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STIKEMAN

INCOME TAX ACT

ANNOTATED

29TH EDITION

2000

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Publications

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INCOME TAX ACT

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The Income Tax Act, Income Tax Application Rules,
Income Tax Conventions Interpretation Act, Canada-U.S.
and Canada-U.K. Tax Treaties, Interpretation Act
Consolidated as of July 1, 2000
(including Bills C-2, C-25 and C-32 as enacted) with
Bills C-23 (2000, c. 12 not yet in force), C-2 (GST Technical Bill)
and C-40 (*Courts Administration Act*);
the Notice of Ways and Means Motion of June 5, 2000;
Draft Legislation of June 22, 2000;
Federal Budget proposals of February 28, 2000;
Press Releases and other tax proposals;
Income Tax Regulations and Draft Regulations to July 1, 2000

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INTRODUCTION

The twenty-ninth edition of the *Stikeman Income Tax Act, Annotated* publishes the Act as consolidated under the R.S.C. 1985 5th Supplement, effective March 1, 1994. This edition is current to July 1, 2000. It incorporates amendments made by Bill C-2, the *Canada Elections Act*, relating to the political contribution tax credit, that received Royal Assent on May 31, 2000 as 2000, c. 9. Bill C-23, the *Modernization of Benefits and Obligations Act* received Royal Assent on June 29, 2000 as 2000, c. 12 and is reflected in this edition as proposed legislation since it must be proclaimed in force by Order of the Governor in Council. Also incorporated is Bill C-25, the *Income Tax Amendments Act, 1999*, that received Royal Assent on June 29, 2000 as 2000, c. 19 and implements the February 1999 budget measures, demutualization of life insurance companies, child tax benefit, and First Nations taxation. Bill C-32, the *Budget Implementation Act, 2000*, received Royal Assent on June 29, 2000 as 2000, c. 14 and enacts some of the February 2000 budget proposals. A complete list of amending statutes included in this edition is provided in the Table of Amending Acts following this Introduction.

All proposed changes up to July 1, 2000, including draft legislation, Notices of Ways and Means Motions and changes announced by means of press releases, are consolidated in this edition. A complete list of pending amendments included in this edition is provided in the Table of Proposed Amendments. Some of the significant proposed measures added in this edition include the following: February 28, 2000 budget measures, Bill C-24 (GST amendments and tobacco manufacturers' surtax), November 30, 1999 draft regulations (insurance policy reserves, foreign affiliates and RPPs), April 18, 2000 draft regulations (RPPs), May 15, 2000 draft regulations (automobile limits and rates), June 5, 2000 Notice of Ways and Means Motion (resource expenditures, various technical amendments, taxpayer migration, trusts), Bill C-40 (*Courts Administration Act*), and the June 22, 2000 draft legislation (non-resident trusts, foreign investment funds).

New in this Edition

Numerous Department of Finance "comfort letters" obtained under the *Access to Information Act* have been added to the Act and Regulations in context. The letters represent intended amendments that Finance has promised in private letters and that will likely be included in future technical bills or budget measures.

To take fullest advantage of the information in this volume, the reader should refer both to the annotations following the provision under consideration and to the annotations at the end of sections. Occasionally annotations will also appear at the end of a group of related sections or at the beginning or end of a Part of the Act. The categories of annotations, and other features of this Act, are discussed below.

Readers will note that the Government has not yet completely revised the Regulations to reflect changed references to the Act made by the Fifth Supplement. We have, therefore, added the correct references in square brackets throughout the Regulations.

At the end of the book, readers will find a comprehensive Topical Index that includes many terms not explicitly found in the legislation, as well as acronyms. The index and the annotations reflect draft legislation and draft regulations where necessary.

Related Provisions

Where other sections of the Act are relevant to the interpretation or application of a particular provision, these are noted. Note that there are occasional Related Provisions within the "shaded boxes", tying proposed legislation to other parts of the Act.

History/Origin

As noted below, the History notes distinguish pre-RSC history from post-RSC history. As always, the History notes indicate the period of application and any special transitional rules that may apply.

Whereas the Origin notes in pre-RSC editions of the *Stikeman Income Tax Act, Annotated* referred to the pre-1972 Act, the Origin notes in this edition are attached to provisions in the Act that were added by the Fifth Supplement.

Selected Cases

Leading cases that are most central to the point at issue follow the provisions of the Act. Each style of cause is followed by a case citation and a succinct one- or two-sentence digest of the case. The cases are selected, and the digests written, by Stikeman Elliott lawyers under the direction of Richard Pound, Q.C.

Definitions

The Definitions annotations follow each section of the Act (except for certain Parts where the annotation falls at the end of the Part), and consist of an alphabetical list of the words and phrases in the section that are defined elsewhere in the Act, or in other applicable legislation. New to this edition are Definitions annotations for the Regulations and the *Income Tax Application Rules* (ITARs). As with the Act, these annotations are found at the end of each section.

Income Tax Regulations/Income Tax Application Rules

Cross-references are provided where relevant. References are also provided to Draft Regulations where applicable.

Forms/ Interpretation Bulletins/ Information Circulars/ I.T. Technical News/ Advance Tax Rulings/ Application Policies/ Registered Plans Division Newsletters

References to Forms, Bulletins, Circulars, Technical News, Advance Tax Rulings, SR&ED Application Policies, and Registered Plans Division Newsletters are listed following the provisions to which they relate. To save valuable research time, the *Stikeman Income Tax Act, Annotated* provides the full title of these documents. References to Revenue Canada's Registered Plans Division Newsletters are new to this edition of the *Stikeman Income Tax Act*.

R.S.C. 1985, Fifth Supplement

The Act is now properly cited as R.S.C. 1985, c. 1 (5th Supp.) and the *Income Tax Act Application Rules* are cited as R.S.C. 1985, c. 2 (5th Supp.). The Fifth Supplement, as amended by the *Income Tax Amendments Revision Act* (Bill C-15), is deemed to have come into force on March 1, 1994. Furthermore it is deemed to be of retroactive effect to December 1, 1991.

Although the sections of the Act have not been renumbered in the consolidation, there is considerable renumbering within sections. As the explanatory note to the Fifth Supplement states about the *Income Tax Act* and the *Income Tax Application Rules*:

> As a general rule, the existing provisions of both Acts have not been renumbered. As a result, provisions repealed after 1971 or omitted from the revision because they were spent may have left gaps in the numbering. The only structural changes made in the present revision concern certain definitions and some application and transitional provisions.
>
> Where one provision contained definitions that also applied to other Parts or provisions, especially if these were not in the immediate vicinity of the definition provision, the references to those other Parts or provisions were deleted in the existing definition provisions and new reference provisions inserted where they could be found easily. Where a definition applicable to the whole Act was found in a provision other than sections 248 to 260, it was made to apply only to its own provision or Part and a definition by reference was added to subsection 248(1).
>
> The *Income Tax Act* ... was practically the only important Act that continued to contain some series of definitions arranged in lettered paragraphs rather than being listed alphabetically in each official language. This situation was corrected in the present revision, and in the definitions that had to be rearranged, algebraic formulae were inserted where advisable.

In addition to these more substantial changes there are hundreds of minor changes in wording to substitute "the taxpayer" for "he", and "total" for "aggregate", and the like.

The *Stikeman Income Tax Act, Annotated* continues to provide full history back to 1972. However, because the Fifth Supplement is of retroactive effect to December 1, 1991, and all subsequent changes to the Act have been recast to conform with the Fifth Supplement by the *Income Tax Amendments Revision Act*, it has become necessary to distinguish pre-RSC history from post-RSC history. This we have done with subheads within the history annotations. Further, we have included "bridges" to link one stream of history to the other where this is needed. These bridges are most often found (in italics at the beginning of the "pre-RSC History") following a defined term which is no longer part of the numbering scheme of the Act, where a link to the history of the previous, numbered provision will aid research. We have not, however, noted all the changes wrought by the Fifth Supplement, as many are simply minor changes in wording, as explained above.

As always, we welcome comments and suggestions for future editions.

Finance/Accountant Major Market
Carswell
July 2000

TABLE OF AMENDING ACTS

Year (S.C.)	Chapter	Royal Assent	Bill
1970-71-72	63	December 23, 1971	C-259
1970-71-72	64	December 23, 1971	C-275
1972	9	March 29, 1972	C-169
1973-74	14	April 18, 1973	C-170
1973-74	29	July 27, 1973	C-192
1973-74	30	July 27, 1973	C-193
1973-74 (Family Allowances Act, 1973)	44	December 12, 1973	C-211
1973-74 (Federal-Provincial Fiscal Arrangements Act, 1972, Federal-Provincial Fiscal Revision Act, 1974 and Income Tax Act)	45	December 12, 1973	C-233
1973-74 (Residential Mortgage Financing Act)	49	December 21, 1973	C-135
1973-74 (Election Expenses Act)	51	January 14, 1974	C-203
1974-75-76	26	March 13, 1975	C-49
1974-75-76 (Cultural Property Export and Import Act)	50	June 19, 1975	C-33
1974-75-76 (Old Age Security Act)	58	June 26, 1975	C-62
1974-75-76	71	December 2, 1975	C-65
1974-75-76 (Western Grain Stabilization Act)	87	February 25, 1976	C-41
1974-75-76 (Halifax Relief Commission Pension Continuation Act)	88	February 25, 1976	C-78
1974-75-76 (Compensation for Former Prisoners of War Act)	95	May 5, 1976	C-92
1974-75-76	106	July 16, 1976	C-58
1976-77	4	February 24, 1977	C-22
1976-77 (Federal-Provincial Fiscal Arrangements and Established Programs Financing Act)	10	March 31, 1977	C-37
1977-78	1	December 15, 1977	C-11
1977-78 (Employment Tax Credit Act)	4	February 2, 1978	C-23
1977-78	32	June 30, 1978	C-56
1977-78 (Maritime Code)	41	June 30, 1978	C-54
1977-78	42	June 30, 1978	C-59
1978-79 (Child tax credit)	5	December 12, 1978	C-10
1979	5	December 6, 1979	C-17
1980-81-82-83 (Bank Act)	40	November 26, 1980	C-6
1980-81-82-83 (Misc. Statute Law Amend. Act)	47	February 19, 1981	C-56
1980-81-82-83	48	February 26, 1981	C-54
1980-81-82-83 (Petroleum and Gas Revenue Tax)	68	July 8, 1981	C-57
1980-81-82-83 (Retention of Records)	102	June 22, 1982	C-118
1980-81-82-83 (Statute Law Relating to Taxes)	104	June 29, 1982	C-112
1980-81-82-83 (National Training Act)	109	July 7, 1982	C-115
1980-81-82-83	140	March 30, 1983	C-139
1980-81-82-83 (Tax Court of Canada)	158	June 29, 1983	C-167
1980-81-82-83 (Athletic Contests and Events Pools Act)	161	June 19, 1983	C-95
1980-81-82-83 (Government Organization Act, 1983)	167	November 17, 1983	C-152
1984	1	January 19, 1984	C-2
1984 (Canada Health Act)	6	April 17, 1984	C-3
1984 (War Veterans Allowance)	19	June 14, 1984	C-39
1984 (Canada-Nova Scotia Oil and Gas Agreement Act)	29	June 29, 1984	C-43
1984 (Financial Administration Act)	31	June 29, 1984	C-24
1984	45	December 20, 1984	C-7
1985 (Sports Pool and Loto Canada Winding-Up Act)	22	June 20, 1985	C-2
1985 (Aeronautics Act Amendment Act)	28	June 28, 1985	C-36
1985	45	October 29, 1985	C-72
1986	2	February 13, 1986	C-82
1986	6	February 13, 1986	C-84
1986	24	June 17, 1986	C-109
1986 (Pension Benefits Standards Act, 1986)	40	June 27, 1986	C-90
1986	44	November 5, 1986	C-11
1986	55	December 19, 1986	C-23
1986 (Petroleum and Gas Revenue Tax)	58	December 19, 1986	C-17
1987 (Canada-Newfoundland Atlantic Accord Implementation Act)	3	March 25, 1987	C-6
1987 (Financial Institutions and Deposit Insurance System Amendment Act)	23	June 30, 1987 (proclaimed July 2, 1987)	C-42
1987 (National Transportation Act, 1987)	34	August 28, 1987 (proclaimed January 1, 1988)	C-18
1987 (Pension Act etc. Amendment Act)	45	December 17, 1987 (proclaimed February 1, 1988)	C-100
1987	46	December 17, 1987	C-64
1988 (Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act)	28	July 21, 1988 (in force December 22, 1989)	C-75

Table of Amending Acts

Year (S.C.)	Chapter	Royal Assent	Bill
1988 (Criminal Code)	51	September 13, 1988 (proclaimed January 1, 1989)	C-61
1988	55	September 13, 1988	C-139
1988 (Tax Court of Canada Amendment Act)	61	September 22, 1988	C-146
1988 (Canada-U.S. Free Trade Agreement Implementation Act)	65	December 30, 1988 (proclaimed January 1, 1989)	C-2
1990 (Department of Industry, Science and Technology Act)	1	January 30, 1990 (in force February 23, 1990)	C-3
1990 (Garnishment/Collection restrictions)	34	June 27, 1990	C-51
1990 (Pension/Retirement Savings)	35	June 27, 1990	C-52
1990	39	October 23, 1990	C-28
1990 (Child tax credit)	42	November 8, 1990	C-86
1990 (Goods and services tax)	45	December 17, 1990 (in force January 1, 1991)	C-62
1991 (Farm Income Protection Act)	22	April 11, 1991 (in force April 1, 1991)	C-98
1991 (An Act respecting insurance companies and fraternal benefit societies)	47	December 17, 1991	C-28
(1994: Income Tax Amendments Revision Act, Sch. I)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1991	49	December 17, 1991	C-18
(1994: Income Tax Amendments Revision Act, Sch. II)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (Miscellaneous Statute Law Amendment Act)	1	February 28, 1992	C-35
(1994: Income Tax Amendments Revision Act, Sch. III)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (An Act to amend the Civilian War Pensions and Allowances Act etc.)	24	June 18, 1992 (in force July 1, 1992)	C-84
(1994: Income Tax Amendments Revision Act, Sch. IV)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (An Act to amend the Bankruptcy Act and the Income Tax Act)	27	June 23, 1992 (in force November 30, 1992)	C-22
(1994: Income Tax Amendments Revision Act, Sch. V)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (An Act to amend the Excise Tax Act and the Income Tax Act)	29	June 23, 1992	C-75
(1994: Income Tax Amendments Revision Act, Sch. VI)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1992 (Child Tax Benefit)	48	October 15, 1992	C-80
(1994: Income Tax Amendments Revision Act, Sch. VII)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1993	24	June 10, 1993	C-92
(1994: Income Tax Amendments Revision Act, Sch. VIII)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1993 (An Act to amend the Excise Tax Act and other Acts)	27	June 10, 1993	C-112
(1994: Income Tax Amendments Revision Act, Sch. IX)	7	May 12, 1994 (deemed in force March 1, 1994)	C-15
1994	8	May 12, 1994	C-9
1994 (Dept. of National Revenue Reorganization Act)	13	May 12, 1994	C-2
1994	21	June 15, 1994	C-27
1994	28	June 23, 1994	C-28
1994	29	June 23, 1994	C-32
1994 (Dept. of Agriculture Amendment Act)	38	November 24, 1994	C-49
1994 (Dept. of Natural Resources Act)	41	December 15, 1994	C-48
1995 (Dept. of Industry Act)	1	March 16, 1995	C-46
1995	3	March 26, 1995	C-59
1995	11	June 15, 1995 (proclaimed in force July 12, 1996)	C-53
1995 (Budget Implementation Act, 1995)	17	June 22, 1995	C-76
1995	18	June 22, 1995	C-67
1995	21	June 22, 1995	C-70
1995 (Cultural Property Act)	38	December 5, 1995 (proclaimed in force July 12, 1996)	C-93
1995 (Excise Tax Act)	46	December 15, 1995	C-103
1996 (Act to amend, enact and repeal certain laws relating to financial institutions)	6	May 29, 1996 (proclaimed in force June 28, 1996)	C-15
1996 (Department of Human Resources Development Act)	11	May 29, 1996 (proclaimed in force July 12, 1996)	C-11
1996	21	June 20, 1996	C-36
1996 (Department of Employment Insurance Act)	23	June 20, 1996	C-12
1997 (Excise Tax Act — GST Amendments)	10	March 20, 1997	C-70
1997 (Bankruptcy and Insolvency Act)	12	April 25, 1997	C-5
1997 (1996 Budget)	25	April 25, 1997	C-92
1997 (1997 Budget)	26	April 25, 1997	C-93
1998	19	June 18, 1998	C-28
1998 (1998 Budget — partial)	21	June 18, 1998	C-36
1998 (Corruption of Foreign Public Officials Act)	34	December 10, 1998	S-21
1999 (An Act to amend the War Veterans Allowance Act ...)	10	March 25, 1999	C-61
1999 (Canada Customs and Revenue Agency Act)	17	April 29, 1999 (proclaimed in force November 1, 1999)	C-43
1999 (1998 Budget)	22	June 17, 1999	C-72
1999 (Budget Implementation Act, 1999)	26	June 17, 1999	C-71
1999 (Miscellaneous Statute Law Amendment Act, 1999)	31	June 17, 1999	C-84
2000 (Canada Elections Act)	9	May 31, 2000 (not yet proclaimed in force)	C-2
2000 (Modernization of Benefits and Obligations Act)	12	June 29, 2000 (not yet proclaimed in force)	C-23
2000 (Budget Implementation, 2000)	14	June 29, 2000	C-32
2000 (Income Tax Amendments Act, 1999)	19	June 29, 2000	C-25

Commencement of Acts

The *Interpretation Act*, RSC 1985, c. I-21, subsections 5(1) and (2) provide as follows:

5. (1) Royal assent — The Clerk of the Parliaments shall endorse on every Act, immediately after its title, the day, month and year when the Act was assented to in Her Majesty's name and the endorsement shall be a part of the Act.

(2) Date of commencement — If no date of commencement is provided for in an Act, the date of commencement of that Act is the date of assent to the Act.

Application of Amendments

In a "History" or "Application" note, the phrase "applicable to 19 — *et seq.*", used in connection with the application of an amendment, indicates that the amendment is applicable to the 19 — and subsequent taxation years.

Citation of Statutes

In 1983 and previous years, federal statutes were cited by the date of the parliamentary session. Commencing in 1984, statutes have been cited by the date of the calendar year in which Royal Assent was granted.

R.S.C. 1985 (5th Supp.)

The Income Tax Act and *Income Tax Application Rules* were consolidated in the 5th Supplement of the Revised Statutes of Canada, 1985 (as cc. 1 and 2 respectively). The cut-off date for the 5th Supplement was November 30, 1991; the coming-into-force date was March 1, 1994. The income tax amending bills that were passed between these two dates were re-drafted to conform to the R.S.C. version of the Act. These re-drafted bills were issued as Schedules I to IX of the *Income Tax Amendments Revision Act*, 1994, c. 7 (Bill C-15), which received Royal Assent on May 12, 1994. In the list of amending bills above, those Schedules are listed along with the original amending Bill. The relationship of those Bills and Schedules is as follows:

1991, c. 47	—	Sch. I
c. 49	—	Sch. II
1992, c. 1	—	Sch. III
c. 24	—	Sch. IV
c. 27	—	Sch. V
c. 29	—	Sch. VI
c. 48	—	Sch. VII
1993, c. 24	—	Sch. VIII
c. 27	—	Sch. IX

Sections 4 to 7 of the *Income Tax Amendments Revision Act* read as follows:

Interpretation of Schedules

4. Schedules assimilated to R.S.C. 1985 — A schedule shall be interpreted as if it were an amending Act contained in one of the supplements to the Revised Statutes of Canada, 1985 and enacted under the authority of the *Statute Revision Act* and the *Revised Statutes of Canada, 1985 Act.*

5. Application of R.S., S-20, c. 40 (3rd Supp.) and c. 2 (5th Supp.) — For greater certainty, the *Statute Revision Act*, the *Revised Statutes of Canada, 1985 Act* and sections 69 and 74 to 78 of the *Income Tax Application Rules* apply to a schedule, with such modifications as the circumstances require.

Coming into Force

6. (1) Coming into force of Act — Subject to subsection (2), this Act comes into force, or is deemed to have come into force, on March 1, 1994.

(2) Coming into force of schedules — Subject to any provision to the contrary in the schedules, each schedule is deemed to have come into force on the day the Act referred to in the heading of the schedule was assented to.

TABLE OF PROPOSED AMENDMENTS

The following table will assist readers in finding, in the shaded boxes throughout the Act and Regulations, the proposed amendments announced at various times, as well as Department of Finance "comfort letters" issued for amendments that have not yet appeared as draft legislation. If you know the subject-matter of announced changes but cannot find them in the legislation, scan the "Subject" column (or consult the Topical Index). If you know the date on which the changes were announced, use the first column, which lists the proposals in chronological order.

Where proposals do not include (and have not been superseded by) draft legislation, the relevant portions of the announcement or press release are reproduced in shaded boxes under the provisions of the Act or Regulations that are expected to be amended.

Except where indicated, all press releases and draft legislation emanate from the federal Department of Finance (Distribution Centre: telephone 613-995-2855, fax 613-996-0518). See the various Special Releases of Carswell's *Canada Tax Service*, *Tax Times* (the "pink sheets") and TaxPartner.

Bill no. or date of Public Statement	**Subject**	**Reproduced at section no.**
Draft legislation, December 20, 1991	Interest deductibility	20(1)(c), (qq), 20(3.1), (3.2), 20.1, 20.2
Press releases, March 2, 1993 and October 1, 1993	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Draft legislation, August 8, 1994	Capital gains exemption (legislation enacted in Bill C-59)	Reg. 2800(2) application
Draft regulations, September 27, 1994	Tax shelter and CCA (films and video tape)	Reg. 1100(21)(e), (21.1)
Press release, October 14, 1994	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Federal budget, February 27, 1995 (legislation enacted in 1996)	Certified film productions	(see December 12, 1995 draft regulations)
Draft legislation and regulations, June 1, 1995	Securities held by financial institutions (legislation enacted in 1998; regulations still pending)	Reg. 304(1)(c)(ii), 2402, 2405(3), (5), 2411, 6201(5), (5.1), 6209(b), 8102–8105, 9000–9003, 9100–9104, 9200–9204
Letter from Dept. of Finance, September 12, 1995	Re business fiscal period	249.1(1)
Notice of Ways and Means Motion, December 12, 1995 (legislation enacted in 1998; regulations still pending) (1995 budget measures)	Certified film productions	Reg. 1100(1)(m), 1100(2)(a)(iii), 1101(5k.1), 1106, 6701, Sch. II Cl. 10(s), (w), (x), Cl. 12(r)
Press release, December 27, 1995	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Letter from Dept. of Finance to CBA/CICA, June 17, 1996	Requirement for non-resident to post security	216(4)
Notice of Ways and Means Motion, October 2, 1996	Taxpayer emigration	(see the June 5, 2000 NWMM)
Press release, November 29, 1996	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Notice of Ways and Means Motion, December 5, 1996 (legislation enacted in 1997) (1996 budget proposals)	Incentives to invest in renewable energy	(see September 16, 1997 draft regulations)
Press release, December 19, 1996	Segregated fund policies and other annuity contracts	12.2(1), 204.4(1), 206(1)"foreign property"; Reg. 304(1)

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Federal budget, February 18, 1997 (legislation enacted in 1998)	Renewable energy, energy conservation and energy efficiency investments	(see September 16, 1997 draft regulations)
Letter from Dept. of Finance, July 29, 1997	Re the holding of foreign affiliates through partnerships	95(1)"foreign affiliate"
Letter from Dept. of Finance, August 6, 1997	Re application of the Large Corporations Tax to joint debt	181.2(3)
Draft regulations, September 16, 1997	Renewable and non-renewable resource income taxation: Canadian renewable and conservation expense; CCA Class 43.1	Reg. 1102(1)(a.1), 1206(1)"Canadian exploration and development overhead expense", 1219; Reg. 1102(21), Sched. II, Cl. 43.1
Draft regulations, September 19, 1997	Taxation of insurance companies	Reg. 804, 2400–2406, 2410–2412, 8201, 8600 def'ns, 8605(3)
Press release, October 23, 1997	Foreign property limit for segregated funds	12.2(1), 204.4(1), 206(1)"foreign property"
Draft legislation and regulations, October 29, 1997	New film or video production services tax credit	(legislation enacted in 1998); Reg. 9300
Draft legislation and regulations, November 14, 1997	Impaired loans	(legislation enacted in 1998); Reg. 9103(2)
Letter from Dept. of Finance, November 17, 1997	Loss deferral rules	40(3.3)–(3.5)
Press release, November 25, 1997	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Federal budget, February 24, 1998 (most items enacted in 1999)	Prescribed financial institutions (large corporations tax)	(legislation enacted in 1999); Reg. 8604
	First Nations taxation	81(1)(a)
Letter from Dept. of Finance, April 29, 1998	Re registered charity as prescribed investor	Reg. 1106(7)(b)
Letters from Dept. of Finance, June 19, 1998, October 8, 1997, August 28, 1997, June 19, 1997	Re amendment to 88(1)(c)(vi)	88(1)(c)(vi)
Press release, July 22, 1998	Prescribed stock exchanges	Reg. 3201
Press release, July 28, 1998	Abandonment of 1996 proposal re seniors' benefit	118(3)
Letter from Dept. of Finance, September 8, 1998	Limited liability partnerships (accounting firms)	96(2.4)(a)
Letters from Dept. of Finance, September 30, 1998 and February 12, 1998	Re butterfly reorganizations	248(1)"taxable Canadian property"
Letter from Dept. of Finance, October 9, 1998	Re application of Reg. 3200, 3201 for purposes of ITA 38(a.1)	Reg. 3200
Draft legislation and regulations, October 27, 1998 (legislation enacted in 1999)	Canadian film or video production tax credit	Reg. 1106(8)
	SR&ED	Reg. 2900(1), (2)(a), (e), 5202"cost of labour"
	Qualified investments for RESPs	Reg. 221(2), 4900, 4901
	Branch tax (corporate immigration)	Reg. 808(1.1)
Letter from Dept. of Finance, November 17, 1998	Re extension of subsec. 206(3.1)	206(3.1)
Letter from Dept. of Finance, December 10, 1998	Trusts with no prospectus filed to be qualified investments	Reg. 4900(1)(d)
Press release, December 18, 1998	Limit on deductibility of provincial payroll and capital taxes	18 [end]

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Press release, December 18, 1998	Income inclusion on conversion of U.S. IRA	248(1)"foreign retirement arrangement"
	Foreign stock exchange index units	Reg. 4900(1)
Draft legislation, December 23, 1998	Taxpayer migration and trusts	(see the June 5, 2000 NWMM)
Letter from Dept. of Finance, December 23, 1998	Re application of subpara. 55(3)(a)(iii)	55(3)(a)(iii)
Notice of Ways and Means Motion, February 11, 1999	Authorized foreign banks	18(5), 20(1)(c), 126(2), 153(1), 181.3(3), 190.13, 212(1)(b), 219(1), 248(1)"authorized foreign bank"
Federal budget, February 16, 1999 (most legislation enacted by Bill C-25; regulation still pending)	First Nations taxation	81(1)(a)
	Non-resident trusts	94(1) (and see the June 22, 2000 draft legislation)
	Foreign-based investment funds	94.1(1) (and see the June 22, 2000 draft legislation)
	Generating equipment using flare gas	Reg. Sch. II, Cl. 43.1
Letter from Dept. of Finance, February 18, 1999	Re applicability of the withholding tax exemption in subpara. 212(1)(b)(vii)	212(1)(b)(vii)
Letter from Dept. of Finance, February 19, 1999	Re anomaly resulting from interaction of sections 55 and 93	55(2)
Revenue Canada news release, March 10, 1999	Improving incentives for SR&ED	248(1)"scientific research and experimental development"
Revenue Canada news release, March 11, 1999	No tax on ice storm grants	56(1)(s)
Letter from Dept. of Finance, March 17, 1999	Re transfer of SIN and business numbers to nominee	241(4)
Press release, April 15, 1999 (see the June 5, 2000 NWMM)	Tax rollover for Canadian shareholders of foreign corporations	44(1), 85.1(5), (6)
Letter from Dept. of Finance, April 20, 1999	Re used equipment	Reg. Sch. II:Cl. 43.1(b)(iii)(A)
Press release, May 11, 1999	Conversion of foreign bank subsidiaries into foreign bank branches	248(1)"authorized foreign bank"
Letter from Dept. of Finance, May 12, 1999	Re trust's exemption from Part XII.2 tax	210.1(b)
Letters from Dept. of Finance, May 12, 1999, July 2, 1998	Application of subsec. 84(4.1)	84(4.1)
Letter from Dept. of Finance, May 18, 1999	Re restoration of 129(3.2)	129(3.1)–(3.5) [Repealed]
Department of Foreign Affairs and International Trade news release, May 26, 1999 (see the June 5, 2000 NWMM)	Amendments re *Foreign Publishers Advertising Services Act*	19(5)"Canadian newspaper or periodical"
Draft legislation, June 3, 1999 (see the June 5, 2000 NWMM)	Donations of ecologically sensitive land	118.1(12)
Letter from Dept. of Finance, June 11, 1999	Re interaction of ITA 136(2)(c) and Reg. 4900(12)	136(2)(c)
Revenue Canada news release, June 15, 1999	Internet filing pilot project for tax returns in 2000	150.1(2)
Press release, June 16, 1999 (see the June 5, 2000 NWMM)	Technical change to the $1,000 tax-free amount for emergency service volunteers	8(1)(a), 81(4)
Revenue Canada news release, June 17, 1999	SR&ED tax credit action plan	127(9)"SR&ED qualified expenditure pool"

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Letter from Dept. of Finance, July 6, 1999	Application of 108(2)	108(2)
Press release, July 20, 1999	Technical change for RESPs	146.1(1)"education savings plan"
Revenue Canada news release, July 21, 1999	Administration of Film Production Credit	125.4(3)
July 23, 1999 draft legislation	Resource expenditures	(see the June 5, 2000 NWMM); Reg. 1102(1)(a)
Press release, July 29, 1999	Multinational insurance corporations	Reg. 2400, 2401
Letter from Dept. of Finance, July 30, 1999	Penalties for tax advisors and promoters	163.2
Revenue Canada news release, September 9, 1999	Worker's Compensation amounts paid by employer	56(1)(v)
Technical backgrounder re taxpayer migration and trusts, September 10, 1999 (see the June 5, 2000 NWMM)	Alternatives to former resident's credit	126(2.2)
	Changes to security requirements	220(4.5)–(4.71)
Letter from Department of Finance, September 14, 1999	Application of 110(1)(d)	110(1)(d)
Press release, October 19, 1999	Residence deduction for the clergy	8(1)(c)
Agriculture and Agri-Food Canada news releases, November 16, 1999	Income from drought-induced sales	Reg. 7305
November 30, 1999 draft legislation (incorporated in the June 5, 2000 NWMM)	Technical amendments (superseding the June 3, 1999 draft legislation re ecological gifts and implementing news releases of April 15 ($1,000 tax free amount for emergency services) and June 16, 1999 (extension of s. 85.1 to foreign corporations) among others	throughout the Act
November 30, 1999 draft regulations	Insurance business policy reserves	Reg. 1400(3), 1401(1)(b), 1404(3)C, 1408(1) definitions
	Foreign affiliates	Reg. 5900(2), (3), 5902, 5903, 5905, 5907(1.3), (1.4)
	Registered Pension Plans	Reg. 8300(8)(a), 8301(4)(b)(ii.2), 8500(1.1), (7)(d), 8501(6.1), (6.2), 8502(d)(ii), (k)
December 17, 1999 draft legislation and regulations	Taxpayer migration	(incorporated in the June 5, 2000 NWMM); Reg. 600(c), 2602(2)
	Trusts	(incorporated in the June 5, 2000 NWMM)
Press release, December 17, 1999	Limit on deductibility of provincial payroll and capital taxes	18 [end]
Letter from Dept. of Finance, January 12, 2000	Third-party penalties	163.2
Bill C-23 (S.C. 2000, c. 12, in force on a day to be fixed by order of the Governor in Council)	Common-law partners	248(1)"common-law partner" and throughout the Act
Federal budget, February 28, 2000	Tax payable by individuals	117(2)
	Individual surtax	180.1(1)
	Tax reduction for corporations	123(1)

Bill no. or date of Public Statement	Subject	Reproduced at section no.
	Accelerated tax reduction for small business corporations	125(1)
	Capital gains inclusion rate	38 (also 14(1.1), (5), 93(2.1), 107.4(3)(e), 110(1)(d), 110.6(2)(a), 112(3.2), 247(1))
	Deferred stock option benefits	7(1)
	Capital gains deferral	73(5)
	Income not earned in a province	120(1)
	Disability tax credit	118.3(2), 118.4(1)(b)
	Medical expense tax credit	118.2(2)(l.2)
	Attendant care expenses	64
	Child care expense deduction	63(1)(e)(ii)
	Personal-use property	46(1)
	Charitable donations tax credit	118.1(5)
	Donations of ecological gifts	38, 118.1(1)"total ecological gifts"
	Offsetting of interest on personal tax overpayment and underpayments	161.1
	Donation of stock option shares	110(1)(d)
	Scholarships, fellowships and bursaries	56(1)(n)
	Thin capitalization	18(4)–(8)
	Non-resident-owned investment corporations	133(8)"non-resident-owned investment corporation"
	Weak currency debt (kiwi loans)	20(1)(c)
	Government assistance: SR&ED	12(1)(x)
	Foreign tax credits: oil and gas production sharing	126(7)"business-income tax"
	Foreign tax credit	126(7)"qualifying incomes"
	Foreign exploration and development expenses	66(4), 66.7(2), 79.1(1), 128.1(4)
	M&P rate for producing steam for sale	125.1(2)
	Hindering a federal tax official	238(1)
	Communication of taxpayer information	241(4)
	First Nations taxation	81(1)(a)
	Simplified film tax incentives	125.4
	SR&ED	127(9)"SR&ED qualified expenditure pool"
	Capital tax surcharge on large deposit-taking institutions	190.1(1.2)
	Extension of foreign property rules to segregated funds	206(1)"foreign property"
	Adjustments to the CCA system	Reg. Part XI
	Separate class election for M&P equipment	Reg. 1101(5p)
	Electrical generating equipment, and heat or water production and distribution equipment	Reg. Sch. II:Cl. 1
	Rail assets	Reg. Sch. II:Cl. 35
Press release, March 2, 2000	Redemption requirements for LSVCCs	204.81(1)
Draft regulations, April 18, 2000	Registered pension plans	8302(3); 8303(2), (6); 8304(2); 8307(4), (6); 8500(8); 8503(2), (2.1), (3); 8504(11); 8510(6); 8514.

Bill no. or date of Public Statement	Subject	Reproduced at section no.
Draft regulations, May 15, 2000	Automobile deduction limits and benefit rates	Reg. 7305.1(a), (b); 7306(a); 7307(1)(b)A(iii), (iv); 7307(3)A(i) to (iv).
Notice of Ways and Means Motion, June 5, 2000	Amendments re *Foreign Publishers Advertising Services Act*	19(1), (5), (5.1), (6)–(8), 19.01
	Resource expenditures	66.1(6)"Canadian exploration expense"(d)(i), (k.1), 66.1(9)(a), 66.2(5)"Canadian development expense"(i.1)
	Technical amendments (superseding the June 3, 1999 draft legislation re ecological gifts and implementing news releases of April 15 ($1,000 tax free amount for emergency services) and June 16, 1999 (extension of s. 85.1 to foreign corporations) among others	throughout the Act
	Taxpayer migration	114, 114.1, 128.1, 128.3, 220(4.5)–(4.71), 248(1)"taxable Canadian property" and others
	Trusts	107, 107.4, 108(1) definitions, 108(7), 248(1)"disposition", (25.1), (25.2) and others
Bill C-40 (*Courts Administration Act*), First Reading June 15, 2000	Consequential amendments	heading before 169, and 176(2)
Draft legislation, June 22, 2000	Non-resident trusts	94(1) and others
	Foreign-based investment funds	94.1–94.3 and others
Bill C-24, Second Reading (Senate) June 28, 2000	Changes consequential on GST amendments to the *Excise Tax Act*	160(3.1), 166.2(2), 167(3), 223(11.1)(a), 231.2(1), 231.6(1)
	Tobacco manufacturer's surtax	182(1), 183(2)

TAX RATES AND CREDITS

(These tables were prepared with the assistance of KPMG)

INDIVIDUALS

FEDERAL TAX RATES

2000

Taxable Income	Tax on Lower Limit	Tax Rate on Excess	Surtax Rate	Surtax Threshold
$0 — 30,004	$ —	17%	5%	$15,500
30,005 — 60,009	5,101	25%		
60,010 and over	12,602	29%		

2001 (Projected)

Taxable Income	Tax on Lower Limit	Tax Rate on Excess	Surtax Rate	Surtax Threshold
$0 — 30,604	$ —	17%	4%	$18,500
30,605 — 61,209	5,203	24%		
61,210 and over	12,548	29%		

Notes:

The 2000 federal budget announced the following changes to the federal tax rates and brackets:

- Effective January 1, 2000 the brackets will be indexed to inflation. Previously, they were only adjusted if the change in the average inflation rate over the 12 month period ending September 30 of the previous year in comparison to the same period of the year prior to that (the "inflation factor") was greater than 3%. They will now be adjusted annually by this inflation factor. In calculating the brackets for 2001, it is assumed that the average inflation rate is 2.0%.
- The tax rate applicable to the middle bracket decreased to 24% (from 26%) effective July 1, 2000. The rate for 2000 is therefore 25%. The government also announced that it plans to further reduce the rate to 23% over the next five years.
- The federal surtax applies to basic federal tax (net of applicable credits) in excess of the threshold amount noted. This threshold was increased to $18,500 (from $12,500) effective July 1, 2000. The threshold for 2000 is therefore $15,500. Effective January 1, 2001, the surtax rate will be reduced to 4%. The government also announced that it plans to eliminate the surtax within the next five years.

INDEXED FEDERAL PERSONAL TAX CREDITS

	2000
Basic personal credit: 118(1)B(c)	$ 1,229
Maximum married credit or equivalent-to-spouse credit for a related dependant who is under 18, the taxpayer's parent or grandparent, or infirm: 118(1)B(a), (b)	1,044
— spouse's or dependant's income threshold above which credit is reduced: 118(1)B(a), (b)	614
Infirm dependants:	
— under age 18 [Note 1]	500
— age 18 or over: 118(1)B(d), (e) [Note 2]	406
Age 65 or older: 118(2) [Note 3]	600
— net income threshold	26,284
Maximum pension credit: 118(3)	170
Disability credit: 118.3	730
Caregiver: 118(1)B(c.1)	406
Medical expense credit: 118.2	
— maximum reduction of allowable medical expenses	1,637
GST credit: 122.5	
— for eligible individual, qualified relation (spouse or dependant under 19 for whom equivalent-to-spouse credit claimed) [Note 4]	205
— for each qualified dependant	107
— net income threshold	26,284

Tax (clawback) on old age security benefits: 180.2 — net income threshold	53,960

Notes:

1. The 2000 federal budget introduced a new credit for those supporting children eligible for the disability credit. The amount of the credit is reduced by child and attendant care expenses claimed in respect of the child exceeding $2,000.
2. The income threshold for infirm dependants age 18 or over above which the credit is reduced is $4,845
3. The federal age amount, $3,531, which is used to determine the credit, is reduced by an amount equal to 15% of a taxpayer's net income in excess of $26,284. The age credit is reduced to zero when net income exceeds $49,824.
4. The basic credit for each eligible individual is $202 with a one-time supplement of $3 (total $205). The basic credit for each qualified dependant is $106 with a one-time supplement of $1 (total $107).

2000 PROVINCIAL TAX RATES

	Tax Rates (as a % of Basic Federal Tax)	Tax Rates (as a % of Taxable Income)			Provincial Surtax and Flat Tax		
		Bracket 1	Bracket 2	Bracket 3	Rates	Thresholds	Flat Tax
British Columbia (a)(d)		8.4%	12.4%	14.4%	30%	$5,300	
		$0-30,004	30,005-60,009	60,010 and over	15	8,660	
Alberta (b)(e)	44.0%						.5% of taxable income
Saskatchewan (b)(f)	48.0				10	—	1.5% of net income
					15	4,000	1.5% of net income
Manitoba (a)(g)		8.0%	12.2%	13.6%			2% of net income
		$0-29,590	29,591-59,180	59,181 and over			2% of net income over $30,000
Ontario (a)(h)		6.4%	9.6%	11.2%	20	3,561	
		$0-30,004	30,005-60,009	60,010 and over	36	4,468	
Québec (i)		19.0%	22.5%	25.0%			
		$0-26,000	26,001-52,000	52,001 and over			
New Brunswick (a)(j)		9.9%	15.2%	17.0%	8	13,500	
		$0-29,590	29,591-59,180	59,181 and over			
Nova Scotia (a)(k)		9.8%	14.9%	16.7%	10	10,000	
		$0-29,590	29,591-59,180	59,181 and over			
Prince Edward Island (b)(l)	57.5				10	5,200	
Newfoundland (b)(m)	62.0				6	250	
					10	7,050	
Yukon Territory (c)(n)	49.0				5	6,000	
N.W.T./Nunavut (c)	45.0						

Notes:

(a) British Columbia, Manitoba, Ontario, New Brunswick and Nova Scotia have announced that they will be using the tax-on-income method of calculating their provincial income tax beginning with the 2000 taxation year. This new system applies the provincial tax rate to taxable income, which must be the same for both federal and provincial purposes. Provincial non-refundable credits reduce provincial tax, and the surtax rates are then applied to net provincial tax in excess of the threshold amounts indicated.

(b) Alberta, Saskatchewan, P.E.I. and Newfoundland will be switching to the new tax-on-income method in 2001. For 2000, they are retaining the tax-on-tax method of calculating their provincial tax. Their tax rate is applied to basic federal tax (net of applicable credits), and the surtax rates are then applied to provincial tax in excess of the threshold amounts indicated.

(c) The territories have not yet indicated whether they intend to change to the new tax-on-income system in the future.

(d) B.C. has retained its 1999 tax-on-tax rate of 49.5% as the basis for calculating its new rates (i.e., 17% × 49.5% = 8.4%). The province is following the federal reductions announced in the 2000 budget — its middle tax rate is based on an effective federal rate of 25% (i.e., 25% × 49.5% = 12.4%) and its brackets will be indexed for inflation.

The province's second tier surtax rate decreased from 19% to 15% effective January 1, 2000 as announced in the 1999 budget. The first tier surtax rate and the surtax thresholds have not changed.

(e) Alberta eliminated its surtax of 8% on provincial tax in excess of $3,500 effective January 1, 2000.

(f) Saskatchewan reduced its flat tax rate from 2% to 1% effective July 1, 2000. The rate for 2000 is therefore 1.5%. Saskatchewan's 15% high-rate surtax and 10% "Deficit Surtax" both apply to basic Saskatchewan tax plus the flat tax.

(g) Manitoba had announced in its 1999 budget that its tax-on-tax rate would decrease to 47% (from 50%) effective July 1, 1999. This 47% tax-on-tax rate is therefore used to calculate the province's new tax-on-income rates (i.e., 17% × 47% = 8.0%). The province is not passing along the federal reductions announced in the 2000 budget that would otherwise have occurred automatically under the tax-on-tax system. Its middle tax rate is based on the higher

effective federal rate of 26% (i.e., 26% × 47% = 12.2%) and its brackets have not been indexed to inflation. The two levels of surtax in the province have not changed.

(h) Ontario had announced in its 1999 budget that its tax-on-tax rate would decrease to 38.5% (from 40.5%) effective July 1, 1999. This 38.5% tax-on-tax rate is used to calculate the province's new tax-on-income rates applicable to the two top brackets (i.e., 29% × 38.5% = 11.2%). As indicated in its 2000 budget, the province is using the equivalent of a 37.5% tax-on-tax rate to compute the rate applicable to the lowest bracket (i.e., 17% × 37.5% = 6.4%).

The province is following the federal reductions announced in the 2000 budget — its middle tax rate is based on an effective federal rate of 25% (i.e., 25% × 38.5% = 9.6%) and its brackets will be indexed for inflation. However, in order to offset the tax savings generated by the reductions in rates applicable to the lower and middle brackets, Ontario has increased its surtax thresholds as indicated in the table.

(i) Québec has always had a separate and distinct tax system, administered by the province itself. Taxpayers file a separate provincial return and calculate provincial taxes based on Québec taxable income, which need not be the same as federal taxable income. They are also able to use a simplified method of calculating their taxes.

Residents of Québec and taxpayers carrying on business in Québec receive a reduction of their federal taxes equal to 16.5% of basic federal tax. Québec's surtax (called a contribution to the anti-poverty fund) of 0.3% of Québec tax payable was eliminated for taxation years ending after 1999.

(j) As announced in its 2000 budget, New Brunswick's tax-on-tax rate used as the basis for calculating its new rates decreased to 57% (from 60%) effective July 1, 2000. The tax-on-tax rate used as the basis for the new tax-on-income rates is therefore 58.5% for 2000 (i.e., 17% × 58.5% = 9.9%).

The province is not passing along the federal reductions announced in the 2000 budget that would otherwise have occurred automatically under the tax-on-tax system. Its middle tax rate is based on the higher effective rate of 26% (i.e., 26% × 58.5% = 15.2%) and its brackets have not been indexed to inflation. The province's surtax has not changed.

(k) Nova Scotia has retained its 1999 tax-on-tax rate of 57.5% as the basis for calculating its new rates (i.e., 17% × 57.5% = 9.8%). The province is not passing along the federal reductions announced in the 2000 budget that would otherwise have occurred automatically under the tax-on-tax system. Its middle tax rate is based on the higher effective federal rate of 26% (i.e., 26% × 57.5% = 14.9%) and its brackets have not been indexed to inflation. The provinces's surtax has not changed.

(l) Prince Edward Island reduced its basic rate from 58.5% to 57.5% effective January 1, 2000.

(m) Effective January 1, 2000, Newfoundland's tax rate was reduced from 69% to 62%. At the same time, the province instituted a two-tier surtax system as indicated in the table. Previously, surtax applied at a rate of 10% on Newfoundland tax in excess of $7,900.

(n) Yukon decreased its basic rate from 50% to 49% effective January 1, 2000. It also plans to further reduce the rate to 46% effective January 1, 2001 and to 44% effective January 1, 2002.

2001 PROVINCIAL TAX RATES (a)

	Tax Rates (as a % of Taxable Income)	Brackets	Surtax Rate	Surtax Threshold
British Columbia (b)	8.4%	$0-30,335		
	11.9	30,336-60,670		
	16.7	60,671-70,000		
	18.7	70,001-85,000		
	19.7	85,001 and over		
Alberta (c)	10.5	All income		
Saskatchewan (d)	11.5	0-30,000		
	13.5	30,001-60,000		
	16.0	60,001 and over		
Manitoba (e)	10.9	0-30,544		
	16.2	30,545-61,089		
	17.5	61,090 and over		
Ontario (f)	6.2	0-30,604	20%	$3,466
	9.2	30,605-61,209	36	4,373
	11.2	60,210 and over		
Québec (g)	18.0	0-26,000		
	22.5	26,001-52,000		
	25.0	52,001 and over		
New Brunswick (h)	9.7	0-29,590	8	13,500
	14.8	29,591-59,180		
	16.5	59,181 and over		
Nova Scotia (h)	9.8	0-29,590	10	10,000
	14.9	29,591-59,180		
	16.7	59,181 and over		
Prince Edward Island (i)	9.8	0-30,604	10	5,200
	13.8	30,605-61,209		
	16.7	61,210 and over		
Newfoundland (j)	9.3	0-30,604	14	223
	13.2	30,605-61,209	10	6,258
	15.9	60,210 and over		

Notes:

(a) The rates and brackets indicated in the table are based on information provided by the provinces in their 2000 budgets. In some cases only minimal information in respect of 2001 was included. As such, the rates and brackets indicated may change once the provinces have actually implemented their tax-on-income systems.

The territories are not included in the table as they have not yet indicated whether they are switching to the tax-on-income system in 2001.

(b) British Columbia will be indexing its brackets starting in 2001 using the same formula as that used federally, but based on the B.C. inflation rate. These brackets, currently based on an estimated inflation rate of 1.1% as detailed in the province's budget, will change once the indexing factor is determined. B.C.'s surtaxes have now been incorporated into its tax brackets.

(c) Alberta's new system will apply a flat tax rate to all taxable income. As well, no surtaxes will apply.

(d) Saskatchewan's tax reform proposes a reduction in rates and an increase in brackets as follows, applicable in 2003 when the system is fully implemented:

11.0%	$ 0-35,000
13.0	35,001-100,000
15.0	100,001 and over

The province has also proposed that its lowest rate (i.e., 11%) will apply to taxable capital gains on qualified farm property and small business shares exceeding the lifetime $100,000 capital gains deduction limit.

(e) Manitoba has announced that it plans to reduce its middle rate to 15.6% and increase the threshold for its highest bracket to $65,000 in 2002.

(f) Ontario will be indexing its brackets starting in 2001 using the same formula as that used federally. The province has not indicated whether it will use the federal or the provincial inflation rate in its calculations. The brackets indicated in the table are based on an estimated inflation rate of 2.0%. The province has also announced its intention to decrease the capital gains inclusion rate to 62% (from 66 ⅔%) effective in 2001.

(g) Québec's 2000 budget announced further reductions in the low, middle and high rates to 17%, 22% and 24% respectively for 2002. The province will also index its brackets for inflation commencing January 1, 2003.

(h) New Brunswick and Nova Scotia have not announced any details of their new tax-on-income systems. The 2001 rates and brackets indicated in the table are the same as those for 2000 (except New Brunswick's tax-on-tax rate of 57% used as the basis for its tax-on-income rates is in effect for the full year).

(i) Prince Edward Island has announced that its new system will mirror the federal system in 2001, using the same tax rates and brackets as those applied federally.

(j) As announced in a press release issued in November 1999, Newfoundland's 2001 tax-on-income rates will be based on the equivalent of a 55% tax-on-tax rate. The province plans to reduce this rate to 49% in 2002. At the same time, their low-rate surtax will be increased to 20% of provincial tax in excess of $199, and the high-rate surtax threshold will decrease to $5,575.

2000 PERSONAL TAX CREDITS — COMBINED FEDERAL AND PROVINCIAL VALUES

	Dollar Amount (a)	*Value of Credit (b)*				
		Federal	*B.C.*	*Alta.*	*Sask.*	*Man.*
Basic personal	$ 7,231	$1,229	$1,838	$1,770	$1,819	$1,807
Spousal (d)	6,140	1,044	1,560	1,503	1,545	1,534
Equivalent-to-spouse (d) (e)	6,140	1,044	1,560	1,503	1,545	1,534
Infirm dependants						
under age 18 (f)	2,941	500	747	720	740	735
age 18 and over (g)	2,386	406	606	584	600	596
Age 65 and over (h) (l)	3,531	600	897	864	888	882
Disability (i) (l)	4,293	730	1,091	1,051	1,080	1,073
Caregiver (j)	2,386	406	606	584	600	596
Pension (k) (l)	1,000	170	254	245	252	250
Canada Pension Plan						
Employed	1,330	226	338	326	335	332
Self-employed	2,660	452	676	651	669	665
Employment Insurance	936	159	238	229	235	234
Education (l)						
Per month — full time	200	34	51	49	50	50
Per month — part time	60	10	15	15	15	15
Tuition fees (m)						
Interest paid on student loans (n)						
Medical expenses (o)						

	Ont.	*N.B.*	*N.S.*	*P.E.I.*	*Nfld.*	*Yukon*	*N.W.T./ Nunavut*
Basic personal	$1,690	$1,948	$1,936	$1,936	$1,991	$1,832	$1,782
Spousal (d)	1,435	1,654	1,644	1,644	1,691	1,555	1,514
Equivalent-to-spouse (d) (e)	1,435	1,654	1,644	1,644	1,691	1,555	1,514
Infirm dependants							
under age 18 (f)	687	792	787	787	810	745	725
age 18 and over (g)	558	643	639	639	657	604	588
Age 65 and over (h) (l)	825	951	945	945	972	894	870
Disability (i) (l)	1,003	1,157	1,149	1,149	1,182	1,087	1,058
Caregiver (j)	558	643	639	639	657	604	588
Pension (k) (l)	234	269	268	268	275	253	247
Canada Pension Plan							
Employed	311	358	356	356	366	337	328
Self-employed	622	717	712	712	733	674	656
Employment Insurance	219	252	251	251	258	237	231
Education (l)							
Per month — full time	47	54	54	54	55	51	49
Per month — part time	14	16	16	16	17	15	15

Notes:

(a) The 2000 federal budget re-introduced full indexation to most credit amounts. The inflation factor used is the same as that applied to the federal tax brackets.

(b) The federal credit values are calculated at a rate of 17%. For those provinces that have not yet switched to the tax-on-income system, the combined federal and provincial credit values reflect basic federal tax and provincial tax only. They do not include federal surtax or any provincial surtaxes on flat taxes. For those provinces that have switched to the new system, the provincial portion of the combined value is calculated based on the province's lowest tax rate. The federal portion of the combined value is unchanged.

(c) B.C. introduced its own personal and spousal credits for 2000 in the amount of $300 each, resulting in a credit value of $25 per taxpayer, calculated at the province's lowest rate.

(d) The spousal amount of $6,140 is reduced by the excess of the spouse's net income over $614. The credit is therefore reduced to zero where the spouse's net income exceeds $6,754.

(e) The equivalent-to-spouse credit is calculated in the same way as the spousal credit. Eligible dependants include those under age 18 related to the taxpayer, the taxpayer's parents/grandparents, or any other person who is related to the taxpayer and is infirm.

(f) The 2000 federal budget introduced a new credit for those supporting children eligible for the disability credit. The amount of $2941 is reduced by child and attendant care expenses claimed in respect of the child exceeding $2,000. The credit is reduced to zero when these expenses total $4,941.

(g) The infirm dependant amount of $2,386 is reduced by the excess of the dependant's net income over $4,845. The credit is therefore reduced to zero where the dependant's net income exceeds $7,231.

(h) The age amount of $3,531 is reduced by 15% of the excess of the taxpayer's net income over $26,284. The credit is therefore reduced to zero where net income exceeds $49,824.

(i) The disability credit is transferable to a supporting person. The transferable amount of $4,293 is reduced by the excess of the dependant's taxable income over $7,231. The credit is therefore reduced to zero where the dependant's taxable income exceeds $11,524.

(j) The caregiver tax credit is available to providers of in-home care for elderly or infirm relatives. The amount of $2,386 is reduced by the excess of the dependant's net income over $11,661. The credit is therefore reduced to zero where the dependant's net income exceeds $14,047.

(k) The pension credit is calculated based on the lesser of eligible pension income and $1,000. This amount is not indexed for inflation.

(l) These credits are transferable to a spouse. The amounts available for transfer are reduced by the excess of the spouse's net income over $7,231.

(m) The tuition credit is calculated as a percentage of tuition and mandatory ancillary fees paid for the calendar year. The tuition and education credits are both transferable to a spouse, parent or grandparent. The maximum amount transferable for both credits is $5,000 less the excess of the student's net income over $7,231. Any amounts not transferred may be carried forward by the student.

(n) Interest paid on student loans under both federal and provincial programs is eligible for the credit. The credit is not transferable, but it may be carried forward for five years if not claimed in the year earned.

(o) The medical credit is calculated based on qualified medical expenses in excess of the lesser of 3% of net income or $1,637.

A refundable medical expense tax credit is also available equal to the lesser of $507 and 25% of qualifying medical expenses. It is reduced at a rate of 5% of the excess of net family income over $17,664.

2000 QUÉBEC PERSONAL TAX CREDITS (a)

	Dollar Amount	*Value of credit at 22%*
Basic personal	$5,900	$1,298
Spousal (b)	5,900	1,298
Person living alone or with dependant (c)	1,050	231
Single parent (d)	1,300	286
Dependent children (d)		
First	2,600	572
Second and subsequent	2,400	528
Other related dependants age 19 or over (e)	2,400	528
Dependant in full-time attendance at a post-secondary school (per semester) (d)(f)	1,650	363
Infirm dependants age 19 or over (e)	5,900	1,298
Age 65 or older (c)(i)	2,200	484
Disability (g)(i)	2,200	484
Pension (c)(h)(i)	1,000	220
Québec Pension Plan		
Employed	1,330	293
Self-employed (j)	1,330	293
Employment Insurance	936	206
Health Services Fund	1,000	220
Union and professional dues (k)		
Tuition fees (l)		
Interest paid on student loans (m)		
Medical expenses (n)		
Refundable credit for child care expenses (o)		
Refundable credit for adoption expenses (p)		
Refundable housing credit for live-in parents (q)		
Refundable credit for home support of elderly persons living alone (r)		
Refundable credit for the treatment of infertility (s)		

Notes:

(a) Net income must be calculated under both the regular filing system and the simplified filing system even if the simplified system is not used.

"Net family income" means the total income of both spouses, as calculated under the simplified system, minus $26,000. "Family income" means the total income of both spouses as calculated under the simplified system

(b) The spousal amount of $5,900 is reduced by the amount of the spouse's net income. There is no equivalent-to-spouse credit in Québec.

(c) The amounts for a person living alone, age 65 and over, and pension income are added together and reduced by 15% of net family income (see note (a)).

(d) The amounts for a single parent, dependent children, and dependent post-secondary students are added together and reduced by the amount of the dependant's net income.

(e) The amounts for other related dependants and infirm dependants are reduced by the amount of the dependant's net income.

(f) The amount for a dependant attending a post-secondary school may only be claimed by a supporting person and is limited to two semesters per year.

(g) The disability credit is transferable to a supporting person. The amount available for transfer is reduced by any income tax payable by the dependant.

(h) The pension credit is calculated based on the lesser of eligible pension income and $1,000.

(i) These credits are transferable to a spouse. The amounts available for transfer are reduced by any income tax payable by the spouse.

(j) Starting in 2000, self-employed taxpayers may deduct 50% of their QPP or CPP contributions in calculating net income (under either the general or the simplified system). The remaining 50% of the contributions can be claimed as a non-refundable credit.

(k) The credit for union and professional dues is calculated based on the annual fees paid in the year. The portion of professional dues relating to liability insurance is allowed as a deduction and is not included in calculating the credit.

(l) The tuition credit is calculated based on tuition, professional examination, and mandatory ancillary fees paid for the calendar year. The credit is not transferable, but may be carried forward to future years by the student.

(m) Interest paid on student loans but unclaimed in a particular year may be carried forward indefinitely.

(n) The medical credit is calculated based on qualified medical expenses in excess of 3% of family income (see note (a)).

A refundable medical expense tax credit is also available equal to 25% of qualifying medical expenses, net of the 3% reduction. It is reduced at a rate of 5% of the excess of family income over $17,500 (see note (a)).

(o) Child care expenses paid in the year are eligible for a refundable tax credit at a rate that varies from 26% to 75%. The rate of credit falls as net family income rises (see note (a)).

(p) A refundable credit is available equal to 25% of specified adoption expenses, to a maximum credit of $3,750 ($3,000 for adoptions finalized prior to 2000).

(q) The refundable tax credit with respect to housing of a parent is $550 for each live-in parent aged 70 or over at the end of the year.

(r) Beginning in 2000, the refundable credit for home support of persons age 70 and over living alone is equal to 23% of eligible expenses paid to obtain certain home support services. The credit is capped at $2,760. If the expense also qualifies for the Québec medical expense credit, it cannot be claimed for this credit as well.

(s) The costs associated with artificial insemination and *in vitro* fertilization paid during the year by an individual or his/her spouse will give rise to a refundable credit of 25% of all eligible expenses to a maximum annual credit of $3,750 per couple, commencing in 2000.

CORPORATIONS

FEDERAL INCOME TAX RATES FOR ACTIVE BUSINESS INCOME

	*Effective January 1, 2001**				*Effective January 1, 2000**		
	General Non-manufacturing Income	*General Manufacturing Income*	*Small Business Income up to $200,000 (a)*	*Small Business Income from $200,000 to $300,000 (b)*	*General Non-manufacturing Income*	*General Manufacturing Income*	*Small Business Income up to $200,000 (a)*
General corporate rate	38.00%	38.00%	38.00%	38.00%	38.00%	38.00%	38.00%
Less federal abatement	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)
	28.00	28.00	28.00	28.00	28.00	28.00	28.00
Add surtax @ 4% (c)	1.12	1.12	1.12	1.12	1.12	1.12	1.12
	29.12	29.12	29.12	29.12	29.12	29.12	29.12
Less rate reductions (d)	(1.00)	(7.00)	(16.00)	(7.00)	—	(7.00)	(16.00)
	28.12	22.12	13.12	22.12	29.12	22.12	13.12

*See the following Notes for the actual dates on which these rates and other rate changes are effective.

PROVINCIAL INCOME TAX RATES FOR ACTIVE BUSINESS INCOME

	*Effective January 1, 2001**				*Effective January 1, 2000**		
	General Non-manufacturing Income	*General Manufacturing Income*	*Small Business Income up to $200,000 (a)*	*Small Business Income from $200,000 to $300,000 (b)*	*General Non-manufacturing Income*	*General Manufacturing Income*	*Small Business Income up to $200,000 (a)*
British Columbia (e)	16.5%	16.5%	4.75%	16.5%	16.5%	16.5%	5.5(4.75)%
Alberta	15.5	14.5	6.0	15.5	15.5	14.5	6.0
Saskatchewan (f)	17.0	10.0	8.0	17.0	17.0	10.0	8.0
Manitoba (g)	17.0	17.0	6.0	17.0	17.0	17.0	7.0
Ontario (h)	14.0	12.0	6.5	14.0	15.5(14.5)	13.5(12.5)	8.0
Québec (i)	8.9	8.9	8.9	8.9	8.9	8.9	8.9
New Brunswick (j)	17.0	17.0	4.5	17.0	17.0	17.0	4.5
Nova Scotia	16.0	16.0	5.0	16.0	16.0	16.0	5.0
Prince Edward Island	16.0	7.5	7.5	16.0	16.0	7.5	7.5
Newfoundland	14.0	5.0	5.0	14.0	14.0	5.0	5.0
Yukon Territory (k)	15.0	2.5	2.5 / 6.0	15.0	15.0	2.5	2.5 / 6.0
Northwest Territories/Nunavut	14.0	14.0	5.0	14.0	14.0	14.0	5.0

*See the following Notes for the actual dates on which these rates and other rate changes are effective.

COMBINED FEDERAL AND PROVINCIAL INCOME TAX RATES FOR ACTIVE BUSINESS INCOME

	*Effective January 1, 2001**				*Effective January 1, 2000**		
	General Non-manufacturing Income	*General Manufacturing Income*	*Small Business Income up to $200,000 (a)*	*Small Business Income from $200,000 to $300,000 (b)*	*General Non-manufacturing Income*	*General Manufacturing Income*	*Small Business Income up to $200,000 (a)*
British Columbia (e)	44.6%	38.6%	17.9%	38.6%	45.6%	38.6%	18.6(17.9)%
Alberta	43.6	36.6	19.1	37.6	44.6	36.6	19.1
Saskatchewan (f)	45.1	32.1	21.1	39.1	46.1	32.1	21.1
Manitoba (g)	45.1	39.1	19.1	39.1	46.1	39.1	20.1
Ontario (h)	42.1	34.1	19.6	36.1	44.6(43.6)	35.6(34.6)	21.1
Québec (i)	37.0	31.0	22.0	31.0	38.0	31.0	22.0
New Brunswick (j)	45.1	39.1	17.6	39.1	46.1	39.1	17.6
Nova Scotia	44.1	38.1	18.1	38.1	45.1	38.1	18.1
Prince Edward Island	44.1	29.6	20.6	38.1	45.1	29.6	20.6
Newfoundland	42.1	27.1	18.1	36.1	43.1	27.1	18.1
Yukon Territory (k)	43.1	24.6	15.6 / 19.1	37.1	44.1	24.6	15.6 / 19.1
Northwest Territories/Nunavut	42.1	36.1	18.1	36.1	43.1	36.1	18.1

*See the following Notes for the actual dates on which these rates and other rate changes are effective.

Notes:

(a) The first $200,000 of active business income earned by a Canadian-controlled private corporation (CCPC) is eligible for the small business deduction (SBD), equal to 16% of such income. This $200,000 limit must be shared by associated corporations, and is also reduced on a straight-line basis when the associated group's taxable capital (computed for Large Corporations Tax purposes) employed in Canada in the preceding year exceeds $10 million. The phase-out of the $200,000 limit is as follows:

Taxable Capital	*Business Limit*
$10 million or less	$200,000
11 million	160,000
12 million	120,000
13 million	80,000
14 million	40,000

$15 million or more	0

(b) The 2000 federal budget announced that the rate applicable to income of a CCPC between $200,000 and $300,000 will decrease to 21% effective January 1, 2001 (prorated for taxation years that straddle this date). The same limitations that apply to the first $200,000 of income will also apply to this additional $100,000. Income eligible for this lower rate will be reduced if the corporation has manufacturing and processing (M&P) income subject to the M&P credit or income from resource activities.

(c) A 4% corporate surtax is levied on the 28% federal tax before applying any other rate reductions or credits. The federal surtax does not apply to a non-resident-owned investment corporation nor to the capital gains refund received by a mutual fund or investment corporation.

(d) The 2000 federal budget announced that the general corporate rate will be reduced over a five year period from 28% down to 21%. The first 1% reduction will be effective January 1, 2001, and must be prorated for taxation years that straddle that date. This 1% reduction will not apply to corporations that already receive rate reductions due to the M&P credit and the SBD, and it will not apply to investment income that benefits from refundable tax provisions or income from resource activities.

(e) The 2000 B.C. budget announced a reduction in the small business tax rate from 5.5% to 4.75% effective July 1, 2000. For taxation years that straddle the date, the rate reduction must be prorated accordingly.

(f) Saskatchewan's manufacturing rate includes the maximum 7% reduction available for manufacturing profits allocated to the province. This base amount of 7% is multiplied by the corporation's allocation of income to Saskatchewan to arrive at the net Saskatchewan tax rate reduction. The resulting percentage is then applied to the corporation's Saskatchewan share of Canadian manufacturing and processing profits to determine the amount of the tax reduction.

(g) Manitoba's 1999 budget announced that the province's small business rate will be reduced by 1% each January until the year 2002, when it will be 5%. For taxation years that straddle these dates, the rate reduction must be prorated accordingly.

(h) The 2000 Ontario budget announced a reduction in the general corporate rate and the M&P rate which will be phased in over six years. When fully implemented in 2005, both rates will be 8%. Effective May 2, 2000, the general corporate rate is reduced to 14.5% (from 15.5%) and the M&P rate is reduced to 12.5% (from 13.5%). On January 1, 2001, these rates will be further reduced to 14.0% and 12.0% respectively. For taxation years that straddle these dates, the rates must be prorated accordingly.

In its 2000 budget, the government announced an acceleration of the cuts announced in the 1998 budget by decreasing the small business rate to 7.0% effective May 2, 2000 and applying the 0.5% per year reduction from that point until January 1, 2005, at which time the rate will further decrease to 4.0%. For taxation years that straddle these dates, the rates must be prorated accordingly. The 1998 Ontario budget had announced a 0.5% reduction in the provincial small business rate each January until the year 2005, with a further reduction to 4.75% on January 1, 2006.

An Ontario surtax is levied on corporations claiming the Ontario SBD in order to gradually reduce the benefit of the deduction where taxable income exceeds $200,000. Currently, the surtax applies to taxable income between $200,000 and $500,000, with the deduction being completely eliminated at taxable income of approximately $500,000.

The 2000 budget announced several changes to these thresholds that will be phased in over five years, as indicated below. The benefit of the lower small business rate will be extended to taxable income up to $400,000, and the range for the application of the surtax will increase to between $400,000 and $1,000,000. The surtax rate will increase each year to coincide with the reduction in the small business rate computed on the basis that the general corporate rate remains at 14%.

	Small business rate	*Taxable income limit*	*Phase-out range*	*Surtax rate*
Jan. 1, 2001	6.5%	$240,000	$240,000-$600,000	5.0%
Jan. 1, 2002	6.0	280,000	280,000-700,000	5.333
Jan. 1, 2003	5.5	320,000	320,000-800,000	5.667
Jan. 1, 2004	5.0	360,000	360,000-900,000	6.0
Jan. 1, 2005	4.0	400,000	400,000-1,000,000	6.667

(i) Corporations were previously required to make a contribution to the Québec anti-poverty fund equal to 2.8% of their Québec tax payable for the year. This surtax was eliminated effective November 27, 1999, reducing Québec's corporate tax rates to 8.9% (from 9.15%). For taxation years that straddle this date, the rate reduction must be prorated accordingly.

The 2000 budget introduced the establishment of a Youth Fund to support youth job creation. This fund will be financed in part by corporations carrying on business in the province, who will be required to contribute 1.6% of income taxes payable for the year. This contribution is not included in the rates indicated above. This measure is effective for any taxation year, or part thereof, included in the three-year period beginning March 15, 2000.

(j) New Brunswick's 2000 budget announced a decrease in the small business rate to 4.5% (from 6%) effective January 1, 2000. For taxation years that straddle this date, the rate reduction must be prorated accordingly.

(k) Small business corporations carrying on manufacturing and processing in the Yukon are taxed at a rate of 2.5%, the same rate that applies to all other manufacturing and processing corporations. Non-manufacturing CCPCs are subject to the 6% tax rate.

TABLE OF CONCORDANCE

The Revised Statutes of Canada, 1985, Fifth Supplement was proclaimed in force as of March 1, 1994. Although there was no general renumbering of the provisions of the *Income Tax Act*, a substantial number of structural changes were made. The table relates the provisions of the former Act to the corresponding provisions of the Fifth Supplement, as amended by 1994, c. 7 (Bill C-15), the *Income Tax Amendments Revision Act*. Note that only those provisions that have underwent structural changes are included in the table.

Income Tax Act R.S.C. 1952, c. 148 as amended	**R.S.C. 1985 5th Supplement as amended**
Section	**Section**
8	**8**
(1.1)	—
12	**12**
(11)	(11)
(a)	"investment contract"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(viii)	(h)
(ix)	(i)
(x)	(j)
(xi)	(k)
(b)	"anniversary day"
(i)	(a)
(ii)	(b)
(iii)	(c)
12.2	**12.2**
(11)	(11)
(a)	"exempt policy"
(b)	"anniversary day"
(i)	(a)
(ii)	(b)
—	(12)
—	(13)
13	**13**
(15)	(15)
(b)	(b)
—	(i)
—	(ii)
(21)	(21)
—	"appropriate minister"
(a)	"conversion" and "conversion cost"
(b)	"depreciable property"
(c)	"disposition of property"
(d)	"proceeds of disposition"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(viii)	(h)
(d.1)	"timber resource property"
(i)	(a)
(A)	(i)
(B)	(ii)
(I)	(A)
(II)	(B)
(ii)	(b)
(A)	(i)
(B)	(ii)
(e)	"total depreciation"
(f)	"undepreciated capital cost"
(i)	A
(ii)	B
(ii.1)	C
(ii.2)	D
(iii)	E
(iv)	F
(A)	(a)
(B)	(b)
(v)	G
(vi)	H
(vii)	I
(viii)	J
(g)	"vessel"
—	(23.1)
14	**14**
(5)	(5)
(a)	"cumulative eligible capital"
(i)	A
(ii)	B
(iii)	C
(iii.1)	D
(A)	(a)
(B)	(b)
(iii.2)	D.1
(iv)	E
(A)	(a)
(B)	(b)
(v)	F
(A)	P

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(B)	Q
(I)	(a)
(II)	(b)
(C)	R
(b)	"eligible capital expenditure"
(i)	(a)
(ii)	(b)
(iii)	(c)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(iv)	(d)
(v)	(e)
(vi)	(f)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(c)	"adjustment time"
(i)	(a)
(ii)	(b)
(iii)	(c)
15.1	**15.1**
(3)	(3)
(a)	"eligible small business corporation"
(i)	(a)
(ii)	(b)
(b)	"qualifying debt obligation"
(i)	(a)
(ii)	(b)
(ii.1)	(c)
(iii)	—
(iv)	—
(A)	(d)
(B)	(e)
(C)	(f)
(c)	"small business development bond"
(i)	(a)
(ii)	(b)
(d)	"joint election"
(i)	—
(ii)	—
(e)	"property used for specified purposes"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(f)	"specified property"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
15.2	**15.2**

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(3)	(3)
(a)	"qualifying debt obligation"
(i)	(a)
(ii)	(b)
(ii.1)	(c)
(iii)	(d)
(A)	(i)
(B)	(ii)
(C)	(iii)
(b)	"small business bond"
(c)	"joint election"
(i)	(a)
(ii)	(b)
(d)	"eligible issuer"
(i)	(a)
(ii)	(b)
18	**18**
(3)	(3)
(a)	"land"
(i)	(a)
(ii)	(b)
(iii)	(c)
(b)	"interest on debt relating to the acquisition of land"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(5)	(5)
(a)	"outstanding debts to specified non-residents"
(i)	(a)
(A)	(i)
(I)	(A)
(II)	(B)
(B)	(ii)
(ii)	(b)
(b)	"specified non-resident shareholder"
(c)	"specified shareholder"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
19	**19**
(5)	(5)
(a)	"Canadian issue"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(ii)	(b)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(F)	(vi)
(b)	"Canadian newspaper or periodical"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(iii)	(c)
(iv)	(d)
(v)	(e)
(A)	(i)
(B)	(ii)
(C)	(iii)
(I)	(A)
(II)	(B)
(III)	(C)
(IV)	(D)
(V)	(E)
(VI)	(F)
(d)	"substantially the same"
(e)	"United States"
(i)	(a)
(ii)	(b)
20	**20**
—	(1.1)
—	(1.2)
—	(16.2)
—	(16.3)
(18)	(18)
(a)	"qualifying inventory"
(b)	"specified transaction"
(i)	(a)
(ii)	(b)
(iii)	(c)
—	(27.1)
35	**35**
(2)	(2)
(a)	"mining property"
(b)	"prospector"
37	**37**
(7)	(7)
(a)	"approved"
(b)	"scientific research and experimental development"
(c)	(8)(a)
(d)	(b)
(e)	(c)
(f)	(d)
37.1	**37.1**
(5)	(5)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(a)	"base period"
(i)	(a)
(ii)	(b)
(b)	"expenditure base"
(i)	(a)
(ii)	(b)
(A)	(i)
(I)	(A)
(II)	(B)
(B)	(ii)
(C)	(iii)
(c)	"qualified expenditure"
(i)	(a)
(ii)	(b)
(iii)	(c)
(d)	"research property"
(e)	"scientific research and experimental development"
—	**37.2**
—	**37.3**
40	**40**
—	(8)
44	**44**
—	(8)
47.1	**47.1**
—	(26.1)
54	**54**
(a)	"adjusted cost base"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(b)	"capital property"
(i)	(a)
(ii)	(b)
(c)	"disposition"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(iii)	(c)
(iv)	(d)
(v)	(e)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(vi)	(f)
(vii)	(g)
(d)	"eligible capital property"
(e)	"listed personal property"
(i)	(a)
(ii)	(b)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(iii)	(c)
(iv)	(d)
(v)	(e)
(f)	"personal-use property"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(ii)	(b)
(iii)	(c)
(g)	"principal residence"
(i)	(a)
(i.1)	(a.1)
(ii)	(b)
(A)	(i)
(B)	(ii)
(iii)	(c)
(A)	(i)
(B)	(ii)
(iii.1)	(c.1)
(A)	(i)
(B)	(ii)
(I)	(A)
(II)	(B)
(C)	(iii)
(D)	(iv)
(I)	(A)
(II)	(B)
(iv)	(d)
(v)	(e)
(vi)	(f)
(h)	"proceeds of disposition"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(viii)	(h)
(ix)	(i)
(x)	(j)
(xi)	(k)
(i)	"superficial loss"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
56	**56**
—	(1.1)
59	**59**
(3.4)	(3.4)
(a)	"successor corporation"
(b)	"stated percentage"
(i)	(a)
(A)	(i)
(B)	(ii)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(C)	(iii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(c)	"specified predecessor"
(i)	(a)
(ii)	(b)
—	**60.001**
—	**60.02**
—	**60.11**
61	**61**
(4)	(4)
(a)	"annual annuity amount"
	"income-averaging annuity contract"
(b)	(a)
(i)	(i)
(A)	(A)
(I)	(B)
(II)	(ii)
(B)	(b)
(ii)	(c)
(iii)	(d)
(iv)	"qualifying payment"
(c)	
63	**63**
(3)	(3)
(a)	"child care expense"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(iii)	(c)
(A)	(i)
(I)	(A)
(II)	(B)
(B)	(ii)
(iv)	(d)
(b)	"earned income"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(c)	"eligible child"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(d)	"supporting person"
(i)	(a)
(ii)	(b)
(iii)	(c)
66	**66**

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(15)	(15)
(a)	"agreed portion"
(i)	(a)
(ii)	(b)
(a.1)	"assistance"
(b)	"Canadian exploration and development expenses"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(A)	(i)
(B)	(ii)
(C)	(iii)
(v.1)	(f)
(vi)	(g)
(vii)	(h)
(c)	"Canadian resource property"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(d)	"drilling or exploration expense"
(i)	(a)
(ii)	(b)
(iii)	(c)
(g.2), (g.3)	"expense"
(d.1)	"flow-through share"
(i)	(a)
(ii)	(b)
(e)	"foreign exploration and development expenses"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(f)	"foreign resource property"
(g)	"joint exploration corporation"
(g.11)	"original owner"
(i)	(a)
(ii)	(b)
(g.2), (g.3)	"outlay"
(g.4)	"predecessor owner"
(i)	(a)
(ii)	(b)
(iii)	(c)
(h)	"principal-business corporation"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(A)	(i)
(B)	(ii)
(v)	(e)
(vi)	(f)
(vii)	(g)
(h.01)	"production"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(h.02)	"reserve amount"
(i)	A
(ii)	(a)
after (ii)	(b)
(h.1)	B
(i)	"selling instrument"
	"shareholder corporation"
(i)	(a)
(ii)	(b)
—	(15.1)
66.1	**66.1**
(6)	(6)
(a)	"Canadian exploration expense"
(i)	(a)
(i.1)	(b)
(A)	(i)
(B)	(ii)
(ii)	(c)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(ii.1)	(d)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(I)	(A)
(II)	(B)
(ii.2)	(e)
(iii)	(f)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(F)	(vi)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(iii.1)	(g)
(A)	(i)
(B)	(ii)
(iv)	(h)
(v)	(i)
(vi)	(j)
(vii)	(k)
(A)	(i)
(B)	(ii)
(C)	(iii)
(b)	"cumulative Canadian exploration expense"
(i)	A
(ii)	B
(iii)	C
(iv)	D
(iv.1)	E
(iv.2)	E.1
(v)	F
(vi)	G
(vii)	H
(A)	(a)
(B)	(b)
(viii)	I
(ix)	J
(x)	K
(xi)	L
(xii)	M
(c)	"restricted expense"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(d)	"specified purpose"
(i)	(a)
(ii)	(b)
(iii)	(c)
—	(6.1)
66.2	**66.2**
(5)	(5)
(a)	"Canadian development expense"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(i.1)	(b)
(ii)	(c)
(A)	(i)
(B)	(ii)
(ii.1)	(d)
(A)	(i)
(B)	(ii)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(iii)	(e)
(iv)	(f)
(v)	(g)
(vi)	(h)
(vii)	(i)
(A)	(i)
(B)	(ii)
(C)	(iii)
(b)	"cumulative Canadian development expense"
(i)	A
(ii)	B
(iii)	C
(iii.1)	D
(iii.2)	D.1
(iv)	E
(v)	F
(A)	(a)
(B)	(b)
(I)	(i)
(II)	(ii)
(C)	(c)
(vi)	G
(vii)	H
(vii.1)	I
(viii)	J
(ix)	K
(A)	(a)
(B)	(b)
(x)	L
(A)	(a)
(B)	(b)
(xi)	M
(xii)	N
(xiii)	O
—	(5.1)
66.4	**66.4**
(5)	(5)
(a)	"Canadian oil and gas property expense"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(A)	(i)
(B)	(ii)
(C)	(iii)
(b)	"cumulative Canadian oil and gas property expense"
(i)	A
(ii)	B
(iii)	C
(iii.1)	D
(iii.2)	D.1
(iv)	E

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(v)	F
(A)	(a)
(B)	(b)
(I)	(i)
(II)	(ii)
(C)	(c)
(vi)	G
(vii)	H
(viii)	I
(ix)	J
(c)	"disposition" and "proceeds of disposition"
—	(5.1)
66.7	**66.7**
(4)	(4)
(b)	(b)
(i)	—
(A)	(i)
(I)	(A)
(II)	(B)
(B)	after (B)
(5)	(5)
(b)	(b)
(i)	—
(A)	(i)
(I)	(A)
(II)	(B)
(B)	after (B)
—	(18)
69	**69**
—	(12.1)
—	(12.2)
70	**70**
(10)	(10)
(a)	"child"
(i)	(a)
(ii)	(b)
(iii)	(c)
(b)	"share of the capital stock of a family farm corporation"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(ii)	(b)
(iii)	(c)
(c)	"interest in a family farm partnership"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(ii)	(b)
(iii)	(c)
—	(11)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(11)	(12)
73	**73**
—	(6)
74.3	**74.3**
—	(2)
74.4	**74.4**
(1)	(1)
—	"designated person"
80.4	**80.4**
(7)	(7)
(a)	"home purchase loan"
(i)	(a)
(ii)	(b)
(iii)	(c)
(b)	"prescribed rate"
(i)	(a)
(ii)	(b)
(iii)	(c)
82	**82**
—	(1.1)
87	**87**
—	(2.01)
88	**88**
—	(1.41)
89	**89**
(1)	(1)
(a)	"Canadian corporation"
(i)	(a)
(ii)	(b)
(b)	"capital dividend account"
(i)	(a)
(A)	(i)
(I)	(A)
(II)	(B)
(III)	(C)
1.	(I)
2.	(II)
3.	(III)
(B)	(ii)
(I)	(A)
(II)	(B)
(III)	(C)
1.	(I)
2.	(II)
3.	(III)
(ii)	(b)
(iii)	(c)
(A)	(i)
(I)	(A)
(II)	(B)
(III)	(C)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(F)	(vi)
(G)	(vii)
(iv)	(d)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(A)	(i)
(B)	(ii)
(v)	(e)
(b.1)	"designated property"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(c)	"paid-up capital"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(iii)	(c)
(f)	"private corporation"
(i)	(a)
(ii)	(b)
(g)	"public corporation"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(iii)	(c)
(A)	(i)
(B)	(ii)
(i)	"taxable Canadian corporation"
(i)	(a)
(ii)	(b)
(j)	"taxable dividend"
(i)	(a)
(ii)	(b)
—	(1.01)
94.1	**94.1**
(2)	(2)
(a)	"designated cost"
(i)	A
(ii)	B
(iii)	C
(iv)	D
(b)	"non-resident entity"
—	(3)
95	**95**
(1)	(1)
(a)	"controlled foreign affiliate"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(a.1)	"excluded property"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(A)	(i)
(B)	(ii)
(b)	"foreign accrual property income"
(i)	A
(A)	(a)
(B)	(b)
(C)	(c)
(D)	(d)
(ii)	B
(ii.1)	C
(A)	(a)
(B)	(b)
(iii)	D
(iv)	E
(v)	F
(c)	"foreign accrual tax"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(d)	"foreign affiliate"
(e)	"participating percentage"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(f)	"relevant tax factor"
(i)	(a)
(ii)	(b)
(f.1)	"surplus entitlement percentage"
(g)	"taxation year"
(4)	(4)
(a)	"direct equity percentage"
(i)	(a)
(ii)	(b)
(b)	"equity percentage"
(i)	(a)
(ii)	(b)
(c)	"relevant cost base"
—	(4.1)
102	**102**
(a)	(1)
(b)	(2)
108	**108**
(1)	(1)
(a)	"accumulating income"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(iii)	(c)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(b)	"beneficiary"
(c)	"capital interest"
(i)	(a)
(ii)	(b)
(d)	"cost amount"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(ii)	(b)
A	A
(I)	(i)
(II)	(ii)
(III)	(iii)
B	B
C	C
D	D
(d.1)	"eligible real property gain"
(d.11)	"eligible real property loss"
(d.12)	"excluded property"
(d.2)	"eligible taxable capital gains"
(i)	(a)
(ii)	(b)
(A)	A
(B)	B
(e)	"income interest"
(f)	"inter vivos trust"
(f.1)	"non-qualifying real property"
(i)	(a)
(ii)	(b)
(f.2)	"pre-1972 spousal trust"
(i)	(a)
(ii)	(b)
(g)	"preferred beneficiary"
(i)	(a)
(ii)	(b)
(iii)	(c)
(g.1)	"qualified farm property"
(g.2)	"qualified small business corporation share"
(h)	"settlor"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(i)	"testamentary trust"
(i)	(a)
(ii)	(b)
(iii)	(c)
(A)	(i)
(B)	(ii)
(j)	"trust"
pre (i)	pre (f)
(i)	(f)
(i.1)	(g)
after (i.1)	pre (a)
(ii)	(a)
(iii)	(b)
(iv)	(c)
(v)	(d)
(vi)	(e)
111	**111**
—	(7.11)
(8)	(8)
(a)	"net capital loss"
(i)	(a)
(A)	A
(B)	B
(ii)	(b)
(A)	(i)
(B)	(ii)
(b)	"non-capital loss"
(i)	A
(A)	E
(B)	F
(ii)	B
(iii)	C
(iv)	D
(v)	D.1
(b.1)	"farm loss"
(i)	A
(A)	(a)
(B)	(i)
(ii)	(ii)
(iii)	(b)
(b.2)	B
	"pre-1986 capital loss balance"
(i)	A
(A)	F
(B)	G
(ii)	B
	H
(A)	(a)
(B)	(b)
(C)	I
(iii)	C
(iv)	D
(v)	E
(c)	(9)
(i)	(a)
(ii)	(b)
(9)	(10)
(10)	(11)
113	**113**
(3)	(3)
(a)	"relevant tax factor"
(b)	"non-business-income tax"
115	**115**

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
—	(6)
116	**116**
—	(7)
118.1	**118.1**
(1)	(1)
"total cultural gifts"	"total cultural gifts"
(d)	(c)
(e)	(d)
120	**120**
(4)	(4)
(a)	"income earned in the year in a province"
(c)	"tax otherwise payable under this Part"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
122.3	**122.3**
(2)	(2)
(a)	"specified employer"
(i)	(a)
(ii)	(b)
(iii)	(c)
(b)	"tax otherwise payable under this Part for the year"
124	**124**
(4)	(4)
(a)	"taxable income earned in the year in a province"
(b)	"province"
125	**125**
(7)	(7)
(a)	"active business carried on by a corporation"
(b)	"Canadian-controlled private corporation"
(c)	"income of the corporation for the year from an active business"
(i)	(a)
(ii)	(b)
(d)	"personal services business"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(e)	"specified investment business"
(i)	(a)
(ii)	(b)
(f)	"specified partnership income"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i)	A
(A)	(a)
(I)	G
(II)	H
(B)	(b)
	M
(I)	(i)
(II)	(ii)
(III)	K
(IV)	L
(ii)	B
(A)	(a)
(B)	(b)
(I)	N
(II)	O
(g)	"specified partnership loss"
(i)	A
(ii)	B
125.1	**125.1**
(3)	(3)
(a)	"Canadian manufacturing and processing profits"
(b)	"manufacturing or processing"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vi.1)	(g)
(vi.2)	(h)
(vii)	(i)
(viii)	(j)
(ix)	(k)
(x)	(l)
(A)	(i)
(B)	(ii)
126	**126**
(7)	(7)
(a)	"business-income tax"
(i)	(a)
(ii)	(b)
(c)	"non-business-income tax"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(viii)	(h)
(ix)	(i)
(d)	"tax for the year otherwise payable under this Part"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i)	(a)
(A)	A
(B)	B
(ii)	(b)
(iii)	(c)
(e)	"unused foreign tax credit"
(i)	A
(ii)	B
(iii)	C
127	**127**
(2)	(2)
(a)	"income for the year from logging operations in the province"
(b)	"logging tax"
127.1	**127.1**
—	(2.1)
127.2	**127.2**
(6)	(6)
(a)	"share-purchase tax credit"
(i)	A
(ii)	B
(iii)	C
(b)	"unused share-purchase tax credit"
(i)	A
(ii)	B
(iii)	C
127.3	**127.3**
(2)	(2)
(a)	"scientific research and experimental development tax credit"
—	A
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
—	B
(b)	"unused scientific research and experimental development tax credit"
(i)	A
(ii)	B
(iii)	C
129	**129**
(4)	(4)
(a)	"Canadian investment income"
(i)	—
(A)	A
(I)	K
(II)	L
(B)	—
(I)	M
(II)	N
(ii)	B
(iii)	C
(b)	"foreign investment income"
130.1	**130.1**
(9)	(9)
(a)	"liabilities"
(b)	"non-qualifying taxed capital gains"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(c)	"qualifying taxed capital gains"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(d)	"non-qualifying real property"
131	**131**
(6)	(6)
(a)	"capital gains redemptions"
(i)	
(A)	C
(B)	D
	K
	L
	M
	N
(ii)	A
(iii)	B
(b)	"capital gains dividend account"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(c)	"non-qualifying real property capital gains dividend account"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(c.1)	"non-qualifying real property"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(iii)	(c)
(A)	(i)
(B)	(ii)
(iv)	(d)
(v)	(e)
(vi)	(f)
(d)	"refundable capital gains tax on hand"
(i)	A
(A)	(a)
(B)	(b)
(C)	(c)
(ii)	B
132	**132**
(4)	(4)
(a)	"capital gains redemptions"
(i)	
(A)	C
(B)	D
	K
	L
	M
	N
(ii)	A
(iii)	B
(b)	"refundable capital gains tax on hand"
(i)	A
(A)	(a)
(B)	(b)
(C)	(c)
(ii)	B
133	**133**
(8)	(8)
(a)	"allowable refund"
pre. (i)	C
(i)	A
(ii)	B
(b)	"Canadian property"
(i)	(a)
(ii)	(b)
(c)	"capital gains dividend account"
pre. (i)	A
(i)	(a)
(ii)	(b)
	B
(iii)	(a)
(iv)	(c)
	M
	N
(v)	(b)
(d)	"non-resident-owned investment

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
	corporation"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(iii)	(c)
(iv)	(d)
(A)	(i)
(B)	(ii)
(v)	(e)
(vi)	(f)
(e)	"taxable dividend"
(9)	(9)
(a)	"allowable refundable tax on hand"
(i)	A
(ii)	B
(ii.1)	C
(iii)	D
(A)	M
(B)	L
—	N
(iv)	E
(v)	F
(b)	"cumulative taxable income"
(i)	A
(ii)	B
—	L
(A)	M
(B)	N
(iii)	C
—	P
(A)	Q
(B)	R
(iv)	D
(v)	E
135	**135**
(4)	(4)
(a)	"allocation in proportion to patronage"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(b)	"consumer goods or services"
(c)	"customer"
(d)	"income of the taxpayer attributable to business done with members"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(e)	"member"
(f)	"non-member customer"
(g)	"payment"
(i)	(a)
(ii)	(b)
(iii)	(c)
137	**137**
(6)	(6)
(a)	"allocation in proportion to borrowing"
(i)	(a)
(ii)	(b)
(a.1)	"bonus interest payment"
(i)	(a)
(ii)	(b)
(b)	"credit union"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(F)	(vi)
(G)	(vii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(iii)	(c)
(c)	"maximum cumulative reserve"
(i)	A
(ii)	B
(d)	"member"
137.1	**137.1**
(5)	(5)
(a)	"deposit insurance corporation"
(i)	(a)
(A)	(i)
(I)	(A)
(II)	(B)
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(I)	(A)
(II)	(B)
(ii)	(b)
(b)	"member institution"
(i)	(a)
(ii)	(b)
(c)	"investment property"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(iii)	(c)
(iv)	(d)
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138	**138**
(12)	(12)
(a)	"accumulated 1968 deficit"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
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(c)	"Canada security"
(d)	"cost"
(e)	"gross investment revenue"
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(e.1)	"interest"
(f)	"life insurance policy"
(g)	"life insurance policy in Canada"
(h)	"maximum tax actuarial reserve"
(j)	"non-segregated property"
(k)	"participating life insurance policy"
(k.1)	"policy loan"
(l)	"property used by it in the year in, or held by it in the year in the course of"
(l.1)	"qualified related corporation"
(m)	"relevant authority"
(i)	(a)
(ii)	(b)
(n)	"segregated fund"
(o)	"surplus funds derived from operations"
(i)	A
(i.1)	B
(ii)	C
(iii)	D
(iv)	E
(v)	F
(vi)	G
(vii)	H
	M

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
	N
(p)	(15)
(q)	(12)
	"1975 branch accounting election deficiency"
(i)	A
(A)	(a)
(B)	(b)
(ii)	B
(iii)	C
(iv)	D
(A)	(a)
(B)	(b)
(v)	E
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(A)	(a)
(B)	(b)
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(vi)	F
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(A)	P
(B)	Q
(ii)	B
(A)	R
(B)	S
(iii)	C
(A)	T
(B)	U
(s)	"1975-76 excess policy dividend reserve"
(i)	A
(A)	(a)
(B)	(b)
(C)	(c)
(D)	(d)
(E)	(e)
(ii)	B
(t)	"1975-76 excess investment reserve"
(i)	A
(ii)	B
(u)	"1975-76 excess capital cost allowance"
(i)	A
(A)	P
(I)	(a)
(II)	(b)
(B)	Q
(ii)	B
(A)	R
(B)	S
(iii)	C
(A)	T
(B)	U
(v)	"1975-76 excess policy reserves"
(i)	A
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(i)	A
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(4)	(4)
(a)	"adult"
(b)	"congregation"
(c)	"family"
(i)	(a)
(ii)	(b)
(d)	"member of a congregation"
(i)	(a)
(ii)	(b)
(e)	"religious organization"
(f)	"total charitable gifts", "total Crown gifts", "total cultural gifts"
145	**145**
(1)	(1)
(a)	"registered supplementary unemployment benefit plan"
(b)	"supplementary unemployment benefit plan"
146	**146**
(1)	(1)
(a)	"annuitant"
(i)	(a)
(ii)	(b)
(b)	"benefit"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(c)	"earned income"
(i)	(a)
(A)	(i)
(B)	(ii)
(C)	(iii)
(ii)	(b)
(ii.1)	(b.1)
(iii)	(c)
(A)	(i)
(B)	(ii)
(iv)	(d)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(A)	(i)
(B)	(ii)
(v)	(e)
(A)	(i)
(B)	(ii)
(vi)	(f)
(vii)	(g)
(c.1)	"issuer"
(d)	"maturity"
(d.1)	"net past service pension adjustment"
(e)	"non-qualified investment"
(f)	"premium"
(i)	(a)
(ii)	(b)
(g)	"qualified investment"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(g.1)	"RRSP deduction limit"
(g.2)	"RRSP dollar limit"
(h)	"refund of premiums"
(i)	(a)
(ii)	(b)
(i)	"registered retirement savings plan"
(i.1)	"retirement income"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(j)	"retirement savings plan"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(C)	(iii)
(I)	(A)
(II)	(B)
(k)	"spousal plan"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(l)	"unused RRSP deduction room"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(I)	(A)
(II)	(B)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
146.1	**146.1**
(1)	(1)
(a)	"beneficiary"
(b)	"educational assistance payment"
(c)	"education savings plan"
(c.1)	"post-secondary educational institution"
(i)	(a)
(ii)	(b)
(d)	"pre-1972 income"
(d.1)	"qualifying educational program"
(e)	"refund of payments"
(f)	"registered education savings plan"
(g)	"tax-paid-income"
(i)	A
(ii)	—
(A)	B
(B)	C
(h)	"trust"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
146.2	**146.2**
—	(23)
146.3	**146.3**
(1)	(1)
(a)	"annuitant"
(i)	(a)
(ii)	(b)
(iii)	(c)
(b)	"carrier"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(b.1)	"minimum amount"
(i)	(a)
(ii)	(b)
(iii)	(c)
(c)	"property held"
(d)	"qualified investment"
(i)	(a)
(ii)	(b)
(iii)	(c)
(e)	"registered retirement income fund"
(f)	"retirement income fund"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(i)	(a)
(ii)	(b)
148	**148**
(9)	(9)
(a)	"adjusted cost basis"
(i)	A
(ii)	B
(iii)	C
(iii.1)	D
(iv)	E
(v)	F
(v.1)	G
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(b)	"cash surrender value"
(b.1)	"child"
(c)	"disposition"
(i)	(a)
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(iii)	(c)
(iv)	(d)
(iv.1)	(e)
(v)	(f)
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(vii)	(h)
(viii)	(i)
(ix)	(j)
(A)	(i)
(B)	(ii)
(x)	(k)
(c.1)	"interest"
(e)	"policy loan"
(e.1)	"premium"
(i)	(a)
(ii)	(b)
(iii)	(c)
(A)	(i)
(B)	(ii)
(C)	(iii)
(D)	(iv)
(E)	(v)
(F)	(vi)
(G)	(vii)
(e.2)	"proceeds of the disposition"
(i)	(a)
(A)	A
—	B
(B)	C
(I)	(i)
(II)	(ii)
(III)	(iii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(iii)	(c)
(iv)	(d)
(A)	(i)
(B)	(ii)
(e.3)	"relevant authority"
(f)	"tax anniversary date"
(g)	"value"
(i)	(a)
(ii)	(b)
—	(9.1)
149.1	**149.1**
(1)	(1)
(a)	"charitable foundation"
(b)	"charitable organization"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(c)	"charitable purposes"
(d)	"charity"
(e)	"disbursement quota"
(i)	A
(A)	(a)
(B)	(b)
(C)	(c)
—	B
(ii)	(a)
(iii)	(b)
(iv)	C
(A)	D
(B)	E
—	F
(C)	(a)
(D)	(b)
(v)	G
(A)	(a)
(B)	(b)
(e.1)	"non-qualified investment"
(i)	(a)
(A)	(i)
(I)	(A)
(II)	(B)
(III)	(C)
(B)	(ii)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(f)	"private foundation"
(g)	"public foundation"
(i)	(a)
(A)	(i)

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
(B)	(ii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(h)	"qualified donee"
(j)	"related business"
(k)	"specified gift"
(l)	"taxation year"
152	**152**
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172	**172**
—	(6)
—	**187.7**
188	**188**
(5)	(5)
(a)	"net asset amount"
—	A
—	B
(b)	"net value"
—	A
—	B
194	**194**
(3)	(3)
—	"debt obligation"
204	**204**
(a)	"equity share"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(A)	(i)
(B)	(ii)
(a.1)	"excluded share"
(i)	(a)
(ii)	(b)
(A)	(i)
(B)	(ii)
(a.2)	"non-participating share"
(i)	(a)
(A)	(i)
(B)	(ii)
(ii)	(b)
(a.3)	"paid-up capital value"
—	A
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(b)	"initial base"
(i)	(a)
(ii)	(b)
(c)	"initial non-qualified investment"
(i)	(a)
(ii)	(b)
(d)	"non-qualified investment"
(e)	"qualified investment"
(i)	(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(vi)	(e)
(A)	(i)
(B)	(ii)
(I)	(A)
(II)	(B)
(vii)	(f)
(viii)	(g)
(ix)	(h)
(x)	(i)
(f)	"revoked plan"
204.9	**204.9**
—	(1.1)
211	**211**
(1)	(1)
"participating life insurance policy etc."	"participating life insurance policy" "policy loan" "segregated fund"
—	**218.1**
219	**219**
(7)	(7)
(a)	"attributed surplus for the year" "Canadian investment fund"
(b)	"accumulated 1968 deficit"
(b.1)	"maximum tax actuarial reserves"
(b.2)	"surplus funds derived from operations"
(c)	"tax deferred account"
(i)	A
(ii)	B
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—	(1)
—	(2)
230.1	**230.1**
—	(7)
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(1)	(1)
(a)	"judge"
(b)	"custodian"
(c)	"lawyer"
(d)	"officer"
(e)	"solicitor-client privilege"
—	**237.2**
248	**248**
(1)	(1)
"corporation"	"corporation" "corporation incorporated in Canada"
"insurance corporation"	"insurance corporation"

Income Tax Act R.S.C. 1952, c. 148 as amended Section	R.S.C. 1985 5th Supplement as amended Section
or "insurer"	"insurer"
"life insurance corporation"	"life insurance corporation"
or "life insurer"	"life insurer"
—	"Part VII refund"
—	"Part VIII refund"
—	"qualifying share"
—	"refundable Part VII tax on hand"
—	"refundable Part VIII tax on hand"
—	"scientific research and experimental development financing contract"
—	"scientific research and experimental development tax credit"
—	"share-purchase tax credit"
—	"unused scientific research and experimental development tax credit"
—	"unused share-purchase tax credit"
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(a)	"related group"
(b)	"unrelated group"

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INCOME TAX ACT

An Act Respecting Income Taxes

REVISED STATUTES OF CANADA 1985, c. 1 (5TH SUPPLEMENT), AS AMENDED BY 1994, cc. 7, 8, 13, 21, 28, 29, 38, 41; 1995, cc. 1, 3, 11, 17, 18, 21, 38, 46; 1996, cc. 6, 11, 21, 23; 1997, cc. 10, 12, 25, 26; 1998, cc. 19, 21, 34; 1999, c. 10, 17, 22, 26, 31; 2000, cc. 9, 12, 14, 19.

REVISED STATUTES OF CANADA 1952, c. 148, PARTS I TO IIIA, V TO VII WERE REPEALED BY 1970-71-72, c. 63, s. 1 (PART I) AND NEW PARTS I TO XVII WERE SUBSTITUTED (THE "AMENDED ACT"), APPLICABLE BY s. 9 TO THE 1972 AND SUBSEQUENT TAXATION YEARS. THE AMENDED ACT HAS BEEN AMENDED BY 1972, c. 9; 1973-74, cc. 14, 29, 30, 44, 45, 49, 51; 1974-75-76, cc. 26, 50, 58, 71, 87, 88, 95, 106; 1976-77, c. 4, 10; 1977-78, cc. 1, 4, 32, 41, 42; 1978-79, c. 5; 1979, c. 5; 1980-81-82-83, cc. 40, 47, 48, 68, 102, 104, 109, 140, 158, 161, 167; 1984, c. 1; 1984, cc. 6, 19, 29, 31, 45; 1985, cc. 22, 45; 1986, cc. 2, 6, 24, 40, 44, 55, 58; 1987, cc. 3, 23, 34, 45, 46; 1988, cc. 28, 55, 65; 1990, cc. 1, 34, 35, 39, 42, 45; 1991, cc. 22, 47, 49; 1992, cc. 1, 24, 27, 29, 48; 1993, cc. 24, 27.

REVISED STATUTES OF CANADA 1952, c. 148, APPLICABLE TO THE 1953 AND SUBSEQUENT TAXATION YEARS (THE "FORMER ACT"), WAS AMENDED BY 1952-53, c. 40; 1953-54, c. 57; 1955, cc. 54, 55; 1956, c. 39; 1957, c. 29; 1957-58, c. 17; 1958, c. 32; 1959, c. 45; 1960, c. 43; 1960-61, cc. 17, 49; 1962-63, c. 8; 1963, cc. 21, 41; 1964-65, cc. 13, 26, 54; 1965, cc. 12, 18; 1966-67, cc. 25, 47, 69, 82, 84, 91, 96, 97; 1967-68, c. 38; 1968-69, cc. 28, 33, 44; 1969-70, c. 8; 1970-71-72, cc. 1, 11, 30, 48, 63, 64.

1. Short title — This Act may be cited as the *Income Tax Act*.

PART I — INCOME TAX

DIVISION A — LIABILITY FOR TAX

2. (1) Tax payable by persons resident in Canada — An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

Related Provisions: 2(2) — Calculation of taxable income; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 96 — Partnerships and their members; 104 — Trusts and estates; 114 — Residence for part of year; 126 — Foreign tax credit; 127.5 — Alternative minimum tax; 149 — Exempt persons; 250 — Extended meaning of resident.

Selected Cases [subsec. 2(1)]: *Fischer v. Canada*, [1995] 1 C.T.C. 2011 (TCC) (Factors considered where connections with both Japan and Canada); *Wassick v. Canada*, [1994] 2 C.T.C. 2235 (TCC) (Factors considered by Court in determination of residence); *The Queen v. Bergelt*, [1986] 1 C.T.C. 212 (FCTD) (Taxpayer severed residential ties by taking permanent job in U.S.); *The Queen v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA); leave to appeal to SCC refused (1985), 64 N.R. 156 (note), (sub nom. *Gurd's Products v. MNR)* (Wholly owned Canadian subsidiary carrying on business in Canada deemed to be resident despite central management and control in U.S.); *Thibodeau Family Trust v. The Queen*, [1978] C.T.C. 539 (FCTD) (Trust non-resident where majority of trustees reside in Bermuda; trust cannot be resident in two places); *MNR v. Stickel*, [1974] C.T.C. 416 (SCC) (Retention of U.S. residence for purposes of treaty exemption from Canadian tax related to period of employment as teacher, not to length of visit); *Zehnder & Co. v. MNR*, [1970] C.T.C. 85 (Exch.) (Taxpayer company resident when authority vested in Canadian directors despite non-resident shareholders); *Bedford Overseas Freighters Ltd. v. MNR*, [1970] C.T.C. 69 (Exch.) (Taxpayer company resident when authority vested in Canadian directors); *MNR v. Crossley Carpets (Canada) Ltd.*, [1968] C.T.C. 570 (Exch.) (Where central management and control exercised in two countries, corporation had dual residence); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

Interpretation Bulletins: IT-106R2: Crown corporation employees abroad; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-221R2: Determination of an individual's residence status; IT-447: Residence of a trust or estate.

(2) Taxable income — The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.

Related Provisions: 3 — Income for taxation year; 15.1(2)(c) — Issuer of small business development bond; 33.1 — Calculation of income for international banking centre; 110.5 — Additions for foreign tax deductions; 248(1) — "Taxable income" may not be less than nil.

Pre-RSC History: Subsec. 2(2) amended by 1985, c. 45, s. 1 to substitute "additions" for "addition", applicable to 1985 *et seq.*

Subsec. 2(2) substituted by 1984, c. 1, s. 1, applicable to 1983 *et seq.*, to add "plus the addition and".

(3) Tax payable by non-resident persons — Where a person who is not taxable under subsection (1) for a taxation year

(a) was employed in Canada,

(b) carried on a business in Canada, or

(c) disposed of a taxable Canadian property,

at any time in the year or a previous year, an income tax shall be paid, as required by this Act, on the person's taxable income earned in Canada for the year determined in accordance with Division D.

Related Provisions [subsec. 2(3)]: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 96(1.6) — Members of partnership deemed carrying on business in Canada; 114 — Residence for part of year; 115(2)(d) — Non-resident deemed employed in Canada; 120(1) — Federal surtax on non-resident's income not earned in a province; 150(1)(a), 150(1.1)(b) — Requirements for non-residents to file tax returns; 212–219 — Tax on non-residents; 217(3)(a) — Non-resident who makes election is deemed employed in Canada; 250.1(a) — Taxation year of non-resident person; 253 — Extended meaning of carrying on business in Canada; Canada-U.S. Tax Convention, Art. VII — Business profits of U.S. resident.

Selected Cases [subsec. 2(3)]: *Hertel (M.) v. MNR*, [1993] 2 C.T.C. 2050 (TCC) (Dual resident was German resident under treaty); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to cancel settlement agreement not proceeds of disposition of option); *Randall v. The Queen*, [1985] 1 C.T.C. 268 (FCTD) (Inactive non-resident partner taxable on profit participation); *Pullman v. The Queen*, [1983] C.T.C. 52 (FCTD) (Non-resident not taxable if not carrying on business in Canada); *Loeck v. The Queen*, [1982] C.T.C. 64 (FCA) (Real estate transactions carried out by agent for non-resident constitute adventure in nature of trade); *Rutenberg v. MNR*, [1979] C.T.C. 459 (FCA) (U.S. resident's transactions through Canadian broker not sheltered by Canada-U.S. Tax Convention); *Abed v. MNR*, [1978] C.T.C. 5 (FCTD) (Non-resident taxable when carrying on business in Canada despite no permanent establishment); *Masri v.*

MNR, [1973] C.T.C. 448 (FCTD) (U.S. resident carrying on business in Canada exempt under Canada-U.S. Tax Convention where no permanent establishment in Canada); *Tara Exploration and Development Co. Ltd. v. MNR*, [1972] C.T.C. 328 (SCC) (Adventure in the nature of trade taxable despite no permanent establishment in Canada).

Interpretation Bulletins [subsec. 2(3)]: IT-113R4: Benefits to employees — stock options; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-176R2: Taxable Canadian property — Interests in and options on real property and shares; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-221R2: Determination of an individual's residence status; IT-262R2: Losses of non-residents and part-year residents; IT-298: Canada-U.S. Tax Convention — number of days "present" in Canada; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-420R3: Non-residents — income earned in Canada; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-434R: Rental of real property by individual.

Definitions [s. 2]: "business", "employed" — 248(1); "employed in Canada" — 115(2)(d); "non-resident", "person", "property" — 248(1); "resident in Canada" — 250; "taxable Canadian property" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248(1).

Forms [s. 2]: NR71: Determination of residency for spouses and dependent children;; NR72: Determination of residency for employees posted abroad; NR73: Determination of residency status (leaving Canada); NR74: Determination of residency status (entering Canada); T4058: Non-residents and temporary residents of Canada [guide].

DIVISION B — COMPUTATION OF INCOME

Basic Rules

3. Income for taxation year — The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

(a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,

(b) determine the amount, if any, by which

(i) the total of

(A) all of the taxpayer's taxable capital gains for the year from dispositions of property other than listed personal property, and

(B) the taxpayer's taxable net gain for the year from dispositions of listed personal property,

exceeds

(ii) the amount, if any, by which the taxpayer's allowable capital losses for the year from dispositions of property other than listed personal property exceed the taxpayer's allowable business investment losses for the year,

(c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) exceeds the total of the deductions permitted by subdivision e in computing the taxpayer's income for the year (except to the extent that those deductions, if any, have been taken into account in determining the total referred to in paragraph (a)), and

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property or the taxpayer's allowable business investment loss for the year,

and for the purposes of this Part,

(e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer's income for the year is the amount so determined, and

(f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 115(1)(b), (b.1), (c) — Application of s. 3 to a non-resident.

History: That portion of s. 3 following para. (d) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 1, applicable to 1990 *et seq.* That portion formerly read:

and the amount, if any, determined under paragraph (d) is the taxpayer's income for the year for the purposes of this Part.

Pre-RSC History: Cl. 3(b)(i)(C) repealed applicable to 1986 *et seq.* and all that portion following para. 3(c) substituted applicable to 1985 *et seq.* by 1986, c. 6, s. 1; for the 1985 taxation year, that portion of s. 3 following para. (c) shall be read as follows:

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the aggregate of

(i) the aggregate of amounts each of which is his loss for the year from an office, employment, business or property or his allowable business investment loss for the year, and

(ii) the amount, if any, by which the amount determined under subclause (b)(i)(C)(II) exceeds the amount determined under subclause (b)(i)(C)(I); and

(e) determine the amount, if any, by which the amount determined under paragraph (d) exceeds the least of

(i) the amount, if any, by which the amount determined under subparagraph (b)(ii) exceeds the aggregate determined under subparagraph (b)(i),

(ii) the amount, if any, that would be determined under subparagraph (i) if the taxpayer's capital gains and allowable capital losses for the year did not include those arising on the disposition by him of properties in the year and after May 22, 1985 and, for the purposes of this subparagraph,

(A) a disposition of property made by the taxpayer after May 22, 1985 and before 1986 pursuant to an agreement in writing entered into before May 23, 1985 shall be deemed to have been made by him in the year and prior to May 23, 1985,

(B) a capital gains dividend received by the taxpayer after May 22, 1985 shall be deemed to be a capital gain of the taxpayer from the disposition of property by him after May 22, 1985, and

(C) an amount designated by a trust under subsection 104(21) in respect of its net taxable capital gains in respect of the taxpayer in the return of the trust's income for a taxation year ending after May 22, 1985 shall be deemed to be a taxable capital gain of the taxpayer from the disposition of property by him after May 22, 1985, and

(iii) $2,000, or if the taxpayer is a corporation, nil;

and the amount, if any, determined under paragraph (e) is the taxpayer's income for the year for the purposes of this Part.

Cl. 3(b)(i)(C) and that portion following para. 3(c) formerly read:

(C) the amount, if any, by which

(I) the aggregate of his taxable capital gains for the year from indexed security investment plans

exceeds

(II) the aggregate of his allowable capital losses for the year from indexed security investment plans,

(d) determine the amount, if any, by which the remainder determined under paragraph (c) exceeds the aggregate of

(i) the aggregate of amounts each of which is his loss for the year from an office, employment, business or property or his allowable business investment loss for the year, and

(ii) the amount, if any, by which the amount determined under subclause (b)(i)(C)(II) exceeds the amount determined under subclause (b)(i)(C)(I); and

(e) determine the amount, if any, by which the remainder determined under paragraph (d) exceeds the lesser of

(i) the amount, if any, by which the amount determined under subparagraph (b)(ii) exceeds the aggregate determined under subparagraph (b)(i), and

(ii) $2,000, or if the taxpayer is a corporation nil;

and the remainder, if any, obtained under paragraph (e) is the taxpayer's income for the year for the purposes of this Part.

Subpara. 3(b)(i), para. 3(d) substituted by 1984, c. 1, subsecs. 2(1), (2), applicable to taxation years ending after September 30, 1983. Subpara. 3(b)(i), para. 3(d) formerly read:

(i) the aggregate of his taxable capital gains for the year from dispositions of property other than listed personal property, and his taxable net gain for the year from dispositions of listed personal property,

. . . . .

(d) determine the amount, if any, by which the remainder determined under paragraph (c) exceeds the aggregate of amounts each of which is his loss for the year from an office, employment, business or property or his allowable business investment loss for the year; and

Subpara. 3(b)(ii), para. 3(d) substituted by 1977-78, c. 42, subsecs. 1(1), (2), applicable to 1978 *et seq.* Subpara. 3(b)(ii), para. 3(d) formerly read:

(ii) his allowable capital losses for the year from dispositions of property other than listed personal property;

. . . . .

(d) determine the amount, if any, by which the remainder determined under paragraph (c) exceeds the aggregate of amounts each of which is his loss for the year from an office, employment, business or property; and

Subpara. 3(e)(ii) substituted by 1977-78, c. 1, s. 1, applicable to 1977 *et seq.*, to substitute "$2,000" for "$1,000".

Selected Cases [s. 3]: *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreements not a source of income); *Kennedy v. R.*, [2000] 1 C.T.C. 2475 (TCC) (Characterization of income is made under Canadian, not foreign, law); *R. v. Robson*, [1999] 2 C.T.C. 171 (Ont CA); leave to appeal to SCC refused (1999), 243 N.R. 394 (note) (Secret commissions are income); *Endres v. R.*, [1998] 1 C.T.C. 2259 (TCC) (Absence of visa and maintenance of Canadian medicare coverage did not affect non-resident status); *Boston v. R.*, [1998] 1 C.T.C. 2217 (TCC) (Residence outside Canada even though wife remained in Canada); *Mastri v. R.*, [1997] 3 C.T.C. 234 (FCA) (No "source" of income if no reasonable expectation of profit); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Provision contemplates taxability of income from unenumerated sources); *Bellingham v. Canada*, [1996] 1 C.T.C. 187 (FCA) ("Additional" interest in expropriation not income property nor income from a "source" and not taxable); *The Queen v. Fries*, [1990] 2 C.T.C. 439 (SCC) (Strike pay from union defence fund not income); *Beique v. The Queen*, [1981] C.T.C. 75 (FCA) (Attempt to split income between husband and wife under Quebec law not allowed).

Definitions [s. 3]: "allowable business investment loss", "allowable capital loss" — 38(b), 248(1); "amount", "business" — 248(1); "Canada" — 255; "employment" — 248(1); "foreign resource property" — 66(15), 248(1); "listed personal property" — 54, 248(1); "office", "property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable net gain" — 41(1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

I.T. Application Rules: 20(3)(c), 20(5)(c).

Interpretation Bulletins: IT-98R2: Investment corporations; IT-134R: Capital gains and losses on dispositions of business property by an individual; IT-138R: Computation and flow-through of partnership income; IT-169: Price adjustment clauses; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-206R: Separate businesses; IT-232R3: Losses — their deductibility in the loss year or other years; IT-256R: Gains from theft, defalcation or embezzlement; IT-262R2: Losses of non-residents and part-year residents; IT-270R2: Foreign tax credit; IT-334R2: Miscellaneous receipts; IT-365R2: Damages, settlements and similar receipts; IT-377R: Director's, executor's or juror's fees; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-395R: Foreign tax credit — foreign-source capital gains and losses; IT-420R3: Non-residents — income earned in Canada; IT-434R: Rental of real property by individual; IT-484R2: Business investment losses; IT-490: Barter transactions; IT-495R2: Child care expenses.

Advance Tax Rulings: ATR-40: Taxability of receipts under a structured settlement; ATR-50: Structured settlement; ATR-68: Structured settlement.

Forms: T776: Statement of real estate rentals.

4. (1) Income or loss from a source or from sources in a place — For the purposes of this Act,

(a) a taxpayer's income or loss for a taxation year from an office, employment, business, property or other source, or from sources in a particular place, is the taxpayer's income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from that source or no income or loss except from those sources, as the case may be, and was allowed no deductions in computing the taxpayer's income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that source or to those sources, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto; and

(b) where the business carried on by a taxpayer or the duties of the office or employment performed by the taxpayer was carried on or were performed, as the case may be, partly in one place and partly in another place, the taxpayer's income or loss for the taxation year from the business carried on, or the duties performed, by the taxpayer in a particular place is the taxpayer's income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from the part of the business that was carried on in that particular place or no income or loss except from the part of those duties that were performed in that particular place, as the case may be, and was allowed no deductions in computing the taxpayer's income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that part of the business or to those duties, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto.

Related Provisions: 96(1)(f) — Source of income preserved when flows through partnership; 108(5) — Source of income lost when flows through trust.

Selected Cases [subsec. 4(1)]: *Interprovincial Pipe Line Co. v. MNR*, [1968] C.T.C. 156 (SCC) (To determine income from a source, taxpayer required to deduct interest paid to Canadian lenders from interest received from U.S. subsidiary).

Interpretation Bulletins: IT-362R: Patronage dividends.

(2) Idem — Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 64 apply either wholly or in part to a particular source or to sources in a particular place.

History: Subsec. 4(2) substituted by 1994, c. 21, subsec. 1(1), applicable to 1989 *et seq.* That subsec. formerly read:

> (2) Idem — Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 63 are applicable either wholly or in part to a particular source or to sources in a particular place, as the case may be.

(3) Deductions applicable — In applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,

> (a) subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (w), shall apply either wholly or in part to a particular source or to sources in a particular place; and
>
> (b) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

History: Subsec. 4(3) substituted by 1994, c. 21, subsec. 1(2), applicable to taxation years ending after November 12, 1981, except that for taxation years that begin before 1993, the subsec. shall be read as follows:

> (3) The following rules apply for the purposes of this Act:
>
> (a) in applying paragraph (1)(b) for the purposes of sections 115 and 126, subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part shall apply either wholly or in part to a particular source or to sources in a particular place; and
>
> (b) in applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,
>
> (i) any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (w) shall not apply either wholly or in part to a particular source or to sources in a particular place, and
>
> (ii) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

Subsec. 4(3) formerly read:

> (3) Deductions applicable — In applying paragraph (1)(b) for the purposes of sections 115 and 126, all deductions allowed in computing the income of a taxpayer for a taxation year for the purposes of this Part, except any deduction permitted by paragraph 60(b), (c), (d) or (i), shall be deemed to be applicable either wholly or in part to a particular source or to sources in a particular place, as the case may be.

(4) [Repealed]

History: Subsec. 4(4) repealed by 1996, c. 21, s. 2, applicable to taxation years that end after July 19, 1995. The subsec. formerly read:

> (4) Limitation respecting inclusions and deductions — Unless a contrary intention is evident, no provision of this Part shall be read or construed to require the inclusion or to permit the deduction, either directly or indirectly, in computing a taxpayer's income for a taxation year or the taxpayer's income or loss for a taxation year from a particular source or from sources in a particular place, of any amount to the extent that that amount has been directly or indirectly included or deducted, as the case may be, in computing such income or loss for the year or any preceding taxation year under, in accordance with or because of any other provision of this Part.

Subsec. 4(4) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 2, to add "either directly or indirectly," and "directly or indirectly", and "for the year or any preceding taxation year", applicable to 1990 *et seq.*

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Definitions [s. 4]: "amount", "business" — 248(1); "Canada" — 255; "employment", "office", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 4]: IT-256R: Gains from theft, defalcation or embezzlement; IT-270R2: Foreign tax credit; IT-377R: Director's, executor's or juror's fees; IT-420R3: Non-residents — income earned in Canada.

Subdivision a — Income or Loss from an Office or Employment

Basic Rules

5. (1) Income from office or employment — Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

Related Provisions: 4(1) — Income or loss from a source or from sources in a place; 6 — Amounts included as income from office or employment; 8(1)(n) — Reimbursement of salary for periods when not employed; 87(2)(k) — Amalgamations — Amount received by employee from new corporation; 110.2(1)"qualifying amount" — Retroactive spreading of certain lump-sum payments over prior years; 115(1)(a)(i) — Non-resident's taxable income earned in Canada; 149(1)(a), (b) — Exempt individuals; 153(1)(a) — Withholding; Canada-U.S. tax treaty, Art. XV, XVI — Taxation of dependent personal services.

Selected Cases [subsec. 5(1)]: *Buré v. R.*, [2000] 1 C.T.C. 2407 (TCC) (Payment by club of agent's fees was taxable benefit to player); *Romeril v. R.*, [1999] 1 C.T.C. 2535 (TCC) (Predominant purpose of trip governs); *Gernhart v. R.*, [1998] 2 C.T.C. 102 (FCA); aff'd [1996] 3 C.T.C. 2369 (TCC) (Tax equalization payments part of remuneration for services); *Shultz v. Canada* (October 15, 1996), Court File No. 96-29098 (TCC) (unreported) (Bonus payment received in respect of period when taxpayer was non-resident was taxable. Compare *Hewitt*); *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 392 (note) (Payments by employer into employees' stock purchase plan governed by subsection 7(3); not deductible remuneration); *Canada v. G.R. Chrapko*, [1988] 2 C.T.C. 342 (FCA) (Cashier required to include cash shortages withheld from wages); *McNeill v. The Queen*, [1986] 2 C.T.C. 352 (FCTD) (Relocation allowance is not income when unrelated to contract of employment and services rendered); *Nowegijick v. The Queen*, [1983] C.T.C. 20 (SCC) (Income from services performed by Indian off reserve for corporation with head office on reserve was not taxable); *Lawson v. The Queen*, [1982] C.T.C. 368 (FCTD) (Payment for settlement of wrongful dismissal claim taxable); *Dauphinée v. The Queen*, [1980] C.T.C. 332 (FCTD) (Award for inventions made in the course of employment taxable); *Loeb v. The Queen*, [1978] C.T.C. 460 (FCA) (Payment for picketing during strike was income from employment); *Morin v. The Queen*, [1975] C.T.C. 106 (FCTD) (Provincial income taxes deducted from salary included in income).

Interpretation Bulletins: IT-68R2: Exemption: professors and teachers from other countries; IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-113R4: Benefits to employees — stock options; IT-167R6: Registered pension plans — employee's contributions; IT-196R2: Payments by employer to employee; IT-202R2: Employees' or workers' compensation; IT-213R: Prizes from lottery schemes and give-away contests; IT-257R: Canada Council grants; IT-266: Taxation of members of provincial legislative assemblies; IT-292: Taxation of elected municipal officers; IT-316: Awards for employees' suggestions and inventions; IT-334R2: Miscellaneous receipts; IT-365R2: Damages, settlements and similar receipts; IT-389R: Vacation-with-pay plans established under collective agreements; IT-470R: Employees' fringe benefits; IT-515R2: Education tax credit.

Advance Tax Rulings: ATR-21: Pension benefit from an unregistered pension plan; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

(2) Loss from office or employment — A taxpayer's loss for a taxation year from an office or employment is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying, with such modifications as the circumstances require, the provisions of this Act respecting the computation of income from that source.

Related Provisions: 4(1) — Income or loss from a source or from sources in a place; 8(13) — Loss from home office disallowed; 111(1)(a), 111(8)"non-capital loss" — Carryover of loss from employment to prior or later years.

Selected Cases [subsec. 5(2)]: *McIlhargey v. Canada*, [1991] 2 C.T.C. 52 (FCTD) (Forgiveness of loan to employee for share purchase taxable; subsequent loss on sale not deductible from employment income).

Definitions [s. 5]: "amount", "employment", "office", "salary or wages" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Inclusions

6. (1) Amounts to be included as income from office or employment — There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

(a) **value of benefits** — the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit

(i) derived from the contributions of the taxpayer's employer to or under a registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing plan or group term life insurance policy,

(ii) under a retirement compensation arrangement, an employee benefit plan or an employee trust,

(iii) that was a benefit in respect of the use of an automobile,

(iv) derived from counselling services in respect of

(A) the mental or physical health of the taxpayer or an individual related to the taxpayer, other than a benefit attributable to an outlay or expense to which paragraph 18(1)(l) applies, or

(B) the re-employment or retirement of the taxpayer, or

(v) under a salary deferral arrangement, except to the extent that the benefit is included under this paragraph because of subsection (11);

Related Provisions: 6(1)(e) — Standby charge for automobile; 6(1)(e.1) — Additional 7% for GST; 6(1)(f) — Insurance benefits received by employer; 6(1)(g) — Employment benefit plan; 6(1)(i) — Salary deferral arrangement payments; 6(1)(k), (l) — Automobile operating expense benefits; 6(1.1) — Parking costs are taxable benefits; 6(4) — Group term life insurance — taxable benefit; 6(6) — Employment at special work site or remote location; 6(7) — Cost of property or service includes taxes; 6(11)–(14) — Salary deferral arrangement; 6(15), (15.1) — Forgiveness of employee debt; 6(16) — Disability-related employment benefits; 6(18)(a) — No benefit from top-up disability payments where insurer insolvent; 6(19)–(22) — Benefit from reimbursement for loss in value of housing; 6(23) — Benefit from housing subsidy; 7(3) — No benefit from stock option agreement except as provided under s. 7; 15(5) — Automobile benefit to shareholder; 18(1)(r) — Limitation on employer deductibility — automobile expenses; 20.01 — Deduction to self-employed person for private health services plan premiums; 56(1)(a) — Amounts included in income; 56(1)(w) — Salary deferral arrangement; 56(1)(x)–(z) — Retirement compensation arrangement; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; 153(1)(a) — Withholding of tax by employer; 248(1) — "retiring allowance" excludes counselling services.

History: Subpara. 6(1)(a)(iii) substituted by 1994, c. 21, subsec. 2(1), applicable to 1993 *et seq.* That subpara. formerly read:

(iii) that was a benefit in relation to the use of an automobile, except to the extent that the benefit related to the operation of the automobile,

Subpara. 6(1)(a)(v) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(1), applicable to 1986 *et seq.*

Pre-RSC History: Subpara. 6(1)(a)(iv) added by 1990, c. 39, subsec. 1(1), applicable to 1988 *et seq.*

Subpara. 6(1)(a)(i) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

Subpara. 6(1)(a)(ii) substituted by 1987, c. 46, subsec. 1(1), applicable after October 8, 1986. Subpara. 6(1)(a)(ii) formerly read:

(ii) under an employee benefit plan or employee trust, or

Para. 6(1)(a) substituted by 1980-81-82-83, c. 140, subsec. 1(1), applicable to 1982 *et seq.* Para. 6(1)(a) formerly read:

(a) the value of board, lodging and other benefits of any kind whatever, except any benefit

(i) derived from his employer's contributions to or under a registered pension fund or plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing plan or group term life insurance policy, or

(ii) under an employee benefit plan or employee trust, that was received or enjoyed by him in the year in respect of, in the course of, or by virtue of an office or employment;

Para. 6(1)(a) substituted by 1980-81-82-83, c. 48, subsec. 1(1), applicable to 1980 *et seq.* Para. 6(1)(a) formerly read:

(a) the value of board, lodging and other benefits of any kind whatever (except the benefit he derives from his employer's contributions to or under a registered pension fund or plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing plan or group term life insurance policy) received or enjoyed by him in the year in respect of, in the course of, or by virtue of an office or employment;

Selected Cases [para. 6(1)(a)]: *Bure v. R.*, [2000] 1 C.T.C. 2407 (TCC) (Payment by club of agent's fees was taxable benefit to player); *Romeril v. R.*, [1999] 1 C.T.C. 2535 (TCC) (Predominant purpose of trip governs); *Gernhart v. R.*, [1998] 2 C.T.C. 102 (FCA); aff'd [1996] 3 C.T.C. 2369 (TCC) (Tax equalization payments part of remuneration for services); *Guay v. R.*, [1997] 3 C.T.C. 276 (FCA); rev'g [1996] 3 C.T.C. 2385 (TCC) (Relationship of expenses reimbursed to employment led to non-taxability of reimbursement payments); *Shultz v. Canada* (October 15, 1996), Court File No. 96-29098 (TCC) (unreported) (Bonus payment received in respect of period when taxpayer was non-resident was taxable. Compare *Hewitt*); *Lowe v. Canada*, [1996] 2 C.T.C. 33 (FCA) (No benefit if pleasure portion of business trip is incidental); *Leduc (succession de) v. Canada*, [1996] 1 C.T.C. 2873 (TCC) (Costs of transporting food to remote location were taxable benefits); *Detchon v. Canada*, [1996] 1 C.T.C. 2475 (TCC) (Amount of benefit for free schooling was average cost to school of educating student); *Krull et al. v. Canada (Attorney General)*, [1996] 1 C.T.C. 131 (FCA) (Mortgage differential payment for limited time not a taxable benefit); *Mommersteeg and Griffin v. Canada*, [1995] 2 C.T.C. 2767 (TCC) (Airline mileage travel was taxable benefit where tickets giving rise to mileage paid by employer); *Blanchard v. Canada*, [1995] 2 C.T.C. 262 (FCA) (Source of payment of benefit not relevant so long as there is connection with employment); *Klein v. Canada*, [1995] 1 C.T.C. 2980 (TCC) (Loan forgiveness was part of single severance package); *Oster v. Canada*, [1995] 1 C.T.C. 2224 (TCC) (Transfer allowances equal to one month's pay were taxable benefits and not moving expenses); *Hoefele v. Canada*, [1995] 1 C.T.C. 2177 (TCC) (Interest subsidy on increased portion of mortgage over ten year period was reimbursement of expense, not increase in employee's remuneration); *Clemiss v. MNR*, [1992] 2 C.T.C. 232 (FCTD) (Reimbursement of legal fees incurred in defence of criminal prosecution for alleged conspiracy to defraud company was income); *McIlhargey v. Canada*, [1991] 2 C.T.C. 52 (FCTD) (Forgiveness of loan to employee for share purchase taxable; subsequent loss on sale not deductible from employment income); *Huffman v. Canada*, [1990] 2 C.T.C. 132 (FCA) (Undercover police officer's reimbursement for cost of special clothes not benefit); *Splane v. Canada*, [1990] 2 C.T.C. 199 (FCTD); aff'd 92 D.T.C. 6021 (FCA) (Mortgage interest differential paid to relocated employee not benefit); *Robertson v. The Queen*, [1988] 1 C.T.C. 111 (FCTD); aff'd [1990] 1 C.T.C. 114 (FCA); leave to appeal to SCC refused (1990), 113 N.R. 319 (note), (sub nom. *Robertson v. MNR)* (Profit from exercise of option was benefit from employment); *McNeill v. The Queen*, [1986] 2 C.T.C. 352 (FCTD) (Without evidence of uncompensated losses suffered, "social disruption allowance" for relocation was a benefit from employment); *Dauphinée v. The Queen*, [1980] C.T.C. 332 (FCTD) (National Research Council of Canada award for invention was employment income); *The Queen v. Harman*, [1980] C.T.C. 83 (FCA) (Where automobile used for business and personal purposes, benefit from employment only to extent of personal use; no standby charge); *Phaneuf Estate v. The Queen*, [1978] C.T.C. 21 (FCTD) (Difference between par value and market value of shares was gift, not taxable benefit); *Philp et al. v. MNR*, [1970] C.T.C. 330 (Exch.) (Trip with expenses paid by supplier for employment performance resulted in taxable

benefit of 50%); *Waffle v. MNR*, [1968] C.T.C. 572 (Exch.) (Cruise for employee and wife paid for by supplier was fully taxable benefit).

Regulations: 200(2)(g), 200(3) (information returns).

Remission Orders: *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

Interpretation Bulletins: IT-54: Wage loss replacement plans — changes in plans established before June 19, 1971; IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-85R2: Health and welfare trusts; Benefits to employees — stock options; IT-160R3: Personal use of aircraft; IT-167R6: Registered pension plans — employee's contributions; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-196R2: Payments by employer to employee; IT-227R: Group term life insurance premiums; IT-334R2: Miscellaneous receipts; IT-339R2: Meaning of "private health services plan"; IT-357R2: Expenses of training; IT-365R2: Damages, settlements and similar receipts; IT-389R: Vacation-with-pay plans established under collective agreements; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-428: Wage loss replacement plans; IT-432R2: Benefits conferred on shareholders; IT-470R: Employees' fringe benefits; IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

I.T. Technical News: No. 6 (payment of mortgage interest subsidy by employer); No. 13 (employer-paid educational costs); No. 12 (1998 deduction limits and benefit rates for automobiles); No. 15 (Christmas parties and employer-paid special events; employer payment of professional membership fees).

Advance Tax Rulings: ATR-8: Self-insured health and welfare trust fund; ATR-21: Pension benefit from an unregistered pension plan; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan.

Forms: T4130: Employer's guide to payroll deductions — taxable benefits [guide].

(b) **personal or living expenses** — all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except

(i) travel, personal or living expense allowances

(A) expressly fixed in an Act of Parliament, or

(B) paid under the authority of the Treasury Board to a person who was appointed or whose services were engaged pursuant to the *Inquiries Act*, in respect of the discharge of the person's duties relating to the appointment or engagement,

(ii) travel and separation allowances received under service regulations as a member of the Canadian Forces,

(iii) representation or other special allowances received in respect of a period of absence from Canada as a person described in paragraph 250(1)(b), (c), (d) or (d.1),

(iv) representation or other special allowances received by a person who is an agent-general of a province in respect of a period while the person was in Ottawa as the agent-general of the province,

(v) reasonable allowances for travel expenses received by an employee from the employee's employer in respect of a period when the employee was employed in connection with the selling of property or negotiating of contracts for the employee's employer,

(vi) reasonable allowances received by a minister or clergyman in charge of or ministering to a diocese, parish or congregation for expenses for transportation incident to the discharge of the duties of that office or employment,

(vii) reasonable allowances for travel expenses (other than allowances for the use of a motor vehicle) received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling away from

(A) the municipality where the employer's establishment at which the employee ordinarily worked or to which the employee ordinarily reported was located, and

(B) the metropolitan area, if there is one, where that establishment was located,

in the performance of the duties of the employee's office or employment,

(vii.1) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment,

(viii) [Repealed]

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the employee's domestic establishment in the place where the employee is required by reason of the employee's employment to live and in full-time attendance at a school in which the language primarily used for instruction is the official language of Canada primarily used by the employee if

(A) a school suitable for that child primarily using that language of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that language for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities;

and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed not to be a reasonable allowance

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

Related Provisions: 6(6) — Employment at special work site or remote location; 6(16) — Disability-related employment benefits; 8(1) — Deductions allowed; 8(1)(a) — Deduction from income of volunteer firefighter or emergency worker; 8(1)(c) — Clergyman's residence; 8(1)(f) — Salesman's expenses; 8(1)(g) — Transport employee's expenses; 8(1)(h) — Travelling expenses; 8(1)(h.1) — Motor vehicle travelling expenses; 8(11) — GST rebate deemed not a reimbursement; 18(1)(r) — Limitation

on employer deductibility — automobile expenses; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; 153(1)(a) — Withholding of tax by employer.

History: Subpara. 6(1)(b)(viii) repealed by 1999, c. 22, subsec. 2(1), applicable to 1998 *et seq.* The subpara. formerly read:

> (viii) such part of the total of allowances received by a person who is a volunteer fireman from a government, municipality or other public authority for expenses incurred by the person in respect of, in the course of, or by virtue of the discharge of the person's duties as a volunteer fireman, as does not exceed $500, or

Subpara. 6(1)(b)(xi) substituted by 1994, c. 21, subsec. 2(2), applicable to 1993 *et seq.* That subpara. formerly read:

> (xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or parking, toll or ferry charges and the amount of the allowance is determined without reference to those reimbursed expenses);

That portion of subpara. 6(1)(b)(vii) preceding cl. (A), and subpara. (vii.1), amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 3(2), (3), to substitute, in each, "reasonable allowances" for "allowances (not in excess of reasonable amounts)", and "the negotiating" for "negotiating", applicable to 1990 *et seq.*

That portion of para. 6(1)(b) following cl. (ix)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(4), that portion between cl. (ix)(B) and subpara. (x) applicable to 1990 *et seq.*, and subparas. (x) and (xi) applicable to 1988 *et seq.*, except that those subparas. are not applicable to the 1988 and 1989 taxation years of an individual who so elects by notifying the Minister of National Revenue in writing. That portion formerly read:

> and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in the year by the taxpayer for use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed to be in excess of a reasonable amount
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> > (x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or
> >
> > (xi) where the taxpayer both receives an allowance in respect of the use of the vehicle in connection with or in the course of the office or employment and is reimbursed in whole or in part for expenses in respect of the same use;

Pre-RSC History: That portion of subpara. 6(1)(b)(vii) preceding cl. (A) substituted, subpara. (vii.1) and that portion of para. 6(1)(b) following subpara. (ix) (including subparas. (x), (xi)) added, by 1988, c. 55, subsecs. 1(1) to (3), applicable to 1988 *et seq.* That portion of subpara. 6(1)(b)(vii) preceding cl. (A) formerly read:

> (vii) allowances (not in excess of reasonable amounts) for travelling expenses received by an employee (other than an employee employed in connection with the selling of property or negotiating of contracts for his employer) from his employer if they were computed by reference to time actually spent by the employee travelling away from

Cl. 6(1)(b)(ix)(B) substituted by 1985, c. 45, subsec. 2(1), applicable to 1984 *et seq.* Cl. 6(1)(b)(ix)(B) formerly read:

> (B) the school that the child attends is the school closest to that place in which that language is the language primarily used for instruction;

Subparas. 6(1)(b)(iii), (viii) substituted by 1980-81-82-83, c. 48, subsecs. 1(2), (3), applicable to 1980 *et seq.*, to add reference to para. (d.1) and to substitute "$500" for "$300".

Subpara. 6(1)(b)(ix) added by 1974-75-76, c. 26, subsec. 1(1), applicable to 1974 *et seq.*

Selected Cases [para. 6(1)(b)]: *MacDonald v. Canada*, [1994] 2 C.T.C. 48 (FCA) (Monthly housing subsidy for RCMP officer was taxable allowance); *The Queen v. Eggert*, [1985] 2 C.T.C. 343 (FCTD) (Fixed monthly allowance for expenses, not determined according to time spent travelling, nor in connection with selling or negotiating, was taxable benefit); *The Queen v. Paradis*, [1985] 2 C.T.C. 3 (FCTD) (Lump sum for meals, not determined according to time spent travelling, was taxable); *The Queen v. Demers*, [1981] C.T.C. 282 (FCTD) (Allowance intended to compensate employee for working in another country was taxable benefit); *The Queen v. Lavers*, [1978] C.T.C. 341 (FCTD) (Fixed mileage allowance for use of own car, not determined directly according to time spent travelling, was taxable benefit).

Remission Orders: *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-470R: Employees' fringe benefits; IT-516R2: Tuition tax credit; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Forms: T4130: Employer's guide to payroll deductions — taxable benefits [guide].

> (c) **director's or other fees** — director's or other fees received by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment;

Related Provisions: 153(1)(a) — Withholding of tax by employer.

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-377R: Director's, executor's or juror's fees; IT-470R: Employees' fringe benefits; IT-518R: Food, beverages and entertainment expenses.

> (d) **allocations, etc., under [employees] profit sharing plan** — amounts allocated to the taxpayer in the year by a trustee under an employees profit sharing plan as provided by section 144 except subsection 144(4), and amounts required by subsection 144(7) to be included in computing the taxpayer's income for the year;

Related Provisions: 8(1)(o.1) — Deduction for forfeited amounts; 12(1)(n) — Income inclusion — amount received from EPSP; 128.1(10)"excluded right or interest"(a)(v) — No deemed disposition of rights on emigration; 144(9) — Deductions for forfeited amounts; 153(1)(a) — Withholding of tax at source.

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

> (e) **standby charge for automobile** — where the taxpayer's employer or a person related to the employer made an automobile available to the taxpayer, or to a person related to the taxpayer, in the year, the amount, if any, by which
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> > (i) an amount that is a reasonable standby charge for the automobile for the total number of days in the year during which it was made so available
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> exceeds
>
> > (ii) the total of all amounts, each of which is an amount (other than an expense related to the operation of the automobile) paid in the year to the employer or the person related to the employer by the taxpayer or the person related to the taxpayer for the use of the automobile;

Related Provisions: 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 6(1)(e.1) — 7% added to benefit before 1996 to reflect GST; 6(1)(k), (l) — Operating expense benefit; 6(2) — Calculation of reasonable standby charge; 6(2.1) — Reduced standby charge for automobile salesman; 6(7) — Cost of automobile includes GST effective 1996; 8(1)(f)(vii) — Salesman's expenses; 12(1)(y) — Partnerships — auto provided to partner or employee of partner; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding of tax by employer.

Pre-RSC History: Para. 6(1)(e) substituted by 1980-81-82-83, c. 140, subsec. 1(2), applicable to 1982 *et seq.* Para. 6(1)(e) formerly read:

> (e) where his employer made an automobile available to him in the year for his personal use (whether for his exclusive personal use or otherwise), the amount, if any, by which an amount that would be a reasonable standby charge for the automobile for the aggregate number of days in the year during which it was made so available (whether or not it was used by the taxpayer) exceeds the aggregate of
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> > (i) the amount paid by him in the year to his employer for the use of the automobile, and

(ii) any amount included in computing his income for the year by virtue of paragraph (a) in respect of the use by him of the automobile in the year;

Selected Cases [para. 6(1)(e)]: *Bouchard v. The Queen*, [1983] C.T.C. 173 (FCTD) (Rolls Royce used by president of company was benefit to extent of personal use); *The Queen v. Harman*, [1980] C.T.C. 83 (FCA) (Automobile for business and personal use was benefit from employment to extent of personal use; no standby charge).

Regulations: 200(2)(g), 200(3) (information returns).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-168R3: Athletes and players employed by football, hockey and similar clubs.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

(e.1) [Repealed]

History: Para. 6(1)(e.1) repealed by 1997, c. 10, subsec. 267(1), applicable to 1996 *et seq.* Para. (e.1) formerly read:

(e.1) goods and services tax — the total of all amounts each of which is 7% of the amount, if any, by which

(i) an amount (in this paragraph referred to as the "benefit amount") that would be required under paragraph (a) or (e) to be included in computing the taxpayer's income for the year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service if no amount were paid to the employer or to a person related to the employer in respect of the amount that would be so required to be included

exceeds

(ii) the amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*;

Para. 6(1)(e.1) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 1, applicable to 1991 *et seq.*, except that in its application to the 1991 taxation year the para. shall be read as follows:

(e.1) the total of all amounts each of which is 7% of the amount, if any, by which

(i) an amount required under paragraph (a) or (e) to be included in computing the income of the taxpayer for the year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service

exceeds

(ii) the amount, if any, included in the amount that is required to be so included under paragraph (a) or (e), as the case may be, that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*;

Para. 6(1)(e.1) formerly read:

(e.1) goods and services tax — the total of all amounts, each of which is 7% of the amount, if any, by which

(i) an amount required under paragraph (a) or (e) to be included in computing the income of the taxpayer for the year in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service in respect of which section 173 of that Act applies

exceeds

(ii) the amount, if any, included in the amount that is required to be so included under paragraph (a) or (e), as the case may be, that may reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*;

Pre-RSC History: Para. 6(1)(e.1) added by 1990, c. 45, subsec. 37(1), applicable to 1991 *et seq.*

Selected Cases [para. 6(1)(e.1)]: *Hewitt v. Canada*, [1996] 1 C.T.C. 2675 (TCC) (Automobile without insurance and registration not "available" to employee).

(f) **[private] employment insurance [plan] benefits** — the total of all amounts received by the taxpayer in the year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment, pursuant to

(i) a sickness or accident insurance plan,

(ii) a disability insurance plan, or

(iii) an income maintenance insurance plan

to or under which the taxpayer's employer has made a contribution, not exceeding the amount, if any, by which

(iv) the total of all such amounts received by the taxpayer pursuant to the plan before the end of the year and

(A) where there was a preceding taxation year ending after 1971 in which any such amount was, by virtue of this paragraph, included in computing the taxpayer's income, after the last such year, and

(B) in any other case, after 1971,

exceeds

(v) the total of the contributions made by the taxpayer under the plan before the end of the year and

(A) where there was a preceding taxation year described in clause (iv)(A), after the last such year, and

(B) in any other case, after 1967;

Related Provisions: 6(18) — No taxable benefit on top-up disability payments where insurer insolvent; 8(1)(n.1)(iii) — Deduction for certain amounts reimbursed to employer; 56(1)(a)(iv) — Income inclusion for benefit under *Employment Insurance Act*; 110.2(1)"qualifying amount" — Retroactive spreading of lump-sum payment over prior years; 139.1(13) — Effect of demutualization of insurance corporation on group insurance policy; 153(1)(a) — Withholding of tax at source.

Selected Cases [para. 6(1)(f)]: *Leonard v. Canada*, [1996] 3 C.T.C. 265 (FCTD) (Sickness benefits obtained under plan paid by employer; no "trust" arrangement); *Dagenais v. Canada*, [1995] 2 C.T.C. 100 (FCTD) (Accepting lower wages as part of labour negatiations not equivalent to taxpayers' paying premium on wage loss protection plan. Receipts taxable).

Regulations: 200(2)(f) (information return).

I.T. Application Rules: 19 (where plan established before June 19, 1971).

Interpretation Bulletins: IT-54: Wage loss replacement plans; IT-85R2: Health and welfare trusts for employees; IT-99R5: Legal and accounting fees; IT-428: Wage loss replacement plans; IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-8: Self-insured health and welfare trust fund.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T4E: Statement of employment insurance benefits; T4130: Employer's guide to payroll deductions — taxable benefits [guide].

(g) **employee benefit plan benefits** — the total of all amounts each of which is an amount received by the taxpayer in the year out of or under an employee benefit plan or from the disposition of any interest in any such plan, other than the portion thereof that is

(i) a death benefit or an amount that would, but for the deduction provided in the definition of that term in subsection 248(1), be a death benefit,

(ii) a return of amounts contributed to the plan by the taxpayer or a deceased employee of whom the taxpayer is an heir or legal representative, or

(iii) a superannuation or pension benefit attributable to services rendered by a person in a period

throughout which the person was not resident in Canada;

Related Provisions: 6(10) — Contributions; 6(14) — Salary deferral arrangement — part of benefit plan; 12(1)(n) — Employees profit sharing plan; 12(1)(n.1) — Employee benefit plan; 18(1)(o) — Employee benefit plan contributions; 32.1 — Employee benefit plan deductions; 56(1)(a) — Benefits — pension and employee; 104(13)(b) — Trusts — income payable to beneficiary; 107.1 — Distribution by employee benefit plan; 128.1(10)"excluded right or interest"(a)(vi), (b) — No deemed disposition of rights on emigration; 153(1)(a) — Withholding of tax by employer; 212(17) — No non-resident withholding tax.

Pre-RSC History: Subpara. 6(1)(g)(iii) amended by 1990, c. 35, s. 1, to substitute "throughout which the person" for "during which he", applicable to 1988 *et seq.*

Para. 6(1)(g) added by 1980-81-82-83, c. 48, subsec. 1(4), applicable to 1980 *et seq.*

Selected Cases [para. 6(1)(g)]: *Canada v. Chrysler Canada Ltd. (No. 3)*, [1992] 2 C.T.C. 95 (FCTD) (Employee stock ownership plan was "stock option" under section 7, not "employee benefit plan"); *Canada v. Chrysler Canada Ltd.*, [1991] 2 C.T.C. 156 (FCTD); additional reasons at [1992] 1 C.T.C. 61, (sub nom. *Canada v. Chrysler Canada Ltd. (No. 2)*) (FCTD) (Employee stock ownership plan both agreement to issue shares to employees (taxable pursuant to section 7) and employee benefit plan (taxable pursuant to paragraph 6(1)(g))).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits; IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

I.T. Technical News: No. 11 (reporting of amounts paid out of an employee benefit plan).

Advance Tax Rulings: ATR-17: Employee benefit plan — purchase of company shares; ATR-39: Self-funded leave of absence.

(h) **employee trust** — amounts allocated to the taxpayer for the year by a trustee under an employee trust;

Related Provisions: 6(1)(a) — Value of benefits; 12(1)(n) — Employees profit sharing plan; 12(1)(n.1) — Employee benefit plan; 32.1 — Employee benefit plan deductions; 104(6) — Deductions in computing income of trust; 104(13) — Income payable to beneficiary; 107.1 — Distribution by employee trust; 128.1(10)"excluded right or interest"(e)(i) — No deemed disposition of rights on emigration; 153(1)(a) — Withholding of tax by employer; 212(17) — No non-resident withholding tax.

Pre-RSC History: Para. 6(1)(h) added by 1980-81-82-83, c. 48, subsec. 1(4), applicable to 1980 *et seq.*

Regulations: 200(2)(g) (information return).

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

(i) **salary deferral arrangement payments** — the amount, if any, by which the total of all amounts received by any person as benefits (other than amounts received by or from a trust governed by a salary deferral arrangement) in the year out of or under a salary deferral arrangement in respect of the taxpayer exceeds the amount, if any, by which

(i) the total of all deferred amounts under the arrangement that were included under paragraph (a) as benefits in computing the taxpayer's income for preceding taxation years

exceeds

(ii) the total of

(A) all deferred amounts received by any person in preceding taxation years out of or under the arrangement, and

(B) all deferred amounts under the arrangement that were deducted under paragraph 8(1)(o) in computing the taxpayer's income for the year or preceding taxation years;

Related Provisions: 6(11) — Salary deferral arrangement; 20(1)(oo), (pp) — Salary deferral arrangement — deductions; 56(1)(w) — Benefits — salary deferral arrangement; 128.1(10)"excluded right or interest"(a)(vii), (b) — No deemed disposition of rights on emigration; 153(1)(a) — Withholding of tax by employer.

Pre-RSC History: Para. 6(1)(i) added by 1986, c. 55, subsec. 1(1), applicable to 1986 *et seq.*

Interpretation Bulletins: IT-529: Flexible employee benefit programs.

(j) **reimbursements and awards** — amounts received by the taxpayer in the year as an award or reimbursement in respect of an amount that would, if the taxpayer were entitled to no reimbursements or awards, be deductible under subsection 8(1) in computing the income of the taxpayer, except to the extent that the amounts so received

(i) are otherwise included in computing the income of the taxpayer for the year, or

(ii) are taken into account in computing the amount that is claimed under subsection 8(1) by the taxpayer for the year or a preceding taxation year;

Related Provisions: 153(1)(a) — Withholding of tax by employer.

Pre-RSC History: Para. 6(1)(j) added by 1990, c. 39, subsec. 1(2), applicable with respect to amounts received after 1989.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(k) **automobile operating expense benefit** — where

(i) an amount is determined under subparagraph (e)(i) in respect of an automobile in computing the taxpayer's income for the year,

(ii) amounts related to the operation (otherwise than in connection with or in the course of the taxpayer's office or employment) of the automobile for the period or periods in the year during which the automobile was made available to the taxpayer or a person related to the taxpayer are paid or payable by the taxpayer's employer or a person related to the taxpayer's employer (each of whom is in this paragraph referred to as the "payor"), and

(iii) the total of the amounts so paid or payable is not paid in the year or within 45 days after the end of the year to the payor by the taxpayer or by the person related to the taxpayer,

the amount in respect of the operation of the automobile determined by the formula

$$A - B$$

where

A is

(iv) where the automobile is used primarily in the performance of the duties of the taxpayer's office or employment during the period or periods referred to in subparagraph (ii) and the taxpayer notifies the employer in writing before the end of the year of the taxpayer's intention to have this subparagraph apply, ½ of the amount determined under subparagraph (e)(i) in respect of the automobile in computing the taxpayer's income for the year, and

(v) in any other case, the amount equal to the product obtained when the amount prescribed for the year is multiplied by the total number of kilometres that the automobile is driven (otherwise than in connection with or in the course of the taxpayer's office or employment) during the period or periods referred to in subparagraph (ii), and

B is the total of all amounts in respect of the operation of the automobile in the year paid in the year or within 45 days after the end of the year to the payor by the taxpayer or by the person related to the taxpayer; and

Related Provisions: 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 6(1.1) — Parking is not an operating cost; 6(2.2) — Optional calculation of operating benefits; 12(1)(y) — Automobile benefit to partner or employee of partner; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding of tax by employer; 257 — Formula cannot calculate to less than zero.

History: Para. 6(1)(k) added by 1994, c. 21, subsec. 2(3), applicable to 1993 *et seq.*

Regulations: 7305.1 (amount prescribed for 6(1)(k)(v)).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

(l) **idem** — the value of a benefit in respect of the operation of an automobile (other than a benefit to which paragraph (k) applies or would apply but for subparagraph (k)(iii)) received or enjoyed by the taxpayer in the year in respect of, in the course of or because of, the taxpayer's office or employment.

Related Provisions: 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding of tax by employer.

History: Para. 6(1)(l) added by 1994, c. 21, subsec. 2(3), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Selected Cases [subsec. 6(1)]: *The Queen v. Lao*, [1993] 2 C.T.C. 25 (FCTD) (Relocation payment in respect of higher housing costs not employment income); *Blanchard v. Canada*, [1992] 2 C.T.C. 403 (FCTD); appealed to FCA (Nov. 20, 1992), File A-1532-92 (Amount paid to employee on termination of participation in housing program representing possible realtor's fees on future sale not taxable as employee benefit); *Thompson v. MNR*, [1989] 2 C.T.C. 226 (FCTD) (Expenses for office in home owned by taxpayer disallowed except for portion of utilities); *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Interest-free loan by estate to executor was not taxable benefit).

(1.1) Parking cost — For the purposes of this section, an amount or a benefit in respect of the use of a motor vehicle by a taxpayer does not include any amount or benefit related to the parking of the vehicle.

Related Provisions: 6(1)(a)(iii), 6(1)(e), (k) — Benefit in respect of the use of an automobile; 6(16)(a) — Parking costs are non-taxable benefit for disabled employee; 15(5) — Automobile benefit to shareholder.

History: Subsec. 6(1.1) added by 1994, c. 21, subsec. 2(4), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

(2) Reasonable standby charge — For the purposes of paragraph (1)(e), a reasonable standby charge for an automobile for the total number of days (in this subsection referred to as the "total available days") in a taxation year during which the automobile is made available to a taxpayer or to a person related to the taxpayer by the employer of the taxpayer or by a person related to the employer (both of whom are in this subsection referred to as the "employer") shall be deemed to be the amount determined by the formula

$$\frac{A}{B} \times [2\% \times (C \times D) + \frac{2}{3} \times (E - F)]$$

where

A is the lesser of

(a) the total number of kilometres that the automobile is driven (otherwise than in connection with or in the course of the taxpayer's office or employment) during the total available days, and

(b) the value determined for B for the year under this subsection in respect of the standby charge for the automobile during the total available days,

except that the amount determined under paragraph (a) shall be deemed to be equal to the amount determined under paragraph (b) unless

(c) the taxpayer is required by the employer to use the automobile in connection with or in the course of the office or employment, and

(d) all or substantially all of the distance travelled by the automobile in the total available days is in connection with or in the course of the office or employment;

B is the product obtained when 1,000 is multiplied by the quotient obtained by dividing the total available days by 30 and, if the quotient so obtained is not a whole number and exceeds one, by rounding it to the nearest whole number or, where that quotient is equidistant from two consecutive whole numbers, by rounding it to the lower of those two numbers;

C is the cost of the automobile to the employer where the employer owns the vehicle at any time in the year;

D is the number obtained by dividing such of the total available days as are days when the employer owns the automobile by 30 and, if the quotient so obtained is not a whole number and exceeds one, by rounding it to the nearest whole number or, where that quotient is equidistant from two consecutive whole numbers, by rounding it to the lower of those two numbers;

E is the total of all amounts that may reasonably be regarded as having been payable by the employer to a lessor for the purpose of leasing the automobile during such of the total available days as are days when the automobile is leased to the employer; and

F is the part of the amount determined for E that may reasonably be regarded as having been payable to the lessor in respect of all or part of the cost to the lessor of insuring against

(a) loss of, or damage to, the automobile, or

(b) liability resulting from the use or operation of the automobile.

Related Provisions: 6(2.1) — Reduced benefit for automobile salesperson; 12(1)(y) — Automobile benefit to partner or employee of partner; 15(5) — Rule applies to calculate automobile benefit to shareholder; 85(1)(e.4) — Transfer of passenger vehicle to corporation by shareholder.

Pre-RSC History: Subsec. 6(2) substituted by 1988, c. 55, subsec. 1(4), applicable to 1988 *et seq.* Subsec. 6(2) formerly read:

(2) Reasonable standby charge minimum amount — For the purposes of paragraph (1)(e) an amount that is a reasonable standby charge for the automobile for the aggregate number of days in a taxation year during which it was made available by an employer or by a person related to the employer shall be deemed to be the amount equal to the product obtained when

(a) where the employer or the person related to the employer owned the automobile at any time in the year, an amount in

respect of its cost to the employer or to the person related to the employer equal to the percentage thereof obtained when 2% is multiplied by the quotient obtained when such of the aggregate number of days hereinbefore referred to as were days during which the employer or the person related to the employer owned the automobile is divided by 30 (except that if the quotient so obtained is not a full number and exceeds one it shall be taken to the nearest full number or, if there is no nearest full number, then to the full number next below it), or

(b) where the employer or the person related to the employer leased the automobile from a lessor at any time in the year, an amount equal to ⅔ of the amount by which the amounts payable by the employer or the person related to the employer to the lessor for the purpose of leasing the automobile for the aggregate number of days hereinbefore referred to exceeds the portion of those amounts that may reasonably be regarded as having been paid to the lessor in respect of all or part of the cost to him of insuring against

(i) loss of, or damage to, the automobile, or

(ii) liability resulting from the use of the automobile

is multiplied by the proportion that

(c) the lesser of

(i) the aggregate number of kilometres that the automobile was driven (otherwise than in the performance of the duties of the taxpayer's office or employment) in the year or portion thereof during which the automobile was made so available, and

(ii) the product obtained when 1,000 is multiplied by

(A) the quotient obtained under paragraph (a), or

(B) the amount that would be the quotient obtained under paragraph (b) if the calculation referred to in paragraph (a) were also applicable in computing the amount determined under paragraph (b)

as the case may be,

is of

(d) the amount determined under subparagraph (c)(ii)

and for the purposes of this subsection it shall be assumed, unless the taxpayer establishes otherwise in prescribed form, that the aggregate number of kilometres referred to in subparagraph (c)(i) is not less than the product obtained under subparagraph (c)(ii).

Subsec. 6(2) substituted by 1980-81-82-83, c. 140, subsec. 1(3), applicable to 1982 *et seq.* Subsec. 6(2) formerly read:

(2) For the purposes of paragraph (1)(e) "an amount that would be a reasonable standby charge for the automobile" for the aggregate number of days in a taxation year during which it was made available by an employer shall be deemed not to be less than,

(a) where the employer owned the automobile at any time in the year, an amount in respect of its capital cost to the employer equal to the percentage thereof obtained when 1% is multiplied by the quotient obtained when such of the aggregate number of days hereinbefore referred to as were days during which the employer owned the automobile is divided by 30 (except that if the quotient so obtained is not a full number it shall be taken to be the nearest full number or, if there is no nearest full number, then to the full number next below it), and

(b) where the employer leased the automobile from a lessor at any time in the year, an amount equal to ⅓ of the amount by which the amounts payable by the employer to the lessor for the purpose of leasing the automobile for the aggregate number of days hereinbefore referred to exceeds the portion of those amounts that may reasonably be regarded as having been paid to the lessor in respect of all or part of the cost to him of insuring against

(i) loss of, or damage to, the automobile, or

(ii) liability resulting from the use of the automobile.

Para. 6(2)(b) substituted by 1973-74, c. 14, subsec. 1(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 6(2)]: *McDonald v. R.*, [1998] 4 C.T.C. 2569 (TCC) (85 per cent of distance was "substantially all"); *Adams (R.O.) v. R.*, [1998] 2 C.T.C. 353 (FCA) (Fair market rental charge does not necessarily replace standby charge); *Meeuse v. Canada*, [1995] 1 C.T.C. 21 (FCTD) (Full standby charge to be included in income unless presumption rebutted in prescribed form).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T4130: Employer's guide to payroll deductions — taxable benefits [guide].

(2.1) Automobile salesman — Where in a taxation year

(a) a taxpayer was employed principally in selling or leasing automobiles,

(b) an automobile owned by the taxpayer's employer was made available by the employer to the taxpayer or to a person related to the taxpayer, and

(c) the employer has acquired one or more automobiles,

the amount that would otherwise be determined under subsection (2) as a reasonable standby charge shall, at the option of the employer, be computed as if

(d) the reference in the formula in subsection (2) to "2%" were read as a reference to "1½%", and

(e) the cost to the employer of the automobile were the greater of

(i) the quotient obtained by dividing

(A) the cost to the employer of all new automobiles acquired by the employer in the year for sale or lease in the course of the employer's business

by

(B) the number of automobiles described in clause (A), and

(ii) the quotient obtained by dividing

(A) the cost to the employer of all automobiles acquired by the employer in the year for sale or lease in the course of the employer's business

by

(B) the number of automobiles described in clause (A).

Pre-RSC History: Subsec. 6(2.1) substituted by 1988, c. 55, subsec. 1(4), applicable to 1988 *et seq.* Subsec. 6(2.1) formerly read:

(2.1) Automobile salesman — Where in a taxation year a taxpayer was employed principally in selling automobiles and an automobile owned by his employer was made available to him in the year by his employer, the amount that would otherwise be determined under paragraph (2)(a) shall, at the option of the employer, be computed as if

(a) the reference therein to "2%" were read as a reference to "1½%"; and

(b) the cost to the employer of the automobile were the quotient obtained by dividing

(i) the cost to him of all new automobiles acquired by him in the year for sale in the course of his business

by

(ii) the number of automobiles described in subparagraph (i).

All that portion of subsec. 6(2.1) preceding para. (b)(i) substituted by 1980-81-82-83, c. 140, subsec. 1(4), applicable to 1982 *et seq.* That portion formerly read:

(2.1) Where in a taxation year a taxpayer was employed principally in selling automobiles and an automobile owned by his employer was made available to him in the year by his employer for his personal use, in determining the amount that would be a reasonable standby charge for the automobile for the aggregate number of days

in the year during which it was so made available, paragraph (2)(a) shall, at the option of the taxpayer, apply as if

(a) the reference therein to "1%" were read as a reference to "¾ of 1%"; and

Subsec. 6(2.1) added by 1973-74, c. 14, subsec. 1(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

(2.2) [Repealed]

History: Subsec. 6(2.2) repealed by 1994, c. 21, subsec. 2(5), applicable to 1993 *et seq.* That subsec. formerly read:

(2.2) Benefit re auto operation — Where

(a) an amount is determined under subparagraph (1)(e)(i) for an automobile in computing the income of a taxpayer for a taxation year,

(b) the automobile is used primarily in the performance of the duties of the taxpayer's office or employment, and

(c) the taxpayer notifies the taxpayer's employer in writing before the end of the year that the amount of the benefit relating to the operation of the automobile for the period in the year during which it was made available is to be determined under this subsection,

the amount of the benefit relating to the operation of the automobile shall, for the purposes of paragraph (1)(a), be deemed to be the amount, if any, by which

(d) one-half of the amount determined for the automobile under subparagraph (1)(e)(i) in respect of the taxpayer for the year

exceeds

(e) the total of all amounts related to the operation of the automobile paid in the year, by the taxpayer or by a person related to the taxpayer, to the employer or to the person who made the automobile available.

Pre-RSC History: Subsec. 6(2.2) substituted by 1988, c. 55, subsec. 1(4), applicable to 1988 *et seq.* Subsec. 6(2.2) formerly read:

(2.2) Benefit re automobile operation — Where an amount is determined under subparagraph (1)(e)(i) for an automobile in computing the income of a taxpayer for a taxation year and the taxpayer notifies his employer in writing before the end of the year that the amount of the benefit related to the operation of the automobile for the period in the year during which it was made available is to be determined under this subsection, the amount of such benefit shall, for the purposes of paragraph (1)(a), be deemed to be the amount, if any, by which

(a) one-half of the amount determined for the automobile under subparagraph (1)(e)(i) in respect of the taxpayer for the year

exceeds

(b) the aggregate of all amounts each of which is an amount related to the operation of the automobile paid in the year to the employer or the person who made the automobile available by the taxpayer or by a person related to the taxpayer.

Subsec. 6(2.2) added by 1984, c. 45, s. 1, applicable to 1984 *et seq.*

(3) Payments by employer to employee — An amount received by one person from another

(a) during a period while the payee was an officer of, or in the employment of, the payer, or

(b) on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement made by the payer with the payee immediately prior to, during or immediately after a period that the payee was an officer of, or in the employment of, the payer,

shall be deemed, for the purposes of section 5, to be remuneration for the payee's services rendered as an officer or during the period of employment, unless it is established that, irrespective of when the agreement, if any, under which the amount was received was made or the form or legal effect thereof, it cannot reasonably be regarded as having been received

(c) as consideration or partial consideration for accepting the office or entering into the contract of employment,

(d) as remuneration or partial remuneration for services as an officer or under the contract of employment, or

(e) in consideration or partial consideration for a covenant with reference to what the officer or employee is, or is not, to do before or after the termination of the employment.

Related Provisions: 87(2)(k) — Amalgamation — Amount received by employee from new corporation; 153(1)(a) — Withholding of tax by employer.

Selected Cases [subsec. 6(3)]: *Ward v. R.*, [1998] 4 C.T.C. 2129 (TCC) (Taxpayer failed to establish employment relationship to enable access to stock option rules); *Blanchard v. Canada*, [1995] 2 C.T.C. 262 (FCA) (Source of payment of benefit not relevant so long as there is connection with employment); *McNeill v. The Queen*, [1986] 2 C.T.C. 352 (FCTD) (Without evidence of uncompensated losses suffered, "social disruption allowance" for relocation was benefit from employment); *Greiner v. The Queen*, [1984] C.T.C. 92 (FCA) (Payment by new employer (after acquisition of former company) to compensate employee for termination of employment contract was income, not capital for surrender of rights under a contract); *Girouard v. The Queen*, [1980] C.T.C. 284 (FCA) (Liquidated damages for wrongful dismissal pursuant to contract were not taxable); *MNR v. Beaupré Estate*, [1973] C.T.C. 316 (FCTD) (Fixed salary and other benefits under consulting contract entered in consideration for sale of shares to major shareholder were part of price, not taxable benefits).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-196R2: Payments by employer to employee; IT-247: Employer's contributions to pensioners' premiums under provincial medical and hospital services plans; IT-334R2: Miscellaneous receipts; IT-337R3: Retiring allowances; IT-365R2: Damages, settlements and similar receipts; IT-470R: Employees' fringe benefits; IT-515R2: Education tax credit; IT-529: Flexible employee benefit programs.

(4) Group term life insurance — Where at any time in a taxation year a taxpayer's life is insured under a group term life insurance policy, there shall be included in computing the taxpayer's income for the year from an office or employment the amount, if any, prescribed for the year in respect of the insurance.

Related Provisions: 18(9)(a)(iii), 18(9.01) — Limitation on deduction for premiums paid; 139.1(15) — Effect of demutualization of insurance corporation; 139.1(16), (17) — Flow-through of demutualization benefits by employer to employee; 153(1)(a) — Withholding of tax by employer.

History: Subsec. 6(4) amended by 1995, c. 3, subsec. 1(2), applicable to insurance provided in respect of periods that are after June 1994. For insurance provided in respect of periods that are in 1994 and before July 1994, subsec. 6(4) should be read as follows:

(4) Group term life insurance — Notwithstanding any exception provided for in paragraph (1)(a), there shall be included in computing a taxpayer's income for a taxation year as income from an office or employment the premium in respect of any period in the year before July 1994 for any excess over $25,000 of the amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under a group term life insurance policy under which any life insurance was effected on the taxpayer's life in respect of, in the course of or because of, the taxpayer's office or employment or former office or employment, determined as the remainder obtained by

(a) dividing that proportion of the total premium (other than a prescribed premium) payable on account of life insurance under the policy in respect of the policy year that ends in the year, minus the amount of any dividend or experience rating refund payable on account of life insurance under the policy in respect of the policy year, that the number of days in that period is of the number of days in the policy year, by the mean of the total amount of life insurance (other than prescribed insurance) in effect under the policy at the beginning of the policy year and the

total amount of life insurance (other than prescribed insurance) so in effect at the end of the policy year,

(b) multiplying the quotient obtained under paragraph (a) by the excess over $25,000 of the amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under the policy, and

(c) subtracting from the product obtained under paragraph (b) any amount that the taxpayer has reimbursed to the taxpayer's employer, or has paid, in respect of the amount of life insurance (other than prescribed insurance) in excess of $25,000 in effect on the taxpayer's life during that period under the policy,

and in the case of a taxpayer on whose life any life insurance was in effect during any period in the year before July 1994 under more than one such group insurance policy,

(d) this subsection shall be read as requiring a separate determination of the amount or amounts, if any, to be included in computing the taxpayer's income for the year in respect of each particular policy, and

(e) the expression "$25,000" in this subsection shall be read as referring, in respect of a particular policy, to that proportion of $25,000 that the amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under the policy is of the total amount of life insurance (other than prescribed insurance) in effect on the taxpayer's life during that period under all of the policies.

Subsec. 6(4) formerly read:

(4) Portion of premium under certain group insurance policies — Notwithstanding any exception provided for in paragraph (1)(a), there shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment the premium in respect of any period in the year for any excess over $25,000 of the amount of life insurance in effect on the life of the taxpayer during that period under a group term life insurance policy under which any life insurance was effected on the life of the taxpayer in respect of, in the course of, or by virtue of the taxpayer's office or employment or former office or employment, determined as the remainder obtained by

(a) dividing that proportion of the total premium payable on account of life insurance under the policy in respect of the policy year ending in the year, minus the amount of any dividend or experience rating refund payable on account of life insurance under the policy in respect of the policy year, that the number of days in that period is of the number of days in the policy year, by the mean of the total amount of life insurance in effect under the policy at the commencement of the policy year and the total amount of life insurance so in effect at the end of the policy year,

(b) multiplying the quotient obtained under paragraph (a) by the excess over $25,000 of the amount of life insurance in effect on the life of the taxpayer during that period under the policy, and

(c) subtracting from the product obtained under paragraph (b) any amount that the taxpayer has reimbursed to the taxpayer's employer, or has paid, in respect of the portion of the premium attributable to the amount of life insurance in excess of $25,000 in effect on the taxpayer's life under the policy,

and in the case of a taxpayer on whose life any life insurance was in effect during any period in the year under more than one such group insurance policy,

(d) this subsection shall be read as requiring a separate determination of the amount or amounts, if any, to be included in computing the taxpayer's income for the year in respect of each particular policy, and

(e) the expression "$25,000" in this subsection shall be read as referring, in respect of a particular policy, to that proportion of $25,000 that the amount of life insurance in effect on the life of the taxpayer during that period under the policy is of the total amount of life insurance in effect on the taxpayer's life during that period under all of the policies.

Pre-RSC History: Para. 6(4)(c) substituted by 1974-75-76, c. 26, subsec. 1(2), applicable to 1974 *et seq.* Para. 6(4)(c) formerly read:

(c) subtracting from the product obtained under paragraph (b) that proportion of any amount paid by the taxpayer in the year in respect of the amount of life insurance in effect on his life during that period under the policy that the excess over $25,000 of the amount of life insurance so in effect on his life is of the amount of life insurance so in effect on his life.

Regulations: 2700–2704 (prescribed amount).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-227R: Group term life insurance premiums; IT-529: Flexible employee benefit programs.

(5) [Repealed]

History: Subsec. 6(5) repealed by 1995, c. 3, subsec. 1(3), applicable to 1995 *et seq.* Subsec. (5) formerly read:

(5) Reference to policy year ending in taxation year — A reference in subsection (4) to "the policy year" ending in a taxation year shall, where there is no such year ending in the taxation year, be construed as a reference to the period commencing on the anniversary in the immediately preceding taxation year of the date of issue of the policy, or where there is no such anniversary, on the date of issue of the policy, and ending on the last day in the taxation year on which the policy was in effect.

(6) Employment at special work site or remote location — Notwithstanding subsection (1), in computing the income of a taxpayer for a taxation year from an office or employment, there shall not be included any amount received or enjoyed by the taxpayer in respect of, in the course or by virtue of the office or employment that is the value of, or an allowance (not in excess of a reasonable amount) in respect of expenses the taxpayer has incurred for,

(a) the taxpayer's board and lodging for a period at

(i) a special work site, being a location at which the duties performed by the taxpayer were of a temporary nature, if the taxpayer maintained at another location a self-contained domestic establishment as the taxpayer's principal place of residence

(A) that was, throughout the period, available for the taxpayer's occupancy and not rented by the taxpayer to any other person, and

(B) to which, by reason of distance, the taxpayer could not reasonably be expected to have returned daily from the special work site, or

(ii) a location at which, by virtue of its remoteness from any established community, the taxpayer could not reasonably be expected to establish and maintain a self-contained domestic establishment,

if the period during which the taxpayer was required by the taxpayer's duties to be away from the taxpayer's principal place of residence, or to be at the special work site or location, was not less than 36 hours; or

(b) transportation between

(i) the principal place of residence and the special work site referred to in subparagraph (a)(i), or

(ii) the location referred to in subparagraph (a)(ii) and a location in Canada or a location in the country in which the taxpayer is employed,

in respect of a period described in paragraph (a) during which the taxpayer received board and lodging, or a reasonable allowance in respect of board and lodging, from the taxpayer's employer.

Related Provisions: 110.7 — Deduction for residents of northern Canada.

Pre-RSC History: Para. 6(6)(a) substituted by 1985, c. 45, subsec. 2(2), applicable to 1985 *et seq.* Para. 6(6)(a) formerly read:

(a) his board and lodging at

(i) a special work site, being a location at which the duties performed by him were of a temporary nature and from which, by reason of distance from the place where he maintained a self-contained domestic establishment (in this subsection referred to

as his "ordinary place of residence") in which he resided, he could not reasonably be expected to return daily to his ordinary place of residence, or

(ii) a location at which, by virtue of its remoteness from any established community, the taxpayer could not reasonably be expected to establish and maintain a self-contained domestic establishment,

in respect of a period while he was required by his duties to be away from his ordinary place of residence, or to be at the location, for a period of not less than 36 hours; or

Subpara. 6(6)(b)(i) amended by 1985, c. 45, subsec. 2(3) to substitute "principal place of residence" for "ordinary place of residence", applicable to 1985 *et seq.*

Subpara. 6(6)(a)(i) substituted by 1980-81-82-83, c. 140, subsec. 1(5), applicable to 1981 *et seq.* Subpara. 6(6)(a)(i) formerly read:

(i) a special work site at which the duties performed by him were of a temporary nature and from which, by reason of distance from the place where he maintained a self-contained domestic establishment (in this subsection referred to as his "ordinary place of residence") in which he resided and actually supported a spouse or a person dependent upon him for support and connected with him by blood relationship, marriage or adoption, he could not reasonably be expected to return daily to his ordinary place of residence, or

Subsec. 6(6) substituted by 1977-78, c. 32, s. 1, applicable to 1978 *et seq.* Subsec. 6(6) formerly read:

(6) Employment at special work site — Notwithstanding subsection (1), in computing the income of a taxpayer for a taxation year from an office or employment, there shall not be included

(a) the value of, or an allowance (not in excess of a reasonable amount) in respect of expenses incurred by him for, board and lodging received by him

(i) in respect of, in the course of or by virtue of his office or employment at a special work site from which, by reason of distance from the place where he maintained a self-contained domestic establishment (in this subsection referred to as his "ordinary place of residence") in which he resided and actually supported a spouse or a person dependent upon him for support and connected with him by blood relationship, marriage or adoption, he could not reasonably be expected to return daily to his ordinary place of residence, and

(ii) in respect of a period while he was required by his duties to be away, for a period of not less than 36 hours, from his ordinary place of residence; or

(b) the value of, or an allowance (not in excess of a reasonable amount) in respect of expenses incurred by him for, transportation between his ordinary place of residence and the special work site referred to in subparagraph (a)(i), received by him

(i) in respect of, in the course of or by virtue of his office or employment described in subparagraph (a)(i), and

(ii) in respect of a period described in subparagraph (a)(ii), during which he received board and lodging, or a reasonable allowance in respect of expenses incurred by him for board and lodging, from his employer.

Selected Cases [subsec. 6(6)]: *Truemner v. Canada*, [1989] 1 C.T.C. 356 (FCTD) (Where no evidence produced to show unavailability of "self contained domestic establishment" in various locations, no deduction for value of board and lodging received).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-254R2: Fishermen — employees and seafarers — value of rations and quarters; IT-470R: Employees' fringe benefits; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Forms: TD4: Declaration of exemption — Employment at special work site.

(7) Cost of property or service [includes taxes] — To the extent that the cost to a person of purchasing a property or service or an amount payable by a person for the purpose of leasing property is taken into account in determining an amount required under this section to be included in computing a taxpayer's income for a taxation year, that cost or amount payable, as the case may be, shall include any tax that was payable by the person in respect of the property or service or that would have been so payable if the person were not exempt from the payment of that tax because of the nature of the person or the use to which the property or service is to be put.

Related Provisions: 6(1)(e.1) — Benefit of 7% added before 1996 in place of including GST.

History: Subsec. 6(7) amended by 1997, c. 10, subsec. 267(2), applicable to 1996 *et seq.* Subsec. (7) formerly read:

(7) Goods and services tax — To the extent that an amount required to be included in computing the income of a taxpayer for a taxation year under paragraph (1)(a) or (e) is determined by reference to the cost to a person of any property or service, that cost shall, for the purposes of those paragraphs, be determined without reference to any goods and services tax payable by that person in respect of the property or service.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

(8) Idem [GST rebate] — Where

(a) an amount in respect of an expense is deducted under section 8 in computing the income of a taxpayer for a taxation year from an office or employment, or

(b) an amount is included in the capital cost to a taxpayer of a property described in subparagraph 8(1)(j)(ii) or (p)(ii),

and a particular amount is paid to the taxpayer in a particular taxation year as a rebate under the *Excise Tax Act* in respect of any goods and services tax included in the amount of the expense, or the capital cost of the property, as the case may be, the particular amount

(c) to the extent that it relates to an expense referred to in paragraph (a), shall be included in computing the taxpayer's income from an office or employment for the particular year, and

(d) to the extent that it relates to the capital cost of property referred to in paragraph (b), shall be deemed, for the purposes of subsection 13(7.1), to have been received by the taxpayer in the particular year as assistance from a government for the acquisition of the property.

Related Provisions: 8(11) — GST rebate deemed not to be reimbursement.

Pre-RSC History: Subsecs. 6(7), (8) added by 1990, c. 45, subsec. 37(2), applicable to 1991 *et seq.*

Pre-RSC History [former subsecs. 6(7), (8)]: Subsec. 6(8) repealed by 1980-81-82-83, c. 48, subsec. 1(5), applicable to 1980 *et seq.* Subsec. 6(8) had read:

(8) Remuneration as employee of spouse — Notwithstanding anything in section 5 or this section, in computing the income of a taxpayer for a taxation year from an office or employment, there shall not be included any amount that is, by virtue of subsection 74(3), not required to be so included or that is, by subsection 74(4), deemed not to have been received by him.

Subsec. 6(7) repealed by 1977-78, c. 32, s. 1, applicable to 1978 *et seq.* Subsec. 6(7) had read:

(7) "Special work site" defined — For the purposes of subsection (6) "special work site" in respect of a taxpayer means a site

(a) at which the duties performed by him were of a temporary nature, or

(b) the location of which was such that the taxpayer could not reasonably be expected to establish and maintain a self-contained domestic establishment for his spouse or a person described in subparagraph (6)(a)(i) at or near the site.

(9) Amount in respect of interest on employee debt — Where an amount in respect of a loan or debt is deemed by subsection 80.4(1) to be a benefit received in a taxation year by an individual, the amount of the benefit shall be included in computing the income of the individual for the year as income from an office or employment.

Related Provisions: 6(23) — Taxable benefit from employer-provided housing subsidy; 15(9) — Deemed benefit to shareholder.

Pre-RSC History: Subsec. 6(9) substituted by 1980-81-82-83, c. 140, subsec. 1(6), applicable after 1981; and for the 1980 and 1981 taxation years, subsec. 6(9) shall be deemed to have read as follows:

> (9) Where an amount in respect of a loan is deemed by subsection 80.4(1) to be a benefit received in a taxation year by an individual described in paragraph (a) or (a.1) thereof, the amount thereof shall be included in computing the income of the individual for the taxation year as income from an office or employment.

Subsec. 6(9) formerly read:

> (9) Amount in respect of interest on employee, etc., loans — Where an amount in respect of a loan is deemed by subsection 80.4(1) to be a benefit received in a taxation year by an individual referred to in paragraph (a) thereof, the amount thereof shall be included in computing the income of the individual for the taxation year as income from an office or employment.

Subsec. 6(9) added by 1977-78, c. 1, s. 2, applicable to 1979 *et seq.*

Regulations: 200(2)(g) (information return).

Remission Orders: *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: No. 6 (payment of mortgage interest subsidy by employer).

(10) Contributions to an employee benefit plan — For the purposes of subparagraph (1)(g)(ii),

> (a) an amount included in the income of an individual in respect of an employee benefit plan for a taxation year preceding the year in which it was paid out of the plan shall be deemed to be an amount contributed to the plan by the individual; and
>
> (b) where an amount is received in a taxation year by an individual from an employee benefit plan that was in a preceding year an employee trust, such portion of the amount so received by the individual as does not exceed the amount, if any, by which the lesser of
>
> (i) the amount, if any, by which
>
> (A) the total of all amounts allocated to the individual or a deceased person of whom the individual is an heir or legal representative by the trustee of the plan at a time when it was an employee trust
>
> exceeds
>
> (B) the total of all amounts previously paid out of the plan to or for the benefit of the individual or the deceased person at a time when the plan was an employee trust, and
>
> (ii) the portion of the amount, if any, by which the cost amount to the plan of its property immediately before it ceased to be an employee trust exceeds its liabilities at that time that
>
> (A) the amount determined under subparagraph (i) in respect of the individual
>
> is of
>
> (B) the total of amounts determined under subparagraph (i) in respect of all individuals who were beneficiaries under the plan immediately before it ceased to be an employee trust
>
> exceeds
>
> (iii) the total of all amounts previously received out of the plan by the individual or a deceased person of whom the individual is an heir or legal representative at a time when the plan was an employee benefit plan to the extent that the amounts were deemed by this paragraph to be a return of amounts contributed to the plan
>
> shall be deemed to be the return of an amount contributed to the plan by the individual.

Pre-RSC History: Subsec. 6(10) added by 1980-81-82-83, c. 48, subsec. 1(6), applicable to 1980 *et seq.*

Interpretation Bulletins: IT-498: The deductibility of interest on money borrowed to reloan to employees or shareholders; IT-502: Employee benefit plans and employee trusts.

(11) Salary deferral arrangement — Where at the end of a taxation year any person has a right under a salary deferral arrangement in respect of a taxpayer to receive a deferred amount, an amount equal to the deferred amount shall be deemed, for the purposes only of paragraph (1)(a), to have been received by the taxpayer as a benefit in the year, to the extent that the amount was not otherwise included in computing the taxpayer's income for the year or any preceding taxation year.

Related Provisions: 6(1)(a)(v) — Taxable benefit income inclusion; 6(1)(i) — SDA payments; 6(12)-(14) — SDA — Rules; 8(1)(o) — Forfeited amounts; 20(1)(oo), (pp) — SDA — deduction to employer; 56(1)(w) — Benefit from SDA — included in income.

Advance Tax Rulings: ATR-39: Self-funded leave of absence; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

(12) Idem — Where at the end of a taxation year any person has a right under a salary deferral arrangement (other than a trust governed by a salary deferral arrangement) in respect of a taxpayer to receive a deferred amount, an amount equal to any interest or other additional amount that accrued to, or for the benefit of, that person to the end of the year in respect of the deferred amount shall be deemed at the end of the year, for the purposes only of subsection (11), to be a deferred amount that the person has a right to receive under the arrangement.

(13) Application — Subsection (11) does not apply in respect of a deferred amount under a salary deferral arrangement in respect of a taxpayer that was established primarily for the benefit of one or more non-resident employees in respect of services to be rendered in a country other than Canada, to the extent that the deferred amount

> (a) was in respect of services rendered by an employee who
>
> (i) was not resident in Canada at the time the services were rendered, or
>
> (ii) was resident in Canada for a period (in this subsection referred to as an "excluded period") of not more than 36 of the 72 months preceding the time the services were rendered and was an employee to whom the arrangement applied before the employee became resident in Canada; and
>
> (b) cannot reasonably be regarded as being in respect of services rendered or to be rendered during a period (other than an excluded period) when the employee was resident in Canada.

Related Provisions: 18(1)(o.1) — Salary deferral arrangement — no deduction of outlays for non-residents.

(14) Part of plan or arrangement — Where deferred amounts under a salary deferral arrangement in respect of a taxpayer (in this subsection referred to as "that arrangement") are required to be included as benefits under paragraph (1)(a) in computing the taxpayer's income and that arrangement is part of a plan or arrangement (in this subsection referred to as the "plan") under which amounts or benefits not related to the deferred amounts are payable or provided, for the purposes of this Act, other than this subsection,

(a) that arrangement shall be deemed to be a separate arrangement independent of other parts of the plan of which it is a part; and

(b) where any person has a right to a deferred amount under that arrangement, an amount received by the person as a benefit at any time out of or under the plan shall be deemed to have been received out of or under that arrangement except to the extent that it exceeds the amount, if any, by which

(i) the total of all deferred amounts under that arrangement that were included under paragraph (1)(a) as benefits in computing the taxpayer's income for taxation years ending before that time

exceeds

(ii) the total of

(A) all deferred amounts received by any person before that time out of or under the plan that were deemed by this paragraph to have been received out of or under that arrangement, and

(B) all deferred amounts under that arrangement that were deducted under paragraph 8(1)(o) in computing the taxpayer's income for the year or preceding taxation years.

Related Provisions: 6(1)(g) — Employee benefit plan benefits; 56(10) — Severability of retirement compensation arrangement.

Pre-RSC History: Subsecs. 6(11) to (14) added by 1986, c. 55, subsec. 1(2), applicable to 1986 *et seq.*

(15) Forgiveness of employee debt — For the purpose of paragraph (1)(a),

(a) a benefit shall be deemed to have been enjoyed by a taxpayer at any time an obligation issued by any debtor (including the taxpayer) is settled or extinguished; and

(b) the value of that benefit shall be deemed to be the forgiven amount at that time in respect of the obligation.

Related Provisions: 6(15.1) — Meaning of "forgiven amount"; 15(1.2) — Forgiveness of shareholder loans; 79(3)F(b)(i) — Where property surrendered to creditor; 80(1)"forgiven amount"B(b) — Debt forgiveness rules do not apply to amount of benefit; 80.01 — Deemed settlement of debts.

History: Subsec. 6(15) amended by 1995, c. 21, s. 1, applicable to taxation years that end after February 21, 1994. Subsec. 6(15) formerly read:

(15) Forgiven employee loans — For the purposes of paragraph (1)(a), the value of the benefit received or enjoyed by a taxpayer, in circumstances where a loan or other obligation to pay an amount is settled or extinguished at any time without any payment by the taxpayer or by payment by the taxpayer of an amount that is less than the amount of the obligation outstanding at that time, shall be deemed to be the amount, if any, by which the amount of the obligation outstanding at that time exceeds the amount so paid, if any.

Pre-RSC History: Subsec. 6(15) added by 1987, c. 46, subsec. 1(2), applicable in respect of obligations settled or extinguished after February 17, 1987.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(15.1) Forgiven amount — For the purpose of subsection (15), the "forgiven amount" at any time in respect of an obligation issued by a debtor has the meaning that would be assigned by subsection 80(1) if

(a) the obligation were a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the debtor;

(b) no amount included in computing income because of the obligation being settled or extinguished at that time were taken into account;

(c) the definition "forgiven amount" in subsection 80(1) were read without reference to paragraphs (f) and (h) of the description of B in that definition; and

(d) section 80 were read without reference to paragraphs (2)(b) and (q) of that section.

Related Provisions: 80.01(1)"forgiven amount" — Application of definition for purposes of s. 80.01; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation.

History: Subsec. 6(15.1) added by 1995, c. 21, s. 1, applicable to taxation years that end after February 21, 1994.

(16) Disability-related employment benefits — Notwithstanding subsection (1), in computing an individual's income for a taxation year from an office or employment, there shall not be included any amount received or enjoyed by the individual in respect of, in the course of or because of the individual's office or employment that is the value of a benefit relating to, or an allowance (not in excess of a reasonable amount) in respect of expenses incurred by the individual for,

(a) the transportation of the individual between the individual's ordinary place of residence and the individual's work location (including parking near that location) if the individual is blind or is a person in respect of whom an amount is deductible, or would but for paragraph 118.3(1)(c) be deductible, because of the individual's mobility impairment, under section 118.3 in computing a taxpayer's tax payable under this Part for the year; or

(b) an attendant to assist the individual in the performance of the individual's duties if the individual is a person in respect of whom an amount is deductible, or would but for paragraph 118.3(1)(c) be deductible, under section 118.3 in computing a taxpayer's tax payable under this Part for the year.

Related Provisions: 6(1.1) — Parking normally a taxable benefit; 64 — Attendant care expenses; 118.4(1) — Nature of impairment.

History: Subsec. 6(16) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(5), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(17) Definitions — The definitions in this subsection apply in this subsection and subsection (18).

"disability policy" means a group disability insurance policy that provides for periodic payments to individuals in respect of the loss of remuneration from an office or employment.

"employer" of an individual includes a former employer of the individual.

"top-up disability payment" in respect of an individual means a payment made by an employer of the individual as a consequence of the insolvency of an insurer that was

obligated to make payments to the individual under a disability policy where

(a) the payment is made to an insurer so that periodic payments made to the individual under the policy will not be reduced because of the insolvency, or will be reduced by a lesser amount, or

(b) the following conditions are satisfied:

(i) the payment is made to the individual to replace, in whole or in part, periodic payments that would have been made under the policy to the individual but for the insolvency, and

(ii) the payment is made under an arrangement by which the individual is required to reimburse the payment to the extent that the individual subsequently receives an amount from an insurer in respect of the portion of the periodic payments that the payment was intended to replace.

For the purposes of paragraphs (a) and (b), an insurance policy that replaces a disability policy is deemed to be the same policy as, and a continuation of, the disability policy that was replaced.

Related Provisions: 8(1)(n) — Reimbursement under (b)(ii) not deductible as salary reimbursement; 8(1)(n.1) — Limited deduction for reimbursements under (b)(ii).

History: Subsec. 6(17) added by 1998, c. 19, s. 68, applicable to payments made after August 10, 1994.

(18) Group disability benefits — insolvent insurer — Where an employer of an individual makes a top-up disability payment in respect of the individual,

(a) the payment is, for the purpose of paragraph (1)(a), deemed not to be a benefit received or enjoyed by the individual;

(b) the payment is, for the purpose of paragraph (1)(f), deemed not to be a contribution made by the employer to or under the disability insurance plan of which the disability policy in respect of which the payment is made is or was a part; and

(c) if the payment is made to the individual, it is, for the purpose of paragraph (1)(f), deemed to be an amount payable to the individual pursuant to the plan.

Related Provisions: 6(17) — Definitions; 8(1)(n.1) — Reimbursement to employer.

History: Subsec. 6(18) added by 1998, c. 19, s. 68, applicable to payments made after August 10, 1994.

(19) Benefit re housing loss — For the purpose of paragraph (1)(a), an amount paid at any time in respect of a housing loss (other than an eligible housing loss) to or on behalf of a taxpayer or a person who does not deal at arm's length with the taxpayer in respect of, in the course of or because of, an office or employment is deemed to be a benefit received by the taxpayer at that time because of the office or employment.

Related Provisions: 6(20) — Eligible housing loss only partly taxed; 6(21) — Meaning of "housing loss"; 6(23) — Employer-provided housing subsidy is taxable.

History: Subsec. 6(19) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(20) Benefit re eligible housing loss — For the purpose of paragraph (1)(a), an amount paid at any time in a taxation year in respect of an eligible housing loss to or on behalf of a taxpayer or a person who does not deal at arm's length with the taxpayer in respect of, in the course of or because of, an office or employment is deemed to be a benefit received by the taxpayer at that time because of the office or employment to the extent of the amount, if any, by which

(a) one half of the amount, if any, by which the total of all amounts each of which is so paid in the year or in a preceding taxation year exceeds $15,000

exceeds

(b) the total of all amounts each of which is an amount included in computing the taxpayer's income because of this subsection for a preceding taxation year in respect of the loss.

History: Subsec. 6(20) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(21) Housing loss — In this section, "housing loss" at any time in respect of a residence of a taxpayer means the amount, if any, by which the greater of

(a) the adjusted cost base of the residence at that time to the taxpayer or to another person who does not deal at arm's length with the taxpayer, and

(b) the highest fair market value of the residence within the six-month period that ends at that time

exceeds

(c) if the residence is disposed of by the taxpayer or the other person before the end of the first taxation year that begins after that time, the lesser of

(i) the proceeds of disposition of the residence, and

(ii) the fair market value of the residence at that time, and

(d) in any other case, the fair market value of the residence at that time.

Related Provisions: 6(22) — Meaning of "eligible housing loss".

History: Subsec. 6(21) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(22) Eligible housing loss — In this section, "eligible housing loss" in respect of a residence designated by a taxpayer means a housing loss in respect of an eligible relocation of the taxpayer or a person who does not deal at arm's length with the taxpayer and, for these purposes, no more than one residence may be so designated in respect of an eligible relocation.

Related Provisions: 248(1) — Definition of "eligible relocation".

History: Subsec. 6(22) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Interpretation Bulletins: IT-470R: Employees' fringe benefits.

(23) Employer-provided housing subsidies — For greater certainty, an amount paid or the value of assistance provided by any person in respect of, in the course of or because of, an individual's office or employment in respect of the cost of, the financing of, the use of or the

right to use, a residence is, for the purposes of this section, a benefit received by the individual because of the office or employment.

Related Provisions: 80.4(1), (1.1) — Taxable benefit on loan to employee.

History: Subsec. 6(23) added by 1999, c. 22, subsec. 2(2), applicable

(a) to 2001 *et seq.*, in respect of an eligible relocation of an individual in connection with which the individual begins employment at a new work location before October 1998; and

(b) in any other case, after February 23, 1998.

Definitions [s. 6]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "automobile" — 248(1); "benefit" — 6(18)(a); "benefit amount" — 6(1)(e.1)(i); "business" — 248(1); "Canada" — 255; "contribution" — 6(18)(b); "cost" — 6(7); "cost amount", "death benefit", "deferred amount" — 248(1); "deferred payment" — 8(1)(n.1)(i); "deferred profit sharing plan" — 147(1), 248(1); "disability policy" — 6(17); "dividend" — 248(1); "eligible housing loss" — 6(22); "eligible relocation" — 248(1); "employed", "employee", "employee benefit plan", "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 6(2), (17), 248(1); "employment" — 248(1); "forgiven amount" — 6(15.1); "goods and services tax", "group term life insurance policy" — 248(1); "housing loss" — 6(21); "individual", "insurance policy", "life insurance policy", "Minister", "motor vehicle", "non-resident" — 248(1); "obligation" — 248(26); "office" — 248(1); "payor" — 6(1)(k)(ii); "person", "personal or living expenses" — 248(1); "policy year" — 6(5); "prescribed", "private health services plan" — 248(1); "proceeds of disposition" — 54 [technically does not apply to 6(21)(c)(i)]; "profit sharing plan" — 147(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "retirement compensation arrangement", "salary deferral arrangement", "self-contained domestic establishment", "superannuation or pension benefit" — 248(1); "supplementary unemployment benefit plan" — 145(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "top-up disability payment" — 6(17); "Treasury Board" — 248(1); "writing" — *Interpretation Act* 35(1).

7. (1) Agreement to issue securities to employees — Subject to subsection (1.1), where a particular qualifying person has agreed to sell or issue securities of the particular qualifying person, or of a qualifying person with which it does not deal at arm's length, to an employee of the particular qualifying person or of a qualifying person with which it does not deal at arm's length,

(a) if the employee has acquired securities under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the securities at the time the employee acquired them

exceeds the total of

(ii) the amount paid or to be paid to the particular qualifying person by the employee for the securities, and

(iii) the amount, if any, paid by the employee to acquire the right to acquire the securities

is deemed to have been received, in the taxation year in which the employee acquired the securities, by the employee because of the employee's employment;

(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the securities to a person with whom the employee was dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

shall be deemed to have been received, in the taxation year in which the employee made the disposition, by the employee because of the employee's employment;

Selected Cases [para. 7(1)(b)]: *Bernier v. R.*, [2000] 1 C.T.C. 347 (FCA) (Payment was settlement, not transfer of rights under stock option plan); *Buccini v. R.*, [1999] 1 C.T.C. 2001 (TCC) (Disposition of rights under agreement triggered application of provision); *Dundas v. Canada*, [1995] 1 C.T.C. 184 (FCA) (Court of Appeal reluctant to interfere with inference drawn by trial judge from agreed statement of facts); *Dundas v. MNR*, [1993] 1 C.T.C. 398 (FCTD) (Amounts received for cancellation of stock option rights on amalgamation of corporation were proceeds of disposition, not damages).

(c) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has acquired securities under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the securities at the time the person acquired them

exceeds the total of

(ii) the amount paid or to be paid to the particular qualifying person by the person for the securities, and

(iii) the amount, if any, paid by the employee to acquire the right to acquire the securities,

is deemed to have been received, in the taxation year in which the person acquired the securities, by the employee because of the employee's employment, unless at the time the person acquired the securities the employee was deceased, in which case such a benefit is deemed to have been received by the person in that year as income from the duties of an employment performed by the person in that year in the country in which the employee primarily performed the duties of the employee's employment;

(d) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a particular person who has transferred or otherwise disposed of rights under the agreement to another person with whom the particular person was dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

shall be deemed to have been received, in the taxation year in which the particular person made the disposition, by the employee because of the employee's employment, unless at the time the other person acquired the rights the employee was deceased, in which case such a benefit shall be deemed to have been received by the particular person in that year as income from the duties of an employment performed by the particular person in that year in the country in which the employee primarily performed the duties of the employee's employment; and

(e) if the employee has died and immediately before death owned a right to acquire securities under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the right immediately after the death

exceeds

(ii) the amount, if any, paid by the employee to acquire the right

shall be deemed to have been received, in the taxation year in which the employee died, by the employee because of the employee's employment, and paragraphs (b), (c) and (d) do not apply.

Proposed Amendment — Annual deferral of $100,000 of Stock Option Benefits

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Deferred Stock Option Benefits*

(10) That the provisions of the Act which deem an individual who acquires a security under an option granted to the individual as an employee of a corporation (other than a Canadian-controlled private corporation), or as an employee of a mutual fund trust, to have received an employment benefit under subsection 7(1) of the Act that is required to be included in income be amended to provide

(a) that the income inclusion determined in connection with an individual's acquisition of a particular security after February 27, 2000 be deferred from the year in which the security is acquired to the earlier of the year in which the security is disposed of and the year in which the individual dies or becomes non-resident,

(b) that, in the case of an option granted to an employee to acquire a share of the capital stock of a corporation, the deferral not be available if, at the time the option was granted, the employee was a specified shareholder of the employer, of the corporation granting the option or of the corporation whose shares could be acquired under the option,

(c) that the deferral not be available in respect of a particular security acquired by an individual unless

(i) the individual would, if there were no deferral, be entitled in the year the security was acquired to deduct an amount under paragraph 110(1)(d) of the Act in respect of the employment benefit, and

(ii) where the security is a share of the capital stock of a corporation, it is of a class of shares that is listed on a stock exchange referred to in section 3200 or 3201 of the *Income Tax Regulations*,

(d) that the deferral of the income inclusion determined in connection with an individual's acquisition of a particular security under an option that had been granted to the individual by a particular entity, and that had vested in the individual in a particular year, be available only if the specified value of the particular security does not exceed $100,000 less the total of all amounts each of which is the specified value of a related security and, for this purpose,

(i) the specified value of a security acquired under an option is the fair market value of the security at the time the option was granted,

(ii) a security is a related security if

(A) it was acquired by the individual under an option that had been granted to the individual by the particular entity (or by an entity that was not dealing at arm's length with the particular entity) and that had vested in the individual in the particular year, and

(B) the income inclusion determined in connection with its acquisition is deferred because of this measure, and

(iii) the provisions of subsection 7(1.4) of the Act, dealing with exchanged options, apply, and

(e) that the deferral of the income inclusion be available only if arrangements have been established, in accordance with the budget documents tabled by the Minister of Finance in the House of Commons on February 28, 2000, to ensure accurate and timely reporting of the employment benefit.

Federal budget, supplementary information, February 28, 2000: *Employee Stock Options*

Many corporations use stock options to encourage their employees to take an ownership stake in the corporation, most notably in the fast-growing high-technology industries. These options provide employees with the right to acquire shares in their employer for a predetermined price — the exercise price.

The current tax treatment of employee stock options is as follows:

- A taxable employment benefit equal to the difference between the fair market value of the share at the time the option is exercised and the amount paid by the employee to acquire the share is generally included in income in the year the option is exercised.
- In the case of Canadian-controlled private corporations (CCPCs), the taxable employment benefit is generally not included in income until the year of disposition of the share acquired under the option.
- Where certain conditions are met, a deduction in respect of the employee stock option benefit is provided that essentially results in the benefit being taxed at the same rate as capital gains.

To assist corporations in attracting and retaining high-calibre workers and make our tax treatment of employee stock options more competitive with the United States, the budget proposes to allow employees to defer the income inclusion from exercising employee stock options for publicly listed shares until the disposition of the shares, subject to an annual $100,000 limit (see below). Employees disposing of such shares will be eligible to claim the stock option deduction in the year the benefit is included in income. The new rules will also apply to employee options to acquire units of a mutual fund trust. The proposed rules are generally similar to those for Incentive Stock Options in the United States.

Employee stock options granted by CCPCs are not affected by the proposed measure.

Eligible Employees

Eligible employees are those who at the time the option is granted:

- deal at arm's-length with the employer and any related corporation; and
- are not specified shareholders (specified shareholders are generally those who own 10 per cent or more of a company's shares).

Eligible Options

An eligible option is one under which:

- the share to be acquired is an ordinary common share;
- the share is of a class of shares traded on a prescribed Canadian or foreign stock exchange; and
- the total of all amounts payable to acquire the share, including the exercise price and any amount payable to acquire the option, is not less than the fair market value of the share at the time the option is granted.

The proposal applies to eligible options exercised after February 27, 2000, irrespective of when the option was granted or became vested.

$100,000 Limit

There will be a $100,000 annual limit on the amount of options that an employee can be granted which will be eligible for deferral. The same limit applies in the United States. This limit will apply:

- to the value of the stock options that vest (first become exercisable) in the employee each year (the "value of a stock option" is the fair market value of the underlying share at the time the option is granted); and
- across all stock option plans of the employer corporation and related corporations.

Example

Gerry is an employee of a company that has an employee stock option plan. On January 1, 2001, Gerry's employer grants options to acquire 16,000 shares. Options to acquire 4,000 shares vest immediately, and the remaining options vest in equal parts on January 1 of each of 2002, 2003 and 2004. The fair market value of the shares on January 1, 2001 is $10.

Because, at the time the options were granted, the fair market value of the shares underlying the options that vest in each of the years 2001-2004 does not exceed $100,000, Gerry will be able to defer the income inclusion from exercising all the options.

Had the options all vested in the same year, only 10,000 of the underlying shares would have qualified for the deferral.

There are no restrictions on how many of the options Gerry can exercise in any given year.

Reporting Arrangements

Deferral of taxation of the employment benefit arising from the exercise of an employee option will depend on the employer having an arrangement in place to ensure that:

- the employer, or an agent of the employer, can monitor compliance with the $100,000 limit; and
- the related employment benefit and the stock option deduction can be reported on an information slip in the year the share is disposed of.

Consultations will be held in the coming months with stakeholders and other interested parties on the design of appropriate reporting arrangements. It is intended that specific proposals based on these consultations will be made public in sufficient time for employers to have reporting arrangements in place by the end of this year.

Deferral Period

The income inclusion for a share acquired under an employee stock option will be deferred until the time the employee disposes of the share or, if earlier, the time the employee dies or becomes a non-resident.

The measure applies to options exercised after February 27, 2000.

Department of Finance news release, May 9, 2000: *Finance Minister Clarifies Certain Income Tax Measures in the 2000 Budget*

Finance Minister Paul Martin today announced several clarifications to measures announced in the 2000 budget. These clarifications will ensure the smooth conduct of business transactions while consultations take place.

. . . . .

Employee Stock Options

The 2000 budget included a measure allowing employees to defer the income inclusion from exercising employee stock options for publicly listed shares until the disposition of the shares, subject to a $100,000 annual vesting limit. Minister Martin today confirmed that the reporting requirements for the stock option proposal will not require employers to track dispositions of shares acquired under a stock option plan. The reporting forms will concentrate on the benefit at the time of exercise and on compliance with the $100,000 annual limit.

. . . . .

For further information: Employee Stock Options, Catherine Cloutier, (613) 996-0598.

Proposed Amendment — Deduction on donating stock option shares

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110(1)(d) — ed.]

Related Provisions: 7(1.1) — Stock option granted by CCPC; 7(1.4) — Exchange of options; 7(1.5) — Rules where shares exchanged; 7(2) — Shares held by trustee; 8(12) — Return of employee shares by trustee; 53(1)(j) — Addition to ACB of share; 104(1), (2) — Employee of trustee deemed to be employee of mutual fund trust; 110(1)(d) — Deduction of ¼ of the taxable benefit; 110.6(19)(a)(i)(A)B — Election to trigger capital gains exemption — no income inclusion; 128.1(1)(b)(v) [to be repealed], 128.1(10)"excluded right or interest"(c) [draft] — Stock options excluded from deemed disposition on immigration; 128.1(4)(b)(vi) [to be repealed], 128.1(10)"excluded right or interest"(c) [draft] — Stock options excluded from deemed disposition on emigration; 153(1)(a) — Withholding of tax by employer; 164(6.1) — Exercise or disposition of employee stock option by legal representative of deceased employee.

History: The portion of subsec. 7(1) before para. (d) and the opening words of para. (e) amended by 1999, c. 22, subsecs. 3(1) and (2), applicable to 1998 *et seq.* That portion and the opening words of para. (e) formerly read:

7. (1) **Agreement to issue shares to employees** — Subject to subsection (1.1), where a corporation has agreed to sell or issue shares of the capital stock of the corporation or of a corporation with which it does not deal at arm's length to an employee of the corporation or of a corporation with which it does not deal at arm's length,

(a) if the employee has acquired shares under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the shares at the time the employee acquired them

exceeds

(ii) the total of the amount paid or to be paid to the corporation by the employee for the shares and any amount paid by the employee to acquire the right to acquire the shares

shall be deemed to have been received, in the taxation year in which the employee acquired the shares, by the employee because of the employee's employment;

(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the shares to a person with whom the employee was dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

shall be deemed to have been received, in the taxation year in which the employee made the disposition, by the employee because of the employee's employment;

(c) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has acquired shares under the agreement, a benefit equal to the amount, if any, by which

(i) the value of the shares at the time that person acquired them

exceeds

(ii) the total of the amount paid or to be paid to the corporation by that person for the shares and any amount paid by the employee to acquire the right to acquire the shares

shall be deemed to have been received, in the taxation year in which the person acquired the shares, by the employee because of the employee's employment, unless at the time the person acquired the shares the employee was deceased, in which case such a benefit shall be deemed to have been received by the person in that year as income from the duties of an employment performed by the person in that year in the country in which the employee primarily performed the duties of the employee's employment;

. . . . .

(e) if the employee has died and immediately before the death the employee owned a right to acquire shares under the agreement, a benefit equal to the amount, if any, by which

Paras. 7(1)(a) to (d) substituted and para. 7(1)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 4(1) and (2), paras. 7(1)(a) to (d) applicable to 1988 *et seq.*, and (e) applicable with respect to deaths occurring after July 13, 1990. Paras. (a) to (d) formerly read:

(a) if the employee has acquired shares under the agreement, a benefit equal to the amount by which the value of the shares at the time

the employee acquired them exceeds the amount paid or to be paid to the corporation therefor by the employee shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which the employee acquired the shares;

(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the shares to a person with whom the employee was dealing at arm's length, a benefit equal to the value of the consideration for the disposition shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which the employee made the disposition;

(c) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has acquired shares under the agreement, a benefit equal to the amount by which the value of the shares at the time that person acquired them exceeds the amount paid or to be paid to the corporation therefor by that person shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which that person acquired the shares; and

(d) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a person who has transferred or otherwise disposed of rights under the agreement to a person with whom the transferor was dealing at arm's length, a benefit equal to the value of the consideration for the disposition shall be deemed to have been received by the employee by virtue of the employee's employment in the taxation year in which made the disposition was made.

Pre-RSC History: All that portion of subsec. 7(1) preceding para. (a) substituted by 1977-78, c. 1, subsec. 3(1), applicable to agreements entered into after March 31, 1977, to add "Subject to subsection (1.1),".

Selected Cases [subsec. 7(1)]: *Del Grande (E.) v. Canada*, [1993] 1 C.T.C. 2096 (TCC) (Stock option benefit received as director or officer when rights acquired, not when subsequently exercised); *Ball (D.J.) v. MNR*, [1992] 2 C.T.C. 2770 (TCC) (Benefit under stock option agreement commensurate with number of shares issued and acquired on full payment of consideration in accordance with corporation law, not number of shares employee entitled to acquire under option); *Hale v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 159 (note) (Benefit from exercising options while resident in UK and after Canadian employment terminated taxable; subsection 7(4) not inconsistent with Article 15(1) of *Canada-UK Convention*); *Clemiss v. MNR*, [1992] 2 C.T.C. 232 (FCTD) (Benefit taxable in year shares paid for and registered, not in year option purportedly exercised); *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 392 (note) (Payments into employees' stock purchase plan governed by subsection 7(3), not deductible remuneration); *Canada v. Chrysler Canada Ltd. (No. 3)*, [1992] 2 C.T.C. 95 (FCTD) (Employee stock ownership plan was "stock option", not "employee benefit plan" under paragraph 6(1)(g)); *Gesser (N.) Estate v. MNR*, [1992] 2 C.T.C. 26 (FCA); leave to appeal to SCC refused (1992), 143 N.R. 394 (note) ("Pseudo-transfer" of shares executed in 1970 resulted in taxable benefit in later year); *Ingram v. MNR*, [1991] 2 C.T.C. 2259 (TCC) (Taxpayer not taxable on gains from stock options taken as agent for others legally barred from taking them); *Canada v. Chrysler Canada Ltd.*, [1991] 2 C.T.C. 156 (FCTD); additional reasons at [1992] 1 C.T.C. 61, (sub nom. *Canada v. Chrysler Canada Ltd. (No. 2)*) (FCTD) (Employee stock ownership plan both agreement to issue shares to employees (taxable pursuant to section 7) and employee benefit plan (taxable pursuant to paragraph 6(1)(g))); *Hale v. Canada*, [1990] 2 C.T.C. 247 (FCTD); aff'd [1992] 2 C.T.C. 377 (FCA); leave to appeal to SCC refused (March 11, 1993), Doc. 23193 (Director's fees received by non-resident were 50% taxable. Article 15 of Canada-U.K. Tax Convention interpreted); *Pollock v. Canada*, [1990] 1 C.T.C. 196 (FCTD); appealed to FCA (Jan. 19, 1990), File A-75/76-90 (Shares acquired under employee stock option may be object of adventure in nature of trade); *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office); *The Queen v. Beaumont*, [1988] 2 C.T.C. 365 (FCA) (Whether or not a transaction is at arm's length is question of fact); *Steen v. The Queen*, [1988] 1 C.T.C. 256 (FCA) (Shares valued at date option exercised); *Busby v. The Queen*, [1986] 1 C.T.C. 147 (FCTD) (Profit from disposition of shares in company associated to employer company was not benefit from employment); *Mansfield v. The Queen*, [1984] C.T.C. 547 (FCA); leave to appeal to SCC refused (1985), 58 N.R. 237 (Difference between cost of convertible debenture and value of shares was both taxable benefit and addition to adjusted cost base); *Grant v. The Queen*, [1974] C.T.C. 332 (FCTD) (Profit from disposition of shares acquired at market value was not benefit).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits.

Information Circulars: 89-3: Policy statement on business equity valuations.

I.T. Technical News: No. 1 (convertible preferred shares); No. 7 (stock options plans — receipt of cash in lieu of shares); No. 19 (Securities option plan — disposal of securities option rights for shares; Disposition of identical properties acquired under a section 7 securities option; Change in position in respect of GAAR — section 7).

Advance Tax Rulings: ATR-15: Employee stock option plan; ATR-64: Phantom stock award plan.

(1.1) Employee stock options — Where after March 31, 1977 a Canadian-controlled private corporation (in this subsection referred to as "the corporation") has agreed to sell or issue a share of the capital stock of the corporation or of a Canadian-controlled private corporation with which it does not deal at arm's length to an employee of the corporation or of a Canadian-controlled private corporation with which it does not deal at arm's length and at the time immediately after the agreement was made the employee was dealing at arm's length with

(a) the corporation,

(b) the Canadian-controlled private corporation, the share of the capital stock of which has been agreed to be sold by the corporation, and

(c) the Canadian-controlled private corporation that is the employer of the employee,

in applying paragraph (1)(a) in respect of the employee's acquisition of the share, the reference in that paragraph to "the taxation year in which the employee acquired the securities" shall be read as a reference to "the taxation year in which the employee disposed of or exchanged the securities".

Related Provisions: 7(1.3) — Order of disposition of shares; 7(1.4) — Exchange of options; 7(1.5) — Exchange of shares; 7(1.6) — Emigration does not trigger benefit from deemed disposition; 128.1(1)(4)(d.1) — Emigration of taxpayer — calculation of gain; 110(1)(d), (d.1) — Deduction of ¼ of the taxable benefit.

History: The portion of subsec. 7(1.1) after para. (c) amended by 1999, c. 22, subsec. 3(3), applicable to 1998 *et seq.* That portion formerly read:

> in applying paragraph (1)(a) in respect of the employee's acquisition of the share, the reference in that paragraph to "the taxation year in which the employee acquired the shares" shall be read as a reference to "the taxation year in which the employee disposed of or exchanged the shares".

That portion of subsec. 7(1.1) following para. (c) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(3), to substitute "read as a reference to" for "read as", applicable to 1988 *et seq.*

Pre-RSC History: That portion of subsec. 7(1.1) following para. (c) substituted by 1986, c. 6, subsec. 2(1), applicable with respect to shares acquired after May 22, 1985. That portion formerly read:

> paragraph (1)(a) does not apply in respect of the employee's acquisition of the share unless the employee disposes of the share, otherwise than as a consequence of his death, within two years from the date he acquired it.

Subsec. 7(1.1) added by 1977-78, c. 1, subsec. 3(2), applicable to agreements entered into after March 31, 1977.

Selected Cases [subsec. 7(1.1)]: *Ward v. R.*, [1998] 4 C.T.C. 2129 (TCC) (Taxpayer failed to establish employment relationship to enable access to stock option rules); *Aylward v. R.*, [1997] 2 C.T.C. 2748 (TCC) (Section 7, when applicable, overrides subsection 84(1)); *Wiebe et al. v. The Queen*, [1987] 1 C.T.C. 145 (FCA) (Provision inapplicable to shares acquired in 1978 pursuant to option agreement entered before March 31, 1977 where agreement was radically changed at time of share purchase).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits.

I.T. Technical News: No. 19 (Change in position in respect of GAAR — section 7).

Advance Tax Rulings: ATR-15: Employee stock option plan.

(1.11) Non-arm's length relationship with trusts — For the purposes of this section, a mutual fund trust is deemed not to deal at arm's length with a corporation only if the trust controls the corporation.

History: Subsec. 7(1.11) added by 1999, c. 22, subsec. 3(4), applicable to 1998 *et seq.*

(1.2) [Repealed under former Act]

Pre-RSC History: Subsec. 7(1.2) repealed by 1986, c. 6, subsec. 2(2), applicable with respect to shares acquired after May 22, 1985. Subsec. 7(1.2) formerly read:

> (1.2) Idem — Where a taxpayer has acquired a share in circumstances such that, if he had not disposed of it within two years from the date he acquired it, paragraph (1)(a) would not have applied to the acquisition by reason of subsection (1.1), the reference in paragraph (1)(a) to "the taxation year in which he acquired the shares" shall be read as "the taxation year in which he disposed of the shares".

Subsec. 7(1.2) added by 1977-78, c. 1, subsec. 3(2), applicable to agreements entered into after March 31, 1977.

(1.3) Order of disposition of shares — For the purpose of subsection (1.1), a taxpayer shall be deemed to dispose of shares that are identical properties in the order in which the taxpayer acquired them.

Related Provisions: 248(12) — Identical properties.

Pre-RSC History: Subsec. 7(1.3) added by 1977-78, c. 1, subsec. 3(2), applicable to agreements entered into after March 31, 1977.

I.T. Technical News: No. 19 (Change in position in respect of GAAR — section 7).

(1.4) Exchange of options — Where

> (a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire securities of a particular qualifying person that made the agreement or of a qualifying person with which it does not deal at arm's length (which rights and securities are referred to in this subsection and paragraph 110(1)(d) as the "exchanged option" and the "old securities", respectively),

Proposed Amendment — 7(1.4)(a)

> (a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire securities of a particular qualifying person that made the agreement or of a qualifying person with which it does not deal at arm's length (which rights and securities are referred to in this subsection as the "exchanged option" and the "old securities", respectively),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 1(1), will amend para. 7(1.4)(a) to read as above, applicable to 1998 *et seq.*

Technical Notes: Section 7 of the *Income Tax Act* deals with employee stock options. It sets out the rules for determining the amount to be included in an employee's income in respect of the exercise or sale of rights under an employment-related arrangement to sell or issue shares in a corporation or units in a trust.

Subsection 7(1.4) of the Act contains special provisions that apply when an individual disposes of rights to acquire securities under an employee security option agreement in exchange for other such rights. Paragraph 7(1.4)(a) uses the terms "exchanged option" and "old securities" to refer to the rights that have been disposed of and the securities that could have been acquired thereunder. Paragraph 7(1.4)(a) extends this terminology to paragraph 110(1)(d), which provides a special deduction in respect of certain security option benefits.

Paragraph 7(1.4)(a) is amended to remove the reference to "paragraph 110(1)(d)". This amendment is strictly consequential to changes to paragraph 110(1)(d), which no longer uses these terms.

> (b) the taxpayer receives no consideration for the disposition of the exchanged option other than rights under an agreement with a person (in this subsection referred to as the "designated person") that is
>
> (i) the particular person,
>
> (ii) a qualifying person with which the particular person does not deal at arm's length immediately after the disposition,
>
> (iii) a corporation formed on the amalgamation or merger of the particular person and one or more other corporations,
>
> (iv) a mutual fund trust to which the particular person has transferred property in circumstances to which subsection 132.2(1) applied, or
>
> (v) a qualifying person with which the corporation referred to in subparagraph (iii) does not deal at arm's length immediately after the disposition
>
> to acquire securities of the designated person or a qualifying person with which the designated person does not deal at arm's length (which rights and securities are referred to in this subsection as the "new option" and the "new securities", respectively), and
>
> (c) the amount, if any, by which
>
> (i) the total value of the new securities immediately after the disposition
>
> exceeds
>
> (ii) the total amount payable by the taxpayer to acquire the new securities under the new option
>
> does not exceed the amount, if any, by which
>
> (iii) the total value of the old securities immediately before the disposition
>
> exceeds
>
> (iv) the amount payable by the taxpayer to acquire the old securities under the exchanged option,

for the purposes of this section,

> (d) the taxpayer is deemed not to have disposed of the exchanged option and not to have acquired the new option,
>
> (e) the new option is deemed to be the same option as, and a continuation of, the exchanged option, and
>
> (f) if the designated person is not the particular person, the designated person is deemed to be the same person as, and a continuation of, the particular person.

History: Subsec. 7(1.4) amended by 1999, c. 22, subsec. 3(5), applicable to 1998 *et seq.* The subsec. formerly read:

> (1.4) For the purposes of this section and paragraph 110(1)(d), where
>
> (a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire shares of the capital stock of a particular corporation that made the agreement or of a corporation with which the particular corporation does not deal at arm's length (which rights and shares are referred to in this subsection and paragraph 110(1)(d) as the "exchanged option" and the "old shares", respectively),

(b) the taxpayer receives no consideration for the disposition of the exchanged option other than rights under an agreement with

(i) the particular corporation,

(ii) a corporation with which the particular corporation does not deal at arm's length immediately after the disposition,

(iii) a corporation formed on the amalgamation or merger of the particular corporation and one or more other corporations, or

(iv) a corporation with which the corporation referred to in subparagraph (iii) does not deal at arm's length immediately after the disposition

to acquire shares of its capital stock or of the capital stock of a corporation with which it does not deal at arm's length (which rights and shares are referred to in this subsection and paragraph 110(1)(d) as the "new option" and the "new shares", respectively), and

(c) the amount, if any, by which

(i) the total value of the new shares immediately after the disposition

exceeds

(ii) the total amount payable by the taxpayer to acquire the new shares under the new option

does not exceed the amount, if any, by which

(iii) the total value of the old shares immediately before the disposition

exceeds

(iv) the amount payable by the taxpayer to acquire the old shares under the exchanged option,

the following rules apply:

(d) the taxpayer shall be deemed not to have disposed of the exchanged option and not to have acquired the new option,

(e) the new option shall be deemed to be the same option as, and a continuation of, the exchanged option, and

(f) the corporation referred to in subparagraph (b)(ii), (iii) or (iv), as the case may be, shall be deemed to be the same corporation as, and a continuation of, the particular corporation.

Subsec. 7(1.4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(4), applicable to 1988 *et seq.* except that where a taxpayer so elects by notifying the Minister of National Revenue in writing, the subsec. is not applicable with respect to dispositions of property by the taxpayer before July 14, 1990. Subsec. 7(1.4) formerly read:

(1.4) **Rules where options exchanged** — For the purposes of this section and paragraph 110(1)(d), where a taxpayer exchanges rights that the taxpayer has acquired under an agreement referred to in this section (in this subsection referred to as an "exchanged option") on an amalgamation or merger of two or more corporations and receives no consideration for the disposition of the exchanged option other than rights under an agreement of the corporation resulting from the amalgamation or merger to issue or sell to the taxpayer shares of its capital stock or of the capital stock of a corporation with which it does not deal at arm's length (in this subsection referred to as a "new option"), the following rules apply:

(a) the taxpayer shall be deemed not to have disposed of the exchanged option and not to have acquired the new option;

(b) the new option shall be deemed to be the same option as, and a continuation of, the exchanged option; and

(c) the amalgamated or merged corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Pre-RSC History: All that portion of subsec. 7(1.4) preceding para. (a) amended by 1987, c. 46, s. 2, to add "and paragraph 110(1)(d)", applicable with respect to rights exchanged on an amalgamation or merger occurring after 1984.

Subsec. 7(1.4) added by 1985, c. 45, s. 3, applicable with respect to rights acquired on an amalgamation or merger occurring after 1984.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

(1.5) Rules where shares exchanged — For the purposes of this section and paragraph 110(1)(d.1), where

(a) a taxpayer disposes of or exchanges shares of a Canadian corporation that were acquired by the taxpayer under an agreement referred to in subsection (1.1) (in this subsection referred to as the "exchanged shares"),

(b) the taxpayer receives no consideration for the disposition or exchange of the exchanged shares other than shares (in this subsection referred to as the "new shares") of

(i) the corporation,

(ii) a corporation with which the corporation does not deal at arm's length immediately after the disposition or exchange,

(iii) a corporation formed on the amalgamation or merger of the corporation and one or more other corporations, or

(iv) a corporation with which the corporation referred to in subparagraph (iii) does not deal at arm's length immediately after the disposition or exchange, and

(c) the total value of the new shares immediately after the disposition or exchange does not exceed the total value of the old shares immediately before the disposition or exchange,

the following rules apply:

(d) the taxpayer shall be deemed not to have disposed of or exchanged the exchanged shares and not to have acquired the new shares,

(e) the new shares shall be deemed to be the same shares as, and a continuation of, the exchanged shares,

(f) the corporation that issued the new shares shall be deemed to be the same corporation as, and a continuation of, the corporation that issued the exchanged shares, and

(g) where the exchanged shares were issued under an agreement, the new shares shall be deemed to have been issued under that agreement.

Related Provisions: 110(1)(d) — Employee stock options.

History: The opening words of subsec. 7(1.5) substituted by 1994, c. 21, s. 3, applicable to 1992 *et seq.* The opening words of that subsec. formerly read:

(1.5) **Exchange of shares** — For the purposes of subsection (1.1) and paragraph 110(1)(d.1), where

Subsec. 7(1.5) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(4), applicable to 1988 *et seq.* except that where a taxpayer so elects by notifying the Minister of National Revenue in writing, the subsec. is not applicable to dispositions of property by the taxpayer before July 14, 1990. Subsec. 7(1.5) formerly read:

(1.5) **Rules where shares exchanged** — For the purposes of subsection (1.1) and paragraph 110(1)(d.1), where, in circumstances where subsection 85.1(1) or 87(4) apply, a taxpayer acquires shares of a Canadian corporation (in this subsection referred to as "new shares") in exchange for shares of a Canadian corporation acquired under an agreement referred to in subsection (1.1) (in this subsection referred to as "exchanged shares"), the following rules apply:

(a) the taxpayer shall be deemed not to have disposed of or exchanged the exchanged shares and not to have acquired the new shares;

(b) the new shares shall be deemed to be the same shares as, and a continuation of, the exchanged shares;

(c) the purchaser (within the meaning assigned by section 85.1) or the new corporation (within the meaning assigned by section 87), as the case may be, shall be deemed to be the same corporation as, and a continuation of, the corporation that issued the exchanged shares; and

(d) where the exchanged shares were issued under an agreement, the new shares shall be deemed to have been issued under that agreement.

Pre-RSC History: All that portion of subsec. 7(1.5) preceding para. (b) amended to add reference to paragraph 110(1)(d.1) and to substitute in para. 7(1.5)(a) "disposed of or exchanged the exchanged shares" for "disposed of the exchanged shares", by 1986, c. 6, subsec. 2(3), applicable with respect to shares acquired after May 22, 1985.

Subsec. 7(1.5) added by 1985, c. 45, s. 3, applicable with respect to shares acquired on an amalgamation, merger or share for share exchange occurring after 1984.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

Proposed Addition — 7(1.6)

(1.6) Emigrant — For the purposes of this section and paragraph 110(1)(d.1), a taxpayer is deemed not to have disposed of a share solely because of subsection 128.1(4).

Related Provisions: 128.1(4)(d.1) — Calculation of gain from deemed disposition on emigration.

Application: The June 5, 2000 Notice of Ways and Means Motion (taxpayer migration), subsec. 1(2), will add subsec. 7(1.6), applicable after 1992.

Technical Notes: Section 7 of the *Income Tax Act* deals with employee stock options. The section sets out rules for determining the amount to be included in an employee's income in respect of the exercise or sale of rights under an employment-related stock option arrangement.

Subsection 7(1.1) provides that the employment benefit in respect of shares of a Canadian-controlled private corporation issued under an employee stock option plan is, under certain conditions, to be included in the employee's income only in the taxation year in which the employee disposes of or exchanges the shares.

New subsection 7(1.6) applies where an individual who holds shares emigrates from Canada and is treated as having disposed of the shares under subsection 128.1(4) of the Act. In those circumstances, subsection 7(1.6) deems the shares, for the purposes of section 7 and paragraph 110(1)(d.1) of the Act, not to have been disposed of because of the emigration. As a result, emigration from Canada will not by itself trigger an income inclusion under section 7. However, because the share will still be treated as having been disposed of for the purposes of the Act, the emigrant individual will realize any gain that has accrued on the share since it was acquired. See the commentary on new paragraph 128.1(4)(d.1) for additional information.

New subsection 7(1.6) applies after 1992.

Notes: Under 128.1(4), emigration from Canada triggers a disposition of most capital property, triggering tax on accrued capital gains. The rule does not apply, however, for purposes of triggering income under 7(1.1).

(2) Securities held by trustee — If a security is held by a trustee in trust or otherwise, whether absolutely, conditionally or contingently, for an employee, the employee is deemed, for the purposes of this section and paragraphs 110(1)(d) and (d.1),

(a) to have acquired the security at the time the trust began to so hold it; and

(b) to have exchanged or disposed of the security at the time the trust exchanged it or disposed of it to any person other than the employee.

Related Provisions: 8(12) — Forfeiture of securities by employee; 104(21.2) — Capital gains exemption flowed through trust; 110.6(16) — Personal trust.

History: Subsec. 7(2) amended by 1999, c. 22, subsec. 3(6), applicable to 1998 *et seq.* The subsec. formerly read:

(2) Shares held by trustee — Where a share is held by a trustee in trust or otherwise, whether absolutely, conditionally or contingently, for an employee, the employee shall be deemed, for the purposes of this section and paragraphs 110(1)(d) and (d.1),

(a) to have acquired the share at the time the trust commenced so to hold it; and

(b) to have exchanged or disposed of the share at the time the trust exchanged it or disposed of it to any person other than the employee.

Pre-RSC History: Subsec. 7(2) substituted by 1986, c. 6, subsec. 2(4), applicable with respect to shares acquired after May 22, 1985. Subsec. 7(2) formerly read:

(2) Shares held by a trustee — Where a share is held by a trustee in trust or otherwise, either absolutely, conditionally or contingently, for an employee, the employee shall be deemed, for the purposes of this section and paragraph 110(1)(d), to have acquired the share at the time the trustee commenced so to hold it.

Subsec. 7(2) substituted by 1984, c. 45, s. 2, to add "and paragraph 110(1)(d)", applicable after February 15, 1984.

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(3) Special provision [taxable benefit under s. 7 only] — If a particular qualifying person has agreed to sell or issue securities of the particular person, or of a qualifying person with which it does not deal at arm's length, to an employee of the particular person or of a qualifying person with which it does not deal at arm's length,

(a) except as provided by this section, the employee is deemed to have neither received nor enjoyed any benefit under or because of the agreement; and

(b) the income for a taxation year of any person is deemed to be not less than its income for the year would have been if a benefit had not been conferred on the employee by the sale or issue of the securities.

History: Subsec. 7(3) amended by 1999, c. 22, subsec. 3(6), applicable to 1995 *et seq.*, except that the reference in para. 7(3)(b) to "person" shall be read as "corporation" in respect of benefits conferred before March 1998. The subsec. formerly read:

(3) Where a corporation has agreed to sell or issue shares of the capital stock of the corporation or of a corporation with which it does not deal at arm's length to an employee of the corporation or of a corporation with which it does not deal at arm's length

(a) no benefit shall be deemed to have been received or enjoyed by the employee under or by virtue of the agreement for the purpose of this Part except as provided by this section; and

(b) the income for a taxation year of the corporation or of a corporation with which it does not deal at arm's length shall be deemed to be not less than its income for the year would have been if a benefit had not been conferred on the employee by the sale or issue of the shares to the employee or to a person in whom the employee's rights under the agreement have become vested.

Selected Cases [subsec. 7(3)]: *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA); leave to appeal to SCC refused (March 18, 1993), Doc. 23247 [unreported] (Payments by taxpayer into employees' stock purchase plan not deductible); *Kaiser Petroleum Ltd. v. Canada*, [1990] 2 C.T.C. 439 (FCA); leave to appeal to SCC refused (1991), 136 N.R. 407 (note) (Compensation paid to employees to terminate employees' stock option was non-deductible capital outlay).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

I.T. Technical News: No. 7 (stock options plans — receipt of cash in lieu of shares).

Advance Tax Rulings: ATR-64: Phantom stock award plan.

(4) Application of subsec. (1) — For greater certainty it is hereby declared that, where a person to whom any provision of subsection (1) would otherwise apply has ceased to be an employee before all things have happened that would make that provision applicable, subsection (1) shall continue to apply as though the person were still an

employee and as though the employment were still in existence.

Selected Cases [subsec. 7(4)]: *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office); *Hurd v. The Queen*, [1981] C.T.C. 209 (FCA) (Benefit from exercise of option taxable where U.S. resident performed duties in Canada in year of exercise. No treaty exemption).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(5) Non-application of this section — This section does not apply if the benefit conferred by the agreement was not received in respect of, in the course of, or by virtue of, the employment.

Selected Cases [subsec. 7(5)]: *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office).

(6) Sale to trustee for employees — If a particular qualifying person has entered into an arrangement under which securities of the particular person, or of a qualifying person with which it does not deal at arm's length, are sold or issued by either person to a trustee to be held by the trustee in trust for sale to an employee of the particular person or of a qualifying person with which it does not deal at arm's length,

(a) for the purposes of this section (other than subsection (2)) and paragraphs 110(1)(d) and (d.1),

(i) any particular rights of the employee under the arrangement in respect of those securities are deemed to be rights under a particular agreement with the particular person under which the particular person has agreed to sell or issue securities to the employee,

(ii) any securities acquired under the arrangement by the employee or by a person in whom the particular rights have become vested are deemed to be securities acquired under the particular agreement, and

(iii) any amounts paid or agreed to be paid to the trustee for any securities acquired under the arrangement by the employee or by a person in whom the particular rights have become vested are deemed to be amounts paid or agreed to be paid to the particular person for securities acquired under the particular agreement; and

(b) subsection (2) does not apply in respect of securities held by the trustee under the arrangement.

History: Subsec. 7(6) amended by 1999, c. 22, subsec. 3(7), applicable to 1998 *et seq.* The subsec. formerly read:

(6) Where a corporation has entered into an arrangement under which shares of the capital stock of the corporation or of a corporation with which it does not deal at arm's length are sold or issued by either corporation to a trustee to be held by the trustee in trust for sale to an employee of the corporation or of a corporation with which it does not deal at arm's length,

(a) for the purposes of this section (except subsection (2)) and paragraphs 110(1)(d) and (d.1), any rights of the employee under the arrangement in respect of those shares, any shares acquired thereunder by the employee or by a person in whom those rights have become vested, and any amounts paid or agreed to be paid to the trustee for any shares acquired thereunder by the employee or any such person, shall be deemed to be, respectively, rights under, shares acquired under, and amounts paid or agreed to be paid to the corporation for shares acquired under, an agreement with the corporation under which the corporation has agreed to sell or issue shares to the employee; and

(b) subsection (2) does not apply in respect of shares held by the trustee under the arrangement.

All that portion of subsec. 7(6) preceding para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 4(5), applicable to 1988 *et seq.* That portion formerly read:

(6) Shares purchased by trustee for employees — Where a corporation has entered into an arrangement whereby shares of the corporation or of a corporation with which it does not deal at arm's length are purchased by a trustee to be held by the trustee in trust for sale to an employee of the corporation or of a corporation with whom it does not deal at arm's length,

(a) for the purposes of this section except subsection (2), any rights of the employee under the arrangement in respect of those shares, any shares acquired thereunder by the employee or by a person in whom rights of the employee thereunder in respect of those shares have become vested, and any amounts paid or agreed to be paid to the trustee for any shares acquired thereunder by the employee or any such person, shall be deemed to be, respectively, rights under, shares acquired under, and amounts paid or agreed to be paid to the corporation for shares acquired under, an agreement with the corporation whereby the corporation has agreed to sell or issue shares to the employee; and

Advance Tax Rulings: ATR-15: Employee stock option plan.

(7) Definitions — The definitions in this subsection apply in this section and in paragraph 110(1)(d).

"qualifying person" means a corporation or a mutual fund trust.

"security" of a qualifying person means

(a) if the person is a corporation, a share of the capital stock of the corporation; and

(b) if the person is a mutual fund trust, a unit of the trust.

History: Subsec. 7(7) added by 1999, c. 22, subsec. 3(7), applicable after 1994 but, except for the purpose of applying para. 7(3)(b), it does not apply to a right under an agreement made before March 1998 to sell or issue trust units to an individual unless

(a) the right was outstanding at the end of February 1998 and was not disposed of before March 1998 in circumstances to which para. 7(1)(b), as amended, applies; and

(b) the individual so elects in writing filed with the Minister of National Revenue on or before the later of

(i) the filing-due date for the individual's taxation year that includes the earlier of

(A) the time of the individual's death, and

(B) the time that the right was first disposed of after February 1998, and

(ii) January 1, 2000.

Definitions [s. 7]: "amount" — 248(1); "arm's length" — 7(1.11), 251(1); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated person" — 7(1.4)(b); "disposed" — 7(1.6); "employee", "employment" — 248(1); "exchanged option" — 7(1.4)(a); "identical" — 248(12); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "new option" — 7(1.4)(b); "new securities", "new shares" — 7(1.4)(b); "old securities", "old shares" — 7(1.4)(a); "person", "property" — 248(1); "qualifying person" — 7(7); "securities", "security" — 7(7); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Deductions

8. (1) Deductions allowed — In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

(a) **volunteers' deduction** — in respect of each employer of the taxpayer that is a government, municipality or public authority, the lesser of $1,000 and the

total of all amounts received in the year by the taxpayer from the employer that are

(i) included in the taxpayer's income for the year from an office or employment, and

(ii) from the performance, as a volunteer, of the taxpayer's duties as

(A) an ambulance technician,

(B) a firefighter, or

(C) a person who assists in the search or rescue of individuals or in other emergency situations,

except that no amount may be so deducted in respect of an employer if the taxpayer is employed in the year, otherwise than as a volunteer, by the employer in connection with the performance of any of the duties referred to in subparagraph (ii) or of similar duties;

Proposed Repeal — 8(1)(a)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 2(1), will repeal para. 8(1)(a), applicable to 1998 *et seq.*

Technical Notes: Section 8 of the Act provides for the deduction of various amounts in computing income from an office or employment.

Paragraph 8(1)(a) of the Act provides for a deduction of up to $1,000 in respect of amounts received by an individual (and included in the individual's income) from a government, municipality or public authority for the performance, as a volunteer, of the taxpayer's duties as an ambulance technician, a firefighter or a person who assists in the search or rescue of individuals or in other emergency situations. This deduction is replaced by an equivalent exemption under subsection 81(4). For information on this exemption, see the commentary on new subsection 81(4).

Department of Finance news release, June 16, 1999: *Technical Change to the $1,000 Tax-Free Amount for Emergency Service Volunteers*

In recognition of the important role of volunteers in providing emergency services to rural communities, the 1998 budget increased from $500 to $1,000 the annual amount that volunteer firefighters can receive on a tax-free basis from a public authority. This treatment was also extended to volunteer ambulance technicians and other emergency service volunteers.

Prior to the 1998 change, municipalities were not required to report the first $500 paid in allowances to their volunteer firefighters since this amount was excluded from income for income tax purposes. [See former 6(1)(b)(viii) — ed.] The 1998 budget required that all compensation paid by a public authority to a volunteer emergency service provider be included in income with the individual being able to claim an offsetting deduction of up to $1,000.

Some municipalities and other public authorities have made representations that the previous income exclusion approach was easier for them to administer since they did not need to issue reporting slips to volunteers earning no more than the tax-free amount. To simplify administration for public authorities, amendments to the *Income Tax Act* will be proposed at the earliest opportunity to replace the current deduction of up to $1,000 for compensation received by volunteer emergency service providers with a corresponding exclusion from employment income for income tax purposes [see 81(4) — ed.]. This change will have no income tax implications for volunteer emergency service providers.

For further information: Lise Potvin, Personal Income Tax Division, (613) 992-6729; Karl Littler, Senior Advisor, Tax Policy, Office of the Minister of Finance, (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080.

Related Provisions: 8(10) — Employer's certificate required; 81(4) — Exemption for volunteer emergency worker's income.

History: Para. 8(1)(a) added by 1999, c. 22, subsec. 4(1), applicable to 1998 *et seq.*

Forms: T2200: Declaration of conditions of employment.

Pre-RSC History [former 8(1)(a)]: Para. 8(1)(a) repealed by 1988, c. 55, subsec. 2(1), applicable to 1988 *et seq.* Para. 8(1)(a) formerly read:

(a) **employment expense deduction** — a single amount in respect of all offices and employments of the taxpayer, equal to the lesser of $500 and 20% of the aggregate of

(i) his incomes for the year from all offices and employments (other than the office of a corporation director) before making any deduction under this section, and

(ii) all amounts included in computing his income for the year by virtue of paragraphs 56(1)(m) and (o);

All that portion of para. 8(1)(a) preceding subpara. (i) substituted by 1984, c. 1, subsec. 3(1), applicable to 1983 *et seq.*, to substitute "20%" for "3%".

All that portion of para. 8(1)(a) preceding subpara. (i) substituted by 1979, c. 5, s. 1, applicable to 1979 *et seq.*, to substitute "$500" for "$250".

All that portion of para. 8(1)(a) preceding subpara. (i) substituted by 1977-78, c. 1, s. 4, applicable to 1977 *et seq.*, to substitute "$250" for "$150".

(b) **legal expenses of employee** — amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect or establish a right to salary or wages owed to the taxpayer by the employer or former employer of the taxpayer;

Related Provisions: 6(1)(j) — Reimbursements and awards; 6(8) — GST rebate included in income; 60(o.1)(i)(B) — Legal expenses re retiring allowance.

Pre-RSC History: Para. 8(1)(b) substituted by 1990, c. 39, s. 2, applicable in respect of amounts paid after 1989. Para. 8(1)(b) formerly read:

(b) **legal expenses of employee** — amounts paid by the taxpayer in the year as or on account of legal expenses incurred by him in collecting salary or wages owed to him by his employer or former employer;

Selected Cases [para. 8(1)(b)]: *Wilson v. Canada*, [1990] 2 C.T.C. 169 (FCTD); aff'd [1991] 2 C.T.C. 69 (FCA) (Legal expenses for defending criminal charges, not deductible).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Forms: T777: Statement of employment expenses; T4044: Employment expenses [guide].

(c) **clergyman's residence** — where the taxpayer is a member of the clergy or of a religious order or a regular minister of a religious denomination, and is in charge of or ministering to a diocese, parish or congregation, or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination, an amount equal to

(i) the value of the residence or other living accommodation occupied by the taxpayer in the course of or by virtue of the taxpayer's office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, to the extent that that value is included in computing the taxpayer's income for the year by virtue of section 6, or

(ii) rent paid by the taxpayer for a residence or other living accommodation rented and occupied by the taxpayer, or the fair rental value of a residence or other living accommodation owned and occupied by the taxpayer, during the year but not, in either case, exceeding the taxpayer's remuneration from the taxpayer's office or employment as described in subparagraph (i);

Proposed Amendment — Clergy Residence Deduction

Department of Finance news release, October 19, 1999: *Legislative Changes Proposed to Residence Deduction for the Clergy*

Finance Minister Paul Martin today announced his intention to propose legislative changes to the tax deduction allowed to a clergy person under the *Income Tax Act* in respect of the person's residence.

The Minister said that the changes are necessary in order to ensure that the tax deduction continues to be appropriate in circumstances where the clergy person provides his or her own residence. Mr. Martin stated that consultations with the religious sector on the parameters of the proposal will begin this fall. Under the existing clergy residence deduction, certain members of the clergy or of religious organizations are allowed to claim a deduction in respect of their residence. The deduction recognizes, among other things, that the personal residence of a clergy person often serves as an office or meeting place for members of a congregation or parish.

In instances where the employer provides the clergy residence, the deduction for the residence offsets the corresponding housing taxable benefit, and the clergy person pays income tax only on the salary component of his or her employment income. No legislative change is proposed in these circumstances.

A legislative change is proposed, however, where the clergy persons provide their own residence. In these circumstances, the existing clergy residence deduction could, in some cases, offset all of the clergy person's remuneration. In this instance, the amount of the deduction is equal to the rent paid for the residence or, if it is owned by the clergy person, the fair rental value of the residence. This deduction has been available regardless of whether the residence is used by the taxpayer in the performance of religious duties. This level of tax assistance is not appropriate.

Consequently, in circumstances where the clergy person provides his or her residence, it is proposed that the clergy residence deduction be limited for years after 2000 to the lesser of:

(a) the amount of the housing allowance included in the clergy person's income, and

(b) the greater of $10,000 and 50 per cent of the clergy person's ordinary remuneration (i.e., excluding the housing allowance) from that employment.

Under the proposed change, a deduction in respect of a clergy residence will only be available to the extent that a housing allowance is included in the clergy person's income. Employers who currently do not pay such an allowance will be allowed to earmark a reasonable portion of the clergy person's remuneration in respect of a housing allowance.

The Minister of Finance indicated that he is confident that the consultations will ensure that the appropriate level of tax assistance is provided for the clergy residence in circumstances where the clergy person provides the residence. He also noted that affected parties will be given sufficient time to renegotiate, if necessary, working arrangements to comply with any income tax change that may be implemented as a result of these consultations.

The Minister requested that members of the religious sector who wish to have their views considered should submit their comments on the proposal before the end of the year to: Tax Legislation Division, Department of Finance, L'Esplanade Laurier, 17th Floor, East Tower, 140 O'Connor Street, Ottawa, Ontario, K1A 0G5.

For further information: Lucie Vermette, Tax Legislation Division, (613) 992-5636; Nathalie Gauthier, Press Secretary, (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080

Related Provisions: 146(1)"earned income"(a)(i) — Earned income for RRSP purposes includes value of residence.

Selected Cases: *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] 3 C.T.C. 123 (FCTD) (Access to tax policy documents restricted); *Fitch v. R.*, [1999] 2 C.T.C. 2419 (TCC) (Mere teaching falls short of ministering to congregation); *Austin v. R.*, [1999] 2 C.T.C. 2270 (TCC) (Role of taxpayer in context of particular denomination is factor); *Zylstra v. MNR*, [1997] 2 C.T.C. 203 (FCA) (Deduction denied where no "religious order" involved.

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-141R: Clergy Residence Deduction.

(d) **teachers' exchange fund contribution** — a single amount, in respect of all employments of the taxpayer as a teacher, not exceeding $250 paid by the taxpayer in the year to a fund established by the Canadian Education Association for the benefit of teachers from Commonwealth countries present in Canada under a teachers' exchange arrangement;

(e) **expenses of railway employees** — amounts disbursed by the taxpayer in the year for meals and lodging while employed by a railway company

(i) away from the taxpayer's ordinary place of residence as a relieving telegrapher or station agent or on maintenance and repair work, or

(ii) away from the municipality and the metropolitan area, if there is one, where the taxpayer's home terminal was located, and at a location from which, by reason of distance from the place where the taxpayer maintained a self-contained domestic establishment in which the taxpayer resided and actually supported a spouse or a person dependent upon the taxpayer for support and connected with the taxpayer by blood relationship, marriage or adoption, the taxpayer could not reasonably be expected to return daily to that place,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 10, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

to the extent that the taxpayer has not been reimbursed and is not entitled to be reimbursed in respect thereof;

Related Provisions: 6(6) — Employment — remote and special work sites; 6(8) — GST rebate included in income; 8(1)(h) — Travelling expenses; 8(11) — GST; 67.1 — Expenses for food, etc.; 252(4) — Extended meaning of "spouse".

Interpretation Bulletins: IT-518R: Food, beverages and entertainment expenses.

Information Circulars: 73-21R7: Away from home expenses.

Forms: TL2: Claim for meals and lodging expenses.

(f) **sales expenses** — where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and

(i) under the contract of employment was required to pay the taxpayer's own expenses,

(ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,

(iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and

(iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(b)(v), not included in computing the taxpayer's income,

amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph (iii) and received

by the taxpayer in the year) to the extent that such amounts were not

(v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph (j),

(vi) outlays or expenses that would, by virtue of paragraph 18(1)(l), not be deductible in computing the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

(vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(e);

Related Provisions: 6(1)(b)(v) — Allowance for travelling expenses; 6(8) — GST rebate included in income; 8(1)(h) — Travelling expenses; 8(1)(h.1) — Motor vehicle travelling expenses; 8(1)(j) — Auto and aircraft costs; 8(4) — Limitation — meals; 8(9) — Limitation — aircraft expenses; 8(10) — Employer's certificate; 8(13) — Work space in home; 18(1)(h) — Personal or living expenses; 18(1)(l) — Use of recreational facilities and club dues; 18(1)(r) — Limitation on employer deductibility; 67.1 — 50% limitation on expenses for meals and entertainment; 67.3 — Limitation re cost of leasing passenger vehicle; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Subpara. 8(1)(f)(vii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(1), applicable to 1990 *et seq.*

Selected Cases [para. 8(1)(f)]: *Gilling v. MNR*, [1990] 1 C.T.C. 392 (FCTD) (Taxpayer paid salary for principal management function and commissions for secondary sales function ordinarily required to carry on duties away from place of business); *Verrier v. The Queen*, [1990] 1 C.T.C. 313 (FCA); leave to appeal to SCC refused (1990), 120 N.R. 80 (note) (Gas and other expenses not deductible where automobile salesperson required, by implied term of contract, to perform duties away from employer's location); *Malik v. MNR*, [1989] 1 C.T.C. 316 (FCTD) (Term of employment contract requiring real estate salesperson each year to show he was in good financial standing did not result in deductibility of interest payments on personal loan. Insufficient connection with employment); *Thompson v. MNR*, [1989] 2 C.T.C. 226 (FCTD) (Expenses for office in home owned by taxpayer disallowed except for portion of utilities).

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T777: Statement of employment expenses; T2200: Declaration of conditions of employment; TD1X: Statement of remuneration and expenses (For use by commission remunerated employees); T4044: Employment expenses [guide].

(g) **transport employee's expenses** — where the taxpayer was an employee of a person whose principal business was passenger, goods, or passenger and goods transport and the duties of the employment required the taxpayer, regularly,

(i) to travel, away from the municipality where the employer's establishment to which the taxpayer reported for work was located and away from the metropolitan area, if there is one, where it was located, on vehicles used by the employer to transport the goods or passengers, and

(ii) while so away from that municipality and metropolitan area, to make disbursements for meals and lodging,

amounts so disbursed by the taxpayer in the year to the extent that the taxpayer has not been reimbursed and is not entitled to be reimbursed in respect thereof;

Related Provisions: 6(1)(b)(vii) — Allowance for travelling expenses; 6(8) — GST rebate included in income; 8(1)(h) — Travelling expenses; 8(11) — GST rebate deemed not to be reimbursement; 67.1 — Expenses for food, etc.

Selected Cases [para. 8(1)(g)]: *The Queen v. Creamer*, [1976] C.T.C. 676 (FCTD) (Expenses for meals not deductible where employer not principally in transportation); *The Queen v. Deimert*, [1976] C.T.C. 301 (FCTD) (Costs of travelling home for weekends not incurred in course of employment).

Interpretation Bulletins: IT-254R2: Fishermen — employees and seafarers — value of rations and quarters; IT-518R: Food, beverages and entertainment expenses.

Information Circulars: 73-21R7: Away from home expenses.

Forms: TL2: Claim for meals and lodging expenses.

(h) **travel expenses** — where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year (other than motor vehicle expenses) for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for travel expenses that was, because of subparagraph 6(1)(b)(v), (vi) or (vii), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (e), (f) or (g);

Related Provisions: 6(8) — GST rebate included in income; 8(1)(h.1) — Motor vehicle travel expenses; 8(1)(j) — Auto and aircraft costs; 8(4) — Limitation — meals; 8(9) — Limitation — aircraft expenses; 8(10) — Employer's certificate; 67.1 — 50% limitation on expenses for meals; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Para. 8(1)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(2), applicable to 1988 *et seq.* Para. (h) formerly read:

(h) where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the employment away from the employer's place of business or in different places,

(ii) under the contract of employment was required to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment, and

(iii) was not in receipt of an allowance for travel expenses that was, by virtue of subparagraph 6(1)(b)(v), (vi), (vii) or (vii.1), not included in computing the taxpayer's income and did not claim any deduction for the year under paragraph (e), (f) or (g),

amounts expended by the taxpayer in the year for travelling in the course of the employment;

Pre-RSC History: Subpara. 8(1)(h)(iii) amended by 1988, c. 55, subsec. 2(1.1), to substitute "(vi), (vii) or (vii.1)" for "(vi) or (vii)", applicable to 1988 *et seq.*

Selected Cases [para. 8(1)(h)]: *Imray v. R.*, [1998] 4 C.T.C. 221 (FCTD) ("Ordinarily" can accommodate situation which occurs only once per year); *Merten v. MNR*, [1990] 2 C.T.C. 444 (FCTD) (Travel expenses between home and worksites away from usual place of work deductible); *Moore v. The Queen*, [1990] 1 C.T.C. 311 (FCA); leave to appeal to SCC refused (1990), 121 N.R. 322 (note) (Expenses for travelling pursuant to implied term of employment contract deductible. Expenses for travelling between work and home outside regular work hours not deductible); *The Queen v. Chrapko*, [1988] 2 C.T.C. 342 (FCA) (Travelling expenses to place other than place where taxpayer ordinarily worked were deductible); *The Queen v. Mina et al.*, [1988] 1 C.T.C. 380 (FCTD) (Insufficient allowance from employer does not preclude deduction of expenses in excess of allowance); *Hoedel v. The Queen*, [1986] 2 C.T.C. 419 (FCA) (Expenses

of police officer for transporting police dog deductible); *The Queen v. Jeromel*, [1986] 2 C.T.C. 207 (FCTD) (Expenses not deductible where contract permits, but does not require, travelling); *Rozen v. The Queen*, [1986] 1 C.T.C. 50 (FCTD); appealed to FCA (Dec. 3, 1985), File A-929-85 (Automobile expenses deductible where travelling required by implied term of contract); *The Queen v. Patterson*, [1982] C.T.C. 371 (FCTD) (Expenses deductible where travelling ordinarily required).

Interpretation Bulletins: IT-266: Taxation of members of provincial legislative assemblies; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 73-21R7: Away from home expenses; 74-6R2: Power saw expenses.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T777: Statement of employment expenses; T2200: Declaration of conditions of employment; TD1X: Statement of remuneration and expenses; T4044: Employment expenses [guide].

(h.1) **motor vehicle travel expenses** — where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(b), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (f);

Related Provisions: 6(8) — GST rebate included in income; 8(1)(j) — Motor vehicle and aircraft costs; 8(10) — Certificate of employer; 18(1)(r) — Limitation on employer deductibility; 67.3 — Limitation re cost of leasing passenger vehicle; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Para. 8(1)(h.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(3), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Forms: TD1X: Statement of remuneration and expenses; T777: Statement of employment expenses; T2200: Declaration of conditions of employment; T4044: Employment expenses [guide].

(i) **dues and other expenses of performing duties** — amounts paid by the taxpayer in the year as

(i) annual professional membership dues the payment of which was necessary to maintain a professional status recognized by statute,

(ii) office rent, or salary to an assistant or substitute, the payment of which by the officer or employee was required by the contract of employment,

(iii) the cost of supplies that were consumed directly in the performance of the duties of the office or employment and that the officer or employee was required by the contract of employment to supply and pay for,

(iv) annual dues to maintain membership in a trade union as defined

(A) by section 3 of the *Canada Labour Code*, or

(B) in any provincial statute providing for the investigation, conciliation or settlement of industrial disputes,

or to maintain membership in an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work,

(v) annual dues that were, pursuant to the provisions of a collective agreement, retained by the taxpayer's employer from the taxpayer's remuneration and paid to a trade union or association designated in subparagraph (iv) of which the taxpayer was not a member,

(vi) dues to a parity or advisory committee or similar body, the payment of which was required under the laws of a province in respect of the employment for the year, and

(vii) dues to a professions board, the payment of which was required under the laws of a province,

to the extent that the taxpayer has not been reimbursed, and is not entitled to be reimbursed in respect thereof;

Related Provisions: 6(8) — GST rebate included in income; 8(1)(l.1) — Employer's portion of UI/EI premiums and CPP contributions deductible; 8(5) — Certain dues not deductible; 8(10) — Employer's certificate; 8(11) — GST rebate deemed not to be reimbursement; 8(13) — Limitation on home office expenses; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: Subpara. 8(1)(i)(vii) added by 1998, c. 19, subsec. 69(1), applicable to 1996 *et seq.*

Pre-RSC History: Subpara. 8(1)(i)(vi) added by 1986, c. 6, subsec. 3(1), applicable to 1985 *et seq.*

Selected Cases [para. 8(1)(i)]: *Montgomery v. MNR*, [1999] 2 C.T.C. 196 (FCA); rev'g [1998] 1 C.T.C. 58 (FCTD); rev'g [1996] 1 C.T.C. 2796 (TCC) ("Recognized by statute" did not mean profession had to be fully regulated); *Petrin v. Canada*, [1991] 1 C.T.C. 94 (FCTD) (No deduction for dues to association not recognized by statute); *Thompson v. MNR*, [1989] 2 C.T.C. 226 (FCTD) (Expenses for home office required under contract not deductible as "office rent" where no rent paid); *Lucas v. R.*, [1987] 2 C.T.C. 23 (FCTD) (Special increase in association dues due to strike deductible as "annual" dues).

Regulations: 100(3)(b) (deduction of dues by employer reduces source withholding).

Interpretation Bulletins: IT-103R: Dues paid to a union or to a parity or advisory committee; IT-158R2: Employees' professional membership dues; IT-352R2: Employees' expenses, including work space in home expenses.

Information Circulars: 74-6R2: Power saw expenses.

Forms: T777: Statement of employment expenses; T2200: Declaration of conditions of employment; TD1X: Statement of remuneration and expenses; T4044: Employment expenses [guide].

(j) **motor vehicle and aircraft costs** — where a deduction may be made under paragraph (f), (h) or (h.1) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring, or on an amount payable for the acquisition of, property that is

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the taxpayer's office or employment, and

(ii) such part, if any, of the capital cost to the taxpayer of

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the office or employment as is allowed by regulation;

Related Provisions: 6(8) — GST rebate included in income or reduces capital cost of vehicle or aircraft; 8(1)(f) — Salesman's expenses; 8(1)(q) — Artists' employment expenses; 8(9) — Limitation — aircraft expenses; 13(7) — Capital cost allowance — rules applicable; 13(7.1) — Deemed capital cost of certain property; 13(11) — Deductions under 8(1)(j)(ii) deemed claimed as CCA; 67.2 — Interest on money borrowed for passenger vehicle; 67.3 — Limitation re cost of leasing passenger vehicle; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of para. 8(1)(j); 80.4 — Loans; Reg. 102(2)(d)(i) — Effect of deduction on source withholdings.

History: All that portion of para. 8(1)(j) preceding cl. (i)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(4), applicable to 1988 *et seq.* That portion formerly read:

(j) automobile and aircraft costs — where a deduction may be made under paragraph (f) or (h) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring

(A) an automobile that is used, or

Cl. 8(1)(j)(ii)(A) amended to substitute "a motor vehicle" for "an automobile" by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(5), applicable to 1988 *et seq.*

Pre-RSC History: Subpara. 8(1)(j) substituted by 1980-81-82-83, c. 48, subsec. 2(1), applicable to 1980 *et seq.* Para. 8(1)(j) formerly read:

(j) automobile costs — where a deduction may be made under paragraph (f) or (h) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by him in the year on borrowed money used for the purpose of acquiring an automobile used in the performance of the duties of his office or employment, and

(ii) such part, if any, of the capital cost to him of an automobile used in the performance of the duties of his office or employment as is allowed by regulation;

Selected Cases [para. 8(1)(j)]: *Maguire v. Canada*, [1995] 2 C.T.C. 2048 (TCC) (Motor-driven boat is not a motor vehicle).

Regulations: 1100(1)(a)(x), (x.1) (CCA rate is 30%).

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-478R2: CCA — recapture and terminal loss; IT-504R2: Visual artists and writers; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles).

Forms: T777: Statement of employment expenses; TD1X: Statement of remuneration and expenses; T4044: Employment expenses [guide].

(k), (l) [Repealed under former Act]

Pre-RSC History: Paras. 8(1)(k) and (l) repealed by 1988, c. 55, subsec. 2(1), applicable to 1988 *et seq.* (See s. 118.7.) Paras. 8(1)(k) and (l) formerly read:

(k) unemployment insurance premium — any amount payable by him as an employee's premium for the year under the *Unemployment Insurance Act, 1971*;

(l) *Canada Pension Plan* contribution — any amount payable by him as an employee for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of the *Canada Pension Plan*;

(l.1) **C.P.P. contributions and U.I.A. [E.I.] premiums** — any amount payable by the taxpayer in the year

(i) as an employer's premium under the *Employment Insurance Act*, or

(ii) as an employer's contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of the *Canada Pension Plan*,

in respect of salary, wages or other remuneration, including gratuities, paid to an individual employed by the taxpayer as an assistant or substitute to perform the duties of the taxpayer's office or employment if an amount is deductible by the taxpayer for the year under subparagraph (i)(ii) in respect of that individual;

Related Provisions: 8(1)(i) — Expenses of performing duties; 126.1 — Employer's UI premium tax credit for 1993.

History: Subpara. 8(1)(l.1)(i) amended by 1996, c. 23, s. 171, to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Pre-RSC History: Para. 8(1)(l.1) added by 1974-75-76, c. 26, s. 2, applicable to 1974 *et seq.*

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses.

(m) **employee's registered pension plan contributions** — the amount in respect of contributions to registered pension plans that, by reason of subsection 147.2(4), is deductible in computing the taxpayer's income for the year;

Related Provisions: 20(1)(q) — Employer's contribution to registered pension plan; 60(j) — Transfer of superannuation benefits; 60(j.01) — Transfer of surplus; 60(j.02) — Payment to registered pension plan; 60(j.03) — Repayments of pre-1990 pension benefits; 60(j.04) — Repayments of post-1989 pension benefits; 60.2(1) — Refund of undeducted past service AVCs; 127.52(1)(a) — Limitation on deduction for minimum tax purposes; 146(1)"earned income"(a)(i), 146(1)"earned income"(c)(i) — Earned income for RRSP counted before deduction under 8(1)(m); 146(5) — Amount of RRSP premium deductible; 146(16) — RRSP — deduction on transfer of funds; 149 — Exemptions.

Pre-RSC History: Para. 8(1)(m) substituted by 1990, c. 35, subsec. 2(1), applicable to 1986 *et seq.* except that in its application to the 1986 to 1990 taxation years the para. shall be read as follows:

(m) amounts contributed by the taxpayer in the year to or under a registered pension plan,

(i) not exceeding in the aggregate the taxpayer's contribution limit for the year under this subparagraph in respect of the plan, if retained by the taxpayer's employer from the taxpayer's remuneration for or under the plan in respect of services rendered in the year or paid into or under the plan by the taxpayer as part of the taxpayer's dues for the year as a member of a trade union,

(ii) not exceeding in the aggregate, the lesser of

(A) the taxpayer's contribution limit for the year under this subparagraph in respect of the plan, paid by the taxpayer in the year and, in the case of additional voluntary contributions, before October 9, 1986, into or under the plan in respect of services rendered by the taxpayer before the year while the taxpayer was not a contributor, and

(B) that part of an amount paid by the taxpayer in the year and, in the case of additional voluntary contributions, before October 9, 1986, into or under the plan in respect of services rendered by the taxpayer before the year while the taxpayer was not a contributor that is not in excess of the amount obtained by multiplying the number of preceding years in which the taxpayer rendered services while the taxpayer was not a contributor by the taxpayer's contribution limit for the year under this subparagraph in respect of the plan, and subtracting from the product so obtained the aggregate of all amounts deducted under this subparagraph for preceding taxation years,

to the extent not deductible in the immediately preceding taxation year under paragraph 60(j), and

(iii) not exceeding in the aggregate $3,500 minus any amount deducted under subparagraph (i) or (ii) in computing the taxpayer's income for the year, paid by the taxpayer in the year, and in the case of additional voluntary contributions, before October 9, 1986, whether into or under the plan or into or under any other such plan in respect of services rendered by the taxpayer before the year while the taxpayer was a contributor, to

the extent not deductible in the immediately preceding taxation year under paragraph 60(j);

Para. 8(1)(m) formerly read:

(m) **contribution to registered pension plan** — amounts contributed by the taxpayer in the year to or under a registered pension fund or plan,

(i) not exceeding in the aggregate his contribution limit for the year under this subparagraph in respect of the fund or plan, if retained by his employer from his remuneration for or under the fund or plan in respect of services rendered in the year or paid into or under the fund or plan by the taxpayer as part of his dues for the year as a member of a trade union,

(ii) not exceeding in the aggregate, the lesser of

(A) his contribution limit for the year under this subparagraph in respect of the fund or plan, paid by him in the year into or under the fund or plan in respect of services rendered by him previous to the year while he was not a contributor, and

(B) that part of an amount paid by him in the year into or under the fund or plan in respect of services rendered by him previous to the year while he was not a contributor that is not in excess of the product obtained by multiplying the number of years previous to the year in which he rendered services while he was not a contributor by his contribution limit for the year under this subparagraph in respect of the fund or plan, and subtracting from the product so obtained the aggregate of all amounts deducted under this subparagraph in previous years,

to the extent not deductible in the immediately preceding year under paragraph 60(j), and

(iii) not exceeding in the aggregate $3,500 minus any amount deducted under subparagraph (i) or (ii) in computing his income for the year, paid by him in the year whether into or under the fund or plan or into or under any other such fund or plan in respect of services rendered by him previous to the year while he was a contributor, to the extent not deductible in the immediately preceding year under paragraph 60(j);

Subpara. 8(1)(m)(iii) substituted by 1976-77, c. 4, subsec. 1(1), applicable to 1976 *et seq.*, to substitute "$3,500" for "$2,500".

Regulations: 100(3)(a) (deduction of RPP contributions from payroll reduces source withholding).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

Information Circulars: 72-13R8: Employee's pension plans.

Advance Tax Rulings: ATR-2: Contribution to pension plan for past service.

(m.1) [Repealed under former Act]

Pre-RSC History: Para. 8(1)(m.1) repealed by 1990, c. 35, subsec. 2(2), applicable to 1991 *et seq.* Para. 8(1)(m.1) had read:

(m.1) **idem** — the portion, in excess of $3,500, of the aggregate of the amounts (other than voluntary contributions) that the taxpayer contributes in the year to or under a registered pension plan in respect of services rendered by him in the year where his pension entitlement under the plan is determined without reference to the amount accumulated or contributed thereunder;

Para. 8(1)(m.1) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

Para. 8(1)(m.1) added by 1986, c. 55, subsec. 2(1), applicable to 1986 *et seq.*

(m.2) **employee RCA contributions** — an amount contributed by the taxpayer in the year to a pension plan in respect of services rendered by the taxpayer where the plan is a prescribed plan established by an enactment of Canada or a province or where

(i) the plan is a retirement compensation arrangement,

(ii) the amount was paid to a custodian (within the meaning assigned by the definition "retirement compensation arrangement" in subsection 248(1)) of the arrangement who is resident in Canada, and

(iii) either

(A) the taxpayer was required, by the terms of the taxpayer's office or employment, to contribute the amount, and the total of the amounts contributed to the plan in the year by the taxpayer does not exceed the total of the amounts contributed to the plan in the year by any other person in respect of the taxpayer, or

(B) the plan is a pension plan the registration of which under this Act was revoked (other than a plan the registration of which was revoked as of the effective date of its registration) and the amount was contributed in accordance with the terms of the plan as last registered;

(C) [Repealed]

Related Provisions: 18(11)(e) — No deduction for interest on money borrowed to make deductible contribution; 60(t)(ii) — Amount included under para. 56(1)(x) or (z) or subsec. 70(2); 60(u)(ii) — Deduction where amount included under para. 56(1)(y); 146(1)"earned income"(a)(i), 146(1)"earned income"(c)(i) — Earned income for RRSP counted before deduction for 8(1)(m.2); 207.6(6) — Rules re prescribed plan or arrangement.

History: The opening words of para. 8(1)(m.2) substituted by 1994, c. 21, subsec. 4(1), applicable to 1992 *et seq.* The opening words of that para. formerly read:

(m.2) **employee RCA contributions** — an amount contributed by the taxpayer in the year to a pension plan in respect of services rendered by the taxpayer where

Cl. 8(1)(m.2)(iii)(C) repealed by 1994, c. 21, subsec. 4(2), applicable to 1992 *et seq.* That cl. formerly read:

(C) the plan is a prescribed plan or arrangement;

Cl. 8(1)(m.2)(iii)(C) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 2, applicable to 1992 *et seq.*

Pre-RSC History: Para. 8(1)(m.2) added by 1990, c.35, subsec. 2(3), applicable to 1989 *et seq.*

Regulations: 100(3)(b.1) (payroll deduction of employee contribution reduces source withholding); 6802, 6802.1(1) (prescribed plans).

Forms: T4041: Retirement Compensation Arrangements Guide (guide).

(n) **salary reimbursement** — an amount paid by or on behalf of the taxpayer in the year pursuant to an arrangement (other than an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17)) under which the taxpayer is required to reimburse any amount paid to the taxpayer for a period throughout which the taxpayer did not perform the duties of the office or employment, to the extent that

(i) the amount so paid to the taxpayer for the period was included in computing the taxpayer's income from an office or employment, and

(ii) the total of amounts so reimbursed does not exceed the total of amounts received by the taxpayer for the period throughout which the taxpayer did not perform the duties of the office or employment;

Related Provisions: 8(1)(n.1) — Reimbursement of top-up disability payments.

History: The opening words of para. 8(1)(n) amended by 1998, c. 19, subsec. 69(2), applicable to arrangements entered into after August 10, 1994. The opening words formerly read:

(n) an amount paid by or on behalf of the taxpayer in the year pursuant to an arrangement under which the taxpayer is required to reimburse any amount paid to the taxpayer for a period throughout which the taxpayer did not perform the duties of the office or employment, to the extent that

Pre-RSC History: Para. 8(1)(n) added by 1980-81-82-83, c. 140, subsec. 2(1), applicable to 1981 *et seq.*

(n.1) **reimbursement of disability payments** — where,

(i) as a consequence of the receipt of a payment (in this paragraph referred to as the "deferred payment") from an insurer, a payment (in this paragraph referred to as the "reimbursement payment") is made by or on behalf of an individual to an employer or former employer of the individual pursuant to an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17), and

(ii) the reimbursement payment is made

(A) in the year, other than within the first 60 days of the year if the deferred payment was received in the immediately preceding taxation year, or

(B) within 60 days after the end of the year, if the deferred payment was received in the year,

an amount equal to the lesser of

(iii) the amount included under paragraph 6(1)(f) in respect of the deferred payment in computing the individual's income for any taxation year, and

(iv) the amount of the reimbursement payment;

History: Para. 8(1)(n.1) added by 1998, c. 19, subsec. 69(3), applicable to reimbursement payments made after August 10, 1994.

(o) **forfeited amounts** — where at the end of the year the rights of any person to receive benefits under a salary deferral arrangement in respect of the taxpayer have been extinguished or no person has any further right to receive any amount under the arrangement, the amount, if any, by which the total of all deferred amounts under the arrangement included in computing the taxpayer's income for the year and preceding taxation years as benefits under paragraph 6(1)(a) exceeds the total of

(i) all such deferred amounts received by any person in that year or preceding taxation years out of or under the arrangement,

(ii) all such deferred amounts receivable by any person in subsequent taxation years out of or under the arrangement, and

(iii) all amounts deducted under this paragraph in computing the taxpayer's income for preceding taxation years in respect of deferred amounts under the arrangement;

Related Provisions: 12(1)(n.2) — Inclusions — forfeited salary deferral amounts.

Pre-RSC History: Para. 8(1)(o) added by 1986, c. 55, subsec. 2(2), applicable to 1986 *et seq.*

(o.1) **Idem** — an amount that is deductible in computing the taxpayer's income for the year because of subsection 144(9);

Related Provisions: 6(1)(d) — Income inclusion from allocations under employees profit sharing plan.

History: Para. 8(1)(o.1) added by 1994, c. 21, subsec. 4(3), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(p) **musical instrument costs** — where the taxpayer was employed in the year as a musician and as a term of the employment was required to provide a musical instrument for a period in the year, an amount (not exceeding the taxpayer's income for the year from the employment, computed without reference to this paragraph) equal to the total of

(i) amounts expended by the taxpayer before the end of the year for the maintenance, rental and insurance of the instrument for that period, except to the extent that the amounts are otherwise deducted in computing the taxpayer's income for any taxation year, and

(ii) such part, if any, of the capital cost to the taxpayer of the instrument as is allowed by regulation; and

Related Provisions: 6(8) — GST rebate included in income or reduces capital cost of instrument; 8(1)(q) — Artists' employment expenses deduction; 13(7), (7.1) — Capital cost allowance — rules applicable; 13(11) — Deduction under 8(1)(p)(ii) deemed claimed as CCA; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of 8(1)(p).

Pre-RSC History: Para. 8(1)(p) added by 1988, c. 55, subsec. 2(2), applicable to 1988 *et seq.*

Regulations: IT-379R: Employees profit sharing plans — allocations to beneficiaries; 1100(1)(a)(viii); Sch. II:Cl. 8(i) (CCA rate is 20%).

Interpretation Bulletins [para. 8(1)(p)]: IT-257R: Canada Council grants; IT-478R2: CCA — recapture and terminal loss; IT-525R: Performing artists.

(q) **artists' employment expenses** — where the taxpayer's income for the year from the office or employment includes income from an artistic activity

(i) that was the creation by the taxpayer of, but did not include the reproduction of, paintings, prints, etchings, drawings, sculptures or similar works of art,

(ii) that was the composition by the taxpayer of a dramatic, musical or literary work,

(iii) that was the performance by the taxpayer of a dramatic or musical work as an actor, dancer, singer or musician, or

(iv) in respect of which the taxpayer was a member of a professional artists' association that is certified by the Minister of Communications,

amounts paid by the taxpayer before the end of the year in respect of expenses incurred for the purpose of earning the income from those activities to the extent that they were not deductible in computing the taxpayer's income for a preceding taxation year, but not exceeding a single amount in respect of all such offices and employments of the taxpayer equal to the amount, if any, by which

(v) the lesser of $1,000 and 20% of the total of all amounts each of which is the taxpayer's income from an office or employment for the year, before deducting any amount under this section, that was income from an artistic activity described in any of subparagraphs (i) to (iv),

exceeds

(vi) the total of all amounts deducted by the taxpayer for the year under paragraph (j) or (p) in respect of costs or expenses incurred for the purpose of earning the income from such an activity for the year.

History: Para. 8(1)(q) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(6), applicable with respect to amounts paid after 1990.

1995, c. 11: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to

which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Interpretation Bulletins: IT-257R: Canada Council grants; IT-504R2: Visual artists and writers; IT-525R: Performing artists.

Forms [para. 8(1)(q)]: T777: Statement of employment expenses; T4044: Employment expenses [guide].

Selected Cases [subsec. 8(1)]: *Ontario Public Service Employees Union v. Nat'l Citizens' Coalition*, [1990] 2 C.T.C. 163 (Ont CA) (Different taxation of business and employment incomes does not violate *Charter*).

(1.1) [Not included in R.S.C. 1985]

Pre-RSC History: Subsec. 8(1.1) formerly read:

(1.1) Election re additional voluntary contributions — For the purposes of paragraph (1)(m), such part as a taxpayer designates in the taxpayer's return of income for the 1986 taxation year of the aggregate of all amounts contributed by the taxpayer after 1985 and before October 9, 1986 as additional voluntary contributions shall be deemed to have been contributed in respect of services rendered by the taxpayer before 1986.

Subsec. 8(1.1) added by 1990, c. 35, subsec. 2(4), applicable to the 1986 taxation year.

(2) General limitation — Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses; IT-377R: Director's, executor's or juror's fees; IT-478R2: CCA — recapture and terminal loss.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 8(3) repealed by 1988, c. 55, subsec. 2(3), applicable to 1988 *et seq.* Subsec. 8(3) formerly read:

(3) Limitation re employment expense deduction — In computing a taxpayer's income for a taxation year, no amount is deductible under paragraph (1)(a)

(a) if any amount has been deducted under paragraph (1)(f) in computing his income for the year,

(a.1) if the taxpayer was in the year an incorporated employee and a specified shareholder of a corporation that has deducted an amount described in subparagraph 18(1)(p)(iii) in computing its income for its taxation year ending in the year,

(b) if the taxpayer was, at any time in the year, a member of the Senate or House of Commons of Canada, or

(c) in the case of a taxpayer to whom subsection 81(2) or (3) applies, except to the extent that the amount otherwise deductible under paragraph (1)(a) in computing his income for the year exceeds the amounts that, but for subsection 81(2) or (3), as the case may be, would be included in computing that income.

Para. 8(3)(a.1) substituted by 1984, c. 45, s. 3, to delete "(within the meaning assigned by paragraph 125(9)(e))" found after "a specified shareholder", applicable to 1985 *et seq.*

Para. 8(3)(a.1) added by 1980-81-82-83, c. 140, subsec. 2(2), applicable to 1981 *et seq.*

(4) Meals — An amount expended in respect of a meal consumed by a taxpayer who is an officer or employee shall not be included in computing the amount of a deduction under paragraph (1)(f) or (h) unless the meal was consumed during a period while the taxpayer was required by the taxpayer's duties to be away, for a period of not less than twelve hours, from the municipality where the employer's establishment to which the taxpayer ordinarily reported for work was located and away from the metropolitan area, if there is one, where it was located.

Related Provisions: 67.1 — 50% limitation on expenses for meals.

Selected Cases [subsec. 8(4)]: *Verrier v. The Queen*, [1990] 1 C.T.C. 313 (FCA); leave to appeal to SCC refused (1990), 120 N.R. 80 (note) (Gas and other expenses not deductible where automobile salesperson required, by implied term of contract, to perform duties away from employer's location); *Healy v. The Queen*, [1979] C.T.C. 44 (FCA) (Expenses while at place where required to work one-third of year deductible).

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 73-21R7: Away from home expenses.

Forms: T777: Statement of employment expenses; TD1X: Statement of remuneration and expenses (for use by commission remunerated employees); T4044: Employment expenses [guide].

(5) Dues not deductible — Notwithstanding subparagraphs (1)(i)(i), (iv), (vi) and (vii), dues are not deductible under those subparagraphs in computing a taxpayer's income from an office or employment to the extent that they are, in effect, levied

(a) for or under a superannuation fund or plan;

(b) for or under a fund or plan for annuities, insurance (other than professional or malpractice liability insurance that is necessary to maintain a professional status recognized by statute) or similar benefits; or

(c) for any other purpose not directly related to the ordinary operating expenses of the committee or similar body, association, board or trade union, as the case may be.

Related Provisions: 8(1)(i)(i), (iv) — Professional and union dues deductible.

History: The opening words of subsec. 8(5) and para. (c) amended by 1998, c. 19, subsec. 69(4), applicable to 1996 *et seq.* The opening words and para. formerly read:

(5) Dues not deductible — Notwithstanding subparagraphs (1)(i)(i), (iv) and (vi), dues are not deductible under those subparagraphs in computing a taxpayer's income from an office or employment to the extent that they are, in effect, levied

. . . . .

(c) for any other purpose not directly related to the ordinary operating expenses of the committee or similar body, association or trade union to which they were paid.

Pre-RSC History: Para. 8(5)(b) substituted by 1988, c. 55, subsec. 2(4), applicable to 1984 *et seq.* Para. 8(5)(b) formerly read:

(b) for or under a fund or plan for annuities, insurance or similar benefits, or

Subsec. 8(5) amended by 1986, c. 6, subsecs. 3(2), (3), applicable to 1985 *et seq.* to substitute the heading "Dues not deductible" for "Certain annual dues not deductible", to substitute "Notwithstanding subparagraphs (1)(i)(i), (iv) and (vi), dues are not" for "Notwithstanding subparagraphs (1)(i)(i) and (iv), annual dues are not" and in para. 8(5)(c) to add the words "committee or similar body".

Interpretation Bulletins: IT-103R: Dues paid to a union or to a parity or advisory committee; IT-158R2: Employees' professional membership dues.

(6) [Repealed under former Act]

Pre-RSC History: Subsec. 8(6) repealed by 1990, c. 35, subsec. 2(5), applicable to 1991 *et seq.* Subsec. 8(6) had read:

(6) "Contribution limit" defined — For the purposes of paragraph (1)(m), a taxpayer's "contribution limit" for a taxation year under subparagraph (1)(m)(i) or (ii) in respect of a registered pension plan means such amount as is designated by the taxpayer in his return of income for the year to be his contribution limit for the year under subparagraph (1)(m)(i) or (ii), as the case may be, in respect of that fund or plan, not exceeding however the amount, if any, by which $3,500 exceeds the aggregate of amounts each of which is his contribution limit for the year under subparagraph (1)(m)(i) or (ii), as the case may be, in respect of any other such fund or plan.

Subsec. 8(6) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

Subsec. 8(6) amended by 1976-77, c. 4, subsec. 1(2), applicable to 1976 *et seq.*, to substitute "$3,500" for "$2,500".

(7) [Repealed under former Act]

Pre-RSC History: Subsec. 8(7) repealed by 1990, c. 35, subsec. 2(5), applicable to 1991 *et seq.* Subsec. 8(7) had read:

> (7) Teachers — For the purpose of determining whether a teacher may deduct amounts contributed by him to or under a registered pension plan in computing his income for a taxation year during which he was employed by Her Majesty or a person exempt from tax for the year under section 149, subparagraph (1)(m)(ii) shall be read as though the words "while he was not a contributor" were deleted.

Subsec. 8(7) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 8(8) repealed by 1990, c. 35, subsec. 2(6), applicable to 1991 *et seq.*; and in its application to the 1987 to 1990 taxation years the subsec. shall be read as follows:

> (8) Where an amount, other than an additional voluntary contribution, has been contributed by a taxpayer to or under a registered pension plan
>
> (a) after 1945, in respect of services rendered by the taxpayer in a year while the taxpayer was not a contributor, or
>
> (b) after 1962, in respect of services rendered by the taxpayer in a year while the taxpayer was a contributor,
>
> it may be included in computing a deduction under
>
> (c) subparagraph (1)(m)(ii), in the case of an amount described in paragraph (a), or
>
> (d) subparagraph (1)(m)(iii), in the case of an amount described in paragraph (b),
>
> for a particular taxation year subsequent to the year in which it was contributed to the extent that it exceeds the aggregate of all amounts each of which was deductible in respect thereof under this subsection, subparagraph (1)(m)(ii) or (iii) or paragraph 60(j) in computing the taxpayer's income for taxation years preceding the particular taxation year.

Subsec. 8(8) formerly read:

> (8) Employees' contributions to pension fund for arrears — Where an amount has been contributed by a taxpayer to or under a registered pension plan
>
> (a) after 1945, in respect of services rendered by him in a year while he was not a contributor, or
>
> (b) after 1962, in respect of services rendered by him in a year while he was a contributor,
>
> it may be included in computing a deduction under
>
> (c) subparagraph (1)(m)(ii), in the case of an amount described in paragraph (a), or
>
> (d) subparagraph (1)(m)(iii), in the case of an amount described in paragraph (b),
>
> for taxation years subsequent to the year in which it was contributed to the extent that it exceeds the aggregate of amounts deductible in respect thereof under this subsection, subparagraph (1)(m)(ii) or (iii) or paragraph 60(j) in computing incomes for years preceding the taxation year.

That portion of subsec. 8(8) preceding para. (a) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

(9) Presumption — Notwithstanding any other provision of this Act, the total of all amounts that would otherwise be deductible by a taxpayer pursuant to paragraph (1)(f), (h) or (j) for travelling in the course of the taxpayer's employment in an aircraft that is owned or rented by the taxpayer, may not exceed an amount that is reasonable in the circumstances having regard to the relative cost and availability of other modes of transportation.

Related Provisions: 67 — General requirement that expenses be reasonable.

Pre-RSC History: Subsec. 8(9) added by 1980-81-82-83, c. 48, subsec. 2(2), applicable to 1980 *et seq.*

Subsec. 8(9) repealed by 1973-74, c. 30, s. 1, applicable to 1973 *et seq.* Subsec. 8(9) formerly read:

> (9) In computing the income of a taxpayer for a taxation year from the duties of an office or employment performed by him in a country other than Canada, there may be deducted the amount, if any, of any income or profits taxes paid to the government of a state, province or other political subdivision of that country to the extent that such taxes
>
> (a) were deductible under the laws of that country in computing the amount for the year on which the taxpayer is liable to pay income or profits tax imposed by the government of that country, and
>
> (b) may reasonably be regarded as having been paid in respect of the income of the taxpayer for the year from the duties so performed.

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

(10) Certificate of employer — An amount otherwise deductible for a taxation year under paragraph (1)(a), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that paragraph or subparagraph, as the case may be, were met in the year in respect of the taxpayer is filed with the taxpayer's return of income for the year.

Proposed Amendment — 8(10)

(10) Certificate of employer — An amount otherwise deductible for a taxation year under paragraph (1)(f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that paragraph or subparagraph, as the case may be, were met in the year in respect of the taxpayer is filed with the taxpayer's return of income for the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 2(2), will amend subsec. 8(10) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 8(10) of the Act provides that expenses will not be deductible by an employee under certain provisions unless the employee files with the return of income a prescribed form signed by the employer to the effect that the employee met the requirements of the relevant provisions for the deductibility of such expenses. The amendment to subsection 8(10) deletes a reference to paragraph 8(1)(a) and is strictly consequential on the repeal of that paragraph. The deduction available under that paragraph has been replaced with an equivalent exemption under subsection 81(4). For information on this exemption, see the commentary on new subsection 81(4).

Related Provisions: 67 — General requirement that expenses be reasonable; 81(4)(b) — Certification re exemption for volunteer emergency worker.

History: Subsec. 8(10) amended by 1999, c. 22, subsec. 4(2), applicable to 1998 *et seq.* The subsec. formerly read:

> (10) An amount otherwise deductible for a taxation year under paragraph (1)(f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that provision were met in the year in respect of the taxpayer is filed with the taxpayer's return of income for the year under this Part.

Subsec. 8(10) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(7), applicable to 1988 *et seq.* Subsec. 8(10) formerly read:

> (10) Certificate — An amount otherwise deductible for a taxation year under paragraph (1)(f) or (h) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless the taxpayer files with the taxpayer's return of income for the year a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that provision were met in the year in respect of the taxpayer.

Pre-RSC History: Subsec. 8(10) added by 1988, c. 55, subsec. 2(5), applicable to 1988 *et seq.*

Selected Cases [subsec. 8(10)]: *Baptist v. R.*, [2000] 2 C.T.C. 2829 (TCC) (Expenses not deductible where off-duty police officer performed extra services).

Interpretation Bulletins: IT-352R2: Employees' expenses, including work space in home expenses; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 73-21R7: Away from home expenses; 74-6R2: Power saw expenses.

Forms: T2200: Declaration of conditions of employment; T4044: Employment expenses [guide].

Pre-RSC History [former subsec. 8(10)]: Former subsec. 8(10) repealed by 1984, c. 1, subsec. 3(2), applicable to 1984 *et seq.* Subsec. 8(10) formerly read:

(10) Employment outside Canada — Where any individual is resident in Canada in a taxation year and, throughout a period of more than six consecutive months that commenced in the year or a previous year (in this subsection referred to as the "qualifying period"),

(a) was employed by a person who was a specified employer, and

(b) performed all or substantially all the duties of his employment in one or more countries other than Canada

(i) in connection with a contract under which the specified employer carried on business in such country or countries with respect to

(A) the exploration for, or exploitation of, petroleum, natural gas, minerals or other similar resources,

(B) a construction, installation, agricultural or engineering activity, or

(C) any prescribed activity, or

(ii) for the purposes of obtaining a contract for the specified employer to undertake any of the activities referred to in clause (i)(A), (B) or (C),

there may be deducted in computing his income for the year from that employment an amount equal to the lesser of

(c) that portion of $50,000 that the number of days in that portion of the qualifying period that is in the year is of 365, and

(d) 50% of the portion of the amount that would, but for this subsection, be his income for the year from that employment that is reasonably attributable to those duties performed

(i) if section 114 is applicable, during the period or periods in the year referred to in paragraph 114(a) that are within the qualifying period, or

(ii) if section 114 is not applicable, within the qualifying period.

Subsec. 8(10) added by 1980-81-82-83, c. 48, subsec. 2(2), applicable to 1980 *et seq.*

(11) Goods and services tax — For the purposes of this section and section 6, the amount of any rebate paid or payable to a taxpayer under the *Excise Tax Act* in respect of the goods and services tax shall be deemed not to be an amount that is reimbursed to the taxpayer or to which the taxpayer is entitled.

Related Provisions: 6(8) — GST rebate included in income.

Pre-RSC History: Subsec. 8(11) added by 1990, c. 45, s. 38, applicable to 1991 *et seq.*

Pre-RSC History [former subsec. 8(11)]: Former subsec. 8(11) repealed by 1984, c.1, subsec. 3(2), applicable to 1984 *et seq.* Subsec. 8(11) formerly read:

(11) "Specified employer" — In subsection (10), "specified employer" means

(a) a person resident in Canada;

(b) a partnership in respect of which the aggregate fair market value of the interests in the partnership, each of which is owned by a member resident in Canada or a corporation controlled by persons resident in Canada, exceeds 10% of the aggregate fair market value of all of its members' interests in the partnership; and

(c) a corporation that is a foreign affiliate of a person resident in Canada.

Subsec. 8(11) added by 1980-81-82-83, c. 48, subsec. 2(2), applicable to 1980 *et seq.*

(12) Forfeiture of securities by employee — If, in a taxation year,

(a) an employee is deemed by subsection 7(2) to have disposed of a security (as defined in subsection 7(7)) held by a trust,

(b) the trust disposed of the security to the person that issued the security,

(c) the disposition occurred as a result of the employee not meeting the conditions necessary for title to the security to vest in the employee, and

(d) the amount paid by the person to acquire the security from the trust or to redeem or cancel the security did not exceed the amount paid to the person for the security,

the following rules apply:

(e) there may be deducted in computing the employee's income for the year from employment the amount, if any, by which

(i) the amount of the benefit deemed by subsection 7(1) to have been received by the employee in the year or a preceding taxation year in respect of the security

exceeds

(ii) any amount deducted under paragraph 110(1)(d) or (d.1) in computing the employee's taxable income for the year or a preceding taxation year in respect of that benefit, and

(f) notwithstanding any other provision of this Act, the employee's gain or loss from the disposition of the security is deemed to be nil and section 84 does not apply to deem a dividend to have been received in respect of the disposition.

History: Subsec. 8(12) amended by 1999, c. 22, subsec. 4(3), applicable to 1998 *et seq.* The subsec. formerly read:

(12) Return of employee shares by trustee — Where, in a taxation year,

(a) an employee is deemed by subsection 7(2) to have disposed of a share held by a trust,

(b) the trust disposed of the share to the corporation that issued the share,

(c) the disposition occurred as a result of the employee not meeting the conditions necessary for title to the share to vest in the employee, and

(d) the amount paid by the corporation to acquire the share from the trust or to redeem or cancel the share did not exceed the amount paid to the corporation for the share,

the following rules apply:

(e) there may be deducted in computing the employee's income for the year from employment the amount, if any, by which

(i) the amount of the benefit deemed by subsection 7(1) to have been received by the employee in the year or a preceding taxation year in respect of the share

exceeds

(ii) any amount deducted under paragraph 110(1)(d) or (d.1) in computing the employee's taxable income for the year or a preceding taxation year in respect of that benefit, and

(f) notwithstanding any other provision of this Act, any gain or loss of the employee otherwise determined from the disposition of the share shall be deemed to be nil and section 84 does not apply to deem a dividend to have been received in respect of the disposition.

Subsec. 8(12) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(8), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(13) Work space in home — Notwithstanding paragraphs (1)(f) and (i),

(a) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

(i) the place where the individual principally performs the duties of the office or employment, or

(ii) used exclusively during the period in respect of which the amount relates for the purpose of earning income from the office or employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the office or employment;

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount in respect of the work space that is deductible in computing the individual's income for the year from the office or employment shall not exceed the individual's income for the year from the office or employment, computed without reference to any deduction in respect of the work space; and

(c) any amount in respect of a work space that was, solely because of paragraph (b), not deductible in computing the individual's income for the immediately preceding taxation year from the office or employment shall be deemed to be an amount in respect of a work space that is otherwise deductible in computing the individual's income for the year from that office or employment and that, subject to paragraph (b), may be deducted in computing the individual's income for the year from the office or employment.

Related Provisions: 18(12) — Parallel rule for self-employed individual.

History: Subsec. 8(13) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 5(8), applicable to 1991 *et seq*.

Interpretation Bulletins: IT-352R2: Employee's expenses, including work space in home expenses.

Forms: T777: Statement of employment expenses; T4044: Employment expenses [guide].

Definitions [s. 8]: "additional voluntary contribution", "amount", "annuity", "automobile", "borrowed money", "business" — 248(1); "Canada" — 255; "capital cost" — 13(7)–(7.4), 128.1(1)(c), 128.1(4)(c); "common-law partner", "common-law partnership" — 248(1); "Commonwealth" — *Interpretation Act* 35(1); "deferred amount", "employed", "employee", "employer", "employment", "goods and services tax", "individual", "Minister" — 248(1); "marriage" — 252(4)(b); "motor vehicle", "office", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "regulation" — 248(1); "reimbursement payment" — 8(1)(n.1)(i); "resident" — 250; "retirement compensation arrangement", "salary deferral arrangement", "salary or wages" — 248(1); "security" — 7(7); "self-contained domestic establishment", "share" — 248(1); "spouse" — 252(4)(a); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 8]: IT-168R3: Athletes and players employed by football, hockey and similar clubs.

Subdivision b — Income or Loss from a Business or Property

Basic Rules

9. (1) Income — Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

Related Provisions: 9(3) — Capital gains and losses not included; 18 — Limitations on various deductions; 18.1 — Limitation on deduction for matchable expenditure; 19, 19.01, 19.1 — Limitations on deductions for advertising expenses; 23 — Sale of inventory after ceasing to carry on business; 80(13) — Income inclusion on forgiveness of debt; 95(1) — Extended definition of "income from property" for FAPI purposes; 112(4)–(5.6) — Restrictions on losses on shares held as inventory; 115(1)(a)(ii) — Non-resident's taxable income earned in Canada; 142.5(1) — Mark-to-market rules for securities held by financial institutions; 143.2(6) — Reduction in expenditure allowed for tax shelter investment; 247 — Calculation of profit on transactions with non-residents; 248(24) — Equity and consolidation methods of accounting not to be used; Canada-U.S. tax treaty, Art. VII — Business profits of U.S. resident; Art. XIV — Independent personal services; Art. XVI — Artistes and athletes; Art. XVII — Withholding re personal services.

Selected Cases [subsec. 9(1)]

Method of reporting income: *Canadian Pacific Ltd. v. Ontario (Minister of Revenue)*, [2000] 2 C.T.C. 331 (Ont CA) (Capitalized value of future disability payments deductible as current expense); *Sauvé v. R.*, [2000] 2 C.T.C. 2483 (TCC) (Taxability not affected by reciprocal deductibility by payor); *Urbandale Realty Corp. v. MNR*, [2000] 2 C.T.C. 250 (FCTD); rev'g [1997] 3 C.T.C. 6 (FCTD) (Matching principle not applied); *General Motors Acceptance Corp. of Canada*, [2000] 2 C.T.C. 2061 (TCC) (Expenses of program to support sales were deductible); *Buck Consultants Ltd. v. Canada*, [2000] 1 C.T.C. 93 (FCA); aff'g [1996] 3 C.T.C. 2016 (TCC) (Notional rent was neither paid nor payable); *Minet Inc. v. R.*, [1998] 3 C.T.C. 352 (FCA); rev'g [1996] 3 C.T.C. 2108 (TCC) (Income not income where no legal entitlement or control); *Huang & Danczkay Ltd. v. MNR*, [1998] 3 C.T.C. 337 (FCTD) (Receivables brought into income only when income-earning process virtually complete); *Ikea Ltd. v. R.*, [1998] 2 C.T.C. 61 (SCC) (Amount not income merely because it is not capital. Tax "symmetry" not a requirement, even in respect of same property); *Toronto College Park Ltd. v. R.*, [1998] 2 C.T.C. 78 (SCC); rev'g [1996] 3 C.T.C. 94 (FCA) (Matching principle not necessarily applicable. Only issue is accuracy of income picture); *Canderel Ltd. v. R.*, [1998] 2 C.T.C. 35 (SCC); rev'g [1995] 2 C.T.C. 22 (FCA) (Tax accounting not necessarily the same as financial accounting for purposes of legal definition of profit); *Denthor Developments Ltd. v. Canada*, [1997] 1 C.T.C. 2075 (TCC) (No proceeds of disposition of land until land is sold); *Consoltex Inc. v. Canada*, [1996] 1 C.T.C. 2752 (TCC) (Change of inventory valuation method and reversal following utilization of losses distorted income by anticipating profits); *228262 Alberta Ltd. v. MNR*, [1996] 1 C.T.C. 2416 (TCC) (Price rectification was eligible capital expenditure, not current expense or cost of borrowing); *Fleur de Lys Warehousing Ltd. v. Canada*, [1992] 2 C.T.C. 2158 (TCC) (Municipal tax refund included in income for year in which refund ordered by tribunal, not year in which upheld by higher court); *Johnson & Johnson Inc. v. Canada*, [1994] 1 C.T.C. 244 (FCA) (Refund of federal sales tax taxable as income); *Maritime Telegraph and Telephone Co. v. Canada*, [1992] 1 C.T.C. 264 (FCA) (Taxpayer could not change from accrual method to billed method of reporting income for tax purposes); *The Queen v. Zoel Chicoine Inc.*, [1987] 2 C.T.C. 240 (FCA) (Sum received as an advance on final amount not determined and not payable until taxation year-end not included in calculating income); *Kozan v. MNR*, [1987] 1 C.T.C. 2258 (TCC) (Disposal of property in taxation year when vendor, unable to "close" sale transaction on set date, agreed to purchaser taking possession of property, receiving rents, and holding balance due in trust until transfer of title in subsequent year); *Finochio v. The Queen*, [1987] 1 C.T.C. 313 (FCTD) (Sale of real property "closed" in year of registration of sale documents, even though funds held in trust by solicitor until next taxation year); *McCullough v. MNR*, [1986] 2 C.T.C. 2132 (TCC) (Amount of cheque payable to taxpayer's deceased husband entitled to DPSP not included in taxpayer's income when counsel not acting directly or indirectly as agent or solicitor of taxpayer); *Kowalczyk v. MNR*, [1986] 2 C.T.C. 2092 (TCC) (Cheques received upon dismissal from employment equivalent to payment in cash if amounts not conditional on acceptance and honoured on presentation for payment included in income in year of receipt); *Rodgers, A.G., Real Estate Ltd. v. MNR*, [1984] C.T.C. 2051 (TCC) (Determined portion of commissions representing percentage of sale price of land taxable when receivable in year of transaction; remainder of commissions dependent upon completion of buildings taxable when receivable in that year); *Commonwealth Construction Co. Ltd. v. The Queen*, [1984] C.T.C. 338 (FCA) (Adverse judgment on appeal requiring full or partial repayment of costs of action does not alter taxable income in the year of receipt); *The Queen v. Terra Mining & Exploration Ltd. (NPL)*, [1984] C.T.C. 176 (FCTD) (GAAP dictates that interest expense be accounted for

on accrual basis); *Noël-Fortin et al. v. MNR*, [1982] C.T.C. 2543 (T.R.B.) (Assessments adding unreported income, interest and penalties referred back to Minister when taxpayers sharing tips in team system with other waiters); *Graham v. The Queen*, [1980] C.T.C. 212 (FCTD) (Interest received on trust certificate is income in year of receipt; utility payments deductible in year of payment); *Maple Leaf Mills Ltd. v. MNR*, [1976] C.T.C. 324 (SCC) (Debt owed to taxpayer from net revenue deficiency accruing over the course of years taxed in year to which each part of debt is attributable); *High Level Hotel Ltd. v. MNR*, [1970] Tax ABC 1166 (T.A.B.) (Income earned from rental of rooms taxable in hands of taxpayer despite agreement to pay part of rentals to contractor for completion of buildings); *MNR v. Colford (John) Contracting Co. Ltd.*, [1962] C.T.C. 546 (SCC) (Holdback amounts not qualified as "receivables" are to be included in income in the year in which architect's or engineer's final certificate issued).

Assignment of income: *Range Grain Co. v. R.*, [1997] 2 C.T.C. 227 (FCTD) (Gross revenues of commission agent do not include funds provided by principal to carry out contracts); *Dominion Bridge Co. Ltd. v. The Queen*, [1977] C.T.C. 554 (FCA) (Inflated cost of steel purchased by parent company must be computed by reference to cost incurred by foreign subsidiary not carrying on separate business); *The Queen v. Wipf et al.*, [1976] C.T.C. 57 (SCC) (Farm colonies holding all property in common; profits not attributable to individual members of Hutterian Brethren Church working in communal farming operations in return for subsistence benefits).

Discounts and bonuses: *Hall et al. v. The Queen*, [1986] 1 C.T.C. 399 (FCTD) (Gain realized on discount purchase of promissory note conferred benefit on shareholders); *Specht v. MNR*, [1981] C.T.C. 2463 (T.R.B.) (Bonuses earned from pre-payouts were capital gains where taxpayer used own funds to purchase mortgages and was not carrying on business); *Solomon Estate v. MNR*, [1970] Tax ABC 1244 (T.A.B.) (Bonus received from a venturesome loan arising in adventure in nature of trade taxable in year of receipt).

Business and adventure in the nature of trade: *Roseland Farms Ltd. v. MNR*, [1986] 1 C.T.C. 2163 (TCC) (Purchase and sale of farms not adventure in nature of trade when no equipment and no capital to conduct proper farming business); *Diamond Developments Ltd. v. MNR*, [1984] C.T.C. 2992 (TCC) (Profit on sale of building business income when not held as a capital asset and realized in course of ordinary business operations); *Western Union Insurance Co. v. The Queen*, [1983] C.T.C. 363 (FCTD) (Bonus paid to lender for making loan earned in the course of business when creating a gainful use of monetary assets); *Schlamp v. The Queen*, [1982] C.T.C. 304 (FCTD) (Majority shareholder in construction company, acquiring property, building houses, residing in them with family, selling the house at profit and repeating these events, taxable as profits from adventure in nature of trade); *Walton v. The Queen*, [1982] C.T.C. 228 (FCTD) (Proceeds from adventure in nature of trade despite unsolicited offer when city planner has knowledge of real estate potential and speculative intent); *Anderson v. MNR*, [1980] C.T.C. 2588 (T.R.B.) (Adventure in the nature of trade where syndication of stallion represents efficient method of grouping investors in business); *Fawcett v. MNR*, [1980] C.T.C. 2064 (T.R.B.) (Compensation paid for withdrawing from further negotiations to acquire company shares taxable as income from adventure in nature of trade; loss of executive position and right to purchase shares not taxable when representing receipt on account of capital); *Mills v. MNR*, [1978] C.T.C. 3166 (T.R.B.) (Voluntary contributions from followers of philosopher to defray various costs to attend meetings income from business); *The Queen v. Audet*, [1978] C.T.C. 788 (FCTD) (Amounts received as commission for guaranteeing loan constitute business income when not merely engaging in hobby but in deliberate economic action in search of gain); *MNR v. Taylor*, [1956] C.T.C. 189 (Exch.) (Profit arising from transaction is adventure in nature of trade even though transaction itself is not trade or business).

Business purpose: *Thiele Drywall Inc. v. Canada*, [1996] 3 C.T.C. 2208 (TCC) (Nature of participation in tax evasion scheme was such that legal expenses to defend were not deductible); *Sabo Brothers Construction Ltd. v. Canada*, [1996] 2 C.T.C. 2073 (TCC) (Business loss disallowed where no possibility of profit; tax benefits did not arise solely from operation of Act); *Tonn et al. v. Canada*, [1996] 2 C.T.C. 205 (FCA) (Objective test in *Moldowan* is to prevent inappropriate reductions in tax, not to second-guess business judgments); *Levy v. MNR*, [1985] 2 C.T.C. 2107 (TCC); aff'd [1990] 2 C.T.C. 83 (FCTD) (Horses acquired and used for the purpose of racing are farming activity, investments in horse racing syndicates and corresponding losses constitute business of farming).

Change in use: *Hayes v. MNR*, [1989] 2 C.T.C. 2008 (TCC) (Gain on sale of lots capital in nature; filing subdivision plan not converting loan into inventory when no evidence of business plan); *MacKinnon v. MNR*, [1988] 2 C.T.C. 2262 (TCC) (Land sold did not change character from capital to inventory; mere creation of subdivision plan does not constitute the carrying on of business in absence of other circumstances); *Hyman v. MNR*, [1988] 1 C.T.C. 2516 (TCC) (Business income applicable after change in use arising from change in intention regarding property from income-producing asset to wanting to sell for a profit); *Magilb Development Corp. Ltd. v. The Queen*, [1987] 1 C.T.C. 66 (FCTD) (No change of character in respect of homestead property from capital to trading asset when absence of corporate intent to subdivide); *Schneider Ltd. et al. v. The Queen*, [1986] 2 C.T.C. 89 (FCA) (Expropriation rendering profit from sale of land by joint venture income; insufficient evidence of change of intention when trust on behalf of members of consortium held property for disposition); *Jacobsen Holdings Ltd. v. The Queen*, [1986] 1 C.T.C. 87 (FCTD) (Presumption that land acquired for sale at profit retains character of inventory even when personal and farming use of tract of land until receipt of acceptable offer).

Damages: *Prince Rupert Hotel (1957) Ltd. v. Canada*, [1995] 2 C.T.C. 212 (FCA) (Capital nature of partnership interest not relevant in characterizing settlement for damages relating to amount of such interest); *Poulin v. Canada*, [1995] 1 C.T.C. 2075 (TCC) (Damages payable as result of damage suit for fraudulent activities as real estate broker deductible in computing income); *St-Romuald Construction Ltée v. Canada*, [1989] 1 C.T.C. 205 (FCTD) (Payment for cancellation of contract pursuant to provision annulling contract held not to be damages when obtained to compensate for loss in partial execution of contract made in normal course of business); *Wise et al. v. The Queen*, [1986] 1 C.T.C. 169 (FCA) (Amount received on forfeiture of deposit held to constitute damages for loss of sale); *Société d'Ingénierie Cartier Ltée v. The Queen*, [1986] 1 C.T.C. 166 (FCTD) (Payment received from insurer in settlement of claims by and against taxpayer income where compensation would be so treated if received directly in course of business); *The Queen v. Manley*, [1985] 1 C.T.C. 186 (FCA); leave to appeal to SCC refused (1986), 67 N.R. 400 (note), (sub nom. *Manley v. MNR*) (Damages for breach of warranty of authority included in income when corresponding to what would have been realized in profit from adventure in nature of trade); *Vinette v. MNR*, [1984] C.T.C. 2257 (TCC) (Payments received during period covered by notice of termination and arising from employment contract not damages, but taxable); *Cox v. The Queen*, [1982] C.T.C. 322 (FCTD) (Payment from settlement upon contested will taxable, not damages, where claim is for payment of services); *Hillsdale Shopping Centre Ltd. v. The Queen*, [1981] C.T.C. 322 (FCA) (Gain from expropriation of land acquired with primary purpose of developing shopping centre for deriving rental income and with secondary purpose of reselling at profit is business income); *Roberts, H.A., Ltd., v. MNR*, [1969] C.T.C. 369 (SCC) (Payments of compensation capital sum in respect of business separate from main agency).

Business vs employment: *Wiebe Door Services Ltd. v. MNR*, [1986] 2 C.T.C. 200 (FCA) (Inadequacy of "control" test; whole relationship of the parties must be examined through the "integration" test from employee's point of view rather than employer's); *Marotta v. The Queen*, [1986] 1 C.T.C. 393 (FCTD) (Remuneration received by physician forming partnership and arranging for payments from university to be treated as partnership income were employment income from university upon evidence of employment relationship and taxable in calendar year of receipt); *Gagné v. MNR*, [1983] C.T.C. 2502 (T.R.B.) (Lawyer's office expenses not deductible upon evidence of employment contract not providing for expenses); *Rochette v. MNR*, [1981] C.T.C. 2508 (T.R.B.) (Flat monthly fee not salary; related expenses deductible in respect of self-employment).

Foreign exchange profits: *ISE Canadian Finance Ltd. v. MNR*, [1986] 1 C.T.C. 2473 (TCC) (Foreign exchange gains and losses in respect of funds loaned to Canadian affiliates realized in the course of business were on income account); *Ethicon Sutures Ltd. v. The Queen*, [1985] 2 C.T.C. 6 (FCTD) (Gains realized due to changes in foreign exchange rates by subsidiary of U.S. corporation held to be income where intention was to have funds available for inventory payments); *Weatherhead Co. of Canada Ltd. v. MNR*, [1982] C.T.C. 2839 (T.R.B.) (Trade receipts used to purchase U.S. term deposits; resulting foreign exchange gain was business income when arising from normal business operations); *Alberta Gas Trunk Line Co. Ltd. v. MNR*, [1971] C.T.C. 723 (SCC) (Foreign exchange loss on loan is capital loss; premium received on monthly payments were business income when received as part of payment for services); *Tip Top Tailors Ltd. v. MNR*, [1957] C.T.C. 309 (SCC) (Foreign exchange profit taxable when made in necessary part of company's trading operations).

Income attributable to another: *Barnes v. MNR*, [1986] 2 C.T.C. 2079 (TCC) (True nature of transaction was that money not borrowed in trust relationship, but by taxpayer himself, shares registered in his name, and sold on own account); *Turner v. MNR*, [1984] C.T.C. 3026 (TCC) (Taxpayer accountant receiving sum of money for services rendered in arranging for purchase of shares of company did not act as agent for corporation when not treating fee as corporation's property); *Horvath v. MNR*,

[1979] C.T.C. 2059 (T.R.B.) (Principal shareholder of corporation acting in trust for corporation; profits belong to corporation).

Intention: *Queenswood Land Associates Ltd. v. R.*, [2000] 1 C.T.C. 352 (FCA); rev'g [1997] 2 C.T.C. 2688 (TCC) (Court cannot, absent sham, recharacterize legal relationships); *Johnstone v. The Queen*, [1988] 1 C.T.C. 48 (FCTD) (Profit on sale of real estate included in income where intention to subdivide and sell at profit, regardless of initial intention to use property as principal residence); *Wise v. MNR*, [1987] 1 C.T.C. 2319 (TCC) (Taxpayer entering real estate joint venture with experienced traders is bound by intentions and actions of other investors reporting profits as income); *Brown v. MNR*, [1987] 1 C.T.C. 2133 (TCC) (Parcel of land jointly owned by taxpayer and other individual; intention of taxpayer governed by the intention of the majority owner under agreement to sell on the same terms); *Happy Valley Farms Ltd. v. The Queen*, [1986] 2 C.T.C. 259 (FCTD) (Profit on land sales was business income when taxpayer acquired property for resale at profit and was more knowledgeable in land transactions than farming); *Armstrong v. The Queen*, [1985] 2 C.T.C. 179 (FCTD) (Trading in horses by corporation does not necessarily imply business venture with intention of eventual profitable sale); *Harms v. MNR*, [1984] C.T.C. 2714 (TCC) (Profit on sale was capital gain when gold investment capital preserving and not speculative); *Wilderton Shopping Centre Inc. v. MNR*, [1972] C.T.C. 319 (FCTD) (Profits on real estate transactions income from adventure in nature of trade where secondary or alternative intention to sell part of land); *Regal Heights Ltd. v. MNR*, [1960] C.T.C. 384 (SCC) (Profits on real estate transactions income where alternative intention to turn asset to account if primary purpose not realized).

Inventory or capital: *Molstad Development Co. v. Canada*, [1997] 2 C.T.C. 2360 (TCC) (Borrowed funds were capital, even if proceeds used to acquire inventory); *Greatti et al. v. MNR*, [1983] C.T.C. 2541 (T.R.B.) (Real estate not inventory of estate, but partnership profits from real estate included in income where properties acquired for development purposes prior to death); *Arnold v. The Queen*, [1983] C.T.C. 405 (FCTD) (Proceeds from sales of timber cutting rights based upon yearly sales to a company operated by vendor were income); *Algoma Central and Hudson Bay Railway Co. v. MNR*, [1961] C.T.C. 9 (Exch.) (Original nature of rights received changed by manner of dealing with them; proceeds arising therefrom were income).

Involuntary disposition: *Bellingham v. Canada*, [1996] 1 C.T.C. 187 (FCA) ("Additional" interest in expropriation not income property nor income from a "source" and not taxable); *Blok-Anderson v. MNR*, [1972] C.T.C. 338 (FCTD) (Shares transferred in consolidation of holdings was alternative disposition method for traders in real estate).

Leases: *French Shoes Ltd. v. The Queen*, [1986] 2 C.T.C. 132 (FCTD) (Tenant inducement income when received as part of normal business operations); *Zehr's Markets Ltd. v. The Queen*, [1975] C.T.C. 190 (FCTD) (Profit from real estate transactions capital gain when selling buildings and taking back long-term leasebacks where properties not acquired for speculative purposes); *Chibougamau Lumber Ltée v. MNR*, [1973] C.T.C. 2174 (T.R.B.) (Term leases with monthly payments with option to purchase equipment for $1 at end of term not true leases, but purchases on time-payment plans); *Imperial Oil Ltd. v. MNR*, [1972] C.T.C. 455 (FCTD) (Profit from sale of natural gas storage leases not business income when company not trading in such leases but intending to operate them for revenue).

Sale or liquidation of business: *Pepsi-Cola Canada Ltd. v. The Queen*, [1979] C.T.C. 454 (FCA) (Amount received on termination of contract held to be capital payment for goodwill; receipt not containing terms of termination agreement); *Hanalene Investments Ltd. v. MNR*, [1965] Tax ABC 385 (T.A.B.) (Losses during sell-off of partnership land deductible as trading losses when partners still carrying on business); *Frankel Corp. Ltd. v. MNR*, [1959] C.T.C. 244 (SCC) (Amount received for inventory when part of sale of business, not made in course of business, not taxable).

Mineral leases and rights: *Mel-Bar Ranches Ltd. v. MNR*, [1987] 2 C.T.C. 2146 (TCC) (Amounts received from log-purchase agreement in one-time operation capital when necessary to improve ranch land in anticipation of renewed cattle operation); *Corlite Petroleums Ltd. v. The Queen*, [1976] C.T.C. 766 (FCTD) (Profit from sale of mining claims taxable when realized from adventure in nature of trade and property acquired for purpose of making profit); *Bonlie v. MNR*, [1970] Tax ABC 1235 (T.A.B.) (Owner of half-interest in mining claims engaged in adventure in nature of trade when selling claims with intention of making profit); *Settler Oils Ltd. v. MNR*, [1968] C.T.C. 252 (Exch.) (Lump sum and royalty payments under oil leases taxable income when property acquired in hope of profit; cost of mineral rights not deductible).

Options: *Cook v. The Queen*, [1987] 1 C.T.C. 377 (FCTD) (Amount received from unsolicited offer to grant option to purchase land was capital receipt; selling land not operating motivation); *Airway Acceptance Corp. Ltd. v. MNR*, [1986] 1 C.T.C. 2259 (TCC) (Time for ascertainment of intention is moment of purchase, which was moment option exercised; taxpayer not buying for purposes of acquiring business assets, but for speculation); *Algonquin Enterprises Ltd. et al. v. The Queen*, [1986] 1 C.T.C. 493 (FCTD) (Exercise of options to purchase during lease of building lots produced business income).

Partnerships: *Travica v. MNR*, [1988] 1 C.T.C. 2359 (TCC) (No business partnership where community of interests created by marriage; assets owned by taxpayer at time of sale); *Sedelnick Estate v. MNR*, [1986] 2 C.T.C. 2102 (TCC) (Where no evidence of express partnership agreement, existence of partnership cannot be inferred when conduct of parties consistent with community of interests created by marriage).

Penalties: *McNeill v. R.*, [2000] 2 C.T.C. 304 (FCA) (Damages incurred in process of earning income deductible); *65302 British Columbia Ltd. v. R.*, [2000] 1 C.T.C. 57 (SCC); rev'g [1998] 1 C.T.C. 131 (FCA); rev'g [1995] 2 C.T.C. 2294 (TCC) (Penalties incurred during income-earning process deductible); *Port Colbourne Poultry Ltd. v. R.*, [1997] 2 C.T.C. 2480 (TCC) (Penalty for pollution not deductible).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research; IT-92R2: Income of contractors; IT-95R: Foreign exchange gains and losses; IT-104R2: Deductibility of fines or penalties; IT-129R: Lawyers' trust accounts and disbursements; IT-200: Surface rentals and farming operations; IT-213R: Prizes from lottery schemes and giveaway contests; IT-223: Overhead expense insurance vs. income insurance; IT-233R: Lease-option agreements; sale-leaseback agreements; IT-257R: Canada Council grants; IT-261R: Prepayment of rents; IT-314: Income of dealers in oil and gas leases; IT-359R2: Premiums and other amounts re leases; IT-373R: Farm woodlots and tree farms; IT-425: Miscellaneous farm income; IT-434R: Rental of real property by individual; IT-454: Business transactions prior to incorporation; IT-459: Adventure or concern in the nature of trade; IT-493: Agency cooperative corporations. See also list at end of s. 9 and annotation to 18(1)(a).

Information Circulars: 77-11: Sales tax reassessments — deductibility in computing income.

I.T. Technical News: No. 1 (sales commission expenses of mutual-fund limited partnerships); No. 5 (lease agreements); No. 8 (proceeds of sale of a condominium — first closing date or second closing date; treatment of United States unitary state taxes); No. 12 ("millennium bug" expenditures); No. 16 (*Canderel*, *Toronto College Park* and *Ikea* cases; *Continental Bank* case).

Advance Tax Rulings: ATR-4: Exchange of interest rates; ATR-15: Employee stock option plan; ATR-20: Redemption premium on debentures; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan; ATR-50: Structured settlement; ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

Forms: T776: Statement of real estate rentals; T2032: Statement of professional activities; T2042: Statement of farming income and expenses; T2121: Fishing income and expense statement; T2124: Statement of business activities; T2130: Reconciliation of net income per financial statements with net income for tax purposes; T4002: Business and professional income (guide); T4036: Rental income (guide).

(2) Loss — Subject to section 31, a taxpayer's loss for a taxation year from a business or property is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying the provisions of this Act respecting computation of income from that source with such modifications as the circumstances require.

Related Provisions: 18 — Limitations on various deductions; 18.1 — Limitation on deduction for matchable expenditure; 96(8)(b), (c) — Business loss of partnership that previously had only non-resident partners; 103(2) — Meaning of "losses" in subsec. 103(1); 111(1)(a) — Carryover of loss to prior or later year; 111(8) — "non-capital loss"; 112(4)–(4.3) — Loss on share held as inventory.

Selected Cases [subsec. 9(2)]: *Tonn et al. v. Canada*, [1996] 2 C.T.C. 205 (FCA) (Objective test in *Moldowan* is to prevent inappropriate reductions in tax, not to second-guess business judgments).

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received. See also list at end of s. 9.

I.T. Technical News: No. 16 (*Tonn*, *Mastri*, *Mohammad* and *Kaye* cases).

Advance Tax Rulings: See under 9(1).

(3) Gains and losses not included — In this Act, "income from a property" does not include any capital gain from the disposition of that property and "loss from a property" does not include any capital loss from the disposition of that property.

Pre-RSC History: Subsec. 9(3) substituted by 1986, c. 6, s. 4, applicable to 1986 *et seq.* Subsec. 9(3) formerly read:

> (3) Gains and losses not included — In this Act, "income from a property" does not include any amount that is, or that would but for subparagraph 39(1)(a)(v) be, a capital gain from the disposition of that property or any amount that is a capital gain (within the meaning assigned by paragraph 47.1(1)(b)) from an indexed security investment plan and "loss from a property" does not include any amount that is, or that would but for subparagraph 39(1)(a)(v) be, a capital loss from the disposition of that property or any amount that is a capital loss (within the meaning assigned by paragraph 47.1(1)(c)) from an indexed security investment plan.

Subsec. 9(3) substituted by 1984, c. 1, s. 4, applicable to taxation years ending after September 30, 1983. Subsec. 9(3) formerly read:

> (3) Gains and losses not included — In this Act, "income from a property" does not include any capital gain from the disposition of that property and "loss from a property" does not include any capital loss from the disposition of that property.

Selected Cases [subsec. 9(3)]: *Arnold v. The Queen*, [1983] C.T.C. 405 (FCTD) (Proceeds from sale of rights to cut timber were income).

Selected Cases [s. 9]: *Friesen (J.) v. Canada*, [1995] 2 C.T.C. 369 (SCC) (Profit to be determined according to principles of commercial or accounting practice unless inconsistent with specific provisions of Act); *Millford Development Ltd. v. MNR*, [1993] 1 C.T.C. 169 (FCTD) (Discount on sale of mortgage deductible where mortgage taken back on earlier sale of land on income account); *Fleur de Lys Warehousing Ltd. v. MNR*, [1992] 2 C.T.C. 2158 (TCC) (Refund of municipal taxes incorrectly paid and deducted in previous year included in year amount of refund ascertained by court, despite subsequent appeal); *Johnson & Johnson Inc. v. Canada* (Dec. 13, 1993), Doc. A-1074-92 (FCA) (Refund of federal sales tax improperly paid and deducted in prior year was not income when the right to it crystallized or when received but deduction in prior year should have been disallowed by reassessment if year was not statute barred); *Westar Mining Ltd. v. Canada*, [1992] 2 C.T.C. 11 (FCA) (Business interruption insurance proceeds were income from business of operating a mine).

Definitions [s. 9]: "amount", "business" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 9]: IT-99R5: Legal and accounting fees; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-182: Compensation for loss of business income, or of property used in a business; IT-189R2: Corporations used by practising members of professions; IT-216: Corporation holding property as agent for shareholder; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-273R: Government assistance — general comments; IT-293R: Debtor's gain on settlement of debt; IT-297R2: Gifts in kind to charity and others; IT-346R: Commodity futures and certain commodities; IT-403R: Options on real estate; IT-404R: Payments to lottery ticket vendors; IT-417R2: Prepaid expenses and deferred charges; IT-423: Sale of sand, gravel or topsoil; IT-446R: Legacies; IT-461: Forfeited deposits; IT-479R: Transactions in securities; IT-490: Barter transactions; IT-504R2: Visual artists and writers.

10. (1) Valuation of inventory — For the purpose of computing a taxpayer's income for a taxation year from a business that is not an adventure or concern in the nature of trade, property described in an inventory shall be valued at the end of the year at the cost at which the taxpayer acquired the property or its fair market value at the end of the year, whichever is lower, or in a prescribed manner.

Related Provisions: 10(1.01) — Adventure in the nature of trade — no writedown until sale; 10(1.1) — Certain expenses included in cost; 10(2) — Valuation of inventory property; 12(1)(r) — Income inclusion — inventory adjustment; 28(1.1), (1.2) — Inventory of farming or fishing business; 87(2)(b) — Amalgamations — inventory; 96(8)(b) — Cost of inventory of partnership that previously had only non-resident partners; 112(4.1) — Fair market value of share held as inventory; 142.5(1) — Mark-to-market rules for securities held by financial institutions.

History: Subsec. 10(1) amended by 1998, c. 19, subsec. 70(1), applicable

> (a) to taxation years that end after December 20, 1995;
>
> (b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where
>
> > (i) the taxpayer's filing-due date for the year is after December 20, 1995, or
> >
> > (ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and
>
> (c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where
>
> > (i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or
> >
> > (ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

The subsec. formerly read:

> (1) For the purpose of computing income from a business, inventory shall be valued at its cost to the taxpayer or its fair market value, whichever is lower, or in such other manner as may be permitted by regulation.

Selected Cases [subsec. 10(1)]: *Canadian Imperial Bank of Commerce v. R.*, [2000] 2 C.T.C. 269 (FCA) (Bullion and foreign currency were inventory of bank); *Stremler v. R.*, [2000] 2 C.T.C. 2172 (TCC) (Condominium units acquired in adventure in nature of trade were inventory); *Consoltex Inc. v. Canada*, [1996] 1 C.T.C. 2752 (TCC) (Change of inventory valuation method and reversal following utilization of losses distorted income by anticipating profits); *Friesen (J.) v. Canada*, [1993] 2 C.T.C. 113 (FCA); reconsideration refused (Sept. 9, 1993), Doc. A-449-92 (FCA); rev'd [1995] 2 C.T.C. 369 (SCC) (Inventory valuation method applies to asset of adventure in nature of trade); *West Hill Redevelopment Co. v. MNR*, [1991] 2 C.T.C. 83 (FCTD) (Plaintiff who sold condominiums and took back mortgages at below-market interest rates in business of selling condominiums, not trading in mortgages; mortgages not inventory); *Van Dongen v. Canada*, [1991] 1 C.T.C. 86 (FCTD) (Real property received in lieu of repayment of loan not inventory where no intention to resell); *Cyprus Anvil Mining Corp. v. Canada*, [1990] 1 C.T.C. 153 (FCA); leave to appeal to SCC refused (1990), 115 N.R. 320 (note), (sub nom. *Cyprus Anvil Mining Corp. v. MNR)* (Changing valuation method during tax exempt period unacceptable departure from consistency principle); *The Queen v. Boehringer Ingelheim (Canada) Ltd.*, [1987] 2 C.T.C. 245 (FCA) (Goods purchased January 1 considered opening inventory where no closing inventory previous year); *Rudolph Furniture Ltd. v. The Queen*, [1982] C.T.C. 211 (FCTD) (Crown's valuation prevailed where consistent method not used by taxpayer); *The Queen v. Jawl Industries Ltd.*, [1974] C.T.C. 147 (FCTD) (Loss on value of inventory purchased in 1969 not deductible that year where delivery taken and fixed price paid in 1970); *Handy & Harman of Canada Ltd. v. MNR*, [1973] C.T.C. 507 (FCTD) (Lowest cost per ounce rejected in favour of average cost per ounce).

Regulations: 1102(1)(b) (no capital cost allowance for property described in inventory); 1801 (inventory generally may be valued at fair market value); 1802 (valuation of animals).

Interpretation Bulletins: IT-51R2: Supplies on hand at end of a fiscal period; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-165R: Returnable containers; IT-328R3: Losses on shares on which dividends have been received; IT-459: Adventure or concern in the nature of trade; IT-504R2: Visual artists and writers. See also list at end of s. 10.

(1.01) Adventures in the nature of trade — For the purpose of computing a taxpayer's income from a business that is an adventure or concern in the nature of trade, property described in an inventory shall be valued at the cost at which the taxpayer acquired the property.

Related Provisions: 10(9) — Grandfathering of writedown taken before 10(1.01) applies; 10(10) — Writedown required before change in control of corporation; 18(14)–(16) — Superficial loss rule for property held as adventure in the nature of trade.

History: Subsec. 10(1.01) added by 1998, c. 19, subsec. 70(1), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

(1.1) Certain expenses included in cost — For the purposes of subsections (1), (1.01) and (10), where land is described in an inventory of a business of a taxpayer, the cost at which the taxpayer acquired the land shall include each amount that is

(a) described in paragraph 18(2)(a) or (b) in respect of the land and for which no deduction is permitted to the taxpayer, or to another person or partnership that is

(i) a person or partnership with whom the taxpayer does not deal at arm's length,

(ii) if the taxpayer is a corporation, a person or partnership that is a specified shareholder of the taxpayer, or

(iii) if the taxpayer is a partnership, a person or partnership whose share of any income or loss of the taxpayer is 10% or more; and

(b) not included in or added to the cost to that other person or partnership of any property otherwise than because of paragraph 53(1)(d.3) or subparagraph 53(1)(e)(xi).

History: Subsec. 10(1.1) amended by 1998, c. 19, subsec. 70(1), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

The subsec. formerly read:

(1.1) For the purpose of subsection (1), the cost to a particular taxpayer of land that is described in the inventory of a business carried on by the taxpayer shall include each amount described in paragraph 18(2)(a) or (b) in respect of that land for which no deduction is permitted to the taxpayer or to another person in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), where that amount was not included in or added to the cost to that other person of any property otherwise than because of paragraph 53(1)(d.3) or subparagraph 53(1)(e)(xi).

Subsec. 10(1.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 6(1), applicable to 1988 *et seq*. Subsec. 10(1.1) formerly read:

(1.1) Non-deductible expenses — For the purposes of subsection (1), the cost to a particular taxpayer of land that is included in the inventory of a business carried on by the taxpayer shall include all amounts described in paragraph 18(2)(a) or (b) in respect of that land for which no deduction is permitted to the taxpayer or, by reason of subsection 18(3), to another taxpayer in respect of whom the particular taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), where the amounts were not included in the cost to that other taxpayer of property.

Pre-RSC History: Subsec. 10(1.1) added by 1988, c. 55, s. 3, applicable to 1988 *et seq*.

Selected Cases [subsec. 10(1.1)]: *Stremler v. R.*, [2000] 2 C.T.C. 2172 (TCC) (Condominium units acquired in adventure in nature of trade were inventory).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land. See also list at end of s. 10.

Pre-RSC History [former subsec. 10(1.1)]: Former subsec. 10(1.1) repealed by 1979, c. 5, s. 2, applicable with respect to expenses incurred after November 16, 1978. Subsec. 10(1.1) formerly read:

(1.1) Certain non-deductible expenses included in cost of inventory — For the purposes of subsection (1), the cost to the taxpayer of land that is described in the inventory of a business carried on by him shall include any amount, described in paragraph 18(2)(a) or (b) in respect of that land for which no deduction is permitted to him.

Subsec. 10(1.1) added by 1974-76, c. 26, s. 3, applicable to amounts paid or payable after May 6, 1974.

(2) Continuation of valuation — Notwithstanding subsection (1), for the purpose of computing income for a taxation year from a business, the inventory at the commencement of the year shall be valued at the same amount as the amount at which it was valued at the end of the preceding taxation year for the purpose of computing income for that preceding year.

Related Provisions: 10(2.1) — Methods of valuation to be the same from year to year.

Interpretation Bulletins: See list at end of s. 10.

(2.1) Methods of valuation to be same — Where property described in an inventory of a taxpayer's business that is not an adventure or concern in the nature of trade is valued at the end of a taxation year in accordance with a method permitted under this section, that method

shall, subject to subsection (6), be used in the valuation of property described in the inventory at the end of the following taxation year for the purpose of computing the taxpayer's income from the business unless the taxpayer, with the concurrence of the Minister and on any terms and conditions that are specified by the Minister, adopts another method permitted under this section.

History: Subsec. 10(2.1) amended by 1998, c. 19, subsec. 70(2), applicable

(a) to taxation years that end after December 20, 1995;

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

The subsec. formerly read:

(2.1) Where property described in the inventory of a business of a taxpayer at the end of a taxation year is valued in accordance with a method provided for under this section, that method shall, subject to subsection (6), be used in the valuation of property described in the inventory of that business at the end of the following taxation year for the purpose of computing the taxpayer's income from that business unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, adopts another method provided for under this section.

Subsec. 10(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 6(2), applicable with respect to computations of income for 1990 *et seq.*

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(3) Incorrect valuation — Where the inventory of a business at the commencement of a taxation year has, according to the method adopted by the taxpayer for computing income from the business for that year, not been valued as required by subsection (1), the inventory at the commencement of that year shall, if the Minister so directs, be deemed to have been valued as required by that subsection.

Interpretation Bulletins: See list at end of s. 10.

(4) Fair market value — For the purpose of subsection (1), the fair market value of property (other than property that is obsolete, damaged or defective or that is held for sale or lease or for the purpose of being processed, fabricated, manufactured, incorporated into, attached to, or otherwise converted into property for sale or lease) that is

(a) work in progress at the end of a taxation year of a business that is a profession means the amount that can reasonably be expected to become receivable in respect thereof after the end of the year; and

(b) advertising or packaging material, parts, supplies or other property (other than work in progress of a business that is a profession) that is included in inventory means the replacement cost of the property.

Related Provisions: 10(5) — Property deemed to be inventory; 34 — Election to exclude work in progress from professional income.

Pre-RSC History: Subsec. 10(4) substituted by 1980-81-82-83, c. 140, subsec. 3(1), applicable to 1983 *et seq.* Subsec. 10(4) formerly read:

(4) Replacement cost — For the purpose of subsection (1), the fair market value of property (other than property that is obsolete, damaged or defective or that is held for sale or lease or for the purpose of being processed, fabricated, manufactured, incorporated into, attached to, or otherwise converted into property for sale or lease) that is advertising or packaging material, parts, supplies or other property described in an inventory means the replacement cost of the property.

Subsec. 10(4) added by 1980-81-82-83, c. 48, s. 3, applicable with respect to property acquired after December 11, 1979.

Interpretation Bulletins: IT-51R2: Supplies on hand at end of fiscal period. See also list at end of s. 10.

(5) [Meaning of] Inventory — Without restricting the generality of this section,

(a) property (other than capital property) of a taxpayer that is advertising or packaging material, parts or supplies or work in progress of a business that is a profession is, for greater certainty, inventory of the taxpayer;

Selected Cases [para. 10(5)(a)]: *Stearns Catalytic Ltd. v. Canada*, [1990] 1 C.T.C. 398 (FCTD) (Spare parts capable of causing lengthy termination of production if damaged are "major parts" of capital property, not inventory).

(b) anything used primarily for the purpose of advertising or packaging property that is included in the inventory of a taxpayer shall be deemed not to be property held for sale or lease or for any of the purposes referred to in subsection (4); and

(c) property of a taxpayer, the cost of which to the taxpayer was deductible by virtue of paragraph 20(1)(mm), is, for greater certainty, inventory of the taxpayer having a cost to the taxpayer, except for the purposes of that paragraph, of nil.

Related Provisions: 10(4) — Fair market value of work in progress, advertising or packaging materials, parts and supplies; 34 — Election to exclude work in progress from professional income.

Pre-RSC History: Para. 10(5)(c) added by 1984, c. 45, s. 4, applicable to 1984 *et seq.*

Para. 10(5)(a) substituted by 1980-81-82-83, c. 140, subsec. 3(2), applicable to 1983 *et seq.* Para. 10(5)(a) formerly read:

(a) property (other than capital property) of a taxpayer that is advertising or packaging material, parts or supplies is, for greater certainty, inventory of the taxpayer; and

Subsec. 10(5) added by 1980-81-82-83, c. 48, s. 3, applicable with respect to property acquired after December 11, 1979.

I.T. Application Rules: 23(3), (4).

Interpretation Bulletins: IT-51R2: Supplies on hand at end of fiscal period; IT-457R: Election by professionals to exclude work in progress from income. See also list at end of s. 10.

(6) Artistic endeavour — Notwithstanding subsection (1), for the purpose of computing the income of an individual other than a trust for a taxation year from a business that is the individual's artistic endeavour, the value of the inventory of the business for that year shall, if the individual so elects in the individual's return of income under this Part for the year, be deemed to be nil.

Related Provisions: 10(7) — Effect of election; 10(8) — Artistic endeavour.

Pre-RSC History: Subsec. 10(6) added by 1986, c. 6, s. 5, applicable with respect to taxation years ending after 1984.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-504R2: Visual artists and writers. See also list at end of s. 10.

Pre-RSC History [former subsec. 10(6)]: Former subsec. 10(6) repealed by 1985, c. 45, s. 4, applicable to 1984 *et seq.* Subsec. 10(6) formerly read:

> (6) Work in progress — For the purpose of computing the income of a taxpayer from a business that is a profession, the amount of the cost of his work in progress, and the amount of the fair market value thereof shall be deemed to be
>
> (a) at the end of his 1982 taxation year, nil, and
>
> (b) at the end of his 1983 taxation year, ½ of the amount thereof determined without reference to this paragraph,
>
> if an election under paragraph 34(1)(d) is applicable in respect of the business for his 1982 taxation year.

Subsec. 10(6) added by 1980-81-82-83, c. 140, subsec. 3(3).

(7) Value in later years — Where an individual has made an election pursuant to subsection (6) for a taxation year, the value of the inventory of a business that is the individual's artistic endeavour shall, for each subsequent taxation year, be deemed to be nil unless the individual, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, revokes the election.

Pre-RSC History: Subsec. 10(7) added by 1986, c. 6, s. 5, applicable with respect to taxation years ending after 1984.

Interpretation Bulletins: IT-504R2: Visual artists and writers. See also list at end of s. 10.

(8) Definition of "business that is an individual's artistic endeavour" — For the purpose of this section, "business that is an individual's artistic endeavour" means the business of creating paintings, prints, etchings, drawings, sculptures or similar works of art, where such works of art are created by the individual, but does not include a business of reproducing works of art.

Pre-RSC History: Subsec. 10(8) added by 1986, c. 6, s. 5, applicable with respect to taxation years ending after 1984.

Interpretation Bulletins [subsec. 10(8)]: IT-504R2: Visual artists and writers. See also list at end of s. 10.

(9) Transition — Where, at the end of a taxpayer's last taxation year at the end of which property described in an inventory of a business that is an adventure or concern in the nature of trade was valued under subsection (1), the property was valued at an amount that is less than the cost at which the taxpayer acquired the property, after that time the cost to the taxpayer at which the property was acquired is, subject to subsection (10), deemed to be that amount.

History: Subsec. 10(9) added by 1998, c. 19, subsec. 70(3), applicable

> (a) to taxation years that end after December 20, 1995;
>
> (b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where
>
> (i) the taxpayer's filing-due date for the year is after December 20, 1995, or
>
> (ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and
>
> (c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where
>
> (i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or
>
> (ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(10) Acquisition of control — Notwithstanding subsection (1.01), property described in an inventory of a corporation's business that is an adventure or concern in the nature of trade at the end of the corporation's taxation year that ends immediately before the time at which control of the corporation is acquired by a person or group of persons shall be valued at the cost at which the corporation acquired the property, or its fair market value at the end of the year, whichever is lower, and, after that time, the cost at which the corporation acquired the property is, subject to a subsequent application of this subsection, deemed to be that lower amount.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Year-end triggered on change of control; 256(6)–(9) — Whether control acquired.

History: Subsec. 10(10) added by 1998, c. 19, subsec. 70(3), applicable

> (a) to taxation years that end after December 20, 1995;
>
> (b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where
>
> (i) the taxpayer's filing-due date for the year is after December 20, 1995, or
>
> (ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and
>
> (c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where
>
> (i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or
>
> (ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

(11) Acquisition of control — For the purposes of subsections 88(1.1) and 111(5), a corporation's business that is at any time an adventure or concern in the nature of trade is deemed to be a business carried on at that time by the corporation.

History: Subsec. 10(11) added by 1998, c. 19, subsec. 70(3), applicable

> (a) to taxation years that end after December 20, 1995;
>
> (b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where
>
> (i) the taxpayer's filing-due date for the year is after December 20, 1995, or
>
> (ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995; and

(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership.

Interpretation Bulletins: IT-459: Adventure or concern in the nature of trade.

Proposed Addition — 10(12)–(14)

(12) Removing property from inventory [of non-resident] — If at a any time a non-resident taxpayer ceases to use, in connection with a business or part of a business carried on by the taxpayer in Canada immediately before that time, a property that was immediately before that time described in the inventory of the business or the part of the business, as the case may be, (other than a property that was disposed of by the taxpayer at that time), the taxpayer is deemed

(a) to have disposed of the property immediately before that time for proceeds of disposition equal to its fair market value at that time; and

(b) to have received those proceeds immediately before that time in the course of carrying on the business or the part of the business, as the case may be.

Technical Notes: Section 10 of the Act sets out rules for the valuation of inventory for the purpose of computing a taxpayer's income or loss from a business. These amendments ensure the appropriate measurement of a non-resident's income or loss from a business carried on in Canada.

New subsection 10(12) of the Act applies to a non-resident taxpayer who ceases to use a property, described in the inventory of a business or part of a business that is carried on by the taxpayer in Canada, otherwise than by a disposition of the property. For example, subsection 10(12) applies if a non-resident taxpayer removes a property from the inventory of a business or part of a business carried on in Canada and adds that property to the inventory of a business or part of a business carried on by the taxpayer in another country. The time at which the taxpayer ceases to use the property in connection with a business or part of a business in Canada is referred to in this note as the "particular time".

Where new subsection 10(12) applies, the taxpayer is treated as having disposed of the property immediately before the particular time, for proceeds equal to the property's fair market value at that time. The taxpayer is treated as having received the proceeds in the course of carrying on the business in which the property was formerly used, in the taxation year that includes the particular time.

New subsection 10(12) applies after December 23, 1998.

Related Provisions: 10(14) — Inventory includes work in progress of a professional.

(13) Adding property to inventory [of non-resident] — If at any time a property becomes included in the inventory of a business or part of a business that a non-resident taxpayer carries on in Canada after that time (other than a property that was, otherwise than because of this subsection, acquired by the taxpayer at that time), the taxpayer is deemed to have acquired the property at that time at a cost equal to its fair market value at that time.

Technical Notes: New subsection 10(13) of the Act applies to a non-resident taxpayer who adds a property (otherwise than by acquiring the property) to the inventory of a business or part of a business that is carried on in Canada by the taxpayer. For example, new subsection 10(13) applies if a taxpayer removes a property from the inventory of a business or part of a business carried on in another country and adds that property to the inventory of a business or part of a business carried on in Canada by the taxpayer. The time at which the taxpayer adds the property to the inventory of the business or part of a business in Canada is referred to in this note as the "particular time".

Where new subsection 10(13) applies, the taxpayer is deemed to have acquired the property at the particular time at a cost equal to the property's fair market value at that time.

New subsection 10(13) applies after December 23, 1998.

Related Provisions: 10(14) — Inventory includes work in progress of a professional.

(14) Work in progress — For the purposes of subsections (12) and (13), property that is included in the inventory of a business includes property that would be so included if paragraph 34(a) did not apply.

Technical Notes: Section 34 of the Act provides an exception to full accrual accounting in calculating the income of a business that is a professional practice by allowing the income to be determined without taking into account any professional work in progress at year end.

New subsection 10(14) provides, for the purposes of new subsections 10(12) and 10(13), that a property included in the inventory of a business includes professional work in progress that would be so included if paragraph 34(a) (the basic rule described above) did not apply. Any work in progress that would ordinarily be described in an inventory will thus be subject to the deemed disposition under subsection 10(12) or the deemed acquisition under subsection 10(13).

New subsection 10(14) applies after December 23, 1998.

Application: The June 5, 2000 Notice of Ways and Means Motion (taxpayer migration), s. 3, will add subsecs. 10(12) to (14), applicable after December 23, 1998.

Selected Cases [s. 10]: *Ruland Realty Ltd. v. R.*, [1998] 4 C.T.C. 2313 (TCC) (Obligations to acquire land were choses in action, which qualified as property and as inventory); *Consoltex Inc. v. Canada*, [1996] 1 C.T.C. 2752 (TCC) (Change of inventory valuation method and reversal following utilization of losses distorted income by anticipating profits).

Definitions [s. 10]: "amount" — 248(1); "artistic endeavour" — 10(8); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 10(9); "fair market value" — 10(4); "filing-due date" — 248(1); "fiscal period" — 249.1; "individual" — 248(1); "inventory" — 10(5), 248(1); "Minister", "non-resident" — 248(1); "person", "prescribed", "property", "regulation" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 10]: IT-98R2: Investment corporations; IT-189R2: Corporations used by practising members of professions; IT-283R2: CCA — video tapes, videotape cassettes, films, computer software and master recording tapes; IT-345R: Special reserve — loans secured by mortgages; IT-452: Utility service connections; IT-473R: Inventory valuation.

11. (1) Proprietor of business — Subject to sections 34.1 and 34.2, where an individual is a proprietor of a business, the individual's income from the business for a taxation year is deemed to be the individual's income from the business for the fiscal periods of the business that end in the year.

History: Subsec. 11(1) amended by 1996, c. 21, s. 3, applicable to 1995 *et seq.* The subsec. formerly read:

(1) Proprietor of business — Where an individual is a proprietor of a business, the individual's income from the business for a taxation year shall be deemed to be the individual's income from the business for the fiscal period or periods ending in the year.

Selected Cases [subsec. 11(1)]: *Northern Sales (1963) Ltd. v. MNR*, [1973] C.T.C. 239 (FCTD) (Independent companies held to be partners where profits and losses divided pursuant to marketing agreement).

(2) **Reference to "taxation year"** — Where an individual's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, unless the context otherwise requires, a reference in this subdivision or section 80.3 to a "taxation year" or "year" shall, in respect of the business, be read as a reference to a fiscal period of the business ending in the year.

History: Subsec. 11(2) substituted by 1994, c. 21, s. 5, applicable to 1988 *et seq.* That subsec. formerly read:

> (2) Reference to "taxation year" or "year" — Where an individual's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, unless the context otherwise requires, a reference in this Division to a "taxation year" or "year" shall, in respect of the business, be read as a reference to a fiscal period of the business ending in the year.

Pre-RSC History: Subsec. 11(2) amended by 1990, c. 39, s. 3, to substitute "otherwise requires, a reference in this Division" for "otherwise requires a reference in this subdivision", applicable to 1988 *et seq.*

Selected Cases [subsec. 11(2)]: *Bishay v. MNR*, [1996] 1 C.T.C. 2286 (FCTD) (Unilateral change of year-end by taxpayer prohibited).

Related Provisions [s. 11]: 14(4) — Eligible capital property rules — references to "taxation year" or "year"; 20(16.2) — Terminal loss rules — reference to "taxation year" and "year"; 34.1 — Additional income adjustment where fiscal year is not calendar year; 34.2 — Reserve for 1995 stub-period income; 96(1)(f) — Income inclusion from partnership in taxation year in which partnership's year ends; 25(1) — Fiscal period for individual proprietor of business disposed of; 249(2)(b) — Where end of fiscal period coincides with end of taxation year.

Definitions [s. 11]: "business" — 248(1), 249.1; "calendar year" — *Interpretation Act* 37(1)(a); "fiscal period" — 248(1), 249.1; "individual" — 248(1); "taxation year" — 249.

Regulations [s. 11]: 1104(1) (taxation year of individual for capital cost allowance purposes).

Interpretation Bulletins [s. 11]: IT-151R4: Scientific research and experimental development expenditures; IT-184R: Deferred cash purchase tickets issued by Canadian Wheat Board.

Inclusions

12. (1) Income inclusions — There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable:

(a) **services, etc., to be rendered [or goods to be delivered]** — any amount received by the taxpayer in the year in the course of a business

(i) that is on account of services not rendered or goods not delivered before the end of the year or that, for any other reason, may be regarded as not having been earned in the year or a previous year, or

(ii) under an arrangement or understanding that it is repayable in whole or in part on the return or resale to the taxpayer of articles in or by means of which goods were delivered to a customer;

Related Provisions: 12(1)(x) — Inducements, reimbursements, etc. included in income; 12(2) — Rule is for greater certainty only; 20(1)(m) — Deductions — reserve for goods and services; 20(1)(m.1) — Deductions — manufacturer's warranty reserve; 20(1)(m.2) — Deductions — repayment of amount previously included in income; 20(24) — Amounts paid for undertaking future obligations; 68 — Allocation of amounts paid for combination of services and property.

Selected Cases [para. 12(1)(a)]: *Foothills Pipe Lines (Yukon) Ltd. v. The Queen*, [1990] 2 C.T.C. 448 (FCA); leave to appeal to SCC refused (1991), 134 N.R. 238 (note), (sub nom. *Foothills Pipe Lines (South Yukon) Ltd. v. MNR*) (Special charges made by taxpayer responsible for pipeline construction to shippers, to be refunded upon completion of the project, were liabilities not income); *Burrard Yarrows Corp. v. The Queen*, [1986] 2 C.T.C. 313 (FCTD); rev'd in part [1988] 2 C.T.C. 90 (FCA) (Progress payments received were "earned" amounts; reserve not permitted); *Anderson v. MNR*, [1972] C.T.C. 2318 (T.R.B.) (Advance payment pursuant to *Prairie Grain Advance Payments Act* was income, not interest-free loan).

Interpretation Bulletins: IT-154R: Special reserves; IT-165R: Returnable containers; IT-321R: Insurance agents and brokers — unearned commissions; IT-457R: Election by professionals to exclude work in progress from income; IT-531: Eligible funeral arrangements.

I.T. Technical News: No. 18 (*Oerlikon Aérospatiale* case).

Forms: T2124: Statement of business activities.

(b) **amounts receivable** — any amount receivable by the taxpayer in respect of property sold or services rendered in the course of a business in the year, notwithstanding that the amount or any part thereof is not due until a subsequent year, unless the method adopted by the taxpayer for computing income from the business and accepted for the purpose of this Part does not require the taxpayer to include any amount receivable in computing the taxpayer's income for a taxation year unless it has been received in the year, and for the purposes of this paragraph, an amount shall be deemed to have become receivable in respect of services rendered in the course of a business on the day that is the earlier of

(i) the day on which the account in respect of the services was rendered, and

(ii) the day on which the account in respect of those services would have been rendered had there been no undue delay in rendering the account in respect of the services;

Related Provisions: 12(2) — Rule is for greater certainty only; 34 — Professional business; 68 — Allocation of amounts in consideration for disposition of property; 78 — Unpaid amounts; 138(11.5)(k) — Transfer of business by non-resident insurer.

Pre-RSC History: Para. 12(1)(b) substituted by 1980-81-82-83, c. 140, subsec. 4(1), applicable to taxation years ending after 1982. Para. 12(1)(b) formerly read:

> (b) any amount receivable by the taxpayer in respect of property sold or services rendered in the course of a business in the year, notwithstanding that the amount or any part thereof is not due until a subsequent year, unless the method adopted by the taxpayer for computing income from the business and accepted for the purpose of this Part does not require him to include any amount receivable in computing his income for a taxation year unless it has been received in the year;

Para. 12(1)(b) substituted by 1974-75-76, c. 26, subsec. 4(1), applicable after November 18, 1974, to substitute "or any part thereof is not due" for "may not be receivable".

Selected Cases [para. 12(1)(b)]: *Huang & Danczkay Ltd. v. MNR*, [1998] 3 C.T.C. 337 (FCTD) (Receivables brought into income only when income-earning process virtually complete); *Stevenson & Hunt Insurance Brokers Ltd. v. Canada*, [1993] 1 C.T.C. 383 (FCTD) (Contingent commissions "earned" or "receivable" by insurance broker income when amount ascertained); *Maritime Telegraph and Telephone Co. v. Canada*, [1992] 1 C.T.C. 264 (FCA) (Taxpayer not permitted to change method of reporting income for tax purposes); *West Kootenay Power and Light Co. v. Canada*, [1992] 1 C.T.C. 15 (FCA) (In calculating income for tax purposes, taxpayer may use different method from that used for accounting purposes); *West Hill Redevelopment Co. v. MNR*, [1991] 2 C.T.C. 83 (FCTD) (Taxpayer who sold condominiums and took back mortgages at below-market interest rates must include full price expressed in sale, not price reduced by difference between face value of mortgage and lesser market value); *Dominion Construction Co. (Niagara) Ltd. v. MNR*, [1974] C.T.C. 2006 (T.R.B.) (Holdback taxable in year receivable).

Interpretation Bulletins: IT-129R: Lawyers' trust accounts and disbursements; IT-170R: Sale of property — when included in income computation.

(c) **interest** — subject to subsections (3) and (5) [should be (4.1) — ed.], any amount received or re-

ceivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

Proposed Amendment — 12(1)(c)

(c) **Interest** — subject to subsections (3) and (4.1), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 4, will amend para. 12(1)(c) to read as above, applicable to taxation years that end after September 1997.

Technical Notes: Section 12 of the Act provides for the inclusion of various amounts in computing the income of a taxpayer for a taxation year from a business or property.

Paragraph 12(1)(c) requires that any interest received or receivable by a taxpayer in a taxation year be included in computing the taxpayer's income for the year. The existing reference in paragraph 12(1)(c) to subsection 12(5) is corrected to refer instead to subsection 12(4.1).

Related Provisions: 12(3) — Accrued interest taxable to corporation, partnership and certain trusts; 12(4) — Annual accrual of interest even if unpaid; 12(4.1) — Impaired debt obligations; 12(9.1) — Exception for certain interests in prescribed debt obligations; 12.1 — Cash bonus on Canada Savings Bonds; 16 — Income and capital combined; 16(3) — Bonds purchased at a discount; 16(6) — Indexed debt obligations — amount deemed received as interest; 17 — Interest deemed received on loan to non-resident; 18(9.1) — Penalties, bonuses and rate reduction payments; 20(1)(c) — Deduction for interest paid; 20(14) — Accrued bond interest; 20(14.1) — Interest on debt obligation; 81(1)(m) — Interest on certain obligations exempt; 137(4.1) — Interest deemed received on certain reductions of capital by credit union; 142.5(3)(a), (b) — Mark-to-market debt obligation; 218 — Loan to wholly-owned subsidiary; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares; Canada-U.S. tax treaty, Art. XI — Taxation of interest.

History: Para. 12(1)(c) amended by 1998, c. 19, subsec. 71(1), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The para. formerly read:

(c) interest — any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's profit) as, on account or in lieu of payment of, or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

Pre-RSC History: Para. 12(1)(c) substituted by 1980-81-82-83, c. 140, subsec. 4(1), applicable to 1982 *et seq.* Para. 12(1)(c) formerly read:

(c) any amount received by the taxpayer in the year or receivable by him in the year (depending upon the method regularly followed by the taxpayer in computing his profit) as, on account or in lieu of payment of, or in satisfaction of, interest;

Selected Cases [para. 12(1)(c)]: *Shaw (J.M.) v. MNR*, [1993] 1 C.T.C. 221 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 399 (note) (Amount paid as "interest" on additional compensation awarded for expropriation was interest income, not proceeds of disposition); *Praxair Canada Inc. v. MNR*, [1993] 1 C.T.C. 130 (FCTD) (Creditor accepting shares of debtor in satisfaction of unpaid interest received "amount" equal to market value of shares, not par value); *Fisher, E.R., Ltd. v. The Queen*, [1986] 2 C.T.C. 114 (FCTD) (Interest penalty paid on expropriation was added to proceeds of disposition, and was not a windfall); *Miller v. The Queen*, [1985] 2 C.T.C. 139 (FCTD) (Interest on retroactive salary increase not employment income); *Freeway Properties Inc. v. The Queen*, [1985] 1 C.T.C. 222 (FCTD) (Prepaid interest on mortgage included in year received); *Perini Estate v. The Queen*, [1982] C.T.C. 74 (FCA) (Interest on proceeds of disposition, determined retroactively and paid at later date, taxable); *The Queen v. Henuset Bros. Ltd. (No. 2)*, [1977] C.T.C. 228 (FCTD) (Prepaid interest was income, not down payment).

Regulations: 201(1)(b) (information return).

Interpretation Bulletins: IT-265R3: Payments of income and capital combined; IT-396R: Interest income.

Advance Tax Rulings: ATR-61: Interest accrual rules.

Forms: T5 Segment; T5 Summary: Return of investment income; T5 Supplementary: Statement of investment income.

(d) **reserve for doubtful debts** — any amount deducted under paragraph 20(1)(l) as a reserve in computing the taxpayer's income for the immediately preceding taxation year;

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer; 138(11.91)(d) — Computation of income for non-resident insurer; 142.3(1)(c) — Amount deductible in respect of specified debt obligation; Reg. 2405(3)"gross Canadian life investment income"(d) — Inclusion in life insurer's income.

Pre-RSC History: Para. 12(1)(d) substituted by 1988, c. 55, subsec. 4(1), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. Para. 12(1)(d) formerly read:

(d) any amount deducted as a reserve for doubtful debts in computing the taxpayer's income for the immediately preceding year;

Selected Cases [para. 12(1)(d)]: *92735 Canada Ltd. v. R.*, [1999] 2 C.T.C. 2661 (TCC) (Debt becomes doubtful when collection doubtful on objective basis).

Interpretation Bulletins: IT-442R: Bad debts and reserve for doubtful debts.

(d.1) **reserve for guarantees, etc.** — any amount deducted under paragraph 20(1)(l.1) as a reserve in computing the taxpayer's income for the immediately preceding taxation year;

Pre-RSC History: Para. 12(1)(d.1) added by 1988, c. 55, subsec. 4(1), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

(e) **reserves for certain goods and services, etc.** — any amount

(i) deducted under paragraph 20(1)(m) (including any amount substituted by virtue of subsection 20(6) for any amount deducted under that paragraph), paragraph 20(1)(m.1) or subsection 20(7), or

(ii) deducted under paragraph 20(1)(n),

in computing the taxpayer's income from a business for the immediately preceding year;

Related Provisions: 66.2(2)(b)(ii)(B), 66.4(2)(a)(ii)(B) — Deductions for resource expenses; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(11.91)(d) — Computation of income of non-resident insurer.

Pre-RSC History: Subpara. 12(1)(e)(i) substituted by 1980-81-82-83, c. 140, subsec. 4(2), applicable to 1979 *et seq.* to add a reference to "paragraph 20(1)(m.1)".

Subpara. 12(1)(e)(ii) substituted by 1973-74, c. 14, s. 2, applicable to 1972 *et seq.*

Selected Cases [para. 12(1)(e)]: *Regina Shoppers Mall Ltd. v. Canada*, [1991] 1 C.T.C. 297 (FCA) (Taxpayer entitled to file return inconsistent with Minister's assessment for previous year); *Sears Canada Inc. v. Canada*, [1989] 1 C.T.C. 127 (FCA); leave to appeal to SCC refused (1989), 100 N.R. 160 (note), (sub nom. *Sears Canada Inc. v. MNR*) (Reserve improperly deducted nevertheless required to be included in subsequent year).

Interpretation Bulletins: IT-73R5: The small business deduction; IT-154R: Special reserves.

(e.1) **negative reserves** — where the taxpayer is an insurer, the amount prescribed in respect of the insurer for the year;

Related Provisions: 20(22) — Deduction in following year; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g)(i) — Windup of subsidiary insurance corporation; 138(11.5)(j,l) — Transfer of business by non-resident insurer; 138(11.91)(d.1)(ii) — Computation of income for non-resident insurer.

History: Para. 12(1)(e.1) added by 1997, c. 25, subsec. 2(1), applicable to 1996 *et seq.*

Regulations: 1400(2) (amount prescribed).

(f) **insurance proceeds expended** — such part of any amount payable to the taxpayer as compensation for damage to, or under a policy of insurance in respect of damage to, property that is depreciable property of the taxpayer as has been expended by the taxpayer

(i) within the year, and

(ii) within a reasonable time after the damage,

on repairing the damage;

Related Provisions: 13(21)"proceeds of disposition"(c) — Depreciable property — proceeds of disposition.

(g) **payments based on production or use** — any amount received by the taxpayer in the year that was dependent on the use of or production from property whether or not that amount was an instalment of the sale price of the property, except that an instalment of the sale price of agricultural land is not included by virtue of this paragraph;

Selected Cases [para. 12(1)(g)]: *Larsen v. R.*, [2000] 1 C.T.C. 209 (FCA) (Timber stand may be farm property); *Lackie v. The Queen*, [1979] C.T.C. 389 (FCA) (Proceeds from sale of gravel, paid in yearly instalments, was income from property); *MNR v. Bartlett*, [1972] C.T.C. 333 (FCA) (No special prospector treatment for vendor of mining rights on terms varying with production); *Mel-Bar Ranches Ltd. v. MNR (No. 2)*, [1989] 1 C.T.C. 360 (FCTD) (Sale of timber cut to clear land for grazing not income from business).

Interpretation Bulletins: IT-423: Sale of sand, gravel or topsoil; IT-426: Shares sold subject to an earnout agreement; IT-462: Payment based on production or use.

(g.1) **proceeds of disposition of right to receive production** — any proceeds of disposition to which subsection 18.1(6) applies;

History: Para. 12(1)(g.1) added by 1998, c. 19, subsec. 71(2), applicable to dispositions that occur after November 17, 1996.

(h) **previous reserve for quadrennial survey** — any amount deducted as a reserve under paragraph 20(1)(o) in computing the taxpayer's income for the immediately preceding year;

(i) **bad debts recovered** — any amount, other than an amount referred to in paragraph (i.1), received in the year on account of a debt or a loan or lending asset in respect of which a deduction for bad debts or uncollectable loans or lending assets had been made in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 12.4 — Bad debt inclusion; 20(1)(p) — Bad debts; 22(1) — Sale of accounts receivable; 26(3) — Banks — write-offs and recoveries; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 111(5.3) — Doubtful debts and bad debts; 138(11.5)(k) — Transfer of business by non-resident insurer; 142.3(1)(c), (g) — Amount deductible in respect of specified debt obligation; 142.5(8)(d)(iv) — First deemed disposition of mark-to-market debt obligation.

Pre-RSC History: Para. 12(1)(i) substituted by 1988, c. 55, subsec. 4(2), applicable after June 17, 1987. Para. 12(1)(i) formerly read:

(i) bad debts recovered — any amount received in the year on account of a debt in respect of which a deduction for bad debts had been made in computing the taxpayer's income for a previous year;

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-220R2: CCA — proceeds of disposition of depreciable property; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-442R: Bad debts and reserve for doubtful debts.

(i.1) **idem** — where an amount is received in the year on account of a debt in respect of which a deduction for bad debts under subsection 20(4.2) was made in computing the taxpayer's income for a preceding taxation year, that proportion of 3/4 of the amount that

(i) the amount that was deducted under subsection 20(4.2) in respect of that debt

is of

(ii) the total of the amount that was so deducted under subsection 20(4.2) and the amount that was deemed to be an allowable capital loss under subsection 20(4.2) in respect of the debt;

Related Provisions: 39(11) — Bad debt recovery; 89(1)"capital dividend account"(c) — Capital dividend account.

Pre-RSC History: Para. 12(1)(i.1) added by 1988, c. 55, subsec. 4(2), applicable after June 17, 1987 except that

(a) in the case of a corporation, in respect of an amount received on account of a debt which arose as a result of a disposition of property occurring in a taxation year commencing before July, 1988, and

(b) in any other case, in respect of an amount received on account of a debt which arose as a result of a disposition of property occurring in a fiscal period commencing before 1988,

the reference to "3/4" in para. 12(1)(i.1) shall be read as a reference to "1/2".

Interpretation Bulletins: IT-442R: Bad debts and reserve for doubtful debts.

(j) **dividends from resident corporations** — any amount required by subdivision h to be included in computing the taxpayer's income for the year in respect of a dividend paid by a corporation resident in Canada on a share of its capital stock;

Related Provisions: 82(1) — Taxable dividends received; 84, 84.1(1)(b) — Deemed dividends; 139.1(4)(f), (g) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

Advance Tax Rulings: ATR-15: Employee stock option plan.

(k) **dividends from other corporations** — any amount required by subdivision i to be included in computing the taxpayer's income for the year in respect of a dividend paid by a corporation not resident in Canada on a share of its capital stock or in respect of a share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer;

Proposed Amendment — 12(1)(k)

(k) **foreign corporations, trusts and investment entities** — any amount required by subdivision i to be included in computing the taxpayer's income for the year;

Application: The June 22, 2000 draft legislation, s. 1, will amend para. 12(1)(k) to read as above, applicable to taxation years that begin after 2000.

Technical Notes: Section 12 of the *Income Tax Act* provides for the inclusion of various amounts in computing a taxpayer's income for a taxation year from business or property. Para-

graph 12(1)(k) refers to certain amounts required by existing sections 90 to 95 to be so added.

Paragraph 12(1)(k) is amended so that it refers to all amounts required to be added in computing income under amended sections 90 to 95, including new sections 94 to 94.2.

This amendment applies to taxation years that begin after 2000.

Related Provisions: 90 — Dividends received from non-resident corporation; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares.

Selected Cases [para. 12(1)(k)]: *Terrador Investments Ltd. v. R.*, [1999] 3 C.T.C. 520 (FCA); leave to appeal to SCC refused (May 18, 2000), File 27499 (No bad debt possible where statute deemed amount to have been received).

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

(l) **partnership income** — any amount that is, by virtue of subdivision j, income of the taxpayer for the year from a business or property;

Related Provisions: 96(1)(c)(ii) — Partner taxed on share of partnership's income from business or property.

Selected Cases [para. 12(1)(l)]: *Cornforth v. The Queen*, [1982] C.T.C. 45 (FCTD) (All income from business with wife assessed to taxpayer where partnership requirements not met).

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner.

Forms: T2032: Statement of professional activities.

(m) **benefits from trusts** — any amount required by subdivision k or subsection 132.1(1) to be included in computing the taxpayer's income for the year, except

(i) any amount deemed by that subdivision to be a taxable capital gain of the taxpayer, and

(ii) any amount paid or payable to the taxpayer out of or under an RCA trust (within the meaning assigned by subsection 207.5(1));

Related Provisions: 12(1)(n.3) — Retirement compensation arrangement — refund of contributions; 56(1)(x), (z) — Retirement compensation arrangement; 104(13), (14) — Income from trusts; 208 — Tax payable by exempt person.

History: The opening words of para. 12(1)(m) substituted by 1994, c. 21, subsec. 6(1), applicable to 1988 *et seq.* The opening words formerly read:

(m) benefits from trusts — any amount required by subdivision k to be included in computing the income of the taxpayer for the year, except

Pre-RSC History: Para. 12(1)(m) substituted by 1987, c. 46, subsec. 3(1), applicable after October 8, 1986. Para. 12(1)(m) formerly read:

(m) benefits from estates, etc. — any amount required by subdivision k to be included in computing the income of the taxpayer for the year except any amount deemed by that subdivision to be a taxable capital gain of the taxpayer;

(n) **employees profit sharing plan** — any amount received by the taxpayer in the year out of or under

(i) an employees profit sharing plan, or

(ii) an employee trust

established for the benefit of employees of the taxpayer or of a person with whom the taxpayer does not deal at arm's length;

Related Provisions: 6(1)(a) — Inclusions — value of benefits; 6(1)(d) — Inclusions — allocations etc. under profit sharing plan; 6(1)(g) — Inclusions — employee benefit plan benefits; 20(1)(w) — Deduction to employer; 32.1 — Employee benefit plan deductions; 107.1 — Distribution by employee trust or employee benefit plan; 144(1) — "Employees profit sharing plan" defined; 144(6), (7) — Beneficiary's receipts.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(n.1) **employee benefit plan** — the amount, if any, by which the total of all amounts received by the taxpayer in the year out of or under an employee benefit plan to which the taxpayer has contributed as an employer (other than amounts included in the income of the taxpayer by virtue of paragraph (m)) exceeds the amount, if any, by which the total of all amounts

(i) so contributed by the taxpayer to the plan, or

(ii) included in computing the taxpayer's income for any preceding taxation year by virtue of this paragraph

exceeds the total of all amounts

(iii) deducted by the taxpayer in respect of the taxpayer's contributions to the plan in computing the taxpayer's income for the year or any preceding taxation year, or

(iv) received by the taxpayer out of or under the plan in any preceding taxation year (other than an amount included in the taxpayer's income by virtue of paragraph (m));

Related Provisions: 6(1)(a) — Inclusions — value of benefits; 6(1)(g) — Employee benefit plan benefits; 6(10) — Contributions to an employee benefit plan; 18(1)(o) — No deduction for employee benefit plan contributions; 32.1 — Employee benefit plan deductions; 87(2)(j.3) — Amalgamation — continuation of corporation; 107.1 — Distribution by employee trust or employee benefit plan.

Pre-RSC History: Para. 12(1)(n.1) substituted by 1980-81-82-83, c. 140, subsec. 4(3), applicable to 1980 *et seq.*

Paras. 12(1)(n) substituted, (n.1) added by 1980-81-82-83, c. 48, subsec. 4(1), applicable in respect of amounts received after 1979. Para. 12(1)(n) formerly read:

(n) any amount received by the taxpayer in the year under an employees profit sharing plan established for the benefit of employees of the taxpayer or of a corporation with whom the taxpayer does not deal at arm's length;

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(n.2) **forfeited salary deferral amounts** — where deferred amounts under a salary deferral arrangement in respect of another person have been deducted under paragraph 20(1)(oo) in computing the taxpayer's income for preceding taxation years, any amount in respect of the deferred amounts that was deductible under paragraph 8(1)(o) in computing the income of the person for a taxation year ending in the year;

Related Provisions: 6(1)(a) — Inclusions — value of benefits; 6(1)(i) — Salary deferral arrangement payments; 6(11) — Salary deferral arrangement; 87(2)(j.3) — Amalgamations — continuing corporation.

Pre-RSC History: Para. 12(1)(n.2) added by 1986, c. 55, subsec. 3(1), applicable to 1986 *et seq.*

(n.3) **retirement compensation arrangement** — the total of all amounts received by the taxpayer in the year in the course of a business out of or under a retirement compensation arrangement to which the taxpayer, another person who carried on a business that was acquired by the taxpayer, or any person with whom the taxpayer or that other person does not deal at arm's length, has contributed an amount that was deductible under paragraph 20(1)(r) in computing the contributor's income for a taxation year;

Related Provisions: 56(1)(x)–(z) — Employee's income inclusion — amounts received from RCA; 87(2)(j.3) — Amalgamation — continuing corporation; 207.5–207.7 — Tax in respect of retirement compensation arrangements.

Pre-RSC History: Para. 12(1)(n.3) added by 1987, c. 46, subsec. 3(2), applicable after October 8, 1986.

Forms: T4A-RCA Supp: Statement of amounts paid from an RCA.

(o) **royalties, etc.** — any amount (other than an amount referred to in paragraph 18(1)(m), paid or pay-

able by the taxpayer, or a prescribed amount) that, because of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute, became receivable in the year by

(i) Her Majesty in right of Canada or a province,

(ii) an agent of Her Majesty in right of Canada or a province, or

(iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

as a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that can reasonably be regarded as being in lieu of any such amount, or in respect of the late receipt or non-receipt of any such amount, and that can reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property of the taxpayer in respect of which the obligation imposed by statute or the contractual obligation, as the case may be, applied, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada or from an oil or gas well located in Canada,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource located in Canada,

in respect of which the taxpayer had an interest to which the obligation imposed by statute or the contractual obligation, as the case may be, applied;

Related Provisions: 18(1)(m) — Deductions — limitations — royalties; 65 — Allowance for oil or gas well, mine or timber limit; 66 — Exploration and development expenses of principal-business corporations; 69(6), (7) — Unreasonable consideration; 80.2 — Reimbursement by taxpayers; 104(29) — Amounts deemed to be payable to beneficiaries; 208 — Tax on certain royalties payable by tax-exempt person; 219(1)(k) — Reduction in branch tax; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: The portion of para. 12(1)(o) after subpara. (iii) amended by 1997, c. 25, subsec. 2(2), applicable to taxation years that begin after 1996. That portion formerly read:

as a royalty, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) or from an oil or gas well,

(B) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource,

(C) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource, or

(D) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource,

situated on property in Canada in which the taxpayer had an interest with respect to which the obligation imposed by statute or the contractual obligation, as the case may be, applied;

Cl. 12(1)(o)(v)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 7(1), applicable with respect to amounts that become receivable after July 13, 1990. That cl. formerly read:

(B) to any stage that is not beyond the prime metal stage or its equivalent, of metal or minerals (other than iron or petroleum or related hydrocarbons) from a mineral resource,

Pre-RSC History: Subpara. 12(1)(o)(iii) amended by 1988, c. 55, subsec. 4(3), to substitute "controlled by Her Majesty" for "controlled, directly or indirectly in any manner whatever, by Her Majesty", applicable to taxation years commencing after 1988.

Cl. 12(1)(o)(v)(A) amended to add "from a natural accumulation of petroleum or natural gas (other than a mineral resource) or", by 1986, c. 6, subsec. 6(1), applicable with respect to amounts that become receivable after March, 1985.

Subpara. 12(1)(o)(iv) substituted by 1985, c. 45, subsec. 5(1), applicable to taxation years commencing after 1984. Subpara. (iv) formerly read:

(iv) the acquisition, development or ownership of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired after 1971, or

Subpara. 12(1)(o)(v) substituted to amend that portion ending with cl. (B) and to add cls. (C) and (D) by 1985, c. 45, subsec. 5(2), applicable with respect to amounts receivable after 1984. Subpara. (v) to the end of cl. (B) formerly read:

(v) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons from a mineral resource or an oil or gas well, or

(B) metal or minerals, to any stage that is not beyond the prime metal stage or its equivalent, from a mineral resource

All that portion of subpara. 12(1)(o)(v) following cl. (B) substituted by 1984, c. 1, subsec. 5(1), applicable with respect to amounts that became receivable after April 19, 1983 in respect of any period after that date. That portion formerly read:

situated on property in Canada in which the taxpayer had an interest (including a right to take or remove petroleum, natural gas, related hydrocarbons, metal or minerals);

Subpara. 12(1)(o)(v) substituted by 1980-81-82-83, c. 140, subsec. 4(4), applicable to amounts receivable after December 31, 1982. Subpara. (v) formerly read:

(v) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons, or

(B) metal or minerals to any stage that is not beyond the prime metal stage or its equivalent

from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or minerals;

All that portion of para. 12(1)(o) preceding subpara. (i) substituted by 1977-78, c. 1, s. 5, applicable in respect of amounts that became receivable after May 6, 1974 in respect of the period after that date.

All that portion of para. 12(1)(o) following subpara. (iii) substituted by 1976-77, c. 4, s. 2, applicable with respect to amounts described in para. 12(1)(o) that are receivable, and with respect to the fair market value of

property referred to therein that is receivable, after May 25, 1976. That portion formerly read:

> as a royalty or an equivalent amount, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax levied for the purpose of providing services in the immediate area of the property of the taxpayer), rental, bonus, levy or otherwise or as an amount, however described, that may reasonably be regarded as being in lieu of a royalty or an equivalent amount, tax, rental, bonus, levy or other amount (whether such royalty or equivalent amount, tax, rental, bonus, levy or other amount is receivable pursuant to any other Act or a contract) that may reasonably be regarded as being in relation to
>
> (iv) the acquisition, development or ownership by a taxpayer of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired after 1971, or
>
> (v) the production in Canada of
>
> (A) petroleum, natural gas or related hydrocarbons, or
>
> (B) metal or industrial minerals to any stage that is not beyond the prime metal stage or its equivalent
>
> from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or industrial minerals.

Para. 12(1)(o) added by 1974-75-76, c. 26, subsec. 4(2), applicable in respect of amounts that become receivable and in respect of the fair market value of property that becomes receivable, in respect of the period, after May 6, 1974, except that in respect of amounts or property that becomes receivable in respect of the period from May 6, 1974 to November 18, 1974 the para. shall be read as follows:

> (o) any amount (other than an amount, referred to in paragraph 18(1)(m), paid or payable by the taxpayer) receivable in the year or the fair market value of any property receivable (other than an amount or property receivable by Her Majesty in right of Canada for the use and benefit of a band or bands as defined in the *Indian Act*) in the year by
>
> (i) Her Majesty in right of Canada or a province,
>
> (ii) an agent of Her Majesty in right of Canada or a province, or
>
> (iii) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province
>
> as a royalty or an equivalent amount, tax, rental, levy or otherwise or as an amount, however described, that may reasonably be regarded as being in lieu of a royalty or an equivalent amount, tax, rental, levy or other amount (whether such royalty or equivalent amount, tax, rental, levy or other amount is receivable pursuant to any other Act or a contract) that may reasonably be regarded as attributable to the production in Canada of
>
> (iv) petroleum, natural gas or related hydrocarbons, or
>
> (v) metal or industrial minerals to any stage that is not beyond the prime metal stage or its equivalent
>
> from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or industrial minerals.

Selected Cases [para. 12(1)(o)]: *French Shoes Ltd. v. The Queen*, [1986] 2 C.T.C. 132 (FCTD) (Tenant inducement paid to franchise included in income); *Midwest Oil Production Ltd. v. The Queen*, [1983] C.T.C. 338 (FCA) (Royalty was "amount receivable" despite interposition of marketing board).

Regulations: 1211 (prescribed amount).

Remission Orders: *Syncrude Remission Order*, P.C. 1976-1026 (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

Information Circulars: 86-3: Alberta Royalty Tax Credit — Individuals.

(p) **certain payments to farmers** — any amount received by the taxpayer in the year as a stabilization payment, or as a refund of a levy, under the *Western Grain Stabilization Act* or as a payment, or a refund of a premium, in respect of the gross revenue insurance program established under the *Farm Income Protection Act*;

Related Provisions: 20(1)(ff) — Deductions — payments by farmers.

History: Para. 12(1)(p) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(1), applicable to 1991 *et seq.* Para. 12(1)(p) formerly read:

> (p) any amount received by the taxpayer as a stabilization payment or as a refund of levy under the *Western Grain Stabilization Act*;

Pre-RSC History: Para. 12(1)(p) added by 1974-75-76, c. 87, s. 47, proclaimed in force from April 1, 1976.

Regulations: 234–236 (information slips for farm support payments).

Remission Orders: *Farmers' Income Taxes Remission Order*, P.C. 1993-1647 (remission of tax on certain income under 12(1)(p) for 1992, where taxpayer repays insurance payments in later year).

(q) **employment tax deduction** — any amount deducted under subsection 127(13) or (14) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by the taxpayer for the year;

Pre-RSC History: Para. 12(1)(q) substituted by 1979, c. 5, s. 3, applicable to taxation years ending after November 16, 1978. Para. 12(1)(q) formerly read:

> (q) employment tax credit — any amount deducted under subsection 127(13) in computing the tax otherwise payable by the taxpayer under this Part for the year.

Para. 12(1)(q) added by 1977-78, c. 4, s. 1.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(r) **inventory adjustment** — the total of all amounts each of which, in respect of a property described in the taxpayer's inventory at the end of the year and valued at its cost amount to the taxpayer for the purposes of computing the taxpayer's income for the year, is an allowance in respect of depreciation, obsolescence or depletion included in that cost amount;

Related Provisions: 10(1) — Inventory valuation; 20(1)(ii) — Deductions — inventory adjustment; 87(2)(j.1) — Amalgamations — inventory adjustment.

Pre-RSC History: Para. 12(1)(r) added by 1979, c. 5, s. 3, applicable to taxation years ending after November 16, 1978.

(s) **reinsurance commission** — the total of all amounts each of which is the maximum amount that an insurer may claim in the year in respect of a reserve for a reinsurance commission for a policy as allowed by regulations made under paragraph 20(7)(c) in respect of a risk the reinsurance of which is assumed by the taxpayer;

Related Provisions: 20(1)(jj) — Reinsurance commission — deduction; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — winding-up of subsidiary insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer.

Pre-RSC History: Para. 12(1)(s) added by 1980-81-82-83, c. 48, subsec. 4(2), applicable to 1980 *et seq.*

(t) **investment tax credit** — the amount deducted under subsection 127(5) or (6) in respect of a property acquired or an expenditure made in a preceding taxation year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);

Related Provisions: 70(1) — Death of a taxpayer; 87(2)(j.6) — Amalgamations — continuing corporation; 88(2)(c) — Winding-up of a Canadian corporation.

Pre-RSC History: Para. 12(1)(t) substituted by 1988, c. 55, subsec. 4(4), applicable to 1988 *et seq.* Para. 12(1)(t) formerly read:

> (t) investment tax credit — the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year to the extent that it is not included in an amount determined under paragraph 13(7.1)(e), subparagraph 13(21) (f)(vii), paragraph 37(1)(e) or subparagraph 53(2)(c)(vi), 53(2)(h)(ii) or 66.1(6)(b)(xi);

Para. 12(1)(t) amended by 1986, c. 55, subsec. 3(2), to substitute "13(7.1)(e), subparagraph 13(21)(f)(vii), paragraph 37(1)(e) or subparagraph 53(2)(c)(vi), 53(2)(h)(ii) or 66.1(6)(b)(xi)" for "13(7.1)(e) or 37(1)(e) or subparagraph 13(21)(f)(vii), 53(2) (c)(vi) or 53(2)(h)(ii)", applicable after November 30, 1985.

Para. 12(1)(t) substituted by 1980-81-82-83, c. 140, subsec. 4(5), applicable to 1982 *et seq.*, to add "53(2)(c)(vi) or 53(2)(h)(ii)".

Para. 12(1)(t) added by 1980-81-82-83, c. 48, subsec. 4(2), applicable to taxation years ending after December 11, 1979.

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit.

Information Circulars: 78-4R3: Investment tax credit rates.

(u) **home insulation or energy conversion grants** — the amount of any grant received by the taxpayer in the year under a prescribed program of the Government of Canada relating to home insulation or energy conversion in respect of a property used by the taxpayer principally for the purpose of gaining or producing income from a business or property;

Related Provisions: 13(7.1) — Deemed capital cost of certain property; 53(2)(k) — Adjustments to cost base; 56(1)(s) — Amounts to be included in income for year — grants under prescribed programs.

Pre-RSC History: Para. 12(1)(u) added by 1980-81-82-83, c. 48, subsec. 4(2), applicable to 1981 *et seq.*

Regulations: 224 (information return); 5500, 5501 (prescribed program).

(v) **research and development deductions** — the amount, if any, by which the total of amounts determined at the end of the year in respect of the taxpayer under paragraphs 37(1)(d) to (h) exceeds the total of amounts determined at the end of the year in respect of the taxpayer under paragraphs 37(1)(a) to (c.1);

Related Provisions: 37(1)(c.1) — Deduction allowed in subsequent year.

Pre-RSC History: Para. 12(1)(v) amended by 1987, c. 46, subsec. 3(3), to substitute "paragraphs 37(1)(d) to (h)" for "paragraphs 37(1)(d) to (g)", applicable to taxation years ending after January 15, 1987.

The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Para. 12(1)(v) substituted by 1984, c. 45, subsec. 5(1), to substitute "(g)" for "(f)", applicable to 1984 *et seq.*

Para. 12(1)(v) added by 1980-81-82-83, c. 48, subsec. 4(2), applicable to taxation years ending after January 12, 1981.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(w) **subsec. 80.4(1) benefit** — where the taxpayer is a corporation that carried on a personal services business at any time in the year or a preceding taxation year, the amount deemed by subsection 80.4(1) to be a benefit received by it in the year from carrying on a personal services business;

Pre-RSC History: Para. 12(1)(w) substituted by 1984, c. 45, subsec. 5(2), to substitute "125(7)(d)" for "125(6)(g.1)", applicable to 1985 *et seq.*

Para. 12(1)(w) added by 1980-81-82-83, c. 140, subsec. 4(6), applicable to taxation years commencing after November 12, 1981.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(x) **inducement, reimbursement, [refund] etc.** — any particular amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from

(i) a person or partnership (in this paragraph referred to as the "payer") who pays the particular amount

(A) in the course of earning income from a business or property,

(B) in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or

(C) in circumstances where it is reasonable to conclude that the payer would not have paid the amount but for the receipt by the payer of amounts from a payer, government, municipality or public authority described in this subparagraph or in subparagraph (ii), or

(ii) a government, municipality or other public authority,

where the particular amount can reasonably be considered to have been received

(iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or

(iv) as a refund, reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of

(A) an amount included in, or deducted as, the cost of property, or

(B) an outlay or expense,

Selected Cases [subpara. 12(1)(x)(iv)]: *Canada Safeway Ltd. v. R.*, [1998] 1 C.T.C. 120 (FCA) ("Reimbursement" does not include refund of tax).

to the extent that the particular amount

(v) was not otherwise included in computing the taxpayer's income, or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, for the year or a preceding taxation year,

(vi) except as provided by subsection 127(11.1), (11.5) or (11.6), does not reduce, for the purpose of an assessment made or that may be made under this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

(vii) does not reduce, under subsection (2.2) or 13(7.4) or paragraph 53(2)(s), the cost or capital cost of the property or the amount of the outlay or expense, as the case may be, and

(viii) may not reasonably be considered to be a payment made in respect of the acquisition by the payer or the public authority of an interest in the taxpayer or the taxpayer's business or property;

Proposed Amendment — 12(1)(x) — Provincial SR&ED super-deductions

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Government Assistance — SR&ED*

(31) That for taxation years that end after [to be changed to "that begin after"; see below — ed.] February 2000, where, for the purpose of computing income or taxable income relevant in calculating an income tax payable to a province for a taxation year, a corporation becomes entitled to deduct an amount in computing income or taxable income in respect of an expenditure on scientific research and experimental development and that amount exceeds the amount of the expenditure, the specified percentage of the excess be considered for the purposes of the Act to be government assistance received in the year in respect of scientific research and experimental development, and, for this purpose, the specified percentage is

(a) where the corporation's expenditure limit for the year, as determined by subsection 127(10.2) of the Act, is nil, the maximum provincial tax rate applicable to active business income earned in the province by a corporation for the year, and

(b) in any other case, the provincial tax rate applicable to small business income earned in the province by a corporation for the year.

Federal budget, supplementary information, February 28, 2000: *Government Assistance for Scientific Research and Experimental Development*

Various levels of government provide both tax and non-tax assistance to taxpayers in order to achieve a variety of policy objectives. Tax assistance includes investment tax credits (ITCs) and super-deductions (i.e., deductions over 100% of cost). Non-tax assistance includes grants and conditionally repayable contributions. The combined level of assistance can be overly generous with a resultant misallocation of resources.

One of the ways that this misallocation is avoided is to base the cost of the expenditure for federal ITC purposes on the cost of the eligible investment net of any other government assistance or reimbursement that the taxpayer has received or is entitled to receive. This ensures that the ITC is based on the taxpayer's actual costs.

However, not all types of government assistance are treated equally for income tax purposes. Deductions in excess of 100%, commonly known as "super-deductions," are provided in certain provinces. These super-deductions are not considered to be government assistance and thus do not affect the expenditure base for federal ITC purposes, even though they are similar in many respects to provincial ITCs.

To address this issue, the budget proposes to treat provincial deductions for scientific research and experimental development (SR&ED) that exceed the actual amount of the expenditure as government assistance for taxation years ending after February 2000. If a corporation is eligible for SR&ED ITCs at the enhanced rate of 35% (i.e., it is a small Canadian-controlled private corporation), the value of the assistance will be determined at the relevant provincial small business corporate income tax rate that is applicable in that province multiplied by the amount by which the deduction for provincial income tax purposes exceeds the actual amount of the expenditure. For all other corporations, the value of the assistance will be determined as the maximum provincial corporate income tax rate applicable to active business income multiplied by the amount by which the deduction for provincial income tax purposes exceeds the actual amount of the expenditure.

This change will result in SR&ED deductions and credits having comparable value, reduce stacking of benefits and make the tax system fairer.

Department of Finance news release, May 9, 2000: *Finance Minister Clarifies Certain Income Tax Measures in the 2000 Budget*

Finance Minister Paul Martin today announced several clarifications to measures announced in the 2000 budget. These clarifications will ensure the smooth conduct of business transactions while consultations take place.

Government Assistance for Scientific Research and Experimental Development

Minister Martin announced today that the measure regarding the treatment of provincial deductions for scientific research and experimental development (SR&ED) expenditures will apply to taxation years commencing after February 2000. As originally announced in the budget, this measure would have applied for taxation years ending after February 2000. Under this measure, provincial deductions for SR&ED expenditures that exceed the actual amount of the expenditure will be taken into account in determining government assistance for the purposes of the federal investment tax credit base. Postponing the implementation date addresses concerns about the impact of the timing of this change on corporate budgeting strategies for the year 2000.

For further information: Government Assistance for SR&ED, Alexandra MacLean, (613) 995-2980.

Related Provisions: 12(2.1) — Receipt of inducement, reimbursement, etc.; 12(2.2) — Election to exclude amount from income; 13(7.4) — Deemed capital cost of certain property; 20(1)(hh) — Repayments of inducements, etc.; 53(2)(k) — Reduction in adjusted cost base — assistance; 53(2.1) — Election; 80(1)"excluded obligation"(a)(i) — Debt forgiveness rules do not apply where amount included or would be included under 12(1)(x) in debtor's income; 80.2 — Reimbursement by taxpayer; 87(2)(j.6) — Amalgamations — continuing corporation; 125.4(5) — Canadian film/video credit is deemed to be assistance; 125.5(5) — Film/video production services credit is deemed to be assistance; 126.1(12) — Prepayment of UI premium tax credit; 127(9) — Meaning of "non-government assistance" for ITC purposes; 127(18) — Reduction of qualified expenditures for ITC to reflect assistance; 248(16)–(18) — Goods and services tax — input tax credit and rebate.

History: Subpara. 12(1)(x)(i) amended by 1999, c. 22, subsec. 5(1), applicable to amounts received after February 23, 1998 other than amounts received before 1999 pursuant to an agreement in writing made before February 24, 1998. The subpara. formerly read:

(i) a person (in this paragraph referred to as the "payer") who pays the particular amount in the course of earning income from a business or property or in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or

The portion of para. 12(1)(x) before subpara. (vii) amended by 1998, c. 19, subsec. 71(3), applicable to amounts received after 1990 except that, for taxation years that began before 1996, subpara. 12(1)(x)(vi) shall be read without reference to "(11.5) or (11.6),". That portion formerly read:

(x) inducement, reimbursement, etc. — any amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from

(i) a person who pays the amount (in this paragraph referred to as "the payer") in the course of earning income from a business or property or in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or

(ii) a government, municipality or other public authority

where the amount can reasonably be considered to have been received

(iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or

(iv) as a reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of the cost of property or in respect of an outlay or expense

to the extent that the amount

(v) was not otherwise included in computing the taxpayer's income, or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, for the year or a preceding taxation year,

(vi) except as provided by subsection 127(11.1), (11.5) or (11.6), does not reduce, for the purpose of an assessment made or that may be made under this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

Subpara. 12(1)(x)(vi) amended by 1996, c. 21, s. 4, applicable to taxation years that begin after 1995. The subpara. formerly read:

(vi) except as provided by subsection 127(11.1), does not reduce, for the purposes of this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

Pre-RSC History: Subparas. 12(1)(x)(iv), (vi) amended to substitute "outlay or expense" for "expense" and (vii) substituted, applicable with respect to amounts received after January 1990, and subpara. (v) substituted applicable after May 22, 1985, by 1990, c. 45, subsecs. 39(1), (2). Subparas. (v), (vii) formerly read:

(v) was not otherwise included in computing the taxpayer's income for the year or a preceding taxation year,

(vii) does not reduce, pursuant to subsection 13(7.4) or paragraph 53(2)(s), the cost or capital cost of the property, as the case may be, or

Para. 12(1)(x) added by 1986, c. 6, subsec. 6(2), applicable (by subsec. 6(6) as amended by 1986, c. 55, s. 79) with respect to amounts received after May 22, 1985 other than amounts received after that date pursuant to the terms of an agreement in writing entered into before 4:30 p.m. EDST, May 23, 1985 or to the terms of a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by such authority.

History: Subsec. 4(4) of the *Western Grain Transition Payments Act* (1995, c. 17, Sch. II), as amended by 1998, c. 19, s. 303, provides, effective for payments made after June 22, 1995:

4. (4) *Tax treatment* — For the purposes of the *Income Tax Act*,

. . . . .

(b) a transition payment received in respect of farmland that was, immediately before its disposition by the applicant, capital property of the applicant shall, where the farmland is disposed of before the payment is received, be considered to be an amount required by subsection 53(2) of that Act to be deducted in computing the adjusted cost base of the farmland to the applicant immediately before the disposition;

(c) a transition payment to which neither paragraph (a) nor (b) applies, received by the applicant, shall be considered to be assistance received in the course of earning income from a business or property in respect of the cost of the property or in respect of an outlay or an expense; and

(d) where, pursuant to an equitable arrangement referred to in paragraph 6(c), a portion of a transition payment received by an applicant is paid to a person or partnership that is leasing farmland from the applicant, that portion paid to the person or partnership is required to be included in computing the income of the person or partnership from a business for the taxation year of the person or partnership in which it is received and the amount so paid is deemed not to be a transition payment received by the applicant for the purposes of paragraphs (a) to (c).

Selected Cases [para. 12(1)(x)]: *Iron Ore Co. of Canada v. R.*, [2000] 2 C.T.C. 2402 (TCC) (Refunds or reimbursements accounted for in year amount ascertained); *Bois Aisé de Roberval Inc. v. R.*, [1999] 4 C.T.C. 2161 (TCC) (Refunds taxable in year of receipt, regardless of year improper expense incurred); *Supermarché Ste-Croix Inc. v. Canada*, [1996] 1 C.T.C. 2506 (TCC) (Purchase quotas and first refusal not "interest" in a business; exception inapplicable. Compare *Supermarché Dubuc & Frère Inc.*); *CCLC Technologies Inc. v. Canada*, [1996] 1 C.T.C. 7 (FCTD) (Payments in ordinary course of business are not government "assistance"); *RSI Research Ltd. v. Canada*, [1993] 2 C.T.C. 2378 (TCC) (Amount received in consideration of grant of right to portion of taxpayer's revenues not "non-governmental assistance"); *Canada v. Westcoast Energy Inc.*, [1992] 1 C.T.C. 261 (FCA) (Damage settlement in negligence action not a "reimbursement" within meaning of provision); *Woodward Stores Ltd. v. Canada*, [1991] 1 C.T.C. 233 (FCTD) ("Fixturing allowance" (inducement) was capital receipt).

Regulations: 234–236 (information slips for farm support payments); 7300 (prescribed amount).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures; IT-232R3: Losses — their deductibility in the loss year or in other years.

I.T. Technical News: No. 5 (western grain transition payments); No. 7 (lease inducement payments — renewal term); No. 16 (*Canderel*, *Toronto College Park* and *Ikea* cases).

(x.1) **fuel tax rebates** — the total of all amounts each of which is

(i) a fuel tax rebate received in the year by the taxpayer under subsection 68.4(3) [of] the *Excise Tax Act*, or

(ii) the amount determined by the formula

$$10 (A - B) - C$$

where

A is the total of all fuel tax rebates under subsections 68.4(2) and (3.1) of that Act received in the year by the taxpayer,

B is the total of all amounts, in respect of fuel tax rebates under section 68.4 of that Act received in the year by the taxpayer, repaid by the taxpayer under subsection 68.4(7) of that Act, and

C is the total of all amounts, in respect of fuel tax rebates under section 68.4 of that Act received in the year, deducted under subsection 111(10) in computing the taxpayer's non-capital losses for other taxation years;

Related Provisions: 87(2)(uu) — Fuel tax rebates; 88(1)(e.2) — Winding-up; 111(10) — Fuel tax rebate — loss abatement; 111(11) — Fuel tax rebate — partnerships; 161(7)(a)(viii) — Effect of carry-back of loss, etc.; 164(5)(a) — Effect of carry-back of loss, etc.; 164(5.1)(a) — Effect of carry-back of loss, etc.; 257 — Formula cannot calculate to less than zero.

History: Subpara. 12(1)(x.1)(ii) amended by 1997, c. 26, s. 82, applicable to 1997 *et seq.* Subpara. (xi.1)(ii) formerly read:

(ii) the amount, if any, by which

(A) 10 times the amount, if any, by which

(I) the total of all fuel tax rebates under subsection 68.4(2) of that Act received in the year by the taxpayer

exceeds

(II) the total of all amounts, in respect of fuel tax rebates under subsection 68.4(2) of that Act received in the year by the taxpayer, repaid by the taxpayer under subsection 68.4(7) of that Act

exceeds

(B) the total of all amounts, in respect of fuel tax rebates under subsection 68.4(2) of that Act received in the year, deducted under subsection 111(10) in computing the taxpayer's non-capital loss for a year;

Para. 12(1)(x.1) added by 1994, c. 7, Sch. VI (1992, c. 29), s. 2, applicable to 1992 *et seq.*

(y) **automobile provided to partner** — where the taxpayer is an individual who is a member of a partnership or an employee of a member of a partnership and the partnership makes an automobile available in the year to the taxpayer or to a person related to the taxpayer, the amounts that would be included by reason of paragraph 6(1)(e) in the income of the taxpayer for the year if the taxpayer were employed by the partnership;

History: Para. 12(1)(y) amended by 1997, c. 10, s. 268, applicable to 1996 *et seq.* Para. (y) formerly read:

(y) where the taxpayer is an individual who is a member of a partnership or an employee of a member of the partnership and the partnership makes an automobile available in the year to the taxpayer or to a person related to the taxpayer, the amounts that would be included, by reason of paragraph 6(1)(e) or by reason of paragraph 6(1)(e.1) if that paragraph were read without reference to paragraph 6(1)(a), in the income of the taxpayer for the year if the taxpayer were employed by the partnership;

Pre-RSC History: Para. 12(1)(y) amended by 1990, c. 45, subsec. 39(3), to substitute "the amounts that" for "an amount that" and to add "or by

reason of paragraph 6(1)(e.1) if that paragraph were read without reference to paragraph 6(1)(a)" applicable with respect to taxation years and fiscal periods ending after 1990.

Para. 12(1)(y) added by 1988, c. 55, subsec. 4(5), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

(z) **amateur athlete trust payments** — any amount in respect of an amateur athlete trust required by section 143.1 to be included in computing the taxpayer's income for the year;

Related Provisions: 143.1(2) — Amounts included in beneficiary's income.

History: Para. 12(1)(z) added by 1994, c. 7, Sch VIII (1993, c. 24), subsec. 3(2), applicable to 1988 *et seq.*

Forms: T1061: Canadian amateur athlete trust group information return.

(z.1) **qualifying environmental trusts** — the total of all amounts received by the taxpayer in the year as a beneficiary under a qualifying environmental trust, whether or not the amounts are included because of subsection 107.3(1) in computing the taxpayer's income for any taxation year;

Related Provisions: 20(1)(ss) — Deduction for contribution to qualifying environmental trust; 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(2) — Where property of qualifying environmental trust transferred to beneficiary; 107.3(3) — Income where trust ceases to be qualifying environmental trust; 107.3(4) — No income inclusion under 104(13) for amounts payable by trust.

History: Para. 12(1)(z.1) amended by 1998, c. 19, s. 2, applicable to taxation years that end after February 18, 1997. The para. formerly read:

(z.1) mining reclamation trusts — the total of all amounts received by the taxpayer in the year as a beneficiary under a mining reclamation trust, whether or not such amounts are included because of subsection 107.3(1) in computing the taxpayer's income for any taxation year;

Para. 12(1)(z.1) added by 1995, c. 3, s. 2, applicable to taxation years that end after February 22, 1994.

(z.2) **dispositions of interests in qualifying environmental trusts** — the total of all amounts each of which is the consideration received by the taxpayer in the year for the disposition to another person or partnership of all or part of the taxpayer's interest as a beneficiary under a qualifying environmental trust, other than consideration that is the assumption of a reclamation obligation in respect of the trust;

Related Provisions: 20(1)(tt) — Deduction for acquisition of interest in qualifying environmental trust; 39(1)(a)(v) — No capital gain on disposition of interest; 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(1)(b) — Where beneficiary not resident in Canada.

History: Para. 12(1)(z.2) amended by 1998, c. 19, s. 2, applicable to taxation years that end after February 18, 1997. The para. formerly read:

(z.2) dispositions of interests in mining reclamation trusts — the total of all amounts each of which is the consideration received by the taxpayer in the year for the disposition to another person or partnership of all or part of the taxpayer's interest as a beneficiary under a mining reclamation trust, other than consideration that is the assumption of a mining reclamation obligation in respect of the trust;

Para. 12(1)(z.2) added by 1995, c. 3, s. 2, applicable to taxation years that end after February 22, 1994.

(z.3) **debt forgiveness** — any amount required because of subsection 80(13) or (17) to be included in computing the taxpayer's income for the year;

History: Para. 12(1)(z.3) added by 1995, c. 21, s. 76, applicable to taxation years that end after February 21, 1994.

(z.4) **eligible funeral arrangements** — any amount required because of subsection 148.1(3) to be included in computing the taxpayer's income for the year;

History: Para. 12(1)(z.4) added by 1995, c. 21, s. 76, applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(z.5) **resource loss** — 25% of the taxpayer's prescribed resource loss for the year; and

Related Provisions: 20(1)(v.1) — Deduction for resource allowance; 53(1)(e)(i)(B), 53(2)(c)(i)(B) — Para. 12(1)(z.5) ignored for partnership ACB adjustment; 96(1)(d) — Para. 12(1)(z.5) ignored for allocating income at partnership level to partners.

History: Para. 12(1)(z.5) added by 1997, c. 25, subsec. 2(3), applicable to taxation years that begin after 1996.

Regulations: 1210.1 (prescribed resource loss).

(z.6) **refunds [of countervailing or anti-dumping duties]** — any amount received by the taxpayer in the year in respect of a refund of an amount that was deducted under paragraph 20(1)(vv) in computing income for any taxation year.

Related Provisions: 13(21)"undepreciated capital cost"K — Deduction of refund from u.c.c. of depreciable property.

History: Para. 12(1)(z.6) added by 1999, c. 22, subsec. 5(2), applicable to amounts received after February 23, 1998.

(2) Interpretation — Paragraphs (1)(a) and (b) are enacted for greater certainty and shall not be construed as implying that any amount not referred to in those paragraphs is not to be included in computing income from a business for a taxation year whether it is received or receivable in the year or not.

Selected Cases [subsec. 12(2)]: *Maritime Telegraph and Telephone Co. v. Canada*, [1991] 1 C.T.C. 28 (FCTD); aff'd [1992] 1 C.T.C. 264 (FCA) (The principle that amounts not referred to in paragraph 12(1)(b) may still be included in computing income precludes taxpayer from changing method of reporting income for tax purposes).

(2.1) Receipt of inducement, reimbursement, etc. — For the purposes of paragraph (1)(x), where at a particular time a taxpayer who is a beneficiary of a trust or a member of a partnership has received an amount as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, in respect of the activities of the trust or partnership, or as a reimbursement, contribution, allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of the cost of property or in respect of an expense of the trust or partnership, the amount shall be deemed to have been received at that time by the trust or partnership, as the case may be, as such an inducement, reimbursement, contribution, allowance or assistance.

Pre-RSC History: Subsec. 12(2.1) added by 1986, c. 6, subsec. 6(3), applicable with respect to amounts received after May 22, 1985 other than amounts received after that date pursuant to the terms of an agreement in writing entered into before May 23, 1985 or to the terms of a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by such authority.

(2.2) Deemed outlay or expense — Where

(a) in a taxation year a taxpayer receives an amount that would, but for this subsection, be included under paragraph (1)(x) in computing the taxpayer's income for the year in respect of an outlay or expense (other than an outlay or expense in respect of the cost of property of the taxpayer) made or incurred by the taxpayer before the end of the following taxation year, and

(b) the taxpayer elects under this subsection on or before the day on or before which the taxpayer's return of income under this Part for the year is required to be filed, or would be required to be filed if tax under this Part were payable by the taxpayer for the year or, where the outlay or expense is made or incurred in the following taxation year, for that following year,

the amount of the outlay or expense shall be deemed for the purpose of computing the taxpayer's income, other than for the purposes of this subsection and paragraphs (1)(x) and 20(1)(hh), to have always been the amount, if any, by which

(c) the amount of the outlay or expense

exceeds

(d) the lesser of the amount elected by the taxpayer under this subsection and the amount so received by the taxpayer,

and, notwithstanding subsections 152(4) to (5), such assessment or reassessment of the taxpayer's tax, interest and penalties under this Act for any taxation year shall be made as is necessary to give effect to the election.

Related Provisions: 20(1)(hh) — Repayments of inducements, etc.; 80.2 — Reimbursement by taxpayer; 87(2)(j.6) — Amalgamations — Continuing corporation.

History: Subsec. 12(2.2) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(3), applicable with respect to amounts received after January 1990. Subsec. 12(2.2) formerly read:

(2.2) Deemed outlay or expense — Where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in computing the taxpayer's income for the year by reason of paragraph (1)(x) in respect of an outlay or expense made or incurred by the taxpayer in the year, in any of the 3 taxation years immediately preceding the year or in the taxation year immediately following the year (other than an outlay or expense in respect of the cost of property of the taxpayer) and the taxpayer elects under this subsection on or before the day on or before which the taxpayer's return of income under this Part is required to be filed, or would be required to be filed if the taxpayer had tax payable, for the year, or, where the outlay or expense is made or incurred in the taxation year immediately following the year, for that following year, the amount of the outlay or expense shall be deemed, for the purposes of computing the income of the taxpayer, other than for the purposes of this subsection and subparagraphs (1)(x)(iv) and 20(1)(hh)(ii), to have always been the amount, if any, by which

(a) the amount of the outlay or expense

exceeds

(b) the lesser of the amount elected by the taxpayer under this subsection and the amount so received by the taxpayer,

and, notwithstanding subsections 152(4) and (5), such assessment or reassessment of the taxpayer's tax, interest and penalties under this Act for any taxation year shall be made as is necessary to give effect to the election.

Pre-RSC History: Subsec. 12(2.2) added by 1990, c. 45, subsec. 39(4), applicable with respect to amounts received after January 1990.

(3) Interest income [accrual] — Subject to subsection (4.1), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation (other than interest in respect of an income bond, an income debenture, a small business bond, a small business development bond, a net income stabilization account or an indexed debt obligation) that accrues to it to the end of the year, or becomes receivable or is received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

Related Provisions: 12(4) — Annual accrual for individuals and trusts; 12(4.1) — Impaired debt obligations; 12(9) — Deemed accrual; 12.2(8) — Deemed acquisition of interest in annuity; 16(1) — Blended payments; 20(1)(l) — Reserve for doubtful debts; 20(14.1) — Interest on debt obligation; 20(19) — Annuity contract; 87(2)(j.4) — Amalgamations — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer; 138(12)"gross investment revenue"E(b) — Inclusion in gross investment revenue of insurer; 142.3(1)(c) — No income accrual from specified debt obligation; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution; 142.5(3)(a) — Mark-to-market debt obligation; 148(9)"adjusted cost basis"D — Inclusion in "adjusted cost basis".

History: Subsec. 12(3) amended by 1998, c. 19, subsec. 71(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The subsec. formerly read:

(3) Notwithstanding paragraph (1)(c), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation (other than interest in respect of an income bond, an income debenture, a small business development bond, a small business bond, a net income stabilization account or an indexed debt obligation) that accrues to it to the end of the year, or becomes receivable or is received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

Subsec. 12(3) substituted by 1994, c. 21, subsec. 6(2), applicable to debt obligations issued after October 16, 1991. That subsec. formerly read:

(3) Interest income — Notwithstanding paragraph (1)(c), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation (other than interest in respect of an income bond, an income debenture, a small business development bond, a small business bond or a net income stabilization account) that accrues to it to the end of the year, or becomes receivable or is received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

Subsec. 12(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(4), to substitute "a small business bond or a net income stabilization account" for "or a small business bond", applicable to 1991 *et seq.*

Regulations: 303 (amount deductible under subsec. 20(19)).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-265R3: Payments of income and capital combined; IT-345R: Special reserve — loans secured by mortgages; IT-396R: Interest income; IT-466: Trust companies.

(4) Interest from investment contract [annual accrual] — Subject to subsection (4.1), where in a taxation year a taxpayer (other than a taxpayer to whom subsection (3) applies) holds an interest in an investment contract on any anniversary day of the contract, there shall be included in computing the taxpayer's income for the year the interest that accrued to the taxpayer to the end of that day with respect to the investment contract, to the extent that the interest was not otherwise included in computing the taxpayer's income for the year or any preceding taxation year.

Related Provisions: 12(4.1) — Impaired debt obligations; 12(9) — Deemed accrual; 12(11) — Investment contract; 20(14.1) — Interest on debt obligation.

History: Subsec. 12(4) amended by 1998, c. 19, subsec. 71(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The subsec. formerly read:

(4) Idem [annual accrual] — Where in a taxation year a taxpayer (other than a taxpayer to whom subsection (3) applies) holds an interest in an investment contract on any anniversary day of the contract, there shall be included in computing the taxpayer's income for the year the interest that accrued to the taxpayer to the end of that

day with respect to the investment contract, to the extent that the interest was not otherwise included in computing the taxpayer's income for the taxation year or any preceding taxation year.

Pre-RSC History: Subsec. 12(4) substituted for subsecs. (4) to (8) by 1990, c. 39, subsec. 4(1), applicable (by subsec. 4(6), as amended by 1991, c. 49, s. 250) with respect to investment contracts last acquired after 1989, except that the repeal of subsec. 12(7) is applicable to 1979 *et seq.* Subsecs. 12(4) to (8) formerly read:

(4) Idem — Where in a taxation year a taxpayer (other than a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary) holds an interest in an investment contract on any third anniversary of the contract and in the year or any preceding taxation year he has not made an election under subsection (8) with respect to his interest, there shall be included in computing his income for the year the interest that accrued to him to that time with respect to the investment contract to the extent that the interest was not otherwise included in computing his income for the taxation year or any preceding taxation year, and to the extent that the interest accrued to him after December 31, 1981.

(5) Exception — Subsection (3) does not apply to a corporation, partnership or trust (other than a corporation described in any of paragraphs 39(5)(b) to (d), a life insurance corporation or any other corporation, other than a mutual fund corporation or a mortgage investment corporation, whose principal business is the making of loans or that borrows money from the public in the course of carrying on a business the principal purpose of which is the making of loans)

(a) for taxation years ending before December 31, 1984, or

(b) with respect to interest accrued before the beginning of its first taxation year commencing after November 12, 1981,

with respect to an interest in a debt obligation last acquired by it before October 29, 1980 unless the obligation was issued by a person with whom the corporation or trust or any member of the partnership was not dealing at arm's length.

(6) Application — Subsection (3) does not apply in computing the income for a taxation year of a taxpayer (other than a corporation described in any of paragraphs 39(5)(b) to (d), a life insurance corporation or any other corporation, other than a mutual fund corporation or a mortgage investment corporation, whose principal business is the making of loans or that borrows money from the public in the course of carrying on a business the principal purpose of which is the making of loans) if the interest of the taxpayer was last acquired before October 29, 1980, and

(a) the taxpayer could not, after October 28, 1980 and before the end of the taxation year, require the repayment, acquisition, cancellation or conversion of the interest (other than by reason of a failure or default under the terms or conditions thereof),

(b) the maturity date of the debt obligation has not been extended after October 28, 1980 and before the end of the taxation year, and the terms or conditions relating to payments with respect to interest have not been changed during that period, and

(c) the debt obligation was issued by a person with whom the taxpayer or, where the taxpayer is a partnership, each member thereof, was dealing at arm's length.

(7) Idem — For the purposes of subparagraph (1)(e)(i), in computing an insurance corporation's income from carrying on an insurance business for its 1978 taxation year, the amount, if any, by which

(a) the aggregate of all amounts each of which is an amount deducted by the corporation in computing its income for a taxation year ending before 1978 that was in respect of an event giving rise, or likely to give rise, to a claim under an insurance policy (other than a life insurance policy)

exceeds

(b) the aggregate of all amounts paid by the corporation before the commencement of its 1978 taxation year in respect of amounts described in paragraph (a)

shall be deemed to be an amount that was deducted by the corporation under subsection 20(7) in computing its income from that business for its 1977 taxation year.

(8) Accrued interest may be included in income — Where a taxpayer (other than a taxpayer to whom subsection (3) applies) who holds an interest in a debt obligation elects in his return of income under this Part for a taxation year, he shall, in computing his income for the year and each subsequent taxation year during which he holds an interest in the debt obligation, include the interest accrued to him on the debt obligation to the end of the year to the extent that it was not otherwise included in computing his income for the year or any preceding taxation year.

Subsec. 12(8) amended by 1985, c. 45, subsec. 5(3), applicable to 1985 *et seq.*, to substitute the heading "Accrued interest may be included in income" for "Election", to add the words "(other than a taxpayer to whom subsection (3) applies)", to substitute "elects in his return of income under this Part for a taxation year" for "elects in a taxation year by notifying the issuer thereof in writing", and to substitute "to the extent that it was not" for "to the extent that the interest was not".

Subsecs. 12(3)–(6) substituted, 12(8) added, by 1980-81-82-83, c. 140, subsecs. 4(7), (8), applicable to taxation years commencing after 1982. Subsecs. 12(3)–(6) formerly read:

(3) Interest income — Notwithstanding paragraph (1)(c), in computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest that accrued to it, or became receivable or was received by it, in the year to the extent that such interest was not included in computing its income for a previous taxation year.

(4) Presumption — For the purposes of subsection (3), where a corporation, partnership or trust therein referred to has at any time after December 19, 1980 acquired an interest in an annuity contract, an amount determined in prescribed manner shall be deemed to accrue to it as interest in each taxation year during which it held the interest in the contract.

(5) Exception — Subsection (3) does not apply to a corporation, partnership or trust (other than a corporation described in any of paragraphs 39(5)(b) to (e) or any other corporation, other than a mutual fund corporation or a mortgage investment corporation, whose principal business is the making of loans or that borrows money from the public in the course of carrying on a business the principal purpose of which is the making of loans) with respect to interest on an obligation acquired by it before October 29, 1980 unless the obligation was issued by a person with whom the corporation or trust or any member of the partnership was not dealing at arm's length.

(6) Presumption — For the purposes of subsection (5), where at any time after October 28, 1980 in respect of an obligation acquired on or before that date,

(a) the maturity date is extended,

(b) the terms or conditions relating to the repayment of the principal amount are changed, or

(c) the holder could require the repayment, acquisition, cancellation or conversion of the obligation, otherwise than by reason of a failure or default under the terms or conditions thereof,

the obligation shall be deemed to be a new obligation acquired by the holder thereof at that time.

Subsecs. 12(3), (4) substituted, (5), (6) added by 1980-81-82-83, c. 48, subsec. 4(3), applicable to taxation years commencing after October 28, 1980. Subsecs. 12(3), (4) formerly read:

(3) Accrued interest of financial corporations — Notwithstanding paragraph (1)(c), where the taxpayer is a bank, a credit union, a life insurance corporation, a trust company or any other corporation (other than a mutual fund corporation or a mortgage investment corporation) that borrows money from the public in the course of carrying on a business the principal purpose of which is the making of loans or whose principal business is the making of loans, there shall be included in computing its income from the business for a taxation year interest accrued in respect of the year and interest receivable in the year to the extent that such interest was not included in computing the corporation's income for a previous taxation year.

(4) Definitions — For the purposes of subsection (3),

(a) "bank" means a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies; and

(b) "trust company" means a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee.

Subsec. 12(7) added by 1980-81-82-83, c. 48, subsec. 4(3), applicable to the 1978 taxation year.

Subsecs. 12(3), (4) added by 1974-75-76, c. 26, subsec. 4(3), applicable to 1975 *et seq.* and (by subsec. 4(4)), except in the case of a credit union, any

interest that was not included in computing the taxpayer's income for a taxation year ending before 1975 but that would have been included if subsection 12(3) as enacted by subsec. (3) had applied shall be included in computing its income for the 1975 taxation year.

Regulations: 201(4) (information return).

Interpretation Bulletins: IT-265R3: Payments of income and capital combined; IT-415R2: Deregistration of RRSPs.

Advance Tax Rulings: ATR-61: Interest accrual rules.

(4.1) Impaired debt obligations — Paragraph (1)(c) and subsections (3) and (4) do not apply to a taxpayer in respect of a debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(l)(ii) in computing the taxpayer's income for the year.

History: Subsec. 12(4.1) added by 1998, c. 19, subsec. 71(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

(5)–(8) [Repealed under former Act]

Pre-RSC History: See under subsec. 12(4).

(9) Deemed accrual — For the purposes of subsections (3), (4) and (11) and 20(14) and (21), where a taxpayer acquires an interest in a prescribed debt obligation, an amount determined in prescribed manner shall be deemed to accrue to the taxpayer as interest on the obligation in each taxation year during which the taxpayer holds the interest in the obligation.

Related Provisions: 16(3) — Obligation issued at discount; 18.1(14) — Right to receive production deemed to be debt obligation; 87(2)(j.4) — Amalgamations — accrual rules; 142.3(1)(c) — No income accrual from specified debt obligation.

History: Subsec. 12(9) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 7(2), to add reference to subsection (11) and to substitute "acquires" for "has at any time acquired", applicable with respect to investment contracts last acquired after 1989.

Pre-RSC History: Subsec. 12(9) amended by 1990, c. 39, subsec. 4(2), to substitute "subsections (3) and (4)" for "subsections (3), (4), (8) and (11)" and "the taxpayer holds" for "he holds", applicable (by subsec. 4(6), as amended by 1994, c. 7, Sch. II (1991, c. 49), s. 250) with respect to investment contracts last acquired after 1989.

Subsec. 12(9) amended by 1984, c. 1, subsec. 5(2), to add "and (21)" and to substitute "holds" for "held", applicable to taxation years commencing after 1981.

Subsec. 12(9) added by 1980-81-82-83, c. 140, subsec. 4(8), applicable to taxation years commencing after 1981.

Regulations: 7000 (prescribed debt obligation, prescribed manner).

Interpretation Bulletins: IT-396R: Interest income; IT-410R: Debt obligations — accrued interest on transfer.

Advance Tax Rulings: ATR-61: Interest accrual rules.

(9.1) Exclusion of proceeds of disposition — Where a taxpayer disposes of an interest in a debt obligation that is a debt obligation in respect of which the proportion of the payments of principal to which the taxpayer is entitled is not equal to the proportion of the payments of interest to which the taxpayer is entitled, such portion of the proceeds of disposition received by the taxpayer as can reasonably be considered to represent a recovery of the cost to the taxpayer of the interest in the debt obligation shall, notwithstanding any other provision of this Act, not be included in computing the income of the taxpayer, and for the purpose of this subsection, a debt obligation includes, for greater certainty, all of the issuer's obligations to pay principal and interest under that obligation.

History: Subsec. 12(9.1) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(5), applicable with respect to dispositions of debt obligations occurring after October 16, 1991. Subsec. 12(9.1) formerly read:

(9.1) Exception — Where a taxpayer disposes of an interest in a debt obligation that, by virtue of paragraph 7000(1)(b) of the *Income Tax Regulations*, is a prescribed debt obligation for the purposes of subsection (9), such portion of the proceeds of the disposition received by the taxpayer as may reasonably be considered to represent a recovery of the cost to the taxpayer of the debt obligation shall, notwithstanding any other provision of this Act, not be included in computing the taxpayer's income under this Part.

Pre-RSC History: Subsec. 12(9.1) added by 1985, c. 45, subsec. 5(4), applicable to taxation years commencing after 1981.

Interpretation Bulletins: IT-396R: Interest income.

(10) [Repealed under former Act]

Pre-RSC History: Subsec. 12(10) repealed by 1990, c. 39, subsec. 4(3), applicable (by subsec. 4(6), as amended by 1991, c. 49, s. 250) with respect to investment contracts last acquired after 1989. Subsec. 12(10) formerly read:

(10) Application — Subsection (4) shall not apply in computing the income of a taxpayer for a taxation year if the interest of the taxpayer in the investment contract was last acquired by him before November 13, 1981 and

(a) the taxpayer could not, after November 12, 1981 and before the end of the taxation year, require the repayment, acquisition, cancellation or conversion of his interest (other than by reason of a failure or default under the terms or conditions thereof), and

(b) the maturity date of the contract has not been extended after November 12, 1981 and before the end of the taxation year, and the terms or conditions relating to payments in respect of his interest have not been changed during that period.

Subsec. 12(10) added by 1980-81-82-83, c. 140, subsec. 4(8), applicable to taxation years commencing after 1982.

(10.1) Income from RHOSP — Notwithstanding any other provision of this Act, where an individual was at the end of 1985 a beneficiary under a registered home ownership savings plan (within the meanings assigned by paragraphs 146.2(1)(a) and (h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as they read in their application to the 1985 taxation year), that portion of the income that can reasonably be considered to have accrued under the plan before 1986 (other than the portion thereof that can reasonably be considered to be attributable to amounts contributed after May 22, 1985 to or under the plan) shall not be included in computing the income of the individual or of any other person.

Pre-RSC History: Subsec. 12(10.1) added by 1986, c. 6, subsec. 6(4), applicable to 1986 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-396R: Interest income.

(10.2) NISA receipts — There shall be included in computing a taxpayer's income for a taxation year from a property the total of all amounts each of which is the amount determined by the formula

$$A - B$$

where

A is an amount paid at a particular time in the year out of the taxpayer's NISA Fund No. 2; and

B is the amount, if any, by which

(a) the total of all amounts each of which is deemed by subsection 104(5.1) or (14.1) to have been paid out of the taxpayer's NISA Fund No. 2 before the particular time, or is deemed by subsection 70(5.4) or 73(5) to have been paid out of an-

other person's NISA Fund No. 2 on being transferred to the taxpayer's NISA Fund No. 2 before the particular time,

exceeds

(b) the total of all amounts each of which is the amount by which an amount otherwise determined under this subsection in respect of a payment out of the taxpayer's NISA Fund No. 2 before the particular time was reduced because of this description.

Related Provisions: 104(6)(b)(ii.1), (iii) — Limitation on deduction by trust for amount payable to beneficiaries; 104(14.1) — NISA election; 108(1) — "accumulating income"; 125(7)"income of the corporation for the year from an active business"(b) — "Income of the corporation for the year from an active business"; 129(4)"aggregate investment income"(b)(ii) — Exclusion from calculation of refundable dividend tax on hand; 212(1)(t) — NISA Fund No. 2 payments to non-residents; 214(3)(l) — Non-resident withholding tax; 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 12(10.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(6), applicable to 1991 *et seq.*

Regulations: 201(1)(e) (information return).

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-243R4: Dividend refund to private corporations; IT-305R4: Testamentary spouse trusts.

(10.3) Amount credited or added not included in income — Notwithstanding any other provision of this Act, an amount credited or added to a taxpayer's NISA Fund No. 2 shall not be included in computing the taxpayer's income solely because of that crediting or adding.

History: Subsec. 12(10.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(6), applicable to 1991 *et seq.*

Forms: T1163: Statement A — NISA account information and statement of farming activities for individuals; T1164: Statement B — NISA account information and statement of farming activities for additional farming operations; T1165: Statement C — statement of farming activities for Ontario self directed risk management (SDRM); T1175 Sched. 1: NISA/Farming — calculation of CCA and business-use-of-home expenses.

(11) Definitions — In this section,

"anniversary day" of an investment contract means

(a) the day that is one year after the day immediately preceding the date of issue of the contract,

(b) the day that occurs at every successive one year interval from the day determined under paragraph (a), and

(c) the day on which the contract was disposed of;

Pre-RSC History: *The definition "anniversary day" was para. 12(11)(b).*

Para. 12(11)(b) substituted by 1990, c. 39, subsec. 4(5), applicable (by subsec. 4(6), as amended by 1991, c. 49, s. 250) with respect to investment contracts last acquired after 1989. Para. 12(11)(b) formerly read:

(b) "third anniversary" — "third anniversary" of an investment contract means

(i) the end of the day that is three years after the end of the calendar year of issue of the contract,

(ii) the end of the day that occurs at every successive three year interval from the time determined under subparagraph (i), and

(iii) the day on which the contract was disposed of,

and for the purpose of this paragraph, where before 1989 a taxpayer has not disposed of an interest in an investment contract last acquired by him before 1982, the contract shall be deemed to have been issued on December 31, 1988.

That portion of para. 12(11)(b) following subpara. (iii) amended by 1987, c. 46, subsec. 3(4), to substitute "where before 1989" for "where before 1985" and "December 31, 1988" for "December 31, 1984", applicable to 1987 *et seq.*

Subpara. 12(11)(b)(iii) added by 1985, c. 45, subsec. 5(6).

Subsec. 12(11) added by 1980-81-82-83, c. 140, subsec. 4(8), applicable to taxation years commencing after 1981.

"investment contract", in relation to a taxpayer, means any debt obligation other than

(a) a salary deferral arrangement or a plan or arrangement that, but for any of paragraphs (a), (b) and (d) to (l) of the definition "salary deferral arrangement" in subsection 248(1), would be a salary deferral arrangement,

(b) a retirement compensation arrangement or a plan or arrangement that, but for any of paragraphs (a), (b), (d) and (f) to (n) of the definition "retirement compensation arrangement" in subsection 248(1), would be a retirement compensation arrangement,

(c) an employee benefit plan or a plan or arrangement that, but for any of paragraphs (a) to (e) of the definition "employee benefit plan" in subsection 248(1), would be an employee benefit plan,

(d) a foreign retirement arrangement,

(e) an income bond,

(f) an income debenture,

(g) a small business development bond,

(h) a small business bond,

(i) an obligation in respect of which the taxpayer has (otherwise than because of subsection (4)) at periodic intervals of not more than one year, included, in computing the taxpayer's income throughout the period in which the taxpayer held an interest in the obligation, the income accrued thereon for such intervals,

(j) an obligation in respect of a net income stabilization account,

(k) an indexed debt obligation, and

(l) a prescribed contract.

Related Provisions: 12(9) — Deemed accrual.

History: Para. (k) of the definition "investment contract" in subsec. 12(11) redesignated as (l), and para. (k) added, by 1994, c. 21, subsec. 6(3), applicable to debt obligations issued after October 16, 1991.

Para. (j) of "investment contract" in subsec. 12(11) added (and former para. (j) redesignated as (k)) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 3(7), applicable to 1991 *et seq.*

"Investment contract" in subsec. 12(11) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 7(3), applicable to 1985 *et seq.* except that

(a) in its application to the 1985 taxation year, the definition shall be read without reference to paras. (a) and (b);

(b) in its application to the 1985 to 1989 taxation years, the definition shall be read without reference to para. (d); and

(c) in applying para. (i) in respect of debt obligations acquired before 1990, the reference in that para. to "not more than one year" shall be read as a reference to "not more than 3 years".

The definition formerly read:

"investment contract", in relation to a taxpayer, means any debt obligation (other than a salary deferral arrangement, an income bond, an income debenture, a small business development bond, a small business bond, an obligation in respect of which the taxpayer has, at periodic intervals of not more than one year, included, in computing the taxpayer's income throughout the period in which the taxpayer held an interest in the obligation, the income accrued thereon for such intervals, or a prescribed contract).

Pre-RSC History: *The definition "investment contract" was para. 12(11)(a).*

Para. 12(11)(a) substituted by 1990, c. 39, subsec. 4(4), applicable to 1985 *et seq.*, except that in applying the para. in respect of debt obligations acquired before 1990, it shall be read as follows:

(a) "investment contract", in relation to a taxpayer, means any debt obligation (other than a salary deferral arrangement, an income bond, an income debenture, a small business development bond, a

small business bond, an obligation in respect of which the taxpayer has, at periodic intervals of less than 3 years, included, in computing the taxpayer's income throughout the period in which the taxpayer held an interest in the obligation, the income accrued thereon for such intervals, or a prescribed contract);

Para. 12(11)(a) formerly read:

(a) "investment contract" — "investment contract", in relation to a taxpayer, means any debt obligation (other than a salary deferral arrangement, an income bond, an income debenture, a small business development bond, a small business bond or a prescribed contract); and

Para. 12(11)(a) substituted by 1986, c. 55, subsec. 3(3), applicable to 1986 *et seq.* Para. 12(11)(a) formerly read:

"investment contract", in relation to a taxpayer, means any debt obligation (other than a prescribed contract, an income bond, an income debenture, a small business development bond or a small business bond); and

Para. 12(11)(a) amended by 1985, c. 45, subsec. 5(5), to substitute "or a small business bond" for "a small business bond or an obligation in respect of which the taxpayer has, at periodic intervals of less than three years, included, in computing his income throughout the period in which he held an interest in the obligation, the income accrued thereon for such intervals", applicable to 1985 *et seq.*

Para. 12(11)(a) substituted by 1984, c. 1, subsec. 5(3), to add "a prescribed contract", applicable to taxation years commencing after 1981.

Regulations: 7000(6) (prescribed contract).

Interpretation Bulletins [subsec. 12(11)]: IT-396R: Interest income; IT-415R2: Deregistration of RRSPs.

Definitions [s. 12]: "allowable capital loss" — 38(b), 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "anniversary day" — 12(11); "arm's length" — 251(1); "assessment" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), 248(18); "automobile", "bankrupt", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "deferred amount", "dividend", "employee", "employee benefit plan", "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign retirement arrangement" — 248(1); "income from property" — 9(1), 9(3); "income bond", "income debenture", "indexed debt obligation", "individual", "insurance corporation", "insurer" — 248(1); "investment contract" — 12(11); "investment corporation" — 130(3), 248(1); "lending asset", "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "mineral resource", "mineral" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "net income stabilization account", "NISA Fund No. 2" — 248(1); "payer" — 12(1)(x)(i); "person" — 248(1); "personal services business" — 125(7), 248(1); "prescribed", "property" — 248(1); "prescribed debt obligation" — Reg. 7000(1); "prescribed resource loss" — Reg. 1210.1; "province" — *Interpretation Act* 35(1); "qualifying environmental trust — 248(1); "related" — 251(2); "resident in Canada" — 250; "retirement compensation arrangement", "salary deferral arrangement", "share" — 248(1); "small business bond" — 15.2, 248(1); "small business development bond" — 15.1, 248(1); "tar sands" — 248(1); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

12.1 Cash bonus on Canada Savings Bonds — Notwithstanding any other provision of this Act, where in a taxation year a taxpayer receives an amount from the Government of Canada in respect of a Canada Savings Bond as a cash bonus that the Government of Canada has undertaken to pay (other than any amount of interest, bonus or principal agreed to be paid at the time of the issue of the bond under the terms of the bond), the taxpayer shall, in computing the taxpayer's income for the year, include as interest in respect of the Canada Savings Bond ½ of the cash bonus so received.

Related Provisions: 12(1)(c) — Interest.

Pre-RSC History: S. 12.1 substituted by 1986, c. 6, s. 7, applicable with respect to amounts received after 1984. S. 12.1 formerly read:

12.1 Cash bonus on Canada Savings Bond — Notwithstanding any other provision of this Act, where in a taxation year a taxpayer receives any amount from the Government of Canada in respect of a Canada Savings Bond as a cash bonus that the Government of Canada has undertaken to pay (other than any amount of interest, bonus or principal agreed to be paid at the time of the issue of the bond under the terms of the bond) he shall, in computing his income for the year, include

(a) the amount, or such portion thereof, if any, as the taxpayer may report, as interest; and

(b) an amount equal to ½ of the amount, if any, by which

(i) the amount received as a cash bonus

exceeds

(ii) the portion of the amount reported as interest under paragraph (a)

as a taxable capital gain for the year from the disposition of a property.

S. 12.1 added by 1974-75-76, c. 26, s. 5, applicable to 1974 *et seq.*

Definitions [s. 12.1]: "amount" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Regulations: 220 (information return).

Forms: T600C: Statement of cash bonus payment — Canada Savings Bonds.

12.2 (1) Amount to be included [annually from life insurance policy] — Where in a taxation year a taxpayer holds an interest, last acquired after 1989, in a life insurance policy that is not

(a) an exempt policy,

(b) a prescribed annuity contract, and

(c) a contract under which the policyholder has, under the terms and conditions of a life insurance policy that was not an annuity contract and that was last acquired before December 2, 1982, received the proceeds therefrom in the form of an annuity contract,

on any anniversary day of the policy, there shall be included in computing the taxpayer's income for the taxation year the amount, if any, by which the accumulating fund on that day in respect of the interest in the policy, as determined in prescribed manner, exceeds the adjusted cost basis to the taxpayer of the interest in the policy on that day.

Proposed Amendment — RRSP & RRIF annuity contracts

Department of Finance news release, October 27, 1998: *Segregated Funds*

Proposed new rules for segregated funds were announced on October 23, 1997. These rules, which are not included in the draft legislation, are intended to put interests in segregated funds offered by life insurers on an equal footing with units in mutual funds for the purposes of the 20% foreign property limit. The October 23, 1997 press release indicated that these rules would begin to apply from January 1999. However, consultation with the insurance industry has indicated the considerable extent of the systems changes that will be required for the insurance industry to monitor these limits, and the need to consider substantial technical amendments to the rules governing the taxation of segregated funds. Given the technical and administrative issues associated with this proposal, the Minister announced that the foreign property rules for segregated funds would apply only as of January 2001.

Department of Finance news release, October 23, 1997: *Minister Provides Details of Foreign Property Limit for Segregated Funds*

Finance Minister Paul Martin today announced details of the proposed changes to the *Income Tax Act* that will extend the 20 per cent foreign property investment limit to segregated fund policies held under registered retirement savings plans, registered retirement income funds and other deferred-income vehicles.

A segregated fund policy is an arrangement created by an insurance company, under which investors' returns are based on the return earned by the insurer on a specified group of properties. It is a life insurance product that, from the perspective of an investor, is similar to a mutual fund.

Under the existing law, units in a mutual fund are generally treated as foreign property at any time in a year if more than 20 per cent of the mutual fund's assets in the preceding year consisted of foreign property. On December 19, 1996, Minister Martin announced that beginning in 1998 similar rules would apply to segregated funds subject to transitional measures that would be discussed with the insurance industry.

Further to these consultations, it is proposed that the foreign property limit be phased-in over 4 years for segregated funds created before 1997 and that certain segregated funds no longer issued be exempt from the proposed rules. Where the 20 per cent foreign property limit is exceeded, the special penalty tax in the *Income Tax Act* will apply beginning January 1999 to interests in a segregated fund that are foreign property. The characterization of an interest in a segregated fund as foreign property is generally based on the amount of foreign property held by the fund in the previous year. Consequently, beginning in 1998, insurance companies will need to monitor the level of foreign property in segregated funds that they offer.

The attached appendix describes the proposed new rules in greater detail. Draft legislation to implement these proposals will be released next year.

For further information: Andrew Nicholls, Tax Legislation Division, (613) 995-3586.

APPENDIX

Application of Foreign Property Limit to Segregated Funds

1. Introduction

The new foreign property rules for segregated funds will apply in three situations.

First, they will apply where an interest in a segregated fund is held by a tax-exempt taxpayer described in paragraphs 205(a) to (f) of the *Income Tax Act*, such as a registered pension plan (RPP), a trust governed by a registered retirement savings plan (RRSP) or a trust governed by a registered retirement income fund (RRIF). Such taxpayers are subject to tax under Part XI of the Act if they invest too heavily in "foreign property". Under the proposed changes, an interest in a segregated fund will, in some circumstances, become a "foreign property" and the holding of such an interest can result in Part XI tax becoming payable.

A similar penalty tax may apply where an interest in a segregated fund policy is held directly as an RRSP or RRIF (i.e., outside of an RRSP or RRIF trust), or where such an interest is issued under an RPP that is not an RPP trust or corporation. The tax will generally be collected by the insurer that issued the segregated fund policy on behalf of the policyholder that is liable to pay it.

Third, the new rules can result in Part XI tax for an insurer where the Minister accepts a segregated fund administered by the insurer as a "registered investment" under proposed amendments to Part X.2 of the Act.

The application of the proposed rules to these three situations is described below.

2. Tax payable under Part XI of the *Income Tax Act* by trusts governed by RRSPs, RRIFs and RPPs

General

A trust governed by an RRSP, RRIF or RPP is generally liable to pay a penalty tax under subsection 206(2) of the Act in respect of a month where the cost amount to the trust of the "foreign property" (as defined in subsection 206(1)) held by the trust exceeds 20 per cent of the cost amount to the trust of all property held by it.

Under paragraph (i) of the definition "foreign property", an interest in a trust is a foreign property, except where the trust is a "registered investment" or where the interest in the trust is prescribed not to be a foreign property under the *Income Tax Regulations*. Under the proposed amendments, after 1998, an interest in a segregated fund will be a treated as an interest in a trust for the purpose of Part XI. As a consequence, a trust governed by an RRSP, RRIF or RPP that holds a segregated fund policy in any month that ends after 1998 may be liable to pay the penalty tax under Part XI.

When is an Interest in a Segregated Fund Prescribed Not to be a Foreign Property?

The proposed amendments include a number of transitional provisions described below. However, section 5000 of the Regulations will prescribe an interest in a segregated fund held at a particular time not to be a foreign property in two cases:

- where the particular time is after 1999 and, throughout the last year that ended before the particular time (or at the end of the year that includes the particular time, if the fund was created in the year that includes the particular time), the total cost amount of all the foreign property held by the segregated fund does not exceed 20 per cent of the cost amount of all the property held by it; or
- where each policyholder holding an interest in the segregated fund at the particular time held an interest in the fund at the end of 1996 or acquired the interest from another policyholder who held an interest in the fund before 1997.

Transitional rules are proposed for 1999, 2000 and 2001 to give insurers an opportunity to shift the properties held by the segregated funds that they administer from foreign properties to non-foreign properties. To this end, an interest in a segregated fund will be prescribed not to be a foreign property in 1999 where:

- the segregated fund was created before 1997 and, at any time in the first 90 days of 1998, the fair market value (FMV) of all the foreign property held by the fund does not exceed 80 per cent of the FMV of all the property held by the fund;
- the segregated fund was created in 1997 or 1998 and, at any time in the first 90 days of its 1998 taxation year, the FMV of all the foreign property held by the fund does not exceed 20 per cent of the FMV of all of the property held by the fund; or
- the segregated fund was created in 1999 and, at the end of 1999, the cost amount of all of the foreign property held by the fund does not exceed 20 per cent of the cost amount of all of the property held by the fund.

In 2000, an interest in a segregated fund will be prescribed not to be a foreign property if the segregated fund was created before 1997 and, throughout 1999, the cost amount of all the foreign property held by the segregated fund does not exceed 60 per cent of the cost amount of all the property held by the fund.

In 2001, an interest in a segregated fund will be prescribed not to be a foreign property if the segregated fund was created before 1997 and, throughout 2000, the cost amount of all the foreign property held by the segregated fund does not exceed 40 per cent of the cost amount of all the property held by the segregated fund.

"Cost Amount" for the Purposes of Part XI of the Act

Under the proposed amendments, where an interest in a segregated fund is, after 1998, treated as "foreign property", the "cost amount" of the interest will be determined on a lagged basis.

Specifically, the "cost amount" of an interest in a segregated fund to an RRSP trust, RRIF trust or RPP will be its adjusted cost base (ACB), except that the ACB adjustments that would otherwise be required in a particular calendar year will not be made until after March of the following calendar year. An interest in a segregated fund will have a known constant ACB throughout each year as ACB adjustments in respect of the year will not be made until the following year, making it possible for

taxpayers subject to the foreign property penalty tax to comply with the foreign property limit on an on-going basis.

3. New Foreign Property Limits with respect to Segregated Fund Policies Issued or Effected as RRSPs or RRIFs and Policies Issued under RPPs

Segregated Fund Policies Issued or Effected as RRSPs or RRIFs

The new rules will also apply where, after 1998, an individual holds an interest in a segregated fund directly as an RRSP or RRIF (i.e., outside a RRSP or RRIF trust). In general, the policyholder's liability for penalty tax will be determined on a policy-by-policy basis. Where the penalty tax is owing, the insurer that issued the segregated fund will be required to collect the penalty tax on behalf of the policyholder.

A policyholder will be liable to pay the penalty tax in respect of a segregated fund policy for any month where the total cost amount (determined on a lagged basis as described above) at the end of the month of all the interests in segregated funds under the policy that are foreign properties exceeds 20 per cent of the total of

- the cash surrender value of the policy at the end of the month (not including any amount in respect of an interest in a segregated fund), and
- the total cost amount (determined on a lagged basis) at the end of the month of all the interests in segregated funds under the policy.

For this purpose, whether an interest in a segregated fund is a foreign property is determined using the definition of "foreign property" described above.

Where an insurer has issued interests in more than one segregated fund policy, the insurer will be able to treat those policies as one policy for purposes of calculating how much penalty tax is payable. The election will allow policies that derive their value largely from foreign property to be offset by policies that derive their value largely from non-foreign property.

Segregated Fund Policies Issued under RPPs

The administrator of an RPP (other than an RPP trust or corporation) may also be liable to pay foreign property tax where the RPP is funded or partially funded by an interest in a segregated fund policy.

The administrator's liability will be determined on an insurer-by-insurer basis. As a consequence, all the segregated fund policies used to fund the RPP that were issued by a particular insurer will be grouped together for this purpose. The administrator will be liable to pay tax in a given month in respect of the policies issued by a particular insurer where the total cost amount (determined on a lagged basis as described above) at the end of the month of all the interests in segregated funds that arise under the policies and that are foreign properties exceeds 20 per cent of the total of

- the cash surrender values, at the end of the month, of all the policies (not including any amount in respect of an interest in a segregated fund), and
- the total cost amount (determined on a lagged basis) at the end of the month of all the interests in segregated funds that arise under the policies.

For this purpose, whether an interest in a segregated fund is a foreign property will be determined using the definition of "foreign property" described above.

Where an RPP is funded with segregated fund policies issued by more than one insurer, the administrator of the RPP will be able to elect to treat all such insurers as one insurer for purposes of determining its penalty tax liability. Where the policies issued by one insurer have a high foreign property content, the election will make it possible for an administrator to offset that high foreign property content with the non-foreign property content of policies issued by other insurers.

The responsibility for collecting and remitting an administrator's penalty tax falls on the insurer, unless the administrator makes the election to treat all insurers as one. Where this election is made, the responsibility for collecting and remitting the penalty tax falls on the administrator.

4. Registered Investments

Under the proposed rules, Revenue Canada will be able to accept a segregated fund as a registered investment under subsection 204.4(1) of the *Income Tax Act*. If a segregated fund is accepted, an interest in the fund will not be a foreign property for the purposes of the Act. However, the insurer administering the segregated fund will be subject to tax under Part XI of the Act if the foreign property held by the segregated fund ever exceeds the 20 per cent foreign property limit.

The proposed amendments include a transitional provision. If a segregated fund that was created before 1997 is accepted by Revenue Canada as a registered investment under subsection 204.4(1) of the Act, the foreign property limit under Part XI in respect of the fund will be 60 per cent in 1999 and 40 per cent in 2000.

Department of Finance news release, December 19, 1996: *Minister Announces Proposals Affecting Segregated Fund Policies and Other Annuity Contracts*

Finance Minister Paul Martin today announced a number of proposed measures affecting the tax treatment of annuity contracts, including segregated fund policies, offered by insurers.

A segregated fund policy is an arrangement made by a person with an insurer, under which the person's returns are based on the returns earned by the insurer on a specified group of properties. It is a life insurance product that, from the perspective of an investor, is similar to a mutual fund.

The most important measures announced today relate to the 20% foreign property limit set out in Part XI of the *Income Tax Act* for taxpayers such as trusts governed by registered retirement savings plans. Under the existing law, units in a mutual fund are generally treated as foreign property where more than 20% of the mutual fund's assets are foreign property. In order to bridge a gap in the existing law and to provide for a more level playing field, the same characterization will now apply to segregated fund policies

The proposed changes are described in more detail in the attached appendix. It is intended that the new rules applying the foreign property limits will be effective after 1997. This will provide a full opportunity to discuss with representatives of the insurance industry the nature of any transitional measures that might be considered to be appropriate. Once consultations are completed, the Minister intends to table the necessary legislation to implement these proposals in the House of Commons.

For further information: Andrew Nicholls, Tax Legislation Division (613) 995-3586.

Appendix — Proposed Changes for Segregated Funds and Other Annuities: *Background*

There are a number of different types of RRSPs and RRIFs currently available to Canadians. One type is the RRSP or RRIF trust, which is a trust established to hold "qualified investments" for the benefit of the RRSP or RRIF annuitant. Another type is the RRSP or RRIF deposit, which is a contract under which a financial institution agrees to repay a principal amount deposited plus stipulated interest.

A deferred annuity contract issued by an insurer can also be an RRSP or RRIF. Under a deferred annuity contract, the annuitant is entitled to, or is ultimately entitled to elect to receive, a stream of annuity payments at a later date. Quite often a deferred annuity contract provides for amounts, determined with reference to fixed rates of interest, to accumulate prior to maturity in much the way that funds can accumulate through GICs. Variable or segregated fund annuity contracts can also be issued, under which the amount of a future stream of annuity payments will depend largely on the value of a specified group of properties acquired by the insurer with the premiums contributed. An individual's interest in a segregated fund annuity contract is analogous to an investment in a mutual fund.

The foreign property rules in Part XI of the Income Tax Act limit the extent to which a number of specified taxpayers (including RRSP and RRIF trusts) can invest outside Canada. There is a 20% foreign property limit in this context. However, for these

purposes, under the existing rules a segregated fund policy is technically not considered to be foreign property regardless of the nature of the segregated fund's assets. In addition, the existing foreign property rules do not apply to segregated fund policies issued as RRSPs and RRIFs.

In addition, there are two technical anomalies under the existing income tax rules that apply to RRIFs and annuities which are addressed by the proposed amendments described below.

First, RRIF trusts cannot acquire an annuity as a "qualified investment" and the law is not entirely clear on the circumstances in which RRSP trusts can acquire annuities.

Second, annuities that are issued as RRIFs may technically not be exempt from the accrual rules under section 12.2 of the Act. These rules require income accruing under annuity contracts to be reported annually. The application of these rules to RRIFs is particularly anomalous because annuities issued as RRSPs are exempt from these rules.

Proposed Amendments

(a) Qualified Investments

An annuity contract (including a segregated fund policy) that is issued by a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business will be allowed to be a qualified investment for an RRSP or RRIF trust. For such an annuity contract to be a qualified investment under an RRSP or RRIF trust under the new rules,

- the contract must be acquired by the trust after 1997,
- the trust must be the only person (other than the insurer who issued the contract) entitled to future rights or benefits under the contract, and
- the timing and amount of the trust's entitlements cannot be affected by the personal circumstances of any individual, other than the length of the life of the individual who was the RRSP or RRIF annuitant immediately after the contract was acquired.

This amendment will be implemented by way of an amendment to Part XLIX of the *Income Tax Regulations*. No change to paragraph (c) of the definition "qualified investment" in subsection 146(1) of the Act is contemplated. However, it is contemplated that subsection 146(11) of the Act will be amended to provide that it does not apply to annuity contracts issued after 1997.

(b) Accrual Rules

An annuity contract issued as a RRIF will not be subject to the accrual rules under section 12.2 of the Act.

This amendment will be implemented by way of an amendment to subsection 304(1) of the Regulations. It is contemplated that it will apply to taxation years that begin after 1986, given that the original amendments to the Act that gave rise to the need for this amendment applied after 1986.

(c) Foreign Property

An interest in an annuity contract will be "foreign property" for the purposes of the Act if the annuity contract is a segregated fund policy and more than 20% of the segregated fund's assets are "foreign property". As a consequence, if an RRSP or RRIF trust or any other taxpayer described in paragraphs 204(1)(a) to (f) of the Act acquires such a foreign property, it will be included in the 20% foreign property limit set out in Part XI of the Act.

If an insurer issues interests in one or more registered annuity policies directly to an RRSP or RRIF annuitant or to a registered pension plan (RPP), the insurer will be likewise liable to pay a monthly foreign property penalty tax in respect of each RRSP annuitant, RRIF annuitant and RPP equal to the amount, if positive, determined by the formula:

$$1\% \times (A - (20\% \times B))$$

where

A is the total of all premiums and other amounts paid on account of the acquisition by the RRSP annuitant, RRIF annuitant or RPP, as the case may be, of such of those interests outstanding at the end of the month as constitute foreign property, and

B is the total of all premiums and other amounts paid on account of the acquisition by the RRSP annuitant, RRIF annuitant or RPP, as the case may be, of such of those interests as are outstanding at the end of the month.

Issuers of segregated fund policies will be allowed to elect to have their segregated funds registered under Part X.2 of the Act. The result of this election would be to exclude interests in registered segregated funds from the "foreign property" definition. However, as a consequence of the election in respect of a segregated fund, the issuer of the segregated fund would be required to pay any penalty tax under Part XI of the Act in respect of foreign property holdings of the segregated fund.

Related Provisions: 12.2(5) — Amounts to be included; 12.2(8)–(11) — Rules and definitions; 20(1)(c)(iv) — Interest deductibility; 20(20) — Disposal of life insurance policy or annuity contract; 56(1)(d.1) — Annuity payments included in income; 87(2)(j.4) — Amalgamation — accrual rules; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 148(9)"adjusted cost basis"G, 148(9)"adjusted cost basis"L(b) — Adjusted cost basis; 148(10) — Life annuity contracts.

History: Subsec. 12.2(1) repealed and former subsec. 12.2(3) renumbered as 12.2(1) and that portion preceding para. (a) amended to substitute "a taxpayer" for "a taxpayer (other than a taxpayer to whom subsection (1) applies)" by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 8(1), (2), applicable with respect to life insurance policies last acquired after 1989. Subsec. 12.2(1) formerly read:

> 12.2 (1) Amount to be included — In computing the income for a taxation year of a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary that holds
>
> (a) an interest, last acquired after December 1, 1982, in a life insurance policy , or
>
> (b) an interest, last acquired after December 19, 1980 and before December 2, 1982 in an annuity contract under which annuity payments did not commence before December 2, 1982,
>
> that is not
>
> (c) an interest in an exempt policy, or
>
> (d) an interest, last acquired before December 2, 1982, in a contract under which the policyholder has, under the terms and conditions of a life insurance policy that was not an annuity contract, received the proceeds therefrom in the form of an annuity contract,
>
> there shall be included the amount by which the accumulating fund at the end of the calendar year ending in the taxation year, as determined in prescribed manner, in respect of the interest exceeds the adjusted cost basis of the interest to the corporation, partnership, unit trust or trust at the end of that calendar year.

Pre-RSC History: Subsec. 12.2(3) substituted for subsecs. (2) to (4.1) by 1990, c. 39, subsec. 5(1), applicable (by subsec. 5(7), as amended by 1991, c. 49, s. 251) with respect to life insurance policies last acquired after 1989. Subsecs. 12.2(2) to (4.1) formerly read:

> (2) Interest not disposed of before 1985 — Where, before 1985, a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary has not disposed of an interest in an annuity contract that was last acquired by it before December 20, 1980,
>
> (a) subsection (1) shall be read without reference to the words "after December 19, 1980 and", and
>
> (b) all that portion of subsection (1) following paragraph (d) thereof shall be read as follows:
>
> "there shall be included the amount by which the accumulating fund at the end of the calendar year ending in the taxation year, as determined in prescribed manner, in respect of the interest exceeds the aggregate of the adjusted cost basis of the interest to the corporation, partnership, unit trust or trust at the end of the calendar year ending in the taxation year and the amount, if any, at the end of that calendar year of unallocated income accrued in respect of the interest before 1982, as determined in prescribed manner.",

for taxation years ending after December 30, 1984, with respect to that interest.

(3) Third anniversary amounts to be included — Where in a taxation year a taxpayer (other than a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary) holds an interest in

(a) a life insurance policy last acquired after December 1, 1982, or

(b) an annuity contract last acquired before December 2, 1982 under which annuity payments did not commence before December 2, 1982,

other than

(c) an exempt policy,

(d) a prescribed annuity contract, or

(e) a contract under which the policyholder has, under the terms and conditions of a life insurance policy that was not an annuity contract and that was last acquired before December 2, 1982, received the proceeds therefrom in the form of an annuity contract

on a third anniversary of the policy or contract and in the taxation year or any preceding taxation year he has not made an election under subsection (4) in respect of his interest, there shall be included in computing his income for the taxation year the amount by which the accumulating fund on that third anniversary, as determined in prescribed manner, in respect of his interest exceeds the aggregate of the adjusted cost basis of the interest to the taxpayer on that third anniversary and the amount, if any, on that third anniversary of unallocated income accrued in respect of the interest before 1982, as determined in prescribed manner.

(4) Election — Where in a taxation year a taxpayer (other than a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary) who holds an interest in

(a) a life insurance policy (other than an annuity contract) last acquired after December 1, 1982, or

(b) an annuity contract (other than a prescribed annuity contract)

has, in the year or a preceding taxation year, elected in respect of that interest by notifying the issuer thereof in writing, he shall, in computing his income for the year, include the amount by which the accumulating fund at the end of the year, as determined in prescribed manner, in respect of that interest exceeds the aggregate of

(c) the adjusted cost basis to him of the interest at the end of the year, and

(d) the amount, if any, at that time of unallocated income accrued in respect of the interest before 1982, as determined in prescribed manner.

(4.1) Revocation of election — Where not later than 120 days after the end of a taxation year a taxpayer revokes an election made under subsection (4) in respect of his interest in a life insurance policy or an annuity contract by notifying the issuer thereof in writing, the following rules apply for that year and each subsequent taxation year:

(a) he shall be deemed for the purposes of subsection (3) not to have made an election under subsection (4) in respect of his interest; and

(b) he is not entitled to make an election under subsection (4) in respect of his interest.

Subsec. 12.2(4.1) added by 1985, c. 45, s. 6, applicable to 1985 *et seq.*

Subsec. 12.2(4) substituted by 1984, c. 45, s. 6, applicable to taxation years commencing after 1982. Subsec. 12.2(4) formerly read:

(4) Election — Where in a taxation year a taxpayer who holds an interest in

(a) a life insurance policy (other than an annuity contract) last acquired after December 1, 1982, or

(b) an annuity contract (other than a contract under which annuity payments have commenced)

elects under this subsection by notifying the issuer thereof in writing, he shall, in computing his income for the taxation year and each subsequent taxation year during which he holds the interest, include the amount by which the accumulating fund at the end of the taxation year, as determined in prescribed manner, in respect of his interest exceeds the aggregate of

(c) the adjusted cost basis to him of the interest at the end of the year, and

(d) the amount, if any, at that time of unallocated income accrued in respect of the interest before 1982, as determined in prescribed manner.

(For earlier history, see end of s. 12.2.)

Regulations [subsec. 12.2(1)]: 201(5) (information return); 304 (prescribed annuity contract); 307 (accumulating fund).

Interpretation Bulletins [subsec. 12.2(1)]: IT-87R2: Policyholders' income from life insurance policies; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-365R2: Damages, settlements and similar receipts; IT-415R2: Deregistration of RRSPs.

Advance Tax Rulings: ATR-50: Structured settlement; ATR-68: Structured settlement.

(2)–(4.1) [Repealed under former Act]

Pre-RSC History: See subsec. 12.2(1).

(5) Idem — Where in a taxation year subsection (1) applies with respect to a taxpayer's interest in an annuity contract (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest), there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(a) the total of all amounts each of which is an amount determined at the end of the year, in respect of the interest, for any of H to L in the definition "adjusted cost basis" in subsection 148(9)

exceeds

(b) the total of all amounts each of which is an amount determined at the end of the year, in respect of the interest, for any of A to G in the definition referred to in paragraph (a).

History: That portion of subsec. 12.2(5) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 8(3), applicable with respect to life insurance policies last acquired after 1989. That portion formerly read:

(5) Idem — Where in a taxation year subsection (1) or (3) applies with respect to a taxpayer's interest in an annuity contract, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

Pre-RSC History: Subsec. 12.2(5) substituted for subsecs. (5) to (7) by 1990, c. 39, subsec. 5(2), applicable (by subsec. 5(7), as amended by 1991, c. 49, s. 251) with respect to life insurance policies last acquired after 1989. Subsecs. 12.2(5) to (7) formerly read:

(5) Amounts to be included — Where in a taxation year subsection (1), (3) or (4) applies with respect to a taxpayer's interest in an annuity contract, or would apply if the contract had a third anniversary in the year, and at the end of the year

(a) the aggregate of all amounts each of which is an amount determined under any of subparagraphs 148(9)(a)(vi) to (xi) in respect of his interest

exceeds

(b) the aggregate of all amounts each of which is an amount determined under any of subparagraphs 148(9)(a)(i) to (v.1) in respect of his interest,

there shall be included in computing the income of the taxpayer for the year the amount by which the aggregate determined under paragraph (a) exceeds the aggregate determined under paragraph (b).

(6) Application — Subsection (1) does not apply in computing the income of a taxpayer for a taxation year if his interest in the annuity contract was last acquired before December 20, 1980, and

(a) he could not, in the period after December 19, 1980 and before the end of the taxation year, require the repayment, acquisition, cancellation or conversion of his interest (other than by reason of a failure or default under the terms or conditions thereof) and the maturity date of the contract has not been extended and the terms or conditions relating to payments in respect of his interest have not been changed in that period; or

(b) the cash surrender value of his interest has not, in the period referred to in paragraph (a), exceeded the aggregate of premiums paid in respect of the interest.

(7) **Idem** — Subsection (3) does not apply in computing the income of a taxpayer for a taxation year if his interest in the annuity contract was last acquired before December 2, 1982 and

(a) he could not, in the period after December 1, 1982 and before the end of the taxation year, require the repayment, acquisition, cancellation or conversion of his interest (other than by reason of a failure or default under the terms or conditions thereof) and the maturity date of the contract has not been extended and the terms or conditions relating to payments in respect of his interest have not been changed in that period; or

(b) the cash surrender value of his interest has not, in the period referred to in paragraph (a), exceeded the aggregate of premiums paid in respect of the interest.

(For earlier history, see end of s. 12.2.)

Regulations: 201(5) (information return).

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

(6), (7) [Repealed under former Act]

Pre-RSC History: See under subsec. 12.2(5).

(8) Deemed acquisition of interest in annuity — For the purposes of this section, the first premium that was not fixed before 1990 and that was paid after 1989 by or on behalf of a taxpayer under an annuity contract, other than a contract described in paragraph (1)(d) of this section, or paragraph 12.2(3)(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or to which subsection (1) of this section or subsection 12.2(4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies (as those paragraphs and subsections, the numbers of which are those in force immediately before December 17, 1991, read in their application to life insurance policies last acquired before 1990) or to which subsection 12(3) applies, last acquired by the taxpayer before 1990 (in this subsection referred to as the "original contract") shall be deemed to have been paid to acquire, at the time the premium was paid, an interest in a separate annuity contract issued at that time, to the extent that the amount of the premium was not fixed before 1990, and each subsequent premium paid under the original contract shall be deemed to have been paid under that separate contract to the extent that the amount of that subsequent premium was not fixed before 1990.

History: Subsec. 12.2(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 8(4), applicable with respect to premiums paid after 1989. Subsec. 12.2(8) formerly read:

(8) **Deemed acquisition of interest in annuity** — For the purposes of this section, the first premium that was not fixed before 1990 and that was paid after 1989 by or on behalf of a taxpayer under an annuity contract (other than a contract described in paragraph (1)(d) or (3)(c) or a contract to which subsection (1) or (3) or 12(3) applies) last acquired by the taxpayer before 1990 (in this subsection referred to as the "original contract") shall be deemed to have been paid to acquire, at the time the premium was paid, an interest in a separate annuity contract issued at that time and each subsequent premium paid under the original contract shall be deemed to have been paid under that separate contract.

Pre-RSC History: Subsec. 12.2(8) substituted by 1990, c. 39, subsec. 5(3), applicable with respect to premiums paid after 1989. Subsec. 12.2(8) formerly read:

(8) **Presumption** — For the purposes of this section, the first premium that was not fixed before December 2, 1982 and that was paid on or after that date by or on behalf of a taxpayer under an annuity contract (other than a contract described in paragraph (1)(d) or (3)(e) or a contract to which subsection (1), (3) or (4) or 12(3) applies or would apply in a year if the contract had a third anniversary in the year) last acquired by the taxpayer before that date (in this subsection referred to as the "original contract") shall be deemed to have been paid to acquire, at the time the premium was paid, an interest in a separate annuity contract issued at that time, to the extent that the amount of the premium was not fixed before December 2, 1982, and each subsequent premium paid under the original contract shall be deemed to have been paid under such separate contract to the extent that the amount of the premium was not fixed before December 2, 1982.

(For earlier history, see end of s. 12.2.)

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

(9) [Repealed under former Act]

Pre-RSC History: Subsec. 12.2(9) repealed by 1990, c. 39, subsec. 5(4), applicable (by subsec. 5(7), as amended by 1991, c. 49, s. 251) with respect to life insurance policies last acquired after 1989. Subsec. 12.2(9) formerly read:

(9) **Rules where premium paid** — Where, at any time after December 1, 1982, a prescribed premium (other than a premium referred to in subsection (8)) has been paid by or on behalf of a taxpayer in respect of an interest in a life insurance policy last acquired on or before that date, and

(a) the policy is not an exempt policy, or

(b) there has been a prescribed increase in any benefit on death under the policy,

this Act applies after that time with respect to his interest in the policy as if

(c) subsections (1), (3) and (4) and 148(4), paragraph 148(2)(b) and clause 148(9)(e.2)(iv)(A) were read without reference to the words "last acquired after December 1, 1982";

(d) subsection (1) were read without reference to paragraph (d) thereof;

(e) subsection (3) were read without reference to paragraph (e) thereof;

(f) subsection 148(6) were not applicable;

(g) subparagraph 148(9)(a)(ix) were read as follows:

"(ix) in the case of an interest in a life insurance policy (other than an annuity contract), the aggregate of all amounts each of which is the net cost of pure insurance in respect of the interest, as determined in prescribed manner, immediately before the end of the calendar year ending in a taxation year commencing after the later of

(A) May 31, 1985, and

(B) the end of the year before the year in which subsection 12.2(9) first applied in respect of the interest, and

before that time,";

(h) subparagraph 148(9)(c)(ix) were read without reference to clause (A) thereof; and

(i) all that portion of subparagraph 148(9) (e.1)(iii) preceding clause (A) thereof were read as follows:

"(iii) that portion of any amount paid, after the later of May 31, 1985 and the time at which subsection 12.2(9) first applied in respect of the interest, under the policy with respect to"

and, for the purposes of this subsection, paragraph 148(10)(d) shall be read without reference to the expression "(other than a conversion into an annuity contract)".

(For earlier history, see end of s. 12.2.)

Regulations: 309 (prescribed premium, prescribed increase).

(10) Riders — For the purposes of this Act, a rider added at any time after 1989 to a life insurance policy last acquired before 1990 that provides additional life insurance is deemed to be a separate life insurance policy issued at that time unless

(a) the policy is an exempt policy last acquired after December 1, 1982 or an annuity contract; or

(b) the only additional life insurance provided by the rider is an accidental death benefit.

Related Provisions: 87(2)(j.4) — Amalgamation — accrual rules; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; Reg. 1408(5) — Similar rule for policy reserves.

History: Subsec. 12.2(10) amended by 1998, c. 19, s. 72, applicable to riders added after 1989. The subsec. formerly read:

> (10) For the purposes of this Act, any rider added at any time after 1989 to a life insurance policy (other than an annuity contract) last acquired before 1990 that provides for additional life insurance (other than an accidental death benefit) shall be deemed to be a separate life insurance policy issued at that time.

Pre-RSC History: Subsec. 12.2(10) amended by 1990, c. 39, subsec. 5(5), to substitute "after 1989" for "after December 1, 1982" and "before 1990" for "before December 2, 1982", applicable with respect to riders added after 1989.

(For earlier history, see end of s. 12.2.)

(11) Definitions — In this section and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Related Provisions: 20(1.2) — Definitions in 12.2(11) apply to 20(1)(e).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"anniversary day" of a life insurance policy means

(a) the day that is one year after the day immediately preceding the day on which the policy was issued, and

(b) each day that occurs at each successive one-year interval after the day determined under paragraph (a);

History: "Anniversary day" in subsec. 12.2(11) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 8(5), applicable with respect to life insurance policies last acquired after 1989. That definition formerly read:

> "anniversary day" of a life insurance policy means the last day of each calendar year ending after the policy was issued;

Pre-RSC History: *The definition "anniversary day" was para. 12.2(11)(b).*

Para. 12.2(11)(b) substituted by 1990, c. 39, subsec. 5(6), applicable (by subsec. 5(7), as amended by 1991, c. 49, s. 251) with respect to life insurance policies last acquired after 1989. Para. 12.2(11)(b) formerly read:

> (b) "third anniversary" — "third anniversary" of a life insurance policy means
>
> (i) the end of the day that is three years after the end of the calendar year of issue of the policy, and
>
> (ii) the end of the day that occurs at every successive three year interval from the time determined under subparagraph (i)
>
> and for the purposes of this paragraph, where before 1985 a taxpayer has not disposed of an interest in an annuity contract last acquired by him before December 2, 1982, the contract shall be deemed to have been issued on December 31, 1984.

"exempt policy" has the meaning prescribed by regulation.

Related Provisions: 148(9)"adjusted cost basis".

Pre-RSC History: *The definition "exempt policy" was para. 12.2(11)(a).*

Regulations: 306 (meaning of "exempt policy").

(12) Application of subsecs. 138(12) and 148(9) — The definitions in subsections 138(12) and 148(9) apply to this section.

Origin of subsec. 12.2(12): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 138(12) and 148(9)).

(13) Application of subsec. 148(10) — Subsection 148(10) applies to this section.

Origin of subsec. 12.2(13): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 148(10)).

Pre-RSC History [s. 12.2]: S. 12.2 added by 1980-81-82-83, c. 140, s. 5, subsecs. 12.2(1), (3)–(7), (10) applicable to taxation years commencing after 1982.

Definitions [s. 12.2]: "acquired" — 12.2(13), 148(10)(c), (e); "adjusted cost basis" — 148(9), 248(1); "amount" — 12.2(12), 148(9), 248(1); "anniversary day" — 12.2(11); "annuity" — 248(1); "cash surrender value" — 12.2(12), 148(9); "corporation" — 248(1), *Interpretation Act* 35(1); "exempt policy" — 12.2(11); "insurer" — 12.2(13), 148(10)(a); "life insurance policy" — 138(12), 248(1); "life insurer" — 12.2(13), 148(10)(a), 248(1); "person" — 248(1); "person whose life was insured" — 12.2(13), 148(10)(b); "premium" — 12.2(12), 148(9); "prescribed" — 248(1); "prescribed annuity contract" — Reg. 304; "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

Interpretation Bulletins [s. 12.2]: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary; IT-415R2: Deregistration of RRSPs.

12.3 Transition inclusion re unpaid claims reserve — Where an amount has been deducted under subsection 20(26) in computing the income of an insurer for its taxation year that includes February 23, 1994, there shall be included in computing the insurer's income for that taxation year and each subsequent taxation year that begins before 2004, the prescribed portion for the year of the amount so deducted.

Related Provisions: 87(2)(g.1) — Amalgamation — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer.

History: S. 12.3 amended by 1995, c. 3, s. 3, applicable to taxation years that end after February 22, 1994. S. 12.3 formerly read:

> 12.3 Net reserve inclusion — Where a taxpayer has deducted an amount under subsection 20(26) in computing the taxpayer's income for the taxpayer's first taxation year that commences after June 17, 1987 and ends after 1987, there shall be included in computing the taxpayer's income for each of the taxation years ending after 1988 and commencing before 1993, the prescribed amount of the taxpayer's net reserve inclusion for that year.

Pre-RSC History: S. 12.3 added by 1988, c. 55, s. 5, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [s. 12.3]: "amount", "insurer", "prescribed" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Regulations: 8100(1) (prescribed amount of net reserve inclusion for former 12.3); 8101(2) (draft) (prescribed amount).

12.4 Bad debt inclusion — Where, in a taxation year, a taxpayer disposes of a property that was a property described in an inventory of the taxpayer and in the year or a preceding taxation year an amount has been deducted under paragraph 20(1)(p) in computing the taxpayer's income in respect of the property, there shall be included in computing the taxpayer's income for the year from the business in which the property was used or held, the amount, if any, by which

(a) the total of all amounts deducted under paragraph 20(1)(p) by the taxpayer in respect of the property in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(b) the total of all amounts included under paragraph 12(1)(i) by the taxpayer in respect of the property in computing the taxpayer's income for the year or a preceding taxation year.

Related Provisions: 26(3) — Banks — write-offs and recoveries; 87(2)(g.1) — Amalgamations; 138(11.5)(k) — Transfer of business by non-resident insurer; 142.5(8)(d)(ii) — First deemed disposition of mark-to-market debt obligation.

Pre-RSC History: S. 12.4 added by 1988, c. 55, s. 5, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [s. 12.4]: "amount", "business", "inventory", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

13. (1) Recaptured depreciation — Where, at the end of a taxation year, the total of the amounts determined for E to J in the definition "undepreciated capital cost" in subsection (21) in respect of a taxpayer's depreciable property of a particular prescribed class exceeds the total of the amounts determined for A to D in that definition in respect thereof, the excess shall be included in computing the taxpayer's income for the year.

Related Provisions: 13(3) — Interpretation where taxpayer is an individual; 13(5.2) — Where taxpayer paid rent for property before acquiring it; 13(5.3) — Rules applicable; 13(8) — Property disposed of after ceasing business; 13(13) — Deductions; 13(15) — Vessel disposed of before 1974; 20(16) — Terminal loss where A to D exceed E to J and no property left in class; 28(1)(d) — Inclusion in farming or fishing income when using cash method; 104(5)(b), (c) — Trusts — 21-year deemed disposition rule; 110.6(1) — "investment income"; 115(1)(a)(iii.2) — Non-resident's taxable income earned in Canada; 216(6) — Non-residents. See additional Related provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(1) substituted by 1988, c. 55, subsec. 6(1), applicable to 1985 *et seq.* Subsec. 13(1) formerly read:

> 13. (1) Where, at the end of a taxation year, the aggregate of all amounts determined under subparagraphs (21)(f)(iii) to (viii) in respect of depreciable property of a particular prescribed class of a taxpayer exceeds the aggregate of all amounts determined under subparagraphs (21)(f)(i) to (ii.1) in respect of depreciable property of that class of the taxpayer, the excess shall be included in computing the income of the taxpayer for that taxation year.

Subsec. 13(1) substituted by 1980-81-82-83, c. 48, subsec. 5(1), applicable to taxation years ending after December 11, 1979, to substitute "(viii)" for "(vi)" and "to (ii.1)" for "and (ii)".

Subsec. 13(1) substituted for subsecs. 13(1), (1.1), (2) by 1976-77, c. 4, subsec. 3(1), applicable in respect of taxation years commencing after May 25, 1976. Subsecs. 13(1), (1.1), (2) formerly read:

> 13. (1) Excess of proceeds over undepreciated capital cost — Where depreciable property of a taxpayer of a prescribed class has, in a taxation year, been disposed of and the proceeds of disposition exceed the undepreciated capital cost to him of depreciable property of that class immediately before the disposition, the lesser of
>
> (a) the amount of the excess, and
>
> (b) the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer,
>
> shall be included in computing his income for the year.
>
> (1.1) Determination of net amount — Notwithstanding subsection (1), where in a taxation year a timber resource property of a taxpayer has been disposed of, there shall be included in computing his income for the year the amount, if any, by which
>
> (a) the proceeds of disposition thereof,
>
> exceeds
>
> (b) the undepreciated capital cost to him, immediately before the disposition, of depreciable property of a prescribed class in which the timber resource was included.
>
> (2) Determination of net amount — Where one or more amounts are by subsection (1) or (1.1) required to be included in computing a taxpayer's income for a taxation year in respect of the disposition of depreciable property of a prescribed class and the taxpayer has, during the year but following the disposition, acquired further depreciable property of that class, notwithstanding subsections (1) and (1.1) and paragraph (21)(f), the following rules apply:
>
> (a) if the aggregate of the amounts that would, according to the terms of subsection (1) or (1.1), be included thereunder in computing his income is equal to or exceeds the amount that would, according to the terms of paragraph (21)(f), be the undepreciated capital cost to him of depreciable property of that class at the end of the year before any deduction is made under paragraph 20(1)(a) for that year,
>
> (i) the amount to be included in computing his income for the year under subsection (1) or (1.1) in respect of dispositions of depreciable property of that class is that aggregate minus the amount that would be that undepreciated capital cost, and
>
> (ii) the undepreciated capital cost to him of depreciable property of that class at the end of the year is nil; and
>
> (b) if the aggregate of the amounts that would, according to the terms of subsection (1) or (1.1), be included thereunder in computing his income is less than the amount that would, according to the terms of paragraph (21)(f), be the undepreciated capital cost to him of depreciable property of that class at the end of the year before any deduction is made under paragraph 20(1)(a) for that year,
>
> (i) no amounts shall be included in computing his income for the year in respect of depreciable property of that class under subsection (1) or (1.1), and
>
> (ii) the undepreciated capital cost to him of depreciable property of that class at the end of the year before any deduction is made under paragraph 20(1)(a) for the year is the amount that it would be according to the terms of paragraph (21)(f) minus that aggregate.

Subsec. 13(1.1) added and 13(2) substituted to add references to subsec. (1.1) by 1974-75-76, c. 26, subsec. 6(1), applicable in respect of timber resource properties acquired after May 6, 1974.

Selected Cases [subsec. 13(1)]: *Odyssey Industries Inc. v. Canada*, [1996] 2 C.T.C. 2401 (TCC) (Recaptured CCA is not profit from sale of assets; no reserve applicable where proceeds of disposition paid over time); *Olympia and York Developments Ltd. v. The Queen*, [1980] C.T.C. 265 (FCTD) (Conditional sale under suspensive condition was disposition for recapture purposes); *The Queen v. Moulds*, [1978] C.T.C. 146 (FCA) (Despite not having disputed reassessment eight years earlier, vendor not estopped from claiming no part of purchase price allocated to buildings where purchaser destroyed them upon closing; terminal loss permitted); *The Queen v. Baziuk*, [1976] C.T.C. 787 (FCTD) (Purchase price allocated to building destroyed before closing pursuant to contract constituted proceeds of disposition for recapture purposes); *Zeal and Gold Ltd. v. MNR*, [1973] C.T.C. 129 (FCTD) (Compensation resulting in recapture attributed to year claim acknowledged by insurer, not year paid); *Stanley v. MNR*, [1972] C.T.C. 34 (SCC) (Value greater than undepreciated capital cost allocated to building even though purchaser desired only land); *Lea-Don Canada Ltd. v. MNR*, [1970] C.T.C. 346 (SCC) (In non-arm's length sale of asset to parent company, proceeds deemed to be fair market value).

I.T. Application Rules: 20(2) (income from farming or fishing — property acquired before 1972).

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money; IT-267R2: CCA — vessels; IT-288R2: Gifts of capital properties to a charity and others; IT-418: Partial dispositions of property; IT-478R2: CCA — recapture and terminal loss; IT-481: Timber resource property and timber limits.

I.T. Technical News: No. 12 (1998 deduction limits and benefit rates for automobiles); No. 16 (*Continental Bank* case).

(2) Idem [luxury automobile] — Notwithstanding subsection (1), where an excess amount is determined under that subsection at the end of a taxation year in respect of a passenger vehicle having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, that excess amount shall not be included in computing the taxpayer's income for the year but shall be deemed, for the purposes of B in the definition "undepreciated capital cost" in subsection (21), to be an amount included in the taxpayer's income for the year by reason of this section.

Related Provisions: 13(3) — Interpretation where taxpayer is an individual; 13(7)(g) — Limitation on capital cost of automobile; 13(8) — Disposition after ceasing business; 20(16.1) — Terminal loss — vehicles; 67.2 — Interest on money borrowed for passenger vehicle; Reg. 1100(2.5) — 50% CCA in year of disposition. See additional Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(2) substituted by 1990, c. 39, subsec. 6(1), applicable with respect to fiscal periods and taxation years commencing after June 17, 1987 that end after 1987. Subsec. (2) formerly read:

> (2) Notwithstanding subsection (1), where the excess amount determined at the end of a taxation year under that subsection is in respect of
>
> (a) a motor vehicle owned by a taxpayer who is an individual, other than a trust, except where all or substantially all of the distance travelled by the vehicle throughout the period that he owned it was for the purpose of earning income, or
>
> (b) a passenger vehicle, having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, owned by a trust, partnership or corporation,
>
> that excess amount shall not be included in computing the taxpayer's income for the year but shall be deemed, for the purposes of subparagraph (21)(f)(ii), to be an amount included in the taxpayer's income for the year by reason of this section.

Subsec. 13(2) added by 1988, c. 55, subsec. 6(2), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

For former subsec. 13(2), see History under subsec. 13(1).

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

(3) "Taxation year", "year" and "income" of individual — Where a taxpayer is an individual whose income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year and depreciable property acquired for the purpose of gaining or producing income from the business has been disposed of,

> (a) for greater certainty, each reference in subsections (1) and (2) to a "taxation year" and "year" shall be read as a reference to a "fiscal period"; and
>
> (b) a reference in subsection (1) to "the income" shall be read as a reference to "the income from the business".

Related Provisions: 13(8) — Property disposed of after ceasing business; 20(16.2) — Same rule applies for purposes of subsecs. 20(16) and (16.1). See additional Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *Para. 13(3)(a) also referred to subsecs. 20(16) and (16.1). (See now subsec. 20(16.2).)*

Para. 13(3)(a) substituted by 1990, c. 39, subsec. 6(2), applicable with respect to fiscal periods and taxation years commencing after June 17, 1987 that end after 1987. Para. (a) formerly read:

> (a) for greater certainty, a reference in subsections (1) and 20(16) to a "taxation year" shall be read as a reference to a "fiscal period", and

Para. 13(3)(a) substituted by 1977-78, c. 1, subsec. 6(1), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add reference to subsec. 20(16).

Paras. 13(3)(a), (b) substituted by 1976-77, c. 4, subsec. 3(2), applicable in respect of taxation years commencing after May 25, 1976. Paras. (a), (b) formerly read:

> (a) for greater certainty, a reference in subsection (1), (1.1) or (2) to a "taxation year" or "the year" shall be read as a reference to a "fiscal period" or "the period"; and
>
> (b) a reference in subsection (1), (1.1) or (2) to "his income" shall be read as a reference to "his income from the business".

Subsec. 13(3) substituted by 1974-75-76, c. 26, subsec. 6(1), applicable in respect of timber resource properties acquired after May 6, 1974, to add reference to subsec. (1.1).

Interpretation Bulletins: IT-172R: CCA — taxation year of individuals; IT-478R2: CCA — recapture and terminal loss.

(4) Exchanges of property — Where an amount in respect of the disposition in a taxation year (in this subsection referred to as the "initial year") of depreciable property (in this section referred to as the "former property") of a prescribed class of a taxpayer would, but for this subsection, be the amount determined for F or G in the definition "undepreciated capital cost" in subsection (21) in respect of the disposition of the former property that is either

> (a) property the proceeds of disposition of which were proceeds referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection (21), or
>
> (b) a property that was, immediately before the disposition, a former business property of the taxpayer,

and the taxpayer so elects under this subsection in the taxpayer's return of income for the taxation year in which the taxpayer acquires a depreciable property of a prescribed class of the taxpayer that is a replacement property for the taxpayer's former property,

> (c) the amount otherwise determined for F or G in the definition "undepreciated capital cost" in subsection (21) in respect of the disposition of the former property shall be reduced by the lesser of
>
> (i) the amount, if any, by which the amount otherwise determined for F or G in that definition exceeds the undepreciated capital cost to the taxpayer of property of the prescribed class to which the former property belonged at the time immediately before the time that the former property was disposed of, and
>
> (ii) the amount that has been used by the taxpayer to acquire
>
> (A) where the former property is referred to in paragraph (a), before the end of the second taxation year following the initial year, or
>
> (B) in any other case, before the end of the first taxation year following the initial year,
>
> a replacement property of a prescribed class that has not been disposed of by the taxpayer before the time at which the taxpayer disposed of the former property, and
>
> (d) the amount of the reduction determined under paragraph (c) shall be deemed to be proceeds of disposition of a depreciable property of the taxpayer that had a capital cost equal to that amount and that was property of the same class as the replacement property, from a disposition made on the later of
>
> (i) the time the replacement property was acquired by the taxpayer, and
>
> (ii) the time the former property was disposed of by the taxpayer.

Related Provisions: 13(4.1) — Replacement property for a former property; 13(18) — Reassessments; 14(6) — Parallel rule for eligible capital property; 44(1) — Parallel rule for capital gains purposes; 44(4) — Deemed election; 44(6) — Deemed proceeds of disposition; 87(2)(l.3) — Amalgamations — replacement property; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing of election or revocation. See also Related Provisions and Definitions at end of s. 13.

History: The portion of subsec. 13(4) between paras. (b) and (c) amended by 1998, c. 19, subsec. 73(1), applicable to dispositions of former properties that occur after the 1993 taxation year. That portion formerly read:

> and the taxpayer so elects under this subsection in the taxpayer's return of income under this Part for the year in which the taxpayer acquires, as a replacement for the former property, a property (in this subsection referred to as a "replacement property"),

Pre-RSC History: Subsec. 13(4) substituted by 1977-78, c. 1, subsec. 6(2), applicable to dispositions of property after March 31, 1977. Subsec. (4) formerly read:

(4) Insurance and compensation proceeds — Where an amount that would otherwise be included in computing the income of a taxpayer for a taxation year (hereinafter referred to as the "initial year") by virtue of this section is

(a) an amount receivable, in respect of loss or destruction of property of a prescribed class,

(i) under a policy of insurance, or

(ii) otherwise as compensation for the property so lost or destroyed, or

(b) an amount receivable as compensation for property of a prescribed class taken under statutory authority or as the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

the following rule applies:

(c) the amount shall, to the extent that it has been used by a taxpayer

(i) before the end of the time certified by the Minister of Industry, Trade and Commerce to be a reasonable time following the initial year, if the property so lost, destroyed, taken or sold was a vessel, or

(ii) before the end of the second taxation year following the initial year if the property is not property referred to in subparagraph (i)

to acquire, as a replacement for the property referred to in paragraph (a) or (b), a property (in this section referred to as "replacement property") of a prescribed class that has not been disposed of by the taxpayer before the time the property referred to in paragraph (a) or (b) was disposed of

(iii) subject to subparagraph (iv), not be included in computing the income of the taxpayer for the initial year, and

(iv) be deemed to be proceeds of disposition of a depreciable property of the taxpayer, that had a capital cost equal to the amount of those proceeds and that was property of the same class as the replacement property, from a disposition made on the later of

(A) the time the replacement property was acquired, or

(B) the time the property referred to in paragraph (a) or (b) was disposed of.

Cl. 13(4)(c)(iv)(B) substituted by 1976-77, c. 4, subsec. 3(3), applicable in respect of taxation years commencing after May 25, 1976. Cl. (c)(iv)(B) formerly read:

(B) the time immediately after the time the property referred to in paragraph (a) or (b) was disposed of.

Subsec. 13(4) substituted by 1974-75-76, c. 26, subsec. 4(2), applicable in respect of amounts that become receivable after May 6, 1974. Subsec. (4) formerly read:

(4) Where an amount that would otherwise be included in computing the income of a taxpayer for a taxation year (hereinafter referred to as the "initial year") by virtue of this section is

(a) an amount payable, in respect of loss or destruction of property of a prescribed class,

(i) under a policy of insurance, or

(ii) otherwise as compensation for the property so lost or destroyed, or

(b) an amount payable as compensation for property of a prescribed class taken under statutory authority or as the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

the following rules apply;

(c) the amount shall, to the extent that it has been expended by the taxpayer

(i) in the taxation year immediately following the initial year on acquiring property of the same class,

(ii) in the taxation year immediately following the initial year on acquiring, if the property so lost, destroyed taken or sold was a building, a building of a prescribed class, or

(iii) within a time certified by the Minister of Industry, Trade and Commerce to be a reasonable time following the initial year, on acquiring, if the property so lost, destroyed, taken or sold was a vessel of a prescribed class,

not be included in computing the income of the taxpayer for the initial year; and

(d) the amount shall, to the extent that it has not been included in computing the income of the taxpayer for the initial year, be deemed to be proceeds of a disposition made,

(i) in the case of a vessel, in the taxation year in which it is in whole or in part expended in accordance with paragraph (c), but only to the extent that it is so expended in that year and only if such year is within the time certified by the Minister of Industry, Trade and Commerce under subparagraph (c)(iii), and

(ii) in the case of any other property, in the taxation year immediately following the initial year

of depreciable property of the taxpayer of the same class as the property so acquired.

Selected Cases [subsec. 13(4)]: *Posno v. The Queen*, [1989] 2 C.T.C. 234 (FCTD) (Aircraft acquired for personal use replacing one previously used in business within scope of provision).

Remission Orders: *Telesat Canada Remission Order*, P.C. 1999-1335.

Interpretation Bulletins: IT-259R3: Exchanges of property; IT-267R2: CCA — vessels; IT-271R: Expropriations — time and proceeds of disposition.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(4.1) Replacement for a former property — For the purposes of subsection (4), a particular depreciable property of a prescribed class of a taxpayer is a replacement for a former property of the taxpayer if

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer and used by the taxpayer or a person related to the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

(b) where the former property was used by the taxpayer or a person related to the taxpayer for the purpose of gaining or producing income from a business, the particular depreciable property was acquired for the purpose of gaining or producing income from that or a similar business or for use by a person related to the taxpayer for such a purpose;

(c) where the former property was a taxable Canadian property of the taxpayer, the particular depreciable property is a taxable Canadian property of the taxpayer; and

(d) where the former property was a taxable Canadian property (other than treaty-protected property) of the taxpayer, the particular depreciable property is a taxable Canadian property (other than treaty-protected property) of the taxpayer.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

History: Para. 13(4.1)(c) amended and para. (d) added by 1999, c. 22, subsec. 6(1), applicable to any disposition that occurs in a taxation year that ends after 1997. Para. (c) formerly read:

(c) where the former property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the former property was disposed of and the former property were used in a business carried on by the taxpayer), the particular depreciable property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the particular property was acquired and the particular property were used in a business carried on by the taxpayer).

Para. 13(4.1)(a) amended and para. (a.1) added by 1998, c. 19, subsec. 73(2), applicable to dispositions of former properties that occur after the 1993 taxation year except that, where a taxpayer so elects in respect of a former property that was disposed of before June 18, 1998 by notifying the Minister of National Revenue in writing on or before the filing-due date for the taxpayer's first taxation year that ends after June 18, 1998, para. 13(4.1)(a.1) shall, for the purpose of determining whether a property is a replacement property of the former property, be read as follows:

(a.1) it was acquired by the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

Para. (a) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer or a person related to the taxpayer put the former property;

Paras. 13(4.1)(a) to (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(1), paras. (4.1)(a), (b) applicable to dispositions of former properties occurring after July 13, 1990, and para. (c) applicable to property acquired as a replacement for a former property disposed of after April 2, 1990, other than a former property disposed of

(a) under an agreement in writing entered into before April 3, 1990; or

(b) pursuant to a written notice of an intention to take the property under statutory authority given before April 3, 1990 or for the sale price of the property sold to a person by whom such a notice was given before April 3, 1990.

Paras. (a) to (c) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;

(b) where the former property was used by the taxpayer for the purpose of gaining or producing income from a business, the particular depreciable property was acquired for the purpose of gaining or producing income from that or a similar business; and

(c) where the taxpayer was not resident in Canada at the time the taxpayer acquired the particular depreciable property, in addition to the requirements in paragraphs (a) and (b), the particular depreciable property was taxable Canadian property.

Pre-RSC History: Paras. 13(4.1)(a), (b) substituted by 1977-78, c. 32, s. 2, applicable to dispositions of property after March 31, 1977.

Subsec. 13(4.1) added by 1977-78, c. 1, subsec. 6(2), applicable to dispositions of property after March 31, 1977.

Interpretation Bulletins: IT-259R3: Exchanges of property.

(5) Reclassification of property — Where one or more depreciable properties of a taxpayer that were included in a prescribed class (in this subsection referred to as the "old class") become included at any time (in this subsection referred to as the "transfer time") in another prescribed class (in this subsection referred to as the "new class"), for the purpose of determining at any subsequent time the undepreciated capital cost to the taxpayer of depreciable property of the old class and the new class

(a) the value of A in the definition "undepreciated capital cost" in subsection (21) shall be determined as if each of those depreciable properties were

(i) properties of the new class acquired before the subsequent time, and

(ii) never included in the old class; and

(b) there shall be deducted in computing the total depreciation allowed to the taxpayer for property of the old class before the subsequent time, and added in computing the total depreciation allowed to the taxpayer for property of the new class before the subsequent time, the greater of

(i) the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the capital cost to the taxpayer of each of those depreciable properties, and

B is the undepreciated capital cost to the taxpayer of depreciable property of the old class at the transfer time, and

(ii) the total of all amounts each of which is an amount that would have been deducted under paragraph 20(1)(a) in respect of a depreciable property that is one of those properties in computing the taxpayer's income for a taxation year that ended before the transfer time and at the end of which the property was included in the old class if

(A) the property had been the only property included in a separate prescribed class, and

(B) the rate allowed by the regulations made for the purpose of paragraph 20(1)(a) in respect of that separate class had been the effective rate that was used by the taxpayer to calculate a deduction under that paragraph in respect of the old class for the year.

Related Provisions: 87(2)(d)(ii)(C) — Amalgamations — depreciable property; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 13.

History: Subsec. 13(5) amended by 1997, c. 25, subsec. 3(1), applicable to properties of a prescribed class that, after 1996, become included in property of another prescribed class. Subsec. (5) formerly read:

(5) Transferred property — Where depreciable property of a taxpayer that was included in a prescribed class (in this subsection referred to as the "former class") has been transferred to another prescribed class (in this subsection referred to as the "other class"), for purposes of determining the undepreciated capital cost to the taxpayer of depreciable property of the former class and of the other class at any time after the transfer

(a) the transferred property shall be deemed to be depreciable property of the other class acquired before that time and not depreciable property of the former class acquired before that time; and

(b) an amount equal to the greater of

(i) the amount, if any, by which the capital cost to the taxpayer of the transferred property exceeds the undepreciated capital cost to the taxpayer of depreciable property of the former class immediately before the transfer, and

(ii) the total of all amounts that would have been deducted by the taxpayer in respect of the transferred property under paragraph 20(1)(a) in computing the taxpayer's income for taxation years ending before the transfer had that property been the only property included in a separate prescribed class and had the rate allowed by the regulations made under paragraph 20(1)(a) in respect of that separate class been the effective rate that was used by the taxpayer to calculate a deduction under that paragraph in respect of the former class for taxation years at the end of which the transferred property was included in the former class

shall be included in computing the total depreciation allowed to the taxpayer for property of the other class before that time and not included in computing the total depreciation allowed to the taxpayer for property of the former class before that time.

Pre-RSC History: Subsec. 13(5) substituted by 1988, c. 55, subsec. 6(3), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. Subsec. (5) formerly read:

(5) Where depreciable property of a taxpayer that was included in a prescribed class (hereinafter in this subsection referred to as the "former class") has been transferred to another prescribed class (hereinafter in this subsection referred to as the "other class"), for the purposes of paragraph (21)(f)

(a) there shall be added to the capital cost to the taxpayer of depreciable property of the former class acquired before the transfer, the greater of

(i) the amount, if any, by which the capital cost to the taxpayer of the transferred property exceeds the undepreciated

capital cost to him of depreciable property of the former class immediately before the transfer, and

(ii) the aggregate of all amounts that would have been allowed to the taxpayer in respect of the transferred property, if it had been a prescribed class, at the rate that was allowed to him in respect of property of the former class under regulations made under paragraph 20(1)(a) in computing income for the taxation years before the transfer; and

(b) there shall be added to the total depreciation allowed to the taxpayer for property of the other class the greater of the amounts determined under subparagraphs (a)(i) and (ii).

Interpretation Bulletins: IT-190R2: CCA — transferred and misclassified property.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(5.1) Rules applicable [leasehold interest] — Where at any time in a taxation year a taxpayer acquires a particular property in respect of which, immediately before that time, the taxpayer had a leasehold interest that was included in a prescribed class, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(a) the leasehold interest shall be deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to the amount, if any, by which

(i) the capital cost immediately before that time of the leasehold interest

exceeds

(ii) the total of all amounts claimed by the taxpayer in respect of the leasehold interest and deductible under paragraph 20(1)(a) in computing the taxpayer's income in previous taxation years;

(b) the particular property shall be deemed to be depreciable property of a prescribed class of the taxpayer acquired by the taxpayer at that time and there shall be added to the capital cost to the taxpayer of the property an amount equal to the capital cost referred to in subparagraph (a)(i); and

(c) the total referred to in subparagraph (a)(ii) shall be added to the total depreciation allowed to the taxpayer before that time in respect of the class to which the particular property belongs.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(5.1) added by 1977-78, c. 1, subsec. 6(3), applicable in respect of acquisitions of property after March 31, 1977.

Interpretation Bulletins: IT-464R: CCA — leasehold interests.

(5.2) Idem [rent deemed to be CCA] — Where, at any time, a taxpayer has acquired a capital property that is depreciable property or real property in respect of which, before that time, the taxpayer or any person with whom the taxpayer was not dealing at arm's length was entitled to a deduction in computing income in respect of any amount paid or payable for the use of, or the right to use, the depreciable property or real property and the cost or the capital cost (determined without reference to this subsection) at that time of the property to the taxpayer is less than the fair market value thereof at that time determined without reference to any option with respect to that property, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(a) the property shall be deemed to have been acquired by the taxpayer at that time at a cost equal to the lesser of

(i) the fair market value of the property at that time determined without reference to any option with respect to that property, and

(ii) the total of the cost or the capital cost (determined without reference to this subsection) of the property to the taxpayer and all amounts (other than amounts paid or payable to a person with whom the taxpayer was not dealing at arm's length) each of which is an outlay or expense made or incurred by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length at any time for the use of, or the right to use, the property,

and for the purposes of this paragraph and subsection (5.3), where a particular corporation has been incorporated or otherwise formed after the time any other corporation with which the particular corporation would not have been dealing at arm's length had the particular corporation been in existence before that time, the particular corporation shall be deemed to have been in existence from the time of the formation of the other corporation and to have been not dealing at arm's length with the other corporation;

(b) the amount by which the cost to the taxpayer of the property determined under paragraph (a) exceeds the cost or the capital cost thereof (determined without reference to this subsection) shall be added to the total depreciation allowed to the taxpayer before that time in respect of the prescribed class to which the property belongs; and

(c) where the property would, but for this paragraph, not be depreciable property of the taxpayer, it shall be deemed to be depreciable property of a separate prescribed class of the taxpayer.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(5.2) added by 1980-81-82-83, c. 48, subsec. 5(2), applicable with respect to acquisitions of property occurring after December 11, 1979.

Regulations: 1101(5g); Sch. II:Cl. 36 (property under 13(5.2)(c) deemed to be a separate class).

Interpretation Bulletins: IT-233R: Lease-option agreements; sale leaseback agreements.

Forms: T776: Statement of real estate rentals; T2083: Capital dispositions supplementary schedules re: Real estate; T2085: Capital dispositions supplementary schedules re: Depreciable property.

(5.3) Idem [disposition of option] — Where, at any time in a taxation year, a taxpayer has disposed of a capital property that is an option with respect to depreciable property or real property in respect of which the taxpayer or any person with whom the taxpayer was not dealing at arm's length was entitled to a deduction in computing income in respect of any amount paid for the use of, or the right to use, the depreciable property or real property, for the purposes of this section, the amount, if any, by which the proceeds of disposition to the taxpayer of the option exceed the taxpayer's cost in respect thereof shall be deemed to be an excess referred to in subsection (1) in respect of the taxpayer for the year.

Related Provisions: 49 — Options. See also Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(5.3) added by 1980-81-82-83, c. 48, subsec. 5(2), applicable with respect to dispositions occurring after January 12, 1981.

Interpretation Bulletins: IT-233R: Lease-option agreements; sale leaseback agreements.

Forms: T776: Statement of real estate rentals.

(5.4) Idem — Where, before the time of disposition of a capital property that was depreciable property of a taxpayer, the taxpayer, or any person with whom the taxpayer was not dealing at arm's length, was entitled to a deduction in computing income in respect of any outlay or expense made or incurred for the use of, or the right to use, during a period of time, that capital property (other than an outlay or expense made or incurred by the taxpayer or a person with whom the taxpayer was not dealing at arm's length before the acquisition of the property), except where the taxpayer disposed of the property to a person with whom the taxpayer was not dealing at arm's length and that person was subject to the provisions of subsection (5.2) with respect to the acquisition by that person of the property, the following rules apply:

(a) an amount equal to the lesser of

(i) the total of all amounts (other than amounts paid or payable to the taxpayer or a person with whom the taxpayer was not dealing at arm's length) each of which was a deductible outlay or expense made or incurred before the time of disposition by the taxpayer, or by a person with whom the taxpayer was not dealing at arm's length, for the use of, or the right to use, during the period of time, the property, and

(ii) the amount, if any, by which the fair market value of the property at the earlier of

(A) the expiration of the last period of time in respect of which the deductible outlay or expense referred to in subparagraph (i) was made or incurred, and

(B) the time of the disposition

exceeds the capital cost to the taxpayer of the property immediately before that time

shall, immediately before the time of the disposition, be added to the capital cost of the property to the person who owned the property at that time; and

(b) the amount added to the capital cost to the taxpayer of the property pursuant to paragraph (a) shall be added immediately before the time of the disposition to the total depreciation allowed to the taxpayer before that time in respect of the prescribed class to which the property belongs.

Related Provisions: 13(5.5) — Lease cancellation payment deemed not to be made for the use of property. See additional Related Provisions and Definitions at end of s. 13.

(5.5) Lease cancellation payment — For the purposes of subsection (5.4), an amount deductible by a taxpayer under paragraph 20(1)(z) or (z.1) in respect of a cancellation of a lease of property shall, for greater certainty, be deemed not to be an outlay or expense that was made or incurred by the taxpayer for the use of, or the right to use, the property.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsecs. 13(5.4), (5.5) added by 1980-81-82-83, c. 140, subsec. 6(1), applicable with respect to property owned by a taxpayer after November 12, 1981.

(6) Misclassified property — Where, in calculating the amount of a deduction allowed to a taxpayer under subsection 20(16) or regulations made for the purposes of paragraph 20(1)(a) in respect of depreciable property of the taxpayer of a prescribed class (in this subsection referred to as the "particular class"), there has been added to the capital cost to the taxpayer of depreciable property of the particular class the capital cost of depreciable property (in this subsection referred to as "added property") of another prescribed class, for the purposes of this section, section 20 and any regulations made for the purposes of paragraph 20(1)(a), the added property shall, if the Minister so directs with respect to any taxation year for which, under subsection 152(4), the Minister may make any reassessment or additional assessment or assess tax, interest or penalties under this Part, be deemed to have been property of the particular class and not of the other class at all times before the beginning of the year and, except to the extent that the added property or any part thereof has been disposed of by the taxpayer before the beginning of the year, to have been transferred from the particular class to the other class at the beginning of the year.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

History: Subsec. 13(6) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(2), applicable after April 19, 1983. Subsec. (6) formerly read:

> (6) Where, in calculating the amount of a deduction allowed to a taxpayer under subsection 20(16) or regulations made under paragraph 20(1)(a) in respect of depreciable property of the taxpayer of a prescribed class, there has been added to the capital cost to the taxpayer of depreciable property of that class the capital cost of depreciable property (in this subsection referred to as "added property") of another prescribed class, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a) the added property shall, if the Minister so directs with reference to any taxation year for which, within the time specified in paragraph 152(4)(a) or (b), the Minister may make any reassessment or additional assessment or assess tax, interest or penalties under this Part as the circumstances require, be deemed to have been property of the first-mentioned class and not of the other class at all times before the commencement of that year and, except to the extent that that property or any part thereof has been disposed of by the taxpayer before the commencement of that year, to have been transferred from the first-mentioned class to the other class at the commencement of that year.

Pre-RSC History: Subsec. 13(6) substituted by 1977-78, c. 1, subsec. 6(4), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977. Subsec. (6) formerly read:

> (6) Where, in calculating the amount of a deduction allowed to a taxpayer under regulations made under paragraph 20(1)(a) in respect of depreciable property of the taxpayer of a prescribed class, there has been added to the capital cost to the taxpayer of depreciable property of that class the capital cost of depreciable property (hereinafter in this subsection referred to as "added property") of another prescribed class, for the purpose of this section and regulations made under paragraph 20(1)(a) the added property shall, if the Minister so directs with reference to any taxation year for which, within the time specified in paragraph 152(4)(a) or (b), the Minister may make any reassessment or additional assessment or assess tax, interest or penalties under this Part as the circumstances require, be deemed to have been property of the first-mentioned class and not of the other class at all times before the commencement of that year and, except to the extent that that property or any part thereof has been disposed of by the taxpayer before the commencement of that year, to have been transferred from the first-mentioned class to the other class at the commencement of that year.

Interpretation Bulletins: IT-190R2: CCA — transferred and misclassified property.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(7) Rules applicable — Subject to subsection 70(13), for the purposes of paragraphs 8(1)(j) and (p), this sec-

tion, section 20 and any regulations made for the purpose of paragraph 20(1)(a),

History: The opening words of subsec. 13(7) substituted by 1994, c. 21, subsec. 7(1), applicable after 1992. The opening words formerly read:

(7) For the purposes of paragraphs 8(1)(j) and (p), this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

Pre-RSC History: That portion of subsec. 13(7) preceding para. (a) amended by 1988, c. 55, subsec. 6(4), to add reference to paras. 8(1)(j) and (p), applicable with respect to changes in use occurring after April 1988.

That portion of subsec. 13(7) preceding para. (a) substituted by 1977-78, c. 1, subsec. 6(4), to add reference to section 20, applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977.

(a) **[change in use]** — where a taxpayer, having acquired property for the purpose of gaining or producing income, has begun at a later time to use it for some other purpose, the taxpayer shall be deemed to have disposed of it at that later time for proceeds of disposition equal to its fair market value at that time and to have reacquired it immediately thereafter at a cost equal to that fair market value;

Related Provisions: 13(9) — Gaining or producing income; 45 — Change in use rules — capital property. See additional Related Provisions at end of s. 13.

History: Para. 13(7)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(3), applicable to changes in use occurring after May 22, 1985, except that in applying para. (a) to changes in use occurring before May 1988, it shall be read as follows:

(a) where a taxpayer, having acquired property for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business, has begun at a later time to use it for some other purpose, the taxpayer shall be deemed to have disposed of it at that later time for proceeds of disposition equal to its fair market value at that time and to have reacquired it immediately thereafter at a cost equal to that fair market value;

Para. (a) formerly read:

(a) where a taxpayer, having acquired property for the purpose of gaining or producing income, has commenced at a later time to use it for some other purpose, the taxpayer shall be deemed to have disposed of it at that later time at its fair market value at that later time;

Pre-RSC History: Para. 13(7)(a) amended by 1988, c. 55, subsec. 6(4), to substitute, "gaining or producing income" for "gaining or producing income therefrom, or for the purpose of gaining or producing income from a business", applicable with respect to changes in use occurring after April 1988.

Interpretation Bulletins: IT-525R: Performing artists.

(b) **[change in use]** — where a taxpayer, having acquired property for some other purpose, has begun at a later time to use it for the purpose of gaining or producing income, the taxpayer shall be deemed to have acquired it at that later time at a capital cost to the taxpayer equal to the lesser of

(i) the fair market value of the property at that later time, and

(ii) the total of

(A) the cost to the taxpayer of the property at that later time determined without reference to this paragraph, paragraph (a) and subparagraph (d)(ii), and

(B) ¾ of the amount, if any, by which

(I) the fair market value of the property at that later time

exceeds the total of

(II) the cost to the taxpayer of the property as determined under clause (A), and

(III) 4/3 of the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the fair market value of the property at that later time exceeds the cost to the taxpayer of the property as determined under clause (A);

Related Provisions: 13(7)(e) — Rules applicable; 13(9) — Gaining or producing income; 45 — Change in use rules — capital property; 70(12) — Capital cost of depreciable property on death; 248(1) — "cost amount"(a). See additional Related Provisions and Definitions at end of s. 13.

History: Para. 13(7)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(3), applicable to changes in use occurring after May 22, 1985, except that in applying cl. 13(7)(b)(ii)(B),

(i) to changes in use of property by a person or partnership in taxation years and fiscal periods ending before 1988, the references therein to "¾" and "4/3 of" shall be read as references to "½" and "2 times", respectively,

(ii) to changes in use of property by an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the references therein to "¾" and "4/3" shall be read as references to "2/3" and "½", respectively,

(iii) to changes in use of property by a corporation in taxation years ending after 1987 and beginning before 1990 throughout which the corporation was a Canadian-controlled private corporation, the reference therein to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the total of

(A) the proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(B) the proportion of 2/3 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(C) the proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year,

and

(iv) to changes in use of property by a corporation in taxation years ending after 1987 and beginning before 1990 where throughout the year the corporation was not a Canadian-controlled private corporation, the reference therein to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the total of

(A) the proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(B) the proportion of 2/3 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(C) the proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Para. (b) formerly read:

(b) where a taxpayer, having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, the taxpayer shall be deemed to have acquired it at that later time at a capital cost to the taxpayer equal to the lesser of

(i) its fair market value at that later time, and

(ii) the total of

(A) its cost to the taxpayer at that later time determined without reference to this paragraph, paragraph (a) and subparagraph (d)(ii), and

(B) ¾ of the amount, if any, by which

(I) the fair market value of the property at that later time

exceeds the total of

(II) the cost to the taxpayer of the property immediately before that later time, and

(III) 4/3 of the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the fair market value of the property at that later time exceeds the cost to the taxpayer of the property immediately before that later time;

Pre-RSC History: That portion of para. 13(7)(b) preceding subpara. (i) amended by 1988, c. 55, subsec. 6(5), to substitute, "gaining or producing income" for "gaining or producing income therefrom, or for the purpose of

gaining or producing income from a business", applicable with respect to changes in use occurring after April 1988.

Cl. 13(7)(b)(ii)(B) substituted by 1988, c. 55, subsec. 6(6), applicable (by subsec. 6(23), as amended by 1991, c. 49, s. 239, deemed to have come into force September 13, 1988) with respect to acquisitions of property occurring after May 22, 1985, other than acquisitions occurring before 1986 pursuant to an agreement in writing entered into before May 23, 1985, except that in applying clause 13(7)(b)(ii)(B)

(a) to changes in use of property by a person or partnership in taxation years and fiscal periods ending before 1988, the references therein to "3/4" and "4/3 of" shall be read as references to "1/2" and "2 times", respectively;

(b) to changes in use of property by an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the references therein to "3/4" and "4/3" shall be read as references to "2/3" and "3/2", respectively;

(c) to changes in use of property by a corporation in taxation years ending after 1987 and commencing before 1990 throughout which the corporation was a Canadian-controlled private corporation, the reference therein to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year; and

(d) to changes in use of property by a corporation in taxation years ending after 1987 and commencing before 1990 where at any time in the year the corporation was not a Canadian-controlled private corporation, the reference therein to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year.

Cl. (ii)(B) formerly read:

(B) 1/2 of the amount, if any, by which his proceeds of disposition of the property exceeds the cost to him of the property immediately before that later time to the extent that it can be established that no deduction under section 110.6 was claimed by him in respect of that amount;

Para. 13(7)(b) amended by 1986, c. 6, subsec. 8(1), to substitute "a capital cost to him equal to the lesser of" and new subparas. (i) and (ii) for the words "its fair market value at that time", applicable with respect to property acquired after May 22, 1985 other than property acquired before 1986 pursuant to an agreement in writing entered into before May 23, 1985.

Interpretation Bulletins: IT-148R3: Recreational properties and club dues; IT-160R3: Personal use of aircraft; IT-209R: Inter-vivos gifts of capital property to individuals directly or through trusts; IT-525R: Performing artists.

I.T. Technical News: No. 18 (*Cudd Pressure* case).

(c) **[partial use to produce income]** — where property has, since it was acquired by a taxpayer, been regularly used in part for the purpose of gaining or producing income and in part for some other purpose, the taxpayer shall be deemed to have acquired, for the purpose of gaining or producing income, the proportion of the property that the use regularly made of the property for gaining or producing income is of the whole use regularly made of the property at a capital cost to the taxpayer equal to the same proportion of the capital cost to the taxpayer of the whole property and, if the property has, in such a case, been disposed of, the proceeds of disposition of the proportion of the property deemed to have been acquired for gaining or producing income shall be deemed to be the same proportion of the proceeds of disposition of the whole property;

Related Provisions: 13(9) — Gaining or producing income. See additional Related Provisions and Definitions at end of s. 13.

History: Para. 13(7)(c) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(4), to substitute "where property has" for "where property (other than a motor vehicle in respect of which section 67.3 applies) has", applicable with respect to changes in use occurring after April 1988.

Pre-RSC History: Para. 13(7)(c) amended by 1988, c. 55, subsec. 6(7), to add "(other than a motor vehicle in respect of which section 67.3 applies)" and to substitute "gaining or producing income" for "gaining or producing income therefrom or for the purpose of gaining or producing income from a business", applicable with respect to changes in use occurring after April 1988.

Interpretation Bulletins: IT-148R3: Recreational properties and club dues; IT-160R3: Personal use of aircraft; IT-217R: Depreciable property owned on December 31, 1971; IT-525R: Performing artists.

(d) **[partial change in use]** — where, at any time after a taxpayer has acquired property, there has been a change in the relation between the use regularly made by the taxpayer of the property for gaining or producing income and the use regularly made of the property for other purposes,

(i) if the use regularly made by the taxpayer of the property for the purpose of gaining or producing income has increased, the taxpayer shall be deemed to have acquired at that time depreciable property of that class at a capital cost equal to the total of

(A) the proportion of the lesser of

(I) its fair market value at that time, and

(II) its cost to the taxpayer at that time determined without reference to this subparagraph, subparagraph (ii) and paragraph (a)

that the amount of the increase in the use regularly made by the taxpayer of the property for that purpose is of the whole of the use regularly made of the property, and

(B) 3/4 of the amount, if any, by which

(I) the amount deemed under subparagraph 45(1)(c)(ii) to be the taxpayer's proceeds of disposition of the property in respect of the change

exceeds the total of

(II) that proportion of the cost to the taxpayer of the property as determined under subclause (A)(II) that the amount of the increase in the use regularly made by the taxpayer of the property for that purpose is of the whole of the use regularly made of the property, and

(III) 4/3 of the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the amount determined under subclause (I) exceeds the amount determined under subclause (II), and

(ii) if the use regularly made of the property for the purpose of gaining or producing income has decreased, the taxpayer shall be deemed to have disposed at that time of depreciable property of that class and the proceeds of disposition shall be deemed to be an amount equal to the proportion of the fair market value of the property as of that time that the amount of the decrease in the use regularly made by the taxpayer of the property for that purpose is of the whole use regularly made of the property;

Related Provisions: 13(4) — Exchange of property; 13(7)(e) — Rules applicable; 13(9) — Gaining or producing income; 44(1) — Exchanges of property; 45(1)(c) — Partial change in use of capital property; 45(2) — Election where change in use; 70(12) — Capital cost of depreciable property on death; 248(1)"cost amount"(a) — Application of 13(7) to determination of cost amount; 256(6) — Controlled corporation. See additional Related Provisions and Definitions at end of s. 13.

History: Subcls. 13(7)(d)(i)(B)(II), (III) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(5), applicable to changes in use occurring after May 22, 1985, except that in applying subcl. (III)

(a) to changes in use of property by a person or partnership in taxation years and fiscal periods ending before 1988, the reference therein to "4/3 of" shall be read as a reference to "2 times", and

(b) to changes in use of property by an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the reference therein to "4/3" shall be read as a reference to "3/2".

Subcls. (d)(i)(B)(II), (III) formerly read:

(II) the cost to the taxpayer of the property immediately before that time, and

(III) 4/3 of the amount deducted by the taxpayer under section 110.6 in respect of the amount, if any, by which the amount determined under subclause (I) exceeds the cost to the taxpayer of the property immediately before that time, and

Pre-RSC History: Cl. 13(7)(d)(i)(B) substituted by 1988, c. 55, subsec. 6(8), applicable (by subsec. 6(23), as amended by 1991, c. 49, s. 239, deemed to have come into force September 13, 1988) with respect to acquisitions of property occurring after May 22, 1985, other than acquisitions occurring before 1986 pursuant to an agreement in writing entered into before May 23, 1985, except that in applying clause 13(7)(d)(i)(B)

(a) to changes in use of property by a person or partnership in taxation years and fiscal periods ending before 1988, the references therein to "3/4" and "4/3 of" shall be read as references to "1/2" and "2 times", respectively;

(b) to changes in use of property by an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the references therein to "3/4" and "4/3" shall be read as references to "2/3" and "3/2", respectively;

(c) to changes in use of property by a corporation in taxation years ending after 1987 and commencing before 1990 throughout which the corporation was a Canadian-controlled private corporation, the reference therein to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year; and

(d) to changes in use of property by a corporation in taxation years ending after 1987 and commencing before 1990 where at any time in the year the corporation was not a Canadian-controlled private corporation, the reference therein to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year.

Cl. (d)(i)(B) formerly read:

(B) 1/2 of the amount, if any, by which his proceeds of disposition of the property exceeds the cost to him of the property immediately before that time to the extent that it can be established that no deduction under section 110.6 was claimed by him in respect of that amount, and

Subpara. 13(7)(d)(i) amended by 1986, c. 6, subsec. 8(2), to substitute the words "equal to the aggregate of" and clauses (A) and (B) for the words "equal to the proportion of the fair market value of the property as of that time that the amount of the increase in the use regularly made by him of the property for that purpose is of the whole use regularly made of the property", applicable with respect to property acquired after May 22, 1985, other than property acquired before 1986 pursuant to an agreement entered into before May 23, 1985.

Interpretation Bulletins: IT-160R3: Personal use of aircraft; IT-209R: Inter-vivos gifts of capital property to individuals directly or through trusts.

(e) **[non-arm's length acquisition]** — notwithstanding any other provision of this Act except subsection 70(13), where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired (otherwise than as a consequence of the death of the transferor) a depreciable property (other than a timber resource property) of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and, immediately before the transfer, the property was a capital property of the transferor,

(i) where the transferor was an individual resident in Canada or a partnership any member of which was either an individual resident in Canada or another partnership and the cost of the property to the taxpayer at the particular time determined without reference to this paragraph exceeds the cost, or where the property was depreciable property, the capital cost of the property to the transferor immediately before the transferor disposed of it, the capital cost of the property to the taxpayer at the particular time shall be deemed to be the amount that is equal to the total of

(A) the cost or capital cost, as the case may be, of the property to the transferor immediately before the particular time, and

(B) 3/4 of the amount, if any, by which

(I) the transferor's proceeds of disposition of the property

exceed the total of

(II) the cost or capital cost, as the case may be, to the transferor immediately before the particular time,

(III) 4/3 of the amount deducted by any person under section 110.6 in respect of the amount, if any, by which the amount determined under subclause (I) exceeds the amount determined under subclause (II), and

(IV) the amount, if any, required by subsection 110.6(21) to be deducted in computing the capital cost to the taxpayer of the property at that time

and, for the purposes of paragraph (b) and subparagraph (d)(i), the cost of the property to the taxpayer shall be deemed to be the same amount,

(ii) where the transferor was neither an individual resident in Canada nor a partnership any member of which was either an individual resident in Canada or another partnership and the cost of the property to the taxpayer at the particular time determined without reference to this paragraph exceeds the cost, or where the property was depreciable property, the capital cost of the property to the transferor immediately before the transferor disposed of it, the capital cost of the property to the

taxpayer at that time shall be deemed to be the amount that is equal to the total of

(A) the cost or capital cost, as the case may be, of the property to the transferor immediately before the particular time, and

(B) ¾ of the amount, if any, by which the transferor's proceeds of disposition of the property exceed the cost or capital cost, as the case may be, to the transferor immediately before the particular time

and, for the purposes of paragraph (b) and subparagraph (d)(i), the cost of the property to the taxpayer shall be deemed to be the same amount, and

(iii) where the cost or capital cost, as the case may be, of the property to the transferor immediately before the transferor disposed of it exceeds the capital cost of the property to the taxpayer at that time determined without reference to this paragraph, the capital cost of the property to the taxpayer at that time shall be deemed to be the amount that was the cost or capital cost, as the case may be, of the property to the transferor immediately before the transferor disposed of it and the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the taxpayer's income for taxation years ending before the acquisition of the property by the taxpayer;

Related Provisions: 13(7)(e.1) — Where election made to trigger capital gains exemption; 13(7.3) — Control of corporations by one trustee; 13(21.2) — Transfer of property where u.c.c. exceeds fair market value; 70(12) — Capital cost of depreciable property on death; 85(5) — Similar rule on section 85 rollover; 97(4) — Transfer of depreciable property to partnership; 248(8) — Occurrences as a consequence of death; 256(6) — Controlled corporation. See additional Related Provisions and Definitions at end of s. 13.

History: Subcl. 13(7)(e)(i)(B)(IV) added by 1995, c. 3, subsec. 4(1), applicable to 1994 *et seq.*

The opening words of para. 13(7)(e) substituted by 1994, c. 21, subsec. 7(2), applicable after 1992. The opening words formerly read:

(e) notwithstanding any other provision of this Act, where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired (otherwise than as a consequence of the death of the transferor) a depreciable property (other than a timber resource property) of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and the property was a capital property of the transferor,

That portion of para. 13(7)(e) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(6), applicable to property acquired after May 22, 1985. That portion formerly read:

(e) notwithstanding any other provision of this Act, where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired a depreciable property of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and the property was a capital property of the transferor immediately before the particular time,

Pre-RSC History: Cl. 13(7)(e)(i)(B) substituted, (e)(ii)(B) amended to substitute "¾" for "½", by 1988, c. 55, subsecs. 6(9), (10), applicable (by subsec. 6(23.1), as added by 1991, c. 49, s. 239, deemed to have come into force September 13, 1988) with respect to acquisitions of property occurring after May 22, 1985, other than acquisitions occurring before 1986 pursuant to an agreement in writing entered into before May 23, 1985, except that in applying cls. 13(7)(e)(i)(B) and (ii)(B)

(a) to acquisitions of property from a person or partnership in taxation years and fiscal periods ending before 1988, the references therein to "¾" and "⅘ of" shall be read as references to "½" and "2 times", respectively,

(b) to acquisitions of property from an individual or a partnership in taxation years and fiscal periods ending after 1987 and before 1990, the references therein to "¾" and "⅘" shall be read as references to "⅔" and "½", respectively;

(c) to acquisitions of property from a corporation in taxation years ending after 1987 and commencing before 1990 throughout which the corporation was a Canadian-controlled private corporation, the references therein to "¾" shall be read as references to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year; and

(d) to acquisitions of property by a corporation in taxation years ending after 1987 and commencing before 1990 where at any time in the year the corporation was not a Canadian-controlled private corporation, the references therein to "¾" shall be read as references to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Cl. (e)(i)(B) formerly read:

(B) ½ of the amount, if any, by which the transferor's proceeds of disposition of the property exceeds the cost or capital cost, as the case may be, to the transferor immediately before that time to the extent that it can be established that no deduction under section 110.6 was claimed by any person in respect of that amount

Para. 13(7)(e) added by 1986, c. 6, subsec. 8(3), applicable with respect to property acquired after May 22, 1985 other than property acquired before 1986 pursuant to an agreement in writing entered into before May 23, 1985.

Pre-RSC History [former para. 13(7)(e)]: Former para. 13(7)(e) repealed by 1976-77, c. 4, subsec. 3(4), applicable for the purpose of determining the undepreciated capital cost to a taxpayer of depreciable property of a prescribed class at any time after May 25, 1976. Para. (e) formerly read:

(e) notwithstanding paragraph (21)(f),

(i) the undepreciated capital cost referred to in subparagraph 44(1)(c)(ii) shall be determined after giving effect to the disposition of the former property referred to in subsection 44(1), and

(ii) the undepreciated capital cost immediately before the time determined under clause (4)(c)(iv)(B) of the class of property to which the replacement property referred to in paragraph (4)(c) belongs shall be determined after giving effect to

(A) the disposition of the former property referred to in subsection 44(1), and

(B) the reduction, referred to in paragraph 44(1)(b), in the capital cost of that replacement property.

Para. 13(7)(e) substituted by 1974-75-76, c. 26, subsec. 6(3), applicable after May 6, 1974. Para. (e) formerly read:

(e) where a taxpayer has received or is entitled to receive from a government, municipality or other public authority, in respect of or for the acquisition of property, a grant, subsidy or other assistance other than an amount authorized to be paid under an *Appropriation Act* and on terms and conditions approved by the Treasury Board for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry, the capital cost of the property shall be deemed to be the capital cost thereof to the taxpayer minus the amount of the grant, subsidy or other assistance.

Regulations: 1102(14) — Class of property preserved on non-arm's length acquisition.

Interpretation Bulletins: IT-209R: Inter-vivos gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971.

(e.1) **[capital gains exemption election]** — where a taxpayer is deemed by paragraph 110.6(19)(a) to have disposed of and reacquired a property that immediately before the disposition was a depreciable property, the taxpayer shall be deemed to have acquired the property from himself, herself or itself and, in so having acquired the property, not to have been dealing with himself, herself or itself at arm's length;

Related Provisions: 69(1) — Effect of acquiring property not at arm's length.

History: Para. 13(7)(e.1) added by 1995, c. 3, subsec. 4(2), applicable to 1994 *et seq.*

Regulations: 1102(14) — Class of property preserved on deemed reacquisition.

(f) **[change in control]** — where a corporation is deemed under paragraph 111(4)(e) to have disposed of and reacquired depreciable property (other than a timber resource property), the capital cost to the corporation of the property at the time of the reacquisition is deemed to be the amount that is equal to the total of

(i) the capital cost to the corporation of the property at the time of the disposition, and

(ii) ¾ of the amount, if any, by which the corporation's proceeds of disposition of the property exceed the capital cost to the corporation of the property at the time of the disposition;

Related Provisions: See Related Provisions and Definitions at end of s. 13.

History: The opening words of para. 13(7)(f) amended by 1998, c. 19, subsec. 73(3), applicable after April 26, 1995. The opening words formerly read:

(f) [change in control or in exempt status] — where a corporation is deemed under paragraph 111(4)(e) or 149(10)(b) to have disposed of and reacquired depreciable property (other than a timber resource property), the capital cost to the corporation of the property at the time of the reacquisition shall be deemed to be the amount that is equal to the total of

That portion of para. 13(7)(f) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(7), to substitute "deemed under" for "deemed by" and to add "(other than a timber resource property)", applicable to property acquired after May 22, 1985.

Pre-RSC History: Subpara. 13(7)(f)(ii) amended by 1988, c. 55, subsec. 6(11), to substitute "¾" for "½", applicable where control of a corporation is acquired by a person or group of persons after January 15, 1987 and where, after June 5, 1987, a corporation becomes or ceases to be exempt from tax under Part I of the Act on its taxable income, except that where control of a corporation is acquired or a corporation becomes or ceases to be exempt from tax under Part I of the Act on its taxable income in a taxation year ending after 1987 and commencing before 1990, the reference to "¾" in subparagraph 13(7)(f)(ii) shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(a) where the corporation is a Canadian-controlled private corporation throughout its taxation year,

(i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year, and

(b) where the corporation is a corporation that was not a Canadian-controlled private corporation throughout its taxation year,

(i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Para. 13(7)(f) added by 1987, c. 46, subsec. 4(1), applicable retroactively where control of a corporation is acquired by a person or group of persons after January 15, 1987 and where, after June 5, 1987, a corporation becomes or ceases to be exempt from tax under Part I of the Act on its taxable income.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

(g) **[luxury automobile]** — where the cost to a taxpayer of a passenger vehicle exceeds $20,000 or such other amount as may be prescribed, the capital cost to the taxpayer of the vehicle shall be deemed to be $20,000 or that other prescribed amount, as the case may be; and

Related Provisions: 13(2) — No recapture on luxury automobile; 13(7)(h) — Where vehicle acquired not at arm's length; 20(16.1) — No terminal loss on luxury automobile; 67.2 — Limitation on interest expense; 67.3 — Limitation on leasing cost; 85(1)(e.4) — Transfer of property to corporation by shareholders; Reg. 1100(2.5) — 50% CCA in year of disposition.

Regulations: 1101(1af) (separate class); 7307(1) (prescribed amount); Sch. II:Cl. 10.1 (class for CCA).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

(h) **[luxury automobile — non-arm's length acquisition]** — notwithstanding paragraph (g), where a passenger vehicle is acquired by a taxpayer at any time from a person with whom the taxpayer does not deal at arm's length, the capital cost at that time to the taxpayer of the vehicle shall be deemed to be the least of

(i) the fair market value of the vehicle at that time,

(ii) the amount that immediately before that time was the cost amount to that person of the vehicle, and

(iii) $20,000 or such other amount as is prescribed.

Related Provisions: 20(16.1) — Terminal loss; 67.4 — More than one owner. See additional Related provisions and Definitions at end of s. 13.

History: That portion of para. 13(7)(h) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(8), to add "notwithstanding paragraph (g)," applicable with respect to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987.

Pre-RSC History: Paras. 13(7)(g), (h) added by 1988, c. 55, subsec. 6(12), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987.

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins [para. 13(7)(h)]: IT-521R: Motor vehicle expenses claimed by self-employed individuals.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

Interpretation Bulletins [subsec. 13(7)]: IT-102R2: Conversion of property, other than real property, from or to inventory; IT-120R5: Principal residence; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-478R2: CCA — recapture and terminal loss; IT-522R: Vehicle, travel and sales expenses of employees.

(7.1) Deemed capital cost of certain property — For the purposes of this Act, where section 80 applied to reduce the capital cost to a taxpayer of a depreciable property or a taxpayer deducted an amount under subsec-

tion 127(5) or (6) in respect of a depreciable property or received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

(a) an amount described in paragraph 37(1)(d),

(b) an amount deducted as an allowance under section 65, or

(b.1) an amount included in income by virtue of paragraph 12(1)(u) or 56(1)(s),

the capital cost of the property to the taxpayer at any particular time shall be deemed to be the amount, if any, by which the total of

(c) the capital cost of the property to the taxpayer, determined without reference to this subsection, subsection (7.4) and section 80, and

(d) such part, if any, of the assistance as has been repaid by the taxpayer, pursuant to an obligation to repay all or any part of that assistance, in respect of that property before the disposition thereof by the taxpayer and before the particular time

exceeds the total of

(e) where the property was acquired in a taxation year ending before the particular time, all amounts deducted under subsection 127(5) or (6) by the taxpayer for a taxation year ending before the particular time,

(f) the amount of assistance the taxpayer has received or is entitled, before the particular time, to receive, and

(g) all amounts by which the capital cost of the property to the taxpayer is required because of section 80 to be reduced at or before that time,

in respect of that property before the disposition thereof by the taxpayer.

Related Provisions: 6(8)(d) — GST rebate deemed to be assistance; 12(1)(t) — Investment tax credit; 13(7.2) — Receipt of public assistance; 13(7.4) — Deemed capital cost of certain property; 65 — Allowances; 80(1)"excluded obligation"(a)(iii) — Debt forgiveness rules do not apply where amount has reduced capital cost of property; 80(5) — Reduction in capital cost on settlement of debt; 80(9) — Additional reduction in capital cost for limited purposes; 87(2)(j.6) — Amalgamations — continuing corporation; 127(11.5) — Ignore 13(7.1) for purposes of ITC qualified expenditures; 127(12) — Investment tax credit; 143.2(6) — Reduction in cost of tax shelter investment; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit. See additional Related Provisions and Definitions at end of s. 13.

History: The opening words of subsec. 13(7.1) and para. (c) amended and para. (g) added by 1995, c. 21, subsecs. 2(1)–(3), applicable to taxation years that end after February 21, 1994. The opening words and para. (c) formerly read:

(7.1) For the purposes of this Act, where a taxpayer has deducted an amount under subsection 127(5) or (6) in respect of a depreciable property or has received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

. . . . .

(c) the capital cost thereof to the taxpayer, determined without reference to this subsection and subsection (7.4), and

Pre-RSC History: Para. 13(7.1)(a) substituted by 1988, c. 55, subsec. 6(13), applicable with respect to expenditures made after April 1988. Para. (a) formerly read:

(a) an amount authorized to be paid under an *Appropriation Act* and on terms and conditions approved by the Treasury Board in respect of scientific research expenditures incurred for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry,

All that portion of subsec. 13(7.1) following para. (b.1) substituted by 1988, c. 55, subsec. 6(14), applicable to 1988 *et seq.* That portion formerly read:

the capital cost of the property to the taxpayer shall be deemed to be the amount by which the aggregate of

(c) the capital cost thereof to the taxpayer, determined without reference to this subsection and subsection (7.4), and

(d) such part, if any, of the assistance as has been repaid by the taxpayer, pursuant to an obligation to repay all or any part of that assistance, in respect of that property before the disposition thereof by him

exceeds the aggregate of

(e) all amounts deducted under subsection 127(5) or (6), and

(f) the amount of the assistance the taxpayer has received or is entitled to receive

in respect of that property before the disposition thereof by the taxpayer.

Para. 13(7.1)(c) amended by 1986, c. 6, subsec. 8(4), to substitute "determined without reference to this subsection and subsection (7.4)" for "otherwise determined", applicable to 1985 *et seq.*

Para. 13(7.1)(b.1), all that portion of subsec. 13(7.1) following para. (c), substituted by 1980-81-82-83, c. 48, subsecs. 5(3), (4), para. 13(7.1)(b.1) applicable to 1981 *et seq.*, that portion applicable to taxation years ending after December 11, 1979. Para. 13(7.1)(b.1) and that portion formerly read:

(b.1) an amount received under a program that is a prescribed program of the Government of Canada relating to home insulation for the purposes of paragraph 56(1)(s),

. . . . .

(d) such part, if any, of the assistance as has been repaid by the taxpayer pursuant to an obligation to repay all or any part of that assistance,

exceeds the aggregate of

(e) all amounts deducted under subsection 127(5) or (6) in respect of that property, and

(f) the amount of the assistance.

All that portion of subsec. 13(7.1) preceding para. (a) and para. 13(7.1)(e) substituted by 1979, c. 5, s. 4, applicable to taxation years ending after November 16, 1978, to add references to subsection 127(6) and to add "a" before "depreciable property" in that portion.

All that portion of subsec. 13(7.1) preceding para. (a) and all that portion following para. (d) substituted by 1977-78, c. 4, s. 2. Those portions formerly read:

(7.1) For the purposes of this Act, where a taxpayer has deducted an amount under subsection 127(5) in respect of depreciable property or has received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgiveable loan, deduction from tax, investment allowance or as any other form of assistance other than

. . . . .

exceeds

(e) the amount of the assistance.

Para. 13(7.1)(b.1) added by 1977-78, c. 1, subsec. 6(5), applicable to 1977 *et seq.*

Subsec. 13(7.1) added by 1974-75-76, c. 26, subsec. 6(4), applicable (by subsec. 6(10) as substituted by 1974-75-76, c. 71, s. 14) after May 6, 1974, except that in its application to acquisitions of property occurring before November 19, 1974, subsection 13(7.1) of the said Act shall be read as follows:

(7.1) For the purposes of this section and any regulations made under paragraph 20(1)(a), where a taxpayer has received or is entitled to receive from a government, municipality or other public authority, in respect of or for the acquisition of property, a grant, subsidy or other assistance other than an amount authorized to be paid under an *Appropriation Act* and on terms and conditions approved by the Treasury Board for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other in-

dustry, the capital cost of the property to the taxpayer shall be deemed to be the amount by which the aggregate of

(a) the capital cost thereof to the taxpayer, otherwise determined, and

(b) such part, if any, of the grant, subsidy or other assistance as has been repaid by the taxpayer pursuant to an obligation to repay all or any part of that grant, subsidy or other assistance,

exceeds

(c) the amount of the grant, subsidy or other assistance.

Selected Cases [subsec. 13(7.1)]: *Prince Albert Pulp Co. v. Canada*, [1990] 2 C.T.C. 339 (FCTD); aff'd [1992] 1 C.T.C. 262 (FCA) (Reduction in capital cost occurs in year investment tax credit used); *Canadian Pacific Ltd. v. The Queen*, [1988] 1 C.T.C. 429 (FCA) (Government assistance deducted from capital cost); *The Queen v. A.E.L. Mirotel Ltd.*, [1986] 2 C.T.C. 108 (FCA) (Investment tax credits, government assistance, deducted from capital cost); *The Queen v. British Columbia Forest Products Ltd.*, [1986] 1 C.T.C. 1 (FCA) (Investment tax credit deducted from capital cost); *The Queen v. G.T.E. Sylvania Canada Ltd.*, [1974] C.T.C. 751 (FCA) (Reduction in taxable income consequent upon amendment to Quebec statute not "grant, subsidy or other assistance" for purposes of former paragraph 20(6)(h) [now subsection 13(7.1)]); *Valley Camp Ltd. v. MNR*, [1974] C.T.C. 418 (FCTD) (Former paragraph 20(6)(h) [now subsection 13(7.1)] does not apply to ordinary business arrangements with Canadian National, hence no assistance from public authority in acquiring property).

Interpretation Bulletins: IT-273R: Government assistance — General comments; IT-478R2: CCA — recapture and terminal loss.

(7.2) Receipt of public assistance — For the purposes of subsection (7.1), where at any time a taxpayer who is a beneficiary of a trust or a member of a partnership has received or is entitled to receive assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, the amount of the assistance that may reasonably be considered to be in respect of, or for the acquisition of, depreciable property of the trust or partnership shall be deemed to have been received at that time by the trust or partnership, as the case may be, as assistance from the government, municipality or other public authority for the acquisition of depreciable property.

Related Provisions: 53(2)(c)(ix) — Reduction of ACB of partnership interest; 53(2)(h)(v) — Reduction of ACB of capital interest in trust. See also Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(7.2) added by 1985, c. 45, subsec. 7(1), applicable with respect to property acquired after May 9, 1985 other than property acquired pursuant to an agreement in writing entered into before May 10, 1985.

(7.3) Control of corporations by one trustee — For the purposes of paragraph (7)(e), where at a particular time one corporation would, but for this subsection, be related to another corporation by reason of both corporations being controlled by the same trustee or executor and it is established that

(a) the trustee or executor did not acquire control of the corporations as a result of one or more trusts or estates created by the same individual or by two or more individuals not dealing with each other at arm's length, and

(b) the trust or estate under which the trustee or executor acquired control of each of the corporations arose only on the death of the individual creating the trust or estate,

the two corporations shall be deemed not to be related to each other at that particular time.

Related Provisions: 256(6)–(9) — Whether control acquired. Also see Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(7.3) added by 1986, c. 6, subsec. 8(5), applicable with respect to property acquired after May 22, 1985 other than property acquired before 1986 pursuant to an agreement in writing entered into before May 23, 1985.

(7.4) Deemed capital cost — Notwithstanding subsection (7.1), where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(x) in respect of the cost of a depreciable property acquired by the taxpayer in the year, in the three taxation years immediately preceding the year or in the taxation year immediately following the year and the taxpayer elects under this subsection on or before the day on or before which the taxpayer is required to file the taxpayer's return of income under this Part for the year, or, where the property is acquired in the taxation year immediately following the year, for that following year, the capital cost of the property to the taxpayer shall be deemed to be the amount by which the total of

(a) the capital cost of the property to the taxpayer otherwise determined, applying the provisions of subsection (7.1), where necessary, and

(b) such part, if any, of the amount received by the taxpayer as has been repaid by the taxpayer pursuant to a legal obligation to repay all or any part of that amount, in respect of that property and before the disposition thereof by the taxpayer, and as may reasonably be considered to be in respect of the amount elected under this subsection in respect of the property

exceeds the amount elected by the taxpayer under this subsection, but in no case shall the amount elected under this subsection exceed the least of

(c) the amount so received by the taxpayer,

(d) the capital cost of the property to the taxpayer otherwise determined, and

(e) where the taxpayer has disposed of the property before the year, nil.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 125.4(5) — Canadian film/video credit is deemed to be assistance; 125.5(5) — Film/video production services credit is deemed to be assistance; 127(11.5) — Ignore 13(7.4) for purposes of ITC qualified expenditures; 220(3.2), Reg. 600(b) — Late filing of election or revocation. See also Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(7.4) added by 1986, c. 6, subsec. 8(5), applicable to 1985 *et seq.*

Selected Cases [subsec. 13(7.4)]: *Woodward Stores Ltd. v. Canada*, [1991] 1 C.T.C. 233 (FCTD) ("Fixturing allowance" (inducement) was capital receipt).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7.5) Deemed capital cost — For the purposes of this Act,

(a) where a taxpayer, to acquire a property prescribed in respect of the taxpayer, is required under the terms of a contract made after March 6, 1996 to make a payment to Her Majesty in right of Canada or a province or to a Canadian municipality in respect of costs incurred or to be incurred by the recipient of the payment

(i) the taxpayer is deemed to have acquired the property at a capital cost equal to the portion of that payment made by the taxpayer that can reasonably be regarded as being in respect of those costs, and

(ii) the time of acquisition of the property by the taxpayer is deemed to be the later of the time the

payment is made and the time at which those costs are incurred;

(b) where

(i) at any time after March 6, 1996 a taxpayer incurs a cost on account of capital for the building of, for the right to use or in respect of, a prescribed property, and

(ii) the amount of the cost would, if this paragraph did not apply, not be included in the capital cost to the taxpayer of depreciable property of a prescribed class,

the taxpayer is deemed to have acquired the property at that time at a capital cost equal to the amount of the cost;

(c) where a taxpayer acquires an intangible property as a consequence of making a payment to which paragraph (a) applies or incurring a cost to which paragraph (b) applies,

(i) the property referred to in paragraph (a) or (b) is deemed to include the intangible property, and

(ii) the portion of the capital cost referred to in paragraph (a) or (b) that applies to the intangible property is deemed to be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the lesser of the amount of the payment made or cost incurred and the amount determined for C,

B is the fair market value of the intangible property at the time the payment was made or the cost was incurred, and

C is the fair market value at the time the payment was made or the cost was incurred of all intangible properties acquired as a consequence of making the payment or incurring the cost; and

(d) any property deemed by paragraph (a) or (b) to have been acquired at any time by a taxpayer as a consequence of making a payment or incurring a cost

(i) is deemed to have been acquired for the purpose for which the payment was made or the cost was incurred, and

(ii) is deemed to be owned by the taxpayer at any subsequent time that the taxpayer benefits from the property.

Related Provisions: 66.1(6)"Canadian exploration expense"(l), 66.2(5)"Canadian development expense"(j) — Where property is depreciable property, its cost will not be CEE or CDE. See also Related Provisions and Definitions at end of s. 13..

History: Subsec. 13(7.5) added by 1997, c. 25, subsec. 3(2), applicable to taxation years that end after March 6, 1996.

Regulations: 1102(14.2) (prescribed property for 13(7.5)(a)); 1102(14.3) (prescribed property for 13(7.5)(b)).

(8) Disposition after ceasing business — Notwithstanding subsections (3) and 11(2), where a taxpayer, after ceasing to carry on a business, has disposed of depreciable property of the taxpayer of a prescribed class that was acquired by the taxpayer for the purpose of gaining or producing income from the business and that was not subsequently used by the taxpayer for some other purpose, in applying subsection (1) or (2), each reference therein to a "taxation year" and "year" shall not be read as a reference to a "fiscal period".

Related Provisions: 13(1) — Recaptured depreciation; 20(16.3) — Same rule for purposes of subsecs. 20(16) and (16.1); 25(3) — Disposition in extended fiscal period. See additional Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *Subsec. 13(8) also referred to subsecs. 20(16) and (16.1). (See now subsec. 20(16.2).)*

Subsec. 13(8) substituted by 1990, c. 39, subsec. 6(3), applicable with respect to fiscal periods and taxation years commencing after June 17, 1987 that end after 1987. Subsec. (8) formerly read:

(8) Property disposed of after ceasing business — Where a taxpayer, after ceasing to carry on a business, has disposed of depreciable property of the taxpayer of a prescribed class that was acquired by him for the purpose of gaining or producing income from the business and that was not subsequently used by him for some other purpose, in applying subsection (1) or 20(16) a reference therein to a "taxation year" shall, notwithstanding anything in subsection (3), not be read as a reference to a fiscal period.

Subsec. 13(8) substituted by 1977-78, c. 1, subsec. 6(6), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977. Subsec. (8) formerly read:

(8) Where a taxpayer, after ceasing to carry on a business, has disposed of depreciable property of the taxpayer of a prescribed class that was acquired by him for the purpose of gaining or producing income from the business and that was not subsequently used by him for some other purpose, in applying subsection (1) in respect of the disposition of that property, a reference in that subsection to a "taxation year" shall, notwithstanding anything in subsection (3), not be read as a reference to a fiscal period.

Subsec. 13(8) substituted by 1976-77, c. 4, subsec. 3(5), applicable in respect of taxation years commencing after May 25, 1976, to repeal reference to subsec. (1.1).

Subsec. 13(8) substituted by 1974-75-76, c. 26, subsec. 4(4), to add a reference to subsec. (1.1), applicable to the 1974 and subsequent taxation years.

Interpretation Bulletins: IT-172R: CCA — taxation year of individuals; IT-478R2: CCA — recapture and terminal loss.

(9) Meaning of "gaining or producing income" — In applying paragraphs (7)(a) to (d) in respect of a non-resident taxpayer, a reference to "gaining or producing income" in relation to a business shall be read as a reference to gaining or producing income from a business wholly carried on in Canada or such part of a business as is wholly carried on in Canada.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(9) substituted by 1988, c. 55, subsec. 6(15), applicable with respect to changes in use occurring after April 1988. Subsec. (9) formerly read:

(9) "Business" defined — In applying paragraphs (7)(a) to (d) in respect of a non-resident taxpayer, a reference to a "business" shall be read as a reference to a business wholly carried on in Canada or such part of a business as is wholly carried on in Canada.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

I.T. Technical News: No. 18 (*Cudd Pressure* case).

(10) Deemed capital cost — For the purposes of this Act, where a taxpayer has, after December 3, 1970 and before April 1, 1972, acquired prescribed property

(a) for use in a prescribed manufacturing or processing business carried on by the taxpayer, and

(b) that was not used for any purpose whatever before it was acquired by the taxpayer,

the taxpayer shall be deemed to have acquired that property at a capital cost to the taxpayer equal to 115% of the amount that, but for this subsection and section 21, would have been the capital cost to the taxpayer of that property.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Regulations: 1102(15) (prescribed property, prescribed manufacturing or processing business).

Interpretation Bulletins: IT-273R: Government assistance — general comments.

(11) Deduction in respect of property used in performance of duties — Any amount deducted under subparagraph 8(1)(j)(ii) or (p)(ii) of this Act or subsection 11(11) of *The Income Tax Act*, chapter 52 of the Statutes of Canada, 1948, shall be deemed, for the purposes of this section to have been deducted under regulations made under paragraph 20(1)(a).

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(11) substituted by 1988, c. 55, subsec. 6(16), applicable to 1988 *et seq.* Subsec. 13(11) formerly read:

> (11) Deduction in respect of automobile used in performance of duties — Any deduction made under subparagraph 8(1)(j)(ii) of this Act or subsection 11(11) of *The 1948 Income Tax Act* shall be deemed, for the purposes of this section, to have been made under regulations made under paragraph 20(1)(a).

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

(12) Application of para. 20(1)(cc) — Where, in computing the income of a taxpayer for a taxation year, an amount has been deducted under paragraph 20(1)(cc) or the taxpayer has elected under subsection 20(9) to make a deduction in respect of an amount that would otherwise have been deductible under that paragraph, the amount shall, if it was a payment on account of the capital cost of depreciable property, be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the income of the taxpayer

(a) for the year, or

(b) for the year in which the property was acquired,

whichever is the later.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(13) Deduction under *Canadian Vessel Construction Assistance Act* — Where a deduction has been made under the *Canadian Vessel Construction Assistance Act* for any taxation year, subsection (1) is applicable in respect of the prescribed class created by that Act or any other prescribed class to which the vessel may have been transferred.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

(14) Conversion cost — For the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), a vessel in respect of which any conversion cost is incurred after March 23, 1967 shall, to the extent of the conversion cost, be deemed to be included in a separate prescribed class.

Related Provisions: 13(17) — Transfer of separate class to same class as vessel. See also Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(14) substituted by 1977-78, c. 1, subsec. 6(7), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add reference to section 20.

Regulations: 1100(1)(v), 1101(2a).

Interpretation Bulletins: IT-267R2: CCA — vessels.

(15) Where subsec. (1) and subdivision c do not apply — Where a vessel owned by a taxpayer on January 1, 1966 or constructed pursuant to a construction contract entered into by the taxpayer prior to 1966 and not completed by that date was disposed of by the taxpayer before 1974,

(a) subsection (1) and subdivision c do not apply to the proceeds of disposition

(i) if an amount at least equal to the proceeds of disposition was used by the taxpayer, before May, 1974 and during the taxation year of the taxpayer in which the vessel was disposed of or within 4 months from the end of that taxation year, under conditions satisfactory to the appropriate minister, either for replacement or to incur any conversion cost with respect to a vessel owned by the taxpayer, or

(ii) if the appropriate minister certified that the taxpayer had, on satisfactory terms, deposited

(A) on or before the day on which the taxpayer was required to file a return of the taxpayer's income for the taxation year in which the vessel was disposed of, or

(B) on or before such day subsequent to the day referred to in clause (A) as the appropriate minister specified in respect of the taxpayer,

an amount at least equal to the tax that would, but for this subsection, have been payable by the taxpayer under this Part in respect of the proceeds of disposition, or satisfactory security therefor, as a guarantee that the proceeds of disposition would be used before 1975 for replacement; and

(b) if within the time specified for the filing of a return of the taxpayer's income for the taxation year in which the vessel was disposed of

(i) the taxpayer elected to have the vessel constituted a prescribed class, or

(ii) where any conversion cost in respect of the vessel was included in a separate prescribed class, the taxpayer elected to have the vessel transferred to that class,

the vessel shall be deemed to have been so transferred immediately before the disposition thereof, but this paragraph does not apply unless the proceeds of disposition of the vessel exceed the amount that would be the undepreciated capital cost of property of the class to which it would be so transferred.

Related Provisions: 13(16) — Election; 13(17) — Prescribed class; 13(18) — Reassessment; 13(19), (20) — Disposition of deposit; 13(21)"appropriate minister"; 96(3) — Election by members of partnership; 150(1) — When return of income due. See additional Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *Para. 13(15)(a) referred to "the Minister of Industry, Science and Technology" rather than "the appropriate minister". Also, see the Table of Concordance for the restructuring of para. (b).*

Para. 13(15)(a) amended by 1990, c. 1, s. 27, to substitute "Minister of Industry, Science and Technology" for "Minister of Regional Industrial Expansion", in force February 23, 1990.

Subsec. 13(15) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Minister of Regional Industrial Expansion" for "Minister of Industry, Trade and Commerce".

Subparas. 13(15)(a)(i), (ii) substituted by 1974-75-76, c. 26, subsec. 4(5), applicable to 1972 *et seq.*

(16) Election concerning vessel — Where a vessel owned by a taxpayer is disposed of by the taxpayer, the taxpayer may, if subsection (15) does not apply to the proceeds of disposition or if the taxpayer did not make an election under paragraph (15)(b) in respect of the vessel,

within the time specified for the filing of a return of the taxpayer's income for the taxation year in which the vessel is disposed of, elect to have the proceeds that would be included in computing the taxpayer's income for the year under this Part treated as proceeds of disposition of property of another prescribed class that includes a vessel owned by the taxpayer.

Related Provisions: 96(3) — Election by members of partnership. See additional Related Provisions and Definitions at end of s. 13.

Interpretation Bulletins: IT-267R2: CCA — vessels.

(17) Separate prescribed class concerning vessel — Where a separate prescribed class has been constituted either under this Act or the *Canadian Vessel Construction Assistance Act* by reason of the conversion of a vessel owned by a taxpayer and the vessel is disposed of by the taxpayer, if no election in respect of the vessel was made under paragraph (15)(b), the separate prescribed class constituted by reason of the conversion shall be deemed to have been transferred to the class in which the vessel was included immediately before the disposition thereof.

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Interpretation Bulletins: IT-267R2: CCA — vessels.

(18) Reassessments — Notwithstanding any other provision of this Act, where a taxpayer has

(a) used an amount as described in paragraph (4)(c), or

(b) made an election under paragraph (15)(b) in respect of a vessel and the proceeds of disposition of the vessel were used before 1975 for replacement under conditions satisfactory to the appropriate minister,

such reassessments of tax, interest or penalties shall be made as are necessary to give effect to subsections (4) and (15).

Pre-RSC History: *Para. 13(18)(a) referred to "the Minister of Industry, Science and Technology" rather than "the appropriate minister".*

Para. 13(18)(b) amended by 1990, c. 1, s. 27, to substitute "Minister of Industry, Science and Technology" for "Minister of Regional Industrial Expansion", in force February 23, 1990.

Subsec. 13(18) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Minister of Regional Industrial Expansion" for "Minister of Industry, Trade and Commerce".

Subsec. 13(18) substituted by 1974-75-76, c. 26, subsec. 4(6), applicable to 1972 *et seq.*

(18.1) Ascertainment of certain property — For the purpose of determining whether property meets the criteria set out in the Regulations in respect of prescribed energy conservation property, the Technical Guide to Class 43.1, as amended from time to time and published by the Department of Natural Resources, shall apply conclusively with respect to engineering and scientific matters.

Related Provisions: 241(4)(d)(vi.1) — Disclosure of information to Department of Natural Resources. See also Related Provisions and Definitions at end of s. 13.

History: Subsec. 13(18.1) added by 1995, c. 3, subsec. 4(6), applicable to property acquired after February 21, 1994.

Regulations: Reg. 8200.1 (prescribed energy conservation property).

(19) Disposition of deposit — All or any part of a deposit made under subparagraph (15)(a)(ii) or under the *Canadian Vessel Construction Assistance Act* may be paid out to or on behalf of any person who, under conditions satisfactory to the appropriate minister and as a replacement for the vessel disposed of, acquires a vessel before 1975

(a) that was constructed in Canada and is registered in Canada or is registered under conditions satisfactory to the appropriate minister in any country or territory to which the British Commonwealth Merchant Shipping Agreement, signed at London on December 10, 1931, applies, and

(b) in respect of the capital cost of which no allowance has been made to any other taxpayer under this Act or the *Canadian Vessel Construction Assistance Act*,

or incurs any conversion cost with respect to a vessel owned by that person that is registered in Canada or is registered under conditions satisfactory to the appropriate minister in any country or territory to which the agreement referred to in paragraph (a) applies, but the ratio of the amount paid out to the amount of the deposit shall not exceed the ratio of the capital cost to that person of the vessel or the conversion cost to that person of the vessel, as the case may be, to the proceeds of disposition of the vessel disposed of, and any deposit or part of a deposit not so paid out before July 1, 1975 or not paid out pursuant to subsection (20) shall be paid to the Receiver General and form part of the Consolidated Revenue Fund.

Related Provisions: 13(21)"appropriate minister". See additional Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *Subsec. 13(19) referred to "the Minister of Industry, Science and Technology" rather than "the appropriate minister".*

Subsec. 13(19) amended by 1990, c. 1, s. 27, to substitute "Minister of Industry, Science and Technology" for "Minister of Regional Industrial Expansion", in force February 23, 1990.

Subsec. 13(19) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Minister of Regional Industrial Expansion" for "Minister of Industry, Trade and Commerce".

Subsec. 13(19) substituted by 1974-75-76, c. 26, subsec. 4(6), applicable to 1972 *et seq.*

(20) Idem — Notwithstanding any other provision of this section, where a taxpayer made a deposit under subparagraph (15)(a)(ii) and the proceeds of disposition in respect of which the deposit was made were not used by any person before 1975 under conditions satisfactory to the appropriate minister as a replacement for the vessel disposed of,

(a) to acquire a vessel described in paragraphs (19)(a) and (b), or

(b) to incur any conversion cost with respect to a vessel owned by that person that is registered in Canada or is registered under conditions satisfactory to the appropriate minister in any country or territory to which the agreement referred to in paragraph (19)(a) applies,

the appropriate minister may refund to the taxpayer the deposit, or the part thereof not paid out to the taxpayer under subsection (19), as the case may be, in which case there shall be added, in computing the income of the taxpayer for the taxation year of the taxpayer in which the vessel was disposed of, that proportion of the amount that would have been included in computing the income for the year under this Part had the deposit not been made under subparagraph (15)(a)(ii) that the portion of the proceeds of disposition not so used before 1975 as such a replacement is of the proceeds of disposition, and, notwithstanding any other provision of this Act, such reassessments of tax, interest or penalties shall be made as are necessary to give effect to this subsection.

Related Provisions: 13(21)"appropriate minister". See additional Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *Subsec. 13(20) referred to "the Minister of Industry, Science and Technology" rather than "the appropriate minister".*

Subsec. 13(20) amended by 1990, c. 1, s. 27, to substitute "Minister of Industry, Science and Technology" for "Minister of Regional Industrial Expansion", in force February 23, 1990.

Subsec. 13(20) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Minister of Regional Industrial Expansion" for "Minister of Industry, Trade and Commerce". Subsec. 13(20) substituted by 1974-75-76, c. 26, subsec. 4(6), applicable to 1972 *et seq.*

(21) Definitions — In this section,

Related Provisions: 20(1.1) — Definitions in 13(21) apply to regulations made under 20(1)(a); 20(27.1) — Definitions in 13(21) apply to s. 20.

Pre-RSC History: *(The opening words referred also to s. 20 and regulations made under para. 20(1)(a). See now subsecs. 20(1.1), (27.1).)*

All that portion of subsec. 13(21) preceding para. (a) substituted by 1977-78, c. 1, subsec. 6(8), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add reference to section 20.

"appropriate minister" means the Canadian Maritime Commission, the Minister of Industry, Trade and Commerce, the Minister of Regional Industrial Expansion, the Minister of Industry, Science and Technology or the Minister of Industry or any other minister or body that was or is legally authorized to perform the act referred to in the provision in which this expression occurs at the time the act was or is performed;

Origin of subsec. 13(21)"appropriate minister": R.S.C. 1985, c. 1 (5th Supp.). (See "Pre-R.S.C. History" to subsecs. 13(15), (18), (19), (20).)

History: The definition "appropriate minister" in subsec. 13(21) amended by 1995, c. 1, s. 44, in force March 29, 1995. The definition formerly read:

> "appropriate minister" means the Canadian Maritime Commission, the Minister of Industry, Trade and Commerce, the Minister of Regional Industrial Expansion, the Minister of Industry, Science and Technology or such other minister or body as was or is legally authorized to perform the act referred to in the provision in which this expression occurs at the time the act was or is performed;

"conversion", in respect of a vessel, means a conversion or major alteration in Canada by a taxpayer;

Related Provisions: See Related Provisions and Definitions at end of s. 13.

History: The definition "conversion" in subsec. 13(21) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(9), applicable with respect to conversions beginning after July 13, 1990. That definition formerly read:

> "conversion", in respect of a vessel, means a conversion or major alteration in Canada by a taxpayer in accordance with plans approved in writing by the appropriate minister for the purposes of this Act;

Pre-RSC History: *The definition "conversion" was para. 13(21)(a); and the para. referred to "the Minister of Industry, Science and Technology" rather than "the appropriate minister".*

Para. 13(21)(a) amended by 1990, c. 1, s. 27, to substitute "Minister of Industry, Science and Technology" for "Minister of Regional Industrial Expansion", in force February 23, 1990.

Para. 13(21)(a) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Minister of Regional Industrial Expansion" for "Minister of Industry, Trade and Commerce".

Interpretation Bulletins: IT-267R2: CCA — vessels.

"conversion cost", in respect of a vessel, means the cost of a conversion;

History: The definition "conversion cost" in subsec. 13(21) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(9), applicable with respect to conversions beginning after July 13, 1990. That definition formerly read:

> "conversion cost", in respect of a vessel, means the cost of a conversion as determined by the appropriate minister for the purposes of this Act;

Pre-RSC History: *The definition "conversion cost" was included in para. 13(21)(a) and referred to "the Minister of Industry, Science and Technology" rather than "the appropriate minister".*

Interpretation Bulletins: IT-267R2: CCA — vessels.

"depreciable property" of a taxpayer as of any time in a taxation year means property acquired by the taxpayer in respect of which the taxpayer has been allowed, or would, if the taxpayer owned the property at the end of the year and this Act were read without reference to subsection (26), be entitled to, a deduction under paragraph 20(1)(a) in computing income for that year or a preceding taxation year;

Related Provisions: 13(1) — Recapture; 13(5.2)(c) — Certain real property deemed to be depreciable property; 20(1)(a) — Capital cost allowance; 54 — "Capital property"; 88(1)(c.7) — Extended meaning for certain windup rules; 107.4(3)(d) — Rollover of depreciable property to trust; 248(1)"depreciable property" — Definition applies to entire Act. See additional Related Provisions and Definitions at end of s. 13.

History: The definition "depreciable property" in subsec.13(21) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(9), applicable in respect of property acquired after 1989. The definition formerly read:

> "depreciable property" of a taxpayer as of any time in a taxation year means property acquired by the taxpayer in respect of which the taxpayer was allowed, or, if the taxpayer owned the property at the end of the year, would be entitled to, a deduction under paragraph 20(1)(a) in computing income for that year or a previous taxation year;

Pre-RSC History: *The definition "depreciable property" was para. 13(21)(b).*

Para. 13(21)(b) substituted by 1980-81-82-83, c. 48, subsec. 5(5), applicable with respect to acquisitions of property occurring after December 11, 1979. Para. (b) formerly read:

> (b) "depreciable property" of a taxpayer as of any time in a taxation year means property in respect of which the taxpayer has been allowed, or is entitled to, a deduction under regulations made under paragraph 20(1)(a) in computing income for that or a previous taxation year;

Selected Cases [subsec. 13(21)"depreciable property"]: *R. v. Construction Bérou Inc.*, [2000] 2 C.T.C. 174 (FCA) (Trucks "acquired" pursuant to lease financing arrangement); *Kettle River Sawmills Ltd. v. Canada*, [1992] 2 C.T.C. 276 (FCTD); rev'd in part (Nov. 12, 1993), Doc. A-1299-92, A-1300-92 (FCA) (Timber rights acquired in 1961 but renewed after May 6, 1974, were "timber resource property"); *Stearns Catalytic Ltd. v. Canada*, [1990] 1 C.T.C. 398 (FCTD) (Spare parts capable of causing lengthy termination of production if damaged are "major parts" of capital property, not inventory); *Avril Holdings Ltd. v. MNR*, [1970] C.T.C. 572 (SCC) (Land containing sand and gravel deposits sold separately was depreciable property).

Regulations: Part XI (capital cost allowance allowed on depreciable property).

I.T. Application Rules: 18, 20 (property acquired before 1972).

Interpretation Bulletins: IT-102R2: Conversion of property, other than real property, from or to inventory; IT-128R: CCA — depreciable property; IT-220R2: CCA — proceeds of disposition of depreciable property.

Forms: T2085: Capital dispositions supplementary schedule — depreciable property.

"disposition of property" includes any transaction or event entitling a taxpayer to proceeds of disposition of property;

Proposed Repeal — 13(21)"disposition of property"

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 5(1), will repeal the definition "disposition of property" in subsec. 13(21), applicable to transactions and events that occur after December 23, 1998.

Technical Notes: Subsection 13(21) of the *Income Tax Act* defines the expression "disposition of property" for the purposes of the depreciation recapture rules in section 13.

The definition is repealed, strictly as a consequence of the introduction of the new definition "disposition" in subsection 248(1).

Related Provisions: 54"disposition" — Disposition for capital gains purposes. See also Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *The definition "disposition of property" was para. 13(21)(c).*

Selected Cases [subsec. 13(21)"disposition of property"]: *Larose v. MNR*, [1992] 2 C.T.C. 2339 (TCC); amended (Nov. 18, 1991), Doc. 87-294(IT) (TCC) [unreported] (Assessment in respect of sale of properties upheld despite court decision and other circumstances denying taxpayer proceeds of sale; right to dispose of properties had been transferred to purchaser); *Browning Harvey Ltd. v. MNR*, [1990] 1 C.T.C. 161 (FCTD); aff'd (May 21, 1992), [unreported] (FCA); leave to appeal to SCC refused (Feb. 14, 1993), Doc. 23167 [unreported] (Capital assets sold conditionally remain depreciable property of the taxpayer until title passes).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer.

"proceeds of disposition" of property includes

(a) the sale price of property that has been sold,

(b) compensation for property unlawfully taken,

(c) compensation for property destroyed and any amount payable under a policy of insurance in respect of loss or destruction of property,

(d) compensation for property taken under statutory authority or the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

(e) compensation for property injuriously affected, whether lawfully or unlawfully or under statutory authority or otherwise,

(f) compensation for property damaged and any amount payable under a policy of insurance in respect of damage to property, except to the extent that the compensation or amount, as the case may be, has within a reasonable time after the damage been expended on repairing the damage,

(g) an amount by which the liability of a taxpayer to a mortgagee is reduced as a result of the sale of mortgaged property under a provision of the mortgage, plus any amount received by the taxpayer out of the proceeds of the sale, and

(h) any amount included because of section 79 in computing a taxpayer's proceeds of disposition of the property;

Related Provisions: 12(1)(f) — Insurance proceeds received for amount expended; 13(4) — Exchanges of property; 13(21) — Undepreciated capital cost; 13(21.1) — Disposition of a building; 44 — Exchanges of property; 54"proceeds of disposition" — Parallel definition for capital property; 79(3) — Deemed proceeds of disposition when property surrendered to creditor; 248(1) — "Cost amount"(a). See also Related Provisions and Definitions at end of s. 13.

History: Para. (h) of the definition "proceeds of disposition" in subsec. 13(21) amended by 1995, c. 21, subsec. 2(4), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(h) any amount included in computing a taxpayer's proceeds of disposition of the property by virtue of paragraph 79(c);

Pre-RSC History: *The definition "proceeds of disposition" was para. 13(21)(d). See Table of Concordance.*

Selected Cases [subsec. 13(21)"proceeds of disposition"]: *Corbett v. Canada*, [1997] 1 C.T.C. 2 (FCA) (No conflict with section 79); *Seaforth Plastics Ltd. v. The Queen*, [1979] C.T.C. 241 (FCTD) (Amounts received from insurance for business interruption income, not capital).

Interpretation Bulletins: IT-170R: Sale of property — when included in income computation; IT-259R3: Exchanges of property; IT-271R: Expropriations; IT-460: Dispositions — absence of consideration; IT-505: Mortgage foreclosures and conditional sales repossessions.

"timber resource property" of a taxpayer means

(a) a right or licence to cut or remove timber from a limit or area in Canada (in this definition referred to as an "original right") if

(i) that original right was acquired by the taxpayer (other than in the manner referred to in paragraph (b)) after May 6, 1974, and

(ii) at the time of the acquisition of the original right

(A) the taxpayer may reasonably be regarded as having acquired, directly or indirectly, the right to extend or renew that original right or to acquire another such right or licence in substitution therefor, or

(B) in the ordinary course of events, the taxpayer may reasonably expect to be able to extend or renew that original right or to acquire another such right or licence in substitution therefor, or

(b) any right or licence owned by the taxpayer to cut or remove timber from a limit or area in Canada if that right or licence may reasonably be regarded

(i) as an extension or renewal of or as one of a series of extensions or renewals of an original right of the taxpayer, or

(ii) as having been acquired in substitution for or as one of a series of substitutions for an original right of the taxpayer or any renewal or extension thereof;

Related Provisions: 128.1(4)(b)(i) — timber resource property excluded from deemed disposition on emigration; 248(1)"timber resource property" — Definition applies to entire Act; 248(10) — Series of transactions.

Pre-RSC History: *The definition "timber resource property" was para. 13(21)(d.1). See Table of Concordance.*

Para. 13(21)(d.1) added by 1974-75-76, c. 26, subsec. 4(7), applicable in respect of timber resource properties acquired after May 6, 1974.

Selected Cases [subsec. 13(21)"timber resource property"]: *ITT Industries of Canada Ltd. v. R.*, [1999] 2 C.T.C. 277 (FCTD) (Subparagraphs 13(21)(d.1)(i) and (ii) operate independently of each other); *Kettle River Sawmills Ltd. v. Canada*, [1992] 2 C.T.C. 276 (FCTD); rev'd in part (Nov. 12, 1993), Doc. A-1299-92, A-1300-92 (FCA) (Timber rights acquired in 1961 but renewed after May 6, 1974, were "timber resource property").

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-418: CCA — partial dispositions of property; IT-481: Timber resource property and timber limits.

"total depreciation" allowed to a taxpayer before any time for property of a prescribed class means the total of all amounts each of which is an amount deducted by the taxpayer under paragraph 20(1)(a) in respect of property of that class or an amount deducted under subsection 20(16), or that would have been so deducted but for subsection 20(16.1), in computing the taxpayer's income for taxation years ending before that time;

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: *The definition "total depreciation" was para. 13(21)(e).*

Para. 13(21)(e) substituted by 1988, c. 55, subsec. 6(17), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. Para. 13(21)(e) formerly read:

"total depreciation" allowed to a taxpayer before any time for property of a prescribed class means the aggregate of all amounts each of which is an amount allowed to the taxpayer in respect of property of that class under regulations made under paragraph 20(1)(a), or

deductible under subsection 20(16), in computing income for taxation years ending before that time;

Para. 13(21)(e) substituted by 1977-78, c. 1, subsec. 6(9), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977. Para. 13(21)(e) formerly read:

"total depreciation" allowed to a taxpayer before any time for property of a prescribed class means the aggregate of all amounts allowed to the taxpayer in respect of property of that class under regulations made under paragraph 20(1)(a) in computing income for taxation years before that time;

Regulations: Part XI.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

"undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + E.1 + F + G + H + I + J + K)$$

where

A is the total of all amounts each of which is the capital cost to the taxpayer of a depreciable property of the class acquired before that time,

B is the total of all amounts included in the taxpayer's income under this section for a taxation year ending before that time, to the extent that those amounts relate to depreciable property of the class,

C is the total of all amounts each of which is such part of any assistance as has been repaid by the taxpayer, pursuant to an obligation to repay all or any part of that assistance, in respect of a depreciable property of the class subsequent to the disposition thereof by the taxpayer that would have been included in an amount determined under paragraph (7.1)(d) had the repayment been made before the disposition,

D is the total of all amounts each of which is an amount repaid in respect of a property of the class subsequent to the disposition thereof by the taxpayer that would have been an amount described in paragraph (7.4)(b) had the repayment been made before the disposition,

D.1 is the total of all amounts each of which is an amount paid by the taxpayer before that time as or on account of an existing or proposed countervailing or anti-dumping duty in respect of depreciable property of the class,

E is the total depreciation allowed to the taxpayer for property of the class before that time,

E.1 is the total of all amounts each of which is an amount by which the undepreciated capital cost to the taxpayer of depreciable property of that class is required (otherwise than because of a reduction in the capital cost to the taxpayer of depreciable property) to be reduced at or before that time because of subsection 80(5),

F is the total of all amounts each of which is an amount in respect of a disposition before that time of property (other than a timber resource property) of the taxpayer of the class, and is the lesser of

(a) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, and

(b) the capital cost to the taxpayer of the property,

G is the total of all amounts each of which is the proceeds of disposition before that time of a timber resource property of the taxpayer of the class minus any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition,

H is, where the property of the class was acquired by the taxpayer for the purpose of gaining or producing income from a mine and the taxpayer so elects in prescribed manner and within a prescribed time in respect of that property, the amount equal to that portion of the income derived from the operation of the mine that is, by virtue of the provisions of the *Income Tax Application Rules* relating to income from the operation of new mines, not included in computing income of the taxpayer or any other person,

I is the total of all amounts deducted under subsection 127(5) or (6), in respect of a depreciable property of the class of the taxpayer, in computing the taxpayers' tax payable for a taxation year ending before that time and subsequent to the disposition of that property by the taxpayer,

J is the total of all amounts of assistance that the taxpayer received or was entitled to receive before that time, in respect of or for the acquisition of a depreciable property of the class of the taxpayer subsequent to the disposition of that property by the taxpayer, that would have been included in an amount determined under paragraph (7.1)(f) had the assistance been received before the disposition, and

K is the total of all amounts each of which is an amount received by the taxpayer before that time in respect of a refund of an amount added to the undepreciated capital cost of depreciable property of the class because of the description of D.1;

Related Provisions: 12(1)(f) — Damage to depreciable property — insurance proceeds; 12(1)(t) — Investment tax credit; 13(1) — Recapture where E to J exceed A to D; 13(2) — Recaptured depreciation for vehicle; 13(4) — Exchanges of property; 13(5) — Transferred property; 13(5.2) — Where rent paid on property before its acquisition; 13(7) — Rule affecting capital cost; 13(21) — "timber resource property"; 13(22), (23) — Deductions deemed allowed to insurer for 1977 and 1978; 13(24) — Acquisition of control — limitation re calculation of UCC; 13(26) — Restriction on deduction before available for use; 13(33) — Consideration given for depreciable capital; 20(16) — Terminal loss; 70(12) — Capital cost of depreciable property on death; 87(2)(j.6) — Amalgamations — continuing corporation; 138(11.31)(b) — Change-in-use rule for insurance properties does not apply for purposes of UCC definition; 248(1)"undepreciated capital cost" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 13.

History: The descriptions of D.1 and K added to the definition "undepreciated capital cost" in subsec. 13(21) and the corresponding formula amended by 1999, c. 22, subsecs. 6(2) to (4), the formula applicable after February 23, 1998; D.1 applicable to amounts that become payable after February 23, 1998; and K applicable to amounts that are received after February 23, 1998.

The description of E.1 added to the definition "undepreciated capital cost" in subsec. 13(21) and the corresponding formula amended by 1995, c. 21, subsec. 2(6), applicable to taxation years that end after February 21, 1994.

Pre-RSC History: *The definition "undepreciated capital cost" was para. 13(21)(f). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(f) "undepreciated capital cost" — "undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time means the amount by which the aggregate of

(i) the capital cost to the taxpayer of each depreciable property of that class acquired before that time,

(ii) all amounts included in the taxpayer's income by virtue of this section for a taxation year ending prior to that time, to the extent that those amounts relate to depreciable property of that class,

(ii.1) all amounts each of which is such part of any assistance as has been repaid by the taxpayer, pursuant to an obligation to

repay all or any part of that assistance, in respect of a depreciable property of that class subsequent to the disposition thereof by him that would have been included in an amount determined under paragraph 13(7.1)(d) had the repayment been made before the disposition, and

(ii.2) all amounts each of which is an amount repaid in respect of a property of the class subsequent to the disposition thereof by him that would have been an amount described in paragraph (7.4)(b) had the repayment been made before the disposition,

exceeds the aggregate of

(iii) the total depreciation allowed to the taxpayer for property of that class before that time,

(iv) for each disposition before that time of property (other than a timber resource property) of the taxpayer of that class, the lesser of

(A) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by him for the purpose of making the disposition, and

(B) the capital cost to him of the property,

(v) for each disposition before that time of a timber resource property of the taxpayer of that class, the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by him for the purpose of making the disposition,

(vi) where the property of that class was acquired by the taxpayer for the purpose of gaining or producing income from a mine and the taxpayer so elects in prescribed manner and within a prescribed time in respect of that property, an amount equal to that portion of the income derived from the operation of the mine that is, by virtue of the provisions of the Income Tax Application Rules, 1971 *relating to income from the operation of new mines, not included in computing income of the taxpayer or any other person,*

(vii) all amounts each of which is an amount deducted under subsection 127(5) or (6), in respect of a depreciable property of that class of the taxpayer, in computing the taxpayer's tax payable for a taxation year ending before that time and subsequent to the disposition of such property by him, and

(viii) all amounts each of which is the amount of any assistance the taxpayer received or was entitled to receive before that time, in respect of or for the acquisition of a depreciable property of that class of the taxpayer subsequent to the disposition of such property by him, that would have been included in an amount determined under paragraph 13(7.1)(f) had the assistance been received before the disposition; and

Subpara. 13(21)(f)(vii) amended by 1988, c. 55, subsec. 6(18), to substitute "in computing the taxpayer's tax payable for a taxation year ending before that time" for "before that time", applicable to 1988 *et seq.*

Subpara. 13(21)(f)(ii.2) added by 1986, c. 6, subsec. 8(6), applicable to 1985 *et seq.*

Subparas. 13(21)(f)(ii.1), (vii), (viii) added by 1980-81-82-83, c. 48, subsec. 5(6), (7), applicable to taxation years ending after December 11, 1979.

Subparas. 13(21)(f)(iv), (v) substituted by 1977-78, c. 1, subsec. 6(10), applicable for the purpose of computing after March 31, 1977 the undepreciated capital cost to a taxpayer of depreciable property. Subparas. 13(21)(f)(iv), (v) formerly read:

(iv) for each disposition before that time of property (other than a timber resource property) of the taxpayer of that class, the lesser of

(A) the proceeds of disposition of the property, and

(B) the capital cost to him of the property,

(v) for each disposition before that time of a timber resource property of the taxpayer of that class, the proceeds of disposition of the property, and

Para. 13(21)(f) substituted by 1976-77, c. 4, subsec. 3(6), applicable for the purpose of determining the undepreciated capital cost to a taxpayer of depreciable property of a prescribed class at any time after May 25, 1976. Para. 13(21)(f) formerly read:

(f) "undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time means the capital cost to the taxpayer of depreciable property of that class acquired before that time minus the aggregate of

(i) the total depreciation allowed to the taxpayer for property of that class before that time,

(ii) for each disposition before that time of property (other than a timber resource property) of the taxpayer of that class, the least of

(A) the proceeds of disposition of the property,

(B) the capital cost to him of the property, and

(C) the undepreciated capital cost to him of property of that class immediately before the disposition,

(ii.1) for each disposition before that time of a timber resource property of the taxpayer of that class, the lesser of

(A) the proceeds of disposition of the property, and

(B) the undepreciated capital cost to him of property of that class immediately before the disposition,

(iii) each amount by which the undepreciated capital cost to the taxpayer of depreciable property of that class as of the end of a previous year was reduced by virtue of subsection (2), and

(iv) where the property of that class was acquired by the taxpayer for the purpose of gaining or producing income from a mine and the taxpayer so elects in prescribed manner and within a prescribed time in respect of that property, an amount equal to that portion of the income derived from the operation of the mine that is, by virtue of the provisions of the *Income Tax Application Rules, 1971* relating to income from the operation of new mines, not included in computing income of the taxpayer or any other person; and

Subpara. 13(21)(f)(ii) substituted, to add "(other than a timber resource property)", 13(21)(f)(ii.1) added by 1974-75-76, c. 26, subsec. 4(8), applicable in respect of timber resource properties acquired after May 6, 1974.

Selected Cases [subsec. 13(21)"undepreciated capital cost"]: *Prince Albert Pulp Co. v. Canada*, [1990] 2 C.T.C. 339 (FCTD); aff'd [1992] 1 C.T.C. 262 (FCA) (Reduction in capital cost occurs in year investment tax credit used); *Consumers' Gas Co. Ltd. v. The Queen*, [1987] 1 C.T.C. 79 (FCA) (Capital cost not reduced by reimbursement from government for relocating pipelines); *Emco Ltd. v. MNR*, [1968] C.T.C. 457 (Exch.) (Taxpayer permitted to change previous allocation of purchase price entirely to land).

Regulations: Part XI (amounts of depreciation allowed, for E).

I.T. Application Rules: 18 (property acquired before 1972).

Interpretation Bulletins: IT-172R: CCA — taxation year for individuals; IT-327: CCA — Elections under Regulation 1103; IT-418: CCA — partial dispositions of property; IT-478R2: CCA — recapture and terminal loss; IT-481: Timber resource property and timber limits.

Information Circulars: 87-5: Capital cost of property where trade-in is involved.

"vessel" means a vessel as defined in the *Canada Shipping Act*.

Pre-RSC History: *The definition "vessel" was para. 13(21)(g).*

Interpretation Bulletins: IT-267R2: CCA — vessels.

Advance Tax Rulings: ATR-52: Accelerated rate of CCA for vessels.

Related Provisions [subsec. 13(21)]: 20(1.1) — Definitions in 13(21) apply to regulations made under 20(1)(a); 20(27.1) — Definitions in 13(21) apply to s. 20.

(21.1) Disposition of building — Notwithstanding subsection (7) and the definition "proceeds of disposition" in section 54, where at any particular time in a taxation year a taxpayer disposes of a building of a prescribed class and the proceeds of disposition of the building determined without reference to this subsection and subsection (21.2) are less than the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before the disposition, for the purposes of paragraph (a) of the description of F in the definition "undepreciated capital cost" in subsection (21) and subdivision c,

(a) where in the year the taxpayer or a person with whom the taxpayer does not deal at arm's length disposes of land subjacent to, or immediately contiguous

to and necessary for the use of, the building, the proceeds of disposition of the building are deemed to be the lesser of

(i) the amount, if any, by which

(A) the total of the fair market value of the building at the particular time and the fair market value of the land immediately before its disposition

exceeds

(B) the lesser of the fair market value of the land immediately before its disposition and the amount, if any, by which the cost amount to the vendor of the land (determined without reference to this subsection) exceeds the total of the capital gains (determined without reference to subparagraphs 40(1)(a)(ii) and (iii)) in respect of dispositions of the land within 3 years before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length to the taxpayer or to another person with whom the taxpayer was not dealing at arm's length, and

(ii) the greater of

(A) the fair market value of the building at the particular time, and

(B) the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before its disposition,

and, notwithstanding any other provision of this Act, the proceeds of disposition of the land are deemed to be the amount, if any, by which

(iii) the total of the proceeds of disposition of the building and of the land determined without reference to this subsection and subsection (21.2)

exceeds

(iv) the proceeds of disposition of the building as determined under this paragraph,

and the cost to the purchaser of the land shall be determined without reference to this subsection; and

(b) where paragraph (a) does not apply with respect to the disposition and, at any time before the disposition, the taxpayer or a person with whom the taxpayer did not deal at arm's length owned the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building are deemed to be an amount equal to the total of

(i) the proceeds of disposition of the building determined without reference to this subsection and subsection (21.2), and

(ii) 1/4 of the amount by which the greater of

(A) the cost amount to the taxpayer of the building, and

(B) the fair market value of the building

immediately before its disposition exceeds the proceeds of disposition referred to in subparagraph (i).

Related Provisions: 70(5)(c), (d) — Capital property of a deceased taxpayer.

History: Subsec. 13(21.1) amended by 1998, c. 19, subsec. 73(4), subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), applicable to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(21.1) Notwithstanding subsection (7) and the definition "proceeds of disposition" in section 54, where at any particular time in a taxation year a taxpayer disposed of a building of a prescribed class and the proceeds of disposition of the building determined without reference to this subsection are less than the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before its disposition, for the purposes of paragraph (a) of the description of F in the definition "undepreciated capital cost" in subsection (21) and subdivision c, the following rules apply:

(a) where in the same taxation year the taxpayer or a person with whom the taxpayer was not dealing at arm's length disposed of the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building shall be deemed to be the lesser of

(i) the amount, if any, by which

(A) the total of the fair market value of the building at the particular time and the fair market value of the land immediately before its disposition

exceeds

(B) the lesser of the fair market value of the land immediately before its disposition and the amount, if any, by which the cost amount to the vendor of the land (determined without reference to this subsection) exceeds the total of the capital gains (determined without reference to subparagraphs 40(1)(a)(ii) and (iii)) in respect of dispositions of the land within the 3 year period preceding the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length to the taxpayer or to another person with whom the taxpayer was not dealing at arm's length, and

(ii) the greater of

(A) the fair market value of the building at the particular time, and

(B) the lesser of the cost amount and the capital cost to the taxpayer of the building immediately before its disposition

and, notwithstanding any other provision of this Act, the proceeds of disposition of the land shall be deemed to be the amount, if any, by which

(iii) the total of the proceeds of disposition of the building and of the land determined without reference to this subsection

exceeds

(iv) the proceeds of disposition of the building as determined under this paragraph,

and the cost to the purchaser of the land shall be determined without reference to this subsection; and

(b) where paragraph (a) does not apply with respect to the disposition and, at any time before the disposition, the taxpayer or a person with whom the taxpayer was not dealing at arm's length owned the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building shall be deemed to be an amount equal to the total of

(i) the proceeds of disposition of the building determined without reference to this subsection, and

(ii) 1/4 of the amount by which the greater of

(A) the cost amount to the taxpayer of the building, and

(B) the fair market value of the building

immediately before its disposition exceeds the proceeds of disposition referred to in subparagraph (i).

Pre-RSC History: That portion of subpara. 13(21.1)(b)(ii) preceding cl. (A) amended by 1988, c. 55, subsec. 6(19), to substitute "1/4" for "1/2", applicable to taxation years and fiscal periods ending after 1987, except that

(a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "1/4" in subparagraph 13(21.1)(b)(ii) shall be read as a reference to "1/3";

(b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "1/4" in subparagraph

13(21.1)(b)(ii) shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of ⅓ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¼ that the number of days in the year that are after 1989 is of the number of days in the year; and

(c) where the taxpayer is a corporation, that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "¼" in subparagraph 13(21.1)(b)(ii) shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of ⅓ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¼ that the number of days in the year that are after 1989 is of the number of days in the year.

All that portion of subsec. 13(21.1) preceding para. (a) amended by 1985, c. 45, subsec. 7(2), to substitute "at any particular time" for "at any time" and "the lesser of the cost amount and the capital cost" for "the cost amount", applicable with respect to dispositions occurring after November 12, 1981 other than dispositions occurring pursuant to the terms of an agreement in writing entered into on or before that date.

Para. 13(21.1)(a) substituted by 1985, c. 45, subsec. 7(3), applicable with respect to dispositions occurring after May 9, 1985 other than dispositions occurring pursuant to the terms of an agreement in writing entered into on or before that date. Para. 13(21.1)(a) formerly read:

(a) where in the same taxation year the taxpayer or a person with whom he was not dealing at arm's length disposed of the land subjacent to, or immediately contiguous to and necessary for the use of, the building, the proceeds of disposition of the building shall be deemed to be the lesser of

(i) the amount, if any, by which

(A) the aggregate of the proceeds of disposition of the building and of the land determined without reference to this subsection

exceeds

(B) the lesser of the cost amount to the vendor of the land, and its fair market value, immediately before its disposition, and

(ii) the greater of

(A) the fair market value of the building immediately before its disposition, and

(B) the cost amount to the taxpayer of the building immediately before its disposition

and the proceeds of disposition of the land shall be deemed to be the amount, if any, by which

(iii) the aggregate of the proceeds of disposition of the building and of the land determined without reference to this subsection

exceeds

(iv) the proceeds of disposition of the building as determined under this paragraph; and

Subsec. 13(21.1) added by 1980-81-82-83, c. 140, subsec. 6(2), applicable with respect to dispositions occurring after November 12, 1981, other than dispositions occurring pursuant to the terms of an agreement in writing entered into on or before that date.

Selected Cases [subsec. 13(21.1)]: *R. v. Trade Investments Shopping Centre Ltd.*, [1999] 1 C.T.C. 92 (FCA) (Agreement was original option granted, not subsequent exercise).

Interpretation Bulletins [subsec. 13(21.1)]: IT-220R2: CCA — proceeds of disposition of depreciable property; IT-349R3: Intergenerational transfers of farm property on death.

(21.2) Loss on certain transfers [within affiliated group] — Where

(a) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor,

Proposed Amendment — 13(21.2)(a)

(a) a person or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 5(2), will amend para. 13(21.2)(a) to read as above, applicable after November 1999 except that, if an individual (other than a trust) so elects in writing and files with the Minister of National Revenue on or before the individual's filing-due date for the taxation year in which the amending legislation is assented to, this amendment does not apply in respect of the disposition of a property by the individual before July 2000

(a) to a person who was obliged on November 30, 1999 to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before December 1999, other than a transaction or series of transactions a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the *Income Tax Act*, or

(ii) any balance of undeducted outlays, expenses or other amounts.

Technical Notes: Section 13 of the Act provides a number of special rules relating to the tax treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 and the capital cost allowance regulations.

Subsection 13(21.2) of the Act defers, in certain circumstances, the realization of a loss that would otherwise arise from the transfer of a depreciable property. The subsection applies where the transferor or a person affiliated with the transferor holds the transferred property, or has a right to acquire it, 30 days after the transfer. Until any one of certain events occurs, the transferor is treated as holding a notional depreciable property the capital cost of which is, in effect, the amount of the deferred loss.

Subsection 13(21.2) currently applies only where the transferor is a corporation, partnership or trust. The subsection is amended to apply to transfers by any person or partnership. The practical effect of the change is to make the rule apply to natural persons.

The subsection is also amended to clarify subparagraph 13(21.2)(e)(ii), by replacing references to the "taxpayer" with references to the "transferor." This clarification does not effect any substantive change to the provision.

Amended subsection 13(21.2) applies after November 30, 1999. An optional exception is provided where an individual disposes of a property before July 1, 2000, in a transaction that meets either of two tests. The first test is that the disposition be to a person who was obliged on November 30, 1999 to acquire the property under an agreement in writing. The second test is that the disposition be a transaction (or part of a series) the arrangements for which (evidenced in writing) were substantially advanced by November 30, 1999. Ineligible under the second test is any transaction or series of transactions a main purpose of which was to enable an unrelated person to obtain the benefit of a deduction or balance under the Act.

Where either of these tests is met, the transferor may elect not to have the first amendment described above apply to the disposition. Such an election must be made in writing and filed with the

Minister of National Revenue on or before the transferor's filing-due date for the year in which these amendments receive Royal Assent.

(b) the lesser of

(i) the capital cost to the transferor of the transferred property, and

(ii) the proportion of the undepreciated capital cost to the transferor of all property of the particular class immediately before that time that

(A) the fair market value of the transferred property at that time

is of

(B) the fair market value of all property of the particular class immediately before that time

exceeds the amount that would otherwise be the transferor's proceeds of disposition of the transferred property at the particular time, and

(c) on the 30th day after the particular time, a person or partnership (in this subsection referred to as the "subsequent owner") who is the transferor or a person affiliated with the transferor owns or has a right to acquire the transferred property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation),

the following rules apply:

(d) sections 85 and 97 do not apply to the disposition,

(e) for the purposes of applying this section and section 20 and any regulations made for the purpose of paragraph 20(1)(a) to the transferor for taxation years that end after the particular time,

(i) the transferor is deemed to have disposed of the transferred property for proceeds equal to the lesser of the amounts determined under subparagraphs (b)(i) and (ii) with respect to the transferred property,

(ii) where 2 or more properties of a prescribed class of the transferor are disposed of at the same time, subparagraph (i) applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer or, if the taxpayer does not designate an order, in the order designated by the Minister,

Proposed Amendment — 13(21.2)(e)(ii)

(ii) where two or more properties of a prescribed class of the transferor are disposed of at the same time, subparagraph (i) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor or, if the transferor does not designate an order, in the order designated by the Minister,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 5(3), will amend subpara. 13(21.2)(e)(ii) to read as above, applicable after November 1999.

Technical Notes: See under 13(21.2)(a).

(iii) the transferor is deemed to own a property that was acquired before the beginning of the taxation year that includes the particular time at a capital cost equal to the amount of the excess described in paragraph (b), and that is property of the particular class, until the time that is immediately before the first time, after the particular time,

(A) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns or has a right to acquire the transferred property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation),

(B) at which the transferred property is not used by the transferor or a person affiliated with the transferor for the purpose of earning income and is used for another purpose,

(C) at which the transferred property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(D) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(E) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation, and

(iv) the property described in subparagraph (iii) is considered to have become available for use by the transferor at the time at which the transferred property is considered to have become available for use by the subsequent owner,

(f) for the purposes of subparagraphs (e)(iii) and (iv), where a partnership otherwise ceases to exist at any time after the particular time, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this paragraph, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in clauses (e)(iii)(A) to (E), and

(g) for the purposes of applying this section and section 20 and any regulations made for the purpose of paragraph 20(1)(a) to the subsequent owner,

(i) the subsequent owner's capital cost of the transferred property is deemed to be the amount that was the transferor's capital cost of the transferred property, and

(ii) the amount by which the transferor's capital cost of the transferred property exceeds its fair market value at the particular time is deemed to have been deducted under paragraph 20(1)(a) by the subsequent owner in respect of property of that class in computing income for taxation years that ended before the particular time.

Related Provisions: 14(12) — Parallel rule for eligible capital property; 18(13)–(16) — Parallel rule for share or debt owned by financial institution; 40(3.3), (3.4) — Parallel rule with respect to capital losses; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 88(1)(d.1) — No application to property acquired on windup of subsidiary; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 251.1 — Affiliated persons; 256(6)–(9) — Whether control acquired.

History: Subsec. 13(21.2) added by 1998, c. 19, subsec. 73(4), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260) to dispositions of property that occur after April 26, 1995 except that, where

(a) a property is disposed of after April 26, 1995 and before June 20, 1996, and

(b) the transferor elects in writing, filed with the Minister of National Revenue before October 1998,

the opening portion of subpara. 13(21.2)(e)(iii) shall be read as follows:

(iii) the transferor is deemed to own a property that was acquired before the beginning of the taxation year that includes the particular time at a capital cost equal to the amount of the excess described in paragraph (b), and that is of a separate prescribed class that is the same class as the particular class, until the time that is immediately before the first time, after the particular time,

(22) Deduction for insurer — For the purposes of E in the definition "undepreciated capital cost" in subsection (21), an insurer shall be deemed to have been allowed a deduction for depreciation for property of a prescribed class under paragraph 20(1)(a) in computing income for taxation years before its 1977 taxation year equal to the total of

(a) the amount determined, immediately after the end of its 1976 taxation year, for E in that definition, with respect to property of the particular prescribed class of the insurer (determined without reference to this subsection),

(b) the lesser of

(i) the amount of its 1975-76 excess capital cost allowance with respect to property of the particular prescribed class of the insurer, and

(ii) that proportion of the amount, if any, by which its 1975 branch accounting election deficiency exceeds the amount determined under subparagraph 138(4.1)(d)(ii) that

(A) the amount of its 1975-76 excess capital cost allowance with respect to property of the particular prescribed class of the insurer

is of

(B) the total of all its 1975-76 excess capital cost allowances with respect to properties of a prescribed class of the insurer, and

(c) the lesser of

(i) the amount, if any, by which

(A) the undepreciated capital cost of property of the particular prescribed class of the insurer immediately after the end of its 1976 taxation year (determined without reference to this subsection),

exceeds

(B) the amount determined under paragraph (b) in respect of property of the particular prescribed class of the insurer, and

(ii) that proportion of the amount, if any, by which its 1975 branch accounting election deficiency exceeds the total of

(A) the amount determined under subparagraph 138(4.1)(d)(ii),

(B) the total of all amounts determined under paragraph (b) with respect to property of a prescribed class of the insurer,

(C) the total described in subclause 138(4.1)(a)(ii)(B)(IV),

(D) the amount determined under subparagraph 138(4.1)(b)(ii), and

(E) the amount determined under subparagraph 138(4.1)(a)(ii)

that

(F) the undepreciated capital cost of property of the particular prescribed class of the insurer immediately after the end of its 1976 taxation year (determined without reference to this subsection),

is of

(G) the total of all amounts each of which is the undepreciated capital cost of property of a prescribed class of the insurer immediately after the end of its 1976 taxation year (determined without reference to this subsection).

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(22) added by 1977-78, c. 1, subsec. 6(11), applicable to 1977 *et seq.*

(23) Deduction for life insurer — For the purposes of E in the definition "undepreciated capital cost" in subsection (21), a life insurer shall be deemed to have been allowed a deduction for depreciation for property of a prescribed class under paragraph 20(1)(a) in computing income for taxation years before its 1978 taxation year equal to the total of

(a) the amount determined immediately after the end of its 1977 taxation year for E in that definition, with respect to property of the particular prescribed class of the insurer (determined without reference to this subsection), and

(b) the amount, if any, by which

(i) the total of all maximum amounts the insurer was entitled to claim with respect to property of the particular prescribed class of the insurer in taxation years ending before 1978 and after 1968

exceeds

(ii) the amount determined under paragraph (a).

Related Provisions: See Related Provisions and Definitions at end of s. 13.

Pre-RSC History: Subsec. 13(23) added by 1977-78, c. 1, subsec. 6(11), applicable to 1978 *et seq.*

(23.1) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 13(23.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 138(12)).

(24) Acquisition of control — Where control of a corporation has been acquired at any time by a person or group of persons and, within the 12-month period that ended immediately before that time, the corporation or a partnership of which it was a majority interest partner acquired depreciable property (other than property that was owned by the corporation or partnership or by a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(2), be affiliated with the corporation throughout the period that began immediately before the 12-month period began and ended at the time the property was acquired by the corporation or partnership) that was not used, or acquired for use, by the corporation or partnership in a business that was carried on by it immediately before the 12-month period began,

(a) for the purposes of the description of A in the definition "undepreciated capital cost" in subsection (21) and of sections 127 and 127.1, the property is, subject to paragraph (b), deemed not to have been acquired by the corporation or partnership before that time and to have been acquired by it immediately after that time; and

(b) where the property was disposed of by it before that time and was not reacquired by it before that time,

for the purpose of the description of A in that definition, the property is deemed to have been acquired by the corporation or partnership immediately before the property was disposed of.

Related Provisions: 13(25) — Change of control within 12 months of incorporation; 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions at end of s. 13.

History: Subsec. 13(24) amended by 1998, c. 19, subsec. 73(5), applicable to acquisitions of control that occur after April 26, 1995. The subsec. formerly read:

(24) Acquisition of control — Where at any time control of a corporation has been acquired by a person or group of persons and, within the twelve month period ending immediately before that time, the corporation, or a partnership of which it was a majority interest partner (within the meaning assigned by subsection 97(3.1)), acquired depreciable property (other than property that was owned by the corporation or partnership or by a person or persons related to the corporation throughout the period commencing immediately before the twelve month period and ending at the time the property was acquired by the corporation or partnership) that was not used, or acquired for use, by the corporation or partnership in a business that was carried on by it immediately before that twelve month period, for the purposes of A in the definition "undepreciated capital cost" in subsection (21) and of sections 127 and 127.1, the property shall be deemed not to have been acquired by the corporation or partnership before that time and shall be deemed to have been acquired by it immediately after that time, except that, where the property was disposed of by it before that time and not reacquired by it before that time, for the purposes of A in that definition, the property shall be deemed to have been acquired by the corporation or partnership immediately before the property was disposed of.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

(25) Early change of control — For the purpose of subsection (24), where a corporation referred to in that subsection was incorporated or otherwise formed in the 12-month period referred to in that subsection, the corporation is deemed to have been, throughout the period that began immediately before the 12-month period and ended immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) affiliated with every person with whom it was affiliated (otherwise than because of a right referred to in paragraph 251(5)(b)) throughout the period that began when it was incorporated or otherwise formed and ended immediately before its control is acquired.

History: Subsec. 13(25) amended by 1998, c. 19, subsec. 73(5), applicable to acquisitions of control that occur after April 26, 1995. The subsec. formerly read:

(25) Early change of control — For the purposes of subsection (24), where the corporation referred to in that subsection was incorporated or otherwise formed during the twelve month period referred to in that subsection, it shall be deemed to have been, throughout the period commencing immediately before the twelve month period and ending immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) related to the person or persons to whom it was related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) throughout the period commencing when it was incorporated or otherwise formed and ending immediately before the control of the corporation was acquired.

Pre-RSC History: Subsecs. 13(24), (25) added by 1987, c. 46, subsec. 4(2), applicable with respect to acquisitions of property occurring after January 15, 1987 other than acquisitions of property occurring before 1988 where the persons acquiring the property were obliged on that date to acquire the property pursuant to the terms of agreements in writing entered into on or before that date.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

(26) Restriction on deduction before available for use — In applying the definition "undepreciated capital cost" in subsection (21) for the purpose of paragraph 20(1)(a) and any regulations made for the purpose of that paragraph, in computing a taxpayer's income for a taxation year from a business or property, no amount shall be included in calculating the undepreciated capital cost to the taxpayer of depreciable property of a prescribed class in respect of the capital cost to the taxpayer of a property of that class (other than property that is a certified production, as defined by regulations made for the purpose of paragraph 20(1)(a)) before the time the property is considered to have become available for use by the taxpayer.

Related Provisions: 13(27), (28) — Interpretation — available for use; 13(30) — Transfers of property; 13(32) — Leased property; 20(28) — Deduction against rental income from building; 37(1.2) — No R&D deduction for capital expenditure until property available for use; 127(11.2) — No investment tax credit until property available for use; 248(19) — When property available for use. See additional Related Provisions at end of s. 13.

History: See under subsec. 13(29).

Regulations: 1100(2)(a)(i) (CCA in year property becomes available for use); 1104(2) (definition of "certified production").

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

(27) Interpretation — available for use — For the purposes of subsection (26) and subject to subsection (29), property (other than a building or part thereof) acquired by a taxpayer shall be considered to have become available for use by the taxpayer at the earliest of

(a) the time the property is first used by the taxpayer for the purpose of earning income,

(b) the time that is immediately after the beginning of the first taxation year of the taxpayer that begins more than 357 days after the end of the taxation year of the taxpayer in which the property was acquired by the taxpayer,

(c) the time that is immediately before the disposition of the property by the taxpayer,

(d) the time the property

(i) is delivered to the taxpayer, or to a person or partnership (in this paragraph referred to as the "other person") that will use the property for the benefit of the taxpayer, or, where the property is not of a type that is deliverable, is made available to the taxpayer or the other person, and

(ii) is capable, either alone or in combination with other property in the possession at that time of the taxpayer or the other person, of being used by or for the benefit of the taxpayer or the other person to produce a commercially saleable product or to perform a commercially saleable service, including an intermediate product or service that is used or consumed, or to be used or consumed, by or for the benefit of the taxpayer or the other person in producing or performing any such product or service,

(e) in the case of property acquired by the taxpayer for the prevention, reduction or elimination of air or water pollution created by operations carried on by the taxpayer or that would be created by such operations if the property had not been acquired, the time at which the property is installed and capable of performing the function for which it was acquired,

(f) in the case of property acquired by

(i) a corporation a class of shares of the capital stock of which is listed on a prescribed stock exchange,

(ii) a corporation that is a public corporation because of an election made under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) or a designation made by the Minister in a notice to the corporation under subparagraph (b)(ii) of that definition, or

(iii) a subsidiary wholly-owned corporation of a corporation described in subparagraph (i) or (ii),

the end of the taxation year for which depreciation in respect of the property is first deducted in computing the earnings of the corporation in accordance with generally accepted accounting principles and for the purpose of the financial statements of the corporation for the year presented to its shareholders,

(g) in the case of property acquired by the taxpayer in the course of carrying on a business of farming or fishing, the time at which the property has been delivered to the taxpayer and is capable of performing the function for which it was acquired,

(h) in the case of property of a taxpayer that is a motor vehicle, trailer, trolley bus, aircraft or vessel for which one or more permits, certificates or licences evidencing that the property may be operated by the taxpayer in accordance with any laws regulating the use of such property are required to be obtained, the time all those permits, certificates or licences have been obtained,

(i) in the case of property that is a spare part intended to replace a part of another property of the taxpayer if required due to a breakdown of that other property, the time the other property became available for use by the taxpayer,

(j) in the case of a concrete gravity base structure and topside modules intended to be used at an oil production facility in a commercial discovery area (within the meaning assigned by section 2 of the *Canada Petroleum Resources Act*) on which the drilling of the first well that indicated the discovery began before March 5, 1982, in an offshore region prescribed for the purposes of subsection 127(9), the time the gravity base structure deballasts and lifts the assembled topside modules, and

(k) where the property is (within the meaning assigned by subsection (4.1)) a replacement for a former property described in paragraph (4)(a) that was acquired before 1990 or that became available for use at or before the time the replacement property is acquired, the time the replacement property is acquired,

and, for the purposes of paragraph (f), where depreciation is calculated by reference to a portion of the cost of the property, only that portion of the property shall be considered to have become available for use at the end of the taxation year referred to in that paragraph.

Related Provisions: 13(21.2)(e)(iv) — When property considered available for use following transfer to affiliated person; 13(30), (31) — Transfers of property; 20(28) — Deduction before available for use; 87(2)(j.6) — Continuing corporation; 248(19) — When property available for use. See additional Related Provisions at end of s. 13.

History: Para. 13(27)(d) amended by 1998, c. 19, subsec. 73(6), applicable to property acquired after 1989. The para. formerly read:

> (d) the time the property is delivered or made available to the taxpayer and is capable, either alone or in combination with other property in the taxpayer's possession at that time, of producing a commercially saleable product or performing a commercially saleable service, including an intermediate product or service that is used or consumed, or is to be used or consumed, by the taxpayer in producing or providing any such product or service,

See also under subsec. 13(29).

Regulations: 1100(2)(a)(vii) (CCA in year property becomes available for use under 13(27)(b)); 3200, 3201 (prescribed stock exchanges for 13(27)(f)(i)).

(28) Idem — For the purposes of subsection (26) and subject to subsection (29), property that is a building or part thereof of a taxpayer shall be considered to have become available for use by the taxpayer at the earliest of

(a) the time all or substantially all of the building is first used by the taxpayer for the purpose for which it was acquired,

(b) the time the construction of the building is complete,

(c) the time that is immediately after the beginning of the taxpayer's first taxation year that begins more than 357 days after the end of the taxpayer's taxation year in which the property was acquired by the taxpayer,

(d) the time that is immediately before the disposition of the property by the taxpayer, and

(e) where the property is (within the meaning assigned by subsection (4.1)) a replacement for a former property described in paragraph (4)(a) that was acquired before 1990 or that became available for use at or before the time the replacement property is acquired, the time the replacement property is acquired,

and, for the purpose of this subsection, a renovation, alteration or addition to a particular building shall be considered to be a building separate from the particular building.

Related Provisions: 13(21.2)(e)(iv) — When property considered available for use following transfer to affiliated person; 13(30), (31) — Transfers of property; 87(2)(j.6) — Continuing corporation.

History: See under subsec. 13(29).

Regulations: 1100(2)(a)(vii) (CCA in year property becomes available for use under 13(28)(c)).

(29) Idem — For the purposes of subsection (26), where a taxpayer acquires property (other than a building that is used or is to be used by the taxpayer principally for the purpose of gaining or producing gross revenue that is rent) in the taxpayer's first taxation year (in this subsection referred to as the "particular year") that begins more than 357 days after the end of the taxpayer's taxation year in which the taxpayer first acquired property after 1989, that is part of a project of the taxpayer, or in a taxation year subsequent to the particular year, and at the end of any taxation year (in this subsection referred to as the "inclusion year") of the taxpayer

(a) the property can reasonably be considered to be part of the project, and

(b) the property has not otherwise become available for use,

if the taxpayer so elects in prescribed form filed with the taxpayer's return of income under this Part for the particular year, that particular portion of the property the capital

cost of which does not exceed the amount, if any, by which

(c) the total of all amounts each of which is the capital cost to the taxpayer of a depreciable property (other than a building that is used or is to be used by the taxpayer principally for the purpose of gaining or producing gross revenue that is rent) that is part of the project, that was acquired by the taxpayer after 1989 and before the end of the taxpayer's last taxation year that ends more than 357 days before the beginning of the inclusion year and that has not become available for use at or before the end of the inclusion year (except where the property has first become available for use before the end of the inclusion year because of this subsection or paragraph (27)(b) or (28)(c))

exceeds

(d) the total of all amounts each of which is the capital cost to the taxpayer of a depreciable property, other than the particular portion of the property, that is part of the project to the extent that the property is considered, because of this subsection, to have become available for use before the end of the inclusion year

shall be considered to have become available for use immediately before the end of the inclusion year.

History: Subsecs. 13(26) to (29) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable to property acquired by a taxpayer after 1989 other than property acquired

(a) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by reason of a right referred to in para. 251(5)(b)) at the time the property was acquired, or

(b) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsec. 55(2) would not be applicable to the dividend by reason of the application of para. 55(3)(b),

where the property was depreciable property of the person from whom it was acquired and was owned by that person before 1990.

Regulations: 4609 (prescribed offshore region).

Forms: T1031: Subsection 13(29) election re certain depreciable properties, acquired for use in a long term project.

(30) Transfers of property — Notwithstanding subsections (27) to (29), for the purpose of subsection (26), property of a taxpayer shall be deemed to have become available for use by the taxpayer at the earlier of the time the property was acquired by the taxpayer and, if applicable, a prescribed time, where

(a) the property was acquired

(i) from a person with whom the taxpayer was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b)) at the time the property was acquired by the taxpayer, or

(ii) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) would not apply to the dividend because of paragraph 55(3)(b); and

(b) before the property was acquired by the taxpayer, it became available for use (determined without reference to paragraphs (27)(c) and (28)(d)) by the person from whom it was acquired.

History: Subsec. 13(30) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 4, applicable to property acquired after 1989. Subsec. 13(30) formerly read:

(30) Transfers of property — Notwithstanding subsections (27) to (29), for the purposes of subsection (26), property of a taxpayer shall be deemed to have become available for use by the taxpayer at the time at which the property was acquired where

(a) the property was acquired

(i) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by reason of a right referred to in paragraph 251(5)(b)) at that time, or

(ii) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) would not be applicable to the dividend by reason of the application of paragraph 55(3)(b); and

(b) the property had become available for use by the person from whom it was acquired (determined without reference to paragraphs (27)(c) and (28)(d)) before that time.

Subsec. 13(30) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable in respect of property acquired after 1989.

Regulations: 1100(2.2)(j).

(31) Idem — For the purposes of paragraphs (27)(b) and (28)(c) and subsection (29), where a property of a taxpayer was acquired from a person (in this subsection referred to as "the transferor")

(a) with whom the taxpayer was, at the time the taxpayer acquired the property, not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b)), or

(b) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) would not apply to the dividend because of the application of paragraph 55(3)(b),

the taxpayer shall be deemed to have acquired the property at the time it was acquired by the transferor.

History: Subsec. 13(31) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable to property acquired after 1989.

(32) Leased property — Where a taxpayer has leased property that is depreciable property of a person with whom the taxpayer does not deal at arm's length, the amount, if any, by which

(a) the total of all amounts paid or payable by the taxpayer for the use of, or the right to use, the property in a particular taxation year and before the time the property would have been considered to have become available for use by the taxpayer if the taxpayer had acquired the property, and that, but for this subsection, would be deductible in computing the taxpayer's income for any taxation year

exceeds

(b) the total of all amounts received or receivable by the taxpayer for the use of, or the right to use, the property in the particular taxation year and before that time and that are included in the income of the taxpayer for any taxation year

shall be deemed to be a cost to the taxpayer of a property included in Class 13 in Schedule II to the *Income Tax Regulations* and not to be an amount paid or payable for the use of, or the right to use, the property.

History: Subsec. 13(32) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 9(11), applicable to depreciable property of a person referred to in that subsection that was acquired by that person after 1989.

(33) Consideration given for depreciable property — For greater certainty, where a person acquires a depreciable property for consideration that can reasonably be considered to include a transfer of property, the portion of the cost to the person of the depreciable property attributable to the transfer shall not exceed the fair market value of the transferred property.

Related Provisions: 68 — Allocation of amounts in consideration for disposition of property; 69(1) — Inadequate considerations.

History: Subsec. 13(33) added by 1994, c. 21, subsec. 7(3), applicable to property acquired after November 1992.

Related Provisions [s. 13]: 36 — Railway companies; 37(6) — Scientific research capital expenditures; 45(2) — Election where change in use; 68 — Allocation of amounts in consideration for disposition of property; 70(5) — Depreciable and other capital property of deceased taxpayer; 70(9.1) — Transfer of farm property from spouse's trust to children of settlor; 70(12) — Capital cost of depreciable property on death; 73(2) — Capital cost and amount deemed allowed to spouse, etc. or trust; 73(3)(e) — *Inter vivos* transfer of farm property by farmer to child; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of s. 13; 85(5) — Rules on transfers of depreciable property; 87(2)(d) — Amalgamations — depreciable property; 87(2)(l.3) — Amalgamations — replacement property; 88(1)(f) — Winding-up; 97(4) — Where capital cost to partner exceeds proceeds of disposition; 98(3)(e) — Rules where partnership ceases to exist; 98(5)(e) — Rules where partnership business carried on as sole proprietorship; 104(5)(c) — Trust — deemed disposition of property; 104(16) — Trusts — capital cost allowance deduction; 107(2) — Distribution by trust in satisfaction of capital interest; 107.2 — Distribution by retirement compensation arrangement; 132.1(1)(d) — Deemed capital cost of property following mutual fund reorganization; 138(11.8) — Rules on transfer of depreciable property; 138(11.91)(f) — Computation of income of non-resident insurer.

Definitions [s. 13]: "acquired" — 256(7)–(9); "affiliated" — 13(25), 251.1; "amount" — 248(1); "amount payable" — 13(23.1), 138(12); "appropriate minister" — 13(21); "arm's length" — 13(7)(e.1), 251; "assessment" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), 248(18); "available for use" — 13(21.2)(e)(iv), 13(27)–(31), 248(19); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital cost" — 13(7)–(7.4), (10), 13(21.2)(g)(i), 70(12), 128.1(1)(c), 128.1(4)(c), 132.1(1)(d); "capital gain" — 39(1), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "control" — 256(6)–(9); "conversion", "conversion cost" — 13(21); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "cost to an insurer of acquiring a mortgage or hypothec" — 13(23.1), 138(12); "depreciable property" — 13(21), 248(1); "disposition" — 13(21) [to be repealed], 248(1) [draft]; "estate" — 104(1), 248(1); "farming" — 248(1); "fiscal period" — 249.1; "fishing", "former business property" — 248(1); "former property" — 13(4); "gaining or producing income" — 13(9); "gross revenue" — 248(1); "income" — 13(3)(b); "individual", "life insurer", "majority interest partner", "Minister", "motor vehicle" — 248(1); "1975 branch accounting election deficiency", "1975-76 excess capital cost allowance" — 13(23.1), 138(12); "non-resident", "passenger vehicle", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "regulation" — 248(1); "related" — 13(25), 251(2); "replacement property" — 13(4), (4.1); "resident in Canada" — 250; "share", "shareholder", "subsidiary wholly-owned corporation" — 248(1); "tax payable" — 248(2); "taxable Canadian property" — 248(1); "taxation year" — 11(2), 13(3)(a), 13(8), 249; "taxpayer" — 104(1), 248(1); "timber resource property" — 13(21), 248(1); "transferor" — 13(7)(e), 13(21.2)(a), 13(31); "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "year" — 11(2), 13(3)(a), 13(8).

Regulations [s. 13]: 1105 (prescribed classes of depreciable property).

I.T. Application Rules [s. 13]: 20(1), (1.1), (3).

Interpretation Bulletins [s. 13]: IT-151R4: Scientific research and experimental development expenditures; IT-297R2: Gifts in kind to charity and others; IT-325R2: Property transfers after separation, divorce and annulment.

Forms [s. 13]: T2 SCH 8: Capital cost allowance.

14. (1) Inclusion in income from business [eligible capital property] — Where, at the end of a taxation year, the total of all amounts each of which is an amount determined, in respect of a business of a taxpayer, for E in the definition "cumulative eligible capital" in subsection (5) (in this section referred to as an "eligible capital amount") or for F in that definition exceeds the total of all amounts determined for A to D in that definition in respect of the business (which excess is in this subsection referred to as "the excess"),

(a) in the case of a taxpayer (other than

(i) a corporation,

(ii) a partnership all the members of which were

(A) corporations,

(B) partnerships all the members of which were corporations, or

(C) partnerships described in this subparagraph, or

(iii) a partnership that was not a Canadian partnership throughout the year)

who was resident in Canada throughout the year,

(iv) the amount, if any, that is the lesser of

(A) the excess, and

(B) the amount determined for F in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business

shall be included in computing the taxpayer's income from that business for the year, and

(v) there shall be included in computing the taxpayer's income from the business for the year the amount determined by the formula

$$A - B - C - D$$

where

A is the excess,

B is the amount determined for F in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business,

C is ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) at the end of the year in respect of the business, and

D is such amount as the taxpayer claims, not exceeding the taxpayer's exempt gains balance in respect of the business for the year

(b) in any other case, the amount, if any, by which the excess exceeds ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) in respect of the business shall be included in computing the taxpayer's income from that business for that year.

Related Provisions: 14(1.1) — Expenditure relating to qualified farm property; 14(3) — Non-arm's length acquisition of eligible capital property; 14(8) — Deemed residence in Canada; 14(9) — Effect of excessive election for capital gains exemption; 20(1)(b) — Cumulative eligible capital amount; 20(4.2) — Bad debt from disposition of eligible capital property; 24(1) — Ceasing to carry on business; 24(2)(d) — Business carried on by spouse or controlled corporation; 28(1)(d) — Inclusion in farming or fishing income when using cash method; 39(9), (10) — Deduction from business investment loss; 39.1(5) — Partnership income inclusion — exempt capital gains balance; 70(5.1) — Eligible capital property of deceased; 70(9.8) — Farm property used by corporation or partnership; 73(3) — *Inter vivos* transfer of farm property by farmer to child; 85(1)(d.1) — Rollover of property to corporation; 87(2)(f) — Amalgamation — continuing corporation; 88(1)(c.1) — Windup — Amount to be included under para. 14(1)(b); 98(3)(b) — Rules applicable where partnership ceases to exist; 98(5)(h) — Where partnership business carried on as sole proprietorship; 107(2)(f) — Capital interest distribution by personal or prescribed trust; 107.4(3)(e) — Rollover of eligible capital property to trust; 110.6(17) — Capital gains exemption — ordering rule; 146(1)"earned income"(h) — Amount under 14(1)(a)(v) excluded from earned income for RRSP purposes; 248(1)"eligible capital amount" —

Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

History: The closing words of subpara. 14(1)(a)(v) repealed by 1998, c. 19, subsec. 74(1), applicable to fiscal periods that end after February 22, 1994, otherwise than solely because of an election under subsec. 25(1). The closing words formerly read:

> and, for the purposes of section 110.6 and of paragraph 3(b) as it applies for the purposes of that section, the total of all amounts each of which is the portion of the amount so included that can reasonably be attributed to proceeds of a disposition in the year of a qualified farm property (within the meaning assigned by subsection 110.6(1)) in excess of the taxpayer's cost of the property shall be deemed to be a taxable capital gain of the taxpayer from the disposition in the year of qualified farm property.

Subpara. 14(1)(a)(v) amended by 1995, c. 3, subsec. 5(1), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1). Subpara. (v) formerly read:

> (v) the amount, if any, by which the excess exceeds the total of
>
> (A) the amount determined under subparagraph (iv), and
>
> (B) ½ of the amount determined for Q in the definition "cumulative eligible capital" in subsection (5) in respect of the business
>
> shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year; and

Subpara. 14(1)(a)(v) and para. 14(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 10(1), applicable

> (a) in the case of a corporation, to taxation years commencing after June 1988, and
>
> (b) in any other case, to fiscal periods commencing after 1987.

That subpara. and para. formerly read:

> (v) the amount, if any, by which the excess exceeds the amount determined under subparagraph (iv) shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year; and
>
> (b) in any other case, the excess shall be included in computing the taxpayer's income from that business for that year.

Pre-RSC History: Subsec. 14(1) substituted by 1988, c. 55, subsec. 7(1), applicable

> (a) in the case of a corporation, for taxation years commencing after June 1988, and
>
> (b) in any other case, for fiscal periods commencing after 1987.

Subsec. (1) formerly read:

> 14. (1) Amount to be included in computing income from a business — Where, at the end of a taxation year, the aggregate of all amounts each of which is an amount determined under subparagraph (5)(a)(iii) in respect of a business or an amount determined under subparagraph (5)(a)(iv) in respect of the business (the latter amount hereinafter referred to as an "eligible capital amount") exceeds the aggregate of all amounts determined under subparagraphs (5)(a)(i) and (ii) in respect of the business of the taxpayer, the excess shall be included in computing the taxpayer's income from that business for that taxation year.

Subsec. 14(1) substituted by 1977-78, c. 1, subsec. 7(1), applicable with respect to taxation years ending after March 1977. Subsec. (1) formerly read:

> 14. (1) Sale of goodwill and other "nothings" — Where, as a result of a transaction occurring after 1971, an amount has become payable to a taxpayer in a taxation year in respect of a business carried on or formerly carried on by him and the consideration given by the taxpayer therefor was such that, if any payment had been made by the taxpayer after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business, there shall be included in computing the taxpayer's income for the year from the business the amount, if any, by which ½ of the amount so payable (which ½ is hereafter in this section referred to as an "eligible capital amount" in respect of the business) exceeds the taxpayer's cumulative eligible capital in respect of the business immediately before the amount so payable became payable to the taxpayer.

Selected Cases [subsec. 14(1)]: *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreement proceeds not eligible capital amounts); *Edmonton Plaza Hotel (1980) Ltd. v. The Queen*, [1987] 2 C.T.C. 153 (FCTD) (Amount paid to municipality for provision of parking spaces required for expansion was capital); *The Queen v. Goodwin Johnson (1960) Ltd.*, [1986] 1 C.T.C. 448 (FCA) (Amount paid to company for surrender of rights under contract not eligible capital amount); *Tekarra Lodge Ltd. v. The Queen*, [1985] 1 C.T.C. 334 (FCTD) (Proceeds of disposition of expired government licence were amounts received in respect of government right); *Brooke Bond Foods Ltd. v. The Queen*, [1984] C.T.C. 115 (FCTD) (Cost of plans for construction eligible capital expenditure even though building not built); *The Queen v. Timagami Financial Services Ltd.*, [1982] C.T.C. 314 (FCA) (Goodwill portion of proceeds payable in subsequent year not included in current year eligible capital amount); *The Queen v. Lague, Leopold, Ltd.*, [1981] C.T.C. 348 (FCTD) (Sale of rights under contract less than two years after closing was sale of eligible capital property, not adventure in nature of trade).

I.T. Application Rules: 21(1).

Interpretation Bulletins: IT-73R5: The small business deduction; IT-365R2: Damages, settlements and similar receipts; IT-386R: Eligible capital amounts. See also list at end of s. 14.

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(1.1) Deemed taxable capital gain — For the purposes of section 110.6 and of paragraph 3(b) as it applies for the purposes of that section, an amount included under subparagraph (1)(a)(v) in computing a taxpayer's income for a particular taxation year from a business is deemed to be a taxable capital gain of the taxpayer for the year from the disposition in the year of qualified farm property to the extent of the lesser of

(a) the amount included under subparagraph (1)(a)(v) in computing the taxpayer's income for the particular year from the business, and

(b) the amount determined by the formula

$$A - B$$

where

A is 3/4 of the amount determined in respect of the taxpayer for the particular year equal to the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's proceeds from a disposition in the particular year or a preceding taxation year that began after 1987 of an eligible capital property in respect of the business that, at the time of disposition, was a qualified farm property (as defined in subsection 110.6(1)) of the taxpayer

exceeds

(ii) the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the business that was made or incurred in respect of a qualified farm property disposed of by the taxpayer in the particular year or a preceding taxation year that began after 1987, or

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and was made or incurred for the purpose of making a disposition referred to in subparagraph (i), and

B is the total of all amounts each of which is

(i) that portion of an amount deemed by subparagraph (1)(a)(v) (as it applied in respect of the business to fiscal periods that began after 1987

and ended before February 23, 1994) to be a taxable capital gain of the taxpayer that can reasonably be attributed to a disposition of a qualified farm property of the taxpayer, or

(ii) an amount deemed by this section to be a taxable capital gain of the taxpayer for a taxation year preceding the particular year from the disposition of qualified farm property of the taxpayer.

Proposed Amendment — 14(1.1)

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This is expected to affect 14(1.1) — ed.]

Proposed Amendment — 14(1)

Department of Finance news release, May 9, 2000: *Finance Minister Clarifies Certain Income Tax Measures in the 2000 Budget*

Finance Minister Paul Martin today announced several clarifications to measures announced in the 2000 budget. These clarifications will ensure the smooth conduct of business transactions while consultations take place.

. . . . .

Capital Gains Inclusion Rate for Eligible Capital Property

Minister Martin today clarified the tax treatment of the disposition of "eligible capital property" after February 28, 2000. Eligible capital property refers to items such as goodwill and other intangibles. Under the Income Tax Act, the treatment of eligible capital property is somewhat analogous to the treatment of depreciable property in that deductions are subject to recapture and, where proceeds on disposition exceed the original cost, the gains are treated similarly to capital gains. Accordingly, the two-thirds inclusion rate for capital gains will apply to gains on dispositions of eligible capital property.

In addition, the existing pooling system, whereby three-quarters of the cost of such property is depreciated at 7 per cent declining balance, will be maintained. This approach is the most generous for taxpayers and will ease both compliance and administration.

Submissions on these issues may be made to the Tax Policy Branch of the Department of Finance.

. . . . .

For further information: Government Assistance for SR&ED, Eligible Capital Property, Alexandra MacLean, (613) 995-2980.

Related Provisions: 110.6(2) — Capital gains exemption for qualified farm property; 257 — Formula cannot calculate to less than zero.

History: Subsec. 14(1.1) added by 1998, c. 19, subsec. 74(2), applicable to fiscal periods that end after February 22, 1994, otherwise than solely because of an election under subsec. 25(1).

(2) Amount deemed payable — Where any amount is, by any provision of this Act, deemed to be a taxpayer's proceeds of disposition of any property disposed of by the taxpayer at any time, for the purposes of this section, that amount shall be deemed to have become payable to the taxpayer at that time.

Pre-RSC History: Subsec. 14(2) substituted for 14(2), (3) by 1977-78, c. 1, applicable to taxation years ending after March 1977. Subsecs. (2), (3) formerly read:

(2) Amount deemed payable — Where any amount is, by any provision of this Act, deemed to be a taxpayer's proceeds of disposition of any property disposed of by him at any time, for the purposes of subsection (1) that amount shall be deemed to have become payable to him at that time.

(3) Subsequent outlays or expenses — Where a taxpayer has, during a taxation year but after the latest time at which any amount payable to him (in respect of which he is required by subsection (1) to include an amount in computing his income for the year from a business) became payable to him, made or incurred outlays or expenses that are eligible capital expenditures in respect of the business, notwithstanding subsection (1) and paragraph (5)(a), the following rules apply:

(a) if the aggregate of the amounts that would, according to the terms of subsection (1), be included in computing his income for the year from the business is equal to or exceeds his cumulative eligible capital in respect of the business at the end of the year,

(i) the amount to be included in computing his income for the year from the business under subsection (1) is that aggregate minus the amount that would otherwise be his cumulative eligible capital in respect of the business at the end of the year, and

(ii) his cumulative eligible capital in respect of the business at the end of the year is nil; and

(b) if the aggregate of amounts that would, according to the terms of subsection (1), be included in computing his income for the year from the business is less than his cumulative eligible capital in respect of the business at the end of the year,

(i) no amounts shall be included in computing his income for the year from the business under subsection (1), and

(ii) his cumulative eligible capital in respect of the business at the end of the year is the amount thereof otherwise determined minus that aggregate.

Interpretation Bulletins: See list at end of s. 14.

(3) Acquisition of eligible capital property — Notwithstanding any other provision of this Act, where at any time a person or partnership (in this subsection referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired an eligible capital property in respect of a business from a person or partnership with whom the taxpayer did not deal at arm's length (in this subsection referred to as the "transferor") and the property was an eligible capital property of the transferor (other than property acquired by the taxpayer as a consequence of the death of the transferor), the eligible capital expenditure of the taxpayer in respect of the business shall, in respect of that acquisition, be deemed to be equal to ⅔ of the amount, if any, by which

(a) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the transferor

exceeds

(b) the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 by any person with whom the taxpayer was not dealing at arm's length in respect of the disposition of the property by the transferor, or any other disposition of the property before that time,

except that, where the taxpayer disposes of the property after that time, the amount of the eligible capital expenditure deemed by this subsection to be made by the taxpayer in respect of the property shall be determined at any time after the disposition as if the amount determined under paragraph (b) in respect thereof were the lesser of

(c) the amount otherwise so determined, and

(d) the amount, if any, by which

(i) the amount determined under paragraph (a) in respect of the disposition of the property by the transferor

exceeds

(ii) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the taxpayer.

Related Provisions: 110.6(19)(b)(ii) — Where election made to trigger capital gains exemption; 248(8) — Occurrences as a consequence of death.

History: Subsec. 14(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 10(2), applicable with respect to acquisitions of property occurring after 1987, except that, in its application to acquisitions by a taxpayer after 1987 and before the taxpayer's adjustment time in respect of the business in which the property is used, the reference to "⅔ of" shall be read as a reference to "2 times". Subsec. 14(3) formerly read:

(3) **Acquisition of eligible capital property** — Notwithstanding any other provision of this Act, where at a particular time a person or partnership (in this subsection referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired an eligible capital property in respect of a business from a person or partnership that disposed of the property to the taxpayer and with whom the taxpayer did not deal at arm's length, and the property that was disposed of was an eligible capital property of the person or partnership, the eligible capital expenditure in respect of the business made by the taxpayer relating to the acquisition shall be deemed to be ⅔ of the amount, if any, by which

(a) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) by the person or partnership in respect of the disposition

exceeds

(b) the amount, if any, determined under subparagraph (1)(a)(v) by the person or partnership in respect of the disposition to the extent that the amount may reasonably be considered to have been claimed by any person as a deduction under section 110.6.

Pre-RSC History: Subsec. 14(3) added by 1988, c. 55, subsec. 7(2), applicable with respect to acquisitions of property after 1987, except that with respect to acquisitions by a taxpayer after 1987 and before the taxpayer's adjustment time in respect of the business in which the property is used, the reference to "⅔ of" shall be read as a reference to "2 times".

For history of former subsec. 14(3), see under subsec. 14(2).

Interpretation Bulletins: See list at end of s. 14.

(4) References to "taxation year" or "year" — Where a taxpayer is an individual and the taxpayer's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, for greater certainty a reference in this section to a "taxation year" or "year" shall be read as a reference to a "fiscal period" or "period".

Related Provisions: 11(2) — References to "taxation year" or "year" of an individual.

(5) Definitions — In this section,

"adjustment time" of a taxpayer in respect of a business is

(a) in the case of a corporation formed as a result of an amalgamation occurring after June 30, 1988, the time immediately before the amalgamation,

(b) in the case of any other corporation, the time immediately after the commencement of its first taxation year commencing after June 30, 1988, and

(c) for any other taxpayer, the time immediately after the commencement of the taxpayer's first fiscal period commencing after 1987 in respect of the business.

Related Provisions: 248(1)"adjustment time" — Definition applies to entire Act.

Pre-RSC History: *The definition "adjustment time" was para. 14(5)(c). See Table of Concordance.*

Para. 14(5)(c) added by 1988, c. 55, subsec. 7(4), applicable after June 17, 1987.

"cumulative eligible capital" of a taxpayer at any time in respect of a business of the taxpayer means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + F)$$

where

A is ¾ of the total of all eligible capital expenditures in respect of the business made or incurred by the taxpayer before that time and after the taxpayer's adjustment time,

B is the total of

(a) all amounts each of which is the amount that would have been included under subparagraph (1)(a)(v) in computing the taxpayer's income from the business for a taxation year that ended before that time and after February 22, 1994 if the amount determined for D in that subparagraph for the year were nil,

(b) all amounts included under paragraph (1)(b) in computing the taxpayer's income from the business for taxation years that ended before that time and after the taxpayer's adjustment time, and

(c) all taxable capital gains included, because of the application of subparagraph (1)(a)(v) to the taxpayer in respect of the business, in computing the taxpayer's income for taxation years that began before February 23, 1994.

C is ½ of the amount, if any, of the taxpayer's cumulative eligible capital in respect of the business at the taxpayer's adjustment time,

D is the amount, if any, by which

(a) the total of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before the taxpayer's adjustment time

exceeds

(b) the total of all amounts included under subsection (1) in computing the taxpayer's income from the business for taxation years ending before the taxpayer's adjustment time,

D.1 is, where the amount determined by B exceeds zero, ½ of the amount determined for Q in respect of the business,

E is the total of all amounts each of which is ¾ of the amount, if any, by which

(a) an amount which, as a result of a disposition occurring after the taxpayer's adjustment time and before that time, the taxpayer has or may become entitled to receive, in respect of the business carried on or formerly carried on by the taxpayer where the consideration given by the taxpayer therefor was such that, if any payment had been made by the taxpayer after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business

exceeds

(b) all outlays and expenses to the extent that they were not otherwise deductible in computing the taxpayer's income and were made or incurred by the taxpayer for the purpose of giving that consideration, and

Possible Future Amendment — 14(5)"cumulative eligible capital"E

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[As of early March 1999, the Department of Finance had not yet determined whether this will affect 14(5)"cumulative eligible capital"E — i.e., whether the eligible capital deduction rate will also change from 7% of 3/4 to some percentage of 2/3 — ed.]

F is the amount determined by the formula

$$(P + P.1 + Q) - R$$

where

P is the total of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time,

P.1 is the total of all amounts each of which is an amount by which the cumulative eligible capital of the taxpayer in respect of the business is required to be reduced at or before that time because of subsection 80(7),

Q is the amount, if any, by which

(a) the total of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before the taxpayer's adjustment time

exceeds

(b) the total of all amounts included under subsection (1) in computing the taxpayer's income for taxation years ending before the taxpayer's adjustment time, and

R is the total of all amounts included under subparagraph (1)(a)(iv) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time;

Related Provisions: 14(1) — Inclusion in income from business; 14(3) — Non-arm's length acquisition of eligible capital property; 14(12) — Acquisition of eligible capital property by affiliated person on cessation of business; 20(1)(b) — Annual deduction of 7% of cumulative eligible capital; 20(4.2) — Bad debts; 24(1) — Ceasing to carry on business; 24(2)(d) — Business carried on by spouse or controlled corporation; 70(5.1) — Eligible capital property of deceased; 87(2)(f) — Amalgamations — cumulative eligible capital; 89(1) — Capital dividend account; 98(3)(b) — Rules where partnership ceases to exist; 98(5)(h) — Where partnership business carried on as sole proprietorship; 248(1)"cumulative eligible capital" — Definition applies to entire Act; 257 — Formula amounts cannot calculate to less than zero.

History: P.1 added to the second formula in the definition "cumulative eligible capital" in subsec. 14(5) and its description added by 1995, c. 21, subsecs. 3(1) and (2), applicable to taxation years that end after February 21, 1994.

The description of B in the definition "cumulative eligible capital" in subsec. 14(5) amended by 1995, c. 3, subsec. 5(2), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1). The description of B formerly read:

B is the total of all amounts deemed by subparagraph (1)(a)(v) to have been a taxable capital gain of the taxpayer from a disposition of capital property and all amounts included by reason of paragraph (1)(b) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time,

The first formula in "cumulative eligible capital" in subsec. 14(5) was amended to include D.1, and the description of D.1 was added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 10(3), (3.1), applicable

(a) in the case of a corporation, to taxation years commencing after June 1988, and

(b) in any other case, to fiscal periods commencing after 1987.

Pre-RSC History: *The definition "cumulative eligible capital" was para. 14(5)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(a) "cumulative eligible capital" of a taxpayer at any time in respect of a business of the taxpayer means the amount, if any, by which the aggregate of

(i) ¾ of the aggregate of all eligible capital expenditures in respect of the business made or incurred by the taxpayer before that time and after his adjustment time,

(ii) the aggregate of all amounts deemed by subparagraph (1)(a)(v) to have been a taxable capital gain of the taxpayer from a disposition of capital property and all amounts included by reason of paragraph (1)(b) in computing the taxpayer's income from the business for taxation years ending before that time and after the taxpayer's adjustment time,

(iii) ½ of the amount, if any, of the taxpayer's cumulative eligible capital in respect of the business at his adjustment time,

(iii.1) the amount, if any, by which

(A) the aggregate of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before his adjustment time

exceeds

(B) the aggregate of all amounts included under subsection (1) in computing the taxpayer's income from the business for taxation years ending before his adjustment time

exceeds the total of

(iv) the aggregate of all amounts each of which is ¾ of the amount, if any, by which

(A) an amount which, as a result of a disposition occurring after the taxpayer's adjustment time and before that time, he has or may become entitled to receive, in respect of the business carried on or formerly carried on by him where the consideration given by him therefor was such that, if any payment had been made by him after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business

exceeds

(B) all outlays and expenses to the extent that they were not otherwise deductible in computing the taxpayer's income and were made or incurred by him for the purpose of giving that consideration, and

(v) the amount, if any, by which the total of

(A) the aggregate of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before that time and after his adjustment time, and

(B) the amount, if any, by which

(I) the aggregate of all amounts deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for taxation years ending before his adjustment time

exceeds

(II) the aggregate of all amounts included under subsection (1) in computing the taxpayer's income for taxation years ending before his adjustment time,

exceeds

(C) the aggregate of all amounts included under subparagraph (1)(a)(iv) in computing the taxpayer's income from the business for taxation years ending before that time and after his adjustment time;

Para. 14(5)(a) substituted by 1988, c. 55, subsec. 7(3), applicable (by subsec. 7(6), as amended by 1991, c. 49, s. 240, deemed to have come into force September 13, 1988)

(a) in the case of a corporation, for taxation years commencing after June 1988, and

(b) in any other case, for fiscal periods commencing after 1987,

except that, with respect to dispositions of property occurring on or before June 17, 1987 or after that date pursuant to the terms of an obligation entered into in writing on or before that date, cl. 14(5)(a)(iv)(A) shall be read as follows:

(A) an amount which, as a result of a disposition occurring after 1971, became payable to the taxpayer before that time and after the taxpayer's adjustment time in respect of the business carried on or formerly carried on by the taxpayer where the consideration given by the taxpayer therefor was such that, if any payment had been made by him after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business

and, with respect to dispositions of property occurring after June 17, 1987, otherwise than pursuant to the terms of an obligation entered into in writing before June 18, 1987, and before para. 14(5)(a), as amended, comes into effect, cl. 14(5)(a)(iv)(A) shall be read as follows:

(A) an amount which, as a result of a disposition occurring after 1971 and before that time, the taxpayer has or may become entitled to receive, in respect of a business carried on or formerly carried on by the taxpayer where the consideration given by the taxpayer therefor was such that, if any payment had been made by the taxpayer after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business,

Para. 14(5)(a) formerly read:

(a) "cumulative eligible capital" — "cumulative eligible capital" of a taxpayer at any time in respect of a business means the amount by which the aggregate of

(i) ½ of the aggregate of the eligible capital expenditures in respect of the business made or incurred by the taxpayer before that time, and

(ii) all amounts included by virtue of subsection (1) in computing the taxpayer's income from the business for a taxation year ending prior to that time,

exceeds the aggregate of

(iii) all amounts each of which is an amount in respect of any taxation year of the taxpayer ending before that time, equal to the amount deducted under paragraph 20(1)(b) in computing the taxpayer's income for that year from the business, and

(iv) the aggregate of all amounts each of which is ½ of the amount, if any, by which

(A) an amount that, as a result of a transaction occurring after 1971, became payable to the taxpayer before that time in respect of a business carried on or formerly carried on by him where the consideration given by the taxpayer therefor was such that, if any payment had been made by the taxpayer after 1971 for that consideration, the payment would have been an eligible capital expenditure of the taxpayer in respect of the business,

exceeds

(B) any outlays and expenses to the extent that they were made or incurred by him for the purpose of giving that consideration; and

Para. 14(5)(a) substituted by 1977-78, c. 1, subsec. 7(2), applicable for the purpose of determining the cumulative eligible capital of a taxpayer in respect of a business at any time after March 1977. Para. 14(5)(a) formerly read:

(a) "cumulative eligible capital" of a taxpayer at any time in respect of a business means

(i) ½ of the aggregate of the eligible capital expenditures in respect of the business made or incurred by the taxpayer before that time,

minus

(ii) the aggregate of

(A) all amounts each of which is an amount in respect of any taxation year of the taxpayer ending before that time, equal to the amount deducted under paragraph 20(1)(b) in computing the taxpayer's income for that year from the business,

(B) for each eligible capital amount in respect of the business that became payable to the taxpayer before that time, the lesser of

(I) the eligible capital amount, and

(II) the cumulative eligible capital of the taxpayer in respect of the business immediately before the disposition as a result of which the eligible capital amount became payable, and

(C) all amounts by which the cumulative eligible capital of the taxpayer in respect of the business at the end of any taxation year of the taxpayer ending before that time was reduced by virtue of subsection (3); and

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-143R2: Meaning of eligible capital expenditures; IT-365R2: Damages, settlements and similar receipts; IT-386R: Eligible capital amounts; IT-471R: Merger of partnerships. See also list at end of s. 14.

Forms: T2 SCH 10: Cumulative eligible capital deduction.

"eligible capital expenditure" of a taxpayer in respect of a business means the portion of any outlay or expense made or incurred by the taxpayer, as a result of a transaction occurring after 1971, on account of capital for the purpose of gaining or producing income from the business, other than any such outlay or expense

(a) in respect of which any amount is or would be, but for any provision of this Act limiting the quantum of any deduction, deductible (otherwise than under paragraph 20(1)(b)) in computing the taxpayer's income from the business, or in respect of which any amount is, by virtue of any provision of this Act other than paragraph 18(1)(b), not deductible in computing that income,

(b) made or incurred for the purpose of gaining or producing income that is exempt income, or

(c) that is the cost of, or any part of the cost of,

(i) tangible property of the taxpayer,

(ii) intangible property that is depreciable property of the taxpayer,

(iii) property in respect of which any deduction (otherwise than under paragraph 20(1)(b)) is permitted in computing the taxpayer's income from the business or would be so permitted if the taxpayer's income from the business were sufficient for the purpose, or

(iv) an interest in, or right to acquire, any property described in any of subparagraphs (i) to (iii),

but, for greater certainty and without restricting the generality of the foregoing, does not include any portion of

(d) any amount paid or payable to any creditor of the taxpayer as, on account or in lieu of payment of any debt or as or on account of the redemption, cancellation or purchase of any bond or debenture,

(e) where the taxpayer is a corporation, any amount paid or payable to a person as a shareholder of the corporation, or

(f) any amount that is the cost of, or any part of the cost of,

(i) an interest in a trust,

(ii) an interest in a partnership,

(iii) a share, bond, debenture, mortgage, note, bill or other similar property, or

(iv) an interest in, or right to acquire, any property described in any of subparagraphs (i) to (iii);

Related Provisions: 14(3) — Non-arm's length acquisition of eligible capital property; 87(2)(f) — Amalgamations — cumulative eligible capital; 98(3)(b) — Rules applicable where partnership ceases to exist; 107(2)(f) — Capital interest distribution by personal or prescribed trust; 139.1(4)(b) — Amount payable by insurer on demutualization deemed not to be eligible capital expenditure; 248(1)"eligible capital expenditure" — Definition applies to entire Act.

Pre-RSC History: *The definition "eligible capital expenditure" was para. 14(5)(b). See Table of Concordance.*

Selected Cases [subsec. 14(5)"eligible capital expenditure"]: *F.A.S. Seafood Producers Ltd. v. R.*, [1998] 4 C.T.C. 2794 (TCC) (Fishing licences were eligible capital expenditures, not deductible expenses); *228262 Alberta Ltd. v. MNR*, [1996] 1 C.T.C. 2416 (TCC) (Price rectification was eligible capital expenditure, not current expense or cost of borrowing); *The Queen v. Royal Trust Corp. of Canada*, [1983] C.T.C. 159 (FCA) (Stockbroker's commission during public issue eligible capital expenditure).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-104R2: Deductibility of fines or penalties; IT-143R2: Meaning of "eligible capital expenditure"; IT-187: Customer lists and ledger accounts; IT-341R3: Expenses of issuing shares or borrowing money; IT-364: Commencement of business operations. IT-386R: Eligible capital amounts. See also list at end of s. 14.

"exempt gains balance" of an individual in respect of a business of the individual for a taxation year means the amount determined by the formula

$$A - B$$

where

A is the lesser of

(a) the amount by which

(i) the amount that would have been the individual's taxable capital gain determined under paragraph 110.6(19)(b) in respect of the business if

(A) the amount designated in an election under subsection 110.6(19) in respect of the business were equal to the fair market value at the end of February 22, 1994 of all the eligible capital property owned by the elector at that time in respect of the business, and

(B) this Act were read without reference to subsection 110.6(20)

exceeds

(ii) the amount determined by the formula

$$0.75(C - 1.1D)$$

where

C is the amount designated in the election that was made under subsection 110.6(19) in respect of the business, and

D is the fair market value at the end of February 22, 1994 of the property referred to in clause (i)(A), and

(b) the individual's taxable capital gain determined under paragraph 110.6(19)(b) in respect of the business, and

B is the total of all amounts each of which is the amount determined for D in subparagraph (1)(a)(v) in respect of the business for a preceding taxation year.

Related Provisions: 14(9) — Effect of excessive election; 257 — Formulas cannot calculate to less than zero.

History: The definition "exempt gains balance" added to subsec. 14(5) by 1995, c. 3, subsec. 5(3), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1).

(6) Exchange of property — Where in a taxation year (in this subsection referred to as the "initial year") a taxpayer disposes of an eligible capital property (in this section referred to as the taxpayer's "former property") and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires an eligible capital property that is a replacement property for the taxpayer's former property, such amount, not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "3/4 of") in respect of a business, as has been used by the taxpayer before the end of the first taxation year after the initial year to acquire the replacement property

(a) shall, subject to paragraph (b), not be included in the amount determined for E in that definition for the purpose of determining the cumulative eligible capital of the taxpayer in respect of the business; and

(b) shall, to the extent of ¾ thereof, be included in the amount determined for E in that definition for the purpose of determining the cumulative eligible capital of the taxpayer in respect of the business at a time that is the later of

(i) the time the replacement property was acquired by the taxpayer, and

(ii) the time the former property was disposed of by the taxpayer.

Related Provisions: 14(7) — Meaning of a "replacement property"; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: The opening words of subsec. 14(6) amended by 1998, c. 19, subsec. 74(3), applicable to dispositions of former properties that occur after the 1993 taxation year. The opening words formerly read:

(6) Where in a taxation year (in this subsection referred to as the "initial year") a taxpayer has disposed of an eligible capital property (in this section referred to as the taxpayer's "former property"), if the taxpayer so elects under this subsection in the taxpayer's return of income under this Part for the year in which the taxpayer acquires, as a replacement property for the taxpayer's former property, an eligible capital property (in this section referred to as a "replacement property"), such amount not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "¾ of") in respect of a business as has been used by the taxpayer before the end of the first taxation year following the initial year to acquire the replacement property

Pre-RSC History: Subsec. 14(6) amended by 1988, c. 55, subsec. 7(5), to substitute, in that portion preceding para. (a), "a taxpayer has disposed of" for "an amount has become payable to a taxpayer in respect of the disposition of", and "¾ of" for "½ of", and in para. (b), "¾" for "½", applicable with respect to dispositions of eligible capital property occurring

(a) in the case of a corporation, in taxation years commencing after June 1988, and

(b) in any other case, in fiscal periods commencing after 1987,

and, with respect to dispositions occurring

(c) in the case of a corporation, in the last taxation year of the corporation commencing before July 1988, and

(d) in any other case, in the last fiscal period of the taxpayer commencing before 1988,

the reference to "½" in paragraph 14(6)(b), as it read before this amendment, shall be read as a reference to "¾". Subsec. 14(6) formerly read:

(6) Exchanges of property — Where in a taxation year (in this subsection referred to as the "initial year") an amount has become payable to a taxpayer in respect of a disposition of an eligible capital property (in this section referred to as his "former property"), if the taxpayer so elects under this subsection in his return of income under this Part for the year in which he acquires, as a replacement property for his former property, an eligible capital property (in this

section referred to as a "replacement property"), such amount not exceeding the amount that would otherwise be included in the aggregate computed under subparagraph (5)(a)(iv) (if that subparagraph were read without reference to "½ of") in respect of a business as has been used by the taxpayer before the end of the first taxation year following the initial year to acquire the replacement property

(a) shall, subject to paragraph (b), not be included in the aggregate computed under subparagraph (5)(a)(iv) for the purpose of determining the cumulative eligible capital of the taxpayer in respect of the business, and

(b) shall, to the extent of ½ thereof, be included in the aggregate computed under subparagraph (5)(a)(iv) for the purpose of determining the cumulative eligible capital of the taxpayer in respect of the business at a time that is the later of

(i) the time the replacement property was acquired by the taxpayer, and

(ii) the time the former property was disposed of by the taxpayer.

All that portion of subsec. 14(6) preceding para. (a), all that portion of para. 14(6)(b) preceding subpara. (i) substituted by 1980-81-82-83, c. 48, subsecs. 6(1), (2), applicable with respect to dispositions occurring after December 11, 1979, to add "(if that subparagraph were read without reference to "½ of")" and "to the extent of ½ thereof".

Subsec. 14(6) added by 1977-78, c. 1, subsec. 7(3), applicable to dispositions of eligible capital property after March 31, 1977.

Interpretation Bulletins: IT-259R3: Exchanges of property. See also list at end of s. 14.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7) Replacement property for a former property — For the purposes of subsection (6), a particular eligible capital property of a taxpayer is a replacement property for a former property of the taxpayer if

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer for a use that is the same as or similar to the use to which the taxpayer put the former property;

(b) it was acquired for the purpose of gaining or producing income from the same or a similar business as that in which the former property was used; and

(c) where the former property was used by the taxpayer in a business carried on in Canada, the particular property was acquired for use by the taxpayer in a business carried on by the taxpayer in Canada.

History: Para. 14(7)(a) amended and para. (a.1) added by 1998, c. 19, subsec. 74(4), applicable to dispositions of former properties that occur after the 1993 taxation year. Para. (a) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;

Para. 14(7)(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 10(4), applicable to property acquired as a replacement for a former property disposed of after April 2, 1990, other than a former property disposed of

(a) under an agreement in writing entered into before April 3, 1990; or

(b) pursuant to a written notice of an intention to take the property under statutory authority given before April 3, 1990 or for the sale price of the property sold to a person by whom such a notice was given before April 3, 1990.

Para. 14(7)(c) formerly read:

(c) where the taxpayer was not resident in Canada at the time the taxpayer acquired the particular property, in addition to the requirements in paragraphs (a) and (b), the particular property was acquired for use by the taxpayer in a business carried on by the taxpayer in Canada.

Pre-RSC History: Paras. 14(7)(a), (b) substituted by 1977-78, c. 32, s. 3, applicable to dispositions of eligible capital property after March 31, 1977.

Subsec. 14(7) added by 1977-78, c. 1, subsec. 7(3), applicable to dispositions of eligible capital property after March 31, 1977.

Interpretation Bulletins: IT-259R3: Exchanges of property. See also list at end of s. 14.

(8) Deemed residence in Canada — Where an individual was resident in Canada at any time in a particular taxation year and throughout

(a) the preceding taxation year, or

(b) the following taxation year,

for the purpose of paragraph (1)(a), the individual shall be deemed to have been resident in Canada throughout the particular year.

Related Provisions: 110.6(5) — Parallel rule for capital gains exemption.

History: Subsec. 14(8) added by 1994, c. 21, s. 8, applicable to 1988 *et seq.*

(9) Effect of election under subsec. 110.6(19) — Where an individual elects under subsection 110.6(19) in respect of a business, the individual shall be deemed to have received proceeds of a disposition on February 23, 1994 of eligible capital property in respect of the business equal to the amount determined by the formula

$$(A - B)\frac{4}{3}$$

where

A is the amount determined in respect of the business under subparagraph (a)(ii) of the description of A in the definition "exempt gains balance" in subsection (5), and

B is the amount determined in respect of the business under subparagraph (a)(i) of the description of A in the definition "exempt gains balance" in subsection (5).

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 14(9) added by 1995, c. 3, subsec. 5(4), applicable to fiscal periods that end after February 22, 1994 otherwise than because of an election under subsec. 25(1).

(10) Deemed eligible capital expenditure — For the purposes of this Act, where a taxpayer received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, property the cost of which is an eligible capital expenditure of the taxpayer in respect of a business, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, that eligible capital expenditure shall at any time be deemed to be the amount, if any, by which the total of

(a) that eligible capital expenditure, determined without reference to this subsection, and

(b) such part, if any, of the assistance as the taxpayer repaid before

(i) the taxpayer ceased to carry on the business, and

(ii) that time

under a legal obligation to pay all or any part of the assistance

exceeds

(c) the amount of the assistance the taxpayer received or is entitled to receive before the earlier of that time and the time the taxpayer ceases to carry on the business.

Related Provisions: 14(5) — Definition of "exempt gains balance"; 14(11) — Assistance deemed received by trust or partnership; 20(1)(hh.1) — Deduction for repayment after ceasing to carry on business.

History: Subsec. 14(10) added by 1995, c. 21, subsec. 3(3), applicable to assistance that a taxpayer receives or becomes entitled to receive after February 21, 1994 and repayments of such assistance.

(11) Receipt of public assistance — For the purpose of subsection (10), where at any time a taxpayer who is a beneficiary under a trust or a member of a partnership received or is entitled to receive assistance from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, the amount of the assistance that can reasonably be considered to be in respect of, or for the acquisition of, property the cost of which was an eligible capital expenditure of the trust or partnership shall be deemed to have been received at that time by the trust or partnership, as the case may be, as assistance from the government, municipality or other public authority for the acquisition of such property.

History: Subsec. 14(11) added by 1995, c. 21, subsec. 3(3), applicable to assistance that a taxpayer receives or becomes entitled to receive after February 21, 1994 and repayments of such assistance.

(12) Loss on certain transfers [within affiliated group] — Where

(a) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at any time in a taxation year of a particular eligible capital property in respect of a business of the transferor in respect of which it would, but for this subsection, be permitted a deduction under paragraph 24(1)(a) as a consequence of the disposition, and

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection referred to as the "substituted property") that is, or is identical to, the particular property and, at the end of that period, a person or partnership that is either the transferor or a person or partnership affiliated with the transferor owns the substituted property,

the transferor is deemed, for the purposes of this section and sections 20 and 24, to continue to own eligible capital property in respect of the business, and not to have ceased to carry on the business, until the time that is immediately before the first time, after the disposition,

(c) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(i) the substituted property, or

(ii) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(d) at which the substituted property is not eligible capital property in respect of a business carried on by the transferor or a person affiliated with the transferor,

(e) at which the substituted property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(f) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(g) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation.

Related Provisions: 13(21.2) — Parallel rule for depreciable capital property; 14(13) — Deemed identical property; 18(13)–(16) — Parallel rule for share or debt owned by financial institution; 40(3.3), (3.4) — Parallel rule re capital losses; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 88(1)(d.1) — No application to property acquired on windup of subsidiary; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Whether properties are identical; 251.1 — Affiliated persons; 256(6)–(9) — Whether control acquired.

History: Subsec. 14(12) added by 1998, c. 19, subsec. 74(5), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced in the history to s. 260) to dispositions of property that occur after April 26, 1995.

(13) Deemed identical property — For the purpose of subsection (12),

(a) a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property; and

(b) where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist and each person who, immediately before the partnership would, but for this paragraph, have ceased to exist, was a member of the partnership is deemed to remain a member of the partnership, until the time that is immediately after the first time described in paragraphs (12)(c) to (g).

History: Subsec. 14(13) added by 1998, c. 19, subsec. 74(5), subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced in the history to s. 260), applicable to dispositions of property that occur after April 26, 1995.

Definitions [s. 14]: "acquired" — 256(7)–(9); "adjustment time" — 14(5), 248(1); "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "assistance" — 79(4), 125.4(5), 248(16), (18); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian partnership" — 102, 248(1); "capital property" — 54, 248(1); "consequence of the death" — 248(8); "control" — 256(7)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "exempt gains balance" — 14(5); "exempt income" — 248(1); "fiscal period" — 249.1; "identical" — 14(13), 248(12) "individual" — 248(1); "property" — 248(1); "replacement property" — 14(6), (7); "resident in Canada" — 14(8), 250; "shareholder" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 11(2), 14(4), 249; "taxpayer" — 248(1); "transferor" — 14(3), 14(12)(a); "trust" — 104(1), 248(1), (3); "year" — 11(2), 14(4).

I.T. Application Rules [s. 14]: 21(1) (business carried on since before 1972).

Interpretation Bulletins [s. 14]: IT-66R6: Capital dividends; IT-123R4: Disposition of eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-143R2: Meaning of eligible capital expenditure; IT-187: Customer lists and ledger accounts; IT-206R: Separate businesses; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-330R: Dispositions of capital property subject to warranty, covenant, etc.; IT-341R3: Expenses of issuing shares or borrowing money; IT-364: Commencement of business operations; IT-467R: Damages, settlements and similar payments; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

15. (1) Benefit conferred on shareholder — Where at any time in a taxation year a benefit is conferred on a shareholder, or on a person in contemplation of the person becoming a shareholder, by a corporation otherwise than by

(a) the reduction of the paid-up capital, the redemption, cancellation or acquisition by the corporation of shares of its capital stock or on the winding-up, dis-

continuance or reorganization of its business, or otherwise by way of a transaction to which section 88 applies,

(b) the payment of a dividend or a stock dividend,

(c) conferring, on all owners of common shares of the capital stock of the corporation at that time, a right in respect of each common share, that is identical to every other right conferred at that time in respect of each other such share, to acquire additional shares of the capital stock of the corporation, and, for the purpose of this paragraph,

(i) where

(A) the voting rights attached to a particular class of common shares of the capital stock of a corporation differ from the voting rights attached to another class of common shares of the capital stock of the corporation, and

(B) there are no other differences between the terms and conditions of the classes of shares that could cause the fair market value of a share of the particular class to differ materially from the fair market value of a share of the other class,

the shares of the particular class shall be deemed to be property that is identical to the shares of the other class, and

(ii) rights are not considered identical if the cost of acquiring the rights differs, or

(d) an action described in paragraph 84(1)(c.1), (c.2) or (c.3),

the amount or value thereof shall, except to the extent that it is deemed by section 84 to be a dividend, be included in computing the income of the shareholder for the year.

Related Provisions: 15(1.1) — Where stock dividend paid; 15(1.2), (1.21) — Forgiveness of shareholder debt; 15(1.3), (1.4) — GST on shareholder benefit; 15(5) — Calculation of benefit where automobile available to shareholder; 15(7) — Application; 15(9) — Deemed benefit; 69(4), (5) — Property deemed disposed of by corporation at fair market value; 80.04(5.1) — No benefit conferred where debtor transfers property to eligible transferee under 80.04; 80.1(4) — Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to shareholder; 80.4(2) — Loans; 84(2) — Distribution on winding-up, etc.; 120.4(1)"split income"(a)(i) — Shareholder benefits received by children subject to income splitting tax; 139(a) — Life insurance corporations; 139.1(11) — No application to conversion benefit on demutualization of insurance corporation; 184(3.1) — Election to treat dividend as loan; 214(3)(a) — Deemed dividend for purposes of non-resident withholding tax.

History: Para. 15(1)(c) substituted by 1994, c. 21, subsec. 9(1), applicable to benefits conferred after December 19, 1991. That para. formerly read:

(c) conferring, on all owners of common shares of the capital stock of the corporation at that time, a right in respect of each common share, that is identical to every other right conferred at that time in respect of each other such share, to acquire additional shares of the capital stock of the corporation, and for the purpose of this paragraph, rights shall not be considered identical if the cost of acquiring the rights differs, or

That portion of subsec. 15(1) preceding para. (a) amended to substitute "at any time in a taxation year" for "in a taxation year", and para. (c) substituted, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 5(1), (2), applicable to benefits conferred after December 19, 1991. Para. (c) formerly read:

(c) conferring on all owners of common shares of the capital stock of the corporation a right to buy additional shares thereof, or

Para. 15(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 11(1), to add "or a stock dividend", applicable to benefits conferred after June 1988.

Pre-RSC History: Subsec. 15(1) substituted by 1988, c. 55, s. 8, applicable with respect to benefits conferred after June 1988 and, in respect of actions occurring after 1987 and before July 1988, para. (g) shall be read as follows:

(g) an action described in paragraph 84(1)(c.1), (c.2) or (c.3),

Subsec. (1) formerly read:

15. (1) Appropriation of property to shareholder — Where in a taxation year

(a) a payment has been made by a corporation to a shareholder otherwise than pursuant to a *bona fide* business transaction,

(b) funds or property of a corporation have been appropriated in any manner whatever to, or for the benefit of, a shareholder, or

(c) a benefit or advantage has been conferred on a shareholder by a corporation,

otherwise than

(d) on the reduction of capital, the redemption, cancellation or acquisition by the corporation of shares of its capital stock or the winding-up, discontinuance or reorganization of its business, or otherwise by way of a transaction to which section 88 applies,

(e) by the payment of a dividend or a stock dividend,

(f) by conferring on all holders of common shares of the capital stock of the corporation a right to buy additional common shares thereof, or

(g) by an action described in paragraph 84(1)(c.1) or (c.2),

the amount or value thereof shall, except to the extent that it is deemed to be a dividend by section 84, be included in computing the income of the shareholder for the year.

Para. 15(1)(g) added by 1980-81-82-83, c. 48, subsec. 7(1), applicable with respect to actions occurring after 1978.

Paras. 15(1)(d), (e) and all that portion of subsec. 15(1) following para. (f) substituted by 1977-78, c. 1, subsecs. 8(1), (2), applicable after March 31, 1977. Paras. (d), (e) and that portion formerly read:

(d) on the reduction of capital, the redemption of shares or the winding-up, discontinuance or reorganization of its business, or otherwise by way of a transaction to which section 84, 88 or Part II applies,

(e) by the payment of a dividend, or

. . . . .

the amount or value thereof shall be included in computing the income of the shareholder for the year.

Selected Cases [subsec. 15(1)]: *James v. R.*, [1999] 4 C.T.C. 2036 (TCC) (Benefit appropriated over series of years as materials used); *Felray Inc. v. R.*, [1998] 2 C.T.C. 4 (FCTD) (Discontinuance of business implies element of finality or complete cessation, not merely diminution); *Fingold v. R.*, [1997] 3 C.T.C. 441 (FCA) (Shareholder benefit to be measured by equity rate of return on capital devoted); *Hrga v. R.*, [1997] 2 C.T.C. 172 (FCTD) (No possible benefit from providing guarantee); *Doyle v. Canada*, [1997] 1 C.T.C. 2659 (TCC) (Payment of shareholder's legal fees by company was taxable benefit); *De Giorgio v. Canada*, [1996] 2 C.T.C. 2038 (TCC) (Reported income was not a shareholder benefit); *Donovan v. Canada*, [1996] 1 C.T.C. 264 (FCA) (Value of benefit is interest on value of property); *Chopp v. Canada*, [1995] 2 C.T.C. 2946 (TCC) (Provision not applicable where taxpayer unaware of accounting error which led to benefit); *Riddell et al. v. Canada*, [1995] 2 C.T.C. 434 (FCTD) (Provision applied where taxpayer unable to establish existence of loan); *Vieira v. Canada*, [1995] 2 C.T.C. 2218 (TCC) (Appropriate time to determine if appropriation occurred was at end of taxation year); *King v. Canada*, [1995] 1 C.T.C. 2353 (TCC) (Conduct of taxpayers may consitute estoppel with respect to attribution and timing); *Penny v. Canada*, [1995] 1 C.T.C. 114 (FCTD) (Double taxation clearly contemplated by language of s. 15); *Cartwright v. Canada*, [1995] 1 C.T.C. 15 (FCTD) (Valuation of shareholder's benefit of cottage was rental value for summer); *Simpson (H.H.) v. MNR*, [1992] 2 C.T.C. 2387 (TCC) (Payment to shareholder by company's bank to settle action by company and shareholders for failure to give reasonable notice before seizure and sale of assets not shareholder appropriation or benefit); *Outerbridge Estate v. Canada*, [1991] 1 C.T.C. 113 (FCA) (Benefit acquired as son-in-law, not as shareholder); *Youngman v. The Queen*, [1990] 2 C.T.C. 10 (FCA) (Shareholder occupying house owned by company received benefit to the extent that shortfall in fair market value rent paid exceeded benefit conferred upon company through interest free loan from shareholder); *Vine Estate v. Canada*, [1990] 1 C.T.C. 18 (FCTD) (Amount applied by 50% shareholder from one company to cover losses of another company he owned was taxable benefit); *Outerbridge Estate v. Canada*, [1989] 2 C.T.C. 55

(FCTD); aff'd [1991] 1 C.T.C. 113 (FCA) (Benefit received where shares acquired below fair market value); *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Shares acquired by director/shareholder pursuant to rights offering were not benefit received by virtue of office); *Westcoast Petroleum Ltd. v. Canada*, [1989] 1 C.T.C. 363 (FCTD) (Amounts received due to pipeline service rate increase pending public hearing not liability since no obligation to repay; reserve under paragraph 20(1)(m) denied, since no subsequent services to be rendered); *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Interest-free loan by estate to executor was not taxable benefit); *Smith v. The Queen*, [1986] 1 C.T.C. 418 (FCTD) (Amounts paid by company to extinguish debts of another shareholder benefits to majority shareholder of both companies); *Hall et al. v. The Queen*, [1986] 1 C.T.C. 399 (FCTD) (Company debt purchased at discount by shareholder a shareholder benefit); *Mele v. The Queen*, [1985] 1 C.T.C. 257 (FCTD); aff'd (Sept. 12, 1990), File A-356-85 (FCA) [unreported] (Loans by corporation to third parties were personal advances by, and benefit to, controlling shareholder where not repaid); *Hart v. The Queen*, [1982] C.T.C. 275 (FCA) (Trip principally in relation to business, paid for by company, was benefit to shareholder to the extent that it was of personal value apart from business value); *Berbynuk v. The Queen*, [1978] C.T.C. 448 (FCTD) (Income suppressed by company was not income of shareholder); *Perrault v. The Queen*, [1978] C.T.C. 395 (FCA) (Dividend paid to shareholder selling shares to controlling shareholder, in satisfaction of purchase price obligation, taxable benefit to controlling shareholder); *The Queen v. Neudorf*, [1975] C.T.C. 192 (FCTD) (Where a corporation leasing shareholder's building made an addition to it and lease amendment attributing ownership of addition to company executed only subsequent to assessment, contract insufficient to dislodge presumption that addition was shareholder benefit); *Angle v. MNR*, [1975] 2 S.C.R. 248 (Despite earlier case between same parties finding no debt to company for income tax purposes, debt found to exist in present case); *Kennedy v. MNR*, [1973] C.T.C. 437 (FCA) (Sale of building to shareholder below fair market value was shareholder benefit; improvements by company on shareholder's property leased to company were shareholder benefits to extent that value of property increased more than amount below fair market value paid as rent); *Guilder News Co. (1983) Ltd. et al. v. MNR*, [1973] C.T.C. 1 (FCA) (Shares sold to shareholder below F.M.V. resulted in shareholder benefit despite price adjustment clause in contract); *St-Germain v. MNR*, [1969] C.T.C. 194 (SCC) (Improvements made by company to shareholder's building leased to company were shareholder benefits).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-116R3: Rights to buy additional shares; IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-143R2: Meaning of "eligible capital expenditure"; IT-160R3: Personal use of aircraft; IT-169: Price adjustment clauses; IT-256R: Gains from theft, defalcation or embezzlement; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-357R2: Expenses of training; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders; IT-498: The deductibility of interest on money borrowed to reloan to employees or shareholders; IT-529: Flexible employee benefit programs.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 87-2R: International transfer pricing and other international transactions.

Advance Tax Rulings: ATR-9: Transfer of personal residence from corporation to its controlling shareholder; ATR-14: Non-arm's length interest charges; ATR-15: Employee stock option plan; ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital; ATR-29: Amalgamation of social clubs; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze.

(1.1) Conferring of benefit — Notwithstanding subsection (1), where in a taxation year a corporation has paid a stock dividend to a person and it may reasonably be considered that one of the purposes of that payment was to significantly alter the value of the interest of any specified shareholder of the corporation, the fair market value of the stock dividend shall, except to the extent that it is otherwise included in computing that person's income under paragraph 82(1)(a), be included in computing the income of that person for the year.

Related Provisions: 52(3) — Cost of stock dividend.

Pre-RSC History: Subsec. 15(1.1) added by 1986, c. 6, s. 9, applicable with respect to stock dividends paid after November 21, 1985 other than stock dividends declared on or before that day.

Selected Cases [subsec. 15(1.1)]: *Wong v. R.*, [1999] 2 C.T.C. 2173 (TCC) (Provision not applicable where purpose of dividends not to alter value of interest).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-432R2: Benefits conferred on shareholders.

(1.2) Forgiveness of shareholder debt — For the purpose of subsection (1), the value of the benefit where an obligation issued by a debtor is settled or extinguished at any time shall be deemed to be the forgiven amount at that time in respect of the obligation.

Related Provisions: 6(15) — Forgiveness of employee loans; 15(1.21) — Meaning of "forgiven amount"; 79(3)F(b)(i) — Where property surrendered to creditor; 80(1)"forgiven amount"B(b) — Debt forgiveness rules do not apply to amount of benefit; 80.01 — Deemed settlement of debts.

History: Subsec. 15(1.2) amended by 1995, c. 21, s. 4, applicable to taxation years that end after February 21, 1994. Subsec. 15(1.2) formerly read:

> (1.2) **Forgiveness of shareholder loans** — For the purposes of subsection (1), the value of the benefit or advantage conferred on a shareholder, in circumstances where a loan or other obligation to pay an amount is settled or extinguished at any time without any payment by that shareholder or by payment by the shareholder of an amount that is less than the amount of the obligation outstanding at that time, shall be deemed to be the amount, if any, by which the obligation outstanding at that time exceeds the total of the amount, if any, of the benefit in respect of the obligation that was included in the shareholder's income at the time the obligation arose and the amount, if any.

Pre-RSC History: Subsec. 15(1.2) added by 1987, c. 46, s. 5, applicable in respect of obligations settled or extinguished after February 17, 1987.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders.

(1.21) Forgiven amount — For the purpose of subsection (1.2), the "forgiven amount" at any time in respect of an obligation issued by a debtor has the meaning that would be assigned by subsection 80(1) if

(a) the obligation were a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the debtor;

(b) no amount included in computing income (otherwise than because of paragraph 6(1)(a)) because of the obligation being settled or extinguished were taken into account;

(c) the definition "forgiven amount" in subsection 80(1) were read without reference to paragraphs (f) and (h) of the description B in that definition; and

(d) section 80 were read without reference to paragraphs (2)(b) and (q) of that section.

Related Provisions: 80.01(1)"forgiven amount" — Application of definition for purposes of s. 80.01; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation.

History: Subsec. 15(1.21) added by 1995, c. 21, s. 4, applicable to taxation years that end after February 21, 1994.

(1.3) Cost of property or service — To the extent that the cost to a person of purchasing a property or service or an amount payable by a person for the purpose of leasing property is taken into account in determining an amount required under this section to be included in computing a taxpayer's income for a taxation year, that cost or amount payable, as the case may be, shall include any tax that was payable by the person in respect of the property or service or that would have been so payable of the person were not exempt from the payment of that tax be-

cause of the nature of the person or the use to which the property or service is to be put.

Related Provisions: 15(1.4) — Inclusion in income to reflect GST.

History: Subsec. 15(1.3) amended by 1997, c. 10, subsec. 269(1), applicable to 1996 *et seq.* Subsec. (1.3) formerly read:

(1.3) **Goods and services tax** — To the extent that an amount or value of a benefit required under subsection (1) to be included in computing the income of a taxpayer for a taxation year is determined by reference to the cost to a corporation of any property or service, that cost shall, for the purposes of that subsection, be determined without reference to any goods and services tax payable by that corporation in respect of the property or service.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-432R2: Benefits conferred on shareholders.

(1.4) [Repealed]

Related Provisions: 15(1.3) — GST excluded from amount of benefit under 15(1).

History: Subsec. 15(1.4) repealed by 1997, c. 10, subsec. 269(1), applicable to 1996 *et seq.* Subsec. (1.4) formerly read:

(1.4) **Idem** — Where the amount or value of a benefit (in this subsection referred to as the "benefit amount") (other than a benefit referred to in subsection (5)) would be required under subsection (1) to be included in computing a taxpayer's income for a taxation year in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service if no amount were paid to the corporation or to a person related to the corporation in respect of the amount that would be so required to be included, there shall be included in computing the taxpayer's income for the year the total of all amounts each of which is an amount determined by the formula

$$0.07 (A - B)$$

where

A is the amount that would be so required under subsection (1) to be included in computing the taxpayer's income for the year; and

B is the amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*.

The portion of subsec. 15(1.4) before the formula substituted by 1994, c. 21, subsec. 9(2), applicable to 1993 *et seq.* That portion formerly read:

(1.4) **Idem** — Where the amount or value (in this subsection referred to as the "benefit amount") of a benefit would be required under subsection (1) to be included in computing a taxpayer's income for a taxation year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service, if no amount were paid to the corporation or to a person related to the corporation in respect of the amount that would be so required to be included, there shall be included in computing the taxpayer's income for the year the total of all amounts each of which is an amount determined by the formula

Subsec. 15(1.4) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 5(3), applicable to 1991 *et seq.*, except that in its application to the 1991 taxation year the subsec. shall be read as follows:

(1.4) Where the amount or value (in this subsection referred to as the "benefit amount") of a benefit is required under subsection (1) to be included in computing a taxpayer's income for a taxation year in respect of a supply, other than a zero-rated supply or an exempt supply, (within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service, there shall be included in computing the taxpayer's income for the year the total of all amounts each of which is an amount determined by the formula

$$0.07(A - B)$$

where

A is an amount required under subsection (1) to be included in computing the taxpayer's income for the year in respect of a supply (other than a zero-rated supply or an exempt supply, within the meanings assigned by Part IX of the *Excise Tax Act*) of property or a service; and

B is an amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*.

Subsec. 15(1.4) formerly read:

(1.4) **Idem** — Where the amount or value of a benefit is required under subsection (1) to be included in computing the income of a taxpayer for a taxation year (in this subsection referred to as the "benefit amount") in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service in respect of which section 173 of that Act applies, an additional amount, equal to 7% of the amount by which the benefit amount exceeds the amount, if any, included in the benefit amount that may reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*, shall be included in computing the income of the taxpayer for the year.

Pre-RSC History: Subsecs. 15(1.3), (1.4) added by 1990, c. 45, s. 40, applicable with respect to benefits conferred after 1990.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-432R2: Benefits conferred on shareholders.

(2) Shareholder debt — Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) is

(a) a shareholder of a particular corporation,

(b) connected with a shareholder of a particular corporation, or

(c) a member of a partnership, or a beneficiary of a trust, that is a shareholder of a particular corporation

and the person or partnership has in a taxation year received a loan from or has become indebted to the particular corporation, any other corporation related to the particular corporation or a partnership of which the particular corporation or a corporation related to the particular corporation is a member, the amount of the loan or indebtedness is included in computing the income for the year of the person or partnership.

Related Provisions [subsec. 15(2)]: 15(2.1) — Persons connected with shareholder; 15(2.2)–(2.6) — Exceptions to 15(2); 15(7) — Application of subsec. 15(2); 20(1)(j) — Repayment of loan by shareholder; 80(1)"excluded obligation"(a)(i) — Debt forgiveness rules do not apply where amount included in debtor's income; 80.4(2), (3) — Deemed interest; 120.4(1)"split income"(a)(i) — Shareholder benefits received by children subject to income splitting tax; 139(a) — Life insurance corporations; 214(3) — Non-residents' Canadian income; 227(6.1) — Repayment of non-resident shareholder loan; 252(4) — Extended meaning of "spouse".

History: Subsec. 15(2) amended by 1998, c. 19, subsec. 75(1), applicable to loans made and indebtedness arising in 1990 *et seq.* The subsec. formerly read:

(2) Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) is a shareholder of a particular corporation, is connected with a shareholder of a particular corporation or is a member of a partnership, or a beneficiary of a trust, that is a shareholder of a particular corporation and the person or partnership has in a taxation year received a loan from or has become indebted to the particular corporation, to any other corporation related thereto or to a partnership of which the particular corporation or a corporation related thereto is a member, the amount of the loan or indebtedness shall be included in computing the income for the year of the person or partnership, unless

(a) the loan was made or the indebtedness arose

(i) in the ordinary course of the lender's or creditor's business and, in the case of a loan, the lending of money was part of its ordinary business,

(ii) in respect of an individual who is an employee of the lender or creditor or the spouse of an employee of the lender or creditor to enable or assist the individual to ac-

quire a dwelling or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the individual's habitation,

(iii) where the lender or creditor is a corporation, in respect of an employee of the corporation, or of another corporation that is related to the corporation, to enable or assist the employee to acquire from the corporation, or a corporation related thereto, previously unissued fully paid shares of the capital stock of the corporation or the related corporation, as the case may be, to be held by the employee for the employee's own benefit, or

(iv) in respect of an employee of the lender or creditor to enable or assist the employee to acquire an automobile to be used by the employee in the performance of the duties of the employee's office or employment,

and *bona fide* arrangements were made, at the time the loan was made or the indebtedness arose, for repayment thereof within a reasonable time; or

(b) the loan or indebtedness was repaid within one year from the end of the taxation year of the lender or creditor in which it was made or incurred and it is established, by subsequent events or otherwise, that the repayment was not made as part of a series of loans or other transactions and repayments.

Subparas. 15(2)(a)(ii), (iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 11(2), (3), subpara. (ii) applicable to 1985 *et seq.*, subpara. (iii) applicable with respect to loans made and indebtedness arising after 1981. Subparas. 15(2)(a)(ii), (iii) formerly read:

(ii) in respect of an employee of the lender or creditor or the spouse of an employee of the lender or creditor to enable or assist the employee or the employee's spouse to acquire a dwelling for his or her habitation,

(iii) where the lender or creditor is a corporation, in respect of an employee of the corporation to enable or assist the employee to acquire from the corporation fully paid shares of the capital stock of the corporation, or to acquire from a corporation related thereto fully paid shares of the capital stock of the related corporation, to be held by the employee for the employee's own benefit, or

Pre-RSC History: Subsec. 15(2) substituted by 1980-81-82-83, c. 140, subsec. 7(1), applicable with respect to loans made and indebtedness incurred after 1981. Subsec. 15(2) formerly read:

(2) Loan to shareholder, etc. — Where a particular corporation, a corporation to which the particular corporation is related or a partnership of which either or both of the corporations is a member has in a taxation year made a loan to a person (other than a corporation resident in Canada) who is a shareholder of the particular corporation or who is connected with a shareholder of the particular corporation, the amount thereof shall be included in computing the income for the year of the person to whom the loan was made unless

(a) the loan was made

(i) in the ordinary course of the lender's business and the lending of money was part of its ordinary business,

(ii) to an employee of the lender or to the spouse of an employee of the lender to enable or assist the employee or his spouse to acquire a dwelling for his habitation,

(iii) where the lender is a corporation, to an employee of the corporation to enable or assist the employee to acquire from the corporation fully paid shares of the capital stock of the corporation, or to acquire from a corporation related to the corporation fully paid shares of the capital stock of the related corporation, to be held by him for his own benefit, or

(iv) to an employee of the lender to enable or assist the employee to acquire an automobile to be used by him in the performance of the duties of his office or employment,

and *bona fide* arrangements were made at the time the loan was made for repayment thereof within a reasonable time; or

(b) the loan was repaid within one year from the end of the taxation year of the lender in which it was made and it is established, by subsequent events or otherwise, that the repayment was not made as a part of a series of loans and repayments.

All that portion of para. 15(2)(a) following subpara. (i) substituted by 1980-81-82-83, c. 48, subsec. 7(2), applicable to 1979 *et seq.* That portion formerly read:

(ii) to an officer or servant of the lender to enable or assist him to purchase or erect a dwelling house for his own occupation,

(iii) where the lender is a corporation, to an officer or servant of the corporation to enable or assist him to purchase from the corporation fully paid shares of the capital stock of the corporation, or to purchase from a corporation related to the corporation fully paid shares of the capital stock of the related corporation, to be held by him for his own benefit, or

(iv) to an officer or servant of the lender to enable or assist him to purchase an automobile to be used by him in the performance of the duties of his office or employment,

and *bona fide* arrangements were made at the time the loan was made for repayment thereof within a reasonable time; or

Subpara. 15(2)(a)(iii) substituted by 1977-78, c. 32, s. 4, applicable in respect of loans made after March 31, 1977.

Subsec. 15(2) substituted by 1977-78, c. 1, subsec. 8(3), applicable in respect of loans made after March 31, 1977. Subsec. 15(2) formerly read:

(2) Loan to shareholder — Where a corporation has in a taxation year made a loan to a shareholder, the amount thereof shall be included in computing the income of the shareholder for the year unless

(a) the loan was made

(i) in the ordinary course of its business and the lending of money was part of its ordinary business,

(ii) to an officer or servant of the corporation to enable or assist him to purchase or erect a dwelling house for his own occupation,

(iii) to an officer or servant of the corporation to enable or assist him to purchase from the corporation fully paid shares of the corporation to be held by him for his own benefit, or

(iv) to an officer or servant of the corporation to enable or assist him to purchase an automobile to be used by him in the performance of the duties of his office or employment,

and *bona fide* arrangements were made at the time the loan was made for repayment thereof within a reasonable time, or

(b) the loan was repaid within one year from the end of the taxation year of the corporation in which it was made and it is established, by subsequent events or otherwise, that the repayment was not made as a part of a series of loans and repayments,

and, where the shareholder is a corporation, the amount so included in computing its income for the year shall be deemed to have been received by it as a dividend.

Selected Cases [subsec. 15(2)]: *Erb v. R.*, [2000] 1 C.T.C. 2597 (TCC) (No consideration for transfer gives rise to inference of benefit); *Davidson v. R.*, [1999] 3 C.T.C. 2159 (TCC) (Reasonable time for repayment does not require fixed date); *Quigley v. Canada*, [1996] 1 C.T.C. 2378 (TCC) ("Was included" is question of fact and not same as "ought to have been included"); *Lavoie v. Canada*, [1995] 2 C.T.C. 2709D (TCC) (Demand loan not a binding agreement between company and debtor where debtor was 98% shareholder); *Luoma v. Canada*, [1995] 1 C.T.C. 2993D (TCC) (Set-off is not automatic where mutual debts exist; shareholder benefit properly assessed); *Haynes v. Canada*, [1995] 1 C.T.C. 2515 (TCC) (Evidence required to rebut onus of showing transaction was loan and not shareholder appropriation); *Cormie v. Canada*, [1995] 1 C.T.C. 2463 (TCC) (Loans not made in ordinary course of business and no *bona fide* arrangements for repayment); *Silden (J.) v. MNR*, [1993] 2 C.T.C. 123 (FCA) (*NB*: [1990] 2 C.T.C. 533 (FCTD) rev'd on issue of repayment arrangements)); *Perlingieri (G.) v. MNR*, [1993] 1 C.T.C. 2137 (TCC) (Demand loan not *bona fide* arrangement for repayment within reasonable time); *Nellis v. The Queen*, [1986] 2 C.T.C. 216 (FCTD) (Loan to shareholder to acquire shares in other company was income); *Schlamp v. The Queen*, [1982] C.T.C. 304 (FCTD) (Loan to acquire dwelling for shareholder's habitation was income); *Tick v. MNR*, [1972] C.T.C. 137 (FCTD) (Owner of five private companies not permitted to set off one company's debt to him against his debts to other companies for purposes of provision).

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals,

corporations and shareholders from loans or debt; IT-503: Exploration and development shares.

I.T. Technical News: No. 3 (paragraphs 15(2)(b) and 20(1)(j)).

(2.1) Persons connected with a shareholder — For the purposes of subsection (2), a person is connected with a shareholder of a particular corporation if that person does not deal at arm's length with the shareholder and if that person is a person other than

(a) a foreign affiliate of the particular corporation; or

(b) a foreign affiliate of a person resident in Canada with which the particular corporation does not deal at arm's length.

Pre-RSC History: Subsec. 15(2.1) added by 1977-78, c. 1, subsec. 8(3), applicable in respect of loans made after March 31, 1977.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.2) When s. 15(2) not to apply — non-resident persons — Subsection (2) does not apply to indebtedness between non-resident persons.

Related Provisions: 95(2)(a)(ii) — Whether FAPI on income from loans between non-resident corporations.

History: Subsec. 15(2.2) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*.

(2.3) When s. 15(2) not to apply — ordinary lending business — Subsection (2) does not apply to a debt that arose in the ordinary course of the creditor's business or a loan made in the ordinary course of the lender's ordinary business of lending money where, at the time the indebtedness arose or the loan was made, *bona fide* arrangements were made for repayment of the debt or loan within a reasonable time.

Related Provisions: 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.3) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.4) When s. 15(2) not to apply — certain employees — Subsection (2) does not apply to a loan made or a debt that arose

(a) in respect of an individual who is an employee of the lender or creditor but not a specified employee of the lender or creditor,

(b) in respect of an individual who is an employee of the lender or creditor or who is the spouse of an employee of the lender or creditor to enable or assist the individual to acquire a dwelling or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the individual's habitation,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) where the lender or creditor is a particular corporation, in respect of an employee of the particular corporation or of another corporation that is related to the particular corporation, to enable or assist the employee to acquire from the particular corporation, or from another corporation related to the particular corporation, previously unissued fully paid shares of the capital stock of the particular corporation or the related corporation, as the case may be, to be held by the employee for the employee's own benefit, or

(d) in respect of an employee of the lender or creditor to enable or assist the employee to acquire a motor vehicle to be used by the employee in the performance of the duties of the employee's office or employment,

where

(e) it is reasonable to conclude that the employee or the employee's spouse received the loan, or became indebted, because of the employee's employment and not because of any person's share-holdings, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(f) at the time the loan was made or the debt was incurred, *bona fide* arrangements were made for repayment of the loan or debt within a reasonable time.

Related Provisions: 15(2.7) — Deemed specified employee of a partnership; 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.4) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*, except that in its application to loans made and indebtedness arising before April 26, 1995, subsec. 15(2.4) shall be read without reference to paragraph (e).

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.5) When s. 15(2) not to apply — certain trusts — Subsection (2) does not apply to a loan made or a debt that arose in respect of a trust where

(a) the lender or creditor is a private corporation;

(b) the corporation is the settlor and sole beneficiary of the trust;

(c) the sole purpose of the trust is to facilitate the purchase and sale of the shares of the corporation, or of another corporation related to the corporation, for an amount equal to their fair market value at the time of the purchase or sale, as the case may be, from or to the employees of the corporation or of the related corporation (other than employees who are specified employees of the corporation or of another corporation related to the corporation), as the case may be; and

(d) at the time the loan was made or the debt incurred, *bona fide* arrangements were made for repayment of the loan or debt within a reasonable time.

Related Provisions: 15(2.7) — Deemed specified employee of a partnership; 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.5) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*, except that in its application to loans made and indebtedness arising before June 20, 1996, subsec. 15(2.5) shall be read without reference to "(other than employees who are specified employees of the corporation or of another corporation related to the corporation)".

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.6) When s. 15(2) not to apply — repayment within one year — Subsection (2) does not apply to a loan or an indebtedness repaid within one year after the end of the taxation year of the lender or creditor in which the loan was made or the indebtedness arose, where it is established, by subsequent events or otherwise, that the repayment was not part of a series of loans or other transactions and repayments.

Related Provisions: 80.4(2), (3) — Deemed interest.

History: Subsec. 15(2.6) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(2.7) Employee of partnership — For the purpose of this section, an individual who is an employee of a partnership is deemed to be a specified employee of the partnership where the individual is a specified shareholder of one or more corporations that, in total, are entitled, directly or indirectly, to a share of any income or loss of the partnership, which share is not less than 10% of the income or loss.

Related Provisions: 248(1) — Definition of "specified employee".

History: Subsec. 15(2.7) added by 1998, c. 19, subsec. 75(2), applicable to loans made and indebtedness arising in 1990 *et seq.*

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(3) Interest or dividend on income bond or debenture — An amount paid as interest or a dividend by a corporation resident in Canada to a taxpayer in respect of an income bond or income debenture shall be deemed to have been paid by the corporation and received by the taxpayer as a dividend on a share of the capital stock of the corporation, unless the corporation is entitled to deduct the amount so paid in computing its income.

Related Provisions: 15(4) — Where paid by corporation not resident in Canada; 15.1(1), 15.2(1) — Parallel treatment for small business development bonds and small business bonds; 18(1)(g) — Payment on income bonds; 112(2.1) — Where no deductions permitted; 214(3) — Non-residents' Canadian income; 258(2) — Deemed dividend on preferred share.

Pre-RSC History: Subsec. 15(3) substituted by 1979, c. 5, s. 5, applicable in respect of interest and dividends paid after November 16, 1978. Subsec. 15(3) formerly read:

> (3) Interest on income bonds — An annual or other periodic amount paid by a corporation resident in Canada to a taxpayer in respect of an income bond or income debenture shall be deemed to have been paid by the corporation and received by the taxpayer as a dividend on a share of the capital stock of the corporation, unless the corporation is entitled to deduct the amount so paid in computing its income.

Selected Cases [subsec. 15(3)]: *The Queen v. Canadian Pacific Ltd. (No. 1)*, [1977] C.T.C. 606 (FCA) (Interest on income bonds paid by U.S. subsidiary permitted treatment as deemed dividend).

Interpretation Bulletins: IT-52R4: Income bonds and income debentures; IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-527: Distress preferred shares.

(4) Idem, where corporation not resident — An amount paid as interest or a dividend by a corporation not resident in Canada to a taxpayer in respect of an income bond or income debenture shall be deemed to have been received by the taxpayer as a dividend on a share of the capital stock of the corporation unless the amount so paid was, under the laws of the country in which the corporation was resident, deductible in computing the amount for the year on which the corporation was liable to pay income or profits tax imposed by the government of that country.

Related Provisions: 15(3) — Where paid by corporation resident in Canada; 18(1)(g) — Payment on income bonds; 214(3) — Non-residents' Canadian income; 258 — Deemed dividend on preferred share.

Pre-RSC History: Subsec. 15(4) substituted by 1979, c. 5, s. 5, applicable in respect of interest and dividends paid after November 16, 1978. Subsec. 15(4) formerly read:

> (4) Idem — An annual or other periodic amount paid by a corporation not resident in Canada to a taxpayer in respect of an income bond or income debenture shall be deemed to have been received by the taxpayer as a dividend unless the amount so paid was, under the laws of the country in which the corporation was resident, deductible in computing the amount for the year on which the corporation was liable to pay income or profits tax imposed by the government of that country.

Interpretation Bulletins: IT-52R4: Income bonds and income debentures.

(5) Automobile benefit — For the purposes of subsection (1), the value of the benefit to be included in computing a shareholder's income for a taxation year with respect to an automobile made available to the shareholder, or a person related to the shareholder, by a corporation shall (except where an amount is determined under subparagraph 6(1)(e)(i) in respect of the automobile in computing the shareholder's income for the year) be computed on the assumption that subsections 6(1), (1.1), (2) and (7) apply, with such modifications as the circumstances require, and as though the references therein to "the employer of the taxpayer", "the taxpayer's employer" and "the employer" were read as "the corporation".

Related Provisions: 15(1.4) — No additional GST inclusion under 15(1.4) since already covered by 6(1)(e.1) and 15(5); 15(7) — Application; 214(3)(a) — Non-residents' Canadian income.

History: Subsec. 15(5) amended by 1997, c. 10, subsec. 269(2), applicable to 1996 *et seq.* Subsec. (5) formerly read:

> (5) For the purpose of subsection (1), the value of the benefit to be included in computing a shareholder's income for a taxation year with respect to an automobile made available to the shareholder, or a person related to the shareholder, by a corporation shall (except where an amount is determined under subparagraph 6(1)(e)(i) in respect of the automobile in computing the shareholder's income for the year) be computed on the assumption that subsections 6(1), (1.1) and (2) apply, with such modifications as the circumstances require, and as though the references therein to "the employer of the taxpayer", "the taxpayer's employer" and "the employer" were read as "the corporation".

Subsec. 15(5) substituted by 1994, c. 21, subsec. 9(3), applicable to 1993 *et seq.* That subsec. formerly read:

> (5) Automobile benefit — For the purposes of subsection (1), the value of the benefit to be included in computing the income of a shareholder for a taxation year with respect to an automobile made available to the shareholder, or to a person related to the shareholder, by a corporation shall, except when an amount has been included in computing the shareholder's income by virtue of paragraph 6(1)(e) in respect of the automobile, be computed on the assumption that subsections 6(1), (2) and (2.2) apply, with such modifications as the circumstances require, and as though the references in those subsections to "the employer" or "the taxpayer's employer", as the case may be, were read as references to "the corporation".

Pre-RSC History: Subsec. 15(5) amended by 1984, c. 45, s. 7, to add reference to subsection 6(2.2) and to add "or "his employer", as the case may be", applicable to 1984 *et seq.*

Subsec. 15(5) substituted by 1980-81-82-83, c. 140, subsec. 7(2), applicable to 1982 *et seq.* Subsec. 15(5) formerly read:

> (5) Where a corporation has made an automobile available to a shareholder in a taxation year for his personal use (whether for his exclusive personal use or otherwise), the amount, if any, by which an amount that would be a reasonable standby charge for the automobile for the aggregate number of days in the year during which it was made so available (whether or not it was used by the shareholder) exceeds the aggregate of
>
> (a) the amount paid in the year by the shareholder to the corporation for the use of the automobile, and
>
> (b) any amount included in computing the shareholder's income for the year by virtue of subsection (1) in respect of the use by him of the automobile in the year,
>
> shall be included in computing his income for the year.

Regulations: 200(2)(h), 200(4) (information returns).

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992.

(6) [Repealed under former Act]

Pre-RSC History: Subsec. 15(6) repealed by 1980-81-82-83, c. 140, subsec. 7(3), applicable to 1982 *et seq.* Subsec. 15(6) formerly read:

(6) Application of ss. 6(2) — Subsection 6(2) is applicable *mutatis mutandis* to subsection (5).

(7) Application of subsecs. (1), (2) and (5) — For greater certainty, subsections (1), (2) and (5) are applicable in computing, for the purposes of this Part, the income of a shareholder or of a person or partnership whether or not the corporation, or the lender or creditor, as the case may be, was resident or carried on business in Canada.

Pre-RSC History: Subsec. 15(7) substituted by 1980-81-82-83, c. 140, subsec. 7(4), applicable with respect to loans made and indebtedness incurred after 1981. Subsec. 15(7) formerly read:

(7) For greater certainty, subsections (1), (2) and (5) are applicable in computing, for the purposes of this Part, the income of a shareholder or of a person connected with a shareholder (within the meaning of subsection (2.1)) whether or not the corporation or the lender, as the case may be, was resident or carried on business in Canada.

Subsec. 15(7) substituted by 1977-78, c. 1, subsec. 8(4), applicable after March 31, 1977. Subsec. 15(7) formerly read:

(7) For greater certainty, subsections (1), (2) and (5) are applicable in computing the income of a shareholder for the purposes of this Part whether or not the corporation was resident or carried on business in Canada.

Interpretation Bulletins: IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer — after 1992; IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-432R2: Benefits conferred on shareholders.

(8) [Repealed]

History: Subsec. 15(8) repealed by 1998, c. 19, subsec. 75(3), applicable to loans made and indebtedness arising in 1990 *et seq.* The subsec. formerly read:

(8) Where subsec. (2) does not apply — Subsection (2) does not apply in respect of indebtedness between non-resident persons.

Pre-RSC History: Subsec. 15(8) substituted by 1980-81-82-83, c. 140, subsec. 7(4), applicable to loans made and indebtedness incurred after 1981. Subsec. 15(8) formerly read:

(8) Subsection (2) does not apply to a loan made by a non-resident person to another non-resident person.

Subsec. 15(8) added by 1977-78, c. 1, subsec. 8(5), applicable to loans made after March 1977.

(9) Deemed benefit to shareholder by corporation — Where an amount in respect of a loan or debt is deemed by section 80.4 to be a benefit received by a person or partnership in a taxation year, the amount is deemed for the purpose of subsection (1) to be a benefit conferred in the year on a shareholder, unless subsection 6(9) or paragraph 12(1)(w) applies to the amount.

History: Subsec. 15(9) amended by 1998, c. 19, subsec. 75(4), applicable to taxation years that end after November 1991. The subsec. formerly read:

(9) Where an amount in respect of a loan or debt is deemed by section 80.4 to be a benefit received by a person or partnership in a taxation year, the amount of the loan or debt (other than any amount to which subsection 6(9) or paragraph 12(1)(w) applies) shall be deemed for the purposes of subsection (1) to be a benefit conferred in the year on a shareholder.

Pre-RSC History: Subsec. 15(9) substituted by 1980-81-82-83, c. 140, subsec. 7(4), applicable to 1982 *et seq.* Subsec. 15(9) formerly read:

(9) Where an amount in respect of a loan is deemed by subsection 80.4(1) to be a benefit received in a taxation year by an individual referred to in paragraph (b) thereof, that individual shall be deemed for the purposes of subsection (1) to be a shareholder of a corporation and the benefit shall be deemed to be a benefit conferred on a shareholder by the corporation.

Subsec. 15(9) added by 1977-78, c. 1, subsec. 8(5), applicable to 1979 *et seq.*

Regulations: 200(2)(i) (information return).

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Definitions [s. 15]: "Act" — *Interpretation Act* 35(1); "amount", "business" — 248(1); "Canada" — 255; "common share", "common-law partner" — 248(1); "connected" — 15(2.1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "employee" — 248(1); "forgiven amount" — 15(1.21); "goods and services tax", "income bond", "income debenture", "individual" — 248(1); "legislature" — *Interpretation Act* 35(1); "motor vehicle" — 248(1); "obligation" — 248(26); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "series of transactions" — 248(20); "share", "shareholder" — 248(1); "specified employee" — 15(2.7), 248(1); "specified shareholder" — 248(1); "spouse" — 252(4)(a); "stock dividend" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

15.1 (1) Interest on small business development bonds — Any amount received by a taxpayer as or on account of interest on a small business development bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend.

Related Provisions: 15(3) — Parallel rule for income bonds; 15.2(1) — Parallel rule for small business bonds.

(2) Rules for small business development bonds — Where a corporation (in this section referred to as the "issuer") has issued an obligation that is at any time a small business development bond, notwithstanding any other provision of this Act,

(a) in computing the issuer's income for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed in computing the issuer's income) as or on account of interest on the obligation in respect of a period that includes that time;

(b) except for the purpose of subsection 129(1), to the extent that any amount paid by the issuer as or on account of interest on the obligation is not allowed as a deduction because of paragraph (a), it shall, when paid, be deemed to have been paid as a taxable dividend; and

(c) except for the purposes of paragraph 125(1)(b), the issuer's taxable income for any taxation year that includes a period throughout which the obligation was a small business development bond but

(i) the issuer was not an eligible small business corporation, or

(ii) all or substantially all of the proceeds from the issue of the obligation cannot reasonably be regarded as having been used by the issuer or a corporation with which it was not dealing at arm's length in the financing of an active business carried on in Canada immediately before the obligation was issued

shall be deemed to be an amount equal to the total of

(iii) the amount paid or payable (depending on the method regularly followed in computing the issuer's income) as or on account of interest on the obligation in respect of that period, and

(iv) the issuer's taxable income otherwise determined for the year.

(3) Definitions — In this section,

"eligible small business corporation" at any time means a taxable Canadian corporation that at that time is

(a) a small business corporation, or

(b) a cooperative corporation (within the meaning assigned by subsection 136(2)) all or substantially all of the assets of which are used in an active business carried on by it in Canada;

"joint election" means an election that is made in prescribed form, containing prescribed information, jointly by the issuer of an obligation and the person who is the holder of the obligation at the time of the election, that is filed with the Minister by the holder, and in which the holder and the issuer elect that this section apply to the obligation;

Forms: T2216: Joint election for a small business development bond.

"majority interest partner" — [Repealed]

History: The definition "majority interest partner" in subsec. 15.1(3) repealed by 1998, c. 19, s. 76, applicable after April 26, 1995. The definition formerly read:

> "majority interest partner" of a partnership means a taxpayer who, if subsection 97(3.1) applied to this section, would be deemed to be a majority interest partner of the partnership;

"qualifying debt obligation" of a corporation at a particular time means an obligation that is a bond, debenture, bill, note, mortgage or similar obligation issued after February 25, 1992 and before 1995,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than 5 years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than 5 years before the particular time,

if the obligation is issued by the corporation

(d) as part of a proposal to, or an arrangement with, its creditors that has been approved by a court under the *Bankruptcy and Insolvency Act*,

(e) at a time when all or substantially all of its assets are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(f) at a time when, because of financial difficulty, the corporation is in default, or could reasonably be expected to default, on a debt held by a person with whom the corporation was dealing at arm's length and the obligation is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt;

"small business development bond" at any time means

(a) an obligation that is at that time a qualifying debt obligation issued after 1981 and before 1988 by a Canadian-controlled private corporation in respect of which a joint election was made within 90 days after the later of its issue date and March 30, 1983,

(b) an obligation that is at that time a qualifying debt obligation issued after February 25, 1992 by a Canadian-controlled private corporation in respect of which a joint election was made within 90 days after its issue date, or

(c) an obligation that is at that time a qualifying debt obligation issued by a Canadian-controlled private corporation if

(i) it is reasonable to consider that the corporation and the holder of the obligation intended that this section apply to the obligation, having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the corporation and the holder have treated the obligation for the purposes of this Act, and

(ii) the holder files with the Minister a joint election in respect of the obligation within 90 days after the date of notification by the Minister that a joint election in respect of the obligation has not been filed.

Related Provisions: 248(1)"small business development bond" — Definition applies to entire Act.

Forms: T2216: Joint election for a small business development bond.

(4) Money borrowed — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business development bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(5) False declaration — Where the Minister establishes that an issuer has knowingly or under circumstances amounting to gross negligence made a false declaration in a joint election in respect of an obligation, the reference in subparagraph (2)(c)(iii) to "the amount paid or payable" shall in respect of the obligation be read as a reference to "3 times the amount paid or payable".

(6) Disqualification — Where at a particular time an issuer makes a joint election in respect of an obligation and

(a) the issuer or any other corporation associated at the time the obligation was issued with the issuer,

(b) an individual who controls or is a member of a related group that controls the issuer, or

(c) a partnership any member of which, who is a majority interest partner of the partnership, controls, or is a member of a related group that controls, the issuer

had at or before the particular time made a joint election in respect of any small business development bond or small business bond, as the case may be, for the purposes of this section, the issuer shall be deemed not to be an eligible small business corporation in respect of the obligation.

(7) Exception — Subsection (6) does not apply in respect of an obligation issued at any time where the issue price of the obligation does not exceed the amount, if any, by which

(a) $500,000

exceeds

(b) the total of all amounts each of which is the principal amount outstanding immediately after that time in respect of

(i) another obligation that is a small business development bond issued by

(A) the issuer, or

(B) a corporation associated with the issuer, or

(ii) a small business bond issued by

(A) an individual who controls, or is a member of a related group that controls, the issuer, or

(B) a partnership any member of which, who is a majority interest partner of the partnership, controls, or is a member of a related group that controls, the issuer.

Related Provisions [s. 15.1]: 136 — Cooperative not private corporation — exception; 143(1)(k) — Communal organization (e.g. Hutterite colony) may issue small business development bond.

History [s. 15.1]: The opening words of the definition of "qualifying debt obligation" in subsec. 15.1(3) amended by 1994, c. 8, subsec. 1(1), applicable to obligations issued after 1992; and, for the purpose of the definition "small business development bond" in subsec. 15.1(3), an election made before August 11, 1994 in respect of an obligation issued after 1992 and before 1995 shall be deemed to have been made within 90 days after the day the obligation was issued. The opening words formerly read:

> "qualifying debt obligation" of a corporation at a particular time means an obligation that is a bond, debenture, bill, note, mortgage or similar obligation issued after December 11, 1979 and before 1988 or after February 25, 1992 and before 1993,

S. 15.1 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 6, applicable to obligations issued after February 25, 1992. For the purpose of the definition "small business development bond" in subsec. 15.1(3), an election made in respect of an obligation after February 25, 1992 and before September 9, 1993, shall be deemed to have been made within 90 days after the day the obligation was issued. S. 15.1 formerly read:

> 15.1 (1) **Small business development bond** — Any amount received by a taxpayer as or on account of interest in respect of a small business development bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend.
>
> (2) **Idem** — Where a corporation, in this section referred to as the "issuer", has issued an obligation that is at any time a small business development bond, notwithstanding any other provision of this Act, the following rules apply:
>
> (a) in computing the income of the issuer for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed by the issuer in computing its income) for a period that includes that time as or on account of interest on the bond;
>
> (b) except for the purposes of subsection 129(1), to the extent that any amount paid by the issuer as or on account of interest on the bond is not allowed as a deduction by virtue of paragraph (a), it shall, when paid, be deemed to have been paid as a taxable dividend; and
>
> (c) [Repealed under former Act]
>
> (d) except for the purposes of paragraph 125(1)(b), the taxable income of the issuer for any taxation year that includes a period throughout which the obligation was a small business development bond shall, where
>
> (i) the issuer was not an eligible small business corporation,
>
> (ii) the property acquired with the proceeds of the bond or the property referred to in subparagraph (d)(iii) of the definition "qualifying debt obligation" in subsection (3)
>
> (A) was not property used for specified purposes by the issuer, or
>
> (B) was not owned by the issuer, or
>
> (iii) all or substantially all of the proceeds from the issue of an obligation issued in circumstances described in subparagraphs (e)(i) to (iii) of the defintion "qualifying debt obligation" in subsection (3) cannot reasonably be regarded as having been used by the issuer or a corporation with which it was not dealing at arm's length in the financing of an active business carried on in Canada immediately before the time of its issuance,
>
> be deemed to be an amount equal to the total of
>
> (iv) the amount paid or payable (depending on the method regularly followed by the issuer in computing its income) for that period as or on account of interest on the obligation, and
>
> (v) its taxable income otherwise determined for the year.
>
> (3) **Definitions** — In this section,
>
> "eligible small business corporation" at any time means a taxable Canadian corporation that at that time is
>
> (a) a small business corporation, or
>
> (b) a cooperative corporation (within the meaning assigned by subsection 136(2)) all or substantially all of the assets of which are used in an active business carried on by it in Canada;
>
> "joint election" means an election made in prescribed form jointly by the issuer of an obligation and the person who is the holder of the obligation at the election time and filed with the Minister by the holder in which the issuer and the holder elect that the provisions of this section apply with respect to that obligation and in which the issuer declares that
>
> (a) it is an eligible small business corporation, and
>
> (b) the property, if any, acquired with the proceeds of or financed or refinanced by the obligation is property used for specified purposes;
>
> "property used for specified purposes" means property used primarily in the carrying on of an active business in Canada but does not include
>
> (a) property that is used by an issuer primarily for the purpose of being leased to any person, other than an eligible small business corporation,
>
> (i) that does not use the property primarily for the purpose of leasing it to any other person, and
>
> (ii) that would be associated with the issuer if this Act were read without reference to paragraph 251(5)(b), or
>
> (b) property used in a business carried on by an issuer as a member of a partnership;
>
> "qualifying debt obligation" of a corporation at any particular time means an obligation that is a bond, debenture, bill, note, mortgage or similar obligation issued after December 11, 1979 and before 1988,
>
> (a) the principal amount of which is not less than $10,000 or more than $500,000,
>
> (b) that is issued for a term of not more than five years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and
>
> (c) that was issued not more than five years before the particular time
>
> if
>
> (d) all of the proceeds from the issuance before February 1, 1982 of the obligation are used by the corporation
>
> (i) to acquire after December 11, 1979 and before February 1, 1982 property that is specified property of the corporation,
>
> (ii) to finance qualified expenditures (within the meaning assigned by paragraph 127(10.1)(c)) made by the corporation after December 11, 1979 and before February 1, 1982 in respect of scientific research,
>
> (iii) to repay at any time before February 1, 1982, in whole or in part, one or more obligations of the corporation to the extent of an amount not exceeding the cost to the corporation of property referred to in subparagraph (i) or qualified expenditures referred to in subparagraph (ii) that was acquired or that were incurred by the corporation after December 11, 1979 and before the time of the repayment, or
>
> (iv) for any combination of purposes described in subparagraphs (i) to (iii), or
>
> (e) the obligation is issued by the corporation
>
> (i) as part of a proposal to, or an arrangement with, its creditors that has been approved by a court under the *Bankruptcy and Insolvency Act*,
>
> (ii) at a time when all or substantially all of its assets are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or
>
> (iii) at a time when, by reason of financial difficulty, the corporation is in default, or could reasonably be expected to default, on a debt held by a person with whom the corporation was dealing at arm's length and it is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt;
>
> "small business development bond" at any time means
>
> (a) an obligation that is at that time a qualifying debt obligation issued before 1982 by a Canadian-controlled private corporation in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and February 26, 1981, or

(b) an obligation that is at that time a qualifying debt obligation issued after 1981 by a Canadian-controlled private corporation in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and March 30, 1983;

"specified property" of an issuer means property acquired by the issuer that is

(a) depreciable property that has not been used for any purpose whatever before it was acquired by the issuer, or

(b) capital property that is land (excluding any building or other structure affixed to land) other than land acquired by the issuer from a person with whom it was not dealing at arm's length,

but does not include any

(c) automobile, or

(d) transportation equipment used principally for the purpose of transporting persons other than passengers who pay for the transportation services.

(4) Presumption — Where an issuer has disposed of specified property, for the purposes of paragraph (2)(d), the property shall be deemed to be owned by the issuer and to be property used for specified purposes if, in the thirty day period after the date of disposition of the property, the principal amount of the obligation is reduced by an amount not less than the amount by which the proceeds of disposition to the issuer of the property exceed the expense incurred by it in disposing of the property.

(5) Idem — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business development bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(6) False declaration — Where an issuer knowingly or under circumstances amounting to gross negligence makes a false declaration in a joint election in respect of an obligation, the reference in subparagraph (2)(d)(iv) to "the amount" shall in respect of the issuer be read as a reference to "3 times the amount".

(7) Presumption — Where at any particular time an issuer makes a joint election in respect of an obligation and at or before that time the issuer or any other corporation associated with the issuer at or before that time makes or has made a joint election in respect of any other obligation, for the purposes of this section, the issuer shall be deemed not to be an eligible small business corporation.

(8) Idem — For the purposes of this section, where an eligible small business corporation has acquired property from another person who did not deal at arm's length with the corporation immediately after the acquisition, the corporation shall be deemed to have acquired the property

(a) from the person from whom that other person acquired the property; and

(b) at the time the other person acquired the property.

(9) Exception — Where an issuer or any corporation associated with the issuer has made a joint election in respect of a small business development bond, subsection (7) shall not apply with respect to the issuer and any corporation associated with that issuer that would, but for that subsection, be an eligible small business corporation in respect of any obligation issued at any particular time after May 23, 1985 in circumstances described in any of subparagraphs (e)(i) to (iii) of the definition "qualifying debt obligation" in subsection (3), if the issue price of any such bond does not exceed the amount, if any, by which

(a) $500,000

exceeds

(b) the total of all amounts each of which is the principal amount outstanding at that time in respect of

(i) a small business development bond issued

(A) before the particular time by the issuer, or

(B) at or before the particular time by a corporation associated with the issuer, or

(ii) a small business bond issued at or before the particular time by

(A) an individual who controls or is a member of a related group that controls the issuer, or

(B) a partnership any member of which is a person who is a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1)) and who controls, or is a member of a related group that controls, the issuer.

(10) Presumption — Notwithstanding the definition "small business development bond" in subsection (3), where the holder of a qualifying debt obligation issued by a Canadian-controlled private corporation has not filed with the Minister a joint election within the time referred to in that definition and, after the issue of the qualifying debt obligation, the corporation has not issued a small business development bond, other than a small business development bond that is an obligation described in paragraph (e) of the definition "qualifying debt obligation" in subsection (3), the obligation shall be deemed to be a small business development bond if

(a) it is reasonable to consider that the corporation and the holder intended that this section would apply to the obligation having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the corporation and the holder have treated the obligation for the purposes of this Act; and

(b) the holder files with the Minister a joint election within 90 days from the later of

(i) the date of notification by the Minister that a joint election in respect of the obligation has not been filed pursuant to the definition "small business development bond" in subsection (3), and

(ii) March 30, 1983

(11) Penalties — For the purpose of subsection 163(3), where an amount is added to the taxable income of an issuer by virtue of subsection (6), the amount shall be deemed to be a penalty assessed by the Minister under section 163.

(12) Replacement property — Where, at any time after December 11, 1979, an amount has become receivable by a corporation as proceeds of disposition (within the meaning assigned by paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition of that expression in section 54) of specified property and the corporation has, before the end of the first taxation year following the taxation year in which an amount in respect of the disposition of the specified property has become receivable, acquired a replacement property (within the meaning assigned by subsection 13(4.1) or 44(5)) that is specified property, for the purpose of subsection (4) the cost to the corporation of its replacement property shall be deemed to be an expense incurred by it in disposing of the specified property.

Cl. 15.1(3)(b)(iv)(A) amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Pre-RSC History [s. 15.1]: *The definition "eligible small business corporation" was para. 15.1(3)(a); "qualifying debt obligation", para. (b); "small business development bond", para. (c); "joint election", para. (d); "property used for specified purposes", para. (e); and "specified property", para. (f).*

All that portion of subsec. 15.1(2) preceding para. (d) substituted by 1986, c. 6, subsec. 10(1), applicable after June 30, 1985. That portion formerly read:

(2) Idem — Where a corporation (in this section referred to as the "issuer") has issued a small business development bond, notwithstanding any other provision of this Act, the following rules apply:

(a) in computing the income of the issuer for a taxation year, no deduction shall be made in respect of any amount paid or payable as or on account of interest on the bond;

(b) except for the purposes of subsection 129(1), any amount paid by the issuer as or on account of interest on the bond shall be deemed to have been paid as a taxable dividend; and

Para. 15.1(2)(d) amended to substitute in that portion preceding subpara. (i) "throughout which the obligation was a small business development bond but" for "during which" and to substitute in subpara. (iv) "paid or payable (depending on the method regularly followed by the issuer in computing its income) for that period" for "payable in respect of that period", by 1986, c. 6, subsec. 10(2), applicable after June 30, 1985.

Subpara. 15.1(3)(a)(i) ("eligible small business corporation") amended to delete "(within the meaning assigned by paragraph 70(11)(c))" which followed "a small business corporation", by 1986, c. 6, subsec. 10(3), applicable to 1985 *et seq.*

All that portion of para. 15.1(3)(b) ("qualifying debt obligation") preceding subpara. (iii) amended by 1986, c. 6, subsec. 10(4), applicable after June 30, 1985, to substitute in that portion preceding subpara. (i) "1988" for "1986" and to add subpara. (ii.1).

Cl. 15.1(3)(b)(iii)(B) ("qualifying debt obligation") amended by 1986, c. 6, subsec. 15(3), to substitute "scientific research and experimental development" for "scientific research", applicable with respect to taxation years ending after May 23, 1985.

All that portion of subsec. 15.1(9) preceding subpara. (b)(i) amended by 1986, c. 6, subsec. 10(5), applicable with respect to obligations issued after May 23, 1985, to substitute "May 23, 1985" for "November 12, 1981" and "the principal amount outstanding at that time in respect of" for "the issue price of".

Para. 15.1(2)(c) repealed by 1984, c. 45, subsec. 8(1) applicable to 1985 *et seq.* Para. 15.1(2)(c) formerly read:

> (c) for the purposes of paragraph 125(6)(b), any amount paid by an eligible small business corporation as or on account of interest on the bond shall be deemed to be a qualifying taxable dividend (except where the amount has been paid to a private corporation with which the issuer was connected within the meaning of subsection 186(4) and with which it was not associated); and

All that portion of para. 15.1(3)(a) ("eligible small business corporation") following subpara. (ii) repealed by 1984, c. 45, subsec. 8(2), applicable to 1985 *et seq.* That portion formerly read:

> and in respect of which at the time of making an election under this section (in this section referred to as the "election time") the aggregate of
>
> (iii) the corporation's cumulative deduction account (within the meaning of paragraph 125(6)(b)) at the end of its last taxation year ending before the election time, and
>
> (iv) all amounts each of which is the cumulative deduction account of another corporation that was associated with the corporation at any time during the period
>
> (A) commencing at the end of that other corporation's last taxation year ending before the election time, and
>
> (B) ending at the election time,
>
> determined at the end of that other corporation's last taxation year ending before the election time
>
> does not exceed $750,000 or, where the bond is issued after 1981, $1,000,000;

All that portion of para. 15.1(3)(b) ("qualifying debt obligation") preceding subpara. (i) amended by 1984, c.1, s. 62, to substitute "1986" for "1984".

Subpara. 15.1(2)(d)(iii) substituted by 1980-81-82-83, c. 140, subsec. 8(1), applicable with respect to small business development bonds issued after 1981. Subpara. 15.1(2)(d)(iii) formerly read:

> (iii) all or substantially all of the proceeds from the issue of an obligation issued in circumstances described in clauses (3)(b)(iv)(A) to (C) were not used by the issuer in the financing of its business carried on immediately before the time of its issuance

All that portion of para. 15.1(3)(a) ("eligible small business corporation") following subpara. (iv) substituted by 1980-81-82-83, c. 140, subsec. 8(2), to add the words "or, where the bond is issued after 1981, $1,000,000".

All that portion of para. 15.1(3)(b) ("qualifying debt obligation") preceding subpara. (i) and all that portion of subpara. 15.1(3)(b)(iii) preceding cl. (D) substituted by 1980-81-82-83, c. 140, subsecs. 8(3), (4), to change references to read "February 1, 1982" from "1982" and to change "of" to "assigned by" in cl. (B).

Para. 15.1(3)(c) ("small business development bond") substituted by 1980-81-82-83, c. 140, subsec. 8(5). That para. formerly read:

> (c) "small business development bond" at any time means an obligation that is at that time a qualifying debt obligation issued by a Canadian-controlled private corporation in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and the date this section comes into force;

Subsec. 15.1(9) added by 1980-81-82-83, c. 140, subsec. 8(6), applicable with respect to small business development bonds issued after November 12, 1981.

Subsecs. 15.1(10)–(12) added by 1980-81-82-83, c. 140, subsec. 8(6). Subsecs. 15.1(10), (11) are applicable with respect to obligations issued after December 11, 1979.

S. 15.1 added by 1980-81-82-83, c. 48, s. 8, applicable after December 11, 1979.

Definitions [s. 15.1]: "active business", "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "borrowed money", "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible small business corporation" — 15.1(3); "individual" — 248(1); "issuer" — 15.1(2); "joint election" — 15.1(3); "majority interest partner", "Minister", "person", "prescribed", "principal amount", "property" — 248(1); "qualifying debt obligation" — 15.1(3); "related group" — 251(4); "small business bond" — 15.2(3), 248(1); "small business corporation" — 248(1); "small business development bond" — 15.1(3), 248(1); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 15.1]: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-507R: Small business development bonds and small business bonds.

15.2 (1) Interest on small business bond — Any amount received by a taxpayer as or on account of interest on a small business bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend from a taxable Canadian corporation.

Related Provisions: 15(3) — Parallel rule for income bonds; 15.1(1) — Parallel rule for small business development bonds.

(2) Rules for small business bonds — Where an individual or a partnership (in this section referred to as the "issuer") has issued an obligation that is at any time a small business bond, notwithstanding any other provision of this Act,

(a) in computing the issuer's income for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed in computing the issuer's income) as or on account of interest on the bond in respect of a period that includes that time; and

(b) for any taxation year that includes a period throughout which the obligation was a small business bond but

(i) the issuer was not an eligible issuer, or

(ii) all or substantially all of the proceeds from the issue of the obligation were not used by the issuer in the financing of an active business carried on by the issuer in Canada immediately before the time of the issue of the obligation,

there shall be added to the tax otherwise payable under this Part by the issuer for that taxation year an amount equal to 29% of the amount of interest paid or payable (depending on the method regularly followed in computing the issuer's income) in respect of the bond for that period.

(3) Definitions — In this section,

"eligible issuer" at any time means

(a) an individual (other than a trust) who is resident in Canada and who

(i) has not made a joint election before that time in respect of a small business bond,

(ii) is not a majority interest partner of a partnership that has made a joint election before that time in respect of a small business bond, and

(iii) neither controls nor is a member of a related group that controls

(A) a corporation that has made a joint election before that time in respect of a small business development bond, or

(B) a corporation that is associated with a corporation referred to in clause (A), or

(b) a partnership

(i) each member of which is an individual (other than a trust) who is resident in Canada,

(ii) each majority interest partner, if any, of which is an eligible issuer, and

(iii) that has not made a joint election before that time in respect of a small business bond;

"joint election" means an election that is made in prescribed form, containing prescribed information, jointly by the issuer of an obligation and the person who is the holder of the obligation at the time of the election, that is filed with the Minister by the holder and in which the holder and the issuer elect that the provisions of this section apply with respect to that obligation;

Related Provisions: 96(3) — Election by partners.

Forms: T2218: Joint election for a small business bond.

"majority interest partner" — [Repealed]

History: The definition "majority interest partner" in subsec. 15.2(3) repealed by 1998, c. 19, s. 77, applicable after April 26, 1995. The definition formerly read:

"majority interest partner" of a partnership means a taxpayer who, if subsection 97(3.1) applied to this section, would be deemed to be a majority interest partner of the partnership;

"qualifying debt obligation" of an issuer at a particular time means an obligation that is a bill, note, mortgage or similar obligation issued after February 25, 1992 and before 1995,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than 5 years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than 5 years before the particular time,

if the obligation is issued

(d) as part of a proposal to, or an arrangement with, the issuer's creditors that has been approved by a court under the *Bankruptcy and Insolvency Act*,

(e) at a time when all or substantially all of the issuer's assets are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(f) at a time when, because of financial difficulty, the issuer is in default, or could reasonably be expected to default, on a debt incurred in the course of the issuer's business and held by a person with whom the issuer was dealing at arm's length or, where the issuer is a partnership, by a person with whom each member of the partnership was dealing at arm's length, and it is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt,

and the funds from the issue of the obligation are used in Canada in a business of the issuer carried on immediately before the time of issue;

"small business bond" at any time means

(a) an obligation that is at that time a qualifying debt obligation, issued by an individual or a partnership, in respect of which a joint election was made within 90 days after its issue date, or

(b) an obligation that is at that time a qualifying debt obligation issued by an individual or a partnership if

(i) it is reasonable to consider that the issuer and the holder of the obligation intended that this section apply to the obligation, having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the issuer and the holder have treated the obligation for the purposes of this Act, and

(ii) the holder files with the Minister a joint election in respect of the obligation within 90 days after the date of notification by the Minister that a joint election in respect of the obligation has not been filed under paragraph (a).

Related Provisions: 96(3) — Election by partners; 248(1)"small business bond" — Definition applies to entire Act.

Forms: T2218: Joint election for a small business bond.

(4) Status of interest — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(5) False declaration — Where the Minister establishes that an issuer has knowingly or under circumstances amounting to gross negligence made a false declaration in a joint election in respect of an obligation, the reference in paragraph (2)(b) to "29%" shall, in respect of the obligation, be read as a reference to "87%".

(6) Partnerships — For the purpose of paragraph (2)(b), in the case of an issuer that is a partnership, the expression "tax otherwise payable under this Part by the issuer" shall be read as a reference to the "tax otherwise payable under this Part by each member of the partnership" and each member shall add to that member's tax otherwise payable under this Part for the taxation year that includes the period described in paragraph (2)(b) the amount that can reasonably be regarded as that member's share of the amount determined under that paragraph with respect to the partnership.

(7) Deemed eligible issuer — Where, but for subparagraphs (a)(i), (ii) and (iii) and (b)(ii) of the definition "eligible issuer" in subsection (3), an individual or a partnership would be an "eligible issuer", the individual or partnership shall be deemed to be an eligible issuer in respect of a small business bond at any time where the issue price of the bond does not exceed the amount, if any, by which

(a) $500,000

exceeds

(b) where the issuer is an individual, the total of all amounts each of which is the principal amount outstanding immediately after that time in respect of

(i) another obligation that is a small business bond issued by

(A) the individual, or

(B) a partnership of which the individual is a majority interest partner, or

(ii) a small business development bond issued by

(A) a corporation that is controlled by the individual or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A), or

(c) where the issuer is a partnership, the total of all amounts each of which is the principal amount outstanding immediately after that time in respect of

(i) another obligation that is a small business bond issued by

(A) the partnership,

(B) an individual who is a majority interest partner of the partnership, or

(C) a partnership of which the individual referred to in clause (B) is a majority interest partner, or

(ii) a small business development bond issued by

(A) a corporation that is controlled by the individual referred to in clause (i)(B) or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A).

History [s. 15.2]: The opening words of the definition of "qualifying debt obligation" in subsec. 15.2(3) amended by 1994, c. 8, subsec. 2(1), applicable to obligations issued after 1992; and, for the purposes of the definition "small business bond" in subsec. 15.2(3), an election made before August 11, 1994 in respect of an obligation issued after 1992 and before 1995 shall be deemed to have been made within 90 days after the day the obligation was issued. The opening words formerly read:

"qualifying debt obligation" of an issuer at a particular time means an obligation that is a bill, note, mortgage or similar obligation issued after November 12, 1981 and before 1988 or after February 25, 1992 and before 1993,

S. 15.2 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 6 applicable with respect to obligations issued after February 25, 1992. For the purposes of the definition "small business bond" in subsec. 15.2(3), an election made in respect of an obligation after February 25, 1992 and before September 9, 1993, shall be deemed to have been made within 90 days after the day the obligation was issued. S. 15.2 formerly read:

15.2 (1) Small business bond — Any amount received by a taxpayer as or on account of interest in respect of a small business bond shall, except for the purposes of Part IV, be deemed to have been received as a taxable dividend from a taxable Canadian corporation.

(2) Idem — Where an individual or partnership (in this section referred to as the "issuer") has issued an obligation that is at any time a small business bond, notwithstanding any other provision of this Act, the following rules apply:

(a) in computing the income of the issuer for a taxation year, no deduction shall be made in respect of any amount paid or payable (depending on the method regularly followed by the issuer in computing its income) for a period that includes that time as or on account of interest on the bond; and

(b) for any taxation year that includes a period throughout which the obligation was a small business bond but

(i) the issuer was not an eligible issuer, or

(ii) all or substantially all of the proceeds from the issue of an obligation issued in circumstances described in paragraph (d) of the definition "qualifying debt obligation" in subsection(3) were not used by the eligible issuer in the financing of an active business carried on by it in Canada immediately before the time of the issuance of the obligation,

there shall be added to the tax otherwise payable by the issuer for that taxation year an amount equal to 34% of the amount of interest paid or payable (depending on the method regularly followed by the issuer in computing its income) in respect of the bond for that period.

(3) Definitions — In this section,

"eligible issuer" means

(a) an individual (other than a trust) resident in Canada who has not, or is not a majority interest partner (within the meaning assigned by subsection 97(3.1)) of a partnership that has, previously made a joint election in respect of a small business bond or who does not control or is not a member of a related group that controls a corporation that has previously made a joint election in respect of a small business development bond, or

(b) a partnership, all the members of which are individuals who are eligible issuers under paragraph (a);

"joint election" means an election made in prescribed form jointly by the issuer of an obligation and the person who is the holder of the obligation at the election time and filed with the Minister by the holder in which the issuer and the holder elect that the provisions of this section apply with respect to that obligation and in which the issuer declares that

(a) it is an eligible issuer, and

(b) the requirements of paragraph (d) of the definition "qualifying debt obligation" in this subsection have been met;

"qualifying debt obligation" of an individual or a partnership at any time means an obligation that is a bill, note, mortgage or similar obligation issued after November 12, 1981 and before 1988,

(a) the principal amount of which is not less than $10,000 or more than $500,000,

(b) that is issued for a term of not more than five years and, except in the event of a failure or default under the terms or conditions of the obligation, not less than one year, and

(c) that was issued not more than five years before that time

if

(d) the obligation is issued

(i) as part of a proposal to, or an arrangement with, the individual's or partnership's creditors, as the case may be, that has been approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of the individual's or partnership's assets, as the case may be, are under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the individual or partnership is in default, or could reasonably be expected to default, on a debt incurred in the course of the business of the individual or partnership, as the case may be, and held by a person with whom the individual or each member of the partnership was dealing at arm's length and it is issued, in whole or in part, directly or indirectly in exchange or substitution for that debt,

and the funds from the issuance thereof are used in Canada in a business of the individual or partnership carried on immediately before the time of issuance;

"small business bond" at any time means an obligation that is at that time a qualifying debt obligation issued by an individual or partnership in respect of which a joint election was made at a particular time that is within 90 days after the later of its issue date and March 30, 1983.

(4) Presumption — Notwithstanding any other provision of this Act, an amount paid or payable by a taxpayer pursuant to a legal obligation to pay interest on borrowed money used for the purpose of acquiring a small business bond shall be deemed to be an amount paid or payable, as the case may be, on borrowed money used for the purpose of earning income from a business or property.

(5) False declaration — Where an issuer knowingly or under circumstances amounting to gross negligence makes a false declaration in a joint election in respect of an obligation, the reference in paragraph (2)(b) to "34%" shall be read as a reference to "102%".

(6) Partnerships — For the purposes of paragraph (2)(b), in the case of an issuer that is a partnership, the expression "tax otherwise payable by the issuer" shall be read as a reference to the "tax otherwise payable by each member of the partnership" and each member shall add to the member's tax otherwise payable for the taxation year that includes the period described in paragraph (2)(b) the amount that can reasonably be regarded as the member's share of

the amount determined under that paragraph with respect to the partnership.

(7) Deemed eligible issuer — Where an individual, a partnership of which the individual is a majority interest partner (within the meaning assigned by subsection 97(3.1)) or a corporation that is controlled by

(a) the individual,

(b) a related group of which the individual is a member, or

(c) a member of the partnership who is a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1))

has previously made a joint election in respect of a small business bond or, in the case of a corporation, a small business development bond, the individual and any partnership of which the individual is a majority interest partner (within the meaning assigned by subsection 97(3.1)) shall be deemed to be an eligible issuer in respect of any additional small business bond that the individual or partnership may issue at any particular time after May 23, 1985 if at the particular time the issue price of such additional bond does not exceed the amount, if any, by which

(d) $500,000

exceeds,

(e) where the issuer is an individual, the total of all amounts each of which is the principal amount outstanding at that particular time in respect of

(i) another small business bond issued

(A) before the particular time by the individual, or

(B) at or before the particular time by a partnership of which the individual is a majority interest partner (within the meaning assigned by subsection 97(3.1)), or

(ii) a small business development bond issued at or before the particular time by

(A) a corporation that is controlled by the individual, or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A), or

(f) where the issuer is a partnership, the total of all amounts each of which is the principal amount outstanding at that particular time in respect of

(i) another small business bond issued

(A) before the particular time by the partnership, or

(B) at or before the particular time by an individual who is a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1)), or

(ii) a small business development bond issued at or before the particular time by

(A) a corporation that is controlled by the individual referred to in clause (i)(B) or by a related group of which the individual is a member, or

(B) a corporation that is associated with a corporation referred to in clause (A).

(8) Presumption — Notwithstanding the definition "small business bond" in subsection (3), where the holder of a qualifying debt obligation issued by an individual or a partnership has not filed with the Minister a joint election within the time referred to in the definition, the obligation shall be deemed to be a small business bond if

(a) it is reasonable to consider that the issuer and the holder intended that this section would apply to the obligation having regard to such factors as may be relevant, including the rate of interest stipulated under the terms of the obligation and the manner in which the issuer and the holder have treated the obligation for the purposes of this Act; and

(b) the holder files with the Minister a joint election within 90 days after the date of notification by the Minister that a joint election in respect of the obligation has not been filed pursuant to the definition "small business bond" in subsection (3).

(9) Penalty — For the purpose of subsection 163(3), where an amount is added to the tax otherwise payable by an issuer by virtue of subsection (5), the amount shall be deemed to be a penalty assessed by the Minister under section 163.

Subpara. (d)(i) of "qualifying debt obligation" in subsec. 15.2(3) amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Pre-RSC History [s. 15.2]: *Before amendment by 1993, c. 24, the definition "qualifying debt obligation" was para. 15.2(3)(a); "small business bond", para. (b); "joint election", para. (c); and "eligible issuer", para. (d).*

Subsec. 15.2(2) amended by 1986, c. 6, subsec. 11(1), applicable after June 30, 1985, to substitute in that portion preceding para. (a), "issued an obligation that is at any time a small business bond" for "issued a small business bond"; in para. (a), "paid or payable (depending on the method regularly followed by the issuer in computing its income) for a period that includes that time" for "paid or payable"; in para. (b), "a period throughout which the obligation was a small business development bond but" for "a period during which"; and in that portion following para. (b), "interest paid or payable (depending on the method regularly followed by the issuer in computing its income)" for "interest payable".

All that portion of para. 15.2(3)(a) preceding subpara. (iii) amended by 1986, c. 6, subsec. 11(2), to substitute "any time" for "any particular time" and "1988" for "1986" and to add subpara. (ii.1), applicable after June 1985.

Subsec. 15.2(7) amended by 1986, c. 6, subsec. 11(3), applicable with respect to obligations issued after May 23, 1985, to substitute the heading "Deemed eligible issuer" for "Presumption"; to substitute in that portion following para. (c), "may issue at any particular time after May 23, 1985 if at the particular time" for "may issue if at the particular time of its issue"; in paras. (e) and (f) to substitute "the principal amount outstanding at that particular time in respect of" for "the issue price of"; and to substitute "or" for "and" at the end of subpara. (f)(i).

All that portion of para. 15.2(3)(a) preceding subpara. (i) substituted by 1984, c. 1, s. 7, to substitute "1986" for "1984".

S. 15.2 added by 1980-81-82-83, c. 140, s. 9, applicable with respect to obligations issued after November 12, 1981.

Definitions [s. 15.2]: "active business", "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "borrowed money", "business" — 248(1); "Canada" — 255; "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible issuer" — 15.2(3); "individual" — 248(1); "issuer" — 15.2(2); "joint election" — 15.2(3); "majority interest partner", "Minister", "person", "prescribed", "principal amount", "property" — 248(1); "qualifying debt obligation" — 15.2(3); "related group" — 251(4); "resident in Canada" — 250; "small business bond" — 15.2(3), 248(1); "small business development bond" — 15.1(3), 248(1); "tax otherwise payable under this Part" — 15.2(6); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 15.2]: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-507R: Small business development bonds and small business bonds.

16. (1) Income and capital combined — Where, under a contract or other arrangement, an amount can reasonably be regarded as being in part interest or other amount of an income nature and in part an amount of a capital nature, the following rules apply:

(a) the part of the amount that can reasonably be regarded as interest shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be deemed to be interest on a debt obligation held by the person to whom the amount is paid or payable; and

(b) the part of the amount that can reasonably be regarded as an amount of an income nature, other than interest, shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be included in the income of the taxpayer to whom the amount is paid or payable for the taxation year in which the amount was received or became due to the extent it has not otherwise been included in the taxpayer's income.

Related Provisions: 12(1)(c) — Interest income; 12(1)(g) — Amount fully taxable where based on production or use; 12(3) — Accrual of interest income; 16(4), (5) — Application of subsec. (1); 138(12) — "Gross investment revenue" of an insurer; 214(2) — Tax on non-residents.

Pre-RSC History: Subsec. 16(1) substituted by 1988, c. 55, s. 9, applicable with respect to amounts paid or payable after June 1988. Subsec. 16(1) formerly read:

> 16. (1) **Income and capital combined** — Where a payment under a contract or other arrangement can reasonably be regarded as being in part a payment of interest or other payment of an income nature and in part a payment of a capital nature, the part of the payment that can reasonably be regarded as a payment of interest or other payment of an income nature shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be included in computing the recipient's income from property for the taxation year in which it was received to the extent that it was not otherwise included in computing the recipient's income.

Subsec. 16(1) substituted by 1980-81-82-83, c. 140, subsec. 10(1), applicable to 1981 *et seq.* Subsec. 16(1) formerly read:

> 16. (1) Where a payment under a contract or other arrangement can reasonably be regarded as being in part a payment of interest or other payment of an income nature and in part a payment of a capital nature, the part of the payment that can reasonably be regarded as a payment of interest or other payment of an income nature shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be included in computing the recipient's income from property.

Selected Cases [subsec. 16(1)]: *West Hill Redevelopment Co. v. MNR*, [1991] 2 C.T.C. 83 (FCTD) (Where plaintiff sold condominiums and took back mortgages at below-market interest rates, excess of face value of mortgages over fair market value not interest under subsection 16(1)); *Alepin v. The Queen*, [1979] C.T.C. 360 (FCTD) (Absent agreement to contrary, amounts received apply first to arrears of interest); *Rodmon Construction Inc. v. The Queen*, [1975] C.T.C. 73 (FCTD) (Not reasonable to regard payments as part interest where loan is interest free); *Vanwest Logging Co. Ltd. v. MNR*, [1971] C.T.C. 199 (Exch.) (Subsection 7(1) [now subsection 16(1)] inapplicable to amount paid by instalments without interest; taxpayer's intention relevant).

Regulations: 201(1)(d) (information return).

Interpretation Bulletins: IT-233R: Lease-option agreements; sale-leaseback agreements; IT-265R3: Payments of income and capital combined; IT-365R2: Damages, settlements and similar receipts; IT-396R: Interest income.

Forms: T5 Segment; T5 Summ: Return of investment income; T5 Supp: Statement of investment income.

(2) Obligation issued at discount — Where, in the case of a bond, debenture, bill, note, mortgage or similar obligation issued after December 20, 1960 and before June 19, 1971 by a person exempt from tax under section 149, a non-resident person not carrying on business in Canada, or a government, municipality or municipal or other public body performing a function of government,

(a) the obligation was issued for an amount that is less than the principal amount of the obligation,

(b) the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount thereof, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(ii) the amount outstanding from time to time as or on account of the principal amount thereof, in any other case,

is less than 5%, and

(c) the yield from the obligation, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) exceeds the annual rate determined under paragraph (b) by more than 1/3 thereof,

the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation who is a resident of Canada and is not a person exempt from tax under section 149 or a government, for the taxation year of the owner of the obligation in which he, she or it became the owner thereof.

Related Provisions: 16(5) — Application of subsec. 16(1); 53(1)(g) — Addition to adjusted cost base; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution.

Pre-RSC History: All that portion of subsec. 16(2) preceding para. (a) substituted by 1973-74, c. 14, s. 3, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-265R3: Payments of income and capital combined.

(3) Idem — Where, in the case of a bond, debenture, bill, note, mortgage or similar obligation (other than an obligation that is a prescribed debt obligation for the purpose of subsection 12(9)) issued after June 18, 1971 by a person exempt, because of section 149, from Part I tax on part or all of the person's income, a non-resident person not carrying on business in Canada or a government, municipality or municipal or other public body performing a function of government,

(a) the obligation was issued for an amount that is less than the principal amount of the obligation, and

(b) the yield from the obligation, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) exceeds 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount of the obligation, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(ii) the amount outstanding from time to time as or on account of the principal amount thereof, in any other case,

the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation

(c) who is resident in Canada,

(d) who is not a government nor a person exempt, because of section 149, from tax under this Part on all or part of the person's taxable income, and

(e) of whom the obligation is a capital property,

for the taxation year in which the owner acquired the obligation.

Related Provisions: 16(5) — Application of subsec. 16(1); 20(14) — Treatment of accrued bond interest; 53(1)(g) — Addition to adjusted cost

base; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution.

History: All that portion of subsec. 16(3) after para. (b) substituted by 1994, c. 21, s. 10, applicable to 1990 *et seq.* That portion formerly read:

> the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation who is a resident of Canada and is not a person exempt from tax under section 149 or a government, for the taxation year of the owner of the obligation in which he, she or it became the owner thereof.

That portion of subsec. 16(3) preceding para. (a) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 7(1), applicable to 1991 *et seq.* That portion formerly read:

> (3) Idem — Where, in the case of a bond, debenture, bill, note, mortgage or similar obligation issued after June 18, 1971 by a person exempt from tax under section 149, a non-resident person not carrying on business in Canada, or a government, municipality or municipal or other public body performing a function of government,

Regulations: 7000(1) (prescribed debt obligation).

Interpretation Bulletins: IT-265R3: Payments of income and capital combined.

(4) Where subsec. (1) does not apply — Subsection (1) does not apply to any amount received by a taxpayer in a taxation year

(a) as an annuity payment; or

(b) in satisfaction of the taxpayer's rights under an annuity contract.

Pre-RSC History: Para. 16(4)(b) substituted by 1980-81-82-83, c. 140, subsec. 10(2), applicable with respect to dispositions occurring after November 12, 1981. Para. 16(4)(b) formerly read:

> (b) in satisfaction of the rights of the taxpayer under a life annuity contract, as defined by regulation.

Subsec. 16(4) substituted by 1977-78, c. 1, s. 9, applicable to any amount received after March 31, 1978. Subsec. 16(4) formerly read:

> (4) Subsection (1) does not apply to any amount received by a taxpayer in a taxation year
>
> (a) as an annuity payment;
>
> (b) as a refund of premiums or contributions paid by the holder of a life annuity contract, as defined by regulation, upon the death of such holder; or
>
> (c) in satisfaction of the rights of the taxpayer under a life annuity contract, as defined by regulation, that was entered into before June 14, 1963 except to the extent that the amount so received, exceeds the aggregate of
>
> (i) the value of his rights under the contract on the second anniversary date of the contract to occur after October 22, 1968, and
>
> (ii) the aggregate of premiums paid by the taxpayer under the contract after the said second anniversary date.

(5) Idem — Subsection (1) does not apply in any case where subsection (2) or (3) applies.

(6) Indexed debt obligations — Subject to subsection (7) and for the purposes of this Act, where at any time in a taxpayer's taxation year

(a) an interest in an indexed debt obligation is held by the taxpayer,

(i) an amount determined in prescribed manner shall be deemed to be received and receivable by the taxpayer in the year as interest in respect of the obligation, and

(ii) an amount determined in prescribed manner shall be deemed to be paid and payable in respect of the year by the taxpayer as interest under a legal obligation of the taxpayer to pay interest on borrowed money used for the purpose of earning income from a business or property;

(b) an indexed debt obligation is an obligation of the taxpayer,

(i) an amount determined in prescribed manner shall be deemed to be payable in respect of the year by the taxpayer as interest in respect of the obligation, and

(ii) an amount determined in prescribed manner shall be deemed to be received and receivable by the taxpayer in the year as interest in respect of the obligation; and

(c) the taxpayer pays or credits an amount in respect of an amount determined under subparagraph (b)(i) in respect of an indexed debt obligation, the payment or crediting shall be deemed to be a payment or crediting of interest on the obligation.

Related Provisions: 20(1)(c) — Interest deduction; 53(1)(g.1) — Addition to adjusted cost base; 53(2)(l.1) — Deduction from adjusted cost base; 138(12)"gross investment revenue"G(a) — Gross investment revenue of insurer; 142.3(2) — Indexed debt obligation not subject to rules re income from specified debt obligations; 142.4(1)"tax basis"(e), (n) — Disposition of specified debt obligation by financial institution; 214(7) — Sale of obligation by non-resident.

History: The opening words of subsec. 16(6) amended by 1998, c. 19, subsec. 78(1), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The opening words formerly read:

> (6) For the purposes of this Act, where at any time in a taxpayer's taxation year

Subsec. 16(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 7(2), applicable to debt obligations issued after October 16, 1991.

Regulations: 7001 (amounts determined in prescribed manner).

(7) Impaired indexed debt obligations — Paragraph (6)(a) does not apply to a taxpayer in respect of an indexed debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(l)(ii) in computing the taxpayer's income for the year.

History: Subsec. 16(7) added by 1998, c. 19, subsec. 78(2), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

Definitions [s. 16]: "amount", "annuity", "borrowed money", "business" — 248(1); "Canada" — 255; "capital property" — 54, 248(1); "indexed debt obligation", "non-resident", "prescribed" — 248(1); "prescribed debt obligation" — Reg. 7000(1); "principal amount", "property" — 248(1); "received" — 248(7); "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 16]: IT-265R3: Payments of income and capital combined.

16.1 (1) Leasing properties — Where a taxpayer (in this section referred to as the "lessee") leases tangible property (other than prescribed property) that would, if the lessee acquired the property, be depreciable property of the lessee, from a person resident in Canada other than a person whose taxable income is exempt from tax under this Part, or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this

Part, who owns the property and with whom the lessee was dealing at arm's length (in this section referred to as the "lessor") for a term of more than one year, if the lessee and the lessor jointly elect in prescribed form filed with their returns of income for their respective taxation years that include the particular time when the lease began, the following rules apply for the purpose of computing the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

(a) in respect of amounts paid or payable for the use of, or for the right to use, the property, the lease shall be deemed not to be a lease;

(b) the lessee shall be deemed to have acquired the property from the lessor at the particular time at a cost equal to its fair market value at that time;

(c) the lessee shall be deemed to have borrowed money from the lessor at the particular time, for the purpose of acquiring the property, in a principal amount equal to the fair market value of the property at that time;

(d) interest shall be deemed to accrue on the principal amount of the borrowed money outstanding from time to time, compounded semi-annually, not in advance, at the prescribed rate in effect

(i) at the earlier of

(A) the time, if any, before the particular time, at which the lessee last entered into an agreement to lease the property, and

(B) the particular time, or

(ii) where the lease provides that the amount payable by the lessee for the use of, or the right to use, the property varies according to prevailing interest rates in effect from time to time, and the lessee so elects, in respect of all of the property that is subject to the lease, in the lessee's return of income under this Part for the taxation year of the lessee in which the lease began, at the beginning of the period for which the interest is being calculated;

(e) all amounts paid or payable by or on behalf of the lessee for the use of, or the right to use, the property in the year shall be deemed to be blended payments, paid or payable by the lessee, of principal and interest on the borrowed money outstanding from time to time, calculated in accordance with paragraph (d), applied firstly on account of interest on principal, secondly on account of interest on unpaid interest and thirdly on account of unpaid principal, if any, and the amount, if any, by which any such payment exceeds the total of those amounts shall be deemed to be paid or payable on account of interest, and any amount deemed by reason of this paragraph to be a payment of interest shall be deemed to have been an amount paid or payable, as the case may be, pursuant to a legal obligation to pay interest in respect of the year on the borrowed money;

(f) at the time of the expiration or cancellation of the lease, the assignment of the lease or the sublease of the property by the lessee, the lessee shall (except where subsection (4) applies) be deemed to have disposed of the property at that time for proceeds of disposition equal to the amount, if any, by which

(i) the total of

(A) the amount referred to in paragraph (c), and

(B) all amounts received or receivable by the lessee in respect of the cancellation or assignment of the lease or the sublease of the property

exceeds

(ii) the total of

(A) all amounts deemed under paragraph (e) to have been paid or payable, as the case may be, by the lessee on account of the principal amount of the borrowed money, and

(B) all amounts paid or payable by or on behalf of the lessee in respect of the cancellation or assignment of the lease or the sublease of the property;

(g) for the purposes of subsections 13(5.2) and (5.3), each amount paid or payable by or on behalf of the lessee that would, but for this subsection, have been an amount paid or payable for the use of, or the right to use, the property shall be deemed to have been deducted in computing the lessee's income as an amount paid or payable by the lessee for the use of, or the right to use, the property after the particular time;

(h) any amount paid or payable by or on behalf of the lessee in respect of the granting or assignment of the lease or the sublease of the property that would, but for this paragraph, be the capital cost to the lessee of a leasehold interest in the property shall be deemed to be an amount paid or payable, as the case may be, by the lessee for the use of, or the right to use, the property for the remaining term of the lease; and

(i) where the lessee elects under this subsection in respect of a property and, at any time after the lease was entered into, the owner of the property is a non-resident person who does not hold the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part, for the purposes of this subsection the lease shall be deemed to have been cancelled at that time.

Related Provisions: 16.1(5) — Replacement property; 16.1(6) — Additional property; 16.1(7) — Renegotiation of lease; Reg. 1100(1.1)–(1.13) — CCA restrictions on leasing property.

History: The opening words of subsec. 16.1(1) amended by 1999, c. 22, s. 7, applicable to leases entered into by a taxpayer or partnership after 3:30 p.m., EDST, August 18, 1998, other than such leases entered into after that time pursuant to an agreement in writing

(a) made before that time under which the taxpayer or partnership was required to enter into the lease, and

(b) in respect of which there is no agreement or other arrangement under which the obligation of the taxpayer or partnership to enter into the lease can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act,

and for the purpose of this application, a lease in respect of which a material change has been agreed to by the parties to the lease, effective at any particular time that is after 3:30 p.m., EDST, August 18, 1998, is deemed to have been entered into at that particular time. The opening words formerly read:

16.1 (1) Where a taxpayer (in this section referred to as the "lessee") leases tangible property (other than prescribed property) that would, if the lessee acquired the property, be depreciable property of the lessee, from a person resident in Canada (or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part) who owns the property and with whom the lessee was dealing at arm's length (in this section referred to as the "lessor") for a term of more than one year, if the lessee and the lessor jointly elect in prescribed form filed with their returns of income under this Part for their respective taxation years that include the particular time when the lease began, the following rules apply for the purposes of com-

puting the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

That portion of subsec. 16.1(1) preceding para. (e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(1), applicable to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into under an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989,

except that, with respect to leases and subleases entered into after 10 p.m. EDST, April 26, 1989 and before June 12, 1989, the subsec. shall be read without reference to the words "resident in Canada (or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part)" and the words "and with whom the lessee was dealing at arm's length", and, with respect to leases and subleases entered into after June 11, 1989 and before July 13, 1990, the subsec. shall be read without reference to cl. (d)(i)(A), to the words "the earlier of" and to the words "any income from which is subject to tax under this Part". That portion of subsec. 16.1(1) formerly read:

16.1 (1) **Leasing properties** — Where, at any particular time, a taxpayer (in this section referred to as the "lessee") has leased tangible property (other than prescribed property) that would, if the lessee had acquired the property, have been depreciable property of the lessee, from a person resident in Canada (or from a person not resident in Canada where the lease is held in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation) who owns the property and with whom the lessee was dealing at arm's length (in this section referred to as the "lessor") for a term of more than one year, if the lessee and the lessor have jointly elected by filing the prescribed form with their returns of income under this Part for their respective taxation years that include the time at which the lease was entered into, the following rules apply for the purposes of computing the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

(a) the lease shall be deemed not to be a lease;

(b) the lessee shall be deemed to have acquired the property from the lessor at the particular time at a cost equal to its fair market value at that time;

(c) the lessee shall be deemed to have borrowed money from the lessor at the particular time, for the purpose of acquiring the property, in a principal amount equal to the fair market value of the property at that time;

(d) interest shall be deemed to accrue on the principal amount of the borrowed money outstanding from time to time, compounded semi-annually, not in advance, at the prescribed rate in effect at the particular time (or, where a particular lease provides that the amount paid or payable by the lessee for the use of, or the right to use, the property varies according to prevailing interest rates in effect from time to time, and the lessee so elects, in respect of all of the property that is subject to the particular lease, in the lessee's return of income under this Part for the taxation year of the lessee in which the particular lease was entered into, the prescribed rate that is in effect at the time the interest is being calculated);

Para. 16.1(1)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(2), applicable to leases and subleases entered into after June 11, 1989, other than

(a) leases entered into under an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989,

except that, with respect to such leases and subleases entered into before July 13, 1990, para. (i) shall be read without reference to the words "any income from which is subject to tax under this Part". Para. 16.1(1)(i) formerly read:

(i) where the lessee has made an election under this subsection in respect of a property and, at any time after the lease was entered into, the owner of the property is a person not resident in Canada (except where the person holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation), for the purposes of this subsection, the lease shall be deemed to have been cancelled at that time.

Pre-RSC History: See at end of s. 16.1.

Regulations: 1100(2)(a)(vi) — Half-year CCA rule inapplicable to property deemed acquired by 16.1(1)(b); 4302 (prescribed rate of interest for 16.1(1)(d)); 8200 (prescribed property); 8201 (permanent establishment).

Forms: T2145: Election in respect of the leasing of property.

(2) Assignments and subleases — Subject to subsections (3) and (4), where at any particular time a lessee who has made an election under subsection (1) in respect of a leased property assigns the lease or subleases the property to another person (in this section referred to as the "assignee"),

(a) subsection (1) shall not apply in computing the income of the lessee in respect of the lease for any period after the particular time; and

(b) if the lessee and the assignee jointly elect in prescribed form filed with their returns of income under this Part for their respective taxation years that include the particular time, subsection (1) shall apply to the assignee as if

(i) the assignee leased the property at the particular time from the owner of the property for a term of more than one year, and

(ii) the assignee and the owner of the property jointly elected under subsection (1) in respect of the property with their returns of income under this Part for their respective taxation years that include the particular time.

History: Para. 16.1(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(3), applicable to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into pursuant to an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989.

Para. 16.1(2)(b) formerly read:

(b) if the lessee and the assignee have jointly elected by filing the prescribed form with their returns of income under this Part for their respective taxation years that include the time at which the assignment or sublease was entered into, subsection (1) shall apply to the assignee as if the assignee leased the property at that time from the owner of the property for a term of more than one year.

Pre-RSC History: See at end of s. 16.1.

Forms: T2146: Election in respect of assigned leases or subleased property.

(3) Idem — Subject to subsection (4), where at any particular time a lessee who has made an election under subsection (1) in respect of a leased property assigns the lease or subleases the property to another person with whom the lessee is not dealing at arm's length, the other person shall, for the purposes of subsection (1) and for the purposes of computing that person's income in respect of the lease for any period after the particular time, be deemed to be the same person as, and a continuation of, the lessee, except that, notwithstanding paragraph (1)(b), that other person shall be deemed to have acquired the property from the lessee at the time that it was acquired by the lessee at a cost equal to the amount that would be the lessee's proceeds of disposition of the property determined under paragraph (1)(f) if that amount were determined without reference to clauses (1)(f)(i)(B) and (ii)(B).

(4) Amalgamations and windings-up — Notwithstanding subsection (2), where at any time a particular corporation that has made an election under subsection (1) in respect of a lease assigns the lease

(a) by reason of an amalgamation (within the meaning assigned by subsection 87(1)), or

(b) in the course of the winding-up of a Canadian corporation in respect of which subsection 88(1) applies,

to another corporation with which it does not deal at arm's length, the other corporation shall, for the purposes of subsection (1) and for the purposes of computing its income in respect of the lease after that time, be deemed to be the same person as, and a continuation of, the particular corporation.

(5) Replacement property — For the purposes of subsection (1), where at any time a property (in this subsection referred to as a "replacement property") is provided by a lessor to a lessee as a replacement for a similar property of the lessor (in this subsection referred to as the "original property") that was leased by the lessor to the lessee, and the amount payable by the lessee for the use of, or the right to use, the replacement property is the same as the amount that was so payable in respect of the original property, the replacement property shall be deemed to be the same property as the original property.

History: See under subsec. 16.1(7).

(6) Additional property — For the purposes of subsection (1), where at any particular time

(a) an addition or alteration (in this subsection referred to as "additional property") is made by a lessor to a property (in this subsection referred to as the "original property") of the lessor that is the subject of a lease,

(b) the lessor and the lessee of the original property have jointly elected under subsection (1) in respect of the original property, and

(c) as a consequence of the addition or alteration, the total amount payable by the lessee for the use of, or the right to use, the original property and the additional property exceeds the amount so payable in respect of the original property,

the following rules apply:

(d) the lessee shall be deemed to have leased the additional property from the lessor at the particular time,

(e) the term of the lease of the additional property shall be deemed to be greater than one year,

(f) the lessor and the lessee shall be deemed to have jointly elected under subsection (1) in respect of the additional property,

(g) the prescribed rate in effect at the particular time in respect of the additional property shall be deemed to be equal to the prescribed rate in effect in respect of the original property at the particular time,

(h) the additional property shall be deemed not to be prescribed property, and

(i) the excess referred to in paragraph (c) shall be deemed to be an amount payable by the lessee for the use of, or the right to use, the additional property.

History: See under subsec. 16.1(7).

Regulations: 4301(c) (prescribed rate for 16.1(6)(g)); 4302 (prescribed rate for 16.1(6)(d).

(7) Renegotiation of lease — For the purposes of subsection (1), where at any time

(a) a lease (in this subsection referred to as the "original lease") of property is renegotiated in the course of a *bona fide* renegotiation, and

(b) as a result of the renegotiation, the amount payable by the lessee of the property for the use of, or the right to use, the property is altered in respect of a period after that time (otherwise than because of an addition or alteration to which subsection (6) applies),

the original lease shall be deemed to have expired and the renegotiated lease shall be deemed to be a new lease of the property entered into at that time.

Related Provisions: 16(1) — Income and capital combined; 20(1)(c) — Deductions permitted — interest.

History: Subsecs. 16.1(5)–(7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 12(4), applicable to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into pursuant to an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee thereunder has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989.

Pre-RSC History: S. 16.1 added by 1990, c. 39, s. 7, applicable with respect to leases and subleases entered into after 10 p.m. EDST, April 26, 1989, other than

(a) leases entered into pursuant to an agreement in writing entered into at or before 10 p.m. EDST, April 26, 1989 under which the lessee has the right to require the lease of the property, and

(b) subleases of properties that are subject to leases described in paragraph (a) or to leases entered into at or before 10 p.m. EDST, April 26, 1989,

except that, with respect to leases and subleases entered into after 10 p.m. EDST, April 26, 1989 and before June 12, 1989, subsec. 16.1(1) shall be read without reference to para. (i), the words "resident in Canada (or from a person not resident in Canada where the lease is held in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation)", and the words "and with whom the lessee was dealing at arm's length".

Definitions [s. 16.1]: "amount" — 248(1); "arm's length" — 251(1); "borrowed money", "business" — 248(1); "Canada" — 255; "depreciable property" — 13(21), 248(1); "lessee", "lessor" — 16.1(1); "non-resident" — 248(1); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301, 4302; "principal amount", "property" — 248(1); "resident in Canada" — 250; "taxable income" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Regulations [s. 16.1]: 4302 (prescribed interest rate); 8200 (prescribed property).

17. (1) Amount owing by non-resident [deemed interest income] — Where, at any time in a taxation year of a corporation resident in Canada, a non-resident person owes an amount to the corporation, that amount has been or remains outstanding for more than a year and the total determined under paragraph (b) for the year is less than the amount of interest that would be included in computing the corporation's income for the year in respect of the amount owing if that interest were computed at a reasonable rate for the period in the year during which the amount was owing, the corporation shall include an amount in computing its income for the year equal to the amount, if any, by which

(a) the amount of interest that would be included in computing the corporation's income for the year in respect of the amount owing if that interest were computed at the prescribed rate for the period in the year during which the amount was owing

exceeds

(b) the total of all amounts each of which is

(i) an amount included in computing the corporation's income for the year as, on account of, in lieu of or in satisfaction of, interest in respect of the amount owing,

(ii) an amount received or receivable by the corporation from a trust that is included in computing the corporation's income for the year or a subsequent year and that can reasonably be attributed to interest on the amount owing for the period in the year during which the amount was owing, or

(iii) an amount that is included in computing the corporation's income for the year or a subsequent year under subsection 91(1) and that can reasonably be attributed to interest on the amount owing for the period in the year during which the amount was owing.

Related Provisions: 17(2)–(6) — Anti-avoidance rules; 17(7)–(9) — Exceptions; 17(10)–(15) — Interpretation.

History: See History at the end of s. 17.

Pre-RSC History: Former subsec. 17(1) substituted by 1985, c. 45, s. 8. Subsec. 17(1) formerly read:

> 17. (1) Loan to non-resident person — Where a corporation resident in Canada has loaned money to a non-resident person and the loan has remained outstanding for one year or longer without interest at a reasonable rate having been included in computing the lender's income, interest thereon, computed at a prescribed rate per annum for the taxation year or part of the year during which the loan was outstanding, shall, for the purpose of computing the lender's income, be deemed to have been received by the lender on the last day of each taxation year during all or part of which the loan has been outstanding.

Subsec. 17(1) substituted by 1977-78, c. 1, s. 10, applicable with respect to the computation of interest deemed to have been received by a lender after December 31, 1978, to substitute "a prescribed rate" for "5%".

Selected Cases [former subsec. 17(1)]: *Liampat Holdings v. Canada*, [1996] 3 C.T.C. 246 (FCTD) (Deemed interest never received allowed as bad debt); *Upper Lakes Shipping Ltd. v. MNR*, [1993] 1 C.T.C. 2011 (TCC) (5 per cent was reasonable rate of interest on loan made before 1979).

Regulations: 4301(c) (prescribed rate of interest for 17(1)(a)).

(2) Anti-avoidance rule — indirect loan — For the purpose of this section and subject to subsection (3), where

(a) a non-resident person owes an amount at any time to a particular person or partnership (other than a corporation resident in Canada), and

(b) it is reasonable to conclude that the particular person or partnership entered into the transaction under which the amount became owing or the particular person or partnership permitted the amount owing to remain outstanding because

(i) a corporation resident in Canada made a loan or transfer of property, or

(ii) the particular person or partnership anticipated that a corporation resident in Canada would make a loan or transfer of property,

either directly or indirectly, in any manner whatever, to or for the benefit of any person or partnership (other than an exempt loan or transfer),

the non-resident person is deemed at that time to owe to the corporation an amount equal to the amount owing to the particular person or partnership.

Related Provisions: 17(3) — Exception; 17(15)"exempt loan or transfer" — Definition.

(3) Exception to anti-avoidance rule — indirect loan — Subsection (2) does not apply to an amount owing at any time by a non-resident person to a particular person or partnership where

(a) at that time, the non-resident person and the particular person or each member of the particular partnership, as the case may be, are controlled foreign affiliates of the corporation resident in Canada; or

(b) at that time,

(i) the non-resident person and the particular person are not related or the non-resident person and each member of the particular partnership are not related, as the case may be,

(ii) the terms or conditions made or imposed in respect of the amount owing, determined without reference to any loan or transfer of property by a corporation resident in Canada described in paragraph (2)(b) in respect of the amount owing, are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into, and

(iii) if there were an amount of interest payable on the amount owing at that time that would be required to be included in computing the income of a foreign affiliate of the corporation resident in Canada for a taxation year, that amount of interest would not be required to be included in computing the foreign accrual property income of the affiliate for that year.

Related Provisions: 17(10), (12), (13), (15) — Definition of "controlled foreign affiliate"; 17(11), (11.1) — Meaning of "related"; 17(11.2) — Back-to-back loans — look-through rule.

Selected Cases [former subsec. 17(3)]: *Massey-Ferguson Ltd. v. The Queen*, [1977] C.T.C. 6 (FCA) (Subsection 19(3) [now subsection 17(3)] applies to loan made through subsidiary where latter's functions include genuine business purpose of financing group companies; interest not assessed to parent).

(4) Anti-avoidance rule — loan through partnership — For the purpose of this section, where a non-resident person owes an amount at any time to a partnership and subsection (2) does not deem the non-resident person to owe an amount equal to that amount to a corporation resident in Canada, the non-resident person is deemed at that time to owe to each member of the partnership, on the same terms as those that apply in respect of the amount owing to the partnership, that proportion of the amount owing to the partnership at that time that

(a) the fair market value of the member's interest in the partnership at that time

is of

(b) the fair market value of all interests in the partnership at that time.

(5) Anti-avoidance rule — loan through trust — For the purpose of this section, where a non-resident person owes an amount at any time to a trust and subsection (2) does not deem the non-resident person to owe an amount equal to that amount to a corporation resident in Canada,

(a) where the trust is a non-discretionary trust at that time, the non-resident person is deemed at that time to owe to each beneficiary of the trust, on the same terms as those that apply in respect of the amount owing to

the trust, that proportion of the amount owing to the trust that

(i) the fair market value of the beneficiary's interest in the trust at that time

is of

(ii) the fair market value of all the beneficial interests in the trust at that time; and

(b) in any other case, the non-resident person is deemed at that time to owe to each settlor in respect of the trust, on the same terms as those that apply in respect of the amount owing to the trust, an amount equal to the amount owing to the trust.

(6) Anti-avoidance rule — loan to partnership — For the purpose of this section, where a particular partnership owes an amount at any time to any person or any other partnership (in this subsection referred to as the "lender"), each member of the particular partnership is deemed to owe at that time to the lender, on the same terms as those that apply in respect of the amount owing by the particular partnership to the lender, that proportion of the amount owing to the lender that

(a) the fair market value of the member's interest in the particular partnership at that time

is of

(b) the fair market value of all interests in the particular partnership at that time.

(7) Exception — Subsection (1) does not apply in respect of an amount owing to a corporation resident in Canada by a non-resident person if a tax has been paid under Part XIII on the amount owing, except that, for the purpose of this subsection, tax under Part XIII is deemed not to have been paid on that portion of the amount owing in respect of which an amount was repaid or applied under subsection 227(6.1).

(8) Exception — Subsection (1) does not apply to a corporation resident in Canada for a taxation year of the corporation in respect of an amount owing to the corporation by a non-resident person if the non-resident person is a controlled foreign affiliate of the corporation throughout the period in the year during which the amount is owing and it is established that the amount owing

(a) arose as a loan or advance of money to the affiliate that the affiliate has used, throughout the period that began when the loan or advance was made and that ended at the earlier of the end of the year and the time at which the amount was repaid,

(i) for the purpose of earning

(A) income from an active business, as defined in subsection 95(1), of the affiliate, or

(B) income that was included in computing the income from an active business of the affiliate under subsection 95(2), or

(ii) for the purpose of making a loan or advance to another controlled foreign affiliate of the corporation where, if interest became payable on the loan or advance at any time in the period and the affiliate was required to include the interest in computing its income for a taxation year, that interest would not be required to be included in computing the affiliate's foreign accrual property income for that year; or

(b) arose in the course of an active business, as defined in subsection 95(1), carried on by the affiliate throughout the period that began when the amount owing arose and that ended at the earlier of the end of the year and the time at which the amount was repaid.

Related Provisions: 17(10), (12), (13), (15) — Definition of "controlled foreign affiliate"; 212(1)(b) — Part XIII (withholding) tax on interest payments to non-resident; 247(7) — Loan described in 17(3) not subject to transfer pricing rules.

(9) Exception — Subsection (1) does not apply to a corporation resident in Canada for a taxation year of the corporation in respect of an amount owing to the corporation by a non-resident person if

(a) the corporation is not related to the non-resident person throughout the period in the year during which the amount owing is outstanding;

(b) the amount owing arose in respect of goods sold or services provided to the non-resident person by the corporation in the ordinary course of the business carried on by the corporation; and

(c) the terms and conditions in respect of the amount owing are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into.

Related Provisions: 17(10), (12), (13), (15) — Definition of "controlled foreign affiliate"; 17(11), (11.1) — Meaning of "related".

(10) Determination of whether related and controlled foreign affiliate status — For the purpose of this section, in determining whether persons are related to each other and whether a non-resident corporation is a controlled foreign affiliate of a corporation resident in Canada at any time,

(a) each member of a partnership is deemed to own that proportion of the number of shares of a class of the capital stock of a corporation owned by the partnership at that time that

(i) the fair market value of the member's interest in the partnership at that time

is of

(ii) the fair market value of all interests in the partnership at that time; and

(b) each beneficiary of a non-discretionary trust is deemed to own that proportion of the number of shares of a class of the capital stock of a corporation owned by the trust at that time that

(i) the fair market value of the beneficiary's interest in the trust at that time

is of

(ii) the fair market value of all the beneficial interests in the trust at that time.

Related Provisions: 17(12), (13) — Determination of controlled foreign affiliate status.

(11) Determination of whether related — For the purpose of this section, in determining whether persons are related to each other at any time, each settlor in respect of a trust, other than a non-discretionary trust, is deemed to own the shares of a class of the capital stock of a corporation owned by the trust at that time.

Related Provisions: 17(11.1) — Limitation on meaning of "related".

Proposed Addition — 17(11.1)

(11.1) Determination of whether persons related — For the purpose of this section, in determining whether persons are related to each other at any time, any rights referred to in subparagraph 251(5)(b)(i) that exist at that time are deemed not to exist at that time to

the extent that the exercise of those rights is prohibited at that time under a law, of the country under the law of which the corporation was formed or last continued and is governed, that restricts the foreign ownership or control of the corporation.

(11.2) Back-to-back loans — For the purposes of paragraph (3)(b), where a non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "intermediate lender") makes a loan to a non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "intended borrower") because the intermediate lender received a loan from another non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "initial lender"), the loan that was made by the intermediate lender to the intended borrower is deemed to have been made by the initial lender (and not by the intermediate lender) to the intended borrower (to the extent of the lesser of the amount of the loan made by the initial lender to the intermediate lender and the amount of the loan made by the intermediate lender to the intended borrower) under the same terms and conditions and at the same time as it was made by the intermediate lender.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 6(1), will add subsecs. 17(11.1) and (11.2), applicable to taxation years that begin after February 23, 1998.

Technical Notes: Section 17 of the Act generally applies where a corporation resident in Canada has lent money to a non-resident and that loan remained outstanding for one year or longer without the corporation including interest on the loan, computed at a reasonable rate, in computing its income. Where subsection 17(1) applies, it treats the corporation as having received interest on the loan, computed at a prescribed rate, at the end of each taxation year during which the loan was outstanding.

Subsection 17(9) provides an exception to section 17 where the corporation resident in Canada and the non-resident are unrelated and various other conditions are met. Similarly, paragraph 17(3)(b) provides an exception in the case of an indirect loan to which section 17 would otherwise apply if the parties to the indirect loan are unrelated and various other conditions are met. In determining whether a person is related to a corporation, subparagraph 251(5)(b)(i) provides that a taxpayer that has a right to, or to acquire, some shares of the corporation is deemed to own those shares.

New subsection 17(11.1) provides that, in determining whether two persons are related to each other for the purpose of section 17, certain rights referred to in paragraph 251(5)(b) of the Act, such as rights to acquire shares of the capital stock of a corporation, are to be ignored to the extent that, under the laws of the country in which the corporation was formed or last continued or exists that govern foreign ownership or control of the corporation, the holder of the rights is prohibited from exercising the rights.

New subsection 17(11.2) provides a rule for back-to-back loans that is to apply for the purpose of paragraph 17(3)(b) of the Act. Where an initial lender makes a loan to an intermediate lender and that intermediate lender loans funds to the intended borrower because of that loan by the initial lender, the loan by the intermediate lender to the intended borrower is deemed to have been made by the initial lender and not by the intermediate lender to the extent of the loan made by the initial lender and under the terms and conditions established by the intermediate lender and the intended borrower.

These amendments to subsections 17(11.1) and (11.2) apply to taxation years that begin after February 23, 1998.

(12) Determination of controlled foreign affiliate status — For the purpose of this section, in determining whether a non-resident person is a controlled foreign affiliate of a corporation resident in Canada at any time, each settlor in respect of a trust, other than a non-discretionary trust, is deemed to own that proportion of the number of shares of a class of the capital stock of a corporation owned by the trust at that time that one is of the number of settlors in respect of the trust at that time.

(13) Extended definition of controlled foreign affiliate — For the purpose of this section, where, at any time, two corporations resident in Canada are related (otherwise than because of a right referred to in paragraph 251(5)(b)), any corporation that is a controlled foreign affiliate of one of the corporations at that time is deemed to be a controlled foreign affiliate of the other corporation at that time.

(14) Anti-avoidance rule — where rights or shares issued, acquired or disposed of to avoid tax — For the purpose of this section,

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation and it can reasonably be considered that the principal purpose for the existence of the right is to avoid or reduce the amount of income that subsection (1) would otherwise require any corporation to include in computing its income for any taxation year, those shares are deemed to be owned by that person or partnership; and

(b) where any person or partnership acquires or disposes of shares of the capital stock of a corporation, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition of the shares is to avoid or reduce the amount of income that subsection (1) would otherwise require any corporation to include in computing its income for any taxation year, those shares are deemed not to have been acquired or disposed of, as the case may be, and where the shares were unissued by the corporation immediately before the acquisition, those shares are deemed not to have been issued.

Related Provisions: 95(6) — Similar rule re foreign accrual property income.

(15) Definitions — The definitions in this subsection apply in this section.

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if paragraphs (d) and (e) of that definition read as follows:

"(d) one or more persons resident in Canada with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and one or more persons resident in Canada with whom the taxpayer does not deal at arm's length".

Proposed Amendment — 17(15)"controlled foreign affiliate"

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if this Act were read without reference to subsection 94.1(12) and if paragraphs (d) and (e) of that definition read as follows:

"(d) one or more persons resident in Canada with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and one or more persons resident in Canada with whom the taxpayer does not deal at arm's length."

Application: The June 22, 2000 draft legislation, s. 2, will amend the definition "controlled foreign affiliate" in subsec. 17(15) to read as above, applicable after 2000.

Technical Notes: Subsection 17(15) of the Act defines expressions that apply for the purposes of section 17, which provides rules under which imputed interest, in connection with debt owing to a taxpayer from a non-resident person, is included in computing the taxpayer's income. The expression "controlled foreign affiliate" is defined to have the same meaning as it does under subsection 95(1) of the Act, except that for the purpose of section 17 a non-resident corporation must be controlled by Canadian residents in order to be treated as a controlled foreign affiliate of a taxpayer resident in Canada.

The definition "controlled foreign affiliate" in subsection 17(15) is amended so that new subsection 94.1(12) does not apply for the purposes of section 17. Under that new subsection, an election is available so that a foreign affiliate of a taxpayer is treated as a controlled foreign affiliate of the taxpayer.

This amendment applies after 2000.

Related Provisions: 17(9) — Rules for determining CFA status; 17(10), (12), (13) — Extended meaning of controlled foreign affiliate.

"exempt loan or transfer" means a loan or transfer of property made by a corporation to a person or a partnership where

(a) at the time of the loan or transfer, the corporation was not related to the person or to any member of the partnership, as the case may be;

(b) the loan or transfer of property was not part of a series of transactions or events at the end of which the corporation was related to the person or to any member of the partnership, as the case may be; and

(c) the terms and conditions of the loan or transfer (determined without reference to any other loan or transfer of property to either a person related to the corporation or a partnership any member of which was related to the corporation) are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into.

Proposed Amendment — 17(15)"exempt loan or transfer"

"exempt loan or transfer" means

(a) a loan or transfer of property made by a corporation to a person or partnership where

(i) at the time of the loan or transfer, the corporation was not related to the person or to any member of the partnership, as the case may be,

(ii) the loan or transfer of property was not part of a series of transactions or events at the end of which the corporation was related to the person or to any member of the partnership, as the case may be, and

(iii) the terms and conditions of the loan or transfer (determined without reference to any other loan or transfer of property to either a person related to the corporation or to a partnership any member of which was related to the corporation) are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into;

(b) a dividend paid by a corporation resident in Canada on shares of a class of its capital stock; and

(c) a payment made by a corporation resident in Canada on a reduction of the paid-up capital in respect of shares of a class of its capital stock (not exceeding the total amount of the reduction).

Application: The June 5, Notice and Ways and Means Motion, subsec. 6(2), will amend the definition "exempt loan or transfer" in subsec. 17(15) to read as above, applicable to taxation years that begin after February 23, 1998.

Technical Notes: Subsection 17(15) of the Act contains definitions that apply for the purposes of section 17 of the Act, including the definition "exempt loan or transfer" which is relevant for the purpose of subsection 17(2) of the Act. Subsection 17(2) does not apply to an exempt loan or transfer of property.

The definition "exempt loan or transfer" is amended to include a transfer of property by a corporation resident in Canada by way of the payment of a dividend to a shareholder or the reduction of the paid-up capital of shares of the corporation.

This amendment applies to taxation years that begin after February 23, 1998.

"non-discretionary trust", at any time, means a trust in which all interests were vested indefeasibly at the beginning of the trust's taxation year that includes that time.

Related Provisions: 248(1)"non-discretionary trust" — Definition applies to entire Act; 248(9.2) — Meaning of "vested indefeasibly".

"settlor" in respect of a trust at any time means any person or partnership that has made a loan or transfer of property, either directly or indirectly, in any manner whatever, to or for the benefit of the trust at or before that time, other than, where the person or partnership deals at arm's length with the trust at that time,

(a) a loan made by the person or partnership to the trust at a reasonable rate of interest; or

(b) a transfer made by the person or partnership to the trust for fair market value consideration.

History: S. 17 amended by 1999, c. 22, s. 8, applicable to taxation years that begin after February 23, 1998 except that

(a) subsecs. 17(2) and (3) do not apply to taxation years that begin before 2000,

(b) in its application to such a taxation year that ends before March 10, 1999, subsec. 17(7) shall be read as follows:

"Subsection (1) does not apply in respect of an amount owing to a corporation resident in Canada by a non-resident person if a tax has been paid under Part XIII on the amount owing."

and

(c) in its application to a taxation year that includes March 10, 1999, the amount determined under subsec. 17(1) is deemed to be the amount that is equal to the total of

(i) the amount that would have been determined under that subsection if the taxation year had ended at the end of March 10, 1999 and if subsec. 17(7) had read as follows:

"Subsection (1) does not apply in respect of an amount owing to a corporation resident in Canada by a non-resident person if a tax has been paid under Part XIII on the amount owing."

and

(ii) the amount that would have been determined under subsec. 17(1) if the taxation year had begun immediately after the end of March 10, 1999.

The section formerly read:

17. (1) Loan to non-resident — Where a corporation resident in Canada has lent money to a non-resident person and the loan remained outstanding for one year or longer without interest on the loan computed at a reasonable rate having been included in computing the lender's income, the corporation shall be deemed to have received, on the last day of each taxation year during which the loan was outstanding, interest on the loan at the prescribed rate computed for the period in the taxation year during which it was outstanding.

(2) **Exception** — Subsection (1) does not apply if a tax has been paid on the amount of the loan under Part XIII.

(3) **Further exception** — Subsection (1) does not apply if the loan was made to a subsidiary controlled corporation and it is established that the money that was lent was used in the subsidiary corporation's business for the purpose of gaining or producing income.

Definitions: "active business", "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "class" — 248(6); "controlled foreign affiliate" — 17(10), (12), (13), (15); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "dividend" — 248(1); "exempt loan or transfer" — 17(15); "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "non-discretionary trust" — 17(15), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "related" — 17(10), (11), (11.1), 251(2)–(6); "resident", "resident in Canada" — 250; "settlor" — 17(15); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "vested indefeasibly" — 248(9.2).

Deductions

18. (1) General limitations — In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) **general limitation** — an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

Related Provisions: 7(3)(b) — No deduction to employer for cost of issuing stock options to employees; 18(1)(c) — Limitation re exempt income; 18(9) — Limitation re prepaid expenses; 19, 19.01, 19.1 — Limitations on deductions for advertising expenses; 20(1) — Deductions permitted; 20(16) — Terminal loss; 20.01 — Deduction allowed for private health services plan premiums; 21(1) — Cost of borrowed money; 67 — Unreasonable expenses not allowed; 67.1 — 50% limit on expenses for food and entertainment; Reg. 1102(1)(c) — No CCA unless property acquired for purpose of gaining or producing income.

Selected Cases [para. 18(1)(a)]: *Canadian Pacific Ltd. v. Ontario (Minister of Revenue)*, [2000] 2 C.T.C. 331 (Ont CA) (Capitalized value of future disability payments deductible as current expense); *Urbandale Realty Corp. v. MNR*, [2000] 2 C.T.C. 250 (FCA); rev'g [1997] 3 C.T.C. 6 (FCTD) (Matching principle not applied); *Buck Consultants Ltd. v. Canada*, [2000] 1 C.T.C. 93 (FCA); aff'g [1996] 3 C.T.C. 2016 (TCC) (Notional rent was neither paid nor payable); *65302 British Columbia Ltd. v. R.*, [2000] 1 C.T.C. 57 (SCC); rev'g [1998] 1 C.T.C. 131 (FCA); rev'g [1995] 2 C.T.C. 2294 (TCC) (Penalties incurred during income-earning process deductible); *St-Laurent v. R.*, [1999] 1 C.T.C. 2478 (TCC) (No new right created when legal expenses incurred to vary support order; fees deductible); *Northwood Pulp & Timber Ltd. v. R.*, [1999] 1 C.T.C. 53 (FCA); leave to appeal to SCC refused (1999), 242 N.R. 400 (note) (Estimated cost not the same as actual cost and cannot be included in cost of inventory); *Adams v. R.*, [1998] 2 C.T.C. 333 (FCA); rev'g [1996] 1 C.T.C. 2916 (TCC) (Tenant inducement payment by partners to themselves disallowed); *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes); *Sunys Petroleum Ltd. v. Canada*, [1996] 3 C.T.C. 2931 (TCC) ("Avoidable" penalties may not be deductible); *Thiele Drywall Inc. v. Canada*, [1996] 3 C.T.C. 2208 (TCC) (Nature of participation in tax evasion scheme was such that legal expenses to defend were not deductible); *Donohue Normick Inc. v. Canada*, [1995] E.T.C. 2158, 96 D.T.C. 6061 (FCA) (Checklist of factors for determining whether payment is capital or income in nature); *Société Immobilière SSQ Inc. v. MNR*, [1993] 1 C.T.C. 2029 (TCC) (Costs incurred by partnership before taxpayer's acquisition of interest therein not deductible; contracts not retroactive); *Xuereb (G.L.) v. Canada*, [1992] 2 C.T.C. 2132 (TCC) (Pre-incorporation start-up expenses deductible to taxpayer transferring business to corporation); *Moloney v. Canada*, [1992] 2 C.T.C. 227 (FCA); leave to appeal to SCC refused (1993), 154 N.R. 244 (note) (Sole purpose of activity was to obtain tax refunds, not to earn income); *Utah Mines Ltd. v. The Queen*, [1992] 1 C.T.C. 306 (FCA) (Deduction for mineral royalties paid to provincial government disallowed despite article III of *Canada-U.S. Tax Convention*); *Goulard v. MNR*, [1992] 1 C.T.C. 2396 (TCC) (Interest expenses in respect of share purchase arose from legal obligation to repay borrowed money for purpose of earning income); *Symes v. Canada*, [1991] 2 C.T.C. 1 (FCA); aff'd [1994] 1 C.T.C. 40 (SCC) (Child care expenses not business expenses; taxpayer not entitled to deduct such expenses in excess of statutory limits established in section 63); *Canada v. Young*, [1989] 1 C.T.C. 421 (FCA) (Cost of subscriptions to investment publications by portfolio owner/manager not deductible); *Morflot Freightliners Ltd. v. Canada*, [1989] 1 C.T.C. 413 (FCTD) (Amounts advanced by parent to subsidiary were capital outlays to preserve enduring asset); *Madronich v. MNR*, [1989] 1 C.T.C. 247 (FCTD) (Systematic tree farming with reasonable expectation of profit in 50 years was business).

Interpretation Bulletins: IT-80: Interest on money borrowed to redeem shares, or to pay dividends; IT-99R5: Legal and accounting fees; IT-104R2: Deductibility of fines or penalties; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-185R: Losses from theft, defalcation or embezzlement; IT-211R: Membership dues — associations and societies; IT-223: Overhead expense insurance vs. income insurance; IT-233R: Lease-option agreements; sale-leaseback agreements; IT-261R: Prepayment of rents; IT-265R3: Payments of income and capital combined; IT-316: Awards for employees' suggestions and inventions; IT-339R2: Meaning of "private health services plan"; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-348R: Costs incurred in conversion to metric measurement; IT-364: Commencement of business operations; IT-373R: Farm woodlots and tree farms; IT-389R: Vacation-with-pay plans established under collective agreements; IT-461: Forfeited deposits; IT-467R: Damages, settlements and similar payments; IT-475: Expenditures on research and for business expansion; IT-487: General limitation on deduction of outlays or expenses; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-525R: Performing artists.

Information Circulars: 77-11: Sales tax reassessments.

I.T. Technical News: No. 12 (meals and beverages at golf clubs); No. 16 (*Tonn*, *Mastri*, *Mohammad* and *Kaye* cases; *Scott* case).

Advance Tax Rulings: ATR-4: Exchange of interest rates; ATR-20: Redemption premium on debentures; ATR-21: Pension benefit from an unregistered pension plan; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan; ATR-50: Structured settlement.

Forms: T2032: Statement of professional activities; T2124: Statement of business activities; T2130: Reconciliation of net income per financial statements with net income for tax purposes.

(b) **capital outlay or loss** — an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

Related Provisions: 14(5)"eligible capital expenditure" — Definition includes amounts deductible under 20(1)(b); 20(1) — Deductions permitted; 20(10) — Convention expenses; 20(16) — Terminal loss; 24(1) — Ceasing to carry on business; 26(2) — Banks; 30 — Clearing land, levelling land and laying tile drainage; 37(1)(b) — Deductible R&D expenditures on capital.

Selected Cases [para. 18(1)(b)]: *Sherway Centre Ltd. v. Canada*, [1996] 3 C.T.C. 2687 (TCC) ("Participating" interest was not "interest"); *Park Royal Shopping Centre Limited v. Canada*, [1995] 2 C.T.C. 2117 (TCC) (Architect's fees for proposed contruction of building which was abandoned not deductible); *Boulangerie St-Augustine Inc. v. Canada*, [1995] 2 C.T.C. 2149 (TCC) (Cost of shareholder communications on take-over bid deductible); *Kamsel Leasing Inc. v. MNR*, [1993] 1 C.T.C. 2279 (TCC) (Agreement treated as "sale" not "lease" where option to acquire property at end of term substantially below probable market value).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-143R2: Meaning of "eligible capital expenditure"; IT-187: Purchase of customer lists and ledger accounts; IT-233R: Lease-option agreements; sale-leaseback agreements; IT-261R: Prepayment of rents; IT-285R2: Capital cost allowance — general comments; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-357R2: Expenses of training; IT-364: Commencement of business operations; IT-467R: Damages, settlements and similar payments; IT-475: Expenditures on research and for business expansion.

I.T. Technical News: No. 5 (lease agreements).

Advance Tax Rulings: ATR-20: Redemption premium on debentures; ATR-50: Structured settlement; ATR-59: Financing exploration and development through limited partnerships.

(c) **limitation re exempt income** — an outlay or expense to the extent that it may reasonably be re-

garded as having been made or incurred for the purpose of gaining or producing exempt income or in connection with property the income from which would be exempt;

Related Provisions: 81(1) — Exempt income; 248(1)"exempt income" — Definition excludes dividends and support amounts.

Interpretation Bulletins: IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-467R: Damages, settlements and similar payments.

(d) **annual value of property** — the annual value of property except rent for property leased by the taxpayer for use in the taxpayer's business;

Related Provisions: 20(1)(a) — Deduction for capital cost allowance.

(e) **reserves, etc.** — an amount as, or on account of, a reserve, a contingent liability or amount or a sinking fund except as expressly permitted by this Part;

Related Provisions: 20(1)(l), (l.1), (m), (m.1), (n), (o) — Reserves specifically allowed; 20(7)(c) — Policy reserves for insurance corporations; 20(26) — Deduction for unpaid claims reserve adjustment; 40(1)(a)(iii) — Capital gains reserve; 61.2–61.4 — Reserves re forgiven debt included in income; 138(3)(a)(ii) — Reserves in respect of life insurance claims; 248(1) — "Insurance policy" includes life insurance policy.

Pre-RSC History: Para. 18(1)(e) substituted by 1988, c. 55, subsec. 10(1), applicable to taxation years commencing after June 1988. Para. 18(1)(e) formerly read:

(e) reserves, etc. — an amount transferred or credited to a reserve, contingent account or sinking fund except as expressly permitted by this Part;

Selected Cases [para. 18(1)(e)]: *Canadian Pacific Ltd. v. Ontario (Minister of Revenue)*, [2000] 2 C.T.C. 331 (Ont CA) (Possible variation of future payments does not make liability contingent); *Fédération des caisses populaires Desjardins de Montréal & de l'ouest-de-Québec v. R.*, [2000] 1 C.T.C. 2620 (TCC) (Uncertainty ot obligation made estimate of liability a "reserve"); *Huang & Danczkay Ltd. v. MNR*, [1998] 3 C.T.C. 337 (FCTD) (Receivables brought into income only when income-earning process virtually complete); *Barbican Properties Inc. v. Canada*, [1997] 1 C.T.C. 2383 (FCA) (Deferred interest held to be contingent and not deductible); *Co-operators General Insurance Co. v. MNR*, [1993] 1 C.T.C. 2316 (TCC) (Contingent premiums not deductible expense "incurred").

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-215R: Reserves, contingent accounts and sinking funds; IT-321R: Insurance agents and brokers — unearned commissions; IT-442R: Bad debts and reserves for doubtful debts; IT-467R: Damages, settlements and similar payments; IT-518R: Food, beverages and entertainment expenses.

Advance Tax Rulings: ATR-50: Structured settlement.

(e.1) **unpaid claims under insurance policies** — an amount in respect of claims that were received by an insurer before the end of the year under insurance policies and that are unpaid at the end of the year, except as expressly permitted by this Part;

Related Provisions: 20(7)(c) — Policy reserves for insurance corporations; 20(26) — Deduction for unpaid claims reserve adjustment; 138(3)(a)(ii) — Reserves in respect of life insurance claims.

Pre-RSC History: Para. 18(1)(e.1) added by 1988, c. 55, subsec. 10(2), applicable to taxation years commencing after June 17, 1987 that end after 1987.

(f) **payments on discounted bonds** — an amount paid or payable as or on account of the principal amount of any obligation described in paragraph 20(1)(f) except as expressly permitted by that paragraph;

Interpretation Bulletins: IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-518R: Food, beverages and entertainment expenses.

(g) **payments on income bonds** — an amount paid by a corporation as interest or otherwise to holders of its income bonds or income debentures unless the bonds or debentures have been issued or the income provisions thereof have been adopted since 1930

(i) to afford relief to the debtor from financial difficulties, and

(ii) in place of or as an amendment to bonds or debentures that at the end of 1930 provided unconditionally for a fixed rate of interest;

Related Provisions: 15(3), (4) — Interest or dividend on income bond or debenture; 15.1(2)(a), 15.2(2)(a) — Parallel rules for small business development bonds and small business bonds.

Interpretation Bulletins: IT-52R4: Income bonds and debentures; IT-518R: Food, beverages and entertainment expenses.

(h) **personal and living expenses** — personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

Related Provisions: 20(1) — Deductions permitted; 20(16) — Terminal loss; 20.01 — Deduction allowed for private health services plan premiums; 56(1)(o)(i) — No deduction for personal or living expenses against research grant income; 67 — Unreasonable expenses not allowed; 67.1 — 50% limit on expenses for food and entertainment; 248(1)"personal or living expenses" — Reasonable expectation of profit required.

Pre-RSC History: Para. 18(1)(h) substituted by 1988, c. 55, subsec. 10(3), applicable to expenses incurred and amounts paid or payable after 1987. Para. 18(1)(h) formerly read:

(h) personal or living expenses — personal or living expenses of the taxpayer except travelling expenses (including the entire amount expended for meals and lodging) incurred by the taxpayer while away from home in the course of carrying on his business;

Selected Cases [para. 18(1)(h)]: *Scott v. R.*, [1998] 4 C.T.C. 103 (FCA) (Extra food and water of messengers similar to fuel and costs allowed as deduction); *Symes v. Canada*, [1994] 1 C.T.C. 40 (SCC) (Childcare expenses not deductible as business expenses); *The Queen v. Cork*, [1990] 2 C.T.C. 116 (FCA) (Office expenses of self-employed draftsman operating out of home deductible); *Sher v. The Queen*, [1980] C.T.C. 168 (FCTD) (Business expenses unsupported by receipts not deductible); *Deutsch v. The Queen*, [1979] C.T.C. 217 (FCTD) (Deductibility of claimed expenses related to automobile, travel and office at home allowed in part, despite inflated expenses and confusion of records).

Interpretation Bulletins: IT-143R2: Meaning of "eligible capital expenditure"; IT-223: Overhead expense insurance vs. income insurance; IT-322R: Farm losses; IT-334R2: Miscellaneous receipts; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-357R2: Expenses of training; IT-373R: Farm woodlots and tree farms; IT-518R: Food, beverages and entertainment expenses; IT-521R: Motor vehicle expenses claimed by self-employed individuals.

I.T. Technical News: No. 16 (*Tonn, Mastri, Mohammad* and *Kaye* cases; *Scott* case).

Forms: T2032: Statement of professional activities; T2124: Statement of business activities.

(i) **limitation re employer's contribution under supplementary unemployment benefit plan** — an amount paid by an employer to a trustee under a supplementary unemployment benefit plan except as permitted by section 145;

Related Provisions: 20(1)(x), 145(5) — Employer's contribution to supplementary unemployment benefit plan deductible.

(j) **limitation re employer's contribution under deferred profit sharing plan** — an amount paid by an employer to a trustee under a deferred profit sharing plan except as expressly permitted by section 147;

Related Provisions: 147(8) — Employer's DPSP contribution deductible.

(k) **limitation re employer's contribution under profit sharing plan** — an amount paid by an em-

ployer to a trustee under a profit sharing plan that is not

(i) an employees profit sharing plan,

(ii) a deferred profit sharing plan, or

(iii) a registered pension plan;

Pre-RSC History: Subpara. 18(1)(k)(iii) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(l) **use of recreational facilities and club dues** — an outlay or expense made or incurred by the taxpayer after 1971,

(i) for the use or maintenance of property that is a yacht, a camp, a lodge or a golf course or facility, unless the taxpayer made or incurred the outlay or expense in the ordinary course of the taxpayer's business of providing the property for hire or reward, or

(ii) as membership fees or dues (whether initiation fees or otherwise) in any club the main purpose of which is to provide dining, recreational or sporting facilities for its members;

Related Provisions: 8(1)(f)(vi) — Salesman's expenses.

Selected Cases [para. 18(1)(l)]: *The Queen v. C.I.P. Inc.*, [1988] 1 C.T.C. 32 (FCTD) (Expenses of chartered vessel deductible); *The Queen v. Jaddco Anderson Ltd.*, [1984] C.T.C. 137 (FCA) (Rental expenses for fishing lodge to entertain clients not deductible).

Interpretation Bulletins: IT-148R3: Recreational properties and club dues; IT-211R: Membership dues — Associations and societies; IT-470R: Employees' fringe benefits.

I.T. Technical News: No. 12 (meals and beverages at golf clubs).

(l.1) ***Petroleum and Gas Revenue Tax Act* payments** — any amount paid or that became payable in the year to Her Majesty in right of Canada by virtue of an obligation imposed under the *Petroleum and Gas Revenue Tax Act*;

Related Provisions: 53(1)(e)(i)(A.1), 53(2)(c)(i)(A.1) — Adjustments to cost base of partnership interest; 104(29) — Flow-through from trust to beneficiaries; 208 — Tax on certain royalties payable by tax-exempt person; 219(1)(k) — Reduction in branch tax.

Pre-RSC History: Para. 18(1)(l.1) added by 1980-81-82-83, c. 68, s. 114, applicable to 1981 *et seq.*

(m) **royalties, etc.** — any amount (other than a prescribed amount) paid or payable by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to

(i) Her Majesty in right of Canada or a province,

(ii) an agent of Her Majesty in right of Canada or a province, or

(iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

as a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that can reasonably be regarded as being in lieu of any such amount, or in respect of the late payment or non-payment of any such amount, and that can reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada or from an oil or gas well located in Canada,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource located in Canada;

Related Provisions: 12(1)(o) — Royalties, etc., to be included in income; 66.2(5)"Canadian development expense"(e); 66.4(5)"Canadian oil and gas property expense"(a); 80.2 — Reimbursement by taxpayer; 104(29) — Flow-through from trust to beneficiaries; 208 — Tax on certain royalties payable by tax-exempt person; 219(1)(k) — Reduction in branch tax; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: The portion of para. 18(1)(m) following subpara. (iii) amended by 1997, c. 25, subsec. 4(1), applicable to taxation years that begin after 1996. That portion formerly read:

as a royalty, tax (other than a tax or portion of a tax that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or

(v) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas in Canada, other than a mineral resource, or from an oil or gas well in Canada,

(B) metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(C) iron from a mineral resource in Canada to any stage that is not beyond the pellet stage or its equivalent, or

(D) petroleum or related hydrocarbons from tar sands from a mineral resource in Canada to any stage that is not beyond the crude oil stage or its equivalent;

Cl. 18(1)(m)(v)(B) substituted by 1994, c. 7, Sch II (1991, c. 49), subsec. 13(1), applicable to amounts becoming payable after July 13, 1990. Cl. (v)(B) formerly read:

(B) metal or minerals, other than iron or petroleum or related hydrocarbons, from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

Pre-RSC History: Subpara. 18(1)(m)(iii) amended by 1988, c. 55, subsec. 10(4), to substitute "controlled by" for "controlled, directly or indirectly in any manner whatever, by", applicable to taxation years commencing after 1988.

Cl. 18(1)(m)(v)(A) amended to add "from a natural accumulation of petroleum or natural gas in Canada (other than a mineral resource) or" by 1986, c. 6, subsec. 12(1), applicable with respect to amounts paid or that become payable after March 1985.

Subpara. 18(1)(m)(iv) substituted by 1985, c. 45, subsec. 9(1), to delete "or a property that would have been a Canadian resource property if it had

been acquired after 1971" from the conclusion of the subpara., applicable to taxation years commencing after 1984.

Cls. 18(1)(m)(v)(A), (B) substituted and (C), (D) added by 1985, c. 45, subsec. 9(2), applicable with respect to amounts payable after 1984. Cls. (v)(A), (B) formerly read:

(A) petroleum, natural gas or related hydrocarbons from a mineral resource in Canada or an oil or gas well in Canada, or

(B) metal or minerals, to any stage that is not beyond the prime metal stage or its equivalent, from a mineral resource in Canada;

All that portion of para. 18(1)(m) preceding subpara. (i) and subpara. 18(1)(m)(v) substituted by 1980-81-82-83, c. 140, subsecs. 11(1), (2). The portion preceding subpara. (i) of para. 18(1)(m) is applicable with respect to amounts paid or that became payable after May 6, 1974 in respect of the period after that date. Subpara. 18(1)(m)(v) is by 1984, c. 1, s. 109 (deemed to have come into force on March 30, 1983) applicable in respect of amounts paid or that became payable after December 31, 1982 in respect of the period after that date. Those portions of para. (m) formerly read:

(m) any amount (other than a prescribed amount) paid or that became payable in the year by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to

. . . . .

(v) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons, or

(B) metal or minerals to any stage that is not beyond the prime metal stage or its equivalent

from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or minerals;

All that portion of para. 18(1)(m) preceding subpara. (i) substituted by 1977-78, c. 1, subsec. 11(1), applicable in respect of amounts paid or that became payable after May 6, 1974 in respect of the period after that date.

All that portion of para. 18(1)(m) following subpara. (iii) substituted by 1976-77, c. 4, subsec. 4(1), applicable with respect to amounts described in para. 18(1)(m) that are paid or payable, and with respect to the fair market value of property referred to therein that is paid or payable, after May 25, 1976. That portion of para. (m) formerly read:

as a royalty or an equivalent amount, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax levied for the purpose of providing services in the immediate area of the property of the taxpayer), rental, bonus, levy or otherwise or as an amount, however described, that may reasonably be regarded as being in lieu of a royalty or an equivalent amount, tax, rental, bonus, levy or other amount (whether such royalty or equivalent amount, tax, rental, bonus, levy or other amount is paid or payable pursuant to any other Act or a contract) that may reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of a Canadian resource property, or a property that would have been a Canadian resource property if it had been acquired after 1971, or

(v) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons, or

(B) metal or industrial minerals to any stage that is not beyond the prime metal stage or its equivalent

from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or industrial minerals.

Para. 18(1)(m) added by 1974-75-76, c. 26, subsec. 7(1), applicable (by subsec. 7(5)) to amounts paid or payable or the fair market value of any property paid or payable after May 6, 1974 in respect of a period after May 6, 1974, except that for payments made after May 6, 1974 in respect of the period from May 6, 1974 to November 18, 1974 para. (m) shall be read as follows:

(m) any amount paid or payable (other than an amount or property paid or payable to Her Majesty in right of Canada for the use and benefit of a band or bands as defined in the *Indian Act*) in the year or the fair market value of any property paid or payable in the year to

(i) Her Majesty in right of Canada or a province,

(ii) an agent of Her Majesty in right of Canada or a province, or

(iii) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

as a royalty or an equivalent amount, tax, rental, levy or otherwise or as an amount, however described, that may reasonably be regarded as being in lieu of a royalty or an equivalent amount, tax, rental, levy or other amount (whether such royalty or equivalent amount, tax, rental, levy or other amount is paid or payable pursuant to any other Act or a contract) that may reasonably be regarded as attributable to the production in Canada of

(iv) of petroleum, natural gas or related hydrocarbons, or

(v) metal or industrial minerals to any stage that is not beyond the prime metal stage or its equivalent

from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or industrial minerals.

Selected Cases [para. 18(1)(m)]: *Utah Mines Ltd. v. The Queen*, [1992] 1 C.T.C. 306 (FCA) (Deduction for mineral royalties paid to provincial government disallowed despite article III of *Canada-U.S. Tax Convention*).

Regulations: 1211 (prescribed amounts).

Remission Orders: *Syncrude Remission Order*, P.C. 1976-1026 (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

Information Circulars: 86-3: Alberta Royalty Tax Credit — Individuals.

(n) **political contributions** — a political contribution;

Related Provisions: 127(3) — Tax credit for contributions to registered parties and candidates.

Pre-RSC History: Para. 18(1)(n) added by 1976-77, c. 4, subsec. 4(2), applicable in respect of political contributions paid or payable after May 25, 1976.

(o) **employee benefit plan contributions** — an amount paid or payable as a contribution to an employee benefit plan;

Related Provisions: 6(1)(a)(ii), 6(1)(g) — Employee benefit plan benefits taxable to employee; 12(1)(n.1) — Income inclusion — amounts received by employer from employee benefit plan; 18(10) — Exceptions where para. 18(1)(o) does not apply; 32.1 — Employee benefit plan deductions; 107.1 — Distribution by employee benefit plan.

Pre-RSC History: Para. 18(1)(o) added by 1980-81-82-83, c. 48, subsec. 9(1), applicable with respect to amounts paid or payable after 1979.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(o.1) **salary deferral arrangement** — except as expressly permitted by paragraphs 20(1)(oo) and (pp), an outlay or expense made or incurred under a salary deferral arrangement in respect of another person, other than such an arrangement established primarily for the benefit of one or more non-resident employees in respect of services to be rendered outside Canada;

Related Provisions: 6(1)(a)(v) — Value of benefits; 6(1)(i), 56(1)(w) — Salary deferral arrangements — amounts included in income.

History: Para. 18(1)(o.1) amended by 1994, c. 8, Sch. II (1991, c. 49), subsec. 13(2), to add reference to para. 20(1)(pp) and to substitute "outside Canada" for "in a country other than Canada", applicable to 1986 *et seq.*

Pre-RSC History: Para. 18(1)(o.1) added by 1986, c. 55, subsec. 4(1), applicable to 1986 *et seq.*

(o.2) **retirement compensation arrangement** — except as expressly permitted by paragraph 20(1)(r),

contributions made under a retirement compensation arrangement;

Pre-RSC History: Para. 18(1)(o.2) added by 1987, c. 46, s. 6, applicable after October 8, 1986.

(p) **limitation re personal services business expenses** — an outlay or expense to the extent that it was made or incurred by a corporation in a taxation year for the purpose of gaining or producing income from a personal services business, other than

(i) the salary, wages or other remuneration paid in the year to an incorporated employee of the corporation,

(ii) the cost to the corporation of any benefit or allowance provided to an incorporated employee in the year,

(iii) any amount expended by the corporation in connection with the selling of property or the negotiating of contracts by the corporation if the amount would have been deductible in computing the income of an incorporated employee for a taxation year from an office or employment if the amount had been expended by the incorporated employee under a contract of employment that required the employee to pay the amount, and

(iv) any amount paid by the corporation in the year as or on account of legal expenses incurred by it in collecting amounts owing to it on account of services rendered

that would, if the income of the corporation were from a business other than a personal services business, be deductible in computing its income;

Related Provisions: 122.3(1.1) — Restrictions on overseas employment tax credit for incorporated employee; 207.6(3) — Retirement compensation arrangement for incorporated employee; 248(1) — extended definition of "salary or wages".

Pre-RSC History: All that portion of paragraph 18(1)(p) preceding subpara. (i) substituted by 1984, c. 45, subsec. 9(1), to substitute para. "125(7)(d)" for "125(6)(g.1)", applicable to 1985 *et seq.*

Para. 18(1)(p) added by 1980-81-82-83, c. 140, subsec. 11(3), applicable to taxation years commencing after November 12, 1981.

Interpretation Bulletins: IT-73R5: The small business deduction; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-189R2: Corporations used by practising members of professions.

(q) **limitation re cancellation of lease** — an amount paid or payable by the taxpayer for the cancellation of a lease of property of the taxpayer leased by the taxpayer to another person, except to the extent permitted by paragraph 20(1)(z) or (z.1);

Pre-RSC History: Para. 18(1)(q) added by 1980-81-82-83, c. 140, subsec. 11(3), applicable with respect to lease cancellations occurring after December 1, 1982, other than a cancellation pursuant to an agreement in writing entered into before December 2, 1982.

Interpretation Bulletins: IT-359R2: Premiums on leases.

(r) **certain automobile expenses** — an amount paid or payable by the taxpayer as an allowance for the use by an individual of an automobile to the extent that the amount exceeds an amount determined in accordance with prescribed rules, except where the amount so paid or payable is required to be included in computing the individual's income;

Pre-RSC History: Para. 18(1)(r) added by 1988, c. 55, subsec. 10(5), applicable with respect to allowances paid for use after 1987 of automobiles.

Regulations: 7306 (prescribed rules).

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

(s) **loans or lending assets** — any loss, depreciation or reduction in a taxation year in the value or amortized cost of a loan or lending asset of a taxpayer made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money and not disposed of by the taxpayer in the year, except as expressly permitted by this Part;

History: Para. 18(1)(s) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(3), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987. Para. 18(1)(s) formerly read:

(s) loans or lending assets — any loss, depreciation or reduction in the value or amortized cost of a loan or lending asset described in subparagraph 20(1)(l)(ii) of a taxpayer who was an insurer or whose ordinary business included the lending of money, acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or lending money and not disposed of by the taxpayer in the taxation year, except as expressly permitted by this Part; and

Pre-RSC History: Para. 18(1)(s) added by 1988, c. 55, subsec. 10(5), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

(t) **payments under [Income Tax] Act** — any amount paid or payable under this Act (other than tax paid or payable under Part XII.2 or Part XII.6); and

Proposed Amendment — Offsetting of Non-Deductible Interest Against Taxable Interest

Notice of Ways and Means Motion and Budget Supplementary Infomation, February 16, 1999: [See under 161.1 — ed.]

Related Provisions: 60(o) — Expenses of objection or appeal; 20(1)(v) — Deduction for mining taxes; 20(1)(ll) — Deduction for interest repaid; 20(1)(nn) — Deduction for Part XII.6 tax; 20(1)(vv) — Deduction for countervailing and anti-dumping duties; 104(30) — Deduction for Part XII.2 tax paid by trust.

History: Para. 18(1)(t) amended by 1997, c. 25, subsec. 4(2), applicable to 1997 *et seq.* Para. (t) formerly read:

(t) any amount paid or payable under this Act.

Pre-RSC History: Para. 18(1)(t) added by 1990, c. 39, s. 8, applicable to 1989 *et seq.*

Selected Cases [para. 18(1)(t)]: *Harrowston Corp. v. Canada*, [1997] 1 C.T.C. 101 (FCA) (Liability to pay tax did not result in deductible bad debt).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties.

Information Circulars: 77-11: Sales tax reassessments — deductibility in computing income.

(u) **RSP/RIF fees** — any amount paid or payable by the taxpayer for services in respect of a retirement savings plan or retirement income fund under which the taxpayer is the annuitant.

Related Provisions: 18(11)(b) — No deduction for interest paid on money borrowed to make RRSP contribution.

History: Para. 18(1)(u) added by 1997, c. 25, subsec. 4(2), applicable to amounts paid or payable after March 5, 1996.

Interpretation Bulletins [subsec. 18(1)]: IT-357R2: Expenses of training.

(2) Limit on certain interest and property tax — Notwithstanding paragraph 20(1)(c), in computing the taxpayer's income for a particular taxation year from a business or property, no amount shall be deductible in respect of any expense incurred by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(a) interest on debt relating to the acquisition of land, or

(b) property taxes (not including income or profits taxes or taxes computed by reference to the transfer of property) paid or payable by the taxpayer in respect of land to a province or to a Canadian municipality,

unless, having regard to all the circumstances (including the cost to the taxpayer of the land in relation to the taxpayer's gross revenue, if any, from the land for the particular year or any preceding taxation year), the land can reasonably be considered to have been, in the year,

(c) used in the course of a business carried on in the particular year by the taxpayer, other than a business in the ordinary course of which land is held primarily for the purpose of resale or development, or

(d) held primarily for the purpose of gaining or producing income of the taxpayer from the land for the particular year,

except to the extent of the total of

(e) the amount, if any, by which the taxpayer's gross revenue, if any, from the land for the particular year exceeds the total of all amounts deducted in computing the taxpayer's income from the land for the year, and

(f) in the case of a corporation whose principal business is the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property owned by it, to or for a person with whom the corporation is dealing at arm's length, the corporation's base level deduction for the particular year.

Related Provisions: 10(1.1) — Cost of land inventory; 18(2.1) — Limitations; 18(2.2)–(2.5) — Base level deduction; 18(3) — Definitions; 53(1)(d.3) — Addition to adjusted cost base of share; 53(1)(e)(xi) — Addition to adjusted cost base of partnership interest; 53(1)(h) — Addition to adjusted cost base of land; 80(2)(b) — Application of debt forgiveness rules; 212(1)(b)(iii)(E) — Non-resident withholding tax — interest; 241(4)(b) — Communication of information; 248(1)"business".

Pre-RSC History: Subsec. 18(2) substituted by 1988, c. 55, subsec. 10(6), applicable (by subsec. 10(23), as amended by 1994, c. 21, s. 132) to 1988 *et seq.*, except that in respect of expenses incurred in respect of land that may reasonably be considered to be held, but not used, in the course of a business carried on in the year by the taxpayer or land used in the course of a business in the ordinary course of which land is held primarily for the purpose of resale or development, for taxation years that end before 1993 that portion of subsection 18(2) following paragraph (d) shall be read as follows:

except to the extent of the aggregate of

(e) the amount, if any, by which the taxpayer's gross revenue, if any, from the land for the particular year exceeds the aggregate of all amounts deducted in computing his income from the land for the year,

(f) in the case of a corporation whose principal business is the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property owned by it, to or for a person with whom the corporation is dealing at arm's length, the corporation's base level deduction for the particular year, and

(g) the specified percentage of the amount by which the aggregate of all such expenses incurred in the particular year exceeds the aggregate of the amounts determined under paragraphs (e) and (f) for the year,

and, for the purposes of paragraph (g), "specified percentage" means the aggregate of

(h) that proportion of 100% that the number of days in the particular year that are before 1988 is of the number of days in the year,

(i) that proportion of 80% that the number of days in the particular year that are after 1987 and before 1989 is of the number of days in the year,

(j) that proportion of 60% that the number of days in the particular year that are after 1988 and before 1990 is of the number of days in the year,

(k) that proportion of 40% that the number of days in the particular year that are after 1989 and before 1991 is of the number of days in the year, and

(l) that proportion of 20% that the number of days in the particular year that are after 1990 and before 1992 is of the number of days in the year.

Subsec. 18(2) formerly read:

(2) Limitation re certain interest and property taxes in land — Notwithstanding paragraph 20(1)(c), in computing the taxpayer's income for a taxation year from a business or property, no deduction shall be made in respect of any amount paid or payable by the taxpayer in the year and after 1971 as, on account or in lieu of payment of, or in satisfaction of,

(a) interest on borrowed money used to acquire land, or on an amount payable by him for land, or

(b) property taxes (not including income or profits taxes or taxes computed by reference to the transfer of property) paid or payable by him in respect of land to a province or a Canadian municipality,

if, having regard to all the circumstances, including the cost to the taxpayer of the land in relation to his gross revenue, if any, therefrom for that or any previous year, the land cannot reasonably be considered to have been, in that year,

(c) used in, or held in the course of, a business carried on in the year by the taxpayer, or

(d) [Repealed]

(e) held primarily for the purpose of gaining or producing income of the taxpayer from the land for that year,

except to the extent that the taxpayer's gross revenue, if any, from the land for that year exceeds the aggregate of all other amounts deducted in computing his income from the land for that year.

Para. 18(2)(c) substituted by 1979, c. 5, s. 6, applicable in respect of expenses incurred after November 16, 1978. Para. 18(2)(c) formerly read:

(c) used in, or held in the course of, carrying on a business by the taxpayer other than a business in the ordinary course of which land is held primarily for the purpose of resale or development, or

Para. 18(2)(c) substituted for paras. 18(2)(c), (d) by 1974-75-76, c. 26, subsec. 7(2), applicable in respect of amounts paid or payable after May 6, 1974. Paras. 18(2)(c), (d) formerly read:

(c) included in the inventory of a business carried on by the taxpayer,

(d) otherwise used in, or held in the course of, carrying on a business carried on by the taxpayer, or

Selected Cases [subsec. 18(2)]: *Ward v. The Queen*, [1988] 1 C.T.C. 336 (FCTD) (Deductibility of taxpayer's proportionate share of loss resulting from carrying costs of "golf course operation").

Interpretation Bulletins: IT-142R3: Settlement of debts on the winding-up of a corporation; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-360R2: Interest payable in a foreign currency.

(2.1) Where taxpayer member of partnership — Where a taxpayer who is a member of a partnership was obligated to pay any amount as, on account or in lieu of payment of, or in satisfaction of, interest (in this subsection referred to as an "interest amount") on money that was borrowed by the taxpayer before April 1, 1977 and that was used to acquire land owned by the partnership before that day or on an obligation entered into by the taxpayer before April 1, 1977 to pay for land owned by the partnership before that day, and, in a taxation year of the taxpayer, either,

(a) the partnership has disposed of all or any portion of the land, or

(b) the taxpayer has disposed of all or any portion of the taxpayer's interest in the partnership

to a person other than a person with whom the taxpayer does not deal at arm's length, in computing the taxpayer's income for the year or any subsequent year, there may be deducted such portion of the taxpayer's interest amount

(c) that was, by virtue of subsection (2), not deductible in computing the income of the taxpayer for any previous taxation year,

(d) that was not deductible in computing the income of any other taxpayer for any taxation year,

(e) that was not included in computing the adjusted cost base to the taxpayer of any property, and

(f) that was not deductible under this subsection in computing the income of the taxpayer for any previous taxation year

as is reasonable having regard to the portion of the land or interest in the partnership, as the case may be, so disposed of.

Pre-RSC History: Subsec. 18(2.1) added by 1977-78, c. 1, subsec. 11(2), applicable with respect to land owned by the partnership on or before March 31, 1977.

(2.2) Base level deduction — For the purposes of this section, a corporation's base level deduction for a taxation year is the amount that would be the amount of interest, computed at the prescribed rate, for the year in respect of a loan of $1,000,000 outstanding throughout the year, unless the corporation is associated in the year with one or more other corporations in which case, except as otherwise provided in this section, its base level deduction for the year is nil.

Related Provisions: 18(2.3), (2.4) — Associated corporations; 18(2.5) — Special rules for base level deduction.

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

(2.3) Associated corporations — Notwithstanding subsection (2.2), if all of the corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed $1,000,000, the base level deduction for the year for each of the corporations is the base level deduction that would be computed under subsection (2.2) in respect of the corporation if the reference in that subsection to $1,000,000 were read as a reference to the amount so allocated to it.

Related Provisions: 18(2.4) — Failure to file agreement.

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

Forms: T2005: Agreement among associated corporations to allocate an amount to calculate their base level deduction.

(2.4) Failure to file agreement — If any of the corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (2.3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal $1,000,000 and in any such case, the amount so allocated to any corporation shall be deemed to be an amount allocated to the corporation pursuant to subsection (2.3).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

(2.5) Special rules for base level deduction — Notwithstanding any other provision of this section,

(a) where a corporation, in this paragraph referred to as the "first corporation", has more than one taxation year ending in the same calendar year and is associated in two or more of those taxation years with another corporation that has a taxation year ending in that calendar year, the base level deduction of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (b), an amount equal to its base level deduction for the first such taxation year determined without reference to paragraph (b); and

(b) where a corporation has a taxation year that is less than 51 weeks, its base level deduction for the year is that proportion of its base level deduction for the year determined without reference to this paragraph that the number of days in the year is of 365.

Related Provisions: 18(2.2) — Base level deduction.

Pre-RSC History: Subsecs. 18(2.2)–(2.5) added by 1988, c. 55, subsec. 10(7), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

Forms: T2005: Agreement among associated corporations to allocate an amount to calculate their base level deduction.

(3) Definitions — In subsection (2),

"interest on debt relating to the acquisition of land" includes

(a) interest paid or payable in a year in respect of borrowed money that cannot be identified with particular land but that may nonetheless reasonably be considered (having regard to all the circumstances) as interest on borrowed money used in respect of or for the acquisition of land, and

(b) interest paid or payable in the year by a taxpayer in respect of borrowed money that may reasonably be considered (having regard to all the circumstances) to have been used to assist, directly or indirectly,

(i) another person with whom the taxpayer does not deal at arm's length,

(ii) a corporation of which the taxpayer is a specified shareholder, or

(iii) a partnership of which the taxpayer's share of any income or loss is 10% or more,

to acquire land to be used or held by that person, corporation or partnership otherwise than as described in paragraph (2)(c) or (d), except where the assistance is in the form of a loan to that person, corporation or partnership and a reasonable rate of interest on the loan is charged by the taxpayer;

Related Provisions: 53(1)(h) — Addition to adjusted cost base of land.

Pre-RSC History: *The definition "interest on debt ..." was para. 18(3)(b). See Table of Concordance.*

That portion of para. 18(3)(b) preceding subpara. (i) substituted by 1988, c. 55, subsec. 10(8), applicable to 1988 *et seq.* That portion formerly read:

(b) "interest on borrowed money used to acquire land" — "interest on borrowed money used to acquire land" includes

Subpara. 18(3)(b)(ii) substituted by 1988, c. 55, subsec. 10(9), applicable to taxation years commencing after April 1988. Subpara. 18(3)(b)(ii) formerly read:

(ii) interest paid or payable in the year by a taxpayer in respect of borrowed money that may reasonably be considered (having regard to all the circumstances) to have been used to assist, directly or indirectly, another person with whom the taxpayer does not deal at arm's length to acquire land to be used or held by that person, otherwise than as described in paragraph (2)(c) or (e), except where the assistance is in the form of a loan to that person and a reasonable rate of interest thereon is charged by the taxpayer.

Para. 18(3)(b) added by 1974-75-76, c. 26, subsec. 7(3), applicable to amounts paid or payable after May 6, 1974.

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs, etc.

"land" does not, except to the extent that it is used for the provision of parking facilities for a fee or charge, include

(a) any property that is a building or other structure affixed to land,

(b) the land subjacent to any property described in paragraph (a), or

(c) such land immediately contiguous to the land described in paragraph (b) that is a parking area, driveway, yard, garden or similar land as is necessary for the use of any property described in paragraph (a).

Pre-RSC History: *The definition "land" was para. 18(3)(a). See Table of Concordance.*

Subsec. 18(3) substituted by 1974-75-76, c. 26, subsec. 7(3), applicable in respect of amounts paid or payable after May 6, 1974. Subsec. 18(3) formerly read:

(3) Meaning of "land" in ss. (2) — In subsection (2), "land" does not include

(a) any property that is a building or other depreciable property affixed to land,

(b) the land subjacent to any property described in paragraph (a), or

(c) such land immediately contiguous to the land described in paragraph (b) as may reasonably be considered to be used in connection with any property described in paragraph (a).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs, etc.

(3.1) Costs relating to construction of building or ownership of land — Notwithstanding any other provision of this Act, in computing a taxpayer's income for a taxation year,

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer (other than an amount deductible under paragraph 20(1)(a), (aa) or (qq) or subsection 20(29)) that can reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building by or on behalf of the taxpayer, a person with whom the taxpayer does not deal at arm's length, a corporation of which the taxpayer is a specified shareholder or a partnership of which the taxpayer's share of any income or loss is 10% or more and relating to the construction, renovation or alteration, or a cost attributable to that period and relating to the ownership during that period of land

(i) that is subjacent to the building, or

(ii) that

(A) is immediately contiguous to the land subjacent to the building,

(B) is used, or is intended to be used, for a parking area, driveway, yard, garden or any other similar use, and

(C) is necessary for the use or intended use of the building; and

(b) the amount of such outlay or expense shall be included in computing the cost or capital cost, as the case may be, of the building to the taxpayer, to the person with whom the taxpayer does not deal at arm's length, to the corporation of which the taxpayer is a specified shareholder or to the partnership of which the taxpayer's share of any income or loss is 10% or more, as the case may be.

Related Provisions: 18(3.2)–(3.7) — Interpretation and application of subsec. 18(3.1); 20(29) — Deduction against rental income from building; 53(1)(d.3) — Addition to adjusted cost base of share; 53(1)(e)(xi) — Addition to adjusted cost base of partnership interest; 80(2)(b) — Application of debt forgiveness rules; 241(4) — Communication of information.

History: The opening words of para. 18(3.1)(a) substituted by 1994, c. 21, subsec. 11(1), applicable after 1990 except that, in its application to buildings acquired before 1990, the words "or subsection 20(29)" shall be read as ", subsection 20(29) or section 37 or 37.1". The opening words of that para. formerly read:

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer (other than an amount deductible under paragraph 20(1)(a), (aa) or (gg) or subsection 20(29)) that can reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building by or on behalf of the taxpayer, a person with whom the taxpayer does not deal at arm's length, a corporation of which the taxpayer is a specified shareholder or a partnership of which the taxpayer's share of any income or loss is 10% or more and relating to the construction, renovation or alteration, or a cost attributable to that period and relating to the ownership during that period of land

That portion of para. 18(3.1)(a) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(4), applicable to 1987 *et seq.* except that, in its application to buildings acquired before 1990, the reference in para. 18(3.1)(a) to "or subsection 20(29)" shall be read as ", subsection 20(29) or section 37 or 37.1". That portion formerly read:

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer, other than an amount deductible by reason of paragraph 20(1)(a) or (aa), that may reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building and relating to the construction, renovation or alteration or a cost attributable to that period and relating to the ownership during that period, of land

Pre-RSC History: That portion of para. 18(3.1)(a) preceding subpara. (i) amended by 1988, c. 55, subsec. 10(10), to substitute "by reason of paragraph 20(1)(a) or (aa)" for "by virtue of paragraph 20(1)(a) or (aa) or section 37 or 37.1", applicable in respect of buildings acquired by a taxpayer after 1989.

Para. 18(3.1)(b) substituted by 1988, c. 55, subsec. 10(11), applicable to 1988 *et seq.* Para. 18(3.1)(b) formerly read:

(b) the amount of such outlay or expense shall be included in computing the cost or the capital cost to the taxpayer of the land or building, as the case may be.

Para. 18(3.1)(a) substituted by 1985, c. 45, subsec. 9(3), applicable with respect to outlays and expenses made or incurred after May 9, 1985. Para. 18(3.1)(a) formerly read:

(a) no deduction shall be made in respect of any outlay or expense made or incurred by the taxpayer, other than an amount deductible by virtue of paragraph 20(1)(a) or (aa) or section 37 or 37.1, that

(i) may reasonably be regarded as a cost incurred during the period of the construction, renovation or alteration of a building and that relates thereto or to costs incurred during that period relating to the ownership, during that period, of land

(A) that is subjacent to the building, or

(B) that

(I) is immediately contiguous to the land subjacent to the building,

(II) is used, or is intended to be used, for a parking area, driveway, yard, garden or any other similar use, and

(III) is necessary for the use or intended use of the building, and

(ii) was made or incurred before the completion of the construction, renovation or alteration of the building; and

All that portion of para. 18(3.1)(a) preceding subpara. (i) substituted by 1984, c. 1, subsec. 8(1), to add "or section 37 or 37.1", applicable with respect to outlays and expenses made or incurred after 1981.

Subsec. 18(3.1) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays and expenses incurred after 1981.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

(3.2) Included costs — For the purposes of subsection (3.1), costs relating to the construction, renovation or alteration of a building or to the ownership of land include

(a) interest paid or payable by a taxpayer in respect of borrowed money that cannot be identified with a particular building or particular land, but that can reasonably be considered (having regard to all the circumstances) as interest on borrowed money used by the taxpayer in respect of the construction, renovation or alteration of a building or the ownership of land; and

(b) interest paid or payable by a taxpayer in respect of borrowed money that may reasonably be considered (having regard to all the circumstances) to have been used to assist, directly or indirectly,

(i) another person with whom the taxpayer does not deal at arm's length,

(ii) a corporation of which the taxpayer is a specified shareholder, or

(iii) a partnership of which the taxpayer's share of any income or loss is 10% or more,

to construct, renovate or alter a building or to purchase land, except where the assistance is in the form of a loan to that other person, corporation or partnership and a reasonable rate of interest on the loan is charged by the taxpayer.

Pre-RSC History: Para. 18(3.2)(b) substituted by 1988, c. 55, subsec. 10(12), applicable to taxation years commencing after April 1988. Para. 18(3.2)(b) formerly read:

(b) interest paid or payable by a taxpayer in respect of borrowed money that can reasonably be considered (having regard to all the circumstances) to have been used to assist, directly or indirectly,

(i) another person, or a partnership, with whom the taxpayer does not deal at arm's length, or

(ii) a corporation of which the taxpayer is a specified shareholder,

to construct, renovate or alter a building or to purchase land, except where the assistance is in the form of a loan to that other person, partnership or corporation and a reasonable rate of interest thereon is charged by the taxpayer.

Subpara. 18(3.2)(b)(ii) substituted by 1984, c. 45, subsec. 9(2), to delete "(within the meaning assigned by paragraph 125(9)(c)2)" from the end, applicable to 1985 *et seq.*

Subsec. 18(3.2) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays made and expenses incurred after 1981.

(3.3) Completion — For the purposes of subsection (3.1), the construction, renovation or alteration of a building is completed at the earlier of the day on which the construction, renovation or alteration is actually completed and the day on which all or substantially all of the building is used for the purpose for which it was constructed, renovated or altered.

Pre-RSC History: Subsec. 18(3.3) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays made and expenses incurred after 1981.

(3.4) Where subsec. (3.1) does not apply — Subsection (3.1) does not apply to prohibit a deduction in a taxation year of the specified percentage of any outlay or expense described in that subsection made or incurred before 1992 by

(a) a corporation whose principal business is throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property owned by it to or for a person with whom the corporation is dealing at arm's length, or

(b) a partnership

(i) each member of which is a corporation described in paragraph (a), and

(ii) the principal business of which is throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property held by it, to or for a person with whom each member of the partnership is dealing at arm's length,

and for the purposes of this subsection, "specified percentage" means, in respect of an outlay or expense made or incurred in 1988, 80%, in 1989, 60%, in 1990, 40%, and in 1991, 20%.

Pre-RSC History: Subsec. 18(3.4) substituted by 1988, c. 55, subsec. 10(13), applicable with respect to outlays and expenses made or incurred after 1987. Subsec. 18(3.4) formerly read:

(3.4) Exceptions — Subsection (3.1) does not apply to prohibit a deduction in a taxation year by

(a) a corporation whose principal business was throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property owned by it to or for a person with whom the corporation was dealing at arm's length; or

(b) a partnership

(i) each member of which is a corporation described in paragraph (a), and

(ii) the principal business of which was throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real property held by it, to or for a person with whom each member of the partnership was dealing at arm's length.

Subsec. 18(3.4) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays made and expenses incurred after 1981.

(3.5) Idem — Subsection (3.1) does not apply in respect of an outlay or expense in respect of a building or the land described in subparagraph (3.1)(a)(i) or (ii) in respect of the building,

(a) where the construction, renovation or alteration of the building was in progress on November 12, 1981,

(b) where the installation of the footings or other base support of the building commenced after November 12, 1981 and before 1982,

(c) if, in the case of a new building being constructed in Canada or an existing building being renovated or altered in Canada, arrangements, evidenced in writing, for the construction, renovation or alteration were substantially advanced before November 13, 1981 and the installation of footings or other base support for the new building or the renovation or alteration of the existing building, as the case may be, commenced before June 1, 1982, or

(d) if, in the case of a new building being constructed in Canada, the taxpayer was obligated to construct the building under the terms of an agreement in writing entered into before November 13, 1981 and arrangements, evidenced in writing, respecting the construction of the building were substantially advanced

before June 1, 1982 and the installation of footings or other base support for the building commenced before 1983,

and the construction, renovation or alteration, as the case may be, of the building proceeds after 1982 without undue delay (having regard to acts of God, labour disputes, fire, accidents or unusual delay by common carriers or suppliers of materials or equipment).

Related Provisions: 18(3.7) — Commencement of installation of footings.

History: That portion of subsec. 18(3.5) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(5), applicable to outlays and expenses made or incurred after May 9, 1985. That portion formerly read:

(3.5) Idem — Subsection (3.1) does not apply in respect of an outlay or expense in respect of a building or the land described in subparagraph (3.1)(a)(i) or (ii),

Pre-RSC History: Subsec. 18(3.5) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays and expenses incurred after 1981.

(3.6) Undue delay — For the purposes of subsection (3.5), where more than one building is being constructed under any of the circumstances described in that subsection on one site or on immediately contiguous sites, no undue delay shall be regarded as occurring in the construction of any such building if construction of at least one such building proceeds after 1982 without undue delay and continuous construction of all other such buildings proceeds after 1983 without undue delay.

Pre-RSC History: Subsec. 18(3.6) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays and expenses incurred after 1981.

(3.7) Commencement of footings — For the purposes of this section, the installation of footings or other base support for a building shall be deemed to commence on the first placement of concrete, pilings or other material that is to provide permanent support for the building.

Pre-RSC History: Subsec. 18(3.7) added by 1980-81-82-83, c. 140, subsec. 11(4), applicable with respect to outlays and expenses incurred after 1981.

(4) Limitation re deduction of interest by certain corporations [thin capitalization] — Notwithstanding any other provision of this Act, in computing the income for a taxation year of a corporation resident in Canada from a business or property, no deduction shall be made in respect of that proportion of any amount otherwise deductible in computing its income for the year in respect of interest paid or payable by it on outstanding debts to specified non-residents that

(a) the amount, if any, by which

(i) the greatest aggregate amount that the corporation's outstanding debts to specified non-residents were at any time in the year,

exceeds

(ii) 3 times the total of

(A) the retained earnings of the corporation at the commencement of the year, except to the extent that those earnings include retained earnings of any other corporation,

(B) the corporation's contributed surplus at the commencement of the year, to the extent that it was contributed by a specified non-resident shareholder of the corporation, and

(C) the greater of the corporation's paid-up capital at the commencement of the year and the corporation's paid-up capital at the end of the year, excluding the paid-up capital in respect of shares of any class of the capital stock of the corporation owned by a person other than a specified non-resident shareholder of the corporation,

is of

(b) the amount determined under subparagraph (a)(i) in respect of the corporation for the year.

Proposed Amendment — 18(4)–(8)

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Thin Capitalization*

(26) That, for taxation years that begin after 2000, the provisions of the Act relating to thinly capitalized corporations be modified

(a) to reduce, from 3:1 to 2:1, the ratio of debt to equity for the purposes of the limit on interest deductibility in subsection 18(4) of the Act,

(b) to apply an average ratio of debt to equity for the taxation year in determining the limit on interest deductibility applicable to a corporation under subsection 18(4) of the Act, based on calculations of

(i) the corporation's retained earnings at the beginning of the year,

(ii) the corporation's contributed surplus and paid-up capital at the beginning of each month of the year to the extent they are attributable to specified non-residents, and

(iii) the greatest total amount of debt owing by the corporation to specified non-residents at any time in each month of the year,

(c) [deferred pending consultation; see below — ed.] to expand the anti-avoidance rule in subsection 18(6) of the Act to deem indebtedness of a corporation to a third party that is guaranteed or secured by a specified non-resident to be debt owing by the corporation to the specified non-resident, and

(d) to repeal subsection 18(8) of the Act, which provides an exemption for developers and manufacturers of aircraft and aircraft components.

Federal budget, supplementary information, February 28, 2000: *Strengthening Thin Capitalization Rules*

The *Income Tax Act* contains rules that restrict the interest deduction that a corporation resident in Canada can claim in respect of debt owing to a specified non-resident — generally, a shareholder whose stake in the corporation represents 25 per cent or more of the votes or value in the corporation or a person who is not at arm's-length with such a shareholder. Under these so-called "thin capitalization" rules, the Canadian corporation may deduct interest on debt to specified non-residents to the extent that such debt does not exceed three times the amount of equity contributed by such non-residents. In the event that such debt exceeds the 3:1 ratio, the interest deduction attributable to the excess is denied for Canadian tax purposes.

A number of factors support modifications to the thin capitalization rules, which were introduced in 1972. First, the permitted 3:1 debt-equity ratio is high compared to actual industry ratios in the Canadian economy, suggesting that the 3:1 ratio permits inappropriately high debt levels. On the other hand, the current rules apply to reduce the amount of interest deductible if debt to specified non-residents at any point in the year exceeds the permitted ratio relative to equity. Therefore, temporarily high debt levels can have a disproportionate impact.

The scope of debts covered by the rules is also very narrow. An anti-avoidance rule in the current law deals with so-called back-to-back arrangements. Where a specified non-resident makes a loan to a third party on condition that the third party make a loan to the Canadian corporation, the lesser amount of the two loans is deemed to be a loan to the corporation from the specified non-resident. This rule does not extend, however, to an arrangement where a Canadian corporation borrows funds from a third party with the aid of a guarantee from a specified non-resident. Such a borrowing is often economically equivalent to a direct loan from

the non-resident since the guarantee supports the lender's credit risk associated with the borrowing. This type of arrangement can result in the erosion of the tax base to the same extent as a direct loan from the specified non-resident.

In addition, as a result of a special exemption introduced in the early 1970s, the thin capitalization rules currently do not apply to a corporation whose principal business in Canada is the developing or manufacturing of aircraft or aircraft components. It is not apparent that this exemption is warranted under present conditions.

Finally, other changes to the thin capitalization rules need to be considered. The rules currently apply only to corporations and not to other business arrangements such as partnerships, trusts and branches. Taxpayers may therefore be able to use these structures in order to circumvent the rules. There is also concern that use of financing techniques that do not rely on traditional debt — such as leases from a non-resident parent — may weaken the effectiveness of the rules in protecting the Canadian tax base.

In response to these concerns, the budget proposes that the thin capitalization rules in subsections 18(4) to 18(8) of the *Income Tax Act* be amended in the following manner:

- *The threshold debt-equity ratio in subsection 18(4) will be lowered from 3:1 to 2:1.* The new ratio provides a better measurement of excessive reliance on related-party debt financing in the context of actual Canadian industry debt-equity ratios.
- *The debt-equity ratio will be calculated on an averaged basis.* Specifically, average debt for a fiscal year will be calculated as the average of monthly amounts, each of which is the highest amount of debt to specified non-residents outstanding at any time in the month. Of the three components of equity, retained earnings will continue to be measured at the beginning of the year. The amount of paid-up capital and contributed surplus attributed to specified non-residents will be an average of amounts calculated at the beginning of each month during the taxation year. This manner of applying the limitation will give less weight than the current rules to debt levels that are temporarily high.
- *The conditional loan rule in subsection 18(6) of the Act will be broadened.* The rule will encompass loans to a Canadian corporation from a third party that are guaranteed or secured by a specified non-resident.
- *The exemption for developers and manufacturers of aircraft and aircraft components in subsection 18(8) of the Act will be repealed.*

These four changes will come into effect for taxation years that begin after 2000.

Finally, consultations will be initiated on the extension of the thin capitalization rules to other arrangements and business structures, namely:

- Partnerships that have non-resident members, trusts that have non-resident beneficiaries, and Canadian branches of non-resident companies carrying on business in Canada. Because these arrangements do not involve the issuance of share capital, it is not possible to assess on the basis of the current rules whether or not the entity is "thinly capitalized." Therefore, the rules would have to be adapted in order to measure excessive indebtedness for such vehicles.
- Debt substitutes, such as certain types of leases.

The Government invites public comments with respect to both the proposed changes outlined above and the extension of the thin capitalization rules to other arrangements and business structures.

Department of Finance news release, May 9, 2000: *Finance Minister Clarifies Certain Income Tax Measures in the 2000 Budget*

Finance Minister Paul Martin today announced several clarifications to measures announced in the 2000 budget. These clarifications will ensure the smooth conduct of business transactions while consultations take place.

Thin Capitalization Rules

The thin capitalization rules in the Income Tax Act prevent foreign-owned corporations resident in Canada from using an excessive amount of debt when they capitalize their Canadian operations.

Minister Martin today announced the deferral of the budget measure that broadened the kind of debt covered by the thin capitalization rules to include loans to a Canadian corporation from a third party that are guaranteed or secured by a specified non-resident. In certain circumstances, including guaranteed debt in the scope of the thin capitalization rules has raised concerns. Deferring this element of the thin capitalization provision will enable officials to consult broadly with a view to reaching a consensus on how best to define those guarantees that are equivalent to related party debt. Any resulting proposals will be brought forward on a fully prospective basis.

As indicated in the 2000 budget, interested parties will also be consulted on matters related to other business arrangements such as partnerships, trusts, branches and the use of leases.

. . . . .

For further information: Thin Capitalization Rules, Sanjeev Sivarulrasa, (613) 992-5864.

Related Provisions: 18(5) — Meaning of certain expressions; 18(5.1) — Person deemed not to be specified shareholder; 18(6) — Loan made on conditions; 18(8) — Exception for manufacturer of aircraft or components; Canada-U.S. tax treaty, Art. XXV:8 — Thin capitalization rules grandfathered from treaty non-discrimination provision.

Pre-RSC History: Cls. 18(4)(a)(ii)(B), (C) substituted by 1980-81-82-83, c. 140, subsec. 11(5), applicable to taxation years commencing after November 12, 1981. Cls. 18(4)(a)(ii)(B), (C) formerly read:

> (B) the corporation's contributed surplus at the commencement of the year, and
>
> (C) the greater of the corporation's paid-up capital at the commencement of the year and the corporation's paid-up capital at the end of the year,

Subpara. 18(4)(a)(ii) substituted by 1977-78, c. 1, subsec. 11(3), applicable in respect of taxation years ending after March 31, 1977, except that in its application to any such taxation year that commences before April 1, 1977, subparagraph 18(4)(a)(ii) shall be read as follows:

> (ii) 3 times the aggregate of
>
> (A) the corporation's paid-up capital limit (within the meaning of subsection 89(1)) at the commencement of the year,
>
> (B) the amount that the corporation's designated surplus would be immediately after the commencement of the year, if control of the corporation (within the meaning of Part VII) had been acquired by another corporation at that time,
>
> (C) the corporation's tax-paid undistributed surplus on hand at the commencement of the year,
>
> (D) the corporation's 1971 capital surplus on hand at the commencement of the year,
>
> (E) the corporation's capital dividend account (within the meaning of subsection 89(1)) immediately after the commencement of the year, and
>
> (F) the amount, if any, by which the aggregate of
>
> (I) the corporation's paid-up capital at the end of the year, and
>
> (II) the amount, if any, by which the corporation's paid-up capital as determined on March 31, 1977 exceeds its paid-up capital as determined on April 1, 1977
>
> exceeds
>
> (III) the corporation's paid-up capital at the commencement of the year.

Subpara. 18(4)(a)(ii) formerly read:

> (ii) 3 times the aggregate of
>
> (A) the corporation's paid-up capital limit (within the meaning of subsection 89(1)) at the commencement of the year,
>
> (B) the amount that the corporation's designated surplus would be immediately after the commencement of the year, if control of the corporation (within the meaning of Part VII) had been acquired by another corporation at that time,

(C) the corporation's tax-paid undistributed surplus on hand at the commencement of the year,

(D) the corporation's 1971 capital surplus on hand at the commencement of the year,

(E) the corporation's capital dividend account (within the meaning of subsection 89(1)) immediately after the commencement of the year, and

(F) the amount, if any, by which the corporation's paid-up capital limit (within the meaning of subsection 89(1)) at the end of the year exceeds the limit referred to in clause (A),

Cl. 18(4)(a)(ii)(F) added by 1973-74, c. 14, s. 4, applicable to 1972 *et seq.*

Selected Cases [subsec. 18(4)]: *Specialty Manufacturing Ltd. v. R.*, [1999] 3 C.T.C. 82 (FCA); aff'g [1998] 1 C.T.C. 2095 (TCC) (U.S. Convention did not prevent application of provision); *Uddeholm Ltd. v. The Queen*, [1987] 2 C.T.C. 236 (FCTD) (Thin capitalization rules apply on date interest on debt becomes payable); *The Queen v. Thyssen Canada Ltd.*, [1987] 1 C.T.C. 112 (FCA); leave to appeal to SCC refused (1987), 79 N.R. 400 (note) (Late-payment charges not included in price paid attributed to payments of interest on outstanding debts; charges disallowed).

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization); IT-121R3: Election to capitalize cost of borrowed money.

Information Circulars: 87-2R: International transfer pricing and other international transactions.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

I.T. Technical News: No. 15 (back-to-back loans in relation to subsections 18(4) and 18(6)); No. 16 (*Wildenburg Holdings* case).

(5) Definitions — Notwithstanding any other provision of this Act (other than subsection (5.1)), in this subsection and subsections (4) to (6),

History: The introductory portion of subsec. 18(5) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(1), applicable to 1993 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1989 to 1992 taxation years also. That portion formerly read:

(5) Meaning of certain expressions — Notwithstanding any other provision of this Act, in this subsection and subsections (4) and (6),

Pre-RSC History: All that portion of subsec. 18(5) preceding para. (a) substituted by 1984, c. 45, subsec. 9(3), to add "Notwithstanding any other provision of this Act," applicable to 1985 *et seq.*

"outstanding debts to specified non-residents" of a corporation at any particular time in a taxation year means

(a) the total of all amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount

(i) that was payable by the corporation to a person who was, at any time in the year,

(A) a specified non-resident shareholder of the corporation, or

(B) a non-resident person, or a non-resident-owned investment corporation, who was not dealing at arm's length with a specified shareholder of the corporation, and

(ii) on which any amount in respect of interest paid or payable by the corporation is or would be, but for subsection (4), deductible in computing the corporation's income for the year,

but does not include

(b) an amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to a non-resident insurance corporation to the extent that the amount was, for the non-resident insurance corporation's taxation year that included the particular time, designated insurance property in respect of an insurance business carried on in Canada through a permanent establishment as defined by regulation;

Proposed Amendment — Authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (10) That, for the purposes of the thin capitalization rules in subsections 18(4) to 18(8) of the Act, an amount outstanding to an authorized foreign bank as or on account of a debt or other obligation be excluded from the definition "outstanding debts to specified non-residents" in subsection 18(5) of the Act if the interest payable to the bank in respect of that amount is included in computing its income from a business carried on in Canada.

Department of Finance news release, February 11, 1999: *Thin Capitalization Rules*

A corporation may not deduct interest payments made to "specified non-resident shareholders" — generally, those having a 25% or greater ownership interest in the corporation — to the extent that its relevant debt funding exceeds three times its equity funding. The thin capitalization rules ensure that a corporation's earnings are not paid out to significant non-resident shareholders in the form of tax-deductible interest rather than after-tax dividends.

It is proposed that debt owing to a foreign bank from a Canadian resident corporation in which the foreign bank is a specified non-resident shareholder be excluded from these rules, if the interest payments in respect of that debt are included in the foreign bank's income that is subject to tax under Part I of the *Income Tax Act*. Since there is no risk that this debt funding would lead to the corporation's earnings leaving Canada without being taxed, it need not be taken into account for the purposes of the thin capitalization rules.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

History: Para. (b) of the definition "outstanding debts to specified non-residents" in subsec. 18(5) amended by 1997, c. 25, subsec. 4(3), applicable to 1997 *et seq.* Para. (b) formerly read:

(b) any amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to a non-resident insurance corporation where the amount outstanding at the particular time was, in the non-resident insurance corporation's taxation year that included the particular time, included, for the purposes of section 138, as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business through a permanent establishment (within the meaning assigned for the purpose of subsection 112(2)) in Canada,

Para. (b) of "outstanding debts to specified non-residents" in subsec. 18(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(2), applicable to 1991 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1985 to 1990 taxation years also. Para. (b) formerly read:

(b) where the corporation is controlled by a non-resident insurance corporation, the total of all amounts each of which is an amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to the non-resident insurance corporation where the amount outstanding at the particular time has, in the non-resident insurance corporation's taxation year that included the particular time, been included as property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by the definition "property used by it in the year in, or held by it in the year in the course of" in subsection 138(12)) carrying on an insurance business in Canada;

Pre-RSC History: *The definition "outstanding debts ..." was para. 18(5)(a).*

Subpara. 18(5)(a)(ii) substituted by 1988, c. 55, subsec. 10(14), applicable to taxation years commencing after June 17, 1987 that end after 1987. Subpara. (a)(ii) formerly read:

(ii) where the corporation is controlled by a non-resident life insurance corporation, the aggregate of all amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount to the life insurance corporation and such debt or other obligation has, by virtue of an election made under subsection 138(9), been included by the life insurance corporation in its taxation year that included the particular time as property held by it in the year in the course of carrying on an insurance business in Canada and the life insurance corporation has included

the revenue therefrom in computing its income for the year from carrying on an insurance business in Canada,

Regulations: 8201 (permanent establishment).

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

"specified non-resident shareholder" of a corporation at any time means a specified shareholder of the corporation who was at that time a non-resident person or a non-resident-owned investment corporation;

Pre-RSC History: *Definition "specified non-resident shareholder" was para. 18(5)(b).*

Para. 18(5)(b) added by 1980-81-82-83, c. 140, subsec. 11(6), applicable to taxation years commencing after November 12, 1981.

"specified shareholder" of a corporation at any time means a person who at that time, either alone or together with persons with whom that person is not dealing at arm's length, owns

(a) shares of the capital stock of the corporation that give the holders thereof 25% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, or

(b) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation,

and, for the purpose of determining whether a particular person is a specified shareholder of a corporation at any time, where the particular person or a person with whom the particular person is not dealing at arm's length has at that time a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently

(c) to, or to acquire, shares in a corporation or to control the voting rights of shares in a corporation, or

(d) to cause a corporation to redeem, acquire or cancel any of its shares (other than shares held by the particular person or a person with whom the particular person is not dealing at arm's length),

the particular person or the person with whom the particular person is not dealing at arm's length, as the case may be, shall be deemed at that time to own the shares referred to in paragraph (c) and the corporation referred to in paragraph (d) shall be deemed at that time to have redeemed, acquired or cancelled the shares referred to in paragraph (d), unless the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual.

Related Provisions: 18(5.1) — Person deemed not to be specified shareholder.

History: Definition "specified shareholder" in subsec. 18(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(3), applicable to 1993 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1989 to 1992 taxation years also. That definition formerly read:

> "specified shareholder" of a corporation at any time means a shareholder of the corporation who at that time, either alone or together with persons with whom that shareholder was not dealing at arm's length, owned 25% or more of the issued shares of any class of the capital stock of the corporation.

Pre-RSC History: *Definition "specified shareholder" was para. 18(5)(c).*

Para. 18(5)(c) added by 1980-81-82-83, c. 140, subsec. 11(6), applicable to taxation years ending after November 12, 1981.

Pre-RSC History [subsec. 18(5)]: Subsec. 18(5) substituted by 1980-81-82-83, c. 140, subsec. 11(6), applicable to taxation years commencing after November 12, 1981. Subsec. 18(5) formerly read:

(5) Meaning of certain expressions in ss. (4) — In subsection (4), "outstanding debts to specified non-residents" of a corporation at any particular time in a taxation year means

(a) the aggregate of amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount

(i) that was payable by the corporation to a person who was, at any time in the year,

(A) a shareholder of the corporation who, either alone or together with persons with whom the shareholder was not dealing at arm's length, owned 25% or more of the issued shares of any class of the corporation and who was

(I) a person not resident in Canada, or

(II) a non-resident-owned investment corporation, or

(B) a person described in subclause (A)(I) or (II) who was not dealing at arm's length with a shareholder of the corporation, if the shareholder, either alone or together with persons with whom he was not dealing at arm's length, owned 25% or more of the issued shares of any class of the corporation, and

(ii) on which any amount in respect of interest paid or payable by the corporation is or would be, but for subsection (4), deductible in computing the corporation's income for the year,

but does not include

(b) where the corporation is a subsidiary of a non-resident life insurance corporation, the aggregate of amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount to the life insurance corporation and such debt or other obligation has, by virtue of an election made under subsection 138(9), been included by the life insurance corporation in its taxation year that included the particular time as property held by it in the year in the course of carrying on an insurance business in Canada and the life insurance corporation has included the revenue therefrom in computing its income for the year from carrying on an insurance business in Canada.

Subsec. 18(5) substituted by 1974-75-76, c. 26, subsec. 7(4), applicable to 1972 *et seq.*

Subpara. 18(5)(a)(ii) substituted by 1973-74, c. 30, subsec. 2(1), applicable with respect to taxation years commencing after February 19, 1973. Subpara. 18(5)(a)(ii) formerly read:

(ii) a person described in clause (i)(A) or (B) who was not dealing at arm's length with a shareholder described in subparagraph (i), and

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization).

(5.1) Person deemed not to be specified shareholder — For the purposes of subsections (4) to (6), where

(a) a particular person would, but for this subsection, be a specified shareholder of a corporation at any time,

(b) there was in effect at that time an agreement or arrangement under which, on the satisfaction of a condition or the occur[r]ence of an event that it is reasonable to expect will be satisfied or will occur, the particular person will cease to be a specified shareholder, and

(c) the purpose for which the particular person became a specified shareholder was the safeguarding of rights or interests of the particular person or a person with whom the particular person is not dealing at arm's length in respect of any indebtedness owing at any time to the particular person or a person with whom the particular person is not dealing at arm's length,

the particular person shall be deemed not to be a specified shareholder of the corporation at that time.

History: Subsec. 18(5.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(4), applicable to 1993 *et seq.* and, where a corporation so elects by notifying the Minister of National Revenue in writing before December 11, 1993, to its 1989 to 1992 taxation years also.

(6) Loans made on condition — Where any loan (in this subsection referred to as the "first loan") has been made

(a) by a specified non-resident shareholder of a corporation, or

(b) by a non-resident person, or a non-resident-owned investment corporation, who was not dealing at arm's length with a specified shareholder of a corporation,

to another person on condition that a loan (in this subsection referred to as the "second loan") be made by any person to a particular corporation resident in Canada, for the purposes of subsections (4) and (5), the lesser of

(c) the amount of the first loan, and

(d) the amount of the second loan

shall be deemed to be a debt incurred by the particular corporation to the person who made the first loan.

Proposed Amendment — 18(6)

[See under 18(4) — ed.]

Related Provisions: 18(5.1) — Person deemed not to be specified shareholder.

Pre-RSC History: Subsec. 18(6) substituted by 1985, c. 45, subsec. 9(4), applicable with respect to loans outstanding in taxation years of corporations resident in Canada referred to therein, commencing after May 9, 1985. Subsec. 18(6) formerly read:

(6) Loan made on condition — Where any loan is made by a specified non-resident shareholder of a corporation to another person on condition that a loan be made by any person (in this subsection referred to as the "subsequent lender") to a corporation resident in Canada, for the purposes of subsections (4) and (5) the lesser of

(a) the amount of the loan so made by the specified non-resident shareholder to the other person, and

(b) the amount of the loan so made by the subsequent lender to the corporation,

shall be deemed to be a debt incurred by the corporation to the specified non-resident shareholder.

Subsec. 18(6) substituted by 1980-81-82-83, c. 140, subsec. 11(6), applicable to taxation years commencing after November 12, 1981. Subsec. 18(6) formerly read:

(6) Where any loan is made by a taxpayer who is a person described in clause (5)(a)(i)(A) or (B) (in this subsection referred to as the "first lender") to another person on condition that a loan be made by any person (in this subsection referred to as the "subsequent lender") to a corporation resident in Canada, for the purposes of subsections (4) and (5) the lesser of

(a) the amount of the loan so made by the first lender to the other person, and

(b) the amount of the loan so made by the subsequent lender to the corporation, shall be deemed to be a debt incurred by the corporation to the first lender.

All that portion of subsec. 18(6) preceding para. (a) substituted by 1976-77, c. 4, subsec. 4(3), applicable in respect of loans made after May 25, 1976. That portion formerly read:

(6) Where any loan is made by a taxpayer (in this subsection referred to as the "first lender") to another person on condition that a loan be made by any person (in this subsection referred to as the "subsequent lender") to a corporation resident in Canada, for the purposes of subsections (4) and (5) the lesser of

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization).

I.T. Technical News: No. 15 (back-to-back loans in relation to subsections 18(4) and 18(6)).

(7) [Repealed under former Act]

Pre-RSC History: Subsec. 18(7) repealed by 1985, c. 45, subsec. 9(5), applicable to taxation years commencing after 1984. Subsec. 18(7) formerly read:

(7) Limitation on application of section 21 where ss. (4) applicable — Where

(a) section 21 is applicable in respect of an amount or a part of an amount specified by a corporation resident in Canada in its election under that section that, but for that section, would have been deductible in computing its income for a taxation year,

(b) a portion of the amount or of the part of the amount described in paragraph (a) may reasonably be considered to be an amount that, but for section 21, would have been deductible in computing the income of the corporation for the year in respect of interest paid or payable by it on outstanding debts to specified non-residents, and

(c) subsection (4) is or would be, if this Act were read without reference to section 21, applicable in computing the income of the corporation for the year,

notwithstanding section 21, that proportion of the portion described in paragraph (b) that, but for this subsection, would

(d) be added by virtue of paragraph 21(1)(b) or subsection 21(3) to the capital cost to the corporation of depreciable property acquired by it, or

(e) be deemed by paragraph 21(2)(b) or subsection 21(4) to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense as defined in section 66, 66.1, 66.2 or 66.4, as the case may be, incurred by it in the year

as the case may be, that the amount determined under paragraph (4)(a) in respect of the corporation for the year is of the amount determined under paragraph (4)(b) in respect of the corporation for the year, shall not be so added or be so deemed, as the case may be.

Paras. 18(7)(d), (e) substituted by 1980-81-82-83, c. 48, subsec. 9(2), applicable to taxation years ending after May 6, 1974. Paras. 18(7)(d), (e) formerly read:

(d) be added by virtue of section 21 to the capital cost to the corporation of depreciable property acquired by it, or

(e) be deemed by section 21 to be exploration, prospecting and development expenses incurred by it in the year,

(8) Where subsec. (4) does not apply — Subsection (4) does not apply in computing the income for a taxation year of a corporation whose principal business in Canada throughout the year was the developing or manufacturing of aircraft or aircraft components.

Proposed Repeal — 18(8)

[See under 18(4) — ed.]

Pre-RSC History: Subsec. 18(8) added by 1973-74, c. 30, subsec. 2(2), applicable with respect to 1973 *et seq.*

Interpretation Bulletins: IT-59R3: Interest on debts owing to specified non-residents (thin capitalization).

(9) Limitation respecting prepaid expenses — Notwithstanding any other provision of this Act,

(a) in computing a taxpayer's income for a taxation year from a business or property (other than income from a business computed in accordance with the method authorized by subsection 28(1)), no deduction shall be made in respect of an outlay or expense to the extent that it can reasonably be regarded as having been made or incurred

(i) as consideration for services to be rendered after the end of the year,

(ii) as, on account or in lieu of payment of, or in satisfaction of, interest, taxes (other than taxes imposed on insurance premiums), rent or royalty in respect of a period after the end of the year, or

Proposed Amendment — 18(9)(a)(ii)

(ii) as, on account of, in lieu of payment of or in satisfaction of, interest, taxes (other than taxes imposed on an insurer in respect of insurance premiums of a non-cancellable or guaranteed renewable accident and sickness insurance policy, or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less), rent or royalties in respect of a period that is after the end of the year, or

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 7(1), will amend subpara. 18(9)(a)(ii) to read as above, applicable to taxation years that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the amending legislation receives Royal Assent, the amendment applies to taxation years that end after 1997.

Technical Notes: Section 18 of the Act prohibits the deduction of certain outlays and expenses in computing a taxpayer's income from a business or property.

Subsection 18(9) of the Act defers the deduction of certain prepaid expenses to the taxation year to which the expenses relate. Paragraph 18(9)(a) lists the prepaid amounts to which the subsection applies. Currently, these amounts include, amongst other amounts, taxes (other than taxes imposed on insurance premiums).

Subparagraph 18(9)(a)(ii) is amended to provide that only premium taxes imposed on an insurer in respect of a non-cancellable or guaranteed renewable accident and sickness insurance policy or a life insurance policy that is not a group term life insurance policy that provides coverage for a period not exceeding 12 months are excepted from subparagraph 18(9)(a)(ii) and continue to be deductible on a current basis. The amendment to subparagraph 18(9)(a)(ii) is consequential on the addition of subsection 18(9.02) of the Act which requires the deferral of policy acquisition costs (which include premium taxes) generally in respect of non-life insurance policies.

This amendment applies to taxation years that begin after 1999 and, where a taxpayer so elects in writing with respect to both it and new subsection 18(9.02), to the taxpayer's taxation years that end after 1997. The election is to be filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this amendment receives Royal Assent.

(iii) as consideration for insurance in respect of a period after the end of the year, other than

(A) where the taxpayer is an insurer, consideration for reinsurance, and

(B) consideration for insurance on the life of an individual under a group term life insurance policy where all or part of the consideration is for insurance that is (or would be if the individual survived) in respect of a period that ends more than 13 months after the consideration is paid;

(b) such portion of each outlay or expense (other than an outlay or expense of a corporation, partnership or trust as, on account of, in lieu of payment of or in satisfaction of, interest) made or incurred as would, but for paragraph (a), be deductible in computing a taxpayer's income for a taxation year shall be deductible in computing the taxpayer's income for the subsequent year to which it can reasonably be considered to relate;

(c) for the purposes of section 37.1, such portion of each qualified expenditure (within the meaning assigned by subsection 37.1(5)) as was made by a taxpayer in a taxation year and as would, but for paragraph (a), have been deductible in computing the taxpayer's income for the year shall be deemed

(i) not to be a qualified expenditure made by the taxpayer in the year, and

(ii) to be a qualified expenditure made by the taxpayer in the subsequent year to which the expenditure can reasonably be considered to relate;

(d) for the purpose of paragraph (a), an outlay or expense of a taxpayer is deemed not to include any payment referred to in subparagraph 37(1)(a)(ii) or (iii) that

(i) is made by the taxpayer to a person or partnership with which the taxpayer deals at arm's length, and

(ii) is not an expenditure described in subparagraph 37(1)(a)(i); and

(e) for the purposes of section 37 and the definition "qualified expenditure" in subsection 127(9), the portion of an expenditure that is made or incurred by a taxpayer in a taxation year and that would, but for paragraph (a), have been deductible under section 37 in computing the taxpayer's income for the year, is deemed

(i) not to be made or incurred by the taxpayer in the year, and

(ii) to be made or incurred by the taxpayer in the subsequent taxation year to which the expenditure can reasonably be considered to relate.

Related Provisions: 6(1)(a)(i), 6(4) — Group term life insurance premiums — taxable benefit; 18(9.01) — Group term life insurance — deductibility of premiums; 18(9.02) — Application to insurers; 20(1)(m.1) — Manufacturer's warranty reserve; 20(1)(m.2) — Repayment of amount previously included in income; 87(2)(j.2) — Amalgamations — prepaid expenses.

History: Para. 18(9)(d) amended and (e) added by 1996, c. 21, subsec. 5(1), para. (d) applicable to payments made after 1995, and para. (e) applicable to expenditures made or incurred at any time. Para. (d) formerly read:

(d) for the purposes of paragraph (a), an outlay or expense shall be deemed not to include any payment referred to in clause 37(1)(a)(ii)(E).

Subpara. 18(9)(a)(iii) amended by 1995, c. 3, subsec. 6(1), applicable to premiums paid after February 1994 for insurance. Subpara. (iii) formerly read:

(iii) as consideration for insurance in respect of a period after the end of the year (other than an amount paid in respect of reinsurance by an insurer);

Para. 18(9)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(5), applicable with respect to amounts paid as, on account of, in lieu of payment of or in satisfaction of, interest in respect of a period or part thereof that is after 1991. Para. 18(9)(b) formerly read:

(b) such portion of each outlay or expense made or incurred as would, but for paragraph (a), have been deductible in computing a taxpayer's income for a taxation year shall be deductible in computing the taxpayer's income for the subsequent year to which it can reasonably be considered to relate;

Pre-RSC History: Para. 18(9)(d) amended by 1988, c. 55, subsec. 10(15), to substitute "clause 37(1)(a)(ii)(E)" for "subparagraph 37(1)(a)(vi)", applicable in respect of payments to which paragraph 37(1)(a) is applicable.

Para. 18(9)(d) added by 1986, c. 55, subsec. 4(2), applicable with respect to payments made after February 25, 1986.

Subsec. 18(9) added by 1980-81-82-83, c. 48, subsec. 9(3), applicable with respect to outlays and expenses made or incurred after December 11, 1979.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-151R4: Scientific research and experimental development expenditures; IT-211R: Membership dues — associations and societies; IT-233R: Lease-option

agreements; sale-leaseback agreements; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-417R2: Prepaid expenses and deferred charges.

(9.01) Group term life insurance — Where

(a) a taxpayer pays a premium after February 1994 and before 1997 under a group term life insurance policy for insurance on the life of an individual,

(b) the insurance is for the remainder of the individual's lifetime, and

(c) no further premiums will be payable for the insurance,

no amount may be deducted in computing the taxpayer's income for a taxation year from a business or property in respect of the premium except that there may be so deducted,

(d) where the year is the taxation year in which the premium was paid or a subsequent taxation year and the individual is alive at the end of the year, the lesser of

(i) the amount determined by the formula

$$A - B$$

and

(ii) 1/3 of the amount determined by the formula

$$A \times \frac{C}{365}$$

where

A is the amount that would, if this Act were read without reference to this subsection, be deductible in respect of the premium in computing the taxpayer's income,

B is the total amount deductible in respect of the premium in computing the taxpayer's income for preceding taxation years, and

C is the number of days in the year, and

(e) where the individual died in the year, the amount determined under subparagraph (d)(i).

Related Provisions: 6(4) — Taxable benefit from premiums paid by employer; 87(2)(j.2) — Amalgamations — prepaid expenses; 257 — Formula cannot calculate to less than zero.

History: Subsec. 18(9.01) added by 1995, c. 3, subsec. 6(2), applicable to premiums paid after February 1994 for insurance.

Proposed Addition — 18(9.02)

(9.02) Application of subsec. (9) to insurers — For the purpose of subsection (9), an outlay or expense made or incurred by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less) is deemed to be an expense incurred as consideration for services rendered consistently throughout the period of coverage of the policy.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 7(2), will add subsec. 18(9.02), applicable to taxation years that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the amending legislation receives Royal Assent, subsec. 18(9.02) applies to taxation years that end after 1997.

Technical Notes: Currently, policy acquisition costs are deductible for tax purposes on a current basis. New subsection 18(9.02) deems an outlay or expense made by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness policy or a life policy that is not a group term life policy that provides coverage for a period not exceeding 12 months) to be an expense incurred for services rendered consistently throughout the period of coverage of the policy. Where such acquisition costs relate to an insurance policy that covers a period extending beyond the end of the insurer's taxation year, subsection 18(9) of the Act will apply to prorate the deductibility of the costs over the period of coverage of the policy. Generally accepted accounting principles (GAAP) identify policy acquisition costs to include premium taxes, commissions, and other costs directly related to the acquisition of premiums written.

This amendment applies to taxation years that begin after 1999 and, where a taxpayer so elects in writing with respect to both it and amended subparagraph 18(9)(a)(ii), to the taxpayer's taxation years that end after 1997. The election is to be filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxation year in which this amendment receives Royal Assent.

(9.1) Penalties, bonuses and rate-reduction payments — Subject to subsection 142.4(10), where at any time a payment, other than a payment that

(a) can reasonably be considered to have been made in respect of the extension of the term of a debt obligation or in respect of the substitution or conversion of a debt obligation to another debt obligation or share, or

(b) is contingent or dependent on the use of or production from property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation,

is made to a person or partnership by a taxpayer in the course of carrying on a business or earning income from property in respect of borrowed money or on an amount payable for property acquired by the taxpayer (in this subsection referred to as a "debt obligation")

(c) as consideration for a reduction in the rate of interest payable by the taxpayer on the debt obligation, or

(d) as a penalty or bonus payable by the taxpayer because of the repayment by the taxpayer of all or part of the principal amount of the debt obligation before its maturity,

the payment shall, to the extent that it can reasonably be considered to relate to, and does not exceed the value at that time of, an amount that, but for the reduction described in paragraph (c) or the repayment described in paragraph (d), would have been paid or payable by the taxpayer as interest on the debt obligation for a taxation year of the taxpayer ending after that time, be deemed,

(e) for the purposes of this Act, to have been paid by the taxpayer and received by the person or partnership at that time as interest on the debt obligation, and

(f) for the purpose of computing the taxpayer's income in respect of the business or property for the year, to have been paid or payable by the taxpayer in that year as interest pursuant to a legal obligation to pay interest,

(i) in the case of a reduction described in paragraph (c), on the debt obligation, and

(ii) in the case of a repayment described in paragraph (d),

(A) where the repayment was in respect of all or part of the principal amount of the debt obli-

gation that was borrowed money, except to the extent that the borrowed money was used by the taxpayer to acquire property, on borrowed money used in the year for the purpose for which the borrowed money that was repaid was used, and

(B) where the repayment was in respect of all or part of the principal amount of the debt obligation that was either borrowed money used to acquire property or an amount payable for property acquired by the taxpayer, on the debt obligation to the extent that the property or property substituted therefor is used by the taxpayer in the year for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business.

Related Provisions: 18(9.2) — Prepaid interest on debt obligations; 20(1)(e) — Expenses re financing; 87(2)(j.6) — Amalgamations — continuing corporation; 248(5) — Substituted property.

History: The opening words of subsec. 18(9.1) amended by 1998, c. 19, subsec. 79(1), applicable to taxation years that end after February 22, 1994. The opening words formerly read:

(9.1) Where at any time a payment, other than a payment that

Subsec. 18(9.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(6), applicable with respect to payments made after 1984 except that, in its application with respect to payments made before July 13, 1990, subsec. (9.1) shall be read without reference to para. (e).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

(9.2) Interest on debt obligations — For the purposes of this Part, the amount of interest payable on borrowed money or on an amount payable for property (in this subsection and subsections (9.3) to (9.8) referred to as the "debt obligation") by a corporation, partnership or trust (in this subsection and subsections (9.3) to (9.7) referred to as the "borrower") in respect of a taxation year shall, notwithstanding subparagraph (9.1)(f)(i), be deemed to be an amount equal to the lesser of

(a) the amount of interest, not in excess of a reasonable amount, that would be payable on the debt obligation by the borrower in respect of the year if no amount had been paid before the end of the year in satisfaction of the obligation to pay interest on the debt obligation in respect of the year and if the amount outstanding at each particular time in the year that is after 1991 on account of the principal amount of the debt obligation were the amount, if any, by which

(i) the amount outstanding at the particular time on account of the principal amount of the debt obligation

exceeds the total of

(ii) all amounts each of which is an amount paid before the particular time in satisfaction, in whole or in part, of the obligation to pay interest on the debt obligation in respect of a period or part thereof that is after 1991, after the beginning of the year, and after the time the amount was so paid (other than a period or part thereof that is in the year where no such amount was paid before the particular time in respect of a period, or part of a period, that is after the end of the year), and

(iii) the amount, if any, by which

(A) the total of all amounts of interest payable on the debt obligation (determined without reference to this subsection) by the borrower in respect of taxation years ending after 1991 and before the year (to the extent that the interest does not exceed a reasonable amount)

exceeds

(B) the total of all amounts of interest deemed by this subsection to have been payable on the debt obligation by the borrower in respect of taxation years ending before the year, and

(b) the amount, if any, by which

(i) the total of all amounts of interest payable on the debt obligation (determined without reference to this subsection) by the borrower in respect of the year or taxation years ending after 1991 and before the year (to the extent that the interest does not exceed a reasonable amount)

exceeds

(ii) the total of all amounts of interest deemed by this subsection to have been payable on the debt obligation by the borrower in respect of taxation years ending before the year.

Related Provisions: 18(9.3)–(9.8) — Prepaid interest on debt obligations.

History: Subsec. 18(9.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.3) Interest on debt obligations — Where at any time in a taxation year of a borrower a debt obligation of the borrower is settled or extinguished or the holder of the obligation acquires or reacquires property of the borrower in circumstances in which section 79 applies in respect of the debt obligation and the total of

(a) all amounts each of which is an amount paid at or before that time in satisfaction, in whole or in part, of the obligation to pay interest on the debt obligation in respect of a period or part of a period that is after that time, and

(b) all amounts of interest payable on the debt obligation (determined without reference to subsection (9.2)) by the borrower in respect of taxation years ending after 1991 and before that time, or in respect of periods, or parts of periods, that are in such years and before that time (to the extent that the interest does not exceed a reasonable amount),

exceeds the total of

(c) all amounts of interest deemed by subsection (9.2) to have been payable on the debt obligation by the borrower in respect of taxation years ending before that time, and

(d) the amount of interest that would be deemed by subsection (9.2) to have been payable on the debt obligation by the borrower in respect of the year if the year had ended immediately before that time,

(which excess is in this subsection referred to as the "excess amount"), the following rules apply:

(e) for the purpose of applying section 79 in respect of the borrower, the principal amount at that time of the debt obligation shall be deemed to be equal to the amount, if any, by which

(i) the principal amount at that time of the debt obligation

exceeds

(ii) the excess amount, and

(f) the excess amount shall be deducted at that time in computing the forgiven amount in respect of the obligation (within the meaning assigned by subsection 80(1)).

Related Provisions: 80(1)"forgiven amount"B(c) — Deduction from forgiven amount as per 18(9.3)(f).

History: The portion of subsec. 18(9.3) before para. (b) and paras. (e) and (f) amended by 1995, c. 21, subsecs. 5(1), (2), the opening words of subsec. 18(9.3) and para. (e) applicable to 1992 *et seq.* and paras. (a) and (f) applicable to taxation years that end after February 21, 1994, except that they do not apply to any obligation settled or extinguished

(a) before February 22, 1994;

(b) after February 21, 1994

(i) under the terms of an agreement in writing entered into on or before that date, or

(ii) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement;

(c) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994;

(d) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994; or

(e) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994.

That portion of subsec. 18(9.3) before para. (b) and paras. (e) and (f) formerly read:

(9.3) Idem — Where at any time in a taxation year of a borrower a debt obligation of the borrower has been settled or extinguished and the total of

(a) all amounts each of which is an amount paid before that time in satisfaction, in whole or in part, of the obligation to pay interest on the debt obligation in respect of a period or part thereof that is after that time, and

. . . . .

(e) for the purpose of applying paragraph 79(c) in respect of the borrower, where the debt obligation was extinguished in circumstances to which section 79 applies, the amount outstanding at that time on account of the principal amount of the debt obligation shall be deemed to be the amount, if any, by which

(i) the amount outstanding at that time on account of the principal amount of the debt obligation

exceeds

(ii) the excess amount, and

(f) for the purpose of applying section 80 in respect of the borrower, where the debt obligation was settled or extinguished in circumstances to which that section applies, the debt obligation shall be deemed to have been settled or extinguished by the payment of an amount equal to the total of

(i) the amount, if any, of the payment made to settle or extinguish the debt obligation (determined without reference to this subsection), and

(ii) the excess amount.

Subsec. 18(9.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.4) Idem — Where an amount is paid at any time by a person or partnership in respect of a debt obligation of a borrower

(a) as, on account of, in lieu of payment of or in satisfaction of, interest on the debt obligation in respect of a period or part thereof that is after 1991 and after that time, or

(b) as consideration for a reduction in the rate of interest payable on the debt obligation (excluding, for greater certainty, a payment described in paragraph (9.1)(a) or (b)) in respect of a period or part thereof that is after 1991 and after that time,

that amount shall be deemed, for the purposes of subsection (9.5) and, subject to that subsection, for the purposes of clause (9.2)(a)(iii)(A), subparagraph (9.2)(b)(i), paragraph (9.3)(b) and subsection (9.6), to be an amount of interest payable on the debt obligation by the borrower in respect of that period or part thereof and shall be deemed, for the purposes of subparagraph (9.2)(a)(ii) and paragraph (9.3)(a), to be an amount paid at that time in satisfaction of the obligation to pay interest on the debt obligation in respect of that period or part thereof.

History: Subsec. 18(9.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.5) Idem — Where the amount of interest payable on a debt obligation (determined without reference to subsection (9.2)) by a borrower in respect of a particular period or part thereof that is after 1991 can reasonably be regarded as an amount payable as consideration for

(a) a reduction in the amount of interest that would otherwise be payable on the debt obligation in respect of a subsequent period, or

(b) a reduction in the amount that was or may be paid before the beginning of a subsequent period in satisfaction of the obligation to pay interest on the debt obligation in respect of that subsequent period

(determined without reference to the existence of, or the amount of any interest paid or payable on, any other debt obligation), that amount shall, for the purposes of clause (9.2)(a)(iii)(A), subparagraph (9.2)(b)(i), paragraph (9.3)(b) and subsection (9.6), be deemed to be an amount of interest payable on the debt obligation by the borrower in respect of the subsequent period and not to be an amount of interest payable on the debt obligation by the borrower in respect of the particular period and shall, when paid, be deemed for the purposes of subparagraph (9.2)(a)(ii) and paragraph (9.3)(a) to be an amount paid in satisfaction of the obligation to pay interest on the debt obligation in respect of the subsequent period.

Related Provisions: 18(9.4) — Prepaid interest on debt obligations.

History: Subsec. 18(9.5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.6) Idem — Where the liability in respect of a debt obligation of a person or partnership is assumed by a borrower at any time,

(a) the amount of interest payable on the debt obligation (determined without reference to subsection (9.2)) by any person or partnership in respect of a period shall, to the extent that that period is included in a taxation year of the borrower ending after 1991, be deemed, for the purposes of clause (9.2)(a)(iii)(A), subparagraph (9.2)(b)(i) and paragraph (9.3)(b), to be an amount of interest payable on the debt obligation by the borrower in respect of that year, and

(b) the application of subsections (9.2) and (9.3) to the borrower in respect of the debt obligation after that

time shall be determined on the assumption that subsection (9.2) applied to the borrower in respect of the debt obligation before that time,

and, for the purposes of this subsection, where the borrower came into existence at a particular time that is after the beginning of the particular period beginning at the beginning of the first period in respect of which interest was payable on the debt obligation by any person or partnership and ending at the particular time, the borrower shall be deemed

(c) to have been in existence throughout the particular period, and

(d) to have had, throughout the particular period, taxation years ending on the day of the year on which its first taxation year ended.

History: Subsec. 18(9.6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.7) Idem — Where the amount paid by a borrower at any particular time, in satisfaction of the obligation to pay a particular amount of interest on a debt obligation in respect of a subsequent period or part thereof, exceeds the particular amount of that interest, discounted

(a) for the particular period beginning at the particular time and ending at the end of the subsequent period or part thereof, and

(b) at the rate or rates of interest applying under the debt obligation during the particular period (or, where the rate of interest of any part of the particular period is not fixed at the particular time, at the prescribed rate of interest in effect at the particular time),

that excess shall

(c) for the purposes of applying subsections (9.2) to (9.6) and (9.8), be deemed to be neither an amount of interest payable on the debt obligation nor an amount paid in satisfaction of the obligation to pay interest on the debt obligation, and

(d) be deemed to be a payment described in paragraph (9.1)(d) in respect of the debt obligation.

History: Subsec. 18(9.7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(9.8) Idem — Nothing in any of subsections (9.2) to (9.7) shall be construed as providing that

(a) the total of all amounts each of which is the amount of interest payable on a debt obligation by an individual (other than a trust), or deemed by subsection (9.2) to be payable on the debt obligation by a corporation, partnership or trust, in respect of a taxation year ending after 1991 and before any particular time,

may exceed

(b) the total of all amounts each of which is the amount of interest payable on the debt obligation (determined without reference to subsection (9.2)) by a person or partnership in respect of a taxation year ending after 1991 and before that particular time.

History: Subsec. 18(9.8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(6), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-417R2: Prepaid expenses and deferred charges.

(10) Employee benefit plan — Paragraph (1)(o) does not apply in respect of a contribution to an employee benefit plan

(a) to the extent that the contribution

(i) is made in respect of services performed by an employee who is not resident in Canada and is regularly employed in a country other than Canada, and

(ii) cannot reasonably be regarded as having been made in respect of services performed or to be performed during a period when the employee is resident in Canada;

(b) the custodian of which is non-resident, to the extent that the contribution

(i) is in respect of an employee who is non-resident at the time the contribution is made, and

(ii) cannot reasonably be regarded as having been made in respect of services performed or to be performed during a period when the employee is resident in Canada; or

(c) the custodian of which is non-resident, to the extent that the contribution can reasonably be regarded as having been made in respect of services performed by an employee in a particular calendar month where

(i) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and

(ii) the employee became a member of the plan before the end of the month following the month in which the employee became resident in Canada,

and, for the purpose of this paragraph, where benefits provided to an employee under a particular employee benefit plan are replaced by benefits provided under another employee benefit plan, the other plan shall be deemed, in respect of the employee, to be the same plan as the particular plan.

History: Para. 18(10)(b) substituted, and para. (c) added, by 1994, c. 21, subsec. 11(2), applicable to contributions made after 1992. Para. (b) formerly read:

(b) the custodian of which is not resident in Canada, to the extent that the contribution

(i) is in respect of an employee who was

(A) not resident in Canada at the time the contribution was made, or

(B) resident in Canada for a period (in this paragraph referred to as an "excluded period") of not more than 36 of the 72 months preceding the date on which the contribution is made and was a beneficiary under the plan before becoming resident in Canada, and

(ii) cannot reasonably be regarded as having been made in respect of services performed or to be performed during a period (other than an excluded period) when the employee is resident in Canada.

Pre-RSC History: Subsec. 18(10) added by 1980-81-82-83, c. 48, subsec. 9(3), applicable with respect to contributions made after 1979.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

(11) Limitation [on interest expense] — Notwithstanding any other provision of this Act, in computing the income of a taxpayer for a taxation year, no amount is deductible under paragraph 20(1)(c), (d), (e), (e.1) or (f) in respect of borrowed money (or other property acquired by the taxpayer) in respect of any period after which the

money (or other property) is used by the taxpayer for the purpose of

(a) making a payment after November 12, 1981 as consideration for an income-averaging annuity contract, unless the contract was acquired pursuant to an agreement in writing entered into before November 13, 1981;

(b) paying a premium (within the meaning assigned by subsection 146(1) read without reference to the portion of the definition "premium" in that subsection following paragraph (b) of that definition) under a registered retirement savings plan after November 12, 1981;

(c) making a contribution to a registered pension plan or a deferred profit sharing plan after November 12, 1981, other than

(i) a contribution described in subparagraph 8(1)(m)(ii) or (iii) (as they read in their application to the 1990 taxation year) that was required to be made pursuant to an obligation entered into before November 13, 1981, or

(ii) a contribution deductible under paragraph 20(1)(q) or (y) in computing the taxpayer's income;

(d) making a payment as consideration for an annuity the payment for which was deductible in computing the taxpayer's income by virtue of paragraph 60(l);

(e) making a contribution to a retirement compensation arrangement where the contribution was deductible under paragraph 8(1)(m.2) in computing the taxpayer's income;

(f) making a contribution to a net income stabilization account;

(g) making a contribution to any account under a provincial pension plan prescribed for the purpose of paragraph 60(v); or

(h) making a contribution into a registered education savings plan,

and, for the purposes of this subsection, to the extent that an indebtedness is incurred by a taxpayer in respect of a property and at any time that property or a property substituted therefor is used for any of the purposes referred to in this subsection, the indebtedness shall be deemed to be incurred at that time for that purpose.

Related Provisions: 18(1)(u) — Investment counselling and administration fees for RRSP or RRIF are non-deductible; 110.6(1)"investment expense"(a); 248(5) — Substituted property.

History: Para. 18(11)(h) added by 1998, c. 19, s. 3, applicable to 1998 *et seq.*

Para. 18(11)(g) added by 1994, c. 21, subsec. 11(3), applicable to 1993 *et seq.*

Para. 18(11)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 8(7), applicable to 1992 *et seq.* Para. 18(11)(b) formerly read:

(b) paying a premium under a registered retirement savings plan after November 12, 1981;

That portion of subsec. 18(11) following para. (e) amended (para. (f) being added) by 1994, c. 7, Sch VIII (1993, c. 24), subsec. 8(8), applicable to 1991 *et seq.* That portion formerly read:

and, for the purposes of this subsection, where an indebtedness is incurred by a taxpayer in respect of a property and at any time that property or a property substituted therefor is used for any of the purposes referred to in paragraphs (a) to (e), the indebtedness shall be deemed to be incurred at that time for that purpose.

That portion of subsec. 18(11) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(7), applicable to 1990 *et seq.* That portion formerly read:

(11) Limitation — Notwithstanding any other provision of this Act, in computing the income of a taxpayer for a taxation year, no amount shall be deducted under paragraph 20(1)(c), (d) or (e) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of indebtedness incurred for the purpose of

That portion of subsec. 18(11) following para. (e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 13(8), applicable to 1990 *et seq.*

Pre-RSC History: That portion of para. 18(11)(c) preceding subpara. (i) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

Subpara. 18(11)(c)(i) amended to add "(as they read in their application to the 1990 taxation year)", applicable to 1991 *et seq.*; subpara. (c)(ii) substituted, applicable to 1992 *et seq.*; para. (e) added, applicable to 1989 *et seq.*; by 1990, c. 35, subsecs. 3(1) to (3). Subpara. (c)(ii) formerly read:

(ii) a contribution deductible by the taxpayer under paragraph 20(1)(q), (s) or (y); or

Paras. 18(11)(e) to (h) repealed by 1986, c. 6, subsec. 12(2), applicable to 1986 *et seq.* Paras. 18(11)(e) to (h) formerly read:

(e) acquiring property that is or has become an indexed security or for which an indexed security has been substituted, other than an amount that relates to a period when the property or any property substituted therefor, as the case may be, was not an indexed security;

(f) acquiring property that is or has become an interest in a trust that is a participant under an indexed security investment plan or for which such an interest has been substituted, other than an amount that relates to a period when the property or any property substituted therefor, as the case may be, was not an interest in such a trust;

(g) making a contribution to, or acquiring property that is used to make a contribution to, a trust under which the taxpayer is a beneficiary and that is or has become a participant under an indexed security investment plan, other than an amount that relates to a period when the trust was not such a participant; or

(h) acquiring property that is a loan to a trust under which the taxpayer, or a person with whom the taxpayer does not deal at arm's length, is a beneficiary and that is or has become a participant under an indexed security investment plan, or for which such a loan has been substituted, other than an amount that relates to a period when the trust was not such a participant.

Paras. 18(11)(e) to (h) added by 1984, c. 1, subsec. 8(2), applicable to taxation years ending after September 30, 1983.

Subsec. 18(11) added by 1980-81-82-83, c. 140, subsec. 11(7). Para. 18(11)(d) applicable to 1982 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-167R6: Registered pension plans — employee's contributions; IT-307R3: Spousal registered retirement savings plans; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

(12) Work space in home — Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,

(a) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

(i) the individual's principal place of business, or

(ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income for the year from the business shall not exceed the individual's income for the year from the business, com-

puted without reference to the amount and sections 34.1 and 34.2; and

(c) any amount not deductible by reason only of paragraph (b) in computing the individual's income from the business for the immediately preceding taxation year shall be deemed to be an amount otherwise deductible that, subject to paragraphs (a) and (b), may be deducted for the year for the work space in respect of the business.

Related Provisions: 8(13) — Parallel rule for employee.

History: Para. 18(12)(b) amended by 1996, c. 21, subsec. 5(2), applicable to 1995 *et seq.*. The para. formerly read:

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income from the business for a taxation year shall not exceed the individual's income from the business for the year, computed without reference to the amount; and

Pre-RSC History: Subsec. 18(12) added by 1988, c. 55, subsec. 10(16), applicable to fiscal periods commencing after 1987.

Interpretation Bulletins: IT-504R2: Visual artists and writers; IT-514: Work space in home expenses.

(13) When subsec. (15) applies to money lenders — Subsection (15) applies, subject to subsection 142.6(7), when

(a) a taxpayer (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property;

(b) the disposition is not described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54;

(c) the transferor is not an insurer;

(d) the ordinary business of the transferor includes the lending of money and the particular property was used or held in the ordinary course of that business;

(e) the particular property is a share, or a loan, bond, debenture, mortgage, note, agreement for sale or any other indebtedness;

(f) the particular property was, immediately before the disposition, not a capital property of the transferor;

(g) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection (15) referred to as the "substituted property") that is, or is identical to, the particular property; and

(h) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Related Provisions: 18(14) — Alternate application of subsec. 18(15); 40(2)(g)(i), 54"superficial loss" — Parallel rule for capital property; 248(12) — Identical properties.

History: Subsec. 18(13) amended by 1998, c. 19, subsec. 79(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260) to dispositions of property that occur after April 26, 1995, other than a disposition that occurred before July 1995 to which subsec. 142.6(7)

(a) does not apply; and

(b) would apply if the disposition had occurred after June 1995.

The subsec. formerly read:

(13) Superficial loss — Subject to subsection 142.6(7) and notwithstanding any other provision of this Act, where a taxpayer (other than an insurer)

(a) who was a resident of Canada at any time in a taxation year and whose ordinary business during that year included the lending of money, or

(b) who at any time in the year carried on a business of lending money in Canada

has sustained a loss on a disposition of property used or held in that business that is a share, or a loan, bond, debenture, mortgage, note, agreement of sale or any other indebtedness, other than a property that is a capital property of the taxpayer, no amount shall be deducted in computing the income of the taxpayer from that business for the year in respect of the loss where

(c) during the period commencing 30 days before and ending 30 days after the disposition, the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer acquired or agreed to acquire the same or identical property (in this subsection referred to as the "substituted property"), and

(d) at the end of the period described in paragraph (c), the taxpayer, person or partnership, as the case may be, owned or had a right to acquire the substituted property,

and any such loss shall be added in computing the cost to the taxpayer, person or partnership, as the case may be, of the substituted property.

The opening words of subsec. 18(13) amended by 1995, c. 21, s. 48, applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(13) Superficial loss — Subject to subsection 138(5.2) and notwithstanding any other provision of this Act, where a taxpayer

Pre-RSC History: Subsec. 18(13) added by 1988, c. 55, subsec. 10(16), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

(14) When subsec. (15) applies to adventurers in trade — Subsection (15) applies where

(a) a person (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property;

(b) the particular property is described in an inventory of a business that is an adventure or concern in the nature of trade;

(c) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f) or subsection 138(11.3) or 149(10);

(d) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires property (in this subsection and subsection (15) referred to as the "substituted property") that is, or is identical to, the particular property; and

(e) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Related Provisions: 10(1.01) — No writedown of inventory held as adventure in the nature of trade; 18(13) — Alternate application of subsec. 18(15); 40(2)(g)(i), 54"superficial loss" — Parallel rule for capital property; 248(12) — Identical properties.

History: Subsec. 18(14) added by 1998, c. 19, subsec. 79(2), applicable to dispositions of property that occur after June 20, 1996, other than a disposition that occurred before 1997 to a person or partnership that was obliged on June 20, 1996 to acquire the property pursuant to the terms of an agreement in writing made on or before that day and, for the purpose of this application, a person or partnership shall be considered not to be obliged to acquire property where the person or partnership can be excused from performing the obligation if there is a change to the Act or if there is an adverse assessment under the Act.

(15) Loss on certain properties [transferred within affiliated group] — If this subsection applies because of subsection (13) or (14) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil, and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to this subsection) is deemed to be a loss of the transferor from a

disposition of the particular property at the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the substituted property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(iii) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(iv) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation,

and for the purpose of paragraph (b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs (b)(i) to (iv).

Related Provisions: 13(21.2) — Parallel rule for depreciable capital property; 14(12) — Parallel rule for eligible capital property; 18(16) — Deemed identical property; 40(3.3), (3.4) — Parallel rule for capital losses; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Whether properties are identical; 251.1 — Affiliated persons; 256(6)–(9) — Whether control acquired.

History: Subsec. 18(15) added by 1998, c. 19, subsec. 79(2), applicable to dispositions of property that occur after April 26, 1995.

(16) Deemed identical property — For the purposes of subsections (13), (14) and (15), a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property.

History: Subsec. 18(16) added by 1998, c. 19, subsec. 79(2), applicable to dispositions of property that occur after April 26, 1995.

Proposed Amendment — Section 18 — Limitation on deductibility of provincial payroll and capital taxes

Department of Finance press release, March 2, 1993: Finance Minister Don Mazankowski today announced that the government would take action, on an interim basis, to effectively deny the deductibility of any increases in provincial payroll and capital taxes. This measure would take effect if provincial payroll and capital tax revenues were increased by way of a rate increase, base change, or the introduction of a new tax.

The 1991 federal Budget proposed a mechanism to limit the impact on federal revenue of the provinces' increasing reliance on such taxes. Discussions with the provinces and affected taxpayers have been held since that time to consider possible modifications of the federal proposal to limit deductibility. Those discussions are continuing, and it is anticipated that a comprehensive solution will be ready for implementation in 1994. Today's measure is intended to apply until that final proposal is brought forward.

Mr. Mazankowski said, "I remain concerned that any provincial actions to increase existing payroll and capital taxes or the introduction of new taxes would further erode federal revenues and put additional pressure on the fiscal framework."

If a province institutes or increases payroll or capital taxes in 1993, an income tax amendment would be sought to ensure that corporations and certain trusts operating in that province are allowed to deduct only a certain percentage of such taxes in computing their income for federal tax purposes. To compute its deductible amount, a taxpayer would simply multiply its total amount of those taxes paid to the province by a percentage prescribed under the *Income Tax Act*. That percentage, which would be determined after consultation with the province on expected revenues, would ensure that the total amount of payroll and capital taxes deducted by all businesses in the province remained the same. It would not, in contrast, ensure that the level of each taxpayer's deductible taxes remained the same. The restriction on deductibility would apply on a prorated basis from the date the provincial tax increase took effect.

The Minister noted that this measure would not restrict the tax policy options of any province. A province may continue to levy these taxes as it sees fit. "However, provinces that increase these taxes will no longer be able to pass part of the cost on to the federal government and taxpayers in other provinces," added Mr. Mazankowski.

The Minister stressed that this is an interim measure and that federal and provincial officials are continuing to work on a longer-term solution.

For further information: Jack Jung, (613) 992-7162; Lawrence Purdy, (613) 996-0602.

Department of Finance press release, October 1, 1993: *Extension of Interim Measure to Limit the Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Gilles Loiselle today announced that proposed limits to the deductibility for federal tax purposes of provincial payroll and capital taxes will be delayed for another year, to allow time for additional consultations with provincial and business representatives. An interim measure announced earlier this year to limit the impact of any increases in these taxes will continue to apply until the revised proposal is in effect. The Minister indicated that federal and provincial officials will continue their discussions on a longer term solution.

The 1991 federal budget proposed to limit the impact of deductible provincial payroll and capital taxes on federal revenue without adding to the overall tax burden. Implementation of the proposal was to begin on January 1, 1992, but was postponed for two years, pending revisions. Today's announcement delays the implementation of the revised proposal until January 1, 1995.

Under the interim measure announced in March 1993, the government would deny the deductibility of any increases in provincial payroll and capital taxes, whether by way of rate increases, base changes, or the introduction of new taxes. "The problems associated with deductible provincial payroll and capital taxes still need to be addressed," Mr. Loiselle said. "Until the revised proposal is in effect, the interim measure protects the federal tax base from any further erosion resulting from provincial actions to increase these taxes."

For further information: Denis Boucher, (613) 996-7861; Jack Jung, (613) 992-7162.

Department of Finance press release, October 14, 1994: *Extension of Interim Measure to Limit the Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Paul Martin today announced that proposed limits to the deductibility for federal tax purposes of provincial payroll and capital taxes will be delayed for another year, and that the interim measure limiting the deductibility of these taxes will continue to apply for 1995.

The Minister indicated that since the deductibility of these taxes was one of the many issues discussed with his provincial and territorial counterparts last June in Vancouver, it would be inappropriate to implement a new policy while these discussions are in progress.

The interim measure has been in place since March 1993 and protects the federal tax base from further erosion resulting from provincial actions to increase payroll and capital taxes. Under this measure, all existing provincial payroll and capital taxes are deductible, but any increases in these taxes, whether by way of rate increases, base changes, or introduction of new taxes, are not deductible.

The Minister noted that the delay in implementation will have no impact on the fiscal situation of the government.

For further information: Jack Jung, Business Income Tax Division, (613) 992-7162.

Department of Finance press release, December 27, 1995: *Extension of Interim Measure to Limit the Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Paul Martin today announced that the interim measure that limits the deductibility of increases in provincial payroll and capital taxes will be extended for another year in view of the current discussions with many provinces on a harmonized sales tax system. Under the interim measure, existing payroll and capital taxes are deductible but any increases in these taxes, whether by way of rate increases, base changes, or new taxes, are not deductible for federal income tax purposes.

Mr. Martin said that the interim measure, which has been in place since March 1993, will continue to apply throughout 1996. However, he noted that provinces which harmonize their sales tax with the federal sales tax will be provided with additional flexibility in other tax fields such as payroll and capital taxes. Because of Quebec's actions to align its sales tax with the GST, the interim measure will not be triggered by the increases in Quebec payroll and capital taxes, which were announced in the province's 1995-96 budget.

The Minister expressed the hope that all provinces would join a harmonized sales tax system. "A harmonized sales tax would be in the best interests of businesses, consumers and both levels of government in Canada," he added.

For further information: Jack Jung, Business Income Tax Division, (613) 992-7162.

Department of Finance press release, November 29, 1996: *Interim Measure Extended on Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Paul Martin today announced that the interim measure limiting the deductibility of increases in provincial payroll and capital taxes will continue to apply throughout 1997.

Under the interim measure, existing provincial payroll and capital taxes would remain deductible for federal income tax purposes, but any increases in these taxes, whether by way of rate increases, base changes, or introduction of new taxes, would not be deductible. [However, Quebec, New Brunswick, Nova Scotia and Newfoundland are not subject to this rule, since they have harmonized their sales taxes with the GST. See the December 27/95 news release above — ed.]

For further information: Céo Gaudet, Business Income Tax Division, (613) 992-4273

Department of Finance press release, November 25, 1997: *Extension Of Interim Measure On Deductibility Of Provincial Payroll And Capital Taxes*

Finance Minister Paul Martin today announced that the interim measure that limits the deductibility of increases in provincial payroll and capital taxes will continue to apply in 1998.

Under the interim measure, any existing provincial payroll and capital taxes will remain deductible for federal income tax purposes, but any increases in these taxes by way of rate increases, base changes, or introduction of new taxes would not be deductible.

For further information: Jack Jung, Business Income Tax Division, (613) 992-5011.

Department of Finance press release, December 18, 1998: *Government Extends Interim Measure on Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Paul Martin today announced that the interim measure that limits the deductibility of increases in provincial payroll and capital taxes will continue to apply in 1999.

Under the interim measure, any existing provincial payroll and capital taxes will remain deductible for federal income tax purposes, but any increases in these taxes by way of provincial actions to increase the rate, change the definition of the base, or introduce new taxes would not be deductible.

For further information: Jack Jung, Business Income Tax Division, (613) 992-5011; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574.

Department of Finance press release, December 17, 1999: *Extension of Interim Measure on Deductibility of Provincial Payroll and Capital Taxes*

Finance Minister Paul Martin today announced that the interim measure that limits the deductibility of increases in provincial payroll and capital taxes will continue to apply in the year 2000.

Under the interim measure, any existing provincial payroll and capital taxes will remain deductible for federal income tax purposes, but any increases in these taxes by way of provincial actions to increase the rate, change the definition of the base, or introduce new taxes would not be deductible.

For further information: Jack Jung, Business Income Tax Division, (613) 992-5011; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080; Karl Littler, Senior Adviser, Tax Policy, Office of the Minister of Finance, (613) 996-7861.

Definitions [s. 18]: "acquired" — 256(7)–(9); "affiliated" — 251.1; "amortized cost", "amount", "annuity" — 248(1); "arm's length" — 251(1); "associated" — 256; "automobile", "borrowed money", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "debt obligation" — 18(9.1), (9.2); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "dividend", "employee", "employee benefit plan" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "exempt income", "gross revenue", "group term life insurance policy" — 248(1); "identical" — 18(16), 248(12); "income-averaging annuity contract", "income bond", "income debenture" — 248(1); "incorporated employee" — 125(7)"personal services business"(a); "individual", "insurance corporation", "insurance policy", "insurer" — 248(1); "interest on debt relating to the acquisition of land" — 18(3); "inventory" — 248(1); "land" — 18(3); "lending asset", "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "mineral resource", "mineral", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "net income stabilization account", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "outstanding debts to specified non-residents" — 18(5); "paid-up capital" — 89(1), 248(1); "permanent establishment" — Reg. 8201; "person", "personal or living expenses", "personal services business", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount" — 248(1); "profit sharing plan" — 147(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "retirement compensation arrangement", "retirement income fund", "retirement savings plan", "salary" — 248(1)"salary or wages"; "salary deferral arrangement", "self-contained domestic establishment", "share", "shareholder" — 248(1); "specified non-resident shareholder" — 18(5); "specified shareholder" — 18(5), 18(5.1), 248(1); "substituted property" — 18(13)(g), 248(5); "supplementary unemployment benefit fund" — 145(1), 248(1); "tar sands" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "transferor" — 18(13)(a), 18(14)(a); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 18]: IT-105: Administrative costs of pension plans.

18.1 (1) Definitions — The definitions in this subsection apply in this section.

"matchable expenditure" of a taxpayer means the amount of an expenditure that is made by the taxpayer to

(a) acquire a right to receive production,

(b) fulfil a covenant or obligation arising in circumstances in which it is reasonable to conclude that a relationship exists between the covenant or obligation and a right to receive production, or

(c) preserve or protect a right to receive production,

but does not include an amount for which a deduction is provided under section 20 in computing the taxpayer's income.

"right to receive production" means a right under which a taxpayer is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount all or a portion of which is computed by reference to use of property, production, revenue, profit, cash flow, commodity price, cost or value of property or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares where the amount is in respect of another taxpayer's activity, property or business but such a right does not include an income interest in a trust, a Canadian resource property or a foreign resource property.

Related Provisions: 88(1)(a)(i) — Treatment of right to receive production on windup of corporation; 248(1)"cost amount"(e)(iv) — Definition of cost amount does not apply to right to receive production.

I.T. Technical News: No. 10 (net profits interests and proposed section 18.1).

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

"tax shelter" means a property that would be a tax shelter (as defined in subsection 237.1(1)) if

(a) the cost of a right to receive production were the total of all amounts each of which is a matchable expenditure to which the right relates; and

(b) subsections (2) to (13) did not apply for the purpose of computing an amount, or in the case of a partnership a loss, represented to be deductible.

"taxpayer" includes a partnership.

(2) Limitation on the deductibility of matchable expenditure — In computing a taxpayer's income from a business or property for a taxation year, no amount of a matchable expenditure may be deducted except as provided by subsection (3).

Related Provisions: 18.1(15) — Non-applicability of limitation; 87(2)(j.2) — Amalgamation — continuing corporation; 88(1)(a)(i) — Treatment of right to receive production on windup of corporation.

I.T. Technical News: No. 10 (net profits interests and proposed section 18.1).

(3) Deduction of matchable expenditure — If a taxpayer's matchable expenditure would, but for subsection (2) and this subsection, be deductible in computing the taxpayer's income, there may be deducted in respect of the matchable expenditure in computing the taxpayer's income for a taxation year the amount that is determined under subsection (4) for the year in respect of the expenditure.

Related Provisions: 18.1(6) — Income inclusion; 18.1(10) — Amount of deduction if non-arm's length disposition; 18.1(14) — Where right to receive production is reasonably certain.

(4) Amount of deduction — For the purpose of subsection (3), the amount determined under this subsection for a taxation year in respect of a taxpayer's matchable expenditure is the amount, if any, that is the least of

(a) the total of

(i) the lesser of

(A) 1/5 of the matchable expenditure, and

(B) the amount determined by the formula

$$(A/B) \times C$$

where

A is the number of months that are in the year and after the day on which the right to receive production to which the matchable expenditure relates is acquired,

B is the lesser of 240 and the number of months that are in the period that begins on the day on which the right to receive production to which the matchable expenditure relates is acquired and that ends on the day the right is to terminate, and

C is the amount of the matchable expenditure, and

(ii) the amount, if any, by which the amount determined under this paragraph for the preceding taxation year in respect of the matchable expenditure exceeds the amount of the matchable expenditure deductible in computing the taxpayer's income for that preceding year,

(b) the total of

(i) all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates, and

(ii) the amount by which the amount determined under this paragraph for the preceding taxation year in respect of the matchable expenditure exceeds the amount of the matchable expenditure deductible in computing the taxpayer's income for that preceding year, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is an amount of the matchable expenditure that would, but for this section, have been deductible in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(ii) the total of all amounts each of which is an amount of the matchable expenditure deductible under subsection (3) in computing the taxpayer's income for a preceding taxation year.

Related Provisions: 18.1(5) — Rules for determining amount.

(5) Special rules — For the purpose of this section,

(a) where a taxpayer's matchable expenditure is made before the day on which the related right to receive production is acquired by the taxpayer, the expenditure is deemed to have been made on that day;

(b) where a taxpayer has one or more rights to renew a particular right to receive production to which a matchable expenditure relates for one or more additional terms, after the term that includes the time at which the particular right was acquired, the particular

right is deemed to terminate on the latest day on which the latest possible such term could terminate if all rights to renew the particular right were exercised;

(c) where a taxpayer has 2 or more rights to receive production that can reasonably be considered to be related to each other, the rights are deemed to be one right; and

(d) where the term of a taxpayer's right to receive production is for an indeterminate period, the right is deemed to terminate 240 months after it is acquired.

(6) Proceeds of disposition considered income — Where in a taxation year a taxpayer disposes of all or part of a right to receive production to which a matchable expenditure relates, the proceeds of the disposition shall be included in computing the taxpayer's income for the year.

Related Provisions: 12(1)(g.1) — Inclusion in income of proceeds of disposition; 87(2)(j.2) — Amalgamation — continuing corporation.

(7) Arm's length disposition — Subject to subsections (8) to (10), where in a taxation year a taxpayer disposes (otherwise than in a disposition to which subsection 87(1) or 88(1) applies) of all of the taxpayer's right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to this subsection, be deductible under subsection (3) in computing the taxpayer's income) relates, or the taxpayer's right expires, the amount deductible in respect of the expenditure under subsection (3) in computing the taxpayer's income for the year is deemed to be the amount, if any, determined under paragraph (4)(c) for the year in respect of the expenditure.

Related Provisions: 87(2)(j.2) — Amalgamation — continuing corporation; 88(1)(a)(i) — Treatment of right to receive production on windup of corporation; 251.1 — Affiliated persons.

(8) Non-arm's length disposition — Subsection (10) applies where

(a) a taxpayer's particular right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to subsections (7) and (10), be deductible under subsection (3) in computing the taxpayer's income) relates has expired or the taxpayer has disposed of all of the right (otherwise than in a disposition to which subsection 87(1) or 88(1) applies);

(b) during the period that begins 30 days before and ends 30 days after the disposition or expiry, the taxpayer or a person affiliated, or who does not deal at arm's length, with the taxpayer acquires a right to receive production (in this subsection and subsection (10) referred to as the "substituted property") that is, or is identical to, the particular right; and

(c) at the end of the period, the taxpayer or a person affiliated, or who does not deal at arm's length, with the taxpayer owns the substituted property.

(9) Special case — Subsection (10) applies where

(a) a taxpayer's particular right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to subsections (7) and (10), be deductible under subsection (3) in computing the taxpayer's income) relates has expired or the taxpayer has disposed of all of the right (otherwise than in a disposition to which subsection 87(1) or 88(1) applies); and

(b) during the period that begins at the time of the disposition or expiry and ends 30 days after that time, a taxpayer that had an interest, directly or indirectly, in the right has another interest, directly or indirectly, in another right to receive production, which other interest is a tax shelter or a tax shelter investment (as defined by section 143.2).

Related Provisions: 18.1(12) — Identical properties.

(10) Amount of deduction if non-arm's length disposition — Where this subsection applies because of subsection (8) or (9) to a disposition or expiry in a taxation year or a preceding taxation year of a taxpayer's right to receive production to which a matchable expenditure relates,

(a) the amount deductible under subsection (3) in respect of the expenditure in computing the taxpayer's income for a taxation year that ends at or after the disposition or expiry of the right is the least of the amounts determined under subsection (4) for the year in respect of the expenditure; and

(b) the least of the amounts determined under subsection (4) in respect of the expenditure for a taxation year is deemed to be the amount, if any, determined under paragraph (4)(c) in respect of the expenditure for the year where the year includes the time that is immediately before the first time, after the disposition or expiry,

(i) at which the right would, if it were owned by the taxpayer, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the taxpayer,

(ii) that is immediately before control of the taxpayer is acquired by a person or group of persons, if the taxpayer is a corporation,

(iii) at which winding-up of the taxpayer begins (other than a winding-up to which subsection 88(1) applies), if the taxpayer is a corporation,

(iv) if subsection (8) applies, at which a 30-day period begins throughout which neither the taxpayer nor a person affiliated, or who does not deal at arm's length, with the taxpayer owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period began, or

(v) if subsection (9) applies, at which a 30-day period begins throughout which no taxpayer who had an interest, directly or indirectly, in the right has an interest, directly or indirectly, in another right to receive production if one or more of those direct or indirect interests in the other right is a tax shelter or tax shelter investment (as defined by section 143.2).

Related Provisions: 18.1(11) — Partnerships; 18.1(12) — Identical properties; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether and when control acquired.

(11) Partnerships — For the purpose of paragraph (10)(b), where a partnership otherwise ceases to exist at any time after a disposition or expiry referred to in subsection (10), the partnership is deemed not to have ceased to exist, and each taxpayer who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership until the time that is immedi-

ately after the first of the times described in subparagraphs (10)(b)(i) to (v).

(12) Identical property — For the purposes of subsections (8) and (10), a right to acquire a particular right to receive production (other than a right, as security only, derived from a mortgage, agreement of sale or similar obligation) is deemed to be a right to receive production that is identical to the particular right.

Related Provisions: 248(12) — Extended definition of identical properties.

(13) Application of section 143.2 — For the purpose of applying section 143.2 to an amount that would, if this section were read without reference to this subsection, be a matchable expenditure any portion of the cost of which is deductible under subsection (3), the expenditure is deemed to be a tax shelter investment and that section shall be read without reference to subparagraph 143.2(6)(b)(ii).

(14) Debt obligations — Where the rate of return on a taxpayer's right to receive production to which a matchable expenditure (other than an expenditure no portion of which would, if this section were read without reference to this subsection, be deductible under subsection (3) in computing the taxpayer's income) relates is reasonably certain at the time the taxpayer acquires the right,

(a) the right is, for the purposes of subsection 12(9) and Part LXX of the *Income Tax Regulations*, deemed to be a debt obligation in respect of which no interest is stipulated to be payable in respect of its principal amount and the obligation is deemed to be satisfied at the time the right terminates for an amount equal to the total of the return on the obligation and the amount that would otherwise be the matchable expenditure that is related to the right; and

(b) notwithstanding subsection (3), no amount may be deducted in computing the taxpayer's income in respect of any matchable expenditure that relates to the right.

(15) Non-applicability of section 18.1 — Subject to subsections (1) and (14), this section does not apply to a taxpayer's matchable expenditure in respect of a right to receive production if no portion of the expenditure can reasonably be considered to have been paid to another taxpayer, or to a person with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer and

(a) the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter or tax shelter investment (as defined by section 143.2) and none of the main purposes for making the expenditure is that the taxpayer, or a person with whom the taxpayer does not deal at arm's length, obtain a tax benefit; or

(b) before the end of the taxation year in which the expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such an amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates exceeds 80% of the expenditure.

Proposed Amendment — 18.1(15)

(15) Non-applicability of s. 18.1 — Subject to subsections (1) and (14), this section does not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) no portion of the expenditure can reasonably be considered to have been paid to another taxpayer, or to a person with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer and

(i) the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter or tax shelter investment (as defined in section 143.2) and none of the main purposes for making the expenditure is that the taxpayer, or a person with whom the taxpayer does not deal at arm's length, obtain a tax benefit, or

(ii) before the end of the taxation year in which the expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such an amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates exceeds 80% of the expenditure; or

(b) the expenditure is in respect of commissions or other expenses related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer (in this paragraph referred to as the "reinsurer) and both the reinsurer and the person to whom the expenditure is made or is to be made are insurers subject to the supervision of

(i) the Superintendent of Financial Institutions, in the case of an insurer that is required by law to report to the Superintendent of Financial Institutions, or

(ii) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 8, will amend subsec. 18.1(15) to read as above, applicable to expenditures made after November 17, 1996.

Technical Notes: Section 18.1 of the Act restricts the deductibility of an otherwise deductible "matchable expenditure" incurred in respect of a "right to receive production" by prorating the deductibility of the amount of the expenditure over the economic life of the right.

Subsection 18.1(15) of the Act describes those matchable expenditures in respect of a right to receive production that are not subject to the matchable expenditure rules in section 18.1.

Concern has been expressed that the matchable expenditure rules may apply to a reinsurer's share of sales commissions or expenses incurred in respect of the issuance of an insurance policy for which all or a portion of a risk has been ceded to the reinsurer. However, the tax deferral advantage associated with expenditures of a reinsurer are already taken into account in the calculation of the policy reserves of the reinsurer.

Subsection 18.1(15) is, therefore, amended to exclude from the matchable expenditure rules expenditures of a reinsurer in respect of commissions or other expenses related to issuance of an insurance policy for which all or a portion of a risk is ceded to the reinsurer. This exception applies only where the reinsurer and the person to whom the reinsurer made the expenditures are both insurers subject to the supervision of the Superintendent of Financial Institutions (in the case where the reinsurer is required by law to report to the Superintendent of Financial Institutions) or, in any other case, the Superintendent of Insurance or similar officer or authority of the province under whose laws the insurer was incorporated.

This amendment applies to expenditures made after November 17, 1996, the original coming-into-force date for section 18.1.

Related Provisions [subsec. 18.1(15)]: 12(1)(s); 20(1)(jj) — Reinsurance commissions.

History: S. 18.1 added by 1998, c. 19, s. 80, applicable to every expenditure made by a taxpayer or a partnership after November 17, 1996 other than, in respect of a particular right to receive production, such an expenditure made

(a) before 1997 under an agreement in writing made by the taxpayer or the partnership before 1997 to acquire the particular right

(i) in return for paying selling commissions incurred before 1997 in connection with the distribution of shares of a mutual fund corporation or units of mutual fund trust, or

(ii) to render production services before 1997 for a film or video production,

and, for the purpose of applying this paragraph, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and, if subparagraph (ii) applies, only to the extent the services were rendered at or before that time,

(b) before August 1997 if

(i) the expenditure was made under an agreement in writing made by the taxpayer or the partnership before August 1997 to acquire the particular right in return for paying selling commissions incurred after 1996 and before August 1997 in connection with the distribution of shares of a mutual fund corporation or units of a mutual fund trust that is managed by an administrator of mutual funds,

(ii) the particular right to receive production is identified in an advance income tax ruling request delivered to Revenue Canada before November 18, 1996,

(iii) the total of all such expenditures made by any taxpayer or partnership in respect of all of the rights identified in the advance income tax ruling request does not exceed $30,000,000, and

(iv) all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before August 1997,

and, for the purpose of applying this paragraph, an expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made,

(c) before August 1997 if

(i) the expenditure is made under an agreement in writing made by the taxpayer or the partnership before August 1997 to acquire the particular right in return for paying selling commissions incurred after 1996 and before August 1997 in connection with the distribution of shares of a mutual fund corporation or units of a mutual fund trust that is managed by an administrator of mutual funds, other than by an administrator of a mutual fund that is or is related to an administrator to which paragraph (b) refers in respect of commissions incurred in connection with the distribution of the shares or units described in paragraph (b),

(ii) the total of all such expenditures made by any taxpayer or partnership to acquire particular rights in return for paying selling commissions in connection with the distribution of shares of the mutual fund corporation or units of the mutual fund trust that is managed by the administrator of mutual funds or any other person that is related to the administrator does not exceed $10,000,000, and

(iii) all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before August 1997,

and, for the purpose of applying this paragraph, an expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made,

(d) before November 1997 under an agreement in writing made by the taxpayer or the partnership before November 1997 to acquire the particular right and to render production services before November 1997 for a film or video production if

(i) at least 75% of the expenditures made in respect of the film or video production by the taxpayer or partnership pertain to services performed in Canada by residents of Canada, and

(ii) all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before November 1997,

and, for the purpose of applying this paragraph, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time,

(e) before 1998, under an agreement in writing made by the taxpayer or the partnership before November 18, 1996 to acquire the particular right and, for the purpose of this paragraph, if the expenditure relates to service obligations to be fulfilled by the taxpayer or partnership, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time,

(f) before 1998, pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement if

(i) the document was filed before November 18, 1996 with a public authority in Canada in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority,

(ii) the particular right is identified in the document, and

(iii) all the funds raised pursuant to the document were raised before 1997 and all tax shelter investments (as defined in section 143.2 of the Act), that can reasonably be considered to relate to the expenditure, were acquired before August 1997,

and, for the purpose of applying this paragraph, if an expenditure relates to service obligations to be fulfilled by the taxpayer or partnership, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time, or

(g) before 1998, pursuant to the terms of an offering memorandum distributed as part of an offering of securities if

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before November 18, 1996,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before November 18, 1996,

(iv) the sale of the securities was substantially in accordance with the memorandum,

(v) the particular right is identified in the document, and

(vi) all the funds raised pursuant to the memorandum were raised before 1997 and all tax shelter investments (as defined in section 143.2 of the Act) that can reasonably be considered to relate to the expenditure were acquired before August 1997,

and, for the purpose of applying this paragraph, if an expenditure relates to service obligations to be fulfilled by the taxpayer or partnership, the expenditure is deemed to have been made no earlier than the time and only to the extent it is considered for the purposes of the Act to have been made and only to the extent the services are rendered at or before that time,

except that paragraphs (e), (f) and (g) apply to an expenditure only if

(h) there is no agreement or other arrangement under which the obligations of the taxpayer or the partnership with respect to the expenditure can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act,

(i) where the expenditure is associated with one or more tax shelters sold or offered for sale at a time and in circumstances in which section 237.1 of the Act requires an identification number to have been obtained, the identification number was obtained before that time, and

(j) in the case of an expenditure, including an expenditure to which paragraph (e) applies, made pursuant to a document described in paragraph (f) or (g), a portion of the securities authorized to be sold in 1996 pursuant to the document were after 1995 and before November 18, 1996 sold to, or subscribed for by, a person who was not at the time of sale or subscription

(i) a promoter, or an agent of a promoter, of the securities,

(ii) a grantor of the right to receive production to which the expenditure relates,

(iii) a broker or dealer in securities, or

(iv) a person who did not deal at arm's length with a person referred to in subparagraph (i) or (ii).

Definitions [s. 18.1]: "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canadian resource property" — 66(15), 248(1); "class of shares" — 248(6); "control" — 256(6)-(9); "dividend" — 248(1); "foreign resource property" — 66(15), 248(1); "identical" — 18.1(12); "insurer" — 248(1); "matchable expenditure" — 18.1(1); "officer", "person" — 248(1); "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2)-(6); "right to receive production" — 18.1(1); "share", "shareholder" — 248(1); "substituted property" — 18.1(8)(b); "tax benefit", "tax shelter" — 18.1(1); "taxation year" — 249; "taxpayer" — 18.1(1), 248(1); "trust" — 104(1), 248(1), (3).

19. (1) Limitation re advertising expense — In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a newspaper or periodical for an advertisement directed primarily to a market in Canada unless

(a) the issue is a Canadian issue of a Canadian newspaper or periodical dated after 1975; or

(b) the issue is an issue of a newspaper or periodical dated after December 31, 1988 that would be a Canadian issue of a Canadian newspaper or periodical except that

Proposed Amendment — 19(1)

19. (1) Limitation re advertising expense — newspapers — In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a newspaper for an advertisement directed primarily to a market in Canada unless

(a) the issue is a Canadian issue of a Canadian newspaper; or

(b) the issue is an issue of a newspaper that would be a Canadian issue of a Canadian newspaper except that

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(1), will amend the portion of subsec. 19(1) before subpara. (b)(i) to read as above, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: See under 19.01.

(i) its type has been wholly set in the United States or has been partly set in the United States with the remainder having been set in Canada, or

(ii) it has been wholly printed in the United States or has been partly printed in the United States with the remainder having been printed in Canada.

Related Provisions: 19.01 — Limitation for magazines and other periodicals.

Selected Cases [subsec. 19(1)]: *Jay-Kay Publications Ltd. v. MNR*, [1972] C.T.C. 539 (FCA) (Amounts paid for advertising in non-Canadian periodical promoting medical scholarship deductible).

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 19(1) amended to substitute, in that portion preceding para. (a), "an issue of a newspaper or periodical" for "an issue of a non-Canadian newspaper or periodical dated after December 31, 1975" and to add paras. (a) and (b), by 1988, c. 65, s. 133, in force January 1, 1989.

Subsec. 19(1) substituted for 19(1) and (2) by 1974-75-76, c. 106, s. 1, in force January 1, 1976. Subsecs. 19(1), (2) formerly read:

19. (1) In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a non-Canadian newspaper or periodical dated after December 31, 1965 for an advertisement directed primarily to a market in Canada.

(2) An issue or edition of an issue of any newspaper or periodical that is edited in whole or in part in Canada and printed and published in Canada and that was not on April 26, 1965 a Canadian newspaper or periodical shall be deemed, for the purposes of subsection (1), not to be an issue of a non-Canadian newspaper or periodical if

(a) throughout the period of 12 months ending April 26, 1965 issues or editions of issues of that publication were being edited in whole or in part in Canada and printed and published in Canada at the usual intervals for issues of that publication and have since that date continued to be so edited, printed and published without interruption except for a reason other than the cessation of the business of publishing that publication; and

(b) in the case of a periodical, the periodical is similar, in content and in respect of the class of readers to which it is directed, to the issues or editions of that periodical that were throughout the period of 12 months ending April 26, 1965 being edited in whole or in part in Canada and printed and published in Canada.

(3) Where subsec. (1) does not apply — Subsection (1) does not apply with respect to an advertisement in a special issue or edition of a newspaper that is edited in whole or in part and printed and published outside Canada if that special issue or edition is devoted to features or news related primarily to Canada and the publishers thereof publish such an issue or edition not more frequently than twice a year.

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 19(4) repealed by 1974-75-76, c. 106, s. 2, in force January 1, 1976. Subsec. 19(4) formerly read:

(4) Subsection (1) does not apply with respect to an advertisement in

(a) a catalogue, or

(b) any publication the principal function of which is the encouragement, promotion or development of the fine arts, letters, scholarship or religion.

(5) Definitions — In this section,

"Canadian issue" means,

(a) in relation to a newspaper, an issue, including a special issue,

(i) the type of which, other than the type for advertisements or features, is set in Canada,

(ii) the whole of which, exclusive of any comics supplement, is printed in Canada,

(iii) that is edited in Canada by individuals resident in Canada, and

(iv) that is published in Canada, and

(b) in relation to a periodical, an issue, including a special issue,

(i) the type of which, other than the type for advertisements, is set in Canada,

(ii) that is printed in Canada,

(iii) that is edited in Canada by individuals resident in Canada, and

(iv) that is published in Canada,

but does not include an issue of a periodical

(v) that is produced or published under a licence granted by a person who produces or publishes issues of a periodical that are printed, edited or published outside Canada, or

(vi) the contents of which, excluding advertisements, are substantially the same as the contents of an issue of a periodical, or the contents of one or

more issues of one or more periodicals, that was or were printed, edited or published outside Canada;

Proposed Amendment — "Canadian issue"

"Canadian issue" of a newspaper means an issue, including a special issue,

(a) the type of which, other than the type for advertisements or features, is set in Canada,

(b) all of which, exclusive of any comics supplement, is printed in Canada,

(c) that is edited in Canada by individuals resident in Canada, and

(d) that is published in Canada;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(3), will amend the definition "Canadian issue" in subsec. 19(5) to read as above, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: See under 19.01.

Pre-RSC History: *The definition "Canadian issue" was para. 19(5)(a). See Table of Concordance.*

"Canadian newspaper or periodical" means a newspaper or periodical the exclusive right to produce and publish issues of which is held by one or more of the following:

Proposed Amendment — "Canadian newspaper or periodical"

"Canadian newspaper" means a newspaper the exclusive right to produce and publish issues of which is held by one or more of the following:

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(4), will amend the portion of the definition "Canadian newspaper or periodical" in subsec. 19(5) before para. (a) to read as above, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: See under 19.01.

Department of Foreign Affairs and International Trade, news releases, May 26, 1999 and June 4, 1999: See under 19.01.

(a) a Canadian citizen,

(b) a partnership

(i) in which interests representing in value at least ¾ of the total value of the partnership property are beneficially owned by, and

(ii) at least ¾ of each income or loss of which from any source is included in the determination of the income of,

corporations described in paragraph (e) or Canadian citizens or any combination thereof,

(c) an association or society of which at least ¾ of the members are Canadian citizens,

(d) Her Majesty in right of Canada or a province, or a municipality in Canada, or

(e) a corporation

(i) that is incorporated under the laws of Canada or a province,

(ii) of which the chairperson or other presiding officer and at least ¾ of the directors or other similar officers are Canadian citizens, and

(iii) that, if it is a corporation having share capital, is

(A) a public corporation a class or classes of shares of the capital stock of which are listed on a prescribed stock exchange in Canada, other than a corporation controlled by citizens or subjects of a country other than Canada, or

(B) a corporation of which at least ¾ of the shares having full voting rights under all circumstances, and shares having a fair market value in total of at least ¾ of the fair market value of all of the issued shares of the corporation, are beneficially owned by Canadian citizens or by public corporations a class or classes of shares of the capital stock of which are listed on a prescribed stock exchange in Canada, other than a public corporation controlled by citizens or subjects of a country other than Canada,

and, for the purposes of clause (B), where shares of a class of the capital stock of a corporation are owned, or deemed by this definition to be owned, at any time by another corporation (in this definition referred to as the "holding corporation"), other than a public corporation a class or classes of shares of the capital stock of which are listed on a prescribed stock exchange in Canada, each shareholder of the holding corporation shall be deemed to own at that time that proportion of the number of such shares of that class that

(C) the fair market value of the shares of the capital stock of the holding corporation owned at that time by the shareholder

is of

(D) the fair market value of all the issued shares of the capital stock of the holding corporation outstanding at that time,

and, where at any time shares of a class of the capital stock of a corporation are owned, or are deemed by this definition to be owned, by a partnership, each member of the partnership shall be deemed to own at that time the least proportion of the number of such shares of that class that

(E) the member's share of the income or loss of the partnership from any source for its fiscal period that includes that time

is of

(F) the income or loss of the partnership from that source for its fiscal period that includes that time,

and for this purpose, where the income and loss of a partnership from any source for a fiscal period are nil, the partnership shall be deemed to have had income from that source for that period in the amount of $1,000,000;

Related Provisions: 19(5.1) — Extended meaning of "Canadian citizen"; 19(6) — Trust property; 19(8) — Anti-avoidance — certain newspapers and periodicals deemed not to be Canadian.

History: Para. (b) and subpara. (e)(iii) of "Canadian newspaper..." substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 14(1), (2), applicable with respect to rights referred to in the definition that are acquired after July 13, 1990 (and rights acquired after 1988 where the acquiror of the right so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992]) and, for this purpose where an individual who is a citizen or subject of a country other than Canada or a corporation controlled by such an individual or individuals has at any time after July 13, 1990 acquired, in an arm's length transaction,

(a) more than ¼ of the shares of a particular corporation that have full voting rights under all circumstances, or

(b) shares of a particular corporation having a fair market value in total of more than 1/4 of the fair market value of all of the issued shares of the particular corporation,

the particular corporation and any corporation controlled by the particular corporation shall be deemed to have acquired at that time any right referred to in the definition that is owned by the particular corporation or controlled corporation at that time. Those portions of that definition formerly read:

(b) a partnership of which at least 3/4 of the members are Canadian citizens and in which interests representing in value at least 3/4 of the total value of the partnership property are beneficially owned by Canadian citizens,

. . . . .

(iii) of which, if it is a corporation having share capital, at least 3/4 of the shares having full voting rights under all circumstances, and shares representing in total at least 3/4 of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations controlled by citizens or subjects of a country other than Canada;

Pre-RSC History: *Definition "Canadian newspaper or periodical" was para. 19(5)(b). See Table of Concordance.*

Cl. 19(5)(b)(v)(C) amended by 1988, c. 55, s. 11, to substitute "corporations controlled" for "corporations controlled directly or indirectly", applicable to taxation years commencing after 1988.

Regulations: 3200 (prescribed stock exchange for "Canadian newspaper or periodical"(e)(iii)).

"issue of a non-Canadian newspaper or periodical [para. 19(5)(c)]" — [Repealed under former Act]

Pre-RSC History: Para. 19(5)(c) repealed by 1988, c. 55, s. 133, in force January 1, 1989. Para 19(5)(c) formerly read:

(c) "issue of a non-Canadian newspaper or periodical" — "issue of a non-Canadian newspaper or periodical" means an issue that is not a Canadian issue of a Canadian newspaper or periodical; and

"substantially the same" means more than 20% the same;

Proposed Repeal — "substantially the same"

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(2), will repeal the definition "substantially the same" in subsec. 19(5), applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: See under 19.01.

Department of Foreign Affairs and International Trade, news releases, May 26, 1999 and June 4, 1999: [See under 19.01.]

Pre-RSC History: *Definition "substantially the same" was para. 19(5)(d).*

Para. 19(5)(d) added by 1977-78, c. 1, s. 12, applicable to 1978 *et seq.*

"United States" means

(a) the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory, and

(b) any areas beyond the territorial sea of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and the natural resources of those areas.

Pre-RSC History: *Definition "United States" was para. 19(5)(e).*

Para. 19(5)(e) added by 1988, c. 55, s. 133, in force January 1, 1989.

Proposed Addition — 19(5.1)

(5.1) Interpretation — In this section, each of the following is deemed to be a Canadian citizen:

(a) a trust or corporation described in paragraph 149(1)(o) or (o.1) formed in connection with a pension plan that exists for the benefit of individuals a majority of whom are Canadian citizens;

(b) a trust described in paragraph 149(1)(r) or (x), the annuitant in respect of which is a Canadian citizen;

(c) a mutual fund trust, within the meaning assigned by subsection 132(6), other than a mutual fund trust the majority of the units of which are held by citizens or subjects of a country other than Canada;

(d) a trust, each beneficiary of which is a person, partnership, association or society described in any of paragraphs (a) to (e) of the definition "Canadian newspaper" in subsection (5); and

(e) a person, association or society described in paragraph (c) or (d) of the definition "Canadian newspaper" in subsection (5).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(5), will add subsec. 19(5.1), applicable in respect of advertisements placed in an issue dated after June 1996 except that, in applying the subsec. to advertisements placed in an issue dated after June 1996 and before June 2000, the references in that subsec. to "Canadian newspaper" shall be read as references to "Canadian newspaper or periodical".

Technical Notes: In addition, new subsection 19(5.01) provides an extended meaning of "Canadian citizen", in order to ensure that Canadian pension funds and certain other entities that may own Canadian newspapers are considered to be Canadian citizens for the purpose of the ownership requirements of section 19. This amendment applies from July 1996. For periodicals, the amendment applies from July 1996 to May 2000, after which nationality of ownership ceases to be relevant in the context of periodicals.

Department of Foreign Affairs and International Trade, news releases, May 26, 1999 and June 4, 1999: [See under 19.01.]

(6) Trust property — Where the right that is held by any person, partnership, association or society described in the definition "Canadian newspaper or periodical" in subsection (5) to produce and publish issues of a newspaper or periodical is held as property of a trust or estate, the newspaper or periodical is not a Canadian newspaper or periodical within the meaning of this section unless each beneficiary under the trust or estate is a person, partnership, association or society so described.

Proposed Amendment — 19(6)

(6) Trust property — Where the right that is held by any person, partnership, association or society described in the definition "Canadian newspaper" in subsection (5) to produce and publish issues of a newspaper is held as property of a trust or estate, the newspaper is not a Canadian newspaper unless each beneficiary under the trust or estate is a person, partnership, association or society described in that definition.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(6), will amend subsec. 19(6) to read as above, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: [See under 19.01.]

Department of Foreign Affairs and International Trade, news releases, May 26, 1999 and June 4, 1999: [See under 19.01.]

(7) Grace period — Notwithstanding any other provision of this section, where a newspaper or periodical that was at any time after June 30, 1965 a Canadian newspaper or periodical within the meaning of this section subsequently ceases to be such a Canadian newspaper or periodical, the newspaper or periodical shall be deemed to continue to be a Canadian newspaper or periodical within the meaning of this section until the expiration of the 12th

month following the month in which it so ceased to be a Canadian newspaper or periodical.

Proposed Amendment — 19(7)

(7) Grace period — A Canadian newspaper that would, but for this subsection, cease to be a Canadian newspaper, is deemed to continue to be a Canadian newspaper until the end of the 12th month that follows the month in which it would, but for this subsection, have ceased to be a Canadian newspaper.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(6), will amend subsec. 19(7) to read as above, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: [See under 19.01.]

Department of Foreign Affairs and International Trade, news releases, May 26, 1999 and June 4, 1999: [See under 19.01.]

(8) Non-Canadian newspaper or periodical — Where at any time one or more persons or partnerships that are not described in any of paragraphs (a) to (e) of the definition "Canadian newspaper or periodical" in subsection (5) have any direct or indirect influence that, if exercised, would result in control in fact of a person or partnership that holds a right to produce or publish issues of a newspaper or periodical, the newspaper or periodical is deemed not to be a Canadian newspaper or periodical at that time.

Related Provisions: 256(5.1) — General test for "control in fact".

History: Subsec. 19(8) added by 1995, c. 46, s. 5, applicable after December 15, 1995, except that it does not apply to a newspaper or periodical where the influence that would result in control in fact of a person or partnership that holds the right to produce or publish the newspaper or periodical arose as a consequence of a transaction or series of transactions that was completed before April 1993.

Proposed Amendment — 19(8)

(8) Non-Canadian newspaper — Where at any time one or more persons or partnerships that are not described in any of paragraphs (a) to (e) of the definition "Canadian newspaper" in subsection (5) have any direct or indirect influence that, if exercised, would result in control in fact of a person or partnership that holds a right to produce or publish issues of a newspaper, the newspaper is deemed not to be a Canadian newspaper at that time.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 9(6), will amend subsec. 19(8) to read as above, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: [See under 19.01.]

Department of Foreign Affairs and International Trade, news releases, May 26, 1999 and June 4, 1999: [See under 19.01.]

Definitions [s. 19]: "beneficially owned" — 248(3); "Canada" — 255, *Interpretation Act* 35(1); "Canadian citizen" — 19(5.1); "Canadian issue" — 19(5); "Canadian newspaper" — 19(5), (7); "Canadian newspaper or periodical" — 19(5), (8); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "estate" — 104(1), 248(1); "individual" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund trust" — 132(6)–(7), 248(1); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "share", "shareholder" — 248(1); "substantially" — 19(5); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "United States" — 19(5).

Proposed Addition — 19.01

19.01 (1) Definitions — The definitions in this subsection apply in this section.

"advertisement directed at the Canadian market" has the same meaning as the expression "directed at the Canadian market" in section 2 of the *Foreign Publishers Advertising Services Act* and includes a reference to that expression made by or under that Act.

"original editorial content" in respect of an issue of a periodical means non-advertising content

(a) the author of which is a Canadian and, for this purpose, "author" includes a writer, a journalist, an illustrator and a photographer; or

(b) that is created for the Canadian market and has not been published in any other edition of that issue of the periodical published outside Canada.

"periodical" has the meaning assigned by section 2 of the *Foreign Publishers Advertising Services Act*.

Related Provisions: 19.01(6) — Meaning of "edition".

(2) Limitation re advertising expenses — periodicals — Subject to subsections (3) and (4), in computing income, no deduction shall be made by a taxpayer in respect of an otherwise deductible outlay or expense for advertising space in an issue of a periodical for an advertisement directed at the Canadian market.

(3) 100% deduction — A taxpayer may deduct in computing income an outlay or expense of the taxpayer for advertising space in an issue of a periodical for an advertisement directed at the Canadian market if

(a) the original editorial content in the issue is 80% or more of the total non-advertising content in the issue; and

(b) the outlay or expense would, but for subsection (2), be deductible in computing the taxpayer's income.

Related Provisions: 19.01(5) — Calculation of percentage.

(4) 50% deduction — A taxpayer may deduct in computing income 50% of an outlay or expense of the taxpayer for advertising space in an issue of a periodical for an advertisement directed at the Canadian market if

(a) the original editorial content in the issue is less than 80% of the total non-advertising content in the issue; and

(b) the outlay or expense would, but for subsection (2), be deductible in computing the taxpayer's income.

Related Provisions: 19.01(5) — Calculation of percentage.

(5) Application — For the purposes of subsections (3) and (4),

(a) the percentage that original editorial content is of total non-advertising content is the percentage that the total space occupied by original editorial content in the issue is of the total space occupied by non-advertising content in the issue; and

(b) the Minister may obtain the advice of the Department of Canadian Heritage for the purpose of

(i) determining the result obtained under paragraph (a), and

(ii) interpreting any expression defined in this section that is defined in the *Foreign Publishers Advertising Services Act*.

(6) Editions of issues — For the purposes of this section,

(a) where an issue of a periodical is published in several versions, each version is an edition of that issue; and

(b) where an issue of a periodical is published in only one version, that version is an edition of that issue.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 10, will add s. 19.01, applicable in respect of advertisements placed in an issue dated after May 2000.

Technical Notes: Section 19 of the Act precludes the deduction of advertising expenses to the extent that the expenses are incurred for advertisements directed at the Canadian market and placed in a newspaper or periodical that does not meet certain Canadian ownership criteria.

Pursuant to the Canada-U.S. Agreement of June 3, 1999 regarding periodicals, section 19 of the Act is amended to exclude advertisements in periodicals from the application of section 19. Instead, new section 19.01 of the Act permits full deductibility of expenses for advertisements published in issues of periodicals that contain at least 80% original editorial content, and 50% deductibility for advertising expenses in other periodicals, regardless of the ownership of the periodical.

These amendments apply to advertisements in issues of periodicals published after May 2000.

Department of Foreign Affairs and International Trade, news release, May 26, 1999: *Ottawa and Washington Agree on Access to the Canadian Advertising Services Market*

Canadian Heritage Minister Sheila Copps and International Trade Minister Sergio Marchi announced today that an agreement-in-principle has been reached between the Government of Canada and the Government of the United States with regard to the access of foreign periodicals to the Canadian advertising services market.

. . . . .

Under the terms of the agreement, Bill C-55, the *Foreign Publishers Advertising Services Act*, will be enacted, with amendments. The prohibition on foreign publishers selling advertising services aimed primarily at the Canadian market will be amended to allow two limited forms of access:

- a *de minimis* exemption which will allow foreign publishers to publish up to 12% of ads aimed at the Canadian market immediately, up to 15% in eighteen months and 18% thirty-six months after the date of enactment of the *Foreign Publishers Services Act*.
- an exemption which will enable foreign publishers to have access to a greater percentage of the Canadian advertising services market, providing they create majority Canadian content and establish a new periodicals business in Canada. Acquisitions of Canadian publishers will not be permitted.

In addition, the rules governing tax deductibility available to advertisers will be changed to provide full deductibility in any periodical, regardless of the nationality of ownership, that produces at least 80% original or Canadian content. Canadian advertisers will receive half the deduction for ads placed in foreign magazines under the de minimis exemption, as well as ads placed in magazines created by foreign investors that include less than 80% original or Canadian content.

. . . . .

For further information, media representatives may contact: Jacques Lefebvre, Senior Communications Advisor, Office of the Minister of Canadian Heritage, (819) 997-7788; Anne-Sophie Lawless, Media Relations, Department of Canadian Heritage, (819) 997-9314; Leslie Swartman, Office of the Minister for International Trade, (613) 992-7332.

This document is also available on the Web site of the Department of Canadian Heritage (http://www.pch.gc.ca) under News Releases.

Backgrounder 1: Canada-U.S. Agreement on Magazines

Bill C-55 will proceed quickly to enactment, with amendments.

The prohibition on foreign publishers selling advertising services aimed primarily at the Canadian market will be amended to allow two controlled forms of access to the Canadian advertising services market:

- an exemption that will allow foreign publishers to invest in Canada, create new businesses and produce a majority of Canadian content if they want to have greater access to advertising revenues.
- a *de minimis* exemption of up to 18% of the advertising in any foreign periodical. This exemption will be phased in over three years from the date of enactment of C-55 (12% immediately, 15% after eighteen months, 18% after thirty-six months).

. . . . .

Tax Deductibility

Tax deductibility is currently only available for ads placed in periodicals with a minimum of 75% Canadian ownership [see 19(5)"Canadian newspaper or periodical"(b) — ed.] and that contain at least 80% original content [see 19(5)"Canadian issue"(b)(vi) and 19(5)"substantially the same" — ed.]. This will now be changed to provide full deductibility, regardless of the nationality of ownership, in any periodical that contains at least 80% original or Canadian content. Canadian advertisers will receive half the deduction for ads placed in foreign magazines under the de minimis exemption, as well as for ads placed in magazines created by foreign investors that include less than 80% original or Canadian content.

Department of Foreign Affairs and International Trade, news release, June 4, 1999: *Canada and United States Sign Agreement on Periodicals*

The governments of Canada and the United States have signed the formal Agreement ending a long-standing dispute regarding access of foreign periodicals to the Canadian advertising services market.

According to the terms of the Agreement, which comes into effect at the time of signing, the United States has agreed not to take any action under the World Trade Organization Agreements, the North American Free Trade Agreement, or section 301 of the Trade Act of 1974, as amended, in response to Bill C-55.

For its part, Canada has agreed to make certain changes to Bill C-55, the *Foreign Publishers Advertising Services Act*, to its foreign investment policy and to the *Income Tax Act*. All of these changes were explained in the May 26 announcement of the agreement-in-principle.

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For further information, media representatives may contact: Jacques Lefebvre, Senior Communications Advisor, Office of the Minister of Canadian Heritage, (819) 997-7788; Leslie Swartman, Office of the Minister for International Trade, (613) 992-7332.

Definitions [s. 19.01]: "advertisement directed at the Canadian market" — 19.01(5); "Canada" — 255, *Interpretation Act* 35(1); "edition" — 19.01(6); "Minister" — 248(1); "original editorial content", "periodical" — 19.01(1); "taxpayer" — 248(1).

19.1 (1) Limitation re advertising expense on broadcasting undertaking — Subject to subsection (2), in computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer made or incurred after September 21, 1976 for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcasting undertaking.

(2) Exception — In computing income, a deduction may be made in respect of an outlay or expense made or incurred before September 22, 1977 for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcasting undertaking pursuant to

(a) a written agreement entered into on or before January 23, 1975; or

(b) a written agreement entered into after January 23, 1975 and before September 22, 1976 if the agreement is for a term of one year or less and by its express terms is not capable of being extended or renewed.

(3) [Repealed under former Act]

(4) Definitions — In this section,

"foreign broadcasting undertaking" means a network operation or a broadcasting transmitting undertaking located outside Canada or on a ship or aircraft not registered in Canada;

"network" includes any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator.

Pre-RSC History [s. 19.1]: All that portion of subsec. 19.1(2) preceding para. (a) substituted and subsec. 19.1(3) repealed by 1977-78, c. 1, subsecs. 13(1), (2), deemed to have come into force on September 22, 1976.

S. 19.1 added by 1974-75-76, c. 106, s. 3, proclaimed in force from and after September 22, 1976.

Definitions [s. 19.1]: "broadcasting" — *Interpretation Act* 35(1); "Canada" — 255; "foreign broadcasting undertaking", "network" — 19.1(4); "taxpayer" — 248(1).

20. (1) Deductions permitted in computing income from business or property — Notwithstanding paragraphs 18(1)(a), (b) and (h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

(a) **capital cost of property** — such part of the capital cost to the taxpayer of property, or such amount in respect of the capital cost to the taxpayer of property, if any, as is allowed by regulation;

Related Provisions: 13(5) — Transferred property; 13(5.2) — Rules applicable; 13(6) — Misclassified property; 13(7) — Change in use of depreciable property; 13(11) — Automobile deduction; 13(12) — Application of 20(1)(cc); 13(14) — Conversion cost of vessel; 13(21.2) — Transfer of property where u.c.c. exceeds fair market value; 13(26)–(32) — Restriction on deduction before available for use; 18(3.1)(a) — Costs relating to construction of building or ownership of land; 18(12) — Work space in home; 20(1.1) — Definitions in 13(21) apply to regulations; 20(16) — Terminal loss; 21 — Cost of borrowed money; 28(1)(g) — Deduction from farming or fishing income when using cash method; 34.2(2)(c) — Maximum CCA deemed claimed for purposes of 1995 stub period income; 36 — Railway companies; 37(6) — Scientific research capital expenditures; 67.3 — Limitation re cost of leasing passenger vehicle; 68 — Allocation of cost between property and services; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of CCA regulations; 85(5) — Rules on transfers of depreciable property; 87(2)(d.1) — Amalgamations — depreciable property acquired from predecessor corporation; 107.2 — Distribution by a retirement compensation arrangement; 107.4(3)(d) — Rollover of depreciable property to trust; 125.4(4) — No Canadian film/video production credit to corporation if investor can claim CCA; 127.52 — Minimum tax — adjusted taxable income determined; 164(6) — Refund — disposition of property by legal representative of deceased taxpayer; 216(5) — Disposition by non-resident of interest in real property, timber resource property or timber limit. See additional Related provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(a)]: *Enstone v. R.*, [2000] 2 C.T.C. 279 (FCA) (Holder of life interest in property could claim CCA); *Saskatchewan Wheat Pool v. R.*, [1999] 2 C.T.C. 369 (FCA); leave to appeal to SCC refused (Apr. 13, 2000), File 27346 (ITC should not be higher for taxpayer who capitalizes interest); *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes); *Kamsel Leasing Inc. v. MNR*, [1993] 1 C.T.C. 2279 (TCC) (Agreement treated as "sale" not "lease" where option to acquire property at end of term substantially below probable market value); *Société Immobilière SSQ Inc. v. MNR*, [1993] 1 C.T.C. 2029 (TCC) (Costs incurred by partnership before taxpayer's acquisition of interest not deductible; contracts not retroactive); *British Columbia Telephone Co. v. Canada*, [1992] 1 C.T.C. 26 (FCA) (Fibre optic telephone transmission systems properly classified as cable); *Vaillancourt v. Canada*, [1991] 2 C.T.C. 42 (FCA) (Condominium was residential and within Class 31).

Regulations: Part XI (CCA rules); Part XVII (farming and fishing property owned since before 1972); Reg. Sch. II–Sch. VI (classes of property).

I.T. Application Rules: 18(2), 20, 26.1(2).

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures; IT-121R3: Election to capitalize cost of borrowed money; IT-128R: CCA — Depreciable property; IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-172R: CCA — Taxation year of individuals; IT-187: Customer lists and ledger accounts; IT-195R4: Rental property — CCA restrictions; IT-267R2: CCA — Vessels; IT-283R2: CCA — video tapes, video tape cassettes, films, computer software and master recording media; IT-285R2: CCA — General comments; IT-304R2: Condominiums; IT-306R2: CCA — Contractor's movable equipment; IT-317R: CCA — Radio and television equipment; IT-324: Emphyteutic lease; IT-325R2: Property transfers after separation, divorce and annulment; IT-327: CCA — Elections under regulation 1103; IT-336R: CCA — Pollution control property; IT-371: Rental property — meaning of "principal business"; IT-422: Definition of tools; IT-464R: CCA — Leasehold interests; IT-465R: Non-resident beneficiaries of trusts; IT-469R: CCA — Earth-moving equipment; IT-472: CCA — Class 8 property; IT-476: CCA — Gas and oil exploration and production equipment; IT-477: CCA — Patents, franchises, concessions and licences; IT-481: Timber resource property and timber limits; IT-482: CCA — Pipelines; IT-485: Cost of clearing or levelling land; IT-492: CCA — Industrial mineral mines; IT-501: CCA — Logging assets.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions; 87-5: Capital cost of property where trade-in is involved.

I.T. Technical News: No. 1 (sales commission expenses of mutual-fund limited partnerships); No. 3 (loss utilization within a corporate group); No. 12 ("millennium bug" expenditures).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer.

Forms: T1-CP Summ: Return in respect of certified productions; T1-CP Supp: Statement of certified productions; T2 SCH 8: Capital cost allowance; T776: Statement of real estate rentals; T777: Statement of employment expenses; T2041: Capital cost allowance schedule for self-employed persons; T2132: Capital cost allowance schedule (depreciation); T4044: Employment expenses [guide]; T5014: Partnership capital cost allowance schedule.

(b) **cumulative eligible capital amount** — such amount as the taxpayer may claim in respect of a business, not exceeding 7% of the taxpayer's cumulative eligible capital in respect of the business at the end of the year;

Related Provisions: 14(1) — Inclusion in income from business; 14(5) — Definitions — "cumulative eligible capital", "eligible capital expenditure"; 24 — Ceasing to carry on business; 28(1)(g) — Deduction from farming or fishing income when using cash method; 34.2(2)(c) — Maximum amount deemed claimed for purposes of 1995 stub period income; 70(5.1) — Eligible capital property of deceased; 70(9.8) — Leased farm property; 87(2)(f) — Amalgamations — cumulative eligible capital; 107(2)(f) — Capital interest distribution by personal or prescribed trust; 111(5.2) — Computation of cumulative eligible capital. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(b) amended by 1988, c. 55, subsec. 12(1), to substitute "a business, not exceeding 7%" for "any business, not exceeding 10%", applicable

(a) in the case of a corporation, for taxation years commencing after June 1988; and

(b) in any other case, for fiscal periods commencing after 1987.

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-123R4: Disposition of and transactions involving eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-143R2: Meaning of "eligible capital expenditure"; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

Forms: T5017: Calculation of deduction for cumulative eligible capital of a partnership.

(c) **interest** — an amount paid in the year or payable in respect of the year (depending upon the method regularly followed by the taxpayer in computing the taxpayer's income), pursuant to a legal obligation to pay interest on

(i) borrowed money used for the purpose of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt or to acquire a life insurance policy),

(ii) an amount payable for property acquired for the purpose of gaining or producing income from the property or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy),

(iii) an amount paid to the taxpayer under

(A) an appropriation Act and on terms and conditions approved by the Treasury Board for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry, or

(B) the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, or

(iv) borrowed money used to acquire an interest in an annuity contract in respect of which section 12.2 applies (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest) except that, where annuity payments have begun under the contract in a preceding taxation year, the amount of interest paid or payable in the year shall not be deducted to the extent that it exceeds the amount included under section 12.2 in computing the taxpayer's income for the year in respect of the taxpayer's interest in the contract,

Proposed Addition [on hold] — 20(1)(c)(v), (vi)

(v) borrowed money used to make a loan described in subsection 80.4(1), or

(vi) borrowed money used to make a loan described in subsection 80.4(2), to the extent of the amount included in respect of the loan in computing the taxpayer's income for the year,

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(1), will add subparas. 20(1)(c)(v) and (vi), applicable to 1972 *et seq.* (These amendments are still subject to further revision and are not expected to be enacted soon.)

Technical Notes: Paragraph 20(1)(c) is the principal provision dealing with interest deductibility. In addition to a generic description of indebtedness on which interest may be deductible in computing a taxpayer's income, this paragraph identifies certain other obligations in respect of which similar treatment is provided.

This amendment adds two new subparagraphs to paragraph 20(1)(c), dealing with interest on borrowed money used to make employer and shareholder loans described in section 80.4. Subparagraph 20(1)(c)(v) confirms, subject to the overriding condition in paragraph 20(1)(c) and section 67 that the expense be reasonable in the circumstances, the deductibility of interest on borrowed money used by a taxpayer to make a loan to an employee or prospective employee.

Subparagraph 20(1)(c)(vi) governs the treatment of borrowed money used by or on behalf of a corporation to make a loan to or for the benefit of one of its shareholders. This provision permits any interest arising on the borrowed money for a particular taxation year to be deducted to the extent of the amount included in the borrower's income for the year from the shareholder loan.

or a reasonable amount in respect thereof, whichever is the lesser;

Proposed Amendment — Authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (2) That the amount of interest that may be deducted by an authorized foreign bank in computing its income for a taxation year from its business carried on in Canada be the total of

(a) the total of all amounts payable by the bank as interest, or a reasonable amount of interest, whichever is the lesser, for the year in respect of indebtedness incurred in connection with, and on which the interest is borne by, the bank's business carried on in Canada, to the extent that the total amount of all such indebtedness outstanding at any time in the year does not exceed 95% of the total value of the assets used at that time in connection with the bank's business carried on in Canada, and

(b) the amount equal to the product of

(i) an interest rate to be prescribed by regulation, and

(ii) the amount, if any, by which 95% of the total value of the assets used in the year in connection with the bank's business carried on in Canada exceeds the total amount of all indebtedness described in subparagraph (a).

Department of Finance news release, February 11, 1999: *Determining Branch Interest Expense*

It is proposed that a Canadian branch of a foreign bank be permitted to deduct, in computing its income subject to tax in Canada, interest both in respect of money borrowed directly from third parties ("direct debt"), and on account of money borrowed indirectly through its home office ("allocated debt"). Deductibility is allowed only to the extent that the amount of the foreign bank's indebtedness incurred in respect of its Canadian business does not exceed 95% of the value of assets used in connection with its Canadian business.

The amount of interest that may be deducted in respect of direct debt will be based on the actual expenses incurred by the Canadian branch. For administrative simplicity, interest on allocated debt will be deemed to be the excess of the 95% indebtedness limit over the amount of debt directly incurred by the branch, multiplied by a prescribed interest rate. It is not anticipated that a fixed rate or benchmark will be prescribed for this purpose; rather, the prescription will describe relevant criteria such as market rates and the use of funds.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

Proposed Amendment — Weak currency borrowings (Kiwi loans)

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Weak Currency Debt*

(28) That a "weak currency debt" be defined as indebtedness incurred by a taxpayer at a particular time after February 27, 2000, in respect of a borrowing of money or an acquisition of property, in a currency (the "weak currency") other than Canadian currency, where

(a) at any time (the "exchange date") the taxpayer uses the borrowed money or the acquired property, directly or indirectly, to acquire funds, or settle an obligation, in another currency (the "final currency")

(i) which funds are used for the purpose of earning income from a business or property and are not used to acquire funds in a different currency, or

(ii) which obligation was incurred for the purpose of earning income from a business or property and was not incurred to acquire funds in a different currency,

(b) the amount of the indebtedness (together with any other indebtedness that can reasonably be regarded as having been incurred as part of a series of weak currency debt transactions that includes the incurring of the indebtedness) exceeds $500,000, and

(c) the rate at which interest is payable in the weak currency in respect of the indebtedness exceeds by more than 2 percentage points (200 basis points) the rate at which interest would have been payable in the final currency if at the particular time the taxpayer had incurred an equivalent amount of indebtedness in the final currency on the same terms, with such modifications as the difference in currency requires.

(29) That the following rules apply in respect of a weak currency debt of a taxpayer (other than a corporation described in one or more of paragraphs (a), (b), (c) and (e) of the definition "specified financial institution" in subsection 248(1) of the Act):

(a) no deduction on account of interest that accrues on the indebtedness after the later of June 30, 2000 and the exchange date shall exceed the amount (expressed in Canadian currency) of interest in the final currency that would have accrued after that day if, at the time of incurring the indebtedness, the taxpayer had instead incurred an equivalent amount of indebtedness in the final currency on the same terms, with such modifications as the difference in currency requires;

(b) the taxpayer's foreign exchange gain or loss

(i) on the settlement or extinguishment of the indebtedness, and

(ii) on the settlement of any hedge in respect of the indebtedness

shall be on income account [see 39(2) — ed.]; and

(c) in computing the taxpayer's foreign exchange gain or loss on the settlement or extinguishment of the indebtedness, the amount of any interest on the indebtedness that was not deductible because of this paragraph shall be treated as an additional amount paid by the taxpayer to settle or extinguish the indebtedness.

(30) That in applying the rules described in paragraph (29),

(a) a hedge in respect of the indebtedness be defined as any agreement entered into by the taxpayer

(i) that can reasonably be regarded as having been entered into by the taxpayer primarily to reduce the risk to the taxpayer, with respect to payments of principal or interest on the indebtedness, of currency fluctuations, and

(ii) that is identified by the taxpayer as a hedge in respect of the indebtedness in a written notice filed with the Minister on or before the later of July 31, 2000 and the 30th day after the taxpayer agrees to the hedge;

(b) where there is a hedge in respect of any portion of interest in the weak currency paid or payable on the indebtedness, the amount (expressed in Canadian currency) paid or payable in the weak currency for a period on account of interest be deemed to be that amount minus the amount of any foreign exchange gain, or plus the amount of any foreign exchange loss, on the hedge in respect of the interest paid or payable for the period; and

(c) if the amount (expressed in the weak currency) of the indebtedness is decreased before maturity by a repayment of principal, the amount (expressed in the weak currency) repaid be deemed *ab initio* to have been a separate indebtedness and the amount (expressed in the weak currency) of the original indebtedness be reduced accordingly.

Federal budget, supplementary information, February 28, 2000: *Weak Currency Borrowings*

"Weak currency borrowings" are transactions that take advantage of the fact that, where a currency is expected to decline in value relative to some reference currency, the interest rate on a loan in the "weak" currency will be higher than on a loan on similar terms in the reference currency. The higher rate reflects the market's expectation that the borrowed amount will be worth less in terms of the reference currency when the loan is repaid. Lenders demand a higher interest rate to compensate for this expected depreciation.

A taxpayer pursuing tax advantages may borrow in a weak currency, even though that currency is not required in its business. The proceeds of the weak currency loan are converted into a currency that is needed for business purposes, but the interest obligation remains in the weak currency at the higher rate. The higher interest payments form the basis for a claimed interest deduction that is higher than would be available if the taxpayer had borrowed directly in the final currency. If, as expected, the currency of the borrowing depreciates, the taxpayer will realize a foreign exchange gain on maturity when the principal of the loan is repaid in the depreciated foreign currency. While this gain compensates for the higher interest payments, the taxpayer may treat it as a capital gain, which would be taxed at a preferential rate. The full deduction of additional interest, coupled with capital gains treatment of the offsetting appreciation, produces an inappropriate result which has been challenged by the Canada Customs and Revenue Agency.

The Supreme Court of Canada has recently ruled [*Shell Canada Ltd. v. The Queen*, [1999] 4 C.T.C. 313 — ed.] that specific rules in the *Income Tax Act* do not deny the tax benefits sought by proponents of these weak currency structures. However, the disputed transaction preceded the introduction of the Act's General Anti-Avoidance Rule (GAAR). The Government's position that the GAAR applies to weak currency borrowings is currently being adjudicated by the courts.

While the Government is pursuing its challenge of these transactions under the current law, prudent risk management supports the introduction, for greater certainty, of specific legislative rules defining particular weak currency arrangements and setting out their appropriate tax treatment. Essentially, a weak currency borrowing will be treated for tax purposes as equivalent to a direct borrowing in the currency that is used by the taxpayer to earn income.

The proposed rules will apply when a taxpayer incurs foreign currency indebtedness that meets the following conditions:

- the proceeds from the indebtedness are not used directly in the currency of the debt, but rather are converted into another currency and used in that form by the taxpayer;
- the interest rate on the debt is more than two percentage points above the rate on an equivalent borrowing in the currency used to earn income; and
- the principal amount of the debt exceeds $500,000.

Where these conditions are met, the following rules will apply:

- deductible interest on the indebtedness will be limited to the interest that would have been payable if the taxpayer had incurred an equivalent debt directly in the currency of use;
- the total of interest expenses disallowed over the term of the indebtedness will be subtracted from the foreign exchange gain or loss realized when the debt is repaid; and
- any foreign exchange gain or loss realized on repayment of the debt, and the gain or loss on any associated hedge, will be on income account.

The measure will not apply to corporations whose principal business is the lending of money.

It is proposed that this measure apply as of July 1, 2000, in respect of indebtedness incurred after February 27, 2000. This will allow interested parties an opportunity to comment on the proposal.

Example

- Assume that Canco would have to pay interest at 8% on a 2-year Canadian dollar (C$) loan, while it would pay 13% on a 2-year Country F dollar (F$) loan.
- As Canco needs C$1m for use in its business, it borrows F$2m in 2001 and immediately converts the borrowed money into C$1m.
- Canco makes the following payments under the loan:

Payment	F$ value	Exchange rate	C$ value
	(all amounts in 000s)		
Interest — 2002	F$260	0.4779	C$124
Interest — 2003	F$260	0.4567	C$119
Principal — 2003	F$2,000	0.4567	C$913

- Canco realizes a foreign exchange gain when it repays the debt in depreciated F$:

Value of principal on borrowing:	C$1,000
Value of principal on repayment:	C$913
Foreign exchange gain:	C$87

Proposed Tax Treatment

- Since Canco could have borrowed the C$ equivalent of F$2m (C$1m) on the same terms for 8%, Canco's annual interest deduction is limited to 8% of C$1m, i.e., $80,000:

Year	Interest paid	Deductible	Not deductible in year
	(all amounts in 000s)		
2002	C$124	C$80	C$44
2003	C$119	C$80	C$39
Total	C$243	C$160	C$83

- The amount of the non-deductible interest is aggregated over the term of the loan and deducted in computing the foreign exchange gain realized on repayment of the loan. The resulting gain is treated on income account:

Foreign exchange gain:	C$87
Undeducted interest:	C$83
Adjusted foreign exchange gain (loss):	C$4

- The application of the rule does not fully eliminate the exchange gain. This is because the rule takes the simplifying approach of allowing an interest deduction over the term of the loan at a fixed percentage (8 per cent) of the original C$ value of the principal. A more accurate — but more complex — approach would treat the non-deductible interest paid each year as a prepayment of principal. Such an approach would only allow an interest deduction in subsequent years for the fixed percentage of the reduced principal — effectively disallowing more interest over the term of the loan than under the proposed rule.

Related Provisions: 9(3) — Capital gains not included in income from property; 15.1(2)(a), 15.1(4) — Small business development bonds; 16(1) — Income and capital combined; 16(6) — Indexed debt obligations — amount deemed paid as interest; 17 — Loan to non-resident; 18(1)(e) — No deduction for contingent reserve; 18(1)(g) — Interest on income bonds; 18(1)(t) — No deduction for interest paid on late payments of income tax; 18(2) — Limitation — interest and property taxes on land; 18(4)–(8) — Thin capitalization — limitation on deductibility of interest; 18(9)–(9.2) — Prepaid interest; 18(11) — No deduction for interest on money borrowed to make RRSP or certain other contributions; 20(1)(e) — Expense of borrowing money; 20(1)(f) — Amounts paid in satisfaction of the "principal amount"; 20(1)(qq) (draft) — Interest on share purchase; 20(1.2) — Definitions in 12.2(11) apply; 20(2) — Borrowed money; 20(2.1) — Limitation; 20(2.2) — Life insurance policy; 20(3), (3.1) — Borrowed money; 20(14) — Accrued bond interest; 20.1(1) — Borrowed money where property is disposed of; 20.1, 20.2 (draft) — Money borrowed for distribution; 21(1)–(4) — Cost of borrowed money; 60(d) — Annual interest accruing in respect of estate tax or succession duties; 67.2 — Interest on money borrowed for passenger vehicle; 80.5 — Deemed interest — employee deduction re funds borrowed to purchase auto or aircraft; 110.6(1) — "investment expense"; 118.62 — Credit for interest paid on student loans; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 133(1) — No interest deduction to NRO; 137(4.1) — Interest deemed paid on certain reductions of capital by credit union; 138(5)(b) — Insurers — limitation; 212(1)(b) — Non-resident withholding tax on interest; 218 — Loan to wholly-owned subsidiary. See additional Related Provisions and Definitions at end of s. 20.

History: Subpara. 20(1)(c)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(1), applicable with respect to contracts last acquired after 1989. Subpara. 20(1)(c)(iv) formerly read:

> (iv) borrowed money used to acquire an interest in an annuity contract to which section 12.2 applies, except that, where annuity payments have commenced under the contract in a preceding taxation year, the amount of interest paid or payable in the year shall not be deducted to the extent that it exceeds the amount included under that section or under paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year with respect to the taxpayer's interest in the contract,

Pre-RSC History: Subpara. 20(1)(c)(iv) amended by 1990, c. 39, subsec. 9(1), to substitute "section 12.2 applies" for "section 12.2 applies, or would apply if the contract had a third anniversary in the year," and "the taxpayer's interest" for "his interest", applicable (by subsec. 9(3), as amended by 1991, c. 49, s. 252) with respect to contracts last acquired after 1989.

Subpara. 20(1)(c)(iv) added by 1980-81-82-83, c. 140, subsec. 12(1), applicable with respect to acquisitions occurring after June 28, 1982.

Selected Cases [para. 20(1)(c)]: *Shell Canada Ltd. v. R.*, [1999] 4 C.T.C. 313 (SCC); rev'g *Shell Canada Ltd. v. R.*, [1998] 2 C.T.C. 207 (FCA); rev'g on other grounds [1997] 3 C.T.C. 2238 (TCC) (Economic realities cannot change *bona fide* legal relationships); *Ludmer v. MNR*, [1999] 3 C.T.C. 601 (FCA); leave to appeal to SCC allowed (Apr. 20, 2000), File 27320 (Real purpose of loans was to turn income into capital gains; interest deduction disallowed); *Singleton v. R.*, [1999] 3 C.T.C. 446 (FCA); leave to appeal to SCC allowed (Apr. 20, 2000), File 27477 (No "series" test in provision, once direct purpose of borrowing established); *Hudson Bay Mining & Smelting Co. v. R.*, [1999] 3 C.T.C. 76 (FCA) (Issuer of debentures repurchased had obligation to pay interest to date of repurchase); *Robitaille v. R.*, [1997] 3 C.T.C. 3031 (TCC) (Interest on financing of personal assets not deductible); *Parthenon Investments Ltd. v. R.*, [1997] 3 C.T.C. 152 (FCA) (Novation did not create a borrower-lender relationship); *Chase Manhattan Bank of Canada v. R.*, [1997] 2 C.T.C. 3097 (TCC) (Interest on money borrowed to pay dividends not deductible); *74712 Alberta v. MNR (formerly Cal-Gas)*, [1997] 2 C.T.C. 30 (FCA) (Use of borrowed funds was to honour guarantee, not for use in business); *Barbican Properties Inc. v. Canada*, [1997] 1 C.T.C. 2383 (FCA) (Deferred interest held to be contingent and not deductible); *Sherway Centre Ltd. v. Canada*, [1996] 3 C.T.C. 2687 (TCC) ("Participating" interest was not "interest"); *Hudson Bay Mining Smelting Co. v. Canada*, [1996] 2 C.T.C. 2245D (TCC) (Payment for accrued interest is for an expectancy to receive interest and is not itself interest); *Ludco Enterprises Ltd. v. Canada*, [1996] 3 C.T.C. 74 (FCA) (Previous treatment by Minister not binding); *Redclay Holdings Ltd. v. Canada*, [1996] 2 C.T.C. 2347 (TCC) (Deduction disallowed in respect of particular year since obligation to pay was contingent, although eventually absolute); *Tennant v. MNR*, [1996] 1 C.T.C. 290 (SCC) (Deductibility of interest not related to value of property acquired, especially replacement property, but to original purpose of loan); *Canwest Broadcasting Ltd. v. Canada*, [1995] 2 C.T.C. 2780 (TCC) (Interest incurred for purpose of gaining access to tax losses of unrelated company not deductible); *Joy v. Canada*, [1995] 1 C.T.C. 2834 (TCC) (Reference to draft legislation not permitted as guide to interpretation); *Mark Resources Inc. v. Canada*, [1993] 2 C.T.C. 2259 (TCC) (Interest on money borrowed to contribute capital to foreign affiliate for latter to earn investment income and use foreign tax losses not deductible; "income" means gross revenue from use of money; "reasonable amount" of interest need not exceed revenue); *Morscher (A.A.) v. MNR*, [1992] 2 C.T.C. 2534 (TCC) (Interest on money used by lawyer to finance work in progress deductible); *Grenier v. MNR*, [1992] 1 C.T.C. 2703 (TCC); appealed to FCTD (May 22, 1992), File T-1193-92 (Taxpayer allowed to deduct interest only on portion of loan used to earn income);

Kalef v. MNR, [1992] 1 C.T.C. 2771 (TCC) (Interest on loan for share purchase deductible only for year of purchase); *Goulard v. MNR*, [1992] 1 C.T.C. 2396 (TCC) (Interest expenses in respect of share purchase arose from legal obligation to repay borrowed money for purpose of earning income); *The Queen v. Attaie*, [1990] 2 C.T.C. 157 (FCA) (Deductibility determined by current use of borrowed money, not original use); *Holotnak v. The Queen*, [1990] 1 C.T.C. 13 (FCA) (Deduction of interest disallowed when mortgage funds used to purchase residence); *Malik v. MNR*, [1989] 1 C.T.C. 316 (FCTD) (Amounts paid with respect to debts when insufficient connection to employment not deductible); *Bowater Canadian Ltd. v. The Queen*, [1987] 2 C.T.C. 47 (FCA); leave to appeal to SCC refused (1987), 86 N.R. 265 (note), (sub nom. *Bowater Can. Ltd. v. MNR)* (Holding company rendering technical and administrative services to subsidiaries disallowed interest deduction when not in business of financing); *The Queen v. Bronfman Trust*, [1987] 1 C.T.C. 117 (SCC) (Relevancy of current use rather than original use of borrowed funds when assessing deductibility of interest payments); *Emerson v. The Queen*, [1986] 1 C.T.C. 422 (FCA); leave to appeal to SCC refused [1986] 1 SCR vii, 70 N.R. 160n (June 12, 1986) (Interest disallowed where money borrowed to repay previous loan on shares no longer owned); *The Queen v. Terra Mining & Exploration Ltd. (NPL)*, [1984] C.T.C. 176 (FCTD) (Accounting method used in financial statements must be the same for interest expense claims); *Sternthal v. The Queen*, [1974] C.T.C. 851 (FCTD) (Interest paid on borrowed money subsequently loaned interest-free to children not deductible); *MNR v. Mid-West Abrasive Co. of Canada Ltd.*, [1973] C.T.C. 548 (FCTD) (Interest payments on borrowed money not deductible prior to year in which money used); *Trans-Prairie Pipelines Ltd. v. MNR*, [1970] C.T.C. 537 (Exch.) (Interest and legal expenses deductible on money borrowed to redeem preferred shares); *DWS Corp. v. MNR*, [1968] C.T.C. 65 (Exch.); aff'd [1969] C.T.C. vi (SCC) (Interest on money borrowed from subsidiary and loaned to another disallowed when loan not made for purpose of earning income).

Regulations: 201(1)(b) (information return).

Interpretation Bulletins: IT-80: Interest on money borrowed to redeem shares or pay dividends; IT-104R2: Deductibility of fines or penalties; IT-121R3: Election to capitalize cost of borrowed money; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-265R3: Payments of income and capital combined; IT-315: Interest expense incurred for the purpose of winding-up or amalgamation; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-362R: Patronage dividends; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-445: Deduction of interest on borrowed funds which are loaned at less than a reasonable rate; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-498: Deductibility of interest on money borrowed to reloan to employees or shareholders.

Information Circulars: 88-2, paras. 19, 20: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2, Supplement, para. 5: General anti-avoidance rule.

I.T. Technical News: No. 3 (loss utilization within a corporate group; use of a partner's assets by a partnership; interest-bearing note issued in consideration for the redemption or repurchase of shares); No. 16 (*Sherway Centre* case; *Shell Canada* and *Canadian Pacific* cases; *Parthenon Investments* case); No. 18 (*C.R.B. Logging*, *Ludco Enterprises*, *Byram* and *Singleton* cases).

Advance Tax Rulings: ATR-4: Exchange of interest rates; ATR-14: Non-arm's length interest charges; ATR-16: Inter-company dividends and interest expense; ATR-41: Convertible preferred shares; ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-59: Financing exploration and development through limited partnerships.

Forms: T2210: Verification of policy loan interest by the insurer.

(d) **compound interest** — an amount paid in the year pursuant to a legal obligation to pay interest on an amount that would be deductible under paragraph (c) if it were paid in the year or payable in respect of the year;

Related Provisions: 18(11) — Limitation; 20(2.1) — Limitation; 20(2.2) — Life insurance policy; 21(1)–(4) — Cost of borrowed money; 67.2 — Interest on money borrowed for passenger vehicle; 67.3 — Limitation re motor vehicle expenses; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 138(5)(b) — Insurers — limitation; 248(1) — "Borrowed money". See additional Related Provisions and Definitions at end of s. 20.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-362R: Patronage dividends.

Advance Tax Rulings: ATR-4: Exchange of interest rates.

Forms: T2210: Verification of policy loan interest by the insurer.

(e) **expenses re financing** — such part of an amount that is not otherwise deductible in computing the income of the taxpayer and that is an expense incurred in the year or a preceding taxation year

Proposed Amendment — 20(1)(e) opening words

(e) **expenses re financing** — such part of an amount (other than an excluded amount) that is not otherwise deductible in computing the income of the taxpayer and that is an expense incurred in the year or a preceding taxation year

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 11(1), will amend the opening words of para. 20(1)(e) to read as above, applicable with respect to expenses incurred by a taxpayer after November 1999, other than expenses incurred pursuant to a written agreement made by the taxpayer before December 1999.

Technical Notes: Section 20 of the Act provides rules relating to the deductibility of certain outlays, expenses and other amounts in computing a taxpayer's income for a taxation year from a business or property.

Paragraph 20(1)(e) of the Act provides for the deduction over a five-year period of expenses incurred in the course of issuing securities, borrowing money, and certain other financing transactions. Amounts paid in respect of the principal of a debt obligation and interest on the obligation are expressly excluded from the application of this paragraph. Paragraph 20(1)(e) is amended to clarify that it does not allow a deduction for profit participation and similar payments — that is, payments dependent on the use of or production from property, or computed by reference to revenue, profits, cash flow, commodity prices or any other similar criterion or by reference to dividend payments. Where such payments are compensation for the use of borrowed money or for the right to pay a debt over time, they would be excluded by the existing paragraph 20(1)(e) — either because they are interest or because they fall within the broad definition of "principal amount" in subsection 248(1) of the Act. The amendment ensures that in no circumstances can participation and similar payments be deducted under paragraph 20(1)(e).

(i) in the course of an issuance or sale of units of the taxpayer where the taxpayer is a unit trust, of interests in a partnership or syndicate by the partnership or syndicate, as the case may be, or of shares of the capital stock of the taxpayer,

(ii) in the course of a borrowing of money used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt),

(ii.1) in the course of incurring indebtedness that is an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or

(ii.2) in the course of a rescheduling or restructuring of a debt obligation of the taxpayer or an as-

sumption of a debt obligation by the taxpayer, where the debt obligation is

(A) in respect of a borrowing described in subparagraph (ii), or

(B) in respect of an amount payable described in subparagraph (ii.1),

and, in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation,

(including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount that is paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of

Proposed Amendment — 20(1)(e)

(including a commission, fee, or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing) that is the lesser of

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 11(2), will amend the portion of para. 20(1)(e) between subparas. (ii.2) and (iii) to read as above, applicable on the same basis as the amendment to the opening words.

Technical Notes: See under 20(1)(e) opening words.

(iii) that proportion of 20% of the expense that the number of days in the year is of 365 and

(iv) the amount, if any, by which the expense exceeds the total of all amounts deductible by the taxpayer in respect of the expense in computing the taxpayer's income for a preceding taxation year,

and, for the purposes of this paragraph,

Proposed Addition — 20(1)(e)(iv.1)

(iv.1) "excluded amount" means

(A) an amount paid or payable as or on account of the principal amount of a debt obligation or interest in respect of a debt obligation,

(B) an amount that is contingent or dependent on the use of, or production from, property, or

(C) an amount that is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 11(3), will add subpara. 20(1)(e)(iv.1), applicable on the same basis as the amendment to the opening words.

Technical Notes: See under 20(1)(e) opening words.

(v) where in a taxation year all debt obligations in respect of a borrowing described in subparagraph (ii) or in respect of indebtedness described in subparagraph (ii.1) are settled or extinguished (otherwise than in a transaction made as part of a series of borrowings or other transactions and repayments), by the taxpayer for consideration that does not include any unit, interest, share or debt obligation of the taxpayer or any person with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer or any person with whom the taxpayer does not deal at arm's length is a member or beneficiary, this paragraph shall be read without reference to the words "the lesser of" and to subparagraph (iii), and

(vi) where a partnership has ceased to exist at any particular time in a fiscal period of the partnership,

(A) no amount may be deducted by the partnership under this paragraph in computing its income for the period, and

(B) there may be deducted for a taxation year ending at or after that time by any person or partnership that was a member of the partnership immediately before that time, that proportion of the amount that would, but for this subparagraph, have been deductible under this paragraph by the partnership in the fiscal period ending in the year had it continued to exist and had the partnership interest not been redeemed, acquired or cancelled, that the fair market value of the member's interest in the partnership immediately before that time is of the fair market value of all the interests in the partnership immediately before that time;

Related Provisions: 18(11) — Limitation; 20(1)(e.1) — Deduction for annual fees, etc.; 20(1)(e.2) — Premiums on life insurance used as collateral; 20(3) — Use of borrowed money; 21(1)–(4) — Cost of borrowed money; 53(2)(c)(x) — Deduction from adjusted cost base of partnership interest; 87(2)(j.6) — Amalgamations — continuing corporation; 110.6(1) — "investment expense"; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 248(1) — "Borrowed money"; 248(10) — Series of transactions. See additional Related Provisions and Definitions at end of s. 20.

History: The portion of para. 20(1)(e) between subparas. (ii.2) and (iii) amended by 1998, c. 19, subsec. 81(1), applicable to expenses incurred after 1987. That portion formerly read:

> (including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount that is a payment described in paragraph 18(9.1)(c) or (d) nor any amount paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of

That portion of para. 20(1)(e) between subparas. (ii) and (iii) (subparas. (ii.1) and (ii.2) being added) substituted by 1994, c. 21, subsec. 12(1), applicable to expenses incurred after 1987. That portion of the para. formerly read:

> (including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesman, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of,

Subpara. 20(1)(e)(v) substituted by 1994, c. 21, subsec. 12(2), applicable to expenses incurred after 1987. That subpara. formerly read:

> (v) where in a taxation year all debt obligations in respect of a borrowing are settled or extinguished (otherwise than in a transaction made as part of a series of borrowings or other transactions and repayments) by the taxpayer for consideration that does not include any unit, interest, share or debt obligation of the taxpayer or any person with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer or any person with whom the taxpayer does not deal at arm's length is a member or beneficiary, this paragraph shall be read without reference to the words "the lesser of" and to subparagraph (iii), and

Pre-RSC History: Para. 20(1)(e) substituted by 1988, c. 55, subsec. 12(2), applicable to expenses incurred after 1987 in respect of issuances, sales and borrowings occurring after 1987. Para. (e) formerly read:

(e) expenses of issuing or selling units, interests or shares or borrowing money — an expense incurred in the year

(i) in the course of issuing or selling units of the taxpayer where the taxpayer is a unit trust, interests in a partnership or syndicate by the partnership or syndicate, as the case may be, or shares of the capital stock of the taxpayer, or

(ii) in the course of borrowing money used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt),

including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesman, agent or dealer in securities in the course of issuing or selling the units, interests or shares or borrowing the money, but not including any amount paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest;

Para. 20(1)(e) substituted by 1979, c. 5, subsec. 7(1), applicable to amounts paid or payable after November 16, 1978. Para. (e) formerly read:

(e) an expense incurred in the year,

(i) in the course of issuing or selling shares of the capital stock of the taxpayer, or

(ii) in the course of borrowing money used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt),

but not including any amount in respect of

(iii) a commission or bonus paid or payable to a person to whom the shares were issued or sold or from whom the money was borrowed, or for or on account of services rendered by a person as a salesman, agent or dealer in securities in the course of issuing or selling the shares or borrowing the money, or

(iv) an amount paid or payable as or on account of the principal amount of the indebtedness incurred in the course of borrowing the money, or as or on account of interest;

Selected Cases [para. 20(1)(e)]: *Besse v. MNR*, [1999] 3 C.T.C. 52 (FCA) (Expenses of syndicate were expenses of its members); *Harrowston Corp. v. Canada*, [1997] 1 C.T.C. 101 (FCA) (Liability to pay tax did not result in deductible bad debt); *Sherway Centre Ltd. v. Canada*, [1996] 3 C.T.C. 2687 (TCC) ("Participating" interest was not "interest"); *228262 Alberta Ltd. v. MNR*, [1996] 1 C.T.C. 2416 (TCC) (Price rectification was eligible capital expenditure, not current expense or cost of borrowing); *The Queen v. Royal Trust Corp. of Canada*, [1983] C.T.C. 159 (FCA) (Commission payable to broker in the course of public issue was eligible capital expenditure); *MNR v. Yonge-Eglinton Building Ltd.*, [1974] C.T.C. 209 (FCA) (Payments incidental to borrowing of money under financing agreement for construction of building deductible); *Riviera Hotel Co. Ltd. v. MNR*, [1972] C.T.C. 157 (FCTD) (Bonus to discharge loan not deductible); *Trans-Prairie Pipelines Ltd. v. MNR*, [1970] C.T.C. 537 (Exch.) (Interest and legal expenses deductible on money borrowed to redeem preferred shares).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-121R3: Election to capitalize cost of borrowed money; IT-143R2: Meaning of "eligible capital expenditure"; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

I.T. Technical News: No. 16 (*Sherway Centre* case).

Advance Tax Rulings: ATR-49: Long-term foreign debt; ATR-59: Financing exploration and development through limited partnerships.

(e.1) **annual fees, etc. [re borrowings]** — an amount payable by the taxpayer (other than a payment that is contingent or dependent on the use of, or production from, property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation) as a standby charge, guarantee fee, registrar fee, transfer agent fee, filing fee, service fee or any similar fee, that can reasonably be considered to relate solely to the year and that is incurred by the taxpayer

(i) for the purpose of borrowing money to be used by the taxpayer for the purpose of earning income from a business or property (other than borrowed money used by the taxpayer for the purpose of acquiring property the income from which would be exempt income),

(ii) in the course of incurring indebtedness that is an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or

(iii) for the purpose of rescheduling or restructuring a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is

(A) in respect of a borrowing described in subparagraph (i), or

(B) in respect of an amount payable described in subparagraph (ii),

and, in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation.

Related Provisions: 18(11) — Limitation; 20(3) — Use of borrowed money; 21 — Cost of borrowed money; 87(2)(j.6) — Amalgamations — continuing corporation; 110.6(1) — "investment expense"; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes; 248(1) — "Borrowed money". See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(e.1) substituted by 1994, c. 21, subsec. 12(3), applicable to expenses incurred after 1987. That para. formerly read:

(e.1) annual fees, etc. — an amount payable by the taxpayer (other than a payment that is contingent or dependent upon the use or production from property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation) as a standby charge, guarantee fee, registrar fee, transfer agent fee, filing fee, service fee or any similar fee, that may reasonably be considered to relate solely to the year and that relates to money borrowed by the taxpayer and used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt);

Pre-RSC History: Para. 20(1)(e.1) added by 1988, c. 55, subsec. 12(2), applicable to expenses incurred after 1987 in respect of issuances, sales and borrowings occurring after 1987.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

Advance Tax Rulings: ATR-49: Long-term foreign debt.

(e.2) **premiums on life insurance used as collateral** — such portion of the lesser of

(i) the premiums payable by the taxpayer under a life insurance policy (other than an annuity contract) in respect of the year, where

(A) an interest in the policy is assigned to a restricted financial institution in the course of a borrowing from the institution,

(B) the interest payable in respect of the borrowing is or would, but for subsections 18(2)

and (3.1) and sections 21 and 28, be deductible in computing the taxpayer's income for the year, and

(C) the assignment referred to in clause (A) is required by the institution as collateral for the borrowing

and

(ii) the net cost of pure insurance in respect of the year, as determined in accordance with the regulations, in respect of the interest in the policy referred to in clause (i)(A),

as can reasonably be considered to relate to the amount owing from time to time during the year by the taxpayer to the institution under the borrowing;

Related Provisions: 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes.

History: Para. 20(1)(e.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(2), applicable with respect to premiums payable after 1989.

Regulations: 308 (net cost of pure insurance).

Interpretation Bulletins: IT-309R2: Premiums on life insurance used as collateral; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

(f) **discount on certain obligations** — an amount paid in the year in satisfaction of the principal amount of any bond, debenture, bill, note, mortgage or similar obligation issued by the taxpayer after June 18, 1971 on which interest was stipulated to be payable, to the extent that the amount so paid does not exceed,

(i) in any case where the obligation was issued for an amount not less than 97% of its principal amount, and the yield from the obligation, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on its holder a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of its principal amount, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) does not exceed 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(A) the principal amount of the obligation, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(B) the amount outstanding from time to time as or on account of the principal amount of the obligation, in any other case,

the amount by which the lesser of the principal amount of the obligation and all amounts paid in the year or in any preceding year in satisfaction of its principal amount exceeds the amount for which the obligation was issued, and

(ii) in any other case, 3/4 of the lesser of the amount so paid and the amount by which the lesser of the principal amount of the obligation and all amounts paid in the year or in any preceding taxation year in satisfaction of its principal amount exceeds the amount for which the obligation was issued;

Related Provisions: 18(1)(f) — Payments on discounted bonds; 18(11) — Limitation; 110.6(1) — "Investment expense"; 127.52(1)(b), (c), (c.2), (e.1) — Limitation on deduction for minimum tax purposes. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subpara. 20(1)(f)(ii) amended by 1988, c. 55, subsec. 12(3), to substitute "3/4" for "1/2" and "any preceding taxation year" for "any preceding year", applicable to taxation years and fiscal periods ending after 1987, except that

(a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "3/4" shall be read as a reference to "2/3";

(b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined in the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year; and

(c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year.

All that portion of para. 20(1)(f) following clause (i)(B) substituted by 1973-74, c. 14, s. 5, applicable to 1972 *et seq.*

Selected Cases [para. 20(1)(f)]: *92735 Canada Ltd. v. R.*, [1999] 2 C.T.C. 2661 (TCC) (Debt becomes doubtful when collection doubtful on objective basis).

Interpretation Bulletins: IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money.

(g) **share transfer and other fees** — where the taxpayer is a corporation,

(i) an amount payable in the year as a fee for services rendered by a person as a registrar of or agent for the transfer of shares of the capital stock of the taxpayer or as an agent for the remittance to shareholders of the taxpayer of dividends declared by it,

(ii) an amount payable in the year as a fee to a stock exchange for the listing of shares of the capital stock of the taxpayer, and

(iii) an expense incurred in the year in the course of printing and issuing a financial report to shareholders of the taxpayer or to any other person entitled by law to receive the report;

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(g)]: *Boulangerie St-Augustine Inc. v. Canada*, [1995] 2 C.T.C. 2149 (TCC) (Cost of shareholder communications on take-over bid deductible).

(h), (i) [Repealed under former Act]

Pre-RSC History: Paras. 20(1)(h), (i) repealed by 1984, c. 45, subsec. 10(1), applicable in respect of bills drawn after June 1984. Paras. 20(1)(h), (i) formerly read:

(h) certification fee paid to bank — an amount payable by the taxpayer in the year as a fee to a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies for the certification of a non-interest-bearing post-dated bill drawn by the taxpayer on the bank and payable not more than 366 days from the date of the certification;

(i) **sale of bill** — where a bill described in paragraph (h) that was drawn by the taxpayer has been sold by the taxpayer in the year, the amount, if any, by which the principal amount of the bill exceeds the consideration paid by the purchaser to the taxpayer for the bill so sold;

Para. 20(1)(h) substituted by 1980-81-82-83, c. 48, subsec. 10(1), applicable with respect to amounts becoming payable after December 11, 1979, to substitute "366" for "90".

(j) **repayment of loan by shareholder** — such part of any loan or indebtedness repaid by the taxpayer in the year as was by virtue of subsection 15(2) included in computing the taxpayer's income for a preceding taxation year (except to the extent that the amount of the loan or indebtedness was deductible from the taxpayer's income for the purpose of computing the taxpayer's taxable income for that preceding taxation year), if it is established by subsequent events or otherwise that the repayment was not made as part of a series of loans or other transactions and repayments;

Related Provisions: 20(3) — Use of borrowed money; 110.6(1) — "investment expense"; 227(6.1) — Repayment of loan by shareholder when shareholder is non-resident; 248(10) — Series of transactions. See Related provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(j) substituted by 1980-81-82-83, c. 140, subsec. 12(2), applicable to 1982 *et seq.* Para. 20(1)(j) formerly read:

(j) such part of any loan repaid by the taxpayer in the year as was by subsection 15(2) required to be included in computing the income of the taxpayer for a previous year (except to the extent that the amount of the loan was deductible from the taxpayer's income for the purpose of computing his taxable income for that previous year), if it is established by subsequent events or otherwise that the repayment was not made as part of a series of loans and repayments;

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

I.T. Technical News: No. 3 (paragraphs 15(2)(b) and 20(1)(j)).

(k) [Repealed under former Act]

Pre-RSC History: Para. 20(1)(k) repealed by 1988, c. 55, subsec. 12(4), applicable with respect to amounts paid or payable after June 1988. (See subsec. 16(1) as amended by 1988, c. 55). Para. 20(1)(k) formerly read:

(k) **combined income and capital** — such part of a payment

(i) repaying borrowed money used for the purpose of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt), or

(ii) for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt),

made by the taxpayer in the year as is by subsection 16(1) required to be included in computing the recipient's income for a taxation year;

(l) **doubtful or impaired debts** — a reserve determined as the total of

(i) a reasonable amount in respect of doubtful debts (other than a debt to which subparagraph (ii) applies) that have been included in computing the taxpayer's income for the year or a preceding taxation year, and

(ii) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year or a taxpayer whose ordinary business includes the lending of money, an amount in respect of properties (other than mark-to-market properties, as defined in that subsection) that are

(A) impaired loans or lending assets that are specified debt obligations (as defined in that subsection) of the taxpayer, or

(B) impaired loans or lending assets that were made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money

equal to the total of

(C) the percentage (not exceeding 100%) that the taxpayer claims of the prescribed reserve amount for the taxpayer for the year, and

(D) in respect of loans, lending assets or specified debt obligations that are impaired and for which an amount is not deductible for the year because of clause (C) (each of which in this clause is referred to as a "loan"), the taxpayer's specified percentage for the year of the lesser of

(I) the total of all amounts each of which is a reasonable amount as a reserve (other than any portion of which is in respect of a sectoral reserve) for a loan in respect of the amortized cost of the loan to the taxpayer at the end of the year, and

(II) the amount determined by the formula

$$0.9M - N$$

where

M is the amount that is the taxpayer's reserve or allowance for impairment (other than any portion of the amount that is in respect of a sectoral reserve) for all loans that is determined for the year in accordance with generally accepted accounting principles, and

N is the total of all amounts each of which is the specified reserve adjustment for a loan (other than an income bond, an income debenture, a small business bond or small business development bond) for the year or a preceding taxation year;

Related Provisions: 12(1)(d) — Income inclusion in following year; 12(4.1) — Regular interest income rules do not apply where 20(1)(l)(ii) applies; 16(7) — Indexed debt obligation rules do not apply where 20(1)(l)(ii) applies; 18(1)(s) — Limitation on deduction by insurer or money lender; 20(1)(p) — Bad debt deduction; 20(2.3) — Sectoral reserve; 20(2.4) — Specified percentage; 20(27) — Non-arm's length acquisition of loan or lending asset; 20(30) — Specified reserve adjustment; 22(1) — Sale of accounts receivable; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 79.1(8) — Creditor cannot deduct amount for bad or impaired debt where property seized; 87(2)(g) — Amalgamations — reserves; 87(2)(h) — Amalgamations — debts; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 111(5.3) — Doubtful debts and bad debts; 138(5)(a) — Deductions not allowed; 138(11.31)(b) — Change in use rule for insurance properties does not apply for purposes of 20(1)(l); 142.3(1)(c) — Amount deductible in respect of specified debt obligation; 142.3(4) — Specified debt obligation rules do not apply where 20(1)(l)(ii) applies; 149(10)(a.1) — Exempt corporations; 257 — Formula cannot calculate to less than zero; Reg. 2405(3)"gross Canadian life investment income"(d), (i) — Inclusion in life insurer's income for following year. See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(l) amended by 1998, c. 19, subsec. 81(4), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment apply to the year and files the election with the Minister of National Revenue before October 1998.

The para. formerly read:

(l) **reserve for doubtful debts** — a reserve determined as the total of

(i) a reasonable amount in respect of doubtful debts that have been included in computing the income of the taxpayer for that year or a preceding year, and

(ii) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year or a taxpayer whose ordinary business includes the lending of money, an amount in respect of properties (other than mark-to-market properties, as defined in that subsection) that are doubtful loans or lending assets that were made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money or that were specified debt obligations (as defined in that subsection) of the taxpayer, equal to the total of

(A) the prescribed reserve amount for the taxpayer for the year, and

(B) in respect of doubtful loans or lending assets for which an amount was not deducted for the year by reason of clause (A) (in this clause referred to as the "loans"), the lesser of

(I) a reasonable amount as a reserve for the loans in respect of the amortized cost of the loans to the taxpayer at the end of the year, and

(II) the product obtained when the total of

1. that part of the reserve for the loans reported in the financial statements of the taxpayer for the year that is in respect of the amortized cost to the taxpayer at the end of the year of the loans, and

2. the total of all amounts included under subsection 12(3) or paragraph 142.3(1)(a) in computing the taxpayer's income for the year or a preceding taxation year to the extent that those amounts reduced the part of the reserve referred to in sub-subclause 1

is multiplied by one minus the prescribed recovery rate,

or such lesser amount as the taxpayer may claim where the lesser amount is the total of a percentage of the amount determined under clause (A) and the same percentage of the amount determined under clause (B);

The opening words of subpara. 20(1)(l)(ii) and sub-subcl. 20(1)(l)(ii)(B)(II)2 amended by 1998, c. 19, subsec. 81(2) and (3), applicable to taxation years that end after February 22, 1994. The opening words and sub-subcl. formerly read:

(ii) an amount in respect of doubtful loans or lending assets of a taxpayer who was an insurer or whose ordinary business included the lending of money, made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money, equal to the total of

. . . . .

2. the total of all amounts included in computing the taxpayer's income under subsection 12(3) for the year or a preceding taxation year to the extent that those amounts reduced the part of the reserve referred to in sub-subclause 1

Pre-RSC History: Para. 20(1)(l) substituted by 1988, c. 55, subsec. 12(5), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. Para. (l) formerly read:

(l) a reasonable amount as a reserve for

(i) doubtful debts that have been included in computing the income of the taxpayer for that year or a previous year, and

(ii) doubtful debts arising from loans made in the ordinary course of business by a taxpayer part of whose ordinary business was the lending of money;

Selected Cases [para. 20(1)(l)]: *Stokesly Ltd. v. MNR*, [1996] 3 C.T.C. 2928 (TCC) (Change in structure of business did not alter character of business or character of inventory); *Monaghan v. Canada*, [1996] 2 C.T.C. 2169 (TCC) (Significant events occurring well after year-end do not affect determination of bad debt); *Rostland Corp. v. Canada*, [1995] 2 C.T.C. 2276 (TCC) (Interest income in heavily leveraged real estate venture was income from an active business and not FAPI); *Remington v. Canada*, [1995] 1 C.T.C. 9 (FCA) (Reserve allowed where conduct of taxpayer was adventure in nature of trade); *Gibraltar Mines Ltd. v. The Queen*, [1983] C.T.C. 261 (FCA) (Agreement that taxpayer would mine adjacent property; costs transferred to adjacent owner attributed to trading debts; reserve permitted).

Regulations: 8000(a) (prescribed reserve amount).

I.T. Application Rules: 23(5)"investment interest".

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-188R: Sale of accounts receivable; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-345R: Special reserve — loans secured by mortgages; IT-442R: Bad debts and reserve for doubtful debts; IT-505: Mortgage foreclosures and conditional sales repossessions.

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(l.1) **reserve for guarantees, etc.** — a reserve in respect of credit risks under guarantees, indemnities, letters of credit or other credit facilities, bankers' acceptances, interest rate or currency swaps, foreign exchange or other future or option contracts, interest rate protection agreements, risk participations and other similar instruments or commitments issued, made or assumed by a taxpayer who was an insurer or whose ordinary business included the lending of money in favour of persons with whom the taxpayer deals at arm's length in the ordinary course of the taxpayer's business of insurance or the lending of money, equal to the lesser of

(i) a reasonable amount as a reserve for credit risk losses of the taxpayer expected to arise after the end of the year under or in respect of such instruments or commitments, and

(ii) 90% of the reserve for credit risk losses of the taxpayer expected to arise after the end of the year under or in respect of those instruments or commitments determined for the year in accordance with generally accepted accounting principles,

or such lesser amount as the taxpayer may claim;

Related Provisions: 12(1)(d.1) — Income inclusion in following year; 20(27) — Non-arm's length acquisition of loan or lending assets; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 87(2)(g) — Amalgamations — reserves; 87(2)(h) — Amalgamation — debts; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 149(10)(a.1) — Exempt corporations. See additional Related Provisions and Definitions at end of s. 20.

History: Subpara. 20(1)(l.1)(ii) amended by 1998, c. 19, subsec. 81(5), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

The subpara. formerly read:

(ii) the product obtained when the reserve for credit risk losses of the taxpayer expected to arise after the end of the year under or in respect of such instruments or commitments reported in the financial statements of the taxpayer for the year is multiplied by one minus the prescribed recovery rate,

Pre-RSC History: Para. 20(1)(l.1) added by 1988, c. 55, subsec. 12(5), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Regulations: 8001 [repealed] (prescribed recovery rate).

(m) **reserve in respect of certain [future] goods and services** — subject to subsection (6), where amounts described in paragraph 12(1)(a) have been included in computing the taxpayer's income from a

business for the year or a previous year, a reasonable amount as a reserve in respect of

(i) goods that it is reasonably anticipated will have to be delivered after the end of the year,

(ii) services that it is reasonably anticipated will have to be rendered after the end of the year,

(iii) periods for which rent or other amounts for the possession or use of land or chattels have been paid in advance, or

(iv) repayments under arrangements or understandings of the class described in subparagraph 12(1)(a)(ii) that it is reasonably anticipated will have to be made after the end of the year on the return or resale to the taxpayer of articles other than bottles;

Related Provisions: 12(1)(e)(i) — Income inclusion in following year; 20(6) — Special reserves; 20(7) — Where 20(1)(m) does not apply; 20(24) — Amounts paid for undertaking future obligations; 32(1) — Insurance agents and brokers; 34 — Professional business; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 87(2)(g) — Amalgamations — reserves; 149(10)(a.1) — Exempt corporations. See additional Related Provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(m)]: *Sussex Square Apartments Ltd. v. R.*, [1999] 2 C.T.C. 2143 (TCC) (Reserve allowed on prepaid rent where lease assigned for less than full term); *Westcoast Petroleum Ltd. v. Canada*, [1989] 1 C.T.C. 363 (FCTD) (Reserve cannot be claimed when no services are to be rendered); *J.W. Baker Agency (1976) Ltd. v. Canada*, [1989] 1 C.T.C. 246 (FCA) (Portion of insurance commissions deductible when commissions earned over life of policies); *Sears Canada Inc. v. Canada*, [1989] 1 C.T.C. 127 (FCA); leave to appeal to SCC refused (1989), 100 N.R. 160 (note), (sub nom. *Sears Can. Inc. v. MNR)* (Maintenance agreement for appliances constituted indemnity; reserves disallowed); *Burrard Yarrows Corp. v. The Queen*, [1988] 2 C.T.C. 90 (FCA) (Reserve on progress payments permitted only on amounts earned in the year); *Dixie Lee (Maritimes) Ltd. v. The Queen*, [1988] 1 C.T.C. 193 (FCTD) (Amount received pursuant to franchise agreement regarded as income when receivable).

Interpretation Bulletins: IT-92R2: Income of contractors; IT-154R: Special reserves; IT-165R: Returnable containers; IT-215R: Reserves, contingent accounts; IT-261R: Prepayment of rents; IT-321R: Insurance agents and brokers — unearned commissions; IT-531: Eligible funeral arrangements.

I.T. Technical News: No. 18 (*Oerlikon Aérospatiale* case).

(m.1) **manufacturer's warranty reserve** — where an amount described in paragraph 12(1)(a) has been included in computing the taxpayer's income from a business for the year or a preceding taxation year, a reasonable amount as a reserve in respect of goods or services that it is reasonably anticipated will have to be delivered or rendered after the end of the year pursuant to an agreement for an extended warranty

(i) entered into by the taxpayer with a person with whom the taxpayer was dealing at arm's length, and

(ii) under which the only obligation of the taxpayer is to provide such goods or services with respect to property manufactured by the taxpayer or by a corporation related to the taxpayer,

not exceeding that portion of the amount paid or payable by the taxpayer to an insurer that carries on an insurance business in Canada to insure the taxpayer's liability under the agreement in respect of an outlay or expense made or incurred after December 11, 1979 and in respect of the period after the end of the year;

Related Provisions: 12(1)(e)(i) — Income inclusion in following year; 20(24) — Amounts paid for undertaking future obligations; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 87(2)(g), (j) — Amalgamations — reserves; 149(10)(a.1) — Exempt corporations. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(m.1) added by 1980-81-82-83, c. 140, subsec. 12(3), applicable to 1979 *et seq.*

Interpretation Bulletins: IT-154R: Special reserves.

(m.2) **repayment of amount previously included in income** — a repayment in the year by the taxpayer of an amount required by paragraph 12(1)(a) to be included in computing the taxpayer's income from a business for the year or a preceding taxation year;

Related Provisions: 87(2)(j) — Amalgamations. See additional Related provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(m.2) added by 1984, c. 1, subsec. 9(1), applicable to 1982 *et seq.*

Interpretation Bulletins: IT-154R: Special reserves.

(n) **reserve for unpaid amounts** — where an amount included in computing the taxpayer's income from the business for the year or for a preceding taxation year in respect of property sold in the course of the business is payable to the taxpayer after the end of the year and, except where the property is real property, all or part of the amount was, at the time of the sale, not due until at least 2 years after that time, a reasonable amount as a reserve in respect of such part of the amount as can reasonably be regarded as a portion of the profit from the sale;

Related Provisions: 12(1)(e)(ii) — Income inclusion in following year; 20(8) — No deduction in certain circumstances; 34.2(2)(c) — Maximum reserve deemed claimed for purposes of 1995 stub period income; 66.2(2) — Deduction for cumulative Canadian development expenses; 66.4(2) — Deduction for cumulative Canadian oil and gas property expenses; 72(1)(a) — Reserves, etc., for year of death; 79.1(4), (6)(c) — Deemed amount where property repossessed by creditor; 87(2)(g), (i), (ll) — Amalgamations — reserves; 88(1)(d)(i)(C) — Winding-up; 149(10)(a.1) — Exempt corporations. See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(n) amended by 1995, c. 21, subsec. 6(1), applicable to taxation years that end after February 21, 1994. Para. (n) formerly read:

(n) **reserve for amount not due until later year** — where an amount has been included in computing the taxpayer's income from the business for the year or for a previous year in respect of property sold in the course of the business and that amount or a part thereof is not due,

(i) where the property sold is property other than land, until a day that is

(A) more than 2 years after the day on which the property was sold, and

(B) after the end of the taxation year, or

(ii) where the property sold is land, until a day that is after the end of the taxation year,

a reasonable amount as a reserve in respect of such part of the amount so included in computing the income as may reasonably be regarded as a portion of the profit from the sale;

Pre-RSC History: All that portion of para. 20(1)(n) preceding subpara. (i) thereof substituted by 1974-75-76, c. 26, subsec. 8(1), applicable after November 18, 1974, to substitute "due" for "receivable".

Selected Cases [para. 20(1)(n)]: *Odyssey Industries Inc. v. Canada*, [1996] 2 C.T.C. 2401 (TCC) (Recaptured CCA is not profit from sale of assets; no reserve applicable where proceeds of disposition paid over time); *The Queen v. Enniscare Corp.*, [1984] C.T.C. 286 (FCA) ("Reasonable" amount as a reserve is determined in every case); *Korvette Realties Ltd. v. The Queen*, [1976] C.T.C. 780 (FCTD) (Sum paid as commission for services to be rendered not subject to reserve); *The Queen v. Esskay Farms Ltd.*, [1976] C.T.C. 24 (FCTD) (Trust company receiving proceeds of sale for its own benefit; reserve for amount not receivable permitted. Trust company not acting as agent; tax deferral permitted); *MNR v. Colford (John) Contracting Co. Ltd.*, [1962] C.T.C. 546 (SCC) (Construction holdbacks deductible until architect's or engineer's final certificate issued).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-123R6: Transactions involving eligible capital property; IT-152R3: Special reserves — sale of land; IT-154R: Special reserves; IT-345R: Special reserves — loans secured by mortgages; IT-442R: Bad debts and reserves for doubtful debts; IT-505: Mortgage foreclosures and conditional sales repossessions.

Information Circulars: 88-2, para. 24: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Forms: T2069: Election in respect of amounts not deductible as reserves for the year of death.

(o) **reserve for quadrennial survey** — such amount as may be prescribed as a reserve for expenses to be incurred by the taxpayer by reason of quadrennial or other special surveys required under the *Canada Shipping Act*, or the regulations under that Act, or under the rules of any society or association for the classification and registry of shipping approved by the Minister of Transport for the purposes of the *Canada Shipping Act*;

Related Provisions: 12(1)(h) — Inclusion into income of previous reserve for quadrennial survey; 87(2)(g) — Amalgamations — reserves; 149(10)(a.1) — Exempt corporations. See additional Related Provisions and Definitions at end of s. 20.

Regulations: 3600 (prescribed amount).

(p) **bad debts** — the total of

(i) all debts owing to the taxpayer that are established by the taxpayer to have become bad debts in the year and that have been included in computing the taxpayer's income for the year or a preceding taxation year, and

(ii) all amounts each of which is that part of the amortized cost to the taxpayer at the end of the year of a loan or lending asset (other than a mark-to-market property, as defined in subsection 142.2(1)) that is established in the year by the taxpayer to have become uncollectible and that,

(A) where the taxpayer is an insurer or a taxpayer whose ordinary business includes the lending of money, was made or acquired in the ordinary course of the taxpayer's business of insurance or the lending of money, or

(B) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year, is a specified debt obligation (as defined in that subsection) of the taxpayer;

Related Provisions: 12(1)(i) — Income inclusion — bad debts recovered; 12.4 — Bad debt inclusion; 20(1)(l) — Reserve for doubtful debts; 20(27) — Non-arm's length acquisition of loan or lending assets; 22(1) — Sale of accounts receivable; 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor; 87(2)(g), (h) — Amalgamations; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 111(5.3) — Doubtful debts and bad debts; 142.3(1)(c) — Amount deductible in respect of specified debt obligation; 142.4(1)"tax basis"(p) — Disposition of specified debt obligation by financial institution; 142.5(8)(d)(i) — First deemed disposition of mark-to-market debt obligation. See additional Related Provisions and Definitions at end of s. 20.

History: Subpara. 20(1)(p)(ii) amended by 1998, c. 19, subsec. 81(6), applicable to taxation years that end after February 22, 1994. The subpara. formerly read:

(ii) all amounts each of which is that part of the amortized cost to the taxpayer at the end of the year of a loan or lending asset made or acquired in the ordinary course of business by a taxpayer who was an insurer or whose ordinary business included the lending of money established by the taxpayer to have become uncollectable in the year;

Pre-RSC History: Para. 20(1)(p) substituted by 1988, c. 55, subsec. 12(6), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. Para. 20(1)(p) formerly read:

(p) bad debts — the total of debts owing to the taxpayer

(i) that are established by him to have become bad debts in the year, and

(ii) that have (except in the case of debts arising from loans made in the ordinary course of business by a taxpayer part of whose ordinary business was the lending of money) been included in computing his income for the year or a previous year;

Selected Cases [para. 20(1)(p)]: *Loman Warehousing v. R.*, [1999] 4 C.T.C. 2049 (TCC) (Not sufficient that activities were businesslike; particular business of taxpayer to be examined); *Terrador Investments Ltd. v. R.*, [1999] 3 C.T.C. 520 (FCA); leave to appeal to SCC refused (May 18, 2000), File 27499 (No bad debt possible where statute deemed amount to have been received); *Liampat Holdings v. Canada*, [1996] 2 C.T.C. 246 (FCTD) (Deemed interest never received allowed as bad debt); *Monaghan v. Canada*, [1996] 2 C.T.C. 2169 (TCC) (Significant events occurring well after year-end do not affect determination of bad debt); *Anjalie v. Canada*, [1995] 1 C.T.C. 2802 (TCC) (Taxpayer not permitted to change year in which bad debt arose); *Brunette Investments Ltd. et al. v. The Queen*, [1981] C.T.C. 486 (FCTD) (Losses on advances from solvent members of related group to insolvent members not deductible); *Picadilly Hotels Ltd. v. The Queen*, [1978] C.T.C. 658 (FCTD) (Recaptured capital cost allowance included in year of transaction); *The Queen v. Pollock Sokoloff Holdings Corp.*, [1976] C.T.C. 349 (FCA) (Bad debt disallowed where loss not arising from taxpayer's current business operations); *The Queen v. Keith Enterprises*, [1976] C.T.C. 21 (FCTD) (Unlicensed money lender allowed loss on bad debt in ordinary course of its business).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-123R4: Disposition of and transactions involving eligible capital property; IT-123R6: Transactions involving eligible capital property; IT-159R3: Capital debts established to be bad debts; IT-188R: Sale of accounts receivable; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-345R: Special reserve — loans secured by mortgages; IT-442R: Bad debts and reserve for doubtful debts; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-505: Mortgage foreclosures and conditional sales repossessions.

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(q) **employer's contributions to registered pension plan** — such amount in respect of employer contributions to registered pension plans as is permitted by subsection 147.2(1);

Related Provisions: 6(1)(a)(i) — Employer's contribution to RPP not a taxable benefit; 18(1)(c) — Limitation re exempt income; 146(5) — Amount of premium deductible. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(q) substituted by 1990, c. 35, subsec. 4(1), applicable to 1991 *et seq.* with respect to contributions made to registered pension plans after 1990. Para. 20(1)(q) formerly read:

(q) employer's contribution to pension fund — an amount paid by the taxpayer in the year or within 120 days from the end of the year to or under a registered pension plan in respect of services rendered by employees of the taxpayer in the year, subject, however, as follows:

(i) in any case where the amount so paid is the aggregate of amounts each of which is identifiable as a specified amount in respect of an individual employee of the taxpayer, the amount deductible under this paragraph in respect of any one such individual employee is the lesser of the amount so specified in respect of that employee and $3,500, and

(ii) in any other case, the amount deductible under this paragraph is the lesser of the amount so paid and an amount determined in prescribed manner, not exceeding however $3,500 multiplied by the number of employees of the taxpayer in respect of whom the amount so paid by the taxpayer was paid by him,

less the amount, or portion thereof, that is deductible under paragraph (s);

That portion of para. 20(1)(q) preceding subpara. (i) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

All that portion of para. 20(1)(q) following subpara. (ii) substituted by 1980-81-82-83, c. 48, subsec. 10(2), applicable in respect of amounts paid after 1980 that are not deductible in computing income for any taxation year ending before 1981. That portion formerly read:

> plus such amount as may be deducted as a special payment under paragraph (s);

Subparas. 20(1)(q)(i), (ii) substituted by 1976-77, c. 4, s. 5, applicable to 1976 *et seq.*, to substitute "$3,500" for "$2,500".

Selected Cases [para. 20(1)(q)]: *West Hill Redevelopment Co. Ltd. v. MNR*, [1969] C.T.C. 581 (Exch.) (Deductions disallowed for amounts paid to company pension plan after registration withdrawn).

Interpretation Bulletins: IT-105: Administrative costs of pension plans.

Information Circulars: 72-13R8: Employee's pension plans.

(r) **employer's contributions under retirement compensation arrangement** — amounts paid by the taxpayer in the year as contributions under a retirement compensation arrangement in respect of services rendered by an employee or former employee of the taxpayer, other than where it is established, by subsequent events or otherwise, that the amounts were paid as part of a series of payments and refunds of contributions under the arrangement;

Related Provisions: 12(1)(n.3) — Retirement compensation arrangement; 18(1)(o.2) — Retirement compensation arrangement; 87(2)(j.3) — Amalgamations — continuing corporation; 153(1)(p) — Withholding; 227(8.2) — RCA — failure to withhold; 248(10) — Series of transactions. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(r) added by 1987, c. 46, s. 7, applicable after October 8, 1986.

Forms: T737-RCA Supp: Statement of contributions paid to a custodian of a retirement compensation arrangement.

Pre-RSC History [former para. 20(1)(r)]: Para. 20(1)(r) repealed by 1980-81-82-83, c. 48, subsec. 10(3), applicable to taxation years ending after 1980 in respect of amounts paid after 1980. Para. 20(1)(r) formerly read:

> (r) idem — where a registered pension fund or plan contains a provision under which the taxpayer may provide superannuation or pension benefits for an employee or former employee of the taxpayer by making a lump sum payment to or under the fund or plan in the year in which the employee or former employee
>
> (i) becomes eligible to retire,
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> (ii) retires or otherwise ceases to be employed by the taxpayer, or
>
> (iii) reaches an age at which the superannuation or pension benefits so provided for become payable or commence to be payable to him,
>
> an amount paid by the taxpayer in the year or within 60 days from the end of the year pursuant thereto as the lump sum in respect of an employee or former employee who, in the year, became eligible to retire, retired or otherwise ceased to be employed by the taxpayer or reached the age referred to in subparagraph (iii) (except to the extent that it is deductible under paragraph (q));

(s) [Repealed under former Act]

Pre-RSC History: Para. 20(1)(s) repealed by 1990, c. 35, subsec. 4(2), applicable to 1991 *et seq.*, with respect to contributions made to registered pension plans after 1990. Para. 20(1)(s) formerly read:

> (s) employer's special contribution — where the taxpayer is an employer, the aggregate of all amounts each of which is the amount of a payment made by the employer in the year under a registered pension plan in respect of current or past services of the employer's employees or former employees pursuant to a recommendation by a qualified actuary in whose opinion the resources of the plan are required to be augmented by an amount not less than the aggregate of those payments to ensure that the obligation of the employer to the plan and all the obligations of the plan to the employees and former employees may be discharged in full, if the recommendation of the actuary was made in the year or in one of the three immediately preceding years on the basis of assumptions that remain valid in the year of payment and if the payment was made so that it is irrevocably vested in or for the plan and has been approved by the Minister on the advice of the Superintendent of Financial Institutions, and, for greater certainty and without restricting the generality of this paragraph, it is hereby declared that this paragraph is applicable where the resources of a plan are required to be augmented by reason of an increase in the superannuation or pension benefits payable out of or under the plan;

Para. 20(1)(s) amended by 1990, c. 35, s. 29, to substitute "plan" for "fund or plan" (in seven places), applicable after 1985.

Para. 20(1)(s) amended by 1987, c. 23, s. 37, to substitute "made by the employer in the year" for "made by him in the year", "the employer's employees" for "his employees" and "the Superintendent of Financial Institutions" for "the Superintendent of Insurance", in force from July 2, 1987.

Para. 20(1)(s) substituted by 1980-81-82-83, c. 48, subsec. 10(4), applicable in respect of amounts paid after 1980 that are not deductible in computing income for any taxation year ending before 1981. Para. 20(1)(s) formerly read:

> (s) where the taxpayer is an employer, the amount of a special payment made by him in the year on account of an employees' superannuation or pension fund or plan in respect of past services of employees pursuant to a recommendation by a qualified actuary in whose opinion the resources of the fund or plan were required to be augmented by an amount not less than the amount of the special payment to ensure that all the obligations of the fund or plan to the employees may be discharged in full, if the payment was made so that it is irrevocably vested in or for the fund or plan and the payment has been approved by the Minister on the advice of the Superintendent of Insurance, and for greater certainty and without restricting the generality of this paragraph, it is hereby declared that this paragraph is applicable where the resources of a fund or plan were required to be augmented by reason of an increase in the superannuation or pension benefits payable out of or under the fund or plan;

Selected Cases [para. 20(1)(s)]: *Cam Gard Supply Ltd. v. MNR*, [1977] C.T.C. 143 (SCC) (Taxpayer's contribution to past service pension not deductible where fund under no obligation to employees); *Produits LDG Products Inc. v. The Queen*, [1976] C.T.C. 591 (FCA) (Contributions to pension plan deductible despite investment of contributed funds in preferred shares of company); *Mittler Bros. of Quebec Ltd. v. MNR*, [1973] C.T.C. 182 (FCTD) (Contributions to pension plan not deductible for past services of employees when taxpayer under no obligation to members to require special payment, despite prior approval of Minister); *MNR v. Inland Industries Ltd.*, [1972] C.T.C. 27 (SCC) (Payment to approved pension fund for past services not deductible where no obligation to make special payment); *Western Smallware and Stationery Co. Ltd. v. MNR*, [1972] C.T.C. 7 (FCTD) (Deductible contributions to pension plan for past services must be obligatory).

(t) [Repealed under former Act]

Pre-RSC History: Para. 20(1)(t) repealed by 1988, c. 55, subsec. 12(7), applicable after December 15, 1987. Para. 20(1)(t) formerly read:

> (t) scientific research and experimental development — such amount in respect of expenditures on scientific research and experimental development as is permitted by section 37 or 37.1;

The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Para. 20(1)(t) substituted by 1977-78, c. 32, subsec. 5(1), applicable to 1978 *et seq.*, to add reference to s. 37.1.

(u) **patronage dividends** — such amounts in respect of payments made by the taxpayer pursuant to allocations in proportion to patronage as are permitted by section 135;

Related Provisions: See Related Provisions and Definitions at end of s. 20.

(v) **mining taxes** — such amount as is allowed by regulation in respect of taxes on income for the year from mining operations;

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(v)]: *Rio Algom Mines Ltd. v. MNR*, [1970] C.T.C. 53 (SCC) (Proportion of income under federal Act must be considered in calculation of allowance for mining taxes paid to Ontario).

Regulations: 3900 (amount allowed).

(v.1) **resource allowance** — such amount as is allowed to the taxpayer for the year by regulation in respect of natural accumulations of petroleum or natural gas in Canada, oil or gas wells in Canada or mineral resources in Canada;

Related Provisions: 12(1)(z.5) — Inclusion in income of prescribed resource loss; 20(15) — What can be allowed by regulation; 65 — Depletion allowance; 96(1)(d) — Partnerships — no deduction for resource expenditures; 104(29) — Flow-through from trust to beneficiaries; 219(1)(c) — Branch tax on non-resident corporations. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(v.1) amended by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "natural accumulations of petroleum or natural gas in Canada".

Para. 20(1)(v.1) added by 1974-75-76, c. 71, subsec. 1(1), applicable to 1976 *et seq.*

Selected Cases [para. 20(1)(v.1)]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits").

Regulations: 1210 (amount allowed).

Forms: T82: Saskatchewan Royalty Tax Estate Calculation (Individuals).

(w) **employer's contributions under profit sharing plan** — an amount paid by the taxpayer to a trustee in trust for employees of the taxpayer or of a corporation with whom the taxpayer does not deal at arm's length, under an employees profit sharing plan as permitted by section 144;

Related Provisions: 12(1)(n) — Receipts from employees profit sharing plan — inclusion in income of employer; 144(5) — Employer's contribution to trust deductible. See additional Related Provisions and Definitions at end of s. 20.

(x) **employer's contributions under registered supplementary unemployment benefit plan** — an amount paid by the taxpayer to a trustee under a registered supplementary unemployment benefit plan as permitted by section 145;

Related Provisions: 6(1)(a)(i) — Employer's contribution not a taxable benefit to employee; 18(1)(i) — No deduction except as permitted by s. 145; 145(5) — Payments by employer deductible. See additional Related Provisions and Definitions at end of s. 20.

(y) **employer's contributions under deferred profit sharing plan** — an amount paid by the taxpayer to a trustee under a deferred profit sharing plan as permitted by subsection 147(8);

Related Provisions: 18(1)(c) — Limitation re exempt income. See additional Related Provisions and Definitions at end of s. 20.

(z) **cancellation of lease** — the proportion of an amount not otherwise deductible that was paid or that became payable by the taxpayer before the end of the year to a person for the cancellation of a lease of property of the taxpayer leased by the taxpayer to that person that

(i) the number of days that remained in the term of the lease (including all renewal periods of the lease), not exceeding 40 years, immediately before its cancellation and that were in the year

is of

(ii) the number of days that remained in the term of the lease (including all renewal periods of the lease), not exceeding 40 years, immediately before its cancellation,

in any case where the property was owned at the end of the year by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length and no part of the amount was deductible by the taxpayer under paragraph (z.1) in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 13(5.5) — Lease cancellation payment not included as rental payment under 13(5.4) for CCA purposes; 18(1)(q) — Limitation re cancellation of lease; 20(1)(z.1) — Cancellation payment where property not owned at end of year; 87(2)(j.5) — Amalgamations — cancellation of lease. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(z) substituted by 1980-81-82-83, c. 140, subsec. 12(4), applicable with respect to lease cancellations occurring after November 12, 1981, other than a cancellation pursuant to an agreement in writing entered into on or before that date. Para. 20(1)(z) formerly read:

(z) an amount that would not otherwise be deductible, paid by the taxpayer in the year to a person with whom he was dealing at arm's length for the cancellation of a lease of property of the taxpayer leased by him to that person;

Interpretation Bulletins: IT-359R2: Premiums and other amounts re leases; IT-467R: Damages, settlements, and similar payments.

(z.1) **idem** — an amount not otherwise deductible that was paid or that became payable by the taxpayer before the end of the year to a person for the cancellation of a lease of property of the taxpayer leased by the taxpayer to that person, in any case where

(i) the property was not owned at the end of the year by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length, and

(ii) no part of the amount was deductible by the taxpayer under this paragraph in computing the taxpayer's income for any preceding taxation year,

to the extent of the amount thereof (or in the case of capital property, 3/4 of the amount thereof) that was not deductible by the taxpayer under paragraph (z) in computing the taxpayer's income for any preceding taxation year;

Related Provisions: 13(5.5) — Lease cancellation payment; 18(1)(q) — Limitation re cancellation of lease; 20(1)(z) — Alternative deduction for cancellation payment; 87(2)(j.5) — Amalgamations — cancellation of lease. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: That portion of para. 20(1)(z.1) following subpara. (ii) amended by 1988, c. 55, subsec. 12(8), to substitute "3/4" for "1/2", applicable to taxation years and fiscal periods ending after 1987, except that

(a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "3/4" shall be read as a reference to "2/3";

(b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year; and

(c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before July, 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after June, 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Para. 20(1)(z.1) added by 1980-81-82-83, c. 140, subsec. 12(4), applicable with respect to lease cancellations occurring after November 12, 1981, other than a cancellation pursuant to an agreement in writing entered into on or before that date.

Interpretation Bulletins: IT-359R2: Premiums and other amounts re leases; IT-467R: Damages, settlements, and similar payments.

(aa) **landscaping of grounds** — an amount paid by the taxpayer in the year for the landscaping of grounds around a building or other structure of the taxpayer that is used by the taxpayer primarily for the purpose of gaining or producing income therefrom or from a business;

Related Provisions: 18(3.1)(a) — Costs relating to construction of building or ownership of land. See Related Provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(aa)]: *The Queen v. Hampton Golf Club Ltd.*, [1986] 2 C.T.C. 403 (FCTD) (Capital cost allowance for greens and tees of golf course disallowed; expenses to clear trees and drain proposed fairways not deductible); *Qualico Developments Ltd. v. The Queen*, [1984] C.T.C. 122 (FCA) (Costs of landscaping grounds deductible when part of cost of inventory in year of sale).

Interpretation Bulletins: IT-296: Landscaping of grounds; IT-304R2: Condominiums; IT-485: Cost of clearing or levelling land.

(bb) **fees paid to investment counsel** — an amount other than a commission paid by the taxpayer in the year to a person

(i) for advice as to the advisability of purchasing or selling a specific share or security of the taxpayer, or

(ii) for services in respect of the administration or management of shares or securities of the taxpayer,

if that person's principal business

(iii) is advising others as to the advisability of purchasing or selling specific shares or securities, or

(iv) includes the provision of services in respect of the administration or management of shares or securities;

Related Provisions: 18(1)(u) — Investment counsel fees for RRSP or RRIF are non-deductible; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 110.6(1) — "investment expense". See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(bb) substituted by 1974-75-76, c. 26, subsec. 8(2), applicable to 1974 *et seq*. Para. 20(1)(bb) formerly read:

(bb) one-half fees paid to investment counsel — an amount equal to ½ of the fee paid by the taxpayer in the year to a person for advice as to the advisability of purchasing or selling a specific share or security, if that person's principal business is advising others as to the advisability of purchasing or selling specific shares or securities;

Selected Cases [para. 20(1)(bb)]: *Bond Estate v. R.*, [1999] 1 C.T.C. 2181 (TCC) (Fees for protection of assets not deductible); *Richard v. R.*, [1998] 4 C.T.C. 2671 (TCC) (Investment counsel fees re buildings allowed as deduction).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-238R2: Fees paid to investment counsel.

(cc) **expenses of representation** — an amount paid by the taxpayer in the year as or on account of expenses incurred by the taxpayer in making any representation relating to a business carried on by the taxpayer,

(i) to the government of a country, province or state or to a municipal or public body performing a function of government in Canada, or

(ii) to an agency of a government or of a municipal or public body referred to in subparagraph (i) that had authority to make rules, regulations or by-laws relating to the business carried on by the taxpayer,

including any representation for the purpose of obtaining a licence, permit, franchise or trade mark relating to the business carried on by the taxpayer;

Related Provisions: 13(12) — Application to depreciable property; 20(9) — Amortizing claim over 10 years. See additional Related Provisions and Definitions at end of s. 20.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(dd) **investigation of site** — an amount paid by the taxpayer in the year for investigating the suitability of a site for a building or other structure planned by the taxpayer for use in connection with a business carried on by the taxpayer;

Related Provisions: 53(1)(a) — Valuation or surveying costs — addition to adjusted cost base. See additional Related Provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(dd)]: *Brooke Bond Foods Ltd. v. The Queen*, [1984] C.T.C. 115 (FCTD) (Costs of site soil analysis deductible); *Queen and Metcalfe Carpark Ltd. v. MNR*, [1973] C.T.C. 810 (FCTD) (Cost of feasibility study for rental project deductible for company in business of leasing properties).

Interpretation Bulletins: IT-350R: Investigation of site.

(ee) **utilities service connection** — an amount paid by the taxpayer in the year to a person (other than a person with whom the taxpayer was not dealing at arm's length) for the purpose of making a service connection to the taxpayer's place of business for the supply, by means of wires, pipes or conduits, of electricity, gas, telephone service, water or sewers supplied by that person, to the extent that the amount so paid was not paid

(i) to acquire property of the taxpayer, or

(ii) as consideration for the goods or services for the supply of which the service connection was undertaken or made;

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Selected Cases [para. 20(1)(ee)]: *The Queen v. Guaranteed Homes Ltd.*, [1978] C.T.C. 636 (FCTD) (Deduction of utility service connection disallowed when lots in subdivision not taxpayer's sole place of business).

Interpretation Bulletins: IT-452: Utility service connections.

(ff) **payments by farmers** — an amount paid by the taxpayer in the year as a levy under the *Western Grain Stabilization Act*, as a premium in respect of the gross revenue insurance program established under the *Farm Income Protection Act* or as an administration fee in respect of a net income stabilization account;

Related Provisions: 12(1)(p) — Certain payments made to farmers — income inclusion. See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(ff) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(1), applicable to 1991 *et seq*. Para. 20(1)(ff) formerly read:

(ff) an amount paid by the taxpayer in the year as the levy under the *Western Grain Stabilization Act*;

Pre-RSC History: Para. 20(1)(ff) added by 1974-75-76, c. 87, s. 48, proclaimed in force from April 1, 1976.

Forms: T1163: Statement A — NISA account information and statement of farming activities for individuals; T1164: Statement B — NISA account information and statement of farming activities for additional farming operations; T1165: Statement C — statement of farming activities for Ontario self directed risk management (SDRM); T1175 Sched. 1: NISA/Farming — calculation of CCA and business-use-of-home expenses.

(gg) [Repealed]

History: Para. 20(1)(gg) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 157, deemed to have come into force December 17, 1991. [The para. was re-enacted in amended form as 20(1)(qq): see below.]

Para. 20(1)(gg) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(3), applicable with respect to renovations and alterations made after 1990.

Selected Cases [para. 20(1)(gg)]: *Canadian Imperial Bank of Commerce v. R.*, [2000] 2 C.T.C. 269 (FCA) (Bullion and foreign currency were tangible property held for sale); *Cargill Ltd. v. Canada*, [1996] 2 C.T.C. 2102 (TCC) (Calculation of grain inventory on location-by-location basis was incorrect); *Bastion Management Ltd. v. Canada*, [1995] 2 C.T.C. 252 (FCA) (Bullion bought in year-end straddle scheme not bought in ordinary course of business).

Pre-RSC History [former para. 20(1)(gg)]: Former para. 20(1)(gg) repealed by 1986, c. 55, subsec. 5(1), applicable to taxation years commencing after February 25, 1986; with respect to taxation years that include that date, the words "the number of days in the year" shall be read as "the number of days in the year and before February 26, 1986". Para. (gg) formerly read:

> (gg) inventory allowance — an amount in respect of any business carried on by the taxpayer in the year, equal to that portion of 3% of the cost amount to the taxpayer, at the commencement of the year, of the tangible property (other than real property or an interest therein and currency that is held for other than its numismatic value) that was
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> (i) described in the taxpayer's inventory in respect of the business, and
>
> (ii) held by him for sale or for the purposes of being processed, fabricated, manufactured, incorporated into, attached to, or otherwise converted into or used in the packaging of, property for sale in the ordinary course of the business
>
> that the number of days in the year is of 365;

All that portion of para. 20(1)(gg) preceding subpara. (i) amended by 1986, c. 6, subsec. 13(1), applicable to taxation years commencing after May 23, 1985, to add "and currency that is held for other than its numismatic value".

Para. 20(1)(gg) added by 1977-78, c. 1, subsec. 14(1), applicable to fiscal periods of a business commencing after 1976 and to fiscal periods ending after March 31, 1977 except that in its application to fiscal periods that end after March 31, 1977 and commence before 1977, the words in paragraph (gg) following subparagraph (ii) shall be read as "that the number of days in the year that are after March 31, 1977 is of 365".

(hh) **repayments of inducements, etc.** — an amount repaid by the taxpayer in the year pursuant to a legal obligation to repay all or part of a particular amount

(i) included under paragraph 12(1)(x) in computing the taxpayer's income for the year or a preceding taxation year, or

(ii) that is, because of subparagraph 12(1)(x)(vi) or subsection 12(2.2), not included under paragraph 12(1)(x) in computing the taxpayer's income for the year or a preceding taxation year, where the particular amount relates to an outlay or expense (other than an outlay or expense that is in respect of the cost of property of the taxpayer or that is or would be, if amounts deductible by the taxpayer were not limited because of paragraph 66(4)(b), subsection 66.1(2) or subparagraph 66.2(2)(a)(ii) or 66.4(2)(a)(ii), deductible under section 66, 66.1, 66.2 or 66.4) that would, but for the receipt of the particular amount, have been deductible in computing the taxpayer's income for the year or a preceding taxation year;

Related Provisions: 60(s) — Repayment of policy loan; 79(4)(d) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 87(2)(j.6) — Amalgamations — continuing corporation; 148(9)"adjusted cost basis"E — "adjusted cost basis". See additional Related Provisions and Definitions at end of s. 20.

History: Subpara. 20(1)(hh)(ii) amended by 1994, c. 8, s. 3, applicable to taxation years ending after December 2, 1992. Subpara. (ii) formerly read:

> (ii) that is, by reason of subparagraph 12(1)(x)(vi) or subsection 12(2.2), not included in computing the income of the taxpayer under paragraph 12(1)(x) for the year or a preceding taxation year, where the particular amount relates to an outlay or expense (other than an outlay or expense that is in respect of the cost of property of the taxpayer or that is or would be, if amounts deductible by the taxpayer were not limited by reason of paragraph 66(4)(b) or subparagraph 66.1(2)(a)(ii), 66.2(2)(a)(ii) or 66.4(2)(a)(ii), deductible under section 66, 66.1, 66.2 or 66.4) that would, but for the receipt of the particular amount, have been deductible in computing the income of the taxpayer for the year or a preceding taxation year;

Pre-RSC History: Para. 20(1)(hh) substituted by 1990, c. 45 subsec. 41(1), applicable with respect to amounts repaid after January 1990. That para. formerly read:

> (hh) repayments of inducements etc. — an amount repaid by the taxpayer in the year pursuant to a legal obligation to repay all or part of an amount included under paragraph 12(1)(x) in computing his income for the year or a preceding taxation year;

Para. 20(1)(hh) added by 1986, c. 6, subsec. 13(2), applicable to 1985 *et seq.*

Pre-RSC History [former para. 20(1)(hh)]: Para. 20(1)(hh) repealed by 1985, c. 45, subsec. 10(1), applicable to 1982 *et seq.* Para. 20(1)(hh) formerly read:

> (hh) policy loan repayments — an amount in respect of all or any part of any policy loan repaid by the taxpayer in the year not exceeding the amount, if any, by which
>
> (i) the amount required by subsection 148(1) to be included in computing his income in the year or a previous year from a disposition described in subparagraph 148(9)(c)(ii) in respect of that policy
>
> exceeds
>
> (ii) the part of any loan on that policy repaid by the taxpayer that was deductible under this paragraph in computing his income for a previous taxation year;

Para. 20(1)(hh) added by 1977-78, c. 1, subsec. 14(1), applicable to fiscal periods of a business commencing after 1976 and to fiscal periods ending after March 31, 1977.

(hh.1) **repayment of obligation** — ¾ of any amount (other than an amount to which paragraph 14(10)(b) applies in respect of the taxpayer) repaid by the taxpayer in the year under a legal obligation to repay all or part of an amount to which paragraph 14(10)(c) applies in respect of the taxpayer;

Related Provisions: 79(4)(b) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance.

History: Para. 20(1)(hh.1) added by 1995, c. 21, subsec. 6(2), applicable to amounts repaid after February 21, 1994.

(ii) **inventory adjustment** — the amount required by paragraph 12(1)(r) to be included in computing the taxpayer's income for the immediately preceding year;

Related Provisions: 87(2)(j.1) — Amalgamations — inventory adjustment. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(ii) added by 1979, c. 5, subsec. 7(2), applicable to taxation years ending after November 16, 1978.

(jj) **reinsurance commission** — the amount required by paragraph 12(1)(s) to be included in computing the taxpayer's income for the immediately preceding taxation year;

Related Provisions: 18.1(15)(b) — Reinsurance commission excluded from matchable expenditure rules; 20(7)(c) — Deduction for policy reserves; 87(2.2) — Amalgamations of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(jj) added by 1980-81-82-83, c. 48, subsec. 10(5), applicable to 1980 *et seq.*

(kk) **exploration and development grants** — the amount of any assistance or benefit received by the taxpayer in the year as a deduction from or reimburse-

ment of an expense that is a tax (other than the goods and services tax) or royalty to the extent that

(i) the tax or royalty is, by reason of the receipt of the amount by the taxpayer, not deductible in computing the taxpayer's income for a taxation year, and

(ii) the deduction or reimbursement was included by the taxpayer in the amount determined for J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), for M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or for I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5);

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: That portion of para. 20(1)(kk) preceding subpara. (ii) amended by 1990, c. 45, subsecs. 41(2), (3), to add "(other than the goods and services tax)" applicable with respect to amounts received after 1990, and to substitute subpara. (i) applicable with respect to amounts received after January 1990. Subpara. (i) formerly read:

(i) the tax or royalty would, if the amount had not been received by him, have been deductible by the taxpayer in computing his income for a taxation year, and

Para. 20(1)(kk) added by 1980-81-82-83, c. 48, subsec. 10(5), applicable to 1981 *et seq.*

(ll) **repayment of interest** — such part of any amount payable by the taxpayer because of a provision of this Act, or of an Act of a province that imposes a tax similar to the tax imposed under this Act, as was paid in the year and as can reasonably be considered to be a repayment of interest that was included in computing the taxpayer's income for the year or a preceding taxation year;

Related Provisions: 129(2.2), 131(3.2), 132(2.2), 133(7.02), 164(3.1) — Provisions requiring repayment of interest. See also Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(ll) substituted by 1994, c. 21, subsec. 12(4), applicable to taxation years that begin after 1991. That para. formerly read:

(ll) amount deemed to be tax payable — such part of any amount payable by the taxpayer by virtue of

(i) paragraph 164(3.1)(a) or (4)(a) or any similar provision of any Act of a province that imposes a tax similar to the tax imposed under this Act, or

(ii) paragraph 18(4)(a) of the *Petroleum and Gas Revenue Tax Act*

as was paid in the year and as may reasonably be considered to be repayment of interest that was included in computing the taxpayer's income for the year or a preceding taxation year;

Pre-RSC History: That portion of para. 20(1)(ll) following subpara. (ii) substituted by 1988, c. 55, subsec. 12(9), applicable to 1988 *et seq.* That portion formerly read:

as was paid in the year and as may reasonably be considered to be a repayment of interest that was included in computing his income for the year or a preceding taxation year, but not exceeding, where the taxpayer is an individual (other than a trust that is not a testamentary trust), the amount by which the excess determined under paragraph 110.1(1)(b) in respect of the taxpayer for the year in which the interest was included in computing his income exceeds $1,000;

Subpara. 20(1)(ll)(i) amended by 1985, c. 45, subsec. 10(2), to add reference to para. 164(4)(a), applicable to 1985 *et seq.*

Para. 20(1)(ll) substituted by 1984, c. 45, subsec. 9(2), applicable with respect to payments made after April 19, 1983. Para. 20(1)(ll) formerly read:

(ll) amount deemed to be tax payable — such part of any amount payable by the taxpayer by virtue of paragraph 164(3.1)(a) or by virtue of paragraph 91(3.1)(a) of the *Petroleum and Gas Revenue Tax Act* as was paid in the year and as may reasonably be considered to be a repayment of interest that was included in computing his income for the year or a preceding taxation year, but not exceeding, where the taxpayer is an individual (other than a trust that is not a testamentary trust), the amount by which the excess determined under paragraph 110.1(1)(b) in respect of the taxpayer for the year in which the interest was included in computing his income exceeds $1,000.

Para. 20(1)(ll) added by 1984, c. 1, subsec. 9(2), applicable with respect to payments made after April 19, 1983.

(mm) **cost of substances injected in reservoir** — the portion claimed by the taxpayer of an amount that is an outlay or expense made or incurred by the taxpayer before the end of the year that is a cost to the taxpayer of any substance injected before that time into a natural reservoir to assist in the recovery of petroleum, natural gas or related hydrocarbons to the extent that that portion was not

(i) otherwise deducted in computing the taxpayer's income for the year, or

(ii) deducted in computing the taxpayer's income for any preceding taxation year,

except that where the year is less than 51 weeks, the amount that may be claimed under this paragraph by the taxpayer for the year shall not exceed the greater of

(iii) that proportion of the maximum amount that may otherwise be claimed under this paragraph by the taxpayer for the year that the number of days in the year is of 365, and

(iv) the amount of such outlay or expense that was made or incurred by the taxpayer in the year and not otherwise deducted in computing the taxpayer's income for the year;

Related Provisions: 10(5)(c) — Property deemed to be inventory with cost of nil; 66(13.1) — Short taxation years; 87(2)(j.2) — Amalgamation — continuing corporation. See also Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(mm) amended by 1997, c. 25, subsec. 5(1), applicable to 1996 *et seq.* Para. (mm) formerly read:

(mm) such portion, as may be claimed by the taxpayer, of an amount that is an outlay or expense made or incurred by the taxpayer before the end of the year that is a cost to the taxpayer of any substance injected before that time into a natural reservoir to assist in the recovery of petroleum, natural gas or related hydrocarbons to the extent that that portion was not

(i) otherwise deducted by the taxpayer in computing the taxpayer's income for the year,

(ii) deducted by the taxpayer in computing the taxpayer's income for any preceding taxation year,

(iii) an outlay or expense described in the definition "Canadian exploration expense" in subsection 66.1(6) or the definition "Canadian development expense" in subsection 66.2(5), or

(iv) a Canadian oil and gas property expense,

except that where the year is less than 51 weeks, the amount that may be claimed under this paragraph by the taxpayer for the year shall not exceed the greater of

(v) that proportion of the maximum amount that may otherwise be claimed under this paragraph by the taxpayer for the year that the number of days in the year is of 365, and

(vi) the amount of such outlay or expense not referred to in any of subparagraphs (i) to (iv) that was made or incurred by the taxpayer in the year;

That portion of para. 20(1)(mm) following subpara. (iv) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(4), applicable to taxation years beginning after July 13, 1990.

Pre-RSC History: Para. 20(1)(mm) added by 1984, c. 45, subsec. 9(2), applicable to 1984 *et seq.*

(nn) **Part XII.6 tax** — the tax, if any, under Part XII.6 paid in the year or payable in respect of the year by the taxpayer (depending on the method regularly followed by the taxpayer in computing the taxpayer's income);

Related Provisions: 18(1)(t) — Part XII.6 tax not non-deductible. See also Related Provisions at end of s. 20.

History: Para. 20(1)(nn) added by 1997, c. 25, subsec. 5(1), applicable to 1997 *et seq.*

Pre-RSC History: Para. 20(1)(nn) repealed by 1988, c. 55, subsec. 12(10), applicable to 1988 *et seq.* [See s. 125.2 and subsec. 190.1(3).] Para. (nn) formerly read:

(nn) Part VI tax — the tax, if any, paid under Part VI by the taxpayer for the year; and

Para. 20(1)(nn) added by 1986, c. 6, subsec. 13(3), applicable after May 23, 1985.

(oo) **salary deferral arrangement** — any deferred amount under a salary deferral arrangement in respect of another person to the extent that it was

(i) included under paragraph 6(1)(a) as a benefit in computing the income of the other person for the taxation year of the other person that ends in the taxpayer's taxation year, and

(ii) in respect of services rendered to the taxpayer;

Related Provisions: 6(1)(i) — Salary deferral arrangement payments; 6(11) — Salary deferral arrangement; 12(1)(n.2) — Forfeited salary deferral amounts; 18(1)(o.1) — Deductions — General limitations — Salary deferral arrangement; 87(2)(j.3) — Amalgamation — continuation of corporation. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(1)(oo) added by 1986, c. 55, subsec. 5(2), applicable to 1986 *et seq.*

(pp) **idem** — any amount under a salary deferral arrangement in respect of another person (other than an arrangement established primarily for the benefit of one or more non-resident employees in respect of services to be rendered outside Canada) to the extent that it was

(i) included under paragraph 6(1)(i) in computing the income of the other person for the taxation year of the other person that ends in the taxpayer's taxation year, and

(ii) in respect of services rendered to the taxpayer;

Related Provisions: 18(1)(o.1) — Salary deferral arrangement; 87(2)(j.3) — Amalgamations — continuation of corporation.

History: Para. 20(1)(pp) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(5), applicable to 1986 *et seq.*

(qq) **disability-related modifications to buildings** — an amount paid by the taxpayer in the year for prescribed renovations or alterations to a building used by the taxpayer primarily for the purpose of gaining or producing income from the building or from a business that are made to enable individuals who have a mobility impairment to gain access to the building or to be mobile within it;

Related Provisions: 18(3.1)(a) — Costs relating to construction of building or ownership of land; 20(1)(rr) — Disability-related equipment.

History: Para. 20(1)(qq) was moved from 20(1)(gg) and amended, by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(2), applicable with respect to renovations and alterations made after 1990 except that, with respect to such renovations and alterations made before February 26, 1992, the reference to "prescribed renovations or alterations to a building" shall be read as a reference to "prescribed renovations or alterations to a building of the taxpayer". Para. 20(1)(gg) formerly read:

(gg) disability-related modifications to buildings — an amount paid by the taxpayer in the year for such prescribed renovations or alterations to a building of the taxpayer that is used by the taxpayer primarily for the purpose of gaining or producing income therefrom or from a business as are made for the purpose of enabling individuals who have a mobility impairment to gain access to the building or be mobile within it;

Regulations: 8800 (prescribed renovations and alterations).

Proposed Addition [on hold] — 20(1)(qq) [*sic*]

(qq) [*sic*] **interest on share purchase** — the lesser of

(i) the total of all amounts included in computing the taxpayer's income for the year from a share that was not acquired for the purpose of earning income therefrom or from a business, and

(ii) the total of all amounts of interest paid in, or payable in respect of, the year or the immediately preceding taxation year (depending on the method regularly followed in computing the taxpayer's income) on borrowed money used to acquire the share, to the extent that the amount was not deductible in computing the taxpayer's income for the immediately preceding year.

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(2), will add para. 20(1)(qq), applicable to 1972 *et seq.* [Obviously, it will have to be renumbered.]

Technical Notes: Proposed paragraph 20(1)(qq) applies in circumstances where shares of a corporation are acquired, using borrowed funds, for a purpose other than to earn income. This paragraph would typically apply in the context of shares bearing a fixed dividend rate that is lower than the interest rate charged on the funds borrowed to acquire those shares. It would not generally apply for borrowings to acquire common shares.

Paragraph 20(1)(qq) provides an interest deduction on the borrowed funds up to the amount included in the borrower's income from the preferred shares that were acquired with those funds. In other words, a deduction in respect of interest arising on the borrowed funds for a particular taxation year is permitted to the extent of the amount of all dividends received on the shares in that year (or, in the case of an individual shareholder, to the extent of the actual dividends and the dividend "gross-up" required under paragraph 82(1)(b)).

Where the interest expense associated with such a borrowing for a particular year exceeds the income from the relevant shares in that year, paragraph 20(1)(qq) provides that the excess may be added to the interest arising on the borrowing for the following year and deducted to the extent of the income from those shares in that later year.

Related Provisions: 20(1)(c) — Deduction — interest; 20(3.1) — Borrowed money.

(rr) **disability-related equipment** — an amount paid by the taxpayer in the year for any prescribed disability-specific device or equipment;

Related Provisions: 20(1)(qq) — Disability-related modifications to buildings. See also Related Provisions and Definitions at end of s. 20.

History: Para. 20(1)(rr) substituted by 1994, c. 21, subsec. 12(5), applicable to amounts paid after February 25, 1992. That para. formerly read:

(rr) disability-related equipment — an amount paid by the taxpayer in the year for prescribed devices or equipment acquired primarily to assist individuals who have a sight or hearing impairment.

Para. 20(1)(rr) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(2), applicable with respect to amounts paid after February 25, 1992.

Regulations: 8801 (prescribed devices and equipment).

(ss) **qualifying environmental trusts** — a contribution made in the year by the taxpayer to a qualifying environmental trust under which the taxpayer is a beneficiary;

Related Provisions: 12(1)(z.1) — Inclusion in income of amount received from qualifying environmental trust; 87(2)(j.93) — Amalgamations — continuing corporation.

History: Para. 20(1)(ss) amended by 1998, c. 19, s. 4, applicable to taxation years that end after February 18, 1997 and, for the purpose of para. 20(1)(ss), as amended, each contribution made after 1995 and before February 19, 1997 by a taxpayer to a trust (other than a mining reclamation

trust as defined in subsec. 248(1)) is deemed to have been made on February 19, 1997. The para. formerly read:

> (ss) mining reclamation trusts — a contribution made in the year by the taxpayer to a mining reclamation trust under which the taxpayer is a beneficiary;

Para. 20(1)(ss) added by 1995, c. 3, subsec. 7(1), applicable to taxation years that end after February 22, 1994 and, for the purpose of para. (ss), each contribution made by a taxpayer to a trust before February 23, 1994 shall be deemed to have been made on February 23, 1994.

> (tt) **acquisition of interests in qualifying environmental trusts** — the consideration paid by the taxpayer in the year for the acquisition from another person or partnership of all or part of the taxpayer's interest as a beneficiary under a qualifying environmental trust, other than consideration that is the assumption of a reclamation obligation in respect of the trust;

Related Provisions: 12(1)(z.2) — Inclusion in income on disposition of interest in qualifying environmental trust; 87(2)(j.93) — Amalgamations — continuing corporation.

History: Para. 20(1)(tt) amended by 1998, c. 19, s. 4, applicable to taxation years that end after February 18, 1997. The para. formerly read:

> (tt) acquisition of interests in mining reclamation trusts — the consideration paid by the taxpayer in the year for the acquisition from another person or partnership of all or part of the taxpayer's interest as a beneficiary under a mining reclamation trust, other than consideration that is the assumption of a mining reclamation obligation in respect of the trust; and

Para. 20(1)(tt) added by 1995, c. 3, subsec. 7(1), applicable to taxation years that end after February 22, 1994.

> (uu) **debt forgiveness** — any amount deducted in computing the taxpayer's income for the year because of paragraph 80(15)(a) or subsection 80.01(10);

Related Provisions: 28(1)(g) — Deduction from farming or fishing income when using cash method.

History: Para. 20(1)(uu) added by 1995, c. 21, subsec. 6(3), applicable to taxation years that end after February 21, 1994.

> (vv) **countervailing or anti-dumping duty** — an amount paid in the year by the taxpayer as or on account of an existing or proposed countervailing or anti-dumping duty in respect of property (other than depreciable property); and

Related Provisions: 12(1)(z.6) — Refund of duties included in income; 13(21)"undepreciated capital cost"D.1, K — Inclusion of duties in u.c.c. of depreciable property.

History: Para. 20(1)(vv) added by 1999, c. 22, subsec. 9(1), applicable to amounts that become payable after February 23, 1998.

> (ww) **split income** — where the taxpayer is a specified individual in relation to the year, the individual's split income for the year.

Related Provisions: 120(3)(c) — No deduction in determining income not earned in a province and income subject to Quebec abatement; 120.4 — Income splitting tax (kiddie tax) payable by child.

History: Para. 20(1)(ww) added by 2000, c. 19, s. 2, applicable to 2000 *et seq.*

(1.1) Application of subsec. 13(21) — The definitions in subsection 13(21) apply to any regulations made under paragraph (1)(a).

Origin of subsec. 20(1.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 13(21)).

(1.2) Application of subsec. 12.2(11) — The definitions in subsection 12.2(11) apply to paragraph (1)(c).

Origin of subsec. 20(1.2): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 12.2(11)).

(2) Borrowed money — For the purposes of paragraph (1)(c), where a person has borrowed money in consideration of a promise by the person to pay a larger amount and to pay interest on the larger amount,

> (a) the larger amount shall be deemed to be the amount borrowed; and
>
> (b) where the amount actually borrowed has been used in whole or in part for the purpose of earning income from a business or property, the proportion of the larger amount that the amount actually so used is of the amount actually borrowed shall be deemed to be the amount so used.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Regulations: 304 (prescribed annuity contract) [technically does not apply to this subsection].

(2.1) Limitation of expression "interest" — For the purposes of paragraphs (1)(c) and (d), "interest" does not include an amount that is paid after the taxpayer's 1977 taxation year or payable in respect of a period after the taxpayer's 1977 taxation year, depending on the method regularly followed by the taxpayer in computing the taxpayer's income, in respect of interest on a policy loan made by an insurer except to the extent that the amount of that interest is verified by the insurer in prescribed form and within the prescribed time to be

> (a) interest paid in the year on that loan; and
>
> (b) interest (other than interest that would, but for paragraph (2.2)(b), be interest on money borrowed before 1978 to acquire a life insurance policy or on an amount payable for property acquired before 1978 that is an interest in a life insurance policy) that is not added to the adjusted cost basis (within the meaning given that expression in subsection 148(9)) to the taxpayer of the taxpayer's interest in the policy.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Para. 20(2.1)(b) substituted by 1979, c. 5, subsec. 7(3), applicable to 1978 *et seq.*

Subsec. 20(2.1) substituted by 1977-78, c. 32, subsec. 5(2), applicable to 1978 *et seq.*

Subsec. 20(2.1) added by 1977-78, c. 1, subsec. 14(2), applicable to 1978 *et seq.*

Regulations: 4001 (prescribed time).

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

Forms: T2210: Verification of policy loan interest by the insurer.

(2.2) Limitation of expression "life insurance policy" — For the purposes of paragraphs (1)(c) and (d), a "life insurance policy" does not include a policy

> (a) that is or is issued pursuant to a registered pension plan, a registered retirement savings plan, an income-averaging annuity contract or a deferred profit sharing plan;
>
> (b) that was an annuity contract issued before 1978 that provided for annuity payments to commence not later than the day on which the policyholder attains 75 years of age; or
>
> (c) that is an annuity contract all of the insurer's reserves for which vary in amount depending on the fair market value of a specified group of properties.

Related Provisions: 138(12)"life insurance policy". See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(2.2)(c) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(6), applicable to 1987 *et seq.*

Pre-RSC History: Para. 20(2.2)(a) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

Para. 20(2.2)(a) substituted by 1980-81-82-83, c. 140, subsec. 12(5), applicable after November 12, 1981. Para. 20(2.2)(a) formerly read:

(a) referred to in paragraph 148(1)(b); or

Subsec. 20(2.2) substituted by 1979, c. 5, subsec. 7(3), applicable to 1978 *et seq.*

Subsec. (2.2) added by 1977-78, c. 1, subsec. 14(2), applicable to 1978 *et seq.*

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

(2.3) Sectoral reserve — For the purpose of clause (1)(l)(ii)(D), a sectoral reserve is a reserve or an allowance for impairment for a loan that is determined on a sector-by-sector basis (including a geographic sector, an industrial sector or a sector of any other nature) and not on a property-by-property basis.

History: Subsec. 20(2.3) added by 1998, c. 19, subsec. 81(7), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

(2.4) Specified percentage — For the purpose of clause (1)(l)(ii)(D), a taxpayer's specified percentage for a taxation year is

(a) where the taxpayer has a prescribed reserve amount for the year, the percentage that is the percentage of the prescribed reserve amount of the taxpayer for the year claimed by the taxpayer under clause (1)(l)(ii)(C) for the year, and

(b) in any other case, 100%.

History: Subsec. 20(2.4) added by 1998, c. 19, subsec. 81(7), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

Regulations: 8000(a) (prescribed reserve amount).

(3) Borrowed money — For greater certainty, it is hereby declared that where a taxpayer has used borrowed money

(a) to repay money previously borrowed, or

(b) to pay an amount payable for property described in subparagraph (1)(c)(ii) previously acquired,

subject to subsection 20.1(6), the borrowed money shall, for the purposes of paragraphs (1)(c), (e) and (e.1), subsections 20.1(1) and (2), section 21 and subparagraph 95(2)(a)(ii) and for the purpose of paragraph 20(1)(k) of the *Income Tax Act*, Chapter 148 of the Revised Statutes of Canada, 1952, be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the amount was payable, as the case may be.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

History: That portion of subsec. 20(3) after para. (b) amended by 1995, c. 21, s. 45, applicable to expenses incurred in taxation years that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to expenses incurred in taxation years of the foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation year of such foreign affiliate.

That portion formerly read:

subject to subsection 20.1(6), the borrowed money shall, for the purposes of paragraphs (1)(c), (e) and (e.1), subsections 20.1(1) and (2) and section 21, and for the purpose of paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the amount was payable, as the case may be.

That portion of subsec. 20(3) after para. (b) substituted by 1994, c. 21, subsec. 12(6), applicable to expenses incurred after 1987 except that, in its application to such expenses incurred before 1994, that portion shall be read without reference to the expressions "subject to subsection 20.1(6)" and "subsections 20.1(1) and (2)". That portion formerly read:

the borrowed money shall, for the purposes of paragraph (1)(c) (or 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) and section 21, be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the said amount was so payable, as the case may be.

Selected Cases [subsec. 20(3)]: *Grenier v. MNR*, [1992] 1 C.T.C. 2703 (TCC); appealed to FCTD (May 22, 1992), File T-1193-92 (Interest deductible only on portion of loan used to earn income); *Emerson v. The Queen*, [1986] 1 C.T.C. 422 (FCA); leave to appeal to SCC refused (June 12, 1986), Doc. 19907 [unreported] (Interest disallowed where money borrowed to repay previous loan on shares no longer owned).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

I.T. Technical News: No. 3 (use of a partner's assets by a partnership).

Proposed Addition [on hold] — 20(3.1), (3.2)

(3.1) Borrowed money — For the purposes of this Part, where

(a) a shareholder of a particular taxable Canadian corporation uses borrowed money at any time

(i) to make a loan to the particular corporation or another taxable Canadian corporation controlled at that time by the shareholder, the particular corporation or a group of persons of which the shareholder or the particular corporation is a member,

(ii) to make a payment under a guarantee given by the shareholder in respect of

(A) a loan made to, or

(B) an amount payable for property acquired by,

the particular corporation or another taxable Canadian corporation controlled at that time by the shareholder, the particular corporation or a group of persons of which the shareholder or the particular corporation is a member, or

(iii) to acquire from the particular corporation a share of its capital stock where, immediately after that time, the shareholder controls the particular corporation,

(b) the particular corporation or the other corporation, as the case may be, uses the proceeds of the loan, the property or property substituted therefor or

the proceeds of the sale of the share for the purpose of earning income (other than exempt income) from a source in Canada, and

(c) the particular corporation or the other corporation, as the case may be, was unable without the shareholder's guarantee to borrow the same amount of money from any person with whom it deals at arm's length on terms comparable to the terms on which the borrowed money was borrowed by the shareholder,

the borrowed money shall be deemed to be used for the purpose of earning income from property for the period commencing at that time and ending at the first particular time at which this subsection would not be applicable in respect of the borrowed money if the borrowed money were used at the particular time to make the loan, to make the payment under the guarantee or to acquire the share, as the case may be, and if this subsection were read without reference to paragraph (c).

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(3), proposes to add subsec. 20(3.1), applicable to 1972 *et seq.* except that in its application to any such year with respect to borrowed money used before the Date of Introduction [not yet determined, but will be in the future] for a purpose described in subsec. (3.1), that subsec. shall be read as follows:

(3.1) For the purposes of this Part, where

(a) a shareholder of a particular taxable Canadian corporation uses borrowed money at any time

(i) to make a loan to the particular corporation or a subsidiary controlled corporation of that corporation,

(ii) to make a payment under a guarantee given by the shareholder in respect of

(A) a loan made to, or

(B) an amount payable for property acquired by,

the particular corporation or a subsidiary controlled corporation of that corporation, or

(iii) to acquire from the particular corporation or a subsidiary controlled corporation of that corporation a share of its capital stock where, immediately after that time, the shareholder owns the majority of the issued and outstanding shares of each class of the capital stock of the particular corporation,

(b) the particular corporation or the subsidiary controlled corporation, as the case may be, uses the proceeds of the loan, the property or property substituted therefor or the proceeds of the sale of the share for the purpose of earning income (other than exempt income) from a source in Canada, and

(c) the particular corporation or the subsidiary controlled corporation, as the case may be, was unable without the shareholder's guarantee to borrow the same amount of money from any person with whom it deals at arm's length on terms comparable to the terms on which the borrowed money was borrowed by the shareholder,

the borrowed money shall be deemed to be used for the purpose of earning income from property for the period commencing at that time and ending at the first particular time at which this subsection would not be applicable in respect of the borrowed money if the borrowed money were used at the particular time to make the loan, or payment, as the case may be, and if this subsection were read without reference to paragraph (c).

Technical Notes: Proposed subsections 20(3.1) and (3.2) establish rules relating to the income tax treatment of borrowed money used by a taxpayer to support, either directly by way of a loan or indirectly through the assumption of liabilities, a corporation or partnership in which the taxpayer has an interest. These rules would be relied upon only where the direct use of the borrowed funds would not give rise to a reasonable expectation of profit, for instance, where they were used by a taxpayer to make an interest-free loan to his or her private corporation, or were used to acquire preferred shares with little or no dividend entitlement.

Subsection 20(3.1) applies in respect of borrowed money used by a taxpayer for one of three purposes:

- to make a loan to a taxable Canadian corporation of which the taxpayer is a shareholder, or to another taxable Canadian corporation that is controlled — either alone or together with others — by the taxpayer (the "shareholder") or the first corporation;
- to honour a guarantee given by the shareholder on a liability of such a corporation; or
- to acquire shares of a corporation that the shareholder controls.

Such borrowings will be treated as having been made for the purpose of earning income from property (enabling the interest arising thereon to qualify for deduction in computing the shareholder's income), provided that two conditions are met. First, the corporation will be required to use the proceeds generated from the shareholder's loan, the property acquired with the shareholder's guarantee, or the proceeds arising from the shareholder's additional share subscription (as the case may be) for the purpose of earning Canadian-source, non-exempt income. Secondly, the corporation's financial situation must be such that it could not, on its own, have borrowed the money on terms comparable to those obtained by the shareholder.

Where the borrowed money has been used for a qualifying purpose and the other conditions described above have been satisfied, the treatment of the borrowing as being to earn property income will apply until such time as the shareholder ceases to hold a qualifying interest in the corporation, or the corporation ceases to use the funds or property in question for the purpose described above.

Subsection 20(3.1), as described above, would apply only with respect to future borrowings. Two relatively narrow modifications to this explanation are required to describe the rules applying in respect of current borrowings (which rules, in turn, attempt to reflect the administrative practice governing such borrowings). First, such borrowings — other than borrowings used to acquire shares — would be eligible under this subsection only where they were used to make a loan to, or otherwise assume a liability of, a taxable Canadian corporation of which the taxpayer is a shareholder or that is a subsidiary controlled corporation of such a corporation. (The term "subsidiary controlled corporation" is defined in subsection 248(1).) Second, borrowings used to acquire shares would be eligible under subsection 20(3.1) only where the shareholder owns the majority of shares of each class that are issued and outstanding at the relevant time (as opposed to the requirement for future borrowings that the shareholder simply control the corporation).

Finally, it may be noted that neither version of proposed subsection 20(3.1) provides an express exception for artificial transactions. The fact that this exception is not reproduced in this provision (or proposed subsection 20(3.2)) is not meant to indicate that it no longer applies; rather, it is intended to reflect the existence, in section 245, of a general anti-avoidance rule that eliminates the need for such specific prohibitions.

Related Provisions: 248(5) — Substituted property.

(3.2) Idem — For the purposes of this Part, where

(a) a member of a Canadian partnership uses borrowed money at any time

(i) to make a loan to the partnership, or

(ii) to make a payment in respect of a loan made to, or an amount payable for property acquired by, the partnership,

(b) the partnership uses the proceeds of the loan or the property or property substituted therefor for the purpose of earning income (other than exempt income) from a source in Canada, and

(c) the partnership was unable without the provision of additional security by the member to borrow the same amount of money from any person with whom

all of its members deal at arm's length on terms comparable to the terms on which the money was borrowed by the member,

the borrowed money shall be deemed to be used for the purpose of earning income from the partnership for the period commencing at that time and ending at the first particular time at which this subsection would not be applicable in respect of the borrowed money if the borrowed money were used at the particular time to make the loan or payment, as the case may be, and if this subsection were read without reference to paragraph (c).

Application: The December 20, 1991 draft legislation (interest deductibility), subsec. 1(3), will add subsec. 20(3.2), applicable to 1972 *et seq.*

Technical Notes: Proposed subsection 20(3.2) operates in a manner similar to subsection 20(3.1), but has application with respect to borrowed money used by a taxpayer to make loans or honour certain liabilities of a partnership of which the taxpayer is a member. Borrowed money used for such a purpose will be treated as having been used to earn income from the partnership (enabling the interest arising thereon to qualify for deduction in computing the partner's income), provided two conditions are met. First, the partnership will be required to use the proceeds of the loan from the partner, the proceeds of the loan from a third party that the partner has repaid in whole or in part, or the property in respect of which the partner has satisfied an outstanding liability (as the case may be) for the purpose of earning Canadian-source, non-exempt income. Secondly, the partnership must not have been in a position to borrow, without further security from the partner, the same amount on terms comparable to those obtained by the partner in borrowing the money in question.

The treatment of such borrowings will be maintained throughout the period in which the borrower remains a member of the partnership and the funds or property in question are used for the purpose described above.

Related Provisions: 248(5) — Substituted property.

(4) Bad debts from dispositions of depreciable property — Where an amount that is owing to a taxpayer as or on account of the proceeds of disposition of depreciable property (other than a timber resource property or a passenger vehicle having a cost to the taxpayer in excess of $20,000 or such other amount as may be prescribed) of the taxpayer of a prescribed class is established by the taxpayer to have become a bad debt in a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so owing to the taxpayer, and

(b) the amount, if any, by which the capital cost to the taxpayer of that property exceeds the total of the amounts, if any, realized by the taxpayer on account of the proceeds of disposition.

Related Provisions: 20(1)(a) — Capital cost of property; 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(7), applicable with respect to amounts that are established after July 13, 1990 to have become bad debts. Subsec. 20(4) formerly read:

(4) Uncollectable portion of proceeds of disposition of depreciable property — Where an amount that is owing to a taxpayer as or on account of the proceeds of disposition of depreciable property (other than a timber resource property) of the taxpayer of a prescribed class is established by the taxpayer to have become a bad debt in a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so owing to the taxpayer, and

(b) the amount, if any, by which the capital cost to the taxpayer of that property exceeds the aggregate of the amounts, if any, realized by the taxpayer on account of the proceeds of disposition.

Pre-RSC History: Subsec. 20(4) substituted by 1974-75-76, c. 26, subsec. 8(3), applicable in respect of dispositions of property after May 6, 1974, to add "(other than a timber resource property)".

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-220R2: CCA — proceeds of disposition of depreciable property; IT-442R: Bad debts and reserve for doubtful debts.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

(4.1) Idem — Where an amount that is owing to a taxpayer as or on account of the proceeds of disposition of a timber resource property of the taxpayer is established by the taxpayer to have become a bad debt in a taxation year, the amount so owing to the taxpayer may be deducted in computing the taxpayer's income for the year.

Related Provisions: 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor. See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(4.1) added by 1974-75-76, c. 26, subsec. 8(3), applicable in respect of dispositions of property after May 6, 1974.

Interpretation Bulletins: IT-442R: Bad debts and reserve for doubtful debts.

(4.2) Idem — Where, in respect of a disposition of eligible capital property by a taxpayer, an amount that comes within the terms of paragraph (a) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) was included in the calculation of the taxpayer's cumulative eligible capital and is established by the taxpayer to have become a bad debt in a taxation year, there shall be deducted in computing the income of the taxpayer for the year

(a) the amount, if any, by which

(i) ¾ of the total of

(A) the total of all amounts each of which is such an amount that was so established by the taxpayer to be a bad debt in the year, and

(B) the total of all amounts each of which is such an amount that was so established by the taxpayer to be a bad debt in a preceding taxation year,

exceeds the total of

(ii) the total of all amounts each of which is

(A) the taxable capital gain of the taxpayer determined under subsection 14(1) for the year or a preceding taxation year and in respect of which a deduction can reasonably be considered to have been claimed under section 110.6, or

(B) an amount determined in respect of the taxpayer for D in subparagraph 14(1)(a)(v) for the year or a preceding taxation year, and

(iii) the total of all amounts deducted by the taxpayer under this subsection in preceding taxation years

and the amount, if any, by which

(b) ¾ of the amount determined under clause (a)(i)(A) for the year

exceeds

(c) the amount determined under paragraph (a) for the year

shall be deemed to be an allowable capital loss of the taxpayer from a disposition of capital property by the taxpayer in the year.

Related Provisions: 12(1)(i.1) — Bad debts recovered; 39(11) — Bad debt recovery; 50(1)(a) — Deemed disposition where debt becomes bad debt; 79.1(7)(d) — Deduction by creditor for bad debt where property seized; 79.1(8) — No deduction for principal amount of bad debt where property seized by creditor; 89(1)"capital dividend account"(c) — Capital dividend account. See additional Related Provisions and Definitions at end of s. 20.

History: Subpara. 20(4.2)(a)(ii) amended by 1995, c. 3, subsec. 7(2), applicable to taxation years that end after February 22, 1994. Subpara. (ii) formerly read:

> (ii) the total of all amounts each of which is an amount determined under subparagraph 14(1)(a)(v) in respect of the taxpayer for the year or a preceding taxation year, and in respect of which a deduction under section 110.6 may reasonably be considered to have been claimed, and

Pre-RSC History: Subsec. 20(4.2) added by 1988, c. 55, subsec. 12(11), applicable with respect to dispositions of property occurring after June 17, 1987, other than dispositions pursuant to the terms of an obligation entered into in writing before June 18, 1987, except that

> (a) in the case of a corporation, in respect of dispositions of property occurring in taxation years commencing before July 1988, and
>
> (b) in any other case, in respect of dispositions of property occurring in fiscal periods commencing before 1988,

the references to "¾" shall be read as references to "½".

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property.

(5) Sale of agreement for sale or mortgage included in proceeds of disposition — Where depreciable property, other than a timber resource property, of a taxpayer has, in a taxation year, been disposed of to a person with whom the taxpayer was dealing at arm's length, and the proceeds of disposition include an agreement for sale of or mortgage on land that the taxpayer has, in a subsequent taxation year, sold to a person with whom the taxpayer was dealing at arm's length, there may be deducted in computing the income of the taxpayer for the subsequent year an amount equal to the lesser of

> (a) the amount, if any, by which the principal amount of the agreement for sale or mortgage outstanding at the time of the sale exceeds the consideration paid by the purchaser to the taxpayer for the agreement for sale or mortgage, and
>
> (b) the amount determined under paragraph (a) less the amount, if any, by which the proceeds of disposition of the depreciable property exceed the capital cost to the taxpayer of that property.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(5) substituted by 1974-75-76, c. 26, subsec. 8(3), applicable in respect of dispositions of property after May 6, 1974, to add "(other than a timber resource property)".

Interpretation Bulletins: IT-323: Sale of mortgage included in proceeds of disposition of depreciable property.

(5.1) Idem — Where a timber resource property of a taxpayer has, in a taxation year, been disposed of to a person with whom the taxpayer was dealing at arm's length, and the proceeds of disposition include an agreement for sale of or mortgage on land that the taxpayer has, in a subsequent taxation year, sold to a person with whom the taxpayer was dealing at arm's length, there may be deducted in computing the income of the taxpayer for the subsequent year the amount, if any, by which the principal amount of the agreement for sale or mortgage outstanding at the time of the sale exceeds the consideration paid by the purchaser to the taxpayer for the agreement for sale or mortgage.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(5.1) added by 1974-75-76, c. 26, subsec. 8(3), applicable in respect of dispositions of property after May 6, 1974.

(6) Special reserves — Where an amount is deductible in computing income for a taxation year under paragraph (1)(m) as a reserve in respect of

> (a) articles of food or drink that it is reasonably anticipated will have to be delivered after the end of the year, or
>
> (b) transportation that it is reasonably anticipated will have to be provided after the end of the year,

there shall be substituted for the amount determined under that paragraph an amount not exceeding the total of amounts included in computing the taxpayer's income from the business for the year that were received or receivable (depending on the method regularly followed by the taxpayer in computing the taxpayer's profit) in the year in respect of

> (c) articles of food or drink not delivered before the end of the year, or
>
> (d) transportation not provided before the end of the year,

as the case may be.

Related Provisions: 12(1)(e) — Reserves in respect of certain goods and services, etc., rendered. See additional Related Provisions and Definitions at end of s. 20.

Interpretation Bulletins: IT-154R: Special reserves.

(7) Where para. (1)(m) does not apply — Paragraph (1)(m) does not apply to allow a deduction

> (a) as a reserve in respect of guarantees, indemnities or warranties;
>
> (b) in computing the income of a taxpayer for a taxation year from a business in any case where the taxpayer's income for the year from that business is computed in accordance with the method authorized by subsection 28(1); or
>
> (c) as a reserve in respect of insurance, except that in computing an insurer's income for a taxation year from an insurance business, other than a life insurance business, carried on by it, there may be deducted as a policy reserve any amount that the insurer claims not exceeding the amount prescribed in respect of the insurer for the year.

Selected Cases [para. 20(7)(c)]: *Gore Mutual Insurance Co. v. R.*, [1997] 2 C.T.C. 2530 (TCC) (Decision in *Co-Operators General Insurance* not affected by SCC decision in *Notre-Dame de Bons Secours*).

Related Provisions: 12(1)(e) — Income inclusion in following year; 12(1)(s) — Reinsurance commission; 18(1)(e.1) — Unpaid claims under insurance policies; 20(26) — Deduction for unpaid claims reserve adjustment; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(3)(a)(i) — Policy reserves for life insurance business; 139.1(8)(b) — No deduction for policy dividend paid on demutualization; Reg. 8100(a) — Unpaid claims reserve adjustment. See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(7)(c) amended by 1997, c. 25, subsec. 5(2), applicable to 1996 *et seq.* Para. (c) formerly read:

> (c) as a reserve in respect of insurance, except that an insurance corporation may, in computing its income for a taxation year from an insurance business, other than a life insurance business, carried on by it, deduct as policy reserves such amounts as are prescribed for the purposes of this paragraph.

Pre-RSC History: Para. 20(7)(c) substituted by 1977-78, c. 1, subsec. 14(3), applicable to 1978 *et seq.*, to substitute "may" for "shall" in the 2nd line.

Selected Cases [subsec. 20(7)]: *Sears Canada Inc. v. Canada*, [1989] 1 C.T.C. 127 (FCA); leave to appeal to SCC refused (1989), 100 N.R. 160 (note), (sub nom. *Sears Can. Inc. v. MNR*) (Maintenance agreement for appliances constituted indemnity; reserves disallowed); *Amesbury Distributors Ltd. v. The Queen*, [1984] C.T.C. 667 (FCTD) (Reserve from fee charged to dealers for after-sales service disallowed); *Mister Muffler Ltd. v. The Queen*, [1974] C.T.C. 813 (FCTD) (No reserve permitted for part of purchase price constituting contingent allowance for replacement).

Regulations: 1400(1) (amount prescribed for 20(7)(c)); for structured settlement reserves, see Reg. 1400(3)E; for earthquake reserves, see Reg. 1400(3)L.

Interpretation Bulletins: IT-154R: Special reserves.

(8) No deduction in respect of property in certain circumstances — Paragraph (1)(n) does not apply to allow a deduction in computing the income of a taxpayer for a taxation year from a business in respect of a property sold in the course of the business if

(a) the taxpayer, at the end of the year or at any time in the immediately following taxation year,

(i) was exempt from tax under any provision of this Part, or

(ii) was not resident in Canada and did not carry on the business in Canada; or

(b) the sale occurred more than 36 months before the end of the year.

Related Provisions: 149 — Exemptions. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(8) substituted by 1980-81-82-83, c. 140, subsec. 12(6), applicable with respect to property sold after November 12, 1981 otherwise than pursuant to the terms in existence on that date of an offer or agreement in writing made or entered into on or before that date. Subsec. 20(8) formerly read:

(8) Paragraph (1)(n) does not apply to allow a deduction in computing the income of a taxpayer for a taxation year from a business in respect of a property sold in the course of the business if the taxpayer, at the end of the year or at any time in the immediately following year,

(a) was exempt from tax under any provision of this Part, or

(b) was not resident in Canada and did not carry on the business in Canada.

Subsec. 20(8) substituted by 1974-75-76, c. 26, subsec. 8(4), applicable in respect of dispositions of property after May 6, 1974. Subsec. 20(8) formerly read:

(8) Paragraph 1(n) does not apply to allow a deduction in computing the income of a taxpayer for a taxation year from a business in respect of property sold in the course of the business where the taxpayer ceases to be a resident of Canada or becomes exempt from tax under any provision of this Part at any time in the year or in the immediately following year.

Interpretation Bulletins: IT-152R3: Special reserves — sale of land; IT-154R: Special reserves.

(9) Application of para. (1)(cc) — In lieu of making any deduction of an amount permitted by paragraph (1)(cc) in computing a taxpayer's income for a taxation year from a business, the taxpayer may, if the taxpayer so elects in prescribed manner, make a deduction of 1/10 of that amount in computing the taxpayer's income for that taxation year and a like deduction in computing the taxpayer's income for each of the 9 immediately following taxation years.

Related Provisions: 13(12) — Application of 20(1)(cc); 96(3) — Election by members of partnership. See additional Related Provisions and Definitions at end of s. 20.

Regulations: 4100 (prescribed manner).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(10) Convention expenses — Notwithstanding paragraph 18(1)(b), there may be deducted in computing a taxpayer's income for a taxation year from a business an amount paid by the taxpayer in the year as or on account of expenses incurred by the taxpayer in attending, in connection with the business, not more than two conventions held during the year by a business or professional organization at a location that may reasonably be regarded as consistent with the territorial scope of that organization.

Related Provisions: 67.1(3) — Meals and entertainment included in fee for convention; Canada-U.S. tax treaty, Art. XXV:9 — Fees for convention held in U.S. deductible if would be deductible in Canada. See additional Related Provisions and Definitions at end of s. 20.

Selected Cases [subsec. 20(10)]: *Wees v. Canada*, [1995] 1 C.T.C. 2711 (FCA) (Seminars and inhouse meetings held to be conventions and deductions limited).

Interpretation Bulletins: IT-131R2: Convention expenses; IT-357R2: Expenses of training.

(11) Foreign taxes on income from property exceeding 15% — In computing the income of an individual from a property other than real property for a taxation year after 1975 that is income from a source outside Canada, there may be deducted the amount, if any, by which,

(a) such part of any income or profits tax paid by the taxpayer to the government of a country other than Canada for the year as may reasonably be regarded as having been paid in respect of an amount that has been included in computing the taxpayer's income for the year from the property,

exceeds

(b) 15% of the amount referred to in paragraph (a).

Related Provisions: 20(12) — Deduction for foreign tax as alternative to credit; 104(22)–(22.4) — Foreign tax credit for beneficiaries of trust; 126(1) — Foreign tax credit; 126(7)"non-business-income tax"(b) — Limitation on foreign tax credit; 144(8.1) — Employees profit sharing plan — Foreign tax deduction; Canada-U.S. tax treaty, Art. XXIX:5 — United States S corporations. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: All that portion of subsec. 20(11) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 8(5), applicable to 1976 *et seq.*, to add "other than real property".

Interpretation Bulletins: IT-201R2: Foreign tax credit — trusts and beneficiaries; IT-506: Foreign income taxes as a deduction from income.

(12) Foreign non-business income tax — In computing a taxpayer's income for a taxation year from a business or property, there may be deducted such amount as the taxpayer claims not exceeding the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by subsection 126(7) read without reference to paragraphs (c) and (e) of the definition "non-business-income tax" in that subsection) in respect of that income, other than any such tax, or part thereof, that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

Related Provisions: 20(11) — Deduction to limit foreign tax credit of individual; 104(22)–(22.4) — Foreign tax credit for beneficiaries of trust; 126(1) — Foreign tax credit; 126(7)"non-business-income tax"(c) — Limitation on foreign tax credit. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(12) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(3), applicable to 1992 *et seq.* Subsec. 20(12) formerly read:

(12) Foreign non-business income tax — In computing the income of a taxpayer for a taxation year, there may be deducted such amount as the taxpayer may claim not exceeding the non-business income tax paid by the taxpayer for the year to the government of a

country other than Canada (within the meaning assigned by the definition "non-business-income tax" in subsection 126(7) if that definition read without reference to paragraphs (c) and (e) thereof) other than any such tax, or part thereof, that may reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

Pre-RSC History: Subsec. 20(12) substituted by 1980-81-82-83, c. 140, subsec. 12(7), applicable to taxation years commencing after November 12, 1981 to add reference to subpara. 126(7)(c)(v).

Subsec. 20(12) added by 1977-78, c. 32, subsec. 5(3), applicable to 1978 *et seq.*

Pre-RSC History [former subsec. 20(12)]: Former subsec. 20(12) repealed by 1973-74, c. 30, s. 3, applicable to 1973 *et seq.* Subsec. 20(12) formerly read:

(12) In computing the income of a taxpayer for a taxation year from a business carried on by him in a country other than Canada, there may be deducted the amount, if any, of any income or profits taxes paid to the government of a state, province or other political subdivision of that country to the extent that such taxes

(a) were deductible under the laws of that country in computing the amount for the year on which the taxpayer is liable to pay income or profits tax imposed by the government of that country, and

(b) may reasonably be regarded as having been paid in respect of the income of the taxpayer for the year from that business.

Selected Cases [subsec. 20(12)]: *Kaiser v. MNR*, [1991] 2 C.T.C. 2168 (TCC) (No deduction for foreign non-business income); *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (Deduction allowed in respect of non-business income tax paid during period of residence only).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trusts and beneficiaries; IT-506: Foreign income taxes as a deduction from income.

(12.1) Foreign tax where no economic profit — In computing a taxpayer's income for a taxation year from a business, there may be deducted the amount that the taxpayer claims not exceeding the lesser of

(a) the amount of foreign tax (within the meaning assigned by subsection 126(4.1)) that

(i) is in respect of a property used in the business for a period of ownership by the taxpayer or in respect of a related transaction (as defined in subsection 126(7)),

(ii) is paid by the taxpayer for the year,

(iii) is, because of subsection 126(4.1), not included in computing the taxpayer's business-income tax or non-business-income tax, and

(iv) where the taxpayer is a corporation, is not an amount that can reasonably be regarded as having been paid in respect of income from a share of the capital stock of a foreign affiliate of the taxpayer, and

(b) the portion of the taxpayer's income for the year from the business that is attributable to the property for the period or to a related transaction (as defined in subsection 126(7)).

Related Provisions: 20(13) — Deduction for foreign tax on dividend from foreign affiliate.

History: Subsec. 20(12.1) added by 1999, c. 22, subsec. 9(2), applicable to 1998 *et seq.*

(13) Dividend on share from foreign affiliate of taxpayer — In computing the income for a taxation year of a taxpayer resident in Canada, there may be deducted such amount in respect of a dividend received by the taxpayer in the year on a share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer as is provided by subdivision i.

Related Provisions: 20(12.1) — Deduction for foreign tax where no economic profit; 91(5) — Amount deductible in respect of dividends received from foreign affiliate; 93.1(2) — Dividends received from foreign affiliate by partnership; 113(1) — Deduction re dividend received from foreign affiliate. See additional Related Provisions and Definitions at end of s. 20.

(14) Accrued bond interest — Where, by virtue of an assignment or other transfer of a debt obligation, other than an income bond, an income debenture, a small business development bond or a small business bond, the transferee has become entitled to an amount of interest that accrued on the debt obligation for a period commencing before the time of transfer and ending at that time that is not payable until after that time, that amount

(a) shall be included as interest in computing the transferor's income for the transferor's taxation year in which the transfer occurred, except to the extent that it was otherwise included in computing the transferor's income for the year or a preceding taxation year; and

(b) may be deducted in computing the transferee's income for a taxation year to the extent that the amount was included as interest in computing the transferee's income for the year.

Related Provisions: 12(9) — Deemed accrual; 16(3) — Purchase of bond at a discount; 53(2)(l) — Adjusted cost base — amounts to be deducted; 138(12)"gross investment revenue"E(b) — Inclusion in gross investment revenue of insurer; 142.4(1)"tax basis"(m) — Disposition of specified debt obligation by financial institution; 142.4(3)(b) — Disposition of specified debt obligation by financial institution; 142.5(3)(a) — Mark-to-market debt obligation; 214(6) — Deemed interest; 214(9) — Deemed resident. See additional Related provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(14) substituted by 1980-81-82-83, c. 140, subsec. 12(8), applicable with respect to transfers occurring after November 12, 1981. Subsec. 20(14) formerly read:

(14) Where, by virtue of an assignment or other transfer of a bond, debenture or similar security (other than an income bond or an income debenture), including for greater certainty an assignment or other transfer after June 18, 1971 of a bill, note, mortgage, hypothec or similar obligation, the transferee has become entitled to interest in respect of a period commencing before the time of transfer and ending after that time that is not payable until after the time of transfer, an amount equal to that proportion of the interest that the number of days in the portion of the period that preceded the day of transfer is of the number of days in the whole period

(a) shall be included in computing the transferor's income for the taxation year in which the transfer was made, and

(b) may be deducted in computing the transferee's income for a taxation year in the computation of which there has been included

(i) the full amount of the interest under section 12, or

(ii) a portion of the interest under paragraph (a).

Selected Cases [subsec. 20(14)]: *Antosko (H.B.) v. Canada*, [1994] 2 C.T.C. 25 (SCC) (Ability to claim deduction not dependent on inclusion of interest by transferor).

Regulations: 211 (information return by financial institution).

Interpretation Bulletins: IT-320R2: RRSPs — qualified investments; IT-396R: Interest income; IT-410R: Debt obligations — accrued interest on transfer.

(14.1) Interest on debt obligation — Where a person who has issued a debt obligation, other than an income bond, an income debenture, a small business development bond or a small business bond, is obligated to pay an amount that is stipulated to be interest on that debt obligation in respect of a period before its issue (in this subsection referred to as the "unearned interest amount") and it is reasonable to consider that the person to whom the debt obligation was issued paid to the issuer consideration for the debt obligation that included an amount in respect of the unearned interest amount,

(a) for the purposes of subsection (14) and section 12, the issue of the debt obligation shall be deemed to be

an assignment of the debt obligation from the issuer, as transferor, to the person to whom the obligation was issued, as transferee, and an amount equal to the unearned interest amount shall be deemed to be interest that accrued on the obligation for a period commencing before the issue and ending at the time of issue; and

(b) notwithstanding paragraph (a) or any other provision of this Act, no amount that can reasonably be considered to be an amount in respect of the unearned interest amount shall be deducted or included in computing the income of the issuer.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(14.1) added by 1984, c. 1, subsec. 9(3), applicable to taxation years commencing after 1982.

(15) Regulations — For greater certainty it is hereby declared that, in the case of a regulation made under paragraph (1)(v.1) allowing to a taxpayer an amount in respect of natural accumulations of petroleum or natural gas in Canada, oil or gas wells in Canada or mineral resources in Canada,

(a) there may be allowed to the taxpayer by that regulation an amount in respect of any or all such accumulations, wells or resources; and

(b) notwithstanding any other provision contained in this Act, the Governor in Council may prescribe the formula by which the amount that may be allowed to the taxpayer by that regulation shall be determined.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: All that portion of subsec. 20(15) preceding para. (b) amended to add "natural accumulations of petroleum or natural gas in Canada" in that portion preceding para. (a) and to substitute "such accumulations, wells or resources" for "such oil or gas wells in Canada or mineral resources in Canada", by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March, 1985.

Subsec. 20(15) added by 1974-75-76, c. 71, subsec. 1(2), applicable to 1976 *et seq.*

Regulations: 1210 (amount allowed under 20(1)(v.1)).

(16) Terminal loss — Notwithstanding paragraphs 18(1)(a), (b) and (h), where at the end of a taxation year,

(a) the total of all amounts used to determine A to D in the definition "undepreciated capital cost" in subsection 13(21) in respect of a taxpayer's depreciable property of a particular class exceeds the total of all amounts used to determine E to J in that definition in respect of that property, and

(b) the taxpayer no longer owns any property of that class,

in computing the taxpayer's income for the year

(c) there shall be deducted the amount of the excess determined under paragraph (a), and

(d) no amount shall be deducted for the year under paragraph (1)(a) in respect of property of that class.

Related Provisions: 13(1) — Recapture where E to J exceed A to D; 13(6) — Misclassified property; 13(21.1) — Limitation on disposition of a building; 13(21.2) — Limitation where affiliated person acquires the property; 20(16.1) — No terminal loss for luxury automobile; 20(16.2) — Meaning of "taxation year" and "year"; 20(16.3) — Property disposed of after ceasing business; 28(1)(g) — Deduction from farming or fishing income when using cash method; 164(6)(b) — Disposition of property by legal representative of deceased taxpayer. See additional Related Provisions and Definitions at end of s. 20.

History: That portion of subsec. 20(16) following para. (d) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(8), applicable to taxation years beginning after July 13, 1990. That portion formerly read:

and the amount of the excess determined under paragraph (a) shall be deemed to have been deducted under paragraph (1)(a) in computing the taxpayer's income for the year from a business or property.

Pre-RSC History: Para. 20(16)(a) substituted by 1988, c. 55, subsec. 12(12), applicable to 1985 *et seq.* Para. 20(16)(a) formerly read:

(a) the aggregate of all amounts determined under subparagraphs 13(21)(f)(i) to (ii.1) in respect of depreciable property of a particular prescribed class of a taxpayer exceeds the aggregate of all amounts determined under subparagraphs 13(21)(f)(iii) to (viii) in respect of depreciable property of that class of the taxpayer, and

Para. 20(16)(a) substituted by 1980-81-82-83, c. 48, subsec. 10(6), applicable to taxation years ending after December 11, 1979, to substitute "to (ii.1)" for "and (ii)" and "(viii)" for "(vi)".

Subsec. 20(16) added by 1977-78, c. 1, subsec. 14(4), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977.

Selected Cases [subsec. 20(16)]: *Gordon v. Canada*, [1995] 2 C.T.C. 2185 (TCC) (Uncompleted film held to be "depreciable property". Terminal loss allowed).

Interpretation Bulletins: IT-172R: CCA — taxation year of individuals; IT-195R4: Rental property — CCA restrictions; IT-288R2: Gifts of capital properties to a charity and others; IT-464R: CCA — leasehold interests; IT-465R: Non-resident beneficiaries of trusts; IT-478R2: CCA — recapture and terminal loss; IT-522R: Vehicle, travel and sales expenses of employees.

(16.1) Idem — Subsection (16) does not apply in respect of a passenger vehicle of a taxpayer that has a cost to the taxpayer in excess of $20,000 or such other amount as is prescribed.

Related Provisions: 13(2) — No recapture on luxury automobile; 13(7)(g) — Maximum capital cost of passenger vehicle; 13(8) — Disposition after ceasing business; 20(16.2) — Meaning of "taxation year" and "year"; Reg. 1100(2.5) — 50% CCA in year of disposition. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(16.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(4), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987. Subsec. 20(16.1) formerly read:

(16.1) Idem — Notwithstanding paragraph (16)(c), where an excess amount is determined under paragraph (16)(a) at the end of a taxation year in respect of a passenger vehicle having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, that excess amount shall not be deducted in computing the taxpayer's income for the year.

Pre-RSC History: Subsec. 20(16.1) substituted by 1990, c. 39, subsec. 9(2), applicable with respect to fiscal periods and taxation years commencing after June 17, 1987 that end after 1987. Subsec. 20(16.1) formerly read:

(16.1) Idem — Notwithstanding paragraph (16)(c), where the excess amount at the end of a taxation year determined under paragraph (16)(a) is in respect of

(a) a motor vehicle owned by a taxpayer who is an individual, other than a trust, except where all or substantially all of the distance travelled by the vehicle throughout the period that he owned it was for the purpose of earning income from a business or property, or

(b) a passenger vehicle, having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, owned by a trust, partnership or corporation,

that excess shall not be deducted in computing the taxpayer's income for the year.

Subsec. 20(16.1) added by 1988, c. 55, subsec. 12(13), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Regulations: 7307(1) (prescribed amount).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

(16.2) Reference to "taxation year" and "year" of individual — Where a taxpayer is an individual and the taxpayer's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, if depreciable property acquired for the purpose of gaining or producing income from the business has been disposed of, each reference in subsections (16) and (16.1) to a "taxation year" and "year" shall, for greater certainty, be read as a reference to a "fiscal period".

Related Provisions: 11(2) — References to "taxation year" and "year"; 20(16.3) — Exception — disposition after ceasing business; 249 — Taxation year; 249.1 — Fiscal period.

Origin of subsec. 20(16.2): R.S.C. 1985, c.1 (5th Supp.) (formerly contained in para. 13(3)(a)).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

(16.3) Disposition after ceasing business — Where a taxpayer, after ceasing to carry on a business, has disposed of depreciable property of the taxpayer of a prescribed class that was acquired by the taxpayer for the purpose of gaining or producing income from the business and that was not subsequently used by the taxpayer for some other purpose, in applying subsection (16) or (16.1), each reference in that subsection to a "taxation year" and "year" shall, notwithstanding anything in subsection (16.2), not be read as a reference to a "fiscal period".

Origin of subsec. 20(16.3): R.S.C. 1985, c.1 (5th Supp.) (formerly contained in para. 13(8)).

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss.

(17) Reduction of inventory allowance deduction — Notwithstanding paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the deduction allowed under that paragraph to a taxpayer for a taxation year shall be reduced by 3% of that proportion of the lesser of

(a) the cost amount to the taxpayer of the taxpayer's qualifying inventory that was disposed of during the year by the taxpayer in a specified transaction to a person with whom the taxpayer was not dealing at arm's length, and

(b) the cost amount to the taxpayer of the taxpayer's qualifying inventory at the beginning of the year,

that the number of days in the year and after the date of disposition is of 365.

Selected Cases [subsec. 20(17)]: *Brault-Clement Inc. v. Canada*, [1992] 1 C.T.C. 44 (FCA); leave to appeal to SCC refused (Sept. 24, 1992), Doc. 22970 [unreported] (Taxpayer was mandatary of provincial government in collecting tobacco tax; tax not part of "cost amount" of tobacco products in inventory); *Plaza Pontiac Buick Ltd. v. MNR*, [1991] 2 C.T.C. 259 (FCTD); aff'd [1994] 1 C.T.C. 27 (FCA) (Automobiles leased to customers not "held for sale").

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(18) Definitions — For the purposes of this subsection and subsection (17),

"qualifying inventory" means tangible property described in subparagraphs 20(1)(gg)(i) and (ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, other than real property or an interest therein or property of a taxpayer that becomes property of a new corporation by virtue of an amalgamation or merger;

"specified transaction" means

(a) a distribution by a corporation of qualifying inventory on or in the course of its winding-up,

(b) a disposition by a taxpayer of all or a substantial part of the taxpayer's qualifying inventory, or

(c) a disposition at a particular time of qualifying inventory by a taxpayer one of the principal purposes of which was to permit a person with whom the taxpayer does not deal at arm's length to obtain a deduction in respect thereof under paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for that person's first taxation year commencing after the particular time,

but does not include any such distribution or disposition by a taxpayer to another person during a taxation year of that other person that ends at least 11 months after the commencement of the taxation year of the taxpayer during which the distribution or disposition occurs.

Pre-RSC History: *The definition "qualifying inventory" was para. 20(18)(a), "specified transaction", 20(18)(b).*

Subsecs. 20(17), (18) added by 1980-81-82-83, c. 48, subsec. 10(7), applicable with respect to dispositions of property occurring after December 11, 1979. [They refer to the inventory allowance under former para. 20(1)(gg), which was repealed in 1986.]

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(19) Annuity contract — Where a taxpayer has in a particular taxation year received a payment under an annuity contract in respect of which an amount was by virtue of subsection 12(3) included in computing the taxpayer's income for a taxation year commencing before 1983, there may be deducted in computing the taxpayer's income for the particular year such amount, if any, as is allowed by regulation.

Related Provisions: 20(20) — Disposal of annuity where payments have not commenced; 148(9)"adjusted cost basis"I — Amount deducted reduces adjusted cost basis. See additional Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(19) substituted by 1980-81-82-83, c. 140, subsec. 12(9), applicable with respect to taxation years commencing after 1982. Subsec. 20(19) formerly read:

(19) Where a taxpayer has in a particular taxation year received a payment under an annuity contract in respect of which an amount has by virtue of subsection 12(3) been included in computing his income for a taxation year, there may be deducted in computing his income for the particular year such amount, if any, as is allowed by regulation.

Subsec. 20(19) added by 1980-81-82-83, c. 48, subsec. 10(7), applicable with respect to dispositions of property occurring after October 28, 1980.

Regulations: 303 (amounts that may be deducted).

(20) Life insurance policy — Where in a taxation year a taxpayer disposes of an interest in a life insurance policy that is not an annuity contract (otherwise than as a consequence of a death) or of an interest in an annuity contract (other than a prescribed annuity contract), there may be deducted in computing the taxpayer's income for the year an amount equal to the lesser of

(a) the total of all amounts in respect of the interest in the policy that were included under section 12.2 of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year or a preceding taxation year, and

(b) the amount, if any, by which the adjusted cost basis (within the meaning assigned by section 148) to the taxpayer of that interest immediately before the disposition exceeds the proceeds of the disposition (within

the meaning assigned by section 148) of the interest that the policyholder, a beneficiary or an assignee became entitled to receive.

Related Provisions: 148(2) — Deemed proceeds of disposition; 248(8) — Occurrences as a consequence of death. See additional Related Provisions and Definitions at end of s. 20.

History: That portion of subsec. 20(20) preceding para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(9), applicable with respect to dispositions occurring after 1989. That portion formerly read:

(20) Life insurance policy — Where a taxpayer has in a particular taxation year disposed of an interest in a life insurance policy that is not an annuity contract (otherwise than as a consequence of a death) or an interest in an annuity contract under which annuity payments have not commenced and in respect of which an amount was included by virtue of subsection 12.2(1) or (3) of this Act or subsection 12.2(4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for a taxation year, there may be deducted in computing the taxpayer's income for the particular year an amount equal to the lesser of

(a) the total of all amounts each of which is an amount in respect of the interest in the policy that was included by virtue of subsection 12.2(1), (3) or (5) of this Act or subsection 12.2(4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year or a preceding taxation year, and

Pre-RSC History: Subsec. 20(20) substituted by 1984, c. 1, subsec. 9(4), applicable to taxation years commencing after 1982. Subsec. 20(20) formerly read:

(20) Life insurance policy — Where a taxpayer has in a particular taxation year disposed of an interest in a life insurance policy, that is not an annuity contract, (otherwise than as a consequence of a death) or an annuity contract under which annuity payments have not commenced and in respect of which an amount was included by virtue of subsection 12.2(1), (3) or (4) or paragraph 56(1)(d.1) in computing his income for a taxation year, there may be deducted in computing his income for the particular year an amount equal to the lesser of

(a) the aggregate of all amounts each of which is an amount in respect of the interest in the policy that was included by virtue of subsection 12.2(1), (3), (4) or (5) or paragraph 56(1)(d.1) in computing his income for the year or a preceding taxation year, and

(b) an amount determined in prescribed manner.

Subsec. 20(20) added by 1980-81-82-83, c. 140, subsec. 12(9), applicable with respect to taxation years commencing after 1982.

Regulations: 304 (prescribed annuity contract — technically does not apply to this subsection).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(21) Debt obligation — Where a taxpayer has in a particular taxation year disposed of a property that is an interest in a debt obligation for consideration equal to its fair market value at the time of disposition, there may be deducted in computing the taxpayer's income for the particular year the amount, if any, by which

(a) the total of all amounts each of which is an amount that was included in computing the taxpayer's income for the particular year or a preceding taxation year as interest in respect of that property

exceeds the total of all amounts each of which is

(b) the portion of an amount that was received or became receivable by the taxpayer in the particular year or a preceding taxation year that can reasonably be considered to be in respect of an amount described in paragraph (a) and that was not repaid by the taxpayer to the issuer of the debt obligation because of an adjustment in respect of interest received before the time of disposition by the taxpayer, or

(c) an amount in respect of that property that was deductible by the taxpayer by virtue of paragraph (14)(b) in computing the taxpayer's income for the particular year or a preceding taxation year.

Related Provisions: 12(9) — Deemed accrual; 142.5(3)(a) — Mark-to-market debt obligation; 142.5(8)(c) — First deemed disposition of mark-to-market debt obligation. See additional Related Provisions and Definitions at end of s. 20.

History: Para. 20(21)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(5), applicable with respect to dispositions occurring after December 20, 1991. Para. 20(21)(b) formerly read:

(b) the portion of an amount that was received or became receivable by the taxpayer at or before that time that can reasonably be considered to be in respect of an amount described in paragraph (a) and that was not repaid by the taxpayer to the issuer of the debt obligation because of an adjustment in respect of interest received before that time by the taxpayer, or

Para. 20(21)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(10), applicable to 1986 *et seq.* Para. 20(21)(b) formerly read:

(b) the portion of an amount that was received or became receivable by the taxpayer at or before that time as can reasonably be considered to be in respect of an amount described in paragraph (a), or

Pre-RSC History: Subsec. 20(21) substituted by 1984, c. 1, subsec. 9(4), applicable to taxation years commencing after 1982. Subsec. 20(21) formerly read:

(21) Debt obligation — Where a taxpayer has in a particular taxation year disposed of an interest in a debt obligation for consideration equal to its fair market value at the time of disposition, there may be deducted in computing his income for the particular year the amount, if any, by which

(a) the aggregate of all amounts each of which is an amount that was included in computing his income for the particular year or a preceding taxation year as interest on the obligation

exceeds the aggregate of all amounts each of which is,

(b) the portion of an amount that was received or became receivable by him at or before that time as can reasonably be considered to be interest on the obligation, or

(c) an amount in respect of the obligation that was deductible by him by virtue of paragraph (14)(b) in computing his income for the particular year or a preceding taxation year.

Subsec. 20(21) added by 1980-81-82-83, c. 140, subsec. 12(9), applicable to 1982 *et seq.*

Interpretation Bulletins: IT-396R: Interest income.

(22) Deduction for negative reserves — In computing an insurer's income for a taxation year, there may be deducted the amount included under paragraph 12(1)(e.1) in computing the insurer's income for the preceding taxation year.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g)(i) — Windup of subsidiary insurance corporation; 138(11,91)(d.1) — Computation of income for non-resident insurer. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(22) added by 1997, c. 25, subsec. 5(3), applicable to 1996 *et seq.*

Regulations: 1400(2) (negative reserves).

(23) [Repealed under former Act]

Pre-RSC History: Former subsec. 20(22), subsec. 20(23) repealed by 1990, c. 35, subsec. 4(3), applicable to 1991 *et seq.*, with respect to contributions made to registered pension plans after 1990. Subsecs. (22), (23) formerly read:

(22) Limitation — Notwithstanding any other provision of this section, where one or more members of a related group of employers have contributed to one or more registered pension plans with respect to a particular individual or deceased individual, the amount deductible with respect to that individual in computing the income

of a member for taxation years ending in a calendar year shall not exceed,

(a) in the case of an amount deductible under paragraph (1)(q), the lesser of

(i) the amount paid by the member with respect to the individual that would be deductible under that paragraph if this Act were read without reference to this subsection, and

(ii) $3,500 less the aggregate of all amounts each of which is an amount deducted in any such taxation year under that paragraph with respect to the individual by any other member of the group; and

(b) in the case of an amount deductible under paragraph (1)(s), the lesser of

(i) the amount paid by the member with respect to the individual that would be deductible under that paragraph if this Act were read without reference to this subsection, and

(ii) the member's portion of the amount by which

(A) such amount that would be approved by the Minister with respect to the individual for the purposes of paragraph (1)(s) if the individual were a member of a registered pension plan that provides the maximum benefits available under a registered pension plan and

(I) the individual's eligible service in respect of the registered pension plans of all members were eligible service in respect of such a plan,

(II) all the remuneration received by the individual in respect of eligible service under the registered pension plans of all members were his remuneration in respect of eligible service under such a plan, and

(III) the benefits under such a plan in respect of the individual were funded or insured to the same extent that the aggregate of the individual's benefits under the registered pension plans of all members are funded or insured,

exceeds

(B) the aggregate of all amounts each of which is an amount deducted with respect to the individual by a member of the group under paragraph (1)(q) in computing the member's income for a taxation year ending in the calendar year.

(23) **"Member's portion"** — For the purposes of subparagraph (22)(b)(ii), a "member's portion" of an amount shall be deemed to be such portion of the amount as may reasonably be determined to be the member's portion thereof having regard to the remuneration received by the individual from, and his eligible service with, the member.

Subsec. 20(22) amended by 1990, c. 35, s. 29, to substitute "pension plans" for "pension funds or plans" (in four places) and "plan" for "fund or plan", applicable after 1985.

Subsecs. 20(22), (23) added by 1980-81-82-83, c. 140, subsec. 12(9), applicable to taxation years commencing after November 12, 1981.

(24) Amounts paid for undertaking future obligations — Where an amount is included under paragraph 12(1)(a) in computing a taxpayer's income for a taxation year in respect of an undertaking to which that paragraph applies and the taxpayer paid a reasonable amount in a particular taxation year to another person as consideration for the assumption by that other person of the taxpayer's obligations in respect of the undertaking, if the taxpayer and the other person jointly so elect,

(a) the payment may be deducted in computing the taxpayer's income for the particular year and no amount is deductible under paragraph (1)(m) or (m.1) in computing the taxpayer's income for that or any subsequent taxation year in respect of the undertaking; and

(b) where the amount was received by the other person in the course of business, it shall be deemed to be an amount described in paragraph 12(1)(a).

Related Provisions: 20(25) — Manner of election; 87(2)(j) — Amalgamations — special reserve. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(24) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 9(6), applicable to 1991 *et seq.* Subsec. 20(24) formerly read:

(24) Where a taxpayer has under paragraph 12(1)(a) included in computing the taxpayer's income for a taxation year amounts in respect of services not rendered or goods not delivered before the end of the year and the taxpayer has paid a reasonable amount in a particular taxation year to another taxpayer for undertaking to provide those services or goods, if the payer and the recipient have jointly so elected, the following rules apply:

(a) the payer may deduct the payment in computing the payer's income for the particular year and no amount is deductible in respect of those services and goods under paragraph (1)(m) in computing the payer's income for that or any subsequent taxation year; and

(b) for the purposes of paragraph 12(1)(a), the recipient shall be deemed to have received the payment in the course of a business on account of services not rendered or goods not delivered before the end of the taxation year in which the recipient received the payment.

Pre-RSC History: Subsec. 20(24) added by 1985, c. 45, subsec. 10(3), applicable to 1982 *et seq.*, except that an election made under the subsec. before January 28, 1986 shall be deemed to have been made before the day on or before which the election is required to be made by subsec. (25).

Interpretation Bulletins: IT-154R: Special reserves; IT-321R: Insurance agents and brokers — unearned commissions.

(25) Manner of election — An election under subsection (24) shall be made by notifying the Minister in writing on or before the earlier of the days on or before which either the payer or the recipient is required to file a return of income pursuant to section 150 for the taxation year in which the payment to which the election relates was made.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsec. 20(25) added by 1985, c. 45, subsec. 10(3), applicable to 1982 *et seq.*

Interpretation Bulletins: IT-154R: Special reserves.

(26) Transition deduction re unpaid claims reserve — An insurer may deduct, in computing its income for its taxation year that includes February 23, 1994, such amount as the insurer claims not exceeding the amount prescribed to be the insurer's unpaid claims reserve adjustment.

Related Provisions: 12.3 — Net reserve inclusion; 20(7)(c) — Deduction for policy reserves; 87(2)(g.1) — Amalgamation; Reg. 1400 — Deduction for policy reserves. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(26) amended by 1995, c. 3, subsec. 7(3), applicable to taxation years that include February 23, 1994. Subsec. (26) formerly read:

(26) Deduction re net reserve adjustment — In computing the income from a business of a taxpayer who is an insurer or whose business includes the lending of money for the taxpayer's first taxation year that commences after June 17, 1987 and ends after 1987, there may be deducted an amount equal to the taxpayer's prescribed amount of net reserve adjustment or such lesser amount as the taxpayer may claim.

Regulations: 8100 (unpaid claims reserve adjustment).

(27) Loans, etc., acquired in ordinary course of business — For the purposes of computing a deduction under paragraph (1)(l), (l.1) or (p) from the income for a taxation year of a taxpayer who was an insurer or whose ordinary business included the lending of money, a loan or lending asset or an instrument or commitment described in paragraph (1)(l.1) acquired from a person with whom the taxpayer did not deal at arm's length for an amount equal to its fair market value shall be deemed to

have been acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money where

(a) the person from whom the loan or lending asset or instrument or commitment was acquired carried on the business of insurance or the lending of money; and

(b) the loan or lending asset was made or acquired or the instrument or commitment was issued, made or assumed by the person in the ordinary course of the person's business of insurance or the lending of money.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

Pre-RSC History: Subsecs. 20(26), (27) added by 1988, c. 55, subsec. 12(14), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

(27.1) Application of subsecs. 13(21) and 138(12) — The definitions in subsections 13(21) and 138(12) apply to this section.

Origin of subsec. 20(27.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 13(21) and 138(12)).

(28) Deduction [for building] before available for use — In computing a taxpayer's income from a business or property for a taxation year ending before the time a building or a part thereof acquired after 1989 by the taxpayer becomes available for use by the taxpayer, there may be deducted an amount not exceeding the amount by which the lesser of

(a) the amount that would be deductible under paragraph (1)(a) for the year in respect of the building if subsection 13(26) did not apply, and

(b) the taxpayer's income for the year from renting the building, computed without reference to this subsection and before deducting any amount in respect of the building under paragraph (1)(a)

exceeds

(c) the amount deductible under paragraph (1)(a) for the year in respect of the building, computed without reference to this subsection,

and any amount so deducted shall be deemed to be an amount deducted by the taxpayer under paragraph (1)(a) in computing the taxpayer's income for the year.

Related Provisions: 20(29) — Deduction before available for use. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(28) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(11), applicable to taxation years ending after 1989.

(29) Idem — Where, because of subsection 18(3.1), a deduction would, but for this subsection, not be allowed to a taxpayer in respect of an outlay or expense in respect of a building, or part thereof, and the outlay or expense would, but for that subsection and without reference to this subsection, be deductible in computing the taxpayer's income for a taxation year, there may be deducted in respect of such outlays and expenses in computing the taxpayer's income for the year an amount equal to the lesser of

(a) the total of all such outlays or expenses, and

(b) the taxpayer's income for the year from renting the building or the part thereof computed without reference to subsection (28) and this subsection.

Related Provisions: 18(3.1)(a) — Costs relating to construction of building or ownership of land. See additional Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(29) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 15(11), applicable in respect of outlays and expenses made or incurred after 1989.

(30) Specified reserve adjustment — For the purpose of the description of N in subclause (1)(l)(ii)(D)(II), the specified reserve adjustment for a loan of a taxpayer for a taxation year is the amount determined by the formula

$$0.1(A \times B \times C/365)$$

where

A is the carrying amount of the impaired loan that is used or would be used in determining the interest income on the loan for the year in accordance with generally accepted accounting principles;

B is the effective interest rate on the loan for the year determined in accordance with generally accepted accounting principles; and

C is the number of days in the year on which the loan is impaired.

Related Provisions: See Related Provisions and Definitions at end of s. 20.

History: Subsec. 20(30) added by 1998, c. 19, subsec. 81(8), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have the amendment to para. 20(1)(l) (made by 1998, c. 19, subsec. 81(4)) apply to the year and files the election with the Minister of National Revenue before October 1998.

Related Provisions [s. 20]: 18 — Limitations on deductions; 67 — Expenses must be reasonable; 67.1 — Limitation on expenses for meals and entertainment; 67.2 — Interest on money borrowed for passenger vehicle; 67.3 — Limitation re motor vehicle expenses; 70(13) — Capital cost of depreciable property on death; 78 — Unpaid amounts; 80(9)(c) — Reduction of capital cost on debt forgiveness ignored for purposes of s. 20; 104(5) — Deemed disposition by a trust; 107.2 — Distribution by a retirement compensation arrangement; 132.2(1)(d) — Deemed capital cost of depreciable property following mutual fund reorganization; 138(11.5)(k) — Transfer of business by non-resident insurer; 138(11.8) — Rules on transfer of depreciable property; 138(11.91)(f) — Computation of income of non-resident insurer; 209 — "carved-out income"(a).

Definitions [s. 20]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amortized cost", "amount" — 248(1); "amount payable" — (in respect of a policy loan) 20(27.1), 138(12); "anniversary day" — 12.2(11), 20(1.2); "annuity" — 248(1); "arm's length" — 251(1); "assistance" — 79(4), 125.4(5), 248(16), (18); "available for use" — 13(27)–(31), 248(19); "borrowed money" — 20(2), 248(1); "business" — 248(1); "business-income tax" — 126(7); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian partnership" — 102(1), 248(1); "capital cost" — 13(7)–(7.4), 70(12), 128.1(1)(c), 128.1(4)(c), 132.2(1)(d); "capital property" — 54, 248(1); "class of shares" — 248(6); "consequence of the death" — 248(8); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "deferred amount" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 13(21), 20(27.1), 248(1); "dividend" — 248(1); "eligible capital property" — 54, 248(1); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer" — 248(1); "excluded amount" — 20(1)(e)(iv.1); "exempt income" — 248(1); "fiscal period" — 249(2), 249.1; "foreign affiliate" — 95(1), 248(1); "foreign tax" — 126(4.1); "goods and services tax" — 248(1); "income" — from business or property 9(1), (3); "income-averaging annuity contract", "income bond", "income debenture", "individual", "insurance corporation", "insurer" — 248(1); "interest in real property" — 248(4); "interest" — in respect of a policy loan 20(27.1), 138(12); "interest paid" — 20(2.1); "inventory", "lending asset", "life insurance business" — 248(1); "life insurance policy" — 20(2.2), 138(12), 248(1); "mineral resource", "mining reclamation trust", "Minister", "motor vehicle" — 248(1); "net cost of pure insurance" — 148(9)"adjusted cost basis"L(a), Reg. 308; "net income stabilization account" — 248(1); "non-business-income tax" — 126(7); "non-resident", "oil or gas well" — 248(1); "passenger vehicle", "person" — 248(1); "policy loan" — 138(12); "prescribed" — 248(1);

"prescribed annuity contract" — Reg. 304; "principal amount" — 248(1); "proceeds of disposition" — 13(21), 20(27.1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust", "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "resident" — 250; "restricted financial institution", "retirement compensation arrangement", "salary deferral arrangement" — 248(1); "sectoral reserve" — 20(2.3); "share", "shareholder" — 248(1); "small business bond" — 15.2(3), 248(1); "small business development bond" — 15.1(3), 248(1); "specified individual" — 120.4(1), 248(1); "specified percentage" — 20(2.4); "specified reserve adjustment" — 20(30); "split income" — 120.4(1), 248(1); "subsidiary controlled corporation", "superannuation or pension benefit" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 20(16.2), (16.3), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "Treasury Board" — 248(1); "trust" — 104(1), 248(1, (3); "unit trust" — 108(2), 248(1); "writing" — *Interpretation Act* 35(1); "year" — 11(2), 20(16.2), (16.3).

I.T. Application Rules [s. 20]: 20(3)(b), 20(5)(b).

20.01 (1) PHSP [private health services plan] premiums — Notwithstanding paragraphs 18(1)(a) and (h) and subject to subsection (2), there may be deducted in computing an individual's income for a taxation year from a business carried on by the individual and in which the individual is actively engaged on a regular and continuous basis, directly or as a member of a partnership, an amount payable by the individual or partnership in respect of the year as a premium, contribution or other consideration under a private health services plan in respect of the individual, the individual's spouse or any person who is a member of the individual's household if

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) in the year or in the preceding taxation year

(i) the total of all amounts each of which is the individual's income from such a business for a fiscal period that ends in the year exceeds 50% of the individual's income for the year, or

(ii) the individual's income for the year does not exceed the total of $10,000 and the total referred to in subparagraph (i) in respect of the individual for the year,

on the assumption that the individual's income from each business is computed without reference to this subsection and the individual's income is computed without reference to this subsection and subdivision e; and

(b) the amount is payable under a contract between the individual or partnership and

(i) a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business or the business of offering to the public its services as trustee,

(ii) a person or partnership engaged in the business of offering to the public its services as an administrator of private health services plans, or

(iii) a person the taxable income of which is exempt under section 149 and that is a business or professional organization of which the individual is a member or a trade union of which the individual or a majority of the individual's employees are members.

Related Provisions: 53(2)(c)(xii) — Reduction in ACB of partnership interest; 118.2(2)(q) — Medical expense credit for premiums.

(2) Limit — For the purpose of calculating the amount deductible under subsection (1) in computing an individual's income for a taxation year from a particular business,

(a) no amount may be deducted to the extent that

(i) it is deducted under this section in computing another individual's income for any taxation year, or

(ii) it is included in calculating a deduction under section 118.2 in computing an individual's tax payable under this Part for any taxation year;

(b) where an amount payable under a private health services plan relates to a period in the year throughout which

(i) each of one or more persons

(A) is employed on a full-time basis (other than on a temporary or seasonal basis) in the particular business or in another business carried on by

(I) the individual (otherwise than as a member of a partnership),

(II) a partnership of which the individual is a majority interest partner, or

(III) a corporation affiliated with the individual, and

(B) has accumulated not less than three months of service in that employment since the person last became so employed, and

(ii) the total number of persons employed in a business described in clause (i)(A), with whom the individual deals at arm's length and to whom coverage is extended under the plan, is not less than 50% of the total number of persons each of whom is a person

(A) who carries on the particular business or is employed in a business described in clause (i)(A), and

(B) to whom coverage is extended under the plan,

the amount so deductible in relation to the period shall not exceed the individual's cost of equivalent coverage under the plan in respect of each employed person who deals at arm's length with the individual and who is described in subparagraph (i) in relation to the period;

(c) subject to paragraph (d), where an amount payable under a private health services plan relates to a particular period in the year, other than a period described in paragraph (b), the amount so deductible in relation to the particular period shall not exceed the amount determined by the formula

$$(A/365) \times (B + C)$$

where

A is the number of days in the year that are included in the particular period,

B is the product obtained when $1,500 is multiplied by the number of persons each of whom is covered under the plan, and

(i) is the individual or the individual's spouse, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) is a member of the individual's household and has attained the age of 18 years before the beginning of the particular period, and

C is the product obtained when $750 is multiplied by the number of members of the individual's household who, but for the fact that they have not attained the age of 18 years before the particular period began, would be included in computing the product under the description of B; and

(d) where an amount payable under a private health services plan relates to a particular period in the year (other than a period described in paragraph (b)) and one or more persons with whom the individual deals at arm's length are described in subparagraph (b)(i) in relation to the particular period, the amount so deductible in relation to the particular period shall not exceed the lesser of the amount determined under the formula set out in paragraph (c) and the individual's cost of equivalent coverage in respect of any such person in relation to the particular period.

Related Provisions: 20.01(3) — Cost of equivalent coverage; 118.2(2)(q) — Medical expense credit for premiums.

(3) Equivalent coverage — For the purpose of subsection (2), an amount payable in respect of an individual under a private health services plan in relation to a period does not exceed the individual's cost of equivalent coverage under the plan in respect of another person in relation to the period to the extent that, in relation to the period, the amount does not exceed the product obtained when

(a) the amount that would be the individual's cost of coverage under the plan if the benefits and coverage in respect of the individual, the individual's spouse and the members of the individual's household were identical to the benefits and coverage made available in respect of the other person, the other person's spouse and the members of the other person's household

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

is multiplied by

(b) the percentage of the cost of coverage under the plan in respect of the other person that is payable by the individual or a partnership of which the individual is a member.

History [s. 20.01]: S. 20.01 added by 1999, c. 22, s. 10, applicable to amounts that become payable after 1997.

Definitions [s. 20.01]: "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost of equivalent coverage" — 20.01(3); "employed", "employee", "employment" — 248(1); "fiscal period" — 249.1; "individual", "majority interest partner" — 248(1); "month" — *Interpretation Act* 35(1); "person", "private health services plan" — 248(1); "province" — *Interpretation Act* 35(1); "spouse" — 252(4); "taxable income" — 248(1); "taxation year" — 249.

20.1 (1) Borrowed money used to earn income from property — Where

(a) at any time after 1993 borrowed money ceases to be used by a taxpayer for the purpose of earning income from a capital property (other than real property or depreciable property), and

(b) the amount of the borrowed money that was so used by the taxpayer immediately before that time exceeds the total of

(i) where the taxpayer disposed of the property at that time for an amount of consideration that is not less than the fair market value of the property at that time, the amount of the borrowed money used to acquire the consideration,

(ii) where the taxpayer disposed of the property at that time and subparagraph (i) does not apply, the amount of the borrowed money that, if the taxpayer had received as consideration an amount of money equal to the amount by which the fair market value of the property at that time exceeds the amount included in the total by reason of subparagraph (iii), would be considered to be used to acquire the consideration,

(iii) where the taxpayer disposed of the property at that time for consideration that includes a reduction in the amount of the borrowed money, the amount of the reduction, and

(iv) where the taxpayer did not dispose of the property at that time, the amount of the borrowed money that, if the taxpayer had disposed of the property at that time and received as consideration an amount of money equal to the fair market value of the property at that time, would be considered to be used to acquire the consideration,

an amount of the borrowed money equal to the excess shall, to the extent that the amount is outstanding after that time, be deemed to be used by the taxpayer for the purpose of earning income from the property.

(2) Borrowed money used to earn income from business — Where at any particular time after 1993 a taxpayer ceases to carry on a business and, as a consequence, borrowed money ceases to be used by the taxpayer for the purpose of earning income from the business, the following rules apply:

(a) where, at any time (in this paragraph referred to as the "time of disposition") at or after the particular time, the taxpayer disposes of property that was last used by the taxpayer in the business, an amount of the borrowed money equal to the lesser of

(i) the fair market value of the property at the time of disposition, and

(ii) the amount of the borrowed money outstanding at the time of disposition that is not deemed by this paragraph to have been used before the time of disposition to acquire any other property

shall be deemed to have been used by the taxpayer immediately before the time of disposition to acquire the property;

(b) subject to paragraph (a), the borrowed money shall, after the particular time, be deemed not to have been used to acquire property that was used by the taxpayer in the business;

(c) the portion of the borrowed money outstanding at any time after the particular time that is not deemed by

paragraph (a) to have been used before that subsequent time to acquire property shall be deemed to be used by the taxpayer at that subsequent time for the purpose of earning income from the business; and

(d) the business shall be deemed to have fiscal periods after the particular time that coincide with the taxation years of the taxpayer, except that the first such fiscal period shall be deemed to begin at the end of the business's last fiscal period that began before the particular time.

Related Provisions: 20.1(3) — Deemed dispositions — rules.

(3) Deemed dispositions — For the purpose of paragraph (2)(a),

(a) where a property was used by a taxpayer in a business that the taxpayer has ceased to carry on, the taxpayer shall be deemed to dispose of the property at the time at which the taxpayer begins to use the property in another business or for any other purpose;

(b) where a taxpayer, who has at any time ceased to carry on a business, regularly used a property in part in the business and in part for some other purpose,

(i) the taxpayer shall be deemed to have disposed of the property at that time, and

(ii) the fair market value of the property at that time shall be deemed to equal the proportion of the fair market value of the property at that time that the use regularly made of the property in the business was of the whole use regularly made of the property; and

(c) where the taxpayer is a trust, subsections 104(4) to (5.2) do not apply.

(4) Amount payable for property — Where an amount is payable by a taxpayer for property, the amount shall be deemed, for the purposes of this section and, where subsection (2) applies with respect to the amount, for the purposes of this Act, to be payable in respect of borrowed money used by the taxpayer to acquire the property.

(5) Interest in partnership — For the purposes of this section, where borrowed money that has been used to acquire an interest in a partnership is, as a consequence, considered to be used at any time for the purpose of earning income from a business or property of the partnership, the borrowed money shall be deemed to be used at that time for the purpose of earning income from property that is the interest in the partnership and not to be used for the purpose of earning income from the business or property of the partnership.

(6) Refinancings — Where at any time a taxpayer uses borrowed money to repay money previously borrowed that was deemed by paragraph (2)(c) immediately before that time to be used for the purpose of earning income from a business,

(a) paragraphs (2)(a) to (c) apply with respect to the borrowed money; and

(b) subsection 20(3) does not apply with respect to the borrowed money.

Related Provisions [s. 20.1]: 20(3) — Use of borrowed money; 87(2)(j.6) — Amalgamations — continuing corporation.

History [s. 20.1]: S. 20.1 enacted by 1994, c. 21, s. 13, applicable after 1993.

Definitions [s. 20.1]: "amount", "borrowed money", "business" — 248(1); "capital property" — 54, 248(1); "depreciable property" — 13(21), 248(1); "fiscal period" — 249.1; "property", "taxpayer" — 248(1); "time of disposition" — 20.1(2)(a).

Proposed Addition [on hold] — 20.1 [*sic*], 20.2 [December 1991 version]

20.1 (1) Money borrowed for distribution — For the purpose of computing the income of a corporation or partnership (in this section referred to as the "distributor") for a particular taxation year, such part of the total of all amounts each of which is an amount outstanding at a particular time in that year on account of borrowed money

(a) used in a taxation year (in this subsection referred to as the "distribution year") that is the particular year or a taxation year preceding the particular year to make a distribution, and

(b) in respect of which a written designation has not been made under this section

as does not exceed the total of

(c) the lesser of

(i) the amount that would be the distributor's equity under subsection (2) at the beginning of the particular year, and

(ii) the amount that would be the distributor's equity under subsection (2) at the end of the particular year

if each amount owing in respect of borrowed money used by the distributor in or after the distribution year to make a distribution were nil, and

(d) the amount, if any, by which

(i) the total of all amounts each of which is the distributor's non-capital loss for the distribution year, for a taxation year ending after the distribution year and before the particular year or for the particular year

exceeds

(ii) the total of all amounts each of which is the distributor's income for the distribution year, for a taxation year ending after the distribution year and before the particular year or for the particular year

shall be deemed to be borrowed money used at the particular time for the purpose of earning income from the business or businesses carried on by the distributor at that time (or, where the distributor is not carrying on business at that time, from the properties of the distributor at that time).

Application: See end of s. 20.1.

Technical Notes: The overall effect of new sections 20.1 and 20.2 is to treat money borrowed by a corporation or partnership, and used to make a distribution of retained earnings or capital, as having been used for the purpose of earning income from a business or property. Since interest on borrowed money used to earn business or property income may be deducted under paragraph 20(1)(c), new sections 20.1 and 20.2 may permit the deduction of interest on borrowings used to make distributions, subject to certain constraints.

Section 20.1 will govern the treatment of borrowed money used to make distributions after the date on which this legislation is issued in final form, while section 20.2 will apply with respect to borrowings associated with distributions made before that time. For the purposes of the following commentary, however, borrowings and distributions to which section 20.1 will apply are referred to as "future" borrowings and dis-

tributions, while those to which section 20.2 will apply are referred to as "current" borrowings and distributions.

The amount of borrowed money eligible for this treatment is determined by reference to the "equity" of the distributor (the corporation or partnership) or, in the case of current distributions, by reference to its "adjusted equity". A distributor's equity is generally the tax cost of its assets, less its debts, while its adjusted equity is generally based on the carrying value of its property, determined under generally accepted accounting principles, less its liabilities.

Section 20.1, which applies to borrowed money used for future distributions, includes two mechanisms for determining whether interest on a particular borrowed amount will be deductible in a particular year. In the usual case, all outstanding amounts of borrowed money used to make distributions in a given year will be totalled, and the total will be compared to the distributor's equity at the beginning and end of the particular year. If the total amount outstanding on account of borrowed money used for distributions is less than or equal to the lesser of the distributor's opening and its year-end equity, the full amount of those borrowings will be treated as having been used to earn business or property income. If, on the other hand, those borrowings exceed the distributor's equity and non-capital losses incurred by the distributor since the year in which the distribution was made, the excess borrowings will continue to be treated as having been used to make distributions. This mechanism is referred to in these notes as the "basic method".

The second mechanism provided by section 20.1 is available to any distributor as an alternative to the system described above. Under this option, borrowed money used to make a future distribution is treated as having been used to acquire one or more of the distributor's properties. The distributor may select which properties to designate in this way, and the subsequent use of those properties will govern the tax treatment of interest on the borrowed money used to make the distribution, in the same manner as if it had actually been used to acquire the properties. This second option is referred to in these notes as the "allocation method".

A distributor may choose to apply the basic method to some future distributions, and the allocation method to others. The allocation method is, however, elective, and may only be chosen within a fixed period after the distributor's tax for the year of the distribution is assessed.

Where borrowed money is used to make a current distribution, section 20.2 provides that a modified version of the basic method — based on the accounting rather than the tax values of the distributor's property — will apply. No allocation method is available for current distributions.

Subsection 20.1(1) provides a short-form approach to the establishment of tax recognition of interest on borrowings used to make future distributions. Under this approach, referred to in these notes as the "basic method", interest deductibility is based on the distributor's equity, measuring equity by reference to holdings of income-producing properties. This basic method may be contrasted to the allocation method, under which borrowed money used for distributions is treated as having been used to acquire particular properties, with the tax treatment of interest on the borrowing following from the use to which that property is put.

The basic method found in subsection 20.1(1) and the allocation method (set out in subsection 20.1(3)) will often produce identical, or at least similar, results. However, there will be situations in which a distributor may prefer one method to the other. For example:

- where the borrowing is a short-term one, and either system will provide interest deductibility over that term, the simplicity of the basic method may make it preferable;
- where a longer-term borrowing has been made, and a distributor with sufficient equity to ensure deductibility has no intention of altering the composition or use of its property, the basic method may again be appropriate; and
- where a distributor prefers to capitalize its interest expense on the borrowed money — under section 21 with respect to depreciable property or under subsection 18(3) for land — the allocation method may prove beneficial.

Certain special expressions are used in describing the basic method provided by subsection 20.1(1) for determining the treatment of interest on borrowed money used to make future distributions. The year in which the borrowed money in question was used for a distribution of retained earnings or capital is called the "distribution year," while the year in respect of which a taxpayer wishes to deduct an interest expense on the borrowed money is called the "particular year".

Subsection 20.1(1) treats borrowings used to make a distribution in the distribution year and outstanding at a particular time in the particular year as having been used at that time for the purpose of earning income from the business or businesses carried on by the distributor at that time. Where the distributor is not carrying on business at that time, the borrowings will be treated as having been used in respect of properties held by the distributor at that time.

The amount of the borrowings used to make distributions in a distribution year which will be treated in this manner is limited to the lesser of the distributor's equity at the beginning of the particular year and its equity at the end of that year (ignoring any liabilities in respect of distributions made in or after the distribution year). Since this test measures equity from year to year, events which alter the distributor's equity may affect the amount of interest which may be deducted. In particular, operating losses occurring after a distribution would reduce equity to the extent they were reflected in a decrease in the tax cost of the distributor's assets. To prevent this result, any excess of non-capital losses for the years between the distribution year and the particular year, inclusive, over income for those years is included in computing the amount of borrowed money eligible for the treatment provided under subsection 20.1(1).

Related Provisions: 20.1(2) — Meaning of "equity"; 20.1(3) — Alternative allocation; 20.2 — Earlier money borrowed for distribution.

(2) Equity — For the purpose of subsection (1), a distributor's equity at any time in a taxation year is the amount that would be the distributor's equity at that time under subsection (7) if

(a) the cost amount to the distributor of each property

(i) that was not acquired for the purpose of earning income therefrom or from a business,

(ii) that is an interest in a life insurance policy,

(iii) that is property the income from which would be exempt,

(iv) that is land, other than land that can reasonably be considered to have been, in the year, used or held, as the case may be, as described in paragraph 18(2)(c) or (d), or

(v) in respect of which any interest payable for the year would, by reason of subsection 18(3.1), not be deductible in computing the distributor's income for the year

were nil, and

(b) each amount owing in respect of borrowed money used by the distributor to acquire a property described in paragraph (a), or in respect of an amount payable by the distributor to acquire such a property, were nil.

Technical Notes: Subsection 20.1(2) makes certain adjustments to a distributor's equity, for the purpose of applying subsection 20.1(1). The general effect of these adjustments is to limit the amount of borrowed money in respect of which a distributor may deduct interest to what might be described as the distributor's income-earning equity. Since the starting-point for

any determination of a distributor's equity is the definition in subsection 20.1(7), subsections 20.1(2) and (7) should be read together.

Paragraph 20.1(2)(a) requires that the amount of the distributor's equity be determined under subsection 20.1(7) as though the cost amount of certain types of property were nil. Properties so excluded from the computation of the distributor's equity are: any property not acquired for the purpose of earning income therefrom or from a business; any interest in a life insurance policy; any property the income from which would be exempt; any land, other than land used in a business (except a real estate business) or held primarily for the purpose of producing income therefrom; and property in respect of which interest payable would, because of subsection 18(3.1), not be deductible.

In addition, paragraph 20.1(2)(b) requires that amounts owing in respect of borrowed money used to acquire property described in paragraph 20.1(2)(a) be ignored in computing a distributor's equity for the purpose of subsection 20.1(1).

(3) Alternative determination — For the purposes of this Part, where a distributor has used borrowed money at any time to make a distribution, that portion of the borrowed money that has, in a written designation made under this section, been allocated to a property or qualified expenditure of the distributor shall be deemed to have been used at that time to acquire the property or to make the qualified expenditure.

Technical Notes: Subsection 20.1(3) permits the use of a specific allocation method for the treatment of borrowings used to make distributions — that is, borrowed money used, after the date on which these amendments are issued in final form, by a corporation to pay a dividend, to redeem, acquire or cancel a share of its capital stock or to reduce its capital, or by a partnership to make a distribution of profits or capital or otherwise to reduce the interest of any person in the partnership. This optional alternative to the basic method treats such borrowed money as having been used to acquire one or more of the distributor's properties.

To use the allocation method, the distributor must make a written designation, allocating the borrowed money to one or more properties or "qualified expenditures" (defined in subsection 20.1(8) as, in essence, expenditures included in a resource pool or research and development pool of the distributor). In order to be valid, that written designation must accord with the requirements in subsections 20.1(5) and (6).

Related Provisions: 20.1(4) — Limits on allocation; 20.1(5) — Invalid designations; 20.1(6) — Form and filing of designation; 20.1(7) — Meaning of "equity".

(4) Limits on allocation — The amount allocated for the purpose of subsection (3) to a property or qualified expenditure in respect of borrowed money used at any time by a distributor to make a distribution shall be deemed to be

(a) in the case of a property, the lesser of the amount allocated by the distributor to the property and the amount, if any, by which

(i) in the case of a property that is included in an expenditure pool, the cost to the distributor of the property, and

(ii) in the case of any other property, the cost amount (or, where the property is an eligible capital property, 4/3 of the cost amount) of the property to the distributor at that time

exceeds

(iii) the total of all amounts each of which is an amount owing immediately before that time in respect of borrowed money used to acquire the property or in respect of an amount payable for the property, and

(b) in the case of a qualified expenditure, the lesser of the amount allocated by the distributor to the expenditure and the amount, if any, by which

(i) the amount of the expenditure

exceeds

(ii) the total of all amounts each of which is an amount owing immediately before that time in respect of borrowed money used to make the expenditure or in respect of an amount payable on account of the expenditure.

Technical Notes: Subsection 20.1(4) limits the amount of borrowed money that may be allocated to a given property or qualified expenditure for the purposes of the allocation method. In general, no more may be allocated to an asset than its net tax cost — that is, the amount, if any, by which its tax cost at the time of the distribution exceeds any amounts owing in respect of the asset.

Paragraph 20.1(4)(a) sets out the limits on allocations to properties. The amount allocated to a property (other than an eligible capital property or a property included in an expenditure pool) may not exceed the amount, if any, by which the cost amount of the property to the distributor at the time of distribution exceeds any amounts owing immediately before the distribution in respect of borrowed money used to acquire the asset or in respect of an amount payable for the asset. In the case of an eligible capital property, the limit is based upon 4/3 of the property's cost amount, while for property included in an expenditure pool the limit is based upon the cost to the distributor of the property.

Paragraph 20.1(4)(b) sets out the limit on any allocation to a qualified expenditure. The amount so allocated may not exceed the amount, if any, by which the amount of the expenditure exceeds any amounts owing immediately before the time of distribution in respect of borrowed money used to make the expenditure or in respect of an amount payable on account of the expenditure.

(5) Invalid designations — For the purpose of this section, a designation made in respect of borrowed money used at any time by a distributor to make a distribution shall be deemed not to have been made where

(a) the total of all amounts each of which is the amount of that borrowed money allocated under the designation to a property or qualified expenditure exceeds the distributor's equity immediately before that time,

(b) the total of all amounts each of which is the amount of that borrowed money allocated under the designation to a property, or qualified expenditure, included in a particular expenditure pool exceeds the amount, if any, by which

(i) the amount of the particular expenditure pool at that time

exceeds

(ii) the aggregate of all amounts each of which is an amount owing immediately before that time in respect of borrowed money used by the distributor to acquire a property, or to make a qualified expenditure, in respect of which an amount is included in the particular expenditure pool, or in respect of an amount payable on account of such an expenditure or for such a property, or

(c) the designation is revoked in accordance with subsection (6) or another designation made in accordance with subsection (6) is filed in respect of that

borrowed money after the time at which the designation was filed.

Technical Notes: Subsection 20.1(5) limits the total amount of borrowed money that may be allocated in any designation under subsection 20.1(3), as well as the amount that may be allocated to a particular expenditure pool. A designation which fails to comply with either limitation is deemed not to have been made. In addition, subsection 20.1(5) provides for the repudiation of a designation.

Paragraph 20.1(5)(a) sets out a global limit on allocations under a given designation. The total of all amounts of borrowed money so allocated may not exceed the distributor's equity, determined under new subsection 20.1(7), immediately before the time of distribution.

Paragraph 20.1(5)(b) similarly limits allocations made to particular expenditure pools. The total of all amounts of borrowed money allocated under a given designation to qualified expenditures or properties included in a particular pool may not exceed the amount of the pool, at the time of distribution, less all amounts owing immediately before that time in respect of borrowed money used to make expenditures or acquire property included in the pool, or in respect of amounts payable on account of expenditures or for properties.

Paragraph 20.1(5)(c) provides that a designation may be repudiated, either by explicit revocation or by the subsequent filing of another designation. Any revocation or subsequent filing must be in accordance with the requirements of subsection 20.1(6).

(6) Designation — A designation made in respect of borrowed money used at any time by a distributor to make a distribution, or a revocation of such a designation,

(a) shall, in the case of a corporation, be made by the corporation in its return of income under this Part for the taxation year that includes that time or in a prescribed form filed with the Minister within the period ending 90 days after the day on which a notice of assessment of tax payable under this Part for the year or notification that no tax is payable under this Part for the year is mailed to the corporation, and

(b) shall, in the case of a partnership, be made by a taxpayer that has authority to act for the partnership in a prescribed form filed with the Minister within the period ending 120 days after the end of the partnership's fiscal period that includes that time (or within such longer period as is permitted in writing by the Minister).

Technical Notes: The procedural requirements for designations under the allocation method are set out in subsection 20.1(6). A corporation wishing to apply the allocation method must make its designation either in its return of income under Part I for the taxation year that includes the time of distribution, or in a prescribed form filed within 90 days of the day on which an assessment of its Part I tax for the year (or notification that no such tax is payable) is mailed. In the case of a partnership, the designation must be made by a taxpayer with authority to act for the partnership, and must be made in a prescribed form filed within 120 days of the end of the partnership's fiscal period that includes the time of distribution (or within such longer period as the Minister of National Revenue may allow).

The same requirements apply to the revocation of designations contemplated by paragraph 20.1(5)(c).

(7) Definition: equity — For the purposes of this section (other than subsection (1)), a distributor's equity at any time is the amount, if any, by which the total of all amounts each of which is

(a) the amount of money owned by the distributor at that time,

(b) the cost amount to the distributor at that time of a property, other than

(i) a Canadian resource property,

(ii) a foreign resource property,

(iii) an eligible capital property,

(iv) a property in respect of which an amount is included in the amount determined under subparagraph 37(1)(b)(i) in respect of the distributor,

(v) a share of the capital stock of a corporation of which the distributor is a specified shareholder, or

(vi) an interest in a partnership where

(A) the total of the distributor's share and the share of each person with whom the distributor does not deal at arm's length of the income of the partnership from any source for the fiscal period of the partnership that includes that time is, or may be, 10% or more of that income, or

(B) the total of the distributor's share and the share of each person with whom the distributor does not deal at arm's length of the total amount that would be paid to all members of the partnership (otherwise than as a distribution of income referred to in clause (A)) if the partnership were wound up at that time is 10% or more of that amount,

(c) an amount equal to 4/3 of the cumulative eligible capital of the distributor at that time in respect of a business of the distributor, or

(d) the amount of an expenditure pool of the distributor at that time

exceeds the total of all amounts each of which is

(e) an amount owing by the distributor at that time, other than an amount that is required to be paid after that time for the lease or rental of property,

(f) the amount of a reserve deducted, otherwise than under paragraph 20(1)(m.1), in computing the distributor's income for its last taxation year ending before that time,

(g) an amount deducted under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the distributor's gain for its last taxation year ending before that time from the disposition of a property,

(h) where the distributor has, in the period commencing 24 months before that time and ending at that time, entered into an agreement for the issue of a flow-through share (within the meaning assigned by paragraph 66(15)(d.1)) of the distributor, the amount, if any, by which the consideration for the share exceeds the aggregate of all amounts renounced in respect of the share under subsection 66(12.6), (12.62) or (12.64) before that time, or

(i) where the distributor is a member of a partnership at that time, the amount, if any, by which

(i) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the distributor of its interest in the partnership at that time

exceeds the total of

(ii) the cost to the distributor of that interest determined for the purpose of computing the adjusted cost base to the distributor of that interest at that time, and

(iii) the total of all amounts required by subsection 53(1) to be added to the cost to the distributor of that interest in computing its adjusted cost base to the distributor at that time.

Technical Notes: Subsection 20.1(7) contains the general definition of a distributor's "equity" for the purposes of section 20.1.

A distributor's equity at any time is, in broad terms, the tax cost of the distributor's assets at that time less its liabilities. Most properties are included in the equity calculation at their cost amount; exceptions include eligible capital property, Canadian and foreign resource properties, and properties dealt with under section 37 in respect of research and development. Eligible capital property is included under paragraph 20.1(7)(c), which adds to the distributor's equity an amount equal to ¾ of its cumulative eligible capital in respect of a business. Research and development properties form part of the expenditure pools (defined in subsection 20.1(8)), the amount of which is included by paragraph 20.1(7)(d) in equity of both corporations and partnerships. Similarly, resource properties are included in the expenditure pools of corporations.

Shares of corporations of which the distributor is a specified shareholder are not included in equity. This exclusion reflects the fact that the value of a share in a corporation represents part of the value of the corporation's assets. Including the value of the share in the shareholder's equity while also including the value of those assets in the equity of the corporation would count the same value twice, and would artificially expand the overall interest deductibility available to both parties. The same considerations apply to significant (10% or more of income or capital) partnership interests, which are also excluded from equity.

The amounts deducted in computing a distributor's equity at any time are: all amounts owing by the distributor, other than amounts payable after that time as rent for property; reserves other than 20(1)(m.1) manufacturers' warranty reserves; capital gains reserves under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii); unrenounced amounts in respect of flow-through shares; and the distributor's "negative" adjusted cost base in respect of any partnership of which it is a member.

(8) Definitions — For the purposes of this section,

(a) "cumulative Canadian exploration expense", "cumulative Canadian development expense" and "cumulative Canadian oil and gas property expense" have the meanings assigned by paragraphs 66.1(6)(b), 66.2(5)(b) and 66.4(5)(b) [now subsections 66.1(6), 66.2(5) and 66.4(5) — ed.] respectively;

Technical Notes: Paragraph 20.1(8)(a) provides that the terms "cumulative Canadian exploration expense", "cumulative Canadian development expense" and "cumulative Canadian oil and gas property expense" are to have the same meaning under section 20.1 as they do for the purposes of the resource rules in sections 66, 66.2 and 66.4. These terms are relevant for the definition of "expenditure pool" in paragraph 20.1(8)(c), and in determining the amount of such pools under subsection 20.1(9).

(b) a "distribution" means

(i) in the case of a corporation, the payment of an amount by the corporation as a dividend, on a redemption, acquisition or cancellation of a share of any class of its capital stock, or on a reduction of the capital in respect of any class of its capital stock, and

(ii) in the case of a partnership, the payment of an amount by the partnership as a distribution of profits or capital or as any other reduction in a person's interest in the partnership;

Technical Notes: The term "distribution" is relevant in establishing the range of uses of borrowed money to which section 20.1 applies. Those uses are, in the case of a corporation, the payment of a dividend, the redemption, acquisition or cancellation of a share of its capital stock and the reduction of its capital by any other means. In the case of a partnership, section 20.1 applies to the use of borrowed money to distribute profits or capital or otherwise to reduce the interest of any person in the partnership.

(c) an "expenditure pool" of a distributor means properties and expenditures in respect of which amounts are

(i) included in computing the amount that may be deducted under subsection 37(1) in computing the distributor's income for a taxation year, or

(ii) where the distributor is a corporation, included in computing the amount of the corporation's

(A) total Canadian exploration and development expenses,

(B) cumulative Canadian exploration expense,

(C) cumulative Canadian development expense,

(D) cumulative Canadian oil and gas property expense, or

(E) total foreign exploration and development expenses; and

(d) a "qualified expenditure" of a distributor means an expenditure, other than an expenditure made to acquire a property, that is included in an expenditure pool of the distributor.

Technical Notes: Paragraphs 20.1(8)(c) and (d) define the terms "expenditure pool" and "qualified expenditure" for the purposes of section 20.1. The purpose of these definitions is to allow the inclusion in a distributor's equity of the amount of its undeducted resource and research and development expenses.

Paragraph 20.1(8)(c) defines an expenditure pool as properties and expenditures that are included in computing the amount deductible under subsection 37(1) or are included in computing any of the various total (or cumulative) resource expenses. Paragraph 20.1(8)(d) defines a qualified expenditure as an expenditure, other than one made to acquire a property, that is included in an expenditure pool.

Related Provisions: 20.1(9) — Expenditure pool amount.

(9) Expenditure pool amount — For the purposes of this section, the amount of an expenditure pool of a distributor at any time is

(a) in the case of properties and expenditures in respect of which amounts are included in computing the amount that may be deducted under subsection 37(1) in computing the distributor's income for a taxation year, the amount, if any, by which

(i) the total of the amounts determined under paragraphs 37(1)(a) to (c.1)

would exceed

(ii) the total of the amounts determined under paragraphs 37(1)(d) to (h)

at that time if the distributor's taxation year or fiscal period, as the case may be, that includes that time had ended at that time, or

(b) where the distributor is a corporation,

(i) the total Canadian exploration and development expenses incurred by the corporation before that time except to the extent that such expenses were deducted in computing the income of any taxpayer for a taxation year ending before that time,

(ii) the corporation's cumulative Canadian exploration expense at that time,

(iii) the corporation's cumulative Canadian development expense at that time,

(iv) the corporation's cumulative Canadian oil and gas property expense at that time, or

(v) the total foreign exploration and development expenses incurred by the corporation before that time except to the extent that such expenses were deducted in computing the income of any taxpayer for a taxation year ending before that time.

Technical Notes: Subsection 20.1(9) describes the computation of the amount of an expenditure pool at any time. In the case of research and development expenses, the amount of the pool at any time is the amount, if any, by which the amounts determined under paragraphs 37(1)(a) to (c.1) would exceed the amounts determined under paragraphs 37(1)(d) to (h) if the distributor's taxation year or fiscal period had ended at that time. Similarly, in the case of the various resource expenses, the amount of each pool is the amount of undeducted expense at that time. For Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses, that result is achieved by reference to the corporation's cumulative expenses at the relevant time — a figure which takes into account deductions prior to that time. For Canadian and foreign exploration and development expenses, a specific exclusion of amounts deducted in computing income for taxation years before that time is necessary.

Application: The December 20, 1991 draft legislation (interest deductibility), s. 2, will add s. 20.1. No specific application date is given in the draft legislation; the Technical Notes (see the second paragraph under 20.1(1) above) state that it will apply to "borrowed money used to make distributions after the date on which this legislation is issued in final form".

Definitions [s. 20.1 (December 1991 version)]: "amount" — 20.1(9), 248(1); "arm's length" — 251(1); "assessment" — 248(1); "borrowed money", "business" — 248(1); "Canadian exploration and development expenses" — 66(15), 248(1); "Canadian resource property" — 66(15), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "cumulative Canadian development expense" — 20.1(8)(a), 66.2(5); "cumulative Canadian exploration expense" — 20.1(8)(a), 66.1(6); "cumulative Canadian oil and gas property expense" — 20.1(8)(a), 66.4(5); "cumulative eligible capital" — 14(5), 248(1); "disposition" — 54; "distribution" — 20.1(8)(b); "distribution year", "distributor" — 20.1(1); "dividend" — 248(1); "eligible capital property" — 54, 248(1); "equity" — 20.1(2), (7); "exempt income" — 248(1); "expenditure pool" — 20.1(8)(c), 20.1(9); "fiscal period" — 249(2), 249.1; "foreign exploration and development expenses" — 66(15), 248(1); "foreign resource property" — 66(15), 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "non-capital loss" — 111(8), 248(1); "person", "prescribed", "property" — 248(1); "qualified expenditure" — 20.1(8)(d); "share" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

20.2 (1) Money borrowed for distribution — For the purpose of computing the income of a corporation or partnership (in this section referred to as the "distributor") for a particular taxation year, such part of the amount outstanding at a particular time in that year on account of borrowed money used at any time (in this subsection referred to as the "time of distribution")

(a) in the case of a corporation, to pay a dividend, to redeem, acquire or cancel a share of any class of its capital stock or otherwise to reduce the capital in respect of any class of its capital stock, and

(b) in the case of a partnership, to make a distribution of profits or capital or otherwise to reduce the interest of any person in the partnership,

as does not exceed the distributor's adjusted equity immediately before the time of distribution shall be deemed to be borrowed money used for the purpose of earning income from the business or businesses carried on by the distributor at the particular time or, where the distributor is not carrying on business at that time, from the properties of the distributor at that time.

Application: See end of s. 20.2.

Technical Notes: Section 20.2 sets out a modified form of the basic method of determining the deemed use of money borrowed by a corporation or partnership and used to make a distribution of retained earnings or capital. This modified method applies with respect to current distributions — those made before the date on which this legislation is issued in final form. The central difference between this modified method and the basic method described in the notes to section 20.1 is the use in this method of the accounting value, rather than the tax value, of the distributor's property as the basis for measuring equity.

Subsection 20.2(1) treats borrowed money used to make current distributions of retained earnings or capital — that is, used for that purpose before the date on which this legislation is issued in final form — and outstanding at a particular time as having been used at that time for the purpose of earning income from the business or businesses carried on by the distributor at that time. Where the distributor is not carrying on business at that time, the borrowings will be treated as having been used in respect of properties held by the distributor at that time. The amount of the borrowings which will be treated in this manner is limited to the distributor's "adjusted equity" immediately before the time of distribution.

Related Provisions: 20.1 (December 1991 version) — Later money borrowed for distribution.

I.T. Technical News: No. 3 (use of a partner's assets by a partnership).

(2) Definition: adjusted equity — For the purposes of this section, the adjusted equity of a distributor at any time is the amount, if any, by which

(a) the carrying value at that time to the distributor of its property

exceeds the total of

(b) the total amount, determined in accordance with generally accepted accounting principles, of all liabilities of the distributor at that time other than liabilities in respect of borrowed money used to acquire properties described in paragraph (3)(d) or in respect of an amount payable to acquire such properties, and

(c) the total amount of any profits or gains, determined in accordance with generally accepted accounting principles, of the distributor from the disposition of property before that time to persons with whom the distributor does not deal at arm's length (to the extent that such profits or gains may reasonably be considered to be included in the amount determined under paragraph (a)).

Technical Notes: Subsection 20.2(2) defines "adjusted equity" for the purposes of section 20.2. The basis for computing a distributor's adjusted equity at any time is the carrying value of its property at that time, defined in subsection 20.2(3) as carrying value determined under generally accepted accounting principles (GAAP), subject to certain adjustments. Adjusted equity is the amount, if any, by which that carrying value exceeds the total of the distributor's total GAAP liabilities at that time and any profits or gains from non-arm's length disposi-

tions (to the extent that such profits or gains are reflected in the carrying value of the distributor's property).

In computing a distributor's total liabilities, no account is taken of borrowed money used to acquire a property not acquired for the purpose of earning income, any interest in a life insurance policy or any property the income from which would be exempt. Nor is any account taken of an amount payable to acquire such a property.

(3) Carrying value of property — For the purpose of subsection (2), the carrying value at any time to a distributor of its property shall be determined in accordance with generally accepted accounting principles except that

(a) neither the equity nor the consolidation method of accounting shall be used;

(b) no amount may be added to or deducted from the original cost of a property to the distributor (other than amounts in respect of depreciation, depletion or the cost of improvements) in computing its carrying value to the distributor;

(c) subject to paragraph (d), the carrying value at that time to the distributor of any property received by it from a person with whom it was not dealing at arm's length shall be deemed to be the lesser of that value otherwise determined and the cost amount of the property to the distributor at that time; and

(d) the carrying value to the distributor of each property

(i) that was not acquired for the purpose of earning income therefrom or from a business,

(ii) that is an interest in a life insurance policy, or

(iii) the income from which would be exempt,

shall be deemed to be nil.

Technical Notes: Subsection 20.2(3) defines "carrying value" for the purposes of subsection (2). The starting-point of the definition is carrying value determined in accordance with generally accepted accounting principles (GAAP), except that the equity and consolidation methods of accounting must not be used. From that basis, the following adjustments are made. First, the only amounts that may be added to or deducted from the original cost of a property are those in respect of depreciation, depletion or the cost of improvements. Secondly, the carrying value of any property received from a non-arm's length person is deemed to be the lesser of the carrying value otherwise determined and the property's cost amount. Finally, the carrying value of any property not acquired for the purpose of earning income, any interest in a life insurance policy or any property the income from which would be exempt, is deemed to be nil.

Application: The December 20, 1991 draft legislation (interest deductibility), s. 2, will add s. 20.2. No specific application date is given in the draft legislation; the Technical Notes (see the second paragraph under 20.1(1) above) state that it will apply to distributions "made before the date on which this legislation is issued in final form".

Definitions [s. 20.2]: "adjusted equity" — 20.2(2); "amount" — 248(1); "arm's length" — 251(1); "borrowed money", "business" — 248(1); "carrying value" — 20.2(3); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "disposition" — 54; "distributor" — 20.2(1); "dividend", "exempt income" — 248(1); "life insurance policy" — 138(12), 248(1); "person", "property" — 248(1); "taxation year" — 249; "time of distribution" — 20.2(1).

21. (1) Cost of borrowed money — Where in a taxation year a taxpayer has acquired depreciable property, if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the year,

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the taxpayer's election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of borrowed money used to acquire the depreciable property or the amount payable for the depreciable property; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) shall be added to the capital cost to the taxpayer of the depreciable property so acquired by the taxpayer.

Related Provisions: 13(10) — Deemed capital cost of certain property; 13(21) — Definitions; 20(3) — Life insurance policy; 21(5) — Reassessments; 80(2)(b) — Application of debt forgiveness rules; 96(3) — Election by members of partnership; 127(11.5)(b)(i) — Ignore s. 21 for purposes of ITC qualified expenditures; 220(3.2), Reg. 600(a) — Late filing of election or revocation.

History: Para. 21(1)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(1), applicable after 1987. Para. 21(1)(a) formerly read:

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer; and

Pre-RSC History: Para. 21(1)(a) substituted by 1985, c. 45, subsec. 11(1), applicable to taxation years commencing after 1984. Para. 21(1)(a) formerly read:

(a) in computing his income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, if any, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection or subsection 18(3.1), would have been deductible in computing his income (other than exempt income) for the year and for those immediately preceding years, if any, by virtue of those paragraphs in respect of borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by him; and

Para. 21(1)(a) substituted by 1980-81-82-83, c. 140, subsec. 13(1), applicable with respect to any outlay or expense made or incurred after 1981, to add "or subsection 18(3.1)".

All that portion of subsec. 21(1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 11(1), applicable to taxation years ending after December 11, 1979. That portion formerly read:

21. (1) Where in a taxation year a taxpayer has acquired property in respect of which he is entitled to a deduction under regulations made under paragraph 20(1)(a) in computing his income for that taxation year (in this section referred to as "depreciable property"), if he so elects in prescribed manner on or before the day on or before which he is required by section 150 to file his return of income for the year,

Interpretation Bulletins: See list at end of s. 21.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer.

(2) Borrowed money used for exploration or development — Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration, development or the acquisition of property and the expenses incurred by the taxpayer in respect thereof are Canadian

exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the year,

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the taxpayer's election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by the taxpayer in the year.

Related Provisions: 13(10) — Deemed capital cost of property; 13(21) — Definitions; 21(5) — Reassessments; 66(18) — Expenses incurred by partnerships; 80(2)(b) — Application of debt forgiveness rules; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(a) — Late filing of election or revocation.

History: Para. 21(2)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(2), applicable after 1987. Para. 21(2)(a) formerly read:

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

Pre-RSC History: Subsec. 21(2) substituted by 1985, c. 45, subsec. 11(2), applicable to taxation years commencing after 1984. Subsec. 21(2) formerly read:

(2) Borrowed money used for exploration or development — Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration, development or the acquisition of property and the expenses incurred by him in respect thereof are Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense as defined in section 66, 66.1, 66.2 or 66.4, as the case may be, if he elects under this subsection in his return of income under this Part for the year,

(a) in computing his income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, if any, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection, would have been deductible in computing his income (other than exempt income) for the year and for those immediately preceding years, if any, by virtue of those paragraphs in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense as defined in section 66, 66.1, 66.2 or 66.4, as the case may be, incurred by him in the year.

That portion of subsec. 21(2) preceding para. (a) and para. 21(2)(b) substituted by 1980-81-82-83, c. 48, subsecs. 11(2), (3), applicable to taxation years ending after December 11, 1979. That portion and para. 21(2)(b) formerly read:

(2) Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration, development or the acquisition of property and the expenses incurred by him in respect of the exploration, development or acquisition of property are Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense or Canadian development expense as defined in section 66, 66.1 or 66.2, as the case may be, if he so elects in prescribed manner on or before the day on or before which he is required by section 150 to file his return of income for the year, the amount or the part of

(b) the amount, as the case may be, described in paragraph (a) shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expense, Canadian exploration expense or Canadian development expense as defined in section 66, 66.1 or 66.2, as the case may be, incurred by him in the year.

All that portion of subsec. 21(2) preceding para. (b) substituted by 1976-77, c. 4, subsec. 6(1), applicable in respect of taxation years ending after May 6, 1974. That portion formerly read:

(2) Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration or development or the acquisition of property and the expenses incurred by him in respect of the exploration or development or the acquisition of property are foreign exploration and development expenses, Canadian exploration expense or Canadian development expense as defined in section 66, 66.1 or 66.2, as the case may be, if he so elects in prescribed manner on or before the day on or before which he is required by section 150 to file his return of income for the year

(a) in computing his income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, if any, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection, would have been deductible in computing his income (other than exempt income) for the year and for those immediately preceding years, if any, by virtue of those paragraphs in respect of the borrowed money used for the exploration or development, as the case may be; and

Subsec. 21(2) substituted by 1974-75-76, c. 26, s. 9, applicable after May 6, 1974. Subsec. 21(2) formerly read:

(2) Borrowed money used for exploration or development — Where in a taxation year a taxpayer has used borrowed money for the purpose of exploration, development or the acquisition of property and the expenses incurred by him in respect thereof are Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, if he elects under this subsection in his return of income under this Part for the year,

(a) in computing the taxpayer's income for the year and for such of the 3 immediately preceding taxation years as the taxpayer had, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the taxpayer's election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for any such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be; and

(b) the amount or the part of the amount, as the case may be, described in paragraph (a) shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by him in the year.

Interpretation Bulletins: See list at end of s. 21.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3) Borrowing for depreciable property — In computing the income of a taxpayer for a particular taxation year, where the taxpayer

(a) in any preceding taxation year

(i) made an election under subsection (1) in respect of borrowed money used to acquire depreciable

property or an amount payable for depreciable property acquired by the taxpayer, or

(ii) was, by virtue of subsection 18(3.1), required to include an amount in respect of the construction of a depreciable property in computing the capital cost to the taxpayer of the depreciable property, and

(b) in each taxation year, if any, after that preceding taxation year and before the particular year, made an election under this subsection covering the total amount that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for each such year in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer,

if an election under this subsection is made in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer, and the amount or part of the amount, as the case may be, shall be added to the capital cost to the taxpayer of the depreciable property.

Related Provisions: 96(3) — Election by members of partnership; 127(11.5)(b)(i) — Ignore s. 21 for purposes of ITC qualified expenditures; 220(3.2), Reg. 600(a) — Late filing of election or revocation.

History: That portion of subsec. 21(3) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(3), applicable after 1987. That portion formerly read:

if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by the taxpayer, and the said amount or part of the amount, as the case may be, shall be added to the capital cost to the taxpayer of the depreciable property so acquired [by the taxpayer].

Pre-RSC History: Subsec. 21(3) substituted by 1985, c. 45, subsec. 11(2), applicable to taxation years commencing after 1984. Subsec. 21(3) formerly read:

(3) Idem — In computing the income of a taxpayer for a taxation year, where the taxpayer

(a) in any preceding year made an election under subsection (1) in respect of borrowed money used to acquire depreciable property or an amount payable for depreciable property acquired by him, and

(b) in each taxation year, if any, after that preceding year and before the taxation year, made an election under this subsection covering the total amount that, but for this subsection or subsection 18(3.1), would have been deductible in computing his income (other than exempt income) for each such year by virtue of paragraphs 20(1)(c), (d) and (e) in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by him,

if he elects under this subsection in his return of income under this Part for the year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection or subsection 18(3.1), would have been deductible in computing his income (other than exempt income) for the year by virtue of any of those paragraphs in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by him, and the said amount or part of the amount, as the case may be, shall be added to the capital cost to him of the depreciable property so acquired by him.

Subsec. 21(3) substituted by 1980-81-82-83, c. 140, subsec. 13(2), applicable with respect to any outlay or expense made or incurred after 1981.

All that portion of subsec. 21(3) following para. (b) substituted by 1980-81-82-83, c. 48, subsec. 11(4), applicable to taxation years ending after December 11, 1979. That portion formerly read:

if he so elects in prescribed manner on or before the day on or before which he is required by section 150 to file his return of income for the year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection, would have been deductible in computing his income (other than exempt income) for the year by virtue of those paragraphs in respect of the borrowed money used to acquire the depreciable property or the amount payable for the depreciable property acquired by him, and the said amount or part of the amount, as the case may be, shall be added to the capital cost to him of the depreciable property as acquired by him.

Interpretation Bulletins: See list at end of s. 21.

(4) Borrowing for exploration, etc. — In computing the income of a taxpayer for a particular taxation year, where the taxpayer

(a) in any preceding taxation year made an election under subsection (2) in respect of borrowed money used for the purpose of exploration, development or acquisition of property, and

(b) in each taxation year, if any, after that preceding taxation year and before the particular year, made an election under this subsection covering the total amount that, but for an election under this subsection in respect thereof, would have been deductible in computing the taxpayer's income (other than exempt income) for each such year in respect of the borrowed money used for the exploration, development or acquisition of property, as the case may be,

if an election under this subsection is made in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d), (e) and (e.1) do not apply to the amount or to the part of the amount specified in the election that, but for an election under this subsection in respect thereof, would be deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used for the exploration, development or acquisition of property, and the amount or part of the amount, as the case may be, shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by the taxpayer in the particular year.

Related Provisions: 96(3) — Election by members of partnership; 220(3.2), Reg. 600(a) — Late filing of election or revocation.

History: That portion of subsec. 21(4) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 16(4), applicable after 1987. That portion formerly read:

if the taxpayer elects under this subsection in the taxpayer's return of income under this Part for the particular year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by the taxpayer in the election that, but for an election under this subsection in respect thereof would have been deductible in computing the taxpayer's income (other than exempt income) for the particular year in respect of the borrowed money used for the exploration, development or acquisition of property, and the said amount or part of the amount, as the case may be, shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian explora-

tion expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, incurred by the taxpayer in the particular year.

Pre-RSC History: Subsec. 21(4) substituted by 1985, c. 45, subsec. 11(2), applicable to taxation years commencing after 1984. Subsec. 21(4) formerly read:

(4) **Idem** — In computing the income of a taxpayer for a taxation year, where the taxpayer

(a) in any preceding year made an election under subsection (2) in respect of borrowed money used for the purpose of exploration, development or acquisition of property, and

(b) in each taxation year, if any, after that preceding year and before the taxation year, made an election under this subsection covering the total amount that, but for this subsection, would have been deductible in computing his income (other than exempt income) for each such year by virtue of paragraphs 20(1)(c), (d) and (e) in respect of the borrowed money used for the exploration, development or acquisition of property,

if he elects under this subsection in his return of income under this Part for the year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection, would have been deductible in computing his income (other than exempt income) for the year by virtue of any of those paragraphs in respect of the borrowed money used for the exploration, development or acquisition of property, and the said amount or part of the amount, as the case may be, shall be deemed to be Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense as defined in section 66, 66.1, 66.2 or 66.4, as the case may be, incurred by him in the year.

All that portion of subsec. 21(4) following para. (b) substituted by 1980-81-82-83, c. 48, subsec. 11(5), applicable to taxation years ending after December 11, 1979, to substitute "if he elects under this subsection in his return of income under this Part" for "if he so elects in prescribed manner on or before the day on or before which he is required by section 150 to file his return of income", and "Canadian development expense or Canadian oil and gas property expense" for "or Canadian development expense", and to add reference to section 66.4.

Subsec. 21(4) substituted by 1976-77, c. 4, subsec. 6(2), applicable in respect of taxation years ending after May 6, 1974. Subsec. 21(4) formerly read:

(4) In computing the income of a taxpayer for a taxation year, where the taxpayer

(a) in any preceding year made an election under subsection (2) in respect of borrowed money used for the purpose of exploration, prospecting or development, and

(b) in each taxation year, if any, after that preceding year and before the taxation year, made an election under this subsection covering the total amount that, but for this subsection, would have been deductible in computing his income (other than exempt income) for each year by virtue of paragraphs 20(1)(c), (d) and (e) in respect of the borrowed money used for the exploration, prospecting and development,

if he so elects in prescribed manner on or before the day on or before which he is required by section 150 to file his return of income for the year, paragraphs 20(1)(c), (d) and (e) do not apply to the amount or to the part of the amount specified by him in his election that, but for this subsection, would have been deductible in computing his income (other than exempt income) for the year by virtue of those paragraphs in respect of the borrowed money used for the exploration, prospecting and development, and the said amount or part of the amount, as the case may be, shall be deemed to be exploration, prospecting and development expenses incurred by him in the year.

Interpretation Bulletins: See list at end of s. 21.

(5) Reassessments — Notwithstanding any other provision of this Act, where a taxpayer has made an election in accordance with the provisions of subsection (1) or (2), such reassessments of tax, interest or penalties shall be made as are necessary to give effect thereto.

Selected Cases [s. 21]: *Saskatchewan Wheat Pool v. R.*, [1999] 2 C.T.C. 369 (FCA); leave to appeal to SCC refused (Apr. 13, 2000), File 27346 (ITC should not be higher for taxpayer who capitalizes interest); *Lornex Mining Corp. Ltd. v. Canada*, [1996] 3 C.T.C. 309 (FCTD) ("Exempt income" includes income exempt under section 28 of ITAR, 1971).

Definitions [s. 21]: "amount", "borrowed money" — 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expenses" — 66(15), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "depreciable property" — 13(21), 248(1); "exempt income" — 248(1); "foreign exploration and development expenses" — 66(15), 248(1); "prescribed", "property", "regulation" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 21]: IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-360R2: Interest payable in a foreign currency.

Ceasing to Carry on Business

22. (1) Sale of accounts receivable — Where a person who has been carrying on a business has, in a taxation year, sold all or substantially all the property used in carrying on the business, including the debts that have been or will be included in computing the person's income for that year or a previous year and that are still outstanding, and including the debts arising from loans made in the ordinary course of the person's business if part of the person's ordinary business was the lending of money and that are still outstanding, to a purchaser who proposes to continue the business which the vendor has been carrying on, if the vendor and the purchaser have executed jointly an election in prescribed form to have this section apply, the following rules are applicable:

(a) there may be deducted in computing the vendor's income for the taxation year an amount equal to the difference between the face value of the debts so sold (other than debts in respect of which the vendor has made deductions under paragraph 20(1)(p)), and the consideration paid by the purchaser to the vendor for the debts so sold;

(b) an amount equal to the difference described in paragraph (a) shall be included in computing the purchaser's income for the taxation year;

(c) the debts so sold shall be deemed, for the purposes of paragraphs 20(1)(l) and (p), to have been included in computing the purchaser's income for the taxation year or a previous year but no deduction may be made by the purchaser under paragraph 20(1)(p) in respect of a debt in respect of which the vendor has previously made a deduction; and

(d) each amount deducted by the vendor in computing income for a previous year under paragraph 20(1)(p) in respect of any of the debts so sold shall be deemed, for the purpose of paragraph 12(1)(i), to have been so deducted by the purchaser.

Related Provisions: 13(8) — Disposition of depreciable property after ceasing to carry on business; 96(3) — Election by members of partnership.

Interpretation Bulletins: IT-188R: Sale of accounts receivable; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-433R: Farming or fishing — use of cash method; IT-442R: Bad debts and reserve for doubtful debts; IT-471R: Merger of partnership; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Forms: T2022: Election in respect of the sale of debts receivable.

(2) Statement by vendor and purchaser — An election executed for the purposes of subsection (1) shall contain a statement by the vendor and the purchaser jointly as to the consideration paid for the debts sold by the vendor to the purchaser and that statement shall, subject to sub-

section 69(1), as against the Minister, be binding upon the vendor and the purchaser in so far as it may be relevant in respect of any matter arising under this Act.

Pre-RSC History: Subsec. 22(2) substituted by 1974-75-76, c. 26, s. 10, applicable in respect of sales of debts after May 6, 1974, to add, "subject to subsection 69(1),".

Definitions [s. 22]: "amount", "business", "Minister", "person", "prescribed", "property" — 248(1); "taxation year" — 11(2), 249.

23. (1) Sale of inventory — Where, on or after disposing of or ceasing to carry on a business or a part of a business, a taxpayer has sold all or any part of the property that was included in the inventory of the business, the property so sold shall, for the purposes of this Part, be deemed to have been sold by the taxpayer in the course of carrying on the business,

Related Provisions: 12.4 — Bad debt inclusion on sale of inventory.

Selected Cases [subsec. 23(1)]: *Terminal Dock and Warehouse Co. Ltd. v. MNR*, [1968] C.T.C. 78 (Exch.) (Sale at discount not capital loss).

Interpretation Bulletins: IT-287R2: Sale of inventory; IT-457R: Election by professionals to exclude work in progress from income.

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 23(2) repealed by 1974-75-76, c. 26, s. 11, applicable in respect of sales after May 6, 1974. Subsec. 23(2) formerly read:

> (2) Agreement as to price paid by vendor and purchaser — Where a person who has been carrying on a business has sold all or part of the property that was included in the inventory of the business (whether or not he has disposed of or ceased to carry on that business or a part of that business) to a person who has used all or part of the property so sold as inventory of a business carried on or to be carried on by the purchaser, and the amount of the consideration paid by the purchaser is, in part, consideration for the property so sold and, in part, consideration for something else, the following rules are applicable:
>
> (a) such part of the consideration as the vendor and the purchaser have, in writing, agreed to be the price paid for the property so sold shall be deemed, both for the purpose of computing income from the business of the vendor and for the purpose of computing income from the business of the purchaser, to be the price so paid;
>
> (b) and where an agreement as contemplated by paragraph (a) has not been filed with the Minister within 60 days after notice in writing by the Minister has been forwarded to the vendor and the purchaser that such an agreement is required for the purpose of any assessment of tax under this Part, such part of the consideration paid as is fixed by the Minister shall be deemed to be the price agreed upon by them as the price paid for the property so sold.

(3) Reference to property in inventory — A reference in this section to property that was included in the inventory of a business shall be deemed to include a reference to property that would have been so included if the income from the business had not been computed in accordance with the method authorized by subsection 28(1) or paragraph 34(a).

Pre-RSC History: Subsec. 23(3) amended by 1985, c. 45, subsec. 13(2), to substitute "property in inventory" for "property included in inventory" in the heading, and "paragraph 34(a)" for "paragraph 34(1)(d)", applicable to 1985 *et seq.*

Definitions [s. 23]: "business", "inventory", "Minister", "person", "property", "taxpayer" — 248(1).

24. (1) Ceasing to carry on business — Notwithstanding paragraph 18(1)(b), where at any time after a taxpayer ceases to carry on a business the taxpayer no longer owns any property that was eligible capital property in respect of the business and that has value, in computing the taxpayer's income for taxation years ending after that time,

> (a) there shall be deducted, for the first such taxation year, the amount of the taxpayer's cumulative eligible capital in respect of the business at that time;
>
> (b) no amount may be deducted under paragraph 20(1)(b) in respect of the business;
>
> (c) for the purposes of determining the value of P in the definition "cumulative eligible capital" in subsection 14(5), the amount deducted by the taxpayer under paragraph (a) shall be deemed to be an amount deducted under paragraph 20(1)(b) in computing the taxpayer's income from the business for the taxation year that included that time; and
>
> (d) for the purposes of subsection 14(1), section 14 shall be read without reference to subsection 14(4).

Related Provisions: 10(12) — Where non-resident ceases to use inventory in business; 13(8) — Disposition of depreciable property after ceasing to carry on business; 14(12) — Limitation where affiliated person acquires the property; 20(1)(hh.1) — Deduction for repayment of assistance relating to eligible capital expenditure after ceasing to carry on business; 24(2) — Business carried on by spouse or controlled corporation; 25 — Fiscal period for individual proprietor of business disposed of; 28(1)(g) — Deduction from farming or fishing income when using cash method; 70(5.1) — Eligible capital property of deceased taxpayer; 107(2)(f) — Capital interest distribution by personal or prescribed trust; Reg. 8103(6) — Mark-to-market — transition inclusion on ceasing to carry on business; Reg. 9204(5) — Residual portion of specified debt obligation on ceasing to carry on business.

History: Subsec. 24(1) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 17, applicable after July 13, 1990. Subsec. 24(1) formerly read:

> 24. (1) Ceasing to carry on business — Notwithstanding paragraph 18(1)(b), where a taxpayer has ceased to carry on a business, in computing the taxpayer's income for the taxpayer's taxation year in which the taxpayer so ceased to carry on the business,
>
> (a) there shall be deducted the amount of the taxpayer's cumulative eligible capital in respect of the business at the time the taxpayer so ceased to carry on the business;
>
> (b) no amount is deductible by virtue of paragraph 20(1)(b) in respect of the business;
>
> (c) notwithstanding the definition "cumulative eligible capital" in subsection 14(5), the taxpayer's cumulative eligible capital in respect of the business immediately after the time the taxpayer so ceased to carry on the business shall be deemed to be nil; and
>
> (d) for the purposes of subsection 14(1), section 14 shall be read without reference to subsection 14(4).

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

(2) Business carried on by spouse or controlled corporation — Notwithstanding subsection (1), where at any time an individual ceases to carry on a business and thereafter the individual's spouse, or a corporation controlled directly or indirectly in any manner whatever by the individual, carries on the business and acquires all of the property that was eligible capital property in respect of the business owned by the individual before that time and that had value at that time,

> (a) in computing the individual's income for the individual's first taxation year ending after that time, subsection (1) shall be read without reference to paragraph (1)(a) and the reference in paragraph (1)(c) to "the amount deducted by the taxpayer under paragraph (a)" shall be read as a reference to "an amount equal to the taxpayer's cumulative eligible capital in respect of the business immediately before that time";

(b) in computing the cumulative eligible capital of the spouse or the corporation, as the case may be, in respect of the business, the spouse or corporation shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at that time at a cost equal to ⅘ of the total of

(i) the cumulative eligible capital of the taxpayer in respect of the business immediately before that time, and

(ii) the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the individual at that time;

(c) for the purposes of determining the cumulative eligible capital in respect of the business of the spouse or corporation after that time, an amount equal to the amount determined under subparagraph (b)(ii) shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5); and

(d) for the purposes of determining after that time

(i) the amount deemed by subparagraph 14(1)(a)(v) to be the spouse's taxable capital gain, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the income of the spouse or corporation

in respect of any subsequent disposition of property of the business, there shall be added to the amount otherwise determined for Q in the second formula in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined for Q in that formula in respect of the business of the individual immediately before the individual ceased to carry on the business.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 14(12) — Certain property deemed not acquired by affiliated person; 25 — Fiscal period for individual proprietor of business disposed of; 252(4) — Extended meaning of "spouse"; 256(5.1), (6.2) — Controlled directly or indirectly.

History: Subpara. 24(2)(d)(ii) amended by 1995, c. 3, s. 8, applicable to fiscal periods that end after February 22, 1994. Subpara. (ii) formerly read:

(ii) the amount to be included under paragraph 14(1)(b) in computing the income of the spouse or corporation

Para. 24(2)(a) amended to substitute "in respect of the business" for "in respect of property", and para. (d) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 10(1) and (2), applicable after July 13, 1990.

Subsec. 24(2) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 17, applicable after July 13,1990. Subsec. 24(2) formerly read:

(2) Where business carried on by spouse or controlled corporation — Notwithstanding subsection (1), where an individual has ceased to carry on a business and thereafter the individual's spouse, or a corporation controlled directly or indirectly in any manner whatever by the individual, has carried on the business,

(a) in computing the individual's income for the individual's taxation year in which the individual so ceased to carry on the business, the provisions of subsection (1) shall be read without reference to paragraph (1)(a) and as if the reference in paragraph (1)(c) to "the time the taxpayer so ceased to carry on the business" were read as a reference to "the end of the taxation year in which the taxpayer so ceased to carry on the business"; and

(b) in computing the cumulative eligible capital in respect of the business of the spouse or the corporation, as the case may be, at any time after the end of the taxation year in which the individual so ceased to carry on the business, there shall be included the amount of the individual's cumulative eligible capital in respect thereof at the end of that taxation year.

(3) Where partnership has ceased to exist — Notwithstanding subsection (1), where at any time a partnership ceases to exist in circumstances to which neither subsection 98(3) nor subsection 98(5) applies, there may be deducted, in computing the income for the first taxation year beginning after that time of a taxpayer who was a member of the partnership immediately before that time, an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount that would, had the partnership continued to exist, have been deductible under subsection (1) in computing its income;

B is the fair market value of the taxpayer's interest in the partnership immediately before that time; and

C is the fair market value of all interests in the partnership immediately before that time.

History: Subsec. 24(3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 10(3), applicable after July 13, 1990.

Definitions [s. 24]: "amount", "business", "common-law partner" — 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "individual", "property" — 248(1); "spouse" — 252(4)(a); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

24.1 [Repealed]

History: S. 24.1 repealed by 1996, c. 21, s. 6, applicable to appointments made after 1995. S. 24.1 formerly read:

24.1 Judges — Where in a taxation year a taxpayer has been appointed a judge by the Governor General or the Governor in Council or by the lieutenant governor in council of a province and the taxpayer elects in the taxpayer's return of income under this Part for the year to have this section apply to the computation of the taxpayer's income,

(a) the taxpayer's income from a professional practice for a fiscal period ending in that taxation year and commencing in the preceding taxation year shall be deemed to be that proportion of such income that the number of months in the taxation year during which the taxpayer was not a judge is of the number of months in the fiscal period; and

(b) the amount by which the taxpayer's income for that taxation year from the taxpayer's professional practice, computed without reference to this section, exceeds the amount that is deemed by paragraph (a) to be the taxpayer's income for the fiscal period shall be deemed to be income of the taxpayer in the immediately following taxation year.

Pre-RSC History: All that portion of s. 24.1 preceding para. (a) substituted by 1985, c. 45, s. 12, applicable to appointments made in 1984 *et seq.* That portion of s. 24.1 formerly read:

24.1 Where in a taxation year a taxpayer has been appointed a judge by the Governor in Council or by the lieutenant governor in council

of a province and the taxpayer so elects in his return of income under this Part for the year,

S. 24.1 added by 1984, c. 45, s. 11, applicable to appointments made in 1984 *et seq.*

Definitions [s. 24.1]: "fiscal period" — 249(2)(b), 249.1; "Governor General", "Governor in Council", "lieutenant governor in council", "province" — *Interpretation Act* 35(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

25. (1) Fiscal period of business disposed of by individual — Where an individual was the proprietor of a business and disposed of it during a fiscal period of the business, the fiscal period may, if the individual so elects and subsection 249.1(4) does not apply in respect of the business, be deemed to have ended at the time it would have ended if the individual had not disposed of the business during the fiscal period.

Related Provisions: 13(8) — Disposition of depreciable property after ceasing to carry on business; 14(1) — Inclusion of eligible capital amount in income from business; 99(2) — Parallel rule where partnership ceases to exist.

History: Subsec. 25(1) amended by 1996, c. 21, s. 7, applicable to fiscal periods that begin after 1994. The subsec. formerly read:

> (1) Fiscal period for individual proprietor of business disposed of — Where an individual was the proprietor of a business and disposed of it during a fiscal period of the business, the fiscal period may, if the individual so elects, be deemed to have ended at the time it would have ended if the individual had not disposed of the business during the fiscal period.

Interpretation Bulletins: IT-172R: Capital cost allowance — taxation year of individuals; IT-179R: Change of fiscal period; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

(2) Election — An election under subsection (1) is not valid unless the individual, at the time when the fiscal period of the business would, if the election were valid, be deemed to have ended, is resident in Canada.

(3) Dispositions in the extended fiscal period — Where subsection (1) applies in respect of a fiscal period of a business of an individual, for the purpose of computing the individual's income for the fiscal period,

(a) section 13 shall be read without reference to subsection 13(8); and

(b) section 24 shall be read without reference to paragraph 24(1)(d).

Pre-RSC History: Subsec. 25(3) added by 1980-81-82-83, c. 140, s. 14, applicable to elections made after 1979.

Interpretation Bulletins: IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-478R2: CCA — recapture and terminal loss.

Definitions [s. 25]: "business" — 248(1); "Canada" — 255; "fiscal period" — 249.1; "individual" — 248(1); "resident in Canada" — 250; "taxpayer" — 248(1).

Special Cases

26. (1) Banks — inclusions in income — There shall be included in computing the income of a bank for its first taxation year that commences after June 17, 1987 and ends after 1987 the total of

(a) the total of the specific provisions of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, as at the end of its immediately preceding taxation year,

(b) the total of the general provisions of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, as at the end of its immediately preceding taxation year,

(c) the amount, if any, by which

> (i) the amount of the special provision for losses on trans-border claims of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, that was deductible by the bank under subsection (2) in computing its income for its immediately preceding taxation year

exceeds

> (ii) that part of the amount determined under subparagraph (i) that was a realized loss of the bank for that immediately preceding taxation year, and

(d) the amount, if any, of the tax allowable appropriations account of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, at the end of its immediately preceding taxation year.

Related Provisions: 20(1)(l) — Reserve for doubtful accounts; 20(1)(l.1) — Reserve for guarantees; 33.1 — International banking centres; 87(2)(g.1) — Amalgamation — continuing corporation; 142.2–142.6 — Additional rules for financial institutions.

(2) Banks — deductions from income — In computing the income for a taxation year of a bank, there may be deducted an amount not exceeding the total of

(a) that part of the total of the amounts of the five-year average loan loss experiences of the bank, as determined, or as would be determined if such a determination were required, under the Minister's rules, for all taxation years before its first taxation year that commences after June 17, 1987 and ends after 1987 that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year,

(b) that part of the total of the amounts transferred by the bank to its tax allowable appropriations account, as permitted under the Minister's rules, for all taxation years before its first taxation year that commences after June 17, 1987 and ends after 1987 that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year,

(c) that part of the amount, if any, by which

> (i) the amount of the special provision for losses on trans-border claims, as determined, or as would be determined if such a determination were required, under the Minister's rules, that was deductible by the bank under this subsection in computing its income for its last taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987

exceeds

> (ii) that part of the amount determined under subparagraph (i) that was a realized loss of the bank for that last taxation year

that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year,

(d) where the tax allowable appropriations account of the bank at the end of its last taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987, as determined, or as would be determined if such a determination were required, under

the Minister's rules, is a negative amount, that part of such amount expressed as a positive number that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year, and

(e) that part of the total of the amounts calculated in respect of the bank for the purposes of the Minister's rules, or that would be calculated for the purposes of those rules if such a calculation were required, under Procedure 8 of the Procedures for the Determination of the Provision for Loan Losses as set out in Appendix 1 of those rules, for all taxation years before its first taxation year that commences after June 17, 1987 and ends after 1987 that is specified by the bank for the year and was not deducted by the bank in computing its income for any preceding taxation year.

Related Provisions: 87(2)(g.1) — Amalgamation — continuing corporation.

(3) Write-offs and recoveries — In computing the income of a bank, the following rules apply:

(a) any amount that was recorded by the bank as a realized loss or a write-off of an asset that was included by the bank in the calculation of an amount deductible under the Minister's rules, or would have been included in the calculation of such an amount if such a calculation had been required, for any taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987, shall, for the purposes of paragraph 12(1)(i) and section 12.4, be deemed to have been deducted by the bank under paragraph 20(1)(p) in computing its income for the year for which it was so recorded; and

(b) any amount that was recorded by the bank as a recovery of a realized loss or a write-off of an asset that was included by the bank in the calculation of an amount deductible under the Minister's rules, or would have been included in the calculation of such an amount if such a calculation had been required, for any taxation year before its first taxation year that commences after June 17, 1987 and ends after 1987 shall, for the purposes of section 12.4, be deemed to have been included by the bank under paragraph 12(1)(i) in computing its income for the year for which it was so recorded.

(4) Definition of "Minister's rules" — For the purposes of this section, "Minister's rules" means the *Rules for the Determination of the Appropriations for Contingencies of a Bank* issued under the authority of the Minister of Finance pursuant to section 308 of the *Bank Act* for the purposes of subsections (1) and (2) of this section.

Pre-RSC History [s. 26]: That portion of subsec. 26(1), of 26(2) and of 26(3) preceding para. (a) of each amended by 1992, c. 1, Sch. V, s. 14, to substitute "a bank" for "a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies", applicable from February 28, 1992. ["Bank" is now defined in the *Interpretation Act*.]

S. 26 substituted by 1988, c. 55, s. 13, applicable to taxation years commencing after June 17, 1987 that end after 1987. S. 26 formerly read:

26. (1) **Banks** — There shall be included in computing the income for a taxation year of a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies, the amount by which the aggregate of the amounts that, at the end of the year, are set aside or reserved by way of write-down of the value of assets or appropriation to contingency reserves or contingent accounts for the purpose of meeting losses on loans, bad or doubtful debts, depreciation in the value of assets other than bank premises, or other contingencies, is, in the opinion of the Minister of Finance, having regard to all the circumstances, in excess of the reasonable requirements of the bank.

(2) **Idem** — In computing the income for a taxation year of a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies, no deduction may be made under paragraph 20(1)(l) or (p) or subsection 33(1) and, notwithstanding paragraphs 18(1)(a) and (b), there may be deducted the amount, if any, by which such amount

(a) as the bank may claim, not exceeding the amount, if any, by which

(i) the aggregate of all amounts each of which is an amount set aside or reserved for the year or a preceding taxation year as or on account of the general appropriations of the bank, either by way of write-down of the value of assets or appropriation to any contingency reserve or contingent account for the purpose of meeting losses on loans, bad or doubtful debts, depreciation in the value of assets, other than depreciable property of the bank, or other contingencies

exceeds

(ii) the aggregate of all amounts each of which is an amount deducted under this subsection in computing the income of the bank for a preceding taxation year; and

(b) as is, in the opinion of the Minister of Finance, having regard to all the circumstances, not in excess of the reasonable requirements of the bank

exceeds the aggregate of all amounts each of which is an amount deducted under paragraph 20(1)(p) in computing the bank's income for the year or a preceding taxation year in respect of a debt owed to the bank that is included in the assets of the bank at the end of the year.

All that portion of subsec. 26(2) preceding para. (a) amended to substitute "the amount, if any, by which such amount" for "such amount", and all that portion following para. (b) added, by 1987, c. 46, subsecs. 8(1), (2), applicable to taxation years ending after January 15, 1987.

Subsec. 26(2) substituted by 1980-81-82-83, c. 48, s. 12, applicable to 1980 *et seq.* Subsec. 26(2) formerly read:

(2) Notwithstanding paragraphs 18(1)(a) and (b), there may be deducted in computing the income for a taxation year of a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies, such amount as is set aside or reserved for the year either by way of write-down of the value of assets or appropriation to any contingency reserve or contingent account for the purpose of meeting losses on loans, bad or doubtful debts, depreciation in the value of assets other than bank premises, or other contingencies, and is, in the opinion of the Minister of Finance, having regard to all the circumstances, not in excess of the reasonable requirements of the bank.

Definitions [s. 26]: "amount" — 248(1); "bank" — *Interpretation Act* 35(1); "Minister" — 26(4), 248(1); "taxation year" — 249.

27. (1) Application of Part I to Crown corporation — This Part applies to a federal Crown corporation as if

(a) any income or loss from a business carried on by the corporation as agent of Her Majesty, or from a property of Her Majesty administered by the corporation, were an income or loss of the corporation from the business or the property, as the case may be; and

(b) any property, obligation or debt of any kind whatever held, administered, entered into or incurred by the corporation as agent of Her Majesty were a property, obligation or debt, as the case may be, of the corporation.

Related Provisions: 124(3) — No tax abatement for income earned in a province; 181(1) — Meaning of "long-term debt"; 181.71, 190.211 — Capital taxes apply to federal Crown corporations; 187.61, 191.4(3) — Part IV.1 and VI.1 taxes on preferred share dividends apply to federal Crown corporations.

History: Subsec. 27(1) amended by 1998, c. 19, s. 82, applicable

(a) for the purpose of s. 181.71, to taxation years that end after June 1989;

(b) for the purposes of s. 187.61, and subsec. 191.4(3) after 1987;

(c) for the purpose of s. 190.211, after May 23, 1985; and

(d) for all other purposes, after April 26, 1995.

The subsec. formerly read:

(1) Application of Part to Crown corporations — This Part applies to a prescribed federal Crown corporation as if any income or loss from

(a) a business carried on by the corporation as agent of Her Majesty, and

(b) a property of Her Majesty administered by the corporation,

were an income or loss, as the case may be, of the corporation therefrom.

Interpretation Bulletins: IT-347R2: Crown corporations.

(2) Presumption — Notwithstanding any other provision of this Act, a prescribed federal Crown corporation and any corporation controlled by such a corporation shall be deemed not to be a private corporation and paragraph 149(1)(d) does not apply thereto.

Proposed Amendment — 27(2)

(2) Presumption — Notwithstanding any other provision of this Act, a prescribed federal Crown corporation and any corporation controlled by such a corporation are each deemed not to be a private corporation and paragraphs 149(1)(d) to (d.4) do not apply to those corporations.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 12, will amend subsec. 27(2) to read as above, applicable to taxation years and fiscal periods that begin after 1998.

Technical Notes: Section 27 of the Act provides special rules for the application of Part I to federal Crown corporations. It allows the Governor in Council to impose income tax on such corporations by prescribing them under the *Income Tax Regulations*. Subsection 27(2) provides that the tax exemption provided under paragraph 149(1)(d) of the Act does not apply to a corporation controlled by a prescribed federal Crown corporation. The amendment to subsection 27(2), which adds a reference to the tax exemptions provided under paragraphs 149(1)(d.1) to (d.4), is strictly consequential on the amendment to paragraph 149(1)(d) and the addition of paragraphs 149(1)(d.1) to (d.4) that were made applicable to taxation years and fiscal periods that begin after 1998.

Related Provisions: 181.71, 190.211 — Capital taxes apply to prescribed federal Crown corporations; 187.61, 191.4(3) — Part IV.1 and VI.1 taxes on preferred share dividends apply to prescribed federal Crown corporations; 256(6), (6.1) — Meaning of "control".

Regulations: 7100 (prescribed federal Crown corporation).

Interpretation Bulletins: IT-347R2: Crown corporations.

(3) Transfers of land for disposition — Where land of Her Majesty has been transferred to a prescribed federal Crown corporation for purposes of disposition, the acquisition of the property by the corporation and any disposition thereof shall be deemed not to have been in the course of the business carried on by the corporation.

Interpretation Bulletins: IT-347R2: Crown corporations.

Pre-RSC History [s. 27]: S. 27 amended by 1984, c. 31, Schedule II, proclaimed in force September 1, 1984, to substitute "a prescribed federal Crown corporation" for references to "a corporation specified in Schedule D to the *Financial Administration Act*".

Subsec. 27(2) substituted by 1979, c. 5, s. 8, applicable to 1978 *et seq.* Subsec. 27(2) formerly read:

(2) Notwithstanding any other provision of this Act, a corporation specified in Schedule D to the *Financial Administration Act* shall be deemed not to be a private corporation, and paragraph 149(1)(d) does not apply to a corporation specified in Schedule D to that Act.

Definitions [s. 27]: "business" — 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "private corporation" — 89(1), 248(1); "property" — 248(1).

28. (1) Farming or fishing business [cash method] — For the purpose of computing the income of a taxpayer for a taxation year from a farming or fishing business, the income from the business for that year may, if the taxpayer so elects, be computed in accordance with a method (in this section referred to as the "cash method") whereby the income therefrom for that year shall be deemed to be an amount equal to the total of

(a) all amounts that

(i) were received in the year, or are deemed by this Act to have been received in the year, in the course of carrying on the business, and

(ii) were in payment of or on account of an amount that would, if the income from the business were not computed in accordance with the cash method, be included in computing income therefrom for that or any other year, and

(b) with respect to a farming business, such amount, if any, as is specified by the taxpayer in respect of the business in the taxpayer's return of income under this Part for the year, not exceeding the amount, if any, by which

(i) the fair market value at the end of the year of inventory owned by the taxpayer in connection with the business at that time

exceeds

(ii) the amount determined under paragraph (c) for the year,

(c) with respect to a farming business, the amount, if any, that is the lesser of

(i) the taxpayer's loss from the business for the year computed without reference to this paragraph and to paragraph (b), and

(ii) the value of inventory purchased by the taxpayer that was owned by the taxpayer in connection with the business at the end of the year, and

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business because of subsection 13(1), 14(1), 80(13) or 80.3(3) or (5),

minus the total of

(e) all amounts, other than amounts described in section 30, that

(i) were paid in the year, or are deemed by this Act to have been paid in the year, in the course of carrying on the business,

(ii) in the case of amounts paid, or deemed by this Act to have been paid, for inventory, were in payment of or on account of an amount that would be deductible in computing the income from the business for the year or any other taxation year if that income were not computed in accordance with the cash method, and

(iii) in any other case, were in payment of or on account of an amount that would be deductible in computing the income from the business for a preceding taxation year, the year or the following taxation year if that income were not computed in accordance with the cash method,

(e.1) all amounts, other than amounts described in section 30, that

(i) would be deductible in computing the income from the business for the year if that income were not computed in accordance with the cash method,

(ii) are not deductible in computing the income from the business for any other taxation year, and

(iii) were paid in a preceding taxation year in the course of carrying on the business,

(f) the total of all amounts each of which is the amount, if any, included under paragraph (b) or (c) in computing the taxpayer's income from the business for the immediately preceding taxation year, and

(g) the total of all amounts each of which is an amount deducted for the year under paragraph 20(1)(a), (b) or (uu), subsection 20(16) or 24(1), section 30 or subsection 80.3(2) or (4) in respect of the business,

except that paragraphs (b) and (c) do not apply in computing the income of the taxpayer for the taxation year in which the taxpayer dies.

Related Provisions: 20(7)(b) — No reserve available under 20(1)(m) when using cash method; 23(3) — Reference to property included in inventory; 28(2) — Limitation where business carried on jointly with other persons; 28(4) — Non-resident; 29–31 — Additional special rules for farmers; 34.2(2)(a) — Para. 28(1)(b) ignored for purposes of 1995 stub period income; 76(1) — Security in satisfaction of income debt; 79(3)F(b)(v)(B)(II) — Proceeds of disposition to debtor on surrender of property — unpaid interest included under 28(1)(e); 80(1)"excluded obligation"(b) — Obligation not subject to debt forgiveness rules; 80.3 — Income deferral from destruction of livestock or drought-induced sales of breeding animals; 85(1)(c.2) — Transfer of property to corporation by shareholders; 87(2)(b) — Amalgamations — inventory; 88(1.6) — Winding-up; 248(1)"cash method" — Definition applies to entire Act.

History: Para. 28(1)(d) amended by 1998, c. 19, subsec. 83(1), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business because of subsection 13(1), 14(1), 80(13) or (17) or 80.3(3) or (5),

Subpara. 28(1)(e)(ii) amended and subpara. (iii) and para. (e.1) added by 1998, c. 19, subsec. 83(2), applicable to amounts paid after April 26, 1995, other than amounts paid pursuant to an agreement in writing made by the payer on or before April 26, 1995. Subpara. (ii) formerly read:

(ii) were in payment of or on account of an amount that would, if the income from the business were not computed in accordance with the cash method, be deductible in computing income therefrom for that or any other taxation year,

Paras. 28(1)(d) and (g) amended by 1995, c. 21, subsecs. 7(1), (2), applicable to taxation years that end after February 21, 1994. Those paras. formerly read:

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business by reason of subsection 13(1), 14(1) or 80.3(3) or (5),

. . . . .

(g) the total of all amounts each of which is an amount deducted for the year as permitted under paragraph 20(1)(a) or (b), subsection 20(16) or 24(1), section 30 or subsection 80.3(2) or (4) in respect of the business,

That portion of subsec. 28(1) following para. (g) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(1), applicable to fiscal periods beginning after 1988.

Pre-RSC History: Para. 28(1)(d) amended to substitute "the taxpayer's income" for "his income" and "13(1), 14(1) or 80.3(3) or (5)" for "13(1) or 14(1)", that portion of para. 28(1)(e) preceding subpara. (i) amended to add ", other than amounts described in section 30," and para. 28(1)(g) amended to substitute "24(1), section 30 or subsection 80.3(2) or (4)" for "24(1)", by 1990, c. 39, subsecs. 10(1) and (2), applicable to fiscal periods commencing after 1988.

That portion of subsec. 28(1) following para. (a) substituted by 1988, c. 55, subsec. 14(1), applicable (by subsec. 14(3), as amended by 1991, c. 49, s. 241, deemed to have come into force September 13, 1988) to fiscal periods commencing after 1988 except that for a fiscal period of a taxpayer commencing after 1988 and before 1995 in respect of a farming business that was carried on by the taxpayer before 1989, para. 28(1)(c)

(a) shall, where the taxpayer so elects for the taxation year in the taxpayer's return of income under Part I for the taxation year in which the fiscal period ends, be read as follows:

"(c) the lesser of

(i) the taxpayer's loss from the business for the year computed without reference to this paragraph and to paragraph (b), and

(ii) the aggregate of

(A) the value at the end of the year of inventory purchased by him in taxation years commencing after 1988 that was owned by him in connection with the business at the end of the year, and

(B) the amount determined by the formula

$$\left(\frac{A}{7} \times B\right)$$

where

A is the number of taxation years of the business (not exceeding 6) commencing after 1988, and

B is the value (determined in accordance with subsection (1.2)) at the end of the year of inventory purchased by him that was owned by him in connection with the business at that time and at the beginning of the first taxation year of the business commencing after 1988 (in this paragraph referred to as the "particular year") which value, in the case of inventory that is a specified animal, shall be determined in accordance with subsection (1.2) as if the animal were acquired in the particular year for a cash cost equal to,

(I) in the case of an animal acquired in the taxation year immediately preceding the particular year, its cash cost otherwise determined,

(II) in the case of an animal acquired in one of the two taxation years immediately preceding the year referred to in subclause (I), ½ of its cash cost otherwise determined, and

(III) in any other case, ¼ of its cash cost otherwise determined,

and for this purpose, where a taxpayer acquired a specified animal from a person with whom he was not dealing at arm's length, he shall be deemed to have acquired the animal at the time that it was acquired by that person, and"

and

(b) shall, in any other case, be read as follows:

"(c) the amount, if any, by which the lesser of

(i) the taxpayer's loss from the business for the year computed without reference to this paragraph and to paragraph (b), and

(ii) the value (determined in accordance with subsection (1.2)) at the end of the year of inventory purchased by him that was owned by him in connection with the business at that time, which value, in the case of inventory that is a specified animal acquired in any taxation year of the business commencing before 1989, shall be determined in accordance with subsection (1.2) as if the animal were acquired in the first taxation year of the business commencing after 1988 (in this paragraph referred to as the "particular year") for a cash cost equal to,

(A) in the case of an animal acquired in the taxation year immediately preceding the particular year, its cash cost otherwise determined,

(B) in the case of an animal acquired in one of the two taxation years immediately preceding the year referred to in clause (A), ½ of its cash cost otherwise determined, and

(C) in any other case, ¼ of its cash cost otherwise determined,

exceeds

(iii) for taxation years commencing in 1989, $15,000,

(iv) for taxation years commencing in 1990, $12,500,

(v) for taxation years commencing in 1991, $10,000,

(vi) for taxation years commencing in 1992, $7,500,

(vii) for taxation years commencing in 1993, $5,000, and

(viii) for taxation years commencing in 1994, $2,500,

and where

(ix) such taxation year is less than 51 weeks, the amount referred to in subparagraph (iii), (iv), (v), (vi), (vii) or (viii), as the case may be, shall be read as that proportion of the amount determined thereunder that the number of days in the year is of 365, and

(x) a taxpayer acquired a specified animal from a person with whom he was not dealing at arm's length, he shall, for the purpose of subparagraph (ii), be deemed to have acquired the animal at the time that it was acquired by that person, and"

That portion of subsec. 28(1) formerly read:

(b) such amount, if any, as may be specified by the taxpayer in respect of the business in his return of income under this Part for the year, not exceeding the fair market value at the end of the year of livestock (other than animals included in his basic herd within the meaning assigned by section 29) owned by him at that time in connection with the business

minus the aggregate of

(c) all amounts that

(i) were paid in the year, or are deemed by this Act to have been paid in the year, in the course of carrying on the business, and

(ii) were in payment of or on account of an amount that would, if the income from the business were not computed in accordance with the cash method, be deductible in computing income therefrom for that or any other year, and

(d) the amount, if any, specified by the taxpayer in respect of the business in accordance with paragraph (b) in his return of income under this Part filed for the immediately preceding taxation year;

and minus any deductions for the year permitted by paragraphs 20(1)(a) and (b).

All that portion of subsec. 28(1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 13(1), applicable to 1972 *et seq.*

Subsec. 28(1) substituted by 1973-74, c. 14, s. 6, applicable to 1972 *et seq.*

Selected Cases [subsec. 28(1)]: *Dansereau v. R.*, [2000] 1 C.T.C. 2582 (TCC) (Cash basis cannot be denied simply because business is complicated); *Hadler Turkey Farms Inc. v. The Queen*, [1986] 1 C.T.C. 81 (FCTD) (Switch to cash option not permitted when taxpayer filed on accrual basis); *Pollon v. The Queen*, [1984] C.T.C. 131 (FCTD) (Where income derived from farming, despite not physically taking part in operations, taxpayers operating independent businesses permitted to compute income on cash basis).

Regulations: 1700–1704 (capital cost allowance rates for pre-1972 property of farming or fishing business).

Interpretation Bulletins: IT-154R: Special reserves; IT-184R: Deferred cash purchase tickets issued by Canadian Wheat Board; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-373R: Farm woodlots and tree farms; IT-427R: Livestock of farmers; IT-526: Farming — cash method inventory adjustments.

Forms: RC4060: Farming income and NISA (guide); T1163: Statement A — NISA account information and statement of farming activities for individuals; T1164: Statement B — NISA account information and statement of farming activities for additional farming operations; T1165: Statement C — statement of farming activities for Ontario self directed risk management (SDRM); T1175 Sched. 1: NISA/Farming — calculation of CCA and business-use-of-home expenses; T2034: Election to establish inventory unit prices for animals; T2042: Statement of farming income and expenses; T2121: Statement of fishing activities; T4003: Farming income (guide); T4004: Fishing income (guide); TD3F: Fishermen's election for tax deductions at source.

(1.1) Acquisition of inventory — Where at any time, and in circumstances where paragraph 69(1)(a) or (c) applies, a taxpayer acquires inventory that is owned by the taxpayer in connection with a farming business the income from which is computed in accordance with the cash method, for the purposes of this section an amount equal to the cost to the taxpayer of the inventory shall be deemed

(a) to have been paid by the taxpayer at that time and in the course of carrying on that business, and

(b) to be the only amount so paid for the inventory by the taxpayer,

and the taxpayer shall be deemed to have purchased the inventory at the time it was so acquired.

History: Subsec. 28(1.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(3), applicable to taxation years and fiscal periods ending after 1990.

Interpretation Bulletins: IT-427R: Livestock of farmers.

Forms: T2034: Election to establish inventory unit prices for animals.

History [former subsec. 28(1.1)]: Former subsec. 28(1.1) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(2), applicable to fiscal periods beginning after 1988. Former subsec. 28(1.1) had read:

(1.1) Inventory — For the purposes of subsection (1), inventory owned in connection with a farming business means property that would have been included as inventory of the business if the income from the business had not been computed in accordance with the cash method, and includes livestock but does not include animals included in a taxpayer's basic herd (within the meaning assigned by section 29).

Pre-RSC History [former subsec. 28(1.1)]: Former subsec. 28(1.1) added by 1988, c. 55, subsec. 14(2), applicable (by 1991, c. 49 s. 241, deemed to have come into force September 13, 1988) to fiscal periods commencing after 1988.

(1.2) Valuation of inventory — For the purpose of paragraph (1)(c) and notwithstanding section 10, inventory of a taxpayer shall be valued at any time at the lesser of the total amount paid by the taxpayer at or before that time to acquire it (in this section referred to as its "cash cost") and its fair market value, except that an animal (in this section referred to as a "specified animal") that is a horse or, where the taxpayer has so elected in respect thereof for the taxation year that includes that time or for any preceding taxation year, is a bovine animal registered under the *Animal Pedigree Act*, shall be valued

(a) at any time in the taxation year in which it is acquired, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of its cash cost to the taxpayer; and

(b) at any time in a subsequent taxation year, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of the total of

(i) its value determined under this subsection at the end of the preceding taxation year, and

(ii) the total amount paid on account of the purchase price of the animal during the year.

Related Provisions: 85(1)(c.2) — Transfer of property to corporation by shareholders; 88(1.6) — Winding-up.

History: Subsec. 28(1.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(4), applicable to fiscal periods commencing after 1988. Subsec. 28(1.2) formerly read:

(1.2) Valuation of inventory — For the purpose of paragraph (1)(c) and notwithstanding section 10, inventory of a taxpayer shall be valued at any time at the lesser of the amount paid by the taxpayer at or before that time to acquire it (in this section referred to as its "cash cost") and its fair market value, except that an animal (in this section referred to as a "specified animal") that is a horse or, where the

taxpayer so elects in respect thereof, is a bovine animal registered under the *Animal Pedigree Act* shall be valued

(a) at any time in the taxation year in which it is acquired, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of its cash cost to the taxpayer; and

(b) at any time in any subsequent taxation year, at such amount as is designated by the taxpayer not exceeding its cash cost to the taxpayer and not less than 70% of its value determined under this subsection at the end of the preceding taxation year.

Pre-RSC History: Subsec. 28(1.2) added by 1988, c. 55, subsec. 14(2), applicable (by 1991, c. 49, s. 241, deemed to have come into force September 13, 1988) to fiscal periods commencing after 1988.

Regulations: 1801, 1802 (valuation of inventory).

Forms: T2034: Election to establish inventory unit prices for animals.

(1.3) Short fiscal period — For each taxation year that is less than 51 weeks, the reference in subsection (1.2) to "70" shall be read as a reference to the number determined by the formula

$$100 - \left(30 \times \frac{A}{365}\right)$$

where

A is the number of days in the taxation year.

Pre-RSC History: Subsec. 28(1.3) added by 1988, c. 55, subsec. 14(2), applicable to taxation years commencing after 1988.

(2) Where joint farming or fishing business — Subsection (1) does not apply for the purpose of computing the income of a taxpayer for a taxation year from a farming or fishing business carried on by the taxpayer jointly with one or more other persons, unless each of the other persons by whom the business is jointly carried on has elected to have his or her income from the business for that year computed in accordance with the cash method.

Interpretation Bulletins: IT-373R: Farm woodlots and tree farms.

(3) Concurrence of Minister — Where a taxpayer has filed a return of income under this Part for a taxation year wherein the taxpayer's income for that year from a farming or fishing business has been computed in accordance with the cash method, income from the business for each subsequent taxation year shall, subject to the other provisions of this Part, be computed in accordance with that method unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, adopts some other method.

Pre-RSC History: Subsecs. 28(2), (3) substituted by 1980-81-82-83, c. 48, subsec.13(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-373R: Farm woodlots and tree farms.

(4) Non-resident — Notwithstanding subsections (1) and (5), where at the end of a taxation year a taxpayer who carried on a business the income from which was computed in accordance with the cash method is non-resident and does not carry on that business in Canada, an amount equal to the total of all amounts each of which is the fair market value of an amount outstanding during the year as or on account of a debt owing to the taxpayer that arose in the course of carrying on the business and that would have been included in computing the taxpayer's income for the year if the amount had been received by the taxpayer in the year, shall (to the extent that the amount was not otherwise included in computing the taxpayer's income for the year or a preceding taxation year) be included in computing the taxpayer's income from the business

(a) for the year, if section 114 is not applicable; or

(b) if section 114 is applicable, for the period or periods referred to in paragraph 114(a) in respect of the year.

Proposed Amendment — 28(4)(a), (b)

(a) for the year, if the taxpayer was non-resident throughout the year; and

(b) for the part of the year throughout which the taxpayer was resident in Canada, if the taxpayer was resident in Canada at any time in the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 13(1), will amend paras. 28(4)(a) and (b) to read as above, applicable to 1998 *et seq.*

Technical Notes: Section 28 of the Act provides rules concerning the computation of income for taxpayers who, for income tax purposes, use the cash-basis method of accounting in respect of farming or fishing businesses. Subsection 28(4) applies, under certain conditions, to require the inclusion of the value of a non-resident taxpayer's accounts receivable in calculating the taxpayer's income for the year. Subsection 28(4.1) applies, under certain circumstances, to treat a non-resident taxpayer as having disposed of inventory owned by the taxpayer for proceeds of disposition equal to its fair market value.

Subsection 28(4) is amended, for the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment makes no substantive change, but keeps the reference in step with the changes to section 114. For more information about the changes to section 114, see the commentary on that section.

Related Provisions: 28(4.1) — Non-resident; 28(5) — Accounts receivable; 128.1(4)(b) — Deemed disposition of property where taxpayer ceases to be resident in Canada; 253 — Extended meaning of "carrying on business in Canada".

History: Subsec. 28(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(5), applicable with respect to taxpayers who cease to reside in Canada or who cease to carry on business in Canada after July 13, 1990. Subsec. 28(4) formerly read:

(4) Change in residence — Where a taxpayer who, at a time when the taxpayer was a resident of Canada, carried on a business the income from which was computed in accordance with the method authorized by subsection (1) has, on or after disposing of or ceasing to carry on the business or a part of the business, ceased to be a resident of Canada in a taxation year, an amount equal to the value, at the time the taxpayer ceased to be a resident of Canada, of

(a) such part of the property that would have been included in the inventory of the business or the part of the business if the income from the business had not been computed in accordance with the method authorized by subsection (1) as remained the property of the taxpayer at the time the taxpayer ceased to be a resident of Canada, and

(b) such part of amounts outstanding at the time the taxpayer ceased to be a resident of Canada as or on account of debts owing to the taxpayer that arose in the course of carrying on the business as would have been included in computing the taxpayer's income for the year if the amounts had been received by the taxpayer in the year at a time when the taxpayer was a resident of Canada,

shall be included in computing the taxpayer's income

(c) for the year, if section 114 is not applicable, or

(d) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a).

Interpretation Bulletins: IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-427R: Livestock of farmers.

(4.1) Idem — Notwithstanding subsection (1), where at any time in a taxation year

(a) a taxpayer who carried on a business the income from which is computed in accordance with the cash method is non-resident, and

(b) a property that was inventory owned by the taxpayer in connection with the business is not used in connection with a business carried on in Canada by the taxpayer (other than inventory sold in the course of carrying on the business),

the taxpayer shall (except where this subsection applied in respect of the property at an earlier time) be deemed to have disposed of the property at that time in the course of carrying on the business for proceeds of disposition equal to its fair market value at that time and an amount equal to those proceeds shall be included in computing the taxpayer's income from the business

(c) for the year, if section 114 does not apply, or

(d) if section 114 applies, for the period or periods in the year referred to in paragraph 114(a).

Proposed Repeal — 28(4.1)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 13(2), will repeal subsec. 28(4.1), applicable after December 23, 1998.

Technical Notes: With the addition of new subsection 10(12) and the amendment of section 128.1 of the Act (changes in residence), subsection 28(4.1) has become redundant, and is repealed with application after December 23, 1998.

Related Provisions: 10(12) — Non-resident ceasing to use inventory; 28(4) — Non-resident; 253 — Extended meaning of "carrying on business in Canada".

History: Subsec. 28(4.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 18(5), applicable with respect to taxpayers who cease to reside in Canada after July 13, 1990 and with respect to property that ceases after July 13, 1990 to be used in connection with a business carried on in Canada.

Interpretation Bulletins: IT-427R: Livestock of farmers.

(5) Accounts receivable — There shall be included in computing the income of a taxpayer for a taxation year such part of an amount received by the taxpayer in the year, on or after disposing of or ceasing to carry on a business or a part of a business, for, on account or in lieu of payment of, or in satisfaction of debts owing to the taxpayer that arose in the course of carrying on the business as would have been included in computing the income of the taxpayer for the year had the amount so received been received by the taxpayer in the course of carrying on the business.

Definitions [s. 28]: "amount", "business" — 248(1), 253; "Canada" — 255; "cash method" — 28(1), 248(1); "farming", "inventory", "Minister", "non-resident", "person", "property" — 248(1); "specified animal" — 28(1.2); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 28]: IT-156R: Feedlot operators; IT-188R: Sale of accounts receivable; IT-433R: Farming or fishing — use of cash method; IT-505: Mortgage foreclosures and conditional sales repossessions; IT-526: Farming — cash method inventory adjustments.

29. (1) Disposition of animal of basic herd class — Where a taxpayer has a basic herd of a class of animals and disposes of an animal of that class in the course of carrying on a farming business in a taxation year, if the taxpayer so elects in the taxpayer's return of income under this Part for the year the following rules apply:

(a) there shall be deducted in computing the taxpayer's basic herd of that class at the end of the year such number as is designated by the taxpayer in the taxpayer's election, not exceeding the least of

(i) the number of animals of that class so disposed of by the taxpayer in that year,

(ii) 1/10 of the taxpayer's basic herd of that class on December 31, 1971, and

(iii) the taxpayer's basic herd of that class of animal at the end of the immediately preceding taxation year; and

(b) there shall be deducted in computing the taxpayer's income from the farming business for the taxation year the product obtained when

(i) the number determined under paragraph (a) in respect of the taxpayer's basic herd of that class for the year

is multiplied by

(ii) the quotient obtained when the fair market value on December 31, 1971 of the taxpayer's animals of that class on that day is divided by the number of the taxpayer's animals of that class on that day.

Related Provisions: 28(1)(b) — Optional inclusion of inventory in income; 96(3) — Election by members of partnership.

Forms: T2034: Election to establish inventory unit prices for animals.

(2) Reduction in basic herd — Where a taxpayer carries on a farming business in a taxation year and the taxpayer's basic herd of any class at the end of the immediately preceding year, minus the deduction, if any, required by paragraph (1)(a) to be made in computing the taxpayer's basic herd of that class at the end of the year, exceeds the number of animals of that class owned by the taxpayer at the end of the year,

(a) there shall be deducted in computing the taxpayer's basic herd of that class at the end of the year the number of animals comprising the excess, and

(b) there shall be deducted in computing the taxpayer's income from the farming business for the taxation year the product obtained when

(i) the number of animals comprising the excess

is multiplied by

(ii) the quotient obtained when the fair market value on December 31, 1971 of the taxpayer's animals of that class on that day is divided by the number of the taxpayer's animals of that class on that day.

(3) Interpretation — For the purposes of this section,

(a) a taxpayer's "basic herd" of any class of animals at a particular time means such number of the animals of that class that the taxpayer had on hand at the end of [the taxpayer's] 1971 taxation year as were, for the purpose of assessing the taxpayer's tax under this Part for that year, accepted by the Minister, as a consequence of an application made by the taxpayer, to be capital properties and not to be stock-in-trade, minus the numbers, if any, required by virtue of this section to be deducted in computing the taxpayer's basic herd of that class at the end of taxation years of the taxpayer ending before the particular time;

(b) "class of animals" means animals of a particular species, namely, cattle, horses, sheep or swine, that are

(i) purebred animals of that species for which a certificate of registration has been issued by a person recognized by breeders in Canada of purebred animals of that species to be the registrar of the breed to which such animals belong, or issued by the Canadian National Livestock Records Corporation, or

(ii) animals of that species other than purebred animals described in subparagraph (i),

each of which descriptions in subparagraphs (i) and (ii) shall be deemed to be of separate classes, except that where the number of the taxpayer's animals described in subparagraph (i) or (ii), as the case may be, of a particular species is not greater than 10% of the total number of the taxpayer's animals of that species that would otherwise be of two separate classes by virtue of this paragraph, the taxpayer's animals described in subparagraphs (i) and (ii) of that species shall be deemed to be of a single class; and

(c) in determining the number of animals of any class on hand at any time, an animal shall not be included if it was acquired for a feeder operation, and an animal shall be included only if its actual age is not less than,

(i) in the case of cattle, 2 years,

(ii) in the case of horses, 3 years, and,

(iii) in the case of sheep or swine, one year,

except that 2 animals of a class under the age specified in subparagraph (i), (ii) or (iii), as the case may be, shall be counted as one animal of the age so specified.

Definitions [s. 29]: "basic herd" — 29(3); "business" — 248(1); "capital property" — 54, 248(1); "farming", "Minister", "person" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 29]: IT-427R: Livestock of farmers.

30. Improving land for farming — Notwithstanding paragraphs 18(1)(a) and (b), there may be deducted in computing a taxpayer's income for a taxation year from a farming business any amount paid by the taxpayer before the end of the year for clearing land, levelling land or installing a land drainage system for the purposes of the business, to the extent that such amount has not been deducted in a preceding taxation year.

Related Provisions: 28(1)(g) — Deduction from farming or fishing income when using cash method.

Pre-RSC History: S. 30 substituted by 1988, c. 55, s. 15, applicable with respect to amounts paid after 1987; and (by 1990, c. 39, s. 59), where a taxpayer

(a) claims a deduction under s. 30 in respect of such an amount in computing the taxpayer's income from a farming business for a fiscal period or a taxation year that commences before 1989, and

(b) computes income from the farming business for that fiscal period or taxation year, as the case may be, under s. 28,

notwithstanding s. 28, the amount of the deduction described in (a) shall be deducted under s. 28 in computing the taxpayer's income for that fiscal period or taxation year, as the case may be, in lieu of any other amount deductible under that section in respect of amounts paid after 1987 to which s. 30 applies. S. 30 formerly read:

30. Clearing land, levelling land and laying tile drainage — Notwithstanding paragraphs 18(1)(a) and (b), there may be deducted in computing a taxpayer's income for a taxation year from a farming business any amount paid by him in the year for clearing land, levelling land or laying tile drainage for the purpose of carrying on the farm business.

Definitions [s. 30]: "amount", "business", "farming" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 30]: IT-485: Cost of clearing or levelling land.

31. (1) Loss from farming where chief source of income not farming — Where a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income, for the purposes of sections 3 and 111 the taxpayer's loss, if any, for the year from all farming businesses carried on by the taxpayer shall be deemed to be the total of

(a) the lesser of

(i) the amount by which the total of the taxpayer's losses for the year, determined without reference to this section and before making any deduction under section 37 or 37.1, from all farming businesses carried on by the taxpayer exceeds the total of the taxpayer's incomes for the year, so determined from all such businesses, and

(ii) $2,500 plus the lesser of

(A) ½ of the amount by which the amount determined under subparagraph (i) exceeds $2,500, and

(B) $6,250, and

(b) the amount, if any, by which

(i) the amount that would be determined under subparagraph (a)(i) if it were read as though the words "and before making any deduction under section 37 or 37.1" were deleted,

exceeds

(ii) the amount determined under subparagraph (a)(i).

Related Provisions: 9(2) — Loss from business or property; 31(1.1) — Restricted farm loss; 53(1)(i) — Addition to adjusted cost base for non-deductible losses; 53(2)(c)(i)(B) — Adjusted cost base of interest in partnership; 87(2.1)(a) — Amalgamation — Restricted farm loss carried forward; 96(1) — Restricted farm loss of partner; 101 — Disposition of land used in farming business of partnership; 111(1)(c) — Carryover of restricted farm losses; 111(9) — Restricted farm loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's restricted farm loss for minimum tax purposes; 128.1(4)(f) — Restricted farm loss limitation on becoming non-resident.

History: The closing words of subsec. 31(1) repealed by 1995, c. 21, subsec. 8(1), applicable to taxation years that end after February 21, 1994. The closing words formerly read:

and for the purposes of this Act the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii) is the taxpayer's "restricted farm loss" for the year.

Pre-RSC History: Cl. 31(1)(a)(ii)(B) amended by 1988, c. 55, s. 16, to substitute "$6,250" for "$2,500", applicable (by subsec. 16(2), as amended by 1991, c. 49, s. 242, deemed to have come into force September 13, 1988) to fiscal periods commencing after 1988.

Subparas. 31(1)(a)(i), (b)(i) substituted by 1979, c. 5, s. 9, applicable to taxation years ending after 1977. Subparas. 31(1)(a)(i), (b)(i) formerly read:

(i) the amount by which the aggregate of his losses for the year, determined without reference to this section and before making any deductions in respect of expenditures described in section 37, from all farming businesses carried on by him exceeds the aggregate of his incomes for the year, so determined from all such businesses, and

. . . . .

(i) the amount that would be determined under subparagraph (a)(i) if it were read as though the words "and before making any deductions in respect of expenditures described in section 37" were deleted,

Subsec. 31(1) substituted by 1973-74, c. 14, s. 7, applicable to 1972 *et seq.*

Selected Cases [subsec. 31(1)]: *Riveros v. R.*, [2000] 1 C.T.C. 3013 (TCC) (Test met where employment was for benefit of and subject to the farming business); *Phillips v. Canada*, [1997] 1 C.T.C. 59 (FCTD) (Consideration of psychological, physical and professional commitment as well as income and capital levels); *Moldowan v. The Queen*, [1977] C.T.C. 310 (SCC) (Taxpayer's chief source of income determined from reasonable expectations of income from various revenue sources and ordinary mode and habit of work); *McLaws v. The Queen*, [1976] C.T.C. 15 (FCTD) (Losses from raising racehorses were from business with expectation of profit).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

Forms [subsec. 31(1)]: T624: Analysis of farm losses.

(1.1) Restricted farm loss — For the purposes of this Act, a taxpayer's "restricted farm loss" for a taxation year is the amount, if any, by which

(a) the amount determined under subparagraph (1)(a)(i) in respect of the taxpayer for the year

exceeds

(b) the total of the amount determined under subparagraph (1)(a)(ii) in respect of the taxpayer for the year and all amounts each of which is an amount by which the taxpayer's restricted farm loss for the year is required to be reduced because of section 80.

Related Provisions: 80(3)(c) — Reduction in restricted farm loss on debt forgiveness; 248(1)"restricted farm loss" — Definition applies to entire Act. See also Related Provisions to 31(1).

History: Subsec. 31(1.1) added by 1995, c. 21, subsec. 8(2), applicable to taxation years that end after February 21, 1994.

(2) Determination by Minister — For the purpose of this section, the Minister may determine that a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income.

Selected Cases: *Cormack v. R.*, [2000] 1 C.T.C. 2035 (T.C.C.) (Comparison of capital employed not always necessary in determining chief source).

Selected Cases [s. 31]: *R. v. Donnelly*, [1998] 1 C.T.C. 23 (FCA) (Distinction between country person going to city to supplement farming income and city person going to country).

Definitions [s. 31]: "amount", "business", "farming", "Minister" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 31]: IT-156R: Feedlot operators; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2 — Losses of non-residents and part-year residents; IT-322R: Farm losses; IT-373R: Farm woodlots and tree farms.

32. (1) Insurance agents and brokers [unearned commissions] — In computing a taxpayer's income for a taxation year from the taxpayer's business as an insurance agent or broker, no amount may be deducted under paragraph 20(1)(m) for the year in respect of unearned commissions from the business, but in computing the taxpayer's income for the year from the business there may be deducted, as a reserve in respect of such commissions, an amount equal to the lesser of

(a) the total of all amounts each of which is that proportion of an amount that has been included in computing the taxpayer's income for the year or a preceding taxation year as a commission in respect of an insurance contract (other than a life insurance contract) that

(i) the number of days in the period provided for in the insurance contract that are after the end of the taxation year

is of

(ii) the number of days in that period, and

(b) the total of all amounts each of which is the amount that would, but for this subsection, be deductible under paragraph 20(1)(m) for the year in respect of a commission referred to in paragraph (a).

Related Provisions: 72(1)(b) — Reserves, etc. for year of death; 87(2)(j.6) — Amalgamation — continuing corporation.

History: Subsec. 32(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 19(1), applicable to taxation years ending after 1990. Subsec. 32(1) formerly read:

> 32. (1) **Insurance agents and brokers** — Paragraph 20(1)(m) does not apply to allow a deduction to an insurance agent or broker in respect of unearned commissions but a taxpayer may, in computing the taxpayer's income from a business as an insurance agent or broker for a taxation year, deduct as a reserve in respect of unearned commissions an amount equal to the proportion of an amount that has been included in computing the taxpayer's income for the year or a previous year as a commission in respect of an insurance contract, other than a life insurance contract, that
>
> (a) the number of days in that portion of the period provided for in the insurance contract that is after the end of the taxation year,
>
> is of
>
> (b) the whole of that period.

Forms: T2069: Election in respect of amounts not deductible as reserves for the year of death.

(2) Reserve to be included — There shall be included as income of a taxpayer for a taxation year from a business as an insurance agent or broker, the amount deducted under subsection (1) in computing the taxpayer's income therefrom for the immediately preceding year.

(3) Additional reserve — In computing a taxpayer's income for a taxation year ending after 1990 from a business carried on by the taxpayer throughout the year as an insurance agent or broker, there may be deducted as an additional reserve an amount not exceeding

(a) where the year ends in 1991, 90%,

(b) where the year ends in 1992, 80%,

(c) where the year ends in 1993, 70%,

(d) where the year ends in 1994, 60%,

(e) where the year ends in 1995, 50%,

(f) where the year ends in 1996, 40%,

(g) where the year ends in 1997, 30%,

(h) where the year ends in 1998, 20%,

(i) where the year ends in 1999, 10%, and

(j) where the year ends after 1999, 0%

of the amount, if any, by which

(k) the reserve that was deducted by the taxpayer under subsection (1) for the taxpayer's last taxation year ending before 1991

exceeds

(l) the amount deductible by the taxpayer under subsection (1) for the taxpayer's first taxation year ending after 1990,

and any amount so deducted by the taxpayer for a taxation year shall be deemed for the purposes of subsection (2) to have been deducted for that year pursuant to subsection (1).

Related Provisions: 87(2)(j.6) — Rules applicable — continuing corporation.

History: Subsec. 32(3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 19(2), applicable to taxation years ending after 1990.

Definitions [s. 32]: "amount", "business" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 32]: IT-321R: Insurance agents and brokers — unearned commissions.

32.1 (1) Employee benefit plan deductions — Where a taxpayer has made contributions to an employee benefit plan in respect of the taxpayer's employees or for-

mer employees, the taxpayer may deduct in computing the taxpayer's income for a taxation year

(a) such portion of an amount allocated to the taxpayer for the year under subsection (2) by the custodian of the plan as does not exceed the amount, if any, by which

(i) the total of all amounts each of which is a contribution by the taxpayer to the plan for the year or a preceding year

exceeds the total of all amounts each of which is

(ii) an amount in respect of the plan deducted by the taxpayer in computing the taxpayer's income for a preceding year, or

(iii) an amount received by the taxpayer in the year or a preceding year that was a return of amounts contributed by the taxpayer to the plan; and

(b) where at the end of the year all of the obligations of the plan to the taxpayer's employees and former employees have been satisfied and no property of the plan will thereafter be paid to or otherwise be available for the benefit of the taxpayer, the amount, if any, by which

(i) the total of all amounts each of which is a contribution by the taxpayer to the plan for the year or a preceding year

exceeds the total of all amounts each of which is

(ii) an amount in respect of the plan deducted by the taxpayer in computing the taxpayer's income for a preceding year, or, by virtue of paragraph (a), for the year, or

(iii) an amount received by the taxpayer in the year or a preceding year that was a return of amounts contributed by the taxpayer to the plan.

Related Provisions: 6(1)(a)(ii), 6(1)(g) — Employee benefit plan benefits taxable; 12(1)(n) — Employer's income inclusion — amounts received from employees profit sharing plan; 12(1)(n.1) — Employee benefit plan; 18(1)(o) — Employee benefit plan contributions; 87(2)(j.3) — Amalgamation — continuation of corporation; 107.1 — Distribution by employee trust or employee benefit plan; 207.6(4) — Deemed contribution.

Advance Tax Rulings: ATR-17: Employee benefit plan — purchase of company shares.

(2) Allocation — Every custodian of an employee benefit plan shall each year allocate to persons who have made contributions to the plan in respect of their employees or former employees the amount, if any, by which the total of

(a) all payments made in the year out of or under the plan to or for the benefit of their employees or former employees (other than the portion thereof that, by virtue of subparagraph 6(1)(g)(ii), is not required to be included in computing the income of a taxpayer), and

(b) all payments made in the year out of or under the plan to the heirs or the legal representatives of their employees or former employees

exceeds the income of the plan for the year.

Related Provisions: 32.1(3) — Income of employee benefit plan.

Pre-RSC History: Subsec. 32.1(2) substituted by 1980-81-82-83, c. 140, s. 15, applicable to the 1980 and subsequent taxation years, to add a reference to payments made to the "heirs or the legal representatives of their employees or former employees".

(3) Income of employee benefit plan — For the purposes of subsection (2), the income of an employee benefit plan for a year

(a) in the case of a plan that is a trust, is the amount that would be its income for the year if section 104 were read without reference to subsections 104(4) to (24); and

(b) in any other case, is the total of all amounts each of which is the amount, if any, by which a payment under the plan by the custodian thereof in the year exceeds

(i) in the case of an annuity, that part of the payment determined in prescribed manner to have been a return of capital, and

(ii) in any other case, that part of the payment that could, but for paragraph 6(1)(g), reasonably be regarded as being a payment of a capital nature.

Regulations: 300 (prescribed manner).

Pre-RSC History [s. 32.1]: S. 32.1 added by 1980-81-82-83, c. 48, s. 14, applicable with respect to benefits paid under an employee benefit plan after 1979.

Selected Cases [s. 32.1]: *J.W. Baker Agency (1976) Ltd. v. Canada*, [1989] 1 C.T.C. 246 (FCA) (Provision intended to permit spreading commissions over duration of policies).

Definitions [s. 32.1]: "amount", "annuity", "employee benefit plan", "person", "prescribed", "property" — 248(1); "taxation year" — 11(2), 249.

Interpretation Bulletins [s. 32.1]: IT-502: Employee benefit plans and employee trusts.

33. [Repealed under former Act]

Pre-RSC History: S. 33 repealed by 1988, c. 55, s. 17, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987, except that the repeal of subsec. 33(2) is applicable with respect to taxation years and fiscal periods after the first taxation year or fiscal period that commences after June 17, 1987 and ends after 1987. S. 33 formerly read:

33. (1) Lending of money on security — In computing the income for a taxation year of a taxpayer whose business includes the lending of money on the security of a mortgage, hypothec or agreement of sale of real property, there may be deducted as a reserve, in lieu of any deduction under paragraph 20(1)(l), such amount as the taxpayer may claim not exceeding the lesser of

(a) the aggregate of

(i) 1½% of the lesser of

(A) the aggregate of

(I) each amount outstanding at the end of the year as or on account of the amortized cost of loans made by the taxpayer on the security of a mortgage, hypothec or agreement for sale of real property, or as or on account of the amortized cost of any such mortgage, hypothec or agreement for sale purchased by him,

(II) each amount due and unpaid at the end of the year as or on account of interest payable to the taxpayer under a mortgage, hypothec or agreement for sale of real property,

(III) each amount that has been taken into account in computing the income of the taxpayer for the year as or on account of the value of real property of the taxpayer that was included in the inventory of the taxpayer at the end of the year and that was acquired, by foreclosure or otherwise, after default made under a mortgage, hypothec or agreement for sale of real property (otherwise than as or on account of the value of real property in respect of which any amount for the year has been included under subclause (I) or (II)), and

(IV) where a taxpayer is a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of of-

fering to the public its services as trustee, each amount outstanding at the end of the year as or on account of the amortized cost of a bond or debenture (other than a bond or debenture that matures within 1 year after that time) owned by the taxpayer at that time and held by it in respect of money received by it in trust for investment subject to a guarantee by it in respect of the repayment of the principal or the payment of interest, or both, and each amount due and unpaid as or on account of interest payable in respect of such bond or debenture to the corporation, and

(B) $2,000.000,000, and

(ii) 1% of the amount, if any, by which the aggregate referred to in clause (i)(A) exceeds the amount referred to in clause (i)(B); and

(b) the amount, if any, deducted under this subsection as a reserve in computing the taxpayer's income for the immediately preceding taxation year plus ⅓ of the amount determined under paragraph (a);

but no deduction may be made under this subsection as a reserve in respect of loans made on the security of a mortgage or hypothec under the *National Housing Act* or any of the Housing Acts as defined in section 2 of the *Canada Mortgage and Housing Corporation Act* or in respect of a debt deducted as a bad debt under paragraph 20(1)(p) in computing the taxpayer's income for the year or a preceding taxation year.

(2) Reserve to be included — There shall be included as income of a taxpayer for a taxation year from a business described in subsection (1), the amount deducted under that subsection as a reserve in computing his income therefrom for the immediately preceding year.

(3) Amortized cost of an obligation — In this section, "amortized cost" of a bond, debenture, mortgage, hypothec or agreement for sale at any time means the amount, if any, by which the aggregate of

(a) the cost to the taxpayer of acquiring the bond, debenture, mortgage, hypothec or agreement for sale, and

(b) the portion of the amount, if any, by which

(i) the principal amount of the bond, debenture, mortgage, hypothec or agreement for sale at the time it was acquired by the taxpayer

exceeds

(ii) the cost thereof to the taxpayer of acquiring it

that was included in computing the taxpayer's income for any taxation year ending at or before that time,

exceeds the aggregate of

(c) the portion of the amount, if any, by which

(i) the cost to the taxpayer of acquiring the bond, debenture, mortgage, hypothec or agreement for sale,

exceeds

(ii) the principal amount thereof at the time it was acquired by the taxpayer

that was deducted in computing the taxpayer's income for any taxation year ending at or before that time, and

(d) the aggregate of all amounts that, before that time, the taxpayer became entitled to receive as or on account or in lieu of payment of or in satisfaction of the principal amount of the bond, debenture, mortgage, hypothec or agreement for sale.

All that portion of subsec. 33(1) following para. (b) substituted by 1987, c. 46, s. 9, to add "or in respect of a debt deducted as a bad debt under paragraph 20(1)(p) in computing the taxpayer's income for the year or a preceding taxation year", applicable to taxation years ending after January 15, 1987.

Para. 33(1)(a) substituted by 1974-75-76, c. 26, subsec. 12(1), applicable to 1974 *et seq.* Para. 33(1)(a) formerly read:

(a) 1½% of the aggregate of

(i) each amount outstanding at the end of the year as or on account of the principal amount of loans made by the taxpayer on the security of a mortgage, hypothec or agreement of sale of real property, or as or on account of the principal amount of any such mortgage, hypothec or agreement of sale purchased by him,

(ii) each amount due and unpaid at the end of the year as or on account of interest payable to the taxpayer under a mortgage, hypothec or agreement of sale of real property, and

(iii) each amount that has been taken into account in computing the income of the taxpayer for the year as or on account of the value of real property of the taxpayer that was included in the inventory of the taxpayer at the end of the year and that was acquired, by foreclosure or otherwise, after default made under a mortgage, hypothec or agreement of sale of real property (otherwise than as or on account of the value of real property in respect of which any amount for the year has been included under subparagraph (i) or (ii)); and

Subsec. 33(3) added by 1974-75-76, c. 26, subsec. 12(2), applicable to 1974 *et seq.*

33.1 (1) International banking centres — definitions — In this section,

"eligible deposit", at any particular time, means a debt owing at the particular time by a taxpayer that is a prescribed financial institution as or on account of an amount deposited with the taxpayer by

(a) a non-resident person with whom the taxpayer is dealing at arm's length at the particular time, where

(i) at the particular time, the deposit is recorded in the books of account of an international banking centre business of the taxpayer,

(ii) at the particular time, the taxpayer is not obligated, either immediately or in the future and either absolutely or contingently, to repay any portion of the debt to a person other than a non-resident person, and

(iii) before the deposit was recorded in the books of account of the international banking centre business, the taxpayer made reasonable inquiries and had no reasonable cause to believe that any portion of the amount was deposited on behalf of, for the benefit of or as a condition of any transaction with, a person (other than a non-resident person with whom the taxpayer was dealing at arm's length), or

(b) another prescribed financial institution with whom the taxpayer is dealing at arm's length at the particular time, where

(i) at or before the time at which the deposit was made, the prescribed financial institution provided written notice to the taxpayer that the deposit was being made from deposits recorded in the books of account of an international banking centre business of that prescribed financial institution, and

(ii) a reasonable rate of interest is paid or payable by the taxpayer in respect of the deposit;

Related Provisions: 212(1)(b)(xi) — Non-resident withholding tax — exemption.

History: Subpara. (a)(iii) of the definition "eligible deposit" in subsec. 33.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 20(1), to substitute "(other than a non-resident person with whom the taxpayer was dealing at arm's length)" for "other than a non-resident person", applicable to deposits first recorded in the books of account of an international banking centre business after July 13, 1990.

Regulations: 7900 (prescribed financial institution).

"eligible loan", at any particular time, means

(a) a loan or deposit (in this paragraph referred to as a "loan") made by a taxpayer that is a prescribed financial institution to a non-resident person (in this paragraph referred to as the "borrower") with whom the

taxpayer is dealing at arm's length at the particular time, where

(i) at the particular time, neither a person other than a non-resident person nor a person with whom the taxpayer is not dealing at arm's length is obligated to the taxpayer, either immediately or in the future and either absolutely or contingently, to pay to the taxpayer any amount in respect of the loan,

(ii) the loan was recorded in the books of account of an international banking centre business of the taxpayer throughout the period commencing with the later of

(A) the time at which the loan was made, and

(B) the earliest of

(I) the time at which the loan was first recorded in the books of account of a branch or office of the taxpayer located in Canada,

(II) the end of the first taxation year in respect of which the taxpayer has made any designation under subsection (3), and

(III) the end of 1992

and ending at the particular time,

(iii) in the case of a loan made before the end of the first taxation year in respect of which the taxpayer has made any designation under subsection (3) (other than a loan recorded in the books of account of an international banking centre business of the taxpayer at the time at which the loan was made) or a loan made to a foreign bank, the taxpayer made reasonable inquiries before the loan was recorded in the books of account of the international banking centre business and had no reasonable cause to believe that the borrower had used or would use any proceeds of the loan, directly or indirectly, for the purpose of

(A) earning income in Canada, or

(B) making a loan to a person other than a non-resident person, and

(iv) in the case of any other loan, the taxpayer, before the loan was recorded in the books of account of the international banking centre business,

(A) obtained a statement signed by or on behalf of the borrower that the borrower would not use any proceeds of the loan, directly or indirectly, for a purpose described in subparagraph (iii), and

(B) had no reasonable cause to believe that the borrower would use any proceeds of the loan, directly or indirectly, for a purpose described in subparagraph (iii),

(b) a loan acquired by a taxpayer that is a prescribed financial institution from a foreign bank with which the taxpayer is not dealing at arm's length at the time the loan was acquired, where the conditions described in subparagraphs (a)(i) to (iii) are met at the particular time, or

(c) a deposit made by a taxpayer that is a prescribed financial institution with another prescribed financial institution with whom the taxpayer is dealing at arm's length at the particular time where, at or before the time at which the deposit was made, the taxpayer provided written notice to the prescribed financial institution that the deposit was being made from deposits recorded in the books of account of an international banking centre business of the taxpayer;

Regulations: 7900 (prescribed financial institution).

"foreign bank" has the meaning that would be assigned by the definition "foreign bank" in subsection 2(1) of the *Bank Act* if that definition were read without reference to paragraph (g) thereof;

"non-resident person" at any time, with respect to a taxpayer, includes a person that the taxpayer, based on reasonable inquiries, believes at that time to be a person not resident in Canada.

(2) Interpretation — For the purposes of this section,

(a) a partnership shall be deemed to be a person;

(b) where a member of a partnership and a person do not deal with each other at arm's length, the partnership and the person shall be deemed not to deal with each other at arm's length;

(c) a partnership is a non-resident person only where all of its members are non-resident persons; and

(d) a deposit made by or to a non-resident person or a loan made to a non-resident person does not include a deposit made by or to, or a loan made to, as the case may be, a fixed place of business in Canada of the non-resident person.

(3) Designation and exemption — Where a taxpayer that was, throughout a taxation year, a prescribed financial institution has designated in respect of the year, by filing a prescribed form with the Minister on or before the day that is 90 days after the commencement of the year, a branch or office of the taxpayer in the metropolitan area of Montreal in the Province of Quebec or in the metropolitan area of Vancouver in the Province of British Columbia as a branch or office in which an international banking centre business of the taxpayer is to be carried on and has not revoked that designation by filing a prescribed form with the Minister on or before that day, in computing the income of the taxpayer for the year no amount shall be added or deducted in respect of the taxpayer's income or loss, as the case may be, for the year from the international banking centre business.

Related Provisions: 33.1(5) — Restriction; 33.1(6) — Election; 33.1(7) — Election restriction; 33.1(9) — Exception where less than 90% of revenue from eligible loans; 33.1(12) — Return; 87(2)(j.8) — Amalgamations — continuing corporation.

Regulations: 7900 (prescribed financial institution).

Forms: T781: Designation as an international banking centre; T781-C: Revocation of designation as an international banking centre.

(4) Income or loss from an international banking centre business — Subject to subsection (5), the amount of a taxpayer's income or loss, as the case may be, for a taxation year from an international banking centre business shall be determined on the assumption that

(a) the international banking centre business was a separate business carried on by the taxpayer the only income or loss of which was derived from eligible loans for the period in the year during which they were recorded in the books of account of the business; and

(b) the only amount payable for the year by the taxpayer in respect of interest on money borrowed for the purpose of earning income from the business was equal to the total of

(i) the total of all amounts each of which is the interest payable by the taxpayer in respect of an eligible deposit for the period in the year during

which it was recorded in the books of account of the business, and

(ii) the amount equal to that proportion of

(A) the total of all amounts each of which is the amount determined in respect of a day in the year equal to the amount, if any, by which

(I) 96% of the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible loan recorded in the books of account of the business at the end of the day

exceeds

(II) the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible deposit recorded in the books of account of the business at the end of the day

that

(B) the total determined under subparagraph (i)

is of

(C) the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible deposit recorded in the books of account of the business at the end of a day in the year.

Related Provisions: 33.1(6) — Election; 33.1(10) — No deduction permitted; 33.1(11) — Rules clarifying application of provision; 87(2)(j.8) — Amalgamations — continuing corporation.

(5) Restriction — A taxpayer's income for a taxation year from an international banking centre business shall not exceed that proportion of such income determined in accordance with subsection (4) that

(a) the total of all amounts each of which is an amount determined in respect of a day in the year equal to the lesser of

(i) 96% of the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible loan recorded in the books of account of the business at the end of the day, and

(ii) the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible deposit recorded in the books of account of the business at the end of the day

is of

(b) 96% of the total of all amounts each of which is the amount outstanding on account of the principal amount of an eligible loan recorded in the books of account of the business at the end of a day in the year.

Related Provisions: 33.1(6) — Election.

(6) Election — For the purposes of subsections (4) and (5), where a taxpayer so elects in the taxpayer's return of income for a taxation year or in a prescribed form filed with the Minister within 90 days after the day of mailing of a notice of assessment for the year or a notification that no tax is payable for the year, an eligible deposit recorded in the books of account of an international banking centre business of the taxpayer at the end of a day in the year shall be deemed not to have been recorded at any time in the day in the books of account of that business and shall be deemed to have been recorded throughout that day in the books of account of another international banking centre business of the taxpayer designated by the taxpayer in the election.

Related Provisions: 33.1(7) — Election restriction.

Forms: T781-B: Election re deemed transfers of eligible deposits between international banking centres.

(7) Election restriction — A taxpayer may elect, as provided in subsection (6), only in respect of eligible deposits recorded in the books of account of an international banking centre business at the end of a day to the extent that the total of those deposits exceeds 96% of the total of all amounts outstanding on account of the principal amounts of eligible loans recorded in the books of account of the business at the end of the day.

History: Subsec. 33.1(7) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 20(2), to substitute "96% of the total" for "the total", applicable to taxation years commencing after December 17, 1987.

(8) Limitation — In computing the income of a taxpayer for a taxation year, an amount paid or payable by the taxpayer on a deposit for the period in the year during which it was an eligible deposit shall, notwithstanding any other provision of this Act, be deductible only in computing the income or loss of the taxpayer from an international banking centre business.

(9) Exception — Where less than 90% of the revenue of a taxpayer for a taxation year from loans or deposits for the period in the year during which they were recorded in the books of account of an international banking centre business was derived from eligible loans in respect of which employees of the taxpayer actively participated in the solicitation, negotiation, analysis or management thereof while employed at a branch or office designated under subsection (3) as a branch or office in which an international banking centre business of the taxpayer is to be carried on, the amount, if any, of the taxpayer's income for the year from the international banking centre business shall, notwithstanding subsection (3), be included in computing the taxpayer's income for the year.

(10) No deduction permitted — Notwithstanding any other provision of this Act, in computing the income of a taxpayer no deduction shall be made in respect of any amount paid or payable in respect of indebtedness of the taxpayer to any person where, under an arrangement of which the taxpayer was aware or ought to have been aware at the time the indebtedness was incurred by the taxpayer, any portion of the indebtedness may reasonably be regarded as having been provided directly or indirectly from proceeds of a loan recorded in the books of account of an international banking centre business of a prescribed financial institution and any person has, in respect of that loan, signed a statement described in subparagraph (a)(iv) of the definition "eligible loan" in subsection (1).

Regulations: 7900 (prescribed financial institution).

(11) Application — For greater certainty,

(a) where at any time a loan or deposit of a taxpayer ceases to be an eligible loan otherwise than by virtue of its disposition to another person, the taxpayer shall be deemed to have disposed of the loan or deposit in the course of carrying on an international banking centre business and to have received proceeds of disposition therefor equal to the fair market value of the loan or deposit at that time and to have reacquired the loan or deposit immediately after that time at a cost equal to its fair market value at that time;

(b) a taxpayer's loss for a taxation year from an international banking centre business shall not be included in determining the taxpayer's non-capital loss for the year; and

(c) the amount, if any, by which

(i) the amount that would be a taxpayer's income for a taxation year from an international banking centre business if this section were read without reference to subsection (5)

exceeds

(ii) the taxpayer's income for the year from the international banking centre business

shall be added in computing the income of the taxpayer for the year.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply.

(12) Return — Every taxpayer that has, in respect of a taxation year, designated a branch or office under subsection (3) as a branch or office in which an international banking centre business of the taxpayer is to be carried on shall, within six months after the end of the year, file with the Minister a return in prescribed form containing prescribed information.

Forms: T781-A: International banking centre information return.

Pre-RSC History [s. 33.1]: S. 33.1 added by 1987, c. 46, s. 10, applicable with respect to taxation years commencing after December 17, 1987.

Definitions [s. 33.1]: "amount" — 248(1); "arm's length" — 251(1); "assessment", "borrowed money", "business" — 248(1); "carrying on business" — 253; "eligible deposit", "eligible loan" — 33.1(1); "employed" — 248(1); "foreign bank" — 33.1(1); "Minister" — 248(1); "non-capital loss" — 111(8), 248(1); "non-resident" — 33.1(1), 248(1); "office", "person", "prescribed", "principal amount" — 248(1); "person" — 33.1(2), 248(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1).

34. Professional business — In computing the income of a taxpayer for a taxation year from a business that is the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor, the following rules apply:

(a) where the taxpayer so elects in the taxpayer's return of income under this Part for the year, there shall not be included any amount in respect of work in progress at the end of the year; and

(b) where the taxpayer has made an election under this section, paragraph (a) shall apply in computing the taxpayer's income from the business for all subsequent taxation years unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are specified by the Minister, revokes the election to have that paragraph apply.

Related Provisions: 10(4)(a) — Valuation of work in progress; 10(5)(a) — Work in progress deemed to be inventory; 23(3) — Reference to property included in inventory; 34.2(2)(b) — Election deemed to have been made for purposes of 1995 stub period income; 70(2) — Rights or things included in income on death; 96(3) — Election by members of partnership.

Pre-RSC History: S. 34 substituted by 1985, c. 45, subsec. 13(1), applicable to 1985 *et seq.* S. 34 formerly read:

34. (1) Professional business — In computing the income of a taxpayer for a taxation year from a business that is the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor, the following rules apply:

(a) paragraph 12(1)(b) is not applicable;

(b) every amount that becomes receivable by him in the year in respect of property sold or services rendered in the course of the business shall be included;

(c) for the purposes of paragraph (b), an amount shall be deemed to have become receivable in respect of services rendered in the course of the business on the day that is the earliest of

(i) the day upon which the account in respect of the services was rendered,

(ii) the day upon which the account in respect of those services would have been rendered had there been no undue delay in rendering the account in respect of the services, and

(iii) the day upon which the taxpayer was paid for the services; and

(d) where the taxpayer so elects in his return of income under this Part for the year, no amount shall be included in respect of work in progress at the end of the taxation year, except as otherwise provided by this section.

(2) Application of para. (1)(d) where election made — Where a taxpayer has elected that paragraph (1)(d) be applicable in computing his income for a taxation year from a business that is the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor, that paragraph shall apply in computing his income from the business for all subsequent taxation years unless the taxpayer, with the concurrence of the Minister and upon such terms and conditions as are specified by the Minister, revokes his election to have that paragraph apply.

All that portion of subsec. 34(1) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 16(1), applicable with respect to 1983 *et seq.* That portion formerly read:

34. (1) In computing the income of a taxpayer for a taxation year from a business that is a profession, the following rules apply:

Subsec. 34(2) substituted by 1980-81-82-83, c. 140, subsec. 16(2), applicable with respect to 1983 *et seq.* Subsec. 34(2) formerly read:

(2) Where a taxpayer has elected that paragraph (1)(d) be applicable in computing his income for a taxation year from a business that is a profession, that paragraph shall apply in computing his income from the business for all subsequent taxation years unless the taxpayer, with the concurrence of the Minister and upon such terms and conditions as are specified by the Minister, revokes his election to have that paragraph apply.

Para. 34(1)(a) substituted by 1973-74, c. 14, s. 8, applicable to 1972 *et seq.*

Definitions [s. 34]: "amount", "business" — 248(1); "lawyer" — 232(1), 248(1); "Minister", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

I.T. Application Rules [s. 34]: 23(3)–(5) (where business carried on since before 1972).

Interpretation Bulletins [s. 34]: IT-188R: Sale of accounts receivable; IT-189R2: Corporations used by practising members of professions; IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner; IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

Forms [s. 34]: T2032: Statement of professional activities.

34.1 (1) Additional business income [off-calendar fiscal period] — Where

(a) an individual (other than a testamentary trust) carries on a business in a taxation year,

(b) a fiscal period of the business begins in the year and ends after the end of the year (in this subsection referred to as the "particular period"), and

(c) the individual has elected under subsection 249.1(4) in respect of the business and the election has not been revoked,

there shall be included in computing the individual's income for the year from the business, the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of the individual's income from the business for the fiscal periods of the business that end in the year,

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of all amounts deducted under section 110.6 in computing the individual's taxable income for the year,

C is the number of days on which the individual carries on the business that are both in the year and in the particular period, and

D is the number of days on which the individual carries on the business that are in fiscal periods of the business that end in the year.

Related Provisions: 11(1) — Determination of income from fiscal period of proprietor; 34.1(3) — Offsetting deduction in following year; 34.1(4) — Effect on 1995 stub period; 34.1(7) — Maximum December 31, 1995 income; 34.1(8) — No additional inclusion on death, bankruptcy or cease of business; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 257 — Formula cannot calculate to less than zero.

Selected Cases [s. 34.1(1)]: *Cho v. R.*, [2000] 2 C.T.C. 2714 (TCC) (Provision applies to businesses started before end of 1994).

(2) Additional income election — Where

(a) an individual (other than a testamentary trust) begins carrying on a business in a taxation year and not earlier than the beginning of the first fiscal period of the business that begins in the year and ends after the end of the year (in this subsection referred to as the "particular period"), and

(b) the individual has elected under subsection 249.1(4) in respect of the business and the election has not been revoked,

there shall be included in computing the individual's income for the year from the business the lesser of

(c) the amount designated in the individual's return of income for the year, and

(d) the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the individual's income from the business for the particular period,

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of all amounts deducted under section 110.6 in computing the individual's taxable income for the taxation year that includes the end of the particular period,

C is the number of days on which the individual carries on the business that are both in the year and in the particular period, and

D is the number of days on which the individual carries on the business that are in the particular period.

Related Provisions: 34.1(3) — Offsetting deduction in following year; 34.1(5) — Effect on 1995 stub period; 34.1(6) — Deemed December 31, 1995 income; 34.1(8) — No additional inclusion on death, bankruptcy or cease of business; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 257 — Formula cannot calculate to less than zero.

(3) Deduction — There shall be deducted in computing an individual's income for a taxation year from a business the amount, if any, included under subsection (1) or (2) in computing the individual's income for the preceding taxation year from the business.

(4) Deemed December 31, 1995 income — For the purpose of section 34.2, where

(a) at the end of 1994 an individual carried on a particular business no fiscal period of which ended at that time, and

(b) an amount is included under subsection (1) in computing the individual's income for the 1995 taxation year in respect of

(i) the particular business, or

(ii) another business that would, if subsection 34.2(3) applied for the purpose of this subparagraph, be included in the particular business,

subject to subsection (7), the December 31, 1995 income of the individual in respect of the particular business or the other business, as the case may be, is deemed to be the amount that would have been so included if the descriptions of A and B in subsection (1) were read as follows:

"A is the total of the individual's income from the business for the fiscal periods of the business that end in the year (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the year,".

(5) Deemed December 31, 1995 income — For the purpose of section 34.2, where

(a) at the end of 1994 an individual carried on a particular business no fiscal period of which ended at that time, and

(b) an amount is included under subsection (2) in computing the individual's income for the 1995 taxation year in respect of another business that would, if subsection 34.2(3) applied for the purpose of this paragraph, be included in the particular business,

the December 31, 1995 income of the individual in respect of the other business is deemed to be the amount that would have been so included if the descriptions of A and B in paragraph (2)(d) were read as follows:

"A is the individual's income from the business for the particular period (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the in-

dividual's taxable income for the taxation year that includes the end of the particular period,".

(6) Deemed December 31, 1995 income — For the purpose of section 34.2, where

(a) at the end of 1995 an individual carries on a business as a member of a partnership no fiscal period of which ended at the end of 1994,

(b) the business was carried on by a professional corporation as a member of the partnership at the end of 1994,

(c) the professional corporation transferred its interest in the partnership to the individual before the end of 1995,

(d) the individual is a practising member of the professional body under the authority of which the professional corporation practised the profession,

(e) the individual was a specified shareholder of the professional corporation immediately before the transfer,

(f) the professional corporation does not have a share of the income or loss of the partnership for the first fiscal period of the partnership that ends after the end of 1995, and

(g) an amount is included under subsection (2) in computing the individual's income for the 1995 taxation year in respect of the business,

the December 31, 1995 income of the individual in respect of the business is deemed to be the amount that would have been so included if the descriptions of A and B in paragraph (2)(d) were read as follows:

"A is the individual's income from the business for the particular period (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the taxation year that includes the end of the particular period,"

and, for the purpose of computing the values of C and D in paragraph (2)(d), the individual is deemed to carry on the business on the days on which the corporation carried on the business.

(7) Maximum December 31, 1995 income — Where an amount was included under subsection (1) in computing an individual's income for the 1995 taxation year from a business and

(a) the individual's December 31, 1995 income otherwise determined under subsection (4) in respect of the business for the purpose of section 34.2

exceeds

(b) the amount that would be described under paragraph (a) if the descriptions of A, B and D in subsection (1) were read as follows:

"A is the individual's income from the business for the particular period (determined as if paragraphs 34.2(2)(a) to (d) applied in computing that income),

B is the lesser of

(i) the total of all amounts each of which is an amount included in the value of A in respect of the business and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of the maximum amounts deductible under section 110.6 in computing the individual's taxable income for the taxation year that includes the end of the particular period,

D is the number of days on which the individual carries on the business that are in the particular period."

for the purpose of applying subsection 34.2(4) to the 1996 and subsequent taxation years, the December 31, 1995 income of the individual in respect of the business is deemed to be the amount determined under paragraph (b).

(8) No additional income inclusion — Subsections (1) and (2) do not apply in computing an individual's income for a taxation year from a business where

(a) the individual dies or otherwise ceases to carry on the business in the year, or

(b) the individual becomes a bankrupt in the calendar year in which the taxation year ends.

Related Provisions: 34.1(9) — Income inclusion on death where election made or separate return filed.

(9) Death of partner or proprietor — Where

(a) an individual carries on a business in a taxation year,

(b) the individual dies in the year and after the end of a fiscal period of the business that ends in the year,

(c) another fiscal period of the business ends because of the individual's death (in this subsection referred to as the "short period"), and

(d) the individual's legal representative

(i) elects that this subsection apply in computing the individual's income for the year, or

(ii) files a separate return of income under subsection 150(4) in respect of the individual's business,

notwithstanding subsection (8), there shall be included in computing the individual's income for the year from the business, the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of the individual's income from the business for fiscal periods (other than the short period) of the business that end in the year,

B is the lesser of

(i) the total of all amounts, each of which is an amount included in the value of A in respect of the business that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(ii) the total of all amounts deducted under section 110.6 in computing the individual's taxable income for the year,

C is the number of days in the short period, and

D is the total number of days in fiscal periods of the business (other than the short period) that end in the year.

Related Provisions: 257 — Formula cannot calculate to less than zero; 150(4)(c)C — Additional amount deductible on deceased's separate return.

History: Subsec. 34.1(9) added by 1998, c. 19, s. 84, applicable to 1996 *et seq.*, except that subpara. 34.1(9)(d)(ii) does not apply to the 1996 and 1997 taxation years.

History [s. 34.1]: S. 34.1 added by 1996, c. 21, s. 8, applicable after 1994.

Definitions [s. 34.1]: "amount", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "December 31, 1995 income" — 34.1(4)–(7), 34.2(1); "fiscal period" — 249.1; "individual", "legal representative" — 248(1); "particular period" — 34.1(1)(b), 34.1(2)(a); "professional corporation" — 248(1); "short period" — 34.1(9)(c); "specified shareholder" — 248(1); "taxable capital gain" — 38, 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1).

34.2 [1995 stub period reserve] — (1) Definitions — The definitions in this subsection apply in this section.

"December 31, 1995 income" in respect of a business carried on by a taxpayer means the amount determined by the formula

$$(A - B - C + D) \times E$$

where

A is the total of all amounts each of which is the taxpayer's income from the business for a qualifying fiscal period,

B is the total of all amounts each of which is the taxpayer's loss from the business for a qualifying fiscal period,

C is the lesser of

(a) the total of all amounts each of which is an amount included in computing the taxpayer's income or loss from the business for a qualifying fiscal period and that is deemed to be a taxable capital gain for the purpose of section 110.6, and

(b) the total of the maximum amounts deductible under section 110.6 in computing the taxpayer's taxable income for the taxation year in which the qualifying fiscal periods end,

D is

(a) where the taxpayer is a professional corporation, the total salary or wages deductible in computing the value of A or B in respect of the business that is payable by the corporation to an individual

(i) who is a practising member of the professional body under the authority of which the corporation practised the profession, and

(ii) who is a specified shareholder of the corporation, and

(b) in any other case, nil, and

E is

(a) where the taxpayer is a professional corporation a taxation year of which ended at the end of 1995 because of the application of paragraph 249.1(1)(b), the amount determined by the formula

$$\frac{F - G}{F}$$

where

F is the number of days in all qualifying fiscal periods of the business, and

G is the number of days in the year, and

(b) in any other case, 1.

Related Provisions: 34.1(7) — Maximum December 31, 1995 income where additional amount included under 34.1(1); 34.2(2) — Maximum reserves and allowances deemed claimed for qualifying fiscal period; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 257 — Formulas cannot calculate to less than zero.

"qualifying fiscal period" of a business of a taxpayer means

(a) where at the end of 1994 the taxpayer carried on the business and no fiscal period of the business ended at that time, a fiscal period of the business that

(i) begins after the beginning of the taxpayer's taxation year that includes the end of 1995, and

(ii) ends

(A) at the end of 1995 because of the application of paragraph 249.1(1)(b) or because of the application of section 25 and paragraph 249.1(1)(b), or

(B) immediately before the end of 1995 because of the application of subsection 99(2) and paragraph 249.1(1)(b),

(b) a fiscal period of the business that ends at the end of 1995 because of the application of paragraph 249.1(1)(b) where

(i) the taxpayer is an individual who carries on the business as a member of a partnership at the end of 1995,

(ii) the individual acquired the individual's interest in the partnership in 1995 from a professional corporation,

(iii) the professional corporation carried on the business at the end of 1994 as a member of the partnership and does not have a share of the income or loss of the partnership for the fiscal period,

(iv) the individual is a practising member of the professional body under the authority of which the professional corporation practised the profession, and

(v) the individual was a specified shareholder of the professional corporation immediately before acquiring the interest, and

(c) where

(i) the taxpayer is a professional corporation that has a taxation year that ends at the end of 1995 because of the application of paragraph 249.1(1)(b), and

(ii) at the end of 1994 the business was carried on by the professional corporation as a member of a partnership, or by an individual

(A) who transferred an interest in the partnership to the professional corporation before the end of 1995,

(B) who is a practising member of the professional body under the authority of which the professional corporation practises the profession,

(C) who was a specified shareholder of the professional corporation immediately after the transfer, and

(D) who does not have a share of the income or loss of the partnership for the first fiscal period of the partnership that ends in 1995,

a fiscal period of the business that ends in that taxation year.

"specified percentage" of a taxpayer for a particular taxation year in respect of a business means

(a) where the first taxation year in which a qualifying fiscal period of the business ends is 1995, or subsection 34.1(4), (5) or (6) applies in respect of the business, and the particular year ends in

(i) 1995, 95%,

(ii) 1996, 85%,

(iii) 1997, 75%,

(iv) 1998, 65%,

(v) 1999, 55%,

(vi) 2000, 45%,

(vii) 2001, 35%,

(viii) 2002, 25%,

(ix) 2003, 15%, and

(x) any other year, 0%, and

(b) where the first taxation year in which a qualifying fiscal period of a business of the taxpayer ends is 1996 and the particular year ends in

(i) 1996, 95%,

(ii) 1997, 85%,

(iii) 1998, 75%,

(iv) 1999, 65%,

(v) 2000, 55%,

(vi) 2001, 45%,

(vii) 2002, 35%,

(viii) 2003, 25%,

(ix) 2004, 15%, and

(x) any other year, 0%.

(2) Computation of December 31, 1995 income — For the purpose of the definition "December 31, 1995 income" in subsection (1), a taxpayer's income or loss from a business for a qualifying fiscal period shall be computed as if

(a) this Act were read without reference to paragraph 28(1)(b);

(b) the taxpayer had made the election referred to in paragraph 34(a) in respect of the business for the period;

(c) the maximum amount deductible in respect of any reserve, allowance or other amount were deducted; and

(d) the taxpayer had not received any taxable dividend.

(3) Business defined — For the purposes of the definition "qualifying fiscal period" in subsection (1) and subparagraphs (6)(b)(i) and (c)(i), a reference to a particular business of a taxpayer includes another business substituted therefor, or for which the particular business was substituted, by the taxpayer where

(a) all or substantially all of the gross revenue of the particular business is derived from the sale, leasing, rental or development of properties or the rendering of services; and

(b) all or substantially all of the gross revenue of the other business is derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services.

Related Provisions: 34.2(7) — Anti-avoidance rule re carrying on business.

(4) Reserve — Subject to subsection (6), where a taxpayer carries on a business in a particular taxation year, there may be deducted in computing the taxpayer's income for the year from the business, as a reserve in respect of December 31, 1995 income, such amount as the taxpayer claims not exceeding the least of

(a) the specified percentage for the particular year of the taxpayer's December 31, 1995 income in respect of the business;

(b) where an amount was deductible under this subsection in computing the taxpayer's income for a preceding taxation year from the business, the amount included under subsection (5) in computing the taxpayer's income for the particular year from the business; and

(c) the taxpayer's income for the particular year computed before deducting any amount under this subsection in respect of the business or under any of paragraph 60(w), sections 61.2 to 61.4 and subsection 80(17).

Related Provisions: 18(12)(b) — Reserve ignored for purposes of home office limitations; 34.1(7) — Maximum December 31, 1995 income where additional amount included under 34.1(1); 34.2(3) — Similar business carried on; 34.2(5) — Reserve included in income the following year; 34.2(6) — No reserve on death, bankruptcy or cease of business; 34.2(8) — Reserve deduction in year of death; 53(2)(c)(i.4) — Reduction in ACB of passive partner's partnership interest; 87(2)(j) — Amalgamations — continuing corporation; 96(1)(d) — Reserve ignored in determining income of partnership; 96(1.1), (1.6) — Allocation of share of income to retiring partner; 125(7)"specified partnership income"A(a)H — Reserve deducted from specified partnership income for CCPC that is member of partnership.

Forms: T1139: Reconciliation of 199X business income for tax purposes; T4002: Business and professional income (guide).

(5) Reserve included in income — There shall be included in computing a taxpayer's income for a taxation year from a business the amount deducted under subsection (4) in computing the taxpayer's income therefrom for the preceding taxation year.

Related Provisions: 87(2)(j) — Amalgamations — continuing corporation; 125(7)"specified partnership income"A(a)G — Reserve included in specified partnership income for CCPC that is member of partnership.

Forms: T1139: Reconciliation of 199X business income for tax purposes.

(6) No reserve — No deduction shall be made under subsection (4) in computing a taxpayer's income for a taxation year from a business where

(a) at the end of the year or at any time in the following taxation year,

(i) the taxpayer's income from the business is exempt from tax under this Part, or

(ii) the taxpayer is non-resident and does not carry on the business through a permanent establishment (as defined by regulation) in Canada;

(b) the taxpayer is a corporation and the year ends immediately before another taxation year

(i) at the beginning of which the business is not carried on principally by the corporation nor by members of a partnership of which the corporation is a member,

(ii) in which the corporation becomes a bankrupt, or

(iii) in which the corporation is dissolved or wound up (other than in circumstances to which subsection 88(1) applies); or

(c) the taxpayer is an individual, and

(i) at the beginning of the year, the business is not carried on principally by the individual nor by members of a partnership of which the individual is a member,

(ii) the individual dies or becomes a bankrupt in the calendar year in which the taxation year ends, or

(iii) the individual is a trust that ceases to exist in the year.

Related Provisions: 34.2(7) — Anti-avoidance rule re carrying on business; 34.2(8) — Optional deduction in year of death; 96(1.1) — Retired partner deemed to continue as member of partnership; 96(1.6) — Members of partnership deemed to be carrying on business in Canada (except where 34.2(7) applies).

Regulations: 8201 (permanent establishment).

(7) Anti-avoidance rule — Where it is reasonable to conclude that one of the main reasons a person carries on a business or is a member of a partnership is to avoid the application of subparagraph (6)(b)(i) or (c)(i), the person is deemed not to carry on the business, and not to be a member of the partnership, for the purposes of those subparagraphs.

(8) Death of partner or proprietor — Where

(a) an individual carries on a business in a taxation year,

(b) the individual dies in the year,

(c) an amount is included under subsection (5) in computing the individual's income for the year from the business, and

(d) the individual's legal representative

(i) elects that this subsection apply in computing the individual's income for the year, or

(ii) files a separate return of income under subsection 150(4) in respect of the individual's business,

there shall be deducted in computing the individual's income for the year from the business the lesser of

(e) the greatest amount that would have been deductible under subsection (4) in computing the individual's income for the year from the business if the individual had not died, and

(f) any amount that the representative claims.

Related Provisions: 150(4)(c)B — Additional amount taxable on deceased's separate return.

History: Subsec. 34.2(8) added by 1998, c. 19, s. 85, applicable to 1996 *et seq.*

History [s. 34.2]: S. 34.2 added by 1996, c. 21, s. 8, applicable after 1994.

Definitions [s. 34.2]: "amount", "bankrupt" — 248(1); "business" — 34.2(3), (7), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "December 31, 1995 income" — 34.1(4)–(7), 34.2(1); "fiscal period" — 249.1; "gross revenue" — 248(1); "income or loss from a business" — 34.2(2); "individual", "legal representative", "non-resident" — 248(1); "permanent establishment" — Reg. 8201; "person", "professional corporation" — 248(1); "qualifying fiscal period", "specific percentage" — 34.2(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

35. (1) Prospectors and grubstakers — Where a share of the capital stock of a corporation

(a) is received in a taxation year by an individual as consideration for the disposition by the individual to the corporation of a mining property or interest therein acquired by the individual as a result of the individual's efforts as a prospector, either alone or with others, or

(b) is received in a taxation year

(i) by a person who has, either under an arrangement with a prospector made before the prospecting, exploration or development work or as an employer of a prospector, advanced money for, or paid part or all of, the expenses of prospecting or exploring for minerals or of developing a property for minerals, and

(ii) as consideration for the disposition by the person referred to in subparagraph (i) to the corporation of a mining property or interest therein acquired under the arrangement under which that person made the advance or paid the expenses, or if the prospector was the person's employee, acquired by the person through the employee's efforts,

the following rules apply:

(c) notwithstanding any other provision of this Act, no amount in respect of the receipt of the share shall be included

(i) in computing the income for the year of the individual or person, as the case may be, except as provided in paragraph (d), or

(ii) in computing at any time the amount to be determined for F in the definition "cumulative Canadian development expense" in subsection 66.2(5) in respect of the individual or person, as the case may be,

(d) in the case of an individual or partnership (other than a partnership each member of which is a taxable Canadian corporation), an amount in respect of the receipt of the share equal to the lesser of its fair market value at the time of acquisition and its fair market value at the time of disposition or exchange of the share shall be included in computing the income of the individual or partnership, as the case may be, for the year in which the share is disposed of or exchanged,

(e) notwithstanding subdivision c, in computing the cost to the individual, person or partnership, as the case may be, of the share, no amount shall be included in respect of the disposition of the mining property or the interest therein, as the case may be,

(f) notwithstanding sections 66 and 66.2, in computing the cost to the corporation of the mining property or the interest therein, as the case may be, no amount shall be included in respect of the share, and

(g) for the purpose of paragraph (d), an individual or partnership shall be deemed to have disposed of or exchanged shares that are identical properties in the order in which they were acquired.

Related Provisions: 35(2) — "prospector"; 81(1)(l) — Income exemption; 110(1)(d.2) — Deduction in computing taxable income; 110.6(19)(a)(i)(A)B — Election to trigger capital gains exemption — no income inclusion; 248(12) — Identical properties.

Pre-RSC History: Paras. 35(1)(c) to (e) amended and para. (g) added by 1986, c. 6, s. 14, applicable with respect to shares received after May 22, 1985. Paras. 35(1)(c) to (e) amended to add in subpara. (c)(i) the words

"except as provided in paragraph (d)"; to add a new para. (d); to renumber the former para. (d) as (e); to substitute in that para. "individual, person or partnership" for "individual or the person" and "disposition of the mining property or the interest therein" for "mining property or interest therein"; to renumber former para. (e) as para. (f); and to substitute in that para. "sections 66 and 66.2" for "section 66 or 66.2".

Para. 35(1)(c) substituted by 1976-77, c. 4, s. 7, deemed to have been applicable at all times after May 6, 1974. Para. 35(1)(c) formerly read:

> (c) notwithstanding any other provision of this Act, no amount in respect of the receipt of the share shall be included in computing the income for the year of the individual or person, as the case may be;

Para. 35(1)(e) substituted by 1974-75-76, c. 26, s. 13, applicable after May 6, 1974, to add "or 66.2".

Selected Cases [subsec. 35(1)]: *Geophysical Engineering Ltd. v. MNR*, [1976] C.T.C. 687 (SCC) (Shares obtained in consideration for syndicate member's interest in claims staked by another member's employee as prospector not obtained for property acquired under arrangement with prospector, nor as employer of prospector); *Winchell v. MNR*, [1974] C.T.C. 782 (FCA) (Arrangement with prospector's employer, not with prospector); *Appleby v. MNR*, [1974] C.T.C. 693 (SCC) (No exemption for disposition of shares during sales campaign by stock brokerage company controlled by taxpayer).

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits.

(2) Definitions — In this section,

"mining property" means a right to prospect, explore or mine for minerals or a property the principal value of which depends on its mineral content;

Pre-RSC History: *The definition "mining property" was para. 35(2)(a).*

"prospector" means an individual who prospects or explores for minerals or develops a property for minerals on behalf of the individual, on behalf of the individual and others or as an employee.

Pre-RSC History: *The definition "prospector" was para. 35(2)(b).*

Selected Cases [subsec. 35(2)"prospector"]: *Foster v. MNR*, [1971] C.T.C. 335 (Exch.) ("Prospector" includes independent contractor).

Definitions [s. 35]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employee", "employer" — 248(1); "identical" — 248(12); "individual", "mineral" — 248(1); "mining property" — 35(2); "person", "property" — 248(1); "prospector" — 35(2); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 11(2), 249.

36. Railway companies — Where any amount in respect of an expenditure incurred by a taxpayer on or in respect of the repair, replacement, alteration or renovation of depreciable property of the taxpayer of a prescribed class is, under a uniform classification and system of accounts and returns prescribed by the National Transportation Agency pursuant to the *Railway Act*, required to be entered in the books of the taxpayer otherwise than as an expense,

> (a) no deduction may be made in respect of that expenditure in computing the income of the taxpayer for a taxation year; and
>
> (b) for the purposes of section 13 and regulations made under paragraph 20(1)(a), the taxpayer shall be deemed to have acquired, at the time the expenditure was incurred, depreciable property of a class prescribed by regulation at a capital cost equal to that amount.

Related Provisions: Canada-U.S. tax treaty, Art. VIII:4–Art. VIII:6 — Income from railway business.

Pre-RSC History: S. 36 amended by 1987, c. 34, s. 368, to substitute "National Transportation Agency" for "Canadian Transport Commission", in force January 1, 1988.

S. 36 substituted by 1976-77, c. 4, s. 8, applicable with respect to expenditures made after May 25, 1976. S. 36 formerly read:

> 36. Where any amount in respect of an expenditure incurred by a taxpayer on or in respect of the repair, replacement, alteration or renovation of depreciable property of the taxpayer of a class prescribed by regulations of the Governor in Council made for the purposes of this section is, under a uniform classification and system of accounts and returns prescribed by the Canadian Transport Commission pursuant to the *Railway Act*, required to be entered in the books of the taxpayer otherwise than as an expense,
>
> (a) no deduction may be made in respect of that expenditure in computing the income of the taxpayer for a taxation year; and
>
> (b) for the purposes of section 13 and regulations made under paragraph 20(1)(a), the taxpayer shall be deemed to have acquired, at the time the expenditure was incurred, depreciable property of that class at a capital cost equal to that amount.

Selected Cases [s. 36]: *Canadian Pacific Ltd. v. The Queen*, [1988] 1 C.T.C. 429 (FCA) (Government assistance in respect of capital outlays deducted from capital cost allowance); *The Queen v. Canadian Pacific Ltd.*, [1977] C.T.C. 606 (FCA) (No capital cost allowance where assets acquired for third parties).

Definitions [s. 36]: "amount" — 248(1); "depreciable property" — 13(21), 248(1); "prescribed", "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Regulations: Sch. II:Cl. 1, Sch. II:Cl. 4, Sch. II:Cl. 6, Sch. II:Cl. 35.

37. (1) Scientific research and experimental development — Where a taxpayer carried on a business in Canada in a taxation year, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer claims not exceeding the amount, if any, by which the total of

> (a) the total of all amounts each of which is an expenditure of a current nature made by the taxpayer in the year or in a preceding taxation year ending after 1973
>
> (i) on scientific research and experimental development carried on in Canada, directly undertaken by or on behalf of the taxpayer, and related to a business of the taxpayer,
>
> (i.1) by payments to a corporation resident in Canada to be used for scientific research and experimental development carried on in Canada that is related to a business of the taxpayer, but only where the taxpayer is entitled to exploit the results of that scientific research and experimental development,
>
> (ii) by payments to
>
> (A) an approved association that undertakes scientific research and experimental development,
>
> (B) an approved university, college, research institute or other similar institution,
>
> (C) a corporation resident in Canada and exempt from tax under paragraph 149(1)(j), or
>
> (D) [Repealed]
>
> (E) an approved organization that makes payments to an association, institution or corporation described in any of clauses (A) to (C)
>
> to be used for scientific research and experimental development carried on in Canada that is related to a business of the taxpayer, but only where the taxpayer is entitled to exploit the results of that scientific research and experimental development, or
>
> (iii) where the taxpayer is a corporation, by payments to a corporation resident in Canada and exempt from tax because of paragraph 149(1)(j), for scientific research and experimental development

that is basic research or applied research carried on in Canada

(A) the primary purpose of which is the use of results therefrom by the taxpayer in conjunction with other scientific research and experimental development activities undertaken or to be undertaken by or on behalf of the taxpayer that relate to a business of the taxpayer, and

(B) that has the technological potential for application to other businesses of a type unrelated to that carried on by the taxpayer,

Selected Cases [para. 37(1)(a)]: *LGL Ltd. v. R.*, [2000] 2 C.T.C. 27 (FCA); aff'g [1999] 2 C.T.C. 2482 (TCC) (Each item of expense must have been incurred in Canada to be deductible; overall project not a consideration); *Dew Engineering & Development Ltd. v. Canada*, [1996] 3 C.T.C. 2904 (TCC) (Portable laboratory was not a "building"); *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities).

(b) the lesser of

(i) the total of all amounts each of which is an expenditure of a capital nature made by the taxpayer (in respect of property acquired that would be depreciable property of the taxpayer if this section were not applicable in respect of the property, other than land or a leasehold interest in land) in the year or in a preceding taxation year ending after 1958 on scientific research and experimental development carried on in Canada, directly undertaken by or on behalf of the taxpayer, and related to a business of the taxpayer, and

(ii) the undepreciated capital cost to the taxpayer of the property so acquired as of the end of the taxation year (before making any deduction under this paragraph in computing the income of the taxpayer for the taxation year),

(c) the total of all amounts each of which is an expenditure made by the taxpayer in the year or in a preceding taxation year ending after 1973 by way of repayment of amounts described in paragraph (d),

(c.1) all amounts included by virtue of paragraph 12(1)(v), in computing the taxpayer's income for any previous taxation year,

(c.2) all amounts added because of subsection 127(27), (29) or (34) to the taxpayer's tax otherwise payable under this Part for any preceding taxation year, and

(c.3) in the case of a partnership, all amounts each of which is an excess referred to in subsection 127(30) in respect of the partnership for any preceding fiscal period,

exceeds the total of

(d) the total of all amounts each of which is the amount of any government assistance or non-government assistance (within the meanings assigned to those expressions by subsection 127(9)) in respect of an expenditure described in paragraph (a) or (b) that, at the taxpayer's filing-due date for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive,

(e) that part of the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax payable under this Part by the taxpayer for a preceding taxation year where the amount can reasonably be attributed to

(i) a prescribed proxy amount for a preceding taxation year,

(ii) an expenditure of a current nature incurred in a preceding taxation year that was a qualified expenditure incurred in that preceding year in respect of scientific research and experimental development for the purposes of section 127, or

(iii) an amount included because of paragraph 127(13)(e) in the taxpayer's SR&ED qualified expenditure pool at the end of a preceding taxation year within the meaning assigned by subsection 127(9),

(f) the total of all amounts each of which is an amount deducted under this subsection in computing the taxpayer's income for a preceding taxation year, except amounts described in subsection (6),

(f.1) the total of all amounts each of which is the lesser of

(i) the amount deducted under section 61.3 in computing the taxpayer's income for a preceding taxation year, and

(ii) the amount, if any, by which the amount that was deductible under this subsection in computing the taxpayer's income for that preceding year exceeds the amount claimed under this subsection in computing the taxpayer's income for that preceding year,

(g) the total of all amounts each of which is an amount equal to twice the amount claimed under subparagraph 194(2)(a)(ii) by the taxpayer for the year or any preceding taxation year, and

(h) where the taxpayer is a corporation control of which has been acquired by a person or group of persons before the end of the year, the amount determined for the year under subsection (6.1) with respect to the corporation.

Proposed Amendment — Provincial SR&ED super-deductions

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 12(1)(x) — ed.]

Proposed Amendment — Administration of R&D credits

Federal budget, supplementary information, February 28, 2000: [See under 127(9)"SR&ED qualified expenditure pool" — ed.]

Related Provisions: 12(1)(t) — Investment tax credit included in income; 12(1)(v) — Income inclusion where calculation under 37(1) would be negative; 18(9)(d), (e) — Certain prepaid expenses deemed incurred in later taxation year; 37(1.1) — Business of related corporations; 37(1.2) — Deemed time of capital expenditure; 37(4) — No deduction for acquisition of rights: 37(6) — Expenditures of a capital nature; 37(6.1) — Change of control of corporation; 37(7), (8) — Interpretation; 37(11) — Prescribed form required; 53(2)(k) — Deduction from adjusted cost base — government assistance; 87(2)(l) — Amalgamations — SR&ED; 96(1)(e.1) — Partnerships — carryforward of expenses not allowed; 125.4(2)(c) — No film production credit where R&D deduction allowed; 127(9) — "contract payment", "qualified expenditure"; 127(10.1), (10.8) — Additions to investment tax credits; 127(11.2) — Investment tax credit; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(1)(j) — Non-profit corporation for SR&ED — exemption; 248(1)"scientific research and experimental development" — Definition applicable for purposes of entire Act; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit; 256(6)–(9) — Whether control acquired; Reg. 1102(1)(d) — No CCA for

capital property deducted under 37(1)(b). See additional Related Provisions and Definitions at end of s. 37.

History: Paras. 37(1)(c.2) and (c.3) added by 1999, c. 22, s. 11, applicable to 1998 *et seq.*

The opening words of subsec. 37(1) amended by 1996, c. 21, subsec. 9(1), applicable to taxation years that begin after 1995. The opening words formerly read:

(1) Scientific research and experimental development — Where a taxpayer carried on a business in Canada in a taxation year and files with the Minister by the day on or before which the taxpayer's return of income under this Part for the taxpayer's following taxation year is required to be filed, or would be required to be filed if tax under this Part were payable by the taxpayer for that following year, a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer claims not exceeding the amount, if any, by which the total of

Subpara. 37(1)(a)(i.1) added by 1996, c. 21, subsec. 9(2), applicable to payments made after 1995.

Cl. 37(1)(a)(ii)(D) repealed by 1996, c. 21, subsec. 9(4), applicable to payments made after 1995. The clause formerly read:

(D) a corporation resident in Canada, or

The closing words of subpara. 37(1)(a)(ii) amended by 1996, c. 21, subsec. 9(5), applicable to payments made after 1995. The closing words formerly read:

to be used for scientific research and experimental development carried on in Canada, related to a business of the taxpayer, and provided that the taxpayer is entitled to exploit the results of such scientific research and experimental development, or

Subpara. 37(1)(a)(iii) amended to delete the word "and" at the end of the subpara. by 1996, c. 21, subsec. 9(6), applicable on June 20, 1996.

Paras. 37(1)(d) and (e) amended by 1996, c. 21, subsec. 9(7), applicable to taxation years that begin after 1995. The paras. formerly read:

(d) the total of all amounts each of which is the amount of any government assistance or non-government assistance (within the meanings assigned to those expressions by subsection 127(9)) in respect of an expenditure described in paragraph (a) or (b) that, at the time of filing of the return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive,

(e) that part of the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for a preceding taxation year that can reasonably be attributed to a prescribed proxy amount of a preceding taxation year or expenditures of a current nature made in a preceding taxation year that were qualified expenditures in respect of scientific research and experimental development for the purposes of section 127,

Para. 37(1)(f.1) added by 1995, c. 21, s. 9, applicable to taxation years that end after February 21, 1994.

The opening words of subsec. 37(1) amended by 1995, c. 3, subsec. 9(1), applicable after February 21, 1994 to expenditures incurred at any time except that, for an expenditure incurred by a taxpayer in a taxation year that ended before February 22, 1994, the taxpayer may file the prescribed form referred to in subsec. 37(1) by the later of the day referred to in that subsec. and June 24, 1995. The opening words formerly read:

(1) Scientific research and experimental development — Where a taxpayer carried on a business in Canada in a taxation year and files with the taxpayer's return of income under this Part for the year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer may claim not exceeding the amount, if any, by which the total of

Para. 37(1)(e) amended by 1994, c. 8, subsec. 4(1), applicable to taxation years ending after December 2, 1992. Para. (e) formerly read:

(e) that part of the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for a preceding taxation year that may reasonably be attributed to expenditures of a current nature made in a preceding taxation year that were qualified expenditures in respect of scientific research and experimental development for the purposes of section 127,

Subpara. 37(1)(a)(iii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 21(1), applicable with respect to payments made after December 15, 1987.

Pre-RSC History: All that portion of subsec. 37(1) preceding para. (c) substituted by 1988, c. 55, subsec. 18(1), applicable with respect to expenditures made after December 15, 1987, other than expenditures made after that date and before 1989

(a) pursuant to

(i) an obligation entered into in writing before December 16, 1987,

(ii) the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province, or

(iii) the terms of an offering memorandum distributed as part of an offering of securities where

(A) the offering memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(B) the offering memorandum was distributed before December 16, 1987,

(C) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before December 16, 1987, and

(D) the sale of the securities was substantially in accordance with the offering memorandum,

and provided that, where the expenditure is made after December 15, 1987 by way of a payment made to an entity described in subpara. 37(1)(a)(ii), the scientific research and experimental development to be performed pursuant to that payment is so performed before 1989; and

(b) to an entity described in clause 37(1)(a)(ii)(A), (B) or (C), as part of a public fund raising campaign that commenced on or before December 15, 1987, or after that date pursuant to a settled plan evidenced in writing on or before that date, that may reasonably be considered to be for the purpose of funding the acquisition by the entity of a building which was under construction by or on behalf of the entity on December 16, 1987, or of property necessary for the equipment of such a building for the purpose for which that building was intended.

That portion of subsec. 37(1) formerly read:

37. (1) Scientific research and experimental development — Where a taxpayer files with his return of income under this Part for a taxation year a prescribed form containing prescribed information, carried on a business in Canada and made expenditures in respect of scientific research and experimental development in the year, there may be deducted in computing his income for the year the amount, if any, by which the aggregate of

(a) such amounts as may be claimed by the taxpayer not exceeding all expenditures of a current nature made in Canada by the taxpayer in the year or in any previous taxation year ending after 1973

(i) on scientific research and experimental development related to the business and directly undertaken by or on behalf of the taxpayer,

(ii) by payments to an approved association that undertakes scientific research and experimental development related to the class of business of the taxpayer,

(iii) by payments to an approved university, college, research institute or other similar institution to be used for scientific research and experimental development related to the class of business of the taxpayer,

(iv) by payments to a corporation resident in Canada and exempt from tax under paragraph 149(1)(j),

(v) by payments to a corporation resident in Canada for scientific research and experimental development related to the business of the taxpayer, or

(vi) by payments to an approved organization that makes payments to an association, institution or corporation described in any of subparagraphs (ii) to (iv) to be used for scientific research and experimental development related to the class of business of the taxpayer, where the taxpayer is entitled to exploit the results of such scientific research and experimental development;

(b) such amount as may be claimed by the taxpayer not exceeding the lesser of

(i) the expenditures of a capital nature made in Canada (by acquiring property other than land) in the year and any previous year ending after 1958 on scientific research and experimental development relating to the business and directly undertaken by or on behalf of the taxpayer, and

(ii) the undepreciated capital cost to the taxpayer of the property so acquired as of the end of the taxation year (before making any deduction under this paragraph in computing the income of the taxpayer for the taxation year),

Paras. 37(1)(c), (d) substituted by 1988, c. 55, subsecs. 18(2), (3), applicable with respect to expenditures made after April 1988. Paras. 37(1)(c), (d) formerly read:

(c) such amounts as may be claimed by the taxpayer not exceeding all expenditures in the year or in any previous taxation year ending after 1973 by way of repayment of amounts paid to the taxpayer under an *Appropriation Act* and on terms and conditions approved by the Treasury Board in respect of scientific research and experimental development expenditures incurred for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry, and

. . . . .

(d) all amounts paid to him in the year or in any previous taxation year ending after 1973 under an *Appropriation Act* and on terms and conditions described in paragraph (c),

Para. 37(1)(e) substituted by 1988, c. 55, subsec. 18(4), applicable to 1988 *et seq.*, and for taxation years ending after 1984 and before 1988, the reference to "paragraph 127(10.1)(c)" in para. 37(1)(e) as it was before the substitution, shall be read as "the definition "qualified expenditure" in subsection 127(9)". Para. 37(1)(e) formerly read:

(e) that portion of the aggregate of all amounts deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for the year or any previous taxation year that may reasonably be attributed to expenditures of a current nature made in Canada in the year or in any previous taxation year that were qualified expenditures in respect of scientific research and experimental development within the meaning of paragraph 127(10.1)(c),

Para. 37(1)(f) substituted by 1988, c. 55, subsec. 18(4), applicable with respect to deductions claimed in computing income for taxation years ending after December 15, 1987. Para. 37(1)(f) formerly read:

(f) all amounts deducted by virtue of this subsection and paragraph 20(1)(t) in computing the taxpayer's income for any preceding taxation year, except amounts described in subsection (6),

Para. 37(1)(h) amended by 1988, c. 55, subsec. 18(5), to substitute "with respect to the corporation" for "with respect to the corporation in respect of the business", applicable after December 15, 1987.

Para. 37(1)(h) added by 1987, c. 46, subsec. 11(1), applicable to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" below.

Subpara. 37(1)(a)(vi) added by 1986, c. 55, s. 6, applicable with respect to payments made after February 25, 1986.

All that portion of subsec. 37(1) preceding para. (a) substituted by 1986, c. 6, subsec. 15(1), applicable with respect to taxation years ending after May 23, 1985 except that the prescribed form referred to in subsec. 37(1) may be filed at any time on or before the day that is 90 days after February 13, 1986. That portion formerly read:

37. (1) Scientific research — There may be deducted in computing the income for a taxation year of a taxpayer who carried on a business in Canada and made expenditures in respect of scientific research in the year the amount by which the aggregate of

Para. 37(1)(g) added by 1984, c. 1, s. 10, applicable to 1983 *et seq.*

Para. 37(1)(f) substituted by 1980-81-82-83, c. 140, s. 17(1), applicable to taxation years ending after January 12, 1981.

Paras. 37(1)(c.1) and (f) added, and all that portion following para. 37(1)(e) repealed by 1980-81-82-83, c. 48, s. 15, applicable to taxation years ending after January 12, 1981. That portion following para. (e) formerly read:

to the extent that such expenditures were not deducted in computing his income for any previous taxation year.

Para. 37(1)(e) amended by 1977-78, c. 4, s. 3, to substitute "deducted" for "deductible".

All that portion of subsec. 37(1) following para. (c) substituted by 1977-78, c. 1, s. 15, applicable to 1977 *et seq.* That portion formerly read:

exceeds

(d) the aggregate of all amounts paid to him in the year or in any previous taxation year ending after 1973 under an *Appropriation Act* and on terms and conditions described in paragraph (c),

to the extent that such expenditures were not deducted in computing his income for any previous taxation year.

All that portion of para. 37(1)(a) preceding subpara. (i) and all that portion of subsec. 37(1) following para. (b) substituted by 1974-75-76, c. 26, subsecs. 14(1), (2), applicable to 1974 *et seq.* Those portions formerly read:

(a) all expenditures of a current nature made in Canada in the year,

. . . . .

(c) all expenditures in the year by way of repayment of amounts paid to the taxpayer under an *Appropriation Act* and on terms and conditions approved by the Treasury Board for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry,

exceeds the aggregate of amounts paid to him in the year under an *Appropriation Act* and on terms and conditions described in paragraph (c).

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the *Income Tax Act* affecting acquisitions or dispositions of property or acquisition of control of corporations.

Selected Cases [subsec. 37(1)]: *Tigney Technology Inc. v. R.*, [2000] 2 C.T.C. 134 (FCA) (Individual expenditures deductible only if incurred in Canada); *Sunshine Uniform Supply (1983) Ltd. v. R.*, [2000] 2 C.T.C. 107 (FCTD) ("Expenditures on" narrower than "expenditures for"); *Hun-Medipharma Research Inc. v. R.*, [1999] 1 C.T.C. 2800 (TCC) (Not necessary for SR&ED that there be both analysis and experimentation); *RIS-Christie Ltd. v. R.*, [1999] 1 C.T.C. 132 (FCA); rev'g [1996] 3 C.T.C. 2827 (TCC) (Failure to adduce documentary evidence of research not necessarily fatal); *Data Kinetics Ltd. v. R.*, [1998] 4 C.T.C. 2618 (TCC) (Research not to be broken into constituent elements, but looked at as a whole for purposes of determining where it was carried on); *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846 (TCC) (Expenditure not netted against receipts from sale of product produced through scientific research); *Canalerta Technologies Inc. v. MNR*, [1993] 1 C.T.C. 2141 (TCC) (Scientific research is activity for gaining knowledge based on testing hypotheses against empirical data through controlled experimentation and accurate measurements); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR*) (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits").

Regulations: 2900(4) (prescribed proxy amount for 37(1)(e)).

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money; IT-151R4: Scientific research and experimental development expenditures.

Information Circulars: 86-4R3: Scientific research and experimental development; 86-4R3 Supplement 1: Automotive industry application paper; 86-4R3 Supplement 2: Aerospace industry application paper; 94-1: Plastics industry application paper; 94-2: Machinery and equipment industry application paper; 97-1: Administrative guidelines for software development.

Application Policies: SR&ED 94-02: Expenditures of sole-purpose SR&ED performers — para. 37(8)(a) of the Act and 2902(a) of the Regulations; SR&ED 95-05: SR&ED capital expenditures — retroactive deductions under subsec. 37(1); SR&ED 96-04: Payments to third parties for

SR&ED; SR&ED 96-05: Penalties under subsection 163(2); SR&ED 96-07: Prototypes, custom products, commercial assets, pilot plants and experimental production; SR&ED 96-10: Third party payments — approval process.

Forms: T2 SCH 301: Newfoundland scientific research and experimental development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 360: New Brunswick research and development tax credit; T2 SCH 380: Manitoba research and development tax credit; T2 SCH 403: Saskatchewan research and development tax credit; T661: Claim for scientific research and experimental development expenditures carried on in Canada; T1129: Newfoundland research and development tax credit (individuals); T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(1.1) Business of related corporations — Notwithstanding paragraph (8)(c), for the purposes of subsection (1), where a taxpayer is a corporation, scientific research and experimental development, related to a business carried on by another corporation to which the taxpayer is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) and in which that other corporation is actively engaged, at the time at which an expenditure or payment in respect of the scientific research and experimental development is made by the taxpayer, shall be considered to be related to a business of the taxpayer at that time.

Related Provisions: See Related Provisions and Definitions at end of s. 37.

Pre-RSC History: Subsec. 37(1.1) added by 1988, c. 55, subsec. 18(6), applicable after December 15, 1987.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(1.2) Deemed time of capital expenditure — For the purposes of paragraph (1)(b), an expenditure made by a taxpayer in respect of property shall be deemed not to have been made before the property is considered to have become available for use by the taxpayer.

Related Provisions: 13(26) — No CCA until property available for use; 127(11.2) — No investment tax credit until property available for use; 248(19) — When property available for use.

History: Subsec. 37(1.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 21(2), applicable in respect of expenditures made by a taxpayer after 1989 other than expenditures in respect of property acquired

(a) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by reason of a right referred to in para. 251(5)(b)) at the time the property was acquired, or

(b) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsec. 55(2) would not be applicable to the dividend by reason of the application of para. 55(3)(b),

where the property was depreciable property of the person from whom it was acquired (or would, but for s. 37, be depreciable property of the person from whom it was acquired) and was owned by that person before 1990.

(2) Research outside Canada — In computing the income of a taxpayer for a taxation year from a business of the taxpayer, there may be deducted expenditures of a current nature made by the taxpayer in the year

(a) on scientific research and experimental development carried on outside Canada, directly undertaken by or on behalf of the taxpayer, and related to the business; or

(b) by payments to an approved association, university, college, research institute or other similar institution to be used for scientific research and experimental development carried on outside Canada related to the business provided that the taxpayer is entitled to exploit the results of that scientific research and experimental development.

Related Provisions: See Related Provisions and Definitions at end of s. 37.

Pre-RSC History: Subsec. 37(2) substituted by 1988, c. 55, subsec. 18(7), applicable with respect to expenditures made after December 15, 1987 other than expenditures made after that date and before 1989 pursuant to

(a) an obligation entered into in writing before December 16, 1987;

(b) the terms of a prospectus, preliminary prospectus, offering memorandum or registration statement filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province; or

(c) the terms of an offering memorandum distributed as part of an offering of securities where

(i) the offering memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(ii) the offering memorandum was distributed before December 16, 1987,

(iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before December 16, 1987, and

(iv) the sale of the securities was substantially in accordance with the offering memorandum.

Subsec. 37(2) formerly read:

(2) Research outside Canada — There may be deducted in computing the income for a taxation year of a taxpayer who carried on business in Canada and made expenditures in the year in respect of scientific research and experimental development carried on outside Canada, all such expenditures of a current nature made in the year

(a) on scientific research and experimental development related to the business and directly undertaken by or on behalf of the taxpayer; or

(b) by payments to an approved association, university, college, research institute or other similar institution to be used for scientific research and experimental development related to the class of business of the taxpayer.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(3) Minister may obtain advice — The Minister may obtain the advice of the Department of Industry, the National Research Council of Canada, the Defence Research Board or any other agency or department of the Government of Canada carrying on activities in the field of scientific research as to whether any particular activity constitutes scientific research and experimental development.

Related Provisions: 241(4)(a) — Disclosure of taxpayer information in order to obtain advice. See also Related Provisions and Definitions at end of s. 37.

History: Subsec. 37(3) amended by 1995, c. 1, para. 63(1)(c), to substitute "Department of Industry" for "Department of Industry, Science and Technology", in force March 29, 1995.

Pre-RSC History: Subsec. 37(3) amended by 1990, c. 1, s. 28, to substitute "Department of Industry, Science and Technology" for "Department of Regional Industrial Expansion", applicable from February 23, 1990.

Subsec. 37(3) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Department of Regional Industrial Expansion" for "Department of Industry, Trade and Commerce".

Selected Cases [subsec. 37(3)]: *Stromotich v. The Queen*, [1988] 1 C.T.C. 252 (FCTD); appealed to FCA (March 7, 1988), File A-391-88 (Minister not under duty to obtain advice).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(4) Where no deduction allowed under section — No deduction may be made under this section in respect of an expenditure made to acquire rights in, or arising out of, scientific research and experimental development.

Related Provisions: See Related Provisions and Definitions at end of s. 37.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(5) Where no deduction allowed under sections 110.1 and 118.1 — Where, in respect of an expenditure on scientific research and experimental development made by a taxpayer in a taxation year, an amount is otherwise deductible under this section and under section 110.1 or 118.1, no deduction may be made in respect of the expenditure under section 110.1 or 118.1 in computing the taxable income of, or the tax payable by, the taxpayer for any taxation year.

Related Provisions: See Related Provisions and Definitions at end of s. 37.

Pre-RSC History: Subsec. 37(5) substituted by 1988, c. 55, subsec. 18(8), applicable to 1988 *et seq.* Subsec. 37(5) formerly read:

> (5) Idem — Where in respect of an expenditure on scientific research and experimental development made by a taxpayer in a taxation year an amount is deductible under this section and under section 110, no deduction may be made in respect of the expenditure under section 110 in computing the taxable income of the taxpayer for any taxation year.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(6) Expenditures of a capital nature — An amount claimed under subsection (1) that may reasonably be considered to be in respect of a property described in paragraph (1)(b) shall, for the purpose of section 13, be deemed to be an amount allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a), and for that purpose the property shall be deemed to be of a separate prescribed class.

Related Provisions: 87(2)(d)(ii)(D) — Amalgamations — depreciable property. See additional Related Provisions and Definitions at end of s. 37.

Pre-RSC History: Subsec. 37(6) substituted by 1988, c. 55, subsec. 18(9), applicable after December 15, 1987. Subsec. 37(6) formerly read:

> (6) Expenditures of a capital nature — An amount claimed under paragraph (1)(b) in computing a deduction under that subsection shall, for the purpose of section 13, be deemed to be an amount allowed to the taxpayer in respect of the property acquired by the expenditures under regulations made under paragraph 20(1)(a), and for that purpose the property acquired by the expenditures shall be deemed to be of a separate prescribed class.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(6.1) Amount referred to in para. (1)(h) — Where a taxpayer is a corporation control of which was last acquired by a person or group of persons at any time (in this subsection referred to as "that time") before the end of a taxation year of the corporation, the amount determined for the purposes of paragraph (1)(h) for the year with respect to the corporation in respect of a business is the amount, if any, by which

(a) the amount, if any, by which

(i) the total of all amounts each of which is

(A) an expenditure described in paragraph (1)(a) or (c) that was made by the corporation before that time,

(B) the lesser of the amounts determined in respect of the corporation under subparagraphs (1)(b)(i) and (ii) immediately before that time, or

(C) an amount determined in respect of the corporation under paragraph (1)(c.1) for its taxation year ending immediately before that time

exceeds the total of all amounts each of which is

(ii) the total of all amounts determined in respect of the corporation under paragraphs (1)(d) to (g) for its taxation year ending immediately before that time, or

(iii) the amount deducted by virtue of subsection (1) in computing the corporation's income for its taxation year ending immediately before that time

exceeds

(b) the total of

(i) where the business to which the amounts described in clause (a)(i)(A), (B) or (C) may reasonably be considered to have been related was carried on by the corporation for profit or with a reasonable expectation of profit throughout the year, the total of

(A) the corporation's income for the year from the business before making any deduction under subsection (1), and

(B) where properties were sold, leased, rented or developed, or services were rendered, in the course of carrying on the business before that time, the corporation's income for the year, before making any deduction under subsection (1), from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services, and

(ii) the total of all amounts each of which is an amount determined in respect of a preceding taxation year of the corporation that ended after that time equal to the lesser of

(A) the amount determined under subparagraph (i) with respect to the corporation in respect of the business for that preceding year, and

(B) the amount in respect of the business deducted by virtue of subsection (1) in computing the corporation's income for that preceding year.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See also Related Provisions and Definitions at end of s. 37.

Pre-RSC History: All that portion of subsec. 37(6.1) preceding subpara. (a)(ii) amended by 1988, c. 55, subsec. 18(10) to substitute "with respect to the corporation" for "with respect to the corporation in respect of a business" in that portion preceding para. (a), and "all amounts" for "all amounts determined in respect of the business" in subpara. (a)(i) and that portion of (a)(i) following cl. (C), applicable after December 15, 1987.

That portion of subpara. 37(6.1)(b)(i) preceding cl. (A) amended by 1988, c. 55, subsec. 18(11), to add "to which the amounts described in clause (a)(i)(A), (B) or (C) may reasonably be considered to have been related", applicable after December 15, 1987.

Subsec. 37(6.1) added by 1987, c. 46, subsec. 11(2), applicable to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

(7) Definitions — In this section,

"approved" means approved by the Minister after the Minister has, if the Minister considers it necessary, obtained the advice of the Department of Industry or the National Research Council of Canada;

History: The definition of "approved" in subsec. 37(7) amended by 1995, c. 1, para. 63(1)(c), to substitute "Department of Industry" for "Department of Industry, Science and Technology", in force March 29, 1995.

Pre-RSC History: *The definition "approved" was para. 37(7)(a).*

Para. 37(7)(a) amended by 1990, c. 1, s. 28, to substitute "Department of Industry, Science and Technology" for "Department of Regional Industrial Expansion", in force February 23, 1990.

Para. 37(7)(a) amended by 1980-81-82-83, c. 167, Sch. I, to substitute "Department of Regional Industrial Expansion" for "Department of Industry, Trade and Commerce".

Application Policies: SR&ED 96-10: Third party payments — approval process.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

"scientific research and experimental development" — [Repealed]

History: The definition "scientific research and experimental development" in subsec. 37(7) repealed by 1996, c. 21, subsec. 9(8), applicable to work performed after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b), the repeal does not apply to work performed pursuant to an agreement in writing entered into before February 28, 1995. The definition formerly read:

> "scientific research and experimental development" has the meaning given to that expression by regulation.

Pre-RSC History: *The definition "scientific research and experimental development" was 37(7)(b). [Paras. 37(7)(c)–(f) are now paras. 37(8)(a)–(d).]*

Selected Cases [subsec. 37(7)"scientific research and experimental development"]: *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities); *Cultures Laflamme (1984) Inc. v. MNR*, [1993] 1 C.T.C. 2634 (TCC) (Revenues from sales of experimental mushrooms do not reduce current expenses incurred for scientific research and experimental development in connection therewith).

Regulations: 2900 (meaning of "scientific research and experimental development").

Information Circulars: See under 248(1)"scientific research and experimental development".

(8) Interpretation — In this section,

(a) references to expenditures on or in respect of scientific research and experimental development

(i) where the references occur in subsection (2), include only

(A) expenditures each of which was an expenditure incurred for and all or substantially all of which was attributable to the prosecution of scientific research and experimental development, and

(B) expenditures of a current nature that were directly attributable, as determined by regulation, to the prosecution of scientific research and experimental development, and

(ii) where the references occur other than in subsection (2), include only

(A) expenditures incurred by a taxpayer in a taxation year (other than a taxation year for which the taxpayer has elected under clause (B)), each of which is

(I) an expenditure of a current nature all or substantially all of which was attributable to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada,

(II) an expenditure of a current nature directly attributable, as determined by regulation, to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada, or

(III) an expenditure of a capital nature that at the time it was incurred was for the provision of premises, facilities or equipment, where at that time it was intended

1. that it would be used during all or substantially all of its operating time in its expected useful life for, or

2. that all or substantially all of its value would be consumed in,

the prosecution of scientific research and experimental development in Canada, and

(B) where a taxpayer has elected in prescribed form and in accordance with subsection (10) for a taxation year, expenditures incurred by the taxpayer in the year each of which is

(I) an expenditure of a current nature for, and all or substantially all of which was attributable to, the lease of premises, facilities or equipment for the prosecution of scientific research and experimental development in Canada, other than an expenditure in respect of general purpose office equipment or furniture,

(II) an expenditure in respect of the prosecution of scientific research and experimental development in Canada directly undertaken on behalf of the taxpayer,

(III) an expenditure described in subclause (A)(III), other than an expenditure in respect of general purpose office equipment or furniture,

(IV) that portion of an expenditure made in respect of an expense incurred in the year for salary or wages of an employee who is directly engaged in scientific research and experimental development in Canada that can reasonably be considered to relate to such work having regard to the time spent by the employee thereon, and, for this purpose, where that portion is all or substantially all of the expenditure, that portion shall be deemed to be the amount of the expenditure,

(V) the cost of materials consumed in the prosecution of scientific research and experimental development in Canada, or

(VI) ½ of any other expenditure of a current nature in respect of the lease of premises, facilities or equipment used primarily for the prosecution of scientific research and experimental development in Canada, other than an expenditure in respect of general purpose office equipment or furniture;

Selected Cases [subpara. 37(8)(a)(ii)]: *Dew Engineering & Development Ltd. v. Canada*, [1996] 3 C.T.C. 2904 (TCC) (Portable laboratory was not a "building"); *Highland Foundry Ltd. v. Canada*, [1994] 2 C.T.C. 2329 (TCC) (Time frame for "all or substantially all" is time period over which prosecution or construction takes place, not full useful life of equipment; but see Reg. 2902(b)(i)(B) and 2900(11)(c)).

(b) for greater certainty, references to scientific research and experimental development related to a bus-

iness include any scientific research and experimental development that may lead to or facilitate an extension of that business;

(c) except in the case of a taxpayer who derives all or substantially all of the taxpayer's revenue from the prosecution of scientific research and experimental development (including the sale of rights arising out of scientific research and experimental development carried on by the taxpayer), the prosecution of scientific research and experimental development shall not be considered to be a business of the taxpayer to which scientific research and experimental development is related; and

(d) notwithstanding paragraph (a), references to expenditures on or in respect of scientific research and experimental development shall not include

(i) any capital expenditure made in respect of the acquisition of a building, other than a prescribed special-purpose building, including a leasehold interest therein,

(ii) any outlay or expense made or incurred for the use of, or the right to use, a building other than a prescribed special-purpose building, and

(iii) payments made by a taxpayer to

(A) a corporation resident in Canada and exempt from tax under paragraph 149(1)(j), an approved research institute or an approved association, with which the taxpayer does not deal at arm's length,

(B) a corporation other than a corporation referred to in clause (A), or

(C) an approved university, college or organization

to be used for scientific research and experimental development

(D) in the case of such a payment to a person described in clause (A) or (B), to the extent that the amount of the payment may reasonably be considered to have been made to enable the recipient to acquire a building or a leasehold interest in a building or to pay an amount in respect of the rental expense in respect of a building, and

(E) in the case of a payment to a person described in clause (C), to the extent that the amount of the payment may reasonably be considered to have been made to enable the recipient to acquire a building, or a leasehold interest in a building, in which the taxpayer has, or may reasonably be expected to acquire, an interest.

Related Provisions: 37(1.1) — Business of related corporations; 37(9) — Salary or wages; 37(9.1)–(9.5) — Limitation on payments to specified employees; 37(10) — Time for election; 96(3) — Election by members of partnership; 149(1)(j)(ii)(A) — Non-profit SR&ED corporation's expenditures; 248(1)"scientific research and experimental development" — Definition of SR&ED. See additional Related provisions and Definitions at end of s. 37.

History: Subpara. 37(8)(a)(ii) amended by 1994, c. 8, subsec. 4(2), applicable (by subsec. 4(5), as amended by 1997, c. 25, s. 74, deemed to have come into force May 12, 1994), to taxation years of a taxpayer that end after December 2, 1992, except that it does not apply to taxation years of a taxpayer that began before March 6, 1996 with respect to rental expenses incurred pursuant to a written lease agreement renewed, extended or entered into before June 18, 1987 by the taxpayer or a person with whom the taxpayer did not deal at arm's length at the time the lease was renewed, extended or entered into. Subpara. (a)(ii) formerly read:

(ii) where the references occur other than in subsection (2), include only

(A) expenditures each of which was an expenditure incurred for and all or substantially all of which was attributable to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada, and

(B) expenditures of a current nature that were directly attributable, as determined by regulation, to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development in Canada;

Subpara. 37(8)(d)(ii) amended by 1994, c. 8, subsec. 4(3), applicable to taxation years ending after December 2, 1992. Subpara. (d)(ii) formerly read:

(ii) any rental expense incurred in respect of a building other than a prescribed special-purpose building, and

Pre-RSC History: *Paras. 37(8)(a)–(d) were 37(7)(c)–(f).*

Para. 37(7)(d) [now 37(8)(b)] substituted by 1988, c. 55, subsec. 18(12), applicable after December 15, 1987. Para. 37(7)(d) formerly read:

(d) references to scientific research and experimental development relating to a business or class of business include any scientific research and experimental development that may lead to or facilitate an extension of that business or, as the case may be, business of that class.

Para. 37(7)(e) [now 37(8)(c)] added by 1988, c. 55, subsec. 18(13), applicable with respect to expenditures made after December 15, 1987 other than expenditures made after that date and before 1989 pursuant to

(a) an obligation entered into in writing before December 16, 1987;

(b) the terms of a prospectus, preliminary prospectus, offering memorandum or registration statement filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province; or

(c) the terms of an offering memorandum distributed as part of an offering of securities where

(i) the offering memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(ii) the offering memorandum was distributed before December 16, 1987,

(iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before December 16, 1987, and

(iv) the sale of the securities was substantially in accordance with the offering memorandum.

Para. 37(7)(f) [now 37(8)(d)] added by 1988, c. 55, subsec. 18(14), applicable with respect to

(a) buildings and leasehold interests acquired after 1987 other than a building or leasehold interest acquired before 1990

(i) pursuant to an obligation entered into in writing before June 18, 1987, or

(ii) the construction of which was commenced before June 18, 1987 by or on behalf of the taxpayer;

(b) rental expenses incurred after 1987, other than such rental expenses incurred pursuant to a written lease agreement renewed, extended or entered into before June 18, 1987 by the taxpayer or a person with whom the taxpayer did not deal at arm's length at the time the lease was renewed, extended or entered into; and

(c) payments described in subpara. 37(7)(f)(iii) made after December 15, 1987 other than payments made pursuant to an agreement entered into in writing before December 16, 1987 with a person with whom the taxpayer deals at arm's length.

Subparas. 37(7)(c)(i), (ii) [now 37(8)(a)(i), (ii)] substituted by 1986, c. 6, subsec. 15(2), applicable with respect to expenditures made in taxation years ending after May 23, 1985. Subparas. 37(7)(c)(i), (ii) formerly read:

(i) where the references occur in subsection (2), include only expenditures incurred for and wholly attributable to the prosecution of scientific research, and

(ii) where the references occur other than in subsection (2), include only expenditures incurred for and wholly attributable to the prosecution, or the provision of facilities for the prosecution, of scientific research in Canada; and

Selected Cases [subsec. 37(8)]: *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846 (TCC) (Cost of yarn used for scientific research fell within provision).

Regulations: 2900(2)–(4) (meaning of "expenditures directly attributable"); 2903 (prescribed special-purpose building).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures. See also list at end of s. 37.

Information Circulars: 86-4R3: Scientific research and experimental development; 86-4R3 Supplement 1: Automotive industry application paper; 86-4R3 Supplement 2: Aerospace industry application paper; 94-1: Plastics industry application paper; 94-2: Machinery and equipment industry application paper; 97-1: Administrative guidelines for software development.

Application Policies: SR&ED 94-02: Expenditures of sole-purpose SR&ED performers — para. 37(8)(a) of the Act and 2902(a) of the Regulations; SR&ED 95-04R: Conflict of interest with regard to outside consultants; SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages; SR&ED 2000-01: Cost of materials.

(9) Salary or wages — For the purposes of clauses (8)(a)(ii)(A) and (B), an expenditure of a taxpayer does not include remuneration based on profits or a bonus, where the remuneration or bonus, as the case may be, is in respect of a specified employee of the taxpayer.

History: Subsec. 37(9) added by 1994, c. 8, subsec. 4(4), applicable to taxation years ending after December 2, 1992.

(9.1) Limitation re specified employees — For the purposes of clauses (8)(a)(ii)(A) and (B), expenditures incurred by a taxpayer in a taxation year do not include expenses incurred in the year in respect of salary or wages of a specified employee of the taxpayer to the extent that those expenses exceed the amount determined by the formula

$$A \times \frac{B}{365}$$

where

A is 5 times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year in which the taxation year ends; and

B is the number of days in the taxation year on which the employee is a specified employee of the taxpayer.

Related Provisions: 38(9.2)–(9.5) — Allocation of salary of specified employee of associated corporations.

History: Subsec. 37(9.1) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.2) Associated corporations — Where

(a) in a taxation year of a corporation that ends in a calendar year, the corporation employs an individual who is a specified employee of the corporation,

(b) the corporation is associated with another corporation (in this subsection and subsection (9.3) referred to as the "associated corporation") in a taxation year of the associated corporation that ends in the calendar year, and

(c) the individual is a specified employee of the associated corporation in the taxation year of the associated corporation that ends in the calendar year,

for the purposes of clauses (8)(a)(ii)(A) and (B), the expenditures incurred by the corporation in its taxation year or years that end in the calendar year and by each associated corporation in its taxation year or years that end in the calendar year do not include expenses incurred in those taxation years in respect of salary or wages of the specified employee unless the corporation and all of the associated corporations have filed with the Minister an agreement referred to in subsection (9.3) in respect of those years.

Related Provisions: 37(9.5) — Certain individuals and partnerships deemed to be associated corporations.

History: Subsec. 37(9.2) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.3) Agreement among associated corporations — Where all of the members of a group of associated corporations of which an individual is a specified employee file, in respect of their taxation years that end in a particular calendar year, an agreement with the Minister in which they allocate an amount in respect of the individual to one or more of them for those years and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed the amount determined by the formula

$$A \times \frac{B}{365}$$

where

A is 5 times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the particular calendar year, and

B is the lesser of 365 and the number of days in those taxation years on which the individual was a specified employee of one or more of the corporations,

the maximum amount that may be claimed in respect of salary or wages of the individual for the purposes of clauses (8)(a)(ii)(A) and (B) by each of the corporations for each of those years is the amount so allocated to it for each of those years.

Related Provisions: 37(9.5) — Certain individuals and partnerships deemed to be associated corporations.

History: Subsec. 37(9.3) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.4) Filing — An agreement referred to in subsection (9.3) is deemed not to have been filed by a taxpayer unless

(a) it is in prescribed form; and

(b) where the taxpayer is a corporation, it is accompanied by

(i) where its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(ii) where its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made.

History: Subsec. 37(9.4) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(9.5) Deemed corporation — For the purposes of subsections (9.2) and (9.3) and this subsection, each

(a) individual related to a particular corporation,

(b) partnership of which a majority interest partner is

(i) an individual related to a particular corporation, or

(ii) a corporation associated with a particular corporation, and

(c) limited partnership of which a member whose liability as a member is not limited is

(i) an individual related to a particular corporation, or

(ii) a corporation associated with a particular corporation,

is deemed to be a corporation associated with the particular corporation.

History: Subsec. 37(9.5) added by 1997, c. 25, s. 6, applicable to taxation years that begin after March 5, 1996.

(10) Time for election — Any election made under clause (8)(a)(ii)(B) for a taxation year by a taxpayer shall be filed by the taxpayer on the day on which the taxpayer first files a prescribed form referred to in subsection (11) for the year.

History: Subsec. 37(10) amended by 1998, c. 19, subsec. 86(2), applicable after February 21, 1994 to expenditures incurred at any time except that, for taxation years that began before 1996, the reference in subsec. 37(10) to "subsection (11)" shall be read as a reference to "subsection (1)". The subsec. formerly read:

(10) Any election made under clause (8)(a)(ii)(B) for a taxation year by a taxpayer shall be filed by the taxpayer on the day on which the taxpayer first files a prescribed form referred to in subsection (11) for the year.

Subsec. 37(10) amended by 1996, c. 21, subsec. 9(9), applicable to taxation years that begin after 1995. The subsec. formerly read:

(10) Any election under clause (8)(a)(ii)(B) made by a taxpayer for a taxation year shall be filed with the taxpayer's return of income under this Part for the year.

Subsec. 37(10) added by 1994, c. 8, subsec. 4(4), applicable to taxation years ending after December 2, 1992.

(11) Filing requirement — Subject to subsection (12), no amount in respect of an expenditure that would be incurred by a taxpayer in a taxation year that begins after 1995 if this Act were read without reference to subsection 78(4) may be deducted under subsection (1) unless the taxpayer files with the Minister a prescribed form containing prescribed information in respect of the expenditure on or before the day that is 12 months after the taxpayer's filing-due date for the year.

Related Provisions: 127(9)"investment tax credit"(m) — Filing deadline applies to all investment tax credits.

History: Subsec. 37(11) added by 1996, c. 21, subsec. 9(10), applicable to taxation years that begin after 1995. Former subsec. 37(11) amended and renumbered as subsec. 37(12). See below.

Forms: T661: Claim for scientific research and experimental development carried on in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(12) Misclassified expenditures — If a taxpayer has not filed a prescribed form in respect of an expenditure in accordance with subsection (11), for the purposes of this Act, the expenditure is deemed not to be an expenditure on or in respect of scientific research and experimental development.

History: Subsec. 37(12) amended by 1998, c. 19, s. 5, applicable to 1997 *et seq.* The subsec. formerly read:

(12) Reclassified expenditures — A taxpayer is not required to file the prescribed form referred to in subsection (11) in respect of an expenditure that would be incurred in a taxation year by the taxpayer if this Act were read without reference to subsection 78(4) where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable by the taxpayer for the year, as an expenditure in respect of scientific research and experimental development.

Subsec. 37(12) renumbered (from 37(11)) and amended by 1996, c. 21, subsec. 9(10), applicable to taxation years that begin after 1995. The subsec. formerly read:

(11) Reclassified expenditures — For the purpose of subsection (1), a taxpayer is not required to file the prescribed form referred to in that subsection in respect of an expenditure incurred in a taxation year by the taxpayer where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable by the taxpayer for the year, as an expenditure in respect of scientific research and experimental development.

Subsec. 37(11) (now subsec. 37(12)) added by 1995, c. 3, subsec. 9(2), applicable after February 21, 1994 to expenditures incurred at any time.

(13) Non-arm's length contract — linked work — For the purposes of this section and sections 127 and 127.1, where

(a) work is performed by a taxpayer for a person or partnership at a time when the person or partnership does not deal at arm's length with the taxpayer, and

(b) the work would be scientific research and experimental development if it were performed by the person or partnership,

the work is deemed to be scientific research and experimental development.

History: Para. 37(13)(b) amended by 1998, c. 19, subsec. 86(3), applicable to taxation years that begin after 1995. The para. formerly read:

(b) the work would be scientific research and experimental development described in paragraph 2900(1)(d) of the *Income Tax Regulations* if it were performed by the person or partnership,

Subsec. 37(13) added by 1996, c. 21, subsec. 9(10), applicable to taxation years that begin after 1995.

Related Provisions [s. 37]: 87(2)(l) — Amalgamations — continuing corporation; 127(12.1) — Investment tax credit; 256(8) — Deemed acquisition of shares.

Pre-RSC History [s. 37]: The expression "scientific research and experimental development" substituted for "scientific research" throughout the Act by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Selected Cases [s. 37]: *Northwest Hydraulic Consultants Ltd. v. R.*, [1998] 3 C.T.C. 2520 (TCC) (Court approved criteria in IC 86-4R3 as indicative of SR&ED).

Definitions [s. 37]: "acquired" — 256(7)–(9); "amount" — 248(1); "approved" — 37(7); "arm's length" — 251(1); "associated" — 13(9.5), 256; "available for use" — 13(27)–(32), 248(19); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carrying on business" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "expenditure" — 37(8)(a), (d), 37(9); "filing-due date" — 150(1), 248(1); "individual" — 248(1); "majority interest partner", "Minister", "person", "prescribed", "property" — 248(1); "received" — 248(7); "regulation" — 248(1); "related to a business" — 37(8)(b); "resident in Canada" — 250(1); "scientific research and experimental development" — 37(8), (13), 248(1), Reg. 2900; "specified employee" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

37.1 [Repealed]

History: S. 37.1 repealed by 1998, c. 19, s. 87, applicable to 1995 *et seq.* S. 37.1 formerly read:

37.1 (1) Additional allowance for scientific research and experimental development — In computing the income for a taxation year of a corporation that carried on business in Canada, other than a corporation referred to in subsection (2), there may be deducted an amount (in this section referred to as the "research allowance" of the corporation) equal to 50% of the amount, if any, by which

(a) the qualified expenditure made by the corporation in the year

exceeds

(b) the total of

(i) the expenditure base of the corporation for the year, and

(ii) the total of all amounts each of which is an amount paid to the corporation in the year by

(A) Her Majesty in right of Canada or a province in respect of scientific research and experimental development to the extent that the amount may reasonably be considered to relate to

(I) the qualified expenditure made by the corporation in taxation years ending after 1977, or

(II) the cost of or depreciation on any research property of the corporation,

(B) another corporation resident in Canada for scientific research and experimental development related to the business of that other corporation, or

(C) a corporation not resident in Canada if it is entitled to a deduction under subparagraph 37(1)(a)(v) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the amount so paid.

(2) Idem, where corporations associated — In computing the income for a particular taxation year of a corporation that carried on business in Canada and that was associated in the particular year with one or more other such corporations, there may be deducted an amount (in this section referred to as the "research allowance" of the corporation) determined in accordance with the following rules:

(a) determine the amount in respect of the corporation by which the qualified expenditure made by the corporation in the particular year exceeds the total that would have been described in paragraph (1)(b) in respect of the corporation for the particular year if subsection (1) had applied to the corporation,

(b) determine the amount, if any, by which the total of

(i) the qualified expenditure made by the corporation in the particular year, and

(ii) the total of all amounts each of which is the qualified expenditure made by another corporation associated in the particular year with the corporation, in the other corporation's taxation year that ended in the calendar year in which the particular year ended,

exceeds

(iii) the total of

(A) the expenditure base of the corporation for the particular year,

(B) the expenditure base of each other corporation associated in the particular year with the corporation for that other corporation's taxation year that ended in the calendar year in which the particular year ended, and

(C) the total of all amounts each of which is an amount that would be described in subparagraph (1)(b)(ii) if subsection (1) were applicable

(I) paid to the corporation in the particular year, and

(II) paid to another corporation associated in the particular year with the corporation, if paid in the other corporation's taxation year that ended in the calendar year in which the particular year ended,

(c) determine the total of

(i) the amount determined under paragraph (a) in respect of the corporation for the year, and

(ii) the total of all amounts each of which is the amount determined under paragraph (a) for another corporation that is associated in the particular year with the corporation in respect of the other corporation's taxation year that ended in the calendar year in which the particular year ended, and

(d) determine the amount that is 50% of that proportion of the amount determined under paragraph (b) that

(i) the amount determined under paragraph (a)

is of

(ii) the total determined under paragraph (c),

and the amount determined under paragraph (d) is the amount of the research allowance that may be deducted in computing the income for the particular year of the corporation.

(3) Inclusion in income where research property disposed of — Where at any time in a particular taxation year a corporation has disposed of a research property (other than to a corporation with which it was associated in the year in a transaction to which subsection 85(1) or 88(1) applied), there shall be included in computing the income of the corporation for the year an amount equal to the lesser of

(a) 50% of the lesser of

(i) the fair market value at that time of the property, and

(ii) the capital cost to the corporation of the property at that time, and

(b) the amount, if any, by which the total of

(i) all amounts each of which is the research allowance deducted in computing the income of the corporation for any taxation year commencing before that time, and

(ii) all amounts each of which is an amount in respect of another corporation associated in the particular year with the corporation, equal to the research allowance deducted in computing the income of the other corporation for any taxation year ending in or before the particular year,

exceeds the total of all amounts each of which is an amount in respect of a disposition of property before that time, that was

(iii) an amount included by virtue of this subsection in computing the income of the corporation for any taxation year commencing before that time, or

(iv) an amount in respect of another corporation associated in the particular year with the corporation included by virtue of this subsection in computing the income of that other corporation for any taxation year ending in or before the particular year.

(4) Capital cost of research property disposed of to associated corporation — For the purposes of this subsection and subsection (3), where at any time in a taxation year subsection 85(1) or 88(1) applied with respect to a disposition of research property by a particular corporation to another corporation with which it was associated in the year,

(a) the property shall be deemed to be a research property of the other corporation; and

(b) where the capital cost to the particular corporation of the property exceeds its proceeds of disposition, the capital cost to the other corporation shall be deemed to be the amount that was the capital cost thereof to the particular corporation.

(5) Definitions — In this section,

"base period" of a corporation for a particular taxation year means, except as provided in paragraph 87(2)(l.1), the period commencing

(a) where the corporation has 3 consecutive taxation years commencing at any time after the end of its 1976 taxation year and ending immediately before the particular year, on the first day of the first of those 3 years, and

(b) in any other case, on the later of the first day of its first taxation year and the first day of its 1977 taxation year

and ending immediately before the first day of the particular taxation year;

"expenditure base" of a corporation for a particular taxation year means the product obtained when the amount, if any, by which

(a) the total of all amounts each of which is the qualified expenditure made by the corporation in a taxation year in its base period (or, in the case of a new corporation within the meaning of subsection 87(1), made by the corporation in its base period),

exceeds

(b) the total of all amounts paid to the corporation by

(i) Her Majesty in right of Canada or a province in respect of scientific research and experimental development to the extent that the amount may reasonably be considered to relate to

(A) the qualified expenditure made by the corporation in taxation years ending after 1976, or

(B) the cost of or depreciation on any research property of the corporation,

(ii) another corporation resident in Canada for scientific research and experimental development related to the business of that other corporation, or

(iii) a corporation not resident in Canada if it was entitled to a deduction under subparagraph 37(1)(a)(v) in respect of the amount so paid

in a taxation year in its base period (or, in the case of a new corporation within the meaning of subsection 87(1), paid to the corporation in its base period),

is multiplied by the proportion that the number of days in the particular year is of the number of days in its base period;

"qualified expenditure" made by a corporation in a taxation year means the total of expenditures (other than prescribed expenditures) each of which is

(a) an expenditure, in respect of scientific research and experimental development carried on in Canada, made by it in the year and described in paragraph 37(1)(a),

(b) an expenditure made by it in the year to acquire property that has not been used for any purpose whatever before it was acquired by the corporation and that is an expenditure described in subparagraph 37(1)(b)(i), or

(c) a payment made by it in the year to Her Majesty in right of Canada or a province to the extent that it may reasonably be considered to be a repayment of an amount described in clause (1)(b)(ii)(A) with regard to that corporation;

"research property" of a corporation means property referred to in paragraph (b) of the definition "qualified expenditure" in this subsection acquired by virtue of an expenditure made by the corporation after the end of its 1977 taxation year;

"scientific research and experimental development" has the meaning given to that expression by regulation.

(6) When certain qualified expenditures deemed to be made — Where a corporation has in a taxation year ending in a particular calendar year made a payment to another corporation with which it is associated in the taxation year,

(a) if the payment would, but for this paragraph, be included in the qualified expenditure made by the corporation in the taxation year, such portion of the payment as may reasonably be regarded as a payment for or on account of a scientific research and experimental development expenditure to be made by the other corporation in a taxation year (in this paragraph referred to as a "subsequent year") ending after the particular calendar year shall be deemed, for the purposes of this section, not to have been paid at the time at which it was actually paid, but to have been paid on the last day of the subsequent year; and

(b) if the payment is received by the other corporation in a taxation year ending in a calendar year preceding the particular calendar year, the payment shall, if it may reasonably be regarded as a payment for or on account of a scientific research and experimental development expenditure to be made by the other corporation in a taxation year (in this paragraph referred to as the "specified year") following the year in which the payment was received by it, be deemed, for the purposes of this section, not to have been paid to the other corporation in the taxation year in which it was actually paid, but to have been paid on the last day of the specified year.

(7) Certain corporations deemed to be associated — For the purpose of computing the research allowance of a particular corporation for a taxation year, where another corporation other than a corporation that was

(a) a predecessor corporation (within the meaning of subsection 87(1)) in respect of the particular corporation or in respect of a corporation associated with the particular corporation in the year, or

(b) a subsidiary corporation (within the meaning assigned to the expression "subsidiary" by subsection 88(1)) that was wound up before the taxation year, if its parent corporation (within the meaning assigned to the expression "parent" by that subsection) was the particular corporation or a corporation associated with the particular corporation in the year,

was not associated with the particular corporation in the year but was associated with the particular corporation in a taxation year in the particular corporation's base period for the year, and

(c) all or substantially all of the property of the other corporation used by it in carrying on any business during that base period, was acquired in any manner whatever by the particular corporation, or by one or more corporations associated with the particular corporation in the year,

that other corporation shall (notwithstanding that it may have ceased to exist) be deemed to be a corporation

(d) associated with the particular corporation in the year, and

(e) that had taxation years ending on anniversaries of the last day of its taxation year in which it was last associated with the particular corporation.

Pre-RSC History [s. 37.1]: *The opening words of subsec. 37.1(5) included references to subsecs. 87(2) and 88(1.4). See now subsecs. 87(2.01) and 88(1.41). The definition "base period" was para. 37.1(5)(a). The definition "expenditure base" was para. 37.1(5)(b). The definition "qualified expenditure" was para. 37.1(5)(c). The definition "research property" was para. 37.1(5)(d). The definition "scientific research and experimental development" was para. 37.1(5)(e). See Table of Concordance.*

The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Cl. 37.1(1)(b)(ii)(A) and 37.1(5)(b)(ii)(A) amended and subpara. 37.1(5)(c)(iii) added by 1979, c. 5, s. 10, applicable to taxation years ending after 1977.

S. 37.1 added by 1977-78, c. 32, subsec. 6(1). For application, see 37.2 and 37.3.

Interpretation Bulletins [s. 37.1]: IT-121R3: Election to capitalize cost of borrowed money; IT-151R4: Scientific research and experimental development expenditures.

37.2 [Repealed]

Origin of s. 37.2: R.S.C. 1985, c. 1 (5th Supp.) (formerly an application rule in 1977-78, c. 32, s. 6).

History: S. 37.2 repealed by 1998, c. 19, s. 87, applicable to 1995 *et seq.*. S. 37.2 formerly read:

37.2 (1) Application of section 37.1 — Section 37.1 is applicable to taxation years ending after 1977 and before 1989 except that,

(a) in its application to any taxation year commencing before 1978, the research allowance of a corporation shall be that proportion of the research allowance otherwise deductible that the number of days in the taxation year after 1977 is of the number of days in the taxation year;

(b) in its application to a taxation year ending after 1987, the research allowance of a corporation shall be that proportion of the research allowance otherwise deductible that the number of days in the taxation year before 1988 is of the number of days in the taxation year; and

(c) with respect to the disposition of a research property, section 37.1 is applicable to the 1978 and subsequent taxation years.

(2) Idem — Words and expressions used in subsection (1) have the meanings assigned by section 37.1.

37.3 [Repealed]

Origin of s. 37.3: R.S.C. 1985, c. 1 (5th Supp.) (formerly an application rule in 1984, c. 1, s. 11).

History: S. 37.3 repealed by 1998, c. 19, s. 87, applicable to 1995 *et seq.* S. 37.3 formerly read:

37.3 Application of subsecs. 37.1(1) and (2) — Notwithstanding section 37.2, subsections 37.1(1) and (2) do not apply to a taxation year of a corporation that ends after October 1983 unless

(a) in the case of a particular taxation year that includes November 1, 1983, the corporation elects in its return of income under Part I for the year to have those subsections apply, in which case each corporation that was associated with the corporation in the year shall be deemed to have so elected in respect of its taxation year that ended in the calendar year in which the particular taxation year ended; or

(b) the qualified expenditure (within the meaning assigned by subsection 37.1(5)) made by the corporation in the year includes

(i) an expenditure that the corporation was obligated to make pursuant to an agreement in writing entered into by the corporation before April 20, 1983, or

(ii) an expenditure that the corporation was obligated to make in respect of a project pursuant to an agreement in writing entered into by the corporation before November 2, 1983, where the project commenced before 1984 and proceeded without undue delay, and arrangements, evidenced by writing, respecting the project were substantially advanced before April 20, 1983,

and the corporation elects in its return of income under Part I for the taxation year to have those subsections apply, in which case the amount that may be deducted under section 37.1 in computing the income of the corporation for the year shall be that proportion of the amount thereof that could, but for this section, have been so deducted by the corporation (on the assumption that it is not associated in the year with any other corporation) that

(iii) an amount equal to the total of expenditures made by the corporation in the year each of which is an expenditure described in the definition "qualified expenditure" in subsection 37.1(5) and is made pursuant to an agreement referred to in subparagraph (i) or (ii)

is of

(iv) the qualified expenditure (within the meaning assigned by subsection 37.1(5)) made by the corporation in the year.

Subdivision c — Taxable Capital Gains and Allowable Capital Losses

38. Taxable capital gain and allowable capital loss — For the purposes of this Act,

(a) subject to paragraph (a.1), a taxpayer's taxable capital gain for a taxation year from the disposition of any property is 3/4 of the taxpayer's capital gain for the year from the disposition of the property;

Selected Cases [para. 38(a)]: *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Part of expropriation compensation paid for loss of business use of land was capital).

(a.1) a taxpayer's taxable capital gain for a taxation year from the disposition after February 18, 1997 and before 2002 of any property is 3/8 of the taxpayer's capital gain for the year from the disposition of the property where

(i) the disposition is the making of a gift to a qualified donee (as defined in subsection 149.1(1)), other than a private foundation, of a share, debt obligation or right listed on a prescribed stock exchange, a share of the capital stock of a mutual fund corporation, a unit of a mutual fund trust, an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)) or a prescribed debt obligation, or

(ii) the disposition is deemed by section 70 to have occurred and the taxpayer is deemed by subsection 118.1(5) to have made a gift described in subparagraph (i) of the property;

(b) a taxpayer's allowable capital loss for a taxation year from the disposition of any property is 3/4 of the taxpayer's capital loss for the year from the disposition of that property; and

(c) a taxpayer's allowable business investment loss for a taxation year from the disposition of any property is 3/4 of the taxpayer's business investment loss for the year from the disposition of that property.

Selected Cases [para. 38(c)]: *Windrim v. Canada*, [1991] 1 C.T.C. 271 (FCTD) (Only portion of land necessary to use and enjoyment of mobile home).

Proposed Amendment — Capital gains to be 2/3 taxed

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Capital Gains Inclusion Rate*

(9) That for the 2000 and subsequent taxation years,

(a) subject to subparagraphs (b) and (c), a taxpayer's taxable capital gain, allowable capital loss and allowable business investment loss reflect a 3/4 inclusion rate in respect of gains and losses from dispositions of property before February 28, 2000 and a 2/3 inclusion rate in respect of other gains and losses for the year,

(b) a taxpayer's taxable capital gain in respect of dispositions to which paragraph 38(a.1) of the Act applies reflect a 3/8 inclusion rate for dispositions that occur before February 28, 2000 and a 1/3 inclusion rate for dispositions that occur after February 27, 2000 and before 2002,

(c) the amount included in a taxpayer's taxable capital gain, in a taxation year that begins after February 27, 2000, in respect of a capital gains reserve reflect a 2/3 inclusion rate,

(d) the deductions permitted in paragraphs 110(1)(d) to (d.3) of the Act in respect of amounts that are included in income for the year (other than amounts that would be included in income for the year if the year had ended on February 27, 2000) be determined as 1/3 of the amounts so included in income rather than as 1/4 of such amounts, and

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

Federal budget, supplementary information, February 28, 2000: *Capital Gains*

The budget proposes that the income inclusion rate for capital gains be reduced to two thirds from the current rate of three quarters for capital gains realized after February 27, 2000. This change ensures that capital gains are taxed at about the same rate as dividends received from taxable Canadian corporations.

Computing Taxable Gains/Allowable Losses in Taxation Year 2000 — For Individuals (and Other Taxpayers With Calendar Taxation Years)

Because this measure becomes effective for capital gains realized after February 27, 2000, two different inclusion rates will apply for the 2000 taxation year. Accordingly, individuals (and other taxpayers with calendar taxation years) will be required to separately report capital gains and losses realized in the period January 1 to February 27 inclusive, and capital gains and losses realized after February 27 for that year. For each period, the net capital gain or loss will have to be computed.

An individual's capital gains inclusion rate for the 2000 taxation year will depend on whether the individual has realized net gains or net losses in one or both periods, or a net gain in one period and a net loss in the other, as outlined below.

Case 1: A Net Gain/Loss in One Period Only

Where there is a net gain or net loss in one period and none in the other, the individual's capital gains inclusion rate for the year will be that applicable to the period in which the net gain or net loss is incurred. That is, if the net gain or net loss is incurred in the period January 1 to February 27, the individual's inclusion rate for the 2000 taxation year will be three quarters; if the net gain or net loss is incurred in the period February 28 to December 31, the individual's inclusion rate for the 2000 taxation year will be two thirds.

Case 2: A Net Gain in Each Period or Net Loss in Each Period

Where there are net gains in both periods, or net losses in both periods, the individual's taxable capital gain/allowable capital

loss for the year will be determined by reference to the following formula:

$$3/4 \times (A) + 2/3 \times (B)$$

where

A = Net gain/loss in the period January 1–February 27, 2000;

and

B = Net gain/loss in the period February 28–December 31, 2000.

Individuals may need to determine their effective inclusion rate for 2000 for certain purposes, such as loss carryovers. The effective inclusion rate for the year will be the individual's taxable capital gain or allowable capital loss for the year divided by the net gain or loss for the year.

[Put much more simply, capital gains and losses for the year are netted, and if the balance that remains was created in the first period, it is 3/4 taxed, and if the second period, it is 2/3 taxed — ed.]

Example 1

Howard sells shares in ABC Corporation on January 30, 2000, for a gain of $500. He sells more ABC shares on March 30, 2000, for a gain of $1,000. Finally, he sells shares in XYZ Inc. on June 1, 2000, for a loss of $250.

Step 1

Howard determines separately his net gains for the periods January 1- February 27 and February 28-December 31. For the first period, his net gain is $500; for the second period, his net gain is $1,000 less $250, or $750.

Step 2

Because he has net gains in both periods, Howard computes his taxable capital gains for 2000 using the separate net gain figures derived in Step 1:

A = $500, B = $750

Taxable Capital Gains =

$$3\ 1/4 \times (\$500) + 2\ 1/4\ 3 \times (\$750) = \$875$$

Step 3

To determine his effective capital gains inclusion rate for the year, Howard divides his taxable gain of $875 by his net gain for the year of $1,250 (i.e., $500 plus $750):

Effective Inclusion Rate =

$$(\$875) \div (\$1,250) = 70 \text{ per cent}$$

Case 3: A Net Gain in One Period and a Net Loss in the Other

Where an individual has a net gain in one period and a net loss in the other, the net gain or net loss for 2000 will be computed by netting the two. The individual's taxable capital gain or allowable loss for the year will be the net gain or net loss for the year multiplied by the inclusion rate, as determined below.

The inclusion rate for 2000 will be three quarters where:

- the amount of net gains for the period January 1-February 27 exceeds net losses for the period February 28-December 31, or
- the amount of net losses for the period January 1-February 27 exceeds net gains for the period February 28-December 31.

The inclusion rate for 2000 will be two thirds where:

- the amount of net gains for the period January 1-February 27 is less than net losses for the period February 28-December 31, or
- the amount of net losses for the period January 1-February 27 is less than net gains for the period February 28-December 31.

Example 2

Nancy sells shares in XYZ Inc. on February 1, 2000, for a loss of $300. She sells shares in ABC Corporation on June 1, 2000, for a gain of $1,000.

Step 1

Nancy determines separately her net gains and losses for the periods January 1-February 27 and February 28-December 31. For the first period, she has a net loss of $300; for the second period she has a net gain of $1,000.

Step 2

After deducting the net loss of $300, $700 of the post-February 27 gain remains. Nancy's taxable capital gain for the year is determined by multiplying this amount by the post-February 27 inclusion rate of two thirds.

Taxable Capital Gain =

$$2/3 \times \$700 = \$466.67$$

Taxpayers With Non-Calendar Taxation Years

For taxpayers whose taxation years do not coincide with the calendar year (such as some corporations), the reduced two-thirds inclusion rate will also apply to capital gains realized after February 27, 2000. Similar to individuals, corporations will be required to report capital gains and losses realized on or before February 27, 2000 separately from those realized after that date.

Loss Carryovers

Net capital losses may be carried back three years or forward indefinitely to offset taxable capital gains of other years. An individual's net capital loss for a year is set by reference to the capital gains inclusion rate for that year.

Where a net capital loss of a given year is used to reduce a taxable capital gain of another year for which the capital gains inclusion rate is different, the amount of the loss is adjusted to match the inclusion rate in effect for the year in which the loss is being applied. The adjustment factor is determined by dividing the inclusion rate for the year the loss is claimed by the inclusion rate for the year in which the loss arose.

Example 3

Howard incurred a loss of $500 in 1999. He wishes to carry forward this loss to reduce his taxable capital gain of $875 in 2000 (see Example 1 above).

Step 1

In 1999, the inclusion rate was quarters. Howard's net capital loss for 1999 is his loss for 1999 of $500 multiplied by the three-quarters inclusion rate, or $375.

Step 2

Howard has already determined that his inclusion rate for 2000 is 70 per cent (see Example 1). He determines the adjustment factor applicable to his net capital loss for 1999 by dividing his 70 per cent inclusion rate for 2000 by the three-quarters inclusion rate effective for 1999, the year the loss arose:

Adjustment Factor =

$$(0.70/0.75) = 93.3\%$$

Step 3

To determine the amount of 1999 net capital loss that Howard may deduct in 2000, Howard multiplies the adjustment factor derived in Step 2 by his net capital loss for 1999:

Loss carried forward to 2000 =

$$93.3\% \times \$375 = \$350$$

Howard claims the adjusted loss amount of $350 on his 2000 tax return.

Related Items

To reflect the reduction in the capital gains inclusion rate effective February 28, 2000, the appropriate adjustments will be made to related items, including:

- the deductions for amounts included in income in respect of employee stock options, employer shares from a deferred profit-sharing plan, and shares received by prospectors and grubstakers;
- allowable business investment losses;

- the $500,000 lifetime capital gains exemption for qualified small business shares and qualified farm property; and
- the charitable gifting of listed securities (i.e., one-half the otherwise applicable inclusion rate).

Proposed Amendment — Capital gains rate on ecological gifts

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Donations of Ecological Gifts*

(22) That the provisions of the Act relating to ecological gifts be modified to (a) halve the income inclusion rate for capital gains from such gifts (other than gifts made to a private foundation) made after February 27, 2000, [...]

[For the remainder of this proposal, and the accompanying Budget Supplementary Information, see under 118.1(1)"total ecological gifts" — ed.]

Proposed Amendment — Deduction on donating stock option shares

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110(1)(d) — ed.]

Related Provisions [s. 38]: 11(2) — Fiscal (business) year of individual does not apply for purposes of subdivision c; 39 — Capital gains and losses; 83(2), 89(1)"capital dividend account"(a)(i) — Untaxed ¼ or ⅝ of gain can be distributed free of tax by corporation as capital dividend; 96(1.7) — Partnerships and their members — gains and losses; 100(1) — Disposition of an interest in a partnership; 104(21) — Flow-through of taxable capital gain from trust to beneficiary; 110.6 — Capital gains exemption; 111(8)"net capital loss" — Carryover of unused allowable capital loss; 127.52(1)(d)(i) — Untaxed ¼ of gain added to income for minimum tax purposes; 133(1)(d) — Non-resident-owned investment corporation fully taxed on gains; 142.5(6) — Transitional allowable capital loss re mark-to-market property; 142.5(9)(e) — Deemed taxable capital gain where mark-to-market property acquired by financial institution on rollover; 149.1(6.4) — Rule re gifts of public securities applies to gifts to registered national arts service organizations; 248(1)"allowable business investment loss", 248(1)"allowable capital loss", 248(1)"taxable capital gain" — Definitions in s. 38 apply to entire Act; Canada-U.S. tax treaty, Art. XIII — Gains.

History: Para. 38(a) amended and para. (a.1) added by 1998, c. 19, s. 6, applicable after February 18, 1997. Para. (a) formerly read:

> (a) a taxpayer's taxable capital gain for a taxation year from the disposition of any property is ¾ of the taxpayer's capital gain for the year from the disposition of that property;

Pre-RSC History [s. 38]: S. 38 amended by 1988, c. 55, s. 19, to substitute "¾" for "½" in each of paras. (a), (b), (c), and to substitute "Taxable capital gain" for "Meaning of taxable capital gain" in the heading, applicable to taxation years and fiscal periods ending after 1987, except that

> (a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the references to "¾" shall be read as references to "⅔";
>
> (b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the references to "¾" shall, in respect of the corporation for the year, be read as references to the fraction determined as the aggregate of
>
> > (i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,
> >
> > (ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and
> >
> > (iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year; and
>
> (c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the references to "¾" shall, in respect of the corporation for the year, be read as references to the fraction determined as the aggregate of
>
> > (i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,
> >
> > (ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and
> >
> > (iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Paras. 38(d), (e) repealed by 1986, c. 6, s. 16, applicable to 1986 *et seq.* Paras. 38(d), (e) formerly read:

> (d) a taxpayer's taxable capital gain for a taxation year from an indexed security investment plan is ½ of the amount, if any, by which
>
> > (i) the taxpayer's capital gain for the year from the plan
>
> exceeds
>
> > (ii) the aggregate of all amounts, other than a commission or an amount that may reasonably be considered to relate to a commission, paid by the taxpayer in the year to a person for services in respect of the administration of the plan; and
>
> (e) a taxpayer's allowable capital loss for a taxation year from an indexed security investment plan is ½ of the aggregate of
>
> > (i) the taxpayer's capital loss, if any, for the year from the plan, and
> >
> > (ii) the amount, if any, by which
> >
> > > (A) the aggregate of all amounts, other than a commission or an amount that may reasonably be considered to relate to a commission, paid by the taxpayer in the year to a person for services in respect of the administration of the plan
> >
> > exceeds
> >
> > > (B) the taxpayer's capital gain, if any, for the year from the plan.

Paras. 38(d), (e) added by 1984, c. 1, s. 12, applicable to taxation years ending after September 30, 1983.

Para. 38(c) added by 1977-78, c. 42, s. 2, applicable to 1978 *et seq.*

Selected Cases [s. 38]: *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreement proceeds not capital gain); *Haslam et al. v. The Queen*, [1988] 1 C.T.C. 153 (FCTD) (Land values determined using "cost of development" approach); *Doral Holdings Ltd. v. The Queen*, [1987] 1 C.T.C. 398 (FCTD) (Mere possibility of future development could not considerably increase value of land acquired in 1971); *The Queen v. Demco Management Ltd.*, [1986] 1 C.T.C. 92 (FCA) (Where property sold as a going concern, purchase price need not be broken down into component parts); *Yager v. The Queen*, [1985] 1 C.T.C. 89 (FCTD) (Valuation Day value of shares determined using double capitalization of intangibles method); *The Queen v. Waddell Hugh, Ltd.*, [1983] C.T.C. 270 (FCA) (Fair market value accepted as Valuation Day value where shares had "retention value" beyond that determined using formula); *Community Shopping Developments Ltd. v. The Queen*, [1983] C.T.C. 60 (FCTD) (Taxable capital gain determined as proportion of capital gain equal to years of ownership after Valuation Day, over total years of ownership); *Smith v. The Queen*, [1981] C.T.C. 476 (FCTD) (Revenue officer subject to examination for discovery on appraisal); *National System of Baking of Alberta Ltd. v. The Queen*, [1980] C.T.C. 237 (FCA) (Valuation Day value determined without adjustment for possible takeover bid); *Connor v. The Queen*, [1979] C.T.C. 365 (FCA) (Expert evidence of Valuation Day value rejected in favour of Court's criteria); *Littler v. MNR*, [1976] C.T.C. 379 (FCTD); aff'd on other grounds [1978] C.T.C. 235 (FCA) (Fair market value was price listed on stock exchange despite premium paid for control).

Definitions [s. 38]: "business investment loss" — 39(1)(c), 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "disposition" — 54 [to be repealed], 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "prescribed" — 248(1); "private foundation" — 149.1(1), 248(1); "property", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Regulations: Prescribed debt obligations for 38(a.1) will include certain debt obligations that have a readily determinable market value such as government bonds (Department of Finance technical notes, December 1997). Prescribed stock exchanges will be both Canadian and foreign exchanges, as listed in Reg. 3200 and 3201 (February 1997 budget papers).

Interpretation Bulletins [s. 38]: IT-484R2: Business investment losses.

Forms [s. 38]: T1170: Capital gains on gifts of certain capital property; T4037: Capital gains [guide].

39. (1) Meaning of capital gain and capital loss [and business investment loss] — For the purposes of this Act,

(a) a taxpayer's capital gain for a taxation year from the disposition of any property is the taxpayer's gain for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read without reference to the expression "other than a taxable capital gain from the disposition of a property" in paragraph 3(a) and without reference to paragraph 3(b), be included in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) eligible capital property,

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act* and that has been disposed of,

(A) in the case of a gift to which subsection 118.1(5) applies, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, and

(B) in any other case, at any time,

to an institution or a public authority in Canada that was, at the time of the disposition, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object,

(ii) a Canadian resource property,

(ii.1) a foreign resource property,

(ii.2) a property to the disposition of which subsection 142.4(4) or (5) or 142.5(1) applies,

Proposed Addition — 39(1)(a)(ii.3)

(ii.3) a property in respect of which subsection 94.2(3) applies to the taxpayer immediately before the time of the disposition,

Application: The June 22, 2000 draft legislation, s. 3, will add subpara. 39(1)(a)(ii.3), applicable to dispositions that occur after 2000.

Technical Notes: Paragraph 39(1)(a) of the Act contains a description of a taxpayer's capital gain for a taxation year from the disposition of property. This paragraph provides that gains from dispositions of specified properties are to be excluded in determining a capital gain. Under subparagraph 39(1)(a)(ii.2), the specified properties include specified debt obligations, where subsection 142.4(4) or (5) applies to the disposition, and mark-to-market properties where subsection 142.5(1) applies to the disposition. Under subparagraph 39(1)(b)(ii), the same exclusion generally applies with regard to a taxpayer's capital loss.

New subparagraph 39(1)(a)(ii.3) provides a similar exclusion for property in respect of which new subsection 94.2(3) applies to a taxpayer immediately before the time of the disposition. Subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under subsection 94.2(4) for participating interests in foreign investment entities. Because of paragraph 94.2(5)(b), this exclusion does not apply where the taxpayer is not resident in Canada immediately before the time of the disposition.

This amendment applies to dispositions that occur after 2000.

(iii) an insurance policy, including a life insurance policy, except for that part of a life insurance policy in respect of which a policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust,

(iv) a timber resource property, or

(v) an interest of a beneficiary under a qualifying environmental trust;

Selected Cases [para. 39(1)(a)]: *Whent v. R.*, [2000] 1 C.T.C. 329 (FCA) (Bargain purchases do not necessarily exclude capital treatment of gains); *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Part of expropriation compensation paid for loss of business use of land was capital); *Dumais v. MNR*, [1990] 1 C.T.C. 342 (FCTD) (Capital gain from disposition of community property taxable to husband alone).

(b) a taxpayer's capital loss for a taxation year from the disposition of any property is the taxpayer's loss for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read in the manner described in paragraph (a) of this subsection and without reference to the expression "or the taxpayer's allowable business investment loss for the year" in paragraph 3(d), be deductible in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) depreciable property, or

(ii) property described in any of subparagraphs (a)(i), (ii) to (iii) and (v); and

Selected Cases [para. 39(1)(b)]: *Sénécal (J.G.) v. MNR*, [1993] 2 C.T.C. 2218 (TCC) (Proceeds of disposition of land equal to cash and face value of promissory note received, despite evidence that note's value nil).

(c) a taxpayer's business investment loss for a taxation year from the disposition of any property is the amount, if any, by which the taxpayer's capital loss for the year from a disposition after 1977

(i) to which subsection 50(1) applies, or

(ii) to a person with whom the taxpayer was dealing at arm's length

of any property that is

(iii) a share of the capital stock of a small business corporation, or

(iv) a debt owing to the taxpayer by a Canadian-controlled private corporation (other than, where the taxpayer is a corporation, a debt owing to it by a corporation with which it does not deal at arm's length) that is

(A) a small business corporation,

(B) a bankrupt (within the meaning assigned by subsection 128(3)) that was a small business corporation at the time it last became a bankrupt, or

(C) a corporation referred to in section 6 of the *Winding-up and Restructuring Act* that was insolvent (within the meaning of that Act) and was a small business corporation at the time a winding-up order under that Act was made in respect of the corporation,

exceeds the total of

(v) in the case of a share referred to in subparagraph (iii), the amount, if any, of the increase after 1977 by virtue of the application of subsection 85(4) in the adjusted cost base to the taxpayer of the share or of any share (in this subparagraph referred to as a "replaced share") for which the share or a replaced share was substituted or exchanged,

Selected Cases [subpara. 39(1)(c)(v)]: *Reeson Investments Ltd. v. Canada*, [1990] 2 C.T.C. 190 (FCTD) (Conversion of capital loss to business investment loss prevented in transactions between associated companies; transfers of business investment loss permitted).

(vi) in the case of a share referred to in subparagraph (iii) that was issued before 1972 or a share (in this subparagraph and subparagraph (vii) referred to as a "substituted share") that was substituted or exchanged for such a share or for a substituted share, the total of all amounts each of which is an amount received after 1971 and before or on the disposition of the share or an amount receivable at the time of such a disposition by

(A) the taxpayer,

(B) where the taxpayer is an individual, the taxpayer's spouse, or

(C) a trust of which the taxpayer or the taxpayer's spouse was a beneficiary

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

as a taxable dividend on the share or on any other share in respect of which it is a substituted share, except that this subparagraph shall not apply in respect of a share or substituted share that was acquired after 1971 from a person with whom the taxpayer was dealing at arm's length,

(vii) in the case of a share to which subparagraph (vi) applies and where the taxpayer is a trust referred to in paragraph 104(4)(a), the total of all amounts each of which is an amount received after 1971 or receivable at the time of the disposition by the settlor (within the meaning assigned by subsection 108(1)) or by the settlor's spouse as a taxable dividend on the share or on any other share in respect of which it is a substituted share, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(viii) the amount determined in respect of the taxpayer under subsection (9) or (10), as the case may be.

Selected Cases [subpara. 39(1)(c)]: *Tipster Investments Ltd. v. R.*, [1998] 2 C.T.C. 3005 (TCC) (Business investment loss included in definition of capital loss).

Related Provisions [subsec. 39(1)]: 12(1)(z.1) — Disposition of interest in qualifying environmental trust; 39(2) — Capital gains and losses in respect of foreign currencies; 39(3) — Gain — purchase of bonds by issuer; 39(12) — Amount paid under guarantee deemed to be business investment loss; 40 — Calculation of gain or loss; 55(2) — Deemed capital gain on certain dividends; 80.03(2), (4) — Deemed capital gain on disposition of property following debt forgiveness; 100(4) — Reduction in capital loss on disposition of partnership interest; 104(4.1) — Mark-to-market property can be capital property for trust's 21-year deemed disposition; 110.6 — Capital gains exemption; 118.1(7.1) — Gifts of cultural property; 136 — Cooperative can be private corporation for 39(1)(c); 139.1(4)(a) — Capital gain and loss on ownership rights resulting from demutualization of insurer deemed nil; 144(4) — Deemed capital gain from employees profit sharing plan; 248(1)"capital gain", "capital loss" — Definitions in 39(1) apply to entire Act; 252(4) — Extended meaning of "spouse"; Canada-U.S. tax treaty, Art. XIII — Gains.

History: Subpara. 39(1)(a)(v) amended by 1998, c. 19, subsec. 7(1), applicable to taxation years that end after February 18, 1997. The subpara. formerly read:

(v) an interest of a beneficiary under a mining reclamation trust;

Cl. 39(1)(c)(iv)(C) amended by 1996, c. 6, subsec. 167(2), to substitute "Winding-up and Restructuring Act" for "Winding-up Act", effective June 28, 1996.

Subpara. 39(1)(a)(ii.2) added by 1995, c. 21, subsecs. 49(1), (2), applicable to dispositions of property occurring after February 22, 1994. Subpara. (ii.2) formerly read:

(ii) property described in subparagraph (a)(i), (ii), (ii.1), (iii) or (v); and

Subpara. 39(1)(a)(v) added by 1995, c. 3, subsec. 10(1), applicable to taxation years that end after February 22, 1994.

Subpara. 39(1)(b)(ii) amended by 1995, c. 3, subsec. 10(2), applicable to taxation years that end after February 22, 1994. Subpara. (ii) formerly read:

(ii) property described in subparagraph (a)(i), (ii) or (iii); and

Subpara. 39(1)(a)(i.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 22(1), applicable with respect to dispositions occurring after December 11, 1988. Subpara. 39(1)(a)(i.1) formerly read:

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets all criteria set out in paragraphs 23(3)(b) and (c) of the *Cultural Property Export and Import Act* and that has been disposed of,

(A) in the case of a gift to which subsection 118.1(5) applies, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, and

(B) in any other case, at any time,

to an institution or public authority in Canada that was at the time of the disposition designated under subsection 32(2) of that Act either generally or for a purpose related to that object,

Subpara. 39(1)(c)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 22(2), applicable to 1987 *et seq.* Subpara. 39(1)(c)(iv) formerly read:

(iv) a debt owing to the taxpayer by a small business corporation other than, where the taxpayer is a corporation, a debt owed to it by a small business corporation with which it does not deal at arm's length

Pre-RSC History: Cl. 39(1)(a)(i.1)(A) amended by 1988, c. 55, subsec. 20(1), to substitute "subsection 118.1(5)" for "subsection 110(2.1)", applicable to 1988 *et seq.*

Subpara. 39(1)(a)(v) repealed, subpara. 39(1)(b)(ii) amended to delete "or (v)", and subpara. 39(1)(c)(viii) added, by 1986, c. 6, subsecs. 17(1), (2), (4), applicable to 1986 *et seq.* Subpara. 39(1)(a)(v) formerly read:

(v) an indexed security.

Subparas. 39(1)(c)(iii) and (iv) amended to substitute "small business" for "Canadian-controlled private" and "a small business corporation" for "another corporation", by 1986, c. 6, subsec. 17(3), applicable (by subsec. 17(7) as amended by 1986, c. 55, s. 80) with respect to dispositions made after 1985.

Subpara. 39(1)(a)(ii) substituted and subpara. 39(1)(a)(ii.1) added by 1985, c. 45, subsec. 14(1), applicable to taxation years commencing after 1984. Subpara. 39(1)(a)(ii) formerly read:

(ii) property referred to in any of paragraphs 59(2)(a) to (e),

Subpara. 39(1)(c)(vi) substituted by 1985, c. 45, subsec. 14(2), applicable to 1984 *et seq.* Subpara. 39(1)(c)(vi) formerly read:

(vi) in the case of a share referred to in subparagraph (iii) that was issued before 1972 (other than a share that was acquired after 1971 from a person with whom the taxpayer was dealing at arm's length) or a share (in this subparagraph and subparagraph (vii) referred to as a "substituted share") that was substituted or exchanged for such a share or for a substituted share, the aggregate of all amounts each of which is an amount received after 1971 and before or upon the disposition of the share or an amount receivable at the time of such a disposition by

(A) the taxpayer,

(B) where the taxpayer is an individual, his spouse, or

(C) a trust of which the taxpayer or his spouse was a beneficiary

as a taxable dividend on the share or on any other share in respect of which it is a substituted share, and

Subpara. 39(1)(a)(v) added, subpara. 39(1)(b)(ii) substituted by 1984, c. 1, subsecs. 13(1), (2), applicable to taxation years ending after September 30, 1983. Subpara. 39(1)(b)(ii) substituted to substitute "(a)(i), (ii), (iii) or (v)" for "(a)(i), (ii) or (iii)".

Subpara. 39(1)(a)(iii) substituted by 1980-81-82-83, c. 140, subsec. 18(1), applicable with respect to dispositions occurring after November 12, 1981, except that with respect to the disposition of insurance policies other than life insurance policies, it is applicable to 1980 *et seq.* Subpara. 39(1)(a)(iii) formerly read:

> (iii) a life insurance policy within the meaning of section 138 (except for that part of a policy in respect of which a policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust and an annuity contract that is not a life annuity contract, as defined by regulation), or

Subpara. 39(1)(a)(i.1) substituted by 1980-81-81-83, c. 48, subsec. 16(1), applicable with respect to any transfer of property occurring as a consequence of the death of a taxpayer occurring after September 5, 1977.

All that portion of para. 39(1)(c) following subpara. (iv) substituted by 1980-81-82-83, c. 48, subsec. 16(2), applicable with respect to dispositions of property occurring after December 11, 1979. That portion formerly read:

> exceeds the aggregate of
>
> (v) the amount, if any, of the increase after 1977 in the adjusted cost base to the taxpayer of the property by virtue of the application of subsection 85(4), and
>
> (vi) in the case of a share referred to in subparagraph (iii) that was issued before 1972 or a share (in this subparagraph referred to as a "substituted share") that was substituted or exchanged for a share issued before 1972 or for a substituted share, the aggregate of all amounts received, after 1971 and before the disposition, by the taxpayer or any person with whom he was not dealing at arm's length as a taxable dividend on the share and any other share in respect of which it a substituted share.

Paras. 39(1)(b), (c) substituted by 1979, c. 5, s. 11, para. 39(1)(b) applicable to 1978 *et seq.*, para. 39(1)(c) applicable in respect of dispositions occurring after November 16, 1978. Paras. 39(1)(b), (c) formerly read:

> (b) a taxpayer's capital loss for a taxation year from the disposition of any property is his loss for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read in the manner described in paragraph (a) of this subsection, be deductible in computing his income for the year or any other taxation year) from the disposition of any property of the taxpayer other than
>
> (i) depreciable property, or
>
> (ii) property described in subparagraph (a)(i), (ii) or (iii); and
>
> (c) a taxpayer's business investment loss for a taxation year from the disposition of any property is the amount, if any, by which
>
> (i) his loss for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read in the manner described in paragraph (a) of this subsection, be deductible in computing his income for the year or any other taxation year) from the disposition after 1977 of any property that is
>
> (A) a share of the capital stock of a Canadian-controlled private corporation, or
>
> (B) a debt owing to the taxpayer by a Canadian-controlled private corporation (other than, where the taxpayer is a corporation, a debt owed to it by another corporation with which it does not deal at arm's length)
>
> and, except where subsection 50(1) applies, that has been disposed of to a person other than a person who does not deal at arm's length with the taxpayer
>
> exceeds
>
> (ii) the amount, if any, of the increase after 1977 in the adjusted cost base to the taxpayer of the property by virtue of the application of subsection 85(4).

Para. 39(1)(c) added by 1977-78, c. 42, s. 3, applicable to 1978 *et seq.*

Subpara. 39(1)(a)(iii) substituted by 1977-78, c. 1, subsec. 16(1), applicable to 1978 *et seq.* Subpara. 39(1)(a)(iii) formerly read:

> (iii) a life insurance policy within the meaning of section 138 (except an annuity contract), or

Subpara. 39(1)(a)(ii) substituted by 1976-77, c. 4, s. 9, deemed to have been applicable at all times after May 6, 1974. Subpara. 39(1)(a)(ii) formerly read:

> (ii) property, any amount receivable by the taxpayer for the disposition of which is required to be included in computing his income for the year by virtue of section 59,

Subpara. 39(1)(a)(i.1) added by 1974-75-76, c. 50, s. 48, proclaimed in force from Sept. 6, 1977.

Subpara. 39(1)(a)(iv) added by 1974-75-76, c. 26, s. 15, applicable in respect of timber resource properties acquired after May 6, 1974.

Selected Cases [subsec. 39(1)]: *Gordon v. Canada*, [1996] 3 C.T.C. 2229 (TCC) (Payment directly to creditors instead of to company whose debt was guaranteed was acceptable); *Macdonald (I.V.) v. Canada*, [1993] 2 C.T.C. 75 (FCA) (Inflation not accounted for in computation of capital gain); *Dumais v. MNR*, [1990] 1 C.T.C. 342 (FCTD) (Proceeds of disposition of community property under Civil Code Article 1292 taxed in hands of husband alone); *Louie, H.Y., Co. Ltd. v. The Queen*, [1986] 1 C.T.C. 499 (FCTD) (Loss on shares in construction company was business investment loss).

Interpretation Bulletins: IT-123R5: Transactions involving eligible capital property; IT-125R4: Dispositions of resource properties; IT-159R3: Capital debts established to be bad debts; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-359R2: Premiums and other amounts re leases; IT-346R: Commodity futures and certain commodities; IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-426: Shares sold subject to an earnout agreement; IT-444R: Corporations — involuntary dissolutions; IT-481: Timber resource property and timber limits; IT-484R2: Business investment losses. See also list at end of s. 39.

I.T. Technical News: No. 16 (*Continental Bank* case).

Advance Tax Rulings: ATR-15: Employee stock option plan; ATR-28: Redemption of capital stock of family farm corporation.

Forms: T1 Sched. 3: Capital gains (or losses); T2 SCH 6: Summary of dispositions of capital property; T3 Sched. 1: Summary of dispositions of capital property; T871: Cultural property income tax certificate; T1161: List of properties by an emigrant of Canada; T2083: Capital dispositions supplementary schedules re: real estate; T2085: Capital dispositions supplementary schedules re: depreciable property.

(2) Capital gains and losses in respect of foreign currencies — Notwithstanding subsection (1), where, by virtue of any fluctuation after 1971 in the value of the currency or currencies of one or more countries other than Canada relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year, the following rules apply:

(a) the amount, if any, by which

(i) the total of all such gains made by the taxpayer in the year (to the extent of the amounts thereof that would not, if section 3 were read in the manner described in paragraph (1)(a) of this section, be included in computing the taxpayer's income for the year or any other taxation year)

exceeds

(ii) the total of all such losses sustained by the taxpayer in the year (to the extent of the amounts thereof that would not, if section 3 were read in the manner described in paragraph (1)(a) of this section, be deductible in computing the taxpayer's income for the year or any other taxation year), and

(iii) if the taxpayer is an individual, $200,

shall be deemed to be a capital gain of the taxpayer for the year from the disposition of currency of a country other than Canada, the amount of which capital gain is the amount determined under this paragraph; and

(b) the amount, if any, by which

(i) the total determined under subparagraph (a)(ii),

exceeds

(ii) the total determined under subparagraph (a)(i), and

(iii) if the taxpayer is an individual, $200,

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of currency of a country other than Canada, the amount of which capital loss is the amount determined under this paragraph.

Proposed Amendment — Foreign exchange gain on weak currency loan (Kiwi loan)

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 20(1)(c) — ed.]

Related Provisions: 80.01(11) — Fluctuation in foreign currency ignored for purposes of debt parking and statute-barred debt rules; 95(2)(g), (h) — Gain or loss of foreign affiliate on fluctuation of foreign currency; 142.3(1)(a), (b) — Foreign currency gain or loss by financial institution on specified debt obligation; 142.4(1)"tax basis"(f), (o) — Disposition of specified debt obligation by financial institution; 144(4) — Deemed capital loss from employees profit sharing plan; 248(1)"amortized cost"(c.1), (f.1) — Effect on amortized cost of loan or lending asset.

Selected Cases [subsec. 39(2)]: *MacMillan Bloedel Ltd. v. R.*, [1999] 3 C.T.C. 652 (FCA) (Exchange loss recognized on share redemptions); *Tahsis Co. Ltd. v. The Queen*, [1979] C.T.C. 410 (FCTD) (Pre-Valuation Day exchange rate not relevant).

Interpretation Bulletins: IT-95R: Foreign exchange gains and losses. See also list at end of s. 39.

I.T. Technical News: No. 15 (tax consequences of the adoption of the "euro" currency).

Forms: T2087: Foreign exchange transactions.

(3) Gain in respect of purchase of bonds, etc., by issuer — Where a taxpayer has issued any bond, debenture or similar obligation and has at any subsequent time in a taxation year and after 1971 purchased the obligation in the open market, in the manner in which any such obligation would normally be purchased in the open market by any member of the public,

(a) the amount, if any, by which the amount for which the obligation was issued by the taxpayer exceeds the purchase price paid or agreed to be paid by the taxpayer for the obligation shall be deemed to be a capital gain of the taxpayer for the taxation year from the disposition of a capital property, and

(b) the amount, if any, by which the purchase price paid or agreed to be paid by the taxpayer for the obligation exceeds the greater of the principal amount of the obligation and the amount for which it was issued by the taxpayer shall be deemed to be a capital loss of the taxpayer for the taxation year from the disposition of a capital property,

to the extent that the amount determined under paragraph (a) or (b) would not, if section 3 were read in the manner described in paragraph (1)(a) and this Act were read without reference to subsections 80(12) and (13), be included or be deductible, as the case may be, in computing the taxpayer's income for the year or any other taxation year.

Related Provisions: 80(1)"forgiven amount"B(d) — Debt forgiveness rules do not apply where subsec. 39(3) applies; 248(27) — Purchase of partial obligation treated as purchase of obligation.

History: The closing words of subsec. 39(3) amended by 1995, c. 21, s. 10, applicable to taxation years that end after February 21, 1994. The closing words formerly read:

to the extent of the amount of the capital gain or capital loss, as the case may be, that would not, if section 3 were read in the manner described in paragraph (1)(a) of this section, be included or be deductible, as the case may be, in computing the taxpayer's income for the year or any other taxation year.

I.T. Application Rules: 26(1.1) (when obligation was outstanding on January 1, 1972).

Interpretation Bulletins: See list at end of s. 39.

(4) Election concerning disposition of Canadian securities — Except as provided in subsection (5), where a Canadian security has been disposed of by a taxpayer in a taxation year and the taxpayer so elects in prescribed form in the taxpayer's return of income under this Part for that year,

(a) every Canadian security owned by the taxpayer in that year or any subsequent taxation year shall be deemed to have been a capital property owned by the taxpayer in those years; and

(b) every disposition by the taxpayer of any such Canadian security shall be deemed to be a disposition by the taxpayer of a capital property.

Related Provisions: 39(4.1) — Look through partnerships for purposes of 39(4); 39(5) — Taxpayers to whom subsec. (4) inapplicable; 39(6) — Definition of "Canadian security"; 54.2 — Certain shares deemed to be capital property.

History: Subsec. 7(5) of 1998, c. 19 provides:

(5) For the purpose of subsection 39(4) of the Act, if

(a) an election referred to in that subsection is made by a mutual fund corporation or mutual fund trust in prescribed form on or before its filing-due date for its taxation year that includes the day on which this Act is assented to [June 18, 1998], and

(b) the election is in respect of a particular taxation year that ends after 1990 and that is not after the corporation's or trust's taxation year that includes the day on which this Act is assented to [June 18, 1998],

the election is deemed to have been made in the corporation's or trust's return of income under Part I of the Act for the particular year.

Pre-RSC History: All that portion of subsec. 39(4) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 18(2), applicable with respect to elections made for taxation years ending after coming into force of c. 140. That portion formerly read:

(4) Except as provided in subsection (5), where a Canadian security has been disposed of by a taxpayer in a taxation year, and the taxpayer so elects in his return of income for that year,

Subsec. 39(4) added by 1977-78, c. 1, subsec. 16(2), applicable in respect of dispositions of property in 1977 *et seq.*

Selected Cases [subsec. 39(4)]: *Kane v. Canada*, [1995] 1 C.T.C. 1 (FCTD) (Election not available to individuals having professional knowledge of market in which they deal); *Vancouver Art Metal Works Ltd. v. Canada*, [1993] 1 C.T.C. 346 (FCA); leave to appeal to SCC refused (1993), 160 N.R. 314 (note) (Election not available to taxpayer whose dealings amount to carrying on business); *Loewen (H.R.) v. MNR*, [1993] 1 C.T.C. 212 (FCTD) (Late election not permitted).

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

Forms: T123: Election on disposition of Canadian securities.

(4.1) Members of partnerships — For the purpose of determining the income of a taxpayer who is a member of a partnership, subsections (4) and (5) apply as if

(a) every Canadian security owned by the partnership were owned by the taxpayer; and

(b) every Canadian security disposed of by the partnership in a fiscal period of the partnership were disposed of by the taxpayer at the end of that fiscal period.

History: Subsec. 39(4.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 22(3), applicable to dispositions occurring after July 13, 1990.

(5) Exception — An election under subsection (4) does not apply to a disposition of a Canadian security by a tax-

payer (other than a mutual fund corporation or a mutual fund trust) who at the time of the disposition is

(a) a trader or dealer in securities,

(b) a financial institution (as defined in subsection 142.2(1)),

(c)–(e) [Repealed]

(f) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

(g) a non-resident,

or any combination thereof.

Related Provisions: 39(4.1) — Members of partnerships; 96(3) — Election by members of partnership.

History: The opening words of subsec. 39(5) amended by 1998, c. 19, subsec. 7(2), applicable to 1991 *et seq.* The opening words formerly read:

(5) Where election under subsec. (4) does not apply — An election under subsection (4) does not apply to a disposition of a Canadian security by a taxpayer who, at the time the security is disposed of, is

Subsec. 7(5) of 1998, c. 19 provides:

(5) For the purpose of subsection 39(4) of the Act, if

(a) an election referred to in that subsection is made by a mutual fund corporation or mutual fund trust in prescribed form on or before its filing-due date for its taxation year that includes the day on which this Act is assented to [June 18, 1998], and

(b) the election is in respect of a particular taxation year that ends after 1990 and that is not after the corporation's or trust's taxation year that includes the day on which this Act is assented to [June 18, 1998],

the election is deemed to have been made in the corporation's or trust's return of income under Part I of the Act for the particular year.

Para. 39(5)(b) substituted for paras. (b) to (e) by 1995, c. 21, subsec. 49(3), applicable to dispositions of property occurring after February 22, 1994, other than the disposition of property in a taxation year that begins before November 1994 where the property is mark-to-market property (as defined in subsec. 142.2(1)) for the year. Paras. (b) to (e) formerly read:

(b) a bank,

(c) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(d) a credit union,

(e) an insurance corporation,

Pre-RSC History: Para. 39(5)(b) substituted by 1992, c. 1, Sch. V, s. 15, applicable from February 28, 1992. Para. (b) formerly read:

(b) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies,

[The term "bank" is now defined in the *Interpretation Act*.]

Para. 39(5)(d) substituted by 1985, c. 45, subsec. 14(3). Para. 39(5)(d) formerly read:

(d) a credit union within the meaning assigned by subsection 137(6),

Paras. 39(5)(e), (f) substituted by 1980-81-82-83, c. 140, subsec. 18(3), applicable after November 12, 1981. Paras. 39(5)(e), (f) formerly read:

(e) a life insurance corporation,

(f) a corporation whose principal business is

(i) the lending of money, or

(ii) the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or

Subsec. 39(5) added by 1977-78, c. 1, subsec. 16(2), applicable in respect of dispositions of property in 1977 *et seq.*

Selected Cases [subsec. 39(5)]: *Kane v. Canada*, [1995] 1 C.T.C. 1 (FCTD) (Election not available to individuals having professional knowledge of market in which they deal); *Vancouver Art Metal Works Ltd. v. Canada*, [1993] 1 C.T.C. 346, (sub nom. *R. v. Vancouver Art Metal Works Ltd.*) (FCA) (Professional trader/dealer or other person whose activity amounts to carrying on business cannot make election).

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(6) Definition of "Canadian security" — For the purposes of this section, "Canadian security" means a security (other than a prescribed security) that is a share of the capital stock of a corporation resident in Canada, a unit of a mutual fund trust or a bond, debenture, bill, note, mortgage or similar obligation issued by a person resident in Canada.

Pre-RSC History: Subsec. 39(6) amended by 1986, c. 6, subsec. 17(5), applicable to 1986 *et seq.* to substitute "(other than a prescribed security)" for "(other than an indexed security or a prescribed security)".

Subsec. 39(6) substituted by 1984, c. 1, subsec. 13(3), applicable after September 30, 1983, to add "an indexed security or".

Subsec. 39(6) substituted by 1980-81-82-83, c. 48, subsec. 16(3), applicable to 1979 *et seq.* Subsec. 39(6) formerly read:

(6) "Canadian security" defined — For the purposes of this section, "Canadian security" means a security (other than a prescribed security) that is a share of the capital stock of a corporation resident in Canada or a bond, debenture, bill, note, mortgage, hypothec or similar obligation issued by a person resident in Canada.

Subsec. 39(6) added by 1977-78, c. 1, subsec. 16(2), applicable in respect of dispositions of property in 1977 *et seq.*

Regulations: 6200 (prescribed security).

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(7) Unused share-purchase tax credit — The amount of any unused share-purchase tax credit of a taxpayer for a particular taxation year, to the extent that it was not deducted from the taxpayer's tax otherwise payable under this Part for the immediately preceding taxation year, shall be deemed to be a capital loss of the taxpayer from a disposition of property for the year immediately following the particular taxation year.

Related Provisions: 127.2(6) — Share-purchase tax credit.

Pre-RSC History: Subsec. 39(7) added by 1984, c. 1, subsec. 13(3), applicable to 1983 *et seq.*

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(8) Unused scientific research and experimental development tax credit — The amount of any unused scientific research and experimental development tax credit of a taxpayer for a particular taxation year, to the extent that it was not deducted from the taxpayer's tax otherwise payable under this Part for the immediately preceding taxation year, shall be deemed to be a capital loss of the taxpayer from a disposition of property for the year immediately following the particular taxation year, except that where the taxpayer is an individual the capital loss shall be deemed to be 147% of that amount.

Related Provisions: 127.3(2) — Scientific research and experimental development tax credit.

Pre-RSC History: Subsec. 39(8) added by 1984, c. 1, subsec. 13(3), applicable to 1983 *et seq.*

Interpretation Bulletins: IT-479R: Transactions in securities. See also list at end of s. 39.

(9) Deduction from business investment loss — In computing the business investment loss of a taxpayer who is an individual (other than a trust) for a taxation year from the disposition of a particular property, there shall be deducted an amount equal to the lesser of

(a) the amount that would be the taxpayer's business investment loss for the year from the disposition of

that particular property if paragraph (1)(c) were read without reference to subparagraph (1)(c)(viii), and

(b) the amount, if any, by which the total of

(i) the total of all amounts each of which is twice the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year ending before 1988,

(i.1) the total of all amounts each of which is 3/2 of the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year ending after 1987 and before 1990, and

(i.2) the total of all amounts each of which is 4/3 of the amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year ending after 1989

exceeds

(ii) the total of all amounts each of which is an amount deducted by the taxpayer under paragraph (1)(c) by virtue of subparagraph (1)(c)(viii) in computing the taxpayer's business investment loss

(A) from the disposition of property in taxation years preceding the year, or

(B) from the disposition of property other than the particular property in the year,

except that, where a particular amount was included under subparagraph 14(1)(a)(v) in the taxpayer's income for a taxation year that ended after 1987 and before 1990, the reference in subparagraph (i.1) to "3/2" shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as "4/3".

Related Provisions: 39(10) — Deduction from business investment loss of trust.

History: The closing words to para. 39(9)(b) added by 1994, c. 21, subsec. 14(1), applicable to 1988 *et seq.*

Pre-RSC History: All that portion of para. 39(9)(b) preceding subpara. (ii) substituted by 1988, c. 55, subsec. 20(2), applicable to 1988 *et seq.* That portion formerly read:

(b) the amount, if any, by which

(i) the aggregate of all amounts each of which is twice the amount deducted by the taxpayer under section 110.6 in computing his taxable income for taxation years preceding the year

exceeds

Subsec. 39(9) added by 1986, c. 6, subsec. 17(6), applicable to 1986 *et seq.*

Interpretation Bulletins: IT-484R2: Business investment losses. See also list at end of s. 39.

(10) Idem, of a trust — In computing the business investment loss of a trust for a taxation year from the disposition of a particular property, there shall be deducted an amount equal to the lesser of

(a) the amount that would be the trust's business investment loss for the year from the disposition of that particular property if paragraph (1)(c) were read without reference to subparagraph (1)(c)(viii), and

(b) the amount, if any, by which the total of

(i) the total of all amounts each of which is twice the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year ending before 1988,

(i.1) the total of all amounts each of which is 3/2 of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year ending after 1987 and before 1990, and

(i.2) the total of all amounts each of which is 4/3 of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year ending after 1989

exceeds

(ii) the total of all amounts each of which is an amount deducted by the trust under paragraph (1)(c) by virtue of subparagraph (1)(c)(viii) in computing its business investment loss

(A) from the disposition of property in taxation years preceding the year, or

(B) from the disposition of property other than the particular property in the year,

except that, where a particular amount was included under subparagraph 14(1)(a)(v) in the trust's income for a taxation year that ended after 1987 and before 1990, the reference in subparagraph (i.1) to "3/2" shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as "4/3".

History: The closing words to para. 39(10)(b) added by 1994, c. 21, subsec. 14(2), applicable to 1988 *et seq.*

Pre-RSC History: All that portion of para. 39(10)(b) preceding subpara. (ii) substituted by 1988, c. 55, subsec. 20(3), applicable to 1988 *et seq.* That portion formerly read:

(b) the amount, if any, by which

(i) the aggregate of all amounts each of which is twice the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for taxation years preceding the year

exceeds

Subsec. 39(10) added by 1986, c. 6, subsec. 17(6), applicable to 1986 *et seq.*

Interpretation Bulletins: IT-484R2: Business investment losses. See also list at end of s. 39.

(11) Recovery of bad debt — Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts had been made under subsection 20(4.2) in computing the taxpayer's income for a preceding taxation year, the amount, if any, by which 3/4 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year.

History: Subsec. 39(11) amended by 1995, c. 3, subsec. 10(3), applicable to 1994 *et seq.* except that, in its application to the 1994 taxation year, it shall be read as follows:

(11) Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts had been made under subsection 20(4.2) in computing the taxpayer's income for a preceding taxation year, the amount, if any, by which 3/4 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer on the day on which the taxpayer received the recovered amount.

Subsec. 39(11) formerly read:

(11) Recovery of bad debt — Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad

debts under subsection 20(4.2) had been made in computing the taxpayer's income for a preceding taxation year, the amount, if any, by which 3/4 of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount shall be deemed to be a taxable capital gain of the taxpayer from a disposition of capital property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Pre-RSC History: Subsec. 39(11) added by 1988, c. 55, subsec. 20(4), applicable after June 17, 1987.

(12) Guarantees — For the purpose of paragraph (1)(c), where

(a) an amount was paid by a taxpayer in respect of a debt of a corporation under an arrangement under which the taxpayer guaranteed the debt,

(b) the amount was paid to a person with whom the taxpayer was dealing at arm's length, and

(c) the corporation was a small business corporation

(i) at the time the debt was incurred, and

(ii) at any time in the 12 months before the time an amount first became payable by the taxpayer under the arrangement in respect of a debt of the corporation,

that part of the amount that is owing to the taxpayer by the corporation shall be deemed to be a debt owing to the taxpayer by a small business corporation.

Related Provisions: 80(2)(l) — Application of debt forgiveness rules on payment by guarantor.

History: Subsec. 39(12) added by 1994, c. 7, Sch. II (1994, c. 7, Sch. II (1991, c. 49)), subsec. 22(4), applicable to amounts paid after 1985.

Interpretation Bulletins: IT-484R2: Business investment losses. See also list at end of s. 39.

(13) Repayment of assistance — The total of all amounts paid by a taxpayer in a taxation year each of which is

(a) such part of any assistance described in subparagraph 53(2)(k)(i) in respect of, or for the acquisition of, a capital property (other than depreciable property) by the taxpayer that was repaid by the taxpayer in the year where the repayment is made after the disposition of the property by the taxpayer and under an obligation to repay all or any part of that assistance, or

(b) an amount repaid by the taxpayer in the year in respect of a capital property (other than depreciable property) acquired by the taxpayer that is repaid after the disposition thereof by the taxpayer and that would have been an amount described in subparagraph 53(2)(s)(ii) had the repayment been made before the disposition of the property,

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of property by the taxpayer in the year and, for the purpose of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Related Provisions: 79(4)(a) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance.

History: Subsec. 39(13) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 11, applicable to 1991 *et seq.*

Pre-RSC History [s. 39]: The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Selected Cases [s. 39]: *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff'g [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreement proceeds not capital gain); *Lalande v. MNR*, [1989] 2 C.T.C. 30 (FCA) (Losses on loans and guarantees for purpose of establishing school and seniors' home not deductible current expense).

Definitions [s. 39]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "bank" — *Interpretation Act* 35(1); "Canada" — 255; "Canadian-controlled private corporation" — 248(1); "Canadian resource property" — 66(15), 248(1); "Canadian security" — 39(6); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 54 [to be repealed], 248(1); "eligible capital property" — 54, 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign resource property" — 66(15), 248(1); "individual", "insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "prescribed" — 248(1); "principal amount" — 248(1), 26(1.1); "property", "qualifying environmental trust" — 248(1); "received" — 248(7); "resident in Canada" — 250; "share", "small business corporation" — 248(1); "spouse" — 252(4)(a); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "unused scientific research and experimental development tax credit" — 127.3(2), 248(1); "unused share-purchase tax credit" — 127.2(6), 248(1).

Interpretation Bulletins [s. 39]: IT-297R2: Gifts in kind to charity and others; IT-316: Awards for employees' suggestions and inventions; IT-395R: Foreign tax credit — capital gains and capital losses on foreign property; IT-442R: Bad debts and reserves for doubtful debts; Foreign tax credit — foreign-source capital gains and losses; IT-479R: Transactions in securities.

39.1 (1) Definitions — In this section,

"exempt capital gains balance" of an individual for a taxation year that ends before 2005 in respect of a flow-through entity means the amount determined by the formula

$$A - B - C - F$$

where

A is

(a) if the entity is a trust referred to in any of paragraphs (f) to (j) of the definition "flow-through entity" in this subsection, the amount determined under paragraph 110.6(19)(c) in respect of the individual's interest or interests therein, and

(b) in any other case, the lesser of

(i) 4/3 of the total of the taxable capital gains that resulted from elections made under subsection 110.6(19) in respect of the individual's interests in or shares of the capital stock of the entity, and

(ii) the amount that would be determined under subparagraph (i) if

(A) the amount designated in the election in respect of each interest or share were equal to the amount determined by the formula

$$D - E$$

where

D is the fair market value of the interest or share at the end of February 22, 1994, and

E is the amount, if any, by which the amount designated in the election that was made in respect of the interest or share exceeds 11/10 of its fair market value at the end of February 22, 1994, and

(B) this Act were read without reference to subsection 110.6(20),

B is the total of all amounts each of which is the amount by which the individual's capital gain for a preceding taxation year, determined without reference to subsection (2), from the disposition of an interest in or a share of the capital stock of the entity was reduced under that subsection, and

C is

(a) if the entity is a trust described in any of paragraphs (d) and (h) to (j) of the definition "flow-through entity" in this subsection, 4/3 of the total of all amounts each of which is the amount by which the individual's taxable capital gain otherwise determined for a preceding taxation year that resulted from a designation made under subsection 104(21) by the trust was reduced under subsection (3),

(b) if the entity is a partnership, 4/3 of the total of all amounts each of which is

(i) the amount by which the individual's share otherwise determined of the partnership's taxable capital gains for its fiscal period that ended in a preceding taxation year was reduced under subsection (4), or

(ii) the amount by which the individual's share otherwise determined of the partnership's income from a business for its fiscal period that ended in a preceding taxation year was reduced under subsection (5), and

(c) in any other case, the total of all amounts each of which is the amount by which the total of the individual's capital gains otherwise determined under subsection 130.1(4) or 131(1), subsections 138.1(3) and (4) or subsection 144(4), as the case may be, for a preceding taxation year in respect of the entity was reduced under subsection (6), and

F is

(a) if the entity is a trust described in any of paragraphs (g) to (j) of the definition "flow-through entity" in this subsection, the total of all amounts each of which is an amount included before the year in the cost to the individual of a property under subsection 107(2.2) or paragraph 144(7.1)(c) because of the individual's exempt capital gains balance in respect of the entity, and

(b) in any other case, nil;

Related Provisions: 39.1(7) — Balance deemed nil after ceasing to be shareholder or beneficiary; 53(1)(p) — Addition to ACB after balance expires at end of 2004; 53(1)(r) — Increase in ACB immediately before disposing of all interests or shares of a flow-through entity; 54"adjusted cost base"(c) — ACB adjustment to flow-through entity preserved through disposition and reacquisition; 87(2)(bb.1) — Amalgamation — flow-through entity considered to be same corporation; 107(2.2) — Cost bump on distribution of property from trust that is a flow-through entity; 132.2(1)(j)(ii) — Effect of mutual fund reorganization; 144(1) — Employees profit sharing plan — unused portion of a beneficiary's exempt capital gains balance; 144(7.1) — Employees profit sharing plan — where property received by beneficiary; 257 — Formulas cannot calculate to less than zero.

History: The element F and its description added to the definition "exempt capital gains balance" in subsec. 39.1(1) by 1998, c. 19, subsec. 88(2), applicable to 1994 *et seq.*

"flow-through entity" means

(a) an investment corporation,

(b) a mortgage investment corporation,

(c) a mutual fund corporation,

(d) a mutual fund trust,

(e) a partnership,

(f) a related segregated fund trust for the purpose of section 138.1,

(g) a trust governed by an employees profit sharing plan,

(h) a trust maintained primarily for the benefit of employees of a corporation or 2 or more corporations that do not deal at arm's length with each other, where one of the main purposes of the trust is to hold interests in shares of the capital stock of the corporation or corporations, as the case may be, or any corporation not dealing at arm's length therewith,

(i) a trust established exclusively for the benefit of one or more persons each of whom was, at the time the trust was created, either a person from whom the trust received property or a creditor of that person, where one of the main purposes of the trust is to secure the payments required to be made by or on behalf of that person to such creditor, and

(j) a trust all or substantially all of the properties of which consist of shares of the capital stock of a corporation, where the trust was established pursuant to an agreement between 2 or more shareholders of the corporation and one of the main purposes of the trust is to provide for the exercise of voting rights in respect of those shares pursuant to that agreement.

Related Provisions: 54"adjusted cost base"(c) — ACB adjustment preserved through disposition and reacquisition; 87(2)(bb.1) — Amalgamation — flow-through entity considered to be same corporation; 107(2.2) — Cost bump on distribution of property from trust that is a flow-through entity. See also Definitions at end of 39.1.

History: Subsec. 39.1(1) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(2) Reduction of capital gain — Where at any time after February 22, 1994 an individual disposes of an interest in or a share of the capital stock of a flow-through entity, the individual's capital gain, if any, otherwise determined for a taxation year from the disposition shall be reduced by such amount as the individual claims, not exceeding the amount determined by the formula

$$A - B - C$$

where

A is the exempt capital gains balance of the individual for the year in respect of the entity,

B is

(a) if the entity made a designation under subsection 104(21) in respect of the individual for the year, 4/3 of the amount, if any, claimed under subsection (3) by the individual for the year in respect of the entity,

(b) if the entity is a partnership, 4/3 of the total of

(i) the amount, if any, claimed under subsection (4) by the individual for the year in respect of the entity, and

(ii) the amount, if any, claimed under subsection (5) by the individual for the year in respect of the entity, and

(c) in any other case, the amount, if any, claimed under subsection (6) by the individual for the year in respect of the entity, and

C is the total of all reductions under this subsection in the individual's capital gains otherwise determined for the year from the disposition of other interests in or shares of the capital stock of the entity.

Related Provisions: 39.1(6) — Reduction of capital gains on ongoing basis; 110.6(19)–(30) — Election to trigger capital gains exemption; 132.2(1)(j)(ii) — Effect of mutual fund reorganization; 257 — Formula cannot calculate to less than zero.

History: Subsec. 39.1(2) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(3) Reduction of taxable capital gain — The taxable capital gain otherwise determined under subsection 104(21) of an individual for a taxation year as a result of a designation made under that subsection by a flow-through entity shall be reduced by such amount as the individual claims, not exceeding ¾ of the individual's exempt capital gains balance for the year in respect of the entity.

History: Subsec. 39.1(3) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(4) Reduction in share of partnership's taxable capital gains — An individual's share otherwise determined for a taxation year of a taxable capital gain of a partnership from the disposition of a property (other than property acquired by the partnership after February 22, 1994 in a transfer to which subsection 97(2) applied) for its fiscal period that ends after February 22, 1994 and in the year shall be reduced by such amount as the individual claims, not exceeding the amount determined by the formula

$$A - B$$

where

A is ¾ of the individual's exempt capital gains balance for the year in respect of the partnership, and

B is the total of amounts claimed by the individual under this subsection in respect of other taxable capital gains of the partnership for that fiscal period.

Related Provisions: 39.1(1)"exempt capital gains balance"C(b)(i), 39.1(2)B(b)(i) — Reduction in balance to reflect application of subsec. (4); 257 — Formula cannot calculate to less than zero.

History: Subsec. 39.1(4) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(5) Reduction in share of partnership's income from a business — An individual's share otherwise determined for a taxation year of the income of a partnership from a business for the partnership's fiscal period that ends in the year and the individual's share of the partnership's taxable capital gain, if any, arising under subparagraph 14(1)(a)(v) shall be reduced by such amount as the individual claims, not exceeding the lesser of

(a) the amount, if any, by which ¾ of the individual's exempt capital gains balance for the year in respect of the partnership exceeds the total of

(i) the amount, if any, claimed under subsection (4) by the individual for the year in respect of the partnership, and

(ii) all amounts, if any, claimed under this subsection by the individual for the year in respect of other businesses of the partnership, and

(b) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount included under subparagraph 14(1)(a)(v) in computing the income of the partnership from the business for the fiscal period,

B is the amount that would otherwise be the individual's share of the partnership's income from the business for the fiscal period, and

C is the partnership's income from the business for the fiscal period.

Related Provisions: 39.1(1)"exempt capital gains balance"C(b)(ii), 39.1(2)B(b)(ii) — Reduction in balance to reflect application of subsec. (4).

History: Subsec. 39.1(5) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(6) Reduction of capital gains — The total capital gains otherwise determined under subsection 130.1(4) or 131(1), subsections 138.1(3) and (4) or subsection 144(4), as the case may be, of an individual for a taxation year as a result of one or more elections, allocations or designations made after February 22, 1994 by a flow-through entity shall be reduced by such amount as the individual claims, not exceeding the individual's exempt capital gains balance for the year in respect of the entity.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(2)B(c) — Reduction in balance to reflect application of subsec. (4).

History: Subsec. 39.1(6) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

(7) Nil exempt capital gains balance — Notwithstanding subsection (1), where at any time an individual ceases to be a member or shareholder of, or a beneficiary under, a flow-through entity, the exempt capital gains balance of the individual in respect of the entity for each taxation year that begins after that time is deemed to be nil.

Related Provisions: 53(1)(r) — Increase in ACB on disposition before 2005.

History: Subsec. 39.1(7) added by 1995, c. 3, s. 11, applicable to 1994 *et seq.*

Definitions [s. 39.1]: "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "disposition" — 54 [to be repealed], 248(1); "employees profit sharing plan" — 144(1), 248(1); "exempt capital gains balance" — 39.1(1), (7); "fiscal period" — 249(2)(b), 249.1; "flow-through entity" — 39.1(1); "individual" — 248(1); "investment corporation" — 130(3)(a), 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), (8.1), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "person" — 248(1); "related segregated fund trust" — 138.1(1)(a); "share" — (of corporation) 248(1); "share" — (of partnership's gains) 39.1(4); "shareholder" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 11(2), 249; "trust" — 104(1), 248(1).

40. (1) General rules — Except as otherwise expressly provided in this Part

(a) a taxpayer's gain for a taxation year from the disposition of any property is the amount, if any, by which

(i) if the property was disposed of in the year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

(ii) if the property was disposed of before the year, the amount, if any, claimed by the taxpayer under subparagraph (iii) in computing the taxpayer's gain for the immediately preceding year from the disposition of the property,

exceeds

(iii) subject to subsection (1.1), such amount as the taxpayer may claim

(A) in the case of an individual (other than a trust) in prescribed form filed with the taxpayer's return of income under this Part for the year, and

(B) in any other case, in the taxpayer's return of income under this Part for the year,

as a deduction, not exceeding the lesser of

(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are payable to the taxpayer after the end of the year as can reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

(D) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property; and

Selected Cases [subpara. 40(1)(a)(iii)]: *Regina Shoppers Mall Ltd. v. Canada*, [1991] 1 C.T.C. 297 (FCA) (Taxpayer entitled to file return inconsistent with Minister's assessment for previous year).

Selected Cases [para. 40(1)(a)]: *Sénécal (J.G.) v. MNR*, [1993] 2 C.T.C. 2218 (TCC) (Proceeds of disposition of land equal to cash and face value of promissory note received, despite evidence that note's value nil); *Bodrug Estate v. Canada*, [1991] 2 C.T.C. 347 (FCA) (Damages paid under lawsuit in respect of provincial securities statute not part of cost of shares deemed disposed of upon death); *Watkins v. Canada*, [1990] 2 C.T.C. 205 (FCTD) (Maintenance cost of race horse not included in adjusted cost base of horse).

(b) a taxpayer's loss for a taxation year from the disposition of any property is,

(i) if the property was disposed of in the year, the amount, if any, by which the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, exceeds the taxpayer's proceeds of disposition of the property, and

(ii) in any other case, nil.

Related Provisions: 40(1.1) — Reserve where farm property transferred to child; 40(2) — Limitations; 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 44(1) — Exchanges of property; 53(1)(n) — Survey and valuation costs for disposition included in adjusted cost base; 69(11) — Deemed proceeds of disposition; 72(1)(c) — No reserve for year of death; 79.1(3), (6)(c) — Capital gains reserve where property repossessed by creditor; 84.1(2.1) — Non-arm's length sale of shares; 87(2)(e) — Amalgamations — capital property; 87(2)(m) — Amalgamations — proceeds not due until after end of year; 87(2)(ll) — Amalgamations — continuation of predecessor corporations; 88(1)(d)(i)(C) — Winding-up; 100(2) — Gain from disposition of interest in partnership; 104(6) — Reduction in loss where property disposed of owned by a trust; 112(3) — Loss on share that is capital property.

History: Cl. 40(1)(a)(iii)(C) amended by 1995, c. 21, subsec. 11(1), applicable to taxation years that end after February 21, 1994. The clause formerly read:

(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are not due to the taxpayer until after the end of the year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

Pre-RSC History: Subpara. 40(1)(a)(iii) substituted by 1988, c. 55, subsec. 21(1), applicable to 1988 *et seq.* Subpara. 40(1)(a)(iii) formerly read:

(iii) subject to subsection (1.1), such amount as he may claim as a deduction, not exceeding the lesser of

(A) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are not due to him until after the end of the year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

(B) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property; and

Subpara. 40(1)(a)(iii) substituted by 1980-81-82-83, c. 140, subsec. 19(1), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms in existence on November 12, 1981 of an offer or agreement in writing made or entered into on or before that date or otherwise than by virtue of an event referred to in subpara. 54(h)(ii), (iii) or (iv) [now "proceeds of disposition"(b), (c) or (d)] that occurred on or before that date. Subpara. 40(1)(a)(iii) formerly read:

(iii) such amount as he may claim, not exceeding a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are not due to him until after the end of the year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property; and

Selected Cases [subsec. 40(1)]: *Canada v. Young*, [1989] 1 C.T.C. 421 (FCA) (Cost of subscriptions to investment publications not deductible); *Pineo v. The Queen*, [1986] 2 C.T.C. 71 (FCTD) (Demand promissory note in consideration for shares "due" immediately); *The Queen v. Sterling*, [1985] 1 C.T.C. 275 (FCA) (Interest and storage charges for gold bullion excluded from adjusted cost base); *The Queen v. Derbecker*, [1984] C.T.C. 606 (FCA) (Demand promissory note "due" immediately).

I.T. Application Rules: 26(3), 26(11).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-95R: Foreign exchange gains and losses; IT-99R5: Legal and accounting fees; IT-104R2: Deductibility of fines or penalties; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-236R4: Reserves — disposition of capital property; IT-259R3: Exchanges of property; IT-268R4: *Inter vivos* transfer of farm property to child; IT-328R3: Losses on shares on which dividends have been received; IT-426: Shares sold subject to an earnout agreement; IT-461: Forfeited deposits; IT-505: Mortgage foreclosures and conditional sales repossessions.

Information Circulars: 88-2, paras. 24, 27: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Forms: T3, Sched. 2: Calculation of reserves on dispositions of capital property; T2017: Summary of reserves on dispositions of capital property; T2069: Election in respect of amounts not deductible as reserves for the year of death; T2080–T2090: Capital dispositions supplementary schedules; T5008 Supp: Statement of securities transactions; T4091: Return of securities transactions [guide].

(1.01) Gift of non-qualifying security [— reserve] — A taxpayer's gain for a particular taxation year from a disposition of a non-qualifying security of the taxpayer (as defined in subsection 118.1(18)) that is the making of a gift (other than an excepted gift, within the meaning assigned by subsection 118.1(19)) to a qualified donee (as defined in subsection 149.1(1)) is the amount, if any, by which

(a) where the disposition occurred in the particular year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the security immediately before the disposition and any outlays and expenses to the extent they were made or incurred by the taxpayer for the purpose of making the disposition, and

(b) where the disposition occurred in the 60-month period that ends at the beginning of the particular year, the amount, if any, deducted under paragraph (c) in

computing the taxpayer's gain for the preceding taxation year from the disposition of the security

exceeds

(c) the amount that the taxpayer claims in prescribed form filed with the taxpayer's return of income for the particular year, where the taxpayer is not deemed by subsection 118.1(13) to have made a gift of property before the end of the particular year as a consequence of a disposition of the security by the donee or as a consequence of the security ceasing to be a non-qualifying security of the taxpayer before the end of the particular year.

Related Provisions: 72(1)(c) — No reserve for year of death; 87(2)(m.1) — Amalgamation — continuing corporation; 110.1(6), 118.1(13) — Donation of non-qualifying security disallowed.

History: Subsec. 40(1.01) added by 1998, c. 19, s. 8, applicable to 1997 *et seq.*

(1.1) [Farm or small business] Property disposed of to a child — Where the property referred to in subparagraph (1)(a)(iii) is property that the taxpayer disposed of to the taxpayer's child, who was resident in Canada immediately before the disposition, and was

(a) any land in Canada or depreciable property in Canada of a prescribed class that was, immediately before the disposition, used by the taxpayer, the taxpayer's spouse, or any of the taxpayer's children in the business of farming,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) immediately before the disposition, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer, or

(c) immediately before the disposition, a share of the capital stock of a small business corporation of the taxpayer,

in computing the amount of any claim in respect of that property under subparagraph (1)(a)(iii), that subparagraph shall be read as if the references therein to "1/5" and "4" were references to "1/10" and "9" respectively.

Related Provisions: 40(8), 70(10) — Extended meaning of "child".

Pre-RSC History: Subsec. 40(1.1) added by 1980-81-82-83, c. 140, subsec. 19(2), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms in existence on November 12, 1981 of an offer or agreement in writing made or entered into on or before that date or otherwise than by virtue of an event referred to in subpara. 54(h)(ii), (iii) or (iv) [now "proceeds of disposition"(b), (c) or (d)] that occurred on or before that date.

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property; IT-268R4: *Inter vivos* transfer of farm property to child; IT-328R3: Losses on shares on which dividends have been received.

(2) Limitations — Notwithstanding subsection (1),

(a) **[reserve — limitations]** — subparagraph (1)(a)(iii) does not apply to permit a taxpayer to claim any amount under that subparagraph in computing a gain for a taxation year if

(i) the taxpayer, at the end of the year or at any time in the immediately following year, was not resident in Canada or was exempt from tax under any provision of this Part, or

(ii) the purchaser of the property sold is a corporation that, immediately after the sale,

(A) was controlled, directly or indirectly, in any manner whatever, by the taxpayer,

(B) was controlled, directly or indirectly, in any manner whatever, by a person or group of persons by whom the taxpayer was controlled, directly or indirectly, in any manner whatever, or

(C) controlled the taxpayer, directly or indirectly, in any manner whatever, where the taxpayer is a corporation;

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Pre-RSC History: Subpara. 40(2)(a)(ii) amended by 1988, c. 55, subsec. 21(2), to substitute (4 times), ", directly or indirectly, in any manner whatever," for "directly or indirectly", applicable with respect to dispositions after 1988.

Para. 40(2)(a) substituted by 1974-75-76, c. 26, subsec. 16(1), applicable in respect of dispositions of property after May 6, 1974. Para. 40(2)(a) formerly read:

(a) subparagraph (1)(a)(iii) does not apply to permit a taxpayer to claim any amount thereunder in computing a gain for a taxation year if the taxpayer was, at any time in the year or the immediately following year, not resident in Canada;

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property.

(b) **[principal residence]** — where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of a property that was the taxpayer's principal residence at any time after the date (in this section referred to as the "acquisition date") that is the later of December 31, 1971 and the day on which the taxpayer last acquired or reacquired it, as the case may be, is the amount determined by the formula

$$A - \frac{A \times B}{C} - D$$

where

A is the amount that would, if this Act were read without reference to this paragraph and subsections 110.6(19) and (21), be the taxpayer's gain therefrom for the year,

B is one plus the number of taxation years that end after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada,

C is the number of taxation years that end after the acquisition date during which the taxpayer owned the property whether jointly with another person or otherwise, and

D is

(i) where the acquisition date is before February 23, 1994 and the taxpayer or a spouse of the taxpayer elected under subsection 110.6(19) in respect of the property or an interest therein that was owned, immediately before the disposition, by the taxpayer, 4/3 of the lesser of

(A) the total of all amounts each of which is the taxable capital gain of the taxpayer or of a spouse of the taxpayer that would have resulted from an election by the taxpayer or spouse under subsection 110.6(19) in respect of the property or interest if

(I) this Act were read without reference to subsection 110.6(20), and

(II) the amount designated in the election were equal to the amount, if any, by which the fair market value of the property or interest at the end of February 22, 1994 exceeds the amount determined by the formula

E – 1.1F

where

E is the amount designated in the election that was made in respect of the property or interest, and

F is the fair market value of the property or interest at the end of February 22, 1994, and

(B) the total of all amounts each of which is the taxable capital gain of the taxpayer or of a spouse of the taxpayer that would have resulted from an election that was made under subsection 110.6(19) in respect of the property or interest if the property were the principal residence of neither the taxpayer nor the spouse for each particular taxation year unless the property was designated, in a return of income for the taxation year that includes February 22, 1994 or for a preceding taxation year, to be the principal residence of either of them for the particular taxation year, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) in any other case, zero;

Related Provisions: 40(4) — Disposal of principal residence to spouse or trust for spouse; 40(5) — Where principal residence is property of trust for spouse; 40(6) — Special rule re principal residence; 40(7.1) — Capital gains exemption election ignored for purposes of determining when property last acquired; 45(3) — Election re principal residence; 257 — Formula amounts cannot calculate to less than zero.

History: Para. 40(2)(b) amended by 1995, c. 3, subsec. 12(1), applicable to dispositions that occur after February 22, 1994. Para. (b) formerly read:

(b) where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of a property that was the taxpayer's principal residence at any time after the date, (in this section referred to as the "acquisition date") that is the later of December 31, 1971 and the day on which the taxpayer last acquired or reacquired it, as the case may be, is the taxpayer's gain therefrom for the year otherwise determined minus that proportion thereof that

(i) one plus the number of taxation years ending after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada,

is of

(ii) the number of taxation years ending after the acquisition date during which the taxpayer owned the property whether jointly with another person or otherwise;

Pre-RSC History: Para. 40(2)(b) substituted by 1977-78, c. 1, subsec. 17(1), applicable with respect to dispositions after March 1977. Para. 40(2)(b) formerly read:

(b) where the taxpayer is an individual, his gain for a taxation year from the disposition of a property that was at any time his principal residence is his gain therefrom for the year otherwise determined minus that proportion thereof that

(i) one plus the number of taxation years ending after 1971 for which the property was his principal residence and during which he was resident in Canada,

is of

(ii) the number of taxation years ending after 1971 during which he owned the property, whether jointly with another person or otherwise;

Selected Cases [para. 40(2)(b)]: *Mintenko v. Canada*, [1989] 1 C.T.C. 40 (FCTD) (Only portion of farm land necessary to use and enjoyment of principal residence).

I.T. Application Rules: 26.1(1) (change of use of property before 1972).

Interpretation Bulletins: IT-120R5: Principal residence; IT-268R3: *Inter vivos* transfer of farm property to child; IT-366R: Principal residence: transfer to spouse or spouse trust.

Forms: T2091: Designation of a property as a principal residence by an individual; T2091(IND)WS: Principal residence worksheet.

(c) **[land used in farming business]** — where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of land used in a farming business carried on by the taxpayer that includes property that was at any time the taxpayer's principal residence is

(i) the taxpayer's gain for the year, otherwise determined, from the disposition of the portion of the land that does not include the property that was the taxpayer's principal residence, plus the taxpayer's gain for the year, if any, determined under paragraph (b) from the disposition of the property that was the taxpayer's principal residence, or

(ii) if the taxpayer so elects in prescribed manner in respect of the land, the taxpayer's gain for the year from the disposition of the land including the property that was the taxpayer's principal residence, determined without regard to paragraph (b) or subparagraph (i) of this paragraph, less the total of

(A) $1,000, and

(B) $1,000 for each taxation year ending after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada;

Related Provisions: 40(4) — Disposal of principal residence to spouse or trust for spouse.

Pre-RSC History: Cl. 40(2)(c)(ii)(B) substituted by 1977-78, c. 1, subsec. 17(2), applicable with respect to dispositions after March 1977. That cl. formerly read:

(B) $1,000 for each taxation year ending after 1971 for which the property was his principal residence and during which he was resident in Canada;

Regulations: 2300 (prescribed manner).

Interpretation Bulletins: IT-120R5: Principal residence; IT-268R3: *Inter vivos* transfer of farm property to child; IT-366R: Principal residence: transfer to spouse or spouse trust.

Forms: T2090: Capital dispositions supplementary schedule re: Election available to farmers disposing of farmland.

(d) **[disposition of bond]** — where the taxpayer is a corporation, its loss for a taxation year from the disposition of a bond or debenture is its loss therefrom for the year otherwise determined, less the total of such amounts received by it as, on account or in lieu of payment of, or in satisfaction of interest thereon as were, by virtue of paragraph 81(1)(m), not included in computing its income;

(e) **[disposition to controller or controlled corporation]** — [Repealed]

Related Provisions: 53(1)(f.1) — Addition to adjusted cost base; 69(5)(a)(ii) — No application where property appropriated by shareholder on winding-up; 98(5) — Where partnership business carried on as sole proprietorship; 256(5.1) — Controlled directly or indirectly — control in fact.

History: Para. 40(2)(e) repealed by 1998, c. 19, subsec. 89(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(e) [disposition to controller or controlled corporation] — where the taxpayer is a corporation, its loss otherwise determined from the disposition of any property disposed of by it to

(i) a person by whom it was controlled, directly or indirectly in any manner whatever, or

(ii) a corporation that was controlled, directly or indirectly in any manner whatever, by a person described in subparagraph (i),

is nil;

Pre-RSC History: Para. 40(2)(e) amended by 1988, c. 55, subsec. 21(3), to substitute (in 2 places) "controlled, directly or indirectly in any manner whatever," for "controlled", applicable with respect to dispositions after 1988.

Selected Cases [para. 40(2)(e)]: *Reeson Investments Ltd. v. Canada*, [1990] 2 C.T.C. 190 (FCTD) (Conversion of capital loss to business investment loss prevented in transactions between associated companies; transfers of business investment loss permitted).

Advance Tax Rulings: ATR-57: Transfer of property for estate planning purposes.

(e.1) **[disposition of debt of related person]** — a taxpayer's loss, if any, from the disposition at any time to a particular person or partnership of an obligation that was, immediately after that time, payable by another person or partnership to the particular person or partnership is nil where the taxpayer, the particular person or partnership and the other person or partnership are related to each other at that time or would be related to each other at that time if paragraph 80(2)(j) applied for the purpose of this paragraph;

Related Provisions: 40(2)(e.2), 40(2)(g)(ii) — Further limitations on loss on disposition of debt; 53(1)(f.1), (f.11) — Addition to adjusted cost base; 54"superficial loss"(e) — Superficial loss rule does not apply; 80.01(8) — Deemed settlement after debt parking.

History: Para. 40(2)(e.1) added by 1995, c. 21, subsec. 11(2), applicable to dispositions that occur after July 12, 1994, other than dispositions pursuant to agreements in writing entered into before July 13, 1994.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

(e.2) **[settlement of commercial obligation]** — a taxpayer's loss on the settlement or extinguishment of a particular commercial obligation (in this paragraph having the meaning assigned by subsection 80(1)) issued by a person or partnership and payable to the taxpayer shall, where any part of the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation consists of one or more other commercial obligations issued by the person or partnership to the taxpayer, be deemed to be the amount determined by the formula

$$A \times \frac{(B - C)}{B}$$

where

A is the amount, if any, that would be the taxpayer's loss from the disposition of the particular obligation if this Act were read without reference to this paragraph,

B is the total fair market value of all the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation, and

C is the total fair market value of the other obligations;

Related Provisions: 40(2)(e.2), 40(2)(g)(ii) — Further limitations on loss on disposition of debt; 53(1)(f.12) — Addition to adjusted cost base; 80(2)(h) — Application of debt forgiveness rules; 257 — Formula cannot calculate to less than zero.

History: Para. 40(2)(e.2) added by 1995, c. 21, subsec. 11(2), applicable to dispositions that occur after December 20, 1994, other than dispositions pursuant to agreements in writing entered into before December 21, 1994.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

(f) **[right to a prize]** — a taxpayer's gain or loss from the disposition of

(i) a chance to win a prize or bet, or

(ii) a right to receive an amount as a prize or as winnings on a bet,

in connection with a lottery scheme or a pool system of betting referred to in section 205 of the *Criminal Code* is nil;

Pre-RSC History: The present wording of para. 40(2)(f) undoes (presumably inadvertently) the amendments made by 1985, c. 22 (see below). Section 205 (formerly 188.1) of the *Criminal Code* has been repealed.

Para. 40(2)(f) amended by 1985, c. 22, s. 5, to substitute "a prize" for "a prize or bet" in subpara. (i) and for "a prize or as winnings on a bet" in subpara. (ii), and "a lottery scheme" for "a lottery scheme or a pool system of betting referred to in section 188.1 of the *Criminal Code*".

Para. 40(2)(f) substituted by 1980-81-82-83, c. 161, s. 34, proclaimed in force December 8, 1983. Para. 40(2)(f) formerly read:

(f) a taxpayer's gain or loss from the disposition of

(i) a chance to win a prize, or

(ii) a right to receive an amount as a prize,

in connection with a lottery scheme is nil;

Interpretation Bulletins: IT-213R: Prizes from lottery schemes, pool system betting and giveaway contests; IT-404R: Payments to lottery ticket vendors.

(g) **[various losses deemed nil]** — a taxpayer's loss, if any, from the disposition of a property, to the extent that it is

(i) a superficial loss,

(ii) a loss from the disposition of a debt or other right to receive an amount, unless the debt or right, as the case may be, was acquired by the taxpayer for the purpose of gaining or producing income from a business or property (other than exempt income) or as consideration for the disposition of capital property to a person with whom the taxpayer was dealing at arm's length,

Selected Cases [subpara. 40(2)(g)(ii)]: *W.F. Botkin Construction Ltd. v. Canada*, [1993] 1 C.T.C. 2765 (TCC) (Loss on loan guarantee nil where no commercial reality to transaction other than to benefit taxpayer's children).

(iii) a loss from the disposition of any personal-use property of the taxpayer (other than listed personal property or a debt referred to in subsection 50(2)), or

(iv) a loss from the disposition of property to

(A) a trust governed by a plan or fund referred to in any of subparagraphs (e)(ii) to (iv) of the definition "disposition" in section 54 under which the taxpayer is a beneficiary or immediately after the disposition becomes a beneficiary, or

Proposed Amendment — 40(2)(g)(iv)(A)

(A) a trust governed by a deferred profit sharing plan, an employees profit sharing plan or a registered retirement income fund under which the taxpayer is a beneficiary or imme-

diately after the disposition becomes a beneficiary, or

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 14(1), will amend cl. 40(2)(g)(iv)(A) to read as above, applicable to 1998 *et seq.*

Technical Notes: Paragraph 40(2)(g) of the Act denies the recognition of losses arising from certain dispositions, including dispositions by a taxpayer to a trust governed by a deferred profit sharing plan, employees profit sharing plan or registered retirement income fund, under which the taxpayer is a beneficiary.

Clause 40(2)(g)(iv)(A) is amended to replace a cross-reference to such trusts with a description of them. This amendment is strictly consequential on the replacement of the definition "disposition" in section 54 with a new definition of the same expression in subsection 248(1).

(B) a trust governed by a registered retirement savings plan under which the taxpayer or the taxpayer's spouse is an annuitant or becomes, within 60 days after the end of the taxation year, an annuitant,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

is nil;

Related Provisions: 3(b)(ii) — Limitation on use of listed personal property losses; 13(21.2) — Superficial loss rule for depreciable property; 18(13)–(16) — Superficial loss in moneylending business or adventure in nature of trade; 40(2)(e.1) — Limitation on loss where commercial obligation disposed of in exchange for another commercial obligation; 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 41 — Listed personal property losses can offset listed personal property gains; 53(1)(f) — Addition to adjusted cost base — superficial loss; 80(1) — "Unrecognized loss"; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Cl. 40(2)(g)(iv)(A) amended by 1986, c. 6, subsec. 18(1) to substitute "(B) to (D)" for "(B) to (E)", applicable to 1986 *et seq.*

Subpara. 40(2)(g)(iii) substituted by 1985, c. 45, subsec. 15(1), applicable to 1985 *et seq.* Subpara. 40(2)(g)(iii) formerly read:

(iii) a loss from the disposition of any personal-use property of the taxpayer other than listed personal property, or

Cl. 40(2)(g)(iv)(A) substituted by 1977-78, c. 32, subsec. 7(1). Cl. 40(2)(g)(iv)(A) formerly read:

(A) a trust governed by a plan referred to in any of clauses 54(c)(v)(B) to (D) under which he is a beneficiary or immediately after the disposition becomes a beneficiary, or

Subpara. 40(2)(g)(v) repealed by 1977-78, c. 1, subsec. 17(3), applicable with respect to transfers of property after May 25, 1976. That subpara. had read:

(v) where the taxpayer is a trust governed by a plan referred to in any of clauses 54(c)(v)(A) or (D), a loss from the disposition of property to a beneficiary or annuitant thereunder.

Subparas. 40(2)(g)(iv), (v) added by 1976-77, c. 4, s. 10, applicable to transfers of property after May 25, 1976.

Selected Cases [para. 40(2)(g)]: *Boudreau v. R.*, [2000] 1 C.T.C. 2242 (T.C.C.) (Personal-use property cannot be depreciable nor give rise to terminal loss).

I.T. Application Rules: 26(6).

Interpretation Bulletins: IT-120R5: Principal residence; IT-124R6: Contributions to registered retirement savings plans; IT-159R3: Capital debts established to be bad debts; IT-160R3: Personal use of aircraft; IT-218R: Profit, capital gains and losses from the sale of real estate; IT-239R2: Deductibility of capital losses from guaranteeing loans and loaning funds in non-arm's length circumstances; IT-325R2: Property transfers after separation, divorce and annulment.

I.T. Technical News: No. 18 (*Byram* case).

(h) **[shares of controlled corporation]** — where the taxpayer is a corporation, its loss otherwise determined from the disposition at any time in a taxation year of shares of the capital stock of a corporation (in this paragraph referred to as the "controlled corporation") that was controlled, directly or indirectly in any manner whatever, by it at any time in the year, is its loss therefrom otherwise determined less the amount, if any, by which

(i) all amounts added under paragraph 53(1)(f.1) to the cost to a corporation, other than the controlled corporation, of property disposed of to that corporation by the controlled corporation that were added to the cost of the property during the period while the controlled corporation was controlled by the taxpayer and that can reasonably be attributed to losses on the property that accrued during the period while the controlled corporation was controlled by the taxpayer,

exceeds

(ii) all amounts by which losses have been reduced by virtue of this paragraph in respect of dispositions before that time of shares of the capital stock of the controlled corporation; and

Related Provisions: 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 87(2)(kk) — Amalgamations — Continuation of predecessor corporations; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

History: Subpara. 40(2)(h)(i) amended by 1998, c. 19, subsec. 89(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subpara. formerly read:

(i) all amounts added under paragraph 53(1)(f.1) to the cost to another corporation of property disposed of to that corporation by the controlled corporation that were added to the cost of that property during the period that the controlled corporation was controlled by the taxpayer and that may reasonably be considered to be attributable to losses on the property that accrued during the period that the controlled corporation was controlled by the taxpayer,

Pre-RSC History: That portion of para. 40(2)(h) preceding subpara. (i) amended by 1988, c. 55, subsec. 21(4), to substitute "controlled, directly or indirectly, in any manner whatever," for "controlled", applicable to dispositions after 1988.

Para. 40(2)(h) added by 1979, c. 5, s. 12, applicable in respect of dispositions of property after November 16, 1978.

(i) **[shares of certain corporations]** — where at a particular time a taxpayer has disposed of a share of the capital stock of a corporation that was at any time a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or a share of the capital stock of a taxable Canadian corporation that was held in a prescribed stock savings plan or of a property substituted for such a share, the taxpayer's loss from the disposition thereof shall be deemed to be the amount, if any, by which

(i) the loss otherwise determined

exceeds

(ii) the amount, if any, by which

(A) the amount of prescribed assistance that the taxpayer (or a person with whom the taxpayer was not dealing at arm's length) received or is entitled to receive in respect of the share

exceeds

(B) the total of all amounts determined under subparagraph (i) in respect of any disposition of

the share or of the property substituted for the share before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length.

Related Provisions: 53(2)(k) — Reduction in adjusted cost base — government assistance; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 248(5) — Substituted property.

History: Subpara. 40(2)(i)(ii) substituted by 1994, c. 21, s. 15, applicable to 1991 *et seq.* That subpara. formerly read:

(ii) the amount, if any, by which the amount of any prescribed assistance in respect of the share received by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length exceeds the total of all amounts each of which is an amount determined under subparagraph (i) in respect of any disposition of the share or of the property substituted for the share before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length.

Pre-RSC History: All that portion of para. 40(2)(i) preceding subpara. (i) substituted by 1987, c. 46, s. 12, to add "or a share of the capital stock of a taxable Canadian corporation that was held in a prescribed stock savings plan", applicable to 1986 *et seq.*

All that portion of para. 40(2)(i) preceding subpara. (i) substituted by 1986, c. 6, subsec. 18(2), to add "or a prescribed labour-sponsored venture capital corporation", applicable to 1985 *et seq.*

Para. 40(2)(i) added by 1980-81-82-83, c. 48, s. 17, applicable to 1979 *et seq.*

Regulations: 6700, 6700.1 (prescribed venture capital corporation); 6701 (prescribed labour-sponsored venture capital corporation); 6702 (prescribed assistance); 6705 (prescribed stock savings plan).

(j) [Repealed under former Act]

Pre-RSC History: Para. 40(2)(j) repealed by 1986, c. 6, subsec. 18(3), applicable to 1986 *et seq.* Para. 40(2)(j) formerly read:

(j) where the taxpayer is a participant under an indexed security investment plan and pursuant to paragraph 47.1(2)(c) has transferred a security to the plan within 60 days after the day on which he acquired the security, his loss from the deemed disposition arising by virtue of such transfer shall be deemed to be the amount, if any, by which

(i) the loss otherwise determined

exceeds

(ii) any outlays and expenses to the extent they were made or incurred by the taxpayer for the purpose of acquiring the security and were included in the cost to him of the security.

Para. 40(2)(j) added by 1984, c. 1, subsec. 14(1), applicable with respect to transfers occurring after September 30, 1983.

(3) Deemed gain where amounts to be deducted from ACB exceed cost plus amounts to be added to ACB — Where

(a) the total of all amounts required by subsection 53(2) (except paragraph 53(2)(c)) to be deducted in computing the adjusted cost base to a taxpayer of any property at any time in a taxation year

exceeds

(b) the total of

(i) the cost to the taxpayer of the property determined for the purpose of computing the adjusted cost base to the taxpayer of that property at that time, and

(ii) all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the property in computing the adjusted cost base to the taxpayer of that property at that time,

the following rules apply:

(c) subject to paragraph 93(1)(b), the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of the property,

(d) for the purposes of section 93, the definition "foreign accrual property income" in subsection 95(1) and section 110.6, the property shall be deemed to have been disposed of by the taxpayer in the year, and

(e) for the purposes of section 93, the amount of the excess shall be deemed to be proceeds of disposition of the property to the taxpayer.

Related Provisions: 40(3.1)–(3.2) — Deemed capital gain or loss for passive partners; 53(1)(a) — Addition to adjusted cost base of deemed gain; 93(1) — Election re disposition of share in foreign affiliate; 98(1)(c) — Where partnership ceases to exist; 98.1(1)(c) — Residual interest in partnership.

History: That portion of subsec. 40(3) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 23, applicable to 1987 *et seq.* That portion formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that property and for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Pre-RSC History: That portion of subsec. 40(3) following subpara. (b)(ii) substituted by 1988, c. 55, subsec. 21(5), applicable to 1985 *et seq.* That portion formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that property.

Para. 40(3)(b) substituted by 1974-75-76, c. 26, subsec. 16(2), applicable to 1972 *et seq.*

Selected Cases [subsec. 40(3)]: *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital).

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner.

(3.1) Deemed gain for certain partners — Where, at the end of a fiscal period of a partnership, a member of the partnership is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member, except where the member's partnership interest was held by the member on February 22, 1994 and is an excluded interest at the end of the fiscal period,

(a) the amount determined under subsection (3.11) is deemed to be a gain from the disposition, at the end of the fiscal period, of the member's interest in the partnership; and

(b) for the purpose of section 110.6, the interest is deemed to have been disposed of by the member at that time.

Related Provisions: 40(3.12) — Election for deemed capital loss where ACB is later positive; 40(3.131) — Specified member of partnership — anti-avoidance rule; 40(3.14) — Limited partner; 40(3.15) — Excluded interest; 40(3.18) — Grandfathered partners; 40(3.19) — Subsec. 40(3.1) takes precedence over 40(3); 40(3.2) — Paras. 98(1)(c) and 98.1(1)(c) take precedence; 53(1)(e)(vi) — Addition to adjusted cost base; 53(2)(c)(i.3), (i.4) — Reduction in adjusted cost base.

History: Subsec. 40(3.1) amended by 1998, c. 19, subsec. 89(3), applicable after February 21, 1994, except that subsec. 40(3.1) does not apply to a member of a partnership before the end of the partnership's fifth fiscal period that ends after 1994 if the following conditions are met:

(a) the member acquired the partnership interest before 1995;

(b) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production;

(c) the principal photography of the production (or, in the case of a production that is a television series, an episode of the series) began before 1995;

(d) the funds used to produce the film production were raised before 1995 and the principal photography of the production was completed, and the funds were expended, before 1995 (or, in the case of a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii), the

principal photography of the production was completed, and the funds were expended, before March 2, 1995); and

(e) one of the following conditions is met:

(i) the producer of the production

(A) had, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production, or

(B) had entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production,

(ii) the producer of the production received before 1995 a commitment for funding or government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

(iii) the production is a continuation of a television series an episode of which satisfies the requirements of this paragraph.

The subsec. formerly read:

(3.1) Where, at the end of a fiscal period of a partnership, a member of the partnership is a limited partner of the partnership or is a member of the partnership who was a specified member of the partnership at all times since becoming a member (except where the member's partnership interest was held by the member on February 22, 1994 and is an excluded interest at the end of the fiscal period), the amount determined under subsection (3.11) shall be deemed to be a gain from the disposition, at the end of the fiscal period, of the member's interest in the partnership and, for the purpose of section 110.6, the interest shall be deemed to have been disposed of by the member at that time.

Subsec. 40(3.1) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994, except that subsec. 40(3.1) does not apply to a member of a partnership before the end of the partnership's fifth fiscal period ending after 1994 where the following conditions are met:

(a) the member acquires the partnership interest before 1995;

(b) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production;

(c) the principal photography of the production (or, in the case of a television series, an episode of the series) commences before 1995;

(d) the funds used to produce the film production are raised before 1995 and the principal photography of the production is completed, and the funds are expended, before 1995 (or, in the case of a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii), the principal photography of the production is completed, and the funds are expended, before March 2, 1995); and

(e) one of the following conditions is met:

(i) the producer of the production has, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production (or has entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production),

(ii) the producer of the production receives before 1995 a commitment for funding or government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

(iii) the production is a continuation of a television series an episode of which satisfies the requirements of paragraph (e).

Pre-RSC History [former subsec. 40(3.1)]: Former subsec. 40(3.1) repealed by 1986, c. 6, subsec. 18(4), applicable to 1986 *et seq.* Subsec. 40(3.1) formerly read:

(3.1) Losses on transferring securities to an indexed security investment plan — Where, in any taxation year, a taxpayer pursuant to paragraph 47.1(2)(c) transfers a security owned by him to an indexed security investment plan under which he is the participant and

(a) the total of all capital losses of the taxpayer for the year from dispositions of property arising by virtue of transfers to such plans

exceeds

(b) the total of all capital gains of the taxpayer for the year from dispositions of property arising by virtue of transfers to such plans,

the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition in the year of a capital property.

Subsec. 40(3.1) added by 1984, c. 1, subsec. 14(2), applicable to taxation years commencing after December 31, 1984.

I.T. Technical News: No. 5 (adjusted cost base of partnership interest).

(3.11) Amount of gain — For the purpose of subsection (3.1), the amount determined at any time under this subsection in respect of a member's interest in a partnership is the amount determined by the formula

$$A - B$$

where

A is the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the member of the interest in the partnership at that time, and

B is the total of

(a) the cost to the member of the interest determined for the purpose of computing the adjusted cost base to the member of the interest at that time, and

(b) all amounts required by subsection 53(1) to be added to the cost to the member of the interest in computing the adjusted cost base to the member of the interest at that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 40(3.11) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.12) Deemed loss for certain partners — Where a corporation, an individual (other than a trust) or a testamentary trust (each of which is referred to in this subsection as the "taxpayer") is a member of a partnership at the end of a fiscal period of the partnership, the taxpayer shall be deemed to have a loss from the disposition at that time of the member's interest in the partnership equal to the amount that the taxpayer elects in the taxpayer's return of income under this Part for the taxation year that includes that time, not exceeding the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which was an amount deemed by subsection (3.1) to be a gain of the taxpayer from a disposition of the interest before that time

exceeds

(ii) the total of all amounts each of which was an amount deemed by this subsection to be a loss of the taxpayer from a disposition of the interest before that time, and

(b) the adjusted cost base to the taxpayer of the interest at that time.

Related Provisions: 53(2)(c)(i.2) — Reduction in adjusted cost base.

History: Subsec. 40(3.12) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.13) Artificial transactions — For the purpose of applying section 53 at any time to a member of a partnership who would be a member described in subsection (3.1) of the partnership if the fiscal period of the partnership that includes that time ended at that time, where at any time after February 21, 1994 the member of the partnership makes a contribution of capital to the partnership and

(a) the partnership or a person or partnership with whom the partnership does not deal at arm's length

(i) makes a loan to the member or to a person with whom the member does not deal at arm's length, or

(ii) pays an amount as, on account of, in lieu of payment of or in satisfaction of, a distribution of the member's share of the partnership profits or partnership capital, or

(b) the member or a person with whom the member does not deal at arm's length becomes indebted to the partnership or a person or partnership with whom the partnership does not deal at arm's length,

and it is established, by subsequent events or otherwise, that the loan, payment or indebtedness, as the case may be, was made or arose as part of a series of contributions and such loans, payments or other transactions, the contribution of capital shall be deemed not to have been made.

Related Provisions: 251 — Arm's length.

History: Subsec. 40(3.13) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.131) Specified member of a partnership — Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of subsection (3.1) to the member's interest in the partnership, the member is deemed for the purpose of that subsection to have been a specified member of the partnership at all times since becoming a member of the partnership.

Related Provisions: 127.52(2.1) — Parallel rule for minimum tax purposes.

History: Subsec. 40(3.131) added by 1998, c. 19, subsec. 89(4), applicable after April 26, 1995.

(3.14) Limited partner — For the purpose of subsection (3.1), a member of a partnership at a particular time is a limited partner of the partnership at that time if, at that time or within 3 years after that time,

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited;

Proposed Amendment — 40(3.14)(a)

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions or misconduct that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 14(2), will amend para. 40(3.14)(a) to read as above, applicable after 1997.

Technical Notes: Section 40 of the Act provides special rules for determining a taxpayer's capital gain or capital loss for a taxation year.

Subsection 40(3.14) of the Act provides an extended definition of "limited partner" for the purpose of determining whether a member's interest in a partnership is subject to the negative adjusted cost base rule in subsection 40(3.1).

Paragraph 40(3.14)(a) provides that a member of a partnership is a "limited partner" if, by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (e.g., a limited partner of a limited partnership). Concern has been expressed that paragraph 40(3.14)(a) applies to a partner of a "limited liability partnership" in addition to a limited partner of a limited partnership. A limited liability partnership is a new type of partnership the form of which has only recently been permitted under some provincial statutes [e.g., lawyers and chartered accountants in Ontario — ed.].

Unlike a limited partner of a limited partnership, a member of limited liability partnership can be liable for the general debts and obligations of a limited liability partnership. However, a member of a limited liability partnership is not liable for the debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

Paragraph 40(3.14)(a) is amended to exclude from its application cases where a member's liability is limited by operation of a statutory provision of Canada or a province that limits the member's liability only for the debts, obligations and liabilities of a limited liability partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business and while the partnership is a limited liability partnership.

Letter from Department of Finance re Limited Liability Partnerships: [See under 96(2.4)(a) — ed.]

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph 96(2.2)(d) if that paragraph were read without reference to subparagraphs (ii) and (vi);

(c) one of the reasons for the existence of the member who owns the interest

(i) can reasonably be considered to be to limit the liability of any person with respect to that interest, and

(ii) cannot reasonably be considered to be to permit any person who has an interest in the member to carry on the person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement can reasonably be considered to be to attempt to avoid the application of this subsection to the member.

Related Provisions: 96(2.4) — Definition of limited partner for purposes of at-risk amount.

History: Para. 40(3.14)(b) amended by 1998, c. 19, subsec. 89(5), applicable to fiscal periods that end after November 1994. The para. formerly read:

(b) the member or a person with whom the member does not deal at arm's length is entitled to receive an amount or obtain a benefit that would be described in paragraph 96(2.2)(d) if it were read without reference to subparagraphs 96(2.2)(d)(ii) and (vi);

Subsec. 40(3.14) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.15) Excluded interest — For the purpose of subsection (3.1), an excluded interest in a partnership at any time means an interest in a partnership that actively carries on a business that was carried on by it throughout the period beginning February 22, 1994 and ending at that time, or that earns income from a property that was owned by it throughout that period, unless in that period there was a substantial contribution of capital to the partnership or a substantial increase in the indebtedness of the partnership.

Related Provisions: 40(3.16) — Amounts considered not to be substantial; 40(3.17) — Whether carrying on business before February 22, 1994; 53(2)(c)(i.4)(E) — Effect of excluded interest on ACB of partnership with 1995 stub period income.

History: Subsec. 40(3.15) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.16) Amounts considered not to be substantial — For the purpose of subsection (3.15), an amount will be considered not to be substantial where

(a) the amount

(i) was raised pursuant to the terms of a written agreement entered into by a partnership before February 22, 1994 to issue an interest in the partnership and was expended on expenditures contemplated by the agreement before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production),

(ii) was raised pursuant to the terms of a written agreement (other than an agreement referred to in subparagraph (i)) entered into by a partnership before February 22, 1994 and was expended on expenditures contemplated by the agreement before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production),

(iii) was used by the partnership before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production) to make an expenditure required to be made pursuant to the terms of a written agreement entered into by the partnership before February 22, 1994, or

(iv) was used to repay a loan, debt or contribution of capital that had been received or incurred in respect of any such expenditure;

(b) the amount was raised before 1995 pursuant to the terms of a prospectus, preliminary prospectus, offering memorandum or registration statement filed before February 22, 1994 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of a province and, where required by law, accepted for filing by the public authority, and expended before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii), or an interest in one or more partnerships all or substantially all of the property of which is such a film production) on expenditures contemplated by the document that was filed before February 22, 1994;

(c) the amount was raised before 1995 pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before February 22, 1994,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before February 22, 1994,

(iv) the sale of the securities was substantially in accordance with the memorandum, and

(v) the funds are expended in accordance with the memorandum before 1995 (except that the funds may be expended before March 2, 1995 in the case of a partnership all or substantially all of the property of which is a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production); or

(d) the amount was used for an activity that was carried on by the partnership on February 22, 1994 but not for a significant expansion of the activity nor for the acquisition or production of a film production.

Related Provisions: 40(3.17) — Partnership deemed to have carried on business before February 22, 1994; 40(3.18)(d) — Grandfathering of certain partnership interests.

History: Subsec. 40(3.16) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.17) Whether carrying on business before February 22, 1994 — For the purpose of subsection (3.15), a partnership in respect of which paragraph (3.16)(a), (b) or (c) applies shall be considered to have actively carried on the business, or earned income from the property, contemplated in the document referred to in that paragraph throughout the period beginning February 22, 1994 and ending on the earlier of the closing date, if any, stipulated in the document and January 1, 1995.

History: Subsec. 40(3.17) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.18) Deemed partner — For the purpose of subsection (3.1), a member of a partnership who acquired an interest in the partnership after February 22, 1994 shall be deemed to have held the interest on February 22, 1994 where the member acquired the interest

(a) in circumstances in which

(i) paragraph 70(6)(d.1) applied,

(ii) where the member is an individual, the member's spouse held the partnership interest on February 22, 1994,

(iii) where the member is a trust, the taxpayer by whose will the trust was created held the partnership interest on February 22, 1994, and

(iv) the partnership interest was, immediately before the death of the spouse or the taxpayer, as the case may be, an excluded interest;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) in circumstances in which

(i) paragraph 70(9.2)(c) applied,

(ii) the member's parent held the partnership interest on February 22, 1994, and

(iii) the partnership interest was, immediately before the parent's death, an excluded interest;

(c) in circumstances in which

(i) paragraph 70(9.3)(e) applied,

(ii) the trust referred to in subsection 70(9.3) or the taxpayer by whose will the trust was created held the partnership interest on February 22, 1994, and

(iii) the partnership interest was, immediately before the death of the spouse referred to in subsection 70(9.3), an excluded interest; or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) before 1995 pursuant to a document referred to in subparagraph (3.16)(a)(i) or paragraph (3.16)(b) or (c).

Related Provisions: 252(2)(a) — Extended meaning of "parent"; 252(4)(a) — Extended meaning of "spouse".

History: Subsec. 40(3.18) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.19) Non-application of subsec. (3) — Subsection (3) does not apply in any case where subsection (3.1) applies.

History: Subsec. 40(3.19) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.2) Non-application of subsec. (3.1) — Subsection (3.1) does not apply in any case where paragraph 98(1)(c) or 98.1(1)(c) applies.

History: Subsec. 40(3.2) added by 1995, c. 3, subsec. 12(2), applicable after February 21, 1994.

(3.3) When subsection (3.4) applies — Subsection (3.4) applies when

(a) a corporation, trust or partnership (in this subsection and subsection (3.4) referred to as the "transferor") disposes of a particular capital property (other than depreciable property of a prescribed class) otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54;

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection (3.4) referred to as the "substituted property") that is, or is identical to, the particular property; and

(c) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Related Provisions: 93(2)–(2.3) — Loss on disposition of share of foreign affiliate; 251.1 — Affiliated persons.

History: Subsecs. 40(3.3) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

(3.4) Loss on certain properties — If this subsection applies because of subsection (3.3) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil, and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to paragraph (2)(g) and this subsection) is deemed to be a loss of the transferor from a disposition of the particular property at the time that is immediately before the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(iii) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation,

(iv) at which the transferor or a person affiliated with the transferor is deemed by section 50 to have disposed of the property, where the substituted property is a debt or a share of the capital stock of a corporation, or

(v) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation,

and, for the purpose of paragraph (b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsec-

tion, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs (b)(i) to (v).

Related Provisions: 13(21.2) — Parallel rule for depreciable capital property; 14(12) — Parallel rule for eligible capital property; 18(13)–(15) — Parallel rule for share or debt owned by financial institution; 40(3.5) — Deemed identical property; 40(3.6) — Where share in corporation disposed of to the corporation; 69(5)(d) — No application on winding-up; 87(2)(g.3) — Amalgamations — continuing corporation; 93(2)–(2.3), (4) — Loss on disposition of share of foreign affiliate; 112(3)–(4.22) — Reduction in capital loss on shares where dividends previously paid; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Whether properties are identical; 256(6)–(9) — Whether control acquired.

History: Subsecs. 40(3.4) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

(3.5) Deemed identical property — For the purposes of subsections (3.3) and (3.4),

(a) a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property;

(b) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction to which section 51, 85.1, 86 or 87 applies is deemed to be a property that is identical to the other share;

(c) where subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a corporation, and after the disposition the corporation is merged with one or more other corporations, otherwise than in a transaction in respect of which paragraph (b) applies to the share, or is wound up in a winding-up to which subsection 88(1) applies, the corporation formed on the merger or the parent (within the meaning assigned by subsection 88(1)), as the case may be, is deemed to own the share while it is affiliated with the transferor; and

(d) where subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a corporation, and after the disposition the share is redeemed, acquired or cancelled by the corporation, otherwise than in a transaction in respect of which paragraph (b) or (c) applies to the share, the transferor is deemed to own the share while the corporation is affiliated with the transferor.

Possible Future Amendment — 40(3.3)–(3.5)

Department of Finance letter, November 17, 1997:

Mr. Steve Suarez
Bennett Jones Verchere
Toronto, Ontario

Re: Proposed Subsections 40(3.3) to (3.5) — Loss deferral rules

Dear Mr. Suarez:

I am writing further to your recent discussion of proposed *Income Tax Act* subsections 40(3.3) and following, with Lawrence Purdy of this Division.

You have described a situation in which you consider that these provisions may operate inappropriately, and have asked for our comments. As I understand that you have a client for whom this is an immediate concern, we have given this some priority.

Proposed subsections 40(3.3) to (3.5) set out rules that would apply where, in general terms, a corporation, partnership or trust would otherwise realize a loss on disposition of a non-depreciable capital property to an affiliated person. The rules would defer the recognition of that loss until the earliest of several possible subsequent events, the most typical of which is that the property (or an identical property) is no longer held by a person who is affiliated with the initial transferor. Once the property had left the affiliated population, the initial transferor could recognize that deferred loss.

The proposals include a few provisions directed at special circumstances. One of these is proposed paragraph 40(3.5)(b), which is meant to cover cases where shares are exchanged for one another. Paragraph 40(3.5)(b) would treat a share that was acquired in exchange for another share, in a transaction to which section 51, 85.1, 86 or 87 applies, as being identical to the other share. This ensures, for example, that a loss that is deferred on the transfer of a share to an affiliate will not be recognized if the share is merely replaced with another share under one of those provisions. Even though it may be argued that the former share is no longer held by an affiliated person (since that share no longer exists), paragraph 40(3.5)(b) causes the new share in effect to take its place for this purpose.

Your concern, as I understand it, is that paragraph 40(3.5)(b) may apply not only where the section 85.1 exchange takes place after the initial transfer of a share to an affiliated person, but also where the section 85.1 exchange is itself that initial transfer. In other words, paragraph 40(3.5)(b) might apply to any exchange to which section 85.1 applies. If this is the case, then the clear intention of section 85.1 to permit a loss to be realized on such an exchange, at least in some circumstances, would be contradicted — the shares taken back would be deemed to be identical to the shares given up, and the loss would be deferred under subsection 40(3.4).

I agree that this would not be an appropriate result, at least where the vendor and the purchaser (as they are described in subsection 85.1(1)(a)) are not affiliated. That is, I agree that it ought in policy terms to be possible for a vendor to realize a loss on an exchange of shares of an acquired corporation for shares of a purchaser that is not affiliated with the vendor immediately after the exchange.

We will consider further how this policy view can best be accommodated in the proposed legislation. Given the tight timeline we are on, it may not be possible to recommend a clarifying change before the legislation is introduced. In that case, we will recommend that the change be included in a future set of technical amendments. While I cannot, as you know, offer any assurance that either the Minister or Parliament itself will agree with the recommendations we intend to make in this regard, I hope this summary of our views is helpful.

Yours sincerely
Department of Finance
Len Farber, Director General, Tax Legislation Division

Letter from Department of Finance, September 15, 1998:

Dear [xxx]

I am writing further to a recent exchange of messages between [xxx] and Lawrence Purdy of this Division, regarding *Income Tax Act* subsections 40(3.3) and following. I understand that you and [xxx] are working together on a particular transaction to which these provisions may be relevant, and that [xxx] has asked that you and he be given the same information.

Subsections 40(3.3) to (3.5) set out rules that apply where, in general terms, a corporation, partnership or trust would otherwise realize a loss on a disposition of a non-depreciable capital property to an affiliated person. The rules defer the recognition of that loss until the earliest of several possible subsequent events, the most typical of which is that the property (or an identical property) is no longer held by a person who is affiliated with the initial transferor. Once the property has left the affiliated population, the initial transferor can recognize that deferred loss.

The provisions include a few rules directed at special circumstances. One of those is paragraph 40(3.5)(b), which is meant to cover cases where shares are exchanged for one another. Paragraph 40(3.5)(b) treats a share that was acquired in exchange for another share, in a transaction to which section 51, 85.1, 86 or 87 applies, as being identical to the other share. This ensures, for example, that a loss that is deferred on the transfer of a share to an affiliate will not be recognized if the share is merely replaced

with another share under one of those provisions. Even though it may be argued that the former share is no longer held by an affiliated person (since that share no longer exists), paragraph 40(3.5)(b) causes the new share in effect to take its place for this purpose.

Your concern, which has also been raised with us by others in the past, is that paragraph 40(3.5)(b) may apply not only where the section 85.1 exchange takes place after the initial transfer of a share to an affiliated person, but also where the section 85.1 exchange is itself that initial transfer. In other words, paragraph 40(3.5)(b) might apply to any exchange to which section 85.1 applies. If this is the case, then the clear intention of section 85.1 to permit a loss to be realized on such an exchange, at least in some circumstances, would be contradicted — the shares taken back would be deemed to be identical to the shares given up, and the loss would be deferred under subsection 40(3.4).

I agree that this would not be an appropriate result, at least where the vendor and the purchaser (as they are described in subsection 85.1(1) are not affiliated. That is, I agree that it ought in policy terms to be possible for a vendor to realize a loss on an exchange of shares of an acquired corporation for shares of a purchaser that is not affiliated with the vendor immediately after the exchange.

We will recommend that a clarifying change to the relevant rules be included in a future package of amendments. Since the change would be a strictly technical correction to the rules as they were enacted, I expect to recommend that the change apply as of the date the rules themselves took effect — that is, to dispositions of property that occur after April 26, 1995.

As you know, I cannot offer any assurance that either the Minister or Parliament itself will agree with the recommendations we intend to make in this regard. Nonetheless, I hope this summary of our views is helpful.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division

Related Provisions: 87(2)(g.2) — Amalgamations — continuing corporation.

History: Subsecs. 40(3.5) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

(3.6) Loss on shares — Where at any time a taxpayer disposes, to a corporation that is affiliated with the taxpayer immediately after the disposition, of a share of a class of the capital stock of the corporation (other than a share that is a distress preferred share as defined in subsection 80(1)),

(a) the taxpayer's loss, if any, from the disposition is deemed to be nil; and

(b) in computing the adjusted cost base to the taxpayer after that time of a share of a class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added the proportion of the amount of the taxpayer's loss from the disposition (determined without reference to paragraph (2)(g) and this subsection) that

(i) the fair market value, immediately after the disposition, of the share

is of

(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation owned by the taxpayer.

Related Provisions: 53(1)(f.2) — Addition to adjusted cost base; 84(3) — Deemed dividend of excess of proceeds over paid-up capital; 251.1 — Affiliated persons.

History: Subsecs. 40(3.6) added by 1998, c. 19, subsec. 89(6), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

Proposed Addition — 40(3.7)

(3.7) Losses of non-resident — If an individual disposes of a property at any time after having ceased to be resident in Canada, for the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) in computing the individual's loss from the disposition,

(a) the individual is deemed to be a corporation in respect of dividends received by the individual, or deemed under Part XIII to have been paid to the individual, at a particular time that is after the time at which the individual last acquired the property and at which the individual was non-resident; and

(b) an amount on account of

(i) each taxable dividend received by the individual at a particular time described in paragraph (a), and

(ii) each amount deemed under Part XIII to have been paid to the individual at a particular time described in paragraph (a), as a dividend from a corporation resident in Canada, to the extent that the amount can reasonably be considered to relate to the property,

is deemed to be a taxable dividend that was received by the individual and that was deductible under section 112 in computing the individual's taxable income or taxable income earned in Canada for the taxation year that includes that particular time.

Related Provisions: 119 — Credit to former resident where stop-loss rule applies; 128.1(6)(b), 128.1(7)(e) — Returning former resident of Canada.

Application: The June 5, 2000 Notice of Ways and Means Motion subsec. 14(3), will add subsec. 40(3.7), applicable to dispositions after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

Technical Notes: Section 40 of the Act provides rules for determining a taxpayer's gain or loss from the disposition of a property.

New subsection 40(3.7) of the Act is a "stop-loss" rule that may reduce the loss of an individual from the disposition of a property if the individual disposes of the property at any time after having ceased to be resident in Canada. In general terms, this stop-loss rule applies where an individual has received dividends in respect of a property (whether a share, an interest in a partnership or an interest in a trust) during the period of non-residence that begins after the individual last acquired the property.

The Act already includes, in section 112 and related provisions, a comprehensive stop-loss system for corporations. Instead of duplicating that system, new subsection 40(3.7) adapts it to apply to losses otherwise realized by individuals on dispositions of property after they ceased to be resident in Canada, regardless of whether they are resident in Canada at the time of such dispositions.

For the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) of the Act, new subsection 40(3.7) deems an individual to be a corporation in respect of dividends received in respect of a property after the last time the individual acquired the property and while the individual was non?resident, and deems any taxable dividends received by the individual during that period to have been deductible under section 112 when received. The effect of this is that some or all dividends received while non-resident may reduce the individual's loss on a share, partnership interest or trust interest.

New subsection 40(3.7) applies to dispositions of property that occur after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

(4) Disposal of principal residence to spouse or trust for spouse — Where a taxpayer has, after 1971,

disposed of property to an individual in circumstances to which subsection 70(6) or 73(1) applied, for the purposes of computing the individual's gain from the disposition of the property under paragraph (2)(b) or (c), as the case may be,

(a) the individual shall be deemed to have owned the property throughout the period during which the taxpayer owned it;

Selected Cases [para. 40(4)(a)]: *Dumais v. MNR*, [1990] 1 C.T.C. 342 (FCTD) (Capital gain from disposition of community property taxable to husband alone).

(b) the property shall be deemed to have been the individual's principal residence

(i) in any case where subsection 70(6) is applicable, for any taxation year for which it would, if the taxpayer had designated it in prescribed manner to have been the taxpayer's principal residence for that year, have been the taxpayer's principal residence, and

(ii) in any case where subsection 73(1) is applicable, for any taxation year for which it was the taxpayer's principal residence; and

(c) where the individual is a trust, the trust shall be deemed to have been resident in Canada during each taxation year during which the taxpayer was resident in Canada.

Related Provisions: 40(7.1) — Effect of election to trigger capital gains exemption.

Pre-RSC History: All that portion of subsec. 40(4) preceding para. (a) substituted by 1985, c. 45, subsec. 15(2), applicable to dispositions occurring after May 9, 1985. That portion of subsec. 40(4) formerly read:

(4) Where principal residence disposed of to spouse or trust in favour of spouse — Where a taxpayer has, after 1971, disposed of property to an individual who is deemed by subsection 70(6) or 73(1) to have acquired it for an amount equal to its adjusted cost base to the taxpayer immediately before the disposition, for the purposes of computing the individual's gain from the disposition of the property under paragraph (2)(b) or (c), as the case may be,

Regulations: 2301 (prescribed manner of designation).

Interpretation Bulletins: IT-120R5: Principal residence; IT-366R: Principal residence — transfer to spouse or spouse trust.

(5) [Repealed]

History: Subsec. 40(5) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 12, applicable to dispositions occurring after 1990. Subsec. 40(5) formerly read:

(5) Where principal residence is property of trust for spouse — For the purposes of determining whether any property of a trust described in subsection 70(6) or 73(1) was its principal residence for any taxation year, the reference in paragraph (a) of the definition "principal residence" in section 54 to "the taxpayer" shall be read as if it were a reference to the spouse referred to in subparagraph 70(6)(b)(i) or 73(1)(c)(i), as the case may be.

Pre-RSC History: Subsec. 40(5) substituted by 1985, c. 45, subsec. 15(3), applicable to dispositions occurring after May 9, 1985. Subsec. 40(5) formerly read:

(5) Principal residence where property of trust in favour of spouse — For the purposes of determining whether any property of a trust described in subsection 70(6) or 73(1) was its principal residence for any taxation year, paragraph 54(g) shall be read as if

(a) the reference in subparagraph (i) of that paragraph to "the taxpayer" were read as a reference to the spouse referred to in subparagraph 70(6)(b)(i) or 73(1)(c)(i), as the case may be, and

(b) the references in subparagraph (iii) of that paragraph to "him" were read as references to the trust and the spouse mentioned in paragraph (a).

Para. 40(5)(a) substituted by 1977-78, c. 32, subsec. 7(2), applicable to 1978 *et seq.*, to substitute "73(1)(c)(i)" for "paragraph 73(1)(a)".

(6) Special rule concerning principal residence — Where a property was owned by a taxpayer, whether jointly with another person or otherwise, at the end of 1981 and continuously thereafter until disposed of by the taxpayer, the amount of the gain determined under paragraph (2)(b) in respect of the disposition shall not exceed the amount, if any, by which the total of

(a) the taxpayer's gain calculated in accordance with paragraph (2)(b) on the assumption that the taxpayer had disposed of the property on December 31, 1981 for proceeds of disposition equal to its fair market value on that date, and

(b) the taxpayer's gain calculated in accordance with paragraph (2)(b) on the assumption that that paragraph applies and that

(i) the taxpayer acquired the property on January 1, 1982 at a cost equal to its proceeds of disposition as determined under paragraph (a), and

(ii) the description of B in paragraph (2)(b) is read without reference to "one plus"

exceeds

(c) the amount, if any, by which the fair market value of the property on December 31, 1981 exceeds the proceeds of disposition of the property determined without reference to this subsection.

Related Provisions: 40(7.1) — Effect of election to trigger capital gains exemption.

History: Subpara. 40(6)(b)(ii) amended by 1995, c. 3, subsec. 12(3), applicable to dispositions that occur after February 22, 1994. Subpara. (ii) formerly read:

(ii) subparagraph (2)(b)(i) is read without reference to "one plus"

Pre-RSC History: Subsec. 40(6) added by 1980-81-82-83, c. 140, subsec. 19(3), applicable with respect to dispositions of property occurring after 1981.

Interpretation Bulletins: IT-120R5: Principal residence; IT-366R: Principal residence — transfer to spouse or spouse trust.

(7) Property in satisfaction of interest in trust — Where property has been acquired by a taxpayer in satisfaction of all or any part of the taxpayer's capital interest in a trust, in circumstances to which subsection 107(2) applies and subsection 107(4) does not apply, for the purposes of paragraph (2)(b) and the definition "principal residence" in section 54, the taxpayer shall be deemed to have owned the property continuously since the trust last acquired it.

Related Provisions: 40(7.1) — Effect of election to trigger capital gains exemption; 107(2.01) — Principal residence distribution by spouse trust.

Pre-RSC History: Subsec. 40(7) added by 1985, c. 45, subsec. 15(4), applicable to dispositions occurring after May 9, 1985.

Interpretation Bulletins: IT-120R5: Principal residence; IT-437R: Ownership of property (principal residence).

(7.1) Effect of election under subsec. 110.6(19) — Where an election was made under subsection 110.6(19) in respect of a property of a taxpayer that was the taxpayer's principal residence for the 1994 taxation year or that, in the taxpayer's return of income for the taxation year in which the taxpayer disposes of the property or grants an option to acquire the property, is designated as the taxpayer's principal residence, in determining, for the purposes of paragraph (2)(b) and subsections (4) to (7), the day on which the property was last acquired or reacquired by the taxpayer and the period throughout which the property was owned by the taxpayer this Act shall be read without reference to subsection 110.6(19).

History: Subsec. 40(7.1) added by 1995, c. 3, subsec. 12(4), applicable to dispositions that occur after February 22, 1994.

Interpretation Bulletins: IT-120R5: Principal residence.

(8) Application of subsec. 70(10) — The definitions in subsection 70(10) apply to this section.

Origin of subsec. 40(8): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 70(10)).

(9) Additions to taxable Canadian property — Where a non-resident person disposes of a taxable Canadian property that the person last acquired before April 27, 1995 and that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, the person's gain or loss from the disposition is deemed to be the amount determined by the formula

Proposed Amendment — 40(9)

(9) Additions to taxable Canadian property — If a non-resident person disposes of a taxable Canadian property

(a) that the person last acquired before April 27, 1995,

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on January 1, 1996,

the person's gain or loss from the disposition is deemed to be the amount determined by the formula

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 14(4), will amend the portion of subsec. 40(9) before the formula to read as above, applicable to dispositions that occur after April 26, 1995.

Technical Notes: As a result of changes to the definition of "taxable Canadian property," certain properties acquired before April 27, 1995 became taxable Canadian properties on that date. Subsection 40(9) was enacted to provide rules for computing a non-resident person's gain or loss from the disposition of such a property, prorating the amount of gain or loss determined without reference to the subsection according to the number of months the person held the property before May 1995.

Effective October 2, 1996 the definition of "taxable Canadian property" is again amended so that certain properties acquired before that date will have become taxable Canadian properties on that date. Subsection 40(9) is amended to clarify that the formula it sets out applies only to gains or losses realized on the disposition of properties that became taxable Canadian properties on April 27, 1995.

Amended subsection 40(9) applies to dispositions that occur after April 26, 1995.

$$A \times B/C$$

where

A is the amount of the gain or loss determined without reference to this subsection;

B is the number of calendar months in the period that begins with May 1995 and ends with the calendar month that includes the time of the disposition; and

C is the number of calendar months in the period that begins with the calendar month in which the person last acquired the property and ends with the calendar month that includes the time of the disposition.

History: Subsec. 40(9) added by 1998, c. 19, subsec. 89(7), applicable, subject to s. 247 of the said c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995.

Definitions [s. 40]: "acquired" — 256(7)–(9); "acquisition date" — 40(2)(b), 40(7.1); "adjusted cost base" — 54, 248(1); "affiliated" — 251.1; "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "child" — 40(8), 70(10), 252(1); "class of shares" — 248(6); "common-law partner" — 248(1); "control" — 256(6)–(9); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 54 [to be repealed], 248(1); "dividend", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "excepted gift" — 118.1(19); "excluded interest" — 40(3.15); "exempt income", "farming" — 248(1); "fiscal period" — 249(2)(b), 249.1; "identical" — 40(3.5), 248(12); "individual" — 248(1); "interest in a family farm partnership" — 40(8), 70(10); "last acquired" — 40(7.1); "limited partner" — 40(3.14); "listed personal property" — 54, 248(1); "non-resident" — 248(1); "parent" — 252(2)(a); "person" — 248(1); "personal-use property" — 54, 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700, 6700.1, 6700.2; "principal residence", "proceeds of disposition" — 54; "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "share" — 248(1); "share of the capital stock of a family farm corporation" — 40(8), 70(10); "small business corporation", "specified member" — 40(3.131), 248(1); "spouse" — 252(4)(a); "substantial" — 40(3.16); "substituted property" — 248(5); "superficial loss" — 54; "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 40(3.12), 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1) [writing].

Interpretation Bulletins [s. 40]: IT-332R: Personal-use property.

41. (1) Taxable net gain from disposition of listed personal property — For the purposes of this Part, a taxpayer's taxable net gain for a taxation year from dispositions of listed personal property is ¾ of the amount determined under subsection (2) to be the taxpayer's net gain for the year from dispositions of such property.

Related Provisions: 127.52(1)(d)(i) — Untaxed ¼ of gain added to income for minimum tax purposes; 248(1)"taxable net gain" — Definition applies to entire Act.

Pre-RSC History: Subsec. 41(1) amended by 1988, c. 55, s. 22, to substitute "¾" for "½", applicable to taxation years and fiscal periods ending after 1987, except that

(a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "¾" shall be read as a reference to "⅔";

(b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year; and

(c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Interpretation Bulletins: See list at end of s. 41.

Forms: T2081: Listed personal property.

(2) Determination of net gain — A taxpayer's net gain for a taxation year from dispositions of listed personal property is an amount determined as follows:

(a) determine the amount, if any, by which the total of the taxpayer's gains for the year from the disposition of listed personal property, other than property described in subparagraph 39(1)(a)(i.1), exceeds the total of the taxpayer's losses for the year from dispositions of listed personal property, and

(b) deduct from the amount determined under paragraph (a) such portion as the taxpayer may claim of the taxpayer's listed-personal-property losses for the 7 taxation years immediately preceding and the 3 taxation years immediately following the taxation year, except that for the purposes of this paragraph

(i) an amount in respect of a listed-personal-property loss is deductible for a taxation year only to the extent that it exceeds the total of amounts deducted under this paragraph in respect of that loss for preceding taxation years,

(ii) no amount is deductible in respect of the listed-personal-property loss of any year until the deductible listed-personal-property losses for previous years have been deducted, and

(iii) no amount is deductible in respect of listed-personal-property losses from the amount determined under paragraph (a) for a taxation year except to the extent of the amount so determined for the year,

and the remainder determined under paragraph (b) is the taxpayer's net gain for the year from dispositions of listed personal property.

Related Provisions: 46(1) — Personal-use property.

Pre-RSC History: All that portion of para. 41(2)(b) preceding subpara. (ii) substituted by 1984, c. 1, applicable with respect to:

(a) the computation of a taxpayer's net gain from dispositions of listed personal property for the 1983 and subsequent taxation years, except that in the application of paragraph 41(2)(b) of the said Act, as enacted by subsection (1), to a listed personal-property loss determined for the 1982 and preceding taxation years, the reference therein to "7 taxation years" shall be read as a reference to "5 taxation years", and

(b) a taxpayer's listed-personal-property losses for the 1983 and subsequent taxation years, except that in the application of paragraph 41(2)(b) of the said Act, as enacted by subsection (1), the reference therein to "3 taxation years" shall, in the case of a loss determined for the 1983 taxation year, be read as a reference to "taxation year" and, in the case of a loss determined for the 1984 taxation year, be read as a reference to "2 taxation years".

That portion of para. 41(2)(b) formerly read:

(b) deduct from the amount determined under paragraph (a) his listed-personal-property losses for the 5 taxation years immediately preceding and the taxation year immediately following the taxation year, except that for the purpose of this paragraph

(i) an amount in respect of a listed-personal-property loss is only deductible to the extent that it exceeds the aggregate of amounts previously deductible in respect of that loss under this paragraph,

Para. 41(2)(a) substituted by 1974-75-76, c. 50, s. 49, in force from September 6, 1977, to add "other than property described in subparagraph 39(1)(a)(i.1)".

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of s. 41.

Forms: T1A: Request for loss carry-back; T3A: Request for loss carry-back by a trust; T2081: Listed personal property; T2088: Capital dispositions supplementary schedules — net listed personal property losses — unapplied; net capital losses — unapplied.

(3) Definition of "listed-personal-property loss" — In this section, "listed-personal-property loss" of a taxpayer for a taxation year means the amount, if any, by which the total of the taxpayer's losses for the year from dispositions of listed personal property exceeds the total of the taxpayer's gains for the year from dispositions of listed personal property, other than property described in subparagraph 39(1)(a)(i.1).

Related Provisions: 152(6) — Reassessment; 164(5), (5.1) — Effect of carryback of loss.

Pre-RSC History: Subsec. 41(3) substituted by 1974-75-76, c. 50, s. 49, in force from September 6, 1977, to add "other than property described in subparagraph 39(1)(a)(i.1)".

Interpretation Bulletins [subsec. 41(3)]: IT-159R3: Capital debts established to be bad debts. See also list at end of s. 41.

Definitions [s. 41]: "amount" — 248(1); "disposition" — 54 [to be repealed], 248(1); "listed personal property" — 54, 248(1); "listed-personal-property loss" — 41(3); "property" — 248(1); "taxable net gain" — 41(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 41]: IT-332R: Personal-use property.

42. Dispositions subject to warranty — In computing a taxpayer's proceeds of disposition of any property for the purposes of this subdivision, there shall be included all amounts received or receivable by the taxpayer as consideration for warranties, covenants or other conditional or contingent obligations given or incurred by the taxpayer in respect of the disposition, and in computing the taxpayer's income for the taxation year in which the property was disposed of and for each subsequent taxation year, any outlay or expense made or incurred by the taxpayer in any such year pursuant to or by reason of any such obligation shall be deemed to be a loss of the taxpayer for that year from a disposition of a capital property and for the purposes of section 110.6, that capital property shall be deemed to have been disposed of by the taxpayer in that year.

Related Provisions: 87(2)(n) — Amalgamations — outlays made pursuant to warranty.

Pre-RSC History: S. 42 substituted by 1988, c. 55, s. 23, applicable to 1985 *et seq.* S. 42 formerly read:

42. Dispositions subject to warranty — In computing a taxpayer's proceeds of disposition of any property for the purposes of this subdivision, there shall be included any amount received or receivable by the taxpayer as consideration for any warranty, covenant or other conditional or contingent obligation given or incurred by the taxpayer in respect of the disposition, and in computing the taxpayer's income for the taxation year in which the property was disposed of and for each subsequent taxation year, any outlay or expense made or incurred by the taxpayer in any such year pursuant to or by virtue of the obligation shall be deemed to be a loss of the taxpayer for that taxation year from the disposition of a capital property.

S. 42 substituted by 1985, c. 45, s. 16, applicable to 1985 *et seq.* S. 42 formerly read:

42. Dispositions subject to warranty — In computing a taxpayer's proceeds of disposition of any property for the purposes of this subdivision, there shall be included any amount received or receivable by the taxpayer as consideration for any warranty, covenant or other conditional or contingent obligation incurred by the taxpayer in respect of the disposition, and in computing the taxpayer's income for the year in which the property was disposed of or for any of the 6 immediately following taxation years, any outlay or expense made or incurred by the taxpayer in any such taxation year pursuant to or by virtue of the obligation shall, if the obligation was a legal obligation incurred by the taxpayer, be deemed to be a loss of the taxpayer for that taxation year from the disposition of a capital property.

Definitions [s. 42]: "amount" — 248(1); "capital property" — 54, 248(1); "disposition" — 54 [to be repealed], 248(1); "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 42]: IT-330R: Disposition of capital property subject to warranty, covenant, etc.

43. Part dispositions — For the purpose of computing a taxpayer's gain or loss for a taxation year from the disposition of a part of a property, the adjusted cost base to the taxpayer, immediately before the disposition, of that part is such portion of the adjusted cost base to the taxpayer at that time of the whole property as may reasonably be regarded as attributable to that part.

Proposed Amendment — 43 [ecological donations and trusts]

43. (1) General rule for part dispositions — For the purpose of computing a taxpayer's gain or loss for a taxation year from the disposition of part of a property, the adjusted cost base to the taxpayer, immediately before the disposition, of that part is the portion of the adjusted cost base to the taxpayer at that time of the whole property that can reasonably be regarded as attributable to that part.

Technical Notes: Section 43 of the Act is a rule governing the disposition of a part of a property. For the purpose of computing a taxpayer's gain or loss from the disposition of a part of a property, a portion of the adjusted cost base (ACB) of the whole property must be allocated to the part on a reasonable basis.

Existing section 43 is renumbered as subsection 43(1) strictly as a consequence of the introduction of new subsections 43(2) and (3). This amendment applies after February 27, 1995.

Related Provisions: 43(3) — Where trust makes payment out of income or gains.

(2) Ecological gifts — For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a servitude, covenant or easement to which land is subject in circumstances where subsection 110.1(5) or 118.1(12) applies,

(a) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the servitude, covenant or easement, as the case may be, is deemed to be equal to the amount determined by the formula

$$A \times B/C$$

where

A is the adjusted cost base to the taxpayer of the land immediately before the disposition,

B is the amount determined under subsection 110.1(5) or 118.1(12) in respect of the disposition, and

C is the fair market value of the land immediately before the disposition; and

(b) for greater certainty, the cost to the taxpayer of the land shall be reduced at the time of disposition by the amount determined under paragraph (a).

Technical Notes: New subsection 43(2) of the Act applies where the part of a property disposed of is a servitude, covenant or easement to which land is subject. The 1995 budget introduced enhanced incentives for the donation of ecologically sensitive land to the Government of Canada, a provincial government, a Canadian municipality or an approved registered charity established for the purpose of protecting Canada's environmental heritage. Donations from individuals are eligible for the charitable donations tax credit (section 118.1 of the Act), while those from corporations are eligible for deduction from income (section 110.1 of the Act). Besides transfers of title, landowners are able to donate covenants, easements and servitudes established under common law, the civil law of the province of Quebec, or the law of other provinces allowing for their establishment.

Normally the value of a donated property is determined to be the price that a purchaser would pay for the property on the open market. As there is no established market for covenants, easements and servitudes, the fair market value of such restrictions on land use is difficult to determine. To provide greater certainty in making these valuations, the 1997 budget introduced a measure to deem the value of these gifts to be not less than the resulting decrease in the value of the land. That measure was implemented with application to gifts made after February 27, 1995.

Like other capital property, the adjusted cost base (ACB) of a covenant, easement or servitude is also relevant in calculating the capital gain or loss that may arise on disposition. To provide taxpayers greater certainty in making this calculation, new subsection 43(2) ensures that a portion of the ACB of the land to which the covenant, easement or servitude relates is to be allocated to the donated covenant, easement or servitude. For this purpose, the allocation of the ACB of the land to the gift is calculated in proportion to the percentage decrease in the value of the land as a result of the donation.

This amendment applies in respect of gifts made after February 27, 1995.

Department of Finance news release, June 3, 1999: See under 118.1(12).

Related Provisions: 107(2), (2.1), (2.11) — No capital gain on disposition of capital interest.

(3) Payments out of trust income, etc. — Notwithstanding subsection (1), where part of a capital interest of a taxpayer in a trust would, but for paragraph (g) or (h) of the definition "disposition" in subsection 248(1), be disposed of solely because of the satisfaction of a right to enforce a payment of an amount by the trust, no part of the adjusted cost base to the taxpayer of the taxpayer's capital interest in the trust shall be allocated to that part of the capital interest.

Technical Notes: New subsection 43(3) applies where part of a capital interest in a trust would, but for paragraph (h) or (i) of the definition "disposition" in subsection 248(1), be disposed of solely because of a satisfaction by the trust of a right to enforce a payment from the trust. No portion of the ACB of the taxpayer's capital interest is allocated to such a right. Accordingly, the ACB to the taxpayer of the remaining part of the taxpayer's capital interest in the trust is not reduced after the satisfaction of such a right. This amendment applies to satisfactions of rights that occur after 1999.

EXAMPLE

Joseph buys 1,000 units of XYZ Mutual Fund on December 23, 2000 for $10,000. XYZ has not made an election under subsection 132.11(1) to have a December 15 year end. XYZ makes $400 of its income for its 2000 taxation year payable to Joseph on December 31, 2000. However, without making any cash distribution of the income, XYZ issues 42 additional units on that date in satisfaction of the $400 of income payable. In November 2001, Joseph disposes of his 1,042 units for $10,700.

Results:

1. Under subsection 104(13), Joseph is required to include $400 in computing his income for the 2000 taxation year.

2. The right to enforce the payment of the distribution is treated as part of Joseph's capital interest in the trust under subsection 108(1). However, under paragraphs (h) and (i) of the definition "disposition" in subsection 248(1), there is no disposition of that part of the capital interest on the satisfaction of the right.

3. Under subsection 43(3), no part of the ACB of the original interest is allocated to the right to the income payable when the right is satisfied. Without taking into account the identical properties rule in subsection 47(1), this ensures that the ACB of Joseph's original 1,000 units will remain $10,000 once the right to income is satisfied, notwithstanding that Joseph acquired the units late in the 2000 taxation year.

4. The 42 additional units issued in satisfaction of the right to income are acquired at a cost of $400 because new subsection 248(25.3) ensures that the cost of the units issued directly in satisfaction of the income payable is equal to that amount. Consequently, the total ACB of the 1,042 units at the time of the disposition is $10,400.

5. Consequently, the capital gain realized on the subsequent disposition of all of the units is $300.

The introduction of subsection 43(3) is part of a set of amendments designed to clarify the tax consequences of distributions from trusts to their beneficiaries after 1999. For the large part, the end results achieved under these rules are intended to accord with existing income tax practice. Other related amendments include the repeal of subsection 52(6), amendments to subsections 107(2) and (2.1), the amended definition of "capital interest" in subsection 108(1), paragraphs (d), (h) and (i) of the definition "disposition" in subsection 248(1) and new subsections 248(25.3) and (25.4). For further detail, see the commentary on those provisions.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 15, will amend s. 43 to read as above, subsec. 43(1) applicable after February 27, 1995, subsec. 43(2) applicable in respect of gifts made after February 27, 1995, and subsec. 43(3) applicable to satisfactions of rights that occur after 1999.

Related Provisions: 53(2)(d) — Reduction in adjusted cost base; 98.2(c), 100(3)(c) — No application to transfer of partnership interest on death.

Pre-RSC History: S. 43 substituted by 1974-75-76, c. 26, s. 17, applicable to 1972 *et seq.*

Definitions [s. 43]: "adjusted cost base" — 54, 248(1); "capital interest" — 108(1), 248(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 43]: IT-200: Surface rentals and farming operations; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-242R: Retired partners; IT-264R: Part dispositions; IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — changes in cost base resulting from the admission or retirement of a partner; IT-359R2: Premiums and other amounts re leases; IT-373R: Farm wood lots and tree farms; IT-418: Capital cost allowance — partial dispositions of property.

43.1 (1) Life estates in real property — Notwithstanding any other provision of this Act, where at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply or by way of a gift to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection 118.1(1)) to a person or partnership and retains a life estate or an estate *pur autre vie* (in this section called the "life estate") in the property, the taxpayer shall be deemed

(a) to have disposed at that time of the life estate in the property for proceeds of disposition equal to its fair market value at that time; and

(b) to have reacquired the life estate immediately after that time at a cost equal to the proceeds of disposition referred to in paragraph (a).

Related Provisions: 248(4) — Interest in real property.

History: The opening words of subsec. 43.1(1) substituted by 1994, c. 21, s. 16, applicable to dispositions occurring after December 20, 1991. The opening words of that subsec. formerly read:

> 43.1 (1) Life estates in real property — Notwithstanding any other provision of this Act, where at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply) to a person or partnership (other than a registered charity that is a charitable organization within the meaning assigned by subsection 149.1(1)) and retains a life estate or an estate *pur autre vie* (in this section called the "life estate") in the property, the taxpayer shall be deemed

See also History at end of s. 43.1.

(2) Idem — Where, as a result of an individual's death, a life estate to which subsection (1) applied is terminated,

(a) the holder of the life estate immediately before the death shall be deemed to have disposed of the life estate immediately before the death for proceeds of disposition equal to the adjusted cost base to that person of the life estate immediately before the death; and

(b) where a person who is the holder of the remainder interest in the real property immediately before the death was not dealing at arm's length with the holder of the life estate, there shall, after the death, be added in computing the adjusted cost base to that person of the real property an amount equal to the lesser of

(i) the adjusted cost base of the life estate in the property immediately before the death, and

(ii) the amount, if any, by which the fair market value of the real property immediately after the death exceeds the adjusted cost base to that person of the remainder interest immediately before the death.

Related Provisions: 53(1)(o) — Addition to adjusted cost base.

History [s. 43.1]: S. 43.1 enacted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 13, applicable with respect to dispositions and terminations occurring after December 20, 1991.

Definitions [s. 43.1]: "adjusted cost base" — 54, 248(1); "arm's length" — 251(1); "individual" — 248(1); "life estate" — 43.1(1); "person", "property", "registered charity", "taxpayer" — 248(1).

44. (1) Exchanges of property — Where at any time in a taxation year (in this subsection referred to as the "initial year") an amount has become receivable by a taxpayer as proceeds of disposition of a capital property (in this section referred to as the taxpayer's "former property") that is either

Proposed Amendment — 44(1)

44. (1) Exchanges of property — Where at any time in a taxation year (in this subsection referred to as the "initial year") an amount has become receivable by a taxpayer as proceeds of disposition of a capital property that is not a share of the capital stock of a corporation (which capital property is in this section referred to as the taxpayer's "former property") that is either

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 16, will amend the opening words of subsec. 44(1) to read as above, applicable to shares disposed of after April 15, 1999 other than shares disposed of after that date as a consequence of a public takeover bid or offer filed with a public authority before April 16, 1999.

Technical Notes: Section 44 of the Act allows a taxpayer to defer in certain circumstances the recognition of a capital gain in respect of property.

Subsection 44(1) of the Act allows a taxpayer who incurs a capital gain on the disposition of certain capital property to defer tax

on the gain to the extent that the taxpayer reinvests the proceeds in a replacement property within a certain period of time.

Subsection 44(1) is amended to provide that the replacement property provisions do not apply to shares of the capital stock of a corporation.

These amendments apply to shares disposed of after April 15, 1999, subject to transitional relief for shares disposed of after that day as a consequence of a public takeover bid filed with a public authority before April 16, 1999.

Department of Finance news release, April 15, 1999: *Tax Rollover for Canadian Shareholders of Foreign Corporations*

[For the first portion of this news release, see under 85.1(1) — ed.]

Under the "replacement property rules" in section 44 of the *Income Tax Act*, a taxpayer can defer the recognition of a gain arising on an involuntary disposition of property to the extent that the proceeds of disposition for such property are used to purchase a replacement property. The replacement property rules are not intended to apply to the disposition of shares. Consequently, the rules are proposed to be amended to exclude, after today's date, the disposition of shares of a corporation. [However, 85.1(1) or 87 may be available in some cases — ed.]

For further information: Davine Roach, Tax Policy Branch, (613) 992-4852; Karl Littler, Secretary of State (International Financial Institutions), (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574.

(a) property the proceeds of disposition of which are described in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54, or

(b) a property that was, immediately before the disposition, a former business property of the taxpayer,

Selected Cases [para. 44(1)(b)]: *Macklin (M.) v. Canada*, [1993] 1 C.T.C. 21 (FCTD) ("Immediately" before disposition includes period prior to event (stripping of topsoil) precluding use of land as farmland).

and the taxpayer has

(c) where the former property is described in paragraph (a), before the end of the second taxation year following the initial year, and

(d) in any other case, before the end of the first taxation year following the initial year,

acquired a capital property that is a replacement property for the taxpayer's former property and the replacement property has not been disposed of by the taxpayer before the time the taxpayer disposed of the taxpayer's former property, notwithstanding subsection 40(1), if the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquired the replacement property,

(e) the gain for a particular taxation year from the disposition of the taxpayer's former property shall be deemed to be the amount, if any, by which

(i) where the particular year is the initial year, the lesser of

(A) the amount, if any, by which the proceeds of disposition of the former property exceed

(I) in the case of depreciable property, the lesser of the proceeds of disposition of the former property computed without reference to subsection (6) and the total of its adjusted cost base to the taxpayer immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, and

(II) in any other case, the total of its adjusted cost base to the taxpayer immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, and

(B) the amount, if any, by which the proceeds of disposition of the former property exceed the total of the cost to the taxpayer, or in the case of depreciable property, the capital cost to the taxpayer, determined without reference to paragraph (f), of the taxpayer's replacement property and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

(ii) where the particular year is subsequent to the initial year, the amount, if any, claimed by the taxpayer under subparagraph (iii) in computing the taxpayer's gain for the immediately preceding year from the disposition of the former property,

exceeds

(iii) subject to subsection (1.1), such amount as the taxpayer claims,

(A) in the case of an individual (other than a trust), in prescribed form filed with the taxpayer's return of income under this Part for the particular year, and

(B) in any other case, in the taxpayer's return of income under this Part for the particular year,

as a deduction, not exceeding the lesser of

(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the former property that are payable to the taxpayer after the end of the particular year as can reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

(D) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property, and

(f) the cost to the taxpayer or, in the case of depreciable property, the capital cost to the taxpayer, of the taxpayer's replacement property at any time after the time the taxpayer disposed of the taxpayer's former property, shall be deemed to be

(i) the cost to the taxpayer or, in the case of depreciable property, the capital cost to the taxpayer of the taxpayer's replacement property otherwise determined,

minus

(ii) the amount, if any, by which the amount determined under clause (e)(i)(A) exceeds the amount determined under clause (e)(i)(B).

Related Provisions: 13(4) — Parallel rule for CCA recapture; 14(6) — Parallel rule for eligible capital property; 44(4) — Deemed election; 44(5) — Replacement property; 44(6) — Deemed proceeds of disposition; 72(1)(c) — No reserve for year of death; 72(2)(b) — Election by legal representative and transferee re reserves; 79.1(3), (6)(c) — Capital gains reserve where property repossessed by creditor; 87(2)(l.3) — Amalgamations — replacement property acquired by new corporation; 87(2)(m) — Amalgamations — proceeds not due until after end of year; 87(2)(ll) — Amalgamations — continuation of predecessor corporations;

88(1)(d)(i)(C) — Winding-up; 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: The portion of subsec. 44(1) between paras. (d) and (e) amended by 1998, c. 19, subsec. 90(1), applicable to dispositions of former properties that occur after the 1993 taxation year. That portion formerly read:

> acquired a capital property (in this section referred to as the taxpayer's "replacement property") as a replacement for the taxpayer's former property and the taxpayer's replacement property has not been disposed of by the taxpayer prior to the time the taxpayer disposed of the taxpayer's former property, notwithstanding subsection 40(1), if the taxpayer so elects under this subsection in the taxpayer's return of income under this Part for the year in which the taxpayer acquired the replacement property,

Cl. 44(1)(e)(iii)(C) amended by 1995, c. 21, s. 12, applicable to taxation years that end after February 21, 1994. The clause formerly read:

> (C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the former property that are not due to the taxpayer until after the end of the particular year as can reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

Subpara. 44(1)(e)(iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 24(1), applicable to 1990 *et seq.* Subpara. 44(1)(e)(iii) formerly read:

> (iii) subject to subsection (1.1), such amount as the taxpayer may claim as a deduction, not exceeding the lesser of
>
> (A) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the former property that are not due to the taxpayer until after the end of the particular year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and
>
> (B) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph (i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property and

Pre-RSC History: Cl. 44(1)(e)(i)(A) substituted by 1984, c. 45, subsec. 12(1), applicable with respect to dispositions occurring after February 15, 1984. Cl. 44(1)(e)(i)(A) formerly read:

> (A) the amount, if any, by which the proceeds of disposition of the former property exceed the aggregate of its adjusted cost base to him immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by him for the purpose of making the disposition, and

Subpara. 44(1)(e)(iii) substituted by 1980-81-82-83, c. 140, subsec. 20(1), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms in existence on November 12, 1981 of an offer or agreement in writing made or entered into on or before that date or otherwise than by virtue of an event referred to in subpara. 54(h)(ii), (iii) or (iv) of the Act that occurred on or before that date. Subpara. 44(1)(e)(iii) formerly read:

> (iii) such amount as he may claim, not exceeding a reasonable amount, as a reserve in respect of such of the proceeds of disposition of the former property that are not due to him until after the end of the particular year as may reasonably be regarded as a portion of the amount determined under subparagraph (i) in respect of the property, and

Para. 44(1)(e), subpara. 44(1)(f)(ii) substituted by 1980-81-82-83, c. 48, subsecs. 18(1), (2), applicable with respect to dispositions of property occurring after December 11, 1979. Para. 44(1)(e), subpara. 44(1)(f)(ii) formerly read:

> (e) the gain, if any, from the disposition of his former property shall be deemed to be the lesser of
>
> (i) the gain therefrom otherwise determined, and
>
> (ii) the amount, if any, by which the proceeds of disposition of his former property exceed the cost to him or, in the case of depreciable property, the capital cost to him, determined without reference to paragraph (f), of his replacement property, and
>
> . . . . .
>
> (ii) the amount, if any, by which the gain described in subparagraph (e)(i) exceeds the amount, if any, determined under subparagraph (e)(ii),

For earlier history, see end of s. 44.

Selected Cases [subsec. 44(1)]: *Buonincontri v. The Queen*, [1985] 1 C.T.C. 370 (FCTD) (Rental is income from property and not from business even if taxpayer in business of renting property).

Remission Orders: *Telesat Canada Remission Order*, P.C. 1999-1335.

Interpretation Bulletins: IT-491: Former business property. See also list at end of s. 44.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T1030: Election to claim a capital gains reserve for individuals (other than trusts) when calculating the amount of a capital gain using the replacement property rules; T2069: Election in respect of amounts not deductible as reserves for the year of death.

(1.1) Farm property disposed of to child — Where the former property referred to in subparagraph (1)(e)(iii) is real property in respect of the disposition of which the rules in subsection 73(3) apply, in computing the amount of any claim in respect of that property under that subparagraph, it shall be read as if the references therein to "1/5" and "4" were references to "1/10" and "9" respectively.

Pre-RSC History: Subsec. 44(1.1) substituted by 1985, c. 45, s. 17. Subsec. 44(1.1) formerly read:

> (1.1) Property disposed of to a child — Where the former property referred to in subparagraph (1)(e)(iii) is property that the taxpayer disposed of to his child, who was resident in Canada immediately before the disposition, and was
>
> (a) any land in Canada or depreciable property in Canada of a prescribed class that was, immediately before the disposition, used by the taxpayer, his spouse, or any of his children in the business of farming,
>
> (b) immediately before the disposition, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer, or
>
> (c) immediately before the disposition, a share of the capital stock of a small business corporation of the taxpayer,
>
> in computing the amount of any claim in respect of such property under subparagraph (1)(e)(iii), that subparagraph shall be read as if the references therein to "1/5" and "4" were references to "1/10" and "9" respectively.

Subsec. 44(1.1) added by 1980-81-82-83, c. 140, subsec. 20(2), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms in existence on November 12, 1981 of an offer or agreement in writing made or entered into on or before that date or otherwise than by virtue of an event referred to in subpara. 54(h)(ii), (iii) or (iv) of the Act that occurred on or before that date.

(2) Time of disposition and of receipt of proceeds — For the purposes of this Act, the time at which a taxpayer has disposed of a property for which there are proceeds of disposition as described in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54, and the time at which an amount, in respect of those proceeds of disposition has become receivable by the taxpayer shall be deemed to be the earliest of

> (a) the day the taxpayer has agreed to an amount as full compensation to the taxpayer for the property lost, destroyed, taken or sold,

Selected Cases [para. 44(2)(a)]: *Shaw (J.M.) v. MNR*, [1993] 1 C.T.C. 221 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 399 (note) (Amount paid as "interest" on award of additional compensation was interest income not proceeds of disposition of land).

> (b) where a claim, suit, appeal or other proceeding has been taken before one or more tribunals or courts of competent jurisdiction, the day on which the taxpayer's compensation for the property is finally determined by those tribunals or courts,
>
> (c) where a claim, suit, appeal or other proceeding referred to in paragraph (b) has not been taken before a tribunal or court of competent jurisdiction within two

years of the loss, destruction or taking of the property, the day that is two years following the day of the loss, destruction or taking,

(d) the time at which the taxpayer is deemed by section 70 or paragraph 128.1(4)(b) to have disposed of the property, and

(e) where the taxpayer is a corporation other than a subsidiary corporation referred to in subsection 88(1), the time immediately before the winding-up of the corporation,

and the taxpayer shall be deemed to have owned the property continuously until the time so determined.

Related Provisions: 59.1 — Involuntary disposition of resource property: 70(10). (11) — Definitions.

History: Para. 44(2)(d) substituted by 1994, c. 21, subsec. 17(1), applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the amended para. applies from the corporation's time of continuation (within the meaning assigned by that paragraph). Para. 44(2)(d) formerly read:

(d) the time at which the taxpayer is deemed by section 48 or 70 to have disposed of the property, and

Selected Cases [subsec. 44(2)]: *Laurentide Rendering Inc. v. The Queen*, [1988] 2 C.T.C. 200 (FCA) (Expropriation compensation, including allocation for recaptured capital cost allowance, receivable when agreement concluded).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-185R: Losses from theft, defalcation or embezzlement; IT-259R3: Exchanges of property; IT-271R: Expropriations — time and proceeds of disposition.

(3) Where subsec. 70(3) does not apply — Subsection 70(3) does not apply to compensation referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in subsection 13(21) or paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 that has been transferred or distributed to beneficiaries or other persons beneficially interested in an estate or trust.

(4) Deemed election — Where a former property of a taxpayer was a depreciable property of the taxpayer

(a) if the taxpayer has elected in respect of that property under subsection (1), the taxpayer shall be deemed to have elected in respect thereof under subsection 13(4); and

(b) if the taxpayer has elected in respect of that property under subsection 13(4), the taxpayer shall be deemed to have elected in respect thereof under subsection (1).

(5) Replacement property — For the purposes of this section, a particular capital property of a taxpayer is a replacement property for a former property of the taxpayer, if

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer and used by the taxpayer or a person related to the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

(b) where the former property was used by the taxpayer or a person related to the taxpayer for the purpose of gaining or producing income from a business, the particular capital property was acquired for the purpose of gaining or producing income from that or a similar business or for use by a person related to the taxpayer for such a purpose;

(c) where the former property was a taxable Canadian property of the taxpayer, the particular capital property is a taxable Canadian property of the taxpayer; and

(d) where the former property was a taxable Canadian property (other than treaty-protected property) of the taxpayer, the particular capital property is a taxable Canadian property (other than treaty-protected property) of the taxpayer.

History: Para. 44(5)(c) amended and para. (d) added by 1999, c. 22, s. 12, applicable to dispositions that occur in taxation years that end after 1997. Para. (c) formerly read:

(c) where the former property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the former property was disposed of and the former property were used in a business carried on by the taxpayer), the particular capital property was taxable Canadian property (or would have been taxable Canadian property if the taxpayer were non-resident throughout the year in which the particular capital property was acquired and the particular capital property were used in a business carried on by the taxpayer).

Para. 44(5)(a) amended and para. (a.1) added by 1998, c. 19, subsec. 90(2), applicable to dispositions of former properties that occur after the 1993 taxation year except that, if a taxpayer so elects in respect of a former property of the taxpayer that was disposed of before June 18, 1998 by notifying the Minister of National Revenue in writing on or before the filing-due date for the taxpayer's first taxation year that ends after June 18, 1998, para. 44(5)(a.1) shall, for the purpose of determining whether a property of the taxpayer is a replacement property of the former property, be read as follows:

(a.1) it was acquired by the taxpayer for a use that is the same as or similar to the use to which the taxpayer or a person related to the taxpayer put the former property;

Para. (a) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer or a person related to the taxpayer put the former property;

Paras. 44(5)(a) to (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 24(2), paras. 44(5)(a), (b) applicable to dispositions of former properties occurring after July 13, 1990, and para. (c) applicable to property acquired as a replacement for a former property disposed of after April 2, 1990, other than a former property disposed of

(a) under an agreement in writing entered into before April 3, 1990; or

(b) pursuant to a written notice of an intention to take the property under statutory authority given before April 3, 1990 or for the sale price of the property sold to a person by whom such a notice was given before April 3, 1990.

Paras. 44(5)(a) to (c) formerly read:

(a) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;

(b) where the former property was used by the taxpayer for the purpose of gaining or producing income from a business, the particular capital property was acquired for the purpose of gaining or producing income from that or a similar business; and

(c) where the taxpayer was not resident in Canada at the time the taxpayer acquired the particular capital property, in addition to the requirements in paragraphs (a) and (b), the particular capital property was taxable Canadian property.

Pre-RSC History: Paras. 44(5)(a), (b) substituted by 1977-78, c. 32, s. 8, applicable to dispositions of property after March 31, 1977.

For earlier history, see end of s. 44.

Interpretation Bulletins: IT-259R3: Exchanges of property; IT-271R: Expropriations — time and proceeds of disposition.

(6) Deemed proceeds of disposition — Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land (or an interest therein) subjacent to, or immediately contiguous to and necessary for the use of, the building,

for the purposes of this subdivision, the amount if any, by which

(a) the proceeds of disposition of one such part determined without regard to this subsection

exceed

(b) the adjusted cost base to the taxpayer of that part

shall, to the extent that the taxpayer so elects in the taxpayer's return of income under this Part for the year in which the taxpayer acquired a replacement property for the former business property, be deemed not to be proceeds of disposition of that part and to be proceeds of disposition of the other part.

Related Provisions: 96(3) — Election by members of partnership; 220(3.2), Reg. 600(b) — Late filing of election or revocation; 248(4) — Interest in real property.

History: The opening words of subsec. 44(6) substituted by 1994, c. 21, subsec. 17(2), applicable to dispositions occurring after December 21, 1992. The opening words of that subsec. formerly read:

(6) Deemed proceeds of disposition — Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land, or an interest therein, subjacent to or necessary for the use of the building, for the purposes of subsection (1), the amount, if any, by which

Pre-RSC History: Subsec. 44(6) substituted by 1984, c. 45, subsec. 12(2), applicable with respect to dispositions occurring after February 15, 1984. Subsec. 44(6) formerly read:

(6) Deemed proceeds of disposition — Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land, or an interest therein, subjacent to or necessary for the use of the building, for the purposes of subsections (1) and 13(4), the amount, if any, by which

(a) the proceeds of disposition of one such part determined without regard to this subsection

exceed

(b) the cost to him or, in the case of depreciable property, the capital cost to him of a replacement property for that part

shall, to the extent that the taxpayer so elects in his return of income under this Part for the year in which he acquired the replacement property, be deemed not to be proceeds of disposition of that part and to be proceeds of disposition of the other part.

Subsec. 44(6) added by 1980-81-82-83, c. 48, subsec. 18(3), applicable with respect to dispositions of property occurring after March 31, 1977 except that, with respect to any acquisition of a replacement property by a taxpayer occurring in a taxation year ending before February 26, 1981, the reference in subsec. 44(6) to "the year in which he acquired the replacement property" shall be read as a reference to "the year in which this subsection comes into force".

Interpretation Bulletins: IT-271R: Expropriations — time and proceeds of disposition; IT-259R3: Exchanges of property.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7) Where subpara. (1)(e)(iii) does not apply — Subparagraph (1)(e)(iii) does not apply to permit a taxpayer to claim any amount under that subparagraph in computing a gain for a taxation year where

(a) the taxpayer, at the end of the year or at any time in the immediately following year, was not resident in Canada or was exempt from tax under any provision of this Part; or

(b) the person to whom the former property of the taxpayer was disposed of was a corporation that, immediately after the disposition,

(i) was controlled, directly or indirectly in any manner whatever, by the taxpayer,

(ii) was controlled, directly or indirectly in any manner whatever, by a person or group of persons by whom the taxpayer was controlled, directly or indirectly in any manner whatever, or

(iii) controlled the taxpayer, directly or indirectly in any manner whatever, where the taxpayer is a corporation.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Pre-RSC History: Para. 44(7)(b) amended by 1988, c. 55, s. 24, to substitute (in 4 places) ", directly or indirectly in any manner whatever," for "directly or indirectly", applicable with respect to dispositions after 1988.

Subsec. 44(7) added by 1980-81-82-83, c. 48, subsec. 18(3), applicable with respect to dispositions of property occurring after December 11, 1979.

(8) Application of subsec. 70(10) — The definitions in subsection 70(10) apply to this section.

Origin of subsec. 44(8): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 70(10)).

Pre-RSC History [s. 44]: S. 44 substituted by 1977-78, c. 1, s. 18, applicable to dispositions of property after March 31, 1977. S. 44 formerly read:

44. (1) Deferral of gain on involuntary dispositions — Where in a taxation year an amount has become receivable, as described in subsection (2), by a taxpayer as proceeds of disposition described in subparagraph 13(21)(d)(iii) or (iv) or 54(h)(iii) or (iv) of any capital property (in this section referred to as his "former property") and, before the end of the second taxation year following the taxation year in which such amount became receivable, the taxpayer has acquired a capital property (in this section referred to as his "replacement property") as a replacement for his former property and his replacement property has not been disposed of by him prior to the time he disposed of his former property, notwithstanding subsection 40(1)

(a) the gain, if any, from the disposition of his former property is the lesser of

(i) the gain therefrom otherwise determined, and

(ii) the amount, if any, by which the proceeds of disposition of his former property exceed the cost, or in the case of depreciable property the capital cost to him, determined without reference to paragraph (b), of his replacement property, and

(b) the cost, or in the case of depreciable property the capital cost to him of his replacement property, at any time after the time he disposed of his former property, shall be deemed to be the cost, or in the case of depreciable property the capital cost to him of his replacement property otherwise determined, minus the amount, if any, by which the gain described in subparagraph (a)(i) exceeds the amount, if any, determined under subparagraph (a)(ii).

(2) Idem — For the purposes of this Act, the day on which a taxpayer has disposed of a property, the proceeds of disposition from which are described in subparagraph 13(21)(d)(iii) or (iv) or 54(h)(iii) or (iv), and the day on which an amount has become receivable by that taxpayer as proceeds of disposition of such a property shall be deemed to be the earliest of

(a) the day the taxpayer has agreed to an amount as full compensation to him for the property lost, destroyed, taken or sold,

(b) where a claim, suit, appeal or other proceeding has been taken before one or more tribunals or courts of competent jurisdiction, the day on which the taxpayer's compensation for the property is finally determined by such tribunals or courts,

(c) where a claim, suit, appeal or other proceeding, referred to in paragraph (b), has not been taken before a tribunal or court of competent jurisdiction within two years of the loss, destruction or taking of the property, the day that is two years following the day of the loss, destruction or taking,

(d) the day on which the taxpayer is deemed by section 48 or 70 to have disposed of the property, and

(e) where the taxpayer is a corporation other than a subsidiary corporation referred to in subsection 88(1), the day immediately before the winding-up of the corporation,

and he shall be deemed to have owned the property continuously until the day so determined.

(3) **Where subsec. 70(3) not to apply** — Subsection 70(3) does not apply to compensation referred to in subparagraph 13(21)(d)(iii) or (iv) or subparagraph 54(h)(iii) or (iv) that has been transferred or distributed to beneficiaries or other persons beneficially interested in an estate or trust.

Para. 44(1)(c) repealed by 1976-77, c. 4, s. 11, applicable in respect of taxation years commencing after May 25, 1976. Para. 44(1)(c) formerly read:

(c) where his replacement property was depreciable property of a prescribed class and that property was acquired by him prior to the time he disposed of his former property, the amount, if any, by which

(i) the reduction in the capital cost to him of his replacement property by virtue of paragraph (b)

exceeds

(ii) the undepreciated capital cost to him of depreciable property of the class to which his replacement property belongs, immediately before the reduction in the capital cost referred to in subparagraph (i),

shall be included in computing his income for his taxation year in which his former property was disposed of and shall, for the purposes of subsection 13(2), be deemed to have been so included by virtue of subsection 13(1) in respect of a disposition of depreciable property of the class to which his replacement property belongs.

S. 44 substituted by 1974-75-76, c. 26, s. 18, applicable in respect of amounts that have become receivable after May 6, 1974. S. 44 formerly read:

44. Where in a taxation year a taxpayer has received proceeds of disposition described in subparagraph 54(h)(iii) or (iv) of any property (in this section referred to as his "former property") and, before the end of the following taxation year, has expended an amount to acquire other property as a replacement for his former property, notwithstanding subsection 40(1)

(a) the gain, if any, from the disposition of his former property is the lesser of

(i) the gain therefrom otherwise determined, and

(ii) the amount, if any, by which the proceeds of disposition of his former property exceed the cost to him, otherwise determined, of the other property, and

(b) the cost to the taxpayer of the other property shall be deemed to be the cost to him of the other property otherwise determined, minus the amount, if any, by which the gain described in subparagraph (a)(i) exceeds the excess, if any, determined under subparagraph (a)(ii).

Selected Cases [s. 44]: *Glaxo Wellcome Inc. v. R.*, [1999] 4 C.T.C. 371 (FCA); aff'g [1996] 1 C.T.C. 2904 (TCC) (Property must have been "used" in the business, not merely held).

Definitions [s. 44]: "amount" — 248(1); "adjusted cost base" — 54, 248(1); "beneficially interested" — 248(25); "business" — 248(1); "capital property" — 54, 248(1); "child" — 44(8), 70(10), 252(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "farming", "former business property" — 248(1); "former property" — 44(1); "individual" — 248(1); "interest" — (in real property) 248(4); "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "resident in Canada" — 250; "replacement property" — 44(5); "share", "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer", "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 44]: IT-259R3: Exchanges of property; IT-271R: Expropriations — time and proceeds of disposition.

45. (1) Property with more than one use [change in use] — For the purposes of this subdivision the following rules apply:

(a) where a taxpayer,

(i) having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, or

(ii) having acquired property for the purpose of gaining or producing income, has commenced at a later time to use it for some other purpose,

the taxpayer shall be deemed to have

(iii) disposed of it at that later time for proceeds equal to its fair market value at that later time, and

(iv) immediately thereafter reacquired it at a cost equal to that fair market value;

(b) where property has, since it was acquired by a taxpayer, been regularly used in part for the purpose of gaining or producing income and in part for some other purpose, the taxpayer shall be deemed to have acquired, for that other purpose, the proportion of the property that the use regularly made of the property for that other purpose is of the whole use regularly made of the property at a cost to the taxpayer equal to the same proportion of the cost to the taxpayer of the whole property, and, if the property has, in such a case, been disposed of, the proceeds of disposition of the proportion of the property deemed to have been acquired for that other purpose shall be deemed to be the same proportion of the proceeds of disposition of the whole property; and

(c) where, at any time after a taxpayer has acquired property, there has been a change in the relation between the use regularly made by the taxpayer of the property for gaining or producing income and the use regularly made of the property for other purposes,

(i) if the use regularly made of the property for those other purposes has increased, the taxpayer shall be deemed to have

(A) disposed of the property at that time for proceeds equal to the proportion of the fair market value of the property at that time that the amount of the increase in the use regularly made by the taxpayer of the property for those other purposes is of the whole use regularly made of the property, and

(B) immediately thereafter reacquired the property so disposed of at a cost equal to the proceeds referred to in clause (A), and

(ii) if the use regularly made of the property for those other purposes has decreased, the taxpayer shall be deemed to have

(A) disposed of the property at that time for proceeds equal to the proportion of the fair market value of the property at that time that the amount of the decrease in use regularly made by the taxpayer of the property for those other purposes is of the whole use regularly made of the property, and

(B) immediately thereafter reacquired the property so disposed of at a cost equal to the proceeds referred to in clause (A).

Proposed Addition — 45(1)(d)

(d) in applying this subsection in respect of a non-resident taxpayer, a reference to "gaining or producing income" shall be read as a reference to gaining or producing income from a source in Canada.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 17, will add para. 45(1)(d), applicable after October 1, 1996.

Technical Notes: Subsection 45(1) of the Act provides for a deemed disposition and reacquisition of property where its use is altered, wholly or in part, from a personal to an income-earning

or income-producing use, or vice versa. This "change in use" rule applies for the purpose of the subdivision of the Act that deals with taxable capital gains and allowable capital losses.

New paragraph 45(1)(d) provides that, in applying subsection 45(1) in respect of a non-resident taxpayer, any reference to "gaining or producing income" is to be read as a reference to gaining or producing income from a source in Canada. As a result, a non-resident who ceases to use a property to earn income in Canada and begins to use it instead to earn income outside Canada will be treated as having disposed of the property.

New paragraph 45(1)(d) applies after October 1, 1996.

Related Provisions: 13(7)(a), (b), (d) — Change in use rules — depreciable property; 54"superficial loss"(c) — Superficial loss rule does not apply.

History: Subpara. 45(1)(c)(i) [which had earlier been inadvertently deleted — see below], re-enacted and (ii) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 25, applicable to 1972 *et seq.* Subpara. 45(1)(c)(ii) formerly read:

> (ii) if the use regularly made by the taxpayer of the property for those other purposes has decreased, the taxpayer shall be deemed to have disposed of property at that time and the proceeds of disposition shall be deemed to be an amount equal to the proportion of the fair market value of the property at that time that the amount of the decrease in use regularly made by the taxpayer of the property for those other purposes is of the whole use regularly made of the property.

Pre-RSC History: Subparas. 45(1)(a)(i), (ii) and para. (b) amended by 1988, c. 55, subsecs. 25(1), (2), to substitute, in each, "gaining or producing income" for "gaining or producing income therefrom or for the purpose of gaining or producing income from a business"; and that portion of para. (c) preceding subpara. (ii) amended by subsec. 25(3) to substitute "gaining or producing income" for "gaining or producing income therefrom or income from a business" and to [inadvertently] repeal subpara. (c)(i), all applicable with respect to changes in use occurring after April 1988. Subpara. (c)(i) formerly read:

> (i) if the use regularly made by him of the property for those other purposes has increased, he shall be deemed to have
>
> (A) disposed of property at that time for proceeds equal to the proportion of the fair market value of the property at that time that the amount of the increase in the use regularly made by him of the property for those other purposes is of the whole use regularly made of the property, and
>
> (B) immediately thereafter reacquired the property so disposed of at a cost equal to the proceeds referred to in clause (A), and

Selected Cases [subsec. 45(1)]: *Duthie Estate v. Canada*, [1995] 2 C.T.C. 157 (FCTD) (Change of use determined on balance of indications); *Derlago v. The Queen*, [1988] 2 C.T.C. 21 (FCTD) (Change in use of property deemed disposition; proceeds equal to fair market value).

Interpretation Bulletins: IT-83R3: Non-profit organizations — taxation of income from property; IT-120R5: Principal residence; IT-160R3: Personal use of aircraft; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa.

(2) Election where change of use — For the purposes of this subdivision and section 13, where subparagraph (1)(a)(i) or paragraph 13(7)(b) would otherwise apply to any property of a taxpayer for a taxation year and the taxpayer so elects in respect of the property in the taxpayer's return of income for the year under this Part, the taxpayer shall be deemed not to have begun to use the property for the purpose of gaining or producing income except that, if in the taxpayer's return of income under this Part for a subsequent taxation year the taxpayer rescinds the election in respect of the property, the taxpayer shall be deemed to have begun so to use the property on the first day of that subsequent year.

Related Provisions: 13(1) — Recapture of depreciation; 54"principal residence"(b) — Effect of election on principal residence; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Subsec. 45(2) substituted by 1994, c. 21, s. 18, applicable to 1992 *et seq.* That subsec. formerly read:

> (2) Election where change in use — For the purposes of this subdivision and section 13, where subparagraph (1)(a)(i) and paragraph 13(7)(b) would otherwise be applicable in respect of any property of a taxpayer for a taxation year and the taxpayer so elects in the taxpayer's return of income for the year under this Part, the taxpayer shall be deemed not to have commenced to use the property for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business except that, if in the taxpayer's return of income for a subsequent year and under this Part the taxpayer rescinds the taxpayer's election in respect of the property, the taxpayer shall be deemed to have commenced so to use the property on the first day of that subsequent year.

Pre-RSC History: Subsec. 45(2) substituted by 1974-75-76, c. 26, s. 19, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-120R5: Principal residence.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3) Election concerning principal residence — Where at any time a property that was acquired by a taxpayer for the purpose of gaining or producing income ceases to be used for that purpose and becomes the principal residence of the taxpayer, subsection (1) shall not apply to deem the taxpayer to have disposed of the property at that time and to have reacquired it immediately thereafter if the taxpayer so elects by notifying the Minister in writing on or before the earlier of

> (a) the day that is 90 days after a demand by the Minister for an election under this subsection is sent to the taxpayer, and
>
> (b) the taxpayer's filing-due date for the taxation year in which the property is actually disposed of by the taxpayer.

Related Provisions: 45(4) — Where election cannot be made; 54"principal residence"(b), (d) — Effect of election and parallel rule when moving out of principal residence; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Para. 45(3)(b) amended by 1996, c. 21, s. 10, applicable to 1995 *et seq.* The para. formerly read:

> (b) April 30 following the year in which the property is actually disposed of by the taxpayer.

Pre-RSC History: Subsec. 45(3) amended by 1988, c. 55, subsec. 25(4) to substitute "Election re" for "Election to use property as" in the heading, and "gaining or producing income" for "gaining or producing income therefrom or for the purpose of gaining or producing income from a business", applicable with respect to changes in use occurring after April 1988.

Subsec. 45(3) added by 1985, c. 45, s. 18, applicable with respect to property that a taxpayer commences to use as a principal residence after 1981, except that for any such property actually disposed of in taxation years ending after 1981 and before 1985, the reference to "April 30 following the year in which the property is actually disposed of by him" shall be read as a reference to "April 30, 1986".

Interpretation Bulletins: IT-120R5: Principal residence.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(4) Where election cannot be made — Notwithstanding subsection (3), an election described in that subsection shall be deemed not to have been made in respect of a change in use of property if any deduction in respect of the property has been allowed for any taxation year ending after 1984 and on or before the change in use under regulations made under paragraph 20(1)(a) to the taxpayer, the taxpayer's spouse or a trust under which the taxpayer or the taxpayer's spouse is a beneficiary.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Pre-RSC History: Subsec. 45(4) substituted by 1988, c. 55, subsec. 25(5), applicable in respect of a deduction allowed under regulations made under paragraph 20(1)(a) for a taxation year commencing after 1987. Subsec. 45(4) formerly read:

> (4) Where election cannot be made — Notwithstanding subsection (3), an election described therein shall be deemed not to have been made in respect of a property if any deduction in respect thereof has been allowed for any taxation year ending after 1984 under paragraph 20(1)(a) or subsection 104(16) to the taxpayer, his spouse or a trust under which his spouse is a beneficiary.

Subsec. 45(4) added by 1985, c. 45, s. 18, applicable with respect to property that a taxpayer commences to use as a principal residence after 1981.

Interpretation Bulletins: IT-120R5: Principal residence.

Definitions [s. 45]: "amount", "business", "common-law partner" — 248(1); "filing-due date" — 150(1), 248(1); "gaining or producing income" — 45(1)(d); "Minister" — 248(1); "principal residence", "proceeds of disposition" — 54; "property", "regulation" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer", "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 45]: IT-102R2: Conversion of property, other than real property, from or to inventory.

46. (1) Personal-use property — Where a taxpayer has disposed of any personal-use property of the taxpayer, for the purposes of this subdivision

(a) the adjusted cost base to the taxpayer of the property immediately before the disposition shall be deemed to be the greater of $1,000 and the amount otherwise determined to be its adjusted cost base to the taxpayer at that time; and

(b) the taxpayer's proceeds of disposition of the property shall be deemed to be the greater of $1,000 and the taxpayer's proceeds of disposition of the property otherwise determined.

Proposed Amendment — No minimum $1,000 for donated personal-use property

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Personal-Use Property*

(20) That the provisions of the Act relating to the deemed proceeds of disposition and adjusted cost base applicable to personal-use property not apply to property of a taxpayer that is acquired by the taxpayer after February 27, 2000 as part of an arrangement under which the property is gifted to a qualified donee.

Federal budget, supplementary information, February 28, 2000: *Personal-Use Property*

Currently, the adjusted cost base and proceeds of disposition of personal-use property are deemed to be at least $1,000 for capital gains purposes. This rule is designed to ease the compliance and administrative burden associated with the reporting of dispositions of personal-use property. Personal-use property is generally property that is used primarily for the personal use or enjoyment of an individual and includes jewellery, works of art, furniture and clothing.

Certain charitable donation arrangements have been designed to exploit the $1,000 deemed adjusted cost base for personal-use property and to create a scheme under which taxpayers attempt to achieve an after-tax profit from such gifts. For example, arrangements have been designed under which a promoter acquires a number of objects for less than $50 each, invites taxpayers to purchase the objects for $250 each, and arranges for their appraisal at $1,000 each and their donation to a charity.

[These arrangements are known as "art flips" and have been successfully challenged by the CCRA on many grounds. See Notes to 118.1(1)"total charitable gifts". See also the Technical Notes to the proposed civil penalties for third parties in 163.2 — ed.]

Based on the $1,000 appraised value, there would be a $750 capital gain per item to the donor but for the $1,000 deemed adjusted cost base for the gift. However, with the deemed adjusted cost base there is no gain for tax purposes. As a result, the cost to governments of the "$1,000 gift" is approximately $500 (i.e., the federal and provincial tax savings associated with a $1,000 charitable donation), which in many cases exceeds the amount that the charity can realize from the donated property. Such an arrangement intends that the "donor" achieve a tax-free profit of $250.

The budget proposes to amend the *Income Tax Act* so that the $1,000 deemed adjusted cost base and deemed proceeds of disposition for personal-use property will not apply if the property is acquired after February 27, 2000, as part of an arrangement in which the property is donated as a charitable gift.

Related Provisions: 40(2)(g)(iii) — No loss allowed on most personal-use property; 46(3) — Properties ordinarily disposed of as a set; 50(2) — Personal-use property debts.

Forms: T2080: Personal-use property (other than listed personal property and principal residence).

Interpretation Bulletins: IT-332R: Personal Use Property.

(2) Where part only of property disposed of — Where a taxpayer has disposed of part of a personal-use property owned by the taxpayer and has retained another part of the property, for the purposes of this subdivision

(a) the adjusted cost base to the taxpayer, immediately before the disposition, of the part so disposed of shall be deemed to be the greater of

(i) the adjusted cost base to the taxpayer at that time of that part otherwise determined, and

(ii) that proportion of $1,000 that the amount determined under subparagraph (i) is of the adjusted cost base to the taxpayer at that time of the whole property; and

(b) the proceeds of disposition of the part so disposed of shall be deemed to be the greater of

(i) the proceeds of disposition of that part otherwise determined, and

(ii) the amount determined under subparagraph (a)(ii).

(3) Properties ordinarily disposed of as a set — For the purposes of this subdivision, where a number of personal-use properties of a taxpayer that would, if the properties were disposed of, ordinarily be disposed of in one disposition as a set,

(a) have been disposed of by more than one disposition so that all of the properties have been acquired by one person or by a group of persons not dealing with each other at arm's length, and

(b) had, immediately before the first disposition referred to in paragraph (a), a total fair market value greater than $1,000,

the properties shall be deemed to be a single personal-use property and each such disposition shall be deemed to be a disposition of a part of that property.

(4) Decrease in value of personal-use property of corporation, etc. — Where it may reasonably be regarded that, by reason of a decrease in the fair market value of any personal-use property of a corporation, partnership or trust,

(a) a taxpayer's gain, if any, from the disposition of a share of the capital stock of a corporation, an interest

in a trust or an interest in a partnership has become a loss, or is less than it would have been if the decrease had not occurred, or

(b) a taxpayer's loss, if any, from the disposition of a share or interest described in paragraph (a) is greater than it would have been if the decrease had not occurred,

the amount of the gain or loss, as the case may be, shall be deemed to be the amount that it would have been but for the decrease.

Definitions [s. 46]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "personal-use property" — 54, 248(1); "proceeds of disposition" — 54; "property", "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 46]: IT-332R: Personal-use property.

47. (1) Identical properties — Where at any particular time after 1971 a taxpayer who owns one property that was or two or more identical properties each of which was, as the case may be, acquired by the taxpayer after 1971, acquires one or more other properties (in this subsection referred to as "newly-acquired properties") each of which is identical to each such previously-acquired property, for the purposes of computing, at any subsequent time, the adjusted cost base of the taxpayer of each such identical property,

(a) the taxpayer shall be deemed to have disposed of each such previously-acquired property immediately before the particular time for proceeds equal to its adjusted cost base to the taxpayer immediately before the particular time;

(b) the taxpayer shall be deemed to have acquired the identical property at the particular time at a cost equal to the quotient obtained when

(i) the total of the adjusted cost bases to the taxpayer immediately before the particular time of the previously-acquired properties, and the cost to the taxpayer (determined without reference to this section) of the newly-acquired properties

is divided by

(ii) the number of the identical properties owned by the taxpayer immediately after the particular time;

(c) there shall be deducted, after the particular time, in computing the adjusted cost base to the taxpayer of each such identical property, the amount determined by the formula

$$\frac{A}{B}$$

where

A is the total of all amounts deducted under paragraph 53(2)(g.1) in computing immediately before the particular time the adjusted cost base to the taxpayer of the previously-acquired properties, and

B is the number of such identical properties owned by the taxpayer immediately after the particular time or, where subsection (2) applies, the quotient determined under that subsection in respect of the acquisition; and

(d) there shall be added, after the particular time, in computing the adjusted cost base to the taxpayer of each such identical property the amount determined under paragraph (c) in respect of the identical property.

Related Provisions: 47(2) — Where identical properties are bonds, etc.; 53(1)(q) — Addition to adjusted cost base for amount under 47(1)(d); 53(2)(g.1) — Reduction in adjusted cost base under 47(1)(c); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness; 138(11.1) — Properties of life insurance corporation; 248(12) — Meaning of "identical properties".

History: Paras. 47(1)(c) and (d) added by 1995, c. 21, s. 13, applicable to taxation years that end after February 21, 1994.

I.T. Application Rules: 26(8)–(8.5) (property owned since before 1972).

I.T. Technical News: No. 19 (Disposition of identical properties acquired under a section 7 securities option; Change in position in respect of GAAR — section 7).

Forms: T2082: Capital dispositions supplementary schedule — shares.

(2) Where identical properties are bonds, etc. — For the purposes of subsection (1), where a group of identical properties referred to in that subsection is a group of identical bonds, debentures, bills, notes or similar obligations issued by a debtor, subparagraph (1)(b)(ii) shall be read as follows:

"(ii) the quotient obtained when the total of the principal amounts of all such identical properties owned by the taxpayer immediately after the particular time is divided by the principal amount of the identical property."

Related Provisions: 248(12) — Whether bonds, etc., are identical properties.

Pre-RSC History [subsec. 47(2)]: Subsec. 47(2) amended by 1988, c. 55, subsec. 26(1), to substitute "bonds, debentures, bills, notes or similar obligations issued by a debtor" for "obligations within the meaning of subsection (3)", applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Forms: T2084: Capital dispositions supplementary schedule — bonds and other obligations.

(3), (4) [Repealed under former Act]

Pre-RSC History: Subsec. 47(3) repealed by 1988, c. 55, subsec. 26(2), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. (See subsec. 248(12).) Subsec. 47(3) formerly read:

(3) When bonds, etc., are identical — For the purposes of this subdivision, one bond, debenture, bill, note or other similar obligation issued by a debtor is identical to another such obligation issued by that debtor if both are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof.

Subsec. 47(4) repealed by 1986, c. 6, s. 19, applicable to 1986 *et seq.* Subsec. 47(4) formerly read:

(4) Meaning of "property" — For the purposes of subsection (1), "property" does not include an indexed security.

Subsec. 47(4) added by 1984, c. 1, s. 16, applicable after September 30, 1983.

Definitions [s. 47]: "adjusted cost base" — 54, 248(1); "identical" — 138(11.1), 248(12); "principal amount", "property", "taxpayer" — 248(1).

Interpretation Bulletins [s. 47]: IT-78: Capital property owned on December 31, 1971 — identical properties; IT-88R2: Stock dividends; IT-115R2: Fractional interest in shares; IT-199: Identical properties acquired in non-arm's length transactions; IT-387R2: Meaning of "identical properties".

47.1 Indexed Security Investment Plans — **(1)–(26)** [Repealed under former Act]

(26.1) Application of section 47.1 of R.S.C., 1952, c. 148 — Words and expressions used in subsections (27) and (28) have the meanings assigned to them by subsections 47.1(1) to (26) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as the latter subsections read on July 1, 1986 and in so far as they are not inconsistent with subsections (27) and (28).

Origin of subsec. 47.1(26.1): R.S.C. 1985, c. 1 (5th Supp.).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(27) Capital losses in 1986 — Notwithstanding any other provision of this Act, where paragraph 47.1(10)(f) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as that paragraph read on January 1, 1986, applied in respect of the termination before 1986 of an indexed security investment plan under which a taxpayer was a participant, any amount that would have been deemed under that paragraph to be a capital loss of the taxpayer from the Plan for the 1986 or a subsequent taxation year shall be deemed to be a capital loss of the taxpayer for the 1986 taxation year from the disposition of property in 1986.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(28) Transition for 1986 — Where a taxpayer was a participant under a Plan on January 1, 1986, the following rules apply:

(a) each indexed security owned under the Plan by the taxpayer on that date shall be deemed to have been disposed of under the Plan on that date for proceeds of disposition determined by the formula

$$A \times \frac{B}{C}$$

where

A is the indexing base of the Plan on that date determined as if subparagraph 47.1(3)(a)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, were read as "the fair market value of all indexed securities owned by the taxpayer under the Plan at the end of the preceding taxation year",

B is the fair market value of the security on that date, and

C is the fair market value of all indexed securities owned under the Plan by the taxpayer on that date;

(b) each indexed security deemed under paragraph (a) to have been disposed of under the Plan shall be deemed to have been reacquired outside the Plan by the taxpayer immediately after that date at a cost equal to the amount deemed under paragraph (a) to be the proceeds of the disposition of that security;

(c) each put or call option referred to in clause 47.1(4)(a)(iv)(B) or (C) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as that clause read on January 1, 1986, outstanding under the Plan on that date shall be deemed to have been closed out under the Plan on that date at a cost equal to the amount that the taxpayer would have had to pay on that date if the taxpayer had actually closed out the option on a prescribed stock exchange in Canada on that date;

(d) each put or call option deemed under paragraph (c) to have been closed out shall be deemed to be written outside the Plan immediately after that date for proceeds equal to the amount deemed under paragraph (c) to be the cost at which the option was closed out; and

(e) for greater certainty, the taxpayer's indexed gain or loss, as the case may be, for the 1986 taxation year from the Plan and unindexed gain or loss, as the case may be, for that year from the Plan shall be nil.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Pre-RSC History [s. 47.1]: The description of "A" in para. 47.1(28)(a) substituted by 1986, c. 55, s. 7, applicable after 1985. That description formerly read:

A is the indexing base of the Plan on that date,

Subsecs. 47.1(1)–(26) repealed and subsecs. 47.1(27), (28) added by 1986, c. 6, subsecs. 20(1)–(3). The repeal of subsecs. 47.1(1)–(25) is applicable after January 1, 1986, the repeal of subsec. 47.1(26) is applicable to 1987 *et seq.* and the addition of subsecs. 47.1(27) and (28) is applicable after 1985. Subsecs. 47.1(1)–(26) formerly read:

47.1 (1) Definitions — In this section and section 38,

(a) "administrator" — "administrator", in relation to a Plan, means the trader or dealer in securities, mutual fund corporation, mutual fund trust or insurer who has entered into the contract described in paragraph (f) in respect of the Plan other than as the participant under the Plan;

(b) "capital gain" — "capital gain" of a taxpayer for a taxation year from a Plan means the amount determined in respect of the Plan for the taxpayer for the year under subsection (9), 48(1.1), 70(5.4), 74(2), 75(2), 104(5.1) or 128(2), whichever is applicable;

(c) "capital loss" — "capital loss" of a taxpayer for a taxation year from a Plan means the amount determined in respect of the Plan for the taxpayer for the year under subsection (9), (10), (12), 48(1.1), 70(5.4), 74(2), 75(2), 104(5.1) or 128(2), whichever is applicable;

(d) "fair market value" — "fair market value", at any time of a security, means

(i) in the case of a security listed or traded on a prescribed stock exchange in Canada and owned under or in respect of a Plan or transferred to a Plan, the quoted price at that time determined in accordance with the method regularly followed by the administrator of the Plan in determining quoted prices, and

(ii) in the case of a security that is a share of the capital stock of a mutual fund corporation, a unit of a mutual fund trust or an interest in a related segregated fund trust, the amount that would be received in respect of that share, unit or interest if it were redeemed or disposed of at that time,

or such other amount as may be prescribed;

(e) "indexed security" — "indexed security" means a qualified security beneficially owned by a taxpayer under a Plan and, where the Plan is administered by a trader or dealer in securities, held in the care and custody of a trader or dealer in securities and registered in the name of a trader or dealer in securities or person who is a nominee for a trader or dealer in securities;

(f) "indexed security investment plan" — "indexed security investment plan" means a plan of investment in securities that are qualified securities in relation to the plan and that is evidenced by a written contract

(i) entered into between

(A) a person resident in Canada who is an individual (other than a trust) or a trust (other than a mutual fund trust) of which each beneficiary is

(I) an individual (other than a trust) or a person described in paragraph 110(1)(a), (b) or (b.1) (other than the taxpayer referred to in any such paragraph), or

(II) a testamentary trust that arose on and in consequence of the death of a person who was a beneficiary of the trust and of which all the beneficiaries are persons described in subclause (I), and

(B) a person resident in Canada or licensed to carry on business in Canada who is a trader or dealer in securities, a mutual fund corporation, a mutual fund trust or an insurer in respect of a related segregated fund trust, and

(ii) under which the trader or dealer, corporation, trust or insurer, as the case may be, agrees to compute any taxable capital gain or allowable capital loss of the person referred to in clause (A) from the plan for each taxation year of such person in which the contract is in force;

(g) "indexing factor" — "indexing factor" for a particular month means the quotient obtained when

(i) the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in the prescribed manner, for the month immediately preceding the particular month

is divided by

(ii) the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in the prescribed manner, for the month that is two months before the particular month,

and such quotient is rounded to the nearest one-hundred thousandth or, where the quotient is equidistant from two one-hundred thousandths, to the larger thereof;

(h) "participant" — "participant" under a Plan means any person who has entered into a contract described in paragraph (f) under which his taxable capital gain or allowable capital loss from the Plan will be computed for each taxation year in which the contract is in force or a spouse or trust who has acquired all the rights and assumed all the obligations of the person under the contract in circumstances described in subparagraph 70(5.4)(g)(ii);

(i) "Plan" — "Plan" means an indexed security investment plan;

(j) "qualified security" — "qualified security", at any time, means

(i) in relation to a Plan administered by a trader or dealer in securities, a security in respect of which there is at that time a subsisting certification by a prescribed stock exchange in Canada that the security is

(A) a share of a class of the capital stock of a corporation incorporated and having its head office in Canada, other than a corporation recognized as a mutual fund corporation by that stock exchange, in respect of which the following requirements are met, namely:

(I) the class to which the share belongs is listed, or is conditionally approved for listing, on that stock exchange,

(II) the amount that the owner of the share is entitled to receive on the dissolution, liquidation or winding-up of the corporation is not limited to a fixed or determinable amount, other than an amount determinable by reference to the entitlement of another share described in this clause on the dissolution, liquidation or winding-up of the corporation,

(III) there is no right, privilege, restriction or condition attaching to the share under the corporation's charter or any amendment thereto that

1. gives the owner of the share the right to cause it to be redeemed, acquired or cancelled by the corporation, in whole or in part, or to cause the paid-up capital of the share to be reduced,

2. limits the amount of the dividends that the corporation may declare or pay on the share, or that the owner thereof may receive thereon, to an amount not to exceed a fixed or determinable amount, other than an amount determinable by reference to a dividend payable on another share described in this clause,

3. gives the owner of the share the right to convert it into, or exchange it for, another property, other than a share that is, or that if issued would be, described in this clause read without reference to subclause (I), or

4. gives the corporation the right without the consent of the beneficial owner of the share, or obligates the corporation, to redeem, acquire or cancel (other than a right or obligation to redeem, acquire or cancel for the purpose of keeping the total number of shares of the class to which the share belongs that is owned by a person or group of persons below a specific percentage of all shares of that class that have been issued) the share, in whole or in part, to reduce the corporation's paid-up capital in respect of the share or to convert the share into, or exchange the share for, another property, other than a share that is, or that if issued would be, described in this clause, and

(IV) the owners of all shares of the class have no right or obligation under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to dispose of their shares to the corporation, a person not dealing at arm's length with the corporation or a partnership or trust of which the corporation or a person not dealing at arm's length with the corporation is a member or beneficiary,

(B) a right or warrant that is posted for trading, or that is conditionally approved for such posting, on that stock exchange and that grants the owner thereof the right to acquire a determinable number of shares described in clause (A) at a determinable price, or

(C) a put or call option in respect of a share described in clause (A) that is traded on that stock exchange,

unless the security is at that time

(D) a prescribed security,

(E) a share of the capital stock of a corporation in respect of which 25% or more of the issued shares of any class thereof are owned by the taxpayer who is the participant under the Plan, by any one or more persons with whom the taxpayer does not deal at arm's length or by the taxpayer and any one or more such persons,

(F) a share of the capital stock of a corporation that is prescribed to be an investment corporation,

(G) a right, warrant or call option that, if exercised, would allow the taxpayer who is the participant under the Plan to acquire securities outside the Plan, or

(H) a put option in respect of shares not owned under the Plan, other than any such shares that would be required to be acquired under the Plan on the exercise of a put option written under the Plan that together with the option is recognized as a spread position by a prescribed stock exchange in Canada, and

(ii) in relation to a Plan administered by a mutual fund corporation or mutual fund trust or by an insurer in respect of a related segregated fund trust, a share of the capital stock of the mutual fund corporation, a unit of the mutual fund trust or an interest in the related segregated fund trust, other than a prescribed share, unit or interest;

(k) "specified adjustment factor" — "specified adjustment factor" for a taxation year in respect of a Plan means

(i) where the Plan is administered by a trader or dealer in securities, nil, and

(ii) where the Plan is administered by a mutual fund corporation, a mutual fund trust or an insurer, the amount, if any, obtained when 100 is subtracted from the quotient obtained when

(A) the aggregate of

(I) the total of all amounts that are obtained by determining, for each month in the year, the fair market value of all property, other than securities described in subparagraph (j)(i), owned by the administrator in respect of the Plan at the end of a day (to be selected by the administrator) of the month after the twenty-third day thereof, and

(II) the total of all amounts that are obtained by determining, for each month in the year, the fair market value of all property, other than securities described in subparagraph (j)(i), owned by the administrator in respect of the Plan at the end of a day (to be selected by the administrator) between the tenth and twentieth days of the month

is divided by

(B) the aggregate of

(I) the total of all amounts that are obtained by determining, for each month in the year, the fair market value of all property owned by the administrator in respect of the Plan at the end of such day of that month as was used in computing the fair market value for that month for the purposes of subclause (A)(I), and

(II) the total of all amounts that are obtained by determining, for each month in the year, the fair market value of all property owned by the administrator in respect of the Plan at the end of such day in the month as was used in computing the fair market value for that month for the purposes of subclause (A)(II),

except that where the amount thus obtained is .400 or greater, it shall be deemed to be 1; and

(l) **"trader or dealer in securities"** — "trader or dealer in securities" means a person

(i) who is registered or licensed under the laws of a province to trade in securities and who is a member of a prescribed contingency fund,

(ii) that is

(A) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies,

(B) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(C) a credit union,

and that purchases or sells, through a person described in subparagraph (i), securities as agent for other persons, or

(iii) who is a prescribed person.

(2) **Acquisitions and dispositions under a Plan** — Where, in any month, a taxpayer who is a participant under a Plan owns a security that is a qualified security in relation to the Plan and that is, or would but for this section and subparagraph 39(1)(a)(v) be, a capital property of the taxpayer, the following rules apply:

(a) where

(i) the security was acquired or disposed of by the taxpayer at any time in the month,

(ii) the administrator of the Plan treats the acquisition or disposition as having taken place under the Plan, and

(iii) the taxpayer does not notify the administrator of the Plan in writing within 21 days after the end of the month that the security was not acquired or disposed of under the Plan,

the security shall be deemed to have been acquired or disposed of under the Plan;

(b) where

(i) the security was acquired or disposed of by the taxpayer at any time in the month,

(ii) the administrator of the Plan does not treat the acquisition or disposition as having taken place under the Plan, and

(iii) the taxpayer notifies the administrator of the Plan in writing within 21 days after the end of the month that the security was acquired or disposed of under the Plan,

the security shall be deemed to have been acquired or disposed of under the Plan; and

(c) where the security was not acquired under the Plan by the taxpayer and the taxpayer notifies the administrator of the Plan in writing at any time that the security is to be transferred to the Plan, the security shall be deemed to have been disposed of immediately before that time by the taxpayer for proceeds of disposition equal to its fair market value at that time and shall be deemed to have been reacquired under the Plan by the taxpayer immediately after that time at a cost equal to that fair market value.

(3) **Indexing base at beginning of year** — For the purposes of subsection (4), where a taxpayer is a participant under a Plan at the beginning of a taxation year, the indexing base of the Plan at that time is

(a) where the taxpayer had a gain from the Plan for the preceding taxation year, the amount, if any, by which

(i) the amount, if any, by which

(A) the fair market value of all indexed securities owned by the taxpayer under the Plan at the end of the preceding taxation year

exceeds

(B) the total of all amounts that are obtained by determining, for each put or call option referred to in clause (4)(a)(iv)(B) or (C) outstanding under the Plan at the end of the preceding taxation year, the amount that the taxpayer would have had to pay at that time to close out that option on a prescribed stock exchange in Canada

exceeds

(ii) the amount, if any, by which the taxpayer's gain from the Plan for the preceding taxation year exceeds the taxpayer's capital gain from the Plan for the preceding taxation year; and

(b) in any other case, the aggregate of

(i) the amount referred to in subparagraph (a)(i), and

(ii) the amount, if any, by which the taxpayer's loss from the Plan for the preceding taxation year exceeds the taxpayer's capital loss from the Plan for the preceding taxation year.

(4) **Indexing base at end of a month and indexed gain amount for a month** — For the purposes of this subsection and subsections (5) and (24), where a taxpayer is a participant under a Plan in any month in a taxation year,

(a) the indexing base of the Plan at the end of the month is the amount, if any, by which the aggregate of

(i) the product obtained when the indexing factor for the month is multiplied by

(A) where the month is the first month in the year, the indexing base of the Plan at the beginning of the year, and

(B) in any other case, the indexing base of the Plan at the end of the preceding month,

(ii) the total of all amounts that are obtained by determining, for each indexed security acquired under the Plan by the taxpayer in the month, the cost of the security, and

(iii) the total of all amounts that are obtained by determining, for each put or call option referred to in clause (iv)(B) or (C) that was closed out under the Plan in the month, the cost of closing out that option,

exceeds the aggregate of

(iv) the total of all amounts that are obtained by determining, for

(A) each indexed security owned by the taxpayer under the Plan that was disposed of in the month,

(B) each call option written under the Plan in the month on a prescribed stock exchange in Canada in respect of a security

(I) that is an indexed security owned by the taxpayer under the Plan,

(II) that the taxpayer will acquire under the Plan if he exercises a call option owned under the Plan that, together with the call option written under the Plan, is recognized as a spread position by a prescribed stock exchange in Canada, or

(III) that the taxpayer will acquire under the Plan if he exercises a right or warrant owned under the Plan that does not expire at a time prior to the time at which the call option written under the Plan expires, and

(C) each put option written under the Plan in the month on a prescribed stock exchange in Canada in respect of a security that is a qualified security in relation to the

Plan and that the taxpayer will acquire under the Plan if exercised,

the amount, if any, by which the proceeds to the taxpayer from such disposition or writing exceed such of any outlays and expenses with respect to the disposition or writing as were made or incurred by the taxpayer for the purpose of making the disposition or writing, and

(v) the amount, if any, by which

(A) the total of all amounts that are obtained by determining, for each preceding month in the year, the indexed gain amount, if any, of the taxpayer from the Plan for that preceding month

exceeds

(B) where any portion of an indexed gain amount of the taxpayer from the Plan for a preceding month in the year had the effect of reducing to a lesser amount the amount that would otherwise have been the indexing base of the Plan at the end of any month following (and in the same year as) the preceding month, the total of all such portions that had that effect; and

(b) the indexed gain amount of the taxpayer for the month from the Plan is the amount, if any, by which the total determined under subparagraph (a)(iv) exceeds the aggregate of the product determined under subparagraph (a)(i) and the totals determined under subparagraphs (a)(ii) and (iii).

(5) **Indexed gain or loss** — For the purposes of subsection (7), where a taxpayer is a participant under a Plan in a taxation year,

(a) the indexed gain of the taxpayer for the year from the Plan is the aggregate of

(i) the amount, if any, by which

(A) the total of all amounts that are obtained by determining, for each month in the year, the indexed gain amount of the taxpayer from the Plan for the month

exceeds

(B) where any portion of an indexed gain amount of the taxpayer from the Plan for a month in the year had the effect of reducing to a lesser amount the amount that would otherwise have been the indexing base of the Plan at the end of any month following (and in the same year as) that month, the total of all such portions that had that effect, and

(ii) the amount, if any, by which

(A) the amount, if any, by which

(I) the fair market value of all indexed securities owned by the taxpayer under the Plan at the end of the year

exceeds

(II) the indexing base of the Plan at the end of the last month in the year

exceeds

(B) the total of all amounts that are obtained by determining, for each put or call option referred to in clause (4)(a)(iv)(B) or (C) outstanding under the Plan at the end of the year, the amount that the taxpayer would have to pay at that time to close out that option on a prescribed stock exchange in Canada; and

(b) where the gain described in paragraph (a) is nil, the indexed loss of the taxpayer for the year from the Plan is the amount, if any, by which

(i) the indexing base described in subclause (a)(ii)(A)(II)

exceeds

(ii) the amount, if any, by which

(A) the fair market value described in subclause (a)(ii)(A)(I)

exceeds

(B) the total described in clause (a)(ii)(B).

(6) **Unindexed gain or loss** — For the purposes of subsection (7),

(a) a taxpayer's unindexed gain for a taxation year from a Plan is the amount that would be determined under paragraph (5)(a) to be the indexed gain of the taxpayer for the year from the Plan if the indexing factor for each month in the year were one; and

(b) a taxpayer's unindexed loss for a taxation year from a Plan is the amount that would be determined under paragraph (5)(b) to be the indexed loss of the taxpayer for the year from the Plan if the indexing factor for each month in the year were one.

(7) **Gain or loss** — For the purposes of subsections (3), (9), (10), (24), 48(1.1), 70(5.4), 104(5.1) and 128(2),

(a) the gain of a taxpayer for a taxation year from a Plan is

(i) where the taxpayer had an indexed gain and an unindexed gain for the year from the Plan, the aggregate of

(A) the indexed gain of the taxpayer for the year from the Plan, and

(B) the product obtained when the specified adjustment factor of the taxpayer for the year in respect of the Plan is multiplied by the amount, if any, by which

(I) the unindexed gain of the taxpayer for the year from the Plan

exceeds

(II) the indexed gain of the taxpayer for the year from the Plan, and

(ii) where the taxpayer had an indexed loss and an unindexed gain for the year from the Plan, the amount, if any, by which

(A) the product obtained when the specified adjustment factor of the taxpayer for the year in respect of the Plan is multiplied by the aggregate of

(I) the indexed loss of the taxpayer for the year from the Plan, and

(II) the unindexed gain of the taxpayer for the year from the Plan

exceeds

(B) the indexed loss of the taxpayer for the year from the Plan; and

(b) the loss of a taxpayer for a taxation year from a Plan is

(i) where the taxpayer had an indexed loss and an unindexed loss for the year from the Plan, the amount, if any, by which

(A) the indexed loss of the taxpayer for the year from the Plan

exceeds

(B) the product obtained when the specified adjustment factor of the taxpayer for the year in respect of the Plan is multiplied by the amount, if any, by which

(I) the indexed loss of the taxpayer for the year from the Plan

exceeds

(II) the unindexed loss of the taxpayer for the year from the Plan, and

(ii) where the taxpayer had an indexed loss and an unindexed gain for the year from the Plan, the amount, if any, by which

(A) the indexed loss of the taxpayer for the year from the Plan

exceeds

(B) the amount determined under clause (a)(ii)(A).

(8) **Where Consumer Price Index declines** — Where in a taxation year a taxpayer is a participant under a Plan and the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, for the month immediately preceding the last month of the year or, where the taxpayer ceased to be a participant under the Plan in the year, the month immediately preceding the month in which he so ceased is less than the Consumer Price Index so published for the month two months preceding the first month of the year or, where the taxpayer commenced to be a participant under the Plan in the year, the month immediately preceding the month in which he so commenced, subsection (7) shall, for the purpose of determining any gain or loss of the taxpayer for the year from the Plan, be read as if any reference therein to

(a) "indexed gain" were a reference to "unindexed gain";

(b) "unindexed gain" were a reference to "indexed gain";

(c) "indexed loss" were a reference to "unindexed loss";

(d) "unindexed loss" were a reference to "indexed loss"; and

(e) "the specified adjustment factor" were a reference to "one minus the specified adjustment factor".

(9) Capital gain or loss — Where a taxpayer is a participant under a Plan in a taxation year,

(a) the taxpayer's capital gain for the year from the Plan is the greater of

(i) ¼ of the gain of the taxpayer for the year from the Plan, and

(ii) the amount, if any, by which

(A) the gain of the taxpayer for the year from the Plan

exceeds

(B) the amount, if any, by which

(I) the fair market value of all indexed securities owned by the taxpayer under the Plan at the end of the year

exceeds

(II) the total of all amounts that are obtained by determining, for each put or call option referred to in clause (4)(a)(iv)(B) or (C) outstanding under the Plan at the end of the year, the amount that the taxpayer would have to pay at that time to close out that option on a prescribed stock exchange in Canada; and

(b) the taxpayer's capital loss for the year from the Plan is ¼ of the loss of the taxpayer for the year from the Plan.

(10) Termination of a Plan — Where at any particular time in a taxation year a Plan under which a taxpayer is the participant is terminated, the following rules apply:

(a) the taxpayer's indexed gain or loss, as the case may be, for the year from the Plan and unindexed gain or loss, as the case may be, for the year from the Plan shall be computed as if the year ended at the end of the month in which the Plan was terminated;

(b) each indexed security owned under the Plan by the taxpayer immediately before the particular time shall be deemed to have been disposed of under the Plan at that time for proceeds of disposition equal to the fair market value of the security at that time;

(c) each security deemed to have been disposed of by virtue of paragraph (b) shall be deemed to be reacquired outside the Plan by the taxpayer immediately after the particular time at a cost equal to the amount for which it was so deemed to have been disposed of;

(d) each put or call option referred to in clause (4)(a)(iv)(B) or (C) outstanding under the Plan immediately before the particular time shall be deemed to have been closed out under the Plan at that time at a cost equal to the amount the taxpayer would have had to pay at that time if he had actually closed out the option on a prescribed stock exchange in Canada;

(e) each put or call option deemed to have been closed out by virtue of paragraph (d) shall be deemed to be written outside the Plan by the taxpayer immediately after the particular time for proceeds equal to the amount at which the option was so deemed to have been closed out; and

(f) where the taxpayer had a loss for the year from the Plan, the taxpayer shall, notwithstanding subsection (9), be deemed to have a capital loss from the Plan for the year and each of the four subsequent taxation years equal to ⅕ of the taxpayer's loss for the year from the Plan.

(11) Deemed termination of a Plan — Where

(a) a taxpayer who was a participant under a Plan at the end of a taxation year had a loss for the year from the Plan of less than $2,500 and did not own any indexed securities under the Plan at the end of the year or have any obligations in respect of options referred to in clause (4)(a)(iv)(B) or (C) outstanding under the Plan at the end of the year,

(b) at any particular time in a taxation year a trust that is a participant under a Plan ceases to be a trust described in clause (1)(f)(i)(A), or

(c) at any particular time in a taxation year a taxpayer who is a participant under a Plan writes a call option under the Plan in respect of an indexed security and the option is not written on a prescribed stock exchange in Canada,

the Plan shall be deemed to be terminated at the end of the year or at the particular time, as the case may be.

(12) Termination of a trust — Where paragraph (10)(f) is applicable in a taxation year to a trust in respect of a Plan and at any time in that year the trust is terminated, the trust shall, notwithstanding that paragraph, be deemed to have a capital loss from the Plan for that year equal to the aggregate of all amounts that are obtained by determining every amount that, but for the termination of the trust, would have been a capital loss of the trust from the Plan for that year or any subsequent taxation year.

(13) Indexed securities exchanged or replaced — Notwithstanding any other provision of this Act, other than subsections (17) and 49(3) and paragraph 69(1)(b), where at any particular time an indexed security owned by a taxpayer under a Plan is exchanged for or replaced by other property, the following rules apply:

(a) the indexed security shall be deemed to have been disposed of under the Plan by the taxpayer immediately before the particular time for proceeds of disposition equal to the fair market value of the other property at that time;

(b) where the other property includes a qualified security in relation to the Plan, the qualified security shall be deemed to be an indexed security acquired under the Plan by the taxpayer immediately after the particular time at a cost equal to its fair market value at that time; and

(c) where the other property includes a particular property that is not a qualified security in relation to the Plan, the particular property shall be deemed to have been acquired outside the Plan by the taxpayer immediately after the particular time at a cost equal to its fair market value at that time.

(14) Rights and stock dividends — Where at any time a taxpayer who is a participant under a Plan receives, in respect of an indexed security owned under the Plan, a right described in clause (1)(j)(i)(B) at nil cost or a stock dividend that is not a dividend, and the right or stock dividend is a qualified security in relation to the Plan, such right or stock dividend shall be deemed to be acquired under the Plan by the taxpayer at that time at a cost equal to nil.

(15) Indexed securities withdrawn from a Plan or that cease to be qualified securities — Where at any particular time a security that is an indexed security owned under a Plan by a taxpayer is withdrawn from the Plan or ceases to be a qualified security in relation to the Plan, the following rules apply:

(a) the security shall be deemed to have been disposed of under the Plan by the taxpayer immediately before the particular time for proceeds of disposition equal to its fair market value at that time; and

(b) the security shall be deemed to have been reacquired outside the Plan by the taxpayer immediately after the particular time at a cost equal to the fair market value referred to in paragraph (a).

(16) Disqualification of option written under Plan — Where at any time a put or call option outstanding under a Plan ceases to be in respect of a security described in clause (4)(a)(iv)(B) or (C), the following rules apply in respect of the taxpayer who is the participant under the Plan;

(a) the taxpayer shall be deemed to have closed out the option under the Plan immediately before that time at a cost equal to the amount that the taxpayer would have had to pay at that time if he had actually closed out the option on a prescribed stock exchange in Canada; and

(b) the taxpayer shall be deemed to have written the option outside the Plan immediately after that time for proceeds of disposition equal to the amount at which the option was deemed to have been closed out under paragraph (a).

(17) Exercise of options — Where at any particular time a taxpayer who is a participant under a Plan disposes of an indexed security owned under the Plan by virtue of the exercise of a put option owned or a call option written outside the Plan, the taxpayer shall be deemed to have disposed of the security under the Plan immediately before the time that is immediately before the particular time for proceeds of disposition equal to the fair market value of the security at the particular time and to have reacquired the security outside the Plan immediately before the particular time at a cost equal to that fair market value.

(18) Shares of a mutual fund corporation — For the purposes of subparagraph (4)(a)(iv) and paragraph 131(1)(b), where a taxpayer owns a share of the capital stock of a mutual fund corporation under a Plan, the following rules apply:

(a) any amount received in respect of the share by the taxpayer at any time in a taxation year in relation to a period during which the share was so owned that would, but for this paragraph, be deemed by paragraph 131(1)(b) to be a capital gain of the taxpayer for the year from the disposition of capital property shall be deemed to be proceeds received at that time on the disposition of the share and not to be a capital gain of the taxpayer for the year from the disposition of capital property; and

(b) any amount received by the taxpayer on the redemption, in whole or in part, of the share in relation to a period during which the share was so owned shall, notwithstanding any other provision of this Act, be deemed to be proceeds received by the taxpayer on the disposition of the share.

(19) Units of a mutual fund trust — For the purposes of subparagraph (4)(a)(iv), subsections 104(13) and (14) and section 105, where a taxpayer owns a unit of a mutual fund trust under a Plan, the following rules apply:

(a) any amount that becomes receivable by the taxpayer in respect of the unit at any time in a taxation year in relation to a period during which the unit was so owned that would, but for this paragraph, be deemed by virtue of subsection 104(13) or (14) or section 105, whichever is applicable, and subsection 104(21) to be a taxable capital gain of the taxpayer for the year from the disposition of capital property shall, notwithstanding those provisions,

(i) be deemed to be proceeds received at that time on the disposition of the unit,

(ii) not be included in computing the income of the taxpayer for the year by virtue of subsection 104(13) or (14) or section 105, as the case may be, and

(iii) not be deemed by virtue of subsection 104(21) to be a taxable capital gain of the taxpayer for the year from the disposition of capital property; and

(b) any amount received by the taxpayer as, on account of or in lieu of payment of, or in satisfaction of a distribution or payment of, capital in respect of the unit in relation to a period during which the unit was so owned shall, notwithstanding any other provision of this Act, be deemed to be proceeds received by the taxpayer on the disposition of the unit.

(20) Interest in a related segregated fund trust — For the purposes of this subdivision, where a taxpayer owns an interest in a related segregated fund trust under a Plan, the following rules apply:

(a) any amount required by paragraph 138.1(1)(g) to be added at any time to the cost of the interest to the taxpayer shall be deemed to be a cost in respect of an interest in the trust acquired by the taxpayer at that time;

(b) any amount deemed by paragraph 138.1(1)(f) to be an amount payable at any time in respect of the interest shall be deemed to be a cost in respect of an interest in the trust acquired by the taxpayer at that time;

(c) any amount deemed by subsection 138.1(3) to be a capital gain or capital loss of the taxpayer for a taxation year from the disposition of property shall not be included in computing the taxpayer's taxable capital gains or allowable capital losses, as the case may be, for the year;

(d) any amount deemed by subsection 138.1(4) to be a capital gain or capital loss allocated to the taxpayer in a taxation year shall not be included in computing the taxpayer's taxable capital gains or allowable capital losses, as the case may be, for the year; and

(e) any acquisition fee, within the meaning of subsection 138.1(6), in respect of the interest shall be deemed to be a cost in respect of the interest.

(21) Where more than one Plan — Where at any time a taxpayer becomes a participant under two or more Plans administered by the same trader or dealer in securities, all such Plans shall be deemed to become one Plan.

(22) Transfers between Plans — Where in any month in a taxation year there is a transfer by a taxpayer of all indexed securities owned by him under a Plan under which the taxpayer is the participant and of all obligations outstanding under the Plan in respect of options written under the Plan (in this subsection referred to as the "first Plan") to another Plan under which the taxpayer is the participant (in this subsection referred to as the "second Plan") and immediately thereafter the first Plan is terminated, notwithstanding any other provision of this section, the following rules apply:

(a) the taxpayer shall be deemed to have no capital gain or loss for the year from the first Plan;

(b) for the purpose of computing the taxpayer's capital gain or loss, as the case may be, for the year from the second Plan,

(i) where the taxpayer was not the participant under the second Plan at the end of the preceding month, he shall be deemed to have become the participant at the end of the preceding month,

(ii) all acquisitions and dispositions and each writing of an option in the month under the first Plan, other than dispositions arising by virtue of the transfer, shall be deemed to have taken place under the second Plan,

(iii) the taxpayer shall be deemed to have acquired indexed securities under the second Plan on the last day of the preceding month at a cost equal to the amount of the indexing base, if any, of the first Plan at the end of the preceding month, and

(iv) the taxpayer shall be deemed to have disposed of indexed securities under the second Plan on the last day of the preceding month for proceeds of disposition equal to the amount, if any, by which

(A) the total of all amounts that are obtained by determining, for each preceding month in the year, the indexed gain amount of the taxpayer from the first Plan for the preceding month

exceeds

(B) where any portion of an indexed gain amount of the taxpayer from the first Plan for a preceding month in the year had the effect of reducing to a lesser amount the amount that would otherwise have been the indexing base of the first Plan at the end of any month in that year following that month, the total of all such portions that had that effect; and

(c) the administrator of the first Plan shall, without notice or demand, within 21 days after the end of the month,

(i) file with the Minister a return in respect of the transfer in prescribed form and containing prescribed information, and

(ii) send or deliver in person two copies of the return to each of the taxpayer and the administrator of the second Plan at their latest known address.

(23) Taxation year — Where a taxpayer who is a participant under a Plan has a taxation year that ends on a particular day other than the last day of a month, the taxpayer's gain or loss for the year from the Plan shall be computed as if the taxation year of the taxpayer were the period beginning on the first day of the first month ending in the year and ending on

(a) where the year was a taxation year deemed to have ended by virtue of paragraph 128(2)(d), the last day of the month that includes the particular day; and

(b) in any other case, the last day of the last month ending in the year.

(24) Avoidance — Where

(a) at any particular time in a taxation year a taxpayer who is a participant under a Plan withdraws an indexed security from the Plan or disposes of an indexed security owned by him under the Plan,

(b) the taxpayer has an indexed gain amount from the Plan for any month in the year, and

(c) the withdrawal or disposition was part of a transaction or event or series of transactions or events that may reasonably be considered to have artificially or unduly decreased any gain or increased or created any loss

(i) of the taxpayer from a Plan for the year, or

(ii) of any person not dealing at arm's length with the taxpayer from a Plan under which the person was a participant in the taxation year in which the particular time occurred,

the specified adjustment factor in respect of each Plan referred to in paragraph (c) for the taxation year in which the particular time occurred shall, notwithstanding paragraph (1)(k), be deemed to be one.

(25) **Idem** — Where the result of one or more acquisitions, dispositions, exchanges, declarations of trust or other transactions of any kind whatever under a Plan (including the direct or indirect matching of a long position under a Plan with a short position outside of that Plan) is that a taxpayer or a person with whom the taxpayer does not deal at arm's length may reasonably be considered, other than in circumstances described in subsection (24), to have artificially or unduly decreased or deferred the amount of taxes that would otherwise be payable under this Act for a taxation year, the taxpayer shall be deemed to have terminated the Plan at the later of the time the Plan was established and the commencement of the year.

(26) **Return required** — Every person who administers a Plan under which a taxpayer is a participant in a taxation year shall, without notice or demand, within 60 days from the end of the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information; and

(b) forward or deliver in person two copies of the return to the taxpayer at his latest known address.

That portion of subsec. 47.1(7) preceding para. (a) amended by 1985, c. 45, subsec. 19(1), to add reference to subsec. 48(1.1), applicable after September 1983.

Para. 47.1(20)(e) added by 1985, c. 45, subsec. 19(2), applicable after September 1983.

S. 47.1 added by 1984, c. 1, s. 17, applicable after September 30, 1983.

Definitions [s. 47.1]: "amount" — 248(1); "capital loss" — 39(1)(b), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "proceeds of disposition" — 54; "taxation year" — 249; "taxpayer" — 248(1).

Regulations [s. 47.1]: 3200 (prescribed stock exchange).

48. (1) [Repealed]

History: Subsec. 48(1) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

48. (1) **Deemed disposition of property where taxpayer has ceased to be resident in Canada** — For the purposes of this subdivision, where a taxpayer has ceased, at any particular time in a taxation year and after 1971, to be resident in Canada, the taxpayer shall be deemed to have disposed, immediately before the particular time, of each property, other than

(a) any property that would be taxable Canadian property if at no time in the year the taxpayer had been resident in Canada except where the taxpayer is an individual other than a trust and the taxpayer has elected in prescribed manner and within a prescribed time to be deemed to have disposed of such property owned by the taxpayer immediately before the particular time,

(b) a right to receive any payment described in paragraph 212(1)(h), in any of paragraphs 212(1)(j) to (q) and a right to receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, or

(c) where the taxpayer is an individual other than a trust or was, immediately before the particular time, a Canadian corporation, any property not described in paragraph (a) or (b) in respect of which the taxpayer has elected in prescribed manner and within prescribed time and has furnished the Minister with security acceptable to the Minister for the payment of the additional tax under this Part that would have been payable by the taxpayer if the taxpayer had not so elected,

that was owned by the taxpayer immediately before the particular time for proceeds of disposition equal to the fair market value of the property immediately before the particular time and to have reacquired the property immediately after the taxpayer so ceased to be resident in Canada at a cost equal to that fair market value, except that where the taxpayer has made an election under paragraph (a) or (c), the total of the taxpayer's allowable capital losses for the year from dispositions under this subsection of such of those properties as were not listed personal property of the taxpayer shall be deemed to be the lesser of that total otherwise determined and the total of the taxpayer's taxable capital gains for the year from the dispositions under this subsection of such of those properties as were not listed personal property of the taxpayer.

Pre-RSC History: Para. 48(1)(a) and all that portion of subsec. 48(1) following para. (c) substituted by 1986, c. 6, subsecs. 21(1), (2), applicable to 1985 *et seq.*, except that for the 1985 taxation year para. 48(1)(a) shall be read as follows:

(a) any property that is an indexed security or that would be taxable Canadian property if at no time in the year he had been resident in Canada except where the taxpayer is an individual other than a trust and he has elected in prescribed manner and within a prescribed time to be deemed to have disposed of such property owned by him immediate before the particular time.

Para. 48(1)(a) and that portion of subsec. 48(1) following para. (c) formerly read:

(a) any property that is an indexed security or that would be taxable Canadian property if at no time in the year he had been resident in Canada,

. . . . .

(d) where the taxpayer is an individual other than a trust, the aggregate of his taxable capital gains for the year from disposition of such of those properties as were not listed personal property of the taxpayer shall be deemed to be the amount, if any, by which

(i) that aggregate otherwise determined,

exceeds

(ii) $2,500,

(e) where the taxpayer is an individual other than a trust, the aggregate of his gains for the year from dispositions of such of those properties as were listed personal property of the taxpayer shall be deemed to be the amount, if any, by which that aggregate otherwise determined exceeds 2 times the amount by which $2,500 exceeds the amount determined under subparagraph (d)(i) in respect of the taxpayer for the year, and

(f) where the taxpayer has made an election under paragraph (c), the aggregate of the taxpayer's allowable capital losses for the year from dispositions of such of those properties as were not listed personal property of the taxpayer shall be deemed to be the lesser of that aggregate otherwise determined and the amount, if any, deemed by paragraph (d) to be the aggregate of his taxable capital gains for the year from dispositions of such of those properties as were not listed personal property of the taxpayer.

Para. 48(1)(c) substituted by 1984, c. 45, s. 13, to delete "whether such security is by way of a charge of any kind on property of the taxpayer or any other person or by way of guarantee from any other person" from the end, applicable after February 15, 1984.

Para. 48(1)(a) substituted by 1984, c. 1, subsec. 18(1), applicable with respect to taxpayers who cease to be resident in Canada after September 30, 1983, to add "that is an indexed security or".

Para. 48(1)(b) substituted by 1979, c. 5, s. 13, applicable to 1978 *et seq.*, to substitute "(q)" for "(p)".

Para. 48(1)(b) substituted by 1976-77, c. 4, s. 12, applicable to 1975 *et seq.* Para. (b) formerly read:

(b) a right to receive any payment described in any of paragraphs 121(1)(h) to (o), or

(1.1) [Repealed under former Act]

Pre-RSC History: Subsec. 48(1.1) repealed by 1986, c. 6, subsec. 21(3), applicable to 1986 *et seq.* Subsec. 48(1.1) formerly read:

(1.1) **Gains and losses from indexed security investment plans where taxpayer has ceased to be resident in Canada** — For the purposes of this subdivision, where a taxpayer has ceased at any particular time in a taxation year to be resident in Canada, the following rules apply:

(a) each indexed security investment plan under which the taxpayer was a participant at the particular time shall be deemed to have been terminated immediately before that time and, notwithstanding paragraph 47.1(10)(f), the taxpayer's capital gain or capital loss for the year from each such plan shall be deemed to be the amount of the taxpayer's gain or loss, as the case may be, for the year from that plan and the taxpayer shall be deemed

not to have a capital loss from that plan for any subsequent taxation year; and

(b) where paragraph 47.1(10)(f) is applicable in the year to the taxpayer in respect of an indexed security investment plan, the taxpayer shall, notwithstanding that paragraph, be deemed to have a capital loss from the plan for the year equal to the aggregate of all amounts that are obtained by determining every amount that, but for this paragraph, would have been a capital loss of the taxpayer from the plan for the year or any subsequent taxation year and not to have a capital loss from the plan for any subsequent taxation year.

Subsec. 48(1.1) added by 1984, c. 1, subsec. 18(2), applicable with respect to taxpayers who cease to be resident in Canada after September 30, 1983.

(2) [Repealed]

History: Subsec. 48(2) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(2) **Property in respect of which election made deemed to be taxable Canadian property** — Any property of a taxpayer described in paragraph (1)(c) in respect of which the taxpayer has made an election under that paragraph shall be deemed to be taxable Canadian property of the taxpayer from the time immediately after the taxpayer ceased to be resident in Canada until the time immediately after the taxpayer

(a) disposes of it, or

(b) next becomes resident in Canada,

whichever first occurs.

(3) [Repealed]

History: Subsec. 48(3) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(3) **Deemed acquisition of property on becoming a resident of Canada** — For the purposes of this subdivision, where a taxpayer has become, at any particular time in a taxation year and after 1971, resident in Canada, the taxpayer shall be deemed to have acquired at the particular time each property owned by the taxpayer at that time, other than

(a) property that would be taxable Canadian property if the taxpayer had disposed of it immediately before the particular time, or

(b) property described in paragraph (1)(c) in respect of which the taxpayer had previously made an election under that paragraph in respect of the last preceding time the taxpayer ceased to be resident in Canada,

at a cost equal to its fair market value at the particular time.

Pre-RSC History: Para. 48(3)(a) amended by 1986, c. 6, subsec. 21(4) to substitute "taxable Canadian property" for "property described in paragraph (1)(a)", applicable to 1985 *et seq.*

(4) [Repealed]

History: Subsec. 48(4) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(4) **Exception where taxpayer resident in Canada for short term only** — Subsection (1) does not apply in respect of any property owned by an individual other than a trust at the particular time immediately before the individual ceased to be resident in Canada, if

(a) the property was

(i) owned by the individual immediately before the individual last became resident in Canada, or

(ii) acquired by the individual by inheritance or bequest at any time after the individual last became resident in Canada; and

(b) during the 10 years immediately preceding the particular time, the individual was resident in Canada for a period or periods the total of which was 60 months or less.

Pre-RSC History: Paras. 48(4)(a), (b) substituted by 1974-75-76, c. 26, s. 20, applicable to 1972 *et seq.*

(5) [Repealed]

History: Subsec. 48(5) repealed by 1994, c. 21, s. 19, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). That subsec. formerly read:

(5) **Where corporation becomes resident in Canada** — Where at any time a corporation becomes resident in Canada and immediately before that time the corporation was a foreign affiliate of a taxpayer resident in Canada, for the purposes of subdivision i, the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended immediately before that time and a new taxation year shall be deemed to have commenced at that time;

(b) the corporation shall be deemed to have been a controlled foreign affiliate (within the meaning assigned by subsection 95(1)) of the taxpayer at the end of the taxation year that is deemed by paragraph (a) to have ended immediately before that time; and

(c) such amount as is prescribed shall be included in the foreign accrual property income (within the meaning assigned by subsection 95(1)) of the foreign affiliate for the taxation year that is deemed by paragraph (a) to have ended immediately before that time.

Pre-RSC History: Subsec. 48(5) added by 1980-81-82-83, c. 140, s. 21(1), applicable with respect to corporations that became resident in Canada after November 12, 1981.

Pre-RSC History [s. 48]: S. 48 substituted by 1973-74, c. 14, s. 9, applicable to 1972 *et seq.*

48.1 (1) Gain when small business corporation becomes public[ly listed] — Where

(a) at any time in a taxation year an individual owns capital property that is a share of a class of the capital stock of a corporation that,

(i) at that time, is a small business corporation, and

(ii) immediately after that time, ceases to be a small business corporation because a class of its shares is listed on a prescribed stock exchange, and

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(ii) immediately after that time, ceases to be a small business corporation because a class of its or another corporation's shares is listed on a prescribed stock exchange, and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 18, will amend subpara. 48.1(1)(a)(ii) to read as above, applicable to corporations that cease to be small business corporations after 1999.

Where a corporation ceases to be a Canadian-controlled private corporation in a taxation year solely because of the application of the amendment to 125(7)"Canadian-controlled private corporation", an election under subsec. 48.1(1), as amended, that is made by an individual in respect of the 2000 taxation year is deemed to have been made on time if the election is made on or before the individual's filing-due date for the taxation year in which the amending legislation is assented to.

Technical Notes: Section 48.1 of the Act allows the owner of qualified small business corporation shares to access the capital gains exemption under subsection 110.6(2.1) of the Act in respect of those shares when the corporation lists its shares on a prescribed stock exchange in Canada or outside of Canada. The

listing of the shares on a prescribed stock exchange results in the shares losing their status as qualified small business corporation shares. Such a shareholder may elect to be treated as having disposed of the shares immediately before the change in the corporation's status, in order to realize all or any part of any latent capital gain on the shares. The shareholder is then treated as having reacquired the shares at a cost equal to their deemed proceeds of disposition.

Subsection 48.1(1) is amended as a consequence of amendments to the definition of "Canadian-controlled private corporation" (CCPC) in subsection 125(7) of the Act. In order to be a small business corporation as defined in subsection 248(1) of the Act, a corporation must, among other things, be a CCPC. The amended definition of CCPC will, however, deny CCPC status to a corporation controlled by a Canadian resident corporation with shares listed on a prescribed stock exchange outside of Canada. Such a corporation will, therefore, no longer qualify as a small business corporation, and, in the absence of a rule allowing the shareholder to trigger a capital gain that had accrued before the change of the corporation's status, its shares would not be eligible for the capital gains exemption. Subparagraph 48.1(1)(a)(ii) of the Act is amended to ensure that the election under section 48.1 is available to realize a capital gain in such a case.

Not only will shareholders of subsidiaries controlled by corporations that have newly listed their shares on a prescribed foreign exchange qualify to make the election, but also those subsidiaries controlled by a corporation the shares of which were already listed on a prescribed foreign exchange on January 1, 2000, when the revised CCPC definition takes effect. If a subsidiary's parent corporation's shares were listed on that date, and the subsidiary was a small business corporation on December 31, 1999, an election under section 48.1 by an individual shareholder of the subsidiary will be treated as having been made in a timely manner provided it is made on or before the individual's filing-due date for the taxation year in which the Bill implementing this amendment receives Royal Assent.

Amended subparagraph 48.1(1)(a)(ii) applies to corporations that cease to be small business corporations after 1999.

(b) the individual elects in prescribed form to have this section apply,

the individual shall be deemed, except for the purposes of sections 7 and 35 and paragraph 110(1)(d.1),

(c) to have disposed of the share at that time for proceeds of disposition equal to the greater of

(i) the adjusted cost base to the individual of the share at that time, and

(ii) the lesser of the fair market value of the share at that time and such amount as is designated in the prescribed form by the individual in respect of the share, and

(d) to have reacquired the share immediately after that time at a cost equal to those proceeds of disposition.

Related Provisions: 53(4) — Effect on adjusted cost base where para. 48.1(1)(c) applies; 110.6(2.1) — Capital gains deduction — qualified small business corporation shares.

History: Subpara. 48.1(1)(a)(ii) amended by 1998, c. 19, s. 91, applicable to corporations that cease to be a small business corporation after 1995. The subpara. formerly read:

(ii) immediately after that time, becomes a public corporation because of the listing of a class of its shares on a prescribed stock exchange in Canada, and

Subsec. 91(3) of 1998, c. 19, provides:

An election under subsec. 48.1(1), as amended, that is made by an individual for the 1995 taxation year is deemed to have been made on time, if

(a) a class of the shares of the capital stock of the corporation in respect of which the election is made was, on January 1, 1996, listed on a stock exchange listed in section 3201 of the *Income Tax Regulations*;

(b) the corporation was a small business corporation on December 31, 1995; and

(c) the election is made before October 1, 1998.

Regulations: 3200, 3201 (prescribed stock exchanges for 48.1(1)(a)(ii)).

Forms: T2101: Election for gains on shares of a corporation becoming public.

(2) Time for election — An election made under subsection (1) by an individual for a taxation year shall be made on or before the individual's filing-due date for the year.

(3) Late filed election — Where the election referred to in subsection (2) was not made on or before the day referred to therein, the election shall be deemed for the purposes of subsections (1) and (2) to have been made on that day if, on or before the day that is 2 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the individual when the election is made.

(4) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election referred to in paragraph (3)(a) is an amount equal to the lesser of

(a) ¼ of 1% of the amount, if any, by which

(i) the proceeds of disposition determined under subsection (1)

exceed

(ii) the amount referred to in subparagraph (1)(c)(i)

for each month or part of a month during the period commencing on the day referred to in subsection (2) and ending on the day the election is made, and

(b) an amount equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

(5) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election referred to in paragraph (3)(a), assess the penalty payable and send a notice of assessment to the individual, who shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

History [s. 48.1]: Subsec. 48.1(2) amended by 1996, c. 21, s. 11, applicable to 1995 *et seq.* The subsec. formerly read:

(2) Time for election — An election made under subsection (1) by an individual for a taxation year shall be made on or before the balance-due day of the individual for that year.

S. 48.1 added by 1994, c. 7, Sch. II (1991, c. 49), s. 26, applicable to 1991 *et seq.*

Definitions [s. 48.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date" — 150(1), 248(1); "individual", "Minister", "prescribed" — 248(1); "share", "small business corporation" — 248(1); "taxation year" — 11(2), 249.

49. (1) Granting of options — Subject to subsections (3) and (3.1), for the purposes of this subdivision, the granting of an option, other than

(a) an option to acquire or to dispose of a principal residence,

(b) an option granted by a corporation to acquire shares of its capital stock or bonds or debentures to be issued by it, or

(c) an option granted by a trust to acquire units of the trust to be issued by the trust,

is a disposition of a property the adjusted cost base of which to the grantor immediately before the grant is nil.

Related Provisions: 13(5.3) — Disposition of option on depreciable property or real property; 49(2), (2.1) — Where option expires; 49(5) — Extension or renewal of options.

History: Subsec. 49(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(1), to substitute "(3) and (3.1)" for "(2), (3) and (3.1)" in that portion preceding para. (a), and to add para. (c), applicable to options granted after 1989.

Pre-RSC History: All that portion of subsec. 49(1) preceding para. (a) amended by 1986, c. 6, subsec. 22(1), to add reference to subsection (3.1), applicable to dispositions of property under options granted, extended or renewed after November 21, 1985.

Para. 49(1)(c) repealed by 1986, c. 6, subsec. 22(2), applicable to 1986 *et seq.* Para. 49(1)(c) formerly read:

(c) an option granted under an indexed security investment plan to acquire or dispose of a security that is a qualified security in relation to the plan,

Para. 49(1)(c) added by 1984, c. 1, subsec. 19(1), applicable with respect to options granted after September 30, 1983.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-403R: Options on real estate.

(2) Where option expires — Where at any time an option described in paragraph (1)(b) (other than an option to acquire shares of the capital stock of a corporation in consideration for the incurring, pursuant to an agreement described in paragraph (e) of the definition "Canadian exploration and development expenses" in subsection 66(15), paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), of any expense described in whichever of those paragraphs is applicable) that has been granted by a corporation after 1971 expires,

(a) the corporation shall be deemed to have disposed of capital property at that time for proceeds equal to the proceeds received by it for the granting of the option; and

(b) the adjusted cost base to the corporation of that capital property immediately before that time shall be deemed to be nil.

Related Provisions: 49(5) — Extension or renewal of options; 54"superficial loss"(d) — Superficial loss rule does not apply; 87(2)(o) — Amalgamations — expiry of options previously granted.

Pre-RSC History: All that portion of subsec. 49(2) preceding para. (a) substituted by 1980-81-82-83, c. 48, s. 19, applicable after December 11, 1979, to add reference to subpara. 66.4(5)(a)(iii).

All that portion of subsec. 49(2) preceding para. (a) substituted by 1977-78, c. 1, s. 19, deemed to have been applicable at all times after May 6, 1974.

All that portion of subsec. 49(2) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 21(1), applicable after May 6, 1974. That portion formerly read:

(2) Where at any time an option described in paragraph (1)(b) (other than an option to acquire shares of the capital stock of a corporation in consideration for the incurring, pursuant to an agreement described in subparagraph 66(15)(b)(v), of any expense described in that subparagraph) that has been granted by a corporation after 1971 expires,

All that portion of subsec. 49(2) preceding para. (a) substituted by 1973-74, c. 14, s. 10, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-98R2: Investment corporations.

(2.1) Idem — Where at any time an option referred to in paragraph (1)(c) expires,

(a) the trust shall be deemed to have disposed of capital property at that time for proceeds equal to the proceeds received by it for the granting of the option; and

(b) the adjusted cost base to the trust of that capital property immediately before that time shall be deemed to be nil.

Related Provisions: 49(5) — Extension or renewal; 54"superficial loss"(d) — Superficial loss rule does not apply.

History: Subsec. 49(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(2), applicable to options granted after 1989.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units.

(3) Where option to acquire exercised — Where an option to acquire property is exercised so that property is disposed of by a taxpayer (in this subsection referred to as the "vendor") or so that property is acquired by another taxpayer (in this subsection referred to as the "purchaser"), for the purpose of computing the income of each such taxpayer the granting and the exercise of the option shall be deemed not to be dispositions of property and there shall be included

(a) in computing the vendor's proceeds of disposition of the property, the consideration received by the vendor for the option; and

(b) in computing the cost to the purchaser of the property,

(i) where paragraph 53(1)(j) applied to the acquisition of the property by the purchaser because a person who did not deal at arm's length with the purchaser was deemed because of the acquisition to have received a benefit under section 7, the adjusted cost base to that person of the option immediately before that person last disposed of the option, and

(ii) in any other case, the adjusted cost base to the purchaser of the option.

Related Provisions: 49(3.2) — Election to have 49(3) not apply where option granted before Feb. 23/94; 49(5) — Extension or renewal of option; 164(5)(c), 164(5.1)(c) — Effect of carryback of loss.

History: Para. 49(3)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(3), applicable after July 13, 1990. Para 49(3)(b) formerly read:

(b) in computing the cost to the purchaser of the property, the adjusted cost base to the purchaser of the option.

Pre-RSC History: That portion of subsec. 49(3) preceding para. (a) amended by 1988, c. 55, subsec. 27(1), to substitute "each such taxpayer" for "each such taxpayer (other than a vendor who is an individual)", applicable with respect to dispositions of property under options exercised after 1987.

Subsec. 49(3) substituted by 1986, c. 6, subsec. 22(3), applicable with respect to dispositions of property under options granted, extended or renewed after November 21, 1985 except that for the 1985 taxation year paras. 49(3)(a) and (b) shall be read as follows:

(a) in computing the vendor's proceeds of disposition of the property (other than a property that is an indexed security), the consideration received by him for the option; and

(b) in computing the cost to the purchaser of the property (other than a property acquired by him under an indexed security investment plan), the adjusted cost base to him of the option.

Subsec. 49(3) formerly read:

(3) Where option exercised — Where an option is exercised so that property is disposed of by a taxpayer (hereinafter referred to as the "vendor") or so that property is acquired by another taxpayer (hereinafter referred to as the "purchaser"), for the purpose of computing the income of each such taxpayer the granting of the option

and the exercise thereof shall be deemed not to be dispositions of property and,

(a) if the option is an option to acquire property, there shall be included

(i) in computing the vendor's proceeds of disposition of the property (other than a property that is an indexed security) the consideration received by him for the option, and

(ii) in computing the cost to the purchaser of the property (other than a property acquired by him under an indexed security investment plan) the adjusted cost base to him of the option; and

(b) if the option is an option to dispose of property, there shall be deducted

(i) in computing the vendor's proceeds of disposition of the property (other than a property that is an indexed security), the adjusted cost base to him of the option, and

(ii) in computing the cost to the purchaser of the property (other than a property acquired by him under an indexed security investment plan) the consideration received by him for the option.

Paras. 49(3)(a) and (b) substituted by 1984, c. 1, subsec. 19(2), applicable with respect to options exercised after September 30, 1983. Paras. 49(3)(a) and (b) formerly read:

(a) if the option is an option to acquire property, there shall be included

(i) in computing the vendor's proceeds of disposition of the property, the consideration received by him for the option, and

(ii) in computing the cost to the purchaser of the property, the adjusted cost base to him of the option; and

(b) if the option is an option to dispose of property, there shall be deducted

(i) in computing the vendor's proceeds of disposition of the property, the adjusted cost base to him of the option, and

(ii) in computing the cost to the purchaser of the property, the consideration received by him for the option.

Selected Cases [subsec. 49(3)]: *Salt et al. v. The Queen*, [1984] C.T.C. 414 (FCTD) (Amounts received for extended options included in proceeds of disposition).

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-403R: Options on real estate.

(3.01) Option to acquire specified property exercised — Where at any time a taxpayer exercises an option to acquire a specified property,

(a) there shall be deducted after that time in computing the adjusted cost base to the taxpayer of the specified property the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before that time, the adjusted cost base to the taxpayer of the option; and

(b) the amount determined under paragraph (a) in respect of that acquisition shall be added after that time in computing the adjusted cost base to the taxpayer of the specified property.

Related Provisions: 53(1)(q) — Addition to adjusted cost base for amount under 49(3.01)(b); 53(2)(g.1) — Reduction in adjusted cost base under 49(3.01)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 49(3.01) added by 1995, c. 21, s. 14, applicable to taxation years that end after February 21, 1994.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units.

(3.1) Where option to dispose exercised — Where an option to dispose of property is exercised so that property is disposed of by a taxpayer (in this subsection referred to as the "vendor") or so that property is acquired by another taxpayer (in this subsection referred to as the "purchaser"), for the purpose of computing the income of each such taxpayer the granting and the exercise of the option shall be deemed not to be dispositions of property and there shall be deducted

(a) in computing the vendor's proceeds of disposition of the property, the adjusted cost base to the vendor of the option; and

(b) in computing the cost to the purchaser of the property, the consideration received by the purchaser for the option.

Related Provisions: 49(5) — Extension or renewal of option.

Pre-RSC History: Subsec. 49(3.1) added by 1986, c. 6, subsec. 22(3), applicable with respect to dispositions of property under options granted, extended or renewed after November 21, 1985, except that with respect to the 1985 taxation year, paras. 49(3.1)(a) and (b) shall be read as follows:

(a) in computing the vendor's proceeds of disposition of the property (other than a property that is an indexed security), the adjusted cost base to him of the option; and

(b) in computing the cost to the purchaser of the property (other than property acquired by him under an indexed security investment plan), the consideration received by him for the option.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-403R: Options on real estate.

(3.2) Option granted before February 23, 1994 — Where an individual (other than a trust) who disposes of property pursuant to the exercise of an option that was granted by the individual before February 23, 1994 so elects in the individual's return of income for the taxation year in which the disposition occurs, subsection (3) does not apply in respect of the disposition in computing the income of the individual.

History: Subsec. 49(3.2) added by 1995, c. 3, s. 13, applicable to dispositions that occur after February 22, 1994.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units.

(4) Reassessment where option exercised in subsequent year — Where

(a) an option granted by a taxpayer in a taxation year (in this subsection referred to as the "initial year") is exercised in a subsequent taxation year (in this subsection referred to as the "subsequent year"),

(b) the taxpayer has filed a return of the taxpayer's income for the initial year as required by section 150, and

(c) on or before the day on or before which the taxpayer was required by section 150 to file a return of the taxpayer's income for the subsequent year, the taxpayer has filed an amended return for the initial year excluding from the taxpayer's income the proceeds received by the taxpayer for the granting of the option,

such reassessment of the taxpayer's tax, interest or penalties for the year shall be made as is necessary to give effect to the exclusion.

Related Provisions: 49(5) — Extension or renewal of option; 161(7)(b)(iii) — Effect of carryback of loss, etc.

Pre-RSC History: Para. 49(4)(a) amended by 1988, c. 55, subsec. 27(2), to substitute "an option" for "an option (other than an option granted by an individual to acquire property)", applicable with respect to dispositions of property under options exercised after 1987.

Para. 49(4)(a) substituted by 1986, c. 6, subsec. 22(4), to add "(other than an option granted by an individual to acquire property)", applicable with respect to dispositions of property under options granted, extended or renewed after November 21, 1985.

Interpretation Bulletins: IT-96R6: Options granted by corporations to acquire shares, bonds or debentures and by trusts to acquire trust units. See also list at end of s. 49; IT-384R: Reassessment where option exercised in subsequent year.

(5) [Extension or renewal of option] — Where a taxpayer has granted an option (in this subsection referred to as the "original option") to which subsection (1), (2) or (2.1) applies, and grants one or more extensions or renewals of that original option,

(a) for the purposes of subsections (1), (2) and (2.1), the granting of each extension or renewal shall be deemed to be the granting of an option at the time the extension or renewal is granted;

(b) for the purposes of subsections (2) to (4) and subparagraph (b)(iv) of the definition "disposition" in section 54, the original option and each extension or renewal thereof shall be deemed to be the same option; and

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(b) for the purposes of subsections (2) to (4) and subparagraph (b)(iv) of the definition "disposition" in subsection 248(1), the original option and each extension or renewal of it is deemed to be the same option; and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 19, will amend para. 49(5)(b) to read as above, applicable to options granted after December 23, 1998.

Technical Notes: Subsection 49(5) of the Act sets out rules dealing with extensions or renewals of an option.

Subsection 49(5) is amended to change a cross-reference in the subsection to the definition "disposition" in section 54 to a corresponding cross-reference to the new definition "disposition" in subsection 248(1).

(c) subsection (4) shall be read as if the year in which the original option was granted and each year in which any extension or renewal thereof was granted were all initial years.

History: That portion of subsec. 49(5) preceding para. (c) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 27(4), to substitute "grants" for "has granted", to add two references to subsection (2.1), and to substitute "(2) to (4)" for "(2), (3), (3.1) and (4)", applicable with respect to options granted, extended or renewed after 1989.

Pre-RSC History: Para. 49(5)(b) substituted by 1986, c. 6, subsec. 22(5), to add reference to subsection (3.1), applicable with respect to dispositions of property under options granted, extended or renewed after November 21, 1985.

Subsec. 49(5) added by 1974-75-76, c. 26, subsec. 21(2), applicable to extensions or renewals granted after May 6, 1974 in respect of an option.

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units.

Definitions [s. 49]: "adjusted cost base" — 54, 248(1); "arm's length" — 251(1); "assessment" — 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "person" — 248(1); "principal residence" — 54; "property", "share" — 248(1); "specified property" — 54; "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 49]: IT-334R2: Miscellaneous receipts; IT-403R: Options on real estate; IT-479R: Transactions in securities.

49.1 No disposition where obligation satisfied — For greater certainty, where a taxpayer acquires a particular property in satisfaction of an absolute or contingent obligation of a person or partnership to provide the particular property pursuant to a contract or other arrangement one of the main objectives of which was to establish a right, whether absolute or contingent, to the particular property and that right was not under the terms of a trust, partnership agreement, share or debt obligation, the satisfaction of the obligation is not a disposition of that right.

History: S. 49.1 added by 2000, c. 19, s. 3, applicable to obligations satisfied after December 15, 1998.

Definitions: "disposition" — 248(1); "person", "property", "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

50. (1) Debts established to be bad debts and shares of bankrupt corporation — For the purposes of this subdivision, where

(a) a debt owing to a taxpayer at the end of a taxation year (other than a debt owing to the taxpayer in respect of the disposition of personal-use property) is established by the taxpayer to have become a bad debt in the year, or

(b) a share (other than a share received by a taxpayer as consideration in respect of the disposition of personal-use property) of the capital stock of a corporation is owned by the taxpayer at the end of a taxation year and

(i) the corporation has during the year become a bankrupt (within the meaning of subsection 128(3)),

(ii) the corporation is a corporation referred to in section 6 of the *Winding-up and Restructuring Act* that is insolvent (within the meaning of that Act) and in respect of which a winding-up order under that Act has been made in the year, or

(iii) at the end of the year,

(A) the corporation is insolvent,

(B) neither the corporation nor a corporation controlled by it carries on business,

(C) the fair market value of the share is nil, and

(D) it is reasonable to expect that the corporation will be dissolved or wound up and will not commence to carry on business

and the taxpayer elects in the taxpayer's return of income for the year to have this subsection apply in respect of the debt or the share, as the case may be, the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year for proceeds equal to nil and to have reacquired it immediately after the end of the year at a cost equal to nil.

Related Provisions: 39(1)(c) — Business investment loss; 40(2)(e.2), (g)(ii) — Restrictions on capital losses on debt; 50(1.1) — Where insolvent corporation begins carrying on business again; 54"superficial loss"(c) — Superficial loss rule does not apply; 79.1(8) — No bad debt deduction where property seized by creditor; 80.01(6)(b) — Debt deemed a specified obligation after subsec. 50(1) applies; 80.01(8) — Deemed settlement after debt parking; 96(3) — Election by members of partnership; 111(5.3) — Limitation on bad debt deduction after change in control of corporation; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Subpara. 50(1)(b)(ii) amended by 1996, c. 6, subsec. 167(2), to substitute "Winding-up and Restructuring Act" for "Winding-up Act", effective June 28, 1996.

The portion of subsec. 50(1) after subpara. (b)(ii) amended by 1995, c. 21, s. 15, applicable to taxation years that end after February 21, 1994. That portion formerly read:

(iii) at the end of the year, the corporation is insolvent and neither the corporation nor a corporation controlled by it carries on business, and

(A) at the end of the year, the fair market value of the share is nil and it is reasonable to expect that the corporation will be dissolved or wound up and will not begin to carry on business, and

(B) in the taxpayer's return of income under this Part for the year the taxpayer elects to have this subsection apply in respect of the share,

the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year for proceeds equal

to nil and to have reacquired it immediately thereafter at a cost equal to nil.

That portion of subsec. 50(1) following subpara. (b)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 28(1), applicable

(a) to 1990 *et seq.*; and

(b) where the taxpayer so elects in respect of the shares of the capital stock of a corporation by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], to each of the taxpayer's 1985 to 1989 taxation years in respect of the share owned by the taxpayer at the end of the year, except that the subsec. is not applicable in respect of any such taxation year in respect of the share where the corporation or a corporation controlled by it carries on business during the 24-month period immediately following the end of the year; and, where a taxpayer makes an election under this paragraph in respect of a share of the capital stock of a corporation,

(i) the taxpayer shall be deemed to have elected, in the taxpayer's returns of income under Part I of the Act for each of those years, to have subsec. 50(1) as amended, apply in respect of the share, and

(ii) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election.

That portion of subsec. (1) formerly read:

(iii) the corporation ceased to carry on all of its businesses and was insolvent during the year, and

(A) at the end of the year, the fair market value of the share is nil and it is reasonable to expect that the corporation will be dissolved or wound up and will not commence to carry on any business, and

(B) the corporation did not commence to carry on any business in the year or within 24 months following the end of the year,

the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year and to have reacquired it immediately thereafter at a cost equal to nil.

Pre-RSC History: Subpara. 50(1)(b)(iii) added by 1988, c. 55, s. 28, applicable to 1988 *et seq.* and, where the taxpayer so advises the Minister of National Revenue in writing, to the 1985, 1986 or 1987 taxation year.

Para. 50(1)(b) substituted by 1986, c. 6, subsec. 23(1), applicable to 1985 *et seq.* Para. (b) formerly read:

(b) a share of the capital stock of a corporation (other than a share received by a taxpayer as consideration in respect of the disposition of personal-use property) is owned by a taxpayer at the end of a taxation year and the corporation has during the year become a bankrupt (within the meaning assigned by subsection 128(3)),

Subsec. 50(1) substituted by 1977-78, c. 42, s. 4, applicable to 1978 *et seq.* Subsec. (1) formerly read:

50. (1) Debts established to be bad debts — For the purposes of this subdivision, where a debt owing to a taxpayer at the end of a taxation year (other than a debt owing to him in respect of the disposition of a personal-use property) is established by him to have become a bad debt in the year, he shall be deemed to have disposed of it at the end of the year and to have reacquired it immediately thereafter at a cost equal to nil.

Winding-up Act: S. 6 of the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended by 1996, c. 6, s. 136, effective June 28, 1996, provides:

6. This Act applies to all corporations incorporated by or under the authority of an Act of Parliament, of the former Province of Canada or of the Province of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island or Newfoundland, and whose incorporation and affairs are subject to the legislative authority of Parliament, and to incorporate banks and savings banks, trust companies, insurance companies, loan companies having borrowing powers, building societies having a capital stock and incorporated trading companies doing business in Canada wherever incorporated where any such body

(a) is insolvent;

(b) is in liquidation or in process of being wound up and, on petition by any of its shareholders or creditors, assignees or liquidators, asks to be brought under this Act; or

(c) if it is a financial institution, is under the control, or its assets are under the control, of the Superintendent and is the subject of an application for a winding-up order under section 10.1.

S. 3 of the *Winding-Up and Restructuring Act* defines "insolvent" as follows:

3. A company is deemed insolvent

(a) if it is unable to pay its debts as they become due;

(b) if it calls a meeting of its creditors for the purpose of compounding with them;

(c) if it exhibits a statement showing its inability to meet its liabilities;

(d) if it has otherwise acknowledged its insolvency;

(e) if it assigns, removes or disposes of, or attempts or is about to assign, remove or dispose of, any of its property, with intent to defraud, defeat or delay its creditors, or any of them;

(f) if, with the intent referred to in paragraph (e), it has procured its money, goods, chattels, land or property to be seized, levied on or taken, under or by any process of execution;

(g) if it has made any general conveyance or assignment of its property for the benefit of its creditors, or if, being unable to meet its liabilities in full, it makes any sale or conveyance of the whole or the main part of its stock in trade or assets without the consent of its creditors or without satisfying their claims; or

(h) if it permits any execution issued against it, under which any of its goods, chattels, land or property are seized, levied on or taken in execution, to remain unsatisfied until within four days of the time fixed by the sheriff or other officer for the sale thereof, or for fifteen days after the seizure.

Selected Cases [subsec. 50(1)]: *Gordon v. Canada*, [1996] 3 C.T.C. 2229 (TCC) (Payment directly to creditors instead of to company whose debt was guaranteed was acceptable); *Monaghan v. Canada*, [1996] 2 C.T.C. 2169 (TCC) (Significant events occurring well after year-end do not affect determination of bad debt).

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-188R: Sale of accounts receivable; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-239R2: Deductibility of capital losses from guaranteeing loans for inadequate consideration and from loaning funds at less than a reasonable rate of interest in non-arm's length circumstances; IT-442R: Bad debts and reserves for doubtful debts; IT-484R2: Business investment losses.

(1.1) Idem — Where

(a) a taxpayer is deemed because of subparagraph (1)(b)(iii) to have disposed of a share of the capital stock of a corporation at the end of a taxation year, and

(b) the taxpayer or a person with whom the taxpayer is not dealing at arm's length owns the share at the earliest time, during the 24-month period immediately following the disposition, that the corporation or a corporation controlled by it carries on business,

the taxpayer or the person, as the case may be, shall be deemed to have disposed of the share at that earliest time for proceeds of disposition equal to its adjusted cost base to the taxpayer determined immediately before the time of the disposition referred to in paragraph (a) and to have reacquired it immediately after that earliest time at a cost equal to those proceeds.

History: Subsec. 50(1.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 28(2), applicable to 1990 *et seq.*

(2) Where debt a personal-use property — Where at the end of a taxation year a debt that is a personal-use property of a taxpayer is owing to the taxpayer by a person with whom the taxpayer deals at arm's length and is

established by the taxpayer to have become a bad debt in the year,

(a) the taxpayer shall be deemed to have disposed of it at the end of the year for proceeds equal to the amount, if any, by which

(i) its adjusted cost base to the taxpayer immediately before the end of the year

exceeds

(ii) the amount of the taxpayer's gain, if any, from the disposition of the personal-use property the proceeds of disposition of which included the debt; and

(b) the taxpayer shall be deemed to have reacquired the debt immediately after the end of the year at a cost equal to the amount of the proceeds determined under paragraph (a).

Related Provisions: 46 — Disposition of personal-use property; 54"superficial loss"(c) — Superficial loss rule does not apply.

Pre-RSC History: All that portion of subsec. 50(2) preceding para. (a) substituted by 1985, c. 45, s. 20, applicable to 1985 *et seq.* That portion of subsec. 50(2) formerly read:

(2) Where debt personal-use property — Where a debt owing to a taxpayer at the end of a taxation year that is a personal-use property of the taxpayer is established by him to have become a bad debt in the year,

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts.

(3) Disposal of RHOSP properties — Each trust that was at the end of 1985 governed by a registered home ownership savings plan (within the meaning assigned by paragraph 146.2(1)(h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year) shall be deemed to have disposed, immediately before 1986, of each property it holds at that time for proceeds of disposition equal to the fair market value of the property at that time and to have reacquired it immediately after 1985 at a cost equal to that fair market value.

Pre-RSC History: Subsec. 50(3) added by 1986, c. 6, subsec. 23(2).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Definitions [s. 50]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "carrying on business" — 253; "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "personal-use property" — 54, 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

51. (1) Convertible property — Where a share of the capital stock of a corporation is acquired by a taxpayer from the corporation in exchange for

(a) a capital property of the taxpayer that is another share of the corporation (in this section referred to as a "convertible property"), or

(b) a capital property of the taxpayer that is a bond, debenture or note of the corporation the terms of which confer on the holder the right to make the exchange (in this section referred to as a "convertible property")

and no consideration other than the share is received by the taxpayer for the convertible property,

(c) except for the purpose of subsection 20(21), the exchange shall be deemed not to be a disposition of the convertible property,

(d) the cost to the taxpayer of all the shares of a particular class acquired by the taxpayer on the exchange shall be deemed to be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the adjusted cost base to the taxpayer of the convertible property immediately before the exchange,

B is the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange, and

C is the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange,

(d.1) there shall be deducted, after the exchange, in computing the adjusted cost base to the taxpayer of a share acquired by the taxpayer on the exchange, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before the exchange, the adjusted cost base to the taxpayer of the convertible property,

B is the fair market value, immediately after the exchange, of that share, and

C is the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange,

(d.2) the amount determined under paragraph (d.1) in respect of a share shall be added, after the exchange, in computing the adjusted cost base to the taxpayer of the share,

(e) for the purposes of sections 74.4 and 74.5, the exchange shall be deemed to be a transfer of the convertible property by the taxpayer to the corporation, and

(f) where the convertible property is taxable Canadian property of the taxpayer, the share acquired by the taxpayer on the exchange shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 51(2) — Where benefit conferred on related person; 51(3) — Computation of paid-up capital after exchange of shares; 51.1 — Conversion of debt obligation; 53(1)(q) — Addition to adjusted cost base for amount under 51(1)(d.2); 53(2)(g.1) — Reduction in adjusted cost base under 51(1)(d.1); 77 — Bond conversion; 80(2)(g) — Shares issued in settlement of debt; 80.03(2)(a) — Deemed gain on disposition following debt forgiveness; 84(1)(c.3) — Contributed surplus; 86(2) — Exchange of shares; 86(3) — Exchange of shares — reorganization of capital; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 112(7) — Application of stop-loss rule where shares exchanged.

History: The opening words of subsec. 51(1) amended by 1998, c. 19, s. 92, applicable to exchanges that occur after June 20, 1996, other than exchanges that occur before 1997 under agreements in writing made on or before June 20, 1996. The opening words formerly read:

(1) Where a share of the capital stock of a corporation is acquired by a taxpayer in exchange for

Paras. 51(1)(d.1) and (d.2) added by 1995, c. 21, s. 16, applicable to taxation years that end after February 21, 1994.

Subsec. 51(1) substituted by 1994, c. 21, subsec. 20(1), applicable to exchanges occurring, and reorganizations that begin, after December 21, 1992. That subsec. formerly read:

51. (1) Convertible property — Where shares of the capital stock of a corporation have been acquired by a taxpayer in exchange for a capital property of the taxpayer that was a share, bond, debenture or

note of the corporation (in this section referred to as a "convertible property") the terms of which conferred on the holder the right to make the exchange and no consideration was received by the taxpayer for the convertible property other than those shares, the following rules apply:

(a) the exchange shall be deemed not to have been a disposition of property;

(b) the cost to the taxpayer of all the shares of a particular class acquired by the taxpayer on the exchange shall be deemed to be that proportion of the adjusted cost base to the taxpayer of the convertible property immediately before the exchange that

(i) the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange

is of

(ii) the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange; and

(c) for the purposes of sections 74.4 and 74.5, the exchange shall be deemed to be a transfer of the convertible property by the taxpayer to the corporation.

Pre-RSC History: Para. 51(1)(c) added by 1986, c. 6, s. 24, applicable to exchanges of property occurring after November 21, 1985.

Subsec. 51(1) substituted by 1985, c. 45, subsec. 21(1), applicable with respect to exchanges of property

(a) occurring after May 9, 1985; or

(b) occurring before May 10, 1985 and after 1983 where the taxpayer so elects by notifying the Minister in writing before 1986.

Subsec. 51(1) formerly read:

51. (1) Convertible properties — Where shares of one class of the capital stock of a corporation have, after May 6, 1974, been acquired by a taxpayer in exchange for a capital property of the taxpayer that was a share, bond, debenture or note of the corporation (in this section referred to as a "convertible property") the terms of which conferred upon the holder the right to make the exchange and no consideration was received by the taxpayer for the convertible property other than shares of that class,

(a) the exchange shall be deemed not to have been a disposition of property, and

(b) the cost to the taxpayer of the shares shall be deemed to be the adjusted cost base to him of the convertible property immediately before the exchange.

S. 51 renumbered subsec. 51(1) by 1980-81-82-83, c. 48, subsec. 20(1), applicable with respect to exchanges of property occurring after December 11, 1979.

All that portion of s. 51 preceding para. (a) substituted by 1974-75-76, c. 26, s. 22, applicable in respect of exchanges of property after May 6, 1974. That portion formerly read:

51. Where shares of the capital stock of a corporation have, after 1971, been acquired by a taxpayer in exchange for a share, bond, debenture or note of the corporation (in this section referred to as a "convertible property") the terms of which conferred upon the holder the right to make the exchange,

All that portion of s. 51 preceding para. (a) substituted by 1973-74, c. 14, s. 11, to delete "preferred" from before "share".

Selected Cases [subsec. 51(1)]: *Mansfield v. The Queen*, [1984] C.T.C. 547 (FCA); leave to appeal to SCC refused (1985), 58 N.R. 237 (Debentures converted into common shares constitute conferred employment benefit; value added to adjusted cost base).

I.T. Application Rules: 26(28).

Interpretation Bulletins: IT-115R2: Fractional interest in shares. See also list at end of s. 51.

(2) Idem — Notwithstanding subsection (1), where

(a) shares of the capital stock of a corporation have been acquired by a taxpayer in exchange for a convertible property in circumstances such that, but for this subsection, subsection (1) would have applied,

(b) the fair market value of the convertible property immediately before the exchange exceeds the fair market value of the shares immediately after the exchange, and

(c) it is reasonable to regard any portion of the excess (in this subsection referred to as the "gift portion") as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer,

the following rules apply:

(d) the taxpayer shall be deemed to have disposed of the convertible property for proceeds of disposition equal to the lesser of

(i) the total of its adjusted cost base to the taxpayer immediately before the exchange and the gift portion, and

(ii) the fair market value of the convertible property immediately before the exchange,

(e) the taxpayer's capital loss from the disposition of the convertible property shall be deemed to be nil, and

(f) the cost to the taxpayer of all the shares of a particular class acquired in exchange for the convertible property shall be deemed to be that proportion of the lesser of

(i) the adjusted cost base to the taxpayer of the convertible property immediately before the exchange, and

(ii) the total of the fair market value immediately after the exchange of all the shares acquired by the taxpayer in exchange for the convertible property and the amount that, but for paragraph (e), would have been the taxpayer's capital loss on the disposition of the convertible property,

that

(iii) the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange

is of

(iv) the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange.

Related Provisions: 112(7) — Application of stop-loss rule where shares exchanged.

Pre-RSC History: Para. 51(2)(a) amended to substitute "shares of the capital stock" for "shares of one class of the capital stock", and para. 51(2)(f) substituted, by 1985, c. 45, subsecs. 21(2), (3), applicable with respect to exchanges of property

(a) occurring after May 9, 1985; or

(b) occurring before May 10, 1985 and after 1983 where the taxpayer so elects by notifying the Minister in writing before 1986.

Para. 51(2)(f) formerly read:

(f) the cost to the taxpayer of the shares acquired in exchange for the convertible property shall be deemed to be the lesser of

(i) the adjusted cost base to the taxpayer of the convertible property immediately before the exchange, and

(ii) the aggregate of the fair market value immediately after the exchange of the shares acquired in exchange for the convertible property and the amount that, but for paragraph (e), would have been the taxpayer's capital loss on the disposition of the convertible property.

Subsec. 51(2) added by 1980-81-82-83, c. 48, subsec. 20(2), applicable with respect to exchanges of property occurring after December 11, 1979.

(3) Computation of paid-up capital — Where subsection (1) applies to the exchange of convertible property described in paragraph (1)(a) (referred to in this subsection as the "old shares"), in computing the paid-up capital in respect of a particular class of shares of the capital

stock of the corporation at any particular time that is the time of, or any time after, the exchange

(a) there shall be deducted the amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the total of all amounts each of which is the amount of the increase, if any, as a result of the exchange, in the paid-up capital in respect of a class of shares of the capital stock of the corporation, computed without reference to this subsection as it applies to the exchange,

B is the paid-up capital immediately before the exchange in respect of the old shares, and

C is the increase, if any, as a result of the exchange, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the exchange; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in respect of that particular class of shares before the particular time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 51(3) added by 1994, c. 21, subsec. 20(2), applicable to exchanges occurring after August 1992, other than exchanges occurring after August 1992 and before December 21, 1992 where the corporation issuing shares on the exchange elects in writing and files the election with the Minister of National Revenue by December 31, 1994.

(4) Application — Subsections (1) and (2) do not apply to any exchange to which subsection 85(1) or (2) or section 86 applies.

Related Provisions: 86(3) — Application of section 86.

History: Subsec. 51(4) added by 1994, c. 21, subsec. 20(2), applicable to exchanges occurring, and reorganizations that begin, after December 21, 1992.

Interpretation Bulletins: IT-115R2: Fractional interest in shares.

Definitions [s. 51]: "adjusted cost base" — 54, 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "convertible property" — 51(1) (draft 51(1)(b)); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54; "paid-up capital" — 89(1), 248(1); "property", "share" — 248(1); "taxable Canadian property" — 248(1); "taxpayer" — 248(1).

Interpretation Bulletins [s. 51]: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-243R4: Dividend refund to private corporations.

51.1 Conversion of debt obligation — Where

(a) a taxpayer acquires a bond, debenture or note of a debtor (in this section referred to as the "new obligation") in exchange for a capital property of the taxpayer that is another bond, debenture or note of the same debtor (in this section referred to as the "convertible obligation"),

(b) the terms of the convertible obligation conferred on the holder the right to make the exchange, and

(c) the principal amount of the new obligation is equal to the principal amount of the convertible obligation,

the cost to the taxpayer of the new obligation and the proceeds of disposition of the convertible obligation shall be deemed to be equal to the adjusted cost base to the taxpayer of the convertible obligation immediately before the exchange.

History: S. 51.1 added by 1995, c. 21, s. 50, applicable to exchanges occurring after October 1994.

Definitions [s. 51.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "convertible obligation", "new obligation" — 51.1(a); "principal amount" — 248(1); "proceeds of disposition" — 54; "taxpayer" — 248(1).

I.T. Application Rules: 26(25) (where old bond owned since before 1972).

52. (1) Cost of certain property value of which included in income — For the purposes of this subdivision, where a taxpayer has acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)) and an amount in respect of the value thereof was included in computing the taxpayer's income otherwise than under section 7, the amount so included shall be added in computing the cost to the taxpayer of that property, except to the extent that the amount was otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property.

Proposed Amendment — 52(1), (1.1)

52. (1) Cost of certain property the value of which included in income — Where

(a) a taxpayer acquired property after 1971 (other than an annuity contract, a right as a beneficiary under a trust to enforce payment of an amount by the trust to the taxpayer, property acquired in circumstances to which subsection (2) or (3) applies or property acquired from a trust in satisfaction of all or part of the taxpayer's capital interest in the trust), and

(b) an amount in respect of its value was

(i) included, otherwise than under section 7, in computing

(A) the taxpayer's taxable income or taxable income earned in Canada, as the case may be, for a taxation year during which the taxpayer was non-resident, or

(B) the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada, or

(ii) for the purpose of computing the tax payable under Part XIII by the taxpayer, included in an amount that was paid or credited to the taxpayer,

for the purposes of this subdivision, the amount so included shall be added in computing the cost to the taxpayer of the property, except to the extent that the amount was otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property.

(1.1) [Repealed]

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 20(1), will amend subsec. 52(1) to read as above, and repeal subsec. 52(1.1), applicable after 1999 except that, in respect of property acquired

before 2000 and disposed of before March 2000, para. 52(1)(a), shall be read as follows:

(a) a taxpayer acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)), and

Technical Notes: Subject to a number of exceptions, subsection 52(1) of the Act provides that, where an amount in respect of the value of a property has been included in computing a taxpayer's income, that amount is added in determining the cost to the taxpayer of the property for the purposes of determining capital gains and losses in respect of the property. Subsection 52(1.1) provides a similar rule in respect of taxable Canadian property of non-residents, except that it refers to a taxpayer's taxable income earned in Canada (as well as any amount subject to Part XIII withholding tax) instead of a taxpayer's income. These subsections do not apply to rights to enforce payments from a trust that are described in subsection 52(6).

Subsection 52(1) is amended and subsection 52(1.1) is repealed so that subsection 52(1) applies to all taxpayers, whether resident in Canada or not. Amended subsection 52(1) generally applies where a taxpayer acquired property and an amount in respect of its value was included in computing the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada (or in computing a non-resident taxpayer's taxable income earned in Canada under section 115, taxable income under section 114 or an amount from which tax is withheld under Part XIII).

The exceptions in existing subsection 52(1) also generally apply for the purposes of amended subsection 52(1). However, the exception relating to subsection 52(6) is eliminated because of the repeal of that subsection (as described in the commentary below). Instead, amended subsection 52(1) excepts property that is a beneficiary's right to enforce payments by a trust or that is acquired in satisfaction of a beneficiary's "capital interest" in the trust (as defined in amended subsection 108(1)).

These amendments apply after 1999, except with respect to property that is acquired before 2000 and disposed of before March 2000.

Related Provisions: 69(5)(c) — No application to property appropriated by shareholder on winding-up.

History: Subsec. 52(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 14, applicable after October 16, 1991. Subsec. 52(1) formerly read:

(1) Cost of certain property value of which included in income — For the purposes of this subdivision, where a taxpayer has acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)) and an amount in respect of the value thereof has been included in computing the taxpayer's income otherwise than under section 7, the amount so included shall be added in computing the cost to the taxpayer of that property.

Pre-RSC History: Subsec. 52(1) substituted by 1980-81-82-83, c. 48, subsec. 21(1), applicable to taxation years commencing after October 28, 1980, to add "an annuity contract or".

Subsec. 52(1) substituted by 1974-75-76, c. 26, subsec. 23(1), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-432R2: Benefits conferred on shareholders.

(1.1) Idem, where owner non-resident — For the purposes of this subdivision, where a non-resident person has acquired property after 1971 (other than property acquired as described in subsection (2), (3) or (6)) that would, if that person disposed of it, be taxable Canadian property of that person and

(a) an amount in respect of the value thereof has been included, otherwise than under section 7, in computing that person's taxable income earned in Canada, or

(b) an amount in respect of the value thereof has, for the purposes of computing the tax payable by that person under Part XIII, been included in an amount that has been paid or credited to that person,

the amount so included shall be added in computing the cost to that person of that property.

Proposed Repeal — 52(1.1)

See under 52(1).

Related Provisions: 69(5)(c) — No application to property appropriated by shareholder on winding-up.

Pre-RSC History: All that portion of subsec. 52(1.1) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 23(2), applicable to 1972 *et seq.*

Subsec. 52(1.1) added by 1973-74, c. 14, subsec. 12(1), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-432R2: Benefits conferred on shareholders.

(2) Cost of property received as dividend in kind — Where any property has, after 1971, been received by a shareholder of a corporation at any time as, on account or in lieu of payment of, or in satisfaction of, a dividend payable in kind (other than a stock dividend) in respect of a share owned by the shareholder of the capital stock of the corporation, the shareholder shall be deemed to have acquired the property at a cost to the shareholder equal to its fair market value at that time, and the corporation shall be deemed to have disposed of the property at that time for proceeds equal to that fair market value.

Related Provisions: 69(5)(c) — No application to property appropriated by shareholder on winding-up; 80.1(4) — Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to taxpayer.

I.T. Technical News: No. 11 (U.S. spin-offs (divestitures) — dividends in kind).

(3) Cost of stock dividend — Where a shareholder of a corporation has, after 1971, received a stock dividend in respect of a share owned by the shareholder of the capital stock of the corporation, the shareholder shall be deemed to have acquired the share or shares received by the shareholder as a stock dividend at a cost to the shareholder equal to the total of

(a) where the stock dividend is a dividend, the amount of the stock dividend,

(a.1) where the stock dividend is not a dividend, nil, and

(b) where an amount is included in the shareholder's income in respect of the stock dividend under subsection 15(1.1), the amount so included.

Related Provisions: 95(7) — Stock dividends from foreign affiliates.

History: Paras. 52(3)(a), (a.1) substituted for para. (a) by 1994, c. 7, Sch. II (1991, c. 49), s. 29, applicable to stock dividends paid after May 23, 1985. Para. 52(3)(a) formerly read:

(a) the amount of the stock dividend, and

Pre-RSC History: Subsec. 52(3) substituted by 1986, c. 6, s. 25, applicable with respect to stock dividends received after May 23, 1985 other than such stock dividends that were declared by the corporation before May 24, 1985 and paid before 1986. Subsec. 52(3) formerly read:

(3) Cost of stock dividend — Where a shareholder of a corporation has, after 1971, received a stock dividend in respect of a share owned by him of the capital stock of the corporation, he shall be deemed to have acquired the share or shares received by him as a stock dividend at a cost to him equal to

(a) where the stock dividend is a dividend, the amount of the stock dividend, and

(b) where the stock dividend is not a dividend, nil.

Subsec. 52(3) substituted by 1977-78, c. 1, s. 20, applicable with respect to stock dividends received after 1976. Subsec. 52(3) formerly read:

(3) Where a shareholder of a corporation has, after 1971, received a stock dividend in respect of a share owned by him of the capital stock of the corporation, he shall be deemed to have acquired the

share or shares received by him as a stock dividend at a cost to him equal to the amount of the stock dividend.

Interpretation Bulletins: IT-88R2: Stock dividends.

(4) Cost of property acquired as prize — Where any property has been acquired by a taxpayer at any time after 1971 as a prize in connection with a lottery scheme, the taxpayer shall be deemed to have acquired the property at a cost to the taxpayer equal to its fair market value at that time.

Related Provisions: 40(2)(f) — No gain or loss on disposition of chance to win or right to receive a prize.

Interpretation Bulletins: IT-213R: Prizes from lottery schemes and giveaway contests.

(5) [Repealed under former Act]

Pre-RSC History: Subsec. 52(5) repealed by 1973-74, c. 14, subsec. 12(2), applicable in respect of property transferred after 1971. Subsec. 52(5) formerly read:

> (5) Cost of property transferred by trustee under employees profit sharing plan — Where any property has, after 1971, been transferred to a beneficiary by a trustee under an employees profit sharing plan,
>
> (a) subsection (1) does not apply in respect of the property; and
>
> (b) the beneficiary shall be deemed to have acquired the property at a cost to him equal to its fair market value at the time of the transfer.

(6) Cost of right to receive from trust — Notwithstanding subsection (1), where a beneficiary under a trust acquires a right to enforce payment by the trust of an amount out of a capital gain or the income of the trust (determined without reference to the provisions of this Act) for the taxation year of the trust in which the right was acquired by the beneficiary, for the purposes of this subdivision, the cost to the beneficiary of the right shall be deemed to be the amount that became so payable.

Proposed Repeal — 52(6)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 20(2), will repeal subsec. 52(6), applicable after 1999, but not to rights that were acquired before 2000 and disposed of before March 2000.

Technical Notes: Subsection 52(6) of the Act provides that, where a right to enforce payment by a trust of an amount out of the trust's capital gains or income (determined without reference to the provisions of the Act) for the trust's taxation year is acquired by a trust beneficiary in the year, the beneficiary's cost of the right is the amount that became so payable. This ensures that there is generally no capital gain realized where a payment is made in satisfaction of such a right.

Subsection 52(6) is being repealed. Instead, rights to which subsection 52(6) apply are now generally treated as part of a taxpayer's "income interest" or "capital interest" in a trust (as those expressions are defined in subsection 108(1)). Because of new paragraphs (h) and (i) of the definition "disposition" in subsection 248(1), where the right is part of a taxpayer's capital interest in a trust, the satisfaction of the right by way of a distribution by the trust will generally not constitute a disposition of that interest. In addition, under existing paragraph 53(2)(h), a distribution in satisfaction of such a right generally will not result in a reduction of the adjusted cost base of that interest. In the event that such a right is capitalized by way of the issue of new trust units, new subsection 248(25.3) expressly provides for the cost of the new units. Where a taxpayer's right to enforce payment of an amount is disposed of to a third party prior to the right being satisfied by the trust, new subsection 248(25.4) provides, where the requirements of that subsection are met, an increase in the cost of the taxpayer's capital interest in the trust.

The repeal of subsection 52(6) and the related amendments (described above) are designed to clarify the tax consequences of distributions from trusts to their beneficiaries after 1999. For the large part, the end results achieved under these rules are intended to accord with existing income tax practice.

The repeal of subsection 52(6) applies after 1999, except with respect to property that is acquired before 2000 and disposed of before March 2000.

Related Provisions: 107(2.1) — Distribution of trust property; 132.11(4) — Amounts paid from December 16-31 by mutual fund trust to beneficiary; 132.11(6)(c) — Designation or allocation by mutual fund trust.

Pre-RSC History: Subsec. 52(6) substituted by 1988, c. 55, s. 29, applicable with respect to rights acquired in a trust in the 1988 and subsequent taxation years of the trust. Subsec. 52(6) formerly read:

> (6) Cost of right received from unit trust — Where a beneficiary under a unit trust has, after 1971, acquired a right to enforce payment of an amount by the unit trust out of its capital gains or income from property for its taxation year in which the right was acquired by him, notwithstanding subsection (1), he shall be deemed to have acquired the right at a cost to him equal to the amount that became so payable minus such portion of that amount as was deductible in computing his income by virtue of subsection 65(1) or 104(16).

Subsec. 52(6) added by 1973-74, c. 14, subsec. 12(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-286R2: Trusts — amounts payable; IT-390: Unit trusts — cost of rights and adjustments to cost base.

(7) Cost of shares of subsidiary — Notwithstanding any other provision of this Act, where a corporation disposes of property to another corporation in a transaction to which paragraph 219(1)(l) applies, the cost to it of any share of a particular class of the capital stock of the other corporation received by it as consideration for the property is deemed to be the lesser of the cost of the share to the corporation otherwise determined immediately after the disposition and the amount by which the paid-up capital in respect of that class increases because of the issuance of the share.

History: Subsec. 52(7) amended by 1998, c. 19, s. 93, applicable to taxation years that begin after 1995. The subsec. formerly read:

> (7) Notwithstanding any other provision of this Act, where a corporation has disposed of property to its subsidiary wholly-owned corporation in a transaction to which paragraph 219(1)(k) applies, the cost to it of any share of a particular class of the capital stock of the subsidiary corporation received by it as consideration for the property shall be deemed to be equal to the lesser of the cost of the share to the corporation otherwise determined immediately after the disposition and the amount, if any, by which the paid-up capital of that class increased by virtue of the issuance of that share.

Pre-RSC History: Subsec. 52(7) added by 1980-81-82-83, c. 48, subsec. 21(2), applicable with respect to dispositions of property occurring after December 11, 1979.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

(8) Cost of shares of immigrant corporation — Notwithstanding any other provision of this Act, where at any time a corporation becomes resident in Canada, the cost to any shareholder who is not at that time resident in Canada of any share of the corporation's capital stock, other than a share that was taxable Canadian property immediately before that time, is deemed to be equal to the fair market value of the share at that time.

Related Provisions: 53(1)(b.1), (c) — Additions to ACB of share; 128.1(1)–(3) — Effect of corporation's immigration; 250(4), (5) — Residence of corporation.

History: Subsec. 52(8) amended by 1999, c. 22, s. 13, applicable in respect of corporations that become resident in Canada after February 23, 1998. The subsec. formerly read:

> (8) Cost of shares on immigration [of corporation] — Notwithstanding any other provision of this Act, where at any time a corporation becomes resident in Canada, the cost to any shareholder that is not at that time resident in Canada of any share of the capital

stock of the corporation shall be deemed to be equal to the lesser of that cost otherwise determined and the paid-up capital in respect of the share immediately after that time.

Subsec. 52(8) added by 1994, c. 21, s. 21, applicable to dispositions occurring after 1992.

Definitions [s. 52]: "adjusted cost base" — 54, 248(1); "amount" — 95(7), 248(1); "annuity" — 248(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital interest" — 108(1), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "dividend" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "resident in Canada" — 250; "share", "shareholder", "stock dividend", "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian property" — 248(1); "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1).

53. (1) Adjustments to cost base [additions to ACB] — In computing the adjusted cost base to a taxpayer of property at any time, there shall be added to the cost to the taxpayer of the property such of the following amounts in respect of the property as are applicable:

(a) **[negative ACB]** — any amount deemed by subsection 40(3) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property;

(b) **[share, where 84(1) applied]** — where the property is a share of the capital stock of a corporation resident in Canada, the amount of any dividend on the share deemed by subsection 84(1) to have been received by the taxpayer before that time;

(b.1) **[share of immigrant corporation]** — where the property is a share of the capital stock of a corporation, the amount of any dividend deemed by paragraph 128.1(1)(c.2) to have been received in respect of the share by the taxpayer before that time and while the taxpayer was resident in Canada;

Related Provisions: 52(8) — Cost of share to non-resident.

History: Para. 53(1)(b.1) added by 1999, c. 22, subsec. 14(1), applicable after February 23, 1998.

(c) **[share, where contribution of capital made]** — where the property is a share of the capital stock of a corporation and the taxpayer has, after 1971, made a contribution of capital to the corporation otherwise than by way of a loan, by way of a disposition of shares of a foreign affiliate of the taxpayer to which subsection 85.1(3) or paragraph 95(2)(c) applies or, subject to subsection (1.1), a disposition of property in respect of which the taxpayer and the corporation have made an election under section 85, that proportion of such part of the amount of the contribution as cannot reasonably be regarded as a benefit conferred by the taxpayer on a person (other than the corporation) who was related to the taxpayer that

(i) the amount that may reasonably be regarded as the increase in the fair market value, as a result of the contribution, of the share

is of

(ii) the amount that may reasonably be regarded as the increase in the fair market value, as a result of the contribution, of all shares of the capital stock of the corporation owned by the taxpayer immediately after the contribution;

Related Provisions: 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 53(1)(j) — Addition to ACB of share on which stock option benefit received; 53(1.1) — Deemed contribution of capital.

Pre-RSC History: That portion of para. 53(1)(c) preceding subpara. (i) amended by 1988, c. 55, subsec. 30(1), to substitute "a benefit conferred by the taxpayer on a person" for "a gift made to or for the benefit of any person", applicable with respect to contributions of capital occurring after June 1988 in computing the adjusted cost base of property after June 1988.

All that portion of para. 53(1)(c) preceding subpara. (i) substituted by 1980-81-82-83, c. 48, subsec. 22(1), applicable to a contribution of capital made after December 11, 1979, to substitute "person (other than the corporation)" for "other shareholder of the corporation".

All that portion of para. 53(1)(c) preceding subpara. (i) substituted by 1976-77, c. 4, subsec. 13(1), applicable in respect of contributions of capital occurring after 1971 in computing the adjusted cost base of a property after 1971. That portion formerly read:

(c) where the property is a share of the capital stock of a corporation resident in Canada and the taxpayer has, after 1971, made a contribution of capital to the corporation otherwise than by way of a loan or, subject to subsection (1.1), a disposition of property in respect of which the taxpayer and the corporation have made an election under section 85, that proportion of such part of the amount of the contribution as cannot reasonably be regarded as a gift made to or for the benefit of any other shareholder of the corporation who was related to the taxpayer that

All that portion of para. 53(1)(c) preceding subpara. (i) substituted by 1974-75-76, c. 26, subsec. 24(1), applicable in respect of contributions of capital occurring after 1971 in computing the adjusted cost base of a property after 1971.

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-456R: Capital property — some adjustments to cost base; IT-527: Distress preferred shares.

(d) **[share of foreign affiliate]** — where the property is a share of the capital stock of a foreign affiliate of the taxpayer, any amount required by paragraph 92(1)(a) to be added in computing the adjusted cost base to the taxpayer of the share;

Related Provisions: 91(6) — Amounts deductible in respect of dividends received.

(d.01) **[share of demutualized insurer]** — where the property is a share of the capital stock of a corporation, any amount required by paragraph 139.1(16)(l) to be added in computing the adjusted cost base to the taxpayer of the share;

History: Para. 53(1)(d.01) added by 2000, c. 19, s. 4, applicable after December 15, 1998.

(d.1) **[capital interest in trust]** — where the property is a capital interest of the taxpayer in a trust to which paragraph 94(1)(d) applies, any amount required by paragraph 94(5)(a) to be added in computing the adjusted cost base to the taxpayer of the interest;

Proposed Amendment — 53(1)(d.1)

(d.1) where the property is a capital interest of the taxpayer in a trust to which paragraph 94(1)(d) applied (as that paragraph read in its application before 2001), any amount required by paragraph 94(5)(a) (as that paragraph read in its application before 2001) to be added in computing the adjusted cost base to the taxpayer of the interest;

Application: The June 22, 2000 draft legislation, subsec. 4(1), will amend para. 53(1)(d.1) to read as above, applicable after 2000.

Technical Notes: Paragraph 53(1)(d.1) of the Act, applied together with existing paragraph 94(5)(a), provides for an addition in computing the adjusted cost base (ACB) to a taxpayer of the taxpayer's capital interest in a trust to which existing paragraph 94(1)(d) applies. It is amended to ensure that historical ACB additions are maintained, notwithstanding the replacement of the rules in existing section 94.

This amendment applies after 2000.

Related Provisions: 53(2)(h), (i), (j) — Deductions from adjusted cost base — interest in a trust.

Pre-RSC History: Para. 53(1)(d.1) added by 1974-75-76, c. 26, subsec. 24(2), applicable to 1972 *et seq.*

(d.2) **[unit in mutual fund trust]** — where the property is a unit in a mutual fund trust, any amount required by subsection 132.1(2) to be added in computing the adjusted cost base to the taxpayer of the unit;

Pre-RSC History: Para. 53(1)(d.2) added by 1988, c. 55, subsec. 30(2), applicable to 1988 *et seq.*

(d.3) **[share]** — where the property is a share of the capital stock of a corporation of which the taxpayer was, at any time, a specified shareholder, any expense incurred by the taxpayer in respect of land or a building of the corporation that was by reason of subsection 18(2) or (3.1) not deductible by the taxpayer in computing the taxpayer's income for any taxation year commencing before that time;

Related Provisions: 10(1.1) — Effect of 53(1)(d.3) on cost of land inventory; 53(1)(h) — Where land owned directly by taxpayer.

Pre-RSC History: Para. 53(1)(d.3) added by 1988, c. 55, subsec. 30(2), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land.

(e) **[partnership interest]** — where the property is an interest in a partnership,

(i) an amount in respect of each fiscal period of the partnership ending after 1971 and before that time, equal to the total of all amounts each of which is the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of the income of the partnership from any source for that fiscal period, computed as if this Act were read without reference to

(A) the fractions set out in subsection 14(5), paragraph 38(a) and subsection 41(1),

(A.1) paragraph 18(1)(l.1), and

(B) paragraph (i), paragraphs 12(1)(o) and (z.5), 18(1)(m), 20(1)(v.1) and 29(1)(b) and (2)(b), section 55, subsections 69(6) and (7) and paragraph 82(1)(b) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to income from the operation of new mines,

(ii) the taxpayer's share of any capital dividends and any life insurance capital dividends received by the partnership before that time on shares of the capital stock of a corporation that were partnership property,

(iii) the taxpayer's share of the amount, if any, by which

(A) any proceeds of a life insurance policy received by the partnership after 1971 and before that time in consequence of the death of any person whose life was insured under the policy,

exceeds

(B) the adjusted cost basis (within the meaning assigned by subsection 148(9)) of the policy to the partnership immediately before that person's death,

(iv) where the taxpayer has, after 1971, made a contribution of capital to the partnership otherwise than by way of loan, such part of the amount of the contribution as cannot reasonably be regarded as a benefit conferred on any other member of the partnership who was related to the taxpayer,

(v) where the time is immediately before the taxpayer's death and the taxpayer was at that time a member of a partnership, the value, at the time of the taxpayer's death, of the rights or things referred to in subsection 70(2) in respect of a partnership interest held by the taxpayer immediately before the taxpayer's death, other than an interest referred to in subsection 96(1.5),

(vi) any amount deemed by subsection 40(3.1) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property,

(vii) any amount deemed by paragraph 98(1)(c) or 98.1(1)(c) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property,

(vii.1) a share of the taxpayer's Canadian development expense or Canadian oil and gas property expense that was deducted at or before that time in computing the adjusted cost base to the taxpayer of the interest because of subparagraph (2)(c)(ii) and in respect of which the taxpayer elected under paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), as the case may be,

(viii) an amount deemed, before that time, by subsection 66.1(7), 66.2(6) or 66.4(6) to be an amount referred to in the description of G in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or the description of G in that definition, or paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) or the description of G in that definition in respect of the taxpayer,

(ix) the amount, if any, by which

(A) the taxpayer's share of the amount of any assistance or benefit that the partnership received or became entitled to receive after 1971 and before that time from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, in respect of or related to a Canadian resource property or an exploration or development expense incurred in Canada

exceeds

(B) the part, if any, of the amount included in clause (A) in respect of the interest that was repaid before that time by the taxpayer under a legal obligation to repay all or any part of the amount,

(x) any amount required by section 97 to be added before that time in computing the adjusted cost base to the taxpayer of the interest,

(xi) of which the taxpayer's share of any income or loss of the partnership was, at any time, 10% or more, any expense incurred by the taxpayer in respect of land or a building of the partnership that was by reason of subsection 18(2) or (3.1) not de-

ductible by the taxpayer in computing the taxpayer's income for any taxation year commencing before that time,

(xii) any amount required by paragraph 110.6(23)(a) to be added at that time in computing the adjusted cost base to the taxpayer of the interest, and

(xiii) any amount required by subsection 127(30) to be added to the taxpayer's tax otherwise payable under this Part for a taxation year that ended before that time;

Related Provisions: 10(1.1) — Cost of land inventory; 40(3.13) — Artificial transactions affecting partnership capital; 53(2)(c) — Reduction in adjusted cost base — partnership interest; 70(6)(d.1)(iii) — Where transfer or distribution to spouse or trust; 70(9.2)(c)(iii) — Transfer of family farm corporations and partnerships; 70(9.3)(e)(iii) — Transfer of family farm corporation or partnership from spouse's trust to children of settlor; 87(2)(e.1) — Amalgamations — cost of partnership interest; 96(1.9) — Foreign trusts and other foreign investment entities; 248(8) — Occurrences as a consequence of death; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit.

History: Subpara. 53(1)(e)(xiii) added by 1999, c. 22, subsec. 14(2), applicable to 1998 *et seq.*

Cl. 53(1)(e)(i)(B) amended by 1997, c. 25, subsec. 7(1), applicable for the purpose of computing the adjusted cost base of property after 1996. Cl. (e)(i)(B) formerly read:

(B) paragraph (i), paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1) and 29(1)(b) and (2)(b), section 55, subsections 69(6) and (7) and paragraph 82(1)(b) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to income from the operation of new mines,

New subpara. 53(1)(e)(vi) added by 1995, c. 3, subsec. 14(1), applicable after February 21, 1994.

Subpara. 53(1)(e)(xii) added by 1995, c. 3, subsec. 14(2), applicable to 1994 *et seq.*

Subpara. 53(1)(e)(vii.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(1), applicable after July 1990.

Subpara. 53(1)(e)(ix) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(1), applicable for the purposes of computing the adjusted cost base of an interest in a partnership after January 1990. Subpara. (e)(ix) formerly read:

(ix) the taxpayer's share of the amount of any assistance or benefit that the partnership has received or has become entitled to receive after 1971 and before that time from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, in respect of or related to a Canadian resource property or an exploration or development expense incurred in Canada,

Pre-RSC History: Cl. 53(1)(e)(i)(A) substituted by 1988, c. 55, subsec. 30(3), applicable to 1988 *et seq.* Cl. (e)(i)(A) formerly read:

(A) the references in section 14, paragraph 38(a) and subsection 41(1) to "½",

Subpara. 53(1)(e)(iv) amended by 1988, c. 55, subsec. 30(4), to substitute "a benefit conferred on any other member" for "a gift made to or for the benefit of any other member", applicable with respect to contributions of capital occurring after June 1988 in computing the adjusted cost base of property after June 1988.

Subpara. 53(1)(e)(xi) added by 1988, c. 55, subsec. 30(5), applicable to 1988 *et seq.*

Former subpara. 53(1)(e)(vi) repealed by 1985, c. 45, subsec. 22(1), applicable with respect to dispositions occurring after 1984, but for property disposed of by a partnership prior to 1985, subpara. 53(1)(e)(vi) shall apply and be read as it was at the time of the disposition having regard to any subsequent amendments thereto that applied at that time. Subpara. (e)(vi) formerly read:

(vi) the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of the amount, if any, by which

(A) any proceeds of disposition that become receivable by the partnership in respect of the disposition after 1971 of a property owned by the partnership on December 31, 1971 that is a property referred to in paragraph 59(2)(d) or (e)

exceeds

(B) the relevant percentage as defined in subsection 59(4) of the proceeds of disposition described in clause (A),

Cl. 53(1)(e)(i)(B) substituted by 1984, c. 1, subsec. 20(1), to substitute "81(1)(r) and (s)" for "69(7.1)(b)", applicable to 1982 *et seq.*, except that for the period before January 19, 1984 the reference to "paragraph 81(1)(r)" shall be read as a reference to "paragraphs 69(7.1)(b), 81(1)(r)".

Cl. 53(1)(e)(i)(A.1) added by 1980-81-82-83, c. 68, subsec. 115(1), applicable to determining the adjusted cost base of a partnership interest after December 31, 1980.

Cl. 53(1)(e)(i)(B), subpara. 53(1)(e)(ii) substituted, subpara. (x) added by 1980-81-82-83, c. 140, subsecs. 22(1)–(3), applicable, as to cl. 53(1)(e)(i)(B), to taxation years ending after January 31, 1982, as to subpara. 53(1)(e)(ii), after June 28, 1982, and, as to subpara. 53(1)(e)(x), to dispositions occurring after November 12, 1981. Cl. (i)(B), subpara. (ii) formerly read:

(B) paragraph (i) of this subsection, paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1), 20(1)(gg), 29(1)(b) and 29(2)(b), section 55, subsections 69(6) and 69(7) and paragraph 82(1)(b) and the provisions of the *Income Tax Application Rules, 1971* relating to income from the operation of new mines,

. . . . .

(ii) the taxpayer's share of any capital dividends received by the partnership before that time on shares of the capital stock of a corporation that were partnership property,

Cl. 53(1)(e)(i)(B), subpara. 53(1)(e)(viii) substituted, subpara. 53(1)(e)(ix) added by 1980-81-82-83, c. 48, subsecs. 22(2), (3), applicable, as to cl. 53(1)(e)(i)(B) and subpara. 53(1)(e)(ix), in determining the adjusted cost base of a partnership interest after October 28, 1980 and in determining the adjusted cost base of a partnership interest disposed of by a person after 1976 and before October 29, 1980 where that person so elects in prescribed form before 1982, and, as to subpara. 53(1)(e)(viii), to taxation years ending after December 11, 1979. Cl. (i)(B) and subpara. (viii) formerly read:

(B) paragraph 29(1)(b) or (2)(b), paragraph (i) of this subsection, section 55, paragraph 82(1)(b) and the provisions of the *Income Tax Application Rules, 1971* relating to income from the operation of new mines,

. . . . .

(viii) an amount deemed, before that time, by subsection 66.1(7) or 66.2(6) to be an amount referred to in subparagraph 66.1(6)(b)(vi) or 66.2(5)(b)(v) or (vi) in respect of the taxpayer;

Cl. 53(1)(e)(iii)(B) substituted by 1977-78, c. 32, s. 9, applicable to life insurance proceeds received after March 31, 1977. Cl. (iii)(B) formerly read:

(B) all amounts paid as or on account of premiums under the policy,

Subpara. 53(1)(e)(v) substituted, subpara. 53(1)(e)(viii) added by 1977-78, c. 1, subsecs. 21(1), (2), applicable to 1977 *et seq.* Subpara. (v) formerly read:

(v) any amount included in computing the taxpayer's income in respect of the partnership by virtue of subsection 70(2), other than an amount included therein by virtue of subsection 96(1.5),

Subpara. 53(1)(e)(vii) substituted by 1976-77, c. 4, subsec. 13(2), applicable after May 25, 1976. Subpara. (vii) formerly read:

(vii) any amount deemed by paragraph 98.1(1)(c) to be a gain of the taxpayer for a taxation year from a disposition before that time of the property;

All that portion of subpara. 53(1)(e)(i) preceding cl. (A) and cl. 53(1)(e)(i)(B) substituted, subparas. 53(1)(e)(v)–(vii) added by 1974-75-76, c. 26, subsecs. 24(3)–(5), applicable to 1972 *et seq.*

I.T. Application Rules: 26(9)–(9.4) (where taxpayer became partner before 1972); 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952" in cl. 53(1)(e)(i)(B)).

Interpretation Bulletins: IT-138R: Computation and flow-through of partnership income; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on ACB of admission or retirement of a partner; IT-353R2: Partnership interests — some adjustments to cost base; IT-358: Partnerships — deferment of fiscal year-end; IT-430R3: Life insurance

proceeds received by a private corporation or a partnership as a consequence of death; IT-471R: Merger of partnerships.

I.T. Technical News: No. 5 (adjusted cost base of partnership interest); No. 9 (calculation of ACB of a partnership interest); No. 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

Forms: T2065: Determination of adjusted cost base of a partnership interest; T5015: Reconciliation of partner's capital account; T5016: Partner's share of partnership capital.

(f) **[substituted property]** — where the property is substituted property (within the meaning assigned by paragraph (a) of the definition "superficial loss" in section 54) of the taxpayer, the amount, if any, by which

(i) the amount of the loss that was, because of the acquisition by the taxpayer of the property, a superficial loss of any taxpayer from a disposition of a property

exceeds

(ii) where the property disposed of was a share of the capital stock of a corporation, the amount that would, but for paragraph 40(2)(g), be deducted under subsection 112(3), (3.1) or (3.2) in computing the loss of any taxpayer in respect of the disposition of the share;

Related Provisions: 40(2)(g)(i) — Superficial loss denied; 40(2)(h) — Loss on disposition of share of controlled corporation; 142.4(1)"tax basis"(h) — Disposition of specified debt obligation by financial institution.

History: Para. 53(1)(f) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(2), applicable for the purposes of computing the adjusted cost base of property after July 13, 1990. Para. 53(1)(f) formerly read:

(f) where the property is substituted property (within the meaning assigned by the definition "superficial loss" in section 54) of the taxpayer, the amount of the loss that was, by virtue of the acquisition by the taxpayer of the property, a superficial loss of any taxpayer;

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(f.1) **[property disposed of at loss by other corporation]** — where the taxpayer is a taxable Canadian corporation and the property was disposed of by another taxable Canadian corporation to the taxpayer in circumstances such that

(i) paragraph (f.2) does not apply to increase the adjusted cost base to the other corporation of shares of the capital stock of the taxpayer, and

(ii) the capital loss from the disposition was deemed by paragraph 40(2)(e.1) (or, where the property was acquired by the taxpayer before 1996, by paragraph 40(2)(e) or 85(4)(a) as those paragraphs read in their application to property acquired before April 26, 1995) to be nil,

the amount that would otherwise have been the capital loss from the disposition;

Related Provisions: 53(1)(f.11) — Alternative addition to ACB on dispositions subject to para. 40(2)(e.1); 142.4(1)"tax basis"(h) — Disposition of specified debt obligation by financial institution.

History: Para. 53(1)(f.1) amended by 1998, c. 19, subsec. 94(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(f.1) where the taxpayer is a taxable Canadian corporation and the property was disposed of by another taxable Canadian corporation to the taxpayer in circumstances such that paragraph (f.2) does not apply so as to increase the adjusted cost base to the other corporation of shares of the capital stock of the taxpayer and the capital loss from the disposition was deemed by paragraph 40(2)(e) or (e.1) or 85(4)(a) to be nil, the amount that would otherwise have been the capital loss from the disposition;

Advance Tax Rulings: ATR-57: Transfer of property for estate planning purposes; ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

(f.11) **[property disposed of at loss by other person]** — where the property was disposed of by a person (other than a non-resident person or a person exempt from tax under this Part on the person's taxable income) or by an eligible Canadian partnership (as defined in subsection 80(1)) to the taxpayer in circumstances such that

(i) paragraph (f.1) does not apply to increase the adjusted cost base to the taxpayer of the property,

(ii) paragraph (f.2) does not apply to increase the adjusted cost base to that person of shares of the capital stock of the taxpayer, and

(iii) the capital loss from the disposition was deemed by paragraph 40(2)(e.1) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(a) as it read in its application to property acquired before April 26, 1995) to be nil,

the amount that would otherwise be the capital loss from the disposition;

History: Para. 53(1)(f.11) amended by 1998, c. 19, subsec. 94(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(f.11) where the property was disposed of by a person (other than a non-resident person or a person exempt from tax under this Part on the person's taxable income) or by an eligible Canadian partnership (within the meaning assigned by subsection 80(1)) to the taxpayer in circumstances such that paragraph (f.1) does not apply so as to increase the adjusted cost base to the taxpayer of the property, paragraph (f.2) does not apply so as to increase the adjusted cost base to that person of shares of the capital stock of the taxpayer and the capital loss from the disposition was deemed by paragraph 40(2)(e.1) or 85(4)(a) to be nil, the amount that would otherwise be the capital loss from the disposition;

(f.12) **[commercial obligation owing to taxpayer]** — where the property is a particular commercial obligation (in this paragraph having the meaning assigned by subsection 80(1)) payable to the taxpayer as consideration for the settlement or extinguishment of another commercial obligation payable to the taxpayer and the taxpayer's loss from the disposition of the other obligation was reduced because of paragraph 40(2)(e.2), the proportion of the reduction that the principal amount of the particular obligation is of the total of all amounts each of which is the principal amount of a commercial obligation payable to the taxpayer as consideration for the settlement or extinguishment of that other obligation;

(f.2) **[share, after transfer of other shares to corporation]** — where the property is a share, any amount required by paragraph 40(3.6)(b) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(b) as it read in its application to property disposed of before April 26, 1995) to be added in computing the adjusted cost base to the taxpayer of the share;

Related Provisions: 53(1)(f.1), (f.11) — Para. (f.2) takes precedence over (f.1) and (f.11).

History: Para. 53(1)(f.2) amended by 1998, c. 19, subsec. 94(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The para. formerly read:

(f.2) where the property is a share of the capital stock of a corporation, any amount required by paragraph 85(4)(b) to be added in computing the adjusted cost base to the taxpayer of the share;

Para. 53(1)(f.1) amended and paras. (f.11) and (f.12) added by 1995, c. 21, subsec. 17(1), applicable to taxation years that end after February 21, 1994. Para. 53(1)(f.1) formerly read:

(f.1) where the property has been disposed of by a taxable Canadian corporation to the taxpayer, and the taxpayer is a taxable Canadian corporation, in circumstances such that paragraph 85(4)(b) does not apply so as to increase the adjusted cost base to the corporation of shares of the capital stock of the taxpayer, and the corporation's capital loss from the disposition has been deemed by paragraph 40(2)(e) or 85(4)(a) to be nil, the amount that would otherwise have been the corporation's capital loss from the disposition;

Pre-RSC History: Paras. 53(1)(f.1) substituted, (f.2) added by 1979, c. 5, subsec. 14(1), applicable, as to para. 53(1)(f.1), in respect of dispositions of property after November 16, 1978, and, as to para. 53(1)(f.2), in respect of dispositions of property after 1971.

Para. 53(1)(f.1) added by 1977-78, c. 1, subsec. 21(3), applicable in respect of dispositions occurring after March 31, 1977.

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(g) **[bond, mortgage, etc.]** — where the property is a bond, debenture, bill, note, mortgage or similar obligation, the amount, if any, by which the principal amount of the obligation exceeds the amount for which the obligation was issued, if such excess was required by subsection 16(2) or (3) to be included in computing the income of the taxpayer for a taxation year commencing before that time;

(g.1) **[indexed debt obligation]** — where the property is an indexed debt obligation, any amount determined under subparagraph 16(6)(a)(i) in respect of the obligation and required to be included in computing the taxpayer's income for a taxation year beginning before that time;

Related Provisions: 53(2)(l.1) — Reduction in adjusted cost base — indexed debt obligation.

History: Para. 53(1)(g.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(2), applicable with respect to indexed debt obligations issued after October 16, 1991.

(h) **[land]** — where the property is land of the taxpayer, any amount paid by the taxpayer or by another taxpayer in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), after 1971 and before that time pursuant to a legal obligation to pay

(i) interest on debt relating to the acquisition of land (within the meaning assigned by subsection 18(3)), or

(ii) property taxes (not including income or profits taxes or taxes imposed by reference to the transfer of property) paid by the taxpayer in respect of the property to a province or to a Canadian municipality

to the extent that the amount was, because of subsection 18(2),

(iii) not deductible in computing the taxpayer's income from the land or from a business for any taxation year beginning before that time, or

(iv) not deductible in computing the income of the other taxpayer and was not included in or added to the cost to the other taxpayer of any property otherwise than because of subparagraph (d.3) or subparagraph (e)(xi);

Related Provisions: 43.1(2) — Life estates in real property; 53(1)(d.3) — Where land owned through a corporation.

History: The portion of para. 53(1)(h) after subpara. (ii) amended by 1999, c. 22, subsec. 14(3), applicable after February 23, 1998. That portion formerly read:

to the extent that that amount was neither deductible because of subsection 18(2) in computing the taxpayer's income from the land or from a business for any taxation year beginning before that time nor in computing the income of another person in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), and was not included in or added to the cost to that other person of any property otherwise than because of paragraph (d.3) or subparagraph (e)(xi);

Subpara. 53(1)(h)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(3), applicable to 1988 *et seq*. Subpara. 53(1)(h)(i) formerly read:

(i) interest on debt relating to the acquisition of land, or an amount payable by the taxpayer for the land, or

That portion of para. 53(1)(h) following subpara. (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(4), applicable to 1988 *et seq*. That portion formerly read:

to the extent that that amount was not deductible by reason of subsection 18(2) in computing the taxpayer's income from the land or from a business for any taxation year commencing before that time or, by reason of subsection 18(3), in computing the income of another taxpayer in respect of whom the taxpayer was a person, corporation or partnership described in subparagraph (b)(i), (ii) or (iii) of the definition "interest on debt relating to the acquisition of land" in subsection 18(3), where that amount was not included in the cost to that other taxpayer of any property other than by reason of paragraph (d.3) or subparagraph (e)(xi);

Pre-RSC History: That portion of para. 53(1)(h) preceding subpara. (ii) substituted by 1988, c. 55, subsec. 30(6), applicable with respect to expenses incurred in 1988 *et seq*. That portion formerly read:

(h) where the property is land of the taxpayer, any amount paid by him after 1971 and before that time pursuant to a legal obligation to pay

(i) interest on borrowed money used to acquire the land, or on an amount payable by him for the land, or

That portion of para. 53(1)(h) following subpara. (ii) substituted by 1988, c. 55, subsec. 30(7), applicable to 1988 *et seq*. That portion formerly read:

to the extent that that amount was, by virtue of subsection 18(2), not deductible in computing his income from the land or from a business for any taxation year commencing before that time;

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(i) **[land used in farming]** — where the property is land used in a farming business carried on by the taxpayer, an amount in respect of each taxation year ending after 1971 and commencing before that time, equal to the taxpayer's loss, if any, for that year from the farming business, to the extent that the loss

(i) was not, by virtue of section 31, deductible in computing the taxpayer's income for that year,

(ii) was not deducted in computing the taxpayer's taxable income for the taxation year in which the taxpayer disposed of the property or any preceding taxation year,

(iii) did not exceed the total of

(A) taxes (other than income or profits taxes or taxes imposed by reference to the transfer of the property) paid by the taxpayer in that year or payable by the taxpayer in respect of that year to a province or a Canadian municipality in respect of the property, and

(B) interest, paid by the taxpayer in that year or payable by the taxpayer in respect of that year, pursuant to a legal obligation to pay interest on borrowed money used to acquire the property or on any amount as consideration payable for the property,

to the extent that those taxes and interest were included in computing the loss, and

(iv) did not exceed the remainder obtained when

(A) the total of each of the taxpayer's losses from the farming business for taxation years preceding that year (to the extent that they are required by this paragraph to be added in computing the taxpayer's adjusted cost base of the property),

is deducted from

(B) the amount, if any, by which the taxpayer's proceeds of disposition of the property exceed the adjusted cost base to the taxpayer of the property immediately before that time, determined without reference to this paragraph;

Related Provisions: 96(1)(e) — Partnerships — gains to be computed without reference to para. 53(1)(i); 101 — Corresponding rule for partnerships; 111(1)(c), (d) — Farming loss carryovers; 111(3) — Limitations on deductibility of loss carryover; 111(6) — Limitation.

Pre-RSC History: Subpara. 53(1)(i)(ii) substituted by 1984, c. 1, subsec. 20(2), applicable to 1983 *et seq.*, to substitute "deducted" for "deductible" and "preceding" for "previous".

Interpretation Bulletins: IT-232R2: Non-capital losses, net capital losses, restricted farm losses, farm losses and limited partnership losses — their composition and deductibility in computing taxable income.

(j) **[share or fund unit taxed as stock option benefit]** — if the property is a share or unit and, in respect of its acquisition by the taxpayer, a benefit was deemed by section 7 to have been received in any taxation year that ends after 1971 and begins before that time by the taxpayer or by a person that did not deal at arm's length with the taxpayer, the amount of the benefit so deemed to have been received;

Related Provisions: 7(1.6), 128.1(4)(d.1) — Effect of emigration on disposition of share or fund unit; 49(3)(b) — Where option to acquire exercised.

History: Para. 53(1)(j) amended by 1999, c. 22, subsec. 14(4), applicable in computing the adjusted cost base of a share acquired after 1984 and of a unit acquired after February 1998. The para. formerly read:

(j) [share taxed as stock option benefit] — where the property is a share and, in respect of its acquisition by the taxpayer, a benefit was deemed by section 7 to have been received in any taxation year ending after 1971 and commencing before that time by the taxpayer or by a person that did not deal at arm's length with the taxpayer, the amount of the benefit so deemed to have been received;

Pre-RSC History: Para. 53(1)(j) substituted by 1985, c. 45, subsec. 22(2), applicable in computing the adjusted cost base of a share acquired after 1984. Para. 53(1)(j) formerly read:

(j) where the property is a share in respect of the acquisition of which a benefit was deemed by section 7 to have been received by the taxpayer in any taxation year ending after 1971 and commencing before that time, the amount of the benefit so deemed to have been received;

Selected Cases [para. 53(1)(j)]: *Mansfield v. The Queen*, [1983] C.T.C. 97 (FCTD); aff'd [1984] C.T.C. 547 (FCA); leave to appeal to SCC refused (1985), 58 N.R. 237 (Debentures converted into common shares constitute conferred employment benefit; value added to adjusted cost base).

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-113R4: Benefits to employees — stock options.

I.T. Technical News: No. 19 (Disposition of identical properties acquired under a section 7 securities option).

(k) **[expropriation asset]** — where the property is an expropriation asset of the taxpayer (within the meaning assigned by section 80.1) or an asset of the taxpayer assumed for the purposes of that section to be an expropriation asset thereof, any amount required by paragraph 80.1(2)(b) to be added in computing the adjusted cost base to the taxpayer of the asset;

Related Provisions: 53(2)(n) — Reduction in ACB of expropriation asset.

Pre-RSC History: Para. 53(1)(k) added by 1973-74, c. 14, subsec. 13(1), applicable to 1972 *et seq.*

(l) **[interest in related segregated fund trust]** — where the property is an interest in a related segregated fund trust referred to in section 138.1,

(i) each amount deemed by paragraph 138.1(1)(f) to be an amount payable to the taxpayer before that time in respect of that interest,

(ii) each amount required by subparagraph 138.1(1)(g)(ii) to be added before that time in respect of that interest,

(iii) each amount in respect of that interest that is a capital gain deemed to have been allocated under subsection 138.1(4) to the taxpayer before that time, and

(iv) each amount in respect of that interest that before that time was deemed by subsection 138.1(3) to be a capital gain of the taxpayer;

Related Provisions: 53(2)(q) — Deductions from ACB of related segregated fund trust; 138.1(5) — ACB of property in related segregated fund trust.

Pre-RSC History: Para. 53(1)(l) added by 1977-78, c. 1, subsec. 21(4), applicable to 1978 *et seq.*

I.T. Application Rules: 26(4) (where property owned since before 1972).

(m) **[offshore investment fund property]** — where the property is an offshore investment fund property (within the meaning assigned by subsection 94.1(1)),

(i) any amount included in respect of the property by virtue of subsection 94.1(1) in computing the taxpayer's income for a taxation year commencing before that time, or

(ii) where the taxpayer is a controlled foreign affiliate (within the meaning of subsection 95(1)), of a person resident in Canada, any amount included in respect of the property in computing the foreign accrual property income of the controlled foreign affiliate by reason of the description of C in the definition "foreign accrual property income" in subsection 95(1) for a taxation year commencing before that time;

Proposed Amendment — 53(1)(m), (m.1)

(m) **[offshore investment fund property]** — where the property is an offshore investment fund property (within the meaning assigned by subsection 94.1(1) as that subsection read in its application before 2001),

(i) any amount included in respect of the property under subsection 94.1(1) (as that subsection read in its application before 2001) in computing the taxpayer's income for a taxation year that began both before that time and before 2001, and

(ii) where the taxpayer is a controlled foreign affiliate of a person resident in Canada, any amount included in respect of the property in computing the foreign accrual property income of the controlled foreign affiliate because of the description of C in the definition "foreign accrual property income" in subsection 95(1) for a taxation year of

the controlled foreign affiliate that began both before that time and before 2001;

(m.1) **[interest in foreign investment entity]** — any amount required by subsection 94.1(9) or 94.2(11) to be added at or before that time in computing the adjusted cost base to the taxpayer of the property;

Application: The June 22, 2000 draft legislation, subsec. 4(2), will amend para. 53(1)(m) to read as above, and add para. (m.1), applicable after 2000.

Technical Notes: Paragraph 53(1)(m) of the Act provides for an addition in computing the ACB to a taxpayer of "offshore investment fund property" to which existing section 94.1 applies. It is amended to ensure that the historical ACB additions are maintained, notwithstanding the replacement of the rules in existing section 94.1.

Paragraph 53(1)(m.1) is introduced to provide for the ACB additions contemplated by new subsections 94.1(9) and 94.2(11). For more detail, see the commentary on those subsections.

These amendments apply after 2000.

Pre-RSC History: Subpara. 53(1)(m)(ii) substituted by 1985, c. 45, subsec. 22(3), applicable after 1984. Subpara. 53(1)(m)(ii) formerly read:

(ii) where the taxpayer is a controlled foreign affiliate, within the meaning of paragraph 95(1)(a), of a person resident in Canada, any amount included in respect of the property in computing the income of the person by virtue of subparagraph 95(1)(b)(ii.1) for a taxation year commencing before that time.

Para. 53(1)(m) added by 1984, c. 45, s. 14, applicable after 1984.

Pre-RSC History [former para. 53(1)(m)]: Para. 53(1)(m) repealed by 1980-81-82-83, c. 140, subsec. 22(4), applicable with respect to dispositions occurring after November 12, 1981. Para. 53(1)(m) formerly read:

(m) where the property is an interest in an annuity contract, other than a life annuity contract as defined by regulation made under subsection 16(4), each amount in respect thereof that was included by virtue of subsection 12(3) in computing the income of the taxpayer for any taxation year commencing before that time.

Para. 53(1)(m) added by 1980-81-82-83, c. 48, subsec. 22(4), applicable in determining the adjusted cost base of an interest in an annuity contract after October 28, 1980.

(n) **[surveying and valuation costs]** — the reasonable costs incurred by the taxpayer, before that time, of surveying or valuing the property for the purpose of its acquisition or disposition (to the extent that those costs are not deducted by the taxpayer in computing the taxpayer's income for any taxation year or attributable to any other property);

Related Provisions: 20(1)(dd) — Deduction for site investigation expenses; 40(1)(a)(i), (b)(i) — Expenses incurred in making disposition deductible in computing gain or loss.

Pre-RSC History: Para. 53(1)(n) added by 1985, c. 45, subsec. 22(4), applicable with respect to costs incurred after 1984.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions.

(o) **[real property — remainder interest]** — where the property is real property of the taxpayer, any amount required by paragraph 43.1(2)(b) to be added in computing the adjusted cost base to the taxpayer of the property;

History: Para. 53(1)(o) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(3), applicable in computing the adjusted cost base of property after December 20, 1991.

(p) **[flow-through entity after 2004]** — where the time is after 2004 and the property is an interest in or a share of the capital stock of a flow-through entity (within the meaning assigned by subsection 39.1(1)), the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, that would, if the definition "exempt capital gains balance" in subsection 39.1(1) were read without reference to "that ends before 2005", be the taxpayer's exempt capital gains balance in respect of the entity for the taxpayer's 2005 taxation year,

B is the fair market value at that time of the property, and

C is the fair market value at that time of all the taxpayer's interests in or shares of the capital stock of the entity;

Related Provisions: 53(1)(r) — Increase in ACB before 2005.

History: Para. 53(1)(p) added by 1995, c. 3, subsec. 14(3), applicable to 1994 *et seq.*

(q) **[history preservation rules — debt forgiveness]** — any amount required under paragraph (4)(b), (5)(b), (6)(b), 47(1)(d), 49(3.01)(b), 51(1)(d.2), 86(4)(b) or 87(5.1)(b) or (6.1)(b) to be added in computing the adjusted cost base to the taxpayer of the property; and

History: Para. 53(1)(q) added by 1995, c. 21, subsec. 17(2), applicable to taxation years that end after February 21, 1994.

(r) **[flow-through entity before 2005]** — where the time is before 2005, the property is an interest in, or a share of the capital stock of, a flow-through entity described in any of paragraphs (a) to (f) of the definition "flow-through entity" in subsection 39.1(1) and immediately after that time the taxpayer disposed of all of the taxpayer's interests in, and shares of the capital stock of, the entity, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the taxpayer's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the entity for the taxpayer's taxation year that includes that time exceeds the total of all amounts each of which is

(i) the amount by which a capital gain is reduced under section 39.1 for the year because of the taxpayer's exempt capital gains balance in respect of the entity, or

(ii) 4/3 of an amount by which a taxable capital gain, or the income from a business, is reduced under section 39.1 for the year because of the taxpayer's exempt capital gains balance in respect of the entity,

B is the fair market value at that time of the property, and

C is the fair market value at that time of all the taxpayer's interests in, and shares of the capital stock of, the entity.

Related Provisions: 39.1(7) — Nil exempt capital gains balance; 53(1)(p) — Increase in ACB after 2004.

History: Para. 53(1)(r) added by 1998, c. 19, subsec. 94(3), applicable to 1994 *et seq.*

(1.1) Deemed contribution of capital — For the purposes of paragraph (1)(c), where there has been a disposition of property before May 7, 1974, and

(a) the taxpayer and the corporation referred to in that paragraph have made an election under section 85 in respect of that property, and

(b) the consideration received by the taxpayer for the property did not include shares of the capital stock of the corporation,

the disposition of property shall be deemed to be a contribution of capital equal to the amount, if any, by which

(c) the amount that the taxpayer and the corporation have agreed on in the election

exceeds

(d) the fair market value at the time of the disposition of any consideration received by the taxpayer for the property so disposed of.

Pre-RSC History: Subsec. 53(1.1) added by 1974-75-76, c. 26, subsec. 24(6), applicable in respect of contributions of capital occurring before May 7, 1974 in computing the adjusted cost base of a property after 1971.

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(2) Amounts to be deducted [from ACB] — In computing the adjusted cost base to a taxpayer of property at any time, there shall be deducted such of the following amounts in respect of the property as are applicable:

(a) **[share]** — where the property is a share of the capital stock of a corporation resident in Canada,

(i) any amount received by the taxpayer after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of, a dividend on the share (other than a taxable dividend or a dividend in respect of which the corporation paying the dividend has elected in accordance with subsection 83(2) or (2.1) in respect of the full amount thereof),

(ii) any amount received by the taxpayer after 1971 and before that time on a reduction of the paid-up capital of the corporation in respect of the share, except to the extent that the amount is deemed by subsection 84(4) or (4.1) to be a dividend received by the taxpayer,

(iii) any amount required to be deducted before that time under section 84.1 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied before May 23, 1985 in computing the adjusted cost base to the taxpayer of the share, and

(iv) any amount, to the extent that such amount is not proceeds of disposition of a share, received by the taxpayer before that time that would, but for subsection 84(8), be deemed by subsection 84(2) to be a dividend received by the taxpayer;

Related Provisions: 40(2)(h), (i) — Limitation on capital loss on certain shares; 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 91(6) — Amounts deductible in respect of dividends received.

History: Subpara. 53(2)(a)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 30(5), to add reference to subpara. 84(4.1), applicable for the purpose of computing the adjusted cost base of any share after 1989.

Pre-RSC History: See end of subsec. 53(2).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

Advance Tax Rulings: ATR-54: Reduction of paid-up capital.

(b) **[share of non-resident corporation]** — where the property is a share of the capital stock of a corporation not resident in Canada,

(i) any amount required by paragraph 80.1(4)(d) or section 92 to be deducted in computing the adjusted cost base to the taxpayer of the share, and

(ii) any amount received by the taxpayer after 1971 and before that time on a reduction of the paid-up capital of the corporation in respect of the share;

Related Provisions: 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 56(6)–(9) — Whether control acquired.

Pre-RSC History: See end of subsec. 53(2).

(b.1) **[capital interest in non-resident trust]** — where the property is a capital interest of the taxpayer in a trust to which paragraph 94(1)(d) applies, any amount required by paragraph 94(5)(b) to be deducted in computing the adjusted cost base to the taxpayer of the interest;

Pre-RSC History: See end of subsec. 53(2).

(b.2) **[property of corporation after change in control]** — where the property is property of a corporation control of which was acquired by a person or group of persons at or before that time, any amount required by paragraph 111(4)(c) to be deducted in computing the adjusted cost base of the property;

Related Provisions: 142.4(1)"tax basis"(q) — Disposition of specified debt obligation by financial institution; 256(6)–(9) — Whether control acquired.

Pre-RSC History: See end of subsec. 53(2).

(c) **[partnership interest]** — where the property is an interest in a partnership,

(i) an amount in respect of each fiscal period of the partnership ending after 1971 and before that time, equal to the total of amounts each of which is the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of any loss of the partnership from any source for that fiscal period, computed as if this Act were read without reference to

(A) the fractions set out in subsection 14(5) and paragraph 38(b),

(A.1) paragraph 18(1)(l.1),

(B) paragraphs 12(1)(o) and (z.5), 18(1)(m) and 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and

(C) subsections 100(4) and 112(3.1), and subsection 112(4.2) as it read in its application to dispositions of property that occurred before April 27, 1995,

except to the extent that all or a portion of such a loss may reasonably be considered to have been included in the taxpayer's limited partnership loss in respect of the partnership for the taxpayer's taxation year in which that fiscal period ended,

(i.1) an amount in respect of each fiscal period of the partnership ending before that time that is the taxpayer's limited partnership loss in respect of the partnership for the taxation year in which that fiscal period ends to the extent that such loss was deducted by the taxpayer in computing the taxpayer's taxable income for any taxation year that commenced before that time,

(i.2) any amount deemed by subsection 40(3.12) to be a loss of the taxpayer for a taxation year from a disposition before that time of the property,

(i.3) if at that time the property is not a tax shelter investment as defined by section 143.2 and the tax-

payer would be a member, described in subsection 40(3.1), of the partnership if the fiscal period of the partnership that includes that time ended at that time, the unpaid principal amount of any indebtedness of the taxpayer for which recourse is limited, either immediately or in the future and either absolutely or contingently, and that can reasonably be considered to have been used to acquire the property,

(i.4) if the taxpayer is a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership or the taxpayer is at that time a limited partner of the partnership for the purposes of subsection 40(3.1), the amount

(A) deducted under subsection 34.2(4) in computing the taxpayer's income for the taxation year in respect of the interest, where that time is in the taxpayer's first taxation year in which a qualifying fiscal period (within the meaning assigned by subsection 34.2(1)) of the business carried on by the taxpayer as a member of the partnership ends and is after the end of that period, and

(B) where that time is in any other taxation year, deducted under subsection 34.2(4) in respect of the interest in computing the taxpayer's income for the taxation year preceding that other year

unless

(C) that time is immediately before a disposition of the interest and no amount is deductible under subsection 34.2(4) in respect of the interest in computing the taxpayer's income for the taxation year following the taxation year that includes that time,

(D) the taxpayer has December 31, 1995 income in respect of the business because of section 34.1, or

(E) the taxpayer's partnership interest was held by the taxpayer on February 22, 1994 and is an excluded interest (within the meaning assigned by subsection 40(3.15)) at the end of the fiscal period of the partnership that includes that time,

(ii) an amount in respect of each fiscal period of the partnership ending after 1971 and before that time, other than a fiscal period after the fiscal period in which the taxpayer ceased to be a member of the partnership, equal to the taxpayer's share of the total of

(A) amounts that, but for paragraph 96(1)(d), would be deductible in computing the income of the partnership for the fiscal period by virtue of the provisions of the *Income Tax Application Rules* relating to exploration and development expenses,

(B) the Canadian exploration and development expenses and foreign exploration and development expenses, if any, incurred by the partnership in the fiscal period,

(C) the Canadian exploration expense, if any, incurred by the partnership in the fiscal period,

(D) the Canadian development expense, if any, incurred by the partnership in the fiscal period, and

(E) the Canadian oil and gas property expense, if any, incurred by the partnership in the fiscal period,

(iii) any amount deemed by subsection 110.1(4) or 118.1(8) to have been a gift made, or by subsection 127(4.2) to have been an amount contributed, by the taxpayer by reason of the taxpayer's membership in the partnership at the end of a fiscal period of the partnership ending before that time,

(iv) any amount required by section 97 to be deducted before that time in computing the adjusted cost base to the taxpayer of the interest,

(v) any amount received by the taxpayer after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of, a distribution of the taxpayer's share (other than a share under an agreement referred to in subsection 96(1.1)) of the partnership profits or partnership capital,

Selected Cases [subpara. 53(2)(c)(v)]: *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital).

(vi) an amount equal to that portion of all amounts deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the investment tax credit of the taxpayer by virtue of subsection 127(8),

(vii) any amount added pursuant to subsection 127.2(4) in computing the taxpayer's share-purchase tax credit for a taxation year ending before or after that time,

(viii) an amount equal to 50% of the amount deemed to be designated pursuant to subsection 127.3(4) before that time in respect of each share, debt obligation or right acquired by the partnership and deemed to have been acquired by the taxpayer under that subsection,

(ix) the amount of all assistance received by the taxpayer before that time that has resulted in a reduction of the capital cost of a depreciable property to the partnership by virtue of subsection 13(7.2),

(x) any amount deductible by the taxpayer under subparagraph 20(1)(e)(vi) in respect of the partnership for a taxation year of the taxpayer ending at or after that time,

(xi) any amount required by paragraph 110.6(23)(b) to be deducted at that time in computing the adjusted cost base to the taxpayer of the interest, and

(xii) any amount payable by the partnership, to the extent that the amount is deductible under subsection 20.01(1) in computing the taxpayer's income for a taxation year that began before that time;

Related Provisions: 40(3) — Deemed gain when ACB becomes negative; 40(3.13) — Artificial transactions affecting partnership capital; 53(1)(e) — Addition to adjusted cost base — partnership interest; 66.8(1) — Resource expenses of limited partner; 70(6)(d.1) — Where transfer or distribution to spouse or trust; 70(9.2)(c)(iii) — Transfer of family farm corporations and partnerships; 70(9.3)(e)(iii) — Transfer of family farm corporation or partnership from spouse's trust to children of settlor; 80(1)"excluded obligation"(a)(iii) — Debt forgiveness rules do not apply where amount deducted in computing ACB (e.g., under 53(2)(c)(i.3)); 87(2)(e.1) — Amalgamations — partnership interest; 87(2)(j.6) — Amalgamations — continuing corporation; 96(1.9) — For-

eign trusts and other foreign investment entities; 96(2.2)(c) — At-risk amount — amount deducted under 53(2)(c)(i.3); 98(1)(c) — Disposition of partnership property; 100(2) — Gain from disposition of interest in partnership; 127(12.2) — Interpretation; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit.

History: Subpara. 53(2)(c)(xii) added by 1999, c. 22, subsec. 14(5), applicable after 1997.

Cl. 53(2)(c)(i)(C) and subpara. 53(2)(c)(i.3) amended by 1998, c. 19, subsec. 94(4) and (5), cl. 53(2)(c)(i)(C) applicable after April 26, 1995 and subpara. 53(2)(c)(i.3) applicable to indebtedness of a taxpayer arising after September 26, 1994, other than indebtedness arising under an agreement in writing entered into by the taxpayer before September 27, 1994. The cl. and subpara. formerly read:

> (C) subsections 112(3.1) and (4.2),
>
> . . . . .
>
> (i.3) where at that time the taxpayer would be a member described in subsection 40(3.1) of the partnership, if the fiscal period of the partnership that includes that time ended at that time, the unpaid principal amount of any debt of the taxpayer at that time in respect of which recourse against the taxpayer is limited, either immediately or in the future and either absolutely or contingently, and that can reasonably be considered to have been used to acquire the property,

Cl. 53(2)(c)(i)(B) amended by 1997, c. 25, subsec. 7(2), applicable for the purpose of computing the adjusted cost base of property after 1996. Cl. (i)(B) formerly read:

> (B) paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act and paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and

Subpara. 53(2)(c)(i.4) added by 1996, c. 21, s. 12, applicable after 1994.

Subparas. 53(2)(c)(i.2) and (i.3) added by 1995, c. 3, subsec. 14(4), subpara. (i.2) applicable after February 21, 1994, and (i.3) applicable to debts entered into by a taxpayer after September 26, 1994 other than such a debt entered into pursuant to an agreement in writing entered into by the taxpayer before September 27, 1994.

Subpara. 53(2)(c)(xi) added by 1995, c. 3, subsec. 14(5), applicable to 1994 *et seq.*

Pre-RSC History: See end of subsec. 53(2).

I.T. Application Rules: 26(9)–(9.4) (where taxpayer became partner before 1972); 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-138R: Computation and flow-through of partnership income; IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on ACB of admission or retirement of a partner; IT-341R3: Expenses of issuing or selling shares, units in a trust, interests in a partnership or syndicate, and expenses of borrowing money; IT-353R2: Partnership interests — some adjustments to cost base; IT-358: Partnerships — deferment of fiscal year-end.

I.T. Technical News: No. 5 (adjusted cost base of partnership interest); 9 (calculation of ACB of a partnership interest).

Forms: T2065: Determination of adjusted cost base of a partnership interest; T5015: Reconciliation of partner's capital account; T5016: Partner's share of partnership capital.

(d) **[part of property retained]** — where the property is such that the taxpayer has, after 1971 and before that time, disposed of a part of it while retaining another part of it, the amount determined under section 43 to be the adjusted cost base to the taxpayer of the part so disposed of;

Interpretation Bulletins: IT-200: Surface rentals and farming operations.

(e) **[share]** — where the property is a share, or an interest in or a right to a share, of the capital stock of a corporation acquired before August, 1976, an amount equal to any expense incurred by the taxpayer in consideration therefor, to the extent that the expense was, by virtue of

(i) paragraph (e) of the definition "Canadian exploration and development expenses" in subsection 66(15), a Canadian exploration and development expense,

(ii) paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), a Canadian exploration expense,

(iii) paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5), a Canadian development expense, or

(iv) paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), a Canadian oil and gas property expense

incurred by the taxpayer;

Pre-RSC History: See end of subsec. 53(2).

(f) **[consideration from joint exploration corporation]** — where the property was received by the taxpayer as consideration for any payment or loan

(i) made before April 20, 1983 by the taxpayer as a shareholder corporation (within the meaning assigned by subsection 66(15)) to a joint exploration corporation of the shareholder, and

(ii) described in paragraph (a) of the definition "agreed portion" in subsection 66(15),

or the property was substituted for such a property, such portion of the payment or loan as may reasonably be considered to be related to an agreed portion (within the meaning assigned by subsection 66(15)) of the joint exploration corporation's

(iii) Canadian exploration and development expenses,

(iv) Canadian exploration expense,

(v) Canadian development expense, or

(vi) Canadian oil and gas property expense,

as the case may be;

Related Provisions: 248(5) — Substituted property.

Pre-RSC History: See end of subsec. 53(2).

(f.1) **[share of joint exploration corporation]** — where the property is a share of the capital stock of a joint exploration corporation resident in Canada and the taxpayer has, after 1971, made a contribution of capital to the corporation otherwise than by way of a loan, which contribution was included in computing the adjusted cost base of the property by virtue of paragraph (1)(c), such portion of the contribution as may reasonably be considered to be part of an agreed portion (within the meaning assigned by subsection 66(15)) of the corporation's

(i) Canadian exploration and development expenses,

(ii) Canadian exploration expense,

(iii) Canadian development expense, or

(iv) Canadian oil and gas property expense,

as the case may be;

Pre-RSC History: See end of subsec. 53(2).

(f.2) **[resource expenses renounced by joint exploration corporation]** — any amount required by paragraph 66(10.4)(a) to be deducted before that time in computing the adjusted cost base to the taxpayer of the property;

Advance Tax Rulings: ATR-60: Joint exploration corporations.

(g) **[debt forgiveness]** — where section 80 is applicable in respect of the taxpayer, the amount, if any, by which the adjusted cost base to the taxpayer of the

property is required in prescribed manner to be reduced before that time;

Regulations: 5400(1)(c)–(e) (prescribed manner).

(g.1) **[history preservation rules — debt forgiveness]** — any amount required under paragraph (4)(a), (5)(a), (6)(a), 47(1)(c), 49(3.01)(a), 51(1)(d.1), 86(4)(a) or 87(5.1)(a) or (6.1)(a) to be deducted in computing the adjusted cost base to the taxpayer of the property or any amount by which that adjusted cost base is required to be reduced because of subsection 80(9), (10) or (11);

Related Provisions: 80.03(2), (3) — Gain on subsequent "surrender" of property; 107(1)(a) — Reduction in gain on disposition of capital interest in trust.

History: Para. 53(2)(g.1) added by 1995, c. 21, subsec. 17(3), applicable to taxation years that end after February 21, 1994.

Interpretation Bulletins: IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units.

(h) **[capital interest in trust]** — where the property is a capital interest of the taxpayer in a trust (other than an interest in a personal trust acquired by the taxpayer for no consideration or an interest of the taxpayer in a trust described in any of paragraphs (a) to (d) of the definition "trust" in subsection 108(1)),

Proposed Amendment — 53(2)(h) opening words

(h) **[capital interest in trust]** — where the property is a capital interest of the taxpayer in a trust (other than an interest in a personal trust that has never been acquired for consideration or an interest of a taxpayer in a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(1), will amend the opening words of para. 53(2)(h) to read as above, applicable to amounts that become payable after 1999.

Technical Notes: Under paragraph 53(2)(h) of the Act, certain amounts are deducted in computing the adjusted cost base (ACB) to a beneficiary of the beneficiary's capital interest in a trust (other than an interest in a personal trust acquired for no consideration or an interest in a trust described in any of paragraphs (a) to (d) of the definition "trust" in subsection 108(1)). Trusts described in these paragraphs are generally those deemed to exist for income tax purposes and those that relate to employee compensation and retirement savings. Among the deducted amounts (as described in subparagraph 53(2)(h)(i.1)) are certain amounts payable to a trust beneficiary in respect of the beneficiary's capital interest in a trust, otherwise than as proceeds of disposition.

Paragraph 53(2)(h) is amended to ensure that it does not apply to interests in trusts described in paragraphs (e) and (e.1) of the definition "trust" in subsection 108(1). Trusts referred to in these two paragraphs are cemetery care trusts, trusts governed by eligible funeral arrangements and trusts each of the beneficiaries of which is an employee compensation trust, retirement savings trust or related segregated fund trust. This amendment corrects a legislative oversight.

Paragraph 53(2)(h) is also amended so that it does not apply to an interest in a personal trust that has never been acquired for consideration. New paragraph 108(6)(c) and new subsection 108(7) are relevant for the purpose of determining when an interest in a trust is considered to have been acquired for consideration.

(i) any amount paid to the taxpayer by the trust after 1971 and before that time as a distribution or payment of capital by the trust (otherwise than as proceeds of disposition of the interest or part thereof), to the extent that the amount became payable before 1988,

(i.1) any amount that has become payable to the taxpayer by the trust after 1987 and before that time in respect of the interest (otherwise than as proceeds of disposition of the interest or part thereof), except to the extent of the portion thereof

(A) that was included in the taxpayer's income by reason of subsection 104(13) or from which an amount of tax was deducted under Part XIII by reason of paragraph 212(1)(c), or

(B) where the trust was resident in Canada throughout its taxation year in which the amount became payable

(I) that is equal to ⅓ of the amount designated by the trust under subsection 104(21) in respect of the taxpayer, or

(II) that was designated by the trust under subsection 104(20) in respect of the taxpayer,

(ii) an amount equal to that portion of all amounts deducted under subsection 127(5) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the investment tax credit of the taxpayer by virtue of subsection 127(7),

(iii) any amount added pursuant to subsection 127.2(3) in computing the taxpayer's share-purchase tax credit for a taxation year ending before or after that time,

(iv) an amount equal to 50% of the amount deemed to be designated pursuant to subsection 127.3(3) before that time in respect of each share, debt obligation or right acquired by the trust and deemed to have been acquired by the taxpayer under that subsection, and

(v) an amount equal to the amount of all assistance received by the taxpayer before that time that has resulted in a reduction of the capital cost of a depreciable property to the trust by virtue of subsection 13(7.2);

Related Provisions: 53(1)(d.1) — Additions to adjusted cost base — capital interest in a trust; 53(2)(i), (j) — further deduction from ACB of interest in a trust; 87(2)(j.6) — Amalgamations — continuing corporation; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 104(20) — Designation re non-taxable dividends; 104(24) — Whether amount payable to beneficiary; 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 127(12.2) — Interpretation; 206(1)"cost amount" — Cost amount of capital interest in a trust that is foreign property; 248(1)"personal trust" — Where interest deemed acquired for no consideration; 248(25.3) — Deemed cost of trust interest; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Pre-RSC History: See end of subsec. 53(2).

Interpretation Bulletins: IT-342R: Trusts: Income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-390: Unit trusts — cost of rights and adjustments to cost base; IT-456R: Capital property — some adjustments to cost base.

(i) **[capital interest in non-resident trust]** — where the property is a capital interest in a trust (other than a unit trust) not resident in Canada that was purchased after 1971 by the taxpayer from a non-resident person at a time when the fair market value of such of the trust property as was

Proposed Amendment — 53(2)(i) opening words

(i) **[capital interest in non-resident trust]** — where the property is a capital interest in a trust (other than a unit trust) not resident in Canada that was purchased after 1971 and before that time by the taxpayer from a non-resident person at a time (in this paragraph referred to as the "purchase time") when the property was not taxable Canadian property and the fair market value of such of the trust property as was

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(2), will amend the opening words of para. 53(2)(i) to read as above, applicable for the purpose of computing the adjusted cost base of property after April 26, 1995.

Technical Notes: Paragraphs 53(2)(i) and (j) of the Act set out certain reductions required to be made in determining the adjusted cost base (ACB) of a capital interest in a non-resident trust (including a unit of a non-resident unit trust) acquired by a purchaser. The ACB reduction in respect of a capital interest in such a trust occurs, in general terms, where the purchaser acquired the interest from a non-resident person and assets of the trust consist primarily of any combination of taxable Canadian properties, Canadian resource properties, timber resource properties and income interests in trusts resident in Canada. The ACB reduction reduces the overall tax advantages associated with the sale of such capital interests by reducing the ACB to the purchaser of the capital interest. The ACB reduction takes into account the deferral of the recognition of gains on such properties that used to result when a capital interest in a trust holding such properties (rather than the underlying properties) was sold by a non-resident person.

Paragraphs 53(2)(i) and (j) are amended so that such ACB reductions are no longer required in connection with purchases of a capital interest in a trust, where the interest is taxable Canadian property to the non-resident vendor. This amendment, which is relevant to purchases after April 26, 1995, is consequential to the extension of taxable Canadian property (under former subsection 115(1) and the new definition "taxable Canadian property" in subsection 248(1)) to include capital interests in a non-resident trust in cases where the trust's assets consist primarily of taxable Canadian properties and other properties described above.

(i) a Canadian resource property,

(ii) [Repealed under former Act]

(iii) an income interest in a trust resident in Canada,

(iv) taxable Canadian property, or

(v) a timber resource property

was not less than 50% of the total of

(vi) the fair market value of all the trust property, and

(vii) the amount of any money of the trust on hand,

that proportion of the amount, if any, by which

(viii) the fair market value at that time of such of the trust property as was property described in subparagraphs (i) to (v)

exceeds

(ix) the total of the cost amounts to the trust at that time of such of the trust properties as were properties described in subparagraphs (i) to (v),

that the fair market value at that time of the interest is of the fair market value at that time of all capital interests in the trust;

Proposed Amendment — 53(2)(i)

was not less than 50% of the fair market value of all the trust property, that proportion of the amount, if any, by which

(vi) the fair market value at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v)

exceeds

(vii) the total of the cost amounts to the trust at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v),

that the fair market value at the purchase time of the interest is of the fair market value at the purchase time of all capital interests in the trust;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(3), will amend the portion of para. 53(2)(i) after subpara. (v) to read as above, applicable for the purpose of computing the adjusted cost base of property after April 26, 1995.

Technical Notes: See under 53(2)(i) opening words.

Related Provisions: 53(3) — Application of 53(2)(i) and (j).

Pre-RSC History: See end of subsec. 53(2).

(j) **[unit of non-resident unit trust]** — where the property is a unit of a unit trust not resident in Canada that was purchased after 1971 by the taxpayer from a non-resident person at a time when the fair market value of such of the trust property as was

Proposed Amendment — 53(2)(j) opening words

(j) **[unit of non-resident unit trust]** — where the property is a unit of a unit trust not resident in Canada that was purchased after 1971 and before that time by the taxpayer from a non-resident person at a time (in this paragraph referred to as the "purchase time") when the property was not taxable Canadian property and the fair market value of such of the trust property as was

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(4), will amend the opening words of para. 53(2)(j) to read as above, applicable for the purpose of computing the adjusted cost base of property after April 26, 1995.

Technical Notes: See under 53(2)(i) opening words.

(i) a Canadian resource property,

(ii) [Repealed under former Act]

(iii) an income interest in a trust resident in Canada,

(iv) taxable Canadian property, or

(v) a timber resource property

was not less than 50% of the total of

(vi) the fair market value of all the trust property, and

(vii) the amount of any money of the trust on hand,

that proportion of the amount, if any, by which

(viii) the fair market value at that time of such of the trust property as was property described in subparagraphs (i) to (v),

exceeds

(ix) the total of the cost amounts to the trust at that time of such of the trust properties as were properties described in subparagraphs (i) to (v),

that the fair market value at that time of the unit is of the fair market value at that time of all of the issued units of the trust;

Proposed Amendment — 53(2)(j)

was not less than 50% of the fair market value of all the trust property, that proportion of the amount, if any, by which

(vi) the fair market value at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v)

exceeds

(vii) the total of the cost amounts to the trust at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v),

that the fair market value at the purchase time of the unit is of the fair market value at the purchase time of all the issued units of the trust;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(5), will amend the portion of para. 53(2)(j) after subpara. (v) to read as above, applicable for the purpose of computing the adjusted cost base of property after April 26, 1995.

Technical Notes: See under 53(2)(i) opening words.

Related Provisions: 53(3) — Application of 53(2)(i) and (j).

Pre-RSC History: See end of subsec. 53(2).

(k) **[assistance received or receivable]** — where the property was acquired by the taxpayer after 1971, the amount, if any, by which the total of

(i) the amount of any assistance which the taxpayer has received or is entitled to receive before that time from a government, municipality or other public authority, in respect of, or for the acquisition of, the property, whether as a grant, subsidy, forgivable loan, deduction from tax not otherwise provided for under this paragraph, investment allowance or as any other form of assistance other than

(A) an amount described in paragraph 37(1)(d),

(B) an amount deducted as an allowance under section 65,

(C) the amount of prescribed assistance that the taxpayer has received or is entitled to receive in respect of, or for the acquisition of, shares of the capital stock of a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or shares of the capital stock of a taxable Canadian corporation that are held in a prescribed stock savings plan, or

(D) an amount included in income by virtue of paragraph 12(1)(u) or 56(1)(s), and

(ii) all amounts deducted under subsection 127(5) or (6) in respect of the property before that time,

exceeds such part, if any, of the assistance referred to in subparagraph (i) as has been repaid before that time by the taxpayer pursuant to an obligation to repay all or any part of that assistance;

Related Provisions: 39(13) — Repaid assistance deemed a capital loss; 125.4(5) — Canadian film/video credit is deemed to be assistance; 125.5(5) — Film/video production services credit is deemed to be assistance; 127(12.2) — Interpretation; 127.4(1)"net cost"(b) — Labour-sponsored venture capital corporation; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit.

History: Cl. 53(2)(k)(i)(C) substituted by 1994, c. 21, s. 22, applicable to 1991 *et seq.* That cl. formerly read:

(C) the amount of any prescribed assistance received by the taxpayer that has been provided in respect of, or for the acquisition of, shares of the capital stock of a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or shares of the capital stock of a taxable Canadian corporation that are held in a prescribed stock savings plan, or

Pre-RSC History: See end of subsec. 53(2).

Regulations: 6700, 6700.1 (prescribed venture capital corporation); 6701 (prescribed labour-sponsored venture capital corporation); 6702 (prescribed assistance); 6705 (prescribed stock savings plan).

Interpretation Bulletins: IT-273R: Government assistance — general comments.

(l) **[debt obligation]** — where the property is a debt obligation, any amount that was deductible by virtue of subsection 20(14) in computing the taxpayer's income for any taxation year commencing before that time in respect of interest on that debt obligation;

Pre-RSC History: See end of subsec. 53(2).

(l.1) **[indexed debt obligation]** — where the property is an indexed debt obligation,

(i) any amount determined under subparagraph 16(6)(a)(ii) in respect of the obligation and deductible in computing the income of the taxpayer for a taxation year beginning before that time, and

(ii) the amount of any payment that was received or that became receivable by the taxpayer at or before that time in respect of an amount that was added under paragraph (1)(g.1) to the cost to the taxpayer of the obligation;

Related Provisions: 53(1)(g.1) — Addition to adjusted cost base — indexed debt obligation.

History: Para. 53(2)(l.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(4), applicable with respect to indexed debt obligations issued after October 16, 1991.

(m) **[amounts deducted from income]** — such part of the cost to the taxpayer of the property as was deductible (otherwise than by virtue of this subdivision) in computing the taxpayer's income for any taxation year commencing before that time and ending after 1971;

Pre-RSC History: See end of subsec. 53(2).

Interpretation Bulletins: IT-350R: Investigation of site; IT-456R: Capital property — some adjustments to cost base.

(n) **[expropriation asset]** — where the property is an expropriation asset of the taxpayer (within the meaning assigned by section 80.1) or an asset of the taxpayer assumed for the purposes of that section to be an expropriation asset thereof, any amount required by paragraph 80.1(2)(b) to be deducted in computing the adjusted cost base to the taxpayer of the asset;

Related Provisions: 53(1)(k) — Addition to ACB of expropriation asset.

Pre-RSC History: See end of subsec. 53(2).

(o) **[right to receive partnership property]** — where the property is a right to receive partnership property within the meaning assigned by paragraph 98.2(a) or 100(3)(a), any amount received by the taxpayer in full or partial satisfaction of that right;

Pre-RSC History: See end of subsec. 53(2).

(p) **[debt owing by corporation]** — where the property is a debt owing to the taxpayer by a corporation, any amount required to be deducted before that time under section 84.1 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied before May 23, 1985 or subsection 84.2(2) in

computing the adjusted cost base to the taxpayer of the debt;

Pre-RSC History: See end of subsec. 53(2).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(q) **[interest in related segregated fund trust]** — where the property is an interest in a related segregated fund trust referred to in section 138.1,

(i) each amount in respect of that interest that is a capital loss deemed to have been allocated under subsection 138.1(4) to the taxpayer before that time, and

(ii) each amount in respect of that interest that before that time was deemed by subsection 138.1(3) to be a capital loss of the taxpayer;

Related Provisions: 53(1)(l) — Addition to ACB of interest in related segregated fund trust; 138.1(5) — ACB of property in related segregated fund trust.

Pre-RSC History: See end of subsec. 53(2).

(r) [Repealed under former Act]

Pre-RSC History: See end of subsec. 53(2).

(s) **[amount elected under 53(2.1)]** — the amount, if any, by which

(i) the amount elected by the taxpayer before that time under subsection (2.1)

exceeds

(ii) any repayment before that time by the taxpayer of an amount received by the taxpayer as described in subsection (2.1) that may reasonably be considered to relate to the amount elected where the repayment is made pursuant to a legal obligation to repay all or any part of the amount so received;

Related Provisions: 12(1)(t) — Income inclusion — investment tax credit; 12(1)(x) — Payments as inducement or as reimbursement etc.; 39(13) — Repayment of assistance; 40(3) — Deemed capital gain when ACB goes negative; 53(2.1) — Election; 87(2)(j.6) — Amalgamations — continuing corporation.

Pre-RSC History: See end of subsec. 53(2).

(t) **[right to acquire shares or fund units]** — if the property is a right to acquire shares or units under an agreement, any amount required by paragraph 164(6.1)(b) to be deducted in computing the adjusted cost base to the taxpayer of the right;

History: Para. 53(2)(t) amended by 1999, c. 22, subsec. 14(6), applicable after February 1998. The para. formerly read:

(t) [right to acquire shares] — where the property is a right to acquire shares under an agreement, any amount required by paragraph 164(6.1)(b) to be deducted in computing the adjusted cost base to the taxpayer of the right;

Para. 53(2)(t) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(5), applicable after July 13, 1990.

I.T. Application Rules: 26(3).

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(u) **[non-qualifying real property]** — where the property was at the end of February 22, 1994 a non-qualifying real property (within the meaning assigned by subsection 110.6(1) as that subsection applies to the 1994 taxation year) of a taxpayer, any amount required by paragraph 110.6(21)(b) to be deducted in computing the adjusted cost base to the taxpayer of the property; and

History: Para. 53(2)(u) added by 1995, c. 3, subsec. 14(6), applicable to 1994 *et seq.*

(v) **[excessive capital gains election]** — where the taxpayer elected under subsection 110.6(19) in respect of the property, any amount required by subsection 110.6(22) to be deducted in computing the adjusted cost base to the taxpayer of the property at that time.

History: Para. 53(2)(v) added by 1995, c. 3, subsec. 14(6), applicable to 1994 *et seq.*

Proposed Addition — 53(2)(w)

(w) **[interest in foreign investment entity]** — any amount required by subsection 94.1(9), 94.2(11) or 94.3(2) to be deducted at or before that time in computing the adjusted cost base to the taxpayer of the property.

Application: The June 22, 2000 draft legislation, subsec. 4(3), will add para. 53(2)(w), applicable after 2000.

Technical Notes: Paragraph 53(2)(w) of the Act is introduced to provide for the ACB reductions contemplated by new subsections 94.1(9), 94.2(11) and 94.3(2). For more detail, see the commentary on those subsections.

New paragraph 53(1)(w) applies after 2000.

Pre-RSC History [subsec. 53(2)]: Cl. 53(2)(c)(i)(A) substituted by 1988, c. 55, subsec. 30(8), applicable to 1988 *et seq.* Cl. 53(2)(c)(i)(A) formerly read:

(A) the reference in section 14 and paragraph 38(b) to "½",

Subpara. 53(2)(c)(iii) amended by 1988, c. 55, subsec. 30(9), to substitute "subsection 110.1(4) or 118.1(8)" for "subsection 110(5)", "by reason of" for "by virtue of", and "a fiscal period" for "the fiscal period", applicable with respect to gifts made and amounts contributed by [partners] in fiscal periods of partnerships ending after 1987.

Subpara. 53(2)(c)(x) added by 1988, c. 55, subsec. 30(10), applicable after 1987.

All that portion of para. 53(2)(h) preceding subpara. (ii) substituted by 1988, c. 55, subsec. 30(11), applicable with respect to amounts that become payable by trusts after 1987, except that

(a) with respect to amounts payable by trusts before 1990, the reference to "⅓" in subcl. (i.1)(B)(I) shall be read as a reference to "½"; and

(b) subpara. (i.1) shall not apply with respect to that portion of an amount that becomes payable in a taxation year of the trust ending before 1990 to a taxpayer by a trust (other than a unit trust) created before October 2, 1987, that may reasonably be considered to be out of an amount that has been deducted under subsec. 20(16) or regulations made under para. 20(1)(a) or subsec. 65(1) in computing the income of the trust for the year, where

(i) such portion is designated by the trust in respect of the taxpayer and not in respect of any other beneficiary under the trust and does not exceed the proportion of the aggregate of amounts that the trust so designates in respect of all beneficiaries for the year that

(A) the taxpayer's share of the income of the trust for the year computed without reference to this Act

is of

(B) the income of the trust for the year computed without reference to this Act,

(ii) no beneficial interest in the trust is created before the end of the year and after October 1, 1987 (other than pursuant to the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before October 2, 1987 with a public authority in Canada, where such document was required by law to be so filed before trading in the securities can commence), and

(iii) there has not been a substantial increase in the indebtedness of the trust before the end of the year and after October 1, 1987 (other than as a consequence of an agreement entered into in writing before October 2, 1987).

That portion of para. 53(2)(h) preceding subpara. (ii) formerly read:

(h) where the property is a capital interest in a trust that was purchased by the taxpayer or a unit of a unit trust,

(i) any amount paid to the taxpayer by the trust after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of a distribution or payment of capital, otherwise than as proceeds of disposition of the interest or unit, as the case may be, or of a part thereof,

Cl. 53(2)(k)(i)(A) substituted by 1988, c. 55, subsec. 30(12), applicable with respect to expenditures made after April 1988. Cl. 53(2)(k)(i)(A) formerly read:

(A) an amount authorized to be paid under an *Appropriation Act* and on terms and conditions approved by the Treasury Board in respect of scientific research and experimental development expenditures incurred for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry,

Para. 53(2)(b.2) added and cl. 53(2)(k)(i)(C) substituted to add "or shares of the capital stock of a taxable Canadian corporation that are held in a prescribed stock savings plan", by 1987, c. 46, subsecs. 13(1), (2). Para. 53(2)(b.2) applicable to taxation years ending after January 15, 1987. Cl. 53(2)(k)(i)(C) applicable to 1986 *et seq.*

Subpara. 53(2)(c)(i) amended to add all that portion following cl. (C), and subpara. 53(2)(c)(i.1) added, by 1986, c. 55, subsecs. 8(1), (2), applicable after February 25, 1986.

The expression "scientific research and experimental development" in cl. 53(2)(k)(i)(A) substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Subpara. 53(2)(a)(iii), cl. 53(2)(k)(i)(C), and para. 53(2)(p) substituted, para. 53(2)(r) repealed and para. 53(2)(s) added by 1986, c. 6, subsecs. 26(1)–(5), applicable to 1985 *et seq.*, except for the repeal of para. 53(2)(r) which is applicable with respect to dividends paid after May 23, 1985. Cl. 53(2)(k)(i)(C) was substituted to add "or a prescribed labour-sponsored venture capital corporation". Subpara. 53(2)(a)(iii) and paras. 53(2)(p) and (r) formerly read:

(iii) any amount required by section 84.1 to be deducted before that time in computing the adjusted cost base to him of the share, and

. . . . .

(p) where the property is a debt owing to the taxpayer by a corporation, any amount required by section 84.1 or subsection 84.2(2) to be deducted before that time in computing the adjusted cost base to him of the debt;

. . . . .

(r) where the property is

(i) a share of a class of the capital stock of a corporation, which share was acquired (otherwise than by way of purchase) by the taxpayer as a consequence of the death of a person, or another share of the same class acquired by that taxpayer after the death of that person, or

(ii) a share substituted for a share referred to in subparagraph (i),

the aggregate of all amounts each of which is a dividend thereon received by the taxpayer on or before that time, or deemed to have been received after that time by virtue of subsection 84(2) or (3), that can reasonably be considered to be as, on account or in lieu of proceeds of a disposition and in respect of which the corporation has made an election under subsection 83(2.1).

Cls. 53(2)(c)(ii)(B) to (E) substituted by 1985, c. 45, subsec. 22(5), applicable to taxation years commencing after 1984. Cls. (B) to (E) formerly read:

(B) the Canadian exploration and development expenses and foreign exploration and development expenses, if any, incurred by the partnership in the fiscal period,

(C) the Canadian exploration expense, if any, incurred by the partnership in the fiscal period,

(D) the Canadian development expense, if any, incurred by the partnership in the fiscal period, and

(E) the Canadian oil and gas property expense, if any, incurred by the partnership in the fiscal period,

Subparas. 53(2)(c)(ix), 53(2)(h)(v) added by 1985, c. 45, subsecs. 22(6), (7), applicable with respect to property acquired after May 9, 1985.

Subparas. 53(2)(i)(ii), 53(2)(j)(ii) repealed by 1985, c. 45, subsecs. 22(8), (10), applicable to taxation years commencing after 1984. Subparas. (i)(ii) and (j)(ii) formerly read:

(ii) property that would have been a Canadian resource property if it had been acquired after 1971,

. . . . .

(ii) property that would have been a Canadian resource property if it had been acquired after 1971,

Subparas. 53(2)(i)(ix), 53(2)(j)(ix) amended by 1985, c. 45, subsecs. 22(9), (11), to substitute, in each, "the cost amounts" for "the adjusted cost bases", applicable in computing the adjusted cost base of property owned by a taxpayer after May 9, 1985.

Cl. 53(2)(c)(i)(B), all that portion of para. 53(2)(f) preceding subpara. (iii), para. 53(2)(r) substituted; subparas. 53(2)(c)(vii) and (viii), 53(2)(h)(iii) and (iv), para. 53(2)(f.2) added by 1984, c. 1, subsecs. 20(3)–(8). Subparas. 53(2)(c)(vii) and (viii), 53(2)(h)(iii) and (iv) are applicable to 1983 *et seq.*; para. 53(2)(f.2) is applicable with respect to any property received by a taxpayer with respect to payments or loans made after April 19, 1983; para. 53(2)(r) as substituted is applicable after June 28, 1982 except that all that portion of para. 53(2)(r) following subpara. (ii) is applicable with respect to windings-up commencing after 1983; cl. 53(2)(c)(i)(B) as substituted is applicable to 1982 *et seq.* except that for the period before January 19, 1984 the reference to "paragraphs 81(1)(r)" shall be read as a reference to "paragraphs 69(7.1)(b), 81(1)(r)". Cl. 53(2)(c)(i)(B), all that portion of para. 53(2)(f) preceding subpara. (iii), para. 53(2)(r) formerly read:

[(2)(c)(i)]

(B) paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1) and (gg), section 31, subsection 40(2), section 55, subsections 69(6) and (7) and paragraph 69(7.1)(b), and

. . . . .

(2)(f) where the property was received by the taxpayer as consideration for any payment

(i) made by the taxpayer as a shareholder corporation (within the meaning assigned by subsection 66(15)) to a joint exploration corporation of the shareholder, and

(ii) described in subparagraph 66(15)(a)(i),

such portion of the payment as may reasonably be considered to be related to an agreed portion (within the meaning assigned by paragraph 66(15)(a)) of the joint exploration corporation's

. . . . .

(r) where the property is

(i) a share of a class of the capital stock of a corporation acquired by the taxpayer as a consequence of the death of a person (otherwise than by way of purchase),

(ii) a share of the class referred to in subparagraph (i) acquired by the taxpayer after the death of that person, or

(iii) a share substituted for a share referred to in subparagraph (i) or (ii),

the aggregate of all amounts each of which is a dividend thereon received by the taxpayer (otherwise than pursuant to a transaction described in subsection 84(2)) on or before that time that can reasonably be considered to be as, on account or in lieu of proceeds of a disposition and in respect of which the corporation has made an election under subsection 83(2.1).

Subparas. 53(2)(a)(iv), (c)(iv), (vi), cl. (c)(i)(C) added, 53(2)(a)(i), cl. (c)(i)(B), paras. 53(2)(h), (l), (r) substituted by 1980-81-82-83, c. 140, subsecs. 22(4.1)–(11), subparas. 53(2)(a)(iv), (c)(iv), and para. (l) applicable with respect to dispositions occurring after November 12, 1981, (c)(vi) and para. (h) applicable with respect to investment tax credits deducted for 1982 *et seq.*, cl. 53(2)(c)(i)(B) applicable to taxation years ending after January 31, 1982, (C) applicable in determining the adjusted cost base of partnership interests after November 12, 1981, subpara. (2)(a)(i) and para. (r) applicable after June 28, 1982. Cl. 53(2)(c)(i)(B), paras. 53(2)(h), (l), (r) formerly read:

(B) paragraphs 12(1)(o), 18(1)(m), 20(1)(v.1) and 20(1)(gg), section 31, subsection 40(2), section 55 and subsections 69(6) and 69(7),

. . . . .

(h) where the property is

(i) a capital interest in a trust that was purchased by the taxpayer, or

(ii) a unit of a unit trust,

any amount paid to the taxpayer by the trust after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of a distribution or payment of capital, otherwise than as proceeds of disposition of the interest or unit, as the case may be, or of a part thereof;

. . . . .

(l) where the property is a bond, debenture or similar security (other than an income bond or income debenture), any amount that was deductible by virtue of subsection 20(14) in computing the taxpayer's income for any taxation year commencing before that time in respect of interest thereon;

. . . . .

(r) where the property is an interest in an annuity contract, other than a life annuity contract as defined by regulation made under subsection 16(4), each amount in respect thereof that was deducted by virtue of subsection 20(19) in computing the income of the taxpayer for any taxation year commencing before that time.

Cl. 53(2)(c)(i)(A.1) added by 1980-81-82-83, c. 68, subsec. 115(2), applicable to determining the adjusted cost base of a partnership interest after December 31, 1980.

Cl. 53(2)(c)(i)(B) substituted, cl. 53(2)(c)(ii)(E), subparas. 53(2)(e)(iv), (f)(vi), (f.1)(iv), cl. 53(2)(k)(i)(D), para. 53(2)(r) added by 1980-81-82-83, c. 48, subsecs. 22(5)–(11), applicable, as to cl. 53(2)(c)(ii)(E) and subparas. 53(2)(e)(iv), (f)(vi), (f.1)(iv), to taxation years ending after December 11, 1979, as to cl. 53(2)(c)(i)(B), in determining the adjusted cost base of a partnership interest after October 28, 1980 and in determining the adjusted cost base of a partnership interest disposed of by a person after 1976 and before October 29, 1980 where that person so elects in prescribed form before 1982, as to cl. 53(2)(k)(i)(D), to 1977 *et seq.*, as to para. 53(2)(r), in determining the adjusted cost base of an interest in an annuity contract after October 28, 1980. Cl. 53(2)(c)(ii)(B) formerly read:

(B) section 31, subsection 40(2) and section 55,

Subpara. 53(2)(k)(ii) substituted by 1979, c. 5, subsec. 14(2), applicable to taxation years ending after November 16, 1978, to add "or (6)".

Para. 53(2)(k) substituted by 1977-78, c. 4, s. 4. Para. 53(2)(k) formerly read:

(k) where the property was acquired by the taxpayer after 1971, the amount, if any, by which

(i) the amount of any assistance which he has received or is entitled to receive before that time from a government, municipality or other public authority, in respect of, or for the acquisition of, the property, whether as a grant, subsidy, forgiveable loan, deduction from tax, investment allowance or as any other form of assistance other than

(A) an amount authorized to be paid under an *Appropriation Act* and on terms and conditions approved by the Treasury Board in respect of scientific research expenditures incurred for the purpose of advancing or sustaining the technological capability of Canadian manufacturing or other industry,

(B) an amount deducted as an allowance under section 65, or

(C) the amount of any prescribed assistance received by the taxpayer that has been provided in respect of, or for the acquisition of, shares of the capital stock of a prescribed venture capital corporation,

exceeds

(ii) such part, if any, of the assistance referred to in subparagraph (i) as has been repaid before that time by him pursuant to an obligation to repay all or any part of that assistance;

Subparas. 53(2)(a)(i)–(iii) substituted for (i)–(iv), clause 53(2)(k)(i)(C), paras. 53(2)(p), (q) added by 1977-78, c. 1, subsecs. 21(5), (6), (7). (For application see below.) Subparas. 53(2)(a)(i)–(iv) formerly read:

(i) any amount received by the taxpayer after 1971 and before that time as, on account or in lieu of payment of, or in satisfaction of, a dividend on the share (other than a taxable dividend or capital dividend),

(ii) an amount in respect of any taxable dividend on the share received by the taxpayer after 1971 and before that time, on any portion of which tax under Part VII was payable by the taxpayer, equal to the amount, by which that portion exceeds the tax under Part VII payable thereon,

(iii) an amount in respect of any taxable dividend on the share received by the taxpayer after 1971 and before that time while he was not resident in Canada in respect of which tax under Part VIII was payable by the corporation, equal to the amount, if any, by which

(A) that proportion of the dividend that such part of all dividends that were paid by the corporation at the time the dividend was paid as was paid out of designated surplus (within the meaning of Part VII) is of all dividends that were paid by the corporation at the time the individual

exceeds

(B) such part of any tax under Part XIII that was payable by the taxpayer on the dividend as may reasonably be considered to have been payable on the proportion of the dividend described in clause (A), and

(iv) any amount received by the taxpayer after 1971 and before that time on a reduction of the paid-up capital of the corporation in respect of the share, except to the extent that the amount is deemed by subsection 84(4) to be a dividend received by him;

Para. 53(2)(b), subpara. 53(2)(c)(iii), paras. 53(2)(e), (o), substituted by 1976-77, c. 4, subsecs. 13(3)–(5,1). (For application, see below.) Para. 53(2)(b), subpara. 53(2)(c)(iii), para. 53(2)(e) formerly read:

(b) where the property is a share of the capital stock of a corporation not resident in Canada, any amount required by paragraph 80.1(4)(d) or section 92 to be deducted in computing the adjusted cost base to the taxpayer of the share;

. . . . .

(iii) any amount deemed by subsection 110(5) to have been a gift made by the taxpayer by virtue of his membership in the partnership at the end of any fiscal period of the partnership ending before that time,

. . . . .

(e) where the property is a share, or an interest therein or a right thereto, of the capital stock of a corporation, an amount equal to any expense incurred by the taxpayer in consideration therefor, to the extent that the expense was, by virtue of

(i) subparagraph 66(15)(b)(v), a Canadian exploration and development expense,

(ii) subparagraph 66.1(6)(a)(v), a Canadian exploration expense,

(iii) subparagraph 66.2(5)(a)(vi), a Canadian development expense

incurred by him;

Para. 53(2)(b), all that portion of subpara. 53(2)(c)(i) preceding clause (A), all that portion of subpara. 53(2)(c)(ii) preceding clause (B), subparas. 53(2)(c)(v), 53(2)(c)(iv) repealed, para. 53(2)(e), all that portion of 53(2)(f) following subpara. (ii), paras. 53(2)(i), (j) substituted by 1974-75-76, c. 26, subsecs. 24(7)–(9), (11)–(13), (15), applicable to 1972 *et seq.* Para. 53(2)(b.1), clauses 53(2)(c)(ii)(C), (D), paras. 53(2)(f.1), (o), added by 1974-75-76, c. 26, subsecs. 24(10), (14), (17), applicable to 1972 *et seq.* Para. 53(2)(k) substituted by 1974-75-76, c. 26, subsec. 25(16), applicable for the purpose of computing the adjusted cost base of a property after 1971 in respect of acquisitions of property occurring November 18, 1974 and in respect of the repayment on or after December 31, 1971 of grants, subsidies or other assistance. Para. 53(2)(k) formerly read:

(k) any grant, subsidy or other assistance from a government, municipality or other public authority received by the taxpayer for or in respect of the acquisition by him after 1971 of the property,

Paras. 53(2)(b), (e), (m) substituted, (n) added by 1973-74, c. 14, subsecs. 13(2)–(4), applicable to 1972 *et seq.*

Application: 1977-78, c. 1, subsecs. 21(10)–(13) provide:

Subparas. 53(2)(a)(i)–(iii) are applicable for the purpose of computing the adjusted cost base of any share after March 31, 1977.

Cl. 53(2)(k)(i)(C) is applicable in respect of assistance provided after March 31, 1977.

Para. 53(2)(p) is applicable after March 31, 1977.

Para. 53(2)(q) is applicable to 1978 *et seq.*

1976-77, c. 4, subsecs. 13(8)–(11) provide:

Subpara. 53(2)(b)(i) is applicable in respect of the 1972 and subsequent taxation years in computing the adjusted cost base of a property after 1971 and subpara. 53(2)(b)(ii) is applicable in respect of any reduction of the paid-up capital of a corporation occurring after 1971 in computing the adjusted cost base of a property after May 25, 1976.

Subpara. 53(2)(c)(iii) is applicable in respect of amounts contributed after June 23, 1975.

Para. 53(2)(e) is applicable to property acquired before August 1976, except that subpara. 53(2)(e)(iii) is applicable to amounts paid or payable and the fair market value of property paid or payable after May 6, 1974.

Para. 53(2)(o) is applicable to 1972 *et seq.*

I.T. Technical News: No. 5 (western grain transition payments).

(2.1) Election — For the purpose of paragraph (2)(s), where in a taxation year a taxpayer receives an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(x) in respect of the cost of a property (other than depreciable property) acquired by the taxpayer in the year, in the 3 taxation years preceding the year or in the taxation year following the year, the taxpayer may elect under this subsection on or before the date on or before which the taxpayer's return of income under this Part for the year is required to be filed or, where the property is acquired in the following year, for that following year, to reduce the cost of the property by such amount as the taxpayer specifies, not exceeding the least of

(a) the adjusted cost base, determined without reference to paragraph (2)(s), at the time the property was acquired,

(b) the amount so received by the taxpayer, and

(c) where the taxpayer has disposed of the property before the year, nil.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: That portion of subsec. 53(2.1) preceding para. (a) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 15(6), applicable to 1991 *et seq.* That portion formerly read:

(2.1) Election — For the purposes of paragraph (2)(s), where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(x) in respect of the cost of a property acquired by the taxpayer in the year, in the three taxation years immediately preceding the year or in the taxation year immediately following the year, the taxpayer may elect under this subsection on or before the date on or before which the taxpayer is required to file the taxpayer's return of income under this Part for the year or, where the property is acquired in the immediately following year, for that following year, to reduce the cost of the property by such amount as the taxpayer may specify, not exceeding the least of

Pre-RSC History: Subsec. 53(2.1) added by 1986, c. 6, subsec. 26(6), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-456R: Capital property — some adjustments to cost base.

(3) Application of paras. (2)(i) and (j) — For the purposes of paragraphs (2)(i) and (j), where any property of a trust would, at a particular time, have been a taxable Canadian property of the trust if it had been disposed of by the trust at that time, the property shall be deemed to have been a taxable Canadian property of the trust at that time.

Proposed Repeal — 53(3)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(6), will repeal subsec. 53(3), applicable after October 1, 1996.

Technical Notes: Section 53 of the Act sets out rules for determining the adjusted cost base of a capital property for the purpose of calculating any capital gain or loss on its disposition.

Subsection 53(3) provides that, for the purposes of certain deductions required to be made in determining the adjusted cost base of interests in non-resident trusts, property of a trust is taxable Canadian property (TCP) at a particular time if the property would be TCP if the trust had disposed of the property at that time.

Subsection 53(3) is repealed with effect after October 1, 1996. This amendment is strictly consequential to changes in the definition of TCP (described in the commentary on subsection 248(1) of the Act) and does not represent any change in tax policy.

Interpretation Bulletins [subsec. 53(3)]: IT-138R: Computation and flow-through of a partnership income.

(4) Recomputation of adjusted cost base on transfers and deemed dispositions — Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a) or 111(4)(e) or section 128.1,

Proposed Amendment — 53(4)

(4) Recomputation of adjusted cost base on transfers and deemed dispositions — Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a), 107.4(3)(a) or 111(4)(e) or section 128.1,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 21(7), will amend the opening words of subsec. 53(4) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 53(4) of the Act provides rules that affect the computation of the adjusted cost base (ACB) to a taxpayer of any "specified property". As defined in section 54, "specified property" is capital property that is a share, a capital interest in a trust, a partnership interest or an option to acquire any such property. The rules in subsection 53(4) apply where the proceeds of disposition of a specified property are determined under any one of a number of provisions in the Act set out in the subsection. Where this is the case and the ACB of the specified property was reduced under paragraph 53(2)(g.1) as a consequence of a forgiveness of debt, the ACB continues to be reduced under that paragraph as a consequence of the operation of subsection 53(4). The only significance of this reduction is with respect to the potential future application of section 80.03 which, in certain cases, recaptures reductions previously made under paragraph 53(2)(g.1) in computing the ACB of specified property on a future disposition of such property.

Subsection 53(4) is amended to add a reference in the subsection to paragraph 107.4(3)(a). Subsection 107.4(3) provides for a rollover on certain transfers of property that do not involve any change in the beneficial ownership of the property. As a result, the ACB of a property transferred to a trust that was subject to a reduction because of the forgiveness of debt rules continues to be reduced on the same basis if the property is transferred in circumstances where proceeds of disposition are determined under paragraph 107.4(3)(a).

(a) there shall be deducted after that time in computing the adjusted cost base to the person or partnership (in this subsection referred to as the "transferee") who ac-

quires or reacquires the property at or immediately after that time the amount, if any, by which

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to the vendor of the property,

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2); and

(b) the amount determined under paragraph (a) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

Related Provisions: 53(1)(q) — Addition to adjusted cost base for amount under 53(4)(b); 53(2)(g.1) — Reduction in adjusted cost base under 53(4)(a); 53(5) — Recomputation of ACB on other transfers; 80.03(2)(a) — Deemed gain on disposition following debt forgiveness; 251(1) — Arm's length.

History: The opening words of subsec. 53(4) amended by 1998, c. 19, subsec. 94(6), applicable to taxation years that end after February 21, 1994. The opening words formerly read:

(4) Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 85.1(1)(a), 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a) or 111(4)(e) or section 128.1,

Subsec. 53(4) added by 1995, c. 21, subsec. 17(4), applicable to taxation years that end after February 21, 1994.

(5) Recomputation of adjusted cost base on other transfers — Where

(a) at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property to another person or partnership (in this subsection referred to as the "transferee"),

(b) immediately before that time, the vendor and the transferee do not deal with each other at arm's length or would not deal with each other at arm's length if paragraph 80(2)(j) applied for the purpose of this subsection,

(c) paragraph (b) would apply in respect of the disposition if each right referred to in paragraph 251(5)(b) that is a right of the transferee to acquire the specified property from the vendor or a right of the transferee to acquire other property as part of a transaction or event or series of transactions or events that includes the disposition were not taken into account, and

(d) the proceeds of the disposition are not determined under any of the provisions referred to in subsection (4),

the following rules apply:

(e) there shall be deducted after that time in computing the adjusted cost base to the transferee of the property the amount, if any, by which

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing the adjusted cost base to the vendor of the property immediately before that time

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2), and

(f) the amount determined under paragraph (e) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 53(5)(b); 53(2)(g.1) — Reduction in ACB under 53(5)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 53(5) amended by 1998, c. 19, subsec. 94(7), applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(5) Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property to another person or partnership (in this subsection referred to as the "transferee"), the vendor and the transferee do not deal with each other at arm's length (or would not deal with each other at arm's length if paragraph 80(2)(j) applied for the purpose of this subsection) and the proceeds of disposition of the property at that time are not determined under any of the provisions referred to in subsection (4),

(a) there shall be deducted after that time in computing the adjusted cost base to the transferee of the property the amount, if any, by which

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to the vendor of the property

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2); and

(b) the amount determined under paragraph (a) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

Subsec. 53(5) added by 1995, c. 21, subsec. 17(4), applicable to taxation years that end after February 21, 1994.

(6) Recomputation of adjusted cost base on amalgamation — Where a capital property that is a specified property is acquired by a new corporate entity at any time as a result of the amalgamation or merger of 2 or more predecessor corporations,

(a) there shall be deducted after that time in computing the adjusted cost base to the new entity of the property the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to a predecessor corporation of the property, unless those amounts are otherwise deducted under that paragraph in computing the adjusted cost base to the new entity of the property; and

(b) the amount deducted under paragraph (a) in respect of the acquisition shall be added after that time in computing the adjusted cost base to the new entity of the property.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 53(6)(b); 53(2)(g.1) — Reduction in ACB under 53(6)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 53(6) added by 1995, c. 21, subsec. 17(4), applicable to taxation years that end after February 21, 1994.

Definitions [s. 53]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "assistance" — 79(4), 125.4(5), 248(16), 248(18); "business" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration and development expense" — 66(15), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "capital dividend" — 83(2), 248(1); "capital interest" — 108(1), 248(1); "consequence of the death" — 248(8); "consideration" — 108(7); "control" — 256(6)–(9); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" —

248(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "dividend" — 248(1); "expropriation asset" — 80.1(1); "farming" — 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "foreign exploration and development expense" — 66(15), 248(1); "income bond", "income debenture" — 248(1); "income interest in a trust" — 108(1), 248(1); "indexed debt obligation" — 248(1); "joint exploration corporation" — 66(15); "life insurance capital dividend" — 83(2.1), 248(1); "life insurance policy" — 138(12), 248(1); "limited partnership loss" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident" — 248(1); "person", "personal trust", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700, 6700.1, 6700.2; "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2); "resident in Canada" — 250; "share", "shareholder", "specified member" — 248(1); "specified property" — 54; "specified shareholder" — 248(1); "superficial loss" — 54; "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1); "vendor" — 53(4), (5).

54. Definitions — In this subdivision,

"adjusted cost base" to a taxpayer of any property at any time means, except as otherwise provided,

(a) where the property is depreciable property of the taxpayer, the capital cost to the taxpayer of the property as of that time, and

(b) in any other case, the cost to the taxpayer of the property adjusted, as of that time, in accordance with section 53,

except that

(c) for greater certainty, where any property (other than an interest in or a share of the capital stock of a flow-through entity within the meaning assigned by subsection 39.1(1) that was last reacquired by the taxpayer as a result of an election under subsection 110.6(19)) of the taxpayer is property that was reacquired by the taxpayer after having been previously disposed of by the taxpayer, no adjustment to the cost to the taxpayer of the property that was required to be made under section 53 before its reacquisition by the taxpayer shall be made under that section to the cost to the taxpayer of the property as reacquired property of the taxpayer, and

(d) in no case shall the adjusted cost base to a taxpayer of any property at any time be less than nil;

Related Provisions: 40(3), (3.1) — Deemed capital gain where ACB is negative; 43 — ACB on partial disposition; 47(1) — ACB of identical properties; 49(1) — Granting of options; 49(2) — Where option expires; 69(1)(c) — Deemed acquisition at fair market value in certain circumstances; 84.1(2) — Non-arm's length sale of shares; 91(6) — Amounts deductible in respect of dividends received; 92 — ACB of share of foreign affiliate; 93(4)(b) — Loss on disposition of shares of foreign affiliate; 110.6(19)(a)(ii) — Increase in cost base on capital gains exemption election; 139.1(4)(d) — Cost of share acquired on insurance demutualization deemed nil; 142.4(1)"tax basis" — cost base for securities held by financial institutions; 143.2(6) — Deemed cost reduction of tax shelter investment; 248(1)"adjusted cost base" — Definition applies to entire Act.

History: Paras. (c) and (d) of the definition "adjusted cost base" in s. 54 amended by 1995, c. 3, s. 15, applicable to 1994 *et seq.* Paras. (c) and (d) formerly read:

(c) for greater certainty, where any property of the taxpayer is property that was reacquired by the taxpayer after having been previously disposed of by the taxpayer, no adjustment to the cost to the taxpayer of the property that was required to be made under section 53 before its reacquisition by the taxpayer shall be made under that section to the cost to the taxpayer of the property as reacquired property of the taxpayer, and

(d) in no case shall the adjusted cost base of any property at the time of its disposition by the taxpayer be less than nil;

Pre-RSC History: *The definition "adjusted cost base" was para. 54(a).*

Selected Cases [s. 54"adjusted cost base"]: *Bodrug Estate v. Canada*, [1991] 2 C.T.C. 347 (FCA) (Damages paid under lawsuit in respect of provincial securities statute not part of cost of shares deemed disposed of upon death); *Gaynor v. The Queen*, [1991] 1 C.T.C. 470 (FCA) (Cost to taxpayer is cost in Canadian currency); *Salt et al. v. The Queen*, [1984] C.T.C. 414 (FCTD) (Where option exercised, adjusted cost base is actual purchase price, not Valuation Day value).

Regulations: 4400, Sch. VII (ACB of publicly-traded shares at end of 1971).

I.T. Application Rules: 26(3)–(27) (where property owned since before 1972).

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-418: Partial disposition of property.

I.T. Technical News: No. 9 (calculation of ACB of a partnership interest).

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

Forms: T2065: Determination of adjusted cost base of a partnership interest; T2080–T2090: Capital dispositions supplementary schedules.

"capital property" of a taxpayer means

(a) any depreciable property of the taxpayer, and

(b) any property (other than depreciable property), any gain or loss from the disposition of which would, if the property were disposed of, be a capital gain or a capital loss, as the case may be, of the taxpayer;

Related Provisions: 39(1) — Determination of capital gain and capital loss; 39(4) — Election to treat Canadian securities as capital property; 54.2 — Shares deemed to be capital property where all assets of business transferred; 66.3(1)(a)(i) — Certain exploration and development shares deemed not to be capital property; 96(1.4) — Certain rights to share in income or loss of partnership deemed not to be capital property; 142.5(1) — Mark-to-market rules for financial institutions; 248(1)"capital property" — Definition applies to entire Act.

Pre-RSC History: *The definition "capital property" was para. 54(b).*

I.T. Application Rules: 26(5), (6) and (7).

Interpretation Bulletins: IT-102R2: Conversion of property, other than real property, from or to inventory; IT-143R2: Meaning of "eligible capital expenditure"; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-325R2: Property transfers after separation, divorce and annulment; IT-442R: Bad debts and reserves for doubtful debts; IT-459: Adventure or concern in the nature of trade.

I.T. Technical News: No. 7 (rollovers of capital property — *Mara Properties*); No. 12 ("millennium bug" expenditures).

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

"disposition" of any property, except as expressly otherwise provided, includes

(a) any transaction or event entitling a taxpayer to proceeds of disposition of property,

(b) any transaction or event by which

(i) any property of a taxpayer that is a share, bond, debenture, note, certificate, mortgage, agreement of sale or similar property, or an interest therein, is redeemed in whole or in part or is cancelled,

(ii) any debt owing to a taxpayer or any other right of a taxpayer to receive an amount is settled or cancelled,

(iii) any share owned by a taxpayer is converted by virtue of an amalgamation or merger, or

(iv) any option held by a taxpayer to acquire or dispose of property expires, and

(c) any transfer of property to a trust, or any transfer of property of a trust to any beneficiary under the trust, except as provided in paragraph (e),

but, for greater certainty, does not include

(d) any transfer of property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that had been used as security for a debt or a loan,

(e) any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof, other than a transfer by a trust resident in Canada to a trust not resident in Canada or a transfer to a trust governed by

(i) a registered retirement savings plan,

(ii) a deferred profit sharing plan,

(iii) an employees profit sharing plan, or

(iv) a registered retirement income fund

by a person who is, immediately after the transfer, a beneficiary under the plan or fund, or a transfer by any such trust governed by a plan or fund to a beneficiary thereunder,

(f) any issue by a corporation of a bond, debenture, note, certificate or mortgage of the corporation, or

(g) any issue by a corporation of a share of its capital stock, or any other transaction that, but for this paragraph, would be a disposition by a corporation of a share of its capital stock;

Proposed Repeal — 54"disposition"

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 22(1), will repeal the definition "disposition" in s. 54, applicable to transactions and events that occur after December 23, 1998.

Technical Notes: The expression "disposition" is defined, for the purposes of the capital gains rules, in section 54 of the Act.

The definition is repealed strictly as a consequence of the introduction of the new definition "disposition" in subsection 248(1).

Related Provisions: 48.1(1) — Gain when small business corporation becomes public; 49(5) — Extension or renewal of option; 49.1 — Satisfaction of obligation is not a disposition of property; 51(1) — Convertible property; 70(5) — Deemed disposition of property on death; 80.03(2), (4) — Deemed capital gain on disposition of property following debt forgiveness; 87(4) — Shares of predecessor corporation; 104(5.3) — Election by trust to postpone deemed disposition; 107(2.1) — Distribution of trust property; 128.1(1)(b) — Deemed disposition of property on becoming resident in Canada; 128.1(4)(b) — Deemed disposition of property on ceasing to be resident in Canada.

Pre-RSC History: *The definition "disposition" was para. 54(c). See Table of Concordance.*

Former cl. 54(c)(v)(D) repealed, and (E) renumbered as (D) by 1986, c. 6, subsec. 27(1), applicable to transfers made after 1985. Cl. (D) formerly read:

(D) a registered home ownership savings plan, or

Cl. 54(c)(ii)(C) and all that portion of subpara. 54(c)(v) preceding cl. (A) substituted by 1980-81-82-83, c. 140, subsec. 23(1) and (2), applicable with respect to share conversions or transfers occurring after November 12, 1981. Cl. 54(c)(ii)(C) and that portion formerly read:

(C) any share owned by a taxpayer is converted by virtue of an amalgamation, or

. . . . .

(v) any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof, other than a transfer to a trust governed by

Cl. 54(c)(v)(E) added, all that portion of subpara. 54(c)(v) after cl. (E) substituted by 1977-78, c. 32, s. 10. That portion formerly read:

by a person who is, immediately after the transfer, a beneficiary under the plan, or a transfer by any such trust governed by a plan to a beneficiary thereunder,

Subpara. 54(c)(v) substituted by 1974-75-76, c. 26, subsec. 25(1), applicable to 1974 *et seq*. Subpara. 54(c)(v) formerly read:

(v) any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof,

Selected Cases [s. 54"disposition"]: *T. Eaton Co. v. R.*, [1999] 2 C.T.C. 380 (FCA) (Surrender of participation that reduced value of lease was capital); *Fulljames v. R.*, [2000] 1 C.T.C. 2270 (TCC) (Unrestricted transfer of shares was disposition); *Shepp v. R.*, [1999] 1 C.T.C. 2889 (TCC) (Is disposition of economic interest a disposition of "property"?); *106443 v. Canada*, [1995] 1 C.T.C. 2788 (Sale with right of redemption made to secure repayment of debt); *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital); *Larose v. MNR*, [1992] 2 C.T.C. 2339 (TCC); amended (Nov. 18, 1991), Doc. 87-294(IT) (TCC) [unreported] (Assessment in respect of sale of properties upheld despite court decision and other circumstances denying taxpayer proceeds of sale; right to dispose of properties had been transferred to purchaser); *Fisher, E.R., Ltd. v. The Queen*, [1986] 2 C.T.C. 114 (FCTD) (Interest on expropriation compensation included in proceeds of disposition); *Wise et al. v. The Queen*, [1986] 1 C.T.C. 169 (FCA) (Deposit retained as liquidated damages in respect of aborted sale not taxable).

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-124R6: Contributions to registered retirement savings plans; IT-125R4: Dispositions of resource properties; IT-126R2: Meaning of "winding-up"; IT-133: Stock exchange transactions — date of disposition of shares; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-170R: Sale of property — when included in income computation; IT-182: Compensation for loss of business income or property used in a business; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-334R2: Miscellaneous receipts; IT-436R: Reserves — promissory notes; IT-444R: Corporations — involuntary dissolutions; IT-448: Dispositions — changes in terms of securities; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-505: Mortgage foreclosures and conditional sales repossessions.

I.T. Technical News: No. 3 (loss utilization within a corporate group); No. 7 (revocable living trusts, protective trusts, bare trusts); No. 14 (changes in terms of debt obligations); No. 15 (tax consequences of the adoption of the "euro" currency).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer; ATR-54: Reduction of paid-up capital.

"eligible capital property" of a taxpayer means any property, a part of the consideration for the disposition of which would, if the taxpayer disposed of the property, be an eligible capital amount in respect of a business;

Related Provisions: 14(3) — Non-arm's length acquisition of eligible capital property; 87(2)(f) — Amalgamations — security or debt obligation; 98(3)(b) — Rules applicable where partnership ceases to exist; 248(1)"eligible capital property" — Definition applies to entire Act.

Pre-RSC History: *The definition "eligible capital property" was para. 54(d).*

Para. 54(d) amended by 1988, c. 55, subsec. 31(1), to substitute "a part of the consideration" for "½ of any amount payable to the taxpayer as consideration", and to delete "within the meaning given that expression in subsection 14(1)" from the end, applicable after June 17, 1987.

Interpretation Bulletins: IT-123R4: Disposition of eligible capital property; IT-123R5: Transactions involving eligible capital property; IT-143R2: Meaning of "eligible capital expenditure".

"listed personal property" of a taxpayer means the taxpayer's personal-use property that is all or any portion of, or any interest in or right to, any

(a) print, etching, drawing, painting, sculpture, or other similar work of art,

(b) jewellery,

(c) rare folio, rare manuscript, or rare book,

(d) stamp, or

(e) coin;

Related Provisions: 40(2)(g)(iii) — Limitations; 41 — Gain from listed personal property; 248(1)"listed personal property" — Definition applies to entire Act.

Pre-RSC History: *The definition "listed personal property" was para. 54(e).*

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts.

"personal-use property" of a taxpayer includes

(a) property owned by the taxpayer that is used primarily for the personal use or enjoyment of the taxpayer or for the personal use or enjoyment of one or more individuals each of whom is

(i) the taxpayer,

(ii) a person related to the taxpayer, or

(iii) where the taxpayer is a trust, a beneficiary under the trust or any person related to the beneficiary,

(b) any debt owing to the taxpayer in respect of the disposition of property that was the taxpayer's personal-use property, and

(c) any property of the taxpayer that is an option to acquire property that would, if the taxpayer acquired it, be personal-use property of the taxpayer,

and "personal-use property" of a partnership includes any partnership property that is used primarily for the personal use or enjoyment of any member of the partnership or for the personal use or enjoyment of one or more individuals each of whom is a member of the partnership or a person related to such a member;

Related Provisions: 3(b)(ii), 40(2)(g)(iii) — No capital loss on personal-use property; 46 — Disposition of personal-use property; 50(2) — Where debt personal-use property; 248(1)"personal-use property" — Definition applies to entire Act.

History: *The definition "personal-use property" was para. 54(f). See Table of Concordance.*

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-332R: Personal-use property.

Forms: T2080: Capital dispositions supplementary schedule — personal-use property.

"principal residence" of a taxpayer for a taxation year means a particular property that is a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a co-operative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation and that is owned, whether jointly with another person or otherwise, in the year by the taxpayer, if

(a) where the taxpayer is an individual other than a personal trust, the housing unit was ordinarily inhabited in the year by the taxpayer, by the taxpayer's spouse or former spouse or by a child of the taxpayer,

(a.1) where the taxpayer is a personal trust, the housing unit was ordinarily inhabited in the calendar year ending in the year by a specified beneficiary of the trust for the year, by the spouse or former spouse of such a beneficiary or by a child of such a beneficiary, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) where the taxpayer is a personal trust or an individual other than a trust, the taxpayer

(i) elected[1] under subsection 45(2) that relates to the change in use of the particular property in the year or a preceding taxation year, other than an election rescinded under subsection 45(2) in the taxpayer's return of income for the year or a preceding taxation year, or

(ii) elected[1] under subsection 45(3) that relates to a change in use of the particular property in a subsequent taxation year,

except that, subject to section 54.1, a particular property shall be considered not to be a taxpayer's principal residence for a taxation year

(c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other property has been designated for the purposes of this definition for the year by the taxpayer, by a person who was throughout the year the taxpayer's spouse (other than a spouse who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer), by a person who was the taxpayer's child (other than a child who was during the year a married person or 18 years or over) or, where the taxpayer was not during the year a married person or a person 18 years or over, by a person who was the taxpayer's

(i) mother or father, or

(ii) brother or sister, where that brother or sister was not during the year a married person or a person 18 years or over,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, ss. 1, 13, will replace "spouse" with "spouse or common-law partner", and "married person " with "married person or a person who is in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — 54"principal residence"(c)

(c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the

[1] *Sic.* Should read "made an election" — ed.

year and no other property has been designated for the purposes of this definition for the year

(i) where the year is before 1982, by the taxpayer, or

(ii) where the year is after 1981,

(A) by the taxpayer,

(B) by a person who was throughout the year the taxpayer's spouse or common-law partner (other than a spouse or common-law partner who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer),

(C) by a person who was the taxpayer's child (other than a child who was at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older), or

(D) where the taxpayer was not at any time in the year a married person or 18 years of age or older, by a person who was the taxpayer's

(I) mother or father, or

(II) brother or sister, where that brother or sister was not at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 22(2), will amend para. (c) of the definition "principal residence" in s. 54 to read as above, applicable to dispositions that occur after 1990 except that cls. (c)(ii)(B) to (D) of the definition shall be read without reference to "or common-law partner" and "a person who is in a common-law partnership" in their application to dispositions made by a taxpayer that occur in a taxation year that is before 2001 and

(a) before 1998; or

(b) after 1997, unless a valid election is made by the taxpayer under section 144 of the *Modernization of Benefits and Obligations Act*, c. 12 of the Statutes of Canada, 2000, that that Act apply to the taxpayer in respect of one or more taxation years that include the year.

Technical Notes: Section 54 of the Act defines a number of expressions for the purpose of subdivision c of Division B of Part I, which deals with taxable capital gains and allowable capital losses. The definition "principal residence" in section 54 provides criteria for the classification of a dwelling as the principal residence of a taxpayer for the purposes of the exemption of such property from capital gains taxation.

Under existing rules, a family unit may treat only one housing unit as its principal residence for a taxation year. For years before 1982, it was possible in the case of a married couple for each spouse to designate a principle residence for the purpose of capital gains exemption. However, as a result of an intervening amendment applicable to dispositions occurring after 1990, a strict interpretation of the definition would deny a taxpayer the benefit of the pre-1982 rules. This result is clearly unintended and the amendment reconfirms the benefit of the pre-1982 rules.

This amendment also reflects changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

(c.1) where the taxpayer is a personal trust, unless

(i) the particular property was designated by the trust in prescribed form and manner to be the taxpayer's principal residence for the year,

(ii) the trust specifies in the designation each individual (in this definition referred to as a "specified beneficiary" of the trust for the year) who, in the calendar year ending in the year,

(A) is beneficially interested in the trust, and

(B) except where the trust is entitled to designate it for the year solely because of paragraph (b), ordinarily inhabited the housing unit or has a spouse, former spouse or child who ordinarily inhabited the housing unit,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(iii) no corporation (other than a registered charity) or partnership is beneficially interested in the trust at any time in the year, and

(iv) no other property has been designated for the purpose of this definition for the calendar year ending in the year by any specified beneficiary of the trust for the year, by a person who was throughout that calendar year such a beneficiary's spouse (other than a spouse who was throughout that calendar year living apart from, and was separated pursuant to a judicial separation or written separation agreement from, the beneficiary), by a person who was a beneficiary's child (other than a child who was during that calendar year a married person or a person 18 years or over) or, where such a beneficiary was not during that calendar year a married person or a person 18 years or over, by a person who was such a beneficiary's

(A) mother or father, or

(B) brother or sister, where that brother or sister was not during that calendar year a married person or a person 18 years or over, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, ss. 1, 13, will replace "spouse" with "spouse or common-law partner", and "married person " with "married person or a person who is in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) because of paragraph (b), if solely because of that paragraph the property would, but for this paragraph, have been a principal residence of the taxpayer for 4 or more preceding taxation years,

and, for the purpose of this definition,

(e) the principal residence of a taxpayer for a taxation year shall be deemed to include, except where the particular property consists of a share of the capital stock of a co-operative housing corporation, the land subjacent to the housing unit and such portion of any immediately contiguous land as can reasonably be regarded as contributing to the use and enjoyment of the housing unit as a residence, except that where the total area of the subjacent land and of that portion exceeds 1/2 hectare, the excess shall be deemed not to have contributed to the use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary to such use and enjoyment, and

(f) a particular property designated under paragraph (c.1) by a trust for a year shall be deemed to be property designated for the purposes of this definition by each specified beneficiary of the trust for the calendar year ending in the year;

Related Provisions: 40(2)(b), 40(4)–(6) — Principal residence rules; 40(7) — Property in satisfaction of interest in trust; 45(3), (4) — Election where change in use; 54.1 — Exception to principal residence rules; 107(2.01) — Principal residence distribution by spousal trust; 248(25) — Beneficially interested; 252(2) — Mother, father, etc.; 252(4) — Extended meaning of "spouse".

History: "Principal residence" in s. 54 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 16, applicable to dispositions occurring after 1990. That definition formerly read:

> "principal residence" of a taxpayer for a taxation year means a housing unit, a leasehold interest in such a unit, or a share of the capital stock of a co-operative housing corporation, owned, whether jointly with another person or otherwise, in the year by the taxpayer, if the housing unit was, or if the share was acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation that was,
>
> (a) ordinarily inhabited in the year by the taxpayer, by the taxpayer's spouse or former spouse or by a child of the taxpayer, or
>
> (b) property in respect of which the taxpayer has made an election for the year in accordance with subsection 45(2) or (3),
>
> except that, subject to section 54.1, in no case shall any such housing unit, interest or share, as the case may be, be considered to be a taxpayer's principal residence for a year
>
> (c) unless it has been designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for that year and no other such housing unit, leasehold interest or share has been so designated for that year by the taxpayer, by a person who was throughout the year the taxpayer's spouse (other than a spouse who was throughout the year living apart from, and was separated pursuant to a judicial separation or written separation agreement from, the taxpayer), by a person who was the taxpayer's child (other than a child who was during the year a married person or 18 years of age or over) or, where the taxpayer was not during the year a married person or a person 18 years of age or over, by a person who was the taxpayer's
>
> (i) mother or father, or
>
> (ii) brother or sister and who was not during the year a married person or a person 18 years of age or over, or
>
> (d) by virtue of paragraph (b), if by virtue of that paragraph the property would, but for this paragraph, have been the taxpayer's principal residence for 4 or more previous taxation years,
>
> and
>
> (e) for the purposes of this definition the principal residence of a taxpayer for a taxation year shall be deemed to include, except where the property consists of a share of the capital stock of a co-operative housing corporation, the land subjacent to the housing unit and such portion of any immediately contiguous land as may reasonably be regarded as contributing to the taxpayer's use and enjoyment of the housing unit as a residence, except that where the total area of the subjacent land and of that portion exceeds ½ hectare, the excess shall be deemed not to have contributed to the individual's use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary to that use and enjoyment, and
>
> (f) for the purposes of paragraph (c), a property designated by a trust referred to in subsection 70(6) or 73(1) shall be deemed to be property designated by the spouse who is a beneficiary of the trust and property designated by the spouse who is a beneficiary of any such trust shall be deemed to be a property designated by the trust;

Pre-RSC History: *The definition "principal residence" was para. 54(g). See Table of Concordance.*

Subpara. 54(g)(i) substituted by 1988, c. 55, subsec. 31(2), applicable in respect of 1972 *et seq.* for dispositions occurring after 1987. Subpara. 54(g)(i) formerly read:

> (i) ordinarily inhabited in the year by the taxpayer, his spouse or former spouse, or a child of the taxpayer who, during the year, was dependent upon him for support and was a person described in subparagraph 109(1)(d)(i), (ii) or (iii), or

Subpara. 54(g)(i) amended by 1985, c. 45, subsec. 23(1), to substitute "was dependent" for "was wholly dependent", applicable to 1985 *et seq.*

Subpara. 54(g)(ii) amended by 1985, c. 45, subsec. 23(1), to add reference to subsec. 45(3), applicable to 1982 *et seq.*

All that portion of para. 54(g) following subpara. (iv) substituted by 1985, c. 45, subsec. 23(2), applicable with respect to dispositions occurring after May 9, 1985. That portion formerly read:

> and for the purposes of this paragraph the "principal residence" of a taxpayer for a taxation year shall be deemed to include, except where the property consists of a share of the capital stock of a co-operative housing corporation, the land subjacent to the housing unit and such portion of any immediately contiguous land as may reasonably be regarded as contributing to the taxpayer's use and enjoyment of the housing unit as a residence, except that where the total area of the subjacent land and of that portion exceeds ½ hectare, the excess shall be deemed not to have contributed to the individual's use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary to such use and enjoyment;

Subpara. 54(g)(iii) substituted, applicable with respect to designations made in respect of 1982 *et seq.*, and all that portion of para. 54(g) following subpara. (iv) amended to substitute "½ hectare" for "one acre", applicable with respect to dispositions occurring after 1981, by 1980-81-82-83, c. 140, subsecs. 23(3), (4). Subpara. 54(g)(iii) formerly read:

> (iii) unless it has been designated by him in prescribed manner to be his principal residence for that year and no other property has been so designated by him for that year, or

Subpara. 54(g)(i) substituted by 1976-77, c. 4, subsec. 14(1), applicable to 1972 *et seq.*

All that portion of para. 54(g) following subpara. (ii) and preceding subpara. (iii) substituted by 1974-75-76, c. 26, subsec. 25(2), applicable to 1972 *et seq.*

All that portion of para. 54(g) preceding subpara. (iii) substituted by 1973-74, c. 14, s. 14, applicable to 1972 *et seq.*

Selected Cases [s. 54"principal residence"]: *Carlile v. Canada*, [1995] 2 C.T.C. 273 (FCA) (Uncertainty of being able to re-zone property was sufficient to meet test for principal residence exemption on whole property); *Augart (E.) v. MNR*, [1993] 2 C.T.C. 34 (FCA) (Approximately 9 acres contributed to use and enjoyment where subdivision precluded by law); *Fourt v. MNR*, [1991] 2 C.T.C. 311 (FCTD) (Sale of lot adjacent to principal residence exempt; reasonably regarded as contributing to use and enjoyment of residence); *The Queen v. Joyner*, [1988] 2 C.T.C. 280 (FCTD) (Whether land in excess of one acre is part of taxpayer's principal residence to be determined upon disposition of property); *The Queen v. Yates*, [1986] 2 C.T.C. 46 (FCA) (Proceeds exempt from taxation where additional acres necessary for use and enjoyment of taxpayer's principal residence); *Haber v. The Queen*, [1982] C.T.C. 405 (FCTD) (Taxpayer not ordinarily resident in residential property when home sold one year after acquisition); *The Queen v. Mitosinka*, [1978] C.T.C. 664 (FCTD) (House held to be principal residence only for part occupied by taxpayer).

Regulations: 2301 (prescribed manner of designation).

I.T. Application Rules: 26.1(1) (change of use of property before 1972).

Interpretation Bulletins: IT-120R5: Principal residence; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-268R3: *Inter vivos* transfer of farm property to child; IT-366R: Principal residence: transfer to spouse or spouse trust; IT-437R: Ownership of property (principal residence).

I.T. Technical News: No. 7 (principal residence and the capital gains election).

Forms: T1079: Designation of a property as a principal residence by a personal trust; T1079-WS: Principal residence worksheet; T2091: Designation of a property as a principal residence by an individual; T2091(IND) WS: Principal residence worksheet.

"proceeds of disposition" of property includes,

(a) the sale price of property that has been sold,

(b) compensation for property unlawfully taken,

(c) compensation for property destroyed, and any amount payable under a policy of insurance in respect of loss or destruction of property,

(d) compensation for property taken under statutory authority or the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

(e) compensation for property injuriously affected, whether lawfully or unlawfully or under statutory authority or otherwise,

(f) compensation for property damaged and any amount payable under a policy of insurance in respect of damage to property, except to the extent that such compensation or amount, as the case may be, has within a reasonable time after the damage been expended on repairing the damage,

(g) an amount by which the liability of a taxpayer to a mortgagee is reduced as a result of the sale of mortgaged property under a provision of the mortgage, plus any amount received by the taxpayer out of the proceeds of the sale,

(h) any amount included in computing a taxpayer's proceeds of disposition of the property because of section 79, and

(i) in the case of a share, an amount deemed by subparagraph 88(2)(b)(ii) not to be a dividend on that share,

but notwithstanding any other provision of this Part, does not include

(j) any amount that would otherwise be proceeds of disposition of a share to the extent that the amount is deemed by subsection 84(2) or (3) to be a dividend received and is not deemed by paragraph 55(2)(a) or subparagraph 88(2)(b)(ii) not to be a dividend, or

(k) any amount that would otherwise be proceeds of disposition of property of a taxpayer to the extent that the amount is deemed by subsection 84.1(1), 212.1(1) or 212.2(2) to be a dividend paid to the taxpayer;

Related Provisions: 13(21)"proceeds of disposition" — Parallel definition for depreciable property; 13(21.1) — Disposition of a building; 43.1 — Life estates in real property; 44(6) — Deemed proceeds of disposition on replacement of land and building; 48.1(1) — Optional gain when small business corporation becomes public; 49.1 — Satisfaction of obligation is not a disposition of property; 50(1) — Debts established to be bad debts and shares of bankrupt corporation; 51.1 — Deemed proceeds on conversion of convertible bond; 55(2) — Deemed proceeds or capital gain; 59(5), 66.4(5) — Definition applies to 59 and 66.4; 69(1)(b) — Inadequate considerations — taxpayer deemed to have received proceeds of disposition; 69(4) — Shareholder appropriation — deemed proceeds of disposition to corporation; 69(11) — Deemed proceeds of disposition; 70(5) — Deemed disposition on death; 79(3) — Deemed proceeds to debtor on surrender of property to creditor; 79.1(5) — Deemed proceeds where property sold and repossessed in same taxation year; 85(1)(a) — Transfer of property to corporation by shareholders; 85.1(1)(a)(i) — Share for share exchange; 86(1)(c) — Exchange of shares by a shareholder in course of reorganization of capital; 87(4)(a), (c) — Shares of predecessor corporation; 88(1)(a), (b) — Winding-up; 128.1(4)(b) — Deemed disposition of property on ceasing to be resident in Canada; 128.1(8) — Retroactive adjustment to proceeds for deemed disposition on emigration where taxpayer returns to Canada; 132.2(1)(c), (f), (i), (j) — Deemed proceeds of disposition on mutual fund reorganization; 248(1) — Definition of "disposition".

History: Para. (k) of the definition "proceeds of disposition" in s. 54 amended by 2000, c. 19, s. 5, applicable to taxation years that end after December 15, 1998. Para. (k) formerly read:

(k) any amount that would otherwise be proceeds of disposition of property of a taxpayer to the extent that the amount is deemed by subsection 84.1(1) or 212.1(1) to be a dividend paid to the taxpayer;

Para. (h) of the definition "proceeds of disposition" in s. 54 amended by 1995, c. 21, subsec. 18(1), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(h) any amount included in computing a taxpayer's proceeds of disposition of the property by virtue of paragraph 79(c), and

Pre-RSC History: *The definition "proceeds of disposition" was para. 54(h). See Table of Concordance.*

Subpara. 54(h)(ix.1) repealed and subpara. 54(h)(xi) substituted to add reference to subsec. 84.1(1) by 1986, c. 6, subsecs. 27(2), (3). The repeal of subpara. 54(h)(ix.1) is applicable to 1986 *et seq.* and the amendment of subpara. 54(h)(xi) is applicable with respect to dispositions made after May 22, 1985. Subpara. 54(h)(ix.1) formerly read:

(ix.1) in the case of a share that is an indexed security, any amount received in respect of that share on a reduction of the paid-up capital of a corporation,

Subpara. 54(h)(ix.1) added by 1984, c. 1, subsec. 21(1), applicable after September 30, 1983.

Subpara. 54(h)(x) substituted by 1980-81-82-83, c. 140, subsec. 23(5), applicable with respect to dividends paid after November 12, 1981, to add "received".

Subpara. 54(h)(x) substituted by 1980-81-82-83, c. 48, s. 23, applicable after December 11, 1979, to add "paragraph 55(2)(a) or".

All that portion of para. 54(h) following subpara. (viii) substituted by 1977-78, c. 1, s. 22, applicable to transactions occurring after December 31, 1978 to which any of subpara. 88(2)(b)(ii) and subsecs. 84(2) and (3) apply but in applying paragraph 54(h) to dispositions after March 31, 1977 and before 1979, subparagraph (x) thereof shall be read as follows:

(x) any amount that would otherwise be proceeds of disposition of property of a taxpayer to the extent that such amount is deemed by subsection 212.1(1) to be a dividend paid to the taxpayer; and

That portion of para. (h) following subpara. (viii) formerly read:

but notwithstanding any other provision of this Part, does not include

(ix) any amount that would otherwise be proceeds of disposition of a share to the extent that such amount is deemed by subsection 84(2) or (3) to be a dividend, or

(x) any amount that would otherwise be proceeds of disposition of a debt owing to a taxpayer to the extent that such amount

(A) is deemed by subsection 84.1(1) to be a dividend received by the taxpayer, and

(B) is a taxable dividend; and

All that portion of para. 54(h) following subpara. (viii) substituted by 1974-75-76, c. 26, subsec. 25(3), applicable in respect of dispositions of property occurring after November 18, 1974. That portion formerly read:

but notwithstanding any other provision of this Part does not include any amount that would otherwise be proceeds of disposition of a share to the extent that such amount is deemed by subsection 84(2) or (3) to be a dividend; and

Selected Cases [s. 54"proceeds of disposition"]: *Corbett v. Canada*, [1997] 1 C.T.C. 2 (FCA) (No conflict with section 79); *Hogan v. MNR*, [1995] 2 C.T.C. 108 (FCTD) (Proceeds of disposition when property sold at mortgage sale was full amount of mortgage, not lower amount upon subsequent resale); *Sénécal (J.G.) v. MNR*, [1993] 2 C.T.C. 2218 (TCC) (Proceeds of disposition of land equal to cash and face value of promissory note received, despite evidence that note's value nil); *Shaw (J.M.) v. MNR*, [1993] 1 C.T.C. 221 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 399 (note) (Amount paid as "interest" on award of additional compensation for expropriation was interest income, not proceeds of disposition); *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Portion of compensation pertaining to expropriated property constitutes proceeds of disposition for calculation of capital gain); *The Queen v. Fradet et al.*, [1986] 2 C.T.C. 321 (FCA) (Portion of sales price returned to purchaser not included in proceeds of disposition); *Fisher, E.R., Ltd. v. The Queen*, [1986] 2 C.T.C. 114 (FCTD) (Interest on expropriation compensation included in proceeds of disposition); *Salt et al. v. The Queen*, [1984] C.T.C. 414 (FCTD) (Amounts received for extended options included in proceeds of disposition).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-149R4: Winding-up dividend; IT-170R: Sale of property — when included in income computation; IT-185R: Losses from theft, defalcation or embezzlement; IT-200: Surface rentals and farming operations; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-259R3: Exchanges of property; IT-271R: Expropriations; IT-436R: Reserves — where promissory notes are included in disposal proceeds; IT-444R: Corporations — involuntary dissolutions; IT-460: Dispositions — absence of consideration; IT-505: Mortgage foreclosures and conditional sales repossessions.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-35: Partitioning of assets to get specific ownership — "butterfly".

"specified property" of a taxpayer is capital property of the taxpayer that is

(a) a share,

(b) a capital interest in a trust,

(c) an interest in a partnership, or

(d) an option to acquire specified property of the taxpayer;

History: The definition "specified property" added to s. 54 by 1995, c. 21, subsec. 18(3), applicable to taxation years that end after February 21, 1994.

"superficial loss" of a taxpayer means the taxpayer's loss from the disposition of a particular property where

(a) during the period that begins 30 days before and ends 30 days after the disposition, the taxpayer or a person affiliated with the taxpayer acquires a property (in this definition referred to as the "substituted property") that is, or is identical to, the particular property, and

(b) at the end of that period, the taxpayer or a person affiliated with the taxpayer owns or had a right to acquire the substituted property,

except where the disposition was

(c) a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

(d) the expiry of an option,

(e) a disposition to which paragraph 40(2)(e.1) applies,

(f) a disposition by a corporation the control of which was acquired by a person or group of persons within 30 days after the disposition,

(g) a disposition by a person that, within 30 days after the disposition, became or ceased to be exempt from tax under this Part on its taxable income, or

(h) a disposition to which subsection 40(3.4) or 69(5) applies,

and, for the purpose of this definition, a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property.

Related Provisions: 13(21.2) — Superficial loss rule for depreciable property; 18(13)–(16) — Superficial loss in moneylending business or adventure in nature of trade; 40(2)(g)(i) — Superficial loss deemed to be nil; 40(3.3), (3.4) — Limitation on loss where property acquired by affiliated person; 53(1)(f) — Addition to ACB of substituted property; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 248(12) — Identical properties; 251.1 — Affiliated persons; 252(4) — Extended meaning of "spouse"; 256(5.1) — Controlled directly or indirectly — control in fact; 256(6)–(9) — Whether control acquired.

History: The definition "superficial loss" in s. 54 amended by 1998, c. 19, s. 95, applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The definition formerly read:

"superficial loss" of a taxpayer means the taxpayer's loss from the disposition of a property in any case where

(a) the same or identical property (in this definition referred to as "substituted property") was acquired, during the period beginning 30 days before the disposition and ending 30 days after the disposition, by the taxpayer, the taxpayer's spouse or a corporation controlled, directly or indirectly in any manner whatever, by the taxpayer, and

(b) at the end of the period referred to in paragraph (a) the taxpayer, the taxpayer's spouse or the corporation, as the case may be, owned, in any manner whatever, the substituted property,

except that a loss otherwise described in this definition shall be deemed not to be a superficial loss if the disposition giving rise to the loss

(c) was a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

(d) was the expiration of an option, or

(e) was a disposition of property by the taxpayer to which paragraph 40(2)(e.1) or subsection 85(4) applies.

Para. (c) of the definition "superficial loss" in s. 54 amended by 1995, c. 21, s. 77, applicable to dispositions that occur after February 22, 1994, except that in applying para. (c) before July 1994, it shall be read without reference to "paragraph 132.2(1)(f)". The para. formerly read:

(c) was a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1 or subsection 138(11.3), 144(4.1) or (4.2) or 149(10) to have [been] made,

Para. (e) of the definition "superficial loss" in s. 54 amended by 1995, c. 21, subsec. 18(2), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(e) was a disposition of property by the taxpayer to which subsection 85(4) applies.

Para. (c) of the definition "superficial loss" in s. 54 substituted by 1994, c. 21, s. 23, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the amended para. applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph). Para. (c) formerly read:

(c) was a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48, 50 or 70 or subsection 104(4), 138(11.3), 144(4.1) or (4.2) or 149(10) to have been made,

Para. (a) of the definition "superficial loss" in s. 54 amended by 1994, c. 7, Sch. II (1991, c. 49), s. 31, to substitute "controlled, directly" for "controlled, whether directly", applicable to taxation years beginning after 1988.

Pre-RSC History: *The definition "superficial loss" was para. 54(i).*

Subpara. 54(i)(iii) substituted by 1987, c. 46, s. 14, applicable with respect to taxation years commencing after December 17, 1987. Subpara. 54(i)(iii) formerly read:

(iii) was a disposition deemed by section 48, 50 or 70 or subsection 45(1), 104(4), 138(11.3), 144(4.1) or (4.2) or 149(10) to have been made,

Subpara. 54(i)(vi) repealed by 1986, c. 6, subsec. 27(4), applicable to 1986 *et seq*. Subpara. 54(i)(vi) formerly read:

(vi) was a disposition deemed by paragraph 47.1(2)(c) to have been made on the transfer of the property to an indexed security investment plan and the property was not within 30 days after the disposition withdrawn from the plan or disposed of under the plan to a person with whom the taxpayer did not deal at arm's length.

Subpara. 54(i)(vi) added by 1984, c. 1, subsec. 21(2), applicable after September 30, 1983.

Subpara. 54(i)(iii) substituted by 1980-81-82-83, c. 140, subsec. 23(6), applicable after November 12, 1981. Subpara. 54(i)(iii) formerly read:

(iii) was a disposition deemed by section 48, 50 or 70 or subsection 45(1), 104(4) or 144(4.1) or (4.2) to have been made,

Subparas. 54(i)(i), (ii) substituted by 1976-77, c. 4, subsec. 14(2), applicable to transfers of property after May 25, 1976. Subparas. 54(i)(i), (ii) formerly read:

(i) the same or identical property (in this paragraph referred to as "substituted property") was acquired, during the period beginning 30 days before the disposition and ending 30 days after the disposition, by the taxpayer, his spouse, any trust governed by a plan referred to in any of clauses 54(c)(v) (A) to (D) under which he is a beneficiary or immediately after the disposition becomes a beneficiary, any beneficiary under such a plan, or a corporation controlled, whether directly or indirectly in any manner whatever, by him, and

(ii) at the end of the period referred to in subparagraph (i) the taxpayer, his spouse, the trust governed by a plan, the beneficiary or the corporation, as the case may be, owned, in any manner whatever, the substituted property,

Subparas. 54(i)(i)–(iii) substituted by 1974-75-76, c. 26, subsec. 25(4), applicable to 1972 *et seq.* except that, in its application to 1972 and 1973, subpara. 54(i)(iii) is to be read without reference to subsec. 144(4.2).

I.T. Application Rules: 26(6) (superficial loss where disposition from June 19 to December 31, 1971).

Interpretation Bulletins: IT-159R3: Capital debts established to be bad debts; IT-325R2: Property transfers after separation, divorce and annulment; IT-387R2: Meaning of "identical properties".

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement (re para. (f))).

Definitions [s. 54]: "acquired" — 256(7)–(9); "affiliated" — 251.1; "amount" — 248(1); "beneficially interested" — 248(25); "brother" — 252(2); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "control" — 256(6)–(9); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 54; "dividend" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital property" — 54, 248(1); "employees profit sharing plan" — 144(1), 248(1); "father" — 252(2); "identical" — 248(12); "individual" — 248(1); "married" — 252(4)(c); "mother" — 252(2); "person", "personal trust" — 248(1); "personal-use property" — 54, 248(1); "prescribed", "property" — 248(1); "registered charity" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "separation agreement" — 248(1); "share" — 248(1); "sister" — 252(2); "specified beneficiary" — 54"principal residence"(c.1)(ii); "spouse" — 252(4)(a); "substituted property" — 54"superficial loss"(a); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

54.1 (1) Exception to principal residence rules — A taxation year in which a taxpayer does not ordinarily inhabit the taxpayer's property as a consequence of the relocation of the taxpayer's or the taxpayer's spouse's place of employment while the taxpayer or the spouse, as the case may be, is employed by an employer who is not a person to whom the taxpayer or the spouse is related shall be deemed not to be a previous taxation year referred to in paragraph (d) of the definition "principal residence" in section 54 if

(a) the property subsequently becomes ordinarily inhabited by the taxpayer during the term of the taxpayer's or the taxpayer's spouse's employment by that employer or before the end of the taxation year immediately following the taxation year in which the taxpayer's or the spouse's employment by that employer terminates; or

(b) the taxpayer dies during the term of the taxpayer's or the spouse's employment by that employer.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's"with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4) — Extended meaning of "spouse".

(2) Definition of "property" — In this section, "property", in relation to a taxpayer, means a housing unit

(a) owned by the taxpayer,

(b) in respect of which the taxpayer has a leasehold interest, or

(c) in respect of which the taxpayer owned a share of the capital stock of a co-operative housing corporation if the share was acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation

whether jointly with another person or otherwise in the year and that at all times was at least 40 kilometres farther from the taxpayer's or the taxpayer's spouse's new place of employment than was the taxpayer's subsequent place or places of residence.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 40(2)(b), 40(4)–(6) — Principal residence rules.

Pre-RSC History [s. 54.1]: That portion of subsec. 54.1(2) following para. (c) substituted by 1980-81-82-83, c. 140, s. 24, applicable with respect to relocations occurring after 1981, to substitute "40 kilometres" for "25 miles".

Subsec. 54.1(1), and that portion of subsec. 54.1(2) following para. (c), substituted by 1976-77, c. 4, s. 15, applicable to 1972 *et seq.*

S. 54.1 added by 1974-75-76, c. 26, s. 26, applicable to 1972 *et seq.*

Definitions [s. 54.1]: "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employed", "employer", "employment", "person" — 248(1); "property" — 54.1(2); "share" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 54.1]: IT-120R5: Principal residence.

54.2 Certain shares deemed to be capital property — Where any person has disposed of property that consisted of all or substantially all of the assets used in an active business carried on by that person to a corporation for consideration that included shares of the corporation, the shares shall be deemed to be capital property of the person.

Related Provisions: 39(4) — Election re disposition of Canadian securities; 85(1) — Rollovers of property to corporation; 110.6(14)(f)(ii) — Shares qualify for capital gains exemption without waiting for 2-year holding period; 248(1) — "Business" does not include adventure or concern in the nature of trade.

Pre-RSC History: S. 54.2 added by 1988, c. 55, s. 32, applicable with respect to dispositions occurring after 1987.

Definitions [s. 54.2]: "active business", "business" — 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "person", "property", "share" — 248(1).

Information Circulars: 88-2 Supplement, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

55. (1) Definitions — In this section,

"distribution" means a direct or indirect transfer of property of a corporation (referred to in this section as the "distributing corporation") to one or more corporations (each of which is referred to in this section as a "transferee corporation") where, in respect of each type of property owned by the distributing corporation immediately before the transfer, each transferee corporation receives property of that type the fair market value of which is equal to or approximates the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the fair market value, immediately before the transfer, of all property of that type owned at that time by the distributing corporation,

B is the fair market value, immediately before the transfer, of all the shares of the capital stock of the distributing corporation owned at that time by the transferee corporation, and

C is the fair market value, immediately before the transfer, of all the issued shares of the capital stock of the distributing corporation;

Related Provisions: 55(3.02) — Where distributing corporation is a specified corporation; 88(1)(c)(iv) — Winding-up.

"permitted acquisition", in relation to a distribution by a distributing corporation, means an acquisition of property by a person or partnership on, or as part of,

(a) a distribution, or

(b) a permitted exchange or permitted redemption in relation to a distribution by another distributing corporation;

"permitted exchange", in relation to a distribution by a distributing corporation, means

(a) an exchange of shares for shares of the capital stock of the distributing corporation to which subsection 51(1) or 86(1) applies or would, if the shares were capital property to the holder thereof, apply, other than an exchange that resulted in an acquisition of control of the distributing corporation by any person or group of persons, and

(b) an exchange of shares of the capital stock of the distributing corporation by one or more shareholders of the distributing corporation (each of whom is referred to in this paragraph as a "participant") for shares of the capital stock of another corporation (referred to in this paragraph as the "acquiror") in contemplation of the distribution where

(i) no share of the capital stock of the acquiror outstanding immediately after the exchange (other than directors' qualifying shares) is owned at that time by any person or partnership other than a participant,

and either

(ii) the acquiror owns, immediately before the distribution, all the shares each of which is a share of the capital stock of the distributing corporation that was owned immediately before the exchange by a participant, or

(iii) the fair market value, immediately before the distribution, of each participant's shares of the capital stock of the acquiror is equal to or approximates the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) + D$$

where

A is the fair market value, immediately before the distribution, of all the shares of the capital stock of the acquiror then outstanding (other than shares issued to participants in consideration for shares of a specified class all the shares of which were acquired by the acquiror on the exchange),

B is the fair market value, immediately before the exchange, of all the shares of the capital stock of the distributing corporation (other than shares of a specified class none or all of the shares of which were acquired by the acquiror on the exchange) owned at that time by the participant,

C is the fair market value, immediately before the exchange, of all the shares (other than shares of a specified class none or all of the shares of which were acquired by the acquiror on the exchange and shares to be redeemed, acquired or cancelled by the distributing corporation pursuant to the exercise of a statutory right of dissent by the holder of the share) of the capital stock of the distributing corporation outstanding immediately before the exchange, and

D is the fair market value, immediately before the distribution, of all the shares issued to the participant by the acquiror in consideration for shares of a specified class all of the shares of which were acquired by the acquiror on the exchange;

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

"permitted redemption", in relation to a distribution by a distributing corporation, means

(a) a redemption or purchase for cancellation by the distributing corporation, as part of the reorganization in which the distribution was made, of all the shares of its capital stock that were owned, immediately before the distribution, by a transferee corporation in relation to the distributing corporation,

(b) a redemption or purchase for cancellation by a transferee corporation in relation to the distributing corporation, or by a corporation that, immediately after the redemption or purchase, was a subsidiary wholly-owned corporation of the transferee corporation, as part of the reorganization in which the distribution was made, of all of the shares of the capital stock of the transferee corporation or the subsidiary wholly-owned corporation that were acquired by the distributing corporation in consideration for the transfer of property received by the transferee corporation on the distribution, and

(c) a redemption or purchase for cancellation by the distributing corporation, in contemplation of the distribution, of all the shares of its capital stock each of which is

(i) a share of a specified class the cost of which, at the time of its issuance, to its original owner was equal to the fair market value at that time of the consideration for which it was issued, or

(ii) a share that was issued, in contemplation of the distribution, by the distributing corporation in exchange for a share described in subparagraph (i);

History: Paras. (a) and (b) of the definition "permitted redemption" in subsec. 55(1) amended by 1998, c. 19, subsec. 96(1), applicable to dividends received after February 21, 1994. The paras. formerly read:

(a) a redemption or purchase for cancellation by the distributing corporation, as part of the reorganization in which the distribution was made, of all the shares of its capital stock owned by a transferee corporation in relation to the distributing corporation,

(b) a redemption or purchase for cancellation by a transferee corporation in relation to the distributing corporation, as part of the reorganization in which the distribution was made, of all of the shares of its capital stock owned by the distributing corporation, and

"safe-income determination time" for a transaction or event or a series of transactions or events means the time that is the earlier of

(a) the time that is immediately after the earliest disposition or increase in interest described in any of subparagraphs (3)(a)(i) to (v) that resulted from the transaction, event or series, and

(b) the time that is immediately before the earliest time that a dividend is paid as part of the transaction, event or series;

History: The definition "safe-income determination time" added to subsec. 55(1) by 1998, c. 19, subsec. 96(2), applicable to dividends received after June 20, 1996.

"specified class" means a class of shares of the capital stock of a distributing corporation where

(a) the paid-up capital in respect of the class immediately before the beginning of the series of transactions or events that includes a distribution by the distributing corporation was not less than the fair market value of the consideration for which the shares of that class then outstanding were issued,

(b) under neither the terms and conditions of the shares nor any agreement in respect of the shares are the shares convertible into or exchangeable for shares other than shares of a specified class or shares of the capital stock of a transferee corporation in relation to the distributing corporation, and

(c) under neither the terms and conditions of the shares nor any agreement in respect of the shares is any holder of the shares entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length (excluding any premium for early redemption) an amount greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends thereon.

Proposed Addition — 55(1)"specified corporation"

"specified corporation" in relation to a distribution means a distributing corporation

(a) that is a public corporation or a specified wholly-owned corporation of a public corporation,

(b) shares of the capital stock of which are exchanged for shares of the capital stock of another corporation (referred to in this definition and subsection (3.02) as an "acquiror") in an exchange to which the definition "permitted exchange" in this subsection would apply if that definition were read without reference to paragraph (a) and subparagraph (b)(ii) of that definition,

(c) that does not make a distribution, to a corporation that is not an acquiror, after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b), and

(d) no acquiror in relation to which makes a distribution after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b),

and, for the purposes of paragraphs (c) and (d),

(e) a corporation that is formed by an amalgamation of two or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations, and

(f) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 23(1), will add the definition "specified corporation" to subsec. 55(1), applicable to transfers that occur after 1998.

Technical Notes: Section 55 of the Act deals with certain tax avoidance transactions.

Subsection 55(2) of the Act is an anti-avoidance provision directed against certain arrangements designed to use the inter-corporate dividend exemption to unduly reduce a capital gain on the sale of shares. It treats the dividend in these situations either as proceeds from the sale of the shares or as a capital gain, and not as a dividend received by the corporation.

Subsection 55(3) of the Act sets out circumstances in which subsection 55(2) of the Act does not apply to dividends.

Paragraph 55(3)(b) provides an exemption from the application of subsection 55(2) for dividends received in the course of a reorganization (commonly referred to as divisive or butterfly reorganizations) in which a distribution is made by a distributing corporation to one or more transferee corporations. Because of the meaning of "distribution" in subsection 55(1), each transferee corporation must receive its pro rata share of each type of property owned by the distributing corporation immediately before the distribution.

As a result of the new definitions "specified corporation" and "specified wholly-owned corporation" in subsection 55(1) and new subsection 55(3.02) of the Act, the requirement that each transferee corporation must receive its pro rata share of each type of property owned by the distributing corporation on a butterfly reorganization will no longer apply in the case of certain public corporation butterflies. In particular, the type of property requirement will no longer apply for butterfly reorganizations of specified corporations that occur after 1998.

In order for a distributing corporation to qualify as a "specified corporation":

1) it must be a public corporation or specified wholly-owned corporation of a public corporation (specified wholly-owned corporation is a new expression and it is defined in subsection 55(1) of the Act);
2) shares of the distributing corporation must be exchanged for shares of another corporation (an "acquiror") in an exchange to which the definition "permitted exchange" in subsection 55(1) of the Act would apply if the definition "permitted exchange" were read without reference to paragraph (a) and subparagraph (b)(ii) thereof;
3) the distributing corporation must not make a distribution to a corporation other than an acquiror after 1998 and before the day that is three years after the day on which the distributing corporation shares were exchanged in a transaction referred to in 2) above; and
4) no acquiror in relation to the distributing corporation may make a distribution after 1998 and before the day that is three years after the day on which the distributing corporation shares were exchanged in a transaction referred to in 2) above.

Reading the definition of "permitted exchange" without reference to paragraph (a) and subparagraph (b)(ii) ensures that the exchange of shares of the capital stock of the distributing corporation for shares of the acquiror is effected in the course of what is commonly referred to a "spin-off" reorganization. In a spin-off reorganisation, property owned by the distributing corporation is transferred to a new corporation having the same shareholders as the distributing corporation.

The new definition of specified corporation also sets out the consequences of an amalgamation of corporations or a winding-up of a subsidiary corporation to which subsection 88(1) of the Act applies. Paragraph (e) of the definition provides that a corporation formed on an amalgamation is treated as a continuation of each of its predecessors. Paragraph (f) of the definition provides that, in the case of a winding-up of a subsidiary corporation into its parent to which subsection 88(1) of the Act applies, the parent corporation is treated as a continuation of the subsidiary.

The new definitions of specified corporation and specified wholly-owned corporation apply to transfers of property that occur after 1998.

Proposed Addition — 55(1)"specified wholly-owned corporation"

"specified wholly-owned corporation" of a public corporation means a corporation all of the outstanding shares of the capital stock of which (other than directors' qualifying shares and shares of a specified class) are held by

(a) the public corporation,

(b) a specified wholly-owned corporation of the public corporation, or

(c) any combination of corporations described in paragraph (a) or (b).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 23(1), will add the definition "specified wholly-owned corporation" to subsec. 55(1), applicable to transfers that occur after 1998.

Technical Notes: The new definition of specified wholly-owned corporation of a public corporation is relevant for the purpose of the new definition "specified corporation". A specified wholly-owned corporation of a public corporation means a corporation all of the outstanding shares of the capital stock of which (other than directors' qualifying shares and shares of a specified class) are held by a public corporation, a specified wholly-owned corporation or any combination of the two. The meaning of a specified class is set out in subsection 55(1) of the Act.

History: New subsec. 55(1) added by 1995, c. 3, subsec. 16(1), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994.

Pre-RSC History: Former subsec. 55(1) repealed by 1988, c. 55, subsec. 33(1), applicable with respect to transactions entered into on or after September 13, 1988, other than

(a) transactions that are part of a series of transactions, determined without reference to subsection 248(10), eommencing before September 13, 1988 and completed before 1989; or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

Subsec. 55(1) formerly read:

55. (1) Avoidance — For the purposes of this subdivision, where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatever is that a taxpayer has disposed of property under circumstances such that he may reasonably be considered to have artificially or unduly

(a) reduced the amount of his gain from the disposition,

(b) created a loss from the disposition, or

(c) increased the amount of his loss from the disposition,

the taxpayer's gain or loss, as the case may be, from the disposition of the property shall be computed as if such reduction, creation or increase, as the case may be, had not occurred.

Selected Cases [subsec. 55(1)]: *Nova Corp. of Alberta v. R.*, [1997] 3 C.T.C. 291 (FCA) (Taxpayer must have done something to increase the loss for provision to apply); *Nova Corporation of Alberta v. Canada*, [1996] 1 C.T.C. 2164 (TCC) (Provision not applicable where taxpayer did nothing to increase an existing loss in shares acquired in arm's length transaction).

(2) **Deemed proceeds or capital gain** — Where a corporation resident in Canada has received a taxable dividend in respect of which it is entitled to a deduction under subsection 112(1) or (2) or 138(6) as part of a transaction or event or a series of transactions or events, one of the purposes of which (or, in the case of a dividend under subsection 84(3), one of the results of which) was to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend and that could reasonably be considered to be attributable to anything other than income earned or realized by any corporation after 1971 and before the safe-income determination time for the transaction, event or series, notwithstanding any other section of this Act, the amount of the dividend (other than the portion of it, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend to a corporation where the payment is part of the series)

(a) shall be deemed not to be a dividend received by the corporation;

(b) where a corporation has disposed of the share, shall be deemed to be proceeds of disposition of the share except to the extent that it is otherwise included in computing such proceeds; and

(c) where a corporation has not disposed of the share, shall be deemed to be a gain of the corporation for the year in which the dividend was received from the disposition of a capital property.

Proposed Amendment — 55(2)

Letter from Department of Finance, February 19, 1999:

Dear [xxx]

This is in reply to your letter of December 1, 1998 to Len Farber regarding an anomaly that results from the interaction of section 55 and 93 of the *Income Tax Act* (the "Act"). You ask that a technical amendment be made to the Act to remove this anomaly.

Based on our understanding of the facts set out in your letter, Parentco/Canco undertakes a series of transactions to utilize losses within its related group. As part of this series of transactions, Forco sells its shares of Forco2 to an arm's length third party for proceeds of disposition equal to the fair market value of the shares. On the disposition, section 93 of the Act applies to treat proceeds realized by Forco as a dividend with the result that, for the purposes of the Act, Forco is considered not to have received fair market value proceeds. As part of the series, Canco transfers on a tax-deferred basis under subsection 85(1) of the Act its shares of Forco to Sisterco in exchange for preferred shares of Sisterco. Sisterco redeems its preferred shares held by Canco and Canco receives a dividend (the "Sisterco Dividend"). The Sisterco Dividend is subject to subsection 55(2) of the Act only because section 93 applies to treat Forco's proceeds of disposition to be less than the fair market value of the Forco2 shares.

We agree that, in the above circumstances, the Sisterco Dividend should be exempt from the application of subsection 55(2) because of paragraph 55(3)(a) of the Act. Section 93 should not, in and by itself, cause an intercorporate dividend received by a corporation in the course of certain related-corporate transactions to be subject to subsection 55(2). Inter-corporate dividends that would, but for the application of section 93 which reduces the proceeds of disposition of a property to less than the fair market

value of the property, have been exempt from the application of subsection 55(2) because of paragraph 55(3)(a) should remain exempt from the application of subsection 55(2).

We are prepared therefore to recommend to the Minister of Finance that the Act be amended to ensure the appropriate results in the circumstances described above. We will recommend that the amendment be effective for dividends received by a corporation after February 21, 1994. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

Related Provisions: 54"proceeds of disposition"(j) — Effect of 55(2) on proceeds of disposition; 55(3) — Exception; 55(4) — Arm's length dealings; 55(5) — Applicable rules; 110.6(7)(a) — Capital gains exemption disallowed on butterfly; 112(3) — Stop-loss rule denying capital loss after dividends received on share; 248(10) — Series of transactions; 256(7) — Where control deemed not to be acquired; 256(8) — Where rights acquired rather than shares in order to avoid 55(2).

History: The opening words of subsec. 55(2) amended by 1998, c. 19, subsec. 96(3), applicable to dividends received after June 20, 1996. The opening words formerly read:

> (2) Where a corporation resident in Canada has after April 21, 1980 received a taxable dividend in respect of which it is entitled to a deduction under subsection 112(1) or 138(6) as part of a transaction or event or a series of transactions or events (other than as part of a series of transactions or events that commenced before April 22, 1980), one of the purposes of which (or, in the case of a dividend under subsection 84(3), one of the results of which) was to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend and that could reasonably be considered to be attributable to anything other than income earned or realized by any corporation after 1971 and before the transaction or event or the commencement of the series of transactions or events referred to in paragraph (3)(a), notwithstanding any other section of this Act, the amount of the dividend (other than the portion thereof, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend to a corporation where the payment is part of the series of transactions or events)

Pre-RSC History: See at end of s. 55.

Selected Cases [subsec. 55(2)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) ("Any corporation" includes foreign corporation that is not a foreign affiliate); *Brelco Drilling Ltd. v. R.*, [1999] 4 C.T.C. 2737 (TCC) (Losses in foreign jurisdiction do not reduce "safe income"); *Meager Creek Holdings Ltd. v. R.*, [1998] 4 C.T.C. 2090 (TCC) (Must be some connection between events for "series" of transactions to occur); *216663 Ontario Ltd. v. R.*, [1998] 3 C.T.C. 2425 (TCC) (Taxpayer acted to do something to its loss; provision applied); *Nassau Walnut Investments Inc. V. R.*, [1998] 1 C.T.C. 33 (FCA) (Provision available to taxpayers assessed under subsection 55(2)); *Deuce Holdings Ltd. v. R.*, [1998] 1 C.T.C. 2550 (TCC) ("Safe income" is after-tax computation; *H.T. Hoy Holdings Ltd. v. R.*, [1997] 2 C.T.C. 2874 (TCC) (Series of transactions structured to cause parties to be related resulted in application of provision); *Northern Hot Oil Services Ltd. v. R.*, [1997] 2 C.T.C. 2543 (TCC) (Teleological approach to construction of provision); *Placer Dome Inc. v. Canada*, [1997] 1 C.T.C. 72 (FCA) ("Purpose" is subjective in nature; "result" is objective); *Industries S.L.M. Inc. v. Canada*, [1996] 2 C.T.C. 2572 (TCC) (Dividend subject to application of provision as significantly reducing capital gain on sale of shares); *Champagne v. MNR*, [1996] 2 C.T.C. 2537 (TCC) (Safe income to be calculated on basis of income available for distribution, not already distributed); *Sabo Brothers Construction Ltd v. Canada*, [1996] 2 C.T.C. 2073 (TCC) (Business loss disallowed where no possibility of profit; tax benefits did not arise solely from operation of Act); *CPL Holdings v. Canada*, [1995] 1 C.T.C. 447 (FCTD) (Provision not applicable where transactions not motivated by same considerations and purpose was to improve legal protection).

Information Circulars: 88-2, paras. 7, 13: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 3 (loss utilization within a corporate group; butterfly reorganizations); No. 7 (subsection 55(2) — recent cases).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-47: Transfer of assets to Realtyco; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(3) Application — Subsection (2) does not apply to any dividend received by a corporation (in this subsection and subsection (3.01) referred to as the "dividend recipient")

(a) if, as part of a transaction or event or a series of transactions or events as a part of which the dividend was received, there was not at any particular time

(i) a disposition of property, other than

(A) money disposed of on the payment of a dividend or on a reduction of the paid-up capital of a share, and

(B) property disposed of for proceeds that are not less than its fair market value,

to a person or partnership that was an unrelated person immediately before the particular time,

(ii) a significant increase (other than as a consequence of a disposition of shares of the capital stock of a corporation for proceeds of disposition that are not less than their fair market value) in the total direct interest in any corporation of one or more persons or partnerships that were unrelated persons immediately before the particular time,

(iii) a disposition, to a person or partnership who was an unrelated person immediately before the particular time, of

(A) shares of the capital stock of the corporation that paid the dividend (referred to in this paragraph and subsection (3.01) as the "dividend payer"), or

(B) property more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend payer,

Proposed Amendment — 55(3)(a)(iii)

Letter from Department of Finance, December 23, 1998:

Dear [xxx],

This is in response to your letter of September 9, 1998 regarding the application of subparagraph 55(3)(a)(iii) of the *Income Tax Act* (the "Act") to the circumstances described in your letter.

We agree that, from a tax policy perspective, subsection 55(2) of the Act should not apply to Target in respect of the dividend it receives on the redemption of the SubCo shares as part of the transactions described in your letter and example 5 of the explanatory notes for subclause 96(4) of Bill C-28. The scope of subparagraph 55(3)(a)(iii) of the Act is too broad and should not capture the dividend paid on the Subco shares merely because the SubCo shares acquired by Target in exchange for the T2SubCo shares have a value greater than 10% of the value of the Target's shares.

We will recommend to the Minister of Finance that an amendment be made to subparagraph 55(3)(a)(iii) of the Act to ensure that it does not apply to the acquisition of the shares of Target by Buyerco in the circumstances described in your letter. We will recommend that an amendment be effective for dividends received by a corporation after February 21, 1994. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

(iv) after the time the dividend was received, a disposition, to a person or partnership that was an unrelated person immediately before the particular time, of

(A) shares of the capital stock of the dividend recipient, or

(B) property more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend recipient, and

(v) a significant increase in the total of all direct interests in the dividend payer of one or more persons or partnerships who were unrelated persons immediately before the particular time; or

Selected Cases [para. 55(3)(a)]: *Deuce Holdings Ltd. v. R.*, [1998 1 C.T.C. 2550 (TCC) ("Any dividend" means one dividend); *CPL Holdings v. Canada*, [1995] 1 C.T.C. 447 (FCTD) (Provision not applicable where transactions not motivated by same considerations and purpose was to improve legal protection).

(b) if the dividend was received

(i) in the course of a reorganization in which

(A) a distributing corporation made a distribution to one or more transferee corporations, and

(B) the distributing corporation was wound up or all of the shares of its capital stock owned by each transferee corporation immediately before the distribution were redeemed or cancelled otherwise than on an exchange to which subsection 51(1), 85(1) or 86(1) applies, and

(ii) on a permitted redemption in relation to the distribution or on the winding-up of the distributing corporation.

Related Provisions: 13(30) — Transfers of property; 55(3.01) — Rules of interpretation for 55(3)(a). 55(3.1), (3.2) — Exception for purchase butterfly; 88(1)(d) — Winding-up; 88(1)(c)(iii), 88(1)(c.2) — Cost base of property after windup; 110.6(7)(a) — Capital gains exemption disallowed on butterfly; 248(10) — Series of transactions; Reg. 1100(2.2), 1102(14)(a) — Depreciable property acquired on reorganization.

History: The portion of subsec. 55(3) before para. (b) amended by 1998, c. 19, subsec. 96(4), applicable to dividends received by a corporation after February 21, 1994, except that,

(a) in respect of such dividends received before June 20, 1996, or received under an arrangement substantially advanced, as evidenced in writing, before June 20, 1996, subparas. 55(3)(a)(ii) and (v) shall, if paragraph (b) does not apply, be read as follows:

(ii) a significant increase (other than as a consequence of a disposition of shares of the capital stock of a corporation for proceeds of disposition that are not less than their fair market value) in the interest in any corporation of one or more persons or partnerships that were unrelated persons immediately before the particular time,

. . . . .

(v) a significant increase in the interest in the dividend payer of one or more persons or partnerships that were unrelated persons immediately before the particular time; or

and

(b) in respect of such dividends, where they are received on shares issued before June 20, 1996, and the corporation so elects in writing before November 1, 1998 or in its return of income under Part I of the Act for the year in which it received the dividends, the Act shall be read without reference to subsec. 55(3.01), and para. 55(3)(a) shall be read as follows:

(a) unless the dividend was received as part of a transaction or event or a series of transactions or events that resulted in

(i) a disposition of any property to a person with whom the dividend recipient was dealing at arm's length, or

(ii) a significant increase in the interest in any corporation of any person with whom the dividend recipient was dealing at arm's length; or

The portion before para. (b) formerly read:

(3) Exception — Subsection (2) does not apply to any dividend received by a corporation,

(a) unless the dividend was received as part of a transaction or event or a series of transactions or events that resulted in

(i) a disposition of property to a person (other than the corporation) to whom that corporation was not related, or

(ii) a significant increase in the interest in any corporation of any person (other than the corporation that received the dividend) to whom the corporation that received the dividend was not related; or

Subsec. 96(15) of 1998, c. 19, applicable to dividends received after February 21, 1994, provides:

(15) Where a corporation elects under [paragraph (b) of the application to this amendment (above) — ed.] in respect of dividends,

(a) subsection 55(4) of the Act shall, in respect of those dividends, be read as follows:

(4) Where it can reasonably be considered that the principal purpose of one or more transactions or events was to cause 2 or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons are deemed not to be related or are deemed to deal with each other at arm's length, or the corporation is deemed not to control the other corporation, as the case may be.

and

(b) paragraph 55(5)(e) of the Act shall, in respect of those dividends, be read as follows:

(e) in determining whether 2 or more persons deal with each other at arm's length,

(i) a person is deemed to deal with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person, and

(ii) persons who are otherwise related to each other solely because of a right referred to in paragraph 251(5)(b) are deemed not to be related to each other; and

Subparas. 55(3)(a)(i) and (ii) amended by 1995, c. 3, subsec. 16(2), applicable to dividends received after February 21, 1994, other than dividends received as part of a transaction or event or a series of transactions or events that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Subparas. (i) and (ii) formerly read:

(i) a disposition of any property to a person with whom that corporation was dealing at arm's length, or

(ii) a significant increase in the interest in any corporation of any person with whom the corporation that received the dividend was dealing at arm's length; or

Para. 55(3)(b) amended by 1995, c. 3, subsec. 16(3), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Para. (b) formerly read:

(b) if the dividend was received in the course of a reorganization in which property of a particular corporation was transferred, directly or indirectly, to one or more corporations (each of which is in this paragraph referred to as a "transferee") and, in respect of each type of property so transferred, the fair market value of the property so received by each transferee was equal to or approximated the pro-

portion of the fair market value of all property of that type owned by the particular corporation immediately before the transfer that

(i) the total of the fair market value immediately before the transfer of all shares of the capital stock of the particular corporation owned by the transferee at that time

is of

(ii) the fair market value immediately before the transfer of all the issued shares of the capital stock of the particular corporation at that time,

except that this paragraph does not apply in respect of a transfer where, in contemplation of and before the transfer, property has become property of the particular corporation, a corporation controlled by the particular corporation or a predecessor of any such corporation otherwise than as a result of

(iii) an amalgamation of corporations each of which was related to the particular corporation,

(iv) the winding-up of a corporation that was related to the particular corporation,

(v) a transaction to which subsection (2) would, but for this subsection, apply,

(vi) a disposition of property by the particular corporation or a corporation controlled by it to another corporation controlled by the particular corporation,

(vii) a disposition of property by the particular corporation or a predecessor thereof for consideration that consists only of money or indebtedness that is not convertible into other property, or of any combination thereof, or

(viii) a prescribed transaction.

Pre-RSC History: See at end of s. 55.

Information Circulars: 88-2, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 3 (butterfly reorganizations); No. 16 (*Parthenon Investments* case).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-47: Transfer of assets to Realtyco; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(3.01) Interpretation for para. (3)(a) — For the purposes of paragraph (3)(a),

(a) an unrelated person means a person (other than the dividend recipient) to whom the dividend recipient is not related or a partnership any member of which (other than the dividend recipient) is not related to the dividend recipient;

(b) a corporation that is formed by an amalgamation of 2 or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations;

(c) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

(d) proceeds of disposition shall be determined without reference to "paragraph 55(2)(a) or" in paragraph (j) of the definition "proceeds of disposition" in section 54; and

(e) notwithstanding any other provision of this Act, where a non-resident person disposes of a property in a taxation year and the gain or loss from the disposition is not included in computing the person's taxable income earned in Canada for the year, the person is deemed to have disposed of the property for proceeds of disposition that are less than its fair market value unless, under the income tax laws of the country in which the person is resident, the gain or loss is computed as if the property were disposed of for proceeds of disposition that are not less than its fair market value and the gain or loss so computed is recognized for the purposes of those laws.

History: Subsec. 55(3.01) added by 1998, c. 19, subsec. 96(5), applicable to dividends received by a corporation after February 21, 1994, except that in respect of such dividends, where they are received on shares issued before June 20, 1996, and the corporation so elects in writing before November 1, 1998 or in its return of income under Part I of the Act for the year in which it received the dividends, the Act shall be read without reference to subsec. 55(3.01).

Subsec. 96(15) of 1998, c. 19, applicable to dividends received after February 21, 1994, provides:

(15) Where a corporation elects under [paragraph (b) of the application to this amendment (above) — ed.] in respect of dividends,

(a) subsection 55(4) of the Act shall, in respect of those dividends, be read as follows:

(4) Where it can reasonably be considered that the principal purpose of one or more transactions or events was to cause 2 or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons are deemed not to be related or are deemed to deal with each other at arm's length, or the corporation is deemed not to control the other corporation, as the case may be.

and

(b) paragraph 55(5)(e) of the Act shall, in respect of those dividends, be read as follows:

(e) in determining whether 2 or more persons deal with each other at arm's length,

(i) a person is deemed to deal with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person, and

(ii) persons who are otherwise related to each other solely because of a right referred to in paragraph 251(5)(b) are deemed not to be related to each other; and

Proposed Addition — 55(3.02)

(3.02) Distribution by a specified corporation — For the purposes of the definition "distribution" in subsection (1), where the transfer referred to in that definition is by a specified corporation to an acquiror described in the definition "specified corporation" in subsection (1), the references in the definition "distribution" to

(a) "each type of property" shall be read as "property"; and

(b) "property of that type" shall be read as "property".

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 23(2), will add subsec. 55(3.02), applicable to transfers that occur after 1998.

Technical Notes: New subsection 55(3.02) of the Act provides that where the distribution is by a "specified corporation" to an acquiror described in the definition "specified corporation" in subsection 55(1), the definition "distribution" in subsection 55(1) is to be read as if the reference in that definition to "each type of property" were read as "property" and to "property of that type" were read as "property". These changes ensure that divisive reorganizations, commonly known as "butterfly reorganizations", of specified corporations will be required to effect a proportionate distribution of the overall property of the corporation undergoing the divisive reorganization rather than of each type of property. subsection 55(3.02) applies to transfers of property that occur after 1998.

(3.1) Where para. (3)(b) not applicable — Notwithstanding subsection (3), a dividend to which subsection (2) would, but for paragraph (3)(b), apply is not excluded from the application of subsection (2) where

(a) in contemplation of and before a distribution made in the course of the reorganization in which the dividend was received, property became property of the distributing corporation, a corporation controlled by it or a predecessor corporation of any such corporation otherwise than as a result of

(i) an amalgamation of corporations each of which was related to the distributing corporation,

(ii) an amalgamation of a predecessor corporation of the distributing corporation and one or more corporations controlled by that predecessor corporation,

(iii) a reorganization in which a dividend was received to which subsection (2) would, but for paragraph (3)(b), apply, or

(iv) a disposition of property by

(A) the distributing corporation, a corporation controlled by it or a predecessor corporation of any such corporation to a corporation controlled by the distributing corporation or a predecessor corporation of the distributing corporation,

(B) a corporation controlled by the distributing corporation or by a predecessor corporation of the distributing corporation to the distributing corporation or predecessor corporation, as the case may be, or

(C) the distributing corporation, a corporation controlled by it or a predecessor corporation of any such corporation for consideration that consists only of money or indebtedness that is not convertible into other property, or of any combination thereof,

(b) the dividend was received as part of a series of transactions or events in which

(i) a person or partnership (referred to in this subparagraph as the "vendor") disposed of property and

(A) the property is

(I) a share of the capital stock of a distributing corporation that made a distribution as part of the series or of a transferee corporation in relation to the distributing corporation, or

(II) property 10% or more of the fair market value of which was, at any time during the course of the series, derived from one or more shares described in subclause (I),

(B) the vendor was, at any time during the course of the series, a specified shareholder of the distributing corporation or of the transferee corporation, and

(C) the property or any other property (other than property received by the transferee corporation on the distribution) acquired by any person or partnership in substitution therefor was acquired (otherwise than on a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by a person (other than the vendor) who was not related to the vendor or, as part of the series, ceased to be related to the vendor or by a partnership,

(ii) control of a distributing corporation that made a distribution as part of the series or of a transferee corporation in relation to the distributing corporation was acquired (otherwise than as a result of a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by any person or group of persons, or

(iii) in contemplation of a distribution by a distributing corporation, a share of the capital stock of the distributing corporation was acquired (otherwise than on a permitted acquisition or permitted exchange in relation to the distribution or on an amalgamation of 2 or more predecessor corporations of the distributing corporation) by

(A) a transferee corporation in relation to the distributing corporation or by a person or partnership with whom the transferee corporation did not deal at arm's length from a person to whom the acquiror was not related or from a partnership,

(B) a person or any member of a group of persons who acquired control of the distributing corporation as part of the series,

(C) a particular partnership any interest in which is held, directly or indirectly through one or more partnerships, by a person referred to in clause (B), or

(D) a person or partnership with whom a person referred to in clause (B) or a particular partnership referred to in clause (C) did not deal at arm's length,

(c) the dividend was received by a transferee corporation from a distributing corporation that, immediately after the reorganization in the course of which a distribution was made and the dividend was received, was not related to the transferee corporation and the total of all amounts each of which is the fair market value, at the time of acquisition, of a property that

(i) was acquired, as part of the series of transactions or events that includes the receipt of the dividend, by a person (other than the transferee corporation) who was not related to the transferee corporation or, as part of the series, ceased to be related to the transferee corporation or by a partnership, otherwise than

(A) as a result of a disposition in the ordinary course of business,

(B) on a permitted acquisition in relation to a distribution, or

(C) as a result of an amalgamation of 2 or more corporations that were related to each other immediately before the amalgamation, and

(ii) is a property (other than money, indebtedness that is not convertible into other property, a share of the capital stock of the transferee corporation and property more than 10% of the fair market value of which is attributable to one or more such shares)

(A) that was received by the transferee corporation on the distribution,

(B) more than 10% of the fair market value of which was, at any time after the distribution and

before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A) or (C), or

(C) to which, at any time during the course of the series, the fair market value of property described in clause (A) was wholly or partly attributable

is greater than 10% of the fair market value, at the time of the distribution, of all the property (other than money and indebtedness that is not convertible into other property) received by the transferee corporation on the distribution, or

(d) the dividend was received by a distributing corporation that, immediately after the reorganization in the course of which a distribution was made and the dividend was received, was not related to the transferee corporation that paid the dividend and the total of all amounts each of which is the fair market value, at the time of acquisition, of a property that

(i) was acquired, as part of the series of transactions or events that includes the receipt of the dividend, by a person (other than the distributing corporation) who was not related to the distributing corporation or, as part of the series, ceased to be related to the distributing corporation or by a partnership, otherwise than

(A) as a result of a disposition in the ordinary course of business,

(B) on a permitted acquisition in relation to a distribution, or

(C) as a result of an amalgamation of 2 or more corporations that were related to each other immediately before the amalgamation, and

(ii) is a property (other than money, indebtedness that is not convertible into other property, a share of the capital stock of the distributing corporation and property more than 10% of the fair market value of which is attributable to one or more such shares)

(A) that was owned by the distributing corporation immediately before the distribution and not disposed of by it on the distribution,

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A) or (C), or

(C) to which, at any time during the course of the series, the fair market value of property described in clause (A) was wholly or partly attributable

is greater than 10% of the fair market value at the time of the distribution, of all the property (other than money and indebtedness that is not convertible into other property) owned immediately before that time by the distributing corporation and not disposed of by it on the distribution.

Related Provisions: 55(3.2) — Interpretation; 88(1)(c)(iv), 88(1)(c.2) — Limitation of cost base of property on winding-up; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Cls. 55(3.1)(c)(ii)(B), (C) and 55(3.1)(d)(ii)(B), (C) amended by 1998, c. 19, subsecs. 96(6) and (7), applicable to dividends received after April 26, 1995 except that, with respect to acquisitions of property that occur before June 20, 1996 or under a written agreement made before June 20, 1996,

cl. 55(3.1)(c)(ii)(B) shall be read as follows:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A), or

and

cl. 55(3.1)(d)(ii)(B) shall be read as follows:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A), or

Cls. 55(3.1)(c)(ii)(B), (C) and 55(3.1)(d)(ii)(B), (C) formerly read:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property received by the transferee corporation on the distribution, or

(C) to which, at any time during the course of the series, more than 10% of the fair market value of a property referred to clause (A) was attributable

. . . . .

(B) more than 10% of the fair market value of which was, at any time after the distribution, attributable to property described in clause (A), or

(C) to which, at any time during the course of the series, more than 10% of the fair market value of a property referred to in clause (A) was attributable

Subsec. 55(3.1) amended by 1995, c. 3, subsec. 16(4), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994, except that, in applying the Act to dividends received before June 23, 1994,

(a) para. 55(3.1)(b) shall be read as follows:

(b) the dividend was received as part of a series of transactions or events in which

(i) a person or partnership (referred to in this subparagraph as the "vendor") disposed of property and

(A) the property is

(I) a share of the capital stock of a distributing corporation that made a distribution as part of the series or of a transferee corporation in relation to the distributing corporation, or

(II) property 10% or more of the fair market value of which was, at any time during the course of the series, derived from one or more shares described in subclause (I),

(B) the property or any other property (other than property received by the transferee corporation on the distribution) acquired by any person or partnership in substitution therefor was acquired (otherwise than on a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by a person (other than the vendor) who was not related to the vendor or, as part of the series, ceased to be related to the vendor or by a partnership, and

(C) either

(I) control of the distributing corporation or of a transferee corporation in relation to the distributing corporation was acquired (otherwise than as a result of a permitted acquisition, permitted exchange or permitted redemption in relation to the distribution) by any person or group of persons, or

(II) the vendor was, at any time during the course of the series, a specified shareholder of the distrib-

uting corporation or a transferee corporation in relation to the distributing corporation, or

(ii) a share of the capital stock of a distributing corporation was acquired (otherwise than on a permitted acquisition or permitted exchange in relation to a distribution by the distributing corporation or on an amalgamation of 2 or more predecessor corporations of the distributing corporation), in contemplation of a distribution by the distributing corporation, by

(A) a transferee corporation in relation to the distributing corporation, or by any person or partnership with whom the transferee corporation did not deal at arm's length from a person to whom the acquiror was not related,

(B) a person or any member of a group of persons who acquired control of the distributing corporation as part of the series,

(C) a particular partnership any interest in which is held, directly or indirectly through one or more partnerships, by a person referred to in clause (B), or

(D) a person or partnership with whom a person referred to in clause (B) or a particular partnership referred to in clause (C) did not deal at arm's length, or

and

(b) the Act shall be read without reference to paras. 55(3.1)(c) and (d).

Subsec. 55(3.1) formerly read:

(3.1) Idem — Notwithstanding subsection (3), a dividend to which subsection (2) would, but for paragraph (3)(b), otherwise apply is not excluded from the application of subsection (2) where the dividend is received as part of a series of transactions or events in which

(a) a person or partnership (in this subsection referred to as the "foreign vendor") who, or any member of which, is resident in a country other than Canada disposes of property that is

(i) a share of the capital stock of the particular corporation referred to in paragraph (3)(b) or of a transferee (within the meaning assigned by that paragraph) in relation to the particular corporation that is taxable Canadian property of the foreign vendor or, where the foreign vendor is a partnership, would be taxable Canadian property of the foreign vendor if the foreign vendor were non-resident, or

(ii) property the fair market value of which, at any time during the course of the series of transactions or events, is derived principally from one or more shares which, if owned by the foreign vendor, would be shares described in subparagraph (i); and

(b) the property disposed of by the foreign vendor or any other property acquired by any person or partnership in substitution for it is acquired by a person (other than the particular corporation) or partnership that, at any time during the course of the series of transactions or events, deals at arm's length with the foreign vendor.

Subsec. 55(3.1) added by 1994, c. 21, s. 24, applicable to dividends received after May 4, 1993, other than a dividend received as part of a series of transactions or events in which a foreign vendor was obliged on May 4, 1993 to dispose of property described in para. 55(3.1)(a), under a written agreement entered into before May 5, 1993.

I.T. Technical News: No. 3 (butterfly reorganizations); No. 9 (the back-door butterfly rule); No. 16 (*Parthenon Investments* case).

(3.2) Interpretation of para. (3.1)(b) — For the purpose of paragraph (3.1)(b),

(a) in determining whether the vendor referred to in subparagraph (3.1)(b)(i) is at any time a specified shareholder of a transferee corporation or of a distributing corporation, the references in the definition "specified shareholder" in subsection 248(1) to "taxpayer" shall be read as "person or partnership";

(b) a corporation that is formed by the amalgamation of 2 or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") shall be deemed to be the same corporation as, and a continuation of, each of the predecessor corporations;

(c) subject to paragraph (d), each particular person who acquired a share of the capital stock of a distributing corporation in contemplation of a distribution by the distributing corporation shall be deemed, in respect of that acquisition, not to be related to the person from whom the particular person acquired the share unless

(i) the particular person acquired all the shares of the capital stock of the distributing corporation that were owned, at any time during the course of the series of transactions or events that included the distribution and before the acquisition, by the other person, or

(ii) immediately after the reorganization in the course of which the distribution was made, the particular person was related to the distributing corporation;

(d) where a share is acquired by an individual from a personal trust in satisfaction of all or a part of the individual's capital interest in the trust, the individual shall be deemed, in respect of that acquisition, to be related to the trust;

(e) subject to paragraph (f), where at any time a share of the capital stock of a corporation is redeemed or cancelled (otherwise than on an amalgamation where the only consideration received or receivable for the share by the shareholder on the amalgamation is a share of the capital stock of the corporation formed by the amalgamation), the corporation shall be deemed to have acquired the share at that time;

(f) where a share of the capital stock of a corporation is redeemed, acquired or cancelled by the corporation pursuant to the exercise of a statutory right of dissent by the holder of the share, the corporation shall be deemed not to have acquired the share;

(g) control of a corporation shall be deemed not to have been acquired by a person or group of persons where it is so acquired solely because of

(i) the incorporation of the corporation, or

(ii) the acquisition by an individual of one or more shares for the sole purpose of qualifying as a director of the corporation; and

(h) each corporation that is a shareholder and specified shareholder of a distributing corporation at any time during the course of a series of transactions or events, a part of which includes a distribution made by the distributing corporation, is deemed to be a transferee corporation in relation to the distributing corporation.

Related Provisions: 88(1)(c)(iv), 88(1)(c.2) — Winding-up; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Para. 55(3.2)(h) added by 1998, c. 19, subsec. 96(8), applicable to dividends received after June 20, 1996 other than dividends received in the course of a reorganization that is carried out under a series of transactions or events substantially advanced, as evidenced in writing, before June 21, 1996 or that was required on June 20, 1996 to be carried out under a written agreement made before June 21, 1996, and for the purpose of this application, a reorganization is deemed not to be required to be carried out if the parties to that agreement can be relieved of that requirement if there is a change to the Act.

Subsec. 55(3.2) added by 1995, c. 3, subsec. 16(4), applicable to dividends received after February 21, 1994 other than dividends received before 1995 in the course of a reorganization that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994, except that, in applying the Act to dividends received before June 23, 1994, the Act shall be read without reference to paras. 55(3.2)(c) and (e).

(3.3) Interpretation of "specified shareholder" changed — In determining whether a person is a specified shareholder of a corporation for the purposes of subparagraph (3.1)(b)(i) and paragraph (3.2)(h), the reference in the definition "specified shareholder" in subsection 248(1) to "or of any other corporation that is related to the corporation" shall be read as "or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation".

History: Subsec. 55(3.3) added by 1998, c. 19, subsec. 96(9), applicable to dividends received after 1996.

(4) Avoidance of subsec. (2) — For the purposes of this section, where it can reasonably be considered that one of the main purposes of one or more transactions or events was to cause 2 or more persons to be related to each other or to cause a corporation to control another corporation, so that subsection (2) would, but for this subsection, not apply to a dividend, those persons shall be deemed not to be related to each other or the corporation shall be deemed not to control the other corporation, as the case may be.

Related Provisions: 55(5)(e) — Determination of "related" and "arm's length"; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization.

History: Subsec. 55(4) amended by 1994, c. 3, subsec. 16(5), applicable to dividends received after February 21, 1994, other than dividends received as part of a transaction or event or a series of transactions or events that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Subsec. 55(4) formerly read:

> (4) Arm's length dealings — Where it may reasonably be considered that the principal purpose of one or more transactions or events was to cause two or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons shall be deemed not to be related or shall be deemed to deal with each other at arm's length, or the corporation shall be deemed not to control the other corporation, as the case may be.

(5) Applicable rules — For the purposes of this section,

(a) where a dividend referred to in subsection (2) was received by a corporation as part of a transaction or event or a series of transactions or events, the portion of a capital gain attributable to any income expected to be earned or realized by a corporation after the safe-income determination time for the transaction, event or series is deemed to be a portion of a capital gain attributable to anything other than income;

(b) the income earned or realized by a corporation for a period throughout which it was resident in Canada and not a private corporation shall be deemed to be the total of

(i) its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation by reason of section 37.1 of this Act or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(ii) the amount, if any, by which

(A) the amount, if any, by which the total of the capital gains of the corporation for the period exceeds the total of the taxable capital gains of the corporation for the period

exceeds

(B) the amount, if any, by which the total of the capital losses of the corporation for the period exceeds the total of the allowable capital losses of the corporation for the period, and

(iii) the total of all amounts each of which is an amount in respect of a business carried on by the corporation at any time in the period, equal to the amount, if any, by which the total of

(A) where the period commenced before the corporation's adjustment time, the amount, if any, by which

(I) the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period preceding its adjustment time

exceeds the total of

(II) the cumulative eligible capital of the corporation in respect of the business at the commencement of the period,

(III) 1/2 of the total of the eligible capital expenditures in respect of the business that were made or incurred by the corporation during that portion of the period preceding its adjustment time, and

(IV) to the extent that the amount determined under subclause (I) exceeds the total of the amounts determined under subclauses (II) and (III), 1/2 of the total of the eligible capital expenditures in respect of the business that were made or incurred by the corporation during that portion of the period following its adjustment time,

(B) 1/3 of the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period following its adjustment time, and

(C) 1/3 of all amounts received in the period that were required to be included in the corporation's income by reason of paragraph 12(1)(i.1)

exceeds the total of

(D) where the period commenced after the corporation's adjustment time, 1/3 of the cumulative eligible capital of the corporation in respect of the business at the commencement of the period,

(E) 1/4 of the total of the eligible capital expenditures in respect of the business made or incurred by the corporation with respect to that portion of the period after its adjustment time and a portion of which were not included in subclause (A)(IV),

(F) where the period commenced before the corporation's adjustment time, 1/2 of the amount, if any, by which the total of the amounts determined in respect of the corporation under subclauses (A)(II) and (III) exceeds the amount de-

termined in respect of the corporation under subclause (A)(I), and

(G) 1/3 of all amounts deducted by the corporation under subsection 20(4.2) in respect of debts established by it to have become bad debts during the period;

Selected Cases [para. 55(5)(b)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) (Provision does not limit "any corporation" in subsec. 55(2)).

(c) the income earned or realized by a corporation for a period throughout which it was a private corporation is deemed to be its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation under section 37.1 of this Act, as that section applies for taxation years that ended before 1995, or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Selected Cases [para. 55(5)(c)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) (Provision does not limit "any corporation" in subsec. 55(2)).

(d) the income earned or realized by a corporation for a period ending at a time when it was a foreign affiliate of another corporation shall be deemed to be the total of the amount, if any, that would have been deductible by that other corporation at that time by virtue of paragraph 113(1)(a) and the amount, if any, that would have been deductible by that other corporation at that time by virtue of paragraph 113(1)(b) if that other corporation

(i) owned all of the shares of the capital stock of the foreign affiliate immediately before that time,

(ii) had disposed at that time of all of the shares referred to in subparagraph (i) for proceeds of disposition equal to their fair market value at that time, and

(iii) had made an election under subsection 93(1) in respect of the full amount of the proceeds of disposition referred to in subparagraph (ii);

Selected Cases [para. 55(5)(d)]: *Lamont Management Ltd. v. R.*, [2000] 3 C.T.C. 18 (FCA); rev'g [1999] 3 C.T.C. 2576 (TCC) (Provision does not limit "any corporation" in subsec. 55(2)); *Brelco Drilling Ltd. v. R.*, [1999] 3 C.T.C. 95 (FCA); rev'g [1998] 3 C.T.C. 2208 (TCC) (Provision not a complete code for determining "safe income").

(e) in determining whether 2 or more persons are related to each other, in determining whether a person is at any time a specified shareholder of a corporation and in determining whether control of a corporation has been acquired by a person or group of persons,

(i) a person shall be deemed to be dealing with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person,

(ii) where at any time a person is related to each beneficiary (other than a registered charity) under a trust who is or may (otherwise than by reason of the death of another beneficiary under the trust) be entitled to share in the income or capital of the trust, the person and the trust shall be deemed to be related at that time to each other and, for this purpose, a person shall be deemed to be related to himself, herself or itself,

(iii) a trust and a person shall be deemed not to be related to each other unless they are deemed by paragraph (3.2)(d) or subparagraph (ii) to be related to each other or the person is a corporation that is controlled by the trust, and

(iv) persons who are related to each other solely because of a right referred to in paragraph 251(5)(b) shall be deemed not to be related to each other; and

Proposed Amendment — 55(5)(e)(iv)

(iv) this Act shall be read without reference to subsection 251(3) and paragraph 251(5)(b); and

Application: The June 5, 2000 Notice of Ways and Means Motion subsec. 23(4), will amend para. 55(5)(e)(iv) to read as above, applicable to dividends that are received after November 1999, other than dividends received as part of a transaction or event, or a series of transactions or events, that was required before December 1, 1999 to be carried out pursuant to a written agreement made before that day.

Technical Notes: Subsection 55(5) of the Act sets out rules applicable to section 55.

Subparagraph 55(5)(e)(iv) of the Act provides that in determining, for the purposes of section 55, whether persons are related to each other or whether control of a corporation has been acquired, persons will be treated as not being related to each other if they are related to each other only because of a right referred to in paragraph 251(5)(b) of the Act. Amended subparagraph 55(5)(e)(iv) provides that, for the purposes of determining, for the purposes of section 55, whether persons are related to each other or whether control of a corporation has been acquired, the Act is to be read without reference to paragraph 251(5)(b) and section 251(3) of the Act. This will have the effect of ensuring that corporations will not be considered to be related to each other by reason only that they are each related to a third corporation.

New subparagraph 55(5)(e)(iv) of the Act applies to dividends received after November 30, 1999 other than dividends received as part of a series of transactions or events that were required, on or before November 30, 1999, to be carried out pursuant to an agreement in writing made on or before that day.

Selected Cases [para. 55(5)(e)]: *Gestion B. Dufresne Ltée v. R.*, [1998] 4 C.T.C. 2551 (TCC) (Wide definition of terms permitted to give effect to intention of Parliament).

(f) where a corporation has received a dividend any portion of which is a taxable dividend,

(i) the corporation may designate in its return of income under this Part for the taxation year during which the dividend was received any portion of the taxable dividend to be a separate taxable dividend, and

(ii) the amount, if any, by which the portion of the dividend that is a taxable dividend exceeds the portion designated under subparagraph (i) shall be deemed to be a separate taxable dividend.

Selected Cases [para. 55(5)(f)]: *Nassau Walnut Investments Inc. V. R.*, [1998] 1 C.T.C. 33 (FCA) (Provision available to taxpayers assessed under subsection 55(2)); *Administration Gilles Leclair Inc. v. R.*, [1997] 3 C.T.C. 3053 (TCC) (Taxpayer not precluded from late filing of designation for separate dividends); *Placer Dome Inc. v. Canada*, [1997] 1 C.T.C. 72 (FCA) ("Purpose" is subjective in nature; "result" is objective); *CPL Holdings v. Canada*, [1995] 1 C.T.C. 447 (FCTD) (Provision not applicable where transactions not motivated by same considerations and purpose was to improve legal protection); *Trico Industries Ltd. v. Canada*, [1994] 2 C.T.C. 2053 (TCC) (Separate designation not permitted where not made at proper time).

Related Provisions [subsec. 55(5)]: 141.1 — Insurance corporation deemed not to be private corporation; 256(6)–(9) — Whether control acquired.

History: Paras. 55(5)(a) and (c) amended by 1998, c. 19, subsecs. 96(10) and (11), para. 55(5)(a) applicable to dividends received after June 20,

1996 and para. 55(5)(c) applicable to 1995 *et seq.* The paras. formerly read:

> (a) the portion of any capital gain attributable to any income that is expected to be earned or realized by a corporation after the time of receipt of the dividend referred to in subsection (2) shall, for greater certainty, be deemed to be a portion of the capital gain attributable to anything other than income;
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> . . . . .
>
> (c) the income earned or realized by a corporation for a period throughout which it was a private corporation shall be deemed to be its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation by reason of section 37.1 of this Act or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Para. 55(5)(e) amended by 1995, c. 3, subsec. 16(6), applicable to dividends received after February 21, 1994, other than dividends received as part of a transaction or event or a series of transactions or events that was required on February 22, 1994 to be carried out pursuant to a written agreement entered into before February 22, 1994. Para. (e) formerly read:

> (e) in determining whether two or more persons are dealing with each other at arm's length, persons shall be deemed to be dealing with each other at arm's length and not to be related to each other if one is the brother or sister of the other; and

Selected Cases [subsec. 55(5)]: *Nassau Walnut Investments Inc. V. R.*, [1998] 1 C.T.C. 33 (FCA) (Provision available to taxpayers assessed under subsection 55(2)).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

I.T. Technical News: No. 7 (subsection 55(2) — recent cases); No. 16 (*Brelco Drilling* case).

Pre-RSC History [s. 55]: Subpara. 55(5)(b)(ii) substituted by 1988, c. 55, subsec. 33(2), applicable to 1988 *et seq.* Subpara. 55(5)(b)(ii) formerly read:

> (ii) ½ of the amount, if any, by which the aggregate of the capital gains of the corporation for the period exceeds the aggregate of its capital losses for the period, and

Subpara. 55(5)(b)(iii) substituted by 1988, c. 55, subsec. 33(3), applicable after June 17, 1987, except that, with respect to amounts included in the calculation of a corporation's income by reason of para. 12(1)(i.1) or subsec. 20(4.2) relating to an amount owing in respect of a disposition of property occurring in a taxation year of the corporation commencing before July 1988, cls. 55(5)(b)(iii)(C) and (G) shall be read without reference to the expression "⅓ of". Subpara. 55(5)(b)(iii) formerly read:

> (iii) the aggregate of all amounts each of which is an amount in respect of a business carried on by the corporation at any time in the period, equal to the amount, if any, by which
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> (A) the aggregate of the eligible capital amounts (within the meaning assigned by subsection 14(1)) in respect of the business that became payable to the corporation in the period
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> exceeds the aggregate of
>
> (B) the cumulative eligible capital of the corporation in respect of the business at the commencement of the period, and
>
> (C) ½ of the aggregate of the eligible capital expenditures in respect of the business that were made or incurred by the corporation in the period;

Paras. 55(2)(a) and 55(3)(b) and subsec. 55(4) substituted by 1984, c. 45, subsecs. 15(1)–(3), applicable as to para. 55(2)(a) to 1985 *et seq.*, as to para. 55(3)(b) with respect to transfers of property occurring after December 31, 1984 by a particular corporation referred to in para. 55(3)(b), or, where the particular corporation so elects at any time on or before the later of the day that is 90 days after this section comes into force and March 31, 1985, to transfers of property occurring after December 31, 1981, and as to subsec. 55(4) after December 31, 1981. Para. 55(2)(a) substituted to delete "except for the purpose of computing the corporation's cumulative deduction account (within the meaning assigned by paragraph 125(6)(b))," located after "shall". Para. 55(3)(b) and subsec. 55(4) formerly read:

> (b) if the dividend was received in the course of a series of transactions or events the principal purpose of which was to effect a reorganization in order to transfer, directly or indirectly, property of a particular corporation to one or more corporations (each of which is in this section referred to as a "transferee") and in the course of the series of transactions or events (other than a series of transactions or events that commenced before December 8, 1982) no person other than the transferee owned any of the shares of the particular corporation that the transferee owned immediately before the series of transactions or events and, in respect of each type of property transferred by the particular corporation, the fair market value of the property so received by each transferee was equal to or approximated the proportion of the fair market value of all property of that type owned by the particular corporation immediately before the series of transactions or events that
>
> (i) the aggregate of the fair market value at that time of all shares of the capital stock of the particular corporation owned by the transferee at that time,
>
> is of
>
> (ii) the fair market value at that time of all the issued shares of the capital stock of the particular corporation at that time,
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> and, for the purposes of this paragraph,
>
> (iii) a series of transactions or events shall be deemed to include any related transactions or events completed in contemplation of the series, and
>
> (iv) where an individual owns shares of a particular corporation immediately before a series of transactions or events and transfers all such shares to a corporation all the shares and rights to shares of which are owned by the individual and no person other than the corporation owned any of the transferred shares from the time of the transfer until the time of the completion of the series, the corporation shall be deemed to have owned the transferred shares immediately before the series and the transferred shares shall be deemed not to have been owned by the individual.
>
> (4) **Arm's length dealings** — Where it may reasonably be considered that the principal purpose of one or more transactions or events was to cause two or more persons to not deal with each other at arm's length so as to make subsection (2) inapplicable, for the purposes of that subsection, those persons shall be deemed to deal with each other at arm's length.

All that portion of para. 55(3)(b) preceding subpara. (i) substituted by 1984, c. 1, s. 22. That portion formerly read:

> (b) if the dividend was received in the course of a series of transactions or events the principal purpose of which was to effect a reorganization in order to transfer, directly or indirectly, property of a particular corporation to one or more corporations (each of which is in this section referred to as a "transferee") and in the course of the series of transactions or events no person other than the transferee owned any of the shares of the particular corporation that the transferee owned immediately before the series of transactions or events and, in respect of each type of property transferred by the particular corporation, the fair market value thereof received by each transferee was equal to or approximated the proportion of the fair market value of all property of that type owned by the particular corporation immediately before the series of transactions or events that

All that portion of subsec. 55(2) preceding para. (a) and para. 55(3)(b) substituted by 1980-81-82-83, c. 140, subsecs. 25(1), (2), applicable, as to that portion of subsec. 55(2), with respect to dividends received after November 12, 1981, and, as to para. 55(3)(b), with respect to transfers of property occurring after June 28, 1982. That portion and para. 55(3)(b) formerly read:

> (2) Where a corporation resident in Canada has after April 21, 1980 received a taxable dividend in respect of which it is entitled to a deduction under subsection 112(1) or 138(6) as part of a transaction or event or a series of transactions or events (other than as part of a series of transactions or events that commenced before April 22, 1980), one of the purposes of which (or, in the case of a dividend under subsection 84(3), one of the results of which) was to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend and that could reasonably be considered to be attributable to anything other than income earned or realized by any corporation after 1971 and before the dividend was received, notwithstanding any other section of this Act, the amount of the dividend (other than the portion thereof, if any, subject to tax under Part IV)
>
> (b) if the dividend was received in the course of a series of transactions or events the principal purpose of which was to effect a reorganization in order to distribute property of a corporation to one or more corporations (each of which is in this section referred to as a "transferee") and in respect of each type of property distributed by the corporation, the fair market value thereof received by each particular transferee was equal to or

approximated the proportion of the fair market value of all property of that type owned by the corporation immediately before the series of transactions or events that

(i) the aggregate of the fair market value at that time of all shares of the capital stock of the corporation owned by the particular transferee or by a person or persons that immediately after the series of transactions or events owned all of the issued shares of the capital stock of that particular transferee,

is of

(ii) the fair market value at that time of all the issued shares of the capital stock of the corporation;

and, for the purposes of this paragraph, a series of transactions or events shall be deemed to include any related transactions or events completed in contemplation of the series.

S. 55 renumbered as subsec. 55(1) and subsecs. 55(2)–(5) added by 1980-81-82-83, c. 48, subsecs. 24(1), (2), applicable after April 21, 1980.

Selected Cases [s. 55]: *943963 Ontario Inc. v. R.*, [1999] 4 C.T.C. 2119 (TCC) (Part IV tax applicable to all dividends and deemed dividends, including those from "safe income").

Definitions [s. 55]: "acquired" — 55(3.2)(e), (f), 139.1(18), 256(7); "acquiror" — 55(1)"permitted exchange"(b); "acquisition of control" — 55(3.2)(g), 55(5)(e), 256(7), (8); "adjustment time" — 14(5), 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 55(4), 55(5)(e), 251(1); "brother" — 252(2); "business" — 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "control", "controlled" — 55(3.2)(g), 55(5)(e), 139.1(18), 256(6)–(9); "corporation" — 55(3.2)(b), 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "disposition" — 54 [to be repealed], 248(1) [draft]; "distributing corporation" — 55(1) (under "distribution"); "distribution" — 55(1); "dividend" — 248(1); "dividend payer" — 55(3)(a)(iii)(A); "dividend recipient" — 55(3); "eligible capital property" — 54, 248(1); "foreign vendor" — 55(3.1)(a); "income earned or realized..." — 55(5)(b), (c); "individual", "non-resident" — 248(1); "participant" — 55(1) [under "permitted exchange"(b)]; "permitted acquisition", "permitted exchange", "permitted redemption" — 55(1); "person" — 248(1); "proceeds of disposition" — 55(3.01)(d); "property" — 248(1); "public corporation" — 89(1), 248(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 55]*; "related" — 55(3.2)(c), (d), 55(5)(e), 251(2); "resident in Canada" — 250; "safe-income determination time" — 55(1); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "sister" — 252(2); "specified class", "specified corporation" — 55(1); "specified shareholder" — 55(3.2)(a), 55(3.3), 248(1); "specified wholly-owned corporation" — 55(1); "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxpayer" — 248(1); "transferee" — 55(1)"distribution"; "transferee corporation" — 55(1)"distribution", 55(3.2)(h); "trust" — 104(1), 248(1), (3); "unrelated" — 55(3.01)(a) "vendor" — 55(3.1)(b)(i).

Subdivision d — Other Sources of Income

56. (1) Amounts to be included in income for year — Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

(a) **pension benefits, unemployment insurance benefits, etc.** — any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

(A) the amount of any pension, supplement or spouse's allowance under the *Old Age Security Act* and the amount of any similar payment under a law of a province,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(B) the amount of any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(C) the amount of any payment out of or under a prescribed provincial pension plan, and

(C.1) the amount of any payment out of or under a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,

Proposed Amendment — 56(1)(a)(i)(C.1) — Income Inclusion on Conversion to Roth IRA

Department of Finance press release, December 18, 1998: [See under 248(1)"foreign retirement arrangement" — ed.]

but not including

(D) the portion of a benefit received out of or under an employee benefit plan that is required by paragraph 6(1)(g) to be included in computing the taxpayer's income for the year, or would be required to be so included if that paragraph were read without reference to subparagraph 6(1)(g)(ii),

(E) the portion of an amount received out of or under a retirement compensation arrangement that is required by paragraph (x) or (z) to be included in computing the taxpayer's income for the year, and

(F) a benefit received under section 71 of the *Canada Pension Plan* or under a similar provision of a provincial pension plan as defined in section 3 of that Act,

(ii) a retiring allowance, other than an amount received out of or under an employee benefit plan, a retirement compensation arrangement or a salary deferral arrangement,

(iii) a death benefit,

(iv) a benefit under the *Unemployment Insurance Act*, other than a payment relating to a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act, or a benefit under Part I, VIII or VIII.1 of the *Employment Insurance Act*,

(v) a benefit under regulations made under an appropriation Act providing for a scheme of transitional assistance benefits to persons employed in the production of products to which the Canada-United States Agreement on Automotive Products, signed on January 16, 1965 applies, or

(vi) except to the extent otherwise required to be included in computing the taxpayer's income, a prescribed benefit under a government assistance program;

(vii) [Repealed]

Related Provisions: 56(8) — CPP/QPP benefits for previous years; 57 — Certain superannuation or pension benefits; 60(j) — Transfer of superannuation benefits; 60(j.03), (j.04) — Deduction for repayments of pension benefits; 60(j.1) — Transfer of retiring allowances; 60(j.2) — Transfer to spousal RRSP; 60(n)(iii) — Deduction for repayment of pension or benefits; 60(v.1) — UI/EI benefit repayment; 60.2(1) — Refund of undeducted past service AVCs; 78(4) — Unpaid remuneration and other amounts; 81(1)(d)–(g) — Certain pensions exempt from tax; 104(27) — Testamentary trust — income included under subpara. 56(1)(a)(i); 104(28) — Death benefit flowed through trust; 110(1)(f) — Deductions for certain payments; 110.2(1)"qualifying amount" — Retroactive spreading of certain lump-sum payments over prior years; 118.7 — Credit for UI/EI premium and CPP contributions; 128.1(10)"excluded right or interest"(a)(viii), (d), (g), (h) — Emigration — no deemed disposition of right to pension or retiring allowance; 139.1(12) — Conversion benefit on demutualization of insurance corporation; 147.4(4) — Amount deemed received when converting pension rights before 1997 to annuity contract commencing after age 69; 153(1) — Withholding of tax at source; 212(1)(h), (j) — Pension and benefit payments to non-residents — withholding tax; 254 — Contract under pension plan; Canada-U.S. tax treaty, Art. XVIII — Pensions and annuities; Art. XXIX:7 — exemption for half of old age security paid to citizen of U.S. resident in Canada.

History: Cl. 56(1)(a)(i)(F) added by 1998, c. 19, subsec. 9(1), applicable to 1997 *et seq.*, except that cl. 56(1)(a)(i)(F) does not apply to benefits received before August 1997 by a taxpayer in respect of the death of an individual if the taxpayer is an estate that arose on or as a consequence of the death of the individual.

Subpara. 56(1)(a)(iv) amended by 1998, c. 19, subsec. 97(1), deemed to have come into force on June 30, 1996. The subpara. formerly read:

> (iv) a benefit under the *Employment Insurance Act*, other than a payment relating to the cost of a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act,

Subpara. 56(1)(a)(iv) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subpara. 56(1)(a)(vi) substituted for subparas. (vi), (vii), by 1994, c. 21, subsec. 25(1), applicable to benefits received after October 1991. Subparas. (vi) and (vii) formerly read:

> (vi) a benefit under the *Labour Adjustment Benefits Act*, or
>
> (vii) an income assistance payment made pursuant to an agreement under section 5 of the *Department of Labour Act*;

Cl. 56(1)(a)(i)(C.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(1), applicable to payments received after July 13, 1990.

Subpara. 56(1)(a)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(2), applicable to 1988 *et seq.* Subpara. 56(1)(a)(iv) formerly read:

> (iv) a benefit under the *Unemployment Insurance Act*,

Subpara. 56(1)(a)(vii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(3), applicable to payments received after September 14, 1989.

Pre-RSC History: Subparas. 56(1)(a)(i), (ii) substituted by 1987, c. 46, subsec. 15(1), applicable after October 8, 1986, except that cl. 56(1)(a)(i)(C) is applicable to 1987 *et seq.* Subparas. 56(1)(a)(i), (ii) formerly read:

> (i) a superannuation or pension benefit (other than the portion thereof received out of or under an employee benefit plan that is required by paragraph 6(1)(g) to be included in computing his income for the year, or would be required to be so included if that paragraph were read without reference to subparagraph (ii) thereof), including, without limiting the generality of the foregoing,
>
> (A) the amount of any pension, supplement or spouse's allowance under the *Old Age Security Act* and the amount of any similar payment under a law of a province, and
>
> (B) the amount of any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,
>
> (ii) a retiring allowance, other than an amount received out of or under an employee benefit plan,

All that portion of subpara. 56(1)(a)(i) preceding cl. (A) substituted by 1984, c. 1, s. 23, applicable to 1980 *et seq.* That portion formerly read:

> (i) a superannuation or pension benefit, (other than the portion thereof received out of or under an employee benefit plan that is required by paragraph 6(1)(g) to be included in computing his income for the year) including, without limiting the generality of the foregoing,

All that portion of para. 56(1)(a) preceding subpara. (i) substituted, all that portion of subpara. 56(1)(a)(i) following cl. (B) repealed, and subpara. 56(1)(a)(vi) substituted for subparas. (vi)–(viii) by 1980-81-82-83, c. 140, subsecs. 26(1)–(3), applicable, as to those portions, to 1982 *et seq.*, and as to subpara. 56(1)(a)(vi), with respect to

> (a) amounts received after 1981 as a benefit under the *Labour Adjustment Benefits Act*, and
>
> (b) amounts received in respect of any termination of an office or employment after November 12, 1981, except see "Application to 1982 taxation year" below.

Those portions and subparas. 56(1)(a)(vi)–(viii) formerly read:

> (a) any amount received in the year as, on account or in lieu of payment of, or in satisfaction of,
>
> . . . . .
>
> [following cl. (B)] but not including
>
> (C) the amount of any social assistance payment made on a means or a needs test basis,
>
> (I) by a registered charity, or
>
> (II) under a prescribed program provided for by an Act of the Parliament of Canada or a law of a province,
>
> . . . . .
>
> (vi) a benefit under any law of Canada providing for a scheme of adjustment assistance benefits to persons employed in the production of textile and clothing goods,
>
> (vii) a benefit under any law of Canada providing for a scheme of adjustment assistance benefits to persons employed in the leather tanning industry or in the production of leather footwear, or
>
> (viii) a termination payment;

All that portion of subpara. 56(1)(a)(i) preceding cl. (A) and subpara. 56(1)(a)(ii) substituted by 1980-81-82-83, c. 48, subsecs. 25(1), (2), applicable with respect to amounts received after 1979. That portion and subpara. 56(1)(ii) formerly read:

> (i) a superannuation or pension benefit, including, without limiting the generality of the foregoing,
>
> (ii) a retiring allowance,

1980-81-82-83, c. 140, subsec. 26(8), provides that in its application to the 1982 taxation year, subpara. 56(1)(a)(vi) shall be read as follows:

> (vi) a benefit under
>
> (A) any law of Canada providing for adjustment assistance benefits to persons employed in
>
> (I) the production of textile and clothing goods or leather footwear, or
>
> (II) the leather tanning industry, or
>
> (B) the *Labour Adjustment Benefits Act*;

Subpara. 56(1)(a)(viii) added by 1979, c. 5, subsec. 15(1), applicable in respect of amounts received in respect of a termination after November 16, 1978 of an office or employment.

"Registered charity" substituted for "registered Canadian charitable organization" by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Cl. 56(1)(a)(i)(A) substituted by 1974-75-76, c. 58, subsec. 12(1), applicable to 1975 *et seq.*, in force October 1, 1975. Cl. 56(1)(a)(i)(A) formerly read:

> (A) the amount of any pension or supplement under the *Old Age Security Act* and the amount of any similar payment under a law of a province, and

Subpara. 56(1)(a)(vii) added by 1974-75-76, c. 26, subsec. 27(1), applicable to 1974 *et seq.*

Selected Cases [para. 56(1)(a)]: *Saardi v. R.*, [1999] 4 C.T.C. 2488 (TCC) (Taxpayer entitled to structure claim settlement to avoid amount becoming retiring allowance); *Fournier v. R.*, [1999] 4 C.T.C. 2247 (TCC) (Damages were not retiring allowance); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Retiring allowance not related to employment which never started); *Layton v. Canada*, [1995] 2 C.T.C. 2408 (TCC) (Grant was not "income from a source"); *Kaiser v. Canada*, [1994] 2 C.T.C. 2385 (TCC) (Inherited IRA fund from U.S. taxable under clause 56(1)(a)(i)(C.1)); *Williams v. Canada*, [1992] 1 C.T.C. 225 (SCC) (Benefits paid under *Unemployment Insurance Act* exempt from tax pursuant to *Indian Act*); *Cewe, Jack, Ltd. v. Jorgenson*, [1980] C.T.C. 314 (SCC) (Sum received in respect of dismissal not income); *The Queen v. Herman*, [1978] C.T.C. 442 (FCTD) (Amounts received as pension benefits from

U.N. fund taxable as pension benefits); *The Queen v. Atkins*, [1976] C.T.C. 497 (FCA) (Sum received upon dismissal non-taxable damages).

Regulations: 100(1)"remuneration"(b), (c), (d), (g) (withholding at source); 103(4), (6)(e) (withholding required for retiring allowance); 200(2)(e) (information return); 5502 (prescribed benefits for 56(1)(a)(vi)); 7800(1) (prescribed provincial pension plan).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-91R4: Employment at special work sites or remote work locations; IT-122R2: U.S. social security taxes and benefits; IT-167R6: Registered pension plans — employee's contributions; IT-247: Employer's contribution to pensioners' premiums under provincial medical and hospital services plans; IT-337R3: Retiring allowances; IT-365R2: Damages, settlements and similar receipts; IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation; IT-499R: Superannuation or pension benefits; IT-508R: Death benefits; IT-528: Transfers of funds between registered plans; IT-529: Flexible employee benefit programs.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Advance Tax Rulings: ATR-12: Retiring allowance; ATR-21: Pension benefit from an unregistered pension plan.

Forms: T4A(OAS) Supp: Statement of old age security; T4A(P): Statement of Canada Pension Plan benefits; T4U: Statement of unemployment insurance benefits paid; RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form.

(a.1) **benefits under CPP/QPP** — where the taxpayer is an estate that arose on or as a consequence of the death of an individual, each benefit received under section 71 of the *Canada Pension Plan*, or under a similar provision of a provincial pension plan as defined in section 3 of that Act, after July 1997 and in the year in respect of the death of the individual;

Related Provisions: 56(8) — CPP/QPP benefits for previous years.

History: Para. 56(1)(a.1) added by 1998, c. 19, subsec. 9(2), applicable to 1997 *et seq.*

(b) **support** — the total of all amounts each of which is an amount determined by the formula

$$A - (B + C)$$

where

A is the total of all amounts each of which is a support amount received after 1996 and before the end of the year by the taxpayer from a particular person where the taxpayer and the particular person were living separate and apart at the time the amount was received,

B is the total of all amounts each of which is a child support amount that became receivable by the taxpayer from the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount received after 1996 by the taxpayer from the particular person and included in the taxpayer's income for a preceding taxation year;

Proposed Amendment — Transitional rule re common-law partners

Application: Bill C-23 (as amended by the Standing Committee on Justice and Human Rights, March 23, 2000), s. 145, provides the following transitional rule regarding the addition of the terms "common-law partner" and "common-law partnership" to the Act:

145. Where, but for the application of sections 130 to 142, paragraphs 56(1)(b) and 60(b) of the *Income Tax Act* would not apply to amounts paid and received pursuant to an order or a written agreement made before the coming into force of this section, those paragraphs do not apply unless the payor and the recipient of the amounts jointly elect to have those paragraphs apply to those amounts for the 2001 and following taxation years by notifying the Minister of National Revenue in prescribed manner on or before their filing due date for the year in which this Act receives royal assent.

Related Provisions: 56(12) — Allowance must be discretionary; 56.1 — Maintenance payments; 56.1(4) — Definitions of "commencement day", "support amount" and "child support amount"; 60(b) — Parallel deduction for payer; 60(c.2) — Repayment of support payments; 60.1 — Maintenance payments; 110.2(1)"qualifying amount" — Retroactive spreading of lump-sum payments over prior years; 122.64(3) — Disclosure of name and address for enforcement of support payments; 146(1)"earned income" — RRSP — earned income includes amounts under 56(1)(b); 212(1)(f) — Withholding tax on alimony or maintenance paid to non-resident before May 1997; 248(1)"exempt income" — Support amount is not exempt income; 252(3), (4) — Extended meaning of "spouse", "former spouse" and "marriage"; Canada–U.S. tax treaty, Art. XVIII:6 — Child support payments exempt if paid by U.S. resident.

History: The description of B in para. 56(1)(b) amended by 1998, c. 19, subsec. 97(2), applicable to amounts received after 1996. The description formerly read:

B is the total of all amounts each of which is a child support amount that became receivable by the taxpayer from the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began after its commencement day, and

Para. 56(1)(b) amended by 1997, c. 25, subsec. 8(1), applicable to amounts received after 1996. Para. (b) formerly read:

(b) alimony — an amount received by the taxpayer in the year as alimony or other allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer or both the taxpayer and the children if the taxpayer, because of the breakdown of the taxpayer's marriage, was living separate and apart from the spouse or former spouse who was required to make the payment at the time the payment was received and throughout the remainder of the year and the amount was received under a decree, order or judgment of a competent tribunal or under a written agreement;

Para. 56(1)(b) substituted for former paras. (b) and (c) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(1), applicable to amounts received under a decree, order or judgment of a competent tribunal or under a written agreement, with respect to a breakdown of a marriage occurring after 1992. Paras. (b) and (c) formerly read:

(b) alimony — any amount received by the taxpayer in the year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the recipient was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, the spouse or former spouse required to make the payment at the time the payment was received and throughout the remainder of the year;

(c) maintenance — any amount received by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer, or both the taxpayer and children of the taxpayer if, at the time the payment was received and throughout the remainder of the year, the taxpayer was living apart from the taxpayer's spouse who was required to make the payment;

Pre-RSC History: Para. 56(1)(c) substituted by 1980-81-82-83, c. 140, subsec. 26(4), applicable (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the person required to make the payment agree in writing at any time in a taxation year, in the year and subsequent taxation years. Para. (c) formerly read:

(c) any amount received by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer, or both the taxpayer and children of the taxpayer, if, at the time the payment was received and throughout the remainder of the year, the taxpayer was living apart from the person required to make the payment and was either the spouse of that person or an individual described in paragraph 73(1)(d);

Para. 56(1)(c) substituted by 1980-81-82-83, c. 48, subsec. 25(3), applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the

payor and the taxpayer agree in writing at any time in a taxation year, in the year and subsequent taxation years. Para. (c) formerly read:

(c) **maintenance where recipient living apart from spouse** — any amount received by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the recipient was living apart from the spouse required to make the payment at the time the payment was received and throughout the remainder of the year;

Selected Cases [para. 56(1)(b)]: *Drapeau v. R.*, [2000] 1 C.T.C. 2589 (TCC) (No constructive trust created; amounts taxable); *Pelletier v. Canada*, [1995] 1 C.T.C. 2327 (TCC) (Replacement of periodic payments with lump sum by supplementary agreement resulted in non-taxability); *Thibaudeau v. Canada*, [1995] 1 C.T.C. 382 (SCC); rev'g [1994] 2 C.T.C. 4 (FCA); rev'g [1992] 2 C.T.C. 2497 (TCC) (Provision is not unconstitutional under subsection 15(1) of the Charter); *Gagnon v. The Queen*, [1986] 1 C.T.C. 410 (SCC) (Stated purposes of amounts not affecting nature of allowance paid to taxpayer); *The Queen v. Sigglekow*, [1985] 2 C.T.C. 251 (FCTD) (Amount received included in taxpayer's income despite divorce decree providing former husband to pay "tax-free" amount); *The Queen v. Sills*, [1985] 1 C.T.C. 49 (FCA); leave to appeal to SCC refused (1986), 68 N.R. 320 (note) (Sums payable on periodic basis remain allowances even if not paid on time).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-118R3: Alimony and maintenance; IT-325R2: Property transfers after separation, divorce and annulment; IT-530: Support payments.

Forms: T1157: Election for child support payments; T1158: Registration of family support payments; P102: Support payments (pamphlet).

(c) [Repealed]

Related Provisions: 56(12) — Allowance must be discretionary; 56.1 — Maintenance payments; 60(c) — Maintenance payments; 60(c.2) — Repayment of support payments; 122.64(3) — Disclosure of name and address for enforcement of support payments; 146(1)"earned income"(b) — RRSP — earned income includes amounts under 56(1)(c); Canada-U.S. tax treaty, Art. XVIII:6 — Child support payments exempt if paid by U.S. resident.

History: Para. 56(1)(c) repealed by 1997, c. 25, subsec. 8(1), applicable to amounts received after 1996. Para. (c) formerly read:

(c) **maintenance** — an amount received by the taxpayer in the year as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer or both the taxpayer and the children if

(i) at the time the amount was received and throughout the remainder of the year the taxpayer was living separate and apart from the person who was required to make the payment,

(ii) the person who was required to make the payment is the natural parent of a child of the taxpayer, and

(iii) the amount was received under an order made by a competent tribunal in accordance with the laws of a province;

Para. 56(1)(c) substituted for para. (c.1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(2), applicable to amounts received under an order made after 1992. Para. (c.1) formerly read:

(c.1) **idem** — any amount received by the taxpayer in the year, pursuant to an order made by a competent tribunal in accordance with the laws of a province, as an allowance payable on a periodic basis for the maintenance of the taxpayer, the children of the taxpayer or both the taxpayer and the children of the taxpayer if

(i) the order was made

(A) after February 10, 1988, or

(B) before February 11, 1988 and the taxpayer and the person required to pay the amount jointly elected in writing before the end of the year to have this paragraph and paragraph 60(c.1) apply with respect to all those amounts,

(ii) at the time the amount was received and throughout the remainder of the year, the taxpayer was living apart from the person required to pay the amount, and

(iii) the person required to pay the amount is a person of the opposite sex who

(A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or

(B) is the natural parent of a child of the taxpayer;

Pre-RSC History: Para. 56(1)(c.1) substituted by 1988, c. 55, subsec. 34(1), applicable,

(a) with respect to orders made under the laws of Ontario, to 1986 *et seq.*, and

(b) in any other case, to 1988 *et seq.*,

except that with respect to amounts received pursuant to orders made after December 11, 1979 under the laws of Ontario, the references in subpara. (i) to "February 10, 1988" and "February 11, 1988" shall be read as references to "December 11, 1979" and "December 12, 1979", respectively. Para. 56(1)(c.1) formerly read:

(c.1) **idem** — any amount received by the taxpayer in the year, pursuant to an order made in accordance with the laws of a province by a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer, or both the taxpayer and children of the taxpayer if, at the time the payment was received and throughout the remainder of the year, the taxpayer was living apart from the person required to make the payment and was an individual within a prescribed class of persons described in the laws of the province,

Para. 56(1)(c.1) added by 1980-81-82-83, c. 140, subsec. 26(4), applicable (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the person required to make the payment agree in writing at any time in a taxation year, in the year and subsequent taxation years.

Selected Cases [para. 56(1)(c)]: *The Queen v. Sigglekow*, [1985] 2 C.T.C. 251 (FCTD) (Amount received included in taxpayer's income despite divorce decree providing former husband to pay "tax-free" amount); *James v. The Queen*, [1985] 1 C.T.C. 239 (FCTD) (Maintenance payments included in taxpayer's income notwithstanding that payments made late and in smaller amounts).

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-325R2: Property transfers after separation, divorce and annulment.

(c.1) [Repealed]

History: See under para. 56(1)(c).

(c.2) **reimbursement of support payments** — an amount received by the taxpayer in the year under a decree, order or judgment of a competent tribunal as a reimbursement of an amount deducted under paragraph 60(b) or (c), or under paragraph 60(c.1) as it applies, in computing the taxpayer's income for the year or a preceding taxation year to decrees, orders and judgments made before 1993;

Related Provisions: 60(c.2) — Repayment of support payments; 146(1)"earned income"(b) — Amount under 56(1)(c.2) included in RRSP earned income.

History: Para. 56(1)(c.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(3), applicable to payments received after 1990.

Interpretation Bulletins: IT-530: Support payments.

(d) **annuity payments** — any amount received by the taxpayer in the year as an annuity payment other than an amount

(i) otherwise required to be included in computing the taxpayer's income for the year, or

(ii) with respect to an interest in an annuity contract to which subsection 12.2(1) applies (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest);

Related Provisions: 56(1.1) — Definitions in 12.2(11) apply; 58 — Government annuities and like annuities; 60(a) — Deduction of capital element; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 128.1(10)"excluded right or interest"(f)(i) — Emigration — no deemed disposition of right to annuity contract; 153(1)(f) — Withholding at source; 212(1)(o) — Withholding tax on annuity payment to non-resident.

History: Subpara. 56(1)(d)(ii) substituted for subparas. (ii), (iii), by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(4), applicable to contracts last acquired after 1989. Subparas. 56(1)(d)(ii), (iii) formerly read:

(ii) with respect to an interest in an annuity contract to which subsection 12.2(1) applies or would apply if the interest had been last acquired after December 19, 1980 and before December 2, 1982

(other than a contract to which subsection 12.2(1) does not apply in the year by reason of subsection 12.2(6) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), or

(iii) with respect to an interest in an annuity contract to which subsection 12.2(3) applies;

Pre-RSC History: Subpara. 56(1)(d)(iii) substituted and (iv) repealed by 1990, c. 39, subsec. 11(1), applicable (by subsec. 11(6), as amended by 1991, c. 49, s. 253) with respect to contracts last acquired after 1989. Subparas. 56(1)(d)(iii) and (iv) formerly read:

(iii) with respect to an interest in an annuity contract to which subsection 12.2(3) applies or would apply if the contract had a third anniversary in the year, or

(iv) with respect to an interest in an annuity contract to which subsection 12.2(4) applies;

Para. 56(1)(d) substituted by 1980-81-82-83, c. 140, subsec. 26(4), applicable after December 1, 1982. Para. 56(1)(d) formerly read:

(d) any amount received by the taxpayer in the year as an annuity payment except to the extent that the payment is otherwise required to be included in computing his income for the year;

Selected Cases [para. 56(1)(d)]: *Thibault v. The Queen*, [1975] C.T.C. 587 (FCTD) (Interest on monthly payments and indemnity amounts taxable income when calculated on annuity basis).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-111R2: Annuities purchased from charitable organizations; IT-365R2: Damages, settlements and similar receipts.

Advance Tax Rulings: ATR-40: Taxability of receipts under a structured settlement; ATR-50: Structured settlement; ATR-68: Structured settlement.

(d.1) [Repealed under former Act]

Pre-RSC History: Para. 56(1)(d.1) repealed by 1990, c. 39, subsec. 11(2), applicable (by subsec. 11(6), as amended by 1991, c. 49, s. 253) with respect to contracts last acquired after 1989. Para. 56(1)(d.1) formerly read:

(d.1) idem — any amount paid in the year as an annuity payment with respect to

(i) an interest in an annuity contract (other than a contract to which subsection 12.2(3) does not apply in the year by virtue of subsection 12.2(7)) to which subsection 12.2(3) does not apply but would apply if the contract had a third anniversary in the year, or

(ii) an interest in an annuity contract (other than a contract to which subsection 12.2(1) does not apply in the year by virtue of subsection 12.2(6)) to which subsection 12.2(1) does not apply but would apply if the interest had been last acquired after December 19, 1980 and before December 2, 1982

where such interest was held by the taxpayer at the time of the payment, except to the extent that the aggregate of such amounts with respect to such an interest in a particular annuity contract exceeds the amount by which the accumulating fund at the end of the calendar year ending in the year, as determined in prescribed manner, with respect to the interest exceeds the aggregate of its adjusted cost basis at the end of that calendar year and the amount at the end of that calendar year of unallocated income accrued in respect of the interest before 1982, as determined in prescribed manner;

Para. 56(1)(d.1) added by 1980-81-82-83, c. 140, subsec. 26(4), applicable after December 1, 1982.

Interpretation Bulletins: IT-365R2: Damages, settlements and similar receipts.

(d.2) **idem [annuity payments]** — any amount received out of or under, or as proceeds of disposition of, an annuity the payment for which was

(i) deductible in computing the taxpayer's income because of paragraph 60(l) or because of subsection 146(5.5) of the *Income Tax Act*, Chapter 148 of the Revised Statutes of Canada, 1952,

(ii) made in circumstances to which subsection 146(21) applied, or

(iii) made pursuant to or under a deferred profit sharing plan by a trustee under the plan to purchase the annuity for a beneficiary under the plan;

Related Provisions: 60.2(1) — Refund of undeducted past service AVCs; 147(2)(k)(vi) — Purchase of annuity by DPSP; 147(10.6) — Purchase of annuity by DPSP before 1997.

History: Subpara. 56(1)(d.2)(iii) added by 1997, c. 25, subsec. 8(2), applicable to 1996 *et seq.*

Para. 56(1)(d.2) substituted by 1994, c. 21, subsec. 25(2), applicable to 1992 *et seq.* Para. (d.2) formerly read:

(d.2) idem — any amount received out of or under, or as proceeds of disposition of, an annuity the payment for which was deductible in computing the taxpayer's income by reason of paragraph 60(l) of this Act or subsection 146(5.5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Pre-RSC History: Para. 56(1)(d.2) substituted by 1984, c. 45, s. 16, to add "or subsection 146(5.5)", applicable to 1984 *et seq.*

Para. (d.2) added by 1980-81-82-83, c. 140, subsec. 26(4), applicable to 1982 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-517R: Pension tax credit.

(e) **disposition of income-averaging annuity contract** — any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract;

Related Provisions: 153(1)(k) — Withholding of tax at source; Canada-U.S. tax treaty, Art. XVIII:3 — Pension income excludes payment from IAAC.

Regulations: 208 (information return).

(f) **idem** — any amount deemed by subsection 61.1(1) to have been received by the taxpayer in the year as proceeds of the disposition of an income-averaging annuity contract;

Related Provisions: 212(1)(n), 214(3)(b) — Non-resident withholding tax.

Pre-RSC History: Para. 56(1)(f) substituted by 1976-77, c. 4, subsec. 16(1), applicable after May 25, 1976, to substitute "61.1(1)" for "61(3)".

Regulations: 208 (information return).

(g) **supplementary unemployment benefit plan** — amounts received by the taxpayer in the year from a trustee under a supplementary unemployment benefit plan as provided by section 145;

Related Provisions: 6(1)(a)(i) — Employer-paid premiums not a taxable benefit; 145(3) — Amounts received taxable; 146(1)"earned income"(b) — Amount under 56(1)(g) included in RRSP earned income; 153(1)(e) — Withholding of tax at source.

Regulations: 100(1)"remuneration"(e) (withholding at source).

(h) **registered retirement savings plan, etc.** — amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;

Related Provisions: 60.2(1) — Refund of undeducted past service AVCs; 139.1(12) — Conversion benefit on demutualization of insurance corporation; 146(8) — Benefits taxable; 148(8.1) — *Inter vivos* transfer to spouse; 153(1)(j) — Withholding of tax at source.

Pre-RSC History: Para 56(1)(h) substituted by 1979, c. 5, subsec. 15(2), applicable after June 29, 1978. Para. 56(1)(h) formerly read:

(h) registered retirement savings plan — amounts in respect of a registered retirement savings plan required by section 146 to be included in computing the taxpayer's income for the year;

Regulations: 214 (information return).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

(h.1) **home buyers' plan** — amounts required by section 146.01 to be included in computing the taxpayer's income for the year;

Related Provisions: 146.01(4), (5), (6) — Income inclusions.

History: Para. 56(1)(h.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(4), applicable to 1992 *et seq.*

(h.2) **lifelong learning plan** — amounts required by section 146.02 to be included in computing the taxpayer's income for the year;

Related Provisions: 146.02(4), (5), (6) — Income inclusions.

History: Para. 56(1)(h.2) added by 1999, c. 22, s. 15, applicable to 1999 *et seq.*

(i) **deferred profit sharing plan** — amounts received by the taxpayer in the year under a deferred profit sharing plan as provided by section 147;

Related Provisions: 60(j.2) — Transfer to spousal RRSP; 139.1(11), (12) — Conversion benefit on demutualization of insurance corporation; 147(10) — Amounts received from DPSP taxable; 153(1)(h) — Withholding of tax at source; 212(1)(m) — DPSP payments to non-residents.

Selected Cases [para. 56(1)(i)]: *The Queen v. Powell*, [1980] C.T.C. 382 (FCTD) (Amount of increase in value from time of acquisition of shares in DPSP included in income).

Regulations: 100(1)"remuneration"(f) (withholding at source).

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

(j) **life insurance policy proceeds** — any amount required by subsection 148(1) or (1.1) to be included in computing the taxpayer's income for the year;

Related Provisions: 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 148(9)"adjusted cost basis"C — increase in adjusted cost basis.

Regulations: 217 (information return).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

Forms: T5 Segment; T5 Summ: Return of investment income; T5 Supp: Statement of investment income.

(k) [Repealed under former Act]

Pre-RSC History: Para. 56(1)(j) substituted by 1979, c. 5, subsec. 15(3), applicable to 1980 *et seq.*, to add "or (1.1)".

Para. 56(1)(j) substituted for paras. 56(1)(j), (k) by 1977-78, c. 1, subsec. 23(1), applicable to 1978 *et seq.* Paras. 56(1)(j), (k) formerly read:

(j) amounts that the taxpayer became entitled to receive in the year upon the disposition of an interest in a life insurance policy, to the extent provided by section 148;

(k) allocations under insurance policies — amounts allocated to the taxpayer in the year by an insurer as provided by paragraph 148(1)(b);

(l) **legal expenses [awarded or reimbursed]** — amounts received by the taxpayer in the year as

(i) legal costs awarded to the taxpayer by a court on an appeal in relation to an assessment of any tax, interest or penalties referred to in paragraph 60(o),

(ii) reimbursement of costs incurred in relation to a decision of the Canada Employment and Immigration Commission, the Canada Employment and Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act* or the *Employment Insurance Act*, or

(iii) reimbursement of costs incurred in relation to an assessment or a decision under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

if with respect to that assessment or decision, as the case may be, an amount has been deducted or may be deductible under paragraph 60(o) in computing the taxpayer's income;

Related Provisions: 60(o) — Expense of objection or appeal; 152(1.2) — Rule applies to determination of losses as well as assessment.

History: Subpara. 56(1)(l)(ii) amended by 1998, c. 19, subsec. 97(3), deemed to have come into force on June 30, 1996. The subpara. formerly read:

(ii) reimbursement of costs incurred in relation to a decision of the Canada Employment Insurance Commission, a board of referees or an umpire under the *Employment Insurance Act*, or

Subpara. 56(1)(l)(ii) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 56(1)(l) amended by 1996, c. 11, para. 99(c), to substitute "Canada Employment Insurance Commission" for "Canada Employment and Immigration Commission", in force July 12, 1996.

Pre-RSC History: Subpara. 56(1)(l)(i) substituted, subpara. 56(1)(l)(iii) added by 1980-81-82-83, c. 48, subsecs. 25(4), (5), applicable to any award or reimbursement with respect to costs incurred after December 11, 1979. Subpara. 56(1)(l)(i) formerly read:

(i) legal costs awarded to him by a court on an appeal in relation to an assessment of tax, interest or penalties under this Act, or

Para. 56(1)(l) substituted by 1976-77, c. 4, subsec. 16(2), applicable in respect of amounts described therein that are received after May 25, 1976. Para. 56(1)(l) formerly read:

(l) amounts received by the taxpayer in the year as legal costs awarded to him by a court on an appeal in relation to,

(i) an assessment of tax, interest or penalties under this Act, or

(ii) a decision of the Unemployment Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act, 1971*,

if with respect to that assessment or decision, as the case may be, an amount has been deducted or may be deductible under paragraph 60(o) in computing his income;

Para. 56(1)(l) substituted by 1974-75-76, c. 26, subsec. 27(2), applicable to 1975 *et seq.* Para. 56(1)(l) formerly read:

(l) amounts received by the taxpayer in the year as legal costs awarded to him by a court on an appeal in relation to an assessment of tax, interest or penalties under this Act, if with respect to that assessment an amount has been deducted or may be deductible under paragraph 60(o) in computing his income;

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(l.1) **idem** — amounts received by the taxpayer in the year as an award or a reimbursement in respect of legal expenses (other than those relating to a division or settlement of property arising out of, or on a breakdown of, a marriage) paid to collect or establish a right to a retiring allowance or a benefit under a pension fund or plan (other than a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act) in respect of employment;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60(o.1) — Deductions in computing income — legal expenses in respect of retiring allowances and pension benefits.

History: Para. 56(1)(l.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(5), to substitute "an award or a reimbursement" for "an award or reimbursement" and "arising out of, or on a breakdown of, a marriage" for "arising from a marriage or other conjugal relationship" and applicable after 1992.

Pre-RSC History: Para. 56(1)(l.1) added by 1990, c. 39, subsec. 11(3), applicable with respect to amounts received after 1985, other than amounts received as an award or reimbursement in respect of legal expenses paid before 1986.

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(m) [Repealed]

Related Provisions: 60(n) — Deduction of overpayment of pension or benefits; 63(3)"earned income"(b), 64(b)(ii) — Amount under 56(1)(m) is earned income for child care expenses and for part-time attendant deduction; 153(1)(i) — Withholding of tax at source; 248(1) — Extended meaning of "personal or living expenses".

History: Para. 56(1)(m) repealed by 1996, c. 23, s. 172, in force January 1, 1998. It formerly read:

(m) training allowance — amounts received by the taxpayer in the year as or on account of a training allowance paid to the taxpayer under the *National Training Act*, except to the extent that they were paid to the taxpayer as or on account of an allowance for the taxpayer's personal or living expenses while the taxpayer was away from home;

Pre-RSC History: Para. 56(1)(m) substituted by 1980-81-82-83, c. 109, subsec. 19(1), proclaimed in force August 2, 1982. Para. 56(1)(m) formerly read:

(m) adult training allowance — amounts received by the taxpayer in the year as or on account of an adult training allowance paid to him under the *Adult Occupational Training Act*, except to the extent that they were paid to him as or on account of an allowance for his personal or living expenses while he was living away from home;

Regulations: 200(2)(c) (information return).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-337R3: Retiring allowances.

(n) **scholarships, bursaries, etc.** — the amount, if any, by which

(i) the total of all amounts (other than amounts described in paragraph (q), amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer (other than a prescribed prize),

exceeds the greater of $500 and the total of all amounts each of which is the lesser of

(ii) the amount included under subparagraph (i) for the year in respect of a scholarship, fellowship, bursary or prize that is to be used by the taxpayer in the production of a literary, dramatic, musical or artistic work, and

(iii) the total of all amounts each of which is an expense incurred by the taxpayer in the year for the purpose of fulfilling the conditions under which the amount described in subparagraph (ii) was received, other than

(A) personal or living expenses of the taxpayer (except expenses in respect of travel, meals and lodging incurred by the taxpayer in the course of fulfilling those conditions and while absent from the taxpayer's usual place of residence for the period to which the scholarship, fellowship, bursary or prize, as the case may be, relates),

(B) expenses for which the taxpayer was reimbursed, and

(C) expenses that are otherwise deductible in computing the taxpayer's income;

Proposed Amendment — Scholarships exemption increased to $3,000

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Scholarships, Fellowships and Bursaries*

(25) That, for the 2000 and subsequent taxation years, the $500 exemption in respect of the total of all amounts received in the year by an individual on account of scholarships, fellowships, bursaries and certain prizes be increased by $2,500 for scholarships, fellowships and bursaries received by the individual in connection with the individual's enrolment at a designated educational institution in a program in respect of which the individual may claim the education tax credit.

Federal budget, supplementary information, February 28, 2000: *Partial Exemption for Scholarships, Fellowships and Bursaries*

The first $500 of scholarship, fellowship or bursary income received in a year has been excluded from income for tax purposes since 1972.

In order to provide additional assistance to students, the budget proposes to increase the annual exemption to $3,000, beginning with the 2000 taxation year. The $2,500 increase in the exemption will apply only to amounts received by a student where that student enrols in a program which entitles the student to claim the education tax credit. Generally, this includes programs at a post-secondary level and programs at educational institutions certified by the Minister of Human Resources Development that furnish or improve skills in an occupation.

Related Provisions: 56(1)(p) — Amounts to be included in income — refund of scholarships, bursaries and research grants; 60(q) — Refund of income payments; 62(1) — Moving expenses; 63(3)"earned income"(b), 64(b)(ii) — Amount under 56(1)(n) is earned income for child care expenses and for part-time attendant deduction; 115(2)(a)–(b.1), 115(2)(e)(ii) — Non-resident's taxable income earned in Canada; 248(1) — Extended meaning of "personal or living expenses"; Canada-U.S. tax treaty, Art. XX — Students.

History: That portion of para. 56(1)(n) following subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(5), applicable to 1987 *et seq*. That portion formerly read:

exceeds

(ii) $500;

Pre-RSC History: Subpara. 56(1)(n)(i) substituted by 1987, c. 46, subsec. 15(2), to add "(other than a prescribed prize)", applicable to 1983 *et seq*. except that, in respect of amounts received before May 24, 1985, subpara. 56(1)(n)(i) shall be read without reference to the words "amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment".

Subpara. 56(1)(n)(i) substituted by 1986, c. 6, subsec. 28(1), applicable with respect to amounts received after May 23, 1985, to add "amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment".

Subpara. 56(1)(n)(i) substituted by 1979, c. 5, subsec. 15(4), applicable in respect of amounts received after 1978, to add "(other than amounts described in paragraph (q))".

Selected Cases [para. 56(1)(n)]: *Foulds v. R.*, [1997] 2 C.T.C. 2660 (TCC) (Prize for outstanding achievement in music not taxable); *Cai v. Canada*, [1996] 3 C.T.C. 2724 (TCC) (Taxpayer's presence in Canada was more than just as student); *The Queen v. Savage*, [1983] C.T.C. 393 (SCC) (Award received by employee for passing self-improvement course was a "prize" for achievement); *McLaughlin v. MNR*, [1978] C.T.C. 602 (FCTD) (Prize for achievement not taxable when taxpayer not competing for award); *The Queen v. Amyot*, [1976] C.T.C. 352 (FCTD) (Grant used primarily to advance career of taxpayer is taxable).

Regulations: 200(2)(a) (information return); 7700 (prescribed prize).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes and research grants; IT-178R3: Moving expenses; IT-257R: Canada Council grants; IT-340R: Scholarships, fellowships, bursaries and research grants — forgivable loans, repayable awards, etc.; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit.

(o) **research grants** — the amount, if any, by which any grant received by the taxpayer in the year to enable the taxpayer to carry on research or any similar work exceeds the total of expenses incurred by the

taxpayer in the year for the purpose of carrying on the work, other than

(i) personal or living expenses of the taxpayer except travel expenses (including the entire amount expended for meals and lodging) incurred by the taxpayer while away from home in the course of carrying on the work,

(ii) expenses in respect of which the taxpayer has been reimbursed, or

(iii) expenses that are otherwise deductible in computing the taxpayer's income for the year;

Related Provisions: 60(q) — Refund of income payments; 62(1) — Moving expenses; 63(3)"earned income"(b), 64(b)(ii) — Amount under 56(1)(o) is earned income for child care expenses and for part-time attendant deduction; 115(2)(b.1), 115(2)(e)(ii) — Non-resident's taxable income earned in Canada; 146(1)"earned income"(b) — Amount under 56(1)(o) is earned income for RRSP; 248(1) — Extended meaning of "personal or living expenses"; Canada-U.S. tax treaty, Art. XX — Students.

Regulations: 200(2)(b) (information return).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes and research grants; IT-178R3: Moving expenses; IT-257R: Canada Council grants; IT-340R: Scholarships, fellowships, bursaries, business and research grants — forgivable loans and repayable awards, etc.

(p) **refund of scholarships, bursaries and research grants** — amounts as described in paragraph 60(q) received by the taxpayer in the year from an individual;

Related Provisions: 56(1)(n) — Scholarships, bursaries, etc.; 60(q) — Refund of income payments.

Interpretation Bulletins: IT-340R: Scholarships, fellowships, bursaries, and research grants — forgivable loans and repayable awards.

(q) **education savings plan payments** — amounts in respect of a registered education savings plan required by section 146.1 to be included in computing the taxpayer's income for the year;

Related Provisions: 146.1(7) — Amounts to be included in beneficiary's income; 212(1)(r) — RESP payments to non-residents.

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes and research grants.

(r) **financial assistance** — amounts received in the year by the taxpayer as

(i) earnings supplements provided under a project sponsored by a government or government agency in Canada to encourage individuals to obtain or keep employment,

(ii) financial assistance under a program established by the Canada Employment Insurance Commission under Part II of the *Employment Insurance Act*, or

(iii) financial assistance under a program that is

(A) established by a government or government agency in Canada or by an organization,

(B) similar to a program established under Part II of that Act, and

(C) the subject of an agreement between the government, government agency or organization and the Canada Employment Insurance Commission because of section 63 of that Act;

Related Provisions: 56(1)(u) — Inclusion of social assistance payments generally (subject to offsetting deduction); 60(n)(iii) — "Deduction for amounts repaid"; 63(3)"earned income"(b) — Amount under 56(1)(r) is earned income for child care expenses; 153(1)(s) — Withholding of tax at source.

History: Para. 56(1)(r) added by 1998, c. 19, subsec. 97(4), applicable to 1993 *et seq.*, except that, in its application before July 1996, para. 56(1)(r) shall be read without reference to subparas. (ii) and (iii).

Pre-RSC History: Former para. 56(1)(r) repealed by 1986, c. 6, subsec. 28(2), applicable to 1986 *et seq.* Para. 56(1)(r) formerly read:

(r) payments from registered home ownership savings plan — amounts in respect of a registered home ownership savings plan required by section 146.2 to be included in computing the taxpayer's income for the year;

Paras. 56(1)(p), (q) and former para. (r) added by 1974-75-76, c. 26, subsec. 27(3), paras. 56(1)(p) and (r) applicable to 1974 *et seq.*, para. 56(1)(q) applicable to 1972 *et seq.*

Regulations: 100(1)"remuneration"(h) (withholding at source).

(s) **grants under prescribed programs** — the amount of any grant received in the year under a prescribed program of the Government of Canada relating to home insulation or energy conversion by

(i) the taxpayer, other than a married taxpayer who resided with the taxpayer's spouse at the time the grant was received and whose income for the year is less than the taxpayer's spouse's income for the year, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 12, will replace "married taxpayer" with "married taxpayer or taxpayer who is in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) the spouse of the taxpayer with whom the taxpayer resided at the time the grant was received, if the spouse's income for the year is less than the taxpayer's income for the year

to the extent that the amount is not required by paragraph 12(1)(u) to be included in computing the taxpayer's or the taxpayer's spouse's income for the year or a subsequent year;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — No tax on ice storm grants

Revenue Canada news release, March 11, 1999: *Taxation of Financial Assistance to 1998 Ice Storm Victims*

In January 1998, a severe ice storm devastated parts of Ontario, Quebec, New Brunswick, and Nova Scotia. When disaster strikes, the federal government provides financial assistance to provinces through the Disaster Financial Assistance Arrangements (DFAA) if the cost of dealing with the disaster would otherwise place an undue burden on a province's economy.

Federal government assistance to ice storm victims includes:

- $175 million in advance payments to affected regions under the DFAA;
- financial assistance through a number of temporary recovery programs aimed at helping small and medium-sized businesses, and farmers cope with expenses not covered by the DFAA;
- employment measures under the *Employment Insurance Act* and initiatives under the government of Canada Youth program.

Some ice storm victims may also have received support from their employers in the affected regions, and from citizens across the country through voluntary organizations.

Taxation of financial assistance from the federal and provincial governments

In general, when victims of a disaster receive payments from the government for personal losses, these payments are not taxable. Normally, the following will apply:

Payments received from governments to cover personal losses	No tax consequences
Payments received and spent to replace destroyed rental or business properties	No tax consequences
Payments received and spent to repair damaged rental or business properties	No tax consequences
Personal expenses	Not deductible
Personal losses	Not deductible

Assistance from employers

Usually, financial assistance that an employer gives to employees is a taxable benefit and must be reported as part of their income. Due to the extenuating circumstances of the ice storm, a tax remission order [see the *Ice Storm Employee Benefits Remission Order* — ed.] will eliminate federal tax on most payments made to ice storm victims by their employer. However, the payments must have been made under all of the following conditions

- the assistance must be in addition to the employee's regular salary, paid even when the employee was unable to report to work because of the ice storm;
- the assistance must be seen as reasonable under the circumstances;
- the assistance must be based on an employer-employee relationship, and not the result of the employee holding shares in the business;
- the employer must have granted the assistance on a voluntary basis;
- the employer must have made the payment without regard for the employee's work performance, length of service, or any other work-related factor;
- the employer cannot have granted financial assistance in exchange for past or future services; and
- the employer cannot have used the amount of financial assistance to compensate the employee for the loss of employment income.

With the remission order, employees will not have to include the amount of any such assistance in their income when they file their 1998 income tax return.

Employers are not required to withhold taxes on these payments. Employers who give financial assistance to their employees will be allowed to deduct those payments as business expenses when they file their income tax returns.

For more information

Anyone who wants more information about the tax consequences of financial assistance received should contact a Revenue Canada representative at the local tax services office.

Related Provisions: 56(9) — Definition of "income for the year"; 13(7.1)(b.1) — Deemed capital cost of certain property; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Para. 56(1)(s) substituted by 1980-81-82-83, c. 48, subsec. 25(6), applicable to 1981 *et seq.* Para. 56(1)(s) formerly read:

> (s) the amount of any grant received in the year under a prescribed program of the Government of Canada relating to home insulation by
>
> (i) the taxpayer, other than a married taxpayer who resided with his spouse at the time the grant was received and whose income for the year is less than the income for the year of his spouse, or
>
> (ii) the spouse of the taxpayer with whom he resided at the time the grant was received, if the spouse's income for the year is less than the income for the year of the taxpayer; and

Para. 56(1)(s) added by 1977-78, c. 1, subsec. 23(2), applicable to 1977 *et seq.*

Regulations: 224 (information return); 5500, 5501 (prescribed program).

Forms: T4 NEP: Statement of National Energy Program payments.

> (t) **registered retirement income fund** — amounts in respect of a registered retirement income fund required by section 146.3 to be included in computing the taxpayer's income for the year;

Related Provisions: 60.2(1) — Refund of undeducted past service AVCs; 139.1(11), (12) — Conversion benefit on demutualization of insurance corporation; 146.3(5), (5.1), (7) — Benefits taxable; 153(1)(l) — Withholding of tax at source; 212(1)(q) — RRIF payments to non-residents.

Pre-RSC History: Para. 56(1)(t) added by 1977-78, c. 32, s. 11.

Regulations: 215 (information return).

Forms: T2205: Calculation of amounts from a spousal RRSP or RRIF to be included in income.

> (u) **social assistance payments** — a social assistance payment made on the basis of a means, needs or income test and received in the year by
>
> (i) the taxpayer, other than a married taxpayer who resided with the taxpayer's spouse at the time the payment was received and whose income for the year is less than the spouse's income for the year, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 12, will replace "married taxpayer" with "married taxpayer or taxpayer who is in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

> (ii) the taxpayer's spouse, if the taxpayer resided with the spouse at the time the payment was received and if the spouse's income for the year is less than the taxpayer's income for the year,
>
> except to the extent that the payment is otherwise required to be included in computing the income for a taxation year of the taxpayer or the taxpayer's spouse;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 56(1)(r) — Inclusion of social assistance payments intended to supplement employment income (with no offsetting deduction); 56(9) — Definition of "income for the year"; 81(1)(h) — Exemption for payments to foster care givers; 110(1)(f) — Offsetting deduction; 252(4) — Extended meaning of "spouse".

History: The closing words of para. 56(1)(u) amended by 1998, c. 19, subsec. 97(5), applicable to 1993 *et seq.* The closing words formerly read:

> except to the extent that the payment is otherwise required to be included in computing the income for a taxation year from a business or property of the taxpayer or the taxpayer's spouse;

Para. 56(1)(u) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(6), applicable to 1982 *et seq.* Para. 56(1)(ii) formerly read:

> (u) social assistance payments — a social assistance payment made in the year
>
> (i) on the basis of a means, needs or income test, and
>
> (ii) in respect of the taxpayer or of a person who, at the time of the payment, is related to the taxpayer or is a person in respect of whom any individual was entitled to receive a family allowance payment under the *Family Allowances Act*
>
> and received by
>
> (iii) the taxpayer, other than a married taxpayer who resides with the taxpayer's spouse at the time of the payment and

whose income for the year is less than the spouse's income for the year, or

(iv) the taxpayer's spouse with whom the taxpayer resides at the time of the payment if the spouse's income for the year is less than the taxpayer's income for the year;

Pre-RSC History: Para. 56(1)(u) substituted by 1988, c. 55, subsec. 34(2), applicable to 1982 *et seq.* Para. 56(1)(u) formerly read:

(u) **social assistance payments** — a social assistance payment made on the basis of a means, needs or income test received in the year by

(i) the taxpayer, other than a married taxpayer who resided with his spouse at the time the payment was received and whose income for the year is less than his spouse's income, or

(ii) the spouse of the taxpayer with whom he resided at the time the payment was received if the spouse's income for the year is less than the taxpayer's income for the year;

Para. 56(1)(u) added by 1980-81-82-83, c. 140, subsec. 26(5), applicable to 1982 *et seq.*

Regulations: 233 (information return).

Forms: T4115: T5007 guide — return of benefits (guide); T5007 Summ: Return of benefit payments — summary; T5007 Supp: Statement of benefit payments.

(v) **workers' compensation** — compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, a disability or death;

Proposed Amendment — Workers' Compensation amounts paid by employer

Revenue Canada notice, September 9, 1999: *Workers' Compensation Board (WCB) Awards*

If an employee cannot work because of an employment-related injury, the WCB may award benefits as compensation for lost wages.

New policy for 2000

Reporting requirements

As a result of a 1997 Tax Court decision an employer who chooses to maintain an employee on salary while waiting for a decision on a WCB claim will no longer be allowed to retroactively reduce earnings in the current year or amend a previous year T4. We have also changed the way employers will report top-up amounts and WCB advances. Our new policy will apply to:

- self-insured employers who are directly liable for the cost of amounts that the WCB awards to employees; and
- regular employers who are not directly liable for the cost of amounts that the WCB awards to employees.

Implementation dates

Starting January 1, 2000, the following instructions will replace the "Workers' Compensation Board (WCB) awards" area in Chapter 6 of the 1999-2000 employers' guide to Payroll Deductions(Basic information). However, employers must follow the current instructions in the 1999-2000 guide when they complete any 1999 T4s that are due February 29, 2000.

Employee salary continued

Before January 1, 2000, an employer who continues to pay salary while waiting for a decision on a WCB claim has to make tax, CPP, and EI deductions at source. If the claim is accepted, either in the same year or a later year, the employer is allowed to adjust the current-year payroll or amend previous-year T4s by reducing the amount in box 14 by the amount of the award, and by adjusting the tax, CPP, and EI deducted to correspond with the reduced income.

Starting January 1, 2000, an employer who chooses to maintain an employee on salary while waiting for a decision on a WCB claim will no longer be allowed to reduce earnings in the current year or amend a previous-year T4. The 1997 Tax Court decision confirmed that an employer who continues to pay salary and withhold tax, CPP, and EI cannot make retroactive adjustments to income and deductions and call them WCB payments. As a result, the employee will have to report, in the year it is received, the salary he or she receives while waiting for the claim decision.

Note: Employers will not be able to recover their share of the CPP and EI contributions.

The T4 slip and T5007 slip, Statement of Benefits

In the year that the WCB claim is accepted, the employee will receive a T5007 slip from the WCB. The employee will report the amount shown on the T5007 slip as income on his or her T1 income tax return for that year and claim the corresponding deduction. The employee will also be allowed to deduct the amount of the WCB award repaid to the employer that was included in income in a previous year, as other employment expenses (repayment of salary or wages). Any unused amount becomes a non-capital loss and may be deducted against income from all sources for the three previous years-any remaining loss is carried forward and can be deducted against income for the following seven years.

For the employee to claim the other employment expense deduction, the employer will complete a T4. On the T4, the employer will enter a special code in the "Other information" area to report the amount received by the employer from the WCB as an offset against the previously paid salary. Self-insured employers who cover the cost of the claims themselves will follow the same procedure. If the award is used only to offset loans or advances, the employer will not have to report his amount.

Note: In 2000, we will issue the T4 code and reporting instructions for the February 28, 2001 filing date.

Top-up amounts

A top-up amount is an amount an employer pays to an employee, in addition to any advance, while waiting for a WCB award. Since a top-up amount is paid to an employee to increase the compensation paid by a provincial authority, the amount is excluded from insurable earnings. A top-up amount will be subject to tax and CPP, and will be reported on a T4 at year end.

WCB advances (loans)

An employer will still be allowed to make an advance or loan to an employee while waiting for a decision on a claim, and we will not consider this amount to be employment income. As a result, the employer will not have to deduct tax, CPP, and EI at source, and no T4 will be issued at year end. The advance or loan will be offset when the claim is decided. We will not consider as a taxable benefit any interest that accumulates on advances while waiting for a claim decision.

Advances or loans not repaid

If an advance or loan is not repaid (or offset in the case of a self-insured employer) in the year the WCB claim is accepted or denied, we will consider the employee to have received a benefit from employment in that year. The amount of the loan or advance will have to be reported on a T4 with tax, CPP, and EI withheld. If the claim is denied, and the employer converts the advance or loan to sick leave, this amount will have to be reported on a T4 with tax, CPP, and EI withheld.

Example: ABC construction loans Robert $10,000 while waiting for a decision on a WCB claim. The claim is denied and ABC construction chooses to offset the loan by paying Robert $20,000 in sick leave for the period in question. ABC will have to withhold tax, CPP, and EI on the total sick leave payment of $20,000. Robert will have to use the net pay to repay the $10,000 loan to ABC construction.

If an advance or loan is considered to become employment income or is converted to sick leave, tax will have to be withheld unless there are not enough other earnings from which to withhold the tax. However, CPP and EI will still have to be deducted at source. If withholding the tax causes undue hardship, the employee can contact any tax services office to ask that less tax be deducted.

Advances by a third party

If an insurance company pays an employee's salary, the insurer will issue a T4A. If the payments are later repaid by the WCB or

by the employee, the insurance company will issue a receipt (letter) to the employee that will allow him or her to claim a deduction for repayment of salary or wages.

Adjustment period for new WCB claims

In many cases, an employer prepares payroll cheques in advance. As a result, it may not always be possible to place an employee on a loan or advance system immediately after he or she files a claim. If this happens, we will allow the employer a reasonable period (normally one pay cycle) to adjust the payroll records to a loan basis.

Transition period for 1999-2000

Employers have to implement this new policy on January 1, 2000. Employees who have outstanding notices of objection for 1997 or later years will have their T4s reinstated to the gross amounts and their T1 returns adjusted to reflect these new rules. We will consider, on a case-by-case basis, any outstanding or new complaints that have not been appealed before 2000. When we do this, we will take into account the union or employment contract currently in force as well as our guidelines.

Any WCB claims made before December 31, 1999, that are decided after January 1, 2000, will usually fall under the new rules-that is, no adjustment to previous-year T4s will be allowed. In special situations-where employment contracts or union agreements specify how adjustments to tax, CPP, and EI are formulated, and where no employee complaints are received-employers will be allowed to follow the old rules. All WCB claims filed after January 1, 2000, will fall under the new rules, regardless of any existing agreement between the employer and the employee.

Note: In Quebec, workers compensation benefits are administered by the Commission de la santé et de la sécurité au travail (CSST). CSST legislation is different from WCB legislation. For more information on CSST, get the Guide for Employers from your ministère du Revenu Québec office.

How to treat WCB payments in certain situations

Example 1 — Employer continues to pay regular wages

John is injured at work on July 10, 2000. He continues to be paid his regular wages until February 6, 2002, when the WCB accepts his claim. The employer is reimbursed by the WCB or if he is self-insured, the claim is confirmed.

Results

All wages paid in 2000, 2001, and 2002 would be reported in the appropriate year with tax, CPP, and EI withheld.

In 2002, the year of the award, the employer would not be allowed to adjust box 14 or to reduce the tax, CPP, and EI withheld in 2000, 2001, or 2002.

When completing the T4 for 2002, the employer would use the special code under "Other information" to report the amount of the WCB award for the three years.

When John files his 2002 T1 return he would claim this amount as a deduction for other employment expenses (repayment of salary or wages).

If John does not deduct all of this amount on his 2002 return, the remaining amount becomes a non-capital loss that he can deduct against income from all sources for the three previous years-any amount that remains after that he can carry forward and deduct against income for the following seven years.

Example 2 — Employer pays a top up and, in addition, advances or loans the employee amounts equal to the anticipated WCB

Mary is injured on April 2, 2000, and is away from work until June 6, 2001. Her employment contract stipulates that she would continue to receive her net pay.

Her employer would make advances or loans equal to the anticipated WCB award. The amount of these advances would not be reported to us and would not be reported on a T4 at year end.

Any top-up amounts paid to ensure that Mary's normal net pay was maintained would be considered income in the year they were paid and would be subject to tax and CPP. The amounts would not be subject to EI premiums.

In 2001, when the claim is decided, her employer would offset the amount received from the WCB against the loans made in the following manner:

1. If the amounts were equal, no amount would be recorded in the "Other information" area. of the T4 slip.
2. If the loans were more than the amount of the award, the difference would be considered employment income; Mary's employer would report this income on a T4 with tax, CPP, and EI withheld. No entry would be required in the "Other information" area.

If the claim is disallowed, the entire loan would become taxable in the year it is disallowed, and tax, CPP, and EI would have to be remitted.

Related Provisions: 110(1)(f) — Offsetting deduction.

History: Para. 56(1)(v) substituted by 1994, c. 7, Sch. III (1992, c. 1), s. 13, applicable from February 28, 1992. Para. (v) formerly read:

> (v) workmen's compensation — compensation received under an employee's or workmen's compensation law of Canada or a province in respect of an injury, disability or death;

Pre-RSC History: Para. 56(1)(v) added by 1980-81-82-83, c. 140, subsec. 26(5), applicable to 1982 *et seq.*

Regulations: 232 (information return).

Interpretation Bulletins: IT-202R2: Employees' or workers' compensation.

Forms: T4115: T5007 guide — return of benefits (guide); T5007 Summ: Return of benefit payments — summary; T5007 Supp: Statement of benefit payments.

> (w) **salary deferral arrangement** — the total of all amounts each of which is an amount received by the taxpayer as a benefit (other than an amount received by or from a trust governed by a salary deferral arrangement) in the year out of or under a salary deferral arrangement in respect of a person other than the taxpayer except to the extent that the amount, or another amount that may reasonably be considered to relate thereto, has been included in computing the income of that other person for the year or for any preceding taxation year;

Related Provisions: 6(1)(i) — Inclusions — salary deferral arrangement payments; 6(11) — Salary deferral arrangement.

Pre-RSC History: Para. 56(1)(w) added by 1986, c. 55, s. 9, applicable to 1986 *et seq.*

> (x) **retirement compensation arrangement** — any amount, including a return of contributions, received in the year by the taxpayer or another person, other than an amount required to be included in that other person's income for a taxation year under paragraph 12(1)(n.3), out of or under a retirement compensation arrangement that can reasonably be considered to have been received in respect of an office or employment of the taxpayer;

Related Provisions: 56(11) — Disposition of property by RCA trust; 60(j.1) — Transfer of retiring allowances; 60(t) — Deductions — amount included under 56(1)(x); 149(1)(q.1) — RCA trust — exempt from Part I tax; 107.2 — Distribution by RCA to beneficiary; 153(1)(q) — Withholding of tax at source; 160.3 — Liability in respect of amounts received out of or under RCA trust; 207.6(7) — Transfer from RCA to another RCA; 212(1)(j) — Non-resident withholding tax.

Regulations: 100(1)"remuneration"(b.1) (withholding at source).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits.

Forms: T4A-RCA Summ: Return of distributions from an RCA; T4A-RCA Supp: Statement of amounts paid from an RCA; T4041: Retirement Compensation Arrangements Guide (guide).

> (y) **idem** — any amount received or that became receivable in the year by the taxpayer as proceeds from the disposition of an interest in a retirement compensation arrangement;

Related Provisions: 60(u) — Deductions — amount included under 56(1)(y); 153(1)(r) — Withholding of tax at source; 214(3)(b.1) — Non-resident withholding tax — deemed payments.

Forms: T4A-RCA Summ: Return of distributions from an RCA; T4A-RCA Supp: Statement of amounts paid from an RCA; T4041: Retirement Compensation Arrangements Guide (guide).

(z) **idem** — the total of all amounts, including a return of contributions, each of which is an amount received in the year by the taxpayer out of or under a retirement compensation arrangement that can reasonably be considered to have been received in respect of an office or employment of a person other than the taxpayer, except to the extent that the amount was required

(i) under paragraph 12(1)(n.3) to be included in computing the taxpayer's income for a taxation year, or

(ii) under paragraph (x) or subsection 70(2) to be included in computing the income for the year of a person resident in Canada other than the taxpayer; and

Related Provisions: 56(11) — Disposition of property by RCA trust; 60(t) — Deductions — amount included under 56(1)(z); 153(1)(q) — Withholding of tax at source; 212(1)(j) — Non-resident withholding tax.

Pre-RSC History: Paras. 56(1)(x), (y), (z) added by 1987, c. 46, subsec. 15(3), applicable after October 8, 1986.

Regulations: 100(1)"remuneration"(b.1) (withholding at source).

Forms: T4A-RCA Summ: Return of distributions from an RCA; T4A-RCA Supp: Statement of amounts paid from an RCA; T4041: Retirement Compensation Arrangements Guide (guide).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits.

(aa) **[benefit from registered national arts service organization]** — the value of benefits received or enjoyed by any person in the year in respect of workshops, seminars, training programs and similar development programs because of the taxpayer's membership in a registered national arts service organization.

Related Provisions [para. 56(1)(aa)]: 149.1(6.4) — National arts service organizations.

History: Para. 56(1)(aa) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(7), applicable after July 13, 1990.

(1.1) Application of subsec. 12.2(11) — The definitions in subsection 12.2(11) apply to paragraph (1)(d).

Origin of subsec. 56(1.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 12.2(11)).

(2) Indirect payments — A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person (other than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan) shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to the taxpayer.

Related Provisions: 56(5) — 56(2) does not apply to income subject to income-splitting tax; 74.1–74.5 — Attribution rules; 80.04(5.1) — No benefit conferred where debtor transfers property to eligible transferee under 80.04; 135(4)"payment"(c) — Patronage dividend payments; 212(2), 214(3)(a) — Non-resident withholding tax; 246 — Benefit conferred on a person.

Pre-RSC History: Subsec. 56(2) substituted by 1987, c. 46, subsec. 15(4), to add "(other than by an assignment of any portion of a retirement pension pursuant to section 64.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan)", applicable to 1987 *et seq.*

Selected Cases [subsec. 56(2)]: *Wong v. R.*, [1999] 2 C.T.C. 2173 (TCC) (Provision not applicable where purpose of dividends not to alter value of interest); *Minet Inc. v. R.*, [1998] 3 C.T.C. 352 (FCA); rev'g [1996] 3 C.T.C. 2108 (TCC) (Income not income where no legal entitlement or control); *Neuman v. MNR*, [1998] 3 C.T.C. 177 (SCC); rev'g [1996] 3 C.T.C. 270 (FCA) (Absent fraud or sham, provision does not apply to dividends. No general scheme in Act to prevent income splitting. Pre-existing entitlement to income is essential element to application of provision); *Ascot Enterprises v. Canada*, [1996] 1 C.T.C. 384 (FCA) (Desire to confer benefit is critical to application of provision); *McClurg v. MNR*, [1991] 1 C.T.C. 169 (SCC) (Dividends to wife on separate class of shares not included in taxpayer's income); *Century 21 Ramos Realty Inc. et al. v. The Queen*, [1987] 1 C.T.C. 340, (sub nom. *Ramos v. The Queen*) (Ont CA); leave to appeal to SCC refused (1987), 44 D.L.R. (4th) vii (note) (Conviction for tax evasion; benefit from transactions attributed to taxpayer when ultimate remuneration earned by taxpayer through corporation); *Boardman et al. v. The Queen*, [1986] 1 C.T.C. 103 (FCTD); appealed to FCA (Dec. 20, 1985), File A-1015-85 (Transfer of houses; net fair market value included in transferor's income); *The Queen v. Hoffman*, [1985] 2 C.T.C. 347 (FCTD) (Amounts withheld from income received by U.S. citizen working in Canada and forwarded to U.S. government included in income); *Champ v. The Queen*, [1983] C.T.C. 1 (FCTD) (Indirect benefit from payment of dividends included in income); *Barbeau v. The Queen*, [1981] C.T.C. 496 (FCTD) (Commissions in lieu of salary paid to holding company were income from employment); *Fraser Companies Ltd. v. The Queen*, [1981] C.T.C. 61 (FCTD) (Proceeds of sale received from U.S. subsidiary loaned interest-free from Canadian parent to subsidiary exempted from Canadian income tax constitute loan, not transfer of interest income); *Murphy v. The Queen*, [1980] C.T.C. 386 (FCTD) (Income distributed to wife attributed to taxpayer executor and beneficiary of father's estate); *McClain Industries of Canada Inc. v. The Queen*, [1978] C.T.C. 511 (FCTD) (Taxpayer taxable on portion of commission assigned to third party); *Perrault v. The Queen*, [1978] C.T.C. 395 (FCA) (Renunciation of dividends taxable benefit when extinguishing shareholder debt); *Nelson v. The Queen*, [1974] C.T.C. 360 (FCA) (Dividends not indirect payment when issued shares held in trust for members of partnership in equal shares or when agreement calling for equal equity shareholdings); *The Queen v. Quinn*, [1973] C.T.C. 258 (FCTD) (Interest on sums in scholarship trust fund not received by taxpayer or beneficiary son not included in taxpayer's income); *Campeau v. MNR*, [1970] C.T.C. 306 (Exch.) (Amounts paid by operating companies when management companies not providing services taxable in hands of shareholder-employees).

Regulations: 7800(1) (prescribed provincial pension plan).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-335R: Indirect payments; IT-362R: Patronage dividends; IT-385R2: Disposition of an income interest in a trust; IT-415R2: Deregistration of registered retirement savings plans; IT-432R: Benefits conferred on shareholders.

I.T. Technical News: No. 16 (*Neuman* case).

Advance Tax Rulings: ATR-3: Winding-up of an estate; ATR-14: Non-arm's length interest charges; ATR-15: Employee stock option plan; ATR-17: Employee benefit plan — purchase of company shares; ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-29: Amalgamation of social clubs; ATR-35: Partitioning of assets to get specific ownership ("butterfly"); ATR-36: Estate freeze.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 56(3) repealed by 1988, c. 55, subsec. 34(3), applicable with respect to transactions entered into on or after September 13, 1988, other than

(a) transactions that are part of a series of transactions, determined without reference to subsection 248(10), commencing before September 13, 1988, and completed before 1989; or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

Subsec. 56(3) formerly read:

> (3) Undistributed payments or profits — For the purposes of this Part, a payment or transfer in a taxation year of property made to the taxpayer or some other person for the benefit of the taxpayer and other persons jointly or a profit made by the taxpayer and other persons jointly in a taxation year shall be deemed to have been received by the taxpayer in the year to the extent of his interest therein notwithstanding that there was no distribution or division thereof in that year.

(4) Transfer of rights to income — Where a taxpayer has, at any time before the end of a taxation year, transferred or assigned to a person with whom the taxpayer was not dealing at arm's length the right to an amount (other than any portion of a retirement pension assigned by the taxpayer under section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act) that would, if the right had not been so transferred or assigned, be included in computing the taxpayer's income for the taxation year, the part of the amount that relates to the period in the year throughout which the taxpayer is resident in Canada shall be included in computing the taxpayer's income for the year unless the income is from property and the taxpayer has also transferred or assigned the property.

Related Provisions: 56(5) — 56(4) does not apply to income subject to income-splitting tax; 82(2) — Dividends deemed received by taxpayer; 212(12) — No non-resident withholding tax where income attributed.

History: Subsec. 56(4) substituted by 1994, c. 21, subsec. 25(3), applicable to 1992 *et seq.* That subsec. formerly read:

> (4) Transfer of rights to income — Where a taxpayer has, at any time before the end of a taxation year (whether before or after the end of 1971), transferred or assigned to a person with whom the taxpayer was not dealing at arm's length the right to an amount (other than any portion of a retirement pension assigned by the taxpayer pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan) that would, if the right thereto had not been so transferred or assigned, be included in computing the taxpayer's income for the taxation year because the amount would have been received or receivable by the taxpayer in or in respect of the year, the amount shall be included in computing the taxpayer's income for the year unless the income is from property and the taxpayer has also transferred or assigned the property.

Pre-RSC History: Subsec. 56(4) substituted by 1987, c. 46, subsec. 15(5), to add "(other than any portion of a retirement pension assigned by the taxpayer pursuant to section 64.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan)" and to substitute "the taxpayer's income for the year" for "the taxpayer's income for the taxation year", applicable to 1987 *et seq.*

Selected Cases [subsec. 56(4)]: *De Groote v. The Queen*, [1984] C.T.C. 687 (FCTD) (Dividends assigned by shareholder to company included in company's income); *Fraser Companies Ltd. v. The Queen*, [1981] C.T.C. 61 (FCTD) (Proceeds of sale received from U.S. subsidiary loaned interest-free from Canadian parent to subsidiary exempted from Canadian income tax constitute loan, not transfer of interest income); *The Queen v. Campbell*, [1980] C.T.C. 319 (SCC) (Taxpayer not assigning own money when assigning fees to company under arrangement in which fees belong to company); *The Queen v. Canadian-American Loan and Investment Corp. Ltd.*, [1974] C.T.C. 101 (FCTD) (Income taxable in taxpayer's hands when profits income from business rather than property); *The Queen v. Guay*, [1973] C.T.C. 148 (FCTD) (Bonus payments held to be taxable income for taxpayer dealing personally with company).

Regulations: 7800(1) (prescribed provincial pension plan).

Interpretation Bulletins: IT-440R2: Transfer of rights to income; IT-499R: Superannuation or pension benefits.

(4.1) Interest free or low interest loans — Where

(a) a particular individual (other than a trust) or a trust in which the particular individual is beneficially interested has, directly or indirectly by means of a trust or by any means whatever, received a loan from or become indebted to

(i) another individual (in this subsection referred to as the "creditor") who

(A) does not deal at arm's length with the particular individual, and

(B) is not a trust, or

(ii) a trust (in this subsection referred to as the "creditor trust") to which another individual (in this subsection referred to as the "original transferor") who

(A) does not deal at arm's length with the particular individual,

(B) was resident in Canada at any time in the period during which the loan or indebtedness is outstanding, and

(C) is not a trust,

has, directly or indirectly by means of a trust or by any means whatever, transferred property, and

(b) it can reasonably be considered that one of the main reasons for making the loan or incurring the indebtedness was to reduce or avoid tax by causing income from

(i) the loaned property,

(ii) property that the loan or indebtedness enabled or assisted the particular individual, or the trust in which the particular individual is beneficially interested, to acquire, or

(iii) property substituted for property referred to in subparagraph (i) or (ii)

to be included in the income of the particular individual,

the following rules apply:

(c) any income of the particular individual for a taxation year from the property referred to in paragraph (b) that relates to the period or periods in the year throughout which the creditor or the creditor trust, as the case may be, was resident in Canada and the particular individual was not dealing at arm's length with the creditor or the original transferor, as the case may be, shall be deemed,

(i) where subparagraph (a)(i) applies, to be income of the creditor for that year and not of the particular individual except to the extent that

(A) section 74.1 applies or would, but for subsection 74.5(3), apply, or

(B) subsection 75(2) applies

to that income, and

(ii) where subparagraph (a)(ii) applies, to be income of the creditor trust for that year and not of the particular individual except to the extent that

(A) subparagraph (i) applies,

(B) section 74.1 applies or would, but for subsection 74.5(3), apply, or

(C) subsection 75(2) applies (otherwise than because of paragraph (d))

to that income; and

(d) where subsection 75(2) applies to any of the property referred to in paragraph (b) and subparagraph (c)(ii) applies to income from the property, subsection 75(2) applies after subparagraph (c)(ii) is applied.

Related Provisions: 56(4.2) — Loans for value; 56(5) — 56(4.1) does not apply to income subject to income-splitting tax; 74.4(2) — Transfers and loan to corporation; 82(2) — Dividends deemed received by taxpayer; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property; 248(25) — Meaning of "beneficially interested"; 250(6.1) — Creditor trust that ceases to exist deemed resident throughout year.

History: Subpara. 56(4.1)(b)(ii) substituted by 1994, c. 21, subsec. 25(4), applicable to income relating to periods that begin after December 21, 1992. That subpara. formerly read:

> (ii) property that the loan or indebtedness enabled or assisted the particular individual to acquire, or

That portion of para. 56(4.1)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 17(6), to delete "(within the meaning assigned by subsection 74.5(10))" from after "beneficially interested", applicable after 1990.

Subsec. 56(4.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(8), applicable with respect to income relating to periods commencing after 1990. Subsec. 56(4.1) formerly read:

> (4.1) **Interest free or low interest loans** — Where an individual has lent property, directly or indirectly by means of a trust or by any means whatever, to another individual with whom the individual was not dealing at arm's length and it may reasonably be considered that one of the main reasons for the loan was to reduce or avoid tax by causing income from the property or property substituted therefor to be included in the income of the other individual, any income for a taxation year from the property or from property substituted therefor that relates to the period or periods of the year throughout which the individual was resident in Canada and was not dealing at arm's length with the other individual, shall be deemed to be income of the individual and not of the other individual except to the extent that section 74.1 is otherwise applicable.

Pre-RSC History: Subsec. 56(4.1) added by 1988, c. 55, subsec. 34(4), applicable with respect to loans that are outstanding after 1988 except that, in the case of a loan outstanding on January 1, 1989 the subsec. does not apply to income relating to any period ending before 1989.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property.

(4.2) Exception — Notwithstanding any other provision of this Act, subsection (4.1) does not apply to any income derived in a particular taxation year where

(a) interest was charged on the loan or indebtedness at a rate equal to or greater than the lesser of

(i) the prescribed rate of interest in effect at the time the loan was made or the indebtedness arose, and

(ii) the rate that would, having regard to all the circumstances, have been agreed on, at the time the loan was made or the indebtedness arose, between parties dealing with each other at arm's length;

(b) the amount of interest that was payable in respect of the particular year in respect of the loan or indebtedness was paid not later than 30 days after the end of the particular year; and

(c) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the loan or indebtedness was paid not later than 30 days after the end of each of those preceding taxation years.

History: Subsec. 56(4.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(8), applicable with respect to income relating to periods commencing after 1990. Subsec. 56(4.2) formerly read:

> (4.2) **Where subsec. (4.1) does not apply** — Notwithstanding any other provision of this Act, subsection (4.1) does not apply to any income derived in a particular taxation year from lent property or from property substituted therefor if
>
> (a) interest was charged on the loan at a rate equal to or greater than the lesser of
>
> (i) the prescribed rate that was in effect at the time the loan was made, and
>
> (ii) the rate that would, having regard to all circumstances, have been agreed on, at the time the loan was made, between parties dealing with each other at arm's length;
>
> (b) the amount of interest that was payable in respect of the particular year in respect of the loan was paid not later than 30 days after the end of the particular year; and
>
> (c) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the loan was paid not later than 30 days after the end of each such taxation year.

Pre-RSC History: Subpara. 56(4.2)(a)(i) amended by 1990, c. 39, subsec. 11(4), to substitute "prescribed rate" for "rate prescribed for the purposes of subsection 161(1)", applicable with respect to interest to be calculated in respect of periods that are after September 1989.

Subsec. 56(4.2) added by 1988, c. 55, subsec. 34(4), applicable with respect to loans that are outstanding after 1988.

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-511R: Interspousal and certain other transfers and loans of property.

(4.3) Repayment of existing indebtedness — For the purposes of subsection (4.1), where at any time a particular property is used to repay, in whole or in part, a loan or indebtedness that enabled or assisted an individual to acquire another property, there shall be included in computing the income from the particular property that proportion of the income or loss, as the case may be, derived after that time from the other property or from property substituted therefor that the amount so repaid is of the cost to the individual of the other property, but for greater certainty nothing in this subsection shall affect the application of subsection (4.1) to any income or loss derived from the other property or from property substituted therefor.

Related Provisions: 248(5) — Substituted property.

History: Subsec. 56(4.3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(8), applicable to income relating to periods commencing after 1990. Subsec. 56(4.3) formerly read:

> (4.3) **Repayment of existing indebtedness** — For the purposes of subsection (4.1), where at any time an individual has lent property (in this subsection referred to as the "lent property") either directly or indirectly, by means of a trust or by any other means whatever, to a person, and the lent property or property substituted therefor is used
>
> (a) to repay, in whole or in part, borrowed money with which other property was acquired, or
>
> (b) to reduce an amount payable for other property,
>
> there shall be included in computing the income from the lent property, or from property substituted therefor, that is so used, that proportion of the income or loss, as the case may be, derived after that time from the other property or from property substituted therefor that the fair market value at that time of the lent property, or property substituted therefor, that is so used is of the cost to that person of the other property at the time of its acquisition, but for greater certainty nothing in this subsection shall affect the application of subsection (4.1) to any income or loss derived from the other property or from property substituted therefor.

Pre-RSC History: Subsec. 56(4.3) added by 1988, c. 55, subsec. 34(4), applicable with respect to loans that are outstanding after 1988.

Interpretation Bulletins: IT-511R: Interspousal and certain other transfers and loans of property.

(5) Exception for split income — Subsections (2), (4) and (4.1) do not apply to any amount that is included in computing a specified individual's split income for a taxation year.

History: Subsec. 56(5) added by 2000, c. 19, s. 6, applicable to 2000 *et seq.*

(5)–(7) [Repealed]

History: Former subsec. 56(5), and subsecs. (6), (7) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 1(1), applicable to 1993 *et seq*. Subsecs. (5) to (7) formerly read:

(5) Family allowances — An individual who is deemed by subsection (6) or (7) to have supported in a particular month of a taxation year a person in respect of whom

(a) a family allowance under the *Family Allowances Act*, or

(b) an allowance under a law of a province that provides for payment of an allowance similar to the family allowance provided under the *Family Allowances Act*

is paid for the particular month shall include in computing the individual income for the year an amount equal to the total of all amounts each of which is the amount of such an allowance received by the individual or the individual's spouse for a month of the year in which the individual is deemed to have supported the person.

(6) Deemed support — For the purposes of subsection (5) and subject to subsection (7), an individual shall be deemed to have supported a person in a particular month of a taxation year if

(a) the person is a child of, or is dependent for support in the particular month on, the individual or the individual's spouse; and

(b) where the individual is married at the end of the particular month,

(i) the individual's income for the year (computed without reference to subsection (5) and section 63) exceeds that of the individual's spouse; and

(ii) the individual's spouse was not, by reason of a breakdown of the marriage, living separate and apart from the individual at the end of the particular month and for a period of at least 90 days commencing in the year.

(7) Idem — For the purposes of subsection (5), where

(a) an amount is allowed under subsection 118(1) because of paragraph 118(1)(b) in computing an individual's tax payable under this Part for a taxation year in respect of a person referred to in subsection (5), the individual shall be deemed to be the only individual to have supported the person in each month of the year and any allowance referred to in subsection (5) that is paid in respect of the person for each such month shall be deemed to have been received by the individual; and

(b) an allowance referred to in that subsection is paid in respect of a person for a particular month of a taxation year and no amount in respect of the allowance would, but for this paragraph, be included in computing the income for the year of any individual, the individual to whom the allowance is paid shall be deemed to have supported the person in the particular month.

Para. 56(7)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(9), applicable to 1988 *et seq*. Para. 56(7)(a) formerly read:

(a) an amount is allowed under subsection 118(1) by reason of paragraph 118(1)(b) in computing an individual's tax payable under this Part for a taxation year in respect of a person, the individual shall be deemed to be the only individual to have supported the person in each month of the year; and

Pre-RSC History: Subsecs. 56(5) to (7) substituted and (8) repealed by 1988, c. 55, subsec. 34(5), applicable to 1988 *et seq*. Subsecs. 56(5) to (8) formerly read:

(5) *Family Allowances Act, 1973* — Subject to subsection (6), a taxpayer who is deemed by subsection (7) to have supported a child in a taxation year, in respect of whom

(a) a family allowance under the *Family Allowances Act, 1973*, or

(b) an allowance under a law of a province that provides for payment of an allowance similar to the family allowance provided under the *Family Allowances Act, 1973*

has been paid in the taxation year, shall include in computing his income for the taxation year an amount equal to the said allowance.

(6) Where law of a province allows no deduction — Where, in respect of a particular child, an allowance, similar to the family allowance provided under the *Family Allowances Act, 1973*, is provided under the law of a province and the law of that province

(a) imposes a tax upon the income of individuals, and

(b) would not, if that child had no income, permit, in computing taxable income, a deduction for that child,

a taxpayer is not required, in computing his income for the year, to include any amount in respect of the allowance.

(7) Taxpayer deemed to support — For the purposes of subsection (5),

(a) a taxpayer who, in computing his taxable income for a taxation year, deducts an amount under section 109 in respect of a child in respect of whom an allowance described in subsection (5) has been paid in the taxation year, or

(b) if paragraph (a) does not apply, a taxpayer to whom an allowance described in subsection (5) has been paid in a taxation year in respect of a child,

shall be deemed to have supported the child in the taxation year.

(8) Partial including of allowance in income — Notwithstanding subsection (5), where more than one taxpayer has, in computing his taxable income for a taxation year, made a deduction under section 109 in respect of a child in respect of whom an allowance described in subsection (5) has been paid in the taxation year, each such taxpayer shall include in computing his income for the taxation year that portion of the amount that, but for this subsection, he would be required by subsection (5) to include in computing his income in the taxation year in respect of that child that

(a) the amount of the deduction made by him under section 109 in respect of that child,

is of

(b) the aggregate of the deductions made by each of the said taxpayers under section 109 in respect of that child.

Subsec. 56(6) substituted by 1976-77, c. 4, subsec. 16(3), applicable to 1976 *et seq*. Subsec. 56(6) formerly read:

(6) Where, under the law of a province, payment of an allowance similar to the family allowance provided under the *Family Allowances Act, 1973* is provided and a law of the province imposes a tax upon the income of individuals, but does not permit a deduction for the child in respect of whom the allowance was paid in computing taxable income, an amount equal to such allowance is not required to be included in computing the income of a taxpayer under this Act.

Subsecs. 56(5) to (8) added by 1973-74, c. 44, s. 23, proclaimed in force January 1, 1974.

(8) CPP/QPP benefits for previous years — Notwithstanding subsection (1), where

(a) one or more amounts are received by an individual (other than a trust) in a taxation year as, on account of, in lieu of payment of or in satisfaction of, any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, and

(b) a portion, not less than $300, of the total of those amounts relates to one or more preceding taxation years,

that portion shall, at the option of the individual, not be included in the individual's income.

Related Provisions: 120.2 — General deferral rule for lump-sum payments; 120.3 — CPP/QPP benefits for previous years; 146(1)"earned income"(b.1) — RRSP — earned income includes amount under 56(8)(a).

History: The portion of subsec. 56(8) before para. (b) amended by 1998, c. 19, subsec. 9(3), applicable to amounts received by an individual after 1994, other than an individual to whom tax has been remitted under subsec. 23(2) of the *Financial Administration Act* in respect of the amounts referred to in para. 56(8)(a), as amended. That portion formerly read:

(8) CPP/QPP disability benefits for previous years — Notwithstanding subsection (1), where

(a) one or more amounts are received by an individual (other than a trust) in a taxation year as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension Plan* or a provincial plan as defined in section 3 of that Act, and

Subsec. 56(8) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(10), applicable with respect to amounts received after 1989.

(9) Meaning of "income for the year" — For the purposes of paragraphs (1)(s) and (u), "income for the year" of a person means the amount that would, but for those

paragraphs, paragraphs 60(v.1) and (w) and section 63, be the income of that person for the year.

History: Subsec. 56(9) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 1(2), applicable to 1993 *et seq.* Subsec. 56(9) formerly read:

> (9) Definition of "income for the year" — For the purposes of paragraphs (1)(s) and (u) and subsection (6), "income for the year" of a person means the amount that would, but for those paragraphs, subsection (5), paragraphs 60(v.1) and (w) and section 63, be the income of that person for the year.

Subsec. 56(9) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 32(11), to add reference to paragraph 60(v.1), applicable to 1989 *et seq.*

Pre-RSC History: Subsec. 56(9) substituted by 1990, c. 39, subsec. 11(5), applicable to 1989 *et seq.* Subsec. 56(9) formerly read:

> (9) Definition of "income for the year" — For the purposes of paragraphs 56(1)(s) and (u), "income for the year" of a person means the amount that would, but for those paragraphs, be the income of that person for the year.

Subsec. 56(9) substituted by 1980-81-82-83, c. 140, subsec. 26(6), applicable to 1982 *et seq.* Subsec. 56(9) added by 1977-78, c.1, subsec. 23(3), applicable to 1977 *et seq.*

(10) Severability of retirement compensation arrangement — Where a retirement compensation arrangement is part of a plan or arrangement (in this subsection referred to as the "plan") under which amounts not related to the retirement compensation arrangement are payable or provided, for the purposes of this Act, other than this subsection,

(a) the retirement compensation arrangement shall be deemed to be a separate arrangement independent of other parts of the plan of which it is a part; and

(b) subject to subsection 6(14), amounts paid out of or under the plan shall be deemed to have first been paid out of the retirement compensation arrangement unless a provision in the plan otherwise provides.

Pre-RSC History: Subsec. 56(10) added by 1987, c. 46, subsec. 15(6), applicable after October 8, 1986.

(11) Disposition of property by RCA trust — For the purposes of paragraphs (1)(x) and (z), where, at any time in a year, a trust governed by a retirement compensation arrangement

(a) disposes of property to a person for consideration less than the fair market value of the property at the time of the disposition, or for no consideration,

(b) acquires property from a person for consideration greater than the fair market value of the property at the time of the acquisition, or

(c) permits a person to use or enjoy property of the trust for no consideration or for consideration less than the fair market value of such use or enjoyment,

the amount, if any, by which such fair market value differs from the consideration or, if there is no consideration, the amount of the fair market value shall be deemed to be an amount received at that time by the person out of or under the arrangement that can reasonably be considered to have been received in respect of an office or employment of a taxpayer.

Related Provisions: 69(1) — General rule deeming disposition to be at fair market value.

Pre-RSC History: Subsec. 56(11) added by 1987, c. 46, subsec. 15(6), applicable after October 8, 1986.

(12) [Repealed]

History: Subsec. 56(12) repealed by 1997, c. 25, subsec. 8(3), applicable to amounts received after 1996. Subsec. (12) formerly read:

> (12) Definition of "allowance" — Subject to subsections 56.1(2) and 60.1(2), for the purposes of paragraphs (1)(b), (c) and (c.1) (in this subsection referred to as the "former paragraphs") and 60(b), (c) and (c.1) (in this subsection referred to as the "latter paragraphs"), "allowance" does not include any amount that is received by a person, referred to in the former paragraphs as "the taxpayer" and in the latter paragraphs as "the recipient", unless that person has discretion as to the use of the amount.

Pre-RSC History: Subsec. 56(12) added by 1988, c. 55, subsec. 34(6), applicable, with respect to decrees, orders, judgments and written agreements made or entered into before March 28, 1986 or after 1987, to 1986 *et seq.*, except that, for the 1986 and 1987 taxation years, subsec. 56(12) shall be read as follows:

> (12) Subject to subsections 56.1(2) and 60.1(2), for the purposes of paragraphs (1)(b), (c) and (c.1), "allowance" does not include any amount that is received by a person referred to in those paragraphs as "the taxpayer" unless that person has discretion as to the use of the amount.

Definitions [s. 56]: "allowance" — 56(12); "amount" — 248(1); "anniversary day" — 12.2(11), 56(1.1); "annuity" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "beneficially interested" — 248(25); "borrowed money", "business" — 248(1); "Canada" — 255; "child" — 252(1); "child support amount", "commencement day" — 56.1(4); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "employee benefit plan", "employment" — 248(1); "estate" — 104(1), 248(1); "foreign retirement arrangement" — 248(1); "income for the year" — 56(9); "income-averaging annuity contract" — 61(4), 248(1); "individual", "insurer" — 248(1); "marriage" — 252(4)(b); "married" — 252(4)(c); "office" — 248(1); "parent" — 252(2); "person", "personal or living expenses", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "retirement compensation arrangement", "retiring allowance", "salary deferral arrangement" — 248(1); "specified individual", "split income" — 120.4(1), 248(1); "spouse" — 252(4); "superannuation or pension benefit" — 248(1); "supplementary unemployment benefit plan" — 145(1), 248(1); "support amount" — 56.1(4); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 56]: IT-495R2: Child care expenses.

56.1 (1) Support — For the purposes of paragraph 56(1)(b) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount to a taxpayer or for the benefit of the taxpayer, children in the taxpayer's custody or both the taxpayer and those children, the amount or any part thereof

(a) when payable, is deemed to be payable to and receivable by the taxpayer; and

(b) when paid, is deemed to have been paid to and received by the taxpayer.

Related Provisions: 60.1(1) — Parallel rule for payer.

History: Subsec. 56.1(1) amended by 1997, c. 25, subsec. 9(1), applicable to amounts received after 1996. Subsec. (1) formerly read:

> 56.1 (1) Maintenance — Where a decree, order, judgment or written agreement described in paragraph 56(1)(b) or (c), or any variation thereof, provides for the periodic payment of an amount
>
> (a) to a taxpayer by a person who is
>
> (i) the taxpayer's spouse or former spouse, or
>
> (ii) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the taxpayer, or
>
> (b) for the benefit of the taxpayer, children in the custody of the taxpayer or both the taxpayer and those children,
>
> the amount or any part thereof, when paid, shall be deemed for the purposes of paragraphs 56(1)(b) and (c) to have been paid to and received by the taxpayer.

Subsec. 56.1(1) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 18, applicable (by subsec. 18(2), as amended by 1994, c. 21, s. 134) to amounts received under a decree, order or judgment made by a competent

tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (1) formerly read:

> 56.1 (1) Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 56(1)(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount
>
> (a) to a taxpayer by a person who is
>
> (i) the taxpayer's spouse or former spouse, or
>
> (ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who
>
> (A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or
>
> (B) is the natural parent of a child of the taxpayer, or
>
> (b) for the benefit of the taxpayer, children in the custody of the taxpayer or both the taxpayer and those children,
>
> the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 56(1)(b), (c) and (c.1), to have been paid to and received by the taxpayer.

Pre-RSC History: Subsec. 56.1(1) substituted by 1988, c. 55, subsec. 35(1), applicable

> (a) in respect of orders made under the laws of Ontario, to 1986 *et seq.*, and
>
> (b) in any other case, to 1988 *et seq.*,

except that, with respect to amounts received pursuant to orders made after May 6, 1974 under the laws of Ontario, in applying subparagraph 56.1(1)(a)(ii), the reference therein to "February 10, 1988" shall be read as a reference to "May 6, 1974". Subsec. 56.1(1) formerly read:

> 56.1 (1) Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 56(1)(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount to a taxpayer by a person who is his spouse, former spouse or, where the amount was paid pursuant to an order made in accordance with the laws of a province, an individual within a prescribed class of persons described in the laws of the province, or for the benefit of the taxpayer or children in the custody of the taxpayer, the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 56(1)(b), (c) and (c.1), to have been paid to and received by the taxpayer if, at the time the amount was paid and throughout the remainder of the year in which the amount was paid, the taxpayer was living apart from that person.

Subsec. 56.1(1) substituted for s. 56.1 by 1984, c. 45, s. 17, applicable in respect of payments made after 1983. S. 56.1 formerly read:

> 56.1 Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 56(1)(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount to the taxpayer by a person who is his spouse, former spouse or an individual within a prescribed class of persons described in the laws of a province, or for the benefit of the taxpayer or children in the custody of the taxpayer, the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 56(1)(b), (c) and (c.1), to have been paid to and received by the taxpayer if, at the time the amount was paid and throughout the remainder of the year in which the amount was paid, the taxpayer was living apart from the person.

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-530: Support payments.

(2) Agreement — For the purposes of section 56, this section and subsection 118(5), the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a person in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a taxpayer, children in the taxpayer's custody or both the taxpayer and those children, where the taxpayer is

(a) the person's spouse or former spouse, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is the parent of a child of whom the person is a natural parent,

and

B is the amount, if any, by which

(a) the total of all amounts each of which is an amount included in the total determined for A in respect of the acquisition or improvement of a self-contained domestic establishment in which the taxpayer resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(b) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in paragraph (a),

is, where the order or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any amount paid or payable thereunder, deemed to be an amount payable to and receivable by the taxpayer as an allowance on a periodic basis, and the taxpayer is deemed to have discretion as to the use of that amount.

Related Provisions: 60.1(2) — Parallel rule for payer; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

History: The portion of subsec. 56.1(2) preceding the formula, the description of A, and the closing words of subsec. (2), amended by 1997, c. 25, subsecs. 9(2)–(4), applicable to amounts received after 1996. Those portions formerly read:

> (2) For the purposes of paragraphs 56(1)(b) and (c), the amount determined by the formula
>
> . . . . .
>
> A is the total of all amounts each of which is an amount (other than an amount to which paragraph 56(1)(b) or (c) otherwise applies) paid by a person in a taxation year, under a decree, order or judgment of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in paragraph (a) or (b) resides)

incurred in the year or the preceding taxation year for the maintenance of a taxpayer who is

(a) that person's spouse or former spouse, or

(b) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the person,

or for the maintenance of children in the taxpayer's custody or both the taxpayer and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living separate and apart from that person, and

. . . . .

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any payment made thereunder, be deemed to be an amount paid by that person and received by the taxpayer as an allowance payable on a periodic basis.

Subsec. 56.1(2) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 18, applicable (by subsec. 18(2), as amended by 1994, c. 21, s. 134) to amounts received under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (2) formerly read:

(2) For the purposes of paragraphs 56(1)(b), (c) and (c.1), the amount, if any, by which

(a) the total of all amounts each of which is an amount (other than an amount to which paragraph 56(1)(b), (c) or (c.1) otherwise applies) paid by a person in a taxation year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or educational expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in subparagraph (i) or (ii) resides) incurred in the year or the immediately preceding taxation year for maintenance of a taxpayer who is

(i) that person's spouse or former spouse, or

(ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who

(A) before the date of the order cohabited with the person in a conjugal relationship, or

(B) is the natural parent of a child of the person,

or for the maintenance of children in the taxpayer's custody or both the taxpayer and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living apart from that person

exceeds

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount included in the total determined under paragraph (a) in respect of the acquisition or improvement of a self-contained domestic establishment in which the taxpayer resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(ii) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in subparagraph (i)

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any payment made pursuant thereto, be deemed to be an amount paid by that person and received by the taxpayer as an allowance payable on a periodic basis.

Pre-RSC History: Para. 56.1(2)(a) substituted by 1988, c. 55, subsec. 35(2), applicable

(a) in respect of orders made under the laws of Ontario, to 1986 *et seq.*, and

(b) in any other case, to 1988 *et seq.*

Para. (a) formerly read:

(a) the aggregate of all amounts each of which is an amount (other than an amount to which paragraph 56(1)(b), (c) or (c.1) otherwise applies) paid by a person in a taxation year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment of the person or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or educational expense or in respect of the acquisition, improvement or maintenance of an owner-occupied home of a taxpayer described in subparagraph (i) or (ii)) incurred in the year or the immediately preceding taxation year for maintenance of a taxpayer who is

(i) that person's spouse or former spouse, or

(ii) where the amount was paid pursuant to an order made in accordance with the laws of a province, an individual within a prescribed class of persons described in the laws of the province,

or for the maintenance of children of the taxpayer in the taxpayer's custody, or both the taxpayer and such children, if at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living apart from that person

Subpara. 56.1(2)(b)(i) amended by 1988, c. 55, subsec. 35(3), to substitute "a self-contained domestic establishment in which the taxpayer resides" for "an owner-occupied home of the taxpayer".

Subsec. 56.1(2) added by 1984, c. 45, s. 17, applicable in respect of payments made after 1993.

Selected Cases: *Larsson v. Canada*, [1996] 3 C.T.C. 2430 (TCC) (Inclusion/deduction process should be favoured in ambiguous or doubtful cases).

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-530: Support payments.

(3) Prior payments — For the purposes of this section and section 56, where a written agreement or order of a competent tribunal made at any time in a taxation year provides that an amount received before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder,

(a) the amount is deemed to have been received thereunder; and

(b) the agreement or order is deemed, except for the purpose of this subsection, to have been made on the day on which the first such amount was received, except that, where the agreement or order is made after April 1997 and varies a child support amount payable to the recipient from the last such amount received by the recipient before May 1997, each varied amount of child support received under the agreement or order is deemed to have been receivable under an agreement or order the commencement day of which is the day on which the first payment of the varied amount is required to be made.

Related Provisions: 60.1(3) — Parallel rule for payer.

History: Subsec. 56.1(3) amended by 1997, c. 25, subsec. 9(5), applicable to amounts received after 1996. Subsec. (3) formerly read:

(3) For the purposes of this section and section 56, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount received before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder, the amount shall be deemed to have been received thereunder.

Subsec. 56.1(3) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 18, applicable (by subsec. 18(2), as amended by 1994, c. 21, s. 134), to amounts received under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment or written agreement made

with respect to a marriage breakdown that occurred before 1993. Subsec. (3) formerly read:

> (3) For the purposes of this section and section 56, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount received before that time and in the year or the immediately preceding taxation year is to be considered as having been paid and received pursuant thereto, the following rules apply:
>
> (a) the amount shall be deemed to have been received pursuant thereto; and
>
> (b) the person who made the payment shall be deemed to have been separated pursuant to a divorce, judicial separation or written separation agreement from that person's spouse or former spouse at the time the payment was made and throughout the remainder of the year.

Pre-RSC History: Subsec. 56.1(3) added by 1984, c. 45, s. 17, applicable in respect of payments made after 1983.

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-530: Support payments.

(4) Definitions — The definitions in this subsection apply in this section and section 56.

"child support amount" means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or former spouse of the payer or who is a parent of a child of whom the payer is a natural parent.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60.1(4) — Definition applies to sections 60 and 60.1.

Interpretation Bulletins: IT-530: Support payments.

"commencement day" at any time of an agreement or order means

(a) where the agreement or order is made after April 1997, the day it is made; and

(b) where the agreement or order is made before May 1997, the day, if any, that is after April 1997 and is the earliest of

(i) the day specified as the commencement day of the agreement or order by the payer and recipient under the agreement or order in a joint election filed with the Minister in prescribed form and manner,

(ii) where the agreement or order is varied after April 1997 to change the child support amounts payable to the recipient, the day on which the first payment of the varied amount is required to be made,

(iii) where a subsequent agreement or order is made after April 1997, the effect of which is to change the total child support amounts payable to the recipient by the payer, the commencement day of the first such subsequent agreement or order, and

(iv) the day specified in the agreement or order, or any variation thereof, as the commencement day of the agreement or order for the purposes of this Act.

Related Provisions: 60.1(4) — Definition applies to sections 60 and 60.1.

Interpretation Bulletins: IT-530: Support payments.

"support amount" means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(a) the recipient is the spouse or former spouse of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage and the amount is receivable under an order of a competent tribunal or under a written agreement; or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, ss. 2, 9, will replace "spouse" with "spouse or common-law partner" and "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the payer is a natural parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

Related Provisions: 60.1(4) — Definition applies to sections 60 and 60.1; 118(5) — No personal credit in respect of person to whom support amount payable; 248(1)"exempt income" — Support amount is not exempt income; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

Interpretation Bulletins: IT-530: Support payments.

History: Subsec. 56.1(4) added by 1997, c. 25, subsec. 9(6), applicable (as amended by 1998, c. 19, subsec. 307(1), deemed to have come into force on April 25, 1997) after 1996, except that

(a) a support amount, as defined in subsection 56.1(4) does not include an amount

(i) that was received under a decree, order or judgment of a competent tribunal, or under a written agreement, that does not have a commencement day (within the meaning assigned by that subsec. 56.1(4)), and

(ii) that if paid and received would, but for this amendment, not be included in computing the income of the recipient of the amount; and

(b) with respect to an amount payable or receivable under a decree, order or judgment of a competent tribunal, or under a written agreement, made after March 27, 1986 and before 1988, the portion of the definition "support amount" in subsec. 56.1(4) before paragraph (a) shall be read without reference to "the recipient has discretion as to the use of the amount, and".

Pre-RSC History: Former subsec. 56.1(4) repealed by 1988, c. 55, subsec. 35(4). Subsec. 56.1(4) formerly read:

> (4) Definitions — For the purposes of this subsection and subsections (2) and 60.1(2),
>
> (a) "owner-occupied home" — "owner-occupied home" of a taxpayer means a housing unit or a share of the capital stock of a cooperative housing corporation owned, whether jointly with another person or otherwise, in a taxation year by the taxpayer, if the housing unit was, or if the share was acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation that was, inhabited by the taxpayer at any time in the year; and
>
> (b) "housing unit" — "housing unit" includes the land subjacent to the housing unit and such portion of any immediately contiguous land as may reasonably be regarded as contributing to the taxpayer's use and enjoyment of the housing unit as a residence.

Subsec. 56.1(4) added by 1988, c. 45, s. 17, applicable in respect of payments made after 1983.

Forms: T1157: Election for child support payments; T1158: Registration of family support payments.

Pre-RSC History [s. 56.1]: S. 56.1 substituted by 1980-81-82-83, c. 140, s. 27, applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other

case where the taxpayer and the person required to make the payment agree in writing at any time in a taxation year, in the year and subsequent taxation years.

S. 56.1 substituted by 1980-81-82-83, c. 48, s. 26, applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the payor and the taxpayer agree in writing at any time in a taxation year, in the year and subsequent taxation years. S. 56.1 formerly read:

> 56.1 Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 56(1)(b) or (c), or any variation thereof, has been made providing for the periodic payment of an amount to the taxpayer by his spouse or former spouse or for the benefit of the taxpayer or children of the marriage in the custody of the taxpayer, the amount or any part thereof, when paid, shall be deemed to have been paid to and received by the taxpayer if the taxpayer was living apart from the spouse or former spouse at the time the amount was paid and throughout the remainder of the year in which the amount was paid.

S. 56.1 added by 1974-75, c. 26, s. 28, applicable in respect of amounts paid after May 6, 1974.

Definitions [s. 56.1]: "amount" — 248(1); "child" — 252(1); "child support amount", "commencement day" — 56.1(4); "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employee benefit plan" — 248(1); "former spouse" — 252(3), (4)(a); "individual" — 248(1); "marriage" — 252(4)(b); "Minister" — 248(1); "parent" — 252(2); "person", "prescribed", "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "self-contained domestic establishment", "share" — 248(1); "spouse" — 252(3), (4)(a); "superannuation or pension benefit" — 248(1); "support amount" — 56.1(4); "taxation year" — 249; "taxpayer" — 248(1); "written" — *Interpretation Act* 35(1) [writing].

56.2 Reserve claimed for debt forgiveness — There shall be included in computing an individual's income for a taxation year during which the individual was not a bankrupt the amount, if any, deducted under section 61.2 in computing the individual's income for the preceding taxation year.

History: S. 56.2 added by 1995, c. 21, s. 19, applicable to taxation years that end after February 21, 1994.

Definitions [s. 56.2]: "amount", "bankrupt", "individual" — 248(1); "taxation year" — 249.

56.3 Reserve claimed for debt forgiveness — There shall be included in computing a taxpayer's income for a taxation year during which the taxpayer was not a bankrupt the amount, if any, deducted under section 61.4 in computing the taxpayer's income for the preceding taxation year.

Related Provisions: 61.4(a)B(ii) — Effect on reserve for subsequent year; 87(2)(g) — Amalgamations — carryover of reserve; 115(1)(a)(iii.21) — Non-resident's taxable income earned in Canada.

History: S. 56.3 added by 1995, c. 21, s. 19, applicable to taxation years that end after February 21, 1994.

Definitions [s. 56.3]: "amount", "bankrupt" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

57. (1) Certain superannuation or pension benefits — Notwithstanding subparagraph 56(1)(a)(i), there shall be included in computing the income of a taxpayer in respect of a payment received by the taxpayer out of or under a superannuation or pension fund or plan the investment income of which has at some time been exempt from taxation under the *Income War Tax Act* by reason of an election for such exemption by the trustees or corporation administering the fund or plan, only that part of the payment that remains after deducting the proportion thereof

(a) that the total of the amounts paid by the taxpayer into or under the fund or plan during the period when its income was exempt by reason of that election is of the total of all amounts paid by the taxpayer into or under the fund or plan, or

(b) that the total of the amounts paid by the taxpayer into or under the fund or plan during the period when its income was exempt by reason of that election together with simple interest on each amount so paid from the end of the year of payment thereof to the commencement of the superannuation allowance or pension at 3% per annum is of the total of all amounts paid by the taxpayer into or under the fund or plan together with simple interest, computed in the same manner, on each amount so paid,

whichever is the greater.

Related Provisions: 57(2)–(4) — Exceptions and limitations; 212(1)(h)(iv) — Parallel exemption from non-resident withholding tax.

(2) Exception — This section does not apply in respect of a payment received by a taxpayer out of or under a superannuation or pension fund or plan if the taxpayer made no payment into or under the fund or plan.

(3) Limitation — Where a payment, to which subsection (1) would otherwise be applicable, is received by a taxpayer out of or under a superannuation or pension fund or plan in respect of a period of service for part only of which the taxpayer made payments into or under the fund or plan, subsection (1) is applicable only to that part of the payment which may reasonably be regarded as having been received in respect of the period for which the taxpayer made payments into or under the fund or plan and any part of the payment which may reasonably be regarded as having been received in respect of a period for which the taxpayer made no payments into or under the fund or plan shall be included in computing the taxpayer's income for the year without any deduction whatever.

(4) Certain payments from pension plan — Where a taxpayer, during the period from August 15, 1944 to December 31, 1945, made a contribution in excess of $300 to or under a registered pension plan in respect of services rendered by the taxpayer before the taxpayer became a contributor, there shall be included in computing the taxpayer's income in respect of a payment received by the taxpayer out of or under the plan only that part of the payment that remains after deducting the proportion thereof that the contribution so made minus $300 is of the total of the amounts paid by the taxpayer to or under the plan.

Related Provisions: 212(1)(h)(iv) — Parallel benefits — non-residents.

Pre-RSC History: Subsec. 57(4) amended by 1990, c. 35, s. 29, to substitute "plan" for "fund or plan" (in three places), applicable after 1985.

(5) Payments to widow, etc., of contributor — Where, in respect of the death of a taxpayer who was a contributor to or under a superannuation or pension fund or plan described in subsection (1) or (4), a payment is received by a person in a taxation year out of or under the fund or plan, there shall be included in computing the income of that person for the year in respect thereof only that part of the payment that would, if the payment had been received by the taxpayer in the year out of or under the fund or plan, have been included by virtue of this section in computing the income of the taxpayer for the year.

Definitions [s. 57]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "registered pension plan", "superannuation or pension benefit" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 57]: IT-499R: Superannuation or pension benefits.

58. (1) Government annuities and like annuities — In determining the amount that shall be included in computing the income of a taxpayer in respect of payments received by the taxpayer in a taxation year under contracts entered into before May 26, 1932 with the Government of Canada or annuity contracts like those issued under the *Government Annuities Act* entered into before that day with the government of a province or a corporation incorporated or licensed to carry on an annuities business in Canada, there may be deducted from the total of the payments received the lesser of

(a) the total of the amounts that would have been so received if the contracts had continued in force as they were immediately before June 25, 1940, without the exercise of any option or contractual right to enlarge the annuity by the payment of additional sums or premiums unless those additional sums or premiums had been paid before that day, and

(b) $5,000.

Related Provisions: 58(3) — Limitation; 58(4) — Capital element.

(2) Annuities before 1940 — In determining the amount that shall be included in computing the income of a taxpayer in respect of payments received by the taxpayer in a taxation year under annuity contracts entered into after May 25, 1932, and before June 25, 1940, with the Government of Canada or annuity contracts like those issued under the *Government Annuities Act* entered into during that period with the government of a province or a corporation incorporated or licensed to carry on an annuities business in Canada, there may be deducted from the total of the payments received the lesser of

(a) the total of the amounts that would have been received under the contracts if they had continued in force as they were immediately before June 25, 1940, without the exercise of any option or contractual right to enlarge the annuity by the payment of additional sums or premiums unless such additional sums or premiums had been paid before that day, and

(b) $1,200.

Related Provisions: 58(3) — Limitation; 58(4) — Capital element.

(3) Limitation — Where a taxpayer has received annuity payments in respect of which the taxpayer would otherwise be entitled to make deductions under both subsection (1) and subsection (2),

(a) if the amount deductible under subsection (1) is $1,200 or more, [the taxpayer] may not make a deduction under subsection (2); and

(b) if the amount deductible under subsection (1) is less than $1,200, the taxpayer may make one deduction computed as though subsection (2) applied to all contracts entered into before June 25, 1940.

Related Provisions: 58(4) — Capital element.

(4) Capital element — The amount remaining after deducting from the total of the annuity payments to which this section applies received in a taxation year the deductions permitted by subsection (1), (2) or (3) shall be deemed to be the annuity payment in respect of which the capital element is deductible under paragraph 60(a).

(5) Spouses — Where a taxpayer and the taxpayer's spouse each received annuity payments in respect of which they may deduct amounts under this section, the amount deductible shall be computed as if their annuities belonged to one person and may be deducted by either of them or be apportioned between them in such manner as is agreed to by them or, in case of disagreement, as the Minister determines.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4) — Extended meaning of "spouse".

History: Subsec. 58(5) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 19, applicable after 1992. Subsec. 58(5) formerly read:

(5) Husband and wife — Where a husband and wife have each received annuity payments in respect of which they may make a deduction under this section, the amount deductible shall be computed as if their annuities belonged to one person and may be deducted by either of them or apportioned between them in such manner as may be agreed by them or, in case of disagreement, as the Minister may determine.

(6) Pension benefits — This section does not apply to superannuation or pension benefits received out of or under a registered pension plan.

Pre-RSC History: Subsec. 58(6) amended by 1990, c. 35, s. 29, to substitute "plan" for "fund or plan", applicable after 1985.

(7) Enlargement of annuity — For the purpose of this section, an annuity shall be deemed to have been enlarged on or after June 25, 1940, if what is payable under the contract has, at any such time, been increased whether by increasing the amount of each periodic payment, by increasing the number of payments or otherwise.

Definitions [s. 58]: "amount", "annuity", "business", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "spouse" — 252(4); "superannuation or pension benefit" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

59. (1) Consideration for foreign resource property — Where a taxpayer has disposed of a foreign resource property, the amount, if any, by which the taxpayer's proceeds of disposition therefrom exceed any outlays or expenses made or incurred by the taxpayer for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part shall be included in computing the taxpayer's income for a taxation year to the extent that the proceeds become receivable in that year.

Related Provisions: 72(2) — Election by legal representative and transferee re reserves; 87(2)(p) — Consideration for resource property disposition; 104(5.2) — Rules for trusts.

Pre-RSC History: Subsec. 59(1) substituted for former subsecs. 59(1) to (1.2) by 1985, c. 45, subsec. 24(1), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subsecs. 59(1) to (1.2) formerly read:

59. (1) Amount receivable as consideration for disposition of resource property — Where a taxpayer has disposed of a foreign resource property, the taxpayer's proceeds of disposition therefrom shall be included in computing his income for a taxation year to the extent that the proceeds become receivable in that year.

(1.1) Idem — Where a taxpayer disposes of a Canadian resource property that is a property described in subparagraph 66(15)(c)(ii), (v) or (vi) or of any right to (including a right to receive proceeds of disposition in respect of a disposition thereof) or interest in any such property (other than property of a trust), the taxpayer's proceeds of disposition therefrom shall be included in the amount referred to in clause 66.2(5)(b)(v)(A) to the extent that the proceeds become receivable.

(1.2) **Idem** — Where a taxpayer disposes of

(a) a Canadian resource property that is a property described in subparagraph 66(15)(c)(i), (iii) or (iv) or any right to (including a right to receive proceeds of disposition in respect of a disposition thereof) or interest in any such property (other than property of a trust), or

(b) any right, licence or privilege described in subsection 83A(5a) of this Act as it read in its application to the 1971 taxation year, that was acquired by the taxpayer,

(i) in the case of

(A) a corporation that is a principal-business corporation within the meaning assigned by subsection 66(15) or that was, at the time it acquired the property, such a principal-business corporation, or

(B) an association, partnership or syndicate described in subsection 83A(4) of this Act as it read in its application to the 1971 taxation year,

before 1972, and

(ii) in any other case, after April 10, 1962 and before 1972,

under an agreement or other contract or arrangement described therein,

the taxpayer's proceeds of disposition therefrom shall be included in the amount referred to in clause 66.4(5)(b)(v)(A) to the extent that the proceeds become receivable.

Subsec. 59(1.1) substituted, subsec. 59(1.2) added by 1980-81-82-83, c. 48, subsec. 27(1), applicable in respect of dispositions occurring after December 11, 1979. Subsec. 59(1.1) formerly read:

59. (1.1) Where a taxpayer disposes of

(a) a Canadian resource property, or

(b) any right, licence or privilege described in subsection 83A(5a) of this Act as it read in its application to the 1971 taxation year, that was acquired by the taxpayer,

(i) in the case of

(A) a corporation that is a principal-business corporation within the meaning assigned by subsection 66(15) or that was, at the time it acquired the property, such a principal-business corporation, or

(B) an association, partnership or syndicate described in subsection 83A(4) of this Act as it read in its application to the 1971 taxation year,

before 1972, and

(ii) in any other case, after April 10, 1962 and before 1972,

under an agreement or other contract or arrangement described therein,

the taxpayer's proceeds of disposition therefrom shall be included in the amount referred to in clause 66.2(5)(b)(v)(A) to the extent that the proceeds become receivable.

All that portion of subsec. 59(1.1) following para. (b) substituted by 1979, c. 5, s. 16, applicable to 1977 *et seq.*, to substitute "clause 66.2(5)(b)(v)(A)" for "subparagraph 66.2(5)(b)(v)".

Subsec. 59(1.1) added by 1974-75-76, c. 26, subsec. 29(1), applicable in respect of dispositions occurring after May 6, 1974.

Subsec. 59(1) substituted by 1974-75-76, c. 26, subsec. 29(1), applicable in respect of dispositions occurring after May 6, 1974. Subsec. 59(1) formerly read:

59. (1) Where in a taxation year a taxpayer disposes of

(a) a Canadian resource property,

(b) a foreign resource property, or

(c) any right, licence or privilege described in subsection 83A(5a) of this Act as it read in its application to the 1971 taxation year, that was acquired by the taxpayer,

(i) in the case of

(A) a corporation that is a principal-business corporation within the meaning assigned by subsection 66(15) or that was, at the time it acquired the property, such a principal-business corporation, or

(B) an association, partnership or syndicate described in subsection 83A(4) of this Act as it read in its application to the 1971 taxation year,

before 1972, and

(ii) in any other case, after April 10, 1962 and before 1972,

under an agreement or other contract or arrangement described therein,

the amount receivable by the taxpayer as consideration for the disposition thereof shall be included in computing his income for the year, notwithstanding that the amount or any part thereof may not be received until a subsequent taxation year.

Interpretation Bulletins: IT-125R4: Dispositions of resource property.

(2) Deduction under former section 64 in preceding year — There shall be included in computing a taxpayer's income for a taxation year any amount that has been deducted as a reserve under subsection 64(1), (1.1) or (1.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the immediately preceding taxation year.

Related Provisions: 66(5) — Dealers; 85(1) — Transfer of property to corporation by shareholder; 85(2) — Transfer of property to corporation from partnership; 88 — Winding-up; 115(4) — Non-resident's income earned on Canadian resource property.

Pre-RSC History: Subsec. 59(2) substituted for former subsecs. 59(2), (2.1) by 1985, c. 45, subsec. 24(2), applicable to taxation years commencing after 1984. Subsecs. 59(2), (2.1) formerly read:

(2) **Amount deducted under s. 64 in preceding year** — There shall be included in computing a taxpayer's income for a taxation year any amount in respect of

(a) a Canadian resource property,

(b) a foreign resource property,

(c) any property described in paragraph (1.2)(b),

(d) any property described in any of subparagraphs 66(15)(c)(i) to (vii) that is not property described in paragraph (1.2)(b), or

(e) any property that would be described in any of subparagraphs 66(15)(c)(i) to (vii) if the references therein to "in Canada" were read as references to "outside Canada",

that has been deducted as a reserve under subsection 64(1) in computing his income for the immediately preceding taxation year.

(2.1) **Idem** — There shall be included in computing a taxpayer's income for a taxation year any amount that has been deducted as a reserve under subsection 64(1.1) or (1.2) in computing his income for the immediately preceding taxation year.

Paras. 59(2)(c)–(e) substituted by 1980-81-82-83, c. 48, subsec. 27(2), applicable in respect of dispositions occurring after December 11, 1979. Paras. 59(2)(c)–(e) formerly read:

(c) any property described in paragraph (1.1)(b),

(d) any property described in any of subparagraphs 66(15)(c)(i) to (vi) that is not property described in paragraph (1.1)(b), or

(e) any property described in any of subparagraphs 66(15)(c)(i) to (vi) if the references therein to "in Canada" were read as references to "outside Canada",

Subsec. 59(2.1) substituted by 1980-81-82-83, c. 48, subsec. 27(3), applicable in respect of dispositions occurring after December 11, 1979, to add "or (1.2)".

Subsec. 59(2) substituted by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974. Subsec. 59(2) formerly read:

(2) There shall be included in computing a taxpayer's income for a taxation year any amount in respect of

(a) a Canadian resource property,

(b) a foreign resource property, or

(c) any property referred to in paragraph (1)(c) or paragraph (3)(a) or (b), that has been deducted under section 64 in computing his income for the immediately preceding taxation year.

Subsec. 59(2.1) added by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(3), (3.1) [Repealed under former Act]

Pre-RSC History: Subsecs. 59(3), (3.1) repealed by 1985, c. 45, subsec. 24(3), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subsecs. 59(3), (3.1) formerly read:

(3) Disposition of resource property acquired before 1972 — Where a taxpayer has made a disposition after 1971 of property owned, or deemed to have been owned, by him on December 31, 1971 and thereafter without interruption until the date of disposition and that property would be property described in any of subparagraphs 66(15)(c)(i) to (vii) if the references therein to "in Canada" were read as references to "outside Canada", the following rules apply:

(a) the relevant percentage of the taxpayer's proceeds of disposition therefrom shall be included in computing his income for a taxation year to the extent that the proceeds become receivable in that year, and

(b) where the taxpayer and the person who acquired the property were not dealing with each other at arm's length, for the purposes of this section and sections 64 and 66,

(i) the cost to that person of the property shall be deemed to be the amount included in the taxpayer's income by virtue of paragraph (a) in respect of the disposition by the taxpayer of the property, and

(ii) when that person subsequently disposes of the property or any right or interest therein, that person shall be deemed to have owned the property on December 31, 1971 and thereafter without interruption until the disposition thereof.

(3.1) Idem — Where a taxpayer has made a disposition of property owned, or deemed to have been owned, by him on December 31, 1971 and thereafter without interruption until the date of disposition and that property is property described in any of subparagraphs 66(15)(c)(i) to (vii) and is not property described in paragraph (1.2)(b), the following rules apply:

(a) the relevant percentage of the taxpayer's proceeds of disposition therefrom shall be included in the amount referred to in clause 66.2(5)(b)(v)(A) to the extent that the proceeds become receivable; and

(b) where the taxpayer and the person who acquired the property were not dealing with each other at arm's length, for the purposes of this section and sections 66 and 66.2

(i) the cost to that person of the property shall be deemed to be the amount included in the amount referred to in paragraph (a) in respect of the disposition by the taxpayer of the property, and

(ii) when that person subsequently disposes of the property or any right or interest therein, that person shall be deemed to have owned the property on December 31, 1971 and thereafter without interruption until the disposition thereof.

All that portion of subsec. 59(3) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 27(4), applicable in respect of dispositions occurring after December 11, 1979. That portion formerly read:

(3) Where a taxpayer has made a disposition after 1971 of property owned, or deemed to have been owned, by him on December 31, 1971 and thereafter without interruption until the date of disposition that would be property described in subparagraphs 66(15)(c)(i) to (vi) if the references therein to "in Canada" were read as references to "outside Canada", the following rules apply:

All that portion of subsec. 59(3.1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 27(5), applicable in respect of dispositions occurring after December 11, 1979. That portion formerly read:

(3.1) Where a taxpayer has made a disposition of property owned, or deemed to have been owned, by him on December 31, 1971 and thereafter without interruption until the date of disposition that is property described in any of subparagraphs 66(15)(c)(i) to (vi) and is not property described in paragraph (1.1)(b), the following rules apply:

Para. 59(3.1)(a) substituted by 1979, c. 5, s. 16, applicable to 1977 *et seq.*, to substitute "clause 66.2(5)(b)(v)(A)" for "subparagraph 66.2(5)(b)(v)".

Subsec. 59(3.1) added by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974.

Subsec. 59(3) substituted by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974. Subsec. 59(3) formerly read:

(3) Where a taxpayer had made a disposition after 1971 of property owned by him on December 31, 1971 that

(a) is property described in any of subparagraphs 66(15)(c)(i) to (vi) and is not property described in paragraph (1)(c), or

(b) would be property described in subparagraphs 66(15)(c)(i) to (vi) if the references therein to "in Canada" were read as references to "outside Canada",

the following rules apply:

(c) the relevant percentage of the amount receivable by the taxpayer as consideration for the disposition thereof shall be included in computing his income for his taxation year in which the disposition was made, notwithstanding that the amount or any part thereof may not be received until a subsequent taxation year; and

(d) where the taxpayer and the person who acquired the property were not dealing with each other at arm's length, for the purposes of this section, section 64 and section 66

(i) the cost to that person of the property shall be deemed to be the amount included in the taxpayer's income by virtue of paragraph (c) in respect of the disposition by the taxpayer of the property, and

(ii) when that person subsequently disposes of the property or any right or interest therein, the amount receivable by that person as consideration for the disposition shall be deemed to be the relevant percentage of the amount actually receivable by that person as consideration therefor.

Selected Cases [subsec. 59(3.1)]: *De Luca v. MNR*, [1991] 2 C.T.C. 243 (FCA) (Income from payment of balance of purchase price on transaction completed prior to 1972 validly assessed in year of receipt).

(3.2) Recovery of exploration and development expenses — There shall be included in computing a taxpayer's income for a taxation year

(a) any amount referred to in paragraph 66(12.4)(b);

(b) any amount referred to in subsection 66.1(1);

(c) any amount referred to in subsection 66.2(1);

(d) any amount referred to in subparagraph 66(10.4)(b)(ii); and

(e) any amount referred to in paragraph 66(10.4)(c).

Related Provisions: 66(5) — Dealers; 104(5.2) — Rules for trusts; 110.6(1) — "investment income"; 115(1)(a)(iii.1) — Non-resident's taxable income earned in Canada.

Pre-RSC History: Paras. 59(3.2)(d), (e) added by 1984, c. 1, subsec. 24(1), applicable after April 19, 1983.

Subsec. 59(3.2) added by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974.

I.T. Application Rules: 29(11)(b)(iv); 29(12)(b)(iv) (undeducted expenses incurred before 1972).

Interpretation Bulletins: IT-125R4: Dispositions of resource property.

(3.3) Amounts to be included in income — There shall be included in computing a taxpayer's income for a taxation year

(a) 33⅓% of the total of all amounts, each of which is the stated percentage of

(i) an amount that became receivable by the taxpayer after December 31, 1983 and in the year (other than an amount that would have been a Canadian oil and gas exploration expense if it had been an expense incurred by the taxpayer at the time it became receivable),

(ii) an amount that became receivable by the taxpayer after December 31, 1983 and in the year that

would have been a Canadian oil and gas exploration expense described in paragraph (c) or (d) of the definition "Canadian exploration expense" in subsection 66.1(6) in respect of a qualified tertiary oil recovery project if it had been an expense incurred by the taxpayer at the time it became receivable, or

(iii) 30% of an amount that became receivable by the taxpayer in the year and in 1984 that would have been a Canadian oil and gas exploration expense (other than an expense described in paragraph (c) or (d) of the definition "Canadian exploration expense" in subsection 66.1(6) in respect of a qualified tertiary oil recovery project) incurred in respect of non-conventional lands if it had been an expense incurred by the taxpayer at the time it became receivable

and in respect of which the consideration given by the taxpayer was a property (other than a share, depreciable property of a prescribed class or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure that was added in computing the earned depletion base of the taxpayer or in computing the earned depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor;

(b) 33⅓% of the total of all amounts, each of which is the stated percentage of an amount in respect of a disposition of depreciable property of a prescribed class (other than a disposition of such property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after December 11, 1979 and in the year, the capital cost of which was added in computing the earned depletion base of the taxpayer or of a person with whom the taxpayer was not dealing at arm's length or in computing the earned depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor, that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer, the person with whom the taxpayer was not dealing at arm's length or the predecessor, as the case may be, computed as if no amount had been added thereto by virtue of paragraph 21(1)(b) or subsection 21(3);

(c) 33⅓% of the total of all amounts, each of which is an amount in respect of a disposition of depreciable property of a prescribed class that is bituminous sands equipment (other than a disposition of such property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after December 11, 1979 and before 1990 and in the year, the capital cost of which was added in computing the supplementary depletion base of the taxpayer or of a person with whom the taxpayer was not dealing at arm's length or in computing the supplementary depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor, that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer, the person with whom the taxpayer was not dealing at arm's length or the predecessor, as the case may be, computed as if no amount had been added thereto by virtue of paragraph 21(1)(b) or subsection 21(3);

(d) 50% of the total of all amounts, each of which is an amount in respect of a disposition of depreciable property of a prescribed class that is enhanced recovery equipment (other than a disposition of such property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after December 11, 1979 and before 1990 and in the year, the capital cost of which was added in computing the supplementary depletion base of the taxpayer or of a person with whom the taxpayer was not dealing at arm's length or in computing the supplementary depletion base of a predecessor where the taxpayer is a successor corporation to the predecessor, that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer, the person with whom the taxpayer was not dealing at arm's length or the predecessor, as the case may be, computed as if no amount had been added thereto by virtue of paragraph 21(1)(b) or subsection 21(3);

(e) 66⅔% of the total of all amounts, each of which is an amount that became receivable by the taxpayer after December 11, 1979 and before 1990 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a share or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure in connection with an oil or gas well in respect of which an amount was included in computing the taxpayer's frontier exploration base or in computing the frontier exploration base of a predecessor where the taxpayer is a successor corporation to the predecessor; and

(f) 33⅓% of the total of all amounts, each of which is the stated percentage of an amount that became receivable by the taxpayer after April 19, 1983 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a share, depreciable property of a prescribed class or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure that was included in computing the mining exploration depletion base of the taxpayer or in computing the mining exploration depletion base of a specified predecessor of the taxpayer.

Related Provisions: 66(5) — Dealers; 66.1(2) — Deduction for principal business corporation; 87(1.2) — Amalgamation — continuing corporation; 88(1.5) — Winding-up — Parent deemed continuation of subsidiary.

Pre-RSC History: That portion of para. 59(3.3)(a) and of (3.3)(b) preceding subpara. (i) of each amended to add "the stated percentage of"; that portion of para. (3.3)(a) following subpara. (iii) substituted; that portion of para. (3.3)(c) and of (3.3)(d) preceding subpara. (i) of each, and para. (3.3)(e) amended to substitute "after December 11, 1979 and before 1990" for "after December 11, 1979" and para. (3.3)(f) substituted by 1988, c. 55, subsecs. 36(1) to (6), applicable to 1988 *et seq.* The substituted portion of para. 59(3.3)(a) and para. 59(3.3)(f) formerly read:

> and in respect of which the consideration given by the taxpayer was a property (other than a property disposed of by the taxpayer to any person with whom he was not dealing at arm's length, a share, depreciable property of a prescribed class or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure that was added in computing the earned depletion base of the taxpayer or of a person with whom he was not dealing at arm's length or in computing the earned deple-

tion base of a predecessor where the taxpayer is a successor corporation to the predecessor;

. . . . .

(f) 33⅓% of the aggregate of all amounts, each of which is an amount that became receivable by the taxpayer after April 19, 1983 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a property disposed of by the taxpayer to any person with whom he was not dealing at arm's length, a share, depreciable property of a prescribed class or a Canadian resource property) or services the cost of which may reasonably be regarded as having been an expenditure that was included in computing the mining exploration depletion base of the taxpayer or of a person with whom he was not dealing at arm's length or in computing the mining exploration depletion base of a specified predecessor of the taxpayer.

All that portion of para. 59(3.3)(a) following subpara. (iii), all that portion of paras. 59(3.3)(b), (c) and (d) preceding subpara. (i) of each, and para. 59(3.3)(e) amended by 1987, c. 46, subsecs. 16(1) to (5), to substitute, in each, "where the taxpayer is a successor corporation to the predecessor" for "where the taxpayer is a successor corporation or a second successor corporation to the predecessor, as the case may be", applicable to taxation years ending after February 17, 1987.

Paras. 59(3.3)(a), (e), (f) amended by 1985, c. 45, subsecs. 24(4), (5) to substitute, in each, "a Canadian resource property" for "a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given", applicable to taxation years commencing after 1984.

Paras. 59(3.3)(a) and (f) substituted by 1984, c. 45, subsecs. 18(1), (2), applicable to 1984 *et seq.* as to para. 59(3.3)(a) and after April 19, 1983 as to para. 59(3.3)(f). Paras. 59(3.3)(a) and (f) formerly read:

(a) 33⅓% of the aggregate of all amounts, each of which is an amount that became receivable by the taxpayer after December 11, 1979 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a share, depreciable property of a prescribed class or a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given) or services the cost of which to the taxpayer may reasonably be regarded as having been an expenditure that was added in computing the taxpayer's earned depletion base or in computing the earned depletion base of a predecessor where the taxpayer is a successor corporation or a second successor corporation to the predecessor, as the case may be;

. . . . .

(f) 33⅓% of the aggregate of all amounts, each of which is an amount that became receivable by the taxpayer after April 19, 1983 and in the year and in respect of which the consideration given by the taxpayer was a property (other than a share, depreciable property of a prescribed class or a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given) or services the cost of which to the taxpayer may reasonably be regarded as having been an expenditure that was included in computing the taxpayer's mining exploration depletion base or in computing the mining exploration depletion base of a specified predecessor of the taxpayer.

Paras. 59(3.3)(a) to (e) amended by substituting "predecessor" for "predecessor corporation" wherever that expression appeared; para. 59(3.3)(f) added by 1984, c. 1, subsecs. 24(2), (3). The amendments to paras. 59(3.3)(a) to (e) are applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

Subsec. 59(3.3) added by 1980-81-82-83, c. 48, subsec. 27(6), applicable to taxation years ending after December 11, 1979.

Regulations: 1105 (classes in Schedule II are prescribed).

(3.4) Definitions — For the purposes of this subsection and subsection (3.3),

"specified predecessor" of a taxpayer means a person who is a predecessor of

(a) the taxpayer, or

(b) a person who is a specified predecessor of the taxpayer;

Pre-RSC History: *The definition "specified predecessor" was para. 59(3.4)(c).*

Para. 59(3.4)(c) added by 1984, c. 1, subsec. 24(4), applicable to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

"stated percentage" means

(a) in respect of an amount described in paragraph (3.3)(a) or (f) that became receivable by a taxpayer,

(i) 100% where the amount became receivable before July, 1988,

(ii) 50% where the amount became receivable after June, 1988 and before 1990, and

(iii) 0% where the amount became receivable after 1989, and

(b) in respect of the disposition described in paragraph (3.3)(b) of a depreciable property of a taxpayer,

(i) 100% where the property was disposed of before July, 1988,

(ii) 50% where the property was disposed of after June, 1988 and before 1990, and

(iii) 0% where the property was disposed of after 1989;

Related Provisions: 59(3.5) — Variation of stated percentage.

Pre-RSC History: *The definition "stated percentage" was para. 59(3.4)(b). See Table of Concordance.*

Para. 59(3.4)(b) added by 1988, c. 55, subsec. 36(7), applicable to 1988 *et seq.*

For earlier para. (b), see History note at end of subsec. (3.4).

"successor corporation" means a corporation that has at any time after November 7, 1969 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection and subsection (3.3) referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor in circumstances in which any of subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1) and (3) to (5) apply to the corporation.

Pre-RSC History: *The definition "successor corporation" was para. 59(3.4)(a).*

Para. 59(3.4)(a) amended by 1987, c. 46, subsec. 16(6), to substitute "in circumstances in which any of subsection 29(25) of the *Income Tax Application Rules, 1971* and subsections 66.7(1) and (3) to (5) apply to the corporation" for "and that, with respect to acquisitions of property after November 16, 1978 (except in the case of an amalgamation or a winding-up), has jointly elected with the predecessor under subsection 66.1(4), 66.2(3) or 66.4(3)", applicable to taxation years ending after February 17, 1987.

Para. 59(3.4)(a) substituted by 1985, c. 45, subsec. 24(6), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985, the reference in para. (a) to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him".

Para. 59(3.4)(a) formerly read:

(a) "successor corporation" — "successor corporation" means a corporation that has, at any time after November 7, 1969, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another person (in this subsection and subsection (3.3) referred to as the "predecessor") all or substantially all of the property of the predecessor used by him in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him, and that, with respect to acquisitions of property after November 16, 1978 (except in the case of an amalgamation or a winding-up), has jointly elected with the predecessor under subsection 66.1(4), 66.2(3) or 66.4(3);

Para. 59(3.4)(a) amended by 1984, c. 1, subsec. 24(4), applicable to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. Para. (a) formerly read:

(a) "successor corporation" means a corporation that has, at any time after November 7, 1969, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection and subsection (3.3) referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and that, with respect to acquisitions of property after November 16, 1978 (except in the case of an amalgamation or a winding-up), has jointly elected with the predecessor corporation under subsection 66.1(4) or 66.2(3); and

Pre-RSC History [subsec. 59(3.4)]: Former para. 59(3.4)(b) repealed by 1987, c. 46, subsec. 16(6), applicable to taxation years ending after February 17, 1987. Para. 59(3.4)(b) formerly read:

(b) **"second successor corporation"** — "second successor corporation" means a corporation that has at any time after November 7, 1969 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this paragraph referred to as the "first successor corporation") that was a successor corporation, all or substantially all of the Canadian resource properties of the first successor corporation and that, with respect to acquisitions of property after November 16, 1978 (except in the case of an amalgamation or a winding-up), has jointly elected with the first successor corporation under subsection 66.1(5), 66.2(4) or 66.4(4); and

Para. 59(3.4)(b) substituted by 1985, c. 45, subsec. 24(6), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985, the reference in para. (b) to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it". Para. 59(3.4)(b) formerly read:

(b) **"second successor corporation"** — "second successor corporation" means a corporation that has, at any time after November 7, 1969, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this paragraph referred to as the "first successor corporation") that was a successor corporation, all or substantially all of the property of the first successor corporation used by it in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and that, with respect to acquisitions of property after November 16, 1978 (except in the case of an amalgamation or a winding-up), has jointly elected with the first successor corporation under subsection 66.1(5), 66.2(4) or 66.4(4); and

Para. 59(3.4)(b) amended by 1984, c. 1, subsec. 24(4), applicable to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. Para. (b) formerly read:

(b) "second successor corporation" means a corporation that has, at any time after November 7, 1969, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this paragraph referred to as the "first successor corporation") that was a successor corporation, all or substantially all of the property of the first successor corporation used by it in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and that, with respect to acquisitions of property after November 16, 1978 (except in the case of an amalgamation or a winding-up), has jointly elected with the first successor corporation under subsection 66.1(5) or 66.2(4).

Subsec. 59(3.4) added by 1980-81-82-83, c. 48, subsec. 27(6), applicable to taxation years ending after December 11, 1979.

(3.5) Variation of stated percentage — Notwithstanding the definition "stated percentage" in subsection (3.4), where

(a) an amount became receivable by a taxpayer within 60 days after the end of 1989 in respect of a disposition of property or services, and

(b) the person to whom the disposition was made is a corporation that, before the end of 1989, had issued, or had undertaken to issue, a flow-through share and the corporation renounces under subsection 66(12.66), effective on December 31, 1989, an amount in respect of Canadian exploration expenses that includes an expenditure in respect of the amount referred to in paragraph (a),

the stated percentage in respect of the amount described in paragraph (a) shall be 50%.

Pre-RSC History: Subsec. 59(3.5) added by 1988, c. 55, subsec. 36(8), applicable to 1988 *et seq.*

(4) [Repealed under former Act]

Pre-RSC History [subsec. 59(4)]: Subsec. 59(4) repealed by 1985, c. 45, subsec. 24(7), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subsec. 59(4) formerly read:

(4) Determination of "relevant percentage" — For the purposes of this section, the "relevant percentage" of proceeds of disposition of property is 60% plus the percentage (not exceeding 40%) obtained when 5% is multiplied by the number of full calendar years in the period commencing at the end of 1972 and ending with the end of the calendar year in which the disposition was made.

Subsec. 59(4) substituted by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974. Subsec. 59(4) formerly read:

(4) For the purposes of paragraphs (3)(c) and (d), the "relevant percentage" of any amount receivable as consideration for the disposition of property is 60% plus the percentage (not exceeding 40%) obtained when 5% is multiplied by the number of full calendar years in the period commencing at the end of 1972 and ending with the end of the calendar year in which the disposition was made.

(5) Definitions of "disposition" and "proceeds of disposition" — In this section, "disposition" and "proceeds of disposition" have the meanings assigned by section 54.

Proposed Amendment — 59(5)

(5) Definition of "proceeds of disposition" — In this section, "proceeds of disposition" has the meaning assigned by section 54.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 24, will amend subsec. 59(5) to read as above, applicable to transactions and events that occur after December 23, 1998.

Technical Notes: Subsections 59(5) and 66.4(5) of the Act define the expressions "disposition" and "proceeds of disposition" for the purposes of sections 59 and 66.4. These expressions are defined in the same way as they are defined in section 54.

Subsections 59(5) and 66.4(5) are amended to eliminate the references to the expression "disposition", as this expression is now defined in subsection 248(1).

Pre-RSC History: Subsec. 59(5) substituted by 1974-75-76, c. 26, subsec. 29(2), applicable in respect of dispositions occurring after May 6, 1974. Subsec. 59(5) formerly read:

(5) In this section, "Canadian resource property" and "foreign resource property" have the meanings assigned by section 66.

Interpretation Bulletins: IT-125R4: Dispositions of resource property.

(6) Definitions in regulations under section 65 — In this section, "bituminous sands equipment", "Canadian oil and gas exploration expense", "earned depletion base", "enhanced recovery equipment", "frontier exploration base", "mining exploration depletion base", "non-conventional lands", "qualified tertiary oil recovery project" and "supplementary depletion base" have the meanings assigned by regulations made for the purposes of section 65.

Pre-RSC History: Subsec. 59(6) substituted by 1984, c. 45, subsec. 18(3), to add "Canadian oil and gas exploration expense", "non-conven-

tional lands" and "qualified tertiary oil recovery project", applicable after April 19, 1983.

Subsec. 59(6) substituted by 1984, c. 1, subsec. 24(5), applicable after April 19, 1983, to add "mining exploration depletion base".

Subsec. 59(6) added by 1980-81-82-83, c. 48, subsec. 27(7), applicable to taxation years ending after December 11, 1979.

Regulations [subsec. 59(6)]: Part XII (Reg. 1206(1) and others).

Definitions [s. 59]: "amount" — 248(1); "bituminous sands equipment" — 59(6); "arm's length" — 251(1); "Canada" — 255; "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas exploration expense" — 59(6); "Canadian resource property" — 66(15), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "disposition" — 54, 59(5) [to be repealed], 248(1) [draft]; "earned depletion base", "enhanced recovery equipment" — 59(6); "flow-through share", "foreign resource property" — 66(15), 248(1); "frontier exploration base", "mining exploration depletion base", "non-conventional lands" — 59(6); "oil or gas well", "person", "prescribed" — 248(1); "proceeds of disposition" — 54, 59(5); "property", "share" — 248(1); "qualified tertiary oil recovery project" — 59(6); "specified predecessor" — 59(3.4); "stated percentage" — 59(3.4); "successor corporation" — 59(3.4); "supplementary depletion base" — 59(6); "taxation year" — 249; "taxpayer" — 248(1).

59.1 Involuntary disposition of resource property — Where in a particular taxation year an amount is deemed by subsection 44(2) to have become receivable by a taxpayer as proceeds of disposition described in paragraph (d) of the definition "proceeds of disposition" in section 54 of any Canadian resource property and the taxpayer elects, in the taxpayer's return of income under this Part for the year, to have this section apply to those proceeds of disposition,

(a) there shall be deducted in computing the taxpayer's income for the particular year such amount as the taxpayer may claim, not exceeding the least of,

(i) the total of all those proceeds so becoming receivable in the particular year by the taxpayer to the extent that they have been included in the amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or in paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer,

(ii) the amount required to be included in computing the taxpayer's income for the particular year by virtue of paragraph 59(3.2)(c), and

(iii) the taxpayer's income for the particular year determined without reference to this section;

(b) the amount, if any, by which

(i) the amount deducted under paragraph (a)

exceeds

(ii) the total of such of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses made or incurred by the taxpayer in the taxpayer's ten taxation years immediately following the particular year as were designated by the taxpayer in the taxpayer's return of income for the year in which the expense was made or incurred,

shall be included in computing the taxpayer's income for the particular year and, notwithstanding subsections 152(4) and (5), such reassessment of the taxpayer's tax, interest or penalties for any year shall be made as is necessary to give effect to such inclusion; and

(c) any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense made or incurred by the taxpayer and designated in the taxpayer's return of income in accordance with subparagraph (b)(ii) shall (except for the purposes of subsections 66(12.1), (12.2), (12.3) and (12.5) and for the purpose of computing the taxpayer's earned depletion base within the meaning assigned by regulations made for the purposes of section 65) be deemed not to be a Canadian exploration expense, a Canadian development expense or a Canadian oil and gas property expense, as the case may be, of the taxpayer.

Related Provisions: 66(18) — Members of partnerships.

History: That portion of s. 59.1 preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 33, applicable with respect to amounts deemed to have become receivable in taxation years beginning after 1984. That portion formerly read:

59.1 Involuntary disposition of resource property — Where in a particular taxation year an amount is deemed by subsection 44(2) to have become receivable by a taxpayer as proceeds of disposition described in paragraph (d) of the definition "proceeds of disposition" in section 54 of any property described in subsection 59(1.1), (1.2) or (3.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the taxpayer has filed a return of the taxpayer's income for the year, as required by section 150, in which the taxpayer has elected to have this section apply in respect of those proceeds of disposition,

Pre-RSC History: All that portion of s. 59.1 preceding subpara. (a)(ii), subpara. 59.1(b)(ii) and para. 59.1(c) substituted by 1980-81-82-83, c. 48, subsecs. 28(1)–(3), applicable to taxation years ending after December 11, 1979. That portion, subpara. 59.1(b)(ii) and para. 59.1(c) formerly read:

59.1 Where in a particular taxation year an amount is deemed by subsection 44(2) to have become receivable by a taxpayer as proceeds of disposition described in subparagraph 54(h)(iv) of any property described in subsection 59(1.1) or (3.1) and the taxpayer has filed a return of his income for the year, as required by section 150, in which he has elected to have this section apply in respect of such proceeds of disposition,

(a) there shall be deducted in computing the taxpayer's income for the particular year such amount as the taxpayer may claim, not exceeding the least of,

(i) the aggregate of all such proceeds so becoming receivable in the particular year by the taxpayer to the extent that they have been included in the amount referred to in subparagraph 66.2(5)(b)(v) in respect of the taxpayer,

. . . . .

(ii) the aggregate of such of the Canadian exploration expenses and Canadian development expenses made or incurred by the taxpayer in his ten taxation years immediately following the particular year as were designated by the taxpayer in his return of income for the year in which the expense was made or incurred,

. . . . .

(c) any Canadian exploration expense or Canadian development expense made or incurred by the taxpayer and designated in his return of income in accordance with subparagraph (b)(ii) shall (except for the purposes of subsections 66(12.1), (12.2) and (12.3) and for the purpose of computing the taxpayer's earned depletion base within the meaning assigned by regulations made for the purposes of section 65) be deemed not to be a Canadian exploration expense of the taxpayer or a Canadian development expense of the taxpayer, as the case may be.

S. 59.1 added by 1977-78, c. 1, s. 24, applicable to amounts deemed to have become receivable after 1976.

Definitions [s. 59.1]: "amount" — 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "Minister", "property", "regulations" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 59.1]: IT-125R4: Dispositions of resource properties.

Subdivision e — Deductions in Computing Income

60. Other deductions — There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:

(a) **capital element of annuity payments** — the capital element of each annuity payment included by virtue of paragraph 56(1)(d) in computing the taxpayer's income for the year, that is to say,

(i) if the annuity was paid under a contract, an amount equal to that part of the payment determined in prescribed manner to have been a return of capital, and

(ii) if the annuity was paid under a will or trust, such part of the payment as can be established by the recipient not to have been paid out of the income of the estate or trust;

Related Provisions: 58(4) — Government and similar annuities; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 110.6(1) — "investment income"; 147.4(4) — Deemed annuity on conversion of pension rights before 1997 to annuity contract commencing after age 69; 148(9)"adjusted cost basis"K — Reduction in adjusted cost basis. See additional Related Provisions and Definitions at end of s. 60.

Pre-RSC History: All that portion of para. 60(a) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 28(1), applicable after December 1, 1982. That portion formerly read:

(a) the capital element of each annuity payment (other than a superannuation or pension benefit, a payment out of or under an employee benefit plan, registered retirement savings plan or registered retirement income fund, a payment under an income-averaging annuity contract or a payment of an annuity paid or purchased pursuant to a deferred profit sharing plan or pursuant to a plan referred to in subsection 147(15) as a "revoked plan") included in computing the taxpayer's income for the year, that is to say,

All that portion of para. 60(a) preceding subpara. (i) substituted by 1980-81-82-83, c. 48, subsec. 29(1), applicable with respect to payments made after 1979. That portion formerly read:

(a) the capital element of each annuity payment (other than a superannuation or pension benefit, a payment under a registered retirement savings plan, a payment under a registered retirement income fund, a payment under an income-averaging annuity contract or a payment of an annuity paid or purchased pursuant to a deferred profit sharing plan or pursuant to a plan referred to in subsection 147(15) as a "revoked plan") included in computing the taxpayer's income for the year, that is to say,

All that portion of para. 60(a) preceding subpara. (i) substituted by 1977-78, c. 32, subsec. 12(1), to add reference to "a payment under a registered retirement income fund".

All that portion of para. 60(a) preceding subpara. (i) substituted by 1973-74, c. 30, s. 4, to add "or pursuant to a plan referred to in subsection 147(15) as a 'revoked plan'", applicable with respect to any annuity payment received after February 19, 1973.

Selected Cases [para. 60(a)]: *Speerstra v. MNR*, [1973] C.T.C. 179 (FCTD) (Payments to taxpayer under annuity contracts not refunds of capital).

Regulations: 300 (prescribed manner).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-111R2: Annuities purchased from charitable organizations; IT-415R2: Deregistration of registered retirement savings plans.

Advance Tax Rulings: ATR-68: Structured settlement.

(b) **support** — the total of all amounts each of which is an amount determined by the formula

$$A - (B + C)$$

where

A is the total of all amounts each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid,

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer's income for a preceding taxation year;

Proposed Amendment — Transitional rule re common-law partners

Application: Bill C-23 (as amended by the Standing Committee on Justice and Human Rights, March 23, 2000), s. 145, provides the following transitional rule regarding the addition of the terms "common-law partner" and "common-law partnership" to the Act:

145. Where, but for the application of sections 130 to 142, paragraphs 56(1)(b) and 60(b) of the *Income Tax Act* would not apply to amounts paid and received pursuant to an order or a written agreement made before the coming into force of this section, those paragraphs do not apply unless the payor and the recipient of the amounts jointly elect to have those paragraphs apply to those amounts for the 2001 and following taxation years by notifying the Minister of National Revenue in prescribed manner on or before their filing due date for the year in which this Act receives royal assent.

Related Provisions: 4(3) — Deductions applicable; 56(1)(b) — Parallel income inclusion for recipient; 56(1)(c.2) — Reimbursement of support payments; 56(12) — Allowance must be discretionary; 56.1(4), 60.1(4) — Definitions of "commencement day", "support amount" and "child support amount"; 60.1(1), (2) — Payments to third parties; 60.1(3) — Payments made before agreement signed or court order made; 118(5) — No personal credits in respect of person to whom support paid; 146(1)"earned income"(f) — Amount under 60(b) reduces RRSP earned income; 212(1)(f) — Withholding tax on alimony or maintenance paid to non-resident before May 1997; 252(3), (4) — Extended meaning of "spouse", "former spouse" and "marriage"; 257 — Formula cannot calculate to less than zero; Canada-U.S. Tax Convention Art. XVIII:6 — Exemptions for cross-border alimony and support. See additional Related Provisions and Definitions at end of s. 60.

History: The description of B in para. 60(b) amended by 1998, c. 19, subsec. 99(1), applicable to amounts paid after 1996. That description formerly read:

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began after its commencement day, and

Para. 60(b) amended by 1997, c. 25, s. 10, applicable to amounts received after 1996. Para. (b) formerly read:

(b) alimony payments — an amount paid by the taxpayer in the year as alimony or other allowance payable on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and the children, if the taxpayer, because of the breakdown of the taxpayer's marriage, was living separate and apart from the spouse or former spouse to whom the taxpayer was required to make the payment at the time the payment was made and throughout the remainder of the year and the amount was paid under a decree, order or judgment of a competent tribunal or under a written agreement;

Para. 60(b) substituted for paras. (b) and (c) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(1), applicable to amounts received under a decree, order or judgment of a competent tribunal or under a written agreement, with respect to a breakdown of a marriage occurring after 1992. Paras. (b) and (c) formerly read:

(b) alimony payments — an amount paid by the taxpayer in the year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient

thereof, children of the marriage, or both the recipient and children of the marriage, if the taxpayer was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, the taxpayer's spouse or former spouse to whom the taxpayer was required to make the payment at the time the payment was made and throughout the remainder of the year;

(c) **maintenance payments** — an amount paid by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if, at the time the payment was made and throughout the remainder of the year, the taxpayer was living apart from the taxpayer's spouse to whom the taxpayer was required to make the payment;

Pre-RSC History: Para. 60(c) substituted by 1980-81-82-83, c. 140, subsec. 28(2), applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the recipient agree in writing at any time in a taxation year, in the year and subsequent taxation years. Para. (c) formerly read:

(c) an amount paid by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if, at the time the payment was made and throughout the remainder of the year, he was living apart from the recipient, who was either his spouse or an individual described in paragraph 73(1)(d), to whom he was required to make the payment;

Para. 60(c) amended by 1980-81-82-83, c. 48, subsec. 29(2), applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the recipient agree in writing at any time in a taxation year, in the year and subsequent taxation years. Para. (c) formerly read:

(c) an amount paid by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if he was living apart from his spouse to whom he was required to make the payment at the time the payment was made and throughout the remainder of the year;

Selected Cases [para. 60(b)]: *Demey v. R.*, [2000] 2 C.T.C. 2026 (TCC) (No legal "custody" of adult children); *Leet v. R.*, [1999] 2 C.T.C. 2477 (TCC) (Payment not periodic where even death would not affect liability to pay); *Hak v. R.*, [1999] 1 C.T.C. 2633 (TCC) (Failure to mention that provision should apply to payments not fatal to deductibility); *Paustian v. Canada*, [1995] 1 C.T.C. 2395 (TCC) (Entitlement to deduction under para. 60(b) disqualifies deduction under s. 118); *Burgess v. MNR*, [1991] 1 C.T.C. 163 (FCTD) (Exchange of solicitors' letters not "written separation agreement"); *Caston v. Canada*, [1990] 1 C.T.C. 439 (FCTD); appealed to FCA (May 1990), File A-348-90 (Payments pursuant to oral agreement and payments made after application adjourned *sine die* not deductible); *McKimmon v. The Queen*, [1990] 1 C.T.C. 109 (FCA) (Five annual maintenance payments not deductible; factors to be considered); *Larivière v. The Queen*, [1989] 1 C.T.C. 297 (FCA) (Three unequal annual maintenance payments, intended as alimentary pension for former spouse, deductible); *Gagnon v. The Queen*, [1986] 1 C.T.C. 410 (SCC) (Payments adjustable according to municipal and school taxes constituted an "allowance"); *Hanlin v. The Queen*, [1985] 1 C.T.C. 54 (FCTD) (Monthly and annual payments deductible as periodic payments); *The Queen v. Taylor Estate*, [1984] C.T.C. 244 (FCTD) (Payments to "spouse or former spouse" not deductible where marriage invalid); *Ahern v. The Queen*, [1982] C.T.C. 362 (FCTD) (Payments made for benefit of child, not a child of the marriage, not deductible); *The Queen v. Dorion*, [1981] C.T.C. 136 (FCTD) (Lump sum in consideration for waiver of benefits under marriage contract not deductible); *Lavoie v. The Queen*, [1979] C.T.C. 48 (FCTD) (Interest on sum owed to taxpayer by province, included in lump sum paid, not deductible); *Hardtman v. The Queen*, [1977] C.T.C. 358 (FCTD) (Maintenance payments prior to separation agreement not deductible); *The Queen v. Guay*, [1977] C.T.C. 266 (FCA) (Payments for medical and other expenses paid directly to third parties for benefit of former spouse and children not deductible); *The Queen v. Pascoe*, [1975] C.T.C. 656 (FCA) (Payments of medical and educational expenses on behalf of children not "allowance"); *A.G. Can. v. Weaver*, [1975] C.T.C. 646 (FCA) (Payments on account of mortgage and utility expenses not "allowance").

Regulations: 100(3)(d) (payroll deduction of employee contribution reduces source withholding if required by pre-May 1997 court order).

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-325R2: Property transfers after separation, divorce and annulment; IT-513R: Personal tax credits; IT-530: Support payments.

Forms: T1157: Election for child support payments; T1158: Registration of family support payments; P102: Support payments (pamphlet).

(c), (c.1) [Repealed]

History: Para. 60(c) repealed by 1997, c. 25, s. 10, applicable to amounts received after 1996. Para. (c) formerly read:

(c) **maintenance** — an amount paid by the taxpayer in the year as an allowance payable on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and the children, if

(i) at the time the amount was paid and throughout the remainder of the year the taxpayer was living separate and apart from the recipient,

(ii) the taxpayer is the natural parent of a child of the recipient, and

(iii) the amount was received under an order made by a competent tribunal in accordance with the laws of a province;

Para. 60(c) substituted for para. (c.1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(2), applicable with respect to orders made after 1992. Para. (c.1) formerly read:

(c.1) **idem** — an amount paid by the taxpayer in the year, pursuant to an order made by a competent tribunal in accordance with the laws of a province, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if

(i) the order was made

(A) after February 10, 1988, or

(B) before February 11, 1988 and the taxpayer and the recipient jointly elected in writing before the end of the year to have this paragraph and paragraph 56(1)(c.1) apply with respect to the payment,

(ii) at the time the payment was made and throughout the remainder of the year, the taxpayer was living apart from the recipient, and

(iii) the taxpayer required to pay the amount is an individual of the opposite sex who

(A) before the date of the order cohabited with the recipient in a conjugal relationship, or

(B) is the natural parent of a child of the recipient;

Pre-RSC History: Para. 60(c.1) substituted by 1988, c. 55, subsec. 37(1), applicable

(a) with respect to orders made under the laws of Ontario, to 1986 *et seq.* (and in applying subpara. (c.1)(i) to such orders made after December 11, 1979, the references to "February 10, 1988" and "February 11, 1988" shall be read as "December 11, 1979" and "December 12, 1979" respectively); and

(b) in any other case, to 1988 *et seq.*

Para. (c.1) formerly read:

(c.1) **Idem** — an amount paid by the taxpayer in the year, pursuant to an order made in accordance with the laws of a province by a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if, at the time the payment was made and throughout the remainder of the year, he was living apart from the recipient who was an individual within a prescribed class of persons described in the laws of the province;

Para. 60 (c.1) added by 1980-81-82-83, c. 140, subsec. 28(2), applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the recipient agree in writing at any time in a taxation year, in the year and subsequent taxation years.

Selected Cases [para. 60(c)]: *MNR v. Hastie*, [1974] C.T.C. 131 (FCTD) (Mortgage payments, made to mortgagee, upon alimentary allowance for benefit of wife and children deductible).

(c.2) **repayment of support payments** — an amount paid by the taxpayer in the year or one of the 2 preceding taxation years under a decree, order or judgment of a competent tribunal as a repayment of an amount included under paragraph 56(1)(b) or (c), or

under paragraph 56(1)(c.1) (as it applies, in computing the taxpayer's income for the year or a preceding taxation year, to decrees, orders and judgments made before 1993) to the extent that it was not so deducted for a preceding taxation year;

Related Provisions: 56(1)(c.2) — Reimbursement of support payments; 146(1)"earned income"(f) — Amount deducted under 60(c.2) reduces RRSP earned income.

History: Para. 60(c.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(3), applicable to payments made after 1990.

Interpretation Bulletins: IT-530: Support payments.

(d) **interest on death duties** — an amount equal to annual interest accruing within the taxation year in respect of succession duties, inheritance taxes or estate taxes;

Related Provisions: 4(3) — Deductions applicable. See additional Related provisions and Definitions at end of s. 60.

Interpretation Bulletins: IT-203: Interest on death duties.

(e) [Repealed under former Act]

Pre-RSC History: Para. 60(e) repealed by 1988, c. 55, subsec. 37(2), applicable to 1988 *et seq.* Para. 60(e) formerly read:

(e) tuition fees — where the taxpayer was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree, the amount of any fees for his tuition paid to the university in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction under this subsection for a previous year except any such fees

(i) paid in respect of a course of less than 13 consecutive weeks' duration,

(ii) paid on his behalf by his employer to the extent that the amount thereof exceeds an amount included in his income for the year in which such payment was made in respect of such payment, or

(iii) paid on his behalf by the employer of his parent, to the extent that the amount thereof is not included in computing the income of the parent by virtue of subparagraph 6(1)(b)(ix);

Subpara. 60(e)(iii) added by 1980-81-82-83, c. 140, subsec. 28(3), applicable to 1982 *et seq.*

(f) [Repealed under former Act]

Pre-RSC History: Para. 60(f) repealed by 1988, c. 55, subsec. 37(2), applicable to 1988 *et seq.* (See s. 118.5.) Para. 60(f) formerly read:

(f) Idem — where the taxpayer was during the year a student enrolled at an educational institution in Canada

(i) that is a university, college or other educational institution providing courses at a post-secondary school level,

(ii) that is a school operated by or on behalf of Her Majesty in right of Canada or a province, a municipality in Canada, or a municipal or public body performing a function of government in Canada,

(iii) that is a high school or secondary school providing courses leading to a secondary school certificate or diploma that is a requirement for entrance to a college or university, or

(iv) that is certified by the Minister of Employment and Immigration to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

the amount of any fees for his tuition paid to the educational institution in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction under this section for a preceding taxation year, if such amount exceeds $100 and, in the case of an educational institution described in subparagraph (iv), the student is enrolled therein in order to furnish him with skills for, or improve his skills in, an occupation, except to the extent that

(v) such amount was paid on his behalf by his employer and was not included in computing his income for the year in which such payment was made, or

(vi) such amount was included as part of an allowance received by his parent on his behalf from an employer and was not included in computing the income of his parent by virtue of subparagraph 6(1)(b)(ix);

All that portion of para. 60(f) following subpara. (iii) substituted by 1980-81-82-83, c. 140, subsec. 28(4), applicable to 1982 *et seq.* That portion formerly read:

(iv) that is certified by the Minister of Manpower and Immigration to be an educational institution by which courses are conducted that provide or improve the qualifications of a person for employment or for the carrying on of a business or profession,

the amount of any fees for his tuition paid to the educational institution in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction under this subsection for a previous year, if such amount exceeds $25, but where such amount was paid on his behalf by his employer, only the part thereof that does not exceed the amount included in his income for the year in which such payment was made in respect of such payment;

(g) [Repealed under former Act]

Pre-RSC History: Para. 60(g) repealed by 1988, c. 55, subsec. 37(2), applicable to 1988 *et seq.* (See s. 118.5.) Para. 60(g) formerly read:

(g) Idem — where the taxpayer resided during the whole of the year in Canada near the boundary between Canada and the United States of America, if

(i) he was during the year a student enrolled at an educational institution in the United States that is a university, college or other educational institution providing courses at a post-secondary school level, and

(ii) he commuted to that educational institution in the United States,

the amount of any fees for his tuition paid to the educational institution in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction under this section for a preceding taxation year, if such amount exceeds $100, except to the extent that

(iii) such amount was paid on his behalf by his employer and was not included in computing his income for the year in which such payment was made, or

(iv) such amount was included as part of an allowance received by his parent on his behalf from an employer and was not included in computing the income of the parent by virtue of subparagraph 6(1)(b)(ix);

All that portion of para. 60(g) following subpara. (ii) substituted by 1980-81-82-83, c. 140, subsec. 28(5), applicable to 1982 *et seq.* That portion formerly read:

the amount of any fees for his tuition paid to the educational institution in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction under this subsection for a previous year, if such amount exceeds $25, but where such amount was paid on his behalf by his employer, only the part thereof that does not exceed the amount included in his income for the year in which such payment was made in respect of such payment;

(h) [Repealed under former Act]

Pre-RSC History: Para. 60(h) repealed by 1988, c. 55, subsec. 37(2), applicable to 1988 *et seq.* (See s. 118.7.) Para. 60(h) formerly read:

(h) *Canada Pension Plan* contributions — an amount payable by the taxpayer in respect of self-employed earnings for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of the *Canada Pension Plan*.

(i) **premium or payment under RRSP or RRIF** — any amount that is deductible under section 146 or subsection 147.3(13.1) in computing the income of the taxpayer for the year;

Related Provisions: 4(3) — Deductions applicable; 127.52(1)(a) — Limitation on deduction for minimum tax purposes; 146(5), (5.1), (6), (6.1), (8.2) — RRSP payments and premiums deductible; 152(6) — Reassessment. See additional Related provisions and Definitions at end of s. 60.

History: Para. 60(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(4), applicable to 1992 *et seq.* Para. (i) formerly read:

> (i) premium or payment under RRSP — any amount that by virtue of section 146 is deductible in computing the income of the taxpayer for the taxation year;

Pre-RSC History: Para. 60(i) substituted by 1977-78, c. 1, subsec. 25(1). Para. 60(i) formerly read:

> (i) an amount paid by the taxpayer as a premium under a registered retirement savings plan, or as a payment to or under such a plan under which his spouse is the annuitant, as permitted by section 146;

Para. 60(i) substituted by 1974-75, c. 26, subsec. 30(1), applicable to 1974 *et seq.* Para. 60(i) formerly read:

> (i) premium under registered retirement savings plan — an amount paid by the taxpayer as a premium under a registered retirement savings plan as permitted by section 146;

Regulations: 100(3)(c) (payroll deduction of RRSP contribution reduces source withholding).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(j) **transfer of superannuation benefits [to RRSP]** — such part of the total of all amounts each of which is

(i) a superannuation or pension benefit (other than any amount in respect of the benefit that is deducted in computing the taxable income of the taxpayer for a taxation year because of subparagraph 110(1)(f)(i) or a benefit that is part of a series of periodic payments) payable out of or under a pension plan that is not a registered pension plan, attributable to services rendered by the taxpayer or a spouse or former spouse of the taxpayer in a period throughout which that person was not resident in Canada, and included in computing the income of the taxpayer for the year because of subparagraph 56(1)(a)(i), or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) an eligible amount in respect of the taxpayer for the year under section 60.01, subsection 104(27) or (27.1) or paragraph 147(10.2)(d),

as

(iii) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(iv) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph 8(1)(m) in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof designated for a taxation year for the purposes of paragraph (l),

to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 60(j.01) — Transfer of surplus; 60.2(1) — Refund of undeducted past service AVCs; 104(27) — Pension benefits; 104(27.1) — DPSP benefits; 127.52(1)(a) — Limitation on deduction for minimum tax purposes; 146(5) — Amount of RRSP premiums deductible; 146(6.1) — Recontribution of certain withdrawals; 146(8.2) — Amount deductible; 147(10) — Amounts received taxable; 146(16) — RRSP deduction on transfer of funds; 147(10.2) — Single payment on retirement etc.; 147(21) — Restriction re transfers; 147.1(3)(a) — Deemed registration; 147.3 — Transfer from RPP; 147.3(12) — Restriction re transfers; 204.2(1)(b)(i)(A) — Excess amount for a year in respect of RRSP; 212(1)(h)(iii.1) — Pension benefits; 252(3), (4) — Extended meaning of "spouse" and "former spouse". See additional Related Provisions and Definitions at end of s. 60.

History: Subpara. 60(j)(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(5), applicable after 1992. Subpara. (j)(i) formerly read:

> (i) a superannuation or pension benefit (other than any amount in respect of the benefit that is deducted in computing the taxable income of the taxpayer for a taxation year by reason of subparagraph 110(1)(f)(i) or a benefit that is part of a series of periodic payments) payable out of or under a pension plan that is not a registered pension plan, attributable to services rendered by the taxpayer or a spouse (in this subparagraph having the meaning assigned by subsection 146(1.1)) or former spouse of the taxpayer in a period throughout which that person was not resident in Canada, and included in computing the income of the taxpayer for the year by reason of subparagraph 56(1)(a)(i), or

Subpara. 60(j)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(1), to substitute "under section 60.01, subsection 104(27)" for "pursuant to subsection 104(27)", applicable to 1990 *et seq.*

Pre-RSC History: Para. 60(j) substituted by 1990, c. 35, subsec. 5(1), applicable to 1986 *et seq.* except that

(a) in its application to the 1986 and 1987 taxation years, para. 60(j) shall be read as follows:

> (j) such part of the aggregate of all amounts each of which is an amount included in computing the income of the taxpayer for the year (other than any portion thereof deducted by the taxpayer under subsection 60.2(1) in computing the taxpayer's income for the year) by virtue of subparagraph 56(1)(a)(i) (where the amount is received out of or under a registered pension plan or is an amount described in subparagraph 6(1)(g)(iii) or clause 56(1)(a)(i)(A) or (B)), or subsection 147(10) as
>
> (i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and
>
> (ii) does not exceed the aggregate of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year
>
> (A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph 8(1)(m) or (m.1) in computing the taxpayer's income for the year, or
>
> (B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof that has been designated for the purposes of paragraph (l),
>
> to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year;

(b) in its application to the 1988 taxation year, para. 60(j) shall be read as follows:

> (j) such part of the aggregate of all amounts each of which is
>
> (i) an amount received by the taxpayer (other than any portion thereof deducted by the taxpayer under subsection 60.2(1) in computing the taxpayer's income for the year) that cannot reasonably be considered to be a payment in respect of the actuarial surplus under a defined benefit provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan and that is included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) (where the amount is received out of or under a registered pension plan or is an amount described in subparagraph 6(1)(g)(iii) or clause 56(1)(a)(i)(A) or (B)) or subsection 147(10), or
>
> (ii) an eligible amount in respect of the taxpayer for the year pursuant to subsection 104(27)

as

(iii) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(iv) does not exceed the aggregate of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph 8(1)(m) or (m.1) in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof that has been designated for the purposes of paragraph (l),

to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year;

(c) in its application to the 1989 taxation year, para. 60(j) shall be read as follows:

(j) such part of the aggregate of all amounts each of which is

(i) an amount received by the taxpayer (other than any portion thereof deducted by the taxpayer under subsection 60.2(1) in computing the taxpayer's income for the year)

(A) that is part of a series of periodic payments, that cannot reasonably be considered to be a payment in respect of the actuarial surplus under a defined benefit provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan, and that is included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) (where the amount is received out of or under a registered pension plan) or subsection 147(10), or

(B) that is included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) (where the amount is described in subparagraph 6(1)(g)(iii) or clause 56(1)(a)(i)(A) or (B)),

(ii) an eligible amount in respect of the taxpayer for the year, pursuant to subsection 104(27) or (27.1) or paragraph 147(10.2)(d), or

(iii) a prescribed amount

as

(iv) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(v) does not exceed the aggregate of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph 8(1)(m) or (m.1) in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof that has been designated for the purposes of paragraph (l),

to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year; and

(d) in its application to the 1990 taxation year, para. 60(j) shall be read as though

(i) the reference therein to "paragraph 8(1)(m)" were a reference to "paragraph 8(1)(m) or (m.1)", and

(ii) subpara. 60(j)(i) in respect of amounts payable in the year and before June 7, 1990, were read as follows:

(i) a superannuation or pension benefit (other than any amount in respect of the benefit that is deducted in computing the taxable income of the taxpayer for a taxation year by reason of subparagraph 110(1)(f)(i) or a benefit that is part of a series of periodic payments) payable out of or under a pension plan that is not a registered pension plan attributable to services rendered by a person in a period throughout which the person was not resident in Canada, and included in computing the income of the taxpayer for the year by reason of subparagraph 56(1)(a)(i), or

Para. 60(j) formerly read:

(j) transfer of superannuation benefits — such part of the aggregate of all amounts each of which is an amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) (where the amount is received out of or under a registered pension fund or plan or is an amount described in subparagraph 6(1)(g)(iii) or clause 56(1)(a)(i)(A) or (B)), or subsection 147(1) as

(i) is designated by the taxpayer in his return of income under this Part for the year, and

(ii) does not exceed the aggregate of all amounts each of which is an amount paid by him in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension fund or plan, other than the portion thereof deductible under paragraph 8(1)(m) in computing his income for the year, or

(B) as a premium (within the meaning of section 146) under a registered retirement savings plan under which he is the annuitant (within the meaning of section 146), other than the portion thereof that has been designated for the purposes of paragraph (l),

to the extent that it was not deducted in computing his income for a preceding taxation year;

Para. 60(j) amended by 1984, c. 45, s. 19, to substitute that portion preceding subpara. (i), applicable to 1984 *et seq.* except that in its application to the 1984 taxation year para. 60(j) shall be read as follows:

(j) such part of the amount that is the greater of

(i) the aggregate of all amounts each of which is

(A) an amount received on or before February 15, 1984 that is included in computing the income of the taxpayer for the year by virtue of subpara. 56(1)(a)(i) or subsec. 147(10), or

(B) an amount received after February 15, 1984 that is included in computing the income of the taxpayer for the year by virtue of subpara. 56(1)(a)(i) (where the amount is received out or of under a registered pension fund or plan or is an amount described in subpara. 6(1)(g)(iii) or cl. 56(1)(a)(i)(A) or (B)) or subsec. 147(10), and

(ii) the lesser of

(A) the aggregate of all amounts each of which is an amount paid by him in the year and before February 16, 1984 as a premium (within the meaning of section 146) under a registered retirement savings plan under which he is the annuitant (within the meaning of section 146), other than the portion thereof that has been designated for the purposes of paragraph (l), and

(B) the aggregate of all amounts each of which is an amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) or subsection 147(10),

as

(iii) is designated by the taxpayer in his return of income under this Part for the year, and

(iv) does not exceed the aggregate of all amounts each of which is an amount paid by him in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension fund or plan, other than the portion thereof deductible under paragraph 8(1)(m) in computing his income for the year, or

(B) as a premium (within the meaning of section 146) under a registered retirement savings plan under which he is the annuitant (within the meaning of section 146), other than the portion thereof that has been designated for the purposes of paragraph (l),

to the extent that it was not deducted in computing his income for a previous year;

That portion of para. 60(j) preceding subpara. (i) formerly read:

such part of the aggregate of all amounts each of which is an amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i), subsection 147(10) or

any refund of deductions as deferred pay under subsection 206.21(1) or (2) of *The Queen's Regulations and Orders* as

All that portion of para. 60(j) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 28(6), applicable with respect to retirements occurring after November 12, 1981, other than retirements occurring before 1982 pursuant to an arrangement made before November 13, 1981. That portion formerly read:

(j) transfer of superannuation benefits and retiring allowances — such part of the aggregate of all amounts each of which is an amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) or (ii) or subsection 147(10) or any refund of deductions as deferred pay under subsection 206.21(1) or (2) of *The Queen's Regulations and Orders* as

Para. 60(j) substituted by 1980-81-82-83, c. 48, subsec. 29(3), applicable to 1979 *et seq.* Para. 60(j) formerly read:

(j) such part of any amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) or (ii) or subsection 147(10) or any refund of deductions as deferred pay under subsection 206.21(1) or (2) of *The Queen's Regulations and Orders* as does not exceed the amount by which

(i) any amount paid by him in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension fund or plan, or

(B) as a premium, as defined by section 146, under a registered retirement savings plan under which he is the annuitant (within the meaning of paragraph 146(1)(a)),

to the extent that it was not deductible in computing his income for the immediately preceding year,

exceeds

(ii) the aggregate of the amounts, if any, deducted under paragraph (l), paragraph 8(1)(m) or subsection 146(5) in computing his income for the year;

Cl. 60(j)(i)(B) substituted by 1977-78, c. 32, subsec. 12(2). Cl. 60(j)(i)(B) formerly read:

(B) as a premium, as defined by section 146, under a registered retirement savings plan,

All that portion of para. 60(j) preceding subpara. (i) substituted by 1977-78, c. 1, subsec. 25(2), applicable after March 31, 1977. That portion formerly read:

(j) such part of any amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) or (ii) or subsection 146.2(6) or 147(10) or any refund of deductions as deferred pay under subsection 206.21(1) or (2) of *The Queen's Regulations and Orders* as does not exceed the amount by which

Subpara. 60(j)(ii) substituted by 1976-77, c. 4, s. 17, applicable to 1976 *et seq.*, to substitute "deducted" for "deductible".

All that portion of para. 60(j) preceding subpara. (i) substituted by 1974-75-76, c. 26, subsec. 30(1), applicable to 1974 *et seq.* That portion formerly read:

(j) such part of any amount included in computing the income of the taxpayer for the year by virtue of subparagraph 56(a)(i) or (ii) or subsection 147(10) as does not exceed the amount by which

I.T. Application Rules: 40(3), 40(6).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

Forms: TD2: Tax deduction waiver for a direct transfer of an eligible retiring allowance; T2097: Designation of transfers to an RRSP.

(j.01) **transfer of surplus** — such part of the total of all amounts each of which is an amount received by the taxpayer before March 28, 1988 that can reasonably be considered to be a payment in respect of the actuarial surplus under a defined benefit provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan and that is included in computing the income of the taxpayer for the year by virtue of subparagraph 56(1)(a)(i) (other than any portion thereof deducted by the taxpayer under subsection 60.2(1) in computing the taxpayer's income for the year) as

(i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and

(ii) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(A) as a contribution to or under a registered pension plan for the taxpayer's benefit, other than the portion thereof deductible under paragraph (j) or (j.1) or 8(1)(m) of this Act or paragraph 8(1)(m.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1)), other than the portion thereof that has been designated for the purposes of paragraph (j), (j.1) or (l),

to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year;

Pre-RSC History: Para. 60(j.01) added by 1990, c. 35, subsec. 5(2), applicable to the 1988 taxation year.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

(j.02) **payment to registered pension plan** — an amount equal to the lesser of

(i) the total of

(A) all contributions made in the year by the taxpayer to registered pension plans in respect of eligible service of the taxpayer before 1990 under the plans, where the taxpayer was obliged under the terms of an agreement in writing entered into before March 28, 1988 to make the contributions, and

(B) all amounts each of which is an amount paid in the year by the taxpayer to a registered pension plan as

(I) a repayment under a prescribed statutory provision of an amount received from the plan that was included under subsection 56(1) in computing the taxpayer's income for a taxation year ending before 1990, where the taxpayer was obliged as a consequence of a written election made before March 28, 1988 to make the repayment, or

(II) interest in respect of a repayment referred to in subclause (I),

other than the portion of that total that is deductible under paragraph 8(1)(m) or paragraph (j.03) in computing the taxpayer's income for the year, and

(ii) the total of all amounts each of which is an amount paid out of or under a registered pension plan as part of a series of periodic payments and included under subsection 56(1) in computing the taxpayer's income for the year, other than the portion of that total that can reasonably be considered to have been designated by the taxpayer for the purpose of paragraph (j.2);

Related Provisions: 60(j.04) — Repayments of post-1989 pension benefits; 127.52(1)(a) — Limitation on deduction for minimum tax purposes.

History: Para. 60(j.02) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(6), applicable to 1990 *et seq.*

Regulations: 6503 (prescribed statutory provisions for 60(j.02)(i)(B)(I)).

(j.03) **repayments of pre-1990 pension benefits** — an amount equal to the lesser of

(i) the total of all amounts each of which is an amount paid in the year or a preceding taxation year by the taxpayer to a registered pension plan that was not deductible in computing the taxpayer's income for a preceding taxation year and that was paid as

(A) a repayment under a prescribed statutory provision of an amount received from the plan that was included under subsection 56(1) in computing the taxpayer's income for a taxation year ending before 1990, or

(B) interest in respect of a repayment referred to in clause (A), and

(ii) the amount, if any, by which $3,500 exceeds the amount deducted under paragraph 8(1)(m) in computing the taxpayer's income for the year;

Related Provisions: 60(j.02) — Payments to registered pension plan; 127.52(1)(a) — Limitation on deduction for minimum tax purposes.

History: Para. 60(j.03) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(6), applicable to 1991 *et seq.*

Regulations: 6503 (prescribed statutory provisions for 60(j.03)(i)(A)).

(j.04) **repayments of post-1989 pension benefits** — the total of all amounts each of which is an amount paid in the year by the taxpayer to a registered pension plan as

(i) a repayment under a prescribed statutory provision of an amount received from the plan that

(A) was included under subsection 56(1) in computing the taxpayer's income for a taxation year ending after 1989, and

(B) can reasonably be considered not to have been designated by the taxpayer for the purpose of paragraph (j.2), or

(ii) interest in respect of a repayment referred to in subparagraph (i),

except to the extent that the total was deductible under paragraph 8(1)(m) in computing the taxpayer's income for the year;

Related Provisions: 127.52(1)(a) — Limitation on deduction for minimum tax purposes.

History: Para. 60(j.04) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(6), applicable to 1990 *et seq.*

Regulations: 6503 (prescribed statutory provisions for 60(j.04)(i)).

(j.1) **transfer of retiring allowances [to RRSP]** — such part of the total of all amounts each of which is an amount paid to the taxpayer by an employer, or under a retirement compensation arrangement to which the employer has contributed, as a retiring allowance and included in computing the taxpayer's income for the year by virtue of subparagraph 56(1)(a)(ii) or paragraph 56(1)(x) as

(i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year,

(ii) does not exceed the amount, if any, by which the total of

(A) $2,000 multiplied by the number of years before 1996 during which the employee or former employee in respect of whom the payment was made (in this paragraph referred to as the "retiree") was employed by the employer or a person related to the employer, and

(B) $1,500 multiplied by the number by which the number of years before 1989 described in clause (A) exceeds the number that can reasonably be regarded as the equivalent number of years before 1989 in respect of which employer contributions under either a pension plan or a deferred profit sharing plan of the employer or a person related to the employer had vested in the retiree at the time of the payment

exceeds the total of

(C) all amounts deducted under this paragraph in respect of amounts paid before the year in respect of the retiree

(I) by the employer or a person related to the employer, or

(II) under a retirement compensation arrangement to which the employer or a person related to the employer has contributed,

(C.1) all other amounts deducted under this paragraph for the year in respect of amounts paid in the year in respect of the retiree

(I) by a person related to the employer, or

(II) under a retirement compensation arrangement to which a person related to the employer has contributed, and

(D) all amounts deducted under paragraph (t) in computing the retiree's income for the year in respect of a retirement compensation arrangement to which the employer or a person related to the employer has contributed, and

(iii) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year in respect of the amount so designated

(A) as a contribution to or under a registered pension plan, other than the portion thereof deductible under paragraph (j) or 8(1)(m) in computing the taxpayer's income for the year, or

(B) as a premium (within the meaning assigned by section 146) under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by section 146), other than the portion thereof that has been designated for the purposes of paragraph (j) or (l),

to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year

and for the purposes of this paragraph, "person related to the employer" includes

(iv) any person whose business was acquired or continued by the employer, and

(v) a previous employer of the retiree whose service therewith is recognized in determining the retiree's pension benefits;

Related Provisions: 60(j.01) — Transfer of surplus; 127.52(1)(a) [repealed] — Limitation on deduction for minimum tax purposes; 146(5) — Amount of RRSP premiums deductible; 146(6.1) — Recontribution of certain withdrawals; 147.3 — Transfer from RPP; 204.2(1)(b)(i)(A) — Excess amount in respect of RRSP. See additional Related Provisions and Definitions at end of s. 60.

History: Cl. 60(j.1)(ii)(A) amended by 1996, c. 21, s. 13, applicable to 1996 *et seq.* The clause formerly read:

> (A) $2,000 multiplied by the number of years during which the employee or former employee in respect of whom the payment was made (in this paragraph referred to as the "retiree") was employed by the employer or a person related to the employer, and

That portion of para. 60(j.1) between cls. (ii)(B) and (iii)(A) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(2), applicable to 1990 *et seq.*, except that where a taxpayer so elects in the taxpayer's return of income under Part I for the 1990 taxation year,

> (a) the amendment shall not apply in respect of the taxpayer for that year, and
>
> (b) the expression "amount paid to the taxpayer" in para. 60(j.1) shall be read as "amount paid before July 14, 1990 to the taxpayer" for that year.

That portion formerly read:

> exceeds the total of
>
> (C) all amounts deducted under this paragraph in respect of amounts paid before the year in respect of the retiree by the employer or a person related to the employer, or under a retirement compensation arrangement to which the employer or the person has contributed, and
>
> (D) all amounts deducted under paragraph (t) in computing the retiree's income for the year, and
>
> (iii) does not exceed the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

Pre-RSC History: Cl. 60(j.1)(ii)(B) amended by 1990, c. 35, subsec. 5(3), to substitute "number of years before 1989" for "number of years" (twice), applicable to 1989 *et seq.*

Cls. 60(j.1)(ii)(B) and (iii)(A) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

All that portion of para. 60(j.1) preceding subpara. (iii) amended by 1987, c. 46, subsec. 17(1), to substitute the portion of para. 60(j.1) preceding subpara. (i) and the portion of subpara. (ii) following cl. (B), applicable after October 8, 1986. The substituted portions formerly read:

> such part of the aggregate of all amounts each of which is an amount paid to the taxpayer by an employer as a retiring allowance and included in computing his income for the year by virtue of subparagraph 56(1)(a)(ii) as
>
> . . . . .
>
> exceeds the aggregate of all amounts deducted under this paragraph in respect of amounts paid before the year by the employer or a person related to the employer in respect of the retiree, and

Para. 60(j.1) added by 1980-81-82-83, c. 140, subsec. 28(7), applicable with respect to retirements occurring after November 12, 1981, other than retirements occurring before 1982 pursuant to an arrangement made before November 13, 1981.

Regulations: 100(3)(c) (no source withholding where amount is paid by employer directly to RRSP); 100(3.1) (limitation on extent to which payroll deduction of employee contribution reduces source withholding).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-337R3: Retiring allowances.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

I.T. Technical News: No. 7 (retiring allowances); No. 19 (Retiring allowances — clarification to Interpretation Bulletin IT-337R3 — (d): Deductions at source).

Advance Tax Rulings: ATR-12: Retiring allowance; ATR-48: Transfer of retiring allowance to an RRSP.

Forms: NRTA1: Authorization for non-resident tax exemption; T2097: Designation of transfers to an RRSP; TD2: Tax deduction waiver in respect of funds to be transferred.

(j.2) **transfer to spousal RRSP [before 1995]** — for taxation years ending after 1988 and before 1995, such part of the total of all amounts (other than amounts paid out of or under a registered retirement savings plan or a registered retirement income fund that by reason of section 254 are considered to be amounts paid out of or under a registered pension plan) paid on a periodic basis out of or under a registered pension plan or a deferred profit sharing plan and included, by reason of subsection 56(1), in computing the taxpayer's income for the year as

> (i) is designated by the taxpayer in the taxpayer's return of income under this Part for the year, and
>
> (ii) does not exceed the least of
>
> (A) $6,000,
>
> (B) the amount, if any, by which that total exceeds the part of that total designated for the year for the purposes of paragraph (j) of this Act or deducted under paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the taxpayer's income for the year, and
>
> (C) the total of all amounts each of which is paid by the taxpayer in the year or within 60 days after the end of the year as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer's spouse (or, where the taxpayer died in the year or within 60 days after the end of the year, an individual who was the taxpayer's spouse immediately before the death) is the annuitant (within the meaning assigned by subsection 146(1)), to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60(j.02) — Payment to registered pension plan; 60(j.04) — Repayments of post-1989 pension benefits; 118(3) — Pension income credit; 127.52(1)(a) [repealed] — Limitation on deduction for minimum tax purposes; 146(1) — "earned income"; 146(5.1) — Amount of spousal RRSP premiums deductible; 146(8.3) — Spousal RRSP payments; 146(16) — RRSP — deduction on transfer of funds; 146.3(5.1) — Amount included in income; 147(21) — Restriction re transfers; 147.1(3)(a) — Deemed registration; 147.3(12)(b)(i) — RPP — restriction re transfers; 204.2(1)(b)(i)(A) — Excess amount in respect of RRSP; 212(1)(h)(iii.1)(B), 212(1)(m)(ii) — Exemption on payment to non-resident.

History: Cl. 60(j.2)(ii)(C) substituted by 1994, c. 21, subsec. 26(1), applicable to 1992 *et seq.* That cl. formerly read:

> (C) the total of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer's spouse is the annuitant (within the meaning assigned by subsection 146(1)), to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year;

Pre-RSC History: Para. 60(j.2) added by 1990, c. 35, subsec. 5(4), applicable to 1989 *et seq.*

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T2097: Identification of amounts transferred to an RRSP.

(k) [Repealed under former Act]

Pre-RSC History: Para. 60(k) repealed by 1990, c. 35, subsec. 5(5), applicable to 1990 *et seq.*; and in its application to the 1989 taxation year para. 60(k) shall be read as follows:

(k) transfers to deferred profit sharing plans — the least of

(i) the aggregate of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year to a trustee under a deferred profit sharing plan that had at least 5 beneficiaries at all times throughout the year, to the extent that the amount was not deducted in computing the taxpayer's income for the immediately preceding taxation year,

(ii) the aggregate of all amounts each of which is an amount that is included in computing the taxpayer's income for the year by reason of subsection 147(10) and is either part of a series of periodic payments or a prescribed amount, and

(iii) the amount by which the aggregate of

(A) the aggregate that is determined under paragraph (j) in respect of the taxpayer for the year by adding the amounts referred to in subparagraphs (i) to (iii) thereof, and

(B) the aggregate of all amounts each of which is such portion of a prescribed amount as is not included in the aggregate referred to in clause (A)

exceeds the amount, if any, deductible under paragraph (j) in computing the taxpayer's income for the year;

Para. 60(k) formerly read:

(k) transfers to deferred profit sharing plans — the least of

(i) any amount paid by the taxpayer in the year or within 60 days after the end of the year to a trustee under a deferred profit sharing plan that had at least 5 beneficiaries at all times throughout the year, to the extent that it was not deductible in computing his income for the immediately preceding year,

(ii) any amount included in computing his income for the year by virtue of subsection 147(10), and

(iii) the amount by which

(A) the aggregate of amounts included in computing his income for the year by virtue of subparagraph 56(1)(a)(i) and subsection 147(10)

exceeds

(B) the amount, if any, deductible under paragraph (j) in computing his income for the year;

Cl. 60(k)(iii)(A) substituted by 1980-81-82-83, c. 140, subsec. 28(8), applicable with respect to retirements occurring after November 12, 1981, other than retirements occurring before 1982 pursuant to an arrangement made before November 13, 1981. Cl. 60(k)(iii)(A) formerly read:

(A) the aggregate of amounts included in computing his income for the year by virtue of subparagraphs 56(1)(a)(i) and (ii) and subsection 147(10)

(l) **transfer of refund of premium under RRSP [on death]** — the total of all amounts each of which is an amount paid by or on behalf of the taxpayer in the year or within 60 days after the end of the year (or within such longer period after the end of the year as is acceptable to the Minister)

(i) as a premium under a registered retirement savings plan under which the taxpayer is the annuitant,

(ii) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity

(A) under which the taxpayer is the annuitant

(I) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse either without a guaranteed period, or with a guaranteed period that is not greater than 90 years minus the lesser of the age in whole years of the taxpayer and the age in whole years of the taxpayer's spouse at the time the annuity was acquired, or

(II) for a term equal to 90 years minus the age in whole years of the taxpayer or the age in whole years of the taxpayer's spouse, at the time the annuity was acquired, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(B) under which the taxpayer, or a trust under which the taxpayer is the sole person beneficially interested in amounts payable under the annuity, is the annuitant for a term not exceeding 18 years minus the age in whole years of the taxpayer at the time the annuity was acquired

that does not provide for any payment thereunder except

(C) the single payment by or on behalf of the taxpayer,

(D) annual or more frequent periodic payments

(I) beginning not later than one year after the date of the payment referred to in clause (C), and

(II) each of which is equal to all other such payments or not equal to all other such payments solely because of an adjustment that would, if the annuity were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v), and

(E) payments in full or partial commutation of the annuity and, where the commutation is partial,

(I) equal annual or more frequent periodic payments thereafter, or

(II) annual or more frequent periodic payments thereafter that are not equal solely because of an adjustment that would, if the annuity were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v),

or

(iii) to a carrier as consideration for a registered retirement income fund under which the taxpayer is the annuitant

where that total

(iv) is designated by the taxpayer in the taxpayer's return of income under this Part for the year,

(v) does not exceed the total of

(A) the amount included in computing the taxpayer's income for the year as a refund of premiums out of or under a registered retirement savings plan under which the taxpayer's spouse was the annuitant,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(B) the amount included in computing the taxpayer's income for the year as a refund of pre-

miums out of or under a registered retirement savings plan where the taxpayer was dependent by reason of physical or mental infirmity on the annuitant under the plan,

(B.1) the least of

(I) the amount paid by or on behalf of the taxpayer to acquire an annuity that would be described in subparagraph (ii) if that subparagraph were read without reference to clause (A) thereof,

(II) the amount (other than any portion thereof included in the amount determined under clause (B) or (B.2)) included in computing the taxpayer's income for the year as

1. a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) received by the taxpayer out of or under a registered pension plan,

2. a refund of premiums out of or under a registered retirement savings plan, or

3. a designated benefit in respect of a registered retirement income fund (in this clause having the meaning assigned by subsection 146.3(1))

as a consequence of the death of an individual of whom the taxpayer is a child or grandchild, and

(III) the amount, if any, by which the amount determined for the year under subclause (II) in respect of the taxpayer exceeds the amount, if any, by which

1. the total of all designated benefits of the taxpayer for the year in respect of registered retirement income funds

exceeds

2. the total of all amounts that would be eligible amounts of the taxpayer for the year in respect of those funds (within the meaning that would be assigned by subsection 146.3(6.11) if the taxpayer were described in paragraph (b) thereof), and

(B.2) all eligible amounts of the taxpayer for the year in respect of registered retirement income funds (within the meaning assigned by subsection 146.3(6.11)),

and, where the amount is paid by a direct transfer from the issuer of a registered retirement savings plan or a carrier of a registered retirement income fund,

(C) the amount included in computing the taxpayer's income for the year as a consequence of a payment described in subparagraph 146(2)(b)(ii), and

(D) the amount, if any, by which

(I) the amount received by the taxpayer out of or under a registered retirement income fund under which the taxpayer is the annuitant [(or, where the taxpayer's spouse died before 1993, under which the spouse was the annuitant)] and included because of subsection 146.3(5) in computing the taxpayer's income for the year

exceeds

(II) the amount, if any, by which the minimum amount (within the meaning assigned by subsection 146.3(1)) under the fund for the year exceeds the total of all amounts received out of or under the fund in the year by an individual who was an annuitant under the fund before the taxpayer became the annuitant under the fund and that were included because of subsection 146.3(5) in computing that individual's income for the year, and

(vi) was not deducted in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 56(1)(d.2) — Income inclusion; 60(j) — Transfer of superannuation benefits; 60(j.01) — Transfer of surplus; 104(27) — Pension benefits; 127.52(1)(a) — Minimum tax — adjusted taxable income determined; 146(2), (3) — Acceptance of plan for registration; 146(5) — Amount of RRSP premiums deductible; 146(6.1) — Recontribution of certain withdrawals; 146(8.1) — RRSP — deemed receipt of refund of premiums; 146(8.2) — RRSP — amount deductible; 146(16) — RRSP — deduction on transfer of funds; 146(16)(d) — RRSP — transfer of funds; 146(21) — Transfer from prescribed provincial pension plan; 146.3(5.1) — Amount included in income; 146.3(6.11) — Transfer of designated benefit; 147.3 — Transfer from RPP; 148(1)(e) — Amounts included in computing policyholder's income; 204.2(1)(b)(i)(A) — Excess amount for a year in respect of RRSP; 212(1)(q)(i)(B) — Exemption from non-resident withholding tax; 248(8) — Occurrences as a consequence of death; 252(3), (4) — Extended meaning of "spouse". See additional Related Provisions and Definitions at end of s. 60.

History: The opening words of para. 60(l) amended by 2000, c. 19, s. 7, applicable to 1999 *et seq.* and, where an amount is included in computing a taxpayer's income for a taxation year as a result of an election under subsec. 42(4) of the amending legislation (see the amendment to 146(1)"refund of premiums"(b)), para. 60(l) shall apply to the taxpayer for the year and each subsequent taxation year that ends before 1999 as if

(a) the words "in the year or within 60 days after the end of the year" in that para. were read as "in the period that begins at the beginning of the year and ends on February 29, 2000 or on such later day as is acceptable to the Minister"; and

(b) subpara. 60(l)(iv) were read as follows:

(iv) is designated in prescribed form filed with the Minister before May 2000 (or before such later day as is acceptable to the Minister),

The portion formerly read:

(l) the total of all amounts each of which is an amount paid by or on behalf of the taxpayer in the year or within 60 days after the end of the year

Cls. 60(l)(ii)(A) and (B) amended by 1998, c. 19, subsec. 99(2), applicable to 1989 *et seq.*. The cls. formerly read:

(A) under which the taxpayer is the annuitant

(I) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse either with a guaranteed period that is not greater than 90 years minus the age of the taxpayer or the age of the taxpayer's spouse, at the time of its acquisition or without a guaranteed period, or

(II) for a term of years equal to 90 minus the age of the taxpayer or the age of the taxpayer's spouse, at the time of its acquisition, or

(B) under which the taxpayer, or a trust under which the taxpayer is the sole person beneficially interested in all amounts payable under the annuity, is the annuitant for a term of years not exceeding 18 minus the age of the taxpayer at the time of its acquisition

The opening words of cl. 60(l)(v)(B.1) substituted, subcl. (B.1)(II) substituted, and subcl. (III) added, by 1994, c. 21, subsecs. 26(2), (3), applicable to 1993 *et seq.* The opening words of cl. (B.1) and subcl. (II) formerly read:

(B.1) the lesser of

.....

(II) the amount (other than any portion thereof included in the amount determined under clause (B)) included in computing the

taxpayer's income for the year as a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) received by the taxpayer out of or under a registered pension plan, or as a refund of premiums out of or under a registered retirement savings plan, as a consequence of the death of an individual, where the taxpayer is a child or grandchild of the individual, and

Cl. 60(l)(v)(B.2) substituted by 1994, c. 21, subsec. 26(4), applicable to 1993 *et seq.*; and subpara. 60(l)(v) shall apply to a taxpayer for the 1992 taxation year as if it were read without reference to cl. (B.2), unless the taxpayer otherwise elects by notifying the Minister of National Revenue in writing. That cl. formerly read:

(B.2) the amount included in computing the taxpayer's income for the year that was received by the taxpayer, as a consequence of the death of the taxpayer's spouse, out of or under a provincial pension plan prescribed for the purposes of paragraph (v),

Cl. 60(l)(v)(D) substituted by 1994, c. 21, subsec. 26(5), applicable to 1993 *et seq.* except that, for the 1993 to 1996 taxation years, subcl. 60(l)(v)(D)(I) shall be read as follows:

(I) the amount received by the taxpayer out of or under a registered retirement income fund under which the taxpayer is the annuitant (or, where the taxpayer's spouse died before 1993, under which the spouse was the annuitant) and included because of subsection 146.3(5) in computing the taxpayer's income for the year

Cl. 60(l)(v)(D) formerly read:

(D) the portion of the amount received by the taxpayer out of or under a registered retirement income fund and included in computing the taxpayer's income for the year by virtue of subsection 146.3(5) that exceeds the minimum amount (within the meaning assigned by subsection 146.3(1)) required to be paid to the annuitant in the year under that fund, and

Subcl. 60(l)(ii)(A)(I) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(7), applicable after 1992. That subcl. formerly read:

(I) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse (in this paragraph having the meaning assigned by subsection 146(1.1)), either with a guaranteed period that is not greater than 90 years minus the age of the taxpayer or the age of the taxpayer's spouse, at the time of its acquisition or without a guaranteed period, or

Cls. 60(l)(ii)(D) and (E) amended by the said c. 7, subsec. 20(8), applicable to 1990 *et seq.* Those cls. formerly read:

(D) equal annual or more frequent periodic payments commencing not later than one year after the date of the payment referred to in clause (C), and

(E) payments in full or partial commutation of the annuity and, where the commutation is partial, equal annual or more frequent periodic payments thereafter,

Cl. 60(l)(v)(B.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(3), applicable to 1990 *et seq.*

Pre-RSC History: All that portion of subpara. 60(l)(ii) preceding cl. (D) substituted, and cl. 60(l)(v)(B.1) added, by 1990, c. 35, subsecs. 5(6), (7), applicable to 1989 *et seq.*; and in its application to the 1988 taxation year cl. 60(l)(ii)(A) shall be read as follows:

(A) for the taxpayer's life, or for the lives jointly of the taxpayer and the taxpayer's spouse (in this paragraph having the meaning assigned by subsection 146(1.1)), either with a guaranteed period that is not greater than 90 years minus the age of the taxpayer, or the age of the taxpayer's spouse, at the time of its acquisition or without a guaranteed period, or

That portion of subpara. 60(l)(ii) formerly read:

(ii) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity under which he is the annuitant

(A) for his life, or for the lives jointly of the taxpayer and his spouse, either with a guaranteed period that is not greater than 90 years minus his age, or the age of his spouse, at the time of its acquisition or without a guaranteed period, or

(B) for a term of years equal to 90 minus his age, or the age of his spouse, at the time of its acquisition

that does not provide for any payment thereunder except

(C) the single payment by the taxpayer,

Para. 60(l) substituted by 1986, c. 55, s. 10, applicable to 1986 *et seq.* Para. 60(l) formerly read:

(l) transfer of refund of premium under registered retirement savings plan — the aggregate of all amounts each of which is an amount paid by the taxpayer in the year or within 60 days after the end of the year

(i) as a premium under a registered retirement savings plan (within the meaning assigned by section 146) under which he is the annuitant (within the meaning assigned by section 146), or

(ii) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity under which he is the annuitant

(A) for his life, or

(B) for a term of years equal to 90 minus his age at the time of its acquisition

that does not provide for any payment thereunder except

(C) the single payment by the taxpayer, and

(D) equal annuity payments that are to be made annually or at more frequent periodic intervals and that commence not later than one year from the date of the payment referred to in clause (C)

where such aggregate

(iii) is designated by the taxpayer in his return of income under this Part for the year,

(iv) does not exceed, in the case of a premium under a registered retirement savings plan, the amount included in computing his income for the year as a refund of premiums (within the meaning assigned by section 146) out of a registered retirement savings plan under which the taxpayer's spouse was the annuitant,

(v) does not exceed, in any other case, the amount included in computing his income for the year as a refund of premiums (within the meaning assigned by section 146) and the taxpayer was dependent on the annuitant (within the meaning assigned by section 146) of the registered retirement savings plan out of which the refund of premiums was paid by reason of physical or mental infirmity, or was the spouse of the annuitant and before the end of the year had attained the age of 71 years, and

(vi) was not deducted in computing his income for a preceding taxation year;

Para. 60(l) substituted by 1980-81-82-83, c. 140, subsec. 28(9), applicable to 1982 *et seq.* Para. 60(l) formerly read:

(l) such part of the aggregate of amounts paid by the taxpayer in the year or within 60 days after the end of the year as a premium (within the meaning of section 146) under a registered retirement savings plan under which he is the annuitant (within the meaning of section 146) as

(i) is designated by the taxpayer in his return of income under this Part for the year,

(ii) does not exceed the amount included in computing his income for the year by virtue of subsection 146(8) to the extent that that amount is a refund of premiums (within the meaning of section 146) under a registered retirement savings plan received by the taxpayer out of or under the plan on or after the death of the person who was, immediately before his death, the annuitant thereunder and the taxpayer's spouse, and

(iii) was not deducted in computing the taxpayer's income for a previous year;

Para. 60(l) substituted by 1980-81-82-83, c. 48, subsec. 29(4), applicable to 1979 *et seq.* Para. 60(l) formerly read:

(l) the lesser of

(i) the amount, if any, by which

(A) the aggregate of amounts paid by the taxpayer in the year or within 60 days after the end of the year as a premium, as defined by section 146, under a registered retirement savings plan, to the extent that they were not deductible in computing his income for the immediately preceding year,

exceeds

(B) the aggregate of amounts deductible under paragraph (i) in computing his income for the year, and

(ii) any amount included in computing his income for the year by virtue of subsection 146(8) to the extent that that amount is a refund of premiums, as defined by section 146, under a registered retirement savings plan received by the taxpayer under the plan on or after the death of the person who was, immediately before his death,

(A) the annuitant thereunder, and

(B) the taxpayer's spouse;

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-500R: RRSPs — death of an annuitant; IT-517R: Pension tax credit; IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T212: Pension income allocations/designations; T2030: Direct transfer under subpara. 60(l)(v); T2097: Designation of transfers to an RRSP.

(m) **estate tax applicable to certain property** — that proportion of any superannuation or pension benefit, death benefit, benefit under a registered retirement savings plan or benefit under a deferred profit sharing plan, received by the taxpayer in the year, on or after the death of a predecessor, in payment of or on account of property to which the taxpayer is the successor, that

(i) such part of any tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, in respect of the death of the predecessor as is determined under that Act to be the part thereof applicable to the property in payment of or on account of which the benefit was so received,

is of

(ii) the value of the property in payment of or on account of which the benefit was so received, computed as provided for the purpose of subsection 62(4) of the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970;

(m.1) **succession duties applicable to certain property** — that proportion of any superannuation or pension benefit, death benefit, benefit under a registered retirement savings plan, benefit under a deferred profit sharing plan or benefit that is a payment under an income-averaging annuity contract, received by the taxpayer in the year, on or after the death of a predecessor, in payment of or on account of property to which the taxpayer is the successor, that

(i) such part of any succession duties payable under a law of a province in respect of the death of the predecessor as may reasonably be regarded as attributable to the property in payment of or on account of which the benefit was so received,

is of

(ii) the value of the property in payment of or on account of which the benefit was so received, as computed for the purposes of the law referred to in subparagraph (i);

Pre-RSC History: Para. 60(m) substituted, 60(m.1) added by 1973-74, c. 14, s. 16, applicable to 1972 *et seq.* in the case of any benefit received upon or after the death of a predecessor whose death occurred after 1958.

(n) **repayment of pension or benefits** — the amount of

(i) any pension described in clause 56(1)(a)(i)(A),

(i.1) any amount described in subparagraph 56(1)(a)(ii),

(ii) any benefit described in clause 56(1)(a)(i)(B),

(ii.1) any benefit described in subparagraph 56(1)(a)(vi), or

(iii) any amount or benefit described in subparagraph 56(1)(a)(iv) or paragraph 56(1)(r),

received by the taxpayer and included in computing the taxpayer's income for the year or a preceding taxation year, to the extent of the amount or benefit repaid by the taxpayer in the year otherwise than because of Part VII of the *Unemployment Insurance Act* or Part VII of the *Employment Insurance Act*;

History: The opening words of para. 60(n) and the portion after subpara. (ii.1) amended by 1998, c. 19, subsecs. 99(3) and (4), deemed to have come into force on June 30, 1996. The opening words and that portion formerly read:

(n) overpayment of pension or benefits — the amount of any overpayment of

. . . . .

(ii.2) [Repealed]

(iii) any benefit under the *Employment Insurance Act*,

(iv) [Repealed]

received by the taxpayer and included in computing the taxpayer's income for the year or a preceding taxation year, to the extent of the amount thereof repaid by the taxpayer in the year otherwise than by virtue of Part VII of the *Employment Insurance Act*;

Para. 60(n) amended by 1996, c. 23, para. 187(d) and s. 172.1, to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*" in subpara. 60(n)(iii) and the closing words of para. 60(n), and to repeal subpara. 60(n)(iv); the substitutions in force June 30, 1996, and the repeal in force January 1, 1998. Subpara. (iv) formerly read:

(iv) any amount described in paragraph 56(1)(m)

Subpara. 60(n)(i.1) added by 1994, c. 21, subsec. 26(6), applicable to repayments made after 1990.

Subpara. 60(n)(ii.2) repealed by 1994, c. 21, subsec. 26(7), applicable to repayments made after October 1991. That subpara. formerly read:

(ii.2) any amount described in subparagraph 56(1)(a)(vii),

Subpara. 60(n)(ii.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(4), applicable to repayments made after September 14, 1989.

Pre-RSC History: All that portion of para. 60(n) following subpara. (iii) substituted by 1985, c. 45, subsec. 25(1), applicable to 1984 *et seq.* That portion formerly read:

received by the taxpayer in a previous taxation year, to the extent of the amount thereof repaid by him in the year otherwise than by virtue of

(iv) the deduction or withholding thereof from any other payment made to him in the year, or

(v) Part VIII of the *Unemployment Insurance Act, 1971*;

Subpara. 60(n)(ii.1) added by 1980-81-82-83, c. 140, subsec. 28(10), applicable with respect to amounts repaid after 1981.

All that portion of para. 60(n) following subpara. (iii) substituted by 1979, c. 5, s. 17, applicable to 1979 *et seq.* That portion formerly read:

received by the taxpayer in a previous taxation year, to the extent of the amount thereof repaid by him in the year otherwise than by virtue of the deduction or withholding thereof from any other payment made to him in the year;

Forms: PD24: Statement of overpayment and application for refund; T2204: Employee overpayment of CPP contributions and EI premiums.

(o) **legal [or other] expenses [of objection or appeal]** — amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to,

(i) an assessment of tax, interest or penalties under this Act or an Act of a province that imposes a tax similar to the tax imposed under this Act,

(ii) a decision of the Canada Employment and Immigration Commission, the Canada Employment and Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act* or the *Employment Insurance Act*,

(iii) an assessment of any income tax deductible by the taxpayer under section 126 or any interest or penalty with respect thereto, or

(iv) an assessment or a decision made under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

Related Provisions: 56(1)(l) — Reimbursed costs included in income; 152(1.2) — Rule applies to determination of losses as well as assessment. See additional Related Provisions and Definitions at end of s. 60.

History: Subpara. 60(o)(ii) amended by 1998, c. 19, subsec. 99(5), deemed to have come into force on June 30, 1996. The subpara. formerly read:

(ii) a decision of the Canada Employment Insurance Commission, a board of referees or an umpire under the *Employment Insurance Act*,

Subpara. 60(o)(ii) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subpara. 60(o)(ii) amended by 1996, c. 11, para. 99(c), to substitute "Canada Employment Insurance Commission" for "Canada Employment and Immigration Commission", in force July 12, 1996.

Pre-RSC History: Para. 60(o) substituted by 1980-81-82-83, c. 48, subsec. 29(5), applicable with respect to expenses incurred after December 11, 1979. Para. 60(o) formerly read:

(o) amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to,

(i) an assessment of tax, interest or penalties under this Act, or

(ii) a decision of the Unemployment Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act, 1971*;

Para. 60(o) substituted by 1974-75-76, c. 26, subsec. 30(2), applicable to 1975 *et seq.* Para. 60(o) formerly read:

(o) amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to, an assessment of tax, interest or penalties under this Act; and

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-337R3: Retiring allowances.

(o.1) **legal expenses** — the amount, if any, by which the lesser of

(i) the total of all legal expenses (other than those relating to a division or settlement of property arising out of, or on a breakdown of, a marriage) paid by the taxpayer in the year or in any of the 7 preceding taxation years to collect or establish a right to an amount of

(A) a benefit under a pension fund or plan (other than a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act) in respect of the employment of the taxpayer or a deceased individual of whom the taxpayer was a dependant, relation or legal representative, or

(B) a retiring allowance of the taxpayer or a deceased individual of whom the taxpayer was a dependant, relation or legal representative, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council.

See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount described in clause (i)(A) or (B)

(I) that is received after 1985,

(II) in respect of which legal expenses described in subparagraph (i) were paid, and

(III) that is included in computing the income of the taxpayer for the year or a preceding taxation year, or

(B) an amount included in computing the income of the taxpayer under paragraph 56(1)(l.1) for the year or a preceding taxation year,

exceeds the total of all amounts each of which is an amount deducted under paragraph (j), (j.01), (j.1) or (j.2) in computing the income of the taxpayer for the year or a preceding taxation year, to the extent that the amount may reasonably be considered to have been deductible as a consequence of the receipt of an amount referred to in clause (A),

exceeds

(iii) the portion of the total described in subparagraph (i) in respect of the taxpayer that may reasonably be considered to have been deductible under this paragraph in computing the income of the taxpayer for a preceding taxation year;

Related Provisions: 56(1)(l.1) — Amounts included in income — amounts received as award or in reimbursement of legal expenses paid to collect or establish a right to retiring allowance, etc. See additional Related Provisions and Definitions at end of s. 60.

History: That portion of subpara. 60(o.1)(i) preceding cl. (A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(9), applicable after 1992. That portion formerly read:

(i) the total of all legal expenses (other than those relating to a division or settlement of property arising from a marriage or other conjugal relationship) paid by the taxpayer after 1985 and in the year or any of the 7 immediately preceding taxation years to collect or establish a right to an amount of

Pre-RSC History: Para. 60(o.1) added by 1990, c. 39, subsec. 12(1), applicable to 1986 *et seq* except that

(a) with respect to the 1986 and 1987 taxation years subpara. (ii) shall be read as if the reference therein to "(j.01), (j.1) or (j.2)" were a reference to "(j.1)"; and

(b) with respect to the 1988 taxation year, subpara. (ii) shall be read as if the reference therein to "(j.01), (j.1) or (j.2)" were a reference to "(j.01) or (j.1)".

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

(p) [Repealed]

History: Para. 60(p) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 2(2), applicable to 1995 *et seq.* Para. 60(p) formerly read:

(p) overpayment of allowance — the amount of any overpayment of an allowance included under subsection 56(5) in computing the taxpayer's income for the year or a preceding taxation year or an amount included because of subparagraph 115(2)(e)(iii) in computing the taxpayer's taxable income earned in Canada for the year or a preceding taxation year to the extent of the amount thereof repaid in the year under the *Family Allowances Act*, or under a law of a province that provides for the payment of an allowance similar to the family allowance provided under the *Family Allowances Act*;

Para. 60(p) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 2(1), applicable to 1990 *et seq.*, and is to be repealed by subsec. 2(2) applicable to 1995 *et seq.* Para. 60(p) formerly read:

(p) overpayment of allowance — the amount of any overpayment of an allowance included in computing the taxpayer's income for the year or a preceding taxation year by reason of subsection 56(5) of this Act or subsection 56(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or an amount included in

computing the taxpayer's taxable income earned in Canada for the year or a preceding taxation year by virtue of subparagraph 115(2)(e)(iii) to the extent of the amount thereof that has been repaid in the year under the *Family Allowances Act*, or under a law of a province that provides for the payment of an allowance similar to the family allowance provided under the *Family Allowances Act*;

Pre-RSC History: Para. 60(p) substituted by 1985, c. 45, subsec. 25(2), applicable to 1984 *et seq.* Para. 60(p) formerly read:

(p) overpayment of allowance — the amount of any overpayment of an allowance included in computing his income in a previous year by virtue of subsection 56(5) or (8) or an amount included in his taxable income in a previous year by virtue of subparagraph 115(2)(e)(iii) to the extent that the overpayment has been repaid or recovered in the year under the *Family Allowances Act, 1973*, or under a law of a province that provides for the payment of an allowance similar to the family allowance provided under the *Family Allowances Act, 1973*, otherwise than by the deduction or withholding thereof from any other payment made under that Act or any such law;

Para. 60(p) added by 1973-74, c. 44, s. 24, proclaimed in force January 1, 1974.

(q) **refund of income payments** — where the taxpayer is an individual, an amount paid by the taxpayer in the year to a person with whom the taxpayer was dealing at arm's length (in this paragraph referred to as the "payer") if

(i) the amount has been included in computing the income of the taxpayer in a preceding taxation year as an amount described in subparagraph 56(1)(n)(i) or paragraph 56(1)(o) paid to the taxpayer by the payer,

(ii) at the time the amount was paid by the payer to the taxpayer a condition was stipulated for the taxpayer to fulfil,

(iii) as a result of the failure of the taxpayer to fulfil the condition referred to in subparagraph (ii) the taxpayer was required to repay the amount to the payer,

(iv) during the period for which the amount referred to in subparagraph (i) was paid the taxpayer did not provide other than occasional services to the payer as an officer or under a contract of employment, and

(v) the amount was paid to the taxpayer for the purpose of enabling the taxpayer to further the taxpayer's education;

Related Provisions: 56(1)(p) — Refund of scholarships, bursaries and research grants. See additional Related Provisions and Definitions at end of s. 60.

Pre-RSC History: Subpara. 60(q)(i) amended by 1985, c. 45, subsec. 25(3), to substitute "his income for the year or a preceding taxation year" for "the income of the taxpayer in a preceding taxation year", applicable to 1984 *et seq.*

Subpara. 60(q)(i) substituted by 1980-81-82-83, c. 140, subsec. 28(11), applicable to 1981 *et seq.* Subpara. 60(q)(i) formerly read:

(i) the amount has been included in computing the income of the taxpayer in a previous year as a wage or salary or as an amount described in subparagraph 56(1)(n)(i) or paragraph 56(1)(o) paid to him by the payer,

Para. 60(q) added by 1974-75-76, c. 26, subsec. 30(3), applicable to 1974 *et seq.*

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-340R: Scholarships, fellowships, bursaries and research grants.

(r) **amounts included under subsec. 146.2(6) [RHOSP]** — where an amount has been included in computing the income of the taxpayer by virtue of subsection 146.2(6) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as it read in its application to the 1985 taxation year) for any of the taxpayer's three immediately preceding taxation years, the taxpayer may deduct the lesser of

(i) the amount that had been so included in computing the taxpayer's income, and

(ii) the total of all amounts used by the taxpayer to acquire in the year the taxpayer's owner-occupied home (within the meaning assigned by paragraph 146.2(1)(f) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year),

except that no amount may be deducted by the taxpayer for the year under this paragraph if an amount has been deducted

(iii) under subsection 146.2(6.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as it read in its application to taxation years before 1986) in computing the taxpayer's income for any taxation year ending before 1986, or

(iv) under this paragraph for any preceding taxation year ending after 1985;

Related Provisions: See Related Provisions and Definitions at end of s. 60.

Pre-RSC History: Para. 60(r) substituted by 1986, c. 6, s. 29, applicable to 1986 *et seq.* Para. 60(r) formerly read:

(r) contribution under a registered home ownership savings plan — any amount that by virtue of section 146.2 is deductible in computing the income of the taxpayer for the taxation year; and

Para. 60(r) substituted by 1977-78, c. 1, subsec. 25(3). Para. 60(r) formerly read:

(r) an amount paid by the taxpayer as a contribution under a registered home ownership savings plan as permitted by section 146.2.

Para. 60(r) added by 1974-75-76, c. 26, subsec. 30(3), applicable to 1974 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(s) **repayment of policy loan** — the total of all repayments made by the taxpayer in the year in respect of a policy loan (within the meaning assigned by subsection 148(9) made under a life insurance policy, not exceeding the amount, if any, by which

(i) the total of all amounts required by subsection 148(1) to be included in computing the taxpayer's income for the year or a preceding taxation year from a disposition described in paragraph (b) of the definition "disposition" in subsection 148(9) in respect of that policy

exceeds

(ii) the total of all repayments made by the taxpayer in respect of the policy loan that were deductible in computing the taxpayer's income for a preceding taxation year;

Related Provisions: 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 148(9) — "value". See additional Related provisions and Definitions at end of s. 60.

History: That portion of para. 60(s) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 20(10), to substitute "all repayments" for "payments", applicable to repayments made after December 20, 1991.

Pre-RSC History: Para. 60(s) added by 1985, c. 45, subsec. 25(4), applicable to 1982 *et seq.*

(t) **RCA distributions** — where an amount in respect of a particular retirement compensation arrangement is required by paragraph 56(1)(x) or (z) or subsection 70(2) to be included in computing the

taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the particular arrangement so required to be included in computing the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount (other than an amount deductible under paragraph 8(1)(m.2) or transferred to the particular arrangement under circumstances in which subsection 207.6(7) applies) contributed under the particular arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year,

(A.1) an amount transferred in respect of the taxpayer before the end of the year to the particular arrangement from another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under this paragraph in respect of the other arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the other arrangement,

(B) an amount paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the particular arrangement, or

(C) an amount that was received or became receivable by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada as proceeds from the disposition of an interest in the particular arrangement,

exceeds the total of all amounts each of which is

(D) an amount deducted under this paragraph or paragraph (u) in respect of the particular arrangement in computing the taxpayer's income for a preceding taxation year, or

(E) an amount transferred in respect of the taxpayer before the end of the year from the particular arrangement to another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under this paragraph in respect of the particular arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the particular arrangement;

Related Provisions: 107.2 — Distribution by retirement compensation arrangement. See additional Related Provisions and Definitions at end of s. 60.

History: Para. 60(t) amended by 1998, c. 19, subsec. 99(6), applicable to 1996 *et seq.* The para. formerly read:

(t) amount included under para. 56(1)(x) or (z) or subsec. 70(2) — where an amount in respect of a retirement compensation arrangement is required by paragraph 56(1)(x) or (z) or subsection 70(2) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the arrangement so required to be included in the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of

(A) all amounts, other than amounts deductible under paragraph 8(1)(m.2), contributed under the arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year,

(B) all amounts paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the arrangement, and

(C) all amounts that were received or became receivable by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada as proceeds from the disposition of an interest in the arrangement,

exceeds the total of all amounts deducted under this paragraph or paragraph (u) in respect of the arrangement in computing the taxpayer's income for a preceding taxation year;

Pre-RSC History: Cl. 60(t)(ii)(A) amended by 1990, c. 35, subsec. 5(8), to add ", other than amounts deductible under paragraph 8(1)(m.2),", applicable to 1989 *et seq.*

(u) **RCA dispositions** — where an amount in respect of a particular retirement compensation arrangement is required by paragraph 56(1)(y) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the particular arrangement so required to be included in computing the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount (other than an amount deductible under paragraph 8(1)(m.2) or transferred to the particular arrangement under circumstances in which subsection 207.6(7) applies) contributed under the particular arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year,

(A.1) an amount transferred in respect of the taxpayer before the end of the year to the particular arrangement from another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under paragraph (t) in respect of the other arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the other arrangement, or

(B) an amount paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the particular arrangement

exceeds the total of all amounts each of which is

(C) an amount deducted under paragraph (t) in respect of the particular arrangement in computing the taxpayer's income for the year or a preceding taxation year,

(D) an amount deducted under this paragraph in respect of the particular arrangement in computing the taxpayer's income for a preceding taxation year, or

(E) an amount transferred in respect of the taxpayer before the end of the year from the particular arrangement to another retirement compensation arrangement under circumstances in which subsection 207.6(7) applies, to the extent that the amount would have been deductible under paragraph (t) in respect of the particular arrangement in computing the taxpayer's income if it had been received by the taxpayer out of the particular arrangement;

Related Provisions: 56(1)(y) — Retirement compensation arrangements; 107.2 — Distribution by a retirement compensation arrangement. See additional Related Provisions and Definitions at end of s. 60.

History: Para. 60(u) amended by 1998, c. 19, subsec. 99(6), applicable to 1996 *et seq.* The para. formerly read:

(u) amount included under para. 56(1)(y) — where an amount in respect of a retirement compensation arrangement is required by paragraph 56(1)(y) to be included in computing the taxpayer's income for the year, an amount equal to the lesser of

(i) the total of all amounts in respect of the arrangement so required to be included in the taxpayer's income for the year, and

(ii) the amount, if any, by which the total of

(A) all amounts, other than amounts deductible under paragraph 8(1)(m.2), contributed under the arrangement by the taxpayer while it was a retirement compensation arrangement and before the end of the year, and

(B) all amounts paid by the taxpayer before the end of the year and at a time when the taxpayer was resident in Canada to acquire an interest in the arrangement

exceeds the total of

(C) the total of all amounts deducted under paragraph (t) in respect of the arrangement in computing the taxpayer's income for the year or a preceding taxation year, and

(D) the total of all amounts deducted under this paragraph in respect of the arrangement in computing the taxpayer's income for a preceding taxation year;

Pre-RSC History: Cls. 60(u)(ii)(A) amended by 1990, c. 35, subsec. 5(9), to add ", other than amounts deductible under paragraph 8(1)(m.2),", applicable to 1989 *et seq.*

Paras. 60(t), (u) added by 1987, c. 46, subsec. 17(2), applicable after October 8, 1986.

(v) **contribution to a provincial pension plan** — the least of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a contribution made in the year, or within 60 days after the end of the year, by the taxpayer to the account of the taxpayer, or of the taxpayer's spouse, under a prescribed provincial pension plan

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

exceeds

(B) the portion of the total described in clause (A) that was deducted in computing the taxpayer's income for the preceding taxation year,

(ii) the prescribed amount for the year in respect of the plan, and

(iii) the amount by which the taxpayer's RRSP deduction limit for the year exceeds the total of the amounts deducted under subsections 146(5) and (5.1) in computing the taxpayer's income for the year;

Related Provisions: 18(11)(g) — No deduction for interest paid on money borrowed to make contribution; 60(l)(v)(B.2) — Transfer of premium under RRSP; 60.02 — 60(v)(iii) applicable since 1991; 118(3) — Pension tax credit; 128.1(10)"excluded right or interest"(g)(iii) — Emigration of individual — no deemed disposition of right to pension; 146(1) — Unused RRSP deduction room; 146(21) — Transfer from prescribed provincial pension plan; 252(4) — Extended definition of "spouse". See additional Related Provisions and Definitions at end of s. 60.

History: Subpara. 60(v)(i) amended by 1999, c. 22, subsec. 16(1), applicable to 1998 *et seq.* The subpara. formerly read:

(i) the amount contributed by the taxpayer to the taxpayer's account under a prescribed provincial pension plan in the year or within 60 days after the end of the year to the extent that the amount has not been deducted in computing the taxpayer's income for a preceding taxation year,

Pre-RSC History: Subpara. 60(v)(iii) substituted by 1990, c. 35, subsec. 5(10), applicable to 1991 *et seq.* Subpara. (iii) formerly read:

(iii) the amount by which the amount determined in respect of the taxpayer for the year under paragraph 146(5)(a) or (b) (whichever is applicable in respect of the taxpayer) exceeds the aggregate of the amounts deducted under subsections 146(5) and (5.1) in computing his income for the year.

Para. 60(v) added by 1987, c. 46, subsec. 17(2), applicable to 1987 *et seq.* except that, for the 1987 taxation year, the reference in subpara. (i) to "in the year" shall be read as a reference to "before the end of the year".

Regulations: 7800(1) (prescribed provincial pension plan is the Saskatchewan Pension Plan); 7800(2) (prescribed amount).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Forms: T2097: Identification of amounts transferred to an RRSP.

(v.1) **UI and EI benefit repayment** — any benefit repayment payable by the taxpayer under Part VII of the *Unemployment Insurance Act* or Part VII of the *Employment Insurance Act* on or before April 30 of the following year, to the extent that the amount was not deductible in computing the taxpayer's income for any preceding taxation year;

Related Provisions: 56(1)(a)(iv) — Unemployment insurance/employment insurance benefits taxable; 56(9) — Meaning of "income for the year"; 60(n)(iii) — Deduction for repayment under other Parts of the UI/EI Act; 63(2) — Child care expenses — income exceeding income of supporting person.

History: Para. 60(v.1) amended by 1998, c. 19, subsec. 99(7), deemed to have come into force on June 30, 1996. The para. formerly read:

(v.1) UI benefit repayment — any benefit repayment payable by the taxpayer under Part VII of the *Employment Insurance Act* on or before April 30 of the following year, to the extent that the amount was not deductible in computing the taxpayer's income or taxable income for any preceding taxation year; and

Para. 60(v.1) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 60(v.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 34(6), applicable to 1989 *et seq.*

(w) **tax under Part I.2** — the amount of the taxpayer's tax payable under Part I.2 for the year; and

Related Provisions: 56(9) — Meaning of "income for the year"; 180.2 — OAS benefits clawback. See additional Related Provisions and Definitions at end of s. 60.

Pre-RSC History: Para. 60(w) added by 1990, c. 39, subsec. 12(2), applicable to 1989 *et seq.*

(x) **CESG repayment** — the total of all amounts each of which is an amount paid by the taxpayer in the year as a repayment under Part III.1 of the *Department of Human Resources Development Act* of an amount included because of subsection 146.1(7) in computing the taxpayer's income for the year or a preceding taxation year.

History: Para. 60(x) added by 1999, c. 22, subsec. 16(2), applicable to 1998 *et seq.*

Related Provisions [s. 60]: 4(2), (3) — Whether deductions under s. 60 are applicable to a particular source.

Definitions [s. 60]: "allowance" — 56(12); "amount" — 248(1); "annuitant" — 146(1), 146.3(1); "annuity" — 248(1); "beneficially interested" — 248(25); "benefit under a deferred profit sharing plan", "business" — 248(1); "Canada" — 255; "child" — 252(1); "child support amount", "commencement day" — 56.1(4), 60.1(4); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "eligible amount" — 60.01; "employee", "employee benefit plan", "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "income-averaging annuity contract" — 61(4), 248(1); "individual" — 248(1); "life insurance policy" — 138(12), 248(1); "marriage" — 252(4)(b); "Minister" — 248(1); "parent" — 252(2); "person",

"prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan", "RRSP deduction limit" — 146(1), 248(1); "related" — 251(2); "resident in Canada" — 250; "retirement compensation arrangement", "retiring allowance" — 248(1); "spouse" — 252(3), (4)(a); "superannuation or pension benefit" — 248(1); "support amount" — 56.1(4), 60.1(4); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

60.001 Application of subpara. 60(c.1)(i) — In the application of subparagraph 60(c.1)(i) in respect of amounts received pursuant to orders made after December 11, 1979 under the laws of Ontario, the references in that subparagraph to "February 10, 1988" and "February 11, 1988" shall be read as references to "December 11, 1979" and "December 12, 1979", respectively.

Origin of s. 60.001: R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in the application rule in 1988, c. 55, s. 37. For the history of subparagraph 60(c.1)(i), see under para. 60(c).)

Definitions: "amount" — 248(1).

60.01 Eligible amount — For the purpose of paragraph 60(j), the amount, if any, by which

(a) the amount of any payment received by a taxpayer in a taxation year out of or under a foreign retirement arrangement and included in computing the taxpayer's income because of clause 56(1)(a)(i)(C.1) (other than any portion thereof that is included in respect of the taxpayer for the year under subparagraph 60(j)(i) or that is part of a series of periodic payments)

exceeds

(b) the portion, if any, of the payment included under paragraph (a) that can reasonably be considered to derive from contributions to the foreign retirement arrangement made by a person other than the taxpayer or the taxpayer's spouse or former spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

is an eligible amount in respect of the taxpayer for the year.

History: Para. 60.01(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 21, applicable after 1992. Para. (b) formerly read:

(b) the portion, if any, of the payment included under paragraph (a) that can reasonably be considered to derive from contributions to the foreign retirement arrangement made by a person other than the taxpayer or the taxpayer's spouse (within the meaning assigned by subsection 146(1.1)) or former spouse

S. 60.01 added by 1994, c. 7, Sch. II (1991, c. 49), s. 35, applicable to payments received after July 13, 1990.

Definitions [s. 60.01]: "amount", "common-law partner" — 248(1); "foreign retirement arrangement" — 248(1); "former spouse" — 252(3); "person" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T2097: Identification of amounts transferred to an RRSP.

60.02 Application of subpara. 60(v)(iii) — Subparagraph 60(v)(iii) is applicable to the 1991 and subsequent taxation years.

Origin of s. 60.02: R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in the application rule in 1990, c. 35, s. 5.)

Definitions: "taxation year" — 249.

60.1 (1) Support — For the purposes of paragraph 60(b) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount by a taxpayer to a person or for the benefit of the person, children in the person's custody or both the person and those children, the amount or any part thereof

(a) when payable, is deemed to be payable to and receivable by that person; and

(b) when paid, is deemed to have been paid to and received by that person.

Related Provisions: 56.1(1) — Parallel rule for recipient; 60.11 — Application to orders made in Ontario after May 6, 1974.

History: Subsec. 60.1(1) amended by 1997, c. 25, subsec. 11(1), applicable to amounts paid after 1996. Subsec. (1) formerly read:

60.1 (1) Maintenance payments — Where a decree, order, judgment or written agreement described in paragraph 60(b) or (c), or any variation thereof, provides for the periodic payment of an amount by a taxpayer

(a) to a person who is

(i) the taxpayer's spouse or former spouse, or

(ii) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the taxpayer, or

(b) for the benefit of the person, children in the custody of the person or both the person and those children,

the amount or any part thereof, when paid, shall be deemed for the purposes of paragraphs 60(b) and (c) to have been paid to and received by that person.

Subsec. 60.1(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 22, applicable (by subsec. 22(2), as amended by 1994, c. 21, s. 135) to amounts paid under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (1) formerly read:

(1) Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 60(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount by a taxpayer

(a) to a person who is

(i) the taxpayer's spouse or former spouse, or

(ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who

(A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or

(B) is the natural parent of a child of the taxpayer, or

(b) for the benefit of the person or children in the custody of the person, or both the person and those children,

the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 60(b), (c) and (c.1), to have been paid to and received by that person.

Pre-RSC History: Subsec. 60.1(1) substituted by 1988, c. 55, subsec. 38(1), applicable

(a) with respect to orders made under the laws of Ontario, to 1986 *et seq.*, and

(b) in any other case, to 1988 *et seq.*,

except that, with respect to amounts paid pursuant to orders made after May 6, 1974 under the laws of Ontario, in applying subpara. 60.1(1)(a)(ii), the reference therein to "February 10, 1988" shall be read as a reference to "May 6, 1974". (See s. 60.11.) Subsec. 60.1(1) formerly read:

60.1 (1) Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 60(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount by the taxpayer to or for the benefit of a person who is his spouse, former spouse, or, where the amount was paid pursuant to an order made in accordance with the laws of a province, an indi-

vidual within a prescribed class of persons described in the laws of the province, or for the benefit of children in the custody of such a person, the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 60(b), (c) and (c.1), to have been paid to and received by that person if, at the time the payment was received and throughout the remainder of the year in which the payment was received, the taxpayer was living apart from that person.

Subsec. 60.1(1) substituted for s. 60.1 by 1984, c. 45, s. 20, applicable in respect of payments made after 1983. S. 60.1 formerly read:

60.1 Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 60(b), (c) or (c.1), or any variation thereof, has been made providing for the periodic payment of an amount by the taxpayer to or for the benefit of a person who is his spouse, former spouse, or an individual within a prescribed class of persons described in the laws of a province, or for the benefit of children in the custody of such a person, the amount or any part thereof, when paid, shall be deemed, for the purposes of paragraphs 60(b), (c) and (c.1), to have been paid to and received by that person if, at the time the payment was received and throughout the remainder of the year in which the payment was received, the taxpayer was living apart from that person.

Selected Cases: *Sadler v. R.*, [1997] 3 C.T.C. 2698 (TCC) (Custody and control not the same as legal control, but general care and custody).

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-530: Support payments.

(2) **Agreement** — For the purposes of section 60, this section and subsection 118(5), the amount determined by the formula

A – B

where

A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a taxpayer in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a person, children in the person's custody or both the person and those children, where the person is

(a) the taxpayer's spouse or former spouse, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is a parent of a child of whom the taxpayer is a natural parent,

and

B is the amount, if any, by which

(a) the total of all amounts each of which is an amount included in the total determined for A in respect of the acquisition or improvement of a self-contained domestic establishment in which that person resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(b) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in paragraph (a),

is, where the order or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any amount paid or payable thereunder, deemed to be an amount payable by the taxpayer to that person and receivable by that person as an allowance on a periodic basis, and that person is deemed to have discretion as to the use of that amount.

Related Provisions: 56.1(2) — Parallel rule for recipient; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

History: The portion of subsec. 60.1(2) before the formula, the description of A, and the closing words of subsec. (2), amended by 1997, c. 25, subsecs. 11(2)–(4), applicable to amounts paid after 1996. Those portions formerly read:

(2) For the purposes of paragraphs 60(b) and (c), the amount determined by the formula

. . . . .

A is the total of all amounts each of which is an amount (other than an amount to which paragraph 60(b) or (c) otherwise applies) paid by a taxpayer in a taxation year, under a decree, order or judgment of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for maintenance of a person who is

(a) the taxpayer's spouse or former spouse, or

(b) where the amount is paid under an order made by a competent tribunal in accordance with the laws of a province, an individual of the opposite sex who is the natural parent of a child of the taxpayer,

or for the maintenance of children in the person's custody or both the person and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living separate and apart from that person, and

. . . . .

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any payment made thereunder, be deemed to be an amount paid by the taxpayer and received by that person as an allowance payable on a periodic basis.

Subsec. 60.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 22, applicable (by subsec. 22(2), as amended by 1994, c. 21, s. 135) to amounts paid under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (2) formerly read:

(2) For the purposes of paragraphs 60(b), (c) and (c.1), the amount, if any, by which

(a) the total of all amounts each of which is an amount (other than an amount to which paragraph 60(b), (c) or (c.1) otherwise applies) paid by a taxpayer in a taxation year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or educational expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in subparagraph (i)

or (ii) resides) incurred in the year or the immediately preceding taxation year for maintenance of a person who is

(i) the taxpayer's spouse or former spouse, or

(ii) where the amount is paid pursuant to an order made by a competent tribunal after February 10, 1988 in accordance with the laws of a province, an individual of the opposite sex who

(A) before the date of the order cohabited with the taxpayer in a conjugal relationship, or

(B) is the natural parent of a child of the taxpayer,

or for the maintenance of children in the person's custody or both the person and those children if, at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living apart from that person

exceeds

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount included in the total determined under paragraph (a) in respect of the acquisition or improvement of a self-contained domestic establishment in which that person resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, the acquisition or improvement

exceeds

(ii) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in subparagraph (i)

shall, where the decree, order, judgment or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any payment made pursuant thereto, be deemed to be an amount paid by the taxpayer and received by that person as an allowance payable on a periodic basis.

Pre-RSC History: Para. 60.1(2)(a) substituted by 1988, c. 55, subsec. 38(2), applicable

(a) with respect to orders made under the laws of Ontario, to 1986 *et seq.*, and

(b) in any other case, to 1988 *et seq.*

Para. (a) formerly read:

(a) the aggregate of all amounts each of which is an amount (other than an amount to which paragraph 60(b), (c) or (c.1) otherwise applies) paid by a taxpayer in a taxation year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment of the taxpayer or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or educational expense or in respect of the acquisition, improvement or maintenance of an owner-occupied home of a person described in subparagraph (i) or (ii)) incurred in the year or the immediately preceding taxation year for maintenance of a person who is

(i) the taxpayer's spouse or former spouse, or

(ii) where the amount was paid pursuant to an order made in accordance with the laws of a province, an individual within a prescribed class of persons described in the laws of the province,

or for the maintenance of children of that person in that person's custody, or both that person and such children, if at the time the expense was incurred and throughout the remainder of the year, the taxpayer was living apart from that person,

Subpara. 60.1(2)(b)(i) amended by 1988, c. 55, subsec. 38(3), to substitute "a self-contained domestic establishment in which that person resides" for "an owner-occupied home of that person".

Subsec. 60.1(2) added by 1984, c. 45, s. 20, applicable in respect of payments made after 1983.

Selected Cases [subsec. 60.1(2)]: *Hak v. R.*, [1999] 1 C.T.C. 2633 (TCC) (Failure to mention that provision should apply to payments not fatal to deductibility); *Larsson v. Canada*, [1996] 3 C.T.C. 2430 (TCC) (Inclusion/deduction process should be favoured in ambiguous or doubtful cases).

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-530: Support payments.

(3) Prior payments — For the purposes of this section and section 60, where a written agreement or order of a competent tribunal made at any time in a taxation year provides that an amount paid before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder,

(a) the amount is deemed to have been paid thereunder; and

(b) the agreement or order is deemed, except for the purpose of this subsection, to have been made on the day on which the first such amount was paid, except that, where the agreement or order is made after April 1997 and varies a child support amount payable to the recipient from the last such amount paid to the recipient before May 1997, each varied amount of child support paid under the agreement or order is deemed to have been payable under an agreement or order the commencement day of which is the day on which the first payment of the varied amount is required to be made.

Related Provisions: 56.1(3) — Parallel rule for recipient.

History: Subsec. 60.1(3) amended by 1997, c. 25, subsec. 11(5), applicable to amounts paid after 1996. Subsec. (3) formerly read:

(3) For the purposes of this section and section 60, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount paid before that time and in the year or the preceding taxation year is to be considered to have been paid and received thereunder, the amount shall be deemed to have been paid thereunder.

Subsec. 60.1(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 22, applicable (by subsec. 22(2) as amended by 1994, c. 21, s. 135) to amounts paid under a decree, order or judgment made by a competent tribunal after 1992 or under a written agreement entered into after 1992 other than such a decree, order or judgment, or written agreement, made with respect to a marriage breakdown that occurred before 1993. Subsec. (3) formerly read:

(3) For the purposes of this section and section 60, where a decree, order or judgment of a competent tribunal or a written agreement made at any time in a taxation year provides that an amount paid before that time and in the year or the immediately preceding taxation year is to be considered as having been paid and received pursuant thereto, the following rules apply:

(a) the amount shall be deemed to have been paid pursuant thereto; and

(b) the person who made the payment shall be deemed to have been separated pursuant to a divorce, judicial separation or written separation agreement from the person's spouse or former spouse at the time the payment was made and throughout the remainder of the year.

Pre-RSC History: Subsec. 60.1(3) added by 1984, c. 45, s. 20, applicable in respect of payments made after 1983.

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-530: Support payments.

(4) Definitions — The definitions in subsection 56.1(4) apply in this section and section 60.

History: Subsec. 60.1(4) added by 1997, c. 25, subsec. 11(6), applicable after 1996.

Pre-RSC History [s. 60.1]: S. 60.1 substituted by 1980-81-82-83, c. 140, s. 29, applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the recipient agree in writing at any time in a taxation year, in the year and subsequent taxation years. S. 60.1 was amended to add references to para. 60(c.1) and to substitute "within a prescribed class of persons described in the laws of a province" for "referred to in paragraph 73(1)(d)".

S. 60.1 substituted by 1980-81-82-83, c. 48, s. 30, applicable with respect to payments made (a) in the case of an order made after December 11, 1979, after that date; and (b) in any other case where the taxpayer and the

recipient agree in writing at any time in a taxation year, in the year and subsequent taxation years. S. 60.1 formerly read:

> 60.1 Where, after May 6, 1974, a decree, order, judgment or written agreement described in paragraph 60(b) or (c), or any variation thereof, has been made providing for the periodic payment of an amount by the taxpayer to or for the benefit of his spouse, former spouse or children of the marriage in the custody of the spouse or former spouse, the amount or any part thereof, when paid, shall be deemed to have been paid to and received by the spouse or former spouse if the taxpayer was living apart from the spouse or former spouse at the time the payment was received and throughout the remainder of the year in which the payment was received.

S. 60.1 added by 1974-75-76, c. 26, s. 31, applicable in respect of amounts paid after May 6, 1974.

Selected Cases [s. 60.1]: *Larivière v. The Queen*, [1989] 1 C.T.C. 297 (FCA) (Maintenance sum payable periodically to former spouse deductible).

Definitions [s. 60.1]: "amount" — 248(1); "child" — 252(1); "child support amount", "commencement day" — 56.1(4), 60.1(4); "former spouse" — 252(3); "housing unit" — 56.1(4); "individual" — 248(1); "parent" — 252(2); "person", "prescribed", "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "received" — 248(7); "self-contained domestic establishment" — 248(1); "spouse" — 252(3), (4)(a); "support amount" — 56.1(4), 60.1(4); "taxation year" — 249; "taxpayer" — 248(1); "written" — *Interpretation Act* 35(1) [writing].

60.11 Application of subpara. 60.1(1)(a)(ii) — In the application of subparagraph 60.1(1)(a)(ii) in respect of amounts paid pursuant to orders made after May 6, 1974 under the laws of Ontario, the reference in that subparagraph to "February 10, 1988" shall be read as a reference to "May 6, 1974".

Origin of s. 60.11: R.S.C. 1985, c. 1 (5th Supp.). (Formerly in the application rule in 1988, c. 55, s. 38.)

Definitions: "amount" — 248(1).

60.2 (1) Refund of undeducted past service AVCs — There may be deducted in computing a taxpayer's income for a taxation year an amount equal to the total of

(a) where the taxation year ends before 1991, the total of all amounts each of which is that portion of an amount paid to the taxpayer before 1991 and included by reason of subparagraph 56(1)(a)(i) or paragraph 56(1)(h) or (t) in computing the taxpayer's income for the year or a preceding taxation year that can reasonably be considered to be a refund of additional voluntary contributions made by the taxpayer before October 9, 1986 to a registered pension plan for the taxpayer's benefit in respect of services rendered by the taxpayer before the year in which the contributions were made, to the extent that the contributions were not deducted in computing the taxpayer's income for any taxation year; and

(b) the least of

(i) $3,500,

(ii) the total of all amounts each of which is an amount included after 1986 by reason of subparagraph 56(1)(a)(i) or paragraph 56(1)(d.2), (h) or (t) in computing the taxpayer's income for the year, and

(iii) the balance of the annuitized voluntary contributions of the taxpayer at the end of the year.

Related Provisions: 8(1)(m) — Employee's RRP contributions; 60(j.01) — Transfer of surplus.

(2) Definition of "balance of the annuitized voluntary contributions" — For the purposes of subsection (1), "balance of the annuitized voluntary contributions" of a taxpayer at the end of a taxation year means the amount, if any, by which

(a) such part of the total of all amounts each of which is an additional voluntary contribution made by the taxpayer to a registered pension plan before October 9, 1986 in respect of services rendered by the taxpayer before the year in which the contribution was made, to the extent that the contribution was not deducted in computing the taxpayer's income for any taxation year, as may reasonably be considered as having been

(i) used before October 9, 1986 to acquire or provide an annuity for the taxpayer's benefit under a registered pension plan or registered retirement savings plan, or

(ii) transferred before October 9, 1986 to a registered retirement income fund under which the taxpayer was the annuitant (within the meaning assigned by subsection 146.3(1)) at the time of the transfer

exceeds

(b) the total of all amounts each of which is

(i) an amount deducted under paragraph (1)(b) in computing the taxpayer's income for a preceding taxation year, or

(ii) an amount deducted under paragraph (1)(a) in computing the taxpayer's income for the year or a preceding taxation year, to the extent that the amount can reasonably be considered to be in respect of a refund of additional voluntary contributions included in determining the total under paragraph (a).

Pre-RSC History [s. 60.2]: S. 60.2 added by 1990, c. 35, s. 6, applicable to 1986 *et seq.*

Definitions [s. 60.2]: "additional voluntary contribution", "amount", "annuity" — 248(1); "balance" — 60.2(2); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

61. (1) Payment made as consideration for income-averaging annuity — In computing the income for a taxation year of an individual resident in Canada, there may be deducted an amount equal to the lesser of

(a) such amount as the individual may claim, not exceeding the total of amounts each of which is a single payment

(i) made by the individual in the year or within 60 days after the end of the year as consideration for an income-averaging annuity contract of the individual, and

(ii) in respect of which no amount has been deducted in computing the individual's income for the immediately preceding taxation year, and

(b) the amount, if any, by which the total of

(i) the remainder obtained when the total of the amounts deductible in computing the individual's income for the year by reason of paragraphs 60(j) and (l) of this Act and paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, is deducted from the total of amounts described in subsection (2) in respect of the individual for the year,

(ii) the amount, if any, by which the amount determined under paragraph 3(b) in respect of the indi-

vidual for the year exceeds the total of amounts each of which is an allowable business investment loss of the individual for the year,

(iii) the individual's income for the year from the production of a literary, dramatic, musical or artistic work,

(iv) the individual's income for the year from the individual's activities as an athlete, a musician or a public entertainer such as a theatre, motion picture, radio or television artist, and

(iv.1) the amount, if any, by which the amount included in computing the income of the individual for the year by virtue of section 59 exceeds the total of amounts deducted in computing the individual's income for the year under sections 64[2], 66, 66.1, 66.2 and 66.4 and under section 29 of the *Income Tax Application Rules*,

exceeds

(v) the total of amounts each of which is the annual annuity amount of the individual in respect of an income-averaging annuity contract in respect of the consideration for which any amount has been deducted under this subsection in computing the individual's income for the year.

Pre-RSC History: Subpara. 61(1)(b)(iv.1) substituted by 1980-81-82-83, c. 48, subsec. 31(1), applicable to taxation years ending after December 11, 1979, to add reference to s. 66.4.

Subpara. 61(1)(b)(ii) substituted by 1979, c. 5, subsec. 18(1), applicable to 1979 *et seq.* Subpara. 61(1)(b)(ii) formerly read:

(ii) the amount determined under paragraph 3(b) in respect of the individual for the year,

Subpara. 61(1)(b)(iv.1) substituted by 1977-78, c. 1, s. 26, applicable to 1978 *et seq.*, to add references to ss. 66.1 and 66.2.

Subpara. 61(1)(b)(iv.1) added by 1973-74, c. 30, s. 5, applicable to 1973 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(2) Idem — For the purposes of subsection (1), an amount described in this subsection in respect of an individual for a taxation year is any following amount:

(a) any single payment received by the individual in the year

(i) out of or under a superannuation or pension fund or plan

(A) on the death, withdrawal or retirement from employment of an employee or former employee,

(B) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(C) to which the payee is entitled by virtue of an amendment to the plan although the payee continues to be an employee to whom the plan is applicable,

(ii) on retirement as an employee in recognition of long service and not made out of or under a superannuation fund or plan,

(iii) pursuant to an employees profit sharing plan in full satisfaction of all the individual's rights in or under the plan, to the extent that the amount thereof is required to be included in computing the individual's income for the year in which the payment was received, or

(iv) pursuant to a deferred profit sharing plan on the death, withdrawal or retirement from employment of an employee or former employee, to the extent that the amount thereof is required to be included in computing the individual's income for the year;

(b) a payment or payments made by an employer to the individual as an employee or former employee on or after retirement in respect of loss of office or employment, if made in the year of retirement or within one year after that year;

(c) a payment or payments paid to the individual as a death benefit, if paid in the year of death or within one year after that year;

(d) any amount included in computing the individual's income for the year by virtue of subsection 146(8), to the extent that the amount is a refund of premiums, as defined by section 146, under a registered retirement savings plan received by the individual under the plan on or after the death of the person who was, immediately before the person's death, the annuitant thereunder;

(e) any amount included in computing the individual's income for the year by virtue of section 13, 14 or 23, subsection 28(4) or (5) or paragraph 106(2)(a) of this Act or subparagraph 56(1)(a)(viii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

(f) any amount deemed by section 7 to be a benefit received by the individual in the year by virtue of the individual's employment;

(g) the amount, if any, by which any amount received by the individual in the year as or on account of a prize for achievement in a field of endeavour ordinarily carried on by the individual exceeds $500;

(h) any amount included in computing the individual's income for the year by virtue of subsection 146.2(6) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

(i) a payment made in the year to an individual by virtue of paragraph 51(2)(b) of the *Judges Act*;

(j) except where the individual claimed a deduction under paragraph 23(3)(a) of the *Income Tax Application Rules* in computing the individual's income for the year, any amount included in computing that income by virtue of paragraph 23(3)(c) of that Act; and

(k) where the individual ceased to be a member of a partnership in the year or the preceding year and paragraph 34(a) applied in computing the individual's income therefrom in the preceding year, the amount included in the individual's income for the year by virtue of paragraph 3(a) to the extent that, having regard to all the circumstances including the proportion in which the members of the partnership have agreed to share the profits of the partnership, it can reasonably be considered to be in respect of the individual's share of the work in progress of the partnership at the time the individual ceased to be a member thereof, if, during the remainder of the year in which the individ-

[2] i.e., s. 64 of R.S.C. 1952, c. 148, as amended.

ual ceased to be a member and in the following year, the individual did not

(i) become employed in the business that had been carried on by the partnership,

(ii) carry on a business that is a profession, or

(iii) become a member of a partnership that carries on a business that is a profession.

Related Provisions: 128.1(10)"excluded right or interest"(f)(ii) — Emigration — no deemed disposition of right to IAAC.

Pre-RSC History: Paras. 61(2)(j), (k) added by 1980-81-82-83, c. 48, subsec. 31(2), applicable to 1980 *et seq.*

Para. 61(2)(e) substituted by 1979, c. 5, subsec. 18(2), applicable in respect of amounts received in respect of a termination after November 16, 1978 of an office or employment, to add "subparagraph 56(1)(a)(viii)".

Para. 61(2)(i) added by 1976-77, c. 4, subsec. 18(1), applicable to 1976 *et seq.*

Para. 61(2)(h) added by 1974-75-76, c. 26, s. 32, applicable to 1974 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 61(3) repealed by 1976-77, c. 4, subsec. 18(2), applicable after May 25, 1976. Subsec. 61(3) formerly read:

(3) **Where income-averaging annuity contract ceases to be such** — Where a contract that was at any time an income-averaging annuity contract of an individual has, at a subsequent time, ceased to be an income-averaging annuity contract otherwise than by virtue of the surrender, cancellation, redemption, sale or the disposition thereof, the individual shall be deemed to have received at that subsequent time as proceeds of the disposition of an income-averaging annuity contract an amount equal to the fair market value of the contract at that subsequent time and to have acquired the contract, as another contract not being an income-averaging annuity contract, immediately thereafter at a cost to him equal to that fair market value.

(4) **Definitions** — In this section,

"annual annuity amount" of an individual in respect of an income-averaging annuity contract means the total of the equal payments described in paragraph (c) of the definition "income-averaging annuity contract" in this subsection that, under the contract, are receivable by the individual in the twelve month period commencing on the day that the first such payment under the contract becomes receivable by the individual;

Pre-RSC History: *The definition "annual annuity amount" was para. 61(4)(a).*

"income-averaging annuity contract" of an individual means a contract between the individual and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business or a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, under which

(a) in consideration of a qualifying payment as consideration under the contract, that person agrees to pay to the individual, commencing at a time not later than 10 months after the individual has made the qualifying payment,

(i) an annuity to the individual for the individual's life, with or without a guaranteed term not exceeding the number of years that is the lesser of

(A) 15, and

(B) 85 minus the age of the individual at the time the annuity payments commence, or

(ii) an annuity to the individual for a guaranteed term described in subparagraph (i), or

(b) in consideration of a single payment in respect of the individual's 1981 taxation year, other than a qualifying payment, made by the individual as consideration under the contract, that person makes all payments provided for under the contract to the individual before 1983

and under which no payments are provided except the single payment by the individual and,

(c) in respect of a contract referred to in paragraph (a), equal annuity payments that are to be made annually or at more frequent periodic intervals, or

(d) in respect of a contract referred to in paragraph (b), payments described therein to the individual;

Pre-RSC History: *The definition "income-averaging annuity contract" was para. 61(4)(b). See Table of Concordance.*

Para. 61(4)(b) substituted by 1980-81-82-83, c. 140, s. 30(1), applicable after November 12, 1981. Para. 61(4)(b) formerly read:

(b) "income-averaging annuity contract" of an individual means a contract

(i) between the individual and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business or a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(ii) under which, in consideration of a single payment by the individual as consideration under the contract, that person agrees to pay to the individual, commencing at a time no later than 10 months after the individual has made the single payment,

(A) an annuity to the individual for his life, with or without a guaranteed term not exceeding the number of years that is the lesser of

(I) 15, and

(II) 85 minus the age of the individual at the time the annuity payments commence, or

(B) an annuity to the individual for a guaranteed term described in clause (A), and

(iii) that does not provide for any payment thereunder except

(A) the single payment by the individual, and

(B) equal annuity payments that are to be made annually or at more frequent periodic intervals.

Subpara. 61(4)(b)(i) substituted by 1973-74, c. 14, s. 17, applicable to 1972 *et seq.*

"qualifying payment" means a single payment made before November 13, 1981 (or made on or after November 13, 1981 pursuant to an agreement in writing entered into before that date to make such a payment in respect of the individual's 1981 taxation year, or pursuant to an arrangement in writing made before that date to have funds withheld before 1982 from any of the individual's remuneration described in paragraph (1)(b) earned or received before November 13, 1981 and paid by or on behalf of the individual),

Pre-RSC History: *The definition "qualifying payment" was para. 61(4)(c).*

Para. 61(4)(c) added by 1980-81-82-83, c. 140, s. 30(1), applicable after November 12, 1981.

Selected Cases [subsec. 61(4)]: *Huet v. Canada*, [1995] 1 C.T.C. 367 (FCTD) (Retroactive legislation not unconstitutional).

Definitions [s. 61]: "amount", "annuity", "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employment", "individual", "office", "person" — 248(1); "province" — *Interpretation Act* 35(1); "registered retirement savings plan" — 146(1),

248(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

61.1 (1) Where income-averaging annuity contract ceases to be such — Where a contract that was at any time an income-averaging annuity contract of an individual has, at a subsequent time, ceased to be an income-averaging annuity contract otherwise than by virtue of the surrender, cancellation, redemption, sale or the disposition thereof, the individual shall be deemed to have received at that subsequent time as proceeds of the disposition of an income-averaging annuity contract an amount equal to the fair market value of the contract at that subsequent time and to have acquired the contract, as another contract not being an income-averaging annuity contract, immediately thereafter at a cost to the individual equal to that fair market value.

Related Provisions: 56(1)(f) — Disposition of income-averaging annuity contracts; 61 — Payment made as consideration for income-averaging annuity; 212(1)(n) — Withholding tax on payment to non-resident.

(2) Where annuitant dies and payments continued — Where an individual who was an annuitant under an income-averaging annuity contract has died and payments are subsequently made under that contract, the payments shall be deemed to be payments under an income-averaging annuity contract.

Interpretation Bulletins [subsec. 61.1(2)]: IT-212R3: Income of deceased persons — rights or things.

Pre-RSC History [s. 61.1]: S. 61.1 added by 1976-77, c. 4, s. 19, applicable after May 25, 1976.

Definitions [s. 61.1]: "income-averaging annuity contract" — 61(4), 248(1); "individual" — 248(1).

61.2 Reserve for debt forgiveness for resident individuals — There may be deducted in computing the income for a taxation year of an individual (other than a trust) resident in Canada throughout the year such amount as the individual claims not exceeding the amount determined by the formula

$$A + B - 0.2(C - \$40{,}000)$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that, because of the application of section 80 to an obligation payable by the individual (or a partnership of which the individual was a member) was included under subsection 80(13) in computing the income of the individual for the year or the income of the partnership for a fiscal period that ends in the year (to the extent that, where the amount was included in computing income of a partnership, it relates to the individual's share of that income)

exceeds

(b) the total of all amounts deducted because of paragraph 80(15)(a) in computing the individual's income for the year,

B is the amount, if any, included under section 56.2 in computing the individual's income for the year, and

C is the greater of $40,000 and the individual's income for the year, determined without reference to this section, paragraph 20(1)(ww), section 56.2, paragraph 60(w), subsection 80(13) and paragraph 80(15)(a).

Related Provisions: 56.2 — Inclusion into income in following year; 61.3, 61.4 — Alternative deductions for corporations, non-residents and trusts; 80(16) — Designation by CCRA to reduce reserve under 61.2; 114(a) — No deduction under 61.2 for part-year residents; 257 — Formula cannot calculate to less than zero.

History: The description of C in s. 61.2 amended by 2000, c. 19, s. 8, applicable to 2000 *et seq.* It formerly read:

C is the greater of $40,000 and the individual's income for the year, determined without reference to this section, section 56.2, paragraph 60(w), subsection 80(13) and paragraph 80(15)(a).

S. 61.2 added by 1995, c. 21, s. 20, applicable to taxation years that end after February 21, 1994.

Definitions [s. 61.2]: "amount" — 248(1); "fiscal period" — 249(2)(b), 249.1; "individual" — 248(1); "resident in Canada" — 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

61.3 (1) Deduction for insolvency with respect to resident corporations — There shall be deducted in computing the income for a taxation year of a corporation resident in Canada throughout the year that is not exempt from tax under this Part on its taxable income, the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount that, because of the application of section 80 to a commercial obligation (in this section having the meaning assigned by subsection 80(1)) issued by the corporation (or a partnership of which the corporation was a member) was included under subsection 80(13) in computing the income of the corporation for the year or the income of the partnership for a fiscal period that ends in the year (to the extent that the amount, where it was included in computing income of a partnership, relates to the corporation's share of that income)

exceeds

(ii) the total of all amounts deducted because of paragraph 80(15)(a) in computing the corporation's income for the year, and

(b) the amount determined by the formula

$$A - 2(B - C - D - E)$$

where

A is the amount determined under paragraph (a) in respect of the corporation for the year,

B is the total of

(i) the fair market value of the assets of the corporation at the end of the year,

(ii) the amounts paid before the end of the year on account of the corporation's tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or on account of a similar tax payable for the year under an Act of a province, and

(iii) all amounts paid by the corporation in the 12-month period preceding the end of the year to a person with whom the corporation does not deal at arm's length

(A) as a dividend (other than a stock dividend),

(B) on a reduction of paid-up capital in respect of any class of shares of its capital stock,

(C) on a redemption, acquisition or cancellation of its shares, or

(D) as a distribution or appropriation in any manner whatever to or for the benefit of the

shareholders of any class of its capital stock, to the extent that the distribution or appropriation cannot reasonably be considered to have resulted in a reduction in the amount otherwise determined for C in respect of the corporation for the year,

C is the total liabilities of the corporation at the end of the year (determined without reference to the corporation's liabilities for tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or for a similar tax payable for the year under an Act of a province) and, for this purpose,

(i) the equity and consolidation methods of accounting shall not be used, and

(ii) subject to subparagraph (i) and except as otherwise provided in this description, the total liabilities of the corporation shall

(A) where the corporation is not an insurance corporation or a bank to which clause (B) or (C) applies and the balance sheet as of the end of the year was presented to the shareholders of the corporation and was prepared in accordance with generally accepted accounting principles, be considered to be the total liabilities shown on that balance sheet,

(B) where the corporation is a bank or an insurance corporation that is required to report to the Superintendent of Financial Institutions and the balance sheet as of the end of the year was accepted by the Superintendent, be considered to be the total liabilities shown on that balance sheet,

(C) where the corporation is an insurance corporation that is required to report to the superintendent of insurance or other similar officer or authority of the province under whose laws the corporation is incorporated and the balance sheet as of the end of the year was accepted by that officer or authority, be considered to be the total liabilities shown on that balance sheet, and

(D) in any other case, be considered to be the amount that would be shown as total liabilities of the corporation at the end of the year on a balance sheet prepared in accordance with generally accepted accounting principles,

D is the total of all amounts each of which is the principal amount at the end of the year of a distress preferred share (within the meaning assigned by subsection 80(1)) issued by the corporation, and

E is 50% of the amount, if any, by which

(i) the amount that would be the corporation's income for the year if that amount were determined without reference to this section and section 61.4

exceeds

(ii) the amount determined under paragraph (a) in respect of the corporation for the year.

Related Provisions: 37(1)(f.1) — Reduction in claim allowed for R&D expenditures; 61.2 — Reserve for individuals; 61.3(3) — Anti-avoidance; 61.4 — Additional reserve; 80(16) — Designation by CCRA to reduce reserve under 61.3; 80.01(8), (9) — Deemed settlement on debt parking or debt becoming statute-barred; 80.04(4)(j) — Agreement to transfer forgiven amount; 87(2)(l.21) — Amalgamations — continuing corporation; 257 — Formula cannot calculate to less than zero.

History: The description of E in para. 61.3(1)(b) amended by 1998, c. 19, subsec. 101(1), applicable to taxation years that end after February 21, 1994. That description formerly read:

E is 50% of the amount, if any, by which the amount that would be the corporation's income for the year if that amount were determined without reference to this section, section 61.4 and subsection 80(17) exceeds the amount determined under paragraph (a) in respect of the corporation for the year.

(2) Reserve for insolvency with respect to non-resident corporations — There shall be deducted in computing the income for a taxation year of a corporation that is non-resident at any time in the year, the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount that, because of the application of section 80 to a commercial obligation issued by the corporation (or a partnership of which the corporation was a member) was included under subsection 80(13) in computing the corporation's taxable income or taxable income earned in Canada for the year or the income of the partnership for a fiscal period that ends in the year (to the extent that, where the amount was included in computing income of a partnership, it relates to the corporation's share of the partnership's income added in computing the corporation's taxable income or taxable income earned in Canada for the year)

exceeds

(ii) the total of all amounts deducted because of paragraph 80(15)(a) in computing the corporation's taxable income or taxable income earned in Canada for the year, and

(b) the amount determined by the formula

$$A - 2(B - C - D - E)$$

where

A is the amount determined under paragraph (a) in respect of the corporation for the year,

B is the total of

(i) the fair market value of the assets of the corporation at the end of the year,

(ii) the amounts paid before the end of the year on account of the corporation's tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or on account of a similar tax payable for the year under an Act of a province, and

(iii) all amounts paid in the 12-month period preceding the end of the year by the corporation to a person with whom the corporation does not deal at arm's length

(A) as a dividend (other than a stock dividend),

(B) on a reduction of paid-up capital in respect of any class of shares of its capital stock,

(C) on a redemption, acquisition or cancellation of its shares, or

(D) as a distribution or appropriation in any manner whatever to or for the benefit of the shareholders of any class of its capital stock, to the extent that the distribution or appropriation cannot reasonably be considered to

have resulted in a reduction of the amount otherwise determined for C in respect of the corporation for the year,

C is the total liabilities of the corporation at the end of the year (determined without reference to the corporation's liabilities for tax payable under this Part or any of Parts I.3, II, VI and XIV for the year or for a similar tax payable for the year under an Act of a province), determined in the manner described in the description of C in paragraph (1)(b),

D is the total of all amounts each of which is the principal amount at the end of the year of a distress preferred share (within the meaning assigned by subsection 80(1)) issued by the corporation, and

E is 50% of the amount, if any, by which

(i) the amount that would be the corporation's taxable income or taxable income earned in Canada for the year if that amount were determined without reference to this section and section 61.4

exceeds

(ii) the amount determined under paragraph (a) in respect of the corporation for the year.

Related Provisions: 37(1)(f.1) — Reduction in claim allowed for R&D expenditures; 61.3(3) — Anti-avoidance; 61.4 — Additional reserve; 80(16) — Designation by CCRA to reduce reserve under 61.3; 80.01(8), (9) — Deemed settlement on debt parking or debt becoming statute-barred; 80.04(4)(j) — Agreement to transfer forgiven amount; 87(2)(l.21) — Amalgamations — continuing corporation; 257 — Formula cannot calculate to less than zero.

History: The description of E in para. 61.3(2)(b) amended by 1998, c. 19, subsec. 101(2), applicable to taxation years that end after February 21, 1994. That description formerly read:

E is 50% of the amount, if any, by which the amount that would be the corporation's taxable income or taxable income earned in Canada for the year if that amount were determined without reference to this section, section 61.4 and subsection 80(17) exceeds the amount determined under paragraph (a) in respect of the corporation for the year.

(3) Anti-avoidance — Subsections (1) and (2) do not apply to a corporation for a taxation year where property was transferred in the 12-month period preceding the end of the year or the corporation became indebted in that period and it can reasonably be considered that one of the reasons for the transfer or the indebtedness was to increase the amount that the corporation would, but for this subsection, be entitled to deduct under subsection (1) or (2).

Related Provisions: 160.4 — Joint liability of transferee where property transferred so that 61.3(3) applies.

History: S. 61.3 added by 1995, c. 21, s. 20, applicable to taxation years that end after February 21, 1994.

Definitions [s. 61.3]: "Act" — *Interpretation Act* 35(1); "amount" — 248(1); "arm's length" — 251(1); "bank" — *Interpretation Act* 35(1); "class of shares" — 248(6); "commercial obligation" — 61.3(1)(a)(i), 80(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fiscal period" — 249(2)(b), 249.1; "insurance corporation", "non-resident" — 248(1); "officer" — 248(1)"office"; "paid-up capital" — 89(1), 248(1); "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "share", "shareholder", "stock dividend" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

61.4 Reserve for debt forgiveness for corporations and others — There may be deducted as a reserve in computing the income for a taxation year of a taxpayer that is a corporation or trust resident in Canada throughout the year or a non-resident person who carried on business through a fixed placed of business in Canada at the end of the year such amount as the taxpayer claims not exceeding the least of

(a) the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which

(i) the total of all amounts each of which is an amount that, because of the application of section 80 to a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the taxpayer (or a partnership of which the taxpayer was a member) was included under subsection 80(13) in computing the income of the taxpayer for the year or a preceding taxation year or of the partnership for a fiscal period that ends in that year or preceding year (to the extent that, where the amount was included in computing income of a partnership, it relates to the taxpayer's share of that income)

exceeds the total of

(ii) all amounts each of which is an amount deducted under paragraph 80(15)(a) in computing the taxpayer's income for the year or a preceding taxation year, and

(iii) all amounts deducted under section 61.3 in computing the taxpayer's income for the year or a preceding taxation year, and

B is the amount, if any, by which the amount determined for A in respect of the taxpayer for the year exceeds the total of

(i) the amount that would be determined for A in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for any preceding taxation year, and

(ii) the amount, if any, included under section 56.3 in computing the taxpayer's income for the year,

(b) the total of

(i) 4/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for any preceding taxation year,

(ii) 3/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for the year or any preceding taxation year (other than the last preceding taxation year),

(iii) 2/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for the year or any preceding taxation year (other than the second last preceding taxation year), and

(iv) 1/5 of the amount that would be determined for A in paragraph (a) in respect of the taxpayer for the year if that value did not take into account amounts included or deducted in computing the taxpayer's income for the year or any preceding taxation year

(other than the third last preceding taxation year), and

(c) where the taxpayer is a corporation that commences to wind up in the year (otherwise than in circumstances to which the rules in subsection 88(1) apply), nil.

Related Provisions: 56.3 — Inclusion into income in following year; 61.2 — Reserve for resident individuals; 61.3 — Additional reserve for insolvent corporation; 80.04(4)(j) — Agreement to transfer forgiven amount; 87(2)(g), (h.1) — Amalgamations — carryover of reserve; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: S. 61.4 added by 1995, c. 21, s. 20, applicable to taxation years that end after February 21, 1994.

Definitions [s. 61.4]: "amount", "business" — 248(1); "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "fiscal period" — 249(2)(b), 249.1; "non-resident" — 248(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

62. (1) Moving expenses — There may be deducted in computing a taxpayer's income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that

(a) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;

(b) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;

(c) the total of those amounts does not exceed

(i) in any case described in subparagraph (a)(i) of the definition "eligible relocation" in subsection 248(1), the taxpayer's income for the year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, as the case may be, and

(ii) in any case described in subparagraph (a)(ii) of the definition "eligible relocation" in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(n) and (o); and

(d) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.

Related Provisions: 4(2) — Deductions under s. 62 not applicable to any particular source; 64.1 — Individuals absent from Canada; 115(2)(f) — Deduction for non-resident; 118.2(2)(l.5) — Medical expense credit for moving expenses.

History: Subsec. 62(1) amended by 1999, c. 22, subsec. 17(1), applicable after 1997. The subsec. formerly read:

62. (1) Where a taxpayer has, at any time, commenced

(a) to carry on a business or to be employed at a location in Canada (in this subsection referred to as "the new work location"), or

(b) to be a student in full-time attendance at an educational institution (in this subsection referred to as "the new work location") that is a university, college or other educational institution providing courses at a post-secondary school level,

and by reason thereof has moved from the residence in Canada at which, before the move, the taxpayer ordinarily resided (in this section referred to as "the old residence") to a residence in Canada at which, after the move, the taxpayer ordinarily resided (in this section referred to as "the new residence"), so that the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location, in computing the taxpayer's income for the taxation year in which the taxpayer moved from the old residence to the new residence or for the immediately following taxation year, there may be deducted amounts paid by the taxpayer as or on account of moving expenses incurred in the course of moving from the old residence to the new residence, to the extent that

(c) they were not paid on the taxpayer's behalf by the taxpayer's employer,

(d) they were not deductible by virtue of this section in computing the taxpayer's income for the preceding taxation year,

(e) they would not, but for this section, be deductible in computing the taxpayer's income,

(f) the total of those amounts does not exceed

(i) in any case described in paragraph (a), the taxpayer's income for the year from the taxpayer's employment at the new work location or from carrying on the new business at the new work location, as the case may be, or

(ii) in any case described in paragraph (b), the total of amounts required to be included in computing the taxpayer's income for the year by virtue of paragraphs 56(1)(n) and (o), and

(g) any reimbursement or allowance received by the taxpayer in respect of those expenses is included in computing the taxpayer's income.

Pre-RSC History: Para. 62(1)(g) substituted by 1985, c. 45, s. 26, applicable to 1985 *et seq.* Para. 62(1)(g) formerly read:

(g) any reimbursement received by him for such expenses has been included in computing his income for the year.

All that portion of subsec. 62(1) preceding para. (c) substituted by 1984, c. 45, s. 21, applicable with respect to relocations occurring after 1983. That portion formerly read:

62. (1) Moving expenses — Where a taxpayer

(a) has, at any time,

(i) ceased to carry on business or to be employed at the location or locations, as the case may be, in Canada at which he ordinarily so carried on business or was so employed, or

(ii) ceased to be a student in full-time attendance at an educational institution in Canada that is a university, college or other educational institution providing courses at a post-secondary school level,

and commenced to carry on a business or to be employed at another location in Canada (hereinafter referred to as his "new work location"), or

(b) has, at any time, commenced to be a student in full-time attendance at an educational institution (hereinafter referred to as his "new work location") that is a university, college or other educational institution providing courses at a post-secondary school level,

and by reason thereof has moved from the residence in Canada at which, before the move, he ordinarily resided on ordinary working days (hereinafter referred to as his "old residence") to a residence in Canada at which, after the move, he ordinarily so resided (hereinafter referred to as his "new residence"), so that the distance between his old residence and his new work location is not less than 40 kilometres greater than the distance between his new residence and his new work location, in computing his income for the taxation year in which he moved from his old residence to his new residence or for the immediately following taxation year, there may be deducted amounts paid by him as or on account of moving expenses incurred in the course of moving from his old residence to his new residence, to the extent that

All that portion of subsec. 62(1) of the Act following para.(b) and preceding para. (c) substituted by 1980-81-82-83, c. 140, s. 31, applicable with respect to relocations occurring after 1981, to substitute "40 kilometres" for "25 miles".

Selected Cases [subsec. 62(1)]: *McLaren v. R.*, [2000] 2 C.T.C. 2633 (TCC) (Expenses must be consequence of change of employment, not in anticipation of change); *Loukine v. R.*, [1998] 3 C.T.C. 2258 (TCC) (Absent means more than simply not being present in a place); *Giannakopoulos v. MNR*, [1995] 2 C.T.C. 316 (FCA) (Distance to be measured along shortest normal route, not straight line); *Glaubitz v. Canada*, [1994] 2 C.T.C. 2448 (TCC) (Deduction disallowed where expenses not incurred for pupose of commencing work at new work location); *Schultz v. The Queen*, [1988] 2 C.T.C. 293 (FCTD) (Moving expenses deductible

when incurred due to loss of employment or to initiate new business); *Midyette v. The Queen*, [1985] 2 C.T.C. 362 (FCTD) (Teacher taxpayer on one-year fellowship abroad; moving expenses not deductible); *Rath v. The Queen*, [1982] C.T.C. 207 (FCA) (Deduction disallowed when payment for loss and replacement costs of goods not moving expenses); *Storrow v. The Queen*, [1978] C.T.C. 792 (FCTD) (Costs incurred in connection with acquisition of new residence not moving expenses).

Interpretation Bulletins: See list at end of s. 62.

I.T. Technical News: No. 6 (road distance to be used instead of "as the crow flies").

Forms: T1-M: Moving expenses deduction.

(2) Moving expenses of students — There may be deducted in computing a taxpayer's income for a taxation year the amount, if any, that the taxpayer would be entitled to deduct under subsection (1) if the definition "eligible relocation" in subsection 248(1) were read without reference to subparagraph (a)(i) of that definition and if the word "both" in paragraph (b) of that definition were read as "either or both".

Related Provisions: 64.1 — Individuals absent from Canada; 115(2) — Non-resident's taxable income earned in Canada; 118.2(2)(l.5) — Medical expense credit for moving expenses.

History: Subsec. 62(2) amended by 1999, c. 22, subsec. 17(1), applicable after 1997. The subsec. formerly read:

> (2) Application of subsec. (1) to certain students — Where a taxpayer would, if subsection (1) were read without reference to paragraph (a) thereof and
>
> (a) if the reference therein to "moved from the residence in Canada at which" were read as a reference to "moved from the residence at which", or
>
> (b) if the reference therein to "to a residence in Canada at which" were read as a reference to "to a residence at which",
>
> be entitled to deduct an amount by virtue of that subsection in computing the taxpayer's income for a taxation year, that amount may be deducted in computing the taxpayer's income for the year.

Interpretation Bulletins: See list at end of s. 62.

(3) Definition of "moving expenses" — In subsection (1), "moving expenses" includes any expense incurred as or on account of

(a) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(b) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(c) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(d) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(e) the taxpayer's selling costs in respect of the sale of the old residence,

(f) where the old residence is sold by the taxpayer or the taxpayer's spouse as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Selected Cases [para. 62(3)(f)]: *Lachman v. Canada*, [1995] 2 C.T.C. 2944D (TCC) (B.C. land transfer tax and GST both included in moving expenses); *Johnson v. Canada*, [1995] 2 C.T.C. 2110 (TCC) (GST is not a tax imposed on transfer or registration of title to new residence); *Mann v. Canada*, [1995] 2 C.T.C. 2049 (TCC) (GST and Ontario land transfer tax deductible under provision in respect of newly constructed home).

(g) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of $5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(h) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

but, for greater certainty, does not include costs (other than costs referred to in paragraph (f)) incurred by the taxpayer in respect of the acquisition of the new residence.

Related Provisions: 56(1)(n) — Scholarships, bursaries, etc.; 56(1)(o) — Research grants; 64.1 — Individuals absent from Canada; 115(2) — Non-resident's taxable income earned in Canada; 118.2(2)(l.5) — Medical expense credit for moving expenses.

History: Paras. 62(3)(g) and (h) added by 1999, c. 22, subsec. 17(2), applicable to expenses incurred after 1997.

Para. 62(3)(f) amended by 1998, c. 19, s. 102, applicable to costs incurred after 1990. The para. formerly read:

> (f) where the old residence is being or has been sold by the taxpayer or the taxpayer's spouse as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any taxes imposed on the transfer or registration of title to the new residence,

Pre-RSC History: All that portion of subsec. 62(3) following para. (d) substituted by 1977-78, c. 1, s. 27, applicable in respect of costs incurred after December 31, 1976. That portion formerly read:

> (e) his selling costs in respect of the sale of his old residence,
>
> but, for greater certainty, does not include costs incurred by the taxpayer in respect of the acquisition of his new residence.

All that portion of subsec. 62(3) following para. (d) substituted by 1976-77, c. 4, s. 20, applicable in respect of costs incurred after May 25, 1976. That portion formerly read:

> (e) his selling costs in respect of the sale of his old residence.

Selected Cases [subsec. 62(3)]: *Séguin v. R.*, [1998] 1 C.T.C. 2453 (TCC) (Mortgage interest at old location not included in moving expenses); *Oster v. Canada*, [1995] 1 C.T.C. 2224 (TCC) (Transfer allowances equal to one month's pay were taxable benefits and not moving expenses); *Collin v. MNR*, [1990] 2 C.T.C. 92 (FCTD) (Amount paid by vendor to enable making of loan to purchaser was cost of disposition not reduction in price); *Gold v. The Queen*, [1977] C.T.C. 616 (FCTD) (Living and education expenses of child in former city of residence not "moving expenses").

Selected Cases [s. 62]: *Cameron (D.) v. MNR*, [1993] 1 C.T.C. 2745 (TCC) (Distance measured as space between two points ("as the crow flies"), not along shortest road between two points).

Definitions [s. 62]: "amount", "business" — 248(1); "Canada" — 64.1, 255; "carrying on business" — 253; "common-law partner", "eligible relocation", "employed", "employer", "employment", "goods and services tax" — 248(1); "moving expenses" — 62(3); "new residence" — 248(1)"eligible relocation"(b); "new work location" — 248(1)"eligible relocation"(a); "office" — 248(1); "old residence" — 248(1)"eligible relo-

cation"(b); "person", "property" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 62]: IT-178R3: Moving expenses; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-518R: Food, beverages and entertainment expenses.

Forms [s. 62]: T1-M: Claim for moving expenses.

63. (1) Child care expenses — Subject to subsection (2), where a prescribed form containing prescribed information is filed with a taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, there may be deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer,

(a) by the taxpayer, where the taxpayer is a taxpayer described in subsection (2) and the supporting person of the child for the year is a person described in subparagraph (2)(b)(vi)[3], or

(b) by the taxpayer or a supporting person of the child for the year, in any other case,

to the extent that

(c) the amount is not included in computing the amount deductible under this subsection by an individual (other than the taxpayer), and

(d) the amount is not an amount (other than an amount that is included in computing the taxpayer's income and that is not deductible in computing the taxpayer's taxable income) in respect of which any taxpayer is or was entitled to a reimbursement or any other form of assistance,

and the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, but not exceeding the amount, if any, by which

(e) the lesser of

(i) 2/3 of the taxpayer's earned income for the year, and

(ii) the total of

(A) the product obtained when $7,000 is multiplied by the number of eligible children of the taxpayer for the year each of whom

(I) is under 7 years of age at the end of the year, or

(II) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

Proposed Amendment — Child care expense limit for disabled child

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Child Care Expense Deduction*

(19) That, for the 2000 and subsequent taxation years, the maximum annual amount deductible for child care expenses be increased from $7,000 to $10,000 for each eligible child in respect of whom a disability tax credit may be claimed.

Federal budget, supplementary information, February 28, 2000: *The Child Care Expense Deduction for Persons Eligible for the DTC*

A child care expense deduction of up to $7,000 annually is currently available in respect of persons eligible for the DTC [disability tax credit]. The budget proposes to increase this limit to $10,000.

(B) the product obtained when $4,000 is multiplied by the number of eligible children of the taxpayer for the year (other than children referred to in clause (A))

exceeds

(f) the total of all amounts each of which is an amount that is deducted, in respect of the taxpayer's eligible children for the year, under this section in computing the income for the year of an individual (other than the taxpayer) to whom subsection (2) applies for the year.

Related Provisions: 4(2) — Deductions under s. 63 not applicable to any particular source; 63(2.2) — Deduction for person attending school or university; 64.1 — Individuals absent from Canada; 220(2.1) — Waiver of filing of documents.

History: The opening words of cl. 63(1)(e)(ii)(A) and cl. 63(1)(e)(ii)(B) amended by 1999, c. 22, subsecs. 18(1), (2), applicable to 1998 *et seq.* The opening words of cl. (A) and cl. (B) formerly read:

(A) the product obtained when $5,000 is multiplied by the number of eligible children of the taxpayer for the year each of whom

. . . . .

(B) the product obtained when $3,000 is multiplied by the number of eligible children of the taxpayer for the year (other than those referred to in clause (A))

Para. 63(1)(f) amended by 1997, c. 25, subsec. 12(1), applicable to 1996 *et seq.* Para. (f) formerly read:

(f) the total of all amounts each of which is an amount deducted, in respect of the eligible children of the taxpayer that are referred to in subparagraph (e)(ii), under this subsection for the year by an individual (other than the taxpayer) to whom subsection (2) is applicable for the year.

That portion of subsec. 63(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 23(1), applicable to 1992 *et seq.* That portion formerly read:

(1) Subject to subsection (2), where a taxpayer who has an eligible child for a taxation year files with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form containing prescribed information, there may be deducted in computing the income of the taxpayer for the year the total of all amounts each of which is an amount paid in the year as or on account of child care expenses in respect of an eligible child of the taxpayer for the year

That portion of cl. 63(1)(e)(ii)(A) preceding subcl. (I), and cl. (1)(e)(ii)(B), amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 23(2) and (3), to substitute, respectively, "$5,000" for "$4,000" and "$3,000" for "$2,000", applicable to 1993 *et seq.*

Subcl. 63(1)(e)(ii)(A)(II) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(1), applicable to 1991 *et seq.* That subcl. formerly read:

(II) has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor or, where the impairment is an impairment of sight, by a medical doctor or an optometrist, where a copy of the certificate has been filed with the Minister, and

Pre-RSC History: That portion of subsec. 63(1) preceding para. (a), and para. 63(1)(e), substituted by 1988, c. 55, subsecs. 39(1), (2), applicable to 1988 *et seq.* That portion of subsec. 63(1) and para. 63(1)(e) formerly read:

63. (1) Subject to subsection (2), there may be deducted in computing the income of a taxpayer for a taxation year the aggregate of all amounts each of which is an amount paid in the year as or on ac-

[3] *Sic.* Reference should now be to 63(1)(b)C(i)(D) — ed.

count of child care expenses in respect of an eligible child of the taxpayer for the year

. . . . .

(e) the least of

(i) $8,000,

(ii) the product obtained when $2,000 is multiplied by the number of eligible children of the taxpayer for the year in respect of whom the child care expenses were incurred, and

(iii) ⅔ of the taxpayer's earned income for the year

That portion of subsec. 63(1) preceding para. (a) substituted by 1984, c. 45, s. 22, to add "there may be deducted" after "Subject to subsection (2)" and to delete "may be deducted" from the end, applicable to 1983 *et seq.*

Subsec. 63(1) substituted by 1984, c. 1, subsec. 25(1), applicable to 1983 *et seq.* Subsec. (1) formerly read:

63. (1) There may be deducted in computing the income for a taxation year of a taxpayer who is

(a) a woman, or

(b) a man

(i) who at any time in the year was not married,

(ii) who at any time in the year was separated from his wife pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement,

(iii) whose wife is certified by a qualified medical practitioner to be a person who,

(A) by reason of mental or physical infirmity and her confinement throughout a period of not less than 2 weeks in the year to bed, to a wheelchair or as a patient in a hospital, asylum or other similar institution, was incapable of caring for children, or

(B) by reason of mental or physical infirmity, was in the year, and is likely to be for a long-continued period of indefinite duration, incapable of caring for children, or

(iv) whose wife was confined to prison throughout a period of not less than 2 weeks in the year,

amounts paid by the taxpayer in the year as or on account of child care expenses in respect of the taxpayer's children, to the extent that

(c) payment of the amounts is proven by filing with the Minister receipts each of which contains the Social Insurance Number of any individual payee who issued the receipt, and

(d) the aggregate of the amounts so paid by the taxpayer in the year does not exceed the least of(i) $4,000,(ii) the product obtained when $1,000 is multiplied by the number of the taxpayer's children in respect of whom the child care expenses were incurred, and(iii) ⅔ of the taxpayer's earned income for the year.

Para. 63(1)(d) substituted by 1976-77, c. 4, subsec. 21(1), applicable to 1976 *et seq.*, to substitute "$4,000" for "$2,000" and "$1,000" for "$500".

Subpara. 63(1)(b)(ii) substituted by 1974-75-76, c. 26, s. 33, applicable to 1974 *et seq.* Subpara. 63(1)(b)(ii) formerly read:

(ii) who at any time in the year was separated from his wife pursuant to a written agreement,

Selected Cases [subsec. 63(1)]: *Wells v. R.*, [1997] 3 C.T.C. 2581 (TCC) (Requirement to file receipts with social insurance number was directory, not mandatory); *Symes v. Canada*, [1994] 1 C.T.C. 40 (SCC) (Child care expenses not business expenses; taxpayer not entitled to deduct such expenses in excess of statutory limits established in section 63).

Interpretation Bulletins: See list at end of s. 63.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

Forms: T778: Child care expenses deduction; T1065: Child care expenses information sheet.

(2) Income exceeding income of supporting person — Where the income for a taxation year of a taxpayer who has an eligible child for the year exceeds the income for that year of a supporting person of that child (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and (w)), the amount that may be deducted by the taxpayer under subsection (1) for the year as or on account of child care expenses shall not exceed the lesser of

(a) the amount that would, but for this subsection, be deductible by the taxpayer for the year under subsection (1); and

(b) the amount determined by the formula

$$(A + B) \times C$$

where

A is the product obtained when $175 is multiplied by the number of eligible children of the taxpayer for the year each of whom

(i) is under 7 years of age at the end of the year, or

(ii) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

B is the product obtained when $100 is multiplied by the number of the taxpayer's eligible children for the year (other than children referred to in the description of A), and

C is the total of

(i) the number of weeks in the year during which the child care expenses were incurred and throughout which the supporting person was

(A) a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program,

(B) a person certified by a medical doctor to be a person who

(I) was incapable of caring for children because of the person's mental or physical infirmity and confinement throughout a period of not less than 2 weeks in the year to bed, to a wheelchair or as a patient in a hospital, an asylum or other similar institution, or

(II) was in the year, and is likely to be for a long, continuous and indefinite period, incapable of caring for children, because of the person's mental or physical infirmity,

(C) a person confined to a prison or similar institution throughout a period of not less than 2 weeks in the year, or

(D) a person who, because of a breakdown of the person's marriage, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days that began in the year, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council.

See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in subparagraph (i)), each of which is a month during which the child care expenses were incurred and the supporting person was a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school that is not less than 3 consecutive weeks duration and that provides that each student in the program spend not less than 12 hours in the month on courses in the program.

Related Provisions: 3(f) — Nil income is deemed to be $0 income for comparative purposes; 118.4(2) — Reference to medical practitioners.

History: Para. 63(2)(b) amended by 1999, c. 22, subsec. 18(3), applicable to 1998 *et seq.* The para. formerly read:

(b) the product obtained when the total of

(i) the product obtained when $150 is multiplied by the number of eligible children of the taxpayer for the year each of whom

(A) is under 7 years of age at the end of the year, or

(B) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

(ii) the product obtained when $90 is multiplied by the number of eligible children of the taxpayer for the year (other than those referred to in subparagraph (i))

is multiplied by the number of weeks in the year during which the child care expenses were incurred and throughout which the supporting person was

(iii) a student in attendance at a designated educational institution (as defined in subsection 118.6(1)) or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program,

(iv) a person certified by a medical doctor to be a person who

(A) by reason of mental or physical infirmity and confinement throughout a period of not less than 2 weeks in the year to bed or to a wheelchair or as a patient in a hospital, an asylum or other similar institution, was incapable of caring for children, or

(B) by reason of mental or physical infirmity, was in the year, and is likely to be for a long-continued period of indefinite duration, incapable of caring for children,

(v) a person confined to a prison or similar institution throughout a period of not less than 2 weeks in the year, or

(vi) a person who, because of a breakdown of the person's marriage, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days beginning in the year.

Subpara. 63(2)(b)(iii) amended by 1997, c. 25, subsec. 12(2), applicable to 1996 *et seq.* Subpara. (b)(iii) formerly read:

(iii) a person in full-time attendance at a designated educational institution (within the meaning assigned by subsection 118.6(1)),

That portion of subpara. 63(2)(b)(i) preceding cl. (A), and subpara. (2)(b)(ii), amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 23(4) and (5), to substitute "$150" for "$120" and "$90" for "$60", applicable to 1993 *et seq.*

Subpara. 63(2)(b)(vi) substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 23(6), applicable to 1993 *et seq.* That subpara. formerly read:

(vi) a person who, by reason of a breakdown of the person's marriage or similar domestic relationship, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days commencing in the year.

That portion of subsec. 63(2) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(2), to add reference to paragraph 60(v.1), applicable to 1989 *et seq.*

Cl. 63(2)(b)(i)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(3), applicable to 1991 *et seq.* That cl. formerly read:

(B) has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor or, where the impairment is an impairment of sight, by a medical doctor or an optometrist, where a copy of the certificate has been filed with the Minister, and

Pre-RSC History: That portion of subsec. 63(2) preceding para. (a) amended by 1990, c. 39, subsec. 13(1), to substitute "paragraph 60(w)" for "paragraphs 56(1)(s) and (u)", applicable to 1989 *et seq.*

Para. 63(2)(b) substituted by 1988, c. 55, subsec. 39(3), applicable to 1988 *et seq.* Para. (b) formerly read:

(b) the product obtained when the lesser of

(i) $240, and

(ii) $60 multiplied by the number of eligible children of the taxpayer for the year in respect of whom the child care expenses were incurred

is multiplied by the number of weeks in the year during which the child care expenses were incurred and throughout which the supporting person was a person described in one or more of the following subparagraphs:

(iii) a person in full-time attendance at a designated educational institution (within the meaning assigned by paragraph 110(9)(a)),

(iv) a person certified by a qualified medical practitioner to be a person who

(A) by reason of mental or physical infirmity and confinement throughout a period of not less than 2 weeks in the year to bed, to a wheelchair or as a patient in a hospital, an asylum or other similar institution, was incapable of caring for children, or

(B) by reason of mental or physical infirmity, was in the year, and is likely to be for a long-continued period of indefinite duration, incapable of caring for children,

(v) a person confined to a prison or similar institution throughout a period of not less than 2 weeks in the year, or

(vi) a person living separate and apart from the taxpayer, throughout a period of not less than 90 days commencing in the year, by reason of a breakdown of their marriage or similar domestic relationship.

Subsec. 63(2) substituted by 1984, c. 1, subsec. 25(1), applicable to 1983 *et seq.* Subsec. (2) formerly read:

(2) Application of ss. (1) in certain cases — For the purposes of subsection (1),

(a) where the taxpayer is a man, subparagraph (1)(d)(i) shall be read as follows:

"(i) the lesser of $4,000 and an amount equal to the product obtained when the number of weeks in the year throughout which

(A) he was not married,

(B) he was separated from his wife pursuant to a written agreement, or

(C) his wife was confined as described in clause (b)(iii)(A) or subparagraph (b)(iv) or was incapable as described in clause (b)(iii)(B),

as the case may be, is multiplied by the lesser of $120 and the product obtained when $30 is multiplied by the number of children in respect of whom the child care expenses were incurred"; and

(b) where the taxpayer is a wife described in subparagraph (1)(b)(iii) or (iv),

(i) subparagraph (1)(d)(i) shall be read as follows:

"(i) $4,000 minus the amount deductible by virtue of this section in computing the income for the year of the taxpayer's spouse", and

(ii) subparagraph (1)(d)(ii) shall be read as follows:

"(ii) the amount, if any, by which

(A) the product obtained when $1,000 is multiplied by the number of his children in respect of whom the child care expenses were incurred,

exceeds

(B) the amount deductible by virtue of this section in computing the income for the year of the taxpayer's spouse".

Subsec. 63(2) substituted by 1976-77, c. 4, subsec. 21(2), applicable to 1976 *et seq.*, to substitute "$4,000" for "$2,000", "$120" for "$60", "$30" for "$15" and "$1,000" for "$500".

Selected Cases [subsec. 63(2)]: *Kuchta v. R.*, [1999] 4 C.T.C. 285 (FCA) (Provision to be strictly applied); *Kelner v. Canada*, [1996] 1 C.T.C. 2687 (TCC) ("Separate and apart" given same meaning as in *Divorce Act* and can exist within same dwelling); *McLaren v. MNR*, [1990] 2 C.T.C. 429 (FCTD) (Provision not applicable where supporting person has no income).

Interpretation Bulletins: See list at end of s. 63.

(2.1) Taxpayer and supporting person with equal incomes — For the purposes of this section, where in any taxation year the income of a taxpayer who has an eligible child for the year and the income of a supporting person of the child are equal (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and (w)), no deduction shall be allowed under this section to the taxpayer and the supporting person in respect of the child unless they jointly elect to treat the income of one of them as exceeding the income of the other for the year.

History: Subsec. 63(2.1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(4), to add reference to paragraph 60(v.1), applicable to 1989 *et seq.*

Pre-RSC History: Subsec. 63(2.1) amended by 1990, c. 39, subsec. 13(2), to substitute, "where in any taxation year" for "where, in any taxation year," and "paragraph 60(w)" for "paragraphs 56(1)(s) and (u)", applicable to 1989 *et seq.*

Subsec. 63(2.1) added by 1984, c. 1, subsec. 25(1), applicable to 1983 *et seq.*

Interpretation Bulletins: See list at end of s. 63.

(2.2) Expenses while at school — There may be deducted in computing a taxpayer's income for a taxation year such part of the amount determined under subsection (2.3) as the taxpayer claims, where

(a) the taxpayer is, at any time in the year, a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than

(i) 10 hours per week on courses or work in the program, or

(ii) 12 hours per month on courses in the program;

(b) there is no supporting person of an eligible child of the taxpayer for the year or the income of the taxpayer for the year exceeds the income for the year of a supporting person of the child (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and (w)); and

(c) a prescribed form containing prescribed information is filed with the taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year.

History: Para. 63(2.2)(a) amended by 1999, c. 22, subsec. 18(4), applicable to 1998 *et seq.* The para. formerly read:

(a) the taxpayer is, at any time in the year, a student in attendance at a designated educational institution (as defined in subsection 118.6(1)) or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program;

Subsec. 63(2.2) added by 1997, c. 25, subsec. 12(3), applicable to 1996 *et seq.*

(2.3) Amount deductible — For the purpose of subsection (2.2), the amount determined in respect of a taxpayer for a taxation year is the least of

(a) the amount by which the total of all amounts, each of which is an amount paid as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer, exceeds the amount that is deductible under subsection (1) in computing the taxpayer's income for the year,

(b) ⅔ of the taxpayer's income for the year computed without reference to this section and paragraphs 60(v.1) and (w),

(c) the amount determined by the formula

$$(A + B) \times C$$

where

A is the product obtained when $175 is multiplied by the number of eligible children of the taxpayer for the year each of whom is

(i) under 7 years of age at the end of the year, or

(ii) a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

B is the product obtained when $100 is multiplied by the number of the taxpayer's eligible children for the year, (other than children referred to in the description of A), and

C is

(i) if there is a supporting person of an eligible child of the taxpayer for the year,

(A) the number of weeks, in the year, in which both the taxpayer and the supporting person were students who would be described in paragraph (2.2)(a) if that paragraph were read without reference to subparagraph (ii), and

(B) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in clause (A)), in which both the taxpayer and the supporting person were students described in paragraph (2.2)(a), and

(ii) in any other case,

(A) the number of weeks, in the year, in which the taxpayer was a student who would be described in paragraph (2.2)(a) if that paragraph were read without reference to subparagraph (ii), and

(B) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in clause (A)), in which the taxpayer was a student described in paragraph (2.2)(a),

(d) the amount by which the total calculated under subparagraph (1)(e)(ii) in respect of eligible children of the taxpayer for the year exceeds the amount that is deductible under subsection (1) in computing the taxpayer's income for the year, and

(e) where there is a supporting person of an eligible child of the taxpayer for the year, the amount by which the amount calculated under paragraph (2)(b)

for the year in respect of the taxpayer exceeds 2/3 of the taxpayer's earned income for the year.

History: The descriptions of A, B and C in para. 63(2.3)(c) amended by 1999, c. 22, subsecs. 18(5) to (7), applicable to 1998 *et seq.* The descriptions formerly read:

A is the product obtained when $150 is multiplied by the number of eligible children of the taxpayer for the year each of whom is

(i) under 7 years of age at the end of the year, or

(ii) a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

B is the product obtained when $90 is multiplied by the number of the taxpayer's eligible children for the year (other than those referred to in the description of A), and

C is

(i) where there is a supporting person of an eligible child of the taxpayer for the year, the number of weeks, in the year, in which both the taxpayer and the supporting person were students described in paragraph (2.2)(a), and

(ii) in any other case, the number of weeks, in the year, in which the taxpayer was a student described in paragraph (2.2)(a),

Subsec. 63(2.3) added by 1997, c. 25, subsec. 12(3), applicable to 1996 *et seq.*

(3) Definitions — In this section,

"child care expense" means an expense incurred in a taxation year for the purpose of providing in Canada, for an eligible child of a taxpayer, child care services including baby sitting services, day nursery services or services provided at a boarding school or camp if the services were provided

(a) to enable the taxpayer, or the supporting person of the child for the year, who resided with the child at the time the expense was incurred,

(i) to perform the duties of an office or employment,

(ii) to carry on a business either alone or as a partner actively engaged in the business,

(iii) [Repealed]

(iv) to carry on research or any similar work in respect of which the taxpayer or supporting person received a grant, or

(v) to attend a designated educational institution or a secondary school, where the taxpayer is enrolled in a program of the institution or school of not less than three consecutive weeks duration that provides that each student in the program spend not less than

(A) 10 hours per week on courses or work in the program, or

(B) 12 hours per month on courses in the program, and

(b) by a resident of Canada other than a person

(i) who is the father or the mother of the child,

(ii) who is a supporting person of the child or is under 18 years of age and related to the taxpayer, or

(iii) in respect of whom an amount is deducted under section 118 in computing the tax payable under this Part for the year by the taxpayer or by a supporting person of the child,

except that

(c) any such expenses paid in the year for a child's attendance at a boarding school or camp to the extent that the total thereof exceeds the product obtained when

(i) in the case of a child of the taxpayer who

(A) is under 7 years of age at the end of the year, or

(B) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

$175, and

(ii) in any other case, $100

is multiplied by the number of weeks in the year during which the child attended the school or camp, and

(d) for greater certainty, any expenses described in subsection 118.2(2) and any other expenses that are paid for medical or hospital care, clothing, transportation or education or for board and lodging, except as otherwise expressly provided in this definition,

are not child care expenses;

Related Provisions: 64.1 — Individuals absent from Canada.

History: Subparas. (a)(v), (c)(i) and (ii) of the definition "child care expense" in subsec. 63(3) amended by 1999, c. 22, subsecs. 18(8) and (9), applicable to 1998 *et seq.* The subparas. formerly read:

(v) to attend a designated educational institution (as defined in subsection 118.6(1)) or a secondary school, where the taxpayer is enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program, and

. . . . .

(i) in the case of a child of the taxpayer who

(A) is under 7 years of age at the end of the year, or

(B) is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year,

$150, and

(ii) in any other case, $90

Subpara. (a)(v) added to the definition "child care expense" in subsec. 63(3) by 1997, c. 25, subsec. 12(4), applicable to 1996 *et seq.*

Subpara. (a)(iii) of the definition "child care expense" in subsec. 63(3) repealed by 1996, c. 23, subsec. 173(1), in force January 1, 1998. Subpara. (a)(iii) formerly read:

(iii) to undertake an occupational training course in respect of which the taxpayer or supporting person received a training allowance paid to him or her under the *National Training Act*, or

That portion of subpara. (c)(i) following cl. (B), and subpara. (c)(ii), of the definition "child care expense" in subsec. 63(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 23(7) and (8), to substitute "$150" for "$120", and "$90" for "$60", applicable to 1993 *et seq.*

Subpara. (b)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(5), applicable to 1990 *et seq.* That subpara. formerly read:

(ii) who is a supporting person of the child or was under 21 years of age and connected with the taxpayer or the taxpayer's spouse by blood relationship, marriage, or adoption, or

Cl. (c)(i)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 36(6), applicable to 1991 *et seq.* That cl. formerly read:

(B) has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor or, where the impairment is an impairment of sight, by a medical doctor or an optometrist, where a copy of the certificate has been filed with the Minister,

Pre-RSC History: *The definition "child care expense" was para. 63(3)(a). See Table of Concordance.*

That portion of para. 63(3)(a) preceding subpara. (i), cl. 63(3)(a)(ii)(C), and subparas. 63(3)(a)(iii), (iv) substituted by 1988, c. 55, subsecs. 39(4) to (6), applicable to 1988 *et seq.* Those substituted portions formerly read:

(a) "child care expense" — "child care expense" means an expense incurred for the purpose of providing in Canada, for any eligible child of a taxpayer, child care services including baby sitting services, day nursery services or lodging at a boarding school or camp if the services were provided

. . . . .

(C) in respect of whom a deduction has been made under section 109 in computing the taxable income for the year of the taxpayer or of a supporting person of the child,

. . . . .

(iii) any such expenses incurred in the year for a child's lodging at a boarding school or camp, to the extent that the aggregate thereof exceeds the product obtained when $60 is multiplied by the number of weeks in the year during which the child was so lodged, and

(iv) for greater certainty, any expenses described in paragraph 110(1)(c) and any other expenses that are incurred for medical or hospital care, clothing, transportation or education or for board and lodging (except as otherwise expressly provided in this paragraph),

All that portion of para. 63(3)(a) preceding cl. (ii)(A) substituted, subparas. 63(3)(a)(ii) to (iv) substituted for subparas. (iii) to (v), by 1984, c. 1, subsecs. 25(2)–(5), applicable to 1983 *et seq.* Also, "$60" substituted for "$30" in subpara. (iii). All that portion of para. 63(3)(a) preceding cl. (ii)(A), subpara. 63(3)(a)(iii) formerly read:

(a) "child care expense" — "child care expense" of a taxpayer means an expense incurred by the taxpayer for the purpose of providing in Canada, for any child of the taxpayer, child care services including baby sitting services, day nursery services or lodging at a boarding school or camp, if

(i) the child was, during the year, ordinarily in the custody of the taxpayer and

(A) under 14 years of age, or

(B) 14 years of age or over and dependent by reason of mental or physical infirmity,

(ii) the services were provided to enable the taxpayer

. . . . .

(iii) the services were provided by a resident of Canada other than a person

(A) in respect of whom a deduction has been made under section 109 in computing the taxable income for the year of the taxpayer or his spouse, or

(B) who, during the year, was under 21 years of age and connected with the taxpayer or his spouse by blood relationship, marriage or adoption,

Cl. 63(3)(a)(ii)(C) substituted by 1980-81-82-83, c. 109, subsec. 19(2), proclaimed in force August 2, 1982. Cl. (a)(ii)(C) formerly read:

to undertake an occupational training course in respect of which he received an adult training allowance paid to him under the *Adult Occupational Training Act*, or

Subparas. 63(3)(a)(ii), (iv) substituted by 1976-77, c. 4, subsecs. 21(3), (4), applicable to 1976 *et seq.*, to substitute (in subpara. 63(3)(a)(iv))"$30" for "$15". Subpara. (a)(ii) formerly read:

(ii) the services were provided to enable the taxpayer to perform the duties of an office or employment or to carry on a business either alone or as a partner actively engaged in the business, and

Interpretation Bulletins: See list at end of s. 63.

"earned income" of a taxpayer means the total of

(a) all salaries, wages and other remuneration, including gratuities, received by the taxpayer in respect of, in the course of, or because of, offices and employments,

(b) all amounts that are included, or that would, but for paragraph 81(1)(a), be included, because of section 6 or 7 or paragraph 56(1)(n), (o) or (r), in computing the taxpayer's income,

Proposed Amendment — 63(3)"earned income"(b)

(b) all amounts that are included, or that would, but for paragraph 81(1)(a) or subsection 81(4), be included, because of section 6 or 7 or paragraph 56(1)(n), (o) or (r), in computing the taxpayer's income,

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 25, will amend para. (b) of the definition "earned income" in subsec. 63(3) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 63(3) of the Act contains the definition "earned income" for the purpose of the child care expense deduction. In any year, an individual is allowed to deduct child care expenses of up to two thirds of the individual's earned income for that year. The amendment to the definition "earned income" is strictly consequential on the replacement of the volunteers' deduction under paragraph 8(1)(a) with an equivalent exemption under subsection 81(4). The amendment ensures that an individual is entitled to the same child care expense deduction as would have been available if the volunteer's exempt income had been required to be included in income. For information on the exemption, see the commentary on new subsection 81(4).

(c) all the taxpayer's incomes or the amounts that would, but for paragraph 81(1)(a), be the taxpayer's incomes from all businesses carried on either alone or as a partner actively engaged in the business, and

(d) all amounts received by the taxpayer as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

Related Provisions: 122.6"earned income" — definition in 63(3) applies to Child Tax Benefit.

History: Para. (b) of the definition "earned income" in subsec. 63(3) amended by 1998, c. 19, subsec. 103(2), applicable after 1997. The para. formerly read:

(b) all amounts that are included, or that would, but for paragraph 81(1)(a), be included, because of section 6 or 7 or paragraph 56(1)(m), (n), (o) or (r), in computing the taxpayer's income,

Para. (b) of the definition "earned income" in subsec. 63(3) amended by 1998, c. 19, subsec. 103(1), applicable after 1992 and before 1998. The para. formerly read:

(b) all amounts that are included or that would, but for paragraph 81(1)(a), be included because of section 6 or 7 or paragraph 56(1)(n) or (o), in computing the taxpayer's income,

Para. (d) of the definition "earned income" in subsec. 63(3) amended by 1998, c. 19, s. 10, applicable to amounts received after 1994. The para. formerly read:

(d) all amounts described in paragraph 56(8)(a) received by the taxpayer in the year;

Para. (b) of the definition "earned income" in subsec. 63(3) amended by 1996, c. 23, subsec. 173(2), in force January 1, 1998. Para. (b) formerly read:

(b) all amounts that are included or that would, but for paragraph 81(1)(a), be included because of section 6 or 7 or paragraph 56(1)(m), (n) or (o), in computing the taxpayer's income,

Paras. (a) to (d) of the definition "earned income" in subsec. 63(3) substituted for (a) to (c) by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 3(1), applicable to 1993 *et seq.* Paras. (a) to (c) formerly read:

(a) all salaries, wages and other remuneration, including gratuities, received by the taxpayer in respect of, in the course of, or by virtue of offices and employments, and all amounts included in computing the taxpayer's income by virtue of sections 6 and 7,

(b) amounts included in computing the taxpayer's income by virtue of paragraph 56(1)(m), (n) or (o), and

(c) the taxpayer's incomes from all businesses carried on either alone or as a partner actively engaged in the business;

Pre-RSC History: *The definition "earned income" was para. 63(3)(b).*

Interpretation Bulletins: IT-434R: Rental of real property by individual. See also list at end of s. 63.

"eligible child" of a taxpayer for a taxation year means

(a) a child of the taxpayer or of the taxpayer's spouse, or

(b) a child dependent on the taxpayer or the taxpayer's spouse for support and whose income for the year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

if, at any time during the year, the child

(c) is under 16 years of age, or

(d) is dependent on the taxpayer or on the taxpayer's spouse and has a mental or physical infirmity;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

History: Para. (b) of the definition "eligible child" in subsec. 63(3) amended by 2000, c. 19, s. 9, applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for the year" shall be read as a reference to "$7,044". Para. (b) formerly read:

(b) a child dependent on the taxpayer or the taxpayer's spouse for support and whose income for the year does not exceed the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

Para. (b) of the definition "eligible child" in subsec. 63(3) amended by 1999, c. 22, subsec. 18(10), applicable to 1998 *et seq.* The para. formerly read:

(b) a child dependent on the taxpayer or the taxpayer's spouse and whose income for the year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

Para. (c) of the definition "eligible child" in subsec. 63(3) amended by 1997, c. 25, subsec. 12(5), applicable to 1996 *et seq.* Para. (c) formerly read:

(c) is under 14 years of age, or

Para. (b) of the definition "eligible child" in subsec. 63(3) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 3(2), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) a child in respect of whom the taxpayer deducted an amount under section 118 for the year,

Pre-RSC History: *The definition "eligible child" was para. 63(3)(c).*

Para. 63(3)(c) substituted, by 1988, c. 55, subsecs. 39(7), applicable to 1988 *et seq.* Para. (c) formerly read:

(c) "eligible child" of a taxpayer for a taxation year means

(i) a child of the taxpayer or of his spouse, or

(ii) a child in respect of whom the taxpayer deducted an amount under section 109 for the year,

if, at any time during the year, the child was under 14 years of age or was over 13 years of age and dependent on the taxpayer by reason of mental or physical infirmity; and

Para. 63(3)(c), added by 1984, c. 1, subsec. 25(6), applicable to 1983 *et seq.*

"supporting person" of an eligible child of a taxpayer for a taxation year means a person, other than the taxpayer, who is

(a) a parent of the child,

(b) the taxpayer's spouse, or

(c) an individual who deducted an amount under section 118 for the year in respect of the child,

if the parent, spouse or individual, as the case may be, resided with the taxpayer at any time during the year and at any time within 60 days after the end of the year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

History: The opening words of the definition "supporting person" in subsec. 63(3) amended by 1997, c. 25, subsec. 12(6), applicable to 1983 *et seq.* The opening words formerly read:

"supporting person" of an eligible child of a taxpayer for a taxation year means

Pre-RSC History: *The definition "supporting person" was para. 63(3)(d).*

Subpara. 63(3)(d)(iii) amended to substitute "section 118" for "section 109", by 1988, c. 55, subsec. 39(8), applicable to 1988 *et seq.*

Para. 63(3)(d) added by 1984, c. 1, subsec. 25(6), applicable to 1983 *et seq.*

(4) Commuter's child care expense — Where in a taxation year a person resides in Canada near the boundary between Canada and the United States and while so resident incurs expenses for child care services that would be child care expenses if

(a) the definition "child care expense" in subsection (3) were read without reference to the words "in Canada", and

(b) the reference in paragraph (b) of the definition "child care expense" in subsection (3) to "resident of Canada" were read as "person",

those expenses (other than expenses paid for a child's attendance at a boarding school or camp outside Canada) shall be deemed to be child care expenses for the purpose of this section if the child care services are provided at a place that is closer to the person's principal place of residence by a reasonably accessible route, having regard to the circumstances, than any place in Canada where such child care services are available and, in respect of those expenses, subsection (1) shall be read without reference to the words "and contains, where the payee is an individual, that individual's Social Insurance Number".

History: Subsec. 63(4) added by 1994, c. 21, s. 27, applicable to 1992 *et seq.*

Pre-RSC History [former subsec. 63(4)]: Subsec. 63(4) repealed by 1984, c. 1, subsec. 25(7), applicable to 1983 *et seq.* Subsec. 63(4) formerly read:

(4) Custody — For the purposes of this section, it shall be assumed that a child of a woman and a man who were living together without being married to each other was ordinarily in the custody of the woman and not in the custody of the man.

Selected Cases [s. 63]: *Senger-Hammond v. Canada*, [1997] 1 C.T.C. 2728 (TCC) (Purpose of legislation is to permit deduction of child care expenses, not collection of tax from baby-sitters).

Definitions [s. 63]: "amount", "business" — 248(1); "Canada" — 64.1, 255; "child" — 252(1); "child care expense" — 63(3); "common-law partner", "common-law partnership" — 248(1); "designated educational institution" — 118.6(1); "earned income", "eligible child" — 63(3); "employment" — 248(1); "father" — 252(2); "individual" — 248(1); "marriage" — 252(4)(b); "medical doctor" — 118.4(2); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mother" — 252(2); "office" — 248(1); "parent" — 252(2); "person", "prescribed" — 248(1); "spouse" — 252(4)(a); "supporting person" — 63(3); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 63]: IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-495R2: Child care expenses; IT-518R: Food, beverages and entertainment expenses.

63.1 [See s. 64.1]

64. Attendant care expenses — If a taxpayer in respect of whom an amount may be deducted because of section 118.3 for a taxation year files with the taxpayer's return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) for the year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount that was

(i) paid in the year by the taxpayer to a person who, at the time of the payment, is neither the taxpayer's spouse nor under 18 years of age as or on account of attendant care provided in Canada to the taxpayer to enable the taxpayer to

(A) perform the duties of an office or employment,

(B) carry on a business either alone or as a partner actively engaged in the business, or

(C) [Repealed]

(D) carry on research or any similar work in respect of which the taxpayer received a grant,

the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" and "spouses" with "spouse or common-law partner" and "spouses and common-law partners" respectively, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) not included in computing a deduction under section 118.2 for any taxation year, and

B is the total of all amounts each of which is the amount of a reimbursement or any other form of assistance (other than prescribed assistance or an amount that is included in computing a taxpayer's income and that is not deductible in computing the taxpayer's taxable income) that any taxpayer is or was entitled to receive in respect of an amount included in computing the value of A, and

(b) ⅔ of the total of all amounts each of which is

(i) an amount included under any of sections 5, 6 and 7 in computing the taxpayer's income for the year from an office or employment,

(ii) an amount included by reason of paragraph 56(1)(n) or (o) in computing a taxpayer's income for the year, or

(iii) the taxpayer's income for the year from a business carried on either alone or as a partner actively engaged in the business.

(c) [Repealed]

Proposed Amendment — Students' attendant care expenses

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Attendant Care Expenses*

(18) That, for the 2000 and subsequent taxation years,

(a) the attendant care expense deduction allowed in computing an individual's income be extended to an individual who incurs such expenses to attend a designated educational institution or a secondary school at which the individual is enrolled in an educational program, and

(b) the maximum amount of the deduction allowed for the year to such an individual for all eligible attendant care expenses be 2/3 of the total of

(i) the individual's earned income for the year, and

(ii) the least of

(A) the amount by which the individual's income otherwise determined for the year exceeds the individual's earned income for the year,

(B) $15,000, and

(C) $375 multiplied by the number of weeks in the year during which the individual attends the institution or school.

Federal budget, supplementary information, February 28, 2000: *The Deduction for Attendant Care and Students*

The current attendant care provisions allow a deduction in respect of a person with a severe disability for the cost of an attendant required in order for the person to be employed, carry on business or carry on funded research. The budget proposes expanding this deduction to include the cost of an attendant required in order to attend school. The deduction will be subject to a maximum of 2/3 of earned income plus, where the taxpayer attends a designated educational institution or a secondary school, 2/3 of the lesser of (a) the taxpayer's income from other sources (up to a maximum of $15,000) and (b) $375 times the number of weeks of attendance at the institution or school.

Related Provisions: 4(2) — Deductions under s. 64 not applicable to any particular source; 64.1 — Individuals absent from Canada; 118.2(2)(b), (b.1), (c) — Medical expense — attendant care; 252(4)(a) — Extended meaning of "spouse"; 257 — Formula cannot calculate to less than zero.

History: The opening words of s. 64 amended and para. (c) repealed by 1998, c. 19, s. 11, applicable to 1997 *et seq.* The opening words and para. (c) formerly read:

64. Where a taxpayer in respect of whom an amount may be deducted by reason of section 118.3 for a taxation year files with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income for the year an amount that is equal to the least of

. . . . .

(c) $5,000.

Cl. 64(a)A(i)(C) repealed by 1996, c. 23, subsec. 174(1), in force January 1, 1998. Cl. (C) formerly read:

(C) undertake an occupational training course in respect of which the taxpayer received a training allowance under the *National Training Act*, or

Subpara. 64(b)(ii) amended by 1996, c. 23, subsec. 174(2), in force January 1, 1998. Subpara. (ii) formerly read:

(ii) an amount included by reason of paragraph 56(1)(m), (n) or (o) in computing the taxpayer's income for the year, or

Para. 64(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 37(1), applicable to 1989 *et seq.*, except that, in its application to the 1989 and 1990 taxation years, that portion of subpara. (i) in the description of A preceding cl. (A) thereof shall be read as follows:

(i) paid in the year by the taxpayer to a person (other than a person related to the taxpayer or a person under 18 years of age) as or on account of attendant care provided in Canada to the taxpayer to enable the taxpayer to

Para. 64(a) formerly read:

(a) the total of all amounts each of which is an amount that was

(i) paid in the year by the taxpayer to a person (other than a person related to the taxpayer or a person under 18 years of age) as or on account of attendant care provided in Canada to the taxpayer to enable the taxpayer to

(A) perform the duties of an office or employment,

(B) carry on a business either alone or as a partner actively engaged in the business,

(C) undertake an occupational training course in respect of which the taxpayer received a training allowance under the *National Training Act*, or

(D) carry on research or any similar work in respect of which the taxpayer received a grant,

the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, and

(ii) not included in computing a deduction under section 118.2 for the year or any subsequent taxation year,

Pre-RSC History: S. 64 added by 1990, c. 39, s. 14, applicable to 1989 *et seq.*

Definitions [s. 64]: "amount", "business" — 248(1); "Canada" — 64.1, 255; "common-law partner", "employment", "individual", "Minister", "office", "person", "prescribed" — 248(1); "spouse" — 252(4)(a); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Regulations: No assistance prescribed to date for 64(a)B.

Interpretation Bulletins: IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

Forms: T929: Attendant care expenses; RC4064: Information concerning people with disabilities [guide].

Pre-RSC History [Former s. 64]: Former s. 64 repealed by 1980-81-82-83, c. 140, s. 32, applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms in existence on November 12, 1981 of an offer or agreement in writing made or entered into on or before that date. S. 64 formerly read:

64. (1) Reserve in respect of consideration for disposition of resource property not receivable until subsequent year — In computing a taxpayer's income for a taxation year (in this subsection referred to as the "current year"), where

(a) by virtue of subsection 59(1) or (3), an amount has been included in computing the taxpayer's income for the current year or a previous year, or

(b) by virtue of subsection 83A(5ba) or (5c) of this Act as it read in its application to a taxation year before the 1972 taxation year, an amount has been included in computing the taxpayer's income for that previous year,

in respect of the disposition of any property and that amount or a part thereof is not due until a day that is after the end of the current year, there may be deducted as a reserve in respect of that amount the part thereof that is not due until a day that is after the end of the current year (not exceeding, where the property was disposed of in a taxation year preceding the current year, any amount deducted under this subsection in respect of the disposition of the property in computing the taxpayer's income for the taxation year immediately preceding the current year), and for greater certainty, no deduction may be made in respect of that amount by virtue of paragraph 20(1)(n).

(1.1) Idem — Where, by virtue of paragraph 59(3.2)(c), an amount has been included in computing a taxpayer's income for a taxation year (in this subsection referred to as the "initial year") and an amount has by virtue of the disposition of a property to which subsection 59(1.1) or (3.1) applies been included, by virtue of clause 66.2(5)(b)(v)(A), in computing the cumulative Canadian development expense of the taxpayer at any time in the initial year and all or a portion of the amount so included in computing the taxpayer's cumulative Canadian development expense is not due until after the end of a taxation year, there may be deducted as a reserve in computing the income of the taxpayer for that taxation year in respect of the portion of the amount that is not due until after the end of that taxation year,

(a) where the taxation year is the initial year, the lesser of

(i) the amount included in computing the taxpayer's income for the taxation year by virtue of paragraph 59(3.2)(c), and

(ii) the part of the portion of the amount in respect of a disposition of the property that is not due until a day that is after the end of the taxation year, or

(b) in any other case, the lesser of

(i) the amount deducted under this paragraph or paragraph (a) in respect of the property in computing the taxpayer's income for the immediately preceding taxation year, and

(ii) the part of the portion of the amount in respect of the property that is not due until a day that is after the end of the taxation year

and for greater certainty, no deduction may be made in respect of any amount or portion of any amount referred to in paragraph (a) or (b) by virtue of paragraph 20(1)(n).

(1.2) Idem — Where, by virtue of paragraph 59(3.2)(c), an amount has been included in computing a taxpayer's income for a taxation year (in this subsection referred to as the "initial year") and an amount in respect of the disposition of a property to which subsection 59(1.2) applies has been included, by virtue of clause 66.4(5)(b)(v)(A), in computing the cumulative Canadian oil and gas property expense of the taxpayer at any time in the initial year and all or a portion of the amount so included in computing the taxpayer's cumulative Canadian oil and gas property expense is not due until after the end of a taxation year, there may be deducted as a reserve in computing the income of the taxpayer for that taxation year in respect of the portion of the amount that is not due until after the end of that taxation year,

(a) where the taxation year is the initial year, the least of

(i) the amount, if any, by which the amount included in computing the taxpayer's income for the taxation year by virtue of paragraph 59(3.2)(c) exceeds the amount deducted under paragraph (1.1)(a) in computing his income for the year,

(ii) the amount determined under subsection 66.4(1) in respect of the taxpayer for the year, and

(iii) the part of the portion of the amount in respect of a disposition of the property that is not due until a day that is after the end of the year, or

(b) in any other case, the lesser of

(i) the amount deducted under this subsection in respect of the property in computing the taxpayer's income for the immediately preceding taxation year, and

(ii) the part of the portion of the amount in respect of the property that is not due until a day that is after the end of the taxation year,

and for greater certainty, paragraph 20(1)(n) does not apply with respect to any amount deductible under this subsection.

(2) Application — Subsections (1), (1.1) and (1.2) do not apply to allow a deduction in computing the income of a taxpayer for a taxation year if the taxpayer, at the end of the year or at any time in the immediately following year,

(a) was exempt from tax under any provision of this Part; or

(b) was not resident in Canada and did not carry on business in Canada.

All that portion of subsec. 64(1.1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 32(1), applicable to 1977 *et seq.* That portion formerly read:

(1.1) Where by virtue of paragraph 59(3.2)(c), an amount has been included in computing a taxpayer's income for a taxation year (in this section referred to as the "initial year") and an amount has by virtue of the disposition of a property to which subsection 59(1.1) or (3.1) applies been included, by virtue of subparagraph 66.2(5)(b)(v), in computing the cumulative Canadian development expense of the taxpayer at any time in the initial year and all or a portion of the amount so included in computing the taxpayer's cumulative Canadian development expense is not due until after the end of a taxation year, there may be deducted as a reserve in computing the income of the taxpayer for that taxation year in respect of the portion of the amount that is not due until after the end of that taxation year,

Subsec. 64(1.2) added by 1980-81-82-83, c. 48, subsec. 32(2), applicable to taxation years ending after December 11, 1979.

All that portion of subsec. 64(2) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 32(3), applicable to taxation years ending after December 11, 1979, to add reference to subsec. (1.2).

Subsec. 64(2) substituted by 1977-78, c. 1, s. 28, applicable to 1977 *et seq.* Subsec. 64(2) formerly read:

> (2) Subsections (1) and (1.1) do not apply to allow a deduction in computing the income of a taxpayer for a taxation year if the taxpayer, at any time in the year or in the immediately following year,
>
> (a) ceases to be a resident of Canada;
>
> (b) becomes exempt from tax under any provision of this Part; or
>
> (c) if a non-resident, ceases to carry on business in Canada.

All that portion of subsec. 64(1) following para. (b) substituted by 1974-75-76, c. 26, subsec. 34(1), applicable to taxation years ending after November 18, 1974, to substitute "due" for "receivable".

Subsec. 64(1.1) added by 1974-75-76, c. 26, subsec. 34(1), applicable to taxation years ending after May 6, 1974.

All that portion of subsec. 64(2) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 34(2), applicable to taxation years ending after November 18, 1974, to add reference to subsec. (1.1).

64.1 Individuals absent from Canada — In applying sections 63 and 64 in respect of a taxpayer who is, throughout all or part of a taxation year, absent from but resident in Canada, the following rules apply for the year or that part of the year, as the case may be:

(a) the definition "child care expense" in subsection 63(3), and section 64, shall be read without reference to the words "in Canada";

(b) subsection 63(1) and section 64 shall be read without reference to the words "and contains, where the payee is an individual, that individual's Social Insurance Number", if the payment referred to in that subsection or section, as the case may be, is made to a person who is not resident in Canada; and

(c) paragraph (b) of the definition "child care expense" in subsection 63(3) shall be read as if the word "person" were substituted for the words "resident of Canada" where they appear therein.

History: The portion of s. 64.1 before para. (b) amended by 1999, c. 22, s. 19, applicable after 1997. That portion formerly read:

> 64.1 In applying sections 62, 63 and 64 in respect of a taxpayer who is, throughout all or part of a taxation year, absent from but resident in Canada, the following rules apply for the year or that part of the year, as the case may be:
>
> (a) subsection 62(1), the definition "child care expense" in subsection 63(3) and section 64 shall be read without reference to the words "in Canada";

Pre-RSC History: S. 64.1 substituted for s. 63.1 by 1990, c. 39, s. 14, applicable to 1989 *et seq.* S. 63.1 formerly read:

> 63.1 Application to deemed residents — Where a taxpayer is deemed by section 250 to be resident in Canada throughout all or part of a taxation year, in applying sections 62 and 63 in respect of him for the period when he is so deemed to be resident in Canada, the following rules apply:
>
> (a) [Repealed]
>
> (b) subsection 62(1) shall be read without reference to the words "in Canada";
>
> (c) subsection 63(1) shall be read without reference to the words "and contains, where the payee is an individual, that individual's Social Insurance Number", if the payment referred to in that subsection is made to a person who is neither resident in Canada nor deemed by section 250 to be resident in Canada;
>
> (d) paragraph 63(3)(a) shall be read without reference to the words "in Canada"; and
>
> (e) subparagraph 63(3)(a)(ii) shall be read as if the word "person" were substituted for the words "resident of Canada" where they appear therein.

That portion of s. 63.1 preceding para. (b) substituted by 1988, c. 55, s. 40, applicable to 1988 *et seq.* That portion formerly read:

> 63.1. Application to deemed residents — Where a taxpayer is deemed by section 250 to be resident in Canada throughout a taxation year or during a part of a taxation year, in applying sections 60, 62 and 63 in respect of him during the period when he is so deemed to be resident in Canada, the following rules apply:
>
> (a) paragraph 60(f) shall be read without reference to the words "in Canada";

Para. 63.1(c) substituted, para. 63.1(e) amended to substitute "63(3)(a)(ii)" for "63(3)(a)(iii)" by 1984, c. 1, s. 26, applicable to 1983 *et seq.* Para. 63.1(c) formerly read:

> (c) paragraph 63(1)(c) shall be read without reference to the words "each of which contains the Social Insurance Number of any individual payee who issued the receipt" if the payment referred to in that paragraph is made to a person who is neither resident in Canada nor deemed by section 250 to be resident in Canada;

S. 63.1 added by 1976-77, c. 4, s. 22, applicable to 1976 *et seq.*

Definitions [s. 64.1]: "Canada" — 255; "person" — 248(1); "resident" — 250; "taxation year" — 249; "taxpayer" — 248(1).

Remission Orders: *Child Care Expense and Moving Expense Remission Order*, P.C. 1991-257 (same relief as section 64.1 for 1984-88, can be applied for retroactively).

Interpretation Bulletins: IT-178R3: Moving expenses; IT-495R2: Child care expenses; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

65. (1) Allowance for oil or gas well, mine or timber limit — There may be deducted in computing a taxpayer's income for a taxation year such amount as an allowance, if any, in respect of

(a) a natural accumulation of petroleum or natural gas, oil or gas well, mineral resource or timber limit,

(b) the processing of ore (other than iron ore or tar sands) from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent,

(c) the processing of iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or

(d) the processing of tar sands from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent

as is allowed to the taxpayer by regulation.

Related Provisions: 20(1)(v.1) — Resource allowance; 53(2) — Amounts to be deducted; 65(3) — Allocation of allowance for coal mine; 66(1) — Exploration and development expenses of principal-business corporations; 66.7 — Successor rules; 96(1)(d) — No deduction at partnership level; 104(17) — Trusts — depletion allowance; 127.52(1)(e) — Limitation on deduction for minimum tax purposes; 133(1)(b) — No deduction allowed to non-resident-owned investment corporation; 209 — Tax on carved-out income.

Pre-RSC History: Para. 65(1)(a) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "a natural accumulation of petroleum or natural gas".

Para. 65(1)(b) substituted, and (c) and (d) added, by 1985, c. 45, subsec. 27(1), applicable to 1985 *et seq.* Para. 65(1)(b) formerly read:

> (b) the processing, to the prime metal stage or its equivalent, of ore from a mineral resource,

Subsec. 65(1) substituted by 1973-74, c. 30, s. 6, applicable to 1973 *et seq.* Subsec. 65(1) formerly read:

> 65. (1) There may be deducted in computing a taxpayer's income for a taxation year such amount as an allowance in respect of an oil or gas well, mineral resource or timber limit, if any, as is allowed to the taxpayer by regulation.

Selected Cases [subsec. 65(1)]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales con-

tracts for silver were "resource profits"); *Canterra Energy Ltd. v. The Queen*, [1987] 1 C.T.C. 89 (FCA) (Frontier exploration allowance can result in figure less than zero; mathematical formula requires technical interpretation of "minus"); *Cominco Ltd. v. The Queen*, [1984] C.T.C. 548 (FCTD); aff'd (Dec. 2, 1985), [unreported] (FCA); leave to appeal to SCC refused (1986), 66 N.R. 77 (note), (sub nom. *Cominco Ltd. v. MNR*) (Allowance disallowed when insurance proceeds for loss of income not from production or processing of minerals); *Texaco Exploration Co. v. The Queen*, [1975] C.T.C. 404 (FCTD) (Value of abandoned properties deducted in calculating allowance for net increases in capital investment in property); *MNR v. Consolidated Mogul Mines Ltd.*, [1968] C.T.C. 429 (SCC) (Taxpayer engaged in business of mining or exploring for minerals despite principal business of development and management of other mining companies).

Regulations: 1200.

I.T. Application Rules: 29(1)–(4), (11)–(14), (16), (24).

(2) Regulations — For greater certainty it is hereby declared that, in the case of a regulation made under subsection (1) allowing to a taxpayer an amount in respect of a natural accumulation of petroleum or natural gas, an oil or gas well or a mineral resource or in respect of the processing of ore,

(a) there may be allowed to the taxpayer by that regulation an amount in respect of any or all

(i) natural accumulations of petroleum or natural gas, oil or gas wells or mineral resources in which the taxpayer has any interest, or

(ii) processing operations described in any of paragraphs (1)(b), (c) or (d) that are carried on by the taxpayer; and

(b) notwithstanding any other provision contained in this Act, the Governor in Council may prescribe the formula by which the amount that may be allowed to the taxpayer by that regulation shall be determined.

Related Provisions: 20(1)(v) — Deduction for mining taxes; 59(6) — Definitions in regulations apply for purposes of s. 59; 66(1) — Exploration and development expenses of principal-business corporations; 66.7 — Successor rules; 221 — Rules applicable to regulations generally.

Pre-RSC History: All that portion of subsec. 65(2) preceding para. (a) and subpara. 65(2)(a)(i) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add, respectively, "a natural accumulation of petroleum or natural gas" and "natural accumulations of petroleum or natural gas".

Subpara. 65(2)(a)(ii) amended by 1985, c. 45, subsec. 27(2), to substitute "any of paragraphs (1)(b), (c) or (d)" for "paragraph (1)(b)", applicable to 1985 *et seq.*

Subsec. 65(2) substituted by 1973-74, c. 30, s. 6, applicable to 1973 *et seq.* Subsec. 65(2) formerly read:

(2) For greater certainty it is hereby declared that, in the case of a regulation made under subsection (1) allowing to a taxpayer an amount in respect of an oil or gas well or a mineral resource,

(a) there may be allowed to the taxpayer by such regulation an amount in respect of any or all oil or gas wells or mineral resources in which the taxpayer has any interest, and

(b) notwithstanding any other provision contained in this Act, the Governor in Council may prescribe the formula by which the amount that may be allowed to the taxpayer by such regulation shall be determined.

Regulations: Part XII.

I.T. Application Rules: 29(1)–(4), (11)–(14), (16), (24).

(3) Lessee's share of allowance — Where a deduction is allowed under subsection (1) in respect of a coal mine operated by a lessee, the lessor and lessee may agree as to what portion of the allowance each may deduct and, in the event that they cannot agree, the Minister may fix the portions.

I.T. Application Rules: 29(1)–(4), (11)–(14), (16), (24).

Forms [subsec. 65(3)]: T3015: Allocation agreement to determine a taxpayer's threshold amount in respect of an oil or gas well.

Definitions [s. 65]: "amount", "mineral resource", "Minister", "oil or gas well", "regulation", "tar sands" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

66. (1) Exploration and development expenses of principal-business corporations — A principal-business corporation may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of its Canadian exploration and development expenses as were incurred by it before the end of the taxation year, to the extent that they were not deductible in computing income for a previous taxation year, and

(b) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this subsection, section 65 or subsection 66.1(2), minus the deductions allowed for the year by sections 112 and 113.

Related Provisions: 66(10) — Joint exploration corporation; 87(6), (7) — Obligations of predecessor corporation. See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Para. 66(1)(b) substituted by 1977-78, c. 1, subsec. 29(1), applicable to taxation years ending after May 6, 1974.

Para. 66(1)(b) substituted by 1974-75-76, c. 26, subsec. 35(1), applicable in respect of taxation years ending after May 6, 1974, to add reference to s. 66.1.

Para. 66(1)(b) substituted by 1973-74, c. 14, subsec. 18(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 66(1)]: *Phénix v. R.*, [1998] 1 C.T.C. 2379 (TCC) (Capital items may form part of CEE); *The Queen v. Alberta and Southern Gas Co. Ltd.*, [1978] C.T.C. 780 (SCC) (Tax considerations of transaction in acquiring and ending rights not artificially reducing income; deduction permitted).

I.T. Application Rules: 29.

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

(2) Expenses of special product corporations — A corporation (other than a principal-business corporation the principal business of which is described in paragraph (a) or (b) of the definition "principal-business corporation" in subsection (15)), whose principal business is the production or marketing of sodium chloride or potash or whose business includes manufacturing products the manufacturing of which involves processing sodium chloride or potash, may deduct, in computing its income for a taxation year, the drilling and exploration expenses incurred by it in the year and before May 7, 1974 on or in respect of exploring or drilling for halite or sylvite.

Related Provisions: See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(2) substituted by 1974-75-76, c. 26, subsec. 35(1), applicable in respect of taxation years ending after May 6, 1974, to add "and before May 7, 1974".

I.T. Application Rules: 29.

(3) Expenses of other taxpayers — A taxpayer other than a principal-business corporation may deduct, in computing the taxpayer's income for a taxation year, the total of the taxpayer's Canadian exploration and development expenses to the extent that they were not deducted in computing the taxpayer's income for a preceding taxation year.

Related Provisions: 66(5) — Dealers; 66(10) — Joint exploration corporation. See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(3) substituted by 1985, c. 45, subsec. 28(1), applicable to 1985 *et seq.* Subsec. 66(3) formerly read:

(3) Expenses of other taxpayers — A taxpayer who is an individual or a corporation other than a principal-business corporation may deduct, in computing his income for a taxation year, the lesser of

(a) the aggregate of such of his Canadian exploration and development expenses as were incurred by him before the end of the taxation year to the extent they were not deductible in computing his income for a previous taxation year, and

(b) of that aggregate, the greater of

(i) such amount as the taxpayer may claim, not exceeding 20% of the aggregate determined under paragraph (a), and

(ii) the amount, if any, by which the aggregate of

(A) such part of his income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells in Canada or to the production of minerals from mines in Canada,

(B) his income for the taxation year from royalties in respect of an oil or gas well in Canada or a mine in Canada,

(C) the amount, if any, included in computing his income for the year by virtue of paragraph 59(3.2)(b) or (c), and

(D) the aggregate of amounts included in computing his income for the year by virtue of any of paragraphs 59(2)(a), (c) and (d) and subsection 59(2.1)

exceeds

(E) the aggregate of amounts deducted in computing his income for the year under subsection 64(1) in respect of property described in paragraph 59(1.2)(b), or under subsection 64(1.1) or (1.2),

if no deduction were allowed under this subsection, subsection 66.1(3) or section 65.

Cl. 66(3)(b)(ii)(E) substituted by 1980-81-82-83, c. 48, subsec. 33(1), applicable to taxation years ending after December 11, 1979. Cl. 66(3)(b)(ii)(E) formerly read:

(E) the aggregate of amounts deducted in computing his income for the year, under paragraph 64(1)(a) in respect of property described in subsection 59(1.1), under paragraph 64(1)(b) or under subsection 64(1.1),

That portion of para. 66(3)(b) preceding subpara. (i) and that portion following clause (ii)(E) substituted by 1977-78, c. 1, subsecs. 29(2), (3), applicable to taxation years ending after May 6, 1974. Those portions formerly read:

(b) of that aggregate, the amount, if any, by which the greater of

. . . . .

if no deductions were allowed under section 65,

exceeds

(iii) the amount of any deduction allowed by the *Income Tax Application Rules, 1971* in respect of this subparagraph in computing his income for the year.

All that portion of subpara. 66(3)(b)(ii) following clause (C) substituted by 1976-77, c. 4, subsec. 23(1), applicable to taxation years ending after May 6, 1974. That portion formerly read:

(D) the amount included in computing his income for the year by virtue of subsections 59(2) and (2.1)

exceeds

(E) the amount deducted under section 64 in computing his income for the year,

if no deductions were allowed under section 65,

All that portion of subpara. 66(3)(b)(ii) preceding cl. (A) and cl. 66(3)(b)(ii)(C) substituted, (D), (E) added by 1974-75-76, c. 26, subsecs. 35(1.1), (2), applicable in respect of taxation years ending after May 6, 1974. That portion and cl. 66(3)(b)(ii)(C) formerly read:

(ii) the aggregate of

. . . . .

(C) the aggregate of amounts each of which is an amount, in respect of a Canadian resource property or a property referred to in paragraph 59(1)(c) or 59(3)(a) that has been disposed of by him, equal to the amount, if any, by which

(I) the amount included in computing his income for the year by virtue of section 59 in respect of the disposition of the property,

exceeds

(II) the amount deducted under section 64 in respect of the property in computing his income for the year,

Cl. 66(3)(b)(ii)(A) substituted by 1973-74, c. 14, subsec. 18(2), applicable to 1972 *et seq.*

I.T. Application Rules: 29.

(4) Foreign exploration and development expenses — A taxpayer who is resident throughout a taxation year in Canada may deduct, in computing the taxpayer's income for that taxation year, the lesser of

(a) the amount, if any, by which

(i) the total of the foreign exploration and development expenses incurred by the taxpayer before the end of the year

Proposed Amendment — 66(4)(a)(i)

(i) the total of the foreign exploration and development expenses incurred by the taxpayer before the end of the year and at a time at which the taxpayer was resident in Canada

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 26(1), will amend subpara. 66(4)(a)(i) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 66 of the Act provides rules with respect to Canadian and foreign exploration and development expenses.

Subsection 66(4) of the Act sets out the deduction that may be claimed for foreign exploration and development expenses (FEDE) incurred by a taxpayer resident in Canada. A taxpayer's minimum deduction for a taxation year under this subsection is 10% of the taxpayer's undeducted FEDE balance at the end of the year. An additional portion of a taxpayer's undeducted FEDE balance may be deducted by a taxpayer for a taxation year, essentially to the extent of the taxpayer's foreign resource income in excess of that minimum amount.

Subparagraph 66(4)(a)(i) of the Act is amended so that a taxpayer's FEDE balance takes into account only expenses incurred while the taxpayer was resident in Canada. As a result, a taxpayer who becomes resident in Canada cannot deduct FEDE that was incurred before becoming resident in Canada. This amendment applies to the 1999 and subsequent taxation years.

The amendment to subparagraph 66(4)(a)(i) does not prevent the creation of FEDE as a consequence of a taxpayer becoming resident [in] Canada. In these circumstances, there is a deemed acquisition of the taxpayer's foreign resource properties at fair market value pursuant to paragraph 128.1(1)(c) of the Act. The deemed cost of the foreign resource properties qualifies as FEDE under paragraph (c) of the FEDE definition in subsection 66(15) of the Act.

exceeds the total of

(ii) such of the expenses described in subparagraph (i) as were deductible in computing the taxpayer's income for a preceding taxation year, and

(iii) all amounts by which the amount described in this paragraph in respect of the taxpayer is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) of that total, the greater of,

(i) such amount as the taxpayer may claim not exceeding 10% of the total determined under paragraph (a), and

Proposed Amendment — 66(4)(b)

(b) of that total, the greatest of,

(i) such amount as the taxpayer claims not exceeding 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year,

(i.1) if the taxpayer ceased to be resident in Canada immediately after the end of the year, such amount as the taxpayer claims not exceeding the amount determined under paragraph (a) in respect of the taxpayer for the year, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 26(2), will amend the portion of para. 66(4)(b) before subpara. (ii) to read as above, applicable to 1995 *et seq.*

Technical Notes: New subparagraph 66(4)(b)(i.1) of the Act is introduced to allow the full amount of a taxpayer's undeducted FEDE balance to be deducted in the event that the taxpayer ceases to be resident in Canada. This measure is consistent with existing income tax rules which allow emigrating taxpayers to claim a terminal loss on depreciable property as a consequence of deemed dispositions under paragraph 128.1(4)(b) of the Act.

The amendment, which applies to the 1995 and subsequent taxation years, will allow the FEDE deduction to be claimed for the last taxation year throughout which a taxpayer is resident in Canada. (Under paragraph 128.1(4)(a) of the Act, a new taxation year for a corporate taxpayer starts at the time that the taxpayer ceases to be resident in Canada.)

Letter from Department of Finance, September 20, 1995:

Dear [xxx]

I am writing further to your recent meeting with Brian Ernewein, Simon Thompson and Lawrence Purdy of this Division regarding the effect of the recently-signed Protocol to the Canada-U.S. tax Convention (the Treaty) on a corporation continued to the United States. I understand that your meeting followed some months of intermittent discussion, and I appreciate your patience in working through the issue with us.

In essence, the case you describe is as follows. A corporation incorporated in Canada continued into the U.S. some years ago. Because it had been created in Canada, the corporation remained resident here under the Treaty, and thus under the *Income Tax Act* as well, even after the enactment of subsection 250(5) of the Act (which effectively denies resident status under the Act to a corporation that is a non-resident under a treaty). The corporation is also, I gather, a Canadian corporation as defined in subsection 89(1).

The Protocol includes a rule that would treat a corporation that continues into either country as having been incorporated in that country. In this case, the rule will mean that the corporation will be treated as having been incorporated in the U.S., and not in Canada. This will make it resident in the U.S. under the Treaty and, by virtue of subsection 250(5) of the Act, no longer resident in Canada.

The consequences of thus ceasing to be resident in Canada will be significant. You have expressed particular concern about the effect on the corporation's foreign exploration and development expenses (FEDE). To the extent that the corporation's FEDE is represented in its foreign resource properties, the deemed disposition of those properties at fair market value on leaving Canada will give rise to an income inclusion under subsection 59(1) of the Act, and may correspondingly increase the amount deductible under subsection 66(4) for the corporation's last year in Canada. Any FEDE in excess of the fair market value of those properties will, however, cease to be available: as a non-resident, the corporation will not be taxable in Canada on its foreign-source income, and will not be able to deduct any amount in respect of FEDE.

You have suggested that this result is inappropriate, since it limits the recognition for Canadian tax purposes of expenses incurred by the corporation to earn revenue that has been subject to Canadian tax. Just as an emigrating taxpayer's deemed disposition may give rise to a terminal loss on a depreciable property used to earn foreign-source income, you suggest, a loss should be recognized in respect of FEDE amounts that become unusable on emigration.

I agree that the corporation in the case you describe ought, as a matter of tax policy, to get some recognition on emigration for FEDE amounts in excess of the amount the corporation can deduct under subsection 66(4) for its last year in Canada. That recognition should probably take the form of a loss for that year from a foreign business or property. [This was done in 66(4)(b)(i.1) — ed.] As such, the loss would be available to offset income earned in that year, or could be applied in computing taxable income for any of the previous three years (assuming the corporation was resident in Canada throughout those years). The loss could not be carried forward for use against income earned while a non-resident, since paragraph 115(1)(d) of the Act allows a non-resident to deduct only Canadian-source losses.

Although further work will need to be done to determine its exact form, I expect that we will recommend including a provision along the lines I have described in a future package of draft technical amendments. I can, as you know, give no assurance that either the Minister or Parliament will endorse such a recommendation, but I have no reason to believe that it would present any special difficulty.

I trust these comments are of some assistance, and thank you for having brought this issue to our attention.

Yours sincerely,

Len Farber
Director
Tax Legislation Division

(ii) the total of

(A) such part of the taxpayer's income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from natural accumulations thereof outside Canada or from oil or gas wells outside Canada or to the production of minerals from mines outside Canada,

(B) the taxpayer's income for the taxation year from royalties in respect of a natural accumulation of petroleum or natural gas outside Canada, an oil or gas well outside Canada or a mine outside Canada, and

(C) the total of amounts each of which is an amount, in respect of a foreign resource property that has been disposed of by the taxpayer, equal to the amount, if any, by which

(I) the amount included in computing the taxpayer's income for the year by virtue of section 59 in respect of the disposition of the property,

exceeds

(II) the amount deducted under section 64[2] in respect of the property in computing the taxpayer's income for the year,

determined as if no deductions were allowed under this subsection, subsections (1) and (3), section 65 and subsections 66.1(2) and (3).

[2] i.e., s. 64 of R.S.C. 1952, c. 148, as amended.

Proposed Amendment — Foreign exploration and development expenses

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Foreign Exploration and Development Expenses*

(34) That an outlay made after February 27, 2000 by a person or partnership not be treated as a foreign exploration and development expense (FEDE) unless

(a) the outlay was made pursuant to an agreement in writing made by the person or partnership before February 28, 2000,

(b) the outlay was for the acquisition of foreign resource property by the person or partnership, or

(c) the outlay can reasonably be considered to have been incurred for the purpose of enhancing the value of foreign resource property owned or to be owned by the person or partnership.

(35) That, for outlays made in taxation years that begin after 2000, separate FEDE balances for a taxpayer be determined in respect of each country to which the taxpayer's FEDE relates.

(36) That, for FEDE incurred in a taxation year that begins after 2000, a taxpayer's FEDE deduction in respect of a country for the year be limited to the total of

(a) the greater of 10 per cent of the taxpayer's FEDE balance in respect of the country at the end of the year and the lesser of

(i) where the year is the taxpayer's last taxation year of residence in Canada, that FEDE balance and, in any other case, 30 per cent of that FEDE balance, and

(ii) the lesser of

(A) the amount, if any, by which the taxpayer's foreign resource income in respect of the country for the year (determined in accordance with subparagraph 66(4)(b)(ii) of the Act) exceeds the taxpayer's FEDE deduction for the year in respect of the country that relates to FEDE incurred in taxation years that begin before 2001, and

(B) the amount, if any, by which the taxpayer's total foreign resource income in respect of all countries for the year (determined in accordance with subparagraph 66(4)(b)(ii) of the Act) exceeds the taxpayer's total FEDE deduction for the year that relates to FEDE incurred in taxation years that begin before 2001, and

(b) the lesser of

(i) the amount, if any, by which that FEDE balance exceeds the amount determined under subparagraph (a), and

(ii) such portion of the taxpayer's specified foreign resource income as is designated by the taxpayer in respect of the country and no other country.

(37) That a taxpayer's specified foreign resource income for a taxation year be equal to the lesser of

(a) the amount, if any, by which the taxpayer's total foreign resource income for the year in respect of all countries (determined in accordance with subparagraph 66(4)(b)(ii) of the Act) exceeds the total of

(i) the maximum total FEDE deductions, in respect of all countries, that would be permitted in computing the taxpayer's income for the year in respect of FEDE incurred in taxation years that begin after 2000 if the taxpayer's specified foreign resource income for the year were nil, and

(ii) the amount deducted by the taxpayer for the year under subsection 66(4) of the Act in computing the taxpayer's income for the year in respect of FEDE incurred in taxation years that begin before 2001, and

(b) the amount, if any, by which

(i) 30 per cent of the taxpayer's total FEDE balances at the end of the year in respect of all countries in respect of expenses incurred in taxation years that begin after 2000, exceeds

(ii) the maximum total FEDE deductions, in respect of all countries, that would be permitted in computing the taxpayer's income for the year in respect of FEDE incurred in taxation years that begin after 2000 if the taxpayer's specified foreign resource income for the year were nil.

(38) That, where a taxpayer ceases after February 27, 2000 to reside in Canada,

(a) the taxpayer's FEDE deduction for the taxpayer's last year of residence in Canada in respect of expenses incurred in taxation years that began before 2001 be limited to the greater of the taxpayer's foreign resource income for that year and 10 per cent of the taxpayer's FEDE balance at the end of that year, and

(b) the taxpayer be permitted for each subsequent taxation year of residence outside Canada to deduct up to 10 per cent of the taxpayer's FEDE balance at the end of that subsequent year in computing the taxpayer's taxable income earned in Canada.

(39) That, for taxation years that begin after the earlier of December 31, 1999 and the date selected by the taxpayer for the application of the rule described in paragraph (32) [reproduced under 126(7)"business-income tax" — ed.], all FEDE deductions claimed by a taxpayer be allocated, wherever relevant for the purposes of the Act, on a country-by-country basis.

(40) That, for taxation years that begin after 2000, the successor rules in section 66.7 of the Act reflect the 30 per cent FEDE balance deduction limit.

(41) That section 79.1 of the Act not apply in respect of acquisitions after February 27, 2000 of foreign resource property from a person (other than a person resident in Canada) or a partnership (other than a partnership each member of which is resident in Canada).

Federal budget, supplementary information, February 28, 2000: *Foreign Exploration and Development Expenses*

A Canadian oil and gas or mining company that incurs foreign exploration and development expenses (FEDE) may claim a minimum 10 per cent of its FEDE balance against its income from any source. A greater claim is permitted if a taxpayer's foreign resource income exceeds the 10 per cent minimum.

Issues

The existing regime for FEDE raises a number of concerns.

First, there is no explicit requirement under the existing rules that FEDE be incurred by a taxpayer for the purpose of entitling the taxpayer to profits or gains in respect of any foreign resource property of the taxpayer. For example, some taxpayers have claimed FEDE even though a foreign affiliate of the taxpayer owns the foreign resource property to which the FEDE relates.

In addition, there are circumstances where FEDE expenses have been generated by virtue of a taxpayer resident in Canada acquiring resource property of little value from a debtor of the taxpayer in circumstances to which section 79.1 of the *Income Tax Act* applies. The general effect of section 79.1 is that a creditor acquires property seized from a debtor in default of a payment of a debt at a cost equal to the principal amount of the debt, but is not entitled to claim a capital loss or bad debt expense with regard to that debt. The application of section 79.1 in this context is a particular concern where the debtor is not resident in Canada. This is because the parallel rules in section 79, under which the debtor is generally deemed to have proceeds of disposition from the resource property equal to the principal amount of the debt, will not have any effect on the debtor's Canadian income tax.

Second, existing FEDE rules allow taxpayers to claim a FEDE deduction of up to the full amount of foreign resource income earned. In this respect, the FEDE rules are more generous than the rules permitting the deduction of Canadian development expenses and Canadian oil and gas property expenses. The FEDE rules also result in similar treatment for foreign exploration expenses as compared to Canadian exploration expenses, even

though the 100 per cent write-off is an accelerated incentive rate designed to encourage exploration activities in Canada.

Third, existing FEDE rules do not expressly apply on a country-by-country basis. Thus, it is difficult to source FEDE deductions to a particular country in cases where a taxpayer incurs FEDE in connection with more than one country outside Canada. This issue is of particular significance with regard to the calculation of a taxpayer's entitlement to foreign tax credits pursuant to the proposed new rules for production sharing agreements.

Also, the discretionary nature of the FEDE deduction may provide overly generous opportunities for maximizing foreign tax credit claims. This is because a FEDE deduction might be claimed in a taxation year for which little or no foreign business income taxes are paid, and not claimed in a taxation year for which large amounts of foreign business income taxes are paid. This action might be taken either to minimize the impact of the proposed 40 per cent limit with regard to production sharing agreements, or to minimize the effect of income-based restrictions in the existing foreign tax credit rules.

Proposals

The budget proposes to introduce amendments to address all of these concerns.

Proposed Restrictions on FEDE Definition

With regard to outlays made by a person or partnership after February 27, 2000 (other than any outlay made pursuant to an agreement in writing entered into before February 28, 2000), FEDE must

- relate to the acquisition of foreign resource property by the person or partnership, or
- be made for the purpose of enhancing the value of foreign resource property owned or to be owned by the person or partnership.

Consistent with this new measure, section 79.1 will not apply in connection with foreign resource property acquired after February 27, 2000, from a person (other than a person resident in Canada) or a partnership (other than a partnership each member of which is resident in Canada). These measures are aimed at ensuring that FEDE incurred by a taxpayer has the potential of directly generating income for the taxpayer that is subject to tax in Canada.

Proposed Restrictions on Claiming of Post-2000 FEDE

Post-2000 FEDE expenses will be allocated to separate pools on a country-by-country basis. Foreign resource income will be applied first to support global FEDE claims (i.e., FEDE claims generated under existing rules) and then, subject to a new limit equal to 30 per cent of the FEDE balance in respect of a country, to support FEDE deductions in respect of the country to which the income relates. However, to the extent that the country-by-country limitation would cause a taxpayer's overall maximum FEDE deductions for a taxation year to be less than 30 per cent of total FEDE balances, the taxpayer will be permitted to augment the portion of a FEDE balance for a taxation year that may be claimed. The augmentations to FEDE deductions for specific countries in these circumstances will be structured so that a taxpayer will be allowed in aggregate to claim FEDE deductions for a taxation year totalling not more than the lesser of

- 30 per cent of the total FEDE balances, and
- the taxpayer's total foreign resource income for the year.

It is proposed to provide taxpayers with maximum flexibility as to which FEDE balance a deduction is claimed against. This is consistent with the approach taken with regard to the undepreciated capital cost of depreciable property. However, it is only after determining the amount of deduction against an FEDE balance generated by pre-2001 expenses that it will be possible to determine deductions against FEDE balances generated by post-2000 expenses.

The new 30 per cent restriction for new FEDE balances necessitates consequential changes to the successor rules for foreign resource properties in section 66.7 of the *Income Tax Act*.

All of these measures apply to taxation years that begin after 2000.

Taxpayers Ceasing to Reside in Canada

Consistent with the proposed approach for the treatment of post-2000 FEDE, the budget proposes that the FEDE deduction that a taxpayer who ceases to reside in Canada may claim, be limited to the taxpayer's foreign resource income (including foreign resource income arising from the deemed disposition of foreign resource property on the taxpayer ceasing to reside in Canada). However, the taxpayer will be permitted to deduct annually up to 10 per cent of the taxpayer's FEDE balance while non-resident against taxable income earned in Canada while a non-resident.

This measure will apply to taxpayers who cease to reside in Canada after February 27, 2000.

Allocation of FEDE for Foreign Tax Credit and Other Purposes

An FEDE deduction claimed for a taxation year that begins after December 31, 1999 (or after such earlier date as the taxpayer has elected to have the new production sharing agreement rules apply), will be explicitly required to be allocated to a specific country where the FEDE deduction relates to a pre-2001 FEDE balance. This rule is intended to apply primarily for the purpose of computing a taxpayer's foreign tax credit.

A taxpayer will be permitted to make reasonable assumptions as to which country or countries a particular deduction from a pre-2001 FEDE balance relates, provided that those assumptions apply consistently from year to year. If a taxpayer fails to make reasonable assumptions in this regard, the Minister of National Revenue will make reasonable assumptions that will be binding on the taxpayer.

It will be assumed for the purpose of the foreign tax credit calculation that a taxpayer's FEDE deduction for a taxation year in respect of a country is generally the greater of

- the taxpayer's FEDE deduction for the year, and
- the maximum FEDE deduction for the year that the taxpayer could claim if the augmentation of FEDE deductions (as described above in *Proposed Restrictions on Claiming of Post-2000 FEDE)* were not taken into account.

Related Provisions: 66(5) — Dealers; 66(11.4) — Change of control; 66(13.1) — Short taxation year; 66.7(2)(a) — Successor of foreign exploration and development expenses; 80(8)(e) — Reduction of FEDE on debt forgiveness; 87(7) — Obligations of predecessor corporation; 104(5.2) — Rules for trusts; 110.6(1)"investment expense"(d) — effect of claim under 66(4) on capital gains exemption. See additional Related provisions and Definitions at end of s. 66.

History: The closing words to para. 66(4)(b) repealed and closing words to subpara. 66(4)(b)(ii) added by 1998, c. 19, subsecs. 104(1) and (2), applicable to taxation years that end after May 6, 1974. The closing words to para. 66(4)(b) formerly read:

> if no deduction were allowed under this subsection, subsection (1) or (3), section 65 or subsection 66.1(2) or (3).

Para. 66(4)(a) amended by 1995, c. 21, s. 21, applicable to taxation years that end after February 21, 1994. The para. formerly read:

> (a) the total of such of the taxpayer's foreign exploration and development expenses as were incurred by the taxpayer before the end of the taxation year to the extent they were not deductible in computing the taxpayer's income for a previous taxation year, and

Pre-RSC History: Cls. 66(4)(b)(ii)(A) and (B) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add, respectively, "natural accumulations thereof outside Canada or from oil or gas" and "a natural accumulation of petroleum or natural gas outside Canada".

All that portion of cl. 66(4)(b)(ii)(C) preceding subcl. (I) amended to delete the words "or a property referred to in subsection 59(3)" which had followed "a foreign resource property", by 1985, c. 45, subsec. 28(2), applicable with respect to transactions occurring in taxation years commencing after 1984.

All that portion of para. 66(4)(b) following subcl. (ii)(C)(II) substituted by 1977-78, c. 1, subsec. 29(4), applicable to taxation years ending after May 6, 1974.

That portion of cl. 66(4)(b)(ii)(C) preceding subcl. (I) and that portion of subpara. 66(4)(b)(ii) following cl. (C) substituted by 1976-77, c. 4, sub-

secs. 23(2), (3), applicable after May 6, 1974. Those portions formerly read:

> (C) the aggregate of amounts each of which is an amount, in respect of a foreign resource property or a property referred to in paragraph 59(3)(b) that has been disposed of by him, equal to the amount, if any, by which
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> . . . . .
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> minus the deductions allowed for the year by subsections (8) and (9) and subsection 87(7),

All that portion of subsec. 66(4) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 35(3), applicable in respect of taxation years commencing after May 6, 1974. That portion formerly read:

> (4) A taxpayer may deduct, in computing his income for a taxation year, the lesser of

Cl. 66(4)(b)(ii)(A) substituted by 1973-74, c. 14, subsec. 18(3), applicable to 1972 *et seq.*

I.T. Application Rules: 29.

(5) Dealers — Subsections (3) and (4) and sections 59, 64[4], 66.1, 66.2, 66.4 and 66.7 do not apply in computing the income for a taxation year of a taxpayer (other than a principal-business corporation) whose business includes trading or dealing in rights, licences or privileges to explore for, drill for or take minerals, petroleum, natural gas or other related hydrocarbons.

Related Provisions: 253 — Extended meaning of "carrying on business". See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(5) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(1), to add reference to section 66.7 and to delete "under this Part" from after "taxation year", applicable to taxation years ending after February 17, 1987.

Pre-RSC History: Subsec. 66(5) substituted by 1980-81-82-83, c. 48, subsec. 33(2), applicable to taxation years ending after December 11, 1979, to add reference to s. 66.4.

Subsec. 66(5) substituted by 1974-75-76, c. 26, subsec. 35(4), applicable in respect of taxation years ending after May 6, 1974, to add references to ss. 66.1 and 66.2.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-314: Income of dealers in oil and gas leases; IT-400: Exploration and development expenses — meaning of principal-business corporation.

(6) [Repealed under former Act]

Pre-RSC History: Subsec. 66(6) repealed by 1987, c. 46, subsec. 18(1), applicable to taxation years ending after February 17, 1987. Subsec. 66(6) formerly read:

> (6) Successor corporation's Canadian exploration and development expenses — Where a corporation (in this subsection referred to as the "successor corporation") has at any time after 1971 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year the lesser of
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> (a) the aggregate of the Canadian exploration and development expenses incurred by the predecessor before that time to the extent that such expenses were not deductible by the successor corporation in computing its income for a previous taxation year and were not deductible by the predecessor in computing its income for any taxation year; and
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> (b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsections (2), (7) and 66.1(5), sections 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to
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> (i) the disposition of any Canadian resource property owned by the predecessor immediately before the acquisition by the successor corporation of the property so acquired,
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> (ii) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and
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> (iii) the amount, if any, by which the aggregate of all amounts each of which is an amount
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> (A) required by subsection 59(2) to be included in computing its income for the year, and
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> (B) in respect of a reserve deducted in computing the predecessor's income and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the successor corporation as a reserve in computing its income for a preceding year,
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> exceeds the aggregate of amounts, if any, deducted in computing the successor corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor;
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> and, in respect of any such expense included in the aggregate determined under paragraph (a), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

Subpara. 66(6)(b)(ii) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "natural accumulations thereof or from oil or gas".

All that portion of subsec. 66(6) preceding para. (a) substituted by 1985, c. 45, subsec. 28(3), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference in subsec. 66(6) to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by him". That portion of subsec. 66(6) formerly read:

> (6) Successor corporation's Canadian exploration and development expenses — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after 1971, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another person (in this subsection referred to as the "predecessor") all or substantially all of the property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by him, and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, the lesser of

Subpara. 66(6)(b)(i) amended to substitute "Canadian resource property" for "property described in any of subparagraphs (15)(c)(i) to (vii)" by 1985, c. 45, subsec. 28(4), applicable with respect to transactions occurring in taxation years commencing after 1984.

[4]The reference should be to s. 64 of R.S.C. 1952, c. 148 (the pre-RSC 1985 version) — ed.

Cl. 66(6)(b)(iii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

All that portion of subsec. 66(6) preceding para. (a) substituted; all that portion of subsec. 66(6) following para. (b) amended to substitute "his" for "its" wherever it appears therein; subsec. 66(6) amended to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's", wherever the expressions appeared therein, by 1984, c. 1, subsecs. 27(1)–(3), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. All that portion of subsec. 66(6) preceding para. (a) formerly read:

> (6) Successor corporation's Canadian exploration and development expenses — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after 1971, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the predecessor corporation and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, the lesser of

Subpara. 66(6)(b)(i) and all that portion of subpara. 66(6)(b)(iii) following clause (B) substituted by 1980-81-82-83, c. 48, subsecs. 33(3), (4), applicable to taxation years ending after December 11, 1979, to substitute "(vii)" for "(vi)" in subpara. 66(6)(b)(i) and to add reference to subsec. (1.2) in that portion.

All that portion of subsec. 66(6) preceding para. (a) substituted, subpara. 66(6)(b)(iii) added by 1979, c. 5, subsecs. 19(1), (2) applicable, as to that portion, with respect to acquisitions of property after November 16, 1978, and, as to subpara. 66(6)(b)(iii), to 1979 *et seq.* That portion formerly read:

> (6) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after 1971, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by it, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, the lesser of

Subsec. 66(6) substituted by 1977-78, c. 1, subsec. 29(5), applicable to 1977 *et seq.* Subsec. 66(6) formerly read:

> (6) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after 1971, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada its business, there may be deducted by the successor corporation, in computing its income under this Part for a taxation year, the lesser of
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> (a) the aggregate of the Canadian exploration and development expenses incurred by the predecessor corporation to the extent that such expenses
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> (i) were not deductible by the successor corporation in computing its income for a previous taxation year, and were not deductible by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation or its income for a previous taxation year, and
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> (ii) would have been deductible by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation, if the predecessor corporation's income for that taxation year had been sufficient for the purpose; and
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> (b) of that aggregate, an amount equal to such part of its income for the year if no deduction were allowed under this section, section 65, subsection 66.1(2) or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus any deductions allowed for the year by subsections (2) and (7), sections 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, a right to take or remove petroleum or natural gas or a right to take or remove minerals;
>
> and, in respect of any such expenses included in the aggregate determined under paragraph (a), no deduction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

All that portion of subsec. 66(6) preceding para. (a) and para. 66(6)(b) substituted by 1974-75-76, c. 26, subsecs. 35(5), (6), applicable in respect of taxation years ending after May 6, 1974, to add a reference in para. 66(6)(b) to subsec. 66.1(2). That portion formerly read:

> (6) Where a principal-business corporation (in this subsection referred to as the "successor corporation") has, at any time after 1971, acquired from another principal-business corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada its principal business, there may be deducted by the successor corporation, in computing its income under this Part for a taxation year, the lesser of

(7) [Repealed under former Act]

Pre-RSC History: Subsec. 66(7) repealed by 1987, c. 46, subsec. 18(1), applicable to taxation years ending after February 17, 1987. Subsec. 66(7) formerly read:

> (7) Second successor corporation's Canadian exploration and development expenses — Where a corporation (in this subsection referred to as the "second successor corporation") has at any time after 1971 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation, within the meaning of subsection (6), all or substantially all of the Canadian resource properties of the first successor corporation and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year the lesser of
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> (a) the amount determined under paragraph (6)(a) in respect of the first successor corporation to the extent that it was not deductible by the second successor corporation in computing its income for a previous taxation year and was not deductible by the first successor corporation in computing its income for any taxation year; and
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> (b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsection (2), sections 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to
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> (i) the disposition of any Canadian resource property owned by the predecessor of the first successor corporation, within the meaning of subsection (6), immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation,
>
> (ii) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation, within the meaning of subsection (6),

had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(iii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the income of the predecessor of the first successor corporation and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the second successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the income of the second successor corporation for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor of the first successor corporation;

and, in respect of any expense included in the amount determined under paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

Subpara. 66(7)(b)(ii) substituted by 1986, c. 6, subsec. 31(2), to add "natural accumulations thereof or from oil or gas", applicable to taxation years ending after March 1985.

All that portion of subsec. 66(7) preceding para. (a) substituted by 1985, c. 45, subsec. 28(5), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference in subsec. 66(7) to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by it". That portion of subsec. 66(7) formerly read:

(7) Second successor corporation's Canadian exploration and development expenses — Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after 1971, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (6), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, the lesser of

Subpara. 66(7)(b)(i) amended by 1985, c. 45, subsec. 28(6), to substitute "Canadian resource property" for "property described in any of subparagraphs (15)(c)(i) to (vii)", applicable with respect to transactions occurring in taxation years commencing after 1984.

Cl. 66(7)(b)(iii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

Subsec. 66(7) amended to substitute "predecessor" for "predecessor corporation" wherever it appeared therein, by 1984, c. 1, subsec. 27(4), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

Subpara. 66(7)(b)(i) and all that portion of subpara. 66(7)(b)(iii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsecs. 33(5), (6), applicable to taxation years ending after December 11, 1979, to substitute "(vii)" for "(vi)" in subpara. 66(7)(b)(i) and to add reference to subsec. (1.2) in that portion.

All that portion of subsec. 66(7) preceding para. (a) substituted, subpara. 66(7)(b)(iii) added by 1979, c. 5, subsecs. 19(3), (4), applicable, as to that portion, with respect to acquisitions of property after November 16, 1978, and, as to subpara. 66(7)(b)(iii), to 1979 *et seq.* That portion formerly read:

(7) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after 1971, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (6), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by it, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, the lesser of

Subsec. 66(7) substituted by 1977-78, c. 1, subsec. 29(5), applicable to 1977 *et seq.* Subsec. 66(7) formerly read:

(7) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after 1971, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (6), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada its business, there may be deducted by the second successor corporation, in computing its income under this Part for a taxation year, the lesser of

(a) the aggregate determined by adding the expenses referred to in paragraph (6)(a) for the purpose of determining the deduction allowable to the first successor corporation under subsection (6) in computing its income for a previous taxation year, to the extent that such expenses

(i) were not deductible by the second successor corporation or any other corporation in computing its income for a previous taxation year, and were not deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(ii) would, but for the provisions of paragraph (6)(b), have been deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(b) of that aggregate, an amount equal to such part of its income for the year if no deduction were allowed under this section or section 65, subsection 66.1(2) or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus any deductions allowed for the year by subsection (2), sections 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph) as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor of the first successor corporation within the meaning of subsection (6) had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any such expenses included in the aggregate determined under paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

All that portion of subsec. 66(7) preceding para. (a) and para. 66(7)(b) substituted by 1974-75-76, c. 26, subsecs. 35(7), (8), applicable in respect of taxation years ending after May 6, 1974, to add a reference in para. 66(7)(b) to subsec. 66.1(2). That portion formerly read:

(7) Where a principal-business corporation (in this subsection referred to as the "second successor corporation") has at any time after 1971 acquired from a corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (6), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada its principal business, there may be deducted by the

second successor corporation, in computing its income under this Part for a taxation year, the lesser of

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 66(8) repealed by 1987, c. 46, subsec. 18(1), applicable to taxation years ending after February 17, 1987. Subsec. 66(8) formerly read:

(8) Successor corporation's foreign exploration and development expenses — In computing the income of a Canadian corporation for a taxation year, there may be deducted the amount that would be deductible under subsection (6) in computing its income for the year if

(a) the references therein to "in Canada" were read as references to "outside Canada",

(b) the reference in paragraph (a) thereof to "Canadian exploration and development expenses" were read as a reference to "foreign exploration and development expenses",

(c) the reference in paragraph (b) thereof to "subsections (2), (7) and 66.1(5)" were read as a reference to "subsections (2), (6), (7), (9), 66.1(4) and (5)",

(d) paragraph (b) thereof were read without reference to the expression "or the *Income Tax Application Rules, 1971* in respect of this paragraph" or the expression "and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph", and

(e) the references therein to "Canadian resource property" and "Canadian resource properties" were read as references to "foreign resource property" and "foreign resource properties", respectively.

Para. 66(8)(e) substituted by 1985, c. 45, subsec. 28(7), applicable with respect to transactions occurring in taxation years commencing after 1984. Para. 66(8)(e) formerly read:

(e) the reference therein to "any property described in any of subparagraphs (15)(c)(i) to (vii)" were read as a reference to "any property that would be described in any of subparagraphs (15)(c)(i) to (vii) if references therein to "in Canada" were read as references to "outside Canada" ".

Para. 66(8)(e) substituted by 1980-81-82-83, c. 48, subsec. 33(7), applicable to taxation years ending after December 11, 1979. Para. 66(8)(e) formerly read:

(e) the reference therein to "any property described in any of subparagraphs (15)(c)(i) to (vi)" were read as a reference to "any property that would be described in any of subparagraphs (15)(c)(i) to (vi) if the references therein to "in Canada" were read as references to "outside Canada"".

Paras. 66(8)(c), (d) substituted, (e) added by 1977-78, c. 1, subsec. 29(6), applicable to 1977 *et seq.* Paras. 66(8)(c), (d) formerly read:

(c) the reference in paragraph (b) thereof to "subsection (7)" were read as a reference to "subsection (9)", and

(d) paragraph (b) thereof were read without reference to the expression "or the *Income Tax Application Rules, 1971* in respect of this paragraph" or the expression "and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph".

All that portion of subsec. 66(8) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 35(9), applicable in respect of taxation years ending after May 6, 1974, to substitute "Canadian" for "principal-business".

(9) [Repealed under former Act]

Pre-RSC History [subsec. 66(9)]: Subsec. 66(9) repealed by 1987, c. 46, subsec. 18(1), applicable to taxation years ending after February 17, 1987. Subsec. 66(9) formerly read:

(9) Second successor corporation's foreign exploration and development expenses — In computing the income of a Canadian corporation for a taxation year, there may be deducted the amount that would be deductible under subsection (7) in computing its income for the year if

(a) the references therein to "subsection (6)" and "paragraph (6)(a)" were read as references to those provisions as they are required to be read for the purposes of subsection (8),

(b) the references therein to "in Canada" were read as references to "outside Canada",

(c) the reference in paragraph (b) thereof to "subsection (2)" were read as a reference to "subsections (2), (6), (7), 66.1(4) and (5)",

(d) paragraph (b) thereof were read without reference to the expression "or the *Income Tax Application Rules, 1971* in respect of this paragraph" or the expression "and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph", and

(e) the references therein to "Canadian resource property" and "Canadian resource properties" were read as references to "foreign resource property" and "foreign resource properties", respectively.

Para. 66(9)(e) substituted by 1985, c. 45, subsec. 28(8), applicable with respect to transactions occurring in taxation years commencing after 1984. Para. 66(9)(e) formerly read:

(e) the reference therein to "any property described in any of subparagraphs (15)(c)(i) to (vii)" were read as a reference to "any property that would be described in any of subparagraphs (15)(c)(i) to (vii) if references therein to "in Canada" were read as references to "outside Canada"".

Para. 66(9)(e) substituted by 1980-81-82-83, c. 48, subsec. 33(8), applicable to taxation years ending after December 11, 1979. Para. 66(9)(e) formerly read:

(e) the reference therein to "any property described in any of subparagraphs (15)(c)(i) to (vi)" were read as a reference to "any property that would be described in any of subparagraphs (15)(c)(i) to (vi) if the references therein to "in Canada" were read as references to "outside Canada"".

Paras. 66(9)(a)–(c) substituted, (d), (e) added by 1977-78, c. 1, subsec. 29(7), applicable to 1977 *et seq.* Paras. 66(9)(a)–(c) formerly read:

(a) the references therein to "subsection (6)", "paragraph (6)(a)" and "paragraph (6)(b)" were read as references to those provisions as they are required to be read for the purposes of subsection (8),

(b) the references therein to "in Canada" were read as references to "outside Canada", and

(c) paragraph (b) thereof were read without reference to the expression "or the *Income Tax Application Rules, 1971* in respect of this paragraph" or the expression "and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph".

All that portion of subsec. 66(9) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 35(10), applicable in respect of taxation years ending after May 6, 1974, to substitute "Canadian" for "principal-business" and "deductible" for "determined".

(10) [Repealed effective 2007]

Related Provisions: 66(15)"agreed portion" — Reduction for amounts previously renounced; 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced. See additional Related provisions and Definitions at end of s. 66.

History: Subsec. 66(10) repealed by 1997, c. 25, subsec. 13(1), applicable to renunciations made

(a) after 2006, in respect of a payment or loan received by a joint exploration corporation

(i) before March 6, 1996, or

(ii) after March 5, 1996 under an agreement in writing made

(A) by the corporation before March 6, 1996, or

(B) by another corporation before March 6, 1996, where

(I) the other corporation controlled the corporation at the time the agreement was made, or

(II) the other corporation undertook, at the time the agreement was made, to form the corporation; and

(b) after March 5, 1996, in any other case.

Subsec. (10) formerly read:

(10) Joint exploration corporation — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian exploration and development expenses as were incurred by it during a period, after 1971 and before the end of the particular taxation year, throughout which the

other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds any amount deductible under subsection (1) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the particular year and, on the election, that agreed portion

(a) shall be deemed, for the purpose of subsection (1) or (3), as the case may be, to be Canadian exploration and development expenses incurred by the other corporation during its taxation year in which the particular taxation year ends; and

(b) shall be subtracted from the total described in paragraph (1)(a) in determining the amount deductible by the joint exploration corporation under subsection (1) in computing its income.

Pre-RSC History: Subsec. 66(10) substituted by 1977-78, c. 1, subsec. 29(8), applicable with respect to elections made for a joint exploration corporation's 1977 and subsequent taxation years. Subsec. (10) formerly read:

(10) A joint exploration corporation may in a taxation year elect in prescribed form to renounce in favour of another corporation an agreed portion of the aggregate of such of the joint exploration corporation's Canadian exploration and development expenses as were incurred by it during a period, after 1971 and before the end of the taxation year, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deductible under subsection (1) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the year in which the election was made, and upon the election the said agreed portion

(a) shall be deemed, for the purposes of subsection (1) or (3), as the case may be, to be Canadian exploration and development expenses incurred by the other corporation in the taxation year of the corporation in which the election was made, and

(b) shall be subtracted from the aggregate described in paragraph (1)(a) in determining the amount deductible by the joint exploration corporation under subsection (1) in computing its income.

All that portion of subsec. 66(10) preceding para. (b) substituted by 1973-74, c. 14, subsec. 18(4), applicable to 1972 *et seq.*

I.T. Application Rules: 29.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.1) [Repealed effective 2007]

Related Provisions: 66(3) — Expenses of other taxpayers; 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced; 163(2.2) — False statement or omissions — penalty; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credits. See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(10.1) repealed by 1997, c. 25, subsec. 13(1), applicable on the same basis as the repeal of subsec. 66(10). Subsec. (10.1) formerly read:

(10.1) **Idem** — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form in respect of that year to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian exploration expenses as were incurred by it during a period (ending before the end of the particular taxation year) throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds the total of all amounts each of which is

(a) an amount deducted or required to be deducted under subsection 66.1(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be regarded as relating to Canadian exploration activities of the joint exploration corporation during the period, other than that portion of the assistance arising because of section 127 or 127.1 in respect of a shareholder corporation of the joint exploration corporation,

and, on the making of the election, that agreed portion

(c) shall be deemed, for the purposes of the definitions "Canadian exploration expense" and "cumulative Canadian exploration expense" in subsection 66.1(6), to be a Canadian exploration expense incurred by the other corporation during its taxation year in which the particular taxation year ends or, if it has no such year, its last taxation year, and

(d) shall be included in the amount determined for F in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) by the joint exploration corporation in computing its cumulative Canadian exploration expense, at the time the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Paras. 66(10.1)(a), (d) amended by 1994, c. 8, subsecs. 5(1), (2), applicable to taxation years ending after December 2, 1992. Paras. (a), (d) formerly read:

(a) an amount deductible under subsection 66.1(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

. . . . .

(d) shall be included in the amount determined for F in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) by reason of its being deducted or deductible, as the case may be, by the joint exploration corporation in computing that corporation's cumulative Canadian exploration expense, at the time that the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Para. 66(10.1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(2), applicable to assistance for expenses incurred after November 1985. Para. (b) formerly read:

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be related to Canadian exploration activities of the joint exploration corporation during the period;

Pre-RSC History: Para. 66(10.1)(b) substituted by 1986, c. 55, subsec. 11(1). Para. (b) formerly read:

(b) an amount of assistance or benefit that any person has received, is entitled to receive or, at any time, becomes entitled to receive from a government, municipality or other public authority in respect of such expenses made or incurred during that period or that can reasonably be related to Canadian exploration activities of the joint exploration corporation during the period, whether such amount is by way of a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit;

Subsec. 66(10.1) substituted by 1984, c. 1, subsec. 27(5). For application, see under subsec. 66(10.4). Subsec. (10.1) formerly read:

(10.1) A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation an agreed portion of the aggregate of such of the joint exploration corporation's Canadian exploration expenses as were incurred by it during a period, before the end of the particular taxation year, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deductible under subsection 66.1(2) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the particular year, and on the election the said agreed portion

(a) shall be deemed, for the purposes of paragraphs 66.1(6)(a) and (b) to be a Canadian exploration expense incurred by the other corporation during its taxation year in which the particular taxation year ends; and

(b) shall be included in the amount deducted or deductible, as the case may be, by the joint exploration corporation under subparagraph 66.1(6)(b)(v) in computing its cumulative Canadian exploration expense.

Subsec. 66(10.1) substituted by 1977-78, c. 1, subsec. 29(8), applicable with respect to elections made for a joint exploration corporation's 1977 and subsequent taxation years. Subsec. (10.1) formerly read:

> (10.1) A joint exploration corporation may in a taxation year elect in prescribed form to renounce in favour of another corporation an agreed portion of the aggregate of such of the joint exploration corporation's Canadian exploration expenses as were incurred by it during a period, before the end of the taxation year, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deductible under subsection 66.1(2) or deducted under subsection 66.1(3), as the case may be, in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the year in which the election was made, and upon the election the said agreed portion
>
> (a) shall, in respect of a Canadian exploration expense, be deemed for the purposes of paragraph 66.1(6)(a) to be a Canadian exploration expense incurred by the other corporation in the taxation year of the corporation in which the election was made; and
>
> (b) shall be included in the amount deducted or deductible, as the case may be, by the joint exploration corporation under subparagraph 66.1(6)(b)(v) in computing its cumulative Canadian exploration expense.

Subsec. 66(10.1) added by 1974-75-76, c. 26, subsec. 35(11), applicable in respect of taxation years ending after May 6, 1974.

Selected Cases [subsec. 66(10.1)]: *Mitchell v. R.*, [1999] 2 C.T.C. 2721 (TCC) (Double renunciation was permitted).

I.T. Application Rules: 29.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.2) [Repealed effective 2007]

Related Provisions: 66.1(6)"restricted expense"(c) — inclusion of renounced expense; 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced; 163(2.2) — False statement or omissions — penalty; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit. See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(10.2) repealed by 1997, c. 25, subsec. 13(1), applicable on the same basis as the repeal of subsec. 66(10). Subsec. (10.2) formerly read:

> (10.2) Idem — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form in respect of that year to renounce in favour of another corporation an agreed portion of the total of such of the joint exploration corporation's Canadian development expenses as were incurred by it during a period (ending before the end of the particular taxation year) throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds the total of all amounts each of which is
>
> (a) an amount deducted under subsection 66.2(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or
>
> (b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be related to Canadian development activities of the joint exploration corporation during the period,
>
> and, on the making of the election, that agreed portion
>
> (c) shall be deemed, for the purposes of the definitions "Canadian development expense" and "cumulative Canadian development expense" in subsection 66.2(5), to be a Canadian development expense incurred by the other corporation during its taxation year in which the particular taxation year ends or, if it has no such year, its last taxation year, and
>
> (d) shall be included in the amount determined for E in the definition "cumulative Canadian development expense" in subsection 66.2(5) by reason of its being deducted by the joint exploration corporation in computing that corporation's cumulative Canadian development expense, at the time the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Pre-RSC History: Para. 66(10.2)(b) substituted by 1986, c. 55, subsec. 11(2). Para. (b) formerly read:

> (b) an amount of assistance or benefit that any person has received, is entitled to receive or, at any time, becomes entitled to receive from a government, municipality or other public authority in respect of such expenses made or incurred during the period or that can reasonably be related to Canadian development activities of the joint exploration corporation during the period, whether such amount is by way of a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit;

Subsec. 66(10.2) substituted by 1984, c. 1, subsec. 27(5). For application, see under subsec. 66(10.4). Subsec. (10.2) formerly read:

> (10.2) A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation an agreed portion of the aggregate of such of the joint exploration corporation's Canadian development expenses as were incurred by it during a period, before the end of the particular taxation year, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deducted under subsection 66.2(2) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the particular year, and on the election the said agreed portion
>
> (a) shall be deemed, for the purposes of paragraphs 66.2(5)(a) and (b), to be a Canadian development expense incurred by the other corporation during its taxation year in which the particular taxation year ends; and
>
> (b) shall be included in the amount deducted by the joint exploration corporation under subparagraph 66.2(5)(b)(iv) in computing its cumulative Canadian development expense.

Subsec. 66(10.2) substituted by 1977-78, c. 1, subsec. 29(8), applicable with respect to elections made for a joint exploration corporation's 1977 and subsequent taxation years. Subsec. (10.2) formerly read:

> (10.2) A joint exploration corporation may in a taxation year elect in prescribed form to renounce in favour of another corporation an agreed portion of the aggregate of such of the joint exploration corporation's Canadian development expenses as were incurred by it during a period, before the end of the taxation year, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deducted under subsection 66.2(2) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the year in which the election was made, and upon the election the said agreed portion
>
> (a) shall, in respect of a Canadian development expense, be deemed for the purposes of paragraph 66.2(5)(a) to be a Canadian development expense incurred by the other corporation in the taxation year of the corporation in which the election was made; and
>
> (b) shall be included in the amount deducted by the joint exploration corporation under subparagraph 66.2(5)(b)(iv) in computing its cumulative Canadian development expense.

Subsec. 66(10.2) added by 1974-75-76, c. 26, subsec. 35(11), applicable in respect of taxation years ending after May 6, 1974.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.3) [Repealed effective 2007]

Related Provisions: 79(3)F(b)(ii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(e) — Debt forgiveness rules do not apply to amount renounced; 163(2.2) — False statement or omission — penalty; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credits. See additional Related Provisions and Definitions at the end of s. 66.

History: Subsec. 66(10.3) repealed by 1997, c. 25, subsec. 13(1), applicable on the same basis as the repeal of subsec. 66(10). Subsec. (10.3) formerly read:

> (10.3) Idem — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form in respect of that year to renounce in favour of another corporation an agreed portion of the total of such of the

joint exploration corporation's Canadian oil and gas property expenses as were incurred by it during a period (ending before the end of the particular taxation year) throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds the total of all amounts each of which is

(a) an amount deducted under subsection 66.4(2) in respect of those expenses by the joint exploration corporation in computing its income for any taxation year preceding the particular taxation year, or

(b) assistance that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of those expenses incurred during the period or that can reasonably be related to those expenses during the period,

and, on the making of the election, that agreed portion

(c) shall be deemed, for the purposes of the definitions "Canadian oil and gas property expense" and "cumulative Canadian oil and gas property expense" in subsection 66.4(5), to be a Canadian oil and gas property expense incurred by the other corporation during its taxation year in which the particular taxation year ends or, if it has no such year, its last taxation year, and

(d) shall be included in the amount determined for E in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) by reason of its being deducted by the joint exploration corporation in computing that corporation's cumulative Canadian oil and gas property expense, at the time the election is made or, where the election is made after the end of the particular taxation year, immediately before the end of that year.

Pre-RSC History: Para. 66(10.3)(b) substituted by 1986, c. 55, subsec. 11(3). Para. 66(10.3)(b) formerly read:

(b) any amount of assistance or benefit that any person has received, is entitled to receive or, at any time, becomes entitled to receive from a government, municipality or other public authority in respect of such expenses made or incurred during the period or that can reasonably be related to such expenses during the period, whether such amount is by way of a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit;

Subsec. 66(10.3) substituted by 1984, c. 1, subsec. 27(5). For application, see under subsec. 66(10.4). Subsec. 66(10.3) formerly read:

(10.3) **Idem** — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation an agreed portion of the aggregate of such of the joint exploration corporation's Canadian oil and gas property expenses as were incurred by it before the end of the particular taxation year and during a period throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deducted under subsection 66.4(2) in respect thereof by the joint exploration corporation in computing its income for any taxation year preceding the particular year, and on the election the agreed portion

(a) shall be deemed, for the purposes of paragraphs 66.4(5)(a) and (b), to be a Canadian oil and gas property expense incurred by the other corporation during its taxation year in which the particular taxation year ends; and

(b) shall be included in the amount deducted by the joint exploration corporation under subparagraph 66.4(5)(b)(iv) in computing its cumulative Canadian oil and gas property expense.

Subsec. 66(10.3) added by 1980-81-82-83, c. 48, subsec. 33(9), applicable to taxation years ending after December 11, 1979.

I.T. Application Rules: 29.

Forms: T2035: Election to renounce exploration, development and oil and gas property expenses.

(10.4) Idem — Where a taxpayer has, after April 19, 1983, made a payment or loan described in paragraph (a) of the definition "agreed portion" in subsection (15) to a joint exploration corporation in respect of which the corporation has at any time renounced in favour of the taxpayer any Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") under subsection (10.1), (10.2) or (10.3), the following rules apply:

(a) where the taxpayer receives as consideration for the payment or loan property that is capital property to the taxpayer,

(i) there shall be deducted in computing the adjusted cost base to the taxpayer of the property at any time the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at or before that time,

(ii) there shall be deducted in computing the adjusted cost base to the taxpayer at any time of any property for which the property, or any property substituted therefor, was exchanged the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at or before that time (except to the extent such amount has been deducted under subparagraph (i)), and

(iii) the amount of any resource expenses renounced by the corporation in favour of the taxpayer in respect of the loan or payment at any time, except to the extent that the renunciation of those expenses results in a deduction under subparagraph (i) or (ii), shall, for the purposes of this Act, be deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of property at that time;

(b) where the taxpayer receives as consideration for the payment or loan property that is not capital property to the taxpayer,

(i) there shall be deducted in computing the cost to the taxpayer of the property at any time the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at or before that time, and

(ii) there shall be included in computing the amount referred to in paragraph 59(3.2)(d) for a taxation year the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the loan or payment at any time in the year, except to the extent that the amount has been deducted under subparagraph (i); and

(c) where the taxpayer does not receive any property as consideration for the payment, there shall be included in computing the amount referred to in paragraph 59(3.2)(e) for a taxation year the amount of any resource expenses renounced by the corporation in the taxpayer's favour in respect of the payment in the year, except to the extent that the amount has been deducted from the adjusted cost base to the taxpayer of shares of the corporation under paragraph 53(2)(f.1) in respect of the payment.

Related Provisions: 53(2)(f)–(f.2) — Deductions from adjusted cost base — renounced expenses; 59(3.2)(d), (e) — Recovery of exploration and development expenses; 59(3.3)(f) — Resource property — amounts included in income; 248(5) — Substituted property. See additional Related Provisions and Definitions at the end of s. 66.

Pre-RSC History: Subsec. 66(10.4) added by 1984, c. 1, subsec. 27(5).

Application: 1984, c. 1, subsec. 27(12), provides that subsecs. 66(10.1) to (10.3) as substituted and subsec. (10.4) are applicable with respect to any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense incurred after March 16, 1983 by a joint exploration corporation (other than such an expense incurred after March 16, 1983 and before October, 1984 in respect of which payments or loans referred to in subpara. 66(15)(i)(ii) as enacted by 1984, c. 1, are

made to the joint exploration corporation pursuant to arrangements that were substantially advanced and evidenced in writing on or before March 16, 1983), except that

(a) the repeal of paras. 66(10.1)(b), (10.2)(b) and (10.3)(b) and the enactment of paras. 66(10.1)(d), (10.2)(d) and (10.3)(d) as provided by 1984, c. 1, are applicable with respect to an agreed portion of the aggregate of such expenses that is renounced after April 19, 1983; and

(b) the repeal of paras. 66(10.1)(a), (10.2)(a) and (10.3)(a) and the enactment of paras. 66(10.1)(c), (10.2)(c) and (10.3)(c), as provided by 1984, c. 1, are applicable with respect to an agreed portion of the aggregate of such expenses that is renounced after April 19, 1983.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

(11) Acquisition of control — Where after March 31, 1977 and before November 13, 1981 control of a corporation has been acquired by a person or persons who did not control the corporation at the time when it last ceased to carry on active business,

(a) the amount by which the Canadian exploration and development expenses incurred by the corporation before it last ceased to carry on active business exceeds the total of all amounts otherwise deductible by the corporation in respect of Canadian exploration and development expenses in computing its income for taxation years ending before control was so acquired, shall be deemed to have been deductible under this section by the corporation in computing its income for taxation years ending before control was so acquired;

(b) the amount by which the cumulative Canadian exploration expense of the corporation at the time it last ceased to carry on active business exceeds the total of amounts otherwise deducted under section 66.1 in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under that section by the corporation in computing its income for taxation years ending before control was so acquired;

(c) the amount by which the cumulative Canadian development expense of the corporation at the time it last ceased to carry on active business exceeds the total of amounts otherwise deducted under section 66.2 in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under that section by the corporation in computing its income for taxation years ending before control was so acquired;

(d) the amount by which the cumulative Canadian oil and gas property expense of the corporation at the time it last ceased to carry on active business exceeds the total of amounts otherwise deducted under section 66.4 in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under that section by the corporation in computing its income for taxation years ending before control was so acquired; and

(e) the amount by which the foreign exploration and development expenses incurred by the corporation before it last ceased to carry on active business exceeds the total of all amounts otherwise deductible by the corporation in respect of foreign exploration and development expenses in computing its income for taxation years ending before control was so acquired, shall be deemed to have been deductible under this section by the corporation in computing its income for taxation years ending before control was so acquired.

Related Provisions: 66(11.3) — Acquisition of control before 1983; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: All that portion of subsec. 66(11) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 33(1), applicable with respect to taxation years ending after November 12, 1981. That portion formerly read:

(11) Where control of a corporation has, after March 31, 1977 and after the corporation last ceased to carry on active business, been acquired by a person or persons who did not control the corporation at the time when it so ceased to carry on active business,

Para. 66(11)(d) substituted, (e) added, by 1980-81-82-83, c. 48, subsec. 33(10), applicable to taxation years ending after December 11, 1979. Para. 66(11)(d) formerly read:

(d) the amount by which the foreign exploration and development expenses incurred by the corporation before it last ceased to carry on active business exceeds the aggregate of all amounts otherwise deductible by the corporation in respect of foreign exploration and development expenses in computing its income for taxation years ending before control was so acquired, shall be deemed to have been deductible under this section by the corporation in computing its income for taxation years ending before control was so acquired.

Subsec. 66(11) substituted by 1977-78, c. 1, subsec. 29(9), applicable to acquisitions of control after March 31, 1977. Subsec. 66(11) formerly read:

(11) Where control of a corporation has, after 1971 and between a time when the corporation ceased to carry on active business and a time when it commenced to carry on active business again, been acquired by

(a) a person, or

(b) a person and other persons with whom that person does not deal at arm's length,

who did not control the corporation at the time when it so ceased to carry on active business, all of the Canadian exploration and development expenses, cumulative Canadian exploration expense, cumulative Canadian development expense and foreign exploration and development expenses incurred by the corporation before the time when it commenced to carry on active business again shall be deemed to have been deductible or deducted, as the case may be, in computing its incomes for taxation years ending before the time when such control was so acquired.

All that portion of subsec. 66(11) following para. (b) substituted by 1974-75-76, c. 26, subsec. 35(12), applicable in respect of taxation years ending after May 6, 1974. That portion formerly read:

who did not control the corporation at the time when it so ceased to carry on active business, all of the Canadian exploration and development expenses and foreign exploration and development expenses incurred by the corporation before the time when it commenced to carry on active business again shall be deemed to have been deductible in computing its incomes for taxation years ending before the time when such control was so acquired.

I.T. Application Rules: 29.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

(11.1) [Repealed under former Act]

Pre-RSC History: Subsec. 66(11.1) repealed by 1987, c. 46, subsec. 18(2), applicable to taxation years ending after February 17, 1987. Subsec. 66(11.1) formerly read:

(11.1) Idem — Where at any time after November 12, 1981

(a) control of a corporation has been acquired by a person or persons, or

(b) a corporation ceases to be exempt from tax under this Part on its taxable income,

for the purposes of the provisions of this Act relating to deductions with respect to Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense, Canadian development expense and Canadian oil and gas property expense (in this subsection referred to as "exploration and development expenses") made or incurred by the corporation before that time, the following rules apply:

(c) the corporation shall after that time be deemed to be a successor corporation that jointly elected with a predecessor in prescribed form as required under subsections (6), (8), 66.1(4), 66.2(3) and 66.4(3);

(d) the corporation shall be deemed to have acquired at that time all or substantially all of the Canadian resource properties and foreign resource properties of the predecessor owned by it immediately before that time;

(e) the exploration and development expenses made or incurred by the corporation before that time shall be deemed not to have been made or incurred by the corporation before that time but to have been made or incurred by the predecessor of the corporation before that time;

(f) except where paragraph (b) applies, in computing the income of the corporation for its taxation year that includes that time,

(i) any disposition by the corporation, in the year before that time, of a Canadian resource property or foreign resource property shall be deemed to be a disposition described in subparagraphs (6)(b)(i) and 66.1(4)(b)(i),

(ii) the first two references in each of subparagraphs 66.2(3)(a)(ii) and 66.4(3)(a)(ii) to "successor corporation" shall be read as references to "corporation" and the references in those subparagraphs to "owned by the predecessor immediately before the acquisition thereof by the successor corporation" shall be read as references to "in the year and before that time", and

(iii) the production referred to in subparagraphs (6)(b)(ii), 66.1(4)(b)(ii), 66.2(3)(b)(i) and 66.4(3)(b)(i) shall be deemed to include the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, and the production of minerals from mines, situated on property in respect of which the corporation had, in the year and before that time, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals; and

(g) where another corporation (in this paragraph referred to as the "subsidiary") was at that time a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4)) of the corporation (in this paragraph referred to as the "parent"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the subsidiary ending after that time and notify the Minister in writing of the agreement in the return of income under this Part of the subsidiary for that year, the subsidiary may designate in favour of the parent, in respect of that year, an amount equal to such portion of the amount that would be its income for the year if no deductions were allowed under sections 65, 66, 66.1, 66.2 and 66.4 and section 29 of the *Income Tax Application Rules, 1971*, as may reasonably be regarded as being attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in respect of which the subsidiary had, immediately before that time, an interest or right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the disposition of any Canadian resource property or foreign resource property, owned by the subsidiary immediately before that time,

to the extent that such portion of the amount is not designated under this paragraph in favour of any other taxpayer, and the amount so designated shall be deemed, for the purposes of determining the amount under paragraphs (6)(b), 66.1(4)(b), 66.2(3)(b) and 66.4(3)(b),

(iii) to be the income from the sources described in subparagraph (i) or (ii), as the case may be, of the parent for its taxation year in which that taxation year of the subsidiary ends, and

(iv) not to be the income from the sources described in subparagraph (i) or (ii), as the case may be, of the subsidiary for that year.

Subpara. 66(11.1)(f)(iii) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "natural accumulations thereof or from oil or gas".

Para. 66(11.1)(g) added by 1986, c. 6, subsec. 30(1), applicable to 1985 *et seq.*, except that a notice referred to in para. 66(11.1)(g) of an agreement between a subsidiary and a parent to have that paragraph apply to them in respect of a taxation year of the subsidiary that ended after 1984 and before February 13, 1986, that is filed in writing with the Minister of National Revenue on or before the day that is 90 days after February 13, 1986, shall be deemed to have been given in the return of income of the subsidiary for that taxation year.

Para. 66(11.1)(d), subpara. 66(11.1)(f)(i) substituted by 1985, c. 45, subsecs. 28(9), (10), applicable with respect to transactions occurring in taxation years commencing after 1984. Para. 66(11.1)(d), subpara. 66(11.1)(f)(i) formerly read:

(d) the corporation shall be deemed to have acquired at that time all or substantially all of the property of a predecessor that was used by him in carrying on such of the businesses described in any of subparagraphs (15)(h)(i) to (vii) as were carried on by the corporation immediately before that time;

. . . . .

(i) any disposition by the corporation, in the year before that time, of property described in any of paragraphs 59(2)(a) to (e) shall be deemed to be a disposition described in subparagraphs (6)(b)(i) and 66.1(4)(b)(i),

Paras. 66(11.1)(c)–(e) substituted to substitute "predecessor" for "predecessor corporation" and "him" for "it" wherever the expressions appeared; para. 66(11.1)(f) added by 1984, c. 1, subsec. 27(6), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983 except that para. 66(11.1)(f) is applicable to taxation years ending after November 12, 1981 and the reference in that paragraph to "predecessor" shall be read as a reference to "predecessor corporation" with respect to acquisitions of property by a successor corporation on or before April 19, 1983.

Subsec. 66(11.1) added by 1980-81-82-83, c. 140, subsec. 33(2), applicable with respect to taxation years ending after November 12, 1981.

(11.2) [Repealed under former Act]

Pre-RSC History: Subsec. 66(11.2) repealed by 1987, c. 46, subsec. 18(2), applicable to taxation years ending after February 17, 1987. Subsec. 66(11.2) formerly read:

(11.2) Idem — Where a corporation (in this subsection referred to as the "acquiring corporation") has at any time after November 12, 1981 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this subsection referred to as the "predecessor"), all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the acquiring corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, and the provisions in subsection (11.1) apply with respect to the deduction of Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses (in this subsection referred to as "exploration and development expenses") made or incurred by the predecessor, the following rules apply:

(a) with respect to the exploration and development expenses, the acquiring corporation shall be deemed after that time to be a successor corporation of the predecessor for the purposes of subsections (6), (8), 66.1(4), 66.2(3) and 66.4(3), and

(b) with respect to the deduction of the predecessor's exploration and development expenses by the acquiring corporation, the provisions that apply with respect to the deduction of the exploration and development expenses by the predecessor by virtue of the application of subsection (11.1) shall apply after that time to the deduction by the acquiring corporation of these expenses.

All that portion of subsec. 66(11.2) preceding para. (a) substituted by 1985, c. 45, subsec. 28(11), applicable with respect to transactions occurring in taxation years commencing after 1984. That portion of subsec. 66(11.2) formerly read:

(11.2) Idem — Where a corporation (in this subsection referred to as the "acquiring corporation") has, at any time after November 12, 1981, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor"), all or substantially all of the property of the predecessor used by it in carrying on in Canada such of the businesses described in

any of subparagraphs (15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the predecessor and the acquiring corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, and the provisions in subsection (11.1) apply with respect to the deduction of Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense (in this subsection referred to as "exploration and development expenses") made or incurred by the predecessor, the following rules apply:

Subsec. 66(11.2) amended by 1984, c. 1, subsec. 27(7), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983, to substitute "predecessor" and "predecessor's" for the expressions "predecessor corporation" and "predecessor corporation's" wherever they appeared.

Subsec. 66(11.2) added by 1980-81-82-83, c. 140, subsec. 33(2), applicable with respect to taxation years ending after November 12, 1981.

(11.3) Control — For the purposes of subsections (11) and 66.7(10), where a corporation acquired control of another corporation after November 12, 1981 and before 1983 by reason of the acquisition of shares of the other corporation pursuant to an agreement in writing concluded on or before November 12, 1981, it shall be deemed to have acquired that control on or before November 12, 1981.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(11.3) amended by 1987, c. 46, subsec. 18(3), to substitute "subsection (11) and 66.7(10)" for "subsections (11) and (11.1)", applicable to taxation years ending after February 17, 1987.

Subsec. 66(11.3) added by 1980-81-82-83, c. 140, subsec. 33(2), applicable with respect to taxation years ending after November 12, 1981.

I.T. Application Rules: 29.

(11.4) Change of control — Where,

(a) at any time, control of a corporation has been acquired by a person or group of persons,

(b) within the 12-month period that ended immediately before that time, the corporation or a partnership of which it was a majority interest partner acquired a Canadian resource property or a foreign resource property (other than a property that was owned by the corporation or partnership or a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the corporation throughout the period that began immediately before the 12-month period began and ended at the time the property was acquired by the corporation or partnership), and

(c) immediately before the twelve month period commenced, the corporation was not a principal-business corporation and the partnership, if it were a corporation, would not be a principal-business corporation,

for the purposes of subsection (4) and sections 66.2 and 66.4, except as those provisions apply for the purposes of section 66.7, the property shall be deemed not to have been acquired by the corporation or partnership before that time and shall be deemed to have been acquired by it at that time, except that, where the property has been disposed of by it before that time and not reacquired by it before that time, the property shall be deemed to have been acquired by the corporation or partnership immediately before it disposed of the property.

Related Provisions: 66(11.5) — Where control changed within 12 months of incorporation; 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 66.

History: Para. 66(11.4)(b) amended by 1998, c. 19, subsec. 104(3), applicable after April 26, 1995. The para. formerly read:

(b) within the twelve month period ending immediately before that time, the corporation, or a partnership of which it was a majority interest partner (within the meaning assigned by subsection 97(3.1)) acquired a Canadian resource property or a foreign resource property (other than a property that was owned by the corporation, partnership or a person or persons related to the corporation throughout the period commencing immediately before the twelve month period and ending at the time the property was acquired by the corporation or partnership), and

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

(11.5) Early change of control — For the purpose of subsection (11.4), where the corporation referred to in that subsection was incorporated or otherwise formed in the 12-month period referred to in that subsection, the corporation is deemed to have been, throughout the period that began immediately before the 12-month period and ended immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) affiliated with every person with whom it was affiliated (otherwise than because of a right referred to in paragraph 251(5)(b)) throughout the period that began when it was incorporated or otherwise formed and ended immediately before its control was acquired.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(11.5) amended by 1998, c. 19, subsec. 104(4), applicable to acquisitions of control that occur after April 26, 1995. The subsec. formerly read:

(11.5) Change of control within 12 months of incorporation — For the purposes of subsection (11.4), where the corporation referred to in that subsection was incorporated or otherwise formed during the twelve month period referred to in that subsection, it shall be deemed to have been, throughout the period commencing immediately before the twelve month period and ending immediately after it was incorporated or otherwise formed,

(a) in existence; and

(b) related to the person or persons to whom it was related (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) throughout the period commencing when it was incorporated or otherwise formed and ending immediately before control of the corporation was acquired.

Pre-RSC History: Subsecs. 66(11.4), (11.5) added by 1987, c. 46, subsec. 18(4), applicable with respect to acquisitions of property occurring after January 15, 1987 other than acquisitions of property occurring before 1988, where the person acquiring the property was obliged on that date to acquire the property pursuant to the terms of an agreement in writing entered into on or before that date.

(12) Computation of exploration and development expenses — In computing a taxpayer's Canadian exploration and development expenses,

(a) there shall be deducted any amount paid to the taxpayer before May 7, 1974

(i) and after 1971 under the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, or

(ii) pursuant to any agreement entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development, to the extent that the amount has been expended by the taxpayer

as or on account of Canadian exploration and development expenses incurred by the taxpayer; and

(b) there shall be included any amount, except an amount in respect of interest, paid by the taxpayer after 1971 and before May 7, 1974 under the Regulations referred to in subparagraph (a)(i) to Her Majesty in right of Canada.

Related Provisions: 66(12.1) — Limitations. See additional Related provisions and Definitions at end of s. 66.

Pre-RSC History: All that portion of para. 66(12)(a) preceding subpara. (ii) and para. 66(12)(b) substituted by 1974-75-76, c. 26, subsecs. 35(13), (14), applicable, as to that portion, in respect of amounts receivable by the taxpayer after 1971 and applicable, as to para. 66(12)(b), in respect of amounts payable by the taxpayer after 1971.

I.T. Application Rules: 29.

(12.1) Limitations of Canadian exploration and development expenses — Except as expressly otherwise provided in this Act,

(a) where as a result of a transaction occurring after May 6, 1974 an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a share or a Canadian resource property, or an interest therein or a right thereto) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily Canadian exploration and development expenses of the taxpayer (or would have been so regarded if they had been incurred by the taxpayer after 1971 and before May 7, 1974) or a Canadian exploration expense, there shall at that time be included in the amount determined for G in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) in respect of the taxpayer the amount that became receivable by the taxpayer at that time; and

(b) where as a result of a transaction occurring after May 6, 1974 an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a share or a Canadian resource property, or an interest therein or a right thereto) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily a Canadian development expense, there shall at that time be included in the amount determined for G in the definition "cumulative Canadian development expense" in subsection 66.2(5) in respect of the taxpayer the amount that became receivable by the taxpayer at that time.

Related Provisions: 59(1) — Amounts received as consideration for disposition of resource property; 66(15) — Definitions. See additional Related provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(12.1) amended by 1985, c. 45, subsec. 28(12), to substitute, in each of paras. (a) and (b), "a share or a Canadian resource property, or an interest therein" for "a property referred to in paragraph 59(2)(a), (c) or (d) or a share or interest therein", applicable with respect to transactions occurring in taxation years commencing after 1984.

Subsec. 66(12.1) added by 1974-75-76, c. 26, subsec. 35(15), applicable in respect of transactions occurring after May 6, 1974.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(12.2) Unitized oil or gas field in Canada — Where, pursuant to an agreement between a taxpayer and another person to unitize an oil or gas field in Canada, an amount has become receivable by the taxpayer at a particular time after May 6, 1974 from that other person in respect of Canadian exploration expense incurred by the taxpayer or Canadian exploration and development expenses incurred by the taxpayer (or expenses that would have been Canadian exploration and development expenses if they had been incurred by the taxpayer after 1971 and before May 7, 1974) in respect of that field or any part thereof, the following rules apply:

(a) there shall, at that time, be included by the taxpayer in the amount determined for G in the definition "cumulative Canadian exploration expense" in subsection 66.1(6) the amount that became receivable by the taxpayer; and

(b) there shall, at that time, be included by the other person in the amount referred to in paragraph (c) of the definition "Canadian exploration expense" in subsection 66.1(6) the amount that became payable by that person.

Related Provisions: 66(15) — Definitions. See additional Related provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(12.2) added by 1974-75-76, c. 26, subsec. 35(15), applicable in respect of transactions occurring after May 6, 1974.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(12.3) Idem — Where, pursuant to an agreement between a taxpayer and another person to unitize an oil or gas field in Canada, an amount has become receivable by the taxpayer at a particular time after May 6, 1974 from that other person in respect of Canadian development expense incurred by the taxpayer in respect of that field or any part thereof, the following rules apply:

(a) there shall, at that time, be included by the taxpayer in the amount determined for G in the definition "cumulative Canadian development expense" in subsection 66.2(5) the amount that became receivable by the taxpayer; and

(b) there shall, at that time, be included by the other person in the amount referred to in paragraph (a) of the definition "Canadian development expense" in subsection 66.2(5) the amount that became payable by that person.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(12.3) added by 1974-75-76, c. 26, subsec. 35(15), applicable in respect of transactions occurring after May 6, 1974.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(12.4) Limitation of foreign exploration and development expenses — Where, as a result of a transaction occurring after May 6, 1974, an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a foreign resource property) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily foreign exploration and development expenses of the taxpayer (or would have been so regarded if they had been incurred by the taxpayer after 1971), the following rules apply:

(a) in computing the taxpayer's foreign exploration and development expenses at that time, there shall be deducted the amount receivable by the taxpayer;

(b) where the amount receivable exceeds the total of the taxpayer's foreign exploration and development expenses incurred before that time to the extent that those expenses were not deducted or deductible, as the case may be, in computing the taxpayer's income for a previous taxation year, there shall be included in the amount referred to in paragraph 59(3.2)(a) the amount by which

(i) the amount receivable

exceeds

(ii) the total of the taxpayer's foreign exploration and development expenses incurred by the taxpayer before that time to the extent that those expenses were not deducted or deductible, as the case may be, in computing the taxpayer's income for a previous taxation year; and

(c) where an amount is included in the amount referred to in paragraph 59(3.2)(a) by virtue of paragraph (b), the total of the taxpayer's foreign exploration and development expenses at that time shall be deemed to be nil.

Related Provisions: 59(3.2)(a) — Income inclusion; 95(1) — "foreign affiliate". See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: All that portion of subsec. 66(12.4) preceding para. (a) amended by 1985, c. 45, subsec. 28(13), to delete the words "or a property that would have been a foreign resource property if it had been acquired after 1971" which had followed "foreign resource property", applicable with respect to transactions occurring in taxation years commencing after 1984.

Subsec. 66(12.4) added by 1974-75-76, c. 26, subsec. 35(15), applicable in respect of transactions occurring after May 6, 1974.

I.T. Application Rules: 29.

(12.5) Unitized oil or gas field in Canada — Where, pursuant to an agreement between a taxpayer and another person to unitize an oil or gas field in Canada, an amount has become receivable by the taxpayer at a particular time from that other person in respect of Canadian oil and gas property expense incurred by the taxpayer in respect of that field or any part thereof, the following rules apply:

(a) there shall, at that time, be included by the taxpayer in the amount determined for G in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) the amount that became receivable by the taxpayer; and

(b) there shall, at that time, be included by the other person in the amount referred to in paragraph (a) of the definition "Canadian oil and gas property expense" in subsection 66.4(5) the amount that became payable by that person.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(12.5) added by 1980-81-82-83, c. 48, subsec. 33(11), applicable to taxation years ending after December 11, 1979.

I.T. Application Rules: 29.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(12.6) Canadian exploration expenses to flow-through shareholder — Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian exploration expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which the part of those expenses that was incurred on or before the effective date of the renunciation (which part is in this subsection referred to as the "specified expenses") exceeds the total of

(a) the assistance that the corporation has received, is entitled to receive or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or to Canadian exploration activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in paragraph (b) or (b.1)),

(b) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation,

(b.1) all specified expenses each of which is a cost of, or for the use of, seismic data

(i) that had been acquired (otherwise than as a consequence of performing work that resulted in the creation of the data) by any other person before the cost was incurred,

(ii) in respect of which a right to use had been acquired by any other person before the cost was incurred, or

(iii) all or substantially all of which resulted from work performed more than one year before the cost was incurred, and

(c) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses,

but not in any case

(d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced under this subsection or subsection (12.601) or (12.62) in respect of the share on or before the day on which the renunciation is made, or

(e) exceeding the amount, if any, by which the cumulative Canadian exploration expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts renounced under this subsection in respect of any other share

(i) on the date on which the renunciation is made, and

(ii) effective on or before the effective date of the renunciation.

Related Provisions: 66(12.601), (12.602) — Flow-through share rules for first $2 million of Canadian development expenses; 66(12.61) — Effect of renunciation of Canadian exploration expense; 66(12.62)(d) — Canadian development expenses to flow-through shareholder; 66(12.64)(c) — Canadian oil and gas property expenses to flow-through shareholder; 66(12.66) — Expense in the first 60 days of the year; 66(12.67) — Restriction on renunciation; 66(12.68) — Filing selling instruments; 66(12.69) — Filing re partners; 66(12.7) — Filing; 66(12.71) — Restriction on renunciation; 66(12.72) — Application of sections 231 to 231.2; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership, etc.; 66.3(3) —

Cost of flow-through shares; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Amalgamations — flow-through shares; 110.6(1)"investment expense"(d) — effect of renunciation on capital gains exemption; 163(2.2) — False statement or omissions — penalty; 211.91 — Tax on issuer using one-year look-back rule; 248(1)"specified future tax consequence"(b) — Reduction under 66(12.73) is a specified future tax consequence; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit. See additional Related Provisions and Definitions at end of s. 66.

History: The portion of subsec. 66(12.6) before para. (c) amended, para. (b.1) added and para. (d) amended by 1997, c. 25, subsecs. 13(2)–(4); the portion before para. (c) applicable to expenses incurred after February 1996, para. (b.1) applicable to costs incurred after March 5, 1996, other than costs incurred under an agreement in writing made before March 6, 1996, and para. (d) applicable to renunciations made after 1998. The amended portions formerly read:

> (12.6) Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian exploration expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of
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> (a) the assistance that it has received, is entitled to receive, or may reasonably be expected to receive at any time, and that may reasonably be related to those expenses or to Canadian exploration activities to which those expenses relate (other than assistance that may reasonably be attributable to expenses referred to in paragraph (b)),
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> (b) any of those expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and
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> . . . . .
>
> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced under this subsection or subsection (12.601), (12.62) or (12.64) in respect of the share on or before the date on which the renunciation is made, or

The opening words of subsec. 66(12.6) amended by 1994, c. 8, subsec. 5(3), applicable to expenses incurred after February 1986. They formerly read:

> (12.6) Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian exploration expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

Para. 66(12.6)(d) amended by 1994, c. 8, subsec. 5(4), applicable to expenses incurred after December 2, 1992. Para. (d) formerly read:

> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.62) or (12.64) on or before the date on which the renunciation is made, or

Pre-RSC History: Subsec. 66(12.6) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

Regulations: 228 (information return); 1206(1), (4.1), (4.2) (prescribed Canadian exploration and development overhead expenses, for 66(12.6)(b)).

Forms: T101: Flow-through share — Summary of renunciation, reduction of amount previously renounced, allocation of assistance and calculation of Part XII.6 tax; T101 Supp: Statement — Renunciation of resource expense, reduction of amount previously renounced and allocation of assistance; T102 Summ: Allocation to members of a partnership of renounced resource expenses, reduction of amounts previously renounced and amount of assistance; T102 Supp: Statement of renounced resource expense, reduction of amount previously renounced and assistance allocation to member of partnership.

(12.601) Flow-through share rules for first $1 million of Canadian development expenses —

Where

(a) a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation,

(a.1) the corporation's taxable capital amount at the time the consideration was given was not more than $15,000,000, and

(b) during the period beginning on the later of December 3, 1992 and the particular day the agreement was entered into and ending on the day that is 24 months after the end of the month that included that particular day, the corporation incurred Canadian development expenses described in paragraph (a) or (b) of the definition "Canadian development expense" in subsection 66.2(5) or that would be described in paragraph (f) of that definition if the words "paragraphs (a) to (e)" in that paragraph were read as "paragraphs (a) and (b)",

the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after that period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which the part of those expenses that was incurred on or before the effective date of the renunciation (which part is in this subsection referred to as the "specified expenses") exceeds the total of

(c) the assistance that the corporation has received, is entitled to receive, or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or Canadian development activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in paragraph (d)),

(d) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and

(e) all amounts that are renounced on or before the day on which the renunciation is made by any other renunciation under this subsection or subsection (12.62) in respect of those expenses.

Related Provisions: 66(12.6011) — Meaning of "taxable capital amount" for 66(12.601)(a.1); 66(12.602) — Restriction; 66(12.62)(c), (d) — Canadian development expenses to flow-through shareholder; 66(12.64)(c) — Canadian oil and gas property expenses to flow-through shareholder; 66(12.66) — Expenses in first 60 days of following year; 66(12.67) — Restrictions on renunciation; 66(12.69) — Filing re partners; 66(12.7) — Filing; 66(12.71) — Restriction on renunciation; 66(12.72) — Application of sections 231 to 231.3; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership, etc.; 66.1(6)"restricted expense"(c) — inclusion of renounced expenses; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Amalgamations; 110.6(1)"investment expense"(d) — Effect of renunciation on capital gains exemption; 163(2.2) — False statements or omissions — penalty; 211.91 — Tax on issuer using one-year look-back rule; 248(1)"specified future tax consequence"(b) — Reduction under 66(12.73) is a specified future tax consequence.

History: The portion of subsec. 66(12.601) before para. (b) amended by 1997, c. 25, subsec. 13(5), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

(a) before March 6, 1996; or

(b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

That portion formerly read:

(12.601) Where

(a) a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation, and

The portion of subsec. 66(12.601) between paras. (b) and (e) amended by 1997, c. 25, subsec. 13(6), applicable to expenses incurred after December 2, 1992. That portion formerly read:

the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

(c) the assistance that it has received, is entitled to receive, or can reasonably be expected to receive at any time, and that can reasonably be related to those expenses or Canadian development activities to which those expenses relate (other than assistance that can reasonably be attributable to expenses referred to in paragraph (b)),

(d) any of those expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and

Subsec. 66(12.601) added by 1994, c. 8, subsec. 5(5), applicable to expenses incurred after December 2, 1992.

Regulations: 1206(1), (4.1), (4.2) (prescribed Canadian exploration and development overhead expenses, for 66(12.601)(d)).

Forms: T101: Flow-through share — Summary of renunciation, reduction of amount previously renounced, allocation of assistance and calculation of Part XII.6 tax; T101 Supp: Statement — Renunciation of resource expense, reduction of amount previously renounced and allocation of assistance; T102 Summ: Allocation to members of a partnership of renounced resource expenses, reduction of amounts previously renounced and amount of assistance; T102 Supp: Statement of renounced resource expense, reduction of amount previously renounced and assistance allocation to member of partnership.

(12.6011) Taxable capital amount — For the purpose of subsection (12.601), a particular corporation's taxable capital amount at any time is the total of

(a) its taxable capital employed in Canada for its last taxation year that ended more than 30 days before that time, and

(b) the total of all amounts each of which is the taxable capital employed in Canada of another corporation associated at that time with the particular corporation for the other corporation's last taxation year that ended more than 30 days before that time.

Related Provisions: 66(12.6012) — Meaning of taxable capital employed in Canada; 66(12.6013) — Effect of amalgamation or merger; 256 — Associated corporations.

History: Subsec. 66(12.6011) added by 1997, c. 25, subsec. 13(7), applicable after March 5, 1996, except that the amount determined under subsec. (12.6011) in respect of a renunciation by a corporation shall be determined as if each other corporation associated with the corporation were not so associated where the renunciation was made before 1999 in respect of consideration given

(a) before December 6, 1996; or

(b) under an agreement in writing made before December 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before December 7, 1996 with a public authority in Canada in accordance with securities legislation of a province.

(12.6012) Taxable capital employed in Canada — For the purpose of determining a corporation's taxable capital amount at a particular time under subsection (12.6011) and for the purpose of subsection (12.6013), a particular corporation's taxable capital employed in Canada for a taxation year is the amount that would be its taxable capital employed in Canada for the year, determined in accordance with subsection 181.2(1) and without reference to the portion of its investment allowance (as determined under subsection 181.2(4)) that is attributable to shares of the capital stock of, dividends payable by, or indebtedness of, another corporation that

(a) was not associated with the particular corporation at the particular time; and

(b) was associated with the particular corporation at the end of the particular corporation's last taxation year that ended more than 30 days before that time.

Related Provisions: 256 — Associated corporations.

History: Subsec. 66(12.6012) added by 1997, c. 25, subsec. 13(7), applicable after March 5, 1996.

(12.6013) Amalgamations and mergers — For the purpose of determining the taxable capital amount at a particular time under subsection (12.6011) of any corporation and for the purpose of this subsection, a particular corporation that was created as a consequence of an amalgamation or merger of other corporations (each of which is in this subsection referred to as a "predecessor corporation"), and that does not have a taxation year that ended more than 30 days before the particular time, is deemed to have taxable capital employed in Canada for a taxation year that ended more than 30 days before the particular time equal to the total of all amounts each of which is the taxable capital employed in Canada of a predecessor corporation for its last taxation year that ended more than 30 days before the particular time.

History: Subsec. 66(12.6013) added by 1997, c. 25, subsec. 13(7), applicable after March 5, 1996.

(12.602) Idem — A corporation shall be deemed not to have renounced any particular amount under subsection (12.601) in respect of a share where

(a) the particular amount exceeds the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under subsection (12.6), (12.601) or (12.62) on or before the day on which the renunciation is made;

(b) the particular amount exceeds the amount, if any, by which

(i) the cumulative Canadian development expense of the corporation on the effective date of the renunciation, computed before taking into account any amounts renounced under subsection (12.601) on the day on which the renunciation is made,

exceeds

(ii) the total of all amounts renounced under subsection (12.601) by the corporation in respect of any other share

(A) on the day on which the renunciation is made, and

(B) effective on or before the effective date of the renunciation; or

(c) the particular amount relates to Canadian development expenses incurred by the corporation in a calendar year and the total amounts renounced, on or before

the day on which the renunciation is made, under subsection (12.601) in respect of

(i) Canadian development expenses incurred by the corporation in that calendar year, or

(ii) Canadian development expenses incurred in that calendar year by another corporation associated with the corporation at the time the other corporation incurred such expenses

exceeds $1,000,000.

Related Provisions: 66(12.66) — Expenses in first 60 days of following year.

History: Para. 66(12.602)(a) amended by 1997, c. 25, subsec. 13(8), applicable to renunciations made after 1998. Para. (a) formerly read:

(a) the particular amount exceeds the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under subsection (12.6), (12.601), (12.62) or (12.64) on or before the day on which the renunciation is made;

The closing words of para. 66(12.602)(c) amended by 1997, c. 25, subsec. 13(9), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

(a) before March 6, 1996; or

(b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

The closing words formerly read:

exceeds $2,000,000.

Subsec. 66(12.602) added by 1994, c. 8, subsec. 5(5), applicable to expenses incurred after December 2, 1992.

(12.61) Effect of renunciation — Subject to subsections (12.69) to (12.702), where under subsection (12.6) or (12.601) a corporation renounces an amount to a person,

(a) the Canadian exploration expenses or Canadian development expenses to which the amount relates shall be deemed to be Canadian exploration expenses incurred in that amount by the person on the effective date of the renunciation; and

(b) the Canadian exploration expenses or Canadian development expenses to which the amount relates shall, except for the purposes of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian exploration expenses or Canadian development expenses incurred by the corporation.

Related Provisions: 66(16) — Partnership deemed to be a person; 66(17) — Non-arm's length partnerships. See additional Related Provisions and Definitions at end of s. 66.

History: The opening words of subsec. 66(12.61) amended by 1997, c. 25, subsec. 13(10), applicable to renunciations made after 1998. The opening words formerly read:

(12.61) Subject to subsections (12.69) to (12.701), where under subsection (12.6) or (12.601) a corporation renounces an amount to a person,

Subsec. 66(12.61) amended by 1994, c. 8, subsec. 5(5), applicable to expenses incurred after December 2, 1992. Subsec. (12.61) formerly read:

(12.61) Effect of renunciation — Subject to subsections (12.69) to (12.701), where under subsection (12.6) a corporation renounces an amount to a person,

(a) the Canadian exploration expenses to which the amount relates shall be deemed to be Canadian exploration expenses incurred in that amount by the person on the effective date of the renunciation; and

(b) the Canadian exploration expenses to which the amount relates shall, except for the purpose of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian exploration expenses incurred by the corporation.

That portion of subsec. 66(12.61) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(3), applicable after July 13, 1990. That portion formerly read:

(12.61) Where a person renounces an amount to a person under subsection (12.6),

Pre-RSC History: Subsec. 66(12.61) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.62) Canadian development expenses to flow-through shareholder — Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian development expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which the part of those expenses that was incurred on or before the effective date of the renunciation (which part is in this subsection referred to as the "specified expenses") exceeds the total of

(a) the assistance that the corporation has received, is entitled to receive, or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or to Canadian development activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in paragraph (b) or (b.1)),

(b) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation,

(b.1) all specified expenses that are described in paragraph (e) of the definition "Canadian development expense" in subsection 66.2(5) or that are described in paragraph (f) of that definition because of the reference in the latter paragraph to paragraph (e), and

(c) the total of amounts that are renounced on or before the day on which the renunciation is made by any other renunciation under this subsection or subsection (12.601) in respect of those expenses,

but not in any case

(d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6) or (12.601) on or before the day on which the renunciation is made, or

(e) exceeding the amount, if any, by which the cumulative Canadian development expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts renounced under this subsection in respect of any other share

(i) on the date on which the renunciation is made, and

(ii) effective on or before the effective date of the renunciation.

Related Provisions: 66(12.601), (12.602) — Flow-through share rules for first $2 million of Canadian development expenses; 66(12.63) — Ef-

fect of renunciation of Canadian development expense; 66(12.64)(c) — Canadian oil and gas property expenses to flow-through shareholder; 66(12.67) — Restriction on renunciation; 66(12.68) — Filing selling instruments; 66(12.69) — Filing re partners; 66(12.7) — Filing; 66(12.71) — Restriction on renunciation; 66(12.72) — Application of sections 231 to 231.3; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership, etc.; 66.1(6)"restricted expense"(c) — Inclusion of amount renounced; 66.2(5) — Definitions; 66.3(3) — Cost of flow-through shares; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Flow-through shares; 110.6(1)"investment expense"(d) — effect of renunciation on capital gains exemption; 163(2.2) — False statement or omissions — penalty; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit. See additional Related Provisions and Definitions at end of s. 66.

History: The portion of subsec. 66(12.62) before para. (c) amended by 1997, c. 25, subsec. 13(11), applicable to expenses incurred after February 1996. This portion formerly read:

> (12.62) Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian development expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of
>
> (a) the assistance that it has received, is entitled to receive, or may reasonably be expected to receive at any time, and that may reasonably be related to those expenses or to Canadian development activities to which those expenses relate (other than assistance that may reasonably be attributable to expenses referred to in paragraph (b)),
>
> (b) any of those expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, and

Para. 66(12.62)(b.1) added by 1997, c. 25, subsec. 13(12), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

> (a) before March 6, 1996; or
>
> (b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

Para. 66(12.62)(d) amended by 1997, c. 25, subsec. 13(13), applicable to renunciations made after 1998. Para. (d) formerly read:

> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6), (12.601) or (12.64) on or before the date on which the renunciation is made, or

The opening words of subsec. 66(12.62) amended by 1994, c. 8, subsec. 5(6), applicable to expenses incurred after February 1986. They formerly read:

> (12.62) Where a person has given consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period commencing on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation has incurred Canadian development expenses, the corporation may, after it has complied with subsection (12.68) in respect of the share and within that period or within 30 days thereafter, renounce, effective on the date on which the renunciation is made or on such earlier date as may be set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

That portion of subsec. 66(12.62) between paras. (b) and (e) amended by 1994, c. 8, subsec. 5(7), applicable to expenses incurred after December 2, 1992. That portion formerly read:

> (c) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses,

but not in any case

> (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6) or (12.64) on or before the date on which the renunciation is made, or

Pre-RSC History: Subsec. 66(12.62) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

Regulations: 228 (information return); 1206(1), (4.1), (4.2) (prescribed Canadian exploration and development overhead expenses, for 66(12.62)(b)).

Forms: T101: Flow-through share — Summary of renunciation, reduction of amount previously renounced, allocation of assistance and calculation of Part XII.6 tax; T101 Supp: Statement — Renunciation of resource expense, reduction of amount previously renounced and allocation of assistance; T102 Summ: Allocation to members of a partnership of renounced resource expenses, reduction of amounts previously renounced and amount of assistance; T102 Supp: Statement of renounced resource expense, reduction of amount previously renounced and assistance allocation to member of partnership.

(12.63) Effect of renunciation — Subject to subsections (12.691) to (12.702), where under subsection (12.62) a corporation renounces an amount to a person,

> (a) the Canadian development expenses to which the amount relates shall be deemed to be Canadian development expenses incurred in that amount by the person on the effective date of the renunciation; and
>
> (b) the Canadian development expenses to which the amount relates shall, except for the purposes of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian development expenses incurred by the corporation.

Related Provisions: 66(16) — Partnership deemed to be a person; 66.2(5) — Definitions. See additional Related provisions and Definitions at end of s. 66.

History: That portion of subsec. 66(12.63) preceding para. (a) amended by 1997, c. 25, subsec. 13(14), applicable to renunciations made after 1998. That portion formerly read:

> (12.63) Subject to subsections (12.69) to (12.701), where under subsection (12.62) a corporation renounces an amount to a person,

That portion of subsec. 66(12.63) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(4), applicable after July 13, 1990. That portion formerly read:

> (12.63) Where a corporation renounces an amount to a person under subsection (12.62),

Pre-RSC History: Subsec. 66(12.63) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.64) [Repealed]

Related Provisions: 66(12.602) — Flow-through share rules for first $2 million of Canadian development expense; 66(12.62)(d) — Canadian development expenses to flow-through shareholder; 66(12.65) — Effect of renunciation of Canadian oil and gas property expenses; 66(12.67) — Restriction on renunciation; 66(12.68) — Filing selling instruments; 66(12.69) — Filing re partners; 66(12.7) — Filing; 66(12.71) — Restriction on renunciation; 66(12.72) — Application of sections 231 to 231.3; 66(12.73) — Adjustment in renunciation; 66(12.741) — Late renunciation; 66(16) — Partnership deemed to be a person; 66(19) — Renunciation by member of partnership, etc.; 66.3(3) — Cost of flow-through shares; 66.3(4)(a)(ii)(B) — Paid-up capital; 87(4.4) — Flow-through shares; 110.6(1)"investment expense"(d) — effect of renunciation on capital gains exemption; 163(2.2) — False statement or omissions — penalty; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit. See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(12.64) repealed by 1997, c. 25, subsec. 13(15), applicable to renunciations made after March 5, 1996, other than a renunciation made before 1999 in respect of consideration given

(a) before March 6, 1996; or

(b) under an agreement in writing made before March 6, 1996 or under the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before March 6, 1996 with a public authority in Canada in accordance with securities legislation of a province.

Subsec. (12.64) formerly read:

(12.64) Canadian oil and gas property expenses to flow-through shareholder — Where a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period beginning on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation incurred Canadian oil and gas property expenses, the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year beginning after that period, renounce, effective on the date on which the renunciation is made or on an earlier date set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

(a) the assistance that it has received, is entitled to receive, or may reasonably be expected to receive at any time, and that may reasonably be related to those expenses, and

(b) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses,

but not in any case

(c) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6), (12.601) or (12.62) on or before the date on which the renunciation is made, or

(d) exceeding the amount, if any, by which the cumulative Canadian oil and gas property expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts renounced under this subsection in respect of any other share

(i) on the date on which the renunciation is made, and

(ii) effective on or before the effective date of the renunciation.

The opening words of subsec. 66(12.64) amended by 1994, c. 8, subsec. 5(8), applicable to expenses incurred after February 1986. They formerly read:

(12.64) Where a person has given consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, during the period commencing on the day the agreement was entered into and ending 24 months after the end of the month that included that day, the corporation has incurred Canadian oil and gas property expenses, the corporation may, after it has complied with subsection (12.68) in respect of the share and within that period or within 30 days thereafter, renounce, effective on the date on which the renunciation is made or on such earlier date as may be set out in the form prescribed for the purposes of subsection (12.7), to the person in respect of the share the amount, if any, by which those expenses incurred by it during that period and on or before the effective date of the renunciation exceed the total of

Para. 66(12.64)(c) amended by 1994, c. 8, subsec. 5(9), applicable to expenses incurred after December 2, 1992. Para. (c) formerly read:

(c) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced in respect of the share under this subsection or subsection (12.6) or (12.62) on or before the date on which the renunciation is made, or

Pre-RSC History: Subsec. 66(12.64) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

Regulations: 228 (information return).

Forms: T101: Flow-through share — Summary of renunciation, reduction of amount previously renounced, allocation of assistance and calculation of Part XII.6 tax; T101 Supp: Statement — Renunciation of resource expense, reduction of amount previously renounced and allocation of assistance; T102 Summ: Allocation to members of a partnership of renounced resource expenses, reduction of amounts previously renounced and amount of assistance; T102 Supp: Statement of renounced resource expense, reduction of amount previously renounced and assistance allocation to member of partnership.

(12.65) [Repealed]

Related Provisions: 66(16) — Partnership deemed to be a person. See additional Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(12.65) repealed by 1997, c. 25, subsec. 13(15), applicable on the same basis as the repeal of 66(12.64). Subsec. (12.65) formerly read:

(12.65) Effect of renunciation — Subject to subsections (12.69) to (12.701), where under subsection (12.64) a corporation renounces an amount to a person,

(a) the Canadian oil and gas property expenses to which the amount relates shall be deemed to be Canadian oil and gas property expenses incurred in that amount by the person on the effective date of the renunciation; and

(b) the Canadian oil and gas property expense to which the amount relates shall, except for the purposes of that renunciation, be deemed on and after the effective date of the renunciation never to have been Canadian oil and gas property expenses incurred by the corporation.

That portion of subsec. 66(12.65) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(5), applicable after July 13, 1990. That portion formerly read:

(12.65) Where a corporation renounces an amount to a person under subsection (12.64),

Pre-RSC History: Subsec. 66(12.65) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.66) Expenses in the first 60 days of year [or throughout next calendar year] — Where

(a) a corporation that issues a flow-through share to a person under an agreement incurs, in a particular calendar year, Canadian exploration expenses or Canadian development expenses,

(a.1) the agreement was made in the preceding calendar year,

(b) the expenses

(i) are described in paragraph (a), (d) or (f) of the definition "Canadian exploration expense" in subsection 66.1(6) or paragraph (a) or (b) of the definition "Canadian development expense" in subsection 66.2(5),

(ii) would be described in paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6) if the words "paragraphs (a), (b), (c), (d), (f) and (g)" were read as "paragraphs (a), (d) and (f)", or

(iii) would be described in paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) if the words "any of paragraphs (a) to (e)" were read as "paragraph (a) or (b)",

(c) before the end of that preceding year the person paid the consideration in money for the share to be issued,

(d) the corporation and the person deal with each other at arm's length throughout the particular year, and

(e) in January, February or March of the particular year, the corporation renounces an amount in respect of the expenses to the person in respect of the share in accordance with subsection (12.6) or (12.601) and the effective date of the renunciation is the last day of that preceding year,

the corporation is for the purpose of subsection (12.6) or for the purposes of subsection (12.601) and paragraph (12.602)(b), as the case may be, deemed to have incurred the expenses on the last day of the year.

Related Provisions: 66(12.6) — Canadian exploration expenses to flow-through shareholder; 66(16) — Partnership deemed to be a person; 66(17) — Non-arm's length partnerships; 87(4.4) — Amalgamations; 163(2.21), (2.22) — Penalty for false statement or omission; 211.91 — Tax on issuer using one-year look-back rule; 248(1)"specified future tax consequence"(b) — Reduction under 66(12.73) is a specified future tax consequence. See additional Related provisions and Definitions at end of s. 66.

History: The closing words of subsec. 66(12.66) amended by 1998, c. 19, subsec. 104(5), applicable to expenses incurred after 1992. The closing words formerly read:

> the corporation shall for the purpose of subsection (12.6) or (12.601) be deemed to have incurred the expenses on the effective date of the renunciation.

Para. 66(12.66)(a) amended, para. (a.1) added, by 1997, c. 25, subsec. 13(16), applicable to expenses incurred after 1996, except that

> amended para. (a) and para. (a.1) do not apply to expenses incurred in January or February of 1997 in respect of an agreement that was made in 1995; and
>
> for the purpose of applying para. (a.1) to expenses incurred in 1998, any agreement made in 1996 is deemed to have been made in 1997.

Para. (a) formerly read:

> (a) a corporation that issues a flow-through share to a person under an agreement incurs, within 60 days after the end of a calendar year, Canadian exploration expenses or Canadian development expenses,

Para. 66(12.66)(b) amended by 1997, c. 25, subsec. 13(17), applicable to expenses incurred after 1992. Para. (b) formerly read:

> (b) the expenses are expenses described in paragraph (a), (d) or (f) of the definition "Canadian exploration expense" in subsection 66.1(6) or paragraph (a) or (b) of the definition "Canadian development expense" expense in subsection 66.2(5),

Paras. 66(12.66)(c), (d) and (e) amended by 1997, c. 25, subsec. 13(18), applicable to expenses incurred after 1996, except that amended paras. (c) to (e) do not apply to expenses incurred in January or February of 1997 in respect of an agreement that was made in 1995. Paras. (c) to (e) formerly read:

> (c) before the end of the year, the agreement was entered into between the corporation and the person and the person paid the consideration for the share in money,
>
> (d) the corporation and the person deal with each other at arm's length throughout the 60 days; and
>
> (e) within 90 days after the end of the year, the corporation renounces an amount in respect of the expenses to the person in respect of the share in accordance with subsection (12.6) or (12.601) and the effective date of the renunciation is the last day of the year,

Subsec. 66(12.66) amended by 1994, c. 8, subsec. 5(10), applicable to expenses incurred after 1992. Subsec. (12.66) formerly read:

> (12.66) Where
>
> (a) a corporation that issues a flow-through share to a person under an agreement incurs, within 60 days after the end of a calendar year, Canadian exploration expenses,
>
> (b) the Canadian exploration expenses are expenses described in paragraph (a), (d) or (f) of the definition "Canadian exploration expense" in subsection 66.1(6),
>
> (c) before the end of the year, the agreement was entered into between the corporation and the person and the person paid the consideration for the share in money,
>
> (d) the corporation and the person deal with each other at arm's length throughout the 60 days, and
>
> (e) within 90 days after the end of the year the corporation renounces an amount in respect of the Canadian exploration expenses to the person in respect of the share in accordance with subsection (12.6) and the effective date of the renunciation is the last day of the year,
>
> the corporation shall for purposes of subsection (12.6) be deemed to have incurred the expenses on the effective date of the renunciation.

Pre-RSC History: Para. 66(12.66)(b) substituted by 1988, c. 55, subsec. 41(1), applicable with respect to expenses incurred after 1987, except that an amount in respect of oil or gas expenses renounced under subsec. 66(12.66) by a corporation on or before the day that is 30 days after September 13, 1988 shall be deemed to have been renounced within 90 days after the end of 1987. Para. (b) formerly read:

> (b) the Canadian exploration expenses are expenses described in subparagraph 66.1(6)(a)(iii) incurred in respect of a mineral resource other than a bituminous sands deposit, an oil sands deposit or an oil shale deposit,

Subsec. 66(12.66) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

Selected Cases [subsec. 66(12.66)]: *Furukawa v. Canada*, [1996] 2 C.T.C. 2641 (TCC) (Marketing incentives did not qualify as assistance; shares not prescribed shares).

(12.67) Restrictions on renunciation — A corporation shall be deemed

> (a) not to have renounced under any of subsections (12.6), (12.601) and (12.62) any expenses that are deemed to have been incurred by it because of a renunciation under this section by another corporation that is not related to it;
>
> (b) not to have renounced under subsection (12.601) to a trust, corporation or partnership any Canadian development expenses (other than expenses renounced to another corporation that renounces under subsection (12.6) any Canadian exploration expense deemed to have been incurred by it because of the renunciation under subsection (12.601)) if, in respect of the renunciation under subsection (12.601), it has a prohibited relationship with the trust, corporation or partnership;
>
> (c) not to have renounced under subsection (12.601) any Canadian development expenses deemed to have been incurred by it because of a renunciation under subsection (12.62); and
>
> (d) not to have renounced under subsection (12.6) to a particular trust, corporation or partnership any Canadian exploration expenses (other than expenses ultimately renounced by another corporation under subsection (12.6) to an individual (other than a trust) or to a trust, corporation or partnership with which that other corporation does not have, in respect of that ultimate renunciation, a prohibited relationship) deemed to be incurred by it because of a renunciation under subsection (12.601) if, in respect of the renunciation under subsection (12.6), it has a prohibited relationship with the particular trust, corporation or partnership.

Related Provisions: 66(12.671) — Prohibited relationship. See additional Related Provisions and Definitions at end of s. 66.

History: Para. 66(12.67)(a) amended by 1997, c. 25, subsec. 13(19), applicable to renunciations made after 1998. Para. (a) formerly read:

> (a) not to have renounced under any of subsections (12.6), (12.601), (12.62) and (12.64) any expenses that are deemed to have been incurred by it because of a renunciation under this section by another corporation that is not related to it;

Subsec. 66(12.67) amended by 1994, c. 8, subsec. 5(11), applicable to expenses incurred after December 2, 1992. Subsec. (12.67) formerly read:

> (12.67) Restriction on renunciation — A corporation shall not renounce under any of subsections (12.6), (12.62) and (12.64) any expenses that are deemed to have been incurred by it by virtue of a renunciation under this section by another corporation that is not related to it.

Pre-RSC History: Subsec. 66(12.67) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.671) Prohibited relationship — For the purposes of subsection (12.67), where a trust, corporation (in paragraph (b) referred to as the "shareholder corporation") or

partnership, as the case may be, gave consideration under a particular agreement for the issue of a flow-through share of a particular corporation, the particular corporation has, in respect of a renunciation under subsection (12.6) or (12.601) in respect of the share, a prohibited relationship

(a) with the trust if, at any time after the particular agreement was entered into and before the share is issued to the trust, the particular corporation or any corporation related to the particular corporation is beneficially interested in the trust;

(b) with the shareholder corporation if, immediately before the particular agreement was entered into, the shareholder corporation was related to the particular corporation; or

(c) with the partnership if any part of the amount renounced would, but for subsection (12.7001), be included, because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), in the Canadian exploration expense of

(i) the particular corporation, or

(ii) any other corporation that, at any time

(A) after the particular agreement was entered into, and

(B) before that part of the amount renounced would, but for this paragraph, be incurred,

would, if flow-through shares issued by the particular corporation under agreements entered into at the same time as or after the time the particular agreement was entered into were disregarded, be related to the particular corporation.

History: The opening words of para. 66(12.671)(c) amended by 1997, c. 25, subsec. 13(20), applicable to renunciations made after 1998. The opening words formerly read:

(c) with the partnership if any part of the amount renounced would, but for subsection (12.7), be included, because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), in the Canadian exploration expense of

Subsec. 66(12.671) added by 1994, c. 8, subsec. 5(11), applicable to expenses incurred after December 2, 1992.

(12.68) Filing selling instruments — A corporation that agrees to issue or prepares a selling instrument in respect of flow-through shares shall file with the Minister a prescribed form together with a copy of the selling instrument or agreement to issue the shares on or before the last day of the month following the earlier of

(a) the month in which the agreement to issue the shares is entered into, and

(b) the month in which the selling instrument is first delivered to a potential investor,

and the Minister shall thereupon assign an identification number to the form and notify the corporation of the number.

Related Provisions: 66(12.61) — Effect of renunciation; 66(12.74) — Late filed forms; 87(4.4) — Flow-through shares. See additional Related Provisions and Definitions at end of s. 66; 163.2(1)"excluded activity"(a)(i) — No good-faith reliance defence for advisor assessed third-party penalty.

Pre-RSC History: Subsec. 66(12.68) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986 except that a prescribed form referred to in the subsec. that is filed with the Minister before March 20, 1987 shall be deemed to have been timely filed.

Forms: T100: Flow-through share information.

(12.69) Filing re partners — Where, in a fiscal period of a partnership, an expense is incurred by the partnership as a consequence of a renunciation of an amount under subsection (12.6), (12.601) or (12.62), the partnership shall, before the end of the third month that begins after the end of the period, file with the Minister a prescribed form identifying the share of the expense attributable to each member of the partnership at the end of the period.

Related Provisions: 66(12.61) — Effect of renunciation; 66(12.6901) — Consequences of partnership failing to file; 66(12.74) — Late filed forms; 66(15) — Definitions. See additional Related provisions and Definitions at end of s. 66.

History: Subsec. 66(12.69) amended by 1997, c. 25, subsec. 13(21), applicable to renunciations made after 1998. Subsec. (12.69) formerly read:

(12.69) Where, in a fiscal period of a partnership, an expense is or, but for this subsection, would be incurred by the partnership as a consequence of a renunciation of an amount under subsection (12.6), (12.601), (12.62) or (12.64), the partnership shall, on or before the last day of the third month following the end of that period, file with the Minister a prescribed form indicating the share of the expense attributable to each member of the partnership at the end of the period and, where the prescribed form is not so filed, the partnership shall be deemed not to have incurred the expense.

Subsec. 66(12.69) amended by 1994, c. 8, subsec. 5(12), applicable to expenses incurred after December 2, 1992. Subsec. (12.69) formerly read:

(12.69) Where, in a fiscal period of a partnership, an expense is or, but for this subsection, would be incurred by the partnership as a consequence of a renunciation of an amount under subsection (12.6), (12.62) or (12.64), the partnership shall, on or before the last day of the third month following the end of that period, file with the Minister a prescribed form indicating the share of the expense attributable to each member of the partnership at the end of the period and, where the prescribed form is not so filed, the partnership shall be deemed not to have incurred the expense.

Subsec. 66(12.69) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to fiscal periods ending after July 13, 1990. Subsec. 66(12.69) formerly read:

(12.69) Where, as a consequence of a renunciation of an amount under subsection (12.6), (12.62) or (12.64), an expense is incurred by a partnership in a fiscal period thereof, the partnership shall, on or before the last day of the third month following the end of that period, file with the Minister an information return in prescribed form indicating the share of the expense attributable to each member of the partnership at the end of that period.

Pre-RSC History: Subsec. 66(12.69) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986 except that a prescribed form referred to in the subsec. that is filed with the Minister before March 20, 1987 shall be deemed to have been timely filed.

Forms: T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(12.6901) Consequences of failure to file — Where a partnership fails to file a prescribed form as required under subsection (12.69) in respect of an expense, except for the purpose of subsection (12.69) the partnership is deemed not to have incurred the expense.

History: Subsec. (12.6901) added by 1997, c. 25, subsec. 13(21), applicable to renunciations made after 1998.

(12.691) Filing re assistance — Where a partnership receives or becomes entitled to receive assistance as an agent for its members or former members at a particular time in respect of any Canadian exploration expense or Canadian development expense that is or, but for paragraph (12.61)(b) or (12.63)(b), would be incurred by a corporation, the following rules apply:

(a) where the entitlement of any such member or former member to any part of the assistance is known by the partnership as of the end of the partnership's first fiscal period ending after the particular time and that

part of the assistance was not required to be reported under paragraph (b) in respect of a calendar year ending before the end of that fiscal period, the partnership shall, on or before the last day of the third month following the end of that fiscal period, file with the Minister a prescribed form indicating the share of that part of the assistance paid to each of those members or former members before the end of that fiscal period or to which each of those members or former members is entitled at the end of that fiscal period;

(b) where the entitlement of any of those members or former members to any part of the assistance is known by the partnership as of the end of a calendar year that ends after the particular time and that part of the assistance was not required to be reported under paragraph (a) in respect of a fiscal period ending at or before the end of that calendar year, or under this paragraph in respect of a preceding calendar year, the partnership shall, on or before the last day of the third month following the end of that calendar year, file with the Minister a prescribed form indicating the share of that part of the assistance paid to each of those members or former members before the end of that fiscal period or to which each of those members or former members is entitled at the end of that calendar year; and

(c) where a prescribed form required to be filed under paragraph (a) or (b) is not so filed, the part of that expense relating to the assistance required to be reported in the prescribed form shall be deemed not to have been incurred by the partnership.

Related Provisions: 163(2.3) — False statement or omissions.

History: The opening words of subsec. 66(12.691) amended by 1997, c. 25, subsec. 13(22), applicable to renunciations made after 1998. The opening words formerly read:

(12.691) Idem — Where a partnership receives or becomes entitled to receive assistance as an agent for its members or former members at a particular time in respect of any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense that is or, but for paragraph (12.61)(b), (12.63)(b) or (12.65)(b), would be incurred by a corporation, the following rules apply:

Subsec. 66(12.691) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to assistance that a partnership receives or becomes entitled to receive after 1989 and in a fiscal period of the partnership ending after July 13, 1990.

(12.7) Filing re renunciation — Where a corporation renounces an amount in respect of Canadian exploration expenses or Canadian development expenses under subsection (12.6), (12.601) or (12.62), the corporation shall file a prescribed form in respect of the renunciation with the Minister before the end of the first month after the month in which the renunciation is made.

Related Provisions: 66(12.7001) — Consequences of corporation failing to file; 66(12.74) — Late filed forms. See additional Related provisions and Definitions at end of s. 66.

History: Subsec. 66(12.7) amended by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998. Subsec. (12.7) formerly read:

(12.7) Filing — Where a corporation renounces an amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses under subsection (12.6), (12.601), (12.62) or (12.64), the corporation shall file a prescribed form in respect of the renunciation with the Minister before the end of the first month following the month in which the renunciation is made and, where the prescribed form is not so filed, subsections (12.61), (12.63) and (12.65) do not apply in respect of the amount so renounced.

Subsec. 66(12.7) amended by 1994, c. 8, subsec. 5(13), applicable to renunciations after December 2, 1992. Subsec. (12.7) formerly read:

(12.7) Where a corporation renounces an amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses under subsection (12.6), (12.62) or (12.64), the corporation shall file a prescribed form in respect of the renunciation with the Minister before the end of the first month following the month in which the renunciation is made and, where the prescribed form is not so filed, subsections (12.61), (12.63) and (12.65) do not apply in respect of the amount so renounced.

Subsec. 66(12.7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to renunciations made after July 13, 1990. Subsec. 66(12.7) formerly read:

(12.7) Where a corporation renounces an amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses under subsection (12.6), (12.62) or (12.64), the corporation shall file a prescribed form in respect of the renunciation with the Minister on or before the last day of the month following the month in which the renunciation was made.

Pre-RSC History: Subsec. 66(12.7) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986 except that a prescribed form referred to in the subsec. that is filed with the Minister before March 20, 1987 shall be deemed to have been timely filed.

Forms: T101: Flow-through share — Summary of renunciation, reduction of amount previously renounced, allocation of assistance and calculation of Part XII.6 tax; T101 Supp: Statement — Renunciation of resource expense, reduction of amount previously renounced and allocation of assistance; T102 Summ: Allocation to members of a partnership of renounced resource expenses, reduction of amounts previously renounced and amount of assistance; T102 Supp: Statement of renounced resource expense, reduction of amount previously renounced and assistance allocation to member of partnership.

(12.7001) Consequences of failure to file — Where a corporation fails to file a prescribed form as required under subsection (12.7) in respect of a renunciation of an amount, subsections (12.61) and (12.63) do not apply in respect of the amount.

History: Subsec. (12.7001) added by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998.

(12.701) Filing re assistance — Where a corporation receives or becomes entitled to receive assistance as an agent in respect of any Canadian exploration expense or Canadian development expense that is or, but for paragraph (12.61)(b) or (12.63)(b), would be incurred by the corporation, the corporation shall, before the end of the first month after the particular month in which it first becomes known to the corporation that a person that holds a flow-through share of the corporation is entitled to a share of any part of the assistance, file with the Minister a prescribed form identifying the share of the assistance to which each of those persons is entitled at the end of the particular month.

Related Provisions: 66(12.702) — Consequences of corporation failing to file; 66(16) — Partnership deemed to be a person; 163(2.3) — False statement or omissions.

History: Subsec. 66(12.701) amended by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998. Subsec. (12.701) formerly read:

(12.701) Idem — Where at a particular time a corporation receives or becomes entitled to receive assistance as an agent in respect of any Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense that is or, but for paragraph (12.61)(b), (12.63)(b) or (12.65)(b), would be incurred by the corporation, the corporation shall, before the end of the first month following the particular month in which it first becomes known that a person or partnership that holds a flow-through share of the corporation is entitled to a share of any part of the assistance, file with the Minister a prescribed form indicating the share of that part of the assistance to which each of those persons or partnerships is entitled at the end of the particular month and, where the prescribed form is not so filed, the part of the expense relating to the assistance re-

quired to be reported in the prescribed form shall be deemed not to have been incurred by the corporation.

Subsec. 66(12.701) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(6), applicable to assistance that a corporation receives or becomes entitled to receive after July 13, 1990.

(12.702) Consequences of failure to file — Where a corporation fails to file a prescribed form as required under subsection (12.701) in respect of assistance, except for the purpose of subsection (12.701) the Canadian exploration expense or Canadian development expense to which the assistance relates is deemed not to have been incurred by the corporation.

History: Subsec. 66(12.702) added by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998.

(12.71) Restriction on renunciation — A corporation may renounce an amount under subsection (12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses incurred by it only to the extent that, but for the renunciation, it would be entitled to a deduction in respect of the expenses in computing its income.

History: Subsec. 66(12.71) amended by 1997, c. 25, subsec. 13(23), applicable to renunciations made after 1998. Subsec. (12.71) formerly read:

> (12.71) A corporation may renounce an amount under subsection (12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by it only to the extent that, but for the renunciation, it would be entitled to claim a deduction in respect of the expenses in computing its income for the purposes of this Part.

Subsec. 66(12.71) amended by 1994, c. 8, subsec. 5(14), applicable to renunciations after December 2, 1992. Subsec. (12.71) formerly read:

> (12.71) A corporation may renounce an amount under subsection (12.6), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by it only to the extent that, but for the renunciation, it would be entitled to claim a deduction in respect of the expenses in computing its income for the purposes of this Part.

Pre-RSC History: Subsec. 66(12.71) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.72) [Repealed]

History: Subsec. 66(12.72) repealed by 1997, c. 25, subsec. 13(23), applicable April 25, 1997 (Royal Assent). Subsec. (12.72) formerly read:

> (12.72) Application of sections 231 to 231.3 — Without restricting the generality of sections 231 to 231.3, where a corporation renounces an amount under subsection (12.6), (12.601), (12.62) or (12.64), sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses of the corporation in respect of which the amount is renounced, the amounts renounced in respect of those expenses, any information in respect of those expenses or the amounts renounced and the amount of, or information relating to, any assistance in respect of those expenses.

Subsec. 66(12.72) amended by 1994, c. 8, subsec. 5(14), applicable after December 2, 1992. Subsec. (12.72) formerly read:

> (12.72) Without restricting the generality of sections 231 to 231.3, where a corporation has renounced an amount under subsection (12.6), (12.62) or (12.64), sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses of the corporation in respect of which the amount was renounced, the amounts renounced in respect of those expenses, any information in respect of the expenses or the amounts renounced and the amount of, or information relating to, any assistance in respect of the expenses.

Subsec. 66(12.72) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(7), applicable after July 13, 1990. Subsec. (12.72) formerly read:

> (12.72) Without restricting the generality of sections 231 to 231.3, where a corporation has renounced any amount under subsection (12.6), (12.62) or (12.64), notwithstanding that a return of income has not been filed by any taxpayer under section 150 for the taxation year of the taxpayer in which the amount so renounced is deemed to be Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by the taxpayer or a partnership of which the taxpayer is a member, sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain the Canadian exploration expenses, Canadian development expenses, or Canadian oil and gas property expenses of the corporation in respect of which the amount was renounced, the amounts renounced in respect of those expenses, and any information in respect of the expenses or the amounts renounced.

Pre-RSC History: Subsec. 66(12.72) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.73) Reductions in renunciations — Where an amount that a corporation purports to renounce to a person under subsection (12.6), (12.601) or (12.62) exceeds the amount that it can renounce to the person under that subsection,

(a) the corporation shall file a statement with the Minister in prescribed form where

(i) the Minister sends a notice in writing to the corporation demanding the statement, or

(ii) the excess arose as a consequence of a renunciation purported to be made in a calendar year under subsection (12.6) or (12.601) because of the application of subsection (12.66) and, at the end of the year, the corporation knew or ought to have known of all or part of the excess;

(b) where subparagraph (a)(i) applies, the statement shall be filed not later than 30 days after the Minister sends a notice in writing to the corporation demanding the statement;

(c) where subparagraph (a)(ii) applies, the statement shall be filed before March of the calendar year following the calendar year in which the purported renunciation was made;

(d) except for the purpose of Part XII.6, any amount that is purported to have been so renounced to any person is deemed, after the statement is filed with the Minister, to have always been reduced by the portion of the excess identified in the statement in respect of that purported renunciation; and

(e) where a corporation fails in the statement to apply the excess fully to reduce one or more purported renunciations, the Minister may at any time reduce the total amount purported to be renounced by the corporation to one or more persons by the amount of the unapplied excess in which case, except for the purpose of Part XII.6, the amount purported to have been so renounced to a person is deemed, after that time, always to have been reduced by the portion of the unapplied excess allocated by the Minister in respect of that person.

Related Provisions: 66(16) — Partnership deemed to be a person; 152(4)(b)(v) — Three-year extension to normal reassessment period; 163(2.21), (2.22) — Penalty for false statement or omission; 248(1)"specified future tax consequence"(b) — Reduction is a specified future tax consequence. See also Related Provisions and Definitions at end of s. 66.

History: Subsec. 66(12.73) amended by 1997, c. 25, subsec. 13(23), applicable to purported renunciations made after 1996 except that, in respect

of purported renunciations made before 1999, the portion of subsec. (12.73) before para. (a) shall be read as:

> (12.73) Where an amount that a corporation purports to renounce to a person under subsection (12.6), (12.601), (12.62) or (12.64) exceeds the amount it can renounce to the person under that subsection,

Subsec. (12.73) formerly read:

> (12.73) Adjustment in renunciation — Where the total of all amounts that a corporation purports to renounce to persons under subsection (12.6), (12.601), (12.62) or (12.64) in respect of expenses incurred by it in any period ending on the effective date of the purported renunciation exceeds the total amount of those expenses in respect of which it may renounce amounts under that subsection, it shall
>
> (a) reduce the amount so renounced to one or more persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess, and
>
> (b) file a statement with the Minister indicating the adjustments made in the renunciations,
>
> and if the corporation does not so reduce the amounts and file that statement with the Minister within 30 days after notice in writing by the Minister is forwarded to the corporation that such a reduction is or will be required for the purposes of any assessment of tax under this Part, the Minister may, for the purposes of this section, reduce the amounts purported to be renounced by the corporation to one or more persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess, and in any such case, notwithstanding subsections (12.61), (12.63) and (12.65), the amount renounced to each of the persons shall be deemed to be the amount as reduced by the corporation or the Minister, as the case may be.

Subsec. 66(12.73) amended by 1994, c. 8, subsec. 5(14), applicable to renunciations made after December 2, 1992. Subsec. (12.73) formerly read:

> (12.73) Where the total of all amounts that a corporation purported to renounce to persons under subsection (12.6), (12.62) or (12.64) in respect of expenses incurred by it in any period ending on the effective date of the purported renunciation exceeds the total amount of those expenses in respect of which it may renounce amounts under those subsections, it shall reduce the amounts so renounced to one or more of those persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess and file a statement with the Minister indicating the adjustments made in the renunciations and if the corporation has failed to so reduce the amounts and file such a statement with the Minister within 30 days after notice in writing by the Minister has been forwarded to the corporation that such a reduction is or will be required for the purposes of any assessment of tax under this Part, the Minister may, for the purposes of this section, reduce the amounts purported to be renounced by the corporation to one or more of those persons to effect a reduction in the total of the amounts so purported to be renounced by the amount of the excess, and in any such case, notwithstanding subsections (12.61), (12.63) and (12.65), the amount renounced to each of the persons shall be deemed to be the amount as reduced by the corporation or the Minister, as the case may be.

Pre-RSC History: Subsec. 66(12.73) added by 1986, c. 55, subsec. 11(4), applicable with respect to expenses incurred after February 1986.

(12.74) Late filed forms — A corporation or partnership may file with the Minister a document referred to in subsection (12.68), (12.69), (12.691), (12.7) or (12.701) after the particular day on or before which the document is required to be filed under the applicable subsection and the document shall, except for the purposes of this subsection and subsection (12.75), be deemed to have been filed on the day on or before which it was required to be filed if

(a) if it is filed

(i) on or before the day that is 90 days after the particular day, or

(ii) after that day that is 90 days after the particular day where, in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the document to be filed; and

(b) the corporation or partnership, as the case may be, pays to the Receiver General at the time of filing a penalty in respect of the late filing.

Related Provisions: 66(12.75) — Penalty.

History: Subsec. 66(12.74) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(8), applicable to documents filed after June 1988, except that with respect to documents filed before July 14, 1990, the reference in the subsec. to "(12.691), (12.7) or (12.701)" shall be read as "or (12.7)". Subsec. 66(12.74) formerly read:

> (12.74) Late filed forms — A corporation or partnership may file with the Minister a document referred to in subsection (12.68), (12.69) or (12.7) after the day on or before which the document is required to be filed under the applicable subsection and the document shall be deemed to have been filed on the day on or before which it was required to be filed
>
> (a) if it is filed within 90 days after that day; and
>
> (b) if the corporation or partnership, as the case may be, pays to the Receiver General at the time of filing a penalty in respect of the late filing.

Pre-RSC History: Subsec. 66(12.74) added by 1988, c. 55, subsec. 41(2), applicable after March 19, 1987 except that, where the document was filed before July 1988, subsec. 66(12.74) shall be read without reference to paras. (a) and (b) thereof.

(12.741) Late renunciation — Where a corporation purports to renounce an amount under subsection (12.6), (12.601) or (12.62) after the period in which the corporation was entitled to renounce the amount, the amount is deemed, except for the purposes of this subsection and subsections (12.7) and (12.75), to have been renounced at the end of the period if

(a) the corporation purports to renounce the amount

(i) on or before the day that is 90 days after the end of that period, or

(ii) after the day that is 90 days after the end of that period where, in the opinion of the Minister, the circumstances are such that it would be just and equitable that the amount be renounced; and

(b) the corporation pays to the Receiver General a penalty in respect of the renunciation not more than 90 days after the renunciation.

Related Provisions: 66(12.75) — Penalty.

History: Subsec. 66(12.741) preceding para. (a) amended by 1997, c. 25, subsec. 13(24), applicable to renunciations made after 1998. That portion formerly read:

> (12.741) Where a corporation purports to renounce an amount under subsection (12.6), (12.601), (12.62) or (12.64) after the period during which the corporation would otherwise be entitled to renounce the amount, the amount shall, except for the purposes of this subsection and subsections (12.7) and (12.75), be deemed to have been renounced at the end of the period if

Subsec. 66(12.741) added by 1994, c. 8, subsec. 5(15), applicable to renunciations purported to be made after February 1993.

(12.75) Penalty — For the purposes of subsections (12.74) and (12.741), the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69), (12.691), (12.7) or (12.701) or in respect of a renunciation referred to in subsection (12.741) is the lesser of $15,000 and

(a) where the penalty is in respect of the late filing of a document referred to in subsection (12.68), (12.69) or (12.7), the greater of

(i) $100, and

(ii) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses and Canadian development expenses renounced or attributed or

to be renounced or attributed as set out in the document;

(b) where the penalty is in respect of the late filing of a document referred to in subsection (12.691) or (12.701), the greater of

(i) $100, and

(ii) ¼ of 1% of the assistance reported in the document; and

(c) where the penalty is in respect of a renunciation referred to in subsection (12.741), the greater of

(i) $100, and

(ii) ¼ of 1% of the amount of the renunciation.

History: The opening words of para. 66(12.75)(c) amended by 1998, c. 19, subsec. 104(6), applicable to renunciations purported to be made after February 1993. The opening words formerly read:

(c) where the penalty is in respect of a renunciation referred to in subsection (12.74), the greater of

Subpara. 66(12.75)(a)(ii) amended by 1997, c. 25, subsec. 13(25), applicable to renunciations made after 1998. Subpara. (a)(ii) formerly read:

(ii) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses renounced or attributed or to be renounced or attributed as set out in the document;

The opening words of subsec. 66(12.75) amended and para. (c) added, by 1994, c. 8, subsecs. 5(16), (17), applicable to renunciations purported to be made after February 1993. The opening words formerly read:

(12.75) For the purposes of subsection (12.74), the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69), (12.691), (12.7) or (12.701) is the lesser of $15,000 and

Subsec. 66(12.75) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(9), applicable to documents filed after July 13, 1990, except that in its application to documents filed on or before December 17, 1991, the subsec. shall be read as follows:

(12.75) For the purposes of subsection (12.74), the penalty in respect of the late filing of a document referred to in subsection (12.691) or (12.701) is nil and the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69) or (12.7) is the lesser of

(a) $15,000, and

(b) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses renounced or attributed or to be renounced or attributed as set out in the document.

Subsec. 66(12.75) formerly read:

(12.75) For the purposes of subsection (12.74), the penalty in respect of the late filing of a document referred to in subsection (12.68), (12.69) or (12.7) is the lesser of

(a) $15,000, and

(b) ¼ of 1% of the maximum amount in respect of the Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses renounced, to be renounced, attributed or to be attributed as set out in the document.

Pre-RSC History: Subsec. 66(12.75) added by 1988, c. 55, subsec. 41(2), applicable after March 19, 1987.

(13) Limitation — Where a taxpayer has incurred an outlay or expense in respect of which a deduction from income is authorized under more than one provision of this section or section 66.1, 66.2 or 66.4, the taxpayer is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(13) substituted by 1980-81-82-83, c. 48, subsec. 33(12), to add reference to section 66.4, applicable to taxation years ending after December 11, 1979.

Subsec. 66(13) substituted by 1974-75-76, c. 26, subsec. 35(16), applicable in respect of taxation years ending after May 6, 1974. Subsec. 66(13) formerly read:

(13) Where a taxpayer has incurred expenses the deduction of which from income is authorized under more than one provision of this section, he is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction.

I.T. Application Rules: 29(1)–(4), (6)–(34).

(13.1) Short taxation years — Where a taxpayer has a taxation year that is less than 51 weeks, the amount determined in respect of the year under any of subparagraph 66(4)(b)(i) and paragraphs 66.2(2)(c), 66.4(2)(b) and 66.7(4)(a) and (5)(a) shall not exceed that proportion of the amount otherwise determined thereunder that the number of days in the year is of 365.

Related Provisions: 20(1)(mm) — Deductions — injection substances. See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(13.1) added by 1987, c. 46, subsec. 18(5), applicable to taxation years commencing after June 5, 1987.

(14) Amounts deemed deductible under this subdivision — For the purposes of section 3, any amount deductible under the *Income Tax Application Rules* in respect of this subsection shall be deemed to be deductible under this subdivision.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

I.T. Application Rules: 29, 30(3).

(14.1) Designation respecting Canadian exploration expense — A corporation may designate for a taxation year, by filing a designation in prescribed form with the Minister on or before the day on or before which it is required to file a return of its income for the year under section 150, a particular amount not exceeding the lesser of

(a) its prescribed Canadian exploration expense for the year, and

(b) its cumulative Canadian exploration expense at the end of the year,

and the particular amount shall be added in computing its cumulative offset account immediately before the end of the year and deducted in computing its cumulative Canadian exploration expense at any time after the end of the year.

Related Provisions: 66.1(3)(a) — Expenses of other taxpayers; 66.1(6)"cumulative Canadian exploration expense"K — Reduction in CCEE; 66.5(1) — Deduction from income — cumulative offset account. See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: See under subsec. 66(14.5).

Regulations: 1217 (prescribed Canadian exploration expense).

Forms: T2098: Designation by a corporation to increase its cumulative offset account.

(14.2) Designation respecting cumulative Canadian development expense — A corporation may designate for a taxation year, by filing a designation in prescribed form with the Minister on or before the day on or before which it is required to file a return of its income for the year under section 150, a particular amount not exceeding

(a) where a deduction has been made under subsection 66.2(2) in computing its income for the year, the lesser of

(i) 30% of its prescribed Canadian development expense for the year, and

(ii) the amount, if any, by which 30% of its cumulative Canadian development expense at the end of the year exceeds the amount, if any, deducted for the year under subsection 66.2(2) in computing its income for the year, or

(b) where a deduction has not been made under subsection 66.2(2) in computing its income for the year, the lesser of

(i) 30% of its prescribed Canadian development expense for the year, and

(ii) 30% of the amount, if any, of its adjusted cumulative Canadian development expense at the end of the year,

and the particular amount shall be added in computing its cumulative offset account immediately before the end of the year and deducted in computing its cumulative Canadian development expense at any time after the end of the year.

Related Provisions: 66(14.3) — Meaning of "adjusted cumulative Canadian development expense"; 66.2(5)"cumulative Canadian development expense"N — Reduction in CCDE; 66.5(1) — Deduction from income — cumulative offset account. See additional Related Provisions and Definitions at end of s. 66.

Pre-RSC History: See under subsec. 66(14.5).

Regulations: 1218 (prescribed Canadian development expense).

Forms: T2098: Designation by a corporation to increase its cumulative offset account.

(14.3) Definition of "adjusted cumulative Canadian development expense" — For the purposes of paragraph (14.2)(b), "adjusted cumulative Canadian development expense" of a corporation at the end of a taxation year means the amount, if any, that would be its cumulative Canadian development expense at the end of the year, if no Canadian resource property were disposed of by it in the year.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: See under subsec. 66(14.5).

(14.4) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit a designation under subsection (14.1) or (14.2) to be filed after the day on or before which it is required by that subsection to be filed, or

(b) to permit a designation filed under subsection (14.1) or (14.2) to be amended,

the Minister may permit the designation to be filed or amended, as the case may be, after that day, and where the designation or amendment is filed pursuant to that permission, it shall be deemed to have been filed on the day on or before which it was required to be filed if

(c) it is filed with the Minister in prescribed form, and

(d) the corporation filing it pays to the Receiver General at the time of filing the penalty in respect of it,

and where a designation is amended under this subsection, the designation to which the amendment is made shall be deemed not to have been effective.

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: See under subsec. 66(14.5).

(14.5) Penalty for late designation — For the purposes of this section, the penalty in respect of a designation or amended designation referred to in paragraph (14.4)(a) or (b) is the lesser of

(a) an amount determined by the formula

$$.0025 \times A \times B$$

where

A is

(i) in the case of a late-filed designation, the amount designated therein, and

(ii) in the case of an amended designation, the amount, if any, by which the amount designated in the designation being amended differs from the amount designated in the amended designation, and

B is the number of months each of which is included in whole or in part in the period commencing on the day on or before which the designation was required to be filed under subsection (14.1) or (14.2), as the case may be, and ending on the day the late-filed designation or amended designation, as the case may be, is filed, and

(b) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is included in whole or in part in the period referred to in the description of B in paragraph (a).

Related Provisions: See Related Provisions and Definitions at the end of s. 66.

Pre-RSC History: Subsecs. 66(14.1)–(14.5) added by 1986, c. 2, s. 16, applicable to 1985 *et seq.*, except that a designation under subsec. 66(14.1) or (14.2), filed with the Minister of National Revenue on or before the day that is 90 days after February 13, 1986, shall be deemed to have been filed before the day on or before which the designation is required to be filed by subsec. 66(14.1) or (14.2).

(14.6) Deduction of carved-out income — A taxpayer may deduct in computing the taxpayer's income under this Part for a taxation year, an amount equal to the total of the taxpayer's carved-out incomes for the year within the meaning assigned by subsection 209(1).

Related Provisions: See Related Provisions and Definitions at end of s. 66.

Pre-RSC History: Subsec. 66(14.6) added by 1986, c. 55, subsec. 11(5), applicable to 1985 *et seq.*

(15) Definitions — In this section,

Related Provisions: 66.1(6.1) — Application to section 66.1; 66.2(5.1) — Application to section 66.2; 66.4(5.1) — Application to section 66.4; 66.7(18) — Application to section 66.7.

Pre-RSC History: *The opening words also referred to ss. 66.1, 66.2, 66.4 and 66.7. See now subsecs. 66.1(6.1), 66.2(5.1), 66.4(5.1), 66.7(18).*

The opening words of subsec. 66(15) substituted by 1987, c. 46, subsec. 18(6), to add reference to section 66.7, applicable to taxation years ending after February 17, 1987.

The opening words of subsec. 66(15) substituted by 1974-75-76, c. 26, subsec. 35(17), applicable in respect of taxation years ending after May 6, 1974. That portion formerly read:

(15) In this section,

"agreed portion" in respect of a corporation that was a shareholder corporation of a joint exploration corporation means such amount as may be agreed on between the joint exploration corporation and the shareholder corporation not exceeding

(a) the total of all amounts each of which is a payment or loan referred to in paragraph (b) of the definition "shareholder corporation" in this subsection (except to the extent that the payment or loan was made by a shareholder corporation that was not a Canadian cor-

poration and was used by the joint exploration corporation to acquire a Canadian resource property after December 11, 1979 from a shareholder corporation that was not a Canadian corporation) made by the shareholder corporation to the joint exploration corporation during the period it was a shareholder corporation of the joint exploration corporation,

minus

(b) the total of the amounts, if any, previously renounced by the joint exploration corporation under any of subsections (10) to (10.3) in favour of the shareholder corporation;

Related Provisions: 53(2)(f.1) — Deduction from ACB.

Pre-RSC History: *The definition "agreed portion" was para. 66(15)(a).*

Subpara. 66(15)(a)(i) substituted by 1984, c. 1, subsec. 27(8), applicable to 1982 *et seq.* Subpara. 66(15)(a)(i) formerly read:

(i) the payments referred to in subparagraph (i)(ii) (except to the extent that such payments were made by a shareholder corporation that was not a Canadian corporation and were used by the joint exploration corporation to acquire a Canadian resource property after December 11, 1979 from a shareholder corporation that was not a Canadian corporation) made by the shareholder corporation to the joint exploration corporation during the period it was a shareholder corporation of the joint exploration corporation,

All that portion of subsec. 66(15) preceding para. (a) and subpara. 66(15)(a)(i), (ii) substituted by 1980-81-82-83, c. 48, subsecs. 33(13)\-(15), applicable to taxation years ending after December 11, 1979, to add reference to section 66.4 in that portion and reference to subsection (10.3) in subpara. (i). Subpara. (ii) formerly read as follows:

(i) the payments referred to in subparagraph (i)(ii) made by the shareholder corporation to the joint exploration corporation during the period it was a shareholder corporation of the joint corporation,

Subpara. 66(15)(a)(ii) substituted by 1976-77, c. 4, subsec. 23(4), applicable after May 6, 1974. Subpara. 66(15)(a)(ii) formerly read:

(ii) the aggregate of the amounts, if any, previously renounced by the joint exploration corporation under subsection (10) in favour of the shareholder corporation;

Subpara. 66(15)(a)(i) amended by 1974-75-76, c. 26, subsec. 35(18) to substitute "(i)(ii)" for "(i)(iii)", applicable to 1972 *et seq.*

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"assistance" means any amount, other than a prescribed amount, received or receivable at any time from a person or government, municipality or other public authority whether the amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit;

Related Provisions: 66(16) — Partnership deemed to be a person; 248(16) — GST input tax credit and rebate deemed to be government assistance.

Pre-RSC History: *The definition "assistance" was para. 66(15)(a.1).*

Para. 66(15)(a.1) added by 1986, c. 55, subsec. 11(6), applicable with respect to expenses incurred after February 1986.

"Canadian exploration and development expenses" incurred by a taxpayer means any expense incurred before May 7, 1974 that is

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer after 1971 on or in respect of exploring or drilling for petroleum or natural gas in Canada,

(b) any prospecting, exploration or development expense incurred by the taxpayer after 1971 in searching for minerals in Canada,

(c) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer after 1971,

(d) the taxpayer's share of the Canadian exploration and development expenses incurred after 1971 by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period the taxpayer was a member or partner thereof,

(e) any expense incurred by the taxpayer after 1971 pursuant to an agreement with a corporation under which the taxpayer incurred the expense solely in consideration for shares of the capital stock of the corporation issued to the taxpayer by the corporation or any interest in such shares or right thereto, to the extent that the expense was incurred as or on account of the cost of

(i) drilling or exploration activities, including any general geological or geophysical activities, in or in respect of exploring or drilling for petroleum or natural gas in Canada,

(ii) prospecting, exploration or development activities in searching for minerals in Canada, or

(iii) acquiring a Canadian resource property, and

(f) any annual payment made by the taxpayer for the preservation of a Canadian resource property,

but, for greater certainty, does not include

(g) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (e), or

(h) any expense described in paragraph (e) incurred by another taxpayer to the extent that the expense was, by virtue of that paragraph, a Canadian exploration and development expense of that other taxpayer;

Related Provisions: 49(2) — Where option expires; 53(2)(e)(i) — Deduction from ACB of shares; 66.7(1) — Deduction to successor corporation; 248(1)"Canadian exploration and development expenses" — Definition applies to entire Act. See additional Related provisions and Definitions at end of s. 66.

History: Para. (c) of the definition "Canadian exploration and development expenses" in subsec. 66(15) amended by 1998, c. 19, subsec. 104(7), applicable to taxation years that begin after 1984. The para. formerly read:

(c) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer,

Pre-RSC History: *The definition "Canadian exploration and development expenses" was para. 66(15)(b). See Table of Concordance.*

Subpara. 66(15)(b)(v.1) amended by 1985, c. 45, subsec. 28(14), to delete the words "or property that would have been a Canadian resource property if it had been acquired by the taxpayer after 1971" which had followed "Canadian resource property", applicable with respect to transactions occurring in taxation years commencing after 1984.

All that portion of para. 66(15)(b) preceding subpara. (i) substituted, subpara. 66(15)(b)(v.1) added by 1974-75-76, c. 26, subsecs. (19), (20), applicable, as to that portion, after May 6, 1974, and as to subpara. 66(15)(b)(v.1), to 1974 *et seq.* That portion formerly read:

(b) "Canadian exploration and development expenses" incurred by a taxpayer means

All that portion of para. 66(15)(b) following subpara. (iv) substituted by 1973-74, c. 14, subsec. 18(5), applicable to 1972 *et seq.*

Selected Cases [subsec. 66(15)"Canadian exploration and development expenses"]: *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits").

Interpretation Bulletins: IT-109R2: Unpaid amounts.

"Canadian resource property" of a taxpayer means any property of the taxpayer that is

(a) any right, licence or privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons in Canada,

(b) any right, licence or privilege to

(i) store underground petroleum, natural gas or related hydrocarbons in Canada, or

(ii) prospect, explore, drill or mine for minerals in a mineral resource in Canada,

(c) any oil or gas well in Canada or any real property in Canada the principal value of which depends on its petroleum or natural gas content (but not including any depreciable property used or to be used in connection with the extraction or removal of petroleum or natural gas therefrom),

(d) any rental or royalty computed by reference to the amount or value of production from an oil or gas well in Canada or from a natural accumulation of petroleum or natural gas in Canada,

(e) any rental or royalty computed by reference to the amount or value of production from a mineral resource in Canada,

(f) any real property in Canada the principal value of which depends upon its mineral resource content (but not including any depreciable property used or to be used in connection with the extraction or removal of minerals therefrom), or

(g) any right to or interest in any property described in any of paragraphs (a) to (f), other than such a right or interest that the taxpayer has by virtue of being a beneficiary of a trust;

Related Provisions: 18.1(1)"right to receive production" — Canadian resource property excluded from matchable expenditure rules; 59(1) — Disposition of resource property; 66(5) — Dealers; 69 — Inadequate consideration and fair market value; 128.1(4)(b)(i) — Canadian resource property excluded from deemed disposition on emigration; 209 — Tax on carved-out income; 248(1)"Canadian resource property" — Definition applies to entire Act; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related provisions and Definitions at end of s. 66.

Pre-RSC History: *The definition "Canadian resource property" was para. 66(15)(c). See Table of Concordance.*

Subparas. 66(15)(c)(iii) and (iv) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985. Subparas. 66(15)(c)(iii) and (iv) formerly read:

(iii) any oil or gas well in Canada,

(iv) any rental or royalty computed by reference to the amount or value of production from an oil or gas well in Canada,

All that portion of para. 66(15)(c) preceding subpara. (i) amended by 1985, c. 45, subsec. 28(15), to substitute "any property of the taxpayer" for "any property acquired by him after 1971", applicable to taxation years commencing after 1984.

Subpara. 66(15)(c)(vii) substituted by 1985, c. 45, subsec. 28(16), applicable with respect to transactions occurring in taxation years commencing after 1984. Subpara. 66(15)(c)(vii) formerly read:

(vii) any right to or interest in any property (other than property of a trust) described in any of subparagraphs (i) to (vi) (including a right to receive proceeds of disposition in respect of a disposition thereof);

Para. 66(15)(c) substituted by 1980-81-82-83, c. 48, subsec. 33(16), applicable to taxation years ending after December 11, 1979. Para. (c) formerly read as follows:

(c) "Canadian resource property" of a taxpayer means any property acquired by him after 1971 that is,

(i) any right, licence or privilege to explore for, drill for, take or store underground petroleum, natural gas or other related hydrocarbons in Canada,

(ii) any right, licence or privilege to prospect, explore, drill, or mine for, minerals in a mineral resource in Canada,

(iii) any oil or gas well situated in Canada,

(iv) any rental or royalty computed by reference to the amount or value of production from an oil or gas well, or a mineral resource, situated in Canada,

(v) any real property situated in Canada the principal value of which depends upon its mineral resource content (but not including any depreciable property situated on the surface of the property or used or to be used in connection with the extraction or removal of minerals therefrom), or

(vi) any right to or interest in any property (other than property of a trust) described in any of subparagraphs (i) to (v) (including a right to receive proceeds of disposition in respect of a disposition thereof);

Subpara. 66(15)(c)(i) substituted by 1979, c. 5, subsec. 19(5), applicable for the purposes of determining the Canadian resource property of a taxpayer after November 16, 1978, to add "or store underground".

Subpara. 66(15)(c)(vi) substituted by 1974-75-76, c. 26, subsec. 35(21), applicable to 1974 *et seq.* except that it shall not apply to any right or interest in property of a trust acquired before November 19, 1974 in respect of which a deduction has been claimed in respect of a taxation year ending before 1976 under section 66 or 66.2. Subpara. 66(15)(c)(vi) formerly read:

(vi) any right to or interest in any property described in any of subparagraphs (i) to (v);

Selected Cases [subsec. 66(15)"Canadian resource property"]: *Alberta Energy Co. v. R.*, [1998] 1 C.T.C. 305 (FCA); aff'd [1995] 1 C.T.C. 2111 (TCC) (Right or privilege was Canadian resource property, not eligible capital amount); *De Luca v. MNR*, [1991] 2 C.T.C. 243 (FCA) (Income from payment of balance of purchase price on transaction completed prior to 1972 validly assessed in year of receipt); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR*) (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits"); *The Queen v. Alberta and Southern Gas Co. Ltd.*, [1978] C.T.C. 780 (SCC) (Sum paid to purchase rights to gas on lands is payment for acquisition of Canadian resource property).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-291R2: Transfer of property to a corporation under subsection 85(1).

I.T. Technical News: No. 10 (net profits interests and proposed section 18.1).

"drilling or exploration expense" incurred on or in respect of exploring or drilling for petroleum or natural gas includes any expense incurred on or in respect of

(a) drilling or converting a well for the disposal of waste liquids from a petroleum or natural gas well,

(b) drilling for water or gas for injection into a petroleum or natural gas formation, or

(c) drilling or converting a well for the injection of water or gas to assist in the recovery of petroleum or natural gas from another well;

Related Provisions: 66(16) — Partnerships — person — taxation year; 87(4.4) — Flow-through shares.

Pre-RSC History: *The definition "drilling or exploration expense" was para. 66(15)(d).*

Para. 66(15)(d) substituted by 1974-75-76, c. 26, subsec. 35(22), applicable to 1974 *et seq.* Para. 66(15)(d) formerly read:

(d) "drilling or exploration expense" incurred on or in respect of exploring or drilling for petroleum or natural gas includes

(i) any annual payment made for the preservation of a Canadian resource property, a foreign resource property or any property referred to in paragraph 59(1)(c), and

(ii) any expense incurred on or in respect of

(A) drilling or converting a well for the disposal of waste liquids from a petroleum or natural gas well,

(B) drilling for water or gas for injection into a petroleum or natural gas formation, or

(C) drilling or converting a well for the injection of water or gas to assist in the recovery of petroleum or natural gas from another well;

Regulations: 6202, 6202.1 (prescribed share).

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

"expense", incurred before a particular time by a taxpayer,

(a) includes an amount designated by the taxpayer at that time under paragraph 98(3)(d) or (5)(d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as a cost in respect of property that is a Canadian resource property or a foreign resource property,

but

(b) for greater certainty, does not include any amount paid or payable

(i) as consideration for services to be rendered after that time, or

(ii) as, on account or in lieu of payment of, or in satisfaction of, rent in respect of a period after that time;

Related Provisions: 66(15)"outlay" — same meaning as "expense".

Pre-RSC History: *The definition "expense" was formerly "outlay" or "expense" in paras. 66(15)(g.2) and (g.3). See Table of Concordance.*

Para. 66(15)(g.2) added by 1980-81-82-83, c. 48, subsec. 33(17), applicable in respect of amounts paid or payable after October 28, 1980.

Para. 66(15)(g.3) substituted by 1984, c. 1, subsec. 27(9), applicable after 1980, to add "or (5)(d)".

Para. 66(15)(g.3) added by 1980-81-82-83, c. 140, subsec. 33(4), applicable after 1980.

Selected Cases: *Phénix v. R.*, [1998] 1 C.T.C. 2379 (TCC) (Capital items may form part of CEE).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-503: Exploration and development shares.

"flow-through share" means a share (other than a prescribed share) of the capital stock of a principal-business corporation that is issued to a person under an agreement in writing entered into between the person and the corporation after February 1986, under which the corporation agrees for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances in which section 51, 85, 85.1, 86 or 87 applies

(a) to incur, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share is to be issued, and

(b) to renounce, before March of the first calendar year that begins after that period, in prescribed form to the person in respect of the share, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share,

and includes a right of a person to have such a share issued to that person and any interest acquired in such a share by a person pursuant to such an agreement;

Related Provisions: 66(12.6), (12.601) — Flow-through of expenditures to shareholder; 66(16) — Partnership deemed to be a person; 127.52(1)(e), (e.1) — Minimum tax; 248(1)"flow-through share" — Definition applies to entire Act.

History: Paras. (a) and (b) of the definition "flow-through share" in subsec. 66(15) amended by 1997, c. 25, subsec. 13(26), applicable to renunciations made after 1998. Paras. (a) and (b) formerly read:

(a) to incur, during the period commencing on the day the agreement was entered into and ending 24 months after the end of the month that includes that day, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses in an amount not less than the consideration for which the share is to be issued, and

(b) to renounce, before March of the first calendar year beginning after that period, in prescribed form to the person in respect of the share, an amount in respect of the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses so incurred by it not exceeding the consideration received by the corporation for the share,

Para. (b) of the definition "flow-through share" in subsec. 66(15) amended by 1994, c. 8, subsec. 5(18), applicable to shares issued pursuant to an agreement entered into after February 1986. Para. (b) formerly read:

(b) to renounce, within that period or within 30 days thereafter, in prescribed form to the person in respect of the share, an amount in respect of the Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses so incurred by it not exceeding the consideration received by the corporation for the share,

That portion of the definition "flow through share" preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(10), to add "for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances in which section 51, 85, 85.1, 86 or 87 applies", applicable to shares issued pursuant to an agreement in writing entered into after July 13, 1990.

Pre-RSC History: *The definition "flow-through share" was para. 66(15)(d.1).*

Para. 66(15)(d.1) added by 1986, c. 55, subsec. 11(7), applicable with respect to:

(a) shares issued pursuant to an agreement entered into after 1986; and

(b) shares issued pursuant to an agreement entered into by a corporation after February 1986 and before 1987 where the corporation elects in prescribed form, filed with the Minister of National Revenue with its return of income pursuant to s. 150 for the taxation year in respect of which the election is made, to have this subsec. apply with respect to shares issued pursuant to the agreement, except that the prescribed form may be filed within 90 days after December 19, 1986.

Selected Cases: *Esplen v. Canada*, [1996] 1 C.T.C. 2044 (TCC) (Where loan repayment tied to price of shares, shares were prescribed shares).

Regulations: 6202(1), (2) (prescribed share).

"foreign exploration and development expenses" incurred by a taxpayer means

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer after 1971 on or in respect of exploring or drilling for petroleum or natural gas outside Canada,

(b) any prospecting, exploration or development expense incurred by the taxpayer after 1971 in searching for minerals outside Canada,

(c) the cost to the taxpayer of any foreign resource property acquired by [the taxpayer],

(d) subject to section 66.8, the taxpayer's share of the foreign exploration and development expenses incurred after 1971 by a partnership in a fiscal period thereof, if at the end of that period the taxpayer was a member of the partnership, and

(e) any annual payment made by the taxpayer for the preservation of a foreign resource property,

but does not include

(f) any amount included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class,

(g) an expenditure incurred at any time after the commencement of production from a foreign resource property of the taxpayer in order to evaluate the feasibility of a method of recovery of petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the foreign resource property relates,

(h) an expenditure (other than a drilling expense) incurred at any time after the commencement of production from a foreign resource property of the taxpayer in order to assist in the recovery of petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the foreign resource property relates, or

(i) an expenditure incurred at any time relating to the injection of any substance to assist in the recovery of petroleum, natural gas or related hydrocarbons from a natural reservoir;

Proposed Amendment — Foreign exploration and development expenses

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See Resolutions (34) and (35) under 66(4) — ed.]

Related Provisions: 66(4) — Deduction for FEDE; 66.7(2) — Deduction to successor corporation; 80(8)(e) — Reduction of FEDE on debt forgiveness; 248(1)"foreign exploration and development expenses" — Definition applies to entire Act.

History: The words "but does not include" and paras. (f) to (i), added to the definition "foreign exploration and development expenses" in subsec. 66(15) by 1997, c. 25, subsec. 13(27), applicable to taxation years that end after December 5, 1996.

Pre-RSC History: *The definition "foreign exploration and development expenses" was para. 66(15)(e). See Table of Concordance.*

Subpara. 66(15)(e)(iv) amended by 1988, c. 55, subsec. 41(3), to add "subject to section 66.8", applicable after June 17, 1987.

Subpara. 66(15)(e)(v) amended by 1985, c. 45, subsec. 28(17), to delete the words "or property that would have been a foreign resource property if it had been acquired by the taxpayer after 1971" which had followed "foreign resource property", applicable with respect to transactions occurring in taxation years commencing after 1984.

Subpara. 66(15)(e)(iv) substituted by 1979, c. 5, subsec. 19(6). Subpara. (e)(iv) formerly read:

> (iv) his share of the foreign exploration and development expenses incurred after 1971 by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period he was a member or partner thereof, and

Subpara. 66(15)(e)(v) added by 1974-75-76, c. 26, subsec. 35(23), applicable to 1974 *et seq.*

Interpretation Bulletins: IT-109R2: Unpaid amounts.

"foreign resource property" of a taxpayer means any property that would be a Canadian resource property of the taxpayer if the definition "Canadian resource property" in this subsection were read as if the references therein to "in Canada" were read as references to "outside Canada";

Related Provisions: 18.1(1)"right to receive production" — foreign resource property excluded from matchable expenditure rules; 248(1)"foreign resource property" — Definition applies to entire Act.

Pre-RSC History: *The definition "foreign resource property" was para. 66(15)(f).*

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"joint exploration corporation" means a principal-business corporation that has not at any time since its incorporation had more than 10 shareholders, not including any individual holding a share for the sole purpose of qualifying as a director;

Related Provisions: 248(1)"Joint exploration corporation" — Definition applies to entire Act.

Pre-RSC History: *The definition "joint exploration corporation" was para. 66(15)(g).*

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"oil or gas well [para. 66(15)(g.1)]" — [Repealed under former Act]

Pre-RSC History: Para. 66(15)(g.1) repealed by 1986, c. 6, subsec. 30(2), applicable to taxation years ending after March 1985. Para. 66(15)(g.1) formerly read:

> (g.1) "oil or gas well" — "oil or gas well" means any well (other than an exploratory probe) drilled for the purpose of producing petroleum or natural gas or of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas;

Para. 66(15)(g.1) substituted by 1980-81-82-83, c. 140, subsec. 33(3), applicable after 1980, to add "other than an exploratory probe."

Para. 66(15)(g.1) added by 1980-81-82-83, c. 48, subsec. 33(17), applicable after 1980.

"original owner" of a Canadian resource property or a foreign resource property means a person

(a) who owned the property and disposed of it to a corporation that acquired it in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property, and

(b) who would, but for subsection 66.7(12), (13) or (17), as the case may be, be entitled in computing that person's income for a taxation year ending after that person disposed of the property to a deduction under section 29 of the *Income Tax Application Rules* or subsection (2), (3) or (4), 66.1(2) or (3), 66.2(2) or 66.4(2) of this Act in respect of expenses described in subparagraph 29(25)(c)(i) or (ii) of that Act, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses incurred by the person before the person disposed of the property;

Pre-RSC History: *The definition "original owner" was para 66(15)(g.11).*

Para. 66(15)(g.11) added by 1987, c. 46, subsec. 18(7), applicable to taxation years ending after February 17, 1987.

"outlay" made before a particular time by a taxpayer, has the meaning assigned to the expression "expense" by this subsection;

Pre-RSC History: *The definition "outlay" was formerly "outlay" or "expense" in paras. 66(15)(g.2) and (g.3).*

Interpretation Bulletins: IT-503: Exploration and development shares.

"predecessor owner" of a Canadian resource property or a foreign resource property means a corporation

(a) that acquired the property in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property,

(b) that disposed of the property to another corporation that acquired it in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) applies, or would apply if the other corporation had continued to own the

property, to the other corporation in respect of the property, and

(c) that would, but for subsection 66.7(14), (15) or (17), as the case may be, be entitled in computing its income for a taxation year ending after it disposed of the property to a deduction under subsection 29(25) of the *Income Tax Application Rules* or subsection 66.7(1), (2), (3), (4) or (5) in respect of expenses incurred by an original owner of the property;

Pre-RSC History: *The definition "predecessor owner" was para. 66(15)(g.4).*

Para. 66(15)(g.4) added by 1987, c. 46, subsec. 18(8), applicable to taxation years ending after February 17, 1987.

"principal-business corporation" means a corporation the principal business of which is any of, or a combination of,

(a) the production, refining or marketing of petroleum, petroleum products or natural gas,

(a.1) exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) the processing of mineral ores for the purpose of recovering metals or minerals from the ores,

(d) the processing or marketing of metals or minerals that were recovered from mineral ores and that include metals or minerals recovered from mineral ores processed by the corporation,

(e) the fabrication of metals,

(f) the operation of a pipeline for the transmission of oil or gas,

(f.1) the production or marketing of calcium chloride, gypsum, kaolin, sodium chloride or potash,

(g) the manufacturing of products, where the manufacturing involves the processing of calcium chloride, gypsum, kaolin, sodium chloride or potash,

(h) the generation of energy using property described in Class 43.1 of Schedule II to the *Income Tax Regulations*, and

(i) the development of projects for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in each project would be the capital cost of property described in Class 43.1 of Schedule II to the *Income Tax Regulations*,

or a corporation all or substantially all of the assets of which are shares of the capital stock or indebtedness of one or more principal-business corporations that are related to the corporation (otherwise than because of a right referred to in paragraph 251(5)(b));

Related Provisions: 66(2) — Expenses of special products corporations; 66.1(2) — Deduction for principal-business corporation; 66.1(3) — Deduction for corporation that is a principal-business corporation solely under paras. (h) and (i); 115(4) — Non-resident's income from Canadian resource property. See additional Related Provisions at end of s. 66.

History: Paras. (h) and (i) added to the definition "principal-business corporation" in subsec. 66(15) by 1997, c. 25, subsec. 13(28), applicable after December 5, 1996.

The definition "principal-business corporation" in subsec. 66(15) substituted by 1994, c. 21, s. 28, applicable to 1993 *et seq.*, except that

(a) a corporation may elect that the amended definition not apply to its 1993 to 1996 taxation years by so notifying the Minister of National Revenue in writing by December 31, 1994; and

(b) it does not apply to transactions and events that occur before the 1993 taxation year.

The definition "principal-business corporation" formerly read:

"principal-business corporation" means a corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) processing mineral ores for the purpose of recovering metals therefrom,

(d) a combination of

(i) processing mineral ores for the purpose of recovering metals therefrom, and

(ii) processing metals recovered from the ores so processed,

(e) fabricating metals,

(f) operating a pipeline for the transmission of oil or natural gas, or

(g) production or marketing of sodium chloride or potash, or whose business includes manufacturing products the manufacturing of which involves processing sodium chloride or potash,

or a corporation all or substantially all of the assets of which are shares of the capital stock of one or more other corporations that are related to the corporation (otherwise than by reason of a right referred to in paragraph 251(5)(b)) and whose principal business is described in any of paragraphs (a) to (g);

Pre-RSC History: *The definition "principal-business corporation" was para. 66(15)(h). See Table of Concordance.*

All that portion of para. 66(15)(h) following subpara. (vii) added by 1987, c. 46, subsec. 18(8.1), applicable to taxation years ending after February 17, 1987.

Subpara. 66(15)(h)(vii) added by 1974-75-76, c. 26, subsec. 35(24), applicable to 1974 *et seq.*

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"production" from a Canadian resource property or a foreign resource property means

(a) petroleum, natural gas and related hydrocarbons produced from the property,

(b) heavy crude oil produced from the property processed to any stage that is not beyond the crude oil stage or its equivalent,

(c) ore (other than iron ore or tar sands) produced from the property processed to any stage that is not beyond the prime metal stage or its equivalent,

(d) iron ore produced from the property processed to any stage that is not beyond the pellet stage or its equivalent,

(e) tar sands produced from the property processed to any stage that is not beyond the crude oil stage or its equivalent, and

(f) any rental or royalty from the property computed by reference to the amount or value of the production of petroleum, natural gas or related hydrocarbons or ore;

Pre-RSC History: *The definition "production" was para. 66(15)(h.01).*

Para. 66(15)(h.01) added by 1987, c. 46, subsec. 18(9), applicable to taxation years ending after February 17, 1987.

"reserve amount" of a corporation for a taxation year in respect of an original owner or predecessor owner of a Canadian resource property means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts that are

(a) required by subsection 59(2) to be included in computing the corporation's income for the year, and

(b) in respect of a reserve, deducted in computing the income of the original owner or predecessor owner and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the corporation as a reserve in computing its income for a preceding taxation year, and

B is the total of amounts deducted in computing the corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2)[5] in respect of dispositions by the original owner or predecessor owner, as the case may be;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "reserve amount" was para. 66(15)(h.02).*

Para. 66(15)(h.02) added by 1987, c. 46, subsec. 18(9), applicable to taxation years ending after February 17, 1987.

"selling instrument" in respect of flow-through shares means a prospectus, registration statement, offering memorandum, term sheet or other similar document that describes the terms of the offer (including the price and number of shares) pursuant to which a corporation offers to issue flow-through shares;

Pre-RSC History: *The definition "selling instrument" was para. 66(15)(h.1).*

Para. 66(15)(h.1) added by 1986, c. 55, subsec. 11(8), applicable with respect to expenses incurred after February 1986.

"shareholder corporation" of a joint exploration corporation means a corporation that for the period in respect of which the expression is being applied

(a) was a shareholder of the joint exploration corporation, and

(b) made a payment or loan to the joint exploration corporation in respect of Canadian exploration and development expenses, a Canadian exploration expense, a Canadian development expense or a Canadian oil and gas property expense incurred or to be incurred by the joint exploration corporation.

Pre-RSC History: *The definition "shareholder corporation" was para. 66(15)(i).*

Subpara. 66(15)(i)(ii) substituted by 1984, c. 1, subsec. 27(10), applicable to 1982 *et seq.*, to substitute "a payment or loan" for "payments" and to add "or to be incurred".

Subpara. 66(15)(i)(ii) substituted by 1980-81-82-83, c. 48, subsec. 33(18), to add reference to "or a Canadian oil and gas property expense", applicable to taxation years ending after December 11, 1979.

Subpara. 66(15)(i)(ii) substituted by 1974-75-76, c. 26, subsec. 35(25), applicable in respect of taxation years ending after May 6, 1974. Subpara. 66(15)(i)(ii) formerly read:

(ii) made payments to the joint exploration corporation in respect of Canadian exploration and development expenses incurred by the joint exploration corporation.

Para. 66(15)(i) substituted by 1973-74, c. 14, subsec. 18(6), applicable to 1972 *et seq.*

Advance Tax Rulings: ATR-60: Joint exploration corporations.

(15.1) Application of subsecs. 66.1(6), 66.2(5), 66.4(5) and 66.5(2) — The definitions in subsections 66.1(6), 66.2(5), 66.4(5) and 66.5(2) apply to this section.

Origin of subsec. 66(15.1): R.S.C. 1985, c. 1 (5th Supp.). Formerly contained in the opening words to 66.1(6), 66.2(5), 66.4(5) and 66.5(2).

(16) Partnerships — For the purposes of subsections (12.6) to (12.73), the definitions "assistance" and "flow-through share" in subsection (15) and subsections (18), (19) and 66.3(3) and (4), a partnership is deemed to be a person and its taxation year is deemed to be its fiscal period.

History: Subsec. 66(16) amended by 1997, c. 25, subsec. 13(29), applicable to fiscal periods that end after 1995. Subsec. (16) formerly read:

(16) For the purposes of subsections (12.6) to (12.66), the definitions "assistance" and "flow-through share" in subsection (15) and subsections (18), (19) and 66.3(3) and (4), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

Pre-RSC History: See under subsec. 66(17).

(17) Non-arm's length partnerships — Where an expense would, but for paragraph (12.61)(b), be incurred during the first 60 days of a calendar year by a corporation and the expense is deemed by subsection (12.61) to be incurred by a partnership, the partnership and the corporation shall be deemed not to deal with each other at arm's length throughout that period for the purposes of paragraph (12.66)(d) only where a share of the expense of the partnership is included because of paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6) in the Canadian exploration expense of the corporation or a member of the partnership with whom the corporation does not deal at arm's length at any time during that period.

History: Subsec. 66(16) amended to add reference to subsecs. (18) and (19), and subsec. 66(17) substituted, by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(11), applicable to fiscal periods ending after February 1986. Subsec. 66(17) formerly read:

(17) Non-arm's length partnerships — For the purpose of paragraph (12.66)(d), where an expense incurred during a period by a corporation that is, but for this subsection, deemed by subsection (12.61) to be incurred by a partnership is attributable directly or indirectly to a member of the partnership who does not deal with the corporation at arm's length, the partnership and the corporation shall be deemed not to deal with each other at arm's length during the period.

Pre-RSC History: Subsecs. 66(16), (17) added by 1986, c. 55, subsec. 11(9), applicable with respect to fiscal periods ending after February 1986.

(18) Members of partnerships — For the purposes of this section, subsection 21(2), sections 59.1 and 66.1 to 66.7, paragraph (d) of the definition "investment expense" in subsection 110.6(1) and the descriptions of C and D in subsection 211.91(1), where a person's share of an outlay or expense made or incurred by a partnership in a fiscal period of the partnership is included in respect of the person under paragraph (d) of the definition "foreign exploration and development expenses" in subsection (15), paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), the portion of the outlay or expense so included is deemed, except for the purposes of applying the definitions "foreign exploration and development expenses", "Canadian exploration expense", "Canadian development expense" and "Canadian oil and gas property expense" in respect of the person, to be made or incurred by the person at the end of that fiscal period.

[5] i.e., those subsecs. of R.S.C. 1952, c. 148, as amended.

Related Provisions: 6(16) — Partnership deemed to be a person; 66.1(7) — Canadian exploration expense — share of partner; 66.2(6) — Canadian development expense — share of partner; 66.4(6) — Canadian oil and gas property expense — share of partner; 96(1)(d) — Partnerships — no deduction at partnership level.

History: Subsec. 66(18) amended by 1997, c. 25, subsec. 13(30), applicable to fiscal periods that end after 1996. Subsec. (18) formerly read:

> (18) For the purposes of this section, subsection 21(2), sections 59.1 and 66.1 to 66.7 and paragraph (d) of the definition "investment expense" in subsection 110.6(1), where a person's share of an outlay or expense incurred by a partnership in a fiscal period thereof is included in respect of the person under paragraph (d) of the definition "foreign exploration and development expenses" in subsection (15), paragraph (h) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), the portion of the outlay or expense so included shall be deemed, except for the purposes of applying the definitions "foreign exploration and development expenses", "Canadian exploration expense", "Canadian development expense" and "Canadian oil and gas property expense" in respect of the person, to be made or incurred by the person at the end of that fiscal period.

Subsec. 66(18) added by 1991, c.49, subsec. 38(12) applicable to fiscal periods ending after February 1986.

(19) Renunciation by corporate partner, etc. — A corporation is not entitled to renounce under subsection (12.6), (12.601) or (12.62) to a person a specified amount in respect of the corporation where the corporation would not be entitled to so renounce the specified amount if

(a) the expression "end of that fiscal period" in subsection (18) were read as "time the outlay or expense was made or incurred by the partnership"; and

(b) the expression "on the effective date of the renunciation" in each of paragraphs (12.61)(a) and (12.63)(a) were read as "at the earliest time that any part of such expense was incurred by the corporation".

Related Provisions: 66(16) — Partnership deemed to be a person; 66(20) — Meaning of "specified amount".

History: Subsec. 66(19) amended by 1997, c. 25, subsec. 13(31), applicable to renunciations made after 1998. Subsec. (19) formerly read:

> (19) Renunciation by member of partnership, etc. — Notwithstanding subsections (12.6), (12.601), (12.62) and (12.64), where at any time a corporation
>
> (a) would, but for this subsection, be entitled to renounce under subsection (12.6), (12.601), (12.62) or (12.64) to another person
>
> (i) all or part of the corporation's share of an outlay or expense made or incurred by a partnership of which the corporation is a member or former member at that time, or
>
> (ii) all or part of an amount renounced to the corporation under subsection (12.6), (12.601), (12.62) or (12.64), and
>
> (b) would not be entitled to so renounce the amount described in subparagraph (a)(i) or (ii) to the other person if
>
> (i) the expression "end of that fiscal period" in subsection (18) were read as "time the outlay or expense was made or incurred by the partnership", and
>
> (ii) the expression "on the effective date of the renunciation" in each of paragraphs (12.61)(a), (12.63)(a) and (12.65)(a) were read as "at the earliest time that any part of such expense was incurred by the corporation",
>
> the corporation is not entitled to renounce that amount under subsection (12.6), (12.601), (12.62) or (12.64), as the case may be, at that time to the other person.

Subsec. 66(19) amended by 1994, c. 8, subsec. 5(19), applicable to renunciations of outlays or expenses made or incurred after December 2, 1992. Subsec. (19) formerly read:

> (19) Notwithstanding subsections (12.6), (12.62) and (12.64), where at any time a corporation
>
> (a) would, but for this subsection, be entitled to renounce
>
> (i) all or part of its share of an outlay or expense made or incurred by a partnership of which the corporation is a member or former member at that time, or
>
> (ii) all or part of an amount renounced to the corporation under subsection (12.6), (12.62) or (12.64),
>
> under subsection (12.6), (12.62) or (12.64) to another person, and
>
> (b) would, if
>
> (i) the expression "end of that fiscal period" in subsection (18) were read as "time the outlay or expense was made or incurred by the partnership", and
>
> (ii) the expression "on the effective date of the renunciation" in each of paragraphs (12.61)(a), (12.63)(a) and (12.65)(a) were read as "at the earliest time that any part of such expense was incurred by the corporation",
>
> not be entitled to so renounce the amount described in subparagraph (a)(i) or (ii) to the other person,
>
> the corporation is not entitled to renounce that amount under subsection (12.6), (12.62) or (12.64), as the case may be, at that time to the other person.

Subsec. 66(19) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 38(12) applicable to renunciations of outlays or expenses made or incurred after July 13, 1990, other than such outlays or expenses made or incurred pursuant to an agreement in writing entered into before July 14, 1990.

(20) Specified amount — For the purpose of subsection (19), a specified amount in respect of a corporation is an amount that represents

(a) all or part of the corporation's share of an outlay or expense made or incurred by a partnership of which the corporation is a member or former member; or

(b) all or part of an amount renounced to the corporation under subsection (12.6), (12.601) or (12.62).

History: Subsec. 66(20) added by 1997, c. 25, subsec. 13(31), applicable to renunciations made after 1998.

Related Provisions [s. 66]: 35(1)(e) — Prospectors and grubstakers; 66.1(6), 66.2(5), 66.4(5) — Definitions; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 87(1.2) — Amalgamations — new corporation deemed continuation of predecessor; 88(1.5) — Winding-up — parent deemed continuation of subsidiary; 127.52(1)(e) — Addition to adjusted taxable income for minimum tax purposes; 209 — Tax on carved-out income; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit.

Definitions [s. 66]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "adjusted cumulative Canadian development expense" — 66(14.3); "affiliated" — 66(11.5), 251.1; "agreed portion" — 66(15); "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "assistance" — 66(15), 79(4), 125.4(5), 248(16), 248(18); "associated" — 256; "beneficially interested" — 248(25); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian corporation" — 89(1), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expenses" — 66(15), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital property" — 54, 248(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative Canadian development expense" — 66(15.1), 66.2(5); "cumulative Canadian exploration expense" — 66(15.1), 66.1(6); "cumulative Canadian oil and gas property expense" — 66(15.1), 66.4; "cumulative offset account" — 66(15.1), 66.5(2); "depreciable property" — 13(21), 248(1); "disposition" — 54, 66.4(5), 248(1); "drilling or exploration expense", "expense" — 66(15); "fiscal period" — 66(16), 249(2), 249.1; "flow-through share" — 66(15); "foreign exploration and development expenses", "foreign resource property" — 66(15), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — 248(1); "joint exploration corporation" — 66(15); "majority interest partner", "mineral resource", "mineral", "Minis-

ter", "oil or gas well" — 248(1); "original owner", "outlay" — 66(15); "person" — 66(16), 248(1); "predecessor owner" — 66(15); "prescribed" — 248(1); "principal-business corporation", "production" — 66(15); "prohibited relationship" — 66(12.671); "property" — 248(1); "related" — 66(11.5), 251(2); "reserve amount" — 66(15); "resident in Canada" — 250; "restricted expense" — 66(15.1), 66.1(6); "selling instrument" — 66(15); "share", "shareholder" — 248(1); "shareholder corporation" — 66(15); "specified amount" — 66(20); "specified purpose" — 66(15.1), 66.1(6); "tar sands" — 248(1); "taxable capital amount" — 66(12.6011); "taxable capital employed in Canada" — 66(12.6012); "taxation year" — 66(16), 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 66]: 29, 30.

Interpretation Bulletins [s. 66]: IT-143R2: Meaning of "eligible capital expenditure".

66.1 [Canadian exploration expenses] — (1) Amount to be included in income — There shall be included in computing the amount referred to in paragraph 59(3.2)(b) in respect of a taxpayer for a taxation year the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of F to M in the definition "cumulative Canadian exploration expense" in subsection (6) that are deducted in computing the taxpayer's cumulative Canadian exploration expense at the end of the year

exceeds the total of

(b) all amounts referred to in the descriptions of A to E.1 in the definition "cumulative Canadian exploration expense" in subsection (6) that are included in computing the taxpayer's cumulative Canadian exploration expense at the end of the year, and

(c) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the taxpayer for the year.

Related Provisions: 59(3.2)(b) — Income inclusion; 66.7(1) — Successor of Canadian exploration and development expenses; 87(1.3) — Amalgamations — shareholder corporation. See additional Related Provisions and Definitions at end of s. 66.1.

History: Subsec. 66.1(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(1), applicable to taxation years ending after February 17, 1987, except that with respect to such taxation years beginning before February 18, 1987, the reference to "E.1" in para. (b) shall be read as "D". Subsec. (1) formerly read:

66.1 (1) A taxpayer shall include, in computing the amount referred to in paragraph 59(3.2)(b), the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of F to M in the definition "cumulative Canadian exploration expense" in subsection (6) that would be taken into account in computing the taxpayer's cumulative Canadian exploration expense at the end of the year

exceeds

(b) the total of all amounts referred to in the descriptions of A to D in the definition referred to in paragraph (a) that would be taken into account in computing the taxpayer's cumulative Canadian exploration expense at the end of the year.

Pre-RSC History: Para. 66.1(1)(a) amended by 1987, c. 46, subsec. 19(1), to substitute "(6)(b)(v) to (xii)" for "(6)(b)(v) to (xi)", applicable to taxation years ending after February 17, 1987.

Para. 66.1(1)(a) amended by 1986, c. 55, subsec. 12(1), to substitute "(xi)" for "(x)", applicable with respect to expenditures made after November 1985.

Para. 66.1(1)(a) amended by 1986, c. 2, subsec. 17(1), applicable to 1985 *et seq.*, to substitute "(x)" for "(ix)".

Para. 66.1(1)(a) substituted by 1980-81-82-83, c. 48, subsec. 34(1), to add reference to subparagraph 6(b)(ix), applicable to 1981 *et seq.*

(2) Deduction for certain principal-business corporations — In computing the income for a taxation year of a principal-business corporation (other than a corporation that would not be a principal-business corporation if the definition "principal-business corporation" in subsection 66(15) were read without reference to paragraphs (h) and (i) of that definition), there may be deducted any amount that the corporation claims not exceeding the lesser of

(a) the total of

(i) the amount, if any, by which its cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by it for the year under subsection 66(14.1), and

(ii) the amount, if any, by which

(A) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the corporation for the year

exceeds

(B) the amount that would be determined under subsection (1) in respect of the corporation for the year, if that subsection were read without reference to paragraph (c) thereof, and

(b) the amount, if any, by which

(i) the amount that would be its income for the year if no deduction (other than a prescribed deduction) were allowed under this subsection or section 65

exceeds

(ii) the total of all amounts each of which is an amount deducted by the corporation under section 112 or 113 in computing its taxable income for the year.

Related Provisions: 65 — Allowance for oil or gas well, mine or timber limit; 66 — Exploration and development expenses; 66.1(3) — Deduction for other taxpayers; 66.7(1) — Successor of Canadian exploration and development expenses; 209 — Tax on carved-out income. See additional Related Provisions and Definitions at end of s. 66.1.

History: The opening words of subsec. 66.1(2) amended by 1997, c. 25, subsec. 14(1), applicable to taxation years that end after December 5, 1996. The opening words formerly read:

(2) Deduction for principal-business corporation — In computing the income of a principal-business corporation for a taxation year, there may be deducted any amount that the corporation claims not exceeding the lesser of

Subsec. 66.1(2) amended by 1994, c. 8, subsec. 6(1), applicable to taxation years ending after December 2, 1992. Subsec. (2) formerly read:

(2) In computing its income for a taxation year, a taxpayer that is a principal-business corporation

(a) shall deduct an amount equal to the lesser of

(i) the amount, if any by which its cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by it for the year under subsection 66(14.1), and

(ii) its income for the year (computed without reference to subsection 59(3.3)) if no deduction (other than a prescribed deduction) were allowed under this subsection or section 65 minus the deductions allowed for the year by sections 112 and 113; and

(b) may deduct such amount as it claims not exceeding the total of

(i) the lesser of

(A) the amount, if any, by which

(I) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the taxpayer for the year

exceeds

(II) the amount that would, but for paragraph (1)(c), be the amount determined under subsection (1) in respect of the taxpayer for the year, and

(B) the amount, if any, by which

(I) the amount, if any, determined under subparagraph (a)(ii) in respect of the taxpayer for the year

exceeds

(II) the amount, if any, deducted under paragraph (a) by the taxpayer for the year, and

(ii) the least of

(A) the total of amounts included under subsection 59(3.3) in computing its income for the year,

(B) the total of

(I) the amount, if any, by which the amount determined under subparagraph (a)(i) in respect of the taxpayer for the year exceeds the amount determined under subparagraph (a)(ii) in respect of the taxpayer for the year, and

(II) the amount, if any, by which the amount determined under clause (i)(A) in respect of the taxpayer for the year exceeds the amount determined under clause (i)(B) in respect of the taxpayer for the year, and

(C) the amount that would be determined under subparagraph (a)(ii) in respect of the taxpayer for the year if that subparagraph were read without reference to the expression "(computed without reference to subsection 59(3.3))".

Para. 66.1(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(2), applicable to taxation years ending after February 17, 1987. Para. (b) formerly read:

(b) may deduct such amount as it may claim not exceeding the least of

(i) the total of amounts required to be included in computing its income for the year by virtue of subsection 59(3.3),

(ii) the amount, if any, by which the amount described in subparagraph (a)(i) exceeds the amount described in subparagraph (a)(ii), and

(iii) the amount that would be determined under subparagraph (a)(ii) if that subparagraph were read without reference to "(computed without reference to subsection 59(3.3))".

Pre-RSC History: Subpara. 66.1(2)(a)(i) substituted by 1986, c. 2, subsec. 17(2), applicable to 1985 *et seq.* Subpara (a)(i) formerly read:

(i) its cumulative Canadian exploration expense at the end of the year, and

Subsec. 66.1(2) substituted by 1980-81-82-83, c. 48, subsec. 34(2), applicable to taxation years ending after December 11, 1979. Subsec. (2) formerly read:

(2) A taxpayer that is a principal-business corporation shall deduct in computing its income for a taxation year an amount equal to the lesser of

(a) its cumulative Canadian exploration expense at the end of the year; and

(b) its income for the year if no deduction were allowed under this subsection or section 65, minus the deductions allowed for the year by sections 112 and 113.

Para. 66.1(2)(b) substituted by 1977-78, c. 1, subsec. 30(1), applicable to taxation years ending after May 6, 1974. Para. (b) formerly read:

(b) its income for the year if no deductions were allowed under this subsection or section 65, minus the deductions allowed for the year by subsections (4) and (5) and sections 66, 112 and 113.

Regulations: 1213 (prescribed deduction).

Interpretation Bulletins: IT-400: Exploration and development expenses — meaning of principal-business corporation.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(3) Expenses of other taxpayer — In computing the income for a taxation year of a taxpayer that is not a principal-business corporation, or that is a corporation that would not be a principal-business corporation if the definition "principal-business corporation" in subsection 66(15) were read without reference to paragraphs (h) and (i) of that definition, there may be deducted such amount as the taxpayer claims not exceeding the total of

(a) the amount, if any, by which the taxpayer's cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by the taxpayer for the year under subsection 66(14.1), and

(b) the amount, if any, by which

(i) the total determined under subparagraph 66.7(12.1)(a)(i) in respect of the taxpayer for the year

exceeds

(ii) the amount that would, but for paragraph (1)(c), be the amount determined under subsection (1) in respect of the taxpayer for the year.

Related Provisions: 66.1(2) — Deduction for principal-business corporation; 110.6(1)"investment expense"(d) — effect of claim under 66.1(3) on capital gains exemption. See additional Related Provisions and Definitions at end of s. 66.1.

History: The opening words of subsec. 66.1(3) amended by 1997, c. 25, subsec. 14(2), applicable to taxation years that end after December 5, 1996. The opening words formerly read:

(3) In computing the income of a taxpayer (other than a principal-business corporation) for a taxation year, there may be deducted such amount as the taxpayer claims not exceeding the total of

Subsec. 66.1(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(3), applicable to taxation years ending after February 17, 1987. Subsec. (3) formerly read:

(3) A taxpayer other than a principal-business corporation may deduct, in computing the taxpayer's income for a taxation year, such amount as the taxpayer may claim not exceeding the amount, if any, by which the taxpayer's cumulative Canadian exploration expense at the end of the year exceeds the amount, if any, designated by the taxpayer for the year under subsection 66(14.1).

Pre-RSC History: Subsec. 66.1(3) amended by 1986, c. 2, subsec. 17(3), applicable to 1985 *et seq.*, to add "the amount, if any, by which" and "exceeds the amount, if any, designated by him for the year under subsection 66(14.1)".

Subsec. 66.1(3) substituted by 1985, c. 45, subsec. 29(1), applicable to 1985 *et seq.* Subsec. (3) formerly read:

(3) Deduction for Canadian exploration expense of others — A taxpayer who is an individual or a corporation, other than a principal-business corporation, may deduct in computing his income for a taxation year such amount as he may claim not exceeding the aggregate of

(a) the lesser of

(i) the amount, if any, by which his Canadian exploration expense incurred after May 25, 1976 exceeds the aggregate of all amounts claimed by him under this paragraph in a previous taxation year, and

(ii) the amount of his cumulative Canadian exploration expense at the end of the year, and

(b) the lesser of

(i) the amount by which his cumulative Canadian exploration expense at the end of the year exceeds the amount described in subparagraph (a)(i), and

(ii) the greater of

(A) 30% of the amount by which his cumulative Canadian exploration expense at the end of the year exceeds the amount described in subparagraph (a)(i), and

(B) the amount, if any, by which the aggregate of

(I) such part of his income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells in Canada or to the production of minerals from mines in Canada,

(II) his income for the taxation year from royalties in respect of an oil or gas well in Canada or a mine in Canada,

(III) the aggregate of amounts included in computing his income for the year by virtue of paragraph 59(3.2)(b) or (c), and

(IV) the aggregate of amounts included in computing his income for the year by virtue of any of paragraphs 59(2)(a), (c) and (d) and subsection 59(2.1)

would exceed

(V) the aggregate of amounts deducted in computing his income for the year under subsection 64(1) in respect of property described in paragraph 59(1.2)(b) or under subsection 64(1.1) or (1.2),

if no deduction were allowed under this subsection or section 65.

Subpara. 66.1(3)(a)(i), subcl. 66.1(3)(b)(ii)(B)(V) substituted by 1980-81-82-83, c. 48, subsecs. 34(3), (4), applicable, as to subcl. 66.1(3)(b)(ii)(B)(V), to taxation years ending after December 11, 1979. Subpara. (a)(i) and subcl. (b)(ii)(B)(V) formerly read:

(i) the amount by which his Canadian exploration expense incurred after May 25, 1976 and before 1982 except the aggregate of all amounts claimed by virtue of this paragraph in a previous taxation year, and

. . . . .

(V) the aggregate of amounts deducted in computing his income for the year, under paragraph 64(1)(a) in respect of property described in subsection 59(1.1), under paragraph 64(1)(b) or under subsection 64(1.1),

Subpara. 66.1(3)(a)(i) substituted by 1979, c. 5, subsec. 20(1), to substitute "1982" for "July 1979".

All that portion of cl. 66.1(3)(b)(ii)(B) following subcl. (V) substituted by 1977-78, c. 1, subsec. 30(2), applicable to taxation years ending after May 6, 1974.

Subsec. 66.1(3) substituted by 1976-77, c. 4, subsec. 24(1), applicable to taxation years ending after May 25, 1976. Subsec. (3) formerly read:

(3) A taxpayer who is an individual or a corporation, other than a principal-business corporation, may deduct in computing his income for a taxation year such amount as he may claim not exceeding 30% of his cumulative Canadian exploration expense at the end of the year.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 66.1(4) repealed by 1987, c. 46, subsec. 19(2), applicable to taxation years ending after February 17, 1987. Subsec. (4) formerly read:

(4) Successor corporation's Canadian exploration expense — Where a corporation (in this subsection referred to as the "successor corporation") has at any time after May 6, 1974 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) the aggregate of

(i) the cumulative Canadian exploration expense of the predecessor, determined at the time immediately after the properties were so acquired by the successor corporation, and

(ii) all amounts required to be added under paragraph (10)(c) to the cumulative Canadian exploration expense of the predecessor in respect of the successor corporation at any time before the end of the year,

to the extent that it has not been deducted by the successor corporation in computing its income for a preceding taxation year and has not been deducted by the predecessor in computing his income for any taxation year or designated by the predecessor pursuant to subsection 66(14.1) for any taxation year, and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65 or 66 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsections (5) and 66(2), (6) and (7), sections 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to

(i) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as being attributable to the disposition in the year or a preceding taxation year of any Canadian resource property owned by the predecessor immediately before the acquisition of the property by the successor corporation to the extent that the proceeds of such disposition have not been included in determining an amount under this subparagraph for a preceding taxation year or in determining an amount under subparagraph (5)(b)(i) in the year or a preceding taxation year,

(ii) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(iii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the predecessor's income and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the successor corporation as a reserve in computing its income for a preceding year

exceeds the aggregate of amounts, if any, deducted in computing the successor corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor;

and, in respect of any expense included in the aggregate referred to in paragraph (a), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property was acquired by the successor corporation.

Para. 66.1(4)(a) substituted by 1986, c. 55, subsec. 12(2), applicable with respect to expenses incurred after March 1987. Para. (a) formerly read:

(a) the cumulative Canadian exploration expense of the predecessor, determined at the time immediately after the properties were so acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a preceding taxation year and has not been deducted by the predecessor in computing his income for any taxation year or designated by the predecessor pursuant to subsection 66(14.1) for any taxation year, and

All that portion of subsec. 66.1(4) following para. (b) amended by 1986, c. 55, subsec. 12(3), to substitute "aggregate" for "cumulative Canadian exploration expense", and "the property was acquired" for "the property so acquired was acquired", applicable with respect to expenses incurred after March 1987.

Subpara. 66.1(4)(b)(ii) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "natural accumulations thereof or from oil or gas".

Para. 66.1(4)(a) substituted by 1986, c. 2, subsec. 17(4), applicable to 1985 *et seq.* Para. (a) formerly read:

(a) the cumulative Canadian exploration expense of the predecessor, determined at the time immediately after the property so acquired was acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a previous taxation year and has not been deducted by the predecessor in computing his income for any taxation year; and

All that portion of subsec. 66.1(4) preceding para. (a) substituted by 1985, c. 45, subsec. 29(2), applicable with respect to acquisitions occurring after 1982 except that with respect to such acquisitions occurring after 1982 and in a taxation year commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on in Canada such of the businesses described in subparagraphs 66(15)(h)(i) to (vii) as were carried on by him". That portion of subsec. (4) formerly read:

> (4) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another person (in this subsection referred to as the "predecessor") all or substantially all of the property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him, and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subpara. 66.1(4)(b)(i) substituted by 1985, c. 45, subsec. 29(3), applicable to taxation years commencing after 1984. Subpara. (b)(i) formerly read:

> (i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vii) owned by the predecessor immediately before the acquisition by the successor corporation of the property so acquired,

Cl. 66.1(4)(b)(iii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

All that portion of subsec. 66.1(4) preceding para. (b), subparas. 66.1(4)(b)(i) to (iii), all that portion of subsec. 66.1(4) following para. (b) substituted by 1984, c. 1, subsecs. 28(1), (2), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. Those portions and subparas. formerly read:

> (4) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the predecessor corporation and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of
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> (a) the cumulative Canadian exploration expense of the predecessor corporation, determined at the time immediately after the property so acquired was acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a previous taxation year and has not been deducted by the predecessor corporation in computing its income for any taxation year; and
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> . . . . .
>
> (i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vii) owned by the predecessor corporation immediately before the acquisition by the succesor corporation of the property so acquired,
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> (ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and
>
> (iii) the amount, if any, by which the aggregate of all amounts each of which is an amount
>
> (A) required by subsection 59(2) or (2.1) to be included in computing its income for the year, and
>
> (B) in respect of a reserve deducted in computing the predecessor corporation's income and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the successor corporation as a reserve in computing its income for a preceding year,
>
> exceeds the aggregate of amounts, if any, deducted in computing the successor corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor corporation;
>
> and, in respect of any expense included in the cumulative Canadian exploration expense referred to in paragraph (a), no deduction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

Subpara. 66.1(4)(b)(i) and all that portion of subpara. 66.1(4)(b)(iii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsecs. 34(5), (6), applicable to taxation years ending after December 11, 1979, to substitute "(vii)" for "(vi)" in subpara. 66.1(4)(b)(ii) and to add reference to subsec. (1.2) in that portion.

All that portion of subsec. 66.1(4) preceding para. (a) substituted, subpara. 66.1(4)(b)(iii) added by 1979, c. 5, subsecs. 20(2), (3) applicable, as to that portion, with respect to acquisitions of property after November 16, 1978 and, as to subpara. 66.1(4)(b)(iii), to 1979 *et seq.* That portion formerly read:

> (4) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subsec. 66.1(4) substituted by 1977-78, c. 1, subsec. 30(3), applicable to 1977 *et seq.* Subsec. (4) formerly read:

> (4) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsec. 87(1)) from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada its business, there may be deducted by the successor corporation in computing its income under this Part for a taxation year
>
> (a) where the successor corporation is a principal-business corporation, the lesser of
>
> (i) the cumulative Canadian exploration expense of the predecessor corporation to the extent that such expense
>
> (A) was deductible but not deducted by the successor corporation in computing its income for a previous taxation year, and was not deducted by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation or its income for a previous taxation year, and
>
> (B) would have been deductible but was not deducted by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation, and
>
> (ii) of the cumulative Canadian exploration expense referred to in subparagraph (i), an amount equal to such part of its income for the year if no deduction were allowed under this section, section 65 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus any deductions allowed for the year by sections 66, 66.2, 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this

paragraph), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, a right to take or remove petroleum or natural gas or a right to take or remove minerals; and

(b) where the successor corporation is not a principal-business corporation, the lesser of

(i) 30% of the amount referred to in subparagraph (a)(i), and

(ii) the amount of income referred to in subparagraph (a)(ii)

and, in respect of any such expense included in the cumulative Canadian exploration expense referred to in subparagraph (a)(i), no deduction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

(5) [Repealed under former Act]

Pre-RSC History: Subsec. 66.1(5) repealed by 1987, c. 46, subsec. 19(2), applicable to taxation years ending after February 17, 1987. Subsec. (5) formerly read:

(5) Second successor corporation's Canadian exploration expenses — Where a corporation (in this subsection referred to as the "second successor corporation") has at any time after May 6, 1974 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation, within the meaning of subsection (4), all or substantially all of the Canadian resource properties of the first successor corporation and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) the aggregate of

(i) the amount determined under paragraph (4)(a) for the first successor corporation at the time immediately after the property so acquired was acquired by the second successor corporation, and

(ii) all amounts required to be added under paragraph (11)(b) to the cumulative Canadian exploration expense of the first successor corporation in respect of the second successor at any time before the end of the year,

to the extent that it has not been deducted by the second successor corporation in computing its income for a preceding taxation year and has not been deducted by the first successor corporation in computing its income for any taxation year; and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65 or 66 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsections 66(2) and (7), sections 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to

(i) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as being attributable to the disposition in the year or a preceding taxation year of any Canadian resource property owned by the predecessor, within the meaning of subsection (4), of the first successor corporation immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation to the extent that the proceeds of such disposition have not been included in determining an amount under this subparagraph for a preceding taxation year,

(ii) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation, within the meaning of subsection (4), had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(iii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the income of the predecessor of the first successor corporation and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the second successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the income of the second successor corporation for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor of the first successor corporation;

and, in respect of any expense included in the aggregate referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in income for a taxation year subsequent to its taxation year in which the property was acquired by the second successor corporation.

Para. 66.1(5)(a) substituted by 1986, c. 55, subsec. 12(4), applicable with respect to expenses incurred after March 1987. Para. (a) formerly read:

(a) the amount determined under paragraph (4)(a) for the first successor corporation at the time immediately after the property so acquired was acquired by the second successor corporation, to the extent that it has not been deducted by the second successor corporation in computing its income for a previous taxation year and has not been deducted by the first successor corporation in computing any income for any taxation year; and

All that portion of subsec. 66.1(5) following para. (b) amended by 1986, c. 55, subsec. 12(5), to substitute "aggregate" for "amount" and "the property was acquired" for "the property so acquired was acquired", applicable with respect to expenses incurred after March 1987.

Subpara. 66.1(5)(b)(ii) substituted by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "natural accumulations thereof or from oil or gas".

All that portion of subsec. 66.1(5) preceding para. (a) substituted by 1985, c. 45, subsec. 29(4), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985, the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in subparagraphs 66(15)(h)(i) to (vii) as were carried on by it". That portion of subsec. (5) formerly read:

(5) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (4), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subpara. 66.1(5)(b)(i) substituted by 1985, c. 45, subsec. 29(5), applicable to taxation years commencing after 1984. Subpara. (b)(i) formerly read:

(i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vii) owned by the predecessor of the first successor corporation, within the meaning of subsection (4), immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation,

Cl. 66.1(5)(b)(iii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

Subpara. 66.1(5)(b)(iii) amended by 1984, c. 1, subsec. 28(3), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983, to substitute "predecessor" for "predecessor corporation" wherever it appeared.

Subpara. 66.1(5)(b)(i) and all that portion of subpara. 66.1(5)(b)(iii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsecs. 34(7), (8), applicable to taxation years ending after December 11, 1979, to substitute "(vii)" for "(vi)" in subpara. 66.1(5)(b)(i) and to add reference to subsec. (1.2) in that portion.

All that portion of subsec. 66.1(5) preceding para. (a) substituted, subpara. 66.1(5)(b)(iii) added by 1979, c. 5, subsecs. 20(4), (5) applicable, as to that portion with respect to acquisitions of property after November 16, 1978, and, as to subpara. 66.1(5)(b)(iii), to 1979 *et seq.* That portion formerly read:

(5) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (4), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subsec. 66.1(5) substituted by 1977-78, c. 1, subsec. 30(3), applicable to 1977 *et seq.* Subsec. (5) formerly read:

(5) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)) from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (4), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada its business, there may be deducted by the second successor corporation, in computing its income under this Part for a taxation year, the lesser of

(a) the amount determined by adding the expenses referred to in subparagraph (4)(a)(i) for the purpose of determining the deduction allowable to the first successor corporation under subsection (4) in computing its income for a previous taxation year, to the extent that such expense

(i) was not deductible or deducted, as the case may be, by the second successor corporation or any other corporation in computing its income for a previous taxation year, and was not deductible or deducted, as the case may be, by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(ii) would, but for paragraph (4)(b), have been deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation;

(b) where the second successor corporation is a principal-business corporation, of that amount, an amount equal to such part of its income for the year if no deduction were allowed under this section, section 65 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus any deductions allowed for the year by sections 66, 66.2, 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph) as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor of the first successor corporation within the meaning of subsection (4) had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, a right to take or remove petroleum or natural gas or a right to take or remove minerals; and

(c) where the second successor corporation is not a principal-business corporation, the lesser of

(i) 30% of the amount referred to in paragraph (a), and

(ii) the amount of income determined under paragraph (b);

and, in respect of any such expense included in the cumulative Canadian exploration expense referred in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

(6) Definitions — In this section,

Pre-RSC History: *The opening words also referred to ss. 66, 66.2 and 66.4. See now subsecs. 66(15.1), 66.2(5.1), 66.4(5.1).*

"Canadian exploration expense" of a taxpayer means any expense incurred after May 6, 1974 that is

(a) any expense including a geological, geophysical or geochemical expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas (other than a mineral resource) in Canada,

(b) any expense (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) incurred by the taxpayer after March, 1985 for the purpose of bringing a natural accumulation of petroleum or natural gas (other than a mineral resource) in Canada into production and incurred prior to the commencement of the production (other than the production from an oil or gas well) in reasonable commercial quantities from such accumulation, including

(i) clearing, removing overburden and stripping, and

(ii) sinking a shaft or constructing an adit or other underground entry,

(c) any expense incurred before April, 1987 in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well,

(i) incurred by the taxpayer in the year, or

(ii) incurred by the taxpayer in any previous year and included by the taxpayer in computing the taxpayer's Canadian development expense for a previous taxation year,

if, within six months after the end of the year, the drilling of the well is completed and

(iii) it is determined that the well is the first well capable of production in commercial quantities from an accumulation of petroleum or natural gas (other than a mineral resource) not previously known to exist, or

(iv) it is reasonable to expect that the well will not come into production in commercial quantities within twelve months of its completion,

(d) any expense incurred by the taxpayer after March, 1987 and in a taxation year of the taxpayer in drilling or completing an oil or gas well in Canada or in build-

ing a temporary access road to, or preparing a site in respect of, any such well if

(i) the well resulted in the discovery of a natural accumulation of petroleum or natural gas and the discovery occurred at any time before six months after the end of the year,

Proposed Amendment — 66.1(6)"Canadian exploration expense"(d)(i)

(i) the drilling or completing of the well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas, where

(A) before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas, and

(B) the discovery occurred at any time before six months after the end of the year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 27(1), will amend subpara. (d)(i) of the definition "Canadian exploration expense" to read as above, applicable to expenses incurred after March 1987.

Technical Notes: Subsections 66.1(2) and (3) of the Act allow a taxpayer a deduction for a taxation year of up to 100 per cent of its cumulative Canadian exploration expense (cumulative CEE) at the end of the year. The definitions of CEE and cumulative CEE are contained in subsection 66.1(6).

Under subparagraph (d)(i) of the CEE definition, CEE includes a taxpayer's expenses incurred in a taxation year in drilling or completing an oil or gas well in Canada, provided that the well resulted in the discovery of a natural accumulation of petroleum or natural gas and the discovery occurred within six months after the end of the year. If such a discovery occurs later, subsection 66.1(9) generally allows for the expenditure to be treated as CEE incurred at the time of the discovery.

Subparagraph (d)(i) of the CEE definition was reviewed in the decision of the Tax Court of Canada in Resman Holdings Limited and *Dex Resources Limited v. Her Majesty the Queen*, [1998] 4 C.T.C. 2289, 98 DTC 1999. The Tax Court's decision stood for the proposition that the costs of a step-out well can qualify as CEE under this subparagraph, even though the well was being drilled merely to establish the extent of an already-known pool of oil. The result in the case was surprising, given that the consistent practice of the industry was that the cost of step-out wells was treated as Canadian development expense rather than CEE. The Tax Court's decision was reversed by the Federal Court of Appeal in a judgment delivered on May 24, 2000.

Subparagraph (d)(i) of the CEE definition and paragraph 66.1(9)(a) are amended to confirm that the costs of drilling or completing a well qualify as CEE under those provisions only in the event that the drilling or completing of the well resulted in the initial discovery that a natural underground reservoir contains petroleum or natural gas. These amendments apply to expenses incurred after March 1987.

Paragraph (k.1) of the CEE definition is introduced to clarify that a taxpayer's CEE does not include the cost to the taxpayer of any depreciable property of a prescribed class. This amendment, as well as the related amendment to the definition "Canadian development expense", is for greater certainty. It responds to an issue raised by the decision of the Tax Court of Canada in *Robert Phénix v. Her Majesty the Queen*, [1998] 1 C.T.C. 2379, 97 DTC 1228, which is currently under appeal. This amendment applies to property acquired after 1987. Paragraph (k.1) complements the wording in existing paragraph (l) of the CEE definition, with the result that both paragraphs provide for the same exclusions with regard to property acquired after December 5, 1996.

It should be noted that new paragraph (k.1), unlike existing paragraph (l), does not explicitly exempt a "Canadian renewable and conservation expense" (CRCE) from being excluded from CEE. The explicit exemption is not considered necessary, since proposed paragraph 1102(1)(a.1) of the Income Tax Regulations results in any CRCE not being considered to be included in the capital cost of depreciable property.

These amendments apply, with necessary minor technical modifications to take into account the restructuring of subsection 66.1(6), to the version of the CEE definition in force prior to the enactment of the Revised Statutes of Canada, 1985, Fifth Supplement. Subsection 79(1) of the *Income Tax Application Rules* contains a rule to this effect.

Department of Finance news release, July 23, 1999: *Clarifying Amendments Regarding Tax Treatment of Resource Expenditures*

Finance Minister Paul Martin today released proposed amendments regarding the tax treatment of certain resource expenditures.

The proposed amendments are designed to deal with two related issues. First, they would ensure that taxpayers cannot obtain unintended tax relief by reclassifying certain Canadian development expenses (CDE), which qualify for a 30-per-cent annual write-off, as Canadian exploration expenses (CEE) qualifying for full deductibility in the year in which they were incurred. Second, these changes would prevent the reclassification, as CDE or CEE, of expenditures that have consistently been treated by taxpayers in the resource sector as relating to depreciable property, the cost of which is deducted as capital cost allowance (CCA) within the limits specified in the *Income Tax Act*.

Allowing these expenditures to be reclassified would result in a windfall for taxpayers. The windfall is due to the 100 per cent rate of write-off for CEE, as opposed to lower rates of write-offs for CDE and CCA. In the case of the reclassification of depreciable property, an additional unintended benefit would occur because, unlike CCA claims, CEE and CDE claims do not result in a reduction of the resource allowance deduction available to taxpayers in the resource sector.

The proposed amendments are intended to clarify the policy underlying the income tax law. Any necessary action will be taken to ensure that the right of parties involved in outstanding court cases to make arguments on the basis of the existing income tax law is not affected. However, the changes would prevent other taxpayers from seeking to benefit from the perceived deficiency in the existing law.

More detailed information on the proposed amendments is contained in the attached draft legislation and explanatory notes.

For further information: Victor Pietrow, Tax Policy Branch, (613) 992-3031; Karl Littler, Executive Assistant, to the Secretary of State, (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080.

(ii) the well is abandoned in the year or within six months after the end of the year without ever having produced otherwise than for specified purposes,

(iii) the period of 24 months commencing on the day of completion of the drilling of the well ends in the year, the expense was incurred within that period and in the year and the well has not within that period produced otherwise than for specified purposes, or

(iv) there has been filed with the Minister, on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well was commenced, a certificate issued by the Minister of Natural Resources certifying that, on the basis of evidence submitted to that Minister, that Minister is satisfied that

(A) the total of expenses incurred and to be incurred in drilling and completing the well, in building a temporary access road to the well

and in preparing the site in respect of the well will exceed $5,000,000, and

(B) the well will not produce, otherwise than for a specified purpose, within the period of 24 months commencing on the day on which the drilling of the well is completed,

(e) any expense deemed by subsection (9) to be a Canadian exploration expense incurred by the taxpayer,

(f) any expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada including any expense incurred in the course of

(i) prospecting,

(ii) carrying out geological, geophysical or geochemical surveys,

(iii) drilling by rotary, diamond, percussion or other methods, or

(iv) trenching, digging test pits and preliminary sampling,

but not including

(v) any Canadian development expense, or

(vi) any expense that may reasonably be considered to be related to a mine that has come into production in reasonable commercial quantities or to be related to a potential or actual extension thereof,

(g) any expense incurred by the taxpayer after November 16, 1978 for the purpose of bringing a new mine in a mineral resource in Canada into production in reasonable commercial quantities and incurred before the coming into production of the new mine, including

(i) clearing, removing overburden and stripping, and

(ii) sinking a mine shaft, constructing an adit or other underground entry,

(g.1) any Canadian renewable and conservation expense incurred by the taxpayer,

(h) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (d) and (f) to (g.1) incurred by a partnership in a fiscal period thereof, if at the end of the period the taxpayer is a member of the partnership, or

(i) any expense referred to in any of paragraphs (a) to (g) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

but, for greater certainty, shall not include

(j) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (i),

(k) any expense described in paragraph (i) incurred by any other taxpayer to the extent that the expense was,

(i) by virtue of that paragraph, a Canadian exploration expense of that other taxpayer,

(ii) by virtue of paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5), a Canadian development expense of that other taxpayer, or

(iii) by virtue of paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), a Canadian oil and gas property expense of that other taxpayer,

Proposed Addition — 66.1(6)"Canadian exploration expense"(k.1)

(k.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 27(2), will add para. (k.1) to the definition "Canadian exploration expense", applicable to 1988 *et seq.*

Technical Notes: See under 66.1(6)"Canadian exploration expense"(d)(i).

(l) any amount (other than a Canadian renewable and conservation expense) included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class,

(m) an expenditure incurred at any time after the commencement of production from a Canadian resource property of the taxpayer in order to evaluate the feasibility of a method of recovery of, or to assist in the recovery of, petroleum, natural gas or related hydrocarbons from the portion of a natural reservoir to which the Canadian resource property relates,

(n) an expenditure incurred at any time relating to the injection of any substance to assist in the recovery of petroleum, natural gas or related hydrocarbons from a natural reservoir, or

(o) the taxpayer's share of any consideration, expense, cost or expenditure referred to in any of paragraphs (j) to (n) given or incurred by a partnership,

but any assistance that a taxpayer has received or is entitled to receive after May 25, 1976 in respect of or related to the taxpayer's Canadian exploration expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (i);

Related Provisions: 13(7.5) — Depreciable property treatment for costs associated with building roads and similar projects; 66.1(8) — Expenses in first 60 days of year; 66.1(9)(a) — Past CDE deemed to be CEE; 66.1(10) — Certificate ceasing to be valid; 66.2(2) — Deduction — Canadian development expenses; 66.3 — Exploration and development shares; 248(1)"Canadian exploration expense" — Definition applies to entire Act; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions and Definitions at end of s. 66.1.

History: Para. (g.1) added to the definition "Canadian exploration expense" in subsec. 66.1(6), and para. (h) amended, by 1997, c. 25, subsec. 14(3), applicable after December 5, 1996. Para. (h) formerly read:

(h) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a), (b), (c), (d), (f) and (g) incurred by a partnership in a fiscal period thereof, if at the end of that period the taxpayer was a member of the partnership, or

Paras. (l) to (o) added to "Canadian exploration expense" by 1997, c. 25, subsec. 14(4), applicable to taxation years that end after December 5, 1996.

The opening words of subpara. 66.1(6)"Canadian exploration expense"(d)(iv) amended by 1994, c. 41, para. 37(1)(o), in force January 12, 1995. They formerly read:

(iv) there has been filed with the Minister, on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well was commenced, a certificate issued by the Minister of Energy, Mines and Resources certifying that, on the basis of evidence submitted to that Minister, that Minister is satisfied that

Pre-RSC History: *The definition "Canadian exploration expense" was para. 66.1(6)(a). See Table of Concordance.*

Cl. 66.1(6)(a)(ii.1)(D) substituted by 1988, c. 55, subsec. 42(1), applicable after March 1987, except that a certificate referred to in that clause that is filed with the Minister of National Revenue within 120 days after September 13, 1988 shall be deemed to have been filed on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well to which the certificate relates was commenced. Cl. (a)(ii.1)(D) formerly read:

> (D) a certificate in prescribed form in respect of the well has been filed with the Minister on or before the day that is 60 days after the end of the calendar year in which the drilling of the well has commenced,

Subpara. 66.1(6)(a)(iv) amended by 1988, c. 55, subsec. 42(2), to add "subject to section 66.8" and to substitute "subparagraphs (i), (i.1), (ii), (ii.1), (iii) or (iii.1)" for "subparagraphs (i) to (iii.1)", applicable after June 17, 1987.

All that portion of para. 66.1(6)(a) preceding subpara. (i) amended by 1986, c. 55, subsec. 12(6), to substitute "expense incurred" for "outlay or expense made or incurred".

All that portion of subpara. 66.1(6)(a)(ii) preceding cl. (A) amended by 1986, c. 55, subsec. 12(7), to substitute "before April 1987" for "before 1986", applicable after 1985.

Subparas. 66.1(6)(a)(ii.1) and (ii.2) substituted by 1986, c. 55, subsec. 12(8), applicable after 1985. Those paras. formerly read:

> (ii.1) any expense incurred after 1985 in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well,
>
> (A) incurred by him in the year, or
>
> (B) incurred by him in any previous year and included by him in computing his Canadian development expense for a previous taxation year,
>
> if the drilling of the well is completed within six months after the end of the year and the well is abandoned within six months after the end of the year and within twelve months after the drilling of the well is completed,
>
> (ii.2) any expense incurred by him after 1985 in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well
>
> (A) in a prescribed frontier exploration area, except where the well is drilled for the purpose of production in commercial quantities from an accumulation of petroleum or natural gas that was known to be capable of being produced in commercial quantities at the time the drilling of the well commenced or for the purpose of delineating or determining the extent or quality of an accumulation of petroleum or natural gas and the drilling of the well commenced after any production in commercial quantities of any petroleum or natural gas from the accumulation, or
>
> (B) in any area other than a prescribed frontier exploration area, except where the well is drilled for the purpose of production from, or delineating or determining the extent or quality of, an accumulation of petroleum or natural gas capable of being produced in commercial quantities that was known to exist at the time the drilling of the well commenced,

Subpara. 66.1(6)(a)(v) amended by 1986, c. 55, subsec. 12(9), to substitute "agreement in writing with a corporation, entered into before 1987," for "agreement with a corporation".

All that portion of para. 66.1(6)(a) following subpara. (vii) substituted by 1986, c. 55, subsec. 12(10), applicable with respect to expenses incurred after December 19, 1986. That portion formerly read:

> but no amount of assistance or benefit that a taxpayer has received or is entitled to receive after May 25, 1976 from a government, municipality or other public authority in respect of or related to his Canadian exploration expense, whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, shall reduce the amount of any of the expenses described in any of subparagraphs (i) to (v); and

Subpara. 66.1(6)(a)(i.1) added by 1986, c. 6, subsec. 31(1), applicable with respect to expenses incurred after March 1985.

All that portion of subpara. 66.1(6)(a)(iii) preceding cl. (A) substituted by 1985, c. 45, subsec. 29(6), applicable with respect to expenses incurred after May 9, 1985. That portion of subpara. (a)(iii) formerly read:

> (iii) any expense incurred by him for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada including any expense incurred in the course of

Cl. 66.1(6)(a)(iii)(F) amended by 1985, c. 45, subsec. 29(7), to delete the words "whether or not owned by the taxpayer" which had followed "related to a mine", applicable with respect to expenses incurred after May 9, 1985.

All that portion of subpara. 66.1(6)(a)(iii.1) preceding cl. (A) substituted by 1985, c. 45, subsec. 29(8), applicable with respect to expenses incurred after May 9, 1985. That portion of subpara. (a)(iii.1) formerly read:

> (iii.1) any expense incurred by him after November 16, 1978 for the purpose of bringing a mineral resource in Canada into production and incurred prior to the commencement of production from the resource in reasonable commercial quantities, including

All those portions of subparas. 66.1(6)(a)(ii), (ii.1) and (ii.2) preceding cl. (A) respectively, substituted by 1984, c. 45, subsecs. 23(1)–(3), applicable with respect to outlays or expenses made or incurred after 1983. Subpara. 66.1(6)(a)(ii) amended to replace "1984" with "1986", subpara. (ii.1) amended to replace "1983" with "1985" and "a particular oil or gas well" with "any such well", subpara. (ii.2) amended to replace "1983" with "1985".

All those portions of subparas. 66.1(6)(a)(ii), (ii.1), (ii.2) preceding cl. (A) and subpara. 66.1(6)(a)(v) substituted by 1980-81-82-83, c. 140, subsecs. 34(1)–(4), applicable, as to those portions, with respect to any outlay or expense made or incurred after 1981, and, as to subpara. 66.1(6)(a)(v), with respect to any outlay or expense made or incurred after 1982, to substitute "1984" for "1982" in that portion of subpara. 66.1(6)(a)(ii), and "1983" for "1981" in those portions of subparas. 66.1(6)(a)(ii.1), (ii.2), and to add "other than prescribed shares," in subpara. 66.1(6)(a)(v).

All that portion of subsec. 66.1(6) preceding para. (a), all that portion of para. 66.1(6)(a) preceding subpara. (iii) and subpara. 66.1(6)(a)(vii) substituted by 1980-81-82-83, c. 48, subsecs. 34(9)\-(11), applicable as to that portion preceding para. (a) and subpara. (vii), to taxation years ending after December 11, 1979, and, as to that portion preceding subpara. (iii), in respect of any outlay or expense made or incurred after 1980. Those portions and subpara. (a)(vii) formerly read:

> (6) In this section and sections 66 and 66.2,
>
> (a) "Canadian exploration expense" of a taxpayer means any outlay or expense made or incurred, or deemed to have been made or incurred, after May 6, 1974 that is
>
> (i) any expense including a geological, geophysical or geochemical expense incurred by him (other than an expense referred to in subparagraph (ii)) for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas (other than a mineral resource) in Canada,
>
> (ii) any expense incurred in drilling or completing an oil or gas well in Canada, building a temporary access road to the well or in preparing the site in respect of the well,
>
> (A) incurred by him in the year, or
>
> (B) incurred by him in any previous year and included by him in computing his Canadian development expense for a previous taxation year,
>
> if, within six months after the end of the year, the drilling of the well is completed and
>
> (C) it is determined that the well is the first well capable of production in commercial quantities from an accumulation of petroleum or natural gas (other than a mineral resource) not previously known to exist, or
>
> (D) it is reasonable to expect that the well will not come into production in commercial quantities within twelve months of its completion,
>
> . . . . .
>
> (vii) any expense described in subparagraph (v) incurred by any other taxpayer to the extent that the expense was, by virtue of that subparagraph, a Canadian exploration expense of that other taxpayer or was, by virtue of subparagraph 66.2(5)(a)(v), a Canadian development expense of that other taxpayer,

All that portion of subpara. 66.1(6)(a)(ii) preceding cl. (A), subparas. 66.1(6)(a)(iv), (v) substituted, subpara. 66.1(6)(a) (iii.1) added by 1979, c. 5, subsecs. 20(6), (7), applicable, as to that portion, to taxation years ending after May 6, 1974. Subparas. (a)(iv), (v) formerly read:

> (iv) his share of any expense referred to in any of subparagraphs (i) to (iii) incurred by any association, partnership or syndicate in a fiscal period of that association, partnership or syndicate, if at the end of that fiscal period he was a member or partner thereof, or
>
> (v) any expense referred to in any of subparagraphs (i) to (iii) incurred by the taxpayer pursuant to an agreement with a corporation under which the taxpayer incurred the expense solely as consideration for shares of the capital stock of the corporation issued to him by the corporation or any interest in such shares or right thereto,

All that portion of para. 66.1(6)(a) following subpara. (vi) substituted by 1976-77, c. 4, subsec. 24(2), applicable to taxation years ending after May 25, 1976. That portion formerly read:

> (vii) any expense described in subparagraph (v) incurred by any other taxpayer to the extent that the expense was, by virtue of that subparagraph, a Canadian exploration expense of that other taxpayer or was, by virtue of subparagraph 66.2(5)(a)(vi), a Canadian development expense of that other taxpayer; and

Selected Cases [subsec. 66.1(6)"Canadian exploration expense"]: *Campbell v. R.*, [1999] 2 C.T.C. 2288 (TCC) (Road included in CEE and no time limit applicable); *Teck-Bullmoose Coal Inc. v. R.*, [1998] 3 C.T.C. 195 (FCA); aff'd [1997] 1 C.T.C. 2603 (TCC) (CEE did not include building road necessary to transport resource after it was brought into production); *Wheeler v. R.*, [1997] 2 C.T.C. 2960 (TCC) (No requirement that well be proven to be established reserve for purposes of CEE deduction); *Northcor Energy Ltd. v. R.*, [1998] 1 C.T.C. 3178 (TCC) (No deduction where company never reimbursed for CEE); *Placer Dome Inc. v. Canada*, [1993] 1 C.T.C. 2411 (TCC) (Underground mine and open pit mine were distinct mines); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits"); *Edmonton Liquid Gas Ltd. v. The Queen*, [1984] C.T.C. 536 (FCA) (Expense of drilling test wells abandoned as "dry holes" considered as "Canadian exploration expenses").

Regulations: 1215 (prescribed frontier exploration area); 6202 (prescribed share).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-503: Exploration and development shares.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

"Canadian renewable and conservation expense" has the meaning assigned by regulation, and for the purpose of determining whether an outlay or expense meets the criteria set out in the Regulations in respect of Canadian renewable and conservation expenses, the *Technical Guide to Canadian Renewable and Conservation Expenses*, as amended from time to time and published by the Department of Natural Resources, shall apply conclusively with respect to engineering and scientific matters;

Related Provisions: 241(4)(d)(vi.1) — Communication with Dept. of Natural Resources permitted for purpose of determining whether an expense is a CRCE; Reg. 1102(1)(a.1) — CRCE ineligible for capital cost allowance.

History: The definition "Canadian renewable and conservation expense" added to subsec. 66.1(6) by 1997, c. 25, subsec. 14(5), applicable after December 5, 1996.

Regulations: 1219 (meaning of Canadian renewable and conservation expense).

"cumulative Canadian exploration expense" of a taxpayer at any time in a taxation year means the amount determined by the formula

$$(A + B + C + D + E + E.1) - (F + G + H + I + J + J.1 + K + L + M)$$

where

A is the total of all Canadian exploration expenses made or incurred by the taxpayer before that time,

B is the total of all amounts required by subsection (1) to be included in computing the amount referred to in paragraph 59(3.2)(b) for the taxpayer's taxation years ending before that time,

C is the total of all amounts, except amounts in respect of interest, paid by the taxpayer after May 6, 1974 and before that time to Her Majesty in right of Canada in respect of amounts paid to the taxpayer before May 25, 1976 under the regulations referred to in paragraph (a) of the description of H,

D is the total of all amounts referred to in the description of G that are established by the taxpayer to have become bad debts before that time,

E is such part, if any, of the amount determined for J as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount, and

E.1 is the total of all specified amounts determined under paragraph 66.7(12.1)(a) in respect of the taxpayer for taxation years ending before that time,

F is the total of all amounts deducted or required to be deducted in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian exploration expense,

G is the total of all amounts that became receivable by the taxpayer before that time that are to be included in the amount determined under this description by virtue of paragraph 66(12.1)(a) or (12.2)(a),

H is the total of all amounts paid to the taxpayer after May 6, 1974 and before May 25, 1976

> (a) under the *Northern Mineral Exploration Assistance Regulations* made under an appropriations Act that provides for payments in respect of the Northern Mineral Grants Program, or
>
> (b) pursuant to any agreement entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development,

to the extent that the amounts have been expended by the taxpayer as or on account of Canadian exploration and development expenses or Canadian exploration expense incurred by the taxpayer,

I is the total of all amounts each of which is an amount received before that time on account of any amount referred to in the description of D,

J is the total amount of assistance that the taxpayer has received or is entitled to receive in respect of any Canadian exploration expense incurred after 1980 or that can reasonably be related to Canadian exploration activities after 1980, to the extent that the assistance has not reduced the taxpayer's Canadian exploration expense by virtue of paragraph (9)(g),

J.1 is the total of all amounts by which the cumulative Canadian exploration expense of the taxpayer is required because of subsection 80(8) to be reduced at or before that time,

K is the total of all amounts that are required to be deducted before that time under subsection 66(14.1) in computing the taxpayer's cumulative Canadian exploration expense,

L is that portion of the total of all amounts deducted by the taxpayer under subsection 127(5) or (6) for a taxation year ending before that time that may reasonably

be attributed to a qualified Canadian exploration expenditure (within the meaning assigned by subsection 127(9)) made in a preceding taxation year, and

M is the total of all amounts that are required to be deducted before that time under paragraph 66.7(12)(b) in computing the taxpayer's cumulative Canadian exploration expense;

Related Provisions: 12(1)(t) — Investment tax credit; 20(1)(kk) — Exploration & development grants; 50(1)(a) — Deemed disposition where debt becomes bad debt; 59(3.2) — Recovery of exploration & development expenses; 66(10.1)(b) — Joint exploration corporation; 66(12.1) — Limitations of Canadian exploration & development expenses; 66(12.2) — Unitized oil or gas field in Canada; 66(15) — Definitions; 66.1(1) — Amount to be included in income; 66.1(7) — Share of partner; 66.7(3) — Deduction to successor corporation; 79(4)(c) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 79.1(8) — No claim for principal amount of bad debt where property seized by creditor; 80(8)(b) — Reduction of CCEE on debt forgiveness; 87(2)(j.6) — Amalgamations — continuing corporation; 96(2.2)(d) — At-risk amount; 127(12.3) — Reduction of cumulative Canadian exploration expense of trust; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 66.1.

History: The description of J.1 in the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) added and the corresponding formula amended by 1995, c. 21, s. 22, applicable to taxation years that end after February 21, 1994.

The description of F in the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) amended by 1994, c. 8, subsec. 6(2), applicable to taxation years ending after December 2, 1992. The description of F formerly read:

F is the total of all amounts deducted or deductible, as the case may be, in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian exploration expense,

E.1 and its description added to the definition "cumulative Canadian exploration expense" in subsec. 66.1(6) by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 39(4) and (4.1), applicable to taxation years beginning after February 17, 1987.

Pre-RSC History: *The definition "cumulative Canadian exploration expense" was para. 66.1(6)(b). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(b) "cumulative Canadian exploration expense"— "cumulative Canadian exploration expense", of a taxpayer at any time shall be the amount, if any, by which the aggregate of

(i) the aggregate of all Canadian exploration expenses made or incurred by him before that time,

(ii) the aggregate of all amounts required by virtue of subsection (1) to be included in computing the amount referred to in paragraph 59(3.2)(b) for his taxation years ending before that time,

(iii) the aggregate of amounts, except amounts in respect of interest, paid by him after May 6, 1974 and before that time to Her Majesty in right of Canada in respect of amounts paid to him before May 25, 1976 under the regulations referred to in clause (vii)(A),

(iv) any amount referred to in subparagraph (vi) that is established by him to have become a bad debt before that time, and

(iv.1) such part, if any, of the amount included in subparagraph (ix) as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount

exceeds the aggregate of all amounts each of which is

(v) any amount deducted or deductible, as the case may be, in computing his income for a taxation year ending before that time in respect of his cumulative Canadian exploration expense,

(vi) any amount that became receivable by him before that time that is to be included in the amount determined under this subparagraph by virtue of paragraph 66(12.1)(a) or (12.2)(a),

(vii) the aggregate of all amounts paid to him after May 6, 1974 and before May 25, 1976

(A) under the Northern Mineral Exploration Assistance Regulations *made under an* Appropriations Act *that provides for payments in respect of the Northern Mineral Grants Program, or*

(B) pursuant to any agreement entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development,

to the extent that the amounts have been expended by the taxpayer as or on account of Canadian exploration and development expenses or Canadian exploration expense incurred by him,

(viii) any amount received before that time on account of any amount referred to in subparagraph (iv),

(ix) any assistance that he has received or is entitled to receive in respect of any Canadian exploration expense incurred after 1980 or that can reasonably be related to Canadian exploration activities after 1980, to the extent that the assistance has not reduced his Canadian exploration expense by virtue of paragraph (9)(g),

(x) any amount that is required to be deducted before that time under subsection 66(14.1) in computing his cumulative Canadian exploration expense,

(xi) that portion of the aggregate of all amounts deducted by the taxpayer under subsection 127(5) or (6) for a taxation year ending before that time that may reasonably be attributed to a qualified Canadian exploration expenditure (within the meaning assigned by subsection 127(9)) made in a preceding taxation year, or

(xii) any amount that is required to be deducted before that time under paragraph 66.7(12)(b) in computing his cumulative Canadian exploration expense;

Subpara. 66.1(6)(b)(iv.1) added by 1990, c. 45, s. 42, applicable with respect to amounts repaid after January 1990.

Subpara. 66.1(6)(b)(xi) substituted by 1988, c. 55, subsec. 42(3), applicable to 1988 *et seq.* Subpara. (b)(xi) formerly read:

(xi) that portion of the aggregate of all amounts deducted by the taxpayer under subsection 127(5) or (6) for the taxation year in which that time is included or any preceding taxation year, that may reasonably be attributed to a qualified Canadian exploration expenditure within the meaning assigned by subsection 127(9), or

Subpara. 66.1(6)(b)(xii) added by 1987, c. 46, subsec. 19(3), applicable to taxation years ending after February 17, 1987.

Subpara. 66.1(6)(b)(ix) substituted by 1986, c. 55, subsec. 12(11), applicable with respect to expenses incurred after December 19, 1986, except that in its application with respect to expenses incurred after December 19, 1986 and before April 1987 it shall be read as follows:

(ix) any assistance that he has received or is entitled to receive in respect of a Canadian exploration expense incurred after 1980 or that can reasonably be related to Canadian exploration activities after 1980,

Subpara. (b)(ix) formerly read:

(ix) any amount of assistance or benefit that he has received or is entitled to receive from a government, municipality or other public authority in respect of any Canadian exploration expense made or incurred after December 31, 1980 or that can reasonably be related to Canadian exploration activities after that date, whether such amount is by way of a grant, subsidy, forgiveable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, or

Subpara. 66.1(6)(b)(xi) added by 1986, c. 55, subsec. 12(12), applicable with respect to expenditures made after November 1985.

Subpara. 66.1(6)(b)(x) added by 1986, c. 2, subsec. 17(5), applicable to 1985 *et seq.*

Subpara. 66.1(6)(b)(i) substituted, subpara. 66.1(6)(b)(ix) added by 1980-81-82-83, c. 48, subsecs. 34(12), (13), applicable as to subpara. 66.1(6)(b)(ix), to 1981 *et seq.*

Subpara. 66.1(6)(b)(i) substituted by 1977-78, c. 1, subsec. 30(4), applicable to taxation years ending after May 6, 1974.

Subparas. 66.1(6)(b)(iii), (vii) substituted by 1976-77, c. 4, subsec. 24(3), (4), applicable to taxation years ending after May 25, 1976. Subparas. (b)(iii), (vii) formerly read:

(iii) the aggregate of amounts, except amounts in respect of interest, paid by him after May 6, 1974 and before that time under the regulations referred to in clause (vii)(A) to Her Majesty in right of Canada, and

. . . . .

(vii) the aggregate of all amounts paid to him after May 6, 1974 and before that time

(A) under the *Northern Mineral Exploration Assistance Regulations* made under an *Appropriation Act* that provides for payments in respect of the Northern Mineral Grants Program, or

(B) pursuant to any agreement, entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development, to the extent that the amounts have been expended by the taxpayer as or on account of Canadian exploration and development expenses or Canadian exploration expense incurred by him, or

"restricted expense" of a taxpayer means an expense

(a) incurred by the taxpayer before April, 1987,

(b) that is deemed by paragraph 66(10.2)(c) to have been incurred by the taxpayer, or included by the taxpayer in the amount referred to in paragraph (a) of the definition "Canadian development expense" in subsection 66.2(5) by virtue of paragraph 66(12.3)(b), to the extent that the expense was originally incurred before April, 1987,

(c) that was renounced by the taxpayer under subsection 66(10.2), (12.601) or (12.62),

(d) in respect of which an amount referred to in subsection 66(12.3) becomes receivable by the taxpayer,

(e) deemed to be a Canadian exploration expense of the taxpayer or any other taxpayer by virtue of subsection (9), or

(f) where the taxpayer is a corporation, that was incurred by the corporation before the time control of the corporation was last acquired by a person or persons;

Related Provisions: 256(6)–(9) — Whether control acquired.

History: Para. (c) of the definition "restricted expense" in subsec. 66.1(6) was amended by 1994, c. 8, subsec. 6(3), applicable to expenses incurred after December 2, 1992. Para. (c) formerly read:

(c) that was renounced by the taxpayer under subsection 66(10.2) or (12.62),

Pre-RSC History: *The definition "restricted expense" was para. 66.1(6)(c). See Table of Concordance.*

Para. 66.1(6)(c) added by 1986, c. 55, subsec. 12(13), applicable with respect to expenses incurred after March 1987.

"specified purpose" means

(a) the operation of an oil or gas well for the sole purpose of testing the well or the well head and related equipment, in accordance with generally accepted engineering practices,

(b) the burning of natural gas and related hydrocarbons to protect the environment, and

(c) prescribed purposes.

Pre-RSC History: *The definition "specified purpose" was para. 66.1(6)(d).*

Para. 66.1(6)(d) added by 1986, c. 55, subsec. 12(13), applicable with respect to expenses incurred after March 1987.

(6.1) Application of subsecs. 66(15), 66.2(5) and 66.4(5) — The definitions in subsections 66(15), 66.2(5) and 66.4(5) apply to this section.

Origin of subsec. 66.1(6.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 66(15), 66.2(5) and 66.4(5)).

(7) Share of partner — Where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in the description of E, G or J in the definition "cumulative Canadian exploration expense" in subsection (6) in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of E, G or J, as the case may be, in that definition in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Related Provisions: 87(1.2) — Amalgamations — new corporation deemed continuation of predecessor; 88(1.5) — Windup — parent corporation deemed to be continuation of subsidiary. See additional Related Provisions and Definitions at end of s. 66.1.

History: Subsec. 66.1(7) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 39(5), to add reference to "E" (twice) applicable after January 1990.

Pre-RSC History: Subsec. 66.1(7) substituted by 1980-81-82-83, c. 48, subsec. 34(14), applicable to 1981 *et seq.* Subsec. (7) formerly read:

(7) Where a taxpayer is a member of a partnership, his share of any amount that would be an amount referred to in subparagraph (6)(b)(vi) in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph (1)(d) thereof shall, for the purposes of this Act, be deemed to be an amount referred to in subparagraph (6)(b)(vi) in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Subsec. 66.1(7) added by 1977-78, c. 1, subsec. 30(5), applicable to 1977 *et seq.*

Interpretation Bulletins: IT-353R2: Partnership interests — some adjustments to cost base.

I.T. Technical News: No. 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

(8) [Repealed]

History: Subsec. 66.1(8) repealed by 1997, c. 25, subsec. 14(6), applicable after March 6, 1996. Subsec. (8) formerly read:

(8) Expenses in first 60 days of year — Where

(a) after December 31, 1985, a taxpayer incurs, within 60 days after the end of a calendar year, Canadian exploration expenses pursuant to an agreement referred to in paragraph (i) of the definition "Canadian exploration expense" in subsection (6),

(b) the Canadian exploration expenses are expenses described in paragraph (f) of the definition "Canadian exploration expense" in subsection (6) incurred in respect of a mineral resource other than a bituminous sands deposit, an oil sands deposit or an oil shale deposit,

(c) the agreement was entered into between the taxpayer and the corporation on or before the last day of the year,

(d) the funds relating to the Canadian exploration expenses have on or before the last day of the year been advanced to an agent acting on behalf of the taxpayer for the purposes of paying the expenses, and

(e) the taxpayer and the corporation deal with each other at arm's length throughout the 60 days,

the Canadian exploration expenses shall be deemed to have been incurred immediately before the end of the year and shall be deemed not to have been incurred in the subsequent year.

Pre-RSC History: Subsec. 66.1(8) added by 1986, c. 55, subsec. 12(14), applicable with respect to expenses incurred after December 1985.

(9) Canadian development expenses for preceding years — Where at any time in a taxpayer's taxation year

(a) an oil or gas well resulted in the discovery of a natural accumulation of petroleum or natural gas,

Proposed Amendment — 66.1(9)(a)

(a) the drilling or completing of an oil or gas well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas and, before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 27(3), will amend para. 66.1(9)(a) to read as above, applicable to expenses incurred after March 1987.

Technical Notes: See under 66.1(6)"Canadian exploration expense"(d)(i).

(b) the period of 24 months commencing on the day of completion of the drilling of an oil or gas well ends and the well has not, within that period, produced otherwise than for specified purposes, or

(c) an oil or gas well that has never produced, otherwise than for specified purposes, is abandoned,

the amount, if any, by which the total of

(d) all Canadian development expenses (other than restricted expenses) described in subparagraph (a)(ii) of the definition "Canadian development expense" in subsection 66.2(5) in respect of the well that are deemed by subsection 66(10.2) or (12.63) to have been incurred by the taxpayer in the year or a preceding taxation year,

(e) all Canadian development expenses (other than restricted expenses) described in subparagraph (a)(ii) of the definition "Canadian development expense" in subsection 66.2(5) in respect of the well that are required by paragraph 66(12.3)(b) to be included by the taxpayer in the amount referred to in paragraph (a) of that definition for the year or a preceding taxation year, and

(f) all Canadian development expenses (other than expenses referred to in paragraph (d) or (e) and restricted expenses) described in subparagraph (a)(ii) of the definition "Canadian development expense" in subsection 66.2(5) incurred by the taxpayer in respect of the well in a taxation year preceding the year,

exceeds

(g) any assistance that the taxpayer or a partnership of which the taxpayer is a member has received or is entitled to receive in respect of the expenses referred to in any of paragraphs (d) to (f),

shall, for the purposes of this Act, be deemed to be a Canadian exploration expense referred to in paragraph (e) of the definition "Canadian exploration expense" in subsection (6) incurred by the taxpayer at that time.

Related Provisions: 66.2(5)"cumulative Canadian development expense"I, M — Reduction in CCDE; 66.7(9) — CDE becoming CEE; 248(16) — GST input tax credit and rebate deemed to be government assistance; 248(18) — GST — repayment of input tax credit. See additional Related Provisions and Definitions at end of s. 66.1.

Pre-RSC History: Subsec. 66.1(9) added by 1986, c. 55, subsec. 12(14), applicable with respect to expenses incurred after March 1987.

(10) Certificate ceasing to be valid — A certificate in respect of an oil or gas well issued by the Minister of Natural Resources for the purposes of paragraph (d)(iv) of the definition "Canadian exploration expense" in subsection (6) shall be deemed never to have been issued and never to have been filed with the Minister where

(a) the well produces, otherwise than for a specified purpose, within the period of 24 months commencing on the day on which the drilling of the well was completed; or

(b) in applying for the certificate, the applicant, in any material respect, provided any incorrect information or failed to provide information.

History: The opening words of subsec. 66.1(10) amended by 1994, c. 41, para. 37(1)(o), in force January 12, 1995. They formerly read:

(10) A certificate in respect of an oil or gas well issued by the Minister of Energy, Mines and Resources for the purposes of paragraph (d)(iv) of the definition "Canadian exploration expense" in subsection (6) shall be deemed never to have been issued and never to have been filed with the Minister where

Pre-RSC History: Subsec. 66.1(10) added by 1988, c. 55, subsec. 42(4), applicable after March 1987.

Pre-RSC History [former subsec. 66.1(10)]: Former subsec. 66.1(10) repealed by 1987, c. 46, subsec. 19(4), applicable to taxation years ending after February 17, 1987. Subsec. 66.1(10) formerly read:

(10) Successor — Where a corporation (in this subsection referred to as the "successor") acquires a Canadian resource property from another person (in this subsection referred to as the "predecessor"), subsection 66.2(3) applies in respect of the acquisition and the cumulative Canadian development expense of the predecessor determined under clause 66.2(3)(a)(i)(A) in respect of the successor includes a Canadian development expense incurred by the predecessor in respect of an oil or gas well that would, but for this subsection, be deemed by subsection (9) to be a Canadian exploration expense incurred by the predecessor at any time after the acquisition in respect of the well, the following rules apply:

(a) subsection (9) does not apply to the predecessor in respect of the expense;

(b) an amount equal to the lesser of

(i) the amount that would be deemed by subsection (9) to be a Canadian exploration expense of the predecessor at that time if that subsection applied in respect of the expense, and

(ii) the cumulative Canadian development expense of the predecessor as determined under subparagraph 66.2(3)(a)(i) in respect of the successor immediately before that time

shall be deducted at that time from the cumulative Canadian development expense of the predecessor in respect of the successor for the purposes of subparagraph 66.2(3)(a)(i); and

(c) the amount required by paragraph (b) to be deducted shall be added at that time to the cumulative Canadian exploration expense of the predecessor under subparagraph 66.1(4)(a)(ii) in respect of the successor.

Subsec. 66.1(10) added by 1986, c. 55, subsec. 12(14), applicable with respect to expenses incurred after March 1987.

(11) [Repealed under former Act]

Pre-RSC History: Subsec. 66.1(11) repealed by 1987, c. 46, subsec. 19(4), applicable to taxation years ending after February 17, 1987. Subsec. (11) formerly read:

(11) Second successor — Where a corporation (in this subsection referred to as the "second successor") acquires a Canadian resource property from another corporation (in this subsection referred to as the "first successor") that had acquired the property from another person (in this subsection referred to as the "predecessor"), subsection 66.2(4) applies in respect of the acquisition and the cumulative Canadian development expense determined under clause 66.2(4)(a)(i)(A) in respect of the second successor includes a Canadian development expense incurred by the predecessor in respect of an oil or gas well that would, but for subsection (10), be deemed by subsection (9) to be a Canadian exploration expense incurred by the predecessor at any time after the acquisition in respect of the well, the following rules apply:

(a) an amount equal to the lesser of

(i) the amount that would be deemed by subsection (9) to be a Canadian exploration expense of the predecessor at that time if that subsection applied in respect of the expense, and

(ii) the cumulative Canadian development expense of the predecessor as determined under subparagraph 66.2(4)(a)(i)

in respect of the second successor immediately before that time

shall be deducted at that time from the cumulative Canadian development expense of the predecessor in respect of the second successor for the purposes of subparagraph 66.2(4)(a)(i); and

(b) the amount required by paragraph (a) to be deducted shall be added at that time to the cumulative Canadian exploration expense under subparagraph 66.1(5)(a)(ii) in respect of the second successor.

Subsec. 66.1(11) added by 1986, c. 55, subsec. 12(14), applicable with respect to expenses incurred after March 1987.

Related Provisions [s. 66.1]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 88(1.5) — Winding-up — parent deemed continuation of subsidiary; 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

Pre-RSC History [s. 66.1]: S. 66.1 added by 1974-75-76, c. 26, s. 36, applicable to taxation years ending after May 6, 1974.

Selected Cases [s. 66.1]: *Schmidt v. R.*, [2000] 1 C.T.C. 3031 (TCC) (Expenses of prospector in site investigation were CEE); *Phénix v. R.*, [1998] 1 C.T.C. 2379 (TCC) (Capital items may form part of CEE); *Central Supply Company (1972) Ltd. v. R.*,, [1997] 3 C.T.C. 102 (FCA); rev'd [1995] 2 C.T.C. 2320 (TCC) (Deduction permitted under specific provisions of the Act may nevertheless unduly or artificially reduce income); *Oro Del Norte S.A. v. Canada*, [1993] 1 C.T.C. 245 (FCTD) (Exploration, drilling and tunnelling expenses were "Canadian exploration expenses").

Definitions [s. 66.1]: "acquired" — 256(7)–(9); "amount" — 248(1); "assistance" — 66(15), 66.1(6.1), 79(4), 125.4(5), 248(16), 248(18); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expenses" — 66(15), 66.1(6.1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian renewable and conservation expense" — 66.1(6); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative Canadian development expense" — 66.1(6.1), 66.2(5); "expense" — 66(15), 66.1(6.1); "fiscal period" — 249(2), 249.1; "Her Majesty" — *Interpretation Act* 35(1); "mineral resource", "Minister" — 248(1); "oil or gas well" — 248(1); "outlay" — 66(15), 66.1(6.1); "person", "prescribed" — 248(1); "principal-business corporation" — 66(15), 66.1(6.1); "property", "regulation", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

66.2 [Canadian development expenses] — (1) Amount to be included in income — There shall be included in computing the amount referred to in paragraph 59(3.2)(c) in respect of a taxpayer for a taxation year the amount, if any, by which the total of

(a) all amounts referred to in the descriptions of E to O in the definition "cumulative Canadian development expense" in subsection (5) that are deducted in computing the taxpayer's cumulative Canadian development expense at the end of year, and

(b) the amount that is designated by the taxpayer for the year under subsection 66(14.2)

exceeds the total of

(c) all amounts referred to in the descriptions of A to D.1 in the definition "cumulative Canadian development expense" in subsection (5) that are included in computing the taxpayer's cumulative Canadian development expense at the end of the year, and

(d) the total determined under subparagraph 66.7(12.1)(b)(i) in respect of the taxpayer for the year.

Related Provisions: 59(3.2)(c) — Income inclusion; 66(11.4) — Change of control; 66.7(12) — Reduction of Canadian resource expenses; 104(5.2) — Rules for trusts; 115(1)(a)(iii.1) — Non-resident's taxable income earned in Canada. See additional Related Provisions and Definitions at end of s. 66.2.

History: Subsec. 66.2(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(1), applicable to taxation years ending after February 17, 1987, except that with respect to such taxation years commencing before February 18, 1987, the reference to "D.1" in para. (c) shall be read as a reference to "C". Subsec. (1) formerly read:

66.2 (1) A taxpayer shall include, in computing the amount referred to in paragraph 59(3.2)(c), the amount, if any, by which

(a) the total of

(i) all amounts referred to in the descriptions of E to O in the definition "cumulative Canadian development expense" in subsection (5) that would be taken into account in computing the taxpayer's cumulative Canadian development expense at the end of the year, and

(ii) the amount that is designated for the year under subsection 66(14.2)

exceeds

(b) the total of all amounts referred to in the descriptions of A to C in the definition "cumulative Canadian development expense" in subsection(5) that would be taken into account in computing the taxpayer's cumulative Canadian development expense at the end of the year.

Pre-RSC History: Subpara. 66.2(1)(a)(i) amended by 1987, c. 46, subsec. 20(1), to substitute "(5)(b)(iv) to (xiii)" for "(5)(b)(iv) to (xii)", applicable to taxation years ending after February 17, 1987.

Para. 66.2(1)(a) substituted by 1986, c. 2, subsec. 18(1), applicable to 1985 *et seq.* Para. (a) formerly read:

(a) the aggregate of all amounts referred to in subparagraphs (5)(b)(iv) to (xi) that would be taken into account in computing his cumulative Canadian development expense at the end of the year

Para. 66.2(1)(a) substituted by 1980-81-82-83, c. 48, subsec. 35(1), applicable to taxation years ending after December 11, 1979, to substitute "(xi)" for "(ix)".

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(2) Deduction for cumulative Canadian development expenses — A taxpayer may deduct, in computing the taxpayer's income for a taxation year, such amount as the taxpayer may claim not exceeding the total of

(a) the lesser of

(i) the total of

(A) the taxpayer's cumulative Canadian development expense at the end of the year, and

(B) the amount, if any, by which

(I) the total determined under subparagraph 66.7(12.1)(b)(i) in respect of the taxpayer for the year

exceeds

(II) the amount that would, but for paragraph (1)(d), be determined under subsection (1) in respect of the taxpayer for the year, and

(ii) the amount, if any, by which the amount determined under subparagraph 66.4(2)(a)(ii) exceeds the amount determined under subparagraph 66.4(2)(a)(i),

(b) the lesser of

(i) the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount included in the taxpayer's income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share, any interest therein or right thereto, acquired by the taxpayer under circumstances described in paragraph (g) of the definition "Canadian development expense" in sub-

section (5) or paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), or

(B) an amount included by virtue of paragraph 12(1)(e) in computing the taxpayer's income for the year to the extent that it relates to inventory described in clause (A)

exceeds

(C) the total of all amounts deducted as a reserve by virtue of paragraph 20(1)(n) in computing the taxpayer's income for the year to the extent that the reserve relates to inventory described in clause (A), and

(c) 30% of the amount, if any, by which the amount determined under subparagraph (b)(i) exceeds the amount determined under subparagraph (b)(ii).

Related Provisions: 66(13.1) — Short taxation year; 110.6(1)"investment expense"(d) — effect of claim under 66.2(2) on capital gains exemption. See additional Related provisions and Definitions at end of s. 66.2.

History: Subpara. 66.2(2)(a)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(2), applicable to taxation years ending after February 17, 1987. Subpara. (a)(i) formerly read:

(i) the amount of the taxpayer's cumulative Canadian development expense at the end of the year, and

Pre-RSC History: Subsec. 66.2(2) substituted by 1980-81-82-83, c. 48, subsec. 35(2), applicable to taxation years ending after December 11, 1979. Subsec. (2) formerly read:

(2) A taxpayer may deduct, in computing his income for a taxation year, such amount as he may claim not exceeding the aggregate of

(a) the lesser of

(i) the amount of his cumulative Canadian development expense at the end of the year, and

(ii) the amount by which the aggregate of

(A) any amount included in his income for the year by virtue of the sale of inventory of the taxpayer described in section 66.3, and

(B) any amount included by virtue of paragraph 12(1)(e) in computing his income for the year to the extent that that amount relates to inventory described in section 66.3

exceeds

(C) any amount deducted as a reserve by virtue of paragraph 20(1)(n) in computing his income for the year to the extent that that reserve relates to inventory described in section 66.3, and

(b) 30% of the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii).

Subsec. 66.2(2) substituted by 1976-77, c. 4, subsec. 25(1), applicable to taxation years ending after May 25, 1976. Subsec. (2) formerly read:

(2) A taxpayer may deduct, in computing his income for a taxation year, such amount as he may claim not exceeding 30% of his cumulative Canadian development expense at the end of the year.

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

(3) [Repealed under former Act]

History: Subsec. 66.2(3) repealed by 1987, c. 46, subsec. 20(2), applicable to taxation years ending after February 17, 1987. Subsec. (3) formerly read:

(3) **Successor corporation's Canadian development expense** — Where a corporation (in this subsection referred to as the "successor corporation") has at any time after May 6, 1974 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) 30% of the amount by which

(i) the amount, if any, by which

(A) the cumulative Canadian development expense of the predecessor, determined at the time immediately after the properties were so acquired by the successor corporation, to the extent that it has not been

(I) deducted by the successor corporation in computing its income for a preceding taxation year,

(II) deducted by the predecessor in computing his income for any taxation year, or

(III) designated by the predecessor pursuant to subsection 66(14.2) for any taxation year

exceeds

(B) any amount required to be deducted under paragraph 66.1(10)(b) in respect of the successor corporation at any time before the end of the year,

exceeds

(ii) the aggregate of all amounts each of which is an amount that became receivable by the successor corporation in the taxation year or a preceding taxation year, is included in the amount determined under clause (5)(b)(v)(A) and may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor immediately before the acquisition thereof by the successor corporation, and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsection (4) and sections 112 and 113), as may reasonably be regarded as attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the predecessor's income and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the successor corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor;

and, in respect of any expense included in the cumulative Canadian development expense referred to in clause (a)(i)(A), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

Subpara. 66.2(3)(a)(i) substituted, and all that portion of subsec. 66.2(3) following para. (b) amended to substitute "clause (a)(i)(A)" for "subparagraph (a)(i)", by 1986, c. 55, subsecs. 13(1), (2), applicable with respect to expenses incurred after March 1987. Subpara. (a)(i) formerly read:

(i) the cumulative Canadian development expense of the predecessor, determined at the time immediately after the properties were so

acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a preceding taxation year and has not been deducted by the predecessor in computing his income for any taxation year or designated by the predecessor pursuant to subsection 66(14.2) for any taxation year,

Subpara. 66.2(3)(a)(i) amended by 1986, c. 2, subsec. 18(2), to substitute "the properties were so acquired" for "the property so acquired was acquired" and to add "or designated by the predecessor pursuant to subsection 66(14.2) for any taxation year", applicable to 1985 *et seq.*

Subpara. 66.2(3)(b)(i) substituted by 1986, c. 2, subsec. 31(2), applicable to taxation years ending after March 1985 to add "natural accumulations thereof or from oil or gas".

All that portion of subsec. 66.2(3) preceding para. (a) substituted by 1985, c. 45, subsec. 30(1), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him". That portion of subsec. (3) formerly read:

(3) Successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another person (in this subsection referred to as the "predecessor") all or substantially all of the property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him, and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subpara. 66.2(3)(a)(ii) substituted by 1985, c. 45, subsec. 30(2), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. (a)(ii) formerly read:

(ii) the aggregate of all amounts each of which is an amount that became receivable by the successor corporation in the taxation year or in a preceding taxation year, that is required to be included in the amount determined under clause 66.2(5)(b)(v)(A) by virtue of subsection 59(1.1) or paragraph 59(3.1)(a) and that may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor immediately before the acquisition thereof by the successor corporation, and

Cl. 66.2(3)(b)(ii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

All that portion of subsec. 66.2(3) preceding para. (b), all that portion of subsec. 66.2(3) following para. (b) substituted; subsec. 66.2(3) amended by substituting "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's" wherever those expressions appeared, by 1984, c. 1, subsecs. 29(1), (2), (4), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. That portion of subsec. 66.2(3) preceding para. (b), that portion following para. (b) formerly read:

(3) Successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, and (except in the case of an amalgamation or a winding-up) the predecessor corporation and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 30% of the amount by which

(i) the cumulative Canadian development expense of the predecessor corporation determined at the time immediately after the property so acquired was acquired by the successor corporation to the extent it has not been deducted by the predecessor corporation in computing its income for any taxation year and has not been deducted by the successor corporation in computing its income for a previous taxation year,

exceeds

(ii) the aggregate of all amounts each of which was an amount that became receivable in the taxation year or in a previous taxation year by the successor corporation, that are required to be included in the amount determined under clause 66.2(5)(b)(v)(A) by virtue of subsection 59(1.1) or paragraph 59(3.1)(a) and that may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor corporation immediately before the acquisition thereof by the successor corporation, and

. . . . .

and, in respect of any expense included in the cumulative Canadian development expense referred to in subparagraph (a)(i), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

All that portion of subpara. 66.2(3)(b)(ii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsec. 35(3), applicable to taxation years ending after December 11, 1979, to add reference to subsec. (1.2).

Subsec. 66.2(3) substituted by 1979, c. 5, subsec. 21(1), applicable, as to para. 66.2(3)(a), to 1977 *et seq.*, as to para. 66.2(3)(b), to 1979 *et seq.*, and with respect to the election referred to in subsec. 66.2(3), with respect to acquisitions of property after November 16, 1978. Subsec. (3) formerly read:

(3) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 30% of the cumulative Canadian development expense of the predecessor corporation, determined at the time immediately after the property so acquired was acquired by the successor corporation, to the extent that it has not been deducted by the successor corporation in computing its income for a previous taxation year and has not been deducted by the predecessor corporation in computing its income for any taxation year; and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971*, in respect of this paragraph (minus the deductions allowed for the year by subsection (4) and sections 112 and 113, as may reasonably be regarded as attributable to

(i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vi) owned by the predecessor corporation immediately before the acquisition by the successor corporation of the property so acquired, and

(ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any expense included in the cumulative Canadian development expense referred to in paragraph (a), no de-

duction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

Subsec. 66.2(3) substituted by 1977-78, c. 1, subsec. 31(1), applicable to 1977 *et seq.* Subsec. (3) formerly read:

(3) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)) from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on its business in Canada, there may be deducted by the successor corporation, in computing its income under this Part for a taxation year, in respect of the cumulative Canadian development expense incurred by the predecessor corporation, to the extent that such expense

(a) was deductible but not deducted by the successor corporation in computing its income for a previous taxation year, and was not deducted by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation or its income for a previous taxation year, and

(b) would have been deductible by the predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation,

an amount that is equal to the lesser of

(c) 30% of the amount of such cumulative Canadian development expense, and

(d) such part of its income for the year if no deduction were allowed under this section, section 65 or the *Income Tax Application Rules, 1971*, in respect of this paragraph (minus any deductions allowed for the year by sections 66, 66.1, 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any such expense included in the amount of such cumulative Canadian development expense, no deduction may be made under this section by the predecessor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

(4) [Repealed under former Act]

History: Subsec. 66.2(4) repealed by 1987, c. 46, subsec. 20(2), applicable to taxation years ending after February 17, 1987. Subsec. 66.2(4) formerly read:

(4) **Second successor corporation's Canadian development expense** — Where a corporation (in this subsection referred to as the "second successor corporation") has at any time after May 6, 1974 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation, within the meaning of subsection (3), all or substantially all of the Canadian resource properties of the first successor corporation and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) 30% of the amount by which

(i) the amount, if any, by which

(A) the amount, if any, by which the amount determined under subparagraph (3)(a)(i) in respect of the first successor corporation immediately after the property so acquired was acquired by the second successor corporation exceeds the amount determined under subparagraph (3)(a)(ii) in respect of the first successor corporation at that time to the extent that it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a preceding taxation year

exceeds

(B) any amount required to be deducted under paragraph 66.1(11)(a) in respect of the second successor corporation at any time before the end of the year

exceeds

(ii) the aggregate of all amounts each of which is an amount that became receivable in the taxation year or a preceding taxation year by the second successor corporation, is included in the amount determined under clause (5)(b)(v)(A) and may reasonably be regarded as attributable to the disposition by the second successor corporation of any property owned by the predecessor of the first successor corporation immediately before the acquisition thereof by the first successor corporation, and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by sections 112 and 113), as may reasonably be regarded as attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the income of the predecessor of the first successor corporation and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the second successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the income of the second successor corporation for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor of the first successor corporation;

and, in respect of any expense included in the amount referred to in clause (a)(i)(A), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

Subpara. 66.2(4)(a)(i) substituted, and all that portion of subsec. 66.2(4) following para. (b) amended to substitute "clause (a)(i)(A)" for "subparagraph (a)(i)", by 1986, c. 55, subsecs. 13(3), (4), applicable with respect to expenses incurred after March 1987. Subpara. 66.2(4)(a)(i) formerly read:

(i) the amount, if any, by which the amount determined under subparagraph (3)(a)(i) in respect of the first successor corporation immediately after the property so acquired was acquired by the second successor corporation exceeds the amount determined under paragraph (3)(a)(ii) in respect of the first successor corporation at that

time, to the extent it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a preceding taxation year

Subpara. 66.2(4)(b)(i) amended by 1986, c. 6, subsec. 31(2), to add "natural accumulations thereof or from oil or gas", applicable to taxation years ending after March 1985.

All that portion of subsec. 66.2(4) preceding para. (a) substituted by 1985, c. 45, subsec. 30(3), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it". That portion of subsec. 66.2(4) formerly read:

(4) Second successor corporation's Canadian development expense — Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

All that portion of para. 66.2(4)(a) preceding subpara. (ii) substituted by 1985, c. 45, subsec. 30(4), applicable to taxation years ending after 1984. That portion of para. 66.2(4)(a) formerly read:

(a) 30% of the amount by which the

(i) cumulative Canadian development expense of the predecessor referred to in subparagraph (3)(a)(i) determined at the time immediately after the property so acquired was acquired by the first successor corporation to the extent it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a previous taxation year,

exceeds

Subpara. 66.2(4)(a)(ii) substituted by 1985, c. 45, subsec. 30(5), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. 66.2(4)(a)(ii) formerly read:

(ii) the aggregate of all amounts each of which was an amount that became receivable in the taxation year or in a previous taxation year by the second successor corporation, that are required to be included in the amount determined under clause 66.2(5)(b)(v)(A) by virtue of subsection 59(1.1) or paragraph 59(3.1)(a) and that may reasonably be regarded as attributable to the disposition by the second successor corporation of any property owned by the predecessor of the first successor corporation immediately before the acquisition thereof by the second successor corporation, and

Cl. 66.2(4)(b)(ii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

Subsec. 66.2(4) amended by 1984, c. 1, subsec. 29(4), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983, to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's" wherever those expressions appeared.

All that portion of subpara. 66.2(4)(b)(ii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsec. 35(4), applicable to taxation years ending after December 11, 1979, to add reference to subsec. (1.2).

Subsec. 66.2(4) substituted by 1979, c. 5, subsec. 21(1), applicable, as to para. 66.2(4)(a), to 1977 *et seq.*, as to para. 66.2(4)(b), to 1979 *et seq.*, and with respect to the election referred to in subsec. 66.2(4), with respect to acquisitions of property after November 16, 1978. Subsec. 66.2(4) formerly read:

(4) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 30% of the cumulative Canadian development expense of the predecessor corporation referred to in paragraph (3)(a), determined at the time immediately after the property so acquired was acquired by the first successor corporation to the extent that it has not been deducted by the second successor corporation in computing its income for a previous taxation year and has not been deducted by the first successor corporation in computing its income for any taxation year; and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66 or 66.1 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by sections 112 and 113), as may reasonably be regarded as attributable to

(i) the disposition of any property described in any of subparagraphs 66(15)(c)(i) to (vi) owned by the predecessor of the first successor corporation, within the meaning of subsection (3), immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, and

(ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation, within the meaning of subsection (3), had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any expense included in the amount referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

Subsec. 66.2(4) substituted by 1977-78, c. 1, subsec. 31(1), applicable to 1977 *et seq.* Subsec. 66.2(4) formerly read:

(4) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation described in subsection 87(1)) from a corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada its business, there may be deducted by the second successor corporation, in computing its income under this Part for a taxation year, in respect of the cumulative Canadian development expense referred to in paragraph (3)(a) for the purpose of determining the deduction allowable to the first successor corporation under subsection (3) in computing its income for a previous taxation year, to the extent that such expense

(a) was not deducted by the second successor corporation or any other corporation in computing its income for a previous taxation year, and was not deducted by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(b) would, but for paragraph (3)(b), have been deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation,

an amount that is equal to the lesser of

(c) 30% of the amount of the aggregate referred to in paragraph (a), and

(d) such part of its income for the year if no deduction were allowed under this section, section 65 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus any deductions allowed for the year by sections 66, 66.1, 112 and 113 and the provisions of the *Income Tax Application Rules, 1971* allowing a deduction for the purposes of this paragraph) as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor of the first successor corporation within the meaning of subsection (3) had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of the aggregate referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

(5) Definitions — In this section,

Related Provisions: 66(15.1) — Application to s. 66; 66.1(6.1) — Application to s. 66.1.

Pre-RSC History: *The opening words also referred to ss. 66 and 66.1. See now subsecs. 66(15.1) and 66.1(6.1).*

"Canadian development expense" of a taxpayer means any cost or expense incurred after May 6, 1974 that is

(a) any expense incurred by the taxpayer in

(i) drilling or converting a well in Canada for the disposal of waste liquids from an oil or gas well,

(ii) drilling or completing an oil or gas well in Canada, building a temporary access road to the well or preparing a site in respect of the well, to the extent that the expense was not a Canadian exploration expense of the taxpayer in the taxation year in which it was incurred,

(iii) drilling or converting a well in Canada for the injection of water, gas or any other substance to assist in the recovery of petroleum or natural gas from another well,

(iv) drilling for water or gas in Canada for injection into a petroleum or natural gas formation, or

(v) drilling or converting a well in Canada for the purposes of monitoring fluid levels, pressure changes or other phenomena in an accumulation of petroleum or natural gas,

(b) any expense incurred by the taxpayer in drilling or recompleting an oil or gas well in Canada after the commencement of production from the well,

(c) any expense incurred by the taxpayer before November 17, 1978 for the purpose of bringing a mineral resource in Canada into production and incurred prior to the commencement of production from the resource in reasonable commercial quantities, including

(i) clearing, removing overburden and stripping, and

(ii) sinking a mine shaft, constructing an adit or other underground entry,

(d) any expense (other than an amount included in the capital cost of depreciable property) incurred by the taxpayer after 1987

(i) in sinking or excavating a mine shaft, main haulage way or similar underground work designed for continuing use, for a mine in a mineral resource in Canada built or excavated after the mine came into production, or

(ii) in extending any such shaft, haulage way or work,

(e) notwithstanding paragraph 18(1)(m), the cost to the taxpayer of any property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in such property (other than such a right or interest that the taxpayer has by virtue of being a beneficiary of a trust) but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment to which paragraph 18(1)(m) applied by virtue of subparagraph 18(1)(m)(v),

(f) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (e) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member of the partnership, unless the taxpayer elects in respect of the share in prescribed form and manner on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

(g) any cost or expense referred to in any of paragraphs (a) to (e) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

but, for greater certainty, shall not include

(h) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (g),

(i) any expense described in paragraph (g) incurred by any other taxpayer to the extent that the expense was,

(i) by virtue of that paragraph, a Canadian development expense of that other taxpayer,

(ii) by virtue of paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), a Canadian exploration expense of that other taxpayer, or

(iii) by virtue of paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), a Canadian oil and gas property expense of that other taxpayer,

Proposed Addition — 66.2(5)"Canadian development expense"(i.1)

(i.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 28, will add para. (i.1) to the definition "Canadian development expense", applicable to 1988 *et seq.*

Technical Notes: Subsection 66.2(2) of the Act generally allows a taxpayer a deduction for a taxation year of up to 30 per cent of its cumulative Canadian development expense (cumulative CDE) at the end of the year. The definitions of CDE and cumulative CDE are contained in subsection 66.2(5).

Paragraph (i.1) of the CDE definition is introduced to clarify that a taxpayer's CDE does not include the cost to the taxpayer of any depreciable property of a prescribed class. This amendment, as well as the related amendment to the definition "Canadian explo-

ration expense", is for greater certainty. It responds to an issue raised by the decision of the Phénix case referred to above.

This amendment applies to property acquired after 1987. Paragraph (i.1) complements the wording in existing paragraph (j) of the CDE definition, with the result that both paragraphs provide for the same exclusion with regard to property acquired after December 5, 1996.

This amendment applies, with necessary minor technical modifications to take into account the restructuring of subsection 66.2(5), to the version of the CDE definition in force prior to the enactment of the Revised Statutes of Canada, 1985, Fifth Supplement. Subsection 79(1) of the *Income Tax Application Rules* contains a rule to this effect.

(j) any amount included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class, or

(k) the taxpayer's share of any consideration, expense, cost or expenditure referred to in any of paragraphs (h) to (j) given or incurred by a partnership,

but any assistance that a taxpayer has received or is entitled to receive after May 25, 1976 in respect of or related to the taxpayer's Canadian development expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (g);

Related Provisions: 13(7.5) — Depreciable property treatment for costs associated with building roads and similar projects; 18(1)(m) — Royalties, etc.; 53(1)(e)(vii.1) — Addition to ACB — partnership interest; 66.2(2) — Deduction for cumulative CDE; 66.2(8) — Presumption; 66.3 — Exploration and development shares; 248(1)"Canadian development expense" — Definition applies to entire Act; 248(16) — GST input tax credit and rebate deemed to be government assistance; 248(18) — GST — repayment of input tax credit; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions and Definitions at end of s. 66.2.

History: Paras. (j) and (k) added to the definition "Canadian development expense" in subsec. 66.2(5) by 1997, c. 25, s. 15, applicable to taxation years that end after December 5, 1996.

Para. (f) of "Canadian development expense" in subsec. 66.2(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 24, applicable to partnership fiscal periods ending after July 1990, except that an election referred to in the para. that is filed before December 11, 1993, shall be deemed to have been filed on a timely basis. Para. (f) formerly read:

(f) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (e) incurred by a partnership in a fiscal period thereof, if, at the end of that period, the taxpayer was a member of the partnership, or

Pre-RSC History: *The definition "Canadian development expense" was para. 66.2(5)(a). See Table of Concordance.*

Subpara. 66.2(5)(a)(ii.1) added by 1988, c. 55, subsec. 43(1), applicable with respect to expenses incurred after 1987, other than amounts included in the capital cost of depreciable property.

Subpara. 66.2(5)(a)(iv) amended by 1988, c. 55, subsec. 43(2), to add "subject to section 66.8", applicable after June 17, 1987.

All that portion of para. 66.2(5)(a) preceding subpara. (i) amended by 1986, c. 55, subsec. 13(5), to substitute "any cost or expense incurred" for "any outlay or expense made or incurred".

Cl. 66.2(5)(a)(i)(B) amended by 1986, c. 55, subsec. 13(6), to substitute "was not a Canadian exploration expense of the taxpayer in the taxation year in which it was incurred" for "is not a Canadian exploration expense", applicable with respect to expenses incurred after March 1987.

Subpara. 66.2(5)(a)(v) amended by 1986, c. 55, subsec. 13(7), to substitute "cost or expense" for "expense" (in two places) and "agreement in writing with a corporation, entered into before 1987," for "agreement with a corporation".

All that portion of para. 66.2(5)(a) following subpara. (vii) substituted by 1986, c. 55, subsec. 13(8), applicable with respect to expenses incurred after December 19, 1986. That portion of para. (a) formerly read:

but no amount of assistance or benefit that a taxpayer has received or is entitled to receive after May 25, 1976 from a government, municipality or other public authority in respect of or related to his Canadian development expense, whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, shall reduce the amount of any of the expenses described in any of subparagraphs (i) to (v); and

Cl. 66.2(5)(a)(i)(E) added by 1985, c. 45, subsec. 30(6), applicable with respect to expenses incurred after 1981.

Subpara. 66.2(5)(a)(iii) substituted by 1985, c. 45, subsec. 30(7), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. (a)(iii) formerly read:

(iii) notwithstanding paragraph 18(1)(m), the cost to him of any Canadian resource property described in subparagraph 66(15)(c)(ii), (v) or (vi) or of any right to (including a right to receive proceeds of disposition in respect thereof) or interest in any such property (other than property of a trust), but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the taxpayer after 1971, and not including a payment to which paragraph 18(1)(m) applied by virtue of subparagraph (v) thereof,

Cl. 66.2(5)(a)(i)(C) substituted to substitute "water, gas or any other substance" for "water or gas"; subsec. 66.2(5) amended to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's", wherever those expressions appeared, by 1984, c. 1, subsecs. 29(3) and (4) respectively. Subsec. 29(3) of c. 1, applicable with respect to expenses incurred after 1980. Subsec. 29(4) of c. 1, applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

Subpara. 66.2(5)(a)(v) substituted by 1980-81-82-83, c. 140, subsec. 35(1), applicable with respect to any outlay or expense made or incurred after 1982, to add ", other than prescribed shares,".

All that portion of para. 66.2(5)(a) preceding subpara. (i), subparas. 66.2(5)(a)(iii), (v) and (vii) substituted by 1980-81-82-83, c. 48, subsecs. 35(5)–(8), subpara. 66.2(5)(a)(iii), applicable with respect to acquisitions of property occurring after December 11, 1979 and subpara. 66.2(5)(a)(vii) applicable to taxation years ending after December 11, 1979. That portion and subparas. (a)(iii), (v) and (vii) formerly read:

(a) "Canadian development expense" of a taxpayer means any outlay or expense made or incurred, or deemed to have been made or incurred, after May 6, 1974 that is

(iii) notwithstanding paragraph 18(1)(m), the cost to him of a Canadian resource property or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the taxpayer after 1971, and not including a payment (other than a net royalty payment referred to in this subparagraph) to which paragraph 18(1)(m) applied by virtue of subparagraph (v) thereof,

. . . . .

(v) any expense referred to in any of subparagraphs (i) to (iii) incurred by the taxpayer pursuant to an agreement with a corporation under which the taxpayer incurred the expense solely as consideration for shares of the capital stock of the corporation issued to him by the corporation or any interest in such shares or right thereto,

. . . . .

(vii) any expense described in subparagraph (v) incurred by any other taxpayer to the extent that the expense was, by virtue of that subparagraph, a Canadian development expense of that other taxpayer or was, by virtue of subparagraph 66.1(6)(a)(v), a Canadian exploration expense of that other taxpayer,

Cl. 66.2(5)(a)(i)(B) substituted, subparas. 66.2(5)(a)(i.1) added, (ii), (iv) substituted by 1979, c. 5, subsecs. 21(2)–(5), applicable, as to cl. 66.2(5)(a)(i)(B), to taxation years ending after May 6, 1974, as to subpara. 66.2(5)(a)(i.1), with respect to expenses incurred after November 16, 1978. Subparas. (a)(ii), (iv) formerly read:

(ii) any expense incurred by him for the purpose of bringing a mineral resource in Canada into production and incurred prior to the

commencement of production from the resource in reasonable commercial quantities, including

(A) clearing, removing overburden and stripping, and

(B) sinking a mine shaft, constructing an adit or other underground entry,

. . . . .

(iv) his share of any expense referred to in any of subparagraphs (i) to (iii), incurred by any association, partnership or syndicate in a fiscal period of that association, partnership or syndicate, if at the end of that fiscal period he was a member or partner thereof, or

Subpara. 66.2(5)(a)(iii) substituted by 1977-78, c. 1, subsec. 31(2), applicable with respect to amounts paid or payable after May 6, 1974 in respect of the period after that date.

All that portion of para. 66.2(5)(a) following subpara. (ii) substituted by 1976-77, c. 4, subsec. 25(2), subparas. 66.2(5)(a)(iii)–(vii), applicable to amounts paid or payable and the fair market value of property paid or payable after May 6, 1974, and that portion of para. 66.2(5)(a) following subpara. (vii) applicable to taxation years ending after May 25, 1976.

Selected Cases [subsec. 66.2(5)"Canadian development expense"]: *Mitchell v. R.*, [1999] 2 C.T.C. 2721 (TCC) (Double renunciation was permitted); *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR)* (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits"); *International Nickel Co. of Canada Ltd. v. MNR*, [1969] C.T.C. 106 (Exch.) (Expenses for establishment of town for employees not development expenses).

Regulations: 6202 (prescribed share).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-438R2: Crown charges — resource properties in Canada; IT-503: Exploration and development shares.

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships.

Forms: T1086: Election by a partner.

"cumulative Canadian development expense" of a taxpayer at any time in a taxation year means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + F + G + H + I + J + K + L + M + M.1 + N + O)$$

where

A is the total of all Canadian development expenses made or incurred by the taxpayer before that time,

B the total of all amounts required by virtue of subsection (1) to be included in computing the amount referred to in paragraph 59(3.2)(c) for taxation years ending before that time,

C is the total of all amounts referred to in the description of F or G that are established by the taxpayer to have become a bad debt before that time,

D is such part, if any, of the amount determined for M as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount,

D.1 is the total of all specified amounts determined under paragraph 66.7(12.1)(b) in respect of the taxpayer for taxation years ending before that time,

E is the total of all amounts deducted in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian development expense,

F is the total of all amounts each of which is an amount in respect of a property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or a right to or interest in such a property, other than such a right or interest that the taxpayer has by virtue of being a beneficiary of a trust, (in this description referred to as the "particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

(a) the amount, if any, by which the proceeds of disposition in respect of the particular property that became receivable by the taxpayer after May 6, 1974 and before that time exceed any outlays or expenses that were made or incurred by the taxpayer after May 6, 1974 and before that time for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part

exceeds

(b) the amount, if any, by which

(i) the total of all amounts that would be determined under paragraph 66.7(4)(a), immediately before the time (in this paragraph referred to as the "relevant time") when such proceeds of disposition became receivable, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(4) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

(A) amounts that became receivable at or after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account

exceeds the total of

(ii) all amounts that would be determined under paragraph 66.7(4)(a) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of",

(D) amounts described in subparagraph 66.7(4)(a)(iii) that became receivable at the relevant time were not taken into account, and

(E) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) such portion of the amount otherwise determined under this paragraph as was otherwise applied to reduce the amount otherwise determined under this description,

G is the total of all amounts that became receivable by the taxpayer before that time that are to be included in the amount determined under this description by virtue of paragraph 66(12.1)(b) or (12.3)(a),

H is the total of all amounts each of which is an amount included by the taxpayer as an expense under paragraph (a) of the definition "Canadian development expense" in this subsection in computing the taxpayer's Canadian development expense for a previous taxation year that has become a Canadian exploration expense of the taxpayer by virtue of subparagraph (c)(ii) of the definition "Canadian exploration expense" in subsection 66.1(6),

I is the total of all amounts each of which is an amount that before that time has become a Canadian exploration expense of the taxpayer by virtue of subsection 66.1(9),

J is the total of all amounts each of which is an amount received before that time on account of any amount referred to in the description of C,

K is the total of all amounts paid to the taxpayer after May 6, 1974 and before May 25, 1976

(a) under the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, or

(b) pursuant to any agreement, entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development,

to the extent that the amounts have been expended by the taxpayer as or on account of Canadian development expense incurred by the taxpayer,

L is the amount by which the total of all amounts determined under subsection 66.4(1) in respect of a taxation year of the taxpayer ending at or before that time exceeds the total of all amounts each of which is the least of

(a) the amount that would be determined under paragraph 66.7(4)(a), at a time (hereafter in this description referred to only as the "particular time") that is the end of the latest taxation year of the taxpayer ending at or before that time, in respect of the taxpayer as successor in respect of a disposition (in this description referred to as the "original disposition") of Canadian resource property by a person who is an original owner of the property because of the original disposition, if

(i) that paragraph were read without reference to "30% of",

(ii) where the taxpayer has disposed of all or part of the property in circumstances in which subsection 66.7(4) applied, that subsection continued to apply to the taxpayer in respect of the original disposition as if subsequent successors were the same person as the taxpayer, and

(iii) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the particular time were made before the particular time,

(b) the amount, if any, by which the total of all amounts each of which became receivable at or before the particular time and before 1993 by the taxpayer and is included in computing the amount determined under subparagraph 66.7(5)(a)(ii) in respect of the original disposition exceeds the amount, if any, by which

(i) where the taxpayer disposed of all or part of the property before the particular time in circumstances in which subsection 66.7(5) applied, the amount that would be determined at the particular time under subparagraph 66.7(5)(a)(i) in respect of the original disposition if that subparagraph continued to apply to the taxpayer in respect of the original disposition as if subsequent successors were the same person as the taxpayer, and

(ii) in any other case, the amount determined at the particular time under subparagraph 66.7(5)(a)(i) in respect of the original disposition

exceeds

(iii) the amount that would be determined at the particular time under subparagraph 66.7(5)(a)(ii) in respect of the original disposition if that subparagraph were read without reference to the words "or the successor", wherever they appear therein, and if amounts that became receivable after 1992 were not taken into account, and

(c) where

(i) after the original disposition and at or before the particular time, the taxpayer disposed of all or part of the property in circumstances in which subsection 66.7(4) applied, otherwise than by way of an amalgamation or merger or solely because of the application of paragraph 66.7(10)(c), and

(ii) the winding-up of the taxpayer began at or before that time or the taxpayer's disposition referred to in subparagraph (i) (other than a disposition under an agreement in writing entered into before December 22, 1992) occurred after December 21, 1992,

nil,

M is the total amount of assistance that the taxpayer has received or is entitled to receive in respect of any Canadian development expense (including an expense that has become a Canadian exploration expense of the taxpayer by virtue of subsection 66.1(9)) incurred after 1980 or that can reasonably be related to Canadian development activities after 1980,

M.1 is the total of all amounts by which the cumulative Canadian development expense of the taxpayer is required because of subsection 80(8) to be reduced at or before that time,

N is the total of all amounts that are required to be deducted before that time under subsection 66(14.2) in computing the taxpayer's cumulative Canadian development expense, and

O is the total of all amounts that are required to be deducted before that time under paragraph 66.7(12)(c) in computing the taxpayer's cumulative Canadian development expense.

Related Provisions: 35(1)(c) — Prospectors and grubstakers; 50(1)(a) — Deemed disposition where debt becomes bad debt; 59(3.2) — Recovery of exploration & development expenses; 66(12.1) — Limitations of Canadian exploration & development expenses; 66(12.3) — Unitized oil or gas field in Canada; 66.2(7) — Exception; 66.4(1) — Recovery

of costs; 66.7(4) — Deduction to successor corporation; 70(5.2)(a) — Resource properties and land inventories of deceased; 79(4)(c) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 79.1(8) — No claim for principal amount of bad debt where property seized by creditor; 80(8)(c) — Reduction of CCDE on debt forgiveness; 96(2.2)(d) — at-risk amount; 104(5.2) — Rules for trusts; 248(16) — GST input tax credit and rebate deemed to be government assistance; 248(18) — GST — repayment of input tax credit; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 66.2.

History: Cls. (b)(i)(D) and (b)(ii)(E) added to the description of F in the definition "cumulative Canadian development expense" in subsec. 66.2(5) added by 1995, c. 21, subsecs. 23(2) and (3), applicable to taxation years that end after February 21, 1994.

The description of M.1 added to the definition "cumulative Canadian development expense" in subsec. 66.2(5) and the corresponding formula amended by 1995, c. 21, subsecs. 23(1) and (4), applicable to taxation years that end after February 21, 1994.

All that portion of the description of F in the definition "cumulative Canadian development expense" in subsec. 66.2(5) following para. (a) substituted by 1994, c. 21, subsec. 29(1), applicable to taxation years ending after February 17, 1987. That portion of the description of F formerly read:

exceeds the amount equal to

(b) where the proceeds of disposition referred to in paragraph (a) may reasonably be attributed to the disposition of a property that was acquired by the taxpayer in circumstances in which subsection 66.7(4) applies to the taxpayer as successor, the lesser of

(i) the amount determined under paragraph (a) in respect of the property, and

(ii) the total of all amounts each of which is an amount that would be determined at that time under paragraph 66.7(4)(a) in respect of the acquisition of the property by the taxpayer if that paragraph were read without reference to "30% of", and

(c) in any other case, nil,

The description of L in the definition "cumulative Canadian development expense" in subsec. 66.2(5) substituted by 1994, c. 21, subsec. 29(2), applicable to taxation years ending after December 21, 1992, except that where a taxpayer so elects by notifying the Minister of National Revenue in writing by December 31, 1994, the description of L shall apply in respect of the taxpayer to taxation years ending after February 17, 1987; and, notwithstanding subsecs. 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made as are necessary to give effect to the election. That description formerly read:

L is the amount by which the total of all amounts each of which is an amount determined under subsection 66.4(1) in respect of a taxation year of the taxpayer ending at or before that time exceeds the total of all amounts each of which is the lesser of

(a) the amount that would be determined at that time under paragraph 66.7(4)(a) in respect of the acquisition of property from a particular original owner or predecessor owner of the property by the taxpayer if that paragraph were read without reference to "30% of", and

(b) the amount, if any, by which the total of the amounts that became receivable at or before that time by the taxpayer and that are described in subparagraph 66.7(5)(a)(ii) in respect of the disposition of property acquired from the particular original owner or predecessor owner exceeds the amount determined in subparagraph 66.7(5)(a)(i) in respect of the acquisition of that property,

D.1 and its description added the definition "cumulative Canadian development expense" in subsec. 66.2(5) by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 40(3)and (3.1), applicable to taxation years beginning after February 17, 1987.

Pre-RSC History: *The definition "cumulative Canadian development expense" was para. 66.2(5)(b). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(b) "cumulative Canadian development expense" of a taxpayer at any time in a taxation year means the amount, if any, by which the aggregate of

(i) the aggregate of all Canadian development expenses made or incurred by him before that time,

(ii) the aggregate of all amounts required by virtue of subsection (1) to be included in computing the amount referred to in paragraph 59(3.2)(c) for taxation years ending before that time,

(iii) any amount referred to in subparagraph (v) or (vi) that is established by him to have become a bad debt before that time, and

(iii.1) such part, if any, of the amount included in subparagraph (xi) as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount

exceeds the aggregate of all amounts each of which is

(iv) any amount deducted in computing his income for a taxation year ending before that time in respect of his cumulative Canadian development expense,

(v) the aggregate of all amounts each of which is an amount in respect of a property described in subparagraph 66(15)(c)(ii), (v) or (vi) or a right to or interest in such property, other than such a right or interest that he has by virtue of being a beneficiary of a trust, (in this subparagraph referred to as the "particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

(A) the amount, if any, by which the proceeds of disposition in respect of the particular property that became receivable by him after May 6, 1974 and before that time exceeds any outlays or expenses that were made or incurred by him after May 6, 1974 and before that time for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part

exceeds the amount equal to

(B) where the proceeds of disposition referred to in clause (A) may reasonably be attributed to the disposition of a property that was acquired by the taxpayer in circumstances in which subsection 66.7(4) applies to the taxpayer as successor, the lesser of

(I) the amount determined under clause (A) in respect of the property, and

(II) the aggregate of all amounts each of which is an amount that would be determined at that time under paragraph 66.7(4)(a) in respect of the acquisition of the property by the taxpayer if that paragraph were read without reference to "30% of", and

(C) in any other case, nil,

(vi) any amount that became receivable by him before that time that is to be included in the amount determined under this subparagraph by virtue of paragraph 66(12.1)(b) or 66(12.3)(a),

(vii) any amount included by him as an expense under subparagraph (a)(i) in computing his Canadian development expense for a previous taxation year that has become a Canadian exploration expense of the taxpayer by virtue of clause 66.1(6)(a)(ii)(B),

(vii.1) any amount that before that time has become a Canadian exploration expense of the taxpayer by virtue of subsection 66.1(9),

(viii) any amount received before that time on account of any amount referred to in subparagraph (iii),

(ix) the aggregate of all amounts paid to him after May 6, 1974 and before May 25, 1976

(A) under the Northern Mineral Exploration Assistance Regulations *made under an* Appropriation Act *that provides for payments in respect of the Northern Mineral Grants Program, or*

(B) pursuant to any agreement, entered into between the taxpayer and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development,

to the extent that the amounts have been expended by the taxpayer as or on account of Canadian development expense incurred by him,

(x) the amount by which the aggregate of all amounts each of which is an amount determined under subsection 66.4(1) in respect of a taxation year of the taxpayer ending at or before that

time exceeds the aggregate of all amounts each of which is the lesser of

(A) the amount that would be determined at that time under paragraph 66.7(4)(a) in respect of the acquisition of property from a particular original owner or predecessor owner of the property by the taxpayer if that paragraph were read without reference to "30% of", and

(B) the amount, if any, by which the aggregate of the amounts that became receivable at or before that time by the taxpayer and that are described in subparagraph 66.7(5)(a)(ii) in respect of the disposition of property acquired from the particular original owner or predecessor owner exceeds the amount determined in subparagraph 66.7(5)(a)(i) in respect of the acquisition of such property,

(xi) any assistance that he has received or is entitled to receive in respect of any Canadian development expense (including an expense that has become a Canadian exploration expense of the taxpayer by virtue of subsection 66.1(9)) incurred after 1980 or that can reasonably be related to Canadian development activities after 1980,

(xii) any amount that is required to be deducted before that time under subsection 66(14.2) in computing his cumulative Canadian development expense, or

(xiii) any amount that is required to be deducted before that time under paragraph 66.7(12)(c) in computing his cumulative Canadian development expense.

Subpara. 66.2(5)(b)(iii.1) added by 1990, c. 45, s. 43, applicable with respect to amounts repaid after January 1990.

All that portion of subpara. 66.2(5)(b)(v) following cl. (A), subpara. 66.2(5)(b)(x) substituted, and subpara. 66.2(5)(b)(xiii) added, by 1987, c. 46, subsecs. 20(3) to (5), applicable to taxation years ending after February 17, 1987. The said portion of subpara. (v) and subpara. (x) formerly read:

exceeds

(B) the amount equal to,

(I) where there has been an acquisition of property by the taxpayer from a predecessor (within the meaning of subsection (3)) or from a first successor corporation (within the meaning of subsection (4)) and the particular property is all or part of the property that was so acquired, the amount, if any, by which the amount determined (immediately before the particular time at which the amount receivable by the taxpayer for the particular property so became receivable by him) under subparagraph 66.2(3)(a)(i) in respect of the acquisition, or under 66.2(4)(a)(i) in respect of the earlier acquisition by the first successor corporation from its predecessor, as the case may be, exceeds the aggregate of such amounts that became receivable by the taxpayer before the particular time and that are described in subparagraph 66.2(3)(a)(ii) or 66.2(4)(a)(ii), as the case may be, as may reasonably be attributed to the disposition by the taxpayer of property owned by the predecessor or the first successor corporation, as the case may be, and

(II) in any other case, nil,

. . . . .

(x) the amount by which the aggregate of all amounts each of which is an amount determined under subsection 66.4(1) in respect of taxation years of the taxpayer ending at or before that time exceeds the aggregate of all amounts each of which is

(A) the lesser of

(I) the amount, if any, by which the amount determined under subparagraph (3)(a)(i) in respect of the acquisition of property by the taxpayer acquired from a particular predecessor before that time exceeds the aggregate of such amounts that became receivable at or before that time by the taxpayer that are described in subparagraph (3)(a)(ii) in respect of the disposition of such property, and

(II) the amount, if any, by which the aggregate of the amounts that became receivable at or before that time by the taxpayer that are described in subparagraph 66.4(3)(a)(ii) in respect of the disposition of property acquired from the particular predecessor exceeds the amount determined in subparagraph 66.4(3)(a)(i) in respect of the acquisition of such property, or

(B) the lesser of

(I) the amount, if any, by which the amount determined under subparagraph (4)(a)(i) in respect of the acquisition of property by the taxpayer acquired from a particular predecessor before that time exceeds the aggregate of such amounts that became receivable at or before that time by the taxpayer that are described in subparagraph (4)(a)(ii) in respect of the disposition of such property, and

(II) the amount, if any, by which the aggregate of the amounts that became receivable at or before that time by the taxpayer that are described in subparagraph 66.4(4)(a)(ii) in respect of the disposition of property acquired from the particular predecessor exceeds the amount determined in subparagraph 66.4(4)(a)(i) in respect of the acquisition of such property,

Subpara. 66.2(5)(b)(vii) amended by 1986, c. 55, subsec. 13(9), to substitute "clause 66.1(6)(a)(ii)(B)" for "clause 66.1(6)(a)(ii)(B) or (ii.1)(B)", and subpara. 66.2(5)(b)(vii.1) added, applicable with respect to expenses incurred after March 1987.

Subpara. 66.2(5)(b)(xi) substituted by 1986, c. 55, subsec. 13(10), applicable with respect to expenses incurred after December 19, 1986, except that in its application with respect to expenses incurred after that day and before April 1987, subpara. 66.2(5)(b)(xi) shall be read as follows:

(xi) any assistance that he has received or is entitled to receive in respect of any Canadian development expense incurred after 1980 or that can reasonably be related to Canadian development activities after 1980, or

Subpara. 66.2(5)(b)(xi) formerly read:

(xi) any amount of assistance or benefit that he has received or is entitled to receive from a government, municipality or other public authority in respect of any Canadian development expense made or incurred after December 31, 1980 or that can reasonably be related to Canadian development activities after that date, whether such amount is by way of a grant, subsidy, forgiveable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, or

Subpara. 66.2(5)(b)(xii) added by 1986, c. 2, subsec. 18(3), applicable to 1985 *et seq.*

All that portion of subpara. 66.2(5)(b)(v) preceding cl. (B) substituted by 1985, c. 45, subsec. 30(8), applicable with respect to dispositions occurring in taxation years commencing after 1984, but for dispositions occurring in taxation years commencing before 1985 subparagraph 66.2(5)(b)(v) shall apply and be read as it was at the time the disposition occurred, having regard to any subsequent amendments thereto that applied at that time. That portion of subpara. 66.2(5)(b)(v) formerly read:

(v) the aggregate of all amounts each of which is an amount in respect of a property (referred to herein as "the particular property") disposed of by the taxpayer equal to the amount, if any, by which

(A) any amount, in respect of the disposition of the particular property, that became receivable by him after May 6, 1974 and before that time that is required to be included in the amount determined under this clause by virtue of subsection 59(1.1) or paragraph 59(3.1)(a),

exceeds

Para. 66.2(5)(b) amended by 1984, c. 1, subsec. 29(4), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983, to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's" wherever those expressions appeared.

Subpara. 66.2(5)(b)(x) substituted by 1980-81-82-83, c. 140, subsec. 35(2), applicable with respect to taxation years ending after December 11, 1979.

Subparas. 66.2(5)(b)(i), (vii) substituted, subparas. 66.2(5)(b)(x), (xi) added by 1980-81-82-83, c. 48, subsecs. 35(9)-(11), applicable, as to subpara. 66.2(5)(b)(x), to taxation years ending after December 11, 1979, and, as to subpara. 66.2(5)(b)(xi), to 1981 *et seq.*

All that portion of para. 66.2(5)(b) preceding subpara. (i), subpara. 66.2(5)(b)(v) substituted by 1979, c. 5, subsecs. 21(6), (7), applicable to 1977 *et seq.* That portion and subpara. 66.2(5)(b)(v) formerly read:

(b) "cumulative Canadian development expense" of a taxpayer at any time shall be the amount, if any, by which the aggregate of

(v) any amount that became receivable by him after May 6, 1974 and before that time that is required to be included in the

amount determined under this subparagraph by virtue of subsection 59(1.1) or paragraph 59(3.1)(a),

Subpara. 66.2(5)(b)(i) substituted by 1977-78, c. 1, subsec. 31(3), applicable to taxation years ending after May 6, 1974.

Subparas. 66.2(5)(b)(i), (ix) substituted by 1976-77, c. 4, subsecs. 25(3), (4), applicable to taxation years ending after May 6, 1974.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-125R4: Dispositions of resource properties.

(5.1) Application of subsecs. 66(15), 66.1(6) and 66.4(5) — The definitions in subsections 66(15), 66.1(6) and 66.4(5) apply to this section.

Origin of subsec. 66.2(5.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 66(15), 66.1(6) and 66.4(5)).

(6) Presumption — Except as provided in subsection (7), where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition, whichever is applicable, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

History: Subsec. 66.2(6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(4), applicable after January 1990. Subsec. (6) formerly read:

> (6) Presumption — Except as provided in subsection (7), where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition, as the case may be, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Pre-RSC History: Subsec. 66.2(6) substituted by 1980-81-82-83, c. 48, subsec. 35(12), applicable to 1977 *et seq.*, except that in its application to the 1977 to 1980 taxation years it shall be read without the references to "or (xi)". Subsec. 66.2(6) formerly read:

> (6) Where a taxpayer is a member of a partnership, his share of any amount that would be an amount referred to in subparagraph (5)(b)(v) or (vi) in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph (1)(d) thereof shall, for the purposes of this Act, be deemed to be an amount referred to in subparagraph (5)(b)(v) or (vi), whichever is applicable, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

Subsec. 66.2(6) added by 1977-78, c. 1, subsec. 31(4), applicable to 1977 *et seq.*

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-353R2: Partnership interest — some adjustments to cost base.

I.T. Technical News: No. 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

(7) Exception — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of any Canadian resource property, the person's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian development expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or M in that definition, whichever is applicable, in respect of the person for the taxation year of the person that is deemed under paragraph 115(4)(a) to have ended.

History: Subsec. 66.2(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 40(4), applicable after January 1990. Subsec. 66.2(7) formerly read:

> (7) Exception — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of a property, the non-resident person's share of any amount that would be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed in respect of the non-resident person to be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection (5) or in the description of G or M in that definition, as the case may be, for the taxation year of the non-resident person that is deemed under paragraph 115(4)(a) to have ended.

Pre-RSC History: Subsec. 66.2(7) substituted by 1985, c. 45, subsec. 30(9), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subsec. 66.2(7) formerly read:

> (7) Exception — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of a property described in subsection 59(1.1), his share of any amount that would be an amount referred to in clause (5)(b)(v)(A) or subparagraph (5)(b)(vi) or (xi) in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph (1)(d) thereof shall, for the purposes of this Act, be deemed to be an amount referred to in clause (5)(b)(v)(A) or subparagraph (5)(b)(vi) or (xi), as the case may be, in respect of the non-resident person for the taxation year of the non-resident person that is deemed under paragraph 115(4)(a) to have ended.

Subsec. 66.2(7) added by 1980-81-82-83, c. 48, subsec. 35(12), applicable to taxation years ending after December 11, 1978, except that in its application to taxation years ending before 1981 it shall be read without the references to "or (xi)".

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(8) Presumption — Where pursuant to the terms of an arrangement in writing entered into before December 12, 1979 a taxpayer acquired a property described in paragraph (a) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), for the purposes of this Act, the cost of acquisition shall be deemed to be a Canadian development expense incurred at the time the taxpayer acquired the property.

Pre-RSC History: Subsec. 66.2(8) added by 1980-81-82-83, c. 48, subsec. 35(12), applicable to taxation years ending before December 11, 1979.

Related Provisions [s. 66.2]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 87(1.2) — New corporation deemed continuation of predecessor; 88(1.5) — Winding-up — parent deemed continuation of subsidiary; 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

Pre-RSC History [s. 66.2]: S. 66.2 added by 1974-75-76, c. 26, s. 36, applicable to taxation years ending after May 6, 1974.

Selected Cases [s. 66.2]: *Gulf Canada Ltd. v. Canada*, [1991] 1 C.T.C. 99 (FCTD); aff'd [1992] 1 C.T.C. 183 (FCA); leave to appeal to SCC refused (1992), 141 N.R. 393 (note), (sub nom. *Gulf Canada Ltd. v. MNR*) (Interpretation of: "Canadian exploration expenses", "Canadian development expenses", "taxable production profits").

Definitions [s. 66.2]: "amount" — 248(1); "assistance" — 66(15), 66.2(5.1), 79(4), 125.4(5), 248(16), 248(18); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian development expense" — 66.2(5), (8), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian exploration and development expense" — 66(15), 66.2(5.1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54, 66.2(5.1), 66.4(5); "expense" — 66(15), 66.2(5.1); "fiscal period" — 249(2)(b), 249.1; "Her Majesty" — *Interpretation Act* 35(1); "mineral resource", "non-resident", "oil or gas well", "person", "prescribed" — 248(1); "proceeds of disposition" — 54, 66.2(5.1), 66.4(5); "property", "share" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

66.3 (1) Exploration and development shares — Any shares of the capital stock of a corporation or any interest in any such shares or right thereto acquired by a taxpayer under circumstances described in paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5)

(a) shall, if acquired before November 13, 1981, be deemed

(i) not to be a capital property of the taxpayer,

(ii) subject to subsection 142.6(3), to be inventory of the taxpayer, and

(iii) to have been acquired by the taxpayer at a cost to the taxpayer of nil; and

(b) shall, if acquired after November 12, 1981, be deemed to have been acquired by the taxpayer at a cost to the taxpayer of nil.

History: Para. 66.3(1)(a) amended by 1995, c. 21, s. 51, applicable to taxation years that begin after October 1994. The para. formerly read:

(a) shall, if acquired before November 13, 1981, be deemed not to be a capital property of the taxpayer but to be inventory of the taxpayer acquired at a cost to the taxpayer of nil, and

(2) Deductions from paid-up capital — Where, at any time after May 23, 1985, a corporation has issued a share of its capital stock under circumstances described in paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5) or has issued a share of its capital stock on the exercise of an interest in or right to such a share granted under circumstances described in any of those paragraphs, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that included that share

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of the share in the paid-up capital, determined without reference to this subsection as it applies to the share, in respect of all of the shares of that class

exceeds

(ii) the amount, if any, by which

(A) the total amount of consideration received by the corporation in respect of the share, including any consideration for the interest or right in respect of the share

exceeds

(B) 50% of the amount of the expense referred to in paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (c) of the definition "Canadian oil and gas property expense" in subsection 66.4(5) that was incurred by a taxpayer who acquired the share or the interest or right on the exercise of which the share was issued, as the case may be, pursuant to an agreement with the corporation under which the taxpayer incurred the expense solely as consideration for the share, interest or right, as the case may be; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after May 23, 1985 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after May 22, 1985 and before the particular time.

(3) Cost of flow-through shares — Any flow-through share (within the meaning assigned by subsection 66(15)) of a corporation acquired by a person who was a party to the agreement pursuant to which it was issued shall be deemed to have been acquired by the person at a cost to the person of nil.

Pre-RSC History: Subsec. 66.3(3) added by 1986, c. 55, s. 14, applicable after February 1986.

(4) Paid-up capital — Where, at any time after February, 1986, a corporation has issued a flow-through share (within the meaning assigned by subsection 66(15)), in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that included that share

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of the share in the paid-up capital, determined without reference to this subsection as it applies to the share, in respect of all of the shares of that class

exceeds

(ii) the amount, if any, by which

(A) the total amount of consideration received by the corporation in respect of the share

exceeds

(B) 50% of the total of the expenses that were renounced by the corporation under subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of the share; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after February, 1986 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after February, 1986 and before the particular time.

History: Cl. 66.3(4)(a)(ii)(B) amended by 1994, c. 8, s. 7, applicable after December 2, 1992. Cl. (B) formerly read:

(B) 50% of the total of the expenses that were renounced by the corporation under subsection 66(12.6), (12.62) or (12.64) in respect of the share: and

Pre-RSC History: Subsec. 66.3(4) added by 1986, c. 55, s. 14, applicable after February 1986.

Related Provisions [s. 66.3]: 66(16) — Partnerships — person — taxation year; 66.4(2) — Deduction — Canadian oil and gas property expenses; 66.7 — Successor rules.

Pre-RSC History [s. 66.3]: S. 66.3 renumbered as subsec. 66.3(1) and subsec. 66.3(2) added by 1986, c. 6, s. 32, applicable after May 23, 1985.

S. 66.3 substituted by 1980-81-82-83, c. 140, s. 36, applicable with respect to property acquired after November 12, 1981. S. 66.3 formerly read:

66.3 **Shares taxed as inventory** — Any shares of the capital stock of a corporation or any interest in any such shares or right thereto acquired by a taxpayer under the circumstances described in subparagraph 66.1(6)(a)(v), 66.2(5)(a)(v) or 66.4(5)(a)(iii) shall be deemed not to be a capital property of the taxpayer but to be inventory of the taxpayer acquired at a cost to the taxpayer of nil.

S. 66.3 substituted by 1980-81-82-83, c. 48, s. 36, to add reference to subpara. 66.4(5)(a)(iii), applicable to taxation years ending after December 11, 1979.

S. 66.3 added by 1976-77, c. 4, s. 26, applicable in respect of property acquired after July 31, 1976.

Definitions [s. 66.3]: "amount" — 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "inventory" — 248(1); "paid-up capital" — 89(1), 248(1); "person" — 66(16), 248(1); "share", "taxpayer" — 248(1).

Interpretation Bulletins [s. 66.3]: IT-503: Exploration and development shares.

66.4 [Canadian oil and gas property expenses] — (1) Recovery of costs — For the purposes of the description of B in the definition "cumulative Canadian oil and gas property expense" in subsection (5) and the description of L in the definition "cumulative Canadian development expense" in subsection 66.2(5) and for the purpose of subparagraph 64(1.2)(a)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applies to dispositions occurring before November 13, 1981, the amount determined under this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of E to J in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that are deducted in computing the taxpayer's cumulative Canadian oil and gas property expense at the end of the year

exceeds the total of

(b) all amounts referred to in the descriptions of A to D.1 in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that are included in computing the taxpayer's cumulative Canadian oil and gas property expense at the end of the year, and

(c) the total determined under subparagraph 66.7(12.1)(c)(i) in respect of the taxpayer for the year.

Related Provisions: 66(11) — Acquisition of control; 66(11.4) — Change of control; 66(13) — Limitation; 104(5.2) — Rules for trusts. See additional Related provisions and Definitions at end of s. 66.4.

History: The opening words of subsec. 66.4(1) substituted by 1994, c. 21, subsec. 30(1), applicable to taxation years that end after February 17, 1987. The opening words of that subsec. formerly read:

66.4 (1) **Recovery of costs** — For the purposes of the descriptions of A in the definition "cumulative Canadian oil and gas property expense" in subsection (5) and L in the definition "cumulative Canadian development expense" in subsection 66.2(5), and of subparagraph 64(1.2)(a)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read immediately before March 30, 1983, the amount determined under this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

Subsec. 66.4(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(1), applicable to taxation years ending after February 17, 1987, except that with respect to such taxation years commencing before February 18, 1987, the reference to "(A to D.1)" in para. (b) shall be read as "(A to C)". Subsec. 66.4(1) formerly read:

66.4 (1) **Recovery of costs** — For the purposes of the descriptions of B in the definition "cumulative Canadian oil and gas property expense" in subsection (5) and L in the definition "cumulative Canadian development expense" in subsection 66.2(5), and of subparagraph 64(1.2)(a)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read before March 30, 1983, the amount determined under this subsection in respect of a taxpayer for a taxation year is the amount, if any, by which

(a) the total of all amounts referred to in the descriptions of E to J in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that would be taken into account in computing the taxpayer's cumulative Canadian oil and gas property expense at the end of the year

exceeds

(b) the total of all amounts referred to in the descriptions of A to C in the definition "cumulative Canadian oil and gas property expense" in subsection (5) that would be taken into account in computing his cumulative Canadian oil and gas property expense at the end of the year.

Pre-RSC History: Para. 66.4(1)(a) amended by 1987, c. 46, subsec. 21(1), to substitute "(5)(b)(iv) to (ix)" for "(5)(b)(iv) to (viii)", applicable to taxation years ending after February 17, 1987.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(2) Deduction for cumulative Canadian oil and gas property expense — A taxpayer may deduct, in computing the taxpayer's income for a taxation year, such amount as the taxpayer may claim not exceeding the total of

(a) the lesser of

(i) the total of

(A) the taxpayer's cumulative Canadian oil and gas property expense at the end of the year, and

(B) the amount, if any, by which

(I) the total determined under subparagraph 66.7(12.1)(c)(i) in respect of the taxpayer for the year

exceeds

(II) the amount that would, but for paragraph (1)(c), be determined under subsection (1) in respect of the taxpayer for the year, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount included in the taxpayer's income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share, any interest therein or right thereto acquired by the taxpayer under circumstances described in paragraph (c) of the definition "Canadian oil and gas property expense" in subsection (5), or

(B) an amount included by virtue of paragraph 12(1)(e) in computing the taxpayer's income for the year to the extent that it relates to inventory described in clause (A)

exceeds

(C) the total of all amounts deducted as a reserve by virtue of paragraph 20(1)(n) in computing the taxpayer's income for the year to the extent that the reserve relates to inventory described in clause (A); and

(b) 10% of the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii).

Related Provisions: 66(10.3) — Joint exploration corporation; 66(13.1) — Short taxation year; 66.2(2) — Deduction for cumulative CDE; 110.6(1)"investment expense"(d) — effect of claim under 66.4(2) on capital gains exemption. See additional Related provisions and Definitions at end of s. 66.4.

History: Subpara. 66.4(2)(a)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(2), applicable to taxation years ending after February 17, 1987. Subpara. 66.4(2)(a)(i) formerly read:

(i) the amount of the taxpayer's cumulative Canadian oil and gas property expense at the end of the year, and

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 66.4(3) repealed by 1987, c. 46, subsec. 21(2), applicable to taxation years ending after February 17, 1987. Subsec. 66.4(3) formerly read:

(3) Successor corporation's Canadian oil and gas property expense — Where a corporation (in this subsection referred to as the "successor corporation") has at any time acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another person (in this subsection referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) 10% of the amount by which

(i) the cumulative Canadian oil and gas property expense of the predecessor, determined at the time immediately after the property so acquired was acquired by the successor corporation, to the extent it has not been deducted by the predecessor in computing his income for any taxation year and has not been deducted by the successor corporation in computing its income for a preceding taxation year,

exceeds

(ii) the aggregate of all amounts each of which is an amount that became receivable in the taxation year or a preceding taxation year by the successor corporation, is included in the amount determined under clause (5)(b)(v)(A) and may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor immediately before the acquisition thereof by the successor corporation, and

(b) the amount that is equal to such part of its income for the year, if no deduction were allowed under this section, section 65, 66, 66.1 or 66.2 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by subsection (4) and sections 112 and 113), as may reasonably be regarded as attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the predecessor's income and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the successor corporation's income for the year by virtue of subsection 64(1), (1.1) or (1.2) in respect of dispositions of property by the predecessor,

and, in respect of any expense included in the cumulative Canadian oil and gas property expense referred to in subparagraph (a)(i), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

Subpara. 66.4(3)(b)(i) substituted by 1986, c. 6, subsec. 31(2), to add "natural accumulations thereof or from oil or gas", applicable to taxation years ending after March 1985.

All that portion of subsec. 66.4(3) preceding para. (a) substituted by 1985, c. 45, subsec. 31(1), applicable with respect to acquisitions occurring after 1982, except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985 the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him". That portion of subsec. 66.4(3) formerly read:

(3) Successor corporation's Canadian oil and gas property expense — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another person (in this subsection referred to as the "predecessor") all or substantially all of the property of the predecessor used by him in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by him and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subpara. 66.4(3)(a)(ii) substituted by 1985, c. 45, subsec. 31(2), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. 66.4(3)(a)(ii) formerly read:

(ii) the aggregate of all amounts each of which is an amount that became receivable by the successor corporation in the taxation year or in a preceding taxation year, that is required to be included in the amount determined under clause (5)(b)(v)(A) by virtue of subsection 59(1.2) and that may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor immediately before the acquisition thereof by the successor corporation, and

Cl. 66.4(3)(b)(ii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

All that portion of subsec. 66.4(3) preceding para. (b) substituted; all that portion of subsec. 66.4(3) following para. (b) amended to substitute "his" for "its" wherever the word appeared; subsec. 66.4(3) amended to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's", wherever those expressions appeared, by 1984, c. 1, subsecs. 30(1)–(3), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. That portion of subsec. 66.4(3) preceding para. (b) formerly read:

(3) Successor corporation's Canadian oil and gas property expense — Where a corporation (in this subsection referred to as the "successor corporation") has, at any time, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it and (except in the case of an amalgamation or a winding-up) the predecessor corporation and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

(a) 10% of the amount by which

(i) the cumulative Canadian oil and gas property expense of the predecessor corporation determined at the time immediately after the property so acquired was acquired by the successor corporation to the extent it has not been deducted by the predecessor corporation in computing its income for any taxation year and has not been deducted by the successor corporation in computing its income for a previous taxation year,

exceeds

(ii) the aggregate of all amounts each of which was an amount that became receivable in the taxation year or in a previous taxation year by the successor corporation, that are required to be included in the amount determined under clause (5)(b)(v)(A) by virtue of subsection 59(1.2) and that may reasonably be regarded as attributable to the disposition by the successor corporation of any property owned by the predecessor corporation immediately before the acquisition thereof by the successor corporation, and

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 66.4(4) repealed by 1987, c. 46, subsec. 21(2), applicable to taxation years ending after February 17, 1987. Subsec. 66.4(4) formerly read:

(4) Second successor corporation's Canadian oil and gas property expense — Where a corporation (in this subsection referred to as the "second successor corporation") has at any time acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) or a winding-up to which the rules in subsection 88(1) apply), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation, within the meaning of subsection (3), all or substantially all of the Canadian resource properties of the first successor corporation and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year such amount as it may claim not exceeding the lesser of

(a) 10% of the amount by which

(i) the amount, if any, by which the amount determined under subparagraph (3)(a)(i) in respect of the first successor corporation immediately after the property so acquired was acquired by the second successor corporation exceeds the amount determined under paragraph (3)(a)(ii) in respect of the first successor corporation at that time, to the extent it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a preceding taxation year,

exceeds

(ii) the aggregate of all amounts each of which is an amount that became receivable in the taxation year or a preceding taxation year by the second successor corporation, is included in the amount determined under clause (5)(b)(v)(A) and may reasonably be regarded as attributable to the disposition by the second successor corporation of any property owned by the predecessor of the first successor corporation immediately before the acquisition thereof by the first successor corporation, and

(b) the amount that is equal to such part of its income for the year if no deduction were allowed under this section, section 65, 66, 66.1 or 66.2 or the *Income Tax Application Rules, 1971* in respect of this paragraph (minus the deductions allowed for the year by sections 112 and 113), as may reasonably be regarded as attributable to

(i) the production of petroleum or natural gas from natural accumulations thereof or from oil or gas wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is an amount

(A) required by subsection 59(2) to be included in computing its income for the year, and

(B) in respect of a reserve deducted in computing the income of the predecessor of the first successor corporation and deemed by paragraph 87(2)(g) or by virtue of that paragraph and paragraph 88(1)(e.2) to have been deducted by the second successor corporation as a reserve in computing its income for a preceding year,

exceeds the aggregate of amounts, if any, deducted in computing the income of the second successor corporation for the year by virtue of subsection 64(1), (1.1), or (1.2) in respect of dispositions of property by the predecessor of the first successor corporation,

and, in respect of any expense included in the amount referred to in subparagraph (a)(i), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

Subpara. 66.4(4)(b)(i) substituted by 1986, c. 6, subsec. 31(2), to add "natural accumulations thereof or from oil or gas", applicable to taxation years ending after March 1985.

All that portion of subsec. 66.4(4) preceding para. (a) substituted by 1985, c. 45, subsec. 31(3), applicable with respect to acquisitions occurring after 1982, except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of the subparagraphs 66(15)(h)(i) to (vii) as were carried on by it". That portion of subsec. 66.4(4) formerly read:

(4) Second successor corporation's Canadian oil and gas property expense — Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time, acquired, by purchase or otherwise (including an acquisition as a result of an amalgamation described in section 87), from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (3), all or substantially all of the property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) as were carried on by it and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second succes-

sor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income under this Part for a taxation year, such amount as it may claim not exceeding the lesser of

Subpara. 66.4(4)(a)(i) substituted by 1985, c. 45, subsec. 31(4), applicable to taxation years ending after 1984. Subpara. 66.4(4)(a)(i) formerly read:

(i) the cumulative Canadian oil and gas property expense of the predecessor referred to in subparagraph (3)(a)(i) determined at the time immediately after the property so acquired was acquired by the first successor corporation to the extent it has not been deducted by the first successor corporation in computing its income for any taxation year and has not been deducted by the second successor corporation in computing its income for a previous taxation year,

Subpara. 66.4(4)(a)(ii) substituted by 1985, c. 45, subsec. 31(5), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. 66.4(4)(a)(ii) formerly read:

(ii) the aggregate of all amounts each of which was an amount that became receivable in the taxation year or in a previous taxation year by the second successor corporation, that are required to be included in the amount determined under clause (5)(b)(v)(A) by virtue of subsection 59(1.2) and that may reasonably be regarded as attributable to the disposition by the second successor corporation of any property owned by the predecessor of the first successor corporation immediately before the acquisition thereof by the second successor corporation, and

Cl. 66.4(4)(b)(ii)(A) amended by 1985, c. 45, subsec. 24(8), to delete a reference to subsection 59(2.1), applicable to taxation years commencing after 1984.

(5) Definitions — In this section

Related Provisions: 66(15.1) — Application to s. 66; 66.1(6.1) — Application to s. 66.1; 66.2(5.1) — Application to s. 66.2.

Pre-RSC History: *The opening words also referred to ss. 66, 66.1 and 66.2. See now subsecs. 66(15.1), 66.1(6.1), 66.2(5.1).*

"Canadian oil and gas property expense" of a taxpayer means any cost or expense incurred after December 11, 1979 that is

(a) notwithstanding paragraph 18(1)(m), the cost to the taxpayer of any property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15) or a right to or interest in such property (other than such a right or interest that the taxpayer has by reason of being a beneficiary of a trust) or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment (other than a net royalty payment referred to in this paragraph) to which paragraph 18(1)(m) applied by virtue of subparagraph 18(1)(m)(v),

(b) subject to section 66.8, the taxpayer's share of any expense referred to in paragraph (a) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member of the partnership, unless the taxpayer elects in respect of the share in prescribed form and manner on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

(c) any cost or expense referred to in paragraph (a) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

but, for greater certainty, shall not include

(d) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph (c), or

(e) any expense described in paragraph (c) incurred by any other taxpayer to the extent that the expense was,

(i) by virtue of that paragraph, a Canadian oil and gas property expense of that other taxpayer,

(ii) by virtue of paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), a Canadian exploration expense of that other taxpayer, or

(iii) by virtue of paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5), a Canadian development expense of that other taxpayer,

but any amount of assistance that a taxpayer has received or is entitled to receive in respect of or related to the taxpayer's Canadian oil and gas property expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (c);

Related Provisions: 49(2) — Where option expires; 53(1)(e)(vii.1) — Addition to ACB — partnership interest; 66(10.3) — Joint exploration corporation; 66(12.5) — Unitized oil or gas field in Canada; 66.2(8) — Presumption; 66.3 — Exploration and development shares; 66.4(1) — Recovery of costs; 66.4(2) — Deduction for cumulative COGPE; 248(1)"Canadian oil and gas property expense" — Definition applies to entire Act; 248(16) — GST input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf. See additional Related Provisions and Definitions at end of s. 66.4.

History: Para. (b) of "Canadian oil and gas property expense" in subsec. 66.4(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 25, applicable to partnership fiscal periods ending after July 1990, except that an election referred to in the para. that is filed before December 11, 1993, shall be deemed to have been filed on a timely basis. That para. formerly read:

(b) subject to section 66.8, the taxpayer's share of any expense referred to in paragraph (a) incurred by a partnership in a fiscal period thereof, if at the end of that fiscal period [the taxpayer] was a member thereof, or

Pre-RSC History: *The definition "Canadian oil and gas property expense" was para. 66.4(5)(a). See Table of Concordance.*

Subpara. 66.4(5)(a)(ii) amended by 1988, c. 55, s. 44, to add "subject to section 66.8", applicable after June 17, 1987.

All that portion of para. 66.4(5)(a) preceding subpara. (i) amended to substitute "any cost or expense incurred" for "any outlay or expense made or incurred", subpara. 66.4(5)(a)(iii) amended to substitute "cost or expense" for "expense" (in two places) and "agreement in writing with a corporation, entered into before 1987" for "agreement with a corporation", and all that portion of para. 66.4(5)(a) following subpara. (v) substituted by 1986, c. 55, subsecs. 15(1) to (3). That portion of para. 66.4(5)(a) formerly read:

but no amount of assistance or benefit that a taxpayer has received or is entitled to receive from a government, municipality or other public authority in respect of or related to his Canadian oil and gas property expense, whether as a grant, subsidy, forgiveable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, shall reduce the amount of any of the expenses described in any of subparagraphs (i) to (iii);

Subpara. 66.4(5)(a)(i) substituted by 1985, c. 45, subsec. 31(6), applicable with respect to dispositions occurring in taxation years commencing after 1984. Subpara. 66.4(5)(a)(i) formerly read:

(i) notwithstanding paragraph 18(1)(m), the cost to him of a Canadian resource property described in subparagraph 66(15)(c)(i), (iii) or (iv) or of any right to (including a right to receive proceeds of

disposition in respect thereof) or interest in any such property (other than property of a trust) or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) for the preservation of a taxpayer's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the taxpayer after 1971, and not including a payment (other than a net royalty payment referred to in this subparagraph) to which paragraph 18(1)(m) applied by virtue of subparagraph (v) thereof,

Subpara. 66.4(5)(a)(iii) substituted by 1980-81-82-83, c. 140, s. 37(1), applicable with respect to any outlay or expense made or incurred after 1982, to add ", other than prescribed shares,".

Regulations: 6202 (prescribed share).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-438R2: Crown charges — resource properties in Canada; IT-503: Exploration and development shares.

Forms: T1086: Election by a partner.

"cumulative Canadian oil and gas property expense" of a taxpayer at any time in a taxation year means the amount determined by the formula

$$(A + B + C + D + D.1) - (E + F + G + H + I + I.1 + J)$$

where

A is the total of all Canadian oil and gas property expenses made or incurred by the taxpayer before that time,

B is the total of all amounts determined under subsection (1) in respect of the taxpayer for taxation years ending before that time,

C is the total of all amounts referred to in the description of F or G that are established by the taxpayer to have become bad debts before that time,

D is such part, if any, of the amount determined for I as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount,

D.1 is the total of all specified amounts, determined under paragraph 66.7(12.1)(c) in respect of the taxpayer for taxation years ending before that time,

E is the total of all amounts deducted in computing the taxpayer's income for a taxation year ending before that time in respect of the taxpayer's cumulative Canadian oil and gas property expense,

F is the total of all amounts each of which is an amount in respect of a property described in paragraph (a), (c) or (d) of the definition "Canadian resource property" in subsection 66(15) or a right to or interest in such a property, other than such a right or interest that the taxpayer has by reason of being a beneficiary of a trust, (in this description referred to as "the particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

(a) the amount, if any, by which the proceeds of disposition in respect of the particular property that became receivable by the taxpayer before that time exceed any outlays or expenses made or incurred by the taxpayer before that time for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part

exceeds the total of

(b) the amount, if any, by which

(i) the total of all amounts that would be determined under paragraph 66.7(5)(a), immediately before the time (in this paragraph and paragraph (c) referred to as the "relevant time") when such proceeds of disposition became receivable, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(5) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

(A) amounts that became receivable at or after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time,

(C) paragraph 66.7(5)(a) were read without reference to "10% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account

exceeds the total of

(ii) all amounts that would be determined under paragraph 66.7(5)(a) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property described in subparagraph (i)) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

(C) paragraph 66.7(5)(a) were read without reference to "10% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) such portion of the amount determined under this paragraph as was otherwise applied to reduce the amount otherwise determined under this description, and

(c) the amount, if any, by which

(i) the total of all amounts that would be determined under paragraph 66.7(4)(a), immediately before the relevant time, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(4) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

(A) amounts that became receivable at or after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount

that became receivable before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of", and

(D) no reduction under subsection 80(8) at or after the relevant time were taken into account

exceeds the total of

(ii) all amounts that would be determined under paragraph 66.7(4)(a) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property described in subparagraph (i)) if

(A) amounts that became receivable after the relevant time were not taken into account,

(B) each designation made under subparagraph 66.7(4)(a)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

(C) paragraph 66.7(4)(a) were read without reference to "30% of",

(D) amounts described in subparagraph 66.7(4)(a)(ii) that became receivable at the relevant time were not taken into account, and

(E) no reduction under subsection 80(8) at or after the relevant time were taken into account, and

(iii) such portion of the amount otherwise determined under this paragraph as was otherwise applied to reduce the amount otherwise determined under this description,

G is the total of all amounts that became receivable by the taxpayer before that time that are to be included in the amount determined under this description by virtue of paragraph 66(12.5)(a),

H is the total of all amounts each of which is an amount received before that time on account of any amount referred to in the description of C,

I is the total amount of assistance that the taxpayer has received or is entitled to receive in respect of any Canadian oil and gas property expense incurred after 1980 or that can reasonably be related to any such expense after 1980,

I.1 is the total of all amounts by which the cumulative Canadian oil and gas property expense of the taxpayer is required because of subsection 80(8) to be reduced at or before that time, and

J is the total of all amounts that are required to be deducted before that time under paragraph 66.7(12)(d) in computing the taxpayer's cumulative Canadian oil and gas property expense;

Related Provisions: 20(1)(kk) — Exploration and development grants; 50(1)(a) — Deemed disposition where debt becomes bad debt; 66(10.3) — Joint exploration corporation; 66(12.5) — Unitized oil or gas field in Canada; 66.7(5) — Deduction to successor corporation; 70(5.2) — Resource properties and land inventories of deceased taxpayer; 79(4)(c) — Subsequent payment by debtor following surrender of property deemed to be repayment of assistance; 79.1(8) — No claim for principal amount of bad debt where property seized by creditor; 80(8)(d) — Reduction of CCOGPE on debt forgiveness; 96(2.2)(d) — At-risk amount; 104(5.2) — Rules for trusts; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 66.4.

History: Cls. (b)(i)(D), (b)(ii)(D), (c)(i)(D) and (c)(ii)(E) added to the description of F in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) by 1995, c. 21, subsecs. 24(2)–(5), applicable to taxation years that end after February 21, 1994.

The description of I.1 added to the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) and the corresponding formula amended by 1995, c. 21, subsecs. 24(6) and (1), applicable to taxation years that end after February 21, 1994.

All that portion of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) following para. (a) substituted by 1994, c. 21, subsec. 30(2), applicable to taxation years ending after February 17, 1987. That portion of the description of F formerly read:

exceeds the amount equal to

(b) where the proceeds of disposition referred to in paragraph (a) may reasonably be attributed to the disposition of a property that was acquired by the taxpayer in circumstances in which subsection 66.7(5) applies to the taxpayer as successor, the lesser of

(i) the amount determined under paragraph (a) in respect of the property, and

(ii) the total of all amounts each of which is an amount that would be determined at that time under paragraph 66.7(5)(a) in respect of the acquisition of the property by the taxpayer if that paragraph were read without reference to "10% of", and

(c) in any other case, nil,

D.1 and its description added to in the definition "cumulative Canadian oil and gas property expense" in subsec. 66.4(5) by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 41(3) and (3.1), applicable to taxation years beginning after February 17, 1987.

Pre-RSC History: *The definition "cumulative Canadian oil and gas property expense" was para. 66.4(5)(b). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(b) "cumulative Canadian oil and gas property expense" of a taxpayer at any time in a taxation year means the amount, if any, by which the aggregate of

(i) the aggregate of all Canadian oil and gas property expenses made or incurred by him before that time,

(ii) the aggregate of all amounts determined under subsection (1) in respect of the taxpayer for taxation years ending before that time,

(iii) any amount referred to in subparagraph (v) or (vi) that is established by him to have become a bad debt before that time, and

(iii.1) such part, if any, of the amount included in subparagraph (viii) as has been repaid before that time by the taxpayer pursuant to a legal obligation to repay all or any part of that amount

exceeds the aggregate of all amounts each of which is

(iv) an amount deducted in computing his income for a taxation year ending before that time in respect of his cumulative Canadian oil and gas property expense,

(v) the aggregate of all amounts each of which is an amount in respect of a property described in subparagraph 66(15)(c)(i), (iii) or (iv) or a right to or interest in such property, other than such a right or interest that he has by reason of being a beneficiary of a trust, (in this subparagraph referred to as "the particular property") disposed of by the taxpayer before that time equal to the amount, if any, by which

(A) the amount, if any, by which the proceeds of disposition in respect of the particular property that became receivable by him before that time exceeds any outlays or expenses made or incurred by him before that time for the purpose of making the disposition and that were not otherwise deductible for the purposes of this Part

exceeds the amount equal to

(B) where the proceeds of disposition referred to in clause (A) may reasonably be attributed to the disposition of a property that was acquired by the taxpayer in circumstances in which subsection 66.7(5) applies to the taxpayer as successor, the lesser of

(I) the amount determined under clause (A) in respect of the property, and

(II) the aggregate of all amounts each of which is an amount that would be determined at that time under paragraph 66.7(5)(a) in respect of the acquisition of the property by the taxpayer if that paragraph were read without reference to "10% of", and

(C) in any other case, nil,

(vi) an amount that became receivable by him before that time that is to be included in the amount determined under this subparagraph by virtue of paragraph 66(12.5)(a),

(vii) an amount received before that time on account of any amount referred to in subparagraph (iii),

(viii) any assistance that he has received or is entitled to receive in respect of any Canadian oil and gas property expense incurred after 1980 or that can reasonably be related to any such expense after 1980, or

(ix) any amount that is required to be deducted before that time under paragraph 66.7(12)(d) in computing his cumulative Canadian oil and gas property expense;

Subpara. 66.4(5)(b)(iii.1) added by 1990, c. 45, s. 44, applicable with respect to amounts repaid after January 1990.

All that portion of subpara. 66.4(5)(b)(v) following cl. (A) substituted and subpara. 66.4(5)(b)(ix) added, by 1987, c. 46, subsecs. 21(3), (4), applicable to taxation years ending after February 17, 1987. That portion of subpara. (v) formerly read:

exceeds

(B) the amount equal to,

(I) where there has been an acquisition of property by the taxpayer from a predecessor (within the meaning of subsection (3)) or from a first successor corporation (within the meaning of subsection (4)) and the particular property is all or part of the property that was so acquired, the amount, if any, by which the amount determined (immediately before the particular time at which the amount receivable by the taxpayer for the particular property so became receivable by him) under subparagraph (3)(a)(i) in respect of the acquisition, or under subparagraph (4)(a)(i) in respect of the earlier acquisition by the first successor corporation from its predecessor, as the case may be, exceeds the aggregate of such amounts that became receivable by the taxpayer before the particular time and that are described in subparagraph (3)(a)(ii) or (4)(a)(ii), as the case may be, as may reasonably be attributed to the disposition by the taxpayer of property owned by the predecessor or the first successor corporation, as the case may be, and

(II) in any other case, nil,

Subpara. 66.4(5)(b)(viii) substituted by 1986, c. 55, subsec. 15(4). Subpara. 66.4(5)(b)(viii) formerly read:

(viii) any amount of assistance or benefit that he has received or is entitled to receive from a government, municipality or other public authority in respect of any Canadian oil and gas property expense made or incurred after December 31, 1980 or that can reasonably be related to any such expense after that date, whether such amount is by way of a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit; and

All that portion of subpara. 66.4(5)(b)(v) preceding cl. (B) substituted by 1985, c. 45, subsec. 31(7), applicable with respect to dispositions occurring in taxation years commencing after 1984, but for dispositions occurring in taxation years commencing before 1985 subparagraph 66.4(5)(b)(v) shall apply and be read as it was at the time the disposition occurred having regard to any subsequent amendments thereto that applied at that time. That portion of subpara. 66.4(5)(b)(v) formerly read:

(v) the aggregate of all amounts each of which is an amount in respect of a property (referred to herein as "the particular property") disposed of by the taxpayer equal to the amount, if any, by which

(A) the amount, in respect of the disposition of the particular property, that became receivable by him before that time that is required to be included in the amount determined under this clause by virtue of subsection 59(1.2),

exceeds

Selected Cases: *Bow River Pipe Lines Ltd. v. R.*, [1998] 3 C.T.C. 2394 (TCC) (CCOGPE was nil where taxpayer never a partner of limited partnership).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"disposition" and **"proceeds of disposition"** have the meanings assigned by section 54.

Proposed Amendment — 66.4(5)"disposition" and "proceeds of disposition"

"proceeds of disposition" has the meaning assigned by section 54.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 29, will amend the definitions "disposition" and "proceeds of disposition" in subsec. 66.4(5) to read as above, applicable to transactions and events that occur after December 23, 1998.

Technical Notes: See under 59(5).

Pre-RSC History: *The definitions "disposition" and "proceeds of disposition" were para. 66.4(5)(c).*

Para. 66.4(5)(c) added by 1985, c. 45, subsec. 31(8), applicable with respect to dispositions occurring in taxation years commencing after 1984.

(5.1) Application of subsecs. 66(15) and 66.1(6) — The definitions in subsections 66(15) and 66.1(6) apply to this section.

Origin of subsec. 66.4(5.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 66(15) and 66.1(6)).

(6) Share of partner — Except as provided in subsection (7), where a taxpayer is a member of a partnership, the taxpayer's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition, whichever is applicable, in respect of the taxpayer for the taxation year of the taxpayer in which the partnership's taxation year ends.

History: Subsec. 66.4(6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(4), to add reference to the description of D (twice), applicable after January 1990.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-353R2: Partnership interests — some adjustments to cost base.

I.T. Technical News: No. 12 (adjusted cost base of partnership interest — subparagraph 53(1)(e)(viii)).

(7) Exception — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of any Canadian resource property, the person's share of any amount that would be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection (5), in paragraph (a) of the description of F in that definition or in the description of G or I in that definition, whichever is applicable, in respect of the person for the taxation year of the person that is deemed under paragraph 115(4)(a) to have ended.

History: Subsec. 66.4(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 41(4), applicable to taxation years of partnerships beginning after 1984. Subsec. 66.4(7) formerly read:

> (7) Idem — Where a non-resident person is a member of a partnership that is deemed under paragraph 115(4)(b) to have disposed of a property described in any of paragraphs 59(1.2)(a), (2)(c) and (d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the non-resident's share of any amount that would be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection (5) or in the description of G or I in that definition in respect of the partnership for a taxation year of the partnership if section 96 were read without reference to paragraph 96(1)(d) shall, for the purposes of this Act, be deemed to be an amount referred to in paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection (5) or in the description of G or I in that definition, as the case may be, in respect of the non-resident person for the taxation year of the non-resident person that is deemed under paragraph 115(4)(a) to have ended.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

Related Provisions [s. 66.4]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 87(1.2) — New corporation deemed continuation of predecessor; 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

Pre-RSC History [s. 66.4]: S. 66.4 amended by 1984, c. 1, subsec. 30(3), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983, to substitute "predecessor" and "predecessor's" for "predecessor corporation" and "predecessor corporation's", wherever those expressions appeared.

S. 66.4 added by 1980-81-82-83, c. 48, s. 37, applicable to taxation years ending after December 11, 1979 except that, in its application to a taxation year that includes December 11, 1979, subpara. 66.4(2)(a)(ii) shall be read as follows:

> "(ii) the amount, if any, by which the aggregate of all amounts each of which is
>
> (A) an amount included in his income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share, any interest therein or right thereto acquired by the taxpayer under circumstances described in subparagraph (5)(a)(iii),
>
> (B) an amount included by virtue of paragraph 12(1)(e) in computing his income for the year to the extent that it relates to inventory described in clause (A), or
>
> (B.1) an amount included by virtue of paragraph 59(3.2)(c) in his income for the year,
>
> exceeds the aggregate of all amounts each of which is
>
> (C) an amount deducted as a reserve by virtue of paragraph 20(1)(n) in computing his income for the year to the extent that the reserve relates to inventory described in clause (A), or
>
> (D) an amount deducted under subsection 64(1) in respect of property described in paragraph 59(1.2)(b) or under subsection 64(1.1) or (1.2) in computing his income for the year to the extent that the reserve relates to property disposed of in the year, and".

Selected Cases [s. 66.4]: *Bow River Pipe Lines Ltd. v. R.*, [1997] 3 C.T.C. 397 (FCA) (Entitlement of non-partners to claim COGPE established).

Definitions [s. 66.4]: "amount" — 248(1); "assistance" — 66(15), 66.4(5.1), 79(4), 125.4(5), 248(16), 248(18); "Canada" — 255, *Interpretation Act* 8(2.1), (2.2); "Canadian exploration expense" — 66.1(6), 66.4(5.1), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 66.4(5.1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54, 66.4(5); "expense" — 66(15), 66.4(5.1); "fiscal period" — 249.1; "inventory", "mineral", "non-resident", "oil or gas well", "prescribed" — 248(1); "proceeds of disposition" — 54, 66.4(5); "property", "share" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

66.5 (1) Deduction from income — In computing its income for a taxation year that ends before 1995, a corporation that has not made a designation for the year under subsection 66(14.1) or (14.2) may deduct such amount as it may claim not exceeding its cumulative offset account at the end of the year.

Related Provisions: 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner; 196 — Tax on deduction under s. 66.5.

Forms: T2099: Part IX tax return in respect of amounts deducted under subsection 66.5(1).

(2) Definition of "cumulative offset account" — In this section, "cumulative offset account" of a corporation at any time means the amount, if any, by which

> (a) the total of all amounts required to be added under subsections 66(14.1) and (14.2) in computing its cumulative offset account before that time,

exceeds

> (b) the total of all amounts deducted under subsection (1) in computing its income for taxation years ending before that time.

Related Provisions: 87(2)(pp) — Amalgamation — cumulative offset account computation.

(3) Change of control — Where at any time after June 5, 1987 control of a corporation has been acquired by a person or group of persons, the amount deductible under subsection (1) by the corporation in computing its income for a taxation year ending after that time shall not exceed the amount, if any, by which

> (a) the part of its income for the year that may reasonably be regarded as attributable to production from Canadian resource properties owned by it immediately before that time

exceeds

> (b) the total of all amounts deducted under subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1), (3), (4) and (5) by it in respect of its income for the year in computing its income for the year.

Related Provisions [subsec. 66.5(3)]: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired.

Pre-RSC History: Subsec. 66.5(3) added by 1987, c. 46, s. 22, applicable to taxation years ending after June 5, 1987.

Subsec. 66.5(1) substituted by 1986, c. 58, s. 9. Subsec. 66.5(1) formerly read:

> 66.5 (1) Deduction from income — A corporation that has not made a designation for a taxation year pursuant to subsection 66(14.1) or (14.2) may deduct in computing its income for the year such amount as it may claim not exceeding its cumulative offset account at the end of the year.

S. 66.5 added by 1986, c. 2, s. 19, applicable to 1985 *et seq.*

Definitions [s. 66.5]: "acquired" — 256(7)–(9); "amount" — 248(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative offset account" — 66.5(2); "person" — 248(1); "taxation year" — 249.

66.6 Acquisition from tax-exempt [person] — Where a corporation acquires, by purchase, amalgamation, merger, winding-up or otherwise, all or substantially all of the Canadian resource properties or foreign resource properties of a person whose taxable income is exempt from tax under this Part, subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1) to (5) do not apply to the corporation in respect of the acquisition of the properties.

Related Provisions: 66.7 — Successor rules; 66.8(1) — Resource expenses of limited partner.

History: S. 66.6 amended by 1998, c. 19, s. 105, applicable to acquisitions that occur after April 26, 1995, other than an acquisition that occurs before 1996 and that was required by an agreement in writing entered into before April 27, 1995. The section formerly read:

> 66.6 (1) Where subsec. 29(25) of ITAR and subsecs. 66.7(1), (2), etc. do not apply — Where a particular corporation has at any time after July 19, 1985 acquired by purchase, amalgamation, merger, winding-up or otherwise, from another person who is exempt from tax under this Part on that person's taxable income (other than a corporation that is referred to in paragraph 149(1)(d) and that is a principal-business corporation within the meaning assigned by subsection 66(15)) all or substantially all of the person's Canadian resource properties, subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1), (2), (3) and (4) do not apply to the particular corporation in respect of the acquisition of the properties except to the extent that the properties were acquired by it before 1987 pursuant to an agreement in writing made by it before July 20, 1985.
>
> (2) Where subsec. 66.7(5) does not apply — Where a particular corporation has at any time after July 19, 1985 acquired by purchase, amalgamation, merger, winding-up or otherwise, from another person who is exempt from tax under this Part on that person's taxable income all or substantially all of the person's Canadian resource properties, subsection 66.7(5) does not apply to the particular corporation in respect of the acquisition of the properties except to the extent that the properties were acquired by it before 1987 pursuant to an agreement in writing made by it before July 20, 1985.

Pre-RSC History: S. 66.6 amended by 1987, c. 46, s. 22.1, to substitute "subsections 66.7(1), (2)" for "subsecs. 66(6), (7)" in the heading to subsec. (1), "the meaning assigned by paragraph 66(15)(h)" for "the meaning of paragraph 66(15)(h)", "subsection 29(25) of the *Income Tax Application Rules, 1971* and subsections 66.7(1), (2), (3) and (4)" for "subsections 66(6) and (7), 66.1(4) and (5) and 66.2(3) and (4)"; "subsection 66.7(5)" for "subsecs. 66.4(3) and (4)" in the heading to subsec. (2), and "subsection 66.7(5) does not" for "subsections 66.4(3) and (4) do not", applicable to taxation years ending after February 17, 1987.

S. 66.6 added by 1986, c. 55, s. 16, applicable to taxation years ending after July 19, 1985.

Definitions [s. 66.6]: "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "person", "property" — 248(1); "taxable income" — 2(2), 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-126R2: Meaning of "winding-up".

66.7 (1) Successor of Canadian exploration and development expenses — Subject to subsections (6) and (7), where after 1971 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the Canadian exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were not otherwise deducted in computing the income of the successor for the year, were not deducted in computing the income of the successor for a preceding taxation year and were not deductible under subsection 66(1) or deducted under subsection 66(2) or (3) by the original owner, or deducted by any predecessor owner of the particular property, in computing income for any taxation year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to the particular property to the extent that the proceeds of the disposition have not been included in determining an amount under clause 29(25)(d)(i)(A) of the *Income Tax Application Rules*, this clause, clause (3)(b)(i)(A) or paragraph (10)(g) for a preceding taxation year,

(B) its reserve amount for the year in respect of the original owner and each predecessor owner, if any, of the particular property, or

(C) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (3), (4) and (5) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66(1) — Exploration and development expenses; 66.6(1) — Application; 66.7(6), (7) — Application rules; 66.7(10) — Change of control; 66.7(11) — Change of control — anti-avoidance rule; 66.7(12) — Reduction of Canadian resource expenses; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions. See additional Related Provisions and Definitions at end of s. 66.7.

History: Subpara. 66.7(1)(b)(iii) amended by 1998, c. 19, subsec. 106(1), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

> (iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

The portion of para. 66.7(1)(b) after subpara. (i) amended by 1995, c. 21, subsec. 25(1), applicable to taxation years that end after February 21, 1994. That portion formerly read:

> exceeds
>
> (ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (3), (4) and (5) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Para. 66.7(1)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(1), applicable to taxation years ending after February 17, 1987. Para. 66.7(1)(a) formerly read:

> (a) the Canadian exploration and development expenses incurred by the original owner before that owner disposed of the particular property to the extent that those expenses were not deducted by the successor in computing its income for a preceding taxation year and were not deductible under subsection 66(1), or deducted under subsection 66(2) or (3), by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(2) Successor of foreign exploration and development expenses — Subject to subsections (6) and (8), where after 1971 a corporation (in this subsection referred to as the "successor") acquired a particular foreign resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the amount, if any, by which

(i) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were not otherwise deducted in computing the successor's income for the year, were not deducted in computing the successor's income for a preceding taxation year and were not deductible by the original owner, or deducted by any predecessor owner of the particular property, in computing income for any taxation year

Proposed Amendment — 66.7(2)(a)(i)

(i) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were incurred when the original owner was resident in Canada, were not otherwise deducted in computing the successor's income for the year, were not deducted in computing the successor's income for a preceding taxation year and were not deductible by the original owner, nor deducted by any predecessor owner of the particular property, in computing income for any taxation year

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 30(1), will amend subpara. 66.7(2)(a)(i) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 66.7 of the Act includes what are commonly known as the "successor rules" with respect to resource properties and expenditures.

Subsection 66.7(2) allows a corporation to claim deductions with respect to foreign exploration and development expenses (FEDE) incurred by one or more original owners, where property has been acquired in circumstances to which the successor rules apply.

Subparagraph 66.7(2)(a)(i) is amended so that the successor FEDE that may be deducted by a successor corporation in respect of an original owner's FEDE is limited to FEDE incurred while the original owner was resident in Canada. This change is parallel to the amendment, described above, to subparagraph 66(4)(a)(i).

This amendment applies to the 1999 and subsequent taxation years.

exceeds

(ii) the total of all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which the total of

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) the amount included under subsection 59(1) in computing its income for the year that can reasonably be regarded as attributable to the disposition by it of any interest in or right to the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under sections 65 to 66.5 and this section, and

(ii) the lesser of

(A) the total of all amounts each of which is the amount designated by the successor for the year in respect of a Canadian resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property, not exceeding the amount included in the successor's income for the year, computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, that can reasonably be regarded as being attributable to the production after 1988 from the Canadian resource property, and

(B) the amount, if any, by which 10% of the amount described in paragraph (a) for the year in respect of the original owner exceeds the total of all amounts each of which would, but for this subparagraph, clause (iii)(B) and subparagraph (10)(h)(vi), be determined under this paragraph for the year in respect of the particular property or other foreign resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property

exceeds the total of

(iii) all other amounts deducted under this subsection for the year that can reasonably be regarded as attributable to

(A) the part of its income for the year described in subparagraph (i) in respect of the particular property, or

(B) a part of its income for the year described in clause (ii)(A) in respect of which an amount is designated by the successor under clause (ii)(A), and

(iv) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i),

and income in respect of which an amount is designated under clause (b)(ii)(A) shall, for the purposes of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules*, clauses (1)(b)(i)(C), (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) and subparagraph (10)(g)(iii), be deemed not to be attributable to production from a Canadian resource property.

Proposed Amendment — 30 per cent FEDE balance deduction limit

Notice of Ways and Means Motion, federal budget, February 28, 2000: (40) That, for taxation years that begin after 2000, the successor rules in section 66.7 of the Act reflect the 30 per cent FEDE balance deduction limit.

Federal budget, supplementary information, February 28, 2000: [See under 66(4) — ed.]

Related Provisions: 66(4) — Foreign exploration and development expenses; 66.6(1) — Application; 66.7(6), (8) — Application rules; 66.7(10) — Change of control; 66.7(11) — Change of control — anti-avoidance rule; 66.7(13) — Reduction of foreign resource expenses;

66.7(15) — Disposal of foreign resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See additional Related Provisions and Definitions at end of s. 66.7.

History: Subpara. 66.7(2)(b)(iv) amended by 1998, c. 19, subsec. 106(2), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

> (iv) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i),

Para. 66.7(2)(a) and the portion of para. 66.7(2)(b) after subpara. (ii) amended by 1995, c. 21, subsecs. 25(2) and (3), applicable to taxation years that end after February 21, 1994. Para. 66.7(2)(a) and that portion of para. 66.7(2)(b) formerly read:

> (a) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were not otherwise deducted in computing the income of the successor for the year, were not deducted in computing the income of the successor for a preceding taxation year and were not deductible by the original owner, or deducted by any predecessor owner of the particular property, in computing income for any taxation year, and
>
> exceeds
>
> (iii) the total of all other amounts deducted under this subsection for the year that can reasonably be regarded as attributable to
>
> (A) the part of its income for the year described in subparagraph (i) in respect of the particular property, or
>
> (B) a part of its income for the year described in clause (ii)(A) in respect of which an amount is designated by the successor under clause (ii)(A),

Cl. 66.7(2)(b)(ii)(B) substituted by 1994, c. 21, subsec. 31(1), applicable to taxation years ending after February 17, 1987. That cl. formerly read:

> (B) the amount, if any, by which 10% of the amount described in paragraph (a) for the year in respect of the original owner exceeds the total of all amounts each of which would, but for this subparagraph, clause (iii)(B) and subparagraph (10)(h)(iv), be determined under this paragraph for the year in respect of the particular property or other foreign resource property owned by the original owner immediately before being acquired with the particular property by the successor or a predecessor owner of the particular property

Paras. 66.7(2)(a), (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(2), applicable to taxation years ending after February 17, 1987, except that, where subsec. 66.7(2) applies to the successor referred to therein by reason of the application of subsec. 66.7(10), cl. (b)(ii)(A) shall be read without reference to the expression "after 1988". Paras. 66.7(2)(a), (b) formerly read:

> (a) the foreign exploration and development expenses incurred by the original owner before that owner disposed of the particular property to the extent that those expenses were not deducted by the successor in computing its income for a preceding taxation year and were not deductible by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and
>
> (b) the amount, if any, by which
>
> (i) the part of the successor's income for the year that may reasonably be regarded as attributable to
>
> (A) the amount included in computing its income for the year under subsection 59(1) that may reasonably be regarded as attributable to the disposition by it of any interest in or right to the particular property, or
>
> (B) production from the particular property,
>
> computed as if no deduction were allowed under this section or any of sections 65 to 66.5,
>
> exceeds
>
> (ii) the total of all other amounts deducted under this subsection for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(3) Successor of Canadian exploration expense — Subject to subsections (6) and (7), where after May 6, 1974 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the amount, if any, by which

(i) the total of

(A) the cumulative Canadian exploration expense of the original owner determined immediately after the disposition of the particular property by the original owner, and

(B) all amounts required to be added under paragraph (9)(f) to the cumulative Canadian exploration expense of the original owner in respect of a predecessor owner of the particular property, or the successor, as the case may be, at any time after the disposition of the particular property by the original owner and before the end of the year,

to the extent that an amount in respect of that total was not

(C) deducted or required to be deducted under subsection 66.1(2) or (3) by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year,

(D) otherwise deducted in computing the successor's income for the year,

(E) deducted in computing the successor's income for a preceding taxation year, or

(F) designated by the original owner pursuant to subsection 66(14.1) for any taxation year,

exceeds

(ii) the total of all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as being attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to the particular property to the extent that the proceeds have not been included in determining an amount under clause 29(25)(d)(i)(A) of the *Income Tax Application Rules*, this clause, clause (1)(b)(i)(A) or paragraph (10)(g) for a preceding taxation year,

(B) its reserve amount for the year in respect of the original owner and each predecessor owner, if any, of the particular property, or

(C) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (4) and (5) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66.6(1) — Application; 66.7(6), (7), (9) — Application rules; 66.7(10), (11) — Change of control; 66.7(12) — Reduction of Canadian resource expenses; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See additional Related Provisions and Definitions at end of s. 66.7.

History: Subpara. 66.7(3)(b)(iii) amended by 1998, c. 19, subsec. 106(3), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

Para. 66.7(3)(a) and the portion of para. 66.7(3)(b) after subpara. (i) amended by 1995, c. 21, subsecs. 25(4) and (5), applicable to taxation years that end after February 21, 1994. Para. 66.7(3)(a) and that portion of para. 66.7(3)(b) formerly read:

(a) the total of

(i) the cumulative Canadian exploration expense of the original owner determined immediately after the disposition of the particular property by the original owner, and

(ii) all amounts required to be added under paragraph (9)(f) to the cumulative Canadian exploration expense of the original owner in respect of a predecessor owner of the particular property, or the successor, as the case may be, at any time after the disposition of the particular property by the original owner and before the end of the year,

to the extent that an amount in respect of that total was not

(iii) deducted or required to be deducted under subsection 66.1(2) or (3) by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year,

(iii.1) otherwise deducted in computing the income of the successor for the year,

(iv) deducted by the successor in computing income for a preceding taxation year, or

(v) designated by the original owner pursuant to subsection 66(14.1) for any taxation year, and

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (4) and (5) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Subpara. 66.7(3)(a)(iii) amended by 1994, c. 8, subsec. 8(1), applicable to taxation years ending after December 2, 1992. Subpara. (iii) formerly read:

(iii) deductible under subsection 66.1(2) or deducted under subsection 66.1(3) by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year,

Subpara. 66.7(3)(a)(iii.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(3), applicable to taxation years ending after February 17, 1987.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(4) Successor of Canadian development expense — Subject to subsections (6) and (7), where after May 6, 1974 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) 30% of the amount, if any, by which

(i) the amount, if any, by which

(A) the cumulative Canadian development expense of the original owner determined immediately after the disposition of the particular property by the original owner to the extent that it has not been

(I) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(I.1) otherwise deducted in computing the income of the successor for the year,

(II) deducted by the successor in computing its income for any preceding taxation year, or

(III) designated by the original owner pursuant to subsection 66(14.2) for any taxation year,

exceeds

(B) any amount required to be deducted under paragraph (9)(e) from the cumulative Canadian development expense of the original owner in respect of a predecessor owner of the particular property or the successor, as the case may be, at any time after the disposition of the particular property by the original owner and before the end of the year,

exceeds the total of

(ii) all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph in respect of another original owner of a relevant mining property who is not a predecessor owner of a relevant mining property or who became a predecessor owner of a relevant mining property before the original owner became a predecessor owner of a relevant mining property) that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) at the end of the year, and

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant mining property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property,

(iii) all amounts each of which is an amount (other than any portion thereof that can reasonably be

considered to result in a reduction of the amount otherwise determined under paragraph (5)(a) in respect of the original owner or under this paragraph or paragraph (5)(a) in respect of another original owner of a relevant oil and gas property who is not a predecessor owner of a relevant oil and gas property or who became a predecessor owner of a relevant oil and gas property before the original owner became a predecessor owner of a relevant oil and gas property) that became receivable by a predecessor owner of the particular property or the successor after 1992 and in the year or a preceding taxation year and that

(A) is designated in respect of the original owner by the predecessor owner or the successor, as the case may be, in prescribed form filed with the Minister within 6 months after the end of the taxation year in which the amount became receivable,

(B) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) at the end of the year, and

(C) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant oil and gas property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and

(iv) all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, except that, where the successor acquired the particular property from the original owner at any time in the year (otherwise than by way of an amalgamation or merger or solely because of the application of paragraph (10)(c)) and did not deal with the original owner at arm's length at that time, the amount determined under this subparagraph shall be deemed to be nil,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (5) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66(13.1) — Short taxation year; 66.6(1) — Application; 66.7(6), (7), (9) — Application rules; 66.7(10) — Change of control; 66.7(11) — Change of control — anti-avoidance rule; 66.7(12) — Reduction of Canadian resource expenses; 66.7(12.1) — Canadian resource properties — Specified amount; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See additional Related Provisions and Definitions at end of s. 66.7.

History: Subpara. 66.7(4)(b)(iii) amended by 1998, c. 19, subsec. 106(4), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

Subpara. 66.7(4)(a)(iv) added and the portion of para. 66.7(4)(b) after subpara. (i) amended by 1995, c. 21, subsecs. 25(6) and (7), applicable to taxation years that end after February 21, 1994. That portion of para. 66.7(4)(b) after subpara. (i) formerly read:

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (5) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

All that portion of para. 66.7(4)(a) following subpara. (i) substituted by 1994, c. 21, subsec. 31(2), applicable to taxation years ending after February 17, 1987 except that, where a taxpayer files a form referred to in cl. 66.7(4)(a)(iii)(A) with the Minister of National Revenue before the end of the sixth month beginning after the end of the taxpayer's taxation year that includes June 15, 1994, the taxpayer shall be deemed to have filed the form in a timely manner. That portion of the para. formerly read:

exceeds

(ii) the total of all amounts each of which is an amount that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) at the end of the year, and

(B) may reasonably be regarded as attributable to the disposition of the particular property by the predecessor owner or the successor, and

Subcl. 66.7(4)(a)(i)(A)(I.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(4), applicable to taxation years ending after February 17, 1987.

Subpara. 66.7(4)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(5), applicable to dispositions occurring in taxation years beginning after December 16, 1991 and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and beginning before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs., would be entitled to deduct an amount under 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with Revenue Canada on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with Revenue Canada on or before the day that was 180 days

after the end of the taxpayer's taxation year that included December 17, 1991.

Subpara. 66.7(4)(b)(i) formerly read:

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(5) Successor of Canadian oil and gas property expense — Subject to subsections (6) and (7), where after December 11, 1979 a corporation (in this subsection referred to as the "successor") acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) 10% of the amount, if any, by which

(i) the cumulative Canadian oil and gas property expense of the original owner determined immediately after the disposition of the particular property by the original owner to the extent it has not been

(A) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(A.1) otherwise deducted in computing the income of the successor for the year, or

(B) deducted by the successor in computing its income for any preceding taxation year

exceeds the total of

(ii) the total of all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph or paragraph (4)(a) in respect of another original owner of a relevant oil and gas property who is not a predecessor owner of a relevant oil and gas property or who became a predecessor owner of a relevant oil and gas property before the original owner became a predecessor owner of a relevant oil and gas property) that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in computing an amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) at the end of the year, and

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant oil and gas property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and

(iii) the total of all amounts each of which is an amount by which the amount described in this paragraph is required because of subsection 80(8) to be reduced at or before the end of the year, and

(b) the amount, if any, by which

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5, except that, where the successor acquired the particular property from the original owner at any time in the year (otherwise than by way of an amalgamation or merger or solely because of the application of paragraph (10)(c)) and did not deal with the original owner at arm's length at that time, the amount determined under this subparagraph shall be deemed to be nil,

exceeds the total of

(ii) all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (4) for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property, and

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

Related Provisions: 66(13.1) — Short taxation year; 66.6(2) — Application; 66.7(6), (7) — Application rules; 66.7(10) — Change of control; 66.7(11) — Change of control — anti-avoidance rule; 66.7(12) — Reduction of Canadian resource expenses; 66.7(14) — Disposal of Canadian resource properties; 66.7(16) — Non-successor acquisitions; 66.7(17) — Restriction on deductions; 80(1)"successor pool" — Debt forgiveness; 80(8)(a) — Reduction of undeducted balances on debt forgiveness. See additional Related Provisions and Definitions at end of s. 66.7.

History: Subpara. 66.7(5)(b)(iii) amended by 1998, c. 19, subsec. 106(5), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(iii) all amounts added because of subsection 80(13) or (17) in computing the amount determined under subparagraph (i).

The portion of para. 66.7(5)(a) between subparas. (i) and (ii) amended to add the words "the total of" and subpara. 66.7(5)(a)(iii) added by 1995, c. 21, subsecs. 25(8) and (9), applicable to taxation years that end after February 21, 1994.

The portion of para. 66.7(5)(b) after subpara. (i) amended by 1995, c. 21, subsec. 25(10), applicable to taxation years that end after February 21, 1994. That portion formerly read:

exceeds

(ii) the total of all other amounts deducted under subsection 29(25) of the *Income Tax Application Rules*, this subsection and subsections (1), (3) and (4) for the year that may reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Subpara. 66.7(5)(a)(ii) substituted by 1994, c. 21, subsec. 31(3), applicable to taxation years ending after February 17, 1987. That subpara. formerly read:

(ii) the total of all amounts each of which is an amount that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that

(A) was included by the predecessor owner or the successor in the amount determined under paragraph (a) of the description of

F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) at the end of the year, and

(B) may reasonably be regarded as attributable to the disposition of the particular property by the predecessor owner or the successor, and

Cl. 66.7(5)(a)(i)(A.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(6), applicable to taxation years ending after February 17, 1987.

Subpara. 66.7(5)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(7), applicable to dispositions occurring in taxation years beginning after December 16, 1991 and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and beginning before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs., would be entitled to deduct an amount under subsec. 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under cl. 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Subpara. 66.7(5)(b)(i) formerly read:

(i) the part of the successor's income for the year that may reasonably be regarded as attributable to

(A) its reserve amount for the year in respect of the original owner and each predecessor owner of the particular property, or

(B) production from the particular property,

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or any of sections 65 to 66.5,

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(6) Where subsec. 29(25) of ITAR and subsecs. (1) to (5) do not apply — Subsection 29(25) of the *Income Tax Application Rules* and subsections (1) to (5) do not apply

(a) in respect of a Canadian resource property or a foreign resource property acquired by way of an amalgamation to which subsection 87(1.2) applies or a winding-up to which subsection 88(1.5) applies; or

(b) to permit, in respect of the acquisition by a corporation before February 18, 1987 of a Canadian resource property or a foreign resource property, a deduction by the corporation of an amount that the corporation would not have been entitled to deduct under section 29 of the *Income Tax Application Rules* or section 66, 66.1, 66.2 or 66.4 if those sections, as they read in their application to taxation years ending before February 18, 1987, applied to taxation years ending after February 17, 1987.

Related Provisions: See Related Provisions and Definitions at end of s. 66.7.

(7) Application of subsec. 29(25) of ITAR and subsecs. (1), (3), (4) and (5) — Subsection 29(25) of the *Income Tax Application Rules* and subsections (1), (3), (4) and (5) apply only to a corporation that has acquired a particular Canadian resource property

(a) where it acquired the particular property in a taxation year commencing before 1985 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the property used by the person from whom it acquired the particular property in carrying on in Canada such of the businesses described in paragraphs (a) to (g) of the definition "principal-business corporation" in subsection 66(15) as were carried on by the person;

(b) where it acquired the particular property in a taxation year commencing after 1984 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the Canadian resource properties of the person from whom it acquired the particular property;

(c) where it acquired the particular property after June 5, 1987 by way of an amalgamation or winding-up and it has filed an election in prescribed form with the Minister on or before the day on or before which the corporation is required to file a return of income pursuant to section 150 for its taxation year in which it acquired the particular property;

(d) where it acquired the particular property after November 16, 1978 and in a taxation year ending before February 18, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property, have filed with the Minister a joint election under and in accordance with any of subsection 29(25) of the *Income Tax Application Rules*, subsection 29(29) of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, and subsections 66(6) and (7), 66.1(4) and (5), 66.2(3) and (4) and 66.4(3) and (4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as all of those subsections read in their application to that year; and

(e) where it acquired the particular property in a taxation year ending after February 17, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property have filed a joint election in prescribed form with the Minister on or before the earlier of the days on or before which either of them is required to file a return of income pursuant to section 150 for its or the person's taxation year in which the corporation acquired the particular property.

Related Provisions: 220(3.2), Reg. 600(c) — Late filing of election or revocation under 66.7(7)(c), (d) or (e). See additional Related Provisions and Definitions at end of s. 66.7.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952"; meaning of "*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72").

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(8) Application of subsec. (2) — Subsection (2) applies only to a corporation that has acquired a particular foreign resource property

(a) where it acquired the particular property in a taxation year commencing before 1985 and, at the time it acquired the particular property, the corporation ac-

quired all or substantially all of the property used by the person from whom it acquired the particular property in carrying on outside Canada such of the businesses described in paragraphs (a) to (g) of the definition "principal-business corporation" in subsection 66(15) as were carried on by that person;

(b) where it acquired the particular property in a taxation year commencing after 1984 and, at the time it acquired the particular property, the corporation acquired all or substantially all of the foreign resource properties of the person from whom it acquired the particular property;

(c) where it acquired the particular property after June 5, 1987 by way of an amalgamation or winding-up and it has filed an election in prescribed form with the Minister on or before the day on or before which the corporation is required to file a return of income pursuant to section 150 for its taxation year in which it acquired the particular property;

(d) where it acquired the particular property after November 16, 1978 and in a taxation year ending before February 18, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property, have filed with the Minister a joint election under and in accordance with subsection 66(6) or (7) (as modified by subsections 66(8) and (9), respectively) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as those subsections read in their application to that year; and

(e) where it acquired the particular property in a taxation year ending after February 17, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property have filed a joint election in prescribed form with the Minister on or before the earlier of the days on or before which either of them is required to file a return of income pursuant to section 150 for its or the person's taxation year in which the corporation acquired the particular property.

Related Provisions: 220(3.2), Reg. 600(c) — Late filing of election or revocation under 66.7(8)(c), (d) or (e). See additional Related Provisions and Definitions at end of s. 66.7.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(9) Canadian development expense becoming Canadian exploration expense — Where

(a) a corporation acquires a Canadian resource property,

(b) subsection (4) applies in respect of the acquisition, and

(c) the cumulative Canadian development expense of an original owner of the property determined under clause (4)(a)(i)(A) in respect of the corporation includes a Canadian development expense incurred by the original owner in respect of an oil or gas well that would, but for this subsection, be deemed by subsection 66.1(9) to be a Canadian exploration expense incurred in respect of the well by the original owner at any particular time after the acquisition by the corporation and before it disposed of the property,

the following rules apply:

(d) subsection 66.1(9) does not apply in respect of the Canadian development expense incurred in respect of the well by the original owner,

(e) an amount equal to the lesser of

(i) the amount that would be deemed by subsection 66.1(9) to be a Canadian exploration expense incurred in respect of the well by the original owner at the particular time if that subsection applied in respect of the expense, and

(ii) the cumulative Canadian development expense of the original owner as determined under clause (4)(a)(i)(A) in respect of the corporation immediately before the particular time

shall be deducted at the particular time from the cumulative Canadian development expense of the original owner in respect of the corporation for the purposes of subparagraph (4)(a)(i), and

(f) the amount required by paragraph (e) to be deducted shall be added at the particular time to the cumulative Canadian exploration expense of the original owner in respect of the corporation for the purpose of paragraph (3)(a).

Related Provisions: See Related Provisions and Definitions at end of s. 66.7.

History: Para. 66.7(9)(f) amended by 1995, c. 21, subsec. 25(11), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(f) the amount required to be deducted by paragraph (e) shall be added at the particular time to the cumulative Canadian exploration expense of the original owner in respect of the corporation for the purposes of subparagraph (3)(a)(ii).

(10) Change of control — Where at any time after November 12, 1981

(a) control of a corporation has been acquired by a person or group of persons, or

(b) a corporation ceased on or before April 26, 1995 to be exempt from tax under this Part on its taxable income,

for the purposes of the provisions of the *Income Tax Application Rules* and this Act (other than subsections 66(12.6), (12.601), (12.602), (12.62) and (12.71)) relating to deductions in respect of drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:

(c) the corporation shall be deemed after that time to be a successor (within the meaning assigned by subsection 29(25) of the *Income Tax Application Rules* or any of subsections (1) to (5)) that had, at that time, acquired all the properties owned by the corporation immediately before that time from an original owner thereof,

(c.1) where the corporation did not own a foreign resource property immediately before that time, the corporation is deemed to have owned a foreign resource property immediately before that time,

(d) a joint election shall be deemed to have been filed in accordance with subsections (7) and (8) in respect of the acquisition,

(e) the resource expenses incurred by the corporation before that time shall be deemed to have been incurred by an original owner of the properties and not by the corporation,

(f) [Repealed]

Proposed Addition — 66.7(10)(f)

(f) the original owner is deemed to have been resident in Canada before that time while the corporation was resident in Canada,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 30(2), will add para. 66.7(10)(f), applicable to 1999 *et seq.*

Technical Notes: Under subsection 66.7(10) of the Act, a corporation is treated as a successor for the purposes of the successor rules in section 66.7 after an acquisition of control of the corporation. Under paragraph 66.7(10)(e), resource expenses incurred by the corporation prior to the change of control are deemed to have been incurred by an original owner of resource properties owned at the time of the acquisition of control.

New paragraph 66.7(10)(f) ensures that the deemed original owner had the same status with regard to residence in Canada before the acquisition of control of a corporation as the corporation itself. This amendment is consequential to an amendment, described above, to subparagraph 66.7(2)(a)(i) affecting successor FEDE claims.

This amendment applies to the 1999 and subsequent taxation years.

(g) where the corporation (in this paragraph referred to as the "transferee") was, immediately before and at that time,

(i) a parent corporation (within the meaning assigned by subsection 87(1.4)), or

(ii) a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4))

of a particular corporation (in this paragraph referred to as the "transferor"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under this Part of the transferor for that year, the transferor may, if throughout that year the transferee was such a parent corporation or subsidiary wholly-owned corporation of the transferor, designate in favour of the transferee, in respect of that year, for the purpose of making a deduction under subsection 29(25) of the *Income Tax Application Rules* or this section in respect of resource expenses incurred by the transferee before that time and when it was such a parent corporation or subsidiary wholly-owned corporation of the transferor, an amount not exceeding such portion of the amount that would be its income for the year, if no deductions were allowed under any of section 29 of the *Income Tax Application Rules*, this section and sections 65 to 66.5, that may reasonably be regarded as being attributable to

(iii) the production from Canadian resource properties owned by the transferor immediately before that time, and

(iv) the disposition in the year of any Canadian resource properties owned by the transferor immediately before that time,

to the extent that such portion of the amount so designated is not designated under this paragraph in favour of any other taxpayer, and the amount so designated shall be deemed, for the purposes of determining the amount under paragraph 29(25)(d) of the *Income Tax Application Rules* and paragraphs (1)(b), (3)(b), (4)(b) and (5)(b),

(v) to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and

(vi) not to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferor for that year,

(h) where the corporation (in this paragraph referred to as the "transferee") was, immediately before and at that time,

(i) a parent corporation (within the meaning assigned by subsection 87(1.4)), or

(ii) a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4))

of a particular corporation (in this paragraph referred to as the "transferor"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under this Part of the transferor for that year, the transferor may, if throughout that year the transferee was such a parent corporation or subsidiary wholly-owned corporation of the transferor, designate in favour of the transferee, in respect of that year, for the purpose of making a deduction under this section in respect of resource expenses incurred by the transferee before that time and when it was such a parent corporation or subsidiary wholly-owned corporation of the transferor, an amount not exceeding such portion of the amount that would be its income for the year, if no deductions were allowed under this section and sections 65 to 66.5, that may reasonably be regarded as being attributable to

(iii) the production from foreign resource properties owned by the transferor immediately before that time, and

(iv) the disposition of any foreign resource properties owned by the transferor immediately before that time,

to the extent that such portion of the amount so designated is not designated under this paragraph in favour of any other taxpayer, and the amount so designated shall be deemed,

(v) for the purposes of determining the amounts under paragraph (2)(b), to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and

(vi) for the purposes of determining the amount under paragraph (2)(b), not to be income from the sources described in subparagraph (iii) or (iv), as the case may be, of the transferor for that year,

(i) where, immediately before and at that time, the corporation (in this paragraph referred to as the "transferee") and another corporation (in this paragraph referred to as the "transferor") were both subsidiary wholly-owned corporations (within the meaning assigned by subsection 87(1.4)) of a particular parent corporation (within the meaning assigned by subsection 87(1.4)), if the transferee and the transferor agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time

and notify the Minister in writing of the agreement in the return of income under this Part of the transferor for that year, paragraph (g) or (h), or both, as the agreement provides, shall apply for that year to the transferee and transferor as though one were the parent corporation (within the meaning of subsection 87(1.4)) of the other, and

(j) where that time is after January 15, 1987 and at that time the corporation was a member of a partnership that owned a Canadian resource property or a foreign resource property at that time

(i) for the purpose of paragraph (c), the corporation shall be deemed to have owned immediately before that time that portion of the property owned by the partnership at that time that is equal to its percentage share of the total of amounts that would be paid to all members of the partnership if it were wound up at that time, and

(ii) for the purposes of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules* and clauses (1)(b)(i)(C), (2)(b)(i)(B), (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) for a taxation year ending after that time, the lesser of

(A) its share of the part of the income of the partnership for the fiscal period of the partnership ending in the year that may reasonably be regarded as being attributable to the production from the property, and

(B) an amount that would be determined under clause (A) for the year if its share of the income of the partnership for the fiscal period of the partnership ending in the year were determined on the basis of the percentage share referred to in subparagraph (i),

shall be deemed to be income of the corporation for the year that may reasonably be attributable to production from the property.

Related Provisions: 66(11.3) — Control; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(10) — Ceasing to be exempt after April 26, 1995; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 66.7.

History: Para. 66.7(10)(b) amended and para. (c.1) added by 1998, c. 19, subsecs. 106(6) and (7), para. 66.7(10)(b) applicable after April 26, 1995 and para. (c.1) applicable to taxation years that end after February 17, 1987. Para. (b) formerly read:

(b) a corporation ceases to be exempt from tax under this Part on its taxable income,

That portion of subsec. 66.7(10) between paras. (b) and (c) amended by 1997, c. 25, s. 16, applicable to taxation years that begin after 1998. That portion formerly read:

for the purposes of the provisions of the *Income Tax Application Rules* and this Act (other than subsections 66(12.6), (12.601), (12.602), (12.62), (12.64) and (12.71)) relating to deductions with respect to drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:

That portion of subsec. 66.7(10) between paras. (b) and (c) amended by 1994, c. 8, subsec. 8(2), applicable to taxation years ending after December 2, 1992. That portion formerly read:

for the purposes of the provisions of the *Income Tax Application Rules*, and this Act, other than subsections 66(12.6), (12.62), (12.64) and (12.71), relating to deductions with respect to drilling and exploration expenses, prospecting, exploration and development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Canadian oil and gas property expenses (in this subsection referred to as "resource expenses") incurred by the corporation before that time, the following rules apply:

Para. 66.7(10)(f) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(8), applicable to taxation years ending after February 17, 1987. Para. (f) formerly read:

(f) where, pursuant to paragraph (e), foreign exploration and development expenses incurred by the corporation are deemed to have been incurred by an original owner of the properties, the corporation may designate in respect of a taxation year an amount not exceeding the lesser of

(i) the amount included in its income for the year, computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules*, this section or sections 65 to 66.5, that may reasonably be regarded as being attributable to the production from a Canadian resource property owned by it immediately before that time, and

(ii) the amount, if any, by which 10% of the amount described in paragraph (2)(a) for the year with respect to those expenses exceeds the amount that would be determined under paragraph (2)(b) for the year if this paragraph and subparagraph (h)(vi) did not apply,

as being an amount attributable to the production described in clause (2)(b)(i)(B), and the amount so designated shall, for the purpose of clause 29(25)(d)(i)(B) of the *Income Tax Application Rules*, clauses (1)(b)(i)(C), (3)(b)(i)(C), (4)(b)(i)(B), (5)(b)(i)(B) and subparagraph (g)(iii) be deemed not to be an amount attributable to production from a Canadian resource property in the year;

Subpara. 66.7(10)(h)(v) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(9), to substitute "paragraph (2)(b)" for "paragraph (2)(b) and subparagraph (f)(ii)", applicable to taxation years ending after February 17, 1987.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

Advance Tax Rulings: ATR-19: Earned depletion base and cumulative Canadian development expense.

(11) Idem — Where, at any time,

(a) control of a taxpayer that is a corporation has been acquired by a person or group of persons, or

(b) a taxpayer has disposed of all or substantially all of the taxpayer's Canadian resource properties or foreign resource properties,

and, before that time, the taxpayer or a partnership of which the taxpayer was a member acquired a property that is a Canadian resource property, a foreign resource property or an interest in a partnership and it may reasonably be considered that one of the main purposes of the acquisition was to avoid any limitation provided in subsection 29(25) of the *Income Tax Application Rules* or any of subsections (1) to (5) on the deduction in respect of any expenses incurred by the taxpayer or a corporation referred to as a transferee in paragraph (10)(g) or (h), the taxpayer or the partnership, as the case may be, shall be deemed, for the purposes of applying those subsections to or in respect of the taxpayer, not to have acquired the property.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 66.7.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

(12) Reduction of Canadian resource expenses — Where in a taxation year an original owner of Canadian resource properties disposes of all or substantially all of the original owner's Canadian resource properties to a particular corporation in circumstances in which subsec-

tion 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies,

(a) the Canadian exploration and development expenses incurred by the original owner before that owner so disposed of the properties shall, for the purposes of this subdivision, be deemed after the disposition not to have been incurred by the original owner except for the purposes of making a deduction under subsection 66(1) or (2) for the year and of determining the amount that may be deducted under subsection (1) by the particular corporation or by any other corporation that subsequently acquires any of the properties;

(b) in determining the cumulative Canadian exploration expense of the original owner at any time after the time referred to in subparagraph (3)(a)(i), there shall be deducted the amount thereof determined immediately after the disposition;

(b.1) for the purposes of paragraph (3)(a), the cumulative Canadian exploration expenses of the original owner determined immediately after the disposition that was deducted or required to be deducted under subsection 66.1(2) or (3) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (b) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(a) in respect of the original owner for the year

exceeds

(B) the total of all amounts each of which is an amount determined under this paragraph in respect of any disposition made by the original owner before the disposition and in the year;

(b.2) for greater certainty, any amount (other than the amount determined under paragraph (b.1)) that was deducted or required to be deducted under subsection 66.1(2) or (3) by the original owner for the year or a subsequent taxation year shall, for the purposes of paragraph (3)(a), be deemed not to be in respect of the cumulative Canadian exploration expense of the original owner determined immediately after the disposition;

(c) in determining the cumulative Canadian development expense of the original owner at any time after the time referred to in clause (4)(a)(i)(A), there shall be deducted the amount thereof determined immediately after the disposition;

(c.1) for the purpose of paragraph (4)(a), the cumulative Canadian development expense of the original owner determined immediately after the disposition that was deducted under subsection 66.2(2) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (c) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(b) in respect of the original owner for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of any dispositions made by the original owner before the disposition and in the year;

(c.2) for greater certainty, any amount (other than the amount determined under paragraph (c.1)) that was deducted under subsection 66.2(2) by the original owner for the year or a subsequent taxation year shall, for the purpose of paragraph (4)(a), be deemed not to be in respect of the cumulative Canadian development expense of the original owner determined immediately after the disposition;

(d) in determining the cumulative Canadian oil and gas property expense of the original owner at any time after the time referred to in subparagraph (5)(a)(i), there shall be deducted the amount thereof determined immediately after the disposition;

(d.1) for the purpose of paragraph (5)(a), the cumulative Canadian oil and gas property expense of the original owner determined immediately after the disposition that was deducted under subsection 66.4(2) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (d) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(c) in respect of the original owner for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of any dispositions made by the original owner before the disposition and in the year;

(d.2) for greater certainty, any amount (other than the amount determined under paragraph (d.1)) that was deducted under subsection 66.4(2) by the original owner for the year or a subsequent taxation year shall, for the purpose of paragraph (5)(a), be deemed not to be in respect of the cumulative Canadian oil and gas property expense of the original owner determined immediately after the disposition; and

(e) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the original owner before 1972 on or in respect of exploring or drilling for petroleum or natural gas in Canada and the prospecting, exploration and development expenses incurred by the original owner before 1972 in searching for minerals in Canada shall, for the purposes of section 29 of the *Income Tax Application Rules*, be deemed after the disposition not to have been incurred by the original owner except for the purposes of making a deduction under that section for the year and of determining the amount that may be deducted under subsection 29(25) of that Act by the particular corporation or any other corporation that subsequently acquires any of the properties.

Related Provisions: 66.1(6)"cumulative Canadian exploration expense"M — Reduction in CCEE; 66.2(5)"cumulative Canadian development expense"O — Reduction in CCDE; 66.4(5)"cumulative Canadian oil and gas property expense"J — Reduction in CCOGPE. See Related Provisions and Definitions at end of s. 66.7.

History: Paras. 66.7(12)(b.1) and (b.2) amended by 1994, c. 8, subsec. 8(3), applicable to taxation years ending after December 2, 1992. Paras. (b.1) and (b.2) formerly read:

(b.1) for the purpose of paragraph (3)(a), the cumulative Canadian exploration expense of the original owner determined immediately after the disposition that was deductible under subsection 66.1(2) or

deducted under subsection 66.1(3) in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted under paragraph (b) in respect of the disposition, and

(ii) the amount, if any, by which

(A) the specified amount determined under paragraph (12.1)(a) in respect of the original owner for the year

exceeds

(B) the total of all amounts determined under this paragraph in respect of any dispositions made by the original owner before the disposition and in the year;

(b.2) for greater certainty, any amount (other than the amount determined under paragraph (b.1)) that was deductible under subsection 66.1(2) or deducted under subsection 66.1(3) by the original owner for the year or a subsequent taxation year shall, for the purpose of paragraph (3)(a), be deemed not to be in respect of the cumulative Canadian exploration expense of the original owner determined immediately after the disposition;

That portion of subsec. 66.7(12) preceding para. (a) amended to substitute "in a taxation year" for "in a taxation year and after June 5, 1987", para. 66.7(12)(b) substituted, and paras. (b.1), (b.2), (c.1), (c.2), (d.1), (d.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 42(11) to (15), applicable with respect to dispositions occurring in taxation years commencing on or after December 17, 1991 to the amending legislation and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and commencing before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs., would be entitled to deduct an amount under subsec. 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under cl. 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Para. 66.7(12)(b) formerly read:

(b) in determining the cumulative Canadian exploration expense of the original owner at any time after the time referred to in subparagraph (3)(a)(i), there shall be deducted the amount, if any, by which the amount thereof determined immediately after the disposition exceeds the amount claimed by the original owner under subsection 66.1(2) or (3) for the year;

(12.1) Specified amount — Where in a taxation year an original owner of Canadian resource properties disposes of all or substantially all of the original owner's Canadian resource properties in circumstances in which subsection (3), (4) or (5) applies,

(a) the lesser of

(i) the total of all amounts each of which is the amount, if any, by which

(A) an amount deducted under paragraph (12)(b) in respect of a disposition in the year by the original owner

exceeds

(B) the amount, if any, designated by the original owner in prescribed form filed with the Minister within 6 months after the end of the year in respect of an amount determined under clause (A), and

(ii) the total of

(A) the amount claimed under subsection 66.1(2) or (3) by the original owner for the year, and

(B) the amount that would, but for paragraph 66.1(1)(c), be determined under subsection 66.1(1) in respect of the original owner for the year

is the specified amount in respect of the original owner for the year for the purposes of clause (12)(b.1)(ii)(A) and of determining the value of E.1 in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);

(b) the lesser of

(i) the total of all amounts each of which is the amount, if any, by which

(A) an amount deducted under paragraph (12)(c) in respect of a disposition in the year by the original owner

exceeds

(B) the amount, if any, designated by the original owner in prescribed form filed with the Minister within 6 months after the end of the year in respect of an amount determined under clause (A), and

(ii) the total of

(A) the amount claimed under subsection 66.2(2) by the original owner for the year, and

(B) the amount that would, but for paragraph 66.2(1)(d), be determined under subsection 66.2(1) in respect of the original owner for the year

is the specified amount in respect of the original owner for the year for the purposes of clause (12)(c.1)(ii)(A) and of determining the value of D.1 in the definition "cumulative Canadian development expense" in subsection 66.2(5); and

(c) the lesser of

(i) the total of all amounts each of which is the amount, if any, by which

(A) an amount deducted under paragraph (12)(d) in respect of a disposition in the year by the original owner

exceeds

(B) the amount, if any, designated by the original owner in prescribed form filed with the Minister within 6 months after the end of the year in respect of an amount determined under clause (A), and

(ii) the total of

(A) the amount claimed under subsection 66.4(2) by the original owner for the year, and

(B) the amount that would, but for paragraph 66.4(1)(c), be determined under subsection 66.4(1) in respect of the original owner for the year

is the specified amount in respect of the original owner for the year for the purposes of clause (12)(d.1)(ii)(A) and of determining the value of D.1 in

the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5).

Related Provisions: 66.1(1) — Amount to be included in income; 66.1(2)(b) — Deduction for principal-business corporation; 66.1(3)(b) — Expenses of other taxpayers; 66.1(6)"cumulative Canadian exploration expense"E.1 — addition to CCEE; 66.2(2)(a) — Deduction for CCDE; 66.2(5)"cumulative Canadian development expense"D.1 — Addition to CCDE; 66.4(1)(c) — Recovery of costs; 66.4(2)(a)(i) — Deduction for CCOGPE; 66.4(5)"cumulative Canadian oil and gas property expense"D.1 — addition to CCOGPE.

History: Subsec. 66.7(12.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 42(11) to (15), applicable to dispositions occurring in taxation years commencing on or after December 17, 1991 to the amending legislation and with respect to a disposition of a property made by a taxpayer in a taxation year ending after February 17, 1987 and commencing before December 17, 1991, where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes December 17, 1991, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for those subsecs. would be entitled to deduct an amount under subsec. 66.7(3), (4) or (5) in respect of an expense incurred by the taxpayer,

so elected by notice in writing filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991; and,

(c) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election, and

(d) where the taxpayer so elected in respect of a disposition, a designation under cl. 66.7(12.1)(a)(i)(B), (b)(i)(B) or (c)(i)(B) in respect of the disposition shall be deemed to have been filed as required if it was filed with the Minister of National Revenue on or before the day that was 180 days after the end of the taxpayer's taxation year that included December 17, 1991.

Forms: T1046: Designation of resource amount by an original owner.

(13) Reduction of foreign resource expenses — Where after June 5, 1987 an original owner of foreign resource properties disposes of all or substantially all of the original owner's foreign resource properties to a particular corporation in circumstances in which subsection (2) applies, the foreign exploration and development expenses incurred by the original owner before that owner so disposed of the properties shall be deemed after the disposition not to have been incurred by the original owner except for the purposes of determining the amounts that may be deducted under that subsection by the particular corporation or any other corporation that subsequently acquires any of the properties.

Related Provisions: See Related Provisions and Definitions at end of s. 66.7.

(14) Disposal of Canadian resource properties — Where in a taxation year a predecessor owner of Canadian resource properties disposes of Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies,

(a) for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any Canadian resource property owned by it immediately before the disposition, it shall be deemed, after the disposition, never to have acquired any such properties except for the purposes of

(i) determining an amount deductible under subsection (1) or (3) for the year,

(ii) where the predecessor owner and the corporation dealt with each other at arm's length at the time of the disposition or the disposition was by way of an amalgamation or merger, determining an amount deductible under subsection (4) or (5) for the year, and

(iii) determining the amount for F in the definition "cumulative Canadian development expense" in subsection 66.2(5), the amounts for paragraphs (a) and (b) in the description of L in that definition and the amount for F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5); and

(b) where the corporation or another corporation acquires any of the properties on or after the disposition in circumstances in which subsection (4) or (5) applies, amounts that become receivable by the predecessor owner after the disposition in respect of Canadian resource properties retained by it at the time of the disposition shall, for the purposes of applying subsection (4) or (5) to the corporation or the other corporation in respect of the acquisition, be deemed not to have become receivable by the predecessor owner.

Related Provisions: 66.6 — Canadian resource properties acquired from exempt person. See additional Related Provisions and Definitions at end of s. 66.7.

History: Subsec. 66.7(14) substituted by 1994, c. 21, subsec. 31(4), applicable to dispositions occurring in taxation years ending after February 17, 1987. That subsec. formerly read:

(14) Where in a taxation year a predecessor owner of Canadian resource properties disposes of all or substantially all of its Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies, for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any of those properties, it shall be deemed, after the disposition, never to have acquired the properties except for the purposes of

(a) determining an amount deductible under subsection (1) or (3) for the year; and

(b) where the predecessor owner and the corporation dealt with each other at arm's length at the time of the disposition or the disposition was by way of an amalgamation or merger, determining an amount deductible under subsection (4) or (5) for the year.

Subsec. 66.7(14) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 42(16), applicable to dispositions occurring in taxation years ending after February 17, 1987. Subsec. 66.7(14) formerly read:

(14) Where, in a taxation year and after June 5, 1987, a predecessor owner of Canadian resource properties disposes of all or substantially all of its Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules* or subsection (1), (3), (4) or (5) applies, for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any of those properties, it shall be deemed, after the disposition, never to have acquired the properties except for the purposes of making a deduction under subsection (1) or (3) for the year.

(15) Disposal of foreign resource properties — Where after June 5, 1987 a predecessor owner of foreign resource properties disposes of all or substantially all of its foreign resource properties to a corporation in circumstances in which subsection (2) applies, for the purpose of applying that subsection to the predecessor owner in respect of its acquisition of any of those properties (or other foreign resource properties retained by it at the time of the disposition which were acquired by it in circumstances in which subsection (2) applied), it shall be deemed, after the disposition, never to have acquired the properties.

Related Provisions: See Related Provisions and Definitions at end of s. 66.7.

History: Subsec. 66.7(15) substituted by 1994, c. 21, subsec. 31(4), applicable to taxation years ending after February 17, 1987. That subsec. formerly read:

> (15) Where after June 5, 1987 a predecessor owner of foreign resource properties disposes of all or substantially all of its foreign resource properties to a corporation in circumstances in which subsection (2) applies, for the purposes of applying that subsection to the predecessor owner in respect of its acquisition of any of those properties, it shall be deemed, after the disposition, never to have acquired the properties.

(16) Non-successor acquisitions — Where at any time a Canadian resource property or a foreign resource property is acquired by a person in circumstances in which none of subsection 29(25) of the *Income Tax Application Rules* and subsections (1) to (5) apply, every person who was an original owner or predecessor owner of the property by reason of having disposed of the property before that time shall, for the purpose of applying those subsections to or in respect of the person or any other person who after that time acquires the property, be deemed after that time not to be an original owner or predecessor owner of the property by reason of having disposed of the property before that time.

Related Provisions: See Related Provisions and Definitions at end of s. 66.7.

(17) Restriction on deductions — Where in a particular taxation year and before June 6, 1987 a person disposed of a Canadian resource property or a foreign resource property in circumstances in which any of subsection 29(25) of the *Income Tax Application Rules* and subsections (1) to (5) applies, no deduction in respect of an expense incurred before the property was disposed of may be made under this section or section 66, 66.1, 66.2 or 66.4 by the person in computing the person's income for a taxation year subsequent to the particular taxation year.

(18) Application of subsec. 66(15) — The definitions in subsection 66(15) apply to this section.

Origin of subsec. 66.7(18): R.S.C. 1985, c. 1 (5th Supp.).

Related Provisions [s. 66.7]: 66(5) — Dealers; 66(18) — Members of partnerships; 66.1(6) — Canadian exploration expense; 66.8(1) — Resource expenses of limited partners; 87(1.2) — Amalgamation — new corporation deemed continuation of predecessor; 88(1.5) — Windup — parent continuation of subsidiary.

Pre-RSC History [s. 66.7]: S. 66.7 added by 1987, c. 46, s. 23, applicable to taxation years ending after February 17, 1987 except that with respect to property acquired before January 15, 1987, or acquired before 1988 where the person acquiring the property was obliged on that date to acquire the property pursuant to the terms of an agreement in writing entered into on or before that date,

> (a) clauses 66.7(1)(b)(i)(C), (2)(b)(i)(B), (3)(b)(i)(C), (4)(b)(i)(B) and (5)(b)(i)(B) shall be read as follows:
>
> > "where the particular property was an interest in or a right to take or remove petroleum or natural gas or a right to take or remove minerals from a property, the production from that property,";
>
> and
>
> (b) subsection 66.7(11) is not applicable.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

> 72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligations as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Definitions [s. 66.7]: "acquired" — 256(7)–(9); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration and development expense" — 66(15), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian resource property" — 66(15), 66.7(18), 248(1); "carrying on business" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "expense" — 66(15), 66.7(18); "fiscal period" — 249(2), 249.1; "foreign exploration and development expenses", "foreign resource property" — 66(15), 248(1); "mineral", "Minister", "oil or gas well", "person", "prescribed", "property" — 248(1); "resident in Canada" — 250; "specified amount" — 66.7(12.1); "subsidiary wholly-owned corporation" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 66.7]: IT-126R2: Meaning of "winding-up".

66.8 (1) Resource expenses of limited partner — Where a taxpayer is a limited partner of a partnership at the end of a fiscal period of the partnership, the following rules apply:

(a) determine the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's share of

(A) the Canadian oil and gas property expenses (in this subsection referred to as "property expenses"),

(B) the Canadian development expenses (in this subsection referred to as "development expenses"),

(C) the Canadian exploration expenses (in this subsection referred to as "exploration expenses"), or

(D) the foreign exploration and development expenses (in this subsection referred to as "foreign expenses"),

incurred by the partnership in the fiscal period determined without reference to this subsection

exceeds

(ii) the amount, if any, by which

(A) the taxpayer's at-risk amount at the end of the fiscal period in respect of the partnership

exceeds

(B) the total of

(I) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer in respect of the fiscal period, and

(II) the taxpayer's share of any losses of the partnership for the fiscal period from a farming business;

(b) the amount determined under paragraph (a) shall be applied

(i) first to reduce the taxpayer's share of property expenses,

(ii) if any remains unapplied, then to reduce the taxpayer's share of development expenses,

(iii) if any remains unapplied, then to reduce the taxpayer's share of exploration expenses, and

(iv) if any remains unapplied, then to reduce the taxpayer's share of foreign expenses,

incurred by the partnership in the fiscal period; and

(c) for the purposes of subparagraph 53(2)(c)(ii), sections 66 to 66.7, subsection 96(2.1) and section 111, the taxpayer's share of each class of expenses de-

scribed in subparagraph (a)(i) incurred by the partnership in the fiscal period shall be deemed to be the amount by which the taxpayer's share of that class of expenses as determined under subparagraph (a)(i) exceeds the amount, if any, that was applied under paragraph (b) to reduce the taxpayer's share of that class of expenses.

(2) Expenses in following fiscal period — For the purposes of subparagraph (1)(a)(i), the amount by which a taxpayer's share of a class of expenses incurred by a partnership is reduced under paragraph (1)(b) in respect of a fiscal period of the partnership shall be added to the taxpayer's share, otherwise determined, of that class of expenses incurred by the partnership in the immediately following fiscal period of the partnership.

(3) Interpretation — In this section,

(a) the expressions "at-risk amount" of a taxpayer in respect of a partnership and "limited partner" of a partnership have the meanings assigned by subsections 96(2.2) and (2.4), respectively, except that, with respect to the definition "limited partner", the definition "exempt interest" in subsection 96(2.5) shall be read as though the reference therein to

(i) "February 25, 1986" were a reference to "June 17, 1987",

(ii) "February 26, 1986" were a reference to "June 18, 1987",

(iii) "January 1, 1987" were a reference to "January 1, 1988",

(iv) "June 12, 1986" were a reference to "June 18, 1987", and

(v) "prospectus, preliminary prospectus or registration statement" were read as "prospectus, preliminary prospectus, registration statement, offering memorandum or notice that is required to be filed before any distribution of securities may commence";

(b) a reference to a taxpayer who is a member of a particular partnership shall include a reference to another partnership that is a member of the particular partnership; and

(c) a taxpayer's share of Canadian development expenses or Canadian oil and gas property expenses incurred by a partnership in a fiscal period in respect of which the taxpayer has elected in respect of the share under paragraph (f) of the definition "Canadian development expense" in subsection 66.2(5) or paragraph (b) of the definition "Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, shall be deemed to be nil.

History [s. 66.8]: Para. 66.8(3)(c) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 26, applicable with respect to partnership fiscal periods ending after July 1990.

Pre-RSC History [s. 66.8]: S. 66.8 added by 1988, c. 55, s. 45, applicable to taxation years ending after June 17, 1987.

Definitions [s. 66.8]: "amount", "business" — 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "farming" — 248(1); "fiscal period" — 249(2), 249.1; "foreign exploration and development expenses" — 66(15), 248(1); "investment tax credit" — 127(9), 248(1); "property", "taxpayer" — 248(1). See also 66.8(3).

Subdivision f — Rules Relating to Computation of Income

67. General limitation re expenses — In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

Related Provisions: 8(9) — Employee's aircraft costs must be reasonable; 18(1)(a) — Expense not deductible unless for purpose of earning income; 18(1)(h) — Personal or living expenses disallowed; 247(8) — Transfer pricing rules take priority over s. 67.

Selected Cases [s. 67]: *Bonin v. R.*, [2000] 2 C.T.C. 2011 (TCC) (Business existed, but expenses unreasonable); *Tarantino v. R.*, [2000] 1 C.T.C. 3039 (TCC) (Expenses reasonable even where properties 100% financed); *Mohammed v. R.*, [1997] 3 C.T.C. 321 (FCA) ("Reasonable expectation of profit" and "expectation of reasonable profit" not synonymous. 100% financing of project not necessarily unreasonable); *Shell Canada Ltd. v. R.*, [1997] 3 C.T.C. 2238 (TCC) (New Zealand currency loans intended to get funds at lowest possible after-tax cost to borrower); *Monga v. Canada*, [1997] 1 C.T.C. 2529 (TCC) (Interest exceeding gross rental income was unreasonable); *Graves v. Canada*, [1990] 1 C.T.C. 357 (FCTD) (Half of expenses of two-car garage at taxpayer's home where business car parked not deductible); *MSS Inc. v. The Queen*, [1989] 2 C.T.C. 30 (FCA) (Management expenses paid to another company not reasonable where services already provided by taxpayer's employees); *Maduke Foods Ltd. v. Canada*, [1989] 2 C.T.C. 284 (FCTD) (Management salaries paid to spouse and children reduced); *Compagnie Idéal Body Inc. v. Canada*, [1989] 2 C.T.C. 187 (FCTD) (Only $100,000 of $210,000 bonus paid to spouse inheriting controlling interest was reasonable); *Moloney v. Canada*, [1989] 1 C.T.C. 213 (FCTD); aff'd [1992] 2 C.T.C. 226 (FCA); leave to appeal to SCC refused (May 6, 1993), Doc. 23336 [unreported] (Elaborate scheme found lacking in business purpose, deductions not permitted); *Gabco Ltd. v. MNR*, [1968] C.T.C. 313 (Exch.) ($56,000 paid to president's brother over 15 months reasonable).

Definitions [s. 67]: "amount" — 248(1).

I.T. Application Rules: 31.

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-131R2: Convention expenses; IT-178R3: Moving expenses; IT-357R2: Expenses of training; IT-467R: Damages, settlements and similar payments; IT-468R: Management or administration fees paid to non-residents; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-525R: Performing artists.

Information Circulars: 87-2R: International transfer pricing and other international transactions.

I.T. Technical News: No. 12 (meals and beverages at golf clubs); No. 15 (Christmas parties and employer-paid special events); No. 16 (*Shell* case).

Advance Tax Rulings: ATR-12: Retiring allowance; ATR-45: Share appreciation rights plan.

67.1 (1) Expenses for food, etc. — For the purposes of this Act, other than sections 62, 63 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment shall be deemed to be 50% of the lesser of

(a) the amount actually paid or payable in respect thereof, and

(b) an amount in respect thereof that would be reasonable in the circumstances.

Related Provisions: 8(4) — Limitation on meals of employee.

History: The opening words of subsec. 67.1(1) amended by 1995, c. 3, s. 17, to substitute "50%" for "80%", applicable to expenses incurred after February 21, 1994 in respect of food and beverages consumed and entertainment enjoyed after February 1994.

Interpretation Bulletins: IT-504R2: Visual artists and writers; IT-518R: Food beverages and entertainment expenses; IT-525R: Performing artists.

Information Circulars: 73-21R7: Away from home expenses.

I.T. Technical News: No. 12 (meals and beverages at golf clubs); No. 16 (*Scott* case).

(2) Exceptions — Subsection (1) does not apply to an amount paid or payable by a person in respect of the consumption of food or beverages or the enjoyment of entertainment where the amount

(a) is paid or payable for food, beverages or entertainment provided for, or in expectation of, compensation in the ordinary course of a business carried on by that person of providing the food, beverages or entertainment for compensation;

(b) relates to a fund-raising event the primary purpose of which is to benefit a registered charity;

(c) is an amount for which the person is compensated and the amount of the compensation is reasonable and specifically identified in writing to the person paying the compensation;

(d) is required to be included in computing any taxpayer's income because of the application of section 6 in respect of food or beverages consumed or entertainment enjoyed by the taxpayer or a person with whom the taxpayer does not deal at arm's length, or would be so required but for subparagraph 6(6)(a)(ii);

(e) is an amount that

(i) is not paid or payable in respect of a conference, convention, seminar or similar event,

(ii) would, but for subparagraph 6(6)(a)(i), be required to be included in computing any taxpayer's income for a taxation year because of the application of section 6 in respect of food or beverages consumed or entertainment enjoyed by the taxpayer or a person with whom the taxpayer does not deal at arm's length, and

(iii) is paid or payable in respect of the taxpayer's duties performed at a work site in Canada that is

(A) outside any urban area, as defined by the last Census Dictionary published by Statistics Canada before the year, that has a population of at least 40,000 individuals as determined in the last census published by Statistics Canada before the year, and

(B) at least 30 kilometres from the nearest point on the boundary of the nearest such urban area; or

(f) is in respect of one of six or fewer special events held in a calendar year at which the food, beverages or entertainment is generally available to all individuals employed by the person at a particular place of business of the person and consumed or enjoyed by those individuals.

History: Paras. 67.1(2)(d) and (e) amended and para. (f) added by 1999, c. 22, s. 20, para. (d) applicable to 1987 *et seq.* and paras. (e) and (f) applicable to expenses incurred after February 23, 1998. Paras. (d) and (e) formerly read:

(d) is required to be included in computing the income of an employee of the person or would be so required but for subparagraph 6(6)(a)(ii); or

(e) is incurred by the person for food, beverages or entertainment generally available to all individuals employed by the person at a particular place of business of the person and consumed or enjoyed by such individuals.

Para. 67.1(2)(e) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 43, applicable to taxation years ending after July 13, 1990. Para. 67.1(2)(e) formerly read:

(e) is incurred by the person for food, beverages or entertainment generally available to all employees of the person at a particular location.

I.T. Technical News: No. 15 (Christmas parties and employer-paid special events).

(3) Fees for convention, etc. — For the purposes of this section, where a fee paid or payable for a conference, convention, seminar or similar event entitles the participant to food, beverages or entertainment (other than incidental beverages and refreshments made available during the course of meetings or receptions at the event) and a reasonable part of the fee, determined on the basis of the cost of providing the food, beverages and entertainment, is not identified in the account for the fee as compensation for the food, beverages and entertainment, $50 or such other amount as may be prescribed shall be deemed to be the actual amount paid or payable in respect of food, beverages and entertainment for each day of the event on which food, beverages or entertainment is provided and, for the purposes of this Act, the fee for the event shall be deemed to be the actual amount of the fee minus the amount deemed by this subsection to be the actual amount paid or payable for the food, beverages and entertainment.

Related Provisions: 20(10) — Deduction for convention expenses.

Regulations: No amount other than $50 has been prescribed for purposes of 67.1(3).

Interpretation Bulletins: IT-131R2: Convention expenses.

(4) Interpretation — For the purposes of this section,

(a) no amount paid or payable for travel on an airplane, train or bus shall be considered to be in respect of food, beverages or entertainment consumed or enjoyed while travelling thereon; and

(b) "entertainment" includes amusement and recreation.

Pre-RSC History [s. 67.1]: S. 67.1 added by 1988, c. 55, s. 46, subsecs. 67.1(1), (2), (4), applicable with respect to amounts incurred after June 17, 1987 in respect of food and beverages consumed and entertainment enjoyed after 1987 and subsec. 67.1(3) applicable with respect to amounts incurred after June 1988.

Selected Cases: *Racco Industrial Roofing Ltd. v. R.*, [1997] 2 C.T.C. 3055 (TCC) (Limitation does not apply to per diem amount paid to employee; *ejusdem generis* rule suggests that entertainment must also be involved).

Definitions [s. 67.1]: "amount", "business", "employee" — 248(1); "entertainment" — 67.1(4)(b); "individual", "person", "prescribed", "registered charity" — 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

67.2 Interest on money borrowed for passenger vehicle — For the purposes of this Act, where an amount is paid or payable for a period by a person in respect of interest on borrowed money used to acquire a passenger vehicle or on an amount paid or payable for the acquisition of such a vehicle, in computing the person's income for a taxation year, the amount of interest so paid or payable shall be deemed to be the lesser of the actual amount paid or payable and the amount determined by the formula

$$\frac{A}{30} \times B$$

where

A is $250 or such other amount as may be prescribed; and

B is the number of days in the period in respect of which the interest was paid or payable, as the case may be.

Related Provisions: 8(1)(j) — Automobile and aircraft costs; 20(1)(c) — Interest deductible; 20(1)(d) — Compound interest deductible; 67.4 — More than one owner or lessor.

History: S. 67.2 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 44, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987. S. 67.2 formerly read:

> 67.2 Interest on money borrowed for passenger vehicle — For the purposes of this Act, where an amount in respect of interest is payable by a person on borrowed money used to acquire, or on an amount payable for the acquisition of, a passenger vehicle, in computing the income of the person for a taxation year the amount of interest so payable shall be deemed to be the lesser of the actual amount payable and the amount determined by the formula
>
> $$\frac{A}{30} \times B$$
>
> where
>
> A is $250 or such other amount as may be prescribed; and
>
> B is the number of days in the year in respect of which the interest was payable.

Pre-RSC History: S. 67.2 added by 1988, c. 55, s. 46, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [s. 67.2]: "amount", "borrowed money", "passenger vehicle", "prescribed" — 248(1); "taxation year" — 11(2), 249.

Regulations: 7307(2) (prescribed amount).

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

67.3 Limitation re cost of leasing passenger vehicle — Notwithstanding any other section of this Act, where

(a) in a taxation year all or part of the actual lease charges in respect of a passenger vehicle are paid or payable, directly or indirectly, by a taxpayer, and

(b) in computing the taxpayer's income for the year an amount may be deducted in respect of those charges,

in determining the amount that may be so deducted, the total of those charges shall be deemed not to exceed the lesser of

(c) the amount determined by the formula

$$\left(A \times \frac{B}{30}\right) - C - D - E$$

where

A is $600 or such other amount as is prescribed,

B is the number of days in the period commencing at the beginning of the term of the lease and ending at the earlier of the end of the year and the end of the lease,

C is the total of all amounts deducted in computing the taxpayer's income for preceding taxation years in respect of the actual lease charges in respect of the vehicle,

D is the amount of interest that would be earned on the part of the total of all refundable amounts in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period before the end of the year during which the refundable amounts were outstanding, and

E is the total of all reimbursements that became receivable before the end of the year by the taxpayer in respect of the lease, and

(d) the amount determined by the formula

$$\left(\frac{A \times B}{0.85C}\right) - D - E$$

where

A is the total of the actual lease charges in respect of the lease incurred in respect of the year or the total of the actual lease charges in respect of the lease paid in the year (depending on the method regularly followed by the taxpayer in computing income),

B is $20,000 or such other amount as is prescribed,

C is the greater of $23,529 (or such other amount as is prescribed) and the manufacturer's list price for the vehicle,

D is the amount of interest that would be earned on that part of the total of all refundable amounts paid in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period in the year during which the refundable amounts are outstanding, and

E is the total of all reimbursements that became receivable during the year by the taxpayer in respect of the lease.

Related Provisions: 67.4 — More than one owner or lessor; 257 — Formula cannot calculate to less than zero.

History: S. 67.3 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 45, applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987, except that with respect to amounts paid or payable as a reimbursement in respect of a lease expense, it is applicable to taxation years that end after July 13, 1990; and with respect to leases entered into before 1991 the description of C in para. (d) shall be read as follows:

> C is the greater of $23,529 (or such other amount as may be prescribed) and the total of
>
> (i) the manufacturer's list price for the vehicle, and
>
> (ii) the provincial sales tax, if any, that would have been payable by a purchaser of the vehicle if it had been purchased at the manufacturer's list price for the vehicle at the time the first lease of the vehicle was entered into and in the province under the laws of which the vehicle was registered for the greatest part of the year,

S. 67.3 formerly read:

> 67.3 Limitation re cost of leasing passenger vehicle — Notwithstanding any other provision of this Act, where
>
> (a) a taxpayer leases a passenger vehicle from a lessor in a taxation year, and
>
> (b) in computing the taxpayer's income for the year an amount may be deducted in respect of the vehicle,
>
> in determining the amount that may be so deducted, the cost to the taxpayer of leasing the vehicle shall not exceed the lesser of
>
> (c) the amount determined by the formula

$$\left(\frac{A \times B}{30}\right) - C - D - E$$

where

A is $600 or such other amount as may be prescribed,

B is the number of days before the end of the year during which the vehicle was leased by the taxpayer from the lessor,

C is the total of all amounts deducted in computing the taxpayer's income for preceding taxation years in respect of the lease of the vehicle,

D is the amount of interest that would be earned on that part of the total of all refundable amounts paid by or on behalf of the taxpayer in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period before the end of the year during which the refundable amounts were outstanding, and

E is the total of all reimbursements receivable by the taxpayer in respect of the lease of the vehicle before the end of the year; and

(d) the amount determined by the formula

$$\left(\frac{A \times B}{0.85C}\right) - D - E$$

where

A is the total of the actual lease charges payable to the lessor by the taxpayer for the lease of the vehicle during the year,

B is $20,000 or such other amount as may be prescribed,

C is the greater of $23,529 (or such other amount as may be prescribed) and the total of

(i) the manufacturer's list price for the vehicle, and

(ii) the provincial sales tax, if any, that would have been payable by a purchaser of the vehicle if it had been purchased at the manufacturer's list price for the vehicle at the time the first lease of the vehicle was entered into and in the province under the laws of which the vehicle was registered for the greatest part of the year,

D is the amount of interest that would be earned on that part of the total of all refundable amounts paid by or on behalf of the taxpayer in respect of the lease that exceeds $1,000 if interest were

(i) payable on the refundable amounts at the prescribed rate, and

(ii) computed for the period in the year during which the refundable amounts are outstanding, and

E is the total of all reimbursements receivable by the taxpayer in respect of the lease of the vehicle during the year.

Pre-RSC History: Subpara. (i) of the description of D in each of paras. 67.3(c) and (d) amended by 1990, c. 39, subsecs. 15(1) and (2), to substitute "prescribed rate" for "prescribed rate that would be applicable if the amounts were amounts payable under this Act", applicable with respect to interest to be calculated in respect of periods after September 1989.

S. 67.3 added by 1988, c. 55, s. 46, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [s. 67.3]: "amount", "borrowed money", "motor vehicle", "passenger vehicle", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Regulations: 4301(c) (prescribed rate of interest); 7307(1), (3), (4) (prescribed amounts).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

67.4 More than one owner or lessor — Where a person owns or leases a motor vehicle jointly with one or more other persons, the reference in paragraph 13(7)(g) to the amount of $20,000, in section 67.2 to the amount of $250 and in section 67.3 to the amounts of $600, $20,000 and $23,529 shall be read as a reference to that proportion of each of those amounts or such other amounts as may be prescribed for the purposes thereof that the fair market value of the first-mentioned person's interest in the vehicle is of the fair market value of the interests in the vehicle of all those persons.

Pre-RSC History: S. 67.4 added by 1988, c. 55, s. 46, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [s. 67.4]: "amount", "motor vehicle", "person" — 248(1).

Regulations: 7307 (prescribed amounts).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

67.5 (1) Non-deductibility of illegal payments — In computing income, no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under section 3 of the *Corruption of Foreign Public Officials Act* or under any of sections 119 to 121, 123 to 125, 393 and 426 of the *Criminal Code*, or an offence under section 465 of the *Criminal Code* as it relates to an offence described in any of those sections.

History: Subsec. 67.5(1) amended by 1998, c. 34, s. 10, in force February 14, 1999. The subsec. formerly read:

> 67.5 (1) In computing income, no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under any of sections 119 to 121, 123 to 125, 393 and 426 of the *Criminal Code* or an offence under section 465 of that Act as it relates to an offence described in any of those sections.

(2) Reassessments — Notwithstanding subsections 152(4) to (5), the Minister may make such assessments, reassessments and additional assessments of tax, interest and penalties and such determinations and redeterminations as are necessary to give effect to subsection (1) for any taxation year.

Related Provisions: 165(1.1) — Limitation of right to object to assessment; 169(2)(a) — Limitation of right to appeal.

History [s. 67.5]: S. 67.5 added by 1994, c. 7, Sch. II (1991, c. 49), s. 46, applicable to outlays made and expenses incurred after July 13, 1990.

Definitions [s. 67.5]: "assessment", "Minister" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-525R: Performing artists.

68. Allocation of amounts in consideration for disposition of property — Where an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer or as being in part consideration for the provision of particular services by a taxpayer,

(a) the part of the amount that can reasonably be regarded as being the consideration for the disposition shall be deemed to be proceeds of disposition of the particular property irrespective of the form or legal effect of the contract or agreement, and the person to whom the property was disposed of shall be deemed to have acquired it for an amount equal to that part; and

(b) the part of the amount that can reasonably be regarded as being consideration for the provision of particular services shall be deemed to be an amount received or receivable by the taxpayer in respect of those services irrespective of the form or legal effect of the contract or agreement, and that part shall be deemed to be an amount paid or payable to the taxpayer by the person to whom the services were rendered in respect of those services.

Related Provisions: 12(1)(a) — Services, etc. to be rendered; 12(1)(b) — Amounts receivable in respect of services, etc, rendered; 13(33) — Consideration given for depreciable capital; 247(8) — Transfer pricing rules take priority over s. 68.

Pre-RSC History: S. 68 substituted by 1988, c. 55, s. 47, applicable with respect to amounts received or receivable after June 1988 otherwise than pursuant to agreements entered into in writing before May 1988. S. 68 formerly read:

> 68. Amounts in part consideration for disposition of property — Where an amount can reasonably be regarded as being in part the consideration for the disposition of any property of a taxpayer and as being in part consideration for something else, the part of the amount that can reasonably be regarded as being the consideration for such disposition shall be deemed to be proceeds of disposition of that property irrespective of the form or legal effect of the contract or agreement; and the person to whom the property was disposed of shall be deemed to have acquired the property at the same part of that amount.

Selected Cases [s. 68]: *Baur Investments Ltd. v. MNR*, [1990] 2 C.T.C. 122 (FCTD) (Appraisal evidence insufficient to dislodge allocation on disposition similar to allocation at time of acquisition); *Golden et al. v. The Queen*, [1980] C.T.C. 488 (FCTD) (Minister may reallocate amounts between land and buildings in arm's length transaction); *A.G. Can. v. Matador Inc. et al.*, [1980] C.T.C. 51 (FCA) (Price for land and building below fair market value of land divided *pro rata*); *The Queen v. Malloney's Studio Ltd.*, [1979] C.T.C. 206 (SCC) (No amount allocated to building where demolished before purchase); *The Queen v. Jessiman Bros. Cartage Ltd.*, [1978] C.T.C. 274 (FCTD) (Going concern value of assets rather than trade-in value accepted); *Crown Trust Co. v. The Queen*, [1977] C.T.C. 320 (FCTD) (Price for land and buildings allocated pursuant to assessment rolls in absence of expert evidence); *Stanley v. MNR*, [1972] C.T.C. 34 (SCC) (Value greater than undepreciated capital cost allocated to building even though purchaser desired only land); *Munday v. MNR*, [1971] C.T.C. 585 (FCTD) (Part of price allocated to building destroyed by purchaser after closing); *Emco Ltd. v. MNR*, [1968] C.T.C. 457 (Exch.) (Taxpayer permitted to change previous allocation of purchase price entirely to land).

Definitions [s. 68]: "amount", "person", "property" — 248(1); "received" — 248(7); "taxpayer" — 248(1).

Interpretation Bulletins: IT-143R2: Meaning of "eligible capital expenditure"; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property.

69. (1) Inadequate considerations — Except as expressly otherwise provided in this Act,

(a) where a taxpayer has acquired anything from a person with whom the taxpayer was not dealing at arm's length at an amount in excess of the fair market value thereof at the time the taxpayer so acquired it, the taxpayer shall be deemed to have acquired it at that fair market value;

(b) where a taxpayer has disposed of anything

(i) to a person with whom the taxpayer was not dealing at arm's length for no proceeds or for proceeds less than the fair market value thereof at the time the taxpayer so disposed of it, or

(ii) to any person by way of gift *inter vivos*,

Proposed Addition — 69(1)(b)(iii)

(iii) to a trust because of a disposition of a property that does not result in a change in the beneficial ownership of the property,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 31(1), will add subpara. 69(1)(b)(iii), applicable to dispositions that occur after December 23, 1998.

Technical Notes: Subsection 69(1) of the Act provides rules that deal with gifts and non-arm's length dispositions of property, except where such transactions are covered by other express provisions in the Act (e.g., section 85, subsections 107(2) and (2.1) and new subsection 107.4(3)). Under paragraph 69(1)(b), a taxpayer is deemed to receive proceeds of disposition equal to the fair market value of the property disposed of where the taxpayer disposed of the property by way of gift or to a non-arm's length person for proceeds less than the fair market value of the property. Under paragraph 69(1)(c), a taxpayer who has acquired property by way of gift, bequest or inheritance is deemed by paragraph 69(1)(c) to have acquired the property at its fair market value.

Paragraph 69(1)(b) is amended to ensure that, subject to subsection 107.4(3), it applies to a disposition to a trust of a property where no change in the beneficial ownership of the property is involved.

the taxpayer shall be deemed to have received proceeds of disposition therefor equal to that fair market value; and

(c) where a taxpayer has acquired property by way of gift, bequest or inheritance, the taxpayer shall be deemed to have acquired the property at its fair market value at the time the taxpayer so acquired it.

Proposed Amendment — 69(1)(c)

(c) where a taxpayer acquires a property by way of gift, bequest or inheritance or because of a disposition that does not result in a change in the beneficial ownership of the property, the taxpayer is deemed to acquire the property at its fair market value.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 31(2), will amend para. 69(1)(c) to read as above, applicable to acquisitions that occur after December 23, 1998.

Technical Notes: Paragraph 69(1)(c) is amended so that a taxpayer, where subsection 69(1) applies, is also considered to acquire property at its fair market value where the acquisition is because of a disposition that does not result in any change in the beneficial ownership of the property.

For a description of circumstances where a transfer without any change in beneficial ownership is not a "disposition", reference should be made to the commentary on the new definition "disposition" in subsection 248(1).

Selected Cases [para. 69(1)(c)]: *Sweeney v. Canada*, [1990] 2 C.T.C. 342 (FCTD); appealed to FCA (Oct. 4, 1990), File A-825-90 (Son's right to purchase father's shares on death not gift).

Related Provisions: 13(33) — Consideration given for depreciable capital; 15(1) — Benefit conferred on shareholder; 28(1.1) — Farming or fishing business — acquisition of inventory; 38(a.1) — Gift of publicly traded shares to charity; 53(5) — Recomputation of ACB on non-arm's length disposition; 56(11) — Disposition of interest in retirement compensation; 69(1.1) — Idem; 69(6) — Inadequate considerations; 73(1) — Rollover at cost on transfer to spouse; 73(3) — Rollover of farm property on transfer to child or grandchild; 79(3)E(a) — Where property surrendered to a creditor; 97(1) — Contribution of property by partner to partnership deemed to be at fair market value; 106(1.1) — Cost of income interest in a trust; 107(1.1) — Cost of capital interest in a trust; 107.4(3) — Tax consequences of qualifying disposition to a trust; 107.4(4) — Fair market value of vested interest in trust; 110.1(5) — Determination of value on donation of servitude, covenant or easement for ecologically sensitive land; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 118.1(12) — Determination of value on donation of servitude, covenant or easement for ecologically sensitive land; 127(11.8)(b) — Ignore 69(1)(c) for certain non-arm's length costs re investment tax credit; 146(9) — Disposition or acquisition of property by RRSP; 146.3(4) — Disposition or acquisition of property by RRIF; 206(4) — Deemed fair market value for purposes of tax on foreign property held by RRSPs etc.; 247(8) — Transfer pricing rules take priority

over subsec. 69(1); 251 — Arm's length; Canada-U.S. tax treaty, Art. IX — Adjustments for transactions between related persons.

Selected Cases [subsec. 69(1)]: *Gilvesy Enterprises Inc. v. Canada*, [1997] 1 C.T.C. 2410 (TCC) ("Shotgun" clause may have impact on valuation of assets); *Kieboom v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred" property to related parties by reducing equity in corporation on subscription for shares by related parties); *Terry v. The Queen*, [1985] 1 C.T.C. 135 (FCTD) (Gift of shares valued; evidence of Crown's valuator, not having full access to information, rejected); *Gervais v. The Queen*, [1984] C.T.C. 661 (FCTD) (Difference between acquisition price, paid by son to father, and fair market value not gift); *Bouchard v. The Queen*, [1983] C.T.C. 173 (FCTD) (No capital gain on transfer to child of legal estate of property held in trust by parents); *Hutterian Brethren et al. v. The Queen*, [1980] C.T.C. 1 (FCA) (Farming not charitable or religious activity; value of members' labour not gift where they and families received colony's support in return); *Lea-Don Canada Ltd. v. MNR*, [1970] C.T.C. 346 (SCC) (Proceeds of non-arm's length sale of assets to parent company deemed fair market value).

Regulations: 1102(14) — Class of depreciable property preserved on non-arm's length acquisition.

I.T. Application Rules: 20(1.3), 32.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-140R3: Buy-sell agreements; IT-188R: Sale of accounts receivable; IT-212R3: Income of deceased persons — rights or things; IT-213R: Prizes from lottery schemes and giveaway contests; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of capital properties to a charity and others; IT-297R2: Gifts in kind to charity and others; IT-385R2: Disposition of an income interest in a trust; IT-403R: Options on real estate; IT-405: Inadequate considerations — acquisitions and dispositions; IT-427R: Livestock of farmers; IT-432R2: Benefits conferred on shareholders; IT-433R: Farming or fishing — use of cash method; IT-442R: Bad debts and reserves for doubtful debts; IT-504R2: Visual artists and writers. See also list at end of s. 69.

Information Circulars: 87-2R: International transfer pricing and other international transactions; 89-3: Policy statement on business equity valuations.

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer; ATR-9: Transfer of personal residence from corporation to its controlling shareholder; ATR-36: Estate freeze.

(1.1) Idem, where subsec. 70(3) applies — Where a taxpayer has acquired property that is a right or thing to which subsection 70(3) applies, the following rules apply:

(a) paragraph (1)(c) is not applicable to that property; and

(b) the taxpayer shall be deemed to have acquired the property at a cost equal to the total of

(i) such part, if any, of the cost thereof to the taxpayer who has died as had not been deducted by the taxpayer in computing the taxpayer's income for any year, and

(ii) any expenditures made or incurred by the taxpayer to acquire the property.

Pre-RSC History: Subsec. 69(1.1) added by 1974-75-76, c. 26, subsec. 37(1), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-427R: Livestock of farmers. See also list at end of s. 69.

(1.2) Idem — Where, at any time,

(a) a taxpayer disposed of property for proceeds of disposition (determined without reference to this subsection) equal to or greater than the fair market value at that time of the property, and

(b) there existed at that time an agreement under which a person with whom the taxpayer was not dealing at arm's length agreed to pay as rent, royalty or other payment for the use of or the right to use the property an amount less than the amount that would have been reasonable in the circumstances if the taxpayer and the person had been dealing at arm's length at the time the agreement was entered into,

the taxpayer's proceeds of disposition of the property shall be deemed to be the greater of

(c) those proceeds determined without reference to this subsection, and

(d) the fair market value of the property at the time of the disposition, determined without reference to the existence of the agreement.

Related Provisions: 247(8) — Transfer pricing rules take priority over subsec. 69(1.2).

History: Subsec. 69(1.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 27(1), applicable to dispositions occurring after December 20, 1991.

(2) [Repealed]

Related Provisions: 67 — General limitation re expenses; 127.55 — Minimum tax not applicable; 233.1 — Disclosure of transactions with related non-residents; 251 — Arm's length; 253 — Extended meaning of carrying on business; Canada-U.S. tax treaty, Art. IX — Adjustments for transactions between related persons; Art. XII:7 — Withholding tax where royalties exceed arm's-length amount.

History: Subsec. 69(2) repealed by 1998, c. 19, subsec. 107(1), applicable to taxation years that begin after 1997. The subsec. formerly read:

(2) Unreasonable consideration [on dealings with non-resident] — Where a taxpayer has paid or agreed to pay to a non-resident person with whom the taxpayer was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount greater than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been the amount that was paid or is payable therefor.

Pre-RSC History: Subsec. 69(2) substituted by 1985, c. 45, subsec. 32(1), applicable with respect to transactions or events occurring after May 9, 1985. Subsec. 69(2) formerly read:

(2) Idem — Where a taxpayer carrying on business in Canada has paid or agreed to pay, to a non-resident person with whom he was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount greater than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been the amount that was paid or is payable therefor.

Interpretation Bulletins: IT-468R: Management or administration fees paid to non-residents. See also list at end of s. 69.

Information Circulars: 87-2R: International transfer pricing and other international transactions; 94-4: International transfer pricing — advance pricing agreements (APA).

(3) [Repealed]

Related Provisions: 67 — General limitation re expenses; 233.1 — Disclosure of transactions with related non-residents; 251 — Arm's length; 253 — Extended meaning of carrying on business; Canada-U.S. tax treaty, Art. IX — Adjustments for transactions between related persons.

History: Subsec. 69(3) repealed by 1998, c. 19, subsec. 107(1), applicable to taxation years that begin after 1997. The subsec. formerly read:

(3) Idem — Where a non-resident person has neither paid nor agreed to pay to a taxpayer with whom the person was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property or as consideration for the carriage of goods or passengers or for other services, an amount equal to or greater than the amount that would have been a reasonable amount in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, that reasonable amount

shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been received or receivable by the taxpayer therefor.

Subsec. 69(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 47(1), applicable to transactions or events occurring after July 13, 1990. Subsec. 69(3) formerly read:

(3) **Idem** — Where a non-resident person has neither paid nor agreed to pay to a taxpayer with whom the [person] was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, the amount that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, that amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been received or receivable by the taxpayer therefor.

Pre-RSC History: Subsec. 69(3) substituted by 1985, c. 45, subsec. 32(1), applicable with respect to transactions or events occurring after May 9, 1985. Subsec. 69(3) formerly read:

(3) **Idem** — Where a non-resident person has paid, or agreed to pay, to a taxpayer carrying on business in Canada with whom he was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount less than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been the amount that was paid or is payable therefor.

(4) Shareholder appropriations — Where at any time property of a corporation has been appropriated in any manner whatever to or for the benefit of a shareholder of the corporation for no consideration or for consideration that is less than the property's fair market value and a sale of the property at its fair market value would have increased the corporation's income or reduced a loss of the corporation, the corporation shall be deemed to have disposed of the property, and to have received proceeds of disposition therefor equal to its fair market value, at that time.

Related Provisions: 15(1) — Benefit conferred on shareholder.

History: Subsec. 69(4) substituted by 1994, c. 21, s. 32, applicable to appropriations occurring after December 21, 1992. That subsec. formerly read:

(4) **Idem** — Where property of a corporation has been appropriated in any manner whatever to, or for the benefit of, a shareholder, for no consideration or for a consideration below the fair market value, if the sale thereof at the fair market value would have increased the corporation's income for a taxation year, for the purpose of determining the corporation's income for the year, it shall be deemed to have sold the property during the year and to have received therefor the fair market value thereof.

Selected Cases [subsec. 69(4)]: *Boardman et al. v. The Queen*, [1986] 1 C.T.C. 103 (FCTD); appealed to FCA (Dec. 20, 1985), File A-1015-85 (Transfer of title to houses pursuant to order in divorce proceedings deemed sale at fair market value).

Interpretation Bulletins: See list at end of s. 69.

(5) Idem — Where in a taxation year of a corporation property of the corporation has been appropriated in any manner whatever to, or for the benefit of, a shareholder, on the winding-up of the corporation, the following rules apply:

(a) the corporation is deemed, for the purpose of computing its income for the year, to have disposed of the property immediately before the winding-up for proceeds equal to its fair market value at that time;

(b) the shareholder shall be deemed to have acquired the property at a cost equal to its fair market value immediately before the winding-up;

(c) subsections 52(1), (1.1) and (2) are not applicable for the purposes of determining the cost to the shareholder of the property; and

Proposed Amendment — 69(5)(c)

(c) subsections 52(1) and (2) do not apply for the purposes of determining the cost to the shareholder of the property; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 31(3), will amend para. 69(5)(c) to read as above, applicable to dispositions that occur after 1999.

Technical Notes: Subsection 69(5) of the Act ensures that where property is appropriated by a shareholder on the winding-up of a corporation, the property is treated as having been transferred at its fair market value with the consequent recognition on the transfer of any resulting income or loss. For this purpose, paragraph 69(5)(c) provides that subsections 52(1), (1.1) and (2) do not apply for the purposes of determining the cost to the shareholder of the property transferred.

Paragraph 69(5)(c) is amended to remove the reference to subsection 52(1.1), strictly consequential on the repeal of that subsection.

This amendment applies to dispositions that occur after 1999.

(d) subsections 13(21.2), 14(12), 18(15) and 40(3.4) and (3.6) do not apply in respect of any property disposed of on the winding-up.

(e) [Repealed]

Related Provisions: 15(1) — Benefit conferred on shareholder; 54"superficial loss"(h) — Superficial loss rule inapplicable when 69(5) applies; 84(2) — Distribution on winding-up, etc.

History: Paras. 69(5)(a) and (d) amended and (e) repealed by 1998, c. 19, subsecs. 107(2) and (3), para. (a) applicable to windings-up that begin after 1995, para. (d) applicable to windings-up that begin after April 26, 1995 except that, in its application to windings-up that began before 1996, it shall be read as follows:

(d) subsections 13(21.2), 14(12), 18(15), 40(3.4) and (3.6) and 85(4) and (5.1) do not apply to the winding-up; and

and the repeal of para. (e) applicable to windings-up that begin after 1995. The paras. formerly read:

(a) for the purpose of computing the corporation's income for the year,

(i) it shall be deemed to have sold each such property immediately before the winding-up and to have received therefor the fair market value thereof at that time, and

(ii) paragraph 40(2)(e) shall not apply in computing the loss, if any, from the sale of any such property;

. . . . .

(d) subsections 85(4) and (5.1) shall not apply in respect of the winding-up; and

(e) paragraph 40(2)(e) does not apply in computing the loss, if any, of the shareholder from the disposition of a share of the capital stock of the corporation to the corporation on the winding-up.

Para. 69(5)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 47(2), applicable to dispositions of shares after 1985.

Pre-RSC History: Para. 69(5)(d) substituted by 1980-81-82-83, c. 140, subsec. 38(1), applicable with respect to appropriations occurring after November 12, 1981. Para. 69(5)(d) formerly read:

(d) subsection 85(4) shall not apply in respect of the winding-up.

Para. 69(5)(d) added by 1979, c. 5, s. 22, applicable in respect of an appropriation of property after November 16, 1978.

Subsec. 69(5) substituted by 1974-75-76, c. 26, subsec. 37(2), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974. Subsec. 69(5) formerly read:

(5) Where property of a corporation has been appropriated in any manner whatever to, or for the benefit of, a shareholder, on the winding-up of the corporation, if the sale thereof at the fair market value immediately prior to the winding-up would have increased the corporation's income for a taxation year, for the purpose of determining the corporation's income for the year, it shall be deemed to

have sold the property during the year and to have received therefor the fair market value thereof.

Interpretation Bulletins: IT-444R: Corporations — involuntary dissolutions; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of s. 69.

Information Circulars: 89-3: Policy statement on business equity valuations.

(6) Idem — Where a taxpayer who is an operator with respect to a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada disposes by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute of any petroleum, natural gas or related hydrocarbons or metal or minerals produced in the operation to

(a) Her Majesty in right of Canada or a province,

(b) an agent of Her Majesty in right of Canada or a province, or

(c) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

for no proceeds of disposition or for proceeds of disposition less than the fair market value thereof at the time the taxpayer so disposes of it, the taxpayer shall be deemed to have received proceeds of disposition therefor equal to that fair market value determined, in circumstances where the taxpayer is required by a law or contract to so dispose thereof, without regard to that law or contract.

Related Provisions: 69(7) — Unreasonable consideration; 104(29) — Amounts deemed to be payable to beneficiaries; 219(1)(k) — Reduction in branch tax.

Pre-RSC History: Para. 69(6)(c) amended by 1988, c. 55, subsec. 48(1), to substitute "that is controlled" for "that is controlled, directly or indirectly in any manner whatever," applicable to taxation years commencing after 1988.

All that portion of subsec. 69(6) preceding para. (a) amended by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985 to substitute "is an operator with respect to a natural accumulation of petroleum or natural gas in Canada," for "operates", to add "in Canada" after "an oil or gas well" and to substitute "the operation to" for "the operation of such well or resource to".

Subsec. 69(6) substituted by 1977-78, c. 32, s. 13, applicable after April 10, 1978. Subsec. 69(6) formerly read:

> (6) Where a taxpayer who operates an oil or gas well or mineral resource in Canada disposes of any petroleum, natural gas or related hydrocarbons or metal or industrial minerals produced in the operation of such well or resource to
>
> (a) Her Majesty in right of Canada or a province,
>
> (b) an agent of Her Majesty in right of Canada or a province, or
>
> (c) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province
>
> for no proceeds of disposition or for proceeds of disposition less than the fair market value thereof at the time he so disposes of it, he shall be deemed to have received proceeds of disposition therefor equal to that fair market value determined, in circumstances where he is required by a law or contract to so dispose thereof, without regard to that law or contract.

Subsec. 69(6) added by 1974-75-76, c. 26, subsec. 37(2), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada. See also list at end of s. 69.

(7) Idem — Where a taxpayer who is an operator with respect to a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada acquires any petroleum, natural gas or related hydrocarbons or metal or minerals produced in the operation from

(a) Her Majesty in right of Canada or a province,

(b) an agent of Her Majesty in right of Canada or a province, or

(c) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province

for an amount in excess of the fair market value thereof at the time the taxpayer so acquired the petroleum, natural gas or related hydrocarbons or metal or minerals, the taxpayer shall be deemed to have acquired the petroleum, natural gas or related hydrocarbons or metal or minerals at that fair market value determined, in circumstances where the taxpayer is required by a law or contract to so acquire the petroleum, natural gas or related hydrocarbons or metal or minerals, without regard to that law or contract.

Related Provisions: 69(9) — Fair market value of resource output acquired from Crown; 104(29) — Amounts deemed to be payable to beneficiaries; 219(1)(k) — Reduction in branch tax.

Pre-RSC History: Para. 69(7)(c) amended by 1988, c. 55, subsec. 48(2), to substitute "that is controlled" for "that is controlled, directly or indirectly in any manner whatever," applicable to taxation years commencing after 1988.

All that portion of subsec. 69(7) preceding para. (a) amended by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to substitute "is an operator with respect to a natural accumulation of petroleum or natural gas in Canada" for "operates", to add "in Canada" after "an oil or gas well" and to substitute "the operation from" for "the operation of such well or resource from".

Subsec. 69(7) substituted by 1977-78, c. 32, s. 13, applicable after April 10, 1978. Subsec. 69(7) formerly read:

> (7) Where a taxpayer who operates an oil or gas well or a mineral resource in Canada acquires any petroleum, natural gas or related hydrocarbons or metal or industrial minerals produced in the operation of such well or resource from
>
> (a) Her Majesty in right of Canada or a province,
>
> (b) an agent of Her Majesty in right of Canada or a province, or
>
> (c) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province
>
> for an amount in excess of the fair market value thereof at the time he so acquired the petroleum, natural gas or related hydrocarbons or metal or industrial minerals, he shall be deemed to have acquired the petroleum, natural gas or related hydrocarbons or metal or industrial minerals at that fair market value determined, in circumstances where he is required by a law or contract to so acquire the petroleum, natural gas or related hydrocarbons or metal or industrial minerals, without regard to that law or contract.

Subsec. 69(7) added by 1974-75-76, c. 26, subsec. 37(2), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada. See also list at end of s. 69.

(7.1) [Repealed under former Act]

Pre-RSC History: Subsec. 69(7.1) repealed by 1984, c. 1, subsec. 31(1), applicable with respect to dispositions of aviation turbine fuel occurring after April 30, 1983. Subsec. 69(7.1) formerly read:

> (7.1) Aviation turbine fuel — Where in a month a taxpayer has disposed of aviation turbine fuel, he shall be deemed to have received, for each cubic metre of aviation turbine fuel so disposed of that was used on an international flight (within the meaning assigned by subsection 234.1(4)) and for which an export licence is required under Part VI of the *National Energy Board Act*, proceeds of disposition equal to the aggregate of
>
> (a) the proceeds of disposition thereof as determined without reference to this subsection, and
>
> (b) the amount prescribed in respect of a cubic metre of aviation turbine fuel for that month.

Subsec. 69(7.1) added by 1980-81-82-83, c. 140, subsec. 38(2), applicable with respect to dispositions occurring after January 31, 1982, except that with respect to dispositions occurring after January 31, 1982 and before March 1, 1982, subsec. 69(7.1) shall be read without reference to the words "and for which an export licence is required under Part VI of the *National Energy Board Act*".

(8) Fair market value of resource output disposed of to Crown — For the purposes of subsection (6), the fair market value at the time of disposition of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or minerals disposed of by the taxpayer referred to in that subsection to a person referred to in any of paragraphs (6)(a) to (c) shall be deemed to be the amount by which

> (a) the average proceeds of disposition that became receivable in the month that included that time by that person for the disposition of a like unit from a person other than a person referred to in any of paragraphs (6)(a) to (c)

exceed the total of

> (b) the average total of all expenses (including depreciation) incurred by that person in respect of that month for each like unit that may reasonably be attributed to transmitting, transporting, marketing or processing thereof to the extent that those expenses are reasonable and necessary and do not include any cost of acquisition thereof, and
>
> (c) in respect of the unit disposed of by the taxpayer, the amount that may reasonably be attributed as being an amount paid to, an amount that became payable to or an amount that became receivable by, Her Majesty in Right of Canada for the use and benefit of a band or bands as defined in the *Indian Act*.

Related Provisions: 69(10) — Certain persons deemed to be same person.

Pre-RSC History: All that portion of subsec. 69(8) following para. (a) substituted (para. (c) added), by 1985, c. 45, subsec. 32(2), applicable to 1978 *et seq.* That portion of subsec. 69(8) formerly read:

> exceeds
>
> (b) the average aggregate of all expenses (including depreciation) incurred by that person in respect of that month for each such unit that may reasonably be attributed to transmitting, transporting, marketing or processing thereof to the extent that such expenses are reasonable and necessary and do not include any cost of acquisition thereof.

Subsec. 69(8) substituted by 1977-78, c. 32, s. 13, applicable after April 10, 1978. Subsec. 69(8) formerly read:

> (8) For the purposes of subsection (6), the fair market value at the time of disposition of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or industrial minerals disposed of by the taxpayer referred to in that subsection to a person referred to in any of paragraphs (6)(a) to (c) shall be deemed to be the amount by which
>
> (a) the average proceeds of disposition that became receivable in the month that included that time by that person for the disposition of a like unit from a person other than a person referred to in any of paragraphs (6)(a) to (c)
>
> exceeds
>
> (b) the average aggregate of all expenses (including depreciation) incurred by that person in respect of that month for each such unit that may reasonably be attributed to transmitting, transporting, marketing or processing thereof to the extent that such expenses are reasonable and necessary and do not include any cost of acquisition thereof.

Subsec. 69(8) added by 1974-75-76, c. 26, subsec. 37(2), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada. See also list at end of s. 69.

(9) Fair market value of resource output acquired from Crown — For the purposes of subsection (7), the fair market value of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metals or minerals acquired by the taxpayer referred to in that subsection from a person referred to in any of paragraphs (7)(a) to (c) shall be deemed to be equal to the total of

> (a) the amount, if any, paid or payable to the taxpayer by that person in respect of that unit, and
>
> (b) the amount, if any, in respect of that unit paid or payable to Her Majesty in right of Canada by that person for the use and benefit of a band or bands as defined in the *Indian Act*.

Pre-RSC History: Subsec. 69(9) substituted by 1985, c. 45, subsec. 32(3), applicable to 1978 *et seq.* Subsec. 69(9) formerly read:

> (9) Fair market value of resource output acquired from Crown — For the purposes of subsection (7), the fair market value of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or minerals acquired by the taxpayer referred to in that subsection from a person referred to in any of paragraphs (7)(a) to (c) shall be deemed to be equal to the amount, if any, paid or payable to the taxpayer by that person in respect of that unit.

Subsec. 69(9) substituted by 1977-78, c. 32, s. 13, applicable after April 10, 1978. Subsec. 69(9) formerly read:

> (9) For the purposes of subsection (7), the fair market value of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or industrial minerals acquired by the taxpayer referred to in that subsection from a person referred to in any of paragraphs (7)(a) to (c) shall be deemed to be equal to the amount, if any, paid or payable to the taxpayer by that person in respect of that unit.

Subsec. 69(9) added by 1974-75-76, c. 26, subsec. 37(2), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada. See also list at end of s. 69.

(10) Certain persons deemed to be same person — For the purposes of subsection (8), where a person referred to in any of paragraphs (6)(a) to (c) disposes of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal or minerals to another person referred to in any of those paragraphs, those persons shall be deemed to be the same person.

Pre-RSC History: Subsec. 69(10) substituted by 1977-78, c. 32, s. 13, applicable after April 10, 1978. Subsec. (10) formerly read:

> (10) For the purposes of subsection (8), where a person referred to in any of paragraphs (6)(a) to (c) disposes of a unit of any particular quantity of petroleum, natural gas or related hydrocarbons or metal

or industrial minerals to another person referred to in any of those paragraphs, those persons shall be deemed to be the same person.

Subsec. 69(10) added by 1974-75-76, c. 26, subsec. 37(2), applicable in respect of appropriations, dispositions or acquisitions of property after May 6, 1974.

Remission Orders: *Syncrude Remission Order*, C.R.C. 1978, c. 794 (P.C. 1976-1026) (remission of tax on royalties etc. relating to the Syncrude Project).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada. See also list at end of s. 69.

(11) Deemed proceeds of disposition — Where, at any particular time as part of a series of transactions or events, a taxpayer disposes of property for proceeds of disposition that are less than its fair market value and it can reasonably be considered that one of the main purposes of the series is

(a) to obtain the benefit of

(i) any deduction (other than a deduction under subsection 110.6(2.1) in respect of a capital gain from a disposition of a share acquired by the taxpayer in an acquisition to which subsection 85(3) or 98(3) applied) in computing income, taxable income, taxable income earned in Canada or tax payable under this Act, or

(ii) any balance of undeducted outlays, expenses or other amounts

available to a person (other than a person that would be affiliated with the taxpayer immediately before the series began, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3)) in respect of a subsequent disposition of the property or property substituted for the property, or

(b) to obtain the benefit of an exemption available to any person from tax payable under this Act on any income arising on a subsequent disposition of the property or property substituted for the property,

notwithstanding any other provision of this Act, where the subsequent disposition occurs, or arrangements for the subsequent disposition are made, before the day that is 3 years after the particular time, the taxpayer is deemed to have disposed of the property at the particular time for proceeds of disposition equal to its fair market value at the particular time.

Related Provisions [subsec. 69(11)]: 69(12) — Reassessment to give effect to 69(11); 69(13) — Amalgamation or merger; 69(14) — Where corporation incorporated during series of transactions; 87 — Amalgamations; 88(1) — Winding-up; 160(1.1) — Joint liability of vendor and specified person; 248(5) — Substituted property.

History: Subsec. 69(11) amended by 1998, c. 19, subsec. 107(4), applicable to each disposition that is part of a series of transactions or events that begins after April 26, 1995, other than a disposition that occurred before 1996 to a person who was obliged on that day to acquire the property under the terms of an agreement in writing entered into on or before that day, and for the purpose of this application, a person is considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act. The subsec. formerly read:

(11) Where, at any time as part of a series of transactions, a person or partnership (in this subsection and subsection (12) referred to as the "vendor") has disposed of property for proceeds of disposition that are less than its fair market value and it may reasonably be considered that one of the main purposes of the series was to obtain the benefit of

(a) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under this Act, or

(b) any balance of undeducted outlays, expenses or other amounts

available to a specified person in respect of a subsequent disposition of the property or property substituted for the property, notwithstanding any other provision of this Act, the vendor shall, where the subsequent disposition occurs within three years after that time, be deemed to have disposed of the property at that time for proceeds of disposition equal to its fair market value at that time.

Pre-RSC History: Subsec. 69(11) added by 1987, c. 46, s. 24, applicable with respect to property disposed of after January 15, 1987 except where the person or partnership disposing of the property after that date was obliged on that date to dispose of it pursuant to an agreement in writing entered into on or before that date or where the person or partnership disposed of the property as part of a series of transactions that commenced on or before that date.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of s. 69.

Information Circulars: 88-2, para. 9: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 9 (loss consolidation within a corporate group).

Pre-RSC History [former subsec. 69(11)]: Former subsec. 69(11) repealed by 1984, c. 1, subsec. 31(2), applicable with respect to dispositions of aviation turbine fuel occurring after April 30, 1983. Subsec. 69(11) formerly read:

(11) Interpretation — For the purposes of subsection (7.1), aviation turbine fuel shall be deemed to be used on an international flight if

(a) it is purchased in Canada by an air carrier that is resident in Canada and is specified, on a fuel certificate referred to in section 234.1, to be fuel used on an international flight; or

(b) it is purchased in Canada by an air carrier that is not resident in Canada, unless it is purchased in respect of an aircraft having a maximum take-off weight not exceeding 34,000 kilograms.

Subsec. 69(11) added by 1980-81-82-83, c. 140, subsec. 38(3), applicable with respect to dispositions occurring after January 31, 1982.

(12) Reassessments — Notwithstanding subsections 152(4) to (5), the Minister may at any time make such assessments or reassessments of the tax, interest and penalties payable by the taxpayer as are necessary to give effect to subsection (11).

History: Subsec. 69(12) amended by 1998, c. 19, subsec. 107(4), applicable on the same basis as the amendment to subsec. 69(11). The subsec. formerly read:

(12) Definition of "specified person" — For the purposes of subsection (11), a "specified person" is

(a) a person that was not (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) related to the vendor immediately before the series of transactions commenced;

(b) a partnership of which neither the vendor nor a person who was (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) related to the vendor immediately before the series commenced was a majority interest partner (within the meaning assigned by subsection 97(3.1)) immediately before the series commenced; or

(c) where the vendor is a partnership, a person who was neither

(i) a majority interest partner (within the meaning assigned by subsection 97(3.1)) of the partnership immediately before the series commenced, nor

(ii) a person who was (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) related to a person described in subparagraph (i) immediately before the series commenced.

Pre-RSC History: Subsec. 69(12) added by 1987, c. 46, s. 24, applicable with respect to property disposed of after January 15, 1987 except where the person or partnership disposing of the property after that date was obliged on that date to dispose of it pursuant to an agreement in writing entered into on or before that date or where the person or partnership dis-

posed of the property as part of a series of transactions that commenced on or before that date. See "Interpretation" under subsec. 69(11).

Interpretation Bulletins: See list at end of s. 69.

(12.1) [Repealed]

History: Subsec. 69(12.1) repealed by 1998, c. 19, subsec. 107(4), applicable on the same basis as the amendment to subsec. 69(11). The subsec. formerly read:

> (12.1) Application of subsecs. (11) and (12) — Subsections (11) and (12) are applicable with respect to property disposed of after January 15, 1987 except where the person or partnership disposing of the property after that date was obliged on that date to dispose of it pursuant to an agreement in writing entered into on or before that date or where the person or partnership disposed of the property as part of a series of transactions that commenced on or before that date.

(12.2) [Repealed]

Origin of subsecs. 69(12.1), (12.2): R.S.C. 1985, c. 1 (5th Supp.). This was formerly an application rule in 1987, c. 46, s. 24.

History: Subsec. 69(12.2) repealed by 1998, c. 19, subsec. 107(4), applicable on the same basis as the amendment to subsec. 69(11). The subsec. formerly read:

> (12.2) Obligation to acquire property, etc. — For the purposes of subsection (12.1), a person shall be considered not to be obliged either to acquire or dispose of property if the person may be excused from performing the obligation as a result of changes to this Act affecting acquisitions or dispositions of property.

(13) Amalgamation or merger — Where there is an amalgamation or merger of a corporation with one or more other corporations to form one corporate entity (in this subsection referred to as the "new corporation"), each property of the corporation that becomes property of the new corporation as a result of the amalgamation or merger is deemed, for the purpose of determining whether subsection (11) applies to the amalgamation or merger, to have been disposed of by the corporation immediately before the amalgamation or merger for proceeds equal to

(a) in the case of a Canadian resource property or a foreign resource property, nil; and

(b) in the case of any other property, the cost amount to the corporation of the property immediately before the amalgamation or merger.

Related Provisions: 87(2)(e) — Rules applicable — capital property.

History: Subsec. 69(13) amended by 1998, c. 19, subsec. 107(5), applicable to amalgamations and mergers that occur after April 26, 1995. The subsec. formerly read:

> (13) Where there has been an amalgamation or merger of a corporation with one or more other corporations to form one corporate entity (in this subsection referred to as the "new corporation"), each property of the corporation that became property of the new corporation as a result of the amalgamation or merger shall be deemed, for the purpose of determining whether subsection (11) is applicable in respect of the amalgamation or merger, to have been disposed of by the corporation immediately before the amalgamation or merger for proceeds of disposition equal to
>
> (a) in the case of a Canadian resource property or a foreign resource property, nil; and
>
> (b) [Repealed]
>
> (c) in the case of any other property, the cost amount to the corporation of the property immediately before the amalgamation or merger.

Para. 69(13)(b) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 27(2), applicable to an amalgamation or merger of a corporation occurring after the beginning of its first taxation year beginning after June 1988. Para. (b) formerly read:

> (b) in the case of eligible capital property, an amount equal to 4/3 of the cost amount to the corporation of the property immediately before the amalgamation or merger; and

Pre-RSC History: Para. 69(13)(b) amended by 1988, c. 55, subsec. 48(3), to substitute "eligible capital property" for "any eligible capital property" and "4/3 of the cost amount" for "twice the cost amount", applicable with respect to an amalgamation or merger of a corporation occurring after the commencement of its first taxation year commencing after June 1988.

Subsec. 69(13) added by 1987, c. 46, s. 24, applicable with respect to amalgamations and mergers occurring after January 15, 1987.

(14) New taxpayer — For the purpose of subsection (11), where a taxpayer is incorporated or otherwise comes into existence at a particular time during a series of transactions or events, the taxpayer is deemed

(a) to have existed at the time that was immediately before the series began; and

(b) to have been affiliated at that time with every person with whom the taxpayer is affiliated (otherwise than because of a right referred to in paragraph 251(5)(b)) at the particular time.

History: Subsec. (14) added by 1998, c. 19, subsec. 107(5), applicable to each disposition that is part of a series of transactions or events that begins after April 26, 1995, other than a disposition that occurred before 1996 to a person who was obliged on that day to acquire the property under the terms of an agreement in writing entered into on or before that day, and for the purpose of this application, a person is considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act.

Selected Cases [s. 69]: *Côté v. R.*, [1999] 3 C.T.C. 2373 (TCC) (Gifts valid but valuations exaggerated; penalties upheld).

Definitions [s. 69]: "amount" — 248(1); "affiliated" — 69(14), 251.1; "arm's length" — 251; "assessment" — 248(1); "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible capital property" — 54, 248(1); "foreign resource property" — 66(15), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "non-resident", "oil or gas well", "person", "prescribed" — 248(1); "proceeds of disposition" — 54 [technically does not apply to s. 69]; "property" — 248(1); "province" — *Interpretation Act* 35(1); "series of transactions or events" — 248(10); "shareholder" — 248(1); "substituted property" — 248(5); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 69]: IT-169: Price adjustment clauses; IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-268R4: *Inter vivos* transfer of farm property to child; IT-490: Barter transactions.

70. (1) Death of a taxpayer — In computing the income of a taxpayer for the taxation year in which the taxpayer died,

(a) an amount of interest, rent, royalty, annuity (other than an amount with respect to an interest in an annuity contract to which paragraph 148(2)(b) applies), remuneration from an office or employment, or other amount payable periodically, that was not paid before the taxpayer's death, shall be deemed to have accrued in equal daily amounts in the period for or in respect of which the amount was payable, and the value of the portion thereof so deemed to have accrued to the day of death shall be included in computing the taxpayer's income for the year in which the taxpayer died; and

(b) paragraph 12(1)(t) shall be read as follows:

"(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumu-

lative Canadian exploration expense" in subsection 66.1(6);"

Related Provisions: 7(1)(e) — Stock option benefit where employee has died; 28(1) — Farming or fishing business; 61.2 — Deduction of debt forgiveness reserve for year of death; 70(5) — Capital property of deceased; 80(2)(p), (q) — Debt forgiveness rules — debt obligation settled by estate; 118.1(1)"total gifts"(a)(ii); 118.1(5) — Unlimited claim for charitable donations after death; 146(8.8) — RRSP — effect of death; 146.01(6) — RRSP Home Buyers' Plan — income inclusions; 146.02(6) — RRSP Lifelong Learning Plan — income inclusions; 146.3(6) — RRIF — effect of death; 147.2(6) — Additional deductible pension contributions for year of death; 148.1(2)(b)(i) — No tax on provision of funeral or cemetary services from eligible funeral arrangement; 156.1(3) — Instalments not required after death; 164(6) — Election by executor to carry back losses of estate to year of death.

Pre-RSC History: Subsec. 70(1) substituted by 1988, c. 55, subsec. 49(1), applicable after 1987. Subsec. 70(1) formerly read:

> 70. (1) Death of a taxpayer — In computing the income of a taxpayer for the taxation year in which he died, an amount of interest, rent, royalty, annuity (other than an amount with respect to an interest in an annuity contract to which paragraph 148(2)(b) applies), remuneration from an office or employment, or other amount payable periodically, that was not paid before his death, shall be deemed to have accrued in equal daily amounts in the period for or in respect of which the amount was payable, and the value of the portion thereof so deemed to have accrued to the day of death shall be included in computing the taxpayer's income for the year in which he died.

Subsec. 70(1) substituted by 1980-81-82-83, c. 140, subsec. 39(1), applicable after November 12, 1981. Subsec. 70(1) formerly read:

> 70. (1) In computing the income of a taxpayer for the taxation year in which he died, an amount of interest, rent, royalty, annuity, remuneration from an office or employment, or other amount payable periodically, that was not paid before his death, shall be deemed to have accrued in equal daily amounts in the period for or in respect of which the amount was payable, and the value of the portion thereof so deemed to have accrued to the day of death shall be included in computing the taxpayer's income for the year in which he died

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-212R3: Income of deceased persons — rights or things; IT-234: Income of deceased persons — farm crops; IT-396R: Interest income; IT-410R: Debt obligations — accrued interest on transfer.

Forms: T4011: Preparing returns for deceased persons [guide]; RC4111(E): What to do following a death (guide).

(2) Amounts receivable — Where a taxpayer who has died had at the time of death rights or things (other than any capital property or any amount included in computing the taxpayer's income by virtue of subsection (1)), the amount of which when realized or disposed of would have been included in computing the taxpayer's income, the value thereof at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died, unless the taxpayer's legal representative has, not later than the day that is one year after the date of death of the taxpayer or the day that is 90 days after the mailing of any notice of assessment in respect of the tax of the taxpayer for the year of death, whichever is the later day, elected otherwise, in which case the legal representative shall file a separate return of income for the year under this Part and pay the tax for the year under this Part as if

(a) the taxpayer were another person;

(b) that other person's only income for the year were the value of the rights or things; and

(c) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the taxpayer was entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the taxpayer's taxable income or tax payable under this Part, as the case may be, for the year.

Related Provisions: 28(1) — Farming or fishing business; 53(1)(e)(v) — Adjustments to cost base; 60(t) — Deductions — amount included under 70(2); 70(3) — Rights or things transferred to beneficiaries; 70(4) — Revocation of election; 110.4(5) — Exception; 114.2 — Deductions in separate returns; 118.93 — Credits in separate returns; 120.2(4)(a) — No minimum tax carryover on special return; 127.1(1)(a) — No refundable investment tax credit on special return; 127.55 — Minimum tax not applicable; 150(1)(b) — Filing deadline for deceased's return; 159(5) — Election where certain provisions applicable.

Pre-RSC History: Para. 70(2)(c) substituted by 1988, c. 55, subsec. 49(2), applicable to 1988 *et seq.* Para. 70(2)(c) formerly read:

> (c) subject to section 114.2, that other person were entitled to the deductions to which the taxpayer was entitled under sections 109 to 110.2 for the year in computing his taxable income for the year.

All that portion of subsec. 70(2) preceding para. (a) substituted by 1986, c. 6, subsec. 33(1), applicable to 1986 *et seq.*, to delete reference to "indexed security" located after "other than any capital property".

Subsec. 70(2) substituted by 1985, c. 45, subsec. 33(1), applicable to 1985 *et seq.* Subsec. 70(2) formerly read:

> (2) Amounts receivable — Where a taxpayer who has died had at the time of his death rights or things (other than any capital property, indexed security or any amount included in computing his income by virtue of subsection (1)), the amount whereof when realized or disposed of would have been included in computing his income, the value thereof at the time of death shall be included in computing the taxpayer's income for the taxation year in which he died, except that where his legal representative has, within one year from the date of death of the taxpayer or within 90 days after the mailing of any notice of assessment in respect of the tax of the taxpayer for the year of death, whichever is the later day, so elected, a separate return of the value shall be filed and tax thereon shall be paid under this Part for the taxation year in which the taxpayer died as if he had been another person entitled to the deductions to which he was entitled under section 109 for that year.

Subsec. 70(2) substituted by 1984, c. 1, subsec. 32(1), applicable with respect to deaths occurring after September 30, 1983, to add "indexed security".

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-212R3: Income of deceased persons — rights or things; IT-234: Farm crops; IT-278R2: Death of a partner or of a retired person; IT-326R3: Returns of deceased persons as "another person"; IT-337R3: Retiring allowances; IT-382: Debts bequeathed or forgiven on death; IT-427R: Livestock of farmers; IT-457R: Election by professionals to exclude work in progress from income; IT-502: Employee benefit plans and employee trusts.

Forms: T4011: Preparing returns for deceased persons [guide].

(3) Rights or things transferred to beneficiaries — Where before the time for making an election under subsection (2) has expired, a right or thing to which that subsection would otherwise apply has been transferred or distributed to beneficiaries or other persons beneficially interested in the estate or trust,

(a) subsection (2) is not applicable to that right or thing; and

(b) an amount received by one of the beneficiaries or persons on the realization or disposition of the right or thing shall be included in computing the income of the beneficiary or person for the taxation year in which the beneficiary or person received it.

Related Provisions: 44(3) — Where subsec. 70(3) not to apply; 69(1.1) — Deemed cost of property to beneficiary; 70(3.1) — Exception; 118.1(7)(b), 118.1(7.1)(b) — Donation of art or cultural property on death.

History: Para. 70(3)(b) amended by 1998, c. 19, subsec. 108(1), applicable to taxation years that end after November 1991. The para. formerly read:

> (b) an amount received by one of the beneficiaries or other such persons on the realization or disposition of the right or thing shall be included in computing the taxpayer's income for the taxation year in which the taxpayer received it.

Selected Cases [subsec. 70(3)]: *Tory Estate (Montreal Trust Co.) v. MNR*, [1976] C.T.C. 415 (SCC) (Transfer of deceased's accounts receivable by estate to beneficiary taxable to estate in amount exceeding beneficiary's interest).

Interpretation Bulletins: IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner; IT-427R: Livestock of farmers.

(3.1) Exception — For the purposes of this section, "rights or things" do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income because of paragraph 60(l) or was made in circumstances in which subsection 146(21) applied), eligible capital property, land included in the inventory of a business, a Canadian resource property or a foreign resource property.

Proposed Amendment — 70(3.1)

(3.1) Exception — For the purposes of this section, "rights or things" in respect of an individual do not include an interest in a life insurance policy (other than an annuity contract where the payment for the contract was deductible in computing the individual's income under paragraph 60(l) or was made in circumstances in which subsection 146(21) applied), eligible capital property, land included in the inventory of a business, a Canadian resource property, a foreign resource property or property in respect of which subsection 94.2(3) applied to the individual immediately before the individual's death.

Application: The June 22, 2000 draft legislation, subsec. 5(1), will amend subsec. 70(3.1) to read as above, applicable to 2001 *et seq.*

Technical Notes: Under subsection 70(2) of the Act, the value of certain "rights or things" owned by an individual at death is required to be included in the individual's income for the year of death. Subsection 70(3) provides that this rule does not apply in connection with "rights or things" transferred to beneficiaries of the deceased within a specified time. Subsection 70(3.1) provides that certain property does not constitute a "right or thing" for this purpose.

Subsection 70(3.1) is amended so that a "right or thing" also does not include property in respect of which new subsection 94.2(3) applied to the deceased immediately before death. New subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under subsection 94.2(4) for participating interests in foreign investment entities.

This amendment applies to the 2001 and subsequent taxation years.

History: Subsec. 70(3.1) substituted by 1994, c. 21, subsec. 33(1), applicable to 1992 *et seq.* That subsec. formerly read:

> (3.1) Exception — For the purposes of this section, "rights or things" do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income by virtue of paragraph 60(l)), eligible capital property, land included in the inventory of a business, a Canadian resource property or a foreign resource property.

Pre-RSC History: Subsec. 70(3.1) amended by 1985, c. 45, subsec. 33(2), applicable to taxation years commencing after 1984, to substitute "a Canadian resource property or a foreign resource property" for "or a property described in any of paragraphs 59(2)(a) to (e)".

Subsec. 70(3.1) substituted by 1980-81-82-83, c. 140, subsec. 39(2), applicable after November 12, 1981. Subsec. 70(3.1) formerly read:

> (3.1) For the purposes of this section, "rights or things" do not include eligible capital property, land included in the inventory of a business or a property described in any of paragraphs 59(2)(a) to (e).

Subsec. 70(3.1) added by 1974-75-76, c. 26, subsec. 38(1), applicable where the death of the taxpayer referred to occurred after May 6, 1974.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

(4) Revocation of election — An election made under subsection (2) may be revoked by a notice of revocation signed by the legal representative of the taxpayer and filed with the Minister within the time that an election under that subsection may be made.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things.

(5) Capital property of a deceased taxpayer — Where in a taxation year a taxpayer dies,

(a) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each capital property of the taxpayer and received proceeds of disposition therefor equal to the fair market value of the property immediately before the death;

(b) any person who as a consequence of the taxpayer's death acquires any property that is deemed by paragraph (a) to have been disposed of by the taxpayer shall be deemed to have acquired it at the time of the death at a cost equal to its fair market value immediately before the death;

(c) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death (other than where the taxpayer's proceeds of disposition of the property under paragraph (a) are redetermined under subsection 13(21.1)) and the amount that was the capital cost to the taxpayer of the property exceeds the amount determined under paragraph (b) to be the cost to the person thereof, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

> (i) the capital cost to the person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and
>
> (ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property; and

(d) where a property of the taxpayer that was deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death and the taxpayer's proceeds of disposition of the property under paragraph (a) are redetermined under subsection 13(21.1), notwithstanding paragraph (b),

> (i) where the property was depreciable property of a prescribed class and the amount that was the capital cost to the taxpayer of the property exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),
>
> (A) its capital cost to the person shall be deemed to be the amount that was its capital cost to the taxpayer, and
>
> (B) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxa-

tion years that ended before the person acquired the property, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its cost to the person shall be deemed to be the amount that was the taxpayer's proceeds of disposition of the land as redetermined under subsection 13(21.1).

Related Provisions: 38(a.1)(ii) — Reduced capital gain on gift on death of publicly-traded securities to charity; 43.1(2) — Life estates in real property; 44(2) — Exchanges of property; 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 70(5.3) — Value of property that depends on life insurance policy; 70(6) — Where transfer or distribution to spouse or trust; 70(6.2) — Election; 70(9) — Transfer of farm property to taxpayer's child; 70(9.2) — Transfer of family farm corporations and partnerships; 70(12) — Capital cost of certain depreciable property; 70(13) — Order of disposal of depreciable property; 80(2)(p), (q) — Debt forgiveness rules — debt obligation settled by estate; 110.6(14)(g) — Related persons, etc.; 118.1(5) — Gift by will deemed made immediately before death; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 139.1(5) — Value of ownership rights in insurer during demutualization; 143.1(4) — Death of beneficiary of amateur athlete trust; 159(5) — Election where certain provisions applicable; 164(6) — Election by executor to carry back losses of estate to year of death; 248(8) — Occurrences as a consequence of death; 256(7)(a)(i)(D) — Control of corporation deemed not acquired; Canada-U.S. tax treaty, Art. XXIX B:6, 7 — Credit for U.S. estate taxes.

History: Paras. 70(5)(a) to (c) substituted, and para. (d) added, by 1994, c. 21, subsec. 33(2), applicable to dispositions and acquisitions occurring after 1992. Paras. (a) to (c) formerly read:

(a) the taxpayer shall be deemed to have disposed, immediately before death, of each property that was at that time a capital property of the taxpayer and to have received proceeds of disposition therefor equal to the fair market value of the property at that time;

(b) any person who as a consequence of the death acquires any property that is deemed by paragraph (a) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to its fair market value at that time; and

(c) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the death and the amount that was the capital cost to the taxpayer of that property exceeds the amount determined under paragraph (b) to be the cost to that person thereof, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost to that person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to that person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for the taxation years ending before the person acquired the property.

Subsec. 70(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(1), applicable to dispositions occurring after 1992. Subsec. (5) formerly read:

(5) **Depreciable and other capital property of deceased taxpayer** — Where in a taxation year a taxpayer has died, the following rules apply:

(a) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of each property owned by the taxpayer at that time that was a capital property of the taxpayer (other than depreciable property of a prescribed class) and to have received proceeds of disposition therefor equal to the fair market value of the property at that time;

(b) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of all depreciable property of a prescribed class owned by the taxpayer at that time and to have received proceeds of disposition therefor equal to,

(i) where the fair market value of that property at that time exceeds the undepreciated capital cost thereof to the taxpayer at that time, the amount of that undepreciated capital cost plus ½ of the amount of the excess, and

(ii) in any other case, the fair market value of that property at that time plus ½ of the amount, if any, by which the undepreciated capital cost thereof to the taxpayer at that time exceeds that fair market value;

(c) any person who, as a consequence of the death of the taxpayer, has acquired any particular capital property of the taxpayer (other than depreciable property of a prescribed class) that is deemed by paragraph (a) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to its fair market value immediately before the death of the taxpayer;

(d) any person who, as a consequence of the death of the taxpayer, has acquired any particular depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (b) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to that proportion of the proceeds of disposition of all depreciable property of that class deemed by paragraph (b) to have been received by the taxpayer that the fair market value immediately before the death of the taxpayer of the particular property is of the fair market value at that time of all of that property of that class; and

(e) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (b) to have been disposed of by the taxpayer has been acquired by any person as a consequence of the death of the taxpayer and the amount that was the capital cost to the taxpayer of that property exceeds the amount determined under paragraph (d) to be the cost to that person thereof, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to that person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to that person in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by that person of the property.

Pre-RSC History: Paras. 70(5)(c) to (e) amended by 1985, c. 45, subsec. 33(3), applicable with respect to transfers, distributions and acquisitions occurring after 1981, to substitute in each paragraph "as a consequence of the death of the taxpayer" for "by virtue of the death of the taxpayer".

All that portion of subsec. 70(5) preceding para. (e) substituted by 1973-74, c. 14, subsec. 19(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 70(5)]: *Nussey Estate v. R.*, [2000] 2 C.T.C. 2284 (TCC) (Taxpayers cannot deem certain events to have occurred immediately prior to death); *Haas Estate v. R.*, [2000] 1 C.T.C. 2446 (TCC) (Domestic law applies when no definition of "gain" in tax treaty); *Greenwood Estate v. Canada*, [1991] 1 C.T.C. 47 (FCTD); appealed to FCA (April 29, 1991), File A-371-91 (Agreement between sons and father to purchase shares on death prevents shares from vesting indefeasibly in spousal trust); *Gladden Estate v. The Queen*, [1985] 1 C.T.C. 163 (FCTD) (Capital gain from deemed disposition of shares in Canadian companies exempt as "sale or exchange" of capital assets under Canada-U.S. Tax Treaty); *Pappas Estate v. The Queen*, [1981] C.T.C. 266 (FCTD) (Vacancies factored into value of rental property); *The Queen v. Mastronardi Estate*, [1977] C.T.C. 355 (FCA) (Insurance payable to company on death of shareholder not relevant to value of shares "immediately before his death"); *Katz Estate v. The Queen*, [1976] C.T.C. 633 (FCTD) (Deemed disposition is for purposes of both capital gain and recapture of capital cost allowance).

I.T. Application Rules: 20(1.2) (where depreciable property owned since before 1972 is transferred on death).

Interpretation Bulletins: IT-140R3: Buy-sell agreements; IT-242R: Retired partners; IT-217R: Depreciable property owned on December 31, 1971; IT-259R3: Exchanges of property; IT-278R2: Death of a partner or of a retired partner; IT-288R2: Gifts of capital properties to a charity and others; IT-305R4: Testamentary spouse trusts; IT-325R2: Property transfers after separation, divorce and annulment; IT-382: Debts bequeathed or forgiven on death; IT-349R3: Intergenerational transfers of farm property on death; IT-416R3: Valuation of shares of a corporation receiving life insurance proceeds on death of a shareholder; IT-504R2: Visual artists and writers; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 89-3: Policy statement on business equity valuations.

Forms: T2086: Capital dispositions supplementary schedule — depreciable property upon the death of a taxpayer; T4011: Preparing returns for

deceased persons [guide]; RC4111(E): What to do following a death (guide).

(5.1) Eligible capital property of deceased — Notwithstanding subsection 24(1), where at any time a taxpayer dies and any person (in this subsection referred to as the beneficiary), as a consequence of the taxpayer's death, acquires an eligible capital property of the taxpayer in respect of a business carried on by the taxpayer immediately before that time (otherwise than by way of a distribution of property by a trust that claimed a deduction under paragraph 20(1)(b) in respect of the property or in circumstances to which subsection 24(2) applies),

(a) the taxpayer shall be deemed to have disposed of the property, immediately before the taxpayer's death, for proceeds equal to 4/3 of that proportion of the cumulative eligible capital of the taxpayer in respect of the business that the fair market value immediately before that time of the property is of the fair market value immediately before that time of all of the eligible capital property of the taxpayer in respect of the business;

(b) subject to paragraph (c), the beneficiary shall be deemed to have acquired a capital property at the time of the taxpayer's death at a cost equal to the proceeds referred to in paragraph (a);

(c) where the beneficiary continues to carry on the business previously carried on by the taxpayer, the beneficiary shall be deemed to have, at the time of the taxpayer's death, acquired an eligible capital property and made an eligible capital property expenditure at a cost equal to the total of

(i) the proceeds referred to in paragraph (a), and

(ii) 4/3 of that proportion of the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer at that time that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

and, for the purposes of determining at any time the beneficiary's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (ii) shall be added to the amount otherwise determined, in respect of the business, for P in the definition "cumulative eligible capital" in subsection 14(5); and

(d) for the purposes of determining, after that time,

(i) the amount deemed by subparagraph 14(1)(a)(v) to be the beneficiary's taxable capital gain, and

(ii) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the beneficiary's income

in respect of any subsequent disposition of the property of the business, there shall be added to the amount determined for Q in the definition "cumulative eligible capital" in [subsection] 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the taxpayer immediately before that time,

B is the fair market value immediately before that time of the particular property, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business.

Related Provisions: 14(1) — Inclusion in income from business; 24(1) — Ceasing to carry on business; 24(2) — Where business carried on by spouse or controlled corporation; 110.6(1)"qualified farm property"(d)(ii) — Capital gains exemption; 248(8) — Occurrences as a consequence of death; 252(4) — Extended meaning of "spouse".

History: Subpara. 70(5.1)(d)(ii) amended by 1995, c. 3, s. 18, applicable to dispositions and acquisitions that occur after February 22, 1994. Subpara. (ii) formerly read:

(ii) the amount to be included under paragraph 14(1)(b) in computing the beneficiary's income

Para. 70(5.1)(b) and the opening words of para. (c) substituted by 1994, c. 21, subsec. 33(3) and (4), applicable to dispositions and acquisitions occurring after 1992. Para. (b) and the opening words of para. (c) formerly read:

(b) subject to paragraph (c), the beneficiary shall be deemed to have acquired a capital property, immediately after the death of the taxpayer, at a cost equal to the proceeds referred to in paragraph (a);

(c) where the beneficiary continues to carry on the business previously carried on by the taxpayer, the beneficiary shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

Para. 70(5.1)(d) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(2), applicable to acquisitions occurring as a consequence of the death of a taxpayer after the beginning of the first fiscal period of the taxpayer's business beginning after 1987.

Subsec. 70(5.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(1), applicable to acquisitions occurring as a consequence of the death of a taxpayer after the beginning of the first fiscal period of the taxpayer's business beginning after 1987, except that in applying the subsec. in respect of acquisitions occurring before July 13, 1990 the subsec. shall be read without reference to "(otherwise than under a distribution of property by a trust that has claimed a deduction under paragraph 20(1)(b) in respect of the property or in circumstances to which subsection 24(2) applies)". Subsec. 70(5.1) formerly read:

(5.1) Eligible capital property of deceased — Notwithstanding subsection 24(1), where in a taxation year a taxpayer has died and any person (other than a spouse or corporation to whom subsection 24(2) applies), as a consequence of the death of the taxpayer, has acquired any particular eligible capital property of the taxpayer, the following rules apply:

(a) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of the property and to have received proceeds of disposition therefor in respect of a business carried on by the taxpayer equal to 4/3 of the cumulative eligible capital in respect of the business at that time; and

(b) the person who has so acquired the property shall be deemed to have acquired a capital property, immediately after the death of the taxpayer, at a cost equal to the proceeds of disposition referred to in paragraph (a), except that, where the person continues to carry on the business previously carried on by the taxpayer, the person shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

(i) the proceeds of disposition referred to in paragraph (a), and

(ii) the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer at that time

and, for the purposes of determining at any time the person's cumulative eligible capital in respect of the business, an amount equal to the amount determined under subparagraph (ii) shall be added to the amount otherwise determined for P in that definition.

Pre-RSC History: Para. 70(5.1)(a) amended to substitute "4/3 of" for "two times", and para. (b) substituted by 1988, c. 55, subsec. 49(3), applicable with respect to acquisitions occurring as a consequence of the death

of a taxpayer after the commencement of the first fiscal period of the taxpayer's business commencing after 1987. Para. 70(5.1)(b) formerly read:

> (b) the person who has so acquired the property shall be deemed to have acquired a capital property, immediately after the death of the taxpayer, at a cost equal to the proceeds of disposition referred to in paragraph (a) except that, where the person continues to carry on the business previously carried on by the taxpayer, the person shall be deemed to have acquired an eligible capital property (within the meaning of paragraph 54(d)) and to have made an eligible capital expenditure (within the meaning of paragraph 14(5)(b)) at a cost equal to those proceeds.

All that portion of subsec. 70(5.1) preceding para. (a) amended by 1985, c. 45, subsec. 33(4), applicable with respect to transfers, distributions and acquisitions occurring after 1981, to substitute "as a consequence of the death of the taxpayer" for "by virtue of the death of the taxpayer" and to substitute the heading "Eligible capital property of deceased" for "Eligible capital property of deceased taxpayer".

Subsec. 70(5.1) added by 1974-75-76, c. 26, subsec. 38(2), applicable where the death of the taxpayer referred to occurred after May 6, 1974.

Interpretation Bulletins: IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

(5.2) Resource properties and land inventories of a deceased taxpayer — Where in a taxation year a taxpayer dies,

(a) for the purposes of subsection 59(1), paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) and paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each Canadian resource property and foreign resource property of the taxpayer and received proceeds of disposition therefor equal to its fair market value immediately before the death;

(b) notwithstanding paragraph (a), where the taxpayer was resident in Canada immediately before the taxpayer's death, any Canadian resource property or foreign resource property of the taxpayer that is, on or after the death and as a consequence of the death, transferred or distributed to a spouse of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b) and it can be shown within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property vested indefeasibly in the spouse or trust, as the case may be,

(i) the taxpayer shall be deemed to have, immediately before the death, disposed of the property and received proceeds of disposition therefor equal to such amount as is specified by the taxpayer's legal representative in the return of income of the taxpayer filed under paragraph 150(1)(b), not exceeding its fair market value immediately before the death, and

(ii) the spouse or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to the amount included in the taxpayer's income under subsection 59(1) or included in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, in respect of the property;

(c) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each property that was land included in the inventory of a business of the taxpayer and received proceeds of disposition therefor equal to its fair market value immediately before the death; and

(d) notwithstanding paragraph (c), where the taxpayer was resident in Canada immediately before the taxpayer's death, any property that is land included in the inventory of a business of the taxpayer is, on or after the death and as a consequence of the death, transferred or distributed to a spouse of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b) and it can be shown within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property vested indefeasibly in the spouse or trust, as the case may be,

(i) the taxpayer shall be deemed to have, immediately before the death, disposed of the land and received proceeds of disposition therefor equal to its cost amount to the taxpayer immediately before the death, and

(ii) the spouse or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds.

Proposed Addition — 70(5.2)(e)

(e) where subsection 94.2(3) applies to the taxpayer in respect of the property immediately before the taxpayer's death,

(i) the taxpayer is deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time,

(ii) for the purposes of subsection 94.2(4), the taxpayer is deemed not to hold the property after that time, and

(iii) any person who acquires the property as a consequence of the taxpayer's death is deemed to acquire the property at the time of the taxpayer's death at a cost equal to the proceeds referred to in subparagraph (i).

Application: The June 22, 2000 draft legislation, subsec. 5(2), will add para. 70(5.2)(e), applicable to 2001 *et seq.*

Technical Notes: Subsection 70(5.2) of the Act provides rules with respect to the disposition of resource properties and land inventories on death.

Paragraph 70(5.2)(e) is introduced to provide for a deemed disposition, on the death of an individual, of an interest in a foreign investment entity held by the individual. Paragraph 70(5.2)(e) applies only to interests in foreign investment entities in respect of which new subsection 94.2(3) applied to the deceased immediately before death. (New subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under subsection 94.2(4) for participating interests in foreign investment entities.)

A disposition under paragraph 70(5.2)(e) is deemed to occur at the fair market value of an interest in a foreign investment entity and to be acquired for the same amount by a person who acquires the interest as a consequence of the individual's death. The proceeds of disposition are included in the value of A in the formula in paragraph 94.2(4)(a) in computing the de-

ceased's income under subsection 94.2(4) for the taxation year of death. The deceased is treated as not having held the interest after death.

This amendment applies to the 2001 and subsequent taxation years.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(4)(a)(i.1) — Deemed disposition of trust property; 159(5) — Election where certain provisions applicable; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly".

History: Subsec. 70(5.2) substituted by 1994, c. 21, subsec. 33(5), applicable to dispositions and acquisitions occurring after 1992. That subsec. formerly read:

(5.2) Resource properties and land inventories of deceased taxpayer — Where in a taxation year a taxpayer has died, the following rules apply:

(a) for the purposes of subsection 59(1), paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) and paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each property owned by the taxpayer at that time that was a Canadian resource property or a foreign resource property and to have received proceeds of disposition therefor equal to its fair market value at that time;

(b), (c) [Repealed under former Act]

(d) notwithstanding paragraph (a), where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a Canadian resource property or foreign resource property has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or trust, as the case may be, the following rules apply:

(i) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as is specified by the taxpayer's legal representative in the return of income of the taxpayer referred to in paragraph 150(1)(b), not exceeding the fair market value of the property immediately before the taxpayer's death, and

(ii) the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to the amount included in the taxpayer's income by virtue of subsection 59(1) or included in the amount determined under paragraph (a) of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) or paragraph (a) of the description of F in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, in respect of the property;

(e) the taxpayer shall be deemed to have disposed, immediately before the taxpayer's death, of each property that was land included in the inventory of a business of the taxpayer and to have received proceeds of disposition therefor equal to the fair market value of the property at that time; and

(f) notwithstanding paragraph (e), where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is land included in the inventory of a business has, on or after the taxpayer's death and as a consequence thereof, been transferred or distributed to the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), if it can be shown within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or trust, as the case may be, the taxpayer shall be deemed to have disposed of the land immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to the cost amount thereof immediately before the taxpayer's death and the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to those proceeds.

Pre-RSC History: Subsec. 70(5.2) amended by 1985, c. 45, subsecs. 33(5)–(7), to substitute para. 70(5.2)(a) and repeal para. 70(5.2)(b), applicable with respect to deaths occurring in taxation years commencing after 1984, and to substitute paras. 70(5.2)(d) and (f) applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985, except that in the application of paragraph 70(5.2)(d) with respect to such property, any reference in that paragraph to "a Canadian resource property or foreign resource property" shall be read as a reference to "a property referred to in any of paragraphs 59(2)(a) to (e)".

Paras. 70(5.2)(a), (b), (d) and (f) formerly read:

(a) for the purposes of subsections 59(1), (1.1) and (1.2), the taxpayer shall be deemed to have disposed, immediately before his death, of each property owned by him at that time that was a property, right, licence or privilege referred to in any of those subsections and to have received proceeds of disposition therefor equal to the fair market value of the property, right, licence or privilege at that time;

(b) for the purposes of subsections 59(3) and (3.1), the taxpayer shall be deemed to have disposed, immediately before his death, of each property owned by him or deemed to have been owned by him on December 31, 1971, and thereafter without interruption, that was a property referred to in subsection 59(3) or (3.1) and shall be deemed to have received proceeds of disposition therefor equal to the fair market value of the property at that time;

. . . . .

(d) notwithstanding paragraphs (a) and (b), where any property of a taxpayer who was a resident of Canada immediately before his death that is a property referred to in any of paragraphs 59(2)(a) to (e) has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), if the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the spouse or trust, as the case may be, not later than 15 months after the death of the taxpayer, the following rules apply:

(i) the taxpayer shall be deemed to have disposed of the property immediately before his death and to have received proceeds of disposition therefor equal to such amount as is specified by the taxpayer's legal representatives in the return of income of the taxpayer referred to in paragraph 150(1)(b) not exceeding the fair market value of the property immediately before his death;

(ii) the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to the amount included in the taxpayer's income or included in the amount referred to in clause 66.2(5)(b)(v)(A) or 66.4(5)(b)(v)(A), as the case may be, in respect of the property by virtue of subsection 59(1), (1.1), (1.2), (3) or (3.1), as the case may be, in respect of the deemed disposition by the taxpayer of the property; and

(iii) in the case of a property of the taxpayer to which subsection 59(3) or (3.1) applies, when the spouse or trust, as the case may be, subsequently disposes of the property or any right or interest therein, that spouse or trust, as the case may be, shall be deemed to have owned the property on December 31, 1971 and thereafter without interruption until that disposition;

. . . . .

(f) notwithstanding paragraph (e), where any property of a taxpayer who was resident in Canada immediately before his death that is land included in the inventory of a business has, on or after his death and as a consequence thereof, been transferred or distributed to his spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), if the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the spouse or trust, as the case may be, not later than 15 months after the death of the taxpayer, the taxpayer shall be deemed to have disposed of the land immediately before his death and received proceeds of disposition therefor equal to the cost amount thereof immediately before his death, and the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to those proceeds.

Para. 70(5.2)(a) and subpara. 70(5.2)(d)(ii) substituted by 1980-81-82-83, c. 48, subsecs. 38(1), (2), applicable to taxation years ending after December 11, 1979. Para. 70(5.2)(a) and subpara. 70(5.2)(d)(ii) formerly read:

(a) for the purposes of subsections 59(1) and (1.1), the taxpayer shall be deemed to have disposed, immediately before his death, of each property owned by him at that time that was a property, right, licence or privilege referred to in that subsection and to have received proceeds of disposition therefor equal to the fair market value of the property, right, licence or privilege at that time;

. . . . .

(ii) the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to the amount included in the taxpayer's income or included in the amount referred to in subparagraph 66.2(5)(b)(v), as the case may be, in respect of the property by virtue of subsection 59(1), (1.1), (3) or (3.1), as the case may be, in respect of the deemed disposition by the taxpayer of the property; and

Para. 70(5.2)(c) repealed and all that portion of para. 70(5.2)(d) preceding subpara. (i) substituted by 1976-77, c. 4, subsec. 27(1), applicable in respect of deaths occurring after May 6, 1974.

Subsec. 70(5.2) added by 1974-75-76, c. 26, subsec. 38(2), applicable where the death of the taxpayer referred to occurred after May 6, 1974.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-212R3: Income of deceased persons — rights or things; IT-449R: Meaning of "vested indefeasibly".

(5.3) Fair market value — For the purposes of subsection (5) of this section and subsections 70(9.4) and (9.5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the fair market value, immediately before the death of the taxpayer referred to in any of those subsections, of any share of the capital stock of a corporation deemed to have been disposed of as a consequence of the taxpayer's death shall be determined as though the fair market value at that time of any life insurance policy under which the taxpayer was the person whose life was insured were the cash surrender value (within the meaning assigned by subsection 148(9)) of the policy at that time.

Proposed Amendment — 70(5.3)

(5.3) Fair market value — For the purposes of subsections (5) and 104(4) and section 128.1, the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death or as a consequence of the particular individual becoming or ceasing to be resident in Canada shall be determined as though the fair market value at that time of any life insurance policy, under which the particular individual (or any other individual not dealing at arm's lenth with the particular individual at that time or at the time the policy was issued) was a person whose life was insured, were the cash surrender value (as defined in subsection 148(9)) of the policy immediately before the particular individual died or became or ceased to be resident in Canada, as the case may be.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 32(1), will amend subsec. 70(5.3) to read as above, applicable to dispositions that occur after October 1, 1996.

Technical Notes: Subsection 70(5) of the Act provides for the deemed disposition of a taxpayer's capital property on the taxpayer's death for proceeds equal to the property's fair market value immediately before the death. In the event that the property includes shares and there was a life insurance policy under which the taxpayer's life was insured, the fair market value of the shares is determined under subsection 70(5.3) as if the value of the policy were the policy's cash surrender value immediately before the taxpayer's death. The purpose of subsection 70(5.3) is to ensure that life insurance proceeds payable as a consequence of death are not reflected in share value and therefore do not give rise to a capital gain on death.

Existing subsection 104(4) provides, in certain cases specified, for a deemed disposition of capital property (which includes shares) on the death of a taxpayer for proceeds equal to the property's fair market value. Existing section 128.1 also provides, in certain cases, that property (including shares) is deemed to be disposed of by an individual for its fair market value in the event that the individual becomes or ceases to be resident in Canada.

Subsection 70(5.3) is amended so that it applies for the purposes of subsection 104(4) and section 128.1.

Subsection 70(5.3) is also amended so that it applies in respect of property deemed to be disposed of as a consequence of a particular individual's death or change of residence where the relevant insurance policy insures the life of another individual (e.g., the spouse of the particular individual) with whom the particular individual does not deal at arm's length.

As a consequence of these amendments, where property is deemed by subsection 104(4) to have been disposed of by a trust as a consequence of the death of a particular individual and there is a life insurance policy under which the particular individual's life (or the life of an individual with whom the particular individual does not deal at arm's length) is insured, the fair market value of the property is determined for the purposes of subsection 104(4) as if the value of the policy were the policy's cash surrender value immediately before the death. Similarly, where property is deemed by section 128.1 to have been disposed of by a particular individual as a consequence of the particular individual becoming or ceasing to be resident in Canada and there is a life insurance policy under which the particular individual's life (or the life of an individual with whom the particular individual does not deal at arm's length) is insured, the fair market value of the property is determined for the purposes of section 128.1 as if the value of the policy were the policy's cash surrender value immediately before the particular individual became or ceased to be resident in Canada.

Subsection 70(5.3) is also amended so that it applies in determining the fair market value of any property (e.g., an interest in a trust or a partnership), not just shares.

Subsection 70(5.3) is further amended to remove references to former subsections 70(9.4) and (9.5), given that these subsections have been repealed.

These amendments apply to dispositions that occur after October 1, 1996.

Related Provisions: 139.1(5) — Value of ownership rights in insurer during demutualization; 248(8) — Occurrences as a consequence of death; 251 — Arm's length.

Pre-RSC History: Subsec. 70(5.3) amended by 1985, c. 45, subsec. 33(8), applicable with respect to deaths occurring after December 1, 1982, to substitute "policy under which the taxpayer was the person whose life was insured" for "policy under which the corporation was a beneficiary and the taxpayer was the person whose life was insured".

Subsec. 70(5.3) substituted by 1984, c. 1, subsec. 32(2), applicable with respect to deaths occurring after December 31, 1982, to add "(within the meaning assigned by paragraph 148(9)(b) (now 148(9)"cash surrender value")).

Subsec. 70(5.3) added by 1980-81-82-83, c. 140, subsec. 39(3), applicable with respect to deaths occurring after December 1, 1982.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-416R3: Valuation of shares of a corporation receiving life insurance proceeds on death of a shareholder.

Information Circulars: 89-3: Policy statement on business equity valuations.

(5.4) NISA on death — Where a taxpayer who dies has at the time of death a net income stabilization account, all amounts held for or on behalf of the taxpayer in the taxpayer's NISA Fund No. 2 shall be deemed to have been paid out of that fund to the taxpayer immediately before that time.

Related Provisions: 12(10.2) — NISA receipts; 248(9.1) — Whether trust created by taxpayer's will.

History: Subsec. 70(5.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(3), applicable to 1991 *et seq.*

Pre-RSC History [former subsec. 70(5.4)]: Former subsec. 70(5.4) repealed by 1986, c. 6, subsec. 33(2), applicable to 1986 *et seq.* That subsec. formerly read:

(5.4) Indexed securities of deceased taxpayer — Where a taxpayer has died in a taxation year, the following rules apply:

(a) the taxpayer shall be deemed to have disposed, immediately before his death, of each indexed security owned by him at that time for proceeds of disposition equal to the fair market value (within the meaning assigned by paragraph 47.1(1)(d)) of the security at that time;

(b) the taxpayer shall be deemed to have closed out, immediately before his death, each put or call option referred to in clause 47.1(4)(a)(iv)(B) or (C) outstanding under an indexed security investment plan under which the taxpayer was a participant immediately before his death at a cost equal to the amount the taxpayer would have had to pay at that time if he had actually closed out the option on a prescribed stock exchange in Canada;

(c) the taxpayer's capital gain or capital loss for the year from an indexed security investment plan under which the taxpayer was a participant immediately before his death shall, notwithstanding subsection 47.1(9), be deemed to be the amount of the taxpayer's gain or loss, as the case may be, for the year from the plan;

(d) where paragraph 47.1(10)(f) is applicable in the year to the taxpayer in respect of an indexed security investment plan, the taxpayer shall, notwithstanding that paragraph, be deemed to have a capital loss for the year from the plan equal to the aggregate of all amounts that are obtained by determining every amount that, but for the taxpayer's death, would have been a capital loss of the taxpayer from the plan for the year or any subsequent taxation year;

(e) any person who, as a consequence of the death of the taxpayer, has acquired any security of the taxpayer that is deemed by paragraph (a) to have been disposed of by the taxpayer at any time shall be deemed to have acquired the security immediately after that time at a cost equal to its fair market value (within the meaning assigned by paragraph 47.1(1)(d)) immediately before the death of the taxpayer;

(f) any person who, as a consequence of the death of the taxpayer, has assumed the obligation in respect of any put or call option deemed by paragraph (b) to have been closed out by the taxpayer at any time shall be deemed to have written the option immediately after that time for proceeds equal to the amount the taxpayer would have had to pay immediately before his death if he had closed out the option on a prescribed stock exchange in Canada; and

(g) notwithstanding paragraphs (a), (b), (c), (e) and (f), where

(i) all indexed securities owned under an indexed security investment plan by the taxpayer immediately before his death and all obligations outstanding at that time in respect of options written under the plan have, on or after his death and as a consequence thereof, been transferred or distributed to or assumed by the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), and

(ii) it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that

(A) all rights and obligations of the taxpayer under the contract evidencing the plan have been transferred to or assumed by the spouse or trust, as the case may be, and

(B) the securities became indefeasibly vested in the spouse or trust, as the case may be, under the plan,

the capital gain or capital loss of the spouse or trust, as the case may be, for any taxation year from the plan shall be computed as if

(iii) the plan prior to the death of the taxpayer (in this paragraph referred to as the "first plan") and the plan at the time of and subsequent to the death of the taxpayer (in this paragraph referred to as the "second plan") were two separate plans administered by two separate persons,

(iv) the spouse or trust, as the case may be, was the participant under the first plan at all times in the year prior to the death of the taxpayer,

(v) all the securities and obligations referred to in subparagraph (i) were transferred by the spouse or trust, as the case may be, to the second plan immediately before the death of the taxpayer and subsection 47.1(22) were applicable, and

(vi) in the case of the trust, the trust's first taxation year commenced at the beginning of the year and ended on the day on which it would otherwise have ended,

and the taxpayer shall be deemed not to have any capital gain or capital loss for the year from the plan.

Subsec. 70(5.4) amended by 1985, c. 45, subsecs. 33(9), (10), to substitute "as a consequence of the death of the taxpayer" for "by virtue of the death of the taxpayer" in paras. 70(5.4)(e) and (f), and to substitute subpara. 70(5.4)(g)(i), applicable with respect to transfers, distributions and acquisitions occurring after 1981. All that portion of subpara. 70(5.4)(g)(ii) preceding cl. (B) substituted by subsec. 33(11) of the said c. 45, applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985.

Subpara. 70(5.4)(g)(i) and subpara. 70(5.4)(g)(ii) preceding cl. (B) formerly read:

(i) all indexed securities owned under an indexed security investment plan by the taxpayer immediately before his death and all obligations outstanding at that time in respect of options written under the plan have, on or after his death and as a consequence thereof or as a consequence of a disclaimer or renunciation by a person who was a beneficiary under the taxpayer's will or intestacy, been transferred or distributed to or assumed by the taxpayer's spouse referred to in paragraph (6)(a) or a trust referred to in paragraph (6)(b), and

(ii) it can be established, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, that

(A) all rights and obligations of the taxpayer under the contract evidencing the plan have been transferred to or assumed by the spouse or trust, as the case may be, not later than 15 months after the death of the taxpayer, and

Subsec. 70(5.4) added by 1984, c. 1, subsec. 32(2), applicable with respect to deaths occurring after September 30, 1983.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-305R4: Testamentary spouse trusts.

(6) Where transfer or distribution to spouse or spouse trust — Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which subsection (5) would

otherwise apply is, as a consequence of the death, transferred or distributed to

(a) the taxpayer's spouse who was resident in Canada immediately before the taxpayer's death, or

(b) a trust, created by the taxpayer's will, that was resident in Canada immediately after the time the property vested indefeasibly in the trust and under which

(i) the taxpayer's spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and

(ii) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or trust, as the case may be, the following rules apply:

(c) paragraphs (5)(a) and (b) do not apply in respect of the property,

(d) subject to paragraph (d.1), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) in any other case, its adjusted cost base to the taxpayer immediately before the death,

and the spouse or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds,

(d.1) where the property is an interest in a partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the spouse or the trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to its cost to the taxpayer, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the spouse or the trust, as the case may be, of the property; and

(e) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(c) applies as if the references therein to "paragraph (a)" and to "paragraph (b)" were read as references to "paragraph (6)(d)".

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 40(3.18)(a) — Grandfathering of partnership interest transferred under 70(6)(d.1); 40(4) — Where principal residence disposed of to spouse or spouse trust; 70(6.2) — Election; 70(7) — Special rules applicable re spouse trust; 70(9.1), (9.3) — Transfer of farm property from spouse trust to settlor's children; 72(2) — Election by legal representative and transferee re reserves; 73(1)(c) — *Inter vivos* transfer of property of spouse, etc., or trust; 104(4)(a)(i.1) — Trust — deemed disposition on death of spouse; 108(3) — Income of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 148(8.2) — Rollover of life insurance policy to spouse on death; 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 248(9.2) — Meaning of "vested indefeasibly"; 248(23.1) — Transfer under provincial family law after death; 252(3), (4) — Extended meaning of "spouse" and "former spouse"; 256(7)(a)(i)(D) — Control of corporation deemed not acquired; Canada-U.S. tax treaty, Art. XXVI:3(g) — Relief from double taxation; Art. XXIX B:5, 6 — Credit for U.S. estate taxes.

History: Para. 70(6)(d) and subpara. (d.1)(ii) substituted by 1994, c. 21, subsecs. 33(6), (7), applicable to dispositions and acquisitions occurring after 1992. That para. and subpara. formerly read:

(d) subject to paragraph (d.1), the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the taxpayer of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before the taxpayer's death of all of the depreciable property of the taxpayer of that class that the fair market value at that time of the property is of the fair market value at that time of all of the depreciable property of the taxpayer of that class, and

(ii) in any other case, the adjusted cost base to the taxpayer of the property immediately before the taxpayer's death,

and the spouse or trust, as the case may be, shall be deemed to have acquired the property for an amount equal to those proceeds,

. . . . .

(ii) the spouse or the trust, as the case may be, shall be deemed to have acquired the property for an amount equal to the cost thereof to the taxpayer, and

That portion of subsec. 70(6) preceding para. (a), and paras. (c) and (e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 28(4) to (6), applicable to dispositions occurring after 1992. Those portions formerly read:

(6) Where transfer or distribution to spouse or trust — Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which paragraphs (5)(a) and (c), or (5)(b) and (d), as the case may be, would otherwise apply has, on or after the taxpayer's death and as a consequence thereof been transferred or distributed to

. . . . .

(c) paragraphs (5)(a) to (d) are not applicable to the property,

. . . . .

(e) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(e) is applicable as if the reference therein to "paragraph (b)" and to "paragraph (d)" were read as references to "paragraph (6)(d)".

That portion of para. 70(6)(d) preceding subpara. (i) amended to add "subject to paragraph (d.1), and para. (d.1) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 48(2), (3), applicable to transfers, distributions and acquisitions occurring after January 15, 1987.

Pre-RSC History: Subsec. 70(6) amended by 1985, c. 45, subsecs. 33(12)–(14), to substitute all that portion preceding para. (a) and to repeal para. (f), applicable with respect to transfers, distributions and acquisitions

occurring after 1981, and to substitute all that portion following para. (b) and preceding para. (c), applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985.

The substituted portions and para. 70(6)(f) formerly read:

(6) Where transfer or distribution to spouse or trust — Where any property of a taxpayer who was resident in Canada immediately before his death that is a property to which paragraphs (5)(a) and (c), or paragraphs (5)(b) and (d), as the case may be, would otherwise apply has, on or after his death and as a consequence thereof or as a consequence of a disclaimer or renunciation by a person who was a beneficiary under the taxpayer's will or intestacy, been transferred or distributed to

. . . . .

[portion following para. (b) and preceding para. (c)]

if the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the spouse or trust, as the case may be, not later than 15 months after the death of the taxpayer, the following rules apply:

. . . . .

(f) notwithstanding any other provision of this Act, where the transfer or distribution of the property occurred as a consequence of a renunciation, the renunciation with respect to the property shall be deemed not to have been a disposition of the property.

All that portion of subsec. 70(6) preceding para. (a) substituted, and para. 70(6)(f) added by 1980-81-82-83, c. 140, subsecs. 39(4), (5), applicable after 1980. That portion of subsec. 70(6) preceding para. (a) formerly read:

(6) Where any property of a taxpayer who was resident in Canada immediately before his death that is a property to which paragraphs (5)(a) and (c) or paragraphs (5)(b) and (d), as the case may be, would otherwise apply has, on or after his death and as a consequence thereof, been transferred or distributed to

All that portion of subsec. 70(6) preceding para. (a), all that portion of para. 70(6)(b) preceding subpara. (i) and following para. (b) and preceding para. (c) substituted by 1974-75-76, c. 26, subsecs. 38(3)–(5), applicable to 1972 *et seq.*

Subsec. 70(6) substituted by 1973-74, c. 14, subsec. 19(2), applicable to 1972 *et seq.*

Selected Cases [subsec. 70(6)]: *Husel Estate v. Canada*, [1995] 1 C.T.C. 2298 (TCC) (Rollover appplies only if property received *qua* beneficiary); *Labbé v. Canada*, [1995] 1 C.T.C. 2209 (TCC) (Interposition of holding company disqualifies shares as family farm corporation); *Greenwood Estate v. Canada*, [1991] 1 C.T.C. 47 (FCTD); appealed to FCA (April 29, 1991), File A-371-91 (Agreement between sons and father to purchase shares on death prevents shares from vesting indefeasibly in spousal trust); *Hillis v. The Queen*, [1983] C.T.C. 348 (FCA) (Rollover to spouse only on one-third of intestate succession after sons renounced two-thirds to which they were entitled).

I.T. Application Rules: 20(1.1)(a) (property owned since before 1972).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-236R4: Reserves — disposition of capital property; IT-242R: Retired partners; IT-259R3: Exchange of property; IT-278R2: Death of a partner or of a retired partner; IT-305R4: Testamentary spouse trusts; IT-321R: Insurance agents and brokers — unearned commissions; IT-325R2: Property transfers after separation, divorce and annulment; IT-382: Debts bequeathed or forgiven on death; IT-449R: Meaning of "vested indefeasibly"; IT-522R: Vehicle, travel and sales expenses of employees.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T4011: Preparing returns for deceased persons [guide].

(6.1) Transfer or distribution of NISA to spouse or trust — Where a property that is a net income stabilization account of a taxpayer is, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to

(a) the taxpayer's spouse, or

(b) a trust, created by the taxpayer's will, under which

(i) the taxpayer's spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and

(ii) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

subsections (5.4) and 73(5) do not apply in respect of the taxpayer's NISA Fund No. 2 if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the spouse or trust, as the case may be.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 12(10.2) — NISA receipts; 70(6.2) — Election; 70(7) — Special rules applicable in respect of trust for benefit of spouse; 104(5.1) — NISA Fund No. 2 held by spousal trust; 104(6) — Deduction in computing income of trust; 104(14.1) — NISA election; 108(3) — Meaning of "income" of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 248(9.2) — Meaning of "vested indefeasibly"; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 70(6.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(8), applicable to 1991 *et seq.*

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-305R4: Testamentary spouse trusts.

History [former subsec. 70(6.1)]: Former subsec. 70(6.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(7), applicable to 1990 *et seq.* That subsec. had read:

(6.1) How trust created — For the purposes of subsection (6) and paragraph 104(4)(a), a trust shall be considered to be created by a taxpayer's will if the trust is created

(a) under the terms of the taxpayer's will; or

(b) by an order of a court in relation to the taxpayer's estate made pursuant to any law of a province providing for the relief or support of dependants.

Pre-RSC History [former subsec. 70(6.1)]: Paras. 70(6.1)(a), (b) substituted for (a)–(c) by 1980-81-82-83, c. 140, subsec. 39(6), applicable after 1980. Paras. 70(6.1)(a)–(c) formerly read:

(a) under the terms of the taxpayer's will;

(b) by a disclaimer by a beneficiary under the taxpayer's will; or

(c) by an order of a court in relation to the testator's estate made pursuant to any law of a province providing for the relief or support of a testator's dependants.

Subsec. 70(6.1) added by 1974-75-76, c. 26, subsec. 38(6), applicable to 1972 *et seq.*

(6.2) Election — Subsection (6) or (6.1) does not apply to any property of a deceased taxpayer in respect of which

the taxpayer's legal representative elects, in the taxpayer's return of income under this Part (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year in which the taxpayer died, to have subsection (5) or (5.4), as the case may be, apply.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Subsec. 70(6.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(8), applicable to 1991 *et seq.* That subsec. formerly read:

(6.2) Election — Subsection (6) does not apply to any property of a deceased taxpayer in respect of which the legal representative of the taxpayer has elected, in the return of income of the taxpayer for the year in which the taxpayer died, to have subsection (5) apply.

Pre-RSC History: Subsec. 70(6.2) added by 1976-77, c. 4, subsec. 27(2), applicable in respect of deaths occurring after December 31, 1975.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(7) Special rules applicable in respect of trust for benefit of spouse — Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust to which subsection (6) or (6.1) applies,

(a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representatives, subsection 150(1) shall be read without reference to paragraph 150(1)(b) and as if paragraph 150(1)(d) read as follows:

"(d) in the case of any other person, by the person's legal representative within 18 months after the person's death; or"; and

(b) where the taxpayer's legal representative so elects in the taxpayer's return (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) and lists therein one or more properties (other than a net income stabilization account) that were, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,

(i) subsection (6) does not apply in respect of the properties so listed, and

(ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection (6),

except that, where the fair market value, immediately after the taxpayer's death, of all of the properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the "listed value excess") and the taxpayer's legal representative designates in the taxpayer's return one property so listed (other than money) that is capital property other than depreciable property,

(iii) the amount of the taxpayer's capital gain or capital loss, as the case may be, from the disposition of that property deemed by subsection (5) to have been made by the taxpayer is that proportion of that capital gain or capital loss otherwise determined that

(A) the amount, if any, by which the fair market value of that property immediately after the taxpayer's death exceeds the listed value excess,

is of

(B) the fair market value of that property immediately after the taxpayer's death, and

(iv) the cost to the trust of that property is

(A) where the taxpayer has a capital gain from the disposition of that property deemed by subsection (5) to have been made by the taxpayer, the total of

(I) its adjusted cost base to the taxpayer immediately before the taxpayer's death, and

(II) the amount determined under subparagraph (iii) to be the taxpayer's capital gain from the disposition of that property, or

(B) where the taxpayer has a capital loss from the disposition of that property deemed by subsection (5) to have been made by the taxpayer, the amount by which

(I) its adjusted cost base to the taxpayer immediately before the taxpayer's death

exceeds

(II) the amount determined under subparagraph (iii) to be the taxpayer's capital loss from the disposition of that property.

Related Provisions: 70(8) — Meaning of certain expressions; 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will.

History: Para. 70(7)(a) amended by 1996, c. 21, s. 14, applicable after 1994. The para. formerly read:

(a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representatives, subsection 150(1) shall be read without reference to paragraph 150(1)(b) and the reference in paragraph 150(1)(d) to "on or before April 30 in the next year" shall be read as a reference to "within 18 months after the person's death"; and

That portion of subsec. 70(7) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(9), applicable to 1991 *et seq.* That portion formerly read

(7) Special rules applicable in respect of trust for benefit of spouse — Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust described in subsection (6), the following rules apply:

All that portion of para. 70(7)(b) preceding subpara. (iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(10), applicable to 1991 *et seq.* That portion formerly read:

(b) where the taxpayer's legal representative has so elected in the taxpayer's return and has listed therein one or more specified properties (including any money) that have, on or after the taxpayer's death and as a consequence thereof, been transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,

(i) subsection (6) does not apply in respect of the specified properties so listed, and

(ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection (6),

except that where the fair market value, immediately after the taxpayer's death, of all of the specified properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the

"listed value excess") and the taxpayer's legal representative has designated in the taxpayer's return one specified property so listed (other than money) that is a capital property other than depreciable property,

Para. 70(7)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(4), applicable to 1990 *et seq*. Para. 70(7)(a) formerly read:

(a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representative, the reference in paragraph 150(1)(b) to "6 months" shall be read, except for the purposes of section 161, as a reference to "18 months"; and

Pre-RSC History: Subparas. 70(7)(b)(iii), (iv) substituted by 1976-77, c. 4, subsec. 27(3), applicable to losses arising from transfers or distributions after May 25, 1976. Subparas. 70(7)(b)(iii), (iv) formerly read:

(iii) the amount of the taxpayer's capital gain, if any, from the disposition of that property deemed by subsection (5) to have been made by him is that proportion of that capital gain otherwise determined that

(A) the amount, if any, by which the fair market value of that property immediately after the taxpayer's death exceeds the listed value excess,

is of

(B) the fair market value of that property immediately after his death, and

(iv) the cost to the trust of that property is the aggregate of

(A) its adjusted cost base to the taxpayer immediately before his death, and

(B) the amount determined under subparagraph (iii) to be the taxpayer's capital gain from the disposition of that property.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(8) Meaning of certain expressions in subsec. (7) — In subsection (7),

(a) the **"fair market value"** at any time of any property subject to a mortgage is the amount, if any, by which the fair market value at that time of the property otherwise determined exceeds the amount outstanding at that time of the debt secured by the mortgage, as the case may be[6];

(b) **"non-qualifying debt"** in respect of a taxpayer who has died and by whose will any trust has been created that would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust described in subsection (6), means any such particular testamentary debt in respect of the taxpayer other than

(i) any estate, legacy, succession or inheritance duty payable, in consequence of the taxpayer's death, in respect of any property of, or interest in, the trust, or

(ii) any debt secured by a mortgage on property owned by the taxpayer immediately before the taxpayer's death; and

(c) **"testamentary debt"**, in respect of a taxpayer who has died, means

(i) any debt owing by the taxpayer, or any other obligation of the taxpayer to pay an amount, that was outstanding immediately before the taxpayer's death, and

(ii) any amount payable (other than any amount payable to any person as a beneficiary of the taxpayer's estate) by the taxpayer's estate in consequence of the taxpayer's death,

including any income or profits tax payable by or in respect of the taxpayer for the taxation year in which the taxpayer died or for any previous taxation year, and any estate, legacy, succession or inheritance duty payable in consequence of the taxpayer's death.

Related Provisions: 248(8) — Occurrences as a consequence of death.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(9) Transfer of farm property to child — Where any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which subsection (5) would otherwise apply was, before the taxpayer's death, used principally in the business of farming in which the taxpayer, the taxpayer's spouse or any of the taxpayer's children was actively engaged on a regular and continuous basis and the property is, as a consequence of the death, transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the child,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) paragraphs (5)(a) and (b) do not apply in respect of the property,

(b) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its adjusted cost base to the taxpayer immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, and

(c) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply as if the references therein to "paragraph (a)" and "paragraph (b)" were read as "paragraph (9)(b)",

except that, where the taxpayer's legal representative so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to such amount as the legal representative elects in the taxpayer's return of income under this

[6] *Sic*. Disregard the words "as the case may be"; they should have been deleted along with "or hypothec" in the R.S.C. 1985 consolidation. (That change was non-substantive.) — ed.

Part for the year in which the taxpayer died, not greater than the greater of nor less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) its fair market value immediately before the death, and

(B) the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies),

(A) its fair market value immediately before the death, and

(B) its adjusted cost base to the taxpayer immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, except that for the purpose of this paragraph, where the elected amount exceeds the greater of the amounts determined under clauses (i)(A) and (B) or (ii) (A) and (B), as the case may be, it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under clauses (i)(A) and (B) or (ii) (A) and (B), as the case may be, it shall be deemed to be equal to the lesser thereof, and".

Related Provisions: 70(9.6) — Transfer to parent; 70(9.8) — Leased farm property; 70(10) — Definitions; 70(12) — Capital cost of certain depreciable property; 73(3) — *Inter vivos* transfer of farm property by farmer to his child; 220(3.2), Reg. 600(b) — Late filing of election or revocation; 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly"; 252(4) — Extended meaning of "spouse".

History: All that portion of subsec. 70(9) following para. (a) substituted by 1994, c. 21, subsec. 33(8), applicable to dispositions and acquisitions occurring after 1992. That portion of the subsec. formerly read:

(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the taxpayer of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before the taxpayer's death of all of the depreciable property of the taxpayer of that class that the fair market value at that time of the property was of the fair market value at that time of all of the depreciable property of the taxpayer of that class, and

(ii) where the property was land, its adjusted cost base to the taxpayer immediately before the taxpayer's death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(c) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(c) applies as if the references therein to "paragraph (a)" and to "paragraph (b)" were read as references to "paragraph (9)(b)",

except that, where the legal representative of the taxpayer has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as the legal representative has elected, not greater than the greater of or less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) the fair market value of the property immediately before the death of the taxpayer, and

(B) that portion of the undepreciated capital cost to the taxpayer immediately before the taxpayer's death of all of the depreciable property of that class of the taxpayer that the fair market value at that time of the property disposed of was of the fair market value at that time of all of the depreciable property of that class of the taxpayer, and

(ii) where the property was land not described in subparagraph (i),

(A) the fair market value of the land immediately before the taxpayer's death, and

(B) the adjusted cost base to the taxpayer of the land immediately before the taxpayer's death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof; and"

All that portion of subsec. 70(9) preceding para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(11), applicable with respect to dispositions occurring after 1992. That portion formerly read:

(9) Transfer of farm property to child — Where any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which paragraphs (5)(a) and (c) or (5)(b) and (d), as the case may be, would otherwise apply was, immediately before the taxpayer's death, used by the taxpayer, the taxpayer's spouse or any of the taxpayer's children in the business of farming and the property has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(a) paragraphs (5)(a) to (d) are not applicable to the property;

Para. 70(9)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(12), applicable with respect to dispositions occurring after 1992. That para. formerly read:

(c) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(e) is applicable as if the reference therein to "paragraph (b)" and to "paragraph (d)" were read as references to "paragraph (9)(b)",

Pre-RSC History: All that portion of subsec. 70(9) preceding para. (a) substituted by 1985, c. 45, subsec. 33(15), applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985.

That portion preceding para. (a) formerly read:

(9) Transfer of farm property by farmer to his child — Where any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which paragraphs 5(a) and (c) or paragraphs 5(b) and (d), as the case may be, would otherwise apply was, immediately before his death, used by him, his spouse or any of his children in the business of farming and the property has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the child not later than 15 months after the death of the taxpayer, the following rules apply:

Subsec. 70(9) amended by 1984, c. 45, subsec. 24(1), to add all that portion following para. (c), applicable with respect to transfers or distributions of property occurring after 1983.

All that portion of subsec. 70(9) preceding para (a) substituted by 1976-77, c. 4, subsec. 27(4), applicable to 1972 *et seq.*

Selected Cases [subsec. 70(9)]: *Boger Estate v. MNR*, [1991] 2 C.T.C. 168 (FCTD); appealed to FCA (Nov. 28, 1991), File A-1199-91 (Bequeathed property unaffected by *Family Relief Act* order vested indefeasibly; rollover allowed).

I.T. Application Rules: 26(18) (farmland owned since before 1972).

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-382: Debts bequeathed or forgiven on death; IT-449R: Meaning of "vested indefeasibly".

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(9.1) Transfer of farm property from spouse's trust to settlor's children — Where any property in Canada of a taxpayer that is land or depreciable property of a prescribed class has been transferred or distributed to a trust described in subsection (6) or subsection 73(1) and the property or a replacement property therefor in respect of which the trust has made an election under subsection 13(4) or 44(1) was, immediately before the death of the taxpayer's spouse who was a beneficiary under the trust, used in the business of farming and has, on the death of the spouse and as a consequence thereof, been transferred or distributed to and become vested indefeasibly in a child of the taxpayer who was resident in Canada immediately before the death of the spouse, the following rules apply:

Proposed Amendment — 70(9.1) opening words

(9.1) Transfer of farm property from trust to settlor's children — Where any property in Canada of a taxpayer that is land or depreciable property of a prescribed class has been transferred or distributed to a trust described in subsection (6) or subsection 73(1) (as that subsection applied to transfers before 2000) or a trust to which subparagraph 73(1.01)(c)(i) applies and the property or a replacement property for that property in respect of which the trust has made an election under subsection 13(4) or 44(1) was, immediately before the death of the taxpayer's spouse or common-law partner who was a beneficiary under the trust, used in the business of farming and has, on the death of the spouse or common-law partner and as a consequence of the death, been transferred or distributed to and vested indefeasibly in an individual who was a child of the taxpayer and who was resident in Canada immediately before the death of the spouse or common-law partner, the following rules apply:

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 32(2), will amend the opening words of subsec. 70(9.1) to read as above, applicable to transfers and distributions from trusts that occur after 1999.

Where a particular transfer or distribution to a trust referred to in subsec. 70(9.1), as amended, occurred before 2001, in applying that subsec. to a transfer or distribution from the trust that occurs after 1997, that subsec. shall be read without reference to the words "or common-law partner" and to the *Modernization of Benefits and Obligations Act*, c. 12 of the Statutes of Canada, 2000, unless

(a) the particular transfer or distribution occurred after 1997;

(b) the death referred to in that subsec. occurs after 1997; and

(c) either

(i) at the time of the particular transfer or distribution referred to in para. (a), the taxpayer was a spouse of the individual whose death is referred to in para. (b), or

(ii) because of an election under s. 144 of the *Modernization of Benefits and Obligations Act*, sections 130 to 142 of that Act applied, at the time of the particular transfer or distribution referred to in para. (a), to the taxpayer and the individual whose death is referred to in para. (b).

Technical Notes: Subsections 70(9.1) and (9.3) of the Act permit farm property (including shares of, or interests in, family farm corporations and family farm partnerships) to be disposed of on a rollover basis from a spousal trust to the children of the settlor of the spousal trust.

Subsections 70(9.1) and (9.3) are amended to preserve the existing rollover. These amendments are strictly consequential to changes to the rules in subsection 73(1) that govern rollovers to spousal trusts.

These amendments apply to dispositions after 1999.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

(a) subsections 104(4) and (5) do not apply to the trust in respect of the property,

(b) the trust shall be deemed to have, immediately before the spouse's death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the trust of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its adjusted cost base to the trust immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds,

(c) where any depreciable property of a prescribed class that is deemed by paragraph (b) to have been disposed of by the trust is acquired by a child of the taxpayer as a consequence of the spouse's death (other than where the trust's proceeds of disposition of the property under paragraph (b) are redetermined under subsection 13(21.1)) and the amount that was the capital cost to the trust of the property exceeds the amount determined under paragraph (b) to be the cost to the child of the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) its capital cost to the child shall be deemed to be the amount that was its capital cost to the trust, and

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and

(d) where the property of the trust that is deemed by paragraph (b) to have been disposed of is acquired by a child of the taxpayer as a consequence of the spouse's death and the trust's proceeds of disposition of the property under paragraph (b) are redetermined under subsection 13(21.1), notwithstanding paragraph (b),

(i) where the property was depreciable property of a prescribed class and the amount that was its capital cost to the trust exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(A) its capital cost to the child shall be deemed to be the amount that was its capital cost to the trust, and

(B) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its cost to the child shall be deemed to be the amount that was the trust's proceeds of disposition as redetermined under subsection 13(21.1),

except that, where the trust so elects in its return of income under this Part for its taxation year in which the spouse died, paragraph (b) shall be read as follows:

"(b) the trust shall be deemed to have, immediately before the spouse's death, disposed of the property and received proceeds of disposition therefor equal to such amount as the trust elects in its return of income under this Part for the year in which the spouse died, not greater than the greater of nor less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) its fair market value immediately before the death, and

(B) the lesser of the capital cost and the cost amount to the trust of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies),

(A) its fair market value immediately before the death, and

(B) its adjusted cost base to the trust immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, except that for the purpose of this paragraph, where the elected amount exceeds the greater of the amounts determined under clauses (i)(A) and (B) or (ii)(A) and (B), as the case may be, it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under clauses (i)(A) and (B) or (ii)(A) and (B), as the case may be, it shall be deemed to be equal to the lesser thereof,".

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 70(9.6) — Transfer to parent; 70(10) — Definitions; 70(12) — Capital cost of certain depreciable property; 70(13) — Order of disposal of depreciable property; 73(4) — *Inter vivos* transfer of family farm corporations and partnerships; 220(3.2); 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly"; 252(4) — Extended meaning of "spouse"; Reg. 600(b) — Late filing of election or revocation.

History: All that portion of subsec. 70(9.1) following para. (a) substituted by 1994, c. 21, subsec. 33(9), applicable to dispositions and acquisitions occurring after 1992. That portion of the subsec. formerly read:

(b) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the trust of a prescribed class, that proportion of the undepreciated capital cost to the trust immediately before the death of the spouse of all of the depreciable property of the trust of that class that the fair market value at that time of the property was of the fair market value at that time of all of the depreciable property of the trust of that class, and

(ii) where the property was land, its adjusted cost base to the trust immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(c) where any depreciable property of the trust of a prescribed class that is deemed by paragraph (b) to have been disposed of by the trust has been acquired by a child of the taxpayer by virtue of the death of the taxpayer's spouse and the amount that was the capital cost to the trust of that property exceeds the amount determined under paragraph (b) to be the cost to the child of that property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the child of the property shall be deemed to be the amount that was the capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the child of the property,

except that, where the trust has so elected in its return of income under this Part for its taxation year in which the taxpayer's spouse died, paragraph (b) shall be read as follows:

"(b) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to such amount as the trust has elected, not greater than the greater of or less than the lesser of

(i) where the property was depreciable property of a prescribed class,

(A) the fair market value of the property immediately before the death of the spouse, and

(B) that proportion of the undepreciated capital cost to the trust immediately before the death of the spouse of all the depreciable property of that class of the trust that the fair market value at that time of the property disposed of was of the fair market value at that time of all the depreciable property of that class of the trust, and

(ii) where the property was land not described in subparagraph (i),

(A) the fair market value of the land immediately before the death of the spouse, and

(B) the adjusted cost base to the trust of the land immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof; and".

Para. 70(9.1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(13), applicable after December 20, 1991. That para. formerly read:

(a) subsections 104(4) and (5) are not applicable to the property;

Pre-RSC History: All that portion of subsec. 70(9.1) preceding para. (a) substituted by 1985, c. 45, subsec. 33(16), applicable to 1984 *et seq.* That portion formerly read:

(9.1) Transfer of farm property from spouse's trust to children of settlor — Where any land or depreciable property of a prescribed

class has been transferred or distributed to a trust described in subsection (6) or subsection 73(1), and the property was, immediately before the death of the taxpayer's spouse who was a beneficiary under the trust, used in the business of farming and has, on the death of the spouse and as a consequence thereof, been transferred or distributed to and become vested indefeasibly in a child of the taxpayer who was resident in Canada immediately before the death of the spouse, the following rules apply:

Subsec. 70(9.1) amended by 1984, c. 45, subsec. 24(2), to add all that portion following para. (c), applicable with respect to transfers or distributions of property occurring after 1983.

Subsec. 70(9.1) added by 1974-75-76, c. 26, subsec. 38(7), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property; IT-449R: Meaning of "vested indefeasibly".

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(9.2) Transfer of family farm corporations and partnerships — Where at any time property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer to which subsection (5) would otherwise apply is, as a consequence of the death, transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the child,

(a) subsection (5) does not apply in respect of the property, and

(b) where the property is a share of the capital stock of a family farm corporation, the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to its adjusted cost base to the taxpayer immediately before the death, and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, and

(c) where the property is an interest in a family farm partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purpose of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the child shall be deemed to have acquired the property at the time of the death at a cost equal to the cost to the taxpayer of the interest, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing its adjusted cost base to the child,

except that, where the taxpayer's legal representative so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (c) does not apply and paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to such amount as the legal representative elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, not greater than the greater of nor less than the lesser of

(i) its fair market value immediately before the death, and

(ii) its adjusted cost base to the taxpayer immediately before the death,

and the child shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds, except that for the purpose of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the lesser thereof, and,".

Related Provisions: 40(3.18)(b) — Grandfathering of partnership interest transferred under 70(9.2)(c); 70(9.6) — Transfer to parent; 70(10) — Definitions; 220(3.2) — Late, amended or revoked elections; 220(3.2); 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly"; Reg. 600(b) — Late filing of election or revocation.

History: All that portion of subsec. 70(9.2) following para. (a) substituted by 1994, c. 21, subsec. 33(10), applicable to dispositions and acquisitions occurring after 1992. That portion of the subsec. formerly read:

(b) where the property is a share of the capital stock of a family farm corporation, the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to its adjusted cost base to the taxpayer immediately before the death, and the child shall be deemed to have acquired the property for an amount equal to the proceeds, and

(c) where the property is an interest in a family farm partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the child shall be deemed to have acquired the property for an amount equal to the cost thereof to the taxpayer, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the child of the property,

except that, where the legal representative of the taxpayer so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (c) does not apply and paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as the legal representative elects, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the death, and

(ii) the adjusted cost base to the taxpayer of the property immediately before the death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof,".

That portion of subsec. 70(9.2) preceding para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(14), applicable to dispositions occurring after 1992. That portion formerly read:

(9.2) Transfer of family farm corporations and partnerships — Where at any particular time after April 10, 1978 property of a tax-

payer that was, immediately before the taxpayer's death, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer to which paragraphs (5)(a) and (c) would otherwise apply has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(a) paragraphs (5)(a) and (c) are not applicable to the property;

All that portion of subsec. 70(9.2) following para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(5), applicable to transfers, distributions and acquisitions occurring after January 15, 1987. That portion formerly read:

(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to its adjusted cost base to the taxpayer immediately before the taxpayer's death and the child shall be deemed to have acquired the property for an amount equal to those proceeds

except that, where the legal representative of the taxpayer has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (b) shall be read as follows:

"(b) the taxpayer shall be deemed to have disposed of the property immediately before the taxpayer's death and to have received proceeds of disposition therefor equal to such amount as the legal representative has elected, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the taxpayer's death, and

(ii) the adjusted cost base to the taxpayer of the property immediately before the taxpayer's death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof."

Pre-RSC History: All that portion of subsec. 70(9.2) preceding para. (a) substituted by 1985, c. 45, subsec. 33(17), applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985.

That portion preceding para. (a) formerly read:

(9.2) Transfer of family farm corporations and partnerships — Where at any particular time after April 10, 1978 property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer to which paragraphs (5)(a) and (c) would otherwise apply has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the child not later than 15 months after the death of the taxpayer, the following rules apply:

Subsec. 70(9.2) amended by 1984, c. 45, subsec. 24(3) to add all that portion following para. (b), applicable with respect to transfers or distributions of property occurring after 1983.

Subsec. 70(9.2) added by 1977-78, c. 32, s. 14, applicable after April 10, 1978.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-449R: Meaning of "vested indefeasibly".

(9.3) Transfer of family farm corporation or partnership from spouse's trust to children of settlor — Where property of a taxpayer has been transferred or distributed to a trust described in subsection (6) or 73(1) and the property was,

Proposed Amendment — 70(9.3) opening words

(9.3) Transfer of family farm corporation or partnership from trust to children of settlor — Where property of a taxpayer has been transferred or distributed to a trust described in subsection (6) or 73(1) (as that subsection applied to transfers before 2000) or a trust to which subparagraph 73(1.01)(c)(i) applies and the property was,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 32(3), will amend the opening words of subsec. 70(9.3) to read as above, applicable to transfers and distributions from trusts that occur after 1999.

Where a particular transfer or distribution to a trust referred to in subsec. 70(9.3), as amended, occurred before 2001, in applying that subsec. to a transfer or distribution from the trust that occurs after 1997, that subsec. shall be read without reference to the words "or common-law partner" and to the *Modernization of Benefits and Obligations Act*, c. 12 of the Statutes of Canada, 2000, unless

(a) the particular transfer or distribution occurred after 1997;

(b) the death referred to in that subsec. occurs after 1997; and

(c) either

(i) at the time of the particular transfer or distribution referred to in para. (a), the taxpayer was a spouse of the individual whose death is referred to in para. (b), or

(ii) because of an election under s. 144 of the *Modernization of Benefits and Obligations Act*, sections 130 to 142 of that Act applied, at the time of the particular transfer or distribution referred to in para. (a), to the taxpayer and the individual whose death is referred to in para. (b).

Technical Notes: See under 70(9.1) opening words.

(a) immediately before the transfer or distribution, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer, and

(b) immediately before the death of the taxpayer's spouse who was a beneficiary under the trust,

(i) a share in the capital stock of a Canadian corporation that would be a share in the capital stock of a family farm corporation if paragraph (a) of the definition "share of the capital stock of a family farm corporation" in subsection (10) were read without the words "in which the person or a spouse, child or parent of the person was actively engaged on a regular and continuous basis", or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) an interest in a partnership that carried on the business of farming in Canada in which it used all or substantially all of its property,

and has, at any time after April 10, 1978, on the death of the spouse and as a consequence thereof, been transferred or distributed to and become vested indefeasibly in a child of the taxpayer who was resident in Canada imme-

diately before the death of the spouse, the following rules apply:

(c) subsection 104(4) does not apply to the trust in respect of the property,

(d) where the property is a share of the capital stock of a family farm corporation, the trust shall be deemed to have disposed of the share immediately before the death of the spouse and to have received proceeds of disposition therefor equal to its adjusted cost base to the trust immediately before the death of the spouse, and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(e) where the property is an interest in a family farm partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the trust shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the death of the spouse,

(ii) the child shall be deemed to have acquired the property for an amount equal to the cost thereof to the trust, and

(iii) each amount added or deducted in computing the adjusted cost base to the trust of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the child of the property,

except that, where the trust so elects in its return of income under this Part for its taxation year in which the spouse died, paragraph (e) shall not apply and paragraph (d) shall be read as follows:

"(d) the trust shall be deemed to have disposed of the property immediately before the death of the spouse and to have received proceeds of disposition therefor equal to such amount as the trust elects, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the death of the spouse, and

(ii) the adjusted cost base to the trust of the property immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof,".

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 40(3.18)(c) — Grandfathering of partnership interest transferred under 70(9.3)(e); 70(9.6) — Transfer to parent; 70(10) — Definitions; 220(3.2) — Late, amended or revoked elections; 220(3.2); 248(8) — Occurrences as a consequence of death; 248(9.2) — Meaning of "vested indefeasibly"; 252(4) — Extended meaning of "spouse"; Reg. 600(b) — Late filing of election or revocation.

History: Subpara. 70(9.3)(b)(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(15), applicable to 1992 *et seq.* That subpara. formerly read:

(i) a share in the capital stock of a Canadian corporation that would be a share in the capital stock of a family farm corporation if paragraph (a) of the definition "share of the capital stock of a family farm corporation" in subsection (10) were read without the words "and in which that person or that person's spouse or child was actively engaged" and subparagraph (b)(ii) of that definition were read without the words "in which that person or that person's spouse or child was actively engaged", or

Para. 70(9.3)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(16), applicable after December 20, 1991. That para. formerly read:

(c) subsection 104(4) is not applicable to the property;

All that portion of subsec. 70(9.3) following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(6), applicable to transfers, distributions and acquisitions occurring after January 15, 1987. That portion formerly read:

(d) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to its adjusted cost base to the trust immediately before the death of that spouse, and the child shall be deemed to have acquired the property for an amount equal to those proceeds,

except that, where the trust has so elected in its return of income under this Part for its taxation year in which the taxpayer's spouse died, paragraph (d) shall be read as follows:

"(d) the trust shall be deemed to have disposed of the property immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to such amount as the trust has elected, not greater than the greater of or less than the lesser of

(i) the fair market value of the property immediately before the death of the spouse, and

(ii) the adjusted cost base to the trust of the property immediately before the death of the spouse,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof."

Pre-RSC History: Para. 70(9.3)(b) substituted and all that portion following para. 70(9.3)(d) added by 1984, c. 45, subsecs. 24(4), (5), applicable as to para. 70(9.3)(b) to transfers made after May 25, 1978 and as to that portion following para. 70(9.3)(d) with respect to transfers or distributions of property occurring after 1983. Para. 70(9.3)(b) formerly read:

(b) immediately before the death of the taxpayer's spouse who was a beneficiary under the trust, a share in the capital stock of a Canadian corporation, or an interest in a partnership, that carried on the business of farming in Canada in which it used all or substantially all of its property,

Subsec. 70(9.3) added by 1977-78, c. 32, s. 14, applicable after April 10, 1978.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-449R: Meaning of "vested indefeasibly".

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(9.4) [Repealed under former Act]

Pre-RSC History: Subsec. 70(9.4) repealed by 1986, c. 6, subsec. 33(3), applicable by subsec. 33(7) (as amended by 1988, c. 55, s. 198) with respect to deaths of taxpayers occurring after 1987. Subsec. 70(9.4) formerly read:

(9.4) **Transfer of shares of small business corporation** — Where at any particular time property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a small business corporation to which paragraphs (5)(a) and (c) would otherwise apply has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and it can be shown, within the period ending 36

months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(a) paragraphs (5)(a) and (c) are not applicable to the property;

(b) the taxpayer shall be deemed to have disposed of the share immediately before his death and to have received proceeds of disposition therefor equal to the amount, if any, by which

(i) the fair market value of the share immediately before his death

exceeds the lesser of

(ii) the taxpayer's capital gain otherwise determined from the disposition of the share, and

(iii) the amount of his cumulative small business gains account immediately before the disposition or such lesser amount as is specified by the taxpayer's legal representative in respect of the transfer of the share;

(c) the child shall be deemed to have acquired the share at a cost equal to the proceeds of disposition deemed to have been received by the taxpayer under paragraph (b); and

(d) where two or more shares have been disposed of at the same time, this subsection applies as if each share had been separately disposed of in the order designated by the taxpayer's legal representative or if no such designation is made, in the order designated by the Minister.

All that portion of subsec. 70(9.4) preceding para. (a) substituted by 1985, c. 45, subsec. 33(18), applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985.

That portion preceding para. (a) formerly read:

(9.4) Transfer of share of capital stock of small business corporation — Where at any particular time property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a small business corporation to which paragraphs (5)(a) and (c) would otherwise apply has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer and the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the child not later than 15 months after the death of the taxpayer, the following rules apply:

Subsec. 70(9.4) added by 1977-78, c. 42, subsec. 5(1), applicable in respect of a disposition after May 25, 1978 of a share of the capital stock of a small business corporation.

(9.5) [Repealed under former Act]

Pre-RSC History: Subsec. 70(9.5) repealed by 1986, c. 6, subsec. 33(3), applicable by subsec. 33(7) (as amended by 1988, c. 55, s. 198) with respect to deaths of taxpayers occurring after 1987 except that the repeal of subsec. 70(9.5) is applicable with respect to deaths of taxpayers' spouses occurring after 1987. Subsec. 70(9.5) formerly read:

(9.5) Transfer of share of capital stock of small business corporation from spouse's trust to children of settlor — Where property of a taxpayer has been transferred or distributed to a trust described in subsection (6) or subsection 73(1) and the property was,

(a) immediately before such transfer or distribution, a share of the capital stock of a small business corporation, and

(b) immediately before the death of the taxpayer's spouse who was a beneficiary under the trust, a share of the capital stock of a small business corporation,

and has, at any particular time after the death of the taxpayer, on the death of the spouse and as a consequence thereof, been transferred or distributed to and become vested indefeasibly in a child of the taxpayer who was resident in Canada immediately before the death of the spouse, the following rules apply:

(c) subsection 104(4) is not applicable to the share;

(d) the trust shall be deemed to have disposed of the share immediately before the death of the taxpayer's spouse and to have received proceeds of disposition therefor equal to the amount, if any, by which

(i) the fair market value of the share immediately before the death of that spouse

exceeds the least of

(ii) the trust's capital gain otherwise determined from the disposition of the share,

(iii) the amount, if any, by which the taxpayer's cumulative small business gains account immediately after his death exceeds the aggregate of all amounts each of which is an amount that would, but for this subsection, have been a capital gain of the trust in respect of a previous disposition by it, and

(iv) such lesser amount as is specified by the trust in respect of the transfer or distribution of the share;

(e) the child shall be deemed to have acquired the share at a cost equal to the proceeds determined under paragraph (d); and

(f) where two or more shares have been disposed of by the trust at the same time, this subsection applies as if each share so disposed of had been separately disposed of in the order designated by the trust or if no such designation is made, in the order designated by the Minister.

Subpara. 70(9.5)(d)(iv) and para. 70(9.5)(f) amended by 1985, c. 45, subsecs. 33(19), (20), to substitute "by the trust" for "by the spouse's legal representative".

Subsec. 70(9.5) added by 1977-78, c. 42, subsec. 5(1), applicable in respect of a disposition after May 25, 1978 of a share of the capital stock of a small business corporation.

(9.6) Transfer to parent — Where

(a) any property has been acquired by a taxpayer in circumstances where any of subsections (9), (9.1), (9.2), (9.3) and 73(3) and (4) applied,

(b) as a consequence of the death of the taxpayer after 1983 the property has been transferred or distributed to a parent of the taxpayer, and

(c) the taxpayer's legal representative has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died,

subsection (9) or (9.2), as the case may be, shall apply in respect of the transfer or distribution as if the references therein to "child" were read as references to "parent".

Related Provisions: 248(8) — Occurrences as a consequence of death.

Pre-RSC History: Subsec. 70(9.6) added by 1984, c. 45, subsec. 24(6), applicable with respect to transfers or distributions of property occurring after 1983.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

(9.7) [Repealed under former Act]

Pre-RSC History: Subsec. 70(9.7) repealed by 1986, c. 6, subsec. 33(4), applicable by subsec. 33(7) (as amended by 1988, c. 55, s. 198) with respect to deaths of taxpayers occurring after 1987. Subsec. 70(9.7) formerly read:

(9.7) Transfer to parent — Where

(a) at any particular time capital property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a small business corporation that was acquired by the taxpayer in circumstances where any of subsections (9.4), (9.5) or 73(5) applied has, as a consequence of the death of the taxpayer after 1983, been transferred or distributed to a parent of the taxpayer who was resident in Canada immediately before the death of the taxpayer,

(b) it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal represen-

tative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the parent, and

(c) the taxpayer's legal representative has so elected in the taxpayer's return of income under this Part for the year in which the taxpayer died,

the following rules apply:

(d) paragraphs (5)(a) and (c) are not applicable to the property;

(e) the taxpayer shall be deemed to have disposed of the share immediately before his death and to have received proceeds of disposition therefor equal to such amount as the legal representative has elected, not greater than the greater of or less than the lesser of

(i) the fair market value of the share immediately before his death, and

(ii) the adjusted cost base to the taxpayer of the share immediately before his death,

except that for the purposes of this paragraph, where such elected amount exceeds the greater of the amounts determined under subparagraphs (i) and (ii), it shall be deemed to be equal to the greater thereof, and where such elected amount is less than the lesser of the amounts determined under those subparagraphs, it shall be deemed to be equal to the lesser thereof; and

(f) the parent shall be deemed to have acquired the share at a cost equal to the proceeds of disposition deemed to have been received by the taxpayer under paragraph (e).

Para. 70(9.7)(b) substituted by 1985, c. 45, subsec. 33(21), applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died in 1984 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the later of December 31, 1985 and the day that is 90 days after October 29, 1985.

Para. 70(9.7)(b) formerly read:

(b) the property can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be shown to have become vested indefeasibly in the parent not later than 15 months after the death of the taxpayer, and

Subsec. 70(9.7) added by 1984, c. 45, subsec. 24(6), applicable with respect to transfers or distributions of property occurring after 1983.

(9.8) Leased farm property — For the purposes of subsections (9) and 14(1), paragraph 20(1)(b), subsection 73(3) and paragraph (d) of the definition "qualified farm property" in subsection 110.6(1), where at any time any property of the taxpayer was used by

(a) a corporation a share of the capital stock of which is a share of the capital stock of a family farm corporation of the taxpayer, the taxpayer's spouse or any of the taxpayer's children, or

(b) a partnership an interest in which is an interest in a family farm partnership of the taxpayer, the taxpayer's spouse or any of the taxpayer's children

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

in the course of carrying on the business of farming in Canada, the property shall be deemed to have been used at that time by the taxpayer in the business of farming.

Related Provisions: 252(4) — Extended meaning of "spouse".

History: That portion of subsec. 70(9.8) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 48(7), applicable to 1986 *et seq.* That portion formerly read:

(9.8) Leased farm property — For the purposes of subsections (9) and 73(3), where at any time any property of a taxpayer was used by

Pre-RSC History: Subsec. 70(9.8) added by 1984, c. 45, subsec. 24(6), applicable with respect to transfers or dispositions of property occurring after 1983.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

(10) Definitions — In this section,

Related Provisions: 40(8), 44(8), 73(6) — Definitions in 70(10) apply to ss. 40, 44 and 73.

Pre-RSC History: That portion of subsec. 70(10) preceding para. (a) substituted by 1990, c. 35, s. 7, applicable after 1988. That portion formerly read:

(10) Definitions — For the purposes of this section and sections 40, 44, 73 and 146,

All that portion of subsec. 70(10) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 39(7), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms, in existence on November 12, 1981, of an offer or agreement in writing made or entered into on or before that date, or otherwise than by virtue of an event referred to in subpara. 54(h)(ii), (iii) or (iv) that occurred on or before that date. That portion formerly read:

(10) For the purposes of this section and section 73,

"child" of a taxpayer includes

(a) a child of the taxpayer's child,

(b) a child of the taxpayer's child's child, and

(c) a person who, at any time before the person attained the age of 19 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control;

Related Provisions: 84.1(2.2)(a)(i), 212.1(3)(b)(i) — Extended meaning of "child" applies for dividend stripping rules; 110.6(1)"child" — Extended meaning applies for capital gains exemption; 148(9)"child" — Extended meaning applies for life insurance policy rules; 252(1) — Additional extended meaning of "child".

Pre-RSC History: *The definition "child" was para. 70(10)(a).*

Subpara. 70(10)(a)(iii) amended by 1988, c. 55, subsec. 49(4), to substitute "19 years" for "21 years", applicable to 1988 *et seq.*

All that portion of subsec. 70(10) preceding para. (b) substituted by 1984, c. 45, subsec. 24(7), to add reference to s. 146 and to add subpara. 70(10)(a)(iii), applicable with respect to transfers or distributions of property occurring after 1983.

Interpretation Bulletins: IT-489R: Non-arm's length sale of shares to a corporation.

"interest in a family farm partnership" of a person at a particular time means an interest owned by the person at that time in a partnership where, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(a) property that has been used by

(i) the partnership,

(ii) the person,

(iii) a spouse, child or parent of the person, or

(iv) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the person or of a spouse, child or parent of the person,

principally in the course of carrying on the business of farming in Canada in which the person or a spouse, child or parent of the person was actively engaged on a regular and continuous basis,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (c), or

(c) properties described in paragraph (a) or (b);

Related Provisions: 252(4) — Extended meaning of "spouse".

History: The definition "interest in a family farm partnership" in subsec. 70(10) amended by 1993, c. 24, subsec. 28(18), applicable to 1992 *et seq.* That definition formerly read:

> "interest in a family farm partnership" of a person at a particular time means an interest in a partnership that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person or that person's spouse or child was actively engaged;

Pre-RSC History: *The definition "interest in a family farm partnership" was para. 70(10)(c).*

"share of the capital stock of a family farm corporation" of a person at a particular time means a share of the capital stock of a corporation owned by the person at that time where, at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(a) property that has been used by

(i) the corporation or any other corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of the person or of a spouse, child or parent of the person,

(i.1) a corporation controlled by a corporation referred to in subparagraph (i),

(ii) the person,

(iii) a spouse, child or parent of the person, or

(iv) a partnership, an interest in which was an interest in a family farm partnership of the person or of a spouse, child or parent of the person,

principally in the course of carrying on the business of farming in Canada in which the person or a spouse, child or parent of the person was actively engaged on a regular and continuous basis,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (c), or

(c) properties described in paragraph (a) or (b).

Related Provisions: 70(12) — Value of NISA deemed nil; 252(4) — Extended meaning of "spouse"; 256(6), (6.1) — Meaning of "controlled".

History: Subpara. (a)(i.1) added to the definition "share of the capital stock of a family farm corporation" in subsec. 70(10) by 1998, c. 19, subsec. 108(2), applicable to 1994 *et seq.*

The definition "share of the capital stock ..." in subsec. 70(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(17), applicable to 1992 *et seq.* That definition formerly read:

> "share of the capital stock of a family farm corporation" of a person at a particular time means
>
> (a) a share of the capital stock of a corporation that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person or that person's spouse or child was actively engaged, or
>
> (b) a share of the capital stock of a corporation all or substantially all of the property of which was, at that time,
>
> (i) shares of the capital stock of one or more corporations described in paragraph (a), or a bond, debenture, bill, note, mortgage or similar obligation issued by such a corporation,
>
> (ii) property used by the corporation in carrying on the business of farming in Canada in which that person, or that person's spouse or child was actively engaged, or
>
> (iii) any combination of properties described in subparagraphs (i) and (ii).

Pre-RSC History: *The definition "share of the capital ..." was para. 70(10)(b).*

Para. 70(10)(b) substituted by 1984, c. 1, subsec. 32(3), applicable with respect to transfers made after May 25, 1978. Para. 70(10)(b) formerly read:

> (b) "share of the capital stock of a family farm corporation" — "share of the capital stock of a family farm corporation" of a person at a particular time means a share of the capital stock of a corporation that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person, his spouse or his child was actively engaged; and

I.T. Application Rules: 20(1.11), 26(20).

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property; IT-349R3: Intergenerational transfers of farm property on death.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-56: Purification of a family farm corporation.

Pre-RSC History [subsec. 70(10)]: Subsec. 70(10) substituted by 1977-78, c. 32, s. 14, applicable after April 10, 1978. Subsec. 70(10) formerly read:

> (10) Extended meaning of "child" — For the purposes of subsections (9) and (9.1), "child" of a taxpayer includes a child of his child and a child of his child's child.

Subsec. 70(10) substituted by 1976-77, c. 4, subsec. 27(5), applicable to 1972 *et seq.*

Subsec. 70(10) added by 1973-74, c. 14, subsec. 19(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

(11) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 70(11): R.S.C. 1985, c. 1 (5th Supp.).

Pre-RSC History [former subsec. 70(11)]: Former subsec. 70(11) repealed by 1986, c. 6, subsec. 33(5), applicable to 1985 *et seq.* Former subsec. 70(11) had read:

> (11) Definitions — For the purposes of this section and sections 40, 44 and 73,
>
> (a) "cumulative small business gains account" — "cumulative small business gains account" of a taxpayer at any particular time means the amount, if any, by which $200,000 exceeds the aggregate of all amounts each of which is an amount that would, but for subsection (9.4) or 73(5), have been a capital gain of the taxpayer in respect of the disposition before that time of a share of the capital stock of a small business corporation, other than a disposition of such a share to his child that was reacquired before that time by the taxpayer as a consequence of the child's death;
>
> (b) [Repealed]
>
> (c) "small business corporation" — "small business corporation" at any particular time means a particular corporation that

is a Canadian-controlled private corporation all or substantially all of the assets of which were at that time

(i) used in an active business carried on in Canada by the particular corporation or by a corporation controlled by it,

(ii) shares of the capital stock of one or more small business corporations that were at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that such small business corporation was at that time a "payer corporation" within the meaning of that subsection) or a bond, debenture, bill, note, mortgage, hypothec or similar obligation issued by such a connected corporation, or

(iii) assets described in subparagraphs (i) and (ii).

Para. 70(11)(a) substituted by 1984, c. 45, subsec. 24(8), to add "other than a disposition of such a share to his child that was reacquired before that time by the taxpayer as a consequence of the child's death" applicable with respect to transfers or distributions of property occurring after 1983.

All that portion of subsec. 70(11) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 39(8), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to the terms, in existence on November 12, 1981, of an offer or agreement in writing made or entered into on or before that date, or otherwise than by virtue of an event referred to in subpara. 54(h)(ii), (iii) or (iv) that occurred on or before that date. That portion formerly read:

(11) For the purposes of this section and section 73,

Subpara. 70(11)(c)(i) substituted by 1980-81-82-83, c. 48, subsec. 38(3), applicable after May 25, 1978.

Para. 70(11)(b) repealed, subparas. 70(11)(c)(i) substituted, (iii) added by 1979, c. 5, subsecs. 23(1)–(3), applicable in respect of a disposition after May 25, 1978 of a share of the capital stock of a small business corporation.

Subsec. 70(11) added by 1977-78, c. 42, subsec. 5(2), applicable in respect of a disposition after May 25, 1978 of a share of the capital stock of a small business corporation.

(12) Value of NISA — For the purpose of the definition "share of the capital stock of a family farm corporation" in subsection (10), the fair market value of a net income stabilization account shall be deemed to be nil.

History: Subsec. 70(12) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 28(19), applicable to 1992 *et seq.*

(13) Capital cost of certain depreciable property — For the purposes of this section and, where a provision of this section (other than this subsection) applies, for the purposes of sections 13 and 20 (but not for the purposes of any regulation made for the purpose of paragraph 20(1)(a)),

(a) the capital cost to a taxpayer of depreciable property of a prescribed class disposed of immediately before the taxpayer's death, or

(b) the capital cost to a trust, to which subsection (9.1) applies, of depreciable property of a prescribed class disposed of immediately before the death of the spouse described in that subsection,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

shall, in respect of property that was not disposed of by the taxpayer or the trust before that time, be the amount that it would be if subsection 13(7) were read without reference to

(c) the expression "the lesser of" in paragraph (b) and clause (d)(i)(A) thereof, and

(d) subparagraph (b)(ii), subclause (d)(i)(A)(II), clause (d)(i)(B) and paragraph (e) thereof.

Related Provisions: 13(7) — Change in use of depreciable property.

History: Subsec. 70(13) added by 1994, c. 21, subsec. 33(11), applicable to dispositions and acquisitions occurring after 1992.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death.

(14) Order of disposal of depreciable property — Where 2 or more depreciable properties of a prescribed class are disposed of at the same time as a consequence of a taxpayer's death, this section and paragraph (a) of the definition "cost amount" in subsection 248(1) apply as if each property so disposed of were separately disposed of in the order designated by the taxpayer's legal representative or, in the case of a trust described in subsection (9.1), by the trust and, where the taxpayer's legal representative or the trust, as the case may be, does not designate an order, in the order designated by the Minister.

History: Subsec. 70(14) added by 1994, c. 21, subsec. 33(11), applicable to dispositions and acquisitions occurring after 1992.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death.

Selected Cases [s. 70]: *Van Son Estate v. The Queen*, [1990] 1 C.T.C. 182 (FCTD) (Rollover applied although widow sold to survivor two years after death upon terms similar to shareholder's agreement calling for purchase upon death).

Definitions [s. 70]: "active business" — 248(1); "adjusted cost base" — 54, 248(1); "amount", "annuity" — 248(1); "arm's length" — 251; "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "capital cost" — 70(12); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "child" — 70(10), 252(1); "common-law partner" — 248(1); "consequence" — 248(8); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "created by the taxpayer's will" — 248(9.1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "employment" — 248(1); "estate" — 104(1), 248(1); "fair market value" — 70(8), 70(12), 139.1(5); "family farm corporation", "family farm partnership" — 70(10); "farming" — 248(1); "foreign resource property" — 66(15), 248(1); "income" — of trust 108(3); "individual" — 248(1); "interest in a family farm partnership" — 70(10); "inventory" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister", "net income stabilization account", "NISA Fund No. 2", "office" — 248(1); "non-qualifying debt" — 70(8); "parent" — 252(2); "person", "prescribed", "property", "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "rights or things" — 70(3.1); "share" — 248(1); "share in the capital stock of a family farm corporation" — 70(10); "specified investment business" — 125(7); "spouse" — 252(3), (4)(a); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "testamentary debt" — 70(8); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "vested indefeasibly" — 248(9.2).

Interpretation Bulletins [s. 70]: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust.

71. [Repealed under former Act]

Pre-RSC History: S. 71 repealed by 1986, c. 6, s. 34, applicable to 1986 *et seq.*; and in its application to the 1985 taxation year s. 71 shall be read as follows:

71. Where a taxpayer dies in the 1985 taxation year, the following rules apply:

(a) in computing his income for the 1985 taxation year, paragraph 3(e) shall be read

(i) without reference to the words "the least of", and

(ii) without reference to subparagraphs (ii) and (iii) thereof; and

(b) in computing his income for the 1984 taxation year, paragraph 3(e), as it read in its application to the year, shall be read

(i) without reference to the words "the lesser of", and

(ii) without reference to subparagraph (ii) thereof.

S. 71 formerly read:

> 71. Application of paragraph 3(e) on death of taxpayer — In computing the income of a taxpayer for the taxation year in which he died and the immediately preceding taxation year, paragraph 3(e) shall be read
>
> (a) without reference to the words "the lesser of", and
>
> (b) without reference to subparagraph (ii) thereof.

All that portion of s. 71 preceding para. (a) substituted by 1977-78, c. 1, s. 32, applicable with respect to deaths occurring after March 31, 1977. That portion formerly read:

> 71. Application of para. 3(e) to year in which taxpayer died — In computing the income of a taxpayer for the taxation year in which he died, paragraph 3(e) shall be read

72. (1) Reserves, etc., for year of death — Where in a taxation year a taxpayer has died,

(a) paragraph 20(1)(n) does not apply to allow, in computing the income of the taxpayer for the year from a business, the deduction of any amount as a reserve in respect of property sold in the course of the business;

(b) no amount is deductible under subsection 32(1) as a reserve in respect of unearned commissions in computing the taxpayer's income for the year;

(c) no amount may be claimed under subparagraph 40(1)(a)(iii), paragraph 40(1.01)(c) or subparagraph 44(1)(e)(iii) in computing any gain of the taxpayer for the year;

(d) subsection 64(1)[7] does not apply to allow, in computing the income of the taxpayer for the year, the deduction of any amount as a reserve in respect of the disposition of any property; and

(e) subsection 64(1.1)[7] does not apply to allow, in computing the income of the taxpayer for the year, the deduction of any amount as a reserve in respect of the disposition of any property.

Related Provisions: 61.2 — Deduction of debt forgiveness reserve for year of death; 72(2) — Election by legal representative and transferee re reserves.

History: Para. 72(1)(c) amended by 1998, c. 19, s. 12, applicable to 1997 *et seq.* The para. formerly read:

> (c) no amount may be claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing any gain of the taxpayer for the year;

Para. 72(1)(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 49(1), applicable to 1990 *et seq.* Para. 72(1)(c) formerly read:

> (c) subparagraph 40(1)(a)(iii) does not apply to permit the claiming of any amount under that subparagraph in computing any gain of the taxpayer for the year;

Pre-RSC History: Para. 72(1)(e) added by 1976-77, c. 4, subsec. 28(1), applicable in respect of deaths occurring after May 25, 1976.

Interpretation Bulletins: IT-152R3: Special reserves — sale of land; IT-154R: Special reserves; IT-236R4: Reserves — disposition of capital property; IT-321R: Insurance agents and brokers — unearned commissions.

(2) Election by legal representative and transferee re reserves — Where property of a taxpayer that is a right to receive any amount has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to the taxpayer's spouse described in paragraph 70(6)(a) or to a trust described in paragraph 70(6)(b) (in this subsection referred to as the "transferee"), if the taxpayer was resident in Canada immediately before the taxpayer's death and the taxpayer's legal representative and the transferee have executed jointly an election in respect of the property in prescribed form,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) any amount in respect of the property that would, but for paragraph (1)(a), (b), (d) or (e), as the case may be, have been deductible as a reserve in computing the taxpayer's income for the taxation year in which the taxpayer died shall,

(i) notwithstanding subsection (1), be deducted in computing the taxpayer's income for the taxation year in which the taxpayer died,

(ii) be included in computing the transferee's income for the transferee's first taxation year ending after the death of the taxpayer, and

(iii) be deemed to be

(A) an amount that has been included in computing the transferee's income from a business for a previous year in respect of property sold in the course of the business,

(B) an amount that has been included in computing the transferee's income for a previous year as a commission in respect of an insurance contract, other than a life insurance contract,

(C) an amount that by virtue of subsection 59(1) has been included in computing the transferee's income for a preceding taxation year, or

(D) for the purposes of subsection 64(1.1)[7], an amount that by virtue of paragraph 59(3.2)(c) has been included in computing the transferee's income for a preceding taxation year and to be an amount deducted by the transferee pursuant to paragraph 64(1.1)(a)[7] in computing the transferee's income for the transferee's last taxation year ending before the death,

as the case may be;

(b) any amount in respect of the property that could, but for paragraph (1)(c), have been claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the amount of any gain of the taxpayer for the year shall,

(i) notwithstanding paragraph (1)(c), be deemed to have been so claimed, and

(ii) for the purpose of computing the transferee's income for the transferee's first taxation year ending after the death of the taxpayer and any subsequent taxation year, be deemed to have been

(A) proceeds of the disposition of capital property disposed of by the transferee in that first taxation year, and

(B) the amount determined under subparagraph 40(1)(a)(i) or 44(1)(e)(i), as the case may be, in respect of the capital property referred to in clause (A); and

(c) notwithstanding paragraphs (a) and (b), where any property had been disposed of by the taxpayer, in

[7]The section 64 meant to be referred to is s. 64 of R.S.C. 1952, c. 148 — ed.

computing the income of the transferee for any taxation year ending after the death of the taxpayer,

(i) the amount of the transferee's deduction under paragraph 20(1)(n) as a reserve in respect of the property sold in the course of business,

(ii) the amount of the transferee's claim under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in respect of the disposition of the property, and

(iii) the amount of the transferee's deduction under section 64[7] as a reserve in respect of the disposition of the property

shall be computed as if the transferee were the taxpayer who had disposed of the property and as if the property were disposed of by the transferee at the time it was disposed of by the taxpayer.

Related Provisions: 220(3.2), Reg. 600(b) — Late filing of election or revocation; 248(8) — Occurrences as a consequence of death.

History: That portion of para. 72(2)(b) preceding subpara. (i), and subpara. 72(2)(c)(ii), amended to add to each "or 44(1)(e)(iii)", and cl. 72(2)(b)(ii)(B) amended to add "or 44(1)(e)(i), as the case may be", by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 49(2) to (4), applicable to 1990 *et seq.*

Pre-RSC History: That portion of subpara. 72(2)(b)(ii) preceding cl. (A) amended by 1988, c. 55, s. 50, to substitute "deemed to have been" for "deemed, except for the purposes of section 3 as it applies for the purposes of section 110.6, to have been", applicable to 1988 *et seq.* in respect of properties disposed of after 1984.

All that portion of subpara. 72(2)(b)(ii) preceding cl. (A) amended by 1986, c. 6, s. 35, applicable to 1985 *et seq.*, to substitute "purpose" for "purposes" and to add "except for the purposes of section 3 as it applies for the purposes of section 110.6".

Cls. 72(2)(a)(iii)(C) and (D) substituted by 1985, c. 45, s. 34, applicable with respect to deaths occurring in taxation years commencing after 1984. Cls. 72(2)(a)(iii)(C) and (D) formerly read:

(C) an amount that, by virtue of subsection 59(1) or (3), has been included in computing the transferee's income for a previous year, or

(D) for the purposes of subsection 64(1.1), an amount that, by virtue of subsection 59(1.1) or (3.1) and paragraph 59(3.2)(c), has been included in computing the transferee's income for a previous year and to be an amount deducted by the transferee pursuant to paragraph 64(1.1)(a) in computing his income for the immediately preceding year,

Para. 72(2)(c) added by 1980-81-82-83, c. 140, s. 40(1), applicable after November 12, 1981.

All that portion of para. 72(2)(a) preceding subpara. (i) substituted, cl. 72(2)(a)(iii)(D) added by 1976-77, c. 4, subsecs. 28(2), (3), applicable in respect of deaths occurring after May 25, 1976. That portion of para. 72(2)(a) formerly read:

(a) any amount in respect of the property that would, but for paragraph (1)(a), (b) or (d), as the case may be, have been deductible as a reserve in computing the taxpayer's income for the taxation year in which he dies shall,

All that portion of subsec. 72(2) preceding para. (a) substituted by 1973-74, c. 14, s. 20.

Interpretation Bulletins [subsec. 72(2)]: IT-152R3: Special reserves — sale of land; IT-236R4: Reserves — disposition of capital property.

Information Circulars [subsec. 72(2)]: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms [subsec. 72(2)]: T2069: Election in respect of amounts not deductible as reserves for the year of death; T4011: Preparing returns for deceased persons [guide].

Definitions [s. 72]: "amount", "business" — 248(1); "Canada" — 255; "capital property", "common-law partner" — 54, 248(1); "consequence" — 248(8); "prescribed", "property" — 248(1); "resident in Canada" — 250; "spouse" — 252(4)(a); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

73. (1) *Inter vivos* transfer of property of spouse, etc., or trust — For the purposes of this Part, where at any time after 1977 any particular capital property of a taxpayer has been transferred to

(a) the taxpayer's spouse,

(b) a former spouse of the taxpayer in settlement of rights arising out of their marriage, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) a trust created by the taxpayer under which

(i) the taxpayer's spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and

(ii) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) [Repealed]

and both the taxpayer and the transferee were resident in Canada at that time, unless the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the property was transferred not to have the provisions of this subsection apply, the particular property shall be deemed to have been disposed of at that time by the taxpayer for proceeds equal to,

(e) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and

(f) in any other case, the adjusted cost base to the taxpayer of the particular property immediately before that time,

and to have been acquired at that time by the transferee for an amount equal to those proceeds.

Proposed Amendment — 73(1), (1.01), (1.02)

73. (1) *Inter vivos* transfers by individuals — For the purposes of this Part, where at any time any particular capital property of an individual (other than a trust) has been transferred in circumstances to which subsection (1.01) applies and both the individual and the transferee are resident in Canada at that time, unless the individual elects in the individual's return of income under this Part for the taxation year in which the property was

[7]The section 64 meant to be referred to is s. 64 of R.S.C. 1952, c. 148 — ed.

transferred that the provisions of this subsection not apply, the particular property is deemed

(a) to have been disposed of at that time by the individual for proceeds equal to,

(i) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the individual immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and

(ii) in any other case, the adjusted cost base to the individual of the particular property immediately before that time; and

(b) to have been acquired at that time by the transferee for an amount equal to those proceeds.

(1.01) Qualifying transfers — Subject to subsection (1.02), property is transferred by an individual in circumstances to which this subsection applies where it is transferred to

(a) the individual's spouse or common-law partner;

(b) a former spouse or common-law partner of the individual in settlement of rights arising out of their marriage or common-law partnership; or

(c) a trust created by the individual under which

(i) the individual's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death and no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(ii) the individual is entitled to receive all of the income of the trust that arises before the individual's death and no person except the individual may, before the individual's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iii) either

(A) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(B) the individual or the individual's common-law partner is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the common-law partner and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

Related Provisions: 73(1.02) — Limitation on transfers to trusts; 108(3) — Calculation of income of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 248(1)"alter ego trust" — Trust for individual during own lifetime.

(1.02) Exception for transfers — Subsection (1.01) applies to a transfer of property by an individual to a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii) or (iii) only where

(a) the trust was created after 1999;

(b) either

(i) the individual has attained 65 years of age at the time the trust was created, or

(ii) no person (other than the individual) or partnership has any absolute or contingent right as a beneficiary under the trust (determined with reference to subsection 104(1.1));

(c) unless subparagraph (b)(ii) applies in respect of the transfer, the transfer is not part of a series of transactions or events

(i) that includes a transfer of property to the individual (or the spouse or common-law partner or former spouse or common-law partner, as the case may be, of the individual) from a trust (other than a testamentary trust) in circumstances to which subsection 107(2) applied, and

(ii) one of the main purposes of which can reasonably be considered to be to avoid the application of subsection 104(4) or (5) on a day determined under paragraph 104(4)(b) or (c); and

(d) in the case of a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii), the trust does not make an election under subparagraph 104(4)(a)(ii.1).

Related Provisions: 104(1.1) — Restricted meaning of "beneficiary".

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 33, will amend subsec. 73(1) to read as above, and add subsecs. (1.01) and (1.02), applicable to transfers that occur after 1999 except that, in respect of transfers that occur in 2000,

(a) for the purpose of subsec. 73(1), the residence of a transferee trust shall be determined without reference to sec. 94, as it read before 2001;

(b) subject to para. (c),

(i) subsecs 73(1.01) and (1.02) shall be read without reference to the words "or common-law partner", "or common-law partner's" and "or common-law partnership", and

(ii) subpara. 73(1.01)(c)(iii) shall be read as follows:

(iii) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

(c) para. (b) does not apply to a transfer at any time by an individual to or for the benefit of another individual where, because of an election under sec. 144 of the *Modernization of Benefits and Obligations Act*, c. 12, of the Statutes of Canada, 2000, ss. 130 to 142 of that Act applied at that time to those individuals.

Technical Notes: Subsection 73(1) of the Act generally provides for a tax-free disposition of capital property where it is transferred by an individual to the individual's spouse or to a spousal trust (i.e., essentially a trust for the exclusive benefit of the spouse during the spouse's lifetime). For subsection 73(1) to apply, the transferor and transferee must both be resident in Canada (determined without reference to subsection 94(1) as it read before 2001) at the time of the transfer. Provision is made to elect out of the rollover rule, in which case the proceeds of disposition for the transferor would be deemed by subsection 69(1) to be not less than the fair market value of the property transferred. Where there has been a transfer to a spousal trust, subsections 104(4) and 107(4) ensure that capital gains are appropriately recognized by a deemed disposition of trust property at the time of the beneficiary spouse's death (or, where applicable, at the time of any earlier distribution to another beneficiary).

Subsection 73(1) is amended, in conjunction with the introduction of subsection 73(1.01), so that the current rules in subsection 73(1) for transfers by an individual to a trust are extended to similarly allow for a tax-free disposition where:

- the individual transfers property to a trust for the exclusive benefit of the individual during the individual's own lifetime (such a trust will generally be an "*alter ego* trust", as defined in subsection 248(1), in the event that the individual is at least 65 years of age), or
- the individual transfers the property for the joint benefit of the individual and the individual's spouse during their lifetimes (such a trust will generally be a "joint partner trust", as defined in subsection 248(1), in the event that the individual is at least 65 years of age). This can involve either equal or unequal entitlements of the two spouses to trust income (as defined in subsection 108(3)).

However, new subsection 73(1.02) limits the application of subsection 73(1.01). It provides that, in order for subparagraphs 73(1.01)(c)(ii) and (iii) to apply to a transfer of property by an individual to a trust, the following conditions must be met:

- the trust was created after 1999;
- the individual has attained 65 years of age at the time the trust was created, except where no person (other than the individual) or partnership has any absolute or contingent right as a beneficiary under the trust (determined with reference to subsection 104(1.1));
- subject to the same exception, the transfer was not part of a series of transactions or events that includes a transfer of property to the transferor (or the spouse or former spouse of the transferor) from a trust (other than a testamentary trust) in circumstances to which subsection 107(2) applied, where one of the main purposes of that series can reasonably be considered to be to avoid the deemed disposition of trust property under subsection 104(4) or (5) on a day determined under paragraph 104(4)(b) or (c); and
- in the case of a trust to which the individual transfers property for the exclusive benefit of the individual during the individual's own lifetime, the trust does not make an election under subparagraph 104(4)(a)(ii.1). For more information on this election see the commentary below on amended paragraph 104(4)(a).

The purpose of the "age 65" condition (above and in amended subsection 104(4)) is to limit the opportunity to engage in tax planning involving trusts and the maximization of the deferral of the recognition of capital gains. For example, a 66 year old parent might arrange for common shares of a private corporation to be issued to his or her 27 year old child with the understanding that those common shares be transferred by the child into a trust effectively controlled by the parent that provides for beneficiaries after the child's death. The purpose of this arrangement may, in part, be to minimize capital gains otherwise recognized on the death of the parent. In these circumstances, the transfer by the child to the trust cannot be made on a rollover basis and subsection 104(4) generally provides for a deemed disposition on the 21st anniversary of the trust (rather than on the child's death).

The purpose of the third condition is consistent with the purpose of the "age 65" condition. Assume there is an upcoming 21-year anniversary for a trust the beneficiaries of which are a 66 year old parent and the adult children of the parent. Property is transferred to the parent alone (rather than to both the parent and the beneficiaries) on the understanding that the parent will transfer the property back to a trust with the same beneficiaries. In the absence of the third condition, the transactions described would result in an inappropriate extension of the 21-year rule for deemed dispositions of trust property.

Changes to subsections 104(4) and (6) and 107(4), as described in the commentary below, have been made so that the income tax regime for trusts to which transfers have been made under amended section 73 parallels the existing rules for spousal trusts.

These amendments apply to transfers that occur after 1999.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Related Provisions: 40(4) — Where principal residence disposed of to a spouse; 53(4) — Effect on ACB of share, partnership interest or trust interest; 56.1 — Maintenance payments; 70(6)(a) — Where transfer or distribution to spouse or trust; 70(9.1), (9.3) — Transfer of farm property from spouse trust to settlor's children before 2000; 73(1.1) — Interpretation; 74.1(1) — Attribution of income or loss on property transferred to spouse; 74.2(1) — Gain or loss deemed that of lender or transferor; 104(4)(a) — Deemed disposition by a trust; 104(4)(a.3) — Deemed disposition by trust on emigration of transferor; 107.4 — Qualifying disposition to a trust; 108(3) — Meaning of "income" of trust; 108(4) — Trust not disqualified by reason only of payment of certain taxes; 148(8) — Disposition at non-arm's length and similar cases; 148(8.1) — *Inter vivos* transfer to spouse; 220(3.2) — Late filing of election or revocation; 252(3), (4) — Extended meaning of "spouse", "marriage" and "former spouse"; Reg. 600(b) — Late filing of election or revocation.

History: Para. 73(1)(d) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 29(1), applicable with respect to transfers of property occurring after 1992. Para. (d) formerly read:

> (d) an individual of the opposite sex, under an order for the support or maintenance of the individual, made by a competent tribunal in accordance with the laws of a province, where the individual and the taxpayer cohabited in a conjugal relationship before the date of the order,

Para. 73(1)(d) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 50, applicable with respect to transfers occurring after July 13, 1990. Para. 73(1)(d) formerly read:

> (d) an individual pursuant to a decree, order or judgment of a competent tribunal made in accordance with prescribed provisions of the law of a province if that individual either entered into a written agreement with the taxpayer in accordance with those provisions or is a person within a prescribed class of persons referred to in those provisions,

Pre-RSC History: All that portion of subsec. 73(1) between paras. (d) and (e) substituted by 1980-81-82-83, c. 48, s. 39, applicable with respect to property transferred after 1979. That portion formerly read:

> and both the taxpayer and the transferee were resident in Canada at that time, the particular property shall be deemed to have been disposed of at that time by the taxpayer for proceeds equal to,

Subsec. 73(1) substituted by 1977-78, c. 32, subsec. 15(1), applicable to 1978 *et seq.* Subsec. 73(1) formerly read:

> 73. (1) *Inter vivos* transfer of property to spouse or trust — For the purposes of this Part, where at any time after 1971 any particular capital property has been transferred by a taxpayer to his spouse, or to a trust created by him under which
>
> (a) his spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and
>
> (b) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,
>
> and both the taxpayer and the spouse or trust, as the case may be, were resident in Canada at that time, the particular property shall be deemed to have been disposed of at that time by the taxpayer for proceeds equal to,
>
> (c) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and
>
> (d) in any other case, the adjusted cost base to the taxpayer of the particular property immediately before that time,
>
> and to have been acquired at that time by the spouse or trust, as the case may be, for an amount equal to those proceeds.

Selected Cases: *King v. Canada*, [1995] 1 C.T.C. 2353 (TCC) (Conduct of taxpayers may constitute estoppel with respect to attribution and timing).

I.T. Application Rules: 20(1.1) (where property owned since before 1972).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-325R2: Property transfers after separation, divorce and annulment.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(1.1) Interpretation — For greater certainty, where, under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with those laws, a person referred to in subsection (1)

(a) acquires or is deemed to have acquired,

(b) is deemed or declared to have or is awarded, or

(c) has vested in that person,

property that was or would, but for those provisions, have been a capital property of the taxpayer referred to in subsection (1), that property shall, for the purposes of that subsection, be deemed to be capital property of the taxpayer that has been transferred to that person.

Proposed Amendment — 73(1.1)

(1.1) Interpretation — For greater certainty, a property is, for the purposes of subsections (1) and (1.01), deemed to be property of the individual referred to in subsection (1) that has been transferred to a particular transferee where,

(a) under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with those laws, the property

(i) is acquired or is deemed to have been acquired by the particular transferee,

(ii) is deemed or declared to be property of, or is awarded to, the particular transferee, or

(iii) has vested in the particular transferee;

(b) the property was or would, but for those laws, have been a capital property of the individual referred to in subsection (1).

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 33, will amend subsec. 73(1.1) to read as above, applicable on the same basis as the amendment to subsec. (1).

Technical Notes: Subsection 73(1.1) of the Act generally provides that one individual is considered to have transferred property to another individual where the other individual obtains the property under provincial law or because of a decree, order or judgment of a competent tribunal made in accordance with that law. The rule applies for the purpose of the rollover rule in subsection 73(1).

Subsection 73(1.1) is amended to change a number of cross-references, to reflect amended subsection 73(1) and new subsection 73(1.01) (described in the commentary above).

This amendment applies to transfers that occur after 1999.

Related Provisions: 70(9.1), (9.3) — Transfer of farm property from spouse trust to settlor's children.

History: The opening words of subsec. 73(1.1) substituted by 1994, c. 21, s. 34, applicable to transfers occurring after July 13, 1990. The opening words formerly read:

(1.1) Interpretation — For greater certainty, where, by the operation of prescribed provisions of the law of a province or by virtue of a decree, order or judgment of a competent tribunal made in accordance with those provisions, a person referred to in subsection (1)

Pre-RSC History: Subsec. 73(1.1) added by 1977-78, c. 32, subsec. 15(1), applicable to 1978 *et seq.*

Regulations: 6500(2) (prescribed provisions; no longer needed).

I.T. Application Rules: 20(1.1).

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment.

(1.2) [Repealed under former Act]

Pre-RSC History: Subsec. 73(1.2) repealed by 1980-81-82-83, c. 140, s. 41, applicable after 1981. Subsec. 73(1.2) formerly read:

(1.2) Idem — For the purposes of subsection (1), "spouse" and "former spouse" includes a party to a void or voidable marriage, as the case may be.

Subsec. 73(1.2) added by 1977-78, c. 32, subsec. 15(1), applicable to 1978 *et seq.*

(2) Capital cost and amount deemed allowed to spouse, etc., or trust — Where a transferee is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1)(e) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the transferee of the particular property shall be deemed to be the amount that was the capital cost to the taxpayer thereof; and

(b) the excess shall be deemed to have been allowed to the transferee in respect of the particular property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition thereof.

Pre-RSC History: Subsec. 73(2) substituted by 1977-78, c. 32, subsec. 15(1), applicable to 1978 *et seq.* Subsec. 73(2) formerly read:

(2) Capital cost and amount deemed allowed to spouse or trust — Where a spouse or trust, as the case may be, is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1)(c) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the spouse or trust, as the case may be, of the particular property shall be deemed to be the amount that was the capital cost to the taxpayer thereof, and

(b) the excess shall be deemed to have been allowed to the spouse or trust, as the case may be, in respect of the particular property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition thereof.

I.T. Application Rules: 20(1.1) (where property owned since before 1972).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-325R2: Property transfers after separation, divorce and annulment.

(3) *Inter vivos* transfer of farm property to child — For the purposes of this Part, where at any time any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer or any eligible capital property in respect of a business carried on in Canada by a taxpayer is transferred by the taxpayer to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, before the transfer, used principally in the business of farming in which the taxpayer, the taxpayer's spouse or any of the taxpayer's children was actively engaged on a regular and continuous basis,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) where the property transferred was depreciable property of a prescribed class, the taxpayer shall be

deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) that proportion of the undepreciated capital cost to the taxpayer immediately before the time of the transfer of all of the depreciable property of the taxpayer of that class that the fair market value at that time of the property so transferred was of the fair market value at that time of all of the depreciable property of the taxpayer of that class,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) where the property transferred was land, the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the land immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the land immediately before the time of the transfer,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b.1) where the property transferred was eligible capital property, the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the amount determined by the formula

$$\frac{4}{3}\left(A \times \frac{B}{C}\right)$$

where

A is the cumulative eligible capital of the taxpayer in respect of the business,

B is the fair market value of the property immediately before the transfer, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(c) section 69 does not apply in determining the proceeds of disposition of the depreciable property, the land or the eligible capital property;

(d) the child shall be deemed to have acquired the depreciable property or the land, as the case may be, for an amount equal to the proceeds of disposition determined under paragraph (a) or (b), respectively;

(d.1) where the property transferred was eligible capital property of the taxpayer, the child shall be deemed to have acquired a capital property, immediately after the transfer, at a cost equal to the proceeds of disposition determined under paragraph (b.1), except that, where the child continues to carry on the business previously carried on by the taxpayer, the taxpayer's spouse or any of the taxpayer's children, the taxpayer shall be deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(i) the proceeds of disposition referred to in paragraph (b.1), and

(ii) 4/3 of the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) - D$$

where

A is the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer immediately before the time of the transfer,

B is the fair market value of the property immediately before that time,

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business, and

D is the amount, if any, included under subparagraph 14(1)(a)(iv) in computing the income of the taxpayer as a result of the disposition,

and, for the purpose of determining at any subsequent time the child's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (ii) shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5);

(d.2) for the purposes of determining after the time of the transfer

(i) the amount deemed by subparagraph 14(1)(a)(v) to be the child's taxable capital gain, and

(ii) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the child's income

in respect of any subsequent disposition of the property of the business, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the taxpayer immediately before the time of the transfer,

B is the fair market value immediately before that time of the property transferred, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business; and

(e) where the child is deemed to have acquired depreciable property of a prescribed class of the taxpayer for an amount determined under paragraph (d) and the capital cost to the taxpayer of the property exceeds the amount determined under that paragraph, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the child of the property shall be deemed to be the amount that was the capital cost to the taxpayer thereof, and

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition thereof.

Related Provisions: 44(1.1) — Farm property disposed of to child; 70(9) — Transfer of farm property by farmer to child; 70(9.6) — Transfer to parent; 70(9.8) — Leased farm property; 75.1 — Gain or loss deemed that of transferor; 110.6(1)"qualified farm property"(d)(ii) — Property to which 73(3)(d.1) applies eligible for capital gains exemption; 110.6(2) — Capital gains exemption on farm property; 252(4) — Extended meaning of "spouse"; 257 — Formula cannot calculate to less than zero.

History: Subpara. 73(3)(d.2)(ii) amended by 1995, c. 3, s. 19, applicable to transfers that occur after February 22, 1994. Subpara. (ii) formerly read:

(ii) the amount to be included under paragraph 14(1)(b) in computing the child's income

That portion of subsec. 73(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 29(2), applicable to transfers occurring after 1992. That portion formerly read:

(3) *Inter vivos* transfer of farm property by farmer to his child — For the purposes of this Part, where at any time after 1971 any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer or any eligible capital property in respect of a business carried on in Canada by a taxpayer has been transferred by a taxpayer to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, immediately before the transfer, used by the taxpayer, the taxpayer's spouse or any of the taxpayer's children in the business of farming, the following rules apply:

Cl. 73(3)(b.1)(ii)(B) and all that portion of para. (d.1) following subpara. (i) amended, and para. (d.2) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 29(3) to (5), applicable to transfers by a taxpayer occurring after the beginning of the first fiscal period of the taxpayer's business beginning after 1987. Those portions formerly read:

(B) ⅔ of the taxpayer's cumulative eligible capital in respect of the business immediately before the time of the transfer,

.....

(ii) the amount, if any, by which

(A) the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business of the taxpayer immediately before the time of the transfer

exceeds

(B) the amount, if any, included in the income of the taxpayer by reason of subparagraph 14(1)(a)(iv) as a result of the disposition,

and, for the purposes of determining at any time the child's cumulative eligible capital in respect of the business, an amount equal to the amount determined under subparagraph (ii) shall be added to the amount otherwise determined for P in the definition "cumulative eligible capital" in subsection 14(5); and

Pre-RSC History: Cl. 73(3)(b.1)(ii)(B) amended to substitute "⅔ of" for "2 times", and para. 73(3)(d.1) substituted, by 1988, c. 55, subsecs. 51(1), (2), applicable with respect to transfers occurring after the commencement of the first fiscal period commencing after 1987 of a taxpayer's business. Para. 73(3)(d.1) formerly read:

(d.1) where the property transferred was eligible capital property of the taxpayer, the child shall be deemed to have acquired a capital property, immediately after the transfer, at a cost equal to the proceeds of disposition determined under paragraph (b.1) except that, where the child continues to carry on the business previously carried on by the taxpayer, his spouse or any of his children, he shall be deemed to have acquired an eligible capital property (within the meaning of paragraph 54(d)) and to have made an eligible capital expenditure (within the meaning of paragraph 14(5)(b)) at a cost equal to those proceeds; and

Paras. 73(3)(a) to (b.1) amended by 1985, c. 45, subsec. 35(1), applicable with respect to transfers occurring after 1981, to substitute in each "at the time of the transfer for proceeds of disposition equal to" for "at the time of the transfer and to have received proceeds of disposition therefor equal to"; to substitute "depreciable property" for "depreciable property of the taxpayer" in para. (a); to substitute "land" for "land of the taxpayer" in para. (b); and to substitute "eligible capital property" for "eligible capital property in respect of a business of the taxpayer" in para. (b.1).

Para. 73(3)(d) amended by 1985, c. 45, subsec. 35(2), to substitute "determined" for "deemed to have been received", applicable to transfers occurring after 1981.

All that portion of subsec. 73(3) preceding para. (a), para. 73(3)(c) substituted, paras. 73(3)(b.1), (d.1) added by 1977-78, c. 32, subsecs. 15(2)–(4), applicable to transfers of eligible capital property after April 10, 1978. That portion of subsec. 73(3) preceding para. (a), and para. 73(3)(c), formerly read:

(3) For the purposes of this Part, where at any time after 1971 any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer has been transferred by a taxpayer to a child of his who was resident in Canada immediately before the transfer, and the property was, immediately before the transfer, used by him, his spouse or any of his children in the business of farming, the following rules apply:

.....

(c) section 69 does not apply in determining the proceeds of disposition of the depreciable property or the land;

Subsec. 73(3) added by 1973-74, c. 14, s. 20.1, applicable to 1972 *et seq.*

I.T. Application Rules: 26(19) (property owned since before 1972).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

(4) *Inter vivos* transfer of family farm corporations and partnerships — For the purposes of this Part, where at any particular time after April 10, 1978 a taxpayer has transferred property to a child of the taxpayer who was resident in Canada immediately before the transfer, and the property was, immediately before the transfer, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm

partnership of the taxpayer (within the meaning assigned by subsection 70(10)), the following rules apply:

(a) the taxpayer shall be deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the proceeds of disposition otherwise determined exceeded the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the property immediately before the time of the transfer,

the greater of the amounts referred to in clauses (A) and (B), or

(iii) if the proceeds of disposition otherwise determined were less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) section 69 does not apply in determining the proceeds of disposition of the property; and

(c) the child shall be deemed to have acquired the property for an amount equal to the proceeds of disposition determined under paragraph (a).

Related Provisions: 53(4) — Effect on ACB of share or partnership interest; 70(9.2) — Transfer of family farm corporations and partnerships; 70(9.6) — Transfer to parent; 70(10) — "child"; 75.1 — Gain or loss deemed that of transfer.

Pre-RSC History: Para. 73(4)(a) amended by 1985, c. 45, subsec. 35(3), to substitute "for proceeds of disposition equal to" for "and to have received proceeds of disposition therefor equal to"; para. 73(4)(c) amended by 1985, c, 45, subsec. 35(4), to substitute "determined under paragraph (a)" for "deemed to have been received under paragraph (a)", applicable with respect to transfers occurring after 1981.

Subsec. 73(4) substituted by 1977-78, c. 32, subsec. 15(5), applicable after April 10, 1978. Subsec. 73(4) formerly read:

(4) Extended meaning of "child" — For the purposes of subsection (3), "child" of a taxpayer includes a child of his child and a child of his child's child.

Subsec. 73(4) added by 1973-74, c. 14, s. 20.1, applicable to 1972 *et seq.*

I.T. Application Rules: 20(1.1).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

Advance Tax Rulings: ATR-56: Purification of a family farm corporation.

(5) Disposition of a NISA — Where at any time a taxpayer disposes of an interest in the taxpayer's NISA Fund No. 2, an amount equal to the balance in the fund so disposed of shall be deemed to have been paid out of the fund at that time to the taxpayer except that,

(a) where the interest is disposed of to the taxpayer's spouse, former spouse or an individual referred to in paragraph (1)(d) (as it applies to transfers of property that occurred before 1993) in settlement of rights arising out of their marriage, on or after the breakdown of the marriage, that amount shall not be deemed to have been paid to the taxpayer if

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(i) the disposition is made under a decree, order or judgment of a competent tribunal or, in the case of a spouse or former spouse, a written separation agreement, and

(ii) the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the property was disposed of to have this paragraph apply to the disposition; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) where the interest is disposed of to a taxable Canadian corporation in a transaction in respect of which an election is made under section 85, an amount equal to the proceeds of disposition in respect of that interest shall be deemed to be paid, at that time, to the taxpayer out of the taxpayer's NISA Fund No. 2.

History: Subsec. 73(5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 29(6), applicable to dispositions occurring after 1990 except that in applying the subsec. before 1993, the reference to "marriage" shall be read as a reference to "marriage or other conjugal relationship". (After 1992, "marriage" is defined in new 252(4)(b).)

Pre-RSC History [former subsec. 73(5)]: Former subsec. 73(5) repealed by 1986, c. 6, s. 36, applicable with respect to dispositions made after 1987, and in applying subsec. 73(5) at any time after May 22, 1985, all that portion preceding para. (a) shall be read as follows:

(5) For the purpose of this Part, where at any particular time a taxpayer has transferred property to his child who was resident in Canada immediately before the transfer and the property was, immediately before the transfer, a share of the capital stock of a small business corporation, except where the rules in subsection 74(2) or 74.2(1) require any taxable capital gain from the disposition by the taxpayer of that property to be included in the income of a person other than the taxpayer, the following rules apply:

Subsec. 73(5) formerly read:

(5) *Inter vivos* transfer of share of the capital stock of small business corporation — For the purposes of this Part, where at any particular time a taxpayer has transferred property to his child who was resident in Canada immediately before the transfer and the property was, immediately before the transfer, a share of the capital stock of a small business corporation, except where the rules in subsection 74(2) require any taxable capital gain from the disposition by the taxpayer of that property to be included in the income of a person other than the taxpayer, the following rules apply:

(a) the taxpayer shall be deemed to have disposed of the share at the time of the transfer for proceeds of disposition equal to the amount, if any, by which

(i) the fair market value of the share at that time

exceeds the lesser of

(ii) the taxpayer's capital gain otherwise determined from the disposition of the share, and

(iii) the amount of the taxpayer's cumulative small business gains account immediately before the transfer or such lesser amount as the taxpayer specifies in respect of the transfer of the share;

(b) the child shall be deemed to have acquired the share at a cost equal to the proceeds of disposition determined under paragraph (a); and

(c) where two or more shares have been disposed of at the same time, this subsection applies as if each share had been separately disposed of in the order designated by the taxpayer or if the taxpayer does not so designate, in the order designated by the Minister.

All that portion of para. 73(5)(a) preceding subpara. (i) amended by 1985, c. 45, subsec. 35(5), to substitute "for proceeds of disposition equal" for

"and to have received proceeds of disposition therefor equal"; para. 73(5)(b) amended by 1985, c. 45, subsec. 35(6), to substitute "determined under paragraph (a)" for "deemed to have been received by the taxpayer under paragraph (a)", both amendments applicable with respect to transfers occurring after 1981.

All that portion of subsec. 73(5) preceding para. (a) substituted by 1979, c. 5, s. 24, applicable in respect of a disposition after November 16, 1978 of a share of the capital stock of a small business corporation. That portion formerly read:

> (5) For the purposes of this Part, where at any particular time a taxpayer has transferred property to a child of his who was resident in Canada immediately before the transfer and the property was, immediately before the transfer, a share of the capital stock of a small business corporation, the following rules apply:

Subsec. 73(5) added by 1977-78, c. 42, s. 6, applicable in respect of a disposition after May 25, 1978 of a share of the capital stock of a small business corporation.

Selected Cases [subsec. 73(5)]: *Brouillette v. R.*, [1998] 1 C.T.C. 2229 (TCC) (Transfer to trust for benefit of child not legal equivalent of transfer to the child); *Paxton v. Canada* (December 12, 1996), Court File No. A-513-94 (FCA) (unreported) ("Inverse sham" had effect of invalidating non-arm's length transfer); *Kieboom (A.) v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred" property to related parties by reducing equity in corporation on subscription for shares by related parties).

Interpretation Bulletins: IT-268R3: *Inter vivos* transfer of farm property to child.

Proposed Addition — Capital gains rollover for small business investments

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Capital Gains Deferral*

(11) That a mechanism be introduced to allow individuals (other than trusts) to defer the recognition of capital gains in respect of certain small business investments, in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 28, 2000.

Federal budget, supplementary information, February 28, 2000: *Capital Gain Rollover for Investment in Small Business*

To improve access to capital for small business corporations, the budget proposes to permit individuals a rollover of capital gains on the disposition of a small business investment where the proceeds of disposition are used to make other small business investments. The cost base of the new investment will be reduced by the capital gain deferred in respect of the initial investment.

Eligible Small Business Investment

An eligible small business investment will have the following characteristics:

- the investment is in ordinary common shares issued from treasury to the investor;
- the corporation is, at the time the shares are issued, an eligible small business corporation — which will generally be defined as a Canadian-controlled private corporation all or substantially all of the assets of which (measured by value) are used in an active business carried on primarily in Canada, or are shares of other related eligible small business corporations;
- the total carrying value of the assets of the corporation and related corporations does not exceed $2.5 million immediately before the investment is made, and does not exceed $10 million immediately after the investment. There will be look-through rules to account for assets held by the corporation through partnerships and trusts; and
- while the investor holds the shares, the issuing corporation is an eligible active business corporation — which will generally be defined as a taxable Canadian corporation all or substantially all of the assets of which (measured by value) are used in an active business carried on primarily in Canada, or are shares of other related eligible active business corporations.

The measure is designed to accommodate rollovers of gains irrespective of the company's size at the time of sale or the fact that it may have gone public before the sale.

The eligible small business investment must be held for more than six months from the time of acquisition before a gain can be deferred. The replacement eligible investment must be purchased after the beginning of the year of disposition of the original small business investment, and before the earlier of the 120th day following the disposition and the 60th day after the end of the year.

Eligible Investor

The measure will be available to individuals (other than trusts). Further, an individual who acquires shares from a related individual on a rollover basis currently provided under the *Income Tax Act* (e.g., on death or marriage breakdown) will be considered for the purpose of this measure to have acquired the shares at the time and under the same circumstances that they were acquired by that related individual.

The measure will also be available to individuals in respect of their capital gains on eligible small business investments that are held through a qualifying pooling arrangement. It is contemplated that such an arrangement will be a special-purpose partnership that is treated for the purpose of these rules as a joint venture — effectively allowing the investment vehicle to act as the investment agent for a number of investors, and to pool investments for those investors, while treating each investor as having his or her own share portfolio within the vehicle.

The issues related to the application of the measure to capital gains realized through a qualifying pooling arrangement will be the subject of consultations with stakeholders and other interested parties.

Eligible Gains

The deferral will be available in respect of capital gains realized after February 27, 2000, on up to $500,000 of eligible small business investments (by reference to adjusted cost base) in any particular corporation (or related group) made by an eligible investor or by a qualifying pooling arrangement on behalf of the investor.

Investment Limit

A capital gain from the disposition of an eligible investment can be deferred to the extent that the proceeds are reinvested in one or more other eligible small business investments. There are no limits on the total amount of proceeds that can be reinvested, but no amount reinvested in excess of $500,000 in shares of a particular corporation or related group will qualify for additional capital gain deferral.

Calculation of Capital Gain Deferral

The maximum capital gain that can be deferred in respect of an eligible capital gain from the disposition of an eligible small business investment is determined by the following formula:

$$(A/B) \times C$$

where:

A = the total cost of all replacement eligible small business investments (not exceeding $500,000 in any particular corporation or related group);

B = the proceeds of disposition that relate to the eligible gain; and

C = the eligible gain from the disposition.

This measure will apply to eligible small business investments disposed of after February 27, 2000.

Example 1

> On March 31, 2000, Harold sells his shares in Corporation A which are eligible small business investments. His proceeds of disposition are $100,000 and his capital gain is $60,000. On July 1, 2000, Harold invests $90,000 in shares of Corporation B which are new eligible small business investments.
>
> Since Harold reinvests only nine tenths of the proceeds in replacement small business investments, he can defer only nine

tenths of the gain ($54,000). He therefore has a $6,000 capital gain from the disposition for the year.

Harold's adjusted cost base of the Corporation B shares is reduced from $90,000 to $36,000 because of the capital gains deferral of $54,000.

Example 2

On November 30, 2000, Kate disposes of shares in Corporation C which are eligible small business investments. Her proceeds of disposition are $1,000,000 and she realizes a capital gain of $600,000. On February 1, 2001, Kate acquires shares in Corporation D at a cost of $1,000,000 which are new eligible small business investments.

Since the investment limit in respect of a corporation or a related group of corporations is $500,000, Kate can defer capital gains on up to one half of her eligible capital gains of $600,000 (i.e., $300,000). After the deferral, she has a capital gain from the disposition for the year of $300,000.

Kate's adjusted cost base of the Corporation D shares is reduced by the $300,000 deferred gain, from $1,000,000 to $700,000.

If Kate had instead reinvested $500,000 each in shares of two unrelated corporations that were eligible small business investments, she would have been able to defer all of the $600,000 eligible gain. In this case, the adjusted cost base of each of the two new investments would have been reduced by $300,000.

Example 3

Robert has shares in Corporation X which are eligible small business investments having an adjusted cost base of $1,000,000. He sells the shares for proceeds of disposition of $3,000,000 and realizes a capital gain of $2,000,000. Because of the $500,000 investment limit, only the capital gains relating to $500,000 of the original investment are eligible for a deferral. Robert purchases replacement eligible small business investments in six other unrelated corporations of $500,000 each for a total reinvestment of $3,000,000.

While Robert's cost of the replacement eligible small business investment is $3,000,000, the maximum amount he can use to calculate his capital gains deferral is $1,500,000, which is equal to the proceeds of disposition that relate to the eligible gain.

The maximum capital gains deferral that Robert can claim is $1,000,000.

(6) Application of subsec. 70(10) — The definitions in subsection 70(10) apply to this section.

Origin of subsec. 73(6): R.S.C. 1985, c. 1 (5th Supp.).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child.

Definitions [s. 73]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "beneficiary" — 104(1.1); "business" — 248(1); "Canada" — 255; "capital property" — 54, 73(1.1), 248(1); "carrying on business" — 253; "child" — 70(10), 73(6), 252(1); "common-law partner", "common-law partnership" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital property" — 54, 248(1); "farming" — 248(1); "former spouse" — 252(3), (4)(a); "income" — of trust 108(3); "individual" — 248(1); "interest in a family farm partnership" — 70(10), 73(6); "marriage" — 252(4)(b); "NISA Fund No. 2" — 248(1); ; "person", "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "resident in Canada" — 250; "separation agreement" — 248(1); "share of the capital stock of a family farm corporation" — 70(10), 73(6); "spouse" — 252(3), (4)(a); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "transfer" — 73(1.1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1).

74. [Repealed under former Act]

Pre-RSC History [s. 74]: S. 74 repealed by 1986, c. 6, s. 37, applicable with respect to transfers of property made after May 22, 1985 except that

(a) the repeal of the rule in paragraph 74(2)(f) is applicable with respect to transfers of property made after 1985, and

(b) with respect to transfers of property made after May 22, 1985 and before 1986, subsec. 74(7) shall be read as follows:

(7) Notwithstanding subsection (2), where a person has transferred property either directly or indirectly by means of a trust or by any other means whatever to his spouse or to a person who has since become his spouse, subsection (2) does not apply with respect to any part of a capital gain or capital loss of the spouse from an indexed security investment plan that may reasonably be considered to relate to the period throughout which the person is living apart and is separated from his spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement or to any part of that period, if the person files with his return of income under this Part for the taxation year during which he commenced to so live apart and be so separated from his spouse an election completed jointly with his spouse not to have that subsection apply.

S. 74 formerly read:

74. (1) Transfers to spouse — Where a person has on or after August 1, 1917, transferred property either directly or indirectly by means of a trust or by any other means whatever to his spouse, or to a person who has since become his spouse, any income or loss, as the case may be, for a taxation year from the property or from property substituted therefor shall, during the lifetime of the transferor while he is resident in Canada and the transferee is his spouse, be deemed to be income or a loss, as the case may be, of the transferor and not of the transferee.

(2) Gain or loss deemed that of transferor — Where a person has, after 1971, transferred property either directly or indirectly by means of a trust or by any other means whatever to his spouse, or to a person who has since become his spouse, (which property is referred to in this subsection as "transferred property"), the following rules apply:

(a) the amount, if any, by which

(i) the aggregate of the transferee's taxable capital gains for the year from dispositions of transferred property other than listed personal property and from dispositions of property (other than listed personal property) substituted for transferred property

exceeds

(ii) the aggregate of the transferee's allowable capital losses for the year from dispositions of transferred property other than listed personal property and from dispositions of property (other than listed personal property) substituted for transferred property,

shall, during the lifetime of the transferor while the transferor is resident in Canada and the transferee is his spouse, be deemed to be a taxable capital gain of the transferor for the year from the disposition of property other than listed personal property;

(b) the amount, if any, by which the aggregate determined under subparagraph (a)(ii) exceeds the aggregate determined under subparagraph (a)(i) shall, during the lifetime of the transferor while the transferor is resident in Canada and the transferee is his spouse, be deemed to be an allowable capital loss of the transferor for the year from the disposition of property other than listed personal property;

(c) the amount, if any, by which

(i) the amount that the aggregate of the transferee's gains for the year from dispositions of listed personal property would be if the transferee had at no time owned listed personal property other than listed personal property that was transferred property or property substituted therefor

exceeds

(ii) the amount that the aggregate of the transferee's losses for the year from dispositions of listed personal property would be if the transferee had at no time owned listed personal property other than listed personal property that was transferred property or property substituted therefor,

shall, during the lifetime of the transferor while the transferor is resident in Canada and the transferee is his spouse, be deemed

to be a gain of the transferor for the year from the disposition of listed personal property;

(d) the amount, if any, by which the aggregate determined under subparagraph (c)(ii) exceeds the aggregate determined under subparagraph (c)(i) shall, during the lifetime of the transferor while the transferor is resident in Canada and the transferee is his spouse, be deemed to be a loss of the transferor for the year from the disposition of listed personal property;

(e) any taxable capital gain or allowable capital loss or any gain or loss taken into account in computing an amount described in paragraph (a), (b), (c) or (d) shall, except for the purposes of those paragraphs, to the extent that the amount so described is deemed by virtue of this subsection to be a taxable capital gain or an allowable capital loss or a gain or loss of the transferor, be deemed not to be a taxable capital gain or an allowable capital loss or a gain or loss, as the case may be, of the transferee; and

(f) such part of the capital gain or capital loss of the transferee for the year from an indexed security investment plan as may reasonably be considered to be derived from the transferred property or property substituted therefor shall, during the lifetime of the transferor while he is resident in Canada and the transferee is his spouse, be deemed to be a capital gain or capital loss, as the case may be, of the transferor for the year from an indexed security investment plan and shall be deemed not to be included in the capital gain or capital loss, as the case may be, of the transferee from his plan.

(3)–(5) [Repealed]

(6) **Application** — This section does not apply in respect of a transfer by a taxpayer of property

(a) as a payment of a premium under a registered retirement savings plan under which the taxpayer's spouse is, immediately after the transfer, the annuitant (within the meanings of subsection 146(1)); or

(b) as or on account of an amount paid by the taxpayer to his spouse in a taxation year that is deductible in computing his income for the year and is required to be included in computing the income of his spouse.

(7) **Spouse living apart** — Notwithstanding subsections (1) and (2), where a person has transferred property either directly or indirectly by means of a trust or by any other means whatever to his spouse or to a person who has since become his spouse,

(a) subsection (1) does not apply with respect to any income or loss from the property, or property substituted therefor, that relates to the period during which the person is living apart and is separated from his spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement; and

(b) subsection (2) does not apply with respect to a disposition of the property, or property substituted therefor, during the period the person is living apart and is separated from his spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, or to any part of a capital gain or capital loss of the spouse from an indexed security investment plan that may reasonably be considered to relate to that period or any part thereof, if the person files with his return of income under this Part for the taxation year during which he commenced to so live apart and be so separated from his spouse an election completed jointly with his spouse not to have that subsection apply.

(8) **Exception** — Subsection (7) does not apply where a person who is separated from his spouse pursuant to a written separation agreement ceases to live apart from that spouse within 12 months from the date on which the agreement was entered into.

Para. 74(2)(f) added and para. 74(7)(b) amended to add "or to any part of a capital gain or capital loss of the spouse from an indexed security investment plan that may reasonably be considered to relate to that period or any part thereof" by 1984, c. 1, s. 33, applicable after September 30, 1983.

Subsecs. 74(3), (4), (5) repealed by 1980-81-82-83, c. 48, subsec. 40(1), applicable as to subsecs. 74(3), (4), with respect to remuneration paid after 1979 for services rendered as an employee after 1979, and as to subsec. 74(5) with respect to fiscal periods ending after December 11, 1979. Subsecs. 74(3) to (5) formerly read:

(3) **Remuneration received as employee of spouse** — Where a person has received remuneration as an employee of his spouse, the amount thereof shall not be deducted in computing the spouse's income and shall not be included in computing the employee's income.

(4) **Remuneration received as employee of spouse's partnership** — Where, in a taxation year, a person has received remuneration as the employee of a partnership in which his spouse was a partner, the proportion of the remuneration that the spouse's interest in the partnership business was of the interest of all the partners shall be deemed to have been received by the spouse as part of the income from the business for the year and not to have been received by the employee.

(5) **Where husband and wife partners in business** — Where a husband and wife were partners in a business, the income of one spouse from the business for a taxation year may, in the discretion of the Minister, be deemed to belong to the other spouse.

Subsec. 74(6) substituted by subsec. 40(2) of said c. 48, applicable by subsec. 40(4) to 1979 *et seq.* Subsec. 74(6) formerly read:

(6) **Transfer to R.R.S.P** — This section does not apply in respect of a transfer of property by a taxpayer as a payment under a registered retirement savings plan under which the taxpayer's spouse is, immediately after the transfer, an annuitant, where that payment would be a premium as described in paragraph 146(1)(f) had the transferor been the annuitant under the plan.

Subsecs. 74(7), (8) added by subsec. 40(2) of said c. 48, subsec. 74(7) other than para. (b) applicable after December 11, 1979 with respect to any income or loss from property, and para. (b) applicable to 1980 *et seq.* except that where a decree, order or judgment was made, or written separation agreement entered into, before 1981, para. (b) shall be read as follows:

(b) subsection (2) does not apply with respect to a disposition of the property, or property substituted therefor, during the period the person is living apart and is separated from that spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, if the person files with his return of income under this Part for the 1980 or 1981 taxation year an election completed jointly with his spouse not to have the provisions of that subsection apply.

Subsec. 74(8) is applicable after December 11, 1979.

Subsec. 74(6) substituted by 1976-77, c. 4, s. 29, applicable to 1974 *et seq.*

Subsecs. 74(1) and (2) substituted by 1974-75-76, c. 26, subsec. 39(1) and by subsec. 39(3), applicable to 1975 *et seq.* Subsecs. (1) and (2) formerly read:

(1) Where a person has, on or after August 1, 1917, transferred property either directly or indirectly, by means of a trust or by any other means whatever to his spouse, or to a person who has since become his spouse, the income for a taxation year from the property or from property substituted therefor shall, during the lifetime of the transferor while he is resident in Canada and the transferee is his spouse, be deemed to be income of the transferor and not of the transferee.

(2) Where a person has, after 1971, transferred property either directly or indirectly, by means of a trust or by any other means whatever to his spouse, or to a person who has since become his spouse (which property is referred to in this subsection as "transferred property"), in computing the transferor's income for any taxation year the amount, if any, by which

(a) the aggregate of

(i) the transferee's taxable capital gains for the year from dispositions of transferred property other than listed personal property and from dispositions of property (other than listed personal property) substituted for transferred property, and

(ii) the amount that the transferee's taxable net gain for the year from dispositions of listed personal property would be if the transferee had at no time owned listed personal property or property substituted therefor,

exceeds

(b) the aggregate of the transferee's allowable capital losses for the year from dispositions of transferred property other than listed personal property and from dispositions of property (other than listed personal property) substituted for transferred property,

shall, during the lifetime of the transferor while the transferor is resident in Canada and the transferee is his spouse, be deemed to be a taxable capital gain of the transferor for the year from the disposi-

tion of property other than listed personal property, and any gain or loss taken into account in computing the aggregate described in paragraph (a) or the aggregate described in paragraph (b) shall, for the purposes of computing the income of the transferee for a taxation year, be deemed not to have been a gain or loss of the transferee.

Subsec. 74(6) added by 1974-75-76, c. 26, subsec. 39(2), applicable to 1974 *et seq.*

Selected Cases [subsec. 74(1)]: *Kieboom v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred" property to related parties by reducing equity in corporation on subscription for shares by related parties).

74.1 (1) Transfers and loans to spouse — Where an individual has transferred or lent property (otherwise than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan), either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who is the individual's spouse or who has since become the individual's spouse, any income or loss, as the case may be, of that person for a taxation year from the property or from property substituted therefor, that relates to the period in the year throughout which the individual is resident in Canada and that person is the individual's spouse, shall be deemed to be income or a loss, as the case may be, of the individual for the year and not of that person.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 56(2) — Indirect payments; 56(4.1) — Interest free or low interest loans; 73(1) — Transfer to spouse deemed at cost; 74.1(3) — Repayment of existing indebtedness; 74.2(1) — Gain or loss deemed that of lender or transferor; 74.3 — Transfers or loans to a trust; 74.4(4) — Benefit not granted to a designated person; 74.5(1) — Transfers for fair market value consideration; 74.5(2) — Loans for value; 74.5(3) — Spouses living apart; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(9) — Transfers or loans to a trust; 74.5(11) — Artificial transactions; 74.5(12) — Attribution rules — exemption; 74.5(13) — No attribution of split income subject to kiddie tax; 82(2) — Attributed dividends deemed received by taxpayer; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 74.1(1) substituted by 1987, c. 46, s. 25, to add "(otherwise than by an assignment of any portion of a retirement pension pursuant to section 64.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan)", applicable with respect to transfers of property made after May 22, 1985 and with respect to loans that are outstanding on or after May 22, 1985 except that, in the case of a loan outstanding on May 22, 1985,

(a) subsection 74.1(1) is not applicable with respect to loans that are repaid before 1988; and

(b) in the case of a loan that is not repaid before 1988, subsection 74.1(1) does not apply to any income or loss, as the case may be, relating to any period ending before 1988.

Regulations: 7800(1) (prescribed provincial pension plan is the Saskatchewan Pension Plan).

Interpretation Bulletins: IT-295R4: Taxable dividends received after 1987 by a spouse; IT-325R2: Property transfers after separation, divorce and annulment; IT-385R2: Disposition of an income interest in a trust; IT-394R2: Preferred beneficiary election; IT-434R: Rental of real property by individual; IT-511R: Interspousal and certain other transfers and loans of property; IT-531: Eligible funeral arrangements.

(2) Transfers and loans to minors — Where an individual has transferred or lent property, either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who was under 18 years of age (other than an amount received in respect of that person as a consequence of the operation of subsection 122.61(1)) and who

(a) does not deal with the individual at arm's length, or

(b) is the niece or nephew of the individual,

any income or loss, as the case may be, of that person for a taxation year from the property or from property substituted therefor, that relates to the period in the year throughout which the individual is resident in Canada, shall be deemed to be income or a loss, as the case may be, of the individual and not of that person unless that person has, before the end of the year, attained the age of 18 years.

Related Provisions: 56(2) — Indirect payments; 56(4.1) — Interest free or low interest loans; 69(1)(b) — Transfer not at arm's length deemed to be disposition at fair market value; 74.1(3) — Repayment of existing indebtedness; 74.3 — Transfers or loans to a trust; 74.4(4) — Benefit not granted to a designated person; 74.5(1) — Transfers for fair market value consideration; 74.5(2) — Loans for value; 74.5(3) — Spouses living apart; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(9) — Transfers or loans to a trust; 74.5(11) — Artificial transactions; 74.5(12) — Attribution rules — exemption; 74.5(13) — No attribution of split income subject to kiddie tax; 75(1) — Transfers before May 23, 1985; 82(2) — Attributed dividends deemed received by taxpayer; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property.

History: That portion of subsec. 74.1(2) preceding para. (a) amended by 1994, c. 7, Sch. VII (1992, c. 48), s. 4, to add the phrase in parentheses, applicable to 1993 *et seq.*

Pre-RSC History: Subsec. 74.1(2) substituted by 1986, c. 55, s. 17, to add:

"and who

(a) does not deal with the individual at arm's length, or

(b) is the niece or nephew of the individual,"

applicable with respect to transfers of property made after May 22, 1985 and with respect to loans that are outstanding on or after May 22, 1985, except that in the case of a loan outstanding on May 22, 1985

(a) it is not applicable if the loan is repaid before 1988; and

(b) if the loan is not repaid before 1988, it does not apply to any income or loss, as the case may be, relating to any period ending before 1988.

Selected Cases [s. 74.1(2)]: *Romkey v. R.*, [2000] 1 C.T.C. 390 (FCA) (Divestiture of right to future dividends was caught by provision).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-325R2: Property transfers after separation, divorce and annulment; IT-385R2: Disposition of an income interest in a trust; IT-394R2: Preferred beneficiary election; IT-434R: Rental of real property by individual; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-531: Eligible funeral arrangements.

(3) Repayment of existing indebtedness — For the purposes of subsections (1) and (2), where, at any time, an individual has lent or transferred property (in this subsection referred to as the "lent or transferred property") either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person, and the lent or transferred property or property substituted therefor is used

(a) to repay, in whole or in part, borrowed money with which other property was acquired, or

(b) to reduce an amount payable for other property,

there shall be included in computing the income from the lent or transferred property, or from property substituted therefor, that is so used, that proportion of the income or loss, as the case may be, derived after that time from the

other property or from property substituted therefor that the fair market value at that time of the lent or transferred property, or property substituted therefor, that is so used is of the cost to that person of the other property at the time of its acquisition, but for greater certainty nothing in this subsection shall affect the application of subsections (1) and (2) to any income or loss derived from the other property or from property substituted therefor.

Interpretation Bulletins [subsec. 74.1(3)]: IT-325R2: Property transfers after separation, divorce and annulment; IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor.

Pre-RSC History [s. 74.1]: S. 74.1 added by 1986, c. 6, s. 38, applicable with respect to transfers of property made after May 22, 1985 and with respect to loans that are outstanding on or after May 22, 1985, except that in the case of a loan outstanding on May 22, 1985,

(a) s. 74.1 is not applicable with respect to loans that are repaid before 1988; and

(b) in the case of a loan that is not repaid before 1988, s. 74.1 does not apply to any income or loss, as the case may be, relating to any period ending before 1988.

Definitions [s. 74.1]: "amount" — 248(1); "arm's length" — 251(1); "borrowed money" — 248(1); "Canada" — 255; "common-law partner", "individual" — 248(1); "nephew", "niece" — 252(2)(g); "person", "property" — 248(1); "resident in Canada" — 250; "spouse" — 252(4)(a); "substituted property" — 248(5); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

74.2 (1) Gain or loss deemed that of lender or transferor — Where an individual has lent or transferred property (in this section referred to as "lent or transferred property"), either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person (in this subsection referred to as the "recipient") who is the individual's spouse or who has since become the individual's spouse, the following rules apply for the purposes of computing the income of the individual and the recipient for a taxation year:

(a) the amount, if any, by which

(i) the total of the recipient's taxable capital gains for the year from dispositions of property (other than listed personal property) that is lent or transferred property or property substituted therefor occurring in the period (in this subsection referred to as the "attribution period") throughout which the individual is resident in Canada and the recipient is the individual's spouse

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

exceeds

(ii) the total of the recipient's allowable capital losses for the year from dispositions occurring in the attribution period of property (other than listed personal property) that is lent or transferred property or property substituted therefor

shall be deemed to be a taxable capital gain of the individual for the year from the disposition of property other than listed personal property;

(b) the amount, if any, by which the total determined under subparagraph (a)(ii) exceeds the total determined under subparagraph (a)(i) shall be deemed to be an allowable capital loss of the individual for the year from the disposition of property other than listed personal property;

(c) the amount, if any, by which

(i) the amount that the total of the recipient's gains for the year from dispositions occurring in the attribution period of listed personal property that is lent or transferred property or property substituted therefor would be if the recipient had at no time owned listed personal property other than listed personal property that was lent or transferred property or property substituted therefor

exceeds

(ii) the amount that the total of the recipient's losses for the year from dispositions of listed personal property that is lent or transferred property or property substituted therefor would be if the recipient had at no time owned listed personal property other than listed personal property that was lent or transferred property or property substituted therefor,

shall be deemed to be a gain of the individual for the year from the disposition of listed personal property;

(d) the amount, if any, by which the total determined under subparagraph (c)(ii) exceeds the total determined under subparagraph (c)(i) shall be deemed to be a loss of the individual for the year from the disposition of listed personal property; and

(e) any taxable capital gain or allowable capital loss or any gain or loss taken into account in computing an amount described in paragraph (a), (b), (c) or (d) shall, except for the purposes of those paragraphs and to the extent that the amount so described is deemed by virtue of this subsection to be a taxable capital gain or an allowable capital loss or a gain or loss of the individual, be deemed not to be a taxable capital gain or an allowable capital loss or a gain or loss, as the case may be, of the recipient.

Related Provisions: 73(1) — Transfer to spouse deemed at cost; 74.1(1) — Transfers and loans to spouse; 74.2(3) — Application to disposition on emigration; 74.3 — Transfers or loans to a trust; 74.4(4) — Benefit not granted to a designated person; 74.5(1) — Transfer for fair market value consideration; 74.5(2) — Loans for value; 74.5(3) — Spouses living apart; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(12) — Attribution rules — exemption; 248(5) — Substituted property; 252(4) — Extended meaning of "spouse".

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property; IT-531: Eligible funeral arrangements.

(2) Deemed gain or loss — Where an amount is deemed by subsection (1) or 75(2) or section 75.1 of this Act, or subsection 74(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to be a taxable capital gain or an allowable capital loss of an individual for a taxation year,

(a) for the purposes of sections 3 and 111, as they apply for the purposes of section 110.6, such portion of the gain or loss as may reasonably be considered to relate to the disposition of a property by another person in the year shall be deemed to arise from the disposition of that property by the individual in the year; and

(b) for the purposes of section 110.6, that property shall be deemed to have been disposed of by the individual on the day on which it was disposed of by the other person.

History: Para. 74.2(2)(b) amended by 1995, c. 3, s. 20, applicable to 1994 *et seq.* Para. (b) formerly read:

> (b) for the purposes of section 110.6, that property shall be deemed to have been disposed of by the individual in the year.

That portion of subsec. 74.2(2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 51, applicable to 1987 *et seq.* That portion formerly read:

> (2) Deemed gain or loss — Where an individual is deemed under subsection (1) or section 75.1 of this Act or subsection 74(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to have a taxable capital gain or allowable capital loss for a taxation year,

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins [subsec. 74.2(2)]: IT-369R: Attribution of trust income to settlor; IT-394R2: Preferred beneficiary election.

Proposed Addition — 74.2(3), (4)

(3) Election for subsection (1) to apply — Subsection (1) does not apply to a disposition at any particular time (in this subsection referred to as the "emigration disposition") under paragraph 128.1(4)(b), by a taxpayer who is a recipient referred to in subsection (1), unless the recipient and the individual referred to in that subsection, in their returns of income for the taxation year that includes the first time, after the particular time, at which the recipient disposes of the property, jointly elect that subsection (1) apply to the emigration disposition.

Related Provisions: 74.2(4) — Application rule.

(4) Application of subsection (3) — For the purpose of applying subsection (3) and notwithstanding subsections 152(4) to (5), any assessment of tax payable under this Act by the recipient or the individual referred to in subsection (1) shall be made that is necessary to take an election under subsection (3) into account except that no such assessment shall affect the computation of

> (a) interest payable under this Act to or by a taxpayer in respect of any period that is before the taxpayer's filing-due date for the taxation year that includes the first time, after the particular time referred to in subsection (3), at which the recipient disposes of the property referred to in that subsection; or
>
> (b) any penalty payable under this Act.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 34, will add subsecs. 74.2(3) and (4), applicable after October 1, 1996.

Technical Notes: Section 74.2 of the Act attributes to an individual taxable capital gains and allowable capital losses realized by the individual's spouse on the disposition of property that was loaned or transferred by the individual to or for the benefit of the individual's spouse, or someone who has since become the individual's spouse.

If the individual's spouse emigrates from Canada after having received the property, an accrued gain or loss on the property that is deemed to be realized by the spouse under paragraph 128.1(4)(b) of the Act could be attributed to the individual, resulting in anomalies in the application of the post-emigration loss rules under subsection 128.1(8) of the Act and the security rules under subsection 220(4.5) of the Act. To prevent such anomalies, new subsection 74.2(3) of the Act provides that the attribution rule in subsection 74.2(1) does not apply to the deemed disposition under paragraph 128.1(4)(b) unless the individual and the individual's spouse jointly elect, in their tax returns for the taxation year during which the spouse disposes of the property for the first time after emigration, that the rule apply to the deemed disposition.

New subsection 74.2(4) of the Act allows any assessment of tax to be made that is necessary for the joint election to be taken into account, but provides that no such assessment shall affect the computation of interest or penalties payable.

New subsections 74.2(3) and (4) apply after October 1, 1996.

Pre-RSC History [s. 74.2]: Subsec. 74.2(2) substituted by 1988, c. 55, s. 52, applicable to 1985 *et seq.* Subsec. 74.2(2) formerly read:

> (2) Deemed gain or loss — For the purposes of sections 3 and 111 as they apply for the purposes of section 110.6, where an individual is deemed under subsection (1), subsection 74(2) or section 75.1 to have a taxable capital gain or allowable capital loss for a taxation year, such portion of the gain or loss as may reasonably be considered to relate to the disposition of a property by another person in the year shall be deemed to arise from the disposition of that property by the individual in the year.

S. 74.2 added by 1986, c. 6, s. 38. Subsec. 74.2(1) is applicable with respect to transfers of property made after May 22, 1985 and with respect to loans that are outstanding on or after May 22, 1985, except that in the case of a loan outstanding on May 22, 1985

> (a) subsec. 74.2(1) is not applicable with respect to loans that are repaid before 1988; and
>
> (b) in the case of a loan that is not repaid before 1988, section 74.2 does not apply to any disposition of property occurring before 1988.

Subsec. 74.2(2) is applicable to 1985 *et seq.*

Selected Cases [s. 74.2]: *King v. Canada*, [1995] 1 C.T.C. 2353 (TCC) (Conduct of taxpayers may constitute estoppel with respect to attribution and timing).

Definitions [s. 74.2]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "Canada" — 255; "common-law partner", "disposition", "filing-due date", "individual" — 248(1); "listed personal property" — 54, 248(1); "person", "property" — 248(1); "resident in Canada" — 250; "spouse" — 252(4)(a); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

74.3 (1) Transfers or loans to a trust — Where an individual has lent or transferred property (in this section referred to as "lent or transferred property"), either directly or indirectly, by means of a trust or by any other means whatever, to a trust in which another individual who is at any time a designated person in respect of the individual is beneficially interested at any time, the following rules apply:

> (a) for the purposes of section 74.1, the income of the designated person for a taxation year from the lent or transferred property shall be deemed to be an amount equal to the lesser of
>
> > (i) the amount in respect of the trust that was included by virtue of paragraph 12(1)(m) in computing the income for the year of the designated person, and
> >
> > (ii) that proportion of the amount that would be the income of the trust for the year from the lent or transferred property or from property substituted therefor if no deduction were made under subsections 104(6) or (12) that
> >
> > > (A) the amount determined under subparagraph (i) in respect of the designated person for the year
> >
> > is of
> >
> > > (B) the total of all amounts each of which is an amount determined under subparagraph (i) for the year in respect of the designated person or any other person who is throughout the year a designated person in respect of the individual; and

(b) for the purposes of section 74.2, an amount equal to the lesser of

(i) the amount that was designated under subsection 104(21) in respect of the designated person in the trust's return of income for the year, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is a taxable capital gain for the year from the disposition by the trust of the lent or transferred property or property substituted therefor

exceeds

(B) the total of all amounts each of which is an allowable capital loss for the year from the disposition by the trust of the lent or transferred property or property substituted therefor,

shall be deemed to be a taxable capital gain of the designated person for the year from the disposition of property (other than listed personal property) that is lent or transferred property.

Related Provisions: 56(4.1) — Interest free or low-interest loans; 74.4(4) — Benefit not granted to a designated person; 74.5(5) — "Designated person"; 74.5(6) — Back to back loans and transfers; 74.5(7) — Guarantees; 74.5(12) — Attribution rules — exemption; 74.5(13) — No attribution of split income subject to kiddie tax; 75(2) — Reversionary trusts — attribution rules; 82(2) — Attributed dividends deemed received by individual; 96(1.8) — Transfer or loan of partnership interest; 212(12) — No non-resident withholding tax where income attributed; 248(5) — Substituted property; 248(25) — Beneficially interested.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(2) Definition of "designated person" — In this section, "designated person", in respect of an individual, has the meaning assigned by subsection 74.5(5).

Origin of subsec. 74.3(2): R.S.C. 1985, c. 1 (5th Supp.).

Pre-RSC History [former subsec. 74.3(2)]: Subsec. 74.3(2) repealed by 1986, c. 55, subsec. 18(1), applicable to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Subsec. 74.3(2) formerly read:

(2) Definition of "designated person" — For the purposes of subsection (1), "designated person", in respect of an individual, means a person

(a) who is the individual's spouse; or

(b) who is under 18 years of age.

Pre-RSC History [s. 74.3]: S. 74.3 added by 1986, c. 6, s. 38, applicable with respect to transfers of property made after May 22, 1985 and with respect to loans that are outstanding on or after May 22, 1985.

Definitions [s. 74.3]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficially interested" — 248(25); "designated person" — 74.3(2), 74.5(5); "individual" — 248(1); "listed personal property" — 54, 248(1); "property" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

74.4 (1) Definitions — In this section,

"designated person", in respect of an individual, has the meaning assigned by subsection 74.5(5);

Origin of 74.4(1)"designated person": R.S.C. 1985, c. 1 (5th Supp.).

"excluded consideration", at any time, means consideration received by an individual that is

(a) indebtedness,

(b) a share of the capital stock of a corporation, or

(c) a right to receive indebtedness or a share of the capital stock of a corporation.

(2) Transfers and loans to corporations — Where an individual has transferred or lent property, either directly or indirectly, by means of a trust or by any other means whatever, to a corporation and one of the main purposes of the transfer or loan may reasonably be considered to be to reduce the income of the individual and to benefit, either directly or indirectly, by means of a trust or by any other means whatever, a person who is a designated person in respect of the individual, in computing the income of the individual for any taxation year that includes a period after the loan or transfer throughout which

(a) the person is a designated person in respect of the individual and would have been a specified shareholder of the corporation if the definition "specified shareholder" in subsection 248(1) were read without reference to paragraphs (a) and (d) of that definition and if the reference therein to "any other corporation that is related to the corporation" were read as a reference to "any other corporation (other than a small business corporation) that is related to the corporation",

(b) the individual was resident in Canada, and

(c) the corporation was not a small business corporation,

the individual shall be deemed to have received as interest in the year the amount, if any, by which

(d) the amount that would be interest on the outstanding amount of the loan or transferred property for such periods in the year if the interest were computed thereon at the prescribed rate of interest for such periods

exceeds the total of

(e) any interest received in the year by the individual in respect of the transfer or loan (other than amounts deemed by this subsection to be interest),

(f) 3/4 of all taxable dividends received (other than dividends deemed by section 84 to have been received) by the individual in the year on shares that were received from the corporation as consideration for the transfer or as repayment for the loan that were excluded consideration at the time the dividends were received or on shares substituted therefor that were excluded consideration at that time, and

(g) where the designated person is a specified individual in relation to the year, the amount required to be included in computing the designated person's income for the year in respect of all taxable dividends received by the designated person that

(i) can reasonably be considered to be part of the benefit sought to be conferred, and

(ii) are included in computing the designated person's split income for any taxation year.

Related Provisions: 56(4.1) — Interest free or low interest loan to individual; 74.4(4) — Benefit not granted to a designated person; 82(2) — Attributed dividends deemed received by individual; 248(5) — Substituted property. See additional Related Provisions and Definitions at end of s. 74.4.

History: Para. 74.4(2)(g) added by 2000, c. 19, s. 10, applicable to 2000 *et seq.*

Para. 74.4(2)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 52, applicable to 1987 *et seq.* with respect to loans and transfers made after October 27, 1986. Para. 74.4(2)(a) formerly read:

(a) the person is a designated person in respect of the individual and would have been a specified shareholder of the corporation if the definition "specified shareholder" in subsection 248(1) were read without reference to paragraphs (a) and (d) of that definition,

Pre-RSC History: Para. 74.4(2)(f) amended by 1988, c. 55, s. 53, to substitute "5/4" for "4/3", applicable with respect to taxable dividends received in 1988 *et seq.*

Regulations: 4301(c) (prescribed rate of interest for 74.4(2)(d)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

Information Circulars: 88-2, para. 10: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 16 (*Neuman* case).

Advance Tax Rulings: ATR-25: Estate freeze; ATR-36: Estate freeze; ATR-47: Transfer of assets to Realtyco.

(3) Outstanding amount — For the purposes of subsection (2), the outstanding amount of a transferred property or loan at a particular time is

(a) in the case of a transfer of property to a corporation, the amount, if any, by which the fair market value of the property at the time of the transfer exceeds the total of

(i) the fair market value, at the time of the transfer, of the consideration (other than consideration that is excluded consideration at the particular time) received by the transferor for the property, and

(ii) the fair market value, at the time of receipt, of any consideration (other than consideration that is excluded consideration at the particular time) received by the transferor at or before the particular time from the corporation or from a person with whom the transferor deals at arm's length, in exchange for excluded consideration previously received by the transferor as consideration for the property or for excluded consideration substituted for such consideration;

(b) in the case of a loan of money or property to a corporation, the amount, if any, by which

(i) the principal amount of the loan of money at the time the loan was made, or

(ii) the fair market value of the property lent at the time the loan was made,

as the case may be, exceeds the fair market value, at the time the repayment is received by the lender, of any repayment of the loan (other than a repayment that is excluded consideration at the particular time).

(4) Benefit not granted to a designated person — For the purposes of subsection (2), one of the main purposes of a transfer or loan by an individual to a corporation shall not be considered to be to benefit, either directly or indirectly, a designated person in respect of the individual, where

(a) the only interest that the designated person has in the corporation is a beneficial interest in shares of the corporation held by a trust;

(b) by the terms of the trust, the designated person may not receive or otherwise obtain the use of any of the income or capital of the trust while being a designated person in respect of the individual; and

(c) the designated person has not received or otherwise obtained the use of any of the income or capital of the trust, and no deduction has been made by the trust in computing its income under subsection 104(6) or (12) in respect of amounts paid or payable to, or included in the income of, that person while being a designated person in respect of the individual.

Pre-RSC History [subsec. 74.4(4)]: Subsec. 74.4(4) added by 1987, c. 46, s. 26, applicable to 1987 *et seq.*, but only with respect to loans and transfers made after October 27, 1986.

Related Provisions [s. 74.4]: 51(1)(e) — Exchange deemed transfer of convertible property by taxpayer to corporation; 74.5(4) — Exemption where spouses are living separate and apart; 74.5(5) — "Meaning of designated person"; 74.5(6) — Back-to-back loans and transfers; 74.5(7) — Guarantees; 74.5(9) — Transfers or loans to a trust; 74.5(11) — Artificial transactions; 82(2) — Dividends deemed received; 87(2)(j.7) — Amalgamations — continuing corporation; 212(12) — No non-resident withholding tax where income attributed; 248(25) — Meaning of "beneficial interest".

Pre-RSC History [s. 74.4]: S. 74.4 added by 1986, c. 55, subsec. 19(2), applicable to 1987 *et seq.* but only with respect to loans and transfers of property made after October 27, 1986.

Definitions [s. 74.4]: "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "designated person" — 74.4(1), 74.5(5); "dividend" — 248(1); "excluded consideration" — 74.4(1); "individual", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "received" — 248(7); "resident in Canada" — 250; "share", "small business corporation" — 248(1); "specified individual" — 120.4(1), 248(1); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "substituted" — 248(5); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Pre-RSC History [former s. 74.4]: Former s. 74.4 repealed by 1986, c. 55, subsec. 19(1), applicable with respect to loans and transfers of property made after November 21, 1985. Former s. 74.4 had read:

74.4 (1) Definitions — In this section,

"designated benefit", at any particular time, in respect of property loaned or transferred either directly or indirectly by means of a trust or by any other means whatever by an individual (in this definition referred to as the "transferor") to a corporation, means"designated benefit", at any particular time, in respect of property loaned or transferred either directly or indirectly by means of a trust or by any other means whatever by an individual (in this definition referred to as the "transferor") to a corporation, means

(a) in the case of a loan of property that is money, the principal amount of the loan outstanding at the particular time,

(b) in the case of a loan of property other than money, the fair market value of the property at the time the loan was made, and

(c) in the case of a transfer of property, the amount, if any, by which

(i) the fair market value of the property at the time the transfer was made to the corporation

exceeds

(ii) the aggregate of

(A) the fair market value, at the time the transfer was made, of the consideration, other than consideration that is excluded consideration at the particular time, received by the transferor for the property, and

(B) the fair market value, at the time of receipt, of any consideration, other than consideration that is excluded consideration at the particular time, received by the transferor at or before the particular time from the corporation or from a person with whom the transferor deals at arm's length, in exchange for excluded consideration previously received by the transferor as consideration for the property;

"designated shareholder" of a subject corporation in respect of an individual means a shareholder of the subject corporation that is"designated shareholder" of a subject corporation in respect of an individual means a shareholder of the subject corporation that is

(a) a person who is the individual's spouse,

(b) a person who is under 18 years of age,

(c) a partnership of which a person described in paragraph (a) or (b) is a member,

(d) a trust in which a person described in paragraph (a) or (b) is beneficially interested, or

(e) a corporation (other than a small business corporation) of which a person described in paragraph (a) or (b) is a specified shareholder;

"excluded consideration", at any time, means consideration received by an individual that is

(a) indebtedness,

(b) a share of the capital stock of a corporation, where the articles of the corporation provide for more than one class of shares at that time, or

(c) a right to receive a share described in paragraph (b);

"monthly designated benefit" in respect of a property, for a month or a portion thereof, means the greatest amount that the designated benefit in respect of the property is at any time in the month or the portion, as the case may be.

(2) **Transfers and loans to corporation for benefit of spouse or minor** — Where an individual has loaned or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to a corporation (in this section referred to as the "subject corporation") other than a small business corporation, in computing the income of the individual for a taxation year, with respect to the period (in this section referred to as the "relevant period") in the year and after the time of the loan or transfer and throughout which the individual is resident in Canada and any shareholder of the subject corporation is a designated shareholder in respect of the individual, an amount equal to the amount calculated under subsection (3) in respect of the property shall be deemed to be a taxable dividend received by the individual in the year from the subject corporation.

(3) **Calculation of amount** — For the purpose of subsection (2), the amount calculated under this subsection in respect of the property with respect to the relevant period in the year is the amount, if any, by which the lesser of

(a) the amount, if any, by which

(i) the aggregate of

(A) the aggregate of all amounts each of which is the product obtained when

(I) the monthly designated benefit in respect of the property for a month, or a portion thereof, in the relevant period

is multiplied by

(II) 2/3 of the quotient obtained when the rate of interest prescribed for the purpose of subsection 161(1) that is in effect during that month is divided by 12, and

(B) the aggregate of all amounts each of which is an amount calculated under clause (A) in respect of the property with respect to a relevant period in a preceding taxation year

exceeds

(ii) the aggregate of

(A) the aggregate of all amounts each of which is a taxable dividend paid in the year or a preceding taxation year to the individual or to a taxable Canadian corporation that is wholly-owned by him, on a share that is excluded consideration received by him as consideration for the loan or transfer of the property or excluded consideration substituted therefor, and

(B) 2/3 of the aggregate of all amounts each of which is an amount included in computing the income for the year or a preceding taxation year of the individual or a taxable Canadian corporation that is wholly-owned by him as interest on excluded consideration, received by him as consideration for the loan or transfer of the property or on excluded consideration substituted therefor, and

(b) the aggregate of all amounts each of which is

(i) a taxable dividend paid by the subject corporation in the relevant period or a relevant period in a preceding taxation year to a designated shareholder of the subject corporation in respect of the individual, or

(ii) a capital gain of the individual's spouse from a disposition of property occurring in the relevant period or in a relevant period in a preceding taxation year, to the extent that the gain may reasonably be attributed to an increase in the value of the property loaned or transferred or of property substituted therefor

exceeds

(c) the aggregate of all amounts each of which is an amount calculated under this subsection for the purpose of subsection (2) in respect of the property for a preceding taxation year.

(4) **Deduction permitted** — Where an individual has loaned or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to a corporation and as a consequence thereof an amount (in this subsection referred to as the "attributed amount") has, by virtue of subsection (2), been deemed to be a taxable dividend received from a subject corporation by an individual in a taxation year, the following rules apply:

(a) an amount equal to the lesser of

(i) the aggregate of all taxable dividends paid by the subject corporation in the year to a designated shareholder of the subject corporation in respect of the individual, and

(ii) that portion of the attributed amount that

(A) the amount determined under subparagraph (i) in respect of the designated shareholder for the year

is of

(B) the aggregate of all amounts each of which is an amount determined under subparagraph (i) for the year in respect of a designated shareholder of the subject corporation in respect of the individual

shall be deemed not to be a taxable dividend received from the subject corporation in the year by the designated shareholder; and

(b) an amount equal to the lesser of

(i) the amount that would have been the amount determined under subparagraph (3)(b)(ii) for the year in respect of the designated shareholder if that subparagraph were read without reference to the words "or in a relevant period in a preceding taxation year", and

(ii) the amount, if any, by which

(A) the attributed amount

exceeds

(B) the aggregate of all amounts each of which is an amount determined under paragraph (a) for the year in respect of a designated shareholder of the subject corporation in respect of the individual,

shall be deemed not to be a capital gain of the designated shareholder from the disposition of a property by him in the year.

(5) **Time of dividend** — For the purposes of this section, where one or more loans or transfers of property have been made as part of a series of transactions or events which includes the payment of a dividend, and it may reasonably be considered that the payment of the dividend was made in contemplation of such loans or transfers, the dividend shall be deemed to have been paid immediately after the first such loan or transfer, as the case may be.

S. 74.4 added by 1986, c. 6, s. 38, applicable with respect to loans and transfers of property made after November 21, 1985.

74.5 (1) Transfers for fair market consideration — Notwithstanding any other provision of this Act, subsections 74.1(1) and (2) and section 74.2 do not apply to any income, gain or loss derived in a particular taxation year from transferred property or from property substituted therefor if

(a) at the time of the transfer the fair market value of the transferred property did not exceed the fair market value of the property received by the transferor as consideration for the transferred property;

(b) where the consideration received by the transferor included indebtedness,

(i) interest was charged on the indebtedness at a rate equal to or greater than the lesser of

(A) the prescribed rate that was in effect at the time the indebtedness was incurred, and

(B) the rate that would, having regard to all the circumstances, have been agreed on, at the time

the indebtedness was incurred, between parties dealing with each other at arm's length,

(ii) the amount of interest that was payable in respect of the particular year in respect of the indebtedness was paid not later than 30 days after the end of the particular year, and

(iii) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the indebtedness was paid not later than 30 days after the end of each such taxation year; and

(c) where the property was transferred to or for the benefit of the transferor's spouse, the transferor elected in the transferor's return of income under this Part for the taxation year in which the property was transferred not to have the provisions of subsection 73(1) apply.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 74.5(6) — Back-to-back loans and transfers; 252(4) — Extended meaning of "spouse". See additional Related Provisions and Definitions at end of s. 74.5.

Pre-RSC History: Cl. 74.5(1)(b)(i)(A) amended by 1990, c. 39, subsec. 16(1), to substitute "prescribed rate" for "rate prescribed for the purpose of subsection 161(1)", applicable with respect to interest to be calculated in respect of periods after September 1989.

Regulations: 4301(c) (prescribed rate of interest for 74.5(1)(b)(i)(A)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(2) Loans for value — Notwithstanding any other provision of this Act, subsections 74.1(1) and (2) and section 74.2 do not apply to any income, gain or loss derived in a particular taxation year from lent property or from property substituted therefor if

(a) interest was charged on the loan at a rate equal to or greater than the lesser of

(i) the prescribed rate that was in effect at the time the loan was made, and

(ii) the rate that would, having regard to all the circumstances, have been agreed on, at the time the loan was made, between parties dealing with each other at arm's length;

(b) the amount of interest that was payable in respect of the particular year in respect of the loan was paid not later than 30 days after the end of the particular year; and

(c) the amount of interest that was payable in respect of each taxation year preceding the particular year in respect of the loan was paid not later than 30 days after the end of each such taxation year.

Related Provisions: 74.5(7) — Guarantees. See additional Related provisions and Definitions at end of s. 74.5.

Pre-RSC History: Subpara. 74.5(2)(a)(i) amended by 1990, c. 39, subsec. 16(2), to substitute "prescribed rate" for "rate prescribed for the purpose of subsection 161(1)", applicable with respect to interest to be calculated in respect of periods after September 1989.

Regulations: 4301(c) (prescribed rate of interest for 74.5(2)(a)(i)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(3) Spouses living apart — Notwithstanding subsection 74.1(1) and section 74.2, where an individual has lent or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who is the individual's spouse or who has since become the individual's spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) subsection 74.1(1) does not apply to any income or loss from the property, or property substituted therefor, that relates to the period throughout which the individual is living separate and apart from that person because of a breakdown of their marriage; and

(b) section 74.2 does not apply to a disposition of the property, or property substituted therefor, occurring at any time while the individual is living separate and apart from that person because of a breakdown of their marriage, if an election completed jointly with that person not to have that section apply is filed with the individual's return of income under this Part for the taxation year that includes that time or for any preceding taxation year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4) — Extended meaning of "spouse".

History: Para. 74.5(3)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 53, applicable to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Para. 74.5(3)(b) formerly read:

(b) section 74.2 does not apply with respect to a disposition of the property, or property substituted therefor, during the period throughout which the individual is living separate and apart from that person by reason of a breakdown of their marriage, if the individual files with the individual's return of income under this Part for the taxation year during which the individual commenced to so live separate and apart from that person an election completed jointly with that person not to have that section apply.

Pre-RSC History: Paras. 74.5(3)(a) and (b) substituted by 1986, c. 55, subsec. 20(1), applicable with respect to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Paras. 74.5(3)(a) and (b) formerly read:

(a) subsection 74.1(1) does not apply with respect to any income or loss from the property, or property substituted therefor, that relates to the period throughout which the individual is living apart and is separated from that person pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement; and

(b) section 74.2 does not apply with respect to a disposition of the property, or property substituted therefor, during the period throughout which the individual is living apart and is separated from that person pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, if the individual files with his return of income under this Part for the taxation year during which he commenced to so live apart and be so separated from that person an election completed jointly with that person not to have that section apply.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-434R: Rental of real property by individual; IT-511R: Interspousal and certain other transfers and loans of property.

(4) Idem — No amount shall be included in computing the income of an individual under subsection 74.4(2) in respect of a designated person in respect of the individual who is the spouse of the individual for any period throughout which the individual is living separate and apart from the designated person by reason of a breakdown of their marriage.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: See Related Provisions and Definitions at end of s. 74.5.

Pre-RSC History: Subsec. 74.5(4) substituted by 1986, c. 55, subsec. 20(2), applicable with respect to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Subsec. 74.5(4) formerly read:

> (4) Idem — Notwithstanding any other provision of this Act and except as provided in subsection (5), where an individual has loaned or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to a corporation the shareholders of which include
>
> (a) a person who is or who has since become the individual's spouse,
>
> (b) a partnership of which such a person is a member,
>
> (c) a trust in which such a person is beneficially interested, or
>
> (d) another corporation of which such a person is the sole shareholder,
>
> no amount shall be determined under subparagraph 74.4(3)(b)(i) or (ii) in respect of a taxable dividend paid by the corporation to that person or that other corporation or in respect of a capital gain realized by that person with respect to the period throughout which the individual is living apart and is separated from that person pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement.

(5) Definition of "designated person" — For the purposes of this section, "designated person" in respect of an individual, means a person

(a) who is the spouse of the individual; or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) who is under 18 years of age and who

(i) does not deal with the individual at arm's length, or

(ii) is the niece or nephew of the individual.

Related Provisions: 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 74.5(5) substituted by 1986, c. 55, subsec. 20(2), applicable with respect to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Subsec. 74.5(5) formerly read:

> (5) Exception — Subsections (3) and (4) do not apply where an individual who is separated from his spouse pursuant to a written separation agreement ceases to live apart from that spouse within 12 months after the date on which the agreement was entered into.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property.

(6) Back to back loans and transfers — Where an individual has lent or transferred property

(a) to another person and that property, or property substituted therefor, is lent or transferred by any person (in this subsection referred to as a "third party") directly or indirectly to or for the benefit of a specified person with respect to the individual, or

(b) to another person on condition that property be lent or transferred by any person (in this subsection referred to as a "third party") directly or indirectly to or for the benefit of a specified person with respect to the individual,

the following rules apply:

(c) for the purposes of sections 74.1, 74.2, 74.3 and 74.4, the property lent or transferred by the third party shall be deemed to have been lent or transferred, as the case may be, by the individual to or for the benefit of the specified person, and

(d) for the purposes of subsection (1), the consideration received by the third party for the transfer of the property shall be deemed to have been received by the individual.

Related Provisions: 74.5(8) — "Specified person". See additional Related Provisions and Definitions at end of s. 74.5.

Pre-RSC History: Subsec. 74.5(6) amended by 1986, c. 55, subsec. 20(2), to substitute "directly or indirectly to or for the benefit of" for "to or for the benefit of" in paras. (a) and (b) and to substitute "sections 74.1, 74.2, 74.3 and 74.4" for "sections 74.1, 74.2 and 74.4", applicable with respect to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(7) Guarantees — Where an individual is obligated, either absolutely or contingently, to effect any undertaking including any guarantee, covenant or agreement given to ensure the repayment, in whole or in part, of a loan made by any person (in this subsection referred to as the "third party") directly or indirectly to or for the benefit of a specified person with respect to the individual or the payment, in whole or in part, of any interest payable in respect of the loan, the following rules apply:

(a) for the purposes of sections 74.1, 74.2, 74.3 and 74.4, the property lent by the third party shall be deemed to have been lent by the individual to or for the benefit of the specified person; and

(b) for the purposes of paragraphs (2)(b) and (c), the amount of interest that is paid in respect of the loan shall be deemed not to include any amount paid by the individual to the third party as interest on the loan.

Related Provisions: 74.5(8) — "Specified person". See additional Related Provisions and Definitions at end of s. 74.5.

Pre-RSC History: Subsec. 74.5(7) amended by 1986, c. 55, subsec. 20(2), to substitute "directly or indirectly to or for the benefit of" for "to or for the benefit of" in that portion of subsec. 74.5(7) preceding para. (a) and to substitute "sections 74.1, 74.2, 74.3 and 74.4" for "sections 74.1, 74.2 and 74.4" in para. (a), applicable with respect to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(8) Definition of "specified person" — For the purposes of subsections (6) and (7), "specified person", with respect to an individual, means

(a) a designated person in respect of the individual; or

(b) a corporation, other than a small business corporation, of which a designated person in respect of the individual would have been a specified shareholder if the definition "specified shareholder" in subsection 248(1) were read without reference to paragraphs (a) and (d) of that definition.

Pre-RSC History: Subsec. 74.5(8) substituted by 1986, c. 55, subsec. 20(2), applicable with respect to transfers of property made after May 22, 1985 and loans outstanding on or after May 22, 1985. Subsec. 74.5(8) formerly read:

> (8) "Specified person" defined — For the purposes of subsections (6) and (7), "specified person", with respect to an individual, means
>
> (a) a person who is or who has become the spouse of the individual;
>
> (b) a person who is under 18 years of age; or
>
> (c) a corporation, other than a small business corporation, the shareholders of which include a person described in paragraph (a) or (b), a trust in which such a person is beneficially interested, a partnership of which such a person is a member or another corporation, other than a small business corporation, of which such a person is a specified shareholder.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(9) Transfers or loans to a trust — Where a taxpayer has lent or transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to a trust in which another taxpayer is beneficially interested, the taxpayer shall, for the purposes of this section and sections 74.1 to 74.4, be deemed to have lent or transferred the property, as the case may be, to or for the benefit of the other taxpayer.

Related Provisions: 248(25) — Beneficially interested.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(10) [Repealed]

History: Subsec. 74.5(10) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 30, applicable after 1990. (See subsec. 248(25).) Subsec. (10) formerly read:

> (10) Beneficially interested — For the purposes of this section and sections 74.1 to 74.4, a taxpayer is beneficially interested in a trust if the taxpayer has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of a discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

(11) Artificial transactions — Notwithstanding any other provision of this Act, sections 74.1 to 74.4 do not apply to a transfer or loan of property where it may reasonably be concluded that one of the main reasons for the transfer or loan was to reduce the amount of tax that would, but for this subsection, be payable under this Part on the income and gains derived from the property or from property substituted therefor.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(12) Where sections 74.1 to 74.3 do not apply — Sections 74.1, 74.2 and 74.3 do not apply in respect of a transfer by an individual of property

(a) as a payment of a premium under a registered retirement savings plan under which the individual's spouse is, immediately after the transfer, the annuitant (within the meaning of subsection 146(1)) to the extent that the premium is deductible in computing the income of the individual for a taxation year;

(a.1) as an amount contributed under a provincial pension plan prescribed for the purposes of paragraph 60(v) under which the individual's spouse is, immediately after the transfer, the annuitant (within the meaning assigned by subsection 146(1)) or the owner of the account under the plan to the extent that the amount does not exceed the amount by which the amount prescribed for the purposes of subparagraph 60(v)(ii) for the year in respect of the plan exceeds the total of all other contributions to the plan for the year to the account of the spouse under the plan; or

(b) as or on account of an amount paid by the individual to another individual who is the individual's spouse or a person who was under 18 years of age in a taxation year and who

(i) does not deal with the individual at arm's length, or

(ii) is the niece or nephew of the individual,

that is deductible in computing the individual's income for the year and is required to be included in computing the income of the other individual.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 146(5.1) — Amount of spousal RRSP premiums deductible; 146(8.3) — Attribution on spousal RRSP payments if withdrawn soon; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Para. 74.5(12)(a.1) added by 1987, c. 46, s. 26.1, applicable to 1987 *et seq.*

Subsec. 74.5(12) added by 1986, c. 55, subsec. 20(3), applicable with respect to transfers of property after May 22, 1985.

Interpretation Bulletins [subsec. 74.5(12)]: IT-394R2: Preferred beneficiary election; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

(13) Exception from attribution rules [kiddie tax] — Subsections 74.1(1) and (2), 74.3(1) and 75(2) of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, do not apply to any amount that is included in computing a specified individual's split income for a taxation year.

History: Subsec. 74.5(13) added by 2000, c. 19, s. 11, applicable to 2000 *et seq.*

Related Provisions [s. 74.5]: 51(1)(c) — Exchange deemed transfer of convertible property by taxpayer to corporation; 87(2)(j.7) — Amalgamations — continuing corporation; 248(5) — Substituted property.

Pre-RSC History [s. 74.5]: S. 74.5 added by 1986, c. 6, s. 38, applicable with respect to transfers of property made after May 22, 1985 and with respect to loans that are outstanding on or after May 22, 1985.

Definitions [s. 74.5]: "amount" — 248(1); "arm's length" — 251(1); "beneficially interested" — 248(25); "capital gain" — 39(1)(a), 248(1); "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated person" — 74.5(5); "individual" — 248(1); "marriage" — 252(4)(b); "nephew", "niece" — 252(2)(g); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "shareholder", "small business corporation" — 248(1); "specified individual" — 120.4(1), 248(1); "specified person" — 74.5(8); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "spouse" — 252(4)(a); "substituted property" — 248(5); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

75. (1) [Repealed under former Act]

Pre-RSC History: Subsec. 75(1) repealed by 1986, c. 6, subsec. 39(1), applicable with respect to transfers of property after May 22, 1985. Subsec. 75(1) formerly read:

> 75. (1) **Transfers to minors** — Where a taxpayer has, since 1930, transferred property to a person who was under 18 years of age, either directly or indirectly, by means of a trust or by any other means whatever, any income or loss, as the case may be, for a taxation year from the property or from property substituted therefor shall, during the lifetime of the transferor while he is resident in Canada, be deemed to be income or a loss, as the case may be, of the transferor and not of the transferee, unless the transferee has, before the end of the year, attained the age of 18 years.

Subsec. 75(1) substituted by 1974-75-76, c. 26, s. 40, applicable to 1975 *et seq.* Subsec. 75(1) formerly read:

> 75. (1) Where a taxpayer has, since 1930, transferred property to a person who was under 18 years of age, either directly or indirectly, by means of a trust or by any other means whatever, the income for a taxation year from the property or from property substituted therefor shall, during the lifetime of the transferor while he is resident in Canada, be deemed to be income of the transferor and not of the transferee, unless the transferee has, before the end of the year, attained the age of 18 years

Selected Cases [subsec. 75(1)]: *Harvey v. Canada*, [1995] 1 C.T.C. 2507 (TCC) (Minimum formalities required where subsec. 75(1) sought to be avoided).

(2) Trusts — Where, by a trust created in any manner whatever since 1934, property is held on condition

(a) that it or property substituted therefor may

(i) revert to the person from whom the property or property for which it was substituted was directly or indirectly received (in this subsection referred to as "the person"), or

(ii) pass to persons to be determined by the person at a time subsequent to the creation of the trust, or

(b) that, during the lifetime of the person, the property shall not be disposed of except with the person's consent or in accordance with the person's direction,

any income or loss from the property or from property substituted therefor, any taxable capital gain or allowable capital loss from the disposition of the property or of property substituted therefor, shall, during the lifetime of the person while the person is resident in Canada be deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

Proposed Amendment — 75(2)(b)

(b) that, during the existence of the person, the property shall not be disposed of except with the person's consent or in accordance with the person's direction,

any income or loss from the property or from property substituted for the property, and any taxable capital gain or allowable capital loss from the disposition of the property or of property substituted for the property, shall, during the existence of the person while the person is resident in Canada, be deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 35(1), will amend the portion of subsec. 75(2) after para. (a) to read as above, applicable to taxation years that begin after 2000.

Technical Notes: Subsection 75(2) of the Act generally provides for the attribution of income from a trust property to a person resident in Canada where that property was received by the trust from the person and can revert to the person (or pass to other persons determined by that person).

Subsection 75(2) is amended to clarify that the reference to "person" in the provision includes a corporation.

This amendment applies to taxation years that begin after 2000.

Related Provisions: 56(4.1) — Interest free or low interest loans; 73(1) — Rollover of capital property to revocable living trust; 74.2(2) — Deemed gain or loss; 74.5(13) — No attribution of split income subject to kiddie tax; 75(3) — Exceptions; 82(2) — Dividends deemed received; 107(4.1) — Denial of rollover under subsec. 107(2); 107.4(1)(e) — No qualifying disposition where settlor can change beneficiaries of trust; 160(1) — Tax liability — non-arm's length property transfer; 212(12) — Deemed payments to spouse, etc; 248(5) — Substituted property; 256(1.2)(f)(iv) — Associated corporations — where shares owned by trust described in 75(2).

Pre-RSC History: All that portion of subsec. 75(2) following para. (b) substituted by 1986, c. 6, subsec. 39(2), applicable to 1987 *et seq.*, to delete the words added by 1984, c. 1, and to substitute "the person" for "such person" in two places.

All that portion of subsec. 75(2) following para. (b) substituted by 1984, c. 1, subsec. 34(1), to add "or such part of any capital gain or capital loss from an indexed security investment plan as may reasonably be considered to be derived from the property or from property substituted therefor" immediately before "shall, during the lifetime", and "a capital gain or capital loss, as the case may be" immediately before "or a taxable capital gain", applicable after September 30, 1983.

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-394R2: Preferred beneficiary election; IT-369R: Attribution of trust income to settlor; IT-447: Residence of a trust or estate; IT-531: Eligible funeral arrangements.

I.T. Technical News: No. 7 (revocable living trusts; protective trusts).

(3) Exceptions — Subsection (2) does not apply to property held in a taxation year

(a) by a trust governed by a registered pension plan, an employees profit sharing plan, a registered supplementary unemployment benefit plan, a registered retirement savings plan, a deferred profit sharing plan, a registered education savings plan, a registered retirement income fund or an employee benefit plan;

(b) by an employee trust, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)) or a trust described in paragraph 149(1)(y);

Proposed Amendment — 75(3)(a), (b)

(a) by a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan, a registered supplementary unemployment benefit plan or a retirement compensation arrangement;

(b) by an employee trust, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)), a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1), or a trust described in paragraph 149(1)(y);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 35(2), will amend paras. 75(3)(a) and (b) to read as above, para. (a) applicable to taxation years that end after October 8, 1986 and, notwithstanding subsecs. 152(4) to (5), the Minister of National Revenue shall make any assessments, reassessments and additional assessments of tax, interest and penalties that are necessary to give effect to the words "retirement compensation arrangement" in para. 75(3)(a); and para. (b) applicable to 1999 *et seq.*

Technical Notes: Subsection 75(3) of the Act exempts certain trusts from the application of subsection 75(2), which generally provides for the attribution of income from a trust property to a person resident in Canada where that property was received by the trust from the person and can revert to the person (or pass to other persons determined by that person).

Paragraph 75(3)(a) is amended to extend the exemption to trusts governed by retirement compensation arrangements (as defined in subsection 248(1)). These trusts are subject to tax in the hands of the trustee under Part XI.3. This amendment ensures that these trusts will not also be subject to tax under Part I in the hands of a person (typically an employer) who made contributions to the trust. This amendment applies to taxation years ending after October 8, 1986, the date on which the retirement compensation arrangement rules were originally announced.

Paragraph 75(3)(b) is amended to extend the exemption to a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1). For additional information on new paragraph (a.1) of the definition "trust", see the commentary on that provision. This amendment applies to the 1999 and subsequent taxation years.

(c) by a trust that

(i) is not resident in Canada,

(ii) is resident in a country under the laws of which an income tax is imposed,

(iii) is exempt under the laws referred to in subparagraph (ii) from the payment of income tax to the government of the country of which the trust is a resident, and

(iv) was established principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits;

(c.1) by a qualifying environmental trust; or

Proposed Addition — 75(3)(c.2)

(c.2) by a trust that is non-resident for the purposes of computing its income for the year, notwithstanding that there is a person who is, at the end of the year, both resident in Canada and a contributor (as defined in section 94) to the trust; or

Application: The June 22, 2000 draft legislation, s. 6, will add para. 75(3)(c.2), applicable to trust taxation years that begin after 2000

Technical Notes: Subsection 75(2) of the Act generally provides that, where a person transfers property to a trust under certain conditions, the income from the property is attributed to the person. Subsection 75(3) exempts certain trusts from this attribution rule.

Subsection 75(3) is amended so that it does not apply to a trust that is not resident in Canada for the purposes of computing its income, notwithstanding that there is a person who is, at the end of the year, both resident in Canada and a contributor (as defined in section 94) to the trust. In effect, this exception will generally apply to trusts in respect of which the contributors are recent immigrants to Canada (i.e., resident in Canada for not more than 60 months). The exception is consistent with similar 60-month exemptions in:

- section 94 (see the definition of "resident contributor" in subsection 94(1) and subsection 94(3)),
- section 94.1 (see paragraph 94.1(2)(a)), and
- section 94.2 (see subparagraph 94.2(3)(b)(i)).

This amendment applies to trust taxation years that begin after 2000.

(d) by a prescribed trust.

History: Para. 75(3)(c.1) amended by 1998, c. 19, s. 13, applicable to taxation years that end after February 22, 1994. The para. formerly read:

(c.1) by a mining reclamation trust; or

Para. 75(3)(c.1) added by 1995, c. 3, s. 21, applicable to taxation years that end after February 22, 1994.

Pre-RSC History: Para. 75(3)(a) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

Para. 75(3)(a) substituted by 1986, c. 6, subsec. 39(3), to delete "a registered home ownership savings plan" from after "a registered education savings plan", applicable to 1986 *et seq.*

Subsec. 75(3) added by 1985, c. 45, s. 36, applicable to 1982 *et seq.*

Subsec. 75(3) repealed by 1980-81-82-83, c. 48, s. 41, applicable after December 11, 1979. Subsec. 75(3) formerly read:

(3) New property deemed substituted — For the purpose of this section and section 74, where a person who did own or hold property has disposed of it and acquired other property in substitution therefor and subsequently, by one or more further transactions, has effected one or more further substitutions, the property acquired by any such transaction shall be deemed to have been substituted for the property originally owned or held.

Regulations [subsec. 75(3)]: No trusts prescribed for purposes of 75(3)(d) to date.

Definitions [s. 75]: "allowable capital loss" — 38(b), 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "deferred profit sharing plan" — 147(1), 248(1); "employee benefit plan" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employee trust", "person", "property" — 248(1); "qualifying environmental trust" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "resident in Canada" — 250; "retirement compensation arrangement"248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 75]: IT-268R3: *Inter vivos* transfer of farm property to child; IT-369R: Attribution of trust income to settlor.

75.1 (1) Gain or loss deemed that of transferor — Where

(a) subsection 73(3) or (4) applied to the transfer of property (in this subsection referred to as "transferred property") by a taxpayer to a child of the taxpayer,

(b) the transfer was made at less than the fair market value of the transferred property immediately before the time of the transfer, and

(c) in a taxation year, the transferee disposed of the transferred property and did not, before the end of that year, attain the age of 18 years,

the following rules apply:

(d) the amount, if any, by which

(i) the total of the transferee's taxable capital gains for the year from dispositions of transferred property

exceeds

(ii) the total of the transferee's allowable capital losses for the year from dispositions of transferred property,

shall, during the lifetime of the transferor while the transferor is resident in Canada, be deemed to be a taxable capital gain of the transferor for the year from the disposition of property,

(e) the amount, if any, by which the total determined under subparagraph (d)(ii) exceeds the total determined under subparagraph (d)(i) shall, during the lifetime of the transferor while the transferor is resident in Canada, be deemed to be an allowable capital loss of the transferor for the year from the disposition of property, and

(f) any taxable capital gain or allowable capital loss taken into account in computing an amount described in paragraph (d) or the amount described in paragraph

(e) shall, except for the purposes of those paragraphs, to the extent that the amount so described is deemed by virtue of this subsection to be a taxable capital gain or an allowable capital loss of the transferor, be deemed not to be a taxable capital gain or an allowable capital loss, as the case may be, of the transferee.

Related Provisions: 38 — Taxable capital gain and allowable capital loss; 39(1) — Capital gain and capital loss; 74.2(2) — Deemed gain or loss.

History: Para. 75.1(1)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 54, applicable to property transferred after 1989. Para. 75.1(1)(a) formerly read:

(a) a taxpayer has, after 1971, transferred property (in this subsection referred to as "transferred property") to a child of the taxpayer in circumstances where subsection 73(3) applied in respect of the transfer,

Pre-RSC History: All that portion of subsec. 75.1(1) following para. (c) substituted by 1974-75-76, c. 26, s. 41, applicable to 1975 *et seq.* That portion formerly read:

in computing the transferor's income for any taxation year the amount, if any, by which

(d) the aggregate of the transferee's taxable capital gains for the year from the disposition of the transferred property,

exceeds

(e) the aggregate of the transferee's allowable capital losses for the year from the disposition of the transferred property,

shall, during the lifetime of the transferor while the transferor is resident in Canada, be deemed to be a taxable capital gain of the transferor for the year from the disposition of property, and any gain or loss taken into account in computing the aggregate described in paragraph (d) or the aggregate described in paragraph (e) shall, for the purposes of computing the income of the transferee for a taxation year, be deemed not to have been a gain or loss of the transferee.

(2) Definition of "child" — For the purposes of this section, "child" of a taxpayer includes a child of the taxpayer's child and a child of the taxpayer's child's child.

Related Provisions: 70(10) — Parallel definition for other purposes; 252(1) — Further extended meaning of "child".

Pre-RSC History [s. 75.1]: S. 75.1 added by 1973-74, c. 14, s. 20.2, applicable to 1972 *et seq.*

Definitions [s. 75.1]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "Canada" — 255; "child" — 75.1(2), 252(1); "property" — 248(1); "resident in Canada" — 250; "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "transferred property" — 75.1(1)(a).

Interpretation Bulletins [s. 75.1]: IT-268R4: *Inter vivos* transfer of farm property to child.

76. (1) Security in satisfaction of income debt — Where a person receives a security or other right or a certificate of indebtedness or other evidence of indebtedness wholly or partially as payment of, in lieu of payment of or in satisfaction of, a debt that is then payable, the amount of which debt would be included in computing the person's income if it were paid, the value of the security, right or indebtedness or the applicable portion thereof shall, notwithstanding the form or legal effect of the transaction, be included in computing the person's income for the taxation year in which it is received.

Related Provisions: 214(4) — Non-resident — securities.

History: Subsec. 76(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 55, applicable to securities, rights, certificates of indebtedness and other evidences of indebtedness received after July 13, 1990. Subsec. 76(1) formerly read:

76. (1) Security in satisfaction of income debt — Where a person has received a security or other right or a certificate of indebtedness or other evidence of indebtedness wholly or partially as, in lieu of payment of, or in satisfaction of, a debt that was then payable, the amount of which debt would be included in computing the person's income if it had been paid, the value of the security, right or indebtedness or the applicable portion thereof shall, notwithstanding the form or legal effect of the transaction, be included in computing the person's income for the taxation year in which it was received.

Selected Cases [subsec. 76(1)]: *Nellis v. The Queen*, [1986] 2 C.T.C. 216 (FCTD) (Mortgage received in satisfaction of debt was security in lieu of payment and included in income); *Pendray Farms Ltd. et al. v. The Queen*, [1980] C.T.C. 109 (FCTD) (Amounts received in cash by marketing association as agent and then by taxpayer in "revolving loan fund certificates" taxable).

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(2) Idem — Where a security or other right or a certificate of indebtedness or other evidence of indebtedness is received by a person wholly or partially as payment of, in lieu of payment of or in satisfaction of, a debt before the debt is payable, but is not itself payable or redeemable before the day on which the debt is payable, it shall, for the purpose of subsection (1), be deemed to be received by the person holding it at that time when the debt becomes payable.

History: Subsec. 76(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 55, applicable to securities, rights, certificates of indebtedness and other evidences of indebtedness received after July 13, 1990. Subsec. 76(2) formerly read:

(2) Idem — Where a security or other right or a certificate of indebtedness or other evidence of indebtedness has been received by a person wholly or partially as, in lieu of payment of, or in satisfaction of, a debt before the debt was payable, but was not itself payable or redeemable before the day on which the debt was payable, it shall, for the purpose of subsection (1), be deemed to have been received when the debt became payable by the person holding it at that time.

(3) Section enacted for greater certainty — This section is enacted for greater certainty and shall not be construed as limiting the generality of the other provisions of this Part by which amounts are required to be included in computing income.

(4) Debt deemed not to be income debt — Where a cash purchase ticket or other form of settlement prescribed pursuant to the *Canada Grain Act* or by the Minister is issued to a taxpayer in respect of grain delivered in a taxation year of a taxpayer to a primary elevator or process elevator and the ticket or other form of settlement entitles the holder thereof to payment by the operator of the elevator of the purchase price, without interest, stated in the ticket for the grain at a date that is after the end of that taxation year, the amount of the purchase price stated in the ticket or other form of settlement shall, notwithstanding any other provision of this section, be included in computing the income of the taxpayer to whom the ticket or other form of settlement was issued for the taxpayer's taxation year immediately following the taxation year in which the grain was delivered and not for the taxation year in which the grain was delivered.

Related Provisions: 76(5) — Meaning of certain expressions.

Pre-RSC History: See under subsec. 76(5).

Interpretation Bulletins: IT-184R: Deferred cash purchase tickets issued for grain; IT-433R: Farming or fishing — use of cash method.

(5) Definitions of certain expressions — In subsection (4), the expressions "cash purchase ticket", "operator", "primary elevator" and "process elevator" have the meanings assigned by the *Canada Grain Act* and "grain" means wheat, oats, barley, rye, flaxseed and rapeseed produced in the designated area defined by the *Canadian Wheat Board Act*.

Related Provisions: 24 — Ceasing to carry on business; 214(4) — Non-resident's tax on securities income.

Pre-RSC History: Subsecs. 76(4), (5) substituted by 1974-75-76, c. 26, s. 42, applicable to 1974 *et seq.* Subsecs. 76(4), (5) formerly read:

> (4) Where a cash purchase ticket is issued to a taxpayer in respect of grain delivered in a taxation year of a taxpayer to a primary elevator and such ticket entitles the holder thereof to payment by the operator of the elevator of the purchase price, without interest, stated in the ticket for the grain at a date that is after the end of that taxation year, the amount of the purchase price stated in the ticket shall, notwithstanding any other provision of this section, be included in computing the income of the taxpayer to whom the ticket was issued for his taxation year immediately following the taxation year in which the grain was delivered and not for the taxation year in which the grain was delivered.
>
> (5) For the purposes of subsection (4), the expressions "cash purchase ticket", "operator" and "primary elevator" have the meanings assigned by the *Canada Grain Act* and "grain" means wheat, oats, barley, rye, flaxseed and rapeseed produced in the designated area defined by the *Canadian Wheat Board Act*.

Subsecs. 76(4), (5) added by 1973-74, c. 30, subsec. 6(1), applicable to 1973 *et seq.*

Definitions [s. 76]: "amount" — 248(1); "cash purchase ticket", "grain" — 76(5); "Minister" — 248(1); "operator" — 76(5); "person" — 248(1); "primary elevator", "process elevator" — 76(5); "taxpayer" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 76]: IT-77R: Securities in satisfaction of an income debt.

77. [Repealed]

History: S. 77 repealed by 1995, c. 21, s. 52, applicable to exchanges occurring after October 1994. S. 77 formerly read:

> 77. Bond conversion — Where a bond of a debtor is acquired by a taxpayer in exchange for another bond of the same debtor and
>
> (a) the terms of the bond for which it was exchanged conferred on the holder thereof the right to make the exchange, and
>
> (b) the amount payable to the holder of the bond on its maturity is the same as the amount that would have been payable to the holder of the bond for which it was exchanged on the maturity of that bond,
>
> the cost of the bond so acquired and the sale price of the bond for which it was exchanged shall be deemed to be,
>
> (c) in the event that the bond that was exchanged was property described in an inventory of a business carried on by the taxpayer, the amount at which it had been valued at the end of the last complete fiscal period of the business preceding the exchange, or
>
> (d) in any other event, the adjusted cost base to the taxpayer of the bond that was exchanged, immediately before the exchange.

Pre-RSC History: Para. 77(a) substituted by 1974-75-76, c. 26, s. 43, applicable to exchanges of bonds after May 6, 1974. Para. 77(a) formerly read:

> (a) the terms on which the bond for which it was exchanged was issued conferred upon the holder thereof the right to make the exchange, and

78. (1) Unpaid amounts — Where an amount in respect of a deductible outlay or expense that was owing by a taxpayer to a person with whom the taxpayer was not dealing at arm's length at the time the outlay or expense was incurred and at the end of the second taxation year following the taxation year in which the outlay or expense was incurred, is unpaid at the end of that second taxation year, either

(a) the amount so unpaid shall be included in computing the taxpayer's income for the third taxation year following the taxation year in which the outlay or expense was incurred, or

(b) where the taxpayer and that person have filed an agreement in prescribed form on or before the day on or before which the taxpayer is required by section 150 to file the taxpayer's return of income for the third succeeding taxation year, for the purposes of this Act the following rules apply:

(i) the amount so unpaid shall be deemed to have been paid by the taxpayer and received by that person on the first day of that third taxation year, and section 153, except subsection 153(3), is applicable to the extent that it would apply if that amount were being paid to that person by the taxpayer, and

(ii) that person shall be deemed to have made a loan to the taxpayer on the first day of that third taxation year in an amount equal to the amount so unpaid minus the amount, if any, deducted or withheld therefrom by the taxpayer on account of that person's tax for that third taxation year.

Related Provisions: 12(1)(b) — Income inclusion for certain amounts not received until after end of year; 78(3) — Late filing; 78(4), (5) — Unpaid remuneration; 80(1)"excluded obligation"(c) — Obligation not subject to debt forgiveness rules; 127(26) — Parallel rule for unpaid amounts re investment tax credit; 248(1)"salary deferral arrangement"(k) — No SDA where bonus paid within 3 years.

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-152R3: Special reserves — sale of land.

Information Circulars: 88-2, para. 16: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Forms: T2047: Agreement in respect of unpaid amounts.

(2) Idem — Where an amount in respect of a deductible outlay or expense that was owing by a taxpayer that is a corporation to a person with whom the taxpayer was not dealing at arm's length is unpaid at the time when the taxpayer is wound up, and the taxpayer is wound up before the end of the second taxation year following the taxation year in which the outlay or expense was incurred, the amount so unpaid shall be included in computing the taxpayer's income for the taxation year in which it is wound up.

Related Provisions: 80(1)"excluded obligation"(c) — Obligation not subject to debt forgiveness rules.

Interpretation Bulletins: IT-109R2: Unpaid amounts.

(3) Late filing — Where, in respect of an amount described in subsection (1) that was owing by a taxpayer to a person, an agreement in a form prescribed for the purposes of this section is filed after the day on or before which the agreement is required to be filed for the purposes of paragraph (1)(b), both paragraphs (1)(a) and (b) apply in respect of the said amount, except that paragraph (1)(a) shall be read and construed as requiring 25% only of the said amount to be included in computing the taxpayer's income.

Interpretation Bulletins: IT-109R2: Unpaid amounts.

(4) Unpaid remuneration and other amounts — Where an amount in respect of a taxpayer's expense that is a superannuation or pension benefit, a retiring allowance, salary, wages or other remuneration (other than reasonable vacation or holiday pay or a deferred amount under a salary deferral arrangement) in respect of an office or employment is unpaid on the day that is 180 days after the end of the taxation year in which the expense was incurred, for the purposes of this Act other than this subsection, the amount shall be deemed not to have been incurred as an expense in the year and shall be deemed to be incurred as an expense in the taxation year in which the amount is paid.

Related Provisions: 37(11) — SR&ED expense must be claimed as such even if not deductible due to 78(4); 78(5) — 78(4) takes priority over 78(1); 80(1)"excluded obligation"(c) — Obligation not subject to debt forgiveness rules; 127(9)"investment tax credit"(m) — investment tax credit must be claimed as such even if not deductible due to 78(4); 127(26) —

Unpaid amounts re investment tax credit; 248(1)"salary deferral arrangement"(k) — No SDA where bonus paid within 3 years.

History: Subsec. 78(4) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 56, to add "a superannuation or pension benefit, a retiring allowance", applicable to expenses incurred after July 1990.

For earlier History, see under 78(5).

Selected Cases [subsec. 78(4)]: *The Queen v. V and R Enterprises Ltd.*, [1979] C.T.C. 465 (FCTD) (Payments at year-end to officers in addition to basic salaries were not "bonuses", but part of regular remuneration, and deductible); *McClain Industries of Canada Inc. v. The Queen*, [1978] C.T.C. 511 (FCTD) (Unpaid commissions assigned to non-resident company taxable as benefits conferred on another).

Interpretation Bulletins: IT-109R2: Unpaid amounts.

Forms: T2049: Agreement in respect of unpaid remuneration.

(5) Where subsec. (1) does not apply — Subsection (1) does not apply in any case where subsection (4) applies.

Pre-RSC History [subsecs. 78(3)–(6)]: Subsecs. 78(3) to (5) substituted for former subsecs. 78(3) to (6) by 1986, c. 55, s. 21, applicable with respect to expenses incurred in taxation years commencing after February 25, 1986. Those subsections formerly read:

(3) Unpaid remuneration — Where an amount in respect of a deductible outlay or expense that was owing by a taxpayer to a person as salary, wages or other remuneration in respect of an office or employment is unpaid at the end of the first taxation year following the taxation year in which the outlay or expense was incurred, either

(a) the amount so unpaid shall be included in computing the taxpayer's income for the second taxation year following the taxation year in which the outlay or expense was incurred, or

(b) where the taxpayer and that person have filed an agreement in prescribed form on or before the day on or before which the taxpayer is required by section 150 to file his return of income for the first taxation year following the taxation year in which the outlay or expense was incurred, for the purposes of this Act the following rules apply:

(i) the amount so unpaid shall be deemed to have been paid by the taxpayer and received by that person on the first day of the said second taxation year, and section 153, except subsection (3) thereof, is applicable to the extent that it would apply if that amount were being paid to that person by the taxpayer; and

(ii) that person shall be deemed to have made a loan to the taxpayer on the first day of the said second taxation year in an amount equal to the amount so unpaid minus the amount, if any, deducted or withheld therefrom by the taxpayer on account of that person's tax for the said second taxation year.

(4) Where unpaid at time corporation wound up — Where an amount in respect of a deductible outlay or expense described in subsection (3) that was owing by a taxpayer that is a corporation is unpaid at the time when the taxpayer is wound up, and the taxpayer is wound up before the end of the first taxation year following the taxation year in which the outlay or expense was incurred, the amount so unpaid shall be included in computing the taxpayer's income for the taxation year in which it is wound up.

(5) Application — Subsection (1) does not apply in any case where subsection (3) applies and subsection (2) does not apply in any case where subsection (4) applies.

(6) Late filing — Where, in respect of an amount described in subsection (1) or (3) that was owing by a taxpayer to a person, an agreement in a form prescribed for the purposes of this section is filed after the day on or before which the agreement is required to be filed for the purposes of paragraph (1)(b) or paragraph (3)(b), as the case may be, both paragraphs (1)(a) and (1)(b) or paragraphs (3)(a) and (3)(b), as the case may be, apply in respect of the said amount, except that paragraph (1)(a) or paragraph (3)(a), as the case may be, shall be read and construed as requiring 25% only of the said amount to be included in computing the taxpayer's income.

Definitions [s. 78]: "amount" — 248(1); "arm's length" — 251(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred amount", "employment", "office", "person", "prescribed", "retiring allowance", "salary deferral arrangement", "salary or wages", "superannuation or pension benefit" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 78]: IT-109R2: Unpaid amounts; IT-152R3: Special reserves — sale of land.

79. (1) Definitions — In this section,

"creditor" of a particular person includes a person to whom the particular person is obligated to pay an amount under a mortgage or similar obligation and, where property was sold to the particular person under a conditional sales agreement, the seller of the property (or any assignee with respect to the agreement) shall be deemed to be a creditor of the particular person in respect of that property;

Related Provisions: 79.1(1)"creditor" — Definition applies to s. 79.1.

"debt" includes an obligation to pay an amount under a mortgage or similar obligation or under a conditional sales agreement;

Related Provisions: 79.1(1)"debt" — Definition applies to s. 79.1.

"person" includes a partnership;

Related Provisions: 79.1(1)"person" — Definition applies to s. 79.1.

"property" does not include

(a) money, or

(b) indebtedness owed by or guaranteed by the government of a country, or a province, state, or other political subdivision of that country;

Related Provisions: 79.1(1)"property" — Definition applies to s. 79.1.

"specified amount" at any time of a debt owed or assumed by a person means

(a) the unpaid principal amount of the debt at that time, and

(b) unpaid interest accrued to that time on the debt.

Related Provisions: 79.1(1)"specified amount" — Definition applies to s. 79.1.

(2) Surrender of property — For the purposes of this section, a property is surrendered at any time by a person to another person where the beneficial ownership of the property is acquired or reacquired at that time from the person by the other person and the acquisition or reacquisition of the property was in consequence of the person's failure to pay all or part of one or more specified amounts of debts owed by the person to the other person immediately before that time.

Related Provisions: 79.1(2) — Seizure of property by creditor; 180.2(1)"adjusted income" — No OAS clawback on gain to which 79(2) applies.

(3) Proceeds of disposition for debtor — Where a particular property is surrendered at any time by a person (in this subsection referred to as the "debtor") to a creditor of the debtor, the debtor's proceeds of disposition of the particular property shall be deemed to be the amount determined by the formula

$$(A + B + C + D + E - F) \times \frac{G}{H}$$

where

A is the total of all specified amounts of debts of the debtor that are in respect of properties surrendered at that time by the debtor to the creditor and that are owing immediately before that time to the creditor;

B is the total of all amounts each of which is a specified amount of a debt that is owed by the debtor immediately before that time to a person (other than the credi-

tor), to the extent that the amount ceases to be owing by the debtor as a consequence of properties being surrendered at that time by the debtor to the creditor;

C is the total of all amounts each of which is a specified amount of a particular debt that is owed by the debtor immediately before that time to a person (other than a specified amount included in the amount determined for A or B as a consequence of properties being surrendered at that time by the debtor to the creditor), where

(a) any property surrendered at that time by the debtor to the creditor was security for

(i) the particular debt, and

(ii) another debt that is owed by the debtor immediately before that time to the creditor, and

(b) the other debt is subordinate to the particular debt in respect of that property;

D is

(a) where a specified amount of a debt owed by the debtor immediately before that time to a person (other than the creditor) ceases, as a consequence of the surrender at that time of properties by the debtor to the creditor, to be secured by all properties owned by the debtor immediately before that time, the lesser of

(i) the amount, if any, by which the total of all such specified amounts exceeds the portion of that total included in any of the amounts determined for B or C as a consequence of properties being surrendered at that time by the debtor to the creditor, and

(ii) the amount, if any, by which the total cost amount to the debtor of all properties surrendered at that time by the debtor to the creditor exceeds the total amount that would, but for this description and the description of F, be determined under this subsection as a consequence of the surrender, and

(b) in any other case, nil;

E is

(a) where the particular property is surrendered at that time by the debtor in circumstances in which paragraph 69(1)(b) would, but for this subsection, apply and the fair market value of all properties surrendered at that time by the debtor to the creditor exceeds the amount that would, but for this description and the description of F, be determined under this subsection as a consequence of the surrender, that excess, and

(b) in any other case, nil;

F is the total of all amounts each of which is the lesser of

(a) the portion of a particular specified amount of a particular debt included in the amount determined for A, B, C or D in computing the debtor's proceeds of disposition of the particular property, and

(b) the total of

(i) all amounts included under paragraph 6(1)(a) or subsection 15(1) in computing the income of any person because the particular debt was settled, or deemed by subsection 80.01(8) to have been settled, at or before the end of the taxation year that includes that time,

(ii) all amounts renounced under subsection 66(10), (10.1), (10.2) or (10.3) by the debtor in respect of the particular debt,

(iii) all amounts each of which is a forgiven amount (within the meaning assigned by subsection 80(1)) in respect of the debt at a previous time that the particular debt was deemed by subsection 80.01(8) to have been settled,

(iv) where the particular debt is an excluded obligation (within the meaning assigned by subsection 80(1)), the particular specified amount, and

(v) the lesser of

(A) the unpaid interest accrued to that time on the particular debt, and

(B) the total of

(I) the amount, if any, by which the total of all amounts included because of section 80.4 in computing the debtor's income for the taxation year that includes that time or for a preceding taxation year in respect of interest on the particular debt exceeds the total of all amounts paid before that time on account of interest on the particular debt, and

(II) such portion of that unpaid interest as would, if it were paid, be included in the amount determined under paragraph 28(1)(e) in respect of the debtor;

G is the fair market value at that time of the particular property; and

H is the fair market value at that time of all properties surrendered by the debtor to the creditor at that time.

Related Provisions: 13(21)"proceeds of disposition"(h) — Inclusion for depreciable property rules; 15(1.21)(b) — Inclusion under 79(3) ignored for calculating shareholder benefit from forgiven amount; 18(9.3) — Rule where debtor previously prepaid interest; 79(2) — Meaning of "surrendered"; 79(4) — Subsequent payment by debtor; 79(5) — Where amount included in consequence of properties being surrendered before the year; 79(7) — Where debt denominated in foreign currency; 80(1)"forgiven amount"B(f) — Debt forgiveness rules do not apply; 87(2)(h.1) — Amalgamations — continuing corporation; 118(2)B — Inclusion under s. 79 ignored for old age credit threshold; 122.5(1)"adjusted income" — Inclusion under s. 79 ignored for GST credit threshold; 122.6"adjusted income" — Inclusion under s. 79 ignored for Child Tax Benefit threshold; 257 — Formula cannot calculate to less than zero.

Interpretation Bulletins: IT-505: Mortgage foreclosures and conditional sales repossessions.

(4) Subsequent payment by debtor — An amount paid at any time by a person as, on account of or in satisfaction of, a specified amount of a debt that can reasonably be considered to have been included in the amount determined for A, C or D in subsection (3) in respect of a property surrendered before that time by the person shall be deemed to be a repayment of assistance, at that time in respect of the property, to which

(a) subsection 39(13) applies, where the property was capital property (other than depreciable property) of the person immediately before its surrender;

(b) paragraph 20(1)(hh.1) applies, where the cost of the property to the person was an eligible capital expenditure;

(c) the description of E in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the description of D in the definition "cumulative Canadian development expense" in subsection 66.2(5) or

the description of D in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), as the case may be, applies, where the cost of the property to the person was a Canadian exploration expense, a Canadian development expense or a Canadian oil and gas property expense; or

(d) paragraph 20(1)(hh) applies, in any other case.

(5) Subsequent application with respect to employee or shareholder debt — Any amount included under paragraph 6(1)(a) or subsection 15(1) in computing a person's income for a taxation year that can reasonably be considered to have been included in the amount determined for A, C or D in subsection (3) as a consequence of properties being surrendered before the year by the person shall be deemed to be a repayment by the person, immediately before the end of the year, of assistance to which subsection (4) applies.

(6) Surrender of property not payment or repayment by debtor — Where a specified amount of a debt is included in the amount determined at any time for A, B, C or D in subsection (3) in respect of a property surrendered at that time by a person to a creditor of the person, for the purpose of computing the person's income, no amount shall be considered to have been paid or repaid by the person as a consequence of the acquisition or reacquisition of the surrendered property by the creditor.

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser.

(7) Foreign exchange — Where a debt is denominated in a currency (other than Canadian currency), any amount determined for A, B, C or D in subsection (3) in respect of the debt shall be determined with reference to the relative value of that currency and Canadian currency at the time the debt was issued.

History: S. 79 amended by 1995, c. 21, subsec. 26(1), applicable to property acquired or reacquired after February 21, 1994, other than property acquired or reacquired pursuant to a court order made before February 22, 1994. Subsec. 26(3) of S.C. 1995, c. 21, provides that where a taxpayer so elects in writing filed with the Minister of National Revenue, para. 79(f) shall apply to the taxpayer in respect of property reacquired by the taxpayer after 1991 as if it read as follows:

(e.1) where the property is capital property of the taxpayer and was disposed of by the taxpayer to the other person in the year and subsequently reacquired by the taxpayer in the year, the taxpayer's proceeds of disposition of the property shall be deemed to be the lesser of the proceeds of disposition of the property to the taxpayer (determined without reference to this paragraph) and the amount that is the greater of

(i) the amount, if any, by which such proceeds (determined without reference to this paragraph) exceeds such portion of the proceeds as is represented by the taxpayer's claim, and

(ii) the cost amount to the taxpayer of the property immediately before its disposition by the taxpayer;

(f) the taxpayer shall be deemed to have reacquired the property at the amount, if any, by which the cost at that time of the taxpayer's claim exceeds the amount described in subparagraph (e)(i) or (ii) in respect of that property or the amount, if any, by which the proceeds of disposition of the property are reduced because of paragraph (e.1), as the case may be;

S. 79 formerly read:

79. Mortgage foreclosures and conditional sales repossessions — Where, at any time in a taxation year, a taxpayer who

(a) was a mortgagee or other creditor of another person who had previously acquired property, or

(b) had previously sold property to another person under a conditional sales agreement,

has acquired or reacquired the beneficial ownership of the property in consequence of the other person's failure to pay all or any part of an amount (in this section referred to as the "taxpayer's claim") owing by that person to the taxpayer, the following rules apply:

(c) there shall be included, in computing the other person's proceeds of disposition of the property, the principal amount of the taxpayer's claim plus all amounts each of which is the principal amount of any debt that had been owing by the other person, to the extent that it has been extinguished by virtue of the acquisition or reacquisition, as the case may be,

(d) any amount paid by the other person after the acquisition or reacquisition, as the case may be, as, on account of or in satisfaction of the taxpayer's claim shall be deemed to be a loss of that person, for that person's taxation year in which payment of that amount was made, from the disposition of the property,

(e) in computing the income of the taxpayer for the year,

(i) the amount, if any, claimed by the taxpayer under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the taxpayer's gain for the immediately preceding taxation year from the disposition of the property, and

(ii) the amount, if any, deducted under paragraph 20(1)(n) in computing the income of the taxpayer for the immediately preceding year in respect of the property,

shall be deemed to be nil,

(f) the taxpayer shall be deemed to have acquired or reacquired, as the case may be, the property at the amount, if any, by which the cost at that time of the taxpayer's claim exceeds the amount described in subparagraph (e)(i) or (ii), as the case may be, in respect of the property,

(g) the adjusted cost base to the taxpayer of the taxpayer's claim shall be deemed to be nil, and

(h) in computing the taxpayer's income for the year or a subsequent year, no amount is deductible in respect of the taxpayer's claim by virtue of paragraph 20(1)(l) or (p).

Subpara. 79(e)(i) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 57, to add "or 44(1)(e)(iii)", applicable

(a) to property in respect of which a taxpayer has claimed an amount under subpara. 44(1)(e)(iii) and that was reacquired by the taxpayer after 1985 and before July 13, 1990, where the taxpayer so elects before July 1991, and

(b) to property acquired or reacquired after July 12, 1990,

and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to an election made pursuant to para. (a).

Pre-RSC History: Para. 79(f) substituted by 1980-81-82-83, c. 140, s. 42(1), applicable with respect to acquisitions and reacquisitions occurring after November 12, 1981. Para. 79(f) formerly read:

(f) the taxpayer shall be deemed to have acquired or reacquired, as the case may be, the property at the amount, if any, by which the principal amount of the taxpayer's claim exceeds the amount described in subparagraph (e)(i) or (ii), as the case may be, in respect of the property;

Selected Cases [s. 79]: *Jones v. R.*, [1999] 1 C.T.C. 2644 (TCC) (Surrender and subrogation gave rise to new creditor; provision applicable); *Hallbauer v. R.*, [1998] 3 C.T.C. 115 (FCA); aff'd [1997] 1 C.T.C. 2428 (TCC) (Non-contingent, irreversible transfers were dispositions); *Corbett v. Canada*, [1997] 1 C.T.C. 2 (FCA) (Section intended to apply where no fixed price of sale. No conflict with sections 13 and 54); *Peters (D.L.) v. Canada*, [1993] 1 C.T.C. 2628 (TCC) (Section 80 applies to unpaid interest on obligation to which section 79 applied); *Moysey (R.) v. Canada*, [1992] 2 C.T.C. 2657 (TCC) (Section applies only to principal amount extinguished, not unpaid interest); *Ward v. The Queen*, [1988] 1 C.T.C. 336 (FCTD) (Member of group purchasing "golf course" operation permitted to deduct share of loss after foreclosure).

Definitions [s. 79]: "amount" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), (18); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "creditor", "debt" — 79(1); "debtor" — 79(3); "eligible capital expenditure" — 14(5), 248(1); "person" — 79(1), 248(1); "principal amount" — 248(1); "property" — 79(1), 248(1); "province" — *Interpretation Act* 35(1); "specified amount" — 79(1); "surrendered" — 79(2); "taxation year" — 249.

79.1 (1) Definitions — In this section,

"creditor" has the meaning assigned by subsection 79(1);

"debt" has the meaning assigned by subsection 79(1);

"person" has the meaning assigned by subsection 79(1);

"property" has the meaning assigned by subsection 79(1);

"specified amount" has the meaning assigned by subsection 79(1);

"specified cost" to a person of a debt owing to the person means

(a) where the debt is capital property of the person, the adjusted cost base to the person of the debt, and

(b) in any other case, the amount, if any, by which

(i) the cost amount to the person of the debt

exceeds

(ii) such portion of that cost amount as would be deductible in computing the person's income (otherwise than in respect of the principal amount of the debt) if the debt were established by the person to have become a bad debt or to have become uncollectable.

Related Provisions: 20(1)(p), 20(4)–(4.2), 50(1) — Provisions allowing deductions for bad debts.

Proposed Amendment — Application of 79.1 on acquisition of foreign resource property

Notice of Ways and Means Motion, federal budget, February 28, 2000: (41) That section 79.1 of the Act not apply in respect of acquisitions after February 27, 2000 of foreign resource property from a person (other than a person resident in Canada) or a partnership (other than a partnership each member of which is resident in Canada).

Federal budget, supplementary information, February 28, 2000: [See under 66(4) — ed.]

(2) Seizure of property — For the purposes of this section, a property is seized at any time by a person in respect of a debt where the beneficial ownership of the property is acquired or reacquired at that time by the person and the acquisition or reacquisition of the property was in consequence of another person's failure to pay to the person all or part of the specified amount of the debt.

Related Provisions: 50(1) — Deemed disposition of debt on bad debt, windup, insolvency or bankruptcy; 79(2) — Surrender of property by debtor; 138(11.93)(a) — Section 79.1 does not apply to insurer.

(3) Creditor's capital gains reserves — Where a property is seized at any time in a particular taxation year by a creditor in respect of a debt, for the purpose of computing the income of the creditor for the particular year, the amount claimed by the creditor under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the creditor's gain for the preceding taxation year from any disposition before the particular year of the property shall be deemed to be the amount, if any, by which the amount so claimed exceeds the total of all amounts each of which is an amount determined under paragraph (6)(a) or (b) in respect of the seizure.

(4) Creditor's inventory reserves — Where a property is seized at any time in a particular taxation year by a creditor in respect of a debt, for the purpose of computing the income of the creditor for the particular year, the amount deducted under paragraph 20(1)(n) in computing the income of the creditor for the preceding taxation year in respect of any disposition of the property before the particular year shall be deemed to be the amount, if any, by which the amount so deducted exceeds the total of all amounts each of which is an amount determined under paragraph (6)(a) or (b) in respect of the seizure.

(5) Adjustment where disposition and reacquisition of capital property in same year — Where a property is seized at any time in a taxation year by a creditor in respect of one or more debts and the property was capital property of the creditor that was disposed of by the creditor at a previous time in the year, the proceeds of disposition of the property to the creditor at the previous time shall be deemed to be the lesser of the amount of the proceeds (determined without reference to this subsection) and the amount that is the greater of

(a) the amount, if any, by which the amount of such proceeds (determined without reference to this subsection) exceeds such portion of the proceeds as is represented by the specified amounts of those debts immediately before that time, and

(b) the cost amount to the creditor of the property immediately before the previous time.

(6) Cost of seized properties for creditor — Where a particular property is seized at any time in a taxation year by a creditor in respect of one or more debts, the cost to the creditor of the particular property shall be deemed to be the amount, if any, by which the total of

(a) that proportion of the total specified costs immediately before that time to the creditor of those debts that

(i) the fair market value of the particular property immediately before that time

is of

(ii) the fair market value of all properties immediately before that time that were seized by the creditor at that time in respect of those debts, and

(b) all amounts each of which is an outlay or expense made or incurred, or a specified amount at that time of a debt that is assumed, by the creditor at or before that time to protect the creditor's interest in the particular property, except to the extent the outlay or expense

(i) was included in the cost to the creditor of property other than the particular property,

(ii) was included before that time in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts of the creditor, or

(iii) was deductible in computing the creditor's income for the year or a preceding taxation year

exceeds

(c) the amount, if any, claimed or deducted under paragraph 20(1)(n) or subparagraph 40(1)(a)(iii) or 44(1)(e)(iii), as the case may be, in respect of the particular property in computing the creditor's income or capital gain for the preceding taxation year or the amount by which the proceeds of disposition of the creditor of the particular property are reduced because of subsection (5) in respect of a disposition of the particular property by the creditor occurring before that time and in the year.

Related Provisions: 79.1(3) — Capital gains reserve; 79.1(4) — Inventory reserve.

(7) Treatment of debt — Where a property is seized at any time in a taxation year by a creditor in respect of a particular debt,

(a) the creditor shall be deemed to have disposed of the particular debt at that time;

(b) the amount received on account of the particular debt as a consequence of the seizure shall be deemed

(i) to be received at that time, and

(ii) to be equal to

(A) where the particular debt is capital property, the adjusted cost base to the creditor of the particular debt, and

(B) in any other case, the cost amount to the creditor of the particular debt;

(c) where any portion of the particular debt is outstanding immediately after that time, the creditor shall be deemed to have reacquired that portion immediately after that time at a cost equal to

(i) where the particular debt is capital property, nil, and

(ii) in any other case, the amount, if any, by which

(A) the cost amount to the creditor of the particular debt

exceeds

(B) the specified cost to the creditor of the particular debt; and

(d) where no portion of the particular debt is outstanding immediately after that time and the particular debt is not capital property, the creditor may deduct as a bad debt in computing the creditor's income for the year the amount described in subparagraph (c)(ii) in respect of the seizure.

Related Provisions: 79.1(8) — No deduction for principal amount of bad debt; 142.4(3)(a) — Disposition of specified debt obligation.

(8) Claims for debts — Where a property is seized at any time in a taxation year by a creditor in respect of a debt, no amount in respect of the debt

(a) is deductible in computing the creditor's income for the year or a subsequent taxation year as a bad, doubtful or impaired debt; or

(b) shall be included after that time in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts of the creditor as a bad, doubtful or impaired debt.

Related Provisions: 50(1)(a) — Deemed disposition of bad debt; 79.1(7)(d) — Deduction by creditor for bad debt.

History: Subsec. 79.1(8) amended by 1998, c. 19, s. 110, applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b).

The subsec. formerly read:

(8) Claims for bad and doubtful debts — Where a property is seized at any time in a taxation year by a creditor in respect of a debt, no amount in respect of the principal amount of the debt shall be

(a) deductible in computing the creditor's income for the year or a subsequent taxation year as a bad or doubtful debt; or

(b) included after that time in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts of the creditor as a bad or doubtful debt.

S. 79.1 added by 1995, c. 21, s. 26, applicable to property acquired or reacquired after February 21, 1994, other than property acquired or reacquired pursuant to a court order made before February 22, 1994.

Definitions [s. 79.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital gain" — 39(1), 248(1); "capital property" — 54, 248(1); "cost" — 79.1(6); "cost amount" — 248(1); "creditor", "debt" — 79(1), 79.1(1); "disposition" — 50(1), 54; "person" — 79(1), 79.1(1), 248(1); "principal amount" — 248(1); "proceeds of disposition" — 54; "property" — 79(1), 79.1(1), 248(1); "seized" — 79.1(2); "specified amount" — 79(1), 79.1(1); "specified cost" — 79.1(1); "taxation year" — 249.

80. (1) Definitions — In this section,

"commercial debt obligation" issued by a debtor means a debt obligation issued by the debtor

(a) where interest was paid or payable by the debtor in respect of it pursuant to a legal obligation, or

(b) if interest had been paid or payable by the debtor in respect of it pursuant to a legal obligation,

an amount in respect of the interest was or would have been deductible in computing the debtor's income, taxable income or taxable income earned in Canada, as the case may be, if this Act were read without reference to subsections 15.1(2) and 15.2(2), paragraph 18(1)(g), subsections 18(2), (3.1) and (4) and section 21;

Related Provisions: 80.01(1)"commercial debt obligation" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03; 80.03(7)(b)(i) — Commercial debt obligation deemed issued where amount designated; 80.04(1) — Definition applies to s. 80.04; 80.04(4)(e) — Commercial debt obligation deemed issued on agreement to transfer forgiven amount; 95(2)(g.1)(i) — Application to FAPI; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation.

"commercial obligation" issued by a debtor means

(a) a commercial debt obligation issued by the debtor, or

(b) a distress preferred share issued by the debtor;

Related Provisions: 40(2)(e.2) — Disposition of commercial obligation in exchange for another obligation issued by same person; 80(2)(b) — Obligation to pay interest deemed to be a debt obligation; 80.01(1)"commercial obligation" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03; 80.04(1) — Definition applies to s. 80.04.

"debtor" includes any corporation that has issued a distress preferred share and any partnership;

Related Provisions: 80.01(1)"debtor" — Definition applies to s. 80.01; 80.04(1) — Definition applies to s. 80.04.

"directed person" at any time in respect of a debtor means

(a) a taxable Canadian corporation or an eligible Canadian partnership by which the debtor is controlled at that time, or

(b) a taxable Canadian corporation or an eligible Canadian partnership that is controlled at that time by

(i) the debtor,

(ii) the debtor and one or more persons related to the debtor, or

(iii) a person or group of persons by which the debtor is controlled at that time;

Related Provisions: 80.04(1) — Definition applies to s. 80.04; 256(6), (6.1) — Meaning of "controlled".

"distress preferred share" issued by a corporation means, at any time, a share issued after February 21, 1994 (other than a share issued pursuant to an agreement in writing entered into on or before that date) by the corporation that is a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) that

would be a term preferred share at that time if that definition were read without reference to paragraphs (e) and (f);

Related Provisions: 61.3(1)(b)D, 61.3(2)(b)D — Deduction of principal amount of distress preferred share in determining debt forgiveness reserve; 80.01(1)"distress preferred share" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03.

"eligible Canadian partnership" at any time means a Canadian partnership none of the members of which is, at that time,

(a) a non-resident owned investment corporation,

(b) a person exempt, because of subsection 149(1), from tax under this Part on all or part of the person's taxable income,

(c) a partnership, other than an eligible Canadian partnership, or

(d) a trust, other than a trust in which no non-resident person and no person described in paragraph (a), (b) or (c) is beneficially interested;

Related Provisions: 80.04(1) — Definition applies to s. 80.04; 102(1) — Canadian partnership.

"excluded obligation" means an obligation issued by a debtor where

(a) the proceeds from the issue of the obligation

(i) were included in computing the debtor's income or, but for the expression "other than a prescribed amount" in paragraph 12(1)(x), would have been so included,

(ii) were deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, or

(iii) were deducted in computing the capital cost or cost amount to the debtor of any property of the debtor,

(b) an amount paid by the debtor in satisfaction of the entire principal amount of the obligation would be included in the amount determined under paragraph 28(1)(e) or section 30 in respect of the debtor,

(c) section 78 applies to the obligation, or

(d) the principal amount of the obligation would, if this Act were read without reference to sections 79 and 80 and the obligation were settled without any amount being paid in satisfaction of its principal amount, be included in computing the debtor's income because of the settlement of the obligation;

Related Provisions: 79(3)F(b)(iv) — Proceeds of disposition for debtor; 80(1)"forgiven amount"B(j) — Debt forgiveness rules do not apply to principal amount of excluded obligation; 80(2)(a) — Debt forgiveness rules do not apply to obligation settled as consideration for share described in para. (c).

"excluded property" means property of a non-resident debtor that is treaty-protected property or that is not taxable Canadian property;

Related Provisions: 111(9) — Losses ignored while taxpayer is non-resident.

History: The definition "excluded property" in subsec. 80(1) amended by 1999, c. 22, s. 21, applicable to 1998 *et seq.* The definition formerly read:

> "excluded property" at any time means property of a non-resident debtor that would not be taxable Canadian property of the debtor if it were disposed of at that time by the debtor;

"excluded security" issued by a corporation to a person as consideration for the settlement of a debt means

(a) a distress preferred share issued by the corporation to the person, or

(b) a share issued by the corporation to the person under the terms of the debt, where the debt was a bond, debenture or note listed on a prescribed stock exchange in Canada and the terms for the conversion to the share were not established or substantially modified after the later of February 22, 1994 and the time that the bond, debenture or note was issued;

Regulations: 3200 (prescribed stock exchange; not yet amended to apply for purposes of 80(1)).

"forgiven amount" at any time in respect of a commercial obligation issued by a debtor is the amount determined by the formula

$$A - B$$

where

A is the lesser of the amount for which the obligation was issued and the principal amount of the obligation, and

B is the total of

(a) the amount, if any, paid at that time in satisfaction of the principal amount of the obligation,

(b) the amount, if any, included under paragraph 6(1)(a) or subsection 15(1) in computing the income of any person because of the settlement of the obligation at that time,

(c) the amount, if any, deducted at that time under paragraph 18(9.3)(f) in computing the forgiven amount in respect of the obligation,

(d) the capital gain, if any, of the debtor resulting from the application of subsection 39(3) to the purchase at that time of the obligation by the debtor,

(e) such portion of the principal amount of the obligation as relates to an amount renounced under subsection 66(10), (10.1), (10.2) or (10.3) by the debtor,

(f) any portion of the principal amount of the obligation that is included in the amount determined for A, B, C or D in subsection 79(3) in respect of the debtor for the taxation year of the debtor that includes that time or for a preceding taxation year,

(g) the total of all amounts each of which is a forgiven amount at a previous time that the obligation was deemed by subsection 80.01(8) or (9) to have been settled,

(h) such portion of the principal amount of the obligation as can reasonably be considered to have been included under section 80.4 in computing the debtor's income for a taxation year that includes that time or for a preceding taxation year,

(i) where the debtor is a bankrupt at that time, the principal amount of the obligation,

(j) such portion of the principal amount of the obligation as represents the principal amount of an excluded obligation,

(k) where the debtor is a partnership and the obligation was, since the later of the creation of the partnership or the issue of the obligation, always payable to a member of the partnership actively engaged, on a regular, continuous and substantial basis, in those activities of the partnership that are other than the financing of the partnership business, the principal amount of the obligation, and

(l) the amount, if any, given at or before that time by the debtor to another person as consideration for the assumption by the other person of the obligation;

Related Provisions: 6(15.1) — Meaning of "forgiven amount" for employee benefits; 15(1.21) — Meaning of "forgiven amount" for shareholder benefits; 80(2)(k) — Determination of forgiven amount where obligation denominated in foreign currency; 80.01(1)"forgiven amount" — Application of definition to s. 80.01; 80.01(8)(b) — Determination of forgiven amount following debt parking; 80.02(3)–(6) — Distress preferred share — determination of amount paid in satisfaction of principal; 80.03(1)(a) — Definition applies to s. 80.03; 80.03(7)(b)(ii) — Deemed forgiven amount where amount designated following debt forgiveness; 80.04(1) — Definition applies to s. 80.04; 80.04(4)(f) — Agreement to transfer forgiven amount; 87(2)(h.1) — Amalgamations — continuing corporation; 137.1(10) — Settlement of debts by deposit insurance corporation; 248(26) — Liability deemed to be obligation issued by debtor; 248(27) — Partial settlement of debt obligation; 257 — Formula cannot calculate to less than zero.

I.T. Application Rules: 26(1.1) (debt outstanding since before 1972).

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly").

I.T. Technical News: No. 15 (tax consequences of the adoption of the "euro" currency).

"person" includes a partnership;

Related Provisions: 80(15)(c) — Where commercial debt obligation issued by partnership; 80.01(1)"person" — Definition applies to s. 80.01; 80.02(1) — Definition applies to s. 80.02; 80.03(1)(a) — Definition applies to s. 80.03; 80.04(1) — Definition applies to s. 80.04.

"relevant loss balance" at a particular time for a commercial obligation and in respect of a debtor's non-capital loss, farm loss, restricted farm loss or net capital loss, as the case may be, for a particular taxation year means the amount of such loss that would be deductible in computing the debtor's taxable income or taxable income earned in Canada, as the case may be, for the taxation year that includes that time if

(a) the debtor had sufficient incomes from all sources and sufficient taxable capital gains,

(b) subsections (3) and (4) did not apply to reduce such loss at or after that time, and

(c) paragraph 111(4)(a) and subsection 111(5) did not apply to the debtor,

except that, where the debtor is a corporation the control of which was acquired at a previous time by a person or group of persons and the particular year ended before the previous time, the relevant loss balance at the particular time for the obligation and in respect of such loss for the particular year shall be deemed to be nil unless

(d) the obligation was issued by the debtor before, and not in contemplation of, the acquisition of control, or

(e) all or substantially all of the proceeds from the issue of the obligation were used to satisfy the principal amount of another obligation to which paragraph (d) or this paragraph would apply if the other obligation were still outstanding;

Related Provisions: 80(15)(c)(iv)(B) — Application of para. (e) of definition where obligation issued by partnership; 80.04(4)(h)(ii) — Application of para. (e) of definition on agreement to transfer forgiven amount; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

"successor pool" at any time for a commercial obligation and in respect of an amount determined in relation to a debtor means such portion of that amount as would be deductible under subsection 66.7(2), (3), (4) or (5), as the case may be, in computing the debtor's income for the taxation year that includes that time, if

(a) the debtor had sufficient incomes from all sources,

(b) subsection (8) did not apply to reduce the amount so determined at that time,

(c) the year ended immediately after that time, and

(d) paragraphs 66.7(4)(a) and (5)(a) were read without reference to the expressions "30% of" and "10% of", respectively,

except that the successor pool at that time for the obligation shall be deemed to be nil unless

(e) the obligation was issued by the debtor before, and not in contemplation of, the event described in paragraph (8)(a) that gives rise to the deductibility under subsection 66.7(2), (3), (4) or (5), as the case may be, of all or part of that amount in computing the debtor's income, or

(f) all or substantially all of the proceeds from the issue of the obligation were used to satisfy the principal amount of another obligation to which paragraph (e) or this paragraph would apply if the other obligation were still outstanding;

Related Provisions: 80(15)(c)(iv)(B) — Application of para. (f) of definition where obligation issued by partnership; 80.04(4)(h)(ii) — Application of para. (f) of definition on agreement to transfer forgiven amount; 256(8) — Deemed acquisition of shares.

"unrecognized loss" at a particular time, in respect of an obligation issued by a debtor, from the disposition of a property means the amount that would, but for subparagraph 40(2)(g)(ii), be a capital loss from the disposition by the debtor at or before the particular time of a debt or other right to receive an amount, except that where the debtor is a corporation the control of which was acquired before the particular time and after the time of the disposition by a person or group of persons, the unrecognized loss at the particular time in respect of the obligation is deemed to be nil unless

(a) the obligation was issued by the debtor before, and not in contemplation of, the acquisition of control, or

(b) all or substantially all of the proceeds from the issue of the obligation were used to satisfy the principal amount of another obligation to which paragraph (a) or this paragraph would apply if the other obligation were still outstanding.

Related Provisions: 80(15)(c)(iv)(B) — Application of para. (b) of definition where obligation issued by partnership; 80.04(4)(h)(ii) — Application of para. (b) of definition on agreement to transfer forgiven amount; 87(2)(l.21) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

History: The opening words of the definition "unrecognized loss" in subsec. 80(1) amended by 1998, c. 19, subsec. 111(1), applicable to taxation years that end after February 21, 1994. The opening words formerly read:

> "unrecognized loss" at a particular time, in respect of an obligation issued by a debtor, from the disposition of a property means the amount that would, but for subparagraph 40(2)(g)(ii), be a capital loss from the disposition at or before the particular time of a debt or other right to receive an amount, except that where the debtor is a corporation the control of which was acquired before the particular time and after the time of the disposition by a person or group of persons, the unrecognized loss at the particular time in respect of the obligation shall be deemed to be nil unless

(2) Application of debt forgiveness rules — For the purposes of this section,

(a) **[when obligation settled]** — an obligation issued by a debtor is settled at any time where the obligation is settled or extinguished at that time (otherwise than by way of a bequest or inheritance or as consideration for the issue of a share described in paragraph (b) of the definition "excluded security" in subsection (1));

Related Provisions: 6(15) — Forgiveness of debt owing by employee — taxable benefit; 15(1.2) — Forgiveness of debt owing by shareholder — taxable benefit; 80.01(2)(a) — Application to s. 80.01; 80.01(3)–(9) — Deemed settlement of debts; 80.02(2)(c) — Meaning of "settled" for distress preferred share; 80.02(7)(a) — Deemed settlement where share ceases to be distress preferred share; 80.03(7)(b)(i) — Deemed settlement where amount designated; 80.04(3) — Application to s. 80.04; 80.04(4)(e) — Deemed settlement on agreement to transfer forgiven amount.

(b) **[interest deemed to be obligation]** — an amount of interest payable by a debtor in respect of an obligation issued by the debtor shall be deemed to be an obligation issued by the debtor that

(i) has a principal amount, and

(ii) was issued by the debtor for an amount,

equal to the portion of the amount of such interest that was deductible or would, but for subsection 18(2) or (3.1) or section 21, have been deductible in computing the debtor's income for a taxation year;

Related Provisions: 6(15.1)(d), 15(1.21)(d) — 80(2)(b) ignored for employee and shareholder benefit purposes; 80.01(2)(a) — Application to s. 80.01; 80.04(3) — Application to s. 80.04.

(c) **[ordering of rules]** — subsections (3) to (5) and (7) to (13) apply in numerical order to the forgiven amount in respect of a commercial obligation;

Related Provisions: 80(15) — Deduction by member of partnership; 80.04(4)(b) — Transfer of forgiven amount to related person after maximum designations; 248(27)(b), (c) — Partial settlement of debt deemed to be proportional to entire amount.

(d) **[applicable fraction]** — the applicable fraction of the unapplied portion of a forgiven amount at any time in respect of an obligation issued by a debtor is

(i) in respect of a loss for a taxation year that ends after 1989, 3/4,

(ii) in respect of a loss for a taxation year that ended before 1988, 1/2, and

(iii) in respect of a loss for any other taxation year, the fraction required to be used under section 38 for that year;

(e) **[where applicable fraction reduces loss]** — where an applicable fraction (as determined under paragraph (d)) of the unapplied portion of a forgiven amount is applied under subsection (4) to reduce at any time a loss for a taxation year, the portion of the forgiven amount so applied shall, except for the purpose of reducing the loss, be deemed to be the quotient obtained when the amount of the reduction is divided by the applicable fraction;

(f) **[cumulative eligible capital]** — where 3/4 of the unapplied portion of a forgiven amount is applied under subsection (7) to reduce cumulative eligible capital, except for the purpose of reducing the cumulative eligible capital, the portion of the forgiven amount so applied shall be deemed to be 4/3 of the amount of the reduction;

(g) **[amount paid in satisfaction of debt]** — where a corporation issues a share (other than an excluded security) to a person as consideration for the settlement of a debt issued by the corporation and payable to the person, the amount paid in satisfaction of the debt because of the issue of the share is deemed to be equal to the fair market value of the share at the time it was issued;

Related Provisions: 51(1) — Conversion of convertible debt into shares.

(g.1) **[amount paid in satisfaction of debt]** — where a debt issued by a corporation and payable to a person is settled at any time, the amount, if any, that can reasonably be considered to be the increase, as a consequence of the settlement of the debt, in the fair market value of shares of the capital stock of the corporation owned by the person (other than any shares acquired by the person as consideration for the settlement of the debt) is deemed to be an amount paid at that time in satisfaction of the debt;

(h) **[debt replaced with debt]** — where any part of the consideration given by a debtor to another person for the settlement at any time of a particular commercial debt obligation issued by the debtor and payable to the other person consists of a new commercial debt obligation issued by the debtor to the other person

(i) an amount equal to the principal amount of the new obligation shall be deemed to be paid by the debtor at that time, because of the issue of the new obligation, in satisfaction of the principal amount of the particular obligation, and

(ii) the new obligation shall be deemed to have been issued for an amount equal to the amount, if any, by which

(A) the principal amount of the new obligation

exceeds

(B) the amount, if any, by which the principal amount of the new obligation exceeds the amount for which the particular obligation was issued;

Related Provisions: 40(2)(e.2) — Limitation on capital loss; 80(2)(l) — Where debt replaced with debt to third party; 248(1)"principal amount" — Principal amount excludes amounts payable on account of interest.

I.T. Technical News: No. 15 (tax consequences of the adoption of the "euro" currency).

(i) **[multiple debts settled]** — where 2 or more commercial obligations issued by a debtor are settled at the same time, those obligations shall be treated as if they were settled at different times in the order designated by the debtor in a prescribed form filed with the debtor's return of income under this Part for the debtor's taxation year that includes that time or, if the debtor does not so designate any such order, in the order designated by the Minister;

Related Provisions: 220(3.21)(a) — Late filing, amendment or revocation of designation.

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts.

(j) **["related" and "controlled"]** — for the purpose of determining, at any time, whether 2 persons are related to each other or whether any person is controlled by any other person, it shall be assumed that

(i) each partnership and each trust is a corporation having a capital stock of a single class of voting shares divided into 100 issued shares,

(ii) each member of a partnership and each beneficiary under a trust owned at that time the number

of issued shares of that class that is equal to the proportion of 100 that

(A) the fair market value at that time of the member's interest in the partnership or the beneficiary's interest in the trust, as the case may be

is of

(B) the fair market value at that time of all members' interests in the partnership or all beneficiaries' interests in the trust, as the case may be, and

(iii) where a beneficiary's share of the income or capital of a trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, the fair market value at any time of the beneficiary's interest in the trust is equal to

(A) where the beneficiary is not entitled to receive or otherwise obtain the use of any of the income or capital of the trust before the death after that time of one or more other beneficiaries under the trust, nil, and

(B) in any other case, the total fair market value at that time of all beneficiaries' interests under the trust;

Related Provisions: 40(2)(e.1) — Application to stop-loss rule; 80.01(2)(a) — Application to s. 80.01; 80.04(3) — Application to s. 80.04.

(k) **[foreign currency obligation]** — where an obligation is denominated in a currency (other than Canadian currency), the forgiven amount at any time in respect of the obligation shall be determined with reference to the relative value of that currency and Canadian currency at the time the obligation was issued;

Related Provisions: 79(7) — Parallel rule re proceeds of disposition where property surrendered to creditor; 80.01(11) — Debt parking and statute-barred debt rules ignored where currency fluctuates.

(l) **[debt replaced with debt to third party]** — where an amount is paid in satisfaction of the principal amount of a particular commercial obligation issued by a debtor and, as a consequence of the payment, the debtor is legally obliged to pay that amount to another person, the obligation to pay that amount to the other person shall be deemed to be a commercial obligation that was issued by the debtor at the same time and in the same circumstances as the particular obligation;

Related Provisions: 80(2)(h) — Where debt replaced with new debt; 80.01(2)(a) — Application to s. 80.01.

(m) **[amount reducible only to zero]** — for greater certainty, the amount that can be applied under this section to reduce another amount may not exceed that other amount;

Related Provisions: 257 — Formulas cannot calculate to less than zero.

(n) **[where debt owed by partnership]** — except for the purposes of this paragraph, where

(i) a commercial debt obligation issued by a debtor is settled at any time,

(ii) the debtor is at that time a member of a partnership, and

(iii) the obligation was, under the agreement governing the obligation, treated immediately before that time as a debt owed by the partnership,

the obligation shall be considered to have been issued by the partnership and not by the debtor;

Related Provisions: 80(2)(o) — Override rule where debtor jointly liable with others; 80(15) — Commercial debt obligation issued by partnership; 80.01(2)(a) — Application to s. 80.01; 80.04(3) — Application to s. 80.04.

(o) **[where joint liability for debt]** — notwithstanding paragraph (n), where a commercial debt obligation for which a particular person is jointly liable with one or more other persons is settled at any time in respect of the particular person but not in respect of all of the other persons, the portion of the obligation that can reasonably be considered to be the particular person's share of the obligation shall be considered to have been issued by the particular person and settled at that time and not at any subsequent time;

(p) **[death of debtor]** — a commercial debt obligation issued by an individual that is outstanding at the time of the individual's death and settled at a subsequent time shall, if the estate of the individual was liable for the obligation immediately before the subsequent time, be deemed to have been issued by the estate at the same time and in the same circumstances as the obligation was issued by the individual; and

Related Provisions: 80(2)(q) — Where debt settled within 6 months of death.

(q) **[death of debtor]** — where a commercial debt obligation issued by an individual would, but for this paragraph, be settled at any time in the period ending 6 months after the death of an individual (or within such longer period as is acceptable to the Minister and the estate of the individual) and the estate of the individual was liable immediately before that time for the obligation

(i) the obligation shall be deemed to have been settled at the beginning of the day on which the individual died and not at that time,

(ii) any amount paid at that time by the estate in satisfaction of the principal amount of the obligation shall be deemed to have been paid at the beginning of the day on which the individual died,

(iii) any amount given by the estate at or before that time to another person as consideration for assumption by the other person of the obligation shall be deemed to have been given at the beginning of the day on which the individual died, and

(iv) paragraph (b) shall not apply in respect of the settlement to interest that accrues within that period,

except that this paragraph does not apply in circumstances in which any amount is because of the settlement included under paragraph 6(1)(a) or subsection 15(1) in computing the income of any person or in which section 79 applies in respect of the obligation.

Related Provisions: 6(15.1)(d), 15(1.21)(d) — 80(2)(q) ignored for employee and shareholder benefit purposes; 80(2)(p) — Where debt not settled within 6 months of death.

History: Para. 80(2)(g) amended and para. (g.1) added by 1998, c. 19, subsec. 111(2), applicable to taxation years that end after February 21, 1994. Para. (g) formerly read:

(g) the amount paid in satisfaction of a debt issued by a corporation and payable to a person shall

(i) where any part of the consideration given to the person for the settlement of the debt consists of a share (other than an excluded security) issued by the corporation to the person, be deemed to be equal to the total of

(A) the fair market value of the share at the time it was issued, and

(B) the amount, if any, that can reasonably be considered to be the increase, as a consequence of the settlement of the debt, in the fair market value of other shares of the capital stock of the corporation owned by the person, and

(ii) in any other case, be deemed to include the amount described in clause (i)(B);

(3) Reductions of non-capital losses — Where a commercial obligation issued by a debtor is settled at any time, the forgiven amount at that time in respect of the obligation shall be applied to reduce at that time, in the following order,

(a) the debtor's non-capital loss for each taxation year that ended before that time to the extent that the amount so applied

(i) does not exceed the amount (in subsection (4) referred to as the debtor's "ordinary non-capital loss at that time for the year") that would be the relevant loss balance at that time for the obligation and in respect of the debtor's non-capital loss for the year if the description of E in the definition "non-capital loss" in subsection 111(8) were read without reference to the expression "the taxpayer's allowable business investment loss for the year", and

(ii) does not, because of this subsection, reduce the debtor's non-capital loss for a preceding taxation year;

(b) the debtor's farm loss for each taxation year that ended before that time, to the extent that the amount so applied

(i) does not exceed the amount that is the relevant loss balance at that time for the obligation and in respect of the debtor's farm loss for the year, and

(ii) does not, because of this subsection, reduce the debtor's farm loss for a preceding taxation year; and

(c) the debtor's restricted farm loss for each taxation year that ended before that time, to the extent that the amount so applied

(i) does not exceed the amount that is the relevant loss balance at that time for the obligation and in respect of the debtor's restricted farm loss for the year, and

(ii) does not, because of this subsection, reduce the debtor's restricted farm loss for a preceding taxation year.

Related Provisions: 31(1.1)(b) — Reduction in restricted farm loss; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the amount of losses; 80(4)(a) — Reduction of allowable business investment loss carryforward; 111(8)"farm loss"C — Reduction in farm loss; 111(8)"non-capital loss"D.2 — Reduction in non-capital loss.

(4) Reductions of capital losses — Where a commercial obligation issued by a debtor is settled at any time, the applicable fraction of the remaining unapplied portion of a forgiven amount at that time in respect of the obligation shall be applied to reduce at that time, in the following order,

(a) the debtor's non-capital loss for each taxation year that ended before that time to the extent that the amount so applied

(i) does not exceed the amount, if any, by which

(A) the relevant loss balance at that time for the obligation and in respect of the debtor's non-capital loss for the year

exceeds

(B) the debtor's ordinary non-capital loss (within the meaning assigned by subparagraph (3)(a)(i)) at that time for the year, and

(ii) does not, because of this subsection, reduce the debtor's non-capital loss for a preceding taxation year; and

(b) the debtor's net capital loss for each taxation year that ended before that time, to the extent that the amount so applied

(i) does not exceed the relevant loss balance at that time for the obligation and in respect of the debtor's net capital loss for the year, and

(ii) does not, because of this subsection, reduce the debtor's net capital loss for a preceding taxation year.

Related Provisions: 80(2)(c) — Order of application of rules; 80(2)(e) — Determination of applicable fraction; 80(2)(m) — Reduction cannot exceed the amount of losses; 111(8)"net capital loss"D — Reduction in net capital loss; 111(8)"non-capital loss"D.2 — Reduction in non-capital loss.

(5) Reductions with respect to depreciable property — Where a commercial obligation issued by a debtor is settled at any time, the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied, in such manner as is designated by the debtor in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time, to reduce immediately after that time the following amounts:

(a) the capital cost to the debtor of a depreciable property that is owned by the debtor immediately after that time; and

(b) the undepreciated capital cost to the debtor of depreciable property of a prescribed class immediately after that time.

Related Provisions: 13(7.1)(g) — Reduction in capital cost of depreciable property; 13(21)"undepreciated capital cost"E.1 — Reduction in undepreciated capital cost; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the capital cost or u.c.c.; 80(6) — Restriction with respect to depreciable property; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Regulations: 1105 (prescribed classes of depreciable property).

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts; T2154: Application of designated forgiven debt under sec. 80.

(6) Restriction with respect to depreciable property — Where a commercial obligation issued by a debtor is settled at any time,

(a) an amount may be applied under subsection (5) to reduce, immediately after that time, the capital cost to the debtor of a depreciable property of a prescribed class only to the extent that

(i) the undepreciated capital cost to the debtor of depreciable property of that class at that time

exceeds

(ii) the total of all other reductions immediately after that time to that undepreciated capital cost; and

(b) an amount may be applied under subsection (5) to reduce, immediately after that time, the capital cost to the debtor of a depreciable property (other than a de-

preciable property of a prescribed class) only to the extent that

(i) the capital cost to the debtor of the property at that time

exceeds

(ii) the amount that was allowed to the debtor before that time under Part XVII of the *Income Tax Regulations* in respect of the property.

Regulations: 1105 (prescribed classes of depreciable property).

(7) Reductions of cumulative eligible capital — Where a commercial obligation issued by a debtor is settled at any time, ¾ of the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied (to the extent designated in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time) to reduce immediately after that time the cumulative eligible capital of the debtor in respect of each business of the debtor (or, where the debtor is at that time non-resident, in respect of each business carried on in Canada by the debtor).

Related Provisions: 14(5)"cumulative eligible capital"F:P.1 — Reduction in cumulative eligible capital; 80(2)(c) — Order of application of rules; 80(2)(f) — Rule where cumulative eligible capital reduced; 80(2)(m) — Reduction cannot exceed the amount of cumulative eligible capital; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 220(3.21)(a) — Late filing, amendment or revocation of designation; 253 — Extended meaning of carrying on business in Canada.

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts; T2154: Application of designated forgiven debt under sec. 80.

(8) Reductions of resource expenditures — Where a commercial obligation issued by a debtor is settled at any time, the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied (to the extent designated in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time) to reduce immediately after that time the following amounts:

(a) where the debtor is a corporation resident in Canada throughout that year, each particular amount that would be determined in respect of the debtor under paragraph 66.7(2)(a), (3)(a), (4)(a) or (5)(a) if paragraphs 66.7(4)(a) and (5)(a) were read without reference to the expressions "30% of" and "10% of", respectively, as a consequence of the acquisition of control of the debtor by a person or group of persons, the debtor ceasing to be exempt from tax under this Part on its taxable income or the acquisition of properties by the debtor by way of an amalgamation or merger, where the amount so applied does not exceed the successor pool immediately after that time for the obligation and in respect of the particular amount;

(b) the cumulative Canadian exploration expense (within the meaning assigned by subsection 66.1(6)) of the debtor;

(c) the cumulative Canadian development expense (within the meaning assigned by subsection 66.2(5)) of the debtor;

(d) the cumulative Canadian oil and gas property expense (within the meaning assigned by subsection 66.4(5)) of the debtor; and

(e) the total determined under paragraph 66(4)(a) in respect of the debtor, where

(i) the debtor is resident in Canada throughout that year, and

(ii) the amount so applied does not exceed such portion of the total of the debtor's foreign exploration and development expenses (within the meaning assigned by subsection 66(15)) as were incurred by the debtor before that time and would be deductible under subsection 66(4) in computing the debtor's income for that year if the debtor had sufficient income described in subparagraph 66(4)(b)(ii) and if that year ended at that time.

Related Provisions: 66(4)(a)(iii) — Reduction in claim for foreign exploration and development expenses; 66.1(6)"cumulative Canadian exploration expense"J.1 — Reduction in CCEE; 66.2(5)"cumulative Canadian development expense"M.1 — Reduction in CCDE; 66.4(5)"cumulative Canadian oil and gas property expense"I.1 — Reduction in CCOGPE; 66.7(2)(a)(ii), 66.7(3)(a)(ii), 66.7(4)(a)(iv), 66.7(5)(a)(iii) — Reductions in successor pools; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the resource expenditures reduced; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 220(3.21)(a) — Late filing, amendment or revocation of designation; 256(6)–(9) — Whether control acquired.

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts; T2154: Application of designated forgiven debt under sec. 80.

(9) Reductions of adjusted cost bases of capital properties — Where a commercial obligation issued by a debtor is settled at any time and amounts have been designated under subsections (5), (7) and (8) to the maximum extent permitted in respect of the settlement, subject to subsection (18)

(a) the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied (to the extent designated in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time) to reduce immediately after that time the adjusted cost bases to the debtor of capital properties (other than shares of the capital stock of corporations of which the debtor is a specified shareholder at that time, debts issued by corporations of which the debtor is a specified shareholder at that time, interests in partnerships that are related to the debtor at that time, depreciable property that is not of a prescribed class, personal-use properties and excluded properties) that are owned by the debtor immediately after that time;

(b) an amount may be applied under this subsection to reduce, immediately after that time, the capital cost to the debtor of a depreciable property of a prescribed class only to the extent that

(i) the capital cost immediately after that time to the debtor of the property (determined without reference to the settlement of the obligation at that time)

exceeds

(ii) its capital cost immediately after that time to the debtor for the purposes of paragraphs 8(1)(j) and (p), sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) (determined without reference to the settlement of the obligation at that time); and

(c) for the purposes of paragraphs 8(1)(j) and (p), sections 13 and 20 and any regulations made for the pur-

pose of paragraph 20(1)(a), no amount shall be considered to have been applied under this subsection.

Related Provisions: 53(2)(g.1) — Reduction in ACB; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the adjusted cost base; 80(10), (11) — Reduction of ACB of certain shares, debt and partnership interests; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80(18) — Limitation on designation by partnership; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Regulations: 1105 (prescribed classes of depreciable property).

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts; T2154: Application of designated forgiven debt under sec. 80.

(10) Reduction of adjusted cost bases of certain shares and debts — Where a commercial obligation issued by a debtor is settled at any time in a taxation year and amounts have been designated by the debtor under subsections (5), (7), (8) and (9) to the maximum extent permitted in respect of the settlement, subject to subsection (18) the remaining unapplied portion of that forgiven amount shall be applied (to the extent that it is designated in a prescribed form filed with the debtor's return of income under this Part for the year) to reduce immediately after that time the adjusted cost bases to the debtor of capital properties, owned by the debtor immediately after that time, that are shares of the capital stock of corporations of which the debtor is a specified shareholder at that time and debts issued by corporations of which the debtor is a specified shareholder at that time (other than shares of the capital stock of corporations related to the debtor at that time, debts issued by corporations related to the debtor at that time and excluded properties).

Related Provisions: 53(2)(g.1) — Reduction in ACB; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the adjusted cost base; 80(11) — Reduction of ACB of certain shares, debt and partnership interests; 80(13)D(a) — Income inclusion of remaining balance; 80(16) — Designation by CCRA where debtor fails to designate; 80(18) — Limitation on designation by partnership; 80.04(4)(b) — Transfer of forgiven amount after maximum designations; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts; T2154: Application of designated forgiven debt under sec. 80.

(11) Reduction of adjusted cost bases of certain shares, debts and partnership interests — Where a commercial obligation issued by a debtor is settled at any time in a taxation year and amounts have been designated by the debtor under subsections (5), (7), (8), (9) and (10) to the maximum extent permitted in respect of the settlement, subject to subsection (18) the remaining unapplied portion of that forgiven amount shall be applied (to the extent that it is designated in a prescribed form filed with the debtor's return of income under this Part for the year) to reduce immediately after that time the adjusted cost bases to the debtor of

(a) shares and debts that are capital properties (other than excluded properties and properties the adjusted cost bases of which are reduced at that time under subsection (9) or (10)) of the debtor immediately after that time; and

(b) interests in partnerships that are related to the debtor at that time that are capital properties (other than excluded properties) of the debtor immediately after that time.

Related Provisions: 53(2)(g.1) — Reduction in ACB; 80(2)(c) — Order of application of rules; 80(2)(m) — Reduction cannot exceed the adjusted cost base; 80(13)B(a) — Income inclusion where reductions in ACB are excessive; 80(16) — Designation by CCRA where debtor fails to designate; 80(18) — Limitation on designation by partnership; 80.03 — Gains on subsequent dispositions; 96(3) — Designation by members of partnership; 220(3.21)(a) — Late filing, amendment or revocation of designation.

Forms: T2153: Designations under para. 80(2)(i) for forgiven debts; T2154: Application of designated forgiven debt under sec. 80.

(12) Capital gain where current year capital loss — Where a commercial obligation issued by a debtor (other than a partnership) is settled at any time in a taxation year and amounts have been designated by the debtor under subsections (5), (7), (8) and (9) to the maximum extent permitted in respect of the settlement,

(a) the debtor shall be deemed to have a capital gain for the year from the disposition of capital property (or, where the debtor is non-resident at the end of the year, taxable Canadian property), equal to the lesser of

(i) the remaining unapplied portion of the forgiven amount at that time in respect of the obligation, and

(ii) the amount, if any, by which the total of

(A) all of the debtor's capital losses for the year from the dispositions of properties (other than listed personal properties and excluded properties), and

(B) 4/3 of the amount that would, because of subsection 88(1.2), be deductible under paragraph 111(1)(b) in computing the debtor's taxable income for the year, if the debtor had sufficient income and taxable capital gains for the year,

exceeds the total of

(C) all of the debtor's capital gains for the year from the dispositions of such properties (determined without reference to this subsection), and

(D) all amounts each of which is an amount deemed by this subsection to be a capital gain of the debtor for the year as a consequence of the application of this subsection to other commercial obligations settled before that time; and

(b) the forgiven amount at that time in respect of the obligation shall be considered to have been applied under this subsection to the extent of the amount deemed by this subsection to be a capital gain of the debtor for the year as a consequence of the application of this subsection to the settlement of the obligation at that time.

Related Provisions: 80(2)(c) — Order of application of rules.

(13) Income inclusion — Where a commercial obligation issued by a debtor is settled at any time in a taxation year, there shall be added, in computing the debtor's income for the year from the source in connection with which the obligation was issued, the amount determined by the formula

$$(A + B - C - D) \times E$$

where

A is the remaining unapplied portion of the forgiven amount at that time in respect of the obligation,

B is the lesser of

(a) the total of all amounts designated under subsection (11) by the debtor in respect of the settlement of the obligation at that time, and

(b) the residual balance at that time in respect of the settlement of the obligation,

C is the total of all amounts each of which is an amount specified in an agreement filed under section 80.04 in respect of the settlement of the obligation at that time,

D is

(a) where the debtor has designated amounts under subsections (5), (7), (8), (9) and (10) to the maximum extent permitted in respect of the settlement, the amount, if any, by which

(i) the total of all amounts each of which is an unrecognized loss at that time, in respect of the obligation, from the disposition of a property

exceeds

(ii) 4/3 of the total of all amounts each of which is an amount by which the amount determined before that time under this subsection in respect of a settlement of an obligation issued by the debtor has been reduced because of an amount determined under this paragraph, and

(b) in any other case, nil, and

E is

(a) where the debtor is a partnership, 1, and

(b) in any other case, 0.75.

Related Provisions: 4(1) — Income from a source; 12(1)(z.3) — Inclusion into income from business or property; 28(1)(d) — Inclusion in farming or fishing income when using cash method; 61.2–61.4 — Reserves to offset amount included under 80(13); 66.7(1)(b)(iii), 66.7(2)(b)(iv), 66.7(3)(b)(iii), 66.7(4)(b)(iii), 66.7(5)(b)(iii) — Resource expenditures — reduction in successor pools; 80(2)(c) — Order of application of rules; 80(14) — Determination of residual balance; 80(16) — Designation by CCRA to reduce reserve under 61.2; 80.04(8) — Where corporations become related in order to transfer forgiven amount; 95(1)"foreign accrual property income"A.1 — 4/3 inclusion in FAPI; 137.1(10) — Settlement of debts by deposit insurance corporation; 257 — Formula cannot calculate to less than zero.

History: Para. (b) of the description of B in subsec. 80(13) amended by 1998, c. 19, subsec. 111(3), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(b) the total of

(i) the residual balance at that time in respect of the settlement of the obligation, and

(ii) the amount, if any, by which the amount determined for C in respect of the settlement exceeds the amount determined for A in respect of the settlement,

Interpretation Bulletins: See list at end of s. 80.

Information Circulars: See list at end of s. 80.

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly").

(14) Residual balance — For the purpose of subsection (13), the residual balance at any time in a taxation year in respect of the settlement of a particular commercial obligation issued by a debtor is the amount, if any, by which

(a) the gross tax attributes of directed persons at that time in respect of the debtor

exceeds the total of

(b) the value of A in subsection (13) in respect of the settlement of the particular obligation at that time,

(c) all amounts each of which is

(i) the amount, if any, by which the value of A in subsection (13) in respect of a settlement before that time and in the year of a commercial obligation issued by the debtor exceeds the value of C in that subsection in respect of the settlement,

(ii) the value of A in subsection (13) in respect of a settlement of a commercial obligation that is deemed by paragraph 80.04(4)(e) to have been issued by a directed person in respect of the debtor because of the filing of an agreement under section 80.04 in respect of a settlement before that time and in the year of a commercial obligation issued by the debtor, or

(iii) the amount specified in an agreement (other than an agreement with a directed person in respect of the debtor) filed under section 80.04 in respect of the settlement before that time and in the year of a commercial obligation issued by the debtor, and

(d) all amounts each of which is an amount in respect of a settlement at a particular time before that time and in the year of a commercial obligation issued by the debtor equal to the least of

(i) the total of all amounts designated under subsection (11) in respect of the settlement,

(ii) the residual balance of the debtor at the particular time, and

(iii) the amount, if any, by which the sum of the values of A and B in subsection (13) in respect of the settlement exceeds the value of C in that subsection in respect of the settlement.

Related Provisions: 80(14.1) — Meaning of "gross tax attributes".

History: Subsec. 80(14) amended by 1998, c. 19, subsec. 111(4), applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(14) For the purpose of subsection (13), the residual balance at any time in a taxation year in respect of the settlement of a particular commercial obligation issued by a debtor is the amount, if any, by which the total of

(a) all amounts each of which is an amount that would be applied under any of subsections (3) to (10) and (12) in respect of the settlements of separate commercial obligations issued by directed persons at that time in respect of the debtor if

(i) those obligations were issued at that time by those directed persons and were settled immediately after that time,

(ii) an amount equal to the forgiven amount at that time in respect of the particular obligation were the forgiven amount immediately after that time in respect of each of those obligations,

(iii) amounts were designated under subsections (5), (7), (8), (9) and (10) by those directed persons to the maximum extent permitted in respect of the settlement of each of those obligations, and

(iv) no amounts were designated under subsection (11) by any of those directed persons in respect of the settlement of any of those obligations, and

(b) where the debtor is a partnership, all amounts each of which is 1/4 of an amount deducted because of paragraph (c) or (d) in computing the residual balance at that time in respect of the settlement of the particular obligation,

exceeds the total of

(c) all amounts each of which is 4/3 of the amount that would be included under subsection (13) in computing the debtor's income for the year in respect of the settlement at or before that time of a commercial obligation issued by the debtor if the amounts determined for B and D in subsection (13) were nil,

(d) all amounts each of which is 4/3 of an amount that would, if the amount determined for D in subsection (13) were nil, be included under subsection (13) in computing the income of any of those directed persons in respect of the settlement of an obligation that is deemed by paragraph 80.04(4)(e) to have been issued by the directed person because of the filing of an agreement under section 80.04 in respect of the settlement at or before that time and in the year of a commercial obligation issued by the debtor,

(e) all amounts each of which is an amount specified in an agreement (other than an agreement with any of those directed persons) filed under section 80.04 in respect of the settlement at

or before that time and in the year of a commercial obligation issued by the debtor, and

(f) all amounts each of which is the lesser of

(i) the total of all amounts designated under subsection (11) in respect of the settlement before that time and in the year of another commercial obligation issued by the debtor, and

(ii) the residual balance of the debtor at that previous time.

(14.1) Gross tax attributes — The gross tax attributes of directed persons at any time in respect of a debtor means the total of all amounts each of which is an amount that would be applied under any of subsections (3) to (10) and (12) in respect of a settlement of a separate commercial obligation (in this subsection referred to as a "notional obligation") issued by directed persons at that time in respect of the debtor if the following assumptions were made:

(a) a notional obligation was issued immediately before that time by each of those directed persons and was settled at that time;

(b) the forgiven amount at that time in respect of each of those notional obligations was equal to the total of all amounts each of which is a forgiven amount at or before that time and in the year in respect of a commercial obligation issued by the debtor;

(c) amounts were designated under subsections (5), (7), (8), (9) and (10) by each of those directed persons to the maximum extent permitted in respect of the settlement of each of those notional obligations; and

(d) no amounts were designated under subsection (11) by any of those directed persons in respect of the settlement of any of the notional obligations.

History: Subsec. 80(14.1) added by 1998, c. 19, subsec. 111(4), applicable to taxation years that end after February 21, 1994.

(15) Members of partnerships — Where a commercial debt obligation issued by a partnership (in this subsection referred to as the "partnership obligation") is settled at any time in a fiscal period of the partnership that ends in a taxation year of a member of the partnership,

(a) the member may deduct, in computing the member's income for the year, such amount as the member claims not exceeding the relevant limit in respect of the partnership obligation;

(b) for the purpose of paragraph (a), the relevant limit in respect of the partnership obligation is the amount that would be included in computing the member's income for the year as a consequence of the application of subsection (13) and section 96 to the settlement of the partnership obligation if the partnership had designated amounts under subsections (5), (7), (8), (9) and (10) to the maximum extent permitted in respect of each obligation settled in that fiscal period and if income arising from the application of subsection (13) were from a source of income separate from any other sources of partnership income; and

(c) for the purposes of this section and section 80.04,

(i) the member shall be deemed to have issued a commercial debt obligation that was settled at the end of that fiscal period,

(ii) the amount deducted under paragraph (a) in respect of the partnership obligation in computing the member's income shall be treated as if it were the forgiven amount at the end of that fiscal period in respect of the obligation referred to in subparagraph (i),

(iii) subject to subparagraph (iv), the obligation referred to in subparagraph (i) shall be deemed to have been issued at the same time at which, and in the same circumstances in which, the partnership obligation was issued,

(iv) where the member is a corporation the control of which was acquired at a particular time that is before the end of that fiscal period and before the corporation became a member of the partnership and the partnership obligation was issued before the particular time,

(A) subject to the application of this subparagraph to an acquisition of control of the corporation after the particular time and before the end of that fiscal period, the obligation referred to in subparagraph (i) shall be deemed to have been issued by the member after the particular time, and

(B) paragraph (e) of the definition "relevant loss balance" in subsection (1), paragraph (f) of the definition "successor pool" in that subsection and paragraph (b) of the definition "unrecognized loss" in that subsection do not apply in respect of that acquisition of control, and

(v) the source in connection with which the obligation referred to in subparagraph (i) was issued shall be deemed to be the source in connection with which the partnership obligation was issued.

Related Provisions: 4(1) — Income from a source; 20(1)(uu) — Deduction for amount allowed under para. 80(15)(a); 61.2:A(b) — Effect of para. 80(15)(a) on reserve for individuals; 61.2:A(b), 61.3(1)(a)(ii), 61.3(2)(a)(ii), 61.4(a)A(ii) — Reserve in respect of debt forgiven; 80(1) — "Person" includes a partnership; 80(2)(n) — Commercial debt obligation issued by partner — deemed issued by partnership; 80(13)E(a) — Income inclusion where debtor is partnership; 80(14)(b) — Residual balance where debtor is partnership; 80(18) — Limitation on designation by partnership; 96(3) — Designation by members of partnership; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

(16) Designations by Minister — Where a commercial obligation issued by a debtor is settled at any time in a taxation year and, as a consequence of the settlement an amount would, but for this subsection, be deducted under section 61.2 or 61.3 in computing the debtor's income for the year and the debtor has not designated amounts under subsections (5) to (11) to the maximum extent possible in respect of the settlement,

(a) the Minister may designate amounts under subsections (5) to (11) to the extent that the debtor would have been permitted to designate those amounts; and

(b) the amounts designated by the Minister shall, except for the purpose of this subsection, be deemed to have been designated by the debtor as required by subsections (5) to (11).

(17) [Repealed]

History: Subsec. 80(17) repealed by 1998, c. 19, subsec. 111(5), applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(17) **Income inclusion where residual balance a positive amount** — Where a commercial obligation issued by a corporation is settled at any time in a taxation year and, as a consequence of the settlement an amount is deducted under section 61.3 in computing the corporation's income for the year, unless the corporation has commenced to wind up on or before the day that is 12 months after the end of the year there shall be added in computing the corpora-

tion's income for the year from the source in connection with which the obligation was issued 50% of the lesser of

(a) the total of all amounts designated under subsection (11) by the corporation in respect of the settlement of the obligation at that time, and

(b) the amount, if any, by which the lesser of

(i) the residual balance (within the meaning assigned by subsection (14)) of the corporation at that time in respect of the settlement of the obligation, and

(ii) the amount, if any, by which the amount deducted under section 61.3 in computing the corporation's income for the year exceeds the amount, if any, deducted because of paragraph 37(1)(f.1) in determining the balance determined under subsection 37(1) in respect of the corporation after the year because of an amount deducted under section 61.3 in computing the corporation's income for the year

exceeds the total of all amounts included because of this subsection in computing the corporation's income for the year in respect of a settlement before that time of a commercial obligation issued by the corporation.

(18) Partnership designations — Where a commercial obligation issued by a partnership is settled at any time after December 20, 1994, the amount designated under subsection (9), (10) or (11) in respect of the settlement by the partnership to reduce the adjusted cost base of a capital property acquired shall not exceed the amount, if any, by which the adjusted cost base at that time to the partnership of the property exceeds the fair market value at that time of the property.

History [s. 80]: S. 80 substituted by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that

(a) the amended section does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994;

(b) in its application with respect to interest accruing before July 14, 1990, the words "was deductible" in paragraph 80(2)(b), shall be read as "was deducted"; and

(c) a form referred to in section 80 shall be deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue before 1996.

Definitions [s. 80]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "applicable fraction" — 80(2)(d); "bankrupt" — 248(1); "beneficially interested" — 248(25); "business" — 80.03(7)(b)(iii), 248(1); "Canada" — 255; "Canadian partnership" — 102(1), 248(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "carried on in Canada" — 253; "commercial debt obligation" — 80(1); "control" — 80(2)(j), 256(6)–(9); "controlled, directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "debtor" — 80(1); "depreciable property" — 13(21), 248(1); "directed person" — 80(1); "distress preferred share", "eligible Canadian partnership", "excluded obligation", "excluded property", "excluded security" — 80(1); "farm loss" — 111(8), 248(1); "fiscal period" — 249(2)(b), 249.1; "forgiven amount" — 80(1), 80.01(8)(b), 80.03(7)(b)(ii); "gross tax attributes" — 80(14.1) "listed personal property" — 54, 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "ordinary non-capital loss" — 80(3)(a)(i); "partnership obligation" — 80(15); "person" — 80(1), 248(1); "personal-use property" — 54, 248(1); "prescribed", "principal amount", "property", "regulation" — 248(1); "related" — 80(2)(j), 251(2); "relevant limit" — 80(15)(b); "relevant loss balance" — 80(1); "residual balance" — 80(14); "resident in Canada" — 250; "restricted farm loss" — 31, 248(1); "settled" — 80(2)(a), 80.01(3)–(9), 80.02(2)(c), 80.02(7)(a), 80.03(7)(b)(i); "share" — 248(1); "source" — 4(1), 80.03(7)(b)(iv); "specified shareholder" — 248(1); "successor pool" — 80(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 11(2), 249; "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "unrecognized loss" — 80(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 80]: 26(1.1) (debt outstanding since before 1972.).

Interpretation Bulletins [s. 80]: IT-109R2: Unpaid amounts; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-143R2: Meaning of "eligible capital expenditure"; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-268R3: *Inter vivos* transfer of farm property to child; IT-293R: Debtor's gain on settlement of debt; IT-382: Debts bequeathed or forgiven on death; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-474R: Amalgamations of Canadian corporations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Information Circulars [s. 80]: 88-2, para. 23: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, para. 6: General anti-avoidance rule — section 245 of the *Income Tax Act*.

History [former s. 80]: *subsec. 80(4)*

Subsec. 80(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 58, applicable to interest in respect of debts or other obligations settled or extinguished after May 9, 1985, except that, in its application to interest accruing before July 14, 1990, the subsec. shall be read as follows:

(4) For the purposes of subsections (1) and (3), an amount of interest in respect of a debt or other obligation of a taxpayer shall be deemed to be a debt or other obligation issued by the taxpayer that

(a) has a principal amount, and

(b) was issued by the taxpayer for an amount,

equal to the portion of the amount of the interest that was deducted, or would, but for subsection 18(2) or (3.1) or section 21, be deductible, in computing the taxpayer's income under this Part for a taxation year.

Subsec. (4) formerly read:

(4) Principal for interest payable — For the purposes of subsections (1) and (3), an amount of interest payable by a taxpayer on a debt or other obligation shall be deemed to have a principal amount equal to the portion thereof that was deducted, or would, but for subsection 18(2) or (3.1) or section 21, have been deductible, in computing the taxpayer's income for a taxation year under this Part.

Pre-RSC History [former s. 80]: *subsec. 80(1)*

Para. 80(1)(f) substituted by 1987, c. 46, s. 27, applicable to 1983 *et seq.* Para. (f) formerly read:

(f) the excess is otherwise required to be included in computing his income for the year or to be deducted in computing the capital cost to him of any depreciable property or the adjusted cost base to him of any capital property,

Para. 80(1)(d) substituted, paras. 80(1)(g) and (h) added by 1985, c. 45, subsecs. 37(1), (2), applicable with respect to debts and obligations settled or extinguished after May 9, 1985. Para. (d) formerly read:

(d) the debt or obligation was such that, if interest had been paid by the taxpayer in respect of it, no deduction would have been permitted by this Part in respect of that interest in computing the taxpayer's income,

Subpara. 80(1)(a)(i.1) added by 1984, c. 1, s. 35, applicable to 1983 *et seq.*

S. 80 renumbered as subsec. 80(1) by 1980-81-82-83, c. 140, subsec. 43(1), applicable after November 12, 1981.

Para. 80(1)(f) substituted by 1973-74, c. 14, s. 21, applicable to 1972 *et seq.*

subsec. 80(2)

Subsec. 80(2) added by 1980-81-82-83, c. 140, subsec. 43(2), applicable to amalgamations occurring after November 12, 1981.

subsec. 80(3)

Subsec. 80(3) substituted by 1985, c. 45, subsec. 37(3), applicable with respect to debts and other obligations settled or extinguished after 1983 except that an election under subsec. 80(3) in respect of the settlement or extinguishment of a debt or other obligation of a parent to pay an amount to a subsidiary may be filed in prescribed form at any time on or before the day that is the later of

(a) the day on or before which it would be required by subsec. 80(3) to be filed, and

(b) December 31, 1986.

Subsec. (3) formerly read:

(3) Deemed settlement on winding-up — Where there has been a winding-up to which subsection 88(1) applies and a debt or other obligation of the subsidiary to pay an amount to the parent is settled or extinguished on the winding-up without any payment by the subsidiary or by the payment of an amount less than both the principal amount of the debt or obligation and the amount that would have been the parent's cost amount of the debt or obligation immediately before the winding-up if the definition "cost amount" in section 248 were read without reference to paragraph (e) thereof, the debt or obligation shall be deemed to have been settled or extinguished on the winding-up by a payment made by the subsidiary and received by the parent of an amount equal to the amount that would have been the parent's cost amount of the debt or obligation immediately before the winding-up if the definition "cost amount" in section 248 were read without reference to paragraph (e) thereof, if the parent so elects in prescribed form on or before the day the parent is required to file a return of income pursuant to section 150 for the taxation year in which the debt or obligation was settled or extinguished.

Subsec. 80(3) added by 1980-81-82-83, c. 140, subsec. 43(2), applicable by 1984, c. 1, s. 110 (deemed in force on March 30, 1983), to windings-up occurring after November 12, 1981, except that an election under subsec. 80(3) may be made at any time before 1984.

subsec. 80(4)

Subsec. 80(4) added by 1985, c. 45, subsec. 37(4), applicable with respect to debts and obligations settled or extinguished after May 9, 1985.

Selected Cases [former s. 80]: *Queenswood Land Associates Ltd. v. R.*, [2000] 1 C.T.C. 352 (FCA); rev'g [1997] 2 C.T.C. 2688 (TCC) (Court cannot, absent sham, recharacterize legal relationships); *Metro-Can Construction Ltd. v. R.*, [1999] 2 C.T.C. 2206 (TCC) (Provision applies at partnership level, not at level of individual partner); *Central City Financial Services Ltd. v. R*, [1997] 3 C.T.C. 2949 (TCC) (Mere assignment of debt is not a settlement of it); *Wigmar Holdings Ltd. v. R.*, [1997] 2 C.T.C. 263 (FCA) (Test in section 80 is legal settlement or extinguishment of particular debt in legally binding form); *Queenswood Associates Ltd. v. R.*, [1997] 2 C.T.C. 2688 (TCC) (Forgiveness of debt related to inventory to be included in computation of income); *Molstad Development Co. v. Canada*, [1997] 2 C.T.C. 2360 (TCC) (Borrowed funds were capital, even if proceeds used to acquire inventory); *Denthor Developments Ltd. v. Canada*, [1997] 1 C.T.C. 2075 (TCC) (No proceeds of disposition of land until land is sold); *Carma Developers Ltd. v. Canada*, [1996] 3 C.T.C. 2029 (TCC) ("Settlement" means final settlement and extinguishment of debt from debtor's perspective); *King Rentals Ltd. v. Canada*, [1995] 2 C.T.C. 2612 (TCC) (Consideration for debt was amount of debt for which shares were issued and credit made to share capital, not fair market value of the debt).

80.01 (1) Definitions — In this section,

"commercial debt obligation" has the meaning assigned by subsection 80(1);

"commercial obligation" has the meaning assigned by subsection 80(1);

"debtor" has the meaning assigned by subsection 80(1);

"distress preferred share" has the meaning assigned by subsection 80(1);

"forgiven amount" has the meaning assigned by subsection 80(1) except that, where an amount would be included in computing a person's income under paragraph 6(1)(a) or subsection 15(1) as a consequence of the settlement of an obligation if the obligation were settled without any payment being made in satisfaction of its principal amount, "forgiven amount" in respect of that obligation has the meaning assigned by subsection 6(15.1) or 15(1.21), as the case may be;

"person" has the meaning assigned by subsection 80(1);

"specified cost" at any time to a person of an obligation means,

(a) where the obligation is capital property of the person at that time, the adjusted cost base at that time to the person of the obligation, and

(b) in any other case, the cost amount to the person of the obligation.

(2) Application — For the purposes of this section,

(a) paragraphs 80(2)(a), (b), (j), (l) and (n) apply; and

(b) a person has a significant interest in a corporation at any time if the person owned at that time

(i) shares of the capital stock of the corporation that would give the person 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, or

(ii) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the corporation

and, for the purposes of this paragraph, a person shall be deemed to own at any time each share of the capital stock of a corporation that is owned, otherwise than because of this paragraph, at that time by another person with whom the person does not deal at arm's length.

(3) Deemed settlement on amalgamation — Where a commercial obligation or another obligation (in this subsection referred to as the "indebtedness") of a debtor that is a corporation to pay an amount to another corporation (in this subsection referred to as the "creditor") is settled on an amalgamation of the debtor and the creditor, the indebtedness shall be deemed to have been settled immediately before the time that is immediately before the amalgamation by a payment made by the debtor and received by the creditor of an amount equal to the amount that would have been the creditor's cost amount of the indebtedness at that time if

(a) the definition "cost amount" in subsection 248(1) were read without reference to paragraph (e) of that definition; and

(b) that cost amount included amounts added in computing the creditor's income in respect of the portion of the indebtedness representing unpaid interest, to the extent those amounts have not been deducted in computing the creditor's income as bad debts in respect of that unpaid interest.

Related Provisions: 80(3)–(13) — Treatment of obligation deemed to have been settled.

(4) Deemed settlement on winding-up — Where there is a winding-up of a subsidiary to which the rules in subsection 88(1) apply and

(a) a debt or other obligation (in this subsection referred to as the "subsidiary's obligation") of the subsidiary to pay an amount to the parent, or

(b) a debt or other obligation (in this subsection referred to as the "parent's obligation") of the parent to pay an amount to the subsidiary

is, as a consequence of the winding-up, settled at a particular time without any payment of an amount or by the payment of an amount that is less than the principal amount of the subsidiary's obligation or the parent's obligation, as the case may be,

(c) where that payment is less than the amount that would have been the cost amount to the parent or subsidiary of the subsidiary's obligation or the parent's obligation immediately before the particular time if the definition "cost amount" in subsection 248(1) were read without reference to paragraph (e) of that definition and the parent so elects in a prescribed form on or before the day on or before which the parent is required to file a return of income pursuant to section 150 for the taxation year that includes the particular time, the amount paid at that time in satisfaction of the principal amount of the subsidiary's obligation or the parent's obligation shall be deemed to be equal to the amount that would be the cost amount to the parent or the subsidiary, as the case may be, of the subsidiary's obligation or the parent's obligation immediately before the particular time if

(i) the definition "cost amount" in subsection 248(1) were read without reference to paragraph (e) of that definition, and

(ii) that cost amount included amounts added in computing the parent's income or the subsidiary's income in respect of the portion of the indebtedness representing unpaid interest, to the extent that the parent or the subsidiary has not deducted any amounts as bad debts in respect of that unpaid interest, and

(d) for the purposes of applying section 80 to the subsidiary's obligation, where property is distributed at any time in circumstances to which paragraph 88(1)(a) or (b) applies and the subsidiary's obligation is settled as a consequence of the distribution, the subsidiary's obligation shall be deemed to have been settled immediately before the time that is immediately before the time of the distribution and not at any later time.

Related Provisions: 50(1)(b)(ii) — Deemed disposition of debt or shares on winding-up; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.01(5) — Where distress preferred share issued; 220(3.2), Reg. 600(b) — Late filing or revocation of election under 80.01(4)(c).

Advance Tax Rulings: ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

Forms: T2027: Election to deem amount of settlement of a debt or obligation.

(5) Deemed settlement on winding-up — Where there is a winding-up of a subsidiary to which the rules in subsection 88(1) apply and, as a consequence of the winding-up, a distress preferred share issued by the subsidiary and owned by the parent (or a distress preferred share issued by the parent and owned by the subsidiary) is settled at any time without any payment of an amount or by the payment of an amount that is less than the principal amount of the share,

(a) where the payment was less than the adjusted cost base of the share to the parent or the subsidiary, as the case may be, immediately before that time, for the purposes of applying the provisions of this Act to the issuer of the share, the amount paid at that time in satisfaction of the principal amount of the share shall be deemed to be equal to its adjusted cost base to the parent or to the subsidiary, as the case may be; and

(b) for the purposes of applying section 80 to the share, where property is distributed at any time in circumstances to which paragraph 88(1)(a) or (b) applies and the share is settled as a consequence of the distribution, the share shall be deemed to have been settled immediately before the time that is immediately before the time of the distribution and not at any later time.

Related Provisions: 50(1)(b)(ii) — Deemed disposition of debt or shares on winding-up; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.02(2)(c) — Meaning of "settled" for distress preferred shares; 88(1)(b) — Determination of proceeds of disposition to parent.

(6) Specified obligation in relation to debt parking — For the purpose of subsection (7), an obligation issued by a debtor is, at a particular time, a specified obligation of the debtor where

(a) at any previous time (other than a time before the last time, if any, the obligation became a parked obligation before the particular time),

(i) a person who owned the obligation

(A) dealt at arm's length with the debtor, and

(B) where the debtor is a corporation, did not have a significant interest in the debtor, or

(ii) the obligation was acquired by the holder of the obligation from another person who was, at the time of that acquisition, not related to the holder or related to the holder only because of paragraph 251(5)(b); or

(b) the obligation is deemed by subsection 50(1) to be reacquired at the particular time.

Related Provisions: 80(2)(j), 80.01(2)(a) — Special rules for determining the meaning of "related" and "arm's length"; 80.01(7) — Meaning of "parked obligation".

(7) Parked obligation — For the purposes of this subsection and subsections (6), (8) and (10),

(a) an obligation issued by a debtor is a "parked obligation" at any time where at that time

(i) the obligation is a specified obligation of the debtor, and

(ii) the holder of the obligation

(A) does not deal at arm's length with the debtor, or

(B) where the debtor is a corporation and the holder acquired the obligation after July 12, 1994 (otherwise than pursuant to an agreement in writing entered into on or before July 12, 1994), has a significant interest in the debtor; and

(b) an obligation that is, at any time, acquired or reacquired in circumstances to which subparagraph (6)(a)(ii) or paragraph (6)(b) applies shall, if the obligation is a parked obligation immediately after that

time, be deemed to have become a parked obligation at that time.

Related Provisions: 80(2)(j), 80.01(2)(a) — Special rules for determining the meaning of "related" and thence "arm's length"; 80.01(6) — Meaning of "specified obligation".

(8) Deemed settlement after debt parking — Where at any particular time after February 21, 1994 a commercial debt obligation that was issued by a debtor becomes a parked obligation (otherwise than pursuant to an agreement in writing entered into before February 22, 1994) and the specified cost at the particular time to the holder of the obligation is less than 80% of the principal amount of the obligation, for the purpose of applying the provisions of this Act to the debtor

(a) the obligation shall be deemed to have been settled at the particular time; and

(b) the forgiven amount at the particular time in respect of the obligation shall be determined as if the debtor had paid an amount at the particular time in satisfaction of the principal amount of the obligation equal to that specified cost.

Related Provisions: 40(2)(e.1), (e.2), (g)(ii) — Stop-loss rules on disposition of debt; 50(1)(a) — Deemed disposition of bad debt; 79(3)F(b)(i), (iii) — Where property surrendered to creditor; 80(1)"forgiven amount"B(g) — Debt forgiveness rules do not apply if parked obligation subsequently forgiven; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.01(7) — Meaning of "parked obligation"; 80.01(10) — Subsequent payments; 80.01(11) — Foreign currency fluctuation to be ignored.

(9) Statute-barred debt — Where at any particular time after February 21, 1994 a commercial debt obligation issued by a debtor that is payable to a person (other than a person with whom the debtor is related at the particular time) becomes unenforceable in a court of competent jurisdiction because of a statutory limitation period and the obligation would, but for this subsection, not have been settled or extinguished at the particular time, for the purpose of applying the provisions of this Act to the debtor, the obligation shall be deemed to have been settled at the particular time.

Related Provisions: 80(1)"forgiven amount"B(g) — Debt forgiveness rules do not apply; 80(2)(j), 80.01(2)(a) — Special rules for determining the meaning of "related"; 80(3)–(13) — Treatment of obligation deemed to have been settled; 80.01(10) — Subsequent payments; 80.01(11) — Foreign currency fluctuation to be ignored.

(10) Subsequent payments in satisfaction of debt — Where a commercial debt obligation issued by a debtor is first deemed by subsection (8) or (9) to have been settled at a particular time, at a subsequent time a payment is made by the debtor of an amount in satisfaction of the principal amount of the obligation and it cannot reasonably be considered that one of the reasons the obligation became a parked obligation or became unenforceable, as the case may be, before the subsequent time was to have this subsection apply to the payment, in computing the debtor's income for the taxation year (in this subsection referred to as the "subsequent year") that includes the subsequent time from the source in connection with which the obligation was issued, there may be deducted the amount determined by the formula

$$0.75(A - B) - C$$

where

A is the amount of the payment,

B is the amount, if any, by which

(a) the principal amount of the obligation

exceeds the total of

(b) all amounts each of which is a forgiven amount at any time

(i) in the period that began at the particular time and ended immediately before the subsequent time, and

(ii) at which a particular portion of the obligation is deemed by subsection (8) or (9) to be settled

in respect of the particular portion, and

(c) all amounts paid in satisfaction of the principal amount of the obligation in the period that began at the particular time and ended immediately before the subsequent time, and

C is the amount, if any, by which the total of

(a) all amounts deducted under section 61.3 in computing the debtor's income for the subsequent year or a preceding taxation year,

(b) all amounts added because of subsection 80(13) in computing the debtor's income for the subsequent year or a preceding taxation year in respect of a settlement under subsection (8) or (9) in a period during which the debtor was exempt from tax under this Part on its taxable income, and

(c) all amounts added because of subsection 80(13) in computing the debtor's income for the subsequent year or a preceding taxation year in respect of a settlement under subsection (8) or (9) in a period during which the debtor was non-resident (other than any of those amounts added in computing the debtor's taxable income or taxable income earned in Canada)

exceeds the total of

(d) the amount, if any, deducted because of paragraph 37(1)(f.1) in determining the balance determined under subsection 37(1) in respect of the debtor immediately after the subsequent year, and

(e) all amounts by which the amount deductible under this subsection in respect of a payment made by the debtor before the subsequent time in computing the debtor's income for the subsequent year or a preceding year has been reduced because of this description.

Related Provisions: 3, 4(1) — Income from a source; 20(1)(uu) — Deduction for amount allowed under subsec. 80.01(10); 80.01(7) — Meaning of "parked obligation"; 87(2)(l.21) — Amalgamations — continuing corporation; 257 — Formula cannot calculate to less than zero.

(11) Foreign currency gains and losses — Where an obligation issued by a debtor is denominated in a currency (other than the Canadian currency) and the obligation is deemed by subsection (8) or (9) to have been settled, those subsections do not apply for the purpose of determining any gain or loss of the debtor on the settlement that is attributable to a fluctuation in the value of the currency relative to the value of Canadian currency.

Related Provisions: 39(2) — Gain or loss on fluctuation of foreign currency; 79(7) — Currency fluctuation where property surrendered to creditor; 80(2)(k) — Determination of forgiven amount where obligation denominated in foreign currency.

I.T. Technical News: No. 15 (tax consequences of the adoption of the "euro" currency).

History [s. 80.01]: S. 80.01 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that it does not,

other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994.

Definitions [s. 80.01]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 80(2)(j), 80.01(2)(a), 251(1); "capital property" — 54, 248(1); "commercial debt obligation", "commercial obligation" — 80(1), 80.01(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "creditor" — 80.01(3); "debtor", "distress preferred share" — 80(1), 80.01(1); "forgiven amount" — 80(1), 80.01(1), 80.01(8)(b); "parent" — 88(1); "parked obligation" — 80.01(7); "person" — 80(1), 80.01(1); "prescribed", "principal amount" — 248(1); "related" — 80(2)(j), 80.01(2)(a), 251(2); "settled" — 80(2)(a), 80.01(3)–(9), 80.02(2)(c), 80.02(7)(a); "significant interest" — 80.01(2)(b); "source" — 4(1); "specified cost" — 80.01(1); "specified obligation" — 80.01(6); "specified shareholder" — 248(1); "subsidiary" — 88(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

80.02 (1) Definitions — In this section, "commercial debt obligation", "commercial obligation", "distress preferred share" and "person" have the meanings assigned by subsection 80(1).

(2) General rules for distress preferred shares — For the purpose of applying the provisions of this Act to an issuer of a distress preferred share,

(a) the principal amount, at any time, of the share shall be deemed to be the amount (determined at that time) for which the share was issued;

(b) the amount for which the share was issued shall, at any time, be deemed to be the amount, if any, by which the total of

(i) the amount for which the share was issued, determined without reference to this paragraph, and

(ii) all amounts by which the paid-up capital in respect of the share increased after the share was issued and before that time

exceeds

(iii) the total of all amounts each of which is an amount paid before that time on a reduction of the paid-up capital in respect of the share, except to the extent that the amount is deemed by section 84 to have been paid as a dividend;

(c) the share shall be deemed to be settled at such time as it is redeemed, acquired or cancelled by the issuer; and

(d) a payment in satisfaction of the principal amount of the share is any payment made on a reduction of the paid-up capital in respect of the share to the extent that the payment would be proceeds of disposition of the share within the meaning that would be assigned by the definition "proceeds of disposition" in section 54 if that definition were read without reference to paragraph (j).

Related Provisions: 80.02(3)(b), 80.02(5)(b) — Deemed amounts for purposes of subpara. 80.02(2)(b)(i).

(3) Substitution of distress preferred share for debt — Where any part of the consideration given by a corporation to another person for the settlement or extinguishment at any time of a commercial debt obligation that was issued by the corporation and owned immediately before that time by the other person consists of a distress preferred share issued by the corporation to the other person,

(a) for the purposes of section 80, the amount paid at that time in satisfaction of the principal amount of the obligation because of the issue of that share shall be deemed to be equal to the lesser of

(i) the principal amount of the obligation, and

(ii) the amount by which the paid-up capital in respect of the class of shares that include that share increases because of the issue of that share; and

(b) for the purpose of subparagraph (2)(b)(i), the amount for which the share was issued shall be deemed to be equal to the amount deemed by paragraph (a) to have been paid at that time.

Related Provisions: 80.02(2) — General rules.

(4) Substitution of commercial debt obligation for distress preferred share — Where any part of the consideration given by a corporation to another person for the settlement at any time of a distress preferred share that was issued by the corporation and owned immediately before that time by the other person consists of a commercial debt obligation issued by the corporation to the other person, for the purposes of section 80

(a) the amount paid at that time in satisfaction of the principal amount of the share because of the issue of that obligation shall be deemed to be equal to the principal amount of the obligation; and

(b) the amount for which the obligation was issued shall be deemed to be equal to its principal amount.

Related Provisions: 80.02(2) — General rules.

(5) Substitution of distress preferred share for other distress preferred share — Where any part of the consideration given by a corporation to another person for the settlement at any time of a particular distress preferred share that was issued by the corporation and owned immediately before that time by the other person consists of another distress preferred share issued by the corporation to the other person, for the purposes of section 80

(a) the amount paid at that time in satisfaction of the principal amount of the particular share because of the issue of the other share shall be deemed to be equal to the amount by which the paid-up capital in respect of the class of shares that includes the other share increases because of the issue of the other share; and

(b) for the purpose of subparagraph (2)(b)(i), the amount for which the other share was issued shall be deemed to be equal to the amount deemed by paragraph (a) to have been paid at that time.

Related Provisions: 80.02(2) — General rules.

(6) Substitution of non-commercial obligation for distress preferred share — Where any part of the consideration given by a corporation to another person for the settlement at any time of a distress preferred share that

was issued by the corporation and owned immediately before that time by the other person consists of another share (other than a distress preferred share) or an obligation (other than a commercial obligation) issued by the corporation to the other person, for the purposes of section 80, the amount paid at that time in satisfaction of the principal amount of the distress preferred share because of the issue of the other share or obligation shall be deemed to be equal to the fair market value of the other share or obligation, as the case may be, at that time.

Related Provisions: 80.02(2) — General rules.

(7) Deemed settlement on expiry of term — Where at any time a distress preferred share becomes a share that is not a distress preferred share, for the purposes of section 80

(a) the share shall be deemed to have been settled immediately before that time; and

(b) a payment equal to the fair market value of the share at that time shall be deemed to have been made immediately before that time in satisfaction of the principal amount of the share.

Related Provisions: 80(1)"distress preferred share", 248(1)"term preferred share"(e) — Maximum term of distress preferred share is 5 years.

History [s. 80.02]: S. 80.02 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994;

Definitions [s. 80.02]: "amount" — 80.02(2)(b), 248(1); "class of shares" — 248(6); "commercial debt obligation", "commercial obligation" — 80(1), 80.02(1); "corporation" — 248(1), *Interpretation Act* 35(1); "distress preferred share" — 80(1), 80.02(1); "dividend" — 248(1); "paid-up capital" — 89(1), 248(1); "payment in satisfaction" — 80.02(2)(d); "person" — 80(1), 80.02(1); "principal amount" — 80.02(2)(a), 248(1); "settled" — 80(2)(a), 80.01(5), 80.02(2)(c), 80.02(7)(a); "share" — 248(1).

80.03 (1) [Definitions — In this section, "commercial debt obligation", "commercial obligation", "distress preferred share", "forgiven amount" and "person" have the meanings assigned by subsection 80(1).][8]

(2) Deferred recognition of debtor's gain on settlement of debt — Where at any time in a taxation year a person (in this subsection referred to as the "transferor") surrenders a particular capital property (other than a distress preferred share) that is a share, a capital interest in a trust or an interest in a partnership, the person shall be deemed to have a capital gain from the disposition at that time of another capital property (or, where the particular property is a taxable Canadian property, another taxable Canadian property) equal to the amount, if any, by which

(a) the total of all amounts deducted under paragraph 53(2)(g.1) in computing the adjusted cost base to the transferor of the particular property immediately before that time

exceeds the total of

(b) the amount that would be the transferor's capital gain for the year from the disposition of the particular property if this Act were read without reference to subsection 100(2), and

(c) where, at the end of the year, the transferor is resident in Canada or is a non-resident person who carries on business in Canada through a fixed place of business, the amount designated under subsection (7) by the transferor in respect of the disposition, at that time or immediately after that time, of the particular property.

Related Provisions: 80.03(3) — Meaning of "surrender"; 253 — Extended meaning of carrying on business in Canada.

(3) Surrender of capital property — For the purpose of subsection (2), a person shall be considered to have surrendered a property at any time only where

(a) in the case of a share of the capital stock of a particular corporation,

(i) the person is a corporation that disposed of the share at that time and the proceeds of disposition of the share are determined under paragraph 88(1)(b), or

(ii) the person is a corporation that owned the share at that time and, immediately after that time, amalgamates or merges with the particular corporation;

(b) in the case of a capital interest in a trust, the person disposed of the interest at that time and the proceeds of disposition are determined under paragraph 107(2)(c); and

(c) in the case of an interest in a partnership, the person disposed of the interest at that time and the proceeds of disposition are determined under paragraph 98(3)(a) or (5)(a).

(4)–(6) [Repealed]

History: Subsec. 80.03(1) accidentally deleted, instead of amended to repeal "taxable dividend", by 1998, c. 19, subsec. 112(1), with the version in square brackets above to have been applicable to taxation years that end after February 21, 1994. The subsec. formerly read:

(1) In this section,

(a) "commercial debt obligation", "commercial obligation", "distress preferred share", "forgiven amount" and "person" have the meanings assigned by subsection 80(1); and

(b) "taxable dividend" does not include any capital gains dividends (within the meaning assigned by subsection 131(1)).

History: Subsecs. 80.03(4) to (6) repealed by 1998, c. 19, subsec. 112(2), applicable to taxation years that end after February 21, 1994. The subsecs. formerly read:

(4) Dispositions by corporations — Where at any time in a taxation year a corporation (in this subsection referred to as the "vendor") disposes of a particular capital property that is a share, an interest in a partnership or a capital interest in a trust, otherwise than by way of a disposition to which subsection (2) or 53(6) applies, a

[8]The English version of subsec. 80.03(1) accidentally deleted by 1998, c. 19, subsec. 112(1). The Dept. of Finance has confirmed that this will be corrected in an upcoming technical bill.

disposition to another corporation in circumstances to which subsection 53(5) applies, or a disposition the proceeds from which are determined under subsection 47(1), section 86 or any of the provisions (other than subsection 97(2)) referred to in subsection 53(4), the vendor shall be deemed to have a capital gain from the disposition at that time of another capital property (or where the particular property is a taxable Canadian property, another taxable Canadian property) equal to the amount, if any, by which the lesser of

(a) all amounts deducted under paragraph 53(2)(g.1) in computing the adjusted cost base to the vendor of the particular property immediately before that time, and

(b) where the particular property

(i) is a share, the total of all amounts each of which is

(A) a taxable dividend on the share that was received in the specified period relating to the disposition of the share, to the extent that the dividend is deductible in computing taxable income of a holder of the share or a beneficiary under a trust that held the share, or

(B) a capital dividend on the share that was received in the specified period relating to the disposition of the share,

(ii) is an interest in a partnership, the total of all amounts each of which is

(A) the share of a taxable dividend relating to the interest that was received after July 12, 1994 and in a fiscal period of the partnership that ended in the specified period relating to the disposition of the interest, to the extent that such share is deductible in computing taxable income of a person holding the interest in the partnership or a beneficiary under a trust that held the interest in the partnership, or

(B) the share of a capital dividend relating to the interest that was received after July 12, 1994 and in a fiscal period of the partnership that ended in the specified period relating to the disposition of the interest, or

(iii) is a capital interest in a trust, the total of all amounts each of which is such portion of a taxable dividend that was received by the trust in the specified period relating to the disposition of the capital interest and that was deemed by subsection 104(19) to have been received in respect of the capital interest, to the extent that such portion was deductible in computing taxable income of a person holding the capital interest

exceeds the total of

(c) the amount that would be the vendor's capital gain for the year from the disposition of the particular property if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2), and

(d) where the vendor is resident in Canada at the end of the year or is a non-resident person who carries on business in Canada through a fixed place of business at the end of the year, the amount designated under subsection (7) by the vendor in respect of the disposition of the particular property.

(5) **Specified period** — For the purpose of subsection (4), the specified period relating to a disposition at a particular time of a property by a person is the period

(a) that began at or on the later of July 12, 1994 and the last time before the particular time that the person acquired the property, and

(b) that ended at the particular time.

(6) **When property acquired** — For the purposes of this subsection and subsection (5), where, as a consequence of the disposition at a particular time of a property to a person, an amount is deducted under paragraph 53(2)(g.1) in computing the adjusted cost base of the property after the particular time, the person shall be deemed not to have acquired the property at the particular time and to have acquired the property at the time it was last acquired before the particular time.

(7) **Alternative treatment** — Where at any time in a taxation year a person disposes of a property, for the purposes of subsection (2) and section 80

(a) the person may designate an amount in a prescribed form filed with the person's return of income under this Part for the year; and

(b) where an amount is designated by the person under paragraph (a) in respect of the disposition,

(i) the person shall be deemed to have issued a commercial debt obligation at that time that is settled immediately after that time,

(ii) the lesser of the amount so designated and the amount that would, but for this subsection, be a capital gain determined in respect of the disposition because of subsection (2) shall be treated as if it were the forgiven amount at the time of the settlement in respect of the obligation referred to in subparagraph (i),

(iii) the source in connection with which the obligation referred to in subparagraph (i) was issued shall be deemed to be the business, if any, carried on by the person at the end of the year, and

(iv) where the person does not carry on a business at the end of the year, the person shall be deemed to carry on an active business at the end of the year and the source in connection with which the obligation referred to in subparagraph (i) was issued shall be deemed to be the business deemed by this subparagraph to be carried on.

Related Provisions: 87(2)(h.1) — Amalgamations — continuing corporation; 220(3.21)(a) — Late filing, amendment or revocation of designation.

History: The opening words of subsec. 80.03(7) and subpara. 80.03(7)(b)(ii) amended by 1998, c. 19, subsecs. 112(3) and (4), applicable to taxation years that end after February 21, 1994. The opening words and subpara. formerly read:

(7) Where at any time in a taxation year a person disposes of a property, for the purposes of subsections (2) and (4) and section 80

. . . . .

(ii) the lesser of the amount so designated and the amount that would, but for this subsection, be a capital gain determined in respect of the disposition because of subsection (2) or (4) shall be treated as if it were the forgiven amount at the time of the settlement in respect of the obligation referred to in subparagraph (i),

Forms: T2155: Alternative treatment of capital gains under sec. 80.03 that arise from a forgiven debt.

(8) **Lifetime capital gains exemption** — Where, as a consequence of the disposition at any time by an individual of a property that is a qualified farm property of the individual or a qualified small business corporation share of the individual (within the meanings assigned by subsection 110.6(1)), the individual is deemed by subsection (2) to have a capital gain at that time from the disposition of another property, for the purposes of sections 3, 74.3 and 111, as they apply for the purpose of section 110.6, the other property shall be deemed to be a qualified farm property of the individual or a qualified small business corporation share of the individual, as the case may be.

History [s. 80.03]: S. 80.03 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that

(a) it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994; and

(b) a form referred to in subsection 80.03(7) shall be deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue before 1996.

Definitions [s. 80.03]: "active business" — 248(1); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "business" — 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital property" — 54, 248(1); "carried on business in Canada" — 253; "commercial debt obligation" — 80(1), 80.03(1)(a), 80.03(7)(b)(i); "commercial obligation" — 80(1), 80.03(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "directed person" — 80(1), 80.04(1); "distress preferred share" — 80(1), 80.03(1)(a); "fiscal period" — 249(2)(b), 249.1; "forgiven amount" — 80(1), 80.03(1)(a), 80.03(7)(b)(ii); "individual", "non-resident" — 248(1); "person" — 80(1), 80.03(1)(a); "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "resident in Canada" — 250; "settled" — 80.03(7)(b)(i); "share" — 248(1); "source" — 4(1), 80.03(7)(b)(iv); "surrender" — 80.03(3); "taxable Canadian property" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "transferor" — 80.03(2); "trust" — 104(1), 248(1), (3); "vendor" — 80.03(4).

80.04 (1) Definitions — In this section, "commercial debt obligation", "commercial obligation", "debtor", "directed person", "eligible Canadian partnership", "forgiven amount" and "person" have the meanings assigned by subsection 80(1).

(2) Eligible transferee — For the purpose of this section, an "eligible transferee" of a debtor at any time is a directed person at that time in respect of the debtor or a taxable Canadian corporation or eligible Canadian partnership related (otherwise than because of a right referred to in paragraph 251(5)(b)) at that time to the debtor.

Related Provisions: 87(2)(h.1) — Amalgamations — continuing corporation.

(3) Application — Paragraphs 80(2)(a), (b), (j), (l) and (n) apply for the purpose of this section.

(4) Agreement respecting transfer of forgiven amount — Where

(a) a particular commercial obligation (other than an obligation deemed by paragraph (e) to have been issued) issued by a debtor is settled at a particular time,

(b) amounts have been designated by the debtor under subsections 80(5) to (10) to the maximum extent permitted in respect of the settlement of the particular obligation at the particular time,

(c) the debtor and an eligible transferee of the debtor at the particular time file under this section an agreement between them in respect of that settlement, and

(d) an amount is specified in that agreement

the following rules apply:

(e) except for the purposes of subsection 80(11), the transferee shall be deemed to have issued a commercial debt obligation that was settled at the particular time,

(f) the specified amount shall be deemed to be the forgiven amount at the particular time in respect of the obligation referred to in paragraph (e),

(g) subject to paragraph (h), the obligation referred to in paragraph (e) shall be deemed to have been issued at the same time (in paragraph (h) referred to as the "time of issue") at which, and in the same circumstances in which, the particular obligation was issued,

(h) where the transferee is a corporation the control of which was acquired by a person or group of persons after the time of issue and the transferee and the debtor were not related to each other immediately before that acquisition of control,

(i) the obligation referred to in paragraph (e) shall be deemed to have been issued after that acquisition of control, and

(ii) paragraph (e) of the definition "relevant loss balance" in subsection 80(1), paragraph (f) of the definition "successor pool" in that subsection and paragraph (b) of the definition "unrecognized loss" in that subsection do not apply in respect of that acquisition of control,

(i) the source in connection with which the obligation referred to in paragraph (e) was issued shall be deemed to be the source in connection with which the particular obligation was issued, and

(j) for the purposes of sections 61.3 and 61.4, the amount included under subsection 80(13) in computing the income of the eligible transferee in respect of the settlement of the obligation referred to in paragraph (e) or deducted under paragraph 80(15)(a) in respect of such income shall be deemed to be nil.

Related Provisions: 80(13)C — Amount specified in agreement reduces income inclusion; 80(14)(c) — Calculation of residual balance for income inclusion; 80(15)(c) — Where commercial debt obligation issued by partnership; 80.04(5) — Where consideration given for entering into agreement; 80.04(6) — How and when agreement to be filed with CCRA; 87(2)(h.1) — Amalgamations — continuing corporation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired; 256(8) — Deemed acquisition of shares.

(5) Consideration for agreement — For the purposes of this Part, where property is acquired at any time by an eligible transferee as consideration for entering into an agreement with a debtor that is filed under this section

(a) where the property was owned by the debtor immediately before that time,

(i) the debtor shall be deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and

(ii) no amount may be deducted in computing the debtor's income as a consequence of the transfer of the property, except any amount arising as a consequence of the application of subparagraph (i);

(b) the cost at which the property was acquired by the eligible transferee at that time shall be deemed to be equal to the fair market value of the property at that time; and

(c) the eligible transferee shall not be required to add an amount in computing income solely because of the acquisition at that time of the property.

(d) [Repealed]

Related Provisions: 80.04(5.1) — No benefit conferred on debtor as a consequence of the agreement; 191.3(1.1) — Similar rule for purposes of Part VI.1 tax.

History: Para. 80.04(5)(d) repealed by 1998, c. 19, subsec. 113(1), applicable to taxation years that end after February 21, 1994. The para. formerly read:

> (d) no benefit shall be considered to have been conferred on the debtor as a consequence of the debtor entering into an agreement filed under this section.

(5.1) No benefit conferred — For the purposes of this Part, where a debtor and an eligible transferee enter into an agreement that is filed under this section, no benefit shall be considered to have been conferred on the debtor as a consequence of the agreement.

History: Subsec. 80.04(5.1) added by 1998, c. 19, subsec. 113(2), applicable to taxation years that end after February 21, 1994.

(6) Manner of filing agreement — Subject to subsection (7), a particular agreement between a debtor and an eligible transferee in respect of an obligation issued by the debtor that was settled at any time shall be deemed not to have been filed under this section

(a) where it is not filed with the Minister in a prescribed form

(i) on or before the later of

(A) the day on or before which the debtor's return of income under this Part is required to be filed for the taxation year or fiscal period, as the case may be, that includes that time (or would be required to be filed if tax under this Part were payable by the debtor for the year), and

(B) the day on or before which the transferee's return of income under this Part is required to be filed for the taxation year or fiscal period, as the case may be, that includes that time, or

(ii) within the period within which the debtor or the transferee may serve a notice of objection to an assessment of tax payable under this Part for a taxation year or fiscal period, as the case may be, described in clause (i)(A) or (B), as the case may be;

(b) where it is not accompanied by,

(i) where the debtor is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the debtor is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made,

(iii) where the transferee is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the transferee is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made; or

(c) if an agreement amending the particular agreement has been filed in accordance with this section, except where subsection (8) applies to the particular agreement.

Related Provisions: 80.04(7) — Deemed due dates for partnership to file return and service notice of objection; 96(3) — Agreement of members of partnership; 150(1) — Due date for return; 165(1) — Deadline for serving notice of objection.

Forms: T2156: Agreement to transfer forgiven debt under s. 80.04.

(7) Filing by partnership — For the purpose of subsection (6), where an obligation is settled at any time in a fiscal period of a partnership, it shall be assumed that

(a) the partnership is required to file a return of income under this Part for the fiscal period on or before the latest day on or before which any member of the partnership during the fiscal period is required to file a return of income under this Part for the taxation year in which that fiscal period ends (or would be required to file such a return of income if tax under this Part were payable by the member for that year); and

(b) the partnership may serve a notice of objection described in subparagraph (6)(a)(ii) within each period within which any member of the partnership during the fiscal period may serve a notice of objection to tax payable under this Part for a taxation year in which that fiscal period ends.

(8) Related corporations — Where at any time a corporation becomes related to another corporation and it can reasonably be considered that the main purpose of the corporation becoming related to the other corporation is to enable the corporations to file an agreement under this section, the amount specified in the agreement shall be deemed to be nil for the purpose of the description of C in subsection 80(13).

(9) Assessment of taxpayers in respect of agreement — The Minister shall, notwithstanding subsections 152(4) to (5), assess or reassess the tax, interest and penalties payable under this Act by any taxpayer in order to take into account an agreement filed under this section.

(10) Liability of debtor — Without affecting the liability of any person under any other provision of this Act, where a debtor and an eligible transferee file an agreement between them under this section in respect of an obligation issued by the debtor that was settled at any time, the debtor is, to the extent of 30% of the amount specified in the agreement, liable to pay

(a) where the transferee is a corporation, all taxes payable under this Act by it for taxation years that end in the period that begins at that time and ends 4 calendar years after that time;

(b) where the transferee is a partnership, the total of all amounts each of which is the tax payable under this Act by a person for a taxation year

(i) that begins or ends in that period, and

(ii) that includes the end of a fiscal period of the partnership during which the person was a member of the partnership; and

(c) interest and penalties in respect of such taxes.

Related Provisions: 80.04(11) — Joint and several liability; 80.04(12) — Assessment; 80.04(14) — Where partnership is a member of a partnership; 87(2)(h.1) — Amalgamations — continuing corporation.

History: Para. 80.04(10)(a) amended by 1998, c. 19, subsec. 113(3), applicable to taxation years that end after February 21, 1994. The para. formerly read:

> (a) where the transferee is a corporation, all taxes payable under this Act by it for taxation years that end in the period that begins at that time and ends 10 calendar years after that time;

(11) Joint liability — Where taxes, interest and penalties are payable under this Act by a person for a taxation year and those taxes, interest and penalties are payable by a debtor because of subsection (10), the debtor and the person are jointly and severally liable to pay those amounts.

Related Provisions: 87(2)(h.1) — Amalgamations — continuing corporation.

(12) Assessments in respect of liability — Where a debtor and an eligible transferee file an agreement between them under this section in respect of an obligation issued by the debtor that was settled at a particular time,

(a) where the debtor is an individual or a corporation, the Minister may at any subsequent time assess the debtor in respect of taxes, interest and penalties for which the debtor is liable because of subsection (10); and

(b) where the debtor is a partnership, the Minister may at any subsequent time assess any person who has been a member of the partnership in respect of taxes, interest and penalties for which the partnership is liable because of subsection (10), to the extent that those amounts relate to taxation years of the transferee (or, where the transferee is another partnership, members of the other partnership) that end at or after

(i) where the person was not a member of the partnership at the particular time, the first subsequent time the person becomes a member of the partnership, and

(ii) in any other case, the particular time.

Related Provisions: 80.04(13) — Provisions applicable to assessment; 80.04(14) — Where partnership is a member of a partnership; 87(2)(h.1) — Amalgamations — continuing corporation.

(13) Application of Division I — The provisions of Division I apply to an assessment under subsection (12) as though it had been made under section 152.

(14) Partnership members — For the purposes of paragraphs (10)(b) and (12)(b) and this subsection, where at any time a member of a particular partnership is another partnership, each member of the other partnership shall be deemed to be a member of the particular partnership at that time.

History [s. 80.04]: S. 80.04 added by 1995, c. 21, s. 27, applicable to taxation years that end after February 21, 1994, except that

(a) it does not, other than for the purposes of subsections 6(15) and (15.1) and 15(1.2) and (1.21) and section 79, apply to any obligation settled or extinguished

(i) before February 22, 1994,

(ii) after February 21, 1994

(A) under the terms of an agreement in writing entered into on or before that date, or

(B) under the terms of any amendment to such an agreement, where that amendment was entered into in writing before July 12, 1994 and the amount of the settlement or extinguishment was not substantially greater than the settlement or extinguishment provided under the terms of the agreement,

(iii) before 1996 pursuant to a restructuring of debt in connection with a proceeding commenced in a court in Canada before February 22, 1994,

(iv) before 1996 in connection with a proposal (or notice of intention to make a proposal) that was filed under the *Bankruptcy and Insolvency Act*, or similar legislation of a country other than Canada, before February 22, 1994, or

(v) before 1996 in connection with a written offer that was made by, or communicated to, the holder of the obligation before February 22, 1994; and

(b) a form referred to in subsection 80.04(6) shall be deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue before 1996.

Definitions [s. 80.04]: "acquired" — 256(7)–(9); "amount" — 80.04(5), 248(1); "benefit" — 80.04(5.1); "commercial debt obligation" — 80(1), 80.04(1), (4)(e); "commercial obligation" — 80(1), 80.04(1); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* s. 35(1); "debtor", "directed person", "eligible Canadian partnership" — 80(1), 80.04(1); "eligible transferee" — 80.04(2); "fiscal period" — 249(2)(b), 249.1; "forgiven amount" — 80(1), 80.01(8)(b), 80.04(1); "individual", "Minister" — 248(1); "person" — 80(1), 80.04(1); "prescribed" — 248(1); "related" — 80(2)(j), 80.04(3), (8), 251(2); "settled" — 80(2)(a), 80.01(3)–(9), 80.02(2)(c), 80.02(7)(a), 80.04(4)(e); "specified amount" — 80.04(4)(d); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "time of issue" — 80.04(4)(g).

80.1 (1) Expropriation assets acquired as compensation for or as consideration for sale of foreign property taken by or sold to foreign issuer — Where in a taxation year ending coincidentally with or after December 31, 1971 a taxpayer resident in Canada has acquired any bonds, debentures, mortgages, notes or similar obligations (in this section referred to as "expropriation assets") issued by the government of a country other than Canada or issued by a person resident in a country other than Canada and guaranteed by the government of that country,

(a) as compensation for

(i) shares owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer that carried on business in that country, or

(ii) all or substantially all of the property used by the taxpayer in carrying on business in that country,

(which shares or property, as the case may be, are referred to in this section as "foreign property"), taken, after June 18, 1971, from the taxpayer by the issuer under the authority of a law of that country, or

(b) as consideration for the sale of foreign property sold, after June 18, 1971, by the taxpayer to the issuer, if

(i) the sale was, by a law of that country, expressly required to be made, or

(ii) the sale was made after notice or other manifestation of an intention to take the foreign property,

if the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the expropriation assets so acquired by the taxpayer, the following rule applies, namely, an amount in respect of each such expropriation asset, equal to

(c) the principal amount of the asset, or

(d) where the taxpayer has designated in the taxpayer's election an amount in respect of the asset that is less than the principal amount thereof, the amount so designated,

shall be deemed to be

(e) the cost to the taxpayer of the asset, and

(f) for the purpose of computing the taxpayer's proceeds of disposition of the foreign property so taken or sold, the amount received by the taxpayer by virtue of the taxpayer's acquisition of the asset,

except that in no case may the taxpayer designate an amount in respect of any expropriation asset so that the taxpayer's proceeds of disposition of the foreign property so taken or sold (computed having regard to the provisions of paragraph (f)) are less than the cost amount to the taxpayer of the foreign property immediately before it was so taken or sold.

Related Provisions: 53(1)(k), 53(2)(n) — Adjustments to cost base; 90–95 — Shareholders of corporations not resident in Canada.

Regulations: 4500 (prescribed time).

Forms: T2079: Elections re expropriation assets.

(2) Election re interest received or to be received on expropriation assets acquired by taxpayer — Where a taxpayer has elected in prescribed form and within prescribed time in respect of all amounts (each of which is referred to in this subsection as an "interest amount") received or to be received by the taxpayer as or on account of interest on all expropriation assets acquired by the taxpayer as compensation for, or as consideration for the sale of, foreign property taken by or sold to any particular issuer as described in subsection (1), the following rules apply in respect of each such asset so acquired by the taxpayer:

(a) in computing the taxpayer's income for a taxation year from the asset, there may be deducted, in respect of each interest amount received by the taxpayer in the year on the asset, the lesser of the interest amount and the total of

(i) the amount required by paragraph (b) to be added, by virtue of the receipt by the taxpayer of the interest amount, in computing the adjusted cost base to the taxpayer of the asset, and

(ii) the greater of

(A) the adjusted cost base to the taxpayer of the asset immediately before the interest amount was so received by the taxpayer, and

(B) the adjusted principal amount to the taxpayer of the asset immediately before the interest amount was so received by the taxpayer,

and there shall be included, in respect of each amount (in this paragraph referred to as a "capital amount") received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(iii) any proceeds of disposition of the asset, or

(iv) the principal amount of the asset,

the amount, if any, by which the capital amount exceeds the greater of the adjusted cost base to the taxpayer of the asset immediately before the capital amount was received by the taxpayer and its adjusted principal amount to the taxpayer at that time;

(b) in computing, at any particular time, the adjusted cost base to the taxpayer of the asset, there shall be added, in respect of each interest amount received by the taxpayer on the asset before the particular time, an amount equal to the lesser of

(i) any income or profits tax paid by the taxpayer to the government of a country other than Canada in respect of the interest amount, and

(ii) that proportion of the tax referred to in subparagraph (i) that the adjusted cost base to the taxpayer of the asset immediately before the interest amount was received by the taxpayer is of the amount, if any, by which the interest amount exceeds the tax referred to in that subparagraph,

and there shall be deducted

(iii) each interest amount received by the taxpayer on the asset before the particular time, and

(iv) each amount received by the taxpayer before the particular time on account of the principal amount of the asset;

(c) the receipt by the taxpayer of an amount described in subparagraph (b)(iv) in respect of the asset shall be deemed not to be a partial disposition thereof; and

(d) for the purposes of section 126, notwithstanding the definition "non-business-income tax" in subsection 126(7), the "non-business-income tax" paid by a taxpayer does not include any tax, or any portion thereof, the amount of which is required by paragraph (b) to be added in computing the adjusted cost base to the taxpayer of the asset.

Related Provisions: 53(1)(k), 53(2)(n) — Adjustments to cost base.

Regulations: 4500 (prescribed time).

Forms: T2079: Elections re expropriation assets.

(3) Where interest amount and capital amount received at same time — For the purposes of subsection (2), where an interest amount on an expropriation asset and a capital amount with respect to that asset are received by a taxpayer at the same time, the interest amount shall be deemed to have been received by the taxpayer immediately before the capital amount.

(4) Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to shareholder — Where a foreign affiliate of a taxpayer resident in Canada would, on the assumption that the foreign affiliate were resident in Canada and its only foreign affiliates were corporations that were foreign affiliates of the taxpayer, be entitled to make an election under subsection (1) in respect of assets acquired by it that would, on that assumption, be expropriation assets of the foreign affiliate, and all or any of those assets are subsequently acquired by the taxpayer from the foreign affiliate as a dividend payable in kind, or as a benefit received from the foreign affiliate that would otherwise be required by subsection 15(1) to be included in computing the income of the taxpayer, if the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the assets so acquired by the taxpayer from the foreign affiliate, the following rules apply in respect of each such asset so acquired by the taxpayer:

(a) an amount equal to

(i) the principal amount of the asset, or

(ii) where the taxpayer has designated in the taxpayer's election an amount in respect of the asset that is less than the principal amount thereof, the amount so designated,

shall be deemed to be,

(iii) notwithstanding subsection 52(2), the cost to the taxpayer of the asset, and

(iv) the amount of the dividend or benefit, as the case may be, received by the taxpayer by virtue of the acquisition by the taxpayer of the asset;

(b) where the asset was so acquired as such a benefit and the taxpayer has designated in the election a class of shares as described in this paragraph in respect of the asset, the amount of the benefit shall be deemed

(i) to have been received by the taxpayer as a dividend from the foreign affiliate in respect of such class of shares of the capital stock thereof as the taxpayer has designated in the election, and

(ii) not to be an amount required by subsection 15(1) to be included in computing the taxpayer's income;

(c) in computing the taxable income of the taxpayer for the taxation year in which the taxpayer acquired the asset, there may be deducted from the taxpayer's income for the year the amount, if any, by which the amount received by the taxpayer as a dividend by virtue of the acquisition by the taxpayer of the asset exceeds the total of amounts deductible in respect of the

dividend under sections 91 and 113 in computing the taxpayer's income or taxable income, as the case may be, for the year;

(d) there shall be deducted in computing the adjusted cost base to the taxpayer of each share of the capital stock of the foreign affiliate that is a share of a class in respect of which an amount was received by the taxpayer as a dividend by virtue of the acquisition by the taxpayer of the asset, the quotient obtained by dividing the amount, if any, deducted by the taxpayer under paragraph (c) in respect of the dividend by the number of shares of that class owned by the taxpayer immediately before that amount was received by the taxpayer as a dividend;

(e) any capital loss of the taxpayer from the disposition, after that time when the asset was so acquired by the taxpayer, of a share of the capital stock of the foreign affiliate shall be deemed to be nil; and

(f) where the taxpayer has so elected in prescribed form and within prescribed time, subsection (2) applies as if the asset were an expropriation asset acquired by the taxpayer as compensation for foreign property taken by a particular issuer as described in subsection (1).

Related Provisions: 53(2)(b) — Reduction in ACB; 220(3.2), Reg. 600(b) — Late filing or revocation of election.

Pre-RSC History: Para. 80.1(4)(c) substituted by 1977-78, c. 1, s. 33, applicable to 1972 *et seq.*

Regulations: 4500 (prescribed time).

Forms: T2079: Elections re expropriation assets.

(5) Assets acquired from foreign affiliate of taxpayer as consideration for settlement, etc., of debt — Where a foreign affiliate of a taxpayer resident in Canada would, on the assumption that the foreign affiliate were resident in Canada and its only foreign affiliates were corporations that were foreign affiliates of the taxpayer, be entitled to make an election under subsection (1) in respect of assets acquired by it that would, on that assumption, be expropriation assets of the foreign affiliate, and all or any of those assets are subsequently acquired by the taxpayer from the foreign affiliate as consideration for the settlement or extinguishment of a capital property of the taxpayer that was a debt payable by the foreign affiliate to the taxpayer or any other obligation of the foreign affiliate to pay an amount to the taxpayer (which debt or other obligation is referred to in this subsection as the "obligation"), if the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the assets so acquired by the taxpayer from the foreign affiliate, the following rules apply in respect of each such asset so acquired by the taxpayer,

(a) paragraph (4)(a) applies in respect of the asset as if subparagraph (4)(a)(iv) were read as follows:

"(iv) the taxpayer's proceeds of the disposition of the obligation settled or extinguished by virtue of the acquisition by the taxpayer of the asset;";

(b) where the taxpayer has designated in the taxpayer's election a class of shares as described in this paragraph in respect of the asset,

(i) the amount, if any, by which the cost to the taxpayer of the asset (computed having regard to paragraph (a) and paragraph (4)(a)) exceeds the amount of the obligation settled or extinguished by virtue of the acquisition by the taxpayer of the asset shall be deemed to have been received by the taxpayer as a dividend from the foreign affiliate in respect of such class of shares of the capital stock thereof as the taxpayer has designated in the election, and

(ii) the taxpayer's gain, if any, from the disposition of the obligation shall be deemed to be nil;

(c) the taxpayer's loss, if any, from the disposition of the obligation shall be deemed to be nil; and

(d) paragraphs (4)(c) to (f) apply in respect of the asset.

Regulations: 4500 (prescribed time).

Forms: T2079: Elections re expropriation assets.

(6) Assets acquired from foreign affiliate of taxpayer on winding-up, etc. — Where a foreign affiliate of a taxpayer resident in Canada would, on the assumption that the foreign affiliate were resident in Canada and its only foreign affiliates were corporations that were foreign affiliates of the taxpayer, be entitled to make an election under subsection (1) in respect of assets acquired by it that would, on that assumption, be expropriation assets of the foreign affiliate, and all or any of those assets are subsequently acquired by the taxpayer from the foreign affiliate,

(a) on the winding-up, discontinuance or reorganization of the business of the foreign affiliate, or

(b) as consideration for the redemption, cancellation or acquisition by the foreign affiliate of shares of its capital stock,

if the taxpayer has so elected, in prescribed form and within prescribed time,

(c) in respect of all of the assets so acquired by the taxpayer from the foreign affiliate, subsection (1) applies in respect of each such asset, or

(d) in respect of all amounts received or to be received by the taxpayer as or on account of interest on all of the assets so acquired by the taxpayer from the foreign affiliate, subsection (2) applies in respect of each such asset,

as if the assets were expropriation assets acquired by the taxpayer as consideration for the sale of foreign property that consisted of shares of the capital stock of the foreign affiliate owned by the taxpayer immediately before the assets were so acquired and that was sold to a particular issuer as described in subsection (1).

Regulations: 4500 (prescribed time).

Forms: T2079: Elections re expropriation assets.

(7) Definition of "adjusted principal amount" — In this section, "adjusted principal amount" to a taxpayer of an expropriation asset at any particular time means the amount, if any, by which

(a) the total of the principal amount of the asset and, in respect of each interest amount received by the taxpayer on the asset before the particular time, the lesser of the tax referred to in subparagraph (2)(b)(i) in respect of that interest amount and the proportion determined under subparagraph (2)(b)(ii) in respect thereof,

exceeds

(b) the total of each amount received by the taxpayer before the particular time as an interest amount on the asset and each amount received by the taxpayer before the particular time as, on account or in lieu of payment of, or in satisfaction of, the principal amount of the asset.

(8) Currency in which adjusted principal amount to be computed or expressed — For the purposes of this section, the adjusted principal amount, at any particular time, of an expropriation asset or of any asset assumed for the purposes of this section to be an expropriation asset shall be computed in the currency in which the principal amount of the asset is, under the terms thereof, payable, except that for greater certainty, for the purposes of paragraph (2)(a), the adjusted principal amount at any particular time of such an asset is its adjusted principal amount at that time computed as provided in this subsection but expressed in Canadian currency.

(9) Election in respect of two or more expropriation assets acquired by taxpayer — For the purposes of subdivision c and subsection (2), and in applying subsections (7) and (8) for those purposes, where two or more expropriation assets that were

(a) issued by the government of a country other than Canada, or

(b) issued by a person resident in a country other than Canada and guaranteed by the government of that country

at the same time, or as compensation for, or consideration for the sale of, the same foreign property, have been acquired by a taxpayer and the taxpayer has so elected, in prescribed form and within prescribed time, in respect of all of the expropriation assets that were so issued or guaranteed by the government of that country and acquired by the taxpayer before the making of the election, all of those expropriation assets shall be considered to be a single expropriation asset that was issued or guaranteed by the government of that country and acquired by the taxpayer.

Regulations: 4500 (prescribed time).

Forms: T2079: Elections re expropriation assets.

Pre-RSC History [s. 80.1]: S. 80.1 added by 1973-74, c. 14, s. 22.

Definitions [s. 80.1]: "adjusted cost base" — 54, 248(1); "adjusted principal amount" — 80.1(7); "amount", "business" — 248(1); "Canada" — 255; "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "dividend" — 248(1); "expropriation assets" — 80.1(1); "foreign affiliate" — 95(1), 248(1); "person", "prescribed", "principal amount", "property" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

80.2 Reimbursement by taxpayer [resource royalties] — Where

(a) a taxpayer, under the terms of a contract, pays to another person an amount (in this subsection[9] referred to as the "specified payment") that may reasonably be considered to have been received by the other person as a reimbursement, contribution or allowance in respect of an amount (referred to in paragraph (b) as the "particular amount") paid or payable by the other person,

(b) the particular amount is included in the income of the other person or is denied as a deduction in computing the income of the other person by reason of paragraph 12(1)(o) or 18(1)(m), as the case may be, and

(c) the taxpayer was resident in Canada or carrying on business in Canada at the time the specified payment was made by the taxpayer,

the following rules apply for the purposes of this Act, other than this section:

(d) the taxpayer shall be deemed neither to have made nor to have become obligated to make the specified payment to the other person but to have paid an amount described in paragraph 18(1)(m) equal to the amount of the specified payment, and

(e) the other person shall be deemed neither to have received nor to have become entitled to receive the specified payment from the taxpayer.

Related Provisions: 104(29) — Amounts deemed to be payable to beneficiaries.

Pre-RSC History: S. 80.2 substituted by 1990, c. 45, s. 45, applicable with respect to payments made after January 1990. S. 80.2 formerly read:

80.2 Reimbursement by taxpayer — Where

(a) a taxpayer, under the terms of a contract, reimburses another person for an amount paid or that became payable by that other person and such amount is included in the income of that other person or denied as a deduction in computing the income of that other person by virtue of paragraph 12(1)(o) or paragraph 18(1)(m), as the case may be, and

(b) the taxpayer was resident in Canada or carrying on business in Canada at the time of the reimbursement,

the following rules apply for the purposes of this Act:

(c) the taxpayer shall be deemed not to have made the reimbursement to the other person but to have paid an amount described in paragraph 18(1)(m) equal to the amount of the reimbursement, and

(d) the other person shall be deemed not to have received the reimbursement from the taxpayer.

Para. 80.2(a) substituted by 1977-78, c. 1, s. 34, applicable to 1977 *et seq.* Para. 80.2(a) formerly read:

(a) a taxpayer, under the terms of a contract, reimburses another person for an amount, or the fair market value of property, paid or payable by that other person and such amount or value of property, as the case may be, is included in the income of that other person or denied as a deduction in computing the income of that other person by virtue of paragraph 12(1)(o) or paragraph 18(1)(m), as the case may be, and

S. 80.2 substituted by 1976-77, c. 4, s. 30, applicable to reimbursements referred to therein that are made after May 25, 1976. S. 80.2 formerly read:

80.2 Reimbursement by taxpayer for payment to Crown deemed paid direct to Crown — Where pursuant to a contract between a taxpayer and another person (in this section referred to as the "payee") any amount is paid or payable by the taxpayer or any property is transferred by the taxpayer to the payee as reimbursement in respect of any amount paid or payable referred to in paragraph 18(1)(m) or the fair market value of any property paid or payable referred to in that paragraph by the payee to any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii), for the purposes of this Act the following rules apply

(a) the taxpayer shall be deemed to have paid the amount or property, as the case may be, to a person or persons referred to in any of those subparagraphs,

(b) the payee shall, to the extent of that reimbursement, be deemed not to have paid an amount or property, as the case may be,

(c) the payee shall be deemed not to have received any reimbursement from the taxpayer, and

(d) paragraph 12(1)(o) shall not apply in respect of the amount or property paid or payable, as the case may be.

S. 80.2 added by 1974-75-76, c. 26, s. 43.1, applicable in respect of amounts or property paid or payable on or after May 6, 1974.

Definitions: "amount", "person", "property" — 248(1); "resident in Canada" — 250; "specified payment" — 80.2(a); "taxpayer" — 248(1).

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

[9] *Sic.* Should read "section" — ed.

80.3 (1) [Income deferrals — livestock —] Definitions — In this section,

"breeding animals" means

(a) horses that are over 12 months of age and are kept for breeding in the commercial production of pregnant mares' urine, and

(b) deer, elk and other similar grazing ungulates, bovine cattle, bison, goats and sheep that are over 12 months of age and are kept for breeding;

History: Para. (b) of the definition "breeding animals" in subsec. 80.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 31, to add "deer, elk and other similar grazing ungulates", applicable to fiscal periods and taxation years ending after 1990.

"breeding herd" of a taxpayer at any time means the number determined by the formula

$$A - (B - C)$$

where

A is the total number of the taxpayer's breeding animals held in the course of carrying on a farming business at that time,

B is the total number of the taxpayer's breeding animals held in the business at that time that are female bovine cattle that have not given birth to calves, and

C is the lesser of the number determined as the value of B and one-half the total number of the taxpayer's breeding animals held in the business at that time that are female bovine cattle that have given birth to calves.

(2) Income deferral from the destruction of livestock — Where a particular amount in respect of the forced destruction of livestock under statutory authority in a taxation year of a taxpayer is included in computing the income of the taxpayer for the year from a farming business, there may be deducted in computing that income such amount as the taxpayer claims not exceeding the particular amount.

Related Provisions: 28(1)(g) — Deduction for farmer using cash method; 80.3(3) — Inclusion of deferred amount; 80.3(6) — Where subsecs. (2) and (4) not to apply.

(3) Inclusion of deferred amount — The amount deducted under subsection (2) in computing the income of a taxpayer from a farming business for a taxation year shall be deemed to be income of the taxpayer from the business for the taxpayer's immediately following taxation year.

Related Provisions: 28(1)(d) — Amount under 80.3(3) to be added to income of farmer using cash method; 87(2)(tt) — Amalgamations — deferral of amounts received; 88(1)(e.2) — Winding-up — rules applicable.

(4) Income deferral for sales in prescribed drought region — Where in a taxation year a taxpayer carries on a farming business in a region that is a prescribed drought region at any time in the year and the taxpayer's breeding herd at the end of the year in respect of the business does not exceed 85% of the taxpayer's breeding herd at the beginning of the year in respect of the business, there may be deducted in computing the taxpayer's income from the business for the year such amount as the taxpayer claims, not exceeding the amount, if any, determined by the formula

$$(A - B) \times C$$

where

A is the amount by which

(a) the total of all amounts included in computing the taxpayer's income for the year from the business in respect of the sale of breeding animals in the year

exceeds

(b) the total of all amounts deducted under paragraph 20(1)(n) in computing the taxpayer's income from the business for the year in respect of an amount referred to in paragraph (a) of this description;

B is the total of all amounts deducted in computing the taxpayer's income from the business for the year in respect of the acquisition of breeding animals; and

C is

(a) 30% where the taxpayer's breeding herd at the end of the year in respect of the business exceeds 70% of the taxpayer's breeding herd at the beginning of the year in respect of the business, and

(b) 90% where the taxpayer's breeding herd at the end of the year in respect of the business does not exceed 70% of the taxpayer's breeding herd at the beginning of the year in respect of the business.

Related Provisions: 28(1)(g) — Deduction for farmer using cash method; 80.3(5) — Inclusion of deferred amount; 80.3(6) — Where subsecs. (2) and (4) not to apply; 257 — Formula cannot calculate to less than zero.

Regulations: 7305 (prescribed drought region).

(5) Inclusion of deferred amount — The amount deducted under subsection (4) in computing the income of a taxpayer for a particular taxation year from a farming business carried on in a prescribed drought region may, to the extent that the taxpayer so elects, be included in computing the taxpayer's income from the business for a taxation year ending after the particular taxation year, and shall, except to the extent that the amount has been included under this subsection in computing the taxpayer's income from the business for a preceding taxation year after the particular year, be deemed to be income of the taxpayer from the business for the taxation year of the taxpayer that is the earliest of

(a) the first taxation year beginning after the end of the period or series of continuous periods, as the case may be, for which the region is a prescribed drought region,

(b) the first taxation year, following the particular taxation year, at the end of which the taxpayer is

(i) non-resident, and

(ii) not carrying on business through a fixed place of business in Canada, and

(c) the taxation year in which the taxpayer dies.

Related Provisions: 28(1)(d) — Inclusion in farming or fishing income when using cash method.

History: Subsec. 80.3(5) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 59(1), applicable to fiscal periods and taxation years ending after 1987. Subsec. 80.3(5) formerly read:

(5) Inclusion of deferred amount — The amount deducted under subsection (4) in computing the income of a taxpayer for a taxation year from a farming business carried on in a prescribed drought region shall be deemed to be income of the taxpayer from the business for the taxpayer's first taxation year commencing after the end of the period or series of continuous periods, as the case may be, for which the region was a prescribed drought region or, where the taxpayer has died before the beginning of that first taxation year, for the taxation year in which the taxpayer died, except to the extent

that the amount has been included in computing the taxpayer's income from the business for a preceding taxation year.

Regulations: 7305 (prescribed drought regions for each year).

(6) Where subsecs. (2) and (4) do not apply — Subsections (2) and (4) do not apply to a taxpayer in respect of a farming business for a taxation year

(a) in which the taxpayer died; or

(b) where at the end of the year the taxpayer is non-resident and not carrying on the business through a fixed place of business in Canada.

History: Para. 80.3(6)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 59(2), applicable to fiscal periods and taxation years ending after 1987. Para. 80.3(6)(b) formerly read:

(b) where the taxpayer is not resident in Canada at the end of the year and at any time in the year did not carry on the business in Canada.

Pre-RSC History [s. 80.3]: S. 80.3 substituted by 1990, c. 39, s. 17, applicable to fiscal periods and taxation years ending after 1987. S. 80.3 formerly read:

80.3 (1) Income deferral from destruction of livestock — Where an amount that would otherwise be included in computing the income of a taxpayer for a particular taxation year from the business of farming is an amount received or receivable (depending upon the method followed by the taxpayer in computing his income from that business for that year) by the taxpayer in respect of the forced destruction of livestock under statutory authority, that amount shall, except where the taxpayer has reported the amount as income in his return of income for the particular taxation year, be deemed to be income of the taxpayer from that business for his taxation year immediately following the particular taxation year.

(2) Where ss. (1) not to apply — Subsection (1) does not apply to an amount received or receivable, as the case may be, by a taxpayer in a taxation year in which he died or ceased to be a resident of Canada or in any subsequent taxation year.

S. 80.3 added by 1976-77, c. 4, s. 30, applicable to 1976 *et seq.*

Definitions [s. 80.3]: "amount" — 248(1); "breeding animals", "breeding herd" — 80.3(1); "business" — 248(1); "Canada" — 255; "farming", "taxpayer" — 248(1); "taxation year" — 11(2), 249; "year" — 11(2).

Interpretation Bulletins [s. 80.3]: IT-425: Miscellaneous farm income.

80.4 (1) Loans [to employees] — Where a person or partnership receives a loan or otherwise incurs a debt because of or as a consequence of a previous, the current or an intended office or employment of an individual, or because of the services performed or to be performed by a corporation carrying on a personal services business, the individual or corporation, as the case may be, shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the total of

(a) all interest on all such loans and debts computed at the prescribed rate on each such loan and debt for the period in the year during which it was outstanding, and

(b) the total of all amounts each of which is an amount of interest that was paid or payable in respect of the year on such a loan or debt by

(i) a person or partnership (in this paragraph referred to as the "employer") that employed or intended to employ the individual,

(ii) a person (other than the debtor) related to the employer, or

(iii) a person or partnership to or for whom or which the services were or were to be provided or performed by the corporation or a person (other than the debtor) that does not deal at arm's length with that person or any member of such partnership,

exceeds the total of

(c) the amount of interest for the year paid on all such loans and debts not later than 30 days after the end of the year, and

(d) any portion of the total determined in respect of the year under paragraph (b) that is reimbursed in the year or within 30 days after the end of the year by the debtor to the person or entity who made the payment referred to in that paragraph.

Related Provisions: 6(9) — Inclusion as income from office or employment; 6(23) — Employer-provided mortgage subsidy is taxable; 12(1)(w) — Benefit from carrying on personal services business; 15(2) — Shareholder debt; 20(1)(c)(v) — Deductibility of interest; 79(3)F(b)(v)(B)(I) — Where property surrendered to creditor; 80(1)"forgiven amount"B(h) — Debt forgiveness rules do not apply; 80.4(1.1) — Interpretation; 80.4(3) — Loans — exceptions; 80.4(4) — Interest on loans for home purchase or relocation; 80.5 — Interest deemed paid; 110(1)(j) — Deduction — home relocation loan; 248(1)"home relocation loan"(c) — Definition based on application of 80.4(1).

History: That portion of subsec. 80.4(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 32, applicable to taxation years commencing after 1991. That portion formerly read:

(1) Loans — Where a person or partnership received a loan or otherwise incurred a debt by virtue of the office or employment or intended office or employment of an individual, or by virtue of the services performed or to be performed by a corporation carrying on a personal services business, the individual or corporation, as the case may be, shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the total of

Pre-RSC History: Para. 80.4(1)(a) substituted by 1985, c. 45, subsec. 38(1). Para. 80.4(1)(a) formerly read:

(a) the amount of interest for the year on all such loans and debts computed at such prescribed rates as are in effect from time to time during the period in the year that the loans and debts were outstanding, and

All that portion of subsec. 80.4(1) following subpara. 80.4(1)(b)(iii) substituted by 1985, c. 45, subsec. 38(2), applicable to 1984 *et seq.* That portion formerly read:

exceeds

(c) the amount of interest for the year paid on all such loans and debts not later than 30 days after the end of the year.

All that portion of subsec. 80.4(1) preceding para. (a), subparas. 80.4(1)(b)(ii), (iii) substituted and subpara. 80.4(1)(b)(iv) repealed by 1984, c. 45, subsecs. 25(1), (2), to substitute para. "125(7)(d)" for "125(6)(g.1)" in that portion preceding para. (a), and to add "or" at the end of subpara. (ii), applicable to 1985 *et seq.* Subparas. 80.4(1)(b)(iii) and (iv) formerly read:

(iii) the entity (within the meaning assigned by paragraph 125(9)(b)), to or for which the services were or were to be performed by the corporation, or

(iv) a person (other than the debtor) related to the entity (within the meaning assigned by paragraph 125(9)(b)),

See also History at end of s. 80.4.

Selected Cases [subsec. 80.4(1)]: *Vine Estate v. Canada*, [1990] 1 C.T.C. 18 (FCTD) (Amount applied by 50% shareholder from one company to cover losses of another fully owned company was benefit); *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Provision applies only to corporate officers and shareholders, not to loan from estate to executor).

Regulations: 4301(c) (prescribed rate of interest for 80.4(1)(a)); but see also ITA 80.4(7)"prescribed rate".

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: No. 6 (payment of mortgage interest subsidy by employer).

(1.1) Interpretation — A loan or debt is deemed to have been received or incurred because of an individual's office or employment, or because of services performed by

a corporation that carries on a personal services business, as the case may be, if it is reasonable to conclude that, but for an individual's previous, current or intended office or employment, or the services performed or to be performed by the corporation,

(a) the terms of the loan or debt would have been different; or

(b) the loan would not have been received or the debt would not have been incurred.

Related Provisions: 6(23) — Employer-provided mortgage subsidy is taxable; 248(1)"home relocation loan"(c) — Definition based on application of 80.4(1).

History: Subsec. 80.4(1.1) added by 1999, c. 22, s. 22, applicable to loans received and debts incurred after February 23, 1998 except that, in its application to a loan received or a debt incurred after February 23, 1998 in respect of an eligible relocation of an individual in connection with which the individual begins employment at the new work location before October 1998, subsec. (1.1) does not apply to taxation years that end before 2001.

(2) Idem — Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) was

(a) a shareholder of a corporation,

(b) connected with a shareholder of a corporation, or

(c) a member of a partnership, or a beneficiary of a trust, that was a shareholder of a corporation,

and by virtue of such shareholding that person or partnership received a loan from, or otherwise incurred a debt to, that corporation, any other corporation related thereto or a partnership of which that corporation or any corporation related thereto was a member, the person or partnership shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which

(d) all interest on all such loans and debts computed at the prescribed rate on each such loan and debt for the period in the year during which it was outstanding

exceeds

(e) the amount of interest for the year paid on all such loans and debts not later than 30 days after the later of the end of the year and December 31, 1982.

Related Provisions: 15(2) — Income inclusion for amount of loan; 15(9) — Deemed benefit to shareholder; 20(1)(c)(vi) — Deductibility of interest; 79(3)F(b)(v)(B)(I) — Where property surrendered to creditor; 80(1)"forgiven amount"B(h) — Debt forgiveness rules do not apply; 80.4(3) — Exceptions; 80.5 — Deemed interest; 95(1)"foreign accrual property income"A(d) — Definitions — "foreign accrual property income".

Pre-RSC History: Para. 80.4(2)(d) substituted by 1985, c. 45, subsec. 38(3). Para. 80.4(2)(d) formerly read:

(d) the amount of interest for the year on all such loans and debts computed at such prescribed rates as are in effect from time to time during the period in the year that the loans and debts were outstanding

See also History at end of s. 80.4.

Regulations: 4301(c) (prescribed rate of interest for 80.4(2)(d)); but see also ITA 80.4(7)"prescribed rate".

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(3) Where subsecs. (1) and (2) do not apply — Subsections (1) and (2) do not apply in respect of any loan or debt, or any part thereof,

(a) on which the rate of interest was equal to or greater than the rate that would, having regard to all the circumstances (including the terms and conditions of the loan or debt), have been agreed on, at the time the loan was received or the debt was incurred, between parties dealing with each other at arm's length if

(i) none of the parties received the loan or incurred the debt by virtue of an office or employment or by virtue of the shareholding of a person or partnership, and

(ii) the ordinary business of the creditor included the lending of money,

except where an amount is paid or payable in any taxation year to the creditor in respect of interest on the loan or debt by a party other than the debtor; or

(b) that was included in computing the income of a person or partnership under this Part.

Selected Cases [subsec. 80.4(3)]: *Quigley v. Canada*, [1996] 1 C.T.C. 2378 (TCC) ("Was included" is question of fact and not same as "ought to have been included").

(4) Interest on loans for home purchase or relocation — For the purpose of computing the benefit under subsection (1) in a taxation year in respect of a home purchase loan or a home relocation loan and for the purpose of paragraph 110(1)(j), the amount of interest determined under paragraph (1)(a) shall not exceed the amount of interest that would have been determined thereunder if it had been computed at the prescribed rate in effect at the time the loan was received or the debt was incurred, as the case may be.

Related Provisions: 80(14)(d) — Residual balance; 80.4(6) — Interest rate cap reset every 5 years; 110(1.4) — Replacement of home relocation loan.

Pre-RSC History: Subsec. 80.4(4) amended by 1986, c. 6, subsec. 40(1), applicable to 1985 *et seq.*, to substitute heading "Interest on loans for home purchase or relocation" for "Interest on home purchase loans", to substitute "in respect of a home purchase loan or a home relocation loan and for the purpose of paragraph 110(1)(j)" for "on a home purchase loan", and to add "as the case may be" after "the debt was incurred".

See also History at end of s. 80.4.

Regulations: 4301(c) (prescribed rate of interest); but see also ITA 80.4(7)"prescribed rate".

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(5) Idem — Where an individual has, before November 13, 1981,

(a) received a housing loan, or

(b) made arrangements in writing in respect of a home purchase loan that would, if the loan were made before 1982, have been a housing loan,

for the purpose of computing the amount of interest referred to in paragraph (1)(a) on the loan, the amount of the loan may be reduced

(c) for the 1982 taxation year, by the amount, if any, by which $40,000 exceeds the total of

(i) all amounts claimed as a reduction under this subsection for the year by the individual's spouse with whom the individual resided in the year, and

(ii) all amounts claimed as a reduction under this subsection for the year by the individual on all other loans, and

(d) for the 1983 taxation year, by the amount, if any, by which $20,000 exceeds the total of

(i) all amounts claimed as a reduction under this subsection for the year by the individual's spouse with whom the individual resided in the year, and

(ii) all amounts claimed as a reduction under this subsection for the year by the individual on all other loans.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(6) Deemed new home purchase loans — For the purposes of this section, other than paragraph (3)(a) and subsection (5), where a home purchase loan or a home relocation loan of an individual has a term for repayment exceeding five years, the balance outstanding on the loan on the date that is five years from the day the loan was received or was last deemed by this subsection to have been received shall be deemed to be a new home purchase loan received by the individual on that date.

Related Provisions: 110(1)(j) — Home relocation loan; 110(1.4) — Replacement of home relocation loan; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 80.4(6) amended by 1986, c. 6, subsec. 40(2), applicable to 1985 *et seq.*, to add "or a home relocation loan".

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(7) Definitions — In this section,

"home purchase loan" means that portion of any loan received or debt otherwise incurred by an individual in the circumstances described in subsection (1) that is used to acquire, or to repay a loan or debt that was received or incurred to acquire, a dwelling, or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the habitation of

(a) the individual by virtue of whose office or employment the loan is received or the debt is incurred,

(b) a specified shareholder of the corporation by virtue of whose services the loan is received or the debt is incurred, or

(c) a person related to a person described in paragraph (a) or (b),

or that is used to repay a home purchase loan;

History: That portion of "home purchase loan" preceding para. (a) in subsec. 80.4(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 60, applicable to 1985 *et seq.* That portion formerly read:

"home purchase loan" means that portion of any loan received or debt otherwise incurred by an individual in the circumstances described in subsection (1) that is used to acquire, or to repay a loan or debt that had been received or incurred to acquire, a dwelling for the habitation of

Pre-RSC History: *The definition "home purchase loan" was para. 80.4(7)(a).*

Para. 80.4(7)(a) substituted by 1984, c. 45, subsec. 25(3), to delete from subpara. (ii) "(within the meaning assigned by paragraph 125(9)(c))" located after "a specified shareholder" and to add after subpara. (iii) "or that is used to repay a home purchase loan; and", applicable to taxation years ending after 1981, except that subpara. (ii), as it read immediately prior to the coming into force of c. 45, shall continue to apply to the 1984 and prior taxation years.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

"prescribed rate" of interest means

(a) 6% per annum before 1978,

(b) 8% per annum for 1978, and

(c) for any year, or part thereof, after 1978, such rate of interest as is prescribed therefor except that, for the purpose of computing the benefit under subsection (1) in a taxation year on a home purchase loan received after November 12, 1981 and before 1982, the prescribed rate of interest at the time the loan was received shall be deemed to be 16% per annum.

Pre-RSC History: *The definition "prescribed rate" was para. 80.4(7)(b).*

Regulations: 4301(c) (prescribed rate of interest for para. (c)).

(8) Persons connected with a shareholder — For the purposes of subsection (2), a person is connected with a shareholder of a corporation if that person does not deal at arm's length with the shareholder and if that person is a person other than

(a) a foreign affiliate of the corporation; or

(b) a foreign affiliate of a person resident in Canada with which the corporation does not deal at arm's length.

Pre-RSC History [s. 80.4]: S. 80.4 substituted by 1980-81-82-83, c. 140, subsec. 44(1), applicable by 1984, c. 1, s. 111 (deemed to be in force on March 30, 1983), to taxation years ending after 1981 except that

(a) where the taxation year ended in 1982, subsections 80.4(1) and (2) of the said Act, as enacted by c. 140, shall not apply to the part of that taxation year that is before 1982; and

(b) subsection 80.4(2) of the said Act, as enacted by c. 140, shall not apply before July 1, 1983 in respect of any loan received or debt incurred before December 8, 1982 by a corporation that is not resident in Canada and that was not dealing at arm's length with the creditor corporation.

And (by 1980-81-82-83, subsec. 44(3)), in applying s. 80.4 for the 1980 and 1981 taxation years,

(a) para. 80.4(1)(d) shall be deemed to have read as follows:

"(d) the amount, if any, by which interest in respect of the taxation year on all loans each of which is described in paragraph (a), (a.1) or (b) (other than housing loans and excluded loans) received by him, computed at a prescribed rate per annum, exceeds the interest in respect of the taxation year paid by him before the end of the immediately following taxation year on all such loans,";

(b) subpara. 80.4(2)(a)(i) shall be deemed to have read as follows:

"(i) the portion of any loan described in paragraph (1)(a) or (a.1) made to an officer or employee of a corporation or to an individual who becomes an officer or employee of a corporation to enable or assist him to purchase fully paid shares of the capital stock of the corporation or of a corporation related thereto to be held by him for his own benefit,"; and

(c) para. 80.4(2)(b) shall be deemed to have read as follows:

"(b) "housing loan" means the portion of any loan made to

(i) an officer or employee or to his spouse, or

(ii) an individual who becomes an officer or employee or to his spouse, where such loan is made within ninety days preceding the day he becomes an officer or employee,

by virtue of his office or employment, to enable or assist him or his spouse to acquire a dwelling for his habitation if the acquisition of that dwelling was made in the course of a change in his residence and he was (or would have been had he moved from a location in Canada after 1971 and incurred moving expenses) entitled to a deduction under section 62;"

S. 80.4 formerly read:

80.4 (1) Loans to officers, employees and shareholders — Where an individual

(a) is an officer or employee or is related to an officer or employee and has received a loan by virtue of his office or employment or the office or employment of a person to whom he is related,

(a.1) becomes an officer or employee, or is related to another person who becomes an officer or employee, and, within the ninety days preceding the day he or that other person becomes

an officer or employee, has received a loan by virtue of his office or employment or the office or employment of that other person, or

(b) is a shareholder of a particular corporation or is related to a shareholder of a particular corporation and has received a loan (other than an excluded loan) from the particular corporation, from a corporation related to the particular corporation or from a partnership of which the particular corporation or a corporation related to the particular corporation is a member,

he shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the aggregate of

(c) the amount, if any, by which interest in respect of the taxation year on all housing loans received by him, computed at a prescribed rate per annum, exceeds the aggregate of

(i) interest in respect of the taxation year paid by him before the end of the immediately following taxation year on all such loans, and

(ii) the product obtained when the prescribed rate per annum is multiplied by

(A) in the case of an individual whose spouse with whom he resided in the taxation year had a housing loan, an amount (in this subsection referred to as his "agreed amount") equal to such portion of $50,000 as has, by agreement between the individual and his spouse, been allocated to him and that, when added to the agreed amount of his spouse, does not exceed $50,000, and

(B) in any other case, $50,000, and

(d) the amount, if any, by which interest in respect of the taxation year on all loans described in paragraphs (a) and (b) (other than housing loans and excluded loans) received by him, computed at a prescribed rate per annum, exceeds the interest in respect of the taxation year paid by him before the end of the immediately following taxation year on all such loans,

exceeds

(e) in the case of the individual referred to in clause (c)(ii)(A), that proportion of $500 that his agreed amount is of $50,000, and

(f) in any other case, $500.

(1.1) Exception — Subsection (1) does not apply in any taxation year with respect to a loan referred to in paragraph (1)(a) or (a.1), unless the interest for the year that was paid thereon before the end of the immediately following taxation year is less than the interest that would have been payable thereon for the year if interest thereon were charged at the rate of interest specified for the year in which the loan was made or the year in which the terms or conditions relating to the loan were last modified, whichever year is later.

(2) Definitions — For the purposes of this section,

(a) "excluded loan" — "excluded loan" means

(i) the portion of any loan described in paragraph (1)(a) made to an officer or employee of a corporation to enable or assist him to purchase fully paid shares of the capital stock of the corporation or of a corporation related to it to be held by him for his own benefit,

(ii) the portion of any loan included in computing the income of the individual to whom it was made, and

(iii) a loan made by an individual (other than a trust) to an individual with whom he was not dealing at arm's length;

(b) "housing loan" — "housing loan" means the portion of any loan made to an officer or employee or to his spouse, by virtue of his office or employment, to enable or assist him or his spouse to acquire a dwelling for his habitation if the acquisition of that dwelling was made in the course of a change in his residence and he was (or would have been had he moved from a location in Canada after 1971 and incurred moving expenses) entitled to a deduction under section 62;

(c) "rate of interest specified for the year" — "rate of interest specified for the year" in respect of a loan means

(i) 6% per annum for any year before 1978,

(ii) 8% per annum for 1978, and

(iii) for any year after 1978, the rate of interest prescribed therefor for the purposes of subsection (1).

Selected Cases [s. 80.4]: *Marchand v. R.*, [1997] 2 C.T.C. 312 (FCA) (Blending of market and other interest rates not permitted).

Definitions [s. 80.4]: "amount" — 248(1); "arm's length" — 251(1); "because of" — 80.4(1.1); "Canada" — 255; "carrying on business" — 253; "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employee" — 248(1); "employer" — 80.4(1)(b)(i); "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "home purchase loan" — 80.4(7); "home relocation loan", "individual", "office", "officer", "person" — 248(1); "personal services business" — 125(7), 248(1); "prescribed" — 80.4(7), 248(1); "prescribed rate" — Reg. 4301; "related" — 251(2); "resident in Canada" — 250; "share", "shareholder", "specified shareholder" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Pre-RSC History [former s. 80.4]: Paras. 80.4(1)(a.1), (2)(c), subsec. 80.4(1.1) added, all that portion of subsec. 80.4(2) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsecs. 42(1)–(4), applicable to 1980 *et seq.* That portion formerly read:

(2) For the purpose of subsection (1),

All that portion of subsec. 80.4(1) following subpara. (c)(i) substituted, by 1979, c. 5, subsec. 25(1), applicable with respect to loans made after November 16, 1978. That portion (except for para (d), which remained unaltered) formerly read:

(ii) the product obtained when the prescribed rate per annum is multiplied by $50,000, and

. . . . .

(e) $500.

Para. 80.4(2)(b) substituted by 1979, c. 5, subsec. 25(2), applicable to 1979 *et seq.*

Subpara. 80.4(2)(a)(i) and para. 80.4(2)(b) substituted by 1977-78, c. 32, subsecs. 16(2), (3), applicable to 1979 *et seq.*

S. 80.4 added by 1977-78, c. 1, s. 35, applicable to 1979 *et seq.*

80.5 Deemed interest — Where a benefit is deemed by section 80.4 to have been received in a taxation year by

(a) an individual or corporation under subsection 80.4(1), or

(b) a person or partnership under subsection 80.4(2),

the amount of the benefit shall, for the purposes of subparagraph 8(1)(j)(i) and paragraph 20(1)(c), be deemed to be interest paid in, and payable in respect of, the year by the debtor pursuant to a legal obligation to pay interest on borrowed money.

Pre-RSC History: All that portion of s. 80.5 following para. (b) substituted by 1984, c. 1, s. 36, applicable to taxation years commencing after 1981. That portion formerly read:

the amount of the benefit shall, for the purpose of paragraph 20(1)(c), be deemed to be interest paid in the year and payable in respect of the year, pursuant to a legal obligation to pay interest on borrowed money, by the debtor.

S. 80.5 added by 1980-81-82-83, c. 140 s. 45(1), applicable, by 1984, c. 1, s. 112 (deemed in force on March 30, 1983), to taxation years commencing after 1981 except that in its application to the 1982 taxation year, where a debtor would otherwise be entitled to make a deduction under para. 20(1)(c) with respect to a benefit deemed by s. 80.5 to be interest paid in the year and payable in respect of the year, the individual or corporation referred to in para. 80.5(a) may in computing its income for the year, deduct an amount equal to the amount that the debtor would otherwise be entitled to deduct in computing its income for the year where the debtor elects in his return of income for the 1982 taxation year not to make such deduction.

Definitions [s. 80.5]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "individual", "person" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Subdivision g — Amounts Not Included in Computing Income

81. (1) Amounts not included in income — There shall not be included in computing the income of a taxpayer for a taxation year,

(a) **statutory exemptions** — an amount that is declared to be exempt from income tax by any other enactment of Parliament, other than an amount received or receivable by an individual that is exempt by virtue of a provision contained in a tax convention or agreement with another country that has the force of law in Canada;

Proposed Amendment — First Nations taxation

Federal budget, Supplementary Information, February 24, 1998: *First Nations Taxation*

In the 1997 budget, the federal government indicated its willingness to put into effect taxation arrangements with interested First Nations. Since that time, Parliament has passed legislation that allows the Cowichan Tribes and the Westbank First Nation to levy taxes on tobacco products sold on their respective reserves. In the case of the Westbank First Nation, a tax collection agreement has been concluded under which Revenue Canada will collect Westbank's tax.

The federal government has also been working, this past year, with the self-governing First Nations in the Yukon to facilitate the exercise of taxation powers provided in their self-government agreements. The discussions have focused on the co-ordination of the First Nations tax system with that of Canada through the use of tax collection agreements. The successful conclusion of these first tax collection agreements will open a new and important revenue source for these communities. The first such agreements will address the co-ordination of our respective personal income tax systems. The government has also identified co-ordination of corporate income taxes and sales taxes as subjects for discussion in the next year.

Building on the work of the last year, the federal government is once again expressing its willingness to continue discussions and to put into effect taxation arrangements with the First Nations that indicate an interest in exercising taxation powers.

Federal budget, Supplementary Information, February 16, 1999: *First Nations taxation*

In the 1997 and 1998 budgets, the federal government indicated its willingness to put into effect taxation arrangements with interested First Nations. Since that time, Parliament has passed legislation that enables the Cowichan Tribes, the Westbank First Nation and the Kamloops Indian Band to levy a tax on sales of certain products on their reserves. In addition, personal income tax collection and sharing agreements with the seven self-governing Yukon First Nations came into effect on January 1, 1999. The federal government is once again expressing its willingness to discuss and to put into effect arrangements in respect of direct taxation with interested First Nations.

Federal budget, supplementary information, February 28, 2000: *First Nations Taxation*

In the 1997, 1998 and 1999 budgets, the Government indicated its willingness to put into effect taxation arrangements with interested First Nations. Since that time, Parliament has passed legislation that enables the Cowichan Tribes, the Westbank First Nation, the Kamloops Indian Band and the Sliammon First Nation to levy a tax on sales of certain products on their reserves. In addition, personal income tax collection and sharing agreements with the seven self-governing Yukon First Nations came into effect on January 1, 1999. The Government is once again expressing its willingness to discuss and to put into effect arrangements in respect of direct taxation with interested First Nations.

Related Provisions: 110(1)(f)(i) — Deduction for amount exempted by treaty; 120(2.2) — Credit for persons subject to First Nations Tax; 126(3)(c) — Employees of international organizations; 150(1)(a)(ii) — Non-resident claiming treaty exemption must file tax return; 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Pre-RSC History: Para. 81(1)(a) substituted by 1980-81-82-83, c. 140, subsec. 46(1), applicable to 1982 *et seq.* Para. 81(1)(a) formerly read:

> (a) an amount that is declared to be exempt from income tax by any other enactment of the Parliament of Canada.

Selected Cases [para. 81(1)(a)]: *Perley v. R.*, [1999] 3 C.T.C. 180 (FCA) (Remission orders applicable only after tax liability has been determined); *Poker v. Canada*, [1995] 1 C.T.C. 84 (FCTD) (Factors considered with respect to taxability of income earned by taxpayer identified in *Indian Act*); *Williams v. Canada*, [1990] 2 C.T.C. 124 (FCA); rev'd [1992] 1 C.T.C. 225 (SCC) (Unemployment insurance benefits received by Indian after work on reserve completed not taxable).

Remission Orders: *Indian Income Tax Remission Order*, P.C. 1993-523, P.C. 1993-1649 (remission of tax on income from an employer that resides on a reserve); *Indian Income Tax Remission Order (Yukon Territory Lands)*, P.C. 1995-197 (certain lands in Yukon treated as Indian reserves for income tax purposes); *Indians and Bands on certain Indian Settlements Remission Orders*, P.C. 1992-1052 (remission of tax payable by Indians and Indian bands); *Indians and Bands on Certain Indian Settlements Remission Orders (1997)*, P.C. 1992-1529 (remission of tax payable by Indians and Indian bands).

Interpretation Bulletins: IT-62: Indians [withdrawn — under revision]; IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

I.T. Technical News: No. 2 (tax exemption for Indians); No. 5 (statutory exemptions — *Indian Act*); No. 7 (Indians: interest income — situs of savings accounts); No. 9 (taxation of Indians' investment income).

Forms: TD1-IN: Determination of exemption of an Indian's employment income.

(b) **War Savings Certificate** — an amount received under a War Savings Certificate issued by His Majesty in right of Canada or under a similar savings certificate issued by His Majesty in right of Newfoundland before April 1, 1949;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

(c) **ship or aircraft of non-residents** — the income for the year of a non-resident person earned in Canada from the operation of a ship or aircraft in international traffic, if the country where that person resided grants substantially similar relief for the year to a person resident in Canada;

Related Provisions: 115(1)(b)(ii)(B) — Exclusion of ship or aircraft from taxable Canadian property; 250(6) — Residence of international shipping corporation; Canada–U.S. tax treaty, Art. VIII — Operation of ships or aircraft in international traffic.

Pre-RSC History: Para. 81(1)(c) substituted by 1974-75-76, c. 26, subsec. 44(1), applicable to 1974 *et seq.*, to delete "by him" after "operation".

Selected Cases [para. 81(1)(c)]: *Crown Forest Industries Ltd. v. Canada*, [1992] 2 C.T.C. 1 (FCTD); aff'd (Nov. 8, 1993), Doc. A-1103-92, A-1104-92, A-1105-92 (FCA) (Corporation liable to, but exempt from, US tax was resident in US under treaty by virtue of place of management and business); *Furness, Withy & Co. Ltd. v. MNR*, [1968] C.T.C. 35 (SCC) (income from services rendered in Canada to unrelated companies not exempt; income from services by company's Canadian branches rendered to ships in company's service exempt).

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

(d) **service pension, allowance or compensation** — a pension payment, an allowance or compensation that is received under or is subject to the *Pension Act*, the *Civilian War-related Benefits Act* or the *War Veterans Allowance Act*, an amount received under the *Gallantry Awards Order* or compensation received under the regulations made under section 9 of the *Aeronautics Act*;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

History: Para. 81(1)(d) amended by 1999, c. 10, s. 44, to substitute "*Civilian War-related Benefits Act*" for "*Merchant Navy Veteran and Civilian War-related Benefits Act*", proclaimed into force on May 1, 1999.

Para. 81(1)(d) amended by 1994, c. 7, Sch. IV (1992, c. 24), s. 15, to substitute "*Merchant Navy Veteran and Civilian War-related Benefits Act*" for "*Civilian War Pension and Allowances Act*", effective July 1, 1992.

Para. 81(1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(1), to add "an amount received under the *Gallantry Awards Order*", applicable to 1986 *et seq.*

Pre-RSC History: Para. 81(1)(d) amended by 1987, c. 45, s. 17, to delete reference to the *Compensation for Former Prisoners of War Act*, applicable to taxation years commencing after February 1, 1988.

Para. 81(1)(d) amended by 1985, c. 28, s. 9, to substitute "section 7.7 of the *Aeronautics Act*" for "section 7 of the *Aeronautics Act*".

Para. 81(1)(d) amended by 1974-75-76, c. 95, s. 13, deemed to be in force April 1, 1976, to add reference to the *Compensation for Former Prisoners of War Act.*

Interpretation Bulletins: IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

(e) **war pensions** — a pension payment received on account of disability or death arising out of a war from a country that was an ally of Canada at the time of the war, if that country grants substantially similar relief for the year to a person receiving a pension referred to in paragraph (d);

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

History: Para. 81(1)(e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(2), applicable to 1988 *et seq.* Para. (e) formerly read:

(e) service pension from another country — a pension payment received on account of disability or death arising out of war service from a country that was an ally of Her majesty or His Majesty at the time of the war service, if that country grants substantially similar relief for the year to a person receiving a pension referred to in paragraph (d);

Interpretation Bulletins: IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

(f) **Halifax disaster pensions, grants or allowances** — a pension payment, a grant or an allowance in respect of death or injury sustained in the explosion at Halifax in 1917 and received from the Halifax Relief Commission the incorporation of which was confirmed by *An Act respecting the Halifax Relief Commission*, chapter 24 of the Statutes of Canada, 1918, or received pursuant to the *Halifax Relief Commission Pension Continuation Act*, chapter 88 of the Statutes of Canada, 1974-75-76;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

History: Para. 81(1)(f) amended by 1995, c. 18, s. 88, in force September 15, 1995. Para. (f) formerly read:

(f) a pension payment, a grant or an allowance in respect of death or injury sustained in the explosion at Halifax in 1917 received from the Halifax Relief Commission the incorporation of which was confirmed by *An Act respecting the Halifax Relief Commission*, chapter 24 of the Statutes of Canada, 1918, or from the Canadian Pension Commission pursuant to the *Halifax Relief Commission Pension Continuation Act*, chapter 88 of the Statutes of Canada, 1974-75-76;

Pre-RSC History: Para. 81(1)(f) substituted by 1974-75-76, c. 88, s. 8, proclaimed in force from June 11, 1976. Para. (f) formerly read:

(f) a pension payment in respect of death or injury sustained in the explosion at Halifax in 1917 received from the Halifax Relief Commission the incorporation of which was confirmed by chapter 24 of the Statutes of Canada, 1918;

(g) **compensation by Federal Republic of Germany** — a payment made by the Federal Republic of Germany or by a public body performing a function of government within that country as compensation to a victim of National Socialist persecution, where no tax is payable in respect of that payment under a law of the Federal Republic of Germany that imposes an income tax;

(g.1) **income from personal injury award property** — the income for the year from any property acquired by or on behalf of a person as an award of, or pursuant to an action for, damages in respect of physical or mental injury to that person, or from any property substituted therefor and any taxable capital gain for the year from the disposition of any such property,

(i) where the income was income from the property, if the income was earned in respect of a period before the end of the taxation year in which the person attained the age of 21 years, and

(ii) in any other case, if the person was less than 21 years of age during any part of the year;

Related Provisions: 81(1)(g.2) — Income from income exempt under paragraph (g.1); 81(5) — Election to increase ACB of capital property at age 21; 212(1)(h)(iii) — Exemption from non-resident holding tax; 248(5) — Substituted property.

Pre-RSC History: Para. 81(1)(g.1) substituted by 1985, c. 45, subsec. 39(1), applicable to 1984 *et seq.* Para. (g.1) formerly read:

(g.1) income from property acquired as personal injury award — the income of the taxpayer for the year from any property, or any property substituted therefor, or the taxable capital gain of the taxpayer for the year from the disposition of any such property, acquired by the taxpayer or by any person for the benefit of the taxpayer as an award of, or pursuant to an action for, damages in respect of physical or mental injury to the taxpayer, if the income or taxable capital gain was received

(i) by the taxpayer,

(ii) by the taxpayer's guardian, curator, tutor, committee or other legal representative, or

(iii) by an officer of a court for the benefit of the taxpayer,

before the taxpayer attained the age of 21 years;

All that portion of para. 81(1)(g.1) preceding subpara. (i) substituted by 1974-75-76, c. 26, subsec. 44(2), applicable to 1972 *et seq.*

Para. 81(1)(g.1) added by 1973-74, c. 14, subsec. 23(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-365R2: Damages, settlements and similar receipts.

(g.2) **income from income exempt under para. (g.1)** — any income for the year from any income that is by virtue of this paragraph or paragraph (g.1) not required to be included in computing the taxpayer's income (other than any income attributable to any period after the end of the taxation year in which the person on whose behalf the income was earned attained the age of 21 years);

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Pre-RSC History: Para. 81(1)(g.2) substituted by 1985, c. 45, subsec. 39(1), applicable to 1984 *et seq.* Para. (g.2) formerly read:

(g.2) any income of the taxpayer for the year (other than any such income received after he attained the age of 21 years) from any income that is, by virtue of paragraph (g.1) or this paragraph, not required to be included in computing the taxpayer's income for any taxation year;

Para. 81(1)(g.2) added by 1973-74, c. 14, subsec. 23(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-365R2: Damages, settlements and similar receipts.

(g.3) **hepatitis C trust** — the amount that, but for this paragraph, would be the income of the taxpayer for the year where

(i) the taxpayer is the trust established under the 1986-1990 Hepatitis C Settlement Agreement en-

tered into by Her Majesty in right of Canada and Her Majesty in right of each of the provinces, and

(ii) the only contributions made to the trust before the end of the year are those provided for under the Agreement;

History: Para. 81(1)(g.3) added by 2000, c. 19, s. 12, applicable to 1999 *et seq.*

Pre-RSC History [former para. 81(1)(g.3)]: Para. 81(1)(g.3) repealed by 1985, c. 45, subsec. 39(1), applicable to 1984 *et seq.* Para. (g.3) formerly read:

(g.3) interest paid on property acquired as award and held for benefit of taxpayer under 21 years — any amount paid to the taxpayer in the year by a person described in subparagraph (g.1)(ii) or (iii) as, on account or in lieu of payment of, or in satisfaction of, interest on

(i) any property, or any property substituted therefor, acquired by or for the benefit of the taxpayer as described in paragraph (g.1), or

(ii) any income of the taxpayer from any property referred to in subparagraph (i),

in respect of a period during which

(iii) the property or the income, as the case may be, was held or was received and held, as the case may be, by that person or, if that person was an officer of a court, under his jurisdiction, and

(iv) the taxpayer was under the age of 21 years;

Para. 81(1)(g.3) added by 1973-74, c. 14, subsec. 23(2), applicable to 1972 *et seq.*

(h) **social assistance** — where the taxpayer is an individual (other than a trust), a social assistance payment (other than a prescribed payment) ordinarily made on the basis of a means, needs or income test under a program provided for by an Act of Parliament or a law of a province, to the extent that it is received directly or indirectly by the taxpayer for the benefit of another individual (other than the taxpayer's spouse or a person who is related to the taxpayer or to the taxpayer's spouse), if

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(i) no family allowance under the *Family Allowances Act* or any similar allowance under a law of a province that provides for payment of an allowance similar to the family allowance provided under that Act is payable in respect of the other individual for the period in respect of which the social assistance payment is made, and

(ii) the other individual resides in the taxpayer's principal place of residence, or the taxpayer's principal place of residence is maintained for use as the residence of that other individual, throughout the period referred to in subparagraph (i);

Related Provisions: 56(1)(u), 110(1)(f) — Income inclusion and deduction — social assistance payments; 212(1)(h)(iii) — Exemption from non-resident holding tax; 252(4) — Extended meaning of "spouse".

History: That portion of para. 81(1)(h) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 33, to substitute "the taxpayer's spouse or a person who is related to the taxpayer or to the taxpayer's spouse" for "a person who is cohabiting in a conjugal relationship with the taxpayer or who is related to the taxpayer or to such a person", applicable after 1992.

Para. 81(1)(h) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(3), applicable to 1982 *et seq.* and, notwithstanding subsecs. 152(4) to (5), if before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such a request made before December 11, 1993 shall be deemed to have been made before 1992] a taxpayer requested the Minister of National Revenue to do so, such assessments of tax, amounts deemed to be paid on account of tax, interest and penalties payable or deemed to be paid by the taxpayer for any such year shall be made as are necessary to give effect to the para. in respect of the taxpayer.

Regulations: No prescribed payments to date.

I.T. Technical News: No. 17 (application of para. 81(1)(h) to employment income).

Pre-RSC History [former para. 81(1)(h)]: Para. 81(1)(h) repealed by 1980-81-82-83, c. 140, subsec. 46(2), applicable to 1982 *et seq.* Para. (h) formerly read:

(h) workmen's compensation — compensation received under an employees' or workmen's compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid;

(i) **RCMP pension or compensation** — a pension payment or compensation received under section 5, 31 or 45 of the *Royal Canadian Mounted Police Pension Continuation Act*, chapter R-10 of the Revised Statutes of Canada, 1970, or section 32 or 33 of the *Royal Canadian Mounted Police Superannuation Act*, in respect of an injury, disability or death;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Interpretation Bulletins: IT-397R: Amounts excluded from income — statutory exemptions and certain service or RCMP pensions, allowances and compensation.

(j) [Repealed under former Act]

Pre-RSC History: Para. 81(1)(j) repealed by 1980-81-82-83, c. 140, subsec. 46(3), applicable to 1982 *et seq.* Para. (j) formerly read:

(j) social assistance payments — the amount of any social assistance payment made on a means or a needs test basis,

(i) by a registered charity, or

(ii) under a prescribed program provided for by an Act of the Parliament of Canada or a law of a province;

"Registered charity" substituted for "registered Canadian charitable organization" in subpara. 81(1)(j)(i) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

(k) **employees profit sharing plan** — a payment or part of a payment from an employees profit sharing plan that section 144 provides is not to be included;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

(l) **prospecting** — an amount in respect of the receipt of a share that section 35 provides is not to be included;

Related Provisions: 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Selected Cases [para. 81(1)(l)]: *Cooper v. MNR*, [1977] C.T.C. 107 (FCA) (Proceeds from disposition of shares received for claims acquired pursuant to agreement with prospector exempt).

(m) **interest on certain obligations** — interest that accrued to, became receivable or was received by, a corporation resident in Canada (in this paragraph referred to as the "parent corporation") on a bond, debenture, bill, note, mortgage or similar obligation received by it as consideration for the disposition by it, before June 18, 1971, of

(i) a business carried on by it in a country other than Canada, or

(ii) all of the shares of a corporation that carried on a business in a country other than Canada, and such of the debts and other obligations of that corporation as were, immediately before the disposition, owing to the parent corporation,

if

(iii) the business was of a public utility or public service nature,

(iv) the business or the property described in subparagraph (ii), as the case may be, was disposed of to a person or persons resident in that country, and

(v) the obligation received by the parent corporation was issued by or guaranteed by the government of that country or any agent thereof;

Related Provisions: 40(2)(d) — Reduction in capital loss on bond to reflect exempt income; 87(2)(jj) — Amalgamations — continuation of predecessor corporations; 212(1)(h)(iii) — Exemption from non-resident withholding tax.

Pre-RSC History: All that portion of para. 81(1)(m) preceding subpara. (i) substituted by 1980-81-82-83, c. 48, subsec. 43(1), applicable to taxation years commencing after October 28, 1980. That portion formerly read:

(m) interest received by a corporation resident in Canada (in this paragraph referred to as the "parent corporation") on a bond, debenture, bill, note, mortgage, hypothec or similar obligation received by it as consideration for the disposition by it, before June 18, 1971, of

(n) **Governor General** — income from the office of Governor General of Canada;

(o), (p) [Repealed]

History: Paras. 81(1)(o) and (p) repealed by 1998, c. 19, subsec. 14(1), applicable to 1998 *et seq.* The paras. formerly read:

(o) RESP refunds — a refund of payments (within the meaning assigned by subsection 146.1(1));

(p) educational assistance payments — an educational assistance payment (within the meaning assigned by subsection 146.1(1)) received by a beneficiary under an education savings plan (within the meaning assigned by subsection 146.1(1)) that is not registered or the registration of which has been revoked pursuant to section 146.1;

Pre-RSC History: Paras. 81(1)(o) and (p) added by 1974-75-76, c. 26, subsec. 44(3), applicable to 1972 *et seq.*

(q) **provincial indemnities** — an amount paid to an individual as an indemnity under a prescribed provision of the law of a province; or

Pre-RSC History: Para. 81(1)(q) added by 1979, c. 5, s. 26, applicable with respect to amounts received after 1977.

Regulations: 6501 (prescribed provisions — criminal injuries compensation and motor vehicle accident claims).

(r) **foreign retirement arrangements** — an amount that is credited or added to a deposit or account governed by a foreign retirement arrangement as interest or other income in respect of the deposit or account, where the amount would, but for this paragraph, be included in the taxpayer's income solely because of that crediting or adding.

Proposed Amendment — Income Inclusion on Conversion to Roth IRA

Department of Finance press release, December 18, 1998: [See under 248(1)"foreign retirement arrangement" — ed.]

Related Provisions: 56(1)(a)(i)(C.1) — Inclusion in income of payment from foreign retirement arrangement; 146(20) — Where amount credited or added deemed not received.

History: Para. 81(1)(r) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 61(4), applicable to 1990 *et seq.*

(s) [Repealed under former Act]

Pre-RSC History [paras. 81(1)(r), (s)]: Former para. 81(1)(r), para. (s) repealed by 1986, c. 2, subsec. 20(1), applicable to 1986 *et seq.* Paras. (r), (s) formerly read:

(r) [amount under *Petroleum and Gas Revenue Act*] — an amount determined under section 83.1 of the *Petroleum and Gas Revenue Tax Act* for the year computed without reference to paragraph (1)(c) thereof; or

(s) [incremental resource royalty] — the amount, if any, by which the amount of an incremental resource royalty received by the taxpayer in the year exceeds the aggregate of all incremental payouts by him in respect of the royalty.

Paras. 81(1)(r), (s) added by 1980-81-82-83, c. 104, subsec. 31(1), applicable to 1982 *et seq.*

Selected Cases [subsec. 81(1)]: *ACTRA Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA) (Allocation of assets to particular fund was rebuttable presumption only).

(1.1) [Repealed under former Act]

Pre-RSC History: Subsec. 81(1.1) repealed by 1986, c. 2, subsec. 20(2), applicable to 1986 *et seq.* Subsec. (1.1) formerly read:

(1.1) Interpretation — In paragraph (1)(s), "incremental payout" and "incremental resource royalty" have the same meanings as in the *Petroleum and Gas Revenue Tax Act*.

Subsec. 81(1.1) added by 1980-81-82-83, c. 104, subsec. 31(2), applicable to 1982 *et seq.*

(2) M.L.A.'s expense allowance — Where an elected member of a provincial legislative assembly has, under an Act of the provincial legislature, been paid an allowance in a taxation year for expenses incident to the discharge of the member's duties in that capacity, the allowance shall not be included in computing the member's income for the year unless it exceeds ½ of the maximum fixed amount provided by law as payable to the member by way of salary, indemnity and other remuneration as a member in respect of attendance at a session of the legislature, in which event there shall be included in computing the member's income for the year only the amount by which the allowance exceeds ½ of that maximum fixed amount.

Related Provisions: 6(1)(b) — Allowances taxable, and exclusions.

Interpretation Bulletins: IT-266: Taxation of members of provincial legislative assemblies.

(3) Municipal officers' expense allowance — Where a person who is

(a) an elected officer of an incorporated municipality,

(b) an officer of a municipal utilities board, commission or corporation or any other similar body, the incumbent of whose office as such an officer is elected by popular vote, or

(c) a member of a public or separate school board or similar body governing a school district,

has been paid by the municipal corporation or the body of which the person was such an officer or member (in this subsection referred to as the person's "employer") an amount as an allowance in a taxation year for expenses incident to the discharge of the person's duties as such an officer or member, the allowance shall not be included in computing the person's income for the year unless it exceeds ½ of the amount that was paid to the person in the year by the person's employer as salary or other remuneration as such an officer or member, in which event there shall be included in computing the person's income for the year only the amount by which the allowance exceeds ½ of the amount so paid to the person by way of salary or remuneration.

Related Provisions: 6(1)(b) — Allowances taxable, and exclusions.

Pre-RSC History: Subsec. 81(3) substituted by 1974-75-76, c. 26, subsec. 44(4), applicable to 1974 *et seq.* Subsec. (3) formerly read:

(3) Where

(a) an elected officer of an incorporated municipality, or

(b) an officer of a school board or school district, a municipal utilities board, commission or corporation or any other similar

body, the incumbent of whose office as such an officer is elected by popular vote,

has been paid by the municipal corporation or the body of which he was such an officer (in this subsection referred to as his "employer") an amount as an allowance in a taxation year for expenses incident to the discharge of his duties as such an officer, the allowance shall not be included in computing his income for the year unless it exceeds ½ of the amount that was paid to him in the year by his employer as salary or other remuneration as such an officer, in which event there shall be included in computing his income for the year only the amount by which the allowance exceeds ½ of the amount so paid to him by way of salary or remuneration.

Interpretation Bulletins: IT-292: Taxation of elected officers of incorporated municipalities, school boards, etc.

(3.1) Travel expenses — An amount received by an individual in respect of the individual's part-time employment by an employer with whom the individual was dealing at arm's length as an allowance for, or reimbursement of, travel expenses incurred during a period throughout which the individual had other employment or was carrying on a business shall not be included in computing the individual's income to the extent that it is paid by the employer and does not exceed a reasonable amount on account of travel expenses (other than expenses incurred in the performance of the duties of the individual's part-time employment) incurred by the individual in respect of that part-time employment, if the duties of the part-time employment are performed at a location not less than 80 kilometres from both the individual's ordinary place of residence and principal place of employment or business.

Proposed Amendment — 81(3.1)

(3.1) Travel expenses — There shall not be included in computing an individual's income for a taxation year an amount (not in excess of a reasonable amount) received by the individual from an employer with whom the individual was dealing at arm's length as an allowance for, or reimbursement of, travel expenses incurred by the individual in the year in respect of the individual's part-time employment in the year with the employer (other than expenses incurred in the performance of the duties of the individual's part-time employment) if

(a) throughout the period in which the expenses were incurred,

(i) the individual had other employment or was carrying on a business, or

(ii) where the employer is a designated educational institution (as defined in subsection 118.6(1)), the duties of the individual's part-time employment were the provision in Canada of a service to the employer in the individual's capacity as a professor or teacher; and

(b) the duties of the individual's part-time employment were performed at a location not less than 80 kilometres from,

(i) where subparagraph (a)(i) applies, both the individual's ordinary place of residence and the place of the other employment or business referred to in that subparagraph, and

(ii) where subparagraph (a)(ii) applies, the individual's ordinary place of residence.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 36, will amend subsec. 81(3.1) to read as above, applicable to 1995 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of an individual's tax payable under the Act for any taxation year that ends before 2000 shall be made that is necessary to take into account the application of subsec. 81(3.1).

Technical Notes: Section 81 of the Act lists various amounts which are not included in computing a taxpayer's income.

Subsection 81(3.1) of the Act excludes from income certain amounts received by a part-time employee in respect of travel expenses. In order to benefit from the exemption, the part-time employee is required to carry on a business or to have another employment. Since one of the purposes of this exemption is to facilitate the recruiting of part-time teachers by universities and other educational institutions located outside the major metropolitan areas, the amendment waives this particular requirement for individuals who are employed as professors or teachers by designated educational institutions. The term "designated educational institution", which is also used for the purposes of the tuition fee and education tax credits, is defined in subsection 118.6(1).

Pre-RSC History: Subsec. 81(3.1) substituted by 1980-81-82-83, c. 140 subsec. 46(4), applicable with respect to travelling expenses incurred after 1981, to substitute "80 kilometres" for "50 miles".

Subsec. 81(3.1) added by 1980-81-82-83, c. 48, subsec. 43(2), applicable in respect of amounts received after 1979.

Interpretation Bulletins: IT-522R: Vehicle, travel and sales expenses of employees.

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 81(4) repealed by 1980-81-82-83, c. 48, subsec. 43(3), applicable after December 11, 1979. Subsec. (4) formerly read:

(4) **Property subsequently substituted** — For the purposes of paragraphs (1)(g.1), (g.2) and (g.3), where a person who did own or hold property has disposed of it and acquired other property in substitution therefor and subsequently, by one or more further transactions, has effected one or more further substitutions, the property acquired by any such transaction shall be deemed to have been substituted for the property originally owned or held.

Subsec. 81(4) added by 1973-74, c.14, subsec. 23(3), applicable to 1972 *et seq.*

Proposed Addition — 81(4)

(4) Payments for volunteer services — Where

(a) an individual was employed or otherwise engaged in a taxation year by a government, municipality or public authority (in this subsection referred to as "the employer") and received in the year from the employer one or more amounts for the performance, as a volunteer, of the individual's duties as

(i) an ambulance technician,

(ii) a firefighter, or

(iii) a person who assists in the search or rescue of individuals or in other emergency situations, and

(b) if the Minister so demands, the employer has certified in writing that

(i) the individual was in the year a person described in paragraph (a), and

(ii) the individual was at no time in the year employed or otherwise engaged by the employer, otherwise than as a volunteer, in connection with the performance of any of the duties referred to in paragraph (a) or of similar duties,

there shall not be included in computing the individual's income derived from the performance of those duties the lesser of $1,000 and the total of those amounts.

Related Provisions: 63(3)"earned income"(b) — Exempted amount included in earned income for child-care expense deduction.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 36, will add subsec. 81(4), applicable to 1998 *et seq.*

Technical Notes: New subsection 81(4) of the Act provides for an exemption equivalent to the deduction available under

paragraph 8(1)(a), which is being repealed. The exemption applies to the first $1,000 of amounts received by an individual from a government, municipality or public authority for the performance, as a volunteer, of the individual's duties as an ambulance technician, a firefighter or a person who assists in the search or rescue of individuals or in other emergency situations. The exemption is granted under the same conditions as was the deduction under paragraph 8(1)(a).

CCRA news release, February 22, 2000: *Tax Tips: What is changing for emergency volunteers this year?*

In 1999, you may have received an allowance from a government, municipality or other public authority as an emergency worker for performing as a volunteer ambulance technician, fire fighter, in search and rescue, or in some other emergency capacity.

If you received an allowance, the T4 slip issued by such an authority will generally show only the taxable part of the allowance. This is the part that is more than $1,000. However, it is important to remember that if you were employed by the same authority for work other than as a volunteer, for the same or similar duties, the whole allowance will be taxable.

(5) Election — Where a taxpayer or a person described in paragraph (1)(g.1) has acquired capital property under the circumstances described in that paragraph, the taxpayer or the person may, in the return of income of the taxpayer for the taxation year in which the taxpayer attains the age of 21 years, elect to treat any such capital property held by the taxpayer or person as having been disposed of on the day immediately preceding the day on which the taxpayer attained the age of 21 years for proceeds of disposition equal to the fair market value of the property on that day and the person or taxpayer making the election shall be deemed to have reacquired that property immediately thereafter at a cost equal to those proceeds.

Pre-RSC History: Subsec. 81(5) added by 1976-77, c. 4, s. 31, applicable to 1972 *et seq.*

Definitions [s. 81]: "Act" — *Interpretation Act* 35(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated educational institution" — 118.6(1); "employees profit sharing plan" — 144(1), 248(1); "employed" — 248(1); "employer" — 81(4)(a), 248(1); "employment" — 248(1); "foreign retirement arrangement" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "international traffic" — 248(1); "legislative assembly" — *Interpretation Act* 35(1); "Minister", "non-resident", "office", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Subdivision h — Corporations Resident in Canada and Their Shareholders

82. (1) Taxable dividends received — In computing the income of a taxpayer for a taxation year, there shall be included

(a) the total of

(i) all amounts each of which is a taxable dividend received by the taxpayer in the year as part of a dividend rental arrangement of the taxpayer from a corporation resident in Canada or a taxable dividend received by the taxpayer in the year from a corporation resident in Canada that is not a taxable Canadian corporation,

(i.1) where the taxpayer is a trust, all amounts each of which is all or part of a taxable dividend (other than a taxable dividend described in subparagraph (i)) that was received by the trust in the year on a share of the capital stock of a taxable Canadian corporation and that can reasonably be considered as having been included in computing the income of a beneficiary under the trust who was non-resident at the end of the year, and

(ii) the amount, if any, by which

(A) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account of, in lieu of payment of or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer because of subparagraph (i) or (i.1)

exceeds

(B) where the taxpayer is an individual, the total of all amounts paid by the taxpayer in the year that are deemed by subsection 260(5) to have been received by another person as taxable dividends,

plus

(b) where the taxpayer is an individual, other than a trust that is a registered charity, 1/4 of the amount determined under subparagraph (a)(ii) in respect of the taxpayer for the year.

Related Provisions: 12(1)(j) — Inclusion into income from business or property; 52(3) — Cost of stock dividend; 82(1.1) — Application of 82(1)(a)(i); 82(2) — Dividends included in income by attribution rules; 82(3) — Dividends received by spouse; 84 — Deemed dividends; 90 — Dividends received from non-resident corporation; 104(19) — Taxable dividend received by trust; 112(3)(b)(i) — Reduction in loss on subsequent disposition of share by corporate shareholder; 112(4)–(4.3) — Loss on share held as inventory; 120.4(1)"split income"(a)(i) — Dividends received by children subject to income splitting tax; 121 — Dividend tax credit; 127.52(1)(f) — Exclusion of gross-up for minimum tax purposes; 137(4.2) — Credit unions — deemed interest deemed not to be a dividend; 139.1(4)(f), (g) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation; Canada–U.S. tax treaty, Art. X — Taxation of dividends.

History: Subpara. 82(1)(a)(i.1) added and cl. 82(1)(a)(ii)(A) amended by 1998, c. 19, subsecs. 114(1) and (2), applicable to taxation years that end after April 26, 1995. Cl. 82(1)(a)(ii)(A) formerly read:

(A) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account or in lieu of payment of, or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer by reason of subparagraph (i),

Pre-RSC History: Subsec. 82(1) substituted by 1990, c. 39, s. 18, applicable to 1989 *et seq.* except that no amount shall be included in the aggregate determined under cl. 82(1)(a)(ii)(B) in respect of an amount paid before June 1989. (See also subsec. 82(1.1).) Subsec. (1) formerly read:

82. (1) In computing the income of a taxpayer for a taxation year, there shall be included

(a) all amounts received by him in the year from corporations resident in Canada as, on account or in lieu of payment of, or in satisfaction of, taxable dividends,

plus

(b) where the taxpayer is an individual, other than a trust that is a registered charity, 1/4 of the aggregate of all amounts described in paragraph (a) received by him in the year from taxable Canadian corporations.

Para. 82(1)(b) amended by 1988, c. 55, subsec. 54(1), to substitute "1/4" for "1/3", applicable with respect to taxable dividends received in taxation years ending after 1987.

All that portion of subsec. 82(1) following para. (a) amended by 1986, c. 55, s. 22, to substitute "⅓" for "½", applicable to taxable dividends received after 1986.

Para. 82(1)(b) substituted by 1977-78, c. 1, s. 36, applicable in respect of taxable dividends received after 1977, to substitute "½" for "⅓".

Para. 82(1)(b) substituted by 1976-77, c. 4, s. 31.1, applicable to 1977 *et seq.* Para. (b) formerly read:

> (b) where the taxpayer is an individual, other than a trust referred to in paragraph 149(1)(h), ⅓ of the aggregate of all amounts described in paragraph (a) received by him in the year from taxable Canadian corporations.

Para. 82(1)(b) substituted by 1974-75-76, c. 26, s. 45, applicable to 1972 *et seq.*

Selected Cases [subsec. 82(1)]: *Mulligan v. R.*, [1999] 3 C.T.C. 2092 (TCC) (Corporate informality can be disregarded).

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-432R2: Benefits conferred on shareholders; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

I.T. Technical News: No. 11 (U.S. spin-offs (divestitures) — dividends in kind).

Forms: T5 Segment; T5 Summary: Return of investment income; T5 Supplementary: Statement of investment income.

(1.1) Limitations as to subpara. (1)(a)(i) — An amount shall be included in the amounts described in subparagraph (1)(a)(i) in respect of a taxable dividend received at any time as part of a dividend rental arrangement only where that dividend was received on a share acquired before that time and after April, 1989.

Origin of subsec. 82(1.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the application rule for subsec. 82(1) in 1990, c. 39, subsec. 18(2)).

(2) Certain dividends [deemed] received by taxpayer — Where by reason of subsection 56(4) or (4.1) or sections 74.1 to 75 of this Act or section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, there is included in computing a taxpayer's income for a taxation year a dividend received by another person, for the purposes of this Act, the dividend shall be deemed to have been received by the taxpayer.

Pre-RSC History: Subsec. 82(2) substituted by 1988, c. 55, subsec. 54(2), applicable to dividends received after June 18, 1987. Subsec. (2) formerly read:

> (2) Certain dividends deemed received by taxpayer — Where, by virtue of subsection 56(4) or sections 74 to 75, there is included in computing a taxpayer's income for a taxation year a dividend received by some other person, for the purposes of this section and sections 112 and 121, the dividend shall be deemed to have been received by the taxpayer.

Subsec. 82(2) amended by 1986, c. 6, s. 41, applicable after May 21, 1985, to substitute "sections 74 to 75" for "section 74 or 75".

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-440R2: Transfer of rights to income.

(3) Dividends received by spouse — Where the amount that would, but for this subsection, be deductible under subsection 118(1) by reason of paragraph 118(1)(a) in computing a taxpayer's tax payable under this Part for a taxation year is less than the amount that would be so deductible if no amount were required by subsection (1) to be included in computing the income for the year of the taxpayer's spouse and the taxpayer so elects in the taxpayer's return of income for the year under this Part, all amounts described in paragraph (1)(a) received in the year from taxable Canadian corporations by the taxpayer's spouse shall be deemed to have been so received by the taxpayer and not by the spouse.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1) "common-law partner".

Related Provisions: 220(3.2) — Late filing of election or revocation; 252(4) — Extended meaning of "spouse"; Reg. 600(b) — Late filing of election or revocation.

Pre-RSC History: Subsec. 82(3) substituted by 1988, c. 55, subsec. 54(3), applicable to 1988 *et seq.* Subsec. (3) formerly read:

> (3) Where the amount that would, but for this subsection, be deductible under paragraph 109(1)(a) from a taxpayer's income for a taxation year is less than the amount that would be deductible under that paragraph from his income for the year if no amount were required by subsection (1) to be included in computing his spouse's income for the year and the taxpayer so elects in his return of income for the year under this Part, all amounts described in paragraph (1)(a) received in the year from taxable Canadian corporations by the taxpayer's spouse shall be deemed to have been so received by the taxpayer and not by his spouse.

Selected Cases [subsec. 82(3)]: *Gillis v. The Queen*, [1977] C.T.C. 343 (FCTD) (All of spouse's income to be included if any is included).

Interpretation Bulletins [subsec. 82(3)]: IT-295R4: Taxable dividends received after 1987 by a spouse; IT-513R: Personal tax credits.

Definitions [s. 82]: "amount" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "dividend rental arrangement", "individual", "person" — 248(1); "received" — 248(7); "registered charity" — 248(1); "resident in Canada" — 250; "series of transactions" — 248(10); "spouse" — 252(4)(a); "tax payable" — 248(2); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

83. (1) Qualifying dividends — Where a qualifying dividend has been paid by a public corporation to shareholders of a series of tax-deferred preferred shares of a class of the capital stock of the corporation that were outstanding on March 31, 1977, the following rules apply:

(a) no part of the qualifying dividend shall be included in computing the income of any shareholder of the corporation by virtue of this subdivision; and

(b) in computing the adjusted cost base to any shareholder of the corporation of any tax-deferred preferred share of the corporation owned by the shareholder, there shall be deducted in respect of the qualifying dividend an amount as provided by subparagraph 53(2)(a)(i).

Related Provisions: 83(3) — Late filed elections; 83(6) — "Qualifying dividend" defined; 89(3) — Simultaneous dividends; 184 — Tax on excessive elections.

Pre-RSC History: Subsec. 83(1) substituted by 1977-78, c. 1, subsec. 37(1), applicable in respect of dividends payable after 1978, except that with respect to dividends that became payable after March 31, 1977 and before 1979 subsec. (1) shall be read as follows:

> 83. (1) Dividend out of tax-paid undistributed surplus or 1971 capital surplus — Where at any particular time after 1971 and before 1979, a particular dividend becomes payable by a Canadian corporation to shareholders of a particular class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:
>
> (a) the dividend shall be deemed to be payable out of the corporation's tax-paid undistributed surplus on hand to the extent of such amount as the corporation may claim not exceeding the lesser of the amount of the dividend and the corporation's tax-

paid undistributed surplus on hand immediately before the particular time;

(b) the dividend shall be deemed to be payable out of the corporation's 1971 capital surplus on hand to the extent of the lesser of

(i) the amount, if any, by which the dividend exceeds the portion of the dividend deemed by paragraph (a) to be payable out of the corporation's tax-paid undistributed surplus on hand, and

(ii) the corporation's 1971 capital surplus on hand immediately before the particular time;

(c) no part of the dividend shall be included in computing the income of any shareholder of the corporation by virtue of this subdivision, except to the extent that the dividend was received by a non-resident-owned investment corporation and was deemed by paragraph (c.1) to be a taxable dividend;

(c.1) where the corporation is a corporation other than a non-resident-owned investment corporation and, immediately before the particular time, it had 1971 undistributed income on hand or had, after March 31, 1977 and before the particular time, received a dividend from another corporation related to it that

(i) was payable out of the other corporation's 1971 capital surplus on hand, and

(ii) would, had the corporation not been resident in Canada, have been deemed to be a taxable dividend by virtue of this paragraph,

such portion of the particular dividend deemed to be payable out of the corporation's 1971 capital surplus on hand as was received by a person who was a non-resident or a non-resident-owned investment corporation and who, either alone or together with other non-residents or non-resident-owned investment corporations related to him, controls directly or indirectly the corporation, shall, to the extent that such portion exceeds the amount, if any, by which

(iii) the amount, if any, by which the corporation's paid-up capital in respect of the particular class of shares of its capital stock as determined on March 31, 1977 exceeds the amount determined on that date in respect of that class of that class of shares under clause 89(1)(c)(ii)(A) of this Act as it read on that date

exceeds

(iv) the aggregate of all amounts each of which is the portion of a dividend in respect of the particular class of shares deemed to be payable out of the corporation's 1971 capital surplus on hand after March 31, 1977 and before the particular time that was received by a person who was a non-resident or a non-resident-owned investment corporation and who, either alone or together with other non-residents or non-resident-owned investment corporations related to him, controlled directly or indirectly the corporation at the time the dividend was paid

be deemed to be a taxable dividend for the purposes of subparagraph 53(2)(a)(i), section 133 and subsection 212(2) but not for the purposes of subparagraph 89(1)(l)(xviii); and

(d) in computing the adjusted cost base to any shareholder of the corporation of any share of the particular class of the capital stock of the corporation owned by him, there shall be deducted in respect of the dividend an amount as provided by subparagraph 53(2)(a)(i).

Subsec. (1) formerly read:

83. (1) **Dividend out of tax-paid undistributed surplus or 1971 capital surplus** — Where at any particular time after 1971 a dividend becomes payable by a Canadian corporation to shareholders of any class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:

(a) the dividend shall be deemed to be payable out of the corporation's tax-paid undistributed surplus on hand to the extent of the lesser of the amount of the dividend and the corporation's tax-paid undistributed surplus on hand immediately before the particular time;

(b) the dividend shall be deemed to be payable out of the corporation's 1971 capital surplus on hand to the extent of the lesser of

(i) the amount, if any, by which the dividend exceeds the aggregate of the corporation's 1971 undistributed income on hand immediately before the particular time and the portion of the dividend deemed by paragraph (a) to be payable out of the corporation's tax-paid undistributed surplus on hand, and

(ii) the corporation's 1971 capital surplus on hand immediately before the particular time;

(c) no part of the dividend shall be included in computing the income of any shareholder of the corporation by virtue of this subdivision; and

(d) in computing the adjusted cost base to any shareholder of the corporation of any share of the capital stock of the corporation owned by him, there shall be deducted in respect of the dividend an amount as provided by subparagraph 53(2)(a)(i).

All that portion of subsec. 83(1) preceding para. (c) substituted by 1973-74, c. 14, subsec. 24(1), applicable with respect to any dividend that became payable after 1971.

Regulations: 2107 (tax-deferred preferred series).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-465R: Non-resident beneficiaries of trusts.

(2) Capital dividend — Where at any particular time after 1971 a dividend becomes payable by a private corporation to shareholders of any class of shares of its capital stock and the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:

(a) the dividend shall be deemed to be a capital dividend to the extent of the corporation's capital dividend account immediately before the particular time; and

(b) no part of the dividend shall be included in computing the income of any shareholder of the corporation.

Related Provisions: 83(2.1) — Capital dividend on certain shares disallowed; 83(3) — Late filed elections; 87(2)(z.1) — Amalgamations — capital dividend account; 88(2)(b) — Winding-up of a Canadian corporation; 89(1) — Capital dividend account; 89(1)"taxable dividend"(a) — Taxable dividend excludes capital dividend; 89(3) — Simultaneous dividends; 104(20) — Flow-through of capital dividend through trust; 108(3)(a) — "Income" of a trust; 112(3)(a), 112(3)(b)(ii) — Reduction in loss on disposition of share on which capital dividend paid; 112(3.1)(a), 112(3.1)(b)(ii) — Reduction in loss of partner on disposition of share by partnership; 112(3.2)(b) — Reduction in loss on disposition of share by trust; 112(5.2)B(b)(iv) — Adjustment for dividends received on mark-to-market property; 133(1)(e) — NRO investment corporations; 184, 185 — Tax on excessive elections; 212(1)(c)(ii) — Tax on payments to non-residents — estate or trust income derived from capital dividend; 212(2)(b) — Tax on capital dividend paid to non-resident; 220(3.2) — Late filing of election or revocation; 248(1)"capital dividend" — Definition applies to entire Act; Reg. 600(b) — Late filing of election or revocation.

Pre-RSC History: Para. 83(2)(a) substituted by 1977-78, c. 1, subsec. 37(2), applicable with respect to dividends that became payable after March 31, 1977. Para. (a) formerly read:

(a) the dividend shall be deemed to be a capital dividend to the extent of the lesser of the portion thereof in excess of the corporation's 1971 undistributed income on hand immediately before the particular time and the corporation's capital dividend account immediately before the particular time; and

Para. 83(2)(a) substituted by 1973-74, c. 14, subsec. 24(2), applicable to any dividend that became payable after 1971.

Regulations: 2101 (prescribed manner, prescribed form).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-67R3: Taxable dividends from corporations resident in Canada; IT-146R4: Shares en-

titling shareholders to choose taxable or capital dividends; IT-149R4: Winding-up dividend; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

I.T. Technical News: No. 9 (life insurance policy used as security for indebtedness).

Advance Tax Rulings: ATR-54: Reduction of paid-up capital;.

Forms: T2054: Election for a capital dividend.

(2.1) Idem — Notwithstanding subsection (2), where a dividend that, but for this subsection, would be a capital dividend is paid on a share of the capital stock of a corporation and the share (or another share for which the share was substituted) was acquired by its holder in a transaction or as part of a series of transactions one of the main purposes of which was to receive the dividend,

(a) the dividend shall, for the purposes of this Act (other than for the purposes of Part III and computing the capital dividend account of the corporation), be deemed to be received by the shareholder and paid by the corporation as a taxable dividend and not as a capital dividend; and

(b) paragraph (2)(b) does not apply in respect of the dividend.

Related Provisions: 83(2.2)–(2.4) — Exceptions; 87(2)(z.1) — Amalgamations — capital dividend account; 112(3)(a)(i), 112(3)(b)(ii), 112(3.1)(a), 112(3.1)(b)(ii), 112(3.2)(b) — Taxable dividend under 83(2.1) excluded from stop-loss rule on disposition of share; 248(1)"life insurance capital dividend" — Definition applies to entire Act248(10) — Series of transactions.

Interpretation Bulletins: IT-66R6: Capital dividends.

Advance Tax Rulings: ATR-54: Reduction of paid-up capital;.

History [subsec. 83(2.1)]: Subsec. 83(2.1) added by 1988, c. 55, s. 55, applicable with respect to dividends paid after 4 p.m. EDST, September 25, 1987.

Pre-RSC History [former subsec. 83(2.1)]: Former subsec. 83(2.1) repealed by 1986, c. 6, subsec. 42(1), applicable with respect to dividends paid after May 23, 1985. Subsec. (2.1) formerly read:

(2.1) Idem — Where at any particular time after June 28, 1982 a dividend becomes payable by a private corporation to shareholders of any class of shares of its capital stock and the corporation elects, in prescribed form and manner, before the later of

(a) June 30, 1983, and

(b) the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time

in respect of the full amount of the dividend, the following rules apply:

(c) the dividend shall be deemed to be a life insurance capital dividend to the extent of the corporation's life insurance capital dividend account immediately before the particular time; and

(d) no part of the dividend shall be included in computing the income of any shareholder of the corporation.

Subsec. 83(2.1) added by 1980-81-82-83, c. 140, subsec, 47(1), applicable with respect to dividends paid after June 28, 1982.

(2.2) Where subsec. (2.1) does not apply — Subsection (2.1) does not apply in respect of a particular dividend, in respect of which an election is made under subsection (2), paid on a share of the capital stock of a particular corporation to an individual where it is reasonable to consider that all or substantially all of the capital dividend account of the particular corporation immediately before the particular dividend became payable consisted of amounts other than any amount

(a) added to that capital dividend account under paragraph (b) of the definition "capital dividend account" in subsection 89(1) in respect of a dividend received on a share of the capital stock of another corporation, which share (or another share for which the share was substituted) was acquired by the particular corporation in a transaction or as part of a series of transactions one of the main purposes of which was that the particular corporation receive the dividend, but not in respect of a dividend where it is reasonable to consider that the purpose of paying the dividend was to distribute an amount that was received by the other corporation and included in computing the other corporation's capital dividend account by reason of paragraph (d) of that definition;

(b) added to that capital dividend account under paragraph 87(2)(z.1) as a result of an amalgamation or winding-up or a series of transactions including the amalgamation or winding-up that would not have been so added had the amalgamation or winding-up occurred or the series of transactions been commenced after 4:00 p.m. Eastern Daylight Saving Time, September 25, 1987;

(c) added to that capital dividend account at a time when the particular corporation was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons; or

(d) in respect of a capital gain from a disposition of a property by the particular corporation or another corporation that may reasonably be considered as having accrued while the property (or another property for which it was substituted) was a property of a corporation that was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons.

Related Provisions: 248(5) — Substituted property; 248(10) — Series of transactions; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Interpretation Bulletins: IT-66R6: Capital dividends.

(2.3) Idem — Subsection (2.1) does not apply in respect of a dividend, in respect of which an election is made under subsection (2), paid on a share of the capital stock of a corporation where it is reasonable to consider that the purpose of paying the dividend was to distribute an amount that was received by the corporation and included in computing its capital dividend account by reason of paragraph (d) of the definition "capital dividend account" in subsection 89(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

(2.4) Idem — Subsection (2.1) does not apply in respect of a particular dividend, in respect of which an election is made under subsection (2), paid on a share of the capital stock of a particular corporation to a corporation (in this subsection referred to as the "related corporation") related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular corporation where it is reasonable to consider that all or substantially all of the capital dividend account of the particular corporation immediately before the particular dividend became payable consisted of amounts other than any amount

(a) added to that capital dividend account under paragraph (b) of the definition "capital dividend account" in subsection 89(1) in respect of a dividend received on a share of the capital stock of another corporation if it is reasonable to consider that any portion of the capital dividend account of that other corporation immediately before that dividend became payable consisted of amounts added to that account under paragraph 87(2)(z.1) or paragraph (b) of that definition as a result of a transaction or a series of transactions that would

not have been so added had the transaction occurred or the series of transactions been commenced after 4:00 p.m. Eastern Daylight Saving Time, September 25, 1987;

(b) that represented the capital dividend account of a corporation before it became related to the related corporation;

(c) added to the capital dividend account of the particular corporation at a time when that corporation was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons;

(d) in respect of a capital gain from a disposition of a property by the particular corporation or another corporation that may reasonably be considered as having accrued while the property (or another property for which it was substituted) was a property of a corporation that was controlled, directly or indirectly, in any manner whatever, by one or more non-resident persons; or

(e) in respect of a capital gain from a disposition of a property (or another property for which it was substituted) that may reasonably be considered as having accrued while the property or the other property was a property of a person that was not related to the related corporation.

Related Provisions: 248(5) — Substituted property; 248(10) — Series of transactions; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

Pre-RSC History [subsecs. 83(2.1)–(2.4)]: Subsecs. 83(2.1) to (2.4) added by 1988, c. 55, s. 55, applicable with respect to dividends paid after 4 p.m. EDST, September 25, 1987.

Interpretation Bulletins: IT-66R6: Capital dividends.

(3) Late filed elections — Where at any particular time after 1974 a dividend has become payable by a corporation to shareholders of any class of shares of its capital stock, and subsection (1) or (2) would have applied to the dividend except that the election referred to therein was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if

(a) the election is made in prescribed manner and prescribed form;

(b) an estimate of the penalty in respect of that election is paid by the corporation when that election is made; and

(c) the directors or other person or persons legally entitled to administer the affairs of the corporation have, before the time the election is made, authorized the election to be made.

Related Provisions: 83(3.1) — Request for late filed election; 83(4) — Penalty for late filed election; 83(5) — Unpaid balance of penalty.

Pre-RSC History: All that portion of subsec. 83(3) preceding para. (a) amended by 1986, c. 6, subsec. 42(2), applicable with respect to dividends paid after May 23, 1985, to substitute "subsection (1) or (2)" for "subsection (1), (2) or (2.1)".

All that portion of subsec. 83(3) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 47(2), applicable after June 28, 1982, to add reference to "subsec. (2.1)".

Subsec. 83(3) substituted by 1976-77, c. 4, s. 32, applicable in respect of dividends that became payable after December 31, 1974.

Subsec. 83(3) added by 1974-75-76, c. 26, s. 46, applicable in respect of dividends that became payable after 1974.

Regulations: 2101(e) (prescribed manner, prescribed form).

Forms: T2054: Election for a capital dividend.

(3.1) Request for election — The Minister may at any time, by written request served personally or by registered mail, request that an election referred to in subsection (3) be made by a taxpayer, and where the taxpayer on whom such a request is served does not comply therewith within 90 days of service thereof on the taxpayer, subsection (3) does not apply to such an election made by the taxpayer.

Related Provisions: 244(5), (6) — Proof of service; 248(7) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 83(3.1) added by 1976-77, c. 4, s. 32, applicable in respect of dividends that became payable after December 31, 1974.

(4) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election referred to in paragraph (3)(a) is an amount equal to the lesser of

(a) 1% per annum of the amount of the dividend referred to in the election for each month or part of a month during the period commencing with the time that the dividend became payable, or the first day on which any part of the dividend was paid if that day is earlier, and ending with the day on which that election was made, and

(b) the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period referred to in paragraph (a) bears to 12.

Related Provisions: 83(5) — Unpaid balance of penalty.

Pre-RSC History: Paras. 83(4)(a), (b) substituted by 1976-77, c. 4, s. 32, applicable in respect of dividends that became payable after December 31, 1974.

Subsec. 83(4) added by 1974-75-76, c. 26, s. 46, applicable in respect of dividends that became payable after 1974.

(5) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election referred to in paragraph (3)(a), assess the penalty payable and send a notice of assessment to the corporation and the corporation shall pay, forthwith to the Receiver General, the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Pre-RSC History: Subsec. 83(5) added by 1974-75-76, c. 26, s. 46, applicable in respect of dividends that become payable after 1974.

(6) Definition of "qualifying dividend" — For the purposes of subsection (1), "qualifying dividend" means a dividend on shares of a series of a class of the capital stock of a public corporation that is prescribed to be a tax-deferred preferred series that became payable by the corporation after 1978 and not later than

(a) where the terms as at March 31, 1977 of the shares of that series entitled the holder of any such share to exchange it after a particular date for a share or shares of another series or class of preferred shares of the capital stock of the corporation, that particular date,

(b) where the terms as at March 31, 1977 of the shares of that series required the corporation to offer to purchase at a time not later than a particular date all of the shares of that series from all of the holders of those shares, that particular date, and

(c) in any other case, October 1, 1991,

whichever is applicable in respect of that series of shares, except that a dividend on shares of such a series that

would otherwise be a qualifying dividend shall be deemed not to be a qualifying dividend if

(d) at the time that the dividend became payable, the terms of the shares of that series differ from the terms as at March 31, 1977 of the shares of that series, or

(e) after March 31, 1977 the corporation issued additional shares of that series.

Pre-RSC History: Subsec. 83(6) added by 1977-78, c. 1, subsec. 37(3), applicable in respect of dividends payable after 1978.

Regulations: 2107 (tax-deferred preferred series).

(7) Amalgamation where there are tax-deferred preferred shares — For the purposes of this section, where, after March 31, 1977, there has been an amalgamation within the meaning of section 87 and one or more of the predecessor corporations had a series of shares outstanding on March 31, 1977 that was prescribed to be a tax-deferred preferred series, the following rules apply:

(a) the series of shares of the capital stock of the predecessor corporation that was prescribed to be a tax-deferred preferred series shall be deemed to have been continued in existence in the form of the new shares; and

(b) the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation.

Pre-RSC History: Subsec. 83(7) added by 1977-78, c. 32, s. 17, applicable in respect of dividends payable after 1978.

Regulations: 2107 (tax-deferred preferred series).

Definitions [s. 83]: "adjusted cost base" — 54, 248(1); "amount", "assessment" — 248(1); "Canadian corporation" — 89(1), 248(1); "capital dividend" — 83(2), 248(1); "capital dividend account" — 89(1); "capital gain" — 39(1)(a), 248(1); "class of shares" — 248(6); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "individual", "Minister", "non-resident" — 248(1); "payable" — 84(7), 89(3); "person", "preferred share", "prescribed" — 248(1); "private corporation" — 89(1), 248(1); "property" — 248(1); "qualifying dividend" — 83(6); "received" — 248(7); "series of transactions or events" — 248(10); "share", "shareholder" — 248(1); "substituted property" — 248(5); "taxable dividend" — 89(1), 248(1).

84. (1) Deemed dividend — Where a corporation resident in Canada has at any time after 1971 increased the paid-up capital in respect of the shares of any particular class of its capital stock, otherwise than by

(a) payment of a stock dividend,

(b) a transaction by which

(i) the value of its assets less its liabilities has been increased, or

(ii) its liabilities less the value of its assets have been decreased,

by an amount not less than the amount of the increase in the paid-up capital in respect of the shares of the particular class,

(c) a transaction by which the paid-up capital in respect of the shares of all other classes of its capital stock has been reduced by an amount not less than the amount of the increase in the paid-up capital in respect of the shares of the particular class,

(c.1) where the corporation is an insurance corporation, any action by which it converts contributed surplus related to its insurance business into paid-up capital in respect of the shares of its capital stock,

(c.2) where the corporation is a bank, any action by which it converts any of its contributed surplus that arose on the issuance of shares of its capital stock into paid-up capital in respect of shares of its capital stock, or

(c.3) where the corporation is neither an insurance corporation nor a bank, any action by which it converts into paid-up capital in respect of a class of shares of its capital stock any of its contributed surplus that arose after March 31, 1977

(i) on the issuance of shares of that class or shares of another class for which the shares of that class were substituted (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied),

(ii) on the acquisition of property by the corporation from a person who at the time of the acquisition held any of the issued shares of that class or shares of another class for which shares of that class were substituted for no consideration or for consideration that did not include shares of the capital stock of the corporation, or

(iii) as a result of any action by which the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted was reduced by the corporation, to the extent of the reduction in paid-up capital that resulted from the action,

the corporation shall be deemed to have paid at that time a dividend on the issued shares of the particular class equal to the amount, if any, by which the amount of the increase in the paid-up capital exceeds the total of

(d) the amount, if any, of the increase referred to in subparagraph (b)(i) or the decrease referred to in subparagraph (b)(ii), as the case may be,

(e) the amount, if any, of the reduction referred to in paragraph (c), and

(f) the amount, if any, of the increase in the paid-up capital that resulted from a conversion referred to in paragraph (c.1), (c.2) or (c.3),

and a dividend shall be deemed to have been received at that time by each person who held any of the issued shares of the particular class immediately after that time equal to that proportion of the dividend so deemed to have been paid by the corporation that the number of the shares of the particular class held by the person immediately after that time is of the number of the issued shares of that class outstanding immediately after that time.

Related Provisions: 15(1) — Benefit conferred on shareholder — income inclusion; 53(1)(b) — Addition to ACB; 82(1) — Income inclusion of dividend deemed received; 84(8) — Application; 84(10) — Reduction of contributed surplus; 84(11) — Computation of contributed surplus; 85(2.1) — Reduction in paid-up capital to prevent deemed dividend on s. 85 rollover; 86(2.1) — Adjustment to paid-up capital on internal reorganization; 87(2)(y) — Amalgamations — contributed surplus; 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 131(11)(c) — Rules re prescribed labour-sponsored venture capital corporations; 138(11.9) — Computation of contributed surplus.

History: Para. 84(1)(c.3) substituted by 1994, c. 21, subsec. 35(1), applicable to actions occurring after July 13, 1990, except that for such actions occurring before December 21, 1992, subpara. (c.3)(iii) shall be read as follows:

(iii) on the reduction by the corporation of the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted,

Para. (c.3) formerly read:

(c.3) where the corporation is neither an insurance corporation nor a bank, any action by which it converts into paid-up capital in respect

of a class of shares of its capital stock any of its contributed surplus that arose after March 31, 1977

(i) on the issuance of shares of that class or shares of another class for which the shares of that class were substituted (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied),

(ii) on the acquisition of property by the corporation from a person who at the time of the acquisition held any of the issued shares of that class or shares of another class for which shares of that class were substituted for no consideration or for consideration that did not include shares of the capital stock of the corporation, or

(iii) on the reduction by the corporation of the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted,

Para. 84(1)(c.3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(1), applicable to actions occurring after July 13, 1990. Para. (c.3) formerly read:

(c.3) where the corporation is a corporation other than an insurance corporation or a bank, any action by which it converts any of its contributed surplus that arose on the issuance, after March 31, 1977, of shares of a class of its capital stock (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied) into paid-up capital in respect of shares of that class of its capital stock,

Para. 84(1)(f) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(2), applicable after 1985.

Pre-RSC History: Paras. 84(1)(c.2), (c.3) amended to substitute "a bank" for "a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies" ["bank" is now defined in the *Interpretation Act*], and subpara. (c.3)(iii) amended to substitute "for which shares" for "for which the shares", by 1992, c. 1, Sch. V, s. 16, and para 159(a), applicable from February 28, 1992.

Para. 84(1)(c.3) added by 1988, c. 55, subsec. 56(1), applicable to actions occurring after 1987.

Paras. 84(1)(c.1), (c.2) added by 1980-81-82-83, c. 48, subsec. 44(1), applicable, as to para. 84(1)(c.1), with respect to actions occurring after 1978 and, as to para. 84(1)(c.2), with respect to actions occurring after November 30, 1980.

Selected Cases [subsec. 84(1)]: *Aylward v. R.*, [1997] 2 C.T.C. 2748 (TCC) (Section 7, when applicable, overrides subsection 84(1)).

Regulations: 201(1)(a) (information return).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-243R4: Dividend refund to private corporations; IT-432R2: Benefits conferred on shareholders; IT-463R2: Paid-up capital.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

Advance Tax Rulings: ATR-33: Exchange of shares.

Forms: T5 Segment; T5 Summary: Return of investment income; T5 Supplementary: Statement of investment income.

(2) Distribution on winding-up, etc. — Where funds or property of a corporation resident in Canada have at any time after March 31, 1977 been distributed or otherwise appropriated in any manner whatever to or for the benefit of the shareholders of any class of shares in its capital stock, on the winding-up, discontinuance or reorganization of its business, the corporation shall be deemed to have paid at that time a dividend on the shares of that class equal to the amount, if any, by which,

(a) the amount or value of the funds or property distributed or appropriated, as the case may be,

exceeds

(b) the amount, if any, by which the paid-up capital in respect of the shares of that class is reduced on the distribution or appropriation, as the case may be,

and a dividend shall be deemed to have been received at that time by each person who held any of the issued shares at that time equal to that proportion of the amount of the excess that the number of the shares of that class held by the person immediately before that time is of the number of the issued shares of that class outstanding immediately before that time.

Related Provisions: 15(1) — Benefit conferred on shareholder; 54"proceeds of disposition"(j) — exclusion of deemed dividend; 55(1) — "Permitted redemption" for butterfly purposes; 69(5) — Unreasonable consideration; 84(5) — Amount distributed or paid where a share; 84(6), (8) — Application rules; 88(1) — Winding-up; 88(2)(b) — Winding up of a Canadian corporation; 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 137(4.2) — No application to credit union.

Pre-RSC History: Subsec. 84(2) substituted by 1977-78, c. 1, subsec. 38(1), applicable with respect to transactions occurring after March 31, 1977. Subsec. (2) formerly read:

(2) Distributions on winding-up, etc. — Where funds or property of a corporation resident in Canada have at any time after 1971 been distributed or otherwise appropriated in any manner whatever to or for the benefit of the shareholders of any class of shares in its capital stock, on the winding-up, discontinuance or reorganization of its business, the corporation shall be deemed to have paid at that time a dividend on shares of that class equal to the amount, if any, by which,

(a) the amount or value of the funds or property distributed or appropriated, as the case may be,

exceeds the lesser of

(b) the amount, if any, by which the paid-up capital in respect of the shares of that class immediately before that time is reduced on the distribution or appropriation, as the case may be, and

(c) the paid-up capital limit of the corporation immediately before that time,

and a dividend shall be deemed to have been received at that time by each person who held any of the issued shares at that time equal to that proportion of the amount of the excess that the number of the shares of that class held by him immediately before that time is of the number of the issued shares of that class outstanding immediately before that time.

Selected Cases [subsec. 84(2)]: *Felray Inc. v. R.*, [1998] 2 C.T.C. 4 (FCTD) (Discontinuance of business implies element of finality or complete cessation, not merely diminution); *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Language of provision very broad and covers variety of ways corporate funds can end up in shareholders' hands); *Maccala v. Canada*, [1995] 1 C.T.C. 2215 (TCC) (Mere reception of property upon dissolution of company does not constitute appropriation of capital unless there is something more); *David v. The Queen*, [1975] C.T.C. 197 (FCTD) (Proceeds from disposition of shares deemed partial appropriation of undistributed income); *Craddock v. MNR*, [1969] C.T.C. 566 (SCC) (Proceeds from disposition of shares deemed partial appropriation of undistributed income); *Smythe et al. v. MNR*, [1969] C.T.C. 558 (SCC) (Proceeds from disposition of shares deemed partial appropriation of undistributed income).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-126R2: Meaning of "winding-up"; IT-149R4: Winding-up dividend; IT-243R4: Dividend refund to private corporations; IT-409: Winding-up of a non-profit organization; IT-444R: Corporations — involuntary dissolutions; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

(3) Redemption, etc. — Where at any time after December 31, 1977 a corporation resident in Canada has redeemed, acquired or cancelled in any manner whatever (otherwise than by way of a transaction described in subsection (2)) any of the shares of any class of its capital stock,

(a) the corporation shall be deemed to have paid at that time a dividend on a separate class of shares comprising the shares so redeemed, acquired or cancelled equal to the amount, if any, by which the amount paid by the corporation on the redemption, acquisition or cancellation, as the case may be, of those shares exceeds the paid-up capital in respect of those shares immediately before that time; and

(b) a dividend shall be deemed to have been received at that time by each person who held any of the shares of that separate class at that time equal to that portion of the amount of the excess determined under paragraph (a) that the number of those shares held by the person immediately before that time is of the total number of shares of that separate class that the corporation has redeemed, acquired or cancelled, at that time.

Related Provisions: 8(12) — Return of employee shares by trustee; 40(3.6) — Stop-loss rule on disposition of share of corporation to the corporation; 54"proceeds of disposition"(j) — exclusion of deemed dividend; 55(1) — "Permitted redemption" for butterfly purposes; 55(2) — Deemed proceeds or capital gain on capital gains strip; 84(5) — Amount distributed or paid where a share; 84(6), (8) — Application rules; 84(9) — Shares disposed of on redemption; 89(3) — Simultaneous dividends; 128.1(3) — Addition to PUC of corporation that previously became resident in Canada; 131(4) — S. 84 does not apply to mutual fund corporation; 137(4.1) — Deemed interest on certain reductions of capital by credit union; 137(4.2) — No application to credit union; 191.1(1) — Application of Part VI.1 tax to corporation.

Pre-RSC History: Subsec. 84(3) substituted by 1977-78, c. 1, subsec. 38(1), applicable with respect to transactions occurring after March 31, 1977 except that all that portion of subsec. 84(3) preceding para. (a), as enacted by subsec. 38(1), shall, with respect to transactions or events occurring after March 31, 1977 and before 1978, be read as follows:

(3) Redemption, etc. — Where at any time after March 31, 1977 a corporation resident in Canada has redeemed, acquired or cancelled in any manner whatever (otherwise than by way of a transaction described in subsection (2) or a transaction in respect of which the corporation is required to pay tax under section 182) any of the shares of any class of its capital stock,

Subsec. (3) formerly read:

(3) Where at any time after 1971 a corporation resident in Canada has redeemed, acquired or cancelled in any manner whatever (otherwise than by way of a transaction described in subsection (2)) any of the shares of any class of its capital stock, the corporation shall be deemed to have paid at that time a dividend on a class of shares comprising the shares so redeemed, acquired or cancelled, equal to,

(a) in the case of any such shares in respect of the redemption or acquisition of which the corporation is required to pay tax under section 182, the amount, if any, by which the paid-up capital in respect of those shares immediately before that time exceeds the paid-up capital limit of the corporation immediately before that time, and

(b) in the case of any other such shares, the amount, if any, by which the amount paid by the corporation on the redemption, acquisition or cancellation, as the case may be, of those shares exceeds the lesser of

(i) the paid-up capital in respect of those shares immediately before that time, and

(ii) the amount, if any, by which the paid-up capital limit of the corporation immediately before that time exceeds the amount that was its paid-up capital in respect of the shares referred to in paragraph (a) so redeemed, acquired or cancelled at that time,

and a dividend shall be deemed to have been received at that time by each person who held any of those shares at that time equal to the aggregate of

(c) that proportion of the excess referred to in paragraph (a) that the number of those shares held by him immediately before that time and described in that paragraph is of the total number of those shares described in that paragraph, and

(d) that proportion of the excess referred to in paragraph (b) that the number of those shares held by him immediately before that time and not described in paragraph (a) is of the total number of those shares not described in that paragraph.

Selected Cases: *943963 Ontario Inc. v. R.*, [1999] 4 C.T.C. 2119 (TCC) (Part IV tax applicable to all dividends and deemed dividends, including those from "safe income"); *MacMillan Bloedel Ltd. v. R.*, [1999] 3 C.T.C. 652 (FCA); aff'g [1997] 3 C.T.C. 3012 (TCC) (Foreign exchange difference between issue prices and redemption price of preferred shares not a deemed dividend).

Interpretation Bulletins: IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by private corporation or subject corporation; IT-450R: Share for share exchange; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-54: Reduction of paid-up capital; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(4) Reduction of paid-up capital — Where at any time after March 31, 1977 a corporation resident in Canada has reduced the paid-up capital in respect of any class of shares of its capital stock otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or a transaction described in subsection (2) or (4.1),

(a) the corporation shall be deemed to have paid at that time a dividend on shares of that class equal to the amount, if any, by which the amount paid by it on the reduction of the paid-up capital, exceeds the amount by which the paid-up capital in respect of that class of shares of the corporation has been so reduced; and

(b) a dividend shall be deemed to have been received at that time by each person who held any of the issued shares at that time equal to that proportion of the amount of the excess referred to in paragraph (a) that the number of the shares of that class held by the person immediately before that time is of the number of the issued shares of that class outstanding immediately before that time.

Related Provisions: 53(2)(a)(ii) — Reduction in ACB; 84(5) — Amount distributed or paid where a share; 84(8) — Application; 89(3) — Simultaneous dividends; 128.1(3) — Addition to PUC of corporation that previously became resident in Canada; 131(4) — S. 84 does not apply to mutual fund corporation; 137(4.1) — Deemed interest on certain reductions of capital by credit union; 137(4.2) — No application to credit union.

Pre-RSC History: All that portion of subsec. 84(4) preceding para. (a) substituted by 1977-78, c. 32, subsec. 18(1), applicable in respect of amounts paid after April 10, 1978, to add "or (4.1)".

All that portion of subsec. 84(4) preceding para. (b) substituted by 1977-78, c. 1, subsec. 38(1), applicable with respect to transactions occurring after March 31, 1977. That portion formerly read:

(4) Where at any time after 1971 a corporation resident in Canada has reduced the paid-up capital in respect of any shares of any class of its capital stock otherwise than by way of a redemption, acquisition or cancellation of those shares or a transaction described in subsection (2),

(a) the corporation shall be deemed to have paid at that time a dividend on shares of that class equal to the amount, if any, by which the amount paid by it on the reduction of the paid-up capital exceeds the paid-up capital limit of the corporation immediately before that time, and

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-243R4: Dividend refund to private corporations; IT-450R: Share for share exchange.

(4.1) Deemed dividend on reduction of paid-up capital — Where at any time after April 10, 1978, a public corporation has reduced the paid-up capital in respect of any class of shares of its capital stock otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or a transaction described in subsection (2) or section 86, any amount paid by it on the reduction of the paid-up capital shall be deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend.

Proposed Amendment — 84(4.1)

Letter from Department of Finance, July 2, 1998:

Dear [xxx]

This is in reply to your letter of June 30, 1998 to Davine Roach of the Department regarding the application of subsection 84(4.1) of the *Income Tax Act* to your client.

As you know, we are prepared to recommend to the Minister of Finance that subsection 84(4.1) of the *Income Tax Act* be amended. The amendment would provide that subsection 84(4.1) apply only in respect of a reduction in the paid-up capital of a class of shares to the extent that a previous increase in the paid-up capital of that class resulted in a dividend in respect of which the taxpayer elected to treat the dividend as having been paid out of the taxpayer's 1971 CSOH.

It would be recommended that such an amendment be effective for paid-up capital reductions occurring after 1996. If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Letter from Department of Finance, May 12, 1999:

Dear [xxx]

This is in reply to your letter of April 23, 1999 regarding subsection 84(4.1) of the *Income Tax Act* as it applies to your client, [xxx].

Based on our understanding of the facts described in your letter, [xxx] has been refocusing its business activity in an effort to improve profitability. To this end, [xxx] has been disposing of businesses that are inconsistent with its aviation services business. The last disposition was scheduled to close by the end of [xxx]. As a result of these dispositions, [xxx] has capital in excess of its future business requirements. Consequently, [xxx] may want to reduce the stated capital of its common shares with a payment of cash to its shareholders in an amount equal to the reduction. The amount of any such reduction has not been determined.

As you know, we believe that subsection 84(2) of the *Income Tax Act* may apply to this proposed reduction in stated capital. While the Department of National Revenue would determine the applicability of subsection 84(2) in the circumstances, it is our understanding that the Department has ruled in circumstances where they have been satisfied that the conditions set out in subsection 84(2) have been met. Given that subsection 84(2) of the *Income Tax Act* would appear to render the appropriate tax results on the proposed reduction of stated capital, your concerns about subsection 84(4.1) of the *Income Tax Act* may not be warranted.

However, as you are aware, we are prepared to recommend to the Minister of Finance that subsection 84(4.1) of the *Income Tax Act* be amended so that it applies only in respect of certain reductions of the paid-up capital of a class of shares of a corporation. Based on our understanding of the facts associated with [xxx]'s proposed reduction of the stated capital of its common shares, we do not regard the distribution as a substitution for an ordinary-course dividend and therefore are prepared to recommend that such a reduction be excluded from the application of subsection 84(4.1). If the recommendation were acted upon, I would anticipate that such an amendment would be included in the next technical bill.

Yours sincerely,

Brian Ernewein
Director General
Tax Legislation Division
Tax Policy Branch

Related Provisions: 53(2)(a) — Reduction in ACB; 84(4) — Reduction of paid-up capital; 89(3) — Simultaneous dividends; 128.1(3) — Addition to PUC of corporation that previously became resident in Canada; 131(4) — S. 84 does not apply to mutual fund corporation.

Pre-RSC History: Subsec. 84(4.1) added by 1977-78, c. 32, subsec. 18(2), applicable in respect of amounts paid after April 10, 1978.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-450R: Share for share exchange.

(4.2) Deemed dividend on term preferred share — Where, at any time after November 16, 1978, the paid-up capital in respect of a term preferred share owned by a shareholder that is

(a) a specified financial institution, or

(b) a partnership or trust of which a specified financial institution or a person related to such an institution was a member or a beneficiary,

was reduced otherwise than by way of a redemption, acquisition or cancellation of the share or of a transaction described in subsection (2) or (4.1), the amount received by the shareholder on the reduction of the paid-up capital in respect of the share shall be deemed to be a dividend received by the shareholder at that time unless the share was not acquired in the ordinary course of the business carried on by the shareholder.

Related Provisions: 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 248(13) — Interests in trusts or partnerships.

(4.3) Deemed dividend on guaranteed share — Where at any time after 1987 the paid-up capital in respect of a share of the capital stock of a particular corporation owned

(a) by a shareholder that is another corporation to which subsection 112(2.2) or (2.4) would, if the particular corporation were a taxable Canadian corporation, apply to deny the deduction under subsection 112(1) or (2) or 138(6) of a dividend received on the share, or

(b) by a partnership or trust of which such other corporation is a member or beneficiary, as the case may be,

was reduced otherwise than by way of a redemption, acquisition or cancellation of the share or of a transaction described in subsection (2) or (4.1), the amount received by the shareholder on the reduction of the paid-up capital in respect of the share shall be deemed to be a dividend received by the shareholder at that time.

Related Provisions: 89(3) — Simultaneous dividends; 131(4) — S. 84 does not apply to mutual fund corporation; 248(13) — Interests in trusts or partnerships.

Pre-RSC History: Subsecs. 84(4.2), (4.3) added by 1988, c. 55, subsec. 56(2), applicable with respect to reductions of paid-up capital occurring after 1987.

(5) Amount distributed or paid where a share — Where

(a) the amount of property distributed by a corporation or otherwise appropriated to or for the benefit of its shareholders as described in paragraph (2)(a), or

(b) the amount paid by a corporation as described in paragraph (3)(a) or (4)(a),

includes a share of the capital stock of the corporation, for the purposes of subsections (2) to (4) the following rules apply:

(c) in computing the amount referred to in paragraph (a) at any time, the share shall be valued at an amount equal to its paid-up capital at that time, and

(d) in computing the amount referred to in paragraph (b) at any time, the share shall be valued at an amount equal to the amount by which the paid-up capital in respect of the class of shares to which it belongs has increased by virtue of its issue.

Related Provisions: 51(3), 86(2.1) — Computation of paid-up capital after share exchange.

Pre-RSC History: Subsec. 84(5) substituted by 1977-78, c. 1, subsec. 38(2), applicable to transactions occurring after 1976 except that in its ap-

plication to transactions occurring before April 1, 1977, the reference in para. 84(5)(b) to para (3)(a) shall be read as a reference to para. (3)(b). Subsec. (5) formerly read:

(5) Where

(a) the amount of the property distributed or appropriated by a corporation as described in paragraph (2)(a), or

(b) the amount paid by a corporation as described in paragraph (3)(b) or (4)(a),

includes a share of the capital stock of the corporation, for the purposes of subsections (2) to (4) the following rules apply:

(c) in computing that amount at any time, the share shall be valued at an amount equal to the paid-up capital in respect of the share at that time; and

(d) the value of the share shall be included in computing the paid-up capital limit of the corporation immediately before that time.

(6) Where subsec. (2) or (3) does not apply — Subsection (2) or (3), as the case may be, is not applicable

(a) in respect of any transaction or event, to the extent that subsection (1) is applicable in respect of that transaction or event; and

(b) in respect of any purchase by a corporation of any of its shares in the open market, if the corporation acquired those shares in the manner in which shares would normally be purchased by any member of the public in the open market.

Pre-RSC History: Para. 84(6)(a) amended by 1988, c. 55, subsec. 56(3), to substitute "to the extent that" for "if", applicable to transactions and events occurring after April 1988.

(7) When dividend payable — A dividend that is deemed by this subsection or section 84.1, 128.1 or 212.1 to have been paid at a particular time is deemed, for the purposes of this subdivision and sections 131 and 133, to have become payable at that time.

Related Provisions: 15(1) — Appropriation of property to a shareholder.

History: Subsec. 84(7) amended by 1999, c. 22, s. 23, applicable after February 23, 1998. It formerly read:

(7) A dividend that is deemed by this section or section 84.1 or 212.1 to have been paid at a particular time shall be deemed, for the purposes of this subdivision and sections 131 and 133, to have become payable at that time.

Subsec. 84(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(3), applicable with respect to dividends paid after 1988. Subsec. (7) formerly read:

(7) A dividend that is deemed by this section or by section 212.1 to have been paid at a particular time shall be deemed, for the purposes of this subdivision, to have become payable at that time.

Pre-RSC History: Subsec. 84(7) substituted by 1977-78, c. 1, subsec. 38(3), applicable with respect to transactions occurring after March 31, 1977. Subsec. (7) formerly read:

(7) A dividend that is deemed by this section or section 84.1 to have been paid at a particular time shall be deemed, for the purposes of this subdivision, to have become payable at that time.

Subsec. 84(7) substituted by 1974-75-76, c. 26, s. 47, applicable to dividends deemed to have been paid after November 18, 1974, to add reference to s. 84.1.

(8) Where subsec. (3) does not apply — Subsection (3) does not apply to deem a dividend to have been received by a shareholder of a public corporation where the shareholder is an individual resident in Canada who deals at arm's length with the corporation and the shares redeemed, acquired or cancelled are prescribed shares of the capital stock of the corporation.

Pre-RSC History: Subsec. 84(8) substituted by 1986, c. 6, s. 43, applicable to transactions and events occurring after May 23, 1985. Subsec. (8) formerly read:

(8) **Application** — Subsections (1) to (4) do not apply to deem a dividend to have been received by a shareholder of a public corporation unless, at the time the dividend was paid, the shareholder was

(a) a non-resident person;

(b) a person resident in Canada who did not deal at arm's length with the corporation;

(c) a private corporation;

(d) a corporation that was not a private corporation and the dividend was received in the course of a series of transactions or events to which subsection 55(2) would, but for paragraph 55(3)(b), apply; or

(e) a corporation that would not, in respect of the dividend, be entitled to a deduction under section 112 or subsection 138(6) in computing its taxable income,

and, where the shareholder was a person described in paragraph (b), the dividend was paid in respect of a security other than an indexed security.

All that portion of subsec. 84(8) following para. (e) or added by 1984, c. 1, s. 37, applicable with respect to dividends paid after September 30, 1983.

Subsec. 84(8) added by 1980-81-82-83, c. 140, s. 48(1), applicable with respect to dividends paid after November 12, 1981.

Regulations: 6206 (prescribed shares — Class I shares of Reed Stenhouse).

(9) Shares disposed of on redemptions, etc. — For greater certainty it is declared that where a shareholder of a corporation has disposed of a share of the capital stock of the corporation as a result of the redemption, acquisition or cancellation of the share by the corporation, the shareholder shall, for the purposes of this Act, be deemed to have disposed of the share to the corporation.

Pre-RSC History: Subsec. 84(9) added by 1985, c. 45, s. 40.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-444R: Corporations — involuntary dissolutions; IT-484R2: Business investment losses.

(10) Reduction of contributed surplus — For the purpose of paragraph (1)(c.3), there shall be deducted in determining at any time a corporation's contributed surplus that arose after March 31, 1977 in any manner described in that paragraph the lesser of

(a) the amount, if any, by which the amount of a dividend paid by the corporation at or before that time and after March 31, 1977 and when it was a public corporation exceeded its retained earnings immediately before the payment of the dividend, and

(b) the amount of its contributed surplus immediately before the payment of the dividend referred to in paragraph (a) that arose after March 31, 1977.

Related Provisions: 84(11) — Computation of contributed surplus; 87(2)(y) — Amalgamations — contributed surplus.

History: Subsec. 84(10) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(4), applicable to the determination after July 13, 1990 of the contributed surplus of a corporation.

Interpretation Bulletins: IT-463R2: Paid-up capital.

(11) Computation of contributed surplus — For the purpose of subparagraph (1)(c.3)(ii), where the property acquired by the corporation (in this subsection referred to as the "acquiring corporation") consists of shares (in this subsection referred to as the "subject shares") of any class of the capital stock of another corporation resident in Canada (in this subsection referred to as the "subject corporation") and, immediately after the acquisition of the subject shares, the subject corporation would be connected (within the meaning that would be assigned by subsection 186(4) if the references in that subsection to

"payer corporation" and "particular corporation" were read as "subject corporation" and "acquiring corporation", respectively) with the acquiring corporation, the contributed surplus of the acquiring corporation that arose on the acquisition of the subject shares shall be deemed to be the lesser of

(a) the amount added to the contributed surplus of the acquiring corporation on the acquisition of the subject shares, and

(b) the amount, if any, by which the paid-up capital in respect of the subject shares at the time of the acquisition exceeded the fair market value of any consideration given by the acquiring corporation for the subject shares.

Related Provisions: 84(10) — Reduction of contributed surplus.

History: Subsec. 84(11) added by 1994, c. 21, subsec. 35(2), applicable to actions occurring after December 20, 1992.

Interpretation Bulletins: IT-463R2: Paid-up capital.

Definitions [s. 84]: "amount" — 248(1); "arm's length" — 251(1); "bank" — *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "class of shares" — 248(6); "contributed surplus" — 84(10), (11); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation", "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "payable" — 84(7), 89(3); "person", "prescribed" — 248(1); "private corporation", "public corporation" — 89(1), 248(1); "property" — 248(1); "received" — 248(7); "resident in Canada" — 250; "share", "shareholder", "specified financial institution" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "term preferred share" — 248(1); "trust" — 104(1), 248(1), (3).

84.1 (1) Non-arm's length sale of shares — Where after May 22, 1985 a taxpayer resident in Canada (other than a corporation) disposes of shares that are capital property of the taxpayer (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation (in this section referred to as the "purchaser corporation") with which the taxpayer does not deal at arm's length and, immediately after the disposition, the subject corporation would be connected (within the meaning assigned by subsection 186(4) if the references therein to "payer corporation" and to "particular corporation" were read as "subject corporation" and "purchaser corporation" respectively) with the purchaser corporation,

(a) where shares (in this section referred to as the "new shares") of the purchaser corporation have been issued as consideration for the subject shares, in computing the paid-up capital, at any particular time after the issue of the new shares, in respect of any particular class of shares of the capital stock of the purchaser corporation, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of all shares of the capital stock of the purchaser corporation as a result of the issue of the new shares,

B is the amount, if any, by which the greater of

(i) the paid-up capital, immediately before the disposition, in respect of the subject shares, and

(ii) subject to paragraphs (2)(a) and (a.1), the adjusted cost base to the taxpayer, immediately before the disposition, of the subject shares,

exceeds the fair market value, immediately after the disposition, of any consideration (other than the new shares) received by the taxpayer from the purchaser corporation for the subject shares, and

C is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of the particular class of shares as a result of the issue of the new shares; and

(b) for the purposes of this Act, a dividend shall be deemed to be paid to the taxpayer by the purchaser corporation and received by the taxpayer from the purchaser corporation at the time of the disposition in an amount determined by the formula

$$(A + D) - (E + F)$$

where

A is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of all shares of the capital stock of the purchaser corporation as a result of the issue of the new shares,

D is the fair market value, immediately after the disposition, of any consideration (other than the new shares) received by the taxpayer from the purchaser corporation for the subject shares,

E is the greater of

(i) the paid-up capital, immediately before the disposition, in respect of the subject shares, and

(ii) subject to paragraphs (2)(a) and (a.1), the adjusted cost base to the taxpayer, immediately before the disposition, of the subject shares, and

F is the total of all amounts each of which is an amount required to be deducted by the purchaser corporation under paragraph (a) in computing the paid-up capital in respect of any class of shares of its capital stock by virtue of the acquisition of the subject shares.

Related Provisions: 53(2)(a)(iii), 53(2)(p) — Reductions in adjusted cost base; 54"proceeds of disposition"(k) — Exclusion of deemed dividend from proceeds; 84(7) — When dividend payable; 84.1(2) — Non-arm's length sale of shares; 85(2.1) — Alternative reduction in paid-up capital of new shares; 89(1) — Definitions; 212.1 — Similar rule for non-residents; 257 — Formula amounts cannot calculate to less than zero.

History: That portion of para. 84.1(1)(b) preceding the formula amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 63(1), to add "and received by the taxpayer from the purchaser corporation", applicable to dispositions occurring after May 22, 1985.

Pre-RSC History: Subsec. 84.1(1) substituted by 1986, c. 6, subsec. 44(1), applicable in respect of dispositions made after May 22, 1985. Subsec. (1) formerly read:

84.1 (1) Where, at any particular time in a taxation year and after April 10, 1978, a taxpayer resident in Canada (other than a corporation) disposes of shares that are capital property of the taxpayer (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation (in this section referred to as the "purchaser corporation"), with which the taxpayer does not deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning of subsection 186(4) on the assumption that the references therein to "payer corporation" and to "particular corporation" were

read as "subject corporation" and "purchaser corporation" respectively) with the purchaser corporation,

(a) an amount equal to the amount, if any, by which the lesser of

(i) the adjusted cost base to the taxpayer of the subject shares immediately before the disposition, and

(ii) the fair market value of any consideration (other than any debt owing by, or share of the capital stock of, the purchaser corporation) received by the taxpayer for the subject shares from the purchaser corporation,

exceeds

(iii) the paid-up capital in respect of the subject shares immediately before the disposition

shall be deemed to be a capital gain of the taxpayer for the taxation year from the disposition of a capital property; and

(b) in computing the adjusted cost base to the taxpayer at any time after the particular time of any property received by the taxpayer as consideration for the subject shares that was any particular debt owing by the purchaser corporation or any particular share of the capital stock of the purchaser corporation, there shall be deducted from the adjusted cost base of that property to the taxpayer otherwise determined, an amount equal to that proportion of the amount, if any, by which the lesser of

(i) the adjusted cost base referred to in subparagraph (a)(i), and

(ii) the aggregate of the fair market value referred to in subparagraph (a)(ii), the principal amounts of all such particular debts and the amount, if any, by which the paid-up capital in respect of all the shares of the capital stock of the purchaser corporation is increased by virtue of the issue of all such particular shares,

exceeds

(iii) the greater of the fair market value referred to in subparagraph (a)(ii) and the paid-up capital referred to in subparagraph (a)(iii),

that the cost to the taxpayer of the particular debt or share, as the case may be, is of the aggregate of the costs to him of all such particular debts and particular shares so received as consideration for the subject shares.

Subpara. 84.1(1)(b)(ii) substituted by 1980-81-82-83, c. 140, s. 49(1), applicable with respect to dispositions occurring after November 12, 1981. Subpara. (b)(ii) formerly read:

(ii) the aggregate of the fair market value referred to in subparagraph (a)(ii) and the principal amounts of all such particular debts and the paid-up capital in respect of all such particular shares,

All that portion of subsec. 84.1(1) preceding para. (a) substituted, by 1977-78, c. 32, subsec. 19(1), applicable in respect of dispositions after April 10, 1978. That portion formerly read:

84.1 (1) Where, at any particular time in a taxation year and after March 31, 1977, a taxpayer resident in Canada (other than a corporation) disposes of shares that are capital property of the taxpayer (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation (in this section referred to as the "purchaser corporation"), that, immediately after the disposition, does not deal at arm's length with the taxpayer, and immediately after the disposition the purchaser corporation controls (within the meaning of subsection 186(2)) the subject corporation,

Subsec. 84.1(1) substituted by 1977-78, c. 1, s. 39, applicable in respect of dispositions after March 31, 1977. Subsec. (1) formerly read:

84.1 (1) **Deemed dividend on repayment of debt** — Where, at any time before a particular time and after November 18, 1974, a corporation incurred any debt as consideration for the purchase of shares of the capital stock of a second corporation and,

(a) at any time before the debt was incurred, any particular person, or the group of persons to whom the debt was owed at the time it was incurred,

(i) controlled the second corporation, directly or indirectly in any manner whatever, or

(ii) beneficially owned shares of the capital stock of the second corporation representing more than 50% of its paid-up capital, and

(b) at any time before the particular time, the particular person or group of persons referred to in paragraph (a)

(i) controlled the corporation, directly or indirectly in any manner whatever,

(ii) beneficially owned shares of the capital stock of the corporation representing more than 50% of its paid-up capital, or

(iii) held an amount of debt payable by the corporation that exceeded the paid-up capital of the corporation, at a time when shares of the capital stock of the corporation representing more than 50% of its paid-up capital were beneficially owned by

(A) that particular person,

(B) that group of persons,

(C) persons related to the particular person or any member of the group of persons, or

(D) any combination of persons referred to in clause (A), (B) or (C),

the following rules apply:

(c) where the corporation has, at the particular time, made any payment on account of that debt, or any other debt substituted for that debt,

(i) a dividend shall be deemed to have been paid by the corporation at the particular time equal to the lesser of

(A) the amount of that payment, and

(B) the amount, if any, by which

(I) the aggregate of the payment referred to in clause (A) and all payments made before the particular time on account of that debt, or any other debt substituted therefor,

exceeds

(II) the debt limit of the corporation in respect of that debt,

(ii) a dividend shall be deemed to have been received at the particular time, by each person who received any portion of that payment, equal to that proportion of the dividend so deemed to have been paid by the corporation at that time that the portion of that payment received by that person is of the amount of that payment, and

(iii) section 83 (except paragraph 83(1)(d)) shall be applicable to the dividend referred to in subparagraph (i) as though the persons referred to in subparagraph (ii) were shareholders of a class of shares of the capital stock of the corporation, and

(d) where any portion of that debt, or any debt substituted for that debt, is converted into shares of the capital stock of the corporation, an amount equal to the lesser of

(i) the portion of that debt, or any debt substituted for that debt, that was so converted, and

(ii) the amount, if any, by which

(A) the amount of the debt owed by the corporation at the time it was incurred,

exceeds

(B) debt limit of the corporation in respect of that debt

shall be added to the aggregate of the amounts determined under subparagraph 89(1)(d)(iv.1) at any time after the time of the conversion.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-489R: Non-arm's length sale of shares to a corporation.

Information Circulars: 88-2 Supplement, paras. 4, 9: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze; ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares; ATR-57: Transfer of property for estate planning purposes.

(2) Idem — For the purposes of this section,

(a) where a share disposed of by a taxpayer was acquired by a taxpayer before 1972, the adjusted cost base to the taxpayer of the share at any time shall be deemed to be the total of

(i) the amount that would be its adjusted cost base to the taxpayer if the *Income Tax Application Rules* were read without reference to subsections 26(3) and (7) of that Act, and

(ii) the total of all amounts each of which is an amount received by the taxpayer after 1971 and before that time as a dividend on the share and in respect of which the corporation that paid the dividend has made an election under subsection 83(1);

(a.1) where a share disposed of by a taxpayer was acquired by the taxpayer after 1971 from a person with whom the taxpayer was not dealing at arm's length, was a share substituted for such a share or was a share substituted for a share owned by the taxpayer at the end of 1971, the adjusted cost base to the taxpayer of the share at any time shall be deemed to be the amount, if any, by which its adjusted cost base to the taxpayer, otherwise determined, exceeds the total of

(i) where the share or a share for which the share was substituted was owned at the end of 1971 by the taxpayer or a person with whom the taxpayer did not deal at arm's length, the amount in respect of that share equal to the amount, if any, by which

(A) the fair market value of the share or the share for which it was substituted, as the case may be, on valuation day (within the meaning assigned by section 24 of the *Income Tax Application Rules*)

exceeds the total of

(B) the actual cost (within the meaning assigned by subsection 26(13) of that Act) of the share or the share for which it was substituted, as the case may be, on January 1, 1972, to the taxpayer or the person with whom the taxpayer did not deal at arm's length, and

(C) the total of all amounts each of which is an amount received by the taxpayer or the person with whom the taxpayer did not deal at arm's length after 1971 and before that time as a dividend on the share or the share for which it was substituted and in respect of which the corporation that paid the dividend has made an election under subsection 83(1), and

(ii) the total of all amounts each of which is an amount determined after 1984 under subparagraph 40(1)(a)(i) in respect of a previous disposition of the share or a share for which the share was substituted (or such lesser amount as is established by the taxpayer to be the amount in respect of which a deduction under section 110.6 was claimed) by the taxpayer or an individual with whom the taxpayer did not deal at arm's length;

(a.2) [Repealed]

(b) in respect of any disposition described in subsection (1) by a taxpayer of shares of the capital stock of a subject corporation to a purchaser corporation, the taxpayer shall, for greater certainty, be deemed not to deal at arm's length with the purchaser corporation if the taxpayer

(i) was, immediately before the disposition, one of a group of fewer than 6 persons that controlled the subject corporation, and

(ii) was, immediately after the disposition, one of a group of fewer than 6 persons that controlled the purchaser corporation, each member of which was a member of the group referred to in subparagraph (i); and

(c) [Repealed]

(d) a trust and a beneficiary of the trust or a person related to a beneficiary of the trust shall be deemed not to deal with each other at arm's length.

(e) [Repealed]

Related Provisions: 84.1(2.01) — Rules for 84.1(2)(a.1); 84.1(2.1) — Where capital gains reserve claimed; 84.1(2.2) — Rules for 84.1(2)(b); 252(4) — Extended meaning of "spouse"; 256(6), (6.1) — Meaning of "controlled".

History: Paras. 84.1(2)(a.2), (c) and (e) repealed by 1998, c. 19, subsecs. 115(1) to (3), the repeal of para. (a.2) applicable to 1994 *et seq.* and the repeal of paras. (c) and (e) in force on June 18, 1998. The paras. formerly read:

(a.2) for the purposes of paragraph (a.1), where a corporation (in this paragraph referred to as the "issuing corporation") issues previously unissued shares of a class of its capital stock (in this paragraph referred to as the "new shares") to a taxpayer, the taxpayer and the issuing corporation shall be deemed not to have been dealing with each other at arm's length at the time the new shares were acquired by the taxpayer;

. . . . .

(c) for the purposes of determining whether or not a taxpayer referred to in paragraph (b) was a member of a group of fewer than 6 persons that controlled a corporation at any time, any shares of the capital stock of that corporation owned at that time by

(i) the taxpayer's child (within the meaning assigned by subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse,

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii), is a beneficiary, or

(iii) a corporation controlled by the taxpayer, by a person described in subparagraph (i), by a trust described in subparagraph (ii) or by any combination thereof

shall be deemed to be owned at that time by the taxpayer and not by the person who actually owned the shares at that time;

. . . . .

(e) for the purpose of paragraph (b),

(i) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation,

(ii) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(iii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also controlled or deemed to be controlled by another person or group of persons.

Para. 84.1(2)(e) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 34, applicable to dispositions occurring after December 20, 1991.

Subparas. 84.1(2)(c)(i) to (iii) substituted, para. (d) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 63(2), (3), applicable to dispositions occurring after July 13, 1990. Subparas. (i) to (iii) formerly read:

(i) the taxpayer's spouse,

(ii) an *inter vivos* trust of which the taxpayer, the spouse, a corporation described in subparagraph (iii) or any combination thereof is a beneficiary, or

(iii) a corporation controlled by the taxpayer, the spouse, a trust described in subparagraph (ii) or any combination thereof

Pre-RSC History: Para. 84.1(2)(a) and that portion of para. 84.1(2)(a.1) preceding subpara. (ii) substituted by 1988, c. 55, subsecs. 57(1), (2), applicable in respect of dispositions made after May 22, 1985. Para. 84.1(2)(a) and that portion of para. 84.1(2)(a.1) formerly read:

> (a) where a share disposed of by the taxpayer was acquired by him before 1972 or was a share substituted for such a share, the adjusted cost base to the taxpayer of the share shall be deemed to be the amount that would be its adjusted cost base to him if the *Income Tax Application Rules, 1971* were read without reference to subsections 26(3) and (7) thereof;
>
> (a.1) where a share disposed of by the taxpayer was acquired by him after 1971 from a person with whom he was not dealing at arm's length, or was a share substituted for such a share, the adjusted cost base to the taxpayer of the share shall be deemed to be the amount, if any, by which its adjusted cost base to him, otherwise determined, exceeds the aggregate of
>
> (i) where the share or a share for which the share was substituted was owned at the end of 1971 by a person with whom the taxpayer did not deal at arm's length, the amount in respect of such share equal to the amount, if any, by which the share's fair market value on valuation day (within the meaning assigned by section 24 of the *Income Tax Application Rules, 1971*) exceeds the actual cost (within the meaning assigned by subsection 26(13) of those Rules) of the share, on January 1, 1972, to that person, and

Para. 84.1(2)(a) substituted and paras. 84.1(2)(a.1) and (a.2) added by 1986, c. 6, subsec. 44(2), applicable in respect of dispositions made after May 22, 1985. Para. 84.1(2)(a) formerly read:

> (a) where after 1971 a taxpayer (other than a corporation) has acquired any share from a person with whom he did not deal at arm's length, for the purposes of computing the taxpayer's adjusted cost base of the share,
>
> (i) he shall be deemed to have acquired it at a cost equal to its adjusted cost base to that person immediately before the acquisition thereof by the taxpayer, and
>
> (ii) subsection 26(5) of the *Income Tax Application Rules, 1971* shall be read without reference to paragraph (c) thereof;

Para. 84.1(2)(c) substituted by 1979, c. 5, s. 27, applicable in respect of dispositions after April 10, 1978.

Para. 84.1(2)(b) substituted, (c) added, by 1977-78, c. 32, subsec. 19(2), applicable in respect of dispositions after April 10, 1978. Para. 84.1(2)(b) formerly read:

> (b) a taxpayer who is one of a group of less than 10 persons who act in concert to control a corporation shall be deemed not to deal with the corporation at arm's length.

Subsec. 84.1(2) substituted by 1977-78, c. 1, s. 39, applicable in respect of dispositions after March 31, 1977. Subsec. 84.1(2) formerly read:

> (2) **"Debt limit" defined** — For the purpose of this section, the "debt limit" of a corporation in respect of any debt incurred by it as consideration for the purchase of shares of the capital stock of a second corporation shall be the amount, if any, by which
>
> (a) the amount of the debt owed by the corporation at the time it was incurred
>
> exceeds
>
> (b) the amount if any, by which the aggregate of
>
> (i) the amount of the debt owed by the corporation at the time it was incurred, and
>
> (ii) the fair market value, at the time the debt was incurred, of any other consideration (other than shares of the capital stock of the corporation) given by the corporation for the purchase of the shares of the capital stock of the second corporation,
>
> exceeds the lesser of
>
> (c)
>
> (iii) the paid-up capital limit of the second corporation at the time the debt was incurred, and
>
> (iv) the paid-up capital, at the time the debt was incurred, of the shares of the capital stock of the second corporation so purchased.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares.

(2.01) Rules for para. 84.1(2)(a.1) — For the purpose of paragraph (2)(a.1),

> (a) where at any time a corporation issues a share of its capital stock to a taxpayer, the taxpayer and the corporation are deemed not to be dealing with each other at arm's length at that time;
>
> (b) where a taxpayer is deemed by paragraph 110.6(19)(a) to have reacquired a share, the taxpayer is deemed to have acquired the share at the beginning of February 23, 1994 from a person with whom the taxpayer was not dealing at arm's length; and
>
> (c) where a share owned by a particular person, or a share substituted for that share, has by one or more transactions or events between persons not dealing at arm's length become vested in another person, the particular person and the other person are deemed at all times not to be dealing at arm's length with each other whether or not the particular person and the other person coexisted.

History: Subsec. 84.1(2.01) added by 1998, c. 19, subsec. 115(4), applicable to 1994 *et seq.*, except that para. 84.1(2.01)(c) is applicable in respect of the determination of the adjusted cost base of a share after June 20, 1996.

(2.1) Idem — For the purposes of subparagraph (2)(a.1)(ii), where the taxpayer or an individual with whom the taxpayer did not deal at arm's length (in this subsection referred to as the "transferor") disposes of a share in a taxation year and claims an amount under subparagraph 40(1)(a)(iii) in computing the gain for the year from the disposition, the amount in respect of which a deduction under section 110.6 was claimed in respect of the transferor's gain from the disposition shall be deemed to be equal to the lesser of

> (a) the total of
>
> (i) the amount claimed under subparagraph 40(1)(a)(iii) by the transferor for the year in respect of the disposition, and
>
> (ii) 4/3 of the amount deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of the taxable capital gain from the disposition, and
>
> (b) 4/3 of the maximum amount that could have been deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of the taxable capital gain from the disposition if
>
> (i) no amount had been claimed by the transferor under subparagraph 40(1)(a)(iii) in computing the gain for the year from the disposition, and
>
> (ii) all amounts deducted under section 110.6 in computing the taxable income of the transferor for the year in respect of taxable capital gains from dispositions of property to which this subsection does not apply were deducted before determining the maximum amount that could have been deducted under section 110.6 in respect of the taxable capital gain from the disposition,
>
> and, for the purposes of subparagraph (ii), 3/4 of the total of all amounts determined under this subsection for the year in respect of other property disposed of before the disposition of the share shall be deemed to have been deducted under section 110.6 in computing the taxable income of the transferor for the year in re-

spect of the taxable capital gain from the disposition of property to which this subsection does not apply,

and, for the purposes of this subsection, where more than one share to which this subsection applies is disposed of in the year, each such share shall be deemed to have been separately disposed of in the order designated by the taxpayer in the taxpayer's return of income under this Part for the year.

History: Subsec. 84.1(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 62(4), applicable to dispositions occurring after July 13, 1990.

(2.2) Rules for para. 84.1(2)(b) — For the purpose of paragraph (2)(b),

(a) in determining whether or not a taxpayer referred to in that paragraph was a member of a group of fewer than 6 persons that controlled a corporation at any time, any shares of the capital stock of that corporation owned at that time by

(i) the taxpayer's child (as defined in subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii), is a beneficiary, or

(iii) a corporation controlled by the taxpayer, by a person described in subparagraph (i) or (ii) or by any combination of those persons or trusts

are deemed to be owned at that time by the taxpayer and not by the person who actually owned the shares at that time;

(b) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation;

(c) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation is considered to be controlled by that group of persons; and

(d) a corporation may be controlled by a person or a particular group of persons even though the corporation is also controlled or deemed to be controlled by another person or group of persons.

Related Provisions: 256(6), (6.1) — Extended meaning of "controlled".

History: Subsec. 84.1(2.2) added by 1998, c. 19, subsec. 115(5), in force on June 18, 1998.

(3) Addition to paid-up capital — In computing the paid-up capital at any time after May 22, 1985 in respect of any class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid after May 22, 1985 and before that time by the corporation

exceeds

(ii) the total of such dividends that would be determined under subparagraph (i) if this Act were read without reference to paragraph (1)(a), and

(b) the total of all amounts required by paragraph (1)(a) to be deducted in computing the paid-up capital in respect of that class of shares after May 22, 1985 and before that time.

Pre-RSC History: Subsec. 84.1(3) substituted by 1986, c. 6, subsec. 44(3), applicable in respect of dispositions made after May 22, 1985. Subsec. 84.1(3) formerly read:

(3) Where ss. (1) not to apply — Notwithstanding subsection (1), this section does not apply in respect of any share of the capital stock of a subject corporation that would otherwise be a subject share referred to in that subsection in respect of a taxpayer referred to therein, if the share was acquired by the taxpayer referred to therein after 1971 and it was owned after 1971 and before the taxpayer acquired it by a person with whom the taxpayer was dealing at arm's length.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-489R: Non-arm's length sale of shares to a corporation.

Pre-RSC History [s. 84.1]: S. 84.1 added by 1974-75-76, c. 26, s. 47, applicable in respect of payments made after November 18, 1974.

Selected Cases: *Juliar v. Canada (Attorney General)*, [2000] 2 C.T.C. 464 (Ont SCJ) (Rectification allowed where original intention improperly implemented).

Definitions [s. 84.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 84.1(2)(b), (d), 84.1(2.01)(a), (c), 251(1); "child" — 70(10), 252(1); "class of shares" — 248(6); "common-law partner" — 248(1); "control" — 84.1(2.2)(c), (d); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "group" — 84.1(2.2)(a), (b); "individual" — 248(1); "paid-up capital" — 84.1(3), 89(1), 248(1); "person" — 248(1); "private corporation" — 89(1), 248(1); "resident in Canada" — 250; "share" — 248(1); "spouse" — 252(4)(a); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

84.2 (1) Computation of paid-up capital in respect of particular class of shares — In computing the paid-up capital in respect of any particular class of shares of the capital stock of a corporation at any particular time after March 31, 1977,

(a) there shall be deducted that proportion of the amount, if any, by which the paid-up capital in respect of all of the issued shares of the capital stock of the corporation on April 1, 1977, determined without reference to this section, exceeds the greater of

(i) the amount that the paid-up capital limit of the corporation would have been on March 31, 1977 if paragraph 89(1)(d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read at that date, were read without reference to clause 89(1)(d)(iv.1)(F) of that Act and without reference to all subparagraphs of paragraph 89(1)(d) of that Act except subparagraphs 89(1)(d)(iv.1) and (vii) of that Act, and

(ii) the paid-up capital limit of the corporation on March 31, 1977,

that the paid-up capital on April 1, 1977, determined without reference to this section, in respect of the particular class of shares is of the paid-up capital on April 1, 1977, determined without reference to this section, in respect of all of the issued and outstanding shares of the capital stock of the corporation; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3) or (4) to be a dividend on shares of the particular class paid by the corporation after March 31, 1977 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the amount required by paragraph (a) to be deducted in computing the paid-up capital of shares of the particular class.

Related Provisions: 84.1 — Non-arm's length sale of shares.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(2) Debt deficiency — In computing, after March 31, 1977, the adjusted cost base to an individual of a debt that was owing to the individual by a corporation on March 31, 1977, there shall be deducted the amount of any dividend that would have been deemed to have been received by the individual on that day if the corporation had paid the debt in full on that day.

Related Provisions: 53(2)(p) — Deduction from ACB; 84.2(3) — Where debt converted to shares.

(3) Idem — Where, after March 31, 1977 and before 1979, any debt referred to in subsection (2) owing by a corporation and held by an individual on March 31, 1977 and continuously after that date until conversion, is converted into shares of a particular class of the capital stock of the corporation,

(a) subsection (2) shall not apply in respect of the debt; and

(b) in computing the paid-up capital in respect of the shares of the particular class at any particular time after the conversion,

(i) there shall be deducted the amount by which the adjusted cost base to the taxpayer of the debt would, but for paragraph (a), have been reduced by virtue of subsection (2), and

(ii) there shall be added an amount equal to the lesser of

(A) the amount, if any, by which

(I) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid by the corporation after the conversion and before the particular time,

exceeds

(II) the total that would be determined under subclause (I) if this Act were read without reference to subparagraph (i), and

(B) the amount required by subparagraph (i) to be deducted in computing the paid-up capital of shares of the particular class.

Pre-RSC History: Subcl. 84.2(3)(b)(ii)(A)(I) substituted by 1977-78, c. 32, s. 20, applicable after April 10, 1978, to add reference to subsec. 84(4.1).

Pre-RSC History [s. 84.2]: S. 84.2 substituted by 1977-78, c. 1, s. 39, applicable after March 31, 1977. S. 84.2 formerly read:

84.2 Special rules relating to shares issued or debt incurred before November 19, 1974 — Where a corporation has, at any particular time before July 1976, notified the Minister in writing that it wishes

(a) to have subparagraph 89(1)(d)(iv.1) apply to all shares, if any, issued by it before November 19, 1974, and

(b) to have section 84.1 apply to all debt, if any, incurred by it before November 19, 1974,

the following rules apply:

(c) subsection 89(6) shall not apply for the purposes of computing the paid-up capital deficiency of the corporation at any time after the particular time,

(d) section 84.1 shall be read without reference to "and after November 18, 1974",

(e) the amount of any dividend that the corporation would, by virtue of paragraph 84.1(1)(c), be deemed to have paid in respect of payments, before the particular time, of or on account of any debt incurred by the corporation prior to November 19, 1974, or any debt substituted for that debt, shall be deemed to be nil,

(f) subparagraph 84.1(2)(b)(iii) shall be read as "the paid-up capital limit of the second corporation at the time the debt was incurred or on November 18, 1974, where that day is later",

(g) subparagraph 84.1(2)(b)(iv) shall be read as "the paid-up capital, at the time the debt was incurred, of the shares of the second corporation so purchased (on the assumption that paragraph 89(1)(c) applied at that time)", and

(h) no direction shall be made under subsection 247(1) in respect of any amount received, after the particular time, by a taxpayer in respect of

(i) any disposition of or reduction in the paid-up capital of shares referred to in paragraph (a), or

(ii) any payment on account of debt referred to in paragraph (b) or any debt substituted therefor.

S. 84.2 added by 1974-75-76, c. 26, s. 47, applicable to 1974 *et seq.*

Definitions [s. 84.2]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "paid-up capital" — 89(1), 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

85. (1) Transfer of property to corporation by shareholders [rollover] — Where a taxpayer has, in a taxation year, disposed of any of the taxpayer's property that was eligible property to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, if the taxpayer and the corporation have jointly elected in prescribed form and in accordance with subsection (6), the following rules apply:

(a) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be the taxpayer's proceeds of disposition of the property and the corporation's cost of the property;

(b) subject to paragraph (c), where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is less than the fair market value, at the time of the disposition, of the consideration therefor (other than any shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer, the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to that fair market value;

(c) where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is greater than the fair market value, at the time of the disposition, of the property so disposed of, the amount so agreed on shall, irrespective of the amount actually so agreed on, be deemed to be an amount equal to that fair market value;

(c.1) where the property was inventory, capital property (other than depreciable property of a prescribed class), a NISA Fund No. 2 or a property that is eligible property because of paragraph (1.1)(g) or (g.1), and the amount that the taxpayer and corporation have

agreed on in their election in respect of the property is less than the lesser of

(i) the fair market value of the property at the time of the disposition, and

(ii) the cost amount to the taxpayer of the property at the time of the disposition,

the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to the lesser of the amounts described in subparagraphs (i) and (ii);

(c.2) subject to paragraphs (b) and (c) and notwithstanding paragraph (c.1), where the taxpayer carries on a farming business the income from which is computed in accordance with the cash method and the property was inventory owned in connection with that business immediately before the particular time the property was disposed of to the corporation,

(i) the amount that the taxpayer and the corporation agreed on in their election in respect of inventory purchased by the taxpayer shall be deemed to be equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) + D$$

where

A is the amount that would be included because of paragraph 28(1)(c) in computing the taxpayer's income for the taxpayer's last taxation year beginning before the particular time if that year had ended immediately before the particular time,

B is the value (determined in accordance with subsection 28(1.2)) to the taxpayer immediately before the particular time of the purchased inventory in respect of which the election is made,

C is the value (determined in accordance with subsection 28(1.2)) of all of the inventory purchased by the taxpayer that was owned by the taxpayer in connection with that business immediately before the particular time, and

D is such additional amount as the taxpayer and the corporation designate in respect of the property,

(ii) for the purpose of subparagraph 28(1)(a)(i), the disposition of the property and the receipt of proceeds of disposition therefor shall be deemed to have occurred at the particular time and in the course of carrying on the business, and

(iii) where the property is owned by the corporation in connection with a farming business and the income from that business is computed in accordance with the cash method, for the purposes of section 28,

(A) an amount equal to the cost to the corporation of the property shall be deemed to have been paid by the corporation, and

(B) the corporation shall be deemed to have purchased the property for an amount equal to that cost,

at the particular time and in the course of carrying on that business;

(d) where the property was eligible capital property in respect of a business of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition of the property is less than the least of

(i) 4/3 of the taxpayer's cumulative eligible capital in respect of the business immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in subparagraphs (i) to (iii);

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) - 2(D - E)$$

where

A is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

B is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer,

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

D is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if

(i) the amounts determined for C and D in subparagraph 14(1)(a)(v) were zero, and

(ii) paragraph 14(1)(b) were read as follows:

"(b) in any other case, the excess shall be included in computing the taxpayer's income from that business for that year.", and

E is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if the amount determined for D in subparagraph 14(1)(a)(v) were zero;

(e) where the property was depreciable property of a prescribed class of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition thereof is less than the least of

(i) the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in subparagraphs (i) to (iii);

(e.1) where two or more properties, each of which is a property described in paragraph (d) or each of which is a property described in paragraph (e), are disposed of at the same time, paragraph (d) or (e), as the case may be, applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer before the time referred to in subsection (6) for the filing of an election in respect of those properties or, if the taxpayer does not so designate any such order, in the order designated by the Minister;

(e.2) where the fair market value of the property immediately before the disposition exceeds the greater of

(i) the fair market value, immediately after the disposition, of the consideration received by the taxpayer for the property disposed of by the taxpayer, and

(ii) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property, determined without reference to this paragraph,

and it is reasonable to regard any part of the excess as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer (other than a corporation that was a wholly owned corporation of the taxpayer immediately after the disposition), the amount that the taxpayer and the corporation agreed on in their election in respect of the property shall, regardless of the amount actually so agreed on by them, be deemed (except for the purposes of paragraphs (g) and (h)) to be an amount equal to the total of the amount referred to in subparagraph (ii) and that part of the excess;

(e.3) where, under any of paragraphs (c.1), (d) and (e), the amount that the taxpayer and the corporation have agreed on in their election in respect of the property (in this paragraph referred to as "the elected amount") would be deemed to be an amount that is greater or less than the amount that would be deemed, subject to paragraph (c), to be the elected amount under paragraph (b), the elected amount shall be deemed to be the greater of

(i) the amount deemed by paragraph (c.1), (d) or (e), as the case may be, to be the elected amount, and

(ii) the amount deemed by paragraph (b) to be the elected amount;

(e.4) where

(i) the property is depreciable property of a prescribed class of the taxpayer and is a passenger vehicle the cost to the taxpayer of which was more than $20,000 or such other amount as may be prescribed, and

(ii) the taxpayer and the corporation do not deal at arm's length,

the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be an amount equal to the undepreciated capital cost to the taxpayer of the class immediately before the disposition, except that, for the purposes of subsection 6(2), the cost to the corporation of the vehicle shall be deemed to be an amount equal to its fair market value immediately before the disposition;

(f) the cost to the taxpayer of any particular property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition shall be deemed to be an amount equal to the lesser of

(i) the fair market value of the particular property at the time of the disposition, and

(ii) that proportion of the fair market value, at the time of the disposition, of the property disposed of by the taxpayer to the corporation that

(A) the amount determined under subparagraph (i)

is of

(B) the fair market value, at the time of the disposition, of all properties (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition;

(g) the cost to the taxpayer of any preferred shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be the lesser of the fair market value of those shares immediately after the disposition and that proportion of the amount, if any, by which the proceeds of the disposition exceed the fair market value of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition, that

(i) the fair market value, immediately after the disposition, of those preferred shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition;

Proposed Addition — 85(1.1)(g)(ii.1)

(ii.1) a property held by the taxpayer if subsection 94.2(3) applies to the taxpayer in respect of the property, or

Application: The June 22, 2000 draft legislation, s. 7, will add subpara. 85(1.1)(g)(ii.1), applicable after 2000.

Technical Notes: Subsection 85(1.1) of the Act describes the types of property (which are referred to as "eligible property") that may be transferred to a corporation under subsection 85(1). Eligible property includes certain capital property described in the subsection, as well as additional property.

Subsection 85(1.1) is amended so that eligible property for a taxpayer, in all cases, excludes property in respect of which new subsection 94.2(3) applies to the taxpayer. New subsection 94.2(3) sets out the conditions for the application of the mark-to-market taxation regime under subsection 94.2(4) for participating interests in foreign investment entities.

This amendment applies after 2000.

(h) the cost to the taxpayer of any common shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the proceeds of the disposition exceed the total of the fair market value, at the time of the disposition, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition and the cost to the taxpayer of all preferred shares of the capital stock of the corpo-

ration receivable by the taxpayer as consideration for the disposition, that

(i) the fair market value, immediately after the disposition, of those common shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all common shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition; and

(i) where the property so disposed of is taxable Canadian property of the taxpayer, all of the shares of the capital stock of the Canadian corporation received by the taxpayer as consideration for the property shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 13(7)(e) — Deemed maximum capital cost on non-arm's length transfer; 13(7)(g), (h) — Maximum capital cost of passenger vehicles; 13(21.2)(d) — No election allowed on certain transfers of depreciable property where u.c.c. exceeds fair market value; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 51(4) — Application of 85(1) to exchange of convertible property; 53(4) — Effect on ACB of share, partnership interest or trust interest; 54.2 — Certain shares deemed to be capital property; 55(1) — "Permitted redemption" for butterfly purposes; 55(3.1)(b) — Rules where foreign vendor's capital gain exempted by treaty; 69(11) — Where corporation later sells transferred property and shelters gain; 85(1.1) — "Eligible property"; 85(2) — Rollover of property to corporation from partnership; 85(5) — Rules on transfers of depreciable property; 85(6) — Time for election; 86(3) — 85(1) takes precedence over s. 86; 97(2)(a) — Rollover of property to a partnership; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 138(11.5) — Transfer of insurance business by non-resident insurer; 139.1(4)(c) — No election allowed re ownership rights on demutualization of insurer; 142.5(9) — Transitional rule — mark-to-market property acquired by financial institution on rollover; 256(7)(c), (d) — Whether control of corporation acquired on rollover; 257 — Formula cannot calculate to less than zero; Canada-U.S. tax treaty, Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: The opening words of para. 85(1)(c.1) amended by 1995, c. 21, subsec. 53(1), applicable to dispositions occurring after February 22, 1994. The opening words of para. (c.1) formerly read:

(c.1) where the property of the taxpayer was inventory, capital property (other than depreciable property of a prescribed class), a NISA Fund No. 2 or a property (other than capital property or an inventory) of the taxpayer that is a security or debt obligation used in the year in, or held in the year in the course of, carrying on the business of insurance or lending money, and the amount that the taxpayer and corporation have agreed on in their election in respect of the property is less than the lesser of

Para. 85(1)(d.1) amended by 1995, c. 3, s. 22, applicable to dispositions of property in respect of a business that occur in a fiscal period of the business that ends after February 22, 1994 otherwise than because of an election under subsec. 25(1). Para. (d.1) formerly read:

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) - 2[(D + E) - (F + G)]$$

where

A is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

B is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer,

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

D is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if paragraph 14(1)(b) were read as follows:

"(b) in any other case, the excess shall be included in computing the taxpayer's income from that business for that year.",

E is the amount, if any, that would be deemed under subsection 14(1) to be a taxable capital gain of the taxpayer as a result of the disposition if clause 14(1)(a)(v)(B) were read as follows:

"(B) zero"

F is the amount, if any, included under subsection 14(1) in computing the taxpayer's income as a result of the disposition, and

G is the amount, if any, deemed under subsection 14(1) to be a taxable capital gain of the taxpayer as a result of the disposition;

Para. 85(1)(d.1) substituted by 1994, c. 21, subsec. 36(1), applicable to the disposition of property to a corporation occurring after the beginning of its first taxation year that begins after June 1988. That para. formerly read:

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

B is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business;

That portion of para. 85(1)(c.1) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(1), to substitute "where the property of the taxpayer" for "where the property" and to add reference to "a NISA Fund No. 2", applicable to dispositions occurring after 1990.

Para. 85(1)(d.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(2), applicable to the disposition of property to a corporation occurring after the beginning of its first taxation year beginning after June 1988.

Para. 85(1)(c.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(1), applicable to dispositions occurring after July 13, 1990.

That portion of para. 85(1)(e.2) following subpara. (ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(2), to add "(other than the corporation, where all of its issued shares, except directors' qualifying shares, are owned by the taxpayer immediately before the disposition)," applicable to dispositions occurring after June 1988.

Pre-RSC History: That portion of subsec. 85(1) preceding para. (a) and that portion of para. 85(1)(c.1) preceding subpara. (i) substituted by 1988, c. 55, subsecs. 58(1), (2), applicable to dispositions of property occurring after 1986. Those portions formerly read:

85. (1) Transfer of property to corporation by shareholders — Where a taxpayer has after May 6, 1974 disposed of any of his property that was a capital property (other than real property, an interest therein or an option in respect thereof, owned by a non-resident person), a Canadian resource property, a foreign resource property, an eligible capital property or an inventory (other than real property) to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, if the taxpayer and the corporation have jointly so elected in prescribed form and within the time referred to in subsection (6), the following rules apply:

. . . . .

(c.1) where the property was inventory or capital property (other than depreciable property of a prescribed class) of the taxpayer and the amount that the taxpayer and the corporation have agreed upon in their election in respect of the property is less than the lesser of

Subpara. 85(1)(d)(i) amended by 1988, c. 55, subsec. 58(3), to substitute "4/3 of" for "2 times", applicable

(a) in the case of a corporation, with respect to dispositions by it of property occurring after the commencement of its first taxation year commencing after June 1988; and

(b) in any other case, with respect to dispositions of property in respect of a business occurring after the commencement of the first fiscal period commencing after 1987 of the business.

Para. 85(1)(e.2) substituted by 1988, c. 55, subsec. 58(4), applicable with respect to dispositions occurring after June 1988. Para. 85(1)(e.2) formerly read:

(e.2) where the fair market value of the property at the time of the disposition exceeds the greater of

(i) the fair market value at the time of the disposition of the consideration received by the taxpayer for the property disposed of by him, and

(ii) the amount that the taxpayer and the corporation have agreed upon in their election in respect of the property, determined without reference to this paragraph,

and it is reasonable to regard any portion of such excess as a gift made by the taxpayer to or for the benefit of any other shareholder of the corporation, the amount that the taxpayer and the corporation have agreed upon in their election in respect of the property shall, irrespective of the amount actually so agreed upon by them, be deemed (except for the purposes of paragraphs (g) and (h)) to be an amount equal to the aggregate of

(iii) the amount referred to in subparagraph (ii), and

(iv) the portion of such excess that may reasonably be regarded as a gift made by the taxpayer to or for the benefit of any other shareholder of the corporation;

Para. 85(1)(e.4) added by 1988, c. 55, subsec. 58(5), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

All that portion of subsec. 85(1) preceding para. (a) amended by 1985, c. 45, subsec. 41(1), applicable to 1984 *et seq.*, to substitute "non-resident person), a Canadian resource property, a foreign resource property," for "non-resident), a property referred to in subsection 59(2),".

All that portion of subsec. 85(1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 45(1), applicable with respect to dispositions of property occurring after December 11, 1979 except that in its application to dispositions occurring before August 29, 1980, subsection 85(1) shall be read without reference therein to the expression "an interest therein". That portion formerly read:

85. (1) Where a taxpayer has, after May 6, 1974, disposed of any property that was a capital property (other than real property or an option in respect thereof owned by a non-resident), an eligible capital property, an inventory other than real property or a property referred to in subsection 59(2) of the taxpayer to a Canadian corporation for consideration including shares of the capital stock of the corporation, if the taxpayer and the corporation have jointly so elected in prescribed form and within the time referred to in subsection (6), the following rules apply:

All that portion of para. 85(1)(e.3) preceding subpara. (i) substituted by 1977-78, c. 1, subsec. 40(1), applicable to dispositions of property after May 6, 1974

All that portion of subsec. 85(1) preceding para. (a), paras. 85(1)(d), (e), (i) substituted, subsecs. 85(1)(c.1), (e.1)–(e.3) added by 1974-75-76, c. 26, subsecs. 48(1)–(3), applicable to dispositions of property after May 6, 1974. That portion and paras. 85(1)(d), (e), (i) formerly read:

85. (1) Transfer of property to corporation by controlling shareholder — Where a taxpayer has, after 1971, disposed of any property that was a capital property or eligible capital property of the taxpayer or a property referred to in subsection 59(2) of the taxpayer to a Canadian corporation, and immediately after the disposition owned not less than 80% of the issued shares of each class of the capital stock of the corporation, if the taxpayer and the corporation have jointly so elected in prescribed form and within prescribed time the following rules apply:

. . . . .

(d) where the property was eligible capital property in respect of a business of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition thereof is less than the least of

(i) 2 times the taxpayer's cumulative eligible capital in respect of the business immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed upon by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed upon by them, and notwithstanding paragraphs (b) and (c), be deemed to be the least of the amounts described in subparagraphs (i) to (iii);

(e) where the property was depreciable property of a prescribed class of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition thereof is less than the least of

(i) the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed upon by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed upon by them, and notwithstanding paragraphs (b) and (c), be deemed to be the least of the amounts described in subparagraphs (i) to (iii);

. . . . .

(i) for greater certainty, where the application of this subsection results in a capital loss of the taxpayer from the disposition of any property, subsection (4) is applicable.

All that portion of subsec. 85(1) preceding para. (a) substituted by 1973-74, c. 14, subsec. 25(1), applicable with respect to dispositions made after 1971.

Selected Cases [subsec. 85(1)]: *Barnabe Estate v. MNR*, [1999] 4 C.T.C. 5 (FCA); rev'g [1998] 3 C.T.C. 2201 (TCC) (Executors capable of making election); *Juliar v. Canada (Attorney General)*, [2000] 2 C.T.C. 464 (Ont SCJ) (Rectification allowed where original intention improperly implemented); *Shepp v. R.*, [1999] 1 C.T.C. 2889 (TCC) (No transfer of value between classes of shares upon reorganization); *Dale v. R.*, [1997] 2 C.T.C. 286 (FCA) (Retroactive court approval of share issue was binding on Minister); *Deconinck v. The Queen*, [1990] 2 C.T.C. 464 (FCA) (Particulars provided in statement of claim on appeal too late to cause finding of erroneous assessment based on vague election form).

Regulations: 7307(1) (prescribed amount for 85(1)(e.4)(i)).

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: IT-188R: Sale of accounts receivable; IT-217R: Depreciable property owned on December 31, 1971; IT-243R4: Dividend refund to private corporations; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-427R: Livestock of farmers; IT-433R: Farming or fishing — use of cash method; IT-457R: Election by professionals to exclude work in progress from income; IT-489R: Non-arm's length sale of shares to a corporation; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 88-2, paras. 9, 10, 13, 14, 22: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, paras. 3, 8: General anti-avoidance rule — section 245 of the *Income Tax Act*; 89-3: Policy statement on business equity valuations.

I.T. Technical News: No. 3 (section 85 — *Dale* case); No. 7 (rollovers of capital property — *Mara Properties*); No. 10 (1997 deduction limits and benefit rates for automobiles (for 85(1)(e.4)(i)).

Advance Tax Rulings: ATR-6: Vendor reacquires business assets following default by purchaser; ATR-7: Amalgamation involving losses and control; ATR-19: Earned depletion base and cumulative Canadian development expense; ATR-25: Estate freeze; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-28: Redemption of capital stock of family farm corporation; ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze; ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares; ATR-57: Transfer of property for estate planning

purposes; ATR-58: Divisive reorganization; ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

Forms: T2057: Election on disposition of property by a taxpayer to a taxable Canadian corporation.

(1.1) Definition of "eligible property" — For the purposes of subsection (1), "eligible property" means

(a) a capital property (other than real property, or an interest in or an option in respect of real property, owned by a non-resident person);

(b) a capital property that is real property, or an interest in or an option in respect of real property, owned by a non-resident insurer where that property and the property received as consideration for that property are designated insurance property for the year;

(c) a Canadian resource property;

(d) a foreign resource property;

(e) an eligible capital property;

(f) an inventory (other than real property, an interest in real property or an option in respect of real property);

(g) a property that is a security or debt obligation used by the taxpayer in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money, other than

(i) a capital property,

(ii) inventory, or

(iii) where the taxpayer is a financial institution in the year, a mark-to-market property for the year;

(g.1) where the taxpayer is a financial institution in the year, a specified debt obligation (other than a mark-to-market property of the taxpayer for the year);

(h) a capital property that is real property, an interest in real property or an option in respect of real property, owned by a non-resident person (other than a non-resident insurer) and used in the year in a business carried on in Canada by that person; or

(i) a NISA Fund No. 2.

Related Provisions: 85(1.2) — Limitation on 85(1.1)(h) — application; 248(4) — Interest in real property includes a leasehold interest but not a security interest.

History: Para. 85(1.1)(b) amended by 1997, c. 25, s. 17, applicable to dispositions that occur in an insurer's 1997 or subsequent taxation year. Para. (b) formerly read:

(b) a capital property that is real property or an interest in or an option in respect of real property, owned by a non-resident insurer where that property and the property received as consideration for that property are property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by subsection 138(12)), carrying on an insurance business in Canada;

Para. 85(1.1)(g) amended, and para. (g.1) added, by 1995, c. 21, subsecs. 53(2), (3); para. (g) applicable to dispositions occurring in taxation years that begin after October 1994, and para. (g.1) applicable to dispositions occurring after February 22, 1994. Para. (g) formerly read:

(g) a property (other than a capital property or an inventory) that is a security or debt obligation used by the taxpayer in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money;

Para. 85(1.1)(f) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(3), applicable to dispositions occurring after December 20, 1991. Para. (f) formerly read:

(f) an inventory (other than real property);

Para. 85(1.1)(i) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 35(4), applicable to dispositions occurring after 1990.

Para. 85(1.1)(h) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(3), applicable to

(a) dispositions occurring after 1989, and

(b) dispositions occurring after 1984 where the taxpayer is a resident of a country with which Canada has a tax treaty and a provision of that treaty that was prescribed for the purposes of section 115.1 of the Act was effective at the time the disposition occurred.

Pre-RSC History: Subsec. 85(1.1) added by 1988, c. 55, subsec. 58(6), applicable to dispositions of property occurring after 1986.

Pre-RSC History [former subsec. 85(1.1)]: Former subsec. 85(1.1) repealed by 1984, c. 45, subsec. 26(1), applicable with respect to dispositions of property made after February 15, 1984. Subsec. 85(1.1) formerly read:

(1.1) Exception to subsection (1) — Subsection (1) does not apply with respect to any disposition by a taxpayer of any of his property referred to in subsection 59(2) if the corporation to which the property was disposed of has carried on any business before the disposition.

Subsec. 85(1.1) added by 1973-74, c. 14, subsec. 25(2), applicable with respect to dispositions made after 1971.

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1).

(1.2) Application of subsec. (1) — Subsection (1) does not apply to a disposition by a taxpayer to a corporation of a property referred to in paragraph (1.1)(h) unless

(a) immediately after the disposition, the corporation is controlled by the taxpayer, a person or persons related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the taxpayer or the taxpayer and a person or persons so related to the taxpayer;

(b) the disposition is part of a transaction or series of transactions in which all or substantially all of the property used in the business referred to in paragraph (1.1)(h) is disposed of by the taxpayer to the corporation; and

(c) the disposition is not part of a series of transactions that result in control of the corporation being acquired by a person or group of persons after the time that is immediately after the disposition.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Subsec. 85(1.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(4), applicable to

(a) dispositions occurring after 1989, and

(b) dispositions occurring after 1984 where the taxpayer is a resident of a country with which Canada has a tax treaty and a provision of that treaty that was prescribed for the purposes of section 115.1 of the said Act was effective at the time the disposition occurred,

(1.3) Meaning of "wholly owned corporation" — For the purposes of this subsection and paragraph (1)(e.2), "wholly owned corporation" of a taxpayer means a corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to

(a) the taxpayer;

(b) a corporation that is a wholly owned corporation of the taxpayer; or

(c) any combination of persons described in paragraph (a) or (b).

History: Subsec. 85(1.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(4), applicable to dispositions occurring after June 1988.

(1.4) Definitions — For the purpose of subsection (1.1), "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1).

History: Subsec. 85(1.4) added by 1995, c. 21, subsec. 53(4), applicable to dispositions occurring after February 22, 1994.

(2) Transfer of property to corporation from partnership — Where

(a) a partnership has disposed, to a taxable Canadian corporation for consideration that includes shares of the corporation's capital stock, of any partnership property that was

(i) a capital property (other than real property, or an interest in or an option in respect of real property, where the partnership was not a Canadian partnership at the time of the disposition),

(ii) a property described in any of paragraphs (1.1)(c) to (f), or

(iii) a property that would be described in paragraph (1.1)(g) or (g.1) if the references in those paragraphs to "taxpayer" were read as "partnership", and

(b) the corporation and all the members of the partnership have jointly so elected, in prescribed form and within the time referred to in subsection (6),

paragraphs (1)(a) to (i) are applicable, with such modifications as the circumstances require, in respect of the disposition as if the partnership were a taxpayer resident in Canada who had disposed of the property to the corporation.

Related Provisions: 13(21.2)(d) — No election allowed on certain transfers of depreciable property where u.c.c. exceeds fair market value; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 51(4) — Application of 85(2) to exchange of convertible property; 54.2 — Certain shares deemed to be capital property; 69(11) — Where corporation later sells transferred property and shelters gain; 85(3) — Where partnership wound up; 85(5) — Rules on transfers of depreciable property; 85(6) — Time for election; 86(3) — Section 86 does not apply where 85(2) applies; 139.1(4)(c) — No election allowed re ownership rights on demutualization of insurer; 248(4) — Interest in real property; Canada-U.S. tax treaty, Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: The portion of subsec. 85(2) before para. (b) amended by 1998, c. 19, subsec. 116(1), applicable to dispositions that occur after June 20, 1996. That portion formerly read:

(2) Where, after May 6, 1974,

(a) a partnership has disposed of any partnership property that was a capital property (other than real property, or an interest in or an option in respect of real property, owned by a partnership that was not a Canadian partnership at the time of the disposition), a Canadian resource property, a foreign resource property, an eligible capital property, an inventory (other than real property) or a property (other than a capital property or an inventory) that is a security or debt obligation used by it in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, and

Pre-RSC History: Para. 85(2)(a) substituted by 1988, c. 55, subsec. 58(7), applicable to dispositions of property occurring after 1986. Para. 85(2)(a) formerly read:

(a) a partnership has disposed of any partnership property that was a capital property (other than real property, an interest therein or an option in respect thereof, owned by a partnership that was not a Canadian partnership at the time of the disposition), a Canadian resource property, a foreign resource property, an eligible capital property or an inventory (other than real property) to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, and

Para. 85(2)(a) amended by 1985, c. 45, subsec. 41(2), applicable to taxation years commencing after 1984, to substitute "a Canadian resource property, a foreign resource property," for "a property referred to in subsection 59(2)".

That portion of subsec. 85(2) following para. (b) substituted by 1984, c. 45, subsec. 26(2), applicable with respect to dispositions of property made after February 15, 1984. That portion of subsec. 85(2) formerly read as follows:

paragraphs (1)(a) to (i) and subsection (1.1) are applicable in respect of the disposition *mutatis mutandis* as if the partnership were a taxpayer resident in Canada who had disposed of the property to the corporation.

Para. 85(2)(a) substituted by 1980-81-82-83, c. 48, subsec. 45(2), applicable with respect to dispositions of property occurring after December 11, 1979 except that in its application to dispositions occurring before August 29, 1980, paragraph 85(2)(a) shall be read without reference therein to the expression "an interest therein". Para. 85(2)(a) formerly read:

(a) a partnership has disposed of any partnership property that was a capital property (other than real property or an interest therein owned by a partnership that was not a Canadian partnership at the time of the disposition), an eligible capital property, an inventory other than real property or a property referred to in subsection 59(2) of the partnership to a Canadian corporation for consideration, including shares of the capital stock of the corporation, and

Subsecs. 85(2) substituted, 85(2.1) repealed by 1974-75-76, c. 26, subsec. 48(4), applicable to dispositions of property after May 6, 1974. Subsecs. 85(2), (2.1) formerly read:

(2) Where, after 1971,

(a) any partnership property that was a capital property or eligible capital property of a partnership or a property referred to in subsection 59(2) of a partnership has been disposed of to a Canadian corporation,

(b) immediately after the disposition, not less than 80% of the issued shares of each class of the capital stock of the corporation was partnership property, and

(c) the corporation and all the members of the partnership have so elected in respect of the disposition, in prescribed form and within prescribed time,

paragraphs (1)(a) to (i) are applicable in respect of the disposition *mutatis mutandis* as if the partnership were a taxpayer resident in Canada who had disposed of the property to the corporation.

(2.1) Subsection (2) does not apply with respect to any disposition by a partnership of any partnership property referred to in subsection 59(2) if the corporation to which the property was disposed of has carried on any business before the disposition.

Para. 85(2)(a) substituted by 1973-74, c. 14, subsec. 25(3), applicable with respect to dispositions made after 1971.

Former subsec. 85(2.1) added by 1973-74, c. 14, subsec. 25(4), applicable with respect to dispositions made after 1971.

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: IT-217R: Depreciable property owned on December 31, 1971; IT-378R: Winding-up of a partnership; IT-457R: Election by professionals to exclude work in progress from income.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

Forms: T2058: Election on disposition of property by a partnership to a taxable Canadian corporation.

(2.1) Computing paid-up capital — Where subsection (1) or (2) applies to a disposition of property (other than a disposition of property to which section 84.1 or 212.1 applies) to a corporation by a person or partnership (in this subsection referred to as the "taxpayer"),

(a) in computing the paid-up capital in respect of any particular class of shares of the capital stock of the corporation at the time of, and at any time after, the issue of shares of the capital stock of the corporation in consideration for the disposition of the property, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this section as it applies to the disposition of the property, in the paid-up capital in respect of all the shares of the capital stock of the corporation

as a result of the acquisition by the corporation of the property,

B is the amount, if any, by which the corporation's cost of the property, immediately after the acquisition, determined under subsection (1) or (2), as the case may be, exceeds the fair market value, immediately after the acquisition, of any consideration (other than shares of the capital stock of the corporation) received by the taxpayer from the corporation for the property, and

C is the increase, if any, determined without reference to this section as it applies to the disposition of the property, in the paid-up capital in respect of the particular class of shares as a result of the acquisition by the corporation of the property; and

(b) in computing the paid-up capital, at any time after November 21, 1985, in respect of any class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid after November 21, 1985 and before that time by the corporation

exceeds

(B) the total of such dividends that would be determined under clause (A) if the Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after November 21, 1985 and before that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: All that portion of subsec. 85(2.1) preceding the formula in para. (a) substituted by 1994, c. 21, subsec. 36(2), applicable to dispositions occurring after November 21, 1985 and, notwithstanding subsections 152(4) to (5), such assessments and determinations in respect of any taxation year may be made as are consequential on the application of the provision, as amended, to dispositions occurring before 1993. That portion of the subsec. formerly read:

(2.1) Computation of paid-up capital — Where subsection (1) or (2) has been applicable in respect of a disposition to a corporation, after November 21, 1985, of property (other than a disposition of property in respect of which section 84.1 or 212.1 applies) by a person or partnership (in this subsection referred to as the "taxpayer"), the following rules apply:

(a) in computing the paid-up capital, at any time after the disposition of the property, in respect of any particular class of shares of the capital stock of the corporation, there shall be deducted an amount determined by the formula

Pre-RSC History: Subsec. 85(2.1) added by 1986, c. 6, s. 45, applicable for the purpose of computing paid-up capital of shares after November 21, 1985. (For history of former subsec. 85(2.1) see history under subsec. 85(2).)

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1).

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-36: Estate freeze;.

(3) Where partnership wound up — Where,

(a) in respect of any disposition of partnership property of a partnership to a corporation, subsection (2) applies,

(b) the affairs of the partnership were wound up within 60 days after the disposition, and

(c) immediately before the winding-up there was no partnership property other than money or property received from the corporation as consideration for the disposition,

the following rules apply:

(d) the cost to any member of the partnership of any property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be the fair market value of the property at the time of the winding-up,

(e) the cost to any member of the partnership of any preferred shares of any class of the capital stock of the corporation receivable by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be

(i) where any common shares of the capital stock of the corporation were also receivable by the member as consideration for the disposition of the interest, the lesser of

(A) the fair market value, immediately after the winding-up, of the preferred shares of that class so receivable by the member, and

(B) that proportion of the amount, if any, by which the adjusted cost base to the member of the member's partnership interest immediately before the winding-up exceeds the total of the fair market value, at the time of the winding-up, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member for the disposition of the interest, that

(I) the fair market value, immediately after the winding-up, of the preferred shares of that class so receivable by the member,

is of

(II) the fair market value, immediately after the winding-up, of all preferred shares of the capital stock of the corporation receivable by the member as consideration for the disposition, and

(ii) in any other case, the amount determined under clause (i)(B),

(f) the cost to any member of the partnership of any common shares of any class of the capital stock of the corporation receivable by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be that proportion of the amount, if any, by which the adjusted cost base to the member of the member's partnership interest immediately before the winding-up exceeds the total of the fair market value, at the time of the winding-up, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member for the disposition of the interest and the cost to the member of all preferred shares of the capital stock of the corporation receivable by the member as consideration for the disposition of the interest, that

(i) the fair market value, immediately after the winding-up, of the common shares of that class so receivable by the member,

is of

(ii) the fair market value, immediately after the winding-up, of all common shares of the capital stock of the corporation so receivable by the member as consideration for the disposition,

(g) the proceeds of disposition of the partnership interest of any member of the partnership shall be deemed to be the cost to the member of all shares and property receivable or received by the member as consideration for the disposition of the interest plus the amount of any money received by the member as consideration for the disposition, and

(h) where the partnership has distributed partnership property referred to in paragraph (c) to a member of the partnership, the partnership shall be deemed to have disposed of that property for proceeds equal to the cost amount to the partnership of the property immediately before its distribution.

Pre-RSC History: Para. 85(3)(h) added by 1973-74, c. 14, subsec. 25(5), applicable with respect to distributions of partnership property received as consideration for dispositions made after 1971.

Related Provisions: 69(11)(a)(i) — Exception to rule deeming proceeds at FMV where capital gains exemption claimed after incorporation of partnership; 98(2) — Deemed proceeds; 98(4) — Winding-up of partnership.

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: IT-217R: Depreciable property owned on December 31, 1971; IT-242R: Retired partners; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner; IT-378R: Winding-up of a partnership; IT-457R: Election by professionals to exclude work in progress from income.

(4) [Repealed]

Related Provisions: 40(2)(e), (g) — Other limitations on capital loss; 40(2)(e.1) — Loss on disposition of debt owing by related person deemed nil; 53(1)(f.1), (f.2) — Additions to ACB; 54"superficial loss"(e) — Superficial loss rule does not apply; 69(5)(d) — No application where property appropriated by shareholder on winding-up; 80.01(8) — Deemed settlement after debt parking; 93(2) — Loss limitation on disposition of share; 97(3), (3.1) — Property acquired from majority interest partner; 112(3), (3.1) — Loss on share that is capital property; 252(4) — Extended meaning of "spouse"; 256(5.1) — Controlled directly or indirectly — control in fact.

History: Subsec. 85(4) repealed by 1998, c. 19, subsec. 116(3), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(4) Loss from disposition to controlled corporation — Where a taxpayer or a partnership (in this subsection referred to as the "taxpayer") disposes of any capital property (other than depreciable property of a prescribed class) of the taxpayer or eligible capital property in respect of a business of the taxpayer in respect of which the taxpayer would, but for this subsection, be permitted a deduction under paragraph 24(1)(a), to a corporation that immediately after the disposition is controlled, directly or indirectly in any manner whatever, by the taxpayer, by the spouse of the taxpayer or by a person or group of persons by whom the taxpayer is controlled, directly or indirectly in any manner whatever,

(a) notwithstanding any other provision of this Act,

(i) the capital loss therefrom, and

(ii) any deduction under paragraph 24(1)(a) in respect of the business in computing the taxpayer's income for the taxation year in which the taxpayer ceased to carry on the business

shall be deemed to be nil; and

(b) except where the property so disposed of was, immediately after the disposition, an obligation that was payable to the corporation by another corporation that is related to the corporation or by a corporation or a partnership that would be related to the corporation if paragraph 80(2)(j) applied for the purpose of this paragraph, in computing the adjusted cost base to the taxpayer of all shares of any particular class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added that proportion of the amount, if any, by which

(i) the cost amount to the taxpayer immediately before the disposition of the property so disposed of,

exceeds the total of

(ii) the taxpayer's proceeds of disposition of the property or, where the property is an eligible capital property, 4/3 of the taxpayer's eligible capital amount resulting from the disposition of the property, and

(ii.1) where the property disposed of by the taxpayer is a share of the capital stock of a corporation, the total of all amounts each of which is an amount that, but for paragraphs (a) and 40(2)(e), would be deducted

(A) under subsection 93(2) or 112(3) or (3.2) in computing a loss of the taxpayer from the disposition, or

(B) where the taxpayer is a partnership, by a corporation that is a member of the partnership under subsection 112(3.1) in computing its share of the loss of the partnership from the disposition,

that

(iii) the fair market value, immediately after the disposition, of all shares of that class so owned by the taxpayer,

is of

(iv) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation so owned by the taxpayer.

Subpara. 85(4)(b)(ii) amended by 1998, c. 19, subsec. 116(2), applicable

(a) in the case of a corporation, to dispositions by it of property that occur after the beginning of its first taxation year that begins after June 1988; and

(b) in any other case, to dispositions of property in respect of a business that occur after the beginning of the first fiscal period, that begins after 1987, of the business.

The subpara. formerly read:

(ii) the taxpayer's proceeds of disposition of the property or, where the property is an eligible capital property, the taxpayer's eligible capital amount resulting from the disposition of the property, and

The opening words of para. 85(4)(b) amended by 1995, c. 21, s. 28, applicable to property disposed of after July 12, 1994, other than property disposed of pursuant to an agreement in writing entered into before July 13, 1994. The opening words formerly read:

(b) in computing the adjusted cost base to the taxpayer of all shares of any particular class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added that proportion of the amount, if any, by which

The opening words of para. 85(4)(b) substituted by 1994, c. 21, subsec. 36(3), applicable

(a) in the case of a corporation, to dispositions by it of property occurring after the beginning of its first taxation year that begins after June 1988; and

(b) in any other case, to dispositions of property in respect of a business occurring after the beginning of the first fiscal period, that begins after 1987, of the business.

The opening words of that para. formerly read:

(b) in computing the adjusted cost base to the taxpayer of all shares of any particular class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added, in the case of capital property, the amount that is equal to, and in the case of eligible capital property, 4/3 of the amount that is equal to, that proportion of the amount, if any, by which

That portion of subsec. 85(4) preceding para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(5), applicable to dispositions occurring after July 13, 1990. That portion formerly read:

(4) Where loss from disposition of property to controlled corporation — Where a taxpayer or a partnership (in this subsection referred to as the taxpayer) has, after May 6, 1974, disposed of any capital property or eligible capital property of the taxpayer to a corporation that, immediately after the disposition, was controlled, directly or indirectly in any manner whatever, by the taxpayer, by the spouse of the taxpayer or by a person or group of persons by whom

the taxpayer was controlled, directly or indirectly in any manner whatever, and, but for this subsection, subsection 24(2) and paragraphs 40(2)(e) and (g), the taxpayer would have had a capital loss therefrom or a deduction pursuant to paragraph 24(1)(a) in computing the taxpayer's income for the taxation year in which the taxpayer ceased to carry on a business, as the case may be, the following rules apply:

(a) notwithstanding section 24 and paragraphs 40(2)(e) and (g), the taxpayer's capital loss therefrom, or the taxpayer's deduction pursuant to paragraph 24(1)(a) in computing the taxpayer's income for the taxation year in which the taxpayer ceased to carry on the business, as the case may be, otherwise determined shall be deemed to be nil; and

That portion of para. 85(4)(b) between subparas. (i) and (iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 64(6), applicable with respect to dispositions occurring after July 13, 1990. That portion formerly read:

exceeds

(ii) the taxpayer's proceeds of disposition of the property or, where the property was an eligible capital property, the taxpayer's eligible capital amount, as a result of the disposition of that property

that

Pre-RSC History: That portion of para. 85(4)(b) preceding subpara. (i) amended by 1988, c. 55, subsec. 58(8), to substitute "⅔ of" for "twice", applicable

(a) in the case of a corporation, with respect to dispositions by it of property occurring after the commencement of its first taxation year commencing after June, 1988; and

(b) in any other case, with respect to dispositions of property in respect of a business occurring after the commencement of the first fiscal period commencing after 1987 of the business.

Subsec. 85(4) substituted by 1974-75-76, c. 26, subsec. 48(5), applicable to dispositions of property after May 6, 1974. Subsec. 85(4) formerly read:

(4) Where capital loss from disposition of property to controlled corporation — Where a taxpayer has, after 1971, disposed of any capital property of the taxpayer to a corporation that, immediately after the disposition, was controlled, directly or indirectly in any manner whatever, by the taxpayer or by a person or group of persons by whom the taxpayer was controlled directly or indirectly in any manner whatever, and, but for this subsection, the taxpayer would have had a capital loss therefrom, the following rules apply:

(a) his capital loss therefrom otherwise determined shall be deemed to be nil;

(b) where, immediately after the disposition, the taxpayer owned any common shares of any class of the capital stock of the corporation, in computing the adjusted cost base to him of all common shares of that class owned by him immediately after the disposition there shall be added that proportion of the amount, if any, by which the adjusted cost base to him, immediately before the disposition, of the property so disposed of exceeds his proceeds of the disposition, that

(i) the fair market value, immediately after the disposition, of all common shares of that class so owned by him,

is of

(ii) the fair market value, immediately after the disposition, of all common shares of the capital stock of the corporation owned by him immediately after the disposition; and

(c) where, immediately after the disposition, the taxpayer owned no common shares of any class of the capital stock of the corporation, in computing the adjusted cost base to him of all preferred shares of any class of the capital stock of the corporation owned by him at that time, there shall be added that proportion of the amount, if any, by which the adjusted cost base to him, immediately before the disposition, of the property so disposed of exceeds his proceeds of the disposition, that

(i) the fair market value, immediately after the disposition, of all preferred shares of that class so owned by him,

is of

(ii) the fair market value, immediately after the disposition, of all preferred shares of the capital stock of the corporation owned by him immediately after the disposition.

I.T. Application Rules: 26(5)(c)(ii)(A) (where property owned since June 18, 1971).

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1).

Advance Tax Rulings: ATR-57: Transfer of property for estate planning purposes; ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

(5) Rules on transfers of depreciable property — Where subsection (1) or (2) has applied to a disposition at any time of depreciable property to a person (in this subsection referred to as the "transferee") and the capital cost to the transferor of the property exceeds the transferor's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(a) the capital cost to the transferee of the property is deemed to be the amount that was its capital cost to the transferor; and

(b) the excess is deemed to have been deducted by the transferee under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that time.

Related Provisions: 13(7)(e) — Similar rule on non-arm's length transfer of depreciable property; 132.2(1)(d) — Parallel rule on mutual fund reorganization.

History: Subsec. 85(5) amended by 1998, c. 19, subsec. 116(4), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(5) Where subsection (1), (2) or (5.1) has applied in respect of a disposition of depreciable property to a person or partnership (in this subsection referred to as the "transferee") and the capital cost to the transferor of the property exceeds the transferor's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(a) the capital cost of the property to the transferee shall be deemed to be the amount that was the capital cost of the property to the transferor; and

(b) the excess shall be deemed to have been allowed to the transferee in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the transferee of the property.

Pre-RSC History: All that portion of subsec. 85(5) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 50(1), applicable with respect to dispositions occurring after November 12, 1981 other than dispositions occurring after that date pursuant to an agreement in writing entered into on or before that date. That portion of subsec. 85(5) formerly read:

(5) Rules where depreciable property transferred to controlled corporation — Where subsection (1) or (2) has been applicable in respect of any disposition of any depreciable property to a corporation (in this subsection referred to as "the transferee") and the capital cost to the transferor of the property exceeds the transferor's proceeds of the disposition, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1).

(5.1) [Repealed]

Related Provisions: 13(7)(e) — Limitation on capital cost on non-arm's length transfer; 69(5)(d) — No application where property appropriated by shareholder on winding-up; 88(1)(d.1) — Winding-up; 252(4) — Extended meaning of "spouse"; 256(5.1) — Controlled directly or indirectly — control in fact.

History: Subsec. 85(5.1) repealed by 1998, c. 19, subsec. 116(5), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(5.1) Idem — Where a person or a partnership (in this subsection referred to as the "taxpayer") has disposed of any depreciable property of a prescribed class of the taxpayer to a transferee that was

(a) a corporation that, immediately after the disposition, was controlled, directly or indirectly in any manner whatever, by the taxpayer, by the spouse of the taxpayer or by a person, group of

persons or partnership by whom or which the taxpayer was controlled, directly or indirectly in any manner whatever,

(b) a person, spouse of a person, member of a group of persons or partnership who or that immediately after the disposition controlled the taxpayer, directly or indirectly in any manner whatever, or

(c) a partnership and, immediately after the disposition, the taxpayer's interest in the partnership as a member thereof is as described in paragraph 97(3.1)(a) or (b),

and the fair market value of the property at the time of the disposition is less than both the cost to the taxpayer of the property and the amount (in this subsection referred to as the "proportionate amount") that is the proportion of the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition that the fair market value of the property at the time of the disposition is of the fair market value of all property of that class at the time of disposition, the following rules apply:

(d) subsections (1) and (2) and section 97 are not applicable with respect to the disposition,

(e) the lesser of the cost to the taxpayer of the property and the proportionate amount in respect of the property shall be deemed to be the taxpayer's proceeds of disposition and the transferee's cost of the property,

(f) where two or more depreciable properties of a prescribed class of the taxpayer are disposed of at the same time, paragraph (e) applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer or, if the taxpayer does not so designate any such order, in the order designated by the Minister, and

(g) the cost to the taxpayer of any particular property received by the taxpayer as consideration for the disposition shall be deemed to be an amount equal to the lesser of

(i) the fair market value of the particular property at the time of the disposition, and

(ii) that proportion of the fair market value, at the time of the disposition, of the property disposed of by the taxpayer that

(A) the amount determined under subparagraph (i) is of

(B) the fair market value, at the time of the disposition, of all properties received by the taxpayer as consideration for the disposition.

Pre-RSC History: Subsec. 85(5.1) added by 1980-81-82-83, c. 140, subsec. 50(2), applicable with respect to dispositions occurring after November 12, 1981 other than dispositions occurring after that date pursuant to an agreement in writing entered into on or before that date.

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner.

(6) Time for election — Any election under subsection (1) or (2) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred.

Related Provisions: 85(7)–(9) — Late-filed election.

Pre-RSC History: Subsec. 85(6) added by 1974-75-76, c. 26, subsec. 48(6), applicable to 1972 *et seq.*

(7) Late filed election — Where the election referred to in subsection (6) was not made on or before the day on or before which the election was required by that subsection to be made and that day is after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the taxpayer or the partnership, as the case may be, when that election is made.

Related Provisions: 85(8), (9) — Penalty for late-filed election.

Pre-RSC History: All that portion of subsec. 85(7) preceding para. (a) substituted by 1977-78, c. 1, subsec. 40(2) to substitute "3 years" for "one year" applicable, by 1977-78, c. 32, s. 21, to all elections required by subsection 85(6) to be made after May 6, 1974.

Subsec. 85(7) added by 1974-75-76, c. 26, subsec. 48(6), applicable to 1972 *et seq.*

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

(7.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection (1) or (2) to be made after the day that is 3 years after the day on or before which the election was required by subsection (6) to be made, or

(b) to permit an election made under subsection (1) or (2) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the taxpayer or partnership, as the case may be, when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Related Provisions: 85(8), (9) — Penalty for late-filed election.

Pre-RSC History: Subsec. 85(7.1) added by 1984, c. 45, subsec. 26(3), applicable after February 15, 1984.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 92-1: Guidelines for accepting late, amended or revoked elections.

(8) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election or an amended election referred to in paragraph (7)(a) or (7.1)(c) is an amount equal to the lesser of

(a) 1/4 of 1% of the amount, if any, by which

(i) the fair market value of the property in respect of which that election or amended election was made, at the time the property was disposed of,

exceeds

(ii) the amount agreed on in the election or amended election by the taxpayer or partnership, as the case may be, and the corporation,

for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (6) to be made and ending on the day the election or amended election is made, and

(b) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

Related Provisions: 220(3.1) — Waiver of penalty by CCRA.

Pre-RSC History: Subsec. 85(8) substituted by 1984, c. 45, subsec. 26(3), to add a reference to para. (7.1)(c), to add "or amended election" following references to an election and to amend para. (b), applicable after February 15, 1984. Para. 85(8)(b) formerly read:

(b) $4,000.

Para. 85(8)(b) substituted by 1977-78, c. 1, subsec. 40(3), to substitute "$4,000" for "$25,000", applicable with respect to elections made after 1977.

Subsec. 85(8) substituted by 1976-77, c. 4, s. 33, applicable to 1972 *et seq.*

Subsec. 85(8) added by 1974-75-76, c. 26, subsec. 48(6), applicable to 1972 *et seq.*

(9) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (7)(a) or (7.1)(c), assess the penalty payable and send a notice of assessment to the taxpayer or partnership, as the case may be, and the taxpayer or partnership, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Pre-RSC History: Subsec. 85(9) substituted by 1984, c. 45, subsec. 26(3), to add reference to para. (7.1)(c) and to add "and amended election", applicable after February 15, 1984.

Subsec. 85(9) added by 1974-75-76, c. 26, subsec. 48(6), applicable to 1972 *et seq.*

Definitions [s. 85]: "acquired" — 256(7)–(9); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "assessment", "business" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian partnership" — 102(1), 248(1); "Canadian resource property" — 66(15), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "cash method" — 28(1), 248(1); "class of shares" — 248(6); "common share" — 248(1); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "eligible capital property" — 54, 248(1); "farming" — 248(1); "financial institution" — 85(1.4), 142.2(1); "foreign affiliate" — 95(1), 248(1); "foreign resource property" — 66(15), 248(1); "insurer" — 248(1); "interest" — in real property 248(4); "inventory" — 248(1); "mark-to-market property" — 85(1.4), 142.2(1); "Minister", "NISA Fund No. 2", "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "passenger vehicle", "person", "preferred share", "prescribed", "property" — 248(1); "qualifying share" — 192(6), 248(1) [*not intended to apply to s. 85*]; "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "share", "shareholder" — 248(1); "specified debt obligation" — 85(1.4), 142.2(1); "spouse" — 252(4)(a); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "undepreciated capital cost" — 13(21), 248(1); "wholly owned corporation" — 85(1.3).

Interpretation Bulletins [s. 85]: IT-188R: Sale of accounts receivable.

Information Circulars [s. 85]: 76-19R3: Transfer of property to a corporation under section 85.

85.1 (1) Share for share exchange — Where shares of any particular class of the capital stock of a Canadian corporation (in this section referred to as the "purchaser") are issued to a taxpayer (in this section referred to as the "vendor") by the purchaser in exchange for a capital property of the vendor that is shares of any particular class of the capital stock (in this section referred to as the "exchanged shares") of another corporation that is a taxable Canadian corporation (in this section referred to as the "acquired corporation"), subject to subsection (2),

(a) except where the vendor has, in the vendor's return of income for the taxation year in which the exchange occurred, included in computing the vendor's income for that year any portion of the gain or loss, otherwise determined, from the disposition of the exchanged shares, the vendor shall be deemed

(i) to have disposed of the exchanged shares for proceeds of disposition equal to the adjusted cost base to the vendor of those shares immediately before the exchange, and

(ii) to have acquired the shares of the purchaser at a cost to the vendor equal to the adjusted cost base to the vendor of the exchanged shares immediately before the exchange,

and where the exchanged shares were taxable Canadian property of the vendor, the shares of the purchaser so acquired by the vendor shall be deemed to be taxable Canadian property of the vendor; and

(b) the cost to the purchaser of each exchanged share, at any time up to and including the time the purchaser disposed of the share, shall be deemed to be the lesser of

(i) its fair market value immediately before the exchange, and

(ii) its paid-up capital immediately before the exchange.

Related Provisions: 7(1.5) — Shares acquired through employee stock option; 85.1(2) — Where rollover not to apply; 85.1(3)–(6) — Exchange of foreign share for foreign share; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; 112(7) — Application of stop-loss rule where shares exchanged; 219.1 — Corporate emigration; 256(7)(c), (d) — Whether control of corporation acquired on rollover; Canada-U.S. tax treaty, Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: That portion of subsec. 85.1(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 36, applicable to exchanges of shares occurring after December 20, 1991. That portion formerly read:

85.1 (1) Share for share exchange — Where shares of any particular class of the capital stock of a Canadian corporation (in this section referred to as the "purchaser") have, after May 6, 1974, been issued to a taxpayer (in this section referred to as the "vendor") by the purchaser in exchange for capital property of the vendor that is shares of any particular class of the capital stock (in this section referred to as the "exchanged shares") of another corporation (in this section referred to as the "acquired corporation"), subject to subsection (2), the following rules apply:

Pre-RSC History: All that portion of subsec. 85.1(1) preceding para. (a) amended by 1987, c. 46, subsec. 28(1), to substitute "been issued to a taxpayer (in this section referred to as the "vendor") by the purchaser" for "been acquired by a taxpayer (in this section referred to as the "vendor") from the purchaser", applicable with respect to shares exchanged after June 5, 1987, other than shares exchanged after that date pursuant to

(a) an agreement in writing to do so entered into on or before that date; or

(b) the terms of a prospectus, preliminary prospectus, proxy statement, preliminary proxy statement or registration statement filed before June 6, 1987 with a public authority in a country or a political subdivision of that country in accordance with the securities legislation of that country or subdivision and, where required by law, accepted for filing by such public authority.

Para. 85.1(1)(b) substituted by 1987, c. 46, subsec. 28(2), applicable with respect to shares exchanged after February 17, 1987, other than shares exchanged after that date pursuant to

(a) an agreement in writing to do so entered into on or before that date; or

(b) the terms of a prospectus, preliminary prospectus, proxy statement, preliminary proxy statement or registration statement filed before February 18, 1987 with a public authority in a country or a political subdivision of that country in accordance with the securities legislation of that country or subdivision and, where required by law, accepted for filing by such public authority.

Para. 85.1(1)(b) formerly read:

(b) the cost to the purchaser of each exchanged share, at any particular time up to and including the time he disposed of such share, shall be deemed to be

(i) its fair market value immediately before the exchange if, at the particular time or at any earlier time after the exchange, the purchaser owned shares of the capital stock of the acquired corporation

(A) to which are attached not less than 10% of all the votes that could then be cast for any and all purposes by holders of all shares of the capital stock of the acquired corporation, and

(B) that represent not less than 10% of the fair market value of all issued and outstanding shares of the capital stock of the acquired corporation, and

(ii) in any other case, nil.

I.T. Application Rules: 26(26), (28).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange.

Advance Tax Rulings: ATR-26: Share exchange.

(2) Where subsec. (1) does not apply — Subsection (1) does not apply where

(a) the vendor and purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) that is a right of the purchaser to acquire the exchanged shares);

(b) the vendor or persons with whom the vendor did not deal at arm's length, or the vendor together with persons with whom the vendor did not deal at arm's length,

(i) controlled the purchaser, or

(ii) beneficially owned shares of the capital stock of the purchaser having a fair market value of more than 50% of the fair market value of all of the outstanding shares of the capital stock of the purchaser,

immediately after the exchange;

(c) the vendor and the purchaser have filed an election under subsection 85(1) or (2) with respect to the exchanged shares; or

(d) consideration other than shares of the particular class of the capital stock of the purchaser was received by the vendor for the exchanged shares, notwithstanding that the vendor may have disposed of shares of the capital stock of the acquired corporation (other than the exchanged shares) to the purchaser for consideration other than shares of one class of the capital stock of the purchaser.

Proposed Addition — 85.1(2)(e)

(e) the vendor

(i) is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred, and

(ii) has included any portion of the gain or loss, otherwise determined, from the disposition of the exchanged shares in computing its foreign accrual property income for the taxation year of the vendor in which the exchange occurred.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 37(1), will add para. 85.1(2)(e), applicable to exchanges that occur after 1995.

Technical Notes: Subsection 85.1(2) of the Act is amended to add new paragraph (e), consequential on the introduction of new subsection 85.1(5). New paragraph 85.1(2)(e) provides that subsection 85.1(1) will not apply to allow a tax-deferred rollover in respect of a Canadian share-for-share exchange where a vendor is a foreign affiliate and the vendor includes any portion of the gain or loss realized from the exchange in computing its foreign accrual property income for the year.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: Para. 85.1(2)(a) substituted by 1994, c. 21, s. 37, applicable to exchanges occurring after December 21, 1992. That para. formerly read:

(a) the vendor and purchaser were, immediately before the exchange, not dealing with each other at arm's length;

Pre-RSC History: Subpara. 85.1(2)(b)(i) substituted by 1988, c. 55, s. 59, applicable with respect to exchanges occurring after 1988. Subpara. 85.1(2)(b)(i) formerly read:

(i) controlled, directly or indirectly in any manner whatever, the purchaser, or

Subpara. 85.1(2)(b)(ii) substituted by 1977-78, c. 1, s. 41, applicable to exchanges occurring after March 31, 1977. Subpara. 85.1(2)(b)(ii) formerly read:

(ii) beneficially owned shares of the capital stock of the purchaser representing more than 50% of its paid-up capital,

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange.

Advance Tax Rulings: ATR-26: Share exchange.

(2.1) Computation of paid-up capital — Where, at any time, a purchaser has issued shares of its capital stock as a result of an exchange to which subsection (1) applied, in computing the paid-up capital in respect of any particular class of shares of its capital stock at any particular time after that time

(a) there shall be deducted that proportion of the amount, if any, by which

(i) the increase, if any, as a result of the issue, in the paid-up capital in respect of all the shares of the capital stock of the purchaser, computed without reference to this subsection as it applies to the issue,

exceeds

(ii) the paid-up capital in respect of all of the exchanged shares received as a result of the exchange

that

(iii) the increase, if any, as a result of the issue, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the issue,

is of

(iv) the amount, if any, determined in subparagraph (i) in respect of the issue; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the purchaser before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in respect of that particular class of shares before the particular time.

Related Provisions: 219.1 — Corporate emigration; 256(6), (6.1) — Meaning of "controlled".

Pre-RSC History: Subsec. 85.1(2.1) added by 1987, c. 46, subsec. 28(3) applicable with respect to shares exchanged after June 5, 1987, other than shares exchanged after that date pursuant to

(a) an agreement in writing to do so entered into on or before that date; or

(b) the terms of a prospectus, preliminary prospectus, proxy statement, preliminary proxy statement or registration statement filed before June 6, 1987 with a public authority in a country or a political subdivision of that country in accordance with the securities legislation of that country or subdivision and, where required by law, accepted for filing by such public authority.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-450R: Share for share exchange.

(3) Disposition of shares of foreign affiliate — Where a taxpayer has disposed of capital property that was shares of the capital stock of a foreign affiliate of the taxpayer to any corporation that was, immediately following the disposition, a foreign affiliate of the taxpayer (in this subsection referred to as the "acquiring affiliate") for consideration including shares of the capital stock of the acquiring affiliate,

(a) the cost to the taxpayer of any property (other than shares of the capital stock of the acquiring affiliate) receivable by the taxpayer as consideration for the disposition shall be deemed to be the fair market value of the property at the time of the disposition;

(b) the cost to the taxpayer of any shares of any class of the capital stock of the acquiring affiliate receivable by the taxpayer as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the total of the adjusted cost bases to the taxpayer, immediately before the disposition, of the shares disposed of exceeds the fair market value at that time of the consideration receivable for the disposition (other than shares of the capital stock of the acquiring affiliate) that

(i) the fair market value, immediately after the disposition, of those shares of the acquiring affiliate of that class

is of

(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the acquiring affiliate receivable by the taxpayer as consideration for the disposition;

(c) the taxpayer's proceeds of disposition of the shares shall be deemed to be an amount equal to the cost to the taxpayer of all shares and other property receivable by the taxpayer from the acquiring affiliate as consideration for the disposition; and

(d) the cost to the acquiring affiliate of the shares acquired from the taxpayer shall be deemed to be an amount equal to the taxpayer's proceeds of disposition referred to in paragraph (c).

Related Provisions: 53(1)(c) — Addition to ACB of share; 85.1(4) — Exception.

(4) Exception — Subsection (3) is not applicable in respect of a disposition at any time by a taxpayer of a share of the capital stock of a foreign affiliate, all or substantially all of the property of which at that time was excluded property (within the meaning assigned by subsection 95(1)), to another foreign affiliate of the taxpayer where the disposition is part of a series of transactions or events for the purpose of disposing of the share to a person who, immediately after the series of transactions or events, was a person (other than a foreign affiliate of the taxpayer) with whom the taxpayer was dealing at arm's length.

Related Provisions: 248(10) — Series of transactions.

Pre-RSC History: Subsec. 85.1(4) added by 1980-81-82-83, c. 140, s. 51, applicable with respect to dispositions occurring after November 12, 1981.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-291R2: Transfer of property to a corporation under subsection 85(1).

Proposed Addition — 85.1(5), (6)

(5) Foreign share for foreign share exchange — Subject to subsections (3) and (6) and 95(2), where a corporation resident in a country other than Canada (in this section referred to as the "foreign purchaser") issues shares of its capital stock (in this section referred to as the "issued foreign shares") to a vendor in exchange for shares of the capital stock of another corporation resident in a country other than Canada (in this section referred to as the "exchanged foreign shares") that were immediately before the exchange capital property of the vendor, except where the vendor has, in the vendor's return of income for the taxation year in which the exchange occurred, included in computing the vendor's income for that year any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares, the vendor is deemed

(a) to have disposed of the exchanged foreign shares for proceeds of disposition equal to the adjusted cost base to the vendor of those shares immediately before the exchange, and

(b) to have acquired the issued foreign shares at a cost to the vendor equal to the adjusted cost base to the vendor of the exchanged foreign shares immediately before the exchange,

and where the exchanged foreign shares were taxable Canadian property of the vendor, the issued foreign shares so acquired by the vendor are deemed to be taxable Canadian property of the vendor.

Related Provisions: 85.1(6) — Where rollover does not apply.

(6) Where subsec. (5) does not apply — Subsection (5) does not apply where

(a) the vendor and foreign purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) that is a right of the foreign purchaser to acquire the exchanged foreign shares);

(b) immediately after the exchange the vendor, persons with whom the vendor did not deal at arm's length or the vendor together with persons with whom the vendor did not deal at arm's length,

(i) controlled the foreign purchaser, or

(ii) beneficially owned shares of the capital stock of the foreign purchaser having a fair market value of more than 50% of the fair market value of all of the outstanding shares of the capital stock of the foreign purchaser; or

(c) consideration other than issued foreign shares was received by the vendor for the exchanged foreign shares, notwithstanding that the vendor may have disposed of shares of the capital stock of the other corporation referred to in subsection (5) (other than the exchanged foreign shares) to the foreign purchaser for consideration other than shares of the capital stock of the foreign purchaser;

(d) the vendor

(i) is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred, and

(ii) has included any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares in computing its foreign accrual property income for the taxation

year of the vendor in which the exchange occurred; or

(e) the vendor is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred and the exchanged foreign shares are excluded property (within the meaning assigned by subsection 95(1)) of the vendor.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 37(2), will add subsecs. 85.1(5) and (6), applicable to exchanges that occur after 1995.

Technical Notes: Section 85.1 of the Act permits a tax-deferred rollover for shareholders who exchange shares of a taxable Canadian corporation for shares of a Canadian purchaser corporation in the course of an arm's length sale of the acquired corporation's shares. Subsection 85.1(1) provides, amongst other things, that the shareholder's tax cost of the old shares becomes the tax cost of the new shares with the result that any capital gain is deferred. If, however, the shareholder recognizes, in the shareholder's tax return for the year in which the exchange occurred, any portion of the gain or loss realized on the share exchange, subsection 85.1(1) provides that the rollover will not apply to the shares. Subsection 85.1(2) of the Act sets out other circumstances where the rollover will not be available. These include circumstances where the purchaser corporation and the shareholder are not dealing at arm's length immediately before the exchange or where the shareholder controls the purchaser immediately after the exchange.

New subsection 85.1(5) of the Act provides a similar tax-deferred rollover for shareholders who exchange shares of a foreign corporation for shares of another foreign corporation to that provided in subsection 85.1(1) in respect of exchanges of shares of Canadian corporations. The application of subsection 85.1(5) is subject to the rollover for foreign shares contained in subsection 85.1(3) and 95(2) of the Act.

New subsection 85.1(6) of the Act describes the circumstances where new subsection 85.1(5) will not apply to a foreign share-for-share exchange. The rules in subsection 85.1(6) are similar to those in subsection 85.1(2), except that paragraph 85.1(6)(e) provides that subsection 85.1(5) will not apply where the vendor is a foreign affiliate and the exchanged foreign shares are excluded property (within the meaning assigned by subsection 95(1) of the Act) of the vendor. In other words, excluded property is not eligible for the foreign share-for-foreign share rollover in new subsection 85.1(5).

New subsections 85.1(2), (5) and (6) apply to foreign share-for-share exchanges that occur after 1995. Taxpayers may request a reassessment of their 1996, 1997 and 1998 taxation years in cases where they have disposed of shares in the relevant year in circumstances in which subsections 85.1(5) and (6) of the Act may apply to the disposition. These requests should be made in writing to the Canada Customs and Revenue Agency Tax Centre which serves the area in which the taxpayer lives.

Revenue Canada Question and Answers, April 28, 1999: *Tax Rollover for Canadian Shareholders of Foreign Corporations*

Background

On April 15, 1999, Finance Minister Paul Martin announced proposed changes to the "rollover" provisions of the *Income Tax Act* dealing with the disposition of shares of foreign corporations. (Press Release number 99-035)

Under the current rollover provisions in sections 85.1 and 87 of the *Income Tax Act*, a taxpayer who disposes of shares of one taxable Canadian corporation and receives shares of another, on a "share-for-share" exchange or with a merger of such corporations, may defer the recognition of any gain or loss arising on the disposition. The gain or loss will ultimately be recognized when the shares received on the exchange are sold in a taxable transaction.

The proposed changes will extend this tax-deferral treatment to taxpayers who dispose of shares of one foreign corporation for shares of another on share-for-share exchange or with the merger of foreign corporations. The foreign corporations would not have to be residents of the same foreign jurisdiction. These changes would apply to share exchanges that occur after 1997. They would also apply to share exchanges that occurred after 1995 and before 1998 where the taxpayer elects by notifying the Department in writing.

A taxpayer would also be able to elect, for the year in which the exchange occurs, not to have these proposed tax-deferral changes apply in respect of the disposition. In this case, any gain or loss realized by the taxpayer on the exchange of the shares of the foreign corporation would be included in computing the taxpayer's income for tax purposes in the year of the exchange.

Questions and Answers

Q1. Can I take advantage of these proposed changes when I file my 1998 income tax return?

A1. Yes. This proposal takes effect immediately. Unless you want to include the gain or loss in your income for 1998, the rollover provisions of subsection 85.1(1) apply automatically to the exchange and no election is required to be filed. In this transaction, you are deemed to have disposed of the original shares at their adjusted cost base and to have acquired the new shares at a cost equal to the adjusted cost base of the original shares immediately before the exchange.

Q2. I want to elect to include the capital gain or loss in 1998. What do I do?

A2. If you have yet to file your 1998 return and you wish to include the gain or loss for 1998, you must elect to do so by reporting the details of the transaction on your 1998 Schedule 3.

Q3. I have already filed my 1998 income tax return and I included the capital gain from such a transaction. Can I have my return corrected to recognize this change?

A3. Yes. You can elect to exclude the capital gain from this transaction by requesting a reassessment of your 1998 income tax return to delete this capital gain. This election must be made in writing and you should refer to the Press Release. Be sure to provide your name, Social Insurance Number and the tax year involved.

Q4. What other information is required to elect to include or exclude a capital gain from such a transaction?

A4. To assist us in identifying the reported gain, please provide the details of the transaction including the following:

- the name of the corporation;
- the number of shares disposed of;
- the adjusted cost base of these shares;
- the proceeds of disposition; and,
- the capital gain reported.

Q5. I included the capital gain from this transaction on my 1998 income tax return but I have no tax owing for 1998. Do I need to do anything further?

A5. If you have already filed your 1998 income tax return, there is no need to supply any additional information to leave the capital gain on your 1998 return.

Q6. I included the capital gain from such a transaction on my 1996 and/or 1997 return(s). How can I request that these returns be corrected to recognize this modification?

A6. You can elect to exclude the capital gain from these transactions by requesting a reassessment of your 1996 and/or 1997 income tax return(s) to delete such a capital gain. This election must be made in writing and you should refer to the Press Release. In addition, you should supply the information listed in Question 4. This election must be forwarded to the tax centre which serves the area where you live.

Q7. I included the capital gain from such a transaction on my 1996 or 1997 return and I would prefer it to remain there. Is there anything I need to do?

A7. No. The requirement to elect to include such income applies to 1998 returns yet to be filed and to subsequent tax years. There-

fore, you are not required to complete any particular forms or letters requesting the inclusion of such an income.

Department of Finance news release, April 15, 1999: *Tax Rollover for Canadian Shareholders of Foreign Corporations*

Finance Minister Paul Martin today proposed changes to the "rollover" and "replacement property" provisions of the *Income Tax Act* dealing with the disposition of shares of a foreign corporation.

Under the current rollover provisions in sections 85.1 and 87 of the *Income Tax Act*, a taxpayer who disposes of shares of one taxable Canadian corporation and receives shares of another, on a "share-for-share" exchange or a merger of such corporations, may defer the recognition of any gain or loss arising on the disposition. The gain or loss will ultimately be recognized when the shares received on the exchange are sold in a taxable transaction.

The announcement today would extend this tax-deferral treatment to taxpayers who dispose of shares of one foreign corporation for shares of another on a share-for-share exchange [85.1(5), (6) — ed.] or foreign merger [87(8), (8.1) — ed.]. The foreign corporations would not have to be residents of the same foreign jurisdiction. These changes would apply to share exchanges that occur after 1997. They would also apply to share exchanges that occurred after 1995 and before 1998 where the taxpayer elects by notifying the Minister of National Revenue in writing.

A taxpayer would also be able to elect, for the year in which a share exchange occurs, not to have these proposed tax-deferral changes apply in respect of the disposition. In this case, any gain or loss realized by the taxpayer on the exchange of the shares of the foreign corporation would be included in computing the taxpayer's income for tax purposes in the year of the exchange.

[For the change affecting the replacement property rules, see under 44(1), which will no longer apply to shares — ed.]

For further information: Davine Roach, Tax Policy Branch, (613) 992-4852; Karl Littler, Secretary of State (International Financial Institutions), (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574.

Pre-RSC History [s. 85.1]: S. 85.1 added by 1974-75-76, c. 26, s. 49, subsecs. 85.1(1), (2) applicable in respect of transactions after May 6, 1974, subsec. 85.1(3) applicable to 1972 *et seq.*

Definitions [s. 85.1]: "acquired corporation" — 85.1(1); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canadian corporation" — 89(1), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "dividend" — 248(1); "exchanged foreign shares" — 85.1(5); "exchanged share" — 85.1(1); "foreign accrual property income" — 95(1); "foreign affiliate" — 95(1), 248(1); "foreign purchaser", "issued foreign shares" — 85.1(5); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "purchaser" — 85.1(1); "resident", "resident in Canada — 250; "series of transactions" — 248(10); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

86. (1) Exchange of shares by a shareholder in course of reorganization of capital — Where, at a particular time after May 6, 1974, in the course of a reorganization of the capital of a corporation, a taxpayer has disposed of capital property that was all the shares of any particular class of the capital stock of the corporation that were owned by the taxpayer at the particular time (in this section referred to as the "old shares"), and property is receivable from the corporation therefor that includes other shares of the capital stock of the corporation (in this section referred to as the "new shares"), the following rules apply:

(a) the cost to the taxpayer of any property (other than new shares) receivable by the taxpayer for the old shares shall be deemed to be its fair market value at the time of the disposition;

(b) the cost to the taxpayer of any new shares of any class of the capital stock of the corporation receivable by the taxpayer for the old shares shall be deemed to be that proportion of the amount, if any, by which the total of the adjusted cost bases to the taxpayer, immediately before the disposition, of the old shares exceeds the fair market value at that time of the consideration receivable for the old shares (other than new shares) that

(i) the fair market value, immediately after the disposition, of those new shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all new shares of the capital stock of the corporation receivable by the taxpayer for the old shares; and

(c) the taxpayer shall be deemed to have disposed of the old shares for proceeds of disposition equal to the cost to the taxpayer of all new shares and other property receivable by the taxpayer for the old shares.

Related Provisions: 7(1.5) — Exchange of shares; 51(1), (2) — Conversion of debt to shares; 51(4) — Application of s. 86 to exchange of convertible property; 55(1) — "Permitted redemption" for butterfly purposes; 85(1)–(3) — Transfer of property to corporation; 86(2.1) — Computation of paid-up capital; 86(3) — Application; 86(4) — Debt forgiveness — reduction in adjusted cost base of new shares; 112(7) — Application of stop-loss rule where shares exchanged; Canada-U.S. tax treaty, Art. XIII:8 — Deferral of tax for U.S. resident transferor.

I.T. Application Rules: 26(27), (28).

Interpretation Bulletins: IT-146R4: Shares entitling shareholders to choose taxable or capital dividends.

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-33: Exchange of shares.

(2) Idem — Notwithstanding paragraphs (1)(b) and (c), where a taxpayer has disposed of old shares in circumstances described in subsection (1) and the fair market value of the old shares immediately before the disposition exceeds the total of

(a) the cost to the taxpayer of the property (other than new shares) receivable by the taxpayer for the old shares as determined under paragraph (1)(a), and

(b) the fair market value of the new shares, immediately after the disposition,

and it is reasonable to regard any portion of the excess (in this subsection referred to as the "gift portion") as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer, the following rules apply:

(c) the taxpayer shall be deemed to have disposed of the old shares for proceeds of disposition equal to the lesser of

(i) the total of the cost to the taxpayer of the property as determined under paragraph (1)(a) and the gift portion

and

(ii) the fair market value of the old shares immediately before the disposition,

(d) the taxpayer's capital loss from the disposition of the old shares shall be deemed to be nil, and

(e) the cost to the taxpayer of any new shares of any class of the capital stock of the corporation receivable by the taxpayer for the old shares shall be deemed to be that proportion of the amount, if any, by which the total of the adjusted cost bases to the taxpayer, immediately before the disposition, of the old shares ex-

ceeds the total determined under subparagraph (c)(i) that

(i) the fair market value, immediately after the disposition, of the new shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all new shares of the capital stock of the corporation receivable by the taxpayer for the old shares.

Related Provisions: 86(3) — Application.

I.T. Application Rules: 26(27), (28) (where shares or property owned since before 1972).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange; ATR-33: Exchange of shares.

(2.1) Computation of paid-up capital — Where subsection (1) applies to a disposition of shares of the capital stock of a corporation (in this subsection referred to as the "exchange"), in computing the paid-up capital in respect of a particular class of shares of the capital stock of the corporation at any particular time that is the time of, or any time after, the exchange,

(a) there shall be deducted the amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the total of all amounts each of which is the increase, if any, as a result of the exchange, in the paid-up capital in respect of a class of shares of the capital stock of the corporation, computed without reference to this subsection as it applies to the exchange,

B is the amount, if any, by which the paid-up capital in respect of the old shares exceeds the fair market value of the consideration (other than shares of the capital stock of the corporation) given by the corporation for the old shares on the exchange, and

C is the increase, if any, as a result of the exchange, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the exchange; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in respect of that particular class of shares before the particular time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 86(2.1) added by 1994, c. 21, subsec. 38(1), applicable to exchanges occurring after August 1992, other than an exchange occurring after August 1992 and before December 21, 1992 where the corporation issuing shares on the exchange so elects in writing and files the election with the Minister of National Revenue by December 31, 1994.

(3) Application — Subsections (1) and (2) do not apply in any case where subsection 85(1) or (2) applies.

Related Provisions: 51(4) — Application of section 51.

History: Subsec. 86(3) substituted by 1994, c. 21, subsec. 38(2), applicable to reorganizations that begin after December 21, 1992. That subsec. formerly read:

(3) Where subsecs. (1) and (2) do not apply — Subsections (1) and (2) are not applicable in any case where section 51 or any of subsections 85(1) to (3) is applicable.

(4) Computation of adjusted cost base — Where a taxpayer has disposed of old shares in circumstances described in subsection (1),

(a) there shall be deducted after the disposition in computing the adjusted cost base to the taxpayer of each new share the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which

(i) the total of all amounts deducted under paragraph 53(2)(g.1) in computing the adjusted cost base to the taxpayer of the old shares immediately before the disposition

exceeds

(ii) the amount that would be the taxpayer's capital gain for the taxation year that includes the time of the disposition from the disposition of the old shares if paragraph 40(1)(a) were read without reference to subparagraph (iii) of that paragraph,

B is the fair market value of the new share at the time it was acquired by the taxpayer in consideration for the disposition of the old shares, and

C is the total of all amounts each of which is the fair market value of a new share at the time it was acquired by the taxpayer in consideration for the disposition of the old shares; and

(b) the amount determined under paragraph (a) in respect of the acquisition shall be added in computing the adjusted cost base to the taxpayer of the new share after the disposition.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 86(4)(b); 53(2)(g.1) — Reduction in ACB under 86(4)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 86(4) added by 1995, c. 21, s. 29, applicable to taxation years that end after February 21, 1994.

Pre-RSC History [s. 86]: All that portion of subsec. 86(1) preceding subpara. (b)(i) and subsec. 86(2) substituted, subsec. 86(3) added, by 1980-81-82-83, c. 48, subsecs. 46(1), (2), applicable with respect to reorganizations occurring after December 11, 1979. That portion and subsec. 86(2) formerly read as follows:

86. (1) Where, at a particular time after May 6, 1974, in the course of reorganization of the capital of a corporation, a taxpayer has disposed of capital property that was all the shares of any particular class of the capital stock of the corporation that were owned by him at the particular time (in this section referred to as the "old shares"), and property is receivable from the corporation therefor that includes other shares of the capital stock of the corporation (in this section referred to as the "new shares"), the following rules apply:

(a) the cost to the taxpayer of any property (other than shares of the capital stock of the corporation) receivable by him for the old shares shall be deemed to be its fair market value at the time of the disposition;

(b) the cost to the taxpayer of any new shares of any class of the capital stock of the corporation receivable by him for the old shares shall be deemed to be that proportion of the amount, if any, by which the aggregate of the adjusted cost bases to him, immediately before the disposition, of the old shares exceeds the fair market value at that time of the consideration receivable

therefor (other than shares of the capital stock of the corporation) that

. . . . .

(2) Application — This section is not applicable in any case where section 51 or any of subsections 85(1) to (3) is applicable.

S. 86 substituted by 1974-75-76, c. 26, s. 50, applicable in respect of dispositions after May 6, 1974 by a taxpayer of shares of any class of the capital stock of a corporation in the course of a reorganization of the capital of the corporation. S. 86 formerly read:

86. (1) Disposition of shares by a shareholder in course of reorganization of capital — Where in the course of a reorganization of the capital of a corporation, a taxpayer has, after 1971, disposed of, and the corporation has acquired, category A shares of any class of the capital stock of the corporation, the following rules apply:

(a) the cost to the taxpayer of any property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by him as consideration for the disposition shall be deemed to be its fair market value at the time of the disposition;

(b) the cost to the taxpayer of any category B shares of any class of the capital stock of the corporation receivable by him as consideration for the disposition shall be deemed to be,

(i) where category A shares were also receivable by him as consideration for the disposition, the lesser of

(A) the fair market value, immediately after the disposition, of those category B shares of that class, and

(B) that proportion of the amount, if any, by which the adjusted cost base to him, immediately before the disposition, of the category A shares so disposed of exceeds the fair market value of the consideration for the disposition (other than shares of the capital stock of the corporation or a right to receive any such shares) received by him from the corporation, that

(I) the fair market value, immediately after the disposition, of those category B shares of that class,

is of

(II) the fair market value, immediately after the disposition, of all category B shares of the capital stock of the corporation receivable by him as consideration for the disposition, and

(ii) in any other case, the amount determined under clause (i)(B);

(c) the cost to the taxpayer of any category A shares of any class of the capital stock of the corporation receivable by him as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the adjusted cost base to him, immediately before the disposition, of the category A shares so disposed of exceeds the aggregate of the fair market value of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by him from the corporation as consideration for the disposition and the cost to him of all category B shares of the capital stock of the corporation receivable by him as consideration for the disposition, that

(i) the fair market value, immediately after the disposition, of the category A shares of that class receivable by him as consideration for the disposition,

is of

(ii) the fair market value, immediately after the disposition, of all category A shares of the capital stock of the corporation receivable by him as consideration for the disposition; and

(d) his proceeds of the disposition of the shares shall be deemed to be the cost to him of all shares and other property receivable or received by him as consideration for the disposition of the shares plus the amount of any money received by him on the disposition.

(2) Definitions — For the purposes of this section,

(a) "category A share" means a common share where the taxpayer has disposed of a common share in the course of a reorganization, and means a preferred share where the taxpayer has disposed of a preferred share in the course of a reorganization; and

(b) "category B share" means a preferred share where a category A share means a common share, and means a common share where a category A share means a preferred share.

(3) Application — This section is not applicable in any case where any of subsections 85(1) to (3) is applicable.

Definitions [s. 86]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "common share" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "person", "preferred share", "property", "share", "taxpayer" — 248(1).

I.T. Application Rules [s. 86]: 26(27) (where old shares owned since before 1972).

Interpretation Bulletins [s. 86]: IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-243R4: Dividend refund to private corporations.

87. (1) Amalgamations — In this section, an amalgamation means a merger of two or more corporations each of which was, immediately before the merger, a taxable Canadian corporation (each of which corporations is referred to in this section as a "predecessor corporation") to form one corporate entity (in this section referred to as the "new corporation") in such a manner that

(a) all of the property (except amounts receivable from any predecessor corporation or shares of the capital stock of any predecessor corporation) of the predecessor corporations immediately before the merger becomes property of the new corporation by virtue of the merger,

(b) all of the liabilities (except amounts payable to any predecessor corporation) of the predecessor corporations immediately before the merger become liabilities of the new corporation by virtue of the merger, and

(c) all of the shareholders (except any predecessor corporation), who owned shares of the capital stock of any predecessor corporation immediately before the merger, receive shares of the capital stock of the new corporation because of the merger,

otherwise than as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of that property by the other corporation or as a result of the distribution of that property to the other corporation on the winding-up of the corporation.

Related Provisions: 53(6) — Effect of amalgamation or merger on adjusted cost base of share, partnership interest or trust interest; 69(13) — Amalgamation or merger — deemed proceeds of disposition; 80.03(1), (3)(a)(ii) — Capital gain on amalgamation following debt forgiveness; 87(1.1) — Shares deemed to have been received by virtue of merger; 87(8) — Foreign mergers; 87(9) — Triangular amalgamations; 89(1)"Canadian corporation" — Whether amalgamated corporation is a Canadian corporation; 89(2) — Where corporation is beneficiary under life insurance policy; 112(7) — Application of stop-loss rule following amalgamation; 128.2 — Predecessor corporations take on residence status of amalgamated corporation; 137(4.3) — Determination of preferred-rate amount; 139.1(3)(g) — Where insurance corporation merges causing demutualization; 204.85(3) — Rules on amalgamation of LSVCCs; 251(3.1), (3.2) — Amalgamated corporation deemed related to predecessor. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(1)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(1), applicable to amalgamations occurring after 1989. Para. (c) formerly read:

(c) all of the shareholders (except any predecessor corporation) of the predecessor corporations immediately before the merger receive shares of the capital stock of the new corporation by virtue of the merger,

Pre-RSC History: All that portion of subsec. 87(1) preceding para. (a) substituted by 1979, c. 5, subsec. 28(1), applicable in respect of amalgamations occurring after November 16, 1978, to add "taxable".

Paras. 87(1)(a)–(c) substituted by 1974-75-76, c. 26, subsec. 51(1), applicable in respect of amalgamations occurring after 1971.

I.T. Application Rules: 26(28).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 87.

Information Circulars: 88-2, paras. 20, 28: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, para. 9: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-29: Amalgamation of social clubs; ATR-55: Amalgamation followed by sale of shares; ATR-59: Financing exploration and development through limited partnerships.

(1.1) Shares deemed to have been received by virtue of merger — For the purposes of paragraph (1)(c) and the *Income Tax Application Rules*, where there is a merger of

(a) a corporation and one or more of its subsidiary wholly-owned corporations, or

(b) two or more corporations each of which is a subsidiary wholly-owned corporation of the same corporation,

any shares of the capital stock of a predecessor corporation owned by a shareholder (except any predecessor corporation) immediately before the merger that were not cancelled on the merger shall be deemed to be shares of the capital stock of the new corporation received by the shareholder by virtue of the merger as consideration for the disposition of the shares of the capital stock of the predecessor corporations.

Related Provisions: 87(1.4) — Subsidiary wholly-owned corporation. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Subsec. 87(1.1) added by 1977-78, c. 1, subsec. 42(1), applicable with respect to mergers occurring after December 14, 1975.

Interpretation Bulletins: See list at end of s. 87.

(1.2) New corporation continuation of a predecessor — Where there has been an amalgamation of corporations described in paragraph (1.1)(a) or of 2 or more corporations each of which is a subsidiary wholly-owned corporation of the same person, the new corporation shall, for the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, be deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this subsection shall not affect the determination of any predecessor corporation's fiscal period, taxable income or tax payable.

Related Provisions: 87(1.4) — Subsidiary wholly-owned corporation. See additional Related Provisions and Definitions at end of s. 87.

History: Subsec. 87(1.2) substituted by 1994, c. 21, subsec. 39(1), applicable to amalgamations occurring after December 21, 1992. That subsec. formerly read:

(1.2) New corporation continuation of predecessor — Where there has been an amalgamation of corporations described in paragraph (1.1)(a) or (b), the new corporation shall, for the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, be deemed to be the same corporation as and a continuation of each predecessor corporation, except that this subsection shall in no respect affect the determination of any predecessor corporation's fiscal period, taxable income or tax payable.

Pre-RSC History: Subsec. 87(1.2) amended by 1987, c. 46, subsec. 29(1), to add reference to section 66.7, applicable to taxation years ending after February 17, 1987 with respect to amalgamations occurring after 1982, and with respect to amalgamations occurring after December 14, 1975 and before 1983 where an election has been made under subsection 87(1.2) as that subsection read at that time.

Subsec. 87(1.2) substituted by 1985, c. 45, subsec. 42(1), applicable with respect to amalgamations occurring after 1982. Subsec. 87(1.2) formerly read:

(1.2) Parent corporation's resource expenses on amalgamation — Where there has been an amalgamation of a corporation (in this subsection referred to as the "parent corporation") and one or more other corporations, each of which was a subsidiary wholly-owned corporation of the parent corporation, and the new corporation has elected under this subsection in its return of income under this Part for its first taxation year ending after October 28, 1980, the following rules apply for that year and all subsequent taxation years of the new corporation:

(a) with respect to exploration or development expenses, Canadian exploration and development expenses, foreign exploration and development expenses, cumulative Canadian exploration expense, cumulative Canadian development expense and cumulative Canadian oil and gas property expense of

(i) the parent corporation, or

(ii) a predecessor of the parent corporation where the parent corporation is a successor corporation or a second successor corporation of the predecessor for the purposes of subsection 29(25) or (29) of the *Income Tax Application Rules, 1971* or subsection 66(6), (7), (8) or (9), 66.1(4) or (5), 66.2(3) or (4) or 66.4(3) or (4),

the new corporation shall be deemed to be the same corporation as, and a continuation of, the parent corporation, except that an election under this subsection shall in no respect affect the determination of the fiscal period of, the taxable income of, or the tax payable by, the parent corporation; and

(b) for the purposes of subsections 29(25) and (29) of the *Income Tax Application Rules, 1971* and subsections 66(6), (7), (8) and (9), 66.1(4) and (5), 66.2(3) and (4) and 66.4(3) and (4), the new corporation shall be deemed not to be a successor corporation with respect to the expenses described in paragraph (a) of the parent corporation.

Subpara. 87(1.2)(a)(ii) substituted by 1984, c. 1, subsec. 38(1), to substitute "predecessor" for "predecessor corporation", applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

Para. 87(1.2)(a) substituted by 1980-81-82-83, c. 140, s. 52, applicable with respect to amalgamations occurring after December 14, 1975.

Subsec. 87(1.2) added by 1980-81-82-83, c. 48, subsec. 47(1), applicable in respect of amalgamations occurring after December 14, 1975.

Regulations: 1214 (resource and processing allowances — purposes for which amalgamated corporation deemed to be continuation of predecessors).

Interpretation Bulletins: IT-125R4: Dispositions of resource properties. See also list at end of s. 87.

(1.3) [Repealed under former Act]

Pre-RSC History: Subsec. 87(1.3) repealed by 1985, c. 45, subsec. 42(1), applicable with respect to amalgamations occurring after 1982. Subsec. 87(1.3) formerly read:

(1.3) Shareholder corporation — Where there has been an amalgamation of a shareholder corporation (within the meaning assigned by paragraph 66(15)(i)) and one or more other corporations each of which is a subsidiary wholly-owned corporation of the shareholder corporation, for the purposes of sections 66, 66.1, 66.2 and 66.4, the new corporation shall be deemed to be a shareholder corporation and to be the same corporation as, and a continuation of, the shareholder corporation.

Subsec. 87(1.3) substituted by 1980-81-82-83, c. 140, subsec. 52(1), applicable with respect to amalgamations occurring after December 14, 1975.

Subsec. 87(1.3) added by 1980-81-82-83, c. 48, subsec. 47(1), applicable in respect of amalgamations occurring after December 14, 1975.

(1.4) Definition of "subsidiary wholly-owned corporation" — Notwithstanding subsection 248(1), for the purposes of this subsection and subsections (1.1), (1.2) and (2.11), "subsidiary wholly-owned corporation" of a person (in this subsection referred to as the "parent") means a corporation all the issued and outstanding shares of the capital stock of which belong to

(a) the parent;

(b) a corporation that is a subsidiary wholly-owned corporation of the parent; or

(c) any combination of persons each of which is a person described in paragraph (a) or (b).

Related Provisions: See Related Provisions and Definitions at end of s. 87.

History: Subsec. 87(1.4) substituted by 1994, c. 21, subsec. 39(2), applicable to amalgamations occurring after December 21, 1992. That subsec. formerly read:

(1.4) Definition of "subsidiary wholly-owned corporation" — Notwithstanding subsection 248(1), for the purposes of this subsection and subsections (1.1), (1.2) and (2.11), "subsidiary wholly-owned corporation" of a corporation (in this subsection referred to as the "parent corporation") means a corporation all the issued and outstanding shares of the capital stock of which belong to

(a) the parent corporation;

(b) a corporation that is a subsidiary wholly-owned corporation of the parent corporation; or

(c) any combination of corporations each of which is a corporation described in paragraph (a) or (b).

That portion of subsec. 87(1.4) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(2), to add reference to subsection (2.11), applicable to amalgamations occurring after 1989.

Pre-RSC History: Subsec. 87(1.4) amended by 1985, c. 45, subsec. 42(2), applicable with respect to amalgamations occurring after 1982, to substitute "subsections (1.1) and (1.2)" for "subsections (1.1), (1.2) and (1.3)".

Subsec. 87(1.4) added by 1980-81-82-83, c. 140, subsec. 52(2), applicable with respect to amalgamations occurring after December 14, 1975.

Interpretation Bulletins: See list at end of s. 87.

(1.5) Definitions — For the purpose of this section, "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1).

History: Subsec. 87(1.5) added by 1995, c. 21, subsec. 54(1), applicable to taxation years that end after February 22, 1994.

(2) Rules applicable — Where there has been an amalgamation of two or more corporations after 1971 the following rules apply:

(a) **taxation year** — for the purposes of this Act, the corporate entity formed as a result of the amalgamation shall be deemed to be a new corporation the first taxation year of which shall be deemed to have commenced at the time of the amalgamation, and a taxation year of a predecessor corporation that would otherwise have ended after the amalgamation shall be deemed to have ended immediately before the amalgamation;

Selected Cases [para. 87(2)(a)]: *Pan Ocean Oil Ltd. v. Canada*, [1994] 2 C.T.C. 143 (FCA) (New company did not "acquire" property of predecessor companies); *Guaranty Properties Ltd. v. Canada*, [1990] 2 C.T.C. 94 (FCA); leave to appeal to SCC refused (1991), 49 B.L.R. 320 (note) (Notice of reassessment to company subsequent to amalgamation was valid).

Interpretation Bulletins: IT-179R: Change of fiscal period. See also list at end of s. 87.

Information Circulars: 88-2, para. 21: General anti-avoidance rule — section 245 of the *Income Tax Act*.

(b) **inventory** — for the purpose of computing the income of the new corporation, where the property described in the inventory, if any, of the new corporation at the beginning of its first taxation year includes property that was described in the inventory of a predecessor corporation at the end of the taxation year of the predecessor corporation that ended immediately before the amalgamation (which taxation year of a predecessor corporation is referred to in this section as its "last taxation year"), the property so included shall be deemed to have been acquired by the new corporation at the beginning of its first taxation year for an amount determined in accordance with section 10 as the value thereof for the purpose of computing the income of the predecessor corporation for its last taxation year, except that where the income of the predecessor corporation for its last taxation year from a farming business was computed in accordance with the cash method, the amount so determined in respect of inventory owned in connection with that business shall be deemed to be the total of all amounts each of which is an amount included because of paragraph 28(1)(b) or (c) in computing that income for that year and, where the income of the new corporation from a farming business is computed in accordance with the cash method, for the purpose of section 28,

(i) an amount equal to that total shall be deemed to have been paid by the new corporation, and

(ii) the new corporation shall be deemed to have purchased the property for an amount equal to that total,

in its first taxation year and in the course of carrying on that business;

History: Para. 87(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(1), applicable to amalgamations occurring after 1988, except that, in its application with respect to property acquired from a predecessor corporation the last taxation year of which commenced before 1989, the reference to "paragraph 28(1)(b) or (c)" in the para. shall be read as "paragraph 28(1)(b)". Para. 87(2)(b) formerly read:

(b) inventory — for the purpose of computing the income of the new corporation for its first taxation year, where the property described in the inventory, if any, of the new corporation at the commencement of that year includes

(i) property that was described in the inventory of a predecessor corporation at the end of the taxation year of the predecessor corporation that ended immediately before the amalgamation (which taxation year of a predecessor corporation is referred to in this section as its "last taxation year"), or

(ii) property that would have been described in the inventory of the predecessor corporation at the end of its last taxation year if its income for that year had not been computed in accordance with the method authorized by subsection 28(1),

the property so included shall be deemed to have been acquired by the new corporation at the commencement of its first taxation year for an amount determined in accordance with section 10 as the value thereof for the purpose of computing the income of the predecessor corporation for its last taxation year, except that where the income of the predecessor corporation for its last taxation year was computed in accordance with the method authorized by subsection 28(1), the amount so determined shall be deemed to be the amount, if any, specified in respect of the predecessor corporation under paragraph 28(1)(b) for that year;

Pre-RSC History: That portion of para. 87(2)(b) following subpara. (ii) amended by 1985, c. 45, subsec. 42(3), applicable with respect to amalgamations occurring after 1981, to substitute "the amount, if any, specified in respect of the predecessor corporation under paragraph 28(1)(b) for that year" for "nil".

Interpretation Bulletins: IT-427R: Livestock of farmers. See also list at end of s. 87.

(c) **method adopted for computing income** — in computing the income of the new corporation for a taxation year from a business or property

(i) there shall be included any amount received or receivable (depending on the method followed by the new corporation in computing its income for that year) by it in that year that would, if it had been received or receivable (depending on the method followed by the predecessor corporation in computing its income for its last taxation year) by the predecessor corporation in its last taxation year,

have been included in computing the income of the predecessor corporation for that year, and

(ii) there may be deducted any amount paid or payable (depending on the method followed by the new corporation in computing its income for that year) by it in that year that would, if it had been paid or payable (depending on the method followed by the predecessor corporation in computing its income for its last taxation year) by the predecessor corporation in its last taxation year, have been deductible in computing the income of the predecessor corporation for that year;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(c) substituted by 1974-75-76, c. 26, subsec. 51(2), applicable in respect of amalgamations occurring after May 6, 1974. Para. 87(2)(c) formerly read:

(c) where the method adopted by the new corporation for computing its income for a taxation year from a business is not the same as the method adopted by a predecessor corporation for computing its income for its last taxation year or a previous taxation year, in computing the income of the new corporation for that taxation year from the business

(i) there shall be included any amount received by it in that year in payment of or on account of a debt owing to the predecessor corporation that would, if it had been received by the predecessor corporation in its last taxation year, have been included in computing the income of the predecessor corporation for that year, and

(ii) there may be deducted any amount paid by it in that year in payment of or on account of a debt owing by the predecessor corporation that would, if it had been paid by the predecessor corporation in its last taxation year, have been deductible in computing the income of the predecessor corporation for that year;

Interpretation Bulletins: See list at end of s. 87.

(d) **depreciable property** — for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) where depreciable property of a prescribed class has been acquired by the new corporation from a predecessor corporation, the capital cost of the property to the new corporation shall be deemed to be the amount that was the capital cost of the property to the predecessor corporation, and

(ii) in determining the undepreciated capital cost to the new corporation of depreciable property of a prescribed class at any time,

(A) there shall be added to the capital cost to the new corporation of depreciable property of the class acquired before that time the cost amount, immediately before the amalgamation, to a predecessor corporation of each property included in that class by the new corporation,

(B) there shall be subtracted from the capital cost to the new corporation of depreciable property of that class acquired before that time the capital cost to the new corporation of property of that class acquired by virtue of the amalgamation,

(C) a reference in subparagraph 13(5)(b)(ii) to amounts that would have been deducted in respect of property in computing a taxpayer's income shall be construed as including a reference to amounts that would have been deducted in respect of that property in computing a predecessor corporation's income, and

(D) where depreciable property that is deemed by subsection 37(6) to be a separate prescribed class has been acquired by the new corporation from a predecessor corporation, the property shall continue to be deemed to be of that same separate prescribed class;

History: Cl. 87(2)(d)(ii)(C) amended by 1997, c. 25, subsec. 18(1), applicable to taxation years that begin after 1996. Cl. (ii)(C) formerly read:

(C) a reference in subparagraph 13(5)(b)(ii) to amounts that would have been deducted by a taxpayer in respect of transferred property shall be construed as including a reference to amounts that would have been deducted by a predecessor corporation in respect of that property, and

Cl. 87(2)(d)(ii)(C) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(2), applicable to taxation years commencing after June 17, 1987 that end after 1987. Cl. (ii)(C) formerly read:

(C) a reference in subparagraph 13(5)(a)(ii) to amounts that would have been allowed to a taxpayer in respect of transferred property, at the rate that was allowed to the taxpayer in respect of property of a prescribed class, shall be construed as including a reference to amounts that would have been allowed to a predecessor corporation in respect of that property at the rate that was allowed to the predecessor corporation in respect of property of that prescribed class, and

Pre-RSC History: Cl. 87(2)(d)(ii)(A) substituted by 1988, c. 55, subsec. 60(1), applicable with respect to amalgamations occurring after 1987. Cl. (ii)(A) formerly read:

(A) there shall be added to the capital cost to the new corporation of depreciable property of that class acquired before that time the undepreciated capital cost to each of the predecessor corporations of property of that class immediately before the amalgamation,

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: See list at end of s. 87.

(d.1) **depreciable property acquired from predecessor corporation** — for the purposes of this Act, where depreciable property (other than property of a prescribed class) has been acquired by the new corporation from a predecessor corporation, the new corporation shall be deemed to have acquired the property before 1972 at an actual cost equal to the actual cost of the property to the predecessor corporation, and the new corporation shall be deemed to have been allowed the total of all amounts allowed to the predecessor corporation in respect of the property, under regulations made under paragraph 20(1)(a), in computing the income of the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(d.1) added by 1974-75-76, c. 26, subsec. 51(3), applicable in respect of amalgamations occurring after 1971.

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

Interpretation Bulletins: See list at end of s. 87.

(e) **capital property** — subject to paragraph (e.4) and subsection 142.6(5), where a capital property (other than depreciable property or an interest in a partnership) has been acquired by the new corporation from a predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the adjusted cost base of the property to the predecessor corporation immediately before the amalgamation;

Related Provisions: 53(6) — Effect of amalgamation on ACB of share, partnership interest or trust interest; 69(13) — Amalgamation or merger. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(e) amended by 1995, c. 21, subsec. 54(2), applicable to taxation years that end after February 22, 1994. Para. (e) formerly read:

(e) where any capital property (other than depreciable property or an interest in a partnership) has been acquired by the new corporation from a predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the adjusted cost base of the property to the predecessor corporation immediately before the amalgamation;

Pre-RSC History: Para. 87(2)(e) amended by 1987, c. 46, subsec. 29(2), to substitute "(other than depreciable property or an interest in a partnership)" for "(other than depreciable property)", applicable with respect to amalgamations occurring after January 15, 1987.

Interpretation Bulletins: See list at end of s. 87.

(e.1) **partnership interest** — where a partnership interest that is capital property has been acquired from a predecessor corporation to which the new corporation was related, for the purposes of this Act, the cost of that partnership interest to the new corporation shall be deemed to be the amount that was the cost of that interest to the predecessor corporation and, in respect of that partnership interest, the new corporation shall be deemed to be the same corporation as and a continuation of the predecessor corporation;

Related Provisions: 53(1)(e), 53(2)(c) — ACB — partnership interest; 88(1)(c), 88(1)(e.2) — Winding-up; 100(2.1) — Gain from disposition of partnership interest on amalgamation. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(e.1) added by 1987, c. 46, subsec. 29(2), applicable with respect to amalgamations occurring after January 15, 1987.

Interpretation Bulletins: See list at end of s. 87.

(e.2) **security or debt obligation** — subject to paragraphs (e.3) and (e.4) and subsection 142.6(5), where a property that is a security or debt obligation (other than a capital property or an inventory) of a predecessor corporation used by it in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money in the taxation year ending immediately before the amalgamation has been acquired by the new corporation from the predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the cost amount of the property to the predecessor corporation immediately before the amalgamation;

History: Para. 87(2)(e.2) amended by 1995, c. 21, subsec. 54(3), applicable to taxation years that end after February 22, 1994. Para. (e.2) formerly read:

(e.2) where any property that is a security or debt obligation (other than a capital property or an inventory) of a predecessor corporation used by it in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money in the taxation year ending immediately before the amalgamation has been acquired by the new corporation from the predecessor corporation, the cost of the property to the new corporation shall be deemed to be the amount that was the cost amount of the property to the predecessor corporation immediately before the amalgamation;

Pre-RSC History: Para. 87(2)(e.2) added by 1988, c. 55, subsec. 60(2), applicable to amalgamations occurring after December 15, 1987.

Interpretation Bulletins: See list at end of s. 87.

(e.3) **financial institutions — specified debt obligation** — where the new corporation is a financial institution in its first taxation year, it shall be deemed, in respect of a specified debt obligation (other than a mark-to-market property) acquired from a predecessor corporation that was a financial institution in its last taxation year, to be the same corporation as, and a continuation of, the predecessor corporation;

Related Provisions: 87(1.5) — Interpretation; 88(1)(e.2) — Winding-up; 142.6(5) — Parallel rule for rollover transactions generally. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(e.3) added by 1995, c. 21, subsec. 54(3), applicable to amalgamations occurring, and windings-up beginning, after February 22, 1994.

(e.4) **financial institutions — mark-to-market property** — where

(i) the new corporation is a financial institution in its first taxation year and a property acquired by the new corporation from a predecessor corporation is a mark-to-market property of the new corporation for the year, or

(ii) a predecessor corporation was a financial institution in its last taxation year and a property acquired by the new corporation from the predecessor corporation was a mark-to-market property of the predecessor corporation for the year,

the cost of the property to the new corporation shall be deemed to be the amount that was the fair market value of the property immediately before the amalgamation;

Related Provisions: 87(1.5) — Interpretation; 87(2)(e), (e.2) — Rule overrides normal rules for capital property, securities and debt obligations; 87(2)(g.2), 142.6(1)(b) — Predecessor non-financial institution deemed to have disposed of property before amalgamation; 142.5(2) — Predecessor financial institution deemed to have disposed of property before amalgamation; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(e.4) added by 1995, c. 21, subsec. 54(3), applicable to amalgamations occurring after October 1994.

(e.5) **financial institutions — mark-to-market property** — for the purposes of subsections 112(5) to (5.2) and (5.4) and the definition "mark-to-market property" in subsection 142.2(1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 87(1.5) — Interpretation; 88(1)(h) — Parallel rule on windup. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(e.5) added by 1995, c. 21, subsec. 54(3), applicable to amalgamations occurring at any time (including, for greater certainty, amalgamations occurring before June 22, 1995).

(f) **eligible capital property** — for the purposes of determining under this Act any amount relating to cumulative eligible capital, an eligible capital amount, an eligible capital expenditure or eligible capital property, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

History: Para. 87(2)(f) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(3), applicable to amalgamations occurring after June 1988. That para. formerly read:

(f) cumulative eligible capital — for the purposes of computing the cumulative eligible capital of the new corporation at any time in respect of a business, where a predecessor corporation carried on a business that is carried on by the new corporation, the amount of the cumulative eligible capital of the predecessor corporation immediately before the amalgamation in respect of that business shall be added to the amount determined for A in the definition "cumulative eligible capital" in subsection 14(5) in respect of that business;

Interpretation Bulletins: See list at end of s. 87.

(f.1) [Repealed]

History: Para. 87(2)(f.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(3), applicable to amalgamations occurring after June 1988. That para. formerly read:

(f.1) idem — notwithstanding paragraph (f), for the purposes of computing the cumulative eligible capital of the new corporation at any time in respect of a business, where the last taxation year of a predecessor corporation commenced before July, 1988 and the predecessor corporation carried on a business that is carried on by the

new corporation, 3/2 of the amount of the cumulative eligible capital of the predecessor corporation immediately before the amalgamation in respect of that business shall be added to the amount determined for A in the definition "cumulative eligible capital" in subsection 14(5) in respect of that business;

Pre-RSC History: Para. 87(2)(f.1) added by 1988, c. 55, subsec. 60(3), applicable with respect to amalgamations occurring after June 1988.

(g) **reserves** — for the purpose of computing the income of the new corporation for a taxation year,

(i) any amount that has been deducted as a reserve in computing the income of a predecessor corporation for its last taxation year shall be deemed to have been deducted as a reserve in computing the income of the new corporation for a taxation year immediately preceding its first taxation year, and

(ii) any amount deducted under paragraph 20(1)(p) in computing the income of a predecessor corporation for its last taxation year or a previous taxation year shall be deemed to have been deducted under that paragraph in computing the income of the new corporation for a taxation year immediately preceding its first taxation year;

Related Provisions: 88(1)(e.2) — Winding-up.

(g.1) **continuation** — for the purposes of sections 12.3 and 12.4, subsection 20(26) and section 26, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(g.1) amended by 1988, c. 55, subsec. 60(4), to add "sections 12.3 and 12.4, subsection 20(26) and", applicable to taxation years commencing after June 17, 1987 that end after 1987 of corporations formed as a result of amalgamations.

Para. 87(2)(g.1) added by 1986, c. 55, subsec. 23(1), applicable in respect of amalgamations occurring after 1979.

Interpretation Bulletins: See list at end of s. 87.

(g.2) **financial institution rules** — for the purposes of paragraphs 142.4(4)(c) and (d) and subsections 142.5(5) and (7) and 142.6(1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up; 142.6(1)(b) — Deemed disposition of specified debt obligations and mark-to-market properties on becoming a financial institution. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(g.2) added by 1995, c. 21, subsec. 54(4), applicable to taxation years that end after February 22, 1994.

(g.3) **superficial losses** — for the purposes of applying subsections 13(21.2), 14(12), 18(15) and 40(3.4) to any property that was disposed of by a predecessor corporation before the amalgamation, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(g.3) added by 1998, c. 19, subsec. 117(1), applicable to amalgamations that occur, and windings-up that begin, after April 26, 1995.

(g.4) **superficial losses — capital property** — for the purpose of applying paragraph 40(3.5)(c) in respect of any share that was acquired by a predecessor corporation, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(g.4) added by 1998, c. 19, subsec. 117(1), applicable to amalgamations that occur, and windings-up that begin, after April 26, 1995.

(h) **debts** — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(l), (l.1) or (p)

(i) any debt owing to a predecessor corporation that was included in computing the income of the predecessor corporation for its last taxation year or a preceding taxation year,

(ii) where a predecessor corporation was an insurer or a corporation the ordinary business of which included the lending of money, any loan or lending asset made or acquired by the predecessor corporation in the ordinary course of its business of insurance or the lending of money, or

(iii) where a predecessor corporation was an insurer or a corporation the ordinary business of which included the lending of money, any instrument or commitment described in paragraph 20(1)(l.1) that was issued, made or assumed by the predecessor corporation in the ordinary course of its business of insurance or the lending of money,

and that by reason of the amalgamation, has been acquired by the new corporation, shall be deemed to be a debt owing to the new corporation that was included in computing its income for a preceding taxation year, a loan or lending asset made or acquired or an instrument or commitment that was issued, made or assumed by the new corporation in a preceding taxation year in the ordinary course of its business of insurance or the lending of money, as the case may be;

Related Provisions: 80(2) — Deemed settlement on amalgamation; 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(h) substituted by 1988, c. 55, subsec. 60(5), applicable to taxation years commencing after June 17, 1987 that end after 1987 of corporations formed as a result of amalgamations. Para. 87(2)(h) formerly read:

(h) debts — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(l) or (p) or section 33, where any debt owing to a predecessor corporation

(i) that was included in computing the income of the predecessor corporation for its last taxation year or a previous taxation year, or

(ii) that arose from a loan made in the ordinary course of business by the predecessor corporation, part of whose ordinary business was the lending of money,

has, by virtue of the amalgamation, been acquired by the new corporation, the amount thereof shall be deemed to be a debt owing to the new corporation that was included in computing the income of the new corporation for a previous taxation year or that arose from a loan so made by it, as the case may be;

Interpretation Bulletins: See list at end of s. 87.

(h.1) **debts** — for the purposes of section 61.4, the description of F in subsection 79(3), the definition "forgiven amount" in subsection 80(1), subsection 80.03(7) and section 80.04, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(h.1) added by 1995, c. 21, subsec. 30(1), applicable to taxation years that end after February 21, 1994.

(i) **special reserve** — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(n), any

amount included in computing the income of a predecessor corporation from a business for its last taxation year or a previous taxation year in respect of property sold in the course of the business shall be deemed to have been included in computing the income of the new corporation from the business for a previous year in respect of that property;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Interpretation Bulletins: IT-154R: Special reserves. See also list at end of s. 87.

(j) **special reserves** — for the purposes of paragraphs 20(1)(m), (m.1) and (m.2), subsection 20(24) and section 34.2, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j) amended by 1996, c. 21, subsec. 15(1), applicable to amalgamations that occur and windings-up that begin after 1994. The para. formerly read:

(j) idem — for the purposes of paragraphs 20(1)(m), (m.1) and (m.2) and subsection 20(24), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

Para. 87(2)(j) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(4), applicable to amalgamations occurring and windings-up beginning after 1990. Para. (j) formerly read:

(j) idem — for the purpose of computing a deduction from the income of the new corporation for a taxation year under paragraph 20(1)(m), (m.1) or (m.2) or section 32, any amount included in computing the income of a predecessor corporation from a business for its last taxation year or a preceding taxation year by virtue of paragraph 12(1)(a) shall be deemed to have been included in computing the income of the new corporation from the business for a preceding taxation year by virtue of that paragraph;

Pre-RSC History: Para. 87(2)(j) substituted by 1984, c. 1, subsec. 38(2), to add "(m.1) or (m.2)" and to substitute "preceding" for "previous", applicable to 1979 *et seq.*

Interpretation Bulletins: IT-154R: Special reserves. See also list at end of s. 87.

(j.1) **inventory adjustment** — for the purposes of paragraph 20(1)(ii), an amount required by paragraph 12(1)(r) to be included in computing the income of a predecessor corporation for its last taxation year shall be deemed to be an amount required by paragraph 12(1)(r) to be included in computing the income of the new corporation for a taxation year immediately preceding its first taxation year;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(j.1) added by 1979, c. 5, subsec. 28(2), applicable in respect of amalgamations occurring after November 16, 1978.

Interpretation Bulletins: See list at end of s. 87.

(j.2) **prepaid expenses and matchable expenditures** — for the purposes of subsections 18(9) and (9.01), section 18.1 and paragraph 20(1)(mm), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.2) amended by 1998, c. 19, subsec. 117(2), applicable after November 17, 1996. The para. formerly read:

(j.2) prepaid expenses — for the purposes of subsections 18(9) and (9.01) and paragraph 20(1)(mm), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.2) amended by 1995, c. 3, subsec. 23(1), applicable to 1994 *et seq.* Para. (j.2) formerly read:

(j.2) prepaid expenses — for the purposes of subsection 18(9) and paragraph 20(1)(mm), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Pre-RSC History: Para. 87(2)(j.2) substituted by 1984, c. 45, subsec. 27(1), to add "paragraph 20(1)(mm) and", applicable to 1984 *et seq.*

Para. 87(2)(j.2) added by 1980-81-82-83, c. 48, subsec. 47(2), applicable to amalgamations occurring after December 11, 1979.

Interpretation Bulletins: See list at end of s. 87.

(j.3) **employee benefit plans, etc. [SDAs, RCAs]** — for the purposes of paragraphs 12(1)(n.1), (n.2) and (n.3) and 20(1)(r), (oo) and (pp), section 32.1, paragraph 104(13)(b) and Part XI.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.3) substituted by 1994, c. 21, subsec. 39(3), applicable to taxation years ending after December 21, 1992. That para. formerly read:

(j.3) employee benefit plans, etc. — for the purposes of paragraphs 12(1)(n.2) and (n.3), 20(1)(r), (oo) and (pp), section 32.1 and Part XI.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.3) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(3), to add reference to para. (pp), applicable to amalgamations occurring and windings-up commencing after 1985.

Pre-RSC History: Para. 87(2)(j.3) amended by 1987, c. 46, subsec. 29(3), to substitute "of paragraphs 12(1)(n.2) and (n.3), 20(1)(r) and (oo), section 32.1 and Part XI.3" for "of paragraphs 12(1)(n.2) and 20(1)(oo) and section 32.1", applicable after October 8, 1986.

Para. 87(2)(j.3) amended by 1986, c. 55, subsec. 23(2), to substitute "of paragraphs 12(1)(n.2) and 20(1)(oo) and section 32.1" for "of section 32.1" applicable with respect to amalgamations occurring after February 25, 1986.

Para. 87(2)(j.3) added by 1980-81-82-83, c. 48, subsec. 47(2), applicable to amalgamations occurring after December 11, 1979.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts. See also list at end of s. 87.

(j.4) **accrual rules** — for the purposes of subsections 12(3) and (9), section 12.2, subsection 20(19) and the definition "adjusted cost basis" in subsection 148(9) of this Act, and subsections 12(5) and (6) and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(j.4) substituted by 1980-81-82-83, c. 140, subsec. 52(3), applicable after December 1, 1982. Para. 87(2)(j.4) formerly read:

(j.4) accrued interest income — for the purposes of subsections 12(3) to (6) and 20(19) and paragraph 148(9)(a), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.4) added by 1980-81-82-83, c. 48, subsec. 47(2), applicable in respect of amalgamations occurring after October 28, 1980.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: See list at end of s. 87.

(j.5) **cancellation of lease** — for the purposes of paragraphs 20(1)(z) and (z.1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(j.5) added by 1980-81-82-83, c. 140, subsec. 52(3), applicable to payments relating to lease cancellations occurring after November 12, 1981, other than a cancellation pursuant to an agreement in writing entered into on or before that date.

Interpretation Bulletins: See list at end of s. 87.

(j.6) **continuing corporation** — for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4) and 66.7(11), section 139.1, subsection 152(4.3), the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and the determination of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 55(3.2)(b) — Continuation for purposes of butterfly reorganizations and capital gains stripping; 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.6) amended by 2000, c. 19, s. 13, applicable to amalgamations that occur, and windings-up that begin, after December 15, 1998. The para. formerly read:

(j.6) for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11) and 152(4.3), the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and the determination of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) substituted by 1994, c. 21, subsec. 39(4), applicable after January 1990, and

(a) in applying the para. after 1987 and before February 1990, it shall be read as including a reference to para. 20(1)(e.1); and

(b) in applying the para. after January 1990 and before 1994, it shall be read as if the reference in it to "sections 20.1 and 32" were a reference to "section 32".

Para. 87(2)(j.6) formerly read:

(j.6) [continuation as to various subjects] — for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e) and (hh), section 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11) and 152(4.3) and the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(5), applicable after January 1990. Para. (j.6) formerly read:

(j.6) continuation as to various subjects — for the purposes of paragraphs 12(1)(t) and (x), subsections 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e) and (hh), section 32, paragraph 37(1)(c), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), and 66.7(11) and the determination of D in the definition "undepreciated capital cost" in subsection 13(21) and of L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(4), to add reference to paras. 13(27)(b), (28)(c), subsecs. 13(29), 18(9.1) and s. 32, applicable with respect to amalgamations occurring and windings-up commencing after 1989.

Pre-RSC History: Para. 87(2)(j.6) substituted by 1988, c. 55, subsec. 60(6), applicable to 1988 *et seq.*, except that, with respect to amalgamations occurring before 1988, the reference to "paragraphs 20(1)(e) and (hh)" shall be read as a reference to "paragraph 20(1)(hh)". Para. 87(2)(j.6) formerly read:

(j.6) continuing corporation — for the purposes of paragraph 12(1)(x), subsection 13(7.4), subparagraph 13(21)(f)(ii.2), subsection 13(24), paragraphs 20(1)(hh) and 53(2)(s) and subsections 53(2.1), 66(11.4) and 66.7(11) the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.6) amended by 1987, c. 46, subsec. 29(4), to substitute "subparagraph 13(21)(f)(ii.2), subsection 13(24), paragraphs 20(1)(hh) and 53(2)(s) and subsections 53(2.1), 66(11.4) and 66.7(11)" for "subparagraph 13(21)(f)(ii.2), paragraphs 20(1)(hh) and 53(2)(s) and subsection 53(2.1)", applicable with respect to amalgamations occurring after January 15, 1987.

Para. 87(2)(j.6) added by 1986, c. 6, subsec. 46(1), applicable to 1985 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(j.7) **certain transfers and loans [attribution rules]** — for the purposes of sections 74.4 and 74.5, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(j.7) added by 1986, c. 6, subsec. 46(1), applicable with respect to amalgamations occurring after November 21, 1985.

Interpretation Bulletins: See list at end of s. 87.

(j.8) **international banking centre business** — for the purposes of section 33.1, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(j.8) added by 1987, c. 46, subsec. 29(5), applicable with respect to taxation years commencing after December 17, 1987.

Interpretation Bulletins: See list at end of s. 87.

(j.9) **Part VI and Part I.3 tax [pre-1992]** — for the purposes of determining the amount deductible by the new corporation for any taxation year under section 125.2 or 125.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(j.9) amended by 1990, c. 39, subsec. 19(1), to add reference to s. 125.3, applicable with respect to amalgamations occurring and windings-up commencing after June 1989.

Para. 87(2)(j.9) added by 1988, c. 55, subsec. 60(7), applicable with respect to amalgamations occurring and windings-up commencing after 1987.

Interpretation Bulletins: See list at end of s. 87.

(j.91) **Part I.3 and Part VI tax** — for the purpose of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.91) amended by 1998, c. 19, subsec. 117(3), applicable to amalgamations that occur, and windings-up that begin, after April 26, 1995. The para. formerly read:

> (j.91) for the purposes of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.91) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(6), applicable to amalgamations occurring and windings-up beginning after 1990.

(j.92) **subsec. 125(5.1) [small business deduction]** — for the purposes of subsection 125(5.1), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.92) added by 1995, c. 3, subsec. 23(2) applicable to taxation years that end after June 1994.

(j.93) **mining reclamation trusts [and qualifying environmental trusts]** — for the purposes of paragraphs 12(1)(z.1) and (z.2) and 20(1)(ss) and (tt) and sections 107.3 and 127.41, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.93) added by 1995, c. 3, subsec. 23(2), applicable to amalgamations that occur and windings-up that begin after February 22, 1994.

(j.94) **film or video productions** — for the purposes of sections 125.4 and 125.5, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(j.94) amended by 1998, c. 19, subsec. 117(4), applicable to amalgamations that occur and windings-up that begin after October 1997. The para. formerly read:

> (j.94) Canadian film or video production tax credit — for the purpose of section 125.4, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(j.94) added by 1996, c. 21, subsec. 15(2), applicable to amalgamations that occur and windings-up that begin after 1994.

Proposed Addition — 87(2)(j.95)

(j.95) **non-resident trusts and foreign investment entities** — for the purposes of sections 94 to 94.3, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Application: The June 22, 2000 draft legislation, s. 8, will add para. 87(2)(j.95), applicable after 2000.

Technical Notes: Section 87 of the Act sets out rules that apply on the amalgamation of two or more taxable Canadian corporations. The amalgamated corporation is generally treated as a continuation of the predecessor corporations for the purposes of the Act.

New paragraph 87(2)(j.95) provides that, where there has been an amalgamation of two or more taxable Canadian corporations, the amalgamated corporation is deemed to be a continuation of its predecessor corporations for the purposes of sections 94 to 94.3, which relate to foreign trusts and foreign investment entities. Thus, for example, an amalgamated corporation will be considered to be a "contributor" to a trust (as defined in subsection 94(1)) if any predecessor corporation was a contributor to the trust. In addition, the new corporation's "deferral amount" under paragraph 94.2(1)(b) in respect of an interest in a foreign investment entity will be determined in the same manner as a predecessor's "deferral amount" in respect of the same interest.

Because of the operation of paragraph 88(1)(e.2), new paragraph 87(2)(j.95) also applies to windings-up to which section 88 applies.

This amendment applies after 2000.

(k) **certain payments to employees** — for the purpose of subsection 6(3), any amount received by a person from the new corporation that would, if received by the person from a predecessor corporation, be deemed for the purpose of section 5 to be remuneration for that person's services rendered as an officer or during a period of employment, shall be deemed for the purposes of section 5 to be remuneration for services so rendered by the person;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

(l) **scientific research and experimental development** — for the purposes of section 37 and Part VIII, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(l) substituted by 1984, c. 45, subsec. 27(2), applicable to 1984 *et seq.* Para. 87(2)(l) formerly read:

> (l) scientific research — for the purposes of section 37,
>
> (i) an amount equal to the aggregate of all amounts each of which is the amount of an expenditure referred to in paragraph 37(1)(a) made by a predecessor corporation shall, to the extent that it was not deducted by the predecessor corporation in computing its income for a taxation year, be deemed to be an expenditure of a current nature on scientific research made in Canada by the new corporation in its first taxation year,
>
> (ii) an amount equal to the aggregate of all amounts each of which is the amount of an expenditure referred to in subparagraph 37(1)(b)(i) made by a predecessor corporation shall, to the extent that it was not deducted by the predecessor corporation in computing its income for a taxation year, be deemed to be an expenditure of a capital nature on scientific research made in Canada by the new corporation in its first taxation year,
>
> (iii) an amount equal to the aggregate of all amounts each of which is the amount of an expenditure referred to in paragraph 37(1)(c) made by a predecessor corporation shall, to the extent that it was not deducted by a predecessor corporation in computing its income for a taxation year, be deemed to be an expenditure incurred by the new corporation in its first taxation year by way of repayment of an amount paid to the new corporation under an *Appropriation Act* and on terms and conditions described in paragraph 37(1)(c), and
>
> (iv) an amount equal to the aggregate of all amounts each of which is an amount paid to a predecessor corporation referred to in paragraph 37(1)(d) shall be deemed to be an amount paid to the new corporation in its first taxation year under an *Appropriation Act* and on terms and conditions described in paragraph 37(1)(c);

Para. 87(2)(l) substituted by 1974-75-76, c. 26, subsec. 51(4), applicable in respect of amalgamations occurring after May 6, 1974. Para. 87(2)(l) formerly read:

> (l) for the purpose of section 37, any expenditure of a capital nature on scientific research made by a predecessor corporation on its last taxation year or a previous taxation year that would have been deductible by the predecessor corporation by virtue of paragraph 37(1)(b) in computing its income for its last taxation year shall, to the extent that such expenditure was not deducted by the predecessor corporation, be deemed to be an expenditure of a capital nature on scientific research made in Canada by the new corporation in its first taxation year.

Interpretation Bulletins: See list at end of s. 87.

(l.1) **idem** — for the purposes of this paragraph, paragraph (l.2) and section 37.1,

(i) the base period for a particular taxation year of a new corporation that has fewer than 3 preceding taxation years shall be deemed to be the period

(A) commencing on the day that

(I) is the earliest of all days each of which is a day immediately before the commencement of a taxation year of a predecessor corporation in respect of the new corporation that ended after 1976, and

(II) is in the 3 year period ending on the day immediately before the commencement of the particular year, and

(B) ending immediately before the first day of the particular taxation year,

(ii) where subparagraph (i) applies,

(A) in determining the qualified expenditures made by the new corporation in its base period, there shall be included the total of all amounts each of which is the qualified expenditure made by a predecessor corporation in a taxation year that commenced in the base period of the new corporation, and

(B) in determining the total of the amounts paid to the new corporation by persons referred to in subparagraphs (b)(i) to (iii) of the definition "expenditure base" in subsection 37.1(5) in its base period, there shall be included the total of all such amounts paid to a predecessor corporation by a person referred to in those subparagraphs in a taxation year that commenced in the base period of the new corporation,

(iii) the capital cost to the new corporation of any property that was a research property of a predecessor corporation acquired by it from the predecessor corporation shall be deemed to be the capital cost thereof to the predecessor corporation and the property shall be deemed to be a research property of the new corporation, and

(iv) each amount determined in respect of the new corporation under subparagraph 37.1(3)(b)(i) or (iii), as the case may be, shall be deemed to be the total of the amount otherwise determined and the total of amounts each of which is the amount determined under subparagraph 37.1(3)(b)(i) or (iii), as the case may be, in respect of a predecessor corporation;

(l.2) **definition of "predecessor corporation"** — for the purposes of this paragraph and paragraph (l.1), "predecessor corporation" includes any corporation in respect of which a predecessor corporation was a new corporation;

Pre-RSC History: Paras. 87(2)(l.1), (l.2) added by 1977-78, c. 32, subsec. 22(1), applicable to 1978 *et seq.*

(l.21) **[debt forgiveness rules]** — for the purposes of section 61.3, the definition "unrecognized loss" in subsection 80(1) and subsection 80.01(10), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

History: Para. 87(2)(l.21) amended by 1998, c. 19, subsec. 117(5), applicable to taxation years that end after February 21, 1994. The para. formerly read:

(l.21) **forgiven amount** — for the purposes of section 61.3 and subsection 80.01(10), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2)(l.21) added by 1995, c. 21, subsec. 30(2), applicable to taxation years that end after February 21, 1994.

(l.3) **replacement property** — where before the amalgamation property of a predecessor corporation was unlawfully taken, lost, destroyed or taken under statutory authority, or was a former business property of the predecessor corporation, for the purposes of applying sections 13 and 44 and the definition "former business property" in subsection 248(1) to the new corporation in respect of the property and any replacement property acquired therefor, the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(l.3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(7), applicable to amalgamations occurring and windings-up beginning after 1989. Para. (l.3) formerly read:

(l.3) **property lost, destroyed or taken** — if the amalgamation was after May 6, 1974 and a property of a predecessor corporation was unlawfully taken, lost, destroyed or taken under statutory authority prior to the amalgamation, sections 13 and 44 apply to the new corporation as though

(i) the new corporation had been in existence and owned that property at the time it was so lost, destroyed or taken,

(ii) the cost or capital cost, as the case may be, of that property to the new corporation were its cost or capital cost, as the case may be, to the predecessor corporation, and

(iii) where the predecessor corporation had acquired a replacement property for that property before the amalgamation, the new corporation had acquired that replacement property immediately after the amalgamation;

Pre-RSC History: Para. 87(2)(l.3) substituted for former (l.1) by 1977-78, c. 32, subsec. 22(1), to add "unlawfully taken", applicable in respect of amalgamations occurring after April 10, 1978, in para. 87(2)(l.3).

Former para. 87(2)(l.1) added by 1974-75-76, c. 26, subsec. 51(4), applicable in respect of amalgamations occurring after May 6, 1974.

Interpretation Bulletins: IT-259R3: Exchanges of property. See also list at end of s. 87.

(m) **reserves** — for the purpose of computing the income of the new corporation for a taxation year, any amount claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing a predecessor corporation's gain for its last taxation year from the disposition of any property shall be deemed

(i) to have been claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii), as the case may be, in computing the new corporation's gain for a taxation year immediately preceding its first taxation year from the disposition of that property by it before its first taxation year, and

(ii) to be the amount determined under subparagraph 40(1)(a)(i) or 44(1)(e)(i), as the case may be, in respect of that property;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(m) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(5), applicable to amalgamations occurring and windings-up beginning after 1989. Para. 87(2)(m) formerly read:

(m) **proceeds not due until after end of year** — for the purpose of computing the income of the new corporation for its first taxation year and any subsequent taxation year, any amount claimed under

subparagraph 40(1)(a)(iii) in computing a predecessor corporation's gain for its last taxation year from the disposition of any property shall be deemed

(i) to have been claimed under that subparagraph in computing the new corporation's gain for a taxation year immediately preceding its first taxation year from the disposition of that property by it before its first taxation year, and

(ii) to be the amount determined under subparagraph 40(1)(a)(i) in respect of that property;

(m.1) **[charitable] gift of non-qualifying security** — for the purpose of computing the new corporation's gain under subsection 40(1.01) for any taxation year from the disposition of a property, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(m.1) added by 1998, c. 19, s. 15, applicable to 1997 *et seq.*

(n) **outlays made pursuant to warranty** — for the purpose of section 42, any outlay or expense made or incurred by the new corporation in a taxation year, pursuant to or by virtue of an obligation described in that section incurred by a predecessor corporation, that would, if the outlay or expense had been made or incurred by the predecessor corporation in that year, have been deemed to be a loss of the predecessor corporation for that year from the disposition of a capital property shall be deemed to be a loss of the new corporation for that year from the disposition of a capital property;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Interpretation Bulletins: IT-330R: Disposition of capital property subject to warranty, covenant, etc. See also list at end of s. 87.

(o) **expiration of options previously granted** — for the purpose of subsection 49(2), any option granted by a predecessor corporation that expires after the amalgamation shall be deemed to have been granted by the new corporation, and any proceeds received by the predecessor corporation for the granting of the option shall be deemed to have been received by the new corporation therefor;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

(p) **consideration for resource property disposition** — for the purpose of computing a deduction from the income of the new corporation for a taxation year under section 64 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, any amount that has been included in computing the income of a predecessor corporation for its last taxation year or a previous taxation year by virtue of subsection 59(1) or paragraph 59(3.2)(c) of this Act, of subsection 59(3) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or of subsection 83A(5ba) or (5c) of that Act as it read in its application to a taxation year before the 1972 taxation year, shall be deemed to have been included in computing the income of the new corporation for a previous year by virtue thereof;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(q) **registered [pension] plans [and DPSPs]** — for the purposes of sections 147, 147.1 and 147.2 and any regulations made under subsection 147.1(18), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(q) added by 1990, c. 35, s. 8, applicable after 1988. (For History to former para. 87(2)(q), see under para. 87(2)(t).)

Interpretation Bulletins: See list at end of s. 87.

(r)–(s.1) [Repealed under former Act]

(t) **pre-1972 capital surplus on hand** — for the purpose of subsection 88(2.1), any capital property owned by a predecessor corporation on December 31, 1971 that was acquired by the new corporation by virtue of the amalgamation shall be deemed to have been acquired by the new corporation before 1972 at an actual cost to it equal to the actual cost of the property to the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History [paras. 87(2)(q)–(t)]: Para. 87(2)(t) substituted for former para. 87(2)(q), paras. (r), (s), (s.1), (t) by 1977-78, c. 1, subsec. 42(2), applicable after December 31, 1978 except that

(a) the repeal of paras. 87(2)(s) and (s.1) is applicable with respect to amalgamations occurring after March 31, 1977; and

(b) for the purpose of computing the 1971 capital surplus on hand of a new corporation after March 31, 1977 and before 1979, paras. 87(2)(r) and (t) shall be read as follows:

(r) 1971 capital surplus on hand — for the purposes of computing the 1971 capital surplus on hand of the new corporation at any time after the amalgamation, there shall be added to the aggregate of the amounts determined under subparagraph 89(1)(l)(iv) the aggregate of amounts each of which is the 1971 capital surplus on hand, if any, of a predecessor corporation immediately before the amalgamation;

(t) idem — for the purpose of computing the 1971 capital surplus on hand of the new corporation, in determining any amount under subparagraph 89(1)(l)(ii) or (xiv), any capital property owned by a predecessor corporation on December 31, 1971 that was acquired by the new corporation by virtue of the amalgamation shall be deemed to have been acquired by the new corporation before 1972 at an actual cost to it equal to the actual cost of the property to the predecessor corporation;

Paras. 87(2)(q), (r), (s), (s.1), (t) formerly read:

(q) tax-paid undistributed surplus on hand — for the purpose of computing the tax-paid undistributed surplus on hand of the new corporation at any time after the amalgamation, where a predecessor corporation had tax-paid undistributed surplus on hand immediately before the amalgamation, the amount thereof shall be added to the aggregate of the amounts determined under subparagraphs 89(1)(k)(i) to (iii);

(r) 1971 capital surplus on hand or paid-up capital deficiency — for the purpose of computing the 1971 capital surplus on hand or the paid-up capital deficiency, as the case may be, of the new corporation at any time after the amalgamation, there shall be added to the aggregate of the amounts determined under subparagraph 89(1)(l)(iv) the amount, if any, by which

(i) the aggregate of amounts each of which is the 1971 capital surplus on hand, if any, of a predecessor corporation immediately before the amalgamation

exceeds

(ii) the aggregate of amounts each of which is the paid-up capital deficiency, if any, of a predecessor corporation immediately before the amalgamation;

(s) idem — for the purpose of computing the 1971 capital surplus on hand or the paid-up capital deficiency, as the case may be, of the new corporation at any time after the amalgamation, there shall be added to the aggregate of the amounts determined under subparagraph 89(1)(d)(iii) the amount, if any, by which

(i) the aggregate of amounts each of which is the paid-up capital deficiency, if any, of a predecessor corporation immediately before the amalgamation

exceeds

(ii) the aggregate of amounts each of which is the 1971 capital surplus on hand, if any, of a predecessor corporation immediately before the amalgamation;

(s.1) **idem** — for the purpose of computing the 1971 capital surplus on hand or the paid-up capital deficiency, as the case may be, of the new corporation at any time after the amalgamation, there shall be added to the aggregate of the amounts determined under subparagraph 89(1)(d)(iii) the amount, if any, by which

(i) the paid-up capital of the new corporation immediately after the amalgamation

exceeds

(ii) the aggregate of amounts each of which is the paid-up capital in respect of a share (except a share held by any other predecessor corporation) of the capital stock of a predecessor corporation immediately before the amalgamation;

(t) **idem** — for the purpose of computing the 1971 capital surplus on hand or the paid-up capital deficiency, as the case may be, of the new corporation, in determining any amount under subparagraph 89(1)(l)(ii) or (xiv), any capital property owned by a predecessor corporation on December 31, 1971 that was acquired by the new corporation by virtue of the amalgamation shall be deemed to have been acquired by the new corporation before 1972 at an actual cost to it equal to the actual cost of the property to the predecessor corporation;

Paras. 87(2)(p), (q) and all that portion of para. 87(2)(r) preceding subpara. (i) substituted by 1974-75-76, c. 26, subsec. 51(5), applicable in respect of amalgamations occurring after May 6, 1974. Paras. 87(2)(p), (q) and that portion of para. 87(2)(r) formerly read:

(p) for the purpose of computing a deduction from the income of the new corporation for a taxation year under section 64, any amount that has been included in computing the income of a predecessor corporation for its last taxation year or a previous taxation year by virtue of subsection 59(1) or (3), or by virtue of subsection 83A(5ba) or (5c) of this Act as it read in its application to a taxation year before the 1972 taxation year, shall be deemed to have been included in computing the income of the new corporation for a previous year by virtue thereof;

(q) for the purpose of computing the tax-paid undistributed surplus on hand of the new corporation at any time, where a predecessor corporation had tax-paid undistributed surplus on hand immediately before the amalgamation the amount thereof shall be added to the aggregate of the amounts determined under subparagraphs 89(1)(k)(i) to (iii);

(r) **1971 capital surplus on hand** — for the purpose of computing the 1971 capital surplus on hand of the new corporation at any time, there shall be added to the aggregate of the amounts determined under subparagraphs 89(1)(l)(i) to (iv) the amount, if any, by which

All that portion of para. 87(2)(s) preceding subpara. (i) substituted by 1974-75-76, c. 26, subsec. 51(6), applicable in respect of amalgamations occurring after May 6, 1974. That portion formerly read:

(s) for the purpose of computing the paid-up capital deficiency of the new corporation at any time, there shall be added to the aggregate of the amounts determined under subparagraphs 89(1)(d)(i) to (iv) the amount, if any, by which

Para. 87(2)(s.1) added, para. 87(2)(t) substituted by 1974-75-76, c. 26, subsec. 51(7), applicable in respect of amalgamations occurring after May 6, 1974, to substitute "(xiv)" for "(vii)" in para. 87(2)(t).

Interpretation Bulletins: See list at end of s. 87.

(u) **shares of foreign affiliate** — where one or more shares of the capital stock of a foreign affiliate of a predecessor corporation have, by virtue of the amalgamation, been acquired by the new corporation and as a result of the acquisition the affiliate has become a foreign affiliate of the new corporation,

(i) for the purposes of subsection 91(5) and paragraph 92(1)(b), any amount required by section 92 to be added or deducted, as the case may be, in computing the adjusted cost base of any such share to the predecessor corporation before the amalgamation shall be deemed to have been so required to be added or deducted, as the case may be, in computing the adjusted cost base of the share to the new corporation, and

(ii) for the purpose of subsection 93(2), any exempt dividend received by the predecessor corporation on any such share shall be deemed to be an exempt dividend received by the new corporation on the share;

Proposed Amendment — 87(2)(u)(ii)

(ii) for the purposes of subsections 93(2) to (2.3), any exempt dividend received by the predecessor corporation on any such share is deemed to be an exempt dividend received by the new corporation on the share;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 38(1), will amend subpara. 87(2)(u)(ii) to read as above, applicable after November 1999.

Technical Notes: Section 87 of the Act provides rules that apply where there has been a merger of two or more corporations to form a new corporation.

Paragraph 87(2)(u) of the Act applies where two or more taxable Canadian corporations (referred to as "predecessor corporations") amalgamate to form a new corporation. Subparagraph 87(2)(u)(ii) provides that any dividend received by a predecessor corporation on a share that is an exempt dividend is considered for the purposes of subsection 93(2) to be an exempt dividend received by the new corporation. Subparagraph 87(2)(u)(ii) of the Act is amended to refer to subsections 93(2) to (2.3), effective after November 30, 1999, to refer to new subsections 93(2) to (2.3) which limit the losses arising on the disposition of shares of a foreign affiliate.

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Subpara. 87(2)(u)(i) substituted by 1974-75-76, c. 26, subsec. 51(8), applicable in respect of amalgamations occurring after May 6, 1974. Subpara. 87(2)(u)(i) formerly read:

(i) for the purposes of subsection 90(2), paragraph 92(1)(b) and subsection 93(1), any amount required by section 92 to be added or deducted, as the case may be, in computing the adjusted cost base of any such share to the predecessor corporation before the amalgamation shall be deemed to have been so required to be added or deducted, as the case may be, in computing the adjusted cost base of the share to the new corporation, and

Interpretation Bulletins: See list at end of s. 87.

(v) **gifts [charitable donations]** — for the purposes of section 110.1, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation with respect to gifts;

Pre-RSC History: Para. 87(2)(v) substituted by 1988, c. 55, subsec. 60(8), applicable to 1988 *et seq.* Para. 87(2)(v) formerly read:

(v) **charitable gifts** — for the purposes of paragraphs 110(1)(a), (b) and (b.1), the new corporation shall be deemed to be the same corporation as and a continuation of each predecessor corporation with respect to gifts;

Para. 87(2)(v) substituted by 1985, c. 45, subsec. 42(4), applicable to 1984 *et seq.* Para. 87(2)(v) formerly read:

(v) **charitable donations** — where a predecessor corporation has made a gift in a taxation year, in determining the gifts made and the amounts deductible in respect of such gifts by the new corporation in any taxation year preceding any taxation year of the new corporation for the purposes of paragraphs 110(1)(a), (b) and (b.1), the new corporation shall be deemed to be the same corporation as and a continuation of the predecessor corporation with respect to such gifts;

Para. 87(2)(v) substituted by 1980-81-82-83, c. 140, subsec. 52(4), applicable to gifts made in 1981 *et seq.* Para. 87(2)(v) formerly read:

(v) for the purposes of paragraphs 110(1)(a), (b) and (b.1), gifts made by a predecessor corporation in its last taxation year shall, to the extent that they were not deductible in computing its taxable

income for that taxation year, be deemed to have been made by the new corporation in a taxation year immediately preceding its first taxation year;

Para. 87(2)(v) substituted by 1977-78, c. 32, subsec. 22(2), applicable in respect of amalgamations occurring after September 5, 1977, to add reference to (b.1).

Interpretation Bulletins: See list at end of s. 87.

(w) [Repealed under former Act]

Pre-RSC History: Para. 87(2)(w) repealed by 1984, c. 1, subsec. 38(3), applicable with respect to amalgamations occurring after December 31, 1982. Para. 87(2)(w) formerly read:

(w) losses — for the purposes of section 111, a restricted farm loss of a predecessor corporation for a taxation year is not deductible in computing the taxable income of the new corporation;

Para. 87(2)(w) substituted by 1977-78, c. 1, subsec. 42(3), applicable to amalgamations and mergers occurring after March 31, 1977. Para. 87(2)(w) formerly read:

(w) for the purposes of section 111, a non-capital loss, net capital loss or restricted farm loss of a predecessor corporation for a taxation year is not deductible in computing the taxable income of the new corporation;

(x) **taxable dividends** — for the purposes of subsections 112(3) to (4.22),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) is deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income under section 112 or subsection 138(6), as the case may be,

(ii) any dividend (other than a taxable dividend) received on a share by the predecessor corporation is deemed to have been received on the share by the new corporation, and

(iii) a share acquired by the new corporation from a predecessor corporation is deemed to have been owned by the new corporation throughout any period of time throughout which it was owned by a predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(x) amended by 1998, c. 19, subsec. 117(6), applicable to 1994 *et seq.* except that, in its application to dispositions of shares that occurred before April 27, 1995, para. 87(2)(x) shall be read as follows:

(x) for the purposes of subsections 112(3) to (4.3),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) is deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income under section 112 or 138(6), as the case may be,

(ii) any capital dividend or life insurance capital dividend received on a share by the predecessor corporation is deemed to be a capital dividend or life insurance capital dividend, as the case may be, received on the share by the new corporation, and

(iii) a share acquired by the new corporation from a predecessor corporation is deemed to have been owned by the new corporation throughout any period of time throughout which it was owned by a predecessor corporation;

The para. formerly read:

(x) for the purposes of subsections 112(3) to (4.3),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) shall be deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income for a taxation year under section 112 or subsection 138(6), as the case may be, and

(ii) any capital dividend or life insurance capital dividend received on a share by the predecessor corporation shall be deemed to be a capital dividend or life insurance capital dividend, as the case may be, received on the share by the new corporation;

Pre-RSC History: Para. 87(2)(x) substituted by 1987, c. 46, subsec. 29(6), applicable with respect to amalgamations occurring after June 5, 1987. Para. 87(2)(x) formerly read:

(x) taxable dividends — for the purposes of subsections 112(3) and (4), where a share owned by a predecessor corporation has, by virtue of the amalgamation, been acquired by the new corporation any taxable dividend received on the share by the predecessor corporation that was deductible from the predecessor corporation's income for a taxation year under section 112 shall be deemed to be a taxable dividend received by the new corporation that was deductible from the new corporation's income for a taxation year under section 112;

Interpretation Bulletins: See list at end of s. 87.

(y) **contributed surplus** — for the purposes of subsections 84(1) and (10), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

History: Para. 87(2)(y) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(6), applicable after July 13, 1990.

Pre-RSC History [former 87(2)(y)]: Para. 87(2)(y) repealed by 1984, c. 45, subsec. 27(3), applicable to 1985 *et seq.* Para. 87(2)(y) formerly read:

(y) cumulative deduction account — for the purpose of computing the cumulative deduction account (within the meaning assigned by subsection 125(6)) of the new corporation, the new corporation shall be deemed to have a taxation year immediately preceding its first taxation year and to have a cumulative deduction account at the end of that preceding year equal to the aggregate of all amounts each of which was a predecessor corporation's cumulative deduction account immediately before the amalgamation and, with respect to such amounts, the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation;

Para. 87(2)(y) substituted by 1980-81-82-83, c. 140, subsec. 52(5), applicable to taxation years ending after 1982. Para. 87(2)(y) formerly read:

(y) for the purpose of computing the cumulative deduction account (within the meaning assigned by subsection 125(6)) of the new corporation, the new corporation shall be deemed to have a taxation year immediately preceding its first taxation year and to have a cumulative deduction account at the end of that preceding year equal to the aggregate of amounts each of which was a predecessor corporation's cumulative deduction account immediately before the amalgamation and for the purposes of subsection 125(12), the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation;

Para. 87(2)(y) substituted by 1979, c. 5, subsec. 28(3), applicable to 1979 *et seq.*, to add "and for the purposes of subsection 125(12), the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation;"

Para. 87(2)(y) substituted by 1977-78, c. 1, subsec. 42(4), applicable when the first taxation year of a new corporation is the 1978 or any subsequent taxation year. Para. 87(2)(y) formerly read:

(y) for the purpose of computing the cumulative deduction account (within the meaning assigned by subsection 125(6)) of the new corporation

(i) the new corporation shall be deemed to have a cumulative deduction account at the end of a taxation year immediately preceding its first taxation year equal to the aggregate of amounts each of which was a predecessor corporation's cumulative deduction account immediately before the amalgamation, and

(ii) at the end of any subsequent taxation year, there shall be added to the amount determined under paragraph 125(6)(b) from which the aggregate of the amounts referred to in subparagraphs (iii) and (iv) thereof is to be subtracted, the aggregate of amounts each of which is an amount in respect of a predecessor corporation, equal to the amount that would have been the predecessor corporation's cumulative deduction account immedi-

ately before the amalgamation if paragraph 125(6)(b) had been read without reference to subparagraph (iv) thereof;

Para. 87(2)(y) substituted by 1973-74, c. 14, subsec. 26(1), applicable to 1972 *et seq.*

(y.1) [Repealed]

History: Para. 87(2)(y.1) repealed by 1998, c. 19, subsec. 117(7), applicable to taxes payable for taxation years that begin after 1986. The para. formerly read:

(y.1) preferred-earnings amount — for the purpose of computing the preferred-earnings amount (within the meaning assigned by subsection 181(2)) of the new corporation, there shall be added to the new corporation's preferred-earnings amount at the end of its first taxation year the total of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's preferred-earnings amount at the end of its last taxation year

exceeds

(ii) the amount that would be determined under paragraph 181(2)(c) in respect of the predecessor corporation for its last taxation year if the references in that paragraph to "the immediately preceding taxation year" and "that year" were read as "the year";

Pre-RSC History: Para. 87(2)(y.1) added by 1980-81-82-83, c. 140, subsec. 52(5), applicable to taxation years ending after 1982.

Interpretation Bulletins: See list at end of s. 87.

(z) **foreign tax carryover** — for the purposes of determining the new corporation's unused foreign tax credit (within the meaning of subsection 126(7)) in respect of a country for any taxation year and determining the extent to which subsection 126(2.3) applies to reduce the amount that may be claimed by the new corporation under paragraph 126(2)(a) in respect of an unused foreign tax credit in respect of a country for a taxation year, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph shall in no respect affect the determination of

(i) the fiscal period of the new corporation or any of its predecessor corporations, or

(ii) the tax payable under this Act by any predecessor corporation;

Pre-RSC History: Para. 87(2)(z) substituted by 1984, c. 45, subsec. 27(4), applicable to the computation of tax for 1984 *et seq.* Para. 87(2)(z) formerly read:

(z) foreign tax carryover — for the purpose of computing the foreign-tax carryover (within the meaning assigned by subsection 126(7)) of the new corporation for any taxation year,

(i) the amount determined under paragraph 126(2)(a) in respect of the new corporation for a taxation year immediately preceding its first taxation year in respect of a particular country, and

(ii) the business-income tax paid by the new corporation for a taxation year immediately preceding its first taxation year in respect of businesses carried on by it in that country,

shall be deemed to be the aggregate of amounts each of which is an amount in respect of a predecessor corporation, equal to the amount that the predecessor corporation's foreign-tax carryover in respect of that country would have been for its taxation year immediately following its last taxation year if it had had such a following taxation year;

Interpretation Bulletins: IT-520: Unused foreign tax credits — carryforward and carryback. See also list at end of s. 87.

(z.1) **capital dividend account** — for the purposes of computing the capital dividend account of the new corporation, it shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation, other than a predecessor corporation to which subsection 83(2.1) would, if a dividend were paid immediately before the amalgamation and an election were made under subsection 83(2) in respect of the full amount of that dividend, apply to deem any portion of the dividend to be paid by the predecessor corporation as a taxable dividend;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(z.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(7), applicable to amalgamations occurring and windings-up beginning after July 13, 1990. Para. 87(2)(z.1) formerly read:

(z.1) capital dividend account — for the purpose of computing at any particular time after the amalgamation the capital dividend account of a new corporation that has been a private corporation continuously from the time of the amalgamation to the particular time, there shall be added the amount of the capital dividend account of each predecessor corporation immediately before the amalgamation, except that the amount of the capital dividend account of any predecessor corporation immediately before the amalgamation shall be deemed to be nil where, had a dividend been paid by the predecessor corporation immediately before the amalgamation and an election been made under subsection 83(2) in respect of that dividend, subsection 83(2.1) would have applied to deem all or any portion of the dividend to be a taxable dividend;

Pre-RSC History: Para. 87(2)(z.1) substituted by 1988, c. 55, subsec. 60(9), applicable with respect to amalgamations and windings-up occurring after 4 p.m. EDST, September 25, 1987. Para. 87(2)(z.1) formerly read:

(z.1) capital dividend account — for the purpose of computing, at any particular time after the amalgamation, the capital dividend account or the life insurance capital dividend account for a new corporation that has been a private corporation continuously from the time of the amalgamation to the particular time, there shall be added the amount of the capital dividend account or the life insurance capital dividend account, as the case may be, of each predecessor corporation immediately before the amalgamation;

Para. 87(2)(z.1) substituted by 1980-81-82-83, c. 140, subsec. 52(6), applicable after June 28, 1982. Para. 87(2)(z.1) formerly read:

(z.1) for the purpose of computing, at any particular time after the amalgamation, the capital dividend account for a new corporation that has been a private corporation continuously from the time of the amalgamation to the particular time, there shall be added the amount of the capital dividend account of any predecessor corporation immediately before the amalgamation;

Para. 87(2)(z.1) substituted by 1974-75-76, c. 26, subsec. 51(9), applicable in respect of amalgamations occurring after May 6, 1974. Para. 87(2)(z.1) formerly read:

(z.1) in the case of a new corporation that is a private corporation, for the purposes of computing the capital dividend account of the new corporation at any particular time,

(i) ½ of the amount of any capital gain and ½ of the amount of any capital loss of any predecessor private corporation for any taxation year commencing after it last became a private corporation and ending after 1971 and either before or at the time of the amalgamation shall, in the case of a capital gain, be included, and in the case of a capital loss, be deducted,

(ii) any amount that would, if the amalgamation had not occurred but if any taxation year of a predecessor corporation that would otherwise have ended next after the amalgamation had ended immediately before the amalgamation, have been required by any of subparagraphs 89(1)(b)(ii) to (iv) to be included in computing the predecessor corporation's capital dividend account immediately after the amalgamation shall be included, and

(iii) any capital dividend that became payable by any predecessor corporation after it last became a private corporation and before the amalgamation shall be deducted;

Interpretation Bulletins: IT-66R6: Capital dividends. See also list at end of s. 87.

(z.2) **application of Part III** — for the purposes of Part III, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(z.2) added by 1988, c. 55, subsec. 60(10), applicable to amalgamations occurring after April 1988.

Interpretation Bulletins: See list at end of s. 87.

(aa) **refundable dividend tax on hand** — where the new corporation was a private corporation immediately after the amalgamation, for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of its first taxation year there shall be added to the total determined under subsection 129(3) in respect of the new corporation for the year the total of all amounts each of which is the amount, if any, by which the refundable dividend tax on hand of a predecessor corporation at the end of its last taxation year exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for its last taxation year, except that no amount shall be added under this paragraph in respect of a predecessor corporation

(i) that was not a private corporation at the end of its last taxation year, or

(ii) where subsection 129(1.2) would have applied to deem a dividend paid by the predecessor corporation immediately before the amalgamation not to be a taxable dividend for the purpose of subsection 129(1);

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87; 131(5) — Dividend refund to mutual fund corporation; 186(5) — Deemed private corporation. See additional Related Provisions and Definitions at end of subsec. 87(9).

History: Para. 87(2)(aa) amended by 1996, c. 21, subsec. 15(3), applicable to amalgamations that occur and windings-up that begin after June 1995. The para. formerly read:

(aa) refundable dividend tax on hand — where the new corporation was a private corporation continuously from the time of the amalgamation until the time immediately after the beginning of any taxation year, for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of that year there shall be added to the total determined under subsection 129(3) for that year, from which the total of amounts determined under paragraphs 129(3)(c) to (e) is subtracted, the total of all amounts each of which is the amount, if any, by which the refundable dividend tax on hand immediately before the amalgamation of a predecessor corporation that was a private corporation at that time exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year ending at that time, except that no amount shall be so added in respect of a predecessor corporation where subsection 129(1.2) would have applied to deem a dividend paid by the predecessor corporation immediately before the amalgamation not to be a taxable dividend for the purpose of subsection 129(1);

Para. 87(2)(aa) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(8), applicable to the computation of refundable dividend tax on hand (within the meaning assigned by subsec. 129(3) as amended) for 1993 *et seq.* Para. (aa) formerly read:

(aa) refundable dividend tax on hand — in the case of a new corporation that has been a private corporation continuously from the time of the amalgamation to the end of any taxation year, for the purposes of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)), of the new corporation at the end of the taxation year, where a predecessor corporation had refundable dividend tax on hand immediately before the amalgamation, the amount by which the refundable dividend tax on hand at that time exceeds any dividend refund (within the meaning assigned by subsection 129(1)) of the predecessor corporation for its taxation year ending immediately before the amalgamation shall be added to the total determined under subsection 129(3) from which the new corporation's dividend refunds are to be subtracted, except that the amount to be added to the total determined under subsection 129(3) shall be deemed to be nil where, had a dividend been paid by the predecessor corporation immediately before the amalgamation, subsection 129(1.2) would have applied to deem the dividend not to be a taxable dividend;

Pre-RSC History: Para. 87(2)(aa) amended by 1988, c. 55, subsec. 60(11), to substitute "for the purposes of" for "for the purpose of" and to add "except that the amount to be added to the aggregate determined under subsection 129(3) shall be deemed to be nil where, had a dividend been paid by the predecessor corporation immediately before the amalgamation, subsection 129(1.2) would have applied to deem the dividend not to be a taxable dividend", applicable with respect to amalgamations and windings-up occurring after 4 p.m. EDST, September 25, 1987.

Para. 87(2)(aa) substituted by 1974-75-76, c. 26, subsec. 51(9), applicable in respect of amalgamations occurring after May 6, 1974. Para. 87(2)(aa) formerly read:

(aa) in the case of a new corporation that is a private corporation, for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of any taxation year, where a predecessor corporation had refundable dividend tax on hand immediately before the amalgamation, the amount by which the refundable dividend tax on hand at that time exceeds any dividend refund (within the meaning assigned by subsection 129(1)) of the predecessor corporation for its taxation year ending immediately before the amalgamation shall be added to the aggregate determined under subsection 129(3) from which the new corporation's dividend refunds are to be subtracted;

Para. 87(2)(aa) substituted by 1973-74, c. 14, subsec. 26(2), applicable to 1972 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(bb) **mutual fund and investment corporations** — where the new corporation is a mutual fund corporation or an investment corporation, there shall be added to

(i) the amount determined under each of paragraphs (a) and (b) of the definition "capital gains dividend account" in subsection 131(6), and

(ii) the values of A and B in the definition "refundable capital gains tax on hand" in that subsection

in respect of the new corporation at any time the amounts so determined and the values of those factors immediately before the amalgamation in respect of each predecessor corporation that was, immediately before the amalgamation, a mutual fund corporation or an investment corporation;

History: Para. 87(2)(bb) amended by 1998, c. 19, subsec. 117(8), applicable to amalgamations that occur after 1991 except that, for amalgamations that occurred after 1991 and before February 23, 1994, subpara. 87(2)(bb)(i) shall be read as follows:

(i) the amount determined under each of paragraphs (a) to (g) of the definition "capital gains dividend account" in subsection 131(6), and

The para. formerly read:

(bb) mutual fund and investment corporations — where the new corporation is a mutual fund corporation or an investment corporation, there shall be added to the amount determined for each of A, B, C and D in the definition "capital gains dividend account" and A and B in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the new corporation at any time the amount so determined immediately before the amalgamation in respect of each predecessor corporation that was a mutual fund corporation or an investment corporation;

Para. 87(2)(bb) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(8), applicable to amalgamations occurring after July 13, 1990 and, where the corporation so elects by notifying the Minister of National Revenue in writing before 1993, to amalgamations occurring after 1986. Para. 87(2)(bb) formerly read:

(bb) mutual fund corporation — in the case of a new corporation that is a mutual fund corporation,

(i) for the purpose of computing its capital gains dividend account at any time, where a predecessor mutual fund corporation had a capital gains dividend account immediately before the amalgamation the amount thereof shall be added to the amount determined for A in the definition "capital gains dividend account" in subsection 131(6), and

(ii) for the purpose of computing its refundable capital gains tax on hand at the end of any taxation year, where a predecessor

mutual fund corporation had refundable capital gains tax on hand immediately before the amalgamation the amount thereof shall be added to the amount determined for A in the definition "refundable capital gains [tax] on hand" in subsection 131(6);

(bb.1) **flow-through entities** — where a predecessor corporation was, immediately before the amalgamation, an investment corporation, a mortgage investment corporation or a mutual fund corporation and the new corporation is an investment corporation, a mortgage investment corporation or a mutual fund corporation, as the case may be, for the purpose of section 39.1, the new corporation is deemed to be the same corporation as, and a continuation of, the predecessor corporation;

History: Para. 87(2)(bb.1) added by 1998, c. 19, subsec. 117(8), applicable to amalgamations that occur after 1993.

(cc) **non-resident-owned investment corporation** — in the case of a new corporation that is a non-resident-owned investment corporation,

(i) for the purpose of computing its allowable refundable tax on hand (within the meaning assigned by subsection 133(9)) at any time, where a predecessor corporation had allowable refundable tax on hand immediately before the amalgamation, the amount thereof shall be added to the total determined for A in the definition "allowable refundable tax on hand" in subsection 133(9),

(ii) for the purpose of computing its capital gains dividend account (within the meaning assigned by subsection 133(8)) at any time, where a predecessor corporation had an amount in its capital gains dividend account immediately before the amalgamation, that amount shall be added to the amount determined under paragraph (a) of the description of A in the definition "capital gains dividend account" in subsection 133(8), and

(iii) for the purpose of computing its cumulative taxable income (within the meaning assigned by subsection 133(9)) at any time, where a predecessor corporation had cumulative taxable income immediately before the amalgamation, the amount thereof shall be added to the total determined for A in the definition "cumulative taxable income" in subsection 133(9);

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(cc) substituted by 1974-75-76, c. 26, subsec. 51(10), applicable in respect of amalgamations occurring after 1971.

Interpretation Bulletins: See list at end of s. 87.

(dd), (ee) [Repealed under former Act]

Pre-RSC History: Para. 87(2)(ee) repealed by 1984, c. 45, subsec. 27(5) applicable to 1985 *et seq.* Para. 87(2)(ee) formerly read:

(ee) preferred-rate amount — for the purpose of computing the preferred-rate amount (within the meaning assigned by subsection 190(2)) of the new corporation at any time, where a predecessor corporation had a preferred-rate amount immediately before the amalgamation the amount thereof shall be added to the amount determined under subparagraph 190(2)(b)(i);

Para. 87(2)(ee) substituted for paras. 87(2)(dd), (ee) by 1973-74, c. 14, subsec. 26(3), applicable to 1972 *et seq.*

(ff)–(hh) [Repealed under former Act]

Pre-RSC History [paras. 87(2)(ff), (gg), (hh)]: Paras. 87(2)(ff), (gg), (hh) repealed by 1977-78, c. 1, subsec. 42(5), applicable, as to paras. (ff), (gg), after March 31, 1977, and as to para. (hh), after 1978. Paras. (ff), (gg), (hh) formerly read:

(ff) application of Part VII — for the purpose of section 192 except subsection (11) thereof, where a corporation was controlled by a predecessor corporation immediately before the amalgamation and has, by virtue of the amalgamation, become controlled by the new corporation, the new corporation shall be deemed to have acquired control of the corporation so controlled at the time control thereof was acquired by the predecessor corporation;

(gg) designated surplus — for the purpose of computing the designated surplus of the new corporation at any particular time, there shall be added to the aggregate of the amounts determined under subparagraphs 192(13)(a)(i) and (ii) or under subparagraphs 192(13)(b)(i) to (iii), as the case may be, the aggregate of amounts each of which is an amount in respect of a predecessor corporation, equal to

(i) in any case where the predecessor corporation was, immediately before the amalgamation, controlled by a corporation that, immediately after the amalgamation and thereafter without interruption until the particular time, controlled the new corporation, its designated surplus immediately before the amalgamation, and

(ii) in any other case, the amount that its designated surplus would have been immediately before the amalgamation if control of the predecessor corporation had been acquired by another corporation immediately before the amalgamation;

(hh) 1971 undistributed income on hand — for the purpose of computing the 1971 undistributed income on hand of the new corporation at any time (except as that computation applies for the purpose of determining the designated surplus of the new corporation at any time), where a predecessor corporation had 1971 undistributed income on hand immediately before the amalgamation the amount thereof shall be added to the aggregate of the amounts determined under paragraphs 196(4)(a), (b) and (c); and

(ii) **public corporation** — where a predecessor corporation was a public corporation immediately before the amalgamation, the new corporation shall be deemed to have been a public corporation at the commencement of its first taxation year;

Pre-RSC History: Para. 87(2)(ii) added by 1973-74, c. 14, subsec. 26(4), applicable to 1972 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(jj) **interest on certain obligations** — for the purposes of paragraph 81(1)(m), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Interpretation Bulletins: See list at end of s. 87.

(kk) **disposition of shares of controlled corporation** — for the purposes of paragraph 40(2)(h),

(i) where a corporation was controlled, directly or indirectly in any manner whatever, by a predecessor corporation immediately before the amalgamation and has, by reason of the amalgamation, become controlled, directly or indirectly in any manner whatever, by the new corporation, the new corporation shall be deemed to have acquired control of the corporation so controlled at the time control thereof was acquired by the predecessor corporation, and

(ii) where a predecessor corporation was immediately before the amalgamation controlled, directly or indirectly in any manner whatever, by a corporation that, immediately after the amalgamation, controlled, directly or indirectly in any manner whatever, the new corporation, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(kk) substituted by 1988, c. 55, subsec. 60(12), applicable to taxation years commencing after 1988. Para. 87(2)(kk) formerly read:

(kk) for the purposes of paragraph 40(2)(h),

(i) where a corporation was controlled by a predecessor corporation immediately before the amalgamation and has, by virtue of the amalgamation, become controlled by the new corporation, the new corporation shall be deemed to have acquired control of the corporation so controlled at the time control thereof was acquired by the predecessor corporation, and

(ii) where a predecessor corporation was immediately before the amalgamation controlled by a corporation that, immediately after the amalgamation, controlled the new corporation, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Paras. 87(2)(jj), (kk) added by 1979, c. 5, subsec. 28(4), applicable to 1978 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(ll) **para. 20(1)(n) and subpara. 40(1)(a)(iii) amounts** — notwithstanding any other provision of this Act, where any property was disposed of by a predecessor corporation, the new corporation shall, in computing

(i) the amount of any deduction under paragraph 20(1)(n) as a reserve in respect of the property sold in the course of business, and

(ii) the amount of its claim under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in respect of the disposition of the property,

be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Subpara. 87(2)(ll)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(9), to add reference to subpara. 44(1)(e)(iii), applicable to amalgamations occurring and windings-up beginning after 1989.

Pre-RSC History: Para. 87(2)(ll) added by 1980-81-82-83, c. 140, subsec. 52(7), applicable after November 12, 1981.

(mm) **idem** — for the purposes of section 126.1, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 126.1(5) — UI premium tax credit — "specified employer" defined. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(mm) added by 1994, c. 8, subsec. 9(1), applicable to amalgamations occurring, and windings-up beginning, after 1991.

Pre-RSC History [former para. 87(2)(mm)]: Para. 87(2)(mm) repealed by 1985, c. 45, subsec. 42(5), applicable to 1984 *et seq.* Para. 87(2)(mm) formerly read:

(mm) work in progress — for the purpose of determining under subsection 10(6) whether a corporation has made an election under paragraph 34(1)(d), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Para. 87(2) (mm) added by 1980-81-82-83, c. 140, subsec. 52(7), applicable with respect to amalgamations occurring after 1981.

(nn) **refundable Part VII tax on hand** — for the purpose of computing the refundable Part VII tax on hand of the new corporation at the end of any taxation year, there shall be added to the total determined under paragraph 192(3)(a) the total of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's refundable Part VII tax on hand at the end of its last taxation year

exceeds

(ii) the predecessor corporation's Part VII refund for its last taxation year;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(nn) added by 1984, c. 1, subsec. 38(4) applicable to 1983 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(oo) **investment tax credit** — for the purpose of applying subsection 127(10.2) to any corporation, the new corporation is deemed to have had

(i) a particular taxation year that

(A) where it was associated with another corporation in the new corporation's first taxation year, ended in the calendar year that precedes the calendar year in which that first year ends, and

(B) in any other case, immediately precedes that first year, and

(ii) taxable income for the particular year (determined before taking into consideration the specified future tax consequences for the particular year) equal to the total of all amounts each of which is a predecessor corporation's taxable income for its taxation year that ended immediately before the amalgamation (determined before taking into consideration the specified future tax consequences for that year);

History: Para. 87(2)(oo) amended by 1997, c. 25, subsec. 18(2), applicable to amalgamations that occur after 1995, except that, for amalgamations that occur in 1996, the expression "any corporation" shall be read as "the new corporation". For amalgamations that occur after May 23, 1985 and before 1996, para. (oo) shall be read without reference to the expression "paragraph 127.1(2)(a) and subparagraph 157(1)(b)(i)". Para. (oo) formerly read:

(oo) for the purposes of applying subsection 127(10.1), paragraph 127.1(2)(a)[10] and subparagraph 157(1)(b)(i) in respect of the first taxation year of the new corporation, the new corporation shall be deemed to have had a taxation year immediately preceding its first taxation year and to have had

(i) taxable income for that preceding taxation year equal to the total of amounts each of which is the taxable income of a predecessor corporation for its taxation year ending immediately before the amalgamation, and

(ii) a business limit for that preceding taxation year equal to the total of amounts each of which is the business limit of a predecessor corporation for its taxation year ending immediately before the amalgamation;

Pre-RSC History: Para. 87(2)(oo) added by 1985, c. 45, subsec. 42(6), applicable with respect to amalgamations occurring after 1983.

Para. 87(2)(oo) repealed by 1984, c. 45, subsec. 27(6), applicable to 1984 *et seq.* Para (oo) formerly read:

(oo) refundable Part VIII tax on hand — for the purpose of computing the refundable Part VIII tax on hand of the new corporation at the end of any taxation year, there shall be added to the aggregate determined under paragraph 194(3)(a) the aggregate of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's refundable Part VIII tax on hand at the end of its last taxation year

exceeds

(ii) the predecessor corporation's Part VIII refund for its last taxation year.

Para. 87(2)(oo) added by 1984, c. 1, subsec. 38(4), applicable to 1983 *et seq.*

[10] *Sic.* This refers to an earlier version of subsec. 127.1(2), which is now the definition of "qualifying corporation" in that subsec.

Interpretation Bulletins: See list at end of s. 87.

(oo.1) **refundable investment tax credit and balance-due day** — for the purpose of applying subparagraph 157(1)(b)(i) and the definition "qualifying corporation" in subsection 127.1(2) to any corporation, the new corporation is deemed to have had

(i) a particular taxation year that

(A) where it was associated with another corporation in the new corporation's first taxation year, ended in the calendar year that precedes the calendar year in which that first year ends, and

(B) where clause (A) does not apply, immediately precedes that first year,

(ii) taxable income for the particular year (determined before taking into consideration the specified future tax consequences for the particular year) equal to the total of all amounts each of which is a predecessor corporation's taxable income for its taxation year that ended immediately before the amalgamation (determined before taking into consideration the specified future tax consequences for that year), and

(iii) a business limit for the particular year equal to the total of all amounts each of which is a predecessor corporation's business limit for its taxation year that ended immediately before the amalgamation;

History: Para. 87(2)(oo.1) added by 1997, c. 25, subsec. 18(3), applicable to amalgamations that occur after May 23, 1985, except that,

(a) for amalgamations that occur before 1997, the expression "any corporation" shall be read as "the new corporation";

(b) for the purpose of applying para. (oo.1) for the purpose of the definition "qualifying corporation" in subsec. 127.1(2), the business limits referred to in para. (oo.1), for taxation years that ended after June 1994 and began before 1996, shall be determined under s. 125 as that section read in its application to taxation years that ended before July 1994; and

(c) cl. (oo.1)(i)(A) does not apply

(i) for the purpose of applying the definition "qualifying corporation" in subsec. 127.1(2) to taxation years that ended before July 1994, and

(ii) for the purpose of applying subpara. 157(1)(b)(i) to taxation years that end before 1998.

(pp) **cumulative offset account computation** — for the purpose of computing the cumulative offset account (within the meaning assigned by subsection 66.5(2)) of the new corporation at any time, there shall be added to the total otherwise determined under paragraph 66.5(2)(a) the total of all amounts each of which is the amount, if any, by which

(i) a predecessor corporation's cumulative offset account at the end of its last taxation year

exceeds

(ii) the amount deducted under subsection 66.5(1) in computing the predecessor corporation's income for its last taxation year;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(pp) added by 1986, c. 2, s. 21, applicable to 1985 *et seq.*

Interpretation Bulletins: See list at end of s. 87.

(qq) **continuation of corporation [investment tax credit]** — for the purpose of computing the new corporation's investment tax credit at the end of any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any predecessor corporation;

Related Provisions: See Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(qq) amended by 1998, c. 19, subsec. 117(9), applicable to amalgamations that occur after April 26, 1995. The para. formerly read:

(qq) continuation of corporation [investment tax credit] — for the purpose of computing the new corporation's investment tax credit and employment tax credit at the end of any taxation year, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Pre-RSC History: Para. 87(2)(qq) added by 1986, c. 6, subsec. 46(2), applicable with respect to amalgamations occurring after May 23, 1985.

Interpretation Bulletins: See list at end of s. 87.

(rr) **tax on taxable preferred shares** — for the purposes of subsections 112(2.9), 191(4), and 191.1(2) and (4), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

(ss) **transferred liability for Part VI.1 tax** — for the purposes of section 191.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

Pre-RSC History: Paras. 87(2)(rr), (ss) added by 1988, c. 55, subsec. 60(13), applicable to amalgamations and windings-up occurring after June 18, 1987.

(tt) **livestock — inclusion of deferred amount** — for the purposes of subsections 80.3(3) and (5), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation; and

Related Provisions: 88(1)(e.2) — Winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Para. 87(2)(tt) added by 1990, c. 39, subsec. 19(2), applicable with respect to amalgamations occurring and windings-up commencing after 1987.

(uu) **fuel tax rebates** — for the purposes of paragraph 12(1)(x.1), the description of D.1 in the definition "non-capital loss" in subsection 111(8), and subsections 111(10) and (11), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Related Provisions: 88(1)(e.2) — Winding-up; 93(2)–(2.3) — Loss limitation on disposition of share. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2)(uu) amended by 1997, c. 26, s. 83, applicable to 1997 *et seq.* Para. (uu) formerly read:

(uu) for the purposes of paragraph 12(1)(x.1), the description of D.1 in the definition "non-capital loss" in subsection 111(8), clause 111(10)(a)(i)(B) and subsection 111(11), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Para. 87(2)(uu) added by 1994, c. 7, Sch. VI (1992, c. 29), s. 3, applicable to amalgamations occurring after 1991.

Interpretation Bulletins: See list at end of s. 87.

(2.01) Application of subsec. 37.1(5) — The definitions in subsection 37.1(5) apply to subsection (2).

Origin of subsec. 87(2.01): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 37.1(5)).

(2.1) Non-capital losses, etc., of predecessor corporations — Where there has been an amalgamation of two or more corporations, for the purposes only of

(a) determining the new corporation's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for any taxation year, and

(b) determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(c) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be,

the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this subsection shall in no respect affect the determination of

(c) the fiscal period of the new corporation or any of its predecessors,

(d) the income of the new corporation or any of its predecessors, or

(e) the taxable income of, or the tax payable under this Act by, any predecessor corporation.

Related Provisions: 87(2)(a) — Taxation year-end; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation; 256(7) — Where control deemed not acquired. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(2.1)(b) amended by 1998, c. 19, subsec. 117(10), applicable to a corporation that becomes or ceases to be exempt from tax under Part I of the Act after April 26, 1995. The para. formerly read:

(b) determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(d) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be,

Pre-RSC History: Para. 87(2.1)(b) substituted by 1987, c. 46, subsec. 29(7), to add reference to paragraph 149(10)(d), applicable with respect to amalgamations occurring after June 5, 1987.

Paras. 87(2.1)(a) and (b) amended by 1986, c. 55, subsec. 23(3), to substitute, in each, "restricted farm loss, farm loss or limited partnership loss," for "restricted farm loss or farm loss", applicable after February 25, 1986.

All that portion of subsec. 87(2.1) preceding para. (c) substituted by 1984, c. 1, subsec. 38(5), applicable with respect to amalgamations occurring after December 31, 1982. That portion formerly read:

(2.1) Non-capital losses and net capital losses of predecessor corporations — Where there has been an amalgamation of two or more corporations after March 31, 1977, and one or more of the predecessor corporations had a non-capital loss or a net capital loss for any taxation year any portion of which was not deductible by it in computing its taxable income for any taxation year, for the purposes only of

(a) determining the new corporation's non-capital loss or net capital loss, as the case may be, for any taxation year preceding any taxation year of the new corporation, and

(b) determining the extent to which subsection 111(3), (4) or (5) applies to restrict the deductibility by the new corporation of any non-capital loss or net capital loss, as the case may be,

the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation, except that this subsection shall in no respect affect the determination of

Subsec. 87(2.1) added by 1977-78, c. 1, subsec. 42(6), applicable to amalgamations and mergers occurring after March 31, 1977.

Selected Cases [subsec. 87(2.1)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Shareholder agreement did not result in *de jure* control); *Garage Montplaisir Ltée v. MNR*, [1992] 2 C.T.C. 2700 (TCC) (Predecessor corporation's business not carried on by corporation resulting from amalgamation; non-capital losses not deductible).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 87.

(2.11) Vertical amalgamations — Where a new corporation is formed by the amalgamation of a particular corporation and one or more of its subsidiary wholly-owned corporations, the new corporation is deemed to be the same corporation as, and a continuation of, the particular corporation for the purposes of applying sections 111 and 126, subsections 127(5) to (26) and 181.1(4) to (7), Part IV and subsections 190.1(3) to (6) in respect of the particular corporation.

Related Provisions: 87(1.4) — Definition of "subsidiary wholly-owned corporation"; 87(2.1) — Non-capital losses, etc., of predecessor corporations; 87(11) — Vertical amalgamation — effects; 256(7) — Where control deemed not acquired.

History: Subsec. 87(2.11) amended by 1998, c. 19, subsec. 117(11), applicable to amalgamations that occur after April 26, 1995. The subsec. formerly read:

(2.11) Losses, etc., on amalgamation with subsidiary wholly-owned corporation — Where a new corporation is formed by the amalgamation of a particular corporation and one or more of its subsidiary wholly-owned corporations, the new corporation shall, for the purposes of applying section 111 and Part IV in respect of the particular corporation, be deemed to be the same corporation as, and a continuation of, the particular corporation.

Subsec. 87(2.11) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(9), applicable to amalgamations occurring after 1989.

I.T. Technical News: No. 3 (subsection 87(2.11)).

(2.2) Amalgamation of insurers — Where there has been an amalgamation and one or more of the predecessor corporations was an insurer, the new corporation is, notwithstanding subsection (2), deemed, for the purposes of paragraphs 12(1)(d), (e), (e.1), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), subsection 20(22), sections 138, 138.1, 140, 142 and 148 and Part XII.3, to be the same corporation as, and a continuation of, each of those predecessor corporations.

Related Provisions: 139.1(3)(g) — Where merger causes demutualization of insurer. See also Related Provisions and Definitions at end of s. 87.

History: Subsec. 87(2.2) amended by 1997, c. 25, subsec. 18(4), applicable to amalgamations that occur after 1995. Subsec. (2.2) formerly read:

(2.2) Amalgamation of insurance corporations — Where there has been an amalgamation of two or more corporations and one or more of the predecessor corporations was an insurance corporation, the new corporation shall, notwithstanding subsection (2), be deemed, for the purposes of paragraphs 12(1)(d), (e), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), sections 138, 138.1, 140, 142 and 148 and Part XII.3 of this Act and section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to be the same corporation as, and a continuation of, each such predecessor corporation.

Pre-RSC History: Subsec. 87(2.2) substituted by 1988, c. 55, subsec. 60(14), applicable to amalgamations occurring after December 15, 1987. Subsec. (2.2) formerly read:

(2.2) Amalgamation of life insurance corporations — Where there has been an amalgamation of two or more life insurance corporations after 1977, the new corporation shall be deemed, for purposes of section 138, to be the same corporation as, and a continuation of, each predecessor corporation except that this subsection shall in no respect affect the determination of

(a) the fiscal period of the new corporation or any of its predecessors; or

(b) the taxable income of, or the tax payable under this Act by, any predecessor corporation.

Subsec. 87(2.2) added by 1980-81-82-83, c. 48, subsec. 47(3), applicable to amalgamations occurring after 1977.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: See list at end of s. 87.

(3) Computation of paid-up capital — Subject to subsection (3.1), where there is an amalgamation or a merger of 2 or more Canadian corporations, in computing

at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation,

(a) there shall be deducted that proportion of the amount, if any, by which the paid-up capital, determined without reference to this subsection, in respect of all the shares of the capital stock of the new corporation immediately after the amalgamation or merger exceeds the total of all amounts each of which is the paid-up capital in respect of a share (except a share held by any other predecessor corporation) of the capital stock of a predecessor corporation immediately before the amalgamation or merger, that

(i) the paid-up capital, determined without reference to this subsection, of the particular class of shares of the capital stock of the new corporation immediately after the amalgamation or merger

is of

(ii) the paid-up capital, determined without reference to this subsection, in respect of all of the issued and outstanding shares of the capital stock of the new corporation immediately after the amalgamation or merger; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid by the new corporation before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the amount required by paragraph (a) to be deducted in computing the paid-up capital of shares of the particular class.

Related Provisions: 87(3.1) — Election for 87(3) not to apply. See additional Related Provisions and Definitions at end of s. 87.

History: That portion of subsec. 87(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(10), applicable to amalgamations occurring after 1990. That portion formerly read:

(3) Computation of paid-up capital — Where there has been an amalgamation or a merger after March 31, 1977 of two or more Canadian corporations, in computing, at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation

Pre-RSC History: Cl. 87(3)(b)(i)(A) substituted by 1977-78, c. 32, subsec. 22(3), applicable after April 10, 1978, to add reference to (4.1).

Subsec. 87(3) substituted by 1977-78, c. 1, subsec. 42(7), applicable to amalgamations and mergers occurring after March 1977. Subsec. 87(3) formerly read:

(3) Where share of predecessor corporation owned by another such corporation — Where there has been an amalgamation of two or more corporations after 1971 and, immediately before the amalgamation, one of the predecessor corporations (in this subsection referred to as the "owner corporation") owned any share of the capital stock of another of the predecessor corporations, the following rules apply:

(a) for the purpose of computing the paid-up capital deficiency of the new corporation at any time, the amount, if any, by which the paid-up capital in respect of the share immediately before the amalgamation exceeds the adjusted cost base of the share to the owner corporation immediately before the amalgamation shall be added to the aggregate of the amounts determined under subparagraph 89(1)(d)(iii); and

(b) for the purpose of computing the post-1971 undistributed surplus on hand (within the meaning assigned by subsection 192(15)) of the new corporation at any time, the amount, if any, by which the adjusted cost base of the share to the owner corporation immediately before the amalgamation exceeds the paid-up capital in respect of the share immediately before the amalgamation shall be added to the aggregate of the amounts determined under paragraphs 192(15)(a) to (d).

Para. 87(3)(a) substituted by 1974-75-76, c. 26, subsec. 51(11), applicable in respect of amalgamations occurring after May 6, 1974, to substitute "89(1)(d)(iii)" for "89(1)(d)(i) to (iv)".

Interpretation Bulletins: See list at end of s. 87.

(3.1) Election for non-application of subsec. (3) — Where,

(a) there is an amalgamation of 2 or more corporations,

(b) all of the issued shares, immediately before the amalgamation, of each class of shares (other than a class of shares all of the issued shares of which were cancelled on the amalgamation) of the capital stock of each predecessor corporation (in this subsection referred to as the "exchanged class") are converted into all of the issued shares, immediately after the amalgamation, of a separate class of shares of the capital stock of the new corporation (in this subsection referred to as the "substituted class"),

(c) immediately after the amalgamation, the number of shareholders of each substituted class, the number of shares of each substituted class owned by each shareholder, the number of issued shares of each substituted class, the terms and conditions of each share of a substituted class, and the paid-up capital of each substituted class determined without reference to the provisions of this Act are identical to the number of shareholders of the exchanged class from which the substituted class was converted, the number of shares of each such exchanged class owned by each shareholder, the number of issued shares of each such exchanged class, the terms and conditions of each share of such exchanged class, and the paid-up capital of each such exchanged class determined without reference to the provisions of this Act, respectively, immediately before the amalgamation, and

(d) the new corporation elects in its return of income filed in accordance with section 150 for its first taxation year to have the provisions of this subsection apply,

for the purpose of computing at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation,

(e) subsection (3) does not apply in respect of the amalgamation, and

(f) each substituted class shall be deemed to be the same as, and a continuation of, the exchanged class from which it was converted.

History: Subsec. 87(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(11), applicable to amalgamations occurring after 1990.

(4) Shares of predecessor corporation — Where there has been an amalgamation of two or more corporations after May 6, 1974, each shareholder (except any predecessor corporation) who, immediately before the amalgamation, owned shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old shares") that were capital property to the shareholder and who received no consideration for the disposition of those shares on the amalgamation, other than

shares of the capital stock of the new corporation (in this subsection referred to as the "new shares"), shall be deemed

(a) to have disposed of the old shares for proceeds equal to the total of the adjusted cost bases to the shareholder of those shares immediately before the amalgamation, and

(b) to have acquired the new shares of any particular class of the capital stock of the new corporation at a cost to the shareholder equal to that proportion of the proceeds described in paragraph (a) that

(i) the fair market value, immediately after the amalgamation, of all new shares of that particular class so acquired by the shareholder,

is of

(ii) the fair market value, immediately after the amalgamation, of all new shares so acquired by the shareholder,

except that, where the fair market value of the old shares immediately before the amalgamation exceeds the fair market value of the new shares immediately after the amalgamation and it is reasonable to regard any portion of the excess (in this subsection referred to as the "gift portion") as a benefit that the shareholder desired to have conferred on a person related to the shareholder, the following rules apply:

(c) the shareholder shall be deemed to have disposed of the old shares for proceeds of disposition equal to the lesser of

(i) the total of the adjusted cost bases to the shareholder, immediately before the amalgamation, of the old shares and the gift portion, and

(ii) the fair market value of the old shares immediately before the amalgamation,

(d) the shareholder's capital loss from the disposition of the old shares shall be deemed to be nil,

(e) the cost to the shareholder of any new shares of any class of the capital stock of the new corporation acquired by the shareholder on the amalgamation shall be deemed to be that proportion of the lesser of

(i) the total of the adjusted cost bases to the shareholder, immediately before the amalgamation, of the old shares, and

(ii) the total of the fair market value, immediately after the amalgamation, of all new shares so acquired by the shareholder and the amount that, but for paragraph (d), would have been the shareholder's capital loss from the disposition of the old shares

that

(iii) the fair market value, immediately after the amalgamation, of the new shares of that class so acquired by the shareholder

is of

(iv) the fair market value, immediately after the amalgamation, of all new shares so acquired by the shareholder,

and where the old shares were taxable Canadian property of the shareholder, the new shares shall be deemed to be taxable Canadian property of the shareholder.

Related Provisions: 7(1.5) — Shares acquired through employee stock option; 53(4) — Effect on ACB of shares; 87(5) — Option to acquire share of predecessor corporation; 87(8) — Merger of foreign affiliate; 87(9) — Rules applicable in respect of certain mergers; 95(2)(d) — Merger of foreign affiliate; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: All that portion of subsec. 87(4) following subpara. (b)(ii) substituted by 1980-81-82-83, c. 48, subsec. 47(4), applicable to amalgamations occurring after December 11, 1979. That portion formerly read:

and where the old shares were taxable Canadian property of the shareholder, the new shares shall be deemed to be taxable Canadian property of the shareholder.

Subsec. 87(4) substituted by 1974-75-76, c. 26, subsec. 51(12), applicable in respect of amalgamations occurring after May 6, 1974. Subsec. 87(4) formerly read:

(4) **Rules applicable for computing income of shareholder of predecessor corporation** — Where there has been an amalgamation of two or more corporations after 1971, for the purposes of computing the income of each shareholder (except any predecessor corporation) who owned one or more shares of the capital stock of a predecessor corporation immediately before the amalgamation, the following rules apply:

(a) where the shareholder owned one or more preferred shares of any class of the capital stock of the predecessor corporation immediately before the amalgamation and received no consideration for the disposition of those shares on the amalgamation other than one or more preferred shares of a class of the capital stock of the new corporation having substantially the same rights and conditions attaching thereto (determined without regard to any voting rights attaching to any shares) as attached to the shares of the predecessor corporation so disposed of by him,

(i) the shareholder shall be deemed to have disposed of the preferred shares of the class of the capital stock of the predecessor corporation so disposed of by him on the amalgamation, for proceeds equal to the adjusted cost base to him of those shares immediately before the amalgamation, and

(ii) he shall be deemed to have acquired the preferred shares of the class of the capital stock of the new corporation so acquired by him as consideration for the disposition of the preferred shares described in subparagraph (i), at a cost to him equal to the proceeds described in that subparagraph; and

(b) where

(i) the shareholder owned one or more common shares of the capital stock of the predecessor corporation immediately before the amalgamation,

(ii) none of the persons (except any predecessor corporation) who owned one or more of the common shares of the capital stock of the predecessor corporation immediately before the amalgamation received any consideration for the disposition of those shares on the amalgamation, other than one or more shares of the capital stock of the new corporation, and

(iii) either

(A) the persons (except any predecessor corporation) who together owned all of the common shares of the capital stock of the predecessor corporation immediately before the amalgamation together received as consideration for the disposition of those shares on the amalgamation, either

(I) not less than 25% of the shares of each particular class of the issued common shares of the capital stock of the new corporation immediately after the amalgamation,

or

(II) common shares of the capital stock of the new corporation to which are attached not less than 25% of all votes that could be cast for any and all purposes by holders of common shares of the new corporation immediately after the amalgamation and representing not less than 25% of the fair market value of all common shares of the new corporation issued and outstanding at that time,

or

(B) in any case where

(I) the shareholder owned one or more of the common shares of the capital stock of one or more other predecessor corporations immediately before the amalgamation, and

(II) none of the persons (except any predecessor corporation) who owned one or more of the common shares of the capital stock of such one or more other predecessor corporations immediately before the amalgamation received any consideration for the disposition of those shares on the amalgamation other than one or more shares of the capital stock of the new corporation,

the shareholder received on the amalgamation, as consideration for the disposition of the common shares of the capital stock of the predecessor corporation and of such one or more other predecessor corporations owned by him immediately before the amalgamation, not less than 80% of the shares of each particular class of the issued common shares of the capital stock of the new corporation immediately after the amalgamation,

the shareholder

(iv) shall be deemed to have disposed of the common shares of the capital stock of the predecessor corporation so disposed of by him on the amalgamation, for proceeds equal to the adjusted cost base to him of those shares immediately before the amalgamation, and

(v) shall be deemed to have acquired the shares of any particular class of the capital stock of the new corporation so acquired by him as consideration for the disposition of the common shares described in subparagraph (iv), at a cost to him equal to that proportion of the proceeds described in subparagraph (iv) that

(A) the fair market value immediately after the amalgamation, of all shares of that particular class so acquired by him,

is of

(B) the fair market value, immediately after the amalgamation, of all of the shares of the capital stock of the new corporation so acquired by him as consideration for the disposition of the common shares described in subparagraph (iv).

Cl. 87(4)(b)(iii)(A) substituted by 1973-74, c. 30, subsec. 7(1), applicable with respect to amalgamations that take place after May 29, 1973. Cl. 87(4)(b)(iii)(A) formerly read:

(A) the persons (except any predecessor corporation) who together owned all of the common shares of the capital stock of the predecessor corporation immediately before the amalgamation together received as consideration for the disposition of those shares on the amalgamation not less than 25% of the shares of each particular class of the issued common shares of the capital stock of the new corporation immediately after the amalgamation,

Interpretation Bulletins: IT-113R: Benefits to employees — stock options. See also list at end of s. 87.

(4.1) Exchanged shares — For the purposes of the definition "term preferred share" in subsection 248(1), where there has been an amalgamation of two or more corporations after November 16, 1978 and a share of any class of the capital stock of the new corporation (in this subsection referred to as the "new share") was issued in consideration for the disposition of a share of any class of the capital stock of a predecessor corporation (in this subsection referred to as the "exchanged share") and the terms and conditions of the new share were the same as, or substantially the same as, the terms and conditions of the exchanged share,

(a) the new share shall be deemed to have been issued at the time the exchanged share was issued;

(b) if the exchanged share was issued under an agreement in writing, the new share shall be deemed to have been issued under that agreement; and

(c) the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation.

Related Provisions: 87(9)(a.1) — Rules applicable in respect of certain mergers. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Subsec. 87(4.1) added by 1979, c. 5, subsec. 28(5).

Interpretation Bulletins: See list at end of s. 87.

(4.2) Idem — Where there has been an amalgamation or merger of two or more corporations after November 27, 1986 and a share of any class of the capital stock of the new corporation (in this subsection referred to as the "new share") was issued to a shareholder in consideration for the disposition of a share by that shareholder of any class of the capital stock of a predecessor corporation (in this subsection referred to as the "exchanged share") and the terms and conditions of the new share were the same as, or substantially the same as, the terms and conditions of the exchanged share, for the purposes of applying the provisions of this subsection, subsections 112(2.2) and (2.4), Parts IV.1 and VI.1, section 258 and the definitions "grandfathered share", "short-term preferred share", "taxable preferred share" and "taxable RFI share" in subsection 248(1) to the new share, the following rules apply:

(a) the new share shall be deemed to have been issued at the time the exchanged share was issued;

(b) where the exchanged share was a share described in paragraph (a), (b), (c) or (d) of the definition "grandfathered share" in subsection 248(1), the new share shall be deemed to be the same share as the exchanged share for the purposes of that definition;

(c) the new share shall be deemed to have been acquired by the shareholder at the time the exchanged share was acquired by the shareholder;

(d) the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(e) an election made under subsection 191.2(1) by a predecessor corporation with respect to the class of shares of its capital stock to which the exchanged share belonged shall be deemed to be an election made by the new corporation with respect to the class of shares of its capital stock to which the new share belongs; and

(f) where the terms or conditions of the exchanged share or an agreement in respect of the exchanged share specify an amount in respect of the exchanged share for the purposes of subsection 191(4) and an amount equal to the amount so specified in respect of the exchanged share is specified in respect of the new share for the purposes of subsection 191(4),

(i) for the purposes of subparagraphs 191(4)(d)(i) and (e)(i), the new share shall be deemed to have been issued for the same consideration as that for which the exchanged share was issued and to have been issued for the purpose for which the exchanged share was issued,

(ii) for the purposes of subparagraphs 191(4)(d)(ii) and (e)(ii), the new share shall be deemed to be the same share as the exchanged share and to have been issued for the purpose for which the exchanged share was issued, and

(iii) where the shareholder received no consideration for the disposition of the exchanged share

other than the new share, for the purposes of subsection 191(4),

(A) in the case of an exchanged share to which subsection 191(4) applies because of paragraph 191(4)(a), the new share shall be deemed to have been issued for consideration having a fair market value equal to the consideration for which the exchanged share was issued, and

(B) in the case of an exchanged share to which subsection 191(4) applies because of an event described in paragraph 191(4)(b) or (c), the consideration for which the new share was issued shall be deemed to have a fair market value equal to the fair market value of the exchanged share immediately before the time that event occurred.

Related Provisions: 87(9)(a.1) — Rules applicable in respect of certain mergers.

History: Para. 87(4.2)(f) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(10), applicable to 1988 *et seq.*

Pre-RSC History: Subsec. 87(4.2) added by 1988, c. 55, subsec. 60(15), applicable to amalgamations and mergers occurring after November 27, 1986.

Interpretation Bulletins: See list at end of s. 87.

(4.3) Exchanged rights — Where there has been an amalgamation or merger of two or more corporations after June 18, 1987 and a right listed on a prescribed stock exchange to acquire a share of any class of the capital stock of the new corporation (in this subsection referred to as the "new right") was acquired by a shareholder in consideration for the disposition of a right described in paragraph (d) of the definition "grandfathered share" in subsection 248(1) to acquire a share of any class of the capital stock of a predecessor corporation (in this subsection referred to as the "exchanged right"), the new right shall be deemed to be the same right as the exchanged right for the purposes of paragraph (d) of the definition "grandfathered share" in subsection 248(1) where the terms and conditions of the new right were the same as, or substantially the same as, the terms and conditions of the exchanged right and the terms and conditions of the share receivable on an exercise of the new right were the same as, or substantially the same as, the terms and conditions of the share that would have been received on an exercise of the exchanged right.

Related Provisions: 87(9)(a.2) — Rules applicable in respect of certain mergers. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Subsec. 87(4.3) added by 1988, c. 55, subsec. 60(15), applicable to amalgamations and mergers occurring after June 18, 1987.

Regulations: 3200 (prescribed stock exchange).

Interpretation Bulletins: See list at end of s. 87.

(4.4) Flow-through shares — Where

(a) there is an amalgamation of two or more corporations each of which is a principal-business corporation (within the meaning assigned by subsection 66(15)) or a corporation that at no time carried on business,

(b) a predecessor corporation entered into an agreement with a person at a particular time for consideration given by the person to the predecessor corporation,

(c) a share of the predecessor corporation

(i) that was a flow-through share (in this subsection having the meaning that would be assigned by subsection 66(15) if the definition "flow-through share" in that subsection were read without reference to the portion after paragraph (b) of that definition) was issued to the person before the amalgamation, or

(ii) that would (if it were issued) be a flow-through share, was to be issued to the person

for the consideration under the agreement, and

(d) the new corporation

(i) issues a share (in this subsection referred to as a "new share") of any class of its capital stock on the amalgamation to the person in consideration for the disposition of the flow-through share of the predecessor corporation and the terms and conditions of the new share are the same as, or substantially the same as, the terms and conditions of the flow-through share, or

(ii) is obliged after the amalgamation to issue a new share of any class of its capital stock to the person under the obligation of the predecessor corporation to issue a flow-through share of the predecessor corporation to the person and the new share would not, if issued, be a prescribed share referred to in the definition "flow-through share" in subsection 66(15),

for the purposes of subsection 66(12.66) and Part XII.6 and for the purposes of renouncing an amount under subsection 66(12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses that would, but for the renunciation, be incurred by the new corporation after the amalgamation,

(e) the person shall be deemed to have given the consideration under the agreement to the new corporation for the issue of the new share,

(f) the agreement shall be deemed to have been entered into between the new corporation and the person at the particular time,

(g) the new share shall be deemed to be a flow-through share of the new corporation, and

(h) the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation.

History: The portion of subsec. 87(4.4) between paras. (d) and (e) amended by 1997, c. 25, subsec. 18(5), applicable (as amended by 1998, c. 19, s. 308, deemed to have come into force on April 25, 1997) to amalgamations that occur after 1995, except that the expression "subsection 66(12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses" in subsection 87(4.4) of the Act, as enacted by subsection (5), shall be read as "subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses" in respect of amalgamations that occur before 1999. This portion formerly read:

for the purpose of subsection 66(12.66) and for the purposes of renouncing an amount under subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses that would, but for the renunciation, be incurred by the new corporation after the amalgamation,

That portion of subsec. 87(4.4) between paras. (d) and (e) amended by 1994, c. 8, subsec. 9(2), applicable to amalgamations occurring after December 2, 1992. That portion formerly read:

for the purpose of subsection 66(12.66) and for the purpose of renouncing an amount under subsection 66(12.6), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses that would, but for the renunciation, be incurred by the new corporation after the amalgamation,

Subsec. 87(4.4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(11), applicable to amalgamations occurring after February 1986.

(5) Options to acquire shares of predecessor corporation — Where there has been an amalgamation of two or more corporations after May 6, 1974, each taxpayer (except any predecessor corporation) who immediately before the amalgamation owned a capital property that was an option to acquire shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old option") and who received no consideration for the disposition of that option on the amalgamation, other than an option to acquire shares of the capital stock of the new corporation (in this subsection referred to as the "new option"), shall be deemed

(a) to have disposed of the old option for proceeds equal to the adjusted cost base to the taxpayer of that option immediately before the amalgamation, and

(b) to have acquired the new option at a cost to the taxpayer equal to the proceeds described in paragraph (a),

and where the old option was taxable Canadian property of the taxpayer, the new option shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 7(1.4) — Employee stock options; 87(5.1) — ACB of option; 87(8) — Merger of foreign affiliate; 87(9)(a.3) — Rules applicable in respect of certain mergers; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Subsec. 87(5) substituted by 1974-75-76, c. 26, subsec. 51(12), applicable in respect of amalgamations occurring after May 6, 1974. Subsec. 87(5) formerly read:

(5) Determination of percentages — In determining any of the percentages referred to in clause (4)(b)(iii)(A), the percentage shall be deemed to be

(a) the percentage otherwise determined,

plus

(b) that proportion of the percentage otherwise determined that

(i) the fair market value of the issued common shares of the capital stock of a particular predecessor corporation owned by all other predecessor corporations immediately before the amalgamation

is of

(ii) the fair market value of the issued common shares of the capital stock of the particular predecessor corporation owned by all persons (except any predecessor corporation) immediately before the amalgamation.

Subsec. 87(5) substituted by 1973-74, c. 30, subsec. 7(2), applicable with respect to amalgamations that take place after May 29, 1973. Subsec. 87(5) formerly read:

(5) For the purposes of clause (4)(b)(iii)(A), the percentage of the shares of any particular class of the issued common shares of the capital stock of the new corporation immediately after the amalgamation received as described in that clause by the persons (except any predecessor corporation) who together owned all of the common shares of the capital stock of a particular predecessor corporation shall be deemed to be

(a) the percentage thereof otherwise determined,

plus

(b) that proportion of the percentage described in paragraph (a) that

(i) the fair market value of the issued common shares of the capital stock of the particular predecessor corporation owned by all other predecessor corporations immediately before the amalgamation

is of

(ii) the fair market value of the issued common shares of the capital stock of the particular predecessor corporation owned by all persons (except any predecessor corporation) immediately before the amalgamation.

Interpretation Bulletins: See list at end of s. 87.

(5.1) Adjusted cost base of option — Where the cost to a taxpayer of a new option is determined at any time under subsection (5),

(a) there shall be deducted after that time in computing the adjusted cost base to the taxpayer of the new option the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before that time, the adjusted cost base to the taxpayer of the old option; and

(b) the amount determined under paragraph (a) shall be added after that time in computing the adjusted cost base to the taxpayer of the new option.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 87(5.1)(b); 53(2)(g.1) — Reduction in ACB under 87(5.1)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 87(5.1) added by 1995, c. 21, subsec. 30(3), applicable to taxation years that end after February 21, 1994.

(6) Obligations of predecessor corporation — Notwithstanding subsection (7), where there has been an amalgamation of two or more corporations after May 6, 1974, each taxpayer (except any predecessor corporation) who, immediately before the amalgamation, owned a capital property that was a bond, debenture, mortgage, note or other similar obligation of a predecessor corporation (in this subsection referred to as the "old property") and who received no consideration for the disposition of the old property on the amalgamation other than a bond, debenture, mortgage, note or other similar obligation respectively, of the new corporation (in this subsection referred to as the "new property") shall, if the amount payable to the holder of the new property on its maturity is the same as the amount that would have been payable to the holder of the old property on its maturity, be deemed

(a) to have disposed of the old property for proceeds equal to the adjusted cost base to the taxpayer of that property immediately before the amalgamation; and

(b) to have acquired the new property at a cost to the taxpayer equal to the proceeds described in paragraph (a).

Related Provisions: 80(2) — Deemed settlement on amalgamation; 87(6.1) — ACB of property; 88(1)(e.2) — Application to winding-up. See additional Related Provisions and Definitions at end of s. 87.

Pre-RSC History: Subsec. 87(6) substituted by 1974-75-76, c. 26, subsec. 51(12), applicable in respect of amalgamations occurring after May 6, 1974. Subsec. 87(6) formerly read:

(6) Canadian exploration and development expenses — Where there has been an amalgamation of two or more corporations after 1971 and the new corporation is a principal-business corporation within the meaning assigned by subsection 66(15), there may be deducted by the new corporation in computing its income for a taxation year the aggregate of the following amounts in respect of expenses incurred by predecessor corporations, namely, in respect of each individual predecessor corporation, the amount that is the lesser of

(a) the aggregate of the Canadian exploration and development expenses (within the meaning assigned by subsection 66(15)) incurred by the predecessor corporation to the extent that such expenses

(i) were not deductible by the new corporation in computing its income for a previous taxation year, and were not deductible by the predecessor corporation in computing its income for its last taxation year or for a previous taxation year, and

(ii) would, but for paragraph 66(1)(b), have been deductible by the predecessor corporation in computing its income for its last taxation year, and

(b) of the aggregate determined under paragraph (a), an amount equal to such part of the income of the new corporation for the

year if no deduction were allowed under this section, section 65 or section 66 (minus any deductions allowed for the year by sections 112 and 113) as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the amalgamation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and no amount in respect of expenses of the predecessor corporation included in the aggregate determined under paragraph (a) shall, where subsection 192(15) is being applied to determine for the purposes of paragraph (2)(gg) of this section the designated surplus of the predecessor corporation immediately before the amalgamation, be included in the amount or amounts deductible under any paragraph of subsection 192(15).

I.T. Application Rules: 26(23) (where taxpayer owned the old property since before 1972).

Interpretation Bulletins: See list at end of s. 87.

(6.1) Adjusted cost base — Where the cost to a taxpayer of a particular property that is a bond, debenture or note is determined at any time under subsection (6) and the terms of the bond, debenture or note conferred upon the holder the right to exchange that bond, debenture or note for shares,

(a) there shall be deducted after that time in computing the adjusted cost base to the taxpayer of the bond, debenture or note the total of all amounts deducted under paragraph 53(2)(g.1) in computing, immediately before that time, the adjusted cost base to the taxpayer of the property for which the particular property was exchanged at that time; and

(b) the amount determined under paragraph (a) in respect of the particular property shall be added after that time in computing the adjusted cost base to the taxpayer of the particular property.

Related Provisions: 53(1)(q) — Addition to ACB for amount under 87(6.1)(b); 53(2)(g.1) — Reduction in ACB under 87(6.1)(a); 80.03(2)(a) — Deemed gain on disposition following debt forgiveness.

History: Subsec. 87(6.1) added by 1995, c. 21, subsec. 30(4), applicable to taxation years that end after February 21, 1994.

(7) [Obligations of predecessor corporation] — Where there has been an amalgamation of two or more corporations after May 6, 1974 and

(a) a debt or other obligation of a predecessor corporation that was outstanding immediately before the amalgamation became a debt or other obligation of the new corporation on the amalgamation, and

(b) the amount payable by the new corporation on the maturity of the debt or other obligation, as the case may be, is the same as the amount that would have been payable by the predecessor corporation on its maturity,

the provisions of this Act

(c) shall not apply in respect of the transfer of the debt or other obligation to the new corporation, and

(d) shall apply as if the new corporation had incurred or issued the debt or other obligation at the time it was incurred or issued by the predecessor corporation under the agreement made on the day on which the predecessor corporation made an agreement under which the debt or other obligation was issued,

except that, for the purposes of the definition "income bond" or "income debenture" in subsection 248(1), paragraph (d) shall not apply to any debt or other obligation of the new corporation unless the terms and conditions thereof immediately after the amalgamation are the same as, or substantially the same as, the terms and conditions of the debt or obligation that was an income bond or income debenture of the predecessor corporation immediately before the amalgamation.

Related Provisions: 87(6) — Obligations of predecessor corporation; 88(1)(e.2) — Application to winding-up. See additional Related Provisions and Definitions at end of s. 87.

History: Para. 87(7)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(12). Para. (a) formerly read:

(a) a debt or other obligation of a predecessor corporation, other than any such debt or other obligation owed to any other predecessor corporation, was outstanding immediately before the amalgamation and became a debt or other obligation, as the case may be, of the new corporation on the amalgamation, and

Pre-RSC History: All that portion of subsec. 87(7) following para. (c) substituted by 1979, c. 5, subsec. 28(6). That portion formerly read:

(d) shall apply as if the new corporation had incurred or issued the debt or other obligation at the time it was incurred or issued by the predecessor corporation.

Subsec. 87(7) substituted by 1974-75-76, c. 26, subsec. 51(12), applicable in respect of amalgamations occurring after May 6, 1974. Subsec. 87(7) formerly read:

(7) Foreign exploration and development expenses — Where there has been an amalgamation of two or more corporations after 1971, there may be deducted by the new corporation in computing its income for a taxation year the amount that would be deductible under subsection (6) in computing its income for the year if

(a) the reference therein to "Canadian exploration and development expenses" were read as a reference to "foreign exploration and development expenses",

(b) the reference in subparagraph (a)(ii) thereof to "paragraph 66(1)(b)" were read as a reference to "paragraph 66(4)(b)", and

(c) the reference in paragraph (b) thereof to "in Canada" were read as a reference to "outside Canada".

Interpretation Bulletins: See list at end of s. 87.

(8) Foreign merger — Where there has been a foreign merger in which a taxpayer's shares or options to acquire shares of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares or options to acquire shares of the capital stock of the new foreign corporation or the foreign parent corporation, unless the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the foreign merger took place not to have this subsection apply, subsections (4) and (5) apply to the taxpayer as if the references in those subsections to

Proposed Amendment — 87(8)

(8) Foreign merger — Subject to subsection 95(2), where there has been a foreign merger in which a taxpayer's shares or options to acquire shares of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares or options to acquire shares of the capital stock of the new foreign corporation or the foreign parent corporation, unless the taxpayer elects in the taxpayer's return of income for the taxation year in which the foreign merger took place not to have this subsection apply, subsections (4) and (5) apply to the taxpayer as if the references in those subsections to

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 38(2), will amend the opening words of subsec. 87(8) to read as above, applicable to mergers and combinations that occur after 1995 and, where a taxpayer notifies the Minister of National Revenue in writing before the taxpayer's filing-due date for the taxation year in which the amending legislation is assented to that the taxpayer makes the election referred to in subsec. 87(8), as amended, in respect of a merger or combination that occurred before 1999, the election is deemed to have been validly made in respect of the merger or combination.

Technical Notes: Subsections 87(8) and (8.1) of the Act provide tax-deferred rollover treatment to a shareholder of a foreign corporation (a predecessor) in respect of a disposition of shares of the predecessor where the predecessor undergoes a merger with one or more other foreign corporations. It also provides a shareholder with a similar rollover in respect of the disposition of shares of the predecessor in the case of a three-way or "triangular" foreign merger. The rollover is only available where the predecessor corporations, the new corporation formed on the merger and, in the case of a triangular merger, the corporation that controls the new corporation formed on the merger, are resident in the same foreign jurisdiction.

Subsections 87(8) and (8.1) are amended to remove the requirement that all of the corporations be resident in the same foreign jurisdiction. Consequently, the tax-deferred rollover will be available under subsection 87(8) in cases where the foreign corporations are resident in the same or different foreign jurisdictions.

New subsections 87(8) and (8.1) apply to mergers that occur after 1995. Where subsection 87(8) would otherwise apply to a taxpayer in respect of a merger that occurred in 1996, 1997 or 1998, the taxpayer can notify the Minister of National Revenue in writing, before the taxpayer's filing-due date for the taxation year in which subsections 87(8) and (8.1) receive Royal Assent, that the taxpayer elects not to have the subsection apply. Where the taxpayer so elects, the election will be considered to have been made in accordance with new subsection 87(8) of the Act.

Dept. of Finance news release, April 15, 1999: See under 85.1(5), (6).

Letter from Department of Finance, October 8, 1997:

Dear [xxx]

This is in response to your letters of May 18 and June 20, 1997 and further to your telephone conversations with Davine Roach of the Department regarding the income tax treatment granted a Canadian shareholder of a foreign corporation which has been the subject of a so-called triangular foreign merger. You suggest that the Canadian income tax provisions are deficient in that they do not provide rollover treatment to the Canadian shareholder in such a merger.

As you indicate, the income tax provisions provide in certain circumstances for the tax deferred exchange by a Canadian shareholder of a share of a "predecessor foreign corporation" for a share of the "new foreign corporation" formed on the merger of the predecessor foreign corporation and another "predecessor foreign corporation" (a "foreign merger"). The provisions do not however provide for such a tax-deferred exchange where such a shareholder exchanges a share of the foreign predecessor corporation for a share of the foreign corporation that controls, immediately after the merger, the new foreign corporation (a "triangular foreign merger"). You believe this is unintended because the Canadian shareholder should be treated the same in respect of an exchanged share under both the foreign merger and the triangular foreign merger.

From a tax policy perspective, we agree that it would be appropriate for a Canadian shareholder of a predecessor foreign corporation to receive rollover tax treatment in the case of a triangular foreign merger. Therefore, we are prepared to recommend to the Minister of Finance that the *Income Tax Act* be amended to accommodate such mergers. In particular, such amendments would provide that a Canadian shareholder of a predecessor foreign corporation would receive rollover treatment in respect of the adjusted cost base of a share of the predecessor foreign corporation owned by the shareholder and exchanged for a share of the foreign corporation that controls, immediately after the merger, the new foreign corporation formed as a result of the merger of the predecessor foreign corporation and another predecessor foreign corporation where such predecessor corporations and controlling corporation are all resident of the same country.

We would recommend that such amendments apply in respect of triangular foreign mergers that occur after 1996. If this recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

(a) "amalgamation" were read as "foreign merger";

(b) "predecessor corporation" were read as "predecessor foreign corporation"; and

(c) "new corporation" were read as "new foreign corporation or the foreign parent corporation".

Related Provisions: 87(8.1) — Definition of "foreign merger"; 95(2)(d) — Effect of foreign merger on FAPI. See additional Related Provisions and Definitions at end of s. 87.

History: Subsec. 87(8) amended by 1999, c. 22, subsec. 24(1), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination. Subsec. 87(8) formerly read:

(8) Merger of foreign affiliate — Where there has been a foreign merger in which the shares owned by a taxpayer of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares of the capital stock of the new foreign corporation, unless the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the foreign merger took place not to have the provisions of this section apply, subsection (4) applies to the taxpayer as if the references therein to

(a) "amalgamation" were read as "foreign merger";

(b) "predecessor corporation" were read as "predecessor foreign corporation";

(c) "new corporation" were read as "new foreign corporation"; and

(d) "May 6, 1974" were read as "November 12, 1981".

Pre-RSC History: Subsec. 87(8) substituted by 1980-81-82-83, c. 140, subsec. 52(8), applicable with respect to foreign mergers occurring after November 12, 1981. Subsec. 87(8) formerly read:

(8) Where there has been a merger of a foreign affiliate of a taxpayer (in this subsection referred to as a "predecessor affiliate") and one or more other corporations to form one corporate entity (in this subsection referred to as a "new affiliate") that, immediately after the merger, is a foreign affiliate of the taxpayer and such merger is not as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of such property by the other corporation, or as a result of the distribution of such property to another corporation upon the winding-up of the predecessor affiliate, subsection (4) applies to the taxpayer as if the references therein to

(a) "amalgamation" were read as "merger";

(b) "predecessor corporation" were read as "predecessor affiliate";

(c) "new corporation" were read as "new affiliate"; and

(d) "May 6, 1974" were read as "1971".

Subsec. 87(8) added by 1974-75-76, c. 26, subsec. 51(12), applicable in respect of mergers occurring after 1971.

Interpretation Bulletins: See list at end of s. 87.

(8.1) Definition of "foreign merger" — For the purposes of this section, "foreign merger" means a merger or combination of two or more corporations each of which

was, immediately before the merger or combination, resident in a country other than Canada (each of which is in this section referred to as a "predecessor foreign corporation") to form one corporate entity resident in the country in which all the predecessor foreign corporations were resident (in this section referred to as the "new foreign corporation") in such manner that

(a) all or substantially all the property (except amounts receivable from any predecessor foreign corporation or shares of the capital stock of any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination becomes property of the new foreign corporation by virtue of the merger or combination,

(b) all or substantially all the liabilities (except amounts payable to any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination become liabilities of the new foreign corporation by virtue of the merger or combination, and

(c) all or substantially all of the shares of the capital stock of the predecessor foreign corporations (except any shares or options owned by any predecessor foreign corporation) are exchanged for or become, because of the merger or combination,

(i) shares of the capital stock of the new foreign corporation, or

(ii) if, immediately after the merger, the new foreign corporation was controlled by another foreign corporation (in this section referred to as the "foreign parent corporation") that was resident in the same country as the new foreign corporation, shares of the capital stock of the foreign parent corporation,

otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation.

Proposed Amendment — 87(8.1)

(8.1) Definition of "foreign merger" — For the purposes of this section, "foreign merger" means a merger or combination of two or more corporations each of which was, immediately before the merger or combination, resident in a country other than Canada (each of which is in this section referred to as a "predecessor foreign corporation") to form one corporate entity resident in a country other than Canada (in this section referred to as the "new foreign corporation") in such a manner that, and otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation,

(a) all or substantially all the property (except amounts receivable from any predecessor foreign corporation or shares of the capital stock of any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination becomes property of the new foreign corporation as a consequence of the merger or combination;

(b) all or substantially all the liabilities (except amounts payable to any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination become liabilities of the new foreign corporation as a consequence of the merger or combination; and

(c) all or substantially all of the shares of the capital stock of the predecessor foreign corporations (except any shares or options owned by any predecessor foreign corporation) are exchanged for or become, because of the merger or combination,

(i) shares of the capital stock of the new foreign corporation, or

(ii) if, immediately after the merger, the new foreign corporation was controlled by another corporation (in this section referred to as the "foreign parent corporation") that was resident in a country other than Canada, shares of the capital stock of the foreign parent corporation.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 38(3), will amend subsec. 87(8.1) to read as above, applicable to mergers and combinations that occur after 1995.

Technical Notes: See under 87(8).

Related Provisions: 95(4.1) — Application to FAPI; 256(6), (6.1) — Meaning of "controlled". See Related provisions and Definitions at end of s. 87.

History: Para. 87(8.1)(c) amended by 1999, c. 22, subsec. 24(2), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination. Para. 87(8.1)(c) formerly read:

(c) all or substantially all the shares of the capital stock of the predecessor foreign corporations (except any such shares owned by any predecessor foreign corporation) are exchanged for or become shares of the capital stock of the new foreign corporation by virtue of the merger or combination,

Pre-RSC History: *Opening words referred to "this section and section 95". See now subsec. 95(4.1).*

Subsec. 87(8.1) added by 1980-81-82-83, c. 140, subsec. 52(8), applicable with respect to foreign mergers occurring after November 12, 1981.

Interpretation Bulletins: See list at end of s. 87.

(9) Rules applicable in respect of certain mergers [triangular amalgamation] — Where there has been a merger of two or more taxable Canadian corporations to form a new corporation that was controlled, immediately after the merger, by a taxable Canadian corporation (in this subsection referred to as the "parent") and, on the merger, shares of the capital stock of the parent (in this subsection referred to as "parent shares") were issued by the parent to persons who were, immediately before the merger, shareholders of a predecessor corporation, the following rules apply:

(a) for the purposes of paragraph (1)(c), subsection (4) and the *Income Tax Application Rules*, any parent shares received by a shareholder of a predecessor corporation shall be deemed to be shares of the capital stock of the new corporation received by the shareholder by virtue of the merger;

(a.1) for the purposes of subsections (4.1) and (4.2), a parent share issued to a shareholder in consideration for the disposition of a share of a class of the capital stock of a predecessor corporation shall be deemed to be a share of a class of the capital stock of the new corporation that was issued in consideration for the

disposition of a share of a class of the capital stock of a predecessor corporation by that shareholder;

(a.2) for the purposes of subsection (4.3), a right listed on a prescribed stock exchange to acquire a share of a class of the capital stock of the parent shall be deemed to be a right listed on a prescribed stock exchange to acquire a share of a class of the capital stock of the new corporation;

(a.3) for the purpose of applying subsection (5) in respect of the merger, the reference in that subsection to "the new corporation" shall be read as a reference to "the parent";

(a.4) for the purpose of paragraph (c), any shares of the new corporation acquired by the parent on the merger shall be deemed to be new shares;

(a.5) for the purpose of applying subsection (10) in respect of the merger,

(i) the reference in paragraph (10)(b) to "the new corporation" shall be read as a reference to "the new corporation or the parent, within the meaning assigned by subsection (9)", and

(ii) the references in paragraphs (10)(c) and (f) to "the new corporation" shall be read as references to "the public corporation described in paragraph (b)".

(b) in computing, at any particular time, the paid-up capital in respect of any particular class of shares of the capital stock of the parent that included parent shares immediately after the merger

(i) there shall be deducted that proportion of the amount, if any, by which the paid-up capital, determined without reference to this paragraph, in respect of all the shares of the capital stock of the parent immediately after the merger exceeds the total of all amounts each of which is the paid-up capital in respect of a share of the capital stock of the parent or a predecessor corporation (other than any share of a predecessor corporation owned by the parent or by another predecessor corporation and any share of a predecessor corporation owned by a shareholder other than the parent or another predecessor corporation that was not exchanged on the merger for parent shares) immediately before the merger that

(A) the paid-up capital, determined without reference to this paragraph, in respect of that particular class of shares of the capital stock of the parent immediately after the merger

is of

(B) the paid-up capital, determined without reference to this paragraph, in respect of all the issued and outstanding shares of the classes of the capital stock of the parent that included parent shares immediately after the merger, and

(ii) there shall be added an amount equal to the lesser of

(A) the amount, if any, by which

(I) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid by the parent before the particular time

exceeds

(II) the total that would be determined under subclause (I) if this Act were read without reference to subparagraph (i), and

(B) the amount required by subparagraph (i) to be deducted in computing the paid-up capital of shares of the particular class; and

(c) notwithstanding paragraph (4)(b), the parent shall be deemed to have acquired the new shares of any particular class of the capital stock of the new corporation at a cost equal to the total of

(i) the amount otherwise determined under paragraph (4)(b) to be the cost of those shares, and

(ii) in any case where the parent owned, immediately after the merger, all of the issued shares of the capital stock of the new corporation, such portion of

(A) the amount, if any, by which

(I) the amount by which the total of the money on hand of the new corporation and all amounts each of which is the cost amount to the new corporation of a property owned by it, immediately after the merger, exceeds the total of all amounts each of which is the amount of any debt owing by the new corporation, or of any other obligation of the new corporation to pay any amount, that was outstanding immediately after the merger,

exceeds

(II) the total of the adjusted cost bases to the parent of all shares of the capital stock of each predecessor corporation beneficially owned by it immediately before the merger

as is designated by the parent in respect of the shares of that particular class in its return of income under this Part for its taxation year in which the merger occurred, except that

(B) in no case shall the amount so designated in respect of the shares of a particular class exceed the amount, if any, by which the total fair market value, immediately after the merger, of the shares of that particular class issued by virtue of the merger exceeds the cost of those shares to the parent determined without reference to this paragraph, and

(C) in no case shall the total of the amounts so designated in respect of the shares of each class of the capital stock of the new corporation exceed the amount determined under clause (A).

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control; 256(6), (6.1) — Meaning of "controlled". See also Related provisions and Definitions at end of s. 87.

History: Para. 87(9)(a.5) added by 1998, c. 19, subsec. 117(12), applicable to amalgamations that occur after April 26, 1995 except that, in its application to amalgamations that occurred before 1998, para. 87(9)(a.5) shall be read as follows:

(a.5) for the purpose of applying subsection (10) in respect of the merger,

(i) any share issued by the parent on the merger is deemed to have been issued by the new corporation, and

(ii) the reference in paragraph (10)(f) to "the new corporation" shall be read as a reference to "the corporation that issued the share";

Paras. 87(9)(a.3) and (a.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 37(13), applicable to amalgamations and mergers occurring after December 20, 1991.

Paras. 87(9)(a.1), (a.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 65(12), applicable to amalgamations and mergers occurring after 1986.

Pre-RSC History: Subsec. 87(9) added by 1979, c. 5, subsec. 28(7), applicable in respect of amalgamations occurring after November 16, 1978.

Regulations: 3200 (prescribed stock exchange).

(10) Share deemed listed — Where

(a) a new corporation is formed as a result of an amalgamation,

(b) the new corporation is a public corporation,

(c) the new corporation issues a share (in this subsection referred to as the "new share") of its capital stock,

(d) the new share is issued in exchange for a share (in this subsection referred to as the "old share") of the capital stock of a predecessor corporation,

(e) immediately before the amalgamation, the old share was listed on a prescribed stock exchange, and

(f) the new share is redeemed, acquired or cancelled by the new corporation within 60 days after the amalgamation,

the new share is deemed, for the purposes of subsections 115(1) and 116(6) and the definitions "qualified investment" in subsections 146(1), 146.1(1) and 146.3(1) and in section 204, to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

Proposed Amendment — 87(10)

the new share is deemed, for the purposes of subsection 116(6), the definitions "qualified investment" in subsections 146(1), 146.1(1), and 146.3(1) and in section 204, and the definition "taxable Canadian property" in subsection 248(1), to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 38(4), will amend the closing words of subsec. 87(10) to read as above, applicable after October 1, 1996.

Technical Notes: Section 87 of the Act sets out rules that apply where there has been an amalgamation of two or more taxable Canadian corporations to form a new corporation.

Subsection 87(10) of the Act treats certain shares issued as part of an "amalgamation squeeze-out" as being listed on a prescribed stock exchange. The subsection is amended, with application after October 1, 1996, to replace its reference to subsection 115(1) of the Act with a reference to the new definition "taxable Canadian property" in subsection 248(1) of the Act. This consequential change is not intended to have any substantive effect on the operation of subsection 87(10).

History: The closing words of subsec. 87(10) amended by 1999, c. 22, subsec. 24(3), applicable after 1997. The closing words formerly read:

> the new share is deemed, for the purposes of subsections 115(1) and 116(6) and the definitions "qualified investment" in subsections 146(1) and 146.3(1) and in section 204, to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

Subsec. 87(10) added by 1998, c. 19, subsec. 117(13), applicable to amalgamations that occur after April 26, 1995 except that, in its application to amalgamations that occurred before July 1996, subsec. 87(10) shall be read without reference to para. (b).

Regulations: 3200, 3201 (prescribed stock exchanges; expected to be amended to cover 87(10)).

(11) Vertical amalgamations — Where at any time there is an amalgamation of a corporation (in this subsection referred to as the "parent") and one or more other corporations (each of which in this subsection is referred to as the "subsidiary") each of which is a subsidiary wholly-owned corporation of the parent,

(a) the shares of the subsidiary are deemed to have been disposed of by the parent immediately before the amalgamation for proceeds equal to the proceeds that would be determined under paragraph 88(1)(b) if subsections 88(1) and (1.7) applied, with any modifications that the circumstances require, to the amalgamation; and

(b) the cost to the new corporation of each capital property of the subsidiary acquired on the amalgamation is deemed to be the amount that would have been the cost to the parent of the property if the property had been distributed at that time to the parent on a winding-up of the subsidiary and subsections 88(1) and (1.7) had applied to the winding-up.

Related Provisions: 87(2.11) — Vertical amalgamation — carryback of losses; 87(9)(a.5) — Application on triangular amalgamation.

History: Subsec. 87(11) added by 1998, c. 19, subsec. 117(13), subject to subsec. 117(27) of 1998, c. 19, applicable to amalgamations that occur after 1994, and for the purpose of para. 87(11)(b), any designation by a new corporation of an amount under para. 88(1)(d) that is filed with the Minister of National Revenue before October 1998 is deemed to have been made by the new corporation in its return of income under Part I of the Act for its first taxation year.

1998, c. 19, subsec. 117(27), provides:

> (27) Where the new corporation formed on an amalgamation that occurred before June 20, 1996 so elects in writing, filed with the Minister of National Revenue with the return of income under Part I of the Act for the parent's taxation year that ended immediately before the amalgamation, or within 90 days after any assessment or reassessment of tax payable under that Part for the year, subsection 87(11) of the Act, as enacted by subsection (13), does not apply to the amalgamation.

Related Provisions [s. 87]: 66.7 — Resource taxation — successor corporation rules; 89(1)"Canadian corporation" — Whether amalgamated corporation is a Canadian corporation; 128.2 — Predecessor corporations take on residence status of amalgamated corporation; 134 — Status of non-resident-owned investment corporation for purposes of s. 87; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; 251(3.1), (3.2) — Amalgamated corporation — whether related to predecessor.

Definitions [s. 87]: "adjusted cost base" — 54, 248(1); "amalgamation" — 87(1); "amount" — 248(1); "business" — 248(1); "business limit" — 125(2)-(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "capital dividend" — 83(2), 248(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "cash method" — 248(1); "class of shares" — 248(6); "common share" — 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "dividend" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "employment" — 248(1); "farming" — 248(1); "farm loss" — 111(8), 248(1); "financial institution" — 87(1.5), 142.2(1); "fiscal period" — 249(2)(b), 249.1; "flow-through share" — 66(15), 87(4.4), 248(1); "foreign affiliate" — 95(1), 248(1); "foreign merger" — 87(8.1); "foreign parent corporation" — 87(8.1)(c); "former business property" — 248(1); "grandfathered share", "income bond", "insurance corporation", "insurer", "inventory" — 248(1); "investment corporation" — 130(3), 248(1); "investment tax credit" — 127(9), 248(1); "lending asset" — 248(1); "life insurance capital dividend" — 83(2.1), 248(1); "life insurance corporation", "limited partnership loss" — 248(1); "mark-to-market property" — 87(1.5), 142.2(1); "mineral" — 248(1); "mutual fund corporation" — 131(8), 248(1); "net capital loss" — 111(8), 248(1); "new corporation" — 87(1); "new foreign corporation" — 87(8.1); "non-capital loss" — 111(8), 248(1); "paid-up capital" — 89(1), 248(1); "person" — 248(1); "predecessor corporation" — 87(1); "predecessor foreign corporation" — 87(8.1); "preferred share", "prescribed" — 248(1); "private corporation" — 89(1), 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "qualified expenditure" — 37.1(5),

87(2.01); "regulation" — 248(1); "research property" — 37.1(5), 87(2.01); "restricted farm loss" — 31, 248(1); "share", "shareholder", "short-term preferred share" — 248(1); "specified debt obligation" — 87(1.5), 142.2(1); "specified future tax consequence" — 248(1); "subsidiary wholly-owned corporation" — 87(1.4), 248(1); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable preferred share", "taxable RFI share" — 248(1); "taxation year" — 87(2)(a), 249; "taxpayer", "term preferred share" — 248(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [s. 87]: 20(1.2), 26(21)–(23), 34(4), (7), 58(3.3).

Interpretation Bulletins [s. 87]: IT-52R4: Income bonds and income debentures; IT-121R3: Election to capitalize cost of borrowed money; IT-151R4: Scientific research and experimental development expenditures; IT-243R4: Dividend refund to private corporations; IT-315: Interest expense incurred for the purpose of winding-up or amalgamation; IT-474R: Amalgamations of Canadian corporations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Information Circulars [s. 87]: 88-2, para. 20: General anti-avoidance rule — section 245 of the *Income Tax Act*.

88. (1) Winding-up [of subsidiary] — Where a taxable Canadian corporation (in this subsection referred to as the "subsidiary") has been wound up after May 6, 1974 and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another taxable Canadian corporation (in this subsection referred to as the "parent") and all of the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length, notwithstanding any other provision of this Act other than subsection 69(11), the following rules apply:

Related Provisions: See at end of subsec. 88(1).

(a) **[property of subsidiary]** — subject to paragraphs (a.1) and (a.3), each property (other than an interest in a partnership) of the subsidiary that was distributed to the parent on the winding-up shall be deemed to have been disposed of by the subsidiary for proceeds equal to

(i) in the case of a Canadian resource property, a foreign resource property or a right to receive production (as defined in subsection 18.1(1)) to which a matchable expenditure (as defined in subsection 18.1(1)) relates, nil, and

(ii) [Repealed]

(iii) in the case of any other property, the cost amount to the subsidiary of the property immediately before the winding-up;

Related Provisions: 53(4) — Effect on ACB of share or trust interest; 84(2) — Deemed dividend on distribution of assets; 88(2) — Windup of other corporation.

History: Subpara. 88(1)(a)(i) amended by 1998, c. 19, subsec. 118(1), applicable after November 17, 1996. The subpara. formerly read:

(i) in the case of a Canadian resource property or foreign resource property, nil, and

The opening words of para. 88(1)(a) amended by 1995, c. 21, subsec. 55(1), applicable to windings-up that begin after February 22, 1994. The opening words formerly read:

(a) subject to paragraph (a.1), each property (other than an interest in a partnership) of the subsidiary that was distributed to the parent on the winding-up shall be deemed to have been disposed of by the subsidiary for proceeds equal to,

Subpara. 88(1)(a)(ii) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(1), applicable to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary beginning after June 1988. Subpara. 88(1)(a)(ii) formerly read:

(ii) in the case of any eligible capital property, an amount equal to 4/3 of the cost amount to the subsidiary of that property immediately before the winding-up, and

Subpara. 88(1)(a)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(1), to substitute "4/3 of" for "twice", applicable to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary beginning after June 1988.

Pre-RSC History: See end of subsec. 88(1).

Selected Cases [para. 88(1)(a)]: *Hollinger Inc. v. R.*, [1998] 4 C.T.C. 2424 (TCC) (Losses flow through and sale of unproductive investment does not change nature from capital to inventory); *Mara Properties Ltd. v. Canada*, [1996] 2 C.T.C. 54 (SCC) (Property retained its character as inventory upon rollover).

Interpretation Bulletins: IT-259R3: Exchanges of property.

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

(a.1) **[property of subsidiary]** — each property of the subsidiary that was distributed to the parent on the winding-up shall, for the purpose of paragraph (2.1)(b) or (e), be deemed not to have been disposed of;

(a.2) **[partnership interest]** — each interest of the subsidiary in a partnership that was distributed to the parent on the winding-up shall, except for the purpose of paragraph 98(5)(g), be deemed not to have been disposed of by the subsidiary;

History: Para. 88(1)(a.2) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(2), to add ", except for the purpose of paragraph 98(5)(g)," applicable to windings-up beginning after January 15, 1987.

(a.3) **[specified debt obligation]** — where

(i) the subsidiary was a financial institution in its taxation year in which its assets were distributed to the parent on the winding up, and

(ii) the parent was a financial institution in its taxation year in which it received the assets of the subsidiary on the winding up,

each specified debt obligation (other than a mark-to-market property) of the subsidiary that was distributed to the parent on the winding-up shall, except for the purpose of subsection 69(11), be deemed not to have been disposed of, and for the purpose of this paragraph, "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1);

Related Provisions: Reg. 8103(3) — Mark-to-market — transition inclusion; Reg. 9204(2) — Residual portion of specified debt obligation.

History: Para. 88(1)(a.3) added by 1995, c. 21, subsec. 55(2), applicable to windings-up that begin after February 22, 1994.

(b) **[shares of subsidiary]** — the shares of the capital stock of the subsidiary owned by the parent immediately before the winding-up shall be deemed to have been disposed of by the parent on the winding-up for proceeds equal to the greater of

(i) the lesser of the paid-up capital in respect of those shares immediately before the winding-up and the amount determined under subparagraph (d)(i), and

(ii) the total of all amounts each of which is an amount in respect of any share of the capital stock of the subsidiary so disposed of by the parent on the winding-up, equal to the adjusted cost base to the parent of the share immediately before the winding-up;

Related Provisions: 80.01(5) — Determination of proceeds of disposition of distress preferred share to subsidiary; 80.03(1), (3)(a)(i) — Capital gain where para. 88(1)(b) applies to share on disposition following debt

forgiveness; 87(11) — Application to vertical amalgamation. See additional Related Provisions at end of 88(1).

(c) **[cost to parent]** — subject to paragraph 87(2)(e.3) (as modified by paragraph (e.2)), and notwithstanding paragraph 87(2)(e.1) (as modified by paragraph (e.2)), the cost to the parent of each property of the subsidiary distributed to the parent on the winding-up shall be deemed to be

(i) in the case of a property that is an interest in a partnership, the amount that but for this paragraph would be the cost to the parent of the property, and

(ii) in any other case, the amount, if any, by which

(A) the amount that would, but for subsection 69(11), be deemed by paragraph (a) to be the proceeds of disposition of the property

exceeds

(B) any reduction of the cost amount to the subsidiary of the property made because of section 80 on the winding-up,

plus, where the property was a capital property (other than an ineligible property) of the subsidiary at the time that the parent last acquired control of the subsidiary and was owned by the subsidiary thereafter without interruption until such time as it was distributed to the parent on the winding-up, the amount determined under paragraph (d) in respect of the property and, for the purposes of this paragraph, "ineligible property" means

(iii) depreciable property,

(iv) property transferred to the parent on the winding-up where the transfer is part of a distribution (within the meaning assigned by subsection 55(1)) made in the course of a reorganization in which a dividend was received to which subsection 55(2) would, but for paragraph 55(3)(b), apply,

(v) property acquired by the subsidiary from the parent or from any person or partnership that was not (otherwise than because of a right referred to in paragraph 251(5)(b)) dealing at arm's length with the parent, or any other property acquired by the subsidiary in substitution for it, where the acquisition was part of the series of transactions or events in which the parent last acquired control of the subsidiary, and

(vi) property distributed to the parent on the winding-up where, as part of the series of transactions or events that includes the winding-up,

(A) the parent acquired control of the subsidiary, and

(B) any property distributed to the parent on the winding-up or any other property acquired by any person in substitution therefor is acquired by

(I) a particular person (other than a specified person) that, at any time during the course of the series and before control of the subsidiary was last acquired by the parent, was a specified shareholder of the subsidiary,

(II) 2 or more persons (other than specified persons), if a particular person would have been, at any time during the course of the series and before control of the subsidiary was last acquired by the parent, a specified shareholder of the subsidiary if all the shares that were then owned by those 2 or more persons were owned at that time by the particular person, or

(III) a corporation (other than a specified person)

Proposed Amendment — 88(1)(c)(vi)(B)(III)

(III) a corporation (other than a specified person or the subsidiary)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 39(1), will amend the opening words of subcl. 88(1)(c)(vi)(B)(III) to read as above, applicable to windings-up that begin after November 1994.

Technical Notes: Section 88 of the Act deals with the tax consequences arising from the winding-up of a corporation. Subsection 88(1) provides rules that apply where a subsidiary has been wound up into its parent corporation where both corporations are taxable Canadian corporations and the parent owns at least 90% of the issued shares of each class of the subsidiary's capital stock.

Paragraph 88(1)(c) of the Act provides that the cost to a parent corporation of each property distributed to it on the winding-up of a subsidiary is equal to the subsidiary's proceeds of disposition of the property plus, where the property is not an "ineligible property", an amount determined under paragraph 88(1)(d) of the Act in respect of the property. An ineligible property is defined in paragraph 88(1)(c) and consists of four types of property. Subparagraph 88(1)(c)(vi) describes the fourth type of ineligible property.

Subclause 88(1)(c)(vi)(B)(III) of the Act provides that property will be an ineligible property for the purposes of paragraph 88(1)(c) where the property distributed to the parent on the winding-up is acquired as part of the series of transactions or events that includes the winding-up by a person described in subclause 88(1)(c)(vi)(B)(III).

A person described in subclause 88(1)(c)(vi)(B)(III) of the Act is

A. a corporation (other than a specified person) of which any person who was a specified shareholder of the subsidiary is a specified shareholder, or

B. a corporation (other than a specified person) in which persons described in subclause 88(1)(c)(vi)(B)(II) owns shares that, if owned by one person, would have made that person a specified shareholder of the corporation.

Subclause 88(1)(c)(vi)(B)(III) of the Act is amended to also exclude from persons described therein the subsidiary itself. This amendment will ensure that where a target/subsidiary corporation transfers some of its property to a subsidiary of the target prior to the parent's acquisition of control of the target, the transfer, in and by itself, will not cause property distributed to the parent on the winding-up of the target/subsidiary to be ineligible property.

Amended subclause 88(1)(c)(vi)(B)(III) applies to windings-up that begin after November 1994.

Letter from Department of Finance, June 19, 1998:

Dear [xxx]

This is in reply to your letter of May 28, 1998 to Davine Roach of the Department regarding the application of proposed subclause 88(1)(c)(vi)(B)(III) of the *Income Tax Act* (the "Act") to the proposed takeover transaction described in your letter. You believe this application gives rise to unintended tax consequences and ask that consideration be given to amending the subclause to ensure the appropriate tax results.

Based on our understanding of the facts of the proposed transaction, proposed subclause 88(1)(c)(vi)(B)(III) will cause the Opco shares to be "ineligible property" for the purpose of paragraph 88(1)(c) of the Act and therefore ineligible for a step-up in tax basis. The Opco shares will be rendered "ineligible property" because of the fact that as part of the series of transactions or events in which PCo acquired control of TCo and in which Amalco was wound-up into PCo, Holdco acquired the shares of Opco.

In these circumstances, we agree that the Opco shares should not be "ineligible property" for the purposes of the step-up in tax basis under paragraph 88(1)(c) of the Act. Consequently, we will recommend to the Minister of Finance that an amendment to paragraph 88(1)(c)(vi) of the Act be introduced to ensure that, in the circumstances described in your letter, the Opco shares will not be "ineligible property". We will recommend that such an amendment be effective for windings-up that occur after November 1994. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the government's next technical bill.

Yours sincerely,

Len Farber, Director General, Tax Legislation Division

Letter from Department of Finance, October 8, 1997:

Dear [xxx]

This is in response to your letter of October 7, 1997 to Davine Roach of this Department, on behalf of your client, [xxx], regarding subparagraph 88(1)(c)(v) of the *Income Tax Act*. In particular, you ask if we could confirm our intention to recommend to the Minister of Finance that a particular amendment be made to subparagraph 88(1)(c)(v).

We can confirm that we are prepared to recommend to the Minister of Finance that subparagraph 88(1)(c)(v) of the *Income Tax Act* be amended to refer to property transferred to the subsidiary by the parent or a person or partnership that was not (otherwise than because of a right referred to in paragraph 251(5)(b)) dealing at arm's length with the parent where the transfer was made as part of the series of transactions or events in which the parent last acquired control of the subsidiary. It will be recommended that such an amendment be effective for windings-up that begin after 1996.

If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Letter from Department of Finance, October 8, 1997:

Dear [xxx]

This is in response to your letter of September 24, 1997 to Davine Roach of the Department regarding amended subparagraph 88(1)(c)(vi) of the *Income Tax Act* as contained in Bill C-69. You ask if we would reconsider the appropriateness of the application of this subparagraph in view of the transaction described in your letter.

Based on our understanding of your transaction, the Newco shares will be considered to be substituted property for the purposes of subparagraph 88(1)(c)(vi) of the *Income Tax Act*. As a result, the partnership interests distributed to Buyco on the winding-up of Newco will be considered to be ineligible property for the purposes of the step-up in cost under paragraph 88(1)(c) of the *Income Tax Act*.

We are prepared to recommend to the Minister of Finance that the income tax provisions be amended so that in the transaction you describe the Newco shares will not be considered to be substituted property for the purposes of subparagraph 88(1)(c)(vi) of the *Income Tax Act*. It will be recommended that such an amendment have the same effective date as currently provided for proposed paragraph 88(1)(c.3) of the *Income Tax Act* included in former Bill C-69.

If the recommendation is acted upon, I would anticipate that the amendment would be included in either the bill that replaces former Bill C-69 or a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Letter from Department of Finance, August 28, 1997:

Dear [xxx]

This is in response to your letter of August 26, 1997 regarding proposed paragraph 88(1)(c.3) of the *Income Tax Act*. You state that the current wording of proposed paragraph 88(1)(c.3) is too restrictive thereby rendering a capital property that would otherwise qualify for the step-up in cost under paragraph 88(1)(c) of the *Income Tax Act* to be an ineligible property for this purpose.

Based on our understanding of the facts of the so-called Dual Offer and the Amalgamation Squeeze Out described in your letter, certain capital property owned by the subsidiary since the Parent last acquired control of the subsidiary and distributed to the Parent on the winding-up of the subsidiary does not technically qualify for the step-up in cost under paragraph 88(1)(c) of the *Income Tax Act*. This is as a consequence of certain transitory transactions which were facilitating in nature and which may be considered to have occurred during the series of transactions or events that included the acquisition of control of the subsidiary by the Parent and the winding-up of the subsidiary into the Parent.

Under the Dual Offer, shares of the Parent, a taxable Canadian corporation, (the "Dual Shares"), were issued as consideration for the acquisition of the shares of the subsidiary by a wholly-owned subsidiary corporation of the Parent.

Under the Amalgamation Squeeze Out, shares of the subsidiary, (the "Amalco Shares"), which subsidiary was formed on the amalgamation of two or more corporations one of which was a wholly-owned subsidiary corporation of the Parent, were issued on the amalgamation in exchange for the shares of a predecessor corporation and were redeemed immediately after the amalgamation for money or shares of the Parent.

From a tax policy perspective, the Dual Shares and the Amalco Shares should not, in and by themselves, cause the capital property distributed to the parent on the winding-up of the subsidiary to be ineligible property for the purposes of the step-up in cost under paragraph 88(1)(c) of the *Income Tax Act*. While Revenue Canada's strict application of the law is that the issue of the Dual Shares and the Amalco Shares is part of the series of transactions that includes the acquisition of control by the Parent of the subsidiary and the winding-up of the subsidiary, we believe that there is scope to interpret these provisions in a manner consistent with the policy intent underlying the provisions. We intend to pursue this approach further with Revenue Canada.

Should Revenue Canada continue to maintain its position with respect to the Dual Shares and the Amalco Shares we are prepared to recommend to the Minister of Finance that a technical amendment be made to the income tax provisions to ensure that the tax policy intent of those provisions is more properly reflected in the law. In this context, we would recommend that paragraph 88(1)(c.3) of the *Income Tax Act* be amended to provide that such shares will not be considered to be substituted property for the purposes of clause 88(1)(c)(vi)(B) of the *Income Tax Act*. It would be recommended that such an amendment have the same effective date as is currently provided for proposed paragraph 88(1)(c.3) of the *Income Tax Act* in former Bill C-69. If the recommendation is acted upon, I would anticipate that such an amendment would be included in either the bill that replaces Bill C-69 or a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Letter from Department of Finance, June 19, 1997:

Dear [xxx]

This letter is in response to the letters to Ms. Davine Roach of the Department of Finance dated June 6 and 9, 1997 that were written by [xxx] on behalf of [xxx] and [xxx] [regarding the] proposed public takeover offer by [xxx] of [xxx]. These letters request an amendment to the *Income Tax Act* that would eliminate the negative effect subparagraph 88(1)(c)(vi) of the *Income Tax Act* has on the proposed takeover.

Based on our understanding of the facts as set out in the letters, [xxx] and his personal holding company [xxx] own shares of

[xxx]. Prior to the sale of the [xxx] shares to [xxx], [xxx] will transfer his [xxx] shares to [xxx] and [xxx] will then transfer the [xxx] shares to a newly incorporated company (Newco). The adjusted cost base and paid-up capital of the Newco shares will be increased by an amount equal to the so-called "safe income" that [xxx] had in [xxx] at the time of the transfer. [xxx] will then sell the Newco shares to Acquisico. Newco will be wound up into (or amalgamated with) Acquisico and the cost of the [xxx] shares acquired on the winding-up (or amalgamation) will be stepped-up in accordance with subsection 88(1) (or proposed subsection 87(11)) of the *Income Tax Act*. The acquisition of the shares of Newco by [xxx] will however cause the [xxx] shares to be ineligible property for the purpose of paragraph 88(1)(c) of the *Income Tax Act* with the result that on the winding-up (or [xxx] amalgamation) of Newco, Acquisico will be denied the step-up in the cost of the [xxx] shares.

We are prepared to recommend to the Minister of Finance that the income tax provisions be amended so that in the circumstances described herein the [xxx] shares will not be considered to be ineligible property of Newco for the purpose of paragraph 88(1)(c) of the *Income Tax Act*. It will be recommended that such an amendment have the same effective date as currently provided for proposed paragraph 88(1)(c.3) of the *Income Tax Act* included in former Bill C-69. If the recommendation is acted upon, I would anticipate that such an amendment would be included in either the bill that replaces former Bill C-69 or a future technical bill.

Yours sincerely,

David A. Dodge

1. of which a particular person referred to in subclause (I) is, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder, or

2. of which a particular person would be, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder if all the shares then owned by persons (other than specified persons) referred to in subclause (II) and acquired by those persons as part of the series were owned at that time by the particular person;

Related Provisions: 88(1)(c.2) — Specified person for 88(1)(c)(vi); 88(1)(c.3) — Property acquired in substitution, for purpose of 88(1)(c)(vi)(B); 88(1)(c.7) — Extended meaning of depreciable property; 88(1)(d.2) — When taxpayer last acquired control; 88(1)(d.3) — Where control acquired because of death; 88(1.7) — Where parent did not deal at arm's length; 88(4) — Amalgamation deemed not to be acquisition of control; 248(10) — Series of transactions or events; 256(6)–(9) — Whether control acquired. See additional Related Provisions at end of 88(1).

History: Subpara. 88(1)(c)(v) amended by 1998, c. 19, subsec. 118(2), applicable to windings-up that begin after 1996. The subpara. formerly read:

(v) property transferred to the subsidiary by the parent or by any person or partnership that was not, otherwise than because of a right referred to in paragraph 251(5)(b), dealing at arm's length with the parent, and

The portion of subpara. 88(1)(c)(vi) before subcl. (B)(I) and sub-subcl. 88(1)(c)(vi)(B)(III)2 amended by 1998, c. 19, subsecs. 118(3) and (4), that portion before subcl. (B)(I) applicable to windings-up that begin after June 20, 1996, other than windings-up that are part of an arrangement that was substantially advanced, as evidenced in writing, before June 21, 1996, and sub-subcl. 88(1)(c)(vi)(B)(III)2 applicable to windings-up that begin after November 1994. That portion and sub-subcl. formerly read:

(vi) property disposed of by the parent as part of the series of transactions or events that includes the winding-up where, as part of the series,

(A) the parent acquired control of the subsidiary, and

(B) the property or any other property acquired by any person in substitution therefor is acquired by

. . . . .

2. of which a particular person would be, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder if all the shares then owned by persons (other than specified persons) referred to in subclause (II) were owned at that time by the particular person;

The opening words of para. 88(1)(c) amended by 1995, c. 21, subsec. 55(3), applicable to windings-up that begin after February 22, 1994. The opening words formerly read:

(c) notwithstanding the reference to paragraph 87(2)(e.1) in paragraph (e.2), the cost to the parent of each property of the subsidiary distributed to the parent on the winding-up shall be deemed to be

Cl. 88(1)(c)(ii)(B) amended by 1995, c. 21, s. 31, applicable to windings-up that begin after July 13, 1990. Cl. (B) formerly read:

(B) any reduction of the cost amount to the subsidiary of the property made because of paragraph 80(1)(b) on the winding-up,

That portion of para. 88(1)(c) after cl. (ii)(B) amended by 1995, c. 3, subsec. 24(1), applicable to windings-up that begin after February 21, 1994 except that, in its application to a winding-up that begins after February 21, 1994 and before December 1994, cl. 88(1)(c)(vi)(B) shall be read as follows:

(B) the property or any other property acquired by any person in substitution therefor is acquired by

(I) a particular person (other than a specified person) that, at any time during the course of the series and before control of the subsidiary was last acquired by the parent, was a specified shareholder of the subsidiary, or

(II) any person (other than a specified person) that at any time during the course of the series did not deal at arm's length with a particular person (other than a specified person) referred to in subclause (I);

That portion of para. 88(1)(c) formerly read:

plus, where the property was a capital property (other than depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, the amount determined under paragraph (d) in respect thereof;

Cl. 88(1)(c)(ii)(A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(2), applicable to windings-up beginning after December 20, 1991. Cl. (c)(ii)(A) formerly read:

(A) the amount deemed by paragraph (a) to be the proceeds of disposition of the property

Subpara. 88(1)(c)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(3), applicable to windings-up beginning after July 13, 1990. Subpara. 88(1)(c)(ii) formerly read:

(ii) in any other case, the amount deemed by paragraph (a) to be the proceeds of disposition of the property,

Pre-RSC History: See end of subsec. 88(1).

Selected Cases [para. 88(1)(c)]: *Hollinger Inc. v. R.*, [1998] 4 C.T.C. 2424 (TCC) (Losses flow through and sale of unproductive investment does not change nature from capital to inventory).

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

I.T. Technical News: No. 9 (the backdoor butterfly rule).

(c.1) **[eligible capital property]** — for the purpose of determining after the winding-up the amount to be included under paragraph 14(1)(b) in computing the parent's income in respect of the business carried on by the subsidiary immediately before the winding-up, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined for Q in that definition in respect of that business immediately before the disposition;

History: Para. 88(1)(c.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(3), applicable to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary beginning after June 1988.

(c.2) **["specified person" and "specified shareholder"]** — for the purposes of this paragraph and subparagraph (c)(vi),

(i) "specified person" at any time means the parent and each person that would, if this Act were read without reference to paragraph 251(5)(b), be related to the parent at that time and, for this purpose, a person shall be deemed not to be related to the parent where it can reasonably be considered that one of the main purposes of one or more transactions or events was to cause the person to be related to the parent so as to prevent a property that was distributed to the parent on the winding-up from being an ineligible property for the purpose of paragraph (c),

(ii) where at any time a property is owned or acquired by a partnership or a trust,

(A) the partnership or the trust, as the case may be, shall be deemed to be a person that is a corporation having one class of issued shares, which shares have full voting rights under all circumstances,

(B) each member of the partnership or beneficiary under the trust, as the case may be, shall be deemed to own at that time the proportion of the number of issued shares of the capital stock of the corporation that

(I) the fair market value at that time of that member's interest in the partnership or that beneficiary's interest in the trust, as the case may be,

is of

(II) the fair market value at that time of all the members' interests in the partnership or beneficiaries' interests in the trust, as the case may be, and

(C) the property shall be deemed to have been owned or acquired at that time by the corporation, and

(iii) in determining whether a person is a specified shareholder of a corporation,

(A) the reference in the definition "specified shareholder" in subsection 248(1) to "or of any other corporation that is related to the corporation" shall be read as "or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation", and

Proposed Amendment — 88(1)(c.2)(iii)(A)

(A) the reference in the definition "specified shareholder" in subsection 248(1) to "the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation" shall be read as "the issued shares of any class (other than a specified class) of the capital stock of the corporation or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation", and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 39(2), will amend cl. 88(1)(c.2)(iii)(A) to read as above, applicable to windings-up that begin after November 1994.

Technical Notes: Subparagraph 88(1)(c.2)(iii) of the Act provides, for the purposes of paragraph 88(1)(c.2) and subparagraph 88(1)(c)(vi) of the Act, that an expanded definition of "specified shareholder" in subsection 248(1) of the Act is to be used. In particular, clause 88(1)(c.2)(iii)(A) provides that the definition of specified shareholder is to be read as including a reference to "or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of any class of the capital stock of the corporation" rather than the reference to "or of any corporation that is related to the corporation".

Amended clause 88(1)(c.2)(iii)(A) provides for a new modification to the expanded definition "specified shareholder" in subsection 248(1) of the Act. In particular, for the purposes of paragraph 88(1)(c.2) and subparagraph 88(1)(c)(vi), the definition of specified shareholder is to be read as including a reference to "the issued shares of any class (other than a specified class) of the capital stock of the corporation or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of any class of the capital stock of the corporation" rather than the reference to "or of any corporation that is related to the corporation". Proposed clause 88(1)(c.2)(iii)(A) ensures that in determining whether a person is a specified shareholder of a particular corporation, for the purposes of paragraph 88(1)(c.2) and subparagraph 88(1)(c)(vi), the person does not have to account for shares of a specified class. Specified class is a new expression and is defined in new paragraph 88(1)(c.8) of the Act.

(B) a corporation is deemed not to be a specified shareholder of itself;

Related Provisions: 88(1)(c.8) — Meaning of "specified class" for 88(1)(c.2)(iii)(A); 88(4) — Amalgamation deemed not to be acquisition of control.

History: Subpara. 88(1)(c.2)(iii) added by 1998, c. 19, subsec. 118(5), applicable to windings-up that begin after November 1994.

Para. 88(1)(c.2) added by 1995, c. 3, subsec. 24(2), applicable to windings-up that begin after February 21, 1994.

(c.3) **[substituted property]** — for the purpose of clause (c)(vi)(B), property acquired by any person in substitution for particular property or properties distributed to the parent on the winding-up includes

(i) property (other than a specified property) owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A) the fair market value of which is, at that time, wholly or partly attributable to the particular property or properties, and

(ii) property owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A) the fair market value of which is, at that time, determinable primarily by reference to the fair market value of, or to any proceeds from a disposition of, the particular property or properties

but does not include

(iii) money,

(iv) property that was not owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A), or

(v) property described in subparagraph (i) if the only reason the property is described in that subparagraph is because a specified property described in any of subparagraphs (c.4)(i) to (iv) was received as consideration for the acquisition of a

share of the capital stock of the subsidiary in the circumstances described in subparagraphs (c.4)(i) to (iv);

Related Provisions: 88(1)(c.4) — Meaning of specified property; 88(1)(c.6) — Where control acquired by way of articles of arrangement; 88(1)(c.7) — Extended meaning of depreciable property; 88(4) — Amalgamation deemed not to be acquisition of control; 248(5) — Substituted property; 256(6)–(9) — Whether control acquired.

History: Para. 88(1)(c.3) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994 except that, in its application to windings-up that began before June 21, 1996 and to windings-up that begin after June 20, 1996 that are part of an arrangement that was substantially advanced, as evidenced in writing, before June 21, 1996, the para. shall be read as follows:

(c.3) for the purpose of clause (c)(vi)(B), property acquired by any person in substitution for particular property or properties

(i) includes property owned by the person at any time after the acquisition of control referred to in clause (c)(vi)(A) the fair market value of which is, at that time, determinable primarily by reference to the fair market value of the particular property or properties or by reference to any proceeds from a disposition of the particular property or properties, but

(ii) does not include property that is money received as consideration for a disposition of the particular property or properties;

I.T. Technical News: No. 9 (the backdoor butterfly rule).

(c.4) **["specified property"]** — for the purposes of subparagraphs (c.3)(i) and (v), a specified property is

(i) a share of the capital stock of the parent that was received as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent or by a corporation that was a specified subsidiary corporation of the parent immediately before the acquisition,

(ii) an indebtedness that was issued by the parent as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent,

(iii) a share of the capital stock of a taxable Canadian corporation that was received as consideration for the acquisition of a share of the capital stock of the subsidiary by the taxable Canadian corporation or by the parent where the parent was a specified subsidiary corporation of the taxable Canadian corporation immediately before the acquisition,

(iv) an indebtedness of a taxable Canadian corporation that was issued by it as consideration for the acquisition of a share of the capital stock of the subsidiary by the taxable Canadian corporation or by the parent where the parent was a specified subsidiary corporation of the taxable Canadian corporation immediately before the acquisition,

(v) where the subsidiary was formed on the amalgamation of 2 or more predecessor corporations at least one of which was a subsidiary wholly-owned corporation of the parent, a share of the capital stock of the subsidiary

(A) that was issued on the amalgamation in exchange for a share of the capital stock of a predecessor corporation, and

(B) that was, immediately after the amalgamation, redeemed, acquired or cancelled by the subsidiary for money, and

(vi) where the subsidiary was formed on the amalgamation of 2 or more predecessor corporations at least one of which was a subsidiary wholly-owned corporation of the parent, a share of the capital stock of the parent

(A) that was issued on the amalgamation in exchange for a share of the capital stock of a predecessor corporation, and

(B) that was, immediately after the amalgamation, redeemed, acquired or cancelled by the parent for money;

Related Provisions: 88(1)(c.5) — Meaning of specified subsidiary corporation; 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.4) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994.

(c.5) **["specified subsidiary corporation"]** — for the purpose of paragraph (c.4), a corporation is a specified subsidiary corporation of another corporation, at any time, where the other corporation holds, at that time, shares of the corporation

(i) that give the shareholder 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) having a fair market value of 90% or more of the fair market value of all the issued shares of the capital stock of the corporation;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.5) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994.

(c.6) **[control acquired by way of articles of arrangement]** — for the purpose of paragraph (c.3) and notwithstanding subsection 256(9), where control of a corporation is acquired by way of articles of arrangement, that control is deemed to have been acquired at the end of the day on which the arrangement becomes effective;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.6) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after February 21, 1994.

(c.7) **[depreciable property]** — for the purpose of subparagraph (c)(iii), a leasehold interest in a depreciable property and an option to acquire a depreciable property are depreciable properties;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

History: Para. 88(1)(c.7) added by 1998, c. 19, subsec. 118(6), applicable to windings-up that begin after June 20, 1996.

Proposed Addition — 88(1)(c.8)

(c.8) **["specified class"]** — for the purpose of clause (c.2)(iii)(A), a specified class of the capital stock of a corporation is a class of shares of the capital stock of the corporation where

(i) the paid-up capital in respect of the class was not, at any time, less than the fair market value of the consideration for which the shares of that class then outstanding were issued,

(ii) the shares are non-voting in respect of the election of the Board of Directors of the corporation, except in the event of a failure or default under the terms or conditions of the shares,

(iii) under neither the terms and conditions of the shares nor any agreement in respect of the shares are the shares convertible into or exchangeable for shares other than shares of a specified class of the capital stock of the corporation, and

(iv) under neither the terms and conditions of the shares nor any agreement in respect of the shares is any holder of the shares entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length an amount (excluding any premium for early redemption) greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 39(3), will add para. 88(1)(c.8), applicable to windings-up that begin after November 1994.

Technical Notes: New paragraph 88(1)(c.8) of the Act is relevant in determining whether a person is a specified shareholder for the purposes of a divisive reorganization commonly known as a "backdoor butterfly" described in subparagraph 88(1)(c)(vi) of the Act. (See the commentary on subclause 88(1)(c)(vi)(B)(III) of the Act re the significance of specified shareholder status.) Shares of a specified class are considered to be financing or debt-like shares and consequently need not be counted in determining whether a person is a specified shareholder of a corporation.

New paragraph 88(1)(c.8) provides that shares of the capital stock of a corporation will qualify as shares of a specified class where

1) the paid-up capital in respect of the class was not at any time less than the fair market value of the consideration for which the shares of that class then outstanding were issued;

2) the shares are non-voting in respect of the election of the Board of Directors of the corporation, except in the event of a failure or default under the terms or conditions of the shares;

3) the shares are not convertible into or exchangeable for any other shares (other than shares of a specified class) of the capital stock of the corporation; and

4) the holder of the share is not entitled to receive on the redemption, cancellation or acquisition of the share by the corporation or any person who does not deal at arm's length with the corporation, an amount (excluding any premium for early redemption) greater than the fair market value of the consideration for which the share was issued plus the amount of any unpaid dividends on the share.

(d) **[increase in cost amounts (bump)]** — the amount determined under this paragraph in respect of each property of the subsidiary distributed to the parent on the winding-up is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount in respect of any property owned by the subsidiary immediately before the winding-up, equal to the cost amount to the subsidiary of the property immediately before the winding-up, plus the amount of any money of the subsidiary on hand immediately before the winding-up,

exceeds the total of

(B) all amounts each of which is the amount of any debt owing by the subsidiary, or of any other obligation of the subsidiary to pay any amount, that was outstanding immediately before the winding-up, and

(C) the amount of any reserve (other than a reserve referred to in paragraph 20(1)(n), subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) of this Act or in subsection 64(1) or (1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as those two provisions read immediately before November 3,[11] 1981) deducted in computing the subsidiary's income for its taxation year during which its assets were distributed to the parent on the winding-up, and

(i.1) the total of all amounts each of which is an amount in respect of any share of the capital stock of the subsidiary disposed of by the parent on the winding-up or in contemplation of the winding-up, equal to the total of all amounts received by the parent or by a corporation with which the parent was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) in respect of the subsidiary) in respect of

(A) taxable dividends on the share or on any share (in this subparagraph referred to as a "replaced share") for which the share or a replaced share was substituted or exchanged to the extent that the amounts thereof were deductible from the recipient's income for any taxation year by virtue of section 112 or subsection 138(6) and were not amounts on which the recipient was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977, or

(B) capital dividends and life insurance capital dividends on the share or on any share (in this subparagraph referred to as a "replaced share") for which a share or a replaced share was substituted or exchanged,

as is designated by the parent in respect of that capital property in its return of income under this Part for its taxation year in which the subsidiary was so wound up, except that

(ii) in no case shall the amount so designated in respect of any such capital property exceed the amount, if any, by which the fair market value of the property at the time the parent last acquired control of the subsidiary exceeds the cost amount to the subsidiary of the property immediately before the winding-up, and

(iii) in no case shall the total of amounts so designated in respect of all such capital properties exceed the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of the amounts determined under subparagraphs (i) and (i.1).

Related Provisions: 88(1)(d.2) — When taxpayer last acquired control; 88(1)(d.3) — Where control acquired because of death; 88(1.7) — Where parent did not deal at arm's length; 88(4) — Amalgamation deemed not to be acquisition of control; 256(6)–(9) — Whether control acquired. See additional Related Provisions at end of 88(1).

History: The portion of para. 88(1)(d) after subpara. (iii) repealed by 1998, c. 19, subsec. 118(7), applicable to windings-up that begin after February 21, 1994. That portion formerly read:

and for the purposes of this paragraph, where a parent corporation has been incorporated or otherwise formed after the time any other corporation (other than a corporation acquired by it from a person with whom it was dealing at arm's length) with which it did not deal at arm's length at any time prior to the winding-up was incorporated

[11] *Sic.* The date should be November 13.

or otherwise formed, the parent corporation shall be deemed to have been in existence from the time of formation of the other corporation and to have been not dealing at arm's length with the other corporation from that time;

The opening words of para. 88(1)(d) amended by 1995, c. 3, subsec. 24(3), applicable to windings-up that begin after February 21, 1994. The opening words formerly read:

(d) the amount determined under this paragraph in respect of each property that was a capital property (other than property transferred in the course of a reorganization described in paragraph 55(3)(b) in the course of which a dividend was received by a corporation to which subsection 55(2) would, but for paragraph 55(3)(b), apply where the winding-up of the subsidiary was part of a transfer, directly or indirectly, of property of a particular corporation to a transferee, within the meaning assigned by paragraph 55(3)(b), property transferred to the subsidiary by the parent or by any person or partnership that was not, otherwise than because of a right referred to in paragraph 251(5)(b), dealing at arm's length with the parent, or a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of

That portion of para. 88(1)(d) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(4), applicable to windings-up after September 1988, except that, in its application to such windings-up beginning before July 14, 1990, that portion shall be read as follows:

"(d) the amount determined under this paragraph in respect of each property that was a capital property (other than property transferred in the course of a reorganization described in paragraph 55(3)(b) in the course of which a dividend was received by a corporation to which subsection 55(2) would, but for paragraph 55(3)(b), apply where the winding-up of the subsidiary was part of a transfer, directly or indirectly, of property of a particular corporation to a transferee, within the meaning assigned by paragraph 55(3)(b), or a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of".

That portion formerly read:

(d) the amount determined under this paragraph in respect of each property that was a capital property (other than property transferred in the course of a series of transactions or events to which subsection 55(2) would, but for paragraph 55(3)(b), apply or a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the total determined under subparagraph (b)(ii) exceeds the total of

Cl. 88(1)(d)(i)(C) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(5), applicable to windings-up beginning after 1989. Cl. (d)(i)(C) formerly read:

(C) the amount of any reserve (other than a reserve referred to in paragraph 20(1)(n) or subparagraph 40(1)(a)(iii) of this Act or subsection 64(1) or (1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) deducted in computing the subsidiary's income for its taxation year during which its assets were distributed to the parent on the winding-up, and

That portion of subpara. 88(1)(d)(i.1) preceding cl. (A) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(6), to add "(otherwise than by reason of a right referred to in paragraph 251(5)(b) in respect of the subsidiary)", applicable to windings-up beginning after 1986, except that, in its application with respect to windings-up beginning before July 1988, that portion shall be read without reference to the phrase "or in contemplation of the winding-up" therein.

Pre-RSC History: See end of subsec. 88(1).

I.T. Application Rules: 26(5)(c)(i)(C) (where property owned since before 1972); 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

I.T. Technical News: No. 16 (*Parthenon Investments* case).

Advance Tax Rulings: ATR-67: Increase in the cost of property on the winding-up of a wholly-owned subsidiary.

(d.1) **[rules not applicable]** — subsection 84(2) and section 21 of the *Income Tax Application Rules* do not apply to the winding-up of the subsidiary, and subsections 13(21.2) and 14(12) do not apply to the winding-up of the subsidiary with respect to property acquired by the parent on the winding-up;

History: Para. 88(1)(d.1) amended by 1998, c. 19, subsec. 118(8), applicable to windings-up that begin after April 26, 1995 except that, in its application to windings-up that began before 1996, the reference in para. 88(1)(d.1) to "subsections 13(21.2) and 14(12)" shall be read as a reference to "subsections 13(21.2), 14(12) and 85(5.1)". The para. formerly read:

(d.1) subsections 84(2) and 85(5.1) and section 21 of the *Income Tax Application Rules* are not applicable to the winding-up of the subsidiary;

(d.2) **[when control acquired]** — in determining, for the purposes of this paragraph and paragraphs (c) and (d), the time at which a person or group of persons (in this paragraph and paragraph (d.3) referred to as the "acquirer") last acquired control of the subsidiary, where control of the subsidiary was acquired from another person or group of persons (in this paragraph referred to as the "vendor") with whom the acquirer was not (otherwise than solely because of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the acquirer is deemed to have last acquired control of the subsidiary at the earlier of

(i) the time at which the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference in that subsection to "another corporation" were read as "a person" and the references in that subsection to "the other corporation" were read as "the person") of the subsidiary, and

(ii) the time at which the vendor was deemed for the purpose of this paragraph to have last acquired control of the subsidiary;

Related Provisions: 88(1)(d.3) — Where control acquired because of death; 88(4) — Amalgamation deemed not to be acquisition of control; 256(6)–(9) — Whether control acquired. See additional Related Provisions at end of 88(1).

History: Para. 88(1)(d.2) amended by 1998, c. 19, subsec. 118(9), applicable to windings-up that begin after December 20, 1991. The para. formerly read:

(d.2) in determining, for the purposes of this paragraph and paragraphs (c) and (d), the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired from a person or group of persons (in this paragraph referred to as the "vendor") with whom the taxpayer was not (otherwise than because of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference therein to "another corporation" were read as "a person" and the references therein to "the other corporation" were read as "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control, except that in determining the time that a particular person or group of persons last acquired control of a corporation where at any time control of the corporation is acquired by the particular person or group of persons because of a bequest or an inheritance of shares of the capital stock of the corporation, for the purposes of this paragraph and subsection 186(2) in its application to this paragraph, the particular person or group of persons shall be deemed at that time, and at any time before that time, to have dealt at arm's length with the person who bequeathed the shares, or from whom the shares were inherited, and each other person who is related to that person;

Para. 88(1)(d.2) substituted by 1994, c. 21, subsec. 40(1), applicable to windings-up that begin after December 20, 1991. That para. formerly read:

(d.2) in determining for the purposes of this paragraph and paragraphs (c) and (d) the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired from a person or group of persons (in this paragraph referred to as the "vendor") with whom the taxpayer was not (otherwise than because

of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference therein to "another corporation" were read as a reference to "a person" and the references therein to "the other corporation" were read as references to "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control, except that, in determining the time that a particular taxpayer last acquired control of a corporation where at any time control of the corporation is acquired by the particular taxpayer because of a bequest or an inheritance of shares of the capital stock of the corporation, for the purposes of this paragraph and subsection 186(2) in its application to this paragraph, the particular taxpayer shall be deemed at that time, and at any time before that time, to have dealt at arm's length with the person who bequeathed the shares, or from whom the shares were inherited, and each other person who is related to that person;

Para. 88(1)(d.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(4), applicable to windings-up beginning after December 20, 1991. Para (d.2) formerly read:

(d.2) in determining for the purposes of this paragraph and paragraphs (c) and (d) the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired (otherwise than by way of bequest or inheritance) from a person or group of persons (in this paragraph referred to as the "vendor") with whom the taxpayer was not (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning assigned by subsection 186(2) if the reference therein to "another corporation" were read as a reference to "a person" and the references therein to "the other corporation" were read as references to "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control;

Pre-RSC History: See end of subsec. 88(1).

(d.3) **[control acquired due to death]** — for the purposes of paragraphs (c), (d) and (d.2), where at any time control of a corporation is last acquired by an acquirer because of an acquisition of shares of the capital stock of the corporation as a consequence of the death of an individual, the acquirer is deemed to have last acquired control of the corporation immediately after the death from a person who dealt at arm's length with the acquirer;

Related Provisions: 88(4) — Amalgamation deemed not to be acquisition of control; 256(6)–(9) — Whether control acquired. See additional Related Provisions at end of 88(1).

History: Para. 88(1)(d.3) added by 1998, c. 19, subsec. 118(9), applicable to windings-up that begin after December 20, 1991.

(e) [Repealed under former Act]

(e.1) **[reserves]** — the subsidiary may, for the purposes of computing its income for its taxation year during which its assets were transferred to, and its obligations were assumed by, the parent on the winding-up, claim any reserve that would have been allowed under this Part if its assets had not been transferred to, or its obligations had not been assumed by, the parent on the winding-up and notwithstanding any other provision of this Part, no amount shall be included in respect of any reserve so claimed in computing the income of the subsidiary for its taxation year, if any, following the year in which its assets were transferred to or its obligations were assumed by the parent;

(e.2) **[rules applicable]** — paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (z.1), (z.2), (aa), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references in those provisions to

(i) "amalgamation" were read as "winding-up",

(ii) "predecessor corporation" were read as "subsidiary",

(iii) "new corporation" were read as "parent",

(iv) "its first taxation year" were read as "its taxation year during which it received the assets of the subsidiary on the winding-up",

(v) "its last taxation year" were read as "its taxation year during which its assets were distributed to the parent on the winding-up",

(vi) "predecessor corporation's gain" were read as "subsidiary's gain",

(vii) "predecessor corporation's income" were read as "subsidiary's income",

(viii) "new corporation's income" were read as "parent's income",

(ix) [Repealed under former Act]

(x) "any predecessor private corporation" were read as "the subsidiary (if it was a private corporation at the time of the winding-up)",

(xi), (xii) [Repealed]

(xiii) "two or more corporations" were read as "a subsidiary",

(xiv), (xv) [Repealed]

(xvi) "the life insurance capital dividend account of any predecessor corporation immediately before the amalgamation" were read as "the life insurance capital dividend account of the subsidiary at the time the subsidiary was wound-up",

(xvii) "predecessor corporation's refundable Part VII tax on hand" were read as "subsidiary's refundable Part VII tax on hand",

(xviii) "predecessor corporation's Part VII refund" were read as "subsidiary's Part VII refund",

(xix) "predecessor corporation's refundable Part VIII tax on hand" were read as "subsidiary's refundable Part VIII tax on hand",

(xx) "predecessor corporation's Part VIII refund" were read as "subsidiary's Part VIII refund", and

(xxi) "predecessor corporation's cumulative offset account" were read as "subsidiary's cumulative offset account";

Related Provisions: 88(1)(g) — Where subsidiary was insurance corporation; 126.1(5) — UI premium tax credit — specified employer defined. See additional Related Provisions at end of 88(1).

History: The openings words of para. 88(1)(e.2) amended and subparas. 88(1)(e.2)(xiv) and (xv) repealed by 1998, c. 19, subsecs. 118(10) and (11), applicable to windings-up that begin after June 1995. The opening words and subparas. formerly read:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (y.1), (z.1), (z.2), (aa), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

. . . . .

(xiv) "predecessor corporation's preferred-earnings amount" were read as "subsidiary's preferred-earnings amount",

(xv) "new corporation's preferred-earnings amount" were read as "parent's preferred-earnings amount",

The opening words of para. 88(1)(e.2) amended by 1996, c. 21, subsec. 16(1), applicable to windings-up that begin after June 1995. The opening words formerly read:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (y.1), (z.1), (z.2), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

The opening words of para. 88(1)(e.2) amended by 1995, c. 21, subsec. 55(4), applicable to windings-up that begin after February 22, 1994. The opening words formerly read:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (g) to (l), (l.3) to (u), (x), (y.1), (z.1), (z.2), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

That portion of para. 88(1)(e.2) preceding subpara. (i) amended by 1994, c. 7, Sch. VI (1992, c. 29), s. 4, to add reference to para. 87(2)(uu), applicable to windings-up beginning after 1991.

That portion of para. 88(1)(e.2) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(7), to delete reference to para. 87(2)(e.2), applicable to windings-up ending after June 18, 1987, except that

(a) in its application to windings-up beginning before 1988, the para. shall be read without the reference to "(tt)", and

(b) in its application with respect to windings-up beginning before May 1988, the para. shall be read without the reference to "(z.2)".

Subparas. 88(1)(e.2)(xi), (xii) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(8), applicable to the computation after July 13, 1990 of capital dividend accounts. Those subparas. formerly read:

(xi) "predecessor corporation's capital dividend account" were read as "subsidiary's capital dividend account",

(xii) "the capital dividend account of any predecessor corporation immediately before the amalgamation" were read as "the capital dividend account of the subsidiary at the time the subsidiary was wound up",

Pre-RSC History: See end of subsec. 88(1).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-330R: Dispositions of capital property subject to warranty, covenant, etc.; IT-502: Employee benefit plans and employee trusts. See also lists at end of subsec. 88(1) and s. 88.

(e.3) **[investment tax credit]** — for the purpose of computing the parent's investment tax credit at the end of any particular taxation year ending after the subsidiary was wound up,

(i) property acquired or expenditures made by the subsidiary or an amount included in the investment tax credit of the subsidiary by virtue of paragraph (b) of the definition "investment tax credit" in subsection 127(9) in a taxation year (in this paragraph referred to as the "expenditure year") shall be deemed to have been acquired, made or included, as the case may be, by the parent in its taxation year in which the expenditure year of the subsidiary ended, and

(ii) there shall be added to the amounts otherwise determined for the purposes of paragraphs (f) to (k) of the definition "investment tax credit" in subsection 127(9) in respect of the parent for the particular year

(A) the amounts that would have been determined in respect of the subsidiary for the purposes of paragraph (f) of the definition "investment tax credit" in subsection 127(9) for its taxation year in which it was wound up if the reference therein to "a preceding taxation year" were read as a reference to "the year or a preceding taxation year",

(B) the amounts determined in respect of the subsidiary for the purposes of paragraphs (g) to (i) and (k) of the definition "investment tax credit" in subsection 127(9) for its taxation year in which it was wound up, and

(C) the amount determined in respect of the subsidiary for the purposes of paragraph (j) of the definition "investment tax credit" in subsection 127(9) for its taxation year in which it was wound up except that, for the purpose of the calculation in this clause, where control of the subsidiary has been acquired by a person or group of persons (each of whom is referred to in this clause as the "purchaser") at any time (in this clause referred to as "that time") before the end of the taxation year in which the subsidiary was wound up, there may be added to the amount determined under subparagraph 127(9.1)(d)(i) in respect of the subsidiary the amount, if any, by which that proportion of the amount that, but for subsections 127(3) and (5) and sections 126, 127.2 and 127.3, would be the parent's tax payable under this Part for the particular year, that,

(I) where the subsidiary carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount was included in computing the subsidiary's investment tax credit for its taxation year in which it was wound up, and the parent carried on the particular business throughout the particular year, the amount, if any, by which the total of all amounts each of which is the parent's income for the particular year from the particular business, or the parent's income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the subsidiary in carrying on the particular business before that time, exceeds the total of the amounts, if any, deducted for the particular year under paragraph 111(1)(a) or (d) by the parent in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business

is of the greater of

(II) the amount determined under subclause (I), and

(III) the parent's taxable income for the particular year

exceeds the amount, if any, calculated under subparagraph 127(9.1)(d)(i) in respect of the particular business or the other business, as the case may be, in respect of the parent at the end of the particular year

to the extent that such amounts determined in respect of the subsidiary may reasonably be considered to have been included in computing the parent's investment tax credit at the end of the particular year by virtue of subparagraph (i),

and, for the purposes of the definitions "first term shared-use-equipment" and "second term shared-use-equipment" in subsection 127(9), the parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary;

Related Provisions: 88(1.3) — Rules relating to computation of income and tax of parent; 256(6)–(9) — Whether control acquired. See additional Related Provisions at end of 88(1).

History: Subcl. 88(1)(e.3)(ii)(C)(I) substituted by 1994, c. 21, subsec. 40(2), applicable to windings-up that begin after December 21, 1992. That subcl. formerly read:

(I) where the subsidiary carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount was included in computing the subsidiary's investment tax credit for its taxation year in which it was wound up, the amount, if any, by which the total of all amounts each of which is the parent's income for the particular year from the particular business, or the parent's income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the subsidiary in carrying on the particular business before that time, exceeds the total of the amounts, if any, deducted by the parent under paragraph 111(1)(a) or (d) for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business

The words following subpara. 88(1)(e.3)(ii) added by 1994, c. 8, s. 10, applicable to taxation years ending after December 2, 1992.

Pre-RSC History: See end of subsec. 88(1).

(e.4) **[employment tax credit]** — for the purpose of computing the parent's employment tax credit at the end of any particular taxation year ending after the subsidiary was wound up,

(i) the subsidiary's taxpayer employment credits for any taxation year (in this paragraph referred to as the "employment year") and any amounts required to be added by virtue of subsection 127(15) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the subsidiary's employment tax credit at the end of the employment year shall be deemed to be taxpayer employment credits of the parent for, and amounts required to be added by virtue of that subsection in computing the parent's employment tax credit at the end of, its taxation year in which the employment year of the subsidiary ended, and

(ii) there shall be added to the amounts otherwise determined under paragraphs 127(16)(c) and (d) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the parent for the particular taxation year, the amounts that would have been determined under those paragraphs in respect of the subsidiary for its taxation year in which it was wound-up if the reference in paragraph 127(16)(c) of that Act to "the five immediately preceding taxation years" were read as a reference to "that taxation year or the five immediately preceding taxation years" to the extent that those amounts determined in respect of the subsidiary may reasonably be considered to be in respect of a taxpayer employment credit or an amount required to be added by virtue of subsection 127(15) of that Act that is included in computing the parent's employment tax credit at the end of the particular year by virtue of subparagraph (i);

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(e.5) **[refundable dividend tax on hand]** — [Repealed]

History: Para. 88(1)(e.5) repealed by 1996, c. 21, subsec. 16(2), applicable to windings-up that begin after June 1995. The para. formerly read:

(e.5) for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the parent at the end of any particular taxation year ending after the subsidiary was wound up, the amount, if any, by which

(i) the subsidiary's refundable dividend tax on hand at the end of its taxation year during which it was wound up

exceeds

(ii) the subsidiary's dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year referred to in subparagraph (i)

shall, if

(iii) the subsidiary was a private corporation at the end of the year during which it was wound up, and

(iv) the parent was a private corporation

(A) where the subsidiary was wound up in the particular year, at the time immediately after the winding-up, and

(B) in any other case, continuously from the time of the winding-up until the time immediately after the beginning of the particular year,

be added to the total determined for the particular year under subsection 129(3) from which the total of amounts determined under paragraphs 129(3)(c) to (e) is subtracted, except that no amount shall be so added in respect of the subsidiary where subsection 129(1.2) would have applied to deem a dividend paid by the subsidiary immediately before the winding-up not to be a taxable dividend for the purpose of subsection 129(1);

Para. 88(1)(e.5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(5), applicable to the computation of refundable dividend tax on hand (within the meaning assigned by subsec. 129(3) as amended) for 1993 *et seq.* Para. (e.5) formerly read:

(e.5) for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the parent at the end of any taxation year ending after the subsidiary was wound up, the amount, if any, by which

(i) the subsidiary's refundable dividend tax on hand at the end of its taxation year during which it was wound up

exceeds

(ii) the subsidiary's dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year referred to in subparagraph (i)

shall, if the parent has been a private corporation continuously from the time of the winding-up to the end of the taxation year, be added to the total determined under subsection 129(3) from which the parent's dividend refunds are to be subtracted, except that the amount to be added to the total determined under subsection 129(3) shall be deemed to be nil where, had a dividend been paid by the subsidiary immediately before the winding-up, subsection 129(1.2) would have applied to deem the dividend not to be a taxable dividend;

Pre-RSC History: See end of subsec. 88(1).

(e.6) **[charitable donations]** — where a subsidiary has made a gift in a taxation year (in this section referred to as the "gift year"), for the purposes of computing the amount deductible under section 110.1 by the parent for its taxation years ending after the subsidiary was wound up, the parent shall be deemed to have made a gift in each of its taxation years in which a gift year of the subsidiary ended equal to the amount, if any, by which the total of all gifts made by the subsidiary in the gift year exceeds the total of all amounts deducted by the subsidiary under section 110.1 of this Act or paragraph 110(1)(a), (b) or (b.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of those gifts;

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(e.61) **[donation of non-qualifying securities]** — the parent is deemed for the purpose of section 110.1 to have made any gift deemed by subsection 118.1(13) to have been made by the subsidiary after the subsidiary ceased to exist;

History: Para. 88(1)(e.61) added by 1998, c. 19, s. 16, applicable after July 1997.

(e.7) **[foreign tax credit]** — for the purposes of

(i) determining the amount deductible by the parent under subsection 126(2) for any taxation year com-

mencing after the commencement of the winding-up, and

(ii) determining the extent to which subsection 126(2.3) applies to reduce the amount that may be claimed by the parent under paragraph 126(2)(a),

any unused foreign tax credit (within the meaning of subsection 126(7)) of the subsidiary in respect of a country for a particular taxation year (in this section referred to as the "foreign tax year"), to the extent that it exceeds the total of all amounts each of which is claimed in respect thereof under paragraph 126(2)(a) in computing the tax payable by the subsidiary under this Part for any taxation year, shall be deemed to be an unused foreign tax credit of the parent for its taxation year in which the subsidiary's foreign tax year ended;

Related Provisions: 88(1.3) — Rules relating to computation of income and tax of parent. See additional Related Provisions at end of 88(1).

(e.8) **[investment tax credit — expenditure limit]** — for the purpose of applying subsection 127(10.2) to any corporation (other than the subsidiary)

(i) where the parent is associated with another corporation in a taxation year (in this paragraph referred to as the "current year") of the parent that begins after the parent received an asset of the subsidiary on the winding-up and that ends in a calendar year,

(A) the parent's taxable income for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year) is deemed to be the total of

(I) its taxable income for that last year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that last year), and

(II) the total of the subsidiary's taxable incomes for its taxation years that ended in that preceding calendar year (determined without reference to clause (B) and before taking into consideration the specified future tax consequences for those years), and

(B) the subsidiary's taxable income for each of its taxation years that ends after the first time that the parent receives an asset of the subsidiary on the winding-up of the subsidiary is deemed to be nil, and

(ii) where the parent received an asset of the subsidiary on the winding-up before the current year and is not associated with any corporation in the current year, the parent's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) is deemed to be the total of

(A) its taxable income for that preceding taxation year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that preceding taxation year), and

(B) the total of the subsidiary's taxable incomes for its taxation years that ended in the calendar year in which that preceding taxation year ended (determined before taking into consideration the specified future tax consequences for those years);

History: Para. 88(1)(e.8) amended by 1997, c. 25, subsec. 19(1), applicable for the purpose of applying subsecs. 127(10.1) and (10.2) to taxation years that begin after 1995, except that, for taxation years that begin in 1996, the expression "any corporation (other than the subsidiary)" shall be read as "the parent". For windings-up that begin after May 23, 1985, para. (e.8) shall be read without reference to the expression "the definition "qualifying corporation" in subsection 127.1(2) and subparagraph 157(1)(b)(i)". Para. (e.8) formerly read:

(e.8) for the purposes of subsection 127(10.1), the definition "qualifying corporation" in subsection 127.1(2) and subparagraph 157(1)(b)(i),

(i) the taxable income of the parent for its taxation year during which it received the assets of the subsidiary on the winding-up shall be deemed to be the total of its taxable income for that year as otherwise determined and the taxable incomes of the subsidiary for its taxation years ending in the calendar year in which that year ended, and

(ii) the business limit of the parent for that year shall be deemed to be the total of its business limit for that year as otherwise determined and the business limits of the subsidiary for its taxation years ending in the calendar year in which that year ended;

That portion of para. 88(1)(e.8) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(9), to substitute "the definition "qualifying corporation" in subsection 127.1(2)" for "paragraph 127.1(2)(a)", applicable to windings-up beginning after May 23, 1985.

Pre-RSC History: See end of subsec. 88(1).

(e.9) **[instalments and refundable ITCs]** — for the purpose of applying subparagraph 157(1)(b)(i) and the definition "qualifying corporation" in subsection 127.1(2) to any corporation (other than the subsidiary)

(i) where the parent is associated with another corporation in a taxation year (in this paragraph referred to as the "current year") of the parent that begins after the parent received an asset of the subsidiary on the winding-up and ends in a calendar year,

(A) the parent's taxable income for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year) is deemed to be the total of

(I) its taxable income for that last year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that last year), and

(II) the total of the subsidiary's taxable incomes for its taxation years that ended in that preceding calendar year (determined without reference to subparagraph (iii) and before taking into consideration the specified future tax consequences for those years), and

(B) the parent's business limit for that last year is deemed to be the total of

(I) its business limit (determined before applying this paragraph to the winding-up) for that last year, and

(II) the total of the subsidiary's business limits (determined without reference to subparagraph (iii)) for its taxation years that ended in that preceding calendar year,

(ii) where the parent received an asset of the subsidiary on the winding-up before the current year and subparagraph (i) does not apply,

(A) the parent's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) is deemed to be the total of

(I) its taxable income for that preceding taxation year (determined before applying this paragraph to the winding-up and before taking into consideration the specified future tax consequences for that preceding taxation year), and

(II) the total of the subsidiary's taxable incomes for the subsidiary's taxation years that end in the calendar year in which that preceding taxation year ended (determined before taking into consideration the specified future tax consequences for those years), and

(B) the parent's business limit for that preceding taxation year is deemed to be the total of

(I) its business limit (determined before applying this paragraph to the winding-up) for that preceding taxation year, and

(II) the total of the subsidiary's business limits (determined without reference to subparagraph (iii)) for the subsidiary's taxation years that end in the calendar year in which that preceding taxation year ended, and

(iii) where the parent and the subsidiary are associated with each other in the current year, the subsidiary's taxable income and the subsidiary's business limit for each taxation year that ends after the first time that the parent receives an asset of the subsidiary on the winding-up are deemed to be nil;

History: Para. 88(1)(e.9) added by 1997, c. 25, subsec. 19(2), applicable to windings-up that begin after May 23, 1985, except that

(a) the expression "any corporation (other than the subsidiary)" shall be read as "the parent" with respect to windings-up that begin before 1997;

(b) for the purpose of applying para. (e.9) for the purpose of the definition "qualifying corporation" in subsec. 127.1(2), the business limits referred to in para. (e.9), for taxation years that ended after June 1994 and began before 1996, shall be determined under s. 125 as that section read in its application to taxation years that ended before July 1994; and

(c) subpara. (e.9)(i) does not apply

(i) for the purpose of applying the definition "qualifying corporation" in subsec. 127.1(2) to taxation years that ended before July 1994, and

(ii) for the purpose of applying subpara. 157(1)(b)(i) to taxation years that end before 1998.

(f) **[depreciable property]** — where property that was depreciable property of a prescribed class of the subsidiary has been distributed to the parent on the winding-up and the capital cost to the subsidiary of the property exceeds the amount deemed by paragraph (a) to be the subsidiary's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) notwithstanding paragraph (c), the capital cost to the parent of the property shall be deemed to be the amount that was the capital cost of the property to the subsidiary, and

(ii) the excess shall be deemed to have been allowed to the parent in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the parent of the property;

I.T. Application Rules: 20(1.2) (transfer of depreciable property by person who owned it before 1972).

(g) **[insurance corporation]** — where the subsidiary was an insurance corporation,

(i) for the purposes of paragraphs 12(1)(d), (e), (e.1), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), subsection 20(22), sections 138, 138.1, 140, 142 and 148 and Part XII.3, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary, and

(ii) for the purpose of determining the amount of the gross investment revenue required to be included under subsection 138(9) in the income of the subsidiary and the parent and the amount of gains and losses of the subsidiary and the parent from property used by them in the year or held by them in the year in the course of carrying on an insurance business in Canada

(A) the subsidiary and the parent shall, in addition to their normal taxation years, be deemed to have had a taxation year ending immediately before the time when the property of the subsidiary was transferred to, and the obligations of the subsidiary were assumed by, the parent on the winding-up, and

(B) for the taxation years of the subsidiary and the parent following the time referred to in clause (A), the property transferred to, and the obligations assumed by, the parent on the winding-up shall be deemed to have been transferred or assumed, as the case may be, on the last day of the taxation year ending immediately before that time and the parent shall be deemed to be the same corporation as and a continuation of the subsidiary with respect to that property, those obligations and the insurance businesses carried on by the subsidiary;

History: Subpara. 88(1)(g)(i) amended by 1997, c. 25, subsec. 19(3), applicable to windings-up that begin after 1995. Subpara. (i) formerly read:

(i) for the purposes of paragraphs 12(1)(d), (e), (i) and (s) and 20(1)(l), (l.1), (p) and (jj) and 20(7)(c), sections 138, 138.1, 140, 142 and 148 and Part XII.3 of this Act and section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the parent shall, notwithstanding paragraph (e.2), be deemed to be the same corporation as, and a continuation of, the subsidiary, and

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(h) **[financial institution — mark-to-market property]** — for the purposes of subsections 112(5) to (5.2) and (5.4) and the definition "mark-to-market property" in subsection 142.2(1), the parent shall be deemed, in respect of each property distributed to it on the winding-up, to be the same corporation as, and a continuation of, the subsidiary; and

History: Para. 88(1)(h) added by 1995, c. 21, subsec. 55(5), applicable to windings-up that begin at any time (including, for greater certainty, windings-up that began before June 22, 1995).

(i) **[financial institution — mark-to-market property]** — for the purpose of subsection 142.5(2), the subsidiary's taxation year in which its assets were distributed to the parent on the winding-up shall be

deemed to have ended immediately before the time when the assets were distributed.

History: Para. 88(1)(i) added by 1995, c. 21, subsec. 55(5), applicable to windings-up that begin after October 1994.

Related Provisions [subsec. 88(1)]: 69(5) — Deemed distribution of corporation's property before windup; 69(13) — Amalgamation or merger; 80.01(4) — Deemed settlement of debt on winding-up; 80.01(5) — Deemed settlement of distress preferred share on winding-up; 84(2) — Distribution on winding-up, etc.; 89(3) — Ordering of simultaneous dividends; 98(5)(a)(i) — Where partnership business carried on as sole proprietorship; 137(4.3) — Determination of preferred-rate amount; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; 186(5) — Presumption; Reg. 8101(3) — Windup of insurer.

Pre-RSC History [subsec. 88(1)]: That portion of para. 88(1)(e.2) preceding subpara. (i) amended by 1990, c. 39, s. 20, to add reference to para. 87(2)(tt), applicable with respect to windings-up commencing after 1987.

That portion of subpara. 88(1)(d)(i.1) preceding cl. (A) amended by 1988, c. 55, subsec. 61(1), to substitute "in respect of any share of the capital stock of the subsidiary disposed of by the parent on the winding-up or in contemplation of the winding-up" for "in respect of any share of the capital stock of the subsidiary so disposed of by the parent on the winding-up", applicable to windings-up commencing after June 1988.

Para. 88(1)(e.1) substituted by 1988, c. 55, subsec. 61(2), applicable to windings-up commencing after December 15, 1987. Para. 88(1)(e.1) formerly read:

> (e.1) the subsidiary may, for the purposes of computing its income for its taxation year during which its assets were transferred to the parent on the winding-up, claim any reserve that would have been allowed under this Part if its assets had not been transferred to the parent on the winding-up and notwithstanding any other provision of this Part, no amount shall be included in respect of any reserve so claimed in computing the income of the subsidiary for its taxation year, if any, following the year in which its assets were transferred to the parent;

That portion of para. 88(1)(e.2) preceding subpara. (i) amended by 1988, c. 55, subsec. 61(3), to add reference to paras. 87(2)(e.2), (z.2), (rr), applicable to windings-up ending after June 18, 1987 except that in applying para. 88(1)(e.2)

> (a) to windings-up commencing before December 16, 1987, it shall be read without reference to "(e.2)" and "(z.2)" therein, and
>
> (b) to windings-up commencing before May, 1988, it shall be read without reference to "(z.2)" therein.

That portion of para. 88(1)(e.5) following subpara. (ii) substituted by 1988, c. 55, subsec. 61(4), applicable with respect to windings-up occurring after 4 p.m. EDST, September 25, 1987. That portion formerly read:

> shall, if the parent has been a private corporation continuously from the time of the winding-up to the end of the taxation year, be added to the aggregate determined under subsection 129(3) from which the parent's dividend refunds are to be subtracted;

Para. 88(1)(e.6) substituted by 1988, c. 55, subsec. 61(5), applicable to 1988 *et seq.* Para. 88(1)(e.6) formerly read:

> (e.6) where a subsidiary has made a gift in a taxation year (in this section referred to as the "gift year"), for the purposes of computing the amount deductible under paragraphs 110(1)(a), (b) and (b.1) by the parent for its taxation years ending after the subsidiary was wound up,
>
> (i) the parent shall be deemed to have made a gift in each of its taxation years in which a gift year of the subsidiary ended equal to the amount, if any, by which the aggregate of all gifts made by the subsidiary in the gift year exceeds the aggregate of all amounts deducted by the subsidiary under paragraph 110(1)(a), (b) or (b.1) in respect of such gifts, and
>
> (ii) the amount of the excess determined under paragraph (i) shall be deemed not to have been deductible in any taxation year of the parent ending on or before the day the subsidiary was wound up;

Para. 88(1)(g) added by 1988, c. 55, subsec. 61(6), applicable to windings-up commencing after December 15, 1987.

That portion of subsec. 88(1) preceding para. (a) substituted by 1987, c. 46, subsec. 30(1), to add "other than subsection 69(11)", applicable after January 15, 1987. That portion of para. 88(1)(a) preceding subpara. (i) substituted to add "(other than an interest in a partnership)", para. 88(1)(a.2) added, para. 88(1)(c) substituted, and that portion of para. 88(1)(e.2) preceding subpara. (i) substituted to add reference to para. 87(2)(e.1) by 1987, c. 46, subsecs. 30(2)–(5), applicable with respect to windings-up commencing after January 15, 1987. Para. 88(1)(c) formerly read:

> (c) the cost to the parent of each property of the subsidiary distributed to the parent on the winding-up shall be deemed to be the amount deemed by paragraph (a) to be the proceeds of disposition of the property, plus, where the property was a capital property (other than depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, the amount determined under paragraph (d) in respect thereof;

Subpara. 88(1)(e.3)(i) substituted, cl. 88(1)(e.3)(ii)(B) amended to substitute "(g) to (i) and (k)" for "(g) to (k)", and cl. 88(1)(e.3)(ii)(C) added by 1987, c. 46, subsecs. 30(6), (7), applicable with respect to windings-up commencing after May 23, 1985 except that, with respect to acquisitions of control occurring on or before January 15, 1987 or before 1988, where the persons acquiring the control were obliged on that date to acquire the control (see "Interpretation" following this history) pursuant to the terms of agreements in writing entered into on or before that date, subcl. 88(1)(e.3)(ii)(C)(I) shall be read as follows:

> (I) where the subsidiary carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount was included in computing the subsidiary's investment tax credit for its taxation year in which it was wound up, the amount, if any, by which the aggregate of all amounts each of which is the parent's income for the particular year from the particular business, the parent's income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the subsidiary in carrying on the particular business before that time, or the amount, if any, by which,
>
> 1. the aggregate of the parent's taxable capital gains for the particular year from the disposition of property owned by the subsidiary at that time, other than property that was acquired from the purchaser or a person who did not deal at arm's length with the purchaser,
>
> exceeds
>
> 2. the aggregate of the parent's allowable capital losses for the particular year from the disposition of such property
>
> exceeds, in the case of a winding-up commencing after June 5, 1987, the aggregate of the amounts, if any, deducted by the parent under paragraph 111(1)(a) or (d) for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business

Subpara. 88(1)(e.3)(i) formerly read:

> (i) property acquired and expenditures made by the subsidiary in a taxation year (in this paragraph referred to as the "expenditure year") shall be deemed to have been acquired or made, as the case may be, by the parent in its taxation year in which the expenditure year of the subsidiary ended, and

Para. 88(1)(e.2) amended by 1986, c. 2, s. 22, applicable to 1985 *et seq.*, to add subpara. 88(1)(e.2)(xxi) and in that portion preceding subpara. (i), to substitute "paragraphs 87(2)(c)" for "the provisions of paragraphs 87(2)(c)", to substitute reference to paragraphs 87(2)(l.3) to (u) for reference to paragraphs 87(2)(l.3) to (s), (t), (u) and to add reference to paragraph 87(2)(pp).

Paras. 88(1)(e.3) and (e.4) added by 1986, c. 6, subsec. 47(1), applicable with respect to windings-up commencing after May 23, 1985.

Subpara. 88(1)(a)(i) substituted applicable with respect to windings-up commencing in taxation years commencing after 1984; subpara. 88(1)(e.6)(i) amended by substituting "deducted" for "each of which was the amount deductible", applicable to 1984 *et seq.*; and para. 88(1)(e.8) added applicable with respect to windings-up commencing after 1983 by 1985, c. 45, subsecs. 43(1)–(3). Subpara. 88(1)(a)(i) formerly read:

> (i) in the case of any property described in subsection 59(2), nil,

All that portion of para. 88(1)(e.2) preceding subpara. (i) substituted, subpara. 88(1)(e.2)(ix) and para. 88(1)(e.3) repealed and para. 88(1)(e.7) added by 1984, c. 45, subsecs. 28(1) to (4). The substituted portion of para. 88(1)(e.2) preceding subpara. (i) is applicable to 1984 *et seq.* except that, in its application to the 1984 taxation year, paragraph 88(1)(e.2) shall be

deemed to have included a reference to paragraph 87(2)(ee); the repeal of subpara. 88(1)(e.2)(ix) is applicable to 1984 *et seq;* the repeal of para. 88(1)(e.3) is applicable to 1985 *et seq;* para. 88(1)(e.7) is applicable to the computation of tax for 1984 *et seq.* That portion of para. 88(1)(e.2) preceding subpara. (i), subpara. 88(1)(e.2)(ix) and para. 88(1)(e.3) formerly read:

> (e.2) the provisions of paragraphs 87(2)(c), (d.1), (g) to (l), (l.3) to (s), (t), (u), (x), (y.1) to (z.1), (cc), (ee), and (ll) to (oo), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to
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> . . . . .
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> (ix) "predecessor corporation's foreign tax carryover" were read as "subsidiary's foreign tax carryover",
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> . . . . .
>
> (e.3) for the purpose of computing the cumulative deduction account (within the meaning assigned by subsection 125(6)) of the parent, there shall be added to the parent's cumulative deduction account at the end of its taxation year during which the subsidiary was wound up, the amount of the subsidiary's cumulative deduction account at the end of the taxation year during which the subsidiary was wound up and, with respect to that addition, the parent shall be deemed to be a continuation of the subsidiary;

Para. 88(1)(d.2) substituted, all that portion of para. 88(1)(e.2) preceding subpara. (i) substituted to add "to (oo)", subparas. 88(1)(e.2)(xvii) to (xx) added, by 1984, c. 1, subsecs. 39(1)–(3). Para 88(1)(d.2), as substituted, applicable with respect to windings-up commencing after November 12, 1981. All that portion of para. 88(1)(e.2) preceding subpara. (i), as substituted, and subparas. 88(1)(e.2)(xvii) to (xx) applicable to 1983 *et seq.* Para. 88(1)(d.2) formerly read:

> (d.2) in determining for the purposes of this paragraph and paragraphs (c) and (d) the time that a taxpayer last acquired control of the subsidiary, where any share of the subsidiary was acquired (otherwise than by way of bequest or inheritance) from any person (in this paragraph referred to as the "vendor") with whom the taxpayer was not dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning assigned by subsection 186(2) if the reference therein to "another corporation" were read as a reference to "a person" and the references therein to "the other corporation" were read as references to "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control;

All that portion of para. 88(1)(d) preceding subpara. (i), cl. 88(1)(d)(i.1)(B), paras. 88(1)(d.1), (d.2), (e.3), (e.6), all that portion of para. 88(1)(e.2) preceding subpara. (i) substituted, subparas. 88(1)(e.2)(xiv)–(xvi) added by 1980-81-82-83, c. 140, subsecs. 53(1)–(7). (For application, see "Application" below.) The substituted portions formerly read:

> (d) the amount determined under this paragraph in respect of each property that was a capital property (other than a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on the winding-up, is such portion of the amount, if any, by which the aggregate determined under subparagraph (b)(ii) exceeds the aggregate of
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> . . . . .
>
> (B) capital dividends on the share or on any share (in this subparagraph referred to as a "replaced share") for which the share or a replaced share was substituted or exchanged,
>
> (d.1) subsection 84(2) and section 21 of the *Income Tax Application Rules, 1971* are not applicable to the winding-up of the subsidiary;
>
> (d.2) in determining for the purposes of this paragraph and paragraphs (c) and (d) the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired (otherwise than by way of bequest or inheritance) from a person (in this paragraph referred to as the "vendor") with whom the taxpayer was not dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning assigned by subsection 186(2)) of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired control;
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> . . . . .
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> (e.2) the provisions of paragraphs 87(2)(c), (d.1), (g) to (l), (l.3) to (s), (t), (u), (x), (z), (z.1), (cc) and (ee), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to
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> . . . . .
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> (e.3) for the purpose of computing the cumulative deduction account (within the meaning assigned by subsection 125(6)) of the parent, there shall be added to the parent's cumulative deduction account at the end of its taxation year during which the subsidiary was wound up, the amount of the subsidiary's cumulative deduction account at the end of the taxation year during which the subsidiary was wound up;
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> . . . . .
>
> (e.6) for the purposes of paragraphs 110(1)(a), (b) and (b.1), gifts made by the subsidiary in its last taxation year shall, to the extent that they were not deductible in computing its taxable income for that taxation year, be deemed to have been made by the parent in its first taxation year ending after the subsidiary was wound up; and

Application — 1980-81-82-83, c. 140, subsecs. 53(12)–(18) provide:

> All that portion of para. 88(1)(d) preceding subpara. (i) is applicable with respect to distributions occurring after June 28, 1982.
>
> Cl. 88(1)(d)(i.1)(B) is applicable after June 28, 1982.
>
> Paras. 88(1)(d.1), (d.2) are applicable with respect to windings-up commencing after November 12, 1981.
>
> Para. 88(1)(e.2) is applicable to taxation years ending after November 12, 1981 except that the reference therein to para. 87(2)(mm) is applicable only to windings-up occurring after 1981.
>
> Subparas. 88(1)(e.2)(xiv), (xv) are applicable to taxation years commencing after 1982; subpara. 88(1)(e.2)(xvi) is applicable after June 28, 1982.
>
> Para. 88(1)(e.3) is applicable to taxation years ending after 1982.
>
> Para. 88(1)(e.6) is applicable to gifts made in 1981 *et seq.*

All that portion of subsec. 88(1) preceding para. (a) and all that portion of para. 88(1)(b) preceding subpara. (ii) substituted by 1980-81-82-83, c. 48, subsecs. 48(1), (2), applicable with respect to windings-up commencing after December 11, 1979, except that in their application to windings-up that commenced before January 13, 1981, subsec. 88(1) shall be read without the references therein to "and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length". Those portions formerly read:

> 88. (1) Winding-up of wholly-owned taxable Canadian corporation — Where a taxable Canadian corporation (in this section referred to as the "subsidiary") has been wound up after May 6, 1974 and all of the issued shares of the capital stock thereof were, immediately before the winding-up, owned by another taxable Canadian corporation (in this section referred to as the "parent"), notwithstanding any other provisions of this Act, the following rules apply:
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> . . . . .
>
> (b) the shares of the capital stock of the subsidiary shall be deemed to have been disposed of by the parent on the winding-up for proceeds equal to the greater of
>
> (i) the lesser of the paid-up capital in respect of the capital stock of the subsidiary immediately before the winding-up and the amount determined under subparagraph (d)(i), and

All that portion of subsec. 88(1) preceding para. (a), para. 88(1)(d), all that portion of para. 88(1)(e.2) preceding subpara. (i) substituted, para. 88(1)(d.2), subpara. 88(1)(e.2)(xiii) added by 1979, c. 5, subsecs. 29(1) to (5). (For application, see "Application" below.) The substituted provisions formerly read:

> 88. (1) Winding-up of wholly-owned Canadian corporation — Where a Canadian corporation (in this section referred to as the "subsidiary") has been wound up after May 6, 1974 and all of the issued shares of the capital stock thereof were, immediately before the winding-up, owned by another Canadian corporation (in this section referred to as the "parent"), notwithstanding any other provisions of this Act, the following rules apply:
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> . . . . .
>
> (d) the amount determined under this paragraph in respect of each property that was a capital property (other than a depreciable property) owned by the subsidiary at the time that the parent last acquired control of the subsidiary and thereafter without interruption until such time as it was distributed to the parent on

the winding-up, is such portion of the amount, if any, by which the aggregate determined under subparagraph (b)(ii) exceeds

(i) the amount, if any, by which

(A) the aggregate of amounts each of which is an amount in respect of any property owned by the subsidiary immediately before the winding-up, equal to the cost amount to the subsidiary of the property immediately before the winding-up, plus the amount of any money of the subsidiary on hand immediately before the winding-up,

exceeds the aggregate of

(B) all amounts each of which is the amount of any debt owing by the subsidiary, or of any other obligation of the subsidiary to pay any amount, that was outstanding immediately before the winding-up, and

(C) the amount of any reserve (other than a reserve referred to in paragraph 20(1)(n), subparagraph 40(1)(a)(iii) or subsection 64(1) or (1.1)), deducted in computing the subsidiary's income for its taxation year during which its assets were distributed to the parent on the winding-up,

as is designated by the parent in respect of that capital property in its return of income under this Part for its taxation year in which the subsidiary was so wound up, except that

(ii) in no case shall the amount so designated in respect of any such capital property exceed the amount, if any, by which the fair market value of the property at the time the parent last acquired control of the subsidiary exceeds the cost amount to the subsidiary of the property immediately before the winding-up, and

(iii) in no case shall the aggregate of amounts so designated in respect of all such capital properties exceed the amount, if any, by which the aggregate determined under subparagraph (b)(ii) exceeds the amount determined under subparagraph (i);

. . . . .

(e.2) the provisions of paragraphs 87(2)(c), (d.1), (g) to (l), (l.3) to (s), (t),(u), (x), (z), (z.1), (cc) and (ee) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

Application — 1979, c. 5, subsecs. 29(7), (8) provide:

All that portion of subsec. 88(1) preceding para. (a), paras. 88(1)(d), (d.2) are applicable with respect to corporate wind-ups ending after November 16, 1978.

All that portion of para. 88(1)(e.2) preceding subpara. (i), subpara. 88(1)(e.2)(xiii) are applicable with respect to corporate wind-ups ending after November 16, 1978.

All that portion of para. 88(1)(e.2) preceding subpara. (i) and para. 88(1)(e.6) substituted by 1977-78, c. 32, subsecs. 23(1), (2), applicable, as to that portion, to 1978 *et seq.*, and, as to para. 88(1)(e.6), with respect to wind-ups commencing after September 5, 1977, to add "(l), (l.3) to" in that portion and the reference to (b.1) in para. 88(1)(e.6).

Paras. 88(1)(a.1), (c), (e.3), subparas. 88(1)(b)(i), (d)(ii), all that portion of para. 88(1)(d) preceding subpara. (i), clause 88(1)(d)(i)(C) substituted, paras. 88(1)(e), (e.4), subparas. 88(1)(d)(i.1), (i.2), (e.2)(xii)–(xiv) repealed, subpara. 88(1)(d)(xv) renumbered as (xii) by 1977-78, c. 1, subsecs. 43(1)–(10). (For application, see "Application" below.) The substituted and repealed portions formerly read:

(a.1) each property of the subsidiary that was distributed to the parent on the winding-up shall, for the purpose of subparagraph 89(1)(l)(ii) or (xiv), be deemed not to have been disposed of;

[(b)](i) lesser of the paid-up capital limit of the subsidiary immediately before the winding-up and the amount determined under subparagraph (d)(i), and

. . . . .

(c) the cost to the parent of each property of the subsidiary distributed to the parent on the winding-up shall be deemed to be the amount deemed by paragraph (a) to be the proceeds of disposition of the property, plus, where the property was a capital property (other than depreciable property) of the subsidiary, the amount determined under paragraph (d) in respect thereof;

(d) the amount determined under this paragraph in respect of each property that was a capital property (other than a depreciable property) of the subsidiary is such portion of the amount, if any, by which the aggregate determined under subparagraph (b)(ii) exceeds the aggregate of

. . . . .

[(i)](C) the amount of any reserve (other than a reserve referred to in paragraph 20(1)(n), subparagraph 40(1)(a)(iii) or subsection 64(1)), deducted in computing the subsidiary's income for its taxation year during which its assets were distributed to the parent on the winding-up,

(i.1) the amount of the subsidiary's tax-paid undistributed surplus on hand at the time it was wound up, and

(i.2) the amount of the subsidiary's 1971 capital surplus on hand at the time it was wound up,

(ii) in no case shall the amount so designated in respect of any such capital property exceed the amount, if any, by which the fair market value of the property immediately before the winding-up exceeds the cost amount to the subsidiary of the property immediately before the winding-up, and

(e) for the purposes of Parts VII and VIII, the subsidiary shall be deemed to have paid and the parent shall be deemed to have received a taxable dividend on the shares of the capital stock of the subsidiary equal to the amount that would have been the designated surplus of the subsidiary with respect to the parent that would have been determined under paragraph 192(13)(b) if control of the subsidiary had been acquired by the parent immediately before the winding-up of the subsidiary and the taxation year of the subsidiary that included that time had ended immediately before that time;

. . . . .

[(e.2)](xii) "tax-paid undistributed surplus on hand immediately before the amalgamation" were read as "tax-paid undistributed surplus on hand at the time the subsidiary was wound up",

(xiii) "the aggregate of amounts each of which is the 1971 capital surplus on hand, if any, of a predecessor corporation immediately before the amalgamation" were read as "the amount of the subsidiary's 1971 capital surplus on hand at the time the subsidiary was wound up",

(xiv) "the aggregate of amounts each of which is the paid-up capital deficiency, if any, of a predecessor corporation immediately before the amalgamation" were read as "the amount of the subsidiary's paid-up capital deficiency at the time the subsidiary was wound up", and

(e.3) for the purpose of computing the cumulative deduction account (within the meaning assigned by subsection 125(6)) of the parent at the end of its taxation year during which the subsidiary was wound up and any subsequent year, there shall be added to the amount determined under paragraph 125(6)(b), from which the aggregate of the amounts referred to in subparagraphs (iii) and (iv) thereof is to be subtracted, an amount equal to the amount that would have been the subsidiary's cumulative deduction account at the end of its taxation year during which the subsidiary was wound up if paragraph 125(6)(b) were read without reference to subparagraph (iv) thereof;

(e.4) for the purpose of computing the 1971 undistributed income on hand of the parent at any time after the winding-up, where the subsidiary had 1971 undistributed income on hand at the time the subsidiary was wound up, the amount thereof shall (except for the purpose of determining the designated surplus of the parent at any time) be added to the aggregate of the amounts determined under paragraphs 196(4)(a) to (c);

Application — 1977-78, c. 1, subsecs. 43(13)–(17) provide:

Para. 88(1)(a.1) is applicable after December 31, 1978.

Subpara. 88(1)(b)(i) is applicable after March 31, 1977.

Para. 88(1)(c), all that portion of para. 88(1)(d) preceding subpara. (i), clause 88(1)(d)(i)(C), repeal of subparas. 88(1)(d)(i.1), (i.2), (e), subpara. 88(1)(d)(ii) are applicable with respect to corporate wind-ups commencing after March 31, 1977.

The repeal of subparas. 88(1)(e.2)(xii), (xiii) is applicable after December 31, 1978 and the repeal of subpara. 88(1)(e.2)(xiv) is applicable after March 31, 1977.

Para. 88(1)(e.3) is applicable to a parent corporation's 1978 and subsequent taxation years and the repeal of para. 88(1)(e.4) is applicable after December 31, 1978.

All that portion of para. 88(1)(e.2) preceding subpara. (i) substituted by 1976-77, c. 4, subsec. 34(1), applicable in respect of any winding-up ending after May 6, 1974.

All that portion of subsec. 88(1) preceding para. (b), subpara. 88(1)(b)(ii), all that portion of para. 88(1)(d) preceding subpara. (ii), para. 88(1)(e) substituted, paras. 88(1)(d.1), (e.1)–(e.6) added by 1974-75-76, c. 26, subsecs. 52(1)–(4), applicable in respect of any winding-up ending after May 6, 1974, except that subparagraphs 88(1)(d)(i.1) and (i.2) are applicable for the purpose of computing the adjusted cost base of a property after February 1975. That portion of subsec. 88(1), subpara. 88(1)(b)(ii), that portion of para. 88(1)(d), para. 88(1)(e) formerly read:

> 88. (1) Where a Canadian corporation (in this section referred to as the "subsidiary") has been wound up after 1971 and all of the issued shares of the capital stock thereof were, immediately before the winding-up, owned by another Canadian corporation (in this section referred to as the "parent"), notwithstanding any other provisions of this Act the following rules apply:
>
> (a) each property of the subsidiary that was distributed to the parent on the winding-up shall be deemed to have been disposed of by the subsidiary for proceeds equal to,
>
> (i) in the case of any property described in subsection 59(2), nil, and
>
> (ii) in the case of any other property, the cost amount to the subsidiary of the property immediately before the winding-up;
>
> . . . . .
>
> [(b)](ii) the aggregate of amounts each of which is an amount in respect of any share of the capital stock of the subsidiary so disposed of by the parent on the winding-up, equal to the adjusted cost base to the parent of the share immediately before the winding-up minus any subsequent deduction from that adjusted cost base that is required by subsection 53(2) to be made as a result of the deemed dividend referred to in paragraph (e);
>
> (d) the amount determined under this paragraph in respect of each property that was a capital property (other than depreciable property) of the subsidiary is such portion of the amount, if any, by which the aggregate determined under subparagraph (b)(ii) exceeds
>
> (i) the amount, if any, by which
>
> (A) the aggregate of amounts each of which is an amount in respect of any property owned by the subsidiary immediately before the winding-up, equal to the cost amount to the subsidiary of the property immediately before the winding-up, plus the amount of any money of the subsidiary on hand immediately before the winding-up,
>
> exceeds
>
> (B) the aggregate of amounts each of which is the amount of any debt owing by the subsidiary, or of any other obligation of the subsidiary to pay any amount, that was outstanding immediately before the winding-up,
>
> as is designated by the parent in respect of that capital property in its return of income under this Part for its taxation year in which the subsidiary was so wound up, except that
>
> (e) the subsidiary shall be deemed to have paid and the parent shall be deemed to have received, at the particular time referred to in subsection (2), a dividend on the shares of the capital stock of the subsidiary equal to the amount, if any, by which the amount determined under subparagraph (d)(i) exceeds the paid-up capital limit of the subsidiary immediately before the winding-up and the dividend shall be deemed to have become payable by the subsidiary at the particular time referred to in subsection (2); and

Subpara. 88(1)(b)(ii) substituted by 1973-74, c. 30, s. 8, applicable to 1972 *et seq.*

S. 88 renumbered as subsec. 88(1), subpara. 88(1)(b)(ii), para. 88(1)(e) substituted by 1973-74, c. 14, subsecs. 27(1)–(3), applicable to 1972 *et seq.*

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

> 72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Selected Cases [subsec. 88(1)]: *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC); rev'g [1995] 2 C.T.C. 320 (FCA) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes).

Interpretation Bulletins [subsec. 88(1)]: IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money; IT-126R2: Meaning of "winding-up"; IT-142R3: Settlement of debts on the winding-up of a corporation; IT-151R4: Scientific research and experimental development expenditures; IT-154R: Special reserves; IT-321R: Insurance agents and brokers — unearned commissions; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of s. 88.

Information Circulars [subsec. 88(1)]: 88-2 Supplement, para. 8: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 16 (*Continental Bank* case).

(1.1) Non-capital losses, etc., of subsidiary — Where a Canadian corporation (in this subsection referred to as the "subsidiary") has been wound up and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection referred to as the "parent") and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm's length, for the purpose of computing the taxable income of the parent under this Part and the tax payable under Part IV by the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on a particular business (in this subsection referred to as the "subsidiary's loss business") and any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5 for any particular taxation year of the subsidiary (in this subsection referred to as "the subsidiary's loss year"), to the extent that it

(a) was not deducted in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and

(b) would have been deductible in computing the taxable income of the subsidiary for any taxation year beginning after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income for that year,

shall, for the purposes of this subsection, paragraphs 111(1)(a), (c), (d) and (e), subsection 111(3) and Part IV,

(c) in the case of such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on the subsidiary's loss business, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss, restricted farm loss, farm loss or limited partnership loss, respectively, of the parent from carrying on the subsidiary's loss business, that was not

deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

(d) in the case of any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss or a limited partnership loss, respectively, of the parent that was derived from the source from which the subsidiary derived the loss and that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, and

(d.1) in the case of any other portion of any non-capital loss of the subsidiary as may reasonably be regarded as being in respect of a claim made under section 110.5, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss of the parent in respect of a claim made under section 110.5 that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

except that

(e) where at any time control of the parent or subsidiary has been acquired by a person or group of persons, no amount in respect of the subsidiary's non-capital loss or farm loss for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible only

(i) if that business is carried on by the subsidiary or the parent for profit or with a reasonable expectation of profit throughout the particular year, and

(ii) to the extent of the total of the parent's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services,

and, for the purpose of this paragraph, where this subsection applied to the winding-up of another corporation in respect of which the subsidiary was the parent and this paragraph applied in respect of losses of that other corporation, the subsidiary shall be deemed to be the same corporation as, and a continuation of, that other corporation with respect to those losses, and

(f) any portion of a loss of the subsidiary that would otherwise be deemed by paragraph (c), (d) or (d.1) to be a loss of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purpose of computing the parent's taxable income for taxation years beginning after the commencement of the winding-up, to be such a loss of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

Related Provisions: 10(11) — Adventure in the nature of trade deemed to be business carried on by corporation; 88(1.3) — Rules relating to computation of income and tax of parent; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: Para. 88(1.1)(b) amended to substitute "any taxation year" for "its first taxation year", and that portion of subsec. 88(1.1) between paras. (b) and (c) amended to add "this subsection", by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(10), applicable in computing the taxable income of parent corporations for 1985 *et seq.*

That portion of para. 88(1.1)(e) following subpara. (ii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(11), applicable in computing taxable income for 1990 *et seq.*

Para. 88(1.1)(f) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(12), applicable in computing the taxable income of parent corporations for 1985 *et seq.*, except that a parent corporation may elect in accordance with the para. in respect of any of its 1985 to 1991 taxation years by so notifying the Minister of National Revenue in writing before June 18, 1992.

Pre-RSC History: That portion of para. 88(1.1)(e) preceding subpara. (i) substituted by 1988, c. 55, subsec. 61(7), applicable with respect to non-capital losses and farm losses for 1988 *et seq.* That portion formerly read:

(e) where, at any time, control of the parent or subsidiary has been acquired by a person or group of persons, no amount in respect of the subsidiary's non-capital loss or farm loss for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss from carrying on a business is deductible

That portion of subsec. 88(1.1) following para. (b) and preceding para. (c) substituted by 1987, c. 46, subsec. 30(8), to add reference to para. 111(1)(e), applicable after February 25, 1986; para. 88(1.1)(e) substituted by 1987, c. 46, subsec. 30(9), applicable to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. Reference should be made to "Interpretation" following this history. Para. 88(1.1)(e) formerly read:

(e) where, at any time, control of the parent or subsidiary has been acquired by a person or persons (each of whom is in this section referred to as the "purchaser") such portion of the subsidiary's non-capital loss or farm loss for a taxation year ending before that time as may reasonably be regarded as its loss from carrying on a particular business is deductible by the parent for a particular taxation year ending after that time

(i) only if that business was carried on by the subsidiary or parent for profit or with a reasonable expectation of profit

(A) throughout the part of the particular year that is after that time, where control of the parent or subsidiary was acquired in the particular year, and

(B) throughout the particular year, in any other case, and

(ii) only to the extent of the aggregate of

(A) the parent's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services, and

(B) the amount, if any, by which

(I) the aggregate of the parent's taxable capital gains for the particular year from dispositions of property owned by the corporation at or before that time, other than property that was acquired by the subsidiary within the two-year period ending at that time from the purchaser or a person who did not deal at arm's length with the purchaser,

exceeds

(II) the aggregate of the parent's allowable capital losses for the particular year from dispositions described in subclause (I).

That portion of subsec. 88(1.1) preceding para. (a) amended by 1986, c. 55, subsec. 24(1), to substitute "restricted farm loss, farm loss or limited partnership loss" for "restricted farm loss or farm loss" and "any non-capital loss or limited partnership loss of the subsidiary" for "any non-capital loss of the subsidiary", applicable after February 25, 1986.

Paras. 88(1.1)(c) and (d) amended by 1986, c. 55, subsec. 24(2), to substitute, in para. (c), "restricted farm loss, farm loss or limited partnership loss of the subsidiary" for "restricted farm loss or farm loss of the subsidiary" and "restricted farm loss, farm loss or limited partnership loss, respectively," for "restricted farm loss or farm loss, respectively,", and in para. (d), "any non-capital loss or limited partnership loss of the subsidiary" for "any non-capital loss of the subsidiary", "a non-capital loss or a limited partnership loss, respectively, of the parent" for "a non-capital loss of the parent" and "from which the subsidiary derived the loss" for "from which the subsidiary derived that portion of its non-capital loss", applicable after February 25, 1986.

That portion of subsec. 88(1.1) preceding para. (a) amended to substitute "for the purpose of computing the taxable income of the parent under this Part" for "for the purpose of computing the taxable income of the parent" and to substitute "non-capital loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5" for "non-capital loss of the subsidiary from any other source" by 1985, c. 45, subsec. 43(4), applicable with respect to non-capital losses for 1985 *et seq.*

Para. 88(1.1)(d) substituted, para. 88(1.1)(d.1) added, applicable with respect to non-capital losses for 1985 *et seq.*; subpara. 88(1.1)(e)(i) substituted applicable with respect to windings-up commencing in 1983 *et seq.*; cl. 88(1.1)(e)(ii)(B) substituted applicable with respect to acquisitions of control occurring after May 9, 1985, except that subcl. 88(1.1)(e)(ii)(B)(I) is applicable with respect to acquisitions of control occurring in 1984 *et seq.*, by 1985, c. 45, subsecs. 43(5)–(7). Para. 88(1.1)(d), subpara. 88(1.1)(e)(i) and cl. 88(1.1)(e)(ii)(B) formerly read:

(d) in the case of any other portion of any non-capital loss of the subsidiary from any other source, be deemed, for the taxation year of the parent in which the subsidiary's loss year ended, to be a non-capital loss of the parent that was derived from the source from which the subsidiary derived the loss and that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

. . . . .

[(e)](i) only if throughout the particular year and after that time that business was carried on by the subsidiary or parent for profit or with a reasonable expectation of profit, and

. . . . .

[(e)(ii)](B) the amount, if any, by which

(I) the aggregate of the parent's taxable capital gains for the particular year from the disposition of property owned by the subsidiary at or before that time, other than property that was acquired from the purchaser or a person who did not deal at arm's length with the purchaser,

exceeds

(II) the amount, if any, by which the aggregate of the parent's allowable capital losses for the particular year from the disposition of property described in subclause (I) exceeds the aggregate of its allowable business investment losses for the particular year from the disposition of that property.

Subsec. 88(1.1) substituted by 1984, c. 1, subsec. 39(4), applicable by 1984, c. 45, subsec. 102(1), (deemed in force January 19, 1984), with respect to a subsidiary's restricted farm losses determined for 1978 *et seq.* where the winding-up of the subsidiary commenced in the 1983 or a subsequent taxation year and with respect to a subsidiary's non-capital losses and farm losses determined for 1983 *et seq.* Subsec. 88(1.1) formerly read:

(1.1) Non-capital losses of subsidiary — Where the winding-up of a Canadian corporation (in this subsection referred to as the "subsidiary") commenced after March 31, 1977 and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection referred to as the "parent") and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm's length, for the purpose of computing the taxable income of the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss of the subsidiary, as may reasonably be regarded as its loss from carrying on a particular business (in this subsection referred to as the "subsidiary's loss business") and any other portion of any non-capital loss of the subsidiary from any other source for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), to the extent that it

(a) was not deductible in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and

(b) would have been deductible in computing the taxable income of the subsidiary for its first taxation year commencing after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income for that year,

shall, for the purposes of paragraph 111(1)(a), subsection 111(3) and Part IV, be deemed to be

(c) in the case of such portion of any non-capital loss of the subsidiary as may reasonably be regarded as its loss from carrying on the subsidiary's loss business, a non-capital loss of the parent from carrying on the subsidiary's loss business, and

(d) in the case of any other portion of any non-capital loss of the subsidiary from any other source, a non-capital loss of the parent from the source from which the subsidiary derived the loss

for the taxation year of the parent in which the subsidiary's loss year ended that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, except that

(e) where, at any time, control of the parent or subsidiary has been acquired by a person or persons (each of whom is in this section referred to as the "purchaser"), such portion of the subsidiary's non-capital loss for a taxation year ending before that time as may reasonably be regarded as its loss from carrying on a particular business is deductible by the parent for a taxation year ending after that time only

(i) if throughout the year and after that time the particular business was carried on by the subsidiary or parent for profit or with a reasonable expectation of profit, and

(ii) to the extent of the aggregate of

(A) the parent's income for the year from the particular business and any other business substantially all the income of which was derived from the sale, leasing, rental or development of property or the rendering of services that are similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, in the course of carrying on the particular business before that time, or where the subsidiary was wound-up before that time, before the time of the commencement of the winding-up, and

(B) the amount, if any, by which

(I) the aggregate of the parent's taxable capital gains for the year from the disposition of property owned by the subsidiary at that time or, where the subsidiary was wound up before that time, at the time of the commencement of the winding-up, other than property that was acquired from the purchaser or from a person that did not deal at arm's length with the purchaser,

exceeds

(II) the amount, if any, by which the aggregate of the parent's allowable capital losses for the year from the disposition of property described in subclause (I) exceeds the aggregate of its allowable business investment losses for the year from the disposition of property described in that subclause.

Subsec. 88(1.1) substituted by 1980-81-82-83, c. 140, subsec. 53(8), applicable with respect to windings-up commencing after November 12, 1981, except where control of the parent or subsidiary was last acquired by a person or persons before November 13, 1981, or after November 12, 1981 and before 1983 where the arrangements therefor were substantially ad-

vanced and evidenced in writing on November 12, 1981. Subsec. 88(1.1) formerly read:

> (1.1) Where the winding-up of a Canadian corporation (in this subsection referred to as the "subsidiary") commenced after March 31, 1977 and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection referred to as the "parent") and all of the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length, for the purposes of computing the taxable income of the parent for any taxation year commencing after the commencement of the winding-up, any non-capital loss of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), to the extent that it
>
> (a) was not deductible in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and
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> (b) would have been deductible in computing the taxable income of the subsidiary for its first taxation year commencing after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income for that year,
>
> shall, for the purposes of paragraph 111(1)(a), subsection 111(3) and Part IV, be deemed to be a non-capital loss of the parent for the taxation year of the parent in which the subsidiary's loss year ended that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, except that this subsection does not apply to permit the parent to deduct, for the purpose of computing its taxable income for a particular taxation year, such portion of the subsidiary's non-capital loss for a taxation year as may reasonably be regarded as the subsidiary's loss from carrying on any particular business if
>
> (c) control of the parent or the subsidiary has been acquired, before the end of the parent's particular year, by a person or persons who did not, at the end of the subsidiary's loss year, control the parent or the subsidiary, as the case may be, and the parent was not, during the particular year, carrying on that business, or
>
> (d) control of the parent or the subsidiary was acquired, before the end of the particular year and after the winding-up or discontinuance of that business, by a person or persons who did not control the parent or the subsidiary, as the case may be, at any time during the subsidiary's loss year when that business was being carried on.

All that portion of subsec. 88(1.1) preceding para. (d) substituted by 1980-81-82-83, c. 48, subsec. 48(3), applicable with respect to windings-up commenced after December 11, 1979, except that in their application to windings-up that commenced before January 13, 1981, subsec. 88(1.1) shall be read without reference therein to "and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length". Subsec. 88(1.1) formerly read:

> (1.1) Where the winding-up of a Canadian corporation (in this section referred to as the "subsidiary") commenced after March 31, 1977 and all of the issued shares of the capital stock thereof were, immediately before the winding-up, owned by another Canadian corporation (in this section referred to as the "parent"), for the purposes of computing the taxable income of the parent for any taxation year commencing after the commencement of the winding-up, any non-capital loss of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), to the extent that it

Subsec. 88(1.1) added by 1977-78, c. 1, subsec. 43(11), applicable to taxation years ending after March 31, 1977.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

> 72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Selected Cases [subsec. 88(1.1)]: *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 88.

(1.2) Net capital losses of subsidiary — Where the winding-up of a Canadian corporation (in this subsection referred to as the "subsidiary") commenced after March 31, 1977 and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection referred to as the "parent") and all of the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length, for the purposes of computing the taxable income of the parent for any taxation year commencing after the commencement of the winding-up, any net capital loss of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), to the extent that it

> (a) was not deducted in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and
>
> (b) would have been deductible in computing the taxable income of the subsidiary for any taxation year beginning after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income and taxable capital gains for that year,

shall, for the purposes of this subsection, paragraph 111(1)(b) and subsection 111(3), be deemed to be a net capital loss of the parent for its taxation year in which the particular taxation year of the subsidiary ended, except that

> (c) where at any time control of the parent or subsidiary has been acquired by a person or group of persons, no amount in respect of the subsidiary's net capital loss for a taxation year ending before that time is deductible in computing the parent's taxable income for a taxation year ending after that time, and
>
> (d) any portion of a net capital loss of the subsidiary that would otherwise be deemed by this subsection to be a loss of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purposes of computing its taxable income for taxation years beginning after the commencement of the winding-up, to be a net capital loss of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

Related Provisions: 80(12)(a)(ii)(B) — Application of subsidiary's capital losses against capital gain from forgiveness of debt; 88(1.3) — Computation of income and tax of parent; 111(5.4) — Non-capital loss; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

History: That portion of subsec. 88(1.2) following para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(13), applicable in computing the taxable income of parent corporations for 1985 *et seq.*, except that a parent corporation may elect in accordance with para. (d), with respect to any of its 1985 to 1991 taxation years by so notifying the Minister of National Revenue in writing within 6 months after December 17, 1991. That portion formerly read:

> (b) would have been deductible in computing the taxable income of the subsidiary for its first taxation year commencing

after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income and taxable capital gains for that year,

shall, for the purposes of paragraph 111(1)(b) and subsection 111(3), be deemed to be a net capital loss of the parent for the taxation year of the parent in which the particular taxation year of the subsidiary ended that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, except that this subsection does not apply to permit the parent to deduct, for the purpose of computing its taxable income for a particular taxation year, the subsidiary's net capital loss for a taxation year if control of the parent or the subsidiary has been acquired, before the end of the parent's particular year, by a person or persons who did not, at the end of the subsidiary's loss year, control the parent or the subsidiary, as the case may be.

Pre-RSC History: Para. 88(1.2)(a) substituted by 1984, c. 1, subsec. 39(5), to substitute "deducted" for "deductible", applicable with respect to windings-up commencing in 1983 *et seq.*

All that portion of subsec. 88(1.2) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 48(4), applicable with respect to windings-up commenced after December 11, 1979, except that in their application to windings-up that commenced before January 13, 1981, subsec. 88(1.2) shall be read without reference therein to "and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by persons with whom the parent was dealing at arm's length". That portion formerly read:

(1.2) Where the winding-up of a Canadian corporation (in this section referred to as the "subsidiary") commenced after March 31, 1977 and all of the issued shares of the capital stock thereof were, immediately before the winding-up, owned by another Canadian corporation (in this section referred to as the "parent"), for the purposes of computing the taxable income of the parent for any taxation year commencing after the commencement of the winding-up, any net capital loss of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), to the extent that it

Subsec. 88(1.2) added by 1977-78, c. 1, subsec. 43(11), applicable to taxation years ending after March 31, 1977.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 88.

(1.3) Computation of income and tax of parent — For the purpose of paragraphs (1)(e.3), (e.6) and (e.7), subsections (1.1) and (1.2), section 110.1, subsections 111(1) and (3) and Part IV, where a parent corporation has been incorporated or otherwise formed after the end of an expenditure year, gift year, foreign tax year or loss year, as the case may be, of a subsidiary of the parent, for the purpose of computing the taxable income of, and the tax payable under this Part and Part IV by, the parent for any taxation year,

(a) it shall be deemed to have been in existence during the particular period beginning immediately before the end of the subsidiary's first expenditure year, gift year, foreign tax year or loss year, as the case may be, and ending immediately after it was incorporated or otherwise formed;

(b) it shall be deemed to have had, throughout the particular period, fiscal periods ending on the day of the year on which its first fiscal period ended; and

(c) it shall be deemed to have been controlled, throughout the particular period, by the person or persons who controlled it immediately after it was incorporated or otherwise formed.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: Para. 88(1.3)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 38(6), applicable to windings-up commencing after 1988. Para. (a) formerly read:

(a) it shall be deemed to have been in existence during the particular period commencing immediately before the end of the subsidiary's first foreign tax year, gift year or loss year, as the case may be, and ending immediately after it was incorporated or otherwise formed;

Pre-RSC History: That portion of subsec. 88(1.3) preceding para. (a) substituted by 1988, c. 55, subsec. 61(8), applicable to taxation years ending after May 23, 1985, except that in the application of subsec. 88(1.3)

(a) to taxation years ending before 1988, the reference therein to "section 110.1" shall be read as a reference to "paragraphs 110(1)(a), (b) and (b.1)"; and

(b) to taxation years ending before 1989, the references therein to "(1)(e.3)" and "expenditure year" shall be read as references to "(1)(e.3), (e.4)" and to "expenditure year, employment year" respectively.

That portion of subsec. 88(1.3) formerly read:

(1.3) Computation of income of and tax payable by parent — For the purposes of paragraphs (1)(e.6) and (e.7), subsections (1.1) and (1.2), paragraphs 110(1)(a), (b) and (b.1) and subsections 111(1) and (3) and Part IV, where a parent corporation has been incorporated or otherwise formed after the end of a foreign tax year, gift year or loss year, as the case may be, of a subsidiary of the parent, for the purpose of computing the taxable income of, and the tax payable under this Part and Part IV by, the parent for any taxation year,

All that portion of subsec. 88(1.3) preceding para. (b) substituted by 1984, c. 45, subsec. 28(5) to add reference to para. (e.7), to add "foreign tax year" and to add "this Part" located before "Part IV", applicable to the computation of tax for 1984 *et seq.*

Subsec. 88(1.3) substituted by 1984, c. 1, subsec. 39(6), applicable with respect to windings-up commencing in 1983 *et seq.* Subsec. 88(1.3) formerly read:

(1.3) Rules relating to computation of income of parent — For the purposes of subsections (1.1) and (1.2), paragraphs (1)(e.6), 110(1)(a), (b) and (b.1) and 111(1)(a) and (b), subsection 111(3) and Part IV, where a parent corporation has been incorporated or otherwise formed after the end of a loss year or a gift year, as the case may be, of a subsidiary of the parent, for the purpose of computing the taxable income of the parent for any taxation year,

(a) it shall be deemed to have been in existence during the particular period commencing immediately before the end of the subsidiary's first loss year or gift year, as the case may be, and ending immediately after it was incorporated;

(b) it shall be deemed to have had, throughout the particular period, fiscal periods ending on the day of the year on which its first fiscal period ended; and

(c) it shall be deemed to have been controlled, throughout the particular period, by the person or group of persons who controlled it immediately after its incorporation.

All that portion of subsec. 88(1.3) preceding para. (b) substituted by 1980-81-82-83, c. 140, subsec. 53(9), applicable to gifts made in 1981 *et seq.* That portion formerly read:

(1.3) For the purposes of subsections (1.1), (1.2) and 111(3), paragraphs 111(1)(a) and (b) and Part IV, where a parent corporation has been incorporated or otherwise formed after the end of a loss year of a subsidiary of the parent, for the purpose of computing the taxable income of the parent for any taxation year,

(a) it shall be deemed to have been in existence during the particular period commencing immediately before the end of the subsidiary's first loss year and ending immediately after it was incorporated;

Subsec. 88(1.3) added by 1977-78, c. 1, subsec. 43(11), applicable to taxation years ending after March 31, 1977.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

(1.4) Qualified expenditure of subsidiary — For the purposes of this subsection and section 37.1, where the rules in subsection (1) applied to the winding-up of a subsidiary, for the purpose of computing the income of its parent for any taxation year commencing after the subsidiary has been wound up, the following rules apply:

(a) where the parent's base period consists of fewer than three taxation years, its base period shall be determined on the assumption that it had taxation years in

each of the calendar years preceding the year in which it was incorporated, each of which commenced on the same day of the year as the day of its incorporation;

(b) the qualified expenditure made by the parent in a particular taxation year in its base period shall be deemed to be the total of the amount thereof otherwise determined and the qualified expenditure made by the subsidiary in its taxation year ending in the same calendar year as the particular year;

(c) the total of the amounts paid to the parent by persons referred to in subparagraphs (b)(i) to (iii) of the definition "expenditure base" in subsection 37.1(5) in a particular taxation year in its base period shall be deemed to be the total otherwise determined and all those amounts paid to the subsidiary by a person referred to in those subparagraphs in the subsidiary's taxation year ending in the same calendar year as the particular year; and

(d) there shall be added to the total of the amounts otherwise determined in respect of the parent under subparagraphs 37.1(3)(b)(i) and (iii) respectively, the total of the amounts determined under those subparagraphs in respect of the subsidiary.

Pre-RSC History: All that portion of subsec. 88(1.4) preceding para. (a) amended by 1985, c. 45, subsec. 43(8), applicable with respect to windings-up commencing after 1982, to substitute "where the rules in subsection (1) applied to the winding-up of a subsidiary" for "where a subsidiary to which the rules in subsection (1) apply has been wound up".

Subsec. 88(1.4) added by 1977-78, c. 32, subsec. 23(3), applicable to 1978 *et seq.*

(1.41) Application of subsec. 37.1(5) — The definitions in subsection 37.1(5) apply to subsection (1.4).

Origin of subsec. 88(1.41): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 37.1(5)).

(1.5) Parent continuation of subsidiary — For the purposes of section 29 of the *Income Tax Application Rules*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, where the rules in subsection (1) applied to the winding-up of a subsidiary, its parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary.

Pre-RSC History: Subsec. 88(1.5) amended by 1987, c. 46, subsec. 30(10), to substitute "66.4 and 66.7" for "and 66.4", applicable to taxation years ending after February 17, 1987 with respect to windings-up commencing after 1982.

Subsec. 88(1.5) added by 1985, c. 45, subsec. 43(9), applicable with respect to windings-up commencing after 1982.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

(1.6) Idem — Where a corporation that carries on a farming business and computes its income from that business in accordance with the cash method is wound up in circumstances to which subsection (1) applies and, at the time that is immediately before the winding-up of the corporation, owned inventory that was used in connection with that business,

(a) for the purposes of subparagraph (1)(a)(iii), the cost amount to the corporation at that time of property purchased by it that is included in that inventory shall be deemed to be the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) + D$$

where

A is the amount, if any, that would be included under paragraph 28(1)(c) in computing the corporation's income for its last taxation year beginning before that time if that year had ended at that time,

B is the value (determined in accordance with subsection 28(1.2)) to the corporation at that time of the purchased inventory that is distributed to the parent on the winding-up,

C is the value (determined in accordance with subsection 28(1.2)) of all of the inventory purchased by the corporation that was owned by it in connection with that business at that time, and

D is the lesser of

(i) such additional amount as the corporation designates in respect of the property, and

(ii) the amount, if any, by which the fair market value of the property at that time exceeds the amount determined for A in respect of the property;

(b) for the purpose of subparagraph 28(1)(a)(i), the disposition of the inventory and the receipt of the proceeds of disposition therefor shall be deemed to have occurred at that time and in the course of carrying on the business; and

(c) where the parent carries on a farming business and computes its income therefrom in accordance with the cash method, for the purposes of section 28,

(i) an amount equal to the cost to the parent of the inventory shall be deemed to have been paid by it, and

(ii) the parent shall be deemed to have purchased the inventory for an amount equal to that cost,

in the course of carrying on that business and at the time it acquired the inventory.

History: Subsec. 88(1.6) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(14), applicable to windings-up beginning after July 13, 1990.

Interpretation Bulletins: IT-427R: Livestock of farmers.

(1.7) Interpretation — For the purposes of paragraphs (1)(c) and (d), where a parent of a subsidiary did not deal at arm's length with another person (other than a corporation the control of which was acquired by the parent from a person with whom the parent dealt at arm's length) at any time before the winding-up of the subsidiary, the parent and the other person are deemed never to have dealt with each other at arm's length, whether or not the parent and the other person coexisted.

Related Provisions: 87(11) — Application to vertical amalgamation; 256(6)–(9) — Whether control acquired.

History: Subsec. 88(1.7) added by 1998, c. 19, subsec. 118(12), applicable to windings-up that begin after February 21, 1994.

(2) Winding-up of [other] Canadian corporation — Where a Canadian corporation (other than a subsidiary to the winding-up of which the rules in subsection (1) applied) has been wound up after 1978 and, at a particular time in the course of the winding-up, all or substantially all of the property owned by the corporation immediately before that time was distributed to the shareholders of the corporation,

(a) for the purposes of computing the corporation's

(i) capital dividend account,

(i.1) capital gains dividend account (within the meaning assigned by subsection 131(6)), where the corporation is an investment corporation,

(ii) capital gains dividend account (within the meaning assigned by section 133), and

(iii) pre-1972 capital surplus on hand,

at the time (in this paragraph referred to as the "time of computation") immediately before the particular time,

(iv) the taxation year of the corporation that otherwise would have included the particular time shall be deemed to have ended immediately before the time of computation, and a new taxation year shall be deemed to have commenced at that time, and

(v) each property of the corporation that was so distributed at the particular time shall be deemed to have been disposed of by the corporation immediately before the end of the taxation year so deemed to have ended for proceeds equal to the fair market value of the property immediately before the particular time;

(vi) [Repealed]

(b) where the corporation is, by virtue of subsection 84(2), deemed to have paid at the particular time a dividend (in this paragraph referred to as the "winding-up dividend") on shares of any class of its capital stock, the following rules apply:

(i) such portion of the winding-up dividend as does not exceed the corporation's capital dividend account immediately before that time or capital gains dividend account immediately before that time, as the case may be, shall be deemed, for the purposes of an election in respect thereof under subsection 83(2), 131(1) (as that subsection applies for the purposes of section 130) or 133(7.1), as the case may be, and where the corporation has so elected, for all other purposes, to be the full amount of a separate dividend,

(i.1) [Repealed under former Act]

(ii) the portion of the winding-up dividend equal to the lesser of the corporation's pre-1972 capital surplus on hand immediately before that time and the amount by which the winding-up dividend exceeds

(A) the portion thereof in respect of which the corporation has made an election under subsection 83(2), or

(B) the portion thereof in respect of which the corporation has made an election under subsection 133(7.1),

as the case may be, shall be deemed not to be a dividend,

(iii) notwithstanding the definition "taxable dividend" in subsection 89(1), the winding-up dividend, to the extent that it exceeds the total of the portion thereof deemed by subparagraph (i) to be a separate dividend for all purposes and the portion deemed by subparagraph (ii) not to be a dividend, shall be deemed to be a separate dividend that is a taxable dividend, and

(iv) each person who held any of the issued shares of that class at the particular time shall be deemed to have received that proportion of any separate dividend determined under subparagraph (i) or (iii) that the number of shares of that class held by the person immediately before the particular time is of the number of issued shares of that class outstanding immediately before that time; and

(c) for the purpose of computing the income of the corporation for its taxation year that includes the particular time, paragraph 12(1)(t) shall be read as follows:

"(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included under this paragraph in computing the taxpayer's income for a preceding taxation year or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) or (h)(ii) or the amount determined for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);".

Related Provisions: 69(5) — Property appropriated by shareholder on winding-up of corporation; 84(2) — Distribution of property on winding-up of corporation; 88(2.1) — "Pre-1972 capital surplus on hand" defined; 89(3) — Ordering of simultaneous dividends; 134 — Status of non-resident-owned investment corporation for 88(2).

History: Subpara. 88(2)(a)(i.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(15), applicable to windings-up beginning after 1988.

Subpara. 88(2)(a)(vi) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(16), applicable to windings-up beginning after 1987. Subpara. 88(2)(a)(vi) formerly read:

(vi) in calculating the income of the corporation for the taxation year so deemed to have ended, paragraph 12(1)(t) shall be read as follows:

"(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), or subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition "undepreciated capital cost" in subsection 13(21) or L in the definition "cumulative Canadian exploration expense" in subsection 66.1(6);" and

Subpara. 88(2)(b)(i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(17), to add "131(1) (as that subsection applies for the purposes of section 130)", applicable to windings-up beginning after 1988.

Para. 88(2)(c) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(18), applicable to windings-up commencing after 1987.

Pre-RSC History: Subpara. 88(2)(a)(vi) added by 1988, c. 55, subsec. 61(9), applicable after 1987.

Subpara. 88(2)(b)(i.1) repealed, subpara. 88(2)(b)(ii) amended to substitute "subsection 83(2)" for "subsection 83(2), or (2.1)", subpara. 88(2)(b)(iii) amended to substitute "subparagraph (i)" for "subparagraph (i) or (i.1)", and subpara. 88(2)(b)(iv) amended to substitute "subparagraph (i) or (iii)" for "subparagraph (i), (i.1) or (iii)", and "number of issued shares" for "number of the issued shares", by 1986, c. 6, subsec. 47(2), applicable with respect to winding-up dividends paid after May 23, 1985. Subpara. 88(2)(b)(i.1) formerly read:

(i.1) the portion of the winding-up dividend equal to the lesser of the corporation's life insurance capital dividend account immediately before that time and the amount by which the winding-up dividend exceeds the portion thereof in respect of which the corporation has made an election under subsection 83(2) or 133(7.1), as the case may be, shall be deemed to be the full amount of a separate dividend,

All that portion of subsec. 88(2) preceding para. (a) amended by 1985, c. 45, subsec. 43(10), applicable with respect to windings-up commencing after 1982, to substitute "(other than a subsidiary to the winding-up of which the rules in subsection (1) applied) has been wound up after 1978" for "other than a subsidiary within the meaning of subsection (1), has been wound up after December 31, 1978".

All that portion of para. 88(2)(b) following subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 53(10), applicable with respect to windings-up ending after June 28, 1982. That portion formerly read:

(ii) the portion of the winding-up dividend equal to the lesser of the corporation's pre-1972 capital surplus on hand immediately before

that time and the amount by which the winding-up dividend exceeds the portion thereof in respect of which the corporation has made an election under subsection 83(2) or 133(7.1), as the case may be, shall be deemed not to be a dividend,

(iii) notwithstanding paragraph 89(1)(j), the winding-up dividend, to the extent that it exceeds the aggregate of the portion thereof deemed by subparagraph (i) to be a separate dividend for all purposes and the portion deemed by subparagraph (ii) not to be a dividend, shall be deemed to be a separate dividend that is a taxable dividend, and

(iv) each person who held any of the issued shares of that class at the particular time shall be deemed to have received that proportion of any separate dividend determined under subparagraph (i) or (iii) that the number of shares of that class held by him immediately before the particular time is of the number of the issued shares of that class outstanding immediately before that time.

Subsec. 88(2) substituted by 1977-78, c. 1, subsec. 43(11), applicable after December 31, 1978. Subsec. 88(2) formerly read:

(2) Where a Canadian corporation, other than a subsidiary within the meaning of subsection (1), has been wound up after May 6, 1974 and, at a particular time in the course of the winding-up, all or substantially all of the property owned by the corporation immediately before that time was distributed to the shareholders of the corporation,

(a) for the purposes of computing

(i) the corporation's 1971 capital surplus on hand,

(ii) its paid-up capital deficiency,

(iii) its capital dividend account, and

(iv) its capital gains dividend account (within the meaning assigned by section 133),

at the time (in this paragraph referred to as the "time of computation") immediately before the particular time,

(v) the taxation year of the corporation that otherwise would have included the particular time shall be deemed to have ended immediately before the time of computation, and a new taxation year shall be deemed to have commenced at that time, and

(vi) each property of the corporation that was so distributed at the particular time shall be deemed to have been disposed of by the corporation immediately before the end of the taxation year so deemed to have ended for proceeds equal to the fair market value thereof immediately before the particular time; and

(b) where the corporation is, by virtue of subsection 84(2), deemed to have paid at the particular time a dividend (in this paragraph referred to as the "winding-up dividend") on shares of any class of its capital stock, the following rules apply:

(i) such portion of the winding-up dividend as does not exceed the corporation's capital dividend account immediately before that time or capital gains dividend account immediately before that time, as the case may be, shall be deemed, for the purposes of an election in respect thereof under subsection 83(2) or 133(7.1), as the case may be, and where the corporation has so elected, for all other purposes, to be the full amount of a separate dividend,

(ii) the portion of the winding-up dividend equal to the lesser of

(A) the amount by which the winding-up dividend exceeds the portion thereof in respect of which the corporation has made an election under subsection 83(2) or 133(7.1), as the case may be, and

(B) the aggregate of the corporation's tax-paid undistributed surplus on hand immediately before that time and its 1971 capital surplus on hand immediately before that time,

shall, for the purposes of an election in respect thereof under subsection 83(1), and, where the corporation has so elected, for all other purposes, be deemed to be the full amount of a separate dividend,

(iii) notwithstanding paragraph 89(1)(j), the winding-up dividend, to the extent that it exceeds the aggregate of the portions thereof deemed by subparagraph (i) or (ii) to be separate dividends for all purposes, shall be deemed to be a separate dividend that is a taxable dividend, and

(iv) each person who held any of the issued shares of that class at the particular time shall be deemed to have received that proportion of any separate dividend determined under subparagraph (i), (ii) or (iii) that the number of shares of that class held by him immediately before the particular time is of the number of the issued shares of that class outstanding immediately before that time.

All that portion of subsec. 88(2) preceding para. (a), subpara. 88(2)(a)(vi), all that portion of para. 88(2)(b) preceding subpara. (i) substituted by 1974-75-76, c. 26, subsecs. 52(5)–(7), applicable in respect of any winding-up ending after May 6, 1974. That portion of subsec. 88(2), subpara. 88(2)(a)(vi), that portion of para. 88(2)(b) formerly read:

(2) Where a Canadian corporation, whether or not it is a subsidiary within the meaning of subsection (1), has been wound up after 1971 and, at a particular time in the course of the winding-up, all or substantially all of the property owned by the corporation immediately before that time was distributed to the shareholders of the corporation,

. . . . .

(vi) each property of the corporation that was so distributed at the particular time shall be deemed to have been disposed of by the corporation immediately before the end of the taxation year so deemed to have ended, for proceeds equal to the fair market value thereof immediately before the particular time except that this subparagraph shall not apply in determining the proceeds of disposition of such property where the corporation is a subsidiary within the meaning of subsection (1); and

. . . . .

(b) where the corporation is, by virtue of subsection 84(2) or paragraph (1)(e), deemed to have paid at the particular time a dividend (in this paragraph referred to as the "winding-up dividend") on shares of any class of its capital stock, the following rules apply:

Subsec. 88(2) added by 1973-74, c. 14, subsec. 27(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-126R2: Meaning of "winding-up"; IT-149R4: Winding-up dividend. See also list at end of s. 88.

(2.1) Definition of "pre-1972 capital surplus on hand" — For the purposes of subsection (2), "pre-1972 capital surplus on hand" of a particular corporation at a particular time means the amount, if any, by which the total of

(a) the corporation's 1971 capital surplus on hand on December 31, 1978 within the meaning of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on that date,

(b) the total of all amounts each of which is an amount in respect of a capital property of the corporation owned by it on December 31, 1971 and disposed of by it after 1978 and before the particular time, equal to the amount, if any, by which the lesser of its fair market value on valuation day (within the meaning assigned by section 24 of the *Income Tax Application Rules*) and the corporation's proceeds of disposition of that capital property exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules* other than subsections 26(15), (17) and (21) to (27) of that Act,

(c) where before the particular time a subsidiary (to the winding-up of which the rules in subsection (1) applied) of the particular corporation has been wound up after 1978, an amount equal to the pre-1972 capital surplus on hand of the subsidiary immediately before the commencement of the winding-up, and

(d) where the particular corporation is a new corporation formed as a result of an amalgamation (within the meaning of section 87) after 1978 and before the particular time, the total of all amounts each of which is

an amount in respect of a predecessor corporation, equal to the predecessor corporation's pre-1972 capital surplus on hand immediately before the amalgamation

exceeds

(e) the total of all amounts each of which is an amount in respect of a capital property (other than depreciable property) of the corporation owned by it on December 31, 1971 and disposed of by it after 1978 and before the particular time equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules*, other than subsections 26(15), (17) and (21) to (27) of that Act, exceeds the greater of the fair market value of the property on valuation day (within the meaning assigned by section 24 of that Act) and the corporation's proceeds of disposition of the property.

Related Provisions: 84(2) — Distribution on winding-up, etc.; 87(2)(t) — Deemed date of acquisition; 88(2.2) — Determination of pre-1972 CSOH; 88(2.3) — Actual cost of certain depreciable property.

Pre-RSC History: Para. 88(2.1)(c) amended by 1985, c. 45, subsec. 43(11), applicable with respect to windings-up commencing after 1982, to substitute "(to the winding-up of which the rules in subsection (1) applied)" for "(within the meaning of subsection (1))."

I.T. Application Rules: 26(15), (17), (21)–(27); 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of s. 88.

(2.2) Determination of pre-1972 capital surplus on hand — For the purposes of determining the pre-1972 capital surplus on hand of any corporation at a particular time after 1978, the following rules apply:

(a) an amount referred to in paragraphs (2.1)(b) and (e) in respect of the corporation shall be deemed to be nil, where the property disposed of is

(i) a share of the capital stock of a subsidiary, within the meaning of subsection (1), that was disposed of on the winding-up of the subsidiary where that winding-up commenced after 1978,

(ii) a share of the capital stock of another Canadian corporation that was controlled, within the meaning assigned by subsection 186(2), by the corporation immediately before the disposition and that was disposed of by the corporation after 1978 to a person with whom the corporation was not dealing at arm's length immediately after the disposition, other than by a disposition referred to in paragraph (b), or

(iii) subject to subsection 26(21) of the *Income Tax Application Rules*, a share of the capital stock of a particular corporation that was disposed of by the corporation after 1978, on an amalgamation, within the meaning assigned by subsection 87(1), where the corporation controlled, within the meaning assigned by subsection 186(2), both the particular corporation immediately before the amalgamation and the new corporation immediately after the amalgamation; and

(b) where another corporation that is a Canadian corporation owned a capital property on December 31, 1971 and subsequently disposed of it to the corporation in a transaction to which section 85 applied, the other corporation shall be deemed not to have disposed of that property in the transaction and the corporation shall be deemed to have owned that property on December 31, 1971 and to have acquired it at an actual cost equal to the actual cost of that property to the other corporation.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of s. 88.

(2.3) Actual cost of certain depreciable property — For the purpose of subsection (2.1), the actual cost of the depreciable property that was acquired by a corporation before the commencement of its 1949 taxation year that is capital property referred to in that subsection shall be deemed to be the capital cost of that property to the corporation (within the meaning assigned by section 144 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1971 taxation year).

Pre-RSC History: Subsecs. 88(2.2), (2.3) added by 1977-78, c. 1, subsec. 43(11), applicable as to subsecs. 88(2.1)–(2.3), with respect to windings-up that give rise to winding-up dividends that are deemed to have been paid after December 31, 1978.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(3) Dissolution of foreign affiliate — Where on the dissolution of a controlled foreign affiliate (within the meaning assigned by subsection 95(1)) of a taxpayer (in this subsection referred to as the "disposing affiliate") one or more shares of the capital stock of another foreign affiliate of the taxpayer have been disposed of to the taxpayer,

(a) the disposing affiliate's proceeds of disposition of each such share and the cost thereof to the taxpayer shall be deemed to be an amount equal to the adjusted cost base to the disposing affiliate of the share immediately before the dissolution, or such greater amount as the taxpayer claims not exceeding the fair market value of the share immediately before the dissolution; and

(b) the taxpayer's proceeds of disposition of the shares of the disposing affiliate shall be deemed to be the amount, if any, by which the total of

(i) the cost to the taxpayer of the shares of the other foreign affiliate, as determined in paragraph (a), and

(ii) the fair market value of any property (other than the shares referred to in subparagraph (i)) disposed of by the disposing affiliate to the taxpayer on the dissolution,

exceeds

(iii) the total of all debts owing by the disposing affiliate, and of all amounts of other obligations of the disposing affiliate to pay amounts, otherwise than as or on account of a dividend owing by the disposing affiliate to the taxpayer or to persons with whom the taxpayer was not dealing at arm's length, that were outstanding immediately before the dissolution and that were assumed or cancelled by the taxpayer on the dissolution.

Related Provisions: 95(2)(f) — Determination of certain components of foreign accrual property income.

History: Subpara. 88(3)(b)(iii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(19), to add "otherwise than as or on account of a dividend owing by the disposing affiliate to the taxpayer or to a person with whom the taxpayer was not dealing at arm's length," applicable to dissolutions occurring after July 13, 1990.

Pre-RSC History: All that portion of subsec. 88(3) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 53(11), applicable with respect to dissolutions occurring after November 12, 1981, other than a dis-

solution that was part of a reorganization that was substantially advanced before November 13, 1981. That portion formerly read:

> (3) Where on the dissolution of a foreign affiliate of a taxpayer (in this subsection referred to as the "disposing affiliate") one or more shares of the capital stock of another foreign affiliate of the taxpayer have been disposed of to the taxpayer,

Para. 88(3)(b) substituted by 1976-77, c. 4, subsec. 34(2), applicable in respect of any winding-up ending after 1971.

Subsec. 88(3) added by 1974-75-76, c. 26, subsec. 52(8), applicable in respect of any winding-up ending after 1971.

(4) Amalgamation deemed not to be acquisition of control — For the purposes of paragraphs (1)(c), (d) and (d.2),

Proposed Amendment — 88(4)

(4) Amalgamation deemed not to be acquisition of control — For the purposes of paragraphs (1)(c), (c.2), (d) and (d.2) and, for greater certainty, paragraphs (c.3) to (c.8) and (d.3),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 39(4), will amend the opening words of para. 88(4) to read as above, applicable to windings-up that begin after November 1994.

Technical Notes: Subsection 88(4) of the Act sets out for the purposes of paragraphs 88(1)(c), (d) and (d.2) the circumstances in which, among other things, a corporation formed on an amalgamation will be considered to be a continuation of its predecessor corporations. Subsection 88(4) is amended to also apply for the purpose of paragraph 88(1)(c.2), and for greater certainty, subsection 88(4) is amended to clarify that it also applies for the purposes of paragraphs 88(1)(c.3) to (c.8) and (d.3) of the Act.

> (a) subject to paragraph (c), control of any corporation shall be deemed not to have been acquired because of an amalgamation;
>
> (b) any corporation formed as a result of an amalgamation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation; and
>
> (c) in the case of an amalgamation described in subsection 87(9), control of a predecessor corporation that was not controlled by the parent before the amalgamation shall be deemed to have been acquired by the parent immediately before the amalgamation.

History: Subpara. 88(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 66(20), applicable to windings-up beginning after March 1977. Subsec. 88(4) formerly read:

> (4) Amalgamation deemed not to be acquisition of control — In determining, for the purposes of paragraphs (1)(c) and (d), whether control of any corporation has been acquired, control shall be deemed not to have been acquired by virtue of any amalgamation and any corporation formed as a result of any amalgamation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation and, in the case of a merger described in subsection 87(9), control of a predecessor corporation that was not controlled by the parent prior to such a merger shall be deemed to have been acquired by the parent immediately prior to the merger.

Pre-RSC History: Subsec. 88(4) substituted by 1979, c. 5, subsec. 29(6), applicable with respect to corporate wind-ups commencing after November 16, 1978. Subsec. 88(4) formerly read:

> (4) In determining, for the purposes of paragraphs (1)(c) and (d), whether control of any corporation has been acquired, control shall be deemed not to have been acquired by virtue of any amalgamation, and any corporation formed as a result of any amalgamation shall be deemed to be the same corporation as, and a continuation of, its predecessor corporations.

Subsec. 88(4) added by 1977-78, c. 1, subsec. 43(12), applicable with respect to corporate wind-ups commencing after March 31, 1977.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Definitions [s. 88]: "acquired" — 88(1)(c.6), (d.2), 88(4), 256(7)–(9); "acquirer" — 88(1)(d.2); "adjusted cost base" — 54, 248(1); "allowable business investment loss", "allowable capital loss" — 38, 248(1); "amount" — 248(1); "arm's length" — 88(1.7), 251(1); "business" — 248(1); "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canadian corporation" — 89(1), 248(1); "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "cash method" — 28(1), 248(1); "class of shares" — 248(6); "consequence of the death" — 248(8); "control" — 88(1)(c.6), (d.2), 88(4), 256(6)–(9); "controlled" — 256(6), (6.1); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "depreciable property" — 13(21), 88(1)(c.7), 248(1); "dividend" — 248(1); "expenditure year" — 88(1)(e.3); "farming" — 248(1); "farm loss" — 111(8); "fiscal period" — 249(2)(b), 249.1; "foreign affiliate" — 95(1), 248(1); "foreign resource property" — 66(15), 248(1); "ineligible property" — 88(1)(c) [before (iii)]; "investment tax credit" — 127(9), 248(1); "life insurance capital dividend" — 83(2.1), 248(1); "limited partnership loss" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "paid-up capital" — 89(1), 248(1); "parent" — 88(1), (1.1), (1.2); "payable" — 84(7), 89(3); "person" — 248(1); "pre-1972 capital surplus on hand" — 88(2.1), (2.2); "prescribed", "property" — 248(1); "qualified expenditure" — 37.1(5), 88(1.41); "restricted farm loss" — 31, 248(1); "series of transactions" — 248(10); "share", "shareholder" — 248(1); "specified class" — 88(1)(c.8); "specified future tax consequence" — 248(1); "specified person" — 88(1)(c.2)(i); "specified property" — 88(1)(c.4); "specified shareholder" — 88(1)(c.2)(iii), 248(1); "specified subsidiary corporation" — 88(1)(c.5); "subsidiary" — 88(1), (1.1), (1.2); "substitution" — 88(1)(c.3); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38, 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1).

I.T. Application Rules [s. 88]: 20(1.2).

Interpretation Bulletins [s. 88]: IT-188R: Sale of accounts receivable; IT-243R4: Dividend refund to private corporations; IT-474R: Amalgamations of Canadian corporations.

88.1 [Repealed]

History: S. 88.1 repealed by 1994, c. 21, s. 41, applicable after 1992 except that

> (a) where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before December 16, 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the repeal applies to the corporation from the corporation's "time of continuation" (within the meaning assigned by that para.); and
>
> (b) where a corporation elects in accordance with para. 111(4)(b) of 1994, c. 21 (i.e., elects before December 16, 1994 for new subsec. 250(5.1) to not apply), the repeal applies to the corporation only after the corporation was granted the articles of continuance or similar constitutional documents in respect of which the election was made.

S. 88.1 formerly read:

> 88.1 Corporate emigration — Where at any particular time after August 28, 1980 a corporation that was incorporated in Canada, other than a corporation that was not at any time resident in Canada,
>
> (a) has been granted articles of continuance, or similar corporate constitutional documents, in a jurisdiction outside Canada, or
>
> (b) has become resident in a jurisdiction outside Canada and would, as a consequence thereof, be exempt from tax under this Part on income from any source outside Canada derived by it after the particular time by virtue of any Act of Parliament or anything approved, made or declared to have the force of law under any Act of Parliament,
>
> the following rules apply:
>
> (c) the corporation's taxation year that would otherwise have included the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the corporation shall be deemed to have commenced at the particular time,
>
> (d) the corporation shall be deemed not to be a Canadian corporation at the particular time and all subsequent times,
>
> (e) each property owned by the corporation immediately before the particular time shall be deemed to have been disposed of by it immediately before that time for proceeds of disposition equal to its fair market value at that time and those proceeds

shall be deemed to have become receivable and to have been received by it immediately before that time,

(f) section 48 does not apply to the corporation for the taxation year in which it is deemed by paragraph (e) to have disposed of its property, and

(g) each property deemed by paragraph (e) to have been disposed of by the corporation shall be deemed to have been reacquired by it immediately after the particular time at a cost equal to the proceeds of disposition of the property as determined in that paragraph.

Pre-RSC History [s. 88.1]: S. 88.1 added by 1980-81-82-83, c. 48, s. 49, applicable to 1980 *et seq.*

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition and acquisition on ceasing to be or becoming resident in Canada.

89. (1) Definitions — In this subdivision,

"Canadian corporation" at any time means a corporation that is resident in Canada at that time and was

(a) incorporated in Canada, or

(b) resident in Canada throughout the period that began on June 18, 1971 and that ends at that time,

and, for greater certainty, a corporation formed at any particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (otherwise than as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of the property by the other corporation or as a result of the distribution of the property to the other corporation on the winding-up of the corporation) is a Canadian corporation because of paragraph (a) only if

(c) that reorganization took place under the laws of Canada or a province, and

(d) each of those corporations was, immediately before the particular time, a Canadian corporation;

Related Provisions: 134 — NRO not a Canadian corporation; 219 — Additional tax on corporations (other than Canadian corporations) carrying on business in Canada; 219.1 — Tax when corporation ceases to be Canadian corporation; 248(1)"Canadian corporation" — Definition applies to entire Act; 248(1)"corporation" — meaning of "incorporated in Canada"; 250 — Resident in Canada.

History: The definition "Canadian corporation" in subsec. 89(1) substituted by 1994, c. 21, subsec. 42(1), applicable June 15, 1994. That definition formerly read:

"Canadian corporation" at any time means a corporation that was resident in Canada at that time and was

(a) incorporated in Canada, or

(b) resident in Canada throughout the period commencing June 18, 1971 and ending at that time;

Pre-RSC History: *The definition "Canadian corporation" was para. 89(1)(a).*

Para. 89(1)(a) substituted by 1977-78, c. 1, subsec. 44(1), applicable after December 31, 1978, to delete the following words from the end of the para.:

except that for the purposes of subsection 83(1) a corporation that was incorporated in Canada before April 27, 1965 and that was not resident in Canada at the end of 1971 shall be deemed not to be a Canadian corporation;

Interpretation Bulletins: IT-98R2: Investment corporations; IT-320R2: Registered retirement savings plan — qualified investments; IT-458R2: Canadian-controlled private corporation.

"capital dividend account" of a corporation at any particular time means the amount, if any, by which the total of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the amount if any, by which

(A) the amount of the corporation's capital gain from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)[)] of a property in the period beginning at the beginning of its first taxation year (that began after the corporation last became a private corporation and that ended after 1971) and ending immediately before the particular time

Proposed Amendment — 89(1)"capital dividend account"(a)(i)(A)

(A) the amount of the corporation's capital gain from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)) of a property in the period beginning at the beginning of its first taxation year (that began after the corporation last became a private corporation and that ended after 1971) and ending immediately before the particular time

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 40, will amend cl. (a)(i)(A) of the definition "capital dividend account" in subsec. 89(1) to read as above, applicable to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997.

Technical Notes: Subsection 89(1) defines certain terms that apply to corporations and their shareholders.

Clause (a)(i)(A) of the definition "capital dividend account" is amended to add a bracket that was omitted when the provision was amended by S.C. 1998, c. 19, ss. 17(1) [formerly Bill C-28].

The current amendment applies to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997 — the same coming-into-force provision as the 1998 amendment.

exceeds the total of

(B) the portion of the capital gain referred to in clause (A) that is the corporation's taxable capital gain, and

(C) the portion of the amount, if any, by which the amount determined under clause (A) exceeds the amount determined under clause (B) from the disposition by it of a property that can reasonably be regarded as having accrued while the property, or a property for which it was substituted,

(I) except in the case of a disposition of a designated property, was a property of a corporation (other than a private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation),

(II) where, after November 26, 1987, the property became a property of a Canadian-controlled private corporation (otherwise than by reason of a change in the residence of one or more shareholders of the corpora-

tion), was a property of a corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons, or

(III) where, after November 26, 1987, the property became a property of a private corporation that was not exempt from tax under this Part on its taxable income, was a property of a corporation exempt from tax under this Part on its taxable income,

exceeds

(ii) the total of all amounts each of which is the amount, if any, by which

(A) the amount of the corporation's capital loss from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1) of a property in that period

exceeds the total of

(B) the part of the capital loss referred to in clause (A) that is the corporation's allowable capital loss, and

(C) the portion of the amount, if any, by which the amount determined under clause (A) exceeds the amount determined under clause (B) from the disposition by it of a property that can reasonably be regarded as having accrued while the property, or a property for which it was substituted,

(I) except in the case of a disposition of a designated property, was a property of a corporation (other than a private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation),

(II) where, after November 26, 1987, the property became a property of a Canadian-controlled private corporation (otherwise than by reason of a change in the residence of one or more shareholders of the corporation), was a property of a corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons, or

(III) where, after November 26, 1987, the property became a property of a private corporation that was not exempt from tax under this Part on its taxable income, was a property of a corporation exempt from tax under this Part on its taxable income,

(b) all amounts each of which is an amount in respect of a dividend received by the corporation on a share of the capital stock of another corporation in the period, which amount was, by virtue of subsection 83(2), not included in computing the income of the corporation,

(c) all amounts each of which is an amount in respect of a business carried on by the corporation at any time in the period, equal to the amount, if any, by which the total of

(i) where the period commenced before the corporation's adjustment time, the amount, if any, by which

(A) the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period preceding its adjustment time

exceeds the total of

(B) the cumulative eligible capital of the corporation in respect of the business at the commencement of the period, and

(C) ½ of the total of the eligible capital expenditures in respect of the business that were made or incurred by the corporation during that portion of the period preceding its adjustment time,

(ii) ⅓ of the total of the amounts in respect of the business required to be included in the calculation of the corporation's cumulative eligible capital by reason of the description of E in the definition "cumulative eligible capital" in subsection 14(5) with respect to that portion of the period following its adjustment time, and

(iii) ⅓ of all amounts received in the period that were required to be included in the corporation's income by reason of paragraph 12(1)(i.1)

exceeds the total of

(iv) where the period commenced after the corporation's adjustment time, ⅓ of its cumulative eligible capital in respect of the business at the commencement of the period,

(v) ¼ of the total of the eligible capital expenditures in respect of the business made or incurred by the corporation with respect to that portion of the period after its adjustment time,

(vi) where the period commenced before the corporation's adjustment time, ½ of the amount, if any, by which the total of the amounts determined in respect of the corporation under clauses (i)(B) and (C) exceeds the amount determined in respect of the corporation under clause (i)(A), and

(vii) ⅓ of all amounts deducted by the corporation under subsection 20(4.2) in respect of debts established by it to have become bad debts during the period,

(d) the amount, if any, by which the total of

(i) all amounts each of which is the proceeds of a life insurance policy of which the corporation was a beneficiary on or before June 28, 1982 received by the corporation in the period and after 1971 in consequence of the death of any person, and

(ii) all amounts each of which is the proceeds of a life insurance policy of which the corporation was not a beneficiary on or before June 28, 1982 received by the corporation in the period and after May 23, 1985 in consequence of the death of any person

exceeds the total of all amounts each of which is the adjusted cost basis (within the meaning assigned by subsection 148(9)) of a policy referred to in subparagraph (i) or (ii) to the corporation immediately before that person's death, and

(e) the amount of the corporation's life insurance capital dividend account immediately before May 24, 1985,

exceeds the total of all capital dividends that became payable by the corporation after the commencement of the period and before the particular time;

Related Provisions: 83(2) — Election to pay capital dividend out of capital dividend account; 83(2.3) — Life insurance proceeds included under 89(1)"capital dividend account"(d); 87(2)(z.1) — Amalgamations — rules applicable — capital dividend account; 88(2)(a) — Winding-up of a Canadian corporation; 89(1.1) — Capital dividend account where control acquired; 89(1.2) — Capital dividend account where corporation ceases to be exempt; 89(2) — Where corporation is beneficiary; 104(20) — Flow-through of capital dividend through trust; 131(11)(e) — Rules re prescribed labour-sponsored venture capital corporations; 141.1 — Insurance corporation deemed not to be private corporation; 248(5) — Substituted property; 248(8) — Occurrences as a consequence of death; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

History: Cls. (a)(i)(A) and (a)(ii)(A) of the definition "capital dividend account" in subsec. 89(1) amended by 1998, c. 19, subsecs. 17(1) and (2), applicable to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997. The cls. formerly read:

> (A) the amount of a capital gain of the corporation realized in the period commencing on the first day of the first taxation year commencing after the time the corporation last became a private corporation and ending after 1971, and ending immediately before the particular time
>
> . . . . .
>
> (A) the amount of a capital loss of the corporation realized in that period

That portion of cl. (a)(i)(c) and of (a)(ii)(C) preceding subcl. (II) of each in the definition "capital dividend account" in subsec. 89(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 67(1), (2), to substitute "the disposition by it of a property" for "the disposition by it of a property, other than a designated property" in that portion preceding subcl. (I), and to add "except in the case of a disposition of a designated property" in subcl. (I), applicable to taxation years ending after November 26, 1987.

Pre-RSC History: *The definition "capital dividend account" was para. 89(1)(b). See Table of Concordance.*

Subpara. 89(1)(b)(i) substituted by 1988, c. 55, subsec. 62(1), applicable in taxation years ending after November 26, 1987, except that sub-subcls. 89(1)(b)(i)(A)(III)2. and 3. and (B)(III)2. and 3., are applicable with respect to dispositions occurring after November 26, 1987. Subpara. 89(1)(b)(i) formerly read:

> (i) ½ of the amount, if any, by which
>
> (A) the amount, if any, by which
>
> (I) the aggregate of the capital gains of the corporation for the period commencing on the first day of the first taxation year commencing after the time the corporation last became a private corporation and ending after 1971, and ending immediately before the particular time,
>
> exceeds
>
> (II) the aggregate of all amounts each of which is the portion of a capital gain referred to in subclause (I) from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was a property of a corporation other than a private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation
>
> exceeds
>
> (B) the amount, if any, by which
>
> (I) the aggregate of the capital losses of the corporation for that period,
>
> exceeds
>
> (II) the aggregate of all amounts each of which is the portion of a capital loss referred to in subclause (I) from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was a property of a corporation other than a private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation,

Subpara. 89(1)(b)(iii) substituted by 1988, c. 55, subsec. 62(2), applicable after June 17, 1987 except that, with respect to amounts included in the calculation of a corporation's income by reason of para. 12(1)(i.1) or subsec. 20(4.2), relating to an amount owing in respect of a disposition of property occurring in a taxation year of the corporation commencing before July 1988, cls. 89(1)(b)(iii)(C) and (G) shall be read without reference to the words "⅓ of". Subpara. 89(1)(b)(iii) formerly read:

> (iii) all amounts each of which is an amount in respect of a business carried on by the corporation at any time in the period, equal to the amount, if any, by which
>
> (A) the aggregate of the eligible capital amounts (within the meaning assigned by subsection 14(1)) in respect of the business that became payable to the corporation in the period
>
> exceeds the aggregate of
>
> (B) the cumulative eligible capital of the corporation in respect of the business at the commencement of the period, and
>
> (C) ½ of the aggregate of the eligible capital expenditures in respect of the business that were made or incurred by the corporation in the period,

Subpara. 89(1)(b)(iv) substituted and subpara. 89(1)(b)(v) added, by 1986, c. 6, subsec. 48(1), applicable after May 23, 1985. Subpara. 89(1)(b)(iv) formerly read:

> (iv) the amount, if any, by which
>
> (A) the aggregate of all amounts each of which is the proceeds of a life insurance policy of which the corporation was a beneficiary on or before June 28, 1982 received by the corporation in the period and after 1971 in consequence of the death of any person whose life was insured under the policy,
>
> exceeds
>
> (B) the aggregate of all amounts each of which is the adjusted cost basis of the policy (within the meaning of paragraph 148(9)(a)) to the corporation immediately before that person's death,

Subcls. 89(1)(b)(i)(A)(II) and (B)(II) substituted by 1984, c. 1, subsecs. 40(1), (2), to add "an investment corporation, a mortgage investment corporation or a mutual fund corporation", applicable with respect to dispositions occurring after November 12, 1981.

Subparas. 89(1)(b)(i), (iv) substituted by 1980-81-82-83, c. 140, subsecs. 54(1), (2), applicable, as to subpara. 89(1)(b)(i), with respect to dispositions occurring after November 12, 1981, and, as to subparas. 89(1)(b)(i), (iv), after June 28, 1982. Subparas. 89(1)(b)(i), (iv) formerly read:

> (i) ½ of the amount, if any, by which the aggregate of the capital gains of the corporation, for the period commencing on the first day of the first taxation year commencing after the time the corporation last became a private corporation and ending after 1971, and ending immediately before the particular time, exceeds the aggregate of its capital losses for that period,
>
> . . . . .
>
> (iv) the amount, if any, by which
>
> (A) the proceeds of any life insurance policy received by the corporation in the period and after 1971 in consequence of the death of any person whose life was insured under the policy,
>
> exceeds
>
> (B) the adjusted cost basis of the policy (within the meaning of paragraph 148(9)(a)) to the corporation immediately before that person's death,

Cl. 89(1)(b)(iv)(B) substituted by 1977-78, c. 1, subsec. 44(2), applicable with respect to life insurance proceeds received after March 31, 1977. Cl. 89(1)(b)(iv)(B) formerly read:

> (B) all amounts paid as or on account of premiums paid under the policy,

Para. 89(1)(b)(i) substituted by 1974-75-76, c. 26, subsec. 53(1), applicable to 1972 *et seq.*

Selected Cases [89(1)"capital dividend account"]: *CSI Development Corp. v. R.*, [1999] 3 C.T.C. 2421 (TCC) (Partnership has no capital dividend account); *Tipster Investments Ltd. v. R.*, [1998] 2 C.T.C. 3005 (TCC) (Business investment loss included in definition of capital loss).

I.T. Application Rules: 32.1(4) (where dividend paid or payable before May 7, 1974).

Interpretation Bulletins: IT-66R6: Capital dividends IT-123R4: Disposition of eligible capital property; IT-123R6: Transactions involving eligi-

ble capital property; IT-138R: Computation and flow-through of partnership income; IT-149R4: Winding-up dividend; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-484R2: Business investment losses.

I.T. Technical News: No. 9 (life insurance policy used as security for indebtedness).

Advance Tax Rulings: ATR-54: Reduction of paid-up capital.

"designated property" means

(a) any property of a private corporation that last became a private corporation before November 13, 1981 and that was acquired by it

(i) before November 13, 1981, or

(ii) after November 12, 1981 pursuant to an agreement in writing entered into on or before that date,

(b) any property of a private corporation that was acquired by it from another private corporation with whom the private corporation was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) at the time the property was acquired, where the property was a designated property of the other private corporation,

(c) a share acquired by a private corporation in a transaction to which section 51, subsection 85(1) or section 85.1, 86 or 87 applied in exchange for another share that was a designated property of the corporation, or

(d) a replacement property (within the meaning assigned by section 44) for a designated property disposed of by virtue of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54;

Related Provisions: 89(1)"capital dividend account"(a)(i)(C)(I), 89(1)"capital dividend account"(a)(ii)(C)(I) — Application to capital dividend account; 129(4.3) — Application of definition to s. 129.

Pre-RSC History: *The definition "designated property" was para. 89(1)(b.1). See Table of Concordance.*

Para. 89(1)(b.1) substituted by 1985, c. 45, subsec. 44(1), applicable after November 12, 1981. Para. 89(1)(b.1) formerly read:

(b.1) "designated property" — "designated property" means any particular property of a corporation that last became a private corporation before November 13, 1981 and that was acquired by it

(i) before November 13, 1981, or

(ii) after November 12, 1981 pursuant to an agreement in writing entered into on or before that date,

or a replacement property (within the meaning assigned by section 44) for any such particular property disposed of by virtue of an event referred to in subparagraph 54(h)(ii), (iii) or (iv);

Para. 89(1)(b.1) added by 1980-81-82-83, c. 140, subsec. 54(3), applicable after November 12, 1981.

Interpretation Bulletins: IT-66R6: Capital dividends; IT-243R4: Dividend refund to private corporations.

"life insurance capital dividend account [para. 89(1)(b.2)]" — [Repealed under former Act]

Pre-RSC History: Para. 89(1)(b.2) repealed by 1986, c. 6, subsec. 48(2), applicable after May 23, 1985. Para. 89(1)(b.2) formerly read:

(b.2) "life insurance capital dividend account" — "life insurance capital dividend account" of a corporation at any particular time means the amount, if any, by which the aggregate of

(i) the amount, if any, by which

(A) the aggregate of all amounts each of which is the proceeds of a life insurance policy of which the corporation was not a beneficiary on or before June 28, 1982 received as a consequence of the death of a person whose life was insured under the policy by the corporation in the period

(I) commencing on the first day of the first taxation year commencing after the time the corporation last became a private corporation and ending after 1971, and

(II) ending immediately before the particular time

exceeds

(B) the aggregate of all amounts each of which is the adjusted cost basis (within the meaning assigned by paragraph 148(9)(a)) to the corporation immediately before that person's death of a policy referred to in clause (A), and

(ii) all amounts each of which is an amount in respect of a dividend received by the corporation on a share of the capital stock of another corporation in the period, which amount was, by virtue of subsection 83(2.1), not included in computing the income of the corporation

exceeds

(iii) the aggregate of all amounts each of which is a life insurance capital dividend that became payable by the corporation after the commencement of the period and before the particular time;

Para. 89(1)(b.2) added by 1980-81-82-83, c. 140, subsec. 54(3), applicable after June 28, 1982.

"paid-up capital" at any particular time means,

(a) in respect of a share of any class of the capital stock of a corporation, an amount equal to the paid-up capital at that time, in respect of the class of shares of the capital stock of the corporation to which that share belongs, divided by the number of issued shares of that class outstanding at that time,

(b) in respect of a class of shares of the capital stock of a corporation,

(i) where the particular time is before May 7, 1974, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act,

(ii) where the particular time is after May 6, 1974, and before April 1, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed in accordance with the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977, and

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 86(2.1), 87(3) and (9), 128.1(2) and (3), 138(11.7), 139.1(6) and (7), 192(4.1) and 194(4.1) and section 212.1,

except that, where the corporation is a cooperative corporation (within the meaning assigned by subsection 136(2)) or a credit union and the statute by or under which it was incorporated does not provide for paid-up capital in respect of a class of shares, the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act, shall be deemed to be the amount, if any, by which

(iv) the total of the amounts received by the corporation in respect of shares of that class issued and outstanding at that time

exceeds

(v) the total of all amounts each of which is an amount or part thereof described in subparagraph (iv) repaid by the corporation to persons who held any of the issued shares of that class before that time, and

(c) in respect of all the shares of the capital stock of a corporation, an amount equal to the total of all

amounts each of which is an amount equal to the paid-up capital in respect of any class of shares of the capital stock of the corporation at the particular time;

Related Provisions: 51(3) — Exchange of convertible property; 66.3(2) — Exploration and development shares — deductions from PUC; 66.3(4) — PUC of flow-through share; 84.1 — Non-arm's length sales of shares; 84.2 — Computation of PUC in respect of particular class of shares; 85(2.1) — Transfer of property to corporation by shareholders — computation of PUC; 85.1(2.1) — Share for share exchange — computation of PUC; 86(2.1) — Internal reorganization; 87(3) — Computation of PUC; 87(3.1) — Election for non-application of 87(3); 87(9)(b) — Rules applicable re certain mergers; 128.1(2), (3) — Corporation becoming resident in Canada; 138(11.7) — Insurance corporations — computation of PUC; 139.1(6), (7) — PUC after demutualization of insurer; 192(4.1), 194(4.1) — Computing PUC after SPTC or SRTC designation; 212.1 — Non-arm's length sales of shares by non-residents; 248(1)"PUC" — Definition applies to entire Act; 248(6) — Series of shares.

History: Subpara. (b)(iii) of the definition "paid-up capital" amended by 2000, c. 19, s. 14, applicable after December 15, 1998. The subpara. formerly read:

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 86(2.1), 87(3) and (9), 128.1(2) and (3), 138(11.7), 192(4.1) and 194(4.1) and section 212.1,

Subpara. (b)(iii) of the definition "paid-up capital" in subsec. 89(1) substituted by 1994, c. 21, subsec. 42(2), applicable to determinations of paid-up capital after August 1992, except that, in applying the subpara. before 1993, it shall be read without reference to "128.1(2) and (3)". That subpara. formerly read:

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 87(3) and (9), 138(11.7), 192(4.1) and 194(4.1) and section 212.1,

That portion of para. (b) of "paid-up capital" following subpara. (iii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 67(3), applicable after 1988.

Pre-RSC History: *The definition "paid-up capital" was para. 89(1)(c). See Table of Concordance.*

Cl. 89(1)(c)(ii)(C) amended by 1988, c. 55, subsec. 62(3), to add reference to subsec. 138(11.7), applicable after December 15, 1987.

Cl. 89(1)(c)(ii)(C) substituted by 1987, c. 46, s. 31, to add reference to subsecs. 66.3(4) and 85.1(2.1), applicable after February 17, 1987.

Cl. 89(1)(c)(ii)(C) amended by 1986, c. 6, subsec. 48(3), applicable after May 23, 1985, to substitute "subsection 66.3(2), sections 84.1 and 84.2, subsections 85(2.1), 87(3), 87(9), 192(4.1) and 194(4.1) and section 212.1, and" for "sections 84.2 and 212.1 and subsections 87(3) and 87(9), and".

Cl. 89(1)(c)(ii)(C) substituted by 1979, c. 5, subsec. 30(1), applicable to 1978 *et seq.*, adding reference to subsec. 87(9).

Para. 89(1)(c) substituted by 1977-78, c. 1, subsec. 44(3), applicable after March 31, 1977. Para. 89(1)(c) formerly read:

(c) "paid-up capital" at any particular time means,

(i) in respect of a share of any class of the capital stock of a corporation, an amount equal to the paid-up capital at that time, in respect of the class of shares of the capital stock of the corporation to which that share belongs, divided by the number of issued shares of that class outstanding at that time,

(ii) in respect of a class of shares of the capital stock of a corporation, the amount, if any, by which the aggregate of

(A) an amount equal to the paid-up capital in respect of that class of shares at that time, determined without reference to this subparagraph,

(B) all amounts each of which is an amount in respect of the issue of any share of that class by the corporation before that time equal to the amount, if any, by which

(I) the fair market value, at the time that share was issued, of the consideration received by the corporation for the issue of that share

exceeds

(II) the amount by which the paid-up capital referred to in clause (A) was increased by virtue of the issue of that share, and

(C) all amounts each of which is the amount by which

(I) that portion of the amount, if any, by which

1. any contribution of property (other than eligible capital property) before that time to the corporation by a shareholder who owned shares of that class

exceeds

2. any consideration given by the corporation in respect of that contribution of property

that cannot reasonably be regarded as a gift made to or for the benefit of any other shareholder of the corporation

exceeds

(II) the portion of the portion determined under subclause (I) that has otherwise been included in the paid-up capital in respect of that or any other class of shares of the capital stock of the corporation,

exceeds the aggregate of

(D) all amounts each of which is an amount in respect of the redemption, acquisition or cancellation in any manner whatever, before that time, of a share of that class by the corporation equal to the amount, if any, by which

(I) the paid-up capital in respect of that share immediately before such redemption, acquisition or cancellation

exceeds

(II) the reduction in the amount of the paid-up capital referred to in clause (A) by virtue of such redemption, acquisition or cancellation,

(E) all amounts each of which is an amount in respect of a reduction of the paid-up capital of that class, before that time, otherwise than by way of redemption, acquisition or cancellation of shares of that class equal to the amount, if any, by which

(I) the amount paid by the corporation on the reduction of the paid-up capital

exceeds

(II) the reduction in the amount of the paid-up capital referred to in clause (A) by virtue of such reduction, and

(F) all amounts each of which is the amount of a dividend that the corporation would, but for this clause, have been deemed, by subsection 84(1), to have paid before that time on an increase in the paid-up capital of that class of shares other than an increase on the issue of a share of that class or by virtue of the amalgamation of two or more corporations, and

(iii) in respect of all the shares of the capital stock of a corporation, an amount equal to the aggregate of all amounts each of which is an amount equal to the paid-up capital in respect of any class of shares of the capital stock of the corporation at the particular time;

Para. 89(1)(c) substituted by 1974-75-76, c. 26, subsec. 53(2), applicable for the purposes of computing the paid-up capital of a corporation at the end of its 1971 taxation year and at any time after May 6, 1974. Para. 89(1)(c) formerly read:

(c) "paid-up capital" in respect of a share of any class of the capital stock of a corporation at any particular time means an amount equal to the paid-up capital of the corporation at that time that is represented by the shares of the class to which that share belongs, divided by the number of issued shares of that class then outstanding;

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-463R2: Paid-up capital; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-

28: Redemption of capital stock of family farm corporation; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-54: Reduction of paid-up capital.

"paid-up capital deficiency [para. 89(1)(d)]" and "paid-up capital limit [para. 89(1)(e)]" — [Repealed under former Act]

Pre-RSC History: Paras. 89(1)(d), (e) repealed by 1977-78, c. 1, subsec. 44(3), applicable after March 31, 1977. Paras. 89(1)(d), (e) formerly read:

(d) "paid-up capital deficiency" — "paid-up capital deficiency" of a corporation at any particular time after May 6, 1974 means the amount, if any, by which the aggregate of

(i) the amounts determined under subparagraphs (l)(xii) and (xiii) in respect of the corporation,

(ii) all amounts determined under subparagraphs (l)(xiv), (xv) and (xviii) in respect of the corporation at the particular time,

(iii) all amounts each of which is an amount equal to the paid-up capital at the particular time in respect of a share of the capital stock of the corporation issued after 1971 that was received by a person as described in subsection 35(1) if that person, or that person together with other persons with whom he does not deal at arm's length, controlled the corporation directly or indirectly in any manner whatever immediately after the time the share was issued,

(iv) where subsection 85(1) or (2) has been applicable in respect of any disposition of property (other than a disposition after May 6, 1974 and before November 19, 1974) to the corporation before the particular time, the amount, if any, by which

(A) the amount by which any increase, by virtue of the disposition, in the paid-up capital of the corporation exceeds any increase, by virtue of the disposition, in the value of its assets (determined as though the value of any property so transferred were its cost to the corporation for the purposes of this Part and as though this Part were read without reference to subsection 85(5)) less its liabilities,

exceeds

(B) the amount by which any increase, by virtue of the disposition, in the paid-up capital of the corporation exceeds any increase, by virtue of the disposition, in the value of its assets less its liabilities, and

(iv.1) where the particular time is after November 18, 1974 and where at any time before the particular time the corporation issued any shares of its capital stock as consideration for the purchase of shares of the capital stock of a second corporation and,

(A) at any time before those shares were so issued, any particular person, or the group of persons to whom those shares were issued,

(I) controlled the second corporation, directly or indirectly in any manner whatever, or

(II) beneficially owned shares of the capital stock of the second corporation representing more than 50% of its paid-up capital, and

(B) at any time before the particular time, the particular person, or group of persons referred to in clause (A),

(I) controlled the corporation directly or indirectly in any manner whatever,

(II) beneficially owned shares of the capital stock of the corporation representing more than 50% of its paid-up capital, or

(III) held an amount of debt payable by the corporation that exceeded the paid-up capital of the corporation, at a time when shares of the capital stock of the corporation representing more than 50% of its paid-up capital were beneficially owned by

1. that particular person,

2. that group of persons,

3. persons related to that particular person or any member of that group of persons, or

4. any combination of persons referred to in this subclause,

all amounts each of which is an amount in respect of any shares so issued at any given time equal to the amount, if any, by which the lesser of

(C) subject to subsection 89(6), the increase in the paid-up capital of the corporation by virtue of the issue of those shares (on the assumption that paragraph (c) applied on the issue of those shares) and

(D) the amount, if any, by which the aggregate of the increase in the paid-up capital of the corporation by virtue of the issue of those shares (on the assumption that paragraph (c) applied on the issue of those shares) and the fair market value at that time of any other consideration given by the corporation at that time for the purchase of the shares of the second corporation exceeds the lesser of

(I) the paid-up capital limit of the second corporation at that time or on November 18, 1974 where that day is later, and

(II) the aggregate of all amounts each of which is the paid-up capital at that time of each share of the second corporation so purchased at that time (on the assumption that paragraph (c) applied at that time)

exceeds the aggregate of

(E) the amount of any dividend that the corporation is deemed by virtue of subsection 84(1) to have paid as a result of the issue of those shares, and

(F) the amount determined under subparagraph (iv) in respect of the corporation as a result of the issue of those shares,

exceeds the aggregate of

(v) the tax equity of the corporation at the end of its 1971 taxation year,

(vi) all amounts determined under subparagraphs (l)(ii) to (x) in respect of the corporation at the particular time,

(vii) all amounts each of which is an amount deemed by subsection 84(2), (3) or (4) to be a dividend paid before the particular time by the corporation on shares of any class, to the extent of the amount, if any, by which the paid-up capital in respect of the shares of that class at the time the dividend was paid exceeds the paid-up capital limit of the corporation at the time the dividend was paid,

(viii) all amounts each of which is an amount in respect of a reduction of the paid-up capital of the corporation after its 1971 taxation year and before the particular time, equal to the amount, if any, by which the amount of the reduction exceeds the aggregate of amounts paid by it to its shareholders on the reduction,

(ix) all business losses (within the meaning of this Act as it read in its application to the 1971 taxation year) sustained by the corporation in taxation years ending before 1972, to the extent that such losses have been deducted under paragraph 111(1)(a) or (c) from the corporation's income for any taxation year ending after 1971 and before the particular time, and

(x) all amounts each of which is an amount in respect of any purchase by the corporation before the particular time of any shares of its capital stock in respect of which tax under section 181 is payable by it, equal to the amount, if any, by which the amount described in paragraph 181(1)(a) in respect of the purchase exceeds the amount described in paragraph 181(1)(b) in respect thereof;

(e) "paid-up capital limit" — "paid-up capital limit" of a corporation at any particular time means the amount, if any, by which the paid-up capital capital of the corporation at that time in respect of all of the shares of its capital stock exceeds the corporation's paid-up capital deficiency at that time;

All that portion of para. 89(1)(d) preceding subpara. (v), subparas. 89(1)(d)(vi), (ix) substituted by 1974-75-76, c. 26, subsecs. 53(3)–(5), ap-

plicable in computing paid-up capital deficiency after May 6, 1974. That portion, subparas. 89(1)(d)(vi), (ix) formerly read:

(d) "paid-up capital deficiency" of a corporation at any particular time means the amount, if any, by which the aggregate of

(i) the amounts determined under subparagraphs (l)(v) and (vi) in respect of the corporation,

(ii) all amounts determined under subparagraphs (l)(vii) and (viii) in respect of the corporation at the particular time,

(iii) the paid-up capital at the particular time in respect of any shares of the capital stock of the corporation issued after 1971 that were received by a person as described in subsection 35(1), and

(iv) where subsection 85(1) or (2) has been applicable in respect of any disposition of property to the corporation before the particular time, the amount, if any, by which

(A) the amount by which any increase, by virtue of the disposition, in the paid-up capital of the corporation exceeds any increase, by virtue of the disposition, in the value of its assets (determined as though the value of any property so transferred were its cost to the corporation for the purposes of this Part and as though this Part were read without reference to subsection 85(5)) less its liabilities,

exceeds

(B) the amount by which any increase, by virtue of the disposition, in the paid-up capital of the corporation exceeds any increase, by virtue of the disposition, in the value of its assets less its liabilities,

exceeds the aggregate of

. . . . .

(vi) all amounts determined under subparagraphs (l)(ii), (iii), (iv) and (iv.1) in respect of the corporation at the particular time,

. . . . .

(ix) all business losses (within the meaning of this Act as it read in its application to the 1971 taxation year) sustained by the corporation in taxation years ending before 1972, to the extent that such losses have been deducted under paragraph 111(1)(a) from the corporation's income for any taxation year ending after 1971 and before the particular time, and

"private corporation" at any particular time means a corporation that, at the particular time, is resident in Canada, is not a public corporation and is not controlled by one or more public corporations (other than prescribed venture capital corporations) or prescribed federal Crown corporations or by any combination thereof and, for greater certainty, for the purposes of determining at any particular time when a corporation last became a private corporation,

(a) a corporation that was a private corporation at the commencement of its 1972 taxation year and thereafter without interruption until the particular time shall be deemed to have last become a private corporation at the end of its 1971 taxation year, and

(b) a corporation incorporated after 1971 that was a private corporation at the time of its incorporation and thereafter without interruption until the particular time shall be deemed to have last become a private corporation immediately before the time of its incorporation;

Related Provisions: 27(2) — Crown corporations; 134 — NRO deemed not private corporation; 136(1) — Cooperative corporation not private corporation; 137(7) — Credit union not private corporation; 137.1(6) — Deposit insurance corporation not private corporation; 141.1 — Insurance corporation not private corporation for certain purposes; 186(5) — Subject corporation deemed private corporation for certain purposes; 227(16) — Municipal or provincial corporation deemed not private corporation for Part IV tax; 248(1)"private corporation" — Definition applies to entire Act; 250 — Resident in Canada; 256(6), (6.1) — Meaning of "controlled".

History: That portion of the definition "private corporation" preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 67(4), applicable after July 13, 1990. That portion formerly read:

"private corporation" at any particular time means a corporation that, at the particular time, was resident in Canada, was not a public corporation, and was not controlled by one or more public corporations and for greater certainty for the purposes of determining, at any particular time, when a corporation last became a private corporation,

Pre-RSC History: *The definition "private corporation" was para. 89(1)(f).*

Para. 89(1)(f) amended by 1988, c. 55, subsec. 62(4), to substitute "controlled by one or more public corporations" for "controlled, directly or indirectly in any manner whatever, by one or more public corporations;" applicable to taxation years commencing after 1988.

Regulations: 6700 (prescribed venture capital corporation); 7100 (prescribed federal Crown corporation; intended to apply to 89(1), but has not been amended to do so).

I.T. Application Rules: 50(1) (status of corporation in 1972 taxation year).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-391R: Status of corporations; IT-458R2: Canadian-controlled private corporation.

"public corporation" at any particular time means

(a) a corporation that is resident in Canada at the particular time if at that time a class of shares of the capital stock of the corporation is listed on a prescribed stock exchange in Canada,

(b) a corporation (other than a prescribed labour-sponsored venture capital corporation) that is resident in Canada at the particular time if at any time after June 18, 1971 and

(i) before the particular time, it elected in prescribed manner to be a public corporation, and at the time of the election it complied with prescribed conditions relating to the number of its shareholders, the dispersal of ownership of its shares and the public trading of its shares, or

(ii) before the day that is 30 days before the day that includes the particular time it was, by notice in writing to the corporation, designated by the Minister to be a public corporation and at the time it was so designated it complied with the conditions referred to in subparagraph (i),

unless, after the election or designation, as the case may be, was made and before the particular time, it ceased to be a public corporation because of an election or designation under paragraph (c), or

(c) a corporation (other than a prescribed labour-sponsored venture capital corporation) that is resident in Canada at the particular time if, at any time after June 18, 1971 and before the particular time it was a public corporation, unless after the time it last became a public corporation and

(i) before the particular time, it elected in prescribed manner not to be a public corporation, and at the time it so elected it complied with prescribed conditions relating to the number of its shareholders, the dispersal of ownership of its shares and the public trading of its shares, or

(ii) before the day that is 30 days before the day that includes the particular time, it was, by notice in writing to the corporation, designated by the Minister not to be a public corporation and at the time it was so designated it complied with the conditions referred to in subparagraph (i),

and where a corporation has, on or before its filing-due date for its first taxation year, become a public corporation, it is, if it so elects in its return of income for the year, deemed to have been a public corporation from the beginning of the year until the time when it so became a public corporation;

Related Provisions: 13(27)(f) — Restriction on deduction before available for use; 87(2)(ii) — Amalgamations — public corporation; 130.1(5) — Mortgage investment corporation deemed to be public corporation; 141(2) — Life insurance corporation deemed to be public corporation; 141(3) — Life insurance holding corporation deemed to be public corporation; 248(1)"public corporation" — Definition applies to entire Act; 250 — Resident in Canada.

History: The definition "public corporation" in subsec. 89(1) amended by 1998, c. 19, subsec. 17(3), applicable to 1995 *et seq.* The definition formerly read:

> "public corporation" at any particular time means a corporation that was resident in Canada at the particular time, if
>
> (a) at the particular time, a class or classes of shares of the capital stock of the corporation were listed on a prescribed stock exchange in Canada,
>
> (b) at any time after June 18, 1971 and
>
> (i) before the particular time, it elected in prescribed manner to be a public corporation, and at the time of the election it complied with prescribed conditions relating to the number of its shareholders, dispersal of ownership of its shares, public trading of its shares and size of the corporation, or
>
> (ii) before a day 30 days before the particular time, it was, by notice in writing to the corporation, designated by the Minister to be a public corporation, and at the time it was so designated it complied with the conditions referred to in subparagraph (i),
>
> unless subsequent to the election or designation, as the case may be, and before the particular time, it ceased to be a public corporation by virtue of paragraph (c), or
>
> (c) at any time after June 18, 1971 and before the particular time, it was a public corporation, unless after the time it last became a public corporation and
>
> (i) before the particular time, it elected in prescribed manner not to be a public corporation, and at the time it so elected it complied with prescribed conditions relating to the number of its shareholders, dispersal of ownership of its shares and public trading of its shares, or
>
> (ii) before a day 30 days before the particular time, it was, by notice in writing to the corporation, designated by the Minister not to be a public corporation, and at the time it was so designated it complied with the conditions referred to in subparagraph (i),
>
> in which case it shall be deemed thereupon to have ceased to be a public corporation,
>
> except that where a corporation's first taxation year ended after 1971 and the corporation has, after 1971 and on or before the day on or before which it was required by section 150 to file its return of income for that year, become a public corporation, it shall, if it so elected in that return, be deemed to have been a public corporation from the commencement of that year until the day on which it so became a public corporation;

Pre-RSC History: *The definition "public corporation" was para. 89(1)(g). See Table of Concordance.*

All that portion of para. 89(1)(g) following clause (iii)(B) substituted by 1973-74, c. 14, subsec. 28(1), applicable to 1972 *et seq.*

Regulations: 3200 (prescribed stock exchange); 4800, 4803 (prescribed conditions); 6701 (prescribed labour-sponsored venture capital corporation).

I.T. Application Rules: 50 (status of corporation in 1972 taxation year).

Interpretation Bulletins: IT-98R2: Investment corporations; IT-176R2: Taxable Canadian property — interests in and options on real property and shares; IT-320R2: Registered retirement savings plan — qualified investments; IT-391R: Status of corporations; IT-458R2: Canadian-controlled private corporation.

Forms: T2067: Election not to be a public corporation; T2073: Election to be a public corporation.

"tax equity [para. 89(1)(h)]" — [Repealed under former Act]

Pre-RSC History: Para. 89(1)(h) repealed by 1977-78, c. 1, subsec. 44(4), applicable after December 31, 1978. Para. 89(1)(h) formerly read:

> (h) **"tax equity"** — "tax equity" of a corporation at the end of its 1971 taxation year means the amount, if any, by which the aggregate of all amounts each of which is
>
> (i) an amount in respect of depreciable property of a prescribed class owned by the corporation immediately after that time, equal to the undepreciated capital cost thereof to the corporation at that time,
>
> (ii) an amount in respect of any other depreciable property owned by the corporation at that time, equal to the amount by which
>
> (A) the actual cost of the property to the corporation, or the amount at which it was deemed to have acquired the property under subsection 20(6) of this Act as it read in its application to the 1971 taxation year, as the case may be,
>
> exceeds
>
> (B) the aggregate of amounts in respect of the cost of the property that were allowed under paragraph 11(1)(a) of this Act as it so read in computing the income of the corporation for taxation years ending before 1972,
>
> (ii.1) an amount in respect of a government right or an original right in respect of a government right (within the meanings assigned by section 21 of the *Income Tax Application Rules, 1971*) held by the corporation at that time equal to the aggregate of all amounts each of which is an outlay or expenditure described in subparagraph 21(1)(b)(ii) of the *Income Tax Application Rules, 1971* made or incurred by the taxpayer for the purpose of acquiring the right,
>
> (iii) an amount in respect of any capital property (other than depreciable property) owned by the corporation at that time equal to
>
> (A) in the case of capital property to which either subsection 26(15) or (17) of the *Income Tax Application Rules, 1971* applies, the amount determined under whichever of those subsections is applicable to be the actual cost of the property to the taxpayer, and
>
> (B) in the case of any other capital property, its cost to the corporation (determined without reference to the *Income Tax Application Rules, 1971*) minus any amounts in respect of the cost thereof deducted in computing the income of the corporation under this Part for any taxation year ending before 1972,
>
> (iv) an amount in respect of property owned by the corporation and described in its inventory at that time equal to its value, at that time, for the purposes of computing the income of the corporation under Part I of this Act as it read in its application to the 1971 taxation year,
>
> (v) the amount of any debt owing to the corporation (other than any debt the amount of which was included in computing the corporation's income for its 1971 taxation year and deducted in computing that income under paragraph 11(1)(f) of this Act as it read in its application to the 1971 taxation year) or of any other right of the corporation to receive an amount, that was outstanding at that time, minus such portion thereof as was not but would have been, if the amount had been received by the corporation in its 1971 taxation year, included in computing its income for that year,
>
> (vi) the amount of any money of the corporation on hand at that time, or
>
> (vii) such part, if any, of
>
> (A) the cost to the corporation of any property (other than property described in subparagraphs (i) to (v)) owned by the corporation at that time, or
>
> (B) any expenditure incurred by the corporation (other than an expenditure to acquire property) before that time,
>
> as was not deductible in computing the corporation's income for the 1971 or any previous taxation year for the purposes of Part I of this Act as it read in its application to that year, but

would have been deductible in computing its income for the 1971 taxation year if this Act as it read in its application to that year had been read without reference to any restriction on the quantum of any deduction thereunder,

exceeds the aggregate of all amounts each of which is

(viii) the amount of any debt owing by the corporation or of any other obligation of the corporation to pay an amount, that was outstanding at that time, minus such part, if any, thereof as would be, if the amount were paid by the corporation in its 1972 taxation year, deductible in computing its income for its 1972 taxation year, or

(ix) the amount of any reserve deducted in computing the corporation's income for its 1971 taxation year under Part I of this Act as it read in its application to that year;

Subparas. 89(1)(h)(ii.1), (iii) substituted by 1973-74, c. 14, subsec. 28(2), applicable to 1972 *et seq.*

"taxable Canadian corporation" means a corporation that, at the time the expression is relevant,

(a) was a Canadian corporation, and

(b) was not, by virtue of a statutory provision, exempt from tax under this Part;

Related Provisions: 134 — NRO deemed not taxable Canadian corporation; 149 — Statutory provisions exempting taxpayers from tax under this Part; 248(1)"taxable Canadian corporation" — Definition applies to entire Act.

Pre-RSC History: *The definition "taxable Canadian corporation" was para. 89(1)(i).*

Para. 89(1)(i) substituted by 1979, c. 5, subsec. 30(2), applicable to 1978 *et seq.* Para. 89(1)(i) formerly read:

(i) "taxable Canadian corporation" means a corporation that

(i) was a Canadian corporation at the time any dividend in respect of which the expression is relevant was received or deemed to have been received, and

(ii) was not, by virtue of a statutory provision, exempt from tax under this Part for the taxation year of the corporation during which the dividend was received or deemed to have been received;

"taxable dividend" means a dividend other than

(a) a dividend in respect of which the corporation paying the dividend has elected in accordance with subsection 83(1) as it read prior to 1979 or in accordance with subsection 83(2), and

(b) a qualifying dividend paid by a public corporation to shareholders of a prescribed class of tax-deferred preferred shares of the corporation within the meaning of subsection 83(1).

Related Provisions: 15.1(1) — Small business development bond interest deemed taxable dividend; 15.2(1) — Small business bond interest deemed taxable dividend; 82(1) — Inclusion of taxable dividend in income; 88(2) — Winding-up of a Canadian corporation; 129(1.2) — Dividends paid to create dividend refund deemed not to be taxable dividends for purposes of s. 129; 129(7) — Capital gains dividend is not a taxable dividend for purposes of dividend refund (s. 129); 248(1)"taxable dividend" — Definition applies to entire Act; 260(5) — Deemed taxable dividend on securities lending arrangement.

Pre-RSC History: *The definition "taxable dividend" was para. 89(1)(j).*

Subpara. 89(1)(j)(i) amended by 1986, c. 6, subsec. 48(4), applicable in respect of dividends paid after May 23, 1985, to substitute "subsection 83(2), and" for "subsection 83(2) or (2.1), and".

Subpara. 89(1)(j)(i) substituted by 1980-81-82-83, c. 140, subsec. 54(4), applicable with respect to dividends paid after June 28, 1982, to add "or (2.1)".

Para. 89(1)(j) substituted by 1977-78, c. 1, subsec. 44(5), applicable after December 31, 1978. Para. 89(1)(j) formerly read:

(j) "taxable dividend" means a dividend in respect of which the corporation paying the dividend has not elected in accordance with section 83 in respect of the full amount thereof;

Regulations: 2107 (tax-deferred preferred series).

Interpretation Bulletins: IT-52R4: Income bonds and income debentures. IT-67R3: Taxable dividends from corporations resident in Canada; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends.

"tax-paid undistributed surplus on hand [para. 89(1)(k)]" — [Repealed under former Act]

Pre-RSC History: Para. 89(1)(k) repealed by 1977-78, c. 1, subsec. 44(5), applicable after December 31, 1978. Para. 89(1)(k) formerly read:

(k) "tax-paid undistributed surplus on hand" — "tax-paid undistributed surplus on hand" of a corporation at any particular time means the amount, if any, by which the aggregate of

(i) the lesser of

(A) the amount that the corporation's tax-paid undistributed income (within the meaning of this Act as it read in its application to the 1971 taxation year) would be (if this Act as it so read were applicable to the period consisting of that part of the corporation's 1972 taxation year that is before 1972) as of the end of 1971, and

(B) the amount that the corporation's 1971 undistributed income on hand would be on January 1, 1972 if subsection 196(4) were read without reference to paragraph (d) thereof,

(ii) all amounts on which, before the particular time, tax has been paid by the corporation under Part IX, minus all amounts of that tax,

(ii.1) if the corporation has, before the particular time, elected, under subsection 196(1) in respect of an amount referred to in paragraph 196(1)(b), to pay a tax on the full amount of its 1971 undistributed income on hand immediately before the election, the amount by which

(A) all amounts on which, after the particular time and as a result of the election, tax has been paid by the corporation under Part IX within 90 days from the day of mailing of the notice of assessment of that tax

exceeds

(B) all amounts of that tax, and

(iii) all amounts each of which is an amount in respect of a dividend received by the corporation on a share of any class of the capital stock of another corporation after 1971 and before the particular time, equal to the amount, if any, by which

(A) that proportion of such part of the whole dividend paid by the other corporation on all shares of that class at the time it paid the dividend so received by the corporation as was payable out of the other corporation's tax-paid undistributed surplus on hand, that the dividend so received by the corporation is of the whole dividend so paid by the other corporation,

exceeds

(B) 85/15 of the amount, if any, that the Minister was, before the particular time, required by subsection 196(2) to pay to the corporation in respect of the dividend so received by it,

exceeds the aggregate of such of the dividends that became payable by the corporation before the particular time as were payable out of the corporation's tax-paid undistributed surplus on hand; and

Subpara. 89(1)(k)(ii.1) added by 1973-74, c. 14, subsec. 28(3), applicable to 1972 *et seq.*

"1971 capital surplus on hand [para. 89(1)(l)]" — [Repealed under former Act]

Pre-RSC History: Para. 89(1)(l) repealed by 1977-78, c.1, subsec. 44(5) applicable after 1978 except that in applying para. 89(1)(l) after March 31, 1977 and before 1979 that paragraph reads as follows:

(l) "1971 capital surplus on hand" of a corporation at any particular time after March 31, 1977 and before 1979 means the amount, if any, by which the aggregate of

(i) the tax equity of the corporation at the end of its 1971 taxation year,

(ii) subject to subsection (5), all amounts each of which is an amount in respect of a capital property of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time equal to the amount, if

any, by which the lesser of its fair market value on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971*, other than subsections 26(15), (17) and (21) to (27) thereof,

(iii) all amounts each of which is an amount in respect of a capital property owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed of by the corporation before 1972, equal to the amount, if any, by which the corporation's proceeds of disposition thereof exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971*,

(iv) all amounts each of which is an amount in respect of a dividend received by the corporation on a share of the capital stock of another corporation after 1971 and before the particular time, which amount was, by virtue of subsection 83(1), not included in computing the income of the corporation by virtue of this subdivision, minus such portion, if any, of that amount as was payable out of the other corporation's tax-paid undistributed surplus on hand, and

(v) all amounts each of which is an amount in respect of an eligible capital amount (within the meaning assigned by subsection 14(1)) in respect of a business carried on by the corporation that became payable to the corporation before the particular time and after the taxation year in which the corporation last became a private corporation equal to the amount, if any, by which

(A) the amount that the eligible capital amount would be but for the provisions of the *Income Tax Application Rules, 1971*, relating to section 14

exceeds

(B) the aggregate of

(I) the eligible capital amount, and

(II) where the amount in respect of an eligible capital amount is received as consideration for the disposition of, or for allowing the expiry of, a government right (within the meaning assigned by paragraph 21(3)(a) of the *Income Tax Application Rules, 1971*), such amount as is included in respect thereof in the tax equity of the corporation at the end of its 1971 taxation year by virtue of subparagraph (h)(ii.1),

(vi) all amounts each of which is an amount that became payable to the corporation after the end of its 1971 taxation year and before 1972 in respect of a property, owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed of by it before 1972, that would have been eligible capital property if it had been disposed of after 1971, equal to the amount, if any, by which the amount that became payable exceeds any amount included in respect of that property in the tax equity of the corporation at the end of its 1971 taxation year by virtue of subparagraph (h)(ii.1),

(vii) all amounts each of which is an amount equal to the amount, if any, by which

(A) the aggregate of all amounts that have become due to the corporation before the particular time in respect of the disposition after 1971 of a property owned by the corporation on December 31, 1971 that is a property referred to in any of paragraphs 59(2)(c), (d) or (e),

exceeds

(B) the relevant percentage (within the meaning assigned by subsection 59(4)) of the amount receivable by the corporation in respect of that disposition,

(viii) all amounts each of which is an amount receivable in respect of a property referred to in any of paragraphs 59(2)(c), (d) or (e) owned by the corporation at the end of its 1971 taxation year or acquired by it thereafter and disposed of by it before 1972,

(ix) all amounts each of which is an amount deducted by virtue of paragraph 29(1)(b) or 29(2)(b) in computing the income of the corporation for a taxation year ending before the particular time,

(x) the amount, if any, by which

(A) the proceeds of any life insurance policy received by the corporation after the end of its 1971 taxation year and before 1972 as the result of the death of any person whose life was insured under the policy,

exceeds

(B) the aggregate of

(I) all amounts included in the tax equity of the corporation at the end of its 1971 taxation year in respect of the policy, and

(II) all amounts paid as or on account of premiums paid under the policy by the corporation after the end of its 1971 taxation year and before 1972,

(xi) the amount, if any, by which the aggregate of

(A) all amounts each of which is an amount deemed by subsection 84(2), (3) or (4) to be a dividend paid after 1971 and before April 1, 1977 by the corporation on shares of any class, to the extent of the amount, if any, by which the paid-up capital in respect of the shares of that class at the time the dividend was paid exceeds the paid-up capital limit of the corporation at the time the dividend was paid, and

(B) all amounts each of which is an amount in respect of any purchase by the corporation after 1971 and before April 1, 1977 of any shares of its capital stock in respect of which tax under section 181 as it read on March 31, 1977 was payable by it, equal to the amount, if any, by which the amount described in paragraph 181(1)(a) in respect of the purchase exceeds the amount described in paragraph 181(1)(b) in respect thereof,

exceeds the aggregate of all amounts each of which is an amount in respect of the corporation required to be determined under subparagraph (d)(iii), (iv) or (iv.1) as those subparagraphs read on March 31, 1977 for the purpose of computing the paid-up capital deficiency of the corporation as at that date,

(xi.1) all amounts, each of which is an amount in respect of a share of the capital stock of the corporation issued to a person after the end of the corporation's 1971 taxation year and before April 1, 1977, equal to

(A) where that person is another corporation resident in Canada that controlled the corporation within the meaning of subsection 186(2), the lesser of

(I) the amount in respect thereof required to be determined under clause (c)(ii)(B) as it read on March 31, 1977 for the purpose of computing the paid-up capital of the corporation as at that date, and

(II) the amount that the paid-up capital deficiency of the corporation would have been on March 31, 1977 if paragraph (d) as it read on that day were read without reference to clause (iv.1)(F) and without reference to all subparagraphs thereof except subparagraphs (iv.1) and (vii), and

(B) where that person is other than a person described in clause (A), the amount determined under subclause (A)(I),

(xi.2) all amounts each of which is an amount in respect of a contribution of property to the corporation made after the end of the corporation's 1971 taxation year and before April 1, 1977 by a person (other than another corporation resident in Canada that controlled the corporation within the meaning of subsection 186(2)) equal to the amount in respect thereof required to be determined under clause (c)(ii)(C) as it read on March 31, 1977 for the purpose of computing the paid-up capital of the corporation as at that date,

(xi.3) where the corporation is a new corporation formed as a result of an amalgamation (within the meaning of section 87) after 1971 and before April 1, 1977, the aggregate of amounts each of which is an amount determined in respect of a predecessor corporation equal to the amount, if any, by which

(A) the aggregate of the amounts that would be determined under subparagraphs (xi.1) and (xi.2) in respect of the predecessor corporation if the reference in those subparagraphs to "as at that date" were read as a reference to "immediately before the amalgamation,"

exceeds

(B) the aggregate of the amounts that would be determined under subparagraphs (xvii), (xvii.1) and (xvii.2) in respect of the predecessor corporation if the reference in those subparagraphs to "as at that date" were read as a reference to "immediately before the amalgamation", and

(xi.4) the aggregate of amounts each of which is the portion of a dividend paid by the corporation before the particular time that was, by virtue of paragraph 83(1)(c.1), deemed to be a taxable dividend",

exceeds the aggregate of

(xii) the paid-up capital of the corporation at the end of its 1971 taxation year in respect of all of the shares of its capital stock,

(xiii) the amount that the corporation's undistributed income on hand (within the meaning assigned by this Act as it read in its application to the 1971 taxation year) would be at the end of its 1971 taxation year if

(A) this Act as it so read were read without reference to subparagraph 82(1)(a)(iii) thereof,

(B) references in paragraph 82(1)(a) (except clause (vii)(A) thereof) to "1917" were read as references to "1950", and

(C) no amount were allowed as a deduction under subparagraph 82(1)(a)(ii) as it read in its application to that year that was not deductible in computing the corporation's income for the 1971 or any previous taxation year for the purposes of Part I of this Act as it read in its application to that year, but would have been deductible in computing its income for the 1971 taxation year if this Act as it read in its application to that year had been read without reference to any restriction on the quantum of any deduction thereunder,

(xiv) subject to subsection (5), all amounts each of which is an amount in respect of a capital property (other than depreciable property) of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* (other than subsections 26(15), (17) and (21) to (27) thereof) exceeds the greater of the fair market value of the property on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof,

(xv) all amounts each of which is an amount in respect of a capital property (other than depreciable property) owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed of by it before 1972, equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* exceeds the corporation's proceeds of disposition thereof,

(xvi) the amount, if any, by which the amount that the paid-up capital deficiency of the corporation would have been on March 31, 1977 if paragraph (d) as it read on that day were read without reference to clause (iv.1)(F) and without reference to all subparagraphs thereof except subparagraphs (iv.1) and (vii) exceeds the amount, if any, by which

(A) the paid-up capital in respect of all of the issued shares of the capital stock on April 1, 1977 determined without reference to subsection 84.2(1)

exceeds the greater of

(B) the amount that the paid-up capital limit of the corporation would have been on March 31, 1977 if paragraph (d) as it read on that day were read without reference to clause (iv.1)(F) and without reference to all subparagraphs thereof except subparagraphs (iv.1) and (vii), and

(C) the paid-up capital limit of the corporation on March 31, 1977,

(xvii) all amounts each of which is an amount in respect of the redemption, acquisition or cancellation in any manner whatever, after the end of the corporation's 1971 taxation year and before April 1, 1977, of a share of the capital stock of the corporation equal to the amount required to be determined under clause (c)(ii)(D) as it read on March 31, 1977, for the purpose of computing the paid-up capital of the corporation as at that date,

(xvii.1) all amounts each of which is an amount in respect of a reduction, after the end of the corporation's 1971 taxation year and before April 1, 1977, of the paid-up capital of the corporation (otherwise than by way of redemption or cancellation of shares) equal to the amount required to be determined under clause (c)(ii)(E) as it read on March 31, 1977 for the purpose of computing the paid-up capital of the corporation as at that date,

(xvii.2) the amount, if any, by which the aggregate of all amounts each of which is an amount in respect of the corporation equal to the amount required to be determined under clause (c)(ii)(F) as it read on March 31, 1977, for the purpose of computing the paid-up capital of the corporation at that date exceeds the amount, if any, by which the corporation's paid-up capital on April 1, 1977, determined without reference to subsection 84.2(1), exceeds its paid-up capital on March 31, 1977, and

(xviii) all amounts each of which is an amount in respect of a dividend that became payable by the corporation before the particular time, equal to the portion, if any, thereof payable out of its 1971 capital surplus on hand.

Para. 89(1)(l) formerly read:

(l) "1971 capital surplus on hand" — "1971 capital surplus on hand" of a corporation at any particular time after May 6, 1974, means the amount, if any, by which the aggregate of

(i) the tax equity of the corporation at the end of its 1971 taxation year,

(ii) subject to subsection (5), all amounts each of which is an amount in respect of a capital property of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time equal to the amount, if any, by which the lesser of its fair market value on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971*, other than subsections 26(15), (17) and (21) to (27) thereof,

(iii) all amounts each of which is an amount in respect of a capital property owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed of by the corporation before 1972, equal to the amount, if any, by which the corporation's proceeds of disposition thereof exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971*,

(iv) all amounts each of which is an amount in respect of a dividend received by the corporation on a share of the capital stock of another corporation after 1971 and before the particular time, which amount was, by virtue of subsection 83(1), not included in computing the income of the corporation by virtue of this subdivision, minus such portion, if any, of that amount as was payable out of the other corporation's tax-paid undistributed surplus on hand, and

(v) all amounts each of which is an amount in respect of an eligible capital amount (within the meaning assigned by subsection 14(1)) in respect of a business carried on by the corporation that became payable to the corporation in a taxation year commencing after the time the corporation last became a private corporation and ending before the particular time, equal to the amount, if any, by which

(A) the amount that the eligible capital amount would be but for the provisions of the *Income Tax Application Rules, 1971*, relating to section 14

exceeds

(B) the aggregate of

(I) the eligible capital amount, and

(II) where the amount in respect of an eligible capital amount is received as consideration for the disposition of, or for allowing the expiry of, a government right (within the meaning assigned by paragraph 21(3)(a) of the *Income Tax Application Rules, 1971*), such amount as is included in respect thereof in the tax equity of the corporation at the end of its 1971 taxation year by virtue of subparagraph (h)(ii.1),

(vi) all amounts each of which is an amount that became payable to the corporation after the end of its 1971 taxation year and before 1972 in respect of a property, owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed

of by it before 1972, that would have been eligible capital property if it had been disposed of after 1971, equal to the amount, if any, by which the amount that became payable exceeds any amount included in respect of that property in the tax equity of the corporation at the end of its 1971 taxation year by virtue of subparagraph (h)(ii.1),

(vii) all amounts each of which is an amount equal to the amount, if any, by which

(A) the aggregate of all amounts that have become due to the corporation before the particular time in respect of the disposition after 1971 of a property owned by the corporation on December 31, 1971 that is a property referred to in any of paragraphs 59(2)(c), (d) or (e),

exceeds

(B) the relevant percentage (within the meaning assigned by subsection 59(4)) of the amount receivable by the corporation in respect of that disposition,

(viii) all amounts each of which is an amount receivable in respect of a property referred to in any of paragraphs 59(2)(c), (d) or (e) owned by the corporation at the end of its 1971 taxation year or acquired by it thereafter and disposed of by it before 1972,

(ix) all amounts each of which is an amount deducted by virtue of paragraph 29(1)(b) or 29(2)(b) in computing the income of the corporation for a taxation year ending before the particular time,

(x) the amount, if any, by which

(A) the proceeds of any life insurance policy received by the corporation after the end of its 1971 taxation year and before 1972 as the result of the death of any person whose life was insured under the policy,

(B) the aggregate of

(I) all amounts included in the tax equity of the corporation at the end of its 1971 taxation year in respect of the policy, and

(II) all amounts paid as or on account of premiums paid under the policy by the corporation after the end of its 1971 taxation year and before 1972, and

(xi) all amounts determined under subparagraphs (d) (vii) and (x) in respect of the corporation at the particular time,

exceeds the aggregate of

(xii) the paid-up capital of the corporation at the end of its 1971 taxation year in respect of all of the shares of its capital stock,

(xiii) the amount that the corporation's undistributed income on hand (within the meaning assigned by this Act as it read in its application to the 1971 taxation year) would be at the end of its 1971 taxation year if

(A) this Act as it so read were read without reference to subparagraph 82(1)(a)(iii) thereof,

(B) references in paragraph 82(1)(a) (except clause (vii)(A) thereof) to "1917" were read as references to "1950", and

(C) no amount were allowed as a deduction under subparagraph 82(1)(a)(ii) as it read in its application to that year that was not deductible in computing the corporation's income for the 1971 or any previous taxation year for the purposes of Part I of this Act as it read in its application to that year, but would have been deductible in computing its income for the 1971 taxation year if this Act as it read in its application to that year had been read without reference to any restriction on the quantum of any deduction thereunder,

(xiv) subject to subsection (5), all amounts each of which is an amount in respect of a capital property (other than depreciable property) of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* (other than subsections 26(15), (17) and (21) to (27) thereof) exceeds the greater of the fair market value of the property on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof,

(xv) all amounts each of which is an amount in respect of a capital property (other than depreciable property) owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed of by it before 1972, equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* exceeds the corporation's proceeds of disposition thereof,

(xvi) all amounts determined under subparagraphs (d)(iii) and (iv.1) in respect of the corporation at the particular time,

(xvii) where the particular time is after November 18, 1974, all amounts determined under subparagraph (d)(iv) in respect of the corporation at the particular time, and

(xviii) all amounts each of which is an amount in respect of a dividend that became payable by the corporation before the particular time, equal to the portion, if any, thereof payable out of its 1971 capital surplus on hand.

All that portion of para. 89(1)(l) preceding subpara. (iii) and following subpara. (iv) substituted by 1974-75-76, c. 26, subsecs. 53(6), (7), applicable in computing 1971 capital surplus on hand after May 6, 1974. Those portions formerly read:

(l) "1971 capital surplus on hand" of a corporation at any particular time means the amount, if any, by which the aggregate of

(i) the tax equity of the corporation at the end of its 1971 taxation year,

(ii) all amounts each of which is an amount in respect of a capital property of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time, other than shares of the capital stock of a subsidiary corporation referred to in subsection 88(1) that were disposed of on the winding-up of the subsidiary where that winding-up commenced after May 29, 1973 equal to the amount, if any, by which the lesser of its fair market value on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971*, other than subsections 26(15), (17) and (21) thereof,

. . . . .

(iv.1) all amounts each of which is an amount in respect of an eligible capital amount (within the meaning assigned by subsection 14(1)) in respect of a business carried on by the corporation that became payable to the corporation in a taxation year commencing after the time the corporation last became a private corporation and ending before the particular time, equal to the amount, if any, by which

(A) the amount that the eligible capital amount would be but for the provisions of the *Income Tax Application Rules, 1971* relating to section 14

exceeds

(B) the eligible capital amount,

exceeds the aggregate of

(v) the paid-up capital of the corporation at the end of its 1971 taxation year in respect of all of the shares of its capital stock,

(vi) the amount that the corporation's undistributed income on hand (within the meaning assigned by this Act as it read in its application to the 1971 taxation year) would be at the end of its 1971 taxation year if

(A) this Act as it so read were read without reference to subparagraph 82(1)(a)(iii) thereof, and

(B) references in paragraph 82(1)(a) (except clause (vii)(A)) thereof to "1917" were read as references to "1950",

(vii) all amounts each of which is an amount in respect of a capital property (other than depreciable property) of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time other than shares of the capital stock of a subsidiary corporation referred to in subsection 88(1) that were disposed of on the winding-up of the subsidiary where that winding-up commenced after May 29, 1973 equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* (other than subsections 26(15), (17) and (21) thereof) exceeds the greater of the fair market value of the property on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof,

(viii) all amounts each of which is an amount in respect of a capital property (other than depreciable property) owned by it at the end of its 1971 taxation year or acquired by it thereafter and disposed of by it before 1972, equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* exceeds the corporation's proceeds of disposition thereof, and

(ix) all amounts each of which is an amount in respect of a dividend that became payable by the corporation before the particular time, equal to the portion, if any, thereof payable out of its 1971 capital surplus on hand.

Subparas. 89(1)(l)(ii), (vii) substituted by 1973-74, c. 30, subsecs. 9(1), (2), applicable with respect to dispositions of capital property after January 31, 1973. Subparas. 89(1)(l)(ii), (vii) formerly read:

(ii) all amounts each of which is an amount in respect of a capital property of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time, equal to the amount, if any, by which the lesser of its fair market value on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof exceeds its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971*, other than subsections 26(15) and (17) thereof,

. . . . .

(vii) all amounts each of which is an amount in respect of a capital property (other than depreciable property) of the corporation owned by it on December 31, 1971 and disposed of by it after that date and before the particular time, equal to the amount, if any, by which its actual cost to the corporation determined without reference to the *Income Tax Application Rules, 1971* (other than subsections 26(15) and (17) thereof) exceeds the greater of the fair market value of the property on the day fixed by proclamation for the purposes of subdivision c and the corporation's proceeds of disposition thereof,

Subparas. 89(1)(l)(ii), (vii) substituted by 1973-74, c. 14, subsecs. 28(4), (5), applicable to 1972 *et seq.*

(1.01) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 89(1.01): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words to subsec. 138(12)).

(1.1) Capital dividend account where control acquired — Where at any particular time after March 31, 1977 a corporation that was, at a previous time, a private corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons becomes a Canadian-controlled private corporation (otherwise than by reason of a change in the residence of one or more of its shareholders), in computing the corporation's capital dividend account at and after the particular time there shall be deducted the amount of the corporation's capital dividend account immediately before the particular time.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact; 256(7) — Where control deemed not acquired.

Pre-RSC History: Subsec. 89(1.1) amended by 1988, c. 55, subsec. 62(5), to substitute "by reason of" for "by virtue of" and "at and after the particular time" for "at any time after the particular time", applicable after 4 p.m. EDST, September 25, 1987.

Subsec. 89(1.1) amended by 1986, c. 6, subsec. 48(5), applicable after May 23, 1985. Subsec. (1.1) formerly read:

(1.1) Computation of capital dividend account where control acquired — Where at any particular time after March 31, 1977 a corporation that was, at a previous time, a private corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons becomes a Canadian-controlled private corporation (otherwise than by virtue of a change in the residence of one or more of its shareholders), for the purposes of computing the corporation's capital dividend account or life insurance capital dividend account at any time after the particular time there shall be deducted the amount of the corporation's capital dividend account or life insurance capital dividend account, as the case may be, immediately before the particular time.

Subsec. 89(1.1) substituted by 1980-81-82-83, c. 140, subsec. 54(5), applicable after June 28, 1982. Subsec. 89(1.1) formerly read:

(1.1) Where at any particular time after March 31, 1977 a corporation that was, at a previous time, a private corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons becomes a Canadian-controlled private corporation (otherwise than by virtue of a change in the residence of one or more of its shareholders), for the purposes of computing the corporation's capital dividend account at any time after the particular time there shall be deducted the amount of the corporation's capital dividend account immediately before the particular time.

Subsec. 89(1.1) added by 1977-78, c. 1, subsec. 44(6), applicable with respect to taxation years ending after March 31, 1977.

Interpretation Bulletins: IT-66R6: Capital dividends.

(1.2) Capital dividend account of tax-exempt corporation — Where at any particular time after November 26, 1987 a corporation ceases to be exempt from tax under this Part on its taxable income, in computing the corporation's capital dividend account at and after the particular time there shall be deducted the amount of the corporation's capital dividend account (computed without reference to this subsection) immediately after the particular time.

Pre-RSC History: Subsec. 89(1.2) added by 1988, c. 55, subsec. 62(6), applicable after November 26, 1987.

Interpretation Bulletins: IT-66R6: Capital dividends.

(2) Where corporation is beneficiary — For the purposes of this section,

(a) where a corporation was a beneficiary under a life insurance policy on June 28, 1982, it shall be deemed not to have been a beneficiary under such a policy on or before June 28, 1982 where at any time after December 1, 1982 a prescribed premium has been paid under the policy or there has been a prescribed increase in any benefit on death under the policy; and

(b) where a corporation becomes a beneficiary under a life insurance policy by virtue of an amalgamation or a winding-up to which subsection 87(1) or 88(1) applies, it shall be deemed to have been a beneficiary under the policy throughout the period during which its predecessor or subsidiary, as the case may be, was a beneficiary under the policy.

Pre-RSC History: Subsec. 89(2) added by 1980-81-82-83, c. 140, subsec. 54(5), applicable after June 28, 1982.

Regulations: 309 (prescribed increase, prescribed premium).

Pre-RSC History [former subsec. 89(2)]: Subsec. 89(2) repealed by 1977-78, c. 1, subsec. 44(7), applicable after December 31, 1978. Subsec. 89(2) formerly read:

(2) 1971 capital surplus on hand of life insurance corporation — Notwithstanding paragraph (1)(l), a life insurance corporation's 1971 capital surplus on hand at any particular time is the amount, if any, by which the aggregate of

(a) all amounts each of which is an amount in respect of any property disposed of by the corporation after 1968 and before 1972 that would, if the property had been disposed of after 1972, have been a capital property of the corporation, equal to the amount, if any, by which the proceeds of disposition of the property exceeds the cost to the corporation thereof, and

(b) the amount determined under subparagraph (1)(l)(ii) in respect of the corporation at the particular time

exceeds the aggregate of

(c) all amounts each of which is an amount in respect of any property described in paragraph (a), equal to the amount, if any, by which the cost to the corporation of the property exceeds the proceeds of disposition thereof,

(d) the amount determined under subparagraph (1)(i)(vii) in respect of the corporation at the particular time, and

(e) all amounts each of which is an amount in respect of a dividend that became payable by the corporation before the particu-

lar time, equal to the portion, if any, thereof payable out of its 1971 capital surplus on hand.

(3) Simultaneous dividends — Where a dividend becomes payable at the same time on more than one class of shares of the capital stock of a corporation, for the purposes of sections 83, 84 and 88, the dividend on any such class of shares shall be deemed to become payable at a different time than the dividend on the other class or classes of shares and to become payable in the order designated

(a) by the corporation on or before the day on or before which its return of income for its taxation year in which such dividends become payable is required to be filed; or

(b) in any other case, by the Minister.

Pre-RSC History: Subsec. 89(3) substituted by 1980-81-82-83, c. 48, s. 50, applicable to 1980 *et seq.* Subsec. 89(3) formerly read:

(3) Where a dividend becomes payable at the same time on more than one class of shares of the capital stock of a corporation, for the purposes of sections 83, 84, and 88, the dividend on any such class of shares shall be deemed to become payable at a different time than the dividend on the other class or classes of shares and such dividends shall be deemed to become payable in the order designated in prescribed manner by the corporation or, in the event that the corporation does not designate any such order, in the order designated by the Minister.

Subsec. 89(3) added by 1973-74, c. 14, subsec. 28(6), applicable to 1972 *et seq.*

(4)–(6) [Repealed under former Act]

Pre-RSC History: Subsecs. 89(4), (5), (6) repealed by 1977-78, c. 1, subsec. 44(8), applicable, as to subsec. 89(6), after March 31, 1977, and as to subsecs. 89(4), (5), after December 31, 1978 except that, in applying those subsections after March 31, 1977 and before 1979, those subsections read as follows:

(4) Deemed capital cost of certain depreciable property — For the purposes of subparagraphs (1)(l)(ii) and (iii), the actual cost of the depreciable property that was acquired by a corporation before the commencement of its 1949 taxation year that is capital property referred to in those subparagraphs shall be deemed to be the capital cost of such property to the corporation (within the meaning assigned by section 144 of this Act as it read in its application to the 1971 taxation year).

(5) Rules concerning 1971 capital surplus on hand — For the purposes of determining the 1971 capital surplus on hand of any corporation at any particular time after May 6, 1974, the following rules apply:

(a) the amount referred to in subparagraphs (1)(l)(ii) and (xiv) in respect of a capital property of the corporation shall be deemed to be nil, where the property disposed of is

(i) a share of the capital stock of a subsidiary corporation referred to in subsection 88(1) that was disposed of on the winding-up of the subsidiary where that winding-up commenced after May 29, 1973,

(ii) a share of the capital stock of another Canadian corporation that was controlled, within the meaning assigned by subsection 186(2), by the corporation immediately before the disposition and that was disposed of by the corporation after 1971 to a person with whom the corporation was not dealing at arm's length immediately after the disposition, other than by a disposition referred to in paragraph (b), or

(iii) subject to subsection 26(21) of the *Income Tax Application Rules, 1971*, a share of the capital stock of a particular corporation that was disposed of by the corporation after May 6, 1974, on an amalgamation, within the meaning assigned by subsection 87(1), where the corporation controlled, within the meaning assigned by subsection 186(2), both the particular corporation immediately before the amalgamation and the new corporation immediately after the amalgamation; and

(b) where another corporation that is a Canadian corporation owned a capital property on December 31, 1971 and subsequently disposed of it to the corporation in a transaction to which section 85 applied, the other corporation shall be deemed not to have disposed of that property in the transaction and the corporation shall be deemed to have owned that property on December 31, 1971 and to have acquired it at an actual cost equal to the actual cost of that property to the other corporation.

Subsecs. 89(4), (5), (6) formerly read:

(4) Deemed capital cost of certain depreciable property — For the purposes of subparagraphs (1)(d)(vi) and (1)(l)(ii) and (iii), the actual cost of depreciable property that was acquired by a corporation before the commencement of its 1949 taxation year that is capital property referred to in those subparagraphs shall be deemed to be the capital cost of such property to the corporation (within the meaning assigned by section 144 of this Act as it read in its application to the 1971 taxation year).

(5) Rules concerning 1971 capital surplus on hand and paid-up capital deficiency — For the purposes of determining the 1971 capital surplus on hand or paid-up capital deficiency of a corporation at any particular time after May 6, 1974, the following rules apply:

(a) the amount referred to in subparagraphs (1)(l)(ii) and (xiv) in respect of a capital property of the corporation shall be deemed to be nil, where the property disposed of is

(i) a share of the capital stock of a subsidiary corporation referred to in subsection 88(1) that was disposed of on the winding-up of the subsidiary where that winding-up commenced after May 29, 1973,

(ii) a share of the capital stock of another Canadian corporation that was controlled, within the meaning assigned by subsection 186(2), by the corporation immediately before the disposition and that was disposed of by the corporation after 1971 to a person with whom the corporation was not dealing at arm's length immediately after the disposition, other than by a disposition referred to in paragraph (b), or

(iii) subject to subsection 26(21) of the *Income Tax Application Rules, 1971*, a share of the capital stock of a particular corporation that was disposed of by the corporation after May 6, 1974, on an amalgamation, within the meaning assigned by subsection 87(1), where the corporation controlled, within the meaning assigned by subsection 186(2), both the particular corporation immediately before the amalgamation and the new corporation immediately after the amalgamation; and

(b) where another corporation that is a Canadian corporation owned a capital property on December 31, 1971 and subsequently disposed of it to the corporation in a transaction to which section 85 applied, the other corporation shall be deemed not to have disposed of that property in the transaction and the corporation shall be deemed to have owned that property on December 31, 1971 and to have acquired it at an actual cost equal to the actual cost of that property to the other corporation.

(6) Reduction in paid-up capital deficiency — Where subparagraph (1)(d)(iv.1) has applied to the issue, prior to November 19, 1974, of any share of the capital stock of a corporation, for the purpose of clause (1)(d)(iv.1)(C), the increase in the paid-up capital of the corporation by virtue of the issue of that share shall, subject to section 84.2, be deemed to be equal to the amount that would be determined under clause (1)(c)(ii)(B) in respect of the issue of that share if paragraph (1)(c) were applicable at that time.

Subsecs. 89(4)–(6) added by 1974-75-76, c. 26, subsec. 53(8), subsec. 89(4) applicable to 1972 *et seq.*, subsecs. 89(5), (6) applicable in computing the paid-up capital deficiency or 1971 capital surplus on hand after May 6, 1974.

Definitions [s. 89]: "adjustment time" — 14(5), 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian corporation" — 89(1), 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "consequence of the death" — 248(8); "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "designated property" — 89(1); "dividend" — 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "foreign affiliate" — 95(1), 248(1); "incorporated in Canada" — 248(1)"corporation incorporated in Canada";

"inventory" — 248(1); "investment corporation" — 130(3), 248(1); "life insurance corporation" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "payable" — 84(7); "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700; "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "share", "shareholder" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), (a.1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Regulations [s. 89]: 3200 (prescribed stock exchange).

89.1 [Repealed under former Act]

Pre-RSC History: S. 89.1 repealed by 1977-78, c. 1, s. 45, applicable after March 31, 1977. S. 89.1 formerly read:

89.1 (1) Paid-up capital: special rules on conversion of property — For the purposes of subclause 89(1)(c)(ii)(B)(I), where a corporation has issued any shares of a particular class of its capital stock in exchange for another share, bond, debenture, mortgage, note or other similar obligation of the corporation (in this subsection referred to as a "convertible property"), the fair market value of the convertible property at the time the shares of the particular class were issued shall be deemed to be an amount equal to

(a) where the convertible property was a share, the amount of the paid-up capital in respect of that share immediately before the exchange; or

(b) where the convertible property was a debt owing by the corporation, the amount of that debt immediately before the exchange.

(2) Paid-up capital in respect of amalgamations — Where there has been an amalgamation (within the meaning assigned by section 87) of two or more corporations (each of which corporations is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation"),

(a) for the purposes of subclause 89(1)(c)(ii)(B)(I), the new corporation shall be deemed to have received no consideration for any shares of its capital stock that were issued on the amalgamation;

(b) the paid-up capital in respect of any particular class of the capital stock of the new corporation shall, at any particular time after the amalgamation and after May 6, 1974, be increased by the amount, if any, by which

(i) the aggregate of all amounts each of which is the paid-up capital, immediately before the amalgamation, in respect of a share of the capital stock of a predecessor corporation (other than a share owned by another predecessor corporation)

exceeds

(ii) the aggregate of all amounts each of which is the paid-up capital (referred to in clause 89(1)(c)(ii)(A)), immediately after the amalgamation, in respect of a class of shares of the capital stock of the new corporation,

to the extent that that amount has not been included in the paid-up capital of any other class of shares of the capital stock of the new corporation; and

(c) where the amalgamation occurred prior to May 7, 1974, the paid-up capital, immediately before the amalgamation, of a share of the capital stock of a predecessor corporation shall, for the purposes of subparagraph (b)(i), be determined as though subparagraphs 89(1)(c)(i) and (ii) applied immediately before the amalgamation.

(3) Paid-up capital: where dividend paid — Where a corporation has made an election under subsection 83(1) in respect of a dividend on a particular class of shares of the capital stock of the corporation that has, before November 19, 1974, become payable, or was paid if that event was earlier than the time it became payable, and

(a) the portion of the dividend that was payable out of the corporation's 1971 capital surplus on hand if the paid-up capital of the corporation in respect of any class of shares of its capital stock at the end of its 1971 taxation year was the amount determined under clause 89(1)(c)(ii)(A) in respect of that class at that time

exceeds

(b) the portion of the dividend that would have been payable out of the corporation's 1971 capital surplus on hand if the paid-up capital of the corporation in respect of any class of shares of its capital stock at the end of its 1971 taxation year was the amount determined under subparagraph 89(1)(c)(ii) without reference to this subsection in respect of that class at that time

notwithstanding any other provision of this Act, the paid-up capital in respect of the particular class of shares at the end of the corporation's 1971 taxation year and at any time after November 18, 1974 shall be reduced by the amount, if any, by which the amount referred to in paragraph (a) exceeds the amount referred to in paragraph (b).

S. 89.1 added by 1974-75-76, c. 26, s. 54, applicable for the purpose of computing the paid-up capital of a corporation at the end of its 1971 taxation year and at any time after May 6, 1974.

Subdivision i — Shareholders of Corporations Not Resident in Canada

90. Dividends received from non-resident corporation — In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included any amounts received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of, dividends on a share owned by the taxpayer of the capital stock of a corporation not resident in Canada.

Related Provisions: 82(1) — Dividends received from corporation resident in Canada; 113(1) — Deduction for dividend received from foreign affiliate; 139.1(4)(f), (g) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation.

Pre-RSC History: Subsecs. 90(2), (3) repealed by 1974-75-76, c. 26, s. 55, applicable to 1972 *et seq.*

Definitions [s. 90]: "amount" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

91. (1) Amounts to be included in respect of share of foreign affiliate — In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate ending in the taxation year of the taxpayer, equal to that share's participating percentage in respect of the affiliate, determined at the end of each such taxation year of the affiliate.

Proposed Amendment — 91(1)

91. (1) Amounts to be included in respect of share of foreign affiliate — In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate that ends in the taxation year of the taxpayer, equal to the amount

that would be that share's participating percentage in respect of the affiliate, determined at the end of each such taxation year of the affiliate if paragraph (a) of the definition "equity percentage" in subsection 95(4) did not take into account each share that would be subject to subsection 94.2(9) in respect of the taxpayer for the year if the taxpayer held the share throughout the year.

Application: The June 22, 2000 draft legislation, subsec. 9(1), will amend subsec. 91(1) to read as above, applicable to taxation years that begin after 2000.

Technical Notes: Subsection 91(1) of the Act provides that a taxpayer who is resident in Canada must include in computing income an amount in respect of each share owned by the taxpayer in the capital stock of a controlled foreign affiliate of the taxpayer.

Subsection 91(1) is amended so that it does not result in additional income for a taxpayer arising because of the ownership by the taxpayer (or a controlled foreign affiliate of the taxpayer) of shares that are "tracked interests" subject to the mark-to-market regime in section 94.2 by reason of the application of subsection 94.2(9). Note that, because of paragraph (a) of the definition "exempt interest" in subsection 94.1(1), a share of the capital stock of a controlled foreign affiliate is otherwise not subject to the regime for foreign investment entities in sections 94.1 and 94.2.

This amendment applies to trust taxation years that begin after 2000.

Related Provisions: 17(1)(b)(iii) — Amount included as FAPI not taxed under rule for loan to non-resident; 94.1(16), (17) — Where demand for information not satisfied; 152(6.1) — Reassessment to apply FAPI loss carryback. See also Related Provisions and Definitions at end of s. 91.

Interpretation Bulletins: IT-392: Meaning of the term "share"; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

I.T. Application Rules: 35(1) (ITAR 26 does not apply to gains and losses of foreign affiliates for FAPI purposes).

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2) Reserve where foreign exchange restriction — Where an amount in respect of a share has been included in computing the income of a taxpayer for a taxation year by virtue of subsection (1) or (3) and the Minister is satisfied that, by reason of the operation of monetary or exchange restrictions of a country other than Canada, the inclusion of the whole amount with no deduction for a reserve in respect thereof would impose undue hardship on the taxpayer, there may be deducted in computing the taxpayer's income for the year such amount as a reserve in respect of the amount so included as the Minister deems reasonable in the circumstances.

Interpretation Bulletins: IT-392: Meaning of the term "share".

(3) Reserve for preceding year to be included — In computing the income of a taxpayer for a taxation year, there shall be included each amount in respect of a share that was deducted by virtue of subsection (2) in computing the taxpayer's income for the immediately preceding year.

(4) Amounts deductible in respect of foreign taxes — Where, by virtue of subsection (1), an amount in respect of a share has been included in computing the income of a taxpayer for a taxation year or for any of the 5 immediately preceding taxation years (in this subsection referred to as the "income amount"), there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the product obtained when

(i) the portion of the foreign accrual tax applicable to the income amount that was not deductible under this subsection in any previous year

is multiplied by

(ii) the relevant tax factor, and

Proposed Amendment — 91(4)(a)(ii)

(ii) the taxpayer's relevant tax factor for the year, and

Application: The June 22, 2000 draft legislation, subsec. 9(2), will amend subpara. 91(4)(a)(ii) to read as above, applicable after 2000.

Technical Notes: Subsection 91(4) of the Act provides for a deduction in computing the income of a taxpayer resident in Canada. The deduction is available to a taxpayer where the taxpayer has included an amount under subsection 91(1) in computing income in respect of a share of the capital stock of a controlled foreign affiliate of the taxpayer. The deduction is generally determined with reference to foreign taxes payable by the affiliate and a "relevant tax factor". The "relevant tax factor" for a resident taxpayer is designed to permit a deduction for the resident taxpayer to result in tax relief that is representative of foreign taxes payable by a controlled foreign affiliate of the resident taxpayer.

Subsection 91(4) is amended to explicitly link the "relevant tax factor" to the resident taxpayer and the taxation year for which the deduction under subsection 91(4) is claimed. This is consistent with the more explicit definition of "relevant tax factor" described below in the commentary on subsection 95(1).

This amendment applies after 2000.

(b) the amount, if any, by which the income amount exceeds the total of the amounts in respect of that share deductible under this subsection in any of the 5 immediately preceding taxation years in respect of the income amount.

(5) Amounts deductible in respect of dividends received — Where in a taxation year a taxpayer resident in Canada has received a dividend on a share of the capital stock of a corporation that was at any time a controlled foreign affiliate of the taxpayer, there may be deducted, in respect of such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate, in computing the taxpayer's income for the year, the lesser of

(a) the amount by which that portion of the dividend exceeds the amount, if any, deductible in respect thereof under paragraph 113(1)(b), and

(b) the amount, if any, by which

(i) the total of all amounts required by paragraph 92(1)(a) to be added in computing the adjusted cost base to the taxpayer of the share before the dividend was so received by the taxpayer

exceeds

(ii) the total of all amounts required by paragraph 92(1)(b) to be deducted in computing the adjusted cost base to the taxpayer of the share before the dividend was so received by the taxpayer.

Related Provisions: 20(13) — Dividend on share from foreign affiliate of taxpayer; 91(6) — Amounts deductible re dividends received; 91(7) — Where share acquired by partner from partnership; 94.3(2)(a)(i)(B)(I) — Prevention of double taxation. See additional Related Provisions and Definitions at end of s. 91.

Regulations: 5900(1)(b), 5900(3) (portion of dividend prescribed to be paid out of taxable surplus).

Interpretation Bulletins: IT-392: Meaning of the term "share".

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(6) Idem — Where a share of the capital stock of a foreign affiliate of a taxpayer that is a taxable Canadian corporation is acquired by the taxpayer from another corporation resident in Canada with which the taxpayer is not dealing at arm's length, for the purpose of subsection (5), any amount required by section 92 to be added or deducted, as the case may be, in computing the adjusted cost base to the other corporation of the share shall be deemed to have been so required to be added or deducted, as the case may be, in computing the adjusted cost base to the taxpayer of the share.

Related Provisions: 20(13) — Dividend on share from foreign affiliate of taxpayer; 80.1(4)(c) — Assets acquired from foreign affiliate as dividend in kind or benefit to shareholder; 87(2)(u) — Amalgamations; 92(1) — ACB of share in foreign affiliate; 94(1)(d) — Application of certain provisions to trusts not resident in Canada; 113(1) — Deduction for dividend received from foreign affiliate; 233.2–233.5 — Disclosure of foreign property.

History: Subsec. 91(6) added by 1994, c. 7, Sch. II (1991, c. 49), s. 68, applicable to 1990 *et seq.*

Interpretation Bulletins: IT-392: Meaning of the term "share".

Proposed Addition — 91(7)

(7) Shares acquired from a partnership — For the purpose of subsection (5), where a taxpayer resident in Canada acquires a share of the capital stock of a corporation that is immediately after the acquisition a foreign affiliate of the taxpayer from a partnership of which the taxpayer, or a corporation resident in Canada with which the taxpayer was not dealing at arm's length at the time the share was acquired, was a member (each such person is referred to in this subsection as the "member") at any time during any fiscal period of the partnership that began before the acquisition,

(a) that portion of any amount required by subsection 92(1) to be added to the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount included in the income of the member because of subsection 96(1) in respect of the amount that was included in the income of the partnership because of subsection (1) or (3) in respect of the foreign affiliate and added to that adjusted cost base, and

(b) that portion of any amount required by subsection 92(1) to be deducted from the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount by which the income of the member from the partnership under subsection 96(1) was reduced because of the amount deducted in computing the income of the partnership under subsection (2), (4) or (5) and deducted from that adjusted cost base

is deemed to be an amount required by subsection 92(1) to be added or deducted, as the case may be, in computing the adjusted cost base to the taxpayer of the share.

Interpretation Bulletins: IT-392: Meaning of the term "share".

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 41, will add subsec. 91(7), applicable to shares acquired after November 1999.

Technical Notes: Section 91 of the Act sets out rules for determining amounts that a taxpayer resident in Canada is to include in computing its income for a particular year as income from a share of a controlled foreign affiliate of the taxpayer.

New subsection 91(7) of the Act applies where a taxpayer that is a taxable Canadian corporation acquires a share of the capital stock of a corporation that is, immediately after the acquisition, a foreign affiliate of the taxpayer, from a partnership of which the taxpayer or a corporation resident in Canada with which the taxpayer was not dealing at arm's length at the time the share was acquired was a member (the "member"). Where, after the acquisition, the taxpayer receives a dividend on such a share out of the foreign affiliate's taxable surplus, subsection 91(7) allows the taxpayer to make a deduction under subsection 91(5) of the Act in respect of the net foreign accrual property income in respect of the share that was previously included in the income of the member from the partnership from which the taxpayer acquired the share. Subsection 91(7) allows the deduction under subsection 91(5) by deeming the taxpayer's adjusted cost base of the share to have been adjusted under subsection 92(1) of the Act by the member's share of any additions to, or deductions from, the adjusted cost base of the share to the partnership under subsection 92(1).

New paragraph 91(7)(a) provides that the member's share of the increase to the partnership's adjusted cost base of the share is the amount included in the member's income under subsection 96(1) in respect of the affiliate's foreign accrual property income included in the partnership's income under subsections 91(1) or (3) of the Act. New paragraph 91(7)(b) provides that the member's share of the decrease to the partnership's adjusted cost base of the share is the amount by which the member's share of the partnership's income determined under subsection 96(1) decreased as a result of an amount deducted in computing the partnership's income under subsections 91(2), (4) or (5) of the Act.

Pre-RSC History [s. 91]: S. 91 substituted by 1974-75-76, c. 26, s. 56, applicable to 1972 *et seq.*

Definitions [s. 91]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "controlled foreign affiliate" — 94(1)(d), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fiscal period" — 249.1; "foreign accrual property income" — 95(1), (2), 248(1); "foreign accrual tax" — 95(1); "foreign affiliate" — 94(1)(d), 95(1), 248(1); "Minister" — 248(1); "participating percentage" — 95(1); "person" — 248(1); "relevant tax factor" — 95(1); "resident in Canada" — 250; "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable surplus" — 113(1)(b)(i), Reg. 5907(1); "taxation year" — 95(1) (for foreign affiliate only), 249; "taxpayer" — 248(1).

92. (1) Adjusted cost base of share of foreign affiliate — In computing, at any time in a taxation year, the adjusted cost base to a taxpayer resident in Canada of any share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer,

(a) there shall be added any amount required to be included in respect of that share by reason of subsection 91(1) or (3) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been so required to be included but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952); and

(b) there shall be deducted in respect of that share

(i) any amount deducted by the taxpayer by reason of subsection 91(2) or (4), and

(ii) any dividend received by the taxpayer before that time to the extent of the amount deducted by the taxpayer in respect thereof by reason of subsection 91(5)

in computing the taxpayer's income for the year or any preceding taxation year (or that would have been deductible by the taxpayer but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952).

Related Provisions: 53(1)(d) — ACB — additions; 53(2)(b) — ACB — deductions; 87(2)(u) — Shares of foreign affiliate; 91(6) — Amounts deductible re dividends received.

Pre-RSC History: Paras. 92(1)(a), (b) amended by 1988, c. 55, s. 63, to substitute "by reason of" for "by virtue of" in 3 places, and "but for subsection 56(4.1) and sections 74 to 75" for "but for sections 74 to 75" in 2 places, applicable to 1989 *et seq.*

Subsec. 92(1) amended by 1986, c. 6, s. 49, applicable after May 21, 1985, to substitute "sections 74 to 75" for "sections 74 and 75" in para. (a) and that portion following para. (b).

Subsec. 92(1) substituted by 1974-75-76, c. 26, subsec. 57(1), applicable to 1972 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-392: Meaning of the term "share".

(2) Deduction in computing adjusted cost base — In computing, at any time in a taxation year,

(a) the adjusted cost base to a corporation resident in Canada (in this subsection referred to as an "owner") of any share of the capital stock of a foreign affiliate of the corporation, or

(b) the adjusted cost base to a foreign affiliate (in this subsection referred to as an "owner") of a person resident in Canada of any share of the capital stock of another foreign affiliate of that person,

there shall be deducted, in respect of any dividend received on the share before that time by the owner of the share, an amount equal to the amount, if any, by which

(c) such portion of the amount of the dividend so received as was deductible by virtue of paragraph 113(1)(d) from the income of the owner for the year in computing the owner's taxable income for the year or as would have been so deductible if the owner had been a corporation resident in Canada,

exceeds

(d) such portion of any income or profits tax paid by the owner to the government of a country other than Canada as may reasonably be regarded as having been paid in respect of the portion described in paragraph (c).

Related Provisions: 53(2)(b) — ACB — deductions; 91(6) — Amounts deductible re dividends received.

Pre-RSC History: All that portion of subsec. 92(2) following para. (b) and preceding para. (d) substituted by 1974-75-76, c. 26, subsec. 57(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-392: Meaning of the term "share".

(3) Idem — In computing, at any time in a taxation year, the adjusted cost base to a corporation resident in Canada of any share of the capital stock of a foreign affiliate of the corporation, there shall be deducted an amount in respect of any dividend received on the share by the corporation before that time equal to such portion of the amount so received as was deducted under subsection 113(2) from the income of the corporation for the year or any preceding year in computing its taxable income.

Related Provisions: 53(2)(b) — ACB — deductions.

Pre-RSC History: Subsec. 92(3) substituted by 1974-75-76, c. 26, subsec. 57(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-392: Meaning of the term "share".

Proposed Addition — 92(4)–(6)

(4) Disposition of a partnership interest — Where a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada has at any time disposed of all or a portion of an interest in a partnership of which it was a member, there shall be added, in computing the proceeds of disposition of that interest, the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for any taxation year of the member that began before that time in respect of any portion of a dividend received by the partnership, or would have been so deductible if the member were a corporation resident in Canada,

exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member of the partnership to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a);

B is the total of

(a) the total of all amounts each of which was an amount added under this subsection in computing the member's proceeds of a disposition before that time of another interest in the partnership, and

(b) the total of all amounts each of which was an amount deemed by subsection (5) to be a gain of the member from a disposition before that time of a share by the partnership;

C is the adjusted cost base, immediately before that time, of the portion of the member's interest in the partnership disposed of by the member at that time; and

D is the adjusted cost base, immediately before that time, of the member's interest in the partnership immediately before that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

(5) Deemed gain from the disposition of a share — Where a partnership has, at any time in a fiscal period of the partnership at the end of which a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada was a member, disposed of a share of the capital stock of a corporation, the amount determined under subsection (6) in respect of such a member is deemed to be a gain of the member from the disposition of the share by the partnership for the member's taxation year in which the fiscal period of the partnership ends.

(6) Formula — The amount determined for the purposes of subsection (5) is the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for a taxation year in respect of any portion of a dividend received by

the partnership on the share in a fiscal period of the partnership that began before the time referred to in subsection (5) and ends in the member's taxation year, or would have been so deductible if the member were a corporation resident in Canada,

exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a), and

B is the total of all amounts each of which is an amount that was added under subsection (4) in computing the member's proceeds of a disposition before the time referred to in subsection (5) of an interest in the partnership.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 42, will add subsecs. 92(4) to (6), applicable to dispositions that occur after November 1999.

Technical Notes: Section 92 of the Act provides for adjustments to be made to the adjusted cost base of a share in a foreign affiliate with respect to certain amounts included or deducted in computing income of the owner of the share.

New subsection 92(4) of the Act applies where a member of a partnership that is a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada disposes of all or any portion of its interest in the partnership. New subsection 92(4) ensures that prior dividends received by the partnership out of the affiliate's pre-acquisition surplus, to the extent that they exceed related foreign withholding taxes, are included in calculating the member's proceeds of disposition on the partnership interest. Subsection 92(4) increases the member's proceeds of disposition by the amount that was deductible (or would have been deductible if it were a corporation resident in Canada) by the member under paragraph 113(1)(d) of the Act net of foreign withholding taxes. The amount added to the member's proceeds does not include amounts previously added under this subsection, or amounts that were previously deemed to be a gain under new subsection 92(5) of the Act. Where the member does not dispose of all of its interests in the partnership, the deemed proceeds under new subsection 92(4) are reduced in proportion to the interests that were retained.

New subsection 92(4) applies to dispositions that occur after November 30, 1999.

New subsections 92(5) and (6) of the Act apply where a partnership disposes of a share of corporation. Where a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada is a member of the partnership (the "member"), new subsections 92(5) and (6) treat the member as having a gain on the disposition of the share equal to the amount that was deductible (or would have been deductible by the member if it were a corporation resident in Canada) by the member under paragraph 113(1)(d) of the Act in respect of dividends (net of foreign withholding taxes) received by the partnership on the share that were paid out of pre-acquisition surplus. The gain in this subsection is reduced by any amount that was added to the member's proceeds of disposition of a partnership interest under subsection 92(4).

Related Provisions: 257 — Formula cannot calculate to less than zero.

Definitions [s. 92]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "dividend" — 248(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 248(1); "person" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 95(1) (for foreign affiliate only), 249; "taxpayer" — 248(1).

93. (1) Election re disposition of share in foreign affiliate — For the purposes of this Act, where a corporation resident in Canada so elects, in prescribed manner and within the prescribed time, in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it or by another foreign affiliate of the corporation,

(a) the amount (in this subsection referred to as the "elected amount") designated by the corporation in its election not exceeding the proceeds of disposition of the share shall be deemed to have been a dividend received on the share from the affiliate by the disposing corporation or disposing affiliate, as the case may be, immediately before the disposition and not to have been proceeds of disposition; and

(b) where subsection 40(3) applies to the disposing corporation or disposing affiliate, as the case may be, in respect of the share,

(i) the amount deemed by that subsection to be the gain of the disposing corporation or disposing affiliate, as the case may be, from the disposition of the share shall, except for the purposes of paragraph 53(1)(a), be deemed to be equal to the amount, if any, by which

(A) the amount deemed by that subsection to be the gain from the disposition of the share determined without reference to this subparagraph

exceeds

(B) the elected amount, and

(ii) for the purposes of determining the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the affiliate in respect of the corporation resident in Canada (within the meanings assigned by the regulations for the purpose of section 95), the affiliate shall be deemed at the time of disposition to have redeemed shares of a class of its capital stock.

Proposed Amendment — 93(1)(b)(ii)

(ii) for the purposes of determining the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the affiliate in respect of the corporation resident in Canada (within the meanings assigned by Part LIX of the *Income Tax Regulations*), the affiliate is deemed to have redeemed at the time of disposition shares of a class of its capital stock.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 43(1), will amend subpara. 93(1)(b)(ii) to read as above, applicable to dispositions that occur after November 1999.

Technical Notes: Section 93 of the Act contains a number of rules relating to the disposition of shares of a foreign affiliate of a taxpayer resident in Canada.

Subsection 93(1) of the Act permits a corporation resident in Canada that disposes of a share of a foreign affiliate of the corporation to treat the proceeds of disposition of the share as a dividend.

In such circumstances, subparagraph 93(1)(b)(ii) provides that the foreign affiliate of the corporation will be considered to have redeemed shares of a class of its capital stock for the purposes of calculating certain of its surplus accounts in respect of the corporation. Subparagraph 93(1)(b)(ii) is amended to clarify that those accounts take their meaning from those meanings assigned for the purpose of Part LIX of the Regulations. New subparagraph 93(1)(b)(ii) applies to dispositions that occur after November 30, 1999.

Related Provisions: 40(3) — Deemed gain where amounts to be deducted from ACB exceed cost plus amounts to be added to adjusted cost base; 93(1.1) — Election re share in foreign affiliate; 93(5) — Late filed elections; 95(2)(f) — Determination of certain components of foreign accrual property income; Reg. 5900(2) — No election for dividend to have been paid out of taxable surplus; Reg. 5905(2) — Where shares of foreign affiliate are redeemed or cancelled.

History: Subsec. 93(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 69(1), applicable to 1987 *et seq.* Subsec. 93(1) formerly read:

> 93. (1) Election re disposition of share in foreign affiliate — Where at any time a corporation resident in Canada has so elected, in prescribed manner and within the prescribed time, in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it or by another foreign affiliate of the corporation, for the purposes of this Act, an amount equal to the lesser of
>
> (a) the amount designated by the corporation in its election, and
>
> (b) the proceeds of disposition of the share
>
> shall be deemed to have been a dividend received on the share from the affiliate by the disposing corporation or disposing affiliate, as the case may be, immediately before the disposition and not to have been proceeds of disposition.

Pre-RSC History: Subsec. 93(1) substituted by 1974-75-76, c. 26, subsec. 58(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 93(1)]: *Terrador Investments Ltd. v. R.*, [1999] 3 C.T.C. 520 (FCA); leave to appeal to SCC refused (May 18, 2000), File 27499 (No bad debt possible where statute deemed amount to have been received).

Regulations: 5902 (prescribed manner, prescribed time).

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

Forms: T2107: Election for a disposition of shares in a foreign affiliate.

(1.1) Idem — Where at any time shares of the capital stock of a foreign affiliate of a corporation resident in Canada that are excluded property are disposed of by another foreign affiliate of the corporation (other than a disposition to which paragraph 95(2)(c), (d) or (e) applies), the corporation shall be deemed to have made an election at that time under subsection (1) in respect of each such share disposed of and in the election to have designated an amount equal to such amount as is prescribed.

Related Provisions: 95(2)(f) — Determination of certain components of foreign accrual property income.

Pre-RSC History: Subsec. 93(1.1) added by 1980-81-82-83, c. 140, s. 55, applicable with respect to dispositions occurring after November 12, 1981.

Regulations: 5902(6) (prescribed amount).

Proposed Addition — 93(1.2), (1.3)

(1.2) Disposition of a share of a foreign affiliate held by a partnership — Where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to in this subsection as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a disposition by a partnership, at any time, of a share of the capital stock of a foreign affiliate of the particular corporation and the particular corporation so elects in prescribed manner in respect of the disposition,

(a) 4/3 of

(i) the amount designated by the particular corporation (which amount shall not exceed the amount of the disposing corporations's[12] taxable capital gain from the disposition of the share), or

(ii) where subsection (1.3) applies, the amount prescribed for the purpose of that subsection

in respect of the share is deemed to have been a dividend received on the share by the disposing corporation from the affiliate immediately before that time;

(b) notwithstanding section 96, the disposing corporation's taxable capital gain from the disposition of the share is deemed to be the amount, if any, by which the disposing corporation's taxable capital gain from the disposition of the share otherwise determined exceeds the amount designated by the particular corporation in respect of the share;

(c) for the purpose of any regulation made under this subsection, the disposing corporation is deemed to have disposed of the share at that time and to have had a capital gain from the disposition of the share equal to 4/3 of the disposing corporation's taxable capital gain from the disposition of the share;

(d) for the purpose of section 113 in respect of the dividend referred to in paragraph (a), the disposing corporation is deemed to have owned the share on which that dividend was received; and

(e) where the disposing corporation has a taxable capital gain from the partnership because of the application of subsection 40(3) to the partnership in respect of the share, for the purposes of this subsection, the share is deemed to have been disposed of by the partnership.

Technical Notes: New subsection 93(1.2) of the Act provides that, where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (referred to as "disposing corporation") would, but for this subsection, have a taxable capital gain from a partnership from the disposition by the partnership of a share of a foreign affiliate of the corporation, and the particular corporation elects in prescribed manner in respect of the gain, the amount designated will reduce the taxable capital gain and will be grossed-up and recharacterized as a dividend received on the share by the disposing corporation.

New paragraph 93(1.2)(a) provides that 4/3 of the amount designated by the particular corporation in respect of the share (the amount designated cannot exceed the disposing corporation's taxable capital gain), or where proposed subsection 93(1.3) applies 4/3 of the amount determined under that subsection, will be treated as a dividend received on the share by the disposing corporation from the foreign affiliate.

New paragraph 93(1.2)(b) provides that, notwithstanding section 96, the disposing corporation's taxable capital gain from the disposition of the share is considered to be the amount by which the disposing corporation's taxable capital gain from the disposition of the share otherwise determined exceeds the amount designated by the particular corporation.

New paragraph 93(1.2)(c) provides that, for the purpose of any regulation made under subsection 93(1.2), the disposing corporation is treated as having disposed of the share and to have had a capital gain from the disposition equal to 4/3 of the disposing corporation's taxable capital gain.

New paragraph 93(1.2)(d) provides that, for the purpose of section 113 in respect of the dividend referred to in new paragraph 93(1.2)(a), the disposing corporation is considered to have owned the share on which the dividend is paid.

New paragraph 93(1.2)(e) provides that, where the disposing corporation has a taxable capital gain from the disposition of the share because of the application of subsection 40(3) of the Act to the partnership in respect of the share, the partnership is treated for the purposes of this subsection as having disposed of the share.

[12] *Sic.*

Related Provisions: 93(1.3) — Deemed election; Reg. 5900(2) — No election for dividend to have been paid out of taxable surplus; Reg. 5905(2) — Where shares of foreign affiliate are redeemed or cancelled.

Regulations: 5902 (prescribed manner, prescribed time).

(1.3) Deemed election — Where a foreign affiliate of a particular corporation resident in Canada has a gain from the disposition by a partnership at any time of shares of the capital stock of a foreign affiliate of the particular corporation that are excluded property, the particular corporation is deemed to have made an election under subsection (1.2) in respect of each such share disposed of by the partnership and to have designated in the election an amount equal to a prescribed amount.

Technical Notes: New subsection 93(1.3) of the Act provides that, where a foreign affiliate of a particular corporation resident in Canada has a gain from the disposition by a partnership of a share of a foreign affiliate of the particular corporation and the share is excluded property, the particular corporation will treated as having made the election under new subsection 93(1.2) and to have designated the prescribed amount.

Related Provisions: Reg. 5902(6) — Deemed amount designated.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 43(2), will add subsecs. 93(1.2) and (1.3), applicable to dispositions that occur after November 1999.

(2) Loss limitation on disposition of share — Where

(a) a corporation resident in Canada has disposed of a share of the capital stock of any foreign affiliate of the corporation, or

(b) a foreign affiliate of a corporation resident in Canada has disposed of a share of the capital stock of another foreign affiliate of the corporation,

the amount of the loss of the disposing corporation from the disposition of the share shall be deemed to be the amount, if any, by which

(c) the amount that would be the loss of the disposing corporation therefrom if this Act were read without reference to this subsection

exceeds

(d) the amount, if any, by which

(i) the total of all amounts received before the disposition of the share in respect of exempt dividends on the share or a share for which the share was substituted by

(A) the disposing corporation,

(B) a corporation related to the disposing corporation,

(C) a foreign affiliate of the disposing corporation, or

(D) a foreign affiliate of a corporation related to the disposing corporation

exceeds

(ii) the total of all amounts each of which is the amount by which a loss from a previous disposition of the share or a share for which the share was substituted by a corporation referred to in any of clauses (i)(A) to (D) has been reduced because of this subsection.

Proposed Amendment — 93(2)

(2) Loss limitation on disposition of share — Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that is not excluded property (in this subsection referred to as the "affiliate share"),

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the loss determined without reference to this subsection,

B is the total of all amounts each of which is an amount received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada,

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is 4/3 of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a previous disposition by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is 4/3 of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before

that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 43(3), will amend subsec. 93(2) to read as above, applicable to dispositions that occur after November 1999.

Technical Notes: Subsection 93(2) of the Act is an anti-avoidance rule. It reduces a loss arising on a disposition of a share of the capital stock of a foreign affiliate of a corporation resident in Canada by exempt dividends received on the share before the disposition. The rule applies to the corporation resident in Canada and any foreign affiliate of such a corporation in respect of a share of a foreign affiliate of the corporation resident in Canada.

Subsection 93(2) of the Act is repealed and replaced by new subsections 93(2) to (2.3) of the Act because of the introduction of new section 93.1 of the Act.

Subsection 93(2) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has a loss from the disposition of a share of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the loss from the disposition of a share of another foreign affiliate of the taxpayer, the rule does not apply where that affiliate share is excluded property of the disposing affiliate.

Where the rule applies, the loss arising on the disposition of the affiliate share is reduced by the exempt dividends received on the share by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term "exempt dividend" is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

Related Provisions: 40(3) — Deemed gain where amounts to be deducted from ACB exceed cost plus amounts to be added to adjusted cost base; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93(4) — Loss on disposition of shares of foreign affiliate; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula cannot calculate to less than zero.

History: That portion of subsec. 93(2) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 69(2), applicable to the determination of losses arising in 1985 *et seq.*, except that, in its application to such losses from dispositions occurring before July 13, 1990, para. (d) shall be read as follows:

(d) the total of all amounts in respect of exempt dividends received by the disposing corporation on the share at any time before the disposition.

That portion of subsec. 93(2) formerly read:

the amount of any capital loss of the disposing corporation from the disposition of the share shall be deemed to be the amount, if any, by which the amount of the capital loss therefrom otherwise determined exceeds the total of all amounts in respect of exempt dividends received by the disposing corporation on the share at any time before the disposition.

Proposed Addition — 93(2.1)–(2.3)

(2.1) Loss limitation — disposition of share by partnership — Where

(a) a corporation resident in Canada has an allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the share immediately before it was disposed of (in this subsection referred to as the "affiliate share"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the allowable capital loss determined without reference to this subsection,

B is 3/4 of the total of all amounts each of which was received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section,) of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of exempt dividends referred to in the description of B.

Technical Notes: New subsection 93(2.1) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has an allowable capital loss from a partnership arising on the disposition by the partnership of a share of a foreign affiliate of the corporation resident in Canada. Where

the foreign affiliate has the allowable capital loss, the rule does not apply where that affiliate share would be excluded property of the disposing affiliate if the affiliate owned the share.

Where the rule applies, the allowable capital loss from the partnership arising on the disposition of the affiliate share is reduced by 3/4 of the exempt dividends received on the share by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term "exempt dividend" is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

Related Provisions: 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula cannot calculate to less than zero.

(2.2) Loss limitation — disposition of partnership interest — Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property if the shares were owned by the affiliate (in this subsection referred to as "affiliate shares")

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the loss determined without reference to this subsection,

B is the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is 4/3 of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is 4/3 of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

Technical Notes: New subsection 93(2.2) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has a loss on the disposition of an interest in a partnership that has a direct or indirect interest in shares of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the loss, the rule does not apply where those affiliate shares in which the partnership has an interest would be excluded property of the affiliate with the loss if the affiliate owned them immediately before the disposition.

Where the rule applies, the loss arising on the disposition of the partnership interest is reduced by the exempt dividends received before the disposition on the affiliate shares (in which the partnership has the interest) by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term exempt dividend is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

Related Provisions: 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula cannot calculate to less than zero.

(2.3) Loss limitation — disposition of partnership interest — Where

(a) corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time of an interest in another partnership that has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time by a partnership of an interest in another partnership which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada that would not be excluded property of the

affiliate if the affiliate owned the shares immediately before the disposition (in this subsection referred to as "affiliate shares"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the allowable capital loss determined without reference to this subsection,

B is 3/4 of the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B.

Technical Notes: New subsection 93(2.3) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has an allowable capital loss from a partnership arising on the disposition of an interest in a partnership where that partnership (the interest in which is disposed of) has a direct or indirect interest in shares of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the allowable capital loss, the rule does not apply where the affiliate shares in which the partnership (the interest in which was disposed of) has the interest would be excluded property of the affiliate (with the allowable capital loss) if the affiliate had owned the shares.

Where the rule applies, the allowable capital loss from the partnership arising on the disposition of an interest in another partnership which has a direct or indirect interest in the affiliate shares is reduced by 3/4 of the exempt dividends received on the affiliate shares before the time of the disposition by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term exempt dividend is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

Related Provisions: 87(2)(u)(ii) — Amalgamation; 93(3) — Exempt dividends; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 257 — Formula cannot calculate to less than zero.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 43(3), will add subsecs. 93(2.1) to (2.3), applicable to dispositions that occur after November 1999.

Proposed Amendment — 93(2.1)–(2.3)

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This is expected to affect 93(2.1)B and C and 93(2.3)B and C — ed.]

(3) Exempt dividends — For the purposes of subsection (2),

(a) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation in computing its taxable income by virtue of paragraph 113(1)(a), (b) or (c); and

(b) a dividend received by a foreign affiliate of a corporation resident in Canada from another foreign affiliate of that corporation is an exempt dividend to the extent of the amount, if any, by which the portion of the dividend that was not prescribed to have been paid out of the pre-acquisition surplus of that other affiliate exceeds such portion of any income or profits tax paid by the first-mentioned affiliate as may reasonably be regarded as having been paid in respect of that portion of the dividend.

Proposed Amendment — 93(3)

(3) Exempt dividends — For the purposes of subsections (2) to (2.3),

(a) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation for the purpose of computing the taxable income of the corporation because of paragraph 113(1)(a), (b) or (c); and

(b) a dividend received by a particular foreign affiliate of a corporation resident in Canada from another foreign affiliate of the corporation is an exempt dividend to the extent of the amount, if any, by which the portion of the dividend that was not prescribed to have been paid out of the pre-acquisition surplus of the other affiliate exceeds the total of such portion of the income or profits tax that can reasonably be considered to have been paid in respect of that portion of the dividend by the particular affiliate or by a partnership in which the particular affiliate had, at the time of the payment of the income or profits tax, a partnership interest, either directly or indirectly.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 43(4), will amend subsec. 93(3) to read as above, applicable to dispositions that occur after November 1999.

Technical Notes: Subsection 93(3) of the Act defines the term "exempt dividend" for the purpose of subsection 93(2) of the Act. A dividend received by a Canadian corporation is an exempt dividend to the extent it is deductible under paragraphs 113(1)(a), (b) or (c) of the Act. A dividend received by a foreign affiliate of a Canadian corporation is an exempt dividend to the extent that the portion of the dividend that was not paid out of pre-acquisition surplus exceeds the income or profits tax paid by the affiliate.

Subsection 93(3) is amended to also apply for the purposes of new subsections 93(2.1) to (2.3) of the Act. In addition, the subsection is amended to apply in respect of shares of foreign affiliates that are owed by partnerships. For information on the treatment of foreign affiliate shares owned by partnerships, see the commentary on new section 93.1.

Pre-RSC History: Para. 93(3)(a) substituted by 1974-75-76, c. 26, subsec. 58(2), applicable to 1972 *et seq.*

Regulations: 5900(1)(c) (amount prescribed to have been paid out of pre-acquisition surplus).

(4) Loss on disposition of shares of foreign affiliate — Where a taxpayer resident in Canada or a foreign affiliate of the taxpayer (in this subsection referred to as the "vendor") has acquired shares of a foreign affiliate of the taxpayer (in this subsection referred to as the "acquired affiliate") on the disposition of shares of any other foreign affiliate of the taxpayer (other than a disposition to which subsection 40(3.4) applies),

(a) the capital loss therefrom otherwise determined shall be deemed to be nil; and

(b) in computing the adjusted cost base to the vendor of all shares of any particular class of the capital stock of the acquired affiliate owned by the vendor immediately after the disposition, there shall be added an amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the cost amount to the vendor immediately before the disposition of the shares disposed of,

B is the total of

(i) the proceeds of disposition of the shares disposed of, and

(ii) the total of all amounts deducted under paragraph (2)(d) in computing losses of the vendor from the dispositions of the shares disposed of,

C is the fair market value, immediately after the disposition, of all shares of that particular class owned by it at that time, and

D is the fair market value, immediately after the disposition, of all shares of the capital stock of the acquired affiliate owned by it at that time.

Related Provisions: 93(2) — Loss limitation on disposition of share; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 93(4) amended by 1998, c. 19, s. 120, applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The opening words formerly read:

(4) Where a taxpayer resident in Canada or a foreign affiliate of the taxpayer (in this subsection referred to as the "vendor") has acquired shares of a foreign affiliate of the taxpayer (in this subsection referred to as the "acquired affiliate") on the disposition of shares of any other foreign affiliate of the taxpayer (other than a disposition to which subsection 85(4) applies), the following rules apply:

Para. 93(4)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 69(3), applicable to dispositions of shares occurring after July 13, 1990. Para. 93(4)(b) formerly read:

(b) in computing the adjusted cost base to the vendor of all shares of any particular class of the capital stock of the acquired affiliate owned by it immediately after the disposition there shall be added the amount that is equal to that proportion of the amount, if any, by which

(i) the cost amount to it immediately before the disposition of the shares disposed of

exceeds

(ii) the proceeds of the disposition

that

(iii) the fair market value, immediately after the disposition, of all shares of that class owned by it at that time,

is of

(iv) the fair market value, immediately after the disposition, of all shares of the capital stock of the acquired affiliate owned by it at that time.

Pre-RSC History: Subsec. 93(4) added by 1974-75-76, c. 26, subsec. 58(3), applicable to 1972 *et seq.*

(5) Late filed elections — Where the election referred to in subsection (1) was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed manner; and

(b) an estimate of the penalty in respect of that election is paid by the corporation when that election is made.

Pre-RSC History: That part of subsec. 93(5) preceding para. (a) substituted by 1984, c. 45, subsec. 29(1), to substitute "3" for "2", applicable after February 15, 1984.

Subsec. 93(5) added by 1979, c. 5, s. 31.

Regulations: 5902 (prescribed manner).

Forms: T2107: Election for a disposition of shares in a foreign affiliate.

(5.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection (1) to be made after the day that is 3 years after the day on or before which the election was required by that subsection to be made, or

(b) to permit an election made under subsection (1) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the corporation when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Pre-RSC History: Subsec. 93(5.1) added by 1984, c. 45, subsec. 29(2), applicable after February 15, 1984.

Forms: T2107: Election for a disposition of shares in a foreign affiliate.

(6) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election or amended election referred to in paragraph (5)(a) or (5.1)(c) is an amount equal to the lesser of

(a) ¼ of 1% of the amount designated in the election or amended election for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (1) to be made and ending on the day the election is made, and

(b) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

Related Provisions: 93(7) — Assessment of penalty; 220(3.1) — Waiver of penalty by CCRA.

Pre-RSC History: Subsec. 93(6) substituted by 1984, c. 45, subsec. 29(2), to add reference to para. (5.1)(c), to add "or amended election" and to substitute para. (b) in its entirety, applicable after February 15, 1984. Para. (b) formerly read:

(b) $2,500.

Subsec. 93(6) added by 1979, c. 5, s. 31.

(7) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (5)(a) or (5.1)(c), assess the penalty payable and send a notice of assessment to the corporation, and the corporation shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Pre-RSC History: Subsec. 93(7) substituted by 1984, c. 45, subsec. 29(2), to add reference to para. (5.1)(c) and to add "and amended election", applicable after February 15, 1984.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Subsec. 93(7) added by 1979, c. 5, s. 31.

Definitions [s. 93]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "class" — of shares 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "disposition", "dividend" — 248(1); "excluded property" — 95(1); "exempt surplus" — 113(1)(a), Reg. 5907(1)(d); "foreign affiliate" — 93.1(1), 95(1), 248(1); "Minister" — 248(1); "pre-acquisition surplus" — Reg. 5900(1)(c); "prescribed" — 248(1); "proceeds of disposition" — 54; "property", "regulation" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 248(1); "taxable surplus" — 113(1)(b)(i), Reg. 5907(1)(k); "taxation year" — 95(1) (for foreign affiliate only), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 93]: IT-392: Meaning of the term "share"; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Proposed Addition — 93.1

93.1 (1) Shares held by a partnership — For the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2) and 20(12), sections 93 and 113 (and any regulations made for the purposes of those sections), section 95 (to the extent that that section is applied for the purposes of those provisions) and section 126, where at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, each member of the partnership is deemed to own at that time that number of those shares that is equal to the proportion of all those shares that

(a) the fair market value of the member's interest in the partnership at that time

is of

(b) the fair market value of all members' interests in the partnership at that time.

Technical Notes: New subsection 93.1(1) of the Act applies for the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of new subsection 93.1(2), subsection 20(12), sections 93 and 113 and any regulations made for the purposes of those sections and the rules in section 95 that are required to be applied to a foreign affiliate of a corporation resident in Canada in applying sections 93 and 113 of the Act and section 126.

For this purpose, new subsection 93.1(1) deems a member of a partnership to own its proportionate number of shares of a corporation held by a partnership. The number of shares owned by a member at any particular time is equal to the proportion of the total number of shares owned by the partnership that the fair market value of the member's interest in the partnership at that time is of the fair market value of all members' interests in the partnership at that time.

Subsection 93.1(1) applies at any time after November 30, 1999 in determining whether a non-resident corporation is a foreign affiliate of a taxpayer and, where the taxpayer elects in writing and files the election with Minister before 2002, the subsection also applies after 1972 and before December 1999 in determining whether a non-resident corporation is a foreign affiliate of a taxpayer (other than for the purposes of subsection 20(12) and section 126 of the Act).

Regulations: 5905(14) (where number of shares deemed owned increases or decreases).

(2) Where dividends received by a partnership — Where at any time shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada (in this subsection referred to as "affiliate shares") are owned by a partnership and at that time the affiliate pays a dividend on affiliate shares to the partnership (in this subsection referred to as the "partnership dividend"),

(a) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, each member of the partnership is deemed to have received the proportion of the partnership dividend that

(i) the fair market value of the member's interest in the partnership at that time

is of

(ii) the fair market value of all members' interests' in the partnership at that time;

(b) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, the proportion of the partnership dividend deemed by paragraph (a) to have been received by a member of the partnership at that time is deemed to have been received by the member in equal proportions on each affiliate share that is property of the partnership at that time;

(c) for the purpose of applying section 113, in respect of the dividend referred to in paragraph (a), each affiliate share referred to in paragraph (b) is deemed to be owned by each member of the partnership; and

(d) notwithstanding paragraphs (a) to (c),

(i) where the corporation resident in Canada is a member of the partnership, the amount deductible by it under section 113 in respect of the dividend referred to in paragraph (a) shall not exceed the portion of the amount of the dividend included in its income pursuant to subsection 96(1), and

(ii) where another foreign affiliate of the corporation resident in Canada is a member of the partnership, the amount included in that other affiliate's income in respect of the dividend referred to in paragraph (a) shall not exceed the amount that would be included in its income pursuant to subsection 96(1) in respect of the partnership dividend received by the partnership if the value for H in the definition "foreign accrual property income" in subsection 95(1) were nil and this Act were read without reference to this subsection.

Technical Notes: New subsection 93.1(2) of the Act applies where a partnership receives a dividend from a foreign affiliate of the corporation resident in Canada.

Paragraph 93.1(2)(a) provides that, for the purposes of sections 93 and 113 of the Act and any regulations made for the purposes of those sections, a member of a partnership is treated as having received its proportionate share of a dividend received by the partnership from a foreign affiliate of the member. That proportionate share is determined as that proportion of the partnership dividend that the fair market value of the member's interest in the partnership is of the fair market value of all members' interests in the partnership.

Paragraph 93.1(2)(b) provides that, for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, a dividend that is treated as having been received by a member of a partnership under paragraph 93.1(2)(a) is treated as having been received in equal proportions on each affiliate share held by the partnership at that time.

Paragraph 93.1(2)(c) provides that, for the purpose of section 113, each affiliate share referred to in paragraph 93.1(2)(b) is treated as having been owned by each member of the partnership.

Subparagraph 93.1(2)(d)(i) provides that, notwithstanding paragraphs 93.1(2)(a), (b) and (c), where a member of the partnership is a corporation resident in Canada, the maximum amount that the member may deduct under section 113 is restricted to the amount of the dividend received by the partnership that is included in its income under subsection 96(1) of the Act.

Subparagraph 93.1(2)(d)(ii) provides that, notwithstanding paragraphs 93.1(2)(a), (b) and (c), where the member is another foreign affiliate of the corporation resident in Canada, the amount included in the other affiliate's income in respect of the dividend referred to in paragraph 93.1(2)(a) shall not exceed the amount that would have been included in the other affiliate's income under subsection 96(1) if the value of H in the formula in the definition "foreign accrual property income" in subsection 95(1) were nil and the Act were read without reference to subsection 93.1(2). In effect, the maximum amount that an affiliate can deduct in computing its foreign accrual property income in respect of the dividend referred to in paragraph 93.1(2)(a) is restricted to the amount of the dividend included in the affiliate's foreign accrual property income under subsection 96(1).

New subsection 93.1(2) applies to dividends received after November 30, 1999.

Related Provisions: 92(4)–(6) — Dividend from pre-acquisition surplus; 95(1)"foreign accrual property income"H — Exclusion from FAPI.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 44, will add s. 93.1, subsec. 93.1(1) applicable in determining whether a non-resident corporation is, at any time after November 1999, a foreign affiliate of a taxpayer and, where a taxpayer so elects and notifies the Minister of National Revenue in writing before 2002 of its election, that subsection also applies in determining (other than for the purposes of subsec. 20(12) and s. 126) whether a non-resident corporation is, at any time after 1972 and before December 1999, a foreign affiliate of the taxpayer; subsec. 93.1(2) applicable in respect of dividends received after November 1999.

Definitions [s. 93.1]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 93.1(1), 95(1), 248(1); "non-resident" — 248(1); "property", "regulation" — 248(1); "resident in Canada" — 250; "share" — 248(1).

94. (1) Application of certain provisions to trusts not resident in Canada — Where,

(a) at any time in a taxation year of a trust that is not resident in Canada or that, but for paragraph (c), would not be so resident, a person beneficially interested in the trust (in this section referred to as a "beneficiary") was

(i) a person resident in Canada,

(ii) a corporation or trust with which a person resident in Canada was not dealing at arm's length, or

(iii) a controlled foreign affiliate of a person resident in Canada, and

(b) at any time in or before the taxation year of the trust,

(i) the trust, or a non-resident corporation that would, if the trust were resident in Canada, be a controlled foreign affiliate of the trust, has, other than in prescribed circumstances, acquired property, directly or indirectly in any manner whatever, from

(A) a particular person who

(I) was the beneficiary referred to in paragraph (a), was related to that beneficiary or was the uncle, aunt, nephew or niece of that beneficiary,

(II) was resident in Canada at any time in the 18 month period before the end of that year or, in the case of a person who has ceased to exist, was resident in Canada at any time in the 18 month period before the person ceased to exist, and

(III) in the case of an individual, had before the end of that year been resident in Canada for a period of, or periods the total of which is, more than 60 months, or

(B) a trust or corporation that acquired the property, directly or indirectly in any manner whatever, from a particular person described in clause (A) with whom it was not dealing at arm's length

and the trust was not

(C) an *inter vivos* trust created at any time before 1960 by a person who at that time was a non-resident person,

(D) a testamentary trust that arose as a consequence of the death of an individual before 1976, or

(E) governed by a foreign retirement arrangement, or

(ii) all or any part of the interest of the beneficiary in the trust was acquired directly or indirectly by the beneficiary by way of

(A) purchase,

(B) gift, bequest or inheritance from a person referred to in clause (i)(A) or (B), or

(C) the exercise of a power of appointment by a person referred to in clause (i)(A) or (B),

the following rules apply for that taxation year of the trust:

(c) where the amount of the income or capital of the trust to be distributed at any time to any beneficiary of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power,

(i) the trust is deemed for the purposes of this Part and sections 233.3 and 233.4 to be a person resident in Canada no part of whose taxable income is exempt because of section 149 from Part I tax and whose taxable income for the taxation year is the total of

(A) the amount, if any, that would but for this subparagraph be its taxable income earned in Canada for that year,

(B) the amount that would, if it were a trust to which paragraph (d) applies, be its foreign accrual property income for that year, and

(C) the amount, if any, by which the amount required by section 91 to be included in computing its income for the year exceeds the amount deducted for that year by virtue of subsections 91(2), (4) and (5), and

(ii) for the purposes of section 126,

(A) the amounts referred to in clauses (i)(B) and (C) shall be deemed to be income of the trust from sources in the country other than Canada in which the trust would, but for subparagraph (i), be resident, and

(B) such part of any income or profits tax paid by the trust for the year (other than any tax paid by virtue of this section) that may reasonably be regarded as having been paid in respect of that income shall be deemed to be the non-business-income tax paid by the trust to the government of that country, and

Proposed Amendment — 94(1)(c)(i), (ii)

(i) the trust is deemed for the purposes of this Part and sections 233.3 and 233.4 to be a person resident in Canada no part of whose taxable income is exempt because of section 149 from tax under this Part and whose taxable income for the year is the amount, if any, by which the total of

(A) the amount, if any, that would but for this subparagraph be its taxable income earned in Canada for the year,

(B) the amount that would be its foreign accrual property income for the year if

(I) except for the purpose of applying subsections 104(4) to (5.2) to days after 1998 that are determined under subsection 104(4), the trust were a non-resident corporation all the shares of which were owned by a person who was resident in Canada,

(II) the description of A in the definition "foreign accrual property income" in subsection 95(1) were, in respect of dividends received after 1998, read without reference to paragraph (b) of that description,

(III) the descriptions of B and E in that definition were, in respect of dispositions that occur after 1998, read without reference to "other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply",

(IV) the value of C in that definition were nil, and

(V) for the purpose of computing the trust's foreign accrual property income, the consequences of the application of subsections 104(4) to (5.2) applied in respect of days after 1998 that are determined under subsection 104(4),

(C) the amount, if any, by which the total of all amounts each of which is an amount required by subsection 91(1) or (3) to be included in computing its income for the year exceeds the total of all amounts each of which is an amount deducted by it for that year under subsection 91(2), (4) or (5), and

(D) the amount, if any, required by section 94.1 to be included in computing its income for the year,

exceeds

(E) the amount, if any, by which the total of all amounts each of which is an amount deducted by it under subsection 91(2), (4) or (5) in computing its income for the year exceeds the total of all amounts each of which is an amount included in computing its income for the year because of subsection 91(1) or (3), and

(ii) for the purposes of section 126,

(A) the amount that would be determined under subparagraph (i) in respect of the trust for the year, if that subparagraph were read without reference to clause (i)(A), is deemed to be income of the trust for the year from sources in the country other than Canada in which the trust would, but for subparagraph (i), be resident, and

(B) any income or profits tax paid by the trust for the year (other than any tax paid because of this section), to the extent that it can reasonably be regarded as having been paid in respect of that income, is deemed to be non-business income tax paid by the trust to the government of that country, and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 45, will amend subparas. 94(1)(c)(i) and (ii) to read as above, applicable to 1999 *et seq.*

Technical Notes: Where certain conditions are met, a non-resident discretionary trust to which existing section 94 of the Act applies is generally treated as a trust resident in Canada for the purposes of Part I and sections 233.3 and 233.4 of the Act. Under existing subparagraph 94(1)(c)(i), the taxable income of such a trust is the total of its taxable income earned in Canada

(computed on the assumption that the trust is non-resident) and two additional amounts. The first additional amount for a taxation year is described in clause 94(1)(c)(i)(B) as the amount that would be the trust's foreign accrual property income for the year if paragraph 94(1)(d) applied. Under clause 94(1)(c)(i)(C), the second additional amount for a taxation year is the net amount included under section 91 in computing the trust's income for the year.

Clause 94(1)(c)(i)(B) is amended so that the amount determined under that clause in respect of a trust for a taxation year is generally the trust's foreign accrual property income for the year, determined on the assumptions that the trust is a non-resident corporation and that all of the shares of the capital stock of that corporation are owned by a person resident in Canada. Exceptions to this general rule are described below.

Clause 94(1)(c)(i)(B) is also amended to clarify that the 21-year deemed disposition rule for trusts applies for the purpose of computing the amount determined under clause 94(1)(c)(i)(B), notwithstanding the fact that the rule applies to trusts and not to corporations. This clarification applies to disposition dates determined after 1998.

Subclauses 94(1)(c)(i)(B)(II) and (III) are introduced so that, after 1998, dividends from foreign affiliates, and taxable capital gains and allowable losses that relate to "excluded property" (as defined in subsection 95(1)), are included in the trust's foreign accrual property income determined under clause 94(1)(c)(i)(B). Because trust income can be distributed as trust capital, it is appropriate to remove the exclusions from foreign accrual property income for dividends and capital gains from excluded property.

Subclause 94(1)(c)(i)(B)(IV) is introduced so that section 94.1 is no longer relevant for the purposes of determining the amount under clause 94(1)(c)(i)(B). Instead, new clause 94(1)(c)(i)(D) adds the amount determined under that section in respect of a trust in computing the trust's taxable income under subparagraph 94(1)(c)(i).

Clause 94(1)(c)(i)(C) is amended to clarify that the second additional amount added in computing a trust's taxable income under paragraph 94(1)(c) is determined by subtracting the amounts deducted in computing income under subsections 91(2), (4) and (5) from the amount added in computing income under subsections 91(1) and (3). This amendment applies to the 1999 and subsequent taxation years.

Clause 94(1)(c)(i)(E) (in conjunction with a change to the opening words of subparagraph 94(1)(c)(i)) is introduced to provide for a deduction in computing the taxable income for a taxation year of a trust under subparagraph 94(1)(c)(i). This deduction is equal to the amount, if any, by which the total of the amounts deducted under subsections 91(2), (4) and (5) in computing the trust's income for the year exceeds the total amount included in computing the trust's income for the year because of subsections 91(1) and (3). Clause 94(1)(c)(i)(E) will apply, for example, where an amount was included in computing a trust's taxable income because of clause 94(1)(c)(i)(C) and there is subsequently a distribution of dividends to which that amount relates. Clause 94(1)(c)(i)(E) is meant to avoid the double taxation of the same income that might otherwise arise. The example below illustrates the operation of clause 94(1)(c)(i)(E).

EXAMPLE

Trust X is a non-resident trust to which paragraph 94(1)(c) applies. Trust X owns 100% of the shares in Foreignco. In year 1, Foreignco's only income is $20,000 of interest income on government bonds. In year 2, Foreignco pays a dividend of $7,000 to Trust X. In year 3, Foreignco pays a dividend of $15,000 to Trust X. Foreignco had no other relevant income in years 2 and 3.

Results:

1. The taxable income of Trust X for year 1 is calculated under subparagraph 94(1)(c)(i) as follows:

- ADD the amount that would be Trust X's "foreign accrual property income" if a number of assumptions were made. Trust X's own foreign accrual property income for year 1 is nil. [Clause 94(1)(c)(i)(B), in conjunction with definition of "foreign accrual property income" in subsection 95(1)]
- ADD the net amount required by section 91 to be included in Trust X's income. This amount is $20,000. [Clause 94(1)(c)(i)(C), in conjunction with subsection 91(1)]

As a result, the taxable income of Trust X for year 1 is $20,000.

2. The taxable income of Trust X for year 2 is calculated as follows:

- ADD the amount that would be Trust X's "foreign accrual property income" if a number of assumptions were made. Because of subclause 94(1)(c)(i)(B)(II), dividends received by affiliates are included in computing Trust X's foreign accrual property income for this purpose. Consequently, Trust X's "foreign accrual property income" is $7,000.
- SUBTRACT the net amount deducted under section 91 in computing the trust's income. [Clause 94(1)(c)(i)(E)] The deduction available is equal to the lesser of the amount of the dividend ($7,000) and the net adjusted cost base adjustments ($20,000) up to the time the $10,000 dividend is paid. [Subsection 91(5)] Consequently, the full $7,000 is deducted because of clause 94(1)(c)(i)(E).

As a result, the taxable income of Trust X for year 2 is nil.

3. The taxable income of Trust X for year 3 is calculated as follows:

- ADD the amount that would be Trust X's "foreign accrual property income" if a number of assumptions were made. Because of subclause 94(1)(c)(i)(B)(II), dividends received by affiliates are included in computing Trust X's foreign accrual property income for this purpose. Consequently, Trust X's "foreign accrual property income" is $15,000.
- SUBTRACT the net amount deducted under section 91 in computing the trust's income. [Clause 94(1)(c)(i)(E)] The deduction available is equal to the lesser of the amount of the dividend ($15,000) and the net adjusted cost base adjustments ($20,000-$7,000) up to the time the $15,000 dividend is paid. [Subsection 91(5)] Consequently, $13,000 is deducted because of clause 94(1)(c)(i)(E).

As a result, the taxable income of Trust X for year 2 is $2,000.

These amendments come into effect in the manner indicated in the commentary above and apply to the 1999 and subsequent taxation years. However, as announced in the 1999 budget, further amendments to this section are contemplated.

Subparagraph 94(1)(c)(ii) of the Act is relevant for the purpose of determining the foreign tax credit of a trust to which paragraph 94(1)(c) applies. For this purpose, the trust's income is generally deemed to be from sources in the country in which the trust would be resident if that paragraph did not apply. However, subparagraph 94(1)(c)(ii) does not apply in connection with taxable income calculated under clause 94(1)(c)(i)(A) (taxable income earned in Canada).

Subparagraph 94(1)(c)(ii) is amended strictly to reflect the amendments to subparagraph 94(1)(c)(i). Under amended subparagraph 94(1)(c)(ii), the portion of the taxable income sourced for the purposes of the foreign tax credit is equal to amount that would be the trust's taxable income calculated under subparagraph 94(1)(c)(i) if the trust's taxable income earned in Canada were not taken into account.

This amendment applies to the 1999 and subsequent taxation years. However, as announced in the 1999 budget, further amendments to section 94 are contemplated.

(d) in any other case, for the purposes of subsections 91(1) to (4) and sections 95 and 233.4,

(i) the trust shall, with respect to any beneficiary under the trust the fair market value of whose beneficial interest in the trust is not less than 10% of the aggregate fair market value of all beneficial interests in the trust, be deemed to be a non-resident corporation that is controlled by the beneficiary,

(ii) the trust shall be deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares, and

(iii) each beneficiary under the trust shall be deemed to own at any time the number of the issued shares that is equal to the proportion of 100 that

(A) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(B) the fair market value at that time of all beneficial interests in the trust.

Proposed Amendment — 94(1)

[See at end of s. 94.]

Related Provisions: 94(2) — Rights and obligations; 94(3) — Deduction in computing taxable income; 94(4) — Deduction from foreign accrual property income; 94(5) — ACB of capital interest in trust; 94(6) — Where financial assistance given; 94.1(2) — Trust covered by 94(1)(c) or (d) is a "non-resident entity"; 126 — Foreign tax credit; 248(8) — Occurrences as a consequence of death; 248(25) — Beneficially interested.

History: The opening words of subpara. 94(1)(c)(i), and the opening words of para. 94(1)(d), amended by 1997, c. 25, subsecs. 20(1), (2), applicable after 1995. These portions formerly read:

(i) the trust shall be deemed for the purposes of this Part to be a person resident in Canada not exempt from tax under section 149 whose taxable income for the taxation year is the total of

. . . . .

(d) in any other case, for the purposes of subsections 91(1) to (4) and section 95,

Cl. 94(1)(b)(i)(E) added by 1994, c. 7, Sch. II (1991, c. 49), s. 70, applicable to 1990 *et seq.*

Pre-RSC History: All that portion of subpara. 94(1)(b)(i) preceding cl. (A) amended by 1985, c. 45, s. 45, to add "other than in prescribed circumstances".

Paras. 94(1)(a), (b) substituted by 1980-81-82-83, c. 140, subsec. 56(1), applicable to taxation years of trusts commencing after November 12, 1981. Paras. (a), (b) formerly read:

(a) at any time in a taxation year of a trust that is not resident in Canada or that, but for paragraph (c), would not be so resident, other than

(i) an *inter vivos* trust created at any time before 1960 by a person who at that time was a non-resident person, or

(ii) a testamentary trust that arose as a consequence of the death of an individual whose death occurred before 1976,

a person beneficially interested in the trust (in this section referred to as a "beneficiary") was

(iii) a person resident in Canada,

(iv) a corporation or trust with which a person resident in Canada was not dealing at arm's length, or

(v) a controlled foreign affiliate of a person resident in Canada, and

(b) at any time in or before the taxation year of the trust, the trust, or a non-resident corporation that would, if the trust were resident in Canada, be a controlled foreign affiliate of the trust, has acquired property, directly or indirectly in any manner whatever, from

(i) a particular person who

(A) was the beneficiary referred to in paragraph (a), was related to that person or was the uncle, aunt, nephew or niece of that person,

(B) was resident in Canada at any time in the 18 month period before the end of that year or, in the case of a person who has ceased to exist, was resident in Canada at any time in the 18 month period before he ceased to exist, and

(C) in the case of an individual, had before the end of that year been resident in Canada for a period of, or periods the aggregate of which is, more than 60 months, or

(ii) a trust or corporation that was not dealing at arm's length with a particular person described in subparagraph (i),

Regulations: 5909 (prescribed circumstances for 94(1)(b)(i)).

Interpretation Bulletins: IT-447: Residence of a trust or estate.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2) Rights and obligations — Where paragraph (1)(c) is applicable to a trust, each person described in clause (1)(b)(i)(A) or (B) shall jointly and severally with the trust have the rights and obligations of the trust by virtue of Divisions I and J and shall be subject to the provisions of Part XV, but no amount in respect of taxes, penalties, costs and other amounts payable under this Act shall be recoverable from any such person except to the extent of

(a) amounts paid to the person by the trust or the payment of which from the trust the person is entitled to enforce; and

(b) amounts received by the person on the disposition of an interest in the trust.

Pre-RSC History: Subsec. 94(2) substituted by 1984, c. 1, subsec. 41(1), to substitute "clause (1)(b)(i)(A) or (B)" for "subparagraph (1)(b)(i) or (ii)" applicable to taxation years of trusts commencing after November 12, 1981.

(3) Deduction in computing taxable income — In computing the amount of taxable income of a trust to which paragraph (1)(c) applies for any taxation year, there may be deducted such portion of the amount that would, but for this subsection, be included in computing the taxable income of the trust for the year by virtue of clauses (1)(c)(i)(B) and (C) as may reasonably be considered as having become an amount payable in the year within the meaning of subsection 104(24) to a beneficiary.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries.

(4) Deduction from foreign accrual property income — In computing the foreign accrual property income of a trust to which paragraph (1)(d) applies for any taxation year, there may be deducted such portion of the amount that would, but for this subsection, be the foreign accrual property income of the trust as may reasonably be considered as having become an amount payable in the year within the meaning of subsection 104(24) to a beneficiary.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries.

(5) Adjusted cost base of capital interest in trust — In computing, at any time in a taxation year, the adjusted cost base to a taxpayer resident in Canada of a capital interest in a trust to which paragraph (1)(d) applies,

(a) there shall be added any amount required by subsection 91(1) or (3) to be included in computing the taxpayer's income for the year or any preceding taxation year (or that would have been so required to be included but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest; and

(b) there shall be deducted any amount deducted by the taxpayer by reason of subsection 91(2) or (4) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been so deductible by the taxpayer but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest.

Related Provisions: 53(1)(d.1) — Addition to ACB; 53(2)(b.1) — Reduction in ACB.

Pre-RSC History: Paras. 94(5)(a), (b) amended by 1988, c. 55, s. 64, to substitute "by reason of" for "by virtue of" in para. (b) and "but for subsection 56(4.1) and sections 74 to 75" for "but for sections 74 to 75" in paras. (a) and (b), applicable to 1989 *et seq.*

Subsec. 94(5) amended by 1986, c. 6, s. 50, applicable after May 21, 1985, to substitute in paras. (a) and (b) "sections 74 to 75" for "sections 74 and 75".

(6) Where financial assistance given — For the purposes of paragraph (1)(b), a trust or a non-resident corporation shall be deemed to have acquired property from any person who has given a guarantee on its behalf or from whom it has received any other financial assistance whatever.

(7) [Repealed]

History: Subsec. 94(7) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), s. 39, applicable after 1990. [See now subsec. 248(25).] Subsec. (7) formerly read:

> (7) Beneficially interested — For the purposes of this section, a person is beneficially interested in a trust if that person has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of a discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

Pre-RSC History: Subsec. 94(7) added by 1980-81-82-83, c. 140, subsec. 56(2), applicable to taxation years of trusts commencing after November 12, 1981.

Pre-RSC History [s. 94]: S. 94 substituted by 1974-75-76, c. 26, s. 59, applicable to 1972 *et seq.*

Definitions [s. 94]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount", "annuity" — 248(1); "arm's length" — 251(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "beneficiary" — 94(1)(a); "business" — 248(1); "Canada" — 255; "capital interest" — 108(1), 248(1); "consequence of the death" — 248(8); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign accrual property income", "foreign affiliate" — 95(1), 248(1); "foreign retirement arrangement" — 248(1); "nephew", "niece" — 252(2)(g); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "prescribed", "property" — 248(1); "resident in Canada" — 94(1)(c)(i), 250; "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — (of foreign affiliate) 95(1); "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "uncle" — 252(2)(f).

Interpretation Bulletins [s. 94]: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Proposed Amendment — 94

Technical Notes: *OVERVIEW*

Existing Rules

Section 94 of the Act sets out rules that tax the passive income earned by certain non-resident trusts. Section 94 generally applies if a person resident in Canada has transferred or loaned property to a non-resident trust that has one or more beneficiaries who are resident in Canada.

Section 94 uses two different methods to impose tax, depending on whether or not the trust is discretionary. A discretionary trust is a trust under which a person has a discretionary power to determine the amount of the income or capital of the trust that one or more beneficiaries will receive.

If the non-resident trust is discretionary, paragraph 94(1)(c) deems the trust to be resident in Canada for the purposes of Part I of the Act and deems its income for tax purposes to be the total of its Canadian source income and its foreign accrual property income, if any. Each beneficiary is jointly and severally liable to pay the Canadian tax of the trust. However, the liability can be enforced against a particular beneficiary only to the extent that the beneficiary has received a distribution from the trust or proceeds from the sale of an interest in the trust.

If the non-resident trust is not a discretionary trust, paragraph 94(1)(d) provides that it is to be treated in much the same manner that a non-resident corporation is treated. If a Canadian resident beneficiary holds an interest in the trust with a fair market value equal to 10% or more of the total fair market value of all interests in the trust, the trust is deemed to be a controlled foreign affiliate of the beneficiary. Consequently, the foreign accrual property income rules apply to the trust and the beneficiary, requiring the beneficiary to include a portion of the foreign accrual property income of the trust in income. On the other hand, beneficiaries that do not have 10% or greater interests in the trust may be subject to tax under the offshore investment fund rules in section 94.1. If section 94.1 does not apply, such beneficiaries are taxed only if trust income becomes payable to them in the year that it arises.

New Rules

New section 94 takes a different approach to the taxation of non-resident trusts (NRTs) that bears some similarity to the grantor trust approach used by the United States, New Zealand and Australia. In general, if a Canadian resident contributes property to a non-resident trust, the contributor, the non-resident trust and certain Canadian resident beneficiaries of the trust may all become liable to pay Canadian tax on the world-wide income of the trust.

Except as indicated otherwise, the amendments to section 94 apply to taxation years of trusts that begin after 2000. The table below briefly summarizes section 94 and related rules.

Issue	Summary	References
1. Which trusts are subject to the new NRT rules?	A. In general, a trust (other than an exempt foreign trust) will be subject to tax for a taxation year as a trust resident in Canada if a contribution was made to the trust by a person who is resident in Canada at the end of the year (other than a recent immigrant to Canada).	S. 94(3) "exempt foreign trust" — s. 94(1) "contribution" — s. 94(1) and (2) "resident contributor" — s. 94(1) As to 60-month test for new immigrants, see definition "resident contributor" in s. 94(1).
	B. In addition, a trust (other than an exempt foreign trust) will generally be subject to Canadian tax for a taxation year if • the contribution was made by a person when the person was resident in Canada (or within a 60-month period before the person became resident in Canada or within a 60-month period after the person ceased to be resident in Canada), • by the end of the year that person had been resident in Canada for more than 60 months, and • at the end of the year there is a person resident in Canada who is beneficially interested in the trust.	S. 94(3) "contribution" — s. 94(1) "connected contributor" — s. 94(1) "resident beneficiary" — s. 94(1)

Issue	Summary	References
2. Who is responsible for the tax payable an NRT?	The trust is required to pay tax. If it fails to do so, each contributor referred to in 1(A) and/or each beneficiary referred to in 1(B) is jointly and severally liable with the trust for the tax. However, the amount recoverable from a person who is simply a beneficiary is limited to benefits received by the beneficiary from the trust. Relief is also available in some cases for a contributor whose contribution to the trust is insignificant relative to other contributions made to the trust.	Joint liability: paragraph 94(3)(d) Relief from joint liability: s. 94(7) 10% and $10,000 tests for significant contribution: paragraph 94(7)(b).
3. Where the NRT rules do apply for a taxation year to a trust, how will the trust's tax liabilities be calculated?	A. Canadian rules apply to the trust as if the trust were resident in Canada throughout the year for the purpose of computing the trust's income.	s. 94(3)
	B. Explicit rule treats the trust as becoming resident in Canada, with resulting adjustment to cost amount of property under section 128.1.	s. 94(3)(c)
	C. Parts XII.2 and XIII do not apply to the trust. Explicit exemption from Part XIII tax on amounts distributed to the trust, although payer must still withhold.	s. 94(3)(a)(iii) and (4)(d)
	D. Flow-through of income to resident and non-resident beneficiaries permitted, subject to special rules in the event that Canadian-source income is distributed to non-residents.	s. 104(7.01) — special rules

94. Treatment of Trusts with Canadian Contributors — (1) Definitions — The definitions in this subsection apply in this section.

"accounting profit" of a trust for a taxation year of the trust means

(a) where the trust prepares financial statements in accordance with accounting principles substantially similar to generally accepted accounting principles used in Canada, the trust's profit for the year (determined before taking into account income or profits tax) reflected in the trust's financial statements; and

(b) in any other case, the amount that would be the trust's total profit for the year (determined before taking into account income or profits tax) from businesses carried on by the trust, properties owned by the trust, or any combination of those businesses and properties, if that amount were calculated in accordance with generally accepted accounting principles used in Canada.

Technical Notes: New subsection 94(1) of the Act defines a number of expressions that apply for the purpose of section 94.

The "accounting profit" of a trust for a taxation year refers to the trust's profit for the year (determined before taking into account income or profits tax) reflected in its financial statements, on the assumption that the financial statements were prepared in accordance with accounting principles substantially similar to generally accepted accounting principles used in Canada. Where such financial statements have not been prepared, a trust's "accounting profit" for a taxation year is the amount that would be the trust's total profit (determined before taking into account income or profits tax) for the year, from businesses carried on by the trust and properties owned by the trust, if that amount were calculated in accordance with generally accepted accounting principles used in Canada.

This definition is used only in paragraph (d) of the definition "exempt foreign trust", as described in the commentary below.

"arm's length transfer" at any time by a person or partnership (in this definition referred to as the "transferor") in respect of a trust means a particular transfer or loan of property at that time by the transferor to a particular person or partnership (in this definition referred to as the "recipient") where

(a) one of the following applies, namely,

(i) in exchange for the particular transfer or loan, the recipient transfers or loans property, or becomes obligated to transfer or loan property, and it is reasonable to conclude, having regard only to the particular transfer or loan and the property transferred or loaned, or obligated to be transferred or loaned, by the recipient to the transferor in exchange, that

(A) the exchange is one that the transferor would have been willing to carry out if the transferor had dealt at arm's length with the recipient, and

(B) the terms and conditions made or imposed in respect of the exchange would have been acceptable to the transferor if the transferor had dealt at arm's length with the recipient,

(ii) the particular transfer or loan is a payment of interest, a dividend, rent, a royalty or any similar return on investment, or any substitute for such a return on investment, in respect of a particular property owned by the recipient immediately before that time, if the fair market value at that time of the property so transferred does not exceed the fair market value of property that the transferor would have been willing to transfer at that time in respect of the particular property to the recipient if the transferor had dealt at arm's length with the recipient,

(iii) the particular transfer or loan

(A) is in satisfaction of an obligation that arose because of a transfer to which subparagraph (i) applied, and

(B) is one that the transferor would have been willing to carry out if the transferor had dealt at arm's length with the recipient,

(iv) the particular transfer or loan was made in the ordinary course of the business of the transferor, or

(v) it is reasonable to conclude that none of the reasons for the particular transfer or loan was to

permit or facilitate, directly or indirectly, the conferral, in the future, of a benefit in respect of the trust on

(A) the transferor,

(B) a descendant of the transferor, or

(C) any person with whom the transferor or descendant does not deal at arm's length; and

(b) it is reasonable to conclude that the reasons for which the property was transferred or loaned to the recipient did not include the relationship between the transferor and

(i) any person or partnership that was

(A) beneficially interested in the trust,

(B) a trustee of the trust,

(C) a person having influence over the operation of the trust or the enforcement of its terms, or

(D) a person having influence over the selection or appointment of any person or partnership referred to in any of clauses (A) to (C) or this clause, or

(ii) any group at least one of the members of which is described in subparagraph (i).

Technical Notes: An "arm's length transfer" does not result in any person or partnership being considered to be a "contributor" to a trust. Accordingly, subsection 94(3) does not apply to a non-resident trust as a consequence only of an arm's length transfer.

An "arm's length transfer" is, in general terms:

- a transfer or loan that is part of an arm's length exchange [Subparagraph (a)(i) of the definition.],
- an arm's length return on an investment, conferred by the entity in which the investment is made [Subparagraph (a)(ii) of the definition.],
- a repayment of an arm's length loan [Subparagraph (a)(iii) of the definition.],
- a transfer or loan made in the ordinary course of business [Subparagraph (a)(iv) of the definition.], or
- a transfer or loan that was not undertaken to allow for the conferral, in the future, of a benefit on the transferor, on a descendant of the transferor or on any person with whom the transferor or descendant does not deal at arm's length [Subparagraph (a)(v) of the definition.].

However, a transfer or loan qualifies as an "arm's length transfer" in respect of a trust only where it is reasonable to conclude that none of reasons for the transfer or loan included the relationship between the maker of the transfer or loan and any person or partnership that was

- beneficially interested in the trust,
- a trustee of the trust,
- a person having influence over the operation of the trust or the enforcement of its terms, or
- a person having influence over the selection or appointment of other persons so described.

It should be noted that, under amended subsection 233.2(4) and new subsection 233.2(4.1), an "arm's length transfer" covered by subparagraph (a)(v) of the definition cannot be used as a basis for an exemption from the reporting requirements under those subsections. Reporting requirements under those subsections are structured in this way so that claims for relief on the basis of paragraph (a)(v) of the definition "arm's length transfer" can be carefully scrutinized by the Canada Customs and Revenue Agency (CCRA).

Reference should also be made to new subsection 94(2), which provides various rules that have the effect of broadening the meaning of a "transfer" of property.

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94(2) — Deemed transfers in various situations; 94(3) — No application to non-resident trust on arm's length transfer.

"connected contributor" to a trust at any time means a person (including any person who has ceased to exist) who is a contributor to the trust at that time, other than

(a) an individual (other than a trust) who was, at or before that time, resident in Canada for a period of, or periods the total of which is, not more than 60 months, and

(b) a person who would not be a contributor to the trust at that time if

(i) the transfers and loans referred to in paragraph (a) of the definition "contribution" made by the person at a non-resident time of the person were not taken into account,

(ii) the particular transfers and loans referred to in paragraph (b) of that definition made by the person at a non-resident time of the person were not taken into account, and

(iii) each obligation referred to in paragraph (c) of that definition arising at a non-resident time of the person were not taken into account,

and, for the purpose of this definition, a "non-resident time" of a person means a particular time at which the person is non-resident, where the person was non-resident or not in existence throughout the period that began 60 months before the particular time (or, where the particular time is before June 23, 2000 or the trust arose on and as a consequence of the death of the person, 18 months before the particular time) and ends 60 months after the particular time.

Technical Notes: Where a person is a "connected contributor" to a trust, it can result in another person being a "resident beneficiary" under a non-resident trust. A "resident beneficiary" under a non-resident trust can, to an extent, be liable for the trust's income tax, as set out in greater detail on the commentary on subsections 94(3) and (7).

A "connected contributor" at any time is any person, living or deceased, who is a "contributor" to the trust (as defined in new subsection 94(1)) at that time, provided that the person:

- is not, or at the time of death was not, a recent immigrant to Canada (i.e., an individual who was resident in Canada for a period of, or periods the total of which is, not more than 60 months), or
- is not a person who is a "contributor" only because of one or more transactions that occurred at a "non-resident time" of the contributor.

For these purposes, a "non-resident time" is defined within the definition "connected contributor" as being a particular time at which a contributor is non-resident, provided that the contributor is also non-resident (or not in existence) throughout the period that began 60 months before the particular time and ends 60 months after the particular time. However, if the particular time occurs before June 23, 2000 or the trust arose on and as a consequence of the death of the person, the period begins 18 months (rather than 60 months) before the particular time, consistent with existing subclause 94(1)(b)(i)(A)(II).

"contribution" at any time to a trust by a particular person or partnership means

(a) a transfer or loan at that time of property to the trust by the particular person or partnership (other than an arm's length transfer);

(b) where a particular transfer or loan of property is made by the particular person or partnership (other than an arm's length transfer by the particular person or partnership in respect of the trust) as part of a series of transactions or events that includes another transfer or loan of a property that is made at that time to the trust by another person or partnership, that other transfer or loan to the extent that it can reasonably be considered to have been enabled by the particular transfer or loan; and

(c) where the particular person or partnership becomes obligated to make a particular transfer or loan (other than an arm's length transfer by the particular person or partnership in respect of the trust) as part of a series of transactions or events that includes a transfer or loan of a property that is made at that time by another person or partnership, that transfer or loan to the extent that it can reasonably be considered to have been enabled by that obligation.

Technical Notes: Where a "contribution" is made to a non-resident trust by a person, that person is a "contributor" who, in certain cases, can be jointly and severally liable under subsection 94(3) for the trust's income taxes.

A transferor is considered to make a "contribution" to a trust where a property is transferred or loaned to the trust and any one of three alternative sets of conditions is satisfied. The three sets of conditions are described below.

First, a transfer or loan of a particular property at any time to a trust is considered to be a contribution at that time by a person or partnership to a trust where:

- the particular property is, at that time, transferred, or loaned, directly to the trust by the person or partnership; and
- the transfer or loan is not an "arm's length transfer" (as described in the commentary above).

The second and third alternate sets of conditions deal with cases where a particular person or partnership can be viewed as indirectly contributing property to a trust because of a loan or transfer of property (or an obligation to transfer or loan property) to another person or partnership (other than the trust). In such circumstances, property contributed at a particular time in the same series of transactions and events by another person or partnership to a trust will be treated as having been contributed at the particular time by the particular person or partnership to the trust.

More specifically, the second alternate set of conditions deals with the case where a particular transfer or loan of a property (other than an arm's length transfer) is made by a particular person or partnership as part of a series of transactions or events that includes another transfer or loan of any property, to the particular trust, by another person or partnership. The other transfer or loan is a considered to be a "contribution" to the particular trust by the particular person or partnership to the extent that the other transfer or loan can reasonably be considered to have been enabled by the particular transfer or loan. The contribution is considered to be made at the time of the other transfer or loan.

The third alternate set of conditions deals with the case where a particular person or partnership becomes obligated to make a particular transfer or loan of a property (other than in an arm's length transfer) as part of a series of transactions or events that includes another transfer or loan of any property, to the particular trust, by another person or partnership. The other transfer or loan is considered to be a "contribution" by the particular person or partnership to the particular trust to the extent that the other transfer or loan can reasonably be considered to have been enabled by the particular person's obligation to make the particular loan or transfer. The contribution is considered to be made at the time of the other transfer or loan.

Under new subsection 94(2), there are a number of rules that have the effect of applying the definition "contribution" more broadly than would otherwise be the case. For example, the rendering of services is generally treated as a transfer of property. An obligation to render services is likewise treated as an obligation to transfer property. For more details, see the commentary on subsection 94(2).

As noted earlier, this definition applies to taxation years of trusts that begin after 2000, whether or not a relevant transfer or loan occurred before that time. However, in order to provide for transition between the existing and new rules, a contribution does not include:

- a payment to a trust before 2002 in satisfaction of any amount payable to the trust, or
- the repayment made before 2005, in accordance with terms of repayment established before June 23, 2000, to a trust of a loan made by the trust. (This exception is consistent with existing section 5909 of the Income Tax Regulations.)

"contributor" to a trust at any time means a person or partnership that, at or before that time, has made a contribution to the trust.

Technical Notes: A "contributor" to a trust is any person or partnership that has made a "contribution" to the trust. See, in this regard, the commentary on the definition "contribution". The definition "contributor" is significant primarily for the purposes of the definitions "resident contributor" and "connected contributor".

Reference should also be made in this context to new paragraphs 94(2)(k) to (o), under which "look-through" rules are provided to deal with cases where trusts, partnerships or corporations are contributors.

Related Provisions: 75(3)(c.2) — Reversionary trust rules do not apply to non-resident trust even with Canadian resident contributor; 233.2(4) — Annual information return by contributor to non-resident trust.

"exempt foreign trust" at a particular time means

(a) a non-resident trust, where

(i) each beneficiary of the trust at the particular time is

(A) an individual who, at the time that the trust was created, was, because mental or physical infirmity, dependent on an individual who is a contributor to the trust or on an individual related to such a contributor (which beneficiary is in this paragraph referred to as an "infirm beneficiary"), or

(B) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(ii) at least one infirm beneficiary suffers at the particular time from a mental or physical infirmity that causes the beneficiary to be dependent on any person,

(iii) each infirm beneficiary is non-resident at any time in the trust's taxation year that includes the particular time (in this definition referred to as the trust's "current year"), and

(iv) each contribution to the trust made at or before the particular time can reasonably be considered to have been, at the time that the contribution was made, made to provide for the maintenance of an infirm beneficiary during the expected period of the beneficiary's infirmity;

(b) a non-resident trust, where

(i) the trust was created after the breakdown of a marriage or common-law partnership of two indi-

viduals to provide for the maintenance of a beneficiary under the trust who is a child of one of those individuals (which beneficiary is in this paragraph referred to as a "child beneficiary"),

(ii) each beneficiary of the trust at the particular time is

(A) a child beneficiary under 21 years of age at the particular time,

(B) a child beneficiary under 31 years of age at the particular time who is enroled at any time in the trust's current year at an educational institution that is described in clause (v)(A) or (B), or

(C) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(iii) each child beneficiary is non-resident at any time in the trust's current year,

(iv) each contributor to the trust at the particular time was one of those individuals or a person related to one of those individuals, and

(v) each contribution to the trust, at the time that the contribution was made, was made to provide for the maintenance of a child beneficiary, while the child was either under 21 years of age, or was under 31 years of age and enroled at an educational institution located outside Canada that is

(A) a university, college or other educational institution that provides courses at a post-secondary school level, or

(B) an educational institution that provides courses that furnish a person with skills for, or improve a person's skills in, an occupation;

(c) a non-resident trust where

(i) at the particular time, the trust is an agency of the United Nations,

(ii) at the particular time, the trust owns and administers a university described in paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1), or

(iii) at any time in the calendar year that includes the particular time or at any time in the preceding calendar year, Her Majesty in right of Canada has made a gift to the trust;

(d) a non-resident trust that has a taxation year that ends at or before the particular time where

(i) the trust was created exclusively for charitable purposes and has been operated, throughout the period that began at the time it was created and ends at the particular time, exclusively for charitable purposes,

(ii) where the particular time is more than 24 months after the day on which the trust was created, there is a group of at least 20 persons (other than trusts) at the particular time who are all contributors to the trust and who all deal with each other at arm's length,

(iii) the accounting profit of the trust for each such taxation year would, if the profit were not distributed and the laws described in subparagraph (iv) did not apply, be subject to an income or profits tax in a particular country other than Canada, and

(iv) for each such taxation year, the laws of the particular country exempted the trust from the payment of any income or profits tax to the government of that country in recognition of the charitable purposes for which the trust is operated;

(e) a non-resident trust that is, or but for any of paragraphs (a) to (n) of the definition "retirement compensation arrangement" in subsection 248(1) would be, governed by a retirement compensation arrangement;

(f) a non-resident trust that is governed by a foreign retirement arrangement;

(g) a non-resident trust that is governed by an employees profit sharing plan;

(h) a non-resident trust that is a trust described in paragraph (c) of the definition "exempt trust" in subsection 233.2(1); or

(i) a prescribed trust.

Technical Notes: An "exempt foreign trust" includes a number of different types of non-resident trusts that are exempt from the application of new subsection 94(3). The expression refers to the following types of non-resident trusts:

- (a) a non-resident trust the current income (determined with reference to amended subsection 108(3)) or capital from which can be provided only to one or more physically or mentally infirm dependent individuals, provided that these individuals are non-resident and that any property settled on the trust could reasonably be considered, at the time it was settled, to be necessary for the maintenance of those individuals;
- (b) a non-resident trust created after the breakdown of a marriage or common-law partnership of two individuals, the current income (determined with reference to amended subsection 108(3)) or capital from which can be provided only to non-resident children of one of the individuals, if the children are under 21 years of age (or under 31 years of age and enrolled in a specified educational institution) and each "contribution" to the trust (as defined in subsection 94(1)) was to provide for the maintenance of those children;
- (c) certain non-resident trusts that could qualify under the definition "total charitable gifts" in subsection 118.1(1) as a recipient permitted for the purposes of the tax credit for charitable gifts;
- (d) certain non-resident trusts established exclusively for charitable purposes;
- (e) non-resident trusts set up to administer certain types of retirement or pension plans or arrangements;
- (f) a non-resident trust that is governed by a "foreign retirement arrangement", as defined in subsection 248(1);
- (g) a non-resident trust that is governed by an "employees profit sharing plan", as defined in subsection 248(1);
- (h) a non-resident trust that is described in paragraph (c) of the definition "exempt trust" in subsection 233.2(1) (i.e., certain foreign unit trusts which are dealt with under the foreign investment entity rules in new sections 94.1 and 94.2); and
- (i) a prescribed trust. (Presently, it is not anticipated that any trusts will be prescribed for this purpose.)

Related Provisions: 94(6) [proposed] — Becoming or ceasing to be an exempt foreign trust; 94.1(1)"foreign investment entity"(a) — Exclusion from foreign investment entity rules; 108(3) — Meaning of "income" of trust; 233.2(4)(a) — Exclusion from reporting requirements.

Information Circulars: 84-3R5: Gifts to certain charitable organizations outside Canada.

Regulations: The Department of Finance technical notes (June 22/00) state that it is not currently anticipated that any trusts will be prescribed under para. (h).

"resident beneficiary" at any time under a trust means a person resident in Canada where, at that time,

(a) there is a connected contributor to the trust; and

(b) the person is a beneficiary under the trust whose interest as a beneficiary under the trust is not solely contingent on the subsequent death of an individual who

(i) is related at that time to a contributor to the trust, or

(ii) would have been related at that time to a contributor to the trust if every individual who existed before that time had existed at that time.

Technical Notes: A "resident beneficiary" at a particular time under a trust is a person resident in Canada at the particular time, where:

- at the particular time, there is a "connected contributor" to the trust (as defined in new subsection 94(1)), and
- the person is a beneficiary under the trust and the person's interest in the trust is not solely contingent on the death of a individual who is related at that time to a contributor to the trust (or who would have been related at any earlier time to a contributor to the trust if the individual and every person related at the particular time to the individual had existed at that earlier time).

Under new subsection 94(3), a trust is generally treated as resident in Canada for a particular taxation year if there is a "resident beneficiary" under the trust at the end of the particular year. Under new paragraph 94(3)(d), each "resident beneficiary" can be jointly and severally liable with the trust for the trust's income tax liabilities for the particular year under the Act.

Related Provisions: 104(1.1.) — Restricted meaning of "beneficiary".

"resident contributor" to a trust at any time means a person who is, at that time, both resident in Canada and a contributor to the trust, but does not include an individual (other than a trust) who has not, at that time, been resident in Canada for a period of, or periods the total of which is, more than 60 months.

Technical Notes: A "resident contributor" at any time is a person resident in Canada at that time who is a "contributor" to the trust at that time. However, an exemption is provided in this context for new immigrants to Canada (i.e., individuals who have been resident in Canada for a period of, or periods the total of which is, 60 months or less).

Under new subsection 94(3), a trust is generally treated as resident in Canada for a particular taxation year if there is a "resident contributor" to the trust at the end of the particular year. Under new paragraph 94(3)(d), a "resident contributor" can be jointly and severally liable with the trust for the trust's income tax liabilities for the particular year under the Act.

(2) Rules of application — For the purposes of this section,

(a) property is deemed to be transferred by a person or partnership at any time to a trust where, because of a transfer or loan (other than an arm's length transfer) at that time of property to another person or partnership,

(i) the fair market value of one or more properties held at that time by the trust increases, or

(ii) a liability or potential liability of the trust decreases;

(b) property is deemed to be transferred by a particular person or partnership at any time to a trust where

(i) at that time, the trust holds property the fair market value of which is derived in whole or in part, directly or indirectly, from properties held by another person or partnership (in this paragraph referred to as the "recipient"),

(ii) property is transferred or loaned at that time by the particular person or partnership (in subparagraph (iii) referred to as the "transferor") to the recipient, and

(iii) it is reasonable to conclude that one of the reasons for which the property was transferred or loaned to the recipient included the relationship between the transferor and

(A) any person or partnership that was

(I) beneficially interested in the trust,

(II) a trustee of the trust,

(III) a person having influence over the operation of the trust or the enforcement of its terms, or

(IV) a person having influence over the selection or appointment of any person or partnership referred to in any of subclauses (I) to (III) or this subclause, or

(B) any group at least one of the members of which is described in clause (A);

(c) the fair market value, at the time of the transfer, of property deemed by paragraph (a) or (b) to have been transferred to the trust is deemed to be the total of all amounts each of which is an amount by which

(i) the fair market value of a property of the trust increased at that time because of the other transfer or loan referred to in paragraph (a) or (b), or

(ii) a liability or potential liability of the trust decreased at that time because of the transfer or loan referred to in paragraph (a) or (b);

(d) where a property is acquired at any time by a person or partnership as a consequence of the death of an individual, the individual is deemed to have transferred, at that time, the property to the person or partnership;

(e) where, at any time, a person or partnership has given a guarantee on behalf of, or has provided any other financial assistance to, another person or partnership, the person or partnership is deemed to have transferred, at that time, property to that other person or partnership;

(f) where, at any time after June 22, 2000, a person or partnership renders (otherwise than in the person's capacity as an employee or in the person's or partnership's capacity as agent) any service to, for or on behalf of, another person or partnership (other than any service rendered to a trust that is related to the administration of the trust), the person or partnership is deemed to have transferred, at that time, property to that other person or partnership;

(g) where, at any time after June 22, 2000, a particular person or partnership acquires

(i) a share of the capital stock of a corporation from the corporation,

(ii) a beneficial interest in a trust (otherwise than as a consequence of a disposition of the interest by a beneficiary under the trust),

(iii) an interest in a partnership (otherwise than as a consequence of a disposition of the interest by a member of the partnership), or

(iv) indebtedness owing by a corporation, trust or partnership from the corporation, trust or partnership,

the corporation, trust or partnership referred to in subparagraph (i), (ii), (iii) or (iv), as the case may be, is deemed to have transferred, at that time, the share, interest or debt to the particular person or partnership;

(h) where, at any time after June 22, 2000, a particular person or partnership grants to another person or partnership a right to acquire or to be loaned property, the particular person or partnership is deemed to have transferred property at that time to that other person or partnership;

(i) the fair market value of property deemed by paragraph (e), (f) or (h) to have been transferred is the fair market value, at the time of the transfer, of the assistance, service or right to which the property relates;

(j) for greater certainty, where at any time a particular person or partnership becomes obligated to do an act that would constitute the transfer of a property to another person or partnership if the act occurred, the particular person or partnership is deemed to have become obligated at that time to transfer property to that other person or partnership;

(k) where, at a particular time, a particular trust makes a contribution to another trust, the contribution is deemed to have been made jointly by the particular trust and by each person or partnership that, at the particular time, is a contributor to the particular trust;

(l) where a particular trust makes a contribution to another trust, the contribution is made at the direction, or with the concurrence, of another person and it is reasonable to conclude that one of the reasons the contribution is made to the other trust is to enable that other person to avoid liability under paragraph (3)(d) in respect of the other trust, the contribution is deemed to be made jointly by the particular trust and by that other person;

(m) where, at a particular time, a particular partnership makes a contribution to a trust, the contribution is deemed to have been made jointly by the particular partnership and by each person or partnership that, at the particular time, is a member of the particular partnership (other than a member of the particular partnership where, by operation of any law governing the partnership arrangement, the liability of the member as a member of the particular partnership is limited);

(n) where a partnership makes a contribution to a trust, the contribution is made at the direction, or with the concurrence, of another person and it is reasonable to conclude that one of the reasons the contribution is made to the trust is to enable that other person to avoid liability under paragraph (3)(d) in respect of the trust, the contribution is deemed to be made jointly by the partnership and by that other person;

(o) where a corporation makes a contribution to a trust, the contribution is made at the direction, or with the concurrence, of another person, and it is reasonable to conclude that one of the reasons the contribution is made to the trust is to enable that other person to avoid liability under paragraph (3)(d) in respect of the trust, the contribution is deemed to be made jointly by the corporation and by that other person; and

(p) subject to subsection (9), the fair market value of a contribution to a trust at the time it was made is deemed to be the fair market value, at the time of the contribution, of the property that was the subject of the contribution.

Technical Notes: New subsection 94(2) of the Act sets out a number of rules for use in applying section 94. These rules are primarily relevant for the purposes of determining whether a transaction constitutes a "contribution" of property to a trust (as defined in subsection 94(1)). These rules are also relevant for the purposes of subsections 94(7) to (9) and the amended reporting rules in subsections 162(10.1) and 163(2.4) and section 233.2. These rules apply to taxation years of trusts that begin after 2000, but in some cases specified below relief is provided with regard to transactions or events that occur before June 23, 2000.

Paragraph 94(2)(a) deals with transfers or loans (other than a transfer or loan which is an "arm's length transfer" as defined in subsection 94(1)) that may be viewed as indirect transfers or loans of property to trusts, through transfers or loans to other persons or partnerships. A transfer or loan will be considered a direct transfer to a trust where, because of the transfer or loan to another person or partnership,

- the fair market value of one or more properties held by the trust increases, or
- a liability or potential liability of the trust decreases.

Paragraph 94(2)(b) deals with cases where a trust holds property the fair market value of which is derived from properties held by another person or partnership. Where this paragraph applies, property transferred or loaned to the other person or partnership is deemed to be transferred to the trust itself. Paragraph 94(2)(b) applies where it is reasonable to conclude that one of the reasons for the transfer or loan can reasonably be considered to be connected to the identity of the trust's beneficiaries or other specified persons.

Paragraph 94(2)(c) sets out a rule that applies for the purposes of determining the fair market value of property deemed to be transferred to a trust as a consequence of the application of paragraph 94(2)(a) or (b). This rule is relevant for the purposes of new subsections 94(7) and (8), as well as the penalty provisions for failure to report in subsections 162(10.1) and 163(2.4). The fair market value of the property deemed to have been transferred is considered to be equal to the amount by which the fair market value of the net assets of the trust increased (or the amount by which the liability or potential liability of the trust decreased) due to the transfer or loan that gave rise to the application of paragraph 94(2)(a) or (b).

Paragraph 94(2)(d) applies where property is acquired by a person or partnership as a consequence of the death of an individual. The deceased individual is deemed to have transferred the property to the person or partnership. The paragraph ensures that a person who was resident in Canada immediately before death is generally considered to be a "connected contributor" to the testamentary trust created as a consequence of the person's death. For more detail, see the definitions "connected contributor" and "resident beneficiary".

Paragraph 94(2)(e) deems a person or partnership that provides financial assistance to another person or partnership to have transferred property to that other person or partnership. Under

paragraph 94(2)(i), the fair market value of the property deemed to have been transferred is considered to be equal to the fair market value of the assistance. A deemed transfer will be considered to be a contribution to a trust, by the person or partnership who gives the financial assistance, if the deemed transfer falls within the criteria of the definition "contribution" in subsection 94(1). In this regard, note that the definition contains an exception in respect of arm's length transfers.

Paragraph 94(2)(f) applies where services are rendered after June 22, 2000 to, for or on behalf of another person or partnership. In these circumstances, the party rendering the service is deemed to have transferred property to the other person or partnership. Paragraph 94(2)(f) contains an exception for services rendered in a person's capacity as agent or employee, in which case the paragraph will apply instead to the principal or employer of the agent or employee. Paragraph 94(2)(f) also contains an exception for services rendered to a trust that are related to the administration of the trust. Under paragraph 94(2)(i), the fair market value of the property deemed to have been transferred is considered to be equal to the fair market value of the services. A deemed transfer under paragraph 94(2)(f) will be considered a contribution to a trust, by the person or partnership who rendered the services, if the deemed transfer falls within the criteria of the definition "contribution" in subsection 94(1). In this regard, note that the definition contains an exception in respect of arm's length transfers.

Under paragraph 94(2)(g), a corporation is considered to transfer shares that it issues. Similar rules apply to trust and partnership interests, as well as to debt issued by any person or partnership. Paragraph 94(2)(g) applies to shares, debt and interests that are issued after June 22, 2000.

Paragraph 94(2)(h) deems a person or partnership that, after June 22, 2000, grants, to another person or partnership, a right to acquire or to be loaned property to have transferred property to that other person or partnership. Under paragraph 94(2)(i), the fair market value of the property deemed to have been transferred under paragraph 94(2)(h) is considered to be equal to the fair market value of the right.

As noted above, the fair market value of property deemed to have been transferred under paragraphs 94(2)(e), (f) or (h) is determined with reference to paragraph 94(2)(i). As is the case with a similar rule in paragraph 94(2)(c), paragraph 94(2)(i) is relevant for the purposes of new subsections 94(7) and (8), as well as the penalty provisions for failure to report in subsections 162(10.1) and 163(2.4).

Paragraph 94(2)(j) is included for greater certainty. It applies where a person or partnership becomes obligated to do an act (e.g., the rendering of a service) that would constitute the transfer of a property to another person or partnership if the act were to occur. Where this is the case, the person or partnership is deemed to become obligated to transfer property to the other person or partnership. This rule is relevant for the purposes of paragraph (c) of the definition "contribution" in subsection 94(1).

Paragraph 94(2)(k) applies where a particular trust makes a contribution to another trust. Where this is the case, the contribution is deemed to have been made jointly by the particular trust and each person or partnership who is a contributor to the particular trust.

Paragraph 94(2)(l) applies where a particular trust makes a contribution to another trust, the contribution is made at the direction (or with the concurrence) of another person and it is reasonable to consider that one of the reasons the contribution is made to the other trust is to enable that other person to avoid liability, as a resident contributor, under paragraph 94(3)(d) in respect of the other trust. In such a case, the contribution is deemed to have been made jointly by the particular trust and by that other person.

Paragraph 94(2)(m) applies where a partnership makes a contribution to a trust. Where this is the case, partnership members (other than limited partners) are considered to have made a contribution to the trust jointly with the partnership.

Paragraph 94(2)(n) applies where a partnership makes a contribution to a trust, the contribution is made at the direction (or with the concurrence) of another person and it is reasonable to consider that one of the reasons the contribution is made to the trust is to enable that other person to avoid liability, as a resident contributor, under paragraph 94(3)(d) in respect of the trust. In such a case, the contribution is deemed to have been made jointly by the partnership and by that other person. It should be noted that paragraph 94(2)(n) is not relevant to contributions made by a partnership at the direction (or with the concurrence) of a member of a partnership who is not a limited partner, given that paragraph 94(2)(m) also applies in this case.

Paragraph 94(2)(o) applies where a corporation makes a contribution to a trust, the contribution is made at the direction (or with the concurrence) of another person and it is reasonable to consider that one of the reasons the contribution is made to the trust is to enable that other person to avoid liability, as a resident contributor, under paragraph 94(3)(d) in respect of the trust. In such a case, the contribution is deemed to have been made jointly by the corporation and by that other person.

Paragraph 94(2)(p) provides that the fair market value of a contribution to a trust at the time it was made is deemed to be the fair market value of the property loaned or transferred that was the subject of the contribution. The rule is useful for the purposes of new subsections 94(7) and (8), as well as the reporting penalty provisions in amended subsections 162(10.1) and 163(2.4). The rule is relevant because a "contribution" is defined as being a transfer or loan, rather than as being the property that was the subject of the transfer or loan.

The examples below illustrate the operation of subsection 94(2) and the definition "contribution" in subsection 94(1).

Example 1

Donald is a long-term resident of Canada. In 2001, Donald pays higher than fair market value consideration for a property acquired from a corporation. A non-resident trust holds shares in the corporation. The fair market value of those shares increases because of the transaction.

Results

1. Under paragraph 94(2)(a), Donald is considered to have transferred property to the trust in these circumstances. The exception for "arm's length transfers" is not relevant.
2. As a consequence, Donald is considered to have made a "contribution" to the trust, which results in Donald being a "contributor" and a "resident contributor" to the trust.

Example 2

1. Lucie, who is a long-term resident of Canada, transfers property to Canco on condition that Canco direct Canco's wholly-owned foreign subsidiary (Foreignco-1) to transfer properties to another corporation (Foreignco-2) for consideration that is less than fair market value.
2. Shares of the capital stock of Foreignco-2 are held by a non-resident trust.
3. The fair market value of the Foreignco-2 shares increases as a result of the increase in the fair market value of the property owned by Foreignco-2.

Results

1. The transfers to Canco and to Foreignco-2 are part of the same series of transactions.
2. Because of paragraph 94(2)(a), the transfer to Foreignco-2 is considered to be a transfer by Foreignco-1 to the trust. The exception for "arm's length transfers" is not relevant.
3. As a consequence, Lucie is considered to have made a "contribution" to the trust under paragraph (b) of the definition "contribution" in subsection 94(1), which results in Lucie being a "contributor" and a "resident contributor" to the trust. Canco is also a "contributor" and a "resident contributor" to the trust.
4. Foreignco-1 is also a "contributor" to the trust, but this does not have any practical consequences because Foreignco-1 is non-resident.

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation.

(3) Liabilities of non-resident trust and others — Where a trust (other than an exempt foreign trust) is non-resident at the end of a taxation year of the trust and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust,

(a) subject to subsection (4), the trust is deemed to be resident in Canada throughout the year for the purposes of

(i) applying section 2 and computing the trust's income for the year,

(ii) applying subsection (5), clause 53(2)(h)(i.1)(B), the definition "non-resident entity" in subsection 94.1(1), subsections 104(13.1) to (29) and 107(5), section 115 and sections 233.3 and 233.4,

(iii) determining the liability of the trust for tax under Part XIII on amounts paid or credited to the trust, and

(iv) determining the rights and obligations of the trust under Divisions I and J;

(b) for the purposes of section 126

(i) the trust's income for the year (other than the portion of the income that, but for this subsection, would be the trust's taxable income earned in Canada) is deemed to be income of the trust from sources in the country other than Canada in which the trust would, but for this subsection, be resident, and

(ii) such part of any income or profits tax paid by the trust for the year (other than any tax paid because of this section) that can reasonably be regarded as having been paid in respect of the amount determined under subparagraph (i) is deemed to be the non-business-income tax paid by the trust to the government of that country;

(c) where the trust was non-resident throughout the preceding taxation year for the purpose of computing its income for that preceding year, for the purpose of subsection 128.1(1) the trust is deemed to have become resident in Canada immediately after the end of that preceding year; and

(d) subject to subsection (7),

(i) each person who at any time in the year is a resident contributor to the trust or a resident beneficiary under the trust shall have, jointly and severally with the trust and with each other such person, the rights and obligations of the trust in respect of the year under Divisions I and J and subsection 180.1(4), and

(ii) each such person shall be subject to the provisions of Part XV in respect of those rights and obligations.

Technical Notes: New subsection 94(3) of the Act applies to a non-resident trust (other than an "exempt foreign trust", defined in subsection 94(1)) for a taxation year where, at the end of the year, there is a "resident contributor" to the trust or a "resident beneficiary" under the trust. All of these definitions are explained in detail in the commentary on new subsection 94(1).

Where subsection 94(3) applies to a non-resident trust for a taxation year, the trust is deemed to have been resident in Canada throughout the year for the purposes specified in the subsection. Except to the extent otherwise provided by subsection 94(4), a trust is deemed to be resident in Canada for a taxation year under subsection 94(3):

- for the purposes of applying sections 2 and 115 and computing the trust's income for the year — with the result that the trust is subject to tax under Parts I and I.1 on its worldwide income for the year (Note: These trusts are viewed as resident in Canada for the purposes of tax treaties whether or not they are also considered to be resident in another country. However, subsection 94(3) is structured so that there is no tax arising under the Act for a trust subject to subsection 94(3) in the event that the trust earns only foreign-source income and makes full current distributions of the income to non-resident beneficiaries.);
- for the purpose applying of subsection 94(5) — with the result that, as contemplated by subsection 94(5), the tax consequences under subsection 128.1(4) for a trust that ceases to be resident in Canada apply to the trust (See also the note on paragraph 94(3)(c), below.);
- for the purpose of applying clause 53(2)(h)(i.1)(b) — with the result that the adjusted cost base to a beneficiary of the beneficiary's interest in a trust to which this clause applies is computed in the same way as for interests in trusts resident in Canada;
- for the purpose of applying the definition "non-resident entity" in subsection 94.1(1) — with the result that a beneficiary's interest in the trust is not treated as an interest of a beneficiary in a foreign investment entity for the purposes of new sections 94.1 and 94.2;
- for the purposes of applying subsections 104(13.1) to (29) and 107(5) — with the result that the tax treatment of beneficiaries under the trust accords with the tax treatment available to beneficiaries under trusts that are resident in Canada;
- for the purposes of applying sections 233.3 and 233.4 — with the result that the trust is required to file information returns under sections 233.3 (information return on a foreign property holdings that cost in excess of $100,000) and 233.4 (information return on foreign affiliates);
- for the purpose of determining the liability of the trust for tax under Part XIII — with the result that the trust is exempt from Part XIII tax on amounts paid or credited to it; and
- for the purpose of determining the rights and obligations of the trust under sections 150 to 180 — with the result that various administrative provisions in the Act apply in the same way as to other trusts resident in Canada. These provisions include those with regard to the filing of returns, assessments, tax payments, arrears interest, refund interest, instalment interest, penalties, refunds and appeals.

Paragraph 94(3)(b) provides that a trust that is subject to subsection 94(3) is entitled to claim foreign tax credits against its Canadian income tax in accordance with the rules in section 126, except with regard to any taxable income earned in Canada (as would otherwise be determined under subsection 115(1)).

Paragraph 94(3)(c) clarifies that a non-resident trust that becomes subject to subsection 94(3) for a particular taxation year, after not being subject to either it or existing paragraph 94(1)(c) for the preceding year, is deemed to become resident in Canada at the beginning of the particular year. As a result, the cost amount of each of the properties (other than taxable Canadian properties) held by the trust at the beginning of the particular year is deemed by subsection 128.1(1) to be the fair market value of the property at the beginning of the particular year. Note, in this regard, that paragraph 94(3)(c) complements the rule in subsection 94(6) in the case where a non-resident trust ceases to be an "exempt foreign trust" (as defined in subsection 94(1)). In this case, subsection 94(6) establishes the beginning of a new "stub" taxation year to which subsection 94(3) may apply. If subsection 94(3) does apply for that "stub" year, subsection 128.1(1) would apply with regard to the

properties (other than taxable Canadian properties) held by the trust at the beginning of that "stub" year.

Paragraph 94(3)(d) imposes liabilities for a taxation year on persons who, at the end of the year, are "resident contributors" or "resident beneficiaries". Where subsection 94(3) applies to a trust for a taxation year, each of these persons is jointly and severally liable with the trust in respect of the trust's obligations under sections 150 to 180, including its Part I.1 obligations that arise as a consequence of subsection 180.1(4). Typically, the most significant obligation in this context is the obligation to pay tax instalments pursuant to section 156. However, the extent of the joint liability imposed by paragraph 94(3)(d) is limited by new subsection 94(7) — which is explained in the commentary below.

Note, in particular, that subsection 94(3) does not result in the creation of any obligations for a trust that is subject to subsection 94(3) to withhold tax on distributions to non-resident beneficiaries under Part XIII or to pay any tax under Part XII.2. As noted above, one of the effects of subsection 94(3) is that the trust is not liable in connection with distributions of Canadian-source income to the non-resident trust. However, the rules in new subsection 104(7.01) are designed so that there will be a reasonable level of Part I tax in respect of Canadian-source income received by the trust in the event the trust also distributes income to non-resident beneficiaries.

Related Provisions: 75(3)(c.2) — Reversionary trust rules do not apply to non-resident trust; 94(4) [proposed] — Excluded provisions; 94(5) [proposed] — Trust deemed to cease being resident in Canada; 94(7) [proposed] — Limit to amount recoverable under 94(3)(d); 104(7.01) — Limit to trust's deduction under 104(6); 233.2(4) — Annual information return by contributor; 233.3(3) — Annual information return by holder of interest.

(4) Excluded provisions — Paragraph (3)(a) does not apply for the purposes of

(a) the definition "exempt foreign trust" in subsection (1);

(b) computing any income or loss from property, or any taxable capital gain or allowable loss, because of the application of subsection 75(2);

(c) paragraph 107.4(1)(c) (other than subparagraph 107.4(1)(c)(i)), paragraph (a) of the definition "mutual fund trust" in subsection 132(6), and subparagraph (f)(ii) of the definition "disposition" in subsection 248(1); and

(d) determining the liability of a person that arises because of the application of section 215, except as the Minister otherwise permits in writing.

Technical Notes: New subsection 94(4) of the Act provides that the rules in subsection 94(3) treating non-resident trusts as resident in Canada do not apply for certain limited purposes:

- the definition "exempt foreign trust" — thus ensuring that there is no circularity due to fact that the definition "exempt foreign trust" is used in subsection 94(3);
- computing income or loss from property, or any taxable capital gain or allowable capital loss, because of the application of subsection 75(2) — thus providing that income generated from a property transferred by a non-resident trust to a reversionary trust is not attributed back if the non-resident trust is deemed to be resident in Canada under subsection 94(3);
- proposed paragraph 107.4(1)(c), other than subparagraph 107.4(1)(c)(i), and proposed subparagraph (f)(ii) of the definition "disposition" in subsection 248(1) [The measures were contained in a detailed Notice of Ways and Means Motion tabled on June 5, 2000.] — thus ensuring that proposed rules allowing in some cases for a rollover of property on transfers involving no change in beneficial ownership generally do not apply to transfers to a trust deemed to be resident in Canada by subsection 94(3); and
- paragraph (a) of the definition "mutual fund trust" in subsection 132(6) — a reference which makes it clear that a trust deemed to be resident in Canada by subsection 94(3) will not be treated as a mutual fund trust for any purpose.

Furthermore, except as otherwise permitted in writing by the Minister of National Revenue, subsection 94(3) does not relieve a payer of Canadian-source income the obligation to withhold under section 215 in connection with amounts received by a trust deemed to be resident of Canada by subsection 94(3). This is so even though such a trust is not liable for Part XIII tax on amounts paid or credited to it, because of the application of subparagraph 94(3)(a)(iii). The trust would be expected to apply for a refund of such tax, which would be given unless there are any outstanding liabilities of the trust with regard to Part I tax.

(5) Ceasing to reside in Canada — A trust is deemed to have ceased to be resident in Canada at any time where

(a) that time is in a particular period that, but for this subsection and subsection 128.1(4), would be a taxation year of the trust that immediately follows a taxation year of the trust throughout which the trust was resident in Canada because of the application of subsection (3);

(b) the trust is non-resident at the end of the particular period;

(c) there was a resident contributor to the trust, or a resident beneficiary under the trust, at the beginning of the particular period; and

(d) that time is the earliest time in the particular period at which there is neither a resident contributor to the trust nor a resident beneficiary under the trust.

Technical Notes: New subsection 94(5) of the Act applies to a trust with regard to a particular period that (without reference to the combined application of subsections 94(5) and 128.1(4)) would be a taxation year of the trust that immediately follows a taxation year of the trust throughout which it is resident in Canada because of the application of subsection 94(3). If the trust is not resident in Canada at the end of the particular period (i.e., because the criteria in subsection 94(3) for deeming the trust to be resident in Canada are no longer satisfied), the trust is deemed to have ceased to reside in Canada at the earliest time in the particular period at which there is neither a "resident contributor" to the trust nor a "resident beneficiary" under the trust. These two definitions are explained in the commentary on subsection 94(1).

In such circumstances, the cessation of residence in Canada results in the application of paragraph 128.1(4)(a). As a consequence of that paragraph, a taxation year of the trust is considered to have ended immediately before the earliest time in the particular period described above. At the end of that taxation year, the criteria in subsection 94(3) are satisfied. Accordingly, the trust would be subject to tax under Parts I and I.1 on its world-wide income for that year because it is considered to be resident in Canada under subsection 94(3).

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada.

(6) Becoming or ceasing to be an exempt foreign trust — Where at any time a trust becomes or ceases to be an exempt foreign trust (otherwise than because of becoming resident in Canada),

(a) the trust's taxation year that would otherwise include that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to have begun at that time; and

(b) for the purpose of determining the trust's fiscal period after that time, the trust is deemed not to have established a fiscal period before that time.

Technical Notes: New subsection 94(6) of the Act generally provides that, if a trust becomes or ceases to be an exempt foreign trust at any time, the trust's taxation year is deemed to have ended immediately before that time, a new "stub" taxation year is deemed to have begun at that time and the trust is deemed not to have established a fiscal period before that time. However, subsection 94(6) does not apply where a trust ceases to be an exempt foreign trust because it becomes resident in Canada.

Subsection 94(3) may apply in respect of the later "stub" taxation year of the trust if the criteria set out in that subsection are satisfied at the end of that year. Where this is the case, the trust would be subject to tax under Parts I and I.1 on its world-wide income for that later "stub" year because it would be considered under subsection 94(3) to be resident in Canada for that year.

(7) Limit to amount recoverable — Notwithstanding subsection (3), the amount recoverable under paragraph (3)(d) at any time from a person in respect of a trust and a particular taxation year of the trust shall not exceed the recovery limit at that time of the person in respect of the trust and the particular year where

(a) except where subparagraph (b)(ii) would apply if the portion of that subparagraph after clause (b)(ii)(B) were read as "is not more than $10,000", the person has filed on a timely basis under section 233.2 all information returns required to be filed by the person before that time in respect of the trust (or within such later period as is acceptable to the Minister);

(b) either

(i) the person is liable under paragraph (3)(d) in respect of the trust and the particular year solely because the person was a resident beneficiary under the trust at the end of the particular year, or

(ii) at the end of the particular year, the total of all amounts each of which is the fair market value, at the time it was made, of a contribution to the trust before the end of the particular year by

(A) the person, or

(B) another person not dealing at arm's length with the person,

is not more than the greater of $10,000 and 10% of the total of all amounts each of which was the fair market value, at the time it was made, of a contribution to the trust before the end of the particular year; and

(c) it is reasonable to conclude that each transaction or event that occurred before the end of the particular year at the direction of, or with the concurrence of, the person satisfied the following conditions:

(i) none of the purposes of the transaction or event was to enable the person to minimize liability under paragraph (3)(d) in respect of the trust, and

(ii) the transaction or event was not part of a series of transactions or events any of the purposes of which was to enable the person to minimize liability under paragraph (3)(d) in respect of the trust.

Technical Notes: New subsection 94(7) of the Act allows for a limitation of the amount that may be recovered from a person who would otherwise be jointly and severally liable for the entire amount of the trust's tax obligations under the Act. Subsection 94(7) applies to a person in respect of a particular taxation year of a trust where three conditions are satisfied.

The first condition is that the person must have filed on a timely basis all information returns required to be filed by the person in respect of the trust under section 233.2 (or within such later period as is acceptable to the Minister of National Revenue). [Paragraph 94(7)(a).] However, the first condition need not be satisfied if the second condition (below) is satisfied because of the $10,000 contribution test referred to below.

The second condition is satisfied in respect of a particular taxation year of the trust:

- where the person is jointly and severally liable with the trust only because the person was a "resident beneficiary" under the trust at the end of the particular year. [Subparagraph 94(7)(b)(i).] or
- where, at the end of the particular year, the total fair market value (determined with reference to paragraphs 94(2)(c), (i) and (p) and subsection 94(9)) of contributions made to the trust by the person (or another person not dealing at arm's length with the person) is not more than the greater of $10,000 and 10% of the total fair market value of all contributions to the trust. [Subparagraph 94(7)(b)(ii).]

The third condition is satisfied in respect of a person and a particular taxation year of the trust where it is reasonable to conclude that each transaction or event that occurred before the end of the particular year at the direction of, or with the concurrence of, the person satisfied the following conditions:

- none of the purposes of the transaction or event was to enable the person to minimize liability under paragraph 94(3)(d) in respect of the trust. [Subparagraph 94(7)(c)(i).] and
- the transaction or event was not part of a series of transactions or events any of the purposes of which was to enable the person to minimize liability under paragraph 94(3)(d) in respect of the trust. [Subparagraph 94(7)(c)(ii).]

There are a number of transactions or events, or series of transactions or events, which may result in a failure to satisfy the third condition. For example, an artificial dilution of a person's relative contribution in the trust (i.e., below the 10% level) could well be impugned. Likewise, corporate distributions that have the effect of minimizing the impact of the three-year rule described in subsection 94(9) could also be offensive for these purposes.

Reference should be made in this context to the definition "contribution" in subsection 94(1), as well as to related rules in subsection 94(2).

Where subsection 94(7) applies to a person in respect of a taxation year of a trust, the amount recoverable at any time from the person in respect of the year is limited to the person's "recovery limit" in respect of the trust and the year. Under subsection 94(8), the amount of the recovery limit at any time is calculated as follows:

- ADD amounts payable and amounts previously paid by the trust to the person in respect of the person's beneficial interest in the trust;
- ADD previous proceeds from the disposition of the person's interest in the trust, not otherwise taken into account above;
- ADD the fair market value of benefits conferred by the trust on the person, not otherwise taken into account above;
- ADD the total fair market value (determined with reference to paragraphs 94(2)(c), (i) and (p) and subsection 94(9)) of contributions made to the trust by the person, to the extent that this amount exceeds the total of the first three amounts; and
- SUBTRACT previous recoveries by the CCRA under subsection 94(3) from the person in respect of the trust and the year or a preceding taxation year of the trust.

As indicated above, subsection 94(9) affects the calculation of the fair market value of a "contribution" to a trust. It applies

where the contributed property is a share, a right to acquire a share, or other property primarily deriving its value from a share or a right to acquire a share.

For the purpose of determining whether the "recovery limit" limitation applies to a contributor to a trust in respect of a transfer to the trust and of determining the amount of the "recovery limit", the fair market value of contributed property is deemed by subsection 94(9) to be the greater of:

- its fair market value, otherwise determined, at the time it was transferred (see in this regard paragraph 94(2)(p)); and
- its fair market value (or the fair market value of substituted property) at the end of the third calendar year ending after its transfer to the trust.

Subsection 94(9) is intended to allow for a reasonable opportunity for recovery of tax by the CCRA in the context of a series of transactions involving the transfer of shares or similar property. For example, an estate freeze might occur under which common shares with a nominal initial fair market value are transferred directly or indirectly to a non-resident trust. In these circumstances, it would be inappropriate to limit a recovery of tax to the initial fair market value of the shares.

Related Provisions: 94(8) [proposed] — Recovery limit; 94(9) [proposed] — Determination of fair market value.

(8) Recovery limit — For the purpose of subsection (7), the recovery limit at a particular time of a person in respect of a trust and a particular taxation year of the trust is the amount, if any, by which the greater of

(a) the total of all amounts each of which is

(i) an amount paid before the particular time to the person by the trust because of the interest of the person as a beneficiary under the trust,

(ii) an amount the payment of which by the trust the person is at the particular time entitled to enforce because of the interest of the person as a beneficiary under the trust,

(iii) an amount (other than an amount described in subparagraph (i)) received before the particular time by the person on the disposition of an interest as a beneficiary under the trust, or

(iv) the fair market value of a benefit received or enjoyed by the person from or under the trust (other than a benefit described in any of subparagraphs (i) to (iii)), and

(b) the total of all amounts each of which is the fair market value, at the time it was made, of a contribution to the trust before the particular time by the person,

exceeds

(c) the total of all amounts each of which is an amount recovered before the particular time from the person in connection with a liability of the person arising under subsection (3) in respect of the trust and the particular year or a preceding taxation year of the trust.

Technical Notes: See under 94(7).

Related Provisions: 94(9) [proposed] — Determination of fair market value.

(9) Determination of fair market value-special case — For the purposes of applying subparagraph (7)(b)(ii) and determining the recovery limit under subsection (8), where a contribution is made at any time by a person or partnership to a trust as a consequence of a transaction that is, or as a consequence of a series of transactions or events that includes, the transfer at that time to the trust of a particular property that is a share, a right to acquire a share, or other property primarily deriving its value from a share or a right to acquire a share, the fair market value of the contribution at the time it is made is deemed to be the greater of

(a) the fair market value of the contribution at that time, determined without reference to this subsection, and

(b) the fair market value of the particular property, or property substituted for the particular property, at the end of the third calendar year that ends after that time.

Technical Notes: See under 94(7).

Definitions [s. 94]: "accounting profit" — 94(1); "amount" — 248(1); "arm's length" — 251(1); "arm's length transfer" — 94(1); "beneficiary" — 104(1.1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "child" — 252(1); "common-law partnership" — 248(1); "connected contributor", "contribution", "contributor" — 94(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "dividend", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "exempt foreign trust" — 94(1); "fair market value" — 94(2)(c), 94(9); "fiscal period" — 249.1; "foreign retirement arrangement" — 248(1), Reg. 6803; "Her Majesty" — *Interpretation Act* 35(1); "individual", "Minister" — 248(1); "infirm beneficiary" — 94(1)"exempt foreign trust"(a)(i)(A); "month" — *Interpretation Act* 35(1); "non-resident" — 248(1); "person", "prescribed", "property" — 248(1); "recovery limit" — 94(8); "related" — 251(2)–(6); "resident" — 250; "resident beneficiary", "resident contributor" — 94(1); "resident in Canada" — 250; "retirement compensation arrangement", "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 249; "transfer" — 94(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Application: The June 22, 2000 draft legislation, s. 10, will amend s. 94 to read as above, applicable to taxation years of trusts that begin after 2000, except that the definition "contribution" in subsec. 94(1) shall not apply to

(a) a payment made to a trust before 2002 in satisfaction of any amount payable to the trust; or

(b) a repayment made before 2005, in accordance with terms of repayment established before June 23, 2000, to a trust of a loan made by the trust.

Notice of Ways and Means Motion, federal budget, February 16, 1999: *Non-resident trusts and foreign-based investment funds*

(8) That the provisions of the Act governing the taxation of

(a) trust beneficiaries and non-resident trusts, and

(b) taxpayers resident in Canada who hold interests in foreign-based investment funds

be modified in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 16, 1999.

Federal budget, Supplementary Information, February 16, 1999: *Taxation of trusts — Background*

Trusts that are resident in Canada are subject to tax in Canada annually on their undistributed income.

Beneficiaries of resident trusts are taxable on distributions received from such trusts, to the extent that the distributions are made out of the income of the trust. Distributions made out of the capital of the trust are tax-free. As a result, the Canadian tax base is protected.

Generally, non-resident trusts are not taxable in Canada and income can be accumulated in such trusts on a tax-deferred basis. When such trusts pay little or no foreign tax on their accumulated income and capital gains, taxpayers making use of such trusts may benefit either from a deferral of tax or complete avoidance of tax. Avoidance occurs where the accumulated income is transformed into the capital of the trust, which is distributed to the Canadian beneficiaries tax-free.

Issue

The anti-avoidance rules in the Act attempt to tax income earned by non-resident trusts in certain circumstances in order to ensure

that they are not used to defer Canadian tax on the income accumulating in the trusts. Current rules apply only to non-resident trusts with a Canadian beneficiary. However, these rules are not fully effective and relatively little of such income is taxed in Canada.

Canadian residents are able to transfer funds to non-resident trusts under circumstances designed to circumvent the application of existing anti-avoidance rules. The trust regimes in several tax-haven jurisdictions have been specifically modified in an attempt to permit Canadians to avoid the application of the anti-avoidance rules. A feature of such schemes is to disguise the fact that the non-resident trust has a Canadian resident beneficiary. A number of tax-haven jurisdictions have modified their trust laws so that no beneficiaries need to be designated, thus facilitating tax planning by Canadians in order to defer the taxation of the income accumulating in the non-resident trust. Arrangements between the Canadian transferors and the trustee ensure that the Canadian transferors retain effective control of the trust, or are able to designate who may ultimately receive capital of the trust, including its accumulated income.

Non-resident trusts can therefore offer higher-income Canadians the opportunity to defer or avoid Canadian tax on investment income that would otherwise be taxable in Canada.

[See also the portions reproduced under 94.1(1) — ed.]

Consultations will also be initiated on the following proposed modifications to the tax rules governing non-resident trusts:

- That where a Canadian resident transfers or loans property to a non-resident trust, the trust be treated as being resident in Canada and be taxed on all of its undistributed income, subject to a number of exceptions noted below. The Canadian resident transferor would be jointly (with the trust) liable for tax. Where a foreign income tax is imposed in respect of the undistributed income of the trust, a foreign tax credit would be provided. The proposed rules would apply whether or not the trust has a Canadian-resident beneficiary, since in practice it may not be possible to determine whether the property in the trust will be distributed to Canadian beneficiaries.
- That the proposed changes also deal with the distributions from trusts. Distributions out of current income of the trust would be taxed in the hands of the beneficiaries. As well, distributions out of any previously untaxed accumulated income of the trust would be subject to tax.
- That the following trusts be excluded from the application of the proposed rules:
  - trusts resident in the United States and subject to United States tax provisions;
  - non-resident trusts set up prior to immigrants' arrival in Canada, for a five-year period after immigration; and
  - non-resident trusts set up for the benefit of individuals with disabilities or children of divorced parents where the trust and beneficiaries are resident within the same country.
- Additional exceptions could be contemplated to remove from the rules non-resident trusts that are clearly not used to avoid or defer Canadian tax, such as *bona fide* foreign charitable trusts.
- The proposed rules would apply to any taxation year commencing after 1999, with respect to non-resident trusts to which a Canadian resident transfers or loans property on or after February 16, 1999, subject to the exceptions noted above. Other non-resident trusts to which a transfer or a loan of property was made by a Canadian resident before February 16, 1999, would be subject to the proposed rules for taxation years commencing after 2000.

The proposed changes are consistent with Revenue Canada devoting more resources to the audit of taxpayers whose investment activities extend beyond Canada.

Further details on the proposed legislative changes will be released soon to enhance the consultation process.

Department of Finance news release, November 30, 1999: *Update on Proposals for the Taxation of Non-Resident Trusts and Foreign Investment Funds*

The February 1999 budget announced that consultations would be initiated on proposed new approaches for the taxation of non-resident 'family' trusts (NRTs) and foreign investment funds (FIFs).

The proposed approach for NRTs generally provides for them to be treated as resident in Canada during the period in which a contributor to the NRT was resident in Canada. The contributor would, in these circumstances, be jointly liable with the NRT for the NRT's resulting Canadian income tax liability on its worldwide income.

The proposed approach for FIFs provides for an annual allocation of a FIF's income to a Canadian unitholder. If insufficient information is available for a unitholder to adopt this approach, the unitholder is to be taxed on an annual basis on any increases in the fair market value of the unitholder's interest in the FIF.

The February 1999 budget also proposed that distributions from foreign trusts would generally be subject to an additional tax to the extent that the distributions represented income that had not been subject to Canadian income tax, and that the proposals would not apply to FIFs and NRTs based in the United States.

Further to consultations on these proposals and additional analysis within the Department, the following modifications to the package are proposed:

1. The additional tax on distributions from foreign trusts will not be implemented. The implementation of this tax would have raised concerns about fairness, double taxation and complexity. The strengthened taxation rules proposed for NRTs and FIFs will ensure that Canadian tax will generally be exigible whenever Canadian residents contribute to these vehicles.

2. The administrative advantages of an exemption for NRTs and FIFs based in the United States are reduced because of the elimination of the additional tax on distributions from foreign trusts. Moreover, there were concerns that this exemption would allow for structures that could have undermined the effectiveness of the rules. Consequently, a proposed exemption from the new rules for NRTs and FIFs based in the United States will not be implemented.

3. The proposed new rules for NRTs will apply in all cases to NRT taxation years that begin after 2000. The proposed rules for FIFs will apply in all cases to taxation years of Canadian investors that begin after 2000.

One technical question that has been frequently raised is that of the application of the five-year exemption under proposed rules for NRTs to trusts established after an emigrant becomes resident in Canada. It is proposed that this exemption be structured much like it is under the existing law, so that it is not restricted to trusts established before an emigrant becomes resident in Canada.

It is anticipated that draft legislation on NRTs and FIFs will be released early in 2000 in order to permit an additional period of consultation before it is incorporated in a bill.

94.1 (1) Offshore investment fund property — Where in a taxation year a taxpayer, other than a non-resident-owned investment corporation, holds or has an interest in property (in this section referred to as an "offshore investment fund property")

(a) that is a share of the capital stock of, an interest in, or a debt of, a non-resident entity (other than a controlled foreign affiliate of the taxpayer or a prescribed non-resident entity) or an interest in or a right or option to acquire such a share, interest or debt, and

(b) that may reasonably be considered to derive its value, directly or indirectly, primarily from portfolio investments of that or any other non-resident entity in

(i) shares of the capital stock of one or more corporations,

(ii) indebtedness or annuities,

(iii) interests in one or more corporations, trusts, partnerships, organizations, funds or entities,

(iv) commodities,

(v) real estate,

(vi) Canadian or foreign resource properties,

(vii) currency of a country other than Canada,

(viii) rights or options to acquire or dispose of any of the foregoing, or

(ix) any combination of the foregoing,

and it may reasonably be concluded, having regard to all the circumstances, including

(c) the nature, organization and operation of any non-resident entity and the form of, and the terms and conditions governing, the taxpayer's interest in, or connection with, any non-resident entity,

(d) the extent to which any income, profits and gains that may reasonably be considered to be earned or accrued, whether directly or indirectly, for the benefit of any non-resident entity are subject to an income or profits tax that is significantly less than the income tax that would be applicable to such income, profits and gains if they were earned directly by the taxpayer, and

(e) the extent to which the income, profits and gains of any non-resident entity for any fiscal period are distributed in that or the immediately following fiscal period,

that one of the main reasons for the taxpayer acquiring, holding or having the interest in such property was to derive a benefit from portfolio investments in assets described in any of subparagraphs (b)(i) to (ix) in such a manner that the taxes, if any, on the income, profits and gains from such assets for any particular year are significantly less than the tax that would have been applicable under this Part if the income, profits and gains had been earned directly by the taxpayer, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(f) the total of all amounts each of which is the product obtained when

(i) the designated cost to the taxpayer of the offshore investment fund property at the end of a month in the year

is multiplied by

(ii) the quotient obtained when the prescribed rate of interest for the period including that month is divided by 12

exceeds

(g) the taxpayer's income for the year (other than a capital gain) from the offshore investment fund property determined without reference to this subsection.

Proposed Amendment — Foreign-Based Investment Funds

Notice of Ways and Means Motion, federal budget, February 16, 1999: *Non-resident trusts and foreign-based investment funds*

(8) That the provisions of the Act governing the taxation of

(a) trust beneficiaries and non-resident trusts, and

(b) taxpayers resident in Canada who hold interests in foreign-based investment funds

be modified in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 16, 1999.

Federal budget, Supplementary Information, February 16, 1999: *Non-resident trust and foreign-based investment fund rules*

Canadians have significantly increased their holdings of investments in foreign countries over the past ten years. This reflects the globalization of capital markets and recognizes the benefits of portfolio diversification. However, tax planning techniques have developed to create advantages from using foreign-based investment funds and non-resident trusts in comparison with Canadian-based investment vehicles.

The *Income Tax Act* contains provisions that are designed to prevent the use by taxpayers of foreign-based investment funds and non-resident trusts to avoid Canadian tax. The purpose of the rules is to ensure that an appropriate amount of Canadian tax is paid on the foreign investment income earned by taxpayers through such vehicles in order to provide a level playing field with Canadian-based investment vehicles.

There is growing evidence that the objectives of the current provisions of the Act are not being fully met and that high-income individuals are able, in some cases, to avoid Canadian tax by investing in foreign-based investment funds and by contributing property to non-resident trusts. Such an outcome is inconsistent with a fair and neutral tax system, erodes the Canadian tax base and is contrary to the policy intent of the current rules.

Background

Canadian investment funds are taxed annually on the income and capital gains accumulated in the funds but not allocated to investors. Investors in such funds are taxed annually on the income and capital gains of the funds allocated to them, as well as on any taxable capital gains arising on the disposition of their interest in the fund. As a result, the Canadian tax base is protected.

Investment funds located outside Canada are generally not subject to tax in Canada. Where such funds face little or no tax in their country of residence, Canadian investors holding interests in such vehicles may benefit from a significant deferral of tax on income and realized capital gains retained in the funds over the years. Furthermore, on the disposition of their interest in a foreign- based investment fund, investors may also be able to convert ordinary income to capital gains, which are taxed at a lower rate. These tax advantages have resulted in a growing number of Canadians investing in foreign-based funds.

Issue

The *Income Tax Act* contains rules that attempt to eliminate these tax advantages. Where a Canadian makes an investment in a foreign-based investment fund and one of the main reasons for acquiring, holding or having the interest in such property is to avoid Canadian tax, a notional annual allocation of income is imputed to the taxpayer and subject to tax. This notional amount is determined by multiplying the cost of the taxpayer's interest in the fund by a prescribed interest rate.

The current provision, however, has rarely been applied. Revenue Canada has had difficulty in enforcing this provision because of the frequent lack of information and the challenge of establishing that the interest in the foreign-based investment fund was acquired primarily to avoid Canadian tax. Although the provision may have been effective when first introduced in 1984, its impact has weakened over the years. When the provision has been applied, it has been criticized as subjecting to tax an arbitrary amount that may bear no relationship to the actual income accruing in the fund.

These deficiencies and the resulting erosion of the Canadian tax base necessitate the actions that the government is proposing in this budget.

[See also portions reproduced under 94(1) — ed.]

Proposal

The budget sets forth an approach to address the deficiencies in the current rules governing foreign-based investment funds and non-resident trusts. The objective of the proposals is to enhance fairness in the tax system in relation to the taxation of income earned from investing in foreign-based investment funds and contributing property to non-resident trusts on the one hand, and income earned from investing in similar entities resident in Canada. These proposals would not prevent Canadians from investing in foreign-based investment funds or from contributing property to non-resident trusts, but are intended to ensure that there is no tax advantage in doing so.

Consultations will be initiated on the following proposed modifications to the tax rules governing foreign-based investment funds:

- That the proposed rules apply to interests in a foreign-based investment fund, subject to a number of exceptions noted below. Taxpayers would be subject, annually, to tax on their pro-rata share of all the undistributed income of the foreign-based investment fund where they have access to sufficient information about the income of the fund (the income accrual approach that applies in respect of controlled foreign affiliates of Canadian taxpayers), subject to a foreign tax credit for foreign income taxes paid by the fund. Alternatively, taxpayers would be required to add to or deduct from their income, as the case may be, the annual increase or decrease in the market value of their interest in the fund (the "mark-to-market" approach). These rules would replace the tax motivation test that "one of the main reasons for the taxpayer acquiring, holding or having an interest in a foreign-based investment fund was to avoid Canadian taxation". The rules would not apply where the foreign-based investment fund annually distributes or allocates to Canadian investors all of the fund's income to which those investors are entitled.
- That a foreign-based investment fund be defined as any non-resident corporation, trust, fund or other entity where more than 50 per cent of the cost of the entity's assets are investment properties. Look-through rules would apply in respect of significant investments in other entities for the purpose of making this determination. Where trusts are subject to the proposed non-resident trust rules, such trusts would not be subject to these rules.
- That investment funds situated in the United States not be subject to these rules since tax avoidance and deferral opportunities are not a concern through the use of such vehicles.
- That a five-year exception for temporary residents and new immigrants apply. Additional exemptions could be contemplated to remove from the rules foreign- based investment funds that are clearly not used to avoid or defer Canadian tax.
- That the proposed rules apply to any taxation year commencing after 1999, with respect to any interest in a foreign-based investment fund (in which the taxpayer does not already own an interest) not covered by the exceptions, acquired by a Canadian resident on or after February 16, 1999. All interests in any foreign-based investment fund not covered by the exceptions would be subject to the proposed rules for taxation years commencing after 2000.

Department of Finance news release, November 30, 1999: *Update on Proposals for the Taxation of Non-Resident Trusts and Foreign Investment Funds*

[See under 94(1) — ed.]

Related Provisions: 53(1)(m) — Addition to ACB; 94(1)(c)(i)(D) — Income under 94.1 included in income of offshore trust; 95(1)"foreign accrual property income"C — Application to determination of FAPI.

Pre-RSC History: Subpara. 94.1(1)(f)(ii) amended by 1985, c. 45, s. 46, to substitute "prescribed rate of interest" for "rate of interest prescribed for the purpose of subsection 161(1)".

Regulations: 4301(c) (prescribed rate of interest for 94.1(1)(f)(ii)); to date, no prescribed non-resident entities prescribed for 94.1(1)(a).

(2) Definitions — In this section,

"designated cost" to a taxpayer at any time in a taxation year of an offshore investment fund property that the taxpayer holds or has an interest in means the amount determined by the formula

$$A + B + C + D$$

where

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraphs 53(1)(m) and (q), subparagraph 53(2)(c)(i.3), paragraphs 53(2)(g) and (g.1) and section 143.2),

B is, where an additional amount has been made available by a person to another person after 1984 and before that time, whether by way of gift, loan, payment for a share, transfer of property at less than its fair market value or otherwise, in circumstances such that it may reasonably be concluded that one of the main reasons for so making the additional amount available to the other person was to increase the value of the property, the total of all amounts each of which is the amount, if any, by which such an additional amount exceeds any increase in the cost amount to the taxpayer of the property by virtue of that additional amount,

C is the total of all amounts each of which is an amount included in respect of the offshore investment fund property by virtue of this section in computing the taxpayer's income for a preceding taxation year, and

D is

(a) where the taxpayer has held or has had the interest in the property at all times since the end of 1984, the amount, if any, by which the fair market value of the property at the end of 1984 exceeds the cost amount to the taxpayer of the property at the end of 1984, or

(b) in any other case, the total of

(i) the amount, if any, by which the fair market value of the property at the particular time the taxpayer acquired the property exceeds the cost amount to the taxpayer of the property at the particular time, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount that would have been included in respect of the property because of this section in computing the taxpayer's income for a taxation year that began before June 20, 1996 if the cost to the taxpayer of the property were equal to the fair market value of the property at the particular time

exceeds

(B) the total of all amounts each of which is an amount that was included in respect of the property because of this section in computing the taxpayer's income for a taxation year that began before June 20, 1996,

except that the designated cost of an offshore investment fund property that is a prescribed offshore investment fund property is nil;

History: The description of A in the definition "designated cost" in subsec. 94.1(2) amended by 1998, c. 19, subsec. 121(1), applicable after Sep-

tember 26, 1994, except that as it applies to taxation years that ended before April 27, 1995, the description of A shall be read as follows:

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraph 53(1)(m), subparagraph 53(2)(c)(i.3) and section 143.2),

The description formerly read:

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraph 53(1)(m)),

The description of D in the definition "designated cost" in subsec. 94.1(2) amended by 1998, c. 19, subsec. 121(2), applicable to taxation years that begin after June 20, 1996. The description formerly read:

D is, where the taxpayer held or had the interest in the property at the end of 1984, the amount, if any, by which the fair market value of the property at that time exceeds the cost amount to the taxpayer of the property at that time,

Pre-RSC History: *The definition "designated cost" was para. 94.1(2)(a). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(a) "designated cost" — "designated cost" to a taxpayer at any time in a taxation year of an offshore investment fund property that he holds or has an interest in means the aggregate of

(i) the cost amount to the taxpayer of the property at that time (determined without reference to paragraph 53(1)(m)),

(ii) where an additional amount has been made available by a person to another person after 1984 and before that time, whether by way of gift, loan, payment for a share, transfer of property at less than its fair market value or otherwise, in circumstances such that it may reasonably be concluded that one of the main reasons for so making the additional amount available to the other person was to increase the value of the property, the aggregate of all amounts each of which is the amount, if any, by which such an additional amount exceeds any increase in the cost amount to the taxpayer of the property by virtue of that additional amount,

(iii) the aggregate of all amounts each of which is an amount included in respect of the offshore investment fund property by virtue of this section in computing the taxpayer's income for a preceding taxation year, and

(iv) where the taxpayer held or had the interest in the property at the end of 1984, the amount, if any, by which the fair market value of the property at that time exceeds the cost amount to the taxpayer of the property at that time,

except that the designated cost of an offshore investment fund property that is a prescribed offshore investment fund property is nil; and

Regulations: 6900 (prescribed offshore investment fund property).

"non-resident entity" means a corporation that is not resident in Canada, a partnership, organization, fund or entity that is not resident or is not situated in Canada or a trust with respect to which the rules in paragraph 94(1)(c) or (d) apply.

Pre-RSC History: *The definition "non-resident entity" was para. 94.1(2)(b).*

(3) Interpretation — Where subsection (1) is applied with respect to an offshore investment fund property that was

(a) held by the taxpayer on February 15, 1984,

(b) received as a stock dividend in respect of a share of the capital stock of a non-resident entity held by the taxpayer on February 15, 1984,

(c) received as a stock dividend in respect of a share of the capital stock of a non-resident entity that the taxpayer had previously received as described in paragraph (b), or

(d) substituted for a property held by the taxpayer on February 15, 1984 pursuant to an arrangement that existed on that date,

the reference to "1984" in the descriptions of B and D in the definition "designated cost" in subsection (2) shall be read as a reference to "1985".

Origin of subsec. 94.1(3): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the application rule in 1984, c. 45, s. 30, as amended by 1985, c. 45, s. 148).

Proposed Amendment — 94.1, 94.2, 94.3

Technical Notes: Existing section 94.1 of the Act applies where a taxpayer has invested in an offshore investment fund and one of the main reasons for the investment is to reduce or defer the tax liability that would have applied to the income generated from the underlying assets of the fund if such income had been earned directly by the taxpayer. In these circumstances, existing section 94.1 generally requires an amount to be included in computing the taxpayer's income from the investment. This amount is determined, in general terms, by multiplying the cost amount of the taxpayer's investment by a factor based on interest rates prescribed under Part XLIII of the Regulations.

Section 94.1 is replaced by provisions in new sections 94.1 to 94.3, which contain rules governing the tax treatment of interests in foreign investment entities (FIEs). Under the new rules, a taxpayer's investment motives are no longer relevant. In computing a taxpayer's income for a taxation year, where a taxpayer so elects and has sufficient information to comply, new section 94.1 generally requires the inclusion of the taxpayer's share of FIE income for each FIE taxation year that ends in the taxpayer's taxation year. New section 94.2 applies in place of the rules in section 94.1 in all other cases. Under section 94.2, a taxpayer takes into account the annual increase or decrease in the fair market value of the taxpayer's interest in an FIE in computing the taxpayer's income from the FIE. Section 94.3 is designed to prevent double taxation with respect to amounts included in income under sections 94.1 and 94.2.

New section 94.1 applies to taxation years of Canadian investors that begin after 2000.

The table below provides an overview of new sections 94.1 to 94.3 and related provisions.

Issue	Summary	References
1. Which taxpayers are subject to the new FIE rules?	A. All taxpayers, except exempt taxpayers. Except as indicated in (C), below, FIE rules do not apply to non-resident taxpayers.	S. 94.1(2) to (4) and 94.2(3) and (4). "Exempt taxpayer" (s. 94.1(1)). Non-resident taxpayers: see also s. 94.1(3) and 94.2(5).
	B. Partnerships with members resident in Canada must allocate FIE income to those members.	Existing section 96, including exception in s. 96(1.9). See also s. 94.2(6) for application to cases where partnership members become resident in Canada.
	C. Controlled foreign affiliates.	New s. 95(2)(g.2).
2. What property is subject to the new FIE rules?	A. Participating interests (other than exempt interests) in foreign investment entities. However, if no taxation year of an FIE has ended before the end of the taxpayer's taxation year, the FIE rules do not apply to the taxpayer for the taxpayer's year in respect of the FIE.	S. 94.1(2). The following definitions in s. 94.1(1): "entity", "non-resident entity", "foreign investment entity", "exempt interest" and "participating interest".

Issue	Summary	References
	B. Where property described in (A) is a right to acquire property or is not capital property, it is not subject to section 94.1 but it is subject to s. 94.2.	S. 94.1(4) and 94.2(3).
	C. Interests in non-resident entities, where those interests track returns in respect of investment property. This property is subject only to s. 94.2, not to s. 94.1.	S. 94.2(9). See also amended s. 91(1).
	D. Interests in certain foreign insurance policies. This property is subject only to s. 94.2, not s. 94.1.	S. 94.2(10).
3. What is the difference in the tax treatment of FIE interests between s. 94.1 and s. 94.2?	A. Section 94.1. Taxes only investor's "share" of FIE's income (e.g., does not include FIE's share of unrealized gains).	S. 94.1(3).
	B. Section 94.2. Full appreciation/decline in fair market value recognized on an annual basis.	S. 94.2(4)
4. How will foreign affiliates of taxpayers resident in Canada be treated under new FIE rules?	Subject to s. 94.2(9) (tracked interests), a taxpayer's share of the capital stock of a controlled foreign affiliate is exempt from the new FIE rules. In certain cases, a taxpayer can elect to have a foreign affiliate treated as a controlled foreign affiliate.	Paragraph (a) of the definition "exempt interest". S. 94.1(12).
5. If a non-resident corporation that is an FIE pays out dividends, how are these dividends taxed?	A. General principle: existing rules apply.	Existing s. 90 and 113.
	B. Relief provided to prevent double taxation. This relief extends to taxable distribution from other FIEs (e.g., trusts).	S. 94.3.
	C. Special rules in the event that the dividends paid to another FIE.	S. 94.1(5)A(g).
6. In what circumstances is a taxpayer subject to sections 94.1 and 94.2, respectively?	A. S. 94.2 rule applies, except as expressly provided otherwise.	S. 94.1(2) to (4) and s. 94.1(3).
	B. Election to use s. 94.1 available.	S. 94.1(4)
	C. Requirement to use s. 94.2 where insufficient information to use s. 94.1.	S. 94.1(17)
	D. Requirement for FIEs to calculate own income with reference to s. 94.2.	S. 94.1(4)(e)
	E. Requirement to use s. 94.2 in the case of properties described in 2(B), (C) and (D), above.	See references in 2(B), (C) and (D).

The table above reflects two main variations from the outline of the proposals put forward for consultation for foreign investment funds in the 1999 budget papers and the November 30, 1999 press release issued by the Minister of Finance. First, in recognition of the complexity associated with proposed section 94.1 and the likelihood that most investors will not have sufficient information to comply with the section, the simpler mark-to-market regime has been made the "default" regime. Second, there is no exemption provided for foreign investment funds that distribute their income annually for the following reasons:

- these distributions may not necessarily be subject to immediate Canadian income tax;
- such an exemption could inappropriately allow for the use of tiered structures under which a fund that distributes annually itself invests, directly or indirectly, in a foreign investment fund that does not distribute annually; and
- to provide equality of treatment between domestic and foreign investment funds, it would be necessary to use income for Canadian tax purposes for the purpose of such an exemption.

However, income of this nature is not generally calculated by foreign investment funds and would not normally be known by investors.

94.1 Foreign Investment Entities — Accrual Treatment — (1) Definitions — The definitions in this subsection apply in this section and sections 94.2 and 94.3.

"carrying value" at any time of property of an entity means

(a) where a balance sheet of the entity is prepared as of that time in accordance with accounting principles substantially similar to generally accepted accounting principles used in Canada, the balance sheet is distributed not later than three months after that time to holders of participating interests in the entity at that time and the property is valued in the balance sheet, the amount at which the property is valued in the balance sheet; and

(b) in any other case, the amount at which the property would be valued for the purpose of the entity's balance sheet as of that time if a balance sheet of the entity were prepared in accordance with generally accepted accounting principles used in Canada at that time.

Technical Notes: New subsection 94.1(1) of the Act defines a number of expressions for the purpose of section 94.1. These definitions are also relevant for the purposes of sections 94.2 and 94.3.

The "carrying value" of a property held by an entity at any time is the amount at which the property is valued as of that time for the purpose of the entity's balance sheet, except where

- the balance sheet was not prepared in accordance with accounting principles similar to generally accepted accounting principles used in Canada, or
- the balance sheet was not distributed within 3 months after that time.

The carrying value of a property is generally expected to be either the historical cost of the property or the fair market value of the property. In the event that a qualifying balance sheet is not prepared or distributed on a timely basis or the property is not expressly valued, a property's carrying value is the amount at which the property would have been valued using generally accepted accounting principles used in Canada.

The carrying value of property is relevant primarily for the purpose of determining whether a non-resident entity is an FIE. This determination is made at the end of the entity's taxation year. (For further detail, see the commentary on the definition "foreign investment entity".) However, it should be noted that the look-through rule in subsection 94.1(10) can affect the properties considered to be owned by an entity and the carrying values of the entity's properties. This look-through rule applies where the entity has a "significant interest" (defined in subsection 94.1(11)) in a corporation, partnership, or trust. For the purposes of the look-through rule, the time at which the determination of carrying value is made is the end of the taxation year of the first tier non-resident entity (whether or not lower tier entities share the same taxation year).

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(10) — Deemed carrying value.

"entity" includes a trust, a corporation, an organization and a fund, but does not include a partnership unless a contrary intent is evident.

Technical Notes: An entity includes a trust, a corporation, an organization and a fund. Subject to the comments below, it does not include a partnership. The new rules are designed so that, in the case of partnerships, members' shares of incomes and losses are allocated in accordance with section 96 (including new subsection 96(1.9), described in the commentary below).

An "entity" does, however, include a partnership to the extent that this intent is evident in section 94.1. The intent is evident in the definition "carrying value" and paragraph 94.1(10)(c), as it may be necessary to determine the carrying value of the assets of a partnership because of the operation of subsection 94.1(10).

"excluded investment business" of a corporation in a period means an investment business of the corporation in the period where, throughout the part of the period during which the business was carried on, all or substantially all of the corporation's assets used or held in the business are participating interests or debt issued by one or more other corporations

(a) each of which is related to the corporation or is a corporation in which the corporation has a significant interest; and

(b) the principal business carried on by each of which in the period is not an investment business.

Technical Notes: An "excluded investment business" is a type of "investment business" (as described in the commentary below) that is provided favourable tax treatment. The favourable treatment arises because of the reference to "excluded investment business" in the definition "qualifying corporation". A publicly traded share issued by a "qualifying corporation" is generally an "exempt interest" to which the FIE regime in sections 94.1 and 94.2 does not apply. In addition, there is a reference to an "excluded investment business" in subsection 94.1(12) which permits an election to be made by a taxpayer to treat a foreign affiliate principally carrying on an excluded investment business as a controlled foreign affiliate of the taxpayer.

In general terms, an "excluded investment business" is a business of a corporation in which it finances the operations of related corporations that do not carry on investment businesses. Thus, an "excluded investment business" has a substantial link to active businesses (or, more precisely, to businesses that are not investment businesses).

More specifically, an "excluded investment business" of a particular corporation in a period is defined as an "investment business" of the particular corporation in the period where, throughout the part of the period throughout which the business was carried on, all or substantially all of the particular corporation's assets used or held in the business are participating interests or debt issued by one or more corporations:

- related to the particular corporation (or in which the particular corporation has a "significant interest", as defined in subsection 94.1(11)), and
- the principal businesses of which are not investment businesses.

Related Provisions: 94.1(11) — Significant interest.

"exempt interest" of a taxpayer in a foreign investment entity at any time means

(a) a participating interest held by the taxpayer at that time in a controlled foreign affiliate of the taxpayer;

(b) property held by the taxpayer at that time that is a share of a class of the capital stock of a particular corporation or a right to acquire a share of the class, where

(i) the class is, throughout the part of the taxpayer's taxation year that includes that time (which year is in this definition referred to as the "relevant year") during which shares of the class (or rights to acquire shares of the class) are held by the taxpayer, widely-held, actively traded on a regular basis and listed on a prescribed stock exchange, and

(ii) either

(A) the particular corporation's principal business was not an investment business in the period referred to in subparagraph (i), or

(B) the particular corporation is a qualifying corporation in the period referred to in subparagraph (i);

(c) where the taxpayer is a financial institution (within the meaning assigned by subsection 142.2(1)) in the relevant year, a participating interest that is a mark-to-market property (within the meaning assigned by subsection 142.2(1)) for that year; and

(d) a participating interest of the taxpayer in a testamentary trust that, before that time, has never been acquired for consideration.

Technical Notes: An "exempt interest" of a taxpayer in an FIE is each of the following properties:

- a participating interest held by the taxpayer in a controlled foreign affiliate of the taxpayer (including an affiliate that is a controlled foreign affiliate because of an election under new subsection 94.1(12)),
- as described in greater detail below, certain shares and options in respect of publicly traded corporations,
- where the taxpayer is a financial institution (as defined in subsection 142.2(1)), a participating interest held by the taxpayer that is mark-to-market property (as defined in that same subsection), and
- a participating interest in a testamentary trust, provided the interest has not been acquired for consideration.

The rules in sections 94.1 and 94.2 generally do not apply in respect of "exempt interests". In most cases, the time of determination for whether a property is an "exempt interest" in an entity is the end of a taxation year of the entity. See, in this regard, subsection 94.1(2).

As noted above, an exempt interest includes certain shares and options with respect to publicly traded FIEs. Given the definition "foreign investment entity", most non-resident financial institutions and real estate development companies, and some resource companies, are expected to be classified as FIEs. Consequently, shares issued by these entities (as well as options in respect of these shares) would be subject to the rules in section 94.1 or 94.2 if it were not for the definition "exempt interest". Under paragraph (b) of the definition "exempt interest", the FIE rules will not apply to a taxpayer's shares and rights to acquire shares of a class of the capital stock of a non-resident corporation held during a taxation year of the taxpayer where, in the period in the year during which the property was held:

- the class is widely held, actively traded and listed on a prescribed stock exchange (note: stock exchanges listed in section 3200 or 3201 of the Regulations are to be prescribed for this purpose), and
- either
  - — the corporation's principal business was not an investment business (as defined in subsection 94.1(1) and described in the commentary below) in the period, or
  - — the corporation is a qualifying corporation in the period. (See commentary below on the definition "qualifying corporation".)

Related Provisions: 95(2)(g.2)(viii)(A) — Application to FAPI rules.

"exempt taxpayer" for a taxation year means

(a) an individual (other than a trust) who, before the end of the year, was resident in Canada for a period of, or periods the total of which is, not more than 60 months, but not including an individual who, before the end of the year, was never non-resident; and

(b) an entity the taxable income of which for a period any part of which occurs in the year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)).

Technical Notes: An individual is an "exempt taxpayer" for a taxation year where the individual, before the end of the year, was a resident of Canada for a period of, or periods the total of which is, 60 months or less. (Children who have always been resident in Canada cannot fall within the 60-month exception.)

The rules in new sections 94.1 and 94.2 do not apply in respect of periods during which a taxpayer qualifies as an exempt taxpayer, due to the reference to exempt taxpayers in paragraph 94.1(2)(a) and subsections 94.2(9) and (10). The 60-month exemption for new immigrants to Canada is similar to an exemption in the rules for non-resident trusts in existing section 94.

Tax-exempt entities to which subsection 149(1) applies are also included as exempt taxpayers. However, this inclusion does not apply to retirement compensation arrangements and qualifying environmental trusts for which alternative income tax rules are provided under Parts XI.3 and XII.4. The inclusion also does not apply to insurers to which paragraph 149(1)(t) applies, given the taxability of those insurers pursuant to subsection 149(4.1).

The express reference to tax-exempt entities is generally of significance for the purposes of calculating Part I tax only in the context of the narrow circumstances to which new subsection 94.2(16) applies. That subsection contemplates a case where a taxpayer ceases to be an "exempt taxpayer" and subsequently becomes an "exempt taxpayer". However, the reference to tax-exempt entities may also be of significance in the context of Part XI (foreign property limits), given that the application of sections 94.1 and 94.2 has an impact on the cost amount of participating interests in FIEs.

Related Provisions: 94.2(16) — Fresh start on change of status; 96(1.9) — Where exempt taxpayer is member of partnership.

"foreign bank" has the same meaning as in subsection 95(1).

Technical Notes: The definition "foreign bank" has the same meaning as in subsection 95(1). The expression is used in the definition "investment business".

"foreign investment entity" at any time means a non-resident entity at that time except where, at the end of its taxation year that includes that time,

(a) the entity would be an exempt foreign trust (within the meaning assigned by subsection 94(1)) if the definition "exempt trust" in subsection 233.2(1) were read without reference to paragraph (c) of that definition;

(b) the entity is

(i) a personal trust, and

(ii) not a non-discretionary trust; or

(c) the carrying value of all of the entity's investment property is not more than one-half of the carrying value of all of the entity's property.

Technical Notes: The new tax regime for FIEs in sections 94.1 and 94.2 generally applies only to participating interests in a foreign entity that is a "foreign investment entity".

A non-resident entity is generally a "foreign investment entity" throughout one of its taxation years where the total carrying value of its investment property is greater than 50% of the total carrying value of all of its property at the end of the year. In making this determination, the entity's property must be identified as either investment property or other property and it must be assigned a carrying value.

A foreign investment entity does not, however, include:

- an "exempt foreign trust" under subsection 94(1) (other than a widely-held mutual fund trust referred to in paragraph (c) of the definition "exempt trust" in existing subsection 233.2(1)), or
- a discretionary personal trust (or, more precisely, a trust that is not a "non-discretionary trust").

For more detail, see the commentary on the expressions "entity", "non-resident entity", "investment property" and "carrying value" in subsection 94.1(1). "Non-discretionary trust" is newly defined in subsection 248(1), with reference to the definition of the same expression in subsection 17(15).

Special rules in subsections 94.1(10) and (13) generally limit the circumstances in which a non-resident entity falls within the definition "foreign investment entity".

Related Provisions: 94.1(13) — Exception for qualifying dispositions and issues.

"investment business" of an entity in a period means a business carried on by the entity at any time in the period the principal purpose of which is to derive income

from property (including interest, dividends, rents, royalties or any similar return on investment or any substitute for such a return), income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of indebtedness or properties described in any of paragraphs (a) to (d) or (f) to (l) of the definition "investment property", unless it is established that, throughout the part of the period during which the business was carried on by the entity, the business (other than any business conducted principally with persons with whom the entity does not deal at arm's length) is

(a) a business carried on by the entity as a foreign bank, a trust company, a credit union or an insurance corporation, the activities of which are regulated under the laws of the country in which the business is principally carried on;

(b) the development of real estate for sale;

(c) the rental of real estate held by the entity if the management, maintenance, and other services in respect of the real estate are provided principally by the employees of the entity or of a corporation related to it; or

(d) the development of foreign resource property.

Technical Notes: The expression "investment business" is used in the definitions "exempt interest" and "investment property", as well as in subsection 94.1(12) (election to be a controlled foreign affiliate). The definition "investment business" is similar to the definition of the same expression in existing subsection 95(1). Note, however, that in this definition:

- there is no exception for traders and dealers in securities or for the lending of money, the leasing or licensing of property or the insurance or reinsurance of risks;
- there is a greater accommodation of real estate businesses and businesses involved in the development of foreign resource properties;
- there is no explicit requirement for a specific number of full-time employees for the exceptions to the definition to apply; and
- the supporting definitions and rules contained in subsections 95(1) to (2.4) are not relevant.

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation.

"investment property" of an entity includes property that is

(a) a share of the capital stock of a corporation;

(b) an interest in a partnership;

(c) an interest in a trust;

(d) an interest in any other entity;

(e) indebtedness, other than accounts receivable that arose from the sale of tangible property or services in the ordinary course of a business of the entity that is not an investment business;

(f) an annuity;

(g) a commodity or commodity future purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except a commodity manufactured, produced, grown, extracted or processed by the entity or a person to whom the entity is related, otherwise than because of a right referred to in paragraph 251(5)(b), or a commodity future in respect of such a commodity);

(h) real estate;

(i) a Canadian resource property or foreign resource property;

(j) currency;

(k) a derivative financial product (other than a commodity future to which the exception in paragraph (g) applies); or

(l) an interest, option, or right in respect of property included in any of paragraphs (a) to (k).

Technical Notes: The expression "investment property" includes a list of specified properties. Most of the specified properties (e.g., shares, partnership interests, real estate and resource properties) are also specified in the definition of the same expression in subsection 95(1). In addition to the properties also specified in the definition in subsection 95(1), "investment property" held by a particular entity includes:

- an interest in an organization, fund or other entity;
- most derivative financial products; and
- interests, options and rights in respect of the above properties.

It should be noted, however, that "investment property" in subsection 94.1(1) does not include accounts receivable that arise from the sale of tangible property or services in the ordinary course of a business (other than an "investment business", described above).

The definition is primarily relevant for purposes of the determining whether a non-resident entity is a "foreign investment entity".

"non-resident entity" at any time means

(a) a corporation or trust that is non-resident at that time; and

(b) any entity (other than a corporation or trust)

(i) organized under the laws of a jurisdiction outside Canada, or

(ii) the governance of which is provided at that time under the laws of a jurisdiction outside Canada.

Technical Notes: One of the requirements for an entity to be an FIE to which sections 94.1 and 94.2 apply is that the entity must be a "non-resident entity".

In addition to non-resident corporations and trusts, a "non-resident entity" includes any other type of entity

- organized under the laws of a jurisdiction outside Canada, or
- the governance of which is provided under the laws of a jurisdiction outside Canada.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada.

"participating interest" in an entity means

(a) where the entity is a corporation,

(i) a share of the capital stock of the corporation, and

(ii) a right to acquire a share of the capital stock of the corporation;

(b) where the entity is a trust,

(i) a beneficial interest in the trust, and

(ii) a right to acquire a beneficial interest in the trust; and

(c) in any other case, an interest in the entity or a right to acquire an interest in the entity.

Technical Notes: A "participating interest" in an entity means a share of the capital stock of, or an interest in, the entity. It also includes a right to acquire such a share or interest. Section 94.1 or 94.2 generally applies to a taxpayer in respect

of a participating interest in an FIE that is not an "exempt interest" of the taxpayer.

Related Provisions: 94.2(12) — Cost of participating interest.

"qualifying corporation" in a period means a particular corporation all or substantially all of the assets of which are, throughout the period, any combination of

(a) properties (other than investment properties); and

(b) shares and debt issued by one or more other corporations each of which

(i) is, at any time in the period, a corporation all of the shares of which (other than directors' qualifying shares) are held by

(A) the particular corporation,

(B) a corporation related to the particular corporation, or

(C) any combination of corporations described in clauses (A) and (B), and

(ii) is either

(A) a corporation the principal business of which throughout the period is

(I) an excluded investment business, or

(II) a business that is not an investment business, or

(B) a qualifying corporation in the period.

Technical Notes: Shares issued by a qualifying corporation are generally exempt from the FIE regime in sections 94.1 and 94.2 because of the definition "exempt interest" (described in the commentary above), provided the shares are widely-held, actively traded and listed on a prescribed stock exchange.

In general terms, a "qualifying corporation" is a corporation that (directly or indirectly) finances the active business operations of related corporations.

More specifically, a "qualifying corporation" in a period is defined as a particular corporation all or substantially all of the assets of which are, throughout the period, any combination of:

- properties (other than investment properties), and
- shares or debt issued by one or more other corporations each of which
  - — is, at any time in the period, a corporation all of the shares of which (other than directors' qualifying shares) are held by any combination of the particular corporation and related corporations, and
  - — either
    - — has as its principal business an excluded investment business or a business (other than an investment business), or
    - — is itself a qualifying corporation in the period.

Reference should also be made to the commentary on the definition "excluded investment business".

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(1)"exempt interest"(b)(ii)(B) — Share of qualifying corporation can be exempt interest.

"taxation year" of a non-resident entity means

(a) in the case of a corporation the accounts of which have ordinarily been made up for a period not exceeding 53 weeks, that period; and

(b) in any other case, a calendar year.

Technical Notes: The "taxation year" of a non-resident entity is a calendar year. However, if the entity is a corporation, its taxation year is the period, not exceeding 53 weeks, for which its accounts are ordinarily made up.

(2) Conditions for application of tax regime for foreign investment entities — This subsection applies to a taxpayer for a particular taxation year in respect of a participating interest held in the particular year by the taxpayer in a non-resident entity where

(a) the taxpayer is not an exempt taxpayer for the particular year;

(b) a taxation year of the entity ended at or before the end of the particular year;

(c) at the end of the latest of the entity's taxation years referred to in paragraph (b), the entity was a foreign investment entity;

(d) if the interest or identical property to the interest was held by the taxpayer at the end of the latest of the entity's taxation years referred to in paragraph (b), none of the interest and each identical property was, at the end of that year, an exempt interest in respect of the taxpayer; and

(e) if neither the interest nor identical property to the interest was held by the taxpayer at the end of the latest of the entity's taxation years referred to in paragraph (b), none of the interest and each identical property was, at the latest time in the particular year at which the interest or identical property was held by the taxpayer, an exempt interest in respect of the taxpayer.

Technical Notes: New subsection 94.1(2) of the Act sets out the common conditions for the application of the FIE rules in section 94.1(3) (accrual regime) and 94.2(4) (mark-to-market regime). For the accrual or mark-to-market regimes to apply to a taxpayer for a particular taxation year in respect of a participating interest held in the particular year by the taxpayer in a non-resident entity, all of the following conditions set out in subsection 94.1(2) must be satisfied:

- the taxpayer is not an "exempt taxpayer" for the particular year; [Paragraph 94.12(2)(a).]
- a taxation year of the entity ended at or before the end of the particular year and, at the end of the latest such taxation year of the entity, the entity was an FIE; [Paragraphs 94.1(2)(b) and (c).]
- where the interest or identical property to the interest was held by the taxpayer at the end of the latest such year, the interest or the identical property was not an "exempt interest" in respect of the taxpayer; [Paragraph 94.1(2)(d).] and
- where neither the interest nor identical property to the interest were held by the taxpayer at the end of the latest such year, the interest and each identical property was not an exempt interest while held in the particular year by the taxpayer. [Paragraph 94.1(2)(e).]

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 95(2)(g.2) — Application to FAPI rules.

(3) Income inclusion and deduction — Subject to subsection (4), where, at any time in a particular taxation year of a taxpayer, the taxpayer holds a participating interest, or two or more identical participating interests, in a non-resident entity and subsection (2) applies to the taxpayer for the particular year in respect of those interests, in computing the taxpayer's income for the particular year in respect of such of those interests that are held by the taxpayer at the end of a taxation year of the entity (in this subsection referred to as the "relevant interests") that ends in the particular year, except where the taxpayer is non-resident at the end of the entity's year,

(a) there shall be added the positive amount, if any, determined by the formula

$$A - B - C - D$$

where

A is the taxpayer's income allocation in respect of the relevant interests for the entity's year,

B is the taxpayer's loss allocation in respect of the relevant interests for the entity's year,

C is the specified tax allocation of the taxpayer for the entity's year in respect of the relevant interests, and

D is the amount, if any, by which

(i) the amount determined in respect of the taxpayer under subparagraph (b)(i) for the preceding taxation year of the entity in respect of the relevant interests or identical properties

exceeds

(ii) the amount determined for that preceding year in respect of the taxpayer under subparagraph (b)(ii) in respect of the relevant interests or identical properties; and

(b) there may be deducted the lesser of

(i) the absolute value of the negative amount, if any, determined by the formula in paragraph (a) in respect of the relevant interests for the entity's year, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount added under paragraph (a) in computing the taxpayer's income in respect of the relevant interests or identical properties for a preceding taxation year of the entity

exceeds

(B) the total of all amounts each of which is an amount deductible under this paragraph in computing the taxpayer's income in respect of the relevant interests or identical properties for a preceding taxation year of the entity.

Technical Notes: Where the accrual regime does apply to a taxpayer for a particular taxation year in connection with one or more of a taxpayer's identical participating interests in a non-resident entity, subsection 94.1(3) provides:

- The taxpayer's "income allocation" in respect of those interests for a taxation year of the entity ending in the particular year is added in computing the amount included in the taxpayer's income under subsection 94.1(3), to the extent that the taxpayer held those interests at the end of the entity's year. (However, in order to clarify the application of section 114 to part-year residents and to ensure that section 94.1 does not affect the taxability of non-resident taxpayers, subsection 94.1(3) does not apply to a taxpayer for a taxation year in respect of an FIE's taxation year that ends in the taxpayer's year where the taxpayer is not resident in Canada at the end of the FIE's year.)
- The taxpayer's "loss allocation" in respect of those participating interests is deductible to the extent that there has previously been a net cumulative positive balance determined under subsection 94.1(3) in respect of the taxpayer for such property in respect of preceding taxation years of the entity. An unused loss allocation is carried forward to offset the total amount otherwise required to be computing the taxpayer's income under subsection 94.1(3) in respect of identical participating interests for a subsequent taxation year of the entity.
- A taxpayer's specified tax allocation in respect of the entity's year is treated in the same way as a loss allocation. However, unlike a loss allocation, a specified tax allocation can arise for the same entity's year as an income allocation. Where this is the case, the specified tax allocation can directly offset the income allocation. A taxpayer's specified tax allocation, as determined under subsection 94.1(8), represents the taxpayer's grossed-up share or income of profits tax paid by the entity in the year on account of a liability for income or profits tax for the entity's year or an earlier year of the entity. The taxpayer's share of taxes in respect of the liability year is determined with reference to the taxpayer's position in the entity at the end of the liability year.

The examples after the commentary on subsections 94.1(5) and (6) illustrate the operation of subsection 94.1(3).

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(4) — Exceptions; 94.1(5) — Income allocation; 94.1(7) — Loss allocation; 94.1(8) — Specified tax allocation; 94.3(2)(a)(ii) — Prevention of double taxation; 95(2)(g.2) — Application to FAPI rules; 257 — Formula cannot calculate to less than zero.

(4) Exceptions — Subsection (3) applies to a taxpayer for a taxation year in respect of a participating interest held in the year by the taxpayer in a non-resident entity only where

(a) the taxpayer so elects in respect of the interest in prescribed form and files the election with the Minister not later than the taxpayer's filing-due date for the year;

(b) the taxpayer filed an election under paragraph (a) in respect of the interest (or property identical to it) for each preceding taxation year that began after 2000 and in which the interest or the identical property was held by the taxpayer;

(c) subsection (17) does not apply to the taxpayer for the year in respect of the interest;

(d) subsection 94.2(3) does not, because of subsection 94.2(9), apply to the taxpayer for the year or a preceding taxation year in respect of the interest or identical property to the interest;

(e) the taxpayer is not a foreign investment entity;

(f) the interest is not a right to acquire

(i) shares of the capital stock of the entity, or

(ii) an interest in the entity; and

(g) the interest would, if this Act were read without reference to subparagraph 39(1)(a)(ii.3) and section 94.2, be capital property.

Technical Notes: Notwithstanding the above, the mark-to-market regime, rather than the accrual regime, applies where the exceptions under subsection 94.1(4) apply. Subsection 94.1(4) provides that the accrual regime applies only to capital property and only where an election to use the accrual regime has been made at the earliest opportunity. Moreover, the accrual regime does not apply to a taxpayer for a taxation year in respect of a participating interest in a non-resident entity in the following cases:

- where section 94.1 does not apply because of the operation of subsection 94.1(17) (insufficient information),
- where, because of subsection 94.2(9) (tracked interests), subsection 94.2(3) applies or has applied to the taxpayer in respect of the interest or identical property,
- where the taxpayer is itself an FIE, [See commentary on paragraph 94.1(5)A(a) for more detail.] or
- where the interest is an option or similar right to acquire.

Related Provisions: 95(2)(g.2)(ix) — Application to FAPI rules; 96(3) — Election by members of partnership.

(5) Income allocation — For the purpose of subsection (3), the income allocation of a particular taxpayer in respect of a participating interest, or two or more identical participating interests, of the particular taxpayer in a foreign investment entity for a particular taxation year of the entity is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount that would be the income of the entity for the particular year if

(a) except for the purposes of section 91, paragraph (4)(e), subsection 107.4(1) and paragraph (f) of the definition "disposition" in subsection 248(1), the entity had been a taxpayer resident in Canada throughout the entity's existence,

(b) each property held by the entity at the beginning of the entity's fresh start year in respect of the particular taxpayer had been

(i) disposed of by the entity immediately before that time for proceeds equal to its fair market value at that time, and

(ii) reacquired by the entity at that time at a cost equal to that fair market value,

(c) for the entity's fresh start year in respect of the particular taxpayer and for each following taxation year of the entity, each deduction in computing the entity's income that is contingent on a claim by the entity had been claimed by the entity to the extent, and only to the extent, designated by the particular taxpayer in prescribed form filed with the Minister with the particular taxpayer's return of income for the particular taxpayer's taxation year in which that fresh start year or the following year, as the case may be, ends,

(d) the entity had deducted the greatest amounts that it could have claimed or deducted as a reserve under sections 20, 138 and 140 for its taxation year that precedes its fresh start year in respect of the particular taxpayer,

(e) for the purposes of applying sections 37, 65 to 66.4 and 66.7, the entity had not existed before the entity's fresh start year in respect of the particular taxpayer,

(f) this Act were read without reference to subsections 20(11) and (12) and 104(4) to (6),

(g) where the particular taxpayer is a corporation resident in Canada, dividends received by the entity in the particular year from a foreign affiliate of the particular taxpayer were included in computing the income of the entity for the particular year only where

(i) the particular taxpayer did not have a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) in the affiliate at the time the dividends were received, or

(ii) taking into account the application of paragraphs (a) and (i), subsection 94.2(4) applied for the purpose of computing the entity's income for the particular year in respect of the entity's participating interest in the affiliate,

(h) where the entity holds at any time in the particular year a participating interest in a non-resident entity, the description of D in paragraph 94.2(4)(a) did not apply in respect of that interest, and

(i) the words "controlled foreign affiliate of the taxpayer" in paragraph (a) of the definition "exempt interest" referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the entity;

B is the fair market value of those interests at the end of the particular year; and

C is the fair market value of all participating interests in the entity (other than rights to acquire shares of the capital stock of, or interests in, the entity) at the end of the year.

Technical Notes: New subsection 94.1(5) of the Act provides for the calculation of a taxpayer's income allocation in respect of participating interests in an FIE. A taxpayer's income allocation in respect of one or more identical participating interest in an FIE held by the taxpayer at the end of the FIE's taxation year is included in computing the taxpayer's income under subsection 94.1(3). In general terms, a taxpayer's income allocation in respect of participating interests in an FIE is the proportion of the FIE's income for a taxation year that the fair market value of those interests is of the fair market value of all participating interests in the FIE.

The calculation of a taxpayer's income allocation in respect of an FIE depends on a calculation of income for the FIE in accordance with rules set out in paragraphs 94.1(5)A(a) to (i). The calculation for a particular taxpayer generally only takes into account an FIE's taxation years that end after the particular taxpayer first holds a participating interest in the FIE in a taxation year of the taxpayer that begins after 2000. The first such FIE taxation year in respect of a taxpayer is defined in subsection 94.1(6) as the "fresh start year" of the FIE in respect of the taxpayer. This permits taxpayers to make independent calculations of an FIE's income for the purpose of determining income allocations under section 94.1.

The special rules that apply in calculating an FIE's income in respect of an investor taxpayer for the FIE's fresh start year and subsequent years are as follows:

- Subject to three exceptions, the FIE is generally treated as having been a taxpayer resident of Canada throughout its existence. [Paragraph 94.1(5)A(a).] First, this rule does not apply for the purposes of proposed subsection 107.4(1) or proposed paragraph (f) of the definition "disposition" in subsection 248(1). [Proposed section 107.4 and a new definition "disposition" in subsection 248(1) are contained in a detailed Notice of Ways and Means Motion tabled on June 5, 2000.] with the result that property that is transferred to the FIE without there being any change in the beneficial ownership of the property is considered to have been transferred to the FIE under subsection 69(1) at the fair market value of the property. Second, this rule does not apply for the purposes of section 91 with the result that the FIE will not itself be required to include an amount in respect of foreign accrual property income in computing the FIE's income. Third, this rule does not apply for the purposes of paragraph 94.1(4)(e) with the result that section 94.2 (rather that section 94.1) potentially applies in the event that the FIE owns a participating interest in another FIE.
- Each property held by the FIE at the beginning of the fresh start year is deemed to have been disposed of for its fair market value immediately before that time and reacquired for the same amount at that time. [Paragraph 94.1(5)A(b). Compare paragraph 149(10)(b).]
- Each discretionary deduction permitted in computing the FIE's income for the FIE's fresh start year and subsequent taxation years is deemed to have been claimed to the extent designated by the investor taxpayer. Thus, in calculating an income allocation in respect of the FIE, the investor taxpayer will be permitted to claim deductions such as capital cost allowance. [Paragraph 94.1(5)A(c).]
- The FIE is assumed to have deducted the greatest amounts permissible, for its taxation year preceding the fresh start year, under sections 20, 138 and 140. [Paragraph 94.1(5)A(d). Compare paragraph 149(10)(a.1).] These amounts are added in computing the FIE's income for the

fresh start year, but appropriate deductions under these sections can be claimed for the fresh start year and subsequent taxation years. In the context of the reserve for life insurers under subsection 138(3), it is intended to amend paragraph (c) of the definition "reported reserve" in subsection 1408(1) of the Regulations so that the FIE can have a "reported reserve".

- The FIE is deemed not to have been in existence before the fresh start year for the purposes of sections 37, 65 to 66.4 and 66.7. [Paragraph 94.1(5)A(e). Compare paragraph 149(10)(c).] As a consequence, the scientific research and resource expenditure pools to which these sections refer are ignored, to the extent that these pools were generated before the fresh start year.
- The FIE is not permitted to deduct any amount under subsection 20(11) or (12) in respect of its foreign tax. [Paragraph 94.1(5)A(f).] However, foreign tax will be taken into account because the FIE's specified tax allocation (as determined under new subsection 94.1(8)) can offset amounts otherwise included in income under subsection 94.1(3).
- If the FIE is a trust, no amount is considered deductible under subsection 104(6) in determining its income for the year. [Paragraph 94.1(5)A(f).] Double taxation for the investor taxpayer is avoided through the application of new subsection 94.3(2). In addition, no deemed disposition day under subsection 104(4) is determined in respect of the trust, whether or not the FIE falls outside the restricted meaning of "trust" for this purpose under subsection 108(1).
- If the investor taxpayer is a corporation resident in Canada and the FIE is a foreign affiliate of the taxpayer, any dividends received by the FIE from a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (as determined under paragraph 95(2)(m)) are not included in the FIE's income. [Paragraph 94.1(5)A(g).] Note, that this rule does not apply in the event that the FIE's interest in the foreign affiliate is subject to the mark-to-market regime in subsection 94.2(4). However, an income inclusion resulting from the application of subsection 94.2(4) for the FIE in some cases can, however, be offset by the deduction provided under new subsection 94.3(2).
- Where the FIE has an interest in another FIE, there is no "deferral amount" taken into account in computing the FIE's income pursuant to new subsection 94.2(4). [Paragraph 94.1(5)A(h).] (The fresh start rule described above eliminates the need for a "deferral amount".)
- Participating interests in controlled foreign affiliates of the investor taxpayer (rather than controlled foreign affiliates of the FIE) are treated as "exempt interests" of the FIE. [Paragraph 94.1(5)A(i).]

A taxpayer's income allocation in respect of a participating interest in a FIE is the proportion of an entity's income for a taxation year (determined in accordance with the special rules detailed above) that the fair market value at the end of the year of the participating interest is of the fair market value at that time of all participating interests in the entity (other than rights to acquire shares of the capital stock of, or to acquire interests in, the entity).

For further details, see the related commentary on the expressions "foreign investment entity", "exempt interest" in subsection 94.1(1), as well as the commentary on subsection 94.1(5) (income allocation), subsection 94.1(7) (loss allocation) and subsection 94.1(8) (specified tax allocation).

The examples below illustrate the operation of subsections 94.1(3) and (5). It should be noted in this context that any negative amount otherwise resulting from the formula in paragraph 94.1(3)(a) is deemed to be nil as a result of the application of section 257.

Example 1

Canco owns shares in the capital stock of FIE-1, which like Canco has a calendar taxation year. Canco's income (loss) allocations for 2001, 2002, 2003, 2004 and 2005 are (100), 25, 90, (20) and 50, respectively.

Results

1. The amount included under subsection 94.1(3) in Canco's income for 2001 is nil (B = 100). The amount determined under subparagraph 94.1(3)(b)(i) for 2001 is 100, which can be carried forward to 2002.
2. The amount included under paragraph 94.1(3)(a) in Canco's income for 2002 is nil (A = 25, D = 100). The amount determined under subparagraph 94.1(3)(b)(i) for 2002 is 75, which can be carried forward to 2003.
3. The amount included under paragraph 94.1(3)(a) in Canco's income for 2003 is 15 (A = 90, D = 75). The amount determined under subparagraph 94.1(3)(b)(i) for 2003 is nil.
4. The amount included under paragraph 94.1(3)(a) in Canco's income for 2004 is nil (B = 20, D = 0). The amount deductible under paragraph 94.1(3)(b) is 15 (= the lesser of 20 and 15). The remaining $5 unused loss allocation can be carried forward to 2005.
5. The amount included under paragraph 94.1(3)(a) in Canco's income for 2005 is $45 (A = 50, D = 5).

Example 2

Canco owns shares in the capital stock of FIE-1, which like Canco has a calendar taxation year. Canco's income (loss) allocations for 2001, 2002, 2003, 2004 and 2005 are: (100), (125), (175), 300 and 150.

Results

1. The amount included under subsection 94.1(3) in Canco's income for 2001 is nil (B = 100). The amount determined under subparagraph 94.1(3)(b)(i) for 2001 is 100 (= B), which can be carried forward to 2002.
2. The amount included under paragraph 94.1(3)(a) in Canco's income for 2002 is nil (B = 125, D = 100). The amount determined under subparagraph 94.1(3)(b)(i) for 2002 is 225 (= B+D), which can be carried forward to 2003.
3. The amount included under paragraph 94.1(3)(a) in Canco's income for 2003 is nil (B = 175, D = 225). The amount determined under subparagraph 94.1(3)(b)(i) for 2003 is 400 (= B+D).
4. The amount included under paragraph 94.1(3)(a) in Canco's income for 2004 is nil (A = 300, D = 400). The amount deductible under paragraph 94.1(3)(b) is nil (= the lesser of 100 and nil). The remaining $100 unused loss allocation (= D – A) can be carried forward to 2005.
5. The amount included under paragraph 94.1(3)(a) in Canco's income for 2005 is $50 (A = 150, D = 100).

Example 3

1. Canco, FIE-1 and ABC Inc. each have taxation years that coincide with calendar years and each issue only one class of shares.
2. Canco is a corporation resident in Canada that holds 20% of the shares of the capital stock of an FIE (FIE-1).
3. FIE-1 owns 75% of the shares of the capital stock of ABC Inc.
4. ABC Inc. is not an FIE, but would be a controlled foreign affiliate of FIE-1 if FIE-1 were resident in Canada. Although ABC Inc. is a foreign affiliate of Canco, it is not a controlled foreign affiliate of Canco.
5. FIE-1 earns $5,000 in interest income in 2001. It also receives a dividend of $1,000 from ABC Inc.
6. The fair market value of FIE-1's shares in ABC Inc. increases by $6,500 in 2001. This increase in value ignores the $1,000 dividend paid from ABC Inc. (i.e., the increase in value would have been about $1,000 higher if no such dividends had been paid).

Results

1. Under subsection 94.1(3), Canco is required to include in computing income its income allocation in respect of its shares in the capital stock of FIE-1. For this purpose, FIE-1's income is generally computed as if FIE-1 were resident in Canada.
2. FIE-1's income includes the $5,000 of interest income (as per paragraph 12(1)(c)). However, the $1,000 dividend from ABC Inc. is disregarded because of paragraph 94.1(5)A(g). Because of the reference to section 91 in paragraph 94.1(5)A(a), it is not necessary to make any foreign accrual property income calculation in respect of ABC Inc.
3. Canco must therefore include $1,000 (i.e., 20% × $5,000) in computing its income by virtue of subsection 94.1(3).

Example 4

Same facts as in example 3, except that ABC Inc. is itself an FIE.

Results

1. The mark-to-market rules in section 94.2 will apply in the calculation of FIE-1's income in respect of its interest in ABC Inc.. See, in this regard, paragraph 94.1(4)(e).
2. For the purpose of computing Canco's income allocation in respect of its shares in FIE-1, FIE-1's income would include the $5,000 of interest (as per example 3), but not include any share of foreign accrual property income (as per example 3). However, FIE-1's income would include the $1,000 dividend paid in addition to its gain determined under subsection 94.2(4) in respect of its participating interest in ABC Inc. This gain so determined is $7,500, which is equal to the $6,500 increase in the value of shares plus the $1,000 dividend paid. However, for the purposes of computing Canco's income allocation, a deduction for the $1,000 dividend is permitted for FIE-1 because subsection 94.3(2) would have permitted the deduction if FIE-1 had been resident in Canada.
3. Consequently, Canco's income allocation in respect of its shares of the capital stock of FIE-1 is equal to $2,500 [i.e., ($5,000 + $7,500 + $1,000 – $1,000) × 20%)]. This amount is required to be included in computing Canco's income under subsection 94.1(3).

Related Provisions: 94.1(6) — Fresh start year; 95(2)(g.2) — Application to FAPI rules; 96(3) — Election by members of partnership.

(6) Fresh start year — For the purpose of subsection (5), the fresh start year of a foreign investment entity in respect of a taxpayer is the first taxation year of the entity

(a) that ends in a taxation year of the taxpayer that begins after 2000; and

(b) any time in which the taxpayer holds a participating interest in the entity.

Technical Notes: See under 94.1(5).

(7) Loss allocation — For the purpose of subsection (3), the loss allocation of a taxpayer in respect of a participating interest, or two or more identical participating interests, of the taxpayer in a foreign investment entity for a taxation year of the entity is the amount that would, if paragraphs (a) to (i) of the description of A in subsection (4) applied, be determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of all amounts each of which is a loss of the entity for the year from business or property;

B is the amount determined under paragraph 3(c) in respect of the entity for the year;

C is the fair market value of those interests at the end of the year; and

D is the fair market value of all participating interests in the entity (other than rights to acquire shares of the capital stock of, or interests in, the entity) at the end of the year.

Technical Notes: A taxpayer's "loss allocation" in respect of the taxpayer's participating interest in an entity is relevant for the purposes of determining the amounts deductible and included in computing income under new subsection 94.1(3) of the Act. In general, a taxpayer's loss allocation in respect of an FIE is the proportion of the FIE's net loss for the year that the fair market value of the taxpayer's participating interest in the FIE is of the fair market value of all participating interests in the FIE. More specifically, a taxpayer's loss allocation in respect of a participating interest of a taxpayer in an entity for a taxation year of the entity is determined as follows:

- ADD the entity's total losses for the year from businesses and properties,
- SUBTRACT the amount determined under paragraph 3(c) for the entity for the year (i.e., the total amount of its income from business and property and taxable capital gains in excess of allowable capital losses for the year), and
- MULTIPLY any positive remainder by the percentage that the fair market value of the interest represents of the fair market value of all participating interests in the entity (other than rights to acquire participating interests).

The determination of a taxpayer's loss allocation is subject to the same special rules that apply for the purposes of computing a taxpayer's income allocation under subsection 94.1(5) (e.g., the entity is generally deemed to be resident in Canada).

Related Provisions: 257 — Formula cannot calculate to less than zero.

(8) Specified tax allocation — For the purpose of subsection (3), the **specified tax allocation** of a taxpayer for a particular taxation year of a non-resident entity in respect of a participating interest, or two or more identical participating interests, held by the taxpayer at the end of the particular year is the total of all amounts each of which is the amount determined, in respect of a taxation year of the entity (in this subsection referred to as the "liability year") that is the particular year or a preceding taxation year, by the formula

$$A \times (B/C) \times D$$

where

A is

(a) where the liability year ends in a taxation year of the taxpayer that begins after 2000, the income or profits tax paid in the particular year by the particular entity for the liability year, and

(b) in any other case, nil;

B is

(a) where the taxpayer did not hold those interests or identical properties at the end of the liability year, nil, and

(b) in any other case, the total fair market value of those interests and identical properties that are held by the taxpayer at the end of the liability year;

C is the fair market value of all participating interests in the entity (other than rights to acquire shares of the capital stock of, or interests in, the entity) at the end of the liability year; and

D is the taxpayer's relevant tax factor (within the meaning assigned by subsection 95(1)) for the particular year.

Technical Notes: Under new subsection 94.1(3) of the Act, a taxpayer is entitled to deduct the taxpayer's specified tax allocation in computing income, provided that sufficient amounts are otherwise included under subsection 94.1(3) in computing the taxpayer's income.

A taxpayer's specified tax allocation for an entity's taxation year in respect of a participating interest in an entity is determined under subsection 94.1(8). It represents the total of the taxpayer's shares of "grossed-up" taxes paid by the entity in the entity's year in respect of the entity's liability for income or profits taxes for the entity's year and preceding taxation years of the entity. The taxpayer's share is based on the taxpayer's percentage fair market value interest in the entity at the end of each of the entity's taxation years to which the tax liability relates. The gross-up available to a taxpayer is equal to 163% for corporations and 100% for individuals, as a result of the taxpayer's share of income profits being multiplied by the relevant tax factor (2.63 for corporations and 2 for individuals).

Income or profits tax is normally expected to be tax that is paid by an entity to a foreign government. However, it could also include income tax paid to the government of Canada or a province with respect to income earned by the entity from Canadian sources. In each case, only income or profits tax payable for taxation years of entities that end in a taxation year of a taxpayer that begins after 2000 is taken into account.

The example below illustrates the operation of subsections 94.1(3) and (8).

Example

In 1998, Mireille (a resident of Canada) purchased a 30% participating interest in an entity (FIE-1) that is an FIE. The rate of foreign tax applicable to FIE-1's income is 20%. FIE-1's taxation years coincide with calendar years. For the purposes of computing Mireille's income allocation and loss allocation in respect of the interest, the income (loss) and the foreign tax of FIE-1 for taxation years 2001 to 2004 are as follows:

Year	2001	2002	2003	2004	Total
Income (loss)	$ 100,000	(120,000)**	$95,000	$130,000	$205,000
*Foreign tax paid**	$20,000	Nil	Nil	$21,000	$41,000

Notes:

* Assume foreign tax paid in the same taxation year as liability arose.

** Assume that an equivalent amount is carried forward under the laws of the relevant foreign jurisdiction to reduce FIE-1's tax liabilities after 2002.

Results

Mireille's income allocations, loss allocations and specified tax allocations are shown in the table below, as are the resulting income inclusions and deductions under subsection 94.1(3). The specified tax allocations in the table below are obtained by multiplying the related figures in the above table by 30% (Mireille's percentage interest) and 2 (specified tax factor for Mireille). For example, for 2001 Mireille's specified tax allocation is $12,000 ($20,000 × 30% × 2).

Year	2001	2002	2003	2004
A. Income allocation	$30,000	nil	$28,500	$39,000
B. Specified tax allocation	$12,000	nil	nil	$12,600
C. Loss allocation (used)	nil	$18,000	nil	nil
D. Carry-forward offset used	nil	nil	$18,000	nil
E. Loss allocation/ tax allocation to carryforward	nil	$18,000	nil	nil
Amount included in income under subsection 94.1(3) (A - B - C - D)	$18,000	nil	$10,500	$26,400
Amount deducted in computing income under subsection 94.1(3) (D + C + B – A)	nil	$18,000	nil	nil

(9) Adjusted cost base — In computing the adjusted cost base to a taxpayer of a participating interest in an entity at and after the end of a taxation year of the entity,

(a) there shall be added the amount, if any, added under subsection (3) in computing the taxpayer's income in respect of the interest for the entity's year (or that would have been so added if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75); and

(b) there shall be deducted the amount, if any, deducted under subsection (3) in computing the taxpayer's income in respect of the interest for the entity's year (or that would have been so deducted if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75).

Technical Notes: New subsection 94.1(9) of the Act provides for adjustments to the adjusted cost base (ACB) of a participating interest in an entity held by a taxpayer.

Paragraph 94.1(9)(a) provides for an addition to the ACB of a participating interest held by a taxpayer at the end of a taxation year of the entity, in respect of an amount included in computing the taxpayer's income under subsection 94.1(3) in respect of the interest and the year. Conversely, paragraph 94.1(9)(b) provides for a reduction to the ACB of a participating interest held by a taxpayer at the end of a taxation year of the entity, in respect of amounts deducted in computing the taxpayer's income under subsection 94.1(3) in respect of the interest and the year.

Related Provisions: 53(1)(m.1) — Addition to adjusted cost base; 53(2)(w) — Deduction from adjusted cost base; 87(2)(j.95) — Amalgamations — continuing corporation.

(10) Property deemed owned by an entity — Where at any time a particular entity has a significant interest in a corporation, a partnership or a non-discretionary trust, for the purposes of this section and section 94.2,

(a) the carrying value at that time of each participating interest held at that time by the particular entity in the corporation, partnership or trust (and of each debt owing to the particular entity by the corporation, partnership or trust that is investment property of the particular entity) is deemed to be nil;

(b) the property owned at that time by the corporation is deemed to be owned at that time by the particular entity and to have a carrying value at that time equal to the amount determined by the formula

$$A \times B/C$$

where

A is the carrying value of the property to the corporation at that time,

B B is the total of

(i) the fair market value at that time of the shares of the corporation owned at that time by the particular entity, and

(ii) the fair market value at that time of debts (other than debts that are not investment properties) owing at that time to the particular entity by the corporation, and

C is the total of

(i) the fair market value at that time of all the issued shares of the corporation outstanding at that time, and

(ii) the fair market value at that time of debts owing at that time by the corporation (other than debts that are not investment properties);

(c) the property owned at that time by the partnership is deemed to be owned at that time by the particular entity and to have a carrying value at that time equal to the amount determined by the formula

$$D \times E/F$$

where

D is the carrying value of the property to the partnership at that time,

E is the total of

(i) the fair market value of the interests in the partnership owned at that time by the particular entity, and

(ii) the fair market value of debts (other than debts that are not investment properties) owing at that time to the particular entity by the partnership, and

F is the total of

(i) the fair market value at that time of all interests in the partnership, and

(ii) the fair market value at that time of debts owing by the partnership (other than debts that are not investment property); and

(d) the property owned at that time by the trust is deemed to be owned at that time by the particular entity and to have a carrying value at that time equal to the amount determined by the formula

$$G \times H/I$$

where

G is the carrying value of the property to the trust at that time,

H is the total of

(i) the fair market value of the interests in the trust owned at that time by the particular entity, and

(ii) the fair market value of debts (other than debts that are not investment properties) owing at that time to the particular entity by the trust, and

I is the total of

(i) the fair market value at that time of all interests in the trust, and

(ii) the fair market value at that time of debts owing by the trust (other than debts that are not investment properties).

Technical Notes: New subsections 94.1(10) and (11) of the Act are relevant in determining whether a non-resident entity is an FIE. A non-resident entity is generally an FIE at any time if the carrying value of all of the entity's "investment property" is more than 50% of the "carrying value" of all its property at the end of the entity's taxation year that includes that time.

Where at any time an entity has a "significant interest" (as described below) in a corporation, partnership or non-discretionary trust, in determining the carrying value at that time of the entity's property, the carrying values of the entity's "participating interests" (as described in the commentary above) in the corporation, trust or partnership are deemed to be nil. Debt that is investment property (and that is owing to the entity by the corporation, partnership or trust) is also deemed to have a carrying value to the entity of nil. Instead, the entity is deemed to own the property of the corporation, trust or partnership. Each such property is deemed to have a carrying value to the entity based on the product of the property's carrying value to the corporation, trust or partnership and a percentage based on:

- the entity's percentage relative ownership (determined with reference to fair market value) of shares or interests in the corporation, partnership or trust, as the case may be, and
- the entity's percentage relative ownership (determined with reference to fair market value) in debt issued by the corporation, partnership or trust (other than debts that are not investment property), as the case may be.

Subsection 94.1(10) is intended to operate on an iterative basis. Thus, if there are tiers of entities each of which has a significant interest in the other, the intended effect of subsection 94.1(10) is to deem higher tier entities to own properties of lower tier entities on an iterative basis. For example, assume a non-resident entity (Foreignco-1) owns 100% of the shares in Foreignco-2 which in turn only owns 100% of shares in Foreignco-3 and that Foreignco-1, Foreignco-2 and Foreignco-3 have identical taxation year ends. The carrying values from properties in Foreignco-3 would, under subsection 94.1(10), become the carrying values of properties in Foreignco-2. Because subsection 94.1(10) operates on an iterative basis, the carrying value of those properties would be considered to be the carrying values of properties held by Foreignco-1.

Related Provisions: 94.1(11) — Significant interest; 94.2(2)(b) — Application of rule to s. 94.2; 94.2(9) — Tracked interests.

(11) Significant interest in an entity — For the purposes of subsection (10) and section 94.2, an entity has a **significant interest** in

(a) a corporation at any time if at that time the entity holds shares of the capital stock of the corporation

(i) that would give the entity 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) having a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the corporation;

(b) a partnership at any time if at that time the entity holds an interest in the partnership having a fair market value of 25% or more of the fair market value of all interests in the partnership; and

(c) a non-discretionary trust at any time if at that time the entity holds interests in the trust having a fair market value of 25% or more of the fair market value of all interests in the trust.

Technical Notes: New subsection 94.1(11) sets out the circumstances in which an entity is considered to have a "significant interest" in a corporation, partnership or non-discretionary trust for the purposes of subsection 94.1(10). An entity is considered to have a significant interest in a corporation, partnership, or non-discretionary trust where it holds shares or interests in the corporation, partnership or trust that have a fair market value equal to 25% or more of the fair market value of all the shares or interests in the corporation, partnership or trust and, in the case of a corporation the entity has shares entitling the entity to cast at least 25% of votes at an annual shareholders' meeting of the corporation.

The example below illustrates the operation of subsection 94.1(10).

Example

1. Jean, who resides in Canada, holds a participating interest in Foreignco, a non-resident corporation that is not a controlled foreign affiliate of Jean. Foreignco's principal activity is the carrying on of investment activities on behalf of its shareholders. Foreignco prepares its financial statements in accordance with accounting principles substantially similar to generally accepted accounting principles used in Canada.
2. The carrying values of Foreignco's assets at the end of its taxation year ending in the taxpayer's year are as follows:

guaranteed investment certificate	$10,000
shares of XYZ Inc. in which Foreignco has a significant interest	$20,000
shares of ABC Inc. in which Foreignco does not have a significant interest	$ 5,000
cash	$ 4,000
Total assets	$39,000

3. XYZ Inc. owns assets at that time that are used in the course of carrying on an active business, with a carrying value of $80,000. It also has investment property with a carrying value of $15,000.
4. The fair market value of the shares of XYZ Inc. held by Foreignco is $40,000 while the fair market value of all the issued and outstanding shares of XYZ Inc. is $100,000 at that time.

Results

1. The guaranteed investment certificate, cash, and the shares of XYZ Inc. and ABC Inc. are all investment property by virtue of the definition "investment property" in subsection 94.1(1).
2. However, since Foreignco owns a significant interest in XYZ Inc., the special look-through rule in new subsection 94.1(10) applies. Under this look-through rule the carrying value of Foreignco's shares in XYZ Inc. is deemed to be nil. Instead, Foreignco is deemed to own the property that XYZ Inc. owns.
3. The carrying value of the XYZ property deemed to be owned by Foreignco is 40% of its carrying value to XYZ, since Foreignco's percentage ownership of shares is 40%.
4. Consequently, the carrying values of the investment property of Foreignco are:

guaranteed investment certificate	$10,000
shares of XYZ Inc.	nil
shares of ABC Inc.	$ 5,000
cash	$ 4,000
investment property of XYZ Inc. (40% of $15,000)	$ 6,000
Total	$25,000

5. The total carrying value of the assets of Foreignco is:

Investment property (see above)	$ 25,000
assets of XYZ Inc. (other than investment property) (40% of $80,000)	$ 32,000
Total	$ 57,000

6. As a result, Foreignco is not an FIE because less than 50% of the carrying value of its property is investment property.

Related Provisions: 94.2(2)(b) — Application of rule to s. 94.2.

(12) Entity treated as controlled foreign affiliate — Where

(a) at a particular time in a particular taxation year of a taxpayer, the taxpayer, or a particular controlled foreign affiliate of the taxpayer, holds a participating interest in a non-resident entity,

(b) a taxation year of the entity ends at or before the end of the particular year,

(c) the principal business of the entity in the particular year is an excluded investment business or a business that is not an investment business,

(d) the entity is, at the end of the particular year, a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (as defined in paragraph 95(2)(m)),

(e) the taxpayer elects in prescribed form in the taxpayer's return of income for the particular year, and

(f) the taxpayer has not elected under this subsection in respect of the entity for any taxation year of the taxpayer that precedes the particular year,

subject to subsection (17), the entity is deemed to be a controlled foreign affiliate of the taxpayer throughout the period

(g) that begins at the earliest time in the particular year at which the entity is a foreign affiliate of the taxpayer, and

(h) that ends at the earlier of

(i) the earliest subsequent time at which the entity is not a foreign affiliate of the taxpayer, and

(ii) the end of the first subsequent taxation year of the taxpayer in which the principal business of the entity is an investment business (other than an excluded investment business).

Technical Notes: New subsection 94.1(12) of the Act permits a taxpayer to make an irrevocable election to treat its foreign affiliate (including an affiliate the shares which are held by the taxpayer's controlled foreign affiliate) as a controlled foreign affiliate for a particular taxation year and subsequent taxation years. This one-time election is available only if:

- a taxation year of the affiliate ends at or before the end of the particular year,
- the taxpayer has a "qualifying interest" (as defined in paragraph 95(2)(m)) in the affiliate, and
- the principal business of the affiliate is an excluded investment business or a business that is not an investment business (as defined in subsection 94.1(1)).

The election must be made in prescribed form in the taxpayer's tax return for the year. However, under subsection 94.1(17), the election may be rendered invalid in the event that the taxpayer cannot provide sufficient information to the Minister of National Revenue for the Minister to be able to determine amounts required to be included in the taxpayer's income under section 91. In addition, the election no longer has any effect if the corporation ceases to be a foreign affiliate of the taxpayer or once the entity's principal business is an investment business (other than an excluded investment business).

In the period during which such an election is effective, a foreign affiliate of a taxpayer is deemed to be a controlled foreign affiliate of the taxpayer. As a result, a share issued by the affiliate to the taxpayer would be an "exempt interest" under the definition in subsection 94.1(1). Sections 94.1 and 94.2 generally would not apply to the taxpayer's participating interest in the affiliate. However, the foreign accrual property income (FAPI) rules would apply and the taxpayer would be required to include in income under section 91 a percentage of any FAPI derived by the affiliate in the year. Notwithstanding an election under subsection 94.1(12), section 94.2 may still apply in the event that a taxpayer's interest in a controlled foreign affiliate is a tracked interest to which subsection 94.2(9) applies.

Related Provisions: 17(15) — Subsec. 94.1(12) ignored for CFA definition under s .17; 87(2)(j.95) — Amalgamations — continuing corporation; 94.1(16), (17) — Where demand for information not satisfied;

95(1)"controlled foreign affiliate" — CFA under 94.1(12) is a CFA for ss. 90–95; 96(3) — Election by members of partnership.

(13) Exception for qualifying dispositions and issues — For the purpose of determining whether an entity is a foreign investment entity at the end of a taxation year of the entity in which a qualifying disposition of that or another entity, or a qualifying issue of that or another entity, occurred, each investment property received by either entity as consideration for the qualifying disposition or the qualifying issue, and investment property substituted therefor, is deemed to have a carrying value of nil.

Technical Notes: New subsection 94.1(13) of the Act provides a special rule under which investment property is deemed to have a carrying value of nil.

Subsection 94.1(13) applies where there is a "qualifying disposition" (as defined in subsection 94.1(14)) or a "qualifying issue" (as defined in subsection 94.1(15)).

Related Provisions: 94.1(14) — Qualifying disposition; 94.1(15) — Qualifying issue.

(14) Qualifying disposition — For the purpose of subsection (13), a **qualifying disposition** of an entity is a transaction or part of a series of transactions or events as a consequence of which the entity disposes, to a person with whom the entity deals at arm's length, of all or substantially all of the assets used or held for the purpose of gaining or producing income from a business (other than an investment business) carried on by it.

Technical Notes: A "qualifying disposition" of an entity occurs where the entity disposes of all or substantially all of its assets used or held in a business (other than an investment business, as defined in the commentary above) in an arm's length transaction, either in a single transaction or as part of a series of transactions or events.

(15) Qualifying issue — For the purpose of subsection (13), a **qualifying issue** of an entity is an issue by the entity of a debt of, or a participating interest in, the entity to a person or partnership, otherwise than as part of a series of transactions or events that includes the disposition of a debt of, or a participating interest in, the entity (or another entity with which the entity does not deal at arm's length) by

(a) the person or partnership (or another person or partnership with which the person or partnership does not deal at arm's length);

(b) a trust in which the person or partnership (or another person or partnership with which the person or partnership does not deal at arm's length) is beneficially interested; or

(c) a partnership in which the person or partnership (or another person or partnership with which the person or partnership does not deal at arm's length) has a direct or indirect interest.

Technical Notes: A "qualifying issue" of an entity is essentially an issue to a person or partnership of a debt or participating interest, but with the qualification that a qualifying issue does not arise if the issue is part of a series of transactions or events that also includes the disposition of a debt or participating interest in the entity (or another non-arm's length entity) by the same person or partnership (or certain other non-arm's length parties). This qualification is meant to prevent the circular flow of funds from and to an entity giving rise to a "qualifying issue".

Where an entity has a "qualifying disposition" or "qualifying issue", the consideration received by the entity (cash, shares, and debt) will in most cases be "investment property", as defined in subsection 94.1(1). As a result, the entity (or another entity that has a significant interest in the entity) might otherwise become an FIE. To allow a potential grace period before an entity is classified as an FIE, investment property received as consideration received on the sale of the business or on a qualifying issue (and each investment property substituted for the investment property so received) is deemed, at the end of the taxation year in which the qualifying disposition or qualifying issue took place, to have a carrying value of nil.

(16) Demand for information — Subsection (17) applies to a taxpayer for a taxation year of the taxpayer where

(a) the Minister demands, in writing, from the taxpayer additional information for the purpose of enabling the Minister to make a determination of an amount that, but for subsection (17), would be required to be added or deducted (otherwise than under subsection 104(13)) in computing the income of the taxpayer for the year

(i) because of the application of section 91 and an election under subsection (12), or

(ii) because of the application of subsection (3) to a participating interest in an entity; and

(b) sufficient information to make the determination is not delivered to the Minister within 60 days (or within such longer period as is acceptable to the Minister) after the Minister sends the demand.

Technical Notes: New subsections 94.1(16) and (17) of the Act provide for the application of the mark-to-market rules in section 94.2 to a participating interest in an FIE, if insufficient information is available to determine amounts required to be added or deducted in a taxpayer's income in respect of the interest under subsection 94.1(3). The information required for this purpose would include a calculation of taxable capital gains from dispositions, calculated in Canadian dollars and with reference to the assumptions for the calculation of income set out in subsection 94.1(5).

If this information is not made available to the Minister on a timely basis on demand in respect of a participating interest in an entity, subsection 94.1(17) effectively provides that the rules in section 94.2, rather than the rules in section 94.1, apply in respect of the entity.

Similar rules apply in the event that insufficient information is provided to enable the appropriate calculation of a taxpayer's income arising from an election under subsection 94.1(12). The latter election would otherwise permit an affiliate to be treated as a controlled foreign affiliate. If insufficient information is provided in this context, the mark-to-market rules in section 94.2 will generally apply to the taxpayer if the affiliate is an FIE.

(17) Effect of insufficient information — Where this subsection applies to a taxpayer for a taxation year because of subsection (16), for the purpose of computing the taxpayer's income for the year and following taxation years,

(a) where paragraph (16)(a) applies because of subparagraph (16)(a)(i),

(i) the election referred to in that subparagraph is deemed not to have been made, and

(ii) subsection (3) shall not apply in respect of the foreign affiliate that was the subject of the election; and

(b) where paragraph (16)(a) applies because of subparagraph (16)(a)(ii), subsection (3) shall not apply in respect of the entity referred to in that subparagraph.

Technical Notes: See under 94.1(16).

Definitions [s. 94.1]: "adjusted cost base" — 54, 248(1); "amount", "annuity" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "carrying value" — 94.1(1), (10); "controlled foreign affiliate" — 94.1(12), 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union", "disposition", "dividend", "employee" — 248(1); "entity" — 94.1(1); "estate" — 104(1), 248(1); "excluded investment business", "exempt interest", "exempt taxpayer" — 94.1(1); "exempt foreign trust" — 94(1); "filing-due date" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign bank" — 94.1(1), 95(1); "foreign investment entity" — 94.1(1), (13); "foreign resource property" — 66(15), 248(1); "fresh start year" — 94.1(6); "income allocation" — 94.1(5); "individual", "insurance corporation" — 248(1); "investment business", "investment property" — 94.1(1); "loss allocation" — 94.1(7); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "non-discretionary trust" — 17(15), 248(1); "non-resident" — 248(1); "non-resident entity", "participating interest" — 94.1(1); "owned" — 94.1(10); "person", "personal trust", "prescribed", "property" — 248(1); "qualifying corporation" — 94.1(1); "qualifying disposition" — 94.1(14); "qualifying issue" — 94.1(15); "qualifying share" — 192(6), 248(1); "related" — 251(2)-(6); "relevant tax factor" — 95(1); "resident in Canada" — 250; "share", "shareholder" — 248(1); "significant interest" — 94.1(11); "specified tax allocation" — 94.1(8); "taxable income" — 248(1); "taxation year" — 94.1(1), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

94.2 Foreign Investment Entities — Mark-to-market — (1) Definitions — In this section,

(a) the definitions in subsection 94.1(1) apply;

(b) subject to subsections (6) and (13) to (17), **"deferral amount"** of a taxpayer in respect of a participating interest in an entity means the positive or negative amount determined by the formula

$$A \times (B - C)$$

where

A is

(i) if on June 22, 2000 the interest was capital property held by the taxpayer, 2/3, and

(ii) in any other case, 1,

B is

(i) the fair market value of the interest at the first time in a particular taxation year of the taxpayer at which the taxpayer was resident in Canada where

(A) the taxpayer held the interest at the end of the preceding taxation year,

(B) at the end of that preceding year, the taxpayer was resident in Canada or the interest was taxable Canadian property,

(C) subsection (4) did not apply to the taxpayer for the purpose of computing the taxpayer's income in respect of the interest for any preceding taxation year, and

(D) subsection (4) applies to the taxpayer for the purpose of computing the taxpayer's income in respect of the interest for the particular year, and

(ii) nil in any other case, and

C is

(i) if subparagraph (i) of the description of B applies in respect of the interest, the cost amount of the property immediately before the first time in the particular year at which the taxpayer was resident in Canada, and

(ii) nil in any other case; and

Related Provisions [para. 94.2(1)(b)]: 94.2(16)(c) — Deferral amount on fresh start re tax-exempt entity; 94.2(17) — Deferral amount on superficial disposition.

(c) **"gross-up factor"** for a deferral amount is

(i) if the amount determined for A in respect of the deferral amount is 2/3, 3/2, and

(ii) in any other case, 1.

Technical Notes: New section 94.2 of the Act sets out new rules for the taxation of interests in FIEs.

Except as otherwise indicated, section 94.2 applies to taxation years of investors that begin after 2000.

New subsection 94.2(1) of the Act provides that the definitions in subsection 94.1(1) apply for the purposes of section 94.2.

Subsection 94.2(1) also sets out the definitions "deferral amount" and "gross-up factor".

The deferral amount of a taxpayer generally represents the gain or loss (or, in the event that the interest was capital property held by the taxpayer on June 22, 2000, two-thirds of the gain or loss) in respect of the interest accrued to the time when the interest first became subject to the operation of the rules in section 94.2. The expression "deferral amount" in respect of a participating interest in an entity applies principally for the purpose of determining the value of D in the formula set out in subsection 94.2(4). Subsection 94.2(4) generally provides for the recognition of a deferral amount in respect of a participating interest on the disposition of the interest. Because of subsection 94.2(2), identical participating interests are considered to be disposed of in the order in which they were acquired.

For participating interests in FIEs acquired after 2000, each deferral amount will be nil in the typical cases where the rules in section 94.2 apply to a taxpayer's interest in an FIE for the year in which the interests were acquired.

The deferral amount is calculated, in conjunction with subsections 94.2(5) and subsection 128.1(4), so that gains and losses accruing while a taxpayer is not resident in Canada are ignored for the purposes of section 94.2, except in the unusual case where an interest in an FIE is taxable Canadian property.

Additional rules affecting the calculation of the deferral amount are contained in subsections 94.2(6) and (13) to (17), as described in the commentary below.

The "gross-up factor" for a deferral amount is 1, except where the 2/3 factor is relevant in computing the deferral amount. In the latter case, the "gross-up factor" is the reciprocal of the 2/3 factor (i.e., 3/2). For detail on the relevance of this definition, see the commentary on subsection 94.2(11).

(2) Rules of application — For the purposes of this section

(a) identical participating interests held by a taxpayer are deemed to be disposed of in the order in which they were acquired by the taxpayer, determined without reference to any other provision of this Act; and

(b) subsections 94.1(10) and (11) apply.

Technical Notes: New subsection 94.2(2) of the Act provides rules of application for the purpose of section 94.2.

Paragraph 94.2(2)(a) provides that identical properties held by a taxpayer are deemed to be disposed of in the order in which they were acquired by the taxpayer. For this purpose, paragraph 94.2(2)(a) makes it clear that the various acquisitions that are deemed to occur under the Act (e.g., section 47) are not to be taken into account. This measure is relevant primarily for the purpose of determining the amount added or deducted from a taxpayer's income under subsection 94.2(4), especially with reference to the "deferral amount" referred to in the description of D in paragraph 94.2(4)(a).

Paragraph 94.2(2)(b) provides that the rules in subsections 94.1(10) and (11) (look-through rule for significant interests) also apply for the purposes of section 94.2. This measure is

significant for the purposes of applying subsection 94.2(9) (tracked interests).

Related Provisions: 94.3(1) — Rule in 94.2(2)(a) applies to s. 94.3; 95(2)(g.2)(xi), (xii) — Application to FAPI rules; 104(4.1) — Mark-to-market property can be capital property for trust's 21-year deemed disposition.

(3) Where mark-to-market method applies — Subject to paragraph (5)(b), this subsection applies to a taxpayer throughout a taxation year in respect of a participating interest held in the year by the taxpayer in a non-resident entity where

(a) subsection (9) or (10) applies to the taxpayer for the year in respect of the interest; or

(b) both

(i) subsection 94.1(2) applies to the taxpayer for the year in respect of the interest, and

(ii) because of subsection 94.1(4), subsection 94.1(3) does not apply to the taxpayer for the year in respect of the interest.

Technical Notes: Subsection 94.2(3) of the Act sets out those circumstances where, subject to paragraph 94.2(5)(b), subsection 94.2(3) applies to a taxpayer in respect of a participating interest in a non-resident entity. For the mark-to-market regime in subsection 94.2(4) to apply for a taxation year, subsection 94.2(3) must apply for the year.

For subsection 94.2(3) to apply to a taxpayer throughout a taxation year in respect of a participating interest in a non-resident entity, either:

- Subsection 94.1(2) applies to the taxpayer for the year in respect of the interest, but not result in the application of the accrual regime under subsection 94.1(3) because of the application of subsection 94.1(4). (For details, see the commentary on subsections 94.1(2) and (4).); or
- Subsections 94.2(9) (tracked interests) or 94.2(10) (foreign insurance policies) apply to the taxpayer for the year in respect of the interest.

Where subsection 94.2(3) applies to a participating interest in an FIE, paragraph 94.2(4)(a) requires a taxpayer to include in computing income, in respect of the interest, any positive amount resulting from the operation of the formula set out in paragraph 94.2(4)(a). Under paragraph 94.2(4)(b), the absolute value of any negative amount resulting from the operation of the same formula may be deducted in computing the taxpayer's income. (Note, however, that losses in respect of foreign insurance polices are denied because of subparagraph 94.2(4)(b)(i). Instead, as described below, the denied losses are carried forward to offset later income inclusions.)

The amount determined under the formula for a taxpayer's taxation year in respect of a participating interest in an FIE is computed as follows:

- [A] ADD the proceeds of disposition in the year from any disposition by the taxpayer in the year of the interest (other than a disposition arising from the application of subsection 128.1(4) or 149(10), given that the value of B would take into account the fair market value of the interest at the time of such deemed dispositions);
- [B] where the taxpayer held the interest at the end of the year, ADD the fair market value of the interest at that time (determined before taking into account the FIE's liability in respect of any amount payable from the FIE in respect of the interest);
- [C] ADD the total payments received by the taxpayer in the year from the FIE, other than payments included in the value of A;
- [D] where the taxpayer so elects for a year during which the taxpayer did not dispose of the interest, ADD any positive deferral amount in respect of the interest;
- [D] where the taxpayer disposed of the interest in the year and the election referred to above has not been previously made, ADD the deferral amount in respect of the interest; [The value of D will reduce the amount determined under the formula in the event that the deferral amount is a negative amount.]
- [E] SUBTRACT the cost of the interest on any acquisition in the year of the interest (disregarding acquisitions arising because of the application of subsection 128.1(4) or 149(10), given that these acquisitions are taken into account in the value of F);
- [F] where the taxpayer held the interest at the beginning of the year, SUBTRACT the fair market value of the interest; and
- [G] in the case of a foreign insurance policy to which subsection 94.2(3) applies because of the operation of new subsection 94.2(10), SUBTRACT any loss denied for the preceding year because of the operation of subparagraph 94.2(4)(b)(i).

Ignoring the descriptions of D and G, the formula in paragraph 94.2(4)(a) in effect determines the net increase or decrease in the fair market value of a taxpayer's participating interest in an FIE for a taxation year.

The value of D represents a taxpayer's accrued gain or loss when a participating interest first becomes subject to section 94.2. The amount of this accrued gain or loss (or two-thirds of it, in the event so provided in the definition "deferral amount" in paragraph 94.2(1)(b)) is included in computing income under the description of D, but only for the taxation year in which the interest is disposed of unless the taxpayer elects for earlier recognition of a positive deferral amount. (An earlier recognition of a positive deferral amount may be beneficial for a taxpayer, particularly where section 94.3 applies.) Where the taxpayer is a trust, a disposition may occur as a consequence of the application of the 21-year deemed disposition rule. See, in this regard, new subsection 104(4.1).

Related Provisions: 39(1)(a)(ii.3) — Property excluded from capital gain calculation; 70(3.1) — Property excluded from "rights or things" calculation on death; 70(5.2)(e) — Deemed disposition on death; 85(1.1)(g)(ii.1) — Property excluded from s. 85 rollover eligibility; 94.2(4) — Application of mark-to-market rule; 94.2(9) — Tracked interests; 94.2(10) — Treatment of foreign insurance policies; 104(4.1) — Mark-to-market property can be capital property for trust's 21-year deemed disposition; 248(1)"inventory" — Property under 94.2(3) excluded from definition of inventory.

(4) Mark-to-market — Where subsection (3) applies to a taxpayer throughout a taxation year in respect of a participating interest in a non-resident entity, in computing the taxpayer's income for the year in respect of the interest

(a) there shall be added the positive amount, if any, determined by the formula

$$(A + B + C + D) - (E + F + G)$$

where

A is the total of all amounts each of which is the taxpayer's proceeds from a disposition of the interest in the year (other than a disposition deemed to arise because of subsection 128.1(4) or 149(10)),

B is

(i) if the taxpayer held the interest at the end of the year, the fair market value of the interest at that time (determined before taking into account any amount payable at the end of the year from the entity in respect of the interest), and

(ii) in any other case, nil,

C is the total of all amounts (other than an amount to which the description of A applies) received by the taxpayer in the year from the entity in respect of the interest,

D is

(i) the taxpayer's deferral amount in respect of the interest, if

(A) the deferral amount is a positive amount,

(B) the interest was not disposed of by the taxpayer in the year, and

(C) the taxpayer elects in respect of the interest in prescribed form filed with the Minister not later than the taxpayer's filing-due date for the year,

(ii) the taxpayer's deferral amount in respect of the interest if

(A) the taxpayer disposed of the interest in the year, and

(B) no election was made under subparagraph (i) in respect of the interest by the taxpayer for a preceding taxation year, and

(iii) in any other case, nil,

E is the total of all amounts each of which is the cost at which the taxpayer acquired the interest in the year (otherwise than because of an acquisition deemed to arise because of subsection 128.1(4) or 149(10)),

F is

(i) if the taxpayer held the interest at the beginning of the year, the fair market value of the interest at that time (determined before taking into account any amount payable at that time from the entity in respect of the interest), and

(ii) in any other case, nil, and

G is

(i) if the interest was deemed by paragraph (10)(a) to be a participating interest in an entity for the preceding taxation year of the taxpayer, the amount that would be deductible under paragraph (b) in computing the taxpayer's income for that preceding year in respect of the interest if this subsection were read without reference to subparagraph (b)(i), and

(ii) in any other case, nil; and

(b) there may be deducted

(i) if the interest was deemed by paragraph (10)(a) to be a participating interest in an entity for the year, nil, and

(ii) in any other case, the absolute value of the negative amount, if any, determined by the formula in paragraph (a).

Technical Notes: The example below illustrates the operation of subsection 94.2(4).

Example

1. Leonard acquires a 1% interest in ABC Inc. in 1999 for $500. On June 22, 2000, it is capital property to Leonard. ABC Inc. is not an FIE in respect of the taxpayer at any time before 2003.
2. ABC Inc. becomes an FIE during 2003 and Leonard does not elect under subsection 94.1(4) to have the rules in section 94.1 apply. Leonard's interest in ABC Inc. does not qualify as an "exempt interest".
3. The fair market values of Leonard's participating interest at the beginning and at the end of year 2003 are $800 and $1,000 respectively.
4. Leonard disposes of his shares just before the end of 2004 for $1,200. ABC Inc. does not make any distributions to Leonard during his period of ownership.

Results

1. No amount is included in Leonard's income for 2001 and 2002 under either section 94.1 or 94.2. For 2003, Leonard is required to include $200 in income under the formula in paragraph 94.2(4)(a).
2. The $200 inclusion is determined as follows:
   - "A" is nil, since no participating interest in ABC Inc. is disposed of in 2003,
   - "B" is $1,000, the fair market value of the participating interest at the end of 2003,
   - "C" is nil since no payments are received in 2003,
   - "D" is nil since no participating interest is disposed of in 2003 and no election was otherwise made,
   - "E" is nil since no participating interest in ABC Inc. is acquired in 2003, and
   - "F" is $800, the fair market value of the participating interest at the beginning of 2003.
3. Although Leonard's participating interest has appreciated by $500 since the time of its acquisition, only $200 is required to be included in income under section 94.2 for 2003.
4. For 2004, the amount included in income under subsection 94.2(4) is $400, computed as follows:
   - "A" is $1,200, the proceeds of disposition of the participating interest,
   - "B" is nil since Leonard does not own any participating interest in ABC Inc. at the end of 2004,
   - "C" is nil since no payments or distributions were received in 2004,
   - "D" is $200, the deferral amount in respect of the interest — the "deferral amount" is two-thirds [The two-third factor applies because Leonard's interest in ABC Inc. is capital property held by Leonard on June 22, 2000.] of the amount by which $800 (the fair market value of the interest at the beginning of 2003 which is the first year in respect of which section 94.2 applies to the interest) exceeds $500 (the cost amount of the interest),
   - "E" is nil since no participating interest in ABC Inc. is acquired in 2004, and
   - "F" is $1,000, the fair market value of the participating interest at the beginning of 2004.

Related Provisions: 70(5.2)(e)(ii) — Taxpayer deemed not to hold property on death; 94.2(5) — Non-resident periods excluded; 94.2(10) — Treatment of foreign insurance policies; 94.2(11) — Change of status of entity; 94.2(12) — Cost of participating interest; 94.2(15) — Fresh start after emigration; 94.3(2)(a)(ii) — Prevention of double taxation; 96(3) — Election by members of partnership; 257 — Formula cannot calculate to less than zero.

(5) Non-resident periods excluded — Where a taxpayer is non-resident at any time in a taxation year

(a) for the purpose of subsection (4) (other than the description of D in paragraph (4)(a)), the year is deemed to be the period, if any, that begins at the first time in the year at which the taxpayer is resident in Canada and ends at the last time in the year at which the taxpayer is resident in Canada;

(b) except for the purposes of subsection (4) and paragraph (c), subsection (3) does not apply to the taxpayer at that time; and

(c) if the taxpayer is an individual who was non-resident throughout a particular period that is within the period described in paragraph (a), at any time in the particular period, the individual holds a participating interest in a non-resident entity and subsection (3) applies to the individual throughout the particular period in respect of the interest,

(i) for the purposes of section 114, the income or loss of the individual in respect of the interest for the particular period shall be determined without reference to this section, and

(ii) in computing the amount determined under paragraph 114(a) in respect of the individual for the year

(A) there shall be deducted any amount that would be included under paragraph (4)(a) in computing the individual's income in respect of the interest for the particular period if

(I) the value of D in paragraph (4)(a) were nil, and

(II) the particular period were a taxation year, and

(B) there shall be added any amount that would be deductible under paragraph (4)(b) in computing the individual's income in respect of the interest for the particular period if

(I) the value of D in paragraph (4)(a) were nil, and

(II) the particular period were a taxation year.

Technical Notes: New subsection 94.2(5) of the Act provides special rules dealing with the application of section 94.2 for a taxation year to persons who are not resident in Canada throughout the year.

Under paragraph 94.2(5)(a), the amounts determined under section 94.2 are generally determined as if the taxation year of such a taxpayer excludes the period in the year during which the taxpayer is not resident in Canada. This rule, in conjunction with section 128.1, generally ensures that the increases and decreases in fair market values that are relevant in determining income inclusions and deductions under section 94.2 are the increases and decreases occurring while the taxpayer is resident in Canada. However, this rule does not affect the calculation of the taxpayer's deferral amount: paragraph 94.2(1)(b) (in conjunction with subsection 128.1(1)) already ensures that gains or losses accruing prior to becoming resident in Canada are not taken into account for the purposes of computing a taxpayer's deferral amount in respect of a participating interest in an FIE, except in the unusual case where the FIE interest is taxable Canadian property.

Paragraph 94.2(5)(a) also ensures that subsection 94.2(4) does not apply to a taxpayer for a taxation year throughout which the taxpayer is not resident in Canada.

Under paragraph 94.2(5)(b), subsection 94.2(3) generally does not apply to a taxpayer at a particular time if the taxpayer is not resident in Canada at the particular time. This has relevance for the purposes of a number of new provisions, including subparagraph 39(1)(a)(ii.3). This subparagraph has the effect of excluding, from a taxpayer's capital property, a property in respect of which subsection 94.2(3) applies and is intended to ensure that there is no double taxation with respect to the same economic gain. Paragraph 94.2(5)(b) thus ensures that a non-resident taxpayer cannot claim that a taxable Canadian property consisting of an FIE interest is not capital property on the basis of subparagraph 39(1)(a)(ii.3). (Note: non-resident taxpayers are generally subject to tax on taxable capital gains from their dispositions of taxable Canadian properties.)

Paragraph 94.2(5)(c) applies in the unusual case where an individual changes his or her Canadian residence status more than once in the same calendar year. For example, an individual might leave Canada near the beginning of a calendar year but return later in the same year. In the event that such an individual is considered not to reside in Canada during a period in the calendar year, the individual's period of non-residence would be included within the individual's taxation year and the rule in paragraph 94.2(5)(a) would have no effect. In order to not tax gains accrued while an individual was non-resident and to not provide relief for losses accrued during the same period, paragraph 94.2(5)(c) provides:

- for the purposes of section 114, the individual's income or loss from the individual's period of non-residence is determined without reference to section 94.2, and
- in computing the individual's taxable income under section 114,
  - — there is deducted the fair market value appreciation of an interest in an FIE to which subsection 94.2(4) applies during the non-resident period (this fair market value appreciation would be reflected in the amount determined under subsection 94.2(4) in computing the taxpayer's income), and
  - — there is added the fair market value decline of an interest in an FIE to which subsection 94.2(4) applies during the non-resident period (this fair market value decline would be reflected in the amount determined under subsection 94.2(4) in computing the taxpayer's income).

The example below illustrates the operation of paragraph 94.2(5)(c).

Example

Bernard emigrates from Canada on February 1, 2001 in order to start permanent employment elsewhere. After the position does not work out, he returns to Canada on December 1, 2001. Bernard owns an interest in an FIE to which section 94.2 applies. The fair market value of the interest in 2001 is $100 (January 1, 2001), $105 (February 1, 2001), $108 (December 1, 2001) and $107 (December 31, 2001). It is assumed that Bernard establishes that he did not reside in Canada from February 1, 2001 to December 1, 2001.

Results

1. Under section 94.2(4), the amount included in computing Bernard's income for 2001 is equal to $7 (B = 107, F = 100).
2. Paragraph 94.2(5)(c) permits a deduction for the purposes of paragraph 114(a) equal to $3 (i.e., $108 – $105) equal to the appreciation in the fair market value of the interest while Bernard was not resident in Canada. As a consequence, Bernard's taxable income in respect of the FIE interest for 2001 is equal to $4 (i.e., $7 minus $3).

Related Provisions: 95(2)(g.2)(x) — Application to FAPI rules.

(6) Foreign partnership — member becoming resident — Where, at a particular time in a fiscal period of a partnership, a person resident in Canada becomes a member of the partnership, or a person who is a member of the partnership becomes resident in Canada and immediately before the particular time no member of the partnership is resident in Canada,

(a) all amounts determined under this section shall be determined as if that period began at the first time in that period at which a member of the partnership was resident in Canada;

(b) for the purpose of the definition "deferral amount" in paragraph (1)(b), as it applies in respect of dispositions that occur after the particular time and before the first subsequent time to which this

subsection applies in respect of the partnership, subsection (4) is deemed not to have applied to the partnership for any preceding fiscal period; and

(c) where, but for this paragraph, a negative deferral amount would be determined in respect of a participating interest held by the partnership immediately before the particular time, the deferral amount in respect of the interest is deemed to be nil.

Technical Notes: New subsections 94.2(6) to (8) of the Act provide special rules for partnerships having non-resident members. These subsections are analogous to rules in existing subsections 96(8) and (9) and are designed, in general terms, to prevent partnership losses that accrue while no partnership member is resident in Canada from being used in Canada. A further rule for partnership members is set out in new subsection 96(1.9).

More specifically, subsection 94.2(6) applies where a partnership begins to have members who reside in Canada. Under subsection 94.2(7), a corresponding rule applies in a similar fashion where a partnership ceases to have members who reside in Canada. In either case, for the purposes of determining amounts under section 94.2 portions of the fiscal period of the partnership in which no member is resident in Canada will generally be disregarded.

Where subsection 94.2(6) applies to a partnership at any time, the deferral amount for an FIE interest held by the partnership immediately before that time is computed with reference to the fair market value and the cost amount of the interest. However, if a negative deferral amount is otherwise determined with respect to the interest, the deferral amount is deemed to be nil.

Related Provisions: 94.2(8) — Application — anti-avoidance and partnership look-through rules.

(7) Foreign partnership — members ceasing to be resident — Where, at a particular time in a fiscal period of a partnership, a person resident in Canada ceases to be a member of the partnership, or a person who is a member of the partnership ceases to be resident in Canada and immediately after the particular time no member of the partnership is resident in Canada, all amounts determined under this section shall be determined as if that period ended at the last time in that period at which a member of the partnership was resident in Canada.

Technical Notes: As a consequence of subsections 94.2(6) and (7), amounts added or deductible under subsection 94.2(4) for a partnership in respect of an FIE interest will generally reflect increases or decreases in fair market value while the partnership has members resident in Canada. However, once the interest is disposed of, an amount reflecting gains accruing before any member became resident in Canada will be recognized because of the application of subsection 94.2(4).

Related Provisions: 94.2(8) — Application — anti-avoidance and partnership look-through rules.

(8) Application of subsecs. (6) and (7) — For the purposes of applying subsections (6) and (7) and this subsection,

(a) where it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (6) or (7), the member is deemed not to be resident in Canada; and

(b) where a particular partnership is a member of another partnership at any time,

(i) each person or partnership that is at that time a member of the particular partnership is deemed to be a member of the other partnership at that time,

(ii) each person or partnership that becomes at that time a member of the particular partnership is deemed to become a member of the other partnership at that time, and

(iii) each person or partnership that ceases at that time to be a member of the particular partnership is deemed to cease to be a member of the other partnership at that time.

Technical Notes: Subsection 94.2(8) contains an anti-avoidance rule, which is aimed at preventing the insertion of nominal Canadian resident partners for tax planning purposes. This rule is parallel to the rule in existing subsection 96(9).

Subsection 94.2(8) also contains a look-through rule. It allows for the look-through of one or more tiers of partnerships for the purposes of determining whether a person is a member of a partnership.

Related Provisions: 96(9) — Parallel rule for foreign partnerships.

(9) Tracked interests — Subject to paragraph (5)(b), subsection (3) applies to a taxpayer throughout a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity where

(a) the taxpayer holds the interest at any time in the particular year;

(b) a taxation year of the entity ends at or before the end of the particular year;

(c) the taxpayer is not an exempt taxpayer for the particular year;

(d) the entitlement to receive payments from the entity in respect of the interest (or its fair market value) is determined primarily by reference to production, revenue, profit or cash flow from, the fair market value or the use of, or any similar criterion in respect of, a property or group of properties (each of which is referred to in paragraphs (e) and (f) as a "tracked property");

(e) at the end of the latest of the entity's taxation years described in paragraph (b), the tracked properties

(i) are not all of the properties that would be owned by the entity if this Act were read without reference to subsection 94.1(10), or

(ii) include properties that would not be owned by the entity if this Act were read without reference to subsection 94.1(10); and

(f) either

(i) at the end of the latest of the entity's taxation years described in paragraph (b), the total of all amounts each of which is

(A) the carrying value of an investment property that is a tracked property owned at the end of that year by the entity, or

(B) an amount that would, if this Act were read without reference to paragraph 94.1(10)(a), be the carrying value of a tracked property that is

(I) owned at the end of the year by the entity,

(II) deemed by paragraph 94.1(10)(a) to have a carrying value of nil, and

(III) either a participating interest in a foreign investment entity or indebtedness owing by a foreign investment entity,

exceeds one-half of the total of

(C) all amounts each of which is the entity's carrying value of a tracked property owned by it at the end of that year, and

(D) the carrying value (determined without reference to paragraph 94.1(10)(a)) of a tracked property to which subclauses (B)(I) to (III) apply, or

(ii) at the end of the latest of the entity's taxation years described in paragraph (b)

(A) the entity, or another non-resident entity, owns an investment property (other than a tracked property owned by the entity), and

(B) it is reasonable to conclude that the production, revenue, profit or cash flow from the investment property, the increase in the fair market value of the investment property, or any other return on the investment property based on a similar criterion, is intended to enable the entity to satisfy all or part of an entitlement referred to in paragraph (d).

Technical Notes: New subsection 94.2(9) of the Act is an anti-avoidance rule intended to prevent the circumvention of sections 94.1 and 94.2 through the creation of "tracked interests" in entities that are not FIEs or through the creation of an interest in an FIE that would otherwise be an "exempt interest". Where subsection 94.2(9) applies with regard to a "tracked interest" for a taxation year, the mark-to-market regime in section 94.2(4) applies to a taxpayer for that year.

A participating interest held by a taxpayer in a particular non-resident entity in a taxation year is a "tracked interest" in the particular entity for a particular taxation year of the taxpayer where:

- a taxation year of the particular entity ended at or before the end of the particular year (the latest of which taxation years is referred to below as the "specified year"); [Paragraph 94.2(9)(b).]
- the taxpayer is not an exempt taxpayer for the particular year (see commentary on definition "exempt taxpayer" in subsection 94.1(1)); [Paragraph 94.2(9)(c).]
- the entitlement to receive payments from the particular entity in respect of the participating interest (or its fair market value) is determined primarily by reference to production, revenue, profit or cash flow from, the fair market value or the use of, or any other similar criterion in respect of, a property or group of properties (referred to below as the "tracked properties"); [Paragraph 94.2(9)(d).]
- in the event that all of the tracked properties are properties owned by the particular entity, they do not comprise the totality of the entity's properties. [Paragraph 94.2(9)(e).] (Note: the deemed ownership rule in subsection 94.1(10) is ignored for the purpose of determining whether this condition is satisfied.);
- either
  - — the entity (or any other non-resident entity) owns an investment property (other than a tracked property owned by the entity) and it is reasonable to conclude that the production, revenue, profit or cash flow from that investment property, the increase in the fair market value of that investment property or any other return based on a similar criterion is intended to enable the entity to satisfy all or part of an entitlement in respect of a tracked interest, [Paragraph 94.2(9)(f)(ii).]] or
  - — in general terms, the total carrying value of investment property owned by the entity that is included in the tracked properties is more than one-half of the total carrying value of all property owned by the entity that is included in the tracked properties. [Paragraph 94.2(9)(f)(i).]

More specifically, for the purpose of determining the above totals, the carrying value of investment property owned by an entity included in the tracked properties as of the end of the specified year is determined as follows:

- ADD the carrying value of investment property included in the tracked properties and owned by the particular entity (determined with reference to the definition "investment property" and the deemed ownership rule in subsection 94.1(10)); and
- ADD the carrying value (determined without reference to subsection 94.1(10)) of specified investment property owned by the particular entity and included in the tracked properties. The investment property so specified is the property that would otherwise have a deemed cost of nil under paragraph 94.1(10)(a) and that is either a participating interest in an FIE or indebtedness owing by an FIE. (The specified investment property represents debt or equity interests in entities in which the particular entity has a "significant interest", as defined by subsection 94.1(11).)

For the same purpose, the total carrying value of the total property included in the tracked properties is determined as of the end of the specified taxation year of the particular entity in the following manner:

- ADD the carrying value of each property owned by the particular entity that is included in the tracked properties. (This determination is made with reference to the look-through rule in subsection 94.1(10).); and
- ADD the carrying value (determined without reference to subsection 94.1(10)) of specified investment property referred to above.

It should be noted that tracked properties can include any property, whether or not owned by a taxpayer or a related group of which the taxpayer is a part. For example, if the fair market value of shares issued by a non-resident entity is tracked to the world-wide price of gold bullion, the tracked properties in question would be the world-wide supply of gold bullion. Whether subsection 94.2(9) applies or not in this case would typically depend on whether subparagraph 94.2(9)(f)(ii) applies to the non-resident entity.

It should also be noted that there is no exemption under subsection 94.2(9) with regard to an "exempt interest" (as defined in subsection 94.1(1)) in a non-resident entity. Thus, the mark-to-market rules can apply to a taxpayer in respect of shares of the capital stock of a controlled foreign affiliate of the taxpayer.

Related Provisions: 91(1) — Tracked shares ignored for FAPI income inclusion.

(10) Treatment of foreign insurance policies — Where, in a particular taxation year of a taxpayer (other than an exempt taxpayer for the particular year), the taxpayer holds a particular interest in an insurance policy that was neither issued in the course of carrying on an insurance business in Canada, the income from which is subject to tax under this Part, nor entered into solely in respect of risks that relate to activities occurring outside Canada or losses in respect of tangible property ordinarily situated outside Canada,

(a) subject to paragraph (b),

(i) for the purposes of applying subsections (3) and (4) and paragraph (d.1) of the definition "specified foreign property" in subsection 233.3(1) to the taxpayer in respect of the particular interest for the particular year,

(A) the particular interest is deemed at each time throughout the particular year that it is held by the taxpayer to be a participating interest in a non-resident entity,

(B) subject to paragraph (5)(b), subsection (3) is deemed to apply to the taxpayer throughout the particular year in respect of the particular interest, and

(C) the value of D in paragraph (4)(a) is deemed to be nil, and

(ii) section 12.2, paragraphs 56(1)(d) and (j) and 60(a) and (s) and sections 138 and 138.1 do not apply in respect of the particular interest for the purpose of computing the taxpayer's income for the year;

(b) paragraph (a) does not apply to an individual for a taxation year in respect of a policy an interest in which was acquired by the individual more than five years before the individual became resident in Canada unless, after the day that is five years before the day that the individual became resident in Canada, the individual paid premiums in respect of the policy that are in excess of the level that can reasonably be considered to have been contemplated at the time the first interest in the policy was acquired;

(c) an interest in an insurance policy is deemed to have been disposed of by a person at the end of a taxation year of the person for proceeds of disposition equal to its fair market value at that time where

(i) paragraph (a) did not apply to the person in respect of the interest for the year,

(ii) the person held the interest at the end of the year, and

(iii) paragraph (a) applies to the person in respect of the interest for the person's following taxation year;

(d) an interest in an insurance policy is deemed to have been acquired by a person at the beginning of a taxation year of the person at a cost equal to its fair market value at that time where

(i) paragraph (a) does not apply to the person in respect of the interest for the year,

(ii) the person held the interest at the beginning of the year, and

(iii) paragraph (a) applied to the person in respect of the interest for the person's preceding taxation year; and

(e) for the purposes of this subsection and subsection (4), the fair market value of an interest in an insurance policy, the proceeds of disposition of an interest in an insurance policy and amounts paid to a beneficiary in respect of an interest in an insurance policy shall each be determined without reference to benefits paid, payable or anticipated to be payable, under the policy as a consequence only of a death, sickness, disability or prescribed event.

Technical Notes: New subsection 94.2(10) of the Act sets out the treatment under section 94.2 of an interest in a foreign insurance policy. For this purpose, a foreign insurance policy is one that is neither

- issued by an insurer in the course of carrying on business in Canada the income from which is subject to tax under Part I, nor
- entered into solely in respect of risks that relate to activities occurring outside Canada or losses in respect of tangible property ordinarily situated outside Canada.

Paragraph 94.2(10)(a) generally provides that, where a taxpayer (other than an exempt taxpayer) holds an interest in such an insurance policy, for the purposes of subsections 94.2(3) and (4) (and a corresponding foreign property reporting rule in subsection 233.3(1)) the particular interest is deemed to be a participating interest in a non-resident entity to which the mark-to-market rules in subsection 94.2(4) apply. However, the mark-to-market regime under subsection 94.2(4) applies differently to insurance policies in two respects. First, no deferral amount is calculated with regard to insurance policies. Second, losses are not deductible, but instead can be used to offset future income amounts otherwise arising under subsection 94.2(4). (As to the treatment of losses, see the commentary on subsection 94.2(4).) Paragraph 94.2(10)(a) also provides that, where the mark-to-market rules apply to an insurance policy, the other rules in the Act with regard to the taxation of insurance products do not apply.

Under paragraph 94.2(10)(b), paragraph 94.2(10)(a) does not apply in connection with a policy an interest in which was acquired more than five years before a taxpayer became resident in Canada. However, this exception does not apply if premiums in excess of the level originally contemplated under the policy have been paid within 5 years of the policyholder becoming resident in Canada or while the policyholder was resident in Canada.

In the event that an insurance policy is subject to paragraph 94.2(10)(a) for one taxation year but not subject to that paragraph for the preceding year, paragraph 94.2(10)(c) provides that the taxpayer is deemed, at the end of the preceding year, to have disposed of the taxpayer's interest in the insurance policy at its fair market value (determined with reference to paragraph 94.2(10)(e)).

In the event that an insurance policy is subject to paragraph 94.2(10)(a) for one taxation year but not subject to that paragraph for the following year, paragraph 94.2(10)(d) provides that the taxpayer is deemed, at the beginning of the following year, to have acquired the taxpayer's interest in the insurance policy at its fair market value (determined with reference to paragraph 94.2(10)(e)).

Paragraph 94.2(10)(e) provides that the fair market value of an interest in an insurance policy and other relevant amounts are determined without reference to benefits paid, payable and anticipated to be payable under the policy only as a consequence of a death, sickness, disability or other prescribed event. (Note: Presently, it is not anticipated that events will be prescribed for this purpose.)

Example

Assume that David, a long-term resident of Canada, pays premiums of $10,000 to an offshore insurer for a life insurance policy. The policy's cash surrender value is $9,000 and $10,700 at the end of 2002 and 2003 (respectively).

Results

1. For 2002, no amount is determined under paragraph 94.2(4)(a) because the cost of the policy exceeds the fair market value at the end of 2002.
2. No loss is permitted to be claimed under paragraph 94.2(4)(b). The amount of the denied loss is equal to $1,000.
3. For 2003, the amount included in income under paragraph 94.2(4)(a) is $700 (= $10,700 ("B"), minus $9,000 ("F"), minus $1,000 ("G")).
4. It should be noted, however, that it is possible that the fair market value could be higher that a policy's cash surrender value. This might be the case, for example, if cash surrender values under a policy were not provided on a consistent basis over time. If this were the case, the fair market value of a policy would be a question of fact.

Subsection 94.2(10), unlike the rest of section 94.2, is to apply to taxation years that begin after 2001.

Related Provisions: 233.3(1)"specified foreign property"(d.1) — Annual information reporting re interest in insurance policy.

(11) Change of status of entity — Where a participating interest is held by a taxpayer at the beginning of

a taxation year, subsection (4) applied for the purpose of computing the taxpayer's income in respect of the interest for the preceding taxation year and that subsection does not apply for the purpose of computing the taxpayer's income in respect of the interest for the year (otherwise than because the taxpayer became an exempt taxpayer or ceased to reside in Canada),

(a) subject to paragraph (c), the taxpayer is deemed to have acquired the interest at the beginning of the year at a cost equal to its fair market value at that time;

(b) where the interest is capital property at the beginning of the year, in computing the adjusted cost base after that time to the taxpayer of the interest

(i) except where the taxpayer has made an election in respect of the interest under clause (i)(C) of the description of D in paragraph (4)(a), there shall be deducted the product of any positive deferral amount in respect of the interest and the gross-up factor for the deferral amount, and

(ii) there shall be added the product of the absolute value of any negative deferral amount in respect of the interest and the gross-up factor for the deferral amount; and

(c) where paragraph (b) does not apply,

(i) except where the taxpayer has made an election in respect of the interest under clause (i)(C) of the description of D in paragraph (4)(a), there shall be deducted in computing the cost to the taxpayer of the interest the lesser of

(A) the product of any positive deferral amount in respect of the interest and the gross-up factor for the deferral amount, and

(B) the cost to the taxpayer of the interest, determined without reference to this subparagraph,

(ii) there shall be included in computing the taxpayer's income for the year in respect of the interest the amount, if any, by which

(A) the amount determined under clause (i)(A) in respect of the interest

exceeds

(B) the amount determined under clause (i)(B) in respect of the interest, and

(iii) there shall be added in computing the cost to the taxpayer of the interest the product of the absolute value of any negative deferral amount in respect of the interest and the gross-up factor for the deferral amount.

Technical Notes: New subsection 94.2(11) of the Act sets out rules that apply where a taxpayer holding a participating interest in an entity was subject to subsection 94.2(4) for a taxation year but is not subject, in respect of the interest, to subsection 94.2(4) for the following taxation year (otherwise than because the taxpayer ceased to reside in Canada or became an "exempt taxpayer", as defined in subsection 94.1(1)).

Where subsection 94.2(11) applies, the taxpayer is deemed to have acquired the particular interest at the beginning of the following taxation year at a cost equal to the fair market value of the particular interest at that time.

The subsection could apply, for example, where a taxpayer holds a share of the capital stock of a non-resident corporation and the share is not an "exempt interest", as defined in subsection 94.1(1). Assume that the taxpayer made no election under subsection 94.1(4) for section 94.1 to apply. If the entity subsequently becomes a controlled foreign affiliate of the taxpayer, subsection 94.2(4) would cease to apply.

Since the taxpayer is deemed to have acquired the property at its fair market value at the beginning of the following year, all increases and decreases in the value of the interest from the time of its acquisition are reflected in the taxpayer's cost of the interest for tax purposes. However, only the gain or loss accruing while it was subject to subsection 94.2(4) has been brought into income. The gain or loss in value for the period from the time of acquisition to the time it became subject to subsection 94.2(4) has not been taken into consideration for tax purposes.

Accordingly, paragraph 94.2(10)(b) provides for a negative or positive adjustment to the adjusted cost base (ACB) of a participating interest held as capital property. Any positive "deferral amount" (as defined in subsection 94.2(1)) in respect of the interest is deducted in computing the ACB of the interest, but the deduction is grossed-up by one-half in the event that the deferral amount was calculated with reference to two-thirds of the accrued gains. The ACB deduction does not, however, apply in the event that a positive deferral amount has already been taken into account because of an election under the description of D in paragraph 94.2(4)(a). The absolute value of any negative deferral amount (or three-halves of it where the 2/3 factor was used in computing the negative deferral amount) is added in computing the ACB of the interest. Where capital property is not involved, a corresponding decrease or increase in cost (rather than adjusted cost basis) is provided under paragraph 94.2(11)(c). To the extent that the decrease would otherwise result in a negative cost, the decrease is brought into the taxpayer's income under paragraph 94.2(11)(c).

Related Provisions: 53(1)(m.1) — Addition to adjusted cost base; 53(2)(w) — Deduction from adjusted cost base; 94.2(14) — Fresh start re change of status of entity.

(12) Cost of participating interest — Where a taxpayer's participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a taxation year and subsection (4) applies for the purpose of computing the taxpayer's income for the year in respect of the interest, for the purpose of determining the taxpayer's cost of the interest immediately before the particular time

(a) if the interest was held by the taxpayer at the beginning of the year, its cost to the taxpayer immediately before the particular time is deemed to be equal to the fair market value of the interest at the beginning of the year; and

(b) in any other case, its cost to the taxpayer immediately before the particular time is deemed to be equal to the amount that would be its cost to the taxpayer at the particular time if this Act were read without reference to this section (other than subsection (2)).

Technical Notes: New subsection 94.2(12) of the Act provides a rule for determining the cost at a particular time of a participating interest in an entity for a taxation year in the event that the interest is disposed of by the taxpayer in the year.

The cost to the taxpayer immediately before the disposition of the property is deemed to be its fair market value at the beginning of the taxpayer's taxation year. In the event that the property was not held by the taxpayer at that time, its cost immediately before the disposition is its cost determined without reference to subsections 94.2(4) and (12). In identifying property for these purposes, identical properties of a taxpayer are considered to be disposed of on a "first in, first out" basis, as a consequence of the application of subsection 94.2(2).

Under new paragraph (c.2) of the definition "cost amount" in subsection 248(1), the cost determined at a particular time for a property under subsection 94.2 (12) is also the "cost amount" of the property at the particular time.

Related Provisions: 248(1)"cost amount"(c.2) — Cost amount applies for entire Act.

(13) Deferral amount where same interest reacquired — Subject to subsections (14) to (17), where a taxpayer disposes of a participating interest in an entity at any time in a taxation year of the taxpayer and subsection (4) applies for the purpose of computing the taxpayer's income for the year in respect of the interest, for the purpose of applying subsection (4) to dispositions after that time the deferral amount of the taxpayer in respect of the interest is nil.

Technical Notes: New subsection 94.2(13) of the Act generally provides that a "deferral amount" in respect of a property of a taxpayer is deemed to be nil, after the property has been disposed of by the taxpayer at a time when the mark-to-market rules in subsection 94.2(4) applied to the property. This is of relevance to property that is reacquired by a taxpayer. However, subsection 94.2(13) is subject to rules in subsections 94.2(14) to (17).

It should be noted that identical properties of a taxpayer are considered to be disposed of on a "first in, first out" basis as a consequence of the application of subsection 94.2(2).

Related Provisions: 87(2)(j.95) — Amalgamations — continuing corporation.

(14) Fresh start re change of status of entity — Where a participating interest is deemed by paragraph (11)(a) to have been acquired at a particular time by a taxpayer, for the purpose of applying subsection (4) to a subsequent disposition of the interest and a subsequent election in respect of the interest under clause (i)(C) of the description of D in paragraph (4)(a), the deferral amount of the taxpayer in respect of the interest shall

(a) for the purpose of clause (i)(C) of the description of B in the definition "deferral amount" in paragraph (1)(b), be determined as if subsection (4) had not applied to the taxpayer in respect of the interest for taxation years that began before the particular time; and

(b) be determined without reference to the application of subsection (13) with regard to dispositions that occurred before the particular time.

Technical Notes: New subsection 94.2(14) of the Act covers the case where a taxpayer's participating interest in an entity was initially subject to the rules in subsection 94.2(4) and ceases to be subject to those rules (otherwise than because of the taxpayer having become an "exempt taxpayer"). For example, subsection 94.2(14) could apply where an entity loses its status as an FIE.

In these circumstances, the deferral amount in respect of the participating interest is determined without reference to the past application of subsections 94.2(4) and (13). This rule is relevant only in the event that the same participating interest of the taxpayer again becomes subject to the rules in subsection 94.2(4).

Parallel "fresh start" rules are contained in subsection 94.2(15) and (16). All of these "fresh start" rules are expected to be only rarely invoked, given that more than one change in status of an investment or a taxpayer is required for the rules to become relevant. For further detail on the "deferral amount" defined in subsection 94.2(1), see the commentary on that definition.

(15) Fresh start after emigration of taxpayer — Where a taxpayer ceases at a particular time to be resident in Canada, for the purpose of applying subsection (4) to dispositions, and elections under clause (i)(C) of the description of D in paragraph (4)(a), that occur or that are made after the particular time, the deferral amount in respect of the taxpayer's participating interests shall

(a) for the purpose of clause (i)(C) of the description of B in the definition "deferral amount" in paragraph (1)(b), be determined as if subsection (4) had not applied to the taxpayer in respect of participating interests for taxation years that began before the particular time; and

(b) be determined without reference to the application of subsection (13) with regard to dispositions that occurred before the particular time.

Technical Notes: New subsection 94.2(15) of the Act affects the calculation of the "deferral amount" in respect of a participating interest in an entity for a taxpayer who has ceased to reside in Canada. It is relevant in the event that, at a subsequent time, the taxpayer becomes resident in Canada again.

In these circumstances, the deferral amounts in respect of the taxpayer's FIE interests are determined without reference to the past application of subsections 94.2(4) and (13).

For further context, see the commentary above on the related fresh start rule in subsection 94.2(14).

(16) Fresh start re change of status of tax-exempt entity — Where

(a) a taxpayer was not an exempt taxpayer for a particular taxation year, and

(b) the taxpayer is an exempt taxpayer for the following taxation year because of the application of paragraph (b) of the definition "exempt taxpayer" in subsection 94.1(1),

for the purpose of applying subsection (4) to dispositions, and elections under clause (i)(C) of the description of D in paragraph (4)(a), that occur or that are made after that following year, the deferral amount in respect of the taxpayer's participating interests shall

(c) for the purpose of clause (i)(C) of the description of B in the definition "deferral amount" in paragraph (1)(b), be determined as if subsection (4) had not applied to the taxpayer in respect of participating interests for taxation years that ended before that following year, and

(d) be determined without reference to the application of subsection (13) with regard to dispositions that occurred before that following year.

Technical Notes: New subsection 94.2(16) of the Act affects the calculation of the "deferral amount" in respect of an interest in an entity for a taxpayer that initially was not an "exempt taxpayer" under paragraph (b) of that definition and then subsequently both obtains and loses that status.

In these circumstances, the deferral amounts in respect of the FIE interests of the taxpayer are determined without reference to the past application of subsections 94.2(4) and (13).

For further context, see the commentary on the related fresh start rule in subsection 94.2(14). In addition, it should be noted that amended subsection 149(10) applies to changes of tax-exempt status for taxpayers that are corporations. Where subsection 149(10) applies, the rules in subsection 94.2(16) do not apply.

(17) Superficial dispositions — Where a taxpayer disposes of a particular participating interest in an entity, the deferral amount in respect of the particular interest would otherwise be a negative amount and the disposition would, if the particular interest were a capital property and a loss arose on the disposition, give rise to a superficial loss (within the meaning that would be assigned by section 54 if the definition "superficial loss" in that section were read without the reference to subsection 40(3.4) in paragraph (h) of that definition),

(a) except for the purpose of applying paragraph (b) in respect of the disposition, the deferral amount of

the taxpayer in respect of the particular interest is deemed to be nil; and

(b) the deferral amount of the taxpayer in respect of the property that would be the substituted property referred to in that definition if the assumptions described in this subsection applied is deemed to be equal to the deferral amount of the taxpayer in respect of the particular interest.

Technical Notes: New subsection 94.2(17) of the Act applies where a taxpayer disposes of a participating interest in an entity in respect of which a negative amount is determined under the description of D in the formula in subsection 94.2(4). This would be the case where there is a negative deferral amount associated with the interest. In these circumstances, the deferral amount is instead generally deemed to be nil if, during the period beginning 30 days before the disposition and ending 30 days after the disposition, identical property is acquired by the taxpayer or certain related persons.

Subsection 94.2(17) operates in a manner similar to the "superficial loss" rules for capital properties and is intended to prevent the premature realization of losses in respect of a property in which a taxpayer effectively retains an economic interest. "Superficial loss" has the same meaning as assigned in section 54, except that the definition for the purposes of subsection 94.2(17) does not contain the exception for transactions covered by subsection 40(3.4).

Property substituted for the particular property is, in these circumstances, considered to have the deferral amount associated with the property disposed of.

Definitions [s. 94.2]: "adjusted cost base" — 54, 248(1); "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital property" — 54, 248(1); "carrying value" — 94.1(1), (10), 94.2(1)(a); "cost amount" — 248(1); "deferral amount" — 94.2(1)(b); "disposition" — 248(1); "entity", "exempt taxpayer" — 94.1(1), 94.2(1)(a); "foreign investment entity" — 94.1(1), (13), 94.2(1)(a); "filing-due date" — 248(1); "fiscal period" — 249.1; "gross-up factor" — 94.2(1)(c); "individual", "insurance policy" — 248(1); "investment property" — 94.1(1), 94.2(1)(a); "Minister", "non-resident" — 248(1); "non-resident entity" — 94.1(1), 94.2(1)(a); "owned" — 94.1(10); "participating interest" — 94.1(1), 94.2(1)(a); "person", "prescribed", "property" — 248(1); "resident", "resident in Canada" — 250; "significant interest" — 94.1(11); "taxation year" — 94.1(1), 94.2(1)(a), 249; "taxpayer" — 248(1); "tracked property" — 94.2(9)(d).

94.3 (1) Definitions and rules of application — The definitions in subsection 94.1(1), and paragraph 94.2(2)(a), apply in this section.

(2) Prevention of double taxation — Where at a particular time in a taxation year a taxpayer resident in Canada receives or becomes entitled to receive a payment from an entity in respect of a participating interest in the entity,

(a) there may be deducted in computing the taxpayer's income for the year the lesser of

(i) the amount, if any, by which

(A) the amount included (otherwise than because of subsection 94.2(4)) in computing the taxpayer's income for the year in respect of the payment,

exceeds

(B) the total of all amounts each of which is an amount deductible

(I) under subsection 91(5) in computing the taxpayer's income for the year in respect of the payment, or

(II) under section 113 in computing the taxpayer's taxable income for the year in respect of the payment, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount added under subsection 94.1(3) or 94.2(4), in respect of the interest, in computing the taxpayer's income for the year or a preceding taxation year

exceeds the total of

(B) all amounts each of which is an amount deducted under subsection 94.1(3) or subsection 94.2(4), in respect of the interest, in computing the taxpayer's income for the year or a preceding taxation year, and

(C) all amounts each of which is an amount deducted under this paragraph, in respect of the interest, in computing the taxpayer's income in respect of a payment in respect of the interest that was received or became receivable before the particular time; and

(b) if the interest is capital property at the particular time, in computing the adjusted cost base to the taxpayer of the interest after the particular time there shall be deducted the amount deducted under paragraph (a) in computing the taxpayer's income.

Related Provisions: 53(2)(w) — Deduction from adjusted cost base; 87(2)(j.95) — Amalgamations — continuing corporation.

Definitions [s. 94.3]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "entity", "participating interest" — 94.1(1), 94.3(1); "resident in Canada" — 250; "taxable income" — 248(1); "taxation year" — 94.1(1), 94.3(1), 249; "taxpayer" — 248(1).

Technical Notes: Where a taxpayer resident in Canada has received a payment (a dividend, for example) in respect of a participating interest in an entity held by the taxpayer (otherwise than as consideration for the disposition of the interest), new section 94.3 of the Act permits a deduction designed to offset any net income inclusion resulting from the payment. The permitted deduction for a taxation year is equal to the lesser of:

- the amount included (otherwise than because of subsection 94.2(4)) in computing the taxpayer's income for the year in respect of the payment, less any increase in amounts deductible under subsection 91(5) or section 113 caused by the making of the payment, and
- the net amount included in computing the taxpayer's income under sections 94.1 and 94.2 in respect of the participating interest, less deductions for the taxpayer under subsection 94.3(2) in respect of previous payments in respect of the interest.

In the event that the participating interest is capital property, the amount deducted from income under subsection 94.3(2) in respect of the interest is also required to be deducted in computing the adjusted cost base of the interest. Note that this deduction is not of relevance to property to which the mark-to-market rules in section 94.2 apply, given that such property will not be capital property as a consequence of the application of subparagraph 39(1)(a)(ii.3) and section 94.2.

Section 94.3 also allows income inclusions in respect of amounts payable (for example, amounts payable by an FIE that is a trust) to be similarly treated.

The example below illustrates the operation of section 94.3.

Example

1. A taxpayer resident in Canada, Canco, purchases a 20% interest in Foreignco, a non-resident corporation. Foreignco is an FIE. Participating interests in Foreignco do not qualify as "exempt interests". Both Canco and Foreignco have taxation years that coincide with calendar years. Canco makes an election under subsection 94.1(4) to have section 94.1 apply.

2. Canco's income allocation in respect of its participating interest in Foreignco for 2001 is $100,000, which is added in computing Canco's income under subsection 94.1(3). This is partially offset by a specified tax allocation of $30,000. Foreignco pays a dividend of $50,000 to Canco in 2001. Canco includes the dividend in income pursuant to section 90 and claims a deduction of $20,000 in computing its taxable income pursuant to subsection 113(1).

Results

1. Canco's deduction from income under section 94.3 is equal to $35,000, being the lesser of the net income inclusion as a result of the payment (= $50,000 minus $20,000) and the amount of the net income inclusions under subsection 94.1(3) ($100,000 minus $30,000).
2. The result would generally be the same if the $50,000 dividend were instead paid in a subsequent year.

Application: The June 22, 2000 draft legislation, s. 11, will amend s. 94.1 to read as above, and add ss. 94.2 and 94.3, applicable to taxpayer's taxation years that begin after 2000, except that subsec. 94.2(10) does not apply to taxation years that begin before 2002.

Pre-RSC History [s. 94.1]: S. 94.1 added by 1984, c. 45, s. 30, generally applicable after 1984; but see subsec. 94.1(3) for exceptions.

Definitions [s. 94.1]: "amount", "annuity" — 248(1); "capital gain" — 39(1)(a), 248(1); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "designated cost" — 94.1(2); "fiscal period" — 249(2), 249.1; "foreign affiliate" — 95(1), 248(1); "foreign resource property" — 66(15), 248(1); "investment corporation" — 130(3), 248(1); "non-resident" — 94.1(2), 248(1); "offshore investment fund property" — 94.1(1); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 94.1]: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

95. (1) Definitions for this subdivision — In this subdivision,

Proposed Amendment — 95(1)

95. Definitions re foreign affiliates — (1) In this subdivision (other than sections 94 to 94.3),

Application: The June 22, 2000 draft legislation, subsec. 12(1), will amend the opening words of subsec. 95(1) to read as above, applicable to taxation years of foreign affiliates of taxpayers that begin after 2000.

Technical Notes: Subsection 95(1) of the Act sets out definitions that are relevant for the purposes of sections 90 to 95.

Subsection 95(1) is amended so that these definitions do not apply for the purposes of sections 94 to 94.3, except where the definition applies for the purposes of the Act as a whole because of subsection 248(1). This amendment applies to taxation years that begin after 2000.

"active business" of a foreign affiliate of a taxpayer means any business carried on by the affiliate other than

(a) an investment business carried on by the affiliate, or

(b) a business that is deemed by subsection (2) to be a business other than an active business carried on by the affiliate;

Related Provisions: 95(1)"income from an active business" — What income included; 248(1) — Meanings of "active business" and "business".

History: The definition "active business" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada means a foreign affiliate of the taxpayer that was, at that time, controlled by

(a) the taxpayer,

(b) the taxpayer and not more than four other persons resident in Canada,

(c) not more than 4 persons resident in Canada, other than the taxpayer,

(d) a person or persons with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and a person or persons with whom the taxpayer does not deal at arm's length;

Proposed Amendment — 95(1)"controlled foreign affiliate"

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada means a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of subsection 94.1(12) or that is, at that time, controlled by

Application: The June 22, 2000 draft legislation, subsec. 12(2), will amend the opening words of the definition "controlled foreign affiliate" in subsec. 95(1) to read as above, applicable to taxation years of foreign affiliates of taxpayers that begin after 2000.

Technical Notes: As set out below, various definitions in subsection 95(1) are also being amended.

The income for a taxation year of a taxpayer resident in Canada includes, pursuant to subsection 91(1) of the Act, a specified percentage of the foreign accrual property income (FAPI) of any controlled foreign affiliate of the taxpayer. In order to eliminate overlap between the FAPI rules and the rules for foreign investment entities in sections 94.1 and 94.2, the latter rules do not apply in respect of a taxpayer's interest in a controlled foreign affiliate of a taxpayer resident in Canada. An election is provided under new subsection 94.1(12) under which a foreign affiliate of a taxpayer can be treated as controlled foreign affiliate.

The definition "controlled foreign affiliate" is amended to make a cross-reference to foreign affiliates that are deemed by subsection 94.1(12) to be controlled foreign affiliates. Given the wording in subsection 94.1(12), this reference is not technically necessary but is meant to serve as a useful clarification of the potential application of subsection 94.1(12).

Related Provisions: 17(15)"controlled foreign affiliate" — Definition applicable to loan by corporation to non-resident; 128.1(1)(d) — Foreign affiliate becoming resident in Canada deemed to have been controlled foreign affiliate; 233.4(4) — Reporting requirements; 248(1)"controlled foreign affiliate" — Definition applies to entire Act; 256(6), (6.1) — Meaning of "controlled".

History: Paras. (c) to (e) of "controlled foreign affiliate" in subsec. 95(1) substituted for para. (c) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(1), applicable to taxation years commencing after July 13, 1990. Para. (c) formerly read:

(c) a related group of which the taxpayer was a member;

Pre-RSC History: *The definition "controlled foreign affiliate" was para. 95(1)(a). See Table of Concordance.*

That portion of para. 95(1)(a) preceding subpara. (i) amended by 1988, c. 55, s. 65, to substitute "controlled by" for "controlled, directly or indirectly in any manner whatever, by", applicable to taxation years commencing after 1988.

"excluded property" of a foreign affiliate of a taxpayer means any property of the foreign affiliate that is

(a) used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business,

(b) shares of the capital stock of another foreign affiliate of the taxpayer where all or substantially all of the property of the other foreign affiliate is excluded property, or

(c) an amount receivable the interest on which is, or would be if interest were payable thereon, income from an active business by virtue of subparagraph (2)(a)(ii),

and, for the purposes of the definitions "foreign affiliate" in this subsection and "direct equity percentage" in subsection (4) as they apply to this definition, where at any time a foreign affiliate of a taxpayer has an interest in a partnership,

(d) the partnership shall be deemed to be a non-resident corporation having capital stock of a single class divided into 100 issued shares, and

(e) the affiliate shall be deemed to own at that time that proportion of the issued shares of that class that

(i) the fair market value of the affiliate's interest in the partnership at that time

is of

(ii) the fair market value of all interests in the partnership at that time;

Related Provisions: 85.1(4) — Exception to share-for-share exchange rules where foreign affiliate's property is substantially all excluded property.

History: That portion of the definition "excluded property" following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(2), applicable after 1989. That portion formerly read:

> and for the purpose of this definition, where a foreign affiliate of a taxpayer has an interest in a partnership and the fair market value of the interest is equal to or greater than 10% of the fair market value of all interests in the partnership, the partnership shall be deemed to be another foreign affiliate of the taxpayer and the interest of the foreign affiliate in the partnership shall be deemed to be shares of the capital stock of that other foreign affiliate;

Pre-RSC History: *The definition "excluded property" was para. 95(1)(a.1). See Table of Concordance.*

All that portion of paragraph 95(1)(a.1) following subpara. (iii) substituted by 1984, c. 1, subsec. 42(1), applicable after November 12, 1981. That portion formerly read:

> and for the purpose of this paragraph, where a foreign affiliate of a taxpayer has an interest in a partnership the fair market value of which is at least 10% of the fair market value of all interests in the partnership, the partnership shall be deemed to be a foreign affiliate of the taxpayer;

Para. 95(1)(a.1) added by 1980-81-82-83, c. 140, subsec 57(1), applicable after November 12, 1981.

"foreign accrual property income" of a foreign affiliate of a taxpayer, for any taxation year of the affiliate, means the amount determined by the formula

$$(A + A.1 + A.2 + B + C) - (D + E + F + G)$$

Proposed Amendment — 95(1)"foreign accrual property income"

$$(A + A.1 + A.2 + B + C) - (D + E + F + G + H)$$

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(1), will amend the formula in the definition "foreign accrual property income" in subsec. 95(1) to read as above, applicable after November 1999.

Technical Notes: See under 95(1)"foreign accrual property income"H.

Proposed Amendment — 95(1)"foreign accrual property income"

$$(A + A.1 + A.2 + B) - (D + E + F + G + H)$$

Application: The June 22, 2000 draft legislation, subsec. 12(3), will amend the formula in the definition "foreign accrual property income" in subsec. 95(1) to read as above, applicable to taxation years of foreign affiliates of taxpayers that begin after 2000.

Technical Notes: The FAPI of a controlled foreign affiliate of a taxpayer resident in Canada is allocated to the taxpayer in accordance with subsection 91(1) of the Act. Under its definition in subsection 95(1), FAPI includes certain amounts that would be included in the affiliate's income under existing subsection 94.1(1) if that subsection were read in the manner specified in the description of C of the definition.

where

A is the amount that would, if section 80 did not apply to the affiliate for the year or a preceding taxation year, be the total of the affiliate's incomes for the year from property and businesses (other than active businesses) determined as if each amount described in clause (2)(a)(ii)(D) that was paid or payable, directly or indirectly, by the affiliate to another foreign affiliate of either the taxpayer or a person with whom the taxpayer does not deal at arm's length were nil where an amount in respect of the income derived by the other foreign affiliate from that amount that was paid or payable to it by the affiliate was added in computing its income from an active business, other than

(a) interest that would, by virtue of paragraph 81(1)(m), not be included in computing the income of the affiliate if it were resident in Canada,

(b) a dividend from another foreign affiliate of the taxpayer,

(c) a taxable dividend to the extent that the amount thereof would, if the dividend were received by the taxpayer, be deductible by the taxpayer under section 112, or

(d) any amount included because of subsection 80.4(2) in the affiliate's income in respect of indebtedness to another corporation that is a foreign affiliate of the taxpayer or of a person resident in Canada with whom the taxpayer does not deal at arm's length,

A.1 is 4/3 of the total of all amounts included in computing the affiliate's income from property or businesses (other than active businesses) for the year because of subsection 80(13),

A.2 is the amount determined for G in respect of the affiliate for the preceding taxation year,

B is such portion of the affiliate's taxable capital gains for the year from dispositions of property, other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply, as may reasonably be considered to have accrued after its 1975 taxation year,

C is where the affiliate is a controlled foreign affiliate of the taxpayer, the amount that would be required to be included in computing its income for the year if

(a) subsection 94.1(1) were applicable in computing that income,

(b) the words "earned directly by the taxpayer" in that subsection were replaced by the words "earned

by the person resident in Canada in respect of whom the taxpayer is a foreign affiliate",

(c) the words "other than a controlled foreign affiliate of the taxpayer or a prescribed non-resident entity" in paragraph 94.1(1)(a) were replaced by the words "other than a prescribed non-resident entity or a controlled foreign affiliate of a person resident in Canada of whom the taxpayer is a controlled foreign affiliate", and

(d) the words "other than a capital gain" in paragraph 94.1(1)(g) were replaced by the words "other than any income that would not be included in the taxpayer's foreign accrual property income for the year if the value of C in the definition "foreign accrual property income" in subsection 95(1) were nil and other than a capital gain",

Proposed Repeal — 95(1)"foreign accrual property income"C

Application: The June 22, 2000 draft legislation, subsec. 12(4), will repeal the description of C in the definition "foreign accrual property income" in subsec. 95(1), applicable to taxation years of foreign affiliates of taxpayers that begin after 2000.

Technical Notes: Existing section 94.1 is being repealed. Accordingly, the description of C in the definition "foreign accrual property income" is also repealed. There are, however, special rules in new paragraph 95(2)(g.2) with regard to the application of sections 94.1 to 94.3 for the purposes of computing FAPI.

This amendment applies to taxation years of controlled foreign affiliates that begin after 2000.

D is the total of the affiliate's losses for the year from property and businesses (other than active businesses) determined as if there were not included in the affiliate's income any amount described in any of paragraphs (a) to (d) of the description of A and as if each amount described in clause (2)(a)(ii)(D) that was paid or payable, directly or indirectly, by the affiliate to another foreign affiliate of either the taxpayer or a person with whom the taxpayer does not deal at arm's length were nil where an amount in respect of the income derived by the other foreign affiliate from that amount that was paid or payable to it by the affiliate was added in computing its income from an active business,

E is such portion of the affiliate's allowable capital losses for the year from dispositions of property, other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply, as may reasonably be considered to have accrued after its 1975 taxation year,

F is the amount prescribed to be the deductible loss of the affiliate for the year and the five immediately preceding taxation years, and

Proposed Amendment — 95(1)"foreign accrual property income"F

F is the amount prescribed to be the deductible loss of the affiliate for the year, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(2), will amend the description of F in the definition "foreign accrual property income" in subsec. 95(1) to read as above, applicable to foreign affiliates' taxation years that begin after November 1999.

Technical Notes: The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act and section 5903 of the Regulations establish the extent to which a foreign affiliate of a taxpayer is permitted to deduct amounts in computing its foreign accrual property income for the year in respect of foreign accrual property losses of other taxation years. Under the existing provisions such losses may be carried forward for five years.

The amendments to the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act and section 5903 of the Regulations provide that foreign accrual property losses may be carried back three years and forward seven years. The amendments apply to taxation years of a foreign affiliate that begin after November 30, 1999.

G is the amount, if any, by which

(a) the total of amounts determined for A.1 and A.2 in respect of the affiliate for the year

exceeds

(b) the total of all amounts determined for D to F in respect of the affiliate for the year;

Proposed Addition — 95(1)"foreign accrual property income"H

H is

(a) where the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and the partnership received a dividend at a particular time in that fiscal period from a corporation that was, for the purposes of sections 93 and 113, a foreign affiliate of the taxpayer at that particular time, the portion of the amount of that dividend that is included in the value of A in respect of the affiliate for the year and that is deemed by paragraph 93.1(2)(a) to have been received by the affiliate for the purposes of sections 93 and 113, and

(b) in any other case, nil;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(3), will add the description of H to the definition "foreign accrual property income" in subsec. 95(1), applicable after November 1999.

Technical Notes: The amendment to the definition of "foreign accrual property income" in subsection 95(1) of the Act adds new description H to the formula in that definition. The description of H applies where the affiliate was a member of a partnership that received a dividend from another foreign affiliate of the taxpayer. In such a case, the amount for the description of H is equal to the portion of such dividend received by the partnership that is included in the description of A in the formula in respect of the affiliate for the year that is deemed by paragraph 93.1(2)(a) of the Act to have been a dividend received by the member affiliate from another foreign affiliate of the taxpayer. New description H ensures that inter-affiliate dividends are not included in foreign accrual property income of an affiliate of the taxpayer.

Related Provisions: 40(3)(d) — Deemed gain where ACB would become negative; 53(1)(m) — ACB of offshore investment fund property; 95(2) — Determination of certain components of FAPI; 152(6.1) — Reassessment to apply FAPI loss carryback; 248(1)"foreign accrual property income" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

History: Paras. (c) and (d) added to the description of C in the definition "foreign accrual property income" in subsec. 95(1) by 1998, c. 19, subsec. 122(2), para. (c) applicable to taxation years that end after November 1991, para. (d) applicable to taxation years that begin after June 19, 1996.

The formula in the definition "foreign accrual property income" in subsec. 95(1) amended, and the descriptions of A.1 and A.2 added, by 1995, c. 21, subsecs. 32(1), (2), applicable to taxation years that end after February 21, 1994. The formula formerly read:

$$(A + B + C) - (D + E + F)$$

The opening words of the description of A in the definition "foreign accrual property income" in subsec. 95(1) amended by 1995, c. 21, subsec. 78(2), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22,

1994, the amended description of A applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation year of such foreign affiliate.

In these instances, for taxation years that end after February 21, 1994, the opening words of the description of A should be read as follows (1995, c. 21, subsec. 78(1)):

A is the amount that would, if section 80 did not apply to the affiliate for the year or a preceding taxation year, be the total of the affiliate's incomes for the year from property and businesses (other than active businesses), other than

The opening words of the description of A formerly read:

A is the total of the affiliate's incomes for the year from property and businesses other than active businesses, other than

The description of D in the definition "foreign accrual property income" in subsec. 95(1) amended by 1995, c. 21, subsec. 46(2), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

The description of D formerly read:

D is the total of the affiliate's losses for the year from property and businesses (other than active businesses) determined as if there were not included in the affiliate's income any amount described in any of paragraphs (a) to (d) of the description of A,

The description of G added to the definition "foreign accrual property income" in subsec. 95(1) by 1995, c. 21, subsec. 32(3), applicable to taxation years that end after February 21, 1994.

Para. (d) of the description of A in "foreign accrual property income" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(3), applicable to 1987 *et seq.*

The description of D in "foreign accrual property income" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(4), to parenthesize "other than active businesses" and to substitute "paragraphs (a) to (d)" for "paragraphs (a), (b) or (c)", applicable to 1987 *et seq.*

Pre-RSC History: *The definition "foreign accrual property income" was para. 95(1)(b). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(b) "foreign accrual property income"— "foreign accrual property income" of a foreign affiliate of a taxpayer, for any taxation year of the affiliate, means the amount, if any, by which the aggregate of

(i) the affiliate's incomes for the year from property and businesses other than active businesses, other than

(A) interest that would, by virtue of paragraph 81(1)(m), not be included in computing the income of the affiliate if it were resident in Canada,

(B) a dividend from another foreign affiliate of the taxpayer, or

(C) a taxable dividend to the extent that the amount thereof would, if the dividend were received by the taxpayer, be deductible by him under section 112, and

(ii) such portion of the affiliate's taxable capital gains for the year from dispositions of property, other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply, as may reasonably be considered to have accrued after its 1975 taxation year, and

(ii.1) where the affiliate is a controlled foreign affiliate of the taxpayer, the amount that would be required to be included in computing its income for the year if

(A) subsection 94.1(1) were applicable in computing such income, and

(B) the words "earned directly by the taxpayer" in that subsection were replaced by the words "earned by the person resident in Canada in respect of whom the taxpayer is a foreign affiliate"

exceeds the aggregate of

(iii) the affiliate's losses for the year from property and businesses other than active businesses determined as if there were not included in the affiliate's income any amount described in clause (i)(A), (B) or (C),

(iv) such portion of the affiliate's allowable capital losses for the year from dispositions of property, other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply, as may reasonably be considered to have accrued after its 1975 taxation year, and

(v) the amount prescribed to be the deductible loss of the affiliate for the year and the five immediately preceding taxation years;

Subpara. 95(1)(b)(ii.1) added by 1984, c. 45, s. 31, applicable after 1984.

Subparas. 95(1)(b)(ii) and (iv) amended by 1980-81-82-83, c. 140, subsecs. 57(2), (3), applicable to dispositions occuring after November 12, 1981. That subpara. formerly read:

(ii) such portion of the affiliate's taxable capital gains for the year from dispositions of property (other than property used by it principally for the purpose of gaining or producing income from an active business) as may reasonably be considered to have accrued after its 1975 taxation year

. . . . .

(iv) such portion of the affiliate's allowable capital losses for the year from dispositions of property (other than property used by it principally for the purpose of gaining or producing income from an active business) as may reasonably be considered to have accrued after its 1975 taxation year, and

Selected Cases [95(1)"foreign accrual property income"]: *Canada Trustco Mortgage Co. v. MNR*, [1999] 2 C.T.C. 308 (FCTD) (No separate treatment for portions of total income of foreign affiliate); *Rostland Corp. v. Canada*, [1995] 2 C.T.C. 2276 (TCC) (Interest income in heavily leveraged real estate venture was income from an active business and not FAPI).

Regulations: 5903 (prescribed deductible loss); 5907(2.8) (transfer of active business income between foreign affiliates).

I.T. Application Rules: 35(1) (ITAR 26 does not apply in determining gains and losses of foreign affiliates; 35(4) (where corporation deemed to be foreign affiliate before May 7, 1974 because of election).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

"foreign accrual tax" applicable to any amount included in computing a taxpayer's income by virtue of subsection 91(1) for a taxation year in respect of a particular foreign affiliate of the taxpayer means

(a) the portion of any income or profits tax that was paid by

(i) the particular affiliate, or

(ii) any other foreign affiliate of the taxpayer in respect of a dividend received from the particular affiliate

and that may reasonably be regarded as applicable to that amount, and

(b) any amount prescribed in respect of the particular affiliate to be foreign accrual tax applicable to that amount;

Pre-RSC History: *The definition "foreign accrual tax" was para. 95(1)(c).*

Para. 95(1)(c) amended by 1980-81-82-83, c. 140, subsec. 57(4), applicable to 1982 *et seq.* Para 95(1)(c) formerly read:

> (c) "foreign accrual tax" applicable to any amount included in computing a taxpayer's income by virtue of subsection 91(1) for a taxation year in respect of a particular foreign affiliate of the taxpayer means the portion of any income or profits tax that was paid by
>
> (i) the particular affiliate, or
>
> (ii) any other foreign affiliate of the taxpayer in respect of a dividend received from the particular affiliate
>
> and that may reasonably be regarded as applicable;

Regulations: 5907(1.3) (prescribed foreign accrual tax).

"foreign affiliate", at any time, of a taxpayer resident in Canada means a non-resident corporation in which, at that time,

> (a) the taxpayer's equity percentage is not less than 1%, and
>
> (b) the total of the equity percentages in the corporation of the taxpayer and of each person related to the taxpayer (where each such equity percentage is determined as if the determinations under paragraph (b) of the definition "equity percentage" in subsection (4) were made without reference to the equity percentage of any person in the taxpayer or in any person related to the taxpayer) is not less than 10%,

except that a corporation is not a foreign affiliate of a non-resident-owned investment corporation;

Proposed Amendment — 95(1)"foreign affiliate"

Letter from Department of Finance, July 29, 1997:

Dear [xxx]

I am writing in response to your letter of July 21, 1997, requesting confirmation that our Department intends to recommend an amendment to the *Income Tax Act* (the "Act") to accommodate the holding of foreign affiliates through partnerships. You have noted that Revenue Canada has expressed the view that a foreign corporation ("FA") is not a foreign affiliate of a Canadian corporation ("Canco") where FA's shares are property of a partnership in which Canco is a partner. As a result, dividends paid by FA to the partnership and distributed by the partnership to Canco do not qualify for deductions under section 113 of the Act.

Our Department is prepared to recommend to the Minister of Finance that amendments to the Act be made in a future technical bill to accommodate the holding of shares of foreign corporations in a partnership. Such amendments to the Act would ensure that, in the appropriate circumstances, dividends paid by a foreign corporation to a partnership and distributed by the partnership to a Canadian corporation would qualify for deductions under section 113 of the Act. The appropriate circumstances would encompass the circumstances set out in the example in your letter.

I trust that you will find these comments helpful.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Related Provisions: 87(8) — Merger of foreign affiliate; 93.1 — Shares held by a partnership; 95(4) — Equity percentage; 128.1(1)(d) — Foreign affiliate becoming resident in Canada; 233.4(4) — Reporting requirements; 248(1)"foreign affiliate" — Definition applies to entire Act.

History: The definition "foreign affiliate" in subsec. 95(1) amended by 1995, c. 21, subsec. 46(1), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

> (a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or
>
> (b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

The definition formerly read:

> "foreign affiliate", at any time, of a taxpayer (other than a non-resident-owned investment corporation) resident in Canada means a corporation (other than a corporation resident in Canada), in which, at that time, the taxpayer's equity percentage was not less than 10%;

Pre-RSC History: *The definition "foreign affiliate" was para. 95(1)(d).*

Selected Cases [subsec. 95(1)"foreign affiliate"]: *Old HW-GW Ltd. v. Canada*, [1993] 1 C.T.C. 363 (FCA); leave to appeal to SCC refused (Sept. 30, 1993), Doc. 23591 (SCC) (Puerto Rico separate country from US under subsections 5907(10) and (11) of Regulations; incentive to promote sales from Puerto Rico to US was "export" incentive; dividends from foreign affiliate in Puerto Rico not from "exempt surplus").

I.T. Application Rules: 35(4) (where corporation deemed to be foreign affiliate due to election made before May 6, 1974).

Interpretation Bulletins: IT-343R: Meaning of the term "corporation"; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

"foreign bank" means an entity that would be a foreign bank within the meaning assigned by the definition of that expression in section 2 of the *Bank Act* if

> (a) that definition were read without reference to the portion thereof after paragraph (g) thereof, and
>
> (b) the entity had not been exempt under section 12 of that Act from being a foreign bank;

Related Provisions: 94.1(1)"foreign bank" — Definition applies to foreign investment entity rules.

History: The definition "foreign bank" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

> (a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or
>
> (b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"income from an active business" of a foreign affiliate of a taxpayer for a taxation year includes, for greater certainty, any income of the affiliate for the year that pertains to or is incident to that business but does not include

> (a) other income that is its income from property for the year, or
>
> (b) its income for the year from a business that is deemed by subsection (2) to be a business other than an active business carried on by the affiliate;

Related Provisions: 95(1)"active business" — Businesses excluded; 95(1)"income from property" — Extended meaning of income from property.

History: The definition "income from an active business" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

> (a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"income from property" of a foreign affiliate of a taxpayer for a taxation year includes its income for the year from an investment business and its income for the year from an adventure or concern in the nature of trade, but, for greater certainty, does not include its income for the year that is because of subsection (2) included in its income from an active business or in its income from a business other than an active business;

Related Provisions: 9(1) — Determination of income from property; 95(1)"investment business" — Meaning of investment business; 95(2)(l) — Income from trading or dealing in indebtedness.

History: The definition "income from property" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"investment business" of a foreign affiliate of a taxpayer means a business carried on by the affiliate in a taxation year (other than a business deemed by subsection (2) to be a business other than an active business carried on by the affiliate) the principal purpose of which is to derive income from property (including interest, dividends, rents, royalties or any similar returns or substitutes therefor), income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of investment property, unless it is established by the taxpayer or the affiliate that, throughout the period in the year during which the business was carried on by the affiliate,

(a) the business (other than any business conducted principally with persons with whom the affiliate does not deal at arm's length) is

(i) a business carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country in which the business is principally carried on, or

Proposed Amendment — 95(1)"investment business"(a)(i)

(i) a business carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws of the country in which the business is principally carried on, or

Application: The June 22, 2000 draft legislation, subsec. 12(5), will amend subpara. (a)(i) of the definition "investment business" in subsec. 95(1) to read as above, applicable to taxation years of foreign affiliates of taxpayers that begin after 2000.

Technical Notes: "Investment business" of a foreign affiliate means a business carried on by the foreign affiliate the principal purpose of which is to derive income from property. However, an arm's length business carried on by a foreign bank, trust company, credit union, insurance corporation or securities trader is excluded from the definition "investment business" where the business is regulated in the country in which the business is principally carried on and a 5-employee test is satisfied.

The definition is amended to clarify that the regulation of the business must be under the laws of the country. This language corresponds to a similar definition of the same expression in new subsection 94.1(1).

(ii) the development of real estate for sale, the lending of money, the leasing or licensing of property or the insurance or reinsurance of risks, and

(b) the affiliate or, where the affiliate carries on the business as a member of a partnership (except where the affiliate is a specified member of the partnership in a fiscal period of the partnership that ends in the year), the partnership employs

(i) more than 5 employees full time in the active conduct of the business, or

(ii) the equivalent of more than 5 employees full time in the active conduct of the business taking into consideration only the services provided by its employees and the services provided outside Canada to the affiliate or the partnership by the employees of

(A) a corporation related to the affiliate (otherwise than because of a right referred to in paragraph 251(5)(b)), or

(B) members of the partnership (other than a member of the partnership that was a specified member of the partnership in a fiscal period of the partnership that ends in the year)

where the corporation or members referred to in clause (A) or (B) receive compensation from the affiliate or the partnership for the services provided to the affiliate or the partnership by those employees the value of which is not less than the cost to such corporation or members of the compensation paid or accruing to the benefit of those employees that performed the services during the time the services were performed by those employees;

Related Provisions: 95(1)"active business"(a) — Investment business excluded from active business; 95(2)(a.2) — Income from insurance business; 95(2.1) — Whether dealing with foreign affiliate at arm's length; 125(7) — Analogous definition of "specified investment business" for small business deduction purposes.

History: The definition "investment business" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"investment property" of a foreign affiliate of a taxpayer includes

(a) a share of the capital stock of a corporation other than a share of another foreign affiliate of the taxpayer that is excluded property of the affiliate,

(b) an interest in a partnership other than an interest in a partnership that is excluded property of the affiliate,

(c) an interest in a trust other than an interest in a trust that is excluded property of the affiliate,

(d) indebtedness or annuities,

(e) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except commodities manufactured, produced, grown, extracted or processed by the affiliate or a person to whom the affiliate is related (otherwise than because of a right referred to in paragraph 251(5)(b)) or commodities futures in respect of such commodities),

(f) currency,

(g) real estate,

(h) Canadian and foreign resource properties,

(i) interests in funds or entities other than corporations, partnerships and trusts, and

(j) interests or options in respect of property that is included in any of paragraphs (a) to (i);

History: The definition "investment property" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"lease obligation" of a person includes an obligation under an agreement that authorizes the use of or the production or reproduction of property including information or any other thing;

History: The definition "lease obligation" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"lending of money" by a person (for the purpose of this definition referred to as the "lender") includes

(a) the acquisition by the lender of trade accounts receivable (other than trade accounts receivable owing by a person with whom the lender does not deal at arm's length) from another person or the acquisition by the lender of any interest in any such accounts receivable,

(b) the acquisition by the lender of loans made by and lending assets (other than loans or lending assets owing by a person with whom the lender does not deal at arm's length) of another person or the acquisition by the lender of any interest in such a loan or lending asset,

(c) the acquisition by the lender of a foreign resource property (other than a foreign resource property that is a rental or royalty payable by a person with whom the lender does not deal at arm's length) of another person, and

(d) the sale by the lender of loans or lending assets (other than loans or lending assets owing by a person with whom the lender does not deal at arm's length) or the sale by the lender of any interest in such loans or lending assets;

and for the purpose of this definition, the definition "lending asset" in subsection 248(1) shall be read without the words "but does not include a prescribed property";

History: Closing words added to the definition "lending of money" in subsec. 95(1) by 1998, c. 19, subsec. 122(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994, but where there was a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amendment applies to taxation years of the foreign affiliate that end after 1994 unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation, or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if the change had not occurred,

except that, for taxation years of a foreign affiliate that ended before October 1997, the closing words of the definition "lending of money" shall be read as follows:

and for the purpose of this definition, the definition "lending asset" in subsection 248(1) shall be read without the words "but does not include a prescribed security";

The definition "lending of money" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"licensing of property" includes authorizing the use of or the production or reproduction of property including information or any other thing;

History: The definition "licensing of property" added to subsec. 95(1) by 1995, c. 21, subsec. 46(3), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new definition applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

"participating percentage" of a particular share owned by a taxpayer of the capital stock of a corporation in respect of any foreign affiliate of the taxpayer that was, at the end of its taxation year, a controlled foreign affiliate of the taxpayer is

(a) where the foreign accrual property income of the affiliate for that year is $5,000 or less, nil, and

(b) where the foreign accrual property income of the affiliate for that year exceeds $5,000,

(i) where the affiliate and each corporation that is relevant to the determination of the taxpayer's equity percentage in the affiliate has only one class of

issued shares at the end of that taxation year of the affiliate, the percentage that would be the taxpayer's equity percentage in the affiliate at that time on the assumption that the taxpayer owned no shares other than the particular share (but in no case shall that assumption be made for the purpose of determining whether or not a corporation is a foreign affiliate of the taxpayer), and

(ii) in any other case, the percentage determined in prescribed manner;

Related Provisions: 95(1) — Foreign accrual property income; 95(1) — Foreign affiliate; 95(4) — Equity percentage.

Pre-RSC History: *The definition "participating percentage" was para. 95(1)(e).*

Regulations: 5904 (prescribed manner).

"relevant tax factor" means

(a) where the taxpayer is an individual, 2, or

(b) where the taxpayer is a corporation, the quotient obtained when one is divided by the percentage set out in paragraph 123(1)(a);

Proposed Amendment — 95(1)"relevant tax factor"

"relevant tax factor" of a person or partnership for a taxation year means

(a) in the case of a corporation (or a partnership all the members of which, other than non-resident persons, are corporations), the quotient obtained when 1 is divided by the percentage set out in paragraph 123(1)(a) in respect of the year, and

(b) in any other case, 2.

Application: The June 22, 2000 draft legislation, subsec. 12(6), will amend the definition "relevant tax factor" in subsec. 95(1) to read as above, applicable after 2000.

Technical Notes: The existing definition "relevant tax factor" provides that the "relevant tax factor" for an individual is 2 and for a corporation is the reciprocal of the basic corporate tax rate (i.e., 1/.38, or 2.63).

Under new section 94.1, the "relevant tax factor" is relevant in determining the extent to which relief is provided for investors in foreign investment entities in respect of income or profits taxes payable by those entities. (See, in this regard, subsection 94.1(8).) Partnerships may hold interests in such entities, in which case it may become necessary to compute a relevant tax factor in respect of a partnership.

The definition "relevant tax factor" is amended so that the relevant tax factor for a partnership is 2, except where its members consist entirely of corporations resident in Canada and non-resident persons. In the latter case, the "relevant tax factor" is 2.63.

This amendment applies after 2000.

Pre-RSC History: *The definition "relevant tax factor" was para. 95(1)(f).*

Subpara. 95(1)(f)(ii) substituted by 1985, c. 45, subsec. 47(1), applicable to taxation years commencing after June 22, 1984. Subpara. 95(1)(f)(ii) formerly read:

(ii) where the taxpayer is a corporation, the factor obtained when one is divided by the percentage referred to in section 123 for the taxation year;

"surplus entitlement percentage", at any time, of a taxpayer in respect of a foreign affiliate has the meaning assigned by regulation; and

Pre-RSC History: *The definition "surplus entitlement percentage" was para. 95(1)(f.1).*

Para. 95(1)(f.1) added by 1980-81-82-83, c. 140, subsec. 57(5), applicable after November 12, 1981.

Regulations: 5905(13).

"taxation year" in relation to a foreign affiliate of a taxpayer means the period for which the accounts of the foreign affiliate have been ordinarily made up, but no such period may exceed 53 weeks,

Related Provisions: 95(1) — Foreign affiliate; 249 — Taxation year.

Pre-RSC History: *The definition "taxation year" was para. 95(1)(g).*

"trust company" includes a corporation that is resident in Canada and that is a loan company as defined in subsection 2(1) of the *Canadian Payments Association Act*.

History: The definition "trust company" added to subsec. 95(1) by 1998, c. 19, subsec. 122(4), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there was a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amendment applies to taxation years of the foreign affiliate that end after 1994 unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if the change had not occurred.

(2) **Determination of certain components of foreign accrual property income** — For the purposes of this subdivision,

(a) **[income related to active business]** — in computing the income from an active business for a taxation year of a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the year there shall be included any income of the affiliate for that year from sources in a country other than Canada that would otherwise be income from property of the affiliate for the year to the extent that

(i) the income

(A) is derived by the particular affiliate from activities that can reasonably be considered to be directly related to the active business activities carried on in a country other than Canada by

(I) any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year, or

(II) the taxpayer, where the taxpayer is a life insurance corporation resident in Canada throughout the year, and

(B) would be included in computing the amount prescribed to be the earnings or loss from an active business carried on in a country other than Canada of

(I) the non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year, or

(II) the taxpayer, where the taxpayer is a life insurance corporation resident in Canada throughout the year

if it were a foreign affiliate of the taxpayer and the income were earned by it,

(ii) the income is derived from amounts that were paid or payable, directly or indirectly, to the partic-

ular affiliate or a partnership of which the particular affiliate was a member

(A) by

(I) a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year, or

(II) a partnership of which a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year is a member and of which that non-resident corporation is not a specified member at any time in a fiscal period of the partnership that ends in the year

to the extent that those amounts that were paid or payable are for expenditures that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible by it in the year or a subsequent year in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(B) by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a partnership of which another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year is a member and of which that other affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year

to the extent that those amounts that were paid or payable are for expenditures that were or would be, if the partnership were a foreign affiliate of the taxpayer, deductible in the year or a subsequent taxation year by the other affiliate or the partnership in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(C) by a partnership of which the particular affiliate is a member and of which the particular affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year to the extent that those amounts that were paid or payable were for expenditures that would be, if the partnership were a foreign affiliate of the taxpayer, deductible in the year or a subsequent year in computing the amounts prescribed to be its earnings or loss from an active business carried on by it outside Canada,

(D) by another foreign affiliate of the taxpayer (in this clause referred to as the "second affiliate") to which the particular affiliate and the taxpayer are related throughout the year to the extent that the amounts are paid or payable by the second affiliate

(I) under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or

(II) on an amount payable for property acquired for the purpose of gaining or producing income from property

where

(III) the property is excluded property of the second affiliate that is shares of a foreign affiliate (other than the particular affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (in this clause referred to as the "third affiliate"),

(IV) the second and third affiliates are resident in and subject to income taxation in the same country, and

(V) the amounts paid or payable are relevant in computing the liability for income taxes in that country of the members of a group of corporations composed of the second affiliate and one or more other foreign affiliates of the taxpayer (the shares of which are excluded property) that are resident and subject to income taxation in that country and in respect of which the taxpayer has a qualifying interest throughout the year, or

(E) by the taxpayer, where the taxpayer is a life insurance corporation resident in Canada (in this clause referred to as the "insurer"), to the extent that those amounts that were paid or payable were for expenditures that are deductible in the year or a subsequent taxation year by the insurer in computing its income or loss from carrying on its life insurance business outside Canada and are not deductible in the year or a subsequent taxation year in computing its income or loss from carrying on its life insurance business in Canada,

(iii) the income is derived by the particular affiliate from the factoring of trade accounts receivable acquired by the particular affiliate or a partnership of which the particular affiliate was a member from a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year to the extent that the accounts receivable arose in the course of an active business carried on in a country other than Canada by the non-resident corporation, or

(iv) the income is derived by the particular affiliate from loans or lending assets acquired by the particular affiliate or a partnership of which the particular affiliate was a member from a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year to the extent that the loans or lending assets arose in the course of an active business carried on in a country other than Canada by the non-resident corporation;

(a.1) **[income from sale of property]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year from the sale of property (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the performance of services as an agent in relation to a purchase or sale of property) where

(i) it is reasonable to conclude that the cost to any person of the property (other than property that was manufactured, produced, grown, extracted or processed in Canada by the taxpayer or a person with whom the taxpayer does not deal at arm's

length in the course of carrying on a business in Canada and that was sold to non-resident persons other than the affiliate or sold to the affiliate for sale to non-resident persons) is relevant in computing the income from a business carried on by the taxpayer or a person resident in Canada with whom the taxpayer does not deal at arm's length or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length, and

(ii) the property was not manufactured, produced, grown, extracted or processed in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the affiliate's business is principally carried on,

unless more than 90% of the gross revenue of the affiliate for the year from the sale of property is derived from the sale of such property (other than a property described in subparagraph (ii) the cost of which to any person is a cost referred to in subparagraph (i)) to persons with whom the affiliate deals at arm's length (which, for this purpose, includes a sale of property to a non-resident corporation with which the affiliate does not deal at arm's length for sale to persons with whom the affiliate deals at arm's length) and, where this paragraph applies to include income of the affiliate from the sale of property in the income of the affiliate from a business other than an active business,

(iii) the sale of such property shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(iv) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

(a.2) **[income from insurance]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year from the insurance of a risk (which, for the purposes of this paragraph, includes income of the affiliate for the year from the reinsurance of a risk) where the risk was in respect of

(i) a person resident in Canada,

(ii) a property situated in Canada, or

(iii) a business carried on in Canada

unless more than 90% of the gross premium revenue of the affiliate for the year from the insurance of risks (net of reinsurance ceded) was in respect of the insurance of risks (other than risks in respect of a person, a property or a business described in subparagraphs (i) to (iii)) of persons with whom the affiliate deals at arm's length and, where this paragraph applies to include income of the affiliate from the insurance of risks in the income of the affiliate from a business other than an active business,

(iv) the insurance of those risks shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(v) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

(a.3) **[income from Canadian debt and lease obligations]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year derived directly or indirectly from indebtedness (other than a specified deposit with a prescribed financial institution) and lease obligations (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the purchase and sale of indebtedness and lease obligations on its own account)

(i) of persons resident in Canada, or

(ii) in respect of businesses carried on in Canada

unless more than 90% of the gross revenue of the affiliate derived directly or indirectly from indebtedness (other than a specified deposit with a prescribed financial institution) and lease obligations was derived directly or indirectly from indebtedness and lease obligations of non-resident persons with whom the affiliate deals at arm's length and, where this paragraph applies to include income of the affiliate for the year in the income of the affiliate from a business other than an active business,

(iii) those activities carried out to earn such income shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(iv) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

(a.4) **[income from partnership debt and lease obligations]** — in computing the income from a business other than an active business for a taxation year of a foreign affiliate of a taxpayer there shall be included (to the extent not included under paragraph (a.3) in such income of the affiliate for the year) that proportion of the income of the affiliate for the year derived directly or indirectly from indebtedness and lease obligations (which, for the purposes of this paragraph, includes the income of the affiliate for the year from the purchase and sale of indebtedness and lease obligations on its own account) in respect of a business carried on outside Canada by a partnership (any portion of the income or loss of which for fiscal periods of the partnership that end in the year is included or would, if the partnership had an income or loss for such fiscal periods, be included directly or indirectly in computing the income or loss of the taxpayer or a person resident in Canada with whom the taxpayer does not deal at arm's length) that

(i) the total of all amounts each of which is the income or loss of the partnership for fiscal periods of the partnership that end in the year that are included directly or indirectly in computing the income or loss of the taxpayer or a person resident in Canada with whom the taxpayer does not deal at arm's length

is of

(ii) the total of all amounts each of which is the income or loss of the partnership for fiscal periods of the partnership that end in the year

unless more than 90% of the gross revenue of the affiliate derived directly or indirectly from indebtedness and lease obligations was derived directly or indirectly

from indebtedness and lease obligations of non-resident persons with whom the affiliate deals at arm's length (other than indebtedness and lease obligations of a partnership described in this paragraph) and where this paragraph applies to include a proportion of the income of the affiliate for the year in the income of the affiliate from a business other than an active business

(iii) those activities carried out to earn such income of the affiliate for the year shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and

(iv) any income of the affiliate that pertains to or is incident to that business shall be deemed to be income from a business other than an active business

and for the purpose of this paragraph, where the income or loss of a partnership for a fiscal period that ends in the year is nil, the proportion of the income of the affiliate that is to be included in the income of the affiliate for the year from a business other than an active business shall be determined as if the partnership had income of $1,000,000 for that fiscal period;

(b) **[services deemed not active business]** — where a controlled foreign affiliate of a taxpayer provides services or an undertaking to provide services and

(i) the amount paid or payable in consideration therefor

(A) is deductible in computing the income from a business carried on in Canada by any person in relation to whom the affiliate is a controlled foreign affiliate or by a person related to that person, or

(B) was paid or payable by a person other than the taxpayer and can reasonably be considered to relate to an amount that was deductible by the taxpayer or a person related to the taxpayer in computing the income of that taxpayer or person from a business carried on in Canada, or

(ii) the services are performed or are to be performed by any person referred to in subparagraph (i) who is an individual resident in Canada,

the provision of those services or the undertaking to provide those services shall be deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business shall be deemed to be income from a business other than an active business;

(c) **[rollover of FA shares to another FA]** — where a foreign affiliate of a taxpayer (in this paragraph referred to as the "disposing affiliate") has disposed of capital property that was shares of the capital stock of another foreign affiliate of the taxpayer (in this paragraph referred to as the "shares disposed of") to any corporation that was, immediately following the disposition, a foreign affiliate of the taxpayer (in this paragraph referred to as the "acquiring affiliate") for consideration including shares of the capital stock of the acquiring affiliate,

(i) the cost to the disposing affiliate of any property (other than shares of the capital stock of the acquiring affiliate) receivable by the disposing affiliate as consideration for the disposition shall be deemed to be the fair market value of the property at the time of the disposition,

(ii) the cost to the disposing affiliate of any shares of any class of the capital stock of the acquiring affiliate receivable by the disposing affiliate as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the total of the relevant cost bases to it, immediately before the disposition, of the shares disposed of exceeds the fair market value at that time of the consideration receivable for the disposition (other than shares of the capital stock of the acquiring affiliate) that

(A) the fair market value, immediately after the disposition, of those shares of the acquiring affiliate of that class

is of

(B) the fair market value, immediately after the disposition, of all shares of the capital stock of the acquiring affiliate receivable by the disposing affiliate as consideration for the disposition,

(iii) the disposing affiliate's proceeds of disposition of the shares shall be deemed to be an amount equal to the cost to it of all shares and other property receivable by it from the acquiring affiliate as consideration for the disposition, and

(iv) the cost to the acquiring affiliate of the shares acquired from the disposing affiliate shall be deemed to be an amount equal to the disposing affiliate's proceeds of disposition referred to in subparagraph (iii);

(d) **[foreign merger]** — where there has been a foreign merger in which the shares owned by a foreign affiliate of a taxpayer of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares of the capital stock of the new foreign corporation or the foreign parent corporation, subsection 87(4) applies to the foreign affiliate as if the references in that subsection to

(i) "amalgamation" were read as "foreign merger",

(ii) "predecessor corporation" were read as "predecessor foreign corporation",

(iii) "new corporation" were read as "new foreign corporation or the foreign parent corporation", and

(iv) "adjusted cost base" were read as "relevant cost base";

(d.1) **[foreign merger]** — where there has been a foreign merger of two or more predecessor foreign corporations, in respect of each of which a taxpayer's surplus entitlement percentage was not less than 90% immediately before the merger, to form a new foreign corporation in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90%, other than a foreign merger where, under the income tax law of the country in which the predecessor foreign corporations were resident immediately before the merger, a gain or loss was recognized in respect of any capital property of a predecessor foreign corporation that became capital property of the new foreign corporation in the course of the merger,

(i) each capital property of the new foreign corporation that was a capital property of a predecessor foreign corporation immediately before the merger

shall be deemed to have been disposed of by the predecessor foreign corporation immediately before the merger for proceeds of disposition equal to the cost amount of the property to the predecessor foreign corporation at that time; and

(ii) for the purposes of this subsection and the definition "foreign accrual property income" in subsection (1), the new foreign corporation shall, with respect to any disposition by it of any capital property to which subparagraph (i) applied, be deemed to be the same corporation as, and a continuation of, the predecessor foreign corporation that owned the property immediately before the merger,

but for greater certainty nothing in this paragraph shall affect the determination of whether any property of a predecessor foreign corporation is disposed of on a foreign merger other than one to which this paragraph applies;

(e) **[windup of foreign affiliate]** — except as otherwise provided in paragraph (e.1), where on the dissolution of a foreign affiliate of a taxpayer (in this paragraph referred to as the "disposing affiliate") one or more shares of the capital stock of another foreign affiliate of the taxpayer have been disposed of to a shareholder that is another foreign affiliate of the taxpayer,

(i) the disposing affiliate's proceeds of disposition of each such share and the cost thereof to the shareholder shall be deemed to be an amount equal to the relevant cost base to the disposing affiliate of the share immediately before the dissolution, and

(ii) the shareholder's proceeds of disposition of the shares of the disposing affiliate shall be deemed to be the amount, if any, by which the total of

(A) the cost to the shareholder of the shares of the other foreign affiliate, as determined in subparagraph (i), and

(B) the fair market value of any property (other than the shares referred to in clause (A)) disposed of by the disposing affiliate to the shareholder on the dissolution,

exceeds

(C) the total of all amounts each of which is the amount of any debt owing by the disposing affiliate, or of any other obligation of the disposing affiliate to pay any amount, that was outstanding immediately before the dissolution and that was assumed or cancelled by the shareholder on the dissolution;

(e.1) **[windup of foreign affiliate]** — where there has been a liquidation and a dissolution of a foreign affiliate (in this paragraph referred to as the "disposing affiliate") of a taxpayer in respect of which, immediately before the liquidation, the taxpayer's surplus entitlement percentage was not less than 90%, other than a liquidation and a dissolution where, under the income tax law of the country in which the disposing affiliate was resident immediately before the liquidation, a gain or loss was recognized by the disposing affiliate in respect of any capital property distributed by it in the course of the liquidation to another foreign affiliate of the taxpayer resident in that country, the following rules apply:

(i) each capital property of the disposing affiliate that was so distributed to another foreign affiliate of the taxpayer shall be deemed to have been disposed of by the disposing affiliate for proceeds of disposition equal to the cost amount of the property to the disposing affiliate immediately before the distribution,

(ii) for the purposes of this subsection and the definition "foreign accrual property income" in subsection (1), the other affiliate shall, with respect to any disposition by it of capital property to which subparagraph (i) applied, be deemed to be the same corporation as, and a continuation of, the disposing affiliate, and

(iii) the other affiliate's proceeds of disposition of the shares of the capital stock of the disposing affiliate disposed of in the course of the liquidation shall be deemed to be the adjusted cost base of those shares to the other affiliate immediately before the disposition;

(f) **[capital gains and losses of foreign affiliate]** — except as otherwise provided in this subsection, each taxable capital gain and each allowable capital loss of a foreign affiliate of a taxpayer from the disposition of property shall be computed in accordance with Part I, read without reference to section 26 of the *Income Tax Application Rules*, as though the affiliate were resident in Canada

(i) where that gain or loss is the gain or loss of a controlled foreign affiliate from the disposition of property to which paragraph (c), (d) or (e) or 88(3)(a) applies or from any other disposition of property (other than excluded property), in Canadian currency, and

(ii) in any other case, on the assumption that the currency of the country in which the affiliate is resident or such other currency as is reasonable in the circumstances (in this subparagraph referred to as the "calculating currency") were the currency of Canada and, where subsection 39(2) is applicable, on the further assumptions that

(A) the reference in that subsection to "the currency or currencies of one or more countries other than Canada relative to Canadian currency" were read as a reference to "one or more currencies other than the calculating currency relative to the calculating currency", and

(B) the references therein to "of a country other than Canada" were read as references to "of a country other than the country of the calculating currency",

except that in computing any such gain or loss from the disposition of property owned by the affiliate at the time it last became a foreign affiliate of the taxpayer there shall not be included such portion of the gain or loss, as the case may be, as may reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of

(iii) the taxpayer,

(iv) any person with whom the taxpayer was not dealing at arm's length,

(v) any person with whom the taxpayer would not have been dealing at arm's length if the person had

been in existence after the taxpayer came into existence,

(vi) any predecessor corporation (within the meaning assigned by subsection 87(1)) of the taxpayer or of a person described in subparagraph (iv) or (v), or

(vii) any predecessor corporation (within the meaning assigned by paragraph 87(2)(l.2)) of the taxpayer or of a person described in subparagraph (iv) or (v);

(g) **[debt settlement — currency fluctuation]** — where, by virtue of a fluctuation in the value of the currency of a country other than Canada relative to the value of the Canadian dollar, a foreign affiliate of a taxpayer has realized a taxable capital gain or an allowable capital loss in a taxation year on the settlement of a debt that was owing to

(i) another foreign affiliate of the taxpayer or any other non-resident corporation with which the taxpayer does not deal at arm's length, or

(ii) the affiliate by another foreign affiliate of the taxpayer or any other non-resident corporation with which the taxpayer does not deal at arm's length,

such gain or loss, as the case may be, shall be deemed to be nil;

Proposed Amendment — 95(2)(g)

(g) **[currency fluctuation]** — where, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of the Canadian currency, a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a taxation year of the particular affiliate has earned income or incurred a loss or realized a capital gain or a capital loss in the year, on

(i) the settlement of a debt obligation (other than a "specified debt obligation" as defined in subsection 142.2(1)), that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (referred to in this paragraph as a "qualified foreign corporation"), or

(B) the particular affiliate by a qualified foreign corporation,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (other than a "mark-to-market property" as defined in subsection 142.2(1)), or

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (other than a "mark-to-market property" as defined in subsection 142.2(1)),

that income, gain or loss, as the case may be, is deemed to be nil;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(4), will amend para. 95(2)(g) to read as above, applicable to taxation years of a foreign affiliate of a taxpayer that begin after November 1999 except that, where the taxpayer so elects in writing and files the election with the Minister of National Revenue before 2002, the amendment applies to taxation years, of all of its foreign affiliates, that began after 1994 and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendment.

Technical Notes: Paragraph 95(2)(g) provides that foreign currency gains or losses realized on the settlement of debts owing between foreign affiliates or between a foreign affiliate and a non-arm's length non-resident corporation are ignored for the purpose of determining foreign accrual property income ("FAPI"). Similarly, paragraph 95(2)(h) allows foreign currency gains or losses to be ignored for the purpose of determining FAPI when realized by a foreign affiliate as a result of the redemption, cancellation or acquisition of shares of, or on the reduction of capital of, another foreign affiliate of the taxpayer. Paragraph 95(2)(h) also allows foreign currency gains or losses to be ignored when realized on a non-arm's length sale of shares of another affiliate.

The amendment to paragraph 95(2)(g) incorporates the provisions of paragraphs 95(2)(g) and (h) into one paragraph. Also, the amendment allows paragraph 95(2)(g) to apply regardless of whether the foreign currency gains or losses are incurred on income or capital account. As well, paragraph 95(2)(g) applies in circumstances where the foreign affiliate redeems, cancels or acquires its own shares. Paragraph 95(2)(g) will not apply where the gain or loss is incurred on a "mark-to-market property" or a "specified debt obligation" as defined in subsection 142.2(1). In light of the foreign corporate group concept adopted in paragraph 95(2)(a) as part of the 1994 budget amendments, the relief in paragraph 95(2)(g) is restricted to circumstances where the taxpayer resident in Canada has a qualifying interest in each relevant foreign affiliate. In addition, each qualified non-resident corporation must be a corporation that is related to the taxpayer and the affiliate benefiting from the relief of paragraph 95(2)(g).

Amended paragraph 95(2)(g) applies to taxation years of a foreign affiliate that begin after November 30, 1999. However, if the taxpayer so elects and notifies the Minister of National Revenue in writing before 2001 of its election, paragraph 95(2)(g) applies to of all its foreign affiliates' taxation years that begin after 1994.

(g.1) **[debt forgiveness rules]** — in computing the foreign accrual property income of a foreign affiliate of a taxpayer the Act shall be read

(i) as if the expression "income, taxable income or taxable income earned in Canada, as the case may be" in the definition "commercial debt obligation" in subsection 80(1) were read as "foreign accrual property income (within the meaning assigned by subsection 95(1))", and

(ii) without reference to subsections 80(3) to (12) and (15) and 80.01(5) to (11) and sections 80.02 to 80.04;

Proposed Addition — 95(2)(g.2)

(g.2) **[application of foreign investment entity rules]** — in computing the foreign accrual property income of a particular foreign affiliate of a particular taxpayer for a particular taxation year of the particular affiliate, sections 94.1 to 94.3 shall apply as if

(i) the words "controlled foreign affiliate of the taxpayer" in paragraph (a) of the definition "exempt interest" in subsection 94.1(1) referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the particular affiliate,

(ii) subsection 94.1(3) were read without reference to the words "except where the taxpayer is non-resident at the end of the entity's year",

(iii) the form referred to in paragraph (c) of the description of A in subsection 94.1(5) in respect of participating interests in a foreign investment entity for a taxation year of the entity that ends in the particular year were required to be filed with, and only with, the particular taxpayer's return of income for the particular taxpayer's taxation year in which the particular year ends,

(iv) designations made by the particular taxpayer in the form referred to in subparagraph (iii) were made by the particular affiliate,

(v) the words "the particular taxpayer" in paragraph (g) of the description of A in subsection 94.1(5) referred to the particular taxpayer rather than to the particular affiliate,

(vi) each reference to "foreign affiliate" and "affiliate" in paragraph (g) of the description of A in subsection 94.1(5) were a reference to a foreign affiliate of the particular taxpayer and not to a foreign affiliate of the particular affiliate,

(vii) subsection 94.1(5) were read without reference to paragraph (i) of the description of A in subsection 94.1(5),

(viii) for the purpose of applying sections 94.1 and 94.2 in computing the income of a foreign investment entity in which the particular affiliate holds a participating interest,

(A) the words "controlled foreign affiliate of the taxpayer" in paragraph (a) of the definition "exempt interest" in subsection 94.1(1) referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the entity, and

(B) the fresh start year of the entity in respect of the particular affiliate were the first taxation year of the entity

(I) that ends in a taxation year of the particular affiliate that begins after 2000, and

(II) at any time in which both the particular affiliate holds a participating interest in the entity and the particular affiliate is a controlled foreign affiliate of the particular taxpayer,

(ix) an election under paragraph 94.1(4)(a) or clause (i)(C) of the description of D in paragraph 94.2(4)(a) for the particular year were required to be filed under that provision in respect of the particular affiliate, by, and only by, the particular taxpayer, with the Minister on or before the filing-due date of the particular taxpayer for the particular taxpayer's taxation year in which the particular year ends,

(x) section 94.2 were read without reference to subsection 94.2(5),

(xi) paragraph 94.2(1)(b) were read without reference to the words "at which the taxpayer was resident in Canada" and to clause (i)(B) of the description of B in that paragraph, and

(xii) the amount determined under paragraph 94.2(1)(b) did not include the portion of that amount that can reasonably be considered to have accrued during the period that the particular affiliate was not a foreign affiliate of any person described in any of subparagraphs (f)(iii) to (vii);

Application: The June 22, 2000 draft legislation, subsec. 12(7), will add para. 95(2)(g.2), applicable to taxation years of foreign affiliates of taxpayers that begin after 2000.

Technical Notes: Subsection 95(2) of the Act provides rules for determining the income of a foreign affiliate of a taxpayer resident in Canada. These rules apply for the purposes of sections 90 to 95.

The rules in new paragraph 95(2)(g.2) set out the manner in which sections 94.1 to 94.3 apply for the purpose of computing the FAPI of a particular foreign affiliate of a Canadian taxpayer for a particular taxation year of the affiliate:

- The exemption in the definition "exempt interest" for controlled foreign affiliates is treated as if it referred only to controlled foreign affiliates of the Canadian taxpayer (not of the particular affiliate). [Subparagraph 95(2)(g.2)(i).]
- The measures in sections 94.1 and 94.2 that would otherwise restrict their application to residents in Canada are ignored. [Subparagraph 95(2)(g.2)(ii), (x) and (xi).]
- The Canadian taxpayer, rather than the particular affiliate, claims deductions relevant in determining the particular affiliate's income allocation or loss allocation in respect of a participating interest in a foreign investment entity held by the particular affiliate. [Subparagraphs 95(2)(g.2)(iii) and (iv).] These claims are only relevant for taxation years of the particular affiliate that begin after 2000, once the particular affiliate holds an interest in the foreign investment entity and is a controlled foreign affiliate of the Canadian taxpayer. [Clause 95(2)(g.2)(viii)(B).]
- The exclusion of dividends under paragraph 94.1(5)A(g) applies only where the Canadian taxpayer is resident in Canada, in connection with dividends received by the particular affiliate from foreign affiliates of the Canadian taxpayer (not of the particular affiliate) in which the Canadian taxpayer (not the particular affiliate) has a qualifying interest (determined under paragraph 95(2)(m)). [Subparagraphs 95(2)(g.2)(v) and (vi).]
- In the event that the particular affiliate has a participating interest in a particular foreign investment entity and the particular entity has a participating interest in another non-resident entity, the application of sections 94.1 and 94.2 to the particular entity is determined as if the exclusion from the application of those sections for controlled foreign affiliates referred to in paragraph (a) of the definition "exempt interest" in subsection 94.1(1) were for controlled foreign affiliates of the Canadian taxpayer (not controlled foreign affiliates of the particular entity). [Clause 95(2)(g.2)(viii)(A).] This rule applies instead of the rule in paragraph 94.1(5)A(i). [Subparagraph 95(2)(g.2)(vii).]
- The Canadian taxpayer (rather than the particular affiliate) is permitted to make an election under subsection 94.1(4) or subparagraph 94.2(4)(a)D(i) in connection with the particular affiliate's participating interests in foreign investment entities. [Subparagraph 95(2)(g.2)(ix).]
- The particular affiliate's deferral amount determined under paragraph 94.2(1)(b) does not include the portion of the amount that can reasonably be considered to have accrued during the period that the particular affiliate was not a foreign affiliate of the Canadian taxpayer and certain other specified persons. [Subparagraph 95(2)(g.2)(xii).]

This amendment applies to taxation years that begin after 2000.

(h) **[share transactions — currency fluctuation]** — where, by virtue of a fluctuation in the value of the currency of a country other than Canada relative to the value of the Canadian dollar, a foreign affiliate

of a taxpayer has realized a taxable capital gain or an allowable capital loss in a taxation year on

(i) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, another foreign affiliate of the taxpayer, or

(ii) the disposition to a person with whom the taxpayer does not deal at arm's length of a share of the capital stock of another foreign affiliate of the taxpayer,

that gain or loss, as the case may be, shall be deemed to be nil;

Proposed Repeal — 95(2)(h)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(5), will repeal para. 95(2)(h), applicable on the same basis as the amendment to 95(2)(g) above.

Technical Notes: See under 95(2)(g).

(i) **[settlement of debt relating to excluded property]** — any gain or loss of a foreign affiliate of a taxpayer from the settlement or extinguishment of a debt that related at all times to the acquisition of excluded property shall be deemed to be a gain or loss from the disposition of excluded property;

(j) **[ACB of partnership interest]** — the adjusted cost base to a foreign affiliate of a taxpayer of an interest in a partnership at any time shall be such amount as is prescribed by regulation;

(k) **[change in business — fresh start rule]** — where, in a particular taxation year, a foreign affiliate of a taxpayer

(i) carries on an investment business outside Canada and, in the preceding taxation year, that business was not an investment business of the affiliate (or the definition "investment business" in subsection (1) did not apply in respect of the business in the preceding taxation year), or

(ii) is deemed by paragraph (a.1), (a.2), (a.3) or (a.4) to carry on a separate business, other than an active business, and, in the preceding taxation year, that paragraph did not apply to deem the affiliate to be carrying on that separate business,

for the purpose of computing the income of the affiliate from the investment business or the separate business as the case may be (in this subsection referred to as the "foreign business") for the particular year and each subsequent taxation year in which the foreign business is carried on,

(iii) the affiliate shall be deemed

(A) to have begun to carry on the foreign business in Canada at the later of the time the particular year began or the time that it began to carry on the foreign business, and

(B) to have carried on the foreign business in Canada throughout that part of the particular year and each such subsequent taxation year in which the foreign business was carried on by it,

(iv) where the foreign business of the affiliate is a business in respect of which, if the foreign business were carried on in Canada, the affiliate would be required by law to report to a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province, the affiliate shall be deemed to have been required by law to report to and to have been subject to the supervision of such regulating authority, and

(v) paragraphs 138(11.91)(c) to (f) apply to the affiliate for the particular year in respect of the foreign business as if

(A) the affiliate were the insurer referred to in subsection 138(11.91),

(B) the particular year of the affiliate were the particular year of the insurer referred to in that subsection, and

(C) the foreign business of the affiliate were the business of the insurer referred to in that subsection;

(l) **[trading or dealing in debt]** — in computing the income from property for a taxation year of a foreign affiliate of a taxpayer there shall be included the income of the affiliate for the year from a business (other than an investment business of the affiliate) the principal purpose of which is to derive income from trading or dealing in indebtedness (which for the purpose of this paragraph includes the earning of interest on indebtedness) other than

(i) indebtedness owing by persons with whom the affiliate deals at arm's length who are resident in the country in which the affiliate was formed or continued and exists and is governed and in which the business is principally carried on, or

(ii) trade accounts receivable owing by persons with whom the affiliate deals at arm's length,

unless

(iii) the business is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on, and

(iv) the taxpayer is

(A) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority such as the Superintendent of Financial Institutions or a similar authority of a province,

(B) a subsidiary wholly-owned corporation of a corporation described in clause (A), or

(C) a corporation of which a corporation described in clause (A) is a subsidiary wholly-owned corporation; and

(m) **["qualifying interest"]** — a taxpayer has a qualifying interest in respect of a foreign affiliate of the taxpayer at any time if, at that time, the taxpayer owned

(i) not less than 10% of the issued and outstanding shares (having full voting rights under all circumstances) of the affiliate, and

(ii) shares of the affiliate having a fair market value of not less than 10% of the fair market value of all the issued and outstanding shares of the affiliate

and for the purpose of this paragraph

(iii) where, at any time, shares of a corporation are owned or are deemed for the purposes of this paragraph to be owned by another corporation (in this paragraph referred to as the "holding corporation"), those shares shall be deemed to be owned at that time by each shareholder of the holding corporation in a proportion equal to the proportion of all such shares that

(A) the fair market value of the shares of the holding corporation owned at that time by the shareholder

is of

(B) the fair market value of all the issued shares of the holding corporation outstanding at that time,

(iv) where, at any time, shares of a corporation are property of a partnership or are deemed for the purposes of this paragraph to be property of a partnership, those shares shall be deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all such shares that

(A) the member's share of the income or loss of the partnership for its fiscal period that includes that time

is of

(B) the income or loss of the partnership for its fiscal period that includes that time

and for the purpose of this subparagraph, where the income and loss of the partnership for its fiscal period that includes that time are nil, that proportion shall be computed as if the partnership had income for the period in the amount of $1,000,000, and

(v) where, at any time, a person is a holder of convertible property issued by the affiliate before June 23, 1994 the terms of which confer on the holder the right to exchange the convertible property for shares of the affiliate and the taxpayer elects in its return of income for its first taxation year that ends after 1994 to have the provisions of this subparagraph apply to the taxpayer in respect of all the convertible property issued by the affiliate and outstanding at that time, each holder shall, in respect of the convertible property held by it at that time, be deemed to have, immediately before that time,

(A) exchanged the convertible property for shares of the affiliate, and

(B) acquired shares of the affiliate in accordance with the terms and conditions of the convertible property.

Related Provisions: 20(3) — Purpose for which borrowed money deemed to have been used; 53(1)(c) — Addition to ACB of share; 87(8.1) — Foreign merger; 94(1)(d) — Application of certain provisions to trusts not resident in Canada; 95(2.2)–(2.5) — Interpretation rules for 95(2)(a) to (a.3) and (g); 95(3) — "Services" defined; 95(6) — Anti-avoidance rules; 96(3) — Election under 95(2)(g.2) by members of partnership; 253 — Whether business carried on in Canada.

History: Para. 95(2)(d) amended by 1999, c. 22, subsec. 25(1), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination.

The para. formerly read:

(d) where there has been a foreign merger in which the shares owned by a foreign affiliate of a taxpayer of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares of the capital stock of the new foreign corporation, subsection 87(4) applies to the foreign affiliate as if the references in that subsection to

(i) "amalgamation" were read as "foreign merger",

(ii) "predecessor corporation" were read as "predecessor foreign corporation",

(iii) "new corporation" were read as "new foreign corporation",

(iv) "adjusted cost base" were read as "relevant cost base", and

(v) "May 6, 1974" were read as "November 12, 1981";

Subpara. 95(2)(g.1)(ii) amended by 1998, c. 19, subsec. 122(5), applicable to taxation years that end after February 21, 1994. The subpara. formerly read:

(ii) without reference to subsections 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04;

Para. 95(2)(a) amended, paras. 95(2)(a.1) to (a.4) added, by 1995, c. 21, subsec. 46(4), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amended legislation applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Para. (a) formerly read:

(a) in computing the income from an active business of a foreign affiliate of a taxpayer there shall be included

(i) any income from sources in a country other than Canada that would otherwise be income from property or a business other than an active business, to the extent that it pertains to or is incident to an active business carried on in a country other than Canada by the affiliate or any other non-resident corporation with which the taxpayer does not deal at arm's length, and

(ii) any amount paid or payable to the affiliate by, and, where the affiliate is a member of a partnership, the affiliate's share of any amount paid or payable to the partnership by,

(A) another foreign affiliate of the taxpayer, or

(B) any other non-resident corporation with which the taxpayer does not deal at arm's length

to the extent that, in computing the amount prescribed to be its earnings from an active business other than a business carried on by it in Canada, that amount is deductible or would be deductible if the non-resident corporation were a foreign affiliate of the taxpayer;

Para. 95(2)(g.1) added by 1995, c. 21, subsec. 32(4), applicable to taxation years that end after February 21, 1994.

Paras. 95(2)(k) to (m) added by 1995, c. 21, subsec. 46(5), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new paragraphs apply to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that

taxation year would have begun if there had not been that change in the taxation year of such foreign affiliate.

Subpara. 95(2)(h)(i) substituted by 1994, c. 21, s. 43, applicable to redemptions, cancellations, acquisitions and reductions occurring after December 21, 1992. That subpara. formerly read:

(i) the redemption, cancellation or acquisition of shares of the capital stock of, or the reduction of the capital of, the affiliate or another foreign affiliate of the taxpayer, or

That portion of subpara. 95(2)(a)(ii) preceding cl. (A) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(5), applicable to 1987 *et seq.* That portion formerly read:

(ii) any amount paid or payable to the affiliate by

Para. 95(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(6), applicable to taxation years beginning after July 13, 1990. Para. 95(2)(b) formerly read:

(b) the income of a controlled foreign affiliate of a taxpayer from services or an undertaking to provide services shall be deemed to be income from a business other than an active business if

(i) the amount paid or payable in consideration therefor

(A) is deductible in computing the income from a business carried on in Canada by any person in relation to which the affiliate is a controlled foreign affiliate or by a person related to that person, or

(B) was paid or payable by a person other than the taxpayer and may reasonably be considered to relate to an amount that was deductible by the taxpayer or a person related to the taxpayer in computing the income of that taxpayer or person from a business carried on in Canada, or

(ii) the services are performed or are to be performed by any person referred to in subparagraph (i) who is an individual resident in Canada;

That portion of para. 95(2)(d.1) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(7), applicable to foreign mergers occurring after 1989. That portion formerly read:

(d.1) where there has been a foreign merger of two or more predecessor foreign corporations in respect of each of which a taxpayer's surplus entitlement percentage was not less than 90% immediately before the merger to form a new foreign corporation in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90% and, under the income tax law of the country in which the predecessor foreign corporations were resident immediately before the merger, no gain or loss was recognized in respect of any capital property of a predecessor foreign corporation that became capital property of the new foreign corporation in the course of the merger, the following rules apply:

That portion of para. 95(2)(e.1) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(8), applicable to liquidations commencing after 1989. That portion formerly read:

(e.1) where there has been a liquidation and a dissolution of a foreign affiliate (in this paragraph referred to as the "disposing affiliate") of a taxpayer in respect of which, immediately before the liquidation, the taxpayer's surplus entitlement percentage was not less than 90% and, under the income tax law of the country in which the disposing affiliate was resident immediately before the liquidation, no gain or loss was recognized by the disposing affiliate in respect of any capital property distributed by it in the course of the liquidation to another foreign affiliate of the taxpayer resident in that country, the following rules apply:

Subpara. 95(2)(f)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 71(9), applicable to dispositions after July 13, 1990. Subpara. (f)(i) formerly read:

(i) where that gain or loss is the gain or loss of a controlled foreign affiliate from the disposition of property other than excluded property, in Canadian currency, and

Pre-RSC History: Subpara. 95(2)(b)(i) substituted applicable with respect to amounts paid or payable after November 12, 1981; para. (d) substituted and (d.1) added applicable with respect to foreign mergers occurring after that date; that portion of para. (e) preceding subpara. (i) substituted applicable with respect to dissolutions occurring after that date; para. (e.1) added applicable with respect to liquidations commencing after that date; para. (f) and that portion of para. (g) and of para. (h) following subpara. (ii) substituted applicable after that date; and paras. (i), (j) added applicable with respect to dispositions occurring after that date, by 1980-81-82-83, c. 140, subsecs. 56(6) to (13). The substituted portions formerly read:

(i) the amount paid or payable in consideration therefor is deductible in computing the income from a business carried on in Canada by any person in relation to which the affiliate is a controlled foreign affiliate or by a person related to that person, or

. . . . .

(d) where there has been a merger of a foreign affiliate of a taxpayer (in this paragraph referred to as a "predecessor affiliate") and one or more other corporations to form one corporate entity that immediately after the merger is a foreign affiliate of the taxpayer (in this paragraph referred to as a "new affiliate") and such merger is not as a result of the acquisition of property of one corporation by another corporation pursuant to the purchase of such property by the other corporation, or as a result of the distribution of such property to another corporation upon the winding-up of the predecessor affiliate, subsection 87(4) applies to the taxpayer as if the references therein to

(i) "amalgamation" were read as "merger",

(ii) "predecessor corporation" were read as "predecessor affiliate",

(iii) "new corporation" were read as "new affiliate",

(iv) "adjusted cost base" were read as "relevant cost base", and

(v) "May 6, 1974" were read as "1971";

(e) where on the dissolution of a foreign affiliate of a taxpayer (in this paragraph referred to as the "disposing affiliate") one or more shares of the capital stock of another foreign affiliate of the taxpayer have been disposed of to a shareholder that is another foreign affiliate of the taxpayer,

. . . . .

(f) except as provided in paragraphs (c), (d), (e), (g) and (h), each taxable capital gain and each allowable capital loss of a foreign affiliate of a taxpayer shall be computed as though the foreign affiliate were resident in Canada, except that in computing any such gain or loss from the disposition of property owned by the affiliate at the time it last became a foreign affiliate of the taxpayer there shall not be included such portion of the gain or loss, as the case may be, as may reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of

(i) the taxpayer,

(ii) any person with whom the taxpayer was not dealing at arm's length,

(iii) any person with whom the taxpayer would not have been dealing at arm's length if the person had been in existence after the taxpayer came into existence,

(iv) any predecessor corporation (within the meaning assigned by subsection 87(1)) of the taxpayer or of a person described in subparagraph (ii) or (iii), or

(v) any predecessor corporation (within the meaning assigned by paragraph 87(2)(l.2)) of the taxpayer or of a person described in subparagraph (ii) or (iii);

. . . . .

[(g)] such gain or loss, as the case may be, shall, for the purposes of paragraph (1)(b), be deemed to be nil; and

. . . . .

[(h)] such gain or loss, as the case may be, shall, for the purposes of paragraph (1)(b), be deemed to be nil.

Para. 95(2)(f) substituted and para. (h) added by 1980-81-82-83, c. 48, subsecs. 51(1), (2), para. (f) applicable with respect to any gain or loss on the disposition of property after December 11, 1979, except that the reference in the para. to para. 95(2)(h) is applicable to 1976 *et seq.*, and para. 95(2)(h) applicable to 1976 *et seq.* except that a taxpayer could elect in his return of income under Part I of the Act for his 1980 or 1981 taxation year not to have para. (h) apply to taxable capital gains realized or allowable capital losses incurred by him before December 12, 1979. Para. 95(2)(f) formerly read:

(f) except as provided in paragraphs (c), (d), (e) and (g), each taxable capital gain of a foreign affiliate of a taxpayer and each allowable capital loss of a foreign affiliate of a taxpayer shall be computed in accordance with subdivision c as though the foreign affiliate were resident in Canada, except that in computing any such gain or loss from the disposition of property owned by the affiliate at the time it

last became a foreign affiliate of the taxpayer there shall not be included such portion of the gain or loss, as the case may be, as may reasonably be considered to have accrued before that time; and

Paras. 95(2)(f) substituted, (g) added by 1979, c. 5, s. 32, applicable to 1976 *et seq.* Para. 95(2)(f) formerly read:

(f) except as provided in paragraphs (c), (d) and (e), each taxable capital gain of a foreign affiliate of a taxpayer and each allowable capital loss of a foreign affiliate of a taxpayer shall be computed in accordance with subdivision c as though the foreign affiliate were resident in Canada, except that in computing any such gain or loss from the disposition of property owned by the affiliate at the time it last became a foreign affiliate of the taxpayer there shall not be included such portion of the gain or loss, as the case may be, as may reasonably be considered to have accrued before that time.

Subpara. 95(2)(e)(ii) substituted by 1977-78, c. 1, s. 46, applicable in respect of dissolutions occurring after 1971.

Selected Cases [subsec. 95(2)]: *Rostland Corp. v. Canada*, [1995] 2 C.T.C. 2276 (TCC) (Interest income in heavily leveraged real estate venture was income from an active business and not FAPI).

Regulations: 5900–5908 (FAPI rules); 7900 (prescribed financial institution for 95(2)(a.3)).

I.T. Application Rules: 35(2) (where corporation deemed to be foreign affiliate due to election made before May 6, 1974).

Interpretation Bulletins: IT-392: Meaning of term "share".

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

I.T. Technical News: No. 15 (tax consequences of the adoption of the "euro" currency).

(2.1) Rule for definition "investment business" — For the purposes of the definition "investment business" in subsection (1), a foreign affiliate of a taxpayer, the taxpayer and, where the taxpayer is a corporation all the issued shares of which are owned by a corporation described in subparagraph (a)(i), such corporation described in subparagraph (a)(i) shall be considered to be dealing with each other at arm's length in respect of the entering into of agreements that provide for the purchase, sale or exchange of currency and the execution of such agreements where

(a) the taxpayer is

(i) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority such as the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a subsidiary wholly-owned corporation of a corporation described in subparagraph (i);

(b) the agreements are swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements or similar agreements;

(c) the agreements are entered in the course of a business carried on by the affiliate principally with persons with whom the affiliate deals at arm's length in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on; and

(d) the terms and conditions of such agreements are substantially the same as the terms and conditions of similar agreements made by persons dealing at arm's length.

History: Subsec. 95(2.1) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

(2.2) Rule for para. (2)(a) — For the purpose of paragraph (2)(a),

Proposed Amendment — 95(2.2)

(2.2) Rule for subsec. (2) — For the purpose of subsection (2),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(6), will amend the opening words of subsec. 95(2.2) to read as above, applicable to taxation years of a foreign affiliate of a taxpayer that begin after November 1999 except that, where the taxpayer so elects in writing and files the election with the Minister of National Revenue before 2002, the amendment applies to taxation years, of all of its foreign affiliates, that began after 1994 and, notwithstanding subsecs. 152(4) to (5), any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of the amendment.

Technical Notes: Subsection 95(2.2) of the Act provides rules for the purpose of paragraph 95(2)(a) of the Act. The subsection provides that in certain circumstances a non-resident corporation that was not a foreign affiliate of a taxpayer will be considered to be a foreign affiliate of the taxpayer. It also provides that in certain circumstances a non-resident corporation that was not related to a foreign affiliate of a taxpayer will be considered to be related to the foreign affiliate and the taxpayer.

Subsection 95(2.2) is amended to apply to all of subsection 95(2), rather than merely paragraph 95(2)(a). This amendment ensures that subsection 95(2.2) will apply to the changes in paragraph 95(2)(g) of the Act and has the same effective date as those changes.

(a) a non-resident corporation that was not a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a particular taxation year shall be deemed to be a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout that year where

(i) a person has, in that year, acquired or disposed of shares of that non-resident corporation or any other corporation and, because of that acquisition or disposition, that non-resident corporation became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, and

(ii) at the beginning of that year or at the end of that year, the non-resident corporation was a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest; and

(b) a non-resident corporation that was not related to a foreign affiliate of a taxpayer and the taxpayer throughout a particular taxation year shall be deemed to be related to the foreign affiliate of the taxpayer and that taxpayer throughout that year where

(i) a person has, in that year, acquired or disposed of shares of that non-resident corporation or any other corporation and, because of that acquisition or disposition, that non-resident corporation became or ceased to be a non-resident corporation that was related to the foreign affiliate of the taxpayer and the taxpayer, and

(ii) at the beginning of that year or at the end of that year, the non-resident corporation was related to the foreign affiliate of the taxpayer and the taxpayer.

History: Subsec. 95(2.2) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

(2.3) Application of para. (2)(a.1) — Paragraph (2)(a.1) does not apply to a foreign affiliate of a taxpayer in respect of a sale or exchange of property that is currency or a right to purchase, sell or exchange currency where

(a) the taxpayer is

(i) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority such as the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a subsidiary wholly-owned corporation of a corporation described in subparagraph (i);

(b) the sale or exchange was made in the course of a business carried on by the affiliate principally with persons with whom the affiliate deals at arm's length in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on by it; and

(c) the terms and conditions of the sale or exchange of such property are substantially the same as the terms and conditions of similar sales or exchanges of such property by persons dealing at arm's length.

History: Subsec. 95(2.3) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

(2.4) Application of para. (2)(a.3) — Paragraph (2)(a.3) does not apply to a foreign affiliate of a taxpayer in respect of its income derived directly or indirectly from indebtedness to the extent that

(a) the income is derived by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on, and

(b) the income is derived by the affiliate from trading or dealing in the indebtedness (which, for this purpose, consists of income from the actual trading or dealing in the indebtedness and interest earned by the affiliate during a short term holding period on indebtedness acquired by it for the purpose of the trading or dealing) with persons (in this subsection referred to as "regular customers") with whom it deals at arm's length who were resident in a country other than Canada in which it and any competitor (which is resident in the country in which the affiliate is resident and regulated in the same manner the affiliate is regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which its business is principally carried on) compete and have a substantial market presence,

and, for the purpose of this subsection, an acquisition of indebtedness from the taxpayer shall be deemed to be part of the trading or dealing in indebtedness described in paragraph (b) where the indebtedness is acquired by the affiliate and sold to regular customers and the terms and conditions of the acquisition and the sale are substantially the same as the terms and conditions of similar acquisitions and sales made by the affiliate in transactions with persons with whom it deals at arm's length.

History: Subsec. 95(2.4) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

(2.5) Definitions for para. (2)(a.3) — For the purpose of paragraph (2)(a.3),

"indebtedness" does not include obligations of a person under agreements with non-resident corporations providing for the purchase, sale or exchange of currency where

(a) the agreements are swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements, or similar agreements,

(b) the person is a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(c) the agreements are entered into by the non-resident corporation in the course of a business carried on by it principally with persons with which it deals at arm's length in the country under whose laws the non-resident corporation was formed or continued and exists and is governed and in which the business is principally carried on by it, and

(d) the terms and conditions of such agreements are substantially the same as the terms and conditions of

similar agreements made by persons dealing at arm's length;

"specified deposit" means a deposit of a foreign affiliate of a taxpayer resident in Canada with a prescribed financial institution resident in Canada where

(a) the income from the deposit is income of the affiliate for the year that would, but for paragraph (2)(a.3), be income from an active business carried on by it in a country other than Canada (other than a business the principal purpose of which is to derive income from property including interest, dividends, rents, royalties or similar returns or substitutes therefor or profits from the disposition of investment property), or

(b) the income from the deposit is income of the affiliate for the year that would, but for paragraph (2)(a.3), be income from an active business carried on by the affiliate principally with persons with whom the affiliate deals at arm's length in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on by it and the deposit was held by the affiliate in the course of carrying on that part of the business conducted with non-resident persons with whom the affiliate deals at arm's length or that part of the business conducted with a person with whom the affiliate was related where it can be demonstrated that the related person used or held the funds deposited in the course of a business carried on by the related person with non-resident persons with whom the related person and the affiliate deal at arm's length.

History: Subsec. 95(2.5) added by 1995, c. 21, subsec. 46(6), applicable to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the new subsection applies to taxation years of such foreign affiliate of the taxpayer that end after 1994, unless

(a) such foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation; or

(b) the first taxation year of such foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time that that taxation year would have begun if there had not been that change in the taxation of such foreign affiliate.

Regulations: 7900 (prescribed financial institution).

(3) Definition of "services" — For the purposes of paragraph (2)(b), "services" includes the insurance of Canadian risks but does not include

(a) the transportation of persons or goods; or

(b) services performed in connection with the purchase or sale of goods.

(4) Definitions — In this section,

"direct equity percentage" at any time of any person in a corporation is the percentage determined by the following rules:

(a) for each class of the issued shares of the capital stock of the corporation, determine the proportion of 100 that the number of shares of that class owned by that person at that time is of the total number of issued shares of that class at that time, and

(b) select the proportion determined under paragraph (a) for that person in respect of the corporation that is not less than any other proportion so determined for that person in respect of the corporation at that time,

and the proportion selected under paragraph (b), when expressed as a percentage, is that person's direct equity percentage in the corporation at that time;

Pre-RSC History: *The definition "direct equity percentage" was para. 95(4)(a).*

Interpretation Bulletins: IT-392: Meaning of term "share".

"equity percentage" at any time of a person, in any particular corporation, is the total of

(a) the person's direct equity percentage at that time in the particular corporation, and

(b) all percentages each of which is the product obtained when the person's equity percentage at that time in any corporation is multiplied by that corporation's direct equity percentage at that time in the particular corporation

except that for the purposes of the definition "participating percentage" in subsection (1), paragraph (b) shall be read as if the reference to "any corporation" were a reference to "any corporation other than a corporation resident in Canada";

Related Provisions: 94(1)(d) — Deemed ownership in trust deemed to be corporation for FAPI purposes.

Pre-RSC History: *The definition "equity percentage" was para. 95(4)(b).*

Para. 95(4)(b) substituted by 1976-77, c. 4, s. 35, applicable to 1972 *et seq.*

"relevant cost base" to a foreign affiliate of property at any time means the adjusted cost base to the affiliate of the property at that time or such greater amount as the taxpayer claims not exceeding the fair market value of the property at that time.

Pre-RSC History: *The definition "relevant cost base" was para. 95(4)(c).*

(4.1) Application of subsec. 87(8.1) — In this section, the expressions "foreign merger", "predecessor foreign corporation", "new foreign corporation" and "foreign parent corporation" have the meanings assigned by subsection 87(8.1).

Origin of subsec. 95(4.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 87(8.1)).

History: Subsec. 95(4.1) amended by 1999, c. 22, subsec. 25(2), applicable to a taxpayer in respect of a merger or combination of foreign corporations

(a) that occurs after February 24, 1998, or

(b) that occurred

(i) before February 25, 1998 and in a taxation year of the taxpayer for which the taxpayer's normal reassessment period, as defined in subsec. 152(3.1), has not ended before 1999, or

(ii) after 1994 and before February 25, 1998 and in a taxation year of the taxpayer in which the taxpayer was exempt from tax under s. 149,

unless the taxpayer elects by notifying the Minister of National Revenue in writing, before January 1, 2000, that the amendment not apply to the taxpayer in respect of the merger or combination.

The subsec. formerly read:

(4.1) In this section, the expressions "foreign merger", "predecessor foreign corporation" and "new foreign corporation" have the meanings assigned by subsection 87(8.1).

(5) Income bonds or debentures issued by foreign affiliates — For the purposes of this subdivision, an income bond or income debenture issued by a corporation (other than a corporation resident in Canada) shall be deemed to be a share of the capital stock of the corporation unless any interest or other similar periodic amount paid by the corporation on or in respect of the

bond or debenture was, under the laws of the country in which the corporation was resident, deductible in computing the amount for the year on which the corporation was liable to pay income or profits tax imposed by the government of that country.

Interpretation Bulletins: IT-388: Income bonds issued by foreign corporations.

(6) Where rights or shares issued, acquired or disposed of to avoid tax — For the purposes of this subdivision (other than section 90),

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation and

Proposed Amendment — 95(6)(a) opening words

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation or interests in a partnership and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(7), will amend the opening words of para. 95(6)(a) to read as above, applicable after November 1999.

Technical Notes: Subsection 95(6) of the Act is an anti-avoidance rule that prevents the avoidance of tax through the use of rights to acquire shares or the issuance of shares. The amendments to this subsection clarify that the subsection is intended to prevent the avoidance of tax through the use of rights to acquire partnership interests or the issuance of partnership interests. Where applicable, paragraph 95(6)(b) treats an acquisition or disposition of shares or partnership interests to have not taken place. Where the shares or partnership interests were previously unissued, the paragraph deems the shares or partnership interests to have not been issued.

(i) it can reasonably be considered that the principal purpose for the existence of the right is to cause 2 or more corporations to be related for the purpose of paragraph (2)(a), those corporations shall be deemed not to be related for that purpose, or

(ii) it can reasonably be considered that the principal purpose for the existence of the right is to permit any person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares shall be deemed to be owned by that person or partnership; and

Proposed Amendment — 95(6)(a)(ii)

(ii) it can reasonably be considered that the principal purpose for the existence of the right is to permit any person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares or partnership interests, as the case may be, are deemed to be owned by that person or partnership; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(8), will amend subpara. 95(6)(a)(ii) to read as above, applicable after November 1999.

Technical Notes: See under 95(6)(a).

(b) where a person or partnership acquires or disposes of shares of the capital stock of a corporation, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition of the shares is to permit a person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares shall be deemed not to have been acquired or disposed of, as the case may be, and where the shares were unissued by the corporation immediately prior to the acquisition, those shares shall be deemed not to have been issued.

Proposed Amendment — 95(6)(b)

(b) where a person or partnership acquires or disposes of shares of the capital stock of a corporation or interests in a partnership, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition is to permit a person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, that acquisition or disposition is deemed not to have taken place, and where the shares or partnership interests were unissued by the corporation or partnership immediately before the acquisition, those shares or partnership interests, as the case may be, are deemed not to have been issued.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 46(9), will amend para. 95(6)(b) to read as above, applicable after November 1999.

Technical Notes: See under 95(6)(a).

Related Provisions: 17(14) — Similar rule re loans to non-residents; 256(5.1) — Controlled directly or indirectly — control in fact.

History: Subsec. 95(6) amended by 1995, c. 21, subsec. 46(7), applicable (as amended by 1998, c. 19, subsec. 305(1), deemed to have come into force on June 22, 1995) to rights acquired and shares acquired or disposed of in taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, the amendment applies to rights acquired and shares acquired or disposed of in taxation years of the foreign affiliate that end after 1994, unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred.

Subsec. (6) formerly read:

(6) Where rights or shares issued to avoid tax — For the purposes of this subdivision,

(a) where any person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation, those shares shall, if one of the main reasons for the existence of the right may reasonably be considered to be the reduction or postponement of the amount of taxes that would otherwise be payable under this Act, be deemed to be owned by that person; and

(b) where any foreign affiliate of a taxpayer or any non-resident corporation controlled, directly or indirectly in any manner whatever, by the taxpayer or by a related group of which the taxpayer was a member has issued shares of a class of its capital stock and one of the main reasons for the existence or issuance of one or more of the shares of that class may reasonably be considered to be the reduction or postponement of the amount of taxes that would otherwise be payable under this Act, those shares shall be deemed not to have been issued.

(7) Stock dividends from foreign affiliates — For the purposes of this subdivision and subsection 52(3), the amount of any stock dividend paid by a foreign affiliate of a corporation resident in Canada shall, in respect of the corporation, be deemed to be nil.

Interpretation Bulletins [subsec. 95(7)]: IT-88R2: Stock dividends.

Pre-RSC History [s. 95]: S. 95 substituted by 1974-75-76, c. 26, s. 59, applicable to 1972 *et seq.*

Definitions [s. 95]: "active business" — 95(1); "allowable capital loss" — 38(b), 248(1); "amount" — 95(7), 248(1); "annuity" — 248(1); "arm's length" — 95(2.1), 251(1); "bank" — *Interpretation Act* 35(1); "business" — 248(1); "business carried on in Canada" — 253; "Canada" — 253, 255; "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class" — of shares 248(6); "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "controlled foreign affiliate" — 94(1)(d), 95(1), 248(1); "corporation" — 94(1)(d), 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "direct equity percentage" — 95(4); "disposition", "dividend", "employee" — 248(1); "equity percentage" — 95(4); "excluded property" — 95(1); "fiscal period" — 249(2)(b), 249.1; "foreign accrual property income" — 95(1), 95(2), 248(1); "foreign affiliate" — 93.1(1), 94(1)(d), 95(1), 248(1); "foreign bank" — 95(1); "foreign business" — 95(2)(k); "foreign merger", "foreign parent corporation" — 87(8.1), 95(4.1); "foreign resource property" — 66(15), 248(1); "fresh start year" — 94.1(6); "holding corporation" — 95(2)(m)(iii); "income bond", "income debenture" — 248(1); "income from an active business" — 95(1); "income from property" — 9(1), 95(1); "indebtedness" — 95(2.5); "insurance corporation" — 248(1); "investment business", "investment property", "lease obligation" — 95(1); "lending asset" — 95(1)"lending of money", 248(1); "lending of money", "licensing of property" — 95(1); "life insurance corporation" — 248(1); "new foreign corporation" — 87(8.1), 95(4.1); "new foreign corporation" — 87(8.1), 95(4.1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person" — 248(1); "predecessor foreign corporation" — 87(8.1), 95(4.1); "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying interest" — 95(2)(m), 95(2.2); "related" — 95(2.2)(b), 95(6)(a)(i), 251(2); "related group" — 251(4); "relevant cost base" — 95(4); "resident in Canada" — 250; "services" — 95(3); "share" — 248(1); "specified deposit" — 95(2.5); "specified member" — 248(1); "subsidiary wholly-owned corporation" — 248(1); "surplus entitlement percentage" — 95(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxation year" — 95(1), 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1); "trust company" — 95(1).

Subdivision j — Partnerships and Their Members

96. (1) General rules — Where a taxpayer is a member of a partnership, the taxpayer's income, non-capital loss, net capital loss, restricted farm loss and farm loss, if any, for a taxation year, or the taxpayer's taxable income earned in Canada for a taxation year, as the case may be, shall be computed as if

(a) the partnership were a separate person resident in Canada;

(b) the taxation year of the partnership were its fiscal period;

(c) each partnership activity (including the ownership of property) were carried on by the partnership as a separate person, and a computation were made of the amount of

(i) each taxable capital gain and allowable capital loss of the partnership from the disposition of property, and

(ii) each income and loss of the partnership from each other source or from sources in a particular place,

for each taxation year of the partnership;

(d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraphs 12(1)(z.5) and 20(1)(v.1), section 34.1 and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted under any of section 29 of the *Income Tax Application Rules*, subsections 34.2(4) and 65(1) and sections 66, 66.1, 66.2 and 66.4;

(e) each gain of the partnership from the disposition of land used in a farming business of the partnership were computed as if this Act were read without reference to paragraph 53(1)(i);

(e.1) the amount, if any, by which

(i) the total of all amounts determined under paragraphs 37(1)(a) to (c.1) in respect of the partnership at the end of the taxation year

exceeds

(ii) the total of all amounts determined under paragraphs 37(1)(d) to (g) in respect of the partnership at the end of the year

were deducted under subsection 37(1) by the partnership in computing its income for the year;

(f) the amount of the income of the partnership for a taxation year from any source or from sources in a particular place were the income of the taxpayer from that source or from sources in that particular place, as the case may be, for the taxation year of the taxpayer in which the partnership's taxation year ends, to the extent of the taxpayer's share thereof; and

(g) the amount, if any, by which

(i) the loss of the partnership for a taxation year from any source or sources in a particular place,

exceeds

(ii) in the case of a specified member (within the meaning of the definition "specified member" in subsection 248(1) if that definition were read without reference to paragraph (b) thereof) of the partnership in the year, the amount, if any, deducted by the partnership by virtue of section 37 in calculating its income for the taxation year from that source or sources in the particular place, as the case may be, and

(iii) in any other case, nil

were the loss of the taxpayer from that source or from sources in that particular place, as the case may be, for the taxation year of the taxpayer in which the partnership's taxation year ends, to the extent of the taxpayer's share thereof.

Related Provisions: 12(1)(l) — Inclusion of partnership income; 12(1)(y) — Auto provided to partner; 33.1(2)(a) — "person" includes partnership for international banking centre rules; 39.1(2)B(b), 39.1(4), (5) — Election to trigger capital gains exemption; 53(1)(e), 53(2)(c) — ACB of partnership interest; 66(16) — "person" includes partnership for flow-through share rules; 66(18) — Resource expenditures claimed by members of partnerships; 66.1(7), 66.2(6), (7), 66.4(6), (7) — Resource expenses; 66.7(11) — Change of control — anti-avoidance rule; 79(1), 79.1(1) — "person" includes partnership for rules re seizure of property by creditor; 80(1)"forgiven amount"B(k) — Debt forgiveness rules do not apply to debt forgiven by partnership to active partner; 80(1), 80.01(1) — "person" includes partnership for debt forgiveness rules; 80(15) — Application of debt forgiveness rules to members of partnerships; 87(2)(e.1) — Amalgamations — partnership interest; 93(1.2) — Disposition of share of foreign affiliate; 93.1 — Shares of foreign affiliate held by partnership; 96(1.1) — Allocation of share of income to retiring partner; 96(1.7) — Gains and losses; 96(1.9) — Foreign trusts and other foreign investment entities; 96(2.1) — Limited partnership losses; 100(2.1) — Disposition of an interest in a partnership; 107(1)(d) — Stop-loss rule on disposition by partnership of interest in trust that flowed out dividends; 111(1)(a)–(d) — Losses deductible; 112(3.1) — Stop-loss rule for partner on disposition by partnership of share on which dividends paid; 118.1(8) — Gifts made by partnership; 120.4(1)"split income"(b) — Certain partnership income of children subject to income splitting tax; 127(8), (8.1) — Investment tax credit of partnership or limited partner; 127.52(1)(c.1) — Minimum tax — no deduction for losses of limited partner; 127.52(2) — Application of

partnership income and loss for minimum tax purposes; 139.1(1) — "person" includes partnership for purposes of insurance demutualization; 152(1.4)–(1.8) — Determination by CCRA of partnership income or loss; 162(8.1) — Rules where partnership is liable to penalty; 187.4(c) — "person" includes partnership for purposes of Part IV.1 tax; 209(6) — "person" includes partnership for purposes of tax on carved-out income; 210 — Partnership as designated beneficiary; 212(13.1) — Non-resident withholding tax where payer or payee is a partnership; 227(5.2) — Partnerships liable for obligations re withholding tax; 227(15) — Assessment of partnership for Part XIII tax; 237.1(1) — "person" includes partnership for tax shelter identification rules; 244(20) — Notice to members of partnerships; 251.1(4)(b) — "person" includes partnership for definition of affiliated persons; *Income Tax Conventions Interpretation Act* 6.2 — Partnership with Canadian resident partner cannot be resident in another country.

History: Para. 96(1)(d) amended by 1997, c. 25, s. 21, applicable to fiscal periods that begin after 1996. Para. (d) formerly read:

> (d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraph 20(1)(v.1), section 34.1 and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted under any of section 29 of the *Income Tax Application Rules*, subsections 34.2(4) and 65(1) and sections 66, 66.1, 66.2 and 66.4;

Para. 96(1)(d) amended by 1996, c. 21, subsec. 17(1), applicable after 1994. The para. formerly read:

> (d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraph 20(1)(v.1) and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted by section 29 of the *Income Tax Application Rules*, subsection 65(1) or section 66, 66.1, 66.2 or 66.4;

Para. 96(1)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 40(1), applicable to partnership fiscal periods commencing after December 20, 1991. Para. (d) formerly read:

> (d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted by section 29 of the *Income Tax Application Rules*, subsection 65(1) or section 66, 66.1, 66.2 or 66.4;

Pre-RSC History: Para. 96(1)(e.1) added and para. (g) substituted, by 1988, c. 55, subsecs. 66(1), (2), applicable for taxation years of partnerships ending after December 15, 1987 except that, where a taxpayer acquired a partnership interest before December 16, 1987, or after December 15, 1987

> (a) pursuant to an obligation in writing entered into before December 16, 1987,
>
> (b) and before June, 1988 pursuant to the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province, or
>
> (c) and before June, 1988 as part of an offering of securities where
>
> > (i) the offering was made pursuant to the terms of an offering memorandum which contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,
> >
> > (ii) the offering memorandum was distributed before December 16, 1987,
> >
> > (iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before December 16, 1987, and
> >
> > (iv) the sale of the securities was substantially in accordance with the offering memorandum

para. 96(1)(e.1), and para. (g) as amended, shall not apply in respect of the taxpayer to expenditures made by the partnership

> (d) before December 16, 1987, or
>
> (e) after December 15, 1987 and before 1989 pursuant to
>
> > (i) an obligation in writing entered into by the partnership before December 16, 1987,
> >
> > (ii) the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province, or
> >
> > (iii) the terms of an offering memorandum described in paragraph (c) and pursuant to which securities were distributed.

Para. 96(1)(g) formerly read:

> (g) the amount of the loss of the partnership for a taxation year from any source or from sources in a particular place were the loss of the taxpayer from that source or from sources in that particular place, as the case may be, for the taxation year of the taxpayer in which the partnership's taxation year ends, to the extent of the taxpayer's share thereof.

Para. 96(1)(d) amended by 1987, c. 46, s. 32, to substitute "section 29 of the *Income Tax Application Rules, 1971*, subsection 65(1) or section 66, 66.1, 66.2 or 66.4" for "subsection 65(1), section 66, 66.1, 66.2 or 66.4 or the *Income Tax Application Rules, 1971* in respect of this paragraph", applicable to taxation years ending after February 17, 1987.

Para. 96(1)(d) amended by 1985, c. 45, subsec. 48(1), applicable to taxation years commencing after 1984, to substitute "subsections 66.1(1), 66.2(1) and 66.4(1)" for "subsections 59(1.1) and (1.2) and 66(12.1) and paragraphs 59(3.1)(a) and 66(12.2)(a), (12.3)(a) and (12.5)(a)".

All that portion of subsec. 96(1) preceding para. (a) substituted by 1984, c. 1, subsec. 43(1) to add "and farm loss", applicable to 1983 *et seq.*

Para. 96(1)(d) substituted by 1980-81-82-83, c. 48, subsec. 52(1), applicable to taxation years ending after December 11, 1979. Para. 96(1)(d) formerly read:

> (d) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to subsections 59(1.1) and 66(12.1) and paragraphs 59(3.1)(a), 66(12.2)(a) and 66(12.3)(a) and as if no deduction were permitted by subsection 65(1), section 66, 66.1 or 66.2 or the provisions of the *Income Tax Application Rules, 1971* relating to exploration and development expenses, Canadian exploration expense or Canadian development expense, as the case may be;

Para. 96(1)(d) substituted by 1977-78, c. 1, s. 47, applicable to 1977 *et seq.* Para. 96(1)(d) formerly read:

> (d) each income or loss of the partnership for a taxation year were computed as if no deduction were permitted by subsection 65(1), section 66, 66.1 or 66.2 or the provisions of the *Income Tax Application Rules, 1971* relating to exploration and development expenses, Canadian exploration expense or Canadian development expense, as the case may be;

Para. 96(1)(d) substituted by 1974-75-76, c. 26, subsec. 60(1), applicable to 1974 *et seq.* Para. 96(1)(d) formerly read:

> (d) each income or loss of the partnership for a taxation year were computed as if no deduction were permitted by subsection 65(1), section 66 or the provisions of the *Income Tax Application Rules, 1971* relating to exploration and development expenses;

Selected Cases [subsec. 96(1)]: *Spire Freezers Ltd. v. R.*, [1998] 2 C.T.C. 2764 (TCC) (Partnership did not exist because it was not created with a view to profit); *Goldstein v. Canada*, [1995] 2 C.T.C. 2036 (TCC) (Income retains its character as it flows through partnership); *Signum Communications Inc. v. Canada*, [1991] 2 C.T.C. 31 (FCA) (Limited partner allowed losses greater than amount of capital contribution); *Laxton v. Canada*, [1989] 2 C.T.C. 85 (FCA) (Joint venture not separate person); *The Queen v. CFTO TV Ltd.*, [1982] C.T.C. 147 (FCTD) (Contractual right of partner to buy out taxpayer does not preclude deduction of partnership losses).

Regulations: 229 (partnership information return); 1101(1ab), 1102(1a) (depreciable property of partnership); 1210 (partner's share of resource allowances).

I.T. Application Rules: 20(3) (depreciable property of partnership held since before 1972).

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-183: Foreign tax credit — member of a partnership; IT-259R3: Exchanges of property; IT-278R2: Death of a partner or of a retired partner; IT-346R: Commodity futures and certain commodities; IT-353R2: Partnership interests — some adjustments to cost base; IT-406R2: Tax payable by an *inter vivos* trust. See also list at end of s. 96.

Information Circulars: 73-13: Investment clubs; 89-5R: Partnership information return.

I.T. Technical News: No. 3 (use of a partner's assets by a partnership); No. 6 (expenses paid personally by partner where fiscal years do not coincide — policy in para. 14 of IT-138R reversed).

Advance Tax Rulings: ATR-59: Financing exploration and development through limited partnerships; ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

Forms: T2032: Statement of professional activities; T2121: Statement of fishing activities; T2124: Statement of business activities; T4068: Guide for the partnership information return; T5013 Summ: Partnership information return; T5014: Partnership capital cost allowance schedule; T5015: Reconciliation of partner's capital account; T5017: Calculation of deduction for cumulative eligible capital of a partnership.

(1.1) Allocation of share of income to retiring partner — For the purposes of subsection (1) and sections 34.1, 34.2, 101, 103 and 249.1,

(a) where the principal activity of a partnership is carrying on a business in Canada and its members have entered into an agreement to allocate a share of the income or loss of the partnership from any source or from sources in a particular place, as the case may be, to any taxpayer who at any time ceased to be a member of

(i) the partnership, or

(ii) a partnership that at any time has ceased to exist or would, but for subsection 98(1), have ceased to exist, and either

(A) the members of that partnership, or

(B) the members of another partnership in which, immediately after that time, any of the members referred to in clause (A) became members

have agreed to make such an allocation

or to the taxpayer's spouse, estate or heirs or to any person referred to in subsection (1.3), the taxpayer, spouse, estate, heirs or person, as the case may be, shall be deemed to be a member of the partnership; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) all amounts each of which is an amount equal to the share of the income or loss referred to in this subsection allocated to a taxpayer from a partnership in respect of a particular fiscal period of the partnership shall, notwithstanding any other provision of this Act, be included in computing the taxpayer's income for the taxation year in which that fiscal period of the partnership ends.

Related Provisions: 53(2)(c) — ACB of partnership interest; 96(1.2) — Disposal of right to share in income; 96(1.3) — Deductions; 96(1.4) — Right deemed not to be capital property; 96(1.5) — Disposition by virtue of death of taxpayer; 96(1.6) — Deemed members of partnership are deemed to carry on business; 252(4) — Extended meaning of "spouse".

History: The opening words of subsec. 96(1.1) amended by 1996, c. 21, subsec. 17(2), applicable after 1994. The opening words formerly read:

(1.1) Allocation of share of income to retiring partner — For the purposes of subsection (1) and sections 101 and 103,

Selected Cases [subsec. 96(1.1)]: *CSI Development Corp. v. R.*, [1999] 3 C.T.C. 2421 (TCC) (Partnership has no capital dividend account); *Sauriol v. Canada*, [1994] 2 C.T.C. 244 (FCA) ("Allocate" used in ordinary sense of assigning or setting aside and creating real right for recipient); *Lachance v. Canada*, [1994] 2 C.T.C. 185 (FCA) (Provision requires allocation of retired partner's income among provincial sources); *Dacen v. MNR*, [1989] 2 C.T.C. 44 (FCTD) (Income improperly allocated to former partner when agreement unilaterally altered by remaining partners); *Delesalle v. The Queen; The Queen v. Cohos*, [1986] 1 C.T.C. 58 (FCTD) (Part of sum paid to retiring partner representing work in progress was capital repayment); *Laferrière v. The Queen*, [1985] 2 C.T.C. 190 (FCTD); appealed to FCA (Sept. 9, 1985), File A-725-85 (Sale price for partnership interest including amounts for work in progress and accounts receivable was capital).

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner. See also list at end of s. 96.

(1.2) Disposal of right to share in income, etc — Where in a taxation year a taxpayer who has a right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1) disposes of that right,

(a) there shall be included in computing the taxpayer's income for the year the proceeds of the disposition; and

(b) for greater certainty, the cost to the taxpayer of each property received by the taxpayer as consideration for the disposition is the fair market value of the property at the time of the disposition.

Related Provisions: 96(1.3) — Deductions.

Interpretation Bulletins: See list at end of s. 96.

(1.3) Deductions — Where, by virtue of subsection (1.1) or (1.2), an amount has been included in computing a taxpayer's income for a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so included in computing the taxpayer's income for the year, and

(b) the amount, if any, by which the cost to the taxpayer of the right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1) exceeds the total of all amounts in respect of that right that were deductible by virtue of this subsection in computing the taxpayer's income for previous taxation years.

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner. See also list at end of s. 96.

(1.4) Right deemed not to be capital property — For the purposes of this Act, a right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1) shall be deemed not to be capital property.

Interpretation Bulletins: IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner.

(1.5) Disposition by virtue of death of taxpayer — Where, at the time of a taxpayer's death, the taxpayer has a right to a share of the income or loss of a partnership under an agreement referred to in subsection (1.1), subsections 70(2) to (4) apply.

Related Provisions: 53(1)(e)(v) — Adjustments to cost base.

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner. See also list at end of s. 96.

(1.6) Members of partnership deemed to be carrying on business in Canada — Where a partnership carries on a business in Canada at any time, each taxpayer who is deemed by paragraph (1.1)(a) to be a member of the partnership at that time is deemed to carry on the business in Canada at that time for the purposes of subsection 2(3), sections 34.1 and 150 and (subject to subsection 34.2(7)) section 34.2.

History: Subsec. 96(1.6) amended by 1996, c. 21, subsec. 17(3), applicable after 1993. The subsec. formerly read:

> (1.6) Members of partnership deemed to be carrying on business in Canada — Where a partnership carries on a business in Canada in a taxation year, each taxpayer who is deemed by paragraph (1.1)(a) to be a member of the partnership shall, for the purposes of subsection 2(3), be deemed to carry on that business in Canada in that year.

Pre-RSC History: Subsecs. 96(1.1)–(1.6) added by 1974-75-76, c. 26, subsec. 60(2), applicable to 1972 *et seq.*

Interpretation Bulletins: See list at end of s. 96.

(1.7) Gains and losses — Notwithstanding subsection (1) or section 38, where in a particular taxation year of a taxpayer (other than an individual who is not a testamentary trust) commencing before 1990, the taxpayer is a member of a partnership with a fiscal period ending in the particular year, the amount of its taxable capital gain (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the partnership), allowable capital loss or allowable business investment loss for the particular year determined in respect of the partnership shall be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount of the taxpayer's taxable capital gain (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the partnership) allowable capital loss or allowable business investment loss, as the case may be, for the particular year otherwise determined under this section in respect of the partnership;

B is the fraction that would be used under section 38 for the particular year in respect of the taxpayer if the taxpayer had a capital gain for the particular year; and

C is the fraction that was used under section 38 for the fiscal period of the partnership.

Pre-RSC History: Subsec. 96(1.7) added by 1988, c. 55, subsec. 66(3), applicable to taxation years and fiscal periods ending after 1987.

Interpretation Bulletins: See list at end of s. 96.

(1.8) Loan of property — For the purposes of subsection 56(4.1) and sections 74.1 and 74.3, where an individual has transferred or lent property, either directly or indirectly, by means of a trust or by any other means whatever, to a person and the property or property substituted therefor is an interest in a partnership, the person's share of the amount of any income or loss of the partnership for a fiscal period in which the person was a specified member of the partnership shall be deemed to be income or loss, as the case may be, from the property or substituted property.

Related Provisions: 248(5) — Substituted property.

Pre-RSC History: Subsec. 96(1.8) added by 1988, c. 55, subsec. 66(3), applicable to 1989 *et seq.*, otherwise than with respect to income of a partnership that may reasonably be considered to relate to a period before 1989.

Interpretation Bulletins: IT-511R: Interspousal and certain other transfers and loans of property. See also list at end of s. 96.

Proposed Addition — 96(1.9)

(1.9) Application of sections 94.1 and 94.2 — Where an exempt taxpayer (as defined in subsection 94.1(1)) for a taxation year is a member of a partnership at any time in the year, for the purposes of applying paragraphs (1)(f) and (g) and 53(1)(e) and 2(c) to the taxpayer for a fiscal period of the partnership that ends in the year this Act shall be read without reference to sections 94.1 and 94.2.

Application: The June 22, 2000 draft legislation, subsec. 13(1), will add subsec. 96(1.9), applicable to fiscal periods that begin after June 22, 2000.

Technical Notes: New subsection 96(1.9) of the Act is relevant where an "exempt taxpayer" (in general, an individual who has been resident in Canada for fewer than 60 months) is a member of a partnership and the partnership invests in a foreign investment entity. In these circumstances, the exempt taxpayer's share of the partnership's income or loss is computed without regard to new sections 94.1 and 94.2. For further details on the application of section 94.2 to partnerships, see the commentary on new subsections 94.2(6) to (8).

(2) Construction — The provisions of this subdivision shall be read and construed as if each of the assumptions in paragraphs (1)(a) to (g) were made.

(2.1) Limited partnership losses [at-risk rule] — Notwithstanding subsection (1), where a taxpayer is, at any time in a taxation year, a limited partner of a partnership, the amount, if any, by which

(a) the total of all amounts each of which is the taxpayer's share of the amount of any loss of the partnership, determined in accordance with subsection (1), for a fiscal period of the partnership ending in the taxation year from a business (other than a farming business) or from property

exceeds

(b) the amount, if any, by which

(i) the taxpayer's at-risk amount in respect of the partnership at the end of the fiscal period

exceeds the total of

(ii) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer for the taxation year,

(iii) the taxpayer's share of any losses of the partnership for the fiscal period from a farming business, and

(iv) the taxpayer's share of

(A) the foreign exploration and development expenses, if any, incurred by the partnership in the fiscal period,

(B) the Canadian exploration expense, if any, incurred by the partnership in the fiscal period,

(C) the Canadian development expense, if any, incurred by the partnership in the fiscal period, and

(D) the Canadian oil and gas property expense, if any, incurred by the partnership in the fiscal period,

shall

(c) not be deducted in computing the taxpayer's income for the year,

(d) not be included in computing the taxpayer's non-capital loss for the year, and

(e) be deemed to be the taxpayer's limited partnership loss in respect of the partnership for the year.

Related Provisions: 66.8(1) — Resource expenses of limited partner; 87(2.1)(a) — Amalgamation — limited partnership loss carried forward; 96(2.2) — At-risk amount; 111(1)(e) — Carryforward of non-deductible

limited partnership losses; 111(9) — Limited partnership loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's limited partnership loss for minimum tax purposes; 128.1(4)(f) — Limited partnership loss limitation on becoming non-resident; 152(1.1)–(1.3) — Determination of losses; 248(1)"limited partnership loss" — Definition applies to entire Act.

Pre-RSC History: Para. 96(2.1)(a) amended by 1988, c. 55, subsec. 66(4), to add ", determined in accordance with subsection (1)," applicable after December 15, 1987.

Subsec. 96(2.1) added by 1986, c. 55, subsec. 25(1), applicable after February 25, 1986.

Selected Cases [subsec. 96(2.1)]: *Signum Communications Inc. v. Canada*, [1991] 2 C.T.C. 31 (FCA) (Limited partner allowed losses greater than amount of capital contribution to partnership).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 96.

I.T. Technical News: No. 5 (adjusted cost base of partnership interest).

Advance Tax Rulings: ATR-51: Limited partner at-risk rules; ATR-59: Financing exploration and development through limited partnerships.

(2.2) At-risk amount — For the purposes of this section and sections 111 and 127, the at-risk amount of a taxpayer, in respect of a partnership of which the taxpayer is a limited partner, at any particular time is the amount, if any, by which the total of

(a) the adjusted cost base to the taxpayer of the taxpayer's partnership interest at that time, computed in accordance with subsection (2.3) where applicable,

(b) where the particular time is the end of the fiscal period of the partnership, the taxpayer's share of the income of the partnership from a source for that fiscal period computed under the method described in subparagraph 53(1)(e)(i), and

(b.1) where the particular time is the end of the fiscal period of the partnership, the amount referred to in subparagraph 53(1)(e)(viii) in respect of the taxpayer for that fiscal period

exceeds the total of

(c) all amounts each of which is an amount owing at that time to the partnership, or to a person or partnership not dealing at arm's length with the partnership, by the taxpayer or by a person or partnership not dealing at arm's length with the taxpayer, other than any amount deducted under subparagraph 53(2)(c)(i.3) in computing the adjusted cost base, or under section 143.2 in computing the cost, to the taxpayer of the taxpayer's partnership interest at that time, and

(d) any amount or benefit that the taxpayer or a person not dealing at arm's length with the taxpayer is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain because the taxpayer is a member of the partnership or holds or disposes of an interest in the partnership, except to the extent that the amount or benefit is included in the determination of the value of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer, or the entitlement arises

(i) by virtue of a contract of insurance with an insurance corporation dealing at arm's length with each member of the partnership under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the partnership business,

(ii) [Repealed]

(iii) as a consequence of the death of the taxpayer,

(iv), (v) [Repealed]

(vi) in respect of an amount not included in the at-risk amount of the taxpayer determined without reference to this paragraph, or

(vii) because of an excluded obligation (as defined in subsection 6202.1(5) of the *Income Tax Regulations*) in relation to a share issued to the partnership by a corporation,

and, for the purposes of this subsection,

(e) where the amount or benefit to which the taxpayer or the person is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer or the person has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire other property in exchange for all or any part of the partnership interest, for greater certainty the amount or benefit to which the taxpayer or the person is entitled under the agreement or arrangement is considered to be not less than the fair market value of the other property at that time, and

(f) where the amount or benefit to which the taxpayer or the person is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer or the person, for greater certainty the amount or benefit to which the taxpayer or the person is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

Related Provisions: 40(3.14)(b) — Meaning of "limited partner" re negative ACB of partnership interest; 66.8 — Resource expenses of limited partner; 96(2.3) — Computation of at-risk amount; 96(2.6) — Artificial transactions; 96(2.7) — Non-arm's length contribution of capital to partnership; 143.2(2), (6) — At-risk adjustment to tax shelter investment; 248(8) — Occurrences as a consequence of death.

History: Para. 96(2.2)(c) and the opening words of para. 96(2.2)(d) amended by 1998, c. 19, subsec. 123(1), applicable after November 1994. Para. (c) and the opening words of para. (d) formerly read:

> (c) the total of all amounts each of which is an amount owing at that time to the partnership or to a person or partnership with whom or which the partnership does not deal at arm's length by the taxpayer or by a person or partnership with whom or which the taxpayer does not deal at arm's length other than any such amount deducted under subparagraph 53(2)(c)(i.3) in computing the adjusted cost base to the taxpayer of the taxpayer's partnership interest at that time; and
>
> . . . . .
>
> (d) where the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled, either immediately or in the future and either absolutely or contingently, to receive or obtain any amount or benefit, whether by way of reimbursement, compensation, revenue guarantee or proceeds of disposition or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain because the taxpayer is a member of the partnership or holds or disposes of an interest in the partnership, the

amount or benefit, as the case may be, that the taxpayer or the person is or will be so entitled to receive or obtain, except to the extent that the amount or benefit is included in the determination of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer or the entitlement arises

Subparas. 96(2.2)(d)(iv) and (v) repealed by 1998, c. 19, subsec. 123(3), applicable to partnership interests acquired by a taxpayer after April 26, 1995, other than where

(a) the interest in the partnership is acquired by the taxpayer under the terms of an agreement in writing entered into by the taxpayer before April 27, 1995, or the interest was acquired by the taxpayer

(i) before 1996 where

(A) all or substantially all of the property of the partnership is

(I) a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii), or

(II) an interest in one or more partnerships all or substantially all of the property of which is a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii),

(B) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and

(C) the principal photography of the production was completed before March 1996,

(ii) before 1996 where it can reasonably be considered that the funds raised by the partnership through the issue of the interest were used by the partnership to acquire before 1996 property included in Class 24, 27 or 34 in Schedule II to the *Income Tax Regulations* and the property was

(A) acquired under an agreement in writing entered into by the partnership before April 27, 1995, or

(B) under construction by or on behalf of the partnership on April 26, 1995,

(iii) before July 1995 under the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada under and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(iv) before July 1995 under the terms of an offering memorandum distributed as part of an offering of securities where

(A) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before April 27, 1995,

(C) solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

(D) the sale of the securities was substantially in accordance with the memorandum, and

(E) the funds were spent before 1996 in accordance with the memorandum; and

(b) the following conditions are met:

(i) in the case of an interest

(A) acquired by the taxpayer under the terms of an agreement in writing entered into by the taxpayer before April 27, 1995, or

(B) to which subparagraph (a)(iii) or (iv) applies

that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(ii) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

The subparas. formerly read:

(iv) by virtue of an agreement under which the taxpayer may dispose of the partnership interest for an amount not exceeding its fair market value, determined without reference to the agreement, at the time of the disposition,

(v) by virtue of a revenue guarantee or other agreement in respect of which gross revenue is earned by the partnership except to the extent that the revenue guarantee or other agreement may reasonably be considered to ensure that the taxpayer or person will receive a return of a portion of the taxpayer's investment,

The portion of subsec. 96(2.2) after para. (d) amended by 1998, c. 19, subsec. 123(4), applicable to partnership interests acquired by a taxpayer after April 26, 1995, except that it does not apply where

(a) the interest was acquired by the taxpayer

(i) under the terms of an agreement in writing entered into by the taxpayer before April 27, 1995,

(ii) before July 1995 under the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada under and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(iii) before July 1995 under the terms of an offering memorandum distributed as part of an offering of securities where

(A) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before April 27, 1995,

(C) solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

(D) the sale of the securities was substantially in accordance with the memorandum, and

(E) the funds were spent before 1996 in accordance with the memorandum; and

(b) the following conditions are met:

(i) in the case of an interest that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(ii) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

That portion formerly read:

and, for the purposes of this subsection, where the amount or benefit to which the taxpayer is at any time entitled is provided

(e) by way of an agreement or other arrangement under which the taxpayer has a right, either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire other property in exchange for all or any part of the partnership interest, for greater certainty the amount or benefit to which the taxpayer is entitled under the agreement or arrangement shall be not less than the fair market value of that other property at that time, or

(f) by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer, by the partnership or a person or partnership with whom or which the partnership does not deal at arm's length, for greater certainty the amount or benefit to which the taxpayer is entitled under the guarantee or indemnity at any particular time shall not be less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

Subpara. 96(2.2)(d)(ii) repealed by 1996, c. 21, subsec. 17(4), applicable to revenue guarantees granted after 1995. The subpara. formerly read:

(ii) by virtue of a prescribed revenue guarantee in respect of a prescribed film production,

Para. 96(2.2)(c) amended by 1995, c. 3, s. 25, applicable after September 26, 1994. Para. (c) formerly read:

(c) the total of all amounts each of which is an amount owing at that time to the partnership or to a person or partnership with whom or

which the partnership does not deal at arm's length by the taxpayer or by a person with whom the taxpayer does not deal at arm's length, and

That portion of para. 96(2.2)(d) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 72(1), applicable to taxation years ending after June 17, 1987. That portion formerly read:

(d) where the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled, either immediately or in the future, either absolutely or contingently, to receive or obtain any amount or benefit, whether by way of reimbursement, compensation, revenue guarantee or proceeds of disposition or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain by virtue of the taxpayer's being a member of the partnership or by virtue of the taxpayer's holding or disposing of the taxpayer's partnership interest, the amount or benefit, as the case may be, that the taxpayer or the person is or will be so entitled to receive or obtain, except to the extent that the entitlement arises

Subpara. 96(2.2)(d)(vii) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 72(2), applicable to taxation years ending after June 17, 1987.

Pre-RSC History: Para. 96(2.2)(b.1) added by 1988, c. 55, subsec. 66(5), applicable after June 17, 1987.

Subsec. 96(2.2) added by 1986, c. 55, subsec. 25(1), applicable after February 25, 1986 except that, in its application to partnership interests acquired before 1987 pursuant to

(a) a prospectus, preliminary prospectus, registration statement or offering memorandum filed before June 12, 1986 and, where required by law, accepted for filing by a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province,

(b) an offering memorandum or similar offering material in respect of which solicitations were made to prospective purchasers after February 25, 1986 and before June 12, 1986 and which was, where required by law, filed with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province,

(c) an issue of partnership interests, in a partnership formed for the purpose of producing a film production, that is prescribed for the purposes of subparagraph 96(2.2)(d)(ii), where the partnership is obliged to make expenditures in respect of the production of the film pursuant to an agreement in writing entered into by it or on its behalf before June 12, 1986, or

(d) an issue of interests in a partnership formed before June 12, 1986 for the purpose of acquiring a film production, that is prescribed for the purposes of subparagraph 96(2.2)(d)(ii), from a producer who produced the film for the purpose, as evidenced in writing before June 12, 1986, of its sale to the partnership, where the producer is obliged to make expenditures in respect of the film pursuant to an agreement in writing entered into by him before June 12, 1986,

the words "for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain" in paragraph 96(2.2)(d) shall be read as "pursuant to an undertaking, made by any person or partnership, to indemnify the taxpayer with respect to any liability that the taxpayer may incur".

Selected Cases [subsec. 96(2.2)]: *Goren v. R.*, [1997] 3 C.T.C. 2025 (TCC) (At-risk rules applied where no commercial activity whatsoever); *Central Supply Company (1972) v. R.*, [1997] 3 C.T.C. 102 (FCA); rev'g [1995] 2 C.T.C. 2320 (TCC) (Deductions permitted under specific provisions of the *Act* may nevertheless unduly or artificially reduce income); *Hazelwood v. Canada*, [1990] 1 C.T.C. 5 (FCTD) (Deductions for losses and capital cost allowance by limited partner permitted to the extent of capital contribution).

Regulations: 7500 (prescribed film production, prescribed revenue guarantee).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years. See also list at end of s. 96.

I.T. Technical News: No. 5 (adjusted cost base of partnership interest); No. 12 (adjusted cost base of partnership interest).

Advance Tax Rulings: ATR-51: Limited partner at-risk rules; ATR-59: Financing exploration and development through limited partnerships.

(2.3) Idem — For the purposes of subsection (2.2), where a taxpayer has acquired the taxpayer's partnership interest at any time from a transferor other than the partnership, the adjusted cost base to the taxpayer of that interest shall be computed as if the cost to the taxpayer of the interest were the lesser of

(a) the taxpayer's cost otherwise determined, and

(b) the greater of

(i) the adjusted cost base of that interest to the transferor immediately before that time, and

(ii) nil,

and where the adjusted cost base of the transferor cannot be determined, it shall be deemed to be equal to the total of the amounts determined in respect of the taxpayer under paragraphs (2.2)(c) and (d) immediately after that time.

(2.4) Limited partner — For the purposes of this section and sections 111 and 127, a taxpayer who is a member of a partnership at a particular time is a limited partner of the partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within 3 years after that time,

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited;

Proposed Amendment — 96(2.4)(a)

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions or misconduct that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership);

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 47, will amend para. 96(2.4)(a) to read as above, applicable after 1997.

Technical Notes: Subsection 96(2.4) of the Act provides an extended definition of "limited partner" that is relevant for the purpose of applying the restrictions on partnership tax credits and losses.

Paragraph 96(2.4)(a) provides that a member of a partnership is a "limited partner" if, by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited. Concern has been expressed that paragraph 96(2.4)(a) applies to a partner of a "limited liability partnership" in addition to a limited partner of a limited partnership. A limited liability partnership is a new type of partnership the form of which has only recently been permitted under some provincial statutes.

Unlike a limited partner of a limited partnership, a member of limited liability partnership can be liable for the general debts and obligations of a limited liability partnership. However, a member of a limited liability partnership is not liable for the debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership [e.g., lawyers and chartered accountants in Ontario — ed.].

Paragraph 96(2.4)(a) is amended to exclude from its application cases where a member's liability is limited by operation of a statutory provision of Canada or a province that limits the member's liability only for the debts, obligations and liabilities of a limited liability partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the

partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

Letter from Department of Finance re Limited Liability Partnerships:

Mr. Joel Shafer
Blake, Cassels & Graydon
Toronto, Ontario

Dear Mr. Shafer:

Thank you for your facsimile transmission of July 14, 1998, in which you brought to my attention the introduction in the Ontario Legislature of Bill 6, *An Act to amend the law with respect to Partnerships*. You are concerned that the definition of "limited partner" in subsection 96(2.4) of the *Income Tax Act* might apply to a partner described in new subsection 10(2) of the *Partnerships Act* of Ontario.

It is my understanding that the amendments are intended to limit the liability of a member of a professional accounting partnership only in respect of obligations arising from negligent acts or omissions of another partner, employee, agent or other representative of the partnership. Moreover, this legislation only applies to a partnership for which the sole business is a professional accounting practice governed by statute.

From a tax policy perspective it would not be appropriate for such a partner to be subject to the *Income Tax Act* definition by reason only of a limitation of this nature. Accordingly, we will recommend to the Minister of Finance an amendment to the *Income Tax Act* to preclude a member of a partnership from being considered a limited partner by reason only of a law such as the new Ontario legislation. Further, we will recommend that the amendments be effective as of the date of coming into force of the Ontario legislation.

Thank you for bringing this matter to my attention.

Sincerely,
Len Farber
Director General
Tax Legislation Division

Letter from Department of Finance, November 4, 1998:

Dear [xxx]

Re: *Limited Liability Partnerships*

Thank you for your facsimile transmission of September 15, 1998, in which you brought to my attention the introduction in the Ontario Legislature of Bill 53, *An Act to amend the Law Society Act*.

As you are aware, we propose to recommend amendments to the *Income Tax Act* to preclude a member of a partnership that carries on an accounting practice from being considered a limited partner by reason only of amendments to the Ontario *Chartered Accountants Act, 1956* that have recently been enacted. We are aware that subsection 10(2) of the Ontario *Partnerships Act* is not restricted to professional accounting practices governed by statute: indeed, it was that lack of restriction that prompted us to limit the scope of our September 8th correspondence with [xxx] to the particular profession with which that firm's submission was concerned. Your letter is the first to raise the issue of the application of the Ontario *Partnership Act* raised in relation to the legal profession.

While Ontario Bill 53 (1998) has received only second reading at this time, this is to confirm our intention to propose similar amendments concerning the legal profession to our Minister in the event that section 28 of Ontario Bill 53 (1998) is enacted by the Ontario legislature. Further, we will recommend that the amendments be effective as of the date of coming into force of the Ontario legislation.

Thank you for bringing this matter to my attention.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph (2.2)(d) if that paragraph were read without reference to subparagraphs (ii) and (vi);

(c) one of the reasons for the existence of the member who owns the interest

(i) can reasonably be considered to be to limit the liability of any person with respect to that interest, and

(ii) cannot reasonably be considered to be to permit any person who has an interest in the member to carry on that person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement can reasonably be considered to be to attempt to avoid the application of this subsection to the member.

Related Provisions: 40(3.14) — Definition of limited partner for purposes of negative ACB rules; 66.8 — Resource expenses of limited partner; 96(2.5) — Exempt interest in a partnership; 127.52(3) — Definition for minimum tax purposes; 143.2(1)"tax shelter investment"(b) — Whether limited partnership interest is tax shelter investment.

History: Subsec. 96(2.4) amended by 1998, c. 19, subsec. 123(5), applicable to fiscal periods that end after November 1994. The subsec. formerly read:

(2.4) For the purposes of this section and sections 111 and 127, a taxpayer who is a member of a partnership at a particular time is a limited partner of that partnership at that time if the taxpayer's partnership interest is not an exempt interest at that time (within the meaning assigned by subsection (2.5)) and if, at that time or within three years after that time,

(a) by operation of any law which governs the partnership arrangement, the liability of the taxpayer in the taxpayer's capacity as a member of the partnership, is limited;

(b) the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled to receive an amount or obtain a benefit that would be described in paragraph (2.2)(d) if it were read without reference to subparagraphs (2.2)(d)(ii) and (vi);

(c) one of the reasons for the existence of the taxpayer who owns the interest

(i) may reasonably be considered to be to limit the liability of any other person with respect to that interest, and

(ii) may not reasonably be considered to be to permit any person who has an interest in the taxpayer to carry on that person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement may reasonably be considered to be to attempt to avoid the application of this subsection to the taxpayer.

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years. See also list at end of s. 96.

(2.5) Exempt interest — For the purposes of subsection (2.4), an exempt interest in a partnership at any time means a prescribed partnership interest or an interest in a partnership that was actively carrying on business on a regular and a continuous basis immediately before February 26, 1986 and continuously thereafter until that time or that was earning income from the rental or leasing of property immediately before February 26, 1986 and continuously thereafter until that time, where there has not after February 25, 1986 and before that time been a substantial contribution of capital to the partnership or a substantial increase in the indebtedness of the partnership

and, for this purpose, an amount will not be considered to be substantial where

(a) the amount was used by the partnership to make an expenditure required to be made pursuant to the terms of a written agreement entered into by it before February 26, 1986, or to repay a loan, debt or contribution of capital that had been received or incurred in respect of any such expenditure,

(b) the amount was raised pursuant to the terms of a prospectus, preliminary prospectus or registration statement filed before February 26, 1986 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province, and, where required by law, accepted for filing by that public authority, or

(c) the amount was used for the activity that was carried on by the partnership on February 25, 1986 but was not used for a significant expansion of the activity

and, for the purposes of this subsection,

(d) a partnership in respect of which paragraph (b) applies shall be considered to have been actively carrying on a business on a regular and a continuous basis immediately before February 26, 1986 and continuously thereafter until the earlier of the closing date, if any, stipulated in the document referred to that paragraph and January 1, 1987, and

(e) an expenditure shall not be considered to have been required to be made pursuant to the terms of an agreement where the obligation to make the expenditure is conditional in any way on the consequences under this Act relating to the expenditure and the condition has not been satisfied or waived before June 12, 1986.

Selected Cases [subsec. 96(2.5)]: *Goren v. R.*, [1997] 3 C.T.C. 2025 (TCC) (At-risk rules applied where no commercial activity whatsoever).

Regulations: No prescribed partnership interests to date.

(2.6) Artificial transactions — For the purposes of paragraph (2.2)(c), where at any time an amount owing by a taxpayer or a person with whom the taxpayer does not deal at arm's length is repaid and it is established, by subsequent events or otherwise, that the repayment was made as part of a series of loans or other transactions and repayments, the amount owing shall be deemed not to have been repaid.

Related Provisions: 248(10) — Series of transactions.

(2.7) Idem — For the purposes of paragraph (2.2)(a), where at any time a taxpayer makes a contribution of capital to a partnership and the partnership or a person or partnership with whom or which the partnership does not deal at arm's length makes a loan to the taxpayer or to a person with whom the taxpayer does not deal at arm's length or repays the contribution of capital, and it is established, by subsequent events or otherwise, that the loan or repayment, as the case may be, was made as part of a series of loans or other transactions and repayments, the contribution of capital shall be deemed not to have been made to the extent of the loan or repayment, as the case may be.

Related Provisions: 248(10) — Series of transactions.

Pre-RSC History: Subsecs. 96(2.3) to (2.7) added by 1986, c. 55, subsec. 25(1), applicable after February 25, 1986.

Interpretation Bulletins: See list at end of s. 96.

(3) Agreement or election of partnership members — Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

Proposed Amendment — 96(3)

(3) Agreement or election of partnership members — Where a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 13(4) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04, subsections 94.1(4), (5) and (12), clause (i)(C) of the description of D in paragraph 94.2(4)(a), paragraph 95(2)(g.2) and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

Application: The June 22, 2000 draft legislation, subsec. 13(2), will amend the opening words of subsec. 96(3) to read as above, applicable to fiscal periods that begin after June 22, 2000.

Technical Notes: Subsection 96(3) of the Act provides rules that apply if a member of a partnership makes an election under certain provisions of the Act for a purpose that is relevant to the computation of the member's income from the partnership. In such a case, the election will be valid only if it is made on behalf of all the members of the partnership and the member had authority to act for the partnership.

Subsection 96(3) is amended so that it applies for the purposes of elections under

- new paragraph 94.1(5)A(c) (election by taxpayer to use discretionary deductions on behalf of FIE);
- new subsection 94.1(12) (election to treat foreign affiliate as controlled foreign affiliate);
- new subsection 94.1(4) (election to have accrual regime for foreign investment entities apply);
- new subparagraph 94.2(4)(a)D(i) (election to recognize positive deferral amount before year of disposition); and
- new paragraph 95(2)(g.2) (elections and designations for the purposes of computing foreign accrual property income).

(a) the agreement, designation or election is not valid unless

(i) it was made or executed on behalf of the taxpayer and each other person who was a member of the partnership during the fiscal period, and

(ii) the taxpayer had authority to act for the partnership;

(b) unless the agreement, designation or election is invalid because of paragraph (a), each other person who was a member of the partnership during the fiscal period shall be deemed to have made or executed the agreement, designation or election; and

(c) notwithstanding paragraph (a), any agreement, designation or election deemed by paragraph (b) to have

been made or executed by any person shall be deemed to be a valid agreement, designation or election made or executed by that person.

Related Provisions: 244(20) — Members of partnerships.

History: The opening words of subsec. 96(3) amended by 2000, c. 19, s. 15, applicable to fiscal periods that end after December 15, 1998. The opening words formerly read:

> (3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

The opening words of subsec. 96(3) amended by 1998, c. 19, subsec. 123(6), applicable to fiscal periods that end after December 2, 1992, except that

> (a) with respect to fiscal periods that ended after that day and before February 22, 1994, the opening words of subsec. 96(3) shall be read as follows:
>
> > (3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B) and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election,
>
> and
>
> (b) before 1995, the opening words shall be read without reference to subsections 249.1(4) and (6) of the Act.

The opening words formerly read:

> (3) Where a taxpayer who was a member of a partnership in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, a designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6) [section 15.2, subsections], 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

The opening words of subsec. 96(3) amended by 1996, c. 21, subsec. 17(5), applicable after 1994. The opening words formerly read:

> (3) Agreement or election of partnership members — Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, a designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6), [section 15.2, subsections] 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsection 97(2) and that, but for this subsection, would be a valid agreement, designation or election,

Subsec. 96(3) amended by 1995, c. 21, s. 33, applicable to fiscal periods that end after February 21, 1994. Subsec. (3) formerly read:

> (3) Election by members — Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6), [section 15.2, subsections] 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B) and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election,
>
> (a) the election is not valid unless
>
> > (i) it was made or executed on behalf of the taxpayer and each other person who was a member of the partnership during the fiscal period, and
>
> > (ii) the taxpayer had authority to act for the partnership;
>
> (b) unless the election is invalid by virtue of paragraph (a), each other person who was a member of the partnership during the fiscal period shall be deemed to have made or executed the election; and
>
> (c) notwithstanding paragraph (a), any election deemed by paragraph (b) to have been made or executed by any person shall be deemed to be a valid election made or executed by that person.

The opening words of subsec. 96(3) amended by 1994, c. 8, s. 11, applicable to fiscal periods ending after December 2, 1992. [However, 1994, c. 8 unintentionally deleted the reference to 15.2. Officials at the Department of Finance have confirmed that the reference to section 15.2 will be retroactively reinstated in a future bill, and therefore that the subsec. should be read as if it were present.] They formerly read:

> (3) Election by members — Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34 and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election,

That portion of subsec. 96(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 40(2), applicable after February 25, 1992. That portion formerly read:

> (3) Election by members — Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16), 14(6), 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34 and subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election, the following rules apply:

That portion of subsec. 96(3) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 72(3), applicable to dispositions occurring after July 13, 1990 and with respect to elections made in respect of the application of subsec. 50(1), as amended, to the 1985 to 1989 taxation years and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties payable for the 1985 to 1989 taxation years shall be made as are necessary to give effect to those elections. That portion of subsec. 96(3) formerly read:

> (3) Election by members — Where a taxpayer who was a member of a partnership during a fiscal period thereof that ended after 1971 has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under any of subsections 13(4), (15) and (16), 14(6), 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34 and subsections 39(4), 44(1) and (6) and 97(2) that, but for this subsection, would be a valid election, the following rules apply:

Pre-RSC History: All that portion of subsec. 96(3) preceding para. (a) amended by 1985, c. 45, subsec. 13(2), applicable to 1985 *et seq.*, to substitute heading "Election by members" for "Validity of election by member of partnership" and to substitute "and 29(1), section 34, subsections 39(4), 44(1) and (6) and 97(2)" for "29(1), 39(4), 44(1) and (6) and 97(2) and paragraph 34(1)(d)".

All that portion of subsec. 96(3) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 52(2), applicable to elections made after March 31, 1977. That portion formerly read:

> (3) Where a taxpayer who was a member of a partnership during a fiscal period thereof that ended after 1971 has, for any purpose relevant to the computation of his income from the partnership for the fiscal period, made or executed an election under any of section 22, subsections 13(15) and (16), 20(9), 21(1) to (4), 29(1), 97(2) and paragraph 34(1)(d) that, but for this subsection, would be a valid election, the following rules apply:

All that portion of subsec. 96(3) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 60(3), applicable to 1972 *et seq.*

Subsec. 96(3) added by 1973-74, c. 14, s. 30.

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-413R: Election by members of a partnership under subsection 97(2); IT-457R: Election by professionals to exclude work in progress from income. See also list at end of s. 96.

(4) Election — Any election under subsection 97(2) or 98(3) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxpayer's taxation year in which the transaction to which the election relates occurred.

Related Provisions: 96(5) — Late filing; 96(6) — Penalty for late filing; 96(7) — Unpaid balance of penalty.

Pre-RSC History: Subsec. 96(4) added by 1974-75-76, c. 26, subsec. 60(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

Forms: T2060: Election for disposition of property upon cessation of partnership.

(5) Late filing — Where an election referred to in subsection (4) was not made on or before the day on or before which the election was required by that subsection to be made and that day was after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the taxpayer referred to in subsection 97(2) or by the persons referred to in subsection 98(3), as the case may be, when that election is made.

Pre-RSC History: All that portion of subsec. 96(5) preceding para. (b) substituted by 1980-81-82-83, c. 48, subsec. 52(3), applicable to elections required by subsec. 96(4) to be made on or before a day that is after 1977. Subsec. 96(5) formerly read:

(5) Where an election referred to in subsection (4) was not made on or before the day on or before which the election was required by that subsection to be made and that day was after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is one year after that day,

(a) the election is made in prescribed form and prescribed manner; and

Subsec. 96(5) added by 1974-75-76, c. 26, subsec. 60(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

(5.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection 97(2) or 98(3) to be made after the day that is 3 years after the day on or before which the election was required by subsection (4) to be made, or

(b) to permit an election made under subsection 97(2) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the taxpayer referred to in subsection 97(2) or by the persons referred to in subsection 98(3), as the case may be, when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Pre-RSC History: Subsec. 96(5.1) added by 1984, c. 45, s. 32, applicable after February 15, 1984.

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

(6) Penalty for late-filed election — For the purposes of this section, the penalty in respect of an election or an amended election referred to in paragraph (5)(a) or (5.1)(c) is

(a) where the election or amended election is made under subsection 97(2), an amount equal to the lesser of

(i) ¼ of 1% of the amount by which the fair market value of the property disposed of by the taxpayer referred to therein at the time of disposition exceeds the amount agreed on by the taxpayer and the members of the partnership in the election or amended election, for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (4) to be made and ending on the day the election or amended election is made, and

(ii) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in subparagraph (i); and

(b) where the election is made under subsection 98(3), an amount equal to the lesser of

(i) ¼ of 1% of the amount by which

(A) the total of all amounts of money and the fair market value of partnership property received by the persons referred to therein as consideration for their interests in the partnership at the time that the partnership ceased to exist

exceeds

(B) the total of each such person's proceeds of disposition of that person's interest in the partnership as determined under paragraph 98(3)(a),

for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (4) to be made and ending on the day the election or amended election is made, and

(ii) an amount, not exceeding $8,000, equal to the product obtained by multiplying $100 by the number of months each of which is a month all or part of which is during the period referred to in subparagraph (i).

Related Provisions: 96(7) — Assessment of penalty; 220(3.1) — Waiver of penalty by CCRA.

Pre-RSC History: Subsec. 96(6) substituted by 1984, c. 45, s. 32, to add "or amended election", to add reference to para. (5.1)(c) and to substitute subparas. (a)(ii) and (b)(ii) in their entirety, applicable after February 15, 1984. Subparas. 96(6)(a)(ii), (b)(ii) formerly read:

(a)(ii) $4,000, or

. . . . .

(b)(ii) $4,000.

Subparas. 96(6)(a)(ii), (b)(ii) substituted by 1980-81-82-83, c. 48, subsec. 52(4), applicable with respect to elections made after October 28, 1980. Subparas. 96(6)(a)(ii), (b)(ii) formerly read:

(a)(ii) $2,500, or

. . . . .

(b)(ii) $2,500.

Subsec. 96(6) substituted by 1976-77, c. 4, s. 36, applicable to 1972 *et seq.*

Subsec. 96(6) added by 1974-75-76, c. 26, subsec. 60(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-413R: Election by members of a partnership under subsection 97(2). See also list at end of s. 96.

(7) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (5)(a) or (5.1)(c), assess the penalty payable and send a notice of assessment to the taxpayer or persons, as the case may be, and the taxpayer or persons, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Pre-RSC History: Subsec. 96(7) substituted by 1984, c. 45, s. 32, to add "and amended election" and to add reference to para. (5.1)(c), applicable after February 15, 1984.

Subsec. 96(7) substituted by 1980-81-82-83, c. 48, subsec. 52(5), to substitute "Receiver General" for "Receiver General of Canada".

Subsec. 96(7) added by 1974-75-76, c. 26, subsec. 60(4), applicable to 1972 *et seq.*

(8) Foreign partnerships — For the purposes of this Act, where at a particular time a person resident in Canada becomes a member of a partnership, or a person who is a member of a partnership becomes resident in Canada, and immediately before the particular time no member of the partnership is resident in Canada, the following rules apply for the purpose of computing the partnership's income for fiscal periods ending after the particular time:

(a) where, at or before the particular time, the partnership held depreciable property of a prescribed class (other than taxable Canadian property),

(i) no amount shall be included in determining the amounts for any of A, C, D and F to I in the definition "undepreciated capital cost" in subsection 13(21) in respect of the acquisition or disposition before the particular time of the property, and

(ii) where the property is the partnership's property at the particular time, the property shall be deemed to have been acquired, immediately after the particular time, by the partnership at a capital cost equal to the lesser of its fair market value and its capital cost to the partnership otherwise determined;

(b) in the case of the partnership's property that is inventory (other than inventory of a business carried on in Canada) or non-depreciable capital property (other than taxable Canadian property) of the partnership at the particular time, its cost to the partnership shall be deemed to be, immediately after the particular time, equal to the lesser of its fair market value and its cost to the partnership otherwise determined;

(c) any loss in respect of the disposition of a property (other than inventory of a business carried on in Canada or taxable Canadian property) by the partnership before the particular time shall be deemed to be nil; and

(d) where 4/3 of the cumulative eligible capital in respect of a business carried on at the particular time outside Canada by the partnership exceeds the total of the fair market value of each eligible capital property in respect of the business at that time, the partnership shall be deemed to have, immediately after that time, disposed of an eligible capital property in respect of the business for proceeds equal to the excess and to have received those proceeds.

Related Provisions: 96(9) — Anti-avoidance.

History: Subsec. 96(8) added by 1994, c. 21, s. 44, applicable to a particular partnership where a person or partnership becomes a member of the particular partnership after December 21, 1992, or where a member of the particular partnership becomes resident in Canada after August 30, 1993, except that before May 1994, the subsec. shall be read without reference to para. (d).

(9) Idem — For the purpose of applying subsection (8), where it can reasonably be considered that one of the main reasons that there is a member of the partnership who is resident in Canada is to avoid the application of that subsection, the member shall be deemed not to be resident in Canada.

Proposed Amendment — 96(9)

(9) Application of foreign partnership rule — For the purposes of applying subsection (8) and this subsection,

(a) where it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (8), the member is deemed not to be resident in Canada; and

(b) where at any time a particular partnership is a member of another partnership,

(i) each person or partnership that is, at that time, a member of the particular partnership is deemed to be a member of the other partnership at that time,

(ii) each person or partnership that becomes a member of the particular partnership at that time is deemed to become a member of the other partnership at that time, and

(iii) each person or partnership that ceases to be a member of the particular partnership at that time is deemed to cease to be a member of the other partnership at that time.

Application: The June 22, 2000 draft legislation, subsec. 13(3), will amend subsec. 96(9) to read as above, applicable to fiscal periods that begin after June 22, 2000.

Technical Notes: Subsection 96(8) of the Act provides rules that apply where, at a particular time, a Canadian resident becomes a member of a partnership, or a person who is a member of such a partnership becomes a resident of Canada. Where, immediately before the particular time no member of the partnership was resident in Canada, these rules apply in computing the income of the partnership for fiscal periods ending after the particular time. In general terms, the rules in subsection 96(8) are designed to prevent losses accrued while a partnership had no Canadian resident partners from being used to reduce Canadian income tax liabilities.

Subsection 96(9) provides that, where one of the main reasons that there is a member of the partnership who is resident in Canada is to avoid the application of subsection 96(8), that member will, for the purpose of applying subsection 96(8), be considered not to be resident in Canada.

Subsection 96(9) is amended to provide an explicit look-through rule for the purposes of subsection 96(8) so that members of partnerships may be identified through one or more tiers of partnerships which are members of other partnerships. Amended subsection 96(9) is consistent with new subsection 94.2(8).

This amendment applies to partnership fiscal periods that begin after June 22, 2000.

Related Provisions: 94.2(8) — Parallel rule for foreign investment entities.

History: Subsec. 96(9) added by 1994, c. 21, s. 44, applicable to a particular partnership where a person or partnership becomes a member of the particular partnership after December 21, 1992, or where a member of the particular partnership becomes resident in Canada after August 30, 1993.

Selected Cases [s. 96]: *Backman v. R.*, [1999] 4 C.T.C. 177 (FCA); leave to appeal to SCC allowed (June 8, 2000), File 27561 (No partnership where no relationship of carrying on business with a view to profit).

Definitions [s. 96]: "adjusted cost base" — 54, 248(1); "allowable business investment loss", "allowable capital loss" — 38, 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 250,

255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "Canadian partnership" — 102(1); "capital cost" — of depreciable property 13(7); "capital property" — 54, 248(1); "carried on in Canada", "carrying on business" — 253; "common-law partner" — 248(1); "consequence of the death" — 248(8); "cost" — 96(8); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "disposition" — of depreciable property 13(21); "eligible capital property" — 54, 248(1); "employee" — 248(1); "farm loss" — 111(8), 248(1); "farming" — 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign exploration and development expenses" — 66(15), 248(1); "gross revenue" — 248(1); "insurance corporation" — 248(1); "inventory" — 248(1); "investment tax credit" — 127(9), 248(1); "limited partner" — 96(2.4); "limited partnership loss" — 96(2.1), 248(1); "member" — 102(2); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "restricted farm loss" — 31, 248(1); "series of transactions" — 248(10); "share", "specified member" — 248(1); "spouse" — 252(4)(a); "substituted property" — 248(5); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 11(2), 96(1)(b), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 96]: IT-81R: Partnerships — income of non-resident partners; IT-90: What is a partnership?; IT-138R: Computation and flow-through of partnership income; IT-151R4: Scientific research and experimental development expenditures; IT-242R: Retired partners.

97. (1) Contribution of property to partnership — Where at any time after 1971 a partnership has acquired property from a taxpayer who was, immediately after that time, a member of the partnership, the partnership shall be deemed to have acquired the property at an amount equal to its fair market value at that time and the taxpayer shall be deemed to have disposed of the property for proceeds equal to that fair market value.

Related Provisions: 13(21.2)(d) — No application on certain transfers of depreciable property where u.c.c. exceeds fair market value; 96(2) — Construction; 97(2) — Election for rollover on transfer of property to partnership.

Interpretation Bulletins: IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

I.T. Technical News: No. 3 (use of a partner's assets by a partnership).

(2) Rules where election by partners — Notwithstanding any other provision of this Act other than subsection 13(21.2), where a taxpayer at any time disposes of any property that is a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory of the taxpayer to a partnership that immediately after that time is a Canadian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4),

(a) the provisions of paragraphs 85(1)(a) to (f) apply to the disposition as if

(i) the reference therein to "corporation's cost" were read as a reference to "partnership's cost",

(ii) the references therein to "other than any shares of the capital stock of the corporation or a right to receive any such shares" and to "other than shares of the capital stock of the corporation or a right to receive any such shares" were read as references to "other than an interest in the partnership",

(iii) the references therein to "shareholder of the corporation" were read as references to "member of the partnership",

(iv) the references therein to "the corporation" were read as references to "all the other members of the partnership", and

(v) the references therein to "to the corporation" were read as references to "to the partnership";

(b) in computing, at any time after the disposition, the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the disposition,

(i) there shall be added the amount, if any, by which the taxpayer's proceeds of disposition of the property exceed the fair market value, at the time of the disposition, of the consideration (other than an interest in the partnership) received by the taxpayer for the property, and

(ii) there shall be deducted the amount, if any, by which the fair market value, at the time of the disposition, of the consideration (other than an interest in the partnership) received by the taxpayer for the property so disposed of by the taxpayer exceeds the fair market value of the property at the time of the disposition; and

(c) where the property so disposed of by the taxpayer to the partnership is taxable Canadian property of the taxpayer, the interest in the partnership received by the taxpayer as consideration therefor shall be deemed to be taxable Canadian property of the taxpayer.

Related Provisions: 13(21.2)(d) — No election allowed on certain transfers of depreciable property where u.c.c. exceeds fair market value; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 53(4) — Effect on ACB of share, partnership interest or trust interest; 96(2) — Construction; 96(3) — Election by members; 96(4)–(7) Elections; 97(4) — Where capital cost to partner exceeds proceeds of disposition; 98.1(2) — Continuation of original partnership; 107(2)(d.1)(iii), 107.4(3)(f) — Deemed taxable Canadian property retains status when rolled out of trust or into trust; Canada-U.S. Tax Convention, Art. XIII:8 — Deferral of tax for U.S. resident transferor.

History: The opening words of subsec. 97(2) amended by 1998, c. 19, subsec. 124(1), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The opening words formerly read:

(2) Notwithstanding any other provision of this Act, other than subsection 85(5.1), where at any time after November 12, 1981 a taxpayer has disposed of any capital property, a Canadian resource property, a foreign resource property, an eligible capital property or an inventory to a partnership that immediately after that time was a Canadian partnership of which the taxpayer was a member, if the taxpayer and all the other members of the partnership have jointly so elected in prescribed form and within the time referred to in subsection 96(4), the following rules apply:

Pre-RSC History: All that portion of subsec. 97(2) preceding para. (a) amended by 1985, c. 45, subsec. 49(1), applicable to taxation years commencing after 1984, to substitute heading "Rules where election by partners" for "Rules applicable where election by partners", and "any capital property, a Canadian resource property, a foreign resource property" for "any of his capital property, a property referred to in subsection 59(2)".

Subsec. 97(2) substituted by 1980-81-82-83, c. 140, s. 58, applicable to dispositions occurring after November 12, 1981, other than dispositions occurring before 1983 if the arrangements therefor were substantially advanced and evidenced in writing on November 12, 1981. Subsec. 97(2) formerly read:

(2) Notwithstanding any other provision of this Act, where at any time after 1971 a Canadian partnership has acquired property from a taxpayer who was, immediately after that time, a member of the partnership, if all the persons who immediately after that time were members of the partnership have jointly so elected in respect of the property in prescribed form and within the time referred to in subsection 96(4), the following rules apply:

(a) the amount that all of those persons have agreed upon in their election in respect of the property shall be deemed to be

the taxpayer's proceeds of disposition of the property and the amount for which the partnership acquired the property;

(b) the amount, if any, by which the amount so elected in respect of the property exceeds the amount of the consideration (other than an interest in the partnership) received by the taxpayer for the property shall

(i) if immediately before that time the taxpayer was a member of the partnership, be included in computing the adjusted cost base to him of his interest in the partnership, and

(ii) in any other case, be included in computing the cost to him of his interest in the partnership;

(c) where the amount that all of those persons have agreed upon in their election in respect of the property is greater than the fair market value, at the time of the disposition, of the property so disposed of, the amount so agreed upon shall, irrespective of the amount actually so agreed upon, be deemed to be an amount equal to that fair market value; and

(d) notwithstanding paragraph (c), where the amount that all of those persons have agreed upon in their election in respect of the property is less than the amount of the consideration (other than an interest in the partnership) received by the taxpayer for the property, the amount so agreed upon shall, irrespective of the amount so agreed upon, be deemed to be an amount equal to the amount of that consideration.

All that portion of subsec. 97(2) preceding para. (a) substituted by 1974-75-76, c. 26, s. 61, applicable to 1972 *et seq.*

Selected Cases [subsec. 97(2)]: *Pinot Holdings Ltd. v. R.*, [2000] 1 C.T.C. 258 (FCA) (Legal character of amounts paid is function of obligation being discharged, not particular means of funding the payment); *Continental Bank of Canada v. R.*, [1998] 4 C.T.C. 119 (SCC) (Leasing company in which bank had interest nevertheless entitled to election).

I.T. Application Rules: 20(1.2) (where transferred depreciable property was owned by the transferor since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner; IT-413R: Election by members of a partnership under subsection 97(2); IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85; 88-2, paras. 12, 22: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 16 (*Continental Bank* case).

Forms: T2059: Election on disposition of property by a taxpayer to a Canadian partnership.

(3) [Repealed]

Related Provisions: 40(2)(e.1) — Loss on disposition of debt owing by related person deemed nil; 80.01(8) — Deemed settlement after debt parking; 97(3.1) — Majority interest partner.

History: Subsec. 97(3) repealed by 1998, c. 19, subsec. 124(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(3) Where property acquired from majority interest partner — Where, at any time after November 12, 1981, a taxpayer has disposed of any capital property to a partnership and, immediately after the disposition, the taxpayer was a majority interest partner of the partnership and, but for this subsection, the taxpayer would have had a capital loss therefrom, the following rules apply:

(a) notwithstanding any other provision of this Act, the taxpayer's capital loss therefrom shall be deemed to be nil; and

(b) except where the property so disposed of was, immediately after the disposition, an obligation that was payable to the partnership by a corporation that is related to the taxpayer or by a corporation or partnership that would be related to the taxpayer if paragraph 80(2)(j) applied for the purposes of this paragraph, in computing at any time after the disposition the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the disposition, there shall be added the amount, if any, by which

(i) the cost amount to the taxpayer, immediately before the disposition, of the property

exceeds

(ii) the taxpayer's proceeds of disposition of the property.

The opening words of para. 97(3)(b) amended by 1995, c. 21, s. 34, applicable to property disposed of after July 12, 1994, other than property disposed of pursuant to an agreement in writing entered into before July 13, 1994. The opening words of para. (b) formerly read:

(b) in computing at any time after the disposition the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the disposition, there shall be added the amount, if any, by which

(3.1) [Repealed]

Related Provisions: 98(5) — Where partnership carried on as sole proprietorship; 98.1(2) — Continuation of original partnership; 252(4) — Extended meaning of "spouse".

History: Subsec. 97(3.1) repealed by 1998, c. 19, subsec. 124(2), applicable, subject to s. 247 of 1998, c. 19 (grandfathering rule reproduced after s. 260), to dispositions of property that occur after April 26, 1995. The subsec. formerly read:

(3.1) Deemed majority interest partner — For the purposes of subsection (3), a taxpayer shall be deemed to be a majority interest partner of a partnership at any time if

(a) the total of the taxpayer's share, the share of the taxpayer's spouse and the share of a person or group of persons that, directly or indirectly in any manner whatever, controlled or was controlled by the taxpayer, of the income of the partnership from any source for the fiscal period of the partnership that includes that time exceeds ½ of the income of the partnership from the source for that period; or

(b) the total of the taxpayer's share, the share of the taxpayer's spouse and the share of a person or group of persons that, directly or indirectly in any manner whatever, controlled or was controlled by the taxpayer, of the total amount that would be paid to all members of the partnership (otherwise than as the share of any income of the partnership) if it were wound up at that time exceeds ½ of that amount.

Pre-RSC History: Subsec. 97(3.1) amended by 1987, c. 46, s. 33, to substitute heading "Deemed majority interest partner" for "Majority interest partner", to add in that portion preceding para. (a) "at any time", to substitute in para. (a) "that includes that time" for "in which the property was acquired", and to substitute in para. (b) "otherwise than as the share" for "otherwise than as a share" and "at that time" for "immediately after the disposition of property to the partnership", applicable after January 15, 1987.

Subsecs. 97(3) substituted, (3.1) added by 1980-81-82-83, c. 140, s. 58, applicable to dispositions occurring after November 12, 1981, other than dispositions occurring before 1983 if the arrangements therefor were substantially advanced and evidenced in writing on November 12, 1981. Subsec. 97(3) formerly read:

(3) Where at any time after 1971 a partnership has acquired property from a taxpayer who was, immediately after the acquisition, a member of the partnership, and

(a) the taxpayer's share, as a member of the partnership, of the income of the partnership from any source for the taxation year of the partnership in which the property was acquired exceeds ½ of the income of the partnership from that source for the year, or

(b) the amount that would, if the partnership were wound up immediately after the acquisition, be paid to the taxpayer as a member of the partnership (otherwise than as his share of any income of the partnership) exceeds ½ of the aggregate of all such amounts that would be so paid to all persons as members of the partnership,

the loss, if any, of the taxpayer arising from the acquisition of the property by the partnership

(c) is, notwithstanding any other provision of this Act, not deductible in computing the income, net capital loss, non-capital loss or restricted farm loss, if any, of the taxpayer for any taxation year, and

(d) shall,

(i) where immediately before that time the taxpayer was a member of the partnership, be included in computing the adjusted cost base to him of his interest in the partnership, and

(ii) in any other case, be included in computing the cost to him of his interest in the partnership.

(4) Where capital cost to partner exceeds proceeds of disposition — Where subsection (2) has been applicable in respect of the acquisition of any depreciable property by a partnership from a taxpayer who was, immediately after the taxpayer disposed of the property, a member of the partnership and the capital cost to the taxpayer of the property exceeds the taxpayer's proceeds of the disposition, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the partnership of the property shall be deemed to be the amount that was the capital cost thereof to the taxpayer; and

(b) the excess shall be deemed to have been allowed to the partnership in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the partnership of the property.

Related Provisions: 13(7)(e) — Non-arm's length transfer of depreciable property.

Definitions [s. 97]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canadian partnership" — 102(1), 248(1); "Canadian resource property" — 66(15), 248(1); "depreciable property" — 13(21), 248(1); "fiscal period" — 249(2)(b), 249.1; "foreign resource property" — 66(15), 248(1); "majority interest partner" — 248(1); "member" — 102(2); "net capital loss", "non-capital loss" — 111(8), 248(1); "person", "prescribed", "property", "regulation" — 248(1); "restricted farm loss" — 31, 248(1); "spouse" — 252(4)(a); "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 97]: IT-188R: Sale of accounts receivable.

98. (1) Disposition of partnership property — For the purposes of this Act, where, but for this subsection, at any time after 1971 a partnership would be regarded as having ceased to exist, the following rules apply:

(a) until such time as all the partnership property and any property substituted therefor has been distributed to the persons entitled by law to receive it, the partnership shall be deemed not to have ceased to exist, and each person who was a partner shall be deemed not to have ceased to be a partner,

(b) the right of each such person to share in that property shall be deemed to be an interest in the partnership, and

(c) notwithstanding subsection 40(3), where at the end of a fiscal period of the partnership, in respect of an interest in the partnership,

(i) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the taxpayer of the interest at that time

exceeds

(ii) the total of the cost to the taxpayer of the interest determined for the purpose of computing the adjusted cost base to the taxpayer of that interest at that time and all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the interest in computing the adjusted cost base to the taxpayer of that interest at that time,

the amount of the excess shall be deemed to be a gain of the taxpayer for the taxpayer's taxation year that includes that time from a disposition at that time of that interest.

Related Provisions: 20(1)(e)(vi) — Expenses re financing; 40(3.2) — Para. 98(1)(c) takes precedence over subsec. 40(3.1); 98(3) — Rules where partnership ceases to exist; 98.1(2) — Continuation of original partnership; 99(1) — Fiscal period of terminated partnership; 99(2) — Fiscal period for individual member of terminated partnership; 248(5) — Substituted property.

History: The closing words of para. 98(1)(c) amended by 1995, c. 3, subsec. 26(1), applicable to 1994 *et seq.* except that, in its application to the 1994 and 1995 taxation years, the closing words shall be read as follows:

the amount of the excess shall be deemed to be a gain of the taxpayer for the taxpayer's taxation year that includes that time from a disposition at that time of that interest and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by the taxpayer at that time.

The closing words formerly read:

98(1) the amount of the excess shall be deemed to be a gain of the taxpayer for the taxation year of the taxpayer that includes that time from a disposition at that time of that interest and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by the taxpayer in that year.

That portion of para. 98(1)(c) following subpara. (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 73(1), applicable to 1985 *et seq.* That portion formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that interest and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by the taxpayer in the year.

Pre-RSC History: That portion of para. 98(1)(c) following subpara. (ii) amended by 1988, c. 55, s. 67, to add "and, for the purposes of section 110.6, that interest shall be deemed to have been disposed of by him in the year", applicable to 1985 *et seq.*

All that portion of subsec. 98(1) preceding para. (a) substituted, para. 98(1)(c) added by 1976-77, c. 4, s. 37, applicable in respect of fiscal periods ending after May 25, 1976. That portion formerly read:

98. (1) For the purposes of this Act, notwithstanding that at any time after 1971 a partnership would, but for this subsection, be regarded as having ceased to exist,

Subsec. 98(1.1) repealed by 1974-75-76, c. 26, s. 62, applicable to 1972 *et seq.*

I.T. Application Rules: 23(4.1)(a) (where professional business carried on in partnership since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner; IT-358: Partnerships — deferment of fiscal year-end.

(2) Deemed proceeds — Subject to subsections (3) and (5) and 85(3), where at any time after 1971 a partnership has disposed of property to a taxpayer who was, immediately before that time, a member of the partnership, the partnership shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time and the taxpayer shall be deemed to have acquired the property at an amount equal to that fair market value.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest.

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner; IT-457R: Election by professionals to exclude work in progress from income.

(3) Rules applicable where partnership ceases to exist [rollout] — Where at any particular time after 1971 a Canadian partnership has ceased to exist and all of the partnership property has been distributed to persons who were members of the partnership immediately before that time so that immediately after that time each such person has, in each such property, an undivided interest that, when expressed as a percentage (in this subsection referred to as that person's "percentage") of all undivided interests in the property, is equal to the person's undivided interest, when so expressed, in each other such property, if each such person has jointly so elected in respect of the property in prescribed form and within the

time referred to in subsection 96(4), the following rules apply:

(a) each such person's proceeds of the disposition of the person's interest in the partnership shall be deemed to be an amount equal to the greater of

(i) the adjusted cost base to the person, immediately before the particular time, of the person's interest in the partnership, and

(ii) the amount of any money received by the person on the cessation of the partnership's existence, plus the person's percentage of the total of amounts each of which is the cost amount to the partnership of each such property immediately before its distribution;

(b) the cost to each such person of that person's undivided interest in each such property shall be deemed to be an amount equal to the total of

(i) that person's percentage of the cost amount to the partnership of the property immediately before its distribution,

(i.1) where the property is eligible capital property, that person's percentage of 4/3 of the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the partnership's business immediately before the particular time, and

(ii) where the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), the amount determined under paragraph (c) in respect of the person's undivided interest in the property;

(c) the amount determined under this paragraph in respect of each such person's undivided interest in each such property that was a capital property (other than depreciable property) of the partnership is such portion of the excess, if any, described in subparagraph (b)(ii) as is designated by the person in respect of the property, except that

(i) in no case shall the amount so designated in respect of the person's undivided interest in any such property exceed the amount, if any, by which the person's percentage of the fair market value of the property immediately after its distribution exceeds the person's percentage of the cost amount to the partnership of the property immediately before its distribution, and

(ii) in no case shall the total of amounts so designated in respect of the person's undivided interests in all such capital properties (other than depreciable property) exceed the excess, if any, described in subparagraph (b)(ii);

(d) [Repealed under former Act]

(e) where the property so distributed by the partnership was depreciable property of the partnership of a prescribed class and any such person's percentage of the amount that was the capital cost to the partnership of that property exceeds the amount determined under paragraph (b) to be the cost to the person of the person's undivided interest in the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the person of the person's undivided interest in the property shall be deemed to be the person's percentage of the amount that was the capital cost to the partnership of the property, and

(ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the person of the undivided interest;

(f) the partnership shall be deemed to have disposed of each such property for proceeds equal to the cost amount to the partnership of the property immediately before its distribution; and

(g) where the property so distributed by the partnership was eligible capital property in respect of the business,

(i) for the purposes of determining under this Act any amount relating to cumulative eligible capital, an eligible capital amount, an eligible capital expenditure or eligible capital property, each such person shall be deemed to have continued to carry on the business, in respect of which the property was eligible capital property and that was previously carried on by the partnership, until the time that the person disposes of the person's undivided interest in the property,

(ii) for the purposes of determining the person's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (b)(i.1) in respect of the business shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5), and

(iii) for the purposes of determining after the particular time

(A) the amount deemed under subparagraph 14(1)(a)(v) to be the person's taxable capital gain, and

(B) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the person's income

in respect of any subsequent disposition of the property of the business, the amount determined for Q in the definition "cumulative eligible capital" in subsection 14(5) shall be deemed to be the amount, if any, of that person's percentage of the amount determined under that clause in respect of the partnership's business immediately before the particular time.

Related Provisions: 24(3) — Where partnership has ceased to exist; 53(4) — Effect on ACB of partnership interest; 69(11)(a)(i) — Exception to rule deeming proceeds at FMV where capital gains exemption claimed after dissolution of partnership; 80.03(1), (3)(c) — Capital gain where para. 98(3)(a) applies to partnership interest on disposition following debt forgiveness; 85(3) — Alternative provision where partnership wound up; 96(4) — Election; 96(6) — Penalty for late filed election; 98(2) — Deemed proceeds; 98(4) — Application.

History: Cl. 98(3)(g)(iii)(B) amended by 1995, c. 3, subsec. 26(2), applicable to acquisitions of property that occur after February 22, 1994. Cl. (B) formerly read:

(B) the amount to be included under paragraph 14(1)(b) in computing the income of the person

All that portion of para. 98(3)(b) preceding subpara. (ii) amended, and para. (g) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 41(1) and (2), applicable to acquisitions of property occurring as a result of a part-

nership ceasing to exist after the beginning of its first fiscal period beginning after 1987. That portion of para. (b) formerly read:

(b) the cost to each such person of the person's undivided interest in each such property shall be deemed to be an amount equal to

(i) the person's percentage of the cost amount to the partnership of the property immediately before its distribution

plus

Pre-RSC History: Subpara. 98(3)(b)(ii) amended to substitute "under paragraph (c)" for "under paragraph (c) or (d), as the case may be," and para. 98(3)(d) repealed, by 1986, c. 55, subsecs. 26(1), (2), applicable by subsec. 26(5) (as amended by 1988, c. 55, s. 199 and 1991, c. 49, s. 236, the latter deemed to have come into force December 19, 1986) with respect to property received by a member of a partnership where

(a) the property was acquired by the partnership after December 4, 1985, otherwise than pursuant to an agreement in writing entered into [on or] before that date;

(b) the property is received in satisfaction of an interest in the partnership acquired by the member after December 4, 1985, otherwise than

(i) pursuant to an agreement in writing entered into on or before that date, or

(ii) from a person with whom the member was not dealing at arm's length, where the interest in the partnership has not been acquired in an arm's length transaction after December 4, 1985, otherwise than pursuant to an agreement in writing entered into on or before that date and, for the purposes of this subparagraph, "arm's length" has the meaning it would have for the purposes of the Act if it were read without reference to para. 251(5)(b), or

(c) the property is received in satisfaction of an interest in the partnership that was owned by a corporation at a time when control thereof was acquired (otherwise than by reason of an acquisition described in para. 256(7)(a)) after December 4, 1985, otherwise than pursuant to an agreement in writing entered into on or before that date,

except that

(d) in respect of properties to which the repeal of para. 98(3)(d) does not apply, subpara. 98(3)(d)(iii) shall, subject to paragraphs (f), (g) and (h) (below), in its application to taxation years and fiscal periods ending after 1987, be read as follows:

(iii) in no case shall the aggregate of amounts so designated in respect of his undivided interests in all such properties that are depreciable property or properties other than capital properties, exceed ¾ of the amount determined under subparagraph (i) in respect of him,

(e) in respect of properties to which the repeal of para. 98(5)(d) does not apply, subpara. 98(5)(d)(iii) shall, subject to paragraphs (f), (g) and (h) (below), in its application to taxation years and fiscal periods ending after 1987, be read as follows:

(iii) in no case shall the aggregate of amounts so designated in respect of all such properties of the proprietor that are depreciable property or properties other than capital properties, exceed ¾ of the amount determined under subparagraph (i) in respect of the proprietor,

(f) where the member is an individual, for taxation years and fiscal periods ending after 1987 and before 1990, the references in subparas. 98(3)(d)(iii) and (5)(d)(iii) to "¾" shall, in respect of the member for those years and fiscal periods, be read as references to "⅔",

(g) where the member is a Canadian-controlled private corporation throughout a taxation year ending after 1987 and commencing before 1990, the references to "¾" in subparas. 98(3)(d)(iii) and (5)(d)(iii) shall, in respect of the corporation for the year, be read as references to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year, and

(h) where the member is at any time in a taxation year ending after 1987 and commencing before 1990 a corporation other than a Canadian-controlled private corporation, the references to "¾" in subparas. 98(3)(d)(iii) and (5)(d)(iii) shall, in respect of the corporation for the year, be read as references to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Para. 98(3)(d) formerly read:

(d) the amount determined under this paragraph in respect of each such person's undivided interest in each such property that was depreciable property or a property other than a capital property of the partnership is such portion of

(i) the amount, if any, by which the excess, if any, described in subparagraph (b)(ii) exceeds the aggregate of amounts designated by him under paragraph (c) in respect of his undivided interests in all such capital properties (other than depreciable property)

as is designated by him in respect of the property, except that

(ii) in no case shall the amount so designated in respect of his undivided interest in any such property exceed the amount, if any, by which his percentage of the fair market value of the property immediately after its distribution exceeds his percentage of the cost amount to the partnership of the property immediately before its distribution, and

(iii) in no case shall the aggregate of amounts so designated in respect of his undivided interests in all such properties that are depreciable property or properties other than capital properties, exceed ½ of the amount determined under subparagraph (i) in respect of him;

All that portion of subsec. 98(3) preceding para. (a) substituted by 1974-75-76, c. 26, s. 62, applicable to 1972 *et seq.*

I.T. Application Rules: 20(1.2) (where transferred depreciable property was owned by transferor since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner; IT-442R: Bad debts and reserves for doubtful debts; IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships.

I.T. Technical News: No. 12 (adjusted cost base of partnership interest).

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

Forms: T2060: Election for disposition of property upon cessation of partnership.

(4) Where subsec. (3) does not apply — Subsection (3) is not applicable in any case in which subsection (5) or 85(3) is applicable.

(5) Where partnership business carried on as sole proprietorship — Where at any particular time after 1971 a Canadian partnership has ceased to exist and within 3 months after the particular time one, but not more than one, of the persons who were, immediately before the particular time, members of the partnership (which person is in this subsection referred to as the "proprietor", whether an individual, a trust or a corporation) carries on alone the business that was the business of the partnership and continues to use, in the course of the business, any property that was, immediately before the particular time, partnership property and that was received by the proprietor as proceeds of disposition of the proprietor's interest in the partnership, the following rules apply:

(a) the proprietor's proceeds of disposition of the proprietor's interest in the partnership shall be deemed to be an amount equal to the greater of

(i) the total of the adjusted cost base to the proprietor, immediately before the particular time, of the proprietor's interest in the partnership, and the ad-

justed cost base to the proprietor of each other interest in the partnership deemed by paragraph (g) to have been acquired by the proprietor at the particular time, and

(ii) the total of

(A) the cost amount to the partnership, immediately before the particular time, of each such property so received by the proprietor, and

(B) the amount of any other proceeds of the disposition of the proprietor's interest in the partnership received by the proprietor;

(b) the cost to the proprietor of each such property shall be deemed to be an amount equal to the total of

(i) the cost amount to the partnership of the property immediately before that time,

(i.1) where the property is eligible capital property, 4/3 of the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the partnership's business immediately before the particular time, and

(ii) where the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), the amount determined under paragraph (c) in respect of the property;

(c) the amount determined under this paragraph in respect of each such property so received by the proprietor that is a capital property (other than depreciable property) of the proprietor is such portion of the excess, if any, described in subparagraph (b)(ii) as is designated by the proprietor in respect of the property, except that

(i) in no case shall the amount so designated in respect of any such property exceed the amount, if any, by which the fair market value of the property immediately after the particular time exceeds the cost amount to the partnership of the property immediately before that time, and

(ii) in no case shall the total of amounts so designated in respect of all such capital properties (other than depreciable property) exceed the excess, if any, described in subparagraph (b)(ii);

(d) [Repealed under former Act]

(e) where any such property so received by the proprietor was depreciable property of a prescribed class of the partnership and the amount that was the capital cost to the partnership of that property exceeds the amount determined under paragraph (b) to be the cost to the proprietor of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the proprietor of the property shall be deemed to be the amount that was the capital cost to the partnership of the property, and

(ii) the excess shall be deemed to have been allowed to the proprietor in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the proprietor of the property;

(f) the partnership shall be deemed to have disposed of each such property for proceeds equal to the cost amount to the partnership of the property immediately before the particular time;

(g) where, at the particular time, all other persons who were members of the partnership immediately before that time have disposed of their interests in the partnership to the proprietor, the proprietor shall be deemed at that time to have acquired partnership interests from those other persons and not to have acquired any property that was property of the partnership; and

(h) where the property so received by the proprietor is eligible capital property in respect of the business,

(i) for the purpose of determining the proprietor's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (b)(i.1) in respect of the business shall be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5), and

(ii) for the purposes of determining after the particular time

(A) the amount deemed under subparagraph 14(1)(a)(v) to be the proprietor's taxable capital gain, and

(B) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the proprietor's income

in respect of any subsequent disposition of property of the business, the amount determined for Q in the definition "cumulative eligible capital" in subsection 14(5) shall be deemed to be the amount, if any, determined for Q in that definition in respect of the partnership's business immediately before the particular time.

Related Provisions: 24(3) — Where partnership has ceased to exist; 53(4) — Effect on ACB of partnership interest; 80.03(1), (3)(c) — Capital gain where para. 98(5)(a) applies to partnership interest on disposition following debt forgiveness; 88(1)(a.2) — Winding-up; 98(2) — Deemed proceeds; 98(4) — Subsec. 98(3) does not apply.

History: Cl. 98(5)(h)(ii)(B) amended by 1995, c. 3, subsec. 26(3), applicable to acquisitions of property that occur after February 22, 1994. Cl. (B) formerly read:

(B) the amount to be included under paragraph 14(1)(b) in computing the proprietor's income

All that portion of para. 98(5)(b) preceding subpara. (ii) amended, and para. (h) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 41(3) and (4), applicable to acquisitions of property occurring as a result of a partnership ceasing to exist after the beginning of its first fiscal period beginning after 1987. That portion of para. (b) formerly read:

(b) the cost to the proprietor of each such property so received by the proprietor shall be deemed to be an amount equal to

(i) the cost amount to the partnership of the property immediately before that time,

plus

Subpara. 98(5)(a)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 73(2), applicable to partnerships ceasing to exist after January 15, 1987. Subpara. (a)(i) formerly read:

(i) the total of the adjusted cost base to the proprietor, immediately before the particular time, of the proprietor's interest in the partnership, and the cost to the proprietor of all interests in the partnership deemed by paragraph (g) to have been acquired by the proprietor at the particular time, and

Pre-RSC History: Subpara. 98(5)(b)(ii) amended to substitute "under paragraph (c)" for "under paragraph (c) or (d), as the case may be," and para. 98(5)(d) repealed, by 1986, c. 55, subsecs. 26(3), (4), applicable by subsec. 26(5) (as amended by 1988, c. 55, s. 199 and 1991, c. 49, s. 236, the latter deemed to have come into force December 19, 1986) with respect to property received by a member of a partnership where

(a) the property was acquired by the partnership after December 4, 1985, otherwise than pursuant to an agreement in writing entered into before [*sic*] that date;

(b) the property is received in satisfaction of an interest in the partnership acquired by the member after December 4, 1985, otherwise than

(i) pursuant to an agreement in writing entered into on or before that date, or

(ii) from a person with whom the member was not dealing at arm's length, where the interest in the partnership has not been acquired in an arm's length transaction after December 4, 1985, otherwise than pursuant to an agreement in writing entered into on or before that date, and, for the purposes of this subparagraph, "arm's length" has the meaning it would have for the purposes of the Act if it were read without reference to para. 251(5)(b), or

(c) the property is received in satisfaction of an interest in the partnership that was owned by a corporation at a time when control thereof was acquired (otherwise than by reason of an acquisition described in para. 256(7)(a)) after December 4, 1985, otherwise than pursuant to an agreement in writing entered into on or before that date,

except that

(d) in respect of properties to which the repeal of para. 98(3)(d) does not apply, subpara. 98(3)(d)(iii) shall, subject to paragraphs (f), (g) and (h) (below), in its application to taxation years and fiscal periods ending after 1987, be read as follows:

(iii) in no case shall the aggregate of amounts so designated in respect of his undivided interests in all such properties that are depreciable property or properties other than capital properties, exceed ¾ of the amount determined under subparagraph (i) in respect of him,

(e) in respect of properties to which the repeal of para. 98(5)(d) does not apply, subpara. 98(5)(d)(iii) shall, subject to paragraphs (f), (g) and (h) (below), in its application to taxation years and fiscal periods ending after 1987, be read as follows:

(iii) in no case shall the aggregate of amounts so designated in respect of all such properties of the proprietor that are depreciable property or properties other than capital properties, exceed ¾ of the amount determined under subparagraph (i) in respect of the proprietor,

(f) where the member is an individual, for taxation years and fiscal periods ending after 1987 and before 1990, the references in subparas. 98(3)(d)(iii) and (5)(d)(iii) to "¾" shall, in respect of the member for those years and fiscal periods, be read as references to "⅔",

(g) where the member is a Canadian-controlled private corporation throughout a taxation year ending after 1987 and commencing before 1990, the references to "¾" in subparas. 98(3)(d)(iii) and (5)(d)(iii) shall, in respect of the corporation for the year, be read as references to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year, and

(h) where the member is at any time in a taxation year ending after 1987 and commencing before 1990 a corporation other than a Canadian-controlled private corporation, the references to "¾" in subparas. 98(3)(d)(iii) and (5)(d)(iii) shall, in respect of the corporation for the year, be read as references to the fraction determined as the aggregate of

(i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Para. (d) formerly read:

(d) the amount determined under this paragraph in respect of each such property so received by him that is depreciable property or a property other than a capital property of the proprietor is such portion of

(i) the amount, if any, by which the excess, if any, described in subparagraph (b)(ii) exceeds the aggregate of amounts designated by him under paragraph (c) in respect of all capital properties (other than depreciable property)

as is designated by him in respect of the property, except that

(ii) in no case shall the amount so designated in respect of any such property exceed the amount, if any, by which the fair market value of the property immediately after the particular time exceeds the cost amount to the partnership of the property immediately before that time, and

(iii) in no case shall the aggregate of amounts so designated in respect of all such properties of the proprietor that are depreciable property or properties other than capital properties, exceed ½ of the amount determined under subparagraph (i) in respect of the proprietor;

All that portion of subsec. 98(5) preceding subpara. (a)(ii) substituted, para. (g) added by 1974-75-76, c. 26, s. 62, applicable to 1972 *et seq.*

Selected Cases [subsec. 98(5)]: *Bow River Pipe Lines Ltd. v. Canada*, [1997] 1 C.T.C. 2306 (TCC) (Rollover denied where taxpayer unable to establish that it was member of partnership).

I.T. Application Rules: 20(1.2) (where transferred depreciable property was owned by transferor since before 1972).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner; IT-457R: Election by professionals to exclude work in progress from income.

Information Circulars: 88-2, para. 22: General anti-avoidance rule — section 245 of the *Income Tax Act*.

(6) Continuation of predecessor partnership by new partnership — Where a Canadian partnership (in this subsection referred to as the "predecessor partnership") has ceased to exist at any particular time after 1971 and, at or before that time, all of the property of the predecessor partnership has been transferred to another Canadian partnership (in this subsection referred to as the "new partnership") the only members of which were members of the predecessor partnership, the new partnership shall be deemed to be a continuation of the predecessor partnership and any member's partnership interest in the new partnership shall be deemed to be a continuation of the member's partnership interest in the predecessor partnership.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; Reg. 8103(5) — Mark-to-market transition — inclusion; Reg. 9204(4) — Residual portion of specified debt obligation.

Interpretation Bulletins [subsec. 98(6)]: IT-338R2: Partnership interests — effects on ACB resulting from admission or retirement of a partner; IT-358: Partnerships — deferment of fiscal year-end; IT-457R: Election by professionals to exclude work in progress from income.

Definitions [s. 98]: "adjusted cost base" — 54, 248(1); "amount", "business" — 248(1); "Canadian partnership" — 102(1), 248(1); "capital property" — 54, 248(1); "cost amount" — 248(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital amount" — 14(1), 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "member" — 102(2); "person", "property", "regulation" — 248(1); "substituted property" — 248(5); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

98.1 (1) Residual interest in partnership — Where, but for this subsection, at any time after 1971 a taxpayer has ceased to be a member of a partnership of which the taxpayer was a member immediately before that time, the following rules apply:

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time at which the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") is, subject to sections 70, 110.6 and 128.1 but notwithstanding any other section of this Act, deemed not to have been disposed of by

the taxpayer and to continue to be an interest in the partnership;

(b) where all of the taxpayer's rights described in paragraph (a) are satisfied in full before the end of the fiscal period of the partnership in which the taxpayer ceased to be a member thereof, the taxpayer shall, notwithstanding paragraph (a), be deemed not to have disposed of the taxpayer's residual interest until the end of that fiscal period;

(c) notwithstanding subsection 40(3), where at the end of a fiscal period of the partnership, in respect of a residual interest in the partnership,

(i) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the taxpayer of the residual interest at that time

exceeds

(ii) the total of the cost to the taxpayer of the residual interest determined for the purpose of computing the adjusted cost base to the taxpayer of that interest at that time and all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the residual interest in computing the adjusted cost base to the taxpayer of that interest at that time

the amount of the excess shall be deemed to be a gain of the taxpayer, for the taxpayer's taxation year that includes that time, from a disposition at that time of that residual interest; and

(d) where a taxpayer has a residual interest

(i) by reason of paragraph (b), the taxpayer shall, except for the purposes of subsections 110.1(4), 118.1(8) and 127(4.2), be deemed not to be a member of the partnership, and

(ii) in any other case, the taxpayer shall, except for the purposes of subsection 85(3), be deemed not to be a member of the partnership.

Related Provisions: 40(3.2) — Para. 98.1(1)(c) takes precedence over subsec. 40(3.1); 98.1(2) — Continuation of original partnership; 98.2 — Transfer of interest on death.

History: Para. 98.1(1)(a) amended by 1998, c. 19, s. 125, applicable to 1994 *et seq.* The para. formerly read:

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time that the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") shall, subject to sections 70 and 128.1 but notwithstanding any other section of this Act, be deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership;

The closing words of para. 98.1(1)(c) amended by 1995, c. 3, s. 27, applicable to 1994 *et seq.* except that, in its application to the 1994 and 1995 taxation years, the closing words shall be read as follows:

the amount of the excess shall be deemed to be a gain of the taxpayer, for the taxpayer's taxation year that includes that time, from a disposition at that time of that residual interest and, for the purposes of section 110.6, the residual interest shall be deemed to have been disposed of by the taxpayer at that time; and

The closing words formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer, for the taxation year of the taxpayer that includes that time, from a disposition at that time of that residual interest and, for the purposes of section 110.6, the residual interest shall be deemed to have been disposed of by the taxpayer in that year; and

Para. 98.1(1)(a) substituted by 1994, c. 21, s. 45, applicable after 1992 except that, where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21, the amended para. applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in another jurisdiction. Para. 98.1(1)(a) formerly read:

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time that the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") shall, subject to sections 48 and 70 but notwithstanding any other section of this Act, be deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership;

That portion of para. 98.1(1)(c) following subpara. (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 74, applicable to 1985 *et seq.* That portion formerly read:

the amount of the excess shall be deemed to be a gain of the taxpayer for the year from a disposition at that time of that residual interest; and

Pre-RSC History: Subpara. 98.1(1)(d)(i) amended by 1988, c. 55, s. 68, to substitute "by reason of" for "by virtue of" and "subsections 110.1(4), 118.1(8) and 127(4.2)" for "subsections 110(5) and 127(4.2)", applicable to 1988 *et seq.*

Subpara. 98.1(1)(d)(i) substituted by 1976-77, c. 4, s. 38, applicable after June 23, 1975, to add "127(4.2)".

I.T. Application Rules: 23(4.1)(b) (where professional practice carried on in partnership since before 1972).

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner.

(2) **Continuation of original partnership** — Where a partnership (in this subsection referred to as the "original partnership") has or would but for subsection 98(1) have ceased to exist at a time when a taxpayer had rights described in paragraph (1)(a) in respect of that partnership and the members of another partnership agree to satisfy all or part of those rights, that other partnership shall, for the purposes of that paragraph, be deemed to be a continuation of the original partnership.

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner.

Pre-RSC History [s. 98.1]: S. 98.1 added by 1974-75-76, c. 26, s. 63, applicable to 1972 *et seq.*

Definitions [s. 98.1]: "amount" — 248(1); "property" — 248(1); "residual interest" — 98.1(1)(a); "taxpayer" — 248(1).

98.2 Transfer of interest on death — Where by virtue of the death of an individual a taxpayer has acquired a property that was an interest in a partnership to which, immediately before the individual's death, section 98.1 applied,

(a) the taxpayer shall be deemed to have acquired a right to receive partnership property and not to have acquired an interest in a partnership;

(b) the taxpayer shall be deemed to have acquired the right referred to in paragraph (a) at a cost equal to the amount determined to be the proceeds of disposition of the interest in the partnership to the deceased individual by virtue of paragraph 70(5)(a) or (6)(d), as the case may be; and

(c) section 43 is not applicable to the right.

Related Provisions: 53(2)(o) — Deductions from ACB; 248(8) — Occurrences as a consequence of death.

Pre-RSC History: S. 98.2 added by 1974-75-76, c. 26, s. 63, applicable to 1972 *et seq.*

Definitions [s. 98.2]: "amount", "individual" — 248(1); "property", "taxpayer" — 248(1).

Interpretation Bulletins [s. 98.2]: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner; IT-349R3: Intergenerational transfers of farm property on death.

99. (1) Fiscal period of terminated partnership — Except as provided in subsection (2), where, at any time in a fiscal period of a partnership, the partnership would, but for subsection 98(1), have ceased to exist, the fiscal period shall be deemed to have ended immediately before that time.

Related Provisions: 127.52(1)(c.1), (c.2) — Exclusion from triggering minimum tax.

(2) Fiscal period of terminated partnership for individual member — Where an individual was a member of a partnership that, at any time in a fiscal period of a partnership, has or would have, but for subsection 98(1), ceased to exist, for the purposes of computing the individual's income for a taxation year the partnership's fiscal period may, if the individual so elects and subsection 249.1(4) does not apply in respect of the partnership, be deemed to have ended immediately before the time when the fiscal period of the partnership would have ended if the partnership had not so ceased to exist.

Related Provisions: 25(1) — Parallel rule for individuals; 99(3), (4) — Validity of election.

History: Subsec. 99(2) amended by 1996, c. 21, s. 17.1, applicable to fiscal periods that begin after 1994. The subsec. formerly read:

> (2) Fiscal period for individual member of terminated partnership — Where an individual was a member of a partnership that, at any time in a fiscal period of the partnership, has or would have, but for subsection 98(1), ceased to exist, for the purposes of computing the individual's income for a taxation year the partnership's fiscal period may, if the individual so elects, be deemed to have ended immediately before the time when the fiscal period of the partnership would have ended if the partnership had not so ceased to exist.

Pre-RSC History: Subsec. 99(2) substituted by 1977-78, c. 1, s. 48, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-179R: Change of fiscal period.

Information Circulars: 76-19R3: Transfer of property to a corporation under section 85.

(3) Validity of election — An election under subsection (2) is not valid unless the individual was resident in Canada at the time when the fiscal period of the partnership would, if the election were valid, be deemed to have ended.

Related Provisions: 96(4)-(7) — Elections.

(4) Idem — An election under subsection (2) is not valid if, for the individual's taxation year in which a fiscal period of the partnership would not, if the election were valid, be deemed to have ended but in which it would otherwise have ended, the individual elects to have applicable the rules set out in the *Income Tax Application Rules* that apply when two or more fiscal periods of a partnership end in the same taxation year.

Definitions [s. 99]: "Canada" — 255; "fiscal period" — 99(1), (2), 249.1; "individual" — 248(1); "member" — 102(2); "resident in Canada" — 250; "taxation year" — 11(2), 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 99]: IT-138R: Computation and flow-through of partnership income; IT-358: Partnerships — deferment of fiscal year-end.

100. (1) Disposition of an interest in a partnership — Notwithstanding paragraph 38(a), a taxpayer's taxable capital gain for a taxation year from the disposition of an interest in a partnership to any person exempt from tax under section 149 shall be deemed to be

> (a) ¾ of such portion of the taxpayer's capital gain for the year therefrom as may reasonably be regarded as attributable to increases in the value of any partnership property of the partnership that is capital property other than depreciable property,

plus

> (b) the whole of the remaining portion of that capital gain.

Pre-RSC History: Para. 100(1)(a) amended by 1988, c. 55, s. 69, to substitute "¾" for "½", applicable to taxation years and fiscal periods ending after 1987, except that

> (a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "¾" shall be read as a reference to "⅔";
>
> (b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of
>
> > (i) that proportion of ½ that the number of days in the year that are before 1988 is of the number of days in the year,
> >
> > (ii) that proportion of ⅔ that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and
> >
> > (iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year; and
>
> (c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "¾" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of
>
> > (i) that proportion of ½ that the number of days in the year that are before July 1988 is of the number of days in the year,
> >
> > (ii) that proportion of ⅔ that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and
> >
> > (iii) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

(2) Gain from disposition of interest in partnership — In computing a taxpayer's gain for a taxation year from the disposition of an interest in a partnership, there shall be included, in addition to the amount thereof determined under subsection 40(1), the amount, if any, by which

> (a) the total of all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the taxpayer, immediately before the disposition, of the interest in the partnership,

exceeds

> (b) the total of
>
> > (i) the cost to the taxpayer of the interest in the partnership determined for the purpose of computing the adjusted cost base to the taxpayer of that interest at that time, and
> >
> > (ii) all amounts required by subsection 53(1) to be added to the cost to the taxpayer of that interest in computing the adjusted cost base to the taxpayer of that interest at that time.

Pre-RSC History: Para. 100(2)(b) substituted by 1974-75-76, c. 26, s. 64, applicable to 1972 *et seq.*

Selected Cases [subsec. 100(2)]: *Stursberg (R.K.G.) v. MNR*, [1993] 2 C.T.C. 76 (FCA) (Transactions resulting in reduction of partner's share and corresponding increase of another partner's share was disposition of part of first partner's interest, not distribution of capital).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-278R2: Death of a partner or of a retired partner; IT-358: Deferment of fiscal year end.

(2.1) Idem — Where, as a result of an amalgamation or merger, an interest in a partnership owned by a predecessor corporation has become property of the new corporation formed as a result of the amalgamation or merger and the predecessor corporation was not related to the new corporation, the predecessor corporation shall be deemed to have disposed of the interest in the partnership to the new corporation immediately before the amalgamation or merger for proceeds of disposition equal to the adjusted cost base to the predecessor corporation of the interest in the partnership at the time of the disposition and the new corporation shall be deemed to have acquired the interest in the partnership from the predecessor corporation immediately after that time at a cost equal to the proceeds of disposition.

Related Provisions: 87(2)(e.1) — Partnership interest.

Pre-RSC History: Subsec. 100(2.1) added by 1987, c. 46, s. 34, applicable with respect to amalgamations and mergers occurring after January 15, 1987.

(3) Transfer of interest on death — Where by virtue of the death of an individual a taxpayer has acquired a property that was an interest in a partnership immediately before the individual's death (other than an interest to which, immediately before the individual's death, section 98.1 applied) and the taxpayer is not a member of the partnership and does not become a member of the partnership by reason of that acquisition,

(a) the taxpayer shall be deemed to have acquired a right to receive partnership property and not to have acquired an interest in a partnership;

(b) the taxpayer shall be deemed to have acquired the right referred to in paragraph (a) at a cost equal to the amount determined to be the proceeds of disposition of the interest in the partnership to the deceased individual by virtue of paragraph 70(5)(a) or (6)(d), as the case may be; and

(c) section 43 is not applicable to the right.

Related Provisions: 53(2)(o) — Deduction from ACB; 248(8) — Occurrences as a consequence of death.

Pre-RSC History: Subsec. 100(3) added by 1976-77, c. 4, s. 39, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-278R2: Death of a partner or of a retired partner; IT-349R3: Intergenerational transfers of farm property on death.

(4) Loss re interest in partnership — Notwithstanding paragraph 39(1)(b), the capital loss of a taxpayer from the disposition at any time of an interest in a partnership is deemed to be the amount of the loss otherwise determined minus the total of all amounts each of which is the amount by which the taxpayer's share of the partnership's loss, in respect of a share of the capital stock of a corporation that was property of a particular partnership at that time, would have been reduced under subsection 112(3.1) if the fiscal period of every partnership that includes that time had ended immediately before that time and the particular partnership had disposed of the share immediately before the end of that fiscal period for proceeds equal to its fair market value at that time.

Related Provisions: 40(3.7) — Application to non-resident individual; 53(2)(c)(i)(C) — Reduction in ACB; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition.

History: Subsec. 100(4) amended by 1998, c. 19, s. 126, applicable to dispositions that occur after April 26, 1995. The subsec. formerly read:

(4) Notwithstanding paragraph 39(1)(b), the capital loss of a corporation from the disposition at any time of an interest in a partnership shall be deemed to be the amount of the loss otherwise determined minus the total of all amounts each of which is the amount by which the corporation's share of the partnership's loss, in respect of a share of the capital stock of a corporation that was property of the partnership at that time, would have been reduced pursuant to subsection 112(3.1) or (4.2) had the fiscal period of the partnership ended immediately before that time and had the partnership disposed of the share immediately before the end of that fiscal period for its fair market value at that time.

Pre-RSC History: Subsec. 100(4) added by 1980-81-82-83, c. 140, s. 59, applicable to dispositions occurring after November 12, 1981.

Definitions [s. 100]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "fiscal period" — 249(2)(b), 249.1; "member" — 102(2); "person" — 248(1); "property" — 248(1); "share" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

101. Disposition of farmland by partnership — Where a taxpayer was a member of a partnership at the end of a taxation year of the partnership in which the partnership disposed of land used in a farming business of the partnership, there may be deducted in computing the taxpayer's income for the taxpayer's taxation year in which the taxation year of the partnership ended, ¾ of the total of all amounts each of which is an amount in respect of that taxation year of the taxpayer or any preceding taxation year of the taxpayer ending after 1971, equal to the taxpayer's loss, if any, for the year from the farming business, to the extent that the loss

(a) was, by virtue of section 31, not deductible in computing the taxpayer's income for the year;

(b) was not deducted for the purpose of computing the taxpayer's taxable income for the taxpayer's taxation year in which the partnership's taxation year in which the land was disposed of ended, or for any preceding taxation year of the taxpayer;

(c) did not exceed that proportion of the total of

(i) taxes (other than income or profits taxes or taxes imposed by reference to the transfer of the property) paid by the partnership in its taxation year ending in the year or payable by it in respect of that taxation year to a province or a Canadian municipality in respect of the property, and

(ii) interest paid by the partnership in its taxation year ending in the year or payable by it in respect of that taxation year, pursuant to a legal obligation to pay interest on borrowed money used to acquire the property or on any amount as consideration payable for the property,

(to the extent that the taxes and interest were included in computing the loss of the partnership for that taxation year from the farming business), that

(iii) the taxpayer's loss from the farming business for the year

is of

(iv) the partnership's loss from the farming business for its taxation year ending in the year; and

(d) did not exceed the remainder obtained when

(i) the total of each of the taxpayer's losses from the farming business for taxation years preceding the year (to the extent that those losses are included

in computing the amount determined under this section in respect of the taxpayer)

is deducted from

(ii) 4/3 of the amount of the taxpayer's taxable capital gain from the disposition of the land.

Related Provisions: 53(1)(i) — Corresponding rule for non-partnerships — addition to ACB; 96(1.1) — Allocation of share of income to retiring partner; 111(7) — Limitation.

Pre-RSC History: That portion of s. 101 preceding para. (a) amended by 1988, c. 55, subsec. 70(1), to substitute "Disposition of farmland by" for "Disposition of land used in farming business of" in the heading, "3/4 of the aggregate of" for "1/2 of the aggregate of", and "any preceding taxation year" for "any previous taxation year", applicable to taxation years and fiscal periods ending after 1987, except that

(a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "3/4" shall be read as a reference to "2/3";

(b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year; and

(c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "3/4" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 1/2 that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of 2/3 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of 3/4 that the number of days in the year that are after 1989 is of the number of days in the year.

Subpara. 101(d)(ii) amended by 1988, c. 55, subsec. 70(2), to substitute "4/3 of" for "2 times", applicable to taxation years and fiscal periods ending after 1987, except that

(a) where the taxpayer is an individual or a partnership, for taxation years and fiscal periods ending after 1987 and before 1990, the reference to "4/3" shall be read as a reference to "3/2";

(b) where the taxpayer is a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "4/3" shall, in respect of the corporation for the year, be read as a reference to the aggregate of

(i) that proportion of 2 that the number of days in the year that are before 1988 is of the number of days in the year,

(ii) that proportion of 3/2 that the number of days in the year that are after 1987 and before 1990 is of the number of days in the year, and

(iii) that proportion of 4/3 that the number of days in the year that are after 1989 is of the number of days in the year; and

(c) where the taxpayer is a corporation that was not a Canadian-controlled private corporation throughout its taxation year, for taxation years ending after 1987 and commencing before 1990, the reference to "4/3" shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(i) that proportion of 2 that the number of days in the year that are before July 1988 is of the number of days in the year,

(ii) that proportion of 3/2 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(iii) that proportion of 4/3 that the number of days in the year that are after 1989 is of the number of days in the year.

Para. 101(b) substituted by 1984, c. 1, s. 44, to substitute "deducted" for "deductible" and "preceding" for "previous", applicable to 1983 *et seq.*

Definitions [s. 101]: "amount", "borrowed money", "business", "farming" — 248(1); "member" — 102(2); "property" — 248(1); "province" — *Interpretation Act* 35(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

102. (1) Definition of "Canadian partnership" — In this subdivision, "Canadian partnership" means a partnership all of the members of which were, at any time in respect of which the expression is relevant, resident in Canada.

Related Provisions: 80(1) — "Eligible Canadian partnership"; 96(8) — Anti-avoidance rules; 212(13.1)(b) — Non-Canadian partnership deemed non-resident for withholding tax purposes; 248(1)"Canadian partnership" — Definition applies to entire Act; *Income Tax Conventions Interpretation Act* 6.2 — Partnership with Canadian resident partner cannot be resident in another country.

(2) Member of a partnership — In this subdivision, a reference to a person or a taxpayer who is a member of a particular partnership shall include a reference to another partnership that is a member of the particular partnership.

Pre-RSC History [s. 102]: *Subsecs. 102(1), (2) were paras. 102(a), (b).*

S. 102 substituted by 1986, c. 55, subsec. 27(1), applicable after February 25, 1986. S. 102 formerly read:

102. "Canadian partnership" defined — In this subdivision, "Canadian partnership" means a partnership all of the members of which were, at any time in respect of which the expression is relevant, resident in Canada.

Selected Cases [s. 102]: *Randall v. The Queen*, [1985] 1 C.T.C. 268 (FCTD) (Non-resident member not actively participating in business taxed as if carrying on business in Canada where participating in profits).

Definitions [s. 102]: "Canada" — 255; "person" — 248(1); "resident in Canada" — 250; "taxpayer" — 248(1).

Interpretation Bulletins [s. 102]: IT-123R6: Transactions involving eligible capital property; IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner; IT-413R: Election by members of a partnership under subsection 97(2); IT-417R: Merger of partnerships.

103. (1) Agreement to share income, etc., so as to reduce or postpone tax otherwise payable — Where the members of a partnership have agreed to share, in a specified proportion, any income or loss of the partnership from any source or from sources in a particular place, as the case may be, or any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of any of the members thereof, and the principal reason for the agreement may reasonably be considered to be the reduction or postponement of the tax that might otherwise have been or become payable under this Act, the share of each member of the partnership in the income or loss, as the case may be, or in that other amount, is the amount that is reasonable having regard to all the circumstances including the proportions in which the members have agreed to share profits and losses of the partnership from other sources or from sources in other places.

Related Provisions: 103(2) — Meaning of "losses".

Selected Cases [subsec. 103(1)]: *Signum Communications Inc. v. Canada*, [1991] 2 C.T.C. 31 (FCA) (Limited partner's losses not limited by amount of capital contribution).

(1.1) Agreement to share income, etc., in unreasonable proportions — Where two or more members of a partnership who are not dealing with each other at arm's length agree to share any income or loss of the partnership or any other amount in respect of any activity of the partnership that is relevant to the computation

of the income or taxable income of those members and the share of any such member of that income, loss or other amount is not reasonable in the circumstances having regard to the capital invested in or work performed for the partnership by the members thereof or such other factors as may be relevant, that share shall, notwithstanding any agreement, be deemed to be the amount that is reasonable in the circumstances.

Pre-RSC History: Subsec. 103(1.1) added by 1980-81-82-83, c. 48, s. 53, applicable with respect to fiscal periods ending after December 11, 1979.

Selected Cases [subsec. 103(1.1)]: *Archbold v. Canada*, [1995] 1 C.T.C. 2872 (TCC) (No legal impediment to partner's drawing salary from partnership).

Interpretation Bulletins: IT-231R2: Partnerships — partners not dealing at arm's length.

(2) Definition of "losses" — For the purposes of this section, the word "losses" when used in the expression "profits and losses" means losses determined without reference to other provisions of this Act.

Related Provisions: 96(1.1) — Allocation of share of income to retiring partner.

Definitions [s. 103]: "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "losses" — 103(2); "member" — 102(2); "taxable income" — 2(2), 248(1).

Interpretation Bulletins: IT-338R2: Partnership interests — effects on adjusted cost base resulting from the admission or retirement of a partner.

Subdivision k — Trusts and Their Beneficiaries

104. (1) Reference to trust or estate — In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall be read as a reference to the trustee or the executor, administrator, heir or other legal representative having ownership or control of the trust property.

Proposed Amendment — 104(1)

104. (1) Reference to trust or estate — In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of the succession, heir or other legal representative having ownership or control of the trust property, but, except for the purposes of this subsection, subsection (1.1) and paragraph (k) of the definition "disposition" in subsection 248(1), a trust is deemed to not include an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property unless the trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(1), will amend subsec. 104(1) to read as above, applicable to 1998 *et seq.*, except that in connection with transfers of property that occur before December 24, 1998, subsec. 104(1) shall be read as follows:

> 104. (1) Reference to trust or estate — In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of the succession, heir or other legal representative having ownership or control of the trust property.

Technical Notes: Subsection 104(1) of the Act provides a rule under which a reference to a trust or estate is read in the Act as a reference to the trustee or the executor, administrator, heir or other legal representative having ownership or control over trust property.

Subsection 104(1) is amended to include a "liquidator of the succession" to the list of persons to which a trust or estate refers for the purposes of the Act. This amendment is made to ensure that the Act appropriately reflects both the civil law of the province of Quebec and the law of other provinces.

Subsection 104(1) is amended so that this rule does not apply where the context otherwise requires and to clarify that this rule is merely meant to be a convenient way of linking the trustees and others described in the subsection with a trust for the purposes of the Act. This amendment recognizes that there are references to "trust" in the Act that are meant to indicate a trust arrangement, rather than the persons who are responsible for the operation of the arrangement. The latter references include those found in subsections 74.4(4), 104(5.3) and (5.5), 108(6) and 127(7).

Subsection 104(1) is amended, in conjunction with 104(1.1), so that, except for the purposes of those two subsections and paragraph (k) of the definition "disposition" in subsection 248(1), references in the Act to trusts are not considered to include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as "bare trusts". Trusts described in paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1) are expressly not affected by this amendment.

Related Provisions: 75(2) — Revocable or reversionary trust; 94(3) — Non-resident trust deemed resident in Canada; 104(1.1) — Restricted meaning of "beneficiary"; 108(1) — Meaning of "trust"; 122(1) — High rate of tax for *inter vivos* trusts; 128(1)(b), 128(2)(b) — Estate of bankrupt deemed not to be a trust or estate; 146.1(1)"trust" — RESPs — meaning of "trust"; 233.2(4) — Reporting requirement re transfers to foreign trust; 233.6(1) — Reporting requirement re distributions from foreign trust; 248(1)"estate" — Definition applies to entire Act; 248(1)"trust" — Definition applies to entire Act; 248(3) — Deemed trusts in Quebec; 248(5.2) — Trust-to-trust transfers — deemed same trust; 248(25.1) — Trust-to-trust transfer — deemed continuation of trust; 251(1)(b) — Personal trust and beneficiary deemed not to deal at arm's length.

Interpretation Bulletins: IT-447: Residence of a trust or estate.

I.T. Technical News: No. 7 (revocable living trusts, protective trusts, bare trusts).

Proposed Addition — 104(1.1)

(1.1) Restricted meaning of "beneficiary" — For the purposes of subsection (1), subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time where the person or partnership is beneficially interested in the trust at the particular time solely because of

(a) a right that may arise as a consequence of the terms of the will or other testamentary instrument of an individual who, at the particular time, is a beneficiary under the trust;

(b) a right that may arise as a consequence of the law governing the intestacy of an individual;

(c) a right as a shareholder under the terms of the shares of the capital stock of a corporation that, at the particular time, is a beneficiary under the trust;

(d) a right as a member of a partnership under the terms of the partnership agreement, where, at the particular time, the partnership is a beneficiary under the trust; or

(e) any combination of rights described in paragraphs (a) to (d).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(1), will add subsec. 104(1.1), applicable to 1998 *et seq.*

Technical Notes: New subsection 104(1.1) applies for the purpose of identifying beneficiaries under a trust for the purpose of subsection 104(1), as well as for the purposes of subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e). A person or partnership is deemed not to be a beneficiary under a trust at a particular time for these purposes where the person or partnership is beneficially interested in the trust at the particular time solely because of any one, or a combination of, the following:

- a right that may arise as a consequence of the terms of the will or other testamentary instrument of an individual who, at the particular time, is a beneficiary under the trust;
- a right that may arise as a consequence of the law governing the intestacy of an individual;
- a right as a shareholder under the terms of the shares of the capital stock of a corporation that, at the particular time, is a beneficiary under the trust; or
- a right as a member of a partnership under the terms of the partnership agreement, where, at the particular time, the partnership is a beneficiary under the trust.

These amendments generally apply to the 1998 and subsequent taxation years. However, in order to co-ordinate this amendment with changes to the replacement of the definition "disposition" in section 54 with the new definition of the same expression in subsection 248(1), it does not apply in connection with transfers of property that occurred before December 24, 1998.

Proposed Amendment — 104(1.1)

(1.1) Restricted meaning of beneficiary — For the purposes of subsection (1), subparagraph 73(1.02)(b)(ii), paragraph (b) of the definition "resident beneficiary" in subsection 94(1), and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time where the person or partnership is beneficially interested in the trust at the particular time solely because of

Application: The June 22, 2000 draft legislation, subsec. 14(1), will amend the opening words of subsec. 104(1.1) to read as above, applicable to trust taxation years that begin after 2000.

Technical Notes: Proposed subsection 104(1.1) of the Act was one of the measures contained in a detailed Notice of Ways and Means Motion tabled on June 5, 2000.

Proposed subsection 104(1.1) of the Act applies for the purpose of identifying beneficiaries under a trust for the purpose of subsection 104(1), as well as for the purposes of proposed subparagraph 73(1.02)(b)(ii) and proposed paragraph 107.4(1)(e). Those provisions use the expression "beneficiary". Proposed subsection 104(1.1) deems a person or partnership not to be a "beneficiary" under a trust at a particular time for the purposes of those various provisions where the person or partnership is beneficially interested in the trust at the particular time solely because of a contingent right described in subsection 104(1.1).

It is proposed that subsection 104(1.1) be amended to also apply for the purpose of paragraph (b) of the definition "resident beneficiary" in new subsection 94(1), so that contingent rights described in subsection 104(1.1) will not result in a person being treated as a "resident beneficiary". For more detail on the implications of status as a resident beneficiary, see new subsection 94(3).

This amendment applies to trust taxation years that begin after 2000.

(2) Taxed as individual — A trust shall, for the purposes of this Act, and without affecting the liability of the trustee or legal representative for that person's own income tax, be deemed to be in respect of the trust property an individual, but where there is more than one trust and

(a) substantially all of the property of the various trusts has been received from one person, and

(b) the various trusts are conditioned so that the income thereof accrues or will ultimately accrue to the same beneficiary, or group or class of beneficiaries,

such of the trustees as the Minister may designate shall, for the purposes of this Act, be deemed to be in respect of all the trusts an individual whose property is the property of all the trusts and whose income is the income of all the trusts.

Related Provisions: 127.53(2), (3) — Multiple trusts must share minimum tax exemption; 248(1)"individual" — Trust is an individual.

Regulations: 204 (information return).

Interpretation Bulletins: IT-406R2: Tax payable by an *inter vivos* trust; IT-447: Residence of a trust or estate.

Forms: T3: Trust income tax and information return; T3 Summ: Summary of trust income allocations and designations; T3 Supp: Statement of trust income.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 104(3) repealed by 1988, c. 55, subsec. 71(1), applicable to 1988 *et seq.* (See subsec. 122(1.1).) Subsec. 104(3) formerly read:

> (3) Deduction not permitted — No deduction may be made under section 109 from the income of a trust.

Subsec. 104(3) substituted by 1984, c. 1, subsec. 45(1), applicable to 1984 *et seq.* Subsec. 104(3) formerly read:

> (3) Deductions not permitted — No deduction may be made under section 109 or paragraph 110(1)(d) from the income of a trust.

(4) Deemed disposition by trust — Every trust shall, at the end of each of the following days, be deemed to have disposed of each property of the trust that was capital property (other than excluded property or depreciable property) or land included in the inventory of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately thereafter for an amount equal to that fair market value, and for the purposes of this Act those days are

Proposed Amendment — 104(4) opening words

(4) Deemed disposition by trust — Every trust is, at the end of each of the following days, deemed to have disposed of each property of the trust (other than exempt property) that was capital property (other than excluded property or depreciable property) or land included in the inventory of a business of the trust for proceeds equal to its fair market value (determined with reference to subsection 70(5.3)) at the end of that day and to have reacquired the property immediately after for an amount equal to that fair market value, and for the purposes of this Act those days are

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(2), will amend the opening words of subsec. 104(4) to read as above, applicable to days after December 23, 1998 that are determined in respect of a trust under subsec. 104(4), as amended, and for the purpose of determining the cost amount to a trust after December 23, 1998 of property to days after 1992 that are determined in respect of the trust under subsec. 104(4), as amended.

Technical Notes: Subsections 104(4) to (5.2) of the Act set out what is generally referred to as the "21-year deemed realization rule" for trusts. The purpose of the rule is to prevent the use of trusts to defer indefinitely the recognition for tax purposes of gains accruing on capital properties, resource properties and land inventories. These subsections generally treat such properties as having been disposed of and reacquired by trusts (other than spousal trusts) every 21 years at the properties' fair market value. The first deemed disposition day for post-1971 spousal trusts, as provided under paragraph 104(4)(a), is the day on which the spouse beneficiary dies. The fair market value of property that is

deemed to be disposed of on a day determined under paragraph 104(4)(a) or (a.1), is determined with reference to the valuation rule for insurance policies in amended subsection 70(5.3) (see the commentary above on that provision).

Subsections 104(4) to (5.2) are amended so that the deemed realization rules do not apply to "exempt property" of a non-resident trust, as the expression is now defined in subsection 108(1). "Exempt property" is defined as property the income or gain from the disposition of which by a taxpayer is exempt from Canadian taxation for the taxpayer either because the taxpayer is not resident in Canada or because of a tax treaty. The purpose of this amendment is to prevent the deemed realization rules from being used to increase the cost of such property. The increased cost might be relevant in the event that a non-resident trust distributes such property to Canadian beneficiaries. These amendments apply to deemed disposition days that are after December 23, 1998. In the case of capital property (other than depreciable property), the amendments also apply to deemed disposition days that are after 1992, but only for the purpose of determining after December 23, 1998 the cost amount to a trust of property.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

(a) where the trust

(i) is a trust that was created by the will of a taxpayer who died after 1971 and that, at the time it was created, was a trust,

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust, or

(ii) is a trust that was created after June 17, 1971 by a taxpayer during the taxpayer's lifetime that, at any time after 1971, was a trust

under which

(iii) the taxpayer's spouse was entitled to receive all of the income of the trust that arose before the spouse's death, and

(iv) no person except the spouse could, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse dies;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — 104(4)(a)

(ii.1) is a trust (other than a trust the terms of which are described in clause (iv)(A) that elects in its return of income under this Part for its first taxation year that this subparagraph not apply) that was created after 1999 by a taxpayer during the taxpayer's lifetime that, at any time after 1999, was a trust

under which

(iii) the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse's or common-law partner's death and no person except the spouse or common-law partner could, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iv) in the case of a trust described in subparagraph (ii.1) created by a taxpayer who had attained 65 years of age at the time the trust was created,

(A) the taxpayer was entitled to receive all of the income of the trust that arose before the taxpayer's death and no person except the taxpayer could, before the taxpayer's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(B) the taxpayer or the taxpayer's spouse was, in combination with the spouse or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the spouse and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust,

(C) the taxpayer or the taxpayer's common-law partner was, in combination with the common-law partner or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the common-law partner and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the death or the later death, as the case may be, occurs;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(3), will amend the portion of para. 104(4)(a) after subpara. (ii) to read as above, applicable to 2000 *et seq.* except that, with regard to a trust created by a taxpayer at a particular time in 2000 for the benefit of another individual, subparas. 104(4)(a)(iii) and (iv) of the Act shall be read without reference to the words "or common-law partner" and "or common-law partner's" and to cl. 104(4)(a)(iv)(C), unless, because of an election under s. 144 of the *Modernization of Benefits and Obligations Act*, c. 12 of S.C. 2000, ss. 130 to 142 of that Act applied at the particular time to the taxpayer and the other individual.

Technical Notes: Paragraph 104(4)(a) is amended to provide the first deemed disposition day in respect of an *inter vivos* trust created after 1999 that at any time after 1999 was a trust for the exclusive benefit of the settlor during the settlor's lifetime (i.e., an "*alter ego* trust", as newly defined in subsection 248(1)) or a trust for the joint benefit of the settlor and the settlor's spouse during their lifetimes (i.e., a "joint partner trust", as newly defined in subsection 248(1)). The first deemed disposition date in these circumstances, in the event that the settlor was at least 65 years of age at the time of the settlement, is generally the day on which the settlor dies (or, in the case of a trust for the joint benefit of the settlor and spouse, the day on which the survivor dies). However, where a trust that would otherwise be an alter ego trust so elects under subparagraph 104(4)(a)(ii.1), the first deemed disposition date of the trust will generally be the 21st anniversary of the creation of the trust, as determined under paragraph 104(4)(b). This amendment applies to the 2000 and subsequent taxation years. For an explanation of the age 65 restriction, see the commentary on new subsection 73(1.02).

(a.1) where the trust is a pre-1972 spousal trust on January 1, 1993 and the spouse referred to in the defini-

tion "pre-1972 spousal trust" in subsection 108(1) in respect of the trust was

(i) in the case of a trust created by the will of a taxpayer, alive on January 1, 1976, and

(ii) in the case of a trust created by a taxpayer during the taxpayer's lifetime, alive on May 26, 1976,

the day that is the later of

(iii) the day on which that spouse dies, and

(iv) January 1, 1993;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Addition — 104(4)(a.2), (a.3)

(a.2) where the trust makes a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, it is reasonable to conclude that the distribution was financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual, the day on which the distribution is made (determined as if a day ends for the trust immediately after the time at which each distribution is made by the trust to a beneficiary in respect of the beneficiary's capital interest in the trust);

(a.3) where property (other than property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) has been transferred by a taxpayer after December 17, 1999 to the trust in circumstances to which subsection 73(1) applies, it is reasonable to conclude that the property was so transferred in anticipation that the taxpayer would subsequently cease to reside in Canada and the taxpayer subsequently ceases to reside in Canada, the first day after that transfer during which the taxpayer ceases to reside in Canada (determined as if a day ends for the trust immediately after each time at which the taxpayer ceases to be resident in Canada);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(4), will add paras. 104(4)(a.2) and (a.3), applicable to days after December 17, 1999 that are determined under subsection 104(4), as amended.

Technical Notes: Paragraph 104(4)(a.2) is introduced to provide for a deemed disposition day for a trust that distributes property financed by a liability of the trust. This measure only applies, however, if one of the purposes of the transaction was to avoid taxes otherwise payable as a consequence of the death of an individual. The deemed disposition under this paragraph occurs immediately after the distribution of the property (as the determination is made as if a day had ended immediately after each distribution). This amendment applies to deemed disposition days determined after December 17, 1999.

Paragraph 104(4)(a.3) is introduced to provide for a deemed disposition day for a trust in the event that an individual, after December 17, 1999, has transferred property to the trust in circumstances to which subsection 73(1) applies, it is reasonable to conclude that the property was so transferred in anticipation that the taxpayer would subsequently cease to reside in Canada and the individual subsequently ceases to reside in Canada. This measure does not apply, however, to property transferred that is exempt under amended subparagraphs 128.1(4)(b)(i) to (iii) from a deemed disposition on the transferor's emigration. The deemed disposition under paragraph 104(4)(a.3) occurs immediately after the individual ceases to be resident in Canada.

(b) the day that is 21 years after the latest of

(i) January 1, 1972,

(ii) the day on which the trust was created, and

(iii) where applicable, the day determined under paragraph (a) or (a.1) as those paragraphs applied from time to time after 1971; and

(c) the day that is 21 years after any day (other than a day determined under paragraph (a) or (a.1)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

Proposed Amendment — 104(4)(c)

(c) the day that is 21 years after any day (other than a day determined under paragraph (a), (a.1), (a.2) or (a.3)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(5), will amend para. 104(4)(c) to read as above, applicable to 2000 *et seq.*

Technical Notes: Paragraph 104(4)(c) is amended so that there is not a deemed disposition day for a trust 21 years after any day determined under new paragraph 104(4)(a.2) or (a.3). This amendment applies to the 2000 and subsequent taxation years.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 70(5.3) — Value of property that depends on life insurance policy; 70(6)(a) — Where transfer or distribution to spouse or trust; 70(9.1) — Transfer of farm property from spouse's trust to settlor's children; 73(1)(c) — *Inter vivos* transfer of property to spouse trust; 73(1.02)(c)(ii) — Anti-avoidance rule; 94(1)(c)(i)(B) — Deemed disposition applies to non-resident trust after 1998; 104(4.1) — Mark-to-market property can be capital property for 104(4); 104(5) — Deemed disposition of depreciable property; 104(5.3) — Election by trust to postpone deemed disposition; 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 104(15)(a) — Allocable amount for preferred beneficiary election; 107(4) — Trust in favour of spouse; 107.4(3)(h) — Qualifying disposition to a trust; 108(1) — "accumulating income"; 108(1)"cost amount"(a.1) — Cost amount before death of taxpayer; 108(1)"trust" — Exclusions to meaning of "trust"; 108(3) — Meaning of "income" of trust; 108(4) — Trust payment of duties and taxes; 108(6) — Where terms of trust are varied; 110.6(12) — Spousal trust deduction; 127.55(e) — Application of minimum tax; 132.11(4) — Amounts paid from December 16-31 by mutual fund trust to beneficiary; 138.1(1) — Rules re segregated funds; 139.1(5) — Value of ownership rights in insurer during demutualization; 159(6.1) — Election to postpone payment of tax on deemed disposition; 248(1)"*alter ego* trust" — Name for trust described in 104(4)(a)(iv)(A); 248(1)"joint partner trust" — Name for trust described in 104(4)(a)(iv)(B); 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 248(9.2) — Meaning of "vested indefeasibly"; 252(3), (4)(a) — Extended meaning of "spouse" and "former spouse".

History: Subpara. 104(4)(a)(i.1) amended by 1998, c. 19, subsec. 127(1), applicable to acquisitions and dispositions that occur after 1992. Subpara. 104(4)(a)(i.1) formerly read:

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(d) or (f) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust, or

Para. 104(4)(a.1) amended by 1996, c. 21, subsec. 18(1), applicable to trust taxation years that end after February 11, 1991. The para. formerly read:

(a.1) where the trust is a pre-1972 spousal trust on January 1, 1993, the day that is the later of

(i) the day on which the spouse referred to in the definition "pre-1972 spousal trust" in subsection 108(1) in respect of the trust dies, and

(ii) January 1, 1993;

Subpara. 104(4)(b)(iii) amended by 1996, c. 21, subsec. 18(2), applicable to trust taxation years that end after February 11, 1991. The subpara. formerly read:

(iii) where applicable, the day determined under paragraph (a) or (a.1); and

Subsec. 104(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(1), applicable to taxation years of trusts ending after February 11, 1991 except that para. 104(4)(a) as amended does not apply in respect of any trust described therein because of subpara. (i.1) thereof where the spouse who was the beneficiary of that trust died before December 21, 1991. Subsec. (4) formerly read:

(4) Deemed disposition by a trust — Every trust shall, on each of the following days, be deemed to have disposed of each property of the trust that was capital property (other than depreciable property) or land included in the inventory of the trust for proceeds equal to its fair market value on that day and to have reacquired the property immediately thereafter for an amount equal to that fair market value, and for the purposes of this Act those days are

(a) where the trust

(i) is a trust created by the will of a taxpayer who died after December 31, 1971 and that, at the time it was created, was a trust, or

(ii) is a trust created by a taxpayer during the taxpayer's lifetime, other than a trust described in subsection 122(2), that, at any time after 1971, was a trust

under which

(iii) the taxpayer's spouse was entitled to receive all of the income of the trust that arose before the spouse's death, and

(iv) no person except the spouse could, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse dies;

(b) the day that is 21 years after the latest of

(i) January 1, 1972,

(ii) the day on which the trust was created, and

(iii) where applicable, the day referred to in paragraph (a); and

(c) the day that is 21 years after any day that is, by virtue of this subsection, a day on which the trust is deemed to have disposed of each such property.

Pre-RSC History: That portion of subsec. 104(4) preceding (a) substituted by 1985, c. 45, subsec. 50(1), applicable to taxation years of a trust commencing after 1984. That portion formerly read:

(4) Deemed disposition of property by a trust — Every trust shall, on each of the following days, be deemed to have disposed of each property of the trust that was capital property (other than depreciable property), property referred to in any of paragraphs 59(2)(a) to (e) or land included in the inventory of a business of the trust, for proceeds equal to its fair market value on that day, and to have reacquired the property immediately thereafter for an amount equal to that fair market value; and for the purposes of this Act those days are:

All that portion of subsec. 104(4) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 60(1), and applicable after November 12, 1981. That portion formerly read:

(4) Every trust shall, on each of the following days, be deemed to have disposed of each capital property of the trust, other than depreciable property, for proceeds equal to its fair market value on that day, and to have reacquired such property immediately thereafter for an amount equal to that fair market value; and for the purposes of this Act those days are:

Para. 104(4)(a) substituted by 1976-77, c. 4, subsec. 40(1), applicable with respect to any trust the spouse who was the beneficiary of which died after May 25, 1976; and with respect to any trust the spouse who was the beneficiary of which died after December 31, 1975 and before May 26, 1976, paragraph 104(4)(a) shall be deemed to have read as follows:

(a) where the trust is a trust created by the will of a taxpayer who died after December 31, 1971 or a trust created by a taxpayer during his lifetime, under which

(i) his spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and

(ii) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse dies;

Para. 104(4)(a) formerly read:

(a) where the trust is a trust created by a taxpayer, whether during his lifetime or by his will, under which

(i) his spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and

(ii) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse dies;

Interpretation Bulletins: IT-120R5: Principal residence; IT-286R2: Trusts — amounts payable; IT-325R2: Property transfers after separation, divorce and annulment; IT-349R3: Intergenerational transfers of farm property on death; IT-370: Trusts — capital property owned on December 31, 1971; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-449R: Meaning of "vested indefeasibly"; IT-465R — Non-resident beneficiaries of trusts.

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate.

Forms: T1055: Summary of deemed realizations.

Proposed Addition — 104(4.1)

(4.1) Mark-to-market property — Notwithstanding any other provision of this Act, the determination of whether property is capital property for the purpose of subsection (4) shall be made without reference to subparagraph 39(1)(a)(ii.3) and section 94.2.

Application: The June 22, 2000 draft legislation, subsec. 14(2), will add subsec. 104(4.1), applicable to trust taxation years that begin after 2000.

Technical Notes: New subsection 104(4.1) of the Act provides that, for the purposes of the 21-year deemed disposition rule in subsection 104(4), a property's status as capital property is determined without reference to new subparagraph 39(1)(a)(ii.3) and new section 94.2. The latter provisions have the effect of providing that interests in foreign investment entities to which subsection 94.2 applies are not classified as capital property. In the event that such an interest is deemed to have been disposed of because of the application of subsection 104(4), there is a recognition of the "deferral amount" pursuant to subsection 94.2(4).

This amendment applies to trust taxation years that begin after 2000.

(5) Idem [depreciable property] — Every trust shall, at the end of each day determined under subsection (4) in respect of the trust, be deemed to have disposed of each property of the trust that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that fair market value, except that

Proposed Amendment — 104(5)

(5) Depreciable property [deemed disposition] — Every trust is, at the end of each day determined under subsection (4) in respect of the trust, deemed to have disposed of each property of the trust (other than exempt property) that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately after that day at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that fair market value, except that

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(6), will amend the opening words of subsec. 104(5) to read as above, applicable to days after December 23, 1998 that are determined under subsection 104(4), as amended.

Technical Notes: See under 104(4) opening words.

(a) where the amount that was the capital cost to the trust of the property immediately before the end of the day (in this paragraph referred to as the "actual capital cost") exceeds the deemed capital cost to the trust of the property, for the purpose of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) as they apply in respect of the property at any subsequent time,

(i) the capital cost to the trust of the property on its reacquisition shall be deemed to be the amount that was the actual capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed under paragraph 20(1)(a) to the trust in respect of the property in computing its income for taxation years that ended before the trust reacquired the property;

(b) for the purposes of this subsection, the reference to "at the end of a taxation year" in subsection 13(1) shall be read as a reference to "at the particular time a trust is deemed by subsection 104(5) to have disposed of depreciable property of a prescribed class"; and

(c) for the purpose of computing the excess, if any, referred to in subsection 13(1) at the end of the taxation year of a trust that included a day on which the trust is deemed by this subsection to have disposed of a depreciable property of a prescribed class, any amount that, on that day, was included in the trust's income for the year under subsection 13(1) as it reads because of paragraph (b), shall be deemed to be an amount included under section 13 in the trust's income for a preceding taxation year.

Related Provisions: 70(9.1) — Transfer of farm property from spouse's trust to settlor's children; 73(1.02)(c)(ii) — Anti-avoidance rule; 104(5.3) — Election by trust to postpone deemed disposition; 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 108(1) — "accumulating income"; 108(1)"cost amount"(a.1) — Cost amount before death of taxpayer; 108(1)"trust" — Exclusions to meaning of "trust"; 108(6) — Where terms of trust are varied.

History: Subparas. 104(5)(a)(i) and (ii) substituted by 1994, c. 21, subsec. 46(1), applicable to days determined under subsec. 104(4) that are after 1992. Those subparas. formerly read:

(i) the capital cost to the trust of the property shall be deemed to be the amount that was the actual capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the trust in respect of the property under paragraph 20(1)(a) in computing income for taxation years before the reacquisition by the trust of the property, and any other amount allowed to the trust in respect of the property under that paragraph in computing income for those years shall be deemed to be nil;

Subsec. 104(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(1), applicable to taxation years of trusts ending after February 11, 1991 except that with respect to those days determined under subsec. 104(4) (as amended) that are before 1993, subsec. 104(5) shall be read without reference to the amendments made by subsection (1), and the portion of subsec. 104(5) preceding para. (c) shall be read as follows:

(5) Every trust shall, at the end of each day determined under subsection (4) in respect of the trust, be deemed to have disposed of all depreciable property of a prescribed class of the trust for proceeds equal to

(a) where the fair market value of that property at the end of the day exceeds the undepreciated capital cost thereof to the trust at the end of the day, the amount of that undepreciated capital cost plus ½ of the excess, and

(b) in any other case, the fair market value of that property at the end of that day plus ½ of the amount, if any, by which the undepreciated capital cost thereof to the trust at the end of that day exceeds that fair market value,

and to have reacquired each such depreciable property of that class immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that proportion of the proceeds determined under paragraph (a) or (b), as the case may be, that the amount that was the fair market value of that property is of the total of the amounts that were the fair market values of all properties of that class at the end of that day, except that

Subsec. 104(5) formerly read:

(5) Idem — Every trust shall, on each day determined under subsection (4) in respect of the trust, be deemed to have disposed of all depreciable property of a prescribed class of the trust for proceeds equal to,

(a) where the fair market value of that property on that day exceeds the undepreciated capital cost thereof to the trust on that day, the amount of that undepreciated capital cost plus ½ of the amount of the excess, and

(b) in any other case, the fair market value of that property on that day plus ½ of the amount, if any, by which the undepreciated capital cost thereof to the trust on that day exceeds that fair market value,

and to have reacquired each such depreciable property of that class immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that proportion of the proceeds determined under paragraph (a) or (b), as the case may be, that the amount that was the fair market value of that property on that day is of the total of the amounts that were the fair market values of all properties of that class on that day, except that

(c) where the amount that was the capital cost to the trust of any particular property of that class exceeds the deemed capital cost to the trust of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a) as they apply in respect of the property at any subsequent time,

(i) the capital cost to the trust of the property shall be deemed to be the amount that was the capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the trust in respect of the property under paragraph 20(1)(a) in computing income for taxation years before the reacquisition by the trust of the property, and any other amount allowed to the trust in respect of the property under that paragraph in computing income for those years shall be deemed to be nil,

(d) for the purposes of this subsection, the words "at the end of a taxation year," in subsection 13(1) shall be deemed to read "at the particular time a trust is deemed by subsection 104(5) to have disposed of depreciable property of a prescribed class," and

(e) for the purpose of computing the excess, if any, referred to in subsection 13(1) at the end of the taxation year of a trust that included a day on which the trust is deemed by this subsection to have disposed of all depreciable property of a prescribed class, any amount that, on that day, was included in the trust's income for the year by virtue of subsection 13(1) as it reads by virtue of paragraph (d), shall be deemed to be an amount included in the taxpayer's income by virtue of section 13 for a prior taxation year.

Pre-RSC History: All that portion of subsec. 104(5) preceding para. (a) amended by 1985, c. 45, subsec. 50(2), applicable to taxation years of a trust commencing after 1984, to substitute "determined under subsection (4) in respect of the trust" for "described in subsection (4)".

Paras. 104(5)(d) substituted, (e) added by 1977-78, c. 1, subsec. 49(1), applicable to taxation years commencing after May 25, 1976. Para. 104(5)(d) formerly read:

(d) subsection 13(2) is not applicable in respect of any such reacquisition.

Interpretation Bulletins: IT-286R2: Trusts — amount payable; IT-349R3: Intergenerational transfers of farm property on death; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R: Non-resident beneficiaries of trusts.

Forms: T1055: Summary of deemed realizations.

(5.1) Idem [NISA Fund No. 2] — Every trust that holds an interest in a NISA Fund No. 2 that was transferred to it in circumstances to which paragraph 70(6.1)(b) applied shall be deemed, at the end of the day on which the spouse referred to in that paragraph dies (in this subsection referred to as the "spouse"), to have been paid an amount out of the fund equal to the amount, if any, by which

(a) the balance at the end of that day in the fund so transferred

exceeds

(b) such portion of the amount described in paragraph (a) as is deemed by subsection (14.1) to have been paid to the spouse.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 252(3), (4)(a) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 104(5.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(2), applicable to 1991 *et seq.*

Pre-RSC History [former subsec. 104(5.1)]: Former subsec. 104(5.1) repealed by 1986, c. 6, subsec. 51(1), applicable to 1986 *et seq.* Subsec. 104(5.1) formerly read:

(5.1) Idem — Every trust shall, where subsection (4) is applicable to the trust on a day, be deemed

(a) where the trust was a participant under an indexed security investment plan on that day,

(i) to have (for the purposes of computing any capital gain or capital loss of the trust from the plan for the taxation year in which the day occurred) a taxation year that ended on, and a new taxation year that commenced immediately after, that day

(ii) to have disposed, immediately before the end of the taxation year deemed by subparagraph (i) to have ended, of all indexed securities owned under the plan for proceeds equal to their fair market value (within the meaning assigned by paragraph 47.1(1)(d)) at that time and to have reacquired under the plan, at the beginning of the taxation year deemed by subparagraph (i) to have commenced, all such securities at a cost equal to such fair market value,

(iii) to have closed out, immediately before the end of the taxation year deemed by subparagraph (i) to have ended, each put or call option referred to in clause 47.1(4)(a)(iv)(B) or (C) outstanding under the plan at that time at a cost equal to the amount the trust would have had to pay at that time if the option had actually been closed out and to have written under the plan, at the beginning of the taxation year deemed by subparagraph (i) to have commenced, the option for proceeds equal to such cost, and

(iv) notwithstanding subsection 47.1(9), to have a capital gain or capital loss from the plan for the taxation year deemed by subparagraph (i) to have ended equal to the amount of the trust's gain or loss, as the case may be, for that year from the plan; and

(b) where paragraph 47.1(10)(f) was applicable to the trust in respect of an indexed security investment plan in the taxation year in which the day occurred, to have, notwithstanding that paragraph, a capital loss from the plan for the year equal to the aggregate of all amounts that are obtained by determining every amount that, but for this paragraph, would have been a capital loss of the trust from the plan for the year or any subsequent taxation year and not to have a capital loss from the plan for any subsequent taxation year.

Subsec. 104(5.1) added by 1984, c. 1, subsec. 45(2), applicable after September 30, 1983.

Forms: T1055: Summary of deemed realizations.

(5.2) Rules for trusts [resource property] — Where on a day determined under subsection (4) in respect of a trust the trust owns a Canadian resource property or a foreign resource property, the following rules apply:

(a) for the purpose of determining the amounts under subsection 59(1), paragraph 59(3.2)(c), subsections 66(4) and 66.2(1), the definition "cumulative Canadian development expense" in subsection 66.2(5), subsection 66.4(1) and the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the trust shall be deemed

(i) to have a taxation year (in this subsection referred to as the "old taxation year") that ended on that day and a new taxation year (in this subsection referred to as the "new taxation year") that commenced immediately after that day, and

(ii) to have disposed, immediately before the end of the old taxation year, of each of its Canadian resource properties and foreign resource properties for proceeds that become receivable at that time equal to its fair market value at that time and to have reacquired, at the beginning of the new taxation year, each such property for an amount equal to that fair market value; and

Proposed Amendment — 104(5.2)

(5.2) Resource property — Where at the end of a day determined under subsection (4) in respect of a trust the trust owns a Canadian resource property (other than an exempt property) or a foreign resource property (other than an exempt property),

(a) for the purpose of determining the amounts under subsection 59(1), paragraph 59(3.2)(c), subsections 66(4) and 66.2(1), the definition "cumulative Canadian development expense" in subsection 66.2(5), subsection 66.4(1) and the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the trust is deemed

(i) to have a taxation year (in this subsection referred to as the "old taxation year") that ended at the end of that day and a new taxation year that begins immediately after that day, and

(ii) to have disposed, immediately before the end of the old taxation year, of each of those properties for proceeds that became receivable at that time equal to its fair market value at that time and to have reacquired, at the beginning of the new taxation year, each such property for an amount equal to that fair market value; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(7), will amend the portion of subsec. 104(5.2) before para. (b) to read as above, applicable to days after December 23, 1998 that are determined under subsec. 104(4), as amended.

Technical Notes: See under 104(4) opening words.

(b) for the particular taxation year of the trust that included that day, the trust shall

(i) include in computing its income for the particular taxation year the amount, if any, determined under paragraph 59(3.2)(c) in respect of the old taxation year and the amount so included shall, for the purposes of the determination of B in the definition "cumulative Canadian development ex-

pense" in subsection 66.2(5), be deemed to have been included in computing its income for a preceding taxation year, and

(ii) deduct in computing its income for the particular taxation year the amount, if any, determined under subsection 66(4) in respect of the old taxation year and the amount so deducted shall, for the purposes of paragraph 66(4)(a), be deemed to have been deducted for a preceding taxation year.

Related Provisions: 104(5.3) — Election; 104(5.8) — Trust transfers; 104(6) — Deduction in computing income of trust; 108(1) — "accumulating income"; 108(1) — "trust"; 108(6) — Where terms of trust are varied.

Pre-RSC History: Subsec. 104(5.2) added by 1985, c. 45, subsec. 50(3), applicable to taxation years of a trust commencing after 1984.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

(5.3) Election — Where a trust files an election under this subsection in prescribed form with the Minister within 6 months after the end of a taxation year of the trust that includes a day before 1999 (in this subsection referred to as the "disposition day") that would, but for this subsection, be determined in respect of the trust under paragraph (4)(a.1) in the case of a trust described in that paragraph, or under paragraph (4)(b) in any other case, and there is an exempt beneficiary under the trust on the disposition day,

(a) for the purposes of subsections (4) to (5.2), paragraph (6)(b) and subsection 159(6.1), the day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the trust is deemed to be the earlier of

(i) January 1, 1999, and

(ii) the first day of the trust's first taxation year that begins after the first day after the disposition day throughout which there is no exempt beneficiary under the trust;

(b) subsection 107(2) does not apply to a distribution made by the trust during the period

(i) beginning immediately after the disposition day, and

(ii) ending at the end of the first day after the disposition day that is determined in respect of the trust under subsection (4)

to any beneficiary (other than an individual who is an exempt beneficiary under the trust immediately before the time of the distribution);

(b.1) where the trust filed the form before March 1995, paragraph (b) does not apply to distributions made by the trust after February 1995;

(c) subject to paragraph (d), paragraph (e) of the definition "disposition" in section 54 does not apply to a transfer by the trust after the disposition day during the period

Proposed Amendment — 104(5.3)(c)

(c) subsection 107.4(3) does not apply to a disposition by the trust during the period

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(8), will amend the opening words of para. 104(5.3)(c) to read as above, applicable to transfers made after December 23, 1998.

Technical Notes: Subsection 104(5.3) of the Act allowed the deferral of the 21-year deemed disposition date (determined under paragraph 104(4)(a.1) or (b)) for certain family trusts. The measure has already been terminated under the existing rules, so that the deferred disposition date was no later than January 1, 1999.

Subject to paragraph 104(5.3)(d), paragraph 104(5.3)(c) ensures that the deemed disposition date cannot be deferred beyond January 1, 1999 (or an earlier date, where applicable) through a transfer of property from one trust to another that does not constitute a "disposition" because of existing paragraph (e) of the definition "disposition" in section 54.

Any trust-to-trust transfer in the period (referred to below as the "relevant period") that is after the original date of the deemed disposition and before the date of the deferred deemed disposition is considered to be a "disposition" (i.e., a taxable event) for a trust that has made an election under subsection 104(5.3). Paragraph 104(5.3)(d) provides for relief from paragraph 104(5.3)(c) where, essentially, one trust is replaced by another trust with the same terms and beneficiaries. In this case, the new trust is deemed to be the same trust as, and a continuation of, the original trust.

Paragraph 104(5.3)(c) is amended to eliminate the reference to the existing definition of "disposition" in section 54, as a consequence of the repeal of that definition and its replacement by a new definition of "disposition" in subsection 248(1).

Paragraph 104(5.3)(c) is also amended so that it only applies where there is a "disposition" of property (as now defined in subsection 248(1)). The only relevant "trust-to-trust" transfer where there is no "disposition" is one to which paragraph (f) of the new definition "disposition" applies. Where paragraph (f) of that definition applies, the transferee trust is considered under subsection 248(25.1) to be the same as and a continuation of the transferor trust.

(i) beginning immediately after the disposition day, and

(ii) ending at the end of the first day after the disposition day that is determined in respect of the trust under subsection (4); and

(d) where

(i) property is transferred from the trust to another trust in circumstances to which paragraph (e) of the definition "disposition" in section 54 would, but for paragraph (c), apply,

(ii) the other trust held no property immediately before the transfer, and

(iii) the terms of the trust immediately before the transfer are identical to the terms of the other trust immediately after the transfer,

paragraph (e) of the definition "disposition" in section 54 applies to the transfer and the other trust shall be deemed to be the same trust as, and a continuation of, the trust.

Proposed Repeal — 104(5.3)(d)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(9), will repeal para. 104(5.3)(d), applicable to transfers made after December 23, 1998.

Technical Notes: Paragraph 104(5.3)(d) is repealed, consequential on the introduction of paragraph (f) of the new definition "disposition" and new subsection 248(25.1).

Related Provisions: 104(5.31) — Revocation of election; 104(5.4) — Exempt beneficiary; 104(5.8) — Trust transfers; 107(2) — Rollout of property to beneficiaries where election not available; 108(1) — "trust"; 110.6(12) — Spousal trust deduction; 220(3.2), Reg. 600(b) — Late filing or revocation of election; 248(5.2) — Trust-to-trust transfers.

History: The portion of subsec. 104(5.3) before para. (b) amended and para. (b.1) added by 1996, c. 21, subsecs. 18(3) and (4), applicable after February 11, 1991. That portion before para. (b) formerly read:

(5.3) Election — Where a trust so elects in prescribed form filed with the Minister within 6 months after the end of a taxation year of the trust that includes a day (in this subsection referred to as the "disposition day") that would, but for this subsection, be determined in respect of the trust under paragraph (4)(a.1) in the case of a trust described in that paragraph, or under paragraph (4)(b) in any other

case, and there is an exempt beneficiary under the trust on the disposition day,

(a) for the purposes of subsections (4) to (5.2), paragraph (6)(b) and subsection 159(6.1), the day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the trust shall be deemed to be the first day of the first taxation year of the trust beginning after the first day after the disposition day throughout which there is no exempt beneficiary under the trust;

Subsec. 104(5.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

Forms: T1015: Election by a trust to defer the deemed realization day.

(5.31) Revocation of election — Where a trust that has filed an election under subsection (5.3) before July 1995 applies before 1997 to the Minister in writing for permission to revoke the election and the Minister grants permission to revoke the election,

(a) the election is deemed, otherwise than for the purposes of this subsection, never to have been made;

(b) the trust is not liable to any penalty under this Act to the extent that the liability would, but for this paragraph, have increased because of the revocation of the election; and

(c) notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties under this Act shall be made as are necessary to take into account the consequences of the revocation of the election.

History: Subsec. 104(5.31) added by 1996, c. 21, subsec. 18(5), applicable on June 20, 1996.

(5.4) Exempt beneficiary — For the purpose of subsection (5.3), an "exempt beneficiary" under a trust at a particular time is an individual who is alive and a beneficiary under the trust at the particular time, where

(a) in the case of a trust that was created after February 11, 1991, the individual, or an individual who, otherwise than because of subsection 252(2), is the brother or sister of the individual, was alive at the earlier of

(i) the time the trust was created, and

(ii) the earliest of all times each of which is the time that another trust was created that, before the particular time and the end of the day that would, but for subsection (5.3), be determined in respect of the trust under paragraph (4)(a.1) or (b), transferred property to the trust either

(A) directly, or

(B) indirectly through one or more trusts,

in circumstances in which subsection (5.8) applies; and

(b) the individual or the individual's spouse or former spouse was

(i) the designated contributor in respect of the trust, or

(ii) a grandparent, parent, brother, sister, child, niece or nephew

(A) of the designated contributor in respect of the trust, or

(B) of the spouse or former spouse of the designated contributor in respect of the trust.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(5.5) — Beneficiary; 104(5.6) — Designated contributor; 252(3), (4)(a) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 104(5.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.5) Beneficiary — For the purpose of subsection (5.4), a beneficiary under a trust is an individual who is beneficially interested in the trust, except that an individual shall be deemed not to be a beneficiary under a trust at a particular time

(a) where

(i) the interests in the trust at the particular time of all individuals who would, if this Act were read without reference to this paragraph, be exempt beneficiaries under the trust are conditional on or subject to the exercise of a discretionary power by a person,

(ii) by the exercise of (or the failure to exercise) such power under the terms of the trust after the particular time, all interests in the trust of

(A) those individuals, and

(B) other individuals who are children of deceased individuals who, if this Act were read without reference to this paragraph, would have been exempt beneficiaries under the trust at any time before the particular time

may terminate before the time at which the last of those individuals and the other individuals dies and without any of those individuals or the other individuals enjoying any benefit under the trust after the particular time, and

(iii) the trust was created after February 11, 1991 or subparagraph (ii) applies in respect of the trust because of a variation of the terms of the trust occurring after February 11, 1991; or

(b) where it is reasonable to consider that one of the main purposes for the creation of the interest of the individual in the trust was to defer the day determined under paragraph (4)(a.1) or (b) in respect of the trust.

Related Provisions: 248(25) — Beneficially interested.

History: Subsec. 104(5.5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.6) Designated contributor — For the purpose of subsection (5.4), a designated contributor in respect of a trust is

(a) where the trust is described in paragraph (4)(a) or was, on December 20, 1991, a pre-1972 spousal trust, the individual who created (or whose will created) the trust;

(b) where paragraph (a) does not apply and the trust is a testamentary trust at the end of the taxation year for which it makes an election under subsection (5.3), the individual as a consequence of whose death the trust was created; and

(c) in the case of any other trust, the individual who was, or who was related to, an individual beneficially

interested in the trust and who is designated by the trust in its election under subsection (5.3)

(i) where, at each time in the relevant period, the total amount of property transferred or loaned before that time by the designated individual (either directly or through another trust) to the trust

(A) exceeded the total amount of property so transferred or loaned before that time by each other individual who was born before the designated individual and who, at any time, was related to any individual beneficially interested in the trust, and

(B) was not less than the total amount of property so transferred or loaned before that time by each other individual who was born after the designated individual and who, at any time, was related to any individual beneficially interested in the trust,

(ii) where

(A) no individual may be designated in respect of the trust because of subparagraph (i),

(B) the designated individual transferred or loaned property (either directly or through another trust) to the trust at any time before the end of the relevant period, and

(C) the designated individual was born before all other individuals who

(I) at any time were related to any individual beneficially interested in the trust or to any individual who transferred or loaned property to the trust before the end of the relevant period, and

(II) transferred or loaned property (either directly or through another trust) to the trust at any time before the end of the relevant period, or

(iii) where throughout the relevant period the property of the trust consisted primarily of

(A) shares of the capital stock of a corporation

(I) controlled, on the day that the trust was created or at the beginning of the relevant period, by the designated individual or by the designated individual and one or more other individuals born after, and related to, the designated individual, or

(II) all or substantially all of the value of which throughout the relevant period derived from property transferred to the corporation by the designated individual or by the designated individual and one or more other individuals born after, and related to, the designated individual,

(B) shares of the capital stock of a corporation all or substantially all of the value of which, throughout the part of the relevant period throughout which the shares were held by the trust, derived from shares described in clause (A),

(C) property substituted for the shares described in clause (A) or (B),

(D) property attributable to profits, gains or distributions in respect of property described in clause (A), (B) or (C), or

(E) any combination of the properties described in clauses (A) to (D).

Related Provisions: 104(5.7) — Designated contributor; 248(5) — Substituted property; 248(9.1) — Trust created by taxpayer's will.

History: Subsec. 104(5.6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.7) Idem — For the purposes of subsection (5.6),

(a) the relevant period in respect of a trust is the period that begins one year after the day on which the trust was created and ends at the end of the day that would, but for the election of the trust under subsection (5.3), be determined in respect of the trust under paragraph (4)(a.1) or (b), as the case may be;

(b) 2 individuals shall be deemed to be related to each other where one of them is the aunt, great aunt, uncle or great uncle of the other individual;

(c) an individual shall be deemed not to be a designated contributor in respect of a trust where it is reasonable to consider that one of the main purposes of a series of transactions or events that includes

(i) an individual becoming a trustee in respect of trust property, or

(ii) an acquisition of property or a borrowing by any individual

was to defer the day determined under paragraph (4)(b) in respect of the trust; and

(d) in determining whether all or substantially all of the value of shares of the capital stock of a corporation is derived from other property, the other property shall be deemed to include property substituted for the other property and property attributable to profits, gains or distributions in respect of the other property and the substituted property.

Related Provisions: 248(5) — Substituted property.

History: Subsec. 104(5.7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable after February 11, 1991.

(5.8) Trust transfers — Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which paragraph (e) of the definition "disposition" in section 54 or subsection 107(2) applies,

Proposed Amendment — 104(5.8)

(5.8) Trust transfers — Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which subsection 107(2) or 107.4(3) or paragraph (f) of the definition "disposition" in subsection 248(1) applies,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(10), will amend the opening words of subsec. 104(5.8) to read as above, applicable to transfers made after February 11, 1991 except that, for transfers made before December 24, 1998, the opening words shall be read as follows:

(5.8) Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which paragraph (e) of the definition "disposition" in section 54

or subsection 107(2) applies and the transferee trust is not described in paragraph (g) of the definition "trust" in subsection 108(1),

Technical Notes: Subsection 104(5.8) of the Act is a special rule designed to prevent the avoidance of the 21-year rule through the use of trust-to-trust transfers that do not involve dispositions of property at fair market value. Subsection 104(5.8) generally provides for a transferee trust to assume the next deemed disposition day of the transferor, if that day is earlier than the transferee's next deemed disposition day. In the case of spousal trusts under which the beneficiary spouse is still alive, subsection 104(5.8) provides a deemed disposition as soon as the transfer is completed unless relief is provided under paragraph 104(5.8)(b). Paragraph 104(5.8)(b) provides relief where both the transferor and transferee trusts are spousal trusts to which paragraph 104(4)(a) or (a.1) applies and under which the spouse beneficiary is alive.

Subsection 104(5.8) is amended to eliminate a reference to trust transfers under paragraph (e) of the definition "disposition" in section 54, as a consequence of the repeal of that definition. Subsection 104(5.8) is also amended so that it now covers transfers under new paragraph (f) of the definition "disposition" in subsection 248(1) and under new subsection 107.4(3). These amendments apply to transfers made after December 23, 1998.

Subsection 104(5.8) is amended so that it does not apply to transfers between trusts, if the transferee trust was, at the time of the transfer, described in paragraph (g) of the definition "trust" in subsection 108(1). This amendment, which is made as a consequence of the introduction of subparagraph (g)(iv) of that definition, applies only to transfers made after February 11, 1991 and before December 24, 1998. Subparagraph (g)(iv) of that definition has the effect of limiting an exemption from the 21-year deemed disposition rule for a trust in which interests are vested indefeasibly, in the event that non-resident beneficiaries own more than 20% of the interests in the trust.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

(a) for the purposes of applying subsections (4) to (5.2) after the particular time,

(i) subject to paragraph (b), the first day (in this subsection referred to as the "disposition day") ending at or after the particular time determined under subsection (4) in respect of the transferee trust shall be deemed to be the earliest of

Proposed Amendment — 104(5.8)(a)(i)

(i) subject to paragraphs (b) to (b.2), the first day (in this subsection referred to as the "disposition day") that ends at or after the particular time that would, if this section were read without reference to paragraph (4)(a.2) and (a.3), be determined in respect of the transferee trust is deemed to be the earliest of

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(11), will amend the opening words of subpara. 104(5.8)(a)(i) to read as above, applicable to transfers made after December 17, 1999.

Technical Notes: Subparagraph 104(5.8)(a)(i) is amended to ensure that the determination of a deemed disposition day for a transferee trust will not preclude any earlier deemed disposition day under new paragraph 104(4)(a.2) or (a.3). This amendment applies to transfers made after December 17, 1999.

(A) the first day ending at or after the particular time that would be determined under subsection (4) in respect of the transferor trust without regard to the transfer and any transaction or event occurring after the particular time,

(B) the first day ending at or after the particular time that would otherwise be determined under subsection (4) in respect of the transferee trust without regard to any transaction or event occurring after the particular time,

(C) where the transferor trust is a trust that is described in paragraph (4)(a) or the definition "pre-1972 spousal trust" in subsection 108(1) and the spouse referred to in that paragraph or definition is alive at the particular time, the first day ending at or after the particular time, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — 104(5.8)(a)(i)(C)

(C) the first day that ends at or after the particular time, where

(I) the transferor trust is a joint partner trust, a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1), and

(II) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition "pre-1972 spousal trust" in subsection 108(1) is alive at the particular time,

(C.1) the first day that ends at or after the particular time, where

(I) the transferor trust is an *alter ego* trust or joint partner trust; and

(II) the taxpayer referred to in paragraph (4)(a) is alive at the particular time, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(12), will amend cl. 104(5.8)(a)(i)(C) to read as above, and add cl. (C.1), applicable to transfers made after 1999.

Technical Notes: Subsection 104(5.8) is further amended to extend its existing rules for transfers from spousal trusts to transfers from other specified trusts. The additional trusts so specified are those created after 1999 by a settlor (aged 65 years or more) for the exclusive benefit of the settlor during the settlor's lifetime (i.e., an "*alter ego* trust", as newly defined in subsection 248(1)) or for the joint benefit of the settlor and the settlor's spouse during their joint lifetimes (i.e., a "joint partner trust", as newly defined in subsection 248(1)). Where the settlor of an alter ego trust is still alive (or, in the case of a joint partner trust, where the settlor or the spouse is still alive), a deemed disposition day for the trust may occur once a transfer from the trust is completed. However, amended paragraph 104(5.8)(b) and new paragraphs 104(5.8)(b.1) and (b.2) provide for no deemed disposition day in the case of a transfer from one of the additional specified trusts where the transferee trust is also a specified trust to which paragraph 104(4)(a) applies and the settlor (or, in the case of a joint partner trust, either the settlor or that spouse) is alive. These amendments apply to transfers made after 1999. For further detail on new rules for alter ego trusts and joint partner trusts, see the commentary on amended subsection 73(1) and paragraph 104(4)(a).

(D) where

(I) the disposition day would, but for the application of this subsection to the transfer, be determined under paragraph (5.3)(a) in respect of the transferee trust, and

(II) the particular time is after the day that would, but for subsection (5.3), be determined under paragraph (4)(b) in respect of the transferee trust,

the first day ending at or after the particular time, and

(ii) where the disposition day determined in respect of the transferee trust under subparagraph (i) is earlier than the day referred to in clause (i)(B) in respect of the transferee trust, subsections (4) to (5.2) do not apply to the transferee trust on the day referred to in clause (i)(B) in respect of the transferee trust;

(b) where the transferor trust is a trust (in this paragraph referred to as an "eligible trust") that is described in paragraph (4)(a) or the definition "pre-1972 spousal trust" in subsection 108(1) and the spouse referred to in that paragraph or definition is alive at the particular time, paragraph (a) does not apply in respect of the transfer where the transferee trust is an eligible trust; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — 104(5.8)(b)–(b.2)

(b) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1),

(ii) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition "pre-1972 spousal trust" in subsection 108(1) is alive at the particular time, and

(iii) the transferee trust is a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1);

(b.1) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is an *alter ego* trust,

(ii) the taxpayer referred to in paragraph (4)(a) is alive at the particular time, and

(iii) the transferee trust is an *alter ego* trust;

(b.2) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a joint partner trust,

(ii) either the taxpayer referred to in paragraph (4)(a), or the spouse or common-law partner referred to in that paragraph, is alive at the particular time, and

(iii) the transferee trust is a joint partner trust; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(13), will amend para. 104(5.8)(b) to read as above, and add paras. (b.1) and (b.2), applicable to transfers made after 1999.

Technical Notes: See under 104(5.8)(a)(i)(C).

(c) for the purposes of subsection (5.3), unless a day ending before the particular time has been determined under paragraph (4)(a.1) or (b) or would, but for subsection (5.3), have been so determined, a day determined under subparagraph (a)(i) shall be deemed to be a day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the transferee trust.

Related Provisions: 248(5.2) — Trust-to-trust transfers.

History: Subsec. 104(5.8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(3), applicable to property transferred after February 11, 1991 except that para. 104(5.8)(b) as it applies to property transferred before December 21, 1991 shall be read as follows:

(b) where the transferor trust or the transferee trust is a trust that is described in paragraph (4)(a) or the definition "pre-1972 spousal trust" in subsection 108(1) and the spouse referred to therein is alive at the particular time, paragraph (a) does not apply in respect of the transfer; and

(6) Deduction in computing income of trust — For the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year

Proposed Amendment — 104(6)

(6) Deduction in computing income of trust — Subject to subsections (7) and (7.01), for the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year

Application: The June 22, 2000 draft legislation, subsec. 14(3), will amend the opening words of subsec. 104(6) to read as above, applicable to trust taxation years that begin after 2000.

Technical Notes: Subsection 104(6) of the Act generally permits a trust to deduct, in computing income for a taxation year, any income payable to a beneficiary under the trust.

Subsection 104(6) is amended so that it is expressly subject to subsection 104(7) and new subsection 104(7.01).

This amendment applies to trust taxation years that begin after 2000.

(a) in the case of an employee trust, the amount by which the amount that would, but for this subsection, be its income for the year exceeds the amount, if any, by which

(i) the total of all amounts each of which is its income for the year from a business

exceeds

(ii) the total of all amounts each of which is its loss for the year from a business;

(a.1) in the case of a trust governed by an employee benefit plan, such part of the amount that would, but for this subsection, be its income for the year as was paid in the year to a beneficiary;

(a.2) where the taxable income of the trust for the year is subject to tax under this Part because of paragraph 146(4)(c) or subsection 146.3(3.1), the part of the amount that, but for this subsection, would be the income of the trust for the year that was paid in the year to a beneficiary; and

Proposed Addition — 104(6)(a.3)

(a.3) in the case of an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, such part of its income for the year as became payable in the year to a beneficiary; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(14), will add para. 104(6)(a.3), applicable to 1998 *et seq.*

Technical Notes: Subsection 104(6) of the Act generally allows a trust to deduct an amount for a taxation year not exceeding its income for the year that became payable to its beneficiaries. However, in the case of spousal trusts there are restrictions designed to ensure that a spousal trust cannot claim a deduction under subsection 104(6) in respect of income allocated to non-spouse beneficiaries to the extent the income accrues during the lifetime of the spouse beneficiary. (With regard to income for the year in which a spouse beneficiary dies, this restriction only applies in connection with income from dispositions of capital property, land inventory and Canadian and foreign resource

property that occur before the end of the deemed disposition day caused by the spouse's death.) There is also a restriction in subsection 104(6) designed to limit the extent to which a trust can claim a deduction in respect of distributions by the trust of amounts paid to the trust from the trust's NISA Fund No. 2 (as defined in subsection 248(1)).

Paragraph 104(6)(a.3) is introduced so that the restrictions with regard to a trust's NISA Fund No. 2 do not apply to any trust deemed to exist because of the special rules for communal organizations in section 143. This amendment applies to the 1998 and subsequent taxation years.

(b) in any other case, such amount as the trust claims not exceeding the amount, if any, by which

(i) such part of the amount that, but for

(A) this subsection,

(B) subsections (5.1), (12), and 107(4),

(C) the application of subsections (4), (5) and (5.2) in respect of a day determined under paragraph (4)(a), and

(D) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary or was included under subsection 105(2) in computing the income of a beneficiary

exceeds

(ii) where the trust

(A) is described in paragraph (4)(a) and was created after December 20, 1991, or

(B) would be described in paragraph (4)(a) if the reference therein to "at the time it was created" were read as "on December 20, 1991"

Proposed Amendment — 104(6)(b)(ii)(A), (B)

(A) is a post-1971 partner trust that was created after December 20, 1991, or

(B) would be a post-1971 partner trust if the reference in paragraph (4)(a) to "at the time it was created" were read as "on December 20, 1991",

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(15), will amend cls. 104(6)(b)(ii)(A) and (B) to read as above, applicable to 2000 *et seq.*

Technical Notes: Paragraph 104(6)(b) is amended to extend the restrictions for spousal trusts to other specified trusts created after 1999. The trusts so specified are those created after 1999 by a settlor (aged 65 years or more) for the exclusive benefit of the settlor during the settlor's lifetime (i.e., an "*alter ego* trust", as newly defined in subsection 248(1)) or for the joint benefit of the settlor and the settlor's spouse during their joint lifetimes (i.e., a "joint partner trust", as newly defined in subsection 248(1)). The restrictions for *alter ego* trusts apply until the death of the settlor. The restrictions for joint partner trusts apply until the later of the death of the settlor and the death of the spouse. For further detail on new rules for these specified trusts, see the commentary on amended subsection 73(1) and paragraph 104(4)(a). This amendment applies to the 2000 and subsequent taxation years.

Clauses 104(6)(b)(ii)(A) and (B) are amended to refer to a post-1971 partner trust, strictly as a consequence of the new definition of this term contained in subsection 248(1). For further detail, see the commentary on amended subsection 248(1). This amendment applies to the 2000 and subsequent taxation years.

and the spouse referred to in paragraph (4)(a) in respect of the trust is alive throughout the year, such part of the amount that, but for

(C) this subsection,

(D) subsections (12) and 107(4), and

(E) subsection 12(10.2), except to the extent that that subsection applies to an amount paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary (other than the spouse) or was included under subsection 105(2) in computing the income of a beneficiary (other than the spouse) and

Proposed Addition — 104(6)(b)(ii.1)

(ii.1) where the trust is an *alter ego* trust or a joint partner trust and the death or later death, as the case may be, referred to in subparagraph (4)(a)(iv) has not occurred before the end of the year, such part of the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income as became payable in the year to a beneficiary (other than a taxpayer, spouse or common-law partner referred to in clause (4)(a)(iv)(A), (B) or (C)) or was included under subsection 105(2) in computing the income of a beneficiary (other than such a taxpayer, spouse or common-law partner), and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(16), will add subpara. 104(6)(b)(ii.1), applicable to 2000 *et seq.*

Technical Notes: See under 104(6)(b)(iii).

(iii) where the trust is described in paragraph (4)(a) and the spouse referred to in paragraph (4)(a) in respect of the trust died on a day in the year, the part of the amount that, but for

(A) this subsection, and

(B) subsections (12) and 107(4)

would be the part of its income for the year that became payable in the year to a beneficiary (other than the spouse) and as is attributable to one or more dispositions by the trust before the end of that day of capital properties (other than excluded properties), land described in an inventory of the trust, Canadian resource properties or foreign resource properties.

Proposed Amendment — 104(6)(b)(iii)

(iii) where the trust is an *alter ego* trust, a joint partner trust or a post-1971 partner trust and the death or the later death, as the case may be, referred to in paragraph (4)(a) in respect of the trust occurred on a day in the year, the amount, if any, by which

(A) the maximum amount that would be deductible under this subsection in computing the trust's income for the year if this subsection were read without reference to this subparagraph

exceeds the total of

(B) the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income as became payable in the

year to the taxpayer, spouse or common-law partner referred to in subparagraph (4)(a)(iii) or clause (4)(a)(iv)(A), (B) or (C), as the case may be, and

(C) the amount that would be the trust's income for the year if that income were computed without reference to this subsection and subsection (12) and as if the year began immediately after the end of the day,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(16), will amend subpara. 104(6)(b)(iii) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subparagraph 104(6)(b)(iii) is amended to extend the restrictions for deductions under subsection 104(6) in the taxation year in which the relevant beneficiary dies. The intended effect of the new restrictions is that post-1971 partner trusts, *alter ego* trusts and joint partner trusts cannot deduct an amount under subsection 104(6) in respect of income accrued up to the end of the deemed disposition day caused by the death of the spouse or other relevant beneficiary. This amendment applies to the 2000 and subsequent taxation years.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

EXAMPLE

The spouse beneficiary of a post-1971 partner trust dies in the 2001 taxation year of the trust. Before distribution to beneficiaries, the trust's total income for the year (determined without reference to any deemed disposition under subsection 104(4) and any deduction under subsection 104(6)) is $100, of which $20 is payable to the spouse prior to the spouse's death and of which the remaining $80 is payable to the surviving beneficiaries. $40 of the $100 income accrued before the spouse's death.

Results:

1. Under subparagraph 104(6)(b)(i) the trust's income for the year that became payable in the year to beneficiaries is $100.

2. The amount determined under subparagraph 104(6)(b)(iii) is $20 (i.e., [$100 – ($20 + $60)]).

3. The total amount deductible by the trust cannot exceed the amount by which the amount determined under subparagraph 104(6)(b)(i) exceeds the amount determined under subparagraph 104(6)(b)(iii).

4. Consequently, the trust's maximum deduction for the year is $80 (i.e., $100 – $20). The trust is not allowed a deduction in respect of the $20 portion of trust income accrued to the end of the deemed disposition day caused by the spouse's death but payable only after the death.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 4(3)(b) — Whether deductions under 104(6) are applicable to a particular source; 104(5.3) — Election by trust to postpone deemed disposition; 104(7) — Non-resident beneficiary; 104(7.1) — Deduction denied — capital interest greater than income interest; 104(10) — Property owned for non-resident; 104(13) — Income inclusion to beneficiary; 104(13.1), (13.2) — Designation of income distributed to beneficiary; 104(18) — Trust for minor; 104(24) — Whether amount payable; 104(29) — Amounts deemed to be payable to beneficiaries; 107(2.11) — Election to not flow out gain on distribution to beneficiaries; 107.1 — Distribution by employee trust or benefit plan; 108(5) — Restriction on deduction for beneficiary; 132.11(6) — Additional income of mutual fund trust electing for December 15 year-end; 138.1(1) — Rules re segregated funds; 149.1(12) — Rules — charities; 210.2 — Tax on income of trust.

History: Para. 104(6)(a.2) added by 1998, c. 19, subsec. 127(2), applicable to 1996 *et seq.*

Subpara. 104(6)(b)(iii) added by 1996, c. 21, subsec. 18(6), applicable to trust taxation years that end after July 19, 1995.

Para. 104(6)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(4), applicable to 1991 *et seq.*, except that for taxation years of trusts ending after 1990 and before December 21, 1991, the para. shall be read as follows:

(b) in any other case, such amount as the trust claims not exceeding such part of the amount that, but for

(i) this subsection,

(ii) subsections (5.1) and (12),

(iii) subsections (4), (5) and (5.2) and 107(4), where the trust is a trust described in paragraph (4)(a), and

(iv) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary or was included under subsection 105(2) in computing the income of a beneficiary.

Para. 104(6)(b) formerly read:

(b) in any other case, such amount as the trust may claim not exceeding such part of the amount that, but for this subsection, subsection (12) and, where the trust is a trust described in paragraph (4)(a), subsections (4), (5), (5.2) and 107(4), would be its income for the year as became payable in the year to a beneficiary or was included in computing the income of a beneficiary for the year by reason of subsection 105(2).

Pre-RSC History: Para. 104(6)(b) substituted by 1988, c. 55, subsec. 71(2), applicable to taxation years of trusts commencing after 1987. Para. 104(6)(b) formerly read:

(b) in any other case, such part of the amount that would, but for this subsection, subsection (12) and, where the trust is a trust described in paragraph (4)(a), subsections (4), (5) and 107(4), be its income for the year as was payable in the year to a beneficiary or was included in computing the income of a beneficiary for the year by virtue of subsection 105(2).

Para. 104(6)(b) amended by 1986, c. 6, subsec. 51(2), applicable to 1986 *et seq.*, to substitute "subsections (4), (5) and 107(4)" for "subsections (4), (5), (5.1) and 107(4)".

Para. 104(6)(b) substituted by 1984, c. 1, subsec. 45(3), to add "(5.1)", applicable after September 30, 1983.

Paras. 104(6)(a.1) added, (b) substituted by 1980-81-82-83, c. 140, subsec. 60(2), para. (a.1) applicable to 1981 *et seq.*, para. 104(6)(b) applicable by 1984, c. 45, s. 101 (deemed in force March 30, 1983), with respect to dispositions occurring after November 12, 1981 other than dispositions by a trust created before November 13, 1981 to a person referred to in any of subparagraphs 110(1)(a)(i) to (vii) or to Her Majesty in right of Canada or a province. Para. 104(6)(b) formerly read:

(b) in any other case, such part of the amount that would, but for this subsection and subsection (12), be its income for the year as was payable in the year to a beneficiary or was included in computing the income of a beneficiary for the year by virtue of subsection 105(2).

Subsec. 104(6) substituted by 1980-81-82-83, c. 48, subsec. 54(1), applicable to 1980 *et seq.* Subsec. 104(6) formerly read:

(6) For the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year such part of the amount that would, but for this subsection and subsection (12), be its income for the year as was payable in the year to a beneficiary or was included in computing the income of a beneficiary for the year by virtue of subsection 105(2).

Subsec. 104(6) substituted by 1973-74, c. 14, subsec. 31(2), applicable to 1972 *et seq.*

Selected Cases [subsec. 104(6)]: *Langer Family Trust v. MNR*, [1992] 1 C.T.C. 2119 (TCC); appealed to FCTD (April 16, 1992), File T-907-92 (No deduction where income not "paid in the year to the person"); *Brown v. The Queen*, [1979] C.T.C. 476 (FCTD) (Taxpayer required to include income received even though estate not claiming deduction).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R — Non-resident beneficiaries of trusts; IT-493: Agency cooperative corporations; IT-500R: RRSPs — death of annuitant; IT-502: Employee benefit plans and employee trusts.

I.T. Technical News: No. 11 (payments made by a trust for the benefit of a minor beneficiary).

Advance Tax Rulings: ATR-65: Reduction to management fees for large investments in a mutual fund.

(7) Non-resident beneficiary — No deduction may be made under subsection (6) in computing the income for a taxation year of a trust in respect of such part of an amount that would otherwise be its income for the year as became payable in the year to a beneficiary who was, at any time in the year, a designated beneficiary of the trust (as that expression applies for the purposes of section 210.3) unless, throughout the year, the trust was resident in Canada.

Related Provisions: 104(24) — Whether amount payable; 212(1)(c) — Withholding tax on payment to non-resident beneficiary; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Pre-RSC History: Subsec. 104(7) substituted by 1988, c. 55, subsec. 71(3), applicable to taxation years of trusts commencing after 1987. Subsec. 104(7) formerly read:

> (7) Non-resident beneficiary — No deduction may be made under subsection (6) in computing the income for a taxation year of a trust in respect of such part of an amount that would otherwise be its income for the year as was payable in the year to a person who, at the time such part of that amount became so payable, was not resident in Canada, unless, at that time, the trust was resident in Canada.

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents.

Proposed Addition — 104(7.01)

(7.01) Trusts deemed to be resident in Canada — Where a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, the maximum amount deductible under subsection (6) in computing its income for the year is deemed to be the amount, if any, by which

> (a) the maximum amount that, but for this subsection, would be deductible under subsection (6) in computing its income for the year,

exceeds the lesser of

> (b) the total of
>
> > (i) the designated income of the trust for the year (within the meaning assigned by subsection 210.2(2)), and
> >
> > (ii) all amounts each of which is 50% of an amount paid or credited in the year to the trust that would, if this Act were read without reference to subparagraph 94(3)(a)(iii) and sections 216 and 217, be an amount as a consequence of the payment or crediting of which the trust would have been liable to tax under Part XIII, and
>
> (c) the amount, if any, by which
>
> > (i) the maximum amount that, but for this subsection, would be deductible under subsection (6) in computing its income for the year

exceeds

> > (ii) the maximum amount that would be deductible in computing its income for the year if this section were read without reference to this subsection and if the only amounts that became payable in the year to a beneficiary were amounts that became payable in the year to
> >
> > > (A) a partnership (other than a partnership that is a Canadian partnership on the day that would be determined under paragraph 214(3)(f) in respect of the amount if the assumptions set out in subparagraph (b)(ii) applied), or
> > >
> > > (B) a non-resident person on the day that would be determined under paragraph 214(3)(f) in respect of the amount if the assumptions set out in subparagraph (b)(ii) applied.

Application: The June 22, 2000 draft legislation, subsec. 14(4), will add subsec. 104(7.01), applicable to trust taxation years that begin after 2000.

Technical Notes: New subsection 104(7.01) of the Act restricts the amount that a trust, that is deemed by subsection 94(3) to be resident in Canada, can deduct in computing its income in the event that the trust has Canadian-source income and makes distributions to beneficiaries not resident in Canada.

Subsection 104(7.01) effectively acts as a proxy for taxes under Parts XII.2 and XIII. Trusts to which new subsection 94(3) applies are not subject to Part XII.2 because of an existing exemption for non-resident trusts in Part XII.2. They are also exempt from collecting Part XIII tax because they are not treated as resident in Canada for this purpose. Further, because of new subparagraph 94(3)(a)(iii), they are exempt from Part XIII tax on payments made to them. (The latter Part XIII exemption is new. Existing subparagraph 94(1)(c)(ii) allows a tax credit to be claimed under section 126 in connection with Part XIII tax.)

More specifically, the amount by which the maximum deduction under subsection 104(6) for a taxation year is reduced under subsection 104(7.01) is equal to the lesser of two amounts:

- the total of
  - the trust's "designated income" for the year (as defined in Part XII.2), which essentially consists of taxable capital gains from taxable Canadian property and income from businesses carried on in Canada, and
  - 50% of all amounts paid or credited in the year to the trust that would, disregarding express provisions to the contrary in the Act, be subject to Part XIII tax; and
- the portion of the maximum deduction under subsection 104(6) that is attributable to amounts that become payable in the year (determined with reference to subsection 104(24)) to non-resident persons and to partnerships (other than Canadian partnerships, referred to in section 102).

The example below illustrates the operation of new subsection 104(7.01).

Example

1. Trust X is an offshore trust established by Stefan, a long-term resident of Canada. The primary beneficiaries under the trust are Linda (a resident of Canada) and Bart (a resident of the United States).
2. Trust X receives $400 of dividends from a taxable Canadian corporation and has $1,200 of other income.
3. Trust income of $1,250 for 2001 is made payable to Bart. The remaining $350 is made payable to Linda.
4. Trust X is assumed to have designated $400 of dividends under subsection 104(19).

Results

1. Trust X is deemed by new subsection 94(3) to be resident in Canada for the purposes of computing its income.
2. Before taking into account subsection 104(6), Trust X's income is $1,600. Note, in this regard, that the dividends are included in computing the trust's income because of a proposed amendment to subsection 104(19).[45]{{{This refers to an amendment to subsection 104(19) contained in a detailed Notice of Ways and Means Motion tabled on June 5, 2000.}}}}

3. Before taking into account new subsection 104(7.01), the maximum deduction under subsection 104(6) is also $1,600.
4. Because of subsection 104(7.01), the maximum deduction under subsection 104(6) is reduced to $1,400 (i.e., $1,600 minus the lesser of: (50% × $400) and ($1,600 - $1,250)).
5. Assuming that the trust claims a deduction of $1,400, the trust would consequently have income of $200. If a tax rate of 50% were assumed, the trust would be liable for Canadian income tax of $100. (Note: The trust is expressly exempted from a Part XIII tax liability under new subparagraph 94(3)(a)(iii).) Disregarding this exemption, Part XIII tax liability would also have been $100 (i.e., 25% of $400).

New subsection 104(7.01) applies to trust taxation years that begin after 2000.

Related Provisions: 104(24) — Whether amount payable.

(7.1) Capital interest greater than income interest — Where it is reasonable to consider that one of the main purposes for the existence of any term, condition, right or other attribute of an interest in a trust (other than a personal trust) is to give a beneficiary a percentage interest in the property of the trust that is greater than the beneficiary's percentage interest in the income of the trust, no amount may be deducted under paragraph (6)(b) in computing the income of the trust.

Related Provisions: 104(7.2) — Anti-avoidance rule.

Pre-RSC History: Subsec. 104(7.1) amended by 1988, c. 55, subsec. 71(3), to substitute "(other than a personal trust)" for "(other than a testamentary trust or a trust no beneficial interest in which was acquired for consideration payable directly or indirectly to the trust or to any person who has made a contribution to the trust by way of transfer, assignment or other disposition of property)", applicable to the 1986 and subsequent taxation years of a trust, other than a trust created before November 27, 1985 in which no beneficial interest is issued after 5:00 p.m. Eastern Standard Time on November 26, 1985 (unless the trust is issued on account of a distribution of the income of the trust in accordance with the terms of the trust in effect on November 26, 1985).

Subsec. 104(7.1) added by 1986, c. 55, subsec. 28(1), applicable to the 1986 and subsequent taxation years of a trust, other than a trust created before November 27, 1985, in which no beneficial interest is issued after 5:00 p.m. Eastern Standard Time on November 26, 1985 (unless the interest is issued on account of a distribution of the income of the trust in accordance with the terms of the trust in effect on November 26, 1985).

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Advance Tax Rulings: ATR-65: Reduction to management fees for large investments in a mutual fund.

(7.2) Avoidance of subsec. (7.1) — Notwithstanding any other provision of this Act, where

(a) a taxpayer has acquired a right to or to acquire an interest in a trust, or a right to or to acquire a property of a trust, and

(b) it is reasonable to consider that one of the main purposes of the acquisition was to avoid the application of subsection (7.1) in respect of the trust,

on a disposition of the right (other than pursuant to the exercise thereof), the interest or the property, there shall be included in computing the income of the taxpayer for the taxation year in which the disposition occurs the amount, if any, by which

(c) the proceeds of disposition of the right, interest or property, as the case may be,

exceed

(d) the cost amount to the taxpayer of the right, interest or property, as the case may be.

Pre-RSC History: Subsec. 104(7.2) added by 1986, c. 55, subsec. 28(1).

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 104(8) repealed by 1988, c. 55, subsec. 71(4), applicable to 1988 *et seq.* (See Part XII.2.) Subsec. 104(8) formerly read:

(8) **Limitation on deduction** — Notwithstanding subsection (6), where an amount in respect of the income for a taxation year of a trust (other than a mutual fund trust) is payable to a beneficiary (in this section referred to as a "designated beneficiary") under the trust who, at the time the amount became so payable, was

(a) a non-resident person,

(b) a non-resident-owned investment corporation, or

(c) a trust resident in Canada, other than

(i) a trust referred to in subsection 149(1), or

(ii) a trust all of the beneficiaries under which, throughout the period beginning on May 6, 1974 and ending at the time the amount became so payable, were resident in Canada,

the amount deductible under subsection (6) shall not exceed the amount, if any, by which

(d) the aggregate of all amounts each of which is

(i) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as is payable in the taxation year to a beneficiary under the trust, or

(ii) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

exceeds the aggregate of

(e) where the trust is a trust described in paragraph (4)(a), that proportion of the amount, if any, by which

(i) the amount included in computing the income of the trust for the taxation year by virtue of a deemed disposition after November 12, 1981 under subsection (4), (5) or 107(4)

exceeds

(ii) the amount, if any, by which

(A) the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a)

exceeds

(B) the aggregate of all amounts each of which is

(I) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as is payable in the year to a beneficiary under the trust,

(II) an amount in respect of the accumulating income of the trust for the taxation year that is included in computing the income of a preferred beneficiary under the trust by virtue of subsection (14), or

(III) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2),

that

(iii) the amount determined under subclause (ii)(B)(I)

is of

(iv) the amount determined under clause (ii)(B), and

(f) that proportion of the amount, if any, by which

(i) the designated income of the trust for the taxation year (other than any designated income that arose by virtue of a deemed disposition after November 12, 1981 under subsection (4), (5) or 107(4) where the trust is a trust described in paragraph (4)(a), or any designated income that arose by virtue of a disposition before November 13, 1981 where the trust is a testamentary trust)

exceeds

(ii) the amount, if any, by which

(A) the amount determined under subparagraph (e)(ii)

exceeds

(B) the amount determined under subparagraph (e)(i)

that

(iii) the aggregate of amounts each of which is such part of the amount that would be income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as is payable in the year to a designated beneficiary under the trust

is of

(iv) the amount determined under clause (e)(ii)(B).

Subparas. 104(8)(e)(i) and (f)(i) amended by 1986, c. 6, subsecs. 51(3), (4), applicable to 1986 *et seq.*, to substitute "subsection (4), (5) or 107(4)" for "subsection (4), (5) or (5.1) or 107(4)" in both paras. and to substitute "trust described in paragraph (4)(a)" for "trust described in paragraph (4)(a) of this section" in para. (f)(i).

Subsec. 104(8) substituted by 1984, c. 1, subsec. 45(4), applicable after November 12, 1981, except that in respect of a testamentary trust it is applicable only to taxation years commencing after November 12, 1981. Subsec. 104(8) formerly read:

(8) Limitation on deduction — Notwithstanding subsection (6), where

(a) an amount is included in computing the income for a taxation year of a trust described in paragraph (4)(a) by virtue of a deemed disposition after November 12, 1981 under subsection (4) or (5) or 107(4) and the trust and a preferred beneficiary have made an election under subsection (14) in respect of the year, or

(b) an amount in respect of the income for a taxation year of a trust (other than a mutual fund trust) is payable to a beneficiary (in this section referred to as a "designated beneficiary") under the trust who, at the time the amount became so payable, was

(i) a non-resident person,

(ii) a non-resident-owned investment corporation, or

(iii) a trust resident in Canada other than

(A) a trust referred to in subsection 149(1), or

(B) a trust all of the beneficiaries under which, throughout the period commencing on May 6, 1974 and ending at the time the amount became so payable, were resident in Canada,

the amount deductible under subsection (6) shall not exceed the amount, if any, by which

(c) the aggregate of all amounts each of which is

(i) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the taxation year to a beneficiary under the trust, or

(ii) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

exceeds the aggregate of

(d) where the trust is a trust described in paragraph (4)(a), that proportion of the amount, if any, by which

(i) the amount included in computing the income of the trust for the taxation year by virtue of a deemed disposition after November 12, 1981 under subsection (4) or (5) or 107(4)

exceeds

(ii) the amount, if any, by which

(A) the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a)

exceeds

(B) the aggregate of all amounts each of which is

(I) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the year to a beneficiary under the trust,

(II) an amount in respect of the accumulating income of the trust for the taxation year that would, but for this subsection, be included in computing the income of a preferred beneficiary under the trust by virtue of subsection (14), or

(III) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2),

that

(iii) the amount determined under subclause (ii)(B)(I)

is of

(iv) the amount determined under clause (ii)(B), and

(e) that proportion of the amount, if any, by which

(i) the designated income of the trust for the taxation year (other than any designated income that arose by virtue of a deemed disposition after November 12, 1981 under subsection (4) or (5) or 107(4) where the trust is a trust described in paragraph (4)(a) of this section, or any designated income that arose by virtue of a disposition before November 13, 1981, where the trust is a testamentary trust)

exceeds

(ii) the amount, if any, by which

(A) the amount determined under subparagraph (d)(ii)

exceeds

(B) the amount determined under subparagraph (d)(i)

that

(iii) the aggregate of amounts each of which is such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the year to a designated beneficiary under the trust

is of

(iv) the amount determined under clause (d)(ii)(B).

Subsec. 104(8) substituted by 1980-81-82-83, c. 140, subsec. 60(3), applicable after November 12, 1981 except where subsec. 60(3) is applicable to a testamentary trust it shall only be applicable for taxation years commencing after November 12, 1981. Subsec. 104(8) formerly read:

(8) Notwithstanding subsection (6), where an amount in respect of the income for a taxation year of an *inter vivos* trust (other than a mutual fund trust) is payable to a beneficiary under the trust who, at the time the amount became so payable, was

(a) a non-resident person,

(b) a non-resident-owned investment corporation, or

(c) a trust resident in Canada other than

(i) a testamentary trust, or

(ii) a trust all of the beneficiaries under which, throughout the period commencing on May 6, 1974 and ending at the time the amount became so payable, were resident in Canada,

(in this section referred to as a "designated beneficiary"), the amount deductible under subsection (6) shall not exceed the amount, if any, by which

(d) the aggregate of all amounts each of which is

(i) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the taxation year to a beneficiary under the trust, or

(ii) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

exceeds

(e) that proportion of the amount, if any, by which

(i) the designated income of the trust for the taxation year

exceeds

(ii) the amount by which

(A) the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a)

exceeds

(B) the aggregate of amounts each of which is

(I) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the year to a beneficiary under the trust,

(II) an amount in respect of the accumulating income of the trust for the taxation year that would, but for this subsection, be included in computing the income of a preferred beneficiary under the trust by virtue of subsection (14), or

(III) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2),

that

(iii) the aggregate of amounts each of which is such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the year to a designated beneficiary under the trust

is of

(iv) the amount determined under clause (ii)(B).

Subpara. 104(8)(d)(i) substituted by 1977-78, c. 32, s. 24, applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977.

Subpara. 104(8)(d)(i), all that portion of para. 104(8)(e) following subpara. (i) and preceding subpara. (iv) substituted by 1977-78, c. 1, subsecs. 49(2), (3), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add references to subsec. 20(16).

Subsec. 104(8) substituted by 1976-77, c. 4, subsec. 40(2), applicable to 1976 *et seq.* Subsec. 104(8) formerly read:

(8) Notwithstanding subsection (6), where an amount in respect of the income for a taxation year of an *inter vivos* trust (other than a mutual fund trust) is payable to a beneficiary under the trust who, at the time the amount became so payable, was

(a) a non-resident person,

(b) a non-resident-owned investment corporation, or

(c) a trust resident in Canada other than

(i) a testamentary trust, or

(ii) a trust all of the beneficiaries under which, throughout the period commencing on May 6, 1974 and ending at the time the amount became so payable, were resident in Canada,

(in this section referred to as a "designated beneficiary"), the amount deductible under subsection (6) shall not exceed the amount, if any, by which

(d) the aggregate of all amounts each of which is

(i) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6) or (12) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the year to a beneficiary under the trust,

(ii) an amount in respect of the accumulating income of the trust for the year that was included in computing the income of a preferred beneficiary under the trust by virtue of subsection (14), or

(iii) an amount paid by the trust in the year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

exceeds

(e) that proportion of the amount, if any, by which

(i) the designated income of the trust for the year

exceeds

(ii) the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6) or (12) or under regulations made under paragraph 20(1)(a), minus the amount determined under paragraph (d),

that

(iii) the aggregate of amounts each of which is an amount in respect of the income of the trust for the year that would, but for this subsection, be payable in the year to a designated beneficiary

is of

(iv) the amount determined under paragraph (d).

Subsec. 104(8) substituted by 1974-75-76, c. 26, subsec. 65(1), applicable to 1974 *et seq.* Subsec. 104(8) formerly read:

(8) No deduction may be made under subsection (6) in computing the income for a taxation year of an *inter vivos* trust that had income for the year from a business carried on by it in Canada, in respect of such part of an amount that would, but for subsections (6) and (12), be its income for the year as was payable in the year to a person who, at the time the amount became so payable, was

(a) a non-resident person;

(b) a non-resident-owned investment corporation; or

(c) a trust resident in Canada other than

(i) a testamentary trust, or

(ii) a trust that throughout the period commencing on April 26, 1965 and ending at the time the amount became so payable, was a beneficiary under the trust by whom the amount became so payable, which latter-mentioned trust was throughout such period carrying on a business in Canada.

(9) [Repealed under former Act]

Pre-RSC History: Subsec. 104(9) repealed by 1974-75-76, c. 26, subsec. 65(1), applicable to 1974 *et seq.* Subsec. 104(9) formerly read:

(9) Idem — No deduction may be made under subsection (6) in computing the income for a taxation year of a trust other than a mutual fund trust, in respect of any amount that is deemed by subsection (21) to be a taxable capital gain for the year of a non-resident person or of a non-resident-owned investment corporation from the disposition of capital property.

(10) Where property owned for non-residents — Where all the property of a trust is owned by the trustee for the benefit of non-resident persons or their unborn issue, in addition to the amount that may be deducted under subsection (6), there may be deducted in computing the income of the trust for a taxation year for the purposes of this Part, such part of the dividends and interest received by the trust in a year from a non-resident-owned investment corporation as are not deductible under that subsection in computing the income of the trust for the year.

Related Provisions: 104(11) — Dividend received from non-resident-owned investment corporation; 212(9) — Exemptions from withholding tax.

(11) Dividend received from non-resident-owned investment corporation — Where any part of the dividends received in a taxation year by a trust described in subsection (10) from a non-resident-owned investment corporation are deductible under that subsection in computing the income of the trust for the year, for the purposes of Part XIII the trust shall be deemed to have paid to a non-resident person on the last day of the year an amount equal to that part, as income of the non-resident person from the trust.

Related Provisions: 212(1)(c) — Estate or trust income; 212(9) — Exemptions from non-resident withholding tax.

(12) Deduction of amounts included in preferred beneficiaries' incomes — There may be deducted in computing the income of a trust for a taxation year the lesser of

(a) the total of all amounts designated under subsection (14) by the trust in respect of the year, and

(b) the accumulating income of the trust for the year.

Related Provisions: 4(3)(b) — Whether deductions under 104(12) are applicable to a particular source; 104(6) — Deduction in computing trust income; 104(13) — Income payable to beneficiary; 108(1) — Accumulating income defined; 108(5) — Restriction on deduction for beneficiary; 149.1(12) — Rules — charities.

History: Subsec. 104(12) amended by 1996, c. 21, subsec. 18(7), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

(12) Deduction of part of accumulating income included in preferred beneficiary's income — For the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year such part of its accumulating income for the year as was required by subsection (14) to be included in computing the income of a preferred beneficiary.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R: Non-resident beneficiaries of trusts; IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

(13) Income of beneficiary — There shall be included in computing the income for a taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)) that was resident in Canada throughout its particular taxation year that ended in the year, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the particular year as became payable in the particular year to the beneficiary;

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the income of the trust for its particular taxation year that ended in the year as was paid in the particular year to the beneficiary; and

(c) in the case of a trust (other than a trust referred to in paragraph (a) or paragraph (a) of the definition "trust" in subsection 108(1)), all amounts that became payable in the year by the trust to the beneficiary in respect of the beneficiary's interest in the trust, otherwise than

(i) as proceeds of disposition of the beneficiary's interest or part thereof, or

(ii) an amount paid as a distribution of capital by a personal trust.

Proposed Amendment — 104(13)

(13) Income of beneficiary — There shall be included in computing the income for a particular taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)), such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as became payable in the trust's year to the beneficiary; and

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as was paid in the trust's year to the beneficiary.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(17), will amend subsec. 104(13) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 104(13) of the Act sets out amounts included in computing the income of a beneficiary under a trust. Where a trust is not resident in Canada, paragraph 104(13)(c) provides that the beneficiary must include in computing income all amounts payable in respect of the beneficiary's interest in the trust, otherwise than as proceeds of disposition or amounts paid in satisfaction of the distribution of capital by a personal trust. There is uncertainty in this regard under the existing law, given that different types of distributions from a trust to a beneficiary might arguably be viewed as resulting in proceeds of disposition with respect to all or part of a beneficiary's interest in the trust.

Subsection 104(13) is amended so that it requires a beneficiary to include in income under that subsection only current income payable from a non-resident trust. For this purpose, a non-resident trust's income is intended to be determined in accordance with Canadian income tax rules. See also, in this regard, the commentary on new section 250.1.

Related Provisions: 6(1)(h) — Income from employee trust; 12(1)(m) — Income inclusion — benefits from trusts; 53(2)(h) — Reduction of ACB of beneficiary's interest re amount paid or payable by trust; 104(13.1), (13.2) — Designation of distributed income by trust; 104(18) — Trust for minor; 104(19) — Portion of taxable dividends deemed received by beneficiary; 104(21) — Portion of taxable capital gains deemed gain of beneficiary; 104(22)–(22.4) — Foreign tax credit allocation to beneficiary; 104(24) — Whether amount payable; 104(27) — Pension benefits; 104(29) — Flow-out of resource amounts; 104(31) — Amounts deemed payable to beneficiaries; 106(1) — Income interest in trust; 106(2)(a)(ii) — Reduction of income inclusion on disposition of income interest; 107(2.11) — Election to not flow out gain to beneficiaries on distribution; 107.1 — Distribution by employee trust or benefit plan; 107.3(4) — No application to qualifying environmental trusts; 108(5) — Amount deemed to be income from trust; 120.4(1)"split income"(c) — Certain trust income of children subject to income splitting tax; 132.11(4) — Amounts paid from December 16-31 by mutual fund trust to beneficiary; 132.11(6) — Additional income of MFT electing for December 15 year-end; 146(8.1) — RRSP — deemed receipt of refund of premiums; 210.2 — Tax on income of trust; 212(1)(c) — Non-resident withholding tax; 214(3)(f) — Non-resident withholding tax — deemed payments; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 250.1(b) — Non-resident trust deemed to have income calculated under the Act.

Pre-RSC History: Subsec. 104(13) substituted by 1988, c. 55, subsec. 71(5), applicable with respect to amounts that become payable in taxation years of trusts commencing after 1987. Subsec. 104(13) formerly read:

(13) Income payable to beneficiary — Such part of the amount that would be the income of a trust for a taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a)

(a) as was paid in the year to a person who has contributed to the plan as an employer, shall, in the case of a trust governed by an employee benefit plan, be included in computing the income of that person; and

(b) as was payable in the year to a beneficiary shall, in any case other than that of a trust governed by an employee benefit plan, be included in computing the income of the person to whom it so became payable whether or not it was paid to him in that year and shall not be included in computing his income for a subsequent year in which it was paid.

Para. 104(13)(b) substituted by 1984, c. 1, subsec. 45(5), to substitute "in any case other than that of a trust governed by an employee benefit plan" for "in any other case", applicable to 1980 *et seq.*

Subsec. 104(13) substituted by 1980-81-82-83, c. 140, subsec. 60(4), applicable to 1980 *et seq.* Subsec. 140(13) formerly read:

> (13) Such part of the amount that would be the income of a trust (other than a trust governed by an employee benefit plan) for a taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) as was payable in the year to a beneficiary shall be included in computing the income of the person to whom it so became payable whether or not it was paid to him in that year and shall not be included in computing his income for a subsequent year in which it was paid.

Subsec. 104(13) substituted by 1980-81-82-83, c. 48, subsec. 54(2), to add "(other than a trust governed by an employee benefit plan)", applicable to 1980 *et seq.*

Subsec. 104(13) substituted by 1977-78, c. 1, subsec. 49(4), applicable to taxation years commencing after May 25, 1976 and ending after March 1977, to add reference to subsec. 20(16).

Selected Cases [subsec. 104(13)]: *Brown v. The Queen*, [1979] C.T.C. 476 (FCTD) (Taxpayer required to include income received even though estate not claiming deduction).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-201R2: Foreign tax credit — trust and beneficiaries; IT-243R4: Dividend refund to private corporations; IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-385R2: Disposition of an income interest in a trust; IT-465R: Non-resident beneficiaries of trusts; IT-500R: RRSPs — death of an annuitant; IT-502: Employee benefit plans and employee trusts; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987; IT-531: Eligible funeral arrangements.

I.T. Technical News: No. 11 (payments made by a trust for the benefit of a minor beneficiary).

Forms: T4011: Preparing returns for deceased persons [guide].

(13.1) Amounts deemed not paid — Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada and not exempt from tax under Part I by reason of subsection 149(1), designates an amount in respect of a beneficiary under the trust, not exceeding the amount determined by the formula

$$\frac{A}{B} \times (C - D - E)$$

where

A is the beneficiary's share of the income of the trust for the year computed without reference to this Act,

B is the total of all amounts each of which is a beneficiary's share of the income of the trust for the year computed without reference to this Act,

C is the total of all amounts each of which is an amount that, but for this subsection or subsection (13.2), would be included in computing the income of a beneficiary under the trust by reason of subsection (13) or 105(2) for the year,

D is the amount deducted under subsection (6) in computing the income of the trust for the year, and

E is equal to the amount determined by the trust for the year and used as the value of C for the purposes of the formula in subsection (13.2) or, if no amount is so determined, nil,

the amount so designated shall be deemed, for the purposes of subsections (13) and 105(2), not to have been paid or to have become payable in the year to or for the benefit of the beneficiary or out of income of the trust.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 108(1) — "trust"; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: Subsec. 104(13.1) added by 1988, c. 55, subsec. 71(5), applicable to taxation years of trusts commencing after 1987.

Selected Cases [subsec. 104(13.1)]: *Lussier v. R.*, [2000] 2 C.T.C. 2147 (TCC) (No statutory limitation regarding election to attribute income).

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

(13.2) Idem — Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada and not exempt from tax under Part I by reason of subsection 149(1), designates an amount in respect of a beneficiary under the trust, not exceeding the amount determined by the formula

$$\frac{A}{B} \times C$$

where

A is the amount designated by the trust for the year in respect of the beneficiary under subsection (21),

B is the total of all amounts each of which has been designated for the year in respect of a beneficiary of the trust under subsection (21), and

C is the amount determined by the trust and used in computing all amounts each of which is designated by the trust for the year under this subsection, not exceeding the amount by which

> (i) the total of all amounts each of which is an amount that, but for this subsection or subsection (13.1), would be included in computing the income of a beneficiary under the trust by reason of subsection (13) or 105(2) for the year

exceeds

> (ii) the amount deducted under subsection (6) in computing the income of the trust for the year,

the amount so designated shall

(a) for the purposes of subsections (13) and 105(2) (except in the application of subsection (13) for the purposes of subsection (21)), be deemed not to have been paid or to have become payable in the year to or for the benefit of the beneficiaries or out of income of the trust; and

(b) except for the purposes of subsection (21) as it applies for the purposes of subsections (21.1) and (21.2), reduce the amount of the taxable capital gains of the beneficiary otherwise included in computing the beneficiary's income for the year by reason of subsection (21).

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Pre-RSC History: Subsec. 104(13.2) added by 1988, c. 55, subsec. 71(5), applicable to taxation years of trusts commencing after 1987.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

(14) Election by trust and preferred beneficiary — Where a trust and a preferred beneficiary under the trust for a particular taxation year of the trust jointly so elect in respect of the particular year in prescribed manner, such part of the accumulating income of the trust for the particular year as is designated in the election, not exceeding the allocable amount for the preferred beneficiary in re-

spect of the trust for the particular year, shall be included in computing the income of the preferred beneficiary for the beneficiary's taxation year in which the particular year ended and shall not be included in computing the income of any beneficiary of the trust for a subsequent taxation year.

Related Provisions: 12(1)(m) — Income inclusion — benefits from trusts; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 104(12) — Deduction for amount included in preferred beneficiary's income; 104(14.01), (14.02) — Late, amended or revoked election made with capital gains exemption election; 104(15) — Allocable amount; 104(19) — Portion of net taxable dividends deemed received by beneficiary; 104(21) — Portion of taxable capital gains deemed gain of beneficiary; 108(5) — Interpretation; 146(8.1) — RRSP — deemed receipt of refund premiums; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Subsec. 104(14) amended by 1996, c. 21, subsec. 18(8), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

> (14) Election by trust and preferred beneficiary — Where a trust and a preferred beneficiary thereunder jointly so elect in respect of a taxation year in prescribed manner and within prescribed time, such part of the accumulating income of the trust for the year as is designated in the election, not exceeding the preferred beneficiary's share therein, shall be included in computing the income of the preferred beneficiary for the year, and shall not be included in computing the income of any beneficiary of the trust for a subsequent year in which it was paid.

Pre-RSC History: Subsec. 104(14) substituted by 1973-74, c. 14, subsec. 31(3), applicable to 1972 *et seq.*

Selected Cases [subsec. 104(14)]: *Muzich Family Trust v. MNR*, [1993] 1 C.T.C. 2330 (TCC) (Preferred beneficiary election not valid where not filed in prescribed form nor within prescribed time).

Regulations: 2800(1), (2) (prescribed manner, prescribed time).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-243R4: Dividend refund to private corporations; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-500R: RRSPs — death of an annuitant; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Advance Tax Rulings: ATR-30: Preferred beneficiary election on accumulating income of estate; ATR-34: Preferred beneficiary's election.

(14.01) Late, amended or revoked election — A trust and a preferred beneficiary under the trust may jointly make an election, or amend or revoke an election made, under subsection (14) where the election, amendment or revocation

(a) is made solely because of an election or revocation to which subsection 110.6(25), (26) or (27) applies; and

(b) is filed in prescribed manner with the Minister when the election or revocation referred to in paragraph (a) is filed.

Related Provisions: 104(14.02) — Effect of election.

History: Subsec. 104(14.01) added by 1998, c. 19, subsec. 127(3), applicable to taxation years that include February 22, 1994.

(14.02) Late, amended or revoked election — Where a trust and a preferred beneficiary under the trust have made an election or amended or revoked an election in accordance with subsection (14.01),

(a) the election or the amended election, as the case may be, is deemed to have been made on time for the purpose of subsection (14); and

(b) the election that was revoked is deemed, otherwise than for the purposes of this subsection and subsection (14.01), never to have been made.

History: Subsec. 104(14.02) added by 1998, c. 19, subsec. 127(3), applicable to taxation years that include February 22, 1994.

(14.1) NISA election — Where, at the end of the day on which a taxpayer dies and as a consequence of the death, an amount would, but for this subsection, be deemed by subsection (5.1) to have been paid to a trust out of the trust's interest in a NISA Fund No. 2 and the trust and the legal representative of the taxpayer so elect in prescribed manner, such portion of the amount as is designated in the election shall be deemed to have been paid to the taxpayer out of a NISA Fund No. 2 of the taxpayer immediately before the end of the day and, for the purpose of paragraph (a) of the description of B in subsection 12(10.2) in respect of the trust, the amount shall be deemed to have been paid out of the trust's NISA Fund No. 2 immediately before the end of the day.

Related Provisions: 248(8) — Occurrences as a consequence of death.

History: Subsec. 104(14.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(5), applicable to 1991 *et seq.*

(15) Allocable amount for preferred beneficiary — For the purpose of subsection (14), the allocable amount for a preferred beneficiary under a trust in respect of the trust for a taxation year is

(a) where the trust is a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year or a trust described in paragraph (4)(a) and the taxpayer's spouse referred to in that definition or paragraph is alive at the end of the year, an amount equal to

(i) if the beneficiary is that spouse, the trust's accumulating income for the year, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) in any other case, nil;

(b) where paragraph (a) does not apply and the beneficiary's interest in the trust is not solely contingent on the death of another beneficiary who has a capital interest in the trust and who does not have an income interest in the trust, the trust's accumulating income for the year; and

Proposed Amendment — 104(15)(a), (b)

(a) where the trust is an *alter ego* trust, a joint partner trust, a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year and a beneficiary, referred to in paragraph (4)(a) or in that definition, is alive at the end of the year, an amount equal to

(i) if the preferred beneficiary is a beneficiary so referred to, the trust's accumulating income for the year, and

(ii) in any other case, nil;

(b) where paragraph (a) does not apply and the preferred beneficiary's interest in the trust is not solely contingent on the death of another beneficiary who has a capital interest in the trust and who does not have an income interest in the trust, the trust's accumulating income for the year; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(18), will amend paras. 104(15)(a) and (b) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 104(14) of the Act provides a mechanism under which a preferred beneficiary of a trust and the trust can elect to have a designated amount taxed in the hands of the beneficiary rather than at the trust level. Under the definition "preferred beneficiary" in subsection 108(1), a preferred beneficiary of a trust is generally a disabled person resident in Canada who is, or is closely related to, the settlor of the trust. Under paragraph 104(15)(a), if the preferred beneficiary is the living spouse beneficiary under a spousal trust, an "allocable amount" in respect of the beneficiary for a taxation year is the trust's "accumulating income" for the year (which, in general terms, is defined in subsection 108(1) as undistributed trust income).

Subsection 104(15) is amended so that the preferred beneficiary election in connection with allocations of income from an *alter ego* trust, a joint partner trust, a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) is available to the spouse or other beneficiary (i.e., the settlor) identified in paragraph 104(4)(a), only while the spouse or the other beneficiary is alive.

This amendment applies to the 2000 and subsequent taxation years.

This amendment also reflects changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

(c) in any other case, nil.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 108(1) — Trust defined; 138.1(1) — Rules re segregated funds; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(15) amended by 1996, c. 21, subsec. 18(9), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

(15) Preferred beneficiary's share — The share of a particular preferred beneficiary under a trust in the accumulating income of the trust for a taxation year is,

(a) where the trust is a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year or a trust described in paragraph (4)(a) and the taxpayer's spouse referred to in that definition or paragraph is alive at the end of the year, an amount equal to

(i) if the particular preferred beneficiary is the taxpayer's spouse, the trust's accumulating income for the year, and

(ii) in any other case, nil;

(b) in any case not referred to in paragraph (a), where the shares in which the accumulating income of the trust would be payable to the beneficiaries thereunder do not depend on the exercise by any person of, or the failure by any person to exercise, any discretionary power,

(i) if at the end of the year the particular beneficiary was a member of a class of beneficiaries under the trust each of whom was entitled, as a member of that class, to share equally in any income of the trust, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of beneficiaries of that class, divided by the number of beneficiaries (other than registered charities) of that class in existence at the end of the year, and

(ii) in any other case, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of the particular preferred beneficiary;

(c) in any case not referred to in paragraph (a) or (b), where each beneficiary under the trust whose share of the accumulating income of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, is a preferred beneficiary, or would be a preferred beneficiary if the beneficiary were resident in Canada, or is a registered charity, the portion of the trust's accumulating income for the year equal to the amount determined in prescribed manner to be the beneficiary's discretionary share of the trust's accumulating income for the year; and

(d) in any case not referred to in paragraph (a), (b) or (c), nil.

That portion of para. 104(15)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(6), applicable to taxation years of trusts ending after December 20, 1991. That portion formerly read:

(a) where the trust is a trust described in paragraph (4)(a) and the taxpayer's spouse referred to in that paragraph is alive at the end of the year, an amount equal to,

Pre-RSC History: "Registered charity(ies)" substituted for "registered Canadian charitable organization(s)" in paras. 104(15)(b), (c) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Para. 104(15)(c) substituted by 1974-75-76, c. 26, subsec. 65(2), applicable to 1973 *et seq.* Para. 104(15)(c) formerly read:

(c) in any case not referred to in paragraph (a) or (b), where each beneficiary under the trust whose share of the accumulating income of the trust depends upon the exercise by any person of, or the failure by any person to exercise, any discretionary power, is a preferred beneficiary, or would be a preferred beneficiary if he were resident in Canada, or is a registered Canadian charitable organization, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of the particular beneficiary, not exceeding the amount determined in prescribed manner to be his discretionary share of the trust's accumulating income for the year; and

Para. 104(15)(c) substituted by 1973-74, c. 14, subsec. 31(4), applicable to 1972 *et seq.*

Regulations: 2800(3), (4) (prescribed manner for 104(15)(c)).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

Advance Tax Rulings: ATR-30: Preferred beneficiary election on accumulating income of estate; ATR-34: Preferred beneficiary's election.

(16) [Repealed under former Act]

Pre-RSC History: Subsec. 104(16) repealed by 1988, c. 55, subsec. 71(6), applicable to taxation years of trusts commencing after 1987. Subsec. 104(16) formerly read:

(16) Capital cost allowance deduction — A beneficiary under a trust may deduct from the amount that would otherwise be his income from the trust by virtue of subsection (13) or (14), as the case may be, such part of the amount that would otherwise be deductible from the income of the trust for the year under subsection 20(16) or under regulations made under paragraph 20(1)(a) as the trust may determine; and any amount deductible under this subsection for a taxation year shall be deducted from the amount that the trust would otherwise be able to deduct under subsection 20(16) or under those regulations but shall, for the purposes of section 13, be deemed to have been allowed to the trust under those regulations in computing its income for the year.

Subsec. 104(16) substituted by 1977-78, c. 1, subsec. 49(5), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add references to subsec. 20(16).

(17) [Repealed under former Act]

Pre-RSC History: Subsec. 104(17) repealed by 1988, c. 55, subsec. 71(6), applicable to taxation years of trusts commencing after 1987. Subsec. 104(17) formerly read:

(17) Depletion allowance — Where an amount is payable in a taxation year by a trust to a beneficiary under the trust, no part of that amount shall be deemed, for the purpose of subsections (6) and (13), to be payable out of an amount deductible in computing the income of the trust for the year under regulations made under subsection 65(1) except such part thereof as the trust designates as being so payable.

(17.1) [Repealed under former Act]

Pre-RSC History: Subsec. 104(17.1) repealed by 1988, c. 55, subsec. 71(6), applicable to taxation years of trusts commencing after 1987. Subsec. 104(17.1) formerly read:

(17.1) Determination, etc., ineffective — No effect shall be given to a determination or designation under subsection (16) or (17) or 127(7) or (15) by a testamentary trust or a trust no beneficial interest in which was acquired for consideration payable directly or indirectly to the trust or to any person who has made a contribution to the trust by way of transfer, assignment or other disposition of property in respect of a taxation year of the trust if, as a result of such determination or designation, the amount that any beneficiary of the trust is entitled to deduct in computing his income under regulations made under paragraph 20(1)(a) or subsection 65(1) or to add in

computing his investment tax credit or employment tax credit (within the meaning assigned by subsection 127(16)) for any period during which he is beneficially interested in the trust is greater than the proportion of the aggregate of amounts available to be so determined or designated by the trust in respect of the period that

(a) the beneficiary's share of the amount that would be the total income of the trust for the period if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under subsection 65(1) or paragraph 20(1)(a) for any taxation year of the trust ending in or coinciding with the period

is of

(b) the amount that would be the total income of the trust for the period if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under subsection 65(1) or paragraph 20(1)(a) for any taxation year of the trust ending in or coinciding with the period.

All that portion of subsec. 104(17.1) preceding para. (a) substituted by 1986, c. 55, subsec. 28(2), applicable with respect to determinations and designations made by a trust in respect of 1987 *et seq.* That portion of subsec. 104(17.1) formerly read:

(17.1) Determination or designation ineffective — Notwithstanding subsections (16) and (17), no effect shall be given to a determination by a trust in a taxation year under subsection (16) or to a designation by a trust in a taxation year under subsection (17) if the determination or designation results in a person who is beneficially interested in the trust being able to deduct in computing his income for any period while he is so beneficially interested a portion of an amount that, but for subsection (16) or (17), would be deductible by the trust in such period that is greater than the proportion of such amount that

Subsec. 104(17.1) added by 1980-81-82-83, c. 140, subsec. 60(5), applicable to taxation years commencing after November 12, 1981.

(17.2) [Repealed under former Act]

Pre-RSC History: Subsec. 104(17.2) repealed by 1988, c. 55, subsec. 71(6), applicable to taxation years of trusts commencing after 1987. Subsec. 104(17.2) formerly read:

(17.2) Idem — No effect shall be given to a determination or designation under subsection (16) or (17) by a trust (other than a trust described in subsection (17.1)) in respect of a taxation year of the trust unless an amount is so determined or designated in respect of the year for each beneficiary of the trust and the amount in respect of each such beneficiary is equal to the proportion of the aggregate of amounts that the trust so determines or designates for all beneficiaries in respect of the year, that

(a) the beneficiary's share of the amount that would be the income of the trust for the year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) or subsection 65(1) for the taxation year

is of

(b) the amount that would be the income of the trust for the year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) or subsection 65(1) for the taxation year.

Subsec. 104(17.2) added by 1986, c. 55, subsec. 28(3), applicable (a) with respect to determinations and designations made in respect of 1987 *et seq.* by a trust created after November 26, 1985; and (b) where a trust created before November 27, 1985 issues a beneficial interest after 5:00 p.m. Eastern Standard Time on November 26, 1985 (other than an interest issued on account of a distribution of income of the trust in accordance with the terms of the trust in effect on November 26, 1985), with respect to determinations and designations made in respect of any taxation year that is after the 1986 taxation year and that is a taxation year in which or after which it issued such a beneficial interest.

(18) Trust for minor — Where any part of the amount that, but for subsections (6) and (12), would be the income of a trust for a taxation year throughout which it was resident in Canada

(a) has not become payable in the year,

(b) was held in trust for an individual who did not attain 21 years of age before the end of the year,

(c) the right to which vested at or before the end of the year otherwise than because of the exercise by any person of, or the failure of any person to exercise, any discretionary power, and

(d) the right to which is not subject to any future condition (other than a condition that the individual survive to an age not exceeding 40 years),

notwithstanding subsection (24), that part of the amount is, for the purposes of subsections (6) and (13), deemed to have become payable to the individual in the year.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(18) amended by 1996, c. 21, subsec. 18(10), applicable to trust taxation years that begin after 1995. The subsec. formerly read:

(18) Trust for minor — Where all or any part of the income of a trust for a taxation year has not become payable in the year and was held in trust for a minor whose right thereto has vested and the only reason that it has not become payable in the year was that the beneficiary was a minor, it shall, for the purposes of subsections (6) and (13) be deemed to have become payable to the minor in the year.

Pre-RSC History: Subsec. 104(18) substituted by 1988, c. 55, subsec. 71(7), applicable to taxation years of trusts commencing after 1987. Subsec. 104(18) formerly read:

(18) Trust for minor — Where all or any part of the income of a trust for a taxation year was not payable in the year and was held in trust for a minor whose right thereto had vested and the only reason that it was not payable in the year was that the beneficiary was a minor, it shall, for the purposes of subsections (6) and (13), be considered to have been payable to the minor in the year.

Subsec. 104(18) substituted by 1985, c. 45, subsec. 50(4), applicable to 1985 *et seq.* Subsec. 104(18) formerly read:

(18) Trust for infant — Where the income of a trust for a taxation year or any part thereof was not payable in the year but was held in trust for an infant or minor whose right thereto had vested and the only reason that it was not payable in the year was that the beneficiary was an infant or minor, it shall, for the purpose of subsections (6) and (13), be considered to have been payable.

Interpretation Bulletins: IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

I.T. Technical News: No. 11 (payments made by a trust for the benefit of a minor beneficiary).

(19) Taxable dividends — Such portion of a taxable dividend received by a trust in a taxation year throughout which it was resident in Canada on a share of the capital stock of a taxable Canadian corporation as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for a particular taxation year of a beneficiary under the trust, and

(b) was not designated by the trust in respect of any other beneficiary under the trust

shall, if so designated by the trust in respect of the beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of this Act, other than Part XIII, not to have been received by the trust and to be a taxable dividend on the share received by the beneficiary in the particular year from the corporation.

Proposed Amendment — 104(19) closing words

if so designated by the trust in respect of the beneficiary in its return of income for the year, is deemed, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, not to have been received by the

trust, and for the purposes of this Act (other than Part XIII), to be a taxable dividend on the share received by the beneficiary in the particular year from the corporation.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(19), will amend the closing words of subsec. 104(19) to read as above, applicable to taxation years that end after 2000.

Technical Notes: Subsection 104(19) of the Act permits a trust to designate dividends received by it in a taxation year on shares of a taxable Canadian corporation to be taxable dividends received by a beneficiary of the trust, rather than by the trust itself, in the year from the corporation.

Subsection 104(19) of the Act is amended so that a trust will, except for the purposes of the dividend gross-up in paragraph 82(1)(b) and stop-loss rules in paragraphs 107(1)(c) and (d) and section 112, still be treated as having received the dividend even if it is designated in favour of a beneficiary. In most cases, the trust will be allowed a corresponding deduction under subsection 104(6) to offset the resulting income inclusion. However, as described in the commentary on amendments to subsection 104(6), there are certain restrictions under amended subsection 104(6) on the deduction of amounts made payable from *alter ego* trusts, joint partner trusts and post-1971 partner trusts.

This amendment applies to taxation years that end after 2000.

Related Provisions: 82(1) — Taxable dividends received; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 107(1)(c), (d) — Loss on disposition of capital interest in trust; 112(3.12) — Exclusion from stop-loss rule where beneficiary is partnership or trust; 112(3.2) — Stop-loss rule; 112(5.2)B(b)(iii) — Adjustment for dividends received on mark-to-market property; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Pre-RSC History: Subsec. 104(19) substituted by 1988, c. 55, subsec. 71(8), applicable to 1988 *et seq.*, except that in its application to taxation years of trusts commencing before 1988, subsec. 104(19) shall be read without reference to the words "throughout which it was resident in Canada". Subsec. 104(19) formerly read:

> (19) Portion of taxable dividends deemed to be dividends received by beneficiary — Such portion of the aggregate of taxable dividends received by a trust in a taxation year on shares of the capital stock of a taxable Canadian corporation as
>
> > (a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the year of a particular beneficiary under the trust, and
> >
> > (b) was not designated by the trust in respect of any other beneficiary thereunder
>
> shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of this Act, other than Part XIII, to be a taxable dividend received by the particular beneficiary in the year from the corporation, and not to be a taxable dividend received by the trust from the corporation.

Subsec. 104(19) substituted by 1980-81-82-83, c. 140, subsec. 60(6), applicable with respect to designations made after November 12, 1981. Subsec. 104(19) formerly read:

> (19) Such portion of
>
> > (a) the aggregate of taxable dividends received by a trust in a taxation year on shares of the capital stock of taxable Canadian corporations,
>
> as
>
> > (b) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the year of a particular beneficiary under the trust, and
> >
> > (c) was not designated by the trust in respect of any other beneficiary thereunder,
>
> shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of section 82 and this subsection, to be a taxable dividend received by the particular beneficiary in the year from a taxable Canadian corporation, and not to be a taxable dividend received by the trust in the year from a taxable Canadian corporation.

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

(20) Designation in respect of non-taxable dividends — The portion of the total of all amounts, each of which is the amount of a dividend (other than a taxable dividend) paid on a share of the capital stock of a corporation resident in Canada to a trust during a taxation year of the trust throughout which the trust was resident in Canada, that can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of an amount that became payable in the year to a particular beneficiary under the trust shall be designated by the trust in respect of the particular beneficiary in the return of the trust's income for the year for the purposes of subclause 53(2)(h)(i.1)(B)(II), paragraphs 107(1)(c) and (d) and subsections 112(3.1), (3.2), (3.31) and (4.2).

Related Provisions: 83(2) — Capital dividends; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 107(1)(c) — Stop-loss rule where beneficiary is corporation; 104(24) — Whether amount payable; 112(3.2) — Stop-loss rule; 112(4.3) — Limitation on loss on disposition of share by trust; 132(3) — Application to a mutual fund trust; 248(1)"disposition"(i)(ii) — Payment in respect of capital interest in a trust; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(20) amended by 1998, c. 19, subsec. 127(4), applicable after April 26, 1995. Subsec. 104(20) formerly read:

> (20) Designation in respect of non-taxable dividends — Such portion of the total of all amounts each of which is the amount of a dividend (other than a taxable dividend) paid on a share of the capital stock of a corporation resident in Canada to a trust during a taxation year of the trust throughout which the trust was resident of Canada as may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of an amount that became payable in the year to a particular beneficiary under the trust, shall be designated by the trust in respect of the particular beneficiary in the return of the trust's income for the year for the purposes of subclause 53(2)(h)(i.1)(B)(II), paragraph 107(1)(c) and subsections 112(3.2) and (4.3).

Pre-RSC History: Subsec. 104(20) substituted by 1988, c. 55, subsec. 71(9), applicable to taxation years of trusts commencing after 1987. Subsec. 104(20) formerly read:

> (20) Portion of non-taxable dividends not to be included in beneficiary's income — Where an amount has, in a taxation year, become payable by a trust to a particular beneficiary thereunder, such portion thereof as
>
> > (a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to have derived from an amount received by the trust in the year as, on account or in lieu of payment of, or in satisfaction of, a dividend on a share of the capital stock of a corporation resident in Canada other than a taxable dividend, and
> >
> > (b) was not designated by the trust in respect of any other beneficiary thereunder,
>
> shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, not be included in computing the income of the particular beneficiary for the year.

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received.

(21) Taxable capital gains — Such portion of the net taxable capital gains of a trust for a taxation year throughout which it was resident in Canada as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the taxation year of

(i) a particular beneficiary under the trust, if the trust is a mutual fund trust, or

(ii) a particular beneficiary under the trust who is resident in Canada, if the trust is not a mutual fund trust, and

(b) was not designated by the trust in respect of any other beneficiary under the trust,

shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of sections 3 and 111 except as they apply for the purposes of section 110.6, to be a taxable capital gain for the year of the particular beneficiary from the disposition by that beneficiary of capital property.

Related Provisions: 39.1(2)B(a), 39.1(3) — Reduction in gain to reflect capital gains exemption election; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 104(13.2) — Designation of amount by trust; 104(21.01), (21.02) — Late, amended or revoked designation made with capital gains exemption election; 104(21.1) — Beneficiary's taxable capital gain; 104(21.2) — Beneficiary's taxable capital gain from trust; 104(21.3) — Determination of net taxable capital gains; 110.6(19), (20) — Election to trigger capital gains exemption; 127.52(1)(d)(ii), 127.52(1)(g)(ii) — Adjusted taxable income (for minimum tax); 212(1)(c) — Estate or trust income — non-residents; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Pre-RSC History: That portion of subsec. 104(21) preceding para. (a) substituted by 1988, c. 55, subsec. 71(10), applicable to taxation years of trusts commencing after 1987. That portion formerly read:

(21) Portion of taxable capital gains deemed gain of beneficiary — Such portion of the net taxable capital gains of a trust for a taxation year as

Subsec. 104(21) amended by 1986, c. 6, subsec. 51(5), applicable to 1985 *et seq.*, to substitute that portion preceding para. (b), to renumber paras. (b) and (c) as paras. (a) and (b), and in that portion following para. (b), to add "except as they apply for the purposes of section 110.6" and to substitute "disposition by him of capital property" for "disposition of capital property". That portion preceding para. (b) formerly read:

(21) Such portion of

(a) the amount, if any, by which the aggregate of the taxable capital gains of a trust for a taxation year exceeds the aggregate of

(i) its allowable capital losses for the year, and

(ii) the amount, if any, deducted under paragraph 111(1)(b) from its income for the year

as

Subpara. 104(21)(a)(ii) substituted by 1984, c. 1, subsec. 45(6), to substitute "deducted" for "deductible", applicable to 1983 *et seq.* and with respect to amounts deductible under paragraph 111(1)(b) in respect of losses determined for 1983 *et seq.*

Para. 104(21)(b) substituted by 1976-77, c. 4, subsec. 40(3), applicable to 1976 *et seq.* Para. 104(21)(b) formerly read:

(b) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the taxation year of a particular beneficiary under the trust who is resident in Canada, and

Para. 104(21)(b) substituted by 1974-75-76, c. 26, subsec. 65(3), applicable to 1974 *et seq.*, to add "who is resident in Canada".

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election; IT-465R: Non-resident beneficiaries of trusts; IT-493: Agency cooperative corporations.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

Forms: T3, Sched. 3: Calculation of a trust's eligible taxable capital gains; RC4169: Tax treatment of mutual funds for individuals.

(21.01) Late, amended or revoked designation — A trust that has filed its return of income for its taxation year that includes February 22, 1994 may subsequently designate an amount under subsection (21), or amend or revoke a designation made under that subsection where the designation, amendment or revocation

(a) is made solely because of an increase or decrease in the net taxable capital gains of the trust for the year that results from an election or revocation to which subsection 110.6(25), (26) or (27) applies; and

(b) is filed with the Minister, with an amended return of income for the year, when the election or revocation referred to in paragraph (a) is filed with the Minister.

Related Provisions: 104(21.02) — Restriction; 104(21.03) — Effect of designation.

History: Subsec. 104(21.01) added by 1998, c. 19, subsec. 127(5), applicable to taxation years that include February 22, 1994.

(21.02) Late, amended or revoked designation — A designation, amendment or revocation under subsection (21.01) that affects an amount determined in respect of a beneficiary under subsection (21.2) may be made only where the trust

(a) designates an amount, or amends or revokes a designation made, under subsection (21.2) in respect of the beneficiary; and

(b) files the designation, amendment or revocation referred to in paragraph (a) with the Minister when required by paragraph (21.01)(b).

History: Subsec. 104(21.02) added by 1998, c. 19, subsec. 127(5), applicable to taxation years that include February 22, 1994.

(21.03) Late, amended or revoked designation — Where a trust designates an amount, or amends or revokes a designation, under subsection (21) or (21.2) in accordance with subsection (21.01),

(a) the designation or amended designation, as the case may be, is deemed to have been made in the trust's return of income for the trust's taxation year that includes February 22, 1994; and

(b) the designation that was revoked is deemed, other than for the purposes of this subsection and subsections (21.01) and (21.02), never to have been made.

History: Subsec. 104(21.03) added by 1998, c. 19, subsec. 127(5), applicable to taxation years that include February 22, 1994.

(21.1) Beneficiary's taxable capital gain — Notwithstanding subsection (21) or section 38, where in a particular taxation year, commencing before 1990, of a taxpayer (other than an individual who is not a testamentary trust) the taxpayer is a beneficiary of a trust with a taxation year ending in the particular year, the amount (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the trust) deemed by subsection (21) to be a taxable capital gain of the taxpayer for the particular year in respect of the trust shall be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the amount (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the trust) deemed by subsection (21) to be the taxpayer's taxable capital gain for the particular year in respect of the trust exceeds the amount (other than that part of the amount that can be attributed to an amount deemed under subsection 14(1) to be a taxable capital gain of the trust) designated by the trust for the particular year in respect of the taxpayer under subsection (13.2);

B is the fraction that would be used under section 38 for the particular year in respect of the taxpayer if the taxpayer had a capital gain for the particular year; and

C is the fraction that is used under section 38 for the year of the trust.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada.

Pre-RSC History: Subsec. 104(21.1) substituted by 1988, c. 55, subsec. 71(11), applicable to taxation years and fiscal periods ending after 1987. Subsec. 104(21.1) formerly read:

> (21.1) Beneficiary's taxable capital gain from Canadian securities — Such portion of the amount, if any, deemed by virtue of subsection (21) to be a taxable capital gain for a taxation year of a particular beneficiary under a trust, other than a mutual fund trust, from the disposition of capital property as is designated in respect of the particular beneficiary by the trust in its return of income for that taxation year under this Part for the purposes of computing the amount deductible under section 110.1 by the particular beneficiary for the year, shall, for the purposes of that section, be deemed to be a taxable capital gain for the year of the particular beneficiary from the disposition of Canadian securities and not to be a taxable capital gain of the trust from the disposition of Canadian securities to the extent that the portion so designated does not exceed the amount, if any, by which
>
> (a) the aggregate of taxable capital gains of the trust for the year from the disposition of Canadian securities
>
> exceeds the aggregate of
>
> (b) the allowable capital losses of the trust for the year from the disposition of Canadian securities,
>
> (c) that portion of the amount, if any, deducted under paragraph 111(1)(b) from the income of the trust for the year that may reasonably be regarded as attributable to the disposition of Canadian securities, and
>
> (d) the amounts designated under this subsection by the trust for the year in respect of other beneficiaries of the trust,
>
> and, for the purposes of this subsection, "Canadian securities" has the meaning assigned by subsection 110.1(6).

Subsec. 104(21.1) added by 1985, c. 45, subsec. 50(5), applicable to 1985 *et seq.*

(21.2) Beneficiaries' taxable capital gains — Where, for the purposes of subsection (21), a personal trust designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

Proposed Amendment — 104(21.2) opening words

(21.2) Beneficiaries' taxable capital gain — Where, for the purposes of subsection (21), a personal trust or a trust referred to in subsection 7(2) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 48(20), will amend the opening words of subsec. 104(21.2) to read as above, applicable to trusts' taxation years that begin after February 22, 1994.

Technical Notes: Subsection 104(21.2) of the Act sets out the rules for allocating the net taxable capital gains of a trust to its beneficiaries for the purpose of section 110.6 of the Act. Personal trusts are the only trusts that can make designations of net taxable capital gains to beneficiaries. Subsection 104(21.2) is amended to provide that such designations can also be made by a trust described in subsection 7(2) of the Act. In general, those are trusts of which the trustee holds shares in trust for an employee and the employee is treated for the purposes of paragraphs 110(1)(d) and (d.1) of the Act as having acquired and disposed of the shares at the time that the trust acquired and disposed of them. This amendment ensures that a trust described in subsection 7(2) will be able to designate its net taxable capital gains arising from a disposition of "qualified farm property" or "qualified small business corporation shares" to its beneficiaries.

Letter from Department of Finance, September 30, 1997:

Dear [xxx]

This is in response to your letter of September 23, 1997 regarding the interaction of subsection 104(21.2) and section 110.6 of the *Income Tax Act*. In particular, you indicate that subsection 104(21.2) is technically deficient in that it does not apply to a trust described in paragraph 4800.1(a) of the Income Tax Regulations (an "employee trust").

As you indicate, subsection 104(21.2) of the *Income Tax Act* treats the net taxable capital gains realized by a personal trust and flowed through to its beneficiaries under subsection 104(21) of the *Income Tax Act* as a taxable capital gain of the beneficiaries for the purposes of the lifetime capital gains exemption under section 110.6 of the *Income Tax Act*. It also treats the beneficiaries as having disposed of the particular property that gave rise to that gain for the purposes of subsection 110.6. A personal trust may not necessarily include an employee trust. From a tax policy perspective, it would be appropriate for subsection 104(21.2) to apply to such net taxable capital gains realized by an employee trust and flowed through to its beneficiaries under subsection 104(21).

We are prepared therefore to recommend to the Minister of Finance that subsection 104(21.2) of the *Income Tax Act* be amended to ensure that it applies in respect of net taxable gains realized by a employee trust from the disposition of the particular property described in subsection 104(21.2). [The reference to "a trust referred to in subsection 7(2)" is intended to accomplish this — ed.] It will be recommended that such an amendment be effective for taxation years that end after 1996. If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

(a) the trust shall in its return of income under this Part for the designation year designate an amount in respect of its eligible taxable capital gains, if any, for the designation year in respect of the beneficiary equal to the amount determined in respect of the beneficiary under each of subparagraphs (b)(i) and (ii); and

(b) the beneficiary shall, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6, be deemed to have a taxable capital gain for the beneficiary's taxation year in which the designation year ends

(i) from a disposition of capital property that is qualified farm property of the beneficiary equal to the amount determined by the formula

$$\frac{A \times B \times C}{D \times E}$$

and

(ii) from a disposition of capital property that is a qualified small business corporation share of the beneficiary equal to the amount determined by the formula

$$\frac{A \times B \times F}{D \times E}$$

where

A is the lesser of

(iii) the amount determined by the formula

$$G - H$$

where

G is the total of amounts designated under subsection (21) for the designation year by the trust, and

H is the total of amounts designated under subsection (13.2) for the designation year by the trust, and

(iv) the trust's eligible taxable capital gains for the designation year,

B is the amount, if any, by which the amount designated under subsection (21) for the designation year by the trust in respect of the beneficiary exceeds the amount designated under subsection (13.2) for the year by the trust in respect of the beneficiary,

C is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties of the trust disposed of by it after 1984,

D is the total of all amounts each of which is the amount determined for B for the designation year in respect of a beneficiary under the trust,

E is the total of the amounts determined for C and F for the designation year in respect of the beneficiary, and

F is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares of the trust, other than qualified farm property, disposed of by it after June 17, 1987,

and for the purposes of section 110.6, those capital properties shall be deemed to have been disposed of by the beneficiary in that taxation year of the beneficiary.

Related Provisions: 39(10) — Reduction of business investment loss; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 104(21.01), (21.02) — Late, amended or revoked designation made with capital gains exemption election; 104(21.3) — Determination of net taxable capital gains; 110.6(11) — No capital gains exemption allowed in certain cases; 110.6(12) — Spousal trust deduction; 110.6(14)(c) — Related persons, etc.; 110.6(19), (20) — Election to trigger capital gains exemption; 257 — Formula cannot calculate to less than zero.

History: Subsec. 104(21.2) amended by 1995, c. 3, s. 28, applicable to trusts' taxation years that begin after February 22, 1994; and, in applying subsec. 104(21.2) to a trust's taxation year that includes that day,

(a) the opening words of subsec. 104(21.2) shall be read as follows:

(21.2) Where, for the purposes of subsection (21), a trust (other than a mutual fund trust) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

(b) the descriptions of A, B and C in para. 104(21.2)(b) shall be read as follows:

A is the lesser of

(i) the amount determined by the formula

$$H - I$$

where

H is the total of amounts designated under subsection (21) for the designation year by the trust, and

I is the total of amounts designated under subsection (13.2) for the designation year by the trust, and

(ii) the trust's eligible taxable capital gains for the designation year,

B is the amount, if any, by which the amount designated under subsection (21) for the designation year by the trust in respect of the beneficiary exceeds the amount designated under subsection (13.2) for the year by the trust in respect of the beneficiary,

C is the total of all amounts each of which is the amount determined for B for the designation year in respect of a beneficiary under the trust,

and

(c) the closing words of subsec. 104(21.2) shall be read as follows:

and for the purposes of section 110.6, each such taxable capital gain of a beneficiary shall be deemed to be a taxable capital gain of the beneficiary for the beneficiary's taxation year in which the designation year ends from the disposition of a property that occurred on February 22, 1994.

Subsec. 104(21.2) formerly read:

(21.2) Beneficiary's taxable capital gain from trust — Where a trust has, for the purposes of subsection (21), designated an amount (in this subsection referred to as the "designated amount") in respect of a beneficiary of the trust in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year") and by virtue thereof the designated amount is deemed, for the purposes described in that subsection, to be a taxable capital gain for the year of the beneficiary from the disposition by the beneficiary of capital property,

(a) the trust shall in its return of income for the designation year designate an amount in respect of its eligible taxable capital gains for the designation year in respect of the beneficiary equal to the amount determined in respect of the beneficiary under each of subparagraphs (b)(i), (ii) and (iii), and

(b) the beneficiary shall, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6, be deemed to have a taxable capital gain for the year

(i) from the disposition of capital property that is qualified farm property of the beneficiary equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) \times \frac{D}{G}$$

(ii) from the disposition of capital property that is a qualified small business corporation share of the beneficiary equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) \times \frac{E}{G}$$

and

(iii) from the disposition of capital property, other than properties referred to in subparagraphs (i) or (ii), equal to the amount determined by the formula

$$\left(A \times \frac{B}{C}\right) \times \frac{F}{G}$$

where

A is the eligible taxable capital gains of the trust for the designation year,

B is the amount, if any, by which the designated amount exceeds the amount designated in respect of the beneficiary for the designation year under subsection (13.2),

C is the greater of

(i) the total of all amounts each of which is the amount used for B under this paragraph in respect of a beneficiary of the trust for the designation year, and

(ii) the amount, if any, by which the net taxable capital gains of the trust for the designation year exceed the amount, if any, by which

(A) the investment expense (within the meaning assigned by subsection 110.6(1)) of the trust for the designation year

exceeds

(B) the investment income (within the meaning assigned by subsection 110.6(1)) of the trust for the designation year,

D is the amount, if any, that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties of the trust disposed of by it after 1984,

E is the amount, if any, that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares of the trust, other than qualified farm property, disposed of by it after June 17, 1987,

F is the lesser of

(i) the amount, if any, that would be determined under paragraph 3(b) in respect of capital gains and capital losses in respect of the trust for the designation year if

(A) the only properties referred to in that paragraph were properties disposed of by it after 1984, other than qualified farm properties and other than qualified small business corporation shares disposed of by it after June 17, 1987, and

(B) the trust's capital gains and capital losses for the year from dispositions of non-qualifying real property of the trust were equal to its eligible real property gains and eligible real property losses, respectively, for the year from those dispositions, and

(ii) the amount that would be determined under subparagraph (i) if that subparagraph were read without reference to clause (i)(B), and

G is the total of the amounts used for D, E and F under this paragraph in respect of the beneficiary for the year,

and for the purposes of section 110.6, those capital properties shall be deemed to have been disposed of by the beneficiary in the year.

The description of F in para. 104(21.2)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(7), applicable to 1992 *et seq.* That description formerly read:

F is the amount, if any, that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by it after 1984, other than qualified farm properties and other than qualified small business corporation shares disposed of by it after June 17, 1987, and

The description of C in para. 104(21.2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 75, applicable to 1988 *et seq.* The description of C formerly read:

C is the net taxable capital gains of the trust for the designation year,

Pre-RSC History: Paras. 104(21.2)(a) and (b) substituted and that portion following (b) added by 1988, c. 55, subsec. 71(12), applicable to 1988 *et seq.* and, in applying para. 104(21.2)(b) for taxation years ending after 1984 and before 1988, it shall be read as follows:

(b) the beneficiary shall, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6, be deemed to have a taxable capital gain for the year from the disposition by him in the year of capital property equal to the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the eligible taxable capital gains of the trust for the designation year,

B is the designated amount, and

C is the net taxable capital gains of the trust for the designation year,

and for the purposes of section 110.6, those capital properties shall be deemed to have been disposed of by the beneficiary in the year.

Paras. 104(21.2)(a) and (b) formerly read:

(a) the trust shall in its return of income for the designation year designate an amount in respect of its eligible taxable capital gains for the designation year in respect of the beneficiary equal to the amount determined in respect of the beneficiary under paragraph (b); and

(b) the beneficiary shall, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6, be deemed to have a taxable capital gain for the year from the disposition by him in the year of capital property equal to the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the eligible taxable capital gains of the trust for the designation year,

B is the designated amount, and

C is the net taxable capital gains of the trust for the designation year.

Subsec. 104(21.2) added by 1986, c. 6, subsec. 51(6), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

Forms: T3 Sched. 3: Calculation of a trust's eligible taxable capital gains; T3 Sched. 4: Calculation of cumulative net investment losses.

(21.3) Net taxable capital gains of trust determined — For the purposes of this section, the net taxable capital gains of a trust for a taxation year is the amount, if any, by which the total of the taxable capital gains of the trust for the year exceeds the total of

(a) its allowable capital losses for the year, and

Proposed Amendment — 104(21.3)(a)

(a) the total of all amounts each of which is an allowable capital loss (other than an allowable business investment loss) of the trust for the year from the disposition of a capital property, and

Application: The June 22, 2000 draft legislation, subsec. 14(5), will amend para. 104(21.3)(a) to read as above, applicable to trust taxation years that begin after 2000.

Technical Notes: Subsection 104(21.3) of the Act defines the expression "net taxable capital gains". The expression is used in subsections 104(21) and (21.2), which permit a trust to flow its taxable capital gains realized in a year through to a beneficiary who has received a portion of the trust's income for the year. The trust can flow through its taxable capital gains to beneficiaries only to the extent of its net taxable capital gains for the year.

Under subsection 104(21.3), the net taxable capital gains of a trust for a taxation year equals the amount, if any, by which its total taxable capital gains for the year exceeds the total of two amounts:

- its total allowable capital losses for the year, and

- the amount deducted by it under paragraph 111(1)(b) in computing its taxable income for the year (i.e., deduction of carried-over net capital losses for years preceding and the 3 years immediately following the year).

Subsection 104(21.3) is amended so that allowable business investment losses (ABILs) are disregarded for the purpose of the first of the two amounts. Accordingly, ABILs will not result in a reduction of taxable capital gains that may be flowed through to beneficiaries under trusts and against which allowable capital losses can be claimed.

This amendment applies to trust taxation years that begin after 2000.

(b) the amount, if any, deducted under paragraph 111(1)(b) in computing its taxable income for the year.

Pre-RSC History: Subsec. 104(21.3) added by 1986, c. 6, subsec. 51(6), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Forms: T3, Sched. 3: Calculation of a trust's eligible taxable capital gains.

(22) Designation of foreign source income by trust — For the purposes of this subsection, subsection (22.1) and section 126, such portion of a trust's income for a taxation year (in this subsection referred to as "that year") throughout which it is resident in Canada from a source in a country other than Canada as

(a) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the income that, because of subsection (13) or (14), was included in computing the income for a particular taxation year of a particular beneficiary under the trust, and

(b) is not designated by the trust in respect of any other beneficiary thereunder

shall, if so designated by the trust in respect of the particular beneficiary in its return of income under this Part for that year, be deemed to be the particular beneficiary's income for the particular year from that source.

Related Provisions: 4(3) — Whether deductions are applicable to a particular source; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 104(22.2), (22.3) — Recalculation of trust's foreign-source income and foreign tax; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Subsec. 104(22) substituted by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981 except that, with respect to taxation years of trusts that began before 1988, the opening words of subsec. 104(22) shall be read as follows:

(22) For the purposes of this subsection, subsection (22.1) and section 126, such portion of a trust's income for a taxation year (in this subsection referred to as "that year") from a source in a country other than Canada as

Subsec. 104(22) formerly read:

(22) Deduction for foreign taxes — For the purposes of this subsection and section 126, the following rules apply:

(a) such portion of the income of a trust for a taxation year throughout which it was resident in Canada (before making any deduction under subsection (6) or (12)) from sources in a foreign country as

(i) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the income that, by virtue of subsection (13) or (14), as the case may be, was included in computing the income for a taxation year of a particular beneficiary under the trust, and

(ii) was not designated by the trust in respect of any other beneficiary thereunder,

shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, be deemed to be income of the particular beneficiary for the taxation year from sources in that country;

(b) a beneficiary under a trust shall be deemed to have paid as income tax for a taxation year, on the income that the beneficiary is deemed by paragraph (a) to have for the year from sources in a foreign country, to the government of that country an amount equal to that proportion of the income or profits tax paid by the trust for the year to the government of that country or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or deducted under subsection 20(12) in computing its income for the year) that

(i) such portion of the amount included in computing the beneficiary's income for the year by virtue of subsection (13) or (14), as the case may be, as is deemed by paragraph (a) to be income for the year from sources in that country,

is of

(ii) the income of the trust for the year from sources in that country (before making any deduction under subsection (6) or (12));

(c) the income of a trust from sources in a foreign country for a taxation year shall be deemed to be its actual income from those sources for the year minus the total of the amounts deemed by paragraph (a) to be the income therefrom for the year of all beneficiaries under the trust; and

(d) a trust shall be deemed to have paid as income tax to the government of a foreign country for a taxation year an amount equal to the income or profits tax actually paid by it for the year to the government of that country, or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or deducted under subsection 20(12) in computing its income for the year), minus the total of amounts deemed by paragraph (b) to have been paid to the government of that country for the year by all beneficiaries under the trust.

Pre-RSC History: That portion of para. 104(22)(a) preceding subpara. (i) amended by 1988, c. 55, subsec. 71(13), to substitute "for a taxation year throughout which it was resident in Canada" for "for a taxation year", applicable to taxation years of trusts commencing after 1987.

All that portion of subsec. 104(22) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 60(7), to substitute "For the purposes of of this subsection and section 126" for "For the purpose of section 126", applicable to taxation years ending after November 12, 1981. Paras. 104(22)(b) and (d) substituted by 1980-81-82-83, c. 140, subsecs. 60(8) and 60(9), to add the words "or deducted under subsection 20(12)", applicable to taxation years ending after November 12, 1981.

All that portion of para. 104(22)(b) preceding subpara. (i) and para. 104(22)(d) substituted by 1973-74, c. 30, subsecs. 10(1), (2) applicable to 1973 *et seq.* That portion of para. 104(22)(b) and para. 104(22)(d) formerly read:

(b) a beneficiary under a trust shall be deemed to have paid as income tax for a taxation year, on the income that he is deemed by paragraph (a) to have for the year from sources in a foreign country, to the government of that country an amount equal to that proportion of the income or profits tax paid by the trust for the year to the government of that country or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or (12) in computing its income for the year) that

. . . . .

(d) a trust shall be deemed to have paid as income tax to the government of a foreign country for a taxation year an amount equal to the income or profits tax actually paid by it for the year to the government of that country, or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or (12) in computing its income for the year), minus the aggregate of the amounts deemed by paragraph (b) to have been paid to the government of that country for the year by all beneficiaries under the trust.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-506: Foreign income taxes as a deduction from income.

(22.1) Foreign tax deemed paid by beneficiary — Where a taxpayer is a beneficiary under a trust, for the purposes of this subsection and section 126, the taxpayer

shall be deemed to have paid as business-income tax or non-business-income tax, as the case may be, for a particular taxation year in respect of a source the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount that, but for subsection (22.3), would be the business-income tax or non-business-income tax, as the case may be, paid by the trust in respect of the source for a taxation year (in this subsection referred to as "that year") of the trust that ends in the particular year;

B is the amount deemed, because of a designation under subsection (22) for that year by the trust, to be the taxpayer's income from the source; and

C is the trust's income for that year from the source.

Related Provisions: 4(3) — Whether deductions are applicable to a particular source; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 126(2.22) — Foreign tax credit to trust on disposition of property by non-resident beneficiary.

History: Subsec. 104(22.1) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(22.2) Recalculation of trust's foreign source income — For the purpose of section 126, there shall be deducted in computing a trust's income from a source for a taxation year the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be income of beneficiaries under the trust from that source.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada.

History: Subsec. 104(22.2) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(22.3) Recalculation of trust's foreign tax — For the purpose of section 126, there shall be deducted in computing the business-income tax or non-business-income tax paid by a trust for a taxation year in respect of a source the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be paid by beneficiaries under the trust as business-income tax or non-business-income tax, as the case may be, in respect of the source.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 126(7)"non-business-income tax"(c.1) — Amount deducted under 104(22.3) from business-income tax excluded from non-business-income tax.

History: Subsec. 104(22.3) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(22.4) Definitions — For the purposes of subsections (22) to (22.3), the expressions "business-income tax" and "non-business-income tax" have the meanings assigned by subsection 126(7).

History: Subsec. 104(22.4) added by 1994, c. 21, subsec. 46(2), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries.

(23) Testamentary trusts — In the case of a testamentary trust, notwithstanding any other provision of this Act, the following rules apply:

(a) the taxation year of the trust is the period for which the accounts of the trust are made up for purposes of assessment under this Act, but no such period may exceed 12 months and no change in the time when such a period ends may be made for the purposes of this Act without the concurrence of the Minister;

(b) when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year;

(c) the income of a person for a taxation year from the trust shall be deemed to be the person's benefits from or under the trust for the taxation year or years of the trust that ended in the year determined as provided by this section and section 105;

(d) where an individual having income from the trust died after the end of a taxation year of the trust but before the end of the calendar year in which the taxation year ended, the individual's income from the trust for the period commencing immediately after the end of the taxation year and ending at the time of death shall be included in computing the individual's income for the individual's taxation year in which the individual died unless the individual's legal representative has elected otherwise, in which case the legal representative shall file a separate return of income for the period under this Part and pay the tax for the period under this Part as if

(i) the individual were another person,

(ii) the period were a taxation year,

(iii) that other person's only income for the period were the individual's income from the trust for that period, and

(iv) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual was entitled under sections 110, 118 to 118.7 and 118.9 for the period in computing the individual's taxable income or tax payable under this Part, as the case may be, for the period; and

(e) in lieu of making the payments required by sections 155, 156 and 156.1, the trust shall pay to the Receiver General within 90 days after the end of each taxation year, the tax payable under this Part by it for the year.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 114.2 — Deductions in separate returns; 118.93 — Credits in separate returns; 120.2(4)(a) — No minimum tax carryover on special return under 104(23)(d); 127.1(1)(a) — No refundable investment tax credit on special return; 127.55 — Minimum tax not applicable.

History: Para. 104(23)(a) amended by 1996, c. 21, subsec. 18(11), applicable after 1994. The para. formerly read:

(a) the taxation year of the trust is the period for which the accounts of the trust have been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the period adopted by the trust for that purpose (but no such period may exceed 12 months and a change in a usual and accepted period may not be made for the purpose of this Act without the concurrence of the Minister);

Para. 104(23)(e) amended by 1994, c. 8, s. 12, applicable to 1994 *et seq.* Para. (e) formerly read:

(e) in lieu of making the payments required by section 156, the trust shall pay to the Receiver General within 90 days from the end of each taxation year, the tax for the year as estimated under section 151.

Pre-RSC History: Subpara. 104(23)(d)(iv) substituted by 1988, c. 55, subsec. 71(14), applicable to 1988 *et seq.* Subpara. 104(23)(d)(iv) formerly read:

> (iv) subject to section 114.2, that other person were entitled to the deductions to which the individual was entitled under sections 109 to 110.2 for the period in computing his taxable income for the period; and

Para. 104(23)(d) substituted by 1985, c. 45, subsec. 50(6), applicable to 1985 *et seq.* Para. 104(23)(d) formerly read:

> (d) where an individual having income from the trust died after the end of a taxation year of the trust but before the end of the calendar year in which the taxation year ended, a separate return of his income from the trust after the end of the trust's taxation year to the time of death may be filed and, if such a separate return is filed, the tax under this Part shall be paid on that income as if it were the income of another person; and

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Para. 104(23)(d) substituted by 1973-74, c. 14, subsec. 31(5), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-179R: Change of fiscal period; IT-326R3: Returns of deceased persons as "another person".

(24) Amount payable — For the purposes of subparagraph 53(2)(h)(i.1) and subsections (6), (7), (13) and (20), an amount shall be deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of the amount.

Proposed Amendment — 104(24)

(24) Amount payable — For the purposes of subparagraph 53(2)(h)(i.1) and subsections (6), (7), (7.01), (13) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

Application: The June 22, 2000 draft legislation, subsec. 14(6), will amend subsec. 104(24) to read as above, applicable to trust taxation years that begin after 2000.

Technical Notes: The determination of when an amount becomes payable in a taxation year is relevant for a number of purposes, including the determination of the amount deductible under subsection 104(6) of the Act. Under subsection 104(24), an amount (e.g., income payable to a beneficiary) is deemed not to have become payable in the year to a beneficiary unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of the amount.

Subsection 104(24) is amended so that it also applies for the purpose of new subsection 104(7.01), which is described in the commentary above.

This amendment applies to trust taxation years that begin after 2000.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 94(4) — FAPI does not include "amount payable" to beneficiary; 104(18) — Trust for person under age 21.

Pre-RSC History: Subsec. 104(24) substituted by 1988, c. 55, subsec. 71(15), applicable to taxation years of trusts commencing after 1987. Subsec. 104(24) formerly read:

> (24) "Amount payable" — For the purposes of subsections (6), (7), (8), (13), (20), (25) and 212(11.1), an amount shall not be considered to be payable in a taxation year unless it was paid in the year to the person to whom it was payable or he was entitled in that year to enforce payment thereof.

Subsec. 104(24) substituted by 1974-75-76, c. 26, subsec. 65(4), applicable to 1974 *et seq.*, to add references to subsecs. (25) and 212(11.1).

Selected Cases [subsec. 104(24)]: *Langer Family Trust v. MNR*, [1992] 1 C.T.C. 2119 (TCC); appealed to FCTD (April 16, 1992), File T-907-92 (No deduction where income not "paid in the year to the person").

Interpretation Bulletins: IT-286R2: Trusts — amount payable; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

I.T. Technical News: No. 11 (payments made by a trust for the benefit of a minor beneficiary).

(25) [Repealed under former Act]

Pre-RSC History: Subsec. 104(25) repealed by 1988, c. 55, subsec. 71(15), applicable to taxation years of trusts commencing after 1987. Subsec. 104(25) formerly read:

> (25) **Excess amount** — Such portion of
>
> (a) where subsection (8) is applicable with respect to a particular trust, the amount, if any, referred to in paragraph (e) thereof, or
>
> (b) where subsection (8) is not applicable with respect to a particular trust, the amount, if any, by which the aggregate of all amounts each of which is an amount described in subsection (13) exceeds the amount deductible pursuant to subsection (6)
>
> as
>
> (c) may reasonably be considered to be part of the amount that by virtue of subsection (13) was included in computing the income for a taxation year of a particular beneficiary under the particular trust, and
>
> (d) was not designated by the particular trust in respect of any other beneficiary
>
> shall, if so designated by the particular trust in respect of the particular beneficiary, in the return of its income for the year under this Part, be deemed, for the purposes of subsection (13), not to have been payable in the year to the particular beneficiary.

Para. 104(25)(a) substituted by 1984, c. 1, subsec. 45(7), to substitute "(e)" for "(d)", applicable to taxation years ending after November 12, 1981.

Subsec. 104(25) substituted by 1980-81-82-83, c. 140, subsec. 60(10), applicable after November 12, 1981. Subsec. 104(25) formerly read:

> (25) Such portion of the amount, if any, by which
>
> (a) the aggregate of all amounts each of which is
>
> (i) such part of the amount that would be the income of a trust for the taxation year if no deduction were made under subsection (6), (12) or 20(16) or under regulations made under paragraph 20(1)(a) that is payable in the year to a beneficiary under the trust, or
>
> (ii) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)
>
> exceeds
>
> (b) the amount deductible under subsection (6) by the trust in computing its income for the taxation year
>
> as may reasonably be considered to be part of the amount that by virtue of subsection (13) was included in computing the income for the taxation year of a particular designated beneficiary under the trust, and as was not designated by the trust in respect of any other designated beneficiary thereunder, shall, if so designated by the trust in respect of the particular designated beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of subsection (13), not to have been payable in the year to the designated beneficiary.

Subpara. 104(25)(a)(i) substituted by 1977-78, c. 1, subsec. 49(6), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add reference to subsec. 20(16).

Subsec. 104(25) substituted by 1976-77, c. 4, subsec. 40(4), applicable to 1976 *et seq.* Subsec. 104(25) formerly read:

> (25) In any case where
>
> (a) the amount that would, but for subsection 104(8), be deductible by virtue of subsection 104(6) in computing the income for a taxation year of a trust
>
> exceeds
>
> (b) the amount deductible by virtue of subsection 104(6) in computing the trust's income for that year

(in this subsection referred to as the "excess amount"), for the purpose of subsection (13), an amount equal to that proportion of the excess amount that

(c) the amount payable to a particular designated beneficiary under a trust in respect of the trust's income for the year that would but for this subsection, be included in computing his income by virtue of subsection (13)

is of

(d) the aggregate of amounts each of which is

(i) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6) or (12) or under regulations made under paragraph 20(1)(a) as would, but for this subsection, be payable in the year to a beneficiary under the trust,

(ii) an amount in respect of the accumulating income of the trust for the year that was included in computing the income of a preferred beneficiary under the trust by virtue of subsection (14), or

(iii) an amount paid by the trust in the year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

shall be deemed not to have been payable in the year to the particular beneficiary.

Subsec. 104(25) added by 1974-75-76, c. 26, subsec. 65(4), applicable to 1974 *et seq.*

(25.1) [Repealed under former Act]

Pre-RSC History: Subsec. 104(25.1) repealed by 1988, c. 55, subsec. 71(15), applicable to taxation years of trusts commencing after 1987. Subsec. 104(25.1) formerly read:

(25.1) Idem — Such portion of the amount referred to in paragraph (8)(f)

(a) as may reasonably be considered to be part of the amount that by virtue of subsection (13) was included in computing the income for a taxation year of a particular designated beneficiary under the trust, and

(b) as was not designated by the trust in respect of any other designated beneficiary under the trust

shall, if so designated by the trust in respect of the particular designated beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of subsection (13), not to have been payable in the year to the particular designated beneficiary.

That portion of subsec. 104(25.1) preceding para. (a) substituted by 1984, c. 1, subsec. 45(8), to substitute "(f)" for "(e)", applicable to taxation years ending after November 12, 1981.

Subsec. 104(25.1) added by 1980-81-82-83, c. 140, subsec. 60(10), applicable after November 12, 1981.

(26) [Repealed under former Act]

Pre-RSC History: Subsec. 104(26) repealed by 1988, c. 55, subsec. 71(16), applicable to 1988 *et seq.* Subsec. 104(26) formerly read:

(26) Portion of interest deemed interest of beneficiary — Such portion of the amount, if any, determined in respect of a trust for a taxation year under paragraph 110.1(1)(b) if that paragraph were read without reference to subparagraphs (ii) to (iii.2) and clause (iv)(B) thereof and if subsection 110.1(1) were read without reference to the words "(other than a trust that is not a testamentary trust within the meaning assigned by paragraph 108(1)(i))" as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the taxation year of a particular beneficiary under the trust, and

(b) was not designated by the trust in respect of any other beneficiary thereunder

shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed to be interest for the year of the particular beneficiary and not to be interest of the trust.

Subsec. 104(26) amended by 1985, c. 45, subsec. 50(7), applicable to 1985 *et seq.*, to substitute heading "Portion of interest deemed interest of beneficiary" for "Portion of interest deemed to be interest of beneficiary", and to substitute "to (iii.2)" for "and (iii)".

All that portion of subsec. 104(26) preceding para. (a) substituted by 1977-78, c. 1, subsec. 49(7), applicable to 1977 *et seq.* That portion formerly read:

(26) Such portion of the amount, if any, determined in respect of a trust for a taxation year under paragraph 110.1(1)(b) if that paragraph were read without reference to subparagraph (ii) thereof and if subsection 110.1(1) were read without reference to the words "(other than a trust that is not a testamentary trust within the meaning assigned by paragraph 108(1)(i))" as

Subsec. 104(26) added by 1974-75-76, c. 26, subsec. 65(4), applicable to 1974 *et seq.*, and, for the 1974 taxation year is to be read without reference to the words "(if that paragraph were read without reference to subparagraph (ii) thereof)".

(27) Pension benefits — Where a testamentary trust has, in a taxation year throughout which it was resident in Canada, received a superannuation or pension benefit or a benefit out of or under a foreign retirement arrangement and has designated, in the return of its income for the year under this Part, an amount in respect of a beneficiary under the trust equal to such portion (in this subsection referred to as the "beneficiary's share") of the benefit as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13), was included in computing the income for a particular taxation year of the beneficiary, and

(b) was not designated by the trust in respect of any other beneficiary under the trust,

the following rules apply:

(c) where

(i) the benefit is an amount described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7), and

(ii) the beneficiary was a spouse of the settlor of the trust,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

the beneficiary's share of the benefit shall be deemed, for the purposes of subsections 118(3) and (7), to be a payment described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7) that is included in computing the beneficiary's income for the particular year,

(d) where the benefit

(i) is a single amount (within the meaning assigned by subsection 147.1(1)), other than an amount that relates to an actuarial surplus, paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust who was, at the time of death, a spouse of the beneficiary, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) would be an amount included in the total determined under paragraph 60(j) in respect of the bene-

ficiary for the taxation year of the beneficiary in which the benefit was received by the trust if the benefit had been received by the beneficiary at the time it was received by the trust,

the beneficiary's share of the benefit is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year, and

(e) where the benefit is a single amount (within the meaning assigned by subsection 147.1(1)) paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust and the beneficiary was, at the time of the settlor's death, under 18 years of age and a child or grandchild of the settlor, the beneficiary's share of the benefit (other than any portion thereof that relates to an actuarial surplus) shall be deemed, for the purposes of paragraph 60(l), to be an amount from a registered pension plan included in computing the beneficiary's income for the particular year as a payment described in subclause 60(l)(v)(B.1)(II).

Related Provisions: 60(l)(v)(B.1) — Rollover of RRSP/RRIF designated benefits to child or grandchild on death; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 248(8) — Occurrences as a consequence of death; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 252(4) — Extended meaning of "spouse".

History: Paras. 104(27)(c) and (d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(8), applicable after 1992. Paras. (c) and (d) formerly read:

(c) where

(i) the benefit is an amount described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7), and

(ii) the beneficiary was a spouse (in this subsection having the meaning assigned by subsection 146(1.1)) of the settlor of the trust,

the beneficiary's share of the benefit shall be deemed, for the purposes of subsections 118(3) and (7), to be a payment described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7) that is included in computing the beneficiary's income for the particular year,

(d) where the benefit

(i) is a single amount (within the meaning assigned by subsection 147.1(1)), other than an amount that relates to an actuarial surplus, paid by a registered pension plan to the trust as a consequence of the death of the settlor of the trust who was, at the time of the settlor's death, a spouse of the beneficiary, or

(ii) would be an amount included in the total determined under paragraph 60(j) in respect of the beneficiary for the taxation year of the beneficiary in which the benefit was received by the trust if the benefit had been received by the beneficiary at the time it was received by the trust,

the beneficiary's share of the benefit is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year, and

That portion of subsec. 104(27) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 75(2), applicable to 1990 *et seq.* That portion formerly read:

(27) Pension benefits — Where a testamentary trust has received a superannuation or pension benefit in a taxation year throughout which it was resident in Canada and has designated, in the return of its income for the year under this Part, an amount in respect of a beneficiary under the trust equal to such portion (in this subsection referred to as the "beneficiary's share") of the benefit as

Pre-RSC History: Subsec. 104(27) substituted by 1990, c. 35, s. 9, applicable to 1988 *et seq.*, except that

(a) for the 1988 and 1989 taxation years, the reference to "paragraph 60(j)" in subpara. 104(27)(d)(ii) shall read as a reference to "paragraph 60(j) or (j.01)"; and

(b) for the 1988 taxation year, subsec. 104(27) shall be read without reference to para. (e) thereof.

Subsec. 104(27) formerly read:

(27) Part of income included in beneficiary's income — Such portion of any amount that would otherwise be included under subparagraph 56(1)(a)(i) in computing the income of a testamentary trust for a taxation year throughout which it was resident in Canada

(a) as may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that by virtue of subsection (13) was included in computing the income for the taxation year of a particular beneficiary under the trust, and

(b) as was not designated by the trust in respect of any other beneficiary under the trust

shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of subsections 118(3) and (7) (where the particular beneficiary was the spouse of the individual upon and in consequence of whose death the trust arose), this subsection and paragraph 60(j), to be included in computing the income for the year of the particular beneficiary by reason of subparagraph 56(1)(a)(i) and not to be included in computing the income of the trust for the year.

That portion of subsec. 104(27) preceding para. (a) substituted by 1988, c. 55, subsec. 71(17), applicable to taxation years of trusts commencing after 1987. That portion formerly read:

(27) Portion of income deemed to be included in income of beneficiary — Such portion of any amount that would otherwise be included in computing the income of a testamentary trust for a taxation year by virtue of subparagraph 56(1)(a)(i)

That portion of subsec. 104(27) following para. (b) amended by 1988, c. 55, subsec. 71(18), to substitute "subsections 118(3) and (7)" for "section 110.2", "by reason of" for "by virtue of" and "not to be included in" for "not to be so included in", applicable to 1988 *et seq.*

Subsec. 104(27) added by 1980-81-82-83, c. 140, subsec. 60(11), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T3 Sched. 7: Statement of pension income allocations or designations; T2097: Identification of amounts transferred to an RRSP.

(27.1) DPSP benefits — Where

(a) a testamentary trust has received in a taxation year (in this subsection referred to as the "trust year") throughout which it was resident in Canada an amount from a deferred profit sharing plan as a consequence of the death of the settlor of the trust,

(b) the settlor was an employee of an employer who participated in the plan on behalf of the settlor, and

(c) the amount is not part of a series of periodic payments,

such portion of the amount as

(d) is included under subsection 147(10) in computing the income of the trust for the trust year,

(e) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that was included under subsection (13) in computing the income for a particular taxation year of a beneficiary under the trust who was, at the time of the settlor's death, a spouse of the settlor, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(f) is designated by the trust in respect of the beneficiary in the trust's return of income under this Part for the trust year

is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 248(8) — Occurrences as a consequence of death; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 252(4) — Extended meaning of "spouse".

History: Para. 104(27.1)(e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(9), applicable after 1992. Para. (e) formerly read:

> (e) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13), was included in computing the income for a particular taxation year of a beneficiary under the trust who was, at the time of the settlor's death, a spouse (within the meaning assigned by subsection 146(1.1)) of the settlor, and

Pre-RSC History: Subsec. 104(27.1) added by 1990, c. 35, s. 9, applicable with respect to amounts received after 1988.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

(28) [Death benefit] — Such portion of any amount received by a testamentary trust in a taxation year on or after the death of an employee in recognition of the employee's service in an office or employment as may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be paid or payable at a particular time to a particular beneficiary under the trust shall be deemed to be an amount received by the particular beneficiary at the particular time on or after the death of the employee in recognition of the employee's service in an office or employment and not to have been received by the trust.

Related Provisions: 56(1)(a)(iii) — Death benefit included in income; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

Pre-RSC History: Subsec. 104(28) added by 1980-81-82-83, c. 140, subsec. 60(11), applicable to taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-508R: Death benefits.

(29) Amounts deemed payable to beneficiaries [resource income] — Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada, designates an amount not exceeding the proportion of the amount, if any, by which

> (a) the total of all amounts each of which is an amount that would, but for paragraph 18(1)(l.1) or (m), be deductible in computing the income of the trust for the year or that is required to be included in computing its income for the year by reason of paragraph 12(1)(o) or subsection 69(6) or (7)

exceeds

> (b) the total of all amounts each of which is an amount that is deductible (otherwise than because of the membership of the trust in a partnership) under paragraph 20(1)(v.1) in computing the income of the trust for the year or that would, but for section 80.2, be included in computing its income for the year,

that

> (c) the total of all amounts each of which is a part of the income of the trust for the year computed without reference to the provisions of this Act (in this subsection referred to as the "trust-purpose income" for the year) that was payable in the year to a beneficiary of the trust or was included in computing the income of a beneficiary of the trust for the year by virtue of subsection 105(2)

is of

> (d) the trust-purpose income of the trust for the year,

that designated amount shall, for the purposes of this section, be deemed to have become payable by the trust to particular beneficiaries of the trust in the year in such proportions as are designated by the trust in that return of income, provided that those proportions are reasonable having regard to the shares of the trust-purpose income of the trust for the year included in computing their incomes for the year.

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 250(6.1) — Trust that ceases to exist deemed resident throughout year.

History: Para. 104(29)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 42(10), applicable to taxation years ending after December 20, 1991. Para. (b) formerly read:

> (b) the total of all amounts each of which is an amount deductible in computing the income of the trust for the year under paragraph 20(1)(v.1) or that would, but for section 80.2, be included in computing its income for the year,

Pre-RSC History: Subsec. 104(29) amended by 1988, c. 55, subsec. 71(19), to substitute "a taxation year throughout which it was resident in Canada" for "a taxation year" in that portion preceding para. (a), "by reason of" for "by virtue of" in para. (a), "income of the trust" for "income" in para. (d), and "become payable" for "been payable" in that portion following para. (d), applicable to taxation years of trusts commencing after 1987.

Para. 104(29)(b) amended by 1986, c. 2, s. 23, applicable to 1986 *et seq.*, to substitute "that would, but for section 80.2" for "that would, but for section 80.2 or paragraph 81(1)(r) or (s)".

Subsec. 104(29) added by 1984, c. 45, s. 33, applicable to 1982 *et seq.*, except that with respect to a designation by a trust of an amount in respect of the 1982 or 1983 taxation year under subsection 104(29),

> (a) the trust shall not deduct any amount in computing its income pursuant to subsection 104(6) to the extent that such amount exceeds the aggregate of all proportions designated in respect of beneficiaries who have concurred in writing to the designation, and a beneficiary who has not so concurred shall not be required to include any amount in computing his income under subsection 104(13) as a result of the designation; and
>
> (b) the designation may be made in the trust's return of income under Part I for its 1984 taxation year.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries.

(30) Tax under Part XII.2 — For the purposes of this Part, there shall be deducted in computing the income of a trust for a taxation year the tax paid by the trust for the year under Part XII.2.

Related Provisions: 18(1)(t) — Tax under Part XII.2 is deductible.

(31) Idem — The amount in respect of a taxation year of a trust that is deemed under subsection 210.2(3) to have been paid by a beneficiary under the trust on account of the beneficiary's tax under this Part shall, for the purposes of subsection (13), be deemed to be an amount in respect of the income of the trust for the year that has become payable by the trust to the beneficiary at the end of the year.

Pre-RSC History: Subsecs. 104(30), (31) added by 1988, c. 55, subsec. 71(19), applicable to taxation years of trusts commencing after 1987.

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries.

Selected Cases [s. 104]: *De Mond v. R.*, [1999] 4 C.T.C. 2007 (TCC) (Existence of trust did not prevent taxpayer from deducting partnership losses).

Definitions [s. 104]: "accumulating income" — 108(1); "allocable amount" — 104(15); "allowable business investment loss" — 38(c), 248(1); "allowable capital loss" — 38(b), 248(1); "*alter ego* trust", "amount", "assessment" — 248(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "beneficiary" — 104(1.1), (5.5), 108(1);

"brother" — 252(2); "business" — 248(1); "business-income tax" — 104(22.4), 126(7); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1), 248(1); "capital property" — 54, 104(4.1), 248(1); "child" — 252(1); "common-law partner" — 248(1); "consequence of the death", "consequence of whose death" — 248(8); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 108(1); "created by the taxpayer's will" — 248(9.1); "deemed capital cost" — 104(5); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "designated beneficiary" — 210; "designated contributor" — 104(5.6), (5.7)(c); "designation year" — 104(21.2); "disposition" — 248(1); "disposition day" — 104(5.3), (5.8); "dividend" — 248(1); "eligible real property gain", "eligible real property loss", "eligible taxable capital gains" — 108(1); "employee", "employee benefit plan", "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "excluded property" — 108(1); "exempt beneficiary" — 104(5.4); "exempt property" — 108(1); "foreign resource property" — 66(15), 248(1); "foreign retirement arrangement" — 248(1); "former spouse" — 252(3), (4); "grandparent" — 252(2); "income" — of trust 108(3); "income interest" — 108(1), 248(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "inventory" — 248(1); "investment tax credit" — 127(9), 248(1); "joint partner trust", "legal representative", "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "net taxable capital gains" — 104(21.3); "NISA Fund No. 2" — 248(1); "non-business-income tax" — 104(22.4), 126(7); "non-qualifying real property" — 108(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "office" — 248(1); "parent" — 252(2); "payable" — 104(24); "person", "personal trust", "post-1971 partner trust" — 248(1); "pre-1972 spousal trust", "preferred beneficiary" — 108(1); "preferred beneficiary's share" — 104(15); "prescribed", "property" — 248(1); "qualified farm property", "qualified small business corporation share" — 108(1), 110.6(1); "received" — 248(7); "registered charity", "registered pension plan" — 248(1); "related" — 104(5.7)(b), 251(2); "relevant period" — 104(5.7); "resident in Canada" — 250; "settlor" — 108(1); "share", "shareholder" — 248(1); "sister" — 252(2); "small business corporation" — 248(1); "spouse" — 252(4); "substituted property" — 248(5); "superannuation or pension benefit" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 104(23), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), (3), 108(1), 248(1); "trust-purpose income" — 104(29)(c); "uncle" — 252(2)(f); "vested indefeasibly" — 248(9.2).

105. (1) Benefits under trust — The value of all benefits to a taxpayer during a taxation year from or under a trust, irrespective of when created, shall, subject to subsection (2), be included in computing the taxpayer's income for the year except to the extent that the value

(a) is otherwise required to be included in computing the taxpayer's income for a taxation year; or

(b) has been deducted under paragraph 53(2)(h) in computing the adjusted cost base of the taxpayer's interest in the trust or would be so deducted if that paragraph

(i) applied in respect of the taxpayer's interest in the trust, and

(ii) were read without reference to clause 53(2)(h)(i.1)(B).

Related Provisions: 104(19) — Portion of dividends deemed received by beneficiary; 104(21) — Portion of capital gains deemed gain of beneficiary; 104(23) — Testamentary trusts; 107.3(4) — No application to qualifying environmental trusts; 108(5) — Interpretation.

Pre-RSC History: Subsec. 105(1) substituted by 1988, c. 55, s. 72, applicable with respect to benefits received from trusts in taxation years of the trusts commencing after 1987. Subsec. 105(1) formerly read:

> 105. (1) Benefits under trust, contract, etc. — The value of all benefits (other than a distribution or payment of capital) to a taxpayer during a taxation year from or under a trust, contract, arrangement or power of appointment, irrespective of when made or created, shall, subject to subsection (2), be included in computing his income for the year.

Selected Cases [subsec. 105(1)]: *Cooper v. MNR*, [1989] 1 C.T.C. 66 (FCTD) (Interest-free loan to beneficiary by trust not taxable).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-243R4: Dividend refund to private corporations; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

I.T. Technical News: No. 11 (payments made by a trust for the benefit of a minor beneficiary; taxable benefit for use of personal-use property).

(2) Upkeep, etc. — Such part of an amount paid by a trust out of income of the trust for the upkeep, maintenance or taxes of or in respect of property that, under the terms of the trust arrangement, is required to be maintained for the use of a tenant for life or a beneficiary as is reasonable in the circumstances shall be included in computing the income of the tenant for life or other beneficiary from the trust for the taxation year for which it was paid.

Related Provisions: 104(6) — Deduction in computing trust income; 104(13.1), (13.2) — Designation of distributed income by trust; 104(23) — Testamentary trusts; 104(29) — Amounts deemed to be payable to beneficiaries; 108(5) — Interpretation; 120.4(1)"split income"(c) — Certain trust income of children subject to income splitting tax.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-342R: Trusts — income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-465R: Non-resident beneficiaries of trusts; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

I.T. Technical News: No. 11 (taxable benefit for use of personal-use property).

Definitions [s. 105]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "beneficiary" — 108(1); "property" — 248(1); "taxation year" — 104(23)(a), 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

106. (1) Income interest in trust — Where an amount in respect of a taxpayer's income interest in a trust has been included in computing the taxpayer's income for a taxation year by reason of subsection (2) or 104(13), except to the extent that an amount in respect of that income interest has been deducted in computing the taxpayer's taxable income pursuant to subsection 112(1) or 138(6), there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so included in computing the taxpayer's income for the year, and

(b) the amount, if any, by which the cost to the taxpayer of the income interest exceeds the total of all amounts in respect of the interest that were deductible under this subsection in computing the taxpayer's income for previous taxation years.

Related Provisions: 106(1.1) — Cost of income interest; 108(1) — Exclusions from definition of "trust"; 115(1)(a)(iv) — Non-residents' taxable income earned in Canada; 128.1(10)"excluded right or interest"(j), (k) — Emigration — whether a deemed disposition of income interest.

Pre-RSC History: That portion of subsec. 106(1) preceding para. (a) amended by 1988, c. 55, s. 73, to substitute "by reason of" for "by virtue of" and "subsection 112(1) or 138(6)" for "subsection 112(1), 110.1(1) or 138(6)", applicable to 1988 *et seq.*

That portion of subsec. 106(1) preceding para. (a) substituted by 1986, c. 55, s. 29, applicable to 1986 *et seq.* with respect to income interests in trusts acquired after 5 p.m. EST, November 26, 1985. That portion formerly read:

> 106. (1) Income interest in trust — Where an amount in respect of a taxpayer's income interest in a trust has been included in computing his income for a taxation year by virtue of subsection 104(13) or subsection (2) of this section, there may be deducted in computing his income for the year the lesser of

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

(1.1) Cost of income interest in a trust — For the purposes of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of an income interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before the acquisition thereof by the taxpayer, shall be deemed to be nil.

Proposed Amendment — 106(1.1)

(1.1) Cost of income interest in a trust — The cost to a taxpayer of an income interest of the taxpayer in a trust is deemed to be nil unless

(a) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition; or

(b) the cost of any part of the interest would otherwise be determined not to be nil under paragraph 128.1(1)(c) or (4)(c).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 49(1), will amend subsec. 106(1.1) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 106(1.1) of the Act provides that, for the purposes of determining the deduction available under subsection 106(1) in respect of a beneficiary's income interest in a trust, the cost to the beneficiary of the interest is nil except where the interest was acquired from a beneficiary under the trust.

Subsection 106(1.1) is amended so that the deemed nil cost also does not apply to a beneficiary's income interest in a trust where:

- any part of the interest was acquired from a person who was the beneficiary in respect of the interest immediately before that acquisition, or
- the cost of any part of the interest was ever determined not to be nil under the taxpayer migration rules in section 128.1.

Subsection 106(1.1) is also amended to ensure that it applies for the purposes of the Act, and not simply subsection 106(1).

Related Provisions: 108(1) — Exclusions from definition of "trust".

Pre-RSC History: Subsec. 106(1.1) added by 1980-81-82-83, c. 140, s. 61, applicable after November 12, 1981.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

(2) Disposition by taxpayer of income interest — Where in a taxation year a taxpayer disposes of an income interest in a trust,

(a) except where subsection (3) is applicable, there shall be included in computing the taxpayer's income for the year the proceeds of the disposition;

Proposed Amendment — 106(2)(a)

(a) except where subsection (3) applies to the disposition, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(i) the proceeds of disposition

exceed

(ii) where that interest includes a right to enforce payment of an amount by the trust, the amount in respect of that right that has been included in computing the taxpayer's income for a taxation year because of subsection 104(13);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 49(2), will amend para. 106(2)(a) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 106(2) of the Act applies where a taxpayer disposes of an income interest (as defined in subsection 108(1)) in a trust. Paragraph 106(2)(a) provides that unless the disposition results from a distribution of property by the trust, the taxpayer's proceeds of disposition are included in computing the taxpayer's income for the year that includes the disposition.

Paragraph 106(2)(a) is amended to ensure that where a taxpayer disposes of an income interest in a trust that includes a right to enforce payment by the trust, the proceeds of disposition of the income interest are offset by the amount that has been included in the taxpayer's income under subsection 104(13) because of that right. This measure is meant to ensure that there is no double taxation where such rights are disposed of.

This amendment applies to the 2000 and subsequent taxation years.

(b) any taxable capital gain or allowable capital loss of the taxpayer from the disposition shall be deemed to be nil; and

(c) for greater certainty, the cost to the taxpayer of each property received by the taxpayer as consideration for the disposition is the fair market value of the property at the time of the disposition.

Related Provisions: 107.3(4) — No application to qualifying environmental trusts; 107.4(3)(n) — No disposition of income interest in trust on qualifying disposition; 108(1) — Exclusions from definition of "trust"; 115(1)(a)(iv) — Non-residents' taxable income earned in Canada.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

Advance Tax Rulings: ATR-3: Winding-up of an estate.

(3) Proceeds of disposition of income interest — For greater certainty, where at any time any property of a trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's income interest in the trust, the trust shall be deemed to have disposed of the property for proceeds of disposition equal to the fair market value of the property at that time.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

Definitions [s. 106]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficiary" — 108(1); "cost" — 106(1.1); "income interest" — 108(1), 248(1); "person" — 248(1); "proceeds of disposition" — 54, 106(3); "property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 104(23)(a), 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

107. (1) Disposition by taxpayer of capital interest — Where a taxpayer has disposed of all or any part of the taxpayer's capital interest in a trust,

(a) where the trust is a personal trust or a prescribed trust, for the purpose of computing the taxpayer's taxable capital gain, if any, from the disposition, the adjusted cost base to the taxpayer of the interest, or the part of the interest, as the case may be, immediately before the disposition shall be deemed to be the greater of

Proposed Amendment — 107(1)(a) opening words

(a) where the trust is a personal trust or a prescribed trust, for the purpose of computing the taxpayer's capital gain, if any, from the disposition, the adjusted cost base to the taxpayer of the interest or the part of the interest, as the case may be, immediately before the disposition is, unless any part of the interest has ever been acquired for consideration and, at the time of the disposition, the trust is non-resident, deemed to be the greater of

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(1), will amend the opening words of para. 107(1)(a) to read as

above, applicable to 2000 *et seq.* except that, in respect of transfers in 2000, for the purposes of subsec. 107(1), the residence of a transferee trust shall be determined without reference to s. 94, as it read before 2001.

Technical Notes: Subsection 107(1) of the Act contains special rules that apply to the disposition of a capital interest in a trust.

Paragraph 107(1)(a) applies for the purpose of computing a taxpayer's taxable capital gain from the disposition of a capital interest in a personal trust (or a prescribed trust described in section 4800.1 of the Regulations), except where the interest was an interest in a non-resident inter vivos trust purchased by the taxpayer and the disposition was not by way of a distribution to which subsection 107(2) applies. For this purpose the residency of the trust is to be determined without reference to section 94 as it read before 2001.

Where paragraph 107(1)(a) applies, the adjusted cost base (ACB) to the taxpayer of a trust capital interest for capital gains purposes is generally equal to the greater of the ACB otherwise determined and the "cost amount" of the interest. Subsection 108(1) provides that, for this purpose, the "cost amount" of a capital interest at any time is based on the amount of the trust's money and the cost amount of the trust's other property. The "cost amount" mechanism in paragraph 107(1)(a) generally allows the flow-out from a personal or prescribed trust to a beneficiary of trust capital without adverse tax consequences. However, the concluding words in subsection 107(1) provide that paragraph 107(1)(a) generally does not apply with regard to certain purchased interests in non-resident trusts.

Paragraph 107(1)(a) is amended, in conjunction with the repeal of the concluding wording in subsection 107(1), to ensure that paragraph 107(1)(a) never applies to dispositions of any capital interests in non?resident trusts acquired for consideration. New paragraph 108(6)(c) and new subsection 108(7) are relevant in determining where an interest in a trust has been acquired for consideration. Amended paragraph 107(1)(a) also provides that, for this purpose, a non-resident trust includes a trust deemed by subparagraph 94(1)(c)(i) to be resident in Canada.

(i) its adjusted cost base, otherwise determined, to the taxpayer immediately before the disposition, and

(ii) the amount, if any, by which

(A) its cost amount to the taxpayer immediately before the disposition

exceeds

(B) the total of all amounts deducted under paragraph 53(2)(g.1) in computing its adjusted cost base to the taxpayer immediately before the disposition;

(b) for greater certainty, for the purposes of computing the taxpayer's allowable capital loss, if any, from the disposition of the interest or part thereof, as the case may be, the adjusted cost base to the taxpayer of the interest or part thereof immediately before the disposition is the adjusted cost base to the taxpayer thereof immediately before that time as determined under this Act without reference to paragraph (a),

Proposed Repeal — 107(1)(b)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(2), will repeal para. 107(1)(b), applicable to 2000 *et seq.*

Technical Notes: Paragraph 107(1)(b) is repealed because it is unnecessary. Since paragraph 107(1)(a) applies only for the purposes of computing a taxpayer's capital gain, it is clear without paragraph 107(1)(b) that the ACB calculation in paragraph 107(1)(a) is not relevant for the purposes of computing a taxpayer's allowable capital loss.

(c) where the taxpayer is not a mutual fund trust, the taxpayer's loss from the disposition is deemed to be the amount, if any, by which the amount of that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the taxpayer is a corporation,

(I) was a taxable dividend designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(II) was an amount designated under subsection 104(20) by the trust in respect of the taxpayer,

(B) where the taxpayer is another trust, was an amount designated under subsection 104(19) or (20) by the trust in respect of the taxpayer, and

(C) where the taxpayer is not a corporation, trust or partnership, was an amount designated under subsection 104(20) by the trust in respect of the taxpayer

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the taxpayer's loss otherwise determined from a previous disposition of an interest in the trust, and

(d) where the taxpayer is a partnership, the share of a person (other than another partnership or a mutual fund trust) of any loss of the partnership from the disposition is deemed to be the amount, if any, by which that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which is a dividend that was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the person is a corporation,

(I) was a taxable dividend that was designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the person's taxable income or taxable income earned in Canada for any taxation year, or

(II) was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person,

(B) where the person is an individual other than a trust, was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person, and

(C) where the person is another trust, was a dividend designated under subsection 104(19) or (20) by the trust in respect of the taxpayer and was an amount received by the person (or that would have been received by the person if this Act were read without reference to subsection 104(19)),

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the person's loss otherwise determined from a previous disposition of an interest in the trust,

except that where the interest was an interest in an *inter vivos* trust not resident in Canada that was purchased by the taxpayer, paragraph (a) does not apply in respect of the disposition of all or any part thereof except where subsection (2) is applicable in respect of any distribution of property by the trust to the taxpayer in satisfaction of that interest or that part thereof, as the case may be.

Proposed Repeal — 107(1) closing words

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(3), will repeal the portion of subsec. 107(1) after para. (d), applicable to 2000 *et seq.*

Technical Notes: See under 107(1)(a).

Related Provisions: 40(3.7) — Application to non-resident individual; 104(19) — Taxable dividends flowed through trust; 107(1.1) — Cost of capital interest; 107.3(4) — No application to qualifying environmental trusts; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 128.1(10)"excluded right or interest"(j), (k) — Emigration — whether a deemed disposition of capital interest; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest; 248(25.4) — Addition to cost of capital interest in trust.

History: Para. 107(1)(c) amended, and para. (d) added by 1998, c. 19, subsec. 128(1), applicable to dispositions that occur after April 26, 1995 except that, for dispositions that occur before 1998, the first reference to "loss" in para. 107(1)(c) shall be read as "capital loss". Para. 107(1)(c) formerly read:

(c) where the taxpayer is a corporation and the interest is not an interest in a prescribed trust, its capital loss from the disposition at any time of the interest or part thereof shall be deemed to be the amount, if any, by which the amount of its loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which was received by the trust before that time (and, where the trust is a unit trust, after 1987) and designated by it under subsection 104(19) or (20) in respect of the corporation

exceeds

(ii) such portion of the total referred to in subparagraph (i) as can reasonably be considered to have resulted in a reduction under this paragraph of its capital loss otherwise determined from the disposition before that time of an interest in the trust,

Para. 107(1)(a) amended by 1995, c. 21, s. 35, applicable to taxation years that end after February 21, 1994. Para. (a) formerly read:

(a) where the trust is a personal trust or a prescribed trust, for the purposes of computing the taxpayer's taxable capital gain, if any, from the disposition of the interest or part thereof, as the case may be, the adjusted cost base to the taxpayer thereof immediately before the disposition shall be deemed to be an amount equal to the greater of the adjusted cost base to the taxpayer thereof otherwise determined immediately before that time and the cost amount to the taxpayer thereof immediately before that time,

Para. 107(1)(c) substituted by 1994, c. 21, s. 47, applicable to 1988 *et seq.* That para. formerly read:

(c) where the taxpayer is a corporation and the interest is not an interest in a prescribed trust, its capital loss from the disposition at any time of the interest or part thereof shall be deemed to be the amount of its loss otherwise determined minus the total of all amounts each of which is an amount received by the trust before that time and designated by it in respect of the corporation under subsection 104(19) or (20),

Para. 107(1)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 76(1), to add "or a prescribed trust", applicable to dispositions occurring after 1987, other than a disposition of an interest in a trust, the units of which were listed on October 1, 1987 on a prescribed stock exchange, occurring before the earlier of

(a) January 1, 1991, and

(b) any date after October 1, 1987 on which a beneficial interest in the trust was or is issued.

Pre-RSC History: Para. 107(1)(a) amended by 1988, c. 55, subsec. 74(1), to add "where the trust is a personal trust", applicable in respect of dispositions after 1987 other than a disposition of an interest in a trust, the units of which were listed on October 1, 1987 on a prescribed stock exchange, before the earlier of

(a) January 1, 1991, and

(b) any date after October 1, 1987 on which a beneficial interest in the trust was or is issued.

Para. 107(1)(c) added by 1980-81-82-83, c. 140, subsec. 62(1), applicable with respect to dispositions occurring after November 12, 1981.

Subsec. 107(1) substituted by 1973-74, c. 14, subsec. 32(1), applicable to 1972 *et seq.*

Regulations: 3200 (prescribed stock exchange, for application before 1991; technically does not apply to the amending legislation [1994, c. 7, Sch. II (1991, c. 49), s. 76]); 4800.1 (prescribed trust).

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate.

(1.1) Cost of capital interest in a trust — For the purpose of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before its acquisition by the taxpayer or an interest issued to the taxpayer for consideration paid by the taxpayer that is equal to the fair market value of the interest at the time of issuance, is deemed to be

(a) where the taxpayer elects under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil.

Proposed Amendment — 107(1.1)

(1.1) Cost of capital interest in a trust — The cost to a taxpayer of a capital interest of the taxpayer in a personal trust or a prescribed trust is deemed to be,

(a) where the taxpayer elected under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil, unless

(i) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition, or

(ii) the cost of any part of the interest would otherwise be determined not to be nil under section 48 as it read in its application before 1993 or under paragraph 111(4)(e) or 128.1(1)(c) or (4)(c).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(4), will amend subsec. 107(1.1) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 107(1.1) of the Act provides, for the purposes of subsection 107(1), that the cost of a capital inter-

est in a trust is nil except where the interest is acquired from a previous capital beneficiary in the trust or where the interest is issued to the beneficiary for consideration equal to the fair market value of the interest at the time of issuance.

Subsection 107(1.1) is amended so that it applies only to trusts that are personal trusts or prescribed trusts. It is intended that trusts described in section 4800.1 of the Regulations be prescribed for this purpose.

Paragraph 107(1.1)(b) is amended to provide that the cost of the interest will not be deemed nil where:

- the cost of any part of the interest would otherwise be determined not to be nil under the taxpayer migration rules in section 128.1 or former section 48 or under paragraph 111(4)(e) (acquisition of control), or
- any part of the interest was acquired from a person who was the beneficiary in respect of the interest immediately before that acquisition.

Subsection 107(1.1) is also amended to ensure that it applies for the purposes of the Act, and not simply subsection 107(1).

Related Provisions: 107.4(3)(k)–(m) — Cost of capital interest in trust following qualifying disposition; 107.4(4) — Fair market value of capital interest in trust; 248(25.4) — Addition to cost of capital interest in trust.

History: Subsec. 107(1.1) amended by 1998, c. 19, subsec. 128(2), applicable to 1994 *et seq.* Subsec. 107(1.1) formerly read:

> (1.1) Cost of capital interest in a trust — For the purposes of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before the acquisition thereof by the taxpayer or an interest issued to the taxpayer for consideration paid by the taxpayer that is equal to the fair market value thereof at the time of issuance, shall be deemed to be nil.

Pre-RSC History: Subsec. 107(1.1) substituted by 1980-81-82-83, c. 140, subsec. 62(2), applicable after November 12, 1981. Subsec. 107(1.1) formerly read:

> (1.1) Cost of capital interest in a testamentary trust — For the purposes of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a testamentary trust shall be deemed to be
>
> (a) where the interest was purchased, the cost otherwise determined;
>
> (b) where paragraph 70(5)(c) applies, the cost therein determined; and
>
> (c) in any other case, nil.

Subsec. 107(1.1) added by 1974-75-76, c. 26, subsec. 66(1), applicable to 1972 *et seq.*

Regulations: 4800.1 (prescribed trust; to be amended to apply to 107(1.1)).

(2) Capital interest distribution by personal or prescribed trust — Where at any time any property of a personal trust or a prescribed trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust, the following rules apply:

Proposed Amendment — 107(2) opening words [temporary]

(2) Distribution by personal trust — Subject to subsection (2.001), where at any time a property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(5), will amend the opening words of subsec. 107(2) to read as above, applicable to distributions made after October 1, 1996 and before 2000 (see further amendment below).

Technical Notes: See under 107(2) below.

Proposed Amendment — 107(2) opening words

(2) Distribution by personal trust — Subject to subsections (2.001), (2.002) and (4) to (5), where at any time a property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust and there is a resulting disposition of all or any part of the taxpayer's capital interest in the trust,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(6), will amend the opening words of subsec. 107(2) to read as above, applicable to distributions made after 1999.

Technical Notes: Subsection 107(2) of the Act applies where a personal trust or a trust described in section 4800.1 of the Regulations distributes property to a beneficiary in satisfaction of all or part of the beneficiary's capital interest in the trust. Under paragraphs 107(2)(a) and (b), the trust is deemed to have disposed of the property for proceeds of disposition equal to the property's cost amount and the property is deemed to have been acquired by the beneficiary for the same amount plus a "bump" equal to the specified percentage of any excess of the adjusted cost base to the beneficiary of the capital interest over its "cost amount" (as defined by subsection 108(1)) to the beneficiary of the interest. Under paragraph 107(2)(c), the beneficiary is deemed to have disposed of the capital interest for proceeds equal to the deemed acquisition cost (determined as if the specified percentage referred to above were 100 per cent) less a reduction equal to the amount of debt assumed by the beneficiary that is conditional upon the distribution of the property. Under subsection 107(3), the specified percentage is 100 per cent in the case of non-depreciable capital property (e.g., land and shares) and 50 per cent in any other case.

Subsection 107(2) is amended to clarify that it applies in connection with distributions in respect of a capital interest in a personal or prescribed trust only if the distribution results in a disposition of all or part of the capital interest. Where the distribution does not constitute a disposition of a capital interest in a trust because of new paragraph (i) of the definition "disposition" in subsection 248(1), the rules in amended subsection 107(2.1) apply.

Subsection 107(2) is amended so that it is expressly subject to amended subsections 107(4) to (5). This amendment is made for technical clarity and does not represent any change in policy. Amended subsections 107(4) to (5) describe trust distributions to which subsection 107(2.1) is to apply.

Subsection 107(2) also is amended so that it is subject to new subsections 107(2.001) and (2.002). New subsection 107(2.001) allows a trust to elect out of the rules in subsection 107(2) in respect of a distribution of property to a beneficiary in satisfaction of the beneficiary's capital interest in the trust where

- the trust is resident in Canada at the time of the distribution,
- the property is taxable Canadian property, or
- the property is capital property used in, eligible capital property in respect of, or property described in the inventory of, a business carried on by the trust through a permanent establishment (as defined by regulation) in Canada immediately before the time of the distribution.

If this election is made, the distribution is subject to the rules in amended subsection 107(2.1). An electing trust is generally required to file a prescribed form with the Minister with its tax return for the taxation year that includes the time of the distribution. This amendment applies to distributions made after October 1, 1996. For distributions made before the date of Royal Assent, the election is considered to have been made on a timely basis if it is filed by the filing-due date for the trust's taxation year that includes the date of Royal Assent.

New subsection 107(2.002) applies where a non-resident trust makes a distribution, after 1999, of a property (other than taxable Canadian property or business property connected with a Canadian permanent establishment) to a beneficiary of the trust in satisfaction of the beneficiary's capital interest in the trust. The ben-

eficiary in these circumstances may elect out of the rules in subsection 107(2) in respect of the distribution, with the result that subsection 107(2.1) applies in respect of the distribution. The election is made by filing a prescribed form with the beneficiary's income tax return. Where the election is made, the cost amount of the beneficiary's interest also is deemed to be nil for the purposes of subparagraph 107(1)(a)(ii). This amendment applies to distributions made after 1999. For distributions made before the date of Royal Assent, the election is considered to have been made on a timely basis if it is filed by the filing-due date for the beneficiary's taxation year that includes the date of Royal Assent.

(a) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its cost amount to the trust immediately before that time;

(b) the taxpayer is, subject to subsection (2.2), deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the amount, if any, by which

(i) the adjusted cost base to the taxpayer of the capital interest or part thereof, as the case may be, immediately before that time as determined for the purposes of paragraph (1)(b)

exceeds

(ii) the cost amount to the taxpayer of the capital interest or part thereof, as the case may be, immediately before that time;

(c) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of the capital interest for proceeds equal to the cost at which the taxpayer is deemed by paragraph (b) to have acquired the property, minus the amount of any debt assumed by the taxpayer or of any other legal obligation assumed by the taxpayer to pay any amount, if the distribution of the property to the taxpayer was conditional on the assumption by the taxpayer of the debt or obligation;

Proposed Amendment — 107(2)(b)–(c)

(b) subject to subsection (2.2), the taxpayer is deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the specified percentage of the amount, if any, by which

(i) the adjusted cost base to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time (determined without reference to paragraph (1)(a))

exceeds

(ii) the cost amount to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time;

(b.1) for the purpose of paragraph (b), the specified percentage is,

(i) where the property is capital property (other than depreciable property), 100%,

(ii) where the property is eligible capital property in respect of a business of the trust, 100%, and

(iii) in any other case, 75%;

(c) the taxpayer is deemed to have disposed of all or part, as the case may be, of the capital interest for proceeds equal to the amount, if any, by which

(i) the cost at which the taxpayer would be deemed by paragraph (b) to have acquired the property if the specified percentage referred to in that paragraph were 100%

exceeds

(ii) the total of all amounts each of which is an eligible offset at that time of the taxpayer in respect of the capital interest or the part of it;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(7), will amend paras. 107(2)(b) and (c) to read as above, and add para. (b.1), applicable to distributions made after 1999.

Technical Notes: Paragraph 107(2)(b.1) is introduced (in conjunction with consequential amendments to paragraphs 107(2)(b) and (c) and the repeal of subsection 107(3)) so that the specified percentages referred to above are explicitly provided under subsection 107(2). This amendment is intended to clarify the operation of subsection 107(2). In addition, the specified percentage for property (other than non-depreciable capital property and eligible capital property) is being increased from 50 per cent to 75 per cent. The specified percentage for eligible capital property is increased from 50 per cent to 100 per cent in recognition that only a maximum of 75 per cent of the cost of eligible capital property can ultimately be deducted for income tax purposes. This amendment is intended to reduce the differential in the tax treatment of depreciable and non-depreciable property in this context, so that this differential corresponds more closely to that which prevailed before the increase in the capital gains inclusion rate from 50 per cent to 75 per cent.

Paragraph 107(2)(c) is amended so that the reduction, because of debt assumed by the beneficiary, to a beneficiary's proceeds of disposition of the beneficiary's capital interest is now provided under the new definition "eligible offset" in subsection 108(1).

(d) where the property so distributed was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the taxpayer of the property; and

Proposed Addition — 107(2)(d.1)

(d.1) the property is deemed to be taxable Canadian property of the taxpayer where

(i) the taxpayer is non-resident at that time,

(ii) that time is before October 2, 1996, and

(iii) the property was deemed by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 87(4) or (5) or paragraph 97(2)(c) to be taxable Canadian property of the trust; and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(8), will add para. 107(2)(d.1), applicable in determining after October 1, 1996 whether property is taxable Canadian property.

Technical Notes: Paragraph 107(2)(d.1) is amended to clarify the tax consequences of the disposition of taxable Canadian property by a trust to non-resident beneficiaries before October 2, 1996. In the event that the property was explicitly deemed to have been taxable Canadian property under a number of specified provisions of the Act, paragraph 107(2)(d.1) ensures that it continues to be taxable Canadian property of the beneficiary.

(e) [Repealed]

(f) where the property so distributed was eligible capital property of the trust in respect of a business of the trust,

(i) where the eligible capital expenditure of the trust in respect of the property exceeds the cost at which the taxpayer is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the taxpayer in respect of the property shall be deemed to be the amount that was the eligible capital expenditure of the trust in respect of the property, and

(B) 3/4 of the excess shall be deemed to have been allowed under paragraph 20(1)(b) to the taxpayer in respect of the property in computing income for taxation years ending

(I) before the acquisition by the taxpayer of the property, and

(II) after the adjustment time of the taxpayer in respect of the business, and

(ii) for the purposes of determining after that time

(A) the amount deemed under subparagraph 14(1)(a)(v) to be the taxpayer's taxable capital gain, and

(B) the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the taxpayer's income

in respect of any subsequent disposition of the property of the business, there shall be added to the amount otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the trust immediately before the distribution,

B is the fair market value of the property so distributed immediately before the distribution, and

C is the fair market value immediately before the distribution of all eligible capital property of the trust in respect of the business.

Related Provisions: 43(2) — No capital loss on payment out of trust's income or gains; 53(4) — Effect on ACB of trust interest; 69(11) — Deemed proceeds of disposition; 73(1.02)(c)(i) — Where rollover under 73(1) disallowed; 80.03(1), (3)(b) — Capital gain where subsec. 107(2) applies to trust interest on disposition following debt forgiveness; 104(4)(a.2) — Anti-avoidance rule where trust distributes property before death; 104(5.8) — Trust transfers; 107(2.01) — Principal residence distribution by personal trust; 107(2.1) — Application where trust elects out of 107(2); 107(3) — Cost of certain property; 107(4) — Where trust in favour of spouse; 107(4.1) — Where subsec. 75(2) applicable to trust; 107(5) — Distribution to non-resident; 107.4(3) — Rollover of property to trust where no change in beneficial ownership; 107.4(4) — Fair market value of capital interest in trust; 126(2.22) — Foreign tax credit to trust on disposition of property by non-resident beneficiary; 220(4.6)–(4.63) — Security for tax on distribution of taxable Canadian property to non-resident beneficiary; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest.

History: The opening words of para. 107(2)(b) amended by 1998, c. 19, subsec. 128(3), applicable to distributions made after 1993. The opening words formerly read:

(b) the taxpayer shall be deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the amount, if any, by which

Cl. 107(2)(f)(ii)(B) amended by 1995, c. 3, s. 29, applicable to distributions of property made after February 22, 1994. Cl. (B) formerly read:

(B) the amount to be included under paragraph 14(1)(b) in computing the income of the taxpayer

Para. 107(2)(e) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(1), applicable to distributions occurring after July 13, 1990. Para. (e) formerly read:

(e) where the property so distributed was eligible capital property of the trust in respect of a business of the trust,

(i) the references to "its cost amount" in paragraphs (a) and (b) shall be read as references to "4/3 of its cost amount", and

(ii) where the eligible capital expenditure of the trust in respect of the property exceeds the cost at which the taxpayer is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the taxpayer in respect of the property shall be deemed to be the amount that was the eligible capital expenditure of the trust in respect of the property, and

(B) 3/4 of the excess shall be deemed to have been allowed to the taxpayer in respect of the property under paragraph 20(1)(b) in computing income for taxation years ending

(I) before the acquisition by the taxpayer of the property, and

(II) after the adjustment time of the taxpayer in respect of the business.

Para. 107(2)(f) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(2), applicable to distributions occurring after 1987.

Para. 107(2)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 76(2), applicable with respect to distributions made after July 13, 1990.

Pre-RSC History: That portion of subsec. 107(2) preceding para. (a) substituted by 1988, c. 55, subsec. 74(2), applicable with respect to distributions after 1987 other than a distribution by a trust, the units of which were listed on October 1, 1987 on a prescribed stock exchange, before the earlier of

(a) January 1, 1991, and

(b) any date after October 1, 1987 on which a beneficial interest in the trust is issued.

That portion formerly read:

(2) Distribution by trust in satisfaction of capital interest — Where at any time any property of a trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or part of his capital interest in the trust, the following rules apply:

Para. 107(2)(b) substituted by 1973-74, c. 14, subsec. 32(2), applicable to 1972 *et seq.*

Regulations: 3200 (prescribed stock exchange, for application before 1991); 4800.1 (prescribed trust).

Interpretation Bulletins: IT-120R5: Principal residence; IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-349R3: Intergenerational transfers of farm property on death; IT-393R2: Election re tax on rents and timber royalties — non-residents.

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate; ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

Proposed Addition — 107(2.001), (2.002)

(2.001) No rollover on election by a trust — Where a trust makes a distribution of a property to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and so elects in prescribed form filed with the Minister with the trust's return of income for its taxation year in which the

distribution occurred, subsection (2) does not apply to the distribution if

(a) the trust is resident in Canada at the time of the distribution;

(b) the property is taxable Canadian property; or

(c) the property is capital property used in, eligible capital property in respect of, or property described in the inventory of, a business carried on by the trust through a permanent establishment (as defined by regulation) in Canada immediately before the time of the distribution.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(9), will add subsec. 107(2.001), applicable to distributions made after October 1, 1996, except that for distributions made from a trust before the particular day on which the amending legislation is assented to, an election under subsec. 107(2.001) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes the particular day.

Technical Notes: See under 107(2).

Related Provisions: 107(2.002) — Election by beneficiary; 248(1)"taxable Canadian property"(m)–(q) — Extended meaning of TCP.

(2.002) No rollover on election by a beneficiary — Where a non-resident trust makes a distribution of a property (other than a property described in paragraph (2.001)(b) or (c)) to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and the beneficiary makes an election under this subsection in prescribed form filed with the Minister with the beneficiary's return of income for the beneficiary's taxation year in which the distribution occurred,

(a) subsection (2) does not apply to the distribution; and

(b) for the purpose of subparagraph (1)(a)(ii), the cost amount of the interest to the beneficiary is deemed to be nil.

Related Provisions: 107(2.001) — Election by trust.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(9), will add subsec. 107(2.002), applicable to distributions made after 1999, except that for distributions made to a beneficiary before the particular day on which the amending legislation is assented to, an election under subsec. 107(2.002) is deemed to have been made in a timely manner if it is made on or before the beneficiary's filing-due date for the taxation year that includes the particular day.

Technical Notes: See under 107(2).

(2.01) Distribution of principal residence — Where a property that would, if a personal trust had designated the property under paragraph (c.1) of the definition "principal residence" in section 54, be a principal residence (within the meaning of that definition) of the trust for a taxation year, is at any time (in this subsection referred to as "that time") distributed by the trust to a taxpayer in circumstances to which subsection (2) applies and subsection (4) does not apply and the trust so elects in its return of income under this Part for the taxation year that includes that time,

Proposed Amendment — 107(2.01)

(2.01) Distribution of principal residence — Where property that would, if a personal trust had designated the property under paragraph (c.1) of the definition "principal residence" in section 54, be a principal residence (within the meaning of that definition) of the trust for a taxation year, is at any time (in this subsection referred to as "that time") distributed by the trust to a taxpayer in circumstances to which subsection (2) applies and the trust so elects in its return of income for the taxation year that includes that time,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(10), will amend the opening words of subsec. 107(2.01) to read as above, applicable to distributions made after 1999.

Technical Notes: Subsection 107(2.01) of the Act allows a personal trust to elect to be treated as if it had disposed of, and reacquired, a principal residence at its fair market value immediately before distributing the property to one of its beneficiaries under subsection 107(2). The rule does not apply to distributions of property by a post-1971 partner trust in circumstances to which subsection 107(4) applies. (Subsection 107(4) generally applies to distributions made by such a trust to a beneficiary, other than the beneficiary spouse, before the death of the beneficiary spouse.) Subsection 107(2.01) is designed to allow a personal trust to take advantage of the principal residence exemption. In this regard, reference can be made to the definition of "principal residence" in section 54.

Subsection 107(2.01) is amended to eliminate the reference to subsection 107(4), given that subsection 107(2.1) now applies to distributions to which amended subsection 107(4) applies.

This amendment applies to distributions made after 1999.

(a) the trust shall be deemed to have disposed of the property immediately before the particular time that is immediately before that time for proceeds of disposition equal to the fair market value of the property at that time; and

(b) the trust shall be deemed to have reacquired the property at the particular time at a cost equal to that fair market value.

History: That portion of subsec. 107(2.01) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(3), applicable to distributions occurring after 1990, except that an election by a trust (other than a trust described in subsec. 70(6) or 73(1)) to have subsec. 107(2.01), as amended, apply to a distribution by the trust occurring after 1990 and before June 11, 1993 may be made by the trust by notifying the Minister of National Revenue in writing before December 11, 1993. That portion formerly read:

> (2.01) Principal residence distribution by spousal trust — Where at any time (in this subsection referred to as "that time") a property has been distributed by a trust described in subsection 70(6) or 73(1) to a taxpayer in circumstances in which subsection (2) applies and subsection (4) does not apply and the property would, if the trust had designated the property under paragraph 54(g), be a principal residence (within the meaning assigned by that paragraph) of the trust for a taxation year, the following rules apply where the trust so elects in its return of income under this Part for the taxation year that includes that time:

Subsec. 107(2.01) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 76(3), applicable to distributions occurring after May 9, 1985, except that an election to have the subsec. apply in respect of a distribution by trust occurring after May 9, 1985 and before December 18, 1991, that is made by the trust so notifying the Minister of National Revenue in writing before April 1992 shall be deemed to have been made in accordance with the subsec.; and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election.

Interpretation Bulletins: IT-120R5: Principal residence.

(2.1) Other distributions — Where at any time any property of a trust is distributed by the trust to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's capital interest in the trust or in satisfaction of a right described in subsection 52(6), and subsection (2) does not apply in respect of the distribution, notwithstanding any other provision of this Act other than section 132.2,

(a) the trust shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the beneficiary shall be deemed to have acquired the property at a cost equal to that fair market value; and

(c) the beneficiary shall be deemed to have disposed of the interest or part thereof in the trust or the right, as the case may be, for proceeds of disposition equal to the cost at which the beneficiary is deemed by paragraph (b) to have acquired the property.

Proposed Amendment — 107(2.1)

(2.1) Other distributions — Where at any time a property of a trust is distributed by the trust to a beneficiary under the trust, there would, if this Act were read without reference to paragraphs (h) and (i) of the definition "disposition" in subsection 248(1), be a resulting disposition of all or any part of the beneficiary's capital interest in the trust (which interest or part, as the case may be, is in this subsection referred to as the "former interest") and the rules in subsection (2) and section 132.2 do not apply in respect of the distribution,

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the beneficiary is deemed to have acquired the property at a cost equal to the proceeds determined under paragraph (a);

(c) the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(i) the proceeds determined under paragraph (a) (other than the portion, if any, of the proceeds that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies),

exceeds the total of

(ii) where the property is not a Canadian resource property or foreign resource property, the amount, if any, by which

(A) the fair market value of the property at that time

exceeds the total of

(B) the cost amount to the trust of the property immediately before that time, and

(C) the portion, if any, of the excess that would be determined under this subparagraph if this subparagraph were read without reference to this clause that represents a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies, and

(iii) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest; and

(d) notwithstanding paragraphs (a) to (c), where the trust is non-resident at that time, the property is not described in paragraph (2.001)(b) or (c) and, if this Act were read without reference to this paragraph, there would be no income, loss, taxable capital gain or allowable capital loss of a taxpayer in respect of the property because of the application of subsection 75(2) to the disposition at that time of the property,

(i) the trust is deemed to have disposed of the property for proceeds equal to the cost amount of the property,

(ii) the beneficiary is deemed to have acquired the property at a cost equal to the fair market value of the property, and

(iii) the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(A) the fair market value of the property

exceeds the total of

(B) the portion, if any, of the amount of the distribution that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies, and

(C) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(11), will amend subsec. 107(2.1) to read as above, applicable to distributions made after 1999 (other than distributions made before March 2000 in satisfaction of rights described in subsec. 52(6) that were acquired before 2000).

Technical Notes: Where trust property is distributed by a trust to a beneficiary in satisfaction of the beneficiary's capital interest in the trust and subsection 107(2) of Act does not apply, the rules in subsection 107(2.1) apply. Subsection 107(2.1) also applies to a distribution by a trust in satisfaction of a right described in subsection 52(6). Under paragraphs 107(2.1)(a) to (c), the trust is deemed to have disposed of the distributed property for the property's fair market value and the beneficiary is deemed to have acquired the property, and disposed of the capital interest or right described in subsection 52(6), for the same amount. Notwithstanding the reference to subsection 52(6) (under which a cost is ascribed to the right to enforce payment out of a trust's capital gains and income), it is unclear that there is relief from double taxation on gains associated with the dispositions of the distributed property and the relinquished capital interest.

Subsection 107(2.1) is amended so that it no longer overrides every other provision of the Act. For example, subsection 107(2.1) no longer deems there to be a disposition of property where the existing law provides that there was no disposition because of paragraph (e) of the definition "disposition" in section 54. This amendment is consequential on the replacement of the existing definition "disposition" in section 54 with the new definition of the same expression in subsection 248(1) and new rules in section 107.4 to deal with acquisitions by trusts that do not involve any change in beneficial ownership.

Subsection 107(2.1) is amended so that it applies in connection with all distributions in respect of a capital interest in a trust, regardless of whether the distribution results in a disposition of all or part of the capital interest. This includes rights to which subsection 52(6) formerly applied, but which are now included as part of a capital interest in a trust under the amended definition of "capital interest" in subsection 108(1). Distributions in respect of amounts described in paragraph (h) and (i) of the definition "disposition" in subsection 248(1) need to be referred to in order to take into account the possibility that a distribution from a trust may consist only partly in respect of such amounts. In addition, even if a cash distribution is solely in respect of such an amount, it may not necessarily be denominated in Canadian dollars, in which case the trust may recognize a foreign currency gain or loss on the distribution. However, under amended paragraph 107(2.1)(c), proceeds of disposition are only determined with regard to the portion of a capital interest in a trust that is disposed of because of a distri-

bution from the trust. No proceeds of disposition are determined in respect of rights to amounts to which paragraph (h) and (i) of that definition apply.

The proceeds of disposition for the portion of a capital interest in a trust that is disposed of because of a distribution (other than a distribution to which paragraph 107(2.1)(d) applies) are determined under paragraph 107(2.1)(c) as follows:

- ADD the proceeds of disposition determined in respect of the distribution (other than any portion of those proceeds that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies). Note: paragraph (h) or (i) of that definition apply to a payment that represents a distribution of income or capital gains or to a payment from a unit trust that does not cause a reduction of the number of issued units of the trust;
- where the property distributed is not Canadian resource property or foreign resource property, SUBTRACT the amount (if any) by which the fair market value of the property exceeds the cost amount of the property (however, disregard this excess to the extent it represents a payment to which paragraph (h) or (i) of that definition applies); and
- SUBTRACT the "eligible offset" in respect of the distribution, as defined in subsection 108(1). (This is essentially debt assumed by the beneficiary on the distribution.)

Where there is no disposition of a capital interest because of paragraph (h) or (i) of the definition "disposition" in subsection 248(1), an amount distributed from the trust to a beneficiary generally results in a reduction of the beneficiary's adjusted cost base of the capital interest pursuant to paragraph 53(2)(h).

Paragraph 107(2.1)(d) applies to distributions of property (other than taxable Canadian property or business property connected to a Canadian permanent establishment) from a non-resident trust unless subsection 75(2) would, if the Act were read without reference to that paragraph, result in the attribution to a taxpayer of an income, loss, taxable capital gain or allowable capital loss in respect of the distribution. In these circumstances, new paragraph 107(2.1)(d) deems the beneficiary to acquire the property at its fair market value and to dispose of the corresponding portion of the capital interest in the trust for proceeds equal to the fair market value of the property less the total of two amounts. The first amount represents the portion of the distribution that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies (i.e., a payment that represents a distribution of income or capital gains, or a payment from a unit trust that does not cause a reduction of the number of issued units of the trust). The second amount is the "eligible offset" (as defined in subsection 108(1)) in respect of the distribution (i.e., essentially debt assumed by the beneficiary on the distribution). Paragraph 107(2.1)(d) also ensures that there are no tax consequences to the trust in respect of the distribution of the property.

These amendments apply to distributions made after 1999 (other than distributions before March 2000 in connection with rights described in subsection 52(6) of the Act that were acquired before 2000).

The examples below illustrate the operation of amended subsection 107(2.1). Except as indicated otherwise, it is assumed that the trusts referred to below are all resident in Canada.

EXAMPLE 1

In 2000, a commercial trust distributes non-depreciable capital property (shares) to its beneficiary resident in Canada in satisfaction of the beneficiary's capital interest in the trust. The adjusted cost base of the shares is $40. The adjusted cost base of the beneficiary's capital interest is $20. The fair market value of the property is $100.

Results:

1. Subsection 107(2.1) applies to the distribution.

2. The trust is deemed by paragraph 107(2.1)(a) to have disposed of the property for $100 proceeds, so there is a capital gain of $60 on the resulting disposition and a taxable capital gain of $45.

3. The beneficiary is deemed by paragraph 107(2)(b) to have acquired the property at a $100 cost.

4. Because the distribution gives rise to a capital gain, the amount of the capital gain ($60) reduces the proceeds of disposition of the beneficiary's capital interest under subparagraph 107(2.1)(c)(ii). The beneficiary is deemed to have disposed of the capital interest for $40 proceeds ($100 – $60). Alternatively, in the event that the payment of the gain were considered to be payment of the capital gains of the trust to which paragraph (i) of the definition "disposition" in subsection 248(1) applied, $40 would be determined under subparagraph 107(2.1)(c)(i) and no amount would be determined under subparagraph 107(2.1)(c)(ii). Consequently, under both of the alternative analyses, the beneficiary's proceeds of disposition of the beneficiary's capital interest in the trust are $40.

5. Consequently, the capital gain from the disposition of the capital interest is $20 ($40 – $20).

EXAMPLE 2

A personal trust distributes non-depreciable capital property (shares that are not taxable Canadian property) to its non-resident beneficiary in satisfaction of the beneficiary's capital interest in the trust. The adjusted cost base of the shares is $40. The adjusted cost base of the beneficiary's capital interest, determined before the application of paragraph 107(1)(a), is $0. The fair market value of the property is $100.

Results:

1. Subsection 107(2.1) applies to the distribution because of the application of amended subsection 107(5).

2. The trust is deemed by paragraph 107(2.1)(a) to have disposed of the property for $100 proceeds, so there is a capital gain of $60 from the resulting disposition and a taxable capital gain of $45.

3. The beneficiary is deemed by paragraph 107(2.1)(b) to have acquired the property at a $100 cost.

4. Because the distribution gives rise to a capital gain, the amount of the capital gain ($60) reduces the proceeds of disposition of the beneficiary's capital interest under subparagraph 107(2.1)(c)(ii). The beneficiary is deemed to have disposed of the capital interest for $40 proceeds ($100 – $60). The alternative analysis in paragraph 4 of Example 1 would likewise result in deemed proceeds of $40.

5. The capital interest in the trust constitutes taxable Canadian property for the non-resident beneficiary. For the purposes of computing capital gains, the adjusted cost base of the capital interest under subsection 107(1) is $40, being the greater of its adjusted cost base (nil) determined before the application of that subsection and the cost amount ($40) to the trust of the distributed property. Consequently, the taxable capital gain from the disposition of the capital interest is nil.

6. The allowable capital loss from the disposition of the capital interest is also nil.

Related Provisions: 43(2) — No capital loss on payment out of trust's income or gains; 53(2)(h)(i.2) — Reduction in ACB of interest in trust; 107(2.11) — Election not to flow out gains to beneficiaries; 107.4(4) — Fair market value of capital interest in trust; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest.

History: The opening words of subsec. 107(2.1) amended by 1998, c. 19, subsec. 128(4), applicable to distributions made after June 1994. The opening words formerly read:

> (2.1) Other distributions — Where at any time any property of a trust has been distributed by the trust to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's capital interest in the trust or in satisfaction of a right described in subsection 52(6) and subsection (2) is not applicable in respect of the distribution, notwithstanding any other provision of this Act, the following rules apply:

Pre-RSC History: Subsec. 107(2.1) added by 1988, c. 55, subsec. 74(3), applicable with respect to distributions of properties by trusts after 1987.

Proposed Addition — 107(2.11)

(2.11) Gains not distributed to beneficiaries — Where a trust makes one or more distributions of property in a taxation year in circumstances to which subsection (2.1) applies (or, in the case of property distributed after October 1, 1996 and before 2000, in circumstances to which subsection (5) applied)

(a) where the trust is resident in Canada at the time of each of those distributions and has so elected in prescribed form filed with the trust's return for the year or a preceding taxation year, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard to all of those distributions to non-resident persons (including a partnership other than a Canadian partnership); and

(b) where the trust is resident in Canada at the time of each of those distributions and has so elected in prescribed form filed with the trust's return for the year or a preceding taxation year, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard to all of those distributions.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(11), will add subsec. 107(2.11), applicable to distributions made after October 1, 1996, except that for distributions made from a trust before the particular day on which the amending legislation is assented to, an election under subsec. 107(2.11) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes the particular day.

Technical Notes: New subsection 107(2.11) of the Act provides a special rule that, for the purposes of subsections 104(6) and (13), allows income of a trust for a taxation year (computed without reference to subsection 104(6)) to be computed without regard to the tax consequences under subsection 107(2.1) (and former subsection 107(5)) of property distributed in kind to beneficiaries. This ensures that the gains, if any, that might arguably flow-out in some circumstances to beneficiaries as a consequence of the operation of subsections 107(2.1) and (5), will instead be included in income at the trust level.

More specifically, subsection 107(2.11) applies in two cases:

- where a trust resident in Canada distributes property to a non-resident beneficiary after October 1, 1996, the result described above applies in respect of distributions to non-resident beneficiaries if the trust so elects for the taxation year of the distribution or for a taxation year preceding the distribution. The election is considered to have been made on a timely basis if it is filed with the Minister before the trust's filing-due date for its taxation year that includes the date of Royal Assent; and
- where a trust resident in Canada distributes property to a beneficiary after 1999, the result described above also applies in respect of all beneficiaries (including non-resident beneficiaries) if the trust so elects for the taxation year of the distribution or a taxation year that precedes the distribution. The election is considered to have been made on a timely basis if it is filed with the Minister before the trust's filing-due date for its taxation year that includes the date of Royal Assent.

Related Provisions: 43(2) — No capital loss on payment out of trust's income or gains.

(2.2) Flow-through entity — Where at any time before 2005 a beneficiary under a trust described in paragraph (h), (i) or (j) of the definition "flow-through entity" in subsection 39.1(1) received a distribution of property from the trust in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes that time an election in respect of the property in prescribed form, there shall be included in the cost to the beneficiary of a particular property (other than money) received by the beneficiary as part of the distribution of property the least of

(a) the amount, if any, by which the beneficiary's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the trust for the beneficiary's taxation year that includes that time exceeds the total of all amounts each of which is

(i) an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust,

(ii) 4/3 of an amount by which a taxable capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, or

(iii) an amount included in the cost to the beneficiary of another property received by the beneficiary at or before that time in the year because of this subsection,

(b) the amount by which the fair market value of the particular property at that time exceeds the adjusted cost base to the trust of the particular property immediately before that time, and

(c) the amount designated in respect of the particular property in the election.

Related Provisions: 39.1(1)"exempt capital gains balance"F(a) — Exempt capital gains balance of flow-through entity.

History: Subsec. 107(2.2) added by 1998, c. 19, subsec. 128(5), applicable to distributions made after 1993, and a prescribed form filed under subsec. 107(2.2) before January 1999 is deemed to be filed on time.

(3) Cost of property other than non-depreciable capital property — Where the property referred to in subsection (2) that was distributed by a trust to a taxpayer was property other than capital property that was not depreciable property, for the purpose of determining the cost to the taxpayer of the property under paragraph (2)(b) (except for the purposes of that paragraph as it applies to determine the taxpayer's proceeds of disposition of the taxpayer's capital interest under paragraph (2)(c)), the reference in paragraph (2)(b) to "the amount" shall be read as a reference to "1/2 of the amount".

Proposed Repeal — 107(3)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(12), will repeal subsec. 107(3), applicable to distributions made after 1999.

Technical Notes: Subsection 107(3) of the Act is repealed. See the commentary above on amendments to subsection 107(2).

Pre-RSC History: Subsec. 107(3) amended by 1986, c. 6, s. 52, applicable to 1986 *et seq.*, to substitute heading "Cost of property other than non-depreciable capital property" for "Determination of cost of property other than an indexed security or a non-depreciable capital property", and "other than capital property" for "other than an indexed security or capital property".

Subsec. 107(3) substituted by 1984, c. 1, s. 46, to add "an indexed security or", applicable after September 30, 1983.

Subsec. 107(3) substituted by 1974-75-76, c. 26, subsec. 66(2), applicable to 1972 *et seq.*

(4) Where trust in favour of spouse — Where

(a) at any time property of a trust is distributed by the trust to a beneficiary in circumstances to which subsection (2) would, but for this subsection, apply,

(a.1) the trust is described in paragraph 104(4)(a),

(a.2) the property so distributed by the trust was capital property, a Canadian resource property, a foreign resource property or property that was land included in the inventory of the trust,

(b) the taxpayer to whom the property is so distributed is a person other than the spouse referred to in paragraph 104(4)(a) in respect of the trust, and

(c) that spouse is alive on the day the property is so distributed,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

notwithstanding paragraphs (2)(a) to (c), the following rules apply:

(d) the trust shall be deemed to have disposed of the property and to have received proceeds of disposition therefor equal to its fair market value at that time,

(e) the taxpayer shall be deemed to have acquired the property at a cost equal to those proceeds, and

(f) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of the taxpayer's capital interest in the trust for proceeds of disposition equal to the cost at which, but for this subsection, the taxpayer would be deemed by paragraph (2)(b) to have acquired the property, minus the amount of any debt assumed by the taxpayer or of any other legal obligation assumed by the taxpayer to pay any amount, if the distribution of the property to the taxpayer was conditional on the assumption by the taxpayer of the debt or obligation.

Proposed Amendment — 107(4)

(4) Trusts in favour of spouse, common-law partner or self — Subsection (2.1) applies at any time to property distributed to a beneficiary by a trust described in paragraph 104(4)(a) where

(a) the beneficiary is not

(i) in the case of a post-1971 partner trust, the partner or common-law partner referred to in paragraph 104(4)(a),

(ii) in the case of an *alter ego* trust, the taxpayer referred to in paragraph 104(4)(a), and

(iii) in the case of a joint partner trust, the taxpayer, spouse or common-law partner referred to in paragraph 104(4)(a); and

(b) a taxpayer, spouse or common-law partner referred to in subparagraph (a)(i), (ii), or (iii), as the case may be, is alive on the day of the distribution.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(13), will amend subsec. 107(4) to read as above, applicable to distributions made after 1999.

Technical Notes: Subsection 107(4) of the Act applies where a post-1971 partner trust distributes capital property, resource property or land to a beneficiary other than the beneficiary spouse. When this occurs while the beneficiary spouse is alive, there is generally a deemed disposition of the property at its fair market value.

Subsection 107(4) is amended so that similar rules apply to *alter ego* trusts and joint partner trusts, as newly defined in subsection 248(1). Subsection 107(4) will apply to a distribution by these trusts where the individual (or, in the case of a joint partner trust, either the individual or the spouse) is alive on the day of the distribution and the distribution is made to a beneficiary other than the individual (or, in the case of a joint partner trust, the individual or the spouse). For more detail on these trusts, see the commentary on amended subsections 73(1) and 104(4).

Subsection 107(4) is amended so that the rules set out in amended subsection 107(2.1) apply to distributions covered by subsection 107(4).

These amendments apply to distributions made after 1999.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; 104(6) — Deduction in computing income of trust; 107(5) — Distribution to non-resident beneficiary; 108(1) — "accumulating income".

History: All that portion of subsec. 107(4) preceding para. (e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(4), applicable to distributions occurring after December 20, 1991 except that para. (d) as amended does not apply to distributions occurring before 1993. That portion formerly read:

(4) Where trust in favour of spouse — Where the trust referred to in subsection (2) was a trust described in paragraph 104(4)(a) and

(a) the property so distributed by the trust was capital property, a Canadian resource property, a foreign resource property or property that was land included in the inventory of the trust,

(b) the taxpayer to whom the property was so distributed was a person other than the spouse, and

(c) the spouse was alive at the time the property was so distributed,

notwithstanding paragraphs (2)(a) to (c), the following rules apply:

(d) the trust shall be deemed to have disposed of the property and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of the trust of a prescribed class and the fair market value of that property at that time exceeds its cost amount to the trust at that time, the amount of that cost amount plus ½ of the amount of the excess,

(ii) where the property was depreciable property of the trust of a prescribed class and the cost amount of that property to the trust at that time exceeds its fair market value at that time, the amount of that fair market value plus ½ of the amount of the excess, and

(iii) in any other case, its fair market value at that time,

Pre-RSC History: Para. 107(4)(a) amended by 1985, c. 45, subsec. 51(1), to substitute "a Canadian resource property, a foreign resource property" for "property referred to in any of subparagraphs 59(2)(a) to (e)", and to substitute "of the trust" for "of a business of the trust", applicable to taxation years commencing after 1984.

Para. 107(4)(a) substituted by 1980-81-82-83, c. 140, subsec. 62(3), to add reference to the words "property referred to in any of paragraphs 59(2)(a) to (e) or property that was land included in the inventory of a business of the trust", applicable after November 12, 1981.

Subsec. 107(4) substituted by 1976-77, c. 4, s. 41, applicable in respect of distributions of property after May 25, 1976. Subsec. 107(4) formerly read:

(4) Where the trust referred to in subsection (2) was a trust described in paragraph 104(4)(a) and

(a) the property so distributed by the trust was capital property other than depreciable property,

(b) the taxpayer to whom the property was so distributed was a person other than the spouse, and

(c) the spouse was alive at the time the property was so distributed,

notwithstanding paragraphs (2)(a) to (d), the following rules apply:

(d) the trust shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(e) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value, and

(f) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of his interest in the trust, for proceeds of disposition equal to that fair market value.

Interpretation Bulletins: IT-120R5: Principal residence; IT-286R2: Trusts — amount payable; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-465R: Non-resident beneficiaries of trusts.

(4.1) Where subsec. 75(2) applicable to trust — Where any property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust and

(a) subsection 75(2) was applicable at any time in respect of any property of the trust,

(b) the taxpayer was a person other than

(i) the person from whom the trust directly or indirectly received the property, or property for which the property was substituted, or

(ii) an individual in respect of whom subsection 73(1) would be applicable on the transfer of capital property from the person described in subparagraph (i), and

(c) the person described in subparagraph (b)(i) was alive at the time the property was distributed,

notwithstanding paragraphs (2)(a) to (c), the rules described in paragraphs (4)(d) to (f) apply.

Proposed Amendment — 107(4.1)

subsection (2.1) applies in respect of the distribution.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(14), will amend the closing words of subsec. 107(4.1) to read as above, applicable to distributions made after 1999.

Technical Notes: Subsection 107(4.1) of the Act applies in certain cases where a reversionary trust distributes property to a specified beneficiary under the trust. When this occurs, there is a deemed disposition of the property at its fair market value.

Subsection 107(4.1) is amended so that, for distributions after 1999 in these cases, the rules set out in amended subsection 107(2.1) apply.

Related Provisions: 248(5) — Substituted property.

Pre-RSC History: Subsec. 107(4.1) added by 1988, c. 55, subsec. 74(4), applicable with respect to distributions of properties by trusts after 1988.

Regulations: 4800.1 (prescribed trust).

(5) Distribution to non-resident — Where subsection (2) applies to the distribution by a trust of any property (other than a Canadian resource property, excluded property or property that would, if at no time in the taxation year of the trust in which it is so distributed the trust is resident in Canada, be taxable Canadian property) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who is a beneficiary under the trust, notwithstanding paragraphs (2)(a) to (c),

(a) the trust shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value; and

(c) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of the taxpayer's interest in the trust, for proceeds of disposition equal to the adjusted cost base to the taxpayer of the interest or part thereof, as the case may be, immediately before the property was so distributed.

Proposed Amendment — 107(5)

(5) Distribution to non-resident — Subsection (2.1) applies in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) by a trust resident in Canada to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(15), will amend subsec. 107(5) to read as above, applicable to distributions made after October 1, 1996, except that for distributions made after October 1, 1996 and before 2000, subsec. 107(5) shall be read as follows:

(5) Where subsection (2) applies to a distribution at any time by a trust resident in Canada of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who is a beneficiary under the trust in satisfaction of the taxpayer's capital interest in the trust, notwithstanding paragraphs (2)(a) to (c),

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the taxpayer is deemed to have acquired the property at a cost equal to that fair market value; and

(c) the taxpayer is deemed to have disposed of all or part, as the case may be, of the taxpayer's capital interest in the trust, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part of the interest, as the case may be, immediately before that time.

Technical Notes: Subsection 107(5) of the Act applies to the distribution of property (other than taxable Canadian property, Canadian resource property and shares in non-resident-owned investment corporations), where the distribution would otherwise be made to a non-resident beneficiary on a rollover basis under subsection 107(2). With regard to such distributions, subsection 107(5) provides for a deemed disposition of the distributed property at its fair market value and an acquisition by the beneficiary for the same amount. In addition, paragraph 107(5)(c) provides for proceeds of disposition of the relinquished capital interest equal to the adjusted cost base of that interest.

Subsection 107(5) is amended to replace existing exemptions with regard to taxable Canadian property and Canadian resource property with exemptions for property described in any of new subparagraphs 128.1(4)(b)(i) to (iii). This amendment applies to distributions made after October 1, 1996. For further detail on the enumerated subparagraphs, see the commentary on amended subsection 128.1(4).

Subsection 107(5) is also amended so that it only applies with regard to distributions by trusts resident in Canada. This amendment applies to distributions made after October 1, 1996 and recognizes that, if a distribution of property is made from a non-resident trust to a non-resident beneficiary, Canada's authority to ultimately collect tax on a future disposition of the property has not been compromised because of the distribution. This amendment is consistent with the policy with regard to distributions before October 2, 1996, as the type of property deemed to be disposed of before that date under subsection 107(5) would not have resulted in a non-resident trust being subject to Canadian tax.

Subsection 107(5) is amended so that, where it applies, the amended rules in subsection 107(2.1) provide for the corresponding tax consequences. This amendment applies with regard to distributions made after 1999.

Related Provisions: 53(4) — Effect on ACB of share, partnership interest or trust interest; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 107(2.11) — Election for gain not to be flowed out to beneficiary; 107(5.1) — Gain does not increase instalment requirements; 126(2.22) — Foreign tax credit to trust on disposition of property by non-resident beneficiary; 212(11) — Payment to non-resident beneficiary deemed paid as income of trust for withholding tax purposes; 220(4.6)–(4.63) — Security for tax on distribution of taxable Canadian property to non-resident beneficiary.

History: That portion of subsec. 107(5) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 43(5), applicable to distributions occurring after 1991. That portion formerly read:

> (5) Distribution to non-resident — Where subsection (2) is applicable in respect of the distribution by a trust of any property (other than a Canadian resource property or property that is or would, if at no time in the taxation year of the trust in which it was so distributed the trust had been resident in Canada, be taxable Canadian property) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who was a beneficiary under the trust, notwithstanding paragraphs (2)(a) to (c), the following rules apply:

Pre-RSC History: That portion of subsec. 107(5) preceding para. (a) substituted by 1988, c. 55, subsec. 74(5), applicable with respect to distributions of properties by trusts after 1987. That portion formerly read:

> (5) Distribution to non-resident beneficiary — Where subsection (2) is applicable in respect of the distribution by a trust of any property of the trust to a non-resident taxpayer who was a beneficiary under the trust and the property was not taxable Canadian property or property that would be taxable Canadian property if at no time in the taxation year of the trust in which it was so distributed the trust had been resident in Canada, notwithstanding paragraphs (2)(a) to (c), the following rules apply:

Subsec. 107(5) substituted by 1976-77, c. 4, s. 41, applicable in respect of distributions of property after May 25, 1976. Subsec. 107(5) formerly read:

> (5) Where subsection (2) is applicable in respect of the distribution by a trust of any property of the trust to a non-resident taxpayer who was a beneficiary under the trust and the property was not taxable Canadian property or property that would be taxable Canadian property if at no time in the taxation year of the trust in which it was so distributed the trust had been resident in Canada, notwithstanding paragraphs (2)(a) to (c) the provisions of paragraphs (4)(d) to (f) are applicable in respect of the property as if the reference in paragraph (4)(f) to "that fair market value" were read as a reference to "the adjusted cost base to him of the interest or part thereof, as the case may be, immediately before the property was so distributed".

Advance Tax Rulings: ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

Proposed Addition — 107(5.1)

(5.1) Instalment interest — Where, solely because of the application of subsection (5), paragraphs (2)(a) to (c) do not apply to a distribution in a taxation year of taxable Canadian property by a trust, in applying sections 155, 156 and 156.1 and subsections 161(2), (4) and (4.01) and any regulations made for the purpose of those provisions, the trust's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(a) the trust's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (5) did not apply to each distribution in the year of taxable Canadian property to which the rules in subsection (2) do not apply solely because of the application of subsection (5).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 50(15), will add subsec. 107(5.1), applicable to distributions made after October 1, 1996.

Technical Notes: Subsection 107(5.1) of the Act is a special rule that applies for the purposes of computing instalment interest. The rule applies where

- there has been one or more distributions after October 1, 1996 of taxable Canadian property by a trust resident in Canada in a taxation year to non-resident beneficiaries, and
- paragraphs 107(2)(a) to (c) do not apply to such distributions solely because of subsection 107(5).

For the purposes of the measures pertaining to tax instalments or instalment interest in sections 155, and 156, subsections 156.1(1) to (3) and subsections 161(2), (4) and (4.01), the trust's total taxes under Part I and Part I.1 are deemed in these circumstances to be the lesser of two amounts. The first amount is the trust's total taxes payable under those Parts for the distribution year, determined without taking into consideration the carryback of losses and other consequences described in the definition "specified future tax consequence" in subsection 248(1). The second amount is computed in the same manner, except that it is assumed that subsection 107(5) does not apply to each distribution of trust property in the distribution year that is described above. The general effect of subsection 107(5.1) is to ignore a trust's income tax liabilities arising from the distribution of taxable Canadian property to a non-resident beneficiary for the purpose of computing the trust's instalment interest obligations.

Subsection 107(5.1) is similar to new subsection 128.1(5). Both of these subsections should be read in conjunction with new subsections 220(4.5) and (4.6), under which the posting of security can result in a deferral of the accrual of arrears interest on unpaid taxes.

(6) Loss reduction — Notwithstanding any other provision of this Act, where a person or partnership (in this subsection referred to as the "vendor") has disposed of property and would, but for this subsection, have had a loss from the disposition, the vendor's loss otherwise determined in respect of the disposition shall be reduced by such portion of that loss as may reasonably be considered to have accrued during a period in which

(a) the property or property for which it was substituted was owned by a trust; and

(b) neither the vendor nor a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the vendor had a capital interest in the trust.

Related Provisions: 248(5) — Substituted property.

History: Para. 107(6)(b) amended by 1998, c. 19, subsec. 128(6), applicable after April 26, 1995. Para. 107(6)(b) formerly read:

> (b) neither
>
> (i) the vendor, nor
>
> (ii) any person related to the vendor, nor
>
> (iii) any partnership of which the vendor or a person related to the vendor was a majority interest partner (within the meaning assigned by subsection 97(3.1))
>
> had a capital interest in the trust.

Pre-RSC History: Subsec. 107(6) added by 1987, c. 46, s. 35, applicable with respect to property distributed to a beneficiary from a trust in satisfaction of all or part of a capital interest in the trust that was acquired by the beneficiary after January 15, 1987, except where the beneficiary acquiring the interest was obliged on that date to acquire it pursuant to an agreement in writing entered into on or before that date.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

> 72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligations as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Definitions [s. 107]: "acquired for consideration" — 108(7); "adjusted cost base" — 54, 248(1); "affiliated" — 251.1; "*alter ego* trust" — 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "beneficiary" — 108(1); "business" — 248(1); "Canada" — 255; "Canadian partnership" — 102(1), 248(1); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1)(b), 107(1)(c), 248(1); "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 107(1.1); "cost amount" — 108(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "eligible offset", "excluded property" — 108(1); "fair market value" — 107.4(4); "foreign resource property" — 66(15), 248(1); "inventory", "insurance corporation" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "joint partner trust" — 248(1); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident" — 248(1); "person", "personal trust", "post-1971 partner trust", "prescribed" — 248(1); "prescribed trust" — Reg. 4800.1; "property", "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "share", "specified future tax consequence" — 248(1); "specified percentage" — 107(2)(b.1); "spouse" — 252(4)(a); "substituted property" — 248(5); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 104(23)(a), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 108(1), 248(1), (3); "unit trust" — 108(2), 248(1).

107.1 Distribution by employee trust or employee benefit plan — Where at any time any property of an employee trust or a trust governed by an employee benefit plan has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, the following rules apply:

Proposed Amendment — 107.1

107.1 Distribution by employee trust, employee benefit plan or similar trust — Where at any time any property of an employee trust, a trust governed by an employee benefit plan or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1) has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, the following rules apply:

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 51(1), will amend the opening words of s. 107.1 to read as above, applicable to 1999 *et seq.*

Technical Notes: See under 107.1(a).

(a) in the case of an employee trust,

Proposed Amendment — 107.1(a)

(a) in the case of an employee trust or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 51(2), will amend the opening words of para. 107.1(a) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 107.1 of the Act provides rules to deal with a distribution to a taxpayer of a property by an employee trust or a trust governed by an employee benefit plan under which the taxpayer is a beneficiary. In the case of an employee trust, paragraph 107.1(a) requires the trust to recognize a gain or loss when it distributes trust property to a beneficiary by treating the trust as having disposed of the property at its fair market value immediately before the time of distribution. That paragraph also ensures that the beneficiary is considered to acquire the property at that fair market value.

Section 107.1 is amended so that paragraph 107.1(a) applies to a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1). This is intended to ensure that, in the unusual circumstance that property other than cash is distributed by the trust, there is a recognition in the trust of any gain or loss in respect of the property. For more on new paragraph (a.1) of the definition "trust" in subsection 108(1), see the commentary on that subsection.

This amendment applies to the 1999 and subsequent taxation years.

(i) the trust shall be deemed to have disposed of the property immediately before that time for proceeds of disposition equal to its fair market value at that time, and

(ii) the taxpayer shall be deemed to have acquired the property at a cost equal to its fair market value at that time;

(b) in the case of a trust governed by an employee benefit plan,

(i) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its cost amount to the trust immediately before that time, and

(ii) the taxpayer shall be deemed to have acquired the property at a cost equal to the greater of

(A) its fair market value at that time, and

(B) the adjusted cost base to the taxpayer of the taxpayer's interest or part thereof, as the case may be, immediately before that time;

(c) the taxpayer shall be deemed to have disposed of the taxpayer's interest or part thereof, as the case may be, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part thereof immediately before that time; and

(d) where the property was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the taxpayer of the property.

Related Provisions: 6(1)(g) — Income from employee benefit plan; 6(1)(h) — Income from employee trust; 18(1)(o) — No deduction for employee benefit plan contributions; 32.1 — Employee benefit plan deductions; 104(6) — Deduction in computing income of trust; 104(13) — Income payable to beneficiary.

Pre-RSC History: S. 107.1 added by 1980-81-82-83, c. 48, s. 55, applicable to 1980 *et seq.*

Definitions [s. 107.1]: "adjusted cost base" — 54, 248(1); "amount" — 108(1), 248(1); "cost amount" — 108(1); "depreciable property" — 13(21), 248(1); "employee benefit plan", "employee trust", "prescribed", "property", "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

107.2 Distribution by a retirement compensation arrangement — Where, at any time, any property of a trust governed by a retirement compensation arrangement has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part

of the taxpayer's interest in the trust, for the purposes of this Part and Part XI.3, the following rules apply:

(a) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its fair market value at that time;

(b) the trust shall be deemed to have paid to the taxpayer as a distribution an amount equal to that fair market value;

(c) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value;

(d) the taxpayer shall be deemed to have disposed of the taxpayer's interest or part thereof, as the case may be, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part thereof immediately before that time; and

(e) where the property was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the taxpayer's income for taxation years before the acquisition by the taxpayer of the property.

Related Provisions: 56(1)(x)–(z) — Benefits from retirement compensation arrangement; 60(t) — Amount included under para. 56(1)(x) or (z) or subsec. 70(2); 60(u) — Amount included under para. 56(1)(y); 153(1)(q) — Withholding required on distribution by RCA; Part XI.3 — Tax in respect of retirement compensation arrangements.

Pre-RSC History: S. 107.2 added by 1987, c. 46, s. 36, applicable after October 8, 1986.

Definitions [s. 107.2]: "adjusted cost base" — 54, 248(1); "depreciable property" — 13(21), 248(1); "prescribed", "property", "regulation", "retirement compensation arrangement" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

107.3 (1) Treatment of beneficiaries under qualifying environmental trusts — Where a taxpayer is a beneficiary under a qualifying environmental trust in a taxation year of the trust (in this subsection referred to as the "trust's year") that ends in a particular taxation year of the taxpayer,

(a) subject to paragraph (b), the taxpayer's income, non-capital loss and net capital loss for the particular year shall be computed as if the amount of the income or loss of the trust for the trust's year from any source or from sources in a particular place were the income or loss of the taxpayer from that source or from sources in that particular place for the particular year, to the extent of the portion thereof that can reasonably be considered to be the taxpayer's share of such income or loss; and

(b) if the taxpayer is non-resident at any time in the particular year and an income or loss described in paragraph (a) or an amount to which paragraph 12(1)(z.1) or (z.2) applies would not otherwise be included in computing the taxpayer's taxable income or taxable income earned in Canada, as the case may be, notwithstanding any other provision of this Act, the income, the loss or the amount shall be attributed to the carrying on of business in Canada by the taxpayer through a fixed place of business located in the province in which the site to which the trust relates is situated.

Related Provisions: 12(1)(z.1) — Inclusion in income of amount received from trust; 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(2) — Where property transferred to beneficiary.

History: The opening words of subsec. 107.3(1) and para. 107.3(1)(b) amended by 1998, c. 19, subsecs. 18(1), (2), applicable to taxation years that end after February 18, 1997. The opening words and para. (b) formerly read:

> 107.3 (1) Treatment of beneficiaries under mining reclamation trusts — Where a taxpayer is a beneficiary under a mining reclamation trust in a taxation year of the trust (in this subsection referred to as the "trust's year") that ends in a particular taxation year of the taxpayer,
>
> . . . . .
>
> (b) where the taxpayer is non-resident at any time in the particular year and an income or loss described in paragraph (a) or an amount to which paragraph 12(1)(z.1) or (z.2) applies would not otherwise be included in computing the taxpayer's taxable income or taxable income earned in Canada, as the case may be, notwithstanding any other provision of this Act the income, the loss or the amount shall be attributed to the carrying on of business in Canada by the taxpayer through a fixed place of business located in the province in which the mine to which the trust relates is situated.

Subsec. 107.3(1) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

(2) Transfers to beneficiaries — Where property of a qualifying environmental trust is transferred at any time to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's interest as a beneficiary under the trust,

(a) the trust shall be deemed to have disposed of the property at that time for proceeds of disposition equal to its fair market value at that time; and

(b) the beneficiary shall be deemed to have acquired the property at that time at a cost equal to its fair market value at that time.

Related Provisions: 87(2)(j.93) — Amalgamations — continuing corporation; 107.3(1) — Income or loss flowed through to beneficiaries.

History: The opening words of subsec. 107.3(2) amended by 1998, c. 19, subsec. 18(3), applicable to taxation years that end after February 18, 1997. The opening words formerly read:

> (2) Transfers to beneficiaries — Where property of a mining reclamation trust is transferred at any time to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's interest as a beneficiary under the trust,

Subsec. 107.3(2) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

(3) Ceasing to be a qualifying environmental trust — Where a trust ceases at any time to be a qualifying environmental trust,

(a) the taxation year of the trust that would otherwise have included that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to have begun at that time;

(b) the trust shall be deemed to have disposed immediately before that time of each property held by the trust immediately after that time for proceeds of disposition equal to its fair market value at that time and to have reacquired immediately after that time each such property for an amount equal to that fair market value;

(c) each beneficiary under the trust immediately before that time shall be deemed to have received at that time from the trust an amount equal to the percentage of the fair market value of the properties of the trust immediately after that time that can reasona-

bly be considered to be the beneficiary's interest in the trust; and

(d) each beneficiary under the trust shall be deemed to have acquired immediately after that time an interest in the trust at a cost equal to the amount deemed by paragraph (c) to have been received by the beneficiary from the trust.

Related Provisions: 87(2)(j.93) — Amalgamations — continuing corporation.

History: The portion of subsec. 107.3(3) before para. (b) amended by 1998, c. 19, subsec. 18(4), applicable to taxation years that end after February 18, 1997. The portion formerly read:

(3) Ceasing to be a mining reclamation trust — Where a trust ceases at any time to be a mining reclamation trust,

(a) the taxation year of the trust that would otherwise have included that time shall be deemed to have ended at that time and a new taxation year of the trust shall be deemed to have begun immediately after that time;

Subsec. 107.3(3) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

(4) Application — Subsection 104(13) and sections 105 to 107 do not apply to a trust with respect to a taxation year during which it is a qualifying environmental trust.

Related Provisions: 12(1)(z.1) — Income inclusion in lieu of application of 104(13); 75(3)(c.1) — Reversionary trust rules do not apply.

History: Subsec. 107.3(4) amended by 1998, c. 19, subsec. 18(5), applicable to taxation years that end after February 18, 1997, and amended by 1997 Budget, effective for taxation years that end after February 18, 1997, to change "mining reclamation trust" to "qualifying environmental trust". Subsec. 107.3(4) formerly read:

(4) Application — Subsection 104(13) and sections 105 to 107 do not apply to a trust with respect to a taxation year during which it is a mining reclamation trust.

Subsec. 107.3(4) added by 1995, c. 3, s. 30, applicable to taxation years that end after February 22, 1994.

Definitions [s. 107.3]: "business" — 248(1), 253; "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 11(2), 107.3(3)(a), 249; "taxpayer" — 248(1); "trust's year" — 107.3(1).

Proposed Addition — 107.4

Technical Notes: Subsection 107.4(3) of the Act applies where there has been a "qualifying disposition" of property. As set out in subsection 107.4(1), a qualifying disposition of property is a disposition that does not result in any change in the beneficial ownership of the property and that otherwise meets the conditions set out in that subsection. Subsection 107.4(3) generally provides for the rollover of property on the disposition.

To put new section 107.4 in context, the commentary below summarizes the tax consequences of transfers to bare trusts, protective trusts and revocable living trusts under the existing law before describing new section 107.4. Reference should also be made to the commentary on amended section 73 and subsection 104(1).

Bare Trusts

The stated interpretation of the existing law by the Canada Customs and Revenue Agency (CCRA) is that, where property is held by a bare trust, the trust is ignored for income tax purposes and the transferor/settlor is considered to be the owner of property held by the trustee in the trustee's capacity as an agent. [See Income Tax Technical News No. 7, Interpretation Bulletin IT-216 and GST Technical Information Bulletin B-068; see also Notes to 104(1) — ed.] Paragraph (e) of the definition "disposition" in section 54 is the current authority for the position that there is no "disposition" of property on its transfer to a "bare trust".

The CCRA has stated that it generally views a trust to be a bare trust when:

- the trustee has no significant powers or responsibilities, and can take no action without instructions from the settlor;
- the trustee's only function is to hold legal title to the property; and
- the settlor is the sole beneficiary and can cause the property to revert to him or her at any time.

The CCRA's position that transfers to bare trusts do not constitute "dispositions" has generally been reinforced because, under amended subsection 104(1), "bare trusts" are not treated as trusts. For this reason, the amended definition of "disposition" in subsection 248(1) will not apply because of the transfer by a settlor of a "bare trust" for the benefit of the settlor. In addition, it should be noted that it is possible that a settlor may establish a "bare trust" for another person. Where this is the case, the transfer of property to the "bare trust" by a settlor would be considered to be a disposition of property by the settlor to the person for whom the "bare trust" has been established.

Revocable living trusts

The CCRA has expressed the view [Income Tax Technical News No. 7 — ed.] that a "revocable living trust" should be fully recognized as a trust for income tax purposes. It is of the view that the transfer of property to such a trust involves a change in beneficial ownership of the property and is at the full fair market value of the property. A "revocable living trust" is an estate planning tool used, instead of a will, by individuals. The settlor of the trust is the trustee and, during his or her lifetime, is the sole income and capital beneficiary and retains the right to revoke, alter or amend the trust at any time. However, there is a change of beneficial ownership involved in a transfer to a "revocable living trust" because other beneficiaries under the trust have rights under the trust in the event that the settlor does not revoke the trust before his or her death.

The draft amendments to section 107.4 are generally consistent with the CCRA's present views in this regard. New subsection 107.4(3) is not intended to apply to transfers to revocable living trusts, on the basis that there is no qualifying disposition of property involved. However, for trusts created after 1999, it is generally possible for individuals who are at least 65 years of age to transfer capital property to a revocable living trust on a rollover basis pursuant to amended subsection 73(1).

Protective trusts

The CCRA considers the attributes of a "protective trust" to be as follows:

- The settlor is the sole beneficiary under the trust.
- The settlor is entitled to as much of the annual income and realized capital gains of the trust as he or she requests.
- The property of the trust will revert to the settlor if the trust is terminated prior to the settlor's death.
- The trust will terminate upon the death of the settlor unless it is terminated at an earlier date. (When the settlor dies, any property held by the trust will devolve in accordance with the terms of the settlor's will or, if the settlor dies intestate, the property of the trust will devolve in accordance with the laws of intestacy that are relevant to the estate.)

The CCRA considers that, under the existing law, a protective trust is fully recognized as a trust for income tax purposes and that there is no "disposition" of property where a settlor transfers it to a protective trust. Trust income and gains are attributed to the settlor in accordance with subsection 75(2).

New subsection 107.4(3) will apply to transfers to protective trusts, assuming that the requirements for a qualifying disposition are met. However, transfers of capital property to protective trusts created after 1999 will generally be covered by amended subsection 73(1).

The rules in subsection 107.4(3) (and subsection 73(1), where it is applicable) also bridge a gap in the existing law in the context of protective trusts by making it clear at what cost a trans-

feree is considered to acquire property where there has been a transfer of property without any change in its beneficial ownership and the bare trust regime does not apply.

107.4 (1) Qualifying disposition — For the purpose of this section, a "qualifying disposition" of a property means a disposition of the property by a person or partnership (in this subsection referred to as the "contributor") as a result of a transfer of the property to a particular trust where

(a) the disposition does not result in a change in the beneficial ownership of the property;

(b) the proceeds of disposition would, if this Act were read without reference to this section and sections 69 and 73, not be determined under any provision of this Act;

(c) if the particular trust is non-resident, the disposition is not

(i) by a person resident in Canada or by a partnership (other than a partnership each member of which is non-resident), or

(ii) a transfer of taxable Canadian property from a non-resident person who was resident in Canada in any of the ten calendar years preceding the transfer;

(d) the contributor is not a partnership, if the disposition is part of a series of transactions or events that begin after December 17, 1999 that includes the cessation of the partnership's existence and a subsequent distribution from a personal trust to a former member of the partnership in circumstances to which subsection 107(2) applies;

(e) unless the contributor is a trust, there is immediately after the disposition no absolute or contingent right of a person or partnership (other than the contributor or, where the property was co-owned, each of the joint contributors) as a beneficiary (determined with reference to subsection 104(1.1)) under the particular trust;

(f) the contributor is not an individual (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)), if the particular trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1);

(g) the disposition is not part of a series of transactions or events

(i) that begins after December 17, 1999 and that includes the subsequent acquisition, for consideration given to a personal trust, of a capital interest or an income interest in the trust,

(ii) that begins after December 17, 1999 and that includes the disposition of all or part of a capital interest or an income interest in a personal trust, other than a disposition solely as a consequence of a distribution from a trust to a person or partnership in satisfaction of all or part of that interest, or

(iii) that begins after June 5, 2000 and that includes the transfer to the particular trust of particular property as consideration for the acquisition of a capital interest in the particular trust, if the particular property can reasonably be considered to have been received by the particular trust in order to fund a distribution (other than a distribution that is proceeds of disposition of a capital interest in the particular trust);

(h) the disposition is not, and is not part of, a transaction

(i) that occurs after December 17, 1999, and

(ii) that includes the giving to the contributor, for the disposition, of any consideration (other than consideration that is an interest of the contributor as a beneficiary under the particular trust or that is the assumption by the particular trust of debt for which the property can, at the time of the disposition, reasonably be considered to be security);

(i) subsection 73(1) does not apply to the disposition and would not apply to the disposition if

(i) no election had been made under that subsection, and

(ii) section 73 were read without reference to subsection 73(1.02); and

(j) if the contributor is an amateur athlete trust, a cemetery care trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (as defined by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the particular trust is the same type of trust.

Technical Notes: As discussed above, subsection 107.4(3) generally provides a rollover whenever there is a qualifying disposition of property to a trust. Under new subsection 107.4(1), a "qualifying disposition" of property is a "disposition" (as defined in subsection 248(1)) of the property as a result of a transfer to a particular trust where

- because of the disposition, there is no change in the beneficial ownership of the property,
- the proceeds would not, disregarding sections 69 and 73, be determined under any other provision of the Act (e.g., transfers from a trust to a beneficiary under the trust where the proceeds are determined under subsection 107(2)),
- the disposition is neither by a person resident in Canada to a non-resident trust nor a transfer of taxable Canadian property from a non-resident person who was resident in Canada in any of the ten calendar years preceding the transfer to a non-resident trust,
- the disposition is not by a partnership (other than a partnership each member of which is non-resident) to a non-resident trust,
- the disposition is not by a partnership, if the disposition is part of a series of transactions or events beginning after December 17, 1999 that includes the cessation of the partnership's existence and a subsequent distribution from a personal trust to a former member of the partnership in circumstances to which subsection 107(2) applies,
- immediately after the disposition, unless the contributor is a trust, there is no absolute or contingent right as a beneficiary under the particular trust for any beneficiary other than the contributor or joint contributors, as the case may be. (For this purpose, there is a restricted meaning under new subsection 104(1.1) associated with the expression "beneficiary".),
- the disposition does not occur after December 17, 1999 if the disposition is, or is part of, a transaction where the contributor receives for the disposition any consideration (other than consideration that is an interest of the contribu-

tor as a beneficiary under the particular trust or the assumption by the particular trust of debt for which the property may at the time of the disposition reasonably be considered to be security),

- the disposition is not to a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1) (generally trusts relating to employee compensation and retirement savings and trusts deemed to exist for income tax purposes), except if it is a disposition by a trust so described,
- the disposition is not part of a series of transactions or events
  - — that begins after December 17, 1999 and that includes the disposition of any interest in a personal trust (other than a disposition solely as a consequence of a distribution from the trust),
  - — that begins after December 17, 1999 and that includes the subsequent acquisition, for consideration given to a personal trust, of any interest in the trust, or
  - — that begins after June 5, 2000 and that includes the transfer to the particular trust of particular property as consideration for the acquisition of a capital interest in the particular trust, if the particular property can reasonably be considered to have been received in order to fund a distribution from the other trust (other than a distribution that is proceeds of disposition of a capital interest in the particular trust),
- subsection 73(1) would not apply to the disposition if no election were made under that subsection and there were no restrictions in subsection 73(1.02) as to the circumstances in which subsection 73(1) applies, and
- where the contributor is an amateur athlete trust, a cemetery care trust, an employee trust, an inter vivos trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (as defined in section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the particular trust is the same type of trust. For example, if the contributor is a related segregated fund trust, the particular trust must also be a related segregated fund trust.

Related Provisions: 75(2) — Revocable or reversionary trust; 104(1.1) — Restricted meaning of "beneficiary"; 107.4(2) — Application of para. (1)(a); 107.4(3) — Tax consequences of qualifying dispositions; 248(1)"disposition" — Whether transfer to a trust is a disposition.

(2) Application of paragraph (1)(a) — For the purpose of paragraph (1)(a),

(a) where a trust (in this paragraph referred to as the "transferor trust"), in a period that does not exceed one day, disposes of one or more properties in the period to one or more other trusts, there is deemed to be no resulting change in the beneficial ownership of those properties if

(i) the transferor trust receives no consideration for the disposition, and

(ii) as a consequence of the disposition, the beneficial ownership at the beginning of the period of each beneficiary under the transferor trust in each particular property of the transferor trust is the same as the beneficiary's beneficial ownership at the end of the period in the particular property that relates to the beneficiary's combined interest in the transferor trust and in the other trust or trusts; and

(b) where a trust (in this paragraph referred to as the "transferor") governed by a registered retirement savings plan or by a registered retirement income fund transfers a property to a trust (in this paragraph referred to as the "transferee") governed by a registered retirement savings plan or by a registered retirement income fund, the transfer is deemed to not result in a change in the beneficial ownership of the property if the annuitant of the plan or fund that governs the transferor is also the annuitant of the plan or fund that governs the transferee.

Technical Notes: Subsection 107.4(2) provides a supplementary rule that applies for the purpose of paragraph 107.4(1)(a). Paragraph 107.4(2)(a) is designed to allow for the division of properties among trusts in certain cases. Consider, for example, the situation where 1,000 shares of ABC Corp. are held in trust A for beneficiaries X and Y. Assume that X has a 30 per cent interest in the trust and Y has the remaining 70 per cent interest. If 300 shares are transferred to trust B for X and the remaining 700 shares are transferred on the same day to trust C for Y, there has been no change in the economic interests of X and Y. Paragraph 107.4(2)(a) provides that, in these circumstances, the requirement in paragraph 107.4(1)(a) that there be no change in beneficial ownership is satisfied in the event that trust A receives no consideration. Consequently, assuming the other conditions under subsection 107.4(1) are satisfied, there would be a qualifying disposition of the 300 shares to trust B and another qualifying disposition of the 700 shares to trust C.

Paragraph 107.4(2)(b) deems there to be no change in beneficial ownership of a property where the property is transferred from a trust governed by an RRSP or RRIF to another trust governed by an RRSP or RRIF, provided that the annuitant of the transferor is the same as that of the transferee. The application of paragraph 107.4(2)(b) is illustrated in the following example.

EXAMPLE

Tom is the annuitant of an RRSP under which Laura is named as the beneficiary. The property is transferred from that RRSP trust to another trust governed by an RRSP under which Tom is the annuitant and under which Michelle is named as beneficiary. Assume that, because of an election or otherwise, neither paragraph (f) nor (g) of the definition "disposition" in subsection 248(1) of the Act applies.

Results:

1. In these circumstances, paragraph 107.4(2)(b) deems, for the purpose of paragraph 107.4(1)(a), there to be no change in beneficial ownership.

2. Consequently, there should be a qualifying disposition of the property.

Paragraph 107.4(2)(b) is part of a set of amendments intended to clarify the tax treatment of transfers of property involving RRSPs and RRIFs. For further detail, see the commentary on paragraphs 107.4(3)(c) and (f) and (g) of the new definition "disposition" (in subsection 248(1)) and subsections 206(4) and 248(25.1).

(3) Tax consequences of qualifying dispositions — Where at a particular time there is a qualifying disposition of a property by a person or partnership (in this subsection referred to as the "transferor") to a trust (in this subsection referred to as the "transferee trust"),

(a) the transferor's proceeds of disposition of the property are deemed to be

(i) where the transferor so elects in writing and files the election with the Minister on or before the transferor's filing-due date for its taxation year that includes the particular time, or at any later time that is acceptable to the Minister, the amount specified in the election that is not less than the cost amount to the transferor of the property immediately before the particular time and

not more than the fair market value of the property at the particular time, and

(ii) in any other case, the cost amount to the transferor of the property immediately before the particular time;

(b) except as otherwise provided under paragraph (c), the transferee trust's cost of the property is deemed to be the amount, if any, by which

(i) the proceeds determined under paragraph (a) in respect of the qualifying disposition

exceed

(ii) the amount by which the transferor's loss otherwise determined from the qualifying disposition would be reduced because of subsection 100(4), paragraph 107(1)(c) or (d) or any of subsections 112(3) to (4.2), if the proceeds determined under paragraph (a) were equal to the fair market value of the property at the particular time;

(c) notwithstanding subsection 206(4), for the purposes of Part XI and regulations made for the purposes of that Part, the transferee trust's cost of the property is deemed to be

(i) the cost amount to the transferor immediately before the particular time where

(A) the particular time is before 2000,

(B) the transferor is a trust governed by a registered retirement savings plan or a registered retirement income fund,

(C) the transferee trust is governed by a registered retirement savings plan or a registered retirement income fund,

(D) the transferee trust files a written election with the Minister on or before the later of March 1, 2001 and its filing due-date for its taxation year that includes the particular time (or at such later date as is acceptable to the Minister) that this subparagraph apply, and

(E) it can reasonably be considered that the election was not made for the purpose of avoiding tax under Part XI,

(ii) the fair market value of the property at the particular time where

(A) subparagraph (iii) does not apply,

(B) the transferee trust files a written election with the Minister on or before the later of March 1, 2001 and its filing due-date for its taxation year that includes the particular time (or at such later date as is acceptable to the Minister) that this subparagraph apply, and

(C) it can reasonably be considered that the election was not made for the purpose of avoiding tax under Part XI,

(iii) the fair market value of the property at the particular time where

(A) subparagraph (i) does not apply to the qualifying disposition,

(B) the particular time is before 2000,

(C) the transferor is a trust governed by a registered retirement savings plan or a registered retirement income fund, and

(D) the transferee trust is governed by a registered retirement savings plan or a registered retirement income fund, and

(iv) the cost amount to the transferor of the property immediately before the particular time, in any other case;

(d) if the property was depreciable property of a prescribed class of the transferor and its capital cost to the transferor exceeds the cost at which the transferee trust is deemed by this subsection to have acquired the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost of the property to the transferee trust is deemed to be the amount that was the capital cost of the property to the transferor, and

(ii) the excess is deemed to have been allowed to the transferee trust in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the particular time;

(e) if the property was eligible capital property of the transferor in respect of a business of the transferor,

(i) where the eligible capital expenditure of the transferor in respect of the property exceeds the cost at which the transferee trust is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the transferee trust in respect of the property is deemed to be the amount that was the eligible capital expenditure of the transferor in respect of the property, and

(B) 3/4 of the excess is deemed to have been allowed under paragraph 20(1)(b) to the transferee trust in respect of the property in computing income for taxation years that ended

(I) before the particular time, and

(II) after the adjustment time of the transferee trust in respect of the business, and

(ii) for the purpose of determining after the particular time the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the transferee trust's income in respect of any subsequent disposition of the property of the business, there shall be added to the value otherwise determined for Q in the definition "cumulative eligible capital" in subsection 14(5) the amount determined by the formula

$$A \times B/C$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the transferor immediately before the particular time,

B is the fair market value of the property immediately before the particular time, and

C is the fair market value immediately before the particular time of all eligible capital property of the transferor in respect of the business;

(f) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the transferee trust;

(g) where the transferor is a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1),

(i) paragraph 138.1(1)(i) does not apply in respect of a disposition of an interest in the transferor that occurs in connection with the qualifying disposition, and

(ii) in computing the amount determined under paragraph 138.1(1)(i) in respect of a subsequent disposition of an interest in the transferee trust where the interest is deemed to exist in connection with a particular life insurance policy, the acquisition fee (as defined by subsection 138.1(6)) in respect of the particular policy shall be determined as if each amount determined under any of paragraphs 138.1(6)(a) to (d) in respect of the policyholder's interest in the transferor trust had been determined in respect of the policyholder's interest in the transferee trust;

(h) if the transferor is a trust to which property had been transferred by an individual (other than a trust),

(i) where subsection 73(1) applied in respect of the property so transferred and it is reasonable to consider that the property was so transferred in anticipation of the individual ceasing to be resident in Canada, for the purposes of paragraph 104(4)(a.3) and the application of this paragraph to a disposition by the transferee trust after the particular time, the transferee trust is deemed after the particular time to be a trust to which the individual had transferred property in anticipation of the individual ceasing to reside in Canada and in circumstances to which subsection 73(1) applied, and

(ii) for the purposes of paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the application of this paragraph to a disposition by the transferee trust after the particular time, where the property so transferred was transferred in circumstances to which this subsection would apply if subsection (1) were read without reference to paragraphs (1)(h) and (i), the transferee trust is deemed after the particular time to be a trust an interest in which was acquired by the individual as a consequence of a qualifying disposition;

(i) if the transferor is a trust (other than a personal trust or a trust prescribed for the purposes of subsection 107(2)), the transferee trust is deemed to be neither a personal trust nor a trust prescribed for the purposes of subsection 107(2);

(j) if the transferor is a trust and a taxpayer disposes of all or part of a capital interest in the transferor because of the qualifying disposition and, as a consequence, acquires a capital interest or part of it in the transferee trust

(i) the taxpayer is deemed to dispose of the capital interest or part of it in the transferor for proceeds equal to the cost amount to the taxpayer of that interest or part of it immediately before the particular time, and

(ii) the taxpayer is deemed to acquire the capital interest or part of it in the transferee trust at a cost equal to the amount, if any, by which

(A) that cost amount

exceeds

(B) the amount by which the taxpayer's loss otherwise determined from the disposition referred to in subparagraph (i) would be reduced because of paragraph 107(1)(c) or (d) if the proceeds under that subparagraph were equal to the fair market value of the capital interest or part of it in the transferor immediately before the particular time;

(k) where the transferor is a trust, a taxpayer's beneficial ownership in the property ceases to be derived from the taxpayer's capital interest in the transferor because of the qualifying disposition and no part of the taxpayer's capital interest in the transferor was disposed of because of the qualifying disposition, there shall, immediately after the particular time, be added to the cost otherwise determined of the taxpayer's capital interest in the transferee trust, the amount determined by the formula

$$A \times ((B–C)/B) – D$$

where

A is the cost amount to the taxpayer of the taxpayer's capital interest in the transferor immediately before the particular time,

B is the fair market value immediately before the particular time of the taxpayer's capital interest in the transferor,

C is the fair market value at the particular time of the taxpayer's capital interest in the transferor (determined as if the only property disposed of at the particular time were the particular property), and

D is the lesser of

(i) the amount, if any, by which the cost amount to the taxpayer of the taxpayer's capital interest in the transferor immediately before the particular time exceeds the fair market value of the taxpayer capital interest in the transferor immediately before the particular time, and

(ii) the maximum amount by which the taxpayer's loss from a disposition of a capital interest otherwise determined could have been reduced because of paragraph 107(1)(c) or (d) if the taxpayer's capital interest in the transferor had been disposed of immediately before the particular time;

(l) where paragraph (k) applies to the qualifying disposition in respect of a taxpayer, the amount that would be determined under that paragraph in respect of the qualifying disposition if the amount determined for D in that paragraph were nil shall, immediately after the particular time, be deducted in computing the cost otherwise determined of the taxpayer's capital interest in the transferor;

(m) where paragraphs (j) and (k) do not apply in respect of the qualifying disposition, the transferor is deemed to acquire the capital interest or part of it in

the transferee trust that is acquired as a consequence of the qualifying disposition

(i) where the transferee trust is a personal trust, at a cost equal to nil, and

(ii) in any other case, at a cost equal to the excess determined under paragraph (b) in respect of the qualifying disposition; and

(n) if the transferor is a trust and a taxpayer disposes of all or part of an income interest in the transferor because of the qualifying disposition and, as a consequence, acquires an income interest or a part of an income interest in the transferee trust, for the purpose of subsection 106(2), the taxpayer is deemed not to dispose of any part of the income interest in the transferor at the particular time.

Technical Notes: Under paragraph 107.4(3)(a), the transferor's proceeds from the qualifying disposition are generally deemed to be the cost amount of the property. However, provision is made for the transferor to elect another amount, between the cost amount of the property and its fair market value, as proceeds.

Under paragraph 107.4(3)(b), the proceeds determined under paragraph (a) are also generally treated as the cost to the transferee trust of the property. However, this amount is reduced in some cases where the fair market value of the property is less than the cost amount. The reduction in these cases is equal to a hypothetical reduction in the transferor's loss on the disposition of the property. This hypothetical reduction is computed, using the stop-loss rules with regard to partnership interests (subsection 100(4)), trust interests (paragraphs 107(1)(c) and (d)) and shares (subsections 112(3) to (4.2)), on the assumption that the proceeds of disposition are the fair market value of the property rather than its cost amount.

Paragraph 107.4(3)(b) does not, however, apply for the purpose of the foreign property limit under Part XI. For this purpose, except for transfers before 2000 between RRSP trusts and RRIF trusts, the cost amount to the transferor under paragraph 107.4(3)(c) is the cost to the transferee of the same property unless the transferee elects that the cost be the fair market value of the property at the time of its transfer. (It is expected that this election will be used only if the transferee trust does not have information with regard to the cost amount of property from the transferor trust. If, on the other hand, the election is made for the purpose of avoiding Part XI tax, it is invalid.) With regard to the excepted transfers involving RRSPs and RRIFs, the transferee's cost of the property is its fair market value unless the transferee files the election described in subparagraph 107.4(3)(c)(i). (If this election is made for the purpose of avoiding Part XI tax, it is invalid.) For further detail on transfers involving RRSPs and RRIFs see the commentary, including examples, on paragraph (g) of the new definition "disposition" in subsection 248(1).

In addition, where the property is depreciable property or eligible capital property, there are rules in paragraphs 107.4(3)(d) and (e) designed, for the purposes of the capital cost allowance rules in the Act, to put the transferee in the same position as the transferor in the event that the transferee subsequently disposes of the property. These rules are parallel to existing rules in subsection 107(2) for trust distributions to beneficiaries.

Paragraph 107.4(3)(f) provides that, if the property was deemed to be taxable Canadian property of the transferor because of a number of specified provisions in the Act, the property retains that character in the hands of the transferee.

Paragraph 107.4(3)(g) provides that, where the transferor is a related segregated fund trust (as defined in section 138.1 of the Act), paragraph 138.1(1)(i) does not apply in respect of a disposition of an interest in the transferor that occurs in connection with the qualifying disposition. Consequently, no capital loss is provided on the qualifying disposition under paragraph 138.1(1)(i) in respect of load fees associated with a policyholder's interest in the transferor. Paragraph 107.4(3)(g) also ensures that such amounts can ultimately be recognized on a disposition of an interest in the transferee trust.

Paragraph 107.4(3)(h) applies if the transferor was a trust to which property was transferred by an individual (other than a trust) in anticipation of ceasing to reside in Canada and in circumstances to which subsection 73(1) applied. For the purposes of paragraph 104(4)(a.3), the transferee trust is likewise deemed to be a trust to which the individual had transferred property in circumstances to which subsection 73(1) applied and in anticipation of ceasing to reside in Canada. Thus, as a consequence of new paragraph 104(4)(a.3), there may be a deemed disposition by the transferee trust on the individual ceasing to reside in Canada. Paragraph 107.4(3)(h) also applies, where property was transferred by an individual (other than a trust) to the transferor trust in circumstances to which subsection 107.4(3) would apply if no exception under subsection 107.4(1) were made for either transfers to which subsection 73(1) applied or transfers that included the giving to the transferor of any consideration. In these circumstances, the transferee trust is deemed for the purposes of paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) to be a trust an interest in which was acquired by the individual as a consequence of a qualifying disposition. Thus, gains with regard to an interest in the transferee trust would be required to be recognized in the event that the individual subsequently ceases to reside in Canada.

Paragraph 107.4(3)(i) applies where the transferor was a trust that was neither a personal trust nor a trust prescribed for the purposes of subsection 107(2). In these circumstances, the transferee trust is likewise deemed to be neither a personal trust nor a trust prescribed for the purposes of subsection 107(2).

Paragraph 107.4(3)(j) applies where, as a result of a qualifying disposition from one trust to another trust, a taxpayer disposes of the taxpayer's capital interest in the transferor trust and acquires a capital interest in the transferee trust. In these circumstances, the taxpayer is deemed to dispose of the capital interest in the transferor trust for proceeds equal to the cost amount to the taxpayer of that interest. The taxpayer is also generally deemed to acquire the interest in the transferee trust at that same cost amount. However, the deemed cost amount to the taxpayer of the taxpayer's capital interest in the transferee trust is reduced in some cases where the fair market value of the taxpayer's capital interest in the transferor trust is less than its cost amount to the taxpayer. The reduction in these cases is equal to a hypothetical reduction in the transferor's loss on the disposition of the property. This hypothetical reduction is computed, using the stop-loss rules with regard to trust interests (paragraphs 107(1)(c) and (d)), on the assumption that the proceeds of disposition are the fair market value of the property rather than its cost amount.

Paragraph 107.4(3)(k) applies where the transferor is a trust and a taxpayer's beneficial ownership in property ceases because of a qualifying disposition to be derived from the taxpayer's capital interest in the transferor, but no part of the taxpayer's capital interest in the transferor was disposed of because of the qualifying disposition. In these circumstances, the taxpayer's cost of the taxpayer's capital interest in the transferee trust is increased to reflect the percentage change (attributable to the disposition) in value of the taxpayer's capital interest in the transferee trust. However, the cost amount of the taxpayer's interest in the transferee trust is reduced where the fair market value of the taxpayer's capital interest in the transferor is less than its cost amount to the taxpayer and, had the capital interest in the transferor trust been disposed of, the taxpayer's loss from that hypothetical disposition would have been reduced under the stop-loss rules for trust interests (paragraphs 107(1)(c) and (d)).

Paragraph 107.4(3)(l) generally provides that any amount added under that paragraph in computing the cost to a taxpayer of the taxpayer's capital interest in a transferee trust is deducted in computing the cost to a taxpayer of the taxpayer's capital interest in the transferor. However, the amount of the deduction

does not take into account the reduction under paragraph 107.4(3)(k) in respect of the stop-loss rules for trust interests.

Where paragraphs 107.4(3)(j) and (k) do not apply, paragraph 107.4(3)(m) deems the cost to the transferor of the capital interest in the transferee trust acquired on the disposition to be

- where the transferee is a personal trust, nil, and
- in any other case, the excess determined under paragraph 107.4(3)(b).

Paragraph 107.4(3)(n) applies to a qualifying disposition that is a disposition of a property between two personal trusts. Where, because of the qualifying disposition, a taxpayer disposes of an income interest (as defined in subsection 108(1)) in the transferor trust and acquires an income interest in the transferee trust, for the purpose of subsection 106(2) the taxpayer is deemed not to dispose of any part of the income interest in the transferor trust. This measure is limited to personal trusts because an income interest only exists in respect of such trusts.

These amendments apply to dispositions that occur after December 23, 1998. However, in order to ensure that there will be a cost assigned in certain cases to property previously transferred, these amendments also apply, except for the purposes of Part XI of the Act and regulations made for the purpose of that Part, in simplified form to the 1993 and subsequent taxation years. The previous transfers to which the simplified rules apply are transfers (other than transfers to bare trusts) that were not dispositions of property because of paragraph (e) of the definition "disposition" in section 54. No proceeds of dispositions are ascribed to these previous transfers and the stop-loss rules in subsection 107.4(3) do not apply.

Related Provisions: 53(4) — Effect on ACB of trust interest; 104(5.3)(c) — No application where election in effect to postpone deemed disposition; 104(5.8) — Where property transferred from one trust to another; 107.4(4) — Fair market value of capital interest in trust; 257 — Formula cannot calculate to less than zero.

(4) Fair market value of vested interest in trust — Where

(a) a particular capital interest in a trust is held by a beneficiary at any time,

(b) the particular interest is vested indefeasibly at that time,

(c) the trust is not described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1), and

(d) interests under the trust are not ordinarily disposed of for consideration that reflects the fair market value of the net assets of the trust,

the fair market value of the particular interest at that time is deemed to be not less than the amount determined by the formula

$$(A - B) \times (C/D)$$

where

A is the total fair market value at that time of all properties of the trust,

B is the total of all amounts each of which is the amount of a debt owing by the trust at that time or the amount of any other obligation of the trust to pay any amount that is outstanding at that time,

C is the fair market value at that time of the particular interest (determined without reference to this subsection), and

D is the total fair market value at that time of all interests as beneficiaries under the trust (determined without reference to this subsection).

Technical Notes: New subsection 107.4(4) of the Act provides a valuation rule with regard to vested capital interests in certain trusts.

For subsection 107.4(4) to apply at any time to a taxpayer's capital interest in a trust, the following additional conditions must be satisfied:

- the interest is vested indefeasibly at that time,
- the trust is not described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1), (generally trusts relating to employee compensation and retirement savings and trusts deemed to exist for income tax purposes), and
- capital interests in the trust are not ordinarily disposed of for consideration that reflects the fair market value of the net assets of the trust.

In these circumstances, the fair market value of the capital interest is deemed to be not less than its "share" of the total net assets of the trust. More specifically, the fair market value of the capital interest is deemed to be not less than the product obtained by multiplying the fair market value of the net assets (i.e., assets minus liabilities) of the trust by the proportion of the fair market value of the particular interest (determined without reference to subsection 107.4(4)) to the total fair market value of all beneficial interests in the trust (determined without reference to subsection 107.4(4)).

These amendments apply to dispositions of capital interests that occur after December 23, 1998.

Related Provisions: 248(9.2) — Meaning of "vested indefeasibly"; 257 — Formula cannot calculate to less than zero.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 52, will add s. 107.4, subsecs. (1) and (3) applicable

(a) to dispositions that occur after December 23, 1998, and

(b) re 1993 *et seq.*, to transfers of capital property that occurred before December 24, 1998, except that, in its application to transfers before December 24, 1998,

(i) subsec. (1) shall be read as follows:

107.4 (1) For the purpose of this section, a "qualifying disposition" of a property means a transfer of the property to a particular trust that was not a disposition of the property for the purpose of subdivision c because of paragraph (e) of the definition "disposition" in section 54, except where

(a) if the transfer is from another trust to the particular trust,

(i) each trust can reasonably be considered to act as agent for the same beneficiary or beneficiaries in respect of the property transferred, or

(ii) the transferee trust can reasonably be considered to act as agent for the transferor trust in respect of the property transferred; and

(b) in any other case, it is reasonable to consider that the particular trust acts as agent in respect of the property transferred.

(ii) the opening words of subsec. (3) shall be read as follows:

(3) Where at a particular time there is a qualifying disposition of a property by a person or partnership (in this subsection referred to as the "transferor") to a trust (in this subsection referred to as the "transferee trust"), except for the purposes of Part XI and regulations made for the purposes of that Part

(iii) subsec. (3) shall be read without reference to paras. (a), (c), (g) and (h);

(iv) para. (3)(b) shall be read as follows:

(b) the transferee trust's cost of the property is deemed to be the cost amount to the transferor of the property immediately before the particular time;

(v) subsec. (3) shall be read as if each amount determined under cl. 107.4(3)(j)(ii)(B) and the description of D in paragraph 107.4(3)(k) were nil; and

(vi) subpara. 107.4(3)(m)(ii) shall be read as follows:

(ii) in any other case, at a cost equal to the amount determined under paragraph (b) in respect of the qualifying disposition.

Subsecs. (2) and (4) apply to dispositions that occur after December 23, 1998.

Definitions: "adjustment time" — 14(5), 248(1); "amateur athlete trust" — 143.1(1), 248(1); "amount" — 248(1); "beneficiary" — 104(1.1), 108(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "capital interest" — 108(1), 248(1); "capital property" — 54, 248(1); "cemetery care trust" — 148.1(1), 248(1); "contributor" — 107.4(1); "cost amount" — 248(1); "depreciable property" — 13(21), 248(1); "disposition" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "eligible capital property" — 54, 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "fair market value" — 107.4(4); "filing-due date" — 248(1); "income interest" — 108(1), 248(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "life insurance policy" — 138(12), 248(1); "Minister", "non-resident" — 248(1); "person", "personal trust", "prescribed", "property" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "transferor trust" — 107.4(2); "trust" — 104(1), (3), 108(1), 248(1); "vested indefeasibly" — 248(9.2); "writing" — *Interpretation Act* 35(1).

Proposed Amendment — 107.4

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years, ...

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This is expected to affect 107.4(3)(e)(i)(B) — ed.]

108. (1) Definitions — In this subdivision,

"accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if that amount were

(a) computed without reference to subsections 104(5.1) and (12),

(b) computed as if the greatest amount that the trust was entitled to claim under subsection 104(6) in computing its income for the year were so claimed,

(c) where the trust

(i) is a pre-1972 spousal trust at the end of the year,

(ii) is described in paragraph 104(4)(a), or

(iii) elected under subsection 104(5.3) for a preceding taxation year,

computed without reference to subsections 104(4), (5) and (5.2) and 107(4),

(d) where the trust is described in paragraph 104(4)(a) and the taxpayer's spouse referred to in that paragraph died on a day in that year, computed as if any disposition by the trust before the end of that day of capital property, land described in an inventory of the trust, Canadian resource property or foreign resource property had not occurred, and

(e) computed without reference to subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse referred to in that paragraph;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — 108(1)"accumulating income"

"accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if that amount were computed

(a) without reference to paragraphs 104(4)(a) and (a.1) and subsections 104(5.1), (5.2) and (12) and 107(4),

(b) as if the greatest amount that the trust was entitled to claim under subsection 104(6) in computing its income for the year were so claimed, and

(c) without reference to subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse or common-law partner referred to in that paragraph;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(1), will amend the definition "accumulating income" in subsec. 108(1) to read as above, applicable to 2000 *et seq.*

Technical Notes: The amount that may be allocated under subsection 104(15) of the Act to a disabled beneficiary for a trust taxation year is limited to the trust's accumulating income for the year. The trust's accumulating income is designed, in part, to ensure that the preferred beneficiary election cannot be used to allocate income and gains under a spousal trust to non-spouse beneficiaries. Under the existing definition, trust income arising from a deemed disposition of trust assets under subsection 104(4), (5) or (5.2) is not included in computing "accumulating income" and cannot be allocated to beneficiaries in the event that the trust is a spousal trust.

The definition "accumulating income" is amended so that the above restriction only applies in connection with the deemed disposition of trust assets that occurs on the death of the spouse beneficiary under a spousal trust. As a consequence of amendments to paragraph 104(4)(a), a similar restriction applies to *alter ego* trusts and joint partner trusts, as defined in subsection 248(1).

This amendment applies to the 2000 and subsequent taxation years.

This amendment also reflects changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

History: The definition "accumulating income" in subsec. 108(1) amended by 1996, c. 21, subsec. 19(1), applicable to trust taxation years that end after July 19, 1995. The definition formerly read:

"accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if this Act were read without reference to

(a) subsections 104(5.1) and (12),

(b) where the trust

(i) is a pre-1972 spousal trust at the end of the year,

(ii) is described in paragraph 104(4)(a), or

(iii) elected under subsection 104(5.3) for a preceding taxation year,

subsections 104(4), (5), (5.2) and 107(4), and

(c) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse referred to in that paragraph;

The definition "accumulating income" in subsec. 108(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(1), applicable to 1991 *et seq.* The definition formerly read:

> "accumulating income" of a trust for a taxation year means the amount that would, but for subsection 104(12) and, where the trust is a trust described in paragraph 104(4)(a), subsections 104(4), (5), (5.2) and 107(4), be its income for the year;

Pre-RSC History: *The definition "accumulating income" was para. 108(1)(a). See Table of Concordance.*

Para. 108(1)(a) substituted by 1988, c. 55, subsec. 75(1), applicable to taxation years of trusts commencing after 1987. Para. 108(1)(a) formerly read:

> (a) "accumulating income" — "accumulating income" of a trust for a taxation year means the amount that, but for subsections 104(8) and (12), would be its income for the year less, where the trust is a trust described in paragraph 104(4)(a), such amount, if any, as is included in computing the income of the trust for the taxation year by virtue of a deemed disposition after November 12, 1981 under subsection 104(4), (5) or 107(4);

Para. 108(1)(a) amended by 1986, c. 6, subsec. 53(1), to substitute "subsection 104(4), (5) or 107(4)" for "subsection 104(4), (5) or (5.1) or 107(4)", applicable to 1986 *et seq.*

Para. 108(1)(a) substituted by 1984, c. 1, s. 47 to add "subsection 104(8)" and "subsection 104(5.1)", applicable after November 12, 1981.

Para. 108(1)(a) substituted by 1980-81-82-83, c. 140, subsec. 63(1), to add reference to the words "less, where the trust is a trust described in paragraph 104(4)(a), such amount, if any, as is included in computing the income of the trust for the taxation year by virtue of a deemed disposition after November 12, 1981 under subsection 104(4) or (5) or 107(4);", applicable after November 12, 1981.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-394R2: Preferred beneficiary election.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

"beneficiary" under a trust includes a person beneficially interested therein;

Related Provisions: 104(5.5) — Meaning of "beneficiary" for purposes of election to postpone deemed disposition; 143.1(1)(e) — Deemed beneficiary of amateur athletes' reserve fund; 248(3) — Rules applicable in Quebec; 248(13) — Deemed beneficiary for certain purposes; 248(25) — Meaning of "beneficially interested".

Pre-RSC History: *The definition "beneficiary" was para. 108(1)(b).*

"capital interest" of a taxpayer in a trust means

(a) in the case of a personal trust or a prescribed trust, a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under the trust to, or to receive, all or any part of the capital of the trust, and

(b) in any other case, a right of the taxpayer as a beneficiary under the trust;

Proposed Amendment — 108(1)"capital interest"

"capital interest" of a taxpayer in a trust means all rights of the taxpayer as a beneficiary under the trust, and after 1999 includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right, but does not include an income interest in the trust;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(2), will amend the definition "capital interest" in subsec. 108(1) to read as above, applicable after 1999.

Technical Notes: Subsection 108(1) of the Act contains the definition "capital interest". In the case of a personal trust, a prescribed trust and certain "grandfathered" trusts, a taxpayer's capital interest encompasses all rights of the taxpayer to receive all or any part of the trust's capital. In any other case, a taxpayer's capital interest generally encompasses all rights of the taxpayer as a beneficiary under the trust.

The definition "capital interest" is amended to expressly provide that a capital interest does not include an income interest in the trust. With the exception of an income interest in a trust, a taxpayer's capital interest in a trust encompasses:

- all rights of the taxpayer as a beneficiary under any type of trust, and
- after 1999, a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment by the trust that arises as a consequence of any such rights.

This amendment applies after 1999.

Note, in addition, that an amendment to subsection 104(1) has the effect of excluding a "bare trust" from the definition "trust" in the Act. One of the effects of this amendment is that there will be no capital interests in a "bare trust" for the purposes of the Act.

Related Provisions: 53(2)(h), (i) — Reduction in ACB of capital interest; 248(1)"capital interest" — Definition applies to entire Act; 248(1)"disposition"(d), (h) — Whether transfer by trust is a disposition of capital interest.

Pre-RSC History: *The definition "capital interest" was para. 108(1)(c).*

That portion of para. 108(1)(c) preceding subpara. (ii) amended by 1988, c. 55, subsec. 75(2), to substitute, in subpara. (i), "a personal trust or a prescribed trust," for "a testamentary trust or a trust no beneficial interest in which was acquired for consideration payable directly or indirectly to the trust or to any person who has made a contribution to the trust by way of a transfer, assignment or other disposition of property," applicable in respect of interests created or materially altered after January 31, 1987 that were acquired after 10 p.m. EST, February 6, 1987.

Para. 108(1)(c) substituted by 1987, c. 46, subsecs. 37(1), (2), applicable in respect of interests created or materially altered after January 31, 1987 that were acquired after 10 p.m. EST, February 6, 1987. Para. 108(1)(c) formerly read:

> (c) "capital interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under the trust to, or to receive, all or any part of the capital of the trust;

Regulations: 4800.1 (prescribed trust).

"cost amount" to a taxpayer at any time of a capital interest or part thereof, as the case may be, in a trust (other than a trust that is a foreign affiliate of the taxpayer) means, notwithstanding the definition of "cost amount" in subsection 248(1),

Proposed Amendment — 108(1)"cost amount" opening words

"cost amount" to a taxpayer at any time of a capital interest or part of the interest, as the case may be, in a trust (other than a trust that is a foreign affiliate of the taxpayer) means, except for the purposes of section 107.4 and notwithstanding subsection 248(1),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(3), will amend the opening words of the definition "cost amount" in subsec. 108(1) to read as above, applicable to 1993 *et seq.*

Technical Notes: The calculation of the "cost amount" of a taxpayer's capital interest in a trust is primarily relevant for the purposes of determining a taxpayer's capital gain from the disposition of the taxpayer's capital interest in a personal trust. Under paragraph 107(1)(a) of the Act, for capital gains calculation purposes, the adjusted cost base (ACB) of a taxpayer's capital interest is generally the greater of the ACB otherwise determined and the cost amount of the taxpayer's interest determined under subsection 108(1).

Under the existing definition, the cost amount of a taxpayer's capital interest in a trust satisfied by way of a distribution of money is equal to the money distributed. The cost amount of a capital interest satisfied by way of the distribution of other property is equal to the sum of the cost amounts to the trust of those properties. In cases where a capital interest is disposed of without

any distribution, the cost amount of a taxpayer's capital interest is considered to be the taxpayer's proportionate share of the trust's money on hand and the total cost amount of other trust property, offset by outstanding trust liabilities. The purpose of the existing definition is essentially to give beneficiaries of personal trusts recognition for cost amounts of trust assets, given that the cost of capital and income interests in such trusts will generally be nil because of the operation of subsections 106(1.1) and 107(1.1).

The definition is amended so that it does not apply for the purpose of section 107.4. This amendment applies to the 1993 and subsequent taxation years, in order to be consistent with the coming into force for section 107.4.

(a) where any money or other property of the trust has been distributed by the trust to the taxpayer in satisfaction of all or part of the taxpayer's capital interest (whether on the winding-up of the trust or otherwise), the total of

(i) the money so distributed, and

(ii) all amounts each of which is the cost amount to the trust, immediately before the distribution, of each such other property, and

(iii) [Repealed]

Proposed Addition — 108(1)"cost amount"(a.1)

(a.1) where that time is immediately before the time of the death of the taxpayer and subsection 104(4) or (5) deems the trust to dispose of property at the end of the day that includes that time, the amount that would be determined under paragraph (b) if the taxpayer had died on a day that ended immediately before that time, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(4), will add para. (a.1) to the definition "cost amount" in subsec. 108(1), applicable to deaths that occur after 1999.

Technical Notes: New paragraph (a.1) of the definition is introduced to provide a special rule in the event that an individual is deemed to dispose of a capital interest in a trust immediately before the individual's death. If on the individual's death there is also a deemed disposition of trust assets and an immediate subsequent deemed reacquisition because of the operation of amended paragraph 104(4)(a), that deemed reacquisition is considered to occur immediately before the individual's death in order that the "cost amount" of the individual's capital interest reflects the deemed disposition of trust assets. This amendment is intended to prevent double taxation of the same economic gain in these circumstances.

(b) in any other case, the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of

(i) all money of the trust on hand immediately before that time, and

(ii) all amounts each of which is the cost amount to the trust, immediately before that time, of each other property of the trust,

B is the total of all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay any amount, that was outstanding immediately before that time,

C is the fair market value at that time of the capital interest or part thereof, as the case may be, in the trust, and

D is the fair market value at that time of all capital interests in the trust;

Related Provisions: 206(1)"cost amount" — Meaning of cost amount of capital interest in a trust for foreign-property rules; 248(1) — Definition of "cost amount" for other purposes; 248(25.3) — Deemed cost of trust units; 257 — Formula cannot calculate to less than zero.

History: Subpara. (a)(ii) of the definition "cost amount" in subsec. 108(1) substituted, and subpara. (iii) repealed, by 1994, c. 21, subsec. 48(2), applicable after July 13, 1990. Subparas. (a)(ii) and (iii) formerly read:

(ii) all amounts each of which is the cost amount to the trust, immediately before the distribution, of each such other property (other than eligible capital property in respect of a business of the trust), and

(iii) all amounts each of which is 4/3 of the cost amount to the trust, immediately before the distribution, of each such other property that is eligible capital property in respect of a business of the trust, and

The description of A in para. (b) of the definition "cost amount" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(3), applicable after July 13, 1990. That description formerly read:

A is the total of

(i) all money of the trust on hand immediately before that time,

(ii) all amounts each of which is the cost amount to the trust, immediately before that time, of each other property of the trust (other than eligible capital property in respect of a business of the trust), and

(iii) 4/3 of the total of all amounts each of which is the cumulative eligible capital of the trust, immediately before that time, in respect of a business of the trust,

Paras. (a), (b) of "cost amount" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 77(1), applicable after July 13, 1990. Those paras. formerly read:

(a) in any case where any money or property of the trust has been distributed by the trust to the taxpayer in satisfaction of the whole or part of the taxpayer's capital interest, as the case may be (whether on the winding-up of the trust or otherwise), the total of the money so distributed and all amounts each of which is the cost amount to the trust, immediately before the distribution, of a property so distributed to the taxpayer, and

(b) in any other case, that proportion of the amount, if any, by which the total of all money of the trust on hand immediately before that time and all amounts each of which is the cost amount to the trust, immediately before that time, of a property of the trust exceeds the total of all amounts each of which is the amount of a debt owing by the trust, or of any other obligation of the trust to pay any amount, that was outstanding immediately before that time, that

(i) the fair market value at that time of the capital interest or part thereof, as the case may be, in the trust,

is of

(ii) the fair market value at that time of all capital interests in the trust;

Pre-RSC History: *The definition "cost amount" was para. 108(1)(d). See Table of Concordance.*

That portion of para. 108(1)(d) preceding subpara. (i) substituted by 1988, c. 55, subsec. 75(3), applicable after 1987. That portion formerly read:

(d) "cost amount" of capital interest — "cost amount" of any capital interest or part thereof, as the case may be, of a taxpayer in any trust (other than a trust that is a foreign affiliate of the taxpayer) at any time means,

That portion of para. 108(1)(d) preceding subpara. (i) amended by 1974-75-76, c. 26, subsec. 67(1), applicable to 1972 *et seq.*

Para. 108(1)(d) substituted by 1973-74, c. 14, subsec. 33(1), applicable to 1972 *et seq.*

Advance Tax Rulings: ATR-38: Distribution of all of the property of an estate.

"designated income [para. 108(1)(d.1)]" — [Repealed under former Act]

Pre-RSC History [former para. 108(1)(d.1)"designated income"]: Para. 108(1)(d.1) repealed by 1988, c. 55, subsec. 75(4), applicable after 1987. Para. (d.1) formerly read:

> (d.1) "designated income" — "designated income" of a trust for a taxation year means the amount that would, but for subsections 20(16), 104(6) and (12) and 105(2) and any regulations made under paragraph 20(1)(a), be the income of the trust for the taxation year determined under section 3 if
>
> (i) it had no income other than incomes from real properties in Canada, incomes from timber resource properties, incomes from Canadian resource properties, incomes from businesses carried on in Canada and taxable capital gains from dispositions described in subparagraph (ii),
>
> (ii) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of property that would have been taxable Canadian property if at no time in the year the trust had been resident in Canada, and
>
> (iii) the only losses referred to in paragraph 3(d) were losses from real properties in Canada, losses from timber resource properties and losses from businesses carried on in Canada;

That portion of para. 108(1)(d.1) preceding subpara. (i) substituted by 1977-78, c. 1, subsec. 50(1), to add reference to subsec. 20(16), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977.

Para. 108(1)(d.1) added by 1974-75-76, c. 26, subsec. 67(2), applicable to 1974 *et seq.*

Proposed Addition — 108(1)"eligible offset"

"eligible offset" at any time of a taxpayer in respect of all or part of the taxpayer's capital interest in a trust is the portion of any debt or obligation that is assumed by the taxpayer and that can reasonably be considered to be applicable to property distributed at that time in satisfaction of the interest or part of the interest, as the case may be, if the distribution is conditional upon the assumption by the taxpayer of the portion of the debt or obligation;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(8), will add the definition "eligible offset" to subsec. 108(1), applicable after 1999.

Technical Notes: Subsection 108(1) of the Act is amended to introduce the expression "eligible offset".

A taxpayer's "eligible offset" in respect of all or part of a taxpayer's capital interest in a trust reduces the taxpayer's proceeds of disposition arising from the satisfaction of all or part of that interest, in the event there is a distribution to which amended subsection 107(2) or (2.1) applies. Where such a distribution was conditional upon the assumption by the taxpayer of a debt or obligation, the taxpayer's eligible offset at any time of in respect of that interest is the portion of the debt or obligation assumed by the taxpayer that can reasonably be considered to be applicable to the property distributed at that time in satisfaction of that interest.

This amendment applies after 1999. For further detail on the effect of this amendment, see the notes on amendments to subsections 107(2) and (2.1).

"eligible real property gain" — [Repealed]

History: The definition "eligible real property gain" in subsec. 108(1) repealed by 1995, c. 3, subsec. 31(1), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "eligible real property gain" of a trust has the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1)";

The definition "eligible real property gain" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(1), applicable to 1992 *et seq.* That definition formerly read:

> "eligible real property gain" of a trust has the meaning assigned by subsection 110.6(1);

The definition "eligible real property gain" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable to 1992 *et seq.*

"eligible real property loss" — [Repealed]

History: The definition "eligible real property loss" in subsec. 108(1) repealed by 1995, c. 3, subsec. 31(1), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "eligible real property loss" of a trust has the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1)";

The definition "eligible real property loss" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(1), applicable to 1992 *et seq.* That definition formerly read:

> "eligible real property loss" of a trust has the meaning assigned by subsection 110.6(1);

The definition "eligible real property loss" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable to 1992 *et seq.*

"eligible taxable capital gains" of a personal trust for a taxation year means the lesser of

(a) its annual gains limit (within the meaning assigned by subsection 110.6(1)) for the year, and

(b) the amount determined by the formula

$$A - B$$

where

A is its cumulative gains limit (within the meaning assigned by subsection 110.6(1)) at the end of the year, and

B is the total of all amounts designated under subsection 104(21.2) by the trust in respect of beneficiaries for taxation years before that year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The definition "eligible taxable capital gains" in subsec. 108(1) amended by 1995, c. 3, subsec. 31(2), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "eligible taxable capital gains" of a trust for a taxation year means the lesser of
>
> (a) its annual gains limit for the year (within the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1))", and
>
> (b) the amount determined by the formula
>
> $$A - B$$
>
> where
>
> A is its cumulative gains limit at the end of the year (within the meaning that would be assigned by the definition of that expression in subsection 110.6(1) if the reference in that definition to "non-qualifying real property" were read as "non-qualifying real property as defined in subsection 108(1))", and
>
> B is the total of all amounts designated under subsection 104(21.2) by the trust in respect of beneficiaries in taxation years before that year;

The definition "eligible taxable capital gains" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(1), applicable to 1992 *et seq.* That definition formerly read:

> "eligible taxable capital gains" of a trust for a taxation year means the lesser of
>
> (a) the annual gains limit (within the meaning assigned by the definition of that expression in subsection 110.6(1)) of the trust for the year, and
>
> (b) the amount determined by the formula
>
> $$A - B$$
>
> where

A is the cumulative gains limit (within the meaning assigned by the definition of that expression in subsection 110.6(1) if that definition were read without reference to paragraph (c) thereof) of the trust at the end of the year, and

B the total of all amounts each of which is an amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in a taxation year preceding that year;

Pre-RSC History: *The definition "eligible taxable capital gains" was para. 108(1)(d.2).*

Para. 108(1)(d.2) added by 1986, c. 6, subsec. 53(2), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

Forms: T3 Sched. 3: Calculation of a trust's eligible taxable capital gains.

"excluded property" means a share of the capital stock of a non-resident-owned investment corporation that is not taxable Canadian property;

History: The definition "excluded property" amended by 1998, c. 19, subsec. 129(1), applicable after April 26, 1995. It formerly read:

> "excluded property" at a particular time means a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the first taxation year of the corporation that ends at or after the particular time, the corporation does not own property referred to in any of clauses 115(1)(b)(v)(A) to (D);

The definition "excluded property" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable after February 11, 1991.

Proposed Addition — 108(1)"exempt property"

"exempt property" of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because the taxpayer is non-resident or because of a provision contained in a tax treaty, not cause an increase in the taxpayer's tax payable under this Part;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(8), will add the definition "exempt property" to subsec. 108(1), applicable after 1992, except that before 1999, the words "tax treaty" shall be read as "convention or agreement with another country that has the force of law in Canada".

Technical Notes: Subsection 108(1) of the Act introduces the definition "exempt property". The expression is used in amended subsections 104(4) to (5.2). For further detail, see the notes above on those subsections.

"income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust;

Proposed Amendment — 108(1)"income interest"

"income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, after 1999, includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(5), will amend the definition "income interest" in subsec. 108(1) to read as above, applicable to in respect of interests created or materially altered after January 1987 that were acquired after 10 p.m. EST, February 6, 1987.

Technical Notes: Subsection 108(1) of the Act contains the definition "income interest". It is defined as a right as a beneficiary under a personal trust to income of the trust. Under subsection 108(3), "income" for this purpose is determined without reference to the provisions of the Act.

The definition is amended to provide that, after 1999, an income interest also includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment by the trust that arises as a consequence of a right that is an income interest.

Except as noted above, these amendments apply in respect of interests created or materially altered after January 31, 1987 that were acquired after 10 p.m. EST, February 6, 1987.

Related Provisions: 108(3) — Meaning of "income" of trust; 248(1)"income interest" — Definition applies to entire Act.

Pre-RSC History: *The definition "income interest" was para. 108(1)(e).*

Para. 108(1)(e) amended by 1988, c. 55, subsec. 75(5), to substitute "a personal trust" for "a trust referred to in subparagraph (c)(i)", applicable in respect of interests created or materially altered after January 31, 1987 that were acquired after 10 p.m. EST, February 6, 1987.

Para. 108(1)(e) amended to substitute "under a trust referred to in subparagraph (c)(i) to" for "under the trust to", by 1987, c. 46, subsecs. 37(1), (2), applicable in respect of interests created or materially altered after January 31, 1987 that were acquired after 10 p.m. EST, February 6, 1987.

Interpretation Bulletins: IT-385R2: Disposition of an income interest in a trust.

"inter vivos trust" means a trust other than a testamentary trust;

Related Provisions: 143(1) — Communal religious congregation deemed to be *inter vivos* trust; 143.1(1)(a) — Amateur athletes' reserve fund deemed to be *inter vivos* trust; 146.1(11) — RESP deemed to be *inter vivos* trust for certain purposes; 149(5) — Exception re investment income of certain clubs; 207.6(1) — Retirement compensation arrangement deemed to be *inter vivos* trust; 248(1)"*inter vivos* trust" — Definition applies to entire Act.

Pre-RSC History: *The definition "*inter vivos *trust" was para. 108(1)(f).*

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 108(1) repealed by 1995, c. 3, subsec. 31(1), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

> "non-qualifying real property"
>
> (a) of a trust that is a personal trust has the meaning assigned by subsection 110.6(1), and
>
> (b) of a trust that is not a personal trust has the meaning assigned by subsection 131(6);

The definition "non-qualifying real property" in subsec. 108(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable to 1992 *et seq.*

"pre-1972 spousal trust" at a particular time means a trust that was

(a) created by the will of a taxpayer who died before 1972, or

(b) created before June 18, 1971 by a taxpayer during the taxpayer's lifetime

that, throughout the period beginning at the time it was created and ending at the earliest of January 1, 1993, the day on which the taxpayer's spouse died and the particular time, was a trust under which the taxpayer's spouse was entitled to receive all of the income of the trust that arose before the spouse's death, unless a person other than the spouse received or otherwise obtained the use of any of the income or capital of the trust before the end of that period;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(4)(a.1) — Deemed disposition by a trust; 104(15) — Preferred beneficiary's share; 104(15)(a) — Allocable amount for preferred beneficiary election; 108(3) — Meaning of "income" of trust; 108(4) — Trust not disqualified by reason only of payment of certain duties and taxes; 248(9.1) — Whether trust created by taxpayer's will; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

History: The definition "pre-1972 spousal trust" in subsec. 108(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(2), applicable after February 11, 1991.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gain to beneficiaries.

"preferred beneficiary" under a trust for a particular taxation year of the trust means a beneficiary under the trust at the end of the particular year who is resident in Canada at that time if

(a) the beneficiary is

(i) an individual in respect of whom paragraphs 118.3(1)(a) to (b) apply for the individual's taxation year (in this definition referred to as the "beneficiary's year") that ends in the particular year, or

(ii) an individual

(A) who attained the age of 18 years before the end of the beneficiary's year, was a dependant (within the meaning assigned by subsection 118(6)) of another individual for the beneficiary's year and was dependent on the other individual because of mental or physical infirmity, and

(B) whose income (computed without reference to subsection 104(14)) for the beneficiary's year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year, and

(b) the beneficiary is

(i) the settlor of the trust,

(ii) the spouse or former spouse of the settlor of the trust, or

(iii) a child, grandchild or great grandchild of the settlor of the trust or the spouse of any such person;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(14) — Preferred beneficiary election; 252(4) — Extended meaning of "spouse".

History: Cl. (a)(ii)(B) of the definition "preferred beneficiary" amended by 2000, c. 19, subsec. 16(1), applicable to 1998 *et seq.*, except that the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for the year" shall be read as a reference to

(a) "$6,956" for the 1998 taxation year; and

(b) "$7,044" for the 1999 taxation year.

The clause formerly read:

(B) whose income (computed without reference to subsection 104(14)) for the beneficiary's year does not exceed $6,456, and

The definition "preferred beneficiary" amended by 1998, c. 19, s. 19, applicable to trust taxation years that end after 1996. It formerly read:

"preferred beneficiary" under a trust for a particular taxation year of the trust means an individual

(a) who is resident in Canada and a beneficiary under the trust at the end of the particular year,

(b) in respect of whom paragraphs 118.3(1)(a) to (b) apply for the individual's taxation year in which the particular year ends, and

(c) who is

(i) the settlor of the trust,

(ii) the spouse or former spouse of the settlor of the trust, or

(iii) a child, grandchild or great grandchild of the settlor of the trust, or the spouse of any such person;

The definition "preferred beneficiary" in subsec. 108(1) amended by 1996, c. 21, subsec. 19(2), applicable to trust taxation years that begin after 1995. The definition formerly read:

"preferred beneficiary" under any trust means an individual resident in Canada who is a beneficiary under the trust and is

(a) the settlor of the trust,

(b) the spouse or former spouse of the settlor of the trust, or

(c) a child, grandchild or great grandchild of the settlor of the trust, or the spouse of any such person;

Pre-RSC History: *The definition "preferred beneficiary" was para. 108(1)(g).*

Interpretation Bulletins: IT-374: Meaning of "settlor"; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable gains to beneficiaries; IT-394R2: Preferred beneficiary election.

"qualified farm property" of an individual has the meaning assigned by subsection 110.6(1);

Pre-RSC History: *The definition "qualified farm property" was para. 108(1)(g.1).*

Para. 108(1)(g.1) added by 1988, c. 55, subsec. 76(6), applicable to 1988 *et seq.*

"qualified small business corporation share" of an individual has the meaning assigned by subsection 110.6(1)

Pre-RSC History: *The definition "qualified small business corporation share" was para.108(1)(g.2).*

Para. 108(1)(g.2) added by 1988, c. 55, subsec. 76(6), applicable to 1988 *et seq.*

"settlor",

(a) in relation to a testamentary trust, means the individual referred to in the definition "testamentary trust" in this subsection, and

(b) in relation to an *inter vivos* trust,

(i) if the trust was created by the transfer, assignment or other disposition of property thereto (in this paragraph referred to as property "contributed") by not more than one individual and the fair market value of such of the property of the trust as was contributed by the individual at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual, and

(ii) if the trust was created by the contribution of property thereto jointly by an individual and the individual's spouse and by no other person and the fair market value of such of the property of the trust as was contributed by them at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual and the spouse;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come

into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 17(15)"settlor" — Alternate definition for purposes of loan by corporation to non-resident; 104(5.6) — Designated contributor.

Pre-RSC History: *The definition "settlor" was para. 108(1)(h). See Table of Concordance.*

Interpretation Bulletins: IT-374: Meaning of "settlor"; IT-394R2: Preferred beneficiary election.

"testamentary trust" in a taxation year means a trust or estate that arose on and as a consequence of the death of an individual (including a trust referred to in subsection 248(9.1)), other than

(a) a trust created by a person other than the individual,

(b) a trust created after November 12, 1981 if, before the end of the taxation year, property has been contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof, and

(c) a trust created before November 13, 1981 if

(i) after June 28, 1982 property has been contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof, or

(ii) before the end of the taxation year, the total fair market value of the property owned by the trust that was contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof and the property owned by the trust that was substituted for such property exceeds the total fair market value of the property owned by the trust that was contributed by an individual on or after the individual's death and as a consequence thereof and the property owned by the trust that was substituted for such property, and for the purposes of this paragraph the fair market value of any property shall be determined as at the time it was acquired by the trust; and

Related Provisions: 210.1(a) — Part XII.2 does not apply to testamentary trust; 248(1)"testamentary trust" — Definition applies to entire Act; 248(8) — Occurrences as a consequence of death.

History: The opening words of the definition "testamentary trust" in subsec. 108(1) substituted by 1994, c. 21, subsec. 48(4), applicable to 1990 *et seq.* The opening words of that definition formerly read:

> "testamentary trust" in a taxation year means a trust or estate that arose upon and in consequence of the death of an individual (including a trust referred to in subsection 70(6.1)), other than

Pre-RSC History: *The definition "testamentary trust" was para. 108(1)(i). See Table of Concordance.*

Subparas. 108(1)(i)(ii) and (iii) amended by 1985, c. 45, subsec. 52(1), to substitute the words "by an individual on or after his death and as a consequence thereof" for "by an individual on his death" wherever they appeared, applicable to taxation years commencing after November 12, 1981.

Para. 108(1)(i) substituted by 1980-81-82-83, c. 140, subsec. 63(2), applicable to taxation years commencing after November 12, 1981. Para. 108(1)(i) formerly read:

> (i) "testamentary trust" means a trust or estate that arose upon the death of an individual and in consequence of his death, but for greater certainty does not include any such trust that was created by any person other than that individual; and

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries.

"trust" includes an *inter vivos* trust and a testamentary trust but in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107 does not include

(a) an amateur athlete trust, an employee trust, a trust described in paragraph 149(1)(o.4) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a foreign retirement arrangement, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan or a registered supplementary unemployment benefit plan,

Proposed Addition — 108(1)"trust"(a.1)

(a.1) a trust, other than a trust described in paragraph (a) or (d), all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(6), will add para. (a.1) to the definition "trust" in subsec. 108(1), applicable to 1999 *et seq.*

Technical Notes: Subsection 108(1) of the Act defines "trust", for the purposes of the 21-year deemed disposition rule and other specified measures, to exclude certain listed trusts. For these purposes, paragraph (f) of the definition excludes unit trusts (as defined in subsection 108(2)) and paragraph (g) of the definition excludes, except as specified, trusts all interests in which have vested indefeasibly and no interest in which may become effective in the future. One of the specified exceptions from the exclusion under paragraph (g) is for trusts described in paragraph 104(4)(a) (which, under the existing law, describes only spousal trusts).

Paragraph (a.1) is added to the definition so that the exclusion from the 21-year deemed disposition rule and other rules applies to a trust (other than a trust already described in paragraph (a) or (d) of the definition) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment. It is generally intended that health and welfare trusts qualify for the exclusion, given that these trusts would not be expected to be described in paragraph (a) or (d) of the definition. This amendment applies to the 1999 and subsequent taxation years.

(b) a related segregated fund trust (within the meaning assigned by section 138.1),

(c) an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization,

(d) an RCA trust (within the meaning assigned by subsection 207.5(1)),

(e) a trust each of the beneficiaries under which was at all times after it was created a trust referred to in paragraph (a), (b) or (d) or a person who is a beneficiary of the trust only because of being a beneficiary under a trust referred to in any of those paragraphs, or

(e.1) a cemetery care trust or a trust governed by an eligible funeral arrangement,

and, in subsections 104(4), (5), (5.2), (12), (14) and (15), does not include

(f) a unit trust, or

(g) a trust (other than a trust described in paragraph 104(4)(a), a trust that has elected under subsection 104(5.3), or a trust that, in its return of income under this Part for its first taxation year ending after 1992, has elected that this subparagraph not apply) all inter-

ests in which have vested indefeasibly and no interest in which may become effective in the future.

Proposed Amendment — 108(1)"trust"

and, in applying subsections 104(4), (5), (5.2), (12), (14) and (15) and section 106 at any time, does not include

(f) a trust that, at that time, is a unit trust, or

(g) a trust all interests in which, at that time, have vested indefeasibly, other than

(i) an *alter ego* trust, a joint partner trust or a post-1971 partner trust,

(ii) a trust that has elected under subsection 104(5.3),

(iii) a trust that has, in its return of income under this Part for its first taxation year that ends after 1992, elected that this paragraph not apply,

(iv) a trust that is at that time resident in Canada where the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust who at that time are non-resident is more than 20% of the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust,

(v) a trust under the terms of which, at that time, all or part of a person's interest in the trust is to be terminated with reference to a period of time (including a period of time determined with reference to the person's death), otherwise than as a consequence of terms of the trust under which an interest in the trust is to be terminated as a consequence of a distribution to the person (or the person's estate) of property of the trust if the fair market value of the property to be distributed is required to be commensurate with the fair market value of that interest immediately before the distribution, or

(vi) a trust that, before that time and after December 17, 1999, has made a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, if the distribution can reasonably be considered to have been financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(7), will amend the portion of the definition "trust" in subsec. 108(1) after para. (e.1) to read as above, applicable to 1998 *et seq.*, except that

(a) it does not apply for the purpose of applying subpara. (g)(iv) of the definition before December 24, 1998; and

(b) where the trust so elects in writing and files the election with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which the amending legislation is assented to (or any later day that is acceptable to the Minister), subpara. (g)(v) of the definition, as it applies before 2001, shall be read as follows:

(v) a trust any interest in which may become effective in the future, or

Technical Notes: The definition is also amended so that the exclusion under paragraphs (f) and (g) also apply for the purpose of the rules in section 106 governing the taxation of income interests.

Paragraph (g) of the definition is amended so that the exclusion can apply to a trust all interests in which have vested indefeasibly, without regard to whether an interest in the trust becomes effective in the future. However, under new subparagraph (g)(v), the exclusion generally does not apply to a trust under the terms of which all or part of any person's interest is to be terminated with reference to a period of time.

The elimination of the requirement that there be no future interest and its replacement by subparagraph (g)(v) applies to the 1998 and subsequent taxation years. However, where the trust so elects in writing before its filing-due date for its taxation year that includes the date of Royal Assent (or before such later day as is acceptable to the Minister of National Revenue), these amendments apply only after 2000.

EXAMPLE

A trust provides for beneficiary A to receive income from property for the lifetime of beneficiary A with the remainder interest to go beneficiary B (or the estate of beneficiary B, if beneficiary B does not survive beneficiary A). The above amendment clarifies that the above exclusion from the 21-year rule does not apply in this case. On the other hand, where new units in a trust can be issued by a commercial trust for fair market value consideration, the above amendment ensures that the trust is not precluded from qualifying for the exclusion.

New subparagraph (g)(iv) of the definition ensures that the above exclusion does not apply to a trust resident in Canada that has a non-resident beneficiary, unless the total fair market value of the interests of the non-resident beneficiaries is 20% or less of the total fair market value of the interests in the trust. This 20% level is meant to accommodate a limited level of foreign ownership of interests in the trust, given that gains in respect of those interests may not be subject to Canadian taxes because of income tax treaties. This amendment applies after December 23, 1998.

New subparagraph (g)(vi) of the definition ensures that the above exclusion does not apply to a trust that, after December 17, 1999, made a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, if the distribution may reasonably be considered to have been financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under Part I of the Act as a consequence of the death of any individual. This provision parallels new paragraph 104(4)(a.2), described in the notes above.

Except as noted above, these amendments apply to the 1998 and subsequent taxation years.

Related Provisions: 75(2) — Revocable or reversionary trust; 94(3) — Non-resident trust deemed resident in Canada; 104(1) — Reference to trust or estate; 107.4(4) — Fair market value of capital interest in trust; 146.1(1)"trust" — Meaning of "trust" for RESP; 210.1(d) — Certain trusts not subject to Part XII.2 tax; 233.2(4) — Reporting requirement re transfers to foreign trust; 233.6(1) — Reporting requirement re distributions from foreign trust; 248(1)"trust" — Definition outside subdiv. k is that in 104(1); 248(3) — Deemed trusts in Quebec; 248(5.2) — Trust-to-trust transfers — deemed same trust; 248(9.2) — Meaning of "vested indefeasibly"; 251(1)(b) — Personal trust and beneficiary deemed not to deal at arm's length.

History: Para. (e.1) of the definition "trust" in subsec. 108(1) amended by 1998, c. 19, subsec. 129(2), applicable to 1993 *et seq.* Para. (e.1) formerly read:

(e.1) a trust governed by an eligible funeral arrangement,

Para. (e.1) added to the definition "trust" in subsec. 108(1) by 1995, c. 21, s. 61, applicable to 1993 *et seq.*

The preamble to the definition "trust" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(4), applicable to 1993 *et seq.* That portion formerly read:

"trust" includes an *inter vivos* trust and a testamentary trust but, in subsections 104(4), (5), (5.2), (12), (14) and (15), does not include a unit trust and, in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107, does not include

Para. (a) of "trust" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(5), applicable to 1988 *et seq.* except that, in its application to the 1988 and 1989 taxation years, the para. shall be read without reference to the expression "a foreign retirement arrangement". Para. (a) formerly read:

(a) a trust governed by a registered pension plan, a foreign retirement arrangement, an employees profit sharing plan, a registered supplementary unemployment benefit plan, a registered retirement

savings plan, a deferred profit sharing plan, a registered education savings plan, a registered retirement income fund, an employee benefit plan, an employee trust or a trust described in paragraph 149(1)(o.4),

Paras. (e) and (g) of "trust" added and the portion between those paras. moved from the preamble by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(6), applicable to 1993 *et seq.*

Para. (a) of "trust" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 77(2), to add "a foreign retirement arrangement", applicable to 1990 *et seq.*

Pre-RSC History: *The definition "trust" was para. 108(1)(j); paras. (a) to (e) of the definition were subparas. (j)(ii) to (vi), and paras. (f) and (g) were subparas. (j)(i) and (i.1).*

Subpara. 108(1)(j)(ii) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

That portion of para. 108(1)(j) preceding subpara. (ii) substituted by 1988, c. 55, subsec. 75(7), applicable to taxation years of trusts commencing after 1987. That portion formerly read:

> (j) **"trust"** — "trust" includes an *inter vivos* trust and a testamentary trust but, in subsections 104(4), (5), (12), (14) and (15) and sections 105 to 107, does not include
>
> (i) a unit trust,

Subpara. 108(1)(j)(ii) amended by 1987, c. 46, subsec. 37(3), to substitute "an employee trust, or a trust described in paragraph 149(1)(o.4)" for "an employee trust", applicable to 1987 *et seq.*

Subpara. 108(1)(j)(v) added by 1987, c. 46, subsec. 37(4), applicable after October 8, 1986.

Subpara. 108(1)(j)(ii) amended by 1986, c. 6, subsec. 53(3) to substitute "a registered education savings plan" for "a registered education savings plan, a registered home ownership savings plan", applicable to 1986 *et seq.*

Subpara. 108(1)(j)(ii) substituted by 1980-81-82-83, c. 48, s. 56, to add reference to "an employee benefit plan or employee trust," applicable to 1980 *et seq.*

Subpara. 108(1)(j)(ii) substituted by 1977-78, c. 32, subsec. 25(1), to add "or a registered retirement income fund".

Subparas. 108(1)(j)(iii), (iv) added by 1977-78, c. 1, subsec. 50(2), applicable, as to subpara. (iii), to 1978 *et seq.*, as to subpara. (iv), to 1977 *et seq.*

Subpara. 108(1)(j)(ii) substituted by 1974-75-76, c. 26, subsec. 67(3), applicable to 1972 *et seq.* re registered education savings plans and 1974 *et seq.* re registered home ownership savings plans. Subpara. 108(1)(j)(ii) formerly read:

> (ii) a trust governed by a registered pension fund or plan, an employees profit sharing plan, a registered supplementary unemployment benefit plan, a registered retirement savings plan or a deferred profit sharing plan.

Interpretation Bulletins [subsec. 108(1)"trust"]: IT-394R2: Preferred beneficiary election; IT-449R: Meaning of "vested indefeasibly"; IT-502: Employee benefit plans and employee trusts; IT-531: Eligible funeral arrangements.

Related Provisions [subsec. 108(1)]: 104(4), (5), (5.2) — Exempt property excluded from 21-year deemed disposition.

Selected Cases [subsec. 108(1)]: *Greenberg v. R.*, [1997] 3 C.T.C. 2859 (TCC) (Contribution of property to trust caused it to cease to be testamentary trust).

(2) Where trust is a unit trust — For the purposes of this Act, a trust is a unit trust at any particular time if, at that time, it was an *inter vivos* trust the interest of each beneficiary under which was described by reference to units of the trust, and

(a) the issued units of the trust included

(i) units having conditions attached thereto that included conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the units, or fractions or parts thereof, that are fully paid, or

(ii) units qualified in accordance with prescribed conditions relating to the redemption of the units by the trust,

and the fair market value of such of the units as had conditions attached thereto that included such conditions or as were so qualified, as the case may be, was not less than 95% of the fair market value of all of the issued units of the trust (such fair market values being determined without regard to any voting rights attaching to units of the trust),

(b) throughout the taxation year in which the particular time occurred

(i) it was resident in Canada,

(ii) its only undertaking was

(A) the investing of its funds in property (other than real property or an interest in real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property, or interest in real property, that is capital property of the trust, or

(C) any combination of the activities described in clauses (A) and (B),

(iii) at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, mortgages, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada and interests in such property, and

(G) rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(iv) not less than 95% of its income (determined without reference to subsections 49(2.1) and 104(6)) for the year was derived from, or from the disposition of, investments described in subparagraph (iii), and

(v) not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality,

and, where the trust would not be a unit trust at the particular time if subparagraph (iii) were read without reference to the words "real property (or interests in real property) situated in Canada", the units of the trust are listed at any time in the year or in the following taxation year on a prescribed stock exchange in Canada, or

Proposed Amendment — 108(2)(b)

(b) each of the following conditions was satisfied:

(i) throughout the taxation year that includes the particular time (in this paragraph referred to as the "current year"), the trust was resident in Canada,

(ii) throughout the period or periods (in this paragraph referred to as the "relevant periods") that are in the current year and throughout which the conditions in paragraph (a) are not satisfied in respect of the trust, its only undertaking was

(A) the investing of its funds in property (other than real property or an interest in real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property or an interest in real property, that is capital property of the trust, or

(C) any combination of the activities described in clauses (A) and (B),

(iii) throughout the relevant periods at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, hypothecs, mortgages, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada and interests in real property situated in Canada, and

(G) rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(iv) either

(A) not less than 95% of its income for the current year (computed without regard to subsections 49(2.1) and 104(6)) was derived from, or from the disposition of, investments described in subparagraph (iii), or

(B) not less than 95% of its income for each of the relevant periods (computed without regard to subsections 49(2.1) and 104(6) and as though each of those periods were a taxation year) was derived from, or from the disposition of, investments described in subparagraph (iii),

(v) throughout the relevant periods, not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality, and

(vi) where the trust would not be a unit trust at the particular time if this paragraph were read without reference to this subparagraph and subparagraph (iii) were read without reference to clause (F), the units of the trust are listed at any time in the current year or in the following taxation year on a prescribed stock exchange in Canada, or

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(9), will amend para. 108(2)(b) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 108(2) of the Act describes the requirements for a trust to be a "unit trust" (as defined in subsection 248(1)). A trust must be a unit trust to qualify as a "mutual fund trust" under subsection 132(6).

Paragraph 108(2)(b) is amended to allow a trust to qualify as a unit trust throughout a taxation year, provided that at all times throughout the year the trust meets the conditions set out in either paragraph 108(2)(a) or (b). This ensures that a trust will not lose its status as a unit trust only because it converts from a unit trust described in paragraph 108(2)(b) to a unit trust described in paragraph 108(2)(a) or *vice versa*.

Paragraph 108(2)(b) is intended, because of its closing words, to require a trust more than 20% of the assets of which consist of real property situated in Canada to qualify as a unit trust under paragraph 108(2)(b) only if its units are listed on a prescribed stock exchange in Canada. These closing words are replaced by subparagraph 108(2)(b)(vi). This subparagraph reflects past amendments to subsection 108(2).

Paragraph 108(2)(b) is also amended to add a reference to "hypothec" to the list of properties the combination of which must account for at least 80 per cent of a trust's total properties. This amendment is made to ensure that the Act appropriatly reflects both the civil law of the province of Quebec and the law of other provinces.

These amendments apply to the 1998 and subsequent taxation years.

(c) the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property (or an interest in real property), the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition "qualified investment" in section 204, real property (or an interest in real property) or any combination of those properties.

Proposed Amendment — 108(2)

Letter from Department of Finance, July 6, 1999:

Dear [xxx]

This is in reply to your letter of June 23, 1999 to Simon Thompson concerning subsection 108(2) of the *Income Tax Act*.

We understand that your client currently meets the provision for closed-end unit trusts under paragraph 108(2)(b), and that your client expects, following the introduction of a redemption feature to its units, to meet the provision for open-end unit trusts under paragraph 108(2)(a). We understand that, as a result of its conversion from a closed-end to an open-end trust, your client will no longer have met, during the period before its conversion, the provision for closed-end trusts as it will not have met the requirements of paragraph 108(2)(b) throughout the taxation year.

We would agree that, in these circumstances, it would be appropriate to extend the application of subsection 108(2) to allow a trust to meet the definition of unit trust throughout a taxation year provided that at all times throughout the taxation year the trust meets the conditions set out in either paragraph 108(2)(a) or (b). We will recommend that this amendment apply after 1997.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

Related Provisions: 20(1)(e)(i) — Deduction for expenses relating to sale of units; 53(1)(d.1), 53(2)(h), (j) — ACB of units; 108(1)"trust"(f) — Unit trusts excluded from many trust rules; 132(6) — Meaning of "mutual fund trust"; 248(1)"unit trust" — Definition applies to entire Act; 250(6.1) — Trust that ceases to exist deemed resident throughout year; 253.1 — Deeming rule re investments in limited partnerships.

History: Cls. 108(2)(b)(ii)(A) and (B), subpara. 108(2)(b)(iii), and the closing words of para. 108(2)(b) amended, para. 108(2)(c) added, by 1998, c. 19, subsecs. 129(3)–(6), applicable to 1994 *et seq.* Cls. 108(2)(b)(ii)(A) and (B), subpara. 108(2)(b)(iii) and the closing words of para. 108(2)(b) formerly read:

> (A) the investing of its funds in property (other than real property),
>
> (B) the acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the trust, or
>
> . . . . .
>
> (iii) at least 80% of its property consisted of any combination of shares, bonds, mortgages, marketable securities, cash, real property situated in Canada or rights to or interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,
>
> . . . . .
>
> and, where the trust would not be a unit trust at the particular time if subparagraph (iii) were read without reference to the words "real property situated in Canada", the units of the trust are listed at any time in the year or in the following taxation year on a prescribed stock exchange in Canada.

Para. 108(2)(b) amended by 1995, c. 21, s. 66, applicable to 1994 *et seq.* Para. (b) formerly read:

> (b) throughout the taxation year in which the particular time occurred it complied with the following conditions:
>
> (i) it was resident in Canada,
>
> (ii) its only undertaking was the investing of funds of the trust,
>
> (iii) at least 80% of its property throughout the year consisted of shares, bonds, mortgages, marketable securities, cash or rights to or interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,
>
> (iv) not less than 95% of its income (determined without reference to subsections 49(2.1) and 104(6)) for the year was derived from, or from dispositions of, investments described in subparagraph (iii),
>
> (v) at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality, and
>
> (vi) where there were prescribed for the purposes of this subparagraph conditions relating to the number of unit holders, dispersal of ownership of its units or public trading of its units, all holdings of and transactions in its units accorded with those conditions.

Subpara. 108(2)(b)(iv) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 77(3), to add "(determined without reference to subsections 49(2.1) and 104(6))", applicable to 1990 *et seq.*

Pre-RSC History: Subpara. 108(2)(b)(iii) amended by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to substitute "marketable securities, cash or rights" for "marketable securities, or cash, or of rights", to add "from a natural accumulation of petroleum or natural gas in Canada", and to substitute "oil or gas well in Canada" for "oil or gas well" and "mineral resource in Canada" for "mineral resource situated in Canada".

Subpara. 108(2)(b)(vi) substituted by 1973-74, c. 14, subsec. 33(2), applicable to 1972 *et seq.*

Regulations: 3200 (prescribed stock exchange); not yet amended to apply for purposes of 108(2)(b)).

I.T. Technical News: No. 6 (mutual funds trading — meaning of "investing its funds in property" in 108(2)(b)(ii)(A)).

(3) Income of a trust in certain provisions — For the purposes of the definition "income interest" in subsection (1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included therein

Proposed Amendment — 108(3)

(3) Income of a trust in certain provisions — For the purposes of the definition "income interest" in subsection (1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(10), will amend the opening words of subsec. 108(3) to read as above, applicable to 2000 *et seq.*, except for the purpose of applying s. 73 to transfers that occur before 2000.

Technical Notes: Subsection 108(3) of the Act provides that a trust's income is generally its income computed without reference to the provisions of the Act. Subsection 108(3) applies for the purposes of the spousal trust rules in subsection 73(1), as well as other specified purposes.

Subsection 108(3) is amended to change a cross-reference to paragraph 73(1)(c) to a cross-reference to new paragraph 73(1.01)(c). This is strictly a technical change consequential to amendments to section 73, described in the notes above.

Proposed Amendment — 108(3)

(3) Income of a trust in certain provisions — For the purposes of the definition "income interest" in subsection (1) and the definition "exempt foreign trust" in subsection 94(1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

Application: The June 22, 2000 draft legislation, s. 15, will amend the opening words of subsec. 108(3) to read as above, applicable to taxation years that begin after 2000.

Technical Notes: Subsection 108(3) of the Act provides that, for the purposes of the definition "income interest" in subsection 108(1), the income of a trust is its income computed without reference to the provisions of the Act. Amendments to subsection 108(3) were contained in a detailed Notice of Ways and Means Motion tabled on June 5, 2000.

It is proposed to further amend subsection 108(3) so that the rule described above also applies for the purposes of the definition "exempt foreign trust" in new subsection 94(1).

This amendment applies to taxation years that begin after 2000.

> (a) that are amounts not included by reason of section 83 in computing the income of the trust for the purposes of the other provisions of this Act;
>
> (b) that are described in subsection 131(1); or
>
> (c) to which subsection 131(1) applies by reason of subsection 130(2).

Related Provisions: 108(5) — Interpretation.

History: That portion of subsec. 108(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(7), applicable to 1991 *et seq.* That portion formerly read:

> (3) Income of a trust in certain provisions — For the purposes of the definition "income interest" in subsection (1), the income of a

trust is its income computed without reference to the provisions of this Act and, for the purposes of subparagraphs 70(6)(b)(i), 73(1)(c)(i) and 104(4)(a)(iii), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included therein

Pre-RSC History: Subsec. 108(3) substituted by 1988, c. 55, subsec. 75(8), applicable with respect to dividends paid after 4 p.m. EDST, September 25, 1987. Subsec. 108(3) formerly read:

(3) Meaning of "income" of trust — For the purposes of subparagraphs 70(6)(b)(i), 73(1)(c)(i) and 104(4)(a)(iii), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends otherwise included therein that are described in section 83 or subsection 131(1) or to which subsection 131(1) applies by virtue of subsection 130(2), and, for the purposes of paragraph 108(1)(e), the income of a trust is its income computed without reference to the provisions of this Act.

Subsec. 108(3) substituted by 1977-78, c. 32, subsec. 25(2), applicable to 1978 *et seq.* Subsec. 108(3) formerly read:

(3) For the purposes of subparagraph 70(6)(b)(i), paragraph 73(1)(a) and subparagraph 104(4)(a)(iii), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends otherwise included therein that are described in section 83 or subsection 131(1) or to which subsection 131(1) applies by virtue of subsection 130(2), and, for the purposes of paragraph 108 (1)(e), the income of a trust is its income computed without reference to the provisions of this Act.

Subsec. 108(3) substituted by 1977-78, c. 1, subsec. 50(3), applicable with respect to any trust the spouse who was the beneficiary of which died after May 25, 1976, to substitute "104(4)(a)(iii)" for "104(4)(a)(i)".

Subsec. 108(3) substituted by 1974-75-76, c. 26, subsec. 67(4), applicable to 1972 *et seq.*

Subsec. 108(3) substituted by 1973-74, c. 14, subsec. 33(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-385R2: Disposition of an income interest in a trust.

(4) Trust not disqualified — For the purposes of the definition "pre-1972 spousal trust" in subsection (1) and subparagraphs 70(6)(b)(ii) and (6.1)(b)(ii), 73(1)(c)(ii) and 104(4)(a)(iv), where a trust was created by a taxpayer whether by the taxpayer's will or otherwise, a person, other than the taxpayer's spouse, shall be deemed not to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust solely because of the payment, or provision for payment, as the case may be, by the trust of

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) any estate, legacy, succession or inheritance duty payable, in consequence of the taxpayer's death, in respect of any property of, or interest in, the trust; or

(b) any income or profits tax payable by the trust in respect of any income of the trust.

Proposed Amendment — 108(4)

(4) Trust not disqualified — For the purposes of the definition "pre-1972 spousal trust" in subsection (1), subparagraphs 70(6)(b)(ii) and (6.1)(b)(ii) and paragraphs 73(1.01)(c) and 104(4)(a), where a trust was created by a taxpayer whether by the taxpayer's will or otherwise, no person is deemed to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust solely because of the payment, or provision for payment, as the case may be, by the trust of

(a) any estate, legacy, succession or inheritance duty payable, in consequence of the death of the taxpayer or a spouse or common-law partner of the taxpayer who is a beneficiary under the trust, in respect of any property of, or interest in, the trust; or

(b) any income or profits tax payable by the trust in respect of any income of the trust.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(11), will amend subsec. 108(4) to read as above, applicable to 2000 *et seq.*, except for the purpose of applying s. 73 to transfers that occur before 2000.

Technical Notes: Subsection 108(4) of the Act provides that a trust is not disqualified as a spousal trust under a number of specified provisions in the Act merely because of the payment of estate, income or similar taxes.

Subsection 108(4) is amended so that this rule applies not only to spousal trusts but also to trusts established for the exclusive benefit of the settlor during the settlor's lifetime and to trusts established for the joint benefit of the settlor and the settlor's spouse during their lifetimes. This amendment is consequential to changes to section 73 that are described in the notes above.

This amendment applies to the 2000 and subsequent taxation years.

This provision is further amended to reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Related Provisions: 248(8) — Occurrences as a consequence of death; 248(9.1) — Whether trust created by taxpayer's will; 252(4) — Extended meaning of "spouse".

History: That portion of subsec. 108(4) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(8), applicable to 1991 *et seq.* That portion formerly read:

(4) Trust not disqualified by reason only of payment of certain duties and taxes — For greater certainty, for the purposes of subparagraphs 70(6)(b)(ii), 73(1)(c)(ii) and 104(4)(a)(iv), where a trust has been created by a taxpayer whether by the taxpayer's will or otherwise, a person, other than the taxpayer's spouse, shall be deemed not to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any of the income or capital of the trust, by reason only of the payment, or provision for payment, by the trust of

Pre-RSC History: All that portion of subsec. 108(4) preceding para. (a) substituted by 1977-78, c. 32, subsec. 25(3), applicable to 1978 *et seq.* That portion formerly read:

(4) For greater certainty, for the purposes of subparagraph 70(6)(b)(ii), paragraph 73(1)(b) and subparagraph 104(4)(a)(iv), where a trust has been created by a taxpayer whether by his will or otherwise, a person, other than the taxpayer's spouse, shall be deemed not to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any of the income or capital of the trust, by reason only of the payment, or provision for payment, as the case may be, by the trust of

All that portion of subsec. 108(4) preceding para. (a) substituted by 1977-78, c. 1, subsec. 50(3), applicable with respect to any trust the spouse who was the beneficiary of which died after May 25, 1976, to substitute "104(4)(a)(iv)" for "104(4)(a)(ii)".

Subsec. 108(4) added by 1973-74, c. 14, subsec. 33(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(5) Interpretation — Except as otherwise provided in this Part,

(a) an amount included in computing the income for a taxation year of a beneficiary of a trust under subsection 104(13) or (14) or section 105 shall be deemed to be income of the beneficiary for the year from a property that is an interest in the trust and not from any other source, and

(b) an amount deductible in computing the amount that would, but for subsections 104(6) and (12), be the income of a trust for a taxation year shall not be deducted by a beneficiary of the trust in computing the beneficiary's income for a taxation year,

but, for greater certainty, nothing in this subsection shall affect the application of subsection 56(4.1), sections 74.1 to 75 and 120.4 and subsection 160(1.2) of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Related Provisions: 3 — Calculation of income; 129(4) — "Canadian investment income" and "foreign investment income" defined.

History: the closing words of subsec. 108(5) amended by 2000, c. 19, subsec. 16(2), applicable to 2000 *et seq.* The closing words formerly read:

> but, for greater certainty, nothing in this subsection shall affect the application of subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Pre-RSC History: That portion of subsec. 108(5) following para. (b) amended by 1988, c. 55, subsec. 75(9), to substitute "subsection 56(4.1) and sections 74 to 75" for "sections 74 to 75", applicable to 1989 *et seq.*

All that portion of subsec. 108(5) following para. (b) amended by 1986, c. 6, subsec. 53(4), applicable after May 21, 1985, to substitute "sections 74 to 75" for "subsections 74(1) and (2) and 75(1) and (2)".

Subsec. 108(5) added by 1980-81-82-83, c. 140, subsec. 63(3), applicable with respect to amounts included or deductible, as the case may be, in computing the income of a taxpayer for taxation years commencing after November 12, 1981.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(6) Variation of trusts — For the purposes of subsections 104(4), (5) and (5.2), where at any time the terms of a trust are varied, the trust shall at and after that time be deemed to be the same trust as, and a continuation of, the trust immediately before that time, but, for greater certainty, nothing in this subsection affects the application of paragraph 104(4)(a.1).

Proposed Amendment — 108(6), (7)

(6) Variation of trusts — Where at any time the terms of a trust are varied

(a) for the purposes of subsections 104(4), (5) and (5.2), subject to paragraph (b), the trust is, at and after that time, deemed to be the same trust as, and a continuation of, the trust immediately before that time;

(b) for greater certainty, paragraph (a) does not affect the application of paragraph 104(4)(a.1); and

(c) for the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1), no interest of a beneficiary under the trust before it was varied is considered to be consideration for the interest of the beneficiary in the trust as varied.

(7) Interests acquired for consideration — For the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1),

(a) an interest in a trust is deemed not to be acquired for consideration solely because it was acquired in satisfaction of any right as a beneficiary under the trust to enforce payment of an amount by the trust; and

(b) where all the beneficial interests in a particular *inter vivos* trust acquired by way of the transfer, assignment or other disposition of property to the particular trust were acquired by

(i) one person, or

(ii) two or more persons who would be related to each other if

(A) a trust and another person were related to each other, where the other person is a beneficiary under the trust or is related to a beneficiary under the trust, and

(B) a trust and another trust were related to each other, where a beneficiary under the trust is a beneficiary under the other trust or is related to a beneficiary under the other trust,

any beneficial interest in the particular trust acquired by such a person is deemed to have been acquired for no consideration.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 53(12), will amend subsec. 108(6) to read as above, and add subsec. 108(7). subsec. 108(6) applicable to 2000 *et seq.* and subsec. 108(7) applicable after December 23, 1998.

Technical Notes: Subsection 108(6) of the Act applies where the terms of a trust are varied. It provides that the application of the 21-year deemed disposition rule is not affected by the variation.

Subsection 108(6) is amended to ensure that no interest of a beneficiary under the trust before it was varied is considered to be consideration for the interest of the beneficiary in the trust as varied. This rule is relevant for a number of specified provisions in the Act, which refer to trust interests being acquired for consideration.

This amendment applies to the 2000 and subsequent taxation years. The amendment is intended to extend to all trust variations, including variations that occurred before 2000.

A "personal trust" is defined in subsection 248(1) of the Act as essentially a testamentary trust or an inter vivos trust in which no beneficial interest was acquired for consideration payable to the trust or to a contributor to the trust. An existing special rule within the definition generally ensures that one person (or two or more related persons) can make contributions to a trust and retain an interest under the trust without the prohibition on consideration being considered to apply. This existing rule also applies for the purposes of paragraph 53(2)(h), which deals with the calculation of the adjusted cost bases of certain trust interests.

The definition is amended so that this special rule is removed from the definition. Instead, the special rule is now provided in new subsection 108(7). The special rule also is to apply, under subsection 108(7), for the purposes of amended subsection 107(1), strictly as a consequence of the amendments to that provision and for the purposes of paragraph (j) of the new definition "excluded right or interest" in subsection 128.1(10).

New subsection 108(7) also ensures that, for the purposes of the above-noted provisions, an interest in a trust is deemed not to be acquired for consideration solely because of the acquisition of the interest in satisfaction of any right as a beneficiary under the trust to enforce payment from the trust.

New subsection 108(7) applies after December 23, 1998.

History: Subsec. 108(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 44(9), applicable to variations occurring after February 11, 1991.

Definitions [s. 108]: "*alter ego* trust" — 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "beneficially interested" — 248(25); "beneficiary" — 108(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "capital interest" — 108(1), 248(1); "capital property" — 54, 248(1); "cemetery care trust", "common-law partner" — 248(1); "common-law partner" —

248(1); "consequence" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 108(1); "created by the taxpayer's will" — 248(9.1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 248(1); "dividend" — 248(1); "eligible capital property" — 54, 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employee benefit plan", "employee trust" — 248(1); "estate" — 104(1), 248(1); "employees profit sharing plan" — 144(1), 248(1); "fair market value" — 107.4(4); "foreign affiliate" — 95(1), 248(1); "foreign retirement arrangement" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "income of beneficiary" — 108(5); "income of trust" — 108(3); "income interest" — 108(1), 248(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "joint partner trust", "mineral resource" — 248(1); "non-resident", "oil or gas well", "person", "personal trust", "post-1971 partner trust" — 248(1); "pre-1972 spousal trust" — 108(1); "prescribed" — 248(1); "prescribed trust" — Reg. 4800.1; "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "related" — 251(2)–(6); "relevant periods" — 108(2)(b)(ii); "resident in Canada" — 250; "retirement compensation arrangement", "share" — 248(1); "spouse" — 252(3), (4)(a); "tax treaty" — 248(1); "taxation year" — 104(23)(a), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), (3), 108(1), 248(1); "undertaking" — 253.1(a); "unit trust" — 108(2), 248(1); "vested indefeasibly" — 248(9.2).

DIVISION C — COMPUTATION OF TAXABLE INCOME

109. [Repealed under former Act]

Pre-RSC History: S. 109 repealed by 1988, c. 55, s. 76, applicable to 1988 *et seq.* (See s. 118.) S. 109 formerly read:

109. (1) Deductions permitted by individuals — For the purpose of computing the taxable income of an individual for a taxation year, there may be deducted such of the following amounts as are applicable:

(a) married status — in the case of an individual who, during the year, was a married person who supported his spouse, an amount equal to the aggregate of

(i) $1,600, and

(ii) $1,400 less the amount, if any, by which the spouse's income for the year or, where the individual was living apart from his spouse at the end of the year by reason of a breakdown of their marriage, the spouse's income for the year while married, exceeds $200;

(b) wholly dependent persons — in the case of an individual not entitled to a deduction under paragraph (a) who, during the year,

(i) was an unmarried person or a married person who neither supported nor lived with his spouse and was not supported by his spouse, and

(ii) whether by himself or jointly with one or more other persons maintained a self-contained domestic establishment (in which the individual lived) and actually supported therein a person who, during the year, was

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the taxpayer, or the taxpayer and such person or persons, as the case may be, and

(C) connected, by blood relationship, marriage or adoption, with the taxpayer, or the taxpayer and such person or persons, as the case may be,

an amount equal to the aggregate of

(iii) $1,600, and

(iv) $1,400 less the amount, if any, by which the income for the year of the dependent person exceeds $200;

(c) single status — in the case of an individual not entitled to a deduction under paragraph (a) or (b), $1,600;

(d) dependants — for each dependant of the individual for the year, an amount equal to,

(i) if the dependant has not attained the age of 18 years before the end of the year, the amount, if any, by which

(A) 12 times the family allowance payable for a month in the year under subsection 3(1) of the *Family Allowances Act, 1973* in respect of a child

exceeds

(B) ½ of the amount, if any, by which the income for the year of the dependant exceeds the amount by which $1,600 exceeds twice the amount determined under clause (A) for the year, and

(ii) if the dependant has attained the age of 18 years before the end of the year,

(A) in the case of a person dependent on the individual by reason of mental or physical infirmity, $550 less the amount, if any, by which the income for the year of the dependant exceeds $1,050, and

(B) in any other case, the amount, if any, by which

(I) twice the amount determined under clause (i)(A) for the year

exceeds

(II) ½ of the amount, if any, by which the income for the year of the dependant exceeds the amount by which $1,600 exceeds twice the amount determined under subclause (I) for the year,

but not exceeding, where the dependant is, in respect of the individual or his spouse, a person referred to in subparagraph (6)(b)(iii) or (iv), the amounts expended by the individual during the year for the support of that dependant;

(e), (f), (g) [Repealed]

(h) over 65 years — in the case of an individual who, before the end of the year, has attained the age of 65 years, $1,000; and

(i) [Repealed]

(2) Limitation — For the purpose of a deduction under paragraph (1)(b), the following rules apply:

(a) no deduction may be made under that paragraph by any taxpayer in respect of more than one person;

(b) where a taxpayer is entitled to a deduction under that paragraph in respect of any person described therein neither the taxpayer nor any other taxpayer is entitled to a deduction under paragraph (1)(d) in respect of that person; and

(c) no more than one taxpayer is entitled to a deduction under that paragraph in respect of the same person or the same domestic establishment, and in the event of failure on the part of two or more taxpayers otherwise entitled to a deduction under that paragraph to agree as to the taxpayer by whom the deduction may be made, no deduction thereunder may be made by either or any of them.

(3) [Repealed]

(4) Alimony and maintenance cases — Where a taxpayer is entitled to a deduction in computing his income for a taxation year under paragraph 60(b), (c) or (c.1) in respect of a payment for the maintenance of a spouse or child, the spouse or child shall, for the purposes of this section, be deemed not to be the spouse or child of the taxpayer.

(5) Partial dependency — Where more than one taxpayer is, in respect of a taxation year, entitled to deduct an amount under paragraph (1)(d) in respect of the same dependant, the aggregate of all amounts deductible for the year by those taxpayers in respect of that dependant shall not exceed the maximum amount that would be deductible under that paragraph for the year by any one of those taxpayers in respect of that dependant if that taxpayer were the only taxpayer entitled to deduct an amount under that paragraph in respect of that dependant and where the taxpayers cannot agree as to what portion of the amount each can deduct, the Minister may fix the portions.

(6) "Dependant" defined — For the purposes of paragraph (1)(d) and subsection (5), "dependant" of an individual for a taxation year means a person who, during the year, was

(a) dependent upon the individual for support;

(b) in respect of the individual or his spouse,

(i) his child or grandchild,

(ii) his niece or nephew, if resident in Canada,

(iii) his brother or sister, if resident in Canada, or

(iv) his parent, grandparent, aunt or uncle, if resident in Canada; and

(c) either

(i) under 21 years of age, or

(ii) 21 years of age or over and

(A) dependent by reason of mental or physical infirmity, or

(B) a person referred to in paragraph (b) (other than subparagraph (iv) thereof) in full-time attendance at a school or university.

Subpara. 109(1)(a)(ii) substituted by 1986, c. 55, s. 30, applicable to 1986 *et seq.* Subpara. 109(1)(a)(ii) formerly read:

(ii) $1,400 less the amount, if any, by which the spouse's income for the year while married exceeds $200;

Subparas. 109(1)(a)(ii) and (b)(iv) amended by 1986, c. 6, subsecs. 54(1) and (2), applicable to 1986 *et seq.*, to substitute "$200" for "$300"; para. (d) substituted for paras. (d) to (g), by 1986, c. 6, subsec. 54(3), applicable to 1986 *et seq.*, except that para. 109(1)(d) was to apply as follows to the 1986, 1987 and 1988 taxation years:

(a) clause 109(1)(d)(i)(A) shall be read:

(A) for a taxation year ending in

(I) 1986, $710,

(II) 1987, $560, and

(III) 1988, $470;

(b) subclause 109(1)(d)(ii)(B)(I) shall be read:

(I) for a taxation year ending in

1. 1986, $1,420,

2. 1987, $1,200, and

3. 1988, $1,000.

Paras. (d) to (g) formerly read:

(d) children — for each child or grandchild of the individual who, during the year, was dependent upon him for support and was

(i) under 21 years of age,

(ii) 21 years of age or over and dependent by reason of mental or physical infirmity, or

(iii) 21 years of age or over and in full-time attendance at a school or university,

an amount equal to

(iv) if the child or grandchild has not attained the age of 18 years before the end of the year, $710 less ½ of the amount, if any, by which the income for the year of the child or grandchild, as the case may be, exceeds $2,350, and

(v) in any other case, $550 less the amount, if any, by which the income for the year of the child or grandchild, as the case may be, exceeds $1,150;

(e) niece or nephew — for each niece or nephew of the individual or his spouse who, during the year, resided in Canada, was dependent upon the individual for support and was a person described in subparagraph (d)(i), (ii) or (iii), an amount equal to,

(i) if the niece or nephew has not attained the age of 18 years before the end of the year, $710 less ½ of the amount, if any, by which the income for the year of the niece or nephew, as the case may be, exceeds $2,350, and

(ii) in any other case, $550 less the amount, if any, by which the income for the year of the niece or nephew, as the case may be, exceeds $1,150;

(f) other dependants — an amount expended by the individual during the year for the support of a person who, during the year, was resident in Canada, was dependent upon the individual for support and was

(i) his parent or grandparent and dependent by reason of mental or physical infirmity,

(ii) his brother or sister

(A) under 21 years of age,

(B) 21 years of age or over and dependent by reason of mental or physical infirmity, or

(C) 21 years of age or over and in full-time attendance at a school or university,

not exceeding an amount equal to,

(iii) if the person has not attained the age of 18 years before the end of the year, $710 less ½ of the amount, if any, by which the income for the year of the person exceeds $2,350, and

(iv) in any other case, $550 less the amount, if any, by which the income for the year of the person exceeds $1,150;

(g) aunt or uncle — an amount expended by the individual during the year for the support of a person who, during the year, was the aunt or uncle of the individual or of the individual's spouse and was

(i) resident in Canada, and

(ii) dependent upon the individual for support by reason of mental or physical infirmity,

not exceeding $550 less the amount, if any, by which the income for the year of the person exceeds $1,150;

Para. 109(2)(b) amended by 1986, c. 6, subsec. 54(4), applicable to 1986 *et seq.*, to substitute "described therein" for "therein described" and "paragraph (1)(d)" for "paragraph (1)(d), (e), (f) or (g)".

Subsec. 109(5) amended by 1986, c. 6, subsec. 54(5), applicable to 1986 *et seq.*, to substitute "paragraph (1)(d)" for "any of paragraphs (1)(d), (e), (f) and (g)" and "that paragraph" for "any one of those paragraphs".

Subsec. 109(6) added by 1986, c. 6, subsec. 54(6), applicable to 1986 *et seq.*

All that portion of para. 109(1)(d) preceding subpara. (i), and all that portion of para. 109(1)(e) preceding subpara. (i) amended by 1985, c. 45, subsecs. 53(1), (2) to substitute "was dependent upon" for "was wholly dependent upon", applicable to 1985 *et seq.*

Subsec. 109(3) repealed by 1985, c. 45, subsec. 53(3), applicable to 1985 *et seq.* Subsec. 109(3) formerly read:

(3) Dependent child — For the purpose of the deduction for a child under paragraph (1)(d), it shall be assumed, unless the contrary is established, that an illegitimate child was wholly dependent on his mother and that any other child was wholly dependent on his father.

Subsec. 109(5) substituted by 1985, c. 45, subsec. 53(4), applicable to 1985 *et seq.* Subsec. 109(5) formerly read:

(5) Partial dependency — Where more than one taxpayer is, in respect of a taxation year, entitled to deduct an amount under paragraph (1)(f) or (g) in respect of the same dependant, no more than the amount determined thereunder in respect of the dependant for the year is deductible in respect of the dependant, and where the taxpayers cannot agree as to what portion of the amount each can deduct, the Minister may fix the portions.

Para. 109(1)(e) substituted by 1984, c. 45, subsec. 34(1), applicable to 1984 *et seq.* Para. 109(1)(e) formerly read:

(e) niece or nephew — for each niece or nephew of the individual or his spouse, who, during the year, resided in Canada, was wholly dependent upon the individual for support and was a person described in subparagraph (d)(i), (ii) or (iii), if, during the year,

(i) the mother of the niece or nephew, as the case may be, was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, her husband or former husband and was not in receipt of any amount as alimony or other allowance payable on a periodic basis for the maintenance of the niece or nephew,

(ii) the father of the niece or nephew, as the case may be, was physically or mentally infirm, or

(iii) the father of the niece or nephew, as the case may be, was deceased and the mother was not remarried,

an amount equal to,

(iv) if the niece or nephew has not attained the age of 18 years before the end of the year, $710 less ½ of the amount, if any, by which the income for the year of the niece or nephew, as the case may be, exceeds $2,350, and

(v) in any other case, $550 less the amount, if any, by which the income for the year of the niece or nephew, as the case may be, exceeds $1,150;

Subsec. 109(4) substituted by 1984, c. 45, subsec. 34(2), to add reference to para. 60(c.1), applicable to payments made in 1984 *et seq.*

All that portion of subsec. 109(1) preceding para. (a), subparas. 109(1)(d)(iv), (e)(iv) and (f)(iii) substituted by 1984, c. 1, subsecs. 48(1) to (4), to substitute "$710" for "$300" and "$2,350" for "$1,100" in subparas. 109(1)(d)(iv), (e)(iv) and (f)(iii), applicable to 1984 *et seq.* All that portion of subsec. 109(1) preceding para. (a), as substituted, applicable to 1983 *et seq.* That portion formerly read:

> 109. (1) Deductions permitted by individuals — For the purpose of computing the taxable income of an individual for a taxation year, there may be deducted from his income for the year such of the following amounts as are applicable:

Subpara. 109(1)(b)(ii) substituted by 1980-81-82-83, c. 140, subsec. 64(1), applicable to 1982 *et seq.* Subpara. 109(1)(b)(ii) formerly read:

> (ii) whether by himself or jointly with one or more other persons, maintained a self-contained domestic establishment (in which the individual lived) and actually supported therein a person who, during the year, was
>
> (A) wholly dependent for support upon, and
>
> (B) connected, by blood relationship, marriage or adoption, with
>
> the taxpayer, or the taxpayer and such one or more other persons, as the case may be,

All that portion of para. 109(1)(f) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 64(2), to add reference to the words "was resident in Canada," applicable to 1982 *et seq.*

Subparas. 109(1)(d)(iv), (e)(iv), (f)(iii) substituted by 1978-79, c. 5, s. 1, to substitute in each case "18 years" for "16 years", applicable to 1979 *et seq.*, except that for the 1979 taxation year the reference to "18" shall be read as a reference to "17".

Subpara. 109(1)(b)(i) substituted, para. 109(1)(i) repealed by 1976-77, c. 4, s. 42, applicable (as to subpara. 109(1)(b)(i)) to 1975 *et seq.*, and (as to para. 109(1)(i)) to 1976 *et seq.* Subpara. 109(1)(b)(i), para. 109(1)(i) formerly read:

> (i) was an unmarried person or a married person who did not support or live with his spouse and was not supported by his spouse, and
>
> . . . . .
>
> (i) where the taxpayer's spouse has, before the end of the year, attained the age of 65 years, the amount by which $1,000 exceeds the spouse's income for the year minus all amounts deductible under this section otherwise than by virtue of paragraph (h).

Para. 109(1)(i) added by 1974-75-76, c. 26, s. 68, applicable to 1975 *et seq.*

Subparas. 109(1)(a)(i), (ii), (b)(iii), (iv), para. 109(1)(c), subparas. 109(1)(d)(iv), (v), (e)(iv), (v), (f)(iii), (iv), and all that portion of para. 109(1)(g) following subpara. (ii) substituted by 1973-74, c. 30, subsecs. 11(1)–(7), applicable to 1973 *et seq.* These provisions formerly read:

> (i) $1,500, and
>
> (ii) $1,350 less the amount, if any, by which the spouse's income for the year while married exceeds $250;
>
> . . . . .
>
> (iii) $1,500, and
>
> (iv) $1,350 less the amount, if any, by which the income for the year of the dependent person exceeds $250;
>
> . . . . .
>
> in the case of an individual not entitled to a deduction under paragraph (a) or (b), $1,500;
>
> . . . . .
>
> (iv) if the child or grandchild has not attained the age of 16 years before the end of the year, $300 less ½ of the amount, if any, by which the income for the year of the child or grandchild, as the case may be, exceeds $1,000, and
>
> (v) in any other case, $550 less the amount, if any, by which the income for the year of the child or grandchild, as the case may be, exceeds $1,050;
>
> . . . . .
>
> (iv) if the niece or nephew has not attained the age of 16 years before the end of the year, $300 less ½ of the amount, if any, by which the income for the year of the niece or nephew, as the case may be, exceeds $1,000, and
>
> (v) in any other case, $550 less the amount, if any, by which the income for the year of the niece or nephew, as the case may be, exceeds $1,050;
>
> . . . . .
>
> (iii) if the person has not attained the age of 16 years before the end of the year, $300 less ½ of the amount, if any, by which the income for the year of the person exceeds $1,000, and
>
> (iv) in any other case, $550 less the amount, if any, by which the income for the year of the person exceeds $1,050;
>
> . . . . .
>
> not exceeding $550 less the amount, if any, by which the income for the year of the person exceeds $1,050; and

Para. 109(1)(h) substituted by 1973-74, c. 14, s. 34, applicable to 1972 *et seq.*

110. (1) Deductions permitted — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such of the following amounts as are applicable:

Pre-RSC History: That portion of subsec. 110(1) preceding para. (a) substituted by 1984, c. 1, subsec. 49(1), applicable to 1983 *et seq.* That portion formerly read:

> 110. (1) Other deductions permitted — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted from his income for the year such of the following amounts as are applicable:

(a) [Repealed under former Act]

Pre-RSC History: Para. 110(1)(a) repealed by 1988, c. 55, subsec. 77(1), applicable to 1988 *et seq.* (See ss. 118.1 and 110.1.) Para. 110(1)(a) formerly read:

> (a) charitable gifts — the aggregate of gifts made by the taxpayer in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof that was not deducted in computing the taxable income of the taxpayer for any preceding taxation year) to
>
> (i) registered charities,
>
> (ii) registered Canadian amateur athletic associations,
>
> (iii) housing corporations resident in Canada and exempt from tax under this Part by paragraph 149(1)(i),
>
> (iv) Canadian municipalities,
>
> (v) the United Nations or agencies thereof,
>
> (vi) universities outside Canada prescribed to be universities the student body of which ordinarily includes students from Canada, and
>
> (vii) charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the taxpayer's taxation year or the 12 months immediately preceding that taxation year,
>
> not exceeding 20% of the income of the taxpayer for the year computed without reference to subsection 137(2), if payment of the amounts given is proven by filing receipts with the Minister that contain prescribed information;

All that portion of para. 110(1)(a) preceding subpara. (i) amended by 1985, c. 45, subsec. 54(1), to substitute the heading "charitable gifts" for "charitable donations" and to substitute "deducted in computing" for "deductible in computing", applicable to 1984 *et seq.* except that gifts made by a taxpayer in a taxation year before 1984 in which the taxpayer claimed a deduction under para. 110(1)(d) shall be considered to have been deducted in that taxation year.

All that portion of para. 110(1)(a) preceding subpara. (i), substituted by 1980-81-82-83, c. 140, subsec. 65(1), to substitute "the five immediately preceding taxation years" for "the immediately preceding year" and to substitute "not deductible in computing the taxable income of the taxpayer for any preceding taxation year" for "not deductible under this Act in computing the taxable income of the taxpayer for that immediately preceding year". Para. 110(1)(a) applicable with respect to gifts made in the 1981 and subsequent taxation years.

All that portion of para. 110(1)(a) following subpara. (vii) substituted by 1980-81-82-83, c. 48, subsec. 57(1), applicable with respect to gifts made after 1979, except that in its application to taxation years ending before

October 29, 1980, it shall be read without the reference therein to "computed without reference to subsection 137(2)". That portion formerly read:

> not exceeding 20% of the income of the taxpayer for the year, if payment of the amounts given is proven by filing receipts with the Minister that, in the case of a donation to a registered charity or registered Canadian amateur athletic association, contain prescribed information;

"Registered charity(ies)" substituted for "registered Canadian charitable organization(s)" in para. 110(1)(a) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Selected Cases [para. 110(1)(a)]: *Bradley v. R.*, [1998] 3 C.T.C. 393 (FCA) (Forgiveness of non-existent loan could not be part of carry forward).

(b)–(b.1) [Repealed under former Act]

Pre-RSC History: Paras. 110(1)(b), (b.1) repealed by 1988, c. 55, subsec. 77(1), applicable to 1988 *et seq.* Paras. 110(1)(b), (b.1) formerly read:

> (b) gifts to Her Majesty — the aggregate of gifts made by the taxpayer in the year (and in the 5 immediately preceding taxation years, to the extent of the amount thereof that was not deducted in computing the taxable income of the taxpayer for any preceding taxation year) to Her Majesty in right of Canada and Her Majesty in right of the provinces, not exceeding the amount remaining, if any, when the amount deducted for the year under paragraph (a) is deducted from the income of the taxpayer for the year, if payment of the amounts given is proven by filing receipts with the Minister that contain prescribed information;
>
> (b.1) gifts to institutions — the aggregate of gifts of objects that the Canadian Cultural Property Export Review Board has determined meet all of the criteria set out in paragraphs 23(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gifts were not deducted under paragraph (a) or (b) and were made by the taxpayer in the year (and in the 5 immediately preceding taxation years, to the extent of the amount thereof that was not deducted under this Act in computing the taxable income of the taxpayer for any preceding taxation year) to institutions or public authorities in Canada that were, at the time the gifts were made, designated under subsection 26(2) of that Act either generally or for a purpose related to those objects, not exceeding the amount remaining, if any, when the amounts deducted for the year under paragraphs (a) and (b) are deducted from the income of the taxpayer for the year, if payment of the amounts given is proven by filing receipts with the Minister that contain prescribed information;

Paras. 110(1)(b), (b.1) amended by 1985, c. 45, subsec. 54(2), to substitute, in (b), "deducted in computing" for "deductible in computing" and "the amount deducted for the year" for "the amount deductible for the year", and in (b.1), "deducted under this Act" for "deductible under this Act", and "the amounts deducted for the year" for "the amounts deductible for the year", applicable to 1984 *et seq.* except that gifts made by a taxpayer in a taxation year before 1984 in which the taxpayer claimed a deduction under para. 110(1)(d) shall be considered to have been deducted in that taxation year.

Paras. 110(1)(b), (b.1) substituted by 1980-81-82-83, c. 140, subsec. 65(2), applicable with respect to gifts made in the 1981 and subsequent taxation years. Paras. 110(1)(b) and (b.1) formerly read:

> (b) the aggregate of gifts made by the taxpayer in the year (and in the immediately preceding year, to the extent of the amount thereof that was not deductible under this Act in computing the taxable income of the taxpayer for that immediately preceding year) to Her Majesty in right of Canada and Her Majesty in right of the provinces, not exceeding the amount remaining, if any, when the amount deductible for the year under paragraph (a) is deducted from the income of the taxpayer for the year, if payment of the amounts given is proven by filing receipts with the Minister that contain prescribed information;
>
> (b.1) the aggregate of gifts and objects that the Canadian Cultural Property Export Review Board has determined meet all of the criteria set out in paragraphs 23(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gifts were not deducted under paragraph (a) or (b) and were made by the taxpayer in the year (and in the immediately preceding year, to the extent of the amount thereof that was not deductible under this Act in computing the taxable income of the taxpayer for that immediately preceding year) to institutions or public authorities in Canada that were, at the time the gifts were made, designated under subsection 26(2) of that Act either generally or for a purpose related to those objects, not exceeding the amount remaining, if any, when the amounts deductible for the year under paragraphs (a) and (b) are deducted from the income of the taxpayer for the year, if payment of the amounts given is proven by filing receipts with the Minister that contain prescribed information;

Paras. 110(1)(b), (b.1) substituted by 1980-81-82-83, c. 48, subsec. 57(2), applicable with respect to gifts made after 1979, to add "that contain prescribed information".

Para. 110(1)(b.1) added by 1974-75-76, c. 50, s. 50, in force from September 6, 1977.

Selected Cases [para. 110(1)(b.1)]: *Friedberg v. Canada*, [1992] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (July 2, 1992), Doc. 22990 [unreported] (No deduction was permitted in respect of a gift where taxpayer had no title to property when he donated it).

(c) [Repealed under former Act]

Pre-RSC History: Para. 110(1)(c) repealed by 1988, c. 55, subsec. 77(1), applicable to 1988 *et seq.* (See s. 118.2.) Para. 110(1)(c) formerly read:

> (c) medical expenses — an amount equal to that portion of medical expenses in excess of 3% of the taxpayer's income for the year paid either by the taxpayer or his legal representative,
>
> (i) in the event of the death of the taxpayer in the year, within any period of 24 months that included the day of death, or
>
> (ii) in any other case, within any period of 12 months ending in the year
>
> if the amount was not included in the calculation of a deduction for medical expenses under this Act for a preceding taxation year, payment of the expenses is proven by filing receipts with the Minister and the payment was made
>
> (iii) to a medical practitioner, dentist or nurse qualified to practise under the laws of the place where the expenses were incurred or a public or licensed private hospital in respect of a birth in the family of, illness of or operation on the taxpayer, his spouse or any dependant in respect of whom he may make a deduction from income under section 109 for the year in which the expense was incurred,
>
> (iv) as remuneration for one full-time attendant upon, or for the full-time care in a nursing home of, a person who is the taxpayer, his spouse or any such dependant and who has a severe and prolonged mental or physical impairment that is certified as such in prescribed form by a medical doctor licensed to practise under the laws of a province of Canada or of the place where the person resides,
>
> (iv.1) as remuneration for one full-time attendant upon an individual who was the taxpayer, his spouse or any such dependant (which individual is referred to in this subparagraph as the "cared-for person") in a self-contained domestic establishment in which the cared-for person lived, if
>
> (A) the cared-for person is, and has been certified by a qualified medical practitioner to be, a person who, by reason of physical or mental infirmity, is and is likely to be for a long-continued period of indefinite duration dependent on others for his personal needs and care and who, as a result thereof, requires a full-time attendant,
>
> (B) the attendant was not
>
> (I) a person in respect of whom the taxpayer or the taxpayer's spouse has made a deduction from income under section 109 for the taxation year in which the remuneration was paid, or
>
> (II) at the time the remuneration was paid, under 21 years of age and connected with the taxpayer or the taxpayer's spouse by blood relationship, marriage or adoption, and
>
> (C) each receipt filed with the Minister to prove payment of the remuneration contains the Social Insurance Number of the person who issued the receipt,
>
> (v) for the full-time care in a nursing home of the taxpayer, his spouse or any such dependant, who has been certified by a qualified medical practitioner to be a person who, by reason of lack of normal mental capacity, is and in the foreseeable future will continue to be dependent on others for his personal needs and care,
>
> (vi) for the care, or the care and training, at a school, institution or other place of the taxpayer, his spouse or any such dependant, who has been certified by an appropriately qualified per-

son to be an individual who, by reason of a physical or mental handicap requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by that individual,

(vii) [Repealed]

(viii) for transportation by ambulance to or from a public or licensed private hospital for the taxpayer, his spouse or any such dependant,

(viii.1) to a person engaged in the business of providing transportation services, to the extent that the payment was made for the transportation of

(A) an individual who was the taxpayer, his spouse or any such dependant (which individual is referred to in this subparagraph as the "patient"), and

(B) one individual who accompanied the patient, where the patient was, and has been certified by a qualified medical practitioner to be, incapable of travelling without the assistance of an attendant,

from the locality where the patient was dwelling to a place, not less than 40 kilometres from that locality, where medical services are normally provided, or from that place to that locality, if

(C) substantially equivalent medical services were not available in that locality,

(D) the route, travelled by the patient was, having regard to the circumstances, a reasonably direct route, and

(E) the patient travelled to that place to obtain medical services for himself and it was reasonable, having regard to the circumstances, for the patient to travel to that place to obtain those services,

(viii.2) for reasonable travelling expenses incurred in respect of an individual who was a patient described in clause (viii.1)(A) and one individual who was his attendant within the requirements of clause (viii.1)(B) to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient was dwelling if the circumstances described in clauses (viii.1)(C), (D) and (E) apply,

(ix) for or in respect of an artificial limb, iron lung, rocking bed for poliomyelitis victims, wheel chair, crutches, spinal brace, brace for a limb, iliostomy or colostomy pad, cloth diapers or disposable briefs used by a person who is incontinent by reason of illness, injury or affliction, truss for hernia, artificial eye, laryngeal speaking aid, aid to hearing or artificial kidney machine for the taxpayer, his spouse, or any such dependant,

(x) for eye glasses or other devices for the treatment or correction of a defect of vision, for the taxpayer, his spouse or any such dependant as prescribed by such a medical practitioner or an optometrist qualified to practise under the laws of the place where the expenses were incurred,

(xi) for an oxygen tent or other equipment necessary to administer oxygen or for insulin, oxygen, liver extract injectible for pernicious anaemia or vitamin B12 for pernicious anaemia, for use by the taxpayer, his spouse or any such dependant as prescribed by such a medical practitioner,

(xi.1) on behalf of an individual who was the taxpayer, his spouse or any such dependant, who was totally blind or profoundly deaf

(A) for a dog trained to guide or assist a blind or deaf person provided by a person or organization one of whose main purposes is the training of such dogs,

(B) for the care and maintenance of such a dog, including food and veterinarian care,

(C) for reasonable travelling expenses of the individual incurred in travelling to and from a school, institution or other place that trains blind or deaf persons in the handling of such dogs, and

(D) for reasonable board and lodging expenses of the individual incurred while he was required to live away from his ordinary place of residence because he was in full-time attendance at a school, institution or other place that trains blind or deaf persons in the handling of such dogs,

(xii) for any device or equipment, not described in any other subparagraph of this paragraph, of a prescribed kind, for use by the taxpayer, his spouse or any such dependant as prescribed by such a medical practitioner,

(xiii) for drugs, medicaments or other preparations or substances (except those described in subparagraph (xi)) manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof or in restoring, correcting or modifying an organic function, purchased for use by the taxpayer, his spouse or any such dependant as prescribed by such a medical practitioner or dentist and as recorded by a pharmacist licensed to practise under the laws of the place where the expenses were incurred,

(xiv) for laboratory, radiological or other diagnostic procedures or services together with necessary interpretations, for maintaining health, preventing diseases or assisting in the diagnosis or treatment of any injury, illness or disability, for the taxpayer, his spouse or any such dependant as prescribed by such a medical practitioner or dentist,

(xv) to a person authorized under the laws of a province to carry on the business of a dental mechanic, for the making or repairing of an upper or lower denture, or for the taking of impressions, bite registrations and insertions in respect of the making, producing, constructing and furnishing of an upper or lower denture, for the taxpayer, his spouse or any such dependant, or

(xvi) as a premium, contribution or other consideration to a private health services plan in respect of one or more of the taxpayer, his spouse and any member of his household with whom he is connected by blood relationship, marriage or adoption;

Subpara. 110(1)(c)(iv) substituted by 1986, c. 55, subsec. 31(1), applicable to 1986 *et seq.* Subpara. 110(1)(c)(iv) formerly read:

(iv) as remuneration for one full-time attendant upon, or for the full-time care in a nursing home of, the taxpayer, his spouse or any such dependant who, on application made before the end of the immediately following taxation year, is certified by the Minister of National Health and Welfare as being a person who, during the year, has a severe and prolonged mental or physical impairment, if a certificate issued under subparagraph (e)(i) to that effect is filed for the year,

Subpara. 110(1)(c)(iv) substituted and subpara. 110(1)(c)(vii) repealed by 1986, c. 6, subsecs. 55(1) and (2), applicable to 1986 *et seq.* Subparas. 110(1)(c)(iv), (vii) formerly read:

(iv) as remuneration for one full-time attendant upon, or for the full-time care in a nursing home of, the taxpayer, his spouse or any such dependant who was, throughout any 12-month period ending in the year, necessarily confined for a substantial period of time each day, by reason of illness, injury or affliction, to a bed or wheel chair,

. . . . .

(vii) as remuneration for one full-time attendant upon the taxpayer, his spouse or any such dependant who was totally blind at any time in the taxation year and required the services of an attendant,

All that portion of para. 110(1)(c) preceding subpara. (iii) substituted; subpara. 110(1)(c)(v) amended to substitute "the taxpayer, his spouse or any such dependant who has been certified" for "any such dependant if the dependant is, and has been certified" and to substitute "mental capacity" for "mental development"; and all that portion of 110(1)(c) following subpara. 110(1)(c)(xiv) substituted by 1985, c. 45, subsecs. 54(3)–(5), applicable to 1985 *et seq.*

That portion of para. 110(1)(c) preceding subpara. (iii) and that portion following subpara. (xiv) formerly read:

an amount equal to that portion of medical expenses in excess of 3% of the taxpayer's income for the year paid either by the taxpayer or his legal representatives

(i) within a period of 12 months ending in the year and not included in the calculation of a deduction for medical expenses under this Act for a previous year, or

(ii) in the event of the death of the taxpayer, within a period of 12 months commencing in the year and not included in the calculation of a deduction for medical expenses under this Act for a previous year

if payment was made

. . . . .

(xv) to a person authorized under the laws of a province to carry on the business of a dental mechanic, for the making or repair-

ing of an upper or lower denture, or for the taking of impressions, bite registrations and insertions in respect of the making, producing, constructing and furnishing of an upper or lower denture,

if payment of the expenses is proven by filing receipts with the Minister;

Subparas. 110(1)(c)(ix) and (xi.1) substituted by 1984, c. 45, subsecs. 35(1), (2) to add "cloth diapers or disposable briefs used by a person who is incontinent by reason of illness, injury or affliction" in subpara. (ix); to add "or profoundly deaf" to that portion of subpara. (xi.1) preceding cl. (A); to substitute "guide or assist a blind or deaf person" for "guide a blind person" and to delete, following "training of such dogs", the phrase "(in this subparagraph referred to as a guide dog)" from cl. (xi.1)(A); to add "or deaf" and to substitute "such" for "guide" in cls. (A)–(D), applicable to 1984 *et seq.*

All that portion of subpara. 110(1)(c)(viii.1) following cl. (B) and preceding cl. (C) substituted by 1980-81-82-83, c. 140, subsec. 65(3), to substitute "40 kilometres" for "25 miles", applicable with respect to payments made after 1981.

Subpara. 110(1)(c)(viii.2) added by 1980-81-82-83, c. 140, subsec. 65(4), applicable to the 1982 and subsequent taxation years.

Subpara. 110(1)(c)(iv) substituted by 1976-77, c. 4, subsec. 43(1), applicable to 1973 *et seq.* Subpara. 110(1)(c)(iv) formerly read:

(iv) as remuneration for one full-time attendant upon, or for the full-time care in a nursing home of, the taxpayer, his spouse or any such dependant who was throughout the whole of a 12 months' period ending in the taxation year necessarily confined by reason of illness, injury or affliction to a bed or wheel chair,

Subpara. 110(1)(c)(vi) substituted, subpara. 110(1)(c)(xi.1) added by 1974-75-76, c. 26, subsecs. 69(1), (2), applicable to 1974 *et seq.* Subpara. 110(1)(c)(vi) formerly read:

(vi) for the care, or the care and training of the taxpayer, his spouse or any such dependant in a school, institution or other place that is specially equipped to provide care and training to persons who are physically or mentally handicapped and that admits for care, or for care and training, only persons who are so handicapped,

Subparas. 110(1)(c)(iv.1), (viii.1) added by 1973-74, c. 14, subsecs. 35(1), (3), applicable to 1972 *et seq.*

Selected Cases [para. 110(1)(c)]: *Brown v. Canada*, [1995] 1 C.T.C. 208 (FCTD) ("Designed" can be read as meaning "intended". Air conditioner deductible as medical expense).

(d) **employee options** — an amount equal to 1/4 of the amount of the benefit deemed by subsection 7(1) to have been received by the taxpayer in the year in respect of a security that a particular qualifying person has agreed after February 15, 1984 to sell or issue under an agreement, or in respect of the transfer or other disposition of rights under the agreement, if

(i) the security

(A) is a prescribed share at the time of its sale or issue, as the case may be,

(B) would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement,

(C) would have been a unit of a mutual fund trust at the time of its sale or issue if those units issued by the trust that were not identical to the security had not been issued, or

(D) would have been a unit of a mutual fund trust if

(I) it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement, and

(II) those units issued by the trust that were not identical to the security had not been issued,

(ii) where rights under the agreement were not acquired by the taxpayer as a result of the disposition of rights to which subsection 7(1.4) applied,

(A) the amount payable by the taxpayer to acquire the security under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the security was acquired) is not less than the amount by which

Proposed Amendment — 110(1)(d)(ii)(A)

(A) the amount payable by the taxpayer to acquire the security under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency after the agreement was made) is not less than the amount by which

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 54(1), will amend the opening words of cl. 110(1)(d)(ii)(A) to read as above, applicable to 1998 *et seq.*

Technical Notes: Under subsection 7(1) of the Act, an individual who acquires a share of a corporation or a unit of a mutual fund trust (a "security") under an employee security option agreement (or disposes of rights under such an agreement) may be treated as having received a benefit from employment. Where certain conditions are met, paragraph 110(1)(d) allows the individual to deduct 1/4 of the amount included in income as a result of the application of subsection 7(1).

Fair Market Value Test

One of the conditions to be eligible for the 1/4 deduction is that the amount payable under the option for the security (the "option price") not be less than the fair market value of the security at the time the option was granted. Paragraph 110(1)(d) provides for the option price to be determined without reference to changes in the value of a foreign currency relative to Canadian currency during the period from the time the option is granted to the time the security is acquired. This is to eliminate the effect of foreign exchange fluctuations.

Paragraph 110(1)(d) is amended [110(1)(d)(ii)(A) — ed.] so that changes in the value of a foreign currency at any time after the option is granted are disregarded. This reflects the fact that, if there has been a disposition of rights rather than a security acquisition, the period described above is indeterminable.

Arm's Length Test

Another condition to be eligible for the 1/4 deduction is that the individual be dealing at arm's length, immediately after the option is granted, with the entity that granted the option (the "grantor") and with each entity not dealing at arm's length with the grantor. If the option under which the security is acquired (or rights are disposed of) was acquired as a result of one or more exchanges of options under subsection 7(1.4), the arm's length test must be satisfied after each such exchange but not after the granting of the original option.

The arm's length test [110(1)(d)(iii) — ed.] is amended in two ways. First, the requirement that the individual be dealing at arm's length with any entity not dealing at arm's length with the grantor is replaced with a requirement that the individual be dealing at arm's length with his or her employer and with the entity whose securities can be acquired under the option. There is no change to the requirement that the individual be dealing at arm's length with the grantor. Second, it is amended so that, if there has been an exchange of options under subsection 7(1.4), the arm's length test is applied with respect to the original option and not with respect to any subsequent exchange of options.

These amendments apply to the 1998 and subsequent taxation years. They undo recent legislative changes that had the unin-

tended effect of both tightening the arm's length test (extending it to all entities not dealing at arm's length with the grantor) and relaxing the test (ceasing to apply it to the original option after an exchange). They also further relax the arm's length test by restricting its application to the original option when there has been an exchange of options.

Letter from Department of Finance, September 14, 1999: Thank you for your letter of July 26, 1999 concerning recent amendments made to paragraph 110(1)(d) of the *Income Tax Act*.

You express concern that these amendments have resulted in an expansion of the requirements which must be satisfied in order for an individual who exercises or disposes of a stock option to be eligible for the deduction provided for under paragraph 110(1)(d). In particular, the requirement that the individual be dealing at arm's length with certain corporations has been expanded to include any corporation with which the corporation granting the option (the "optionor") does not deal at arm's length, even if the corporation in question is neither the individual's employer nor the corporation whose shares are the subject of the option.

As you note, the intent of the arm's length test is to ensure that employees who are in a position of influence or control are not able to convert their ordinary employment income (which is fully taxable) into stock options which benefit from the deduction under paragraph 110(1)(d). We agree with your assessment that this objective can be achieved by limiting the application of the arm's length requirement to the employee's employer, the optionor and the corporation whose shares can be acquired under the option, and are prepared to recommend that the Act be amended accordingly.

You have also asked that consideration be given to amending paragraph 110(1)(d)[(iii) — ed.] so that, where there has been one or more exchanges of stock options to which subsection 7(1.4) applied, the arm's length test is applied only to the original option and not to each subsequent exchange. Again, we agree with your assessment that such a change should not provide any opportunity for abuse since the application of subsection 7(1.4) is limited to situations where there is a value for value exchange. We also appreciate the fact that such a change should achieve considerable simplification and provide greater certainty as to an individual's eligibility for a deduction under paragraph 110(1)(d). Therefore, we are prepared to recommend that the Act be amended accordingly.

We would recommend that these proposed amendments have the same coming-into-force as the recent amendments. In other words, we would recommend that paragraph 110(1)(d) as amended apply to the 1998 and subsequent taxation years.

We wish to thank you again for bringing these issues to our attention.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division
Tax Policy Branch

(I) the fair market value of the security at the time the agreement was made

exceeds

(II) the amount, if any, paid by the taxpayer to acquire the right to acquire the security, and

(B) immediately after the agreement was made, the taxpayer was dealing at arm's length with the particular person and with each qualifying person with which the particular person was not dealing at arm's length, and

(iii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied,

(A) the amount payable by the taxpayer, to acquire the old security under the exchanged option in respect of the first of those dispositions (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the security was acquired), was not less than the amount by which

(I) the fair market value of the old security at the time the agreement in respect of the exchanged option was made

exceeds

(II) the amount, if any, paid by the taxpayer to acquire the right to acquire the old security, and

(B) immediately after each of those dispositions, the taxpayer was dealing at arm's length with

(I) the qualifying person with whom the taxpayer entered into an agreement to receive consideration in respect of the disposition, and

(II) each qualifying person with which the qualifying person described in subclause (I) did not deal at arm's length;

Proposed Amendment — 110(1)(d)

(B) at the time immediately after the agreement was made, the taxpayer was dealing at arm's length with

(I) the particular qualifying person,

(II) each other qualifying person that, at that time, was an employer of the taxpayer and was not dealing at arm's length with the particular qualifying person, and

(III) each other qualifying person of which the taxpayer had, under the agreement, a right to acquire a security, and

(iii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied, the requirements of clauses (ii)(A) and (B) would be satisfied if

(A) the agreement referred to in clauses (ii)(A) and (B) were the agreement (in this subparagraph referred to as the "original agreement") the rights under which were the subject of the first of those dispositions,

(B) the security referred to in clause (ii)(A) were a security that the taxpayer had a right to acquire under the original agreement, and

(C) the particular qualifying person referred to in clause (ii)(B) were the qualifying person that made the original agreement;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 54(2), will amend the portion of para. 110(1)(d) after cl. (ii)(A) to read as above, applicable to 1998 *et seq.*

Technical Notes: See under 110(1)(d)(ii)(A).

Proposed Amendment — Change from 1/4 to 1/3 deduction

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(d) the deductions permitted in paragraphs 110(1)(d) to (d.3) of the Act in respect of amounts that are included in income for the year (other than amounts that would be included in income for the year if the year had ended on February 27, 2000) be determined as 1/3 of the amounts so included in income rather than as 1/4 of such amounts,

[For the full text of this proposal and the accompanying Budget Supplementary Information, see under s. 38 — ed.]

Proposed Amendment — Deduction on donating stock option shares

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Donation of Stock Option Shares*

(24) That where

(a) an individual acquires, after February 27, 2000 and before 2002, a security under an option that was granted to the individual as an employee of a corporation or mutual fund trust,

(b) the individual disposes of the security, in the year it is acquired and not more than 30 days after its acquisition, by donating it to a qualified donee that is not a private foundation,

(c) the individual is entitled to deduct an amount under paragraph 110(1)(d) of the Act in respect of the employment benefit determined under subsection 7(1) of the Act in connection with the acquisition of the security, and

(d) if there were a capital gain determined in connection with the individual's disposition of the security, the gain would qualify for the reduced inclusion rate under paragraph 38(a.1) of the Act,

the individual be entitled to deduct, in computing taxable income for the year in which the security is acquired, an additional amount equal to 1/3 of the amount that would be the employment benefit if the fair market value of the security at the time of acquisition were the lesser of that value and the security's fair market value at the time of donation.

Federal budget, supplementary information, February 28, 2000: *Charitable Donations of Shares Acquired with Employee Stock Options*

The 1997 budget halved the inclusion rate on capital gains arising from charitable donations made before 2002 of listed securities, such as shares, bonds, bills, warrants and futures.

An individual who acquires a share under an employee stock option plan is required to include in income an employment benefit equal to the fair market value of the share, less any amounts paid to acquire the share. If certain conditions are satisfied, the individual is allowed to deduct part of the employment benefit in order to effectively tax the benefit at capital gains rates.

However, where the employee exercises the option in order to donate the share to a charity, there is no provision to reduce the tax burden on the employment benefit to parallel the reduced capital gains inclusion rate for donations of publicly-traded securities. The budget therefore proposes to introduce such a provision in order to provide parallel treatment between the two forms of gift-giving. In such circumstances, the individual will be allowed to deduct an additional third of the employment benefit. Taking into account the changes proposed in this budget to increase the existing stock option deduction from a quarter to a third, only a third of the employment benefit will be subject to tax.

If the value of the share at the time it is donated is less than when the option was exercised, the additional deduction will be reduced to provide the appropriate amount of tax assistance.

To be eligible for this measure, the share must be donated in the year and within 30 days of the option being exercised. Also, the share will have to meet the existing criteria for the reduced capital gains inclusion rate for donations of publicly-traded securities. The restrictions on eligible charities will also be the same. In addition, the conditions for the existing stock option deduction will have to be satisfied — principally, that the share be an ordinary common share and that amounts payable to acquire the share be no less than the fair market value of the share at the time the option is granted.

The measure will also apply to the donation of units of a mutual fund trust acquired under an employee option plan.

The measure will apply to securities acquired after February 27, 2000, and donated before 2002.

Related Provisions: 7(1.4) — Rules where options exchanged; 7(7) — Definitions; 7(2) — Shares held by trustee; 110(1)(d.1) — Alternative deduction; 110(1.5) — Value of share under stock option; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h) — Deduction disallowed for minimum tax purposes; 164(6.1) — Exercise or disposition of employee stock option by legal representative of deceased employee.

History: Para. 110(1)(d) amended by 1999, c. 22, s. 26, applicable to 1998 *et seq.* It formerly read:

(d) employee stock options — where, after February 15, 1984,

(i) a corporation has agreed to sell, issue or cause to be issued to the taxpayer a share of its capital stock or of the capital stock of another corporation with which it does not deal at arm's length,

(ii) the share was a prescribed share at the time of its sale or issue, as the case may be, or, where the taxpayer has disposed of rights under the agreement, the share would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of such rights,

(iii) the amount payable by the taxpayer to acquire the share under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the share was acquired) is not less than the amount by which

(A) the fair market value of the share at the time the agreement was made

exceeds

(B) the amount, if any, paid by the taxpayer to acquire the right to acquire the share,

or where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions of rights to which subsection 7(1.4) applied, the amount payable by the taxpayer to acquire the old share under the original option (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the share was acquired) that was disposed of in consideration for a new option in the first such disposition was not less than the amount by which

(C) the fair market value of the old share at the time the agreement in respect of the original option was made

exceeds

(D) the amount, if any, paid by the taxpayer to acquire the right to acquire the old share, and

(iv) at the time immediately after the agreement was made and, where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied, at the time the agreement in respect of the original option was made and at the time immediately after each disposition, the taxpayer was dealing at arm's length with the corporation, the other corporation and the corporation of which the taxpayer is an employee,

an amount equal to 1/4 of the amount of the benefit deemed by subsection 7(1) to have been received by the taxpayer in the year in respect of the share or the transfer or other disposition of the rights under the agreement;

Subpara. 110(1)(d)(iii) substituted by 1994, c. 21, subsec. 49(1), applicable to 1992 *et seq.* That subpara. formerly read:

(iii) the amount payable by the taxpayer to acquire the share under the agreement is not less than the amount by which

(A) the fair market value of the share at the time the agreement was made

exceeds

(B) the amount, if any, paid by the taxpayer to acquire the right to acquire the share,

or where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions of rights to which subsection 7(1.4) applied, the amount payable by the taxpayer to acquire the old share under the original option that was disposed of in consideration for a new option in the first such disposition was not less than the amount by which

(C) the fair market value of the old share at the time that the agreement in respect of the original option was made

exceeds

(D) the amount, if any, paid by the taxpayer to acquire the right to acquire the old share, and

Para. 110(1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(1), to substitute subparas. (i) to (iv), applicable to 1988 *et seq.*, except that, in the application of the para. with respect to shares acquired or rights in respect of shares transferred or otherwise disposed of before 1990, the reference therein to "1/4" shall be read as "1/3". Subparas. (i) to (iv) formerly read:

(i) a corporation has agreed to sell or issue to the taxpayer a share of its capital stock or the capital stock of another corporation with which it does not deal at arm's length,

(ii) the share was a prescribed share at the time of its sale or issue, as the case may be, or, in circumstances where the taxpayer has disposed of the taxpayer's rights under the agreement, the share would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of his rights,

(iii) the amount payable by the taxpayer to acquire the share under the agreement is not less than the fair market value of the share at the time the agreement was made, and

(iv) at the time immediately after the agreement was made the taxpayer was dealing at arm's length with the corporation, the other corporation and the corporation of which the taxpayer is an employee,

Pre-RSC History: That portion of para. 110(1)(d) following subpara. (iv) amended by 1988, c. 55, subsec. 77(2), to substitute "1/4" for "one-half", applicable in respect of shares acquired or rights in respect of shares transferred or otherwise disposed of after 1987, except that in applying para. 110(1)(d) to shares acquired or rights in respect of shares transferred or otherwise disposed of after 1987 and before 1990, the reference therein to "1/4" shall be read as a reference to "1/3".

Subparas. 110(1)(d)(i), (ii) substituted by 1987, c. 46, subsec. 38(1), applicable in respect of shares of a corporation issued or sold, or rights disposed of after May 22, 1985, other than shares issued before 1986 under the terms of an agreement in writing entered into before May 23, 1985. Subparas. 110(1)(d)(i), (ii) formerly read:

(i) a corporation has agreed to sell or issue a share of its capital stock, or of another corporation with which it does not deal at arm's length, to the taxpayer,

(ii) the share is a prescribed share at the time of its sale or issue, as the case may be,

Subpara. 110(1)(d)(ii) substituted by 1986, c. 6, subsec. 55(3), applicable in respect of shares of a corporation issued or sold, as the case may be, after May 22, 1985, other than shares issued before 1986 under the terms of an agreement in writing entered into before May 23, 1985. Subpara. 110(1)(d)(ii) formerly read:

(ii) the share is or would be a qualifying share if at the time of its sale or issue, as the case may be, subsection 192(6) were read without the words "taxable Canadian" and "after June 30, 1983 and before 1987",

Para. 110(1)(d) added by 1984, c. 45, subsec. 35(3).

Pre-RSC History [former para. 110(1)(d)]: Former para. 110(1)(d) repealed by 1984, c. 1, subsec. 49(2), applicable to 1984 *et seq.* Former para. 110(1)(d) read:

(d) optional standard deduction — $100 in the case of a taxpayer who is an individual, but where a deduction is made under this paragraph in computing the taxable income of the taxpayer for a taxation year,

(i) no deduction may be made under paragraph (a) of this subsection in respect of gifts made by him in that year in computing his taxable income for that or a subsequent taxation year, and

(ii) no deduction may be made under paragraph (c) of this subsection in computing his taxable income for that year;

Regulations: 6204 (prescribed share).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-151R4: Scientific research and experimental development expenditures.

I.T. Technical News: No. 7 (stock options plans — receipt of cash in lieu of shares); No. 19 (Securities option plan — disposal of securities option rights for shares).

(d.1) **idem** — where the taxpayer

(i) is deemed, under paragraph 7(1)(a) by virtue of subsection 7(1.1), to have received a benefit in the year in respect of a share acquired by the taxpayer after May 22, 1985,

(ii) has not disposed of the share (otherwise than as a consequence of the taxpayer's death) or exchanged the share within two years after the date the taxpayer acquired it, and

(iii) has not deducted an amount under paragraph (d) in respect of the benefit in computing the taxpayer's taxable income for the year,

an amount equal to 1/4 of the amount of the benefit;

Proposed Amendment — Change from 1/4 to 1/3 deduction

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110(1)(d).]

Related Provisions: 7(1.5) — Rules where shares exchanged; 7(1.6) — Emigration does not trigger disposition for purposes of 110(1)(d.1); 7(2) — Shares held by trustee; 110(1)(d) — Alternative deduction; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h) — Deduction disallowed for minimum tax purposes; 248(8) — Occurrences as a consequence of death.

Pre-RSC History: That portion of para. 110(1)(d.1) following subpara. (iii) amended to substitute "1/4" for "1/2" by 1988, c. 55, subsec. 77(3), applicable to shares disposed of or exchanged after 1987 except that in applying the para. to shares disposed of before 1990 the reference to "1/4" shall be read as "1/3".

Para. 110(1)(d.1) added by 1986, c. 6, subsec. 55(4), applicable with respect to shares acquired after May 22, 1985.

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(d.2) **prospector's and grubstaker's shares** — where the taxpayer has, under paragraph 35(1)(d), included an amount in the taxpayer's income for the year in respect of a share received after May 22, 1985, an amount equal to 1/4 of that amount unless that amount is exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada;

Proposed Amendment — Change from 1/4 to 1/3 deduction

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110(1)(d).]

Related Provisions: 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h) — Deduction disallowed for minimum tax purposes.

Pre-RSC History: Para. 110(1)(d.2) amended to substitute "1/4" for "1/2" and "by reason of" for "by virtue of" by 1988, c. 55, subsec. 77(4), applicable to shares disposed of or exchanged after 1987 except that in applying the para. to shares disposed of or exchanged after 1987 and before 1990, the reference to "1/4" shall be read as "1/3".

Para. 110(1)(d.2) added by 1986, c. 6, subsec. 55(4), applicable with respect to shares acquired after May 22, 1985.

(d.3) **employer's shares [where election made re DPSP]** — where the taxpayer has, under subsection 147(10.4), included an amount in computing the taxpayer's income for the year, an amount equal to 1/4 of that amount;

Proposed Amendment — Change from 1/4 to 1/3 deduction

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110(1)(d).]

Related Provisions: 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h) — Deduction disallowed for minimum tax purposes.

Pre-RSC History: Para. 110(1)(d.3) amended by 1988, c. 55, subsec. 77(5), to substitute "1/4" for "1/2", applicable to shares disposed of or exchanged after 1987, other than shares acquired on terminations of interests in deferred profit sharing plans occurring before May 24, 1985, except that in applying para. 110(1)(d.3) to shares disposed of or exchanged after 1987 and before 1990, the reference therein to "1/4" shall be read as a reference to "1/3".

Para. 110(1)(d.3) added by 1986, c. 6, subsec. 55(4), applicable (by subsec. 55(13) as amended by 1986, c. 55, s. 81) with respect to shares acquired on terminations of interests in DPSPs after May 23, 1985.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan.

(e) [Repealed under former Act]

Pre-RSC History: Para. 110(1)(e) repealed by 1988, c. 55, subsec. 77(6), applicable to 1988 *et seq.* (See s. 118.3.) Para. 110(1)(e) formerly read:

(e) mental or physical impairment — $2,860 if

(i) the taxpayer has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical doctor licensed to practise under the laws of a province of Canada or of the place where the taxpayer resides,

(ii) the taxpayer has filed with the Minister the form prescribed for the purposes of subparagraph (i), and

(iii) no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the mental or physical impairment of the taxpayer is included by the taxpayer or any other person in calculating a deduction for medical expenses under this section for the year;

Para. 110(1)(e) substituted by 1986, c. 55, subsec. 31(2), applicable to 1986 *et seq.* Para. 110(1)(e) formerly read:

(e) mental or physical impairment — $1,000, if the taxpayer

(i) is, on application made by him before the end of the immediately following taxation year, certified by the Minister of National Health and Welfare as being a person who, during the year, has a severe and prolonged mental or physical impairment,

(ii) has filed with the Minister a certificate issued by the Minister of National Health and Welfare under subparagraph (i), and

(iii) did not include any amount in respect of remuneration for an attendant, or care in a nursing home, by reason of his mental or physical impairment, in calculating a deduction for medical expenses under this section for the year;

Para. 110(1)(e) substituted by 1986, c. 6, subsec. 55(5), applicable to 1986 *et seq.* Para. 110(1)(e) formerly read:

(e) blind persons and persons confined to bed or wheel chair — $1,000, if the taxpayer

(i) was totally blind at any time in the year, or was necessarily confined for a substantial period of time each day, by reason of illness, injury or affliction, to a bed or wheel chair throughout

(A) any 12 month period ending in the year, or

(B) a period that commenced in the year and continued to the end of the year where, in the opinion of a medical practitioner, the taxpayer is likely to be so confined for a period of at least 12 months, and

(ii) did not include any amount in respect of remuneration for an attendant, or care in a nursing home, by reason of his blindness, illness, injury or affliction in calculating a deduction for medical expenses under this section for the year;

Subpara. 110(1)(e)(i) substituted by 1984, c. 45, subsec. 35(4), applicable to 1984 *et seq.* Subpara. 110(1)(e)(i) formerly read:

(i) was totally blind at any time in the year or was, throughout the whole of the year, necessarily confined, by reason of illness, injury or affliction, to a bed or wheel chair, and

Subpara. 110(1)(e)(i) substituted by 1974-75-76, c. 26, subsec. 69(3), applicable to 1973 *et seq.* Subpara. 110(1)(e)(i) formerly read:

(i) was totally blind at any time in the year or was, throughout any 12-month period ending in the year, necessarily confined for a substantial period of time each day, by reason of illness, injury or affliction, to a bed or wheel chair, and

All that portion of para. 110(1)(e) preceding subpara. (i) substituted by 1973-74, c. 14, subsec. 35(4), applicable to 1972 *et seq.*

(e.1), (e.2) [Repealed under former Act]

Pre-RSC History: Para. 110(1)(e.1) repealed by 1988, c. 55, subsec. 77(6), applicable to 1988 *et seq.* Para. 110(1)(e.1) formerly read:

(e.1) dependant having impairment — where the taxpayer has claimed, in respect of a person resident in Canada at any time in the year who was entitled to a deduction for the year under paragraph (e), a deduction under

(i) paragraph 109(1)(b), or

(ii) paragraph 109(1)(d), where that person was his child or grandchild,

or could have claimed such a deduction had that person no income for the year and where no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of that person's mental or physical impairment, has been deducted under this section for the year by the taxpayer or any other person, the amount, if any, by which $2,860 exceeds that person's taxable income for the year (computed before making any deduction under paragraph (e));

All that portion of para. 110(1)(e.1) following subpara. (ii) amended by 1986, c. 55, subsec. 31(3), to substitute "$2,860" for "$1,000", applicable to 1986 *et seq.*

Para. 110(1)(e.2) amended and renumbered as (e.1) by 1986, c. 6, subsec. 55(5), applicable to 1986 *et seq.* Former para. 110(1)(e.2) read:

(e.2) deduction transfer — the amount by which $1,000 exceeds the taxable income for the year, computed before making any deduction under paragraph (e), of any person resident in Canada at any time in the year in respect of whom the taxpayer has claimed a deduction under paragraph 109(1)(b) or (d), or could have claimed such a deduction had that person had no income in the year, if the person was totally blind at

(i) any 12 month period ending in the year, or

(ii) a period that commenced in the year and continued to the end of the year where, in the opinion of a medical practitioner, the person is likely to be so confined for a period of at least 12 months,

and no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the person's blindness, illness, injury or affliction has been deducted under this section for the year by the taxpayer or any other person;

All that portion of para. 110(1)(e.2) following subpara. (ii) substituted by 1985, c. 45, subsec. 54(6), applicable to 1985 *et seq.* That portion formerly read:

and neither the taxpayer nor the person included any amount in respect of remuneration for an attendant, or care in a nursing home,

by reason of the person's blindness, illness, injury or affliction in calculating a deduction for medical expenses under this section for the year;

Para. 110(1)(e.2) substituted by 1984, c. 45, subsec. 35(5), applicable to 1984 *et seq.* Para. (e.2) formerly read:

(e.2) **wholly dependent child or other person blind or confined to bed or wheel chair, additional deduction** — the amount by which $1,000 exceeds the taxable income for the year, computed before making any deductions under paragraph (e), of any person resident in Canada at any time in the year in respect of whom the taxpayer has claimed a deduction under paragraph 109(1)(b) or (d), or could have claimed such a deduction had that person had no income in the taxation year, if the person was totally blind at any time in the year or was, throughout any 12-month period ending in the year, necessarily confined for a substantial period of time each day, by reason of illness, injury or affliction, to a bed or wheel chair, and neither the taxpayer nor the person included any amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the person's blindness, illness, injury or affliction in calculating a deduction for medical expenses under this section for the year;

Para. 110(1)(e.2) added and para. 110(1)(e.1) repealed by 1976-77, c. 4, subsec. 43(2), applicable to 1976 *et seq.* Para. 110(1)(e.1) formerly read:

(e.1) **taxpayer's spouse blind or confined to bed or wheel chair: additional deduction** — the amount by which $1,000 exceeds the taxable income for the year of the taxpayer's spouse computed before making any deductions under paragraph (e), if the spouse was totally blind at any time in the year or was, throughout any 12-month period ending in the year, necessarily confined for a substantial period of time each day, by reason of illness, injury or affliction, to a bed or wheel chair, and neither the taxpayer nor his spouse included any amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the spouse's blindness, illness, injury or affliction in calculating a deduction for medical expenses under this section for the year;

Para. 110(1)(e.1) substituted by 1974-75-76, c. 26, subsec. 69(4), applicable to 1973 *et seq.* Para. 110(1)(e.1) formerly read:

(e.1) the amount by which $1,000 exceeds the taxable income for the year of the taxpayer's spouse computed before making any deduction under paragraph (e), if the spouse was totally blind at any time in the year or was, throughout the whole of the year, necessarily confined, by reason of illness, injury or affliction, to a bed or wheel chair, and neither the taxpayer nor his spouse included any amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the spouse's blindness, illness, injury or affliction in calculating a deduction for medical expenses under this section for the year;

Para. 110(1)(e.1) added by 1973-74, c. 14, subsec. 35(5), applicable to 1972 *et seq.*

(f) **deductions for payments** — any social assistance payment made on the basis of a means, needs or income test and included because of clause 56(1)(a)(i)(A) or paragraph 56(1)(u) in computing the taxpayer's income for the year or any amount that is

(i) an amount exempt from income tax in Canada because of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

(ii) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid,

(iii) income from employment with a prescribed international organization, or

(iv) the taxpayer's income from employment with a prescribed international non-governmental organization, where the taxpayer

(A) was not, at any time in the year, a Canadian citizen,

(B) was a non-resident person immediately before beginning that employment in Canada, and

(C) if the taxpayer is resident in Canada, became resident in Canada solely for the purpose of that employment,

to the extent that it is included in computing the taxpayer's income for the year;

Related Provisions: 56(1)(u) — Social assistance payments; 56(1)(v) — Workers' compensation; 60(j) — Transfer of superannuation benefits; 81(1)(a) — Amounts not included — statutory exemption; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 126(7)"tax-exempt income" — Income exempted by tax treaty; 127.52(1)(h) — Application of deduction for minimum tax purposes; 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes; 150(1)(a)(ii) — Requirement for non-resident corporation to file tax return to claim treaty exemption; 153(1.1) — Application for reduced source withholding where amount is exempt from tax under treaty; 248(1)"treaty-protected business", "treaty-protected property" — Amounts exempted by tax treaty.

History: Subpara. 110(1)(f)(iv) added by 1994, c. 21, subsec. 49(3), applicable to 1993 *et seq.*

Subpara. 110(1)(f)(iii) added by 1994, c. 7, Sch. VHI (1993, c. 24), s. 45, applicable to 1991 *et seq.*

Para. 110(1)(f) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(2), applicable to 1991 *et seq.* Para. (f) formerly read:

(f) any amount that is

(i) an amount exempt from income tax in Canada by virtue of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

(ii) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid, or

(iii) a social assistance payment made on the basis of a means, needs or income test by a registered charity or under a program (other than a prescribed program) provided for by an Act of Parliament or a law of a province where the payment is received by the individual in respect of whom the social assistance was provided or by a person who, at the time the payment was made, resided with the individual;

Pre-RSC History: Subpara. 110(1)(f)(iii) substituted by 1988, c. 55, subsec. 77(7), applicable to 1982 *et seq.* Subpara. (iii) formerly read:

(iii) a social assistance payment made on the basis of a means, needs or income test by a registered charity or under a program (other than a prescribed program) provided for by an Act of the Parliament of Canada or a law of a province,

Para. 110(1)(f) substituted by 1980-81-82-83, c. 140, subsec. 65(5), applicable to 1982 *et seq.* Para. (f) formerly read:

(f) **deduction for payments of supplement under *Old Age Security Act*** — the amount of any supplement or spouse's allowance under the *Old Age Security Act* or of any similar payment under a law of a province, in respect of which any amount has been included in computing the taxpayer's income for the year by virtue of clause 56(1)(a)(i)(A);

Para. 110(1)(f) substituted by 1974-75-76, c. 58, subsec. 12(2), applicable to 1975 *et seq.*, in force October 1, 1975. Para. (f) formerly read:

(f) the amount of any supplement under the *Old Age Security Act* or of any similar payment under a law of a province, in respect of which any amount has been included in computing the taxpayer's income for the year by virtue of clause 56(1)(a)(i)(A);

Selected Cases [para. 110(1)(f)]: *Cai v. Canada*, [1996] 3 C.T.C. 2724 (TCC) (Taxpayer's presence in Canada was more than just as student).

Regulations: 232, 233 (information return); 8900(a) (prescribed international organization for 110(1)(f)(iii); 8900(b) (prescribed international non-governmental organization for 110(1)(f)(iv)).

Interpretation Bulletins: IT-122R2: United States social security taxes and benefits; IT-202R2: Employees' or workers' compensation; IT-499R:

Superannuation or pension benefits; IT-528: Transfers of funds between registered plans.

(g) [Repealed under former Act]

Pre-RSC History: Para. 110(1)(g) repealed by 1988, c. 55, subsec. 77(8), applicable to 1988 *et seq.* (See s. 118.6.) Para. (g) formerly read:

(g) students — $50 multiplied by the number of months in the year during which the taxpayer was a student in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at that institution if such enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in clause (9)(a)(i)(B), the student is enrolled in the program to obtain or improve his skills in an occupation;

Para. 110(1)(g) substituted by 1980-81-82-83, c. 140, subsec. 65(5), applicable to 1982 *et seq.* Para. (g) formerly read:

(g) $50 multiplied by the number of months in the year during which the taxpayer was a student in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at that institution if such enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information;

Para. 110(1)(g) substituted by 1976-77, c. 4, subsec. 43(3), applicable to 1976 *et seq.* except that the requirement that enrolment must be proved by filing with the Minister a certificate is applicable after December 31, 1976. Para. (g) formerly read:

(g) $50 multiplied by the number of months in the year during which the taxpayer was a student in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at that institution; and

Para. 110(1)(g) added by 1973-74, c. 14, subsec. 35(6), applicable to 1972 *et seq.*

(h) [Repealed under former Act]

Pre-RSC History: Para. 110(1)(h) repealed by 1988, c. 55, subsec. 77(8), applicable to 1988 *et seq.* Para. (h) formerly read:

(h) taxpayer supporting student — where the taxpayer was the supporting individual for the year in respect of a student who was

(i) in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at that institution, and

(ii) not an individual in respect of whom his spouse deducted an amount for that year under section 109 or 110.3,

the amount by which

(iii) $50 multiplied by the number of months in the year during which the student was so in attendance and was so enrolled

exceeds

(iv) the amount, if any, of the taxable income for the year of the student computed before making any deduction under paragraph (g),

if such enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information; and in respect of a designated educational institution described in clause (9)(a)(i)(B), the student is enrolled in the program to obtain or improve his skills in an occupation;

All that portion of para. 110(1)(h) following subpara. (iv) thereof substituted by 1980-81-82-83, c. 140, subsec. 65(6), to add the words "in respect of a designated educational institution described in clause (9)(a)(i)(B), the student is enrolled in the program to obtain or improve his skills in an occupation; and". That portion applicable to the 1982 and subsequent taxation years.

Para. 110(1)(h) substituted by 1976-77, c. 4, subsec. 43(3), applicable to 1976 *et seq.* except that the requirement that enrolment must be proved by filing with the Minister a certificate is applicable after December 31, 1976. Para. (h) formerly read:

(h) where the taxpayer was the supporting individual for the year in respect of a student who was in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at that institution, the amount by which multiplied by the

(i) $50 multiplied by the number of months in the year during which the student was so in attendance and was so enrolled

exceeds

(ii) the amount, if any, of the taxable income for the year of the student computed before making any deduction under paragraph (g).

Paras. 110(1)(h) added by 1973-74, c. 14, subsec. 35(6), applicable to 1972 *et seq.*

(i) [Repealed]

History: Para. 110(1)(i) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(3), applicable to 1989 *et seq.* Para. (i) formerly read:

(i) unemployment insurance benefit repayment — any benefit repayment payable by the taxpayer under Part VII of the *Unemployment Insurance Act* on or before April 30 of the following year to the extent that the amount was not deductible in computing the taxpayer's taxable income for any previous taxation year;

Para. 110(1)(i) added by 1979, c. 5, s. 33, applicable to 1979 *et seq.*

(j) **home relocation loan** — where the taxpayer has, by virtue of section 80.4, included an amount in the taxpayer's income for the year in respect of a benefit received by the taxpayer in respect of a home relocation loan, the least of

(i) the amount of the benefit that would have been deemed to have been received by the taxpayer under section 80.4 in the year if that section had applied only in respect of the home relocation loan,

(ii) the amount of interest for the year that would be computed under paragraph 80.4(1)(a) in respect of the home relocation loan if that loan were in the amount of $25,000 and were extinguished on the earlier of

(A) the day that is five years after the day on which the home relocation loan was made, and

(B) the day on which the home relocation loan was extinguished, and

(iii) the amount of the benefit deemed to have been received by the taxpayer under section 80.4 in the year; and

Related Provisions: 80.4(4) — Interest on home relocation loan; 110(1.4) — Replacement of home relocation loan; 111.1 — Order of applying provisions; 114.2 — Deductions in separate returns; 127.52(1)(h) — Deduction disallowed for minimum tax purposes.

Pre-RSC History: Subpara. 110(1)(j)(i) substituted and all that portion of subpara. 110(1)(j)(ii) preceding cl. (A) amended to substitute "in respect of the home relocation loan if" for "in respect of a home relocation loan of the individual if" by 1987, c. 46, subsec. 38(2), applicable to 1985 *et seq.* Subpara. (j)(i) formerly read:

(i) the amount, if any, by which

(A) the amount of interest for the year described in paragraph 80.4(1)(a) in respect of the loan

exceeds

(B) the amount of interest for the year paid on the loan not later than 30 days after the end of the year,

Para. 110(1)(j) added by 1986, c. 6, subsec. 55(6), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: No. 6 (payment of mortgage interest subsidy by employer).

(k) **Part VI.1 tax** — ¾ of the tax payable under subsection 191.1(1) by the taxpayer for the year.

Related Provisions: 111(5) — Change in control of corporation; 191.3(4) — Related corporations.

Pre-RSC History: Para. 110(1)(k) amended by 1990, c. 39, subsec. 21(1), applicable to 1990 *et seq.* except that, in its application to a corporation's taxation year commencing before 1990 and ending after 1989, there

shall be added to the amount otherwise determined under para. 110(1)(k) ¼ of the aggregate of

(a) that proportion of the tax that would be payable under subsec. 191.1(1) by the corporation for the year if that subsec. were read without reference to subpara. (a)(iv) thereof, that

(i) the lesser of the amount determined under subparagraph (ii) in respect of the corporation and the aggregate of taxable dividends (other than excluded dividends) paid on taxable preferred shares, within the meanings assigned to those terms by the corporation in the year and before 1990

is of

(ii) the amount, if any, by which the aggregate of taxable dividends (other than excluded dividends) paid on taxable preferred shares (within the meanings assigned to those terms by the Act) by the corporation in the year exceeds the corporation's dividend allowance for the year, and

(b) the aggregate of all amounts each of which is that proportion of any particular amount determined for the year in respect of the corporation under para. 191.3(1)(d) that

(i) the amount, if any, determined under subparagraph (a)(i) in respect of the transferor corporation referred to in subsec 191.3(1) for its taxation year for which the particular amount was determined in respect thereof under para. 191.3(1)(c)

is of

(ii) the amount determined under subparagraph (a)(ii) in respect of the transferor corporation for its taxation year referred to in subparagraph (i).

Special provision — 1989 taxation year: Subsec. 21(3) of 1990, c. 39 provides as follows:

(3) There shall be deducted from the amount otherwise determined under paragraph 110(1)(k) of the said Act in respect of a corporation for its 1989 taxation year ¼ of the aggregate of all amounts each of which is that proportion of any particular amount determined for the year in respect of the corporation under paragraph 191.3(1)(d) of the said Act that

(a) the amount, if any, by which the aggregate of taxable dividends (other than excluded dividends) paid on taxable preferred shares, within the meanings assigned to those terms by the said Act, by the transferor corporation referred to in subsection 191.3(1) of the said Act after 1989 and in its taxation year for which the particular amount was determined in respect thereof under paragraph 191.3(1)(c) of the said Act exceeds its dividend allowance for that year

is of

(b) the amount, if any, by which the aggregate of taxable dividends (other than excluded dividends) paid on taxable preferred shares, within the meanings assigned to those terms by the said Act, by the transferor corporation in its taxation year referred to in paragraph (a) exceeds its dividend allowance for that year.

Para. 110(1)(k) added by 1988, c. 55, subsec. 77(9), applicable to 1988 *et seq.*, except that in the application of para. 110(1)(k) to taxation years ending before July 1988 the reference therein to "⅘ of" shall be read as a reference to "2 times".

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

(1.1)–(1.3) [Repealed under former Act]

Pre-RSC History: Subsecs. 110(1.1), (1.2), (1.3) repealed by 1988, c. 55, subsec. 77(10), applicable to 1988 *et seq.* Those subsecs. formerly read:

(1.1) Deemed payment of medical expenses — Where, in circumstances in which a person engaged in the business of providing transportation services is not readily available, a taxpayer makes use of a vehicle for a purpose described in subparagraph (1)(c)(viii.1), the taxpayer or his legal representative shall be deemed to have paid to a person engaged in the business of providing transportation services, in respect of the operation of the vehicle, such amount as is reasonable in the circumstances.

(1.2) Time of gift — For the purposes of paragraphs (1)(a), (b) and (b.1), a gift made by an individual in the year of his death shall be deemed to have been made by him in the immediately preceding year to the extent that the amount thereof was not deducted in computing his taxable income for the taxation year in which he died.

(1.3) Nature of impairment — For the purposes of paragraphs (1)(c) and (e),

(a) a person shall be considered to have a severe and prolonged impairment only if by reason thereof he is markedly restricted in his activities of daily living and the impairment has lasted or can reasonably be expected to last for a continuous period of at least 12 months; and

(b) the Minister may obtain the advice of the Department of National Health and Welfare as to whether a person has a severe and prolonged impairment.

Subsec. 110(1.3) substituted by 1986, c. 55, subsec. 31(4), applicable to 1986 *et seq.* Subsec. (1.3) formerly read:

(1.3) Nature of impairment — For the purposes of subparagraph (1)(c)(iv) and paragraph (1)(e), a person shall be considered to have a severe and prolonged impairment only if by reason thereof he is markedly restricted in his activities of daily living and the impairment has lasted or can reasonably be expected to last for a continuous period of at least 12 months.

Subsec. 110(1.3) added by 1986, c. 6, subsec. 55(7), applicable to 1986 *et seq.*

Subsec. 110(1.2) amended by 1985, c. 45, subsec. 54(7), to substitute "was not deducted in computing his taxable income for the taxation year in which he died" for "was not deductible in computing his taxable income for the year of his death", applicable to 1984 *et seq.*

Subsec. 110(1.2) added by 1980-81-82-83, c. 140, subsec. 65(7), applicable with respect to gifts made in the 1981 and subsequent taxation years.

Subsec. 110(1.1) added by 1973-74, c. 14, subsec. 35(6.1), applicable to 1972 *et seq.*

Selected Cases [subsec. 110(1.2)]: *O'Brien Estate v. MNR*, [1991] 2 C.T.C. 2747 (TCC) (Donation of remainder of trust to charity upon death of beneficiary who had life interest deductible since executors' encroachment powers did not undermine absolute nature of gift).

(1.4) Replacement of home relocation loan — For the purposes of paragraph (1)(j), a loan received by a taxpayer that is used to repay a home relocation loan shall be deemed to be the same loan as the relocation loan and to have been made on the same day as the relocation loan.

Pre-RSC History: Subsec. 110(1.4) added by 1986, c. 6, subsec. 55(7), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

(1.5) Value of share under stock option — For the purpose of subparagraph (1)(d)(iii), the fair market value of a share of the capital stock of a corporation at the time an agreement in respect of the share was made shall be determined on the assumption that

(a) any subdivision or consolidation of shares of the capital stock of the corporation,

(b) any reorganization of share capital of the corporation, and

(c) any stock dividend of the corporation

occurring after the agreement was made and before the share was acquired had taken place immediately before the agreement was made.

History: Subsec. 110(1.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 78(4), applicable to 1988 *et seq.*

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options.

(2) Charitable gifts — Where an individual is, during a taxation year, a member of a religious order and has, as such, taken a vow of perpetual poverty, the individual may deduct in computing the individual's taxable income for the year an amount equal to the total of the individual's superannuation or pension benefits and the individual's earned income for the year (within the meaning as-

signed by section 63) if, of the individual's income, that amount is paid in the year to the order.

Related Provisions: 118.1(1) — "Total charitable gifts"; 118.1(3) — Deduction from tax.

Pre-RSC History: Subsec. 110(2) substituted by 1988, c. 55, subsec. 77(11), applicable to 1988 *et seq.* Subsec. (2) formerly read:

> (2) Where an individual was, during the taxation year, a member of a religious order and had, as such, taken a vow of perpetual poverty, he may, in lieu of the deduction permitted by paragraph (1)(a), deduct in computing his taxable income for the year an amount equal to the aggregate of his superannuation or pension benefits and his earned income for the year as defined by section 63 if, of his income, that amount has been paid to the order.

Subsec. 110(2) substituted by 1984, c. 1, subsec. 110(4), to add "in computing his taxable" applicable to 1983 *et seq.*

Subsec. 110(2) substituted by 1974-75-76, c. 26, subsec. 69(5), applicable to 1972 *et seq.*

Selected Cases [subsec. 110(2)]: *Aubry v. The Queen*, [1976] C.T.C. 598 (FCTD) (Personal living expenses of member of Jesuit Order residing away from group's house of retreat not charitable gift).

Interpretation Bulletins: IT-86R: Vow of perpetual poverty.

Information Circulars: 78-5R3: Communal organizations.

(2.1)–(2.3) [Repealed under former Act]

Pre-RSC History: Subsecs. 110(2.1) to (2.3) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsecs. (2.1) to (2.3) formerly read:

> (2.1) Gift by will — Where a taxpayer who died after 1971 has, by his will, made a gift to a donee described in paragraph (1)(a), (b) or (b.1), the gift shall, for the purposes of this section, be deemed to have been made by the taxpayer in the taxation year in which he died.
>
> (2.2) Gift of capital property — Where at any time after 1971
>
> (a) a taxpayer has made, whether by his will or otherwise, a gift of
>
> (i) capital property to a donee described in paragraph (1)(a) or (b), or
>
> (ii) in the case of a taxpayer who is a non-resident person, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that such property will be held for use in the public interest, and
>
> (b) the fair market value of the property at that time exceeded its adjusted cost base to the taxpayer,
>
> such amount, not greater than the fair market value and not less than the adjusted cost base to the taxpayer of the property at that time, as is designated by the taxpayer or his legal representative in his return of income under section 150 for the year in which the gift was made shall, if payment thereof is proved by filing with the Minister a receipt containing prescribed information, be deemed to be the taxpayer's proceeds of disposition of the property and the amount of the gift made by the taxpayer.
>
> (2.3) Gifts of art — Where at any other time after 1984
>
> (a) an individual has made, whether by his will or otherwise, a gift of a work of art created by him that is property in his inventory to a donee described in paragraph (1)(a) or (b), and
>
> (b) the fair market value of the work of art at that time exceeded its cost amount to him,
>
> such amount, not greater than the fair market value and not less than the cost amount to the individual of the work of art at that time, as is designated by him or his legal representative in his return of income under section 150 for the year in which the gift was made shall, if the making of the gift is proved by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the work of art and the amount of the gift made by him.

Subsec. 110(2.2) amended to substitute, in subpara. (a)(i), "capital property" for "tangible capital property" and to repeal para. (c), and subsec. (2.3) added, by 1986, c. 6, subsecs. 55(8)–(10), applicable with respect to gifts made after 1984. Para. (c) formerly read:

> (c) the property could at that time reasonably be regarded as being suitable for use by the donee directly in the course of carrying on its charitable, public service or other similar activities,

Subsec. 110(2.2) substituted by 1984, c. 45, subsec. 35(6), applicable with respect to gifts made after February 15, 1984. Subsec. (2.2) formerly read:

> (2.2) Gift of tangible capital property — Where at any time after 1971 a taxpayer has made a gift whether by his will or otherwise, to a donee described in paragraph (1)(a) or (b), of tangible capital property that had, at that time, a fair market value in excess of its adjusted cost base to the taxpayer and that could, at that time, reasonably be regarded as being suitable for use by the donee directly in the course of carrying on its charitable, public service or other similar activities, such amount,
>
> (a) not greater than the fair market value of the property at that time, and
>
> (b) not less than its adjusted cost base to the taxpayer at that time,
>
> as is designated by the taxpayer or his legal representative, as the case may be, in the return of income of the taxpayer required by section 150 to be filed for the year in which the gift was made, shall be deemed to be
>
> (c) the taxpayer's proceeds of disposition of the property, and
>
> (d) the amount of the gift made by the taxpayer,
>
> if payment of the amount given is proven by filing a receipt with the Minister that contains prescribed information.

Para. 110(2.2)(d) substituted and remainder of subsec. 110(2.2) added by 1980-81-82-83, c. 48, subsec. 57(3), applicable with respect to gifts made after 1979. Para. (d) formerly read:

> (d) the amount of the gift made by the taxpayer.

Subsec. 110(2.1) substituted by 1977-78, c. 1, s. 51, applicable after September 5, 1977, to add reference to para. (b.1).

Subsecs. 110(2.1), (2.2) added by 1973-74, c. 14, subsec. 35(7).

Selected Cases [subsec. 110(2.1)]: *O'Brien Estate v. MNR*, [1991] 2 C.T.C. 2747 (TCC) (Donation of remainder of trust to charity upon death of beneficiary who had life interest deductible since executors' encroachment powers did not undermine absolute nature of gift).

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 110(3) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsec. (3) formerly read:

> (3) Commuter's charitable donations — Where a person resided during the whole of a taxation year in Canada near the boundary between Canada and the United States of America, if
>
> (a) he commuted to his principal place of employment or business in the United States, and
>
> (b) his chief source of income for the year was that employment or business,
>
> a gift made by him in the year to a religious, charitable, scientific, literary or educational organization created or organized in or under the law of the United States that would be allowed as a deduction under the United States Internal Revenue Code shall, for the purpose of paragraph (1)(a), be deemed to have been made to a registered charity.

"Registered charity" substituted for "registered Canadian charitable organization" in subsec. 110(3) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 110(4) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsec. (4) formerly read:

> (4) Application — For the purposes of paragraphs (1)(a), (b) and (b.1), no amount in respect of gifts made by the taxpayer in a taxation year shall be deducted until the amount deductible thereunder in respect of all gifts made by the taxpayer in all preceding taxation years has been deducted.

Subsec. 110(4) substituted by 1980-81-82-83, c. 140, subsec. 65(8), applicable with respect to gifts made in 1981 *et seq.* Subsec. (4) formerly read:

> (4) Application of paras. (1)(a) and (b) — Paragraphs (1)(a) and (b) do not apply to permit a taxpayer to deduct, for the purpose of computing his taxable income for a taxation year, any amount in

respect of gifts made by the taxpayer in the year, until the amount deductible under those paragraphs in respect of gifts made by the taxpayer in the immediately preceding year has been deducted.

(5), (6) [Repealed under former Act]

Pre-RSC History: Subsecs. 110(5), (6) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsecs. (5), (6) formerly read:

(5) Gifts made by partnership — Where a taxpayer was, at the end of a taxation year of a partnership, a member of the partnership, his share of any amount that would, if the partnership were a person, be a gift made by the partnership to any donee, shall, for the purposes of this section, be deemed to be a gift made by the taxpayer, in his taxation year in which the taxation year of the partnership ended, to that donee.

(6) Deemed medical expense — For the purposes of paragraph (1)(c),

(a) any amount included in computing a taxpayer's income for a taxation year from an office or employment in respect of a medical expense described in any of subparagraphs (1)(c)(iii) to (xv) paid or provided by an employer at a particular time shall be deemed to be a medical expense paid by the taxpayer at that time; and

(b) there shall not be included as a medical expense of a taxpayer any expense for which the taxpayer or his legal representative has been or is entitled to be reimbursed, except to the extent that the amount thereof is required to be included in computing the taxpayer's income under this Part.

Subsec. 110(6) substituted by 1985, c. 45, subsec. 54(8), applicable to 1985 *et seq.* For the former versions of paras. 110(6)(a) and (b) see histories of subsecs. 110(6.1) and (7) respectively. Subsec. (6) formerly read:

(6) Certain premiums deemed to be medical expenses — For the purposes of paragraph (1)(c), any premium, contribution or other consideration paid by the taxpayer pursuant to a private health services plan in respect of the taxpayer, his spouse and any members of his household with whom he is connected by blood relationship, marriage or adoption, or in respect of any one or more of such persons, shall be deemed to be a medical expense paid by the taxpayer as described in subparagraph (iii) of that paragraph.

(6.1) [Repealed under former Act]

Pre-RSC History: Subsec. 110(6.1) repealed and a revised version incorporated in para. 110(6)(a) by 1985, c. 45, subsec. 54(8), applicable to 1985 *et seq.* Subsec. (6.1) formerly read:

(6.1) Deemed travelling expenses — For the purposes of paragraph (1)(c), any amount included in computing a taxpayer's income for a taxation year from an office or employment in respect of travelling expenses described in subparagraph (1)(c)(viii.2) paid or provided by an employer shall be deemed to be travelling expenses paid by the taxpayer in the year for the purposes of subparagraph (1)(c)(viii.2).

Subsec. 110(6.1) added by 1980-81-82-83, c. 140, subsec. 65(9), applicable to 1982 *et seq.*

(7) [Repealed under former Act]

Pre-RSC History: Subsec. 110(7) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsec. (7) formerly read:

(7) Partial dependency — Where more than one taxpayer is, in respect of a taxation year, entitled to deduct an amount under paragraph (1)(e.2) in respect of the same person, the aggregate of all amounts deductible for the year by those taxpayers in respect of that person shall not exceed the amount that would be deductible under that paragraph for the year by any taxpayer in respect of that person if that taxpayer were the only taxpayer entitled to deduct an amount under that paragraph in respect of that person and where the taxpayers cannot agree as to what portion of the amount each can deduct, the Minister may fix the portions.

Subsec. 110(7) substituted and a revised version incorporated in para. 110(6)(b) by 1985, c. 45, subsec. 54(8), applicable to 1985 *et seq.* Subsec. (7) formerly read:

(7) Medical expenses where right to reimbursement — Notwithstanding anything in this Part, other than subsection (6.1), there shall not be included in computing the medical expenses paid by or on behalf of a taxpayer or his legal representative any expenses for which the taxpayer or such representative has been or is entitled to be reimbursed.

Subsec. 110(7) substituted by 1984, c. 1, subsec. 110(5), to add "other than subsection (6.1)", applicable to 1982 *et seq.*

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 110(8) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsec. (8) formerly read:

(8) Definitions — In this section,

(a) "private health services plan" — "private health services plan" means

(i) a contract of insurance in respect of hospital expenses, medical expenses or any combination of such expenses, or

(ii) a medical care insurance plan or hospital care insurance plan or any combination of such plans,

except any such contract or plan established by or pursuant to

(iii) a law of a province that establishes a health care insurance plan in respect of which the province receives contributions from Canada for insured health services provided under the plan pursuant to the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977*, or

(iv) an enactment of the Parliament of Canada that authorizes the provision of a medical care insurance plan or hospital care insurance plan for employees of Canada and their dependants and for dependants of members of the Royal Canadian Mounted Police and the regular force where such employees or members were appointed in Canada and are serving outside Canada;

(b) "registered Canadian amateur athletic association" — "registered Canadian amateur athletic association" means an association that was created under any law in force in Canada, that is resident in Canada, and that

(i) is a person described in paragraph 149(1)(l), and

(ii) has, as its primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis,

that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2); and

(c) "registered charity" — "registered charity" at any time means

(i) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

(ii) a branch, section, parish, congregation or other division of an organization or foundation described in subparagraph (i), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,

that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation.

Subpara. 110(8)(a)(iii) amended by 1985, c. 45, subsec. 54(9), to substitute "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary and Health Contributions Act*" for "*Federal-Provincial Fiscal Arrangements and Established Programs Financing Act*".

Para. 110(8)(c) substituted by 1984, c. 45, subsec. 35(7), applicable with respect to charities registered after February 15, 1984 or designated pursuant to subsection 110(8.1) or (8.2), except that in its application to such charities registered or designated prior to July 1984, subparagraph 110(8)(c)(ii) shall be read without reference to the words "that is resident in Canada and was either created or established in Canada and". Para. (c) formerly read:

(c) "registered charity" — "registered charity" means

(i) a charitable organization or charitable foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

(ii) a branch, section, parish, congregation or other division of an organization described in subparagraph (i) that receives donations on its own behalf,

that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2).

Subpara. 110(8)(a)(iii) substituted and subpara. 110(8)(a)(v) repealed by 1984, c. 6, s. 31, deemed in force on April 1, 1984. Subparas. (a)(iii) and (v) formerly read:

(iii) a law of a province with which the Minister of National Health and Welfare has entered into an agreement under section 3 of the *Hospital Insurance and Diagnostic Services Act* that provides for the payment by Canada to the province of contributions in respect of the cost of insured services incurred by the province pursuant to that provincial law,

. . . . .

(v) a medical care insurance plan established pursuant to a law of a province that satisfies the criteria set forth in subsection 4(1), of the *Medical Care Act*,

All that portion of para. 110(8)(c) preceding subpara. (ii) substituted by 1976-77, c. 4, subsec. 43(4), applicable to 1977 *et seq.* That portion formerly read:

(c) "Registered Canadian charitable organization" — "registered Canadian charitable organization" means

(i) a charitable organization in Canada exempt from tax under this Part by paragraph 149(1)(f) or a corporation or trust resident in Canada exempt from tax under this Part by paragraph 149(1)(g) or (h), or

(8.1), (8.2) [Repealed under former Act]

Pre-RSC History: Subsecs. 110(8.1), (8.2) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsecs. (8.1), (8.2) formerly read:

(8.1) Designation — Where a charity was a registered charity on February 15, 1984, the Minister may, by notice sent to the charity by registered mail before the end of its first taxation year that commenced after 1983, designate the charity to be a charitable organization, private foundation or public foundation and, from the day of mailing the notice, the charity shall be deemed to be registered as a charitable organization, private foundation or public foundation, as the case may be, for taxation years commencing after 1983 unless and until it is otherwise designated under subsection (8.2) or its registration is revoked under subsection 149.1(2), (3), (4), (4.1) or 168(2).

(8.2) Idem — Where a charity has been registered after February 15, 1984, or designated under subsection (8.1) or this subsection, the Minister may, by notice sent to the charity by registered mail, on his own initiative or on application made to him in prescribed form, designate the charity to be a charitable organization, private foundation or public foundation and the charity shall be deemed to be registered as a charitable organization, private foundation or public foundation, as the case may be, for taxation years commencing after the day of mailing of the notice unless and until it is otherwise designated under this subsection or its registration is revoked under subsection 149.1(2), (3), (4), (4.1) or 168(2).

Subsecs. 110(8.1), (8.2) added by 1984, c. 45, subsec. 35(8), applicable to taxation years commencing after 1983.

(9) [Repealed under former Act]

Pre-RSC History: Subsec. 110(9) repealed by 1988, c. 55, subsec. 77(12), applicable to 1988 *et seq.* Subsec. (9) formerly read:

(9) Idem — For the purposes of paragraphs (1)(g) and (h),

(a) "designated educational institution" means

(i) an educational institution in Canada that is

(A) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act* or recognized by the Minister of Education of the Province of Quebec for the purposes of the *Students Loans and Scholarships Act* of the Province of Quebec, or

(B) certified by the Minister of Employment and Immigration to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

(ii) a university outside Canada at which the student referred to in paragraph (1)(g) or (h), as the case may be, was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree, or

(iii) if the student referred to in paragraph (1)(g) or (h), as the case may be, resided, during the whole of the year referred to therein, in Canada near the boundary between Canada and the United States, an educational institution in the United States to which he commuted that is a university, college or other educational institution providing courses at a post-secondary school level;

(b) "qualifying educational program" means a program of not less than 3 consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program and, in respect of a program at an institution described in clause (a)(i)(A), is a program at a post-secondary school level, but, in relation to any particular student, does not include any such program

(i) if the student received, from a person with whom he was dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program, other than

(A) an amount received by the student as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by him, or

(B) a benefit received by him by virtue of a loan made to him in accordance with the requirements of the *Canada Student Loans Act* or the *Students Loans and Scholarships Act* of the Province of Quebec, or

(ii) if the program was taken by the student

(A) during a period in respect of which he received income from an office or employment, and

(B) in connection with, or as part of the duties of, that office or employment; and

(c) "supporting individual" for a taxation year in respect of a student means an individual (in this paragraph referred to as a "relative" of the student) who was during the year

(i) the student's parent, grandparent, brother or sister, where the student was at any time in the year or a previous year a resident of Canada, or

(ii) the student's parent or grandparent, in any other case,

except that

(iii) no more than one relative of the student may be a supporting individual for the year in respect of the student, and

(iv) the supporting individual for the year in respect of the student shall be deemed to be.

(A) where only one relative of the student has deducted an amount from income for the year under section 109 in respect of the student, that relative,

(B) where more than one relative of the student has made such a deduction, such one of those relatives as is designated in writing by the student, and

(C) where no relative of the student has made such a deduction, such one of his relatives as is designated in writing by the student.

Cl. 110(9)(a)(i)(B) substituted by 1980-81-82-83, c. 140, subsec. 65(10), applicable to 1982 *et seq.* Cl. (a)(i)(B) formerly read:

(B) certified by the Minister of Manpower and Immigration to be an educational institution by which courses are conducted that provide or improve the qualifications of a person for employment or for the carrying on of a business or profession,

All that portion of para. 110(9)(b) preceding subpara. (i) and para. 110(9)(c) substituted by 1976-77, c. 4, subsecs. 43(5), (6), applicable to 1976 *et seq.* That portion of para. 110(9)(b) and para. (c) formerly read:

(b) "qualifying educational program" means a program of not less than 3 consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program, but, in relation to any particular student, does not include any such program

(c) "supporting individual" for a taxation year in respect of a student means an individual (in this paragraph referred to as a "relative" of the student) who was during the year the student's spouse, parent, grandparent, brother or sister, except that

(i) no more than one relative of the student may be a supporting individual for the year in respect of the student, and

(ii) the supporting individual for the year in respect of the student shall be deemed to be,

(A) where the student's spouse has made a deduction from income for the year under section 109 in respect of the student, the student's spouse,

(B) where clause (A) does not apply and only one relative of the student has made a deduction from income for the year under section 109 in respect of the student, that relative,

(C) where clause (A) does not apply and more than one relative of the student has made such a deduction, such one of those relatives as is designated in writing by the student, and

Subsec. 110(9) added by 1973-74, c. 14, subsec. 35(8), applicable to 1972 *et seq.*

Definitions [s. 110]: "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "consequence of the taxpayer's death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition", "employee", "employer" — 248(1); "exchanged option" — 7(1.4)(a); "home relocation loan" — 110(1.4), 248(1); "individual" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "new option", "new share" — 7(1.4); "old share" — 7(1.4)(a); "person" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying person", "security" — 7(7); "share", "stock dividend" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person".

110.1 (1) Deduction for gifts — For the purpose of computing the taxable income of a corporation for a taxation year, there may be deducted such of the following amounts as the corporation claims:

(a) **charitable gifts** — the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (b), (c) or (d)) made by the corporation in the year or in any of the 5 preceding taxation years to

(i) a registered charity,

(ii) a registered Canadian amateur athletic association,

(iii) a corporation resident in Canada and described in paragraph 149(1)(i),

(iv) a municipality in Canada,

(v) the United Nations or an agency thereof,

(vi) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada,

(vii) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12-month period preceding the year, or

(viii) Her Majesty in right of Canada or a province,

not exceeding the lesser of the corporation's income for the year and the amount determined by the formula

$$0.75A + 0.25 (B + C + D)$$

where

A is the corporation's income for the year computed without reference to subsection 137(2),

B is the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition that is the making of a gift made by the corporation in the year and described in this paragraph,

C is the total of all amounts each of which is a taxable capital gain of the corporation for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year, and

D is the total of all amounts each of which is determined in respect of the corporation's depreciable property of a prescribed class and equal to the lesser of

(A) the amount included under subsection 13(1) in respect of the class in computing the corporation's income for the year, and

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the corporation in the year that is described in this paragraph and equal to the lesser of

(I) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the corporation for the purpose of making the disposition, and

(II) the capital cost to the corporation of the property;

(b) **gifts to Her Majesty** — the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (c) or (d)) made by the corporation to Her Majesty in right of Canada or a province

(i) in the year or in any of the 5 preceding taxation years, and

(ii) before February 19, 1997 or under a written agreement made before that day;

(c) **gifts to institutions** — the total of all amounts each of which is the fair market value of a gift (other than a gift described in paragraph (d)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year or in any of the 5 preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object; and

(d) **ecological gifts** — the total of all amounts each of which is the fair market value of a gift of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the corporation in the year or in any of the 5 preceding taxation years to

(i) Her Majesty in right of Canada or a province or a municipality in Canada, or

(ii) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift.

Related Provisions: 37(5) — Scientific research and experimental development expenditures; 87(2)(v) — Amalgamations — gifts; 88(1)(e.6) — Gift by subsidiary; 88(1.3) — Winding-up — computation of income and tax payable by parent; 110.1(1.1)(a) — Gifts not deductible if previously deducted; 110.1(3) — Gifts of capital property; 110.1(5) —

Fair market value of ecological servitude, covenant or easement; 118.1(10) — Cultural property — determination of fair market value; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 138(12)"surplus funds derived from operations" — Insurance operations — surplus funds; 149.1(6.4) — Donations to registered national arts service organization; 168 — Revocation of charitable registration; 207.3 — Tax on institution that disposes of cultural property; 207.31 — Tax if donee of ecological property disposes of it; 230(2) — Records of donations; Canada-U.S. tax treaty, Art. XXI:6 — Donations to U.S. charities..

History: Subsec. 110.1(1) amended by 1998, c. 19, subsec. 20(1), applicable to taxation years that begin after 1996. Subsec. 110.1(1) formerly read:

(1) Deduction for gifts — For the purpose of computing the taxable income of a corporation for a taxation year, there may be deducted such of the following amounts as are applicable:

(a) charitable gifts — the total of all amounts each of which is the fair market value of a gift made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to

(i) a registered charity,

(ii) a registered Canadian amateur athletic association,

(iii) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),

(iv) a Canadian municipality,

(v) the United Nations or an agency thereof,

(vi) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, or

(vii) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the corporation's taxation year or the 12 months immediately preceding that taxation year,

not exceeding the amount determined by the formula

$$0.5(A + B)$$

where

A is its income for the year computed without reference to subsection 137(2), and

B is the total of all amounts each of which is the amount of a taxable capital gain from a gift of property made by it in the year to a donee described in this paragraph;

(b) gifts to Her Majesty — the total of all amounts each of which is the fair market value of a gift made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to Her Majesty in right of Canada or a province, not exceeding the amount remaining, if any, after the amount deducted for the year under paragraph (a) by the corporation is deducted in computing its taxable income for the year;

(c) gifts to institutions — the total of all amounts each of which is the fair market value of a gift (other than a gift in respect of which an amount is or was deducted under paragraph (a) or (b)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object, not exceeding the amount remaining, if any, after the amounts deducted for the year under paragraphs (a) and (b) by the corporation are deducted in computing its taxable income for the year; and

(d) ecological gifts — the total of all amounts each of which is the fair market value of a gift (other than a gift in respect of which an amount is or was deducted under paragraph (a), (b) or (c)) of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount was not deducted in computing its taxable income for any preceding taxation year) to

(i) a Canadian municipality, or

(ii) a registered charity one of the main purposes of which is, in the opinion of the Minister of the Environment, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister, or that person, in respect of that gift,

and not exceeding the amount remaining, if any, after the amounts deducted for the year under paragraphs (a), (b) and (c) are deducted in computing the corporation's taxable income for the year.

The portion of para. 110.1(1)(a) after subpara. (vii) amended by 1997, c. 25, s. 22, applicable to 1996 *et seq.* That portion formerly read:

(a) not exceeding 20% of its income for the year computed without reference to subsection 137(2);

Para. 110.1(1)(d) added by 1996, c. 21, subsec. 20(1), applicable to gifts made after February 27, 1995.

Paras. 110.1(1)(a) to (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 79, applicable after December 11, 1988. Paras. (a) to (c) formerly read:

(a) the total of gifts made by the corporation in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof that was not deducted in computing its taxable income for any preceding taxation year) to

(i) registered charities,

(ii) registered Canadian amateur athletic associations,

(iii) housing corporations resident in Canada and exempt from tax under this Part by paragraph 149(1)(i),

(iv) Canadian municipalities,

(v) the United Nations or agencies thereof,

(vi) universities outside Canada prescribed to be universities the student body of which ordinarily includes students from Canada, and

(vii) charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the corporation's taxation year or the 12 months immediately preceding that taxation year,

not exceeding 20% of its income for the year computed without reference to subsection 137(2);

(b) the total of gifts made by the corporation in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof that was not deducted in computing its taxable income for any preceding taxation year) to Her Majesty in right of Canada and Her Majesty in right of the provinces, not exceeding the amount remaining, if any, when the amount deducted for the year under paragraph (a) by the corporation is deducted from its income for the year; and

(c) the total of gifts (other than gifts in respect of which amounts are or were deducted under paragraph (a) or (b)) of objects that the Canadian Cultural Property Export Review Board has determined meet all of the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gifts were made by the corporation in the year (and in the 5 immediately preceding taxation years to the extent of the amount thereof not deducted under this Act in computing its taxable income for any preceding taxation year) to institutions or public authorities in Canada that were, at the time the gifts were made, designated under subsection 32(2) of that Act either generally or for a purpose related to those objects, not exceeding the amount remaining, if any, when the amounts deducted for the year under paragraphs (a) and (b) by the corporation are deducted from its income for the year.

Regulations: 3503, Sch. VIII (prescribed universities outside Canada).

Interpretation Bulletins: IT-110R3: Gifts and official donation receipts; IT-111R2: Annuities purchased from charitable organizations; IT-151R4: Scientific research and experimental development expenditures; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-244R3: Gifts of life insurance policies as chari-

table donations; IT-288R2: Gifts of capital properties to a charity and others; IT-297R2: Gifts in kind to charity and others; IT-385R2: Disposition of an income interest in a trust; IT-407R4: Dispositions of cultural property to designated Canadian institutions.

Information Circulars: 84-3R5: Gifts to certain charitable organizations outside Canada.

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

Forms: RC4142: Tax advantages of donating to a charity [guide]; T2 SCH 2: Corporation's charitable donations and gifts.

I.T. Technical News: No. 17 (loan of property as a gift).

(1.1) Limitation on deductibility — For the purpose of determining the amount deductible under subsection (1) in computing a corporation's taxable income for a taxation year,

(a) an amount in respect of a gift is deductible only to the extent that it exceeds amounts in respect of the gift deducted under that subsection in computing the corporation's taxable income for preceding taxation years; and

(b) no amount in respect of a gift made in a particular taxation year is deductible under any of paragraphs (1)(a) to (d) until amounts deductible under that paragraph in respect of gifts made in taxation years preceding the particular year have been deducted.

Related Provisions: 118.1(2.1) — Ordering rule parallel to 110.1(1.1)(b).

History: Subsec. 110.1(1.1) added by 1998, c. 19, subsec. 20(1), applicable to taxation years that begin after 1996.

(2) Proof of gift — A gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

Related Provisions: 118.1(2)"Parallel rule for individuals"; 149.1(1)"disbursement quota"A — Charity must spend 80% of gifts on charitable purposes; 188(1) — Revocation tax where registration of charity is revoked.

Regulations: 3500–3502 (prescribed information).

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

Forms: T2 SCH 2: Corporation's charitable donations and gifts.

(3) Gifts of capital property — Where at any time

(a) a corporation makes a gift of

(i) capital property to a donee described in paragraph (1)(a), (b) or (d), or

(ii) in the case of a corporation not resident in Canada, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest, and

(b) the fair market value of the property at that time exceeds its adjusted cost base to the corporation,

such amount, not greater than the fair market value and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

Proposed Amendment — 110.1(3)

such amount, not greater than the fair market value otherwise determined and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

Notes: This measure was first released in a news release on June 3, 1999.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 55(1), will amend the closing words of subsec. 110.1(3) to read as above, applicable in respect of gifts made after February 27, 1995.

Technical Notes: Section 110.1 of the Act provides for the deductibility in computing income of charitable donations and certain other gifts.

Subsection 110.1(3) of the Act provides that, if a corporation donates capital property to a charity, it may elect a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating its capital gain and the amount of the gift for the purpose of the deduction allowed for charitable donations under subsection 110.1(1).

The amendment to subsection 110.1(3) is complementary to the amendment of subsection 110.1(5) of the Act, which provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift. The amendments clarify that a corporate donor may nevertheless report a reduced amount as proceeds of disposition of such a gift, where the value of the gift for the purpose of the charitable donations deduction is reduced accordingly. This amendment applies in respect of gifts made after February 27, 1995.

Dept. of Finance news release, June 3, 1999: See under 118.1(12).

Related Provisions: 118.1(6) — Parallel rule for individuals.

History: Subpara. 110.1(3)(a)(i) amended by 1996, c. 21, subsec. 20(2), applicable to gifts made after February 27, 1995. The subpara. formerly read:

(i) capital property to a donee described in paragraph (1)(a) or (b), or

That portion of subsec. 110.1(3) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 46, applicable to gifts made after December 11, 1988. That portion formerly read:

such amount, not greater than the fair market value and not less than the adjusted cost base to the corporation of the property at that time, as is designated by the corporation in its return of income under section 150 for the year in which the gift is made shall, if payment thereof is proven by filing with the Minister a receipt containing prescribed information, be deemed to be its proceeds of disposition of the property and the amount of the gift made by the corporation.

Regulations: 3500 to 3502 (prescribed information); 3504 (prescribed donee).

Interpretation Bulletins: IT-288R2: Gifts of capital properties to a charity and others.

(4) Gifts made by partnership — Where a corporation is, at the end of a fiscal period of a partnership, a member of the partnership, its share of any amount that would, if the partnership were a person, be a gift made by the partnership to any donee shall, for the purposes of this section, be deemed to be a gift made to that donee by the corporation in its taxation year in which the fiscal period of the partnership ends.

Related Provisions: 53(2)(c)(iii) — Deduction from ACB of partnership interest; 118.1(8) — Parallel rule for individuals.

(5) Ecological gifts — For the purposes of paragraph (1)(d) and section 207.31, the fair market value of a gift of a servitude, a covenant or an easement to which land is subject is deemed to be the greater of its fair market value otherwise determined and the amount by which the fair market value of the land is reduced as a consequence of the making of the gift.

Proposed Amendment — 110.1(5)

(5) Ecological gifts — For the purposes of applying subparagraph 69(1)(b)(ii), section 207.31 and this section in respect of a gift described in paragraph (1)(d) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (3), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (3), to be the taxpayer's proceeds of disposition of the gift.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 55(2), will amend subsec. 110.1(5) to read as above, applicable in respect of gifts made after February 27, 1995.

Technical Notes: Subsection 110.1(5) of the Act provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift.

Subsection 110.1(5) of the Act is amended to clarify that such amount will also be, subject to the designation of an amount under subsection 110.1(3), the corporate donor's proceeds of disposition for the purposes of calculating income and capital gains. New subsection 110.1(5) of the Act applies in respect of gifts made after February 27, 1995.

Dept. of Finance news release, June 3, 1999: See under 118.1(12).

Related Provisions: 43(2) — calculation for 110.1(5) also applies for determining capital gain or loss on disposition; 118.1(12) — Parallel rule for individuals.

History: Subsec. 110.1(5) added by 1998, c. 19, subsec. 20(2), applicable to gifts made after February 27, 1995

(6) Non-qualifying securities — Subsections 118.1(13), and (14) and (16) to (20) apply to a corporation as if the references in those subsections to an individual were read as references to a corporation and as if a non-qualifying security of a corporation included a share (other than a share listed on a prescribed stock exchange) of the capital stock of the corporation.

Related Provisions: 40(1.01) — Capital gains reserve on disposition of non-qualifying security; 88(1)(e.61) — Winding-up of subsidiary — gift deemed made by parent corporation; 110.1(7) — Where corporation ceases to exist after making donation of non-qualifying securities; 118.1(18) — Definition of non-qualifying security.

History: Subsec. 110.1(6) added by 1998, c. 19, subsec. 20(2), applicable after July 1997.

Regulations: 3200 (prescribed stock exchange).

(7) Corporation ceasing to exist — If, but for this subsection, a corporation (other than a corporation that was a predecessor corporation in an amalgamation to which subsection 87(1) applied or a corporation that was wound up in a winding-up to which subsection 88(1) applied) would be deemed by subsection 118.1(13) to have made a gift after the corporation ceased to exist, for the purpose of this section, the corporation is deemed to have made the gift in its last taxation year, except that the amount of interest payable under any provision of this Act is the amount that it would be if this subsection did not apply to the gift.

History: Subsec. 110.1(7) added by 1998, c. 19, subsec. 20(2), applicable after July 1997.

Pre-RSC History [s. 110.1]: S. 110.1 added by 1988, c. 55, s. 78, applicable with respect to computations of taxable income for 1988 *et seq.* See former 110(1)(a), (b), (b.1), (2.2), (5).

Definitions [s. 110.1]: "adjusted cost base" — 54, 248(1); "Canada" — 255; "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "fair market value" — 110.1(5), 118.1(10); "fiscal period" — 249(2)(b), 249.1; "Minister", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered Canadian amateur athletic association", "registered charity" — 248(1); "resident in Canada" — 250; "taxable income" — 2(2), 248(1); "written" — *Interpretation Act* 35(1) ["writing"].

Pre-RSC History [former s. 110.1]: Former s. 110.1 repealed by 1988, c. 55, s. 78, applicable with respect to computations of taxable income for 1988 *et seq.* Former s. 110.1 read:

110.1 (1) **Interest and dividend income deductible** — For the purpose of computing the taxable income for a taxation year of an individual (other than a trust that is not a testamentary trust within the meaning assigned by paragraph 108(1)(i)), there may be deducted an amount equal to the lesser of

(a) $1,000, and

(b) the amount by which the aggregate of

(i) the amount of interest included in computing the taxpayer's income for the year, and

(ii) the taxpayer's grossed-up dividends for the year,

(iii) (iii.1), (iii.2) [Repealed]

exceeds

(iv) the aggregate of amounts deducted by him in computing his income for the year as or on account of interest on borrowed money used, or on an amount payable for property acquired, for the purpose of earning

(A) interest other than interest described in any of paragraphs (2)(a) to (j), or

(B) taxable dividends from corporations resident in Canada other than corporations with which the taxpayer does not deal at arm's length.

(2) **Interest income** — For the purposes of this section, interest shall not include any amount that is

(a) interest from a source outside Canada;

(b) an annuity payment

(i) under a registered retirement savings plan or under a plan referred to in subsection 146(12) as an "amended plan" to which paragraph (a) of that subsection applied before May 26, 1976,

(ii) under a deferred profit sharing plan or under a plan referred to in subsection 147(15) as a "revoked plan", or

(iii) under a registered retirement income fund;

(c) a payment

(i) under an income-averaging annuity contract, or

(ii) under a registered pension fund or plan;

(d) a royalty;

(e) exempt income;

(f) included in computing the income of the taxpayer for the year by virtue of paragraph 56(1)(q) or subsection 135(7) or 137(5);

(g) interest paid or payable to the taxpayer by a person with whom the taxpayer does not deal at arm's length;

(h) interest paid or payable to the taxpayer by a partnership of which the taxpayer is a member;

(i) pension income or qualified pension income within the meaning that would be assigned by section 110.2 if that section were read without reference to subsection (4) thereof; or

(j) interest included in computing the income of the taxpayer for the year to the extent of any amount claimed by him pursuant to subsection 20(14) in respect thereof.

(3) Idem — For the purposes of this section, subject to subsection (2), interest included in computing a taxpayer's income for a taxation year shall be deemed to include

(a) the amount by which the aggregate of all amounts each of which is an annuity payment included by virtue of paragraph 56(1)(d) in computing the taxpayer's income for the year exceeds the aggregate of all amounts each of which is the capital element of the payment as determined or established under paragraph 60(a);

(b) the amount, if any, by which

(i) the aggregate of amounts each of which is an amount included by virtue of subsection 148(1) or (1.1) in computing the taxpayer's income for the year in respect of the disposition of an interest in a life insurance policy

exceeds

(ii) the portion thereof arising from a disposition described in subparagraph 148(9)(c)(ii) in respect of that policy; and

(c) the aggregate of all amounts each of which is an amount included in computing the taxpayer's income for the year by virtue of section 12.2 or paragraph 56(1)(d.1).

(4) Idem — Where there is required to be included in computing a taxpayer's income for a taxation year by virtue of subsection 56(4) or sections 74 to 75 income of another person that is interest, the amount so included in the taxpayer's income shall, for the purposes of this section, be deemed to be interest included in computing his income for the year.

(5) Meaning of "grossed-up dividends" — For the purposes of this section, grossed-up dividends of a taxpayer for a taxation year means the amount required by subsection 82(1) to be included in his income for the year, but does not include any such amount in respect of any dividend

(a) received by the taxpayer from a corporation with which he does not deal at arm's length, or

(b) deemed by section 84 to have been received by the taxpayer.

Subparas. 110.1(1)(b)(iii), (iii.1) and (iii.2) repealed by 1986, c. 6, subsec. 56(1), applicable to 1985 *et seq.* Subparas. (b)(iii) to (iii.2) formerly read:

(iii) the taxpayer's taxable capital gains for the year from the disposition of Canadian securities,

(iii.1) where the taxpayer is a beneficiary under a mutual fund trust, any amount deemed to be his taxable capital gain for the year by virtue of the application of subsection 104(21) in respect of the trust, and

(iii.2) ½ of any amount deemed by paragraph 130.1(4)(b) or 131(1)(b) to be a capital gain of the taxpayer for the year,

Subsec. 110.1(4) amended by 1986, c. 6, subsec. 56(2), applicable after May 21, 1985, to substitute "sections 74 to 75" for "section 74 or 75".

Paras. 110.1(5)(c) and (d) repealed by 1986, c. 6, subsec. 56(3), applicable to 1986 *et seq.* Paras. (c) and (d) formerly read:

(c) received by the taxpayer as a taxable dividend on an indexed security, or

(d) deemed by subsection 104(19) to be a taxable dividend received by the taxpayer if such dividend

(i) was received by virtue of the taxpayer's ownership of an indexed security, or

(ii) may reasonably be considered to relate to a taxable dividend received by a trust in respect of an indexed security.

Subsec. 110.1(6) repealed by 1986, c. 6, subsec. 56(4), applicable to 1985 *et seq.* Subsec. (6) formerly read:

(6) Definition of "Canadian security" — For the purposes of this section, "Canadian security" of a taxpayer means a share of the capital stock of a corporation resident in Canada (other than a corporation with which the taxpayer does not deal at arm's length), a unit of a mutual fund trust or a bond, debenture, bill, note, mortgage, hypothec or similar obligation issued by a person resident in Canada (other than a person with whom the taxpayer does not deal at arm's length) the income from which would qualify as interest for the purposes of this section.

All that portion of subsec. 110.1(1) preceding para. (a) substituted by 1984, c. 1, subsec. 50(1), applicable to 1983 *et seq.* That portion formerly read:

110.1 (1) Interest and dividend income deductible — For the purpose of computing the taxable income for a taxation year of an individual (other than a trust that is not a testamentary trust within the meaning assigned by paragraph 108(1)(i)), there may be deducted from his income for the year an amount equal to the lesser of

Paras. 110.1(5)(c), (d) added by 1984, c. 1, subsec. 50(2), applicable with respect to taxable dividends received after September 30, 1983.

Para. 110.1(3)(a) substituted by 1980-81-82-83, c. 140, subsec. 66(1), applicable to 1983 *et seq.* Para. 110.1(3)(a) formerly read:

(a) the amount by which any annuity payment (other than an annuity payment referred to in paragraph (2)(b) received by the taxpayer in the year exceeds the capital element of that payment as determined or established under paragraph 60(a); and

Para. 110.1(3)(c) added by 1980-81-82-83, c. 140, subsec. 66(2), applicable to 1983 *et seq.*

Subparas. 110.1(1)(b)(iii.1), (iii.2) added by 1980-81-82-83, c. 48, subsec. 58(1), applicable to 1979 *et seq.*

Subsec. 110.1(6) substituted by 1980-81-82-83, c. 48, subsec. 58(2), applicable to 1979 *et seq.* Subsec. (6) formerly read:

(6) "Canadian security" defined — For the purposes of this section, "Canadian security" of a taxpayer means a share of the capital stock of a corporation resident in Canada (other than a corporation with which the taxpayer does not deal at arm's length) or a bond, debenture, bill, note, mortgage, hypothec or similar obligation issued by a person resident in Canada (other than a person with whom the taxpayer does not deal at arm's length) the income from which would qualify as interest for the purposes of this section.

Para. 110.1(2)(f) substituted by 1979, c. 5, subsec. 34(1), applicable to 1979 *et seq.* Para. (f) formerly read:

(f) included in computing the income of the taxpayer for the year by virtue of subsection 135(7) or 137(5);

Para. 110.1(3)(b)(i) substituted by 1979, c. 5, subsec. 34(2), applicable to 1980 *et seq.* Para. (3)(b)(i) formerly read:

(i) the amount included by virtue of subsection 148(1) in computing the income of the taxpayer for the year in respect of the disposition of an interest in a life insurance policy

Subsec. 110.1(5) substituted by 1979, c. 5, subsec. 34(3), applicable to dividends received or deemed to have been received after November 16, 1978. Subsec. (5) formerly read:

(5) For the purposes of this section, grossed-up dividends of a taxpayer for a taxation year means the amount required by subsection 82(1) to be included in the income of the taxpayer for the taxation year, but does not include any such amount in respect of any dividend received by the taxpayer from a corporation with which he does not deal at arm's length.

Para. 110.1(1)(b) substituted by 1977-78, c. 1, subsec. 52(1), applicable to 1977 *et seq.* Para. (1)(b) formerly read:

(b) the aggregate of

(i) the amount of interest included in computing the taxpayer's income for the year, and

(ii) the taxpayer's grossed-up dividends for the year;

Subpara. 110.1(2)(b)(i) and para. 110.1(2)(i) substituted by 1977-78, c. 1, subsecs. 52(2), (3), applicable as to subpara. 110.1(2)(b)(i) after May 25, 1976, and as to 110.1(2)(i) to 1977 *et seq.* Those portions formerly read:

(i) under a registered retirement savings plan or under a plan referred to in subsection 146(12) as an "amended plan", or

. . . . .

(i) pension income or qualified pension income within the meaning assigned by section 110.2; or

Para. 110.1(3)(b) substituted by 1977-78, c. 1, subsec. 52(4), applicable to 1978 *et seq.* Para. (3)(b) formerly read:

(b) any amount included by virtue of paragraph 148 (1)(a) in computing the income of the taxpayer for the year.

Subsec. 110.1(6) added by 1977-78, c. 1, subsec. 52(5), applicable to 1977 *et seq.*

Para. 110.1(2)(j) added by 1976-77, c. 4, s. 44, applicable to interest paid or payable in respect of any period after May 25, 1976.

Former subsec. 110.1(6) repealed by 1976-77, c. 4, s. 44, applicable to 1976 *et seq.* Subsec. (6) formerly read:

(6) Transfer of interest or dividend deduction — Where an amount is required to be included in computing the income for a taxation year of the spouse of a taxpayer as interest or grossed-up dividends, the taxpayer may, in addition to the amount, if any, deducted by him for the year under subsection (1), deduct an amount equal to the amount, if any, by which the lesser of

(a) $1,000, and

(b) the aggregate of

(i) the amount of interest, and

(ii) the grossed-up dividends

included in computing the spouse's income for the year

exceeds

(c) the amount deductible in the year by the spouse under subsection (1).

Subsec. 110.1(6) substituted by 1974-75-76, c. 71, s. 2, applicable to 1975 *et seq.* Subsec. (6) formerly read:

(6) Transfer of unused portion of spouse's deduction — Where the amount that would, but for this subsection, be deductible under paragraph 109(1)(a) from a taxpayer's income for a taxation year is less than the amount that would be deductible under that paragraph from his income for the year if no amount were included in computing his spouse's income for the year as interest or grossed-up dividends, there may be added to the amount, if any, that the taxpayer may deduct under that paragraph the amount by which the lesser of

(a) the amount by which $1,000 exceeds the amount determined under subsection 117.1(2) for the year, and

(b) the amount by which the aggregate of all amounts each of which is an amount included in computing his spouse's income for the year as

(i) interest, or

(ii) grossed-up dividends

exceeds the amount determined under subsection 117.1(2) for the year

exceeds the amount, if any, deducted by the spouse in computing the spouse's taxable income for the year by virtue of subsection (1).

S. 110.1 added by 1974-75, c. 26, subsec. 70(1), applicable, by subsec. 70(2), to 1974 *et seq.* except that in its application to the 1974 taxation year, s. 110.1 read as follows:

110.1 (1) For the purpose of computing the taxable income for a taxation year of an individual (other than a trust that is not a testamentary trust within the meaning assigned by paragraph 108(1)(i)), there may be deducted from his income for the year an amount equal to the lesser of

(a) $1,000, and

(b) the amount of interest included in computing the taxpayer's income for the year including any amount in respect of interest that is required to be included in computing his income for the year by virtue of subsection 56(4) or section 74 or 75 minus the aggregate of all amounts each of which is an amount deducted by him in computing his income for the year by virtue of

(i) subparagraph 8(1)(j)(i) or paragraph 20(1)(c) or (d) or 60(d), or

(ii) paragraph 20(1)(k) to the extent that the deduction thereunder is in respect of part of a payment that is regarded as a payment of interest for the purposes of subsection 16(1).

(2) For the purposes of this section, interest included in computing a taxpayer's income for a taxation year shall not include any amount that is

(a) interest from a source outside Canada;

(b) an annuity payment

(i) under a registered retirement savings plan or under a plan referred to in subsection 146(12) as an "amended plan", or

(ii) under a deferred profit sharing plan or under a plan referred to in subsection 147(15) as a "revoked plan";

(c) a payment

(i) under an income-averaging annuity contract, or

(ii) under a registered pension fund or plan;

(d) a royalty;

(e) exempt income;

(f) included in computing the income of the taxpayer for the year by virtue of subsection 135(7) or 137(5);

(g) interest paid or payable to the taxpayer by a person with whom the taxpayer does not deal at arm's length; or

(h) interest paid or payable to the taxpayer by a partnership of which the taxpayer is a member.

(3) For the purposes of this section, subject to subsection (2), interest included in computing a taxpayer's income for a taxation year shall be deemed to include

(a) the amount by which any annuity payment (other than an annuity payment referred to in paragraph (2)(b)) received by the taxpayer in the year exceeds the capital element of that payment as determined or established under paragraph 60(a), and

(b) any amount included by virtue of paragraph 148(1)(a) in computing the income of the taxpayer for the year.

110.2 Definitions — (1) The definitions in this subsection apply in this section and section 120.31.

"eligible taxation year", in respect of a qualifying amount received by an individual, means a taxation year

(a) that ended after 1977 and before the year in which the individual received the qualifying amount;

(b) throughout which the individual was resident in Canada;

(c) that did not end in a calendar year in which the individual became a bankrupt; and

(d) that was not included in an averaging period, within the meaning assigned by section 119 (as it read in its application to the 1987 taxation year), pursuant to an election that was made and not revoked by the individual under that section.

"qualifying amount" received by an individual in a taxation year means an amount (other than the portion of the amount that can reasonably be considered to be received as, on account of, in lieu of payment of or in satisfaction of, interest) that is included in computing the individual's income for the year and is

(a) an amount

(i) that is received pursuant to an order or judgment of a competent tribunal, an arbitration award or a contract by which the payor and the individual terminate a legal proceeding, and

(ii) that is

(A) included in computing the individual's income from an office or employment, or

(B) received as, on account of, in lieu of payment of or in satisfaction of, damages in respect of the individual's loss of an office or employment,

(b) a superannuation or pension benefit (other than a benefit referred to in clause 56(1)(a)(i)(B)) received on account of, in lieu of payment of or in satisfaction of, a series of periodic payments (other than payments that would have otherwise been made in the year or in a subsequent taxation year),

(c) an amount described in paragraph 6(1)(f), subparagraph 56(1)(a)(iv) or paragraph 56(1)(b), or

(d) a prescribed amount or benefit,

except to the extent that the individual may deduct for the year an amount under paragraph 8(1)(b), (n) or (n.1),

60(n) or (o.1) or 110(1)(f) in respect of the amount so included.

"specified portion", in relation to an eligible taxation year, of a qualifying amount received by an individual means the portion of the qualifying amount that relates to the year, to the extent that the individual's eligibility to receive the portion existed in the year.

Related Provisions: 120.31(1) — Definitions apply to 120.31.

(2) Deduction for lump-sum payments — There may be deducted in computing the taxable income of an individual (other than a trust) for a particular taxation year the total of all amounts each of which is a specified portion of a qualifying amount received by the individual in the particular year, if that total is $3,000 or more.

Related Provisions: 120.31 — Tax payable for other years.

History: S. 110.2 added by 2000, c. 19, s. 17, applicable to amounts received by an individual after 1994 (other than an amount in respect of which tax has been remitted to the individual under subsec. 23(2) of the *Financial Administration Act*) and, notwithstanding subsecs. 152(4) to (5) of the *Income Tax Act*, any assessment of the individual's tax payable under that Act for any taxation year that ended before 1999 shall be made as is necessary to take into account the application of s. 110.2.

Definitions [s. 110.2]: "amount", "bankrupt" — 248(1); "eligible taxation year" — 110.2(1); "employment", "individual", "office", "prescribed" — 248(1); "qualifying amount" — 110.2(1); "resident in Canada" — 250; "specified portion" — 110.2(1); "superannuation or pension benefit", "taxable income" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), 248(3).

Forms: T1198: Statement of qualifying retroactive lump-sum payment.

Pre-RSC History [Former 110.2]: S. 110.2 repealed by 1988, c. 55, s. 79, applicable to 1988 *et seq.*, and para. 110.2(2)(c), as it applies to the 1986 and 1987 taxation years, shall be read as follows:

(c) had not attained the age of 60 years and, in computing his income for the year, has deducted no amount under paragraph 60(j) other than an amount

(i) in respect of an amount included in computing his income pursuant to subsection 147(10) and received in satisfaction of his rights and entitlements under a deferred profit sharing plan, or

(ii) in respect of an amount received out of or under a registered pension plan where the amount so received may reasonably be considered to be

(A) the refund of all or part of the aggregate of all amounts each of which was an additional voluntary contribution made by him before October 9, 1986 to a registered pension plan for his benefit in respect of services rendered by him, or

(B) interest on the refund,

S. 110.2 formerly read:

110.2 (1) Pension income deduction — For the purpose of computing the taxable income for a taxation year of an individual who, before the end of the year, has attained the age of 65 years, there may be deducted an amount equal to the lesser of

(a) $1,000, and

(b) his pension income received in the year.

(2) Qualified pension income exemption — For the purpose of computing the taxable income for a taxation year of an individual (other than a trust or an individual referred to in subsection (1)) who before the end of the year

(a) had attained the age of 60 years,

(b) had received a disability pension or survivor's pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, or

(c) had not attained the age of 60 years, and has not deducted in computing his income for the year an amount under paragraph 60(j) (other than in respect of an amount included in computing his income pursuant to subsection 147(10), which amount was received in satisfaction of his rights and entitlements under a deferred profit sharing plan),

there may be deducted an amount equal to the lesser of

(d) $1,000, and

(e) his qualified pension income received in the year.

(3) Definitions — For the purposes of this section, subject to subsection (4),

(a) "pension income" — "pension income" received by a taxpayer in a taxation year means the aggregate of

(i) the aggregate of all amounts each of which is an amount received by him in the year

(A) as a payment in respect of a life annuity out of or under a superannuation or pension fund or plan,

(B) that is an annuity payment under a registered retirement savings plan, under a plan referred to in subsection 146(12) as an "amended plan" or under an annuity in respect of which an amount is included in computing the taxpayer's income by virtue of paragraph 56(1)(d.2),

(C) that is a payment out of or under a registered retirement income fund,

(D) that is

(I) an annuity payment under a deferred profit sharing plan or under a plan referred to in subsection 147(15) as a "revoked plan", or

(II) a payment described in subparagraph 147(2)(k)(v), or

(E) that is the amount by which any annuity payment included in computing the taxpayer's income for the year by virtue of paragraph 56(1)(d) exceeds the capital element of that payment as determined or established under paragraph 60(a), if before the end of the year the taxpayer has attained the age of 65 years, unless the taxpayer has elected in his return of income under this Part for the year for the purposes of subsection 110.1(1) to include all such amounts as interest in computing his income for the year, and

(ii) the aggregate of all amounts each of which is an amount included in computing the taxpayer's income for the year by virtue of section 12.2 or paragraph 56(1)(d.1), if before the end of the year the taxpayer has attained the age of 65 years, unless the taxpayer has elected in his return of income under this Part for the year for the purpose of subsection 110.1(1) to include all such amounts as interest in computing his income for the year; and

(b) "qualified pension income" — "qualified pension income" received by a taxpayer in a taxation year means any amount described in clause (a)(i)(A) and amounts described in clauses (a)(i)(B) to (E) and subparagraph (a)(ii) (if clause (a)(i)(E) and subparagraph (a)(ii) were read without reference to the words "if before the end of the year the taxpayer has attained the age of 65 years,") received by the taxpayer as a consequence of the death of his spouse.

(4) Idem — For the purposes of this section, "pension income" and "qualified pension income" do not include any amount that is

(a) the amount of any pension or supplement under the *Old Age Security Act* or of any similar payment under a law of a province;

(b) the amount of any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

(c) a retiring allowance;

(d) a death benefit;

(e) exempt income;

(f) the amount, if any, by which

(i) an amount required to be included in computing the taxpayer's income for the year

exceeds

(ii) the amount, if any, by which the amount referred to in subparagraph (i) exceeds the aggregate of all deductions taken by the taxpayer in the year in respect of that amount;

(g) a payment received out of or under a salary deferral arrangement in respect of a taxpayer, an employee benefit plan or an employee trust; or

(h) a payment out of or under a prescribed provincial pension plan.

Para. 110.2(4)(h) added by 1987, c. 46, s. 39, applicable to 1987 *et seq.*

Para. 110.2(4)(g) substituted by 1986, c. 55, s. 32, applicable after February 25, 1986. Para. (4)(g) formerly read:

(g) a payment out of or under an employee benefit plan or an employee trust.

All that portion of subsec. 110.2(1) preceding para. (a) substituted by 1984, c. 1, subsec. 51(1) applicable to 1983 *et seq.* That portion formerly read:

110.2 (1) Pension income exemption — For the purpose of computing the taxable income for a taxation year of an individual who, before the end of the year, has attained the age of 65 years, there may be deducted from his income for the year an amount equal to the lesser of

All that portion of subsec. 110.2(2) following para. (c) and preceding para. (d) substituted by 1984, c. 1, subsec. 51(2) applicable to 1983 *et seq.* That portion formerly read:

there may be deducted from his income for the year an amount equal to the lesser of

Subsec. 110.2(2) substituted by 1980-81-82-83, c. 140, subsec. 67(1), applicable to the 1982 and subsequent taxation years. Subsec. (2) formerly read:

(2) For the purpose of computing the taxable income for a taxation year of an individual (other than a trust or an individual referred to in subsection (1)), there may be deducted from his income for the year an amount equal to the lesser of

(a) $1,000, and

(b) his qualified pension income received in the year.

Paras. 110.2(3)(a) and (b) substituted by 1980-81-82-83, c. 140, subsec. 67(2), applicable to 1982 *et seq.* Those paras. formerly read:

(a) "pension income" received by a taxpayer in a taxation year means any amount received by him in the year

(i) as a payment out of or under a superannuation or pension fund or plan,

(ii) that is an annuity payment under a registered retirement savings plan or under a plan referred to in subsection 146(12) as an "amended plan",

(ii.1) that is a payment out of or under a registered retirement income fund,

(iii) that is

(A) an annuity payment under a deferred profit sharing plan or under a plan referred to in subsection 147(15) as a "revoked plan", or

(B) a payment described in subparagraph 147(2)(k)(v), or

(iv) that is the amount by which any annuity payment (other than an annuity payment described in subparagraph (ii) or clause (iii)(A), or a payment under an income-averaging annuity contract) exceeds the capital element of that payment as determined or established under paragraph 60(a), if before the end of the year the taxpayer has attained the age of 65 years, unless the taxpayer has elected in his return of income under this Part for the year for the purpose of subsection 110.1(1) to include all such amounts as interest in computing his income for the year; and

(b) "qualified pension income" received by a taxpayer in a taxation year means any amount described in subparagraph (a)(i) and amounts described in subparagraphs (a)(ii), (ii.1), (iii) and (iv) (if subparagraph (a)(iv) were read without reference to the words "if before the end of the year the taxpayer has attained the age of 65 years,") received by the taxpayer as a consequence of the death of his spouse.

Para. 110.2(4)(g) added by 1980-81-82-83-, c. 48, s. 54, applicable with respect to payments made after 1979.

Subpara. 110.2(3)(a)(ii.1) added, para. 110.2(3)(b) substituted by 1977-78, c. 32, subsecs. 27(1), (2), to add reference to (ii.1) in para. 110.2(3)(b).

Subpara. 110.2(3)(a)(iv) substituted by 1977-78, c. 1, subsec. 53, applicable to 1977 *et seq.* Subpara. 110.2(3)(a)(iv) formerly read:

(iv) that is the amount by which any annuity payment (other than an annuity payment described in subparagraph (ii) or clause (iii)(A), or a payment under an income-averaging annuity contract) exceeds the capital element of that payment as determined or established under paragraph 60(a), if before the end of the year the taxpayer has attained the age of 65 years; and

Subsec. 110.2(5) repealed by 1976-77, c. 4, s. 45, applicable to 1976 *et seq.* Subsec. 110.2(5) formerly read:

(5) Transfer of unused deduction to spouse — Where the spouse of a taxpayer

(a) has attained the age of 65 years before the end of a taxation year and that spouse has received pension income in the year, or

(b) has received qualified pension income in the year,

the taxpayer may, in addition to the amount, if any, deducted by him for the year under subsection (1) or (2), deduct an amount equal to the amount, if any, by which the lesser of

(c) $1,000, and

(d) the spouse's pension income or qualified pension income, as the case may be, for the year

exceeds

(e) the amount deductible in the year by his spouse under subsection (1) or (2), as the case may be.

S. 110.2 added by 1974-75-76, c. 26, subsec. 70(1), applicable to 1975 *et seq.*

110.3 [Repealed under former Act]

Pre-RSC History: S. 110.3 repealed by 1988, c. 55, s. 79, applicable to 1988 *et seq.* S. 110.3 formerly read:

110.3 Transfer of unused deductions — For the purpose of computing the taxable income for a taxation year of an individual who, during the year was a married person, there may be deducted the amount, if any, by which

(a) the aggregate of

(i) an amount equal to the lesser of

(A) the aggregate of all amounts each of which is an amount his spouse may claim as a deduction for the year under section 110.1 or 110.2, and

(B) the amount, if any, by which the maximum deduction allowable under subparagraph 109(1)(a)(ii) for the year exceeds the amount deducted by him for the year under that subparagraph, and

(ii) the aggregate of all amounts each of which is an amount his spouse may claim as a deduction for the year under paragraph 109(1)(h) or 110(1)(e) or (g),

exceeds

(b) the amount, if any, by which the aggregate of his spouse's income for the year and the amount included under subsection 110.4(2) in computing his spouse's taxable income for the year exceeds the amount allowable as a deduction under paragraph 109(1)(c),

All that portion of s. 110.3 preceding para. (a) and para. 110.3(b) substituted by 1984, c. 1, subsecs. 52(1), (2), applicable to 1983 *et seq.* S. 110.3 preceding para. (a) and para. 110.3(b) formerly read:

110.3 Transfer of unused deductions — For the purpose of computing the taxable income for a taxation year of an individual who, during the year was a married person, there may be deducted from his income for the year the amount, if any, by which

. . . . .

(b) the amount, if any, by which his spouse's income for the year exceeds the amount allowable as a deduction under paragraph 109(1)(c).

Para. 110.3(a) substituted by 1980-81-82-83, c. 140, s. 68, applicable to 1982 *et seq.* Para. (a) formerly read:

(a) the aggregate of amounts his spouse may claim as a deduction for the year under any of paragraphs 109(1)(h), 110(1)(e) and 110(1)(g) and sections 110.1 and 110.2,

S. 110.3 added by 1976-77, c. 4, s. 46, applicable to 1976 *et seq.*

110.4 [Repealed]

Related Provisions: 111(8)"non-capital loss"C — Amount elected under 110.4(2) reduces non-capital loss; 111.1 — Order of applying provi-

sions; 120.1 — Adjustments to tax payable; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: S. 110.4 repealed by 2000, c. 19, s. 18, applicable to 1998 *et seq.* S. 110.4 formerly read:

110.4 (1) [Repealed under former Act]

(2) Election — Where an individual files with the individual's return under this Part for a taxation year ending before 1998 and throughout which the individual was resident in Canada an election in prescribed form on or before the day on or before which the individual was, or would have been if tax had been payable under this Part by the individual for the year, required to file a return of income under this Part for the year, there shall be added in computing the individual's taxable income for the year the amount, if any, by which

(a) such portion of the individual's accumulated averaging amount at the end of the immediately preceding taxation year as is specified by the individual in the election

exceeds

(b) the total of amounts that would be the individual's farm loss or non-capital loss for the year if the amount determined for B in the definition "farm loss" or for C in the definition "non-capital loss" in subsection 111(8) were zero.

(3) [Repealed under former Act]

(4) Death of a taxpayer — For the purposes of subsection (2), where an individual was resident in Canada throughout the period beginning on the first day of the taxation year in which the individual died and ending at the time of the individual's death, the individual shall be deemed to have been resident in Canada throughout that year.

(5) Exception — Subsection (2) does not apply with respect to a return of income filed under subsection 70(2) or 150(4) or paragraph 104(23)(d).

(6) [Repealed under former Act]

(6.1) Revocation of election — An election filed by an individual under subsection (2) for a taxation year may be revoked,

(a) where the individual died in the year in which the election was filed, by the individual or the individual's legal representative filing with the Minister a notice of revocation in writing not later than the day on or before which the individual's return of income for the year of death is required to be filed, or would be required to be filed if tax under this Part were payable for the year of death; and

(b) in any other case, by the individual or the legal representative filing with the Minister a notice of revocation in writing not later than the 30th day following the day of mailing of a notice of assessment of an amount payable by the individual under this Part for the year.

(7) [Repealed under former Act]

(8) Accumulated averaging amount — In this section and section 120.1, the accumulated averaging amount of an individual

(a) at the end of any taxation year before 1998 (other than a taxation year in which the individual dies) is the product obtained when

(i) the amount, if any, by which

(A) the individual's accumulated averaging amount at the end of the immediately preceding taxation year

exceeds

(B) the amount specified under subsection (2) by the individual in the individual's election for the year

is multiplied by

(ii) the ratio (adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two consecutive one-thousandths, to the higher thereof) that the Consumer Price Index of the 12 month period that ended on September 30 of that year bears to the Consumer Price Index for the 12 month period that ended on September 30 of the immediately preceding year;

(b) at the end of the taxation year before 1998 and in which the individuals dies is

(i) nil, where the individual's tax payable under this Part for the year is computed under section 119, or

(ii) the amount determined under subparagraph (a)(i) for the year, in any other case; and

(c) at any time after 1997 is nil.

Subpara. 110.4(8)(b)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 80, to substitute "subparagraph (a)(i)" for "paragraph (a)", applicable to 1988 *et seq.*

Pre-RSC History [s. 110.4]: Subsec. 110.4(1) repealed by 1988, c. 55, subsec. 80(1), applicable to 1988 *et seq.* Subsec. (1) formerly read:

110.4 (1) Forward averaging — Where an individual (other than a trust) who was resident in Canada throughout a taxation year (in this section referred to as the "year of averaging") and the two immediately preceding taxation years files with his return of income for the year of averaging under this Part an election in prescribed form with the Minister on or before the day on or before which he was required to file the return, there may be deducted in computing his taxable income for the year of averaging an amount (in this section referred to as the "averaging amount") that is not less than $1,000 nor more than the lesser of

(a) the amount that would, but for this subsection, be his taxable income for the year of averaging; and

(b) the greater of

(i) the aggregate of

(A) ½ of the amount, if any, by which

(I) the aggregate of all amounts each of which is an amount included by him under subparagraph 40(1)(a)(ii) or 44(1)(e)(ii) in computing his gain for the year of averaging from the disposition of a property

exceeds

(II) the aggregate of all amounts each of which is an amount deducted by him under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing his gain for the year of averaging from the disposition of a property, and

(B) the aggregate of all amounts each of which is the amount of

(I) his income for the year of averaging from the production of a literary, dramatic, musical or artistic work, or

(II) his income for the year of averaging from his activities as an athlete, a musician or a public entertainer, such as a theatre, motion picture, radio or television artist, and

(ii) the amount, if any, by which

(A) his income for the year of averaging

exceeds the aggregate of

(B) 110% of the quotient obtained when

(I) the aggregate of all amounts each of which is his adjusted income for a taxation year in the period of such of the three years immediately preceding the year of averaging as were years throughout which he was resident in Canada

is divided by

(II) the number of years in the period mentioned in subclause (I), and

(C) the amount deducted under section 110.6 in computing his taxable income for the year of averaging.

That portion of subsec. 110.4(2) preceding para. (a) substituted by 1988, c. 55, subsec. 80(2), applicable to 1988 *et seq.* That portion formerly read:

(2) Election — Where an individual who was resident in Canada throughout a taxation year files with his return for the year under this Part an election in prescribed form with the Minister on or before the day on or before which he was, or would have been if tax had been payable under this Part by him for the year, required to file a return of income under this Part for the year, there shall be added in computing his taxable income for the year the amount, if any, by which

Subsecs. 110.4(3), (6) repealed and (4), (5) substituted, by 1988, c. 55, subsecs. 80(3), (4), applicable to 1988 *et seq.* Subsecs. 110.4(3) to (6) formerly read:

(3) Exception — Subsection (1) does not apply in computing the taxable income of an individual for a taxation year that ended in a calendar year during which he was a bankrupt (within the meaning assigned by section 128).

(4) Death of a taxpayer — For the purposes of subsections (1) and (2), where an individual was resident in Canada throughout the period beginning on the first day of the taxation year in which he died and ending at the time of his death, he shall be deemed to have been resident in Canada throughout the taxation year in which he died.

(5) Exception — Subsections (1) and (2) do not apply with respect to a return of income filed under subsection 70(2) or 150(4) or paragraph 104(23)(d).

(6) Invalid election — An election filed by an individual under subsection (1) for a year of averaging is not valid unless on or before the day on or before which the election is required to be filed, the individual

(a) has filed a return of income for each taxation year referred to in subclause (1)(b)(ii)(B)(I) for which tax was payable by him under this Part; and

(b) has filed, with his return of income for the year of averaging, a prescribed form for each taxation year referred to in subclause (1)(b)(ii)(B)(I) for which no tax was payable by him under this Part and for which no return has been filed.

That portion of subsec. 110.4(6.1) preceding para. (a) substituted by 1988, c. 55, subsec. 80(5), applicable with respect to elections made for 1988 *et seq.* That portion formerly read:

(6.1) Revocation of election — An election filed by an individual under subsection (1) or (2) for a taxation year may be revoked

Subsec. 110.4(8) substituted by 1988, c. 55, subsec. 80(6), applicable to 1988 *et seq.* Subsec. (8) formerly read:

(8) Definitions — In this section and section 120.1,

(a) "accumulated averaging amount" — "accumulated averaging amount" of an individual at the end of any taxation year means the product obtained when

(i) the amount, if any, by which the aggregate of

(A) the individual's accumulated averaging amount at the end of the immediately preceding taxation year, and

(B) the amount deducted under subsection (1) by the individual in computing his taxable income for the year

exceeds

(C) the amount specified by the individual in his election for the year under subsection (2)

is multiplied by

(ii) the ratio (adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof) that the Consumer Price Index for the 12 month period that ended on the 30th day of September of that year bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September of the immediately preceding year,

except that, where the individual dies in a taxation year, his accumulated averaging amount at the end of that year means

(iii) nil, where the individual's tax payable under this Part for that year is computed under section 119, or

(iv) the amount determined under subparagraph (i) for that year, in any other case; and

(b) "adjusted income" — "adjusted income" of an individual for a taxation year means the product obtained when

(i) the amount, if any, by which his income for the year exceeds the amount deducted in computing his taxable income for the year under section 110.6

is multiplied by

(ii) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the higher thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before the year of averaging bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September next before the taxation year.

Subpara. 110.4(1)(b)(ii) amended by 1986, c. 6, s. 57, to substitute "exceeds the aggregate of" for "exceeds" between cls. (A), (B), "his adjusted income" for "the individual's adjusted income" in subcl. (B)(I), "the period mentioned" for "the period described" in subcl. (B)(II), and to add cl. (C), applicable to 1985 *et seq.*

Para. 110.4(8)(b) substituted by 1986, c. 6, s. 57, applicable to 1985 *et seq.* Para. (b) formerly read:

(b) adjusted income — "adjusted income" of an individual for a taxation year means the product obtained when his income for the year is multiplied by the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the greater thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before the year of averaging bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September next before the taxation year.

Subsec. 110.4(6) substituted by 1985, c. 45, subsec. 55(1), applicable to

(a) elections filed for 1984 *et seq.* and

(b) elections filed by a taxpayer for 1982 and 1983 if the taxpayer so requests of the Minister in writing before May 1986.

Subsec. (6) formerly read:

(6) An election filed under subsection (1) for a year of averaging is not valid, unless

(a) the individual has, within 30 days from the day of mailing of the first notice of assessment under this Part in respect of his income for the year, remitted to the Receiver General all the assessed tax (other than any portion thereof the payment of which is deferred by virtue of an election made under subsection 159(5)), interest and penalties then remaining unpaid in respect of the year, whether or not an objection to or appeal from the assessment is outstanding; and

(b) on or before the day on or before which the election is required to be filed, the individual

(i) has filed a return of income for each taxation year referred to in subclause (1)(b)(ii)(B)(I) for which tax was payable by him under this Part, and

(ii) has filed, with his return of income for the year of averaging, a prescribed form for each taxation year referred to in subclause (1)(b)(ii)(B)(I) for which no tax was payable by him under this Part and no return has been filed.

Subsec. 110.4(6.1) added by 1985, c. 45, subsec. 55(1), applicable to 1982 *et seq.* except that where the taxation year referred to in the said subsection is the 1982, 1983 or 1984 taxation year, the notice of revocation referred to in paras. (a) and (b) may be filed with the Minister at any time on or before the later of

(a) the day on or before which it would be required by the said subsection to be filed; and

(b) April 30, 1986.

Subsec. 110.4(7) repealed by 1985, c. 45, subsec. 55(2), applicable to 1982 *et seq.* Subsec. (7) formerly read:

(7) Presumption — Where the amount deducted by an individual under subsection (1) in respect of a year of averaging exceeds the amount deductible under that subsection,

(a) such excess shall be deemed not to be included in the amount deducted under subsection (1); and

(b) that portion of the amount that would, but for paragraph (a), be the amount determined under subsection 120.1(2) for the year that can reasonably be considered to be attributable to the excess referred to in paragraph (a) shall be deemed to be an amount paid by him, on account of his tax under this Part for the year, on the day that is the later of

(i) the day on or before which he was required to file the election under subsection (1), and

(ii) the day on which all the assessed tax, interest and penalties then remaining unpaid in respect of the year are remitted to the Receiver General.

All that portion of para. 110.4(8)(a) following subpara. (ii) substituted by 1985, c. 45, subsec. 55(3), applicable to 1985 *et seq.* That portion formerly read:

> except that, where the individual dies in a taxation year, his accumulated averaging amount at the end of that year means the amount determined under subparagraph (i) for that year; and

Subsecs. 110.4(2), (4), para. 110.4(6)(a), cl. 110.4(8)(a)(i)(C) and all that portion of para. 110.4(8)(a) following subpara. (i) substituted by 1984, c. 1, subsecs. 53(1)–(5), applicable to 1983 *et seq.*, except subsec. 110.4(4) and that portion of para. 110.4(8)(a) following subpara. (i) applicable to 1982 *et seq.* Subsecs. 110.4(2), (4), para. 110.4(6)(a), cl. 110.4(8)(a)(i)(C), and all that portion of para. 110.4(8)(a) following subpara. (i) formerly read:

> (2) Election — Where an individual who was resident in Canada throughout a taxation year files with his return for the year under this Part an election in prescribed form with the Minister on or before the day on or before which he was, or would be, if tax were payable under this Part by him for the year, required to file a return of income under this Part for the year, there may be added in computing his taxable income for the year such portion of his accumulated averaging amount at the end of the immediately preceding taxation year as is specified by him in such election.
>
> . . . . .
>
> (4) Death of a taxpayer — For the purposes of subsections (1) and (2) and section 120.1, where an individual was resident in Canada throughout the period commencing on the first day of the taxation year in which he died and ending at the time of his death, he shall be deemed to have been resident in Canada throughout the taxation year in which he died.
>
> . . . . .
>
> (a) the individual has, within 30 days from the day of mailing of the first notice of assessment under this Part in respect of his income for the year, remitted to the Receiver General all the assessed tax, interest and penalties then remaining unpaid in respect of the year, whether or not an objection to or appeal from the assessment is outstanding; and
>
> . . . . .
>
> (C) the amount added under subsection (2) by the individual in computing his taxable income for the year
>
> . . . . .
>
> is multiplied by
>
> (ii) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the greater thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before that year bears to the Consumer Price Index for the 12 month period that ended immediately before the commencement of that 12 month period; and

S. 110.4 added by 1980-81-82-83, c. 140, s. 69, applicable to 1982 *et seq.*, except that, in its application to the 1982 taxation year, the reference in subsection 110.4(1) to "the two immediately preceding taxation years" shall be read as a reference to "the immediately preceding taxation year".

Remission Orders [s. 110.4]: *Prescribed Areas Forward Averaging Remission Order*, P.C. 1994-109 (remission for certain residents of prescribed areas who filed forward averaging elections for 1987).

Interpretation Bulletins [s. 110.4]: IT-212R3: Income of deceased persons — rights or things; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-504R2: Visual artists and writers.

Information Circulars [s. 110.4]: 92-1: Guidelines for accepting late, amended or revoked elections.

Forms [s. 110.4]: T541: Forward averaging tax calculation — deceased individuals; T581: Forward averaging tax credits; T2203A: Forward averaging supplement — multiple jurisdictions.

110.5 Additions for foreign tax deductions — There shall be added to a corporation's taxable income otherwise determined for a taxation year such amount as the corporation may claim to the extent that the addition thereof

(a) increases any amount deductible by the corporation under subsection 126(1) or (2) for the year; and

(b) does not increase an amount deductible by the corporation under any of sections 125, 125.1, 127, 127.2 and 127.3 for the year.

Related Provisions: 111(8)"non-capital loss"B — Carryforward of amount determined under 110.5.

Pre-RSC History: S. 110.5 added by 1985, c. 45, subsec. 56(1), applicable to 1985 *et seq.*

Definitions [s. 110.5]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 110.5]: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-270R2: Foreign tax credit; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

110.6 (1) [Capital gains exemption —] Definitions — For the purposes of this section,

"annual gains limit" of an individual for a taxation year means the amount determined by the formula

A – B

where

A is the lesser of

(a) the amount determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses, and

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984 and qualified small business corporation shares disposed of by the individual after June 17, 1987, and

B is the total of

(a) the amount, if any, by which

(i) the individual's net capital losses for other taxation years deducted under paragraph 111(1)(b) in computing the individual's taxable income for the year

exceeds

(ii) the amount, if any, by which the amount determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses exceeds the amount determined for A in respect of the individual for the year, and

(b) all of the individual's allowable business investment losses for the year;

Related Provisions: 110.6(13) — Meaning of "amount determined under para. 3(b)"; 257 — Formula cannot calculate to less than zero. See also Related Provisions and Definitions at end of s. 110.6.

History: Para. (b) of the description of A in the definition "annual gains limit" in subsec. 110.6(1) amended by 1995, c. 3, subsec. 32(2), applicable to 1994 *et seq.* except that, for the 1994 and 1995 taxation years, it shall be read as follows:

> (b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if
>
> (i) the only properties referred to in paragraph 3(b) were properties disposed of by the individual after 1984 and, except where the property was at the time of the disposition a qualified small business corporation share or qualified farm property of the individual, before February 23, 1994,

(i.1) no amount were included under paragraph 3(b) in respect of

(A) a taxable capital gain of the individual that resulted from an election made under subsection (19) by a personal trust unless the individual was a beneficiary under the trust on February 22, 1994, and

(B) that portion of a taxable capital gain referred to in clause (A) that can reasonably be regarded as being in respect of an amount that is included in computing the individual's income because of an interest in the trust that was acquired by the individual after February 22, 1994,

(i.2) except for the purpose of determining the individual's share of a taxable capital gain of a partnership for its fiscal period that includes February 22, 1994 or a taxable capital gain of the individual resulting from a designation made under section 104 by a trust for its taxation year that includes that day, in determining the individual's taxable capital gain for the 1995 taxation year from the disposition of a property (other than a qualified small business corporation share or qualified farm property), this Act were read without reference to subparagraphs 40(1)(a)(ii) and 44(1)(e)(ii), and

(ii) the individual's capital gains and capital losses for the year from dispositions of non-qualifying real property of the individual were equal to the individual's eligible real property gains and eligible real property losses, respectively, for the year from those dispositions, and

Para. (b) of the description of A formerly read:

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if

(i) the only properties referred to in paragraph 3(b) were properties disposed of by the individual after 1984, and

(ii) the individual's capital gains and capital losses for the year from dispositions of non-qualifying real property of the individual were equal to the individual's eligible real property gains and eligible real property losses, respectively, for the year from those dispositions, and

"Annual gains limit" in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(1), applicable (as amended by 1994, c. 21, subsec. 50(6)) to 1985 *et seq.* except that in its application to the 1985 to 1991 taxation years para. (b) of the description of A shall be read as follows:

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were properties disposed of by the individual after 1984, and

That definition formerly read:

"annual gains limit" of an individual for a taxation year means the amount, if any, by which

(a) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by the individual after 1984

exceeds the total of

(b) the amount of the individual's net capital losses for other taxation years deducted in computing the individual's taxable income for the year under paragraph 111(1)(b), and

(c) the total of all the individual's allowable business investment losses for the year;

Pre-RSC History: Para. (a) of "annual gains limit" in subsec. 110.6(1) substituted by 1988, c. 55, subsec. 81(1), applicable to 1988 *et seq.* Para. (a) formerly read:

(a) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the properties referred to in that paragraph were

(i) in the case of properties other than qualified farm properties, only such properties disposed of by him in the year, and

(ii) in the case of qualified farm properties, only such properties disposed of by him after 1984,

1986, c. 6, s. 58 provides that in its application to the 1985 taxation year, that portion of the definition of "annual gains limit" in subsec. 110.6(1) following para. (a) shall be read as follows:

exceeds the aggregate of

(b) the amount of his net capital losses for other taxation years deducted in computing his taxable income for the year under paragraph 111(1)(b),

(c) the aggregate of all his allowable business investment losses for the year, and

(d) the amount, if any, by which

(i) the aggregate of all amounts deducted under subsection 146(5.3) in computing his income for the year in respect of his capital gains for the year from the disposition of property in the year

exceeds

(ii) the aggregate of all amounts included under subsection 146(8) in computing his income for the year; and

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property.

Forms: See list at end of s. 110.6.

"child" has the meaning assigned by subsection 70(10);

Pre-RSC History: "Child" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable to 1988 *et seq.*

"cumulative gains limit" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts determined in respect of the individual for the year or preceding taxation years that end after 1984 for A in the definition "annual gains limit"

exceeds the total of

(b) all amounts determined in respect of the individual for the year or preceding taxation years that end after 1984 for B in the definition "annual gains limit",

(c) the amount, if any, deducted under paragraph 3(e) in computing the individual's income for the 1985 taxation year,

(d) all amounts deducted under this section in computing the individual's taxable incomes for preceding taxation years, and

(e) the individual's cumulative net investment loss at the end of the year;

History: The definition "cumulative gains limit" in subsec. 110.6(1) substituted by 1994, c. 21, subsec. 49(1), applicable to 1985 *et seq.*; and, notwithstanding subsections 152(4) to (5), such assessments and determinations in respect of any taxation years may be made as are necessary to give effect to the amended definition. That definition formerly read:

"cumulative gains limit" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is

(i) the amount determined in respect of the individual for the year or a preceding taxation year ending after 1987 for A in the definition "annual gains limit", or

(ii) the amount determined in respect of the individual for a preceding taxation year ending after 1984 and before 1988 under paragraph (a) of the definition "annual gains limit" as it read in its application to those years

exceeds the total of

(b) all amounts each of which is

(i) the amount determined in respect of the individual for the year or a preceding taxation year ending after 1987 under paragraph (a) or (b) of the description of B in the definition "annual gains limit",

(ii) the amount determined in respect of the individual for a preceding taxation year ending after 1984 and before 1988 under paragraph (b) or (c) of the definition "annual gains limit" as it read in its application to those years, or

(iii) an amount deducted under paragraph 3(e) by the individual for the individual's 1985 taxation year,

(c) all amounts deducted under this section in computing the individual's taxable income for a preceding taxation year, and

(d) the individual's cumulative net investment loss at the end of the year;

"Cumulative gains limit" in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(1), applicable to 1988 *et seq.* That definition formerly read:

"cumulative gains limit" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is the amount determined in respect of the individual for the year or a preceding taxation year ending after 1984 under paragraph (a) of the definition "annual gains limit" in this subsection

exceeds the total of

(b) the total of all amounts each of which is the amount determined in respect of the individual for the year or a preceding taxation year ending after 1984 under paragraph (b) or (c) of the definition "annual gains limit" in this subsection or an amount deducted by the individual under paragraph 3(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for the individual's 1985 taxation year,

(c) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year, and

(d) the individual's cumulative net investment loss at the end of the year;

Pre-RSC History: Para. (d) of "cumulative gains limit" in subsec. 110.6(1) added by 1988, c. 55, subsec. 81(2), applicable to 1988 *et seq.*

Selected Cases [110.6(1)"cumulative gains limit"]: *Hunter v. R.*, [1997] 3 C.T.C. 3104 (TCC) (Minister entitled to take into account events in earlier years in determining cumulative gains limit).

"cumulative net investment loss" of an individual at the end of a taxation year means the amount, if any, by which

(a) the total of all amounts each of which is the investment expense of the individual for the year or a preceding taxation year ending after 1987

exceeds

(b) the total of all amounts each of which is the investment income of the individual for the year or a preceding taxation year ending after 1987;

Pre-RSC History: "Cumulative net investment loss" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable to 1988 *et seq.*

Forms: T936: Calculation of cumulative net investment loss.

"eligible real property gain" — [Repealed]

History: The definition "eligible real property gain" in subsec. 110.6(1) repealed by 1995, c. 3, subsec. 32(1), applicable after 1995. The definition formerly read:

"eligible real property gain" of an individual for a taxation year from a disposition of a non-qualifying real property of the individual means the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the individual's capital gain for the year from the disposition,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with the calendar month in which the property was disposed of by the individual;

"Eligible real property gain" added to subsec. 110.6(1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(6), applicable to 1992 *et seq.*

"eligible real property loss" — [Repealed]

History: The definition "eligible real property loss" in subsec. 110.6(1) repealed by 1995, c. 3, subsec. 32(1), applicable after 1995. The definition formerly read:

"eligible real property loss" of an individual for a taxation year from a disposition of a non-qualifying real property of the individual means the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the individual's capital loss for the year from the disposition,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by the individual and January 1972 and ends with the calendar month in which the property was disposed of by the individual;

"Eligible real property loss" added to subsec. 110.6(1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(6), applicable to 1992 *et seq.*

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to

(i) property that was used by

(A) the partnership,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, child or parent of the individual or of a beneficiary referred to in clause (C), or

(E) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in clause (C) or a spouse, child or parent of the individual or of a beneficiary referred to in clause (C),

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary referred to in clause (C) or a spouse, child or parent of the individual or of a beneficiary referred to in clause (C) was actively engaged on a regular and continuous basis,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii), and

(b) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(i) property that was used principally in the course of carrying on the business of farming in Canada by the partnership or a person referred to in subparagraph (a)(i),

(ii) shares of the capital stock or indebtedness of one or more corporations described in subparagraph (a)(ii), or

(iii) properties described in subparagraph (i) or (ii).

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4)(a) — Extended meaning of "spouse". See also Related Provisions and Definitions at end of s. 110.6.

History: "Interest in a family farm partnership" in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(2), applicable to 1992 *et seq.* That definition formerly read:

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership where,

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to property used by

(i) the partnership,

(ii) the individual,

(iii) where the individual is a personal trust, a beneficiary of the trust,

(iv) a spouse, child or parent of the individual or of a beneficiary referred to in subparagraph (iii), or

(v) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in subparagraph (iii) or a spouse, child or parent of the individual or of such a beneficiary

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary referred to in subparagraph (iii) or a spouse, child or parent of the individual or of such a beneficiary was actively engaged on a regular and continuous basis, and

(b) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property that has been used principally in the course of carrying on the business of farming in Canada by the partnership or a person referred to in paragraph (a);

"Interest in a family farm partnership" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(1), applicable to 1988 *et seq.* That definition formerly read:

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership all or substantially all of the property of which was, at that time, property used by

(a) the partnership,

(b) the individual,

(c) where the individual is a personal trust, a beneficiary of the trust,

(d) a spouse, child or parent of a person referred to in paragraph (b) or (c), or

(e) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of an individual referred to in paragraph (b), (c) or (d)

throughout a period of at least 24 months before that time in the course of carrying on the business of farming in Canada in which any individual referred to in paragraph (b), (c) or (d) was actively engaged on a regular and continuous basis;

Pre-RSC History: "Interest in a family farm partnership" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable to 1988 *et seq.*

"investment expense" of an individual for a taxation year means the total of

(a) all amounts deducted in computing the individual's income for the year from property (except to the extent that the amounts were otherwise taken into account in computing the individual's investment expense or investment income for the year) other than any amounts deducted under

(i) paragraph 20(1)(c), (d), (e), or (e.1) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of borrowed money that was used by the individual, or that was used to acquire property that was used by the individual,

(A) to make a payment as consideration for an income-averaging annuity contract,

(B) to pay a premium under a registered retirement savings plan, or

(C) to make a contribution to a registered pension plan or a deferred profit sharing plan, or

(ii) paragraph 20(1)(j) or subsection 65(1), 66(4), 66.1(3), 66.2(2) or 66.4(2),

(b) the total of

(i) all amounts deducted under paragraph 20(1)(c), (d), (e), (e.1), (f) or (bb) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the individual's income for the year from a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year, and

(ii) all amounts deducted under subparagraph 20(1)(e)(vi) in computing the individual's income for the year in respect of an expense incurred by a partnership of which the individual was a specified member in the fiscal period of the partnership ending immediately before it ceased to exist,

(c) the total of

(i) all amounts (other than allowable capital losses) deducted in computing the individual's income for the year in respect of the individual's share of the amount of any loss of a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year, and

(ii) all amounts each of which is an amount deducted under paragraph 111(1)(e) in computing the individual's taxable income for the year,

(d) 50% of the total of all amounts each of which is an amount deducted under subsection 66(4), 66.1(3), 66.2(2) or 66.4(2) in computing the individual's income for the year in respect of expenses incurred and renounced under subsection 66(12.6), (12.601), (12.62) or (12.64) by a corporation or incurred by a partnership of which the individual was a specified member in the fiscal period of the partnership in which the expense was incurred, and

(e) the total of all amounts each of which is the amount of the individual's loss for the year from

(i) property, or

(ii) renting or leasing a rental property (within the meaning assigned by subsection 1100(14) of the *Income Tax Regulations*) or a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations*

owned by the individual or by a partnership of which the individual was a member, other than a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year, and

(f) the amount, if any, by which the total of the individual's net capital losses for other taxation years deducted under paragraph 111(1)(b) in computing the individual's taxable income for the year exceeds the amount determined in respect of the individual for the year under paragraph (a) of the description of B in the definition "annual gains limit";

History: Para. (d) of the definition "investment expense" in subsec. 110.6(1) amended by 1994, c. 8, s. 13, to add reference to subsec. 66(12.601), applicable to 1992 *et seq.*

Para. (f) of "investment expense" in subsec. 110.6(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(3), applicable to 1992 *et seq.*

Paras. (a), (b) of "investment expense" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(2), applicable to 1988 *et seq.* except that

(a) para. (a) does not apply before 1989 to amounts deducted under para. 20(1)(a) in respect of a certified production (within the meaning assigned by subsec. 1104(2) of the Regulations) of a taxpayer or a partnership that is property included in para. (n) in Cl. 12 of Sch. II to the Regulations, and

(b) in its application to a taxpayer who so elects by notifying the Minister of National Revenue in writing before 1993, subpara. (a)(ii) shall, in respect of the taxpayer's 1988 and 1989 taxation years, be read as follows:

(ii) paragraph 20(1)(j), to the extent that the total of all amounts deducted under that paragraph by the taxpayer in the year or a preceding taxation year ending after 1987 exceeds the total of all amounts each of which is an amount that

(A) was included in the taxpayer's investment income for the taxpayer's 1988 or 1989 taxation year, and

(B) was included under subsection 15(2) in the taxpayer's income for the taxpayer's 1988 or 1989 taxation year,

or subsection 65(1), 66(4), 66.1(3), 66.2(2) or 66.4(2),

Paras. (a), (b) formerly read:

(a) the total of all amounts each of which is an amount (other than an amount deducted under subsection 65(1), 66(4), 66.1(3), 66.2(2) or 66.4(2)) deducted in computing the individual's income for the year from property, except to the extent that the amount was included in computing the individual's investment expense for the year under paragraph (b), (c) or (e),

(b) the total of all amounts each of which is an amount deducted under paragraph 20(1)(c), (d), (e), (f) or (bb) of this Act or paragraph 20(1)(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the individual's income for the year from a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year,

Subpara. (c)(i) of "investment expense" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(3), applicable to 1988 *et seq.* Subpara. (c)(i) formerly read:

(i) all amounts each of which is an amount deducted in computing the individual's income for the year as the individual's share of the amount of any loss of a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year, and

That portion of para. (e) of "investment expense" following subpara. (ii) in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(4), applicable to 1988 *et seq.*, except that the para. does not apply before 1989 to amounts deducted under para. 20(1)(a) in respect of a certified production (within the meaning assigned by subsec. 1104(2) of the Regulations) of a taxpayer or a partnership that is property included in para. (n) in Cl. 12 of Sched. II to the Regulations. That portion of para. (e) formerly read:

owned by the individual or by a partnership of which the individual was a member, except to the extent that the amount was included in computing the individual's investment expense for the year under paragraph (c);

Pre-RSC History: "Investment expense" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable to 1988 *et seq.*, except that paras. (a), (c) and (e) are not applicable before 1989 with respect to amounts deducted under para. 20(1)(a) in respect of a certified production (within the meaning assigned by subsec. 1104(2) of the Regulations) of a taxpayer or a partnership that is property included in para. (n) of Class 12 of Schedule II of the Regulations.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"investment income" of an individual for a taxation year means the total of

(a) all amounts included in computing the individual's income for the year from property (other than an amount included under subsection 15(2) or paragraph 56(1)(d) of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), including, for greater certainty, any amount so included under subsection 13(1) in respect of a property any income from which would be income from property (except to the extent that the amount was otherwise taken into account in computing the individual's investment income or investment expense for the year),

(b) all amounts (other than taxable capital gains) included in computing the individual's income for the year in respect of the individual's share of the income of a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year, including, for greater certainty, the individual's share of all amounts included under subsection 13(1) in computing the income of the partnership,

(c) 50% of all amounts included under subsection 59(3.2) in computing the individual's income for the year,

(d) all amounts each of which is the amount of the individual's income for the year from

(i) a property, or

(ii) renting or leasing a rental property (within the meaning assigned by subsection 1100(14) of the *Income Tax Regulations*) or a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations*

owned by the individual or by a partnership of which the individual was a member (other than a partnership of which the individual was a specified member in the partnership's fiscal period ending in the year), including, for greater certainty, any amount included under subsection 13(1) in computing the individual's income for the year in respect of a rental property of the individual or the partnership or in respect of a property any income from which would be income from property,

(e) the amount, if any, by which

(i) the total of all amounts (other than amounts in respect of income-averaging annuity contracts or annuity contracts purchased under deferred profit sharing plans or plans referred to in subsection 147(15) as revoked plans) included under paragraph 56(1)(d) of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the individual's income for the year

exceeds

(ii) the total of all amounts deducted under paragraph 60(a) in computing the individual's income for the year, and

(f) the amount, if any, by which the total of all amounts included under paragraph 3(b) in respect of capital gains and capital losses in computing the individual's income for the year exceeds the amount determined in respect of the individual for the year for A in the definition "annual gains limit";

History: Para. (f) of "investment income" in subsec. 110.6(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(4), applicable to 1992 *et seq.*

"Investment income" amended to substitute paras. (a) to (e) for (a) to (d) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(5), applicable to 1988 *et seq.* except that in its application to a taxpayer who so elects by notifying the Minister of National Revenue in writing before 1993, para. (a) shall be read without reference to "subsection 15(2) or" in respect of the taxpayer's 1988 and 1989 taxation years. Paras. (a) to (d) formerly read:

> (a) the total of all amounts included in computing the individual's income for the year from property, including, for greater certainty, any amount included under subsection 13(1) in respect of a property the income from which would be income from property, except to the extent that the amount was included in computing the individual's investment income for the year under paragraph (b) or (d),
>
> (b) the total of all amounts each of which is an amount included in computing the individual's income for the year as the individual's share of the income of a partnership of which the individual was a specified member in the fiscal period of the partnership ending in the year, including, for greater certainty, the individual's share of all amounts included under subsection 13(1) in computing the income of the partnership,
>
> (c) 50% of the total of all amounts included in computing the individual's income for the year under subsection 59(3.2), and
>
> (d) the total of all amounts each of which is an amount included in computing the individual's income for the year from
>
> > (i) property, or
> >
> > (ii) renting or leasing a rental property (within the meaning assigned by subsection 1100(14) of the *Income Tax Regulations*) or a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations*
>
> owned by the individual or by a partnership of which the individual was a member, except to the extent that the amount was included in computing the individual's investment income for the year under paragraph (b), including, for greater certainty, any amount included under subsection 13(1) in computing the individual's income for the year in respect of rental property or in respect of a property the income from which would be income from property;

Pre-RSC History: "Investment income" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable to 1988 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 110.6(1) repealed by 1995, c. 3, subsec. 32(1), applicable after 1995. The definition formerly read:

> "non-qualifying real property" of an individual (other than a trust that is not a personal trust) means property disposed of after February 1992 by the individual, or a partnership any of the income of which is required to be included in computing the income of the individual, that at the time of its disposition (in this definition referred to as the "determination time") is
>
> (a) real property, other than
>
> (i) qualified farm property of the individual,
>
> (ii) real property owned by the individual or the individual's spouse that was used
>
> (A) throughout that part of the 24-month period preceding the determination time during which it was owned by the individual or the individual's spouse, or
>
> (B) throughout all or substantially all of the time in the period preceding the determination time during which it was owned by the individual or the individual's spouse,
>
> principally in an active business carried on by
>
> (C) the individual (otherwise than as a member of a partnership),
>
> (D) where the individual is a personal trust, a preferred beneficiary (within the meaning assigned by subsection 108(1)) under the trust (otherwise than as a member of a partnership),
>
> (E) a spouse, child or parent of the individual or of a preferred beneficiary described in clause (D) (otherwise than as a member of a partnership),
>
> (F) a corporation (otherwise than as a member of a partnership) where shares representing all or substantially all of the fair market value of all the issued and outstanding shares of its capital stock were owned by one or more persons described in this subparagraph,
>
> (G) one or more persons as members of a partnership where interests representing all or substantially all of the fair market value of all partnership interests in the partnership were owned by one or more persons described in this subparagraph, or
>
> (H) a personal trust (otherwise than as a member of a partnership) where interests representing all or substantially all of the fair market value of all beneficial interests in the trust were owned by one or more persons described in this subparagraph, and
>
> (iii) real property of the partnership (except where the individual is a specified member of the partnership or, if a taxable capital gain of the individual's spouse from the disposition of property of the partnership would be a taxable capital gain of the individual, the individual's spouse is a specified member of the partnership) that was used
>
> (A) throughout that part of the 24-month period preceding the determination time during which it was property of the partnership, the individual or the individual's spouse, or
>
> (B) throughout all or substantially all of the time in the period preceding the determination time during which it was property of the partnership, the individual or the individual's spouse,
>
> principally in an active business carried on by
>
> (C) the individual,
>
> (D) where the individual is a personal trust, a preferred beneficiary (within the meaning assigned by subsection 108(1)) under the trust,
>
> (E) a spouse, child or parent of the individual or of a preferred beneficiary described in clause (D),
>
> (F) a corporation where shares representing all or substantially all of the fair market value of all the issued and outstanding shares of its capital stock were owned by one or more persons described in this subparagraph, or
>
> (G) a personal trust where interests representing all or substantially all of the fair market value of all beneficial interests in the trust were owned by one or more persons described in this subparagraph,
>
> (b) a share of the capital stock of a corporation (other than a qualified small business corporation share of the individual or a share of the capital stock of a family farm corporation of the individual) the fair market value of which is derived principally from real property, other than real property that was used
>
> (i) throughout that part of the 24-month period preceding the determination time during which it was owned by the corporation or by persons described in any of clauses (a)(ii)(C) to (H), or
>
> (ii) throughout all or substantially all of the time in the period preceding the determination time during which it was owned by the corporation or by persons described in any of clauses (a)(ii)(C) to (H),
>
> principally in an active business carried on by the corporation or by persons described in any of clauses (a)(ii)(C) to (H), but not including a share of the capital stock of a corporation the fair market value of which is derived principally from real property owned by another corporation, a partnership or a trust, or any combination thereof, the shares of the capital stock of which, or the interests in which, as the case may be, would, if they were disposed of at the determination time by the individual, not be non-qualifying real property of the individual,
>
> (c) an interest in a partnership (other than an interest in a family farm partnership of the individual) the fair market value of

which is derived principally from real property, other than real property that was used

(i) throughout that part of the 24-month period preceding the determination time during which it was property of the partnership or persons described in any of clauses (a)(ii)(C) to (H), or

(ii) throughout all or substantially all of the time in the period preceding the determination time during which it was property of the partnership or persons described in any of clauses (a)(ii)(C) to (H),

principally in an active business carried on by one or more persons as members of the partnership or by persons described in any of clauses (a)(ii)(C) to (H), but not including an interest in a partnership the fair market value of which is derived principally from real property owned by another partnership, a corporation or a trust, or any combination thereof, the shares of the capital stock of which or the interests in which, as the case may be, would, if they were disposed of at the determination time by the individual, not be non-qualifying real property of the individual,

(d) an interest in a trust the fair market value of which is derived principally from real property, other than real property that was used

(i) throughout that part of the 24-month period preceding the determination time during which it was owned by the trust or persons described in any of clauses (a)(ii)(C) to (H), or

(ii) throughout all or substantially all of the time in the period preceding the determination time during which it was owned by the trust or persons described in any of clauses (a)(ii)(C) to (H),

principally in an active business carried on by the trust or by persons described in any of clauses (a)(ii)(C) to (H), but not including an interest in a trust the fair market value of which is derived principally from real property owned by another trust, a corporation or a partnership, or any combination thereof, the shares of the capital stock of which or the interests in which, as the case may be, would, if they were disposed of at the determination time by the individual, not be non-qualifying real property of the individual, or

(e) an interest or an option in respect of property described in any of paragraphs (a) to (d),

and, for the purposes of this definition, an "active business" carried on by a person at any time means any business carried on by the person at that time other than a business (other than a business carried on by a credit union or a business of leasing property that is not real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless the person or, where the person carries on the business as a member of a partnership, the partnership

(f) employs in the business at that time more than 5 individuals on a full-time basis, or

(g) in the course of carrying on the business has managerial, administrative, financial, maintenance or other similar services provided to it at that time and the person or partnership could reasonably be expected to require more than 5 full-time employees if those services had not been so provided;

The closing words of paras. (b), (c) and (d) of the definition "non-qualifying real property" in subsec. 110.6(1) substituted by 1994, c. 21, subsecs. 50(2), (3) and (4), applicable to 1992 *et seq.* The closing words of those paras. formerly read:

principally in an active business carried on by the corporation or by persons described in any of clauses (a)(ii)(C) to (H),

. . . . .

principally in an active business carried on by one or more persons as members of the partnership or by persons described in any of clauses (a)(ii)(C) to (H),

. . . . .

principally in an active business carried on by the trust or by persons described in any of clauses (a)(ii)(C) to (H), or

"Non-qualifying real property" added to subsec. 110.6(1) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(6), applicable to 1992 *et seq.*

Selected Cases [110.6(1)"non-qualifying real property"]: *Boudreau v. R.*, [1997] 2 C.T.C. 2489 (TCC) ("One or more persons described in this subparagraph" not restricted to related persons).

"qualified farm property" of an individual (other than a trust that is not a personal trust) at any particular time means a property owned at that time by the individual, the spouse of the individual or a partnership, an interest in which is an interest in a family farm partnership of the individual or the individual's spouse that is

(a) real property that was used by

(i) the individual,

(ii) where the individual is a personal trust, a beneficiary referred to in paragraph 104(21.2)(b) of the trust,

(iii) a spouse, child or parent of a person referred to in subparagraph (i) or (ii),

(iv) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of an individual referred to in any of subparagraphs (i) to (iii), or

(v) a partnership, an interest in which is an interest in a family farm partnership of an individual referred to in any of subparagraphs (i) to (iii),

in the course of carrying on the business of farming in Canada and, for the purpose of this paragraph, property will not be considered to have been used in the course of carrying on the business of farming in Canada unless

(vi) the property or property for which the property was substituted (in this subparagraph referred to as "the property") was owned by a person who was the individual, a beneficiary referred to in subparagraph (ii) or a spouse, child or parent of the individual or of such a beneficiary, by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v) throughout the period of at least 24 months immediately preceding that time and

(A) in at least 2 years while the property was so owned the gross revenue of such a person, or of a personal trust from which the individual acquired the property, from the farming business carried on in Canada in which the property was principally used and in which such a person or, where the individual is a personal trust, a beneficiary of the trust was actively engaged on a regular and continuous basis exceeded the income of the person from all other sources for the year, or

(B) the property was used by a corporation referred to in subparagraph (iv) or a partnership referred to in subparagraph (v) principally in the course of carrying on the business of farming in Canada throughout a period of at least 24 months during which time the individual, a beneficiary referred to in subparagraph (ii) or a spouse, child or parent of the individual or of such a beneficiary was actively engaged on a regular and continuous basis in the farming business in which the property was used, or

(vii) where the property is a property last acquired by the individual or partnership before June 18, 1987, or after June 17, 1987 under an agreement in writing entered into before that date, the property or property for which the property was substituted

(in this subparagraph referred to as "the property") was used by the individual, a beneficiary referred to in subparagraph (ii) or a spouse, child or parent of the individual or of such a beneficiary, a corporation referred to in subparagraph (iv) or a partnership referred to in subparagraph (v) or by a personal trust from which the individual acquired the property principally in the course of carrying on the business of farming in Canada

(A) in the year the property was disposed of by the individual, or

(B) in at least 5 years during which the property was owned by the individual, a beneficiary referred to in subparagraph (ii) or a spouse, child or parent of the individual or of such a beneficiary, by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v),

(b) a share of the capital stock of a family farm corporation of the individual or the individual's spouse,

(c) an interest in a family farm partnership of the individual or the individual's spouse, or

(d) an eligible capital property used by a person or partnership referred to in any of subparagraphs (a)(i) to (v), or by a personal trust from which the individual acquired the property, in the course of carrying on the business of farming in Canada and, for the purpose of this paragraph, eligible capital property

(i) will not be considered to have been used in the course of carrying on the business of farming in Canada unless the conditions set out in subparagraph (a)(vi) or (vii), as the case may be, are met, and

(ii) shall be deemed to include capital property to which paragraph 70(5.1)(b) or 73(3)(d.1) applies;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner" and by Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 14(1.1) — Eligible capital property inclusion deemed to be taxable capital gain for exemption purposes; 80.03(8) — Deemed qualified farm property where capital gain deemed on disposition following debt forgiveness; 108(1)"qualified farm property" — Trusts — "qualified farm property"; 248(5) — Substituted property; 252(4) — Extended meaning of "spouse". See also Related Provisions and Definitions at end of s. 110.6.

History: Those portions of para. (a) of "qualified farm property" preceding subpara. (i) and following subpara. (v), and para. (d) in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 81(6) to (8), applicable to 1988 *et seq.* Those portions and that para. formerly read:

(a) real property used by

. . . . .

in the course of carrying on the business of farming in Canada and, for the purposes of this paragraph, property will not be considered to have been used in the course of carrying on the business of farming in Canada at that time unless

(vi) where the property is a property other than a property referred to in subparagraph (vii), the property or property for which the property was substituted was used by a person or partnership referred to in any of subparagraphs (i) to (v) or by a personal trust from which the individual acquired the property in the course of carrying on the business of farming in Canada

(A) in the year the property was disposed of by the individual, or

(B) in at least five years during which the property was owned by an individual referred to in any of subparagraphs (i) to (iii), by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v),

(vii) where the property is a property acquired by the individual or a partnership after June 17, 1987 otherwise than pursuant to an agreement in writing entered into on or before that date, the property or property for which the property was substituted was owned by an individual referred to in any of subparagraphs (i) to (iii), by a personal trust from which the individual acquired the property or by a partnership referred to in subparagraph (v) throughout the period of at least 24 months immediately preceding that time and

(A) in at least 2 years while the property was so owned, the gross revenue of an individual referred to in any of subparagraphs (i) to (iii) or of a personal trust from which the individual acquired the property from the farming business carried on in Canada in which the individual used the property and in which the individual or, where the individual is a personal trust, a beneficiary of the trust was actively engaged on a regular and continuous basis exceeded the individual's income from all other sources for the year, or

(B) the property was used by a corporation referred to in subparagraph (iv) or a partnership referred to in subparagraph (v) in the course of carrying on the business of farming in Canada throughout a period of at least 24 months during which time an individual referred to in any of subparagraphs (i) to (iii) was actively engaged on a regular and continuous basis in the farming business in which the property was used,

. . . . .

(d) an eligible capital property used by a person or partnership referred to in any of subparagraphs (a)(i) to (v) or by a personal trust from which the individual acquired the property in the course of carrying on the business of farming in Canada and, for the purpose of this definition, eligible capital property will not be considered to have been used in the course of carrying on the business of farming in Canada unless the conditions set out in subparagraph (a)(vi) or (vii), as the case may be, are met;

Pre-RSC History: "Qualified farm property" in subsec. 110.6(1) substituted by 1988, c. 55, subsec. 81(3), applicable to 1988 *et seq.* The definition formerly read:

"qualified farm property" of an individual means a property owned by him or his spouse that was

(a) real property used by

(i) the individual, his spouse or any of his children,

(ii) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation (within the meaning assigned by paragraph 70(10)(b)) of the individual, his spouse or any of his children, or

(iii) a partnership, an interest in which is an interest in a family farm partnership (within the meaning assigned by paragraph 70(10)(c)) of the individual, his spouse or any of his children

in the course of carrying on the business of farming in Canada and for the purposes of this definition property will be considered to have been used by the individual in the course of carrying on the business of farming in Canada if the property or property for which that real property was substituted was used by a person or partnership, as the case may be, referred to in subparagraphs (i) to (iii) in the course of carrying on a business of farming in Canada

(iv) in the year the property was disposed of by the individual, or

(v) in at least five years during which the property was owned by the individual, his spouse or his children,

(b) a share of the capital stock of a family farm corporation (within the meaning assigned by paragraph 70(10)(b)) of the individual or his spouse, or

(c) an interest in a family farm partnership (within the meaning assigned by paragraph 70(10)(c)) of the individual or his spouse.

Interpretation Bulletins: IT-236R4: Reserves — disposition of capital property. See also list at end of s. 110.6.

"qualified small business corporation share" of an individual (other than a trust that is not a personal trust) at any time (in this definition referred to as the "determination time") means a share of the capital stock of a corporation that,

(a) at the determination time, is a share of the capital stock of a small business corporation owned by the individual, the individual's spouse or a partnership related to the individual,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) throughout the 24 months immediately preceding the determination time, was not owned by anyone other than the individual or a person or partnership related to the individual, and

(c) throughout that part of the 24 months immediately preceding the determination time while it was owned by the individual or a person or partnership related to the individual, was a share of the capital stock of a Canadian-controlled private corporation more than 50% of the fair market value of the assets of which was attributable to

(i) assets used principally in an active business carried on primarily in Canada by the corporation or by a corporation related to it,

(ii) shares of the capital stock or indebtedness of one or more other corporations that were connected (within the meaning of subsection 186(4) on the assumption that each of the other corporations was a "payer corporation" within the meaning of that subsection) with the corporation where

(A) throughout that part of the 24 months immediately preceding the determination time that ends at the time the corporation acquired such a share or indebtedness, the share or indebtedness was not owned by anyone other than the corporation, a person or partnership related to the corporation or a person or partnership related to such a person or partnership, and

(B) throughout that part of the 24 months immediately preceding the determination time while such a share or indebtedness was owned by the corporation, a person or partnership related to the corporation or a person or partnership related to such a person or partnership, it was a share or indebtedness of a Canadian-controlled private corporation more than 50% of the fair market value of the assets of which was attributable to assets described in subparagraph (iii), or

(iii) assets described in either of subparagraph (i) or (ii)

except that

(d) where, for any particular period of time in the 24-month period ending at the determination time, all or substantially all of the fair market value of the assets of a particular corporation that is the corporation or another corporation that was connected with the corporation cannot be attributed to assets described in subparagraph (c)(i), shares or indebtedness of corporations described in clause (c)(ii)(B), or any combination thereof, the reference in clause (c)(ii)(B) to "more than 50%" shall, for the particular period of time, be read as a reference to "all or substantially all" in respect of each other corporation that was connected with the particular corporation and, for the purpose of this paragraph, a corporation is connected with another corporation only where

(i) the corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation was a "payer corporation" within the meaning of that subsection) with the other corporation, and

(ii) the other corporation owns shares of the capital stock of the corporation and, for the purpose of this subparagraph, the other corporation shall be deemed to own the shares of the capital stock of any corporation that are owned by a corporation any shares of the capital stock of which are owned or are deemed by this subparagraph to be owned by the other corporation,

(e) where, at any time in the 24-month period ending at the determination time, the share was substituted for another share, the share shall be considered to have met the requirements of this definition only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in paragraph (b) throughout the period beginning 24 months before the determination time and ending at the time of substitution, and

(ii) was a share of the capital stock of a corporation described in paragraph (c) throughout that part of the period referred to in subparagraph (i) during which such share was owned by a person or partnership described in paragraph (b), and

(f) where, at any time in the 24-month period ending at the determination time, a share referred to in subparagraph (c)(ii) is substituted for another share, that share shall be considered to meet the requirements of subparagraph (c)(ii) only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in clause (c)(ii)(A) throughout the period beginning 24 months before the determination time and ending at the time of substitution, and

(ii) was a share of the capital stock of a corporation described in paragraph (c) throughout that part of the period referred to in subparagraph (i) during which the share was owned by a person or partnership described in clause (c)(ii)(A);

Related Provisions: 80.03(8) — Deemed qualified small business corporation share where capital gain deemed on disposition following debt forgiveness; 108(1)"qualified small business corporation share" — Trusts; 110.6(1.1) — Fair market value of net income stabilization account; 110.6(14) — Various rules of interpretation; 110.6(15) — Value of assets of corporation; 110.6(16) — Personal trust; 248(5) — Substituted property; 252(4) — Extended meaning of "spouse". See also Related Provisions and Definitions at end of s. 110.6.

History: Subparas. (c)(i), (ii) and paras. (d) to (f) of "qualified small business corporation share" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 81(9), (10), applicable to dispositions of shares occurring after June 17, 1987. Those subparas. and paras. formerly read:

(i) assets used in an active business carried on primarily in Canada by the corporation or by a corporation related to it,

(ii) shares of the capital stock of or bonds, debentures, bills, notes, mortgages or similar obligations issued by one or more other corporations that were connected with the corporation (within the meaning of subsection 186(4) on the assumption that in each case the connected other corporation was at that time a "payer corporation" within the meaning of that subsection) where

(A) throughout that part of the 24 months immediately preceding the determination time that ends at the time the corporation acquired those shares or obligations, the shares or obligations were not owned by anyone other than the corporation or a person or partnership related to it, and

(B) throughout that part of the 24 months immediately preceding the determination time while those shares or obligations were owned by the corporation or a person or partnership related to it, they were shares or obligations of Canadian-controlled private corporations more than 50% of the fair market value of the assets of which was attributable to assets described in subparagraph (iii), or

. . . . .

(d) where, for any period of time in the 24 month period ending at the determination time, all or substantially all of the fair market value of the assets of a corporation cannot be attributed to assets described in subparagraph (c)(i) or shares or obligations of corporations described in clause (c)(ii)(B), the reference in clause (c)(ii)(B) to "more than 50%" shall, for that period of time, be read as a reference to "all or substantially all" in respect of other corporations connected with the corporation (within the meaning of subsection 186(4) on the assumption that in each case the connected other corporation was at that time a "payer corporation" within the meaning of that subsection)

(e) where, at any time in the 24 month period ending at the determination time, the share was substituted for another share, the share shall be considered to have met the requirements of this definition only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in paragraph (b), and

(ii) was a share of the capital stock of a corporation described in paragraph (c),

throughout that part of that 24 month period ending at the determination time that ends at the time of substitution, and

(f) where, at any time in the 24-month period ending at the determination time, a share referred to in subparagraph (c)(ii) is substituted for another share, that share shall be considered to have met the requirements of that subparagraph only where the other share

(i) was not owned by any person or partnership other than a person or partnership described in clause (c)(ii)(A), and

(ii) was a share of the capital stock of a corporation described in paragraph (c),

throughout that part of that 24 month period ending at the determination time that ends at the time of substitution;

Pre-RSC History: "Qualified small business corporation share" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable with respect to dispositions of shares after June 17, 1987.

Interpretation Bulletins: See list at end of s. 110.6.

Information Circulars: 88-2, para. 15: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, paras. 3, 4: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-53: Purification of a small business corporation; ATR-55: Amalgamation followed by sale of shares.

"share of the capital stock of a family farm corporation" of an individual (other than a trust that is not a personal trust) at any time means a share of the capital stock of a corporation owned by the individual at that time where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property owned by the corporation was attributable to

(i) property that was used by

(A) the corporation,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, child or parent of the individual or of a beneficiary referred to in clause (C), or

(E) a partnership, an interest in which was an interest in a family farm partnership of the individual, a beneficiary referred to in clause (C) or a spouse, child or parent of the individual or of such a beneficiary,

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary referred to in clause (C) or a spouse, child or parent of the individual or of such a beneficiary, was actively engaged on a regular and continuous basis,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii), and

(b) at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(i) property that was used principally in the course of carrying on the business of farming in Canada by the corporation or a person or partnership referred to in subparagraph (a)(i),

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii).

Related Provisions: 110.6(1.1) — Fair market value of net income stabilization account; 110.6(15) — Value of assets of corporation; 252(4) — Extended meaning of "spouse"; 257 — Formula cannot calculate to less than zero. See also Related Provisions and Definitions at end of s. 110.6.

History: That portion of subpara. (a)(i) of "share of the capital stock of a family farm corporation" preceding cl. (A) in subsec. 110.6(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(5), applicable to 1992 *et seq.* That portion formerly read:

(i) property used by

"Share of a capital stock of a family farm corporation" in subsec. 110.6(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(11), applicable to 1988 *et seq.* That definition formerly read:

"share of the capital stock of a family farm corporation" of an individual (other than a trust that is not a personal trust) at any time means a share of the capital stock of a corporation owned by the individual at that time where, at that time, all or substantially all of the property owned by the corporation was

(a) property used by

(i) the corporation,

(ii) the individual,

(iii) where the individual is a personal trust, a beneficiary of the trust,

(iv) a spouse, child or parent of an individual referred to in subparagraph (ii) or (iii), or

(v) a partnership, an interest in which was an interest in a family farm partnership of an individual referred to in subparagraph (ii), (iii) or (iv)

throughout a period of at least 24 months before that time in the course of carrying on the business of farming in Canada in which any individual referred to in subparagraph (ii), (iii) or (iv) was actively engaged on a regular and continuous basis,

(b) shares of the capital stock of one or more corporations all or substantially all of the property of which was property described in paragraph (a) or bonds, debentures, bills, notes, mortgages or similar obligations issued by such a corporation, or

(c) properties described in either of paragraph (a) or (b).

Pre-RSC History: "Share of the capital stock of a family farm corporation" added to subsec. 110.6(1) by 1988, c. 55, subsec. 81(4), applicable to 1988 *et seq.*

Advance Tax Rulings: ATR-56: Purification of a family farm corporation.

(1.1) Idem — For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1), the fair market value of a net income stabilization account shall be deemed to be nil.

History: Subsec. 110.6(1.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(7), applicable to 1991 *et seq.*

(2) Capital gains deduction — qualified farm property — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of qualified farm property in the year or a preceding taxation year ending after 1984, there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount, if any, by which $375,000 exceeds the total of

Proposed Amendment — Change from $375,000 to $333,333

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This means that the $375,000 figure in 110.6(2)(d), 110.6(2.1)(d) and 110.6(4) will be changed to $333,333, with the appropriate transitional rules — ed.]

(i) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year,

(ii) where the taxation year ended after 1987, 1/3 of the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a taxation year ending before 1988, and

(iii) where the taxation year ended after 1989, 1/8 of the total of

(A) all amounts deducted under this section in computing the individual's taxable income for a taxation year ending before 1990 (other than amounts deducted under this section for a taxation year in respect of an amount that was included in computing the individual's income for that year because of subparagraph 14(1)(a)(v)), and

(B) the amount determined under subparagraph (ii) in respect of the individual for the year,

(b) the individual's cumulative gains limit at the end of the year,

(c) the individual's annual gains limit for the year, and

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984.

Related Provisions: 14(1.1) — Eligible capital property inclusion deemed to be taxable capital gain for exemption purposes; 40(1.1) — extended capital gains reserve where farm property disposed of to child; 40(3.1) — Deemed disposition where negative ACB of partnership interest creates deemed gain; 73(3) — Intergenerational rollover of farm property; 110.6(4) — Maximum deduction; 110.6(5) — Individual deemed resident in Canada throughout year; 110.6(6) — Failure to report gain; 110.6(7)–(11) — Restrictions; 110.6(13) — Meaning of "amount determined under para. 3(b)"; 110.6(17) — Order of deduction. See additional Related Provisions and Definitions at end of s. 110.6.

History: 1995, c. 3, para. 32(15)(a), states that in applying the Act to the 1994 and 1995 taxation years, para. 110.6(2)(d) shall be read as follows:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984 otherwise than because of an election made under subsection (19).

Cl. 110.6(2)(a)(iii)(A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(8), applicable to 1990 *et seq.* That cl. formerly read:

(A) the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a taxation year ending before 1990, and

Pre-RSC History: That portion of subsec. 110.6(2) preceding para. (a) amended by 1988, c. 55, subsec. 81(5), to delete "ending before 1990" which had followed "(other than a trust)" and para. (a) substituted, applicable to 1988 *et seq.*, except that for the 1988 and 1989 taxation years the reference to "$375,000" in para. (a) shall be read as a reference to "$333,333". Para. (a) formerly read:

(a) the amount, if any, by which $250,000 exceeds the aggregate of all amounts each of which is an amount deducted by the individual under this subsection in computing his taxable income for a preceding taxation year;

1986, c. 6, s. 58 provides that in its application to the 1985 taxation year, para. 110.6(2)(d) shall be read as follows:

(d) the amount, if any, by which

(i) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by him after 1984

exceeds

(ii) the amount, if any, by which

(A) the aggregate of all amounts deducted under subsection 146(5.3) in computing his income for the year in respect of his capital gains for the year from the disposition of property in the year

exceeds

(B) the aggregate of all amounts included under subsection 146(8) in computing his income for the year.

Selected Cases [subsec. 110.6(2)]: *Larsen v. R.*, [2000] 1 C.T.C. 209 (FCA) (Timber stand may be farm property).

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation; ATR-56: Purification of a family farm corporation.

Forms: T657: Calculation of capital gains deduction on all capital property. See also list at end of s. 110.6.

(2.1) Capital gains deduction — qualified small business corporation shares — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of a share of a corporation in the year or a preceding taxation year and after June 17, 1987 that, at the time of disposition, was a qualified small business corporation share of the individual, there may be deducted such amount as the individual may claim not exceeding the least of

Proposed Amendment — Change from $375,000 to $333,333

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110.6(2)(a) — ed.]

(a) the amount, if any, by which $375,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year,

(ii) where the taxation year ended after 1987, the amount determined under subparagraph (2)(a)(ii) in respect of the individual for the year, and

(iii) where the taxation year ended after 1989, the amount determined under subparagraph (2)(a)(iii) in respect of the individual for the year,

(b) the amount, if any, by which the individual's cumulative gains limit at the end of the year exceeds the amount deducted under subsection (2) in computing the individual's taxable income for the year,

(c) the amount, if any, by which the individual's annual gains limit for the year exceeds the amount deducted under subsection (2) in computing the individual's taxable income for the year, and

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares disposed of by the individual after June 17, 1987.

Related Provisions: 40(1.1)(c) — extended capital gains reserve where small business corporation disposed of to child; 48.1 — Deemed disposition to trigger exemption before small business corporation goes public; 69(11)(a)(i) — Exception to rule deeming proceeds at FMV where CG deduction claimed after incorporation or dissolution of partnership; 110.6(4) — Maximum deduction; 110.6(5) — Individual deemed resident in Canada throughout year; 110.6(6) — Failure to report gain; 110.6(7)–(11) — Restrictions; 110.6(13) — Meaning of "amount determined under para. 3(b)". See additional Related Provisions and Definitions at end of s. 110.6.

History: Para. 110.6(2.1)(d) amended by 1998, c. 19, subsec. 130(1), applicable to 1996 *et seq.* Para. 110.6(2.1)(d) formerly read:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares disposed of by the individual after June 17, 1987.

1995, c. 3, para. 32(15)(b), states that in applying the Act to the 1994 and 1995 taxation years, para. 110.6(2.1)(d) shall be read as follows:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares disposed of by the individual after June 17, 1987 otherwise than because of an election made under subsection (19).

Pre-RSC History: Subsec. 110.6(2.1) added by 1988, c. 55, subsec. 81(6), applicable to 1988 *et seq.* except that for the 1988 and 1989 taxation years the reference to "$375,000" in para. (a) shall be read as a reference to "$333,333".

Selected Cases [subsec. 110.6(2.1)]: *Ast (H.) Estate v. Canada*, [1992] 2 C.T.C. 2251 (TCC) (Capital gains deduction validly claimed in year subsequent to disposition).

Interpretation Bulletins: See list at end of s. 110.6.

Information Circulars: 88-2, para. 15: General anti-avoidance rule — section 245 of the *Income Tax Act*; 88-2 Supplement, paras. 3, 4: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-53: Purification of a small business corporation; ATR-55: Amalgamation followed by sale of shares.

Forms: T657: Calculation of capital gains deduction on all capital property. See also list at end of s. 110.6.

(3) [Repealed]

Related Provisions: 110.6(4) — Maximum deduction; 110.6(5) — Individual deemed resident in Canada throughout year; 110.6(6) — Failure to report gain; 110.6(7)–(11) — Restrictions; 110.6(17) — Order of deduction 110.6(19) — Election to trigger gains accrued to February 22/94. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(3) repealed by 1995, c. 3, subsec. 32(3), applicable to 1996 *et seq.*; and, in applying subsec. 110.6(3) to the 1994 and 1995 taxation years, the opening words of subsec. (3) shall be read as follows:

(3) In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of property (other than property the capital gain or capital loss from the disposition of which is included in determining an amount under paragraph (2)(d) or (2.1)(d)) there may be deducted such amount as the individual claims, not exceeding the least of

Subsec. 110.6(3) formerly read:

(3) Capital gains deduction — other property — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of property (other than a disposition of property to which subsection (2) or (2.1) applies) there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount, if any, by which $75,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the individual under this subsection in computing the individual's taxable income for a preceding taxation year,

(ii) where the taxation year ended after 1987, 1/3 of the total of all amounts each of which is an amount deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1988, and

(iii) where the taxation year ended after 1989, 1/8 of the total of

(A) all amounts deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1990 (other than amounts deducted under this subsection for a taxation year in respect of an amount that was included in computing the individual's income for that year because of subparagraph 14(1)(a)(v)), and

(B) the amount determined under subparagraph (ii) in respect of the individual for the year,

(b) the amount, if any, by which the individual's cumulative gains limit at the end of the year exceeds the total of all amounts each of which is an amount deducted under subsection (2) or (2.1) in computing the individual's taxable income for the year, and

(c) the amount, if any, by which the individual's annual gains limit for the year exceeds the total of all amounts each of which is an amount deducted under subsection (2) or (2.1) in computing the individual's taxable income for the year.

Cl. 110.6(3)(a)(iii)(A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(9), applicable to 1990 *et seq.* That cl. formerly read:

(A) the total of all amounts each of which is an amount deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1990, and

Pre-RSC History: Subsec. 110.6(3) substituted by 1988, c. 55, subsec. 81(7), applicable to 1988 *et seq.*, except that for the 1988 and 1989 taxation years the reference to "$75,000" in para. (a) shall be read as a reference to "$66,667". Subsec. (3) formerly read:

(3) Capital gains deduction — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year, there may be deducted such amount as he may claim not exceeding the least of

(a) the amount, if any, by which $250,000 exceeds the aggregate of all amounts each of which is an amount deducted by the individual under this section in computing his taxable income for a preceding taxation year;

(b) the amount, if any, by which his cumulative gains limit at the end of the year exceeds the amount deducted under subsection (2) in computing his taxable income for the year; and

(c) the amount, if any, by which his annual gains limit for the year exceeds the amount deducted under subsection (2) in computing his taxable income for the year.

1986, c. 6, s. 58 provides that in its application to taxation years ending after 1984 and before 1990, para. 110.6(3)(a) shall be read as follows:

(a) the amount, if any, by which the allowable exemption for the year exceeds the aggregate of all amounts each of which is an amount deducted by the individual under this subsection in computing his taxable income for a preceding taxation year and, for the purposes of this paragraph, "allowable exemption" for a taxation year means

(i) for the 1985 taxation year, $10,000,

(ii) for the 1986 taxation year, $25,000,

(iii) for the 1987 taxation year, $50,000,

(iv) for the 1988 taxation year, $100,000, and

(v) for the 1989 taxation year, $150,000;

Selected Cases [subsec. 110.6(3)]: *Cardin v. R.*, [1998] 3 C.T.C. 22 (FCA) (Capital gain (not just taxable portion) to be included in income for purposes of calculation for old age pension).

Interpretation Bulletins: IT-297R2: Gifts in kind to charity and others. See also list at end of s. 110.6.

Advance Tax Rulings: ATR-34: Preferred beneficiary's election.

Forms: T657: Calculation of capital gains deduction on all capital property; T657A: Calculation of capital gains deduction on other capital property. See also list at end of s. 110.6.

(4) Maximum capital gains deduction — Notwithstanding subsections (2) and (2.1), the total amount that may be deducted under this section in computing an individual's taxable income for a taxation year shall not exceed the amount, if any, by which $375,000 exceeds the total of

Proposed Amendment — Change from $375,000 to $333,333

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 110.6(2)(a) — ed.]

(a) the total of all amounts each of which is an amount deducted by the individual under this section in computing the individual's taxable income for a preceding taxation year,

(b) where the taxation year ended after 1987, the amount determined under subparagraph (2)(a)(ii) in respect of the individual for the year, and

(c) where the taxation year ended after 1989, the amount determined under subparagraph (2)(a)(iii) in respect of the individual for the year.

History: The opening words of subsec. 110.6(4) amended by 1995, c. 3, subsec. 32(4), applicable to 1996 *et seq.* The opening words formerly read:

(4) Notwithstanding subsections (2) and (2.1), the total amount that may be deducted under this section in computing an individual's taxable income for a taxation year shall not exceed the amount, if any, by which $375,000 exceeds the total of

Pre-RSC History: Subsec. 110.6(4) substituted by 1988, c. 55, subsec. 81(7), applicable to 1988 *et seq.*, except that for the 1988 and 1989 taxation years the reference to "$375,000" shall be read as a reference to "$333,333". Subsec. 110.6(4) formerly read:

(4) Notwithstanding subsections (2) and (3), the total amount that may be deducted under this section in computing the taxable income of an individual for a taxation year shall not exceed the amount, if any, by which $250,000 exceeds the aggregate of all amounts each of which is an amount deducted by the individual under this section in computing his taxable income for a preceding taxation year.

(5) Deemed resident in Canada — Where an individual was resident in Canada at any time in a particular taxation year and throughout

(a) the immediately preceding taxation year, or

(b) the immediately following taxation year,

for the purposes of subsections (2) and (2.1) the individual shall be deemed to have been resident in Canada throughout the particular year.

Related Provisions: 14(8) — Parallel rule for cumulative eligible capital recapture. See additional Related Provisions and Definitions at end of s. 110.6.

History: The closing words of subsec. 110.6(5) amended by 1995, c. 3, subsec. 32(5), applicable to 1996 *et seq.* The closing words formerly read:

for the purposes of subsections (2), (2.1) and (3) the individual shall be deemed to have been resident in Canada throughout the particular year.

Pre-RSC History: That portion of subsec. 110.6(5) following para. (b) amended by 1988, c. 55, subsec. 81(8), to substitute "subsections (2), (2.1) and (3)" for "this section", applicable to 1988 *et seq.*

(6) Failure to report capital gain — Notwithstanding subsections (2) and (2.1), where an individual has a capital gain for a taxation year from the disposition of a capital property and knowingly or under circumstances amounting to gross negligence

(a) fails to file a return of the individual's income for the year within one year after the day on or before which the individual is required to file a return of the individual's income for the year pursuant to section 150, or

(b) fails to report the capital gain in the individual's return of income for the year required to be filed pursuant to section 150,

no amount may be deducted under this section in respect of the capital gain in computing the individual's taxable income for that or any subsequent taxation year and the burden of establishing the facts justifying the denial of such an amount under this section is on the Minister.

History: The opening words of subsec. 110.6(6) amended by 1995, c. 3, subsec. 32(6), applicable to 1996 *et seq.* The opening words formerly read:

(6) Notwithstanding subsections (2), (2.1) and (3), where an individual has a capital gain for a taxation year from the disposition of a capital property and knowingly or under circumstances amounting to gross negligence

Pre-RSC History: That portion of subsec. 110.6(6) preceding para. (a) amended by 1988, c. 55, subsec. 81(9), to add reference to subsec. (2.1), applicable to 1988 *et seq.*

(7) Deduction not permitted — Notwithstanding subsections (2) and (2.1), where an individual has a capital

gain for a taxation year from the disposition of property as part of a series of transactions or events

(a) to which subsection 55(2) would, but for paragraph 55(3)(b), apply, or

(b) in which any property is acquired by a corporation or partnership for consideration that is significantly less than the fair market value of the property at the time of acquisition (other than an acquisition as the result of an amalgamation or merger of corporations or the winding-up of a corporation or partnership or a distribution of property of a trust in satisfaction of all or part of a corporation's capital interest in the trust),

no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

History: The opening words of subsec. 110.6(7) amended by 1995, c. 3, subsec. 32(7), applicable to 1996 *et seq.* The opening words formerly read:

(7) Where deduction not permitted — Notwithstanding subsections (2), (2.1) and (3), where an individual has a capital gain for a taxation year from the disposition of property as part of a series of transactions or events each of which is effected or to be effected after November 21, 1985

Pre-RSC History: That portion of subsec. 110.6(7) preceding para. (a) amended to add reference to subsec. (2.1), applicable to 1988 *et seq.*, and para. 110.6(7)(b) amended to substitute "consideration that is significantly less than the fair market value of the property" for "consideration that does not approximate its fair market value", applicable to 1985 *et seq.*, by 1988, c. 55, subsecs. 81(10), (11).

Advance Tax Rulings: ATR-56: Purification of a family farm corporation.

(8) Deduction not permitted — Notwithstanding subsections (2) and (2.1), where an individual has a capital gain for a taxation year from the disposition of a property and it can reasonably be concluded, having regard to all the circumstances, that a significant part of the capital gain is attributable to the fact that dividends were not paid on a share (other than a prescribed share) or that dividends paid on such a share in the year or in any preceding taxation year were less than 90% of the average annual rate of return thereon for that year, no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

Related Provisions: 110.6(9) — Average annual rate of return; 183.1(7) — Tax on corporate distributions — application of s. 110.6(8). See also Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(8) amended by 1995, c. 3, subsec. 32(8), applicable to 1996 *et seq.* Subsec. (8) formerly read:

(8) Idem — Notwithstanding subsections (2), (2.1) and (3), where an individual has a capital gain for a taxation year from the disposition, after November 21, 1985, of a property and it may reasonably be concluded, having regard to all the circumstances, that a significant part of the capital gain is attributable to the fact that dividends were not paid on a share (other than a prescribed share) of a corporation or that dividends paid on such a share in the year or in any preceding taxation year were less than 90% of the average annual rate of return thereon for that year, no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

Pre-RSC History: Subsec. 110.6(8) amended by 1988, c. 55, subsec. 81(12), to add reference to subsec. (2.1) and to substitute "a significant part" for "a significant portion", applicable to 1988 *et seq.*

Regulations: 6205 (prescribed share).

(9) Average annual rate of return — For the purpose of subsection (8), the average annual rate of return on a share (other than a prescribed share) of a corporation for a taxation year is the annual rate of return by way of dividends that a knowledgeable and prudent investor who purchased the share on the day it was issued would expect to receive in that year, other than the first year after the issue, in respect of the share if

(a) there was no delay or postponement of the payment of dividends and no failure to pay dividends in respect of the share;

(b) there was no variation from year to year in the amount of dividends payable in respect of the share (other than where the amount of dividends payable is expressed as an invariant percentage of or by reference to an invariant difference between the dividend expressed as a rate of interest and a generally quoted market interest rate); and

(c) the proceeds to be received by the investor on the disposition of the share are the same amount the corporation received as consideration on the issue of the share.

Regulations: 6205 (prescribed share).

(10) [Repealed under former Act]

Pre-RSC History [subsec. 110.6(10)]: Subsec. 110.6(10) repealed by 1988, c. 55, subsec. 81(13), applicable to 1988 *et seq.*, and in its application to taxation years ending after 1984 and before 1988 it shall be read as follows:

(10) Notwithstanding subsections (2) and (3), where an individual has a capital gain for a taxation year arising as a result of his granting, after November 21, 1985, an extension or renewal of an option to acquire property, other than qualified farm property, no amount in respect of that capital gain shall be deducted under this section in computing his taxable income for the year.

Subsec. (10) formerly read:

(10) Gain from extension or renewal of option — Notwithstanding subsections (2) and (3), where an individual has a capital gain for a taxation year arising as a result of his granting, after November 21, 1985, an extension or renewal of an option to acquire property, no amount in respect of that capital gain shall be deducted under this section in computing his taxable income for the year.

(11) Where deduction not permitted — Where it is reasonable to consider that one of the main reasons for an individual acquiring, holding or having an interest in a partnership or trust (other than an interest in a personal trust) or a share of an investment corporation, mortgage investment corporation or mutual fund corporation, or for the existence of any terms, conditions, rights or other attributes of the interest or share, is to enable the individual to receive or have allocated to the individual a percentage of any capital gain or taxable capital gain of the partnership, trust or corporation that is larger than the individual's percentage of the income of the partnership, trust or corporation, as the case may be, notwithstanding any other provision of this Act,

(a) no amount may be deducted under this section by the individual in respect of any such gain allocated or distributed to the individual after November 21, 1985; and

(b) where the individual is a trust, any such gain allocated or distributed to it after November 21, 1985 shall not be included in computing its eligible taxable capital gain (within the meaning assigned by subsection 108(1)).

Pre-RSC History: Subsec. 110.6(11) amended by 1988, c. 55, subsec. 81(14), to substitute "(other than an interest in a personal trust")" for "(other than an interest in a testamentary trust or an interest in a trust no beneficial interest in which was acquired for consideration payable directly or indirectly to the trust or to any person who has made a contribution to the trust by way of a transfer, assignment or other disposition of property)", applicable to 1985 *et seq.*

(12) Spousal trust deduction — Notwithstanding any other provision of this Act, a trust described in paragraph

104(4)(a) or (a.1) (other than a trust that elected under subsection 104(5.3)) may, in computing its taxable income for its taxation year that includes the day determined under paragraph 104(4)(a) or (a.1), as the case may be, in respect of the trust, deduct under this section an amount equal to the least of

Proposed Amendment — 110.6(12) opening words

(12) Trust deduction — Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) or (a.1) (other than a trust that elected under subsection 104(5.3), an *alter ego* trust or a joint partner trust) may, in computing its taxable income for its taxation year that includes the day determined under paragraph 104(4)(a) or (a.1), as the case may be, in respect of the trust, deduct under this section an amount equal to the least of

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 56, will amend the opening words of subsec. 110.6(12) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 110.6(12) of the Act generally allows spousal trusts access to the unused lifetime capital gains exemption of the beneficiary spouse, for the taxation year of the spousal trust in which the beneficiary spouse dies. Under paragraph 104(4)(a), there is generally a deemed disposition for a post-1971 partner trust once the beneficiary spouse dies.

Subsection 110.6(12) is amended to ensure that it does not apply to *alter ego* trusts or joint spousal trusts (as newly defined in subsection 248(1)). This amendment is consequential to the extension of paragraph 104(4)(a) to provide for deemed dispositions for *alter ego* trusts and joint partner trusts.

(a) the amount, if any, by which the eligible taxable capital gains (within the meaning assigned by subsection 108(1)) of the trust for that year exceeds the amount, if any, by which

(i) the total of all amounts each of which is the amount, if any, determined under paragraph (b) or (d) of the definition "cumulative gains limit" in subsection (1) in respect of the taxpayer's spouse at the end of the taxation year in which the spouse died

exceeds

(ii) the amount if any, determined under paragraph (a) of the definition "cumulative gains limit" in subsection (1) in respect of the taxpayer's spouse at the end of the taxation year in which the spouse died,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984 and qualified small business corporation shares disposed of by it after June 17, 1987, and

(c) the amount, if any, by which $375,000 exceeds the total of

(i) the total of all amounts each of which is an amount deducted by the taxpayer's spouse under this section for the taxation year in which the spouse died or a preceding taxation year, and

(ii) the total of all amounts each of which is an amount determined under subparagraph (2)(a)(ii) or (iii) in respect of the taxpayer's spouse for the taxation year in which the spouse died.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(21.1) — Beneficiary's taxable capital gain from trust; 110.6(13) — Meaning of "amount determined under para. 3(b)". See additional Related Provisions and Definitions at end of s. 110.6.

History: Para. 110.6(12)(b) amended by 1995, c. 3, subsec. 32(9), applicable to taxation years that end after February 22, 1994 except that, for taxation years that end after that day and before 1997, it shall be read as follows:

(b) the total of

(i) the least of

(A) the amount, if any, determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and losses,

(A.1) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and losses if

(I) the only properties referred to in that paragraph were properties (other than properties referred to in subparagraph (ii)) disposed of by it after 1984 and before February 23, 1994,

(II) the trust's capital gains and capital losses for the year from dispositions of non-qualifying real property of the trust were equal to its eligible real property gains and eligible real property losses, respectively, for that year from those dispositions,

(III) no amount were included under paragraph 3(b) in respect of a capital gain of the trust that resulted from an election made under subsection (19) by another trust unless the trust was a beneficiary under the other trust on February 22, 1994, and

(IV) except for the purpose of determining the trust's share of a taxable capital gain of a partnership for the partnership's fiscal period that includes February 22, 1994 or a taxable capital gain of the trust resulting from a designation made under section 104 by another trust for the other trust's taxation year that includes that day, in determining the trust's taxable capital gain for a taxation year that begins after that day from the disposition of a property (other than a qualified small business corporation share or qualified farm property), this Act were read without reference to subparagraphs 40(1)(a)(ii) and 44(1)(e)(ii), and

(B) the amount, if any, by which $75,000 exceeds the total of

(I) the total of all amounts each of which is an amount deducted under subsection (3) in computing the taxable income of the taxpayer's spouse for the taxation year in which the spouse died or a preceding taxation year, and

(II) the total of all amounts each of which is an amount determined under subparagraph (3)(a)(ii) or (iii) in respect of the taxpayer's spouse for the taxation year in which the spouse died, and

(ii) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984 and qualified small business corporation shares disposed of by it after June 17, 1987; and

Para. (b) formerly read:

(b) the total of

(i) the least of

(A) the amount, if any, determined under paragraph 3(b) in respect of the trust for that year in respect of capital gains and capital losses,

(A.1) the amount, if any, that would be determined under paragraph 3(b) in respect of the trust for that year in respect of capital gains and capital losses if

(I) the only properties referred to in that paragraph were properties disposed of by it after 1984, other than properties referred to in subparagraph (ii), and

(II) the trust's capital gains and capital losses for that year from dispositions of non-qualifying real property of the trust were equal to its eligible real property gains and eligible real property losses, respectively, for that year from those dispositions, and

(B) the amount, if any, by which $75,000 exceeds the total of

(I) the total of all amounts each of which is an amount deducted by the taxpayer's spouse under subsection (3) for the taxation year in which the spouse died or a preceding taxation year, and

(II) the total of all amounts each of which is an amount determined under subparagraph (3)(a)(ii) or (iii) in respect of the taxpayer's spouse for the taxation year in which the spouse died, and

(ii) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984 and qualified small business corporation shares disposed of by it after June 17, 1987, and

That portion of subsec. 110.6(12) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(10), applicable to 1993 *et seq.* That portion formerly read:

(12) Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) may, in computing its taxable income for its taxation year in which the taxpayer's spouse referred to in that paragraph died, deduct under this section an amount equal to the least of

All that portion of para. 110.6(12)(b) preceding cl. (i)(B) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(11), applicable to 1992 *et seq.* That portion formerly read:

(b) the total of

(i) the lesser of

(A) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by it after 1984, other than properties referred to in subparagraph (ii), and

Pre-RSC History: Subsec. 110.6(12) substituted by 1988, c. 55, subsec. 81(15), applicable to 1988 *et seq.*, except that for the 1988 and 1989 taxation years the references to "$75,000" in cl. (b)(i)(B) and "$375,000" in para. (c) shall be read as references to "$66,667" and "$333,333" respectively. Subsec. (12) formerly read:

(12) Deduction from taxable income of spousal trust — Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) may, in computing its taxable income for its taxation year in which the taxpayer's spouse referred to in that paragraph died, deduct under this section an amount equal to the lesser of

(a) the amount, if any, by which the eligible taxable capital gains (within the meaning assigned by paragraph 108(1)(d.2)) of the trust for that year exceeds the amount, if any, by which

(i) the amount, if any, determined under paragraph (b) of the definition "cumulative gains limit" in subsection (1) in respect of the taxpayer's spouse at the end of the taxation year in which the spouse died

exceeds

(ii) the amount, if any, determined under paragraph (a) of the definition "cumulative gains limit" in subsection (1) in respect of the taxpayer's spouse at the end of the taxation year in which the spouse died; and

(b) the amount, if any, by which $250,000 exceeds the aggregate of all amounts each of which is an amount deducted by the taxpayer's spouse under this section for the taxation year in which the spouse died or a preceding taxation year.

1986, c. 6, s. 58 provides that in its application to taxation years ending after 1984 and before 1990, para. (b) shall be read as follows:

(b) the amount, if any, by which the allowable exemption (within the meaning assigned by paragraph (3)(a)) for the taxation year in which the spouse died exceeds the aggregate of all amounts each of which is an amount deducted by the spouse under this section for the taxation year in which the spouse died or a preceding taxation year.

Forms: T3, Sched. 5: Beneficiary spouse information and calculation of spousal trust's capital gains deduction.

(13) Determination under para. 3(b) — For the purposes of this section, the amount determined under paragraph 3(b) in respect of an individual for a period throughout which the individual was not resident in Canada is nil.

Related Provisions: 74.2(2) — Deemed gain or loss under attribution rules; 104(21), (21.2) — Beneficiary's taxable capital gain from trust. See additional Related Provisions and Definitions at end of s. 110.6.

(14) Related persons, etc. [miscellaneous rules re shares] — For the purposes of the definition "qualified small business corporation share" in subsection (1),

(a) a taxpayer shall be deemed to have disposed of shares that are identical properties in the order in which the taxpayer acquired them;

(b) in determining whether a corporation is a small business corporation or a Canadian-controlled private corporation at any time, a right referred to in paragraph 251(5)(b) shall not include a right under a purchase and sale agreement relating to a share of the capital stock of a corporation;

(c) a personal trust shall be deemed

(i) to be related to a person or partnership for any period throughout which the person or partnership was a beneficiary of the trust, and

(ii) in respect of shares of the capital stock of a corporation, to be related to the person from whom it acquired those shares where, at the time the trust disposed of the shares, all of the beneficiaries (other than registered charities) of the trust were related to that person or would have been so related if that person were living at that time;

(d) a partnership shall be deemed to be related to a person for any period throughout which the person was a member of the partnership;

(e) where a corporation acquires shares of a class of the capital stock of another corporation from any person, it shall be deemed in respect of those shares to be related to the person where all or substantially all the consideration received by that person from the corporation in respect of those shares was common shares of the capital stock of the corporation;

(f) shares issued after June 13, 1988 by a corporation to a particular person or partnership shall be deemed to have been owned immediately before their issue by a person who was not related to the particular person or partnership unless the shares were issued

(i) as consideration for other shares,

(ii) as part of a transaction or series of transactions in which the person or partnership disposed of property to the corporation that consisted of

(A) all or substantially all the assets used in an active business carried on by that person or the members of that partnership, or

(B) an interest in a partnership all or substantially all the assets of which were used in an active business carried on by the members of the partnership, or

(iii) as payment of a stock dividend; and

(g) where, immediately before the death of an individual, or, in the case of a deemed transfer under subsection 248(23), immediately before the time that is immediately before the death of an individual, a share would, but for paragraph (a) of the definition "qualified small business corporation share" in subsection (1), be a qualified small business corporation share of the individual, the share shall be deemed to be a qualified small business corporation share of the individual if it was a qualified small business corporation share of the individual at any time in the 12-month period immediately preceding the death of the individual.

Related Provisions: 54.2 — Sale of shares after incorporation of business; 110.6(16) — Personal trust; 248(1) — "business" does not include adventure or concern under 110.6(14)(f); 248(5)(b) — Effect of stock dividend; 248(12) — Identical properties. See additional Related Provisions and Definitions at end of 110.6.

History: Subpara. 110.6(14)(f)(iii) added by 1998, c. 19, subsec. 130(2), applicable to dispositions of shares that occur after June 17, 1987.

Para. 110.6(14)(c) substituted and (g) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 81(12), (13), applicable to 1988 *et seq.* Para. (c) formerly read:

(c) a personal trust shall be deemed to be related to a person or partnership for any period throughout which the person or partnership was a beneficiary of the trust;

Pre-RSC History: Subsec. 110.6(14) added by 1988, c. 55, subsec. 81(16), applicable with respect to dispositions of shares after June 17, 1987.

Advance Tax Rulings: ATR-55: Amalgamation followed by sale of shares.

(15) Value of assets of corporations — For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1), the definition "share of the capital stock of a family farm corporation" in subsection 70(10) and the definition "small business corporation" in subsection 248(1),

(a) where a person (in this subsection referred to as the "insured"), whose life was insured under an insurance policy owned by a particular corporation, owned shares of the capital stock (in this subsection referred to as the "subject shares") of the particular corporation, any corporation connected with the particular corporation or with which the particular corporation is connected or any corporation connected with any such corporation or with which any such corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation referred to in this subsection was a payer corporation within the meaning of that subsection),

(i) the fair market value of the life insurance policy shall, at any time before the death of the insured, be deemed to be its cash surrender value (within the meaning assigned by subsection 148(9)) at that time, and

(ii) the total fair market value of assets (other than assets described in subparagraph (c)(i), (ii) or (iii) of the definition "qualified small business corporation share" in subsection (1), subparagraph (b)(i), (ii) or (iii) of the definition "share of the capital stock of a family farm corporation" in subsection (1) or paragraph (a), (b) or (c) of the definition "small business corporation" in subsection 248(1), as the case may be) of any of those corporations that are

(A) the proceeds, the right to receive the proceeds or attributable to the proceeds, of the life insurance policy of which the particular corporation was a beneficiary, and

(B) used, directly or indirectly, within the 24-month period beginning at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period as the Minister considers reasonable in the circumstances, to redeem, acquire or cancel the subject shares owned by the insured immediately before the death of the insured,

not in excess of the fair market value of the assets immediately after the death of the insured, shall, until the later of

(C) the redemption, acquisition or cancellation, and

(D) the day that is 60 days after the payment of the proceeds under the policy,

be deemed not to exceed the cash surrender value (within the meaning assigned by subsection 148(9)) of the policy immediately before the death of the insured; and

(b) the fair market value of an asset of a particular corporation that is a share of the capital stock or indebtedness of another corporation with which the particular corporation is connected shall be deemed to be nil and, for the purpose of this paragraph, a particular corporation is connected with another corporation only where

(i) the particular corporation is connected (within the meaning assigned by paragraph (d) of the definition "qualified small business corporation share" in subsection (1)) with the other corporation, and

(ii) the other corporation is not connected (within the meaning of subsection 186(4) as determined without reference to subsection 186(2) and on the assumption that the other corporation is a payer corporation within the meaning of subsection 186(4)) with the particular corporation,

except that this paragraph applies only in determining whether a share of the capital stock of another corporation with which the particular corporation is connected is a qualified small business corporation share or a share of the capital stock of a family farm corporation and in determining whether the other corporation is a small business corporation.

History: Subsec. 110.6(15) substituted by 1994, c. 21, subsec. 50(5), applicable to dispositions occurring after 1991. That subsec. formerly read:

(15) Life insurance policy of corporation — For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1) and the definition "small business corporation" in subsection 248(1), where a person (in this subsection referred to as the "insured"), whose life was insured under an insurance policy owned by a particular corporation, owned shares of the capital stock (in

this subsection referred to as the "subject shares") of the particular corporation, any corporation connected with the particular corporation or with which the particular corporation is connected or any corporation connected with any such corporation or with which any such corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation referred to in this subsection was a payer corporation within the meaning of that subsection),

(a) the fair market value of the life insurance policy shall, at any time before the death of the insured, be deemed to be its cash surrender value (within the meaning assigned by subsection 148(9)) at that time; and

(b) the total fair market value of assets (other than assets described in subparagraph (c)(i), (ii) or (iii) of the definition "qualified small business corporation share" in subsection (1), subparagraph (b)(i), (ii) or (iii) of the definition "share of the capital stock of a family farm corporation" in subsection (1) or paragraph (a), (b) or (c) of the definition "small business corporation" in subsection 248(1), as the case may be) of any of those corporations that are

(i) the proceeds, the right to receive the proceeds or attributable to the proceeds, of the life insurance policy of which the particular corporation was a beneficiary, and

(ii) used, directly or indirectly, within the 24-month period beginning at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period as the Minister considers reasonable in the circumstances, to redeem, acquire or cancel the subject shares owned by the insured immediately before the death of the insured,

not in excess of the fair market value of the assets immediately after the death of the insured shall, until the later of

(iii) the redemption, acquisition or cancellation, and

(iv) the date that is 60 days after the payment of the proceeds under the policy,

be deemed not to exceed the cash surrender value (within the meaning assigned by subsection 148(9)) of the policy immediately before the death of the insured.

Subsec. 110.6(15) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(14), applicable to dispositions occurring after June 17, 1987, except that, with respect to dispositions occurring before July 13, 1990, the reference to "within the 24-month period commencing at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period [as the Minister considers reasonable in the circumstances]" in subpara. 110.6(15)(b)(ii) shall be read as "before July 13, 1991 or, where written application therefor is made by the particular corporation before that date, before date".

(16) Personal trust — For the purposes of the definition "qualified small business corporation share" in subsection (1) and of paragraph (14)(c), a personal trust shall be deemed to include a trust described in subsection 7(2).

History: Subsec. 110.6(16) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 81(14), applicable to dispositions occurring after June 17, 1987.

(17) Order of deduction — For the purpose of clause (2)(a)(iii)(A), amounts deducted under this section in computing an individual's taxable income for a taxation year that ended before 1990 shall be deemed to have first been deducted in respect of amounts that were included in computing the individual's income under this Part for the year because of subparagraph 14(1)(a)(v) before being deducted in respect of any other amounts that were included in computing the individual's income under this Part for the year.

History: Subsec. 110.6(17) amended by 1995, c. 3, subsec. 32(10), applicable to 1996 *et seq.* Subsec. (17) formerly read:

(17) Order of deduction — For the purposes of clauses (2)(a)(iii)(A) and (3)(a)(iii)(A), amounts deducted by an individual under this section in computing the individual's taxable income for a taxation year ending before 1990 shall be deemed to have first been deducted in respect of any amounts that were included in computing the individual's income for that year because of paragraph 14(1)(a)(v) before being deducted in respect of any other amounts that were included in computing the individual's income for that year.

Subsec. 110.6(17) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(12), applicable to 1990 *et seq.*

(18) [Repealed]

History: Subsec. 110.6(18) repealed by 1995, c. 3, subsec. 32(11), applicable to 1996 *et seq.* Subsec. (18) formerly read:

(18) Eligible real property gains and losses — For the purposes of the definitions "eligible real property gain" and "eligible real property loss" in subsection (1),

(a) an individual shall be deemed to have disposed of identical properties in the order in which they were acquired;

(b) where paragraph 74.2(2)(b) applies for the purposes of this section to deem a property disposed of by another person to have been disposed of by an individual in a taxation year, the individual shall be deemed to have last acquired that property at the time at which the other person last acquired it and to have disposed of it at the time at which the other person disposed of it;

(c) where an individual is deemed by subsection 70(6), (9), (9.1), (9.2) or (9.3), 73(1), (3) or (4), 98(3) or (5) or 107(2) to have acquired property for an amount that is not greater than the adjusted cost base to the person or partnership from whom it was acquired, the individual shall be deemed to have acquired the property at the time it was last acquired by the person or partnership;

(d) the number of calendar months in a period shall be determined without reference to any such month that is in a taxation year of the individual or the individual's spouse for which the property in respect of which the eligible real property gain or eligible real property loss is computed was a principal residence (within the meaning assigned by section 54) of the individual or the individual's spouse; and

(e) where the eligible real property gain or eligible real property loss of an individual is computed in respect of a gain or loss from a disposition of property by a partnership, the individual shall be deemed to have last acquired the property at the time it was last acquired by the partnership and to have disposed of the property at the time it was disposed of by the partnership except that, where the individual had disposed of that property to the partnership and an election had been filed under subsection 97(2) in respect of that disposition, the individual shall be deemed to have last acquired the property at the time it was last acquired by the individual before that disposition if the amount agreed on in that election in respect of the property was not greater than the adjusted cost base to the individual of the property at the time of that disposition.

Subsec. 110.6(18) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 47(12), applicable to 1992 *et seq.*

(19) Election for property owned on February 22, 1994 — Subject to subsection (20), where an individual (other than a trust) or a personal trust (each of which is referred to in this subsection and subsections (20) to (29) as the "elector"), elects in prescribed form to have the provisions of this subsection apply in respect of

(a) a capital property (other than an interest in a trust referred to in any of paragraphs (f) to (j) of the definition "flow-through entity" in subsection 39.1(1)) owned at the end of February 22, 1994 by the elector, the property shall be deemed, except for the purposes of sections 7 and 35 and subparagraph 110(1)(d.1)(ii),

(i) to have been disposed of by the elector at that time for proceeds of disposition equal to the greater of

(A) the amount determined by the formula

$$A - B$$

where

A is the amount designated in respect of the property in the election, and

B is the amount, if any, that would, if the disposition were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, and

(B) the adjusted cost base to the elector of the property immediately before the disposition, and

(ii) to have been reacquired by the elector immediately after that time at a cost equal to

(A) where the property is an interest in or a share of the capital stock of a flow-through entity (within the meaning assigned by subsection 39.1(1)) of the elector, the cost to the elector of the property immediately before the disposition referred to in subparagraph (i),

(B) where an amount would, if the disposition referred to in subparagraph (i) were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, the lesser of

(I) the elector's proceeds of disposition of the property determined under subparagraph (i), and

(II) the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which the fair market value of the property at that time exceeds the amount that would, if the disposition referred to in subparagraph (i) were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, and

B is the amount that would be determined by the formula in subclause (C)(II) in respect of the property if clause (C) applied to the property, and

(C) in any other case, the lesser of

(I) the designated amount, and

(II) the amount, if any, by which the fair market value of the property at that time exceeds the amount determined by the formula

$$A - 1.1B$$

where

A is the designated amount, and

B is the fair market value of the property at that time;

(b) a business carried on by the elector (otherwise than as a member of a partnership) on February 22, 1994,

(i) the amount that would be determined under subparagraph 14(1)(a)(v) at the end of that day in respect of the elector if

(A) all the eligible capital property owned at that time by the elector in respect of the business were disposed of by the elector immediately before that time for proceeds of disposition equal to the amount designated in the election in respect of the business, and

(B) the fiscal period of the business ended at that time

shall be deemed to be a taxable capital gain of the elector for the taxation year in which the fiscal period of the business that includes that time ends from the disposition of a particular property and, for the purposes of this section, the particular property shall be deemed to have been disposed of by the elector at that time, and

(ii) for the purpose of paragraph 14(3)(b), the amount of the taxable capital gain determined under subparagraph (i) shall be deemed to have been claimed, by a person who does not deal at arm's length with each person or partnership that does not deal at arm's length with the elector, as a deduction under this section in respect of a disposition at that time of the eligible capital property; and

(c) an interest owned at the end of February 22, 1994 by the elector in a trust referred to in any of paragraphs (f) to (j) of the definition "flow-through entity" in subsection 39.1(1), the elector shall be deemed to have a capital gain for the year from the disposition on February 22, 1994 of property equal to the lesser of

(i) the total of amounts designated in elections made under this subsection by the elector in respect of interests in the trust, and

(ii) 4/3 of the amount that would, if all of the trust's capital properties were disposed of at the end of February 22, 1994 for proceeds of disposition equal to their fair market value at that time and that portion of the trust's capital gains and capital losses or its net taxable capital gains, as the case may be, arising from the dispositions as can reasonably be considered to represent the elector's share thereof were allocated to or designated in respect of the elector, be the increase in the annual gains limit of the elector for the 1994 taxation year as a result of the dispositions.

Related Provisions: 13(7)(e.1) — Depreciable capital property; 13(21)"undepreciated capital cost"F — No recapture of CCA on election; 14(1)(a)(v)D, 14(5)"cumulative eligible capital"B, 14(9) — Cumulative eligible capital; 39.1 — Holdings in flow-through entities; 40(2)(b)A, D, 40(7.1) — Principal residence; 49(3.2) — Options; 53(1)(r) — Increase in ACB immediately before disposing of all interests or shares of a flow-through entity; 54"adjusted cost base"(c) — ACB adjustment of flow-through entity preserved through disposition and reacquisition; 84.1(2.01)(a) — Share deemed acquired not at arm's length (cost base preserved) for purposes of later non-arm's length sale; 107(1.1)(a) — Cost of capital interest in a trust when election made; 110.6(20) — Application of election; 110.6(21) — Non-qualifying real property; 110.6(23) — Partnership interest; 110.6(24)–(30) — Time for election and late-filed elections; 257 — Formulas cannot calculate to less than zero; Reg. 2800(2) — Extended deadline for preferred beneficiary election. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(19) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

I.T. Application Rules: 20(1)(c) (where depreciable property owned since before 1972); 26(29) (following election, property deemed not owned at end of 1971 so ITAR 26(3) will not apply).

Interpretation Bulletins: IT-120R5: Principal residence; IT-217R: Depreciable property owned on December 31, 1971; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

I.T. Technical News: No. 7 (principal residence and the capital gains election).

Forms: 94-115: Election to report a capital gain on property owned by a personal trust at the end of February 22, 1994; T664 and T664(Seniors):

Election to report a capital gain on property owned at the end of February 22, 1994; T4138: Capital gains election package; T4142: Capital gains election package for seniors.

(20) Application of subsec. (19) — Subsection (19) applies to a property or to a business, as the case may be, of an elector only if

(a) where the elector is an individual (other than a trust),

(i) its application to all of the properties in respect of which elections were made under that subsection by the elector or a spouse of the elector and to all the businesses in respect of which elections were made under that subsection by the elector

(A) would result in an increase in the amount deductible under subsection (3) in computing the taxable income of the elector or a spouse of the elector, and

(B) in respect of each of the 1994 and 1995 taxation years,

(I) where no part of the taxable capital gain resulting from an election by the elector is included in computing the income of a spouse of the elector, would not result in the amount determined under paragraph (3)(a) for the year in respect of the elector being exceeded by the lesser of the amounts determined under paragraphs (3)(b) and (c) for the year in respect of the elector, and

(II) where no part of the taxable capital gain resulting from an election by the elector is included in computing the income of the elector, would not result in the amount determined under paragraph (3)(a) for the year in respect of a spouse of the elector being exceeded by the lesser of the amounts determined under paragraphs (3)(b) and (c) for the year in respect of the spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) the amount designated in the election in respect of the property exceeds 11/10 of its fair market value at the end of February 22, 1994, or

(iii) the amount designated in the election in respect of the business is $1.00 or exceeds 11/10 of the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business; and

(b) where the elector is a personal trust, its application to all of the properties in respect of which an election was made under that subsection by the elector would result in

(i) an increase in the amount deemed by subsection 104(21.2) to be a taxable capital gain of an individual (other than a trust) who was a beneficiary under the trust at the end of February 22, 1994 and resident in Canada at any time in the individual's taxation year in which the trust's taxation year that includes that day ends, or

(ii) where subsection (12) applies to the trust for the trust's taxation year that includes that day, an increase in the amount deductible under that subsection in computing the trust's taxable income for that year.

History: Subsec. 110.6(20) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(21) Effect of election on non-qualifying real property — Where an elector is deemed by subsection (19) to have disposed of a non-qualifying real property,

(a) in computing the elector's taxable capital gain from the disposition, there shall be deducted the amount determined by the formula

$$0.75(A - B)$$

where

A is the elector's capital gain from the disposition, and

B is the elector's eligible real property gain from the disposition; and

(b) in determining at any time after the disposition the capital cost to the elector of the property where it is a depreciable property and the adjusted cost base to the elector of the property in any other case (other than where the property was at the end of February 22, 1994 an interest in or a share of the capital stock of a flow-through entity within the meaning assigned by subsection 39.1(1)), there shall be deducted 4/3 of the amount determined under paragraph (a) in respect of the property.

Related Provisions: 13(7)(e)(i)(B)(IV) — Reduction in capital cost reflected for CCA purposes; 53(2)(u) — Reduction in adjusted cost base; 127.52(1)(h.1) — Calculation for purposes of minimum tax; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(21) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(22) Adjusted cost base — Where an elector is deemed by paragraph (19)(a) to have reacquired a property, there shall be deducted in computing the adjusted cost base to the elector of the property at any time after the reacquisition the amount, if any, by which

(a) the amount determined by the formula

$$A - 1.1B$$

where

A is the amount designated in the election under subsection (19) in respect of the property, and

B is the fair market value of the property at the end of February 22, 1994

exceeds

(b) where the property is an interest in or a share of the capital stock of a flow-through entity (within the meaning assigned by subsection 39.1(1)), 4/3 of the taxable capital gain that would have resulted from the election if the amount designated in the election were equal to the fair market value of the property at the end of February 22, 1994 and, in any other case, the fair market value of the property at the end of February 22, 1994.

Related Provisions: 14(9) — Further effects of excessive election; 53(2)(v) — Reduction in ACB; 110.6(19)(a)(ii)(C)(II), 110.6(28) — Further effects of excessive election; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(22) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(23) Disposition of partnership interest — Where an elector is deemed by subsection (19) to have disposed of an interest in a partnership, in computing the adjusted cost base to the elector of the interest immediately before the disposition

(a) there shall be added the amount determined by the formula

$$(A - B) \times \frac{C}{D} + E$$

where

A is the total of all amounts each of which is the elector's share of the partnership's income (other than a taxable capital gain from the disposition of a property) from a source or from sources in a particular place for its fiscal period that includes February 22, 1994,

B is the total of all amounts each of which is the elector's share of the partnership's loss (other than an allowable capital loss from the disposition of a property) from a source or from sources in a particular place for that fiscal period,

C is the number of days in the period that begins the first day of that fiscal period and ends February 22, 1994,

D is the number of days in that fiscal period, and

E is 4/3 of the amount that would be determined under paragraph 3(b) in computing the elector's income for the taxation year in which that fiscal period ends if the elector had no taxable capital gains or allowable capital losses other than those arising from dispositions of property by the partnership that occurred before February 23, 1994; and

(b) there shall be deducted the amount that would be determined under paragraph (a) if the formula in that paragraph were read as

$$(B - A) \times \frac{C}{D} - E$$

Related Provisions: 53(1)(e)(xii) — Addition to ACB; 53(2)(c)(xi) — Reduction in ACB; 257 — Formulas cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(23) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(24) Time for election — An election made under subsection (19) shall be filed with the Minister

(a) where the elector is an individual (other than a trust),

(i) if the election is in respect of a business of the elector, on or before the individual's filing-due date for the taxation year in which the fiscal period of the business that includes February 22, 1994 ends, and

(ii) in any other case, on or before the individual's balance-due day for the 1994 taxation year; and

(b) where the elector is a personal trust, on or before March 31 of the calendar year following the calendar year in which the taxation year of the trust that includes February 22, 1994 ends.

Related Provisions: 110.6(26)–(30) — Late and amended elections. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subpara. 110.6(24)(a)(i) amended by 1996, c. 21, s. 21, applicable to 1995 *et seq.* The subpara. formerly read:

(i) if the election is in respect of a business of the elector, on or before the individual's balance-due day for the taxation year in which the fiscal period of the business that includes February 22, 1994 ends, and

Subsec. 110.6(24) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(25) Revocation of election — Subject to subsection (28), an elector may revoke an election made under subsection (19) by filing a written notice of the revocation with the Minister before 1998.

Related Provisions: 104(14.01) — Revocation of preferred beneficiary election at same time; 104(21.01) — Revocation of trust's taxable capital gains designation at same time. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(25) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

I.T. Technical News: No. 7 (principal residence and the capital gains election).

(26) Late election — Where an election made under subsection (19) is filed with the Minister after the day (referred to in this subsection and subsections (27) and (29) as the "election filing date") on or before which the election is required by subsection (24) to have been filed and on or before the day that is 2 years after the election filing date, the election shall be deemed for the purposes of this section (other than subsection (29)) to have been filed on the election filing date if an estimate of the penalty in respect of the election is paid by the elector when the election is filed with the Minister.

Related Provisions: 104(14.01) — Late preferred beneficiary election filed at same time; 104(21.01) — Late filing of trust's taxable capital gains designation at same time; 110.6(29) — Amount of penalty. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(26) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(27) Amended election — Subject to subsection (28), an election under subsection (19) in respect of a property or a business is deemed to be amended and the election, as amended, is deemed for the purpose of this section (other than subsection (29)) to have been filed on the election filing date if

(a) an amended election in prescribed form in respect of the property or the business is filed with the Minister before 1998; and

(b) an estimate of the penalty, if any, in respect of the amended election is paid by the elector when the amended election is filed with the Minister.

Related Provisions: 104(14.01) — Amended preferred beneficiary election filed at same time; 104(21.01) — Amendment of trust's taxable capital gains designation at same time; 110.6(26) — Election filing date; 110.6(29) — Amount of penalty. See additional Related Provisions and Definitions at end of s. 110.6.

History: The opening words of subsec. 110.6(27) amended by 1998, c. 19, subsec. 130(3), applicable to 1994 *et seq.* The opening words formerly read:

(27) Amended election — Subject to subsection (28), an election made under subsection (19) in respect of a property or a business shall be deemed to be amended and the election, as amended, shall be deemed to have been filed on the election filing date if

Subsec. 110.6(27) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(28) Election that cannot be revoked or amended — An election under subsection (19) cannot be revoked or amended where the amount designated in the election exceeds 11/10 of

(a) if the election is in respect of a property other than an interest in a partnership, the fair market value of the property at the end of February 22, 1994;

(b) if the election is in respect of an interest in a partnership, the greater of $1 and the fair market value of the property at the end of February 22, 1994; and

(c) if the election is in respect of a business, the greater of $1 and the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business.

Related Provisions: 14(9), 110.6(19)(a)(ii)(C)(II), 110.6(22)(a)B — Further effects of excessive election; 40(3)(a) — Partnership interest can have negative ACB. See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(28) amended by 1998, c. 19, subsec. 130(4), applicable to 1994 *et seq.* Subsec. 110.6(28) formerly read:

(28) Election that cannot be revoked or amended — An election made under subsection (19) cannot be revoked or amended where the amount designated in the election exceeds 11/10 of

(a) if the election is in respect of a property, the fair market value of the property at the end of February 22, 1994; and

(b) if the election is in respect of a business, the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business.

Subsec. 110.6(28) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(29) Amount of penalty — The penalty in respect of an election to which subsection (26) or (27) applies is the amount determined by the formula

$$\frac{A \times B}{300}$$

where

A is the number of months each of which is a month all or part of which is during the period that begins the day after the election filing date and ends the day the election or amended election is filed with the Minister; and

B is the total of all amounts each of which is the taxable capital gain of the elector or a spouse of the elector that results from the application of subsection (19) to the property or the business in respect of which the election is made less, where subsection (27) applies to the election, the total of all amounts each of which would, if the Act were read without reference to subsections (20) and (27), be the taxable capital gain of the elector or a spouse of the elector that resulted from the application of subsection (19) to the property or the business.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 110.6(26) — Election filing date; 220(3.1) — Waiver of penalty by CCRA; 252(4)(a) — Extended meaning of "spouse". See additional Related Provisions and Definitions at end of s. 110.6.

History: Subsec. 110.6(29) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

(30) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election to which subsection (26) or (27) applies, assess the penalty payable and send a notice of assessment to the elector who made the election, and the elector shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

History: Subsec. 110.6(30) added by 1995, c. 3, subsec. 32(12), applicable to 1994 *et seq.*

Related Provisions [s. 110.6]: 14(1)(a)(v) — Excess exceeding eligible capital amount deemed to be taxable capital gain; 39(9) — Reduction of business investment loss; 39(11) — Bad debt recovery; 39(13) — Repayment of assistance; 40(3) — Deemed gain when ACB adjusted below nil; 42 — Deemed loss on warranty; 70(2) — Rollovers on death; 98(1)(c) — Disposition of partnership property; 111(8)"non-capital loss"A:E — Carryforward of exemption deduction as non-capital loss; 111(8)"pre-1986 capital loss balance"C, D, E — Balance reduced by exemption claims; 111.1 — Order of applying provisions; 131(1)(b) — Election re capital gains dividend.

Pre-RSC History [s. 110.6]: S. 110.6 added by 1986, c. 6, s. 58, generally applicable to 1985 *et seq.* (Exceptions are noted after the relevant subsec.)

Definitions [s. 110.6]: "*alter ego* trust", "active business" — 248(1); "adjusted cost base" — 54, 248(1); "allowable business investment loss" — 38(c), 248(1); "amount" — 248(1); "annual gains limit" — 110.6(1); "assessment" — 248(1); "borrowed money", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "capital gain" — 39(1)(a), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "child" — 70(10), 110.6(1), 252(1); "class of shares" — 248(6); "common-law partner", "common share" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "cumulative gains limit", "cumulative net investment loss" — 110.6(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "election filing date" — 110.6(26); "elector" — 110.6(19); "eligible capital property" — 54, 248(1); "eligible real property gain", "eligible real property loss" — 110.6(1); "employee", "farming" — 248(1); "filing-due date" — 150(1), 248(1); "fiscal period" — 249(2)(b), 249.1; "gross revenue" — 248(1); "identical" — 248(12); "income-averaging annuity contract" — 61(4), 248(1); "individual", "insurance policy" — 248(1); "interest in a family farm partnership" — 110.6(1); "investment corporation" — 130(3)(a), 248(1); "investment expense", "investment income" — 110.6(1); "joint partner trust", "Minister" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "net capital loss" — 111(8), 248(1); "net income stabilization account" — 110.6(1.1), 248(1); "non-qualifying real property" — 110.6(1), 248(1); "parent" — 252(2); "person" — 248(1); "personal trust" — 110.6(16), 248(1); "prescribed", "property" — 248(1); "qualified farm property", "qualified small business corporation share" — 110.6(1); "registered charity", "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "related" — 110.6(14)(c)–(e), 251(2); "related segregated fund trust" — 138.1(1)(a); "resident in Canada" — 110.6(5), 250; "series of transactions" — 248(10); "share" — 248(1); "share of the capital stock of a family farm corporation" — 110.6(1); "small business corporation" — 110.6(14)(b), 248(1); "specified member" — 248(1); "spouse" — 252(4)(a); "stock dividend" — 248(1); "substituted property" — 248(5); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 110.6]: IT-120R5: Principal residence; IT-123R6: Transactions involving eligible capital property; IT-236R4: Reserves — disposition of capital property; IT-242R: Retired partners; IT-268R3: *Inter vivos* transfer of farm property to child; IT-268R4: *Inter vivos* transfer of farm property to child; IT-278R2: Death of a partner or of a retired partner; IT-281R2: Elections on single payments from a deferred profit-sharing plan; IT-330R: Dispositions of capital property subject to warranty, covenant, etc.; IT-369R: Attribution of trust income to settlor; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-395R: Foreign tax credit — foreign-source capital gains and losses; IT-442R: Bad debts and reserves for doubtful debts; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-504R2: Visual artists and writers.

Forms [s. 110.6]: T1 Sched. 3: Capital gains (or losses); T3 Sched. 3: Calculation of a trust's eligible taxable capital gains; T657: Calculation of capital gains deduction (if disposed of farm property or small business shares); T657A: Calculation of capital gains deduction on other property; T936: Calculation of cumulative net investment loss; T1161: List of properties by an emigrant of Canada.

110.7 (1) Residing in prescribed zone [northern Canada deduction] — Where, throughout a period (in this section referred to as the "qualifying period") of not less than 6 consecutive months beginning or ending in a taxation year, a taxpayer who is an individual has resided in one or more particular areas each of which is a prescribed northern zone or prescribed intermediate zone for the year and files for the year a claim in prescribed form, there may be deducted in computing the taxpayer's taxable income for the year

(a) the total of all amounts each of which is the product obtained by multiplying the specified percentage for a particular area for the year in which the taxpayer so resided by an amount received, or the value of a benefit received or enjoyed, in the year by the taxpayer in respect of the taxpayer's employment in the particular area by a person with whom the taxpayer was dealing at arm's length in respect of travel expenses incurred by the taxpayer or another individual who was a member of the taxpayer's household during the part of the year in which the taxpayer resided in the particular area, to the extent that

(i) the amount received or the value of the benefit, as the case may be,

(A) does not exceed a prescribed amount in respect of the taxpayer for the period in the year in which the taxpayer resided in the particular area,

(B) is included and is not otherwise deducted in computing the taxpayer's income for the year or any other taxation year, and

(C) is not included in determining an amount deducted under subsection 118.2(1) for the year or any other taxation year,

(ii) the travel expenses were incurred in respect of trips made in the year by the taxpayer or another individual who was a member of the taxpayer's household during the part of the year in which the taxpayer resided in the particular area, and

(iii) neither the taxpayer nor a member of the taxpayer's household is at any time entitled to a reimbursement or any form of assistance (other than a reimbursement or assistance included in computing the income of the taxpayer or the member) in respect of travel expenses to which subparagraph (ii) applies; and

(b) the lesser of

(i) 20% of the taxpayer's income for the year, and

(ii) the total of all amounts each of which is the product obtained by multiplying the specified percentage for a particular area for the year in which the taxpayer so resided by the total of

(A) $7.50 multiplied by the number of days in the year included in the qualifying period in which the taxpayer resided in the particular area, and

(B) $7.50 multiplied by the number of days in the year included in that portion of the qualifying period throughout which the taxpayer maintained and resided in a self-contained domestic establishment in the particular area (except any day included in computing a deduction claimed under this paragraph by another person who resided on that day in the establishment).

Related Provisions: 6(6) — Employment at special work site or remote area — non-taxable benefits; 111.1 — Order of applying provisions.

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations.

Regulations: 7303.1 (prescribed northern zone, prescribed intermediate zone).

Forms: T2222: Northern residents deductions; RC4054: Ceiling amounts for housing benefits paid in prescribed zones [information sheet].

(2) Specified percentage — For the purpose of subsection (1), the specified percentage for a particular area for a taxation year is

(a) where the area is a prescribed northern zone for the year, 100%; and

(b) where the area is a prescribed intermediate zone for the year, 50%.

Regulations: 7303.1 (prescribed northern zone, prescribed intermediate zone).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations.

(3) Restriction — The total determined under paragraph (1)(a) for a taxpayer in respect of travel expenses incurred in a taxation year in respect of an individual shall not be in respect of more than 2 trips made by the individual in the year, other than trips to obtain medical services that are not available in the locality in which the taxpayer resided.

Related Provisions [s. 110.7(3)]: 118.2(2)(g), (h) — Medical expense credit for travel expenses.

(4) Board and lodging allowances, etc. — The amount determined under subparagraph (1)(b)(ii) for a particular area for a taxpayer for a taxation year shall not exceed the amount by which the amount otherwise determined under that subparagraph for the particular area for the year exceeds the value of, or an allowance in respect of expenses incurred by the taxpayer for, the taxpayer's board and lodging in the particular area (other than at a work site described in paragraph 67.1(2)(e)) that

(a) would, but for subparagraph 6(6)(a)(i), be included in computing the taxpayer's income for the year; and

(b) can reasonably be considered to be attributable to that portion of the qualifying period that is in the year and during which the taxpayer maintained a self-contained domestic establishment as the taxpayer's principal place of residence in an area other than a prescribed northern zone or a prescribed intermediate zone for the year.

Regulations: 7303.1 (prescribed northern zone, prescribed intermediate zone).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations.

Forms: RC4054: Ceiling amounts for housing benefits paid in prescribed zones [information sheet].

(5) Idem — Where on any day an individual resides in more than one particular area referred to in subsection (1), for the purpose of that subsection, the individual shall be deemed to reside in only one such area on that day.

History [s. 110.7]: The opening words of subsec. 110.7(4) amended by 1999, c. 22, s. 27, applicable to 1998 *et seq.* The opening words formerly read:

(4) Idem — The amount determined under subparagraph (1)(b)(ii) for a particular area for a taxpayer for a taxation year shall not exceed the amount by which the amount otherwise determined under that subparagraph for that particular area for the year exceeds the value of, or an allowance in respect of expenses incurred by the taxpayer for, the taxpayer's board and lodging in the particular area that

Subpara. 110.7(1)(a)(iii) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 48, applicable to 1992 *et seq.*

S. 110.7 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 82, applicable to 1988 *et seq.* except that

(a) for the 1988 to 1990 taxation years,

(i) para. 110.7(1)(b) shall be read as follows:

(b) subject to subsections (4) and (6), the total of all amounts each of which is the product obtained by multiplying the specified percentage for a particular area for the year in which the taxpayer so resided by the lesser of

(i) 20% of the taxpayer's income for the year, and

(ii) the total of

(A) $450 multiplied by the quotient obtained when the number of days in the year included in that portion of the qualifying period throughout which the taxpayer maintained and resided in a self-contained domestic establishment in the particular area (except any day included in computing a deduction claimed under this paragraph by another person who resided on that day in the establishment) is divided by 30, and

(B) $225 multiplied by the amount, if any, by which

(I) the quotient obtained when the number of days in the year included in the qualifying period in which the taxpayer resided in the particular area is divided by 30

exceeds

(II) the quotient determined under clause (A),

(ii) the section shall be read as including the following subsections:

(6) Subject to subsection (7), where a quotient determined under paragraph (1)(b) is not a whole number, it shall be rounded to the nearest whole number or, where it is equidistant from 2 such consecutive whole numbers, it shall be rounded to the higher thereof.

(7) Where, in a taxation year, a taxpayer resided in more than one particular area each of which is an area referred to in subsection (2) for the year, for the purpose of computing the amount deductible under subsection (1) in computing the taxpayer's taxable income for the year, the total of all amounts each of which is a quotient determined under paragraph (1)(b) in respect of any such area for the year shall not exceed the total of such amounts that would have been obtained for the year if the taxpayer had resided in only one such area throughout the portion of the qualifying period included in the year.

(8) Where 2 or more taxpayers not dealing with each other at arm's length resided in the same self-contained domestic establishment for periods in a taxation year, for the purpose of computing the amounts deductible under subsection (1) in computing the taxable incomes of those taxpayers for the year, the total of all quotients determined for the year under clause (1)(b)(ii)(A) in respect of the establishment shall not exceed the amount that would be the quotient determined under that clause in respect of the establishment for the year if the establishment had been maintained by only one such taxpayer for the total of those periods;

(b) for the 1988 to 1994 taxation years,

(i) that portion of subsec. 110.7(1) preceding para. (a) shall be read as follows:

110.7 (1) Where, throughout a period (in this section referred to as the "qualifying period") of not less than 6 consecutive months beginning or ending in a taxation year, a taxpayer who is an individual has resided in one or more particular areas each of which is a prescribed area for the year or for one of the 2 preceding taxation years or a prescribed northern zone or prescribed intermediate zone for the year, and the taxpayer files for the year a claim in prescribed form, there may be deducted in computing the taxpayer's taxable income for the year,

(ii) subsection 110.7(2) shall be read as follows:

(2) For the purpose of subsection (1), the specified percentage for a particular area for a taxation year is

(a) where the area is a prescribed area for the year or a prescribed northern zone for the year, 100%;

(b) except as otherwise provided in paragraph (a), where the area was a prescribed area for the immediately preceding taxation year, 66⅔%;

(c) except as otherwise provided in paragraph (a) or (b), where the area is a prescribed intermediate zone for the year, 50%; and

(d) except as otherwise provided in paragraph (a), (b) or (c), where the area was a prescribed area for the second preceding taxation year, 33⅓%,

(iii) paragraph 110.7(4)(b) shall be read as follows:

(b) can reasonably be considered to be attributable to that portion of the qualifying period that is in the year and during which the taxpayer maintained a self-contained domestic establishment as the taxpayer's principal place of residence in an area other than a prescribed area, prescribed northern zone or prescribed intermediate zone for the year.

S. 110.7 formerly read:

110.7 (1) Residing in prescribed area — In computing the taxable income for a taxation year of an individual who, throughout a period of not less than 6 months commencing or ending in the year, resided in an area that was a prescribed area for the year or for one of the 2 preceding taxation years and who files a claim in prescribed form with the individual's return of income for the year pursuant to section 150, there may be deducted

(a) where the area was a prescribed area for the year, 100%,

(b) where the area was not a prescribed area for the year but was a prescribed area for the immediately preceding taxation year, ⅔, and

(c) where the area was not a prescribed area for the year or the immediately preceding taxation year but was a prescribed area for the second preceding taxation year, ⅓

of such of the following amounts as are applicable:

(d) an amount received, or the value of a benefit received or enjoyed, in the year by the individual in respect of the individual's employment in the area by a person with whom the individual was dealing at arm's length in respect of travel expenses incurred by the individual, to the extent that

(i) the amount received or the value of the benefit, as the case may be,

(A) does not exceed a prescribed amount,

(B) is included and is not otherwise deducted in computing the individual's income for the year, and

(C) is not included in determining an amount deducted under subsection 118.2(1) for the year or any other taxation year, and

(ii) the travel expenses were incurred in connection with

(A) a trip made in the year for the purpose of obtaining medical services not available in the locality in which the individual resided, or

(B) not more than two trips made in the year for a purpose other than to obtain medical services not available in the locality in which the individual resided; and

(e) subject to subsection (2), the lesser of

(i) 20% of the individual's income for the year, and

(ii) the total of

(A) $450 multiplied by the quotient obtained when the number of days in the year included in that portion of the period throughout which the individual maintained and resided in a self-contained domestic establishment (except any day included in computing a deduction claimed under this paragraph by another person who resided on that day in the establishment) is divided by 30, and

(B) $225 multiplied by the amount, if any, by which

(I) the quotient obtained when the number of days in the year included in the period is divided by 30

exceeds

(II) the quotient determined under clause (A).

(2) **Restriction** — The amount deductible under paragraph (1)(e) shall not exceed the amount by which the total determined under that paragraph exceeds the value of, or an allowance in respect of expenses incurred by the individual referred to in subsection (1) for, the individual's board and lodging

(a) that would, but for subparagraph 6(6)(a)(i), be included in computing his income for the year, and

(b) that can reasonably be considered to be attributable to that portion of the period referred to in subsection (1) during which the individual maintained a self-contained domestic establishment as the individual's principal place of residence in an area other than a prescribed area.

(3) **Whole number** — For the purposes of subparagraph (1)(e)(ii), where a quotient is not a whole number, it shall be rounded to the nearest whole number or where it is equidistant from two consecutive whole numbers, it shall be rounded to the higher thereof.

Pre-RSC History: Cl. 110.7(1)(d)(i)(C) amended by 1988, c. 55, s. 82, to substitute "in determining" for "in computing" and "subsection 118.2(1)" for "paragraph 110(1)(c)", applicable to 1988 *et seq.*

S. 110.7 added by 1986, c. 55, subsec. 33(1), applicable to 1987 *et seq.*

Definitions [s. 110.7]: "amount" — 248(1); "arm's length" — 251(1); "employment", "individual", "person", "prescribed" — 248(1); "prescribed intermediate zone" — Reg. 7303.1(2); "prescribed northern zone" — Reg. 7303.1(1); "qualifying period" — 110.7(1); "self-contained domestic establishment" — 248(1); "specified percentage" — 110.7(2); "taxable income" — 2(2), 248(1); "taxation year" — 249.

111. (1) Losses deductible — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such portion as the taxpayer may claim of the taxpayer's

(a) **non-capital losses** — non-capital losses for the 7 taxation years immediately preceding and the 3 taxation years immediately following the year;

Related Provisions: 88(1.1) — Windup — non-capital losses of subsidiary; 88(1.3) — Windup — rules relating to computation of income and tax of parent; 111(7.2) — Non-capital loss of life insurer; 115(1)(c), (d) — Application of losses to non-resident; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes; 186(1)(d)(i) — Application of non-capital loss to Part IV tax. See additional Related Provisions at end of subsec. 111(1) and s. 111.

Selected Cases [para. 111(1)(a)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Shareholder agreement did not result in *de jure* control); *Allcann Wood Suppliers Inc. v. Canada*, [1994] 2 C.T.C. 2079 (TCC) (Challenge of Minister's calculation of taxable income can bring other years into play if losses in such years affect taxable income in year under appeal); *The Queen v. Merali*, [1988] 1 C.T.C. 320 (FCA) (Rental losses incurred by non-resident electing to be taxed as resident carried forward and deducted from subsequent income earned as resident); *Oceanspan Carriers Ltd. v. The Queen*, [1987] 1 C.T.C. 210 (FCA) (Losses incurred by corporation before becoming resident not deductible); *AIM Steel Ltd. v. MNR*, [1969] C.T.C. 479 (Exch.) (Accumulated losses deductible for previously inactive subsidiary to which business transferred; subsidiary not division of parent); *MNR v. Wahn*, [1969] C.T.C. 61 (SCC) (Partnership losses must be deducted from other income sources before carry back provisions available).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-484R2: Business investment losses. See also list at end of s. 111.

Information Circulars: 88-2, para. 8: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 3 (loss utilization within a corporate group).

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

Forms: T3A: Request for loss carry-back by a trust.

(b) **net capital losses** — net capital losses for taxation years preceding and the three taxation years immediately following the year;

Related Provisions: 88(1.2) — Wind-up — net capital losses of subsidiary; 88(1.3) — Wind-up — rules relating to computation of income and tax of parent; 104(21)(a) — Trusts — portion of taxable capital gains deemed gain of beneficiary; 110.6(1) — "annual gains limit"; 111(1.1) — Net capital losses; 111(2) — Net capital losses when taxpayer dies; 115(1)(c), (d) — Application of losses to non-resident; 126(2.1) — Foreign tax credit — Amount determined for purpose of paragraph (2)(b); 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes; 129(3) — Refundable dividend tax on hand. See additional Related Provisions and Definitions at end of subsec. 111(1) and s. 111.

Selected Cases [para. 111(1)(b)]: *Placements Bourget Inc. v. The Queen*, [1988] 2 C.T.C. 8 (FCTD) (Capital losses not deductible from income from disposition of shares held by trader).

Interpretation Bulletins: IT-98R2: Investment corporations; IT-243R4: Dividend refund to private corporations; IT-395R: Foreign tax credit — foreign-source capital gains and losses; IT-484R2: Business investment losses. See also list at end of s. 111.

Forms: T3A: Request for loss carry-back by a trust; T2088: Capital dispositions supplementary schedules — net listed-personal-property losses — unapplied; net capital losses — unapplied.

(c) **restricted farm losses** — restricted farm losses for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year, but no amount is deductible for the year in respect of restricted farm losses except to the extent of the taxpayer's incomes for the year from all farming businesses carried on by the taxpayer;

Related Provisions: 31 — Loss from farming where chief source of income not from farming; 53(1)(i) — Addition to ACB of farmland; 88(1.3) — Winding-up — computation of income and tax payable by parent; 101 — Loss carryforward claimed on disposition of farmland by partnership; 115(1)(c), (d) — Application of losses to non-resident; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes. See additional Related Provisions at end of subsec. 111(1) and s. 111.

Interpretation Bulletins: See list at end of s. 111.

Forms: T3A: Request for loss carry-back by a trust.

(d) **farm losses** — farm losses for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year; and

Related Provisions: 53(1)(i) — Addition to ACB of farmland; 101 — Claim of loss after disposition of farmland by partnership; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes.

Forms: T3A: Request for loss carry-back by a trust.

(e) **limited partnership losses** — limited partnership losses in respect of a partnership for taxation years preceding the year, but no amount is deductible for the year in respect of a limited partnership loss except to the extent of the amount by which

(i) the taxpayer's at-risk amount in respect of the partnership (within the meaning assigned by subsection 96(2.2)) at the end of the last fiscal period of the partnership ending in the taxation year

exceeds

(ii) the total of all amounts each of which is

(A) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer for the taxation year,

(B) the taxpayer's share of any losses of the partnership for that fiscal period from a business or property, or

(C) the taxpayer's share of

(I) the foreign exploration and development expenses, if any, incurred by the partnership in that fiscal period,

(II) the Canadian exploration expense, if any, incurred by the partnership in that fiscal period,

(III) the Canadian development expense, if any, incurred by the partnership in that fiscal period, and

(IV) the Canadian oil and gas property expense, if any, incurred by the partnership in that fiscal period.

Related Provisions [para. 111(1)(e)]: 88(1.1) — Wind-up — non-capital losses of subsidiary; 96(2.1) — Determination of limited partnership losses; 96(2.4) — Limited partner — extended definition; 127.52(1)(i)(i) — Limitation on deduction for minimum tax purposes. See additional Related Provisions at end of subsec. 111(1) and s. 111.

Related Provisions [subsec. 111(1)]: 111(3) — Limitations on deductibility; 111(4), (5) — Limitations where change of control; 111(9) — Where taxpayer not resident in Canada; 152(6)(c) — CCRA required to reassess earlier year to allow carryback; 164(5), (5.1) — Effect of carryback of loss; 164(6) — Carryback of losses of estate to deceased's year of death; 256(7) — Where control deemed not to have been acquired; 256(8) — Where share deemed to have been acquired. See additional Related Provisions and Definitions at end of s. 111. For other carryovers, see under "carryforward" in Topical Index.

Pre-RSC History: Para. 111(1)(b) substituted by 1988, c. 55, subsec. 83(1), applicable with respect to computations of taxable incomes for 1985 *et seq.* Para. 111(1)(b) formerly read:

(b) net capital losses — his net capital losses for taxation years preceding and the three taxation years immediately following the year, but no amount is deductible for the year in respect of net capital losses except to the extent of the aggregate of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the year, and

(ii) where the taxpayer is an individual, the lesser of

(A) $2,000, and

(B) his pre-1986 capital loss balance for the year;

Para. 111(1)(e) added by 1986, c. 55, subsec. 34(1), applicable after February 25, 1986.

Para. 111(1)(b) substituted by 1986, c. 6, subsec. 59(1), applicable for the purposes of computing taxable income for 1985 *et seq.* and for the purposes of determining the deductibility of losses for 1985 *et seq.* in computing taxable income for the 1984 and preceding taxation years, except that for the 1985 taxation year, para. 111(1)(b) shall read as follows:

(b) his net capital losses for taxation years preceding and the three taxation years immediately following the year, but no amount is deductible for the year in respect of net capital losses except to the extent of the aggregate of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the year, and

(ii) where the taxpayer is an individual, the amount, if any, by which the lesser of

(A) $2,000, and

(B) his pre-1986 capital loss balance for the year,

exceeds the lesser of the amounts determined in respect of him for the year under subparagraphs 3(e)(i) and (ii);

Para. 111(1)(b) formerly read:

(b) net capital losses — his net capital losses for taxation years preceding and the 3 taxation years immediately following the year, but no amount is deductible for the year in respect of net capital losses except to the extent of the aggregate of the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the year and, where the taxpayer is an individual, the amount, if any, by which $2,000 exceeds the amount determined in respect of him for the year under subparagraph 3(e)(i);

Subsec. 111(1) substituted by 1984, c. 1, subsec. 54(1), applicable with respect to

(a) the computation of taxable income for 1983 *et seq.*, except that

(i) farm losses shall be determined only for 1983 *et seq.*, and

(ii) in the application of paragraphs 111(1)(a) and (c) to non-capital losses and restricted farm losses determined for 1982 and preceding taxation years, the references therein to "7 taxation years" and "10 taxation years" shall be read as references to "5 taxation years"; and

(b) a taxpayer's non-capital losses, restricted farm losses and farm losses determined for 1983 *et seq.* and his net capital losses for 1984 *et seq.* except that

(i) in the application of paragraphs 111(1)(a), (c) and (d) to non-capital losses, restricted farm losses and farm losses determined for 1983, the references therein to "3 taxation years" shall be read as references to "2 taxation years" where, in 1983, the taxpayer is not

(A) an individual (other than a trust), or

(B) a corporation that is entitled to deduct an amount under section 125 in computing its tax payable for that year or that would be so entitled if it had sufficient income for the year from carrying on an active business in Canada and the carry-back period for such losses were the 3 years preceding 1983, and

(ii) in the application of paragraph 111(1)(b) to net capital losses determined for 1984 the reference therein to "3 taxation years" shall be read as a reference to "2 taxation years".

Subsec. 111(1) formerly read:

111. (1) Losses deductible — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted from the income for the year such of the following amounts as are applicable:

(a) non-capital losses — non-capital losses for the 5 taxation years immediately preceding and the taxation year immediately following the taxation year, but no amount is deductible in respect of non-capital losses from the income of any year except to the extent of the taxpayer's income for the year minus any amount deductible under subsection 138(6) and all deductions permitted by the provisions of this Division other than this paragraph, paragraph (b) or section 109;

(b) net capital losses — net capital losses for taxation years preceding and the taxation year immediately following the taxation year, but no amount is deductible in respect of net capital losses from the income of any year except to the extent of the lesser of

(i) the amount, if any, by which the taxpayer's income for the year exceeds the aggregate of all amounts each of which is a deduction permitted by subsection 138(6) or by the provisions of this Division, other than this paragraph or section 109, and

(ii) the aggregate of the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the year and, where the taxpayer is an individual, the amount, if any, by which $2,000 exceeds the amount determined in respect of him for the year under subparagraph 3(e)(i); and

(c) restricted farm losses — restricted farm losses of the taxpayer for the 5 taxation years immediately preceding and the taxation year immediately following the taxation year, but no amount is deductible in respect of a restricted farm loss from the income for any year except to the extent of the lesser of

(i) the taxpayer's income for the year minus all deductions permitted by the provisions of this Division other than this subsection or section 109, and

(ii) his incomes for the year from all farming businesses carried on by him.

Subpara. 111(1)(b)(i) substituted by 1980-81-82-83, c. 48, s. 60, applicable to 1972 *et seq.*

Para. 111(1)(a), subpara. 111(1)(b)(ii) substituted by 1977-78, c. 1, subsecs. 54(1), (2), applicable, as to para. 111(1)(a), to 1972 *et seq.* and, as to subpara. 111(1)(b)(ii), to 1977 *et seq.*, to substitute "$2,000" for "$1,000".

Interpretation Bulletins [subsec. 111(1)]: IT-151R4: Scientific research and experimental development expenditures; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of

non-residents and part-year residents; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

Forms [subsec. 111(1)]: T1A: Request for loss carryback; T2 SCH 4: Corporation loss and continuity application; T3A: Request for loss carryback by a trust.

(1.1) Net capital losses — Notwithstanding paragraph (1)(b), the amount that may be deducted under that paragraph in computing a taxpayer's taxable income for a particular taxation year is the total of

(a) the lesser of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, and

(ii) the total of all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount claimed under paragraph (1)(b) for the particular year by the taxpayer in respect of a net capital loss for a taxation year (in this paragraph referred to as the "loss year"),

B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for the particular year, and

C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year; and

(b) where the taxpayer is an individual, the least of

(i) $2,000,

(ii) the taxpayer's pre-1986 capital loss balance for the particular year, and

(iii) the amount, if any, by which

(A) the amount claimed under paragraph (1)(b) in respect of the taxpayer's net capital losses for the particular year

exceeds

(B) the total of the amounts in respect of the taxpayer's net capital losses that, using the formula in subparagraph (a)(ii), would be required to be claimed under paragraph (1)(b) for the particular year to produce the amount determined under paragraph (a) for the particular year.

Related Provisions: 111(2) — Year of death. See additional Related provisions and Definitions at end of s. 111.

History: Subsec. 111(1.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(1), applicable to the computation of taxable income for 1985 *et seq.* Subsec. 111(1.1) formerly read:

(1.1) Net capital losses — Notwithstanding paragraph (1)(b), where a taxpayer has claimed an amount under that paragraph for a particular taxation year in respect of the taxpayer's net capital losses, the amount that may be deducted under that paragraph in respect of those losses for that year is the lesser of

(a) the total of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, and

(ii) where the taxpayer is an individual, the lesser of

(A) $2,000, and

(B) the taxpayer's pre-1986 capital loss balance for the particular year; and

(b) the total of all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount of a net capital loss for a taxation year (in this paragraph referred to as a "loss year") claimed under paragraph (1)(b),

B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for that year, and

C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year.

Pre-RSC History: Subsec. 111(1.1) added by 1988, c. 55, subsec. 83(2), applicable with respect to computations of taxable incomes for 1985 *et seq.*

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents. See also list at end of s. 111.

Forms: T2088: Capital dispositions supplementary schedules — net listed-personal-property losses — unapplied; net capital losses — unapplied.

(2) Year of death — Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's taxable income for that year and the immediately preceding taxation year, the following rules apply:

(a) paragraph (1)(b) shall be read as follows:

"(b) the taxpayer's net capital losses for all taxation years not claimed for the purpose of computing the taxpayer's taxable income for any other taxation year;"; and

(b) paragraph (1.1)(b) shall be read as follows:

"(b) the amount, if any, by which

(i) the amount claimed under paragraph (1)(b) in respect of the taxpayer's net capital losses for the particular year

exceeds the total of

(ii) all amounts in respect of the taxpayer's net capital losses that, using the formula in subparagraph (a)(ii), would be required to be claimed under paragraph (1)(b) for the particular year to produce the amount determined under paragraph (a) for the particular year, and

(iii) all amounts each of which is an amount deducted under section 110.6 in computing the taxpayer's taxable income for a taxation year, except to the extent that, where the particular year is the year in which the taxpayer died, the amount, if any, by which the amount determined under subparagraph (i) in respect of the taxpayer for the immediately preceding taxation year exceeds the amount so determined under subparagraph (ii)."

History: Subsec. 111(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(1), applicable to the computation of taxable income for 1985 *et seq.* Subsec. 111(2) formerly read:

(2) Year of death — Where a taxpayer dies in a taxation year, for the purposes of computing the taxpayer's taxable income for that year and the immediately preceding taxation year, subsection (1.1) shall be read as follows:

"(1.1) Notwithstanding paragraph (1)(b), where a taxpayer has claimed an amount under that paragraph for a particular year in respect of the taxpayer's net capital losses, the amount that may be deducted under that paragraph in respect of those losses (to the extent they are not deducted in computing the

taxpayer's income for any other taxation year) for that year is the total of

(a) an amount not exceeding the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, equal to the total of all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the net capital losses for a taxation year (in this paragraph referred to as a "loss year") claimed under paragraph (1)(b),

B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for that year, and

C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year; and

(b) the amount, if any, by which

(i) the amount of the taxpayer's net capital losses claimed under paragraph (1)(b) for the particular year

exceeds the total of

(ii) the amount of the taxpayer's net capital losses claimed under paragraph (1)(b) that was determined under paragraph (a) for the particular year, and

(iii) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 in computing the taxpayer's taxable income for a taxation year."

Pre-RSC History: Subsec. 111(2) substituted by 1988, c. 55, subsec. 83(3), applicable with respect to computations of taxable incomes for 1985 *et seq.* Subsec. 111(2) formerly read:

(2) Net capital losses — Where a taxpayer dies in a taxation year, for the purposes of computing his taxable income for that year and the immediately preceding taxation year, paragraph (1)(b) shall be read as follows:

"(b) his net capital losses for all taxation years not deducted by him in computing his taxable income for any other taxation year to the extent of the aggregate of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the year, and

(ii) the amount, if any, by which the aggregate of such net capital losses exceeds the aggregate of the amount, if any, determined under subparagraph (i) in respect of the taxpayer for the year and the aggregate of all amounts each of which is an amount deducted by the taxpayer under section 110.6 in computing his taxable income for a taxation year;"

Subsec. 111(2) substituted by 1986, c. 6, subsec. 59(2), applicable to 1985 *et seq.* except that subsec. 111(2) reads as follows for the 1985 taxation year:

(2) Where a taxpayer dies in the 1985 taxation year

(a) for the purpose of computing his taxable income for the 1985 taxation year and the 1984 taxation year, paragraph (1)(b) shall be read as "his net capital losses for taxation years preceding and the taxation year immediately following the year";

(b) for the purpose of determining his net capital loss for the 1985 taxation year, clause (8)(a)(i)(B), as it is required to be read in its application to that year, shall be read without reference to

(i) the words "the least of", and

(ii) subclauses (I) and (II) thereof;

and

(c) for the purpose of determining his net capital loss for the 1984 taxation year, subparagraph (8)(a)(ii), as it read in 1984, shall be read without reference to

(i) the words "the lesser of", and

(ii) clause (A) thereof.

Subsec. 111(2) formerly read:

(2) Net capital losses — Where a taxpayer has died in a taxation year,

(a) for the purpose of computing his taxable income for that year and the immediately preceding year, paragraph (1)(b) shall be read as "his net capital losses for taxation years preceding and the taxation year immediately following the year;"; and

(b) for the purpose of determining his net capital loss for that year and the immediately preceding taxation year, subparagraph (8)(a)(ii) shall be read without reference to

(i) the words "the lesser of", and

(ii) clause (A) thereof.

Subsec. 111(2) substituted by 1984, c. 1, subsec. 54(2), applicable with respect to deaths occurring after 1983. Subsec. 111(2) formerly read:

(2) Net capital losses — Where a taxpayer has died in a taxation year,

(a) for the purpose of computing his taxable income for that year and the immediately preceding taxation year, paragraph (1)(b) shall be read without reference to

(i) the words "the lesser of", and

(ii) subparagraph (ii) thereof; and

(b) for the purpose of computing his net capital loss for that year and the immediately preceding taxation year, subparagraph (8)(a)(ii) shall be read without reference to

(i) the words "the lesser of", and

(ii) clause (A) thereof.

Subsec. 111(2) substituted by 1977-78, c. 1, subsec. 54(3), applicable with respect to deaths occurring after March 31, 1977. Subsec. 111(2) formerly read:

(2) Net capital loss in year of death — Where a taxpayer has died in a taxation year, in applying paragraph (1)(b) for the purpose of computing his taxable income for that year and the immediately preceding taxation year, that paragraph shall be read without reference to

(a) the words "the lesser of", and

(b) subparagraph (ii) thereof.

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years. See also list at end of s. 111.

(3) Limitation on deductibility — For the purposes of subsection (1),

(a) an amount in respect of a non-capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible, and an amount in respect of a net capital loss for a taxation year may be claimed, in computing the taxable income of a taxpayer for a particular taxation year only to the extent that it exceeds the total of

(i) amounts deducted under this section in respect of that non-capital loss, restricted farm loss, farm loss or limited partnership loss in computing taxable income for taxation years preceding the particular taxation year,

(i.1) the amount that was claimed under paragraph (1)(b) in respect of that net capital loss for taxation years preceding the particular taxation year, and

(ii) amounts claimed in respect of that loss under paragraph 186(1)(c) for the year in which the loss was incurred or under paragraph 186(1)(d) for the particular taxation year and taxation years preceding the particular taxation year, and

(b) no amount is deductible in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year until

(i) in the case of a non-capital loss, the deductible non-capital losses,

(ii) in the case of a net capital loss, the deductible net capital losses,

(iii) in the case of a restricted farm loss, the deductible restricted farm losses,

(iv) in the case of a farm loss, the deductible farm losses, and

(v) in the case of a limited partnership loss, the deductible limited partnership losses,

for preceding taxation years have been deducted.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 88(1.1) — Non-capital losses of subsidiary; 88(1.2) — Net capital losses of subsidiary; 88(1.3) — Winding-up — computation of income and tax payable by parent; 149(10)(c) — Restriction on carry-forward of losses on change of corporate tax status. See additional Related Provisions and Definitions at end of s. 111.

History: That portion of para. 111(3)(a) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(2), applicable to the computation of taxable income for 1985 *et seq.* That portion formerly read:

(a) an amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible by a taxpayer in computing taxable income for a particular taxation year only to the extent that it exceeds the total of

Pre-RSC History: Subpara. 111(3)(a)(i) substituted and (i.1) added, by 1988, c. 55, subsec. 83(4), applicable with respect to computations of taxable incomes for 1985 *et seq.* Subpara. 111(3)(a)(i) formerly read:

(i) amounts deducted under this section in respect of that loss in computing taxable income for taxation years preceding the particular taxation year; and

All that portion of para. 111(3)(a) preceding subpara. (i) and all that portion of para. 111(3)(b) preceding subpara. (i) amended to substitute "restricted farm loss, farm loss or limited partnership loss" for "restricted farm loss or farm loss" and to substitute "a taxation year" for "any year", and subpara. 111(3)(b)(v) added, by 1986, c. 55, subsecs. 34(2), (3), (4), applicable after February 25, 1986.

Subsec. 111(3) substituted by 1984, c. 1, subsec. 54(2), applicable with respect to the computation of taxable income for 1983 *et seq.* and with respect to losses determined for 1983 *et seq.* Subsec. 111(3) formerly read:

(3) Limitation on deductibility — For the purposes of subsection (1),

(a) an amount in respect of a non-capital loss, net capital loss or restricted farm loss, as the case may be, for a taxation year is only deductible to the extent that it exceeds the aggregate of

(i) amounts previously deductible in respect of that loss under this section, and

(ii) amounts previously subtracted in respect of that loss under paragraph 186(1)(c) or (d) in determining amounts on which tax under Part IV has become payable; and

(b) no amount is deductible in respect of a non-capital loss, net capital loss or restricted farm loss, as the case may be, for any year until

(i) in the case of a non-capital loss, the deductible non-capital losses,

(ii) in the case of a net capital loss, the deductible net capital losses, and

(iii) in the case of a restricted farm loss, the deductible restricted farm losses,

for previous years have been deducted.

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

(4) Acquisition of control [capital losses] — Notwithstanding subsection (1), where, at any time (in this subsection referred to as "that time"), control of a corporation has been acquired by a person or group of persons

(a) no amount in respect of a net capital loss for a taxation year ending before that time is deductible in computing the corporation's taxable income for a taxation year ending after that time, and

(b) no amount in respect of a net capital loss for a taxation year ending after that time is deductible in computing the corporation's taxable income for a taxation year ending before that time,

and where, at that time, the corporation neither became nor ceased to be exempt from tax under this Part on its taxable income,

(c) in computing the adjusted cost base to the corporation at and after that time of each capital property, other than a depreciable property, owned by the corporation immediately before that time, there shall be deducted the amount, if any, by which the adjusted cost base to the corporation of the property immediately before that time exceeds its fair market value immediately before that time,

(d) each amount required by paragraph (c) to be deducted in computing the adjusted cost base to the corporation of a property shall be deemed to be a capital loss of the corporation for the taxation year that ended immediately before that time from the disposition of the property,

(e) each capital property owned by the corporation immediately before that time (other than a property in respect of which an amount would, but for this paragraph, be required by paragraph (c) to be deducted in computing its adjusted cost base to the corporation or a depreciable property of a prescribed class to which, but for this paragraph, subsection (5.1) would apply) as is designated by the corporation in its return of income under this Part for the taxation year that ended immediately before that time or in a prescribed form filed with the Minister on or before the day that is 90 days after the day on which a notice of assessment of tax payable for the year or notification that no tax is payable for the year is mailed to the corporation, shall be deemed to have been disposed of by the corporation immediately before the time that is immediately before that time for proceeds of disposition equal to the lesser of

(i) the fair market value of the property immediately before that time, and

(ii) the greater of the adjusted cost base to the corporation of the property immediately before the disposition and such amount as is designated by the corporation in respect of the property,

and shall be deemed to have been reacquired by it at that time at a cost equal to the proceeds of disposition thereof, except that, where the property is depreciable property of the corporation the capital cost of which to the corporation immediately before the disposition time exceeds those proceeds of disposition, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(iii) the capital cost of the property to the corporation at that time shall be deemed to be the amount that was its capital cost immediately before the disposition, and

(iv) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing its income for taxation years ending before that time, and

(f) each amount that by virtue of paragraph (d) or (e) is a capital loss or gain of the corporation from a disposition of a property for the taxation year that ended immediately before that time shall, for the purposes of the definition "capital dividend account" in subsection 89(1), be deemed to be a capital loss or gain, as the case may be, of the corporation from the disposition of the property immediately before the time that a capital property of the corporation in respect of which paragraph (e) would be applicable would be deemed by that paragraph to have been disposed of by the corporation.

Related Provisions: 13(7)(f) — Rules applicable to depreciable property; 53(2)(b.2) — Reduction in ACB; 53(4) — Effect on ACB of share, partnership interest or trust interest; 87(2.1)(b) — Determining loss after amalgamation; 107(1.1)(b)(ii) — Deemed cost of income interest in trust; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end where change of control occurs; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 111. See also under "Control of corporation: change of" in Topical Index.

History: Para. 111(4)(e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 83(3), applicable to acquisitions of control occurring after July 13, 1990, other than acquisitions of control where the persons acquiring control were obliged on that day to acquire control pursuant to the terms of agreements in writing entered into on or before that day. Para. 111(4)(e) formerly read:

(e) each capital property owned by the corporation immediately before that time, other than a property in respect of which an amount would, but for this paragraph, be required by paragraph (c) to be deducted in computing its adjusted cost base to the corporation, as is designated by the corporation in its return of income under this Part for the taxation year that ended immediately before that time or in a prescribed form filed with the Minister on or before the day that is 90 days after the day on which a notice of assessment of tax payable for the year or notification that no tax is payable for the year is mailed to the corporation, shall be deemed to have been disposed of by the corporation immediately before the time that is immediately before that time for proceeds of disposition equal to the greater of

(i) the adjusted cost base to the corporation of the property immediately before that time, and

(ii) the lesser of the fair market value of the property immediately before that time and such amount as is designated by the corporation in respect of the property

and shall be deemed to have been reacquired by it at that time at a cost equal to the proceeds of disposition thereof, and

Pre-RSC History: Subsec. 111(4) substituted by 1987, c. 46, subsec. 40(1), applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" below. Subsec. 111(4) formerly read:

(4) Application of subsec. (1) where change in control — Subsection (1) does not apply to permit a corporation to deduct, for the purpose of computing its taxable income for a taxation year, any amount in respect of

(a) its net capital loss for a preceding year if, before the end of the year, control of the corporation has been acquired by a person or persons who did not, at the end of that preceding year, control the corporation; or

(b) its net capital loss for a subsequent year if, before the beginning of that subsequent year, control of the corporation has been acquired by a person or persons who did not, at the beginning of the taxation year, control the corporation.

Subsec. 111(4) substituted by 1984, c. 1, subsec. 54(2), applicable with respect to acquisitions of control in 1982 *et seq.*, except that in its application to acquisitions of control occurring

(a) before April 20, 1983, or

(b) after April 19, 1983 but before April 20, 1984, where the arrangements therefor were substantially advanced and evidenced in writing on or before April 19, 1983,

the reference in paragraph 111(4)(b) to "a subsequent year" shall be read as a reference to "a subsequent year (other than the year immediately following the taxation year)". Subsec. 111(4) formerly read:

(4) Application of subsec. (1) where change in control — Subsection (1) does not apply to permit a corporation to deduct, for the purpose of computing its taxable income for a taxation year, any amount in respect of its net capital loss for a preceding year if, before the end of the year, control of the corporation has been acquired by a person or persons who did not, at the end of that preceding year, control the corporation.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 9 (loss consolidation within a corporate group).

Forms: T2 SCH 6: Summary of dispositions of capital property.

(5) Idem [business or property losses] — Where, at any time, control of a corporation has been acquired by a person or group of persons, no amount in respect of its non-capital loss or farm loss for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time and no amount in respect of its non-capital loss or farm loss for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time except that

(a) such portion of the corporation's non-capital loss or farm loss, as the case may be, for a taxation year ending before that time as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the corporation in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible by the corporation for a particular taxation year ending after that time

(i) only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year, and

(ii) only to the extent of the total of the corporation's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services; and

(b) such portion of the corporation's non-capital loss or farm loss, as the case may be, for a taxation year ending after that time as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the corporation in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its

taxable income for the year is deductible by the corporation for a particular year ending before that time

(i) only if throughout the taxation year and in the particular year that business was carried on by the corporation for profit or with a reasonable expectation of profit, and

(ii) only to the extent of the corporation's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services.

Related Provisions: 10(11) — Adventure in the nature of trade deemed to be business carried on by corporation; 87(2.1)(b) — Determining loss after amalgamation; 111(4) — Application of subsec. (1) where change in control; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year end when change of control occurs; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 111.

Pre-RSC History: That portion of para. 111(5)(a) and that portion of para. 111(5)(b) preceding subpara. (i) of each amended by 1988, c. 55, subsecs. 83(5), (6), to add, in each, "and, where a business was carried on by the corporation in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year", applicable with respect to non-capital losses and farm losses for 1988 *et seq.*

All that portion of subsec. 111(5) preceding para. (a) and subparas. 111(5)(a)(i), (ii) substituted, and all that portion of para. 111(5)(b) preceding subpara. (i) amended to substitute "year ending after" for "year commencing after" and "year ending before" for "year commencing before", by 1987, c. 46, subsecs. 40(2)–(4), applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" under subsec. 111(4). The substituted portions formerly read:

(5) Idem — Where, at any time, control of a corporation has been acquired by a person or persons (each of whom is in this subsection referred to as the "purchaser")

. . . . .

(i) only if that business was carried on by the corporation for profit or a reasonable expectation of profit

(A) throughout the part of the particular year that is after that time, where control of the corporation was acquired in the particular year, and

(B) throughout the particular year, in any other case, and

(ii) only to the extent of the aggregate of

(A) the corporation's income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services, and

(B) the amount, if any, by which

(I) the aggregate of the corporation's taxable capital gains for the particular year from dispositions of property owned by the corporation at or before that time, other than property that was acquired by the corporation within the two-year period ending at that time from the purchaser or a person who did not deal at arm's length with the purchaser,

exceeds

(II) the aggregate of the corporation's allowable capital losses for the particular year from dispositions described in subclause (I); and

Subpara. 111(5)(a)(i) substituted by 1985, c. 45, subsec. 57(1), applicable with respect to acquisitions of control occurring in 1984 *et seq.* That subpara. formerly read:

(i) only if throughout the particular year and after that time that business was carried on by the corporation for profit or with a reasonable expectation of profit; and

Cl. 111(5)(a)(ii)(B) substituted by 1985, c. 45, subsec. 57(2), applicable with respect to acquisitions of control occurring after May 9, 1985, except that subclause 111(5)(a)(ii)(B)(I) is applicable with respect to acquisitions of control occurring in 1984 *et seq.* That clause formerly read:

(B) the amount, if any, by which

(I) the aggregate of the corporation's taxable capital gains for the particular year from the disposition of property owned by the corporation at that time, other than property that was acquired from the purchaser or a person who did not deal at arm's length with the purchaser,

exceeds

(II) the amount, if any, by which the aggregate of the corporation's allowable capital losses for the particular year from the disposition of property described in subclause (I) exceeds the aggregate of its allowable business investment losses for the particular year from the disposition of that property; and

Subsec. 111(5) substituted by 1984, c. 1, subsec. 54(2), applicable with respect to acquisitions of control occurring in 1984 *et seq.*, except that for the purposes only of applying paragraph 111(5)(b), subsection 111(5) is applicable with respect to acquisitions of control occurring in 1980 *et seq.*, but in its application to acquisitions of control occurring

(a) before April 20, 1983, or

(b) after April 19, 1983 but before April 20, 1984, where the arrangements therefor were substantially advanced and evidenced in writing on or before April 19, 1983,

the reference in that paragraph to "a particular taxation year" shall be read as a reference to "a particular taxation year (other than the year immediately preceding the year in which the loss was incurred)". Subsec. 111(5) formerly read:

(5) Idem — Where, at any time, control of a corporation has been acquired by a person or persons (each of whom is in this subsection referred to as the "purchaser"), such portion of the corporation's non-capital loss for a taxation year ending before that time as may reasonably be regarded as its loss from carrying on a particular business is deductible by the corporation for a taxation year ending after that time only

(a) if throughout the year and after that time the particular business was carried on by the corporation for profit or with a reasonable expectation of profit; and

(b) to the extent of the aggregate of

(i) the corporation's income for the year from the particular business and any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties, or the rendering of services that are similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, in the course of carrying on the particular business before that time, and

(ii) the amount, if any, by which

(A) the aggregate of the corporation's taxable capital gains for the year from the disposition of property owned by the corporation at that time, other than property that was acquired from the purchaser or a person who did not deal at arm's length with the purchaser,

exceeds

(B) the amount, if any, by which the aggregate of the corporation's allowable capital losses for the year from the disposition of property described in clause (A) exceeds the aggregate of its allowable business investment losses for the year from the disposition of property described in clause (A).

Subsec. 111(5) substituted by 1980-81-82-83, c. 140, subsec. 70(1), applicable with respect to acquisitions of control occurring after November 12, 1981 other than acquisitions of control occurring before 1983 where the arrangements therefor were substantially advanced and evidenced in writing on November 12, 1981. Subsec. 111(5) formerly read:

(5) Subsection (1) does not apply to permit a corporation to deduct, for the purpose of computing its taxable income for a taxation year,

such portion of its non-capital loss for a preceding year as may reasonably be regarded as its loss from carrying on any particular business if

(a) control of the corporation has been acquired, before the end of the year, by a person or persons who did not, at the end of that preceding year, control the corporation and the corporation was not, during the year, carrying on that business, or

(b) control of the corporation was acquired, before the end of the year and after the winding-up or discontinuance of that business, by a person or persons who did not control the corporation at any time during that preceding year when that business was being carried on.

Selected Cases [subsec. 111(5)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Shareholder agreement did not result in *de jure* control); *Garage Montplaisir Ltée v. MNR*, [1998] 1 C.T.C. 51 (FCTD) (Purpose of provision not carryover of losses, but strengthening or survival of a declining business); *Wigmar Holdings Ltd. v. R.*, [1997] 2 C.T.C. 263 (FCA) (Word "and" between clauses (A) and (B) in subparagraph 111(5)(a)(i) to be read disjunctively, not cumulatively); *Yarmouth Industrial Leasing Ltd. v. The Queen*, [1985] 2 C.T.C. 67 (FCTD) (Losses of inactive subsidiary not carried forward where new type of business subsequently assumed; control changed when 60% of parent sold).

Interpretation Bulletins: IT-206R: Separate businesses; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 9 (loss consolidation within a corporate group); No. 16 (*Duha Printers* case).

Advance Tax Rulings: ATR-7: Amalgamation involving losses and control.

(5.1) Computation of undepreciated capital cost — Where, at any time, control of a corporation (other than a corporation that at that time became or ceased to be exempt from tax under this Part on its taxable income) has been acquired by a person or group of persons and, if this Act were read without reference to subsection 13(24), the undepreciated capital cost to the corporation of depreciable property of a prescribed class immediately before that time would have exceeded the total of

(a) the fair market value of all the property of that class immediately before that time, and

(b) the amount in respect of property of that class otherwise allowed under regulations made under paragraph 20(1)(a) or deductible under subsection 20(16) in computing the corporation's income for the taxation year ending immediately before that time,

the excess shall be deducted in computing the income of the corporation for the taxation year ending immediately before that time and shall be deemed to have been allowed in respect of property of that class under regulations made under paragraph 20(1)(a).

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 111.

Pre-RSC History: Subsec. 111(5.1) substituted by 1987, c. 46, subsec. 40(5), applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" under subsec. 111(5.5). Subsec. 111(5.1) formerly read:

(5.1) Presumption — Where at any time in a particular taxation year control of a corporation (other than a corporation that was immediately before that time exempt from tax under this Part on its taxable income) has been acquired by a person or persons and at that time the undepreciated capital cost to the corporation of depreciable property of a prescribed class would, but for this subsection, exceed the fair market value of all the property of that class, the excess

(a) shall be deemed to have been allowed to the corporation in respect of property of the class under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before that time, and

(b) shall be deemed to be, or shall be added to, as the case may be, the non-capital loss or farm loss, as the case may be, of the corporation for the taxation year immediately preceding the particular year and shall be regarded as having been incurred in the course net capital carrying on the business in which the property was used at that time,

but no part of the excess shall be deductible in computing the taxable income of the corporation for a taxation year preceding the particular taxation year.

Para. 111(5.1)(b) substituted by 1984, c. 1, subsec. 54(3), applicable with respect to acquisitions of control occurring in 1983 *et seq.* Para. 111(5.1)(b) formerly read:

(b) shall be deemed to be, or shall be added to, as the case may be, the non-capital loss of the corporation for the taxation year immediately preceding the particular taxation year as a loss from carrying on the business in which the property was used at that time,

Subsec. 111(5.1) added by 1980-81-82-83, c. 140, subsec. 70(1), applicable with respect to acquisitions of control occurring after November 12, 1981, other than acquisitions of control occurring before 1983 where the arrangements therefor were substantially advanced and evidenced in writing on November 12, 1981.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 9 (loss consolidation within a corporate group).

(5.2) Computation of cumulative eligible capital — Where, at any time, control of a corporation (other than a corporation that at that time became or ceased to be exempt from tax under this Part on its taxable income) has been acquired by a person or group of persons and immediately before that time the corporation's cumulative eligible capital in respect of a business exceeded the total of

(a) ¾ of the fair market value of the eligible capital property in respect of the business, and

(b) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year ending immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year ending immediately before that time.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 111.

Pre-RSC History: Para. 111(5.2)(a) amended by 1988, c. 55, subsec. 83(7), to substitute "¾" for "½", applicable with respect to acquisitions of control of a corporation occurring after the commencement of the corporation's first taxation year commencing after June 1988.

Subsec. 111(5.2) substituted by 1987, c. 46, subsec. 40(5), applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" under subsec. 111(5.5). Subsec. 111(5.2) formerly read:

(5.2) Idem — Where at any time in a particular taxation year control of a corporation (other than a corporation that was immediately before that time exempt from tax under this Part on its taxable income) has been acquired by a person or persons and at that time the corporation's cumulative eligible capital in respect of a business

would, but for this subsection, exceed ½ of the fair market value of the eligible capital property in respect of the business, the excess

(a) shall be deemed to have been deducted by the corporation under paragraph 20(1)(b) in computing its income from the business for taxation years ending before that time, and

(b) shall be deemed to be or shall be added to, as the case may be, the non-capital loss or farm loss, as the case may be, of the corporation for the taxation year immediately preceding the particular year and shall be regarded as having been incurred in the course of carrying on the business,

but no part of the excess shall be deductible in computing the taxable income of the corporation for a taxation year preceding the particular taxation year.

Para. 111(5.2)(b) substituted by 1984, c. 1, subsec. 54(4), applicable with respect to acquisitions of control occurring in 1983 *et seq.* Para. 111(5.2)(b) formerly read:

(b) shall be deemed to be, or shall be added to, as the case may be, the non-capital loss, if any, of the corporation for the taxation year immediately preceding the particular taxation year as a loss from carrying on the business,

Subsec. 111(5.2) added by 1980-81-82-83, c. 140, subsec. 70(1), applicable with respect to acquisitions of control occurring after November 12, 1981 other than acquisitions of control occurring before 1983 where the arrangements therefor were substantially advanced and evidenced in writing on November 12, 1981.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 9 (loss consolidation within a corporate group).

(5.3) Doubtful debts and bad debts — Where, at any time, control of a corporation (other than a corporation that at that time became or ceased to be exempt from tax under this Part on its taxable income) has been acquired by a person or group of persons, no amount may be deducted under paragraph 20(1)(l) in computing the corporation's income for its taxation year ending immediately before that time and each amount that is the greatest amount that would, but for this subsection and subsection 26(2) of this Act and subsection 33(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, have been deductible under paragraph 20(1)(l) in respect of a debt owing to the corporation immediately before that time shall be deemed to be a separate debt and shall, notwithstanding any other provision of this Act, be deducted as a bad debt under paragraph 20(1)(p) in computing the corporation's income for the year and the amount by which the debt exceeds that separate debt shall be deemed to be a separate debt incurred at the same time and under the same circumstances as the debt was incurred.

Related Provisions: 50(1)(a) — Deemed disposition where debt becomes bad debt; 87(2.1)(b) — Determining loss after amalgamation; 88(1.1) — Non-capital losses, etc., of subsidiary; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 111.

Pre-RSC History: Subsec. 111(5.3) substituted by 1987, c. 46, subsec. 40(5), applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" under subsec. 111(5.5). Subsec. 111(5.3) formerly read:

(5.3) **Idem** — For the purposes of subsections (5.1) and (5.2), where the particular taxation year referred to therein is the first taxation year of a corporation, the corporation shall be deemed to have had a taxation year immediately preceding the particular taxation year.

Subsec. 111(5.3) added by 1980-81-82-83, c. 140, subsec. 70(1), applicable with respect to acquisitions of control occurring after November 12, 1981 other than acquisitions of control occurring before 1983 where the arrangements therefor were substantially advanced and evidenced in writing on November 12, 1981.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 9 (loss consolidation within a corporate group).

(5.4) Non-capital loss — Where, at any time, control of a corporation has been acquired by a person or persons, such portion of the corporation's non-capital loss for a taxation year ending before that time as

(a) was not deductible in computing the corporation's income for a taxation year ending before that time, and

(b) can reasonably be considered to be a non-capital loss of a subsidiary corporation (in this subsection referred to as the "former subsidiary corporation") from carrying on a particular business (in this subsection referred to as the "former subsidiary corporation's loss business") that was deemed by subsection 88(1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on November 12, 1981 to be the non-capital loss of the corporation for the taxation year of the corporation in which the former subsidiary corporation's loss year ended

shall be deemed to be a non-capital loss of the corporation from carrying on the former subsidiary corporation's loss business.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired. See additional Related Provisions and Definitions at end of s. 111.

Pre-RSC History: Subsec. 111(5.4) added by 1980-81-82-83, c. 140, subsec. 70(1), applicable after November 12, 1981.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 9 (loss consolidation within a corporate group).

(5.5) Restriction — Where control of a corporation has been acquired by a person or group of persons and it may reasonably be considered that the main reason for the acquisition of control was to cause paragraph (4)(d) or subsection (5.1), (5.2) or (5.3) to apply with respect to the acquisition,

(a) that provision and paragraph (4)(e), and

(b) where that provision is paragraph (4)(d), paragraph (4)(c)

shall not apply with respect to the acquisition.

Related Provisions: 87(2.1)(b) — Determining loss after amalgamation; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 256(6)–(9) — Whether control acquired.

Pre-RSC History: Subsec. 111(5.5) added by 1987, c. 46, subsec. 40(6), applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988, where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire con-

trol of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987. See also list at end of s. 111.

(6) Limitation — For the purposes of this section and paragraph 53(1)(i), any loss of a taxpayer for a taxation year from a farming business shall, after the taxpayer disposes of the land used in that farming business and to the extent that the amount of the loss is required by paragraph 53(1)(i) to be added in computing the adjusted cost base to the taxpayer of the land immediately before the disposition, be deemed not to be a loss.

(7) Idem — For the purposes of this section, any loss of a taxpayer for a taxation year from a farming business shall, to the extent that the loss is included in the amount of any deduction permitted by section 101 in computing the taxpayer's income for any subsequent taxation year, be deemed not to be a loss of the taxpayer for the purpose of computing the taxpayer's taxable income for that subsequent year or any taxation year subsequent thereto.

(7.1) Effect of election by insurer under subsec. 138(9) in respect of 1975 taxation year — Where an insurer has made an election under subsection 138(9) in respect of its 1975 taxation year, for the purpose of determining the amount deductible in computing its taxable income for its 1977 and subsequent taxation years in respect of the non-capital loss, if any, for the 1972 and each subsequent taxation year ending before 1977, a portion of the non-capital loss for each such year equal to the lesser of

(a) the portion of the non-capital loss for the year (determined without reference to this subsection) that would be deductible in computing the insurer's taxable income for its 1977 taxation year if the insurer had sufficient income for that year, and

(b) the amount, if any, by which

(i) its 1975 branch accounting election deficiency

exceeds

(ii) the total of

(A) the amount determined under subparagraph 138(4.1)(d)(ii) in respect of the insurer,

(B) the total of all amounts each of which is an amount determined under paragraph 13(22)(b) with respect to depreciable property of a prescribed class of the insurer, and

(C) the total of all amounts each of which is the portion determined under this subsection in respect of the non-capital loss for a taxation year after 1971 and preceding the year

shall, for the purposes of this section, be deemed to have been deductible under this section in computing the insurer's taxable income for a taxation year ending before 1977.

Related Provisions: 111(7.11) — Definitions in 138(12) apply. See also Related Provisions and Definitions at end of s. 111.

Pre-RSC History: Subsec. 111(7.1) added by 1977-78, c. 1, subsec. 54(4), applicable to 1977 *et seq.*

Interpretation Bulletins: See list at end of s. 111.

(7.11) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to subsection (7.1).

Origin of subsec. 111(7.11): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

(7.2) Non-capital loss of life insurer — Notwithstanding paragraph (1)(a), in the case of a life insurer the amount deductible in computing its taxable income for its 1978 and subsequent taxation years,

(a) in respect of its non-capital loss for each taxation year ending before 1977 shall be deemed to be nil; and

(b) in respect of its non-capital loss for its 1977 taxation year shall be deemed to be the amount, if any, by which

(i) the amount referred to in subparagraph 138(4.2)(a)(iv)

exceeds the total of

(ii) the amount of the reserve determined for the purpose of subparagraph 138(4.2)(a)(i),

(iii) in any case where subparagraph 138(4.2)(a)(ii) applies, the total of amounts referred to in that subparagraph, and

(iv) in any case where subparagraph 138(4.2)(a)(iii) applies, the amount referred to in that subparagraph.

Pre-RSC History: Subparas. 111(7.2)(b)(i) to (iv) substituted for subparas. 111(7.2)(b)(i) to (iii) by 1979, c. 5, s. 35, applicable to 1978 *et seq.*

Subsec. 111(7.2) substituted by 1977-78, c. 32, s. 28, applicable to 1978 *et seq.*

Subsec. 111(7.2) added by 1977-78, c. 1, subsec. 54(4), applicable, to 1978 *et seq.*

Interpretation Bulletins: See list at end of s. 111.

(8) Definitions — In this section,

"farm loss" of a taxpayer for a taxation year means the amount determined by the formula

$$A - C$$

where

A is the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's loss for the year from a farming or fishing business

exceeds

(ii) the total of all amounts each of which is the taxpayer's income for the year from a farming or fishing business, and

(b) the amount that would be the taxpayer's non-capital loss for the year if each of the amounts determined for C and D in the definition "non-capital loss" in this subsection were zero, and

B [Repealed]

C is the total of all amounts by which the farm loss of the taxpayer for the year is required to be reduced because of section 80;

Related Provisions: 31(1), (1.1) — Restricted farm loss; 53(1)(i) — Addition to ACB of farmland; 80(3)(b) — Reduction in farm loss on debt forgiveness; 87(2.1)(a) — Amalgamation — farm loss carried forward; 96(1) — Farm loss of partner; 111(9) — Farm loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's farm loss for minimum tax purposes; 128.1(4)(f) — Farm loss limitation on becoming non-resident; 133(2) — Non-resident-owned investment corporations; 161(7) — Effect of carryback of loss; 248(1)"farm loss" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 111.

History: The formula in the definition "farm loss" in subsec. 111(8) amended to remove reference to B and the description of B repealed by 2000, c. 19, subsecs. 19(1) and (2), applicable to 1998 *et seq.* The description of B formerly read:

> B is the amount, if any, by which any amount specified by the taxpayer in the taxpayer's election for the year under subsection 110.4(2) exceeds the amount that would be the taxpayer's non-capital loss for the year if the amount determined for C in the definition "non-capital loss" in this subsection were zero, and

The formula in the definition "farm loss" in subsec. 111(8) amended to add C, and the description of C added, by 1995, c. 21, subsecs. 36(1), (2), applicable to taxation years that end after February 21, 1994.

Pre-RSC History: *The definition "farm loss" was para. 111(8)(b.1). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

> *(b.1) "farm loss" — "farm loss" of a taxpayer for a taxation year means the amount, if any, by which the lesser of*
>
> *(i) the amount, if any, by which*
>
> *(A) the aggregate of all amounts each of which is his loss for the year from a farming or fishing business*
>
> *exceeds*
>
> *(B) the aggregate of all amounts each of which is his income for the year from a farming or fishing business, and*
>
> *(ii) the amount that would be the taxpayer's non-capital loss for the year if paragraph (b) were read without reference to subparagraphs (iii) and (iv) thereof*
>
> *exceeds*
>
> *(iii) the amount, if any, by which any amount specified by the taxpayer in his election for the year under subsection 110.4(2) exceeds the amount that would be his non-capital loss for the year if paragraph (b) were read without reference to subparagraph (iii) thereof;*

Para. 111(8)(b.1) added by 1984, c. 1, subsec. 54(5), applicable to 1983 *et seq.*

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-322R: Farm losses. See also list at end of s. 111.

"net capital loss" of a taxpayer for a taxation year means the amount determined by the formula

$$A - B + C - D$$

where

A is the amount, if any, determined under subparagraph 3(b)(ii) in respect of the taxpayer for the year,

B is the lesser of the total determined under subparagraph 3(b)(i) in respect of the taxpayer for the year and the amount determined for A in respect of the taxpayer for the year,

C is the least of

(a) the amount of the allowable business investment losses of the taxpayer for the taxpayer's seventh preceding taxation year,

(b) the amount, if any, by which the amount of the non-capital loss of the taxpayer for the taxpayer's seventh preceding taxation year exceeds the total of all amounts in respect of that non-capital loss deducted in computing the taxpayer's taxable income or claimed by the taxpayer under paragraph 186(1)(c) or (d) for the year or for any preceding taxation year, and

(c) where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, nil, and

D is the total of all amounts by which the net capital loss of the taxpayer for the year is required to be reduced because of section 80;

Related Provisions: 80(4)(b) — Reduction in net capital loss on debt forgiveness; 87(2.1)(a) — Amalgamation — net capital loss carried forward; 96(1) — Net capital loss of partner; 96(8)(b) — Loss of partnership that previously had only non-resident partners; 96(8)(c) — Disposition of property by partnership that previously had only non-resident partners; 111(1)(b) — Application of net capital loss; 111(7.2) — Non-capital loss of life insurer; 111(9) — Net capital loss where taxpayer not resident in Canada; 127.52(1)(i)(ii)(B) — Calculation of previous year's farm loss for minimum tax purposes; 128.1(4)(f) — Net capital loss limitation on becoming non-resident; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 161(7) — Effect of carryback of loss; 248(1)"net capital loss" — Definition applies to entire Act; 256(6)–(9) — Whether control acquired; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 111.

History: The definition "net capital loss" in subsec. 111(8) amended by 1995, c. 21, subsec. 36(3), applicable to taxation years that end after February 21, 1994. The definition formerly read:

> "net capital loss" of a taxpayer for a taxation year means the total of
>
> (a) the amount determined by the formula
>
> $$A - B$$
>
> where
>
> A is the amount, if any, determined under subparagraph 3(b)(ii) in respect of the taxpayer for the year, and
>
> B is the total determined under subparagraph 3(b)(i) in respect of the taxpayer for the year, and
>
> (b) the amount that is equal to the lesser of
>
> (i) the amount of the allowable business investment losses of the taxpayer for the taxpayer's seventh preceding taxation year, and
>
> (ii) the amount, if any, by which the amount of the non-capital loss of the taxpayer for the taxpayer's seventh preceding taxation year exceeds the total of amounts in respect of that non-capital loss deducted by the taxpayer in computing the taxpayer's taxable income or claimed by the taxpayer under paragraph 186(1)(c) or (d) for the year or for any preceding taxation year
>
> except that where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, the amount determined under this paragraph in respect of the taxpayer for the year shall be deemed to be nil;

Pre-RSC History: *The definition "net capital loss" was para. 111(8)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

> *(a) "net capital loss" of a taxpayer for a taxation year means the aggregate of*
>
> *(i) the amount, if any, by which*
>
> *(A) the amount, if any, determined under subparagraph 3(b)(ii) in respect of the taxpayer for the year*
>
> *exceeds*
>
> *(B) the aggregate determined under subparagraph 3(b)(i) in respect of the taxpayer for the year, and*
>
> *(ii) the amount that is equal to the lesser of*
>
> *(A) the amount of the allowable business investment losses of the taxpayer for his seventh preceding taxation year, and*
>
> *(B) the amount, if any, by which the amount of the non-capital loss of the taxpayer for his seventh preceding taxation year exceeds the aggregate of amounts in respect of that non-capital loss deducted by the taxpayer in computing his taxable income or claimed by him under paragraph 186(1)(c) or (d) for the year or for any preceding taxation year*
>
> *except that where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, the amount determined under this subpar-*

agraph in respect of the taxpayer for the year shall be deemed to be nil;

Subpara. 111(8)(a)(ii) substituted by 1987, c. 46, subsec. 40(7), to add "except that where the taxpayer is a corporation the control of which was acquired by a person or group of persons before the end of the year and after the end of the taxpayer's seventh preceding taxation year, the amount determined under this subparagraph in respect of the taxpayer for the year shall be deemed to be nil", applicable to 1987 *et seq.*

Subpara. 111(8)(a)(i) substituted by 1986, c. 6, subsec. 59(3), applicable to 1985 *et seq.* except that subpara. 111(8)(a)(i) shall be read as follows for the 1985 taxation year:

(i) the amount, if any, by which

(A) the amount determined under subparagraph 3(e)(i) in respect of the taxpayer for the year

exceeds

(B) the least of

(I) the amount determined under subparagraph 3(e)(ii),

(II) the amount determined under subparagraph 3(e)(iii), and

(III) the amount determined under paragraph 3(d)

in respect of the taxpayer for the year, and

Subpara. 111(8)(a)(i) formerly read:

(i) the amount, if any, by which

(A) the amount determined under subparagraph 3(e)(i) in respect of the taxpayer for the year

exceeds

(B) the lesser of

(I) the amount determined under subparagraph 3(e)(ii), and

(II) the amount determined under paragraph 3(d)

in respect of the taxpayer for the year, and

Para. 111(8)(a) substituted by 1985, c. 45, subsec. 57(3), applicable to 1985 *et seq.* Para. 111(8)(a) formerly read:

(a) "net capital loss" of a taxpayer for a taxation year means the amount, if any, by which

(i) the amount determined under subparagraph 3(e)(i) in respect of the taxpayer for the taxation year

exceeds

(ii) the lesser of

(A) the amount determined under subparagraph 3(e)(ii), and

(B) the amount determined under paragraph 3(d)

in respect of the taxpayer for the taxation year;

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-484R2: Business investment losses. See also list at end of s. 111.

"non-capital loss" of a taxpayer for a taxation year means the amount determined by the formula

$$(A + B) - (D + D.1 + D.2)$$

where

A is the amount determined by the formula

$$E - F$$

where

E is the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under paragraph (1)(b) or section 110.6 in computing the taxpayer's taxable income for the year or an amount that may be deducted under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (j) or (k), section 112 or subsection 113(1) or 138(6) in computing the taxpayer's taxable income for the year [, and]

F is the amount determined under paragraph 3(c) in respect of the taxpayer for the year,

B is the amount, if any, determined in respect of the taxpayer for the year under section 110.5,

C [Repealed]

D is the amount that would be the taxpayer's farm loss for the year if the amount determined for B in the definition "farm loss" in this subsection were zero,

D.1 is the total of all amounts deducted under subsection (10) in respect of the taxpayer for the year, and

D.2 is the total of all amounts by which the non-capital loss of the taxpayer for the year is required to be reduced because of section 80;

Related Provisions: 80(3)(a), 80(4)(a) — Reduction in non-capital loss on debt forgiveness; 87(2.1)(a) — Amalgamation — non-capital loss carried forward; 96(1) — Non-capital loss of partner; 96(8)(b), (c) — Loss of partnership that previously had only non-resident partners; 111(1)(a) — Application of non-capital loss; 111(5.4) — Non-capital loss following change of control; 111(9) — Non-capital loss where taxpayer not resident in Canada; 111(10), (11) — Fuel tax rebate loss abatement; 127.52(1)(i)(ii)(B) — Calculation of previous year's non-capital loss for minimum tax purposes; 128.1(4)(f) — Non-capital loss limitation on becoming non-resident; 161(7) — Effect of carryback of loss; 248(1)"non-capital loss" — Definition applies to entire Act; 257 — Formula amounts cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 111.

History: The first formula in the definition "non-capital loss" in subsec. 111(8) amended to remove reference to C and the description of C repealed by 2000, c. 19, subsecs. 19(3) and (4), applicable to 1998 *et seq.* The description of C formerly read:

C is any amount specified by the taxpayer in the taxpayer's election for the year under subsection 110.4(2),

The first formula in the definition "non-capital loss" in subsec. 111(8) amended to add D.2, and the description of D.2 added, by 1995, c. 21, subsecs. 36(4), (5), applicable to taxation years that end after February 21, 1994.

The description of E in the definition "non-capital loss" in subsec. 111(8) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 49(1), applicable to 1991 *et seq.* That description formerly read:

E is the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under section 110.6 or an amount deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (j) or (k), section 112 or subsection 113(1) or 138(6) in computing the taxpayer's taxable income for the year, and

D.1 and its description in "non-capital loss" in subsec. 111(8) added by 1994, c. 7, Sch. VI (1992, c. 29), subsecs. 5(1) and (1.1), applicable to amounts received after 1991.

Pre-RSC History: *The definition "non-capital loss" was para. 111(8)(b). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(b) "non-capital loss" — "non-capital loss" of a taxpayer for a taxation year means the amount, if any, by which the aggregate of

(i) the amount, if any, by which

(A) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, his allowable business investment loss for the year, an amount deducted under section 110.6 or an amount deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f), (j) or (k), section 112 or subsection 113(1) or 138(6) in computing his taxable income for the year

exceeds

(B) the amount determined under paragraph 3(c) in respect of the taxpayer for the year, and

(ii) the amount, if any, determined in respect of the taxpayer for the year under section 110.5

exceeds the aggregate of

(iii) any amount specified by the taxpayer in his election for the year under subsection 110.4(2),

(iv) the amount that would be his farm loss for the year if paragraph (b.1) were read without reference to subparagraph (iii) thereof;

Cl. 111(8)(b)(i)(A) substituted by 1988, c. 55, subsec. 83(8), applicable to 1988 *et seq.*, except that

(a) for the purpose of computing a corporation's taxable income for a taxation year ending before July 1988, the amount of the corporation's non-capital loss for another taxation year ending after June 1988 shall be deemed to be the amount, if any, by which

(i) the amount that would, but for this paragraph, be the non-capital loss for the other year,

exceeds

(ii) 1/5 of the lesser of

(A) the amount deductible under para. 110(1)(k) in computing the corporation's taxable income for the other year, and

(B) the amount that would, but for this paragraph, be the non-capital loss for the other year;

(b) for the purpose of computing a corporation's taxable income for a taxation year ending after June 1988, the amount of the corporation's non-capital loss for another taxation year ending before July 1988 shall be deemed to be the aggregate of

(i) the amount that would, but for this paragraph, be the non-capital loss for the other year, and

(ii) 1/4 of the lesser of

(A) the amount deductible under para. 110(1)(k) in computing the corporation's taxable income for the other year, and

(B) the amount that would, but for this paragraph, be the non-capital loss for the other year; and

(c) for the purpose of subsec. 111(3), the aggregate of all amounts each of which is an amount deducted in computing a corporation's taxable income or an amount claimed under Part IV for a taxation year ending before July 1988 in respect of a non-capital loss for another taxation year ending after June 1988 shall be deemed to be the aggregate of

(i) all amounts so deducted or so claimed, and

(ii) 1/4 of the amount, if any, by which

(A) all the amounts so deducted or so claimed

exceeds

(B) the amount, if any, by which the amount deductible for the year in respect of the non-capital loss exceeds 4/5 of the amount deductible under para. 110(1)(k) in computing the corporation's taxable income for the other year.

Cl. 111(8)(b)(i)(A) formerly read:

(A) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, his allowable business investment loss for the year or an amount deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j), section 110.6 or 112 or subsection 113(1) or 138(6) in computing his taxable income for the year

Cl. 111(8)(b)(i)(A) substituted by 1986, c. 6, subsec. 59(4), applicable to 1985 *et seq.* except that for the 1985 taxation year cl. 111(8)(b)(i)(A) shall be read as follows:

(A) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, his allowable business investment loss for the year, the amount determined under subparagraph 3(d)(ii) in respect of the taxpayer for the year or an amount deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j), section 110.6 or 112 or subsection 113(1) or 138(6) in computing his taxable income for the year

Cl. 111(8)(b)(i)(A) formerly read:

(A) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, his allowable business investment loss for the year, the amount determined under subparagraph 3(d)(ii) in respect of the taxpayer for the year or an amount deductible under paragraph 110(1)(d) or (f), section 112 or subsection 113(1) or 138(6) in computing his taxable income for the year

All that portion of para. 111(8)(b) preceding subpara. (iii) substituted by 1985, c. 45, subsec. 57(4), applicable to 1985 *et seq.* That portion formerly read:

(b) "non-capital loss" of a taxpayer for a taxation year means the amount, if any, by which

(i) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, his allowable business investment loss for the year, the amount determined under subparagraph 3(d)(ii) in respect of the taxpayer for the year or an amount deductible under paragraph 110(1)(d) or (f), section 112 or subsection 113(1) or 138(6) in computing his taxable income for the year

exceeds the aggregate of

(ii) the amount determined under paragraph 3(c) in respect of the taxpayer for the year,

Subpara. 111(8)(b)(i) substituted by 1984, c. 45, s. 36, to add reference to para. 110(1)(d), applicable to 1984 *et seq.*

Para. 111(8)(b) substituted by 1984, c. 1, subsec. 54(5), applicable to 1982 *et seq.* except that

(a) in its application to the 1982 taxation year, the para. shall be read without reference to subparagraphs (iii) and (iv) thereof; and

(b) in its application to taxation years ending before October 1983, the para. shall be read without reference to "the amount determined under subparagraph 3(d)(ii) in respect of the taxpayer for the year".

Para. 111(8)(b) formerly read:

(b) "non-capital loss" — "non-capital loss" of a taxpayer for a taxation year means the amount, if any, by which

(i) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, his allowable business investment loss for the year, and all amounts deductible under section 112 or subsection 113(1) or 138(6) from the taxpayer's income for the year

exceeds

(ii) the amount determined under paragraph 3(c); and

Subpara. 111(8)(b)(i) substituted by 1977-78, c. 42, s. 7, applicable to 1978 *et seq.* Subpara. 111(8)(b)(i) formerly read:

(i) the aggregate of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property and all amounts deductible under section 112 or subsection 113(1) or 138(6) from the taxpayer's income for the year

Subpara. 111(8)(b)(i) substituted by 1977-78, c. 1, subsec. 54(5), applicable to 1972 *et seq.*

Selected Cases [subsec. 111(8)"non-capital loss"]: *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (No carryforward of "non-capital loss of other years" incurred during non-residency).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-484R2: Business investment losses. See also list at end of s. 111.

"pre-1986 capital loss balance" of an individual for a particular taxation year means the amount determined by the formula

$$(A + B) - (C + D + E)$$

where

A is the total of all amounts each of which is an amount determined by the formula

$$F - G$$

where

F is the individual's net capital loss for a taxation year ending before 1985, and

G is the total of all amounts claimed under this section by the individual in respect of that loss in computing the individual's taxable income for taxation years preceding the particular taxation year, and

B is the amount determined by the formula

$$H - I$$

where

H is the lesser of

(a) the amount of the individual's net capital loss for the 1985 taxation year, and

(b) the amount, if any, by which the amount determined under subparagraph 3(e)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the individual for the 1985 taxation year exceeds the amount deductible by reason of paragraph 3(e) of that Act in computing the individual's taxable income for the 1985 taxation year, and

I is the total of all amounts claimed under this section by the individual in respect of the individual's net capital loss for the 1985 taxation year in computing the individual's taxable income for taxation years preceding the particular taxation year,

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years preceding 1988,

D is 3/4 of the total of all the amounts deducted under section 110.6 in computing the individual's taxable income for taxation years preceding the particular year and ending after 1987 and before 1990, and

E is 2/3 of the total of all the amounts deducted under section 110.6 in computing the individual's taxable income for taxation years preceding the particular year and ending after 1989.

Related Provisions: 161(7) — Effect of carryback of loss; 257 — Formula amounts cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 111.

History: The descriptions of G and I in "pre-1986 capital loss balance" in subsec. 111(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 83(4), (5), applicable to the computation of taxable income for 1985 *et seq.* Those descriptions formerly read:

G is the total of all amounts deducted by the individual under this section in respect of that loss in computing the individual's taxable income for taxation years preceding the particular taxation year,

. . . . .

I is the total of all amounts deducted by the individual under this section in respect of the individual's net capital loss for the 1985 taxation year in computing the individual's taxable income for taxation years preceding the particular taxation year,

Pre-RSC History: *The definition "pre-1986 capital loss balance" was para. 111(8)(b.2). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(b.2) "pre-1986 capital loss balance" — "pre-1986 capital loss balance" of an individual for a particular taxation year means the amount, if any, by which the total of

(i) the aggregate of all amounts each of which is the amount, if any, by which

(A) his net capital loss for a taxation year ending before 1985

exceeds

(B) the aggregate of amounts deducted by him under this section in respect of that loss in computing his taxable income for taxation years preceding the particular taxation year, and

(ii) the amount, if any, by which the lesser of

(A) the amount of his net capital loss for the 1985 taxation year, and

(B) the amount, if any, by which the amount determined under subparagraph 3(e)(ii) in respect of the individual for the 1985 taxation year exceeds the amount deductible by virtue of paragraph 3(e) in computing his taxable income for the 1985 taxation year

exceeds

(C) the aggregate of amounts deducted by him under this section in respect of his net capital loss for the 1985 taxation year in computing his taxable income for taxation years preceding the particular taxation year,

exceeds the total of

(iii) the aggregate of amounts deducted under section 110.6 in computing his taxable income for taxation years preceding 1988,

(iv) 3/4 of the aggregate of amounts deducted under section 110.6 in computing his taxable income for taxation years preceding the particular year and ending after 1987 and before 1990, and

(v) 2/3 of the aggregate of amounts deducted under section 110.6 in computing his taxable income for taxation years preceding the particular year and ending after 1989; and

That portion of para. 111(8)(b.2) following cl. (ii)(C) substituted by 1988, c. 55, subsec. 83(9), applicable to 1988 *et seq.*, except that

(a) for the purpose of computing a corporation's taxable income for a taxation year ending before July 1988 the amount of the corporation's non-capital loss for another taxation year ending after June 1988 shall be deemed to be the amount, if any, by which

(i) the amount that would, but for this paragraph, be the non-capital loss for the other year,

exceeds

(ii) 1/5 of the lesser of

(A) the amount deductible under para. 110(1)(k) in computing the corporation's taxable income for the other year, and

(B) the amount that would, but for this paragraph, be the non-capital loss for the other year;

(b) for the purpose of computing a corporation's taxable income for a taxation year ending after June 1988, the amount of the corporation's non-capital loss for another taxation year ending before July 1988 shall be deemed to be the aggregate of

(i) the amount that would, but for this paragraph, be the non-capital loss for the other year, and

(ii) 1/4 of the lesser of

(A) the amount deductible under para. 110(1)(k) in computing the corporation's taxable income for the other year, and

(B) the amount that would, but for this paragraph, be the non-capital loss for the other year; and

(c) for the purpose of subsec. 111(3), the aggregate of all amounts each of which is an amount deducted in computing a corporation's taxable income or an amount claimed under Part IV for a taxation year ending before July 1988 in respect of a non-capital loss for another taxation year ending after June 1988 shall be deemed to be the aggregate of

(i) all amounts so deducted or so claimed, and

(ii) 1/4 of the amount, if any, by which

(A) all the amounts so deducted or so claimed

exceeds

(B) the amount, if any, by which the amount deductible for the year in respect of the non-capital loss exceeds 4/5 of the amount deductible under para. 110(1)(k) in computing the corporation's taxable income for the other year.

That portion of para. 111(8)(b.2) formerly read:

exceeds the aggregate of amounts deducted under section 110.6 in computing his taxable income for taxation years preceding the particular taxation year; and

Para. 111(8)(b.2) added by 1986, c. 6, subsec. 59(5), applicable to 1985 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-262R2: Losses of non-residents and part-year residents. See also list at end of s. 111.

(9) Exception — In this section, a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for a taxation year during which

the taxpayer was not resident in Canada shall be determined as if

(a) throughout the portion of the year referred to in paragraph 114(b), where section 114 applies to the taxpayer in respect of the year, and

Proposed Amendment — 111(9)(a)

(a) in the part of the year throughout which the taxpayer was non-resident, if section 114 applies to the taxpayer in respect of the year, and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 57, will amend para. 111(9)(a) to read as above, applicable to 1998 *et seq.*

Technical Notes: Section 111 of the Act establishes the extent to which a taxpayer is permitted to deduct amounts in computing taxable income for a taxation year in respect of losses of other years. Subsection 111(9) sets out special limits that apply to carryovers from taxation years during which a taxpayer is not resident in Canada.

Subsection 111(9) is amended, for the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment replaces a reference to the portion of the year referred to in paragraph 114(b) with a reference to the part of the year throughout which the taxpayer was non-resident. This keeps the reference in step with the changes to section 114. For additional information, see the commentary on section 114.

(b) throughout the year, in any other case,

the taxpayer had no income other than income described in any of subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains, allowable capital losses and allowable business investment losses were from dispositions of taxable Canadian property (other than treaty-protected property) and the taxpayer's only other losses were losses from the duties of an office or employment performed by the taxpayer in Canada and businesses (other than treaty-protected businesses) carried on by the taxpayer in Canada.

Related Provisions: 80(1)"excluded property" — Properties to which debt forgiveness rules do not apply; 115(1)(b.1) — Treaty-protected property losses not usable against taxable Canadian property gains; 115(1)(c) — Treaty-protected business losses not usable against Canadian business profits; 161(7) — Effect of carryback of loss. See additional Related Provisions and Definitions at end of s. 111.

History: The closing words of subsec. 111(9) amended by 1999, c. 22, s. 28, applicable for the purpose of computing taxable income and taxable income earned in Canada for 1998 *et seq.* The closing words formerly read:

> the taxpayer had no income other than income described in subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains and allowable capital losses were taxable capital gains and allowable capital losses from the disposition of taxable Canadian property and the taxpayer's only losses were allowable business investment losses and losses from duties of an office or employment performed by the taxpayer in Canada and businesses carried on by the taxpayer in Canada.

That portion of subsec. 111(9) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 49(2), applicable to 1991 *et seq.* and with respect to the computation of taxable income and taxable income earned in Canada for those years. That portion formerly read:

> the taxpayer had no income other than income described in subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains and allowable capital losses were taxable capital gains and allowable capital losses from the disposition of taxable Canadian property and the taxpayer's only losses were losses from businesses carried on by the taxpayer in Canada.

Pre-RSC History: *Subsec. 111(9) was para. 111(8)(c).*

Para. 111(8)(c) amended by 1986, c. 55, subsec. 34(5), to substitute "restricted farm loss, farm loss and limited partnership loss" for "restricted farm loss and farm loss", applicable after February 25, 1986.

Para. 111(8)(c) substituted by 1984, c. 1, subsec. 54(5), applicable with respect to computation of taxable income for 1983 *et seq.* and with respect to losses determined for 1983 *et seq.* Para. 111(8)(c) formerly read:

> (c) reference in section 3 — a reference to any amount determined under any paragraph or subparagraph of section 3 for a taxation year shall be read as a reference to,
>
> (i) in the case of a taxpayer to whom section 114 applies in respect of the year, the amount determined under any such paragraph or subparagraph for the year for the purposes of section 114, and
>
> (ii) in the case of a taxpayer who at no time in the year was resident in Canada, the amount determined under any such paragraph or subparagraph for the year for the purposes of section 115.

Interpretation Bulletins: IT-262R2: Losses of non-residents and part-year residents; IT-393R2: Election re tax on rents and timber royalties — non-residents.

(10) Fuel tax rebate loss abatement — Where in a particular taxation year a taxpayer received an amount (in this subsection referred to as a "rebate") as a fuel tax rebate under subsection 68.4(2) or (3.1) of the *Excise Tax Act*, in computing the taxpayer's non-capital loss for a taxation year (in this subsection referred to as the "loss year") that is one of the 7 taxation years preceding the particular year, there shall be deducted the lesser of

(a) the amount determined by the formula

$$10 (A - B) - C$$

where

A is the total of all rebates received by the taxpayer in the particular year,

B is the total of all amounts, in respect of rebates received by the taxpayer in the particular year, repaid by the taxpayer under subsection 68.4(7) of that Act, and

C is the total of all amounts, in respect of rebates received in the particular year, deducted under this subsection in computing the taxpayer's non-capital losses for other taxation years; and

(b) such amount as the taxpayer claims, not exceeding that portion of the taxpayer's non-capital loss for the loss year (determined without reference to this subsection) that would be deductible in computing the taxpayer's taxable income for the particular year if the taxpayer had sufficient income for the particular year from businesses carried on by the taxpayer in the particular year.

Related Provisions: 12(1)(x.1) — Income inclusion — fuel tax rebates; 111(8)"non-capital loss"D.1 — Claim under 111(10) reduces non-capital loss; 111(11) — Fuel tax rebate loss abatement — partnerships; 257 — Formula cannot calculate to less than zero.

History: That portion of subsec. 111(10) before para. (b) amended by 1997, c. 26, subsec. 84(1), applicable to 1997 *et seq.* That portion formerly read:

> (10) Where, in a particular taxation year, a taxpayer received an amount (in this subsection referred to as a "rebate") as a fuel tax rebate under subsection 68.4(2) of the *Excise Tax Act*, in computing the amount of the taxpayer's non-capital loss for a taxation year (in this subsection referred to as the "loss year") that is one of the 7 taxation years preceding the particular year, there shall be deducted the lesser of
>
> (a) the amount, if any, by which
>
> (i) 10 times the amount, if any, by which
>
> (A) the total of all rebates received by the taxpayer in the particular year
>
> exceeds
>
> (B) the total of all amounts, in respect of rebates received by the taxpayer in the particular year, repaid by the taxpayer under subsection 68.4(7) of that Act

exceeds

(ii) the total of all amounts, in respect of rebates received in the particular year, deducted under this subsection in computing the taxpayer's non-capital losses for other taxation years, and

Subsec. 111(10) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 5(2), applicable to amounts received after 1991 (originally added as subsec. (9) before R.S.C. 1985 (5th Supp.) consolidation).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years.

(11) Fuel tax rebate — partnerships — Where a taxpayer was a member of a partnership at any time in a fiscal period of the partnership during which it received a fuel tax rebate under subsection 68.4(2), (3) or (3.1) of the *Excise Tax Act*, the taxpayer is deemed

(a) to have received at that time as a rebate under subsection 68.4(2), (3) or (3.1), as the case may be, of that Act an amount equal to that proportion of the amount of the rebate received by the partnership that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act; and

(b) to have paid as a repayment under subsection 68.4(7) of that Act an amount equal to that proportion of all amounts repaid under subsection 68.4(7) of that Act in respect of the rebate that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act.

Related Provisions: 12(1)(x.1) — Income inclusion — fuel tax rebates.

History: That portion of subsec. 111(11) before para. (b) amended by 1997, c. 26, subsec. 84(2), applicable to 1997 *et seq.* That portion formerly read:

(11) Idem — partnerships — Where a taxpayer was a member of a partnership at any time in a fiscal period during which the partnership received a fuel tax rebate under subsection 68.4(2) or (3) of the *Excise Tax Act*, the taxpayer is deemed

(a) to have received at that time as a rebate under subsection 68.4(2) or (3), as the case may be, of that Act an amount equal to that proportion of the amount of the rebate received by the partnership that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act; and

Subsec. 111(11) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 5(2), applicable to amounts received after 1991 (originally added as subsec. (10) before R.S.C. 1985 (5th Supp.) consolidation).

Related Provisions [s. 111]: 31(1) — Loss from farming where chief source of income not farming; 66.8(1) — Resource expenses of limited partner; 87(2.1) — Non-capital loss, net capital loss, restricted farm loss and farm loss of predecessor corporation; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation; 88.1 — Non-capital loss, net capital loss, restricted farm loss, and farm loss of subsidiary; 96(2.2) — At-risk amount; 104(21) — Portion of taxable capital gains deemed gain of beneficiary; 111.1 — Ordering of applying provisions; 127.52(1) — Adjusted taxable income determined; 128(1)(g), 128(2)(g) — Where corporation or individual is bankrupt; 152(1.1)–(1.3) — Determination of losses; 152(6) — Reassessment; 164(6) — Where disposition of property by legal representative of deceased taxpayer; 256(8) — Deemed acquisition of shares.

Definitions [s. 111]: "acquired" — 256(7)–(9); "active business" — 248(1); "adjusted cost base" — 54, 248(1); "allowable business investment loss" — 38(c), 248(1); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "assessment", "business" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative eligible capital" — 14(5), 248(1); "depreciable property" — 13(21), 248(1); "eligible capital property" — 54, 248(1); "employment", "farming" — 248(1); "farm loss" — 111(8), 248(1); "fiscal period" — 249(2)(b), 249.1; "fishing" — 248(1); "foreign exploration and development expenses" — 66(15), 248(1); "individual", "insurer" — 248(1); "investment tax credit" — 127(9), 248(1); "life insurer" — 248(1); "limited partner" — 96(2.4); "limited partnership loss" — 96(2.1)(e), 248(1); "Minister" — 248(1); "net capital loss" — 111(8), 248(1); "1975 branch accounting election deficiency" — 111(7.11), 138(12); "non-capital loss" — 111(8), 248(1); "non-resident", "office", "person", "prescribed", "property", "regulation" — 248(1); "resident in Canada" — 250; "restricted farm loss" — 31, 248(1); "tax payable" — 248(2); "taxable capital gain" — 38, 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer", "treaty-protected business", "treaty-protected property" — 248(1); "undepreciated capital cost" — 13(21), 248(1).

Interpretation Bulletins [s. 111]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-322R: Farm losses; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-474R: Amalgamations of Canadian corporations.

111.1 Order of applying provisions — In computing an individual's taxable income for a taxation year, the provisions of this Division shall be applied in the following order: sections 110, 110.2, 111, 110.6 and 110.7.

History: S. 111.1 amended by 2000, c. 19, s. 20, applicable to 1998 *et seq.* S. 111.1 formerly read:

111.1 In computing the taxable income of an individual for a taxation year, the provisions of this Division shall be applied in the following order: subsection 110.4(2) and sections 110, 111, 110.6 and 110.7.

Pre-RSC History: S. 111.1 substituted by 1988, c. 55, s. 84, applicable to 1987 *et seq.*, except that for the 1987 taxation year the reference to "subsection 110.4(2) and sections 110, 111, 110.6 and 110.7" shall be read as "subsection 110.4(2), sections 109, 110.1, 110.2, 110, 110.3, 111, 110.6 and 110.7 and subsection 110.4(1)". S. 111.1 formerly read:

111.1 Order of applying provision — In computing the taxable income of an individual for a taxation year, the provisions of this division shall be applied in the following order: subsection 110.4(2), sections 109, 110.1, 110.2, 110, 110.3, 111 and 110.6 and subsection 110.4(1).

S. 111.1 amended by 1986, c. 6, s. 60, applicable to 1985 *et seq.* to substitute "111 and 110.6 and subsection 110.4(1)" for "and 111 and subsection 110.4(1)".

S. 111.1 substituted by 1984, c. 1, s. 55, applicable to 1983 *et seq.* S. 111.1 formerly read:

111.1 Ordering — In computing the taxable income of an individual for a taxation year, the provisions of this Division shall be applied in the following order: section 109, 110.1, 110.2 and 110.

S. 111.1 added by 1974-75-76, c. 26, s. 71, applicable to 1975 *et seq.*

Definitions [s. 111.1]: "individual" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-523: Order of provisions applicable in computing an individual's taxable income and tax payable.

112. (1) Deduction of taxable dividends received by corporation resident in Canada — Where a corporation in a taxation year has received a taxable dividend from

(a) a taxable Canadian corporation, or

(b) a corporation resident in Canada (other than a non-resident-owned investment corporation or a corporation exempt from tax under this Part) and controlled by it,

an amount equal to the dividend may be deducted from the income of the receiving corporation for the year for the purpose of computing its taxable income.

Related Provisions: 55(2) — Capital gains stripping; 104(19) — Taxable dividends flowed through trust; 112(2) — Dividends received from non-resident corporation; 112(2.1)–(2.6) — Where no deduction permitted; 112(3)–(3.32) — Denial of capital loss on share where intercorporate dividend previously paid; 112(4)–(4.3) — Loss on share held as inventory; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 115(1)(d.1) — Deduction from income of non-resident; 137(5.2) — Credit union — allocations of taxable dividends and capital gains; 138(6) — Life insurer; 186(1) — Tax payable on certain taxable dividends; 186(3)"assessable dividend" — Part IV tax; 219(1)(b) — Branch tax on non-resident corporations; 256(6), (6.1) — Meaning of "controlled". See additional Related Provisions and Definitions at end of s. 112.

Pre-RSC History: Para. 112(1)(b) substituted by 1980-81-82-83, c. 140, subsec. 71(1), to add reference to the words "or a corporation exempt from tax under this Part" applicable with respect to dividends received after November 12, 1981.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-98R2: Investment corporations; IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received; IT-385R2: Disposition of an income interest in a trust; IT-524: Trusts — flow-through of taxable dividends to a beneficiary — after 1987.

Information Circulars: 88-2, para. 13: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-16: Inter-company dividends and interest expense; ATR-18: Term preferred shares; ATR-22R: Estate freeze using share exchange; ATR-27: Exchange and acquisition of interests in capital properties through rollovers and winding-up ("butterfly"); ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly"; ATR-46: Financial difficulty; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(2) Dividends received from non-resident corporation — Where a taxpayer that is a corporation has, in a taxation year, received a dividend from a corporation (other than a foreign affiliate of the taxpayer) that was taxable under subsection 2(3) for the year and that has, throughout the period from June 18, 1971 to the time when the dividend was received, carried on a business in Canada through a permanent establishment as defined by regulation, an amount equal to that proportion of the dividend that the paying corporation's taxable income earned in Canada for the immediately preceding year is of the whole of the amount that its taxable income for that year would have been if it had been resident in Canada throughout that year, may be deducted from the income of the receiving corporation for the taxation year for the purpose of computing its taxable income.

Related Provisions: 55(2) — Capital gains stripping; 112(2.1)–(2.6) — Where no deduction permitted; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 113(1) — Deduction for dividend from foreign affiliate; 115(1)(d.1) — Deduction from income of non-resident; 137(5.2) — Credit union — allocations of taxable dividends and capital gains; 186(3)"assessable dividend" — Part IV tax; 247(1) — Dividend stripping. See additional Related provisions and Definitions at end of s. 112.

Pre-RSC History: Subsec. 112(2) substituted by 1974-75-76, c. 26, subsec. 72(1), applicable to 1972 *et seq.*

Regulations: 400(2) (meaning of "permanent establishment" until April 26, 1989); 8201 (meaning of "permanent establishment" effective 10:00 p.m., April 26, 1989).

(2.1) Where no deduction permitted — No deduction may be made under subsection (1) or (2) in computing the taxable income of a specified financial institution in respect of a dividend received by it on a share that was, at the time the dividend was paid, a term preferred share, other than a dividend paid on a share of the capital stock of a corporation that was not acquired in the ordinary course of the business carried on by the institution, and for the purposes of this subsection, where a restricted financial institution received the dividend on a share of the capital stock of a mutual fund corporation or an investment corporation at any time after that mutual fund corporation or investment corporation has elected pursuant to subsection 131(10) not to be a restricted financial institution, the share shall be deemed to be a term preferred share acquired in the ordinary course of business.

Related Provisions: 84(4.2) — Deemed dividend where paid-up capital of term preferred share reduced; 191(4) — Subsection 112(2.1) deemed not to apply; 248(1) — "amount" of a stock dividend; 248(14) — Specified financial institution — corporations deemed related; 258(2) — Deemed dividend on term preferred share. See additional Related Provisions and Definitions at end of s. 112.

Pre-RSC History: Subsec. 112(2.1) substituted by 1988, c. 55, subsec. 85(1), applicable with respect to dividends received after June 18, 1987. Subsec. 112(2.1) formerly read:

> (2.1) Where no deduction permitted — No deduction may be made under subsection (1) or (2) in computing the taxable income of a particular corporation (in this section and sections 248 and 258 referred to as a "specified financial institution") that is
>
> (a) a corporation described in any of paragraphs 39(5)(b) to (f),
>
> (b) a corporation that is controlled by one or more corporations described in paragraph (a), or
>
> (c) a corporation associated with a corporation described in paragraph (a) or (b),
>
> in respect of a dividend received by the specified financial institution on a share that was, at the time the dividend was paid, a term preferred share, other than a dividend paid on a share of the capital stock of a corporation that was not acquired in the ordinary course of the business carried on by the institution.

Para. 112(2.1)(a) amended by 1985, c. 45, s. 58, to delete "or an insurance corporation" which followed the words "paragraphs 39(5)(b) to (f)"

Subsec. 112(2.1) substituted by 1980-81-82-83, c. 48, subsec. 61(1), applicable with respect to dividends received after November 16, 1978 except that, with respect to dividends received by an insurance corporation (other than a life insurance corporation), it is applicable with respect to dividends received on shares acquired after October 23, 1979 and with respect to dividends received by a corporation described in para. 112(2.1)(c) but not in para. 112(2.1)(a) or (b), it is applicable with respect to dividends received on shares acquired after December 11, 1979. Subsec. 112(2.1) formerly read:

> (2.1) No deduction may be made under subsection (1) or (2) in computing the taxable income of a particular corporation that is
>
> (a) a corporation described in any of paragraphs 39(5)(b) to (f) or an insurance corporation,
>
> (b) a corporation in which a corporation described in paragraph (a) has an equity percentage (within the meaning that would be assigned by paragraph 95(4)(b) if
>
> (i) the rules in paragraph 94(1)(d) were applicable to all trusts, wherever resident, and
>
> (ii) the references in subparagraph 95(4)(a)(i) to "number of shares" and "number of issued shares" were read as references to "number of issued shares other than shares that were not term preferred shares on November 17, 1978, but would have been term preferred shares on that day, had they not been issued before that day, or that are not term preferred shares by reason of having been issued pursuant to an agreement in writing made before November 17, 1978 and, in either case, that were issued in a transaction between persons dealing at arm's length")
>
> of not less than 10%, or
>
> (c) a corporation whose principal business is the ownership of shares, and that is or would be, if all corporations described in paragraphs (a) and (b) were members of a related group, controlled by a related group of corporations described in paragraph (a) or (b),
>
> in respect of a dividend received on a term preferred share by the particular corporation other than a dividend paid on a share of the capital stock of a corporation that was not acquired in the ordinary course of the business carried on by the particular corporation.

Subsec. 112(2.1) added by 1979, c. 5, s. 36, subsec. 112(2.1), applicable in respect of dividends received after November 16, 1978 except that, in its application to dividends received by an insurance corporation, (other than

a life insurance corporation) it is applicable only in respect of dividends received on shares acquired after October 23, 1979.

Interpretation Bulletins: IT-52R4: Income bonds and income debentures; IT-88R2: Stock dividends.

Advance Tax Rulings: ATR-10: Issue of term preferred shares; ATR-16: Inter-company dividends and interest expense; ATR-18: Term preferred shares; ATR-46: Financial difficulty.

(2.2) Idem — No deduction may be made under subsection (1), (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation that was issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where a person or partnership (other than the issuer of the share or an individual other than a trust) that is a specified financial institution or a specified person in relation to any such institution was, at or immediately before the time the dividend was paid, obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking (in this subsection referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the particular corporation or any specified person in relation to the particular corporation given to ensure that

(a) any loss that the particular corporation or a specified person in relation to the particular corporation may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(b) the particular corporation or a specified person in relation to the particular corporation will derive earnings by reason of the ownership, holding or disposition of the share or any other property,

and the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share, except that this subsection does not apply to a dividend received on

(c) a share that was at the time the dividend was received a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) during the applicable time period referred to in that paragraph,

(d) a grandfathered share, a taxable preferred share issued before December 16, 1987 or a prescribed share, or

(e) a taxable preferred share issued after December 15, 1987 and of a class of the capital stock of a corporation that is listed on a prescribed stock exchange where all guarantee agreements in respect of the share were given by the issuer of the share, by one or more persons that would be related to the issuer if this Act were read without reference to paragraph 251(5)(b) or by the issuer and one or more such persons unless at the time the dividend is received the shareholder or the shareholder and specified persons in relation to the shareholder receive dividends in respect of more than 10 per cent of the issued and outstanding shares to which the guarantee agreement applies,

and for the purposes of this subsection

(f) where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than pursuant to a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share shall be deemed to have been issued at the particular time and the guarantee agreement shall be deemed to have been given as part of a series of transactions that included the issuance of the share, and

(g) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1).

Proposed Amendment — 112(2.2)

(2.2) Guaranteed shares — No deduction may be made under subsection (1), (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation that was issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where

(a) a person or partnership (in this subsection and subsection (2.21) referred to as the "guarantor") that is a specified financial institution or a specified person in relation to any such institution, but that is not the issuer of the share or an individual other than a trust, is, at or immediately before the time the dividend is paid, obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking (in this subsection and subsections (2.21) and (2.22) referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the particular corporation or any specified person in relation to the particular corporation given to ensure that

(i) any loss that the particular corporation or a specified person in relation to the particular corporation may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(ii) the particular corporation or a specified person in relation to the particular corporation will derive earnings by reason of the ownership, holding or disposition of the share or any other property; and

(b) the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 58, will amend subsec. 112(2.2) to read as above, applicable in respect of dividends received after 1998.

Technical Notes: Section 112 of the Act deals with the treatment of dividends received by a corporation resident in Canada from another corporation.

Subsection 112(2.2) of the Act denies the intercorporate dividend deduction for dividends on certain shares that are guaranteed by a specified financial institution. This subsection is amended by dividing its provisions among three new subsections — (2.2), (2.21) and (2.22) — in order to improve readability. In addition, a new exception is set out in new paragraph 112(2.21)(d), described below.

Amended subsection (2.2) sets out the basic conditions under which a share is considered to be a guaranteed share.

Related Provisions: 84(4.3) — Deemed dividend where paid-up capital of guaranteed share reduced; 87(4.2) — Amalgamations; 112(2.21) — Exceptions; 112(2.22) — Interpretation; 248(1) — "amount" of a stock dividend; 248(10) — Series of transactions; 248(14) — Specified financial institution — corporations deemed related; 258(3) — Deemed interest on preferred shares. See additional Related Provisions and Definitions at end of s. 112.

Pre-RSC History: Subsec. 112(2.2) substituted by 1988, c. 55, subsec. 85(2), applicable with respect to dividends received on shares (other than grandfathered shares) issued after 8 p.m. EDST, June 18, 1987 and on shares deemed by para. 112(2.2)(f) to have been issued after 8 p.m. EDST, June 18, 1987. Subsec. 112(2.2) formerly read:

> (2.2) Idem — No deduction may be made under subsection (1) or (2) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation that was acquired after October 23, 1979, if a person (other than the issuer of the share) that is a specified financial institution or a person related thereto or a partnership or trust of which any such institution or a person related thereto is a member or beneficiary was obligated, either absolutely or contingently and either at or after the time the dividend was paid, to effect any undertaking (in this subsection referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share, given to ensure that
>
> (a) any loss that the particular corporation or any partnership or trust of which the particular corporation is a member or a beneficiary may sustain by virtue of the ownership, holding or disposition of the share is limited in any respect, or
>
> (b) the particular corporation or any partnership or trust of which it is a member or a beneficiary will derive earnings by virtue of the ownership, holding or disposition of the share,
>
> except that this subsection does not apply to a dividend received on
>
> (c) a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1),
>
> (d) a share listed on a prescribed stock exchange in Canada that was issued after April 21, 1980 by
>
> (i) a corporation described in paragraph (2.1)(a), or
>
> (ii) a corporation that would be associated with a corporation referred to in subparagraph (i) if this Act were read without reference to paragraph 251(5)(b),
>
> where all guarantee agreements in respect of the share were given by the issuer of the share, by one or more persons that would be associated with the issuer if this Act were read without reference to paragraph 251(5)(b) or by the issuer and one or more such persons,
>
> (e) a share that is listed on a prescribed stock exchange in Canada and was issued before April 22, 1980 by a corporation described in any of paragraphs 39(5)(b) to (f) or by a corporation associated with any such corporation, or
>
> (f) [Repealed]
>
> (g) a share that is a prescribed share.

Para. 112(2.2)(f) repealed by 1986, c. 6, subsec. 61(1), applicable with respect to shares issued after May 23, 1985 other than shares issued pursuant to an agreement in writing entered into on or before May 23, 1985 and shares distributed to the public in accordance with the terms of a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by such authority. Para. 112(2.2)(f) formerly read:

> (f) a share owned, at the time the dividend was paid, by a specified financial institution that acquired the share in the ordinary course of its business, or

Para. 112(2.2)(g) added by 1980-81-82-83, c. 140, subsec. 71(2), applicable with respect to dividends received after October 23, 1979.

Subsec. 112(2.2) substituted by 1980-81-82-83, c. 48, subsec. 61(1). By 1980-81-82-83, c. 48, subsec. 61(3), subsec. 112(2.2) is applicable after October 23, 1979. Subsec. 112(2.2) formerly read:

> (2.2) No deduction may be made under subsection (1) or (2) in computing the taxable income of a particular corporation (other than a corporation described in any of paragraphs (2.1)(a) to (c)) in respect of a dividend on a share of the capital stock of a corporation that was acquired after October 23, 1979 if a corporation described in any of paragraphs (2.1)(a) to (c) or a person related thereto, or a partnership or trust of which any such corporation or a person related thereto is a member or beneficiary, as the case may be, is or may be required to
>
> (a) acquire the share at any time, or
>
> (b) provide any form of guarantee, security or covenant providing protection with respect to the share.

Subsec. 112(2.2) added by 1979, c. 5, s. 36, subsec. 112(2.1), applicable in respect of dividends received after November 16, 1978 except that, in its application to dividends received by an insurance corporation, (other than a life insurance corporation) it is applicable only in respect of dividends received on shares acquired after October 23, 1979.

Regulations: 3200 (prescribed stock exchange); 6201(3) (prescribed share for 112(2.2)(g)); 6201(8) (prescribed share for 112(2.2)(d)).

Advance Tax Rulings: ATR-16: Inter-company dividends and interest expense; ATR-46: Financial difficulty.

Proposed Addition — 112(2.21), (2.22)

(2.21) Exceptions — Subsection (2.2) does not apply to a dividend received by a particular corporation on

(a) a share that is at the time the dividend is received a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1);

(b) a grandfathered share, a taxable preferred share issued before December 16, 1987 or a prescribed share;

(c) a taxable preferred share issued after December 15, 1987 and of a class of the capital stock of a corporation that is listed on a prescribed stock exchange where all guarantee agreements in respect of the share were given by one or more of the issuer of the share and persons that are related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the issuer unless, at the time the dividend is paid to the particular corporation, dividends in respect of more than 10 per cent of the issued and outstanding shares to which the guarantee agreement applies are paid to the particular corporation, or the particular corporation and specified persons in relation to the particular corporation; or

(d) a share

(i) that was not acquired by the particular corporation in the ordinary course of its business,

(ii) in respect of which the guarantee agreement was not given in the ordinary course of the guarantor's business, and

(iii) the issuer of which is, at the time the dividend is paid, related (otherwise than because of a right referred to in paragraph 251(5)(b)) to both the particular corporation and the guarantor.

Technical Notes: New subsection 112(2.21) of the Act sets out exceptions specifying shares to which the guaranteed share rule in amended subsection 112(2.2) does not apply. Paragraphs 112(2.21)(a) to (c) set out the exceptions formerly contained in paragraphs 112(2)(c) to (e).

Paragraph 112(2.21)(d) sets out a new exception for certain shares held within a corporate group. The exception applies where two general conditions are met. First, the shares must not have been acquired by the holder in the ordinary course of its business, and the guarantee agreement must not have been given in the ordinary course of business of the party that gave it. Second, the issuer of the share must be related to both the holder and the guarantor, otherwise than because of an option or other right referred to in paragraph 251(5)(b) of the Act.

Letter from Department of Finance, April 13, 1999:

Dear [xxx]

SUBJECT: *Guaranteed Preferred Shares*

I am writing in reply to your letter of February 19, 1999 to Mr. Len Farber proposing a technical amendment to the *Income Tax Act* (the "Act") to provide an exception to the application of subsection 112(2.2), which deals with so-called "guaranteed preferred shares".

The special preferred share rules in the act were enacted in order to deal with various types of after-tax financing transac-

tions in which a corporation that is not in a taxable position (as a result of losses, excess tax credits, etc.) effectively passes tax benefits on to other parties using preferentially-taxed shares.

The general policy behind the preferred share rules is to limit the tax benefits associated with structuring such financings using equity rather than debt. However, a number of provisions in the rules provide relief from this limitation of benefits in the case of certain transactions involving companies that are members of a single corporate group. As a result of these exceptions, certain types of after-tax financing are effectively permitted within a corporate group. Examples of such relief include the exemption in the "term preferred share" rules for shares not acquired in the ordinary course of business of the financial institution that holds the shares, and the exemption from the special issuer and holder taxes in the case of "taxable preferred shares" where the holder has a "substantial interest" in the issuer.

There is presently no such in-house financing exception in the guaranteed preferred share rules in subsection 112(2.2). The absence of similar relief in that case may be a result of the fact that one would not normally expect to see shares issued by one member in a corporate family to another member being subject to a guarantee given by a third member of the family. Your submission, however, illustrates a case where, because of minority shareholders, it might be reasonable for a corporation to require a guarantee from a related party.

Upon review of the matter, we are satisfied that it would be consistent with the overall scheme of the preferred share rules to provide a limited exception for certain intra-group financing transactions in the guaranteed share context. [This is now in 112(2.21)(d) — ed.] Specifically, the proposed exemption would provide that subsection 112(2.2) does not apply to a dividend received on a share if:

(a) the issuer was, at the time the dividend was received, related (otherwise than by reason of a right referred to in paragraph 251(5)(b) to both the holder of the share and party giving the guarantee agreement;

(b) the share was not acquired by the holder in the ordinary course of the business carried on by the holder; and

(c) the guarantee agreement was not given in the ordinary course of the business carried on by the guarantor.

The first requirement ensures that the transaction is between members of a corporate group. The requirements that the acquisition of the share and the granting of the guarantee not take place in the ordinary course of business maintain consistency with the term preferred share rules, of which the guaranteed share rules are an extension. These latter requirements ensure that the share transaction is not a substitute for a lending transaction that would otherwise be undertaken in the course of a business.

We will recommend that an amendment to the Act to introduce such an exception be included in a future package of amendments, probably the next technical bill. We will also recommend that the proposed exception apply with respect to dividends received after 1998, regardless of the date of issue of the share.

As you know, I cannot offer any assurance that either the Minister of Finance or Parliament will agree with the recommendations that we intend to make in this regard. Nonetheless, I hope that this statement of our position is helpful.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

Related Provisions: 112(2.22) — Interpretation. See additional Related Provisions and Definitions at end of s. 112.

(2.22) Interpretation — For the purposes of subsections (2.2) and (2.21),

(a) where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than under a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share is deemed to have been issued at the particular time and the guarantee agreement is deemed to have been given as part of a series of transactions that included the issuance of the share; and

(b) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1).

Technical Notes: New subsection 112(2.22) of the Act sets out rules of interpretation that apply to the guaranteed share rules in subsections (2.2) and (2.21). These provisions were formerly contained in paragraphs 112(2.2)(f) and (g). This new subsection applies to dividends received after 1998.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 58, will add subsecs. 112(2.21) and (2.22), applicable in respect of dividends received after 1998.

Related Provisions: 248(1)"grandfathered share" — Share deemed not to be grandfathered share; 258(3) — Deemed interest on preferred share. See additional Related Provisions and Definitions at end of s. 112.

(2.3) Idem — No deduction may be made under subsection (1) or (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation as part of a dividend rental arrangement of the particular corporation.

Related Provisions: 126(4.2) — No foreign tax credit on short-term securities acquisitions; 248(1)"dividend rental arrangement"(c) — Dividend rental arrangement includes arrangement where 112(2.3) applies; 260(6.1) — Deductible amount under securities lending arrangement. See additional Related Provisions and Definitions at end of s. 112.

Pre-RSC History: Subsec. 112(2.3) added by 1990, c. 39, s. 22, applicable with respect to dividends received at any time by a corporation on shares acquired before that time and after April 1989.

Advance Tax Rulings: ATR-16: Inter-company dividends and interest expense.

Pre-RSC History [former subsec. 112(2.3)]: Former subsec. 112(2.3) repealed by 1988, c. 55, subsec. 85(3), applicable with respect to dividends received on short-term preferred shares (other than grandfathered shares) issued after 8 p.m. EDST, June 18, 1987. Subsec. 112(2.3) formerly read:

(2.3) Idem — No deduction may be made under subsection (1) or (2) in computing the taxable income of a particular corporation in respect of a dividend received by it on a share that was, at the time the dividend was paid, a short-term preferred share of a corporation unless, at the time the dividend was paid, the corporation was not dealing at arm's length with the particular corporation (otherwise than by virtue of a right referred to in paragraph 251(5)(b)).

Subsec. 112(2.3) added by 1980-81-82-83, c. 140, subsec. 71(3), applicable with respect to dividends received after November 12, 1981.

(2.4) Where no deduction permitted — No deduction may be made under subsection (1) or (2) or subsection 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share (in this subsection referred to as the "subject share"), other than an exempt share, of the capital stock of another corporation where

(a) any person or partnership was obligated, either absolutely or contingently, to effect an undertaking, including any guarantee, covenant or agreement to purchase or repurchase the subject share, under which

an investor is entitled, either immediately or in the future, to receive or obtain any amount or benefit for the purpose of reducing the impact, in whole or in part, of any loss that an investor may sustain by virtue of the ownership, holding or disposition of the subject share, and any property is used, in whole or in part, either directly or indirectly in any manner whatever, to secure the undertaking; or

(b) the consideration for which the subject share was issued or any other property received, either directly or indirectly, by an issuer from an investor, or any property substituted therefor, is or includes

(i) an obligation of an investor to make payments that are required to be included, in whole or in part, in computing the income of the issuer, other than an obligation of a corporation that, immediately before the subject share was issued, would be related to the corporation that issued the subject share if this Act were read without reference to paragraph 251(5)(b), or

(ii) any right to receive payments that are required to be included, in whole or in part, in computing the income of the issuer where that right is held on condition that it or property substituted therefor may revert or pass to an investor or a person or partnership to be determined by an investor,

where that obligation or right was acquired by the issuer as part of a transaction or event or a series of transactions or events that included the issuance or acquisition of the subject share, or a share for which the subject share was substituted.

Related Provisions: 87(4.2) — Amalgamations; 112(2.5) — Application of subsec. (2.4); 112(2.6) — Definitions; 112(2.8) — Loss sustained by investor; 112(2.9) — Related corporations; 248(1) — "amount" of a stock dividend; 248(5) — Substituted property; 248(10) — Series of transactions. See additional Related Provisions and Definitions at end of s. 112.

History: Subpara. 112(2.4)(b)(i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(1), to substitute "a corporation that, immediately" for "a corporation, that immediately", applicable after 5 p.m. EST, November 27, 1986.

Pre-RSC History: Subsec. 112(2.4) added by 1987, c. 46, s. 41, applicable after 5 p.m. EST, November 27, 1986.

Interpretation Bulletins: IT-88R2: Stock dividends.

(2.5) Application of subsec. (2.4) — Subsection (2.4) applies only in respect of a dividend on a share where, having regard to all the circumstances, it may reasonably be considered that the share was issued or acquired as part of a transaction or event or a series of transactions or events that enabled any corporation to earn investment income, or any income substituted therefor, and, as a result, the amount of its taxes payable under this Act for a taxation year is less than the amount that its taxes payable under this Act would be for the year if that investment income were the only income of the corporation for the year and all other taxation years and no amount were deductible under subsections 127(5) and 127.2(1) in computing its taxes payable under this Act.

Related Provisions: 248(10) — Series of transactions.

(2.6) Definitions — For the purposes of this subsection and subsection (2.4),

"exempt share" means

(a) a prescribed share,

(b) a share of the capital stock of a corporation issued before 5:00 p.m. Eastern Standard Time, November 27, 1986, other than a share held at that time

(i) by the issuer, or

(ii) by any person or partnership where the issuer may become entitled to receive any amount after that time by way of subscription proceeds or contribution of capital with respect to that share pursuant to an agreement made before that time, or

(c) a share that was, at the time the dividend referred to in subsection (2.4) was received, a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) during the applicable time period referred to in that paragraph;

History: Para. (c) of "exempt share" in subsec 112(2.6) added by 1994, c. 21, subsec. 51(1), applicable after December 21, 1992.

"investor" means the particular corporation referred to in subsection (2.4) and a person with whom that corporation does not deal at arm's length and any partnership or trust of which that corporation, or a person with whom that corporation does not deal at arm's length, is a member or beneficiary, but does not include the other corporation referred to in that subsection;

"issuer" means the other corporation referred to in subsection (2.4) and a person with whom that corporation does not deal at arm's length and any partnership or trust of which that corporation, or a person with whom that corporation does not deal at arm's length, is a member or beneficiary, but does not include the particular corporation referred to in that subsection.

Related Provisions: 112(2.7) — Change in agreement or condition; 248(13) — Interests in trusts and partnerships. See additional Related Provisions and Definitions at end of s. 112.

(2.7) Change in agreement or condition — For the purposes of the definition "exempt share" in subsection (2.6), where at any time after 5:00 p.m. Eastern Standard Time, November 27, 1986 the terms or conditions of a share of the capital stock of a corporation have been changed or any agreement in respect of the share has been changed or entered into by the corporation, the share shall be deemed to have been issued at that time.

(2.8) Loss sustained by investor — For the purposes of paragraph (2.4)(a), any loss that an investor may sustain by virtue of the ownership, holding or disposition of the subject share referred to in that paragraph shall be deemed to include any loss with respect to an obligation or share that was issued or acquired as part of a transaction or event or a series of transactions or events that included the issuance or acquisition of the subject share, or a share for which the subject share was substituted.

Related Provisions: 248(10) — Series of transactions.

(2.9) Related corporations — For the purposes of subparagraph (2.4)(b)(i), where it may reasonably be considered having regard to all the circumstances that a corporation has become related to any other corporation for the purpose of avoiding any limitation upon the deduction of a dividend under subsection (1), (2) or 138(6), the corporation shall be deemed not to be related to the other corporation.

Related Provisions: 87(2)(rr) — Amalgamations — tax on taxable preferred shares. See additional Related Provisions and Definitions at end of s. 112.

Pre-RSC History: Subsec. 112(2.9) substituted by 1988, c. 55, subsec. 85(4), applicable after 5 p.m. EST, November 27, 1986. Subsec. 112(2.9) formerly read:

(2.9) Related corporations — For the purposes of subparagraph (2.4)(b)(i), where a corporation may reasonably be considered, having regard to all the circumstances, to have become related to any other corporation in an attempt to avoid any limitation that would, but for this subsection, apply with respect to the deduction of a dividend under subsection (1), (2) or 138(6), the corporation shall be deemed not to be related to the other corporation.

Subsecs. 112(2.5)–(2.9) added by 1987, c. 46, s. 41, applicable after 5 p.m. EST, November 27, 1986.

(3) Loss on share that is capital property — Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share that is capital property of the taxpayer (other than a share that is property of a partnership) is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share; and

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend.

Related Provisions: 40(2)(g) — Restriction on capital losses; 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 40(3.7) — Application to non-resident individual; 53(1)(f) — Addition to ACB; 87(2)(x) — Amalgamations — flow-through to new corporation; 107(1)(c), (d) — Parallel stop-loss rule on disposition of interest in trust that flowed dividends out to corporation; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.01) — Exclusion for certain dividends; 112(3.1), (3.2) — Loss on share that is capital property of partnership or trust; 112(4)–(4.22) — Shares held as inventory; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property; 112(7) — Rules where shares exchanged. See additional Related Provisions and Definitions at end of s. 112.

History: Subsec. 112(3) amended by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995, other than

(a) a disposition that occurs pursuant to an agreement in writing made before April 27, 1995;

(b) a disposition of a share of the capital stock of a corporation that is made to the corporation if

(i) on April 26, 1995 the share was owned by an individual (other than a trust) or by a particular trust under which an individual (other than a trust) was a beneficiary,

(ii) on April 26, 1995 a corporation, or a partnership of which a corporation is a member, was a beneficiary of a life insurance policy that insured the life of the individual or the individual's spouse,

(iii) it was reasonable to conclude on April 26, 1995 that a main purpose of the life insurance policy was to fund, directly or indirectly, in whole or in part, a redemption, acquisition or cancellation of the share by the corporation that issued the share, and

(iv) the disposition is made by

(A) the individual or the individual's spouse,

(B) the estate of the individual or of the individual's spouse within the estate's first taxation year,

(C) the particular trust where it is a trust described in para. 104(4)(a) or (a.1) of the Act in respect of a spouse, the spouse is the beneficiary referred to in subparagraph (i) and the disposition occurs before the end of the trust's third taxation year that begins after the spouse's death, or

(D) a trust described in para. 73(1)(c) of the Act created by the individual in respect of the individual's spouse, or a trust described in para. 70(6)(b) of the Act created by the individual's will in respect of the individual's spouse, before the end of the trust's third taxation year that begins after the spouse's death;

(c) a disposition of a share of the capital stock of a corporation owned by an individual on April 26, 1995 that was made by the individual's estate before 1997;

(d) a disposition of a share of the capital stock of a corporation owned by an estate on April 26, 1995, the first taxation year of which ended after that day, that was made by the estate before 1997; or

(e) a disposition of a share of the capital stock of a corporation owned by an individual on April 26, 1995 where the individual is a trust described in para. 104(4)(a) or (a.1) of the Act in respect of a spouse, that was made by the trust after the spouse's death and before 1997.

Subsec. 131(12) of the said c. 19 provides:

(12) For the purposes of paragraph [(b) above] and this subsection, a share of the capital stock of a corporation acquired in exchange for another share in a transaction to which section 51, 85, 86 or 87 of the Act applies is deemed to be the same share as the other share.

Subsec. 112(3) formerly read:

(3) Loss on share that is capital property — Subject to subsections (5.5) and (5.6), where a corporation owns a share that is a capital property and receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of that share, the amount of any loss of the corporation arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the corporation that

(a) the corporation owned the share 365 days or longer before the loss was sustained, and

(b) the corporation and persons with whom the corporation was not dealing at arm's length did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is an amount received by the corporation in respect of

(c) a taxable dividend on the share to the extent that the amount of the dividend was deductible from the corporation's income for any taxation year by virtue of this section or subsection 138(6) and was not an amount on which the corporation was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977,

(d) a capital dividend on the share, or

(e) a life insurance capital dividend on the share.

The opening words of subsec. 112(3) amended by 1995, c. 21, subsec. 56(1), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(3) Loss on share that is capital property — Where a corporation owns a share that is a capital property and receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of that share, the amount of any loss of the corporation arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the corporation that

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

I.T. Technical News: No. 12 (stop-loss provisions — grandfathering).

(3.01) Loss on share that is capital property — excluded dividends — A dividend shall not be included in the total determined under subparagraph (3)(a)(i) or paragraph (3)(b) where the taxpayer establishes that

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(3.01) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.1) Loss on share held by partnership — Subject to subsections (5.5) and (5.6), where a taxpayer (other than a partnership or a mutual fund trust) is a member of a partnership, the taxpayer's share of any loss of the partnership from the disposition of a share that is held by a particular partnership as capital property is deemed to be that share of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) that share of the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share;

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend; and

(c) where the taxpayer is a trust, the total of all amounts each of which is

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Related Provisions: 40(3.3), (3.4) — Limitation on loss where share acquired by affiliated person; 40(3.7) — Application to non-resident individual; 53(1)(f) — Addition to ACB; 87(2)(x) — Amalgamations — flow-through to new corporation; 100(4) — Application of stop-loss rule to disposition of interest in partnership; 104(20) — Designation re non-taxable dividends; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.11) — Exclusion for certain dividends; 112(3.12) — Amount designated by trust to beneficiary that is a partnership or trust; 112(5.2)C(c) — Adjustment for dividends received on mark-to-market property; 112(7) — Rules where shares exchanged. See additional Related Provisions and Definitions at end of s. 112.

History: Subsec. 112(3.1) amended by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3). Subsec. 112(3.1) formerly read:

(3.1) Loss on share that is capital property of partnership — Subject to subsections (5.5) and (5.6), where a corporation is a member of a partnership and the corporation receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of a share that is a capital property of the partnership, the corporation's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the corporation that

(a) the partnership held the share 365 days or longer before the loss was sustained, and

(b) the partnership, the corporation and persons with whom the corporation was not dealing at arm's length did not, at the time the dividend was received, hold in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is an amount received by the corporation in respect of

(c) a taxable dividend on the share to the extent that the amount of the dividend was deductible from the corporation's income for any taxation year by virtue of this section or subsection 138(6) and was not an amount on which the corporation was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977,

(d) a capital dividend on the share, or

(e) a life insurance capital dividend on the share.

The opening words of subsec. 112(3.1) amended by 1995, c. 21, subsec. 56(2), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(3.1) Idem — Where a corporation is a member of a partnership and the corporation receives a taxable dividend, a capital dividend or a life insurance capital dividend in respect of a share that is a capital property of the partnership, the corporation's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the corporation that

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

I.T. Technical News: No. 12 (stop-loss provisions — grandfathering).

(3.11) Loss on share held by partnership — excluded dividends — A dividend shall not be included in the total determined under subparagraph (3.1)(a)(i) or paragraph (3.1)(b) or (c) where the taxpayer establishes that

(a) it was received when the particular partnership, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the particular partnership held throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(3.11) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.12) Loss on share held by partnership — excluded dividends — A taxable dividend received on a share and designated under subsection 104(19) by a particular trust in respect of a beneficiary that was a partnership or trust shall not be included in the total determined

under paragraph (3.1)(c) where the particular trust establishes that the dividend was received by an individual (other than a trust).

History: Subsec. 112(3.12) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.2) Loss on share held by trust — Subject to subsections (5.5) and (5.6), the amount of any loss of a trust (other than a mutual fund trust) from the disposition of a share of the capital stock of a corporation that is capital property of the trust is deemed to be the amount of the loss determined without reference to this subsection minus the total of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is a dividend received by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus the total of all amounts each of which is the amount of a taxable dividend

(A) received by the trust on the share,

(B) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or

(C) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received while the trust, the beneficiary and persons not dealing at arm's length with the beneficiary owned in total less than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received

exceeds

(iii) where the trust is an individual's estate, the share was acquired as a consequence of the individual's death and the disposition occurs during the trust's first taxation year, 1/4 of the lesser of

(A) the loss determined without reference to this subsection, and

(B) the individual's capital gain from the disposition of the share immediately before the individual's death, and

Proposed Amendment — 112(3.2)(a)(iii)

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This is expected to affect 112(3.2)(a)(iii) and 112(3.3)(a)(iii) — ed.]

(b) the total of all amounts each of which is

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Related Provisions: 40(3.7) — Application to non-resident individual; 53(1)(f) — Addition to ACB; 87(2)(x) — Amalgamations — flow-through to new corporation; 104(20) — Designation re non-taxable dividends; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.3), (3.31) — Exceptions; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property; 112(5.6) — Stop-loss rules restricted; 112(7) — Rules where shares exchanged. See additional Related Provisions and Definitions at end of s. 112.

History: Subsec. 112(3.2) amended by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3). Subsec. 112(3.2) formerly read:

(3.2) Loss on share that is capital property of trust — Subject to subsections (5.5) and (5.6), where a corporation is a beneficiary of a trust (other than a prescribed trust) that owns a share that is capital property and the corporation receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the corporation for a capital dividend or a life insurance capital dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the corporation that

(a) the trust owned the share 365 days or longer before the loss was sustained, and

(b) the trust, the corporation and persons with whom the corporation was not dealing at arm's length did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is a taxable dividend, a capital dividend or a life insurance capital dividend in respect of that share that was designated under subsection 104(19) or (20) in respect of a beneficiary that was a corporation.

The opening words of subsec. 112(3.2) amended by 1995, c. 21, subsec. 56(3), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(3.2) Idem — Where a corporation is a beneficiary of a trust (other than a prescribed trust) that owns a share that is capital property and the corporation receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the corporation for a capital dividend or a life insurance capital dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the corporation that

Pre-RSC History: Subsec. 112(3) substituted and subsecs. 112(3.1) and (3.2) added by 1980-81-82-83, c. 140, subsec. 71(4), applicable with respect to dispositions occurring after November 12, 1981. Subsec. 112(3) formerly read:

(3) Where a corporation owns a share that is a capital property and receives a taxable dividend or capital dividend in respect of that share, the amount of any loss of the corporation arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the corporation that

(a) the corporation owned the share 365 days or longer before the loss was sustained, and

(b) the corporation did not, at the time the dividend was received, own more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the aggregate of all amounts received by the corporation in respect of

(c) taxable dividends on the share to the extent that the amounts thereof were deductible from the corporation's income for any taxation year by virtue of this section or subsection 138(6) and were not amounts on which the corporation was required to pay tax under Part VII of this Act as it read on March 31, 1977, or

(d) capital dividends on the share.

Para. 112(3)(c) substituted by 1977-78, c. 1, subsec. 55(1), applicable after March 31, 1977, to add "of this Act as it read on March 31, 1977".

Subsec. 112(3) substituted by 1974-75-76, c. 26, subsec. 72(2), applicable in respect of losses arising after May 6, 1974. Subsec. 112(3) formerly read:

> (3) **Loss from transaction involving share on which deductible dividend received** — Where an amount in respect of a taxable dividend received by a corporation (other than a trader or dealer in securities) in a taxation year is, by virtue of this section or subsection 138(6), deductible from the corporation's income for the year, the amount of any loss arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the corporation that
>
> (a) the corporation owned the share 365 days or longer before the loss was sustained, and
>
> (b) the corporation did not, at the time the dividend was received, own more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,
>
> be deemed to be the amount of that loss otherwise determined, minus the aggregate of all amounts received by the corporation in respect of taxable dividends on the share, to the extent that the amounts thereof
>
> (c) were deductible from the corporation's income for any taxation year by virtue of this section or subsection 138(6), and
>
> (d) were not amounts upon which the corporation was required to pay tax under Part VII.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

I.T. Technical News: No. 12 (stop-loss provisions — grandfathering).

(3.3) Loss on share held by trust — special cases — Notwithstanding subsection (3.2), where a trust has at any time acquired a share of the capital stock of a corporation because of subsection 104(4), the amount of any loss of the trust from a disposition after that time is deemed to be the amount of the loss determined without reference to subsection (3.2) and this subsection minus the total of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is a dividend received after that time by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to subsection (3.2) and this subsection minus the total of all amounts each of which is the amount of a taxable dividend

(A) received by the trust on the share after that time,

(B) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or

(C) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received when the trust, the beneficiary and persons not dealing at arm's length with the beneficiary owned in total less than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received

exceeds

(iii) 1/4 of the lesser of

(A) the loss from the disposition, determined without reference to subsection (3.2) and this subsection, and

(B) the trust's capital gain from the disposition immediately before that time of the share because of subsection 104(4), and

Proposed Amendment — 112(3.3)(a)(iii)

[See under 112(3.2)(a)(iii) — ed.]

(b) the total of all amounts each of which is a taxable dividend received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Related Provisions: 40(3.7) — Application to non-resident individual; 87(2)(x) — Amalgamations — flow-through to new corporation; 107.4(3)(b)(ii) — Application of stop-loss rule to qualifying disposition; 112(3.31), (3.32) — Excluded dividends; 112(5.6) — Stop-loss rules restricted; 112(7) — Rules where shares exchanged.

History: Subsec. 112(3.3) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.31) Loss on share held by trust — excluded dividends — No dividend received by a trust shall be included under subparagraph (3.2)(a)(i) or (b)(ii) or (3.3)(a)(i) where the trust establishes that the dividend

(a) was received,

(i) in any case where the dividend was designated under subsection 104(19) or (20) by the trust, when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, or

(ii) in any other case, when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, and

(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 104(20) — Designation re non-taxable dividends; 112(5.6) — Stop-loss rules restricted; 112(7) — Rules where shares exchanged.

History: Subsec. 112(3.31) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(3.32) Loss on share held by trust — excluded dividends — No taxable dividend received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust shall be included under paragraph (3.2)(b) or (3.3)(b) where the trust establishes that the dividend was received by an individual (other than a trust), or

(a) was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation.

History: Subsec. 112(3.32) added by 1998, c. 19, subsec. 131(1), applicable on the same basis as subsec. 112(3).

(4) Loss on share that is not capital property — Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share of the capital stock of a corporation that is property (other than capital property) of the taxpayer is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual and the corporation is resident in Canada, the total of all dividends received by the individual on the share;

(b) where the taxpayer is a partnership, the total of all dividends received by the partnership on the share; and

(c) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend).

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 93(2)–(2.3) — Loss limitation on disposition of share; 112(4.01) — Exclusion for certain dividends; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property. See additional Related Provisions and Definitions at end of s. 112.

History: Subsec. 112(4) amended by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995. Subsec. 112(4) formerly read:

(4) Loss on share that is not capital property — Subject to subsections (5.5) and (5.6), where a taxpayer owns a share that is not a capital property and receives a dividend in respect of that share, the amount of any loss of the taxpayer arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the taxpayer that

(a) the taxpayer owned the share 365 days or longer before the loss was sustained, and

(b) the taxpayer and persons with whom the taxpayer was not dealing at arm's length, did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus

(c) where the taxpayer is an individual and the corporation is a taxable Canadian corporation, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received by the taxpayer,

(d) where the taxpayer is a corporation, the total of all amounts each of which is

(i) a taxable dividend, to the extent of the amount thereof that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend),

on the share received by the taxpayer, and

(e) in any other case, nil.

The opening words of subsec. 112(4) amended by 1995, c. 21, subsec. 56(4), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(4) Loss on share that is not capital property — Where a taxpayer owns a share that is not a capital property and receives a dividend in respect of that share, the amount of any loss of the taxpayer arising from transactions with reference to the share on which the dividend was received shall, unless it is established by the taxpayer that

Subpara. 112(4)(d)(ii) substituted by 1994, c. 21, subsec. 51(2), applicable to the determination of losses arising in 1990 *et seq.* and, where a taxpayer has elected under subsec. 84(6) of 1994, c. 7, Sch. II (1991, c. 49) (see below), in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are necessary to give effect to that amendment. That subpara. formerly read:

(ii) a dividend, other than a taxable dividend,

That portion of subsec. 112(4) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(2), applicable (by subsec. 84(6)) to the determination of losses arising

(a) in 1990 *et seq.*, and

(b) where a taxpayer so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election,

except that the subsec. as amended does not apply to the amount of a dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII as it read on March 31, 1977. That portion of subsec. 112(4) formerly read:

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts received by the taxpayer in respect of dividends (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share to the extent that the amounts of those dividends were not amounts on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Pre-RSC History: All that portion of subsec. 112(4) preceding para. (a) amended by 1986, c. 6, subsec. 61(2), applicable with respect to dividends received after 1985, to substitute the heading "Loss on share that is not capital property" for "Loss on share that is not a capital property or indexed security" and to substitute "share that is not a capital property" for "share that is neither a capital property nor an indexed security".

All that portion of subsec. 112(4) preceding para. (a) substituted by 1984, c. 1, subsec. 56(1) to add "nor an indexed security", applicable with respect to dividends received after September 30, 1983.

Para. 112(4)(b) substituted by 1980-81-82-83, c. 140, subsec. 71(5), applicable with respect to dispositions occurring after November 12, 1981. Para. 112(4)(b) formerly read:

(b) he did not, at the time the dividend was received, own more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

All that portion of subsec. 112(4) following para. (b) substituted by 1977-78, c. 1, subsec. 55(2), applicable after March 31, 1977, to add "of this Act as it read on March 31, 1977".

Subsec. 112(4) substituted by 1974-75-76, c. 26, subsec. 72(2), applicable in respect of losses arising after May 6, 1974. Subsec. 112(4) formerly read:

(4) Loss sustained by trader or dealer in securities — The amount of any loss of a trader or dealer in securities (whether incorporated or otherwise) arising from transactions with reference to any share on which an amount in respect of a dividend has been received by him shall, unless it is established by him that

(a) he owned the share 365 days or longer before the loss was sustained, and

(b) he did not, at the time the dividend was received, own more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the aggregate of all amounts received by him in respect of taxable dividends on the share to the extent that the amounts thereof were not amounts upon which he was required to pay tax under Part VII.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(4.01) Loss on share that is not capital property — excluded dividends — A dividend shall not be included in the total determined under paragraph (4)(a), (b) or (c) where the taxpayer establishes that

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(4.01) added by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995.

(4.1) Fair market value of shares held as inventory — For the purpose of section 10, the fair market value at any time of a share of the capital stock of a corporation is deemed to be equal to the fair market value of the share at that time, plus

(a) where the shareholder is a corporation, the total of all amounts received by the shareholder on the share before that time each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the shareholder's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend);

(b) where the shareholder is a partnership, the total of all amounts each of which is a dividend received by the shareholder on the share before that time; and

(c) where the shareholder is an individual and the corporation is resident in Canada, the total of all amounts each of which is a dividend received by the shareholder on the share before that time (or, where the shareholder is a trust, that would have been so received if this Act were read without reference to subsection 104(19)).

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(4.11) — Exclusion for certain dividends. See additional Related Provisions and Definitions at end of s. 112.

History: Subsec. 112(4.1) amended by 1998, c. 19, subsec. 131(1), applicable to taxation years that end after April 26, 1995. Subsec. 112(4.1) formerly read:

(4.1) Fair market value of share that is not capital property — Where a taxpayer (other than a prescribed trust) or partnership (in this subsection referred to as the "holder") holds a share that is not a capital property and a dividend is received in respect of that share, for the purpose of subsection 10(1) and any regulations made under that subsection, the fair market value of the share at any particular time after November 12, 1981 shall, unless it is established by the holder that

(a) the holder held the share 365 days or longer before the particular time, and

(b) the holder and persons with whom the holder was not dealing at arm's length did not, at the time the dividend was received, hold in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be an amount equal to the fair market value of that share at the particular time otherwise determined, plus

(c) where the holder is an individual and the corporation is a taxable Canadian corporation, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received before the particular time by the holder or that would have been so received if this Act were read without reference to subsection 104(19),

(d) where the holder is a corporation, the total of all amounts each of which is

(i) a taxable dividend, to the extent of the amount thereof that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the holder's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend),

on the share received before the particular time by the holder,

(e) where the holder is a partnership, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received before the particular time by the holder, and

(f) in any other case, nil.

Subpara. 112(4.1)(d)(ii) substituted by 1994, c. 21, subsec. 51(3), applicable to 1990 *et seq.* and, where a taxpayer has elected under subsec. 84(7) of 1994, c. 7, Sch. II (1991, c. 49) (see below), to the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are necessary to give effect to that amendment. That subpara. formerly read:

(ii) a dividend, other than a taxable dividend,

That portion of subsec. 112(4.1) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(3), applicable (by subsec. 84(7))

(a) to 1990 *et seq.*, and

(b) where a taxpayer so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], to the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election,

except that the subsec. as amended does not apply to the amount of a dividend received by a holder on which the holder was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977. That portion of subsec. 112(4.1) formerly read:

be deemed to be the total of the fair market value of the share at the particular time otherwise determined and all amounts received before the particular time by the holder in respect of dividends (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share determined as if this Act were read without reference to subsection 104(19).

Pre-RSC History: All that portion of subsec. 112(4.1) preceding para. (a) amended by 1986, c. 6, subsec. 61(3), applicable with respect to dividends received after 1985, to substitute the heading "Fair market value of share that is not capital property" for "Fair market value of share that is not a capital property or indexed security" and to substitute "share that is not a capital property" for "share that is neither a capital property nor an indexed security".

All that portion of subsec. 112(4.1) preceding para. (a) substituted by 1984, c. 1, subsec. 56(2), applicable with respect of dividends received after September 30, 1983. That portion formerly read:

(4.1) Fair market value of share that is not capital property — Where a taxpayer, trust (other than a prescribed trust) or partnership (in this subsection referred to as the "holder") holds a share that is not a capital property and a dividend is received in respect of that share, for the purpose of subsection 10(1) and any regulations made thereunder, the fair market value of the share at any particular time after November 12, 1981 shall, unless it is established by the holder that

Subsec. 112(4.1) substituted by 1980-81-82-83, c. 140, subsec. 71(6), applicable to taxation years commencing after 1981. Subsec. 112(4.1) formerly read:

(4.1) Where a taxpayer owns a share that is not a capital property and receives a dividend in respect of that share, for the purpose of subsection 10(1) and any regulations made thereunder, the fair market value of the share at any particular time after November 18, 1974 shall, unless it is established by the taxpayer that

(a) he owned the share 365 days or longer before the particular time, and

(b) he did not, at the time the dividend was received, own more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the aggregate of the fair market value of the share at the particular time otherwise determined and all amounts received before the particular time by him in respect of dividends (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share to the extent that the amounts thereof were not amounts upon which he was required to pay tax under Part VII of this Act as it read on March 31, 1977.

All that portion of subsec. 112(4.1) following para. (b) substituted by 1977-78, c. 1, subsec. 55(3), applicable after March 31, 1977 to add "of this Act as it read on March 31, 1977".

Subsec. 112(4.1) added by 1974-75-76, c. 26, subsec. 72(2), applicable for the purpose of determining the fair market value of a share after November 18, 1974.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(4.11) Fair market value of shares held as inventory — excluded dividends — A dividend shall not be included in the total determined under paragraph (4.1)(a), (b) or (c) where the shareholder establishes that

(a) it was received while the shareholder and persons with whom the shareholder was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the shareholder held throughout the 365-day period that ended at the time referred to in subsection (4.1).

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation.

History: Subsec. 112(4.11) added by 1998, c. 19, subsec. 131(1), applicable to taxation years that end after April 26, 1995.

(4.2) Loss on share held by trust — Subject to subsections (5.5) and (5.6), the amount of any loss of a trust from the disposition of a share that is property (other than capital property) of the trust is deemed to be the amount of the loss determined without reference to this subsection minus

(a) the total of all amounts each of which is a dividend received by the trust on the share, to the extent that the amount was not designated under subsection 104(20) in respect of a beneficiary of the trust; and

(b) the total of all amounts each of which is a dividend received on the share that was designated under subsection 104(19) or (20) by the trust in respect of a beneficiary of the trust.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 104(20) — Designation re non-taxable dividends; 112(3.2) — Stop-loss rule; 112(4.21), (4.22) — Exclusions for certain dividends; 112(5.2)C(b) — Adjustment for dividends received on mark-to-market property. See additional Related Provisions and Definitions at end of s. 112.

History: Subsec. 112(4.2) amended by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995. Subsec. 112(4.2) formerly read:

(4.2) Where no deduction permitted — Subject to subsections (5.5) and (5.6), where a taxpayer is a member of a partnership and the taxpayer receives a dividend in respect of a share that is not a capital property of the partnership, the taxpayer's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the taxpayer that

(a) the partnership held the share 365 days or longer before the loss was sustained, and

(b) the partnership, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not, at the time the dividend was received, hold in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus

(c) where the taxpayer is an individual and the corporation is a taxable Canadian corporation, the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) on the share received by the taxpayer,

(d) where the taxpayer is a corporation, the total of all amounts each of which is

(i) a taxable dividend, to the extent of the amount thereof that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend),

on the share received by the taxpayer, and

(e) in any other case, nil.

The opening words of subsec. 112(4.2) amended by 1995, c. 21, subsec. 56(5), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(4.2) Where no deduction permitted — Where a taxpayer is a member of a partnership and the taxpayer receives a dividend in respect of a share that is not a capital property of the partnership, the taxpayer's share of any loss of the partnership arising with respect to the share on which the dividend was received shall, unless it is established by the taxpayer that

Subpara. 112(4.2)(d)(ii) substituted by 1994, c. 21, subsec. 51(4), applicable to the determination of losses arising in 1990 *et seq.* and, where a taxpayer has elected under subsec. 84(6) of 1994, c. 7, Sch. II (1991, c. 49) (see below), in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are necessary to give effect to that amendment. That subpara. formerly read:

(ii) a dividend, other than a taxable dividend,

That portion of subsec. 112(4.2) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 84(4), applicable (by subsec. 84(6)) to the determination of losses arising

(a) in 1990 *et seq.*, and

(b) where a taxpayer so elects by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], in the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election,

except that the subsec. as amended does not apply to the amount of a dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977. That portion of subsec. 112(4.2) formerly read:

be deemed to be the amount of the loss otherwise determined, minus the total of all amounts each of which is an amount received by the taxpayer in respect of

(c) a dividend (other than capital gains dividends within the meaning assigned by subsection 131(1)) on the share to the extent that the amount of that dividend was not an amount on

which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Pre-RSC History: Subsec. 112(4.2) added by 1980-81-82-83, c. 140, subsec. 71(6), applicable with respect to dispositions occurring after November 12, 1981.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(4.21) Loss on share held by trust — excluded dividends — A dividend shall not be included in the total determined under paragraph (4.2)(a) where the taxpayer establishes that

(a) it was received when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(4.21) added by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995.

(4.22) Loss on share held by trust — excluded dividends — A dividend shall not be included in the total determined under paragraph (4.2)(b) where the taxpayer establishes that

(a) it was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Related Provisions: 87(2)(x) — Amalgamations — flow-through to new corporation; 112(5.6) — Stop-loss rules restricted.

History: Subsec. 112(4.22) added by 1998, c. 19, subsec. 131(1), applicable to dispositions that occur after April 26, 1995.

(4.3) [Repealed]

History: Subsec. 112(4.3) repealed by 1998, c. 19, subsec. 131(2), applicable to dispositions that occur after April 26, 1995. Subsec. 112(4.3) formerly read:

(4.3) Idem — Subject to subsections (5.5) and (5.6), where a taxpayer is a beneficiary of a trust (other than a prescribed trust) that owns a share that is not capital property and the taxpayer receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the taxpayer for a dividend other than a taxable dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the taxpayer that

(a) the trust owned the share 365 days or longer before the loss was sustained, and

(b) the trust, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not, at the time the dividend was received, own in the aggregate more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received,

be deemed to be the amount of that loss otherwise determined, minus the total of all amounts each of which is a dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1)) in respect of that share that was designated under subsection 104(19) or (20) in respect of the taxpayer.

The opening words of subsec. 112(4.3) amended by 1995, c. 21, subsec. 56(6), applicable to dispositions occurring after October 30, 1994. The opening words formerly read:

(4.3) Loss on share that is not capital property of trust — Where a taxpayer is a beneficiary of a trust (other than a prescribed trust) that owns a share that is not capital property and the taxpayer receives a taxable dividend in respect of that share pursuant to a designation under subsection 104(19) or the trust has made a designation under subsection 104(20) in respect of the taxpayer for a dividend other than a taxable dividend on that share, the amount of any loss of the trust arising with respect to the share on which the dividend was subject to a designation shall, unless it is established by the taxpayer that

Pre-RSC History: Subsec. 112(4.3) added by 1980-81-82-83, c. 140, subsec. 71(6), applicable with respect to dispositions occurring after November 12, 1981.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-328R3: Losses on shares on which dividends have been received.

(5) Disposition of share by financial institution — Subsection (5.2) applies to the disposition of a share by a taxpayer in a taxation year where

(a) the taxpayer is a financial institution in the year;

(b) the share is a mark-to-market property for the year; and

(c) the taxpayer received a dividend on the share at a time when the taxpayer and persons with whom the taxpayer was not dealing at arm's length held in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received.

Related Provisions: 87(2)(e.5) — Amalgamations — continuing corporation; 88(1)(h) — Windup — continuing corporation; 112(5.4) — Deemed dispositions and reacquisitions to be ignored; 138(11.5)(k.2) — Transfer of business by non-resident insurer.

History: Subsec. 112(5) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

Pre-RSC History: Subsec. 112(5) repealed by 1977-78, c. 1, subsec. 55(4), applicable with respect to dividends received after March 31, 1977. Subsec. 112(5) formerly read:

(5) Limitation where dividend received by trader or dealer in securities — Subsection (1) is not applicable in respect of any taxable dividend received by a corporation that at the time the dividend was received was a trader or dealer in securities, to the extent of such portion, if any, of the dividend as was paid out of the payer corporation's designated surplus.

(5.1) Share held for less than one year — Subsection (5.2) applies to the disposition of a share by a taxpayer in a taxation year where

(a) the disposition is an actual disposition;

(b) the taxpayer did not hold the share throughout the 365-day period that ended immediately before the disposition; and

(c) the share was a mark-to-market property of the taxpayer for a taxation year that begins after October 1994 and in which the taxpayer was a financial institution.

Related Provisions: 87(2)(e.5) — Amalgamations — continuing corporation; 88(1)(h) — Windup — continuing corporation; 112(5.4) — Deemed dispositions and reacquisitions to be ignored; 138(11.5)(k.2) — Transfer of business by non-resident insurer.

History: Para. 112(5.1)(b) amended by 1998, c. 19, subsec. 131(3), applicable to dispositions that occur after April 26, 1995. Para. 112(5.1)(b) formerly read:

(b) the taxpayer held the share for less than 365 days; and

Subsec. 112(5.1) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.2) Adjustment re dividends — Subject to subsection (5.3), where subsection (5) or (5.1) provides that this

subsection applies to the disposition of a share by a taxpayer at any time, the taxpayer's proceeds of disposition shall be deemed to be the amount determined by the formula

$$A + B - (C - D)$$

where

A is the taxpayer's proceeds determined without reference to this subsection,

B is the lesser of

(a) the loss, if any, from the disposition of the share that would be determined before the application of this subsection if the cost of the share to any taxpayer were determined without reference to

(i) paragraphs 87(2)(e.2) and (e.4), 88(1)(c), 138(11.5)(e) and 142.5(2)(b),

(ii) subsection 85(1), where the provisions of that subsection are required by paragraph 138(11.5)(e) to be applied, and

(iii) paragraph 142.6(1)(d), and

(b) the total of all amounts each of which is

(i) where the taxpayer is a corporation, a taxable dividend received by the taxpayer on the share, to the extent of the amount that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) where the taxpayer is a partnership, a taxable dividend received by the taxpayer on the share, to the extent of the amount that was deductible under this section or subsection 115(1) or 138(6) in computing the taxable income or taxable income earned in Canada for any taxation year of members of the partnership,

(iii) where the taxpayer is a trust, an amount designated under subsection 104(19) in respect of a taxable dividend on the share, or

(iv) a dividend (other than a taxable dividend) received by the taxpayer on the share,

C is the total of all amounts each of which is the amount by which

(a) the taxpayer's proceeds of disposition on a deemed disposition of the share before that time were increased because of this subsection,

(b) where the taxpayer is a corporation or trust, a loss of the taxpayer on a deemed disposition of the share before that time was reduced because of subsection (3), (3.2), (4) or (4.2), or

(c) where the taxpayer is a partnership, a loss of a member of the partnership on a deemed disposition of the share before that time was reduced because of subsection (3.1) or (4.2), and

D is the total of all amounts each of which is the amount by which the taxpayer's proceeds of disposition on a deemed disposition of the share before that time were decreased because of this subsection.

Related Provisions: 87(2)(e.5) — Amalgamations — continuing corporation; 88(1)(h) — Windup — continuing corporation; 112(5.21) — Exclusion for certain dividends; 112(5.3), (5.4) — Application; 112(5.5), (5.6) — Stop-loss rules not applicable; 138(11.5)(k.2) — Transfer of business by non-resident insurer; 257 — Formula cannot calculate to less than zero.

History: Subpara. (b)(iv) of the description of B, and para. (b) of the description of C in subsec. 112(5.2), amended by 1998, c. 19, subsecs. 131(4), (5), applicable to dispositions that occur after April 26, 1995. Subpara. B(b)(iv) and para. C(b) formerly read:

> (iv) a dividend (other than a taxable dividend or a dividend deemed by subsection 131(1) to be a capital gains dividend) received by the taxpayer on the share,
>
> . . . . .
>
> (b) where the taxpayer is a corporation or trust, a loss of the taxpayer on a deemed disposition of the share before that time was reduced because of subsection (3), (3.2), (4) or (4.3), or

Subsec. 112(5.2) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.21) Subsection (5.2) — excluded dividends — A dividend shall not be included in the total determined under paragraph (b) of the description of B in subsection (5.2) unless

(a) the dividend was received when the taxpayer and persons with whom the taxpayer did not deal at arm's length held in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; or

(b) the share was not held by the taxpayer throughout the 365-day period that ended immediately before the disposition.

History: Subsec. 112(5.21) added by 1998, c. 19, subsec. 131(6), applicable to dispositions that occur after April 26, 1995.

(5.3) Adjustment not applicable — For the purpose of determining the cost of a share to a taxpayer on a deemed reacquisition of the share after a deemed disposition of the share, the taxpayer's proceeds of disposition shall be determined without regard to subsection (5.2).

History: Subsec. 112(5.3) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.4) Deemed dispositions — Where a taxpayer disposes of a share at any time,

(a) for the purpose of determining whether subsection (5.2) applies to the disposition, the conditions in subsections (5) and (5.1) shall be applied without regard to a deemed disposition and reacquisition of the share before that time; and

(b) total amounts under subsection (5.2) in respect of the disposition shall be determined from the time when the taxpayer actually acquired the share.

Related Provisions: 87(2)(e.5) — Amalgamations — continuing corporation; 88(1)(h) — Windup — continuing corporation; 138(11.5)(k.2) — Transfer of business by non-resident insurer.

History: Subsec. 112(5.4) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.5) Stop-loss rules not applicable — Subsections (3) to (4) and (4.2) do not apply to the disposition of a share by a taxpayer in a taxation year that begins after October 1994 where

(a) the share is a mark-to-market property for the year and the taxpayer is a financial institution in the year; or

(b) subsection (5.2) applies to the disposition.

Related Provisions: 112(5.6) — Transitional rules.

History: The opening words of subsec. 112(5.5) amended by 1998, c. 19, subsec. 131(7), applicable to dispositions that occur after April 26, 1995. The opening words formerly read:

> (5.5) Stop-loss rules not applicable — Subsections (3) to (4), (4.2) and (4.3) do not apply to the disposition of a share by a taxpayer in a taxation year that begins after October 1994 where

Subsec. 112(5.5) added by 1995, c. 21, subsec. 56(7), applicable to dispositions in taxation years that begin after October 1994.

(5.6) Stop-loss rules restricted — In determining whether any of subsections (3) to (4) and (4.2) apply to reduce a loss of a taxpayer from the disposition of a share, this Act shall be read without reference to paragraphs (3.01)(b) and (3.11)(b), subclauses (3.2)(a)(ii)(C)(I) and (3.3)(a)(ii)(C)(I) and paragraphs (3.31)(b), (3.32)(b), (4.01)(b), (4.21)(b) and (4.22)(b) where

(a) the disposition occurs

(i) because of subsection 142.5(2) in a taxation year that includes October 31, 1994, or

(ii) because of paragraph 142.6(1)(b) after October 30, 1994; or

(b) the share was a mark-to-market property of the taxpayer for a taxation year that begins after October 1994 in which the taxpayer was a financial institution.

History: The opening words of subsec. 112(5.6) amended by 1998, c. 19, subsec. 131(8), applicable to dispositions that occur after April 26, 1995. The opening words formerly read:

(5.6) Stop-loss rules restricted — In determining whether any of subsections (3) to (4), (4.2) and (4.3) apply to the disposition of a share by a taxpayer, each of those subsections shall be read without reference to paragraph (a) of the subsection where

Subsec. 112(5.6) added by 1995, c. 21, subsec. 56(7), applicable to dispositions occurring after October 30, 1994.

(6) Meaning of certain expressions — For the purposes of this section,

(a) **["dividend", "taxable dividend"]** — "dividend" and "taxable dividend" do not include a capital gains dividend (within the meaning assigned by subsection 131(1)) or any dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977;

(b) **["control"]** — one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length; and

Related Provisions: 256(6), (6.1) — Meaning of "control". See Related Provisions and Definitions at end of s. 112.

(c) **["financial institution", "mark-to-market property"]** — "financial institution" and "mark-to-market property" have the meanings assigned by subsection 142.2(1).

Related Provisions: See Related Provisions and Definitions at end of s. 112.

History: Para. 112(6)(a) amended by 1998, c. 19, subsec. 131(9), applicable after April 26, 1995. Para. 112(6)(a) formerly read:

(a) ["taxable dividend"] — "taxable dividend" does not include a capital gains dividend within the meaning assigned by subsection 131(1);

Para. 112(6)(c) added by 1995, c. 21, subsec. 56(8), applicable to taxation years that begin after October 1994.

(7) Rules where shares exchanged — Where a share (in this subsection referred to as the "new share") has been acquired in exchange for another share (in this subsection referred to as the "old share") in a transaction to which section 51, 85.1, 86 or 87 applies, for the purposes of the application of any of subsections (3) to (3.32) in respect of a disposition of the new share, the new share is deemed to be the same share as the old share, except that

(a) any dividend received on the old share is deemed for those purposes to have been received on the new share only to the extent of the proportion of the dividend that

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of

(ii) the shareholder's adjusted cost base of all new shares immediately after the exchange acquired in exchange for the old share; and

(b) the amount, if any, by which a loss from the disposition of the new share is reduced because of the application of this subsection shall not exceed the proportion of the shareholder's adjusted cost base of the old share immediately before the exchange that

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of

(ii) the shareholder's adjusted cost base of all new shares, immediately after the exchange, acquired in exchange for the old share.

Related Provisions: 40(3.7) — Application to non-resident individual.

History: Subsec. 112(7) amended by 1998, c. 19, subsec. 131(10), applicable to dispositions that occur after April 26, 1995. Subsec. 112(7) formerly read:

(7) Rules where shares exchanged — Where at a particular time a share (in this subsection referred to as the "new share") has been acquired by a corporation, partnership or trust (in this subsection referred to as the "holder") in exchange for another share (in this subsection referred to as the "old share") by means of a transaction to which section 51, 85.1, 86 or 87 applies, any reference in subsection (3), (3.1) or (3.2) to a share shall be deemed to include a reference to the new share and the old share as though they were the same share, except that the total of the amounts to be deducted from a loss otherwise determined on any new share of the holder, in respect of dividends received, or designated by the holder, in respect of the share, shall be deemed to be the total of

(a) the total of all amounts each of which is an amount that would be determined under subsection (3), (3.1) or (3.2) in respect of a taxable dividend, a capital dividend or a life insurance capital dividend received or designated by the holder in respect of the new share only, and

(b) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total of all amounts each of which is the amount determined in respect of an old share exchanged by the holder at the particular time equal to the lesser of

(i) the total of all amounts each of which is received or designated by the holder in respect of a taxable dividend, a capital dividend or a life insurance capital dividend on the old share, and

(ii) the adjusted cost base to the holder of the old share immediately before the particular time,

B is the adjusted cost base to the holder of the new share immediately after the exchange, and

C is the adjusted cost base to the holder of all new shares immediately after the exchange,

to the extent that those amounts were not amounts on which the holder was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Para. 112(7)(b) substituted by 1994, c. 21, subsec. 51(5), applicable to losses arising in 1992 *et seq.* That para. formerly read:

(b) that proportion of the total of all amounts each of which is an amount received or designated by the holder in respect of a taxable dividend, a capital dividend or a life insurance capital dividend on all the old shares exchanged at the particular time that

(i) the adjusted cost base to the holder of the new share immediately after the exchange

is of

(ii) the adjusted cost base to the holder of all new shares immediately after the exchange

Pre-RSC History: Subsec. 112(7) substituted by 1980-81-82-83, c. 140, subsec. 71(7), applicable with respect to share exchanges occurring after November 12, 1981. Subsec. 112(7) formerly read:

(7) Where at a particular time a share (in this subsection referred to as the "new share") has been acquired by a corporation in exchange for another share (in this subsection referred to as the "old share") by means of a transaction to which section 51, 85.1, 86 or 87 applies, any reference in subsection (3) to a share shall be deemed to include a reference to the new share and the old share as though they were the same share, except that the aggregate of the amounts to be deducted from a loss otherwise determined on any new share of the corporation, in respect of dividends received by it on the share, shall be deemed to be the aggregate of

(a) the aggregate of amounts that would be determined under subsection (3) in respect of taxable dividend or capital dividends received by it on the new share only; and

(b) that proportion of the aggregate of all amounts received by it in respect of taxable dividends or capital dividends on all the old shares exchanged at the particular time that

(i) the adjusted cost base to him of the new share immediately after the exchange

is of

(ii) the adjusted cost base to him of all new shares immediately after the exchange

to the extent that such amounts were not amounts on which the corporation was required to pay tax under Part VII of this Act as it read on March 31, 1977.

All that portion of subsec. 112(7) following para. (b) substituted by 1977-78, c. 1, subsec. 55(5), applicable after March 31, 1977, to add "of this Act as it read on March 31, 1977".

Subsec. 112(7) added by 1974-75-76, c. 26, subsec. 72(3), applicable in respect of losses arising after May 6, 1974.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins [subsec. 112(7)]: IT-88R2: Stock dividends; IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

Related Provisions [s. 112]: 66(1) — Exploration development expenses of principal-business corporations; 82(2) — Certain dividends deemed received by taxpayer; 138(6) — Insurance corporations — Deduction for dividends from taxable corporations; 187.2 — Tax on dividends on taxable preferred shares; 187.3 — Tax on dividends on taxable RFI shares.

Definitions [s. 112]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital dividend" — 83(2), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(1); "consequence of the individual's death" — 248(8); "controlled" — 112(6)(b), 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "dividend" — 112(6)(a), 248(1); "dividend rental arrangement" — 248(1); "exempt share" — 112(2.6), (2.7); "financial institution" — 112(6)(c), 142.2(1); "foreign affiliate" — 95(1), 248(1); "grandfathered share" — 248(1); "guarantee agreement", "guarantor" — 112(2.2)(a); "individual", "insurance corporation" — 248(1); "investment corporation" — 130(3)(a), 248(1); "investor", "issuer" — 112(2.6); "life insurance capital dividend" — 248(1); "mark-to-market property" — 112(6)(c), 142.2(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "permanent establishment" — Reg. 8201; "person", "prescribed", "property" — 248(1); "received" — 248(7); "regulation" — 248(1); "related" — 112(2.9), 251; "resident in Canada" — 250; "restricted financial institution" — 248(1); "series of transactions" — 248(10); "share" — 112(7), 248(1); "short-term preferred share" — 248(1); "specified financial institution" — 248(1), 248(14); "specified person" — 112(2.2)(g) [to be repealed], 112(2.22)(b) [draft]; "substituted property" — 248(5); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable dividend" — 89(1), 112(6)(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249; "taxpayer", "term preferred share" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

113. (1) Deduction in respect of dividend received from foreign affiliate — Where in a taxation year a corporation resident in Canada has received a dividend on a share owned by it of the capital stock of a foreign affiliate of the corporation, there may be deducted from the income for the year of the corporation for the purpose of computing its taxable income for the year, an amount equal to the total of

(a) an amount equal to such portion of the dividend as is prescribed to have been paid out of the exempt surplus, as defined by regulation (in this Part referred to as "exempt surplus") of the affiliate,

Selected Cases [para. 113(1)(a)]: *Old HW-GW Ltd. v. Canada*, [1993] 1 C.T.C. 363 (FCA); leave to appeal to SCC refused (Sept. 30, 1993), Doc. 23591 (SCC) (Puerto Rico separate country from US under subsections 5907(10) and (11) of Regulations; incentive to promote sales from Puerto Rico to US was "export" incentive; dividends from foreign affiliate in Puerto Rico not from "exempt surplus").

(b) an amount equal to the lesser of

(i) the product obtained when the foreign tax prescribed to be applicable to such portion of the dividend as is prescribed to have been paid out of the taxable surplus, as defined by regulation (in this Part referred to as "taxable surplus") of the affiliate is multiplied by the amount by which

(A) the relevant tax factor

Proposed Amendment — 113(1)(b)(i)(A)

(A) the corporation's relevant tax factor for the year,

Application: The June 22, 2000 draft legislation, subsec. 16(1), will amend cl. 113(1)(b)(i)(A) to read as above, applicable after 2000.

Technical Notes: Subsection 113(1) of the Act permits a resident corporation to deduct specified amounts in respect of dividends received from a foreign affiliate out of the exempt, taxable and pre-acquisition surplus of the foreign affiliate. The amounts so deductible are determined largely with reference to Part LIX of the Regulations. The deductions under paragraphs 113(1)(b) and (c) with regard to dividends out of taxable surplus are also determined with reference to the resident corporation's "relevant tax factor".

Subsection 113(1) is amended to explicitly link the "relevant tax factor" to the resident corporation receiving the dividends and the taxation year in which the dividends are received. This is consistent with the more explicit definition of "relevant tax factor" described above in the commentary on subsection 95(1).

This amendment applies after 2000.

exceeds

(B) one, and

(ii) that portion of the dividend,

(c) an amount equal to the lesser of

(i) the product obtained when

(A) the non-business-income tax paid by the corporation applicable to such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate

is multiplied by

(B) the relevant tax factor, and

Proposed Amendment — 113(1)(c)(i)(B)

(B) the corporation's relevant tax factor for the year,

Application: The June 22, 2000 draft legislation, subsec. 16(2), will amend cl. 113(1)(c)(i)(B) to read as above, applicable after 2000.

Technical Notes: See under 113(1)(b)(i)(A).

(ii) the amount by which such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate exceeds the deduction in respect thereof referred to in paragraph (b); and

(d) an amount equal to such portion of the dividend as is prescribed to have been paid out of the pre-acquisition surplus of the affiliate,

and for the purposes of this subsection and subdivision i of Division B, the corporation may make such elections as may be prescribed.

Proposed Amendment — 113(1)

Letter from Department of Finance, July 29, 1997: See under 95(1)"foreign affiliate".

Related Provisions: 20(13) — Deduction for dividend; 91(5) — Amounts deductible in respect of dividends received; 92(4)–(6) — Where dividend from pre-acquisition surplus received by partnership; 93(1.2) — Disposition of share of foreign affiliate held by partnership; 93(3) — Exempt dividends; 93.1(2) — Dividend on shares of foreign affiliate held by partnership; 94.3(2)(a)(i)(B)(II) — Prevention of double taxation; 111(8)"non-capital loss"A:E — Carryforward of dividend deduction as non-capital loss; 112(2) — Deduction for dividend received from corporation that is not a foreign affiliate; 113(4) — Dividend received before 1976; 186(1) — Part IV tax on certain taxable dividends; 186(3)"assessable dividend" — Part IV tax. See additional Related Provisions and Definitions at end of s. 113.

Pre-RSC History: That portion of subsec. 113(1) following para. (d) added by 1980-81-82-83, c. 140, s. 72, applicable with respect to elections made after 1975.

Paras. 113(1)(a)–(d) substituted by 1974-75-76, c. 26, subsecs. 73(1)–(4), applicable to 1972 *et seq.*

Regulations: 5900–5902, 5906, 5907 (prescribed portion, prescribed foreign tax, prescribed elections, definitions); 5900(1)(c) (pre-acquisition surplus); 5907(1.01) (exempt surplus, taxable surplus).

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2) Additional deduction — Where, at any particular time in a taxation year ending after 1975, a corporation resident in Canada has received a dividend on a share owned by it at the end of its 1975 taxation year of the capital stock of a foreign affiliate of the corporation, there may be deducted from the income for the year of the corporation for the purpose of computing its taxable income for the year, an amount in respect of the dividend equal to the lesser of

(a) the amount, if any, by which the amount of the dividend so received exceeds the total of

(i) the deduction in respect of the dividend permitted by subsection 91(5) in computing the corporation's income for the year, and

(ii) the deduction in respect of the dividend permitted by subsection (1) from the income for the year of the corporation for the purpose of computing its taxable income, and

(b) the amount, if any, by which

(i) the adjusted cost base to the corporation of the share at the end of its 1975 taxation year

exceeds the total of

(ii) [Repealed under former Act]

(iii) such amounts in respect of dividends received by the corporation on the share after the end of its 1975 taxation year and before the particular time as are deductible under paragraph (1)(d) in computing the taxable income of the corporation for taxation years ending after 1975,

(iii.1) the total of all amounts received by the corporation on the share after the end of its 1975 taxation year and before the particular time on a reduction of the paid-up capital of the foreign affiliate in respect of the share, and

(iv) the total of all amounts deducted under this subsection in respect of dividends received by the corporation on the share before the particular time.

Related Provisions: 92 — ACB of share in foreign affiliate; 113(1) — Deduction in respect of dividend received from foreign affiliate; 186(3)"assessable dividend" — Part IV tax. See additional Related Provisions and Definitions at end of s. 113.

Pre-RSC History: Subpara. 113(2)(b)(ii) repealed by 1979, c. 5, s. 37, applicable to 1976 *et seq.* Subpara. 113(2)(b)(ii) formerly read:

(ii) the amount, if any, by which the aggregate of amounts required by paragraph 92(1)(a) to be added in computing the adjusted cost base referred to in subparagraph (i) exceeds the aggregate of amounts required by paragraph 92(1)(b) to be deducted in computing that adjusted cost base,

Subpara. 113(2)(b)(iii) added by 1976-77, c. 4, s. 47, applicable in respect of any amount received by a corporation resident in Canada, after the end of the corporation's 1975 taxation year, on a share of a foreign affiliate of the corporation on a reduction of the paid-up capital of the foreign affiliate in respect of that share.

Subparas. 113(2)(a)(i), 113(2)(b) substituted by 1974-75-76, c. 26, subsec. 73(1)–(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-98R2: Investment corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

(3) Definitions — In this section,

"non-business-income tax" paid by a taxpayer has the meaning assigned by subsection 126(7);

"relevant tax factor" has the meaning assigned by subsection 95(1).

Pre-RSC History: *The definition "non-business-income tax" was para. 113(3)(b); "relevant tax factor" was para. 113(3)(a).*

(4) Portion of dividend deemed paid out of exempt surplus — Such portion of any dividend received at any time in a taxation year by a corporation resident in Canada on a share owned by it of the capital stock of a foreign affiliate of the corporation, that was received after the 1971 taxation year of the affiliate and before the affiliate's 1976 taxation year, as exceeds the amount deductible in respect of the dividend under paragraph (1)(d) in computing the corporation's taxable income for the year shall, for the purposes of paragraph (1)(a), be deemed to be the portion of the dividend prescribed to have been paid out of the exempt surplus of the affiliate.

Related Provisions: 113(1) — Deduction in respect of dividend received from foreign affiliate. See additional Related Provisions and Definitions at end of s. 113.

Pre-RSC History: Subsecs. 113(3), (4) substituted, subsecs. 113(5)–(7) repealed, by 1974-75-76, c. 26, subsecs. 73(1)–(4), applicable to 1972 *et seq.*

Related Provisions [s. 113]: 66(1) — Exploration and development expenses of principal-business corporations; 80.1(4) — Assets acquired from foreign affiliate of taxpayer as dividend in kind or as benefit to shareholder; 82(2) — Dividend deemed received by taxpayer; 126(4) — Portion of foreign tax not included; 187.2 — Tax on dividends on taxable preferred shares; 187.3 — Tax on dividends on taxable RFI shares; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares.

Definitions [s. 113]: "adjusted cost base" — 54; "amount" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "exempt surplus" — 113(1)(a), Reg. 5907(1); "foreign affiliate" — 93.1(1), 95(1), 248(1); "individual" — 248(1); "non-business-income tax" — 113(3), 126(7); "pre-acquisition surplus" — Reg. 5900(1)(c); "prescribed" — 248(1); "relevant tax factor" — 95(1), 113(3); "resident in Canada" — 250; "share" — 248(1); "taxable income" — 2(2), 248(1); "taxable surplus" — 113(1)(b)(i), Reg. 5907(1); "taxation year" — 249; "taxpayer" — 248(1).

114. Individual resident in Canada for only part of year — Notwithstanding subsection 2(2), where an individual is resident in Canada throughout part of a taxation year, and throughout another part of the year is non-resident, the individual's taxable income for the year is the amount, if any, by which the total of

(a) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, computed without regard to section 61.2 and as though that period or those periods were the whole taxation year, and

(b) the amount that would be the individual's taxable income earned in Canada for the year if at no time in the year the individual had been resident in Canada, computed as though the part of the year that is not in the period or periods referred to in paragraph (a) were the whole taxation year,

exceeds

(c) the total of

(i) such of the deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable, and

(ii) such part of any other of those deductions as can reasonably be considered applicable

to the period or periods referred to in paragraph (a),

except that the total of all amounts included in computing the total determined under paragraph (c) and all amounts deducted because of paragraphs 115(1)(d) to (f) in respect of the individual for the year shall not exceed the total of the amounts that would have been deductible in computing the individual's taxable income for the year had the individual been resident in Canada throughout the year.

Proposed Amendment — 114

114. Individual resident in Canada for only part of year — Notwithstanding subsection 2(2), subject to subsection 94.2(5) the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

Definitions: "amount", "individual", "non-resident" — 248(1); "resident in Canada" — 250; "taxable income", "taxable income earned in Canada" — 248(1); "taxation year" — 249.

Application: The June 22, 2000 draft legislation, s. 17, will amend the opening words of s. 114 to read as above, applicable to 2001 *et seq.*

Technical Notes: Section 114 of the Act provides rules for computing the taxable income of an individual who is resident in Canada for a period or periods in a taxation year, and is non-resident for the rest of the year. Amendments to section 114 were contained in a detailed Notice of Ways and Means Motion tabled on June 5, 2000.

Section 114 is amended so that it is subject to paragraph 94.2(5)(c), a rule that applies in connection with interests in foreign investment entities that are subject to the mark-to-market regime under section 94.2. Paragraph 94.2(5)(c) is, however, only relevant to individuals who cease to be, and later become, resident in Canada in the same taxation year. For further detail, see the commentary on new subsection 94.2(5).

This amendment applies to the 2001 and subsequent taxation years.

Proposed Amendment — 114

114. Individual resident in Canada for only part of year — Notwithstanding subsection 2(2), the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

(a) the amount that would be the individual's income for the year if the individual had no income or losses, for the part of the year throughout which the individual was non-resident, other than

(i) income or losses described in paragraphs 115(1)(a) to (c), and

(ii) income that would have been included in the individual's taxable income earned in Canada for the year under subparagraph 115(1)(a)(v) if the part of the year throughout which the individual was non-resident were the whole taxation year

exceeds the total of

(b) the deductions permitted by subsection 111(1) and, to the extent that they relate to amounts included in computing the amount determined under paragraph (a), the deductions permitted by any of paragraphs 110(1)(d), (d.1), (d.2) and (f), and

(c) any other deduction permitted for the purpose of computing taxable income to the extent that

(i) it can reasonably be considered to be applicable to the part of the year throughout which the individual was resident in Canada, or

(ii) if all or substantially all of the individual's income for the part of the year throughout which the individual was non-resident is included in the amount determined under paragraph (a), it can reasonably be considered to be applicable to that part of the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 59, will amend s. 114 to read as above, applicable to 1998 *et seq.*

Technical Notes: Section 114 of the Act provides rules for computing the taxable income of an individual (often referred to as a "part-year resident") who is resident in Canada for some period or periods in a taxation year, and is non-resident for the rest of the year.

In its current form, section 114 in effect applies a two-stage computation. First, it adds the individual's income for the resident part of the year and the individual's taxable income earned in Canada (a term defined in subsection 115(1) of the Act) for the non-resident part of the year, in each case as though the part were the whole year. Second, it allows those deductions (or parts of

deductions) in computing taxable income that can reasonably be considered to apply to the resident part of the year.

This division of the year into separate parts can produce unclear and perhaps inconsistent effects. For example, assume that an individual who emigrates from Canada on June 30 holds shares of a Canadian company that are not listed on a prescribed exchange, with an adjusted cost base of $100 and a fair market value of $160 on emigration. Under proposed amendments to section 128.1 of the Act, the individual is treated as having disposed of the shares and realized the $60 accrued gain before ceasing to be resident in Canada, and as having reacquired the shares, as a non-resident, at a cost of $160. Assume further that the individual actually disposes of the shares on September 30 of the same year, for $140.

On these facts, the individual has a gain of $60 in the resident part of the year, and a loss of $20 in the non-resident part. The result is an overall gain of $40, assuming that the post-departure loss can offset the pre-departure gain. However, the separate calculation under section 114 of the resident-period income and the non-resident period taxable income earned in Canada makes it uncertain that the two can be offset in this way.

Section 114 is amended to avoid such uncertainties, as well as to simplify the application of the rule. The starting-point for calculating a part-year resident's taxable income under amended section 114 is, in paragraph 114(a), the individual's income for the year, counting only those amounts of income and losses for the non-resident period that are included in computing taxable income earned in Canada under paragraphs 115(1)(a) to (c) of the Act.

Paragraphs 114(b) and (c) set out the deductions that the part-year resident may take in computing taxable income. Paragraph 114(b) allows the deduction of loss carryovers permitted by subsection 111(1) of the Act. It also allows the deductions permitted by paragraphs 110(1)(d), (d.1) and (d.2) (the non-taxable 1/4 of employee stock option and prospector's and grubstaker's share benefits) and paragraph 110(1)(f) (various social benefits, amounts exempt from Canadian tax under a tax treaty, and income from employment with certain international organizations), to the extent these relate to amounts that have been included in computing the paragraph 114(a) amount. Paragraph 114(c) allows any other deduction that the Act permits in computing taxable income. A deduction under paragraph 114(c) is allowed to the extent the deduction either can reasonably be considered to be applicable to the resident period or, if all or substantially all of the individual's income for the non-resident period is included in the paragraph 114(a) amount, can reasonably be considered to apply to the non-resident period.

In the example described above, amended section 114 will include both the resident-period gain and the non-resident-period loss in computing the single paragraph 114(a) income amount. The part-year resident will thus be treated as having realized a gain of $40 for the year as a whole.

Amended section 114 applies to the 1998 and subsequent taxation years. A number of consequential amendments ensure that these changes are reflected in other provisions of the Act that refer to section 114.

Related Provisions: 111(9) — Losses where taxpayer not resident in Canada; 114.1 — Application of subsec. 115(2); 118.91 — Part-time resident — deductions from tax; 119 — Credit to former resident where stop-loss rule applies; 120(3)(a) — Effect of s. 114 where income earned in no province or in Quebec; 126(2.1) — Foreign tax credit where s. 114 applies; 128.1 — Change in residence.

History: Para. 114(a) amended by 1995, c. 21, s. 37, applicable to taxation years that end after February 21, 1994. Para. (a) formerly read:

> (a) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year, and

All that portion of s. 114 preceding para. (b) substituted by 1994, c. 21, s. 52, applicable to 1992 *et seq.*, except that a taxpayer may elect that the amendment not apply to the taxpayer's 1992 taxation year by notifying the Minister of National Revenue in writing before the end of December 1994. That portion of s. 114 formerly read:

> 114. **Individual resident in Canada for only part of year** — Notwithstanding subsection 2(2), where an individual is resident in Canada during part of a taxation year, and during some other part of the year is not resident in Canada, is not employed in Canada and is not carrying on business in Canada, for the purposes of this Part, the individual's taxable income for the year is the amount, if any, by which the total of
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> (a) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, is employed in Canada or is carrying on business in Canada, computed as though that period or those periods were the whole taxation year and as though any disposition of property deemed by subsection 48(1) to have been made because the individual ceased to be resident in Canada were made in that period or those periods, and

S. 114 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 85, applicable to 1988 *et seq.* S. 114 formerly read:

> 114. **Individual resident in Canada during part only of year** — Notwithstanding subsection 2(2), where an individual was resident in Canada during part of a taxation year, and during some other part of the year was not resident in Canada, was not employed in Canada and was not carrying on business in Canada, for the purpose of this Part, the individual's taxable income for the taxation year is the total of
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> (a) the individual's income for the period or periods in the year throughout which the individual was resident in Canada, was employed in Canada or was carrying on business in Canada, computed as though that period or those periods were the whole taxation year and as though any disposition of property deemed by subsection 48(1) to have been made by reason of the individual having ceased to be resident in Canada were made in the period or periods, and
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> (b) the amount that would be the individual's taxable income earned in Canada for the year if at no time in the year the individual had been resident in Canada, computed as though the portion of the year that is not in the period or periods referred to in paragraph (a) were the whole taxation year,
>
> minus the total of such of the deductions permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable to the period or periods referred to in paragraph (a) and of such part of any other of those deductions as may reasonably be considered applicable to the period or periods.

Pre-RSC History: Para. 114(a) amended by 1988, c. 55, s. 86, to substitute "the year throughout which" for "the year during which" and "by reason of" for "by virtue of", applicable to 1988 *et seq.*

Para. 114(a) substituted by 1986, c. 6, s. 62, applicable to 1986 *et seq.* Para. 114(a) formerly read:

> (a) his income for the period or periods in the year during which he was resident in Canada, was employed in Canada or was carrying on business in Canada, computed as though
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> (i) such period or periods were the whole taxation year,
>
> (ii) any disposition of property deemed by subsection 48(1) to have been made by virtue of the taxpayer's having ceased to be resident in Canada were made in such period or periods, and
>
> (iii) any amount deemed by subsection 48(1.1) to be a capital gain or capital loss for the year from an indexed security investment plan were a capital gain or capital loss, as the case may be, for such period or periods, and

S. 114 substituted by 1984, c. 1, s. 57, applicable to 1983 *et seq.* S. 114 formerly read:

> 114. **Individual resident in Canada during part only of year** — Where an individual was resident in Canada during part of a taxation year, and during some other part of the year was not resident in Canada, was not employed in Canada and was not carrying on business in Canada, for the purpose of this Part his taxable income for the taxation year is the aggregate of
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> (a) his income for the period or periods in the year during which he was resident in Canada, was employed in Canada or was carrying on business in Canada, computed as though such period or periods were the whole taxation year and as though any disposition of property deemed by subsection 48(1) to have been

made by virtue of the taxpayer's having ceased to be resident in Canada were made in such period or periods, and

(b) the amount that would be his taxable income earned in Canada for the year if at no time in the year he had been resident in Canada, computed as though the portion of the year that is not in the period or periods referred to in paragraph (a) were the whole taxation year,

minus the aggregate of such of the deductions from income permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable to the period or periods referred to in paragraph (a) and of such part of any other of the said deductions as may reasonably be considered applicable to such period or periods.

Selected Cases [s. 114]: *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (No carryforward of "non-capital loss of other years" incurred during non-residency); *Taylor v. Canada*, [1988] 2 C.T.C. 226 (FCTD); rev'd [1991] 1 C.T.C. 304 (FCA) (Division B deductions not restricted to those reasonably considered wholly applicable to period of residence); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

Definitions [s. 114]: "amount", "business" — 248(1); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "carrying on business" — 253; "employed", "individual", "non-resident", "property" — 248(1); "resident in Canada" — 250; "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248(1).

Interpretation Bulletins [s. 114]: IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-193 SR: Taxable income of individuals resident in Canada during part of year (Special Release); IT-194: Foreign tax credit — part-time residents; IT-221R2: Determination of an individual's residence status; IT-262R2: Losses of non-residents and part-year residents; IT-497R3: Overseas employment tax credit.

Forms: T4056: Emigrants and income tax [guide]; T4058: Non-residents and temporary residents of Canada.

114.1 Application of subsec. 115(2) — In applying section 115 for the purposes of section 114, the references in paragraphs 115(2)(b), (b.1) and (c) to "who had, in any previous year, ceased to be resident in Canada" shall be read as references to "who has, in the year, or had, in any previous year, ceased to be resident in Canada".

Proposed Repeal — 114.1

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 59, will repeal s. 114.1, applicable to 1998 *et seq.*

Technical Notes: Section 114.1 of the Act is a technical rule that applies a special reading of paragraphs 115(2)(b), (b.1) and (c) of the Act, for the purpose of applying section 114, to ensure that certain time references in those paragraphs accommodate cases to which section 114 applies. With the restructuring of section 114, this rule is no longer needed. Section 114.1 is repealed for the 1998 and subsequent taxation years.

Pre-RSC History: S. 114.1 added by 1973-74, c. 14, s. 36, applicable to 1974 *et seq.* with respect to individuals who last ceased to be resident in Canada on or before February 19, 1973 and to 1973 *et seq.* with respect to individuals who cease to be resident in Canada after February 19, 1973.

Definitions [s. 114.1]: "resident in Canada" — 250.

Interpretation Bulletins: IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release).

114.2 Deductions in separate returns — Where a separate return of income with respect to a taxpayer is filed under subsection 70(2), 104(23) or 150(4) for a particular period and another return of income under this Part with respect to the taxpayer is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the taxable income under this Part of the taxpayer in those returns, the total of all deductions claimed in all those returns under section 110 shall not exceed the total that could be deducted under that section for the year with respect to the taxpayer if no separate returns were filed under subsections 70(2), 104(23) and 150(4).

Related Provisions: 118.93 — Credits in separate returns.

Pre-RSC History: S. 114.2 substituted by 1988, c. 55, s. 87, applicable to 1988 *et seq.* S. 114.2 formerly read:

> 114.2 Deductions in separate returns — Where a separate return of income with respect to a taxpayer is filed under subsection 70(2), 104(23) or 150(4) for a particular period and another return of income under this Part with respect to the taxpayer is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the taxable income under this Part of the taxpayer in such returns, the aggregate of all deductions claimed in all such returns under any of sections 110, 110.1 and 110.2 shall not exceed the aggregate that could be deducted under such section for the year with respect to the taxpayer if a separate return were not filed under any of subsections 70(2), 104(23) and 150(4).

S. 114.2 added by 1985, c. 45, s. 59, applicable to 1985 *et seq.*

Definitions [s. 114.2]: "calendar year" — *Interpretation Act* 37(1)(a); "taxable income" — 2(2), 248(1); "taxpayer" — 248(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person".

Division D — Taxable Income Earned in Canada by Non-Residents

115. (1) Non-resident's taxable income [earned] in Canada [and taxable Canadian property] — For the purposes of this Act, the taxable income earned in Canada for a taxation year of a person who at no time in the year is resident in Canada is the amount, if any, by which the amount that would be the non-resident person's income for the year under section 3 if

(a) the non-resident person had no income other than

(i) incomes from the duties of offices and employments performed by the non-resident person in Canada,

Proposed Amendment — 115(1)(a)(i)

(i) incomes from the duties of offices and employments performed by the non-resident person in Canada and, if the person was resident in Canada at the time the person performed the duties, outside Canada,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 60(1), will amend subpara. 115(1)(a)(i) to read as above, applicable to 1998 *et seq.* except that if an individual who ceased at any time after 1992 and before October 2, 1996 to be resident in Canada elects under clause 78(1) (see Proposed Amendment to 128.1(4)(b)) in respect of that cessation of residence, subpara. 115(1)(a)(i), as amended, applies to income received by the individual after that cessation of residence.

Technical Notes: Section 115 of the Act determines the amount of a non-resident person's income that is subject to tax under Part I of the Act. This amount is referred to as the non-resident's "taxable income earned in Canada".

Subsection 115(1) of the Act provides the general rules to be applied in calculating a non-resident's "taxable income earned in Canada". Paragraphs 115(1)(a) to (c) describe the conditions that apply in computing a non-resident's taxable income earned in Canada, while paragraphs 115(1)(d) to (f) describe the deductions that are available for the purpose of that computation.

Paragraphs 115(1)(a) to (c) set out special assumptions that are applied in computing the taxable income earned in Canada of a non-resident taxpayer. The general effect of these paragraphs, in conjunction with the deduction provided for treaty-protected income because of the reference to paragraph 110(1)(f) in paragraph 115(1)(d), is to include in this computation only income and losses from sources in Canada, and of those only amounts that are not treaty-protected.

Subparagraph 115(1)(a)(i) includes in this computation income from the duties of offices and employments that the non-resident person in Canada performs in Canada. Subparagraph 115(1)(a)(i) is amended to include as well income from offices and employments performed by the non-resident person outside of Canada, if the person was resident in Canada at the time the duties were performed. This ensures that if an individual who is a former resident of Canada receives, as a non-resident, income relating to work the individual performed outside Canada at a time when the individual was resident in Canada, the income is subject to Canadian tax.

This amendment generally applies to the 1998 and subsequent taxation years. In addition, if an individual ceased to be resident in Canada after 1992 and before October 2, 1996, and the individual so elects [see under 128.1(4)(b) — ed.], this amendment applies to income received by the individual after that cessation of residence. The election in effect backdates the explicit exclusion of certain income rights and trust interests from the deemed disposition immediately before emigration. The basis for excluding the rights in question from the deemed disposition is that they generally represent entitlements to future income that will itself be subject to Canadian tax when it is received by a non-resident. Linking the application of amended subparagraph 115(1)(a)(i) to the election ensures that the Act does tax that income, where it relates to employment exercised abroad by a resident of Canada.

(ii) incomes from businesses carried on by the non-resident person in Canada,

(iii) taxable capital gains from dispositions described in paragraph (b),

(iii.1) the amount by which the amount required by paragraph 59(3.2)(c) to be included in computing the non-resident person's income for the year exceeds any portion of that amount that was included in computing the non-resident person's income from a business carried on by the non-resident person in Canada,

(iii.2) amounts required by section 13 to be included in computing the non-resident person's income for the year in respect of dispositions of properties to the extent that those amounts were not included in computing the non-resident person's income from a business carried on by the non-resident person in Canada,

(iii.21) the amount, if any, included under section 56.3 in computing the non-resident person's income for the year,

(iii.3) in any case where, in the year, the non-resident person carried on a business in Canada described in any of paragraphs (a) to (g) of the definition "principal-business corporation" in subsection 66(15), all amounts in respect of a Canadian resource property that would be required to be included in computing the non-resident person's income for the year under this Part if the non-resident person were resident in Canada at any time in the year, to the extent that those amounts are not included in computing the non-resident person's income by virtue of subparagraph (ii) or (iii.1),

(iv) the amount, if any, by which any amount required by subsection 106(2) to be included in computing the non-resident person's income for the year as proceeds of the disposition of an income interest in a trust resident in Canada exceeds the amount in respect of that income interest that would, if the non-resident person had been resident in Canada throughout the year, be deductible under subsection 106(1) in computing the non-resident person's income for the year,

(iv.1) the amount, if any, by which any amount required by subsection 96(1.2) to be included in computing the non-resident person's income for the year as proceeds of the disposition of a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a) exceeds the amount in respect of that right that would, if the non-resident person had been resident in Canada throughout the year, be deductible under subsection 96(1.3) in computing the non-resident person's income for the year,

(v) in the case of a non-resident person described in subsection (2), the total determined under paragraph (2)(e) in respect of the non-resident person, and

(vi) the amount that would have been required to be included in computing the non-resident person's income in respect of a life insurance policy in Canada by virtue of subsection 148(1) or (1.1) if the non-resident person had been resident in Canada throughout the year,

Selected Cases [para. 115(1)(a)]: *Hale (J.) v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (1993), 151 N.R. 159 (note) (Benefit from exercising options while resident in UK and after Canadian employment terminated taxable; subsection 7(4) not inconsistent with Article 15(1) of *Canada-UK Convention*).

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions at any time in the year of property or an interest therein (in this Act referred to as "taxable Canadian property") that was

(i) real property situated in Canada,

(ii) a capital property used by the non-resident person in carrying on a business in Canada, other than

(A) property used in carrying on an insurance business, and

(B) ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the non-resident person is resident grants substantially similar relief for the year to persons resident in Canada,

(iii) where the non-resident person is an insurer, any capital property that is its designated insurance property for the year,

(iv) a share of the capital stock of a corporation (other than a mutual fund corporation) resident in Canada that is not listed on a prescribed stock exchange,

(v) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the corporation each of which was

(I) a taxable Canadian property,

(II) a Canadian resource property,

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in any of subclauses (II) to (IV), whether or not the property exists,

was more than 50% of the fair market value of all of its properties, and

(B) more than 50% of the fair market value of the share is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties,

(vi) a share otherwise described in subparagraph (iv) or (v) that is listed on a prescribed stock exchange, or a share of the capital stock of a mutual fund corporation, if, at any time during the 5-year period that ends at that time, the non-resident person, persons with whom the non-resident person did not deal at arm's length, or the non-resident person together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(vii) an interest in a partnership where, at any particular time during the 12-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in clauses (B) to (D), whether or not that property exists,

was more than 50% of the fair market value of all of its properties,

(viii) a capital interest in a trust (other than a unit trust) resident in Canada,

(ix) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(x) a unit of a mutual fund trust if, at any particular time during the 5-year period that ends at that time, not less than 25% of the issued units of the trust belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length,

(xi) an interest in a non-resident trust where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the trust each of which was

(I) a taxable Canadian property,

(II) a Canadian resource property,

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in subclauses (II) to (IV), whether or not the property exists,

was more than 50% of the fair market value of all of its properties, and

(B) more than 50% of the fair market value of the interest is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties, or

(xii) a property deemed by any provision of this Act to be taxable Canadian property,

but does not include a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the year, the corporation did not own taxable Canadian property, Canadian resource property, timber resource property nor an income interest in a trust resident in Canada,

Proposed Amendment — 115(1)(b)

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties (other than treaty-protected properties), and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 60(2), will amend para. 115(1)(b) to read as above, applicable after October 1, 1996, except that, in its application to dispositions that occurred before the 1998 taxation year, para. 115(1)(b) shall be read as follows:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties, and

Technical Notes: Paragraph 115(1)(b) lists the types of property (called "taxable Canadian property" or TCP) in respect of which taxable gains and allowable capital losses are considered in the calculation of a non-resident's taxable income earned in Canada. As a result of the relocation of the general TCP definition to subsection 248(1) of the Act, paragraph 115(1)(b) can be greatly simplified. In its new form, the paragraph simply refers to taxable capital gains and allowable capital losses on TCP that is not "treaty-protected property" (as defined in subsection 248(1) of the Act).

Amended paragraph 115(1)(b) generally applies after October 1, 1996. Since the definition (and the concept) of "treaty-protected property" was introduced only with the 1998 Budget [see 115(1)(b.1) — ed.], and applies for the 1998 and later taxation years, a transitional version of amended paragraph 115(1)(b) omits the reference to treaty-protected property for dispositions that occur before the 1998 taxation year.

Notice of Ways and Means Motion (re taxpayer emigration), October 2, 1996: [See under 248(1)"taxable Canadian property" — ed.]

(b.1) notwithstanding paragraph (b), the taxable capital gains and allowable capital losses referred to in paragraph 3(b) did not include taxable capital gains and allowable capital losses from dispositions at any time in the year of taxable Canadian property that was treaty-protected property of the non-resident at that time, and

Proposed Repeal — 115(1)(b.1)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 60(2), will repeal para. (b.1), applicable after October 1, 1996.

Technical Notes: Paragraph 115(1)(b.1) excludes from the computation of a non-resident's taxable income earned in Canada any taxable capital gain or allowable capital loss from the disposition of a taxable Canadian property that was treaty-protected property of the non-resident. Since this exclusion now forms part of amended paragraph 115(1)(b), paragraph 115(1)(b.1) can be repealed.

(c) the only losses for the year referred to in paragraph 3(d) were losses from duties of an office or employment performed by the person in Canada and businesses (other than treaty-protected businesses) carried on by the person in Canada and allowable business investment losses in respect of property any gain from the disposition of which would, because of this subsection, be included in computing the person's taxable income earned in Canada,

exceeds the total of

(d) the deductions permitted by subsection 111(1) and, to the extent that they relate to amounts included in computing the amount determined under any of paragraphs (a) to (c), the deductions permitted by any of paragraphs 110(1)(d), (d.1), (d.2) and (f) and subsection 110.1(1),

(e) the deductions permitted by any of subsections 112(1) and (2) and 138(6) in respect of a dividend received by the non-resident person, to the extent that the dividend is included in computing the non-resident person's taxable income earned in Canada for the year, and

(f) where all or substantially all of the non-resident person's income for the year is included in computing the non-resident person's taxable income earned in Canada for the year, such of the other deductions permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable.

Related Provisions: 2(3) — Tax on non-resident's taxable income earned in Canada; 4(3) — Whether deductions are applicable to a particular source; 13(4.1)(c) — Replacement of depreciable TCP with new TCP; 33.1 — International banking centres; 40(9) — Prorating for gains not taxed before April 27, 1995; 44(5)(c) — replacement of capital TCP with new TCP; 52(8) — Cost to non-resident of share of corporation that becomes resident in Canada; 85(1)(i), 85.1(1)(a) — Shares received on rollover of TCP deemed to be TCP; 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 107.3(1)(b) — Income of non-resident beneficiary of mining reclamation trust/qualifying environmental trust; 111(9) — Carryover of losses where taxpayer not resident in Canada; 112(3)(b)(i) — Reduction in loss under 115(1)(d.1) on subsequent disposition of share; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 114 — Individual resident in Canada during part only of year; 115(3) — Interest in or option in respect of TCP; 115.1 — Competent authority agreements under tax treaties; 115.2 — Non-resident investment or pension fund deemed not to be carrying on business in Canada; 116 — Certificate required where non-resident disposes of TCP; 118.94 — Tax payable by non-resident individual; 128.1(4)(b)(i) [to be repealed] — TCP excluded from deemed disposition on becoming resident in Canada; 133 — Non-resident-owned investment corporations; 141(5) — Demutualized life insurance corporation or holding corporation deemed not to be TCP; 217 — Election respecting certain payments; 219(1) — Branch tax on non-resident corporations; 248(1) — Extended definition of "taxable Canadian property" for certain purposes; 248(1)"taxable income earned in Canada" — Definition applies to entire Act but cannot be less than nil; 250.1(a) — Taxation year of non-resident person; Canada-U.S. Tax Convention, Art. VII — Business profits of U.S. resident; Art. XIII — Taxation of capital gains.

History: The opening words of subsec. 115(1), paras. 115(1)(c) to (e) amended, and para. (b.1) added, by 1999, c. 22, subsecs. 29(1), (2), applicable to 1998 *et seq.* The opening words and paras. (c) to (e) formerly read:

(1) For the purposes of this Act, the taxable income earned in Canada for a taxation year of a person who at no time in the year is resident in Canada is the amount of the non-resident person's income for the year that would be determined under section 3 if

. . . . .

(c) the only losses for the year referred to in paragraph 3(d) were losses from duties of an office or employment performed by the person in Canada and businesses carried on by the person in Canada and allowable business investment losses in respect of property any gain from the disposition of which would, because of this subsection, be included in computing the person's taxable income earned in Canada,

minus the total of

(d) the deductions permitted by paragraphs 110(1)(d), (d.1), (d.2) and (f) and subsection 110.1(1),

(d.1) the deductions permitted by subsections 112(1) and (2) and 138(6), to the extent that a dividend or portion thereof has been included in computing the non-resident person's taxable income earned in Canada,

(e) such of the deductions from income permitted by section 111 as may reasonably be considered to be applicable to the duties of an office or employment performed by the non-resident person in Canada, a business carried on by the non-resident person in Canada or a disposition of property, any profit or gain on which would have been required by this subsection to be included in computing the non-resident person's taxable income earned in Canada, and

Para. 115(1)(b) amended by 1998, c. 19, subsec. 132(1), applicable after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

Para. 115(1)(b) formerly read:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of property each of which was a disposition of property or an interest therein (in this Act referred to as a "taxable Canadian property") that was

(i) real property situated in Canada,

(ii) any capital property used by the non-resident person in carrying on a business (other than an insurance business) in Canada,

(ii.1) where the non-resident person is an insurer, any capital property that is its designated insurance property for the year,

(iii) a share of the capital stock of a corporation resident in Canada (other than a public corporation),

(iv) a share of the capital stock of a public corporation if at any time during such part of the period of 5 years immediately preceding the disposition thereof as is after 1971, not less than 25% of the issued shares of any class of the capital stock of the corporation belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length,

(v) an interest in a partnership, if, at any time during the 12 months immediately preceding the disposition thereof, the fair market value of such of the partnership property as was, at that time,

(A) a Canadian resource property,

(B) a timber resource property,

(C) an income interest in a trust resident in Canada, or

(D) any other property described in this paragraph

was not less than 50% of the total of

(E) the fair market value at that time of all of the partnership property, and

(F) the amount of any money of the partnership on hand at that time,

(vi) a capital interest in a trust (other than a unit trust) resident in Canada,

(vii) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(viii) a unit of a mutual fund trust, if at any time during such part of the period of 5 years immediately preceding the disposition thereof as is after 1971, not less than 25% of the issued

units of the trust belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length, or

(ix) any other property deemed by any provision of this Act to be taxable Canadian property,

but not including a share of the capital stock of a non-resident-owned investment corporation, if, on the first day of the taxation year of the corporation in which the disposition was made, the corporation did not own any property that was property referred to in clauses (v)(A) to (D), and

Subpara. 115(1)(b)(ii.1) amended by 1997, c. 25, s. 23, applicable to 1997 *et seq.* Subpara. (b)(ii.1) formerly read:

(ii.1) where the non-resident person is an insurer, any capital property that is property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada,

Subpara. 115(1)(a)(iii.21) added by 1995, c. 21, s. 38, applicable to taxation years that end after February 21, 1994.

Para. 115(1)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 50, applicable to 1991 *et seq.* Para. (c) formerly read:

(c) the only losses referred to in paragraph 3(d) were losses from businesses carried on by the non-resident person in Canada,

Para. 115(1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 86(1), to delete reference to paragraph 110(1)(i), applicable to 1988 *et seq.*

Para. 115(1)(d.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 86(2), applicable to 1983 *et seq.*

Pre-RSC History: That portion of subsec. 115(1) preceding para. (a), and para. 115(1)(d), substituted by 1988, c. 55, subsecs. 88(1), (2), applicable to 1988 *et seq.* That portion of subsec. 115(1) and para. 115(1)(d) formerly read:

115. (1) Non-residents' taxable income earned in Canada — For the purposes of this Act, a non-resident person's taxable income earned in Canada for a taxation year is the amount of his income for the year that would be determined under section 3 if

. . . . .

(d) the deductions permitted by paragraphs 110(1)(a), (b), (b.1), (d), (d.1), (d.2), (e), (f) and (i),

Para. 115(1)(d) amended by 1986, c. 6, s. 63, applicable to 1985 *et seq.*, to add references to paragraphs (d.1) and (d.2).

Subpara. 115(1)(a)(iii.3) amended to substitute "a Canadian resource property" for "any property described in paragraph 59(2)(a), (c) or (d)"; cl. 115(1)(b)(v)(B) repealed, and (B.1) renumbered as (B), by 1985, c. 45, subsecs. 60(1), (2), applicable to taxation years commencing after 1984. Cl. 115(1)(b)(v)(B) formerly read:

(B) a property that would have been a Canadian resource property if it had been acquired after 1971,

Para. 115(1)(d) amended by 1985, c. 45, subsec. 60(3), to add reference to para. 110(1)(f), applicable to 1982 *et seq.*, except that, in its application to the 1982 and 1983 taxation years, para. 115(1)(d) shall be read as follows:

(d) the deductions permitted by paragraphs 110(1)(a), (b), (b.1), (e), (f) and (i),

Para. 115(1)(d) substituted by 1984, c. 45, s. 37, applicable to 1984 *et seq.* Para. 115(1)(d) formerly read:

(d) the deductions from income permitted by paragraphs 110(1)(a), (b), (b.1), (e) and (i),

Para. 115(1)(f) substituted by 1984, c. 1, s. 58, applicable to 1983 *et seq.* Para. 115(1)(f) formerly read:

(f) where all or substantially all of the non-resident person's income for the year is described by subparagraph (a)(i) or (ii) or (2)(e)(ii), such of the other deductions from income permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable.

Subsec. 115(1) amended by 1980-81-82-83, c. 140, s. 73(1)–(3), to add subpara. 115(1)(a)(vi), applicable with respect to dispositions occurring after November 12, 1981; to substitute subpara. 115(1)(b)(ii) and add subpara. 115(1)(b)(ii.1), applicable with respect to dispositions of property occurring after November 12, 1981; and to substitute that portion of subsec. 115(1) following para. (c), adding paras. (d), (e) and (f), applicable to the 1982 and subsequent taxation years. The substituted portions of subsec. 115(1) formerly read:

[(b)] (ii) any other capital property used by him in carrying on a business in Canada,

. . . . .

[all that portion following (c)]

minus the aggregate of such of the deductions from income permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable and of such part of any other of the said deductions as may reasonably be considered applicable.

Subpara. 115(1)(a)(iii.3) added, cls. 115(1)(b)(v)(A), (B) substituted by 1980-81-82-83, c. 48, subsecs. 62(1), (2), applicable to taxation years ending after December 11, 1979. Cls. 115(1)(b)(v)(A), (B) formerly read:

(A) a Canadian resource property (within the meaning assigned by subsection 66(15)),

(B) a property that would have been a Canadian resource property (within the meaning assigned by subsection 66(15)), if it had been acquired after 1971,

Subparas. 115(1)(a)(iii.1), (iii.2) substituted by 1977-78, c. 1, subsec. 56(1), applicable, as to subpara. 115(1)(a)(iii.1), to 1977 *et seq.* and, as to subpara. 115(1)(a)(iii.2), with respect to taxation years commencing after May 25, 1976. Subparas. 115(1)(a)(iii.1), (iii.2) formerly read:

(iii.1) proceeds of disposition that become receivable by him in the year in respect of the disposition of a property that is a Canadian resource property or that would have been such a property if it had been acquired by him after 1971, to the extent that those proceeds were not included in computing his income from a business carried on by him in Canada,

(iii.2) amounts required by subsection 13(1.1) to be included in computing his income for the year in respect of dispositions of timber resource properties to the extent that those amounts were not included in computing his income from a business carried on by him in Canada,

Subpara. 115(1)(a)(iii.1) amended, all that portion of para. 115(1)(b) preceding subpara. (v) substituted to add "or an interest therein" to the portion preceding subpara. (i) and to delete the same phrase from subparas. (i), (iii) and (iv), that portion of para. 115(1)(b) following subpara. (ix) added, subparas. 115(1)(a)(iii.2), (iv.1), cl. 115(1)(b)(v)(B.1) added by 1974-75-76, c. 26, subsecs. 74(1)–(5), applicable, as to subparas. 115(1)(a)(iii.1), (iii.2), after May 6, 1974, as to subpara. 115(1)(a)(iv.1) and those portions of para. 115(1)(b) preceding para. (a) and following subpara. (viii), to 1972 *et seq.*, as to clause 115(1)(b)(v)(B.1), to 1974 *et seq.* Subpara. 115(1)(a)(iii.1) formerly read:

(iii.1) proceeds of the disposition by him in the year of a property that is a Canadian resource property (within the meaning assigned by subsection 66(15)) or that would have been such a property if it had been acquired by him after 1971, to the extent not included in computing his income from a business carried on by him in Canada,

Subpara. 115(1)(b)(v) substituted by 1973-74, c. 30, s. 12, applicable with respect to a disposition of an interest in a partnership after February 19, 1973. Subpara. 115(1)(b)(v) formerly read:

(v) an interest in a partnership, if at any time during such of the period of 12 months immediately preceding the disposition thereof as is after 1971, the fair market value of such of the partnership property as was property described in this paragraph was not less than 50% of the aggregate of

(A) the fair market value at that time of all of the partnership property, and

(B) the amount of any money of the partnership on hand at that time,

Subpara. 115(1)(b)(ix) added by 1973-74, c. 14, subsec. 37(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 115(1)]: *Hale v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (March 11, 1993), Doc. 23193 (Stock option benefit arose from Canadian employment and taxed even though taxpayer not resident in Canada when option exercised); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to cancel settlement agreement by mortgagee not taxable as proceeds of disposition of option); *Hurd v. The Queen*, [1981] C.T.C. 209 (FCA) (Benefit from exercise of option taxable where U.S. resident performed duties in Canada in year of exercise).

Regulations: 3200, 3201 (prescribed stock exchanges; will be amended to apply to 115(1)(b)(iii)–(v), but see also ITA 87(10)).

I.T. Application Rules: 26(30) (taxable Canadian property under new rules effective April 26, 1995).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-150R2: Acquisition from a non-resident of certain property by death or mortgage foreclosure or by virtue of a deemed disposition; IT-176R2: Taxable Canadian property — Interests in and options on real property and shares; IT-242R: Retired partners; IT-262R2: Losses of non-residents and part-year residents; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-434R: Rental of real property by individual; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-465R: Non-resident beneficiaries of trusts See also list at end of s. 115.

Information Circulars: 72-17R4: Procedures concerning the disposition of taxable Canadian property by non-residents of Canada — section 116; 88-2 Supplement, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-70: Distribution of taxable Canadian property by a trust to a non-resident.

Forms: T2 SCH 91: Information concerning claims for treaty-based exemptions; T2061: Election by an emigrant to defer deemed disposition of property and capital gains thereon; T2061A: Election by an emigrant to report deemed dispositions of taxable Canadian property and capital gains and/or losses thereon.

(2) Idem [persons deemed employed in Canada] — Where, in a taxation year, a non-resident person was

(a) a student in full-time attendance at an educational institution in Canada that is a university, college or other educational institution providing courses at a post-secondary school level in Canada,

(b) a student attending, or a teacher teaching at, an educational institution outside Canada that is a university, college or other educational institution providing courses at a post-secondary school level, who had, in any previous year, ceased to be resident in Canada in the course of or subsequent to moving to attend or to teach at, as the case may be, that institution,

(b.1) an individual who had, in any previous year, ceased to be resident in Canada in the course of or subsequent to moving to carry on research or any similar work under a grant received by the individual to enable the individual to carry on that research or work,

Proposed Amendment — 115(2)(b), (b.1)

(b) a student attending, or a teacher teaching at, an educational institution outside Canada that is a university, college or other educational institution providing courses at a post-secondary school level, who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to attend or to teach at the institution,

(b.1) an individual who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to carry on research or any similar work under a grant received by the individual to enable the individual to carry on the research or work,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 60(3), will amend paras. 115(2)(b) and (b.1) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 115(2) applies, in certain special circumstances, to tax remuneration and specified other amounts received by a non-resident. Because of paragraphs 115(2)(b) and (b.1), subsection 115(2) applies to post-secondary students at Canadian institutions and former Canadian residents who have moved abroad to carry out research or similar work under a grant. The paragraphs are amended, with application to the 1998 and subsequent taxation years, to update their language to reflect current drafting styles. The amendments make no substantive change to the paragraphs.

(c) an individual

(i) who had, in any previous year, ceased to be resident in Canada,

(ii) who received, in the taxation year, salary or wages or other remuneration in respect of an office or employment that was paid to the individual directly or indirectly by a person resident in Canada, and

(iii) who was, under an agreement or a convention with one or more countries that has the force of law in Canada, entitled to an exemption from an income tax otherwise payable in any of those countries in respect of the salary or wages or other remuneration, or

(c.1) a person who received in the year an amount, under a contract, that was or will be deductible in computing the income of a taxpayer subject to tax under this Part and the amount can, irrespective of when the contract was entered into or the form or legal effect of the contract, reasonably be regarded as having been received, in whole or in part,

(i) as consideration or partial consideration for entering into a contract of service or an agreement to perform a service where any such service is to be performed in Canada, or for undertaking not to enter into such a contract or agreement with another party, or

(ii) as remuneration or partial remuneration from the duties of an office or employment or as compensation or partial compensation for services to be performed in Canada,

the following rules apply:

(d) for the purposes of subsection 2(3) the non-resident person shall be deemed to have been employed in Canada in the year,

(e) for the purposes of subparagraph (1)(a)(v), the total determined under this paragraph in respect of the non-resident person is the total of

(i) any remuneration in respect of an office or employment that was paid to the non-resident person directly or indirectly by a person resident in Canada and was received by the non-resident person in the year, except to the extent that such remuneration is attributable to the duties of an office or employment performed by the non-resident person anywhere outside Canada and

(A) is subject to an income or profits tax imposed by the government of a country other than Canada, or

(B) is paid in connection with the selling of property, the negotiating of contracts or the rendering of services for the non-resident person's employer, or a foreign affiliate of the employer, or any other person with whom the employer does not deal at arm's length, in the ordinary course of a business carried on by the employer, that foreign affiliate or that person,

(ii) amounts that would be required by paragraph 56(1)(n) or (o) to be included in computing the non-resident person's income for the year if the non-resident person were resident in Canada throughout the year and the reference in the appli-

cable paragraph to "received by the taxpayer in the year" were read as a reference to "received by the taxpayer in the year from a source in Canada",

(iii) [Repealed]

(iv) amounts that would be required by paragraph 56(1)(q) to be included in computing the non-resident person's income for the year if the non-resident person were resident in Canada throughout the year, and

(v) amounts described in paragraph (c.1) received by the non-resident person in the year, except to the extent that they are otherwise required to be included in computing the non-resident person's taxable income earned in Canada for the year, and

(f) there may be deducted in computing the taxable income of the non-resident person for the year the amount that would be deductible in computing the non-resident person's income for the year by virtue of section 62 if

(i) the definition "eligible relocation" in subsection 248(1) were read without reference to subparagraph (a)(i) of that definition, and

(ii) the amounts described in subparagraph 62(1)(c)(ii) were the amounts described in subparagraph (e)(ii) of this subsection.

Related Provisions: 4(3) — Deductions applicable; 33.1 — International banking centres; 52(8) — Reduction in cost base of share of corporation that becomes resident in Canada; 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 114.1 — Application of subsec. 115(2); 146(1)"earned income"(d) — RRSPs — "earned income"; 153(1)(o) — Withholding of tax on amount described in 115(2)(c.1); 250(1) — Individuals deemed resident in Canada.

History: Para. 115(2)(c) amended, subparas. 115(2)(f)(i) to (iii) replaced with subparas. (i) and (ii), by 1999, c. 22, subsec. 29(3), para. (c) applicable to 1998 *et seq.*, subparas. (f)(i) and (ii) applicable after 1997. Para. 115(2)(c) and subparas. 115(2)(f)(i) to (iii) formerly read:

(c) an individual who had, in any previous year, ceased to be resident in Canada and who was, in the taxation year, in receipt of remuneration in respect of an office or employment that was paid to the individual directly or indirectly by a person resident in Canada, or

. . . . .

(i) that section were read without reference to paragraph 62(1)(a),

(ii) that section were applicable in computing the taxable income of non-resident persons, and

(iii) the amounts described in subparagraph 62(1)(f)(ii) were the amounts described in subparagraph (e)(ii) of this subsection.

Subpara. 115(2)(e)(iii) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 5(2), applicable to 1993 *et seq.* Subpara. (e)(iii) formerly read:

(iii) amounts that would be required by subsection 56(5) to be included in computing the non-resident person's income for the year if the non-resident person were resident in Canada throughout the year,

Subpara. 115(2)(e)(iii) amended by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 5(1), to substitute "subsection 56(5)" for "subsection 56(5) of this Act or subsection 56(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952," applicable to 1990 *et seq.*

Pre-RSC History: Para. 115(2)(c.1) and subpara. 115(2)(e)(v) added by 1980-81-82-83, c. 140, subsecs. 73(4) and (5), applicable with respect to amounts received after November 12, 1981.

All that portion of subpara. 115(2)(e)(i) preceding clause (A) substituted by 1977-78, c. 1, subsec. 56(2), applicable to 1977 *et seq.*, to substitute "anywhere outside Canada" for "in a country other than Canada".

Cls. 115(2)(e)(i)(A), (B) substituted, subpara. 115(2)(e) (iv) added by 1974-75-76, c. 26, subsecs. 74(6), (7), applicable, as to cls. 115(2)(e)(i)(A), (B), to 1973 *et seq.* and, as to subpara. 115(2)(e)(iv), after May 6, 1974. Cls. 115(2)(e) (i)(A), (B) formerly read:

(A) is subject to an income or profits tax imposed by the government of that country, or

(B) is paid in respect of a business carried on in that country by the payer or a foreign affiliate of the payer,

Subpara. 115(2)(e)(iii) added by 1973-74, c. 44, s. 25, proclaimed in force January 1, 1974.

Para. 115(2)(c), subpara. 115(2)(e)(i) substituted by 1973-74, c. 14, subsecs. 37(2), (3), applicable to 1973 *et seq.* except that they are applicable to the 1973 taxation year solely for the purpose of applying section 114.1 of the said Act in respect of individuals who cease to be resident in Canada after February 19, 1973.

Application — paras. 115(2)(b), (b.1): 1973-74, c. 14, subsec. 37(5) provides that paras. 115(2)(b) and (b.1) are applicable to the 1972 and 1973 taxation years solely for the purpose of applying section 114.1 of the said Act in respect of individuals who cease to be resident in Canada after February 19, 1973; for all other purposes they are deemed to be applicable to 1974 *et seq.*

Selected Cases [subsec. 115(2)]: *Jarlan v. The Queen*, [1984] C.T.C. 375 (FCTD) (Royalties sent to inventor after leaving Canada constituted income from employment, not royalties paid to non-resident).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-161R3: Non-residents — exemption from tax deductions at source on employment income; IT-178R3: Moving expenses. See also list at end of s. 115.

(3) Property deemed to include interests and options — For the purpose of this section, a property described in subparagraphs (1)(b)(i) to (xii) is deemed to include any interest therein or option in respect thereof, whether or not such property is in existence.

Proposed Repeal — 115(3)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 60(4), will repeal subsec. 115(3), applicable after October 1, 1996.

Technical Notes: Subsection 115(3) of the Act provides that, for the purposes of section 115 of the Act, taxable Canadian property includes an interest in, or an option in respect of, a property, regardless of whether or not the property is in existence. Because the definition "taxable Canadian property" has been moved from subsection 115(1) to subsection 248(1) of the Act, and the new definition contains in paragraph (l) a similar rule for interests and options, subsection 115(3) is no longer needed and is repealed, effective after October 1, 1996.

Related Provisions: 248(4) — Interest in real property.

History: Subsec. 115(3) amended by 1998, c. 19, subsec. 132(2), applicable after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

Subsec. 115(3) formerly read:

(3) Property deemed to include interests and options — For the purpose of this section, a property described in subparagraphs (1)(b)(i) to (ix) shall be deemed to include any interest therein or option in respect thereof, whether or not such property is in existence.

Subsec. 115(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 86(3), applicable after July 13, 1990. Subsec. 115(3) formerly read:

(3) Property deemed to include option — For the purposes of this section, a property described in subparagraphs (1)(b)(i) to (ix) shall be deemed to include an option in respect of such a property whether or not the property is in existence.

Pre-RSC History: Subsec. 115(3) added by 1974-75-76, c. 26, subsec. 74(8), applicable after May 6, 1974.

Interpretation Bulletins: IT-116R3: Rights to buy additional shares; IT-176R2: Taxable Canadian property — Interests in and options on real property and shares. See also list at end of s. 115.

(4) Non-resident's income from Canadian resource property — Where a non-resident person

ceases at any particular time in a taxation year to carry on such of the businesses described in any of paragraphs (a) to (g) of the definition "principal business corporation" in subsection 66(15) as were carried on by the non-resident person immediately before that time at one or more fixed places of business in Canada and either does not commence after that time and during the year to carry on any business so described at a fixed place of business in Canada or disposes of Canadian resource property at any time in the year during which the non-resident person was not carrying on any business so described at a fixed place of business in Canada, the following rules apply:

(a) the taxation year of the non-resident person that would otherwise have included the particular time shall be deemed to have ended at such time and a new taxation year shall be deemed to have commenced immediately thereafter;

(b) the non-resident person or any partnership of which the non-resident person was a member immediately after the particular time shall be deemed, for the purpose only of computing the non-resident person's income earned in Canada for the taxation year that is deemed to have ended, to have disposed immediately before the particular time of each Canadian resource property that was owned by the non-resident person or by the partnership immediately after the particular time and to have received therefor immediately before the particular time proceeds of disposition equal to the fair market value thereof at the particular time; and

(c) the non-resident person or any partnership of which the non-resident person was a member immediately after the particular time shall be deemed, for the purpose only of computing the non-resident person's income earned in Canada for a taxation year commencing after the particular time, to have reacquired immediately after the particular time, at a cost equal to the amount deemed by paragraph (b) to have been received by the non-resident person or the partnership as the proceeds of disposition therefor, each property deemed by that paragraph to have been disposed of.

Related Provisions: 4(3) — Deductions applicable; 66.2(7) — Exception — Canadian development expense; 66.4(7) — Share of partner; 115(5) — Partnership excludes prescribed partnership; 115.1 — Competent authority agreements under tax treaties.

Pre-RSC History: That portion of subsec. 115(4) preceding para. (a) amended to substitute "where a non-resident person ceases at any particular time in a taxation year" for "where, in a taxation year, a non-resident person ceases at any particular time after December 11, 1979", and "Canadian resource property" for "property described in any of paragraphs 59(2)(a), (c) and (d)"; para. 115(4)(b) amended to substitute "Canadian resource property" for "property described in any of paragraphs 59(2)(a), (c) and (d)", by 1985, c. 45, subsecs. 60(4), (5), applicable to taxation years commencing after 1984.

Subsec. 115(4) added by 1980-81-82-83, c. 48, subsec. 62(3), applicable to 1979 *et seq.*

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

(5) Interpretation of "partnership" — For the purposes of subsection (4), "partnership" does not include a prescribed partnership.

Pre-RSC History: Subsec. 115(5) added by 1980-81-82-83, c. 48, subsec. 62(3), applicable to 1979 *et seq.*

Regulations: No prescribed partnerships to date.

(6) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 115(6): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

Selected Cases [s. 115]: *Hale v. Canada*, [1992] 2 C.T.C. 379 (FCA); leave to appeal to SCC refused (March 11, 1993), Doc. 23193 (Stock option benefit arose from Canadian employment and taxed even though taxpayer not resident in Canada when option exercised); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to non-resident for cancellation of agreement was business income; non-resident had no place of business in Canada, not taxable).

Definitions [s. 115]: "allowable business investment loss" — 38(c), 248(1); "allowable capital loss" — 38(b), 248(1); "amount", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "capital interest" — in a trust 108(1), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "designated insurance property" — 138(12), 248(1); "dividend", "employed", "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "income interest" — 108(1), 248(1); "individual" — 248(1); "interest" — in real property 248(4); "international traffic" — 248(1); "life insurance policy in Canada" — 138(12), 248(1); "listed" — 87(10); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident", "office" — 248(1); "partnership" — 115(5) ; "person", "prescribed", "property" — 248(1); "property used by it in the year in, or held by it in the year in the course of carrying on an insurance business" — 115(6), 138(12); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "salary or wages", "share" — 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "treaty-protected business", "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1)..

Interpretation Bulletins [s. 115]: IT-81R: Partnerships — income of non-resident partners; IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-328R3: Losses on shares on which dividends have been received; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-420R3: Non-residents — income earned in Canada.

115.1 (1) Competent authority agreements — Notwithstanding any other provision of this Act, where the Minister and another person have, under a provision contained in a tax convention or agreement with another country that has the force of law in Canada, entered into an agreement with respect to the taxation of the other person, all determinations made in accordance with the terms and conditions of the agreement shall be deemed to be in accordance with this Act.

(2) Transfer of rights and obligations — Where rights and obligations under an agreement described in subsection (1) have been transferred to another person with the concurrence of the Minister, that other person shall be deemed, for the purpose of subsection (1), to have entered into the agreement with the Minister.

Related Provisions [s. 115.1]: 115(1) — Non-resident's taxable income earned in Canada; 116(1) — Disposition by non-resident of certain property; Canada-U.S. tax treaty, Art. XXVI — Mutual agreement procedure; Canada-U.K. tax treaty, Art. 23 — Mutual agreement procedure.

History: S. 115.1 substituted by 1994, c. 7, Sch. VIII (1993, c. 24), s. 51, applicable after 1984. S. 115.1 formerly read:

115.1 Disposition of property by non-resident person — Where a non-resident person or partnership (in this section referred to as "the vendor") has in a taxation year disposed of property to another person or partnership (in this section referred to as "the purchaser") and

(a) the Minister has agreed, pursuant to a prescribed tax treaty provision, to defer the taxation in Canada of the gain or income in respect of the disposition, and

(b) the vendor and the purchaser jointly so elect in prescribed form and within the prescribed time in accordance with terms and conditions satisfactory to the Minister,

notwithstanding any other provision of this Act, the following rules apply:

(c) the amount that the vendor, the purchaser and the Minister have agreed on in respect of the property shall be deemed to be the vendor's proceeds of disposition of the property and the purchaser's cost of the property;

(d) where the property was, at the time of its disposition, depreciable property of a prescribed class to the vendor and the vendor's capital cost of the property immediately before the disposition exceeds the agreed amount in respect of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost of the property to the purchaser shall be deemed to be the amount that was the capital cost thereof to the vendor immediately before the disposition, and

(ii) the excess shall be deemed to have been allowed to the purchaser in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years ending before the acquisition by the purchaser of the property, and

(e) where the property was, at the time of its disposition, a capital property, a Canadian resource property, a foreign resource property, an eligible capital property or an inventory to the vendor, that property shall be deemed to be such a property of the purchaser and the purchaser shall be deemed to have acquired that property and used it for the same purposes as that for which the property was used by the vendor immediately before that time.

Pre-RSC History: S. 115.1 added by 1987, c. 46, s. 42, applicable to taxation years commencing after 1984.

Definitions [s. 115.1]: "Canada" — 255; "Minister", "person" — 248(1).

Interpretation Bulletins [s. 115.1]: IT-173R2: Capital gains derived in Canada by residents of the United States; IT-270R2: Foreign tax credit; IT-420R3: Non-residents — income earned in Canada.

Information Circulars [s. 115.1]: 71-17R4: Requests for competent authority consideration under mutual agreement procedures in income tax conventions.

Forms [s. 115.1]: T2024: Election by a non-resident under section 115.1 and a prescribed tax treaty provision to avoid double taxation on a gain from a disposition; T2029: Waiver in respect of the normal reassessment period.

115.2 Non-Residents with Canadian Investment Service Providers — (1) Definitions — The definitions in this subsection apply in this section.

"Canadian service provider" means a corporation resident in Canada, a trust resident in Canada or a Canadian partnership.

"designated investment services" provided to a qualified non-resident means any one or more of the services described in the following paragraphs:

(a) investment management and advice with respect to qualified investments, regardless of whether the manager has discretionary authority to buy or sell;

(b) purchasing and selling qualified investments, exercising rights incidental to the ownership of qualified investments such as voting, conversion and exchange, and entering into and executing agreements with respect to such purchasing and selling and the exercising of such rights;

(c) investment administration services, such as receiving, delivering and having custody of investments, calculating and reporting investment values, receiving subscription amounts from, and paying distributions and proceeds of disposition to, investors in and beneficiaries of the qualified non-resident, record keeping, accounting and reporting to the qualified non-resident and its investors and beneficiaries; and

(d) if the qualified non-resident is a corporation, trust or partnership the only undertaking of which is the investing of its funds in qualified investments, marketing investments in the qualified non-resident to non-resident investors.

"promoter" of a qualified non-resident that is a corporation, trust or partnership means a person or partnership that initiates or directs the founding, organization or substantial reorganization of the non-resident, or a person or partnership affiliated with such a person or partnership.

"qualified investment" of a qualified non-resident means

(a) a share of the capital stock of a corporation, or an interest in a partnership, trust, entity, fund or organization, other than a share or an interest

(i) that is either

(A) not listed on a prescribed stock exchange, or

(B) listed on a prescribed stock exchange, if the qualified non-resident, together with all persons with whom the non-resident does not deal at arm's length, owns 25% or more of the issued shares of any class of the capital stock of the corporation or of the total value of interests in the partnership, entity, trust, fund or organization, as the case may be, and

(ii) of which more than 50% of the fair market value is derived from one or more of

(A) real property situated in Canada,

(B) Canadian resource property, and

(C) timber resource property;

(b) indebtedness;

(c) annuities;

(d) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange;

(e) currency; and

(f) options, interests, rights and forward and futures agreements in respect of property described in any of paragraphs (a) to (e) or this paragraph, and agreements under which obligations are derived from interest rates, from the price of property described in any of those paragraphs, from payments made in respect of such a property by its issuer to holders of the property, or from an index reflecting a composite measure of such rates, prices or payments, whether or not the agreement creates any rights in or obligations regarding the referenced property itself.

Regulations: 3200, 3201 (prescribed stock exchanges for cls. (a)(i)(A) and (B); not yet prescribed).

"qualified non-resident" means a non-resident person or a partnership no member of which is resident in Canada.

(2) Not carrying on business in Canada — For the purposes of subsection 115(1) and Part XIV, a qualified non-resident is not considered to be carrying on business in Canada at any particular time solely because of the provision to the non-resident at the particular time of designated investment services by a Canadian service provider if

(a) in the case of a non-resident who is an individual other than a trust, the non-resident is not affiliated at the particular time with the Canadian service provider; and

(b) in the case of a non-resident that is a corporation, trust or partnership,

(i) the non-resident has not, before the particular time, directly or through its agents, directed any promotion of investments in itself principally at, or sold such investments to, persons that the non-resident knew or ought to have known after reasonable enquiry were resident in Canada or partnerships that the non-resident knew or ought to have known after reasonable enquiry had members that were resident in Canada,

(ii) the non-resident has not, before the particular time, directly or through its agents, filed any document with a public authority in Canada in accordance with the securities legislation of Canada or of any province in order to permit the distribution of interests in the non-resident to persons resident in Canada, and

(iii) when the particular time is more than one year after the time at which the non-resident was created, the total of the fair market value, at the particular time, of investments in the non-resident that are beneficially owned by persons and partnerships (other than a designated entity in respect of the Canadian service provider) that are affiliated with the Canadian service provider does not exceed 25% of the fair market value, at the particular time, of all investments in the non-resident.

(3) Interpretation — For the purposes of subparagraph (2)(b)(iii) and this subsection,

(a) the fair market value of an investment in a corporation, trust or partnership shall be determined without regard to any voting rights attaching to that investment; and

(b) a person or partnership is, at a particular time, a designated entity in respect of a Canadian service provider if the total of the fair market value at the particular time, of investments in the entity that are beneficially owned by persons and partnerships (other than another designated entity in respect of the Canadian service provider) that are affiliated with the Canadian service provider does not exceed 25% of the fair market value, at the particular time, of all investments in the entity.

(4) Transfer pricing — For the purpose of section 247, where subsection (2) applies to a qualified non-resident, if the Canadian service provider referred to in that subsection does not deal at arm's length with the promoter of the qualified non-resident, the service provider is deemed not to deal at arm's length with the non-resident.

History: S. 115.2 added by 2000, c. 19, s. 21, applicable to taxation years that end after 1998.

Definitions [s. 115.2]: "affiliated" — 251.1; "amount", "annuity" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian partnership" — 102, 248(1); "Canadian resource property" — 66(15), 248(1); "Canadian service provider" — 115.2(1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated entity" — 115.2(3)(b); "designated investment services" — 115.2(1); "disposition" — 248(1); "fair market value" — 115.2(3)(a); "individual", "non-resident", "person", "prescribed" — 248(1); ; "promoter" — 115.2(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment", "qualified non-resident" — 115.2(1); "record" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249; "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3).

116. (1) Disposition by non-resident person of certain property — Where a non-resident person proposes to dispose of any property that would, if the non-resident person disposed of it, be taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

Proposed Amendment — 116(1)

116. (1) Disposition by non-resident person of certain property — If a non-resident person proposes to dispose of any taxable Canadian property (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 61(1), will amend the opening words of subsec. 116(1) to read as above, applicable after October 1, 1996.

Technical Notes: Section 116 of the Act establishes procedures for collecting tax from non-residents on the disposition of taxable Canadian property, Canadian resource properties, and certain other properties.

Where a non-resident plans to dispose of property the proceeds from the disposition of which are subject to Canadian tax, the non-resident can obtain a "clearance certificate" from the Minister of National Revenue. The certificate, which is provided as well to the prospective purchaser, verifies that the non-resident vendor has made arrangements for the payment of any resulting tax. Without such a certificate, the purchaser may be required to remit a portion of the purchase price to the Receiver General.

Subsections 116(1), (5.1) and (5.2) set out some of the rules and procedures for this process. These subsections are amended, with application after October 1, 1996, to reflect the amended definition "taxable Canadian property" in subsection 248(1) of the Act. In particular, that amended definition clarifies that a property's status as taxable Canadian property does not depend on its being disposed of; this allows the references in these subsections to be simplified.

(a) the name and address of the person to whom proposes to dispose of the property (in this section referred to as the "proposed purchaser");

(b) a description of the property sufficient to identify it;

(c) the estimated amount of the proceeds of disposition to be received by the non-resident person for the property; and

(d) the amount of the adjusted cost base to him [the non-resident person] of the property at the time of the sending of the notice.

Related Provisions: 115.1 — Competent authority agreements under tax treaties; 116(2) — Certificate in respect of proposed disposition; 116(3) — Notice to Minister; 116(6) — Excluded property.

History: The opening words of subsec. 116(1) amended by 1998, c. 19, subsec. 133(1), applicable after April 26, 1995. The opening words formerly read:

116. (1) Disposition by non-resident person of certain property — Where a non-resident person proposes to dispose of any property that would, if the non-resident person disposed of it, be taxable Canadian property of that person (other than depreciable property or excluded property), the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

Pre-RSC History: All that portion of subsec. 116(1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 63(1).

All that portion of subsec. 116(1) preceding para. (a) substituted by 1973-74, c. 14, subsec. 38(1), applicable to 1972 *et seq.*

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2062: Request by a non-resident of Canada for a certificate of compliance related to the disposition of taxable Canadian property; T2062A: Request by a non-resident of Canada for a certificate of compliance related to the disposition of Canadian resource property, Canadian real property (other than capital property), Canadian timber resource property and/or depreciable taxable Canadian property.

(2) Certificate in respect of proposed disposition — Where a non-resident person who has sent to the Minister a notice under subsection (1) in respect of a proposed disposition of any property has

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, 33⅓% of the amount, if any, by which the estimated amount set out in the notice in accordance with paragraph (1)(c) exceeds the amount set out in the notice in accordance with paragraph (1)(d), or

(b) furnished the Minister with security acceptable to the Minister in respect of the proposed disposition of the property,

the Minister shall forthwith issue to the non-resident person and the proposed purchaser a certificate in prescribed form in respect of the proposed disposition, fixing therein an amount (in this section referred to as the "certificate limit") equal to the estimated amount set out in the notice in accordance with paragraph (1)(c).

Related Provisions: 116(5) — Non-residents — Liability of purchaser; 164(1.6) — Security not to be released while appeal pending.

Pre-RSC History: Para. 116(2)(a) amended by 1988, c. 55, subsec. 89(1), to substitute "33⅓%" for "25%", applicable to dispositions occurring after 1987, except that with respect to dispositions occurring before 1990, the reference to "33⅓%" shall be read as a reference to "30%".

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2064: Certificate with respect to the proposed disposition of property by a non-resident of Canada.

(3) Notice to Minister — Every non-resident person who in a taxation year disposes of any taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) shall, not later than 10 days after the disposition, send to the Minister, by registered mail, a notice setting out

(a) the name and address of the person to whom the non-resident person disposed of the property (in this section referred to as the "purchaser"),

(b) a description of the property sufficient to identify it, and

(c) a statement of the proceeds of disposition of the property and the amount of its adjusted cost base to the non-resident person immediately before the disposition,

unless the non-resident person has, at any time before the disposition, sent to the Minister a notice under subsection (1) in respect of any proposed disposition of that property and

(d) the purchaser was the proposed purchaser referred to in that notice,

(e) the estimated amount set out in that notice in accordance with paragraph (1)(c) is equal to or greater than the proceeds of disposition of the property, and

(f) the amount set out in that notice in accordance with paragraph (1)(d) does not exceed the adjusted cost base to the non-resident person of the property immediately before the disposition.

Related Provisions: 116(6) — Excluded property; 238(1) — Offences; 248(7) — Mail deemed received on day mailed.

History: The opening words of subsec. 116(3) amended by 1998, c. 19, subsec. 133(2), applicable after April 26, 1995. The opening words formerly read:

> 116. (3) Notice to Minister — Every non-resident person who in a taxation year has made a disposition of any taxable Canadian property of that person (other than depreciable property or excluded property) shall, not later than 10 days after the day on which the disposition was made, send to the Minister, by registered mail, a notice setting out

Pre-RSC History: All that portion of subsec. 116(3) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 63(2).

Para. 116(3)(a) substituted by 1974-75-76, c. 26, subsec. 75(1), applicable in respect of dispositions occurring after May 6, 1974. Para. 116(3)(a) formerly read:

> (a) the name and address of the person to whom he disposed of the property,

All that portion of subsec. 116(3) preceding para. (f) substituted by 1973-74, c. 14, subsec. 38(2), applicable to 1972 *et seq.*

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2062: Request by a non-resident of Canada for a certificate of compliance related to the disposition of taxable Canadian property; T2062A: Request by a non-resident of Canada for a certificate of compliance related to the disposition of Canadian resource property, Canadian real property (other than capital property), Canadian timber resource property and/or depreciable taxable Canadian property.

(4) Certificate in respect of property disposed of — Where a non-resident person who has sent to the Minister a notice under subsection (3) in respect of a disposition of any property has

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, 33⅓% of the amount, if any, by which the proceeds of disposition of the property exceed the adjusted cost base to the non-resident person of the property immediately before the disposition, or

(b) furnished the Minister with security acceptable to the Minister in respect of the disposition of the property,

the Minister shall forthwith issue to the non-resident person and the purchaser a certificate in prescribed form in respect of the disposition.

Related Provisions: 116(5) — Non-residents — liability of purchaser; 164(1.6) — Security not to be released while appeal pending.

Pre-RSC History: Para. 116(4)(a) amended by 1988, c. 55, subsec. 89(2), to substitute "33⅓%" for "25%", applicable with respect to dispositions occurring after 1987, except that with respect to dispositions occurring before 1990, the reference to "33⅓%" shall be read as a reference to "30%".

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Para. 116(4)(a) substituted by 1973-74, c. 14, subsec. 38(3), applicable to 1972 *et seq.*

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2068: Certificate with respect to the disposition of property by a non-resident of Canada.

(5) Liability of purchaser — Where in a taxation year a purchaser has acquired from a non-resident person any taxable Canadian property (other than depreciable prop-

erty or excluded property) of the non-resident person, the purchaser, unless

(a) after reasonable inquiry the purchaser had no reason to believe that the non-resident person was not resident in Canada, or

(b) a certificate under subsection (4) has been issued to the purchaser by the Minister in respect of the property,

is liable to pay, and shall remit to the Receiver General within 30 days after the end of the month in which the purchaser acquired the property, as tax under this Part for the year on behalf of the non-resident person, 33⅓% of the amount, if any, by which

(c) the cost to the purchaser of the property so acquired

exceeds

(d) the certificate limit fixed by the certificate, if any, issued under subsection (2) in respect of the disposition of the property by the non-resident person to the purchaser,

and is entitled to deduct or withhold from any amount paid or credited by the purchaser to the non-resident person or otherwise recover from the non-resident person any amount paid by the purchaser as such a tax.

Related Provisions: 116(2) — Certificate in respect of proposed disposition; 116(4) — Certificate in respect of property disposed of; 116(6) — Excluded property; 227(9) — Failure to remit tax — penalty; 227(9.3) — Interest on tax not paid; 227(10.1) — Assessment; 248(7) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 116(5) substituted by 1990, c. 39, s. 23, applicable with respect to acquisitions occurring after April 27, 1989 except that, with respect to acquisitions occurring before 1990, the reference to "33⅓%" shall be read as a reference to "30%". Subsec. 116(5) formerly read:

(5) Liability of purchaser in certain cases — Where in a taxation year a purchaser has acquired from a non-resident person any of that non-resident person's taxable Canadian property (other than depreciable property or excluded property),

(a) the purchaser, unless after reasonable inquiry he had no reason to believe that the non-resident person was not resident in Canada, is liable to pay, as tax under this Part for the year on behalf of the non-resident person,

(i) 15% of the cost to the purchaser of the property so acquired, if no certificate has been issued under subsection (2) in respect of the disposition of the property by the non-resident person to the purchaser, or

(ii) in any other case, the lesser of

(A) 15% of the cost to the purchaser of the property so acquired, and

(B) 33⅓% of the amount, if any, by which the cost to the purchaser of the property so acquired exceeds the certificate limit fixed by the certificate issued under subsection (2) in respect of the disposition of the property by the non-resident person to the purchaser,

and is entitled to deduct or withhold from any amount paid or credited by him to the non-resident person or otherwise recover from the non-resident person any amount paid by him as such tax;

(b) at such time, if any, as any certificate under subsection (4) is issued to him by the Minister in respect of the property, the purchaser ceases to be liable under this subsection to pay any amount as tax under this Part for the year on behalf of the non-resident person; and

(c) the purchaser shall within 30 days after the end of the month in which he acquired the property, remit to the Receiver General of Canada the tax for which he is liable under paragraph (a).

Cl. 116(5)(a)(ii)(B) amended by 1988, c. 55, subsec. 89(3), to substitute "33⅓%" for "25%", applicable with respect to dispositions occurring after 1987, except that with respect to dispositions occurring before 1990, the reference to "33⅓%" shall be read as a reference to "30%".

All that portion of subsec. 116(5) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 63(3).

Para. 116(5)(c) added by 1974-75-76, c. 26, subsec. 75(2), applicable in respect of dispositions occurring after May 6, 1974 except that in respect of dispositions occurring before November 18, 1974, the reference in para. 116(5)(c) to "within 30 days after the end of the month in which he acquired the property" shall be read as "within 30 days after November 18, 1974".

Para. 116(5)(a) substituted by 1973-74, c. 30, s. 13, applicable with respect to an acquisition of a property after February 19, 1973. Para. 116(5)(a) formerly read:

(a) the purchaser, unless after reasonable inquiry he had no reason to believe that the non-resident person was not resident in Canada, is liable to pay, as tax under this Part for the year on behalf of the non-resident person,15% of the amount, if any, by which

(i) the cost to the purchaser of the property so acquired

exceeds

(ii) the certificate limit fixed by any certificate under subsection (2) issued to him by the Minister in respect of the property,

and is entitled to deduct or withhold from any amount paid or credited by him to the non-resident person or otherwise recover from the non-resident person any amount paid by him as such tax; and

All that portion of subsec. 116(5) preceding para. (a) substituted by 1973-74, c. 14, subsec. 38(4), applicable to 1972 *et seq.*

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(5.1) Idem — Where a non-resident person has disposed of or proposes to dispose of a life insurance policy in Canada, a Canadian resource property or any property that is or would, if the non-resident person disposed of it, be taxable Canadian property of the non-resident person other than

Proposed Amendment — 116(5.1) opening words

(5.1) Gifts, etc. — If a non-resident person has disposed of or proposes to dispose of a life insurance policy in Canada, a Canadian resource property or a taxable Canadian property other than

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 61(2), will amend the opening words of subsec. 116(5.1) to read as above, applicable after October 1, 1996.

Technical Notes: See under 116(1).

(a) excluded property, or

(b) property that has been transferred or distributed on or after the non-resident person's death and as a consequence thereof

to any person by way of gift *inter vivos* or to a person with whom the non-resident person was not dealing at arm's length for no proceeds of disposition or for proceeds of disposition less than the fair market value of the property at the time the non-resident person so disposed of it or proposes to dispose of it, as the case may be, the following rules apply:

(c) the reference in paragraph (1)(c) to "the proceeds of disposition to be received by the non-resident person for the property" shall be read as a reference to "the fair market value of the property at the time the non-resident person proposes to dispose of it",

(d) the references in subsections (3) and (4) to "the proceeds of disposition of the property" shall be read as references to "the fair market value of the property immediately before the disposition",

(e) the references in subsection (5) to "the cost to the purchaser of the property so acquired" shall be read as references to "the fair market value of the property at the time it was so acquired", and

(f) the reference in subsection (5.3) to "the amount payable by the taxpayer for the property so acquired" shall be read as a reference to "the fair market value of the property at the time it was so acquired".

Related Provisions: 110.4(4) — Death of a taxpayer; 116(6) — Excluded property.

Pre-RSC History: All that portion of subsec. 116(5.1) preceding para. (a) amended by 1985, c. 45, subsec. 61(1), to substitute the words "a Canadian resource property" for "a property described in paragraph 59(2)(a), (c) or (d)", applicable to taxation years commencing after 1984.

All that portion of subsec. 116(5.1) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 74(1), to substitute "a life insurance policy in Canada, a property described in paragraph 59(2)(a), (c) or (d)" for "a Canadian resource property".

All that portion of subsec. 116(5.1) preceding para. (a) substituted, para. 116(5.1)(f) added by 1980-81-82-83, c. 48, subsecs. 63(4), (5).

Subsec. 116(5.1) added by 1974-75-76, c. 26, subsec. 75(3), applicable in respect of dispositions occurring after May 6, 1974.

Interpretation Bulletins: IT-150R2: Taxable Canadian property — acquisition from a non-resident of certain property on death or mortgage foreclosure or by virtue of a deemed disposition. See also Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2062B: Notice of dispositions of life insurance policies in Canada by a non-resident; T2062B — Sched. 1: Certification and remittance notice.

(5.2) Certificates for dispositions — Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is or would, if the non-resident person disposed of it, be a taxable Canadian property of the non-resident person or any interest in, or option in respect of, a property to which this subsection applies (whether or not the property exists),

Proposed Amendment — 116(5.2)

(5.2) Certificates for dispositions — If a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is a taxable Canadian property or any interest in or option in respect of a property to which this subsection applies (whether or not that property exists),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 61(3), will amend the opening words of subsec. 116(5.2) to read as above, applicable after October 1, 1996.

Technical Notes: See under 116(1).

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, such amount as is acceptable to the Minister in respect of the disposition or proposed disposition of the property, or

(b) furnished the Minister with security acceptable to the Minister in respect of the disposition or proposed disposition of the property,

the Minister shall forthwith issue to the non-resident person and to the taxpayer a certificate in prescribed form in respect of the disposition or proposed disposition fixing therein an amount equal to the proceeds of disposition, proposed proceeds of disposition or such other amount as is reasonable in the circumstances.

Related Provisions: 116(5.1), (5.3) — Liability of purchaser; 164(1.6) — Security not to be released while appeal pending; 248(4) — Interest in real property.

History: The opening words of subsec. 116(5.2) amended by 1998, c. 19, subsec. 133(3), applicable to dispositions that occur after 1996. The opening words formerly read:

116. (5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of a life insurance policy in Canada of the non-resident person, a Canadian resource property of the non-resident person, a property (other than capital property) that is real property situated in Canada of the non-resident person (including any interest therein or option in respect thereof, whether or not the property is in existence), a timber resource property of the non-resident person or any interest therein or option in respect thereof, or depreciable property that is or would, if the non-resident person disposed of it, be a taxable Canadian property of the non-resident person,

That portion of subsec. 116(5.2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 87, applicable to dispositions occurring after February 20, 1990, other than dispositions pursuant to agreements in writing entered into before February 21, 1990. That portion formerly read:

(5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of a life insurance policy in Canada of the non-resident person, a Canadian resource property of the non-resident person or depreciable property that is or would, if the non-resident person disposed of it, be taxable Canadian property of the non-resident person,

Pre-RSC History: That portion of subsec. 116(5.2) preceding para. (a) amended by 1985, c. 45, subsec. 61(2), to substitute the heading "Certificate for dispositions" for "Certificate in respect of dispositions", and to substitute the words "a Canadian resource property" for "a property described in paragraph 59(2)(a), (c) or (d)", applicable to taxation years commencing after 1984.

Subsec. 116(5.2) and preceding heading substituted by 1980-81-82-83, c. 140, subsec. 74(2), formerly read:

(5.2) Certificate in respect of proposed disposition — Where a non-resident person has, in respect of a proposed disposition to a taxpayer in a taxation year of a Canadian resource property of the non-resident person or depreciable property that would, if it were disposed of, be taxable Canadian property of the non-resident person,

(a) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, such amount as is acceptable to the Minister in respect of the proposed disposition of the property, or

(b) furnished to the Minister security acceptable to the Minister in respect of the proposed disposition of the property,

the Minister shall forthwith issue to the non-resident person and to the taxpayer a certificate in prescribed form in respect of the proposed disposition fixing therein an amount equal to the proposed proceeds of disposition.

Subsec. 116(5.2) added by 1980-81-82-83, c. 48, subsec. 63(6).

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(5.3) Liability of purchaser in certain cases — Where in a taxation year a taxpayer has acquired from a non-resident person property referred to in subsection (5.2),

(a) the taxpayer, unless after reasonable inquiry the taxpayer had no reason to believe that the non-resident person was not resident in Canada, is liable to pay, as tax under this Part for the year on behalf of the non-resident person, 50% of the amount, if any, by which

(i) the amount payable by the taxpayer for the property so acquired

exceeds

(ii) the amount fixed in the certificate, if any, issued under subsection (5.2) in respect of the disposition of the property by the non-resident person to the taxpayer

and is entitled to deduct or withhold from any amount paid or credited by the taxpayer to the non-resident person or to otherwise recover from the non-resident person any amount paid by the taxpayer as such a tax; and

(b) the taxpayer shall, within 30 days after the end of the month in which the taxpayer acquired the property, remit to the Receiver General the tax for which the taxpayer is liable under paragraph (a).

Related Provisions: 227(9) — Failure to remit tax — penalty; 227(9.3) — Interest on tax not paid; 227(10.1) — Assessment; 248(7) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 116(5.3) added by 1980-81-82-83, c. 48, subsec. 63(6).

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

Forms: T2064: Certificate with respect to the proposed disposition of property by a non-resident of Canada.

(5.4) Presumption — Where there has been a disposition by a non-resident of a life insurance policy in Canada by virtue of subsection 148(2) or any of paragraphs (a) to (c) and (e) of the definition "disposition" in subsection 148(9), the insurer under the policy shall, for the purposes of subsections (5.2) and (5.3) be deemed to be the taxpayer who acquired the property for an amount equal to the proceeds of disposition as determined under section 148.

Pre-RSC History: Subsec. 116(5.4) added by 1980-81-82-83, c. 140, subsec. 74(3).

Interpretation Bulletins: See Interpretation Bulletins and Information Circulars at end of s. 116.

(6) Definition of "excluded property" — For the purposes of this section, "excluded property" of a non-resident person means

(a) property described in subparagraph 115(1)(b)(xii);

Proposed Amendment — 116(6)(a), (a.1)

(a) a property that is a taxable Canadian property solely because a provision of this Act deems it to be a taxable Canadian property;

(a.1) a property (other than real property situated in Canada, a Canadian resource property or a timber resource property) that is described in an inventory of a business carried on in Canada by the person;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 61(4), will amend para. 116(6)(a) to read as above, and add para. (a.1), applicable after October 1, 1996.

Technical Notes: The various rules in section 116 of the Act, which provides a withholding procedure for purchasers of certain properties, do not apply where the property is excluded property. "Excluded property" is defined in subsection 116(6).

Paragraph 116(6)(a) provides that any property referred to in subparagraph 115(1)(b)(xii) of the Act (property that is deemed by a provision of the Act to be taxable Canadian property) is excluded property. Due to the amended definition "taxable Canadian property" in subsection 248(1) of the Act, paragraph 116(6)(a) is amended, effective after October 1, 1996, to remove the reference to subparagraph 115(1)(b)(xii), and to provide that a property is excluded property if it is a taxable Canadian property solely because it is deemed to be so by a provision of the Act.

New paragraph 116(6)(a.1) provides that property described in an inventory of a business carried on in Canada is excluded property for the purposes of section 116 of the Act. This new provision is a result of the change to paragraph (b) of the definition "taxable Canadian property" in subsection 248(1), which now includes as taxable Canadian property the inventory of a business carried on in Canada. Effective after October 1, 1996, new paragraph 116(6)(a.1) excludes such inventory from the requirements of section 116. However, the exclusion does not apply to inventory that is real property situated in Canada, a Canadian resource property or a timber resource property.

(b) a share of a class of the capital stock of a corporation that is listed on a prescribed stock exchange, or an interest in the share;

(c) a unit of a mutual fund trust;

(d) a bond, debenture, bill, note, mortgage or similar obligation; or

(e) any other property that is prescribed to be excluded property.

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange.

History: Paras. 116(6)(a) and (b) amended by 1998, c. 19, subsec. 133(4), applicable after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

Paras. 116(6)(a) and (b) formerly read:

(a) property described in subparagraph 115(1)(b)(ix);

(b) a share of the capital stock of a public corporation, or an interest therein;

Pre-RSC History: Subsec. 116(6) added by 1973-74, c. 14, subsec. 38(5), applicable to 1972 *et seq.*

Regulations: 810 (property prescribed to be excluded property); 3200, 3201 (prescribed stock exchanges; will be amended to cover 116(6), but see also ITA 87(10)).

(7) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

Origin of subsec. 116(7): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

Definitions [s. 116]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "class of shares" — 248(6); "consequence thereof" — 248(8); "depreciable property" — 13(21), 248(1); "excluded property" — 116(6); "interest" in real property — 248(4); "life insurance policy in Canada" — 138(12), 248(1); "listed" — 87(10) "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident", "person", "prescribed", "property" — 248(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "taxable Canadian property" — 248(1); "taxation year" — 249; "taxpayer", "timber resource property" — 248(1). See also 116(7).

Interpretation Bulletins [s. 116]: IT-150R2: Acquisition from non-resident of certain property on death or mortgage foreclosure or by virtue of a deemed disposition; IT-474R: Amalgamations of Canadian corporations.

Information Circulars [s. 116]: 72-17R4: Procedures concerning the disposition of taxable Canadian property by non-residents of Canada — section 116.

DIVISION E — COMPUTATION OF TAX

Subdivision a — Rules Applicable to Individuals

117. (1) Tax payable under this Part — For the purposes of this Division, except section 120 (other than subparagraph (a)(ii) of the definition "tax otherwise payable under this Part" in subsection 120(4)), tax payable under this Part, tax otherwise payable under this Part and tax under this Part shall be computed as if this Part were read without reference to Division E.1.

Related Provisions: 248(2) — Rates of tax.

History: Subsec. 117(1) amended by 2000, c. 19, subsec. 22(1), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the reference to "subparagraph (a)(ii)" shall be read as a reference to "paragraph (b)". The subsec. formerly read:

> (1) Tax payable under this Part — For the purposes of this Division, except section 120 (other than paragraph (b) of the definition "tax otherwise payable under this Part" in subsection 120(4)) and section 120.1 (other than subsection 120.1(2)), tax payable under this Part, tax otherwise payable under this Part and tax under this Part shall be computed as if this Part were read without reference to Division E.1.

Pre-RSC History: Subsec. 117(1) substituted by 1988, c. 55, subsec. 90(1), applicable to 1987 *et seq.* Subsec. 117(1) formerly read:

> 117. (1) For the purposes of this Division, except paragraph 119(1)(d), section 120 (other than subparagraph (4)(c)(ii) thereof) and section 120.1 (other than paragraph (2)(b) thereof), tax payable under this Part, tax otherwise payable under this Part and tax under this Part shall be computed as if this Part were read without reference to Division E.1.

Subsec. 117(1) added by 1986, c. 55, subsec. 35(1), applicable to taxation years commencing after 1983. (For history of former subsec. 117(1), see below.)

(2) 1988 and subsequent taxation years rates — The tax payable under this Part by an individual on the individual's taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1988 and subsequent taxation years is

(a) 17% of the amount taxable if the amount taxable does not exceed $27,500;[13]

(b) $4,675[13] plus 26% of the amount by which the amount taxable exceeds $27,500[13] if the amount taxable exceeds $27,500[13] and does not exceed $55,000[13]; and

(c) $11,825[13] plus 29% of the amount by which the amount taxable exceeds $55,000.[13]

Proposed Amendment — Reduction in middle bracket

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Tax Payable by Individuals*

(4) That the calculation of an individual's tax otherwise payable under Part I of the Act be modified to reduce the 26 per cent tax rate applicable to the portion of the individual's taxable income in excess of $29,590 and less than $59,180 (those two threshold amounts being indexed) to

(a) 25 per cent for the 2000 taxation year, and

(b) 24 per cent for the 2001 and subsequent taxation years,

such that the tax rate structure for the 2000 taxation year be

(c) 17 per cent of taxable income up to $30,004,

(d) 25 per cent of taxable income between $30,004 and $60,009, and

(e) 29 per cent of taxable income that exceeds $60,009.

Federal budget, supplementary information, February 28, 2000: *Reducing the Middle Tax Rate*

The budget proposes to reduce the middle tax rate from 26% to 24% effective July 1, 2000. Tax forms for the year 2000 would show a rate of 25%.

The middle tax rate will drop further to 23% within the next five years.

Proposed Amendment — Allowing Provinces to Impose Tax on Income

Department of Finance/CCRA news release, January 25, 2000: *Government Outlines Measures to Make Tax Systems More Flexible for Provinces and Territories*

Finance Minister Paul Martin and National Revenue Minister Martin Cauchon today released the document *Federal Administration of Provincial Taxes: New Directions*, which outlines recent measures that will give provinces and territories greater tax policy flexibility.

"The federal government has taken the initiative of offering provinces and territories the option to levy their personal income taxes on either taxable income or basic federal tax," said Mr. Martin. "This is the biggest change in federal-provincial-territorial tax collection arrangements in over 30 years. It will allow the provinces and territories to pursue their own policy objectives while insulating their revenue bases from ongoing federal initiatives to reduce taxes."

A tax-on-income system eliminates the impact of changes to federal tax rates and credits on provincial-territorial revenues. At the same time, maintaining a common federal-provincial-territorial taxable income base will preserve the following benefits associated with the federal-provincial-territorial Tax Collection Agreements (TCAs):

- uniformity across provinces and territories with respect to what income should be taxed by both levels of government;
- a single form for taxpayers;
- a single tax collection agency; and
- substantial cost savings for the provinces and territories as a result of the federal government collecting their taxes generally free of charge — over the past five years the provinces and territories have saved some $1.5 billion as a result of the federal government administering their taxes.

"New guidelines have also been developed to allow for federal collection of a much broader range of provincial and territorial taxes," said Minister Cauchon. "The tax collection guidelines establish a simpler system, now in place, that is objective and transparent." Under the guidelines, the costs charged to provinces and territories are graduated to reflect the degree to which their taxes are harmonized with their federal counterparts.

The Organisation for Economic Co-operation and Development (OECD) asserts that the TCAs have worked well. In its 1997 Canada Review the OECD said, "The benefits of decentralized taxing authority can be achieved without sacrificing a harmonized and administratively simple tax system by federal tax collection agreements. This has been a success story in the case of income taxes in Canada."

Backgrounders providing additional details on the tax-on-income model and the new guidelines are attached [not reproduced here — ed].

Copies of the *Federal Administration of Provincial Taxes: New Directions* document may be obtained free of charge from the Department of Finance Distribution Centre at (613) 943-8665 or on the Department's Internet site at www.fin.gc.ca.

For further information: Munir A. Sheikh, Tax Policy Branch, Department of Finance, (613) 992-1630; Bill McCloskey, Policy and Legislation, Canada Customs and Revenue Agency, (613)

[13] Indexed by s. 117.1 after 1988 — ed.

957-2041; Jean-Michel Catta, Public Affairs and Operations Division, Department of Finance, (613) 996-8080.

Related Provisions: 117(1) — Minimum tax to be ignored for purposes of 117(2); 117.1(1) — Indexing for inflation; 120(2) — Rate reduction for residents of Quebec; 122 — Top rate of tax payable by *inter vivos* trust; 127.5 — Minimum tax; 180.1 — Individual surtax; 180.2 — "Clawback" tax on old age security.

Pre-RSC History: Subsec. 117(2) added by 1988, c. 55, subsec. 90(2), applicable to 1988 *et seq.* (For history of former subsec. 117(2), see below.)

Selected Cases: *Guillemette v. R.*, [1997] 3 C.T.C. 2797 (TCC) (Progressive tax rates not unconstitutional).

Interpretation Bulletins: IT-513R: Personal tax credits; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Note re Provincial Income Tax: In addition to the tax under Part I of the federal Act, as above, an individual who resides in or has income earned in any of the provinces is also subject to provincial income tax. Except for Quebec, which collects its own tax on separate income tax returns, each other province imposes a tax that is expressed as a percentage of the tax otherwise payable under Part I of the federal Act and is collected for the province by the federal government on a joint tax return. For rates and surtaxes see introductory pages.

(3)–(5.2) [Repealed under former Act]

Pre-RSC History [former subsecs. 117(1), (2) and 117(3)–(5.2)]: Subsecs. 117(1)–(5) repealed by 1985, c. 45, subsec. 62(1). Those subsecs. formerly read:

117. (1) **1972 rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1972 taxation year is

(a) 17% of the amount taxable if the amount taxable does not exceed $500,

(b) $85 plus 18% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $175 plus 19% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $365 plus 20% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $565 plus 21% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $985 plus 23% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,445 plus 25% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,945 plus 27% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $11,000,

(i) $2,485 plus 31% of the amount by which the amount taxable exceeds $11,000 if the amount taxable exceeds $11,000 and does not exceed $14,000,

(j) $3,415 plus 35% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

(k) $6,915 plus 39% of the amount by which the amount taxable exceeds $24,000 if the amount taxable exceeds $24,000 and does not exceed $39,000,

(l) $12,765 plus 43% of the amount by which the amount taxable exceeds $39,000 if the amount taxable exceeds $39,000 and does not exceed $60,000,

(m) $21,795 plus 47% of the amount by which the amount taxable exceeds $60,000 if the amount taxable exceeds $60,000.

(2) **1973 rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1973 taxation year is

(a) 15% of the amount taxable if the amount taxable does not exceed $500,

(b) $75 plus 18% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $165 plus 19% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $355 plus 20% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $555 plus 21% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $975 plus 23% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,435 plus 25% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,935 plus 27% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $11,000,

(i) $2,475 plus 31% of the amount by which the amount taxable exceeds $11,000 if the amount taxable exceeds $11,000 and does not exceed $14,000,

(j) $3,405 plus 35% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

(k) $6,905 plus 39% of the amount by which the amount taxable exceeds $24,000 if the amount taxable exceeds $24,000 and does not exceed $39,000,

(l) $12,755 plus 43% of the amount by which the amount taxable exceeds $39,000 if the amount taxable exceeds $39,000 and does not exceed $60,000,

(m) $21,785 plus 47% of the amount by which the amount taxable exceeds $60,000 if the amount taxable exceeds $60,000.

(3) **1974 rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1974 taxation year is

(a) 12% of the amount taxable if the amount taxable does not exceed $500,

(b) $60 plus 18% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $150 plus 19% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $340 plus 20% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $540 plus 21% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $960 plus 23% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,420 plus 25% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,920 plus 27% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $11,000,

(i) $2,460 plus 31% of the amount by which the amount taxable exceeds $11,000 if the amount taxable exceeds $11,000 and does not exceed $14,000,

(j) $3,390 plus 35% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

(k) $6,890 plus 39% of the amount by which the amount taxable exceeds $24,000 if the amount taxable exceeds $24,000 and does not exceed $39,000,

(l) $12,740 plus 43% of the amount by which the amount taxable exceeds $39,000 if the amount taxable exceeds $39,000 and does not exceed $60,000,

(m) $21,770 plus 47% of the amount by which the amount taxable exceeds $60,000 if the amount taxable exceeds $60,000.

(4) **1975 rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1975 taxation year is

(a) 9% of the amount taxable if the amount taxable does not exceed $500,

(b) $45 plus 18% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $135 plus 19% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $325 plus 20% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $525 plus 21% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $945 plus 23% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,405 plus 25% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,905 plus 27% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $11,000,

(i) $2,445 plus 31% of the amount by which the amount taxable exceeds $11,000 if the amount taxable exceeds $11,000 and does not exceed $14,000,

(j) $3,375 plus 35% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

(k) $6,875 plus 39% of the amount by which the amount taxable exceeds $24,000 if the amount taxable exceeds $24,000 and does not exceed $39,000,

(l) $12,725 plus 43% of the amount by which the amount taxable exceeds $39,000 if the amount taxable exceeds $39,000 and does not exceed $60,000,

(m) $21,755 plus 47% of the amount by which the amount taxable exceeds $60,000 if the amount taxable exceeds $60,000.

(5) **1976 rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1976 taxation year is

(a) 6% of the amount taxable if the amount taxable does not exceed $500,

(b) $30 plus 18% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $120 plus 19% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $310 plus 20% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $510 plus 21% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $930 plus 23% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,390 plus 25% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,890 plus 27% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $11,000,

(i) $2,430 plus 31% of the amount by which the amount taxable exceeds $11,000 if the amount taxable exceeds $11,000 and does not exceed $14,000,

(j) $3,360 plus 35% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

(k) $6,860 plus 39% of the amount by which the amount taxable exceeds $24,000 if the amount taxable exceeds $24,000 and does not exceed $39,000,

(l) $12,710 plus 43% of the amount by which the amount taxable exceeds $39,000 if the amount taxable exceeds $39,000 and does not exceed $60,000,

(m) $21,740 plus 47% of the amount by which the amount taxable exceeds $60,000 if the amount taxable exceeds $60,000.

(5.1) **1977 to 1981 rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for taxation years after 1976 and before 1982 is

(a) 6% of the amount taxable if the amount taxable does not exceed $500,

(b) $30 plus 16% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $110 plus 17% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $280 plus 18% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $460 plus 19% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $840 plus 21% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,260 plus 23% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,720 plus 25% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $11,000,

(i) $2,220 plus 28% of the amount by which the amount taxable exceeds $11,000 if the amount taxable exceeds $11,000 and does not exceed $14,000,

(j) $3,060 plus 32% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

(k) $6,260 plus 36% of the amount by which the amount taxable exceeds $24,000 if the amount taxable exceeds $24,000 and does not exceed $39,000,

(l) $11,660 plus 39% of the amount by which the amount taxable exceeds $39,000 if the amount taxable exceeds $39,000 and does not exceed $60,000,

(m) $19,850 plus 43% of the amount by which the amount taxable exceeds $60,000 if the amount taxable exceeds $60,000.

All that portion of subsec. 117(5.1) preceding para. (a) and the preceding heading substituted by 1980-81-82-83, c. 140, subsec. 75(1), to substitute the heading "1977 to 1981 rates" for the former heading "1977 and Subsequent Taxation Years Rates" and to substitute "taxation years after 1976 and before 1982" for "the 1977 and subsequent taxation years".

Para. 117(5.1)(c) substituted by 1977-78, c. 1, s. 101 and Schedule to add "if the amount taxable exceeds $1,000".

All that portion of subsec. 117(5) preceding para. (a) substituted by 1976-77, c. 10, subsec. 52(1), to substitute "1976 taxation year" for "1976 and subsequent taxation years".

Subsec. 117(5.1) added by 1976-77, c. 10, subsec. 52(2).

Subsec. 117(5.2) repealed by 1988, c. 55, subsec. 90(3), applicable to 1988 *et seq.* Subsec. 117 (5.2) formerly read:

(5.2) **1982 and subsequent taxation years rates** — The tax payable by an individual under this Part upon his taxable income or taxable income earned in Canada, as the case may be, (in this subdivision referred to as the "amount taxable") for the 1982 and subsequent taxation years is

(a) 6% of the amount taxable if the amount taxable does not exceed $500,

(b) $30 plus 16% of the amount by which the amount taxable exceeds $500 if the amount taxable exceeds $500 and does not exceed $1,000,

(c) $110 plus 17% of the amount by which the amount taxable exceeds $1,000 if the amount taxable exceeds $1,000 and does not exceed $2,000,

(d) $280 plus 18% of the amount by which the amount taxable exceeds $2,000 if the amount taxable exceeds $2,000 and does not exceed $3,000,

(e) $460 plus 19% of the amount by which the amount taxable exceeds $3,000 if the amount taxable exceeds $3,000 and does not exceed $5,000,

(f) $840 plus 20% of the amount by which the amount taxable exceeds $5,000 if the amount taxable exceeds $5,000 and does not exceed $7,000,

(g) $1,240 plus 23% of the amount by which the amount taxable exceeds $7,000 if the amount taxable exceeds $7,000 and does not exceed $9,000,

(h) $1,700 plus 25% of the amount by which the amount taxable exceeds $9,000 if the amount taxable exceeds $9,000 and does not exceed $14,000,

(i) $2,950 plus 30% of the amount by which the amount taxable exceeds $14,000 if the amount taxable exceeds $14,000 and does not exceed $24,000,

and

(j) $5,950 plus 34% of the amount by which the amount taxable exceeds $24,000.

Subsec. 117(5.2) added by 1980-81-82-83, c. 140, subsec. 75(2).

(6) [Repealed]

Pre-RSC History: Subsec. 117(6) amended by 1988, c. 55, subsec. 90(4), to substitute "a table prepared for that year" for "a table prepared" and "prescribed provisions of this Act" for "section 120.1, 120.2, 127 and 127.2 to 127.4", applicable to 1988 *et seq.*

Subsec. 117(6) amended by 1987, c. 46, s. 43, to substitute "computing the amount of his tax payable under Part I.1 and the amount" for "computing the amount", applicable to 1986 *et seq.*

Subsec. 117(6) amended by 1986, c. 55, subsec. 35(2), to substitute "the amount that, but for sections 120.1, 120.2, 127 and 127.2 to 127.4, would be" for "the amount that would, but for sections 120.1, 127 and 127.2 to 127.4, be", applicable to taxation years commencing after 1983.

Subsec. 117(6) amended by 1986, c. 6, subsec. 64(1), to substitute "and 127.2 to 127.4" for "127.2 and 127.3 and the excess referred to in paragraph 120(3.1)(a)", applicable to 1985 *et seq.* except that in its application to the 1985 taxation year, subsec. 117(6) shall be read as follows:

(6) An individual (other than an individual of a prescribed class) whose amount taxable for a taxation year does not exceed a prescribed amount may use a table prepared in accordance with prescribed rules in computing the amount that would, but for sections 120.1, 127 and 127.2 to 127.4 and the excess referred to in paragraph 120(3.1)(a), be his tax payable under this Part for the year.

Subsec. 117(6) substituted by 1985, c. 45, subsec. 62(2), applicable to 1984 *et seq.* Subsec. 117(6) formerly read:

(6) Where the amount taxable for a taxation year of an individual (other than an individual of a prescribed class) is not in excess of a prescribed amount, the amount that would, but for this subsection, be the tax payable by him under this Part for the year before any adjustment thereto by virtue of paragraph 120(3.1)(b) and sections 120.1, 127, 127.2 and 127.3 may be determined by him by reference to a table prepared in accordance with prescribed rules and the amount so determined may be paid by him in lieu of the tax that, but for this subsection, would be the tax payable by him under this Part for the year before any such adjustment.

Subsec. 117(6) substituted by 1984, c. 1, s. 59, applicable to 1982 *et seq.* Subsec. 117(6) formerly read:

(6) An individual, other than an individual of a prescribed class, whose amount taxable for a taxation year is not in excess of a prescribed amount may, in lieu of the tax that, but for this subsection, would be the tax payable by him under this Part for the taxation year if he were not entitled to any deduction under section 127, pay a tax determined by reference to a table prepared in accordance with prescribed rules.

Subsec. 117(6) substituted by 1980-81-82-83, c. 48, s. 64, applicable to 1979 *et seq.* Subsec. 117(6) formerly read:

(6) An individual, other than an individual of a prescribed class, whose amount taxable for a taxation year is $24,000 or less may, in lieu of the tax under subsection (1), (2), (3), (4), (5) or (5.1), as the case may be, pay a tax computed in accordance with a prescribed table, which shall be prepared in accordance with the following rules:

(a) the table shall be divided into ranges of amounts not exceeding $10 each and specify the tax payable on every amount taxable within each range; and

(b) the tax payable on amounts taxable within one of the ranges referred to in paragraph (a) shall be the tax under subsection (1), (2), (3), (4), (5) or (5.1), as the case may be, on the average of the highest and lowest amounts in the range.

Subsec. 117(6) substituted by 1976-77, c. 10, subsec. 52(3), applicable to 1977 *et seq.* to substitute "(5) or (5.1)" for "or (5)".

All that portion of subsec. 117(6) preceding para. (a) substituted by 1973-74, c. 30, subsec. 14(1). That portion formerly read:

(6) An individual, other than an individual of a prescribed class, whose amount taxable for a taxation year is $12,000 or less may, in lieu of the tax under subsection (1), (2), (3), (4), or (5), as the case may be, pay a tax computed in accordance with a prescribed table which shall be prepared in accordance with the following rules:

(7) [Repealed]

History: Subsec. 117(7) repealed by 1994, c. 7, Sch. VII (1992, c. 48), s. 6, applicable to 1993 *et seq.* Subsec. (7) formerly read:

(7) **Notch provision** — Where the tax otherwise payable under this Part for a taxation year by an individual is greater than the total of

(a) the tax that would be so payable if, in computing the individual's tax payable under this Part for the year, the individual could deduct under section 118.2 payments described in that section made in respect of a person who, had the person's income for the year been nil, would have been a dependant in respect of whom the individual could have deducted an amount under section 118 in computing the individual's tax payable under this Part for the year; and

(b) 68% of the amount by which the income for the year of the person referred to in paragraph (a) exceeds $6,000[14],

the tax otherwise payable under this Part for the year may be reduced to that total.

Pre-RSC History: Subsec. 117(7) substituted by 1988, c. 55, subsec. 90(4), applicable to 1988 *et seq.* Subsec. 117(7) formerly read:

(7) Where the tax otherwise payable by a taxpayer for a taxation year under this Part is greater than the aggregate of

(a) the tax that would be payable by the taxpayer if the taxpayer could deduct in computing his taxable income for the year a payment described in paragraph 110(1)(c) in respect of any person who would be a dependant (in respect of whom the taxpayer could make a deduction from his income for the year) if that person's income for the year were not in excess of $1,600, and

(b) 68% of the amount by which the income of the person described in paragraph (a) exceeds $1,600,

the tax otherwise payable for the year under this Part may be reduced to that aggregate.

Paras. 117(7)(a) and (b) amended by 1986, c. 6, subsec. 64(2), to substitute "$1,600" for "$1,700", applicable to 1986 *et seq.*

[14] Indexed by s. 117.1 after 1988.

Para. 117(7)(b) substituted by 1980-81-82-83, c. 140, subsec. 75(3), applicable to the 1980 and subsequent taxation years. Para. 117(7)(b) formerly read:

(b) the amount by which the income of the person described in paragraph (a) exceeds $1,700,

Paras. 117(7)(a), (b) substituted by 1973-74, c. 30, subsec. 14(2), applicable to 1973 *et seq.* Paras. 117(7)(a), (b) formerly read:

(a) the tax that would be payable by the taxpayer if the taxpayer could deduct in computing his taxable income for the year a payment described in paragraph 110(1)(c) in respect of any person who would be a dependant (in respect for whom the taxpayer could make a deduction from his income for the year) if that person's income for the year were not in excess of $1,600, and

(b) the amount by which the income of the person described in paragraph (a) exceeds $1,600,

Definitions [s. 117]: "amount", "individual", "person", "prescribed" — 248(1); "tax payable" — 117(1), 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 117]: IT-406R2: Tax payable by an *inter vivos* trust.

Annual Adjustment of Deductions and Other Amounts

117.1 (1) Annual adjustment [indexing] — Each of the amounts expressed in dollars in subsection 117(2), the description of B in subsection 118(1), subsections 118(2), 118.2(1), 118.3(1), 122.5(3) and 122.51(1) and (2) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

(a) the amount that would, but for subsection (3), be the amount to be used under those provisions for the preceding taxation year, and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph (a)

by

(ii) the amount, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth, or, where the result obtained is equidistant from two consecutive one-thousandths, to the higher thereof, that is determined by the formula where

$$\frac{A}{B} - 1$$

A is the Consumer Price Index for the 12 month period that ended on September 30 next before that year, and

B is the Consumer Price Index for the 12 month period immediately preceding the period mentioned in the description of A.

Related Provisions: 117(1.1) — Indexing of specific amounts; 122.5(3.1) — Indexing of GST Credit amounts; 122.61(5) — Indexing of Child Tax Benefit; 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 117.1(1) before subpara. (d)(ii) amended by 2000, c. 19, subsec. 23(1), applicable to 2001 *et seq.* The portion formerly read:

117.1 (1) Annual adjustment [indexing] — Each of

(a) the amount of $6,456 referred to in clause (a)(ii)(B) of the definition "preferred beneficiary" in subsection 108(1) in relation to a beneficiary's income (computed without reference to subsection 104(14)) for a taxation year,

(b) the amounts expressed in dollars in subsection 117(2), paragraphs (b.1) to (d) of the description of B in subsection 118(1), subsections 118(2), 118.2(1) and 118.3(1) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year,

(b.1) the amounts of $5,000 and $6,000 referred to in subsection (2) and paragraphs (a) and (b) of the description of B in subsection 118(1) in relation to tax payable under this Part for a taxation year, and

(b.2) the amounts expressed in dollars in subsections 122.5(3) and 122.51(1) and (2) in relation to tax payable under this Part for a taxation year

shall be adjusted so that the amount to be used under those provisions for the year is the total of

(c) the amount that would, but for subsection (3), be the amount to be used under those provisions for the immediately preceding taxation year, and

(d) the product obtained by multiplying

(i) the amount referred to in paragraph (c)

by

The formula in subsec. 117.1(1) amended by 2000, c. 14, subsec. 37(1), applicable to 2000 *et seq.* It formerly read:

$$\frac{A}{B} - 1.03$$

Para. 117.1(1)(b) amended by 1999, c. 22, s. 30, applicable

(a) to 2000 *et seq.* for amounts referred to in para. (b.1) of the description of B in subsec. 118(1) as amended; and

(b) to 1999 *et seq.* for amounts referred to in para. (c.1) of the description of B in subsec. 118(1) as amended.

The para. formerly read:

(b) the amounts expressed in dollars in subsection 117(2), paragraphs (c) and (d) of the description of B in subsection 118(1), subsections 118(2), 118.2(1) and 118.3(1) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year,

The portion of subsec. 117.1(1) before para. (c) amended by 1998, c. 19, s. 21, applicable to 1997 *et seq.* except that, in applying para. 117.1(1)(b.2) to the 1997 taxation year, the reference in that paragraph to "subsections 122.5(3) and 122.51(1) and (2)" shall be read as "subsection 122.5(3)". The portion formerly read:

117.1 (1) Each of

(a) the amounts of $5,000 and $6,000 referred to in subsection (2) and paragraphs (a) and (b) of the description of B in subsection 118(1),

(a.1) the amounts expressed in dollars in subsection 122.5(3), and

(b) the amounts expressed in dollars in subsection 117(2), paragraphs (c) and (d) of the description of B in subsection 118(1), subsections 118(2), 118.2(1) and 118.3(1) and Part I.2

shall be adjusted, for each taxation year after 1996 for amounts referred to in paragraph (d) of the description of B in subsection 118(1), for each taxation year after 1990 for amounts referred to in subsection 122.5(3) and for each taxation year after 1988 in any other case, so that the amount to be used under those provisions for the year is an amount equal to the total of

Subsec. 21(3) of 1998, c. 19 provides that for the purpose of para. 117.1(1)(c), the amount to be used under cl. (a)(ii)(B) of the definition "preferred beneficiary" in subsec. 108(1), as amended, in relation to income for the 1996 taxation year is deemed to be $6,456.

Para. 117.1(1)(a) amended by 1997, c. 25, subsec. 24(1), to substitute "paragraphs (a) and (b) of the description of B in subsection 118(1)" for "paragraphs 118(1)(a) and (b)", applicable April 25, 1997.

The portion of subsec. 117.1(1) between paras. (b) and (c) amended by 1997, c. 25, subsec. 24(2), applicable to 1996 *et seq.* This portion formerly read:

shall be adjusted, for each taxation year after 1990 for amounts referred to in subsection 122.5(3) and for each taxation year after 1988 in any other case, so that the amount to be used under those provisions for the year is an amount equal to the total of

Para. 117.1(1)(b) amended by 1996, c. 21, s. 22, applicable to 1996 *et seq.* The para. formerly read:

(b) the amounts expressed in dollars in subsection 117(2), paragraphs 118(1)(c) and (d) and subsections 118(2), 118.2(1), 118.3(1) and 180.2(1)

Interpretation Bulletins: IT-406R2: Tax payable by an *inter vivos* trust.

(1.1) Adjustment of certain amounts — Notwithstanding any other provision of this section, for the purpose of making the adjustment provided under subsection (1) for the 2000 taxation year, the amounts used for the 1999 taxation year

(a) in respect of the amounts of $6,000, $5,000 and $500 referred to in paragraphs (a), (b) and (c) of the description of B in subsection 118(1) and the amount of $625 referred to in subparagraph 180.2(4)(a)(ii) are deemed to be $7,131, $6,055, $606 and $665, respectively; and

(b) in respect of the amounts of $6,456 and $4,103 referred to in paragraph (d) of the description of B in subsection 118(1) are deemed to be $7,131 and $4,778, respectively.

Related Provisions: 122.5(3.1) — Indexing of GST Credit amounts.

History: Subsec. 117.1(1.1) added by 2000, c. 14, subsec. 37(2), applicable to the 2000 taxation year.

(2) Idem — [Repealed]

History: Subsec. 117.1(2) repealed by 2000, c. 19, subsec. 23(2), applicable to 1999 *et seq.* The subsec. formerly read:

(2) Idem — The amount of $500 referred to in subparagraphs (a)(ii) and (b)(iv) of the description of B in subsection 118(1) shall be adjusted for each taxation year after 1988 so that the amount to be used under those subparagraphs for the year is the amount determined by the formula

$$\frac{1}{2} \times (\$6{,}000^{13} - \$5{,}000^{13})$$

Subsec. 117.1(2) amended by 1997, c. 25, subsec. 24(3), to substitute "subparagraphs (a)(ii) and (b)(iv) of the description of B in subsection 118(1)" for "subparagraphs 118(1)(a)(ii) and (b)(iv)", applicable April 25, 1997.

Para. 117.1(1)(b) amended by 1994, c. 7, Sch. VII (1992, c. 48), s. 7, to delete reference to subsecs. 117(7), 122.2(1) and 164.1(1), applicable to 1993 *et seq.*

Pre-RSC History: Para. 117.1(1)(a.1) added, and that portion of the subsec. between paras. (b) and (c) substituted by 1990, c.45, subsecs. 46(1), (2), applicable to 1991 *et seq.* That portion formerly read:

shall be adjusted for each taxation year after 1988 so that the amount to be used thereunder for the year is an amount equal to the aggregate of

Para. 117.1(1)(b) amended by 1990, c. 39, s. 24, to add reference to subsec. 180.2(1), applicable to 1990 *et seq.*

Subsecs. 117.1(1), (2) substituted for subsecs. (1) to (3) by 1988, c. 55, s. 91, applicable to 1988 *et seq.*, except that in applying s. 117.1 to the 1989 taxation year the amount of $200 in subpara. 122.2(1)(a)(ii) shall not be adjusted. Subsecs. 117.1(1) to (3) formerly read:

117.1 (1) Annual adjustment — Each of the following amounts, namely,

(a) the amounts of $1,400 and $550 referred to in section 109 and the amount of $1,600 referred to in that section and subsection 117(7),

(b) the amount of $1,000 referred to in paragraph 109(1)(h),

(b.1) the amount of $2,860 referred to in paragraphs 110(1)(e) and (e.1), and

(c) each amount expressed in dollars referred to in subsection 117(5.2),

shall be adjusted for each taxation year so that the amount to be used for the year is an amount equal to the aggregate of

(d) the amount that would, but for subsection (6), be the amount to be used for the immediately preceding taxation year, and

(e) the product obtained by multiplying

(i) the amount referred to in paragraph (d)

by

(ii) the amount, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth, that is determined by the formula

$$\frac{A}{B} - 1.03$$

where

A is the Consumer Price Index for the 12 month period that ended on September 30 next before that year, and

B is the Consumer Price Index for the 12 month period immediately preceding the period mentioned in the description of A.

(1.1) Idem — The amounts of $524 and $23,500 referred to in subsection 122.2(1) shall be adjusted for each taxation year so that the amount to be used for the year is the aggregate of

(a) the amount that would, but for subsection (6), be the amount to be used for the immediately preceding taxation year; and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph (a)

by

(ii) the amount, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth, that is determined by the formula

$$\frac{A}{B} - 1.03$$

where

A is the Consumer Price Index for the 12 month period that ended on September 30 next before that year, and

B is the Consumer Price Index for the 12 month period immediately preceding the period mentioned in the description of A.

(2) Idem — The amount of $200 referred to in subparagraphs 109(1)(a)(ii) and (b)(iv) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is the amount by which

(a) $1,600, as adjusted and rounded under this section for the year,

exceeds

(b) $1,400, as adjusted and rounded under this section for the year.

(3) Idem — The amount of $1,050 referred to in paragraph 109(1)(d) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is the amount by which

(a) $1,600, as adjusted and rounded under this section for the year,

exceeds

(b) $550, as adjusted and rounded under this section for the year.

Para. 117.1(1)(b) substituted, applicable to 1986 *et seq.*, and para. 117.1(1)(b.1) added, applicable to 1987 *et seq.*, by 1986, c. 55, s. 36. Para. 117.1(1)(b) formerly read:

(b) the amount of $1,000 referred to in paragraph 109(1)(h) and in paragraphs 110(1)(e) and (e.2), and

Para. 117.1(1)(a) and all that portion of subsec. 117.1(1) following para. (c) substituted by 1986, c. 6, subsecs. 65(1), (2), applicable to 1986 *et seq.* Para. 117.1(1)(a) and that portion following para. (c) formerly read:

(a) the amounts of $1,600, $1,400 and $550 referred to in section 109,

[13] Indexed by s. 117.1 after 1988 — ed.

. . . . .

shall be adjusted for each taxation year so that the amount to be used for the year is an amount equal to the product obtained by multiplying

(d) the amount to be adjusted

by

(e) the ratio determined in accordance with the following formula, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof:

$$\text{Ratio to be adjusted and rounded} = \frac{A}{C} \times 2.476$$

where

A is the Consumer Price Index for the 12 month period ending on the 30th day of September next before the year, and

B is the Consumer Price Index for the 12 month period ending on the 30th day of September, 1983.

Subsec. 117.1(1.1) substituted by 1986, c. 6, subsec. 65(3), applicable

(a) in respect of the amount of $524, to 1989 *et seq.*,

(b) in respect of the amount of $23,500, to 1987 *et seq.*

Subsec. 117.1(1.1) formerly read:

(1.1) Idem — The amount of $343 referred to in subsection 122.2(1) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is an amount equal to the product obtained by multiplying

(a) the amount of $343

by

(b) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before that year bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September, 1982.

Subsecs. 117.1(2), (3) substituted, (4), (5) repealed, by 1986, c. 6, subsecs. 65(4), (5), applicable to 1986 *et seq.* Subsecs. 117.1(2) to (5) formerly read:

(2) Idem — The amount of $300 referred to in subparagraphs 109(1)(a)(ii) and (b)(iv) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is the amount by which

(a) the amount resulting from rounding, as described in subsection (6), the product obtained when $1,600 is multiplied by the ratio determined under paragraph (1)(e) for the year,

exceeds

(b) the amount resulting from rounding, as described in subsection (6), the product obtained when $1,400 is multiplied by the said ratio.

(3) Idem — The amount of $2,350 referred to in paragraphs 109(1)(d), (e) and (f) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is the amount by which the amount resulting from rounding, as described in subsection (6), the product obtained when $1,600 is multiplied by the ratio determined under paragraph (1)(e) for the year exceeds $1,420.

(4) Idem — The amount of $1,150 referred to in paragraphs 109(1)(d), (e), (f) and (g) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is the amount by which

(a) the amount resulting from rounding, as described in subsection (6), the product obtained when $1,600 is multiplied by the ratio determined under paragraph (1)(e) for the year

exceeds

(b) the amount resulting from rounding, as described in subsection (6), the product obtained when $550 is multiplied by the said ratio.

(5) Idem — The amount of $1,700 referred to in paragraphs 117(7)(a) and (b) as applicable for a taxation year shall be adjusted for the year so that the amount to be used for the year is an amount equal to the product obtained by multiplying $1,600 by the ratio determined under paragraph (1)(e) for the year.

Para. 117.1(1)(e) substituted by 1985, c. 45, subsec. 63(1), applicable to 1985 *et seq.* That para. formerly read:

(e) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before that year bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September, 1972.

Subsecs. 117.1(1) to (5) substituted by 1984, c. 1, subsec. 60(1), applicable to 1984 *et seq.* Those subsecs. formerly read:

117.1 (1) Annual adjustment — The following amounts as applicable for a taxation year, namely,

(a) the amounts of $1,600, $1,400 and $550 referred to in section 109,

(b) the amount of $300 referred to in paragraphs 109(1)(d), (e) and (f),

(c) the amount of $1,000 referred to in paragraph 109(1)(h) and in paragraphs 110(1)(e) and (e.2), and

(d) each amount expressed in dollars referred to in subsections 117(3) to (5.2),

shall be adjusted annually so that the amount to be used for the taxation year is an amount equal to the product obtained by multiplying

(e) the amount that would have been applicable for the taxation year if no adjustment had been made under this section with respect to that year

by

(f) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before that year bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September, 1972.

(1.1) Annual adjustment — The amounts of $200 and $18,000 referred to in subsection 122.2(1) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is an amount equal to the product obtained by multiplying

(a) the amount that would have been applicable for the taxation year if no adjustment had been made under this section with respect to that year

by

(b) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof, that the Consumer Price Index for the 12 month period that ended on the 30th day of September next before that year bears to the Consumer Price Index for the 12 month period that ended on the 30th day of September, 1977.

(2) Idem — The amount of $300 referred to in subparagraphs 109(1)(a)(ii) and (b)(iv) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is the amount by which the aggregate of

(a) the amount resulting from rounding, as described in subsection (6), the product obtained when $1,600 is multiplied by the ratio determined under paragraph (1)(f) for the taxation year, and

(b) $100

exceeds the amount resulting from rounding, as described in subsection (6), the product obtained when $1,400 is multiplied by the said ratio.

(3) Idem — The amount of $1,100 referred to in paragraphs 109(1)(d), (e) and (f) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is the amount by which the aggregate of

(a) the amount resulting from rounding, as described in subsection (6), the product obtained when $1,600 is multiplied by the ratio determined under paragraph (1)(f) for the taxation year, and

(b) $100

exceeds twice the amount resulting from rounding, as described in subsection (6), the product obtained when $300 is multiplied by the said ratio.

(4) Idem — The amount of $1,150 referred to in paragraphs 109(1)(d), (e), (f) and (g) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is the amount by which the aggregate of

(a) the amount resulting from rounding, as described in subsection (6), the product obtained when $1,600 is multiplied by the ratio determined under paragraph (1)(f) for the taxation year, and

(b) $100

exceeds the amount resulting from rounding, as described in subsection (6), the product obtained when $550 is multiplied by the said ratio.

(5) Idem — Each amount expressed in dollars referred to in paragraphs 117(7)(a) and (b) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is an amount equal to the aggregate of

(a) the product obtained by multiplying $1,600 by the ratio determined under paragraph (1)(f) for the purpose of making the adjustment under subsection (1) for the taxation year, and

(b) $100.

Para. 117.1(1)(d) substituted by 1980-81-82-83, c. 140, subsec. 76(1), applicable to 1982 *et seq.* to substitute "subsections 117(3) to (5.2)" for "paragraphs (a) to (m) of subsections 117(3), (4), (5) and (5.1)"

All that portion of subsec. 117.1(5) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 76(2), applicable to 1982 *et seq.*, to delete reference to para. 118(3)(b).

Subsec. 117.1(1.1) added by 1978-79, c. 5, subsec. 2(1), applicable to 1978 *et seq.*

Para. 117.1(1)(d) substituted by 1976-77, c. 10, subsec. 52(4), applicable to 1977 *et seq.*, to substitute "(5) and (5.1)" for "and (5)".

Paras. 117.1(1)(c), (f) substituted by 1976-77, c. 4, subsecs. 48(1), (2), applicable to 1976 *et seq.* Paras. 117.1(1)(c), (f) formerly read:

(c) the amount of $1,000 referred to in paragraphs 109(1)(h) and (i) and in paragraphs 110(1)(e) and (e.1), and

(f) the ratio that the adjusted Consumer Price Index for the twelve-month period ending on the 30th day of September next before that year bears to the adjusted Consumer Price Index for the twelve-month period ending on the 30th day of September, 1972.

Subsecs. 117.1(2) to (4) substituted by 1976-77, c. 4, subsec. 48(3), applicable to 1976 *et seq.* Those subsecs. formerly read:

(2) The amount of $300 referred to in subparagraphs 109(1)(a)(ii) and (b)(iv) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is the amount by which the aggregate of

(a) the product obtained by multiplying $1,600 by the ratio determined under paragraph (1)(f) for the purpose of making the adjustment under subsection (1) for the taxation year, and

(b) $100

exceeds the product obtained by multiplying $1,400 by the said ratio.

(3) The amount of $1,100 referred to in paragraphs 109(1)(d), (e) and (f) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is the amount by which the aggregate of

(a) the product obtained by multiplying $1,600 by the ratio determined under paragraph (1)(f) for the purpose of making the adjustment under subsection (1) for the taxation year, and

(b) $100

exceeds twice the product obtained by multiplying $300 by the said ratio.

(4) The amount of $1,150 referred to in paragraphs 109(1)(d), (e), (f) and (g) as applicable for a taxation year shall be adjusted annually so that the amount to be used for the taxation year is the amount by which the aggregate of

(a) the product obtained by multiplying $1,600 by the ratio determined under paragraph (1)(f) for the purpose of making the adjustment under subsection (1) for the taxation year, and

(b) $100

exceeds the product obtained by multiplying $550 by the said ratio.

Para. 117.1(1)(c) substituted by 1974-75-76, c. 26, s. 76, applicable to 1975 *et seq.* Para. 117.1(1)(c) formerly read:

(c) the amount of $1,000 referred to in paragraph 109(1)(h) and in paragraphs 110(1)(e) and (e.1), and

(3) Rounding — Where an amount referred to in this section, when adjusted as provided in this section, is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, where it is equidistant from two such consecutive multiples, to the higher thereof.

Pre-RSC History: Subsec. 117.1(3) substituted for former subsec. (6) by 1988, c. 55, s. 91, applicable to 1988 *et seq.* Former subsec. 117.1(6) read:

(6) Where an amount referred to in paragraph (1)(c) or the amount of $524 referred to in subsection (1.1) when adjusted as provided in this section is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof, and where any other amount referred to in this section is not a multiple of ten dollars when so adjusted, it shall be rounded to the nearest multiple of ten dollars or, if it is equidistant from two such multiples, to the higher thereof.

Subsec. 117.1(6) amended by 1986, c. 6, subsec. 65(6), applicable to 1986 *et seq.* to substitute heading "Rounding of amounts" for "Rounding amounts", and "the amount of $524 referred to in subsection (1.1) when adjusted as provided in this section is not a multiple of one dollar" for "subsection (1.1) is not a multiple of one dollar when adjusted as provided in this section".

Subsec. 117.1(6) amended by 1985, c. 45, subsec. 63(2), to substitute "Rounding amounts" for "Rounding of amounts" as the heading, and a reference to paragraph (1)(c) for one to paragraph (1)(d), applicable to 1984 *et seq.*

Subsec. 117.1(6) substituted by 1984, c. 1, subsec. 60(1), applicable to 1984 *et seq.* Subsec. 117.1(6) formerly read:

(6) Rounding of amounts — Where

(a) an amount referred to in paragraph (1)(d) or the amount of $200 referred to in subsection (1.1) is not a multiple of one dollar when adjusted as provided in this section, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof; and

(b) an amount referred to in this section, other than in paragraph (1)(d) or the amount of $200 referred to in subsection (1.1), is not a multiple of ten dollars when adjusted as provided in this section, it shall be rounded to the nearest multiple of ten dollars or, if it is equidistant from two such multiples, to the higher thereof.

Subsec. 117.1(6) substituted by 1978-79, c. 5, subsec. 2(2), to add in paras. (a) and (b) the words "or the amount of $200 referred to in subsection (1.1)", applicable to 1978 *et seq.*

Subsec. 117.1(6) substituted by 1976-77, c. 4, subsec. 48(4), applicable to 1976 *et seq.* Subsec. 117.1 (6) formerly read:

(6) In the event that an amount to be used for a taxation year by virtue of an adjustment under this section contains a fraction of a dollar, the amount shall be rounded to the nearest whole dollar or, if the result is equidistant from the two whole dollars, to the higher thereof.

(4) Consumer Price Index — In this section, the Consumer Price Index for any 12 month period is the result arrived at by

(a) aggregating the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in such manner as is prescribed, for each month in that period;

(b) dividing the aggregate obtained under paragraph (a) by twelve; and

(c) rounding the result obtained under paragraph (b) to the nearest one-thousandth or, where the result obtained is equidistant from two consecutive one-thousandths, to the higher thereof.

History: Para. 117.1(4)(a) amended by 2000, c. 14, subsec. 37(3), applicable to 2000 *et seq.* The para. formerly read:

(a) aggregating the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in such manner as may be prescribed, for each month in that period;

Pre-RSC History: Subsec. 117.1(4) substituted for former subsec. (7) by 1988, c. 55, s. 91, applicable to 1988 *et seq.* Former subsec. 117.1(7) read:

(7) Determination of "Consumer Price Index for a 12 month period" — In this section, the Consumer Price Index for any 12 month period is the result arrived at by

(a) aggregating the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, adjusted in such manner as may be prescribed by regulation, for each month in that period;

(b) dividing the aggregate obtained under paragraph (a) by twelve; and

(c) rounding the result obtained under paragraph (b) to the nearest one-thousandth or, if the result obtained is equidistant from two one-thousandths, to the higher thereof.

Subsec. 117.1(7) substituted by 1976-77, c. 4, subsec. 48(4), applicable to 1976 *et seq.* Subsec. 117.1(7) formerly read:

(7) Meaning of certain references — In this section,

(a) a reference to the adjusted Consumer Price Index for any period means the Consumer Price Index for that period as adjusted in the manner prescribed by regulation, and

(b) a reference to the Consumer Price Index for any twelve-month period means the average of the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act*, for each month in that twelve-month period.

(5)–(7.1) [Repealed under former Act]

Pre-RSC History: Subsec. 117.1(7.1) repealed by 1985, c. 45, subsec. 63(3), applicable to 1985 *et seq.* Subsec. 117.1(7.1) formerly read:

(7.1) Annual adjustment of amounts expressed in dollars — Notwithstanding subsections (1) and (7), for the purpose of making the annual adjustment of amounts expressed in dollars as required by this section (other than subsection (1.1)), the following rules apply:

(a) the Consumer Price Index for the 12 month period ending on September 30, 1982 shall be deemed to be 106% of the Consumer Price Index for the immediately preceding 12 month period;

(b) the Consumer Price Index for the 12 month period ending on September 30, 1983 shall be deemed to be 105% of the Consumer Price Index for the 12 month period ending on September 30, 1982, as determined under paragraph (a); and

(c) for any taxation year ending after 1984, each amount shall be adjusted so that the amount to be used for the year is an amount equal to the product obtained by multiplying

(i) the amount that would, but for subsection (6), be applicable for the 1984 taxation year

by

(ii) the ratio, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the larger thereof that

(A) the Consumer Price Index for the 12 month period ending on the 30th day of September next before the year

bears to

(B) the Consumer Price Index for the 12 month period ending on September 30, 1983, determined without reference to paragraph (b).

Subsec. 117.1(7.1) added by 1980-81-82-83, c. 140, subsec. 76(3).

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 117.1(8) repealed by 1986, c. 6, subsec. 65(7), applicable to 1986 *et seq.* Subsec. 117.1(8) formerly read:

(8) Limitation — In the event that the ratio determined under paragraph (1)(e) or (1.1)(b) for a taxation year is less than the ratio determined under that paragraph for the purpose of making the adjustment for the immediately preceding taxation year, the ratio for the taxation year shall be deemed to be that determined for the immediately preceding taxation year.

Subsec. 117.1(8) substituted by 1984, c. 1, subsec. 60(2) to substitute "para. (1)(e)" for "para. (1)(f)", applicable to 1984 *et seq.*

Subsec. 117.1(8) substituted by 1978-79, c. 5, subsec. 2(3), applicable to 1979 *et seq.* Subsec. 117.1(8) formerly read:

(8) In the event that the ratio determined under paragraph (1)(f) for a taxation year commencing after 1974 is less than the ratio determined under that paragraph for the purpose of making the adjustment for the immediately preceding taxation year, the ratio for the taxation year shall be deemed to be that determined for the immediately preceding taxation year.

INDEXED PERSONAL TAX CREDITS

	1988	1989	1990	1991	1992-1995	1996-1998	1999	2000
Indexing factor from previous year	n/a	1.011	1.017	1.018	1.028	1.000	1.000	1.064
118(1)B(c): basic personal credit	$1,020	$1,031	$1,049	$1,068	$1,098	$1,098	$1,155	$1,229
118(1)B(a), (b): married/equivalent-to-married	850	859	874	890	915	915	972	1,044
— income limit	500	506	514	524	538	538	572	614
118(1)B(d): dependent child under 18, each of first two (pre-1993)	66	67	68	69	71 (1992)			
— for each additional such dependant (pre-1993)	132	133	136	138	142 (1992)			
infirm under age 18 [note 1]								500
118(1)B(d): infirm age 18 or over	250	253	257	262	269	400	400	406
— income limit	2,500	2,528	2,570	2,617	2,690	4,103	4,103	4,845
118(2): age 65 or older (low-income only, since 1994)	550	556	566	576	592	592	592	600
118(3): maximum pension credit	170	170	170	170	170	170	170	170
118.3(1): disability credit	550	556	566	700	720	720	720	730
118(1)B(c.1): caregiver							400	406
118.2(1): medical expense credit — income threshold	1,500	1,517	1,542	1,570	1,614	1,614	1,614	1,637
117(7): notch provision (after 1992, see 118.2(1)D)	6,000	6,066	6,169	6,280	6,456	6,456	6,794	7,131
180.2(1): OAS/family allowance clawback — income threshold		50,000	50,850	51,765	53,215	53,215	53,215	53,960
180.2(4): OAS monthly grind-down					665	665	665	675

Notes:

1. The 2000 federal budget introduced a new credit for those supporting children eligible for the disability credit. The amount of the credit is reduced by child and attendant care expenses claimed in respect of the child exceeding $2,000.

INDEXED FEDERAL TAX RATES FOR INDIVIDUALS

1988 Income Tax Rate Schedule

Taxable Income	Tax
$27,500 or less	17%
In excess of:	
$27,500	$ 4,675 + 26% on next $27,500
55,000	$11,825 + 29% on remainder

1989 Income Tax Rate Schedule

Taxable Income	Tax
$27,803 or less	17%
In excess of:	
$27,803	$ 4,726 + 26% on next $27,802
55,605	$11,955 + 29% on remainder

1990 Income Tax Rate Schedule

Taxable Income	Tax
$28,275 or less	17%
In excess of:	
$28,275	$ 4,807 + 26% on next $28,275
56,550	$12,158 + 29% on remainder

1991 Income Tax Rate Schedule

Taxable Income	Tax
$28,784 or less	17%
In excess of:	
$28,784	$ 4,893 + 26% on next $28,784
57,568	$12,377 + 29% on remainder

1992–1999 Income Tax Rate Schedule

Taxable Income	Tax
(inflation less than 3% per year)	
$29,590 or less	17%
In excess of:	
$29,590	$ 5,030 + 26% on next $29,590
59,180	$12,724 + 29% on remainder

2000 Income Tax Rate Schedule

Taxable Income	Tax on Lower Limit	Tax Rate on Excess	Surtax Rate	Surtax Threshold
$0 — 30,004	$ —	17%	5%	$15,500
30,005 — 60,009	5,101	25%		
60,010 and over	12,602	29%		

Notes:

See s. 180.1 regarding surtax and Division E.1 regarding minimum tax.

Pre-RSC History [s. 117.1]: S. 117.1 and heading added by 1973-74, c. 30, s. 15, applicable to 1974 *et seq.*

Definitions [s. 117.1]: "amount" — 248(1); "Consumer Price Index" — 117.1(4); "individual", "prescribed", "regulation" — 248(1); "taxation year" — 249.

118. (1) Personal credits — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the total of,

(a) **married status** — in the case of an individual who at any time in the year is a married person who supports the individual's spouse and is not living separate and apart from the spouse by reason of a breakdown of their marriage, an amount equal to the total of

(i) $7,131, and

(ii) the amount determined by the formula

$$\$6{,}055^{15} - (C - \$606^{15})$$

where

C is the greater of $606[15] and the income of the individual's spouse for the year or, where the individual and the individual's spouse are living separate and apart at the end of the year because of a breakdown of their marriage, the spouse's income for the year while married and not so separated,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", by Sch. 2, s. 11, will replace "married" with "married or in a common-law partnership", and by Sch. 2, s. 13, will replace "married person" with "married person or a person who is in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Amendment — Basic personal amount and spousal amount

Notice of Ways and Means Motion, federal budget, February 28, 2000: (2) That, for the purpose of indexing amounts for 2000,

(a) the basic personal amount for 1999 be considered to be $7,131 (indexed to $7,231 for 2000),

(b) the spouse and equivalent-to-spouse amounts for 1999 be considered to be $6,055 (indexed to $6,140 for 2000), and

(c) the income threshold for 1999 used in computing the spouse and equivalent-to-spouse tax credits be considered to be $606 (indexed to $614 for 2000).

Federal budget, supplementary information, February 28, 2000: [See under 117.1(1).]

Related Provisions: 82(3) — Optional inclusion into income of dividends received by spouse; 117.1(1) — Indexing for inflation; 118(4) — Limitations; 118(5) — No deduction where claim made for support; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt; 252(4)(a) — Extended meaning of "spouse".

History: Subparas. (a)(i) and (ii) of the description of B in subsec. 118(1) amended by 2000, c. 19, subsec. 24(1), applicable to 1999 *et seq.* except that, in their application to the 1999 taxation year, the references to "$7,131", "$6,055" and "$606" in subparas. (a)(i) and (ii) shall be read as references to "$6,794", "$5,718" and "$572", respectively. The subparas. formerly read:

(i) $6,000[13], and

(ii) an amount determined by the formula

$$\$5{,}000^{13} - (C - \$500^{13})$$

where

C is the greater of $500[13] and the income of the individual's spouse for the year or, where the individual and the individual's

[13]Indexed by s. 117.1 after 1988 — ed.

[15]Indexed by 117.1(1) after 2000 (and different figures apply for 1999) — ed.

spouse are living separate and apart at the end of the year by reason of a breakdown of their marriage, the spouse's income for the year while married and not so separated,

The opening words of para. (a) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(2), applicable to 1997 *et seq.* The opening words formerly read:

(a) in the case of an individual who at any time in the year is a married person who supports the individual's spouse, an amount equal to the total of

Pre-RSC History: See at end of s. 118. See also former para. 109(1)(a), s. 117.1.

Interpretation Bulletins: IT-295R4: Taxable dividends received after 1987 by a spouse; IT-513R: Personal tax credits.

Forms: T1E-NR: Declaration of support of non-resident dependent spouse and children; T1 Sched. 6: Amounts for infirm dependants age 18 or older.

(b) **wholly dependent person ["equivalent to spouse" credit]** — in the case of an individual who does not claim a deduction for the year because of paragraph (a) and who, at any time in the year,

(i) is an unmarried person or a married person who neither supported nor lived with the married person's spouse and is not supported by the spouse, and

Proposed Amendment — Common-law partners

(i) is

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common-law partner and who is not supported by that spouse or common-law partner, and

Application: 2000, c. 12 (Bill C-23), subsec. 131(1), will amend subpara. (b)(i) of the description of B in subsec. 118(1) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

(C) related to the individual, and

(D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the total of

(iii) $7,131[15], and

(iv) the amount determined by the formula

$$\$6,055^{15} - (D - \$606^{15})$$

where

D is the greater of $606[15] and the dependent person's income for the year,

Proposed Amendment — Equivalent-to-spouse amount

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 118(1)B(a).]

Related Provisions: 117.1(1) — Indexing for inflation; 118(4) — Limitations; 118(5) — No deduction where claim made for support; 118.3(2) — Dependant having impairment; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt; 252(4) — Extended meaning of "spouse".

History: Subparas. (b)(iii) and (iv) of the description of B in subsec. 118(1) amended by 2000, c. 19, subsec. 24(2), applicable to 1999 *et seq.* except that, in their application to the 1999 taxation year, the references to "$7,131", "$6,055" and "$606" in subparas. (b)(iii) and (iv) shall be read as references to "$6,794", "$5,718" and "$572", respectively. Those subparas. formerly read:

(iii) $6,000[13], and

(iv) an amount determined by the formula

$$\$5,000^{13} - (D - \$500^{13})$$

where

D is the greater of $500[13] and the income for the year of the dependent person,

The opening words of para. (b) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(3), applicable to 1997 *et seq.* Those words formerly read:

(b) in the case of an individual not entitled to a deduction by reason of paragraph (a) who, at any time in the year,

Pre-RSC History: See at end of s. 118. See also former para. 109(1)(b), s. 117.1.

Selected Cases [para. 118(1)B(b)]: *Geddes v. R.*, [2000] 2 C.T.C. 2577 (TCC) (Intermittent but substantial visits sufficient to qualify).

Interpretation Bulletins: IT-513R: Personal tax credits.

Forms: T1 Sched. 5: Equivalent-to-spouse amount.

(b.1) **supplementary amount [low-income individuals]** — [Repealed]

History: Para. (b.1) of the description of B in subsec. 118(1) repealed by 2000 c. 19, subsec. 24(4), applicable to 2000 *et seq.* The para. formerly read:

(b.1) supplementary amount [low-income individuals] — for each individual (other than a trust), 1/2 of the amount, if any, by which the total of

(i) $500[16], and

(ii) if an amount is deducted under paragraph (a) or (b) by the individual for the year in respect of another individual (or would be so deducted if the other individual had no income for the year), the lesser of

(A) $500[16], and

(B) the amount, if any, by which

(I) the total of $500[16] and the amount used under paragraph (c) for the year

exceeds

(II) the other individual's income for the year or, where the other individual is the individual's spouse and both persons are living separate and apart at the end of the year by reason of a breakdown of their marriage, the other individual's income for the year while married and not so separated

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[13] Indexed by s. 117.1 after 1988 — ed.

[15] Indexed by 117.1(1) after 2000 (and different figures apply for 1999) — ed.

[16] Indexed by s. 117.1 after 1999 — ed.

exceeds

(iii) 4% of the amount, if any, by which

(A) the individual's income for the year

exceeds

(B) the total of $500, the amount used under paragraph (c) for the year and, if subparagraph (ii) applies for the year to the individual, the amount determined under clause (ii)(B) for the year,

The opening words of para. (b.1) of the description of B in subsec. 118(1) amended by the said c. 19, subsec. 24(3), applicable to the 1999 taxation year. The opening words formerly read:

supplementary amount [low-income individuals] — for each individual (other than a trust), the amount, if any, by which the total of

Para. (b.1) added to the description of B in subsec. 118(1) by 1999, c. 22, subsecs. 31(1), applicable to 1998 *et seq.* except that, in its application to the 1998 taxation year, the reference to "the amount" in the opening words of para. (b.1) shall be read as a reference to "50% of the amount".

(c) **single status** — except in the case of an individual entitled to a deduction because of paragraph (a) or (b), $7,131[15],

Proposed Amendment — Basic personal amount

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 118(1)B(a).]

Related Provisions: 117.1(1) — Indexing for inflation; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt; 122(1.1) — Credits not permitted to trust.

History: Para. (c) of the description of B in subsec. 118(1) amended by 2000, c. 19, subsec. 24(5), applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the reference to "$7,131" shall be read as "$6,794". The para. formerly read:

(c) single status — except in the case of an individual entitled to a deduction by reason of paragraph (a) or (b), $6,000[13],

Para. (c) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(4), by striking out the word "and" at the end, applicable to 1996 *et seq.*

Pre-RSC History: See at end of s. 118. See also former para. 109(1)(b), s. 117.1.

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant; IT-513R: Personal tax credits.

(c.1) **in-home care of relative** — in the case of an individual who, at any time in the year alone or jointly with one or more persons, maintains a self-contained domestic establishment which is the ordinary place of residence of the individual and of a particular person

(i) who has attained the age of 18 years before that time,

(ii) who is

(A) the individual's child or grandchild, or

(B) resident in Canada and is the individual's parent, grandparent, brother, sister, aunt, uncle, nephew or niece, and

Proposed Amendment — 118(1)B(c.1)(ii)(B)

(B) resident in Canada and is the parent, grandparent, brother, sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner, and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 62, will amend cl. (c.1)(ii)(B) of the description of B in subsec. 118(1) to read as above, applicable to 1998 *et seq.* except that the cl. shall be read without reference to "or common-law partner" for any taxation year that ends before 2001 unless a valid election is made by the taxpayer under s. 144 of the *Modernization of Benefits and Obligations Act*, c. 12 of the Statutes of Canada, 2000, that that Act apply to the taxpayer in respect of one or more taxation years that includes the year.

This amendment also reflects changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Technical Notes: Paragraph (c.1) of the description of B in section 118(1) of the Act provides a tax credit to an individual who provides in-home care for an adult relative. The relative in respect of whom the credit may be claimed has to be the individual's child, grandchild, parent, grandparent, brother, sister, aunt, uncle, nephew or niece. The paragraph is amended to also allow a taxpayer to claim the caregiver tax credit in respect of such relatives of the taxpayer's spouse.

This amendment applies to the 1998 and subsequent taxation years.

(iii) who is

(A) the individual's parent or grandparent and has attained the age of 65 years before that time, or

(B) dependent on the individual because of the particular person's mental or physical infirmity,

the amount determined by the formula

$$\$13,853^{17} - D.1$$

where

D.1 is the greater of $11,500[17] and the particular person's income for the year,

Related Provisions: 117.1(1) — Indexing for inflation; 118(1)B(e) — Credit for infirm dependant; 118(4) — Limitations; 118(5) — No deduction where claim made for support; 118.2(2)(l.8) — Medical expense credit for caregiver training; 118.3(2) — Dependant having impairment; 118.91 — Individual resident in Canada for part of the year; 118.95(b) — Application in year individual becomes bankrupt.

History: Para. (c.1) added to the description of B in subsec. 118(1) by 1999, c. 22, subsec. 31(2), applicable to 1998 *et seq.*

(d) **dependants** — for each dependant of the individual for the year who

(i) attained the age of 18 years before the end of the year, and

(ii) was dependent on the individual because of mental or physical infirmity,

the amount determined by the formula

$$\$7,131^{15} - E$$

where

E is the greater of $4,778[15] and the dependant's income for the year, and

Related Provisions: 108(1)"preferred beneficiary"(a)(ii)(A) — infirm dependant can be a preferred beneficiary of trust; 117.1(1) — Indexing for inflation; 118(1)B(e) — Credit for infirm dependant who also qualifies for equivalent-to-spouse credit; 118(4) — Limitations; 118(6) — Definition of dependant; 118.3(2) — Dependant having impairment; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.95(b) — Application in year individual becomes bankrupt.

[13] Indexed by s. 117.1 after 1988 — ed.

[15] Indexed by 117.1(1) after 2000 (and different figures apply for 1999) — ed.

[17] Indexed by s. 117.1 after 1998 — ed.

History: The portion of para. (d) of the description of B in subsec. 118(1) after subpara. (ii) amended by 2000, c. 19, subsec. 24(6), applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the references to "$7,131" and "$4,778" shall be read as references to "$6,794" and "$4,441", respectively. The portion formerly read:

the amount determined by the formula

$$\$6,456^{18} - E$$

where

E is the greater of $4,103[18] and the income for the year of the dependant, and

The closing words of para. (d) of the description of B in subsec. 118(1) amended by 1997, c. 25, subsec. 25(5), applicable to 1996 *et seq.* Those words formerly read:

an amount determined by the formula

$$\$1,471^{14} - (E - \$2,500^{14})$$

where

E is the greater of $2,500[14] and the income for the year of the dependant.

Para. (d) of the description of B in subsec. 118(1) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 8(1), applicable to 1993 *et seq.* Para. (d) formerly read:

(d) for each dependant of the individual for the year, an amount equal to

(i) if the dependant was under the age of 18 years at any time in the year, an amount determined by the formula

$$\$388^{14} - (E - \$2,500^{14})$$

where

E is the greater of $2,500[14] and the income for the year of the dependant,

except that where the individual has more than 2 such dependants for the year, the reference to the amount "$388[14]" in the formula under this subparagraph shall, in respect of all but 2 of those dependants, be read as twice that amount, and

(ii) in the case of a person dependent on the individual by reason of mental or physical infirmity and to whom subparagraph (i) does not apply, an amount determined by the formula

$$\$1,471^{14} - (F - \$2,500^{14})$$

where

F is the greater of $2,500[14] and the income for the year of the dependant.

(For earlier history see at end of s. 118. See also former para. 109(1)(d), s. 117.1.)

(e) **additional amount [re dependant]** — in the case of an individual entitled to a deduction in respect of a person because of paragraph (b) and who would also be entitled, but for paragraph (4)(c), to a deduction because of paragraph (c.1) or (d) in respect of the person, the amount by which the amount that would be determined under paragraph (c.1) or (d), as the case may be, exceeds the amount determined under paragraph (b) in respect of the person.

Related Provisions: 118(6) — Definition of dependant; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.95(b) — Application in year individual becomes bankrupt.

History: Para. (e) of the description of B amended by 1999, c. 22, subsec. 31(3), applicable to 1998 *et seq.* Para (e) formerly read:

(e) **infirm dependant** — in the case of an individual entitled to a deduction in respect of a person because of paragraph (b) and who would also be entitled, but for paragraph (4)(c), to a deduction because of paragraph (d) in respect of the same person, the amount by which the amount that would be determined under paragraph (d) in respect of the person exceeds the amount determined under paragraph (b) in respect of the person.

Para. (e) added to the description of B in subsec. 118(1) by 1997, c. 25, subsec. 25(6), applicable to 1996 *et seq.*

Selected Cases [subsec. 118(1)]: *Dionne v. R.*, [1998] 2 C.T.C. 2352 (TCC) (Provision does not violate Canadian Human Rights Act).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-513R: Personal tax credits.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide].

(2) **Age credit** — For the purpose of computing the tax payable under this Part for a taxation year by an individual who, before the end of the year, has attained the age of 65 years, there may be deducted the amount determined by the formula

$$A \times (\$3,236^{13} - B)$$

where

A is the appropriate percentage for the year; and

B is 15% of the amount, if any, by which the individual's income for the year would exceed $25,921[19] if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income.

Related Provisions: 117.1(1) — Indexing for inflation; 118.8 — Transfer of unused credits to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.95(b) — Application in year individual becomes bankrupt; 180.2 — "Clawback" tax and withholding of old age security benefits.

History: The description of B in subsec. 118(2) amended by 1998, c. 19, s. 134, applicable to 1994 *et seq.* except that, notwithstanding s. 117.1, the value of B in subsec. 118(2) shall, for the 1994 taxation year, be determined as the lesser of $1,741 and 7.5% of the amount, if any, by which the individual's income for the year would exceed $25,921 if no amount were included in respect of a gain from a disposition of property to which s. 79 applies in computing that income. The description formerly read:

B is 15% of the amount, if any, by which the individual's income for the year exceeds $25,921[19].

Subsec. 118(2) amended by 1995, c. 3, s. 33, applicable to 1994 *et seq.* except that, notwithstanding s. 117.1, the value of B in subsec. 118(2) shall, for the 1994 taxation year, be determined as the lesser of $1,741 and 7.5% of the amount, if any, by which the individual's income for the year exceeds $25,921. Subsec. (2) formerly read:

(2) **Age credit** — For the purpose of computing the tax payable under this Part for a taxation year by an individual who, before the end of the year, has attained the age of 65 years, there may be deducted an amount determined by the formula

$$A \times \$3,236^{14}$$

where

A is the appropriate percentage for the year.

Pre-RSC History: See at end of s. 118. See also former para. 109(1)(h), s. 117.1.

Selected Cases [subsec. 118(2)]: *Peter v. R.*, [1997] 2 C.T.C. 2504 (TCC) (Treaty-protected income not included in calculation).

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[13]Indexed by s. 117.1 after 1988 — ed.

[14]Indexed by s. 117.1 after 1988.

[18]Indexed by s. 117.1 after 1996 — ed.

[19]Indexed by s. 117.1 after 1995.

Interpretation Bulletins: IT-513R: Personal tax credits.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

(3) Pension credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the lesser of $1,000[20] and

(a) where the individual has attained the age of 65 years before the end of the year, the pension income received by the individual in the year, and

(b) where the individual has not attained the age of 65 years before the end of the year, the qualified pension income received by the individual in the year.

Proposed Amendment — Abandonment of 1996 Proposal re Seniors' Benefit

Department of Finance news release, July 28, 1998: *Finance Minister's Statement on the Seniors Benefit*

[The March 6, 1996 Budget Papers had proposed a non-taxable Seniors Benefit, to be introduced in 2001 and linked to income. The age credit in 118(2) and pension income credit in 118(3) would have been eliminated with the introduction of the Seniors Benefit — ed.]

Finance Minister Paul Martin today issued the following statement regarding Canada's retirement income system: ....

"Second, we proposed the restructuring of the OAS/GIS [Old Age Security/Guaranteed Income Supplement] into a new integrated Seniors Benefit. It is this proposal that I wish to discuss this morning....

"Therefore, in light of the structural enhancements to the public pension system, the turnaround in the country's economic prospects, and because of our commitment to sound fiscal management, the government is today announcing that the proposed Seniors Benefit will not proceed. The existing OAS/GIS system will be fully maintained...."

For further information: Scott Reid, Office of the Minister of Finance, (613) 996-7861; Dale Eisler, Consultations and Communications, (613) 995-5683.

Related Provisions: 60(j.2) — Rollover of pension income to spouse's RRSP before 1995; 104(27) — Deemed income of beneficiary; 118(7), (8) — Meaning of "pension income" and "qualified pension income"; 118.8 — Transfer of unused credits to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Separate returns; 118.95(a) — Application in year individual becomes bankrupt; 122(1.1) — Credits not permitted to trust.

History: 1999, c. 22, s. 33 provides the following special rule, applicable to taxation years that ended after November 15, 1997 and before 1998.

For the purposes of the Act, if

(a) a taxpayer made a gift at any particular time before February 1998, and after the end of a taxation year that ended after November 15, 1997 and before 1998, that would be deductible under section 110.1 or 118.1 of the Act in computing the taxpayer's taxable income or tax payable under Part I of the Act for the year if it were made immediately before the end of the year,

(b) the gift was a gift of tangible property (other than real property) or a gift by cash, cheque, credit card or money order,

(c) the gift was not made

(i) through a payroll deduction, or

(ii) where the taxpayer died after 1997, by the taxpayer's will, and

(d) the taxpayer so elects in the taxpayer's return of income under the Act for the year or by notifying the Minister of National Revenue in writing before 1999,

the taxpayer is deemed to have made the gift and, in the case of a gift of tangible property, to have disposed of the property immediately before the end of the taxpayer's taxation year that ended before 1998 and not to have done so at the particular time.

Subsec. 118(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 52(1), applicable to 1992 *et seq.* Subsec. (3) formerly read:

(3) Pension credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

(a) where the individual has attained the age of 65 years before the end of the year, an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the lesser of $1,000[20] and the pension income received by the individual in the year; and

(b) where the individual (other than an individual referred to in paragraph (a)) has before the end of the year

(i) attained the age of 60 years,

(ii) received a disability pension or survivor's pension under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act, or

(iii) not attained the age of 60 years, and has not deducted in computing the individual's income for the year an amount under paragraph 60(j) (other than in respect of an amount included in computing the individual's income pursuant to subsection 147(10), which amount was received in satisfaction of all the individual's rights and entitlements under a deferred profit sharing plan),

an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the lesser of $1,000[20] and the qualified pension income received by the individual in the year.

Pre-RSC History: For special version of subpara. 118(3)(b)(iii) for the 1988 taxation year, see "History" at the end of s. 118. For earlier history, see former s. 110.2.

Selected Cases [subsec. 118(3)]: *Whalen v. Canada*, [1995] 1 C.T.C. 2339 (TCC) (Payments from RRIF to persons under 65 do not give rise to entitlement to pension credit).

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant; IT-517R: Pension tax credit.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T212: Pension income allocations/designations.

(4) Limitations re subsec. (1) — For the purposes of subsection (1), the following rules apply:

(a) no amount may be deducted under subsection (1) because of paragraphs (a) and (b) of the description of B in subsection (1) by an individual in a taxation year for more than one other person;

(a.1) no amount may be deducted under subsection (1) because of paragraph (b) of the description of B in subsection (1) by an individual for a taxation year for a person in respect of whom an amount is deducted because of paragraph (a) of that description by another individual for the year if, throughout the year, the person and that other individual are married to each other

[20] Not indexed for inflation.

and are not living separate and apart because of a breakdown of their marriage;

Proposed Amendment — 118(4)(a.1)

(a.1) no amount may be deducted under subsection (1) because of paragraph (b) of the description of B in subsection (1) by an individual for a taxation year for a person in respect of whom an amount is deducted because of paragraph (a) of that description by another individual for the year if, throughout the year, the person and that other individual are married to each other or in a common-law partnership with each other and are not living separate and apart because of a breakdown of their marriage or the common-law partnership, as the case may be;

Application: 2000, c. 12 (Bill C-23), subsec. 131(3), will amend para. 118(4)(a.1) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) not more than one individual is entitled to a deduction under subsection (1) because of paragraph (b) of the description of B in subsection (1) for a taxation year in respect of the same person or the same domestic establishment and where two or more individuals otherwise entitled to such a deduction fail to agree as to the individual by whom the deduction may be made, no such deduction for the year shall be allowed to either or any of them;

(c) where an individual is entitled to a deduction under subsection (1) because of paragraph (b) of the description of B in subsection (1) for a taxation year in respect of any person, no amount may be deducted because of paragraph (c.1) or (d) of that description by any individual for the year in respect of the person;

(d) where an individual is entitled to a deduction under subsection (1) because of paragraph (c.1) of the description of B in subsection (1) for a taxation year in respect of any person, the person is deemed not to be a dependant of any individual for the year for the purpose of paragraph (d) of that description; and

(e) where more than one individual is entitled to a deduction under subsection (1) because of paragraph (c.1) or (d) of the description of B in subsection (1) for a taxation year in respect of the same person,

(i) the total of all amounts so deductible for the year shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that person if that individual were the only individual entitled to deduct an amount for the year because of that paragraph for that person, and

(ii) if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

Related Provisions: 118(6) — Definition of "dependant".

History: Para. 118(4)(a.1) added, paras. 118(4)(c) to (e) amended, by 1999, c. 22, subsecs. 31(4), (5), applicable to 1998 *et seq.* Paras. (c) to (e) formerly read:

(c) where an individual is entitled to a deduction under subsection (1) because of paragraph (b) of the description of B in subsection (1) for any person described therein, the person shall be deemed not to be a dependant for the year for the purposes of paragraph (1)(d); and

(d) [Repealed]

(e) where more than one individual is, in respect of a taxation year, entitled to deduct an amount under subsection (1) because of paragraph (d) of the description of B in subsection (1) for the same dependant, the total of all amounts so deductible for the year shall not exceed the maximum amount that would be deductible by reason of that paragraph for the year by any one of those individuals for that dependant if that individual were the only individual entitled to deduct an amount for the year by reason of that paragraph for that dependant and, where the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

Subsec. 118(4) amended by 1997, c. 25, subsec. 25(7), by substituting

(a) in para. (a), "because of paragraphs (a) and (b) of the description of B in subsection (1)" for "by reason of paragraphs (1)(a) and (b)",

(b) in paras. (b) and (c), "because of paragraph (b) of the description of B in subsection (1)" for "by reason of paragraph (1)(b)", and

(c) in para. (e), "because of paragraph (d) of the description of B in subsection (1)" for "by reason of paragraph (1)(d)",

applicable April 25, 1997.

Para. 118(4)(d) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 8(2), applicable to 1993 *et seq.* Para. (d) formerly read:

(d) no amount may be deducted under subsection (1) by reason of paragraph (1)(d) by an individual for a taxation year for a person in respect of whom an allowance referred to in subsection 56(5) has been paid in the year, except to the extent of the proportion of the allowance paid in the year in respect of the person that has been included in computing the individual's income for the year; and

For earlier history see former subsecs. 109(2), (5).

Interpretation Bulletins: IT-513R: Personal tax credits; IT-530: Support payments.

(5) Support — No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (as defined in subsection 56.1(4)) to the individual's spouse or former spouse in respect of the person and the individual

(a) lives separate and apart from the spouse or former spouse throughout the year because of the breakdown of their marriage; or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or former spouse.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4) — Extended meaning of "spouse".

History: Subsec. 118(5) amended by 1997, c. 25, subsec. 25(8), applicable to 1997 *et seq.* Subsec. (5) formerly read:

(5) Alimony and maintenance — Where an individual in computing the individual's income for a taxation year is entitled to a deduction under paragraph 60(b), (c) or (c.1) in respect of a payment for the maintenance of a spouse or child, the spouse or child shall, for the purposes of this section (other than the definition "qualified pension income" in subsection (7)) be deemed not to be the spouse or child of the individual.

Pre-RSC History: See at end of s. 118. See also former subsec. 109(4).

Selected Cases [subsec. 118(5)]: *Paustian v. Canada*, [1995] 1 C.T.C. 2395 (TCC) (Entitlement to deduction under para. 60(b) disqualifies deduction under s. 118).

Interpretation Bulletins: IT-118R3: Alimony and maintenance; IT-513R: Personal tax credits; IT-530: Support payments.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

(6) Definition of "dependant" — For the purposes of paragraphs (d) and (e) of the description of B in subsection (1) and paragraph (4)(e), "dependant" of an individual for a taxation year means a person who at any time in the year is dependent on the individual for support and is

(a) the child or grandchild of the individual or of the individual's spouse; or

(b) the parent, grandparent, brother, sister, uncle, aunt, niece or nephew, if resident in Canada at any time in the year, of the individual or of the individual's spouse.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 118(5) — Meaning of "spouse" and "child" where alimony or maintenance being paid; 252(4) — Extended meaning of "spouse".

History: The opening words of subsec. 118(6) amended by 1997, c. 25, subsec. 25(9), applicable to 1996 *et seq.* Those words formerly read:

(6) For the purposes of paragraphs (1)(d) and (4)(e), "dependant" of an individual for a taxation year means a person who at any time in the year is dependent on the individual for support and is

Pre-RSC History: See at end of s. 118. See also former subsec. 109(6).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-513R: Personal tax credits.

(7) Definitions — Subject to subsection (8), for the purposes of subsection (3),

"pension income" received by an individual in a taxation year means the total of

(a) the total of all amounts each of which is an amount included in computing the individual's income for the year that is

(i) a payment in respect of a life annuity out of or under a superannuation or pension plan,

(ii) an annuity payment under a registered retirement savings plan, under an "amended plan" as referred to in subsection 146(12) or under an annuity in respect of which an amount is included in computing the individual's income by reason of paragraph 56(1)(d.2),

(iii) a payment out of or under a registered retirement income fund or under an "amended fund" as referred to in subsection 146.3(11),

(iv) an annuity payment under a deferred profit sharing plan or under a "revoked plan" as referred to in subsection 147(15),

(v) a payment described in subparagraph 147(2)(k)(v), or

(vi) the amount by which an annuity payment included in computing the individual's income for the year by reason of paragraph 56(1)(d) exceeds the capital element of that payment as determined or established under paragraph 60(a), and

(b) the total of all amounts each of which is an amount included in computing the individual's income for the year by reason of section 12.2 of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Related Provisions: 104(27) — Flow-out of pension benefits by trust; 118(8) — Limitations; 118.7 — Credit for UI/EI premium and CPP contribution.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"qualified pension income" received by an individual in a taxation year means the total of all amounts each of which is an amount included in computing the individual's income for the year and described in

(a) subparagraph (a)(i) of the definition "pension income" in this subsection, or

(b) any of subparagraphs (a)(ii) to (vi) or paragraph (b) of the definition "pension income" in this subsection received by the individual as a consequence of the death of a spouse of the individual.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 104(27) — Fow-out of pension benefits by trust; 118(5) — Alimony and maintenance; 118(8) — Limitations; 118.7 — Credit for UI/EI premium and CPP contribution; 248(8) — Occurrences as a consequence of death; 252(4) — Extended meaning of "spouse".

History: Para. (b) of "qualified pension income" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 52(2), applicable after 1992. Para. (b) formerly read:

(b) any of subparagraphs (a)(ii) to (vi) or paragraph (b) of the definition "pension income" in this subsection received by the individual as a consequence of the death of the spouse (within the meaning assigned by subsection 146(1.1)) of the individual.

Pre-RSC History: Para. (b) of "qualified pension income" amended by 1990, c. 35, s. 10, to substitute "the spouse (within the meaning assigned by subsection 146(1.1)) of the individual" for "the individual's spouse", applicable to 1988 *et seq.*

Also, see at end of s. 118. For pre-1988 history, see former subsec. 110.2(3).

Interpretation Bulletins: IT-500R: RRSPS — death of an annuitant; IT-517R: Pension tax credit.

(8) Interpretation — For the purposes of subsection (3), "pension income" and "qualified pension income" received by an individual do not include any amount that is

(a) the amount of a pension or supplement under the *Old Age Security Act* or of any similar payment under a law of a province;

(b) the amount of a benefit under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act;

(c) a death benefit;

(d) the amount, if any, by which

(i) an amount required to be included in computing the individual's income for the year

exceeds

(ii) the amount, if any, by which the amount referred to in subparagraph (i) exceeds the total of all amounts deducted by the individual for the year in respect of that amount; or

(e) a payment received out of or under a salary deferral arrangement, a retirement compensation arrangement, an employee benefit plan, an employee trust or a prescribed provincial pension plan.

Regulations: 7800(1) (prescribed provincial pension plan).

Related Provisions: 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Tax payable by non-resident individual.

Pre-RSC History: See at end of s. 118.

Interpretation Bulletins: IT-517R: Pension tax credit.

Pre-RSC History [s. 118]: S. 118 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* except that for the 1988 taxation year, subpara. 118(3)(b)(iii) shall be read as follows:

(iii) not attained the age of 60 years and, in computing his income for the year, has deducted no amount under paragraph 60(j) other than an amount

(A) in respect of an amount included in computing his income pursuant to subsection 147(10) and received in satisfaction of his rights and entitlements under a deferred profit sharing plan, or

(B) in respect of an amount received out of or under a registered pension plan where the amount so received may reasonably be considered to be

(I) the refund of all or part of the aggregate of all amounts each of which was an additional voluntary contribution made by him before October 9, 1986 to a registered pension plan for his benefit in respect of services rendered by him, or

(II) interest on the refund,

Definitions [s. 118]: "amount", "annuity", "appropriate percentage" — 248(1); "aunt" — 252(2)(e); "brother" — 252(2); "Canada" — 255; "child" — 118(5), 252(1); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "dependant" — 118(5), (6); "employee benefit plan" — 248(1); "grandparent" — 252(2); "individual" — 248(1); "marriage" — 252(4)(b); "married" — 252(4)(c); "Minister" — 248(1); "nephew", "niece" — 252(2)(g); "parent" — 252(2); "pension income" — 118(7), (8); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualified pension income" — 118(7), (8); "received" — 248(7); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "related" — 251(2); "resident in Canada" — 250; "salary deferral arrangement", "self-contained domestic establishment" — 248(1); "sister" — 252(2); "spouse" — 118(5), 252(4)(a); "tax payable" — 248(2); "taxation year" — 249; "uncle" — 252(2)(f); "unmarried" — 252(4)(d).

Interpretation Bulletins [s. 118]: IT-83R3: Non-profit organizations — Taxation of income from property; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-495R2: Child care expenses; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars [s. 118]: 92-3: Guidelines for refunds beyond the normal three year period.

Forms [s. 118]: T765: Summary of tax calculations; T767: Income and deductions.

Pre-RSC History [former s. 118]: Former s. 118 repealed by 1980-81-82-83, c. 140, s. 77, applicable to the 1982 and subsequent taxation years. That section formerly read:

118. (1) General averaging — Notwithstanding section 117, where, in the case of an individual who was resident in Canada throughout the taxation year immediately preceding a particular taxation year (which particular taxation year is hereafter in this section referred to as the "year of averaging"), any excess remains when

(a) the greater of 110% of his income for the immediately preceding taxation year and 120% of the quotient obtained when

(i) the aggregate of all amounts each of which is the individual's income for a taxation year in the period of such of the consecutive taxation years (not exceeding 4) immediately preceding the year of averaging as were years throughout which he was resident in Canada

is divided by

(ii) the number of years in the period described in subparagraph (i)

is deducted from

(b) the individual's income for the year of averaging,

(which excess is hereafter in this subsection referred to as the "averaging excess"), the tax payable by the individual under this Part upon his amount taxable for the year of averaging is the aggregate of

(c) the amount that would be determined under section 117 for the individual for the year of averaging if his amount taxable for the year were the remainder, if any, obtained when the averaging excess is deducted from the individual's amount taxable for the year computed without regard to this subsection, and

(d) 5 times the amount, if any, by which

(i) the amount that would be determined under section 117 for the individual for the year of averaging if his amount taxable for the year of averaging were the aggregate of the remainder described in paragraph (c) and an amount equal to 1/5 of the lesser of the averaging excess and the individual's amount taxable for the year of averaging

exceeds

(ii) the amount determined under paragraph (c).

(2) Non-resident individuals — Notwithstanding section 117, where, in the case of an individual who

(a) at no time during a taxation year (in this section referred to as the "year of averaging") and the immediately preceding taxation year was resident in Canada, and

(b) in each of those years, performed the duties of one or more offices or employments in Canada or carried on one or more businesses in Canada,

any excess remains after

(c) the greater of 110% of his income for the immediately preceding taxation year and 120% of the quotient obtained when

(i) the aggregate of all amounts each of which is the individual's income for a taxation year in the period of such of the consecutive taxation years (not exceeding 4) immediately preceding the year of averaging as were years

(A) throughout which he was not resident in Canada, and

(B) for which he has filed a return of income under this Part

is divided by

(ii) the number of years in the period described in subparagraph (i),

is deducted from

(d) the individual's income for the year of averaging,

(which excess is hereafter in this subsection referred to as the "averaging excess"), the tax payable by the individual under this Part for the year of averaging is the aggregate of

(e) the amount that would be determined under section 117 for the individual for the year of averaging if his amount taxable for the year were the remainder, if any, obtained when the averaging excess is deducted from the individual's amount taxable for the year computed without regard to this subsection, and

(f) 5 times the amount, if any, by which

(i) the amount that would be determined under section 117 for the individual for the year of averaging if his amount taxable for the year of averaging were the aggregate of the remainder described in paragraph (e) and an amount equal to 1/5 of the lesser of the averaging excess and the individual's amount taxable for the year of averaging

exceeds

(ii) the amount determined under paragraph (e).

(3) Rules applicable in determining income — For the purposes of this section the following rules apply:

(a) the income of an individual for a taxation year, at no time during which he was resident in Canada, shall be deemed to be the amount that would be determined under Division D to be his taxable income for the year if subsection 115(1) were read without reference to the words following paragraph (c) thereof;

(b) a taxpayer's income for any taxation year described in paragraph (1)(a) or (2)(c) as a taxation year preceding a year of averaging shall be deemed to be an amount equal to the greater of $1,700 and his income for the year otherwise determined for the purposes of this Part;

(c) any taxation year included in an "averaging period", within the meaning assigned that expression in section 119, pursuant to an election made by him under that section that was not revoked by him, shall not be included in the period referred to in paragraph (1)(a) or (2)(c), as the case may be; and

(d) where a taxpayer has died in a year of averaging,

(i) paragraphs (1)(a) and (2)(c) shall be read as if the references therein to "110%" and "120%" were read as references to "100%", and

(ii) subsections (1) and (2) are not applicable in respect of the year if the taxpayer's legal representative has made an election under subsection 70(2) in respect of the taxpayer's income for that year.

Para. 118(3)(b) substituted by 1973-74, c. 30, s. 16, applicable to 1973 *et seq.* Para. 118(3)(b) formerly read:

(b) a taxpayer's income for any taxation year described in paragraph (1)(a) or (2)(c) as a taxation year preceding a year of averaging shall be deemed to be an amount equal to the greater of $1,600 and his income for the year otherwise determined for the purposes of this Part;

118.1 (1) Definitions — In this section

"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts, the total cultural gifts or the total ecological gifts of the individual for the year) made by the individual in the year or in any of the 5 immediately preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

(a) a registered charity,

(b) a registered Canadian amateur athletic association,

(c) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),

(d) a Canadian municipality,

(e) the United Nations or an agency thereof,

(f) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada,

(g) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding that taxation year, or

(g.1) Her Majesty in right of Canada or a province,

to the extent that those amounts were

(h) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and

(i) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Related Provisions: 43.1(1) — Charitable gifts excluded from rules re life interests in real property; 110.1(1)(a) — Parallel deduction for corporations; 118.1(1)"total gifts"(a)(ii) — Charitable gifts limited to 20% of net income; 118.1(2.1) — Ordering of claims; 118.1(6) — Gift of capital property; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 118.1(13) — Donation of non-qualifying securities; 118.1(16) — Loanback arrangements; 143(3.1) — Hutterite colonies — election in respect of gifts; 149.1(6.4) — Donations to registered national arts service organization; Canada–U.S. tax treaty, Art. XXI:6 — Donations to U.S. charities qualify as gifts for taxpayer with U.S.-source income; Art. XXIX B:1 — Property left to U.S. charity on death.

History: Para. (g.1) added to the definition "total charitable gifts" in subsec. 118.1(1) by 1998, c. 19, subsec. 22(1), applicable to taxation years that begin after 1996.

The opening words of the definition "total charitable gifts" in subsec. 118.1(1) amended by 1996, c. 21, subsec. 23(1), applicable to gifts made after February 27, 1995. The opening words formerly read:

"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts or the total cultural gifts of the individual for the year, or would have been so included for a preceding taxation year if this section had applied to that preceding year) made by the individual in the year or in any of the 5 immediately preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

Definition "total charitable gifts" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the amount of a gift made by the individual in the year or in one of the 5 immediately preceding taxation years to

(a) a registered charity,

(b) a registered Canadian amateur athletic association,

(c) a housing corporation resident in Canada and exempt from tax under this Part by paragraph 149(1)(i),

(d) a Canadian municipality,

(e) the United Nations or an agency thereof,

(f) a university outside Canada prescribed to be a university the student body of which ordinarily includes students from Canada, or

(g) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding that taxation year,

to the extent that the amounts of those gifts have been neither

(h) deducted in computing the individual's taxable income for a taxation year preceding 1988, nor

(i) used in determining an amount that has been deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year,

but, where the individual has claimed a deduction under subsection 110(2) in computing the individual's taxable income for a taxation year, does not include the amount of any gift made in that year;

Selected Cases [subsec. 118.1(1)"total charitable gifts"]: *Woolner v. R.*, [2000] 1 C.T.C. 35 (FCA) (Anticipated benefit deprives "gift" of essential eleemosynary quality); *Burns v. MNR*, [1990] 1 C.T.C. 350 (FCA) (Donations to registered amateur athletic association not "gifts" where taxpayer paying for daughter's training); *Guertin, Antoine, Ltée v. The Queen*, [1988] 1 C.T.C. 117 (FCA) (Loan for interest to company by foundation made from amounts donated to foundation by company not artificial transactions); *The Queen v. McBurney*, [1985] 2 C.T.C. 214 (FCA); leave to appeal to SCC refused (1986), 65 N.R. 320 (note), (sub nom. *McBurney v. MNR*) (Mere lack of legal obligation to contribute to religious schools not sufficient to create gifts); *The Queen v. Zandstra*, [1974] C.T.C. 503 (FCTD) (Of amounts paid to Christian school, $200 per child held to be tuition; excess charitable).

Regulations: 3503, Sch. VIII (prescribed universities).

Forms: RC4142: Tax advantages of donating to a charity [guide].

Interpretation Bulletins: See lists at end of 118.1(1) and at end of 118.1.

Information Circulars: 75-23: Tuition fees and charitable donations paid to privately supported secular and religious schools; 84-3R5: Gifts to certain charitable organizations outside Canada. See also list at end of 118.1.

I.T. Technical News: No. 17 (loan of property as a gift).

"total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts or the

total ecological gifts of the individual for the year) made by the individual in the year or in any of the 5 immediately preceding taxation years to Her Majesty in right of Canada or a province, to the extent that those amounts were

(a) not deducted in computing the individual's taxable income for a taxation year ending before 1988,

(b) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year, and

(c) in respect of gifts made before February 19, 1997 or under agreements in writing made before that day;

Related Provisions: 43.1(1) — Crown gifts excluded from rules re life interests in real property; 110.1(1)(b) — Parallel deduction for corporations; 118.1(1)"total gifts"(b) — Crown gifts not limited to 20% of net income; 118.1(2.1) — Ordering of claims; 118.1(6) — Gift of capital property; 143(3.1) — Election in respect of gifts.

History: Para. (c) added to the definition "total Crown gifts" in subsec. 118.1(1) by 1998, c. 19, subsec. 22(2), applicable to taxation years that begin after 1996.

The opening words of the definition "total Crown gifts" in subsec. 118.1(1) amended by 1996, c. 21, subsec. 23(2), applicable to gifts made after February 27, 1995. The opening words formerly read:

"total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts of the individual for the year, or would have been so included for a preceding taxation year if this section had applied to that preceding year) made by the individual in the year or in any of the 5 immediately preceding taxation years to Her Majesty in right of Canada or a province, to the extent that those amounts were

Definition "total Crown gifts" in subsec. 118.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the amount of a gift made by the individual in the year or in one of the 5 immediately preceding taxation years to Her Majesty in right of Canada or to Her Majesty in right of a province, to the extent that the amounts of those gifts have been neither

(a) deducted in computing the individual's taxable income for a taxation year preceding 1988, nor

(b) used in determining an amount that has been deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Selected Cases [subsec. 118.1(1)"total Crown gifts"]: *Hudson Bay Mining and Smelting Co. Ltd. v. Canada*, [1989] 2 C.T.C. 309 (FCA); leave to appeal to SCC refused (1990), 106 N.R. 16 (note), (sub nom. *Hudson Bay Mining & Smelting Co. v. MNR)* ("Gift" to Crown corporation after latter acquired facilities from taxpayer neither separate transaction nor deductible).

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

I.T. Technical News: No. 17 (loan of property as a gift).

"total cultural gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift

(a) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, and

(b) that was made by the individual in the year or in any of the 5 immediately preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object,

to the extent that those amounts were

(c) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and

(d) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Related Provisions: 39(1)(a)(i.1) — Meaning of capital gain and capital loss; 110.1(1)(c) — Parallel deduction for corporations; 118.1(1)"total gifts"(c) — Cultural gifts not limited to 20% of net income; 118.1(2.1) — Ordering of claims; 118.1(7.1) — Gifts of cultural property — deemed proceeds; 118.1(10) — Determination of fair market value; 118.1(10.1) — Determination of value by Canadian Cultural Property Export Review Board; 143(3.1) — Election in respect of gifts; 207.3 — Tax on institution that disposes of cultural property.

History: Definition "total cultural gifts" in subsec. 118.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total cultural gifts" of an individual for a taxation year means the total of all values each of which is the value of a gift

(a) of an object that the Canadian Cultural Property Export Review Board has determined meets all the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*,

(b) that neither is included in the total charitable gifts or the total Crown gifts of the individual for the year, nor would have been so included in a preceding taxation year had this section been applicable to that preceding year, and

(c) that was made by the individual in the year or in one of the 5 immediately preceding taxation years to an institution or public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a purpose related to the object referred to in paragraph (a)

to the extent that the values of those gifts have been neither

(d) deducted in computing the individual's taxable income for a taxation year preceding 1988, nor

(e) used in determining an amount that has been deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Selected Cases [subsec. 118.1(1)"total cultural gifts"]: *Chabot v. R.*, [2000] 2 C.T.C. 2546 (TCC) (Artwork not owned and could not be donated); *Hudson Bay Mining and Smelting Co. Ltd. v. Canada*, [1989] 2 C.T.C. 309 (FCA); leave to appeal to SCC refused (1990), 106 N.R. 16 (note), (sub nom. *Hudson Bay Mining & Smelting Co. v. MNR)* ("Gift" to Crown corporation after latter acquired facilities from taxpayer neither separate transaction nor deductible); *Friedberg v. MNR*, [1989] 1 C.T.C. 274 (FCTD); aff'd in part [1992] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (July 2, 1992), Doc. 22990 [unreported]. Fair market value of collections donated to museum deductible despite cost to taxpayer below fair market value).

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of 118.1.

I.T. Technical News: No. 17 (loan of property as a gift).

"total ecological gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts of the individual for the year) of land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage, which gift was made by the individual in the year or in any of the 5 immediately preceding taxation years to

(a) Her Majesty in right of Canada or a province or a municipality in Canada, or

(b) a registered charity one of the main purposes of which is, in the opinion of the Minister of the Environment, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister, or that person, in respect of that gift,

to the extent that those amounts were not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

Proposed Amendment — Ecological Gifts

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Donations of Ecological Gifts*

(22) That the provisions of the Act relating to ecological gifts be modified to

(a) halve the income inclusion rate for capital gains from such gifts (other than gifts made to a private foundation) made after February 27, 2000,

(b) require the donor to file with the return of income for the taxation year in which the gift was made a document obtained from the Minister of the Environment certifying, for the purposes of the Act relating to charitable gifts, the fair market value of the gift as determined by that Minister,

(c) provide a donor with a right to appeal to the Tax Court of Canada a redetermination by that Minister of the fair market value of a gift that has been made, and

(d) provide that such a valuation apply for all purposes of the Act relating to charitable gifts for the two-year period following the time of the last determination or redetermination of the value.

Federal budget, supplementary information, February 28, 2000: *Ecologically Sensitive Lands*

The protection of Canada's natural heritage, and especially its species at risk, is a critical objective of the Government. The 1995 budget announced incentives for ecological gifts to the Government of Canada, provincial governments, Canadian municipalities or approved registered charities established for the purpose of protecting Canada's environmental heritage. To be eligible for the special provisions, a gift must be a property certified as ecologically sensitive by the Minister of the Environment. The preservation of these properties is critical to the Government's strategy for the protection of species at risk and the promotion of Canada's system of national and provincial parks and other environmental objectives. This strategy emphasizes providing assistance to encourage Canadians to take voluntary action to protect species and to make responsible stewardship an easy choice.

Donations of ecologically sensitive land from individuals are eligible for the charitable donations tax credit, while those from corporations are eligible for a charitable donation deduction. These provisions apply to transfers of title as well as to covenants, easements and servitudes established under common law, the Civil Code in Quebec, or provincial or territorial legislation allowing for their establishment. Further, ecological gifts are exempt from the rules which would otherwise limit the amount of charitable donations eligible for tax assistance in a year to 75 per cent of net income.

Normally, the value of a donated property is determined to be the price that a purchaser would pay for the property on the open market. As there is no established market for covenants, easements and servitudes, the fair market value of such restrictions on land use is difficult to determine. To provide greater certainty in making these valuations, the 1997 budget introduced a measure to deem the value of these gifts to be not less than the resulting decrease in the value of the land.

The budget proposes a further enhancement of the incentives for the protection of ecologically sensitive lands, including areas containing habitat for species at risk. Specifically, it is proposed that the income inclusion be reduced by one-half in respect of capital gains arising from gifts of ecologically sensitive land and related easements, covenants and servitudes to qualified donees other than private foundations.

Because of the amount of tax assistance offered and the difficulty of valuing such donations, it is proposed that the value of all ecological gifts be determined by a special process to be established by the Minister of the Environment. The value determined by the Minister of the Environment may be appealed to the Tax Court of Canada after an irrevocable gift has been made. This valuation process, together with the certification of the ecological importance of the property, will help to ensure that such donations are effectively and efficiently directed toward the protection of Canada's natural heritage.

These measures will be effective for ecological gifts made after February 27, 2000.

The measures with respect to ecologically sensitive land are examples of how the tax system can be used to support the Government's overall environmental policy. Other examples include accelerated depreciation for energy conservation equipment and tax relief for ethanol and methanol used in gasoline-blended fuels.

Related Provisions: 110.1(1)(d) — Parallel deduction for corporations; 118.1(1)"total gifts"(d) — Ecological gifts not limited to 20% of net income; 118.1(2.1) — Ordering of claims; 118.1(12) — Fair market value of ecological servitude, covenant or easement; 207.31 — Tax if donee disposes of the property.

History: Para. (a) of the definition "total ecological gifts" in subsec. 118.1(1) amended by 1998, c. 19, subsec. 22(3), applicable to gifts made after February 18, 1997. Para. (a) formerly read:

(a) a Canadian municipality, or

The definition "total ecological gifts" added to subsec. 118.1(1) by 1996, c. 21, subsec. 23(4), applicable to gifts made after February 27, 1995.

I.T. Technical News: No. 17 (loan of property as a gift).

"total gifts" of an individual for a taxation year means the total of

(a) the least of

(i) the individual's total charitable gifts for the year,

(ii) the individual's income for the year where the individual dies in the year or in the following taxation year, and

(iii) in any other case, the lesser of the individual's income for the year and the amount determined by the formula

$$0.75A + 0.25 (B + C + D - E)$$

where

A is the individual's income for the year,

B is the total of all amounts each of which is a taxable capital gain of the individual for the year from a disposition that is the making of a gift made by the individual in the year, which gift is included in the individual's total charitable gifts for the year,

C is the total of all amounts each of which is a taxable capital gain of the individual for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year,

D is the total of all amounts each of which is determined in respect of the individual's depreciable property of a prescribed class and equal to the lesser of

(A) the amount included under subsection 13(1) in respect of the class in computing the individual's income for the year, and

(B) the total of all amounts each of which is determined in respect of a disposition that is

the making of a gift of property of the class made by the individual in the year that is included in the individual's total charitable gifts for the year and equal to the lesser of

(I) the proceeds of disposition of the property minus any outlays and expenses to the extent that they were made or incurred by the individual for the purpose of making the disposition, and

(II) the capital cost to the individual of the property, and

E is the total of all amounts each of which is the portion of an amount deducted under section 110.6 in computing the individual's taxable income for the year that can reasonably be considered to be in respect of a gift referred to in the description of B or C,

(b) the individual's total Crown gifts for the year,

(c) the individual's total cultural gifts for the year, and

(d) the individual's total ecological gifts for the year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: 1999, c. 22, s. 33 provides the following special rule, applicable to taxation years that ended after November 15, 1997 and before 1998.

For the purposes of the Act, if

(a) a taxpayer made a gift at any particular time before February 1998, and after the end of a taxation year that ended after November 15, 1997 and before 1998, that would be deductible under section 110.1 or 118.1 of the Act in computing the taxpayer's taxable income or tax payable under Part I of the Act for the year if it were made immediately before the end of the year,

(b) the gift was a gift of tangible property (other than real property) or a gift by cash, cheque, credit card or money order,

(c) the gift was not made

(i) through a payroll deduction, or

(ii) where the taxpayer died after 1997, by the taxpayer's will, and

(d) the taxpayer so elects in the taxpayer's return of income under the Act for the year or by notifying the Minister of National Revenue in writing before 1999,

the taxpayer is deemed to have made the gift and, in the case of a gift of tangible property, to have disposed of the property immediately before the end of the taxpayer's taxation year that ended before 1998 and not to have done so at the particular time.

Subpara. (a)(iii) of the definition "total gifts" in subsec. 118.1(1) amended by 1998, c. 19, subsec. 22(4), applicable to taxation years that begin after 1996. Subpara. (a)(iii) formerly read:

(iii) in any other case, the amount determined by the formula

$$0.5(A + B - C)$$

where

A is the individual's income for the year,

B is the total of all amounts each of which is the amount of a taxable capital gain from a gift of property made by the individual in the year to a donee described in the definition "total charitable gifts", and

C is the total of all amounts each of which is the portion of an amount deducted under section 110.6 in computing the individual's taxable income for the year that can reasonably be considered to be in respect of a gift of capital property made by the individual in the year to a donee described in the definition "total charitable gifts",

Para. (a) of the definition "total gifts" in subsec. 118.1(1) amended by 1997, c. 25, s. 26, applicable to 1996 *et seq.* and, where an individual dies in 1996, to the individual's 1995 taxation year. Para. (a) formerly read:

(a) the lesser of

(i) the individual's total charitable gifts for the year, and

(ii) 1/5 of the individual's income for the year,

Para. (d) of the definition "total gifts" in subsec. 118.1(1) added by 1996, c. 21, subsec. 23(3), applicable to gifts made after February 27, 1995.

Definition "total gifts" in subsec. 118.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(1), applicable after December 11, 1988. That definition formerly read:

"total gifts" of an individual for a taxation year means the total of

(a) the lesser of

(i) the individual's total charitable gifts for the year, and

(ii) 1/5 of the individual's income for the year computed without reference to subsection 137(2),

(b) the individual's total Crown gifts for the year, and

(c) the individual's total cultural gifts for the year.

I.T. Technical News: No. 17 (loan of property as a gift).

Interpretation Bulletins [subsec. 118.1(1)]: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of capital properties to a charity and others; IT-297R2: Gifts in kind to charity and others; IT-407R3: Disposition after 1987 of Canadian cultural property; IT-504R2: Visual artists and writers. See also list at end of s. 118.1.

Information Circulars: See list at end of s. 118.1.

(2) Proof of gift — A gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

Related Provisions: 149.1(1)"disbursement quota"A — Charity must disburse 80% of receipted gifts; 188(1) — Revocation tax where registration of charity is revoked; 230(2) — Books and records to be kept by charity.

History: Subsec. 118.1(2) amended by 1996, c. 21, subsec. 23(5), applicable to gifts made after February 27, 1995. That subsec. formerly read:

(2) A gift shall not be included in the total charitable gifts, total Crown gifts or total cultural gifts of an individual unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

Selected Cases [subsec. 118.1(2)]: *Côté v. R.*, [1999] 3 C.T.C. 2373 (TCC) (Gifts valid but valuations exaggerated; penalties upheld).

Regulations: 3501 (prescribed information).

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of s. 118.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity. See also list at end of s. 118.1.

Advance Tax Rulings: ATR-63: Donations to agents of the Crown.

(2.1) Ordering — For the purposes of determining the total charitable gifts, total Crown gifts, total cultural gifts and total ecological gifts of an individual for a taxation year, no amount in respect of a gift described in any of the definitions of those expressions and made in a particular taxation year shall be considered to have been included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a taxation year until amounts in respect of such gifts made in taxation years preceding the particular year that can be so considered are so considered.

Related Provisions: 110.1(1.1)(b) — Parallel ordering rule for corporations.

History: Subsec. 118.1(2.1) added by 1998, c. 19, subsec. 22(5), applicable to taxation years that begin after 1996.

(3) Deduction by individuals for gifts — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

$$(A \times B) + [C \times (D - B)]$$

where

A is the appropriate percentage for the year;

B is the lesser of $200 and the individual's total gifts for the year;

C is the highest percentage referred to in subsection 117(2) that applies in determining tax that might be payable under this Part for the year; and

D is the individual's total gifts for the year.

Related Provisions: 37(5) — Scientific research and experimental development expenditures; 110(2) — Deduction for member of religious order who has taken vow of perpetual poverty; 110.1 — Deduction for gifts by corporations; 117(1) — Tax payable under this Part; 118.1(13)–(20) — No credit for gift of non-qualifying securities; 118.91 — Individual resident in Canada for part of the year; 118.95(a), 128(2)(e)(iii)(B), 128(2)(f)(iv), 128(2)(g)(ii)(B) — Application to bankrupt individual; 152(6) — Reassessment; 164(5), (5.1) — Effect of carryback of loss.

History: Subsec. 118.1(3) amended by 1995, c. 3, s. 34, applicable to 1994 *et seq.* Subsec. (3) formerly read:

(3) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual may claim not exceeding an amount determined by the formula

$$(A \times B) + (C \times (D - B))$$

where

A is the appropriate percentage for the year;

B is the lesser of $250 and the individual's total gifts for the year;

C is the highest percentage referred to in subsection 117(2) that is applicable in determining tax that might be payable under this Part for the year; and

D is the individual's total gifts for the year.

Interpretation Bulletins: IT-111R2: Annuities purchased from charitable organizations; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-297R2: Gifts in kind to charity and others; IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of s. 118.1.

Information Circulars: 75-23: Tuition fees and charitable donations paid to privately supported secular and religious schools.

(4) Gift in year of death — Subject to subsection (13), a gift made by an individual in the particular taxation year in which the individual dies (including, for greater certainty, a gift otherwise deemed by subsection (5), (13) or (15) to have been so made) is deemed, for the purpose of this section other than this subsection, to have been made by the individual in the immediately preceding taxation year, and not in the particular year, to the extent that an amount in respect of the gift is not deducted in computing the individual's tax payable under this Part for the particular year.

Proposed Amendment — 118.1(4)

(4) Gift in year of death — Subject to subsection (13), a gift made by an individual in the particular taxation year in which the individual dies (including, for greater certainty, a gift otherwise deemed by subsection (5), (7), (7.1), (13) or (15) to have been so made) is deemed, for the purpose of this section other than this subsection, to have been made by the individual in the preceding taxation year, and not in the particular year, to the extent that an amount in respect of the gift is not deducted in computing the individual's tax payable under this Part for the particular year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 63(1), will amend subsec. 118.1(4) to read as above, applicable to 2000 *et seq.*, and where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this amendment apply in respect of a gift made after 1996 and before 2000, this amendment applies to the taxation year in which the gift was made.

Technical Notes: Section 118.1 of the Act provides the tax credit that may be claimed by individuals who make charitable donations, gifts to the Crown and certain gifts of cultural property and ecologically sensitive land. Donors may carry forward unused claims for up to five years.

Subsection 118.1(4) of the Act treats a gift made in the year of an individual's death as having been made in the preceding year to the extent that it was not deducted in the year of death. The subsection is amended consequential to the amendment of subsections 118.1(7) and (7.1) of the Act, to clarify that it applies for the purposes of those subsections. For further information, see the commentary to those subsections.

Related Provisions: 70(5) — Deemed disposition of property immediately before death; 118.1(5) — Gift made by will deemed made in year of death.

History: Subsec. 118.1(4) amended by 1998, c. 19, subsec. 22(6), applicable to gifts made after July 1997. Subsec. 118.1(4) formerly read:

(4) Time of gift — For the purposes of this section, a gift made by an individual in the taxation year in which the individual dies shall be deemed to have been made by the individual in the immediately preceding taxation year to the extent that an amount in respect thereof is not deducted in computing the individual's tax payable under this Part for the taxation year in which the individual dies.

Interpretation Bulletins: IT-288R2: Gifts of capital properties to a charity and others; IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of s. 118.1.

(5) Gift by will — Subject to subsection (13), where an individual by the individual's will makes a gift, the gift is, for the purpose of this section, deemed to have been made by the individual immediately before the individual died.

Proposed Amendment — Designation of insurance, RRSP or RRIF proceeds to charity

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Charitable Donations Tax Credit*

(21) That the charitable donations tax credit be extended to apply in respect of amounts that are paid directly to a qualified donee as a beneficiary, as a consequence of an individual's death that occurs after 1998, under

(a) a life insurance policy under which the individual was the policyholder and the individual's life was insured,

(b) the individual's coverage under a group life insurance policy under which the individual's life was insured, or

(c) a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant.

Federal budget, supplementary information, February 28, 2000: *Charitable Donations: Designations in Favour of Charity*

An individual who is an annuitant under a registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) or the owner of a life insurance policy may wish to have the proceeds in respect thereof donated to a charity on the individual's death. There are two common ways of achieving this goal:

- the individual's will can provide for a cash bequest of the proceeds to the charity; or
- without making any provision in the individual's will, the individual can designate that the proceeds be paid directly to the charity under the terms of the RRSP, RRIF or insurance policy.

In either case, the individual's estate is responsible for satisfying the individual's income tax liabilities on the individual's death.

Under current income tax rules, donations that are made by way of a donor's will qualify for the charitable donations tax credit on death. [See 118.1(5) — ed.] However, donations made as a consequence of a direct designation do not qualify for the credit. In such circumstances, the charitable donations tax credit would not be available to offset income tax arising because of the taxation of an RRSP or RRIF on death. This can lead to liquidity problems for an estate.

In order to provide consistency in the income tax rules in this regard, the budget proposes to extend the charitable donations tax credit to donations of RRSP, RRIF and insurance proceeds that are made as a consequence of direct beneficiary designations. This measure will apply in respect of an individual's death that occurs after 1998.

Related Provisions: 38(a.1)(ii) — Gift of publicly-traded securities made on death; 39(1)(a)(i.1) — Gain on disposition not capital gain; 70(5) — Deemed disposition of property immediately before death; 118.1(4) — Carryback of gift made in year of death. See additional Related Provisions and Definitions at end of s. 118.1.

History: Subsec. 118.1(5) amended by 1998, c. 19, subsec. 22(6), applicable to gifts made after July 1997 Subsec. 118.1(5) formerly read:

> (5) Where an individual by the individual's will makes a gift to a donee described in subsection (1), the gift shall, for the purposes of this section, be deemed to have been made by the individual in the taxation year in which the individual dies.

Interpretation Bulletins: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-407R4: Dispositions of cultural property to designated Canadian institutions. See also list at end of s. 118.1.

(6) Gift of capital property — Where, at any time, whether by the individual's will or otherwise, an individual makes a gift of

(a) capital property to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection (1), or

(b) in the case of an individual who is a non-resident person, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that such property will be held for use in the public interest,

and the fair market value of the property at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Proposed Amendment — 118.1(6)

and the fair market value of the property otherwise determined at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 63(2), will amend the closing words of subsec. 118.1(6) to read as above, applicable in respect of gifts made after February 27, 1995.

Technical Notes: Subsection 118.1(6) of the Act provides that, if an individual donates capital property to a charity, the individual may elect a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual's capital gain and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3) of the Act.

The amendment to subsection 118.1(6) of the Act is complementary to the amendment of subsection 118.1(12) of the Act, which provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift. The amendments clarify that an individual donor may nevertheless report a reduced amount of proceeds of disposition of such a gift, where the value of the gift for the purpose of calculating the charitable donations tax credit is reduced accordingly. This amendment applies in respect of gifts made after February 27, 1995.

Department of Finance news release, June 3, 1999: [See under 118.11(12).]

History: Para. 118.1(6)(a) amended by 1996, c. 21, subsec. 23(6), applicable to gifts made after February 27, 1995. The para. formerly read:

> (a) capital property to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1), or

That portion of subsec. 118.1(6) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 53, applicable to gifts made after December 11, 1988. That portion formerly read:

> and the fair market value of the property at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as is designated by the individual or the individual's legal representative in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the property and the amount of the gift made by the individual.

Regulations: 3500–3502 (prescribed information); 3504 (prescribed donee).

Interpretation Bulletins: IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of capital properties to a charity and others; IT-504R2: Visual artists and writers.

Forms: T3 Sched. 1A, T1170: Capital gains on gifts of certain capital property.

(7) Gifts of art — Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift of a work of art that was created by the individual and that is property in the individual's inventory to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) and at that time the fair market value of the work of art exceeds its cost amount to the individual, such amount, not greater than that fair market value and not less than that cost amount, as is designated in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Proposed Amendment — 118.1(7)

(7) Gifts of art — Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the gift is deemed to have been made immediately before the death, and

(d) the amount, not greater than that fair market value at the time the gift is made and not less than the cost amount of the property to the individual, that is designated in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 63(3), will amend subsec. 118.1(7) to read as above, applicable to 2000 *et seq.*, and where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this amendment apply in respect of a gift made after 1996 and before 2000, this amendment applies to the taxation year in which the gift was made and, where para. 118.1(7)(d) applies, the amount designated in the notice in respect of the gift is deemed to have been validly designated for the purposes of that paragraph in the taxpayer's return of income for the year in which the gift was made.

Technical Notes: Subsection 118.1(7) of the Act provides that, if an artist donates artwork created by the artist and held in inventory, the artist may designate a value between the cost amount and the fair market value of the artwork to be treated both as the proceeds of disposition for the purpose of calculating the individual's income and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3). Such an amount may also be designated by the legal representative of a deceased artist, where the artwork is donated according to the late individual's will.

If the artwork is cultural property, as described in subsection 118.1(1) of the Act, subsection 118.1(7.1) of the Act applies instead of subsection (7) of the Act. Under subsection 118.1(7.1), the individual is also treated as having received proceeds of disposition equal to the cost amount to the individual of the work of art for the purpose of calculating the individual's income, but the fair market value of the artwork is not affected. This means that the artist is entitled to a credit based on the value of the donation, but that the deceased artist recognizes neither a profit nor a loss on the disposition of the work of art in computing income from the artist's business for income tax purposes.

Subsections (7) and (7.1) of the Act are amended to provide that, where artwork is donated as a result of the death of the individual, the gift is deemed to have been made by the individual immediately before the individual's death. These amendments clarify that the proceeds of disposition calculated under these subsections are relevant for the purpose of calculating the income of the late individual in the year of death.

Subsections 118.1(7) and (7.1) of the Act are also amended to apply to artwork that has been donated by an individual who acquired the artwork in circumstances where subsection 70(3) of the Act applied (i.e. as a "right or thing").

Upon the death of an individual, subsections 69(1.1) and 70(3) of the Act provide (if applicable) a rollover of "rights or things" of the late individual to beneficiaries or other persons beneficially interested in the estate or trust of the late individual. That is, if artwork of a late individual is a "right or thing," income from the ultimate disposition of the artwork will be attributed to the beneficiary. (Note, however, that subsection 70(3) of the Act does not apply where the late individual's legal representative has validly filed a "rights or things" return or where the time for filing such a return has expired before the transfer of the artwork to the beneficiary).

New subsections 118.1(7) and (7.1) of the Act apply to such an individual beneficiary if that beneficiary donates the artwork to the same effect as if the artwork had been donated by the deceased person.

Letter from Department of Finance, April 17, 1998: Dear [xxx]

Thank you for your letter dated February 2, 1998 concerning the income tax treatment of donations to museums by artists' heirs.

I will be recommending the inclusion of the necessary amendments to the *Income Tax Act* to cause donations of art by artists' heirs to be treated the same way for tax purposes as donations made by artists and collectors. This amendment should be contained in the next technical bill relating to income tax matters. As per my previous correspondence, I will recommend that the amendment apply to the 1997 and subsequent taxation years.

Should you have any concerns please contact Alexandra Maclean of this Department at 992-5636.

Sincerely,

The Honourable Paul Martin, P.C., M.P.

c.c.: The Hounarable Herb Dhaliwal, P.C., M.P.

History: Subsec. 118.1(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(2), applicable to gifts made after 1990. Subsec. 118.1(7) formerly read:

(7) Where at any time after 1984, whether by the individual's will or otherwise, an individual makes a gift of a work of art created by the individual that is property in the individual's inventory to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1), and the fair market value of the work of art at that time exceeds its cost amount to the individual, such amount, not greater than the fair market value and not less than the cost amount to the individual of the work of art at that time, as is designated by the individual or the individual's legal representative in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the work of art and the amount of the gift made by the individual.

Interpretation Bulletins: IT-288R2: Gifts of capital properties to a charity and others; IT-504R2: Visual artists and writers.

(7.1) Gifts of cultural property — Where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was created by the individual and that is property in the individual's inventory, the individual shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to have received proceeds of disposition in respect of the gift at that time equal to its cost amount to the individual at that time.

Proposed Amendment — 118.1(7.1)

(7.1) Gifts of cultural property — Where at any particular time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the individual is deemed to have made the gift immediately before the death, and

(d) the individual is deemed to have received at the particular time proceeds of disposition in respect of the gift equal to its cost amount to the individual at that time.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 63(3), will amend subsec. 118.1(7.1) to read as above, applicable to 2000 *et seq.*, and where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this amendment apply in respect of a gift made after 1996 and before 2000, this amendment applies to the taxation year in which the gift was made.

Technical Notes: See under 118.1(7).

Related Provisions: 39(1)(a)(i.1) — Meaning of capital gain and capital loss; 207.3 — Tax on institution that disposes of cultural property.

History: Subsec. 118.1(7.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(2), applicable to gifts made after 1990.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-504R2: Visual artists and writers. See also list at end of s. 118.1.

(8) Gifts made by partnership — Where an individual is, at the end of a fiscal period of a partnership, a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be a gift made by the partnership to any donee shall, for the purposes of this section, be deemed to be a gift made by the individual to that donee in the individual's taxation year in which the fiscal period of the partnership ends.

Related Provisions: 53(2)(c)(iii) — Deduction from ACB of partnership interest.

(9) Commuter's charitable donations — Where throughout a taxation year an individual resided in Canada near the boundary between Canada and the United States, if

(a) the individual commuted to the individual's principal place of employment or business in the United States, and

(b) the individual's chief source of income for the year was that employment or business,

a gift made by the individual in the year to a religious, charitable, scientific, literary or educational organization created or organized in or under the laws of the United States that would be allowed as a deduction under the *United States Internal Revenue Code* shall, for the purpose of the definition "total charitable gifts" in subsection (1), be deemed to have been made to a registered charity.

Related Provisions: Canada-U.S. tax treaty, Art. XXI:6 — Cross-border donations.

(10) Determination of fair market value — For the purposes of paragraph 110.1(1)(c) and the definition "total cultural gifts" in subsection (1), the fair market value of an object is deemed to be the fair market value determined by the Canadian Cultural Property Export Review Board.

Related Provisions: 118.1(10.1) — Determination by Board applies for 2 years; 118.1(11) — Assessment consequential on determination of value by Board; 241(4)(d)(xii) — Disclosure of information to Department of Canadian Heritage or the Board.

History: Subsec. 118.1(10) amended by 1995, c. 38, s. 3, in force July 12, 1996. Subsec. (10) formerly read:

(10) Determination of fair market value — For the purposes of paragraph 110.1(1)(c) and the definition "total cultural gifts" in subsection (1), the fair market value of an object shall be determined by the Canadian Cultural Property Export Review Board.

Subsec. 118.1(10) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 88(3), applicable to gifts made after February 20, 1990.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions; IT-504R2: Visual artists and writers.

(10.1) Determination of fair market value — For the purposes of subparagraph 69(1)(b)(ii), subsection 70(5), section 110.1 and this section, where at any time the Canadian Cultural Property Export Review Board determines or redetermines an amount to be the fair market value of a property that is the subject of a gift described in paragraph 110.1(1)(a) or in the definition "total charitable gifts" in subsection (1) made by a taxpayer within the two-year period that begins at that time, the last amount so determined or redetermined within the period is deemed to be the fair market value of the property at the time the gift was made and, subject to subsection 110.1(3) and subsections (6) and (7), to be the taxpayer's proceeds of disposition of the property.

History: Subsec. 118.1(10.1) added by 1999, c. 22, s. 32, applicable to determinations and redeterminations made after February 23, 1998.

(11) Assessments — Notwithstanding subsections 152(4) to (5), such assessments or reassessments of a taxpayer's tax, interest or penalties payable under this Act for any taxation year shall be made as are necessary to give effect to a certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act* or to a decision of a court resulting from an appeal made pursuant to section 33.1 of that Act.

Related Provisions: 165(1.2) — No objection allowed to assessment under 118.1(11).

History: Subsec. 118.1(11) added by 1995, c. 38, s. 3, in force July 12, 1996.

(12) Ecological gifts — For the purposes of section 207.31 and the definition "total ecological gifts" in subsection (1), the fair market value of a gift of a servitude, a covenant or an easement to which land is subject is deemed to be the greater of its fair market value otherwise determined and the amount by which the fair market value of the land is reduced as a result of the making of the gift.

Proposed Amendment — 118.1(12)

(12) Ecological gifts — For the purpose of applying subparagraph 69(1)(b)(ii), subsection 70(5), section 207.31 and this section in respect of a gift described in the definition "total ecological gifts" in subsection (1) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), to be the taxpayer's proceeds of disposition of the gift.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 63(4), will amend subsec. 118.1(12) to read as above, applicable in respect of gifts made after February 27, 1995.

Technical Notes: Subsection 118.1(12) of the Act provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift.

Subsection 118.1(12) of the Act is amended to clarify that such amount will also be, subject to the designation of an amount under subsection 118.1(6), the donor's proceeds of disposition for the purposes of calculating income and capital gains. This amendment applies in respect of gifts made after February 27, 1995.

Department of Finance news release, June 3, 1999: *Clarifying Changes to Tax Rules Announced for Donations of Ecologically Sensitive Land*

Finance Minister Paul Martin today announced technical changes to the income tax rules applying to the donation of a servitude, covenant or easement in respect of ecologically sensitive land. The changes clarify the manner in which capital gains and losses on the disposition of the property that is the subject of a charitable gift are to be calculated.

The tax credit or deduction allowed to a donor upon making such a gift should be based on the gift's fair market value. However, the fair market value is often difficult to determine since there is no established market for easements, covenants or servitudes. Accordingly, a 1997 budget measure provided that the fair market value of such a gift be considered to be no less than the decrease in the fair market value of the related land as a result of the gift. The 1997 amendment did not, however, explicitly set out how to determine the cost of the related land that is allocable to the gift for the purpose of calculating any gain or loss that may arise on its disposition. The amendments announced today clarify how this allocation is to be made.

These amendments also clarify that the rules that apply in determining the value of an ecological gift would also apply in determining the donor's proceeds of disposition for calculating a capital gain or loss. Further, where there would be a capital gain, these amendments allow the donor to report a lesser gain and claim a correspondingly lesser charitable donations tax credit or deduction.

"Protection of Canada's environmental heritage is a responsibility for all Canadians," Minister Martin said. "Through the provision of tax incentives, the Government of Canada is encouraging private landowners to preserve this heritage on a voluntary basis."

Attached are the draft amendments to the *Income Tax Act* and a background note providing more details about how the rules apply. These amendments are proposed to apply to gifts made after February 27, 1995, the date on which these measures first became effective.

For further information: Ed Short, Tax Policy Branch, (613) 996-0599; Karl Littler, Executive Assistant to the Secretary of State, (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080.

BACKGROUNDER

The 1995 budget announced enhanced incentives for the donation of ecologically sensitive land to the Government of Canada, a provincial government, a Canadian municipality or an approved registered charity established for the purpose of protecting Canada's environmental heritage. Donations from individuals are eligible for the charitable donations tax credit, while those from corporations are eligible for a deduction from income. Besides transfers of title, landowners are able to donate covenants, easements and servitudes established under common law, the Civil Code in Quebec, or particular provincial or territorial legislation allowing for their establishment.

Normally, the value of a donated property is determined to be the price that a purchaser would pay for the property on the open market. As there is no established market for covenants, easements and servitudes, the fair market value of such restrictions on land use is difficult to determine. To provide greater certainty in making these valuations, the 1997 budget introduced a measure to deem the value of these gifts to be not less than the resulting decrease in the value of the land. That measure was implemented with application to gifts made after February 27, 1995.

Like other capital property, the value of a covenant, easement or servitude is also relevant in calculating the capital gain or loss that may arise on disposition. To provide taxpayers greater certainty in making this calculation, the amendments announced today will ensure that:

- a reasonable portion of the adjusted cost base of the land is to be allocated to the donated covenant, easement or servitude; and
- the proceeds of disposition for capital gains purposes are equal to the amount deemed for the purpose of the claim of a charitable donation deduction or credit.

For this purpose, an allocation of the adjusted cost base of the land to the gift, in proportion to the percentage decrease in the value of the land as a result of the donation, will be accepted as a reasonable allocation.

A provision is also added to provide a donor with the option of reporting a reduced amount of capital gain, provided that the value of the gift for the purposes of the charitable donations tax credit or deduction is reduced accordingly.

Related Provisions: 43(2) — Calculation for 118.1(12) also applies for determining capital gain or loss on disposition; 110.1(5) — Parallel rule for donation deduction for corporations.

History: Subsec. 118.1(12) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after February 27, 1995.

(13) Non-qualifying securities — For the purpose of this section (other than this subsection), where at any particular time an individual makes a gift (including a gift that, but for this subsection and subsection (4), would be deemed by subsection (5) to be made at the particular time) of a non-qualifying security of the individual and the gift is not an excepted gift,

(a) except for the purpose of applying subsection (6) to determine the individual's proceeds of disposition of the security, the gift is deemed not to have been made;

(b) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that gift is deemed to be the lesser of the fair market value of the security at the subsequent time and the amount of the gift made at the particular time that would, but for this subsection, have been included in the individual's total charitable gifts or total Crown gifts for a taxation year;

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that gift is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of the individual or a property that would be a non-qualifying security of the individual if the individual were alive at that time) received by the donee for the disposition and the amount of the gift made at the particular time that would, but for this subsection, have been included in the individual's total charitable gifts or total Crown gifts for a taxation year; and

(d) a designation under subsection (6) or 110.1(3) in respect of the gift made at the particular time may be made in the individual's return of income for the year

that includes the subsequent time referred to in paragraph (b) or the time of the disposition referred to in paragraph (c).

Related Provisions: 40(1.01) — Capital gains reserve on disposition of non-qualifying security; 88(1)(e.61) — Winding-up of subsidiary — gift deemed made by parent corporation; 110.1(6), (7) — Application to corporation; 118.1(14) — When security exchanged for another non-qualifying security; 118.1(15) — Death of donor; 118.1(18) — Definition of non-qualifying security; 118.1(19) — Excepted gift.

History: Subsec. 118.1(13) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

(14) Exchanged security — Where a share (in this subsection referred to as the "new share") that is a non-qualifying security of an individual has been acquired by a donee referred to in subsection (13) in exchange for another share (in this subsection referred to as the "original share") that is a non-qualifying security of the individual by means of a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and (ii) or section 86 or 87 applies, the new share is deemed for the purposes of this subsection and subsection (13) to be the same share as the original share.

Related Provisions: 110.1(6) — Application to corporation; 118.1(18) — Definition of non-qualifying security.

History: Subsec. 118.1(14) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

(15) Death of donor — If, but for this subsection, an individual would be deemed by subsection (13) to have made a gift after the individual's death, for the purpose of this section the individual is deemed to have made the gift in the taxation year in which the individual died, except that the amount of interest payable under any provision of this Act is the amount that it would be if this subsection did not apply to the gift.

Related Provisions: 118.1(4) — Carryback of gift made in year of death; 152(4)(b)(vi) — Three-year extension to reassessment period; 161(1) — Imposition of interest on late payments of tax.

History: Subsec. 118.1(15) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

(16) Loanbacks — For the purpose of this section, where

(a) at any particular time an individual makes a gift of property,

(b) if the property is a non-qualifying security of the individual, the gift is an excepted gift, and

(c) within 60 months after the particular time

(i) the donee holds a non-qualifying security of the individual that was acquired by the donee after the time that is 60 months before the particular time, or

(ii) where the individual and the donee do not deal at arm's length with each other,

(A) the individual or any person or partnership with which the individual does not deal at arm's length uses property of the donee under an agreement that was made or modified after the time that is 60 months before the particular time, and

(B) the property was not used in the carrying on of the donee's charitable activities,

the fair market value of the gift is deemed to be that value otherwise determined minus the total of all amounts each of which is the fair market value of the consideration given by the donee to so acquire a non-qualifying security so held or the fair market value of such a property so used, as the case may be.

Related Provisions: 110.1(6) — Application to corporation; 118.1(17) — Ordering rule; 118.1(18) — Definition of non-qualifying security; 152(4)(b)(vi) — Three-year extension to reassessment period.

History: Subsec. 118.1(16) added by 1998, c. 19, subsec. 22(7), applicable where

(a) a non-qualifying security referred to in subpara. 118.1(16)(c)(i) is acquired after July 1997; or

(b) property referred to in subpara. 118.1(16)(c)(ii) has begun to be used after July 1997.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

(17) Ordering rule — For the purpose of applying subsection (16) to determine the fair market value of a gift made at any time by a taxpayer, the fair market value of consideration given to acquire property described in subparagraph (16)(c)(i) or of property described in subparagraph (16)(c)(ii) is deemed to be that value otherwise determined minus any portion of it that has been applied under that subsection to reduce the fair market value of another gift made before that time by the taxpayer.

Related Provisions: 110.1(6) — Application to corporation.

History: Subsec. 118.1(17) amended by 1999, c. 31, s. 136, in force June 17, 1999 (Royal Assent). It formerly read:

(17) For the purpose of applying subsection (16) to determine the fair market value of a gift made at any time by a taxpayer, the fair market value of consideration given to acquire property described in subparagraph (16)(b)(i) or of property described in subparagraph (16)(b)(ii) is deemed to be that value otherwise determined minus any portion of it that has been applied under that subsection to reduce the fair market value of another gift made before that time by the taxpayer.

Subsec. 118.1(17) added by 1998, c. 19, subsec. 22(7), applicable after July 1997.

(18) Non-qualifying security defined — For the purposes of this section, "non-qualifying security" of an individual at any time means

(a) an obligation (other than an obligation of a financial institution to repay an amount deposited with the institution or an obligation listed on a prescribed stock exchange) of the individual or the individual's estate or of any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time;

(b) a share (other than a share listed on a prescribed stock exchange) of the capital stock of a corporation with which the individual or the estate does not deal at arm's length immediately after that time; or

(c) any other security (other than a security listed on a prescribed stock exchange) issued by the individual or the estate or by any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time.

Related Provisions: 110.1(6) — Application to corporation; 118.1(29) — Meaning of "financial institution".

History: Subsec. 118.1(18) added by 1998, c. 19, subsec. 22(7), applicable after July 1997.

(19) Excepted gift — For the purposes of this section, a gift made by a taxpayer is an excepted gift if

(a) the security is a share;

(b) the donee is not a private foundation;

(c) the taxpayer deals at arm's length with the donee; and

(d) where the donee is a charitable organization or a public foundation, the taxpayer deals at arm's length

with each director, trustee, officer and like official of the donee.

Related Provisions: 110.1(6) — Application to corporation; 251(1) — Meaning of arm's length.

History: Subsec. 118.1(19) added by 1998, c. 19, subsec. 22(7), applicable to gifts made after July 1997.

(20) Financial institution defined — For the purpose of subsection (18), "financial institution" means a corporation that is

(a) a member of the Canadian Payments Association; or

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*.

Related Provisions: 110.1(6) — Application to corporation.

History: Subsec. 118.1(20) added by 1998, c. 19, subsec. 22(7), applicable after July 1997.

Pre-RSC History [s. 118.1]: S. 118.1 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* except that for the purpose of applying s. 118.1, gifts made before 1984 shall not be included in an individual's "total charitable gifts", "total Crown gifts", or "total cultural gifts" where the individual deducted an amount for the 1983 taxation year under para. 110(1)(d) as it read for the 1983 taxation year.

Selected Cases [s. 118.1]: *Aikman v. R.*, [2000] 2 C.T.C. 2211 (TCC) (Cost of property relevant factor in determining value where no comparables available); *Beaudry v. R.*, [1998] 1 C.T.C. 2041 (TCC) (No deduction where recipient merely intermediary for non-eligible donee).

Definitions [s. 118.1]: "adjusted cost base" — 54, 248(1); "amount", "appropriate percentage" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital property" — 54, 248(1); "charitable organization" — 149.1(1) [technically does not apply to 118.1]; "cost amount" — 248(1); "credit union" — 137(6), 248(1); "depreciable property" — 13(21), 248(1); "disposition", "employment" — 248(1); "excepted gift" — 118.1(19); "fair market value" — 118.1(13); "financial institution" — 118.1(20); "fiscal period" — 249(2), 249.1; "individual", "inventory", "legal representative", "Minister" — 248(1); "non-qualifying security" — 118.1(18); "non-resident" — 248(1); "officer" — 248(1) [under "office"]; "person", "prescribed" — 248(1); "private foundation" — 149.1(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public foundation" — 149.1(1), 248(1); "qualified pension income" — 118(7); "registered Canadian amateur athletic association", "registered charity" — 248(1); "resident in Canada" — 250; "share", "shareholder" — 248(1); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "total charitable gifts", "total Crown gifts", "total cultural gifts", "total ecological gifts", "total gifts" — 118.1(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.1]: IT-86R: Vow of perpetual poverty; IT-110R2: Deductible gifts and official donation receipts; IT-111R2: Annuities purchased from charitable organizations; IT-151R4: Scientific research and experimental development expenditures; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-244R3: Gifts by individuals of life insurance policies as charitable donations; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents.

Information Circulars [s. 118.1]: 75-23: Tuition fees and charitable donations paid to privately supported schools; 80-10R: Operating a registered charity; 92-3: Guidelines for refunds beyond the normal three year period.

118.2 (1) Medical expense credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A (B - C) - D$$

where

A is the appropriate percentage for the year;

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining an amount under this subsection or subsection 122.51(2) for a preceding taxation year and that were paid by either the individual or the individual's legal representative,

(a) where the individual died in the year, within any period of 24 months that includes the day of death, and

(b) in any other case, within any period of 12 months ending in the year;

C is the lesser of $1,500[13] and 3% of the individual's income for the year; and

D is 68% of the total of all amounts each of which is the amount, if any, by which

(a) the income for the year of a person (other than the individual and the individual's spouse) in respect of whom an amount is included in computing the individual's deduction under this section for the year

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

exceeds

(b) the amount used under paragraph (c) of the description of B in subsection 118(1) for the year.

Related Provisions: 110.7(1) — Residing in prescribed zone; 117(1) — Tax payable under this Part; 117.1(1) — Indexing for inflation; 118.3 — Mental or physical impairment; 118.4(1) — Severe and prolonged impairment; 118.4(2) — Reference to medical practitioner; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt; 122.51 — Refundable credit of up to $500; 257 — Formula cannot calculate to less than zero.

History: Para. (b) of the description of D in subsec. 118.2(1) amended by 2000, c. 19, subsec. 25(1), applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the para. shall be read as follows:

(b) $7,044.

Para. (b) formerly read:

(b) the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for the year.

Para. (b) of the description of D in subsec. 118.2(1) amended by 1999, c. 22, subsec. 34(1), applicable to 1998 *et seq.* Para. (b) formerly read:

(b) the amount used under paragraph [(c)] of the description of B in subsection 118(1) for the year.

The opening words of the description of B in 118.2(1) amended by 1998, c. 19, subsec. 23(1), applicable to 1997 *et seq.* The opening words formerly read:

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining a deduction for medical expenses for a preceding taxation year and that were paid by either the individual or the individual's legal representative

Subsec. 118.2(1) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 9(1), applicable to 1993 *et seq.* Subsec. (1) formerly read:

118.2 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times (B - C)$$

[13] Indexed by s. 117.1 after 1988 — ed.

where

A is the appropriate percentage for the year;

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining a deduction for medical expenses for a preceding taxation year and that were paid by either the individual or the individual's legal representative,

(a) where the individual died in the year, within any period of 24 months that includes the day of death, and

(b) in any other case, within any period of 12 months ending in the year; and

C is the lesser of $1,500[14] and 3% of the individual's income for the year.

Selected Cases: *Watt v. R.*, [1997] 2 C.T.C. 2651 (TCC) (Receipts required for subsection 118.2(1) expenses; for subsection 118.2(4) deemed expenses, taxpayer need only show expenses were reasonable).

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide].

(2) Medical expenses — For the purposes of subsection (1), a medical expense of an individual is an amount paid

(a) **[medical and dental services]** — to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person (in this subsection referred to as the "patient") who is the individual, the individual's spouse or a dependant of the individual (within the meaning assigned by subsection 118(6)) in the taxation year in which the expense was incurred;

(b) **[attendant or nursing home care]** — as remuneration for one full-time attendant (other than a person who, at the time the remuneration is paid, is the individual's spouse or is under 18 years of age) on, or for the full-time care in a nursing home of, the patient in respect of whom an amount would, but for paragraph 118.3(1)(c), be deductible under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense was incurred;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b.1) **[attendant]** — as remuneration for attendant care provided in Canada to the patient if

(i) the patient is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense was incurred,

(ii) no part of the remuneration is included in computing a deduction claimed in respect of the patient under section 63 or 64 or paragraph (b), (b.2), (c), (d) or (e) for any taxation year,

(iii) at the time the remuneration is paid, the attendant is neither the individual's spouse nor under 18 years of age, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(iv) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number,

to the extent that the total of amounts so paid does not exceed $10,000 (or $20,000 if the individual dies in the year);

(b.2) **[group home care]** — as remuneration for the patient's care or supervision provided in a group home in Canada maintained and operated exclusively for the benefit of individuals who have a severe and prolonged impairment if

(i) because of the patient's impairment, the patient is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense is incurred,

(ii) no part of the remuneration is included in computing a deduction claimed in respect of the patient under section 63 or 64 or paragraph (b), (b.1), (c), (d) or (e) for any taxation year, and

(iii) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(c) **[full-time attendant at home]** — as remuneration for one full-time attendant upon the patient in a self-contained domestic establishment in which the patient lives, if

(i) the patient is, and has been certified by a medical practitioner to be, a person who, by reason of mental or physical infirmity, is and is likely to be for a long-continued period of indefinite duration dependent on others for the patient's personal needs and care and who, as a result thereof, requires a full-time attendant,

(ii) at the time the remuneration is paid, the attendant is neither the individual's spouse nor under 18 years of age, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(iii) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(d) **[nursing home care]** — for the full-time care in a nursing home of the patient, who has been certified by a medical practitioner to be a person who, by reason of lack of normal mental capacity, is and in the

[14] Indexed by s. 117.1 after 1988.

foreseeable future will continue to be dependent on others for the patient's personal needs and care;

(e) **[school, institution, etc.]** — for the care, or the care and training, at a school, institution or other place of the patient, who has been certified by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient;

(f) **[ambulance fees]** — for transportation by ambulance to or from a public or licensed private hospital for the patient;

(g) **[transportation]** — to a person engaged in the business of providing transportation services, to the extent that the payment is made for the transportation of

(i) the patient, and

(ii) one individual who accompanied the patient, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant

from the locality where the patient dwells to a place, not less than 40 kilometres from that locality, where medical services are normally provided, or from that place to that locality, if

(iii) substantially equivalent medical services are not available in that locality,

(iv) the route travelled by the patient is, having regard to the circumstances, a reasonably direct route, and

(v) the patient travels to that place to obtain medical services for himself or herself and it is reasonable, having regard to the circumstances, for the patient to travel to that place to obtain those services;

(h) **[travel expenses]** — for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient and, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii), (iv) and (v) apply;

(i) **[devices]** — for or in respect of an artificial limb, iron lung, rocking bed for poliomyelitis victims, wheel chair, crutches, spinal brace, brace for a limb, iliostomy or colostomy pad, truss for hernia, artificial eye, laryngeal speaking aid, aid to hearing or artificial kidney machine, for the patient;

(i.1) **[devices for incontinence]** — for or in respect of diapers, disposable briefs, catheters, catheter trays, tubing or other products required by the patient by reason of incontinence caused by illness, injury or affliction;

(j) **[eyeglasses]** — for eye glasses or other devices for the treatment or correction of a defect of vision of the patient as prescribed by a medical practitioner or optometrist;

(k) **[various]** — for an oxygen tent or other equipment necessary to administer oxygen or for insulin, oxygen, liver extract injectible for pernicious anaemia or vitamin B12 for pernicious anaemia, for use by the patient as prescribed by a medical practitioner;

(l) **[guide dogs, etc.]** — on behalf of the patient who is blind or profoundly deaf or has a severe and prolonged impairment that markedly restricts the use of the patient's arms or legs,

(i) for an animal specially trained to assist the patient in coping with the impairment and provided by a person or organization one of whose main purposes is such training of animals,

(ii) for the care and maintenance of such an animal, including food and veterinary care,

(iii) for reasonable travel expenses of the patient incurred for the purpose of attending a school, institution or other facility that trains, in the handling of such animals, individuals who are so impaired, and

(iv) for reasonable board and lodging expenses of the patient incurred for the purpose of the patient's full-time attendance at a school, institution or other facility referred to in subparagraph (iii);

(l.1) **[transplant costs]** — on behalf of the patient who requires a bone marrow or organ transplant,

(i) for reasonable expenses (other than expenses described in subparagraph (ii)), including legal fees and insurance premiums, to locate a compatible donor and to arrange for the transplant, and

(ii) for reasonable travel, board and lodging expenses (other than expenses described in paragraphs (g) and (h)) of the donor (and one other person who accompanies the donor) and the patient (and one other person who accompanies the patient) incurred in respect of the transplant;

(l.2) **[alterations to home]** — for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling;

Proposed Amendment — Construction costs of new home

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Medical Expense Tax Credit*

(17) That, for the 2000 and subsequent taxation years, there be added to the list of expenses eligible for the medical expense tax credit the portion of reasonable expenses, relating to the construction of the principal place of residence of an individual who lacks normal physical development or has a severe and prolonged mobility impairment, that can reasonably be considered to be incremental costs incurred to enable the individual to gain access to, or to be mobile or functional within, the individual's principal place of residence.

Federal budget, supplementary information, February 28, 2000: *The Medical Expense Tax Credit and New Homes*

The medical expense tax credit (METC) provides tax recognition for above-average medical expenses incurred by individuals. For 2000, the METC reduces the federal tax of a claimant by 17 per cent of qualifying unreimbursed medical expenses in excess of the lesser of $1,637 and 3 per cent of net income.

Currently, an individual who lacks normal physical development or has a severe and prolonged mobility impairment may be eligible for the METC in respect of renovation costs incurred to enable the individual to gain access to or to be mobile or functional within the home. The budget proposes to extend tax assistance to such individuals who incur reasonable expenses relating to the construction of a principal place of residence where the expenses

can reasonably be considered to be incremental costs incurred to enable the individual to gain access to or to be mobile or functional within the home.

(l.3) **[lip reading and sign language training]** — for reasonable expenses relating to rehabilitative therapy, including training in lip reading and sign language, incurred to adjust for the patient's hearing or speech loss;

(l.4) **[sign language services]** — on behalf of the patient who has a speech or hearing impairment, for sign language interpretation services, to the extent that the payment is made to a person engaged in the business of providing such services;

(l.5) **[moving expenses]** — for reasonable moving expenses (within the meaning of subsection 62(3), but not including any expense deducted under section 62 for any taxation year) of the patient, who lacks normal physical development or has a severe and prolonged mobility impairment, incurred for the purpose of the patient's move to a dwelling that is more accessible by the patient or in which the patient is more mobile or functional, if the total of the expenses claimed under this paragraph by all persons in respect of the move does not exceed $2,000;

(l.6) **[driveway alterations]** — for reasonable expenses relating to alterations to the driveway of the principal place of residence of the patient who has a severe and prolonged mobility impairment, to facilitate the patient's access to a bus;

(l.7) **[van for wheelchair]** — for a van that, at the time of its acquisition or within 6 months after that time, has been adapted for the transportation of the patient who requires the use of a wheelchair, to the extent of the lesser of $5,000 and 20% of the amount by which

(i) the amount paid for the acquisition of the van

exceeds

(ii) the portion, if any, of the amount referred to in subparagraph (i) that is included because of paragraph (m) in computing the individual's deduction under this section for any taxation year;

(l.8) **[caregiver training]** — for reasonable expenses (other than amounts paid to a person who was at the time of the payment the individual's spouse or a person under 18 years of age) to train the individual, or a person related to the individual, if the training relates to the mental or physical infirmity of a person who

(i) is related to the individual, and

(ii) is a member of the individual's household or is dependent on the individual for support;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(l.9) **[therapy]** — as remuneration for therapy provided to the patient because of the patient's severe and prolonged impairment, if

(i) because of the patient's impairment, an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the remuneration is paid,

(ii) the therapy is prescribed by, and administered under the general supervision of,

(A) a medical doctor or a psychologist, in the case of mental impairment, and

(B) a medical doctor or an occupational therapist, in the case of a physical impairment,

(iii) at the time the remuneration is paid, the payee is neither the individual's spouse nor an individual who is under 18 years of age, and

(iv) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(l.91) **[tutoring services]** — as remuneration for tutoring services that are rendered to, and are supplementary to the primary education of, the patient who

(i) has a learning disability or a mental impairment, and

(ii) has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services,

if the payment is made to a person ordinarily engaged in the business of providing such services to individuals who are not related to the payee.

(m) **[prescribed devices]** — for any device or equipment for use by the patient that

(i) is of a prescribed kind,

(ii) is prescribed by a medical practitioner,

(iii) is not described in any other paragraph of this subsection, and

(iv) meets such conditions as may be prescribed as to its use or the reason for its acquisition,

to the extent that the amount so paid does not exceed the amount, if any, prescribed in respect of the device or equipment;

(n) **[drugs]** — for drugs, medicaments or other preparations or substances (other than those described in paragraph (k)) manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof or in restoring, correcting or modifying an organic function, purchased for use by the patient as prescribed by a medical practitioner or dentist and as recorded by a pharmacist;

(o) **[lab tests]** — for laboratory, radiological or other diagnostic procedures or services together with necessary interpretations, for maintaining health, preventing disease or assisting in the diagnosis or treatment of any injury, illness or disability, for the patient as prescribed by a medical practitioner or dentist;

(p) **[dentures]** — to a person authorized under the laws of a province to carry on the business of a dental mechanic, for the making or repairing of an upper or lower denture, or for the taking of impressions, bite registrations and insertions in respect of the making, producing, constructing and furnishing of an upper or lower denture, for the patient; or

(q) **[health plan premiums]** — as a premium, contribution or other consideration under a private health services plan in respect of one or more of the individual, the individual's spouse and any member of the individual's household with whom the individual is connected by blood relationship, marriage or adoption,

except to the extent that the premium, contribution or consideration is deducted under subsection 20.01(1) in computing an individual's income from a business for any taxation year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Proposed Addition — Qualifying Medical Expenses

Federal budget, supplementary information, February 16, 1999: *Medical expense tax credit (METC) — persons with disabilities*

The government is committed to continue helping Canadians with disabilities by building on the significant level of tax assistance that is already available. In the last two years, a number of tax relief measures were introduced to better recognize disability-related costs. These included the introduction of a tax credit for caregivers, a refundable tax credit for low-income earners with high medical expenses, and the addition of new expenses eligible for relief under the METC. These measures have provided significant additional tax assistance for persons with disabilities.

The METC recognizes the burden of above-average medical expenses by providing tax relief for eligible medical expenses. For 1999, the METC reduces the federal tax of a claimant by 17 per cent of qualifying unreimbursed medical expenses in excess of the lesser of 3 per cent of net income and $1,614.

The budget proposes to further improve tax assistance for the care and education of persons with disabilities by extending the METC to expenses in respect of the remuneration for:

- the care and supervision of persons with severe and prolonged disabilities living in a group home;
- therapy for persons with severe and prolonged disabilities; and
- tutoring for persons with learning disabilities (or other mental impairments).

The budget also proposes to expand the list of eligible equipment for persons with disabilities.

These measures will apply to the 1999 and subsequent taxation years.

. . . . .

Expanding the list of eligible equipment for persons with disabilities

The *Income Tax Regulations* contain a list of medical devices and equipment eligible for tax relief under the METC. This list will be expanded to include talking textbooks prescribed by a medical practitioner in connection with an individual's enrolment at an educational institution in Canada, where the individual has a perceptual disability.

Related Provisions: 20(1)(qq), (rr) — Business deduction for disability-related modifications to buildings and disability-related equipment; 20.01 — Deduction from business income for private health plan premiums; 63(3)"child care expense"(d) — Medical expenses are not child care expenses; 64 — Deduction for part-time attendant care; 110.7(3) — Northern Canadian residents — trips to obtain medical services; 118.2(3) — Deemed medical expense; 118.2(4) — Use of own vehicle for transportation under (2)(g); 118.3(2) — Dependant having impairment; 251(6) — Meaning of "connected by blood relationship, marriage or adoption"; 252(4)(a) — Extended meaning of "spouse".

History: Subpara. 118.2(2)(b.1)(ii) amended, paras. 118.2(2)(b.2), (2)(l.9) and (l.91) added, by 2000, c. 19, subsecs. 25(2), (3), applicable to 1999 *et seq.* The subpara. formerly read:

(ii) no amount is included under section 63 or 64 or paragraph (b), (c), (d) or (e) in computing a deduction claimed in respect of the patient for the taxation year in which the remuneration was paid,

Para. 118.2(2)(l.8) added, and para. 118.2(2)(q) amended by 1999, c. 22, subsecs. 34(2), (3), applicable to 1998 *et seq.* Para. (q) formerly read:

(q) as a premium, contribution or other consideration to a private health services plan in respect of one or more of the individual, the individual's spouse and any member of the individual's household with whom the individual is connected by blood relationship, marriage or adoption.

The closing words of para. 118.2(2)(b.1) amended, paras. 118.2(2)(l.4) to (l.7) and the closing words to para. 118.2(2)(m) added, by 1998, c. 19, subsecs. 23(1.1)–(3), applicable to 1997 *et seq.* The closing words of para. (b.1) formerly read:

to the extent that the total of amounts so paid does not exceed $5,000 (or $10,000 where the individual died in the year);

Para. 118.2(2)(l.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 54(1), applicable to 1992 *et seq.*

Para. 118.2(2)(a) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 9(2), applicable to 1993 *et seq.* Para. (a) formerly read:

(a) to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person (in this subsection referred to as the "patient") who is the individual, the individual's spouse or any dependant in respect of whom the individual may deduct an amount under section 118 from tax payable under this Part by the individual for the taxation year in which the expense was incurred;

Paras. 118.2(2)(b), (b.1) substituted for para. (b) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(1), applicable to expenses incurred after 1990. Para 118.2(2)(b) formerly read:

(b) as remuneration for one full-time attendant on, or for the full-time care in a nursing home of, the patient who has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical practitioner or, where the impairment is an impairment of sight, by a medical practitioner or an optometrist;

Subparas. 118.2(2)(c)(ii), (iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(2), applicable to expenses incurred after 1990. Subparas. (c)(ii), (iii) formerly read:

(ii) the attendant is not

(A) a person in respect of whom the individual or the individual's spouse deducts an amount under section 118 from tax payable under this Part by the individual for the taxation year in which the remuneration is paid, or

(B) at the time the remuneration is paid, under 18 years of age and connected with the individual or the individual's spouse by blood relationship, marriage or adoption, and

(iii) each receipt filed with the Minister to prove payment of the remuneration contains the Social Insurance Number of the person who issued the receipt;

Para. 118.2(2)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(3), applicable to 1988 *et seq.* Para. 118.2(2)(h) formerly read:

(h) for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient (who was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant) and one individual who accompanied the patient to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii) to (v) apply;

Paras. 118.2(2)(i), (i.1) substituted for para. (i) and paras. (l), (l.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 89(4), (5), (7), applicable to expenses incurred after 1990. Paras. (i), (l), (l.2) formerly read:

(i) for or in respect of an artificial limb, iron lung, rocking bed for poliomyelitis victims, wheel chair, crutches, spinal brace, brace for a limb, iliostomy or colostomy pad, cloth diapers or disposable briefs for use by persons who are incontinent by reason of illness, injury or affliction, truss for hernia, artificial eye, laryngeal speaking aid, aid to hearing or artificial kidney machine for the patient;

. . . . .

(l) on behalf of the patient who is totally blind or profoundly deaf,

(i) for a dog trained to guide or assist a blind or deaf person and provided by a person or organization one of whose main purposes is the training of such dogs,

(ii) for the care and maintenance of such a dog, including food and veterinarian care,

(iii) for reasonable travel expenses of the patient incurred in travelling to and from a school, institution or other place that trains blind or deaf persons in the handling of such dogs, and

(iv) for reasonable board and lodging expenses of the patient incurred while the patient is required to live away from the patient's ordinary place of residence because the patient is in full-time attendance at a school, institution or other place that trains blind or deaf persons in the handling of such dogs;

. . . . .

(l.2) for reasonable expenses relating to modifications to a dwelling of the patient, who lacks normal physical development or is necessarily confined to a wheelchair for a long-continued period of indefinite duration, to enable the patient to be mobile and functional within the dwelling;

Para. 118.2(2)(m) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 89(8). Para. 118.2(2)(m) formerly read:

(m) for any device or equipment, not described in any other paragraph of this subsection, of a prescribed kind, for use by the patient as prescribed by a medical practitioner;

Pre-RSC History: Paras. 118.2(2)(l.1), (l.2) added by 1990, c. 39, s. 25, applicable to 1988 *et seq.*

Selected Cases: *Flumerfelt v. R.*, [1999] 3 C.T.C. 2168 (TCC) (Full-time medical care means person must attend to taxpayer and no one else); *Revusky v. R.*, [1997] 2 C.T.C. 2443 (TCC) (Certification valid even though issued after travel had occurred).

Regulations: 5700 (prescribed device or equipment, for 118.2(2)(m)).

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips (re 118.2(2)(b.1)(iv), (c)(iii)).

Forms: RC4064: Information concerning people with disabilities [guide].

(3) Deemed medical expense — For the purposes of subsection (1),

(a) any amount included in computing an individual's income for a taxation year from an office or employment in respect of a medical expense described in subsection (2) paid or provided by an employer at a particular time shall be deemed to be a medical expense paid by the individual at that time; and

(b) there shall not be included as a medical expense of an individual any expense to the extent that

(i) the individual,

(ii) the person referred to in subsection (2) as the patient,

(iii) any person related to a person referred to in subparagraph (i) or (ii), or

(iv) the legal representative of any person referred to in any of subparagraphs (i) to (iii)

is entitled to be reimbursed for the expense, except to the extent that the amount of the reimbursement is required to be included in computing income and is not deductible in computing taxable income.

Related Provisions: 251(2) — Related persons.

History: Para. 118.2(3)(b) amended by 1998, c. 19, subsec. 23(4), applicable to 1997 *et seq.* Para. 118.2(3)(b) formerly read:

(b) there shall not be included as a medical expense of an individual any expense for which the individual, the person referred to in subsection (2) as the patient or the legal representative of either of them has been or is entitled to be reimbursed, except to the extent that the amount thereof is required to be included in computing income under this Part and cannot be deducted in computing taxable income.

Para. 118.2(3)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 54(2), applicable to 1992 *et seq.* Para. (b) formerly read:

(b) there shall not be included as a medical expense of an individual any expense for which the individual or the individual's legal representative has been or is entitled to be reimbursed, except to the extent that its amount is required to be included in computing the individual's income under this Part.

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(4) Deemed payment of medical expenses — Where, in circumstances in which a person engaged in the business of providing transportation services is not readily available, an individual makes use of a vehicle for a purpose described in paragraph (2)(g), the individual or the individual's legal representative shall be deemed to have paid to a person engaged in the business of providing transportation services, in respect of the operation of the vehicle, such amount as is reasonable in the circumstances.

Selected Cases [subsec. 118.2(4)]: *Watt v. R.*, [1997] 2 C.T.C. 2651 (TCC) (Receipts required for subsection 118.2(1) expenses; for subsection 118.2(4) deemed expenses, taxpayer need only show expenses were reasonable).

Pre-RSC History [s. 118.2]: S. 118.2 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* See former 110(1)(c).

Selected Cases [s. 118.2]: *Crockart v. R.*, [1999] 2 C.T.C. 2409 (TCC) (Provision to be construed liberally, humanely and compassionately).

Definitions [s. 118.2]: "amount", "appropriate percentage", "business" — 248(1); "carrying on business" — 253; "common-law partner" — 248(1); "connected" — 251(6); "dentist" — 118.4(2); "employment", "individual", "legal representative" — 248(1); "marriage" — 252(4)(b); "medical practitioner" — 118.4(2); "Minister" — 248(1); "nurse" — 118.4(2); "office" — 248(1); "optometrist" — 118.4(2); "patient" — 118.2(2)(a); "person", "prescribed", "private health services plan" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2); "resident in Canada" — 250; "self-contained domestic establishment" — 248(1); "spouse" — 252(4)(a); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-518R: Food, beverages and entertainment expenses.

118.3 (1) Credit for mental or physical impairment — Where

(a) an individual has a severe and prolonged mental or physical impairment,

(a.1) the effects of the impairment are such that the individual's ability to perform a basic activity of daily living is markedly restricted,

(a.2) in the case of

(i) a sight impairment, a medical doctor or an optometrist,

(ii) a hearing impairment, a medical doctor or an audiologist,

(iii) an impairment with respect to an individual's ability in feeding and dressing themself, or in walking, a medical doctor or an occupational therapist,

(iv) an impairment with respect to an individual's ability in perceiving, thinking and remembering, a medical doctor or a psychologist, and

(v) an impairment not referred to in any of subparagraphs (i) to (iv), a medical doctor

has certified in prescribed form that the impairment is a severe and prolonged mental or physical impairment the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted,

(b) the individual has filed for a taxation year with the Minister the certificate described in paragraph (a.2), and

(c) no amount in respect of remuneration for an attendant or care in a nursing home, in respect of the individual, is included in calculating a deduction under section 118.2 (otherwise than because of paragraph 118.2(2)(b.1)) for the year by the individual or by any other person,

for the purposes of computing the tax payable under this Part by the individual for the year, there may be deducted an amount determined by the formula

$$A \times \$4,118^{21}$$

where

A is the appropriate percentage for the year.

Related Provisions: 6(16) — Non-taxable disability-related employment benefits; 108(1) — Preferred beneficiary election available after 1995 only to beneficiary with severe and prolonged impairment; 117.1(1) — Indexing for inflation; 118.2 — Credit for medical expenses; 118.4(1) — Meaning of severe and prolonged impairment; 118.4(2) — Reference to medical practitioner; 118.6(3) — Education credit for disabled individuals; 118.8 — Transfer of unused credits to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(b) — Application in year individual becomes bankrupt.

History: Subpara. 118.3(1)(a.2)(iii) renumbered as subpara. (v) and amended, and subparas. (iii) and (iv) added, by 1999, c. 22, subsec. 35(1), applicable to certifications made after February 24, 1998 Subpara. (iii) formerly read:.

(iii) an impairment not referred to in subparagraph (i) or (ii), a medical doctor

Para. 118.3(1)(a.2) amended by 1998, c. 19, s. 24, applicable to certifications made after February 18, 1997. Para. 118.3(1)(a.2) formerly read:

(a.2) a medical doctor, or where the impairment is an impairment of sight, a medical doctor or an optometrist, has certified in prescribed form that the individual has a severe and prolonged mental or physical impairment the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted,

Subsec. 118.3(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 90(1), (3), applicable to 1991 *et seq.* Subsec. 118.3(1) formerly read:

118.3 (1) Where

(a) an individual has a severe and prolonged mental or physical impairment that has been certified as such in prescribed form by a medical practitioner or, where the impairment is an impairment of sight, by a medical practitioner or an optometrist,

(b) the individual has filed for a taxation year with the Minister the certificate described in paragraph (a), and

(c) no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of the mental or physical impairment of the individual is included in calculating a deduction under subsection 118.2(1) for the year by the individual or by any other person,

for the purposes of computing the tax payable under this Part by the individual for the year, there may be deducted an amount determined by the formula

$$A \times \$3,236^{14}$$

where

A is the appropriate percentage for the year.

Selected Cases [subsec. 118.3(1)]: *Froese v. R.*, [1998] 3 C.T.C. 2237 (TCC) (Erroneous tick-mark by doctor not conclusive); *Lowe v. Canada*, [1995] 1 C.T.C. 2392 (TCC) (Colostomate did not qualify for credit); *Brookshaw v. Canada*, [1994] 2 C.T.C. 2360 (TCC) (Crohn's disease qualified for credit).

Interpretation Bulletins: IT-394R2: Preferred beneficiary election. See also list at end of s. 118.3.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T2201: Disability tax credit information; RC4064: Information concerning people with disabilities [guide].

(2) Dependant having impairment — Where

(a) an individual has, in respect of a person (other than a person in respect of whom the person's spouse deducts for a taxation year an amount under section 118 or 118.8) who is resident in Canada at any time in the year and who is entitled to deduct an amount under subsection (1) for the year,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(i) claimed for the year a deduction under subsection 118(1) because of

(A) paragraph (b) of the description of B in that subsection, or

(B) paragraph (c.1) or (d) of that description where the person is the individual's parent, grandparent, child or grandchild, or

(ii) could have claimed for the year a deduction referred to in subparagraph (i) in respect of the person if

(A) the person had no income for the year and had attained the age of 18 years before the end of the year, and

(B) in the case of a deduction referred to in clause (i)(A), the individual were not married, and

Proposed Amendment — 118.3(2)(a)(ii)(B)

(B) in the case of a deduction referred to in clause (i)(A), the individual were not married or not in a common-law partnership, and

Application: 2000, c. 12 (Bill C-23), s. 132, will amend cl. 118.3(2)(a)(ii)(B) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) no amount in respect of remuneration for an attendant, or care in a nursing home, because of that person's mental or physical impairment, is included in calculating a deduction under section 118.2 (otherwise than under paragraph 118.2(2)(b.1)) for the year by the individual or by any other person,

there may be deducted, for the purpose of computing the tax payable under this Part by the individual for the year, the amount, if any, by which

(c) the amount deductible under subsection (1) in computing that person's tax payable under this Part for the year

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[14] Indexed by s. 117.1 after 1988.

[21] Indexed by s. 117.1 after 1991 — ed.

exceeds

(d) the amount of that person's tax payable under this Part for the year computed before any deductions under this Division (other than sections 118 and 118.7).

Proposed Amendment — 118.3(2)

Notice of Ways and Means Motion, federal budget, February 28, 2000: (15) That, for the 2000 and subsequent taxation years,

(a) a $2,941 supplement (indexed after 2000) be added in computing the disability amount that may be claimed in respect of a child who has not attained 18 years of age before the end of the year, and

(b) the amount of the supplement be reduced by the amount by which the total of child care and attendant care expenses claimed for the year in respect of the child exceeds $2,000 (indexed after 2000).

(16) That, for the 2000 and subsequent taxation years, the list of relatives to whom the unused portion of an individual's disability tax credit may be transferred in certain circumstances for use against Canadian tax payable be expanded to include a person who is a brother, sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse.

Federal budget, supplementary information, February 28, 2000: *Assistance for Caregivers of Children with Severe Disabilities*

The infirm dependant credit and caregiver credit provide tax assistance for the care of infirm dependent adult relatives and seniors. This budget provides additional tax assistance for families caring for children with severe disabilities through a supplement for children eligible for the DTC. The supplement amount will be $2,941 and will reduce federal taxes payable by up to $500. The $500 supplement credit will be in addition to the $730 federal tax value of the disability tax credit as of January 1, 2000. The $2,941 supplement amount will be reduced by the amount of child care expenses and attendant care expenses claimed, in respect of the child, exceeding $2,000. This reduction will target tax assistance to families providing unpaid care for children with severe disabilities. The supplement is reduced to zero when child care and attendant care expenses reach $4,941. It is estimated that this supplement will benefit about 40,000 children eligible for the DTC at a cost of $20 million annually.

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. . . . .

The budget also proposes to expand the list of relatives to whom the DTC can be transferred, making it consistent with the medical expense tax credit rules. As a consequence, unused amounts of the DTC may be transferred to individuals supporting a brother, sister, aunt, uncle, niece or nephew, as well as to individuals supporting a spouse, child, grandchild, parent or grandparent.

Related Provisions: 63(1)(e)(ii)(A)(II), 63(2)(b)(i)(B), 63(3)"child care expense"(c)(i)(B) — Higher child care expenses deduction for disabled child over 7; 118.8 — Transfer of disability credit to spouse; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(b) — Application in year individual becomes bankrupt; 252(4)(a) — Extended meaning of "spouse".

History: Para. 118.3(2)(a) amended by 1999, c. 22, subsec. 35(2), applicable to 1998 *et seq.* The para. formerly read:

(a) an individual has, in respect of a person (other than a person in respect of whom the person's spouse deducts for the year an amount under section 118 or 118.8) who is resident in Canada at any time in a taxation year and who is entitled to deduct an amount under subsection (1) for the year, claimed for the year a deduction under subsection 118(1) because of

(i) paragraph (b) of the description of B in subsection 118(1), or

(ii) paragraph (d) of the description of B in subsection 118(1) where that person is the individual's child or grandchild,

or, where that person is the individual's parent, grandparent, child or grandchild, could have claimed such a deduction if the individual were not married and that person had no income for the year and had attained the age of 18 years before the end of the year, and

Subparas. 118.3(2)(a)(i) and (ii) amended by 1997, c. 25, s. 27, applicable April 25, 1997. Subparas. (a)(i) and (ii) formerly read:

(i) paragraph 118(1)(b), or

(ii) paragraph 118(1)(d) where that person is the individual's child or grandchild,

The closing words of para. 118.3(2)(a) substituted by 1994, c. 21, s. 53, applicable to 1993 *et seq.* The closing words formerly read:

or, where that person is the individual's parent, grandparent, child or grandchild, could have claimed such a deduction if the individual were not married and that person had no income for the year, and

Para. 118.3(2)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 55, applicable to 1991 *et seq.* Para. (b) formerly read:

(b) no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of that person's mental or physical impairment, is included in calculating a deduction under subsection 118.2(1) for the year by the individual or by any other person,

That portion of para. 118.3(2)(a) preceding subpara. (i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 90(2), applicable to 1988 *et seq.* That portion formerly read:

(a) an individual has, in respect of a person who is resident in Canada at any time in a taxation year and who is entitled to deduct an amount under subsection (1) for the year, claimed for the year a deduction under subsection 118(1) by reason of

Interpretation Bulletins: See list at end of 118.3.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: RC4064: Information concerning people with disabilities [guide].

(3) Partial dependency — Where more than one individual is entitled to deduct an amount under subsection (2) for a taxation year in respect of the same person, the total of all amounts so deductible for the year shall not exceed the maximum amount that would be deductible under that subsection for the year by an individual in respect of that person if that individual were the only individual entitled to deduct an amount under that subsection in respect of that person, and where the individuals cannot agree as to what portion of the amount each can deduct, the Minister may fix the portions.

(4) Department of Human Resources Development — The Minister may obtain the advice of the Department of Human Resources Development as to whether an individual in respect of whom an amount has been claimed under subsection (1) or (2) has a severe and prolonged impairment, the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted, and any person referred to in subsection (1) or (2) shall, on request in writing by that Department for information with respect to an individual's impairment and its effects on the individual, provide the information so requested.

Related Provisions: 162(7) — Penalty for failure to comply with request for information.

History [subsec. 118.3(4)]: Subsec. 118.3(4) amended by 1996, c. 11, para. 97(1)(e), to substitute "Department of Human Resources Development" for "Department of National Health and Welfare", in force July 12, 1996.

Subsec. 118.3(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 90(3), applicable to 1991 *et seq.*

Pre-RSC History [s. 118.3]: S. 118.3 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* See former 110(1)(e).

Selected Cases [s. 118.3]: *MacIsaac v. R.*, [2000] 1 C.T.C. 307 (FCA) (Provision of prescribed form is mandatory, not merely directory); *Radage v. Canada*, [1996] 3 C.T.C. 2510 (TCC) (Provisions to be construed liberally, humanely and compassionately, not narrowly and technically, without ignoring narrowness of statutory language); *Noseworthy v. Canada*,

[1996] 2 C.T.C. 2006 (TCC) (Inability to get out of bed interfered with ordinary course of life).

Definitions [s. 118.3]: "amount" — 248(1); "basic activity of daily living" — 118.4(1)(c); "appropriate percentage" — 248(1); "audiologist" — 118.4(2); "Canada" — 255; "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "grandparent" — 252(2); "individual" — 248(1); "markedly restricted" — 118.4(1)(b); "married" — 252(4)(c); "medical doctor" — 118.4(2); "Minister" — 248(1); "occupational therapist" — 118.4(2); "optometrist" — 118.4(2); "parent" — 252(2); "person", "prescribed" — 248(1); "prolonged" — 118.4(1)(a); "psychologist" — 118.4(2); "resident in Canada" — 250; "spouse" — 252(4)(a); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.3]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-495R2: Child care expenses; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Forms [s. 118.3]: T929: Attendant care expenses; T2201: Disability tax credit certificate; T2201A: Disability tax credit questionnaire.

118.4 (1) Nature of impairment — For the purposes of subsection 6(16), sections 118.2 and 118.3 and this subsection,

(a) an impairment is prolonged where it has lasted, or can reasonably be expected to last, for a continuous period of at least 12 months;

(b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;

Proposed Amendment — 118.4(1)(b)

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Disability Tax Credit*

(14) That, for the 2000 and subsequent taxation years, the disability tax credit be extended to an individual

(a) who has, and has been certified to have, a severe and prolonged mental or physical impairment, and

(b) who has been certified by a medical doctor to be a person whose ability to perform a basic activity of daily living would all or substantially all of the time be markedly restricted but for therapy (other than therapy that can reasonably be expected to be of benefit to persons who are not so impaired) that is

(i) essential to sustain a vital function of the individual, and

(ii) required to be administered at least three times each week for a total period averaging not less than 14 hours a week.

Federal budget, supplementary information, February 28, 2000: *Enhancing the Disability Tax Credit*

The disability tax credit (DTC) recognizes the effect of a severe and prolonged disability on an individual's ability to pay tax. It provides tax relief to over 500,000 claimants at an annual cost of $280 million.

To be eligible for the DTC, an individual must have a severe and prolonged disability that markedly restricts the ability to perform a basic activity of daily living.

The basic activities of daily living include perceiving, thinking and remembering, feeding and dressing oneself, speaking, hearing, eliminating and walking. An individual's ability to perform these activities is markedly restricted only where, even with the use of appropriate devices, medication and therapy, the individual is blind, or unable to perform the activity.

Consistent with representations made by organizations representing persons with disabilities, the budget proposes extending eligibility for the DTC to individuals who must undergo therapy several times each week totalling at least 14 hours per week in order to sustain their vital functions. In such cases, the severity of the disability is evident in the requirement for extensive therapy that is essential to the individual's survival. Examples of persons who may be eligible for the DTC under the proposed change include individuals with severe kidney disease requiring dialysis in order to prevent renal failure, and individuals with severe cystic fibrosis requiring clapping therapy in order to breathe. It is estimated that this change will increase the number of persons eligible for the DTC by about 18,000, at a cost of $13 million annually.

(c) a basic activity of daily living in relation to an individual means

(i) perceiving, thinking and remembering,

(ii) feeding and dressing oneself,

Selected Cases [subpara. 118.4(1)(c)(ii)]: *Mercier v. R.*, [1998] 2 C.T.C. 2610 (TCC) ("And" should be read as "or").

(iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual,

(iv) hearing so as to understand, in a quiet setting, another person familiar with the individual,

(v) eliminating (bowel or bladder functions), or

(vi) walking; and

(d) for greater certainty, no other activity, including working, housekeeping or a social or recreational activity, shall be considered as a basic activity of daily living.

History [subsec. 118.4(1)]: Subsec. 118.4(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 91, applicable to 1991 *et seq.* Subsec. 118.4(1) formerly read:

118.4 (1) For the purposes of sections 63, 118.2 and 118.3,

(a) a person shall be considered to have a severe and prolonged impairment only if by reason thereof the person is markedly restricted in the person's activities of daily living and the impairment has lasted or can reasonably be expected to last for a continuous period of at least 12 months; and

(b) the Minister may obtain the advice of the Department of National Health and Welfare as to whether a person has a severe and prolonged impairment.

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

(2) Reference to medical practitioners, etc. — For the purposes of sections 63, 118.2, 118.3 and 118.6, a reference to an audiologist, dentist, medical doctor, medical practitioner, nurse, occupational therapist, optometrist, pharmacist or psychologist is a reference to a person authorized to practise as such,

(a) where the reference is used in respect of a service rendered to a taxpayer, pursuant to the laws of the jurisdiction in which the service is rendered;

(b) where the reference is used in respect of a certificate issued by the person in respect of a taxpayer, pursuant to the laws of the jurisdiction in which the taxpayer resides or of a province; and

(c) where the reference is used in respect of a prescription issued by the person for property to be provided to or for the use of a taxpayer, pursuant to the laws of the jurisdiction in which the taxpayer resides, of a province or of the jurisdiction in which the property is provided.

History [subsec. 118.4(2)]: The opening words of subsec. 118.4(2) amended by 1999, c. 22, s. 36, applicable after February 24, 1998. The opening words formerly read:

> (2) For the purposes of sections 63, 118.2 and 118.3, a reference to an audiologist, dentist, medical doctor, medical practitioner, nurse, optometrist or pharmacist is a reference to a person authorized to practice as such

The opening words of subsec. 118.4(2) amended by 1998, c. 19, subsec. 25(1), applicable to taxation years that end after November 1991 except that the reference to "an audiologist" is applicable after February 18, 1997. The opening words formerly read:

> (2) For the purposes of sections 63, 118.2 and 118.3, a reference to a medical practitioner, dentist, pharmacist, nurse or optometrist is a reference to a person authorized to practice as such,

Pre-RSC History [s. 118.4]: S. 118.4 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* See former 110(1.3).

Selected Cases [s. 118.4]: *Radage v. Canada*, [1996] 3 C.T.C. 2510 (TCC) (Provisions to be contrued liberally, humanely and compassionately, not narrowly and technically, without ignoring narrowness of statutory language); *Noseworthy v. Canada*, [1996] 2 C.T.C. 2006 (TCC) (Inability to get out of bed interfered with ordinary course of life).

Definitions [s. 118.4]: "basic activity of daily living" — 118.4(1)(c); "Minister", "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "taxpayer" — 248(1).

Forms [s. 118.4]: T2201: Disability tax credit information.

118.5 (1) Tuition credit — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

(a) **[institution in Canada]** — where the individual was during the year a student enrolled at an educational institution in Canada that is

(i) a university, college or other educational institution providing courses at a post-secondary school level, or

(ii) certified by the Minister of Human Resources Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if the total of those fees exceeds $100,[20] except to the extent that those fees

(ii.1) are paid to an educational institution described in subparagraph (i) in respect of courses that are not at the post-secondary school level,

(ii.2) are paid to an educational institution described in subparagraph (ii) if

(A) the individual had not attained the age of 16 years before the end of the year, or

(B) the purpose of the individual's enrolment at the institution cannot reasonably be regarded as being to provide the individual with skills, or to improve the individual's skills, in an occupation,

(iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income,

(iii.1) are fees in respect of which the individual is or was entitled to receive a reimbursement or any form of assistance under a program of Her Majesty in right of Canada or a province designed to facilitate the entry or re-entry of workers into the labour force, where the amount of the reimbursement or assistance is not included in computing the individual's income,

(iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix), or

(v) are paid on the individual's behalf, or are fees in respect of which the individual is or was entitled to receive a reimbursement, under a program of Her Majesty in right of Canada designed to assist athletes, where the payment or reimbursement is not included in computing the individual's income;

Related Provisions: See Related Provisions and Definitions at end of s. 118.5.

History: Subpara. 118.5(1)(a)(v) added by 1998, c. 19, s. 135, applicable to 1994 *et seq.*

Subpara. 118.5(1)(a)(ii) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

That portion of para. 118.5(1)(a) between subparas. (ii) and (iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 56, applicable to 1992 *et seq.* That portion formerly read:

> an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if the total of those fees exceeds $100 and, in the case of an educational institution described in subparagraph (ii), the individual is enrolled therein to obtain skills for, or improve the individual's skills in, an occupation, except to the extent that those fees

Subpara. 118.5(1)(a)(iii.1) added by 1994, c. 7, Sch. II (1991, c. 49), s. 92, applicable to 1988 *et seq.*

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-470R: Employees' fringe benefits; IT-516R2: Tuition tax credit.

Information Circulars: 75-23: Tuition fees and charitable donations paid to privately supported secular and religious schools; 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T2202A: Tuition and education amount certificate; TL11B: Tuition fees certificate — Flying school.

(b) **[university outside Canada]** — where the individual was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree, an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the university, except any such fees

(i) paid in respect of a course of less than 13 consecutive weeks duration,

(ii) paid on the individual's behalf by the individual's employer to the extent that the amount of the fees is not included in computing the individual's income, or

(iii) paid on the individual's behalf by the employer of the individual's parent, to the extent that the amount of the fees is not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix); and

Related Provisions: See Related Provisions and Definitions at end of 118.5.

[20] Not indexed for inflation.

Selected Cases [para. 118.5(1)(b)]: *The Queen v. Gaudet*, [1978] C.T.C. 686 (FCA) (Seven hours per week in classes in "qualifying educational program" and 10 hours per week preparing therefor not "full time").

Interpretation Bulletins: IT-516R2: Tuition tax credit.

Forms: T2202A: Tuition and education amount certificate; TL11A: Tuition fees certificate — University outside Canada.

(c) **[cross-border commuter]** — where the individual resided throughout the year in Canada near the boundary between Canada and the United States if the individual

(i) was at any time in the year a student enrolled at an educational institution in the United States that is a university, college or other educational institution providing courses at a post-secondary school level, and

(ii) commuted to that educational institution in the United States,

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if those fees exceed $100, except to the extent that those fees

(iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income, or

(iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix).

Related Provisions: See Related Provisions and Definitions at end of 118.5.

Selected Cases [subsec. 118.5(1)]: *Friedland v. R.*, [2000] 1 C.T.C. 2938 (TCC) (No educational institution; fees not deductible); *Gilbert v. R.*, [1999] 2 C.T.C. 2127 (TCC) (Foreign institutions must be degree-granting for tuition to be deductible); *Edwards v. R.*, [1998] 4 C.T.C. 2906 (TCC) (Onus on Minister to show school not certified).

Interpretation Bulletins: IT-516R2: Tuition tax credit.

I.T. Technical News: No. 13 (employer-paid educational costs).

Forms: T2202A: Tuition and education amount certificate; TL11C: Tuition fees certificate — Commuter to United States.

(2) Application to deemed residents — Where an individual is deemed by section 250 to be resident in Canada throughout all or part of a taxation year, in applying subsection (1) in respect of the individual for the period when the individual is so deemed to be resident in Canada, paragraph (1)(a) shall be read without reference to the words "in Canada".

Forms: TL11D: Tuition fees certificate — educational institutions outside Canada — deemed resident of Canada.

(3) Inclusion of ancillary fees and charges — For the purpose of this section, "fees for an individual's tuition" includes ancillary fees and charges that are paid

(a) to an educational institution referred to in subparagraph (1)(a)(i), and

(b) in respect of the individual's enrolment at the institution in a program at a post-secondary school level,

but does not include

(c) any fee or charge to the extent that it is levied in respect of

(i) a student association,

(ii) property to be acquired by students,

(iii) services not ordinarily provided at educational institutions in Canada that offer courses at a post-secondary school level,

(iv) the provision of financial assistance to students, except to the extent that, if the reference in paragraph 56(1)(n) to "$500" were read as a reference to "nil", the amount of the assistance would be required to be included in computing the income, and not be deductible in computing the taxable income, of the students to whom the assistance is provided, or

(v) the construction, renovation or maintenance of any building or facility, except to the extent that the building or facility is owned by the institution and used to provide

(A) courses at the post-secondary school level, or

(B) services for which, if fees or charges in respect of the services were required to be paid by all students of the institution, the fees or charges would be included because of this subsection in the fees for an individual's tuition, and

(d) any fee or charge for a taxation year that, but for this paragraph, would be included because of this subsection in the fees for the individual's tuition and that is not required to be paid by

(i) all of the institution's full-time students, where the individual is a full-time student at the institution, and

(ii) all of the institution's part-time students, where the individual is a part-time student at the institution,

to the extent that the total for the year of all such fees and charges paid in respect of the individual's enrolment at the institution exceeds $250.

History: Subsec. 118.5(3) added by 1998, c. 19, s. 26, applicable to 1997 *et seq.*

Related Provisions [s. 118.5]: 117(1) — Tax payable under this Part; 118.5(3) — Ancillary fees included; 118.61(2) — Carryforward of unused credits 118.8 — Transfer of unused credits to spouse; 118.9 — Transfers to supporting person; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt.

Pre-RSC History [s. 118.5]: S. 118.5 added by 1988, c. 55, s. 92, applicable (by subsec. 92(2) as amended by 1991, c. 49, s. 243, deemed to have come into force September 13, 1988) to 1988 *et seq.* except that no amount in respect of fees paid for an individual's tuition may be included in computing a deduction for the 1988 taxation year under section 118.5 of the said Act, as enacted by subsection (1), to the extent that it was deducted in computing the individual's income for the 1987 taxation year.

Selected Cases [s. 118.5]: *Jacejko v. R.*, [1999] 4 C.T.C. 2032 (TCC) (Institution had right to determine whether course was post-secondary).

Definitions [s. 118.5]: "amount", "appropriate percentage" — 248(1); "Canada" — 255; "employer" — 248(1); "fees for tuition" — 118.5(3); "individual" — 248(1); "parent" — 252(2); "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxation year" — 249.

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-516R2: Tuition tax credit.

118.6 (1) Definitions — For the purposes of section 63 and this subdivision,

"designated educational institution" means

(a) an educational institution in Canada that is

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students* of the Province of Quebec, or

(ii) certified by the Minister of Human Resources Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

(b) a university outside Canada at which the individual referred to in subsection (2) was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree, or

(c) if the individual referred to in subsection (2) resided, throughout the year referred to in that subsection, in Canada near the boundary between Canada and the United States, an educational institution in the United States to which the individual commuted that is a university, college or other educational institution providing courses at a post-secondary school level;

Related Provisions: 146.1(1)"post-secondary educational institution"(a) — designated education institution qualifies for RESP purposes. See additional Related Provisions and Definitions at end of s. 118.6.

"qualifying educational program" means a program of not less than 3 consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program and, in respect of a program at an institution described in the definition "designated educational institution" (other than an institution described in subparagraph (a)(ii) thereof), that is a program at a post-secondary school level but, in relation to any particular student, does not include any such program

(a) if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(i) an amount received by the student as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the student, or

(ii) a benefit, if any, received by the student by reason of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for students* of the Province of Quebec, or by reason of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

(b) if the program is taken by the student

(i) during a period in respect of which the student receives income from an office or employment, and

(ii) in connection with, or as part of the duties of, that office or employment.

Related Provisions: 146.1(1)"qualifying educational program" — Only para. (b) of definition applies to RESPs; 146.02(1)"qualifying educational program" — Definition for purposes of LLP (borrowing from RRSP).

"specified educational program" means a program that would be a qualifying educational program if the definition "qualifying educational program" were read without reference to the words "that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program".

History: The opening words of subsec. 118.6(1) amended, and the definition "specified educational program" added, by 1999, c. 22, subsecs. 37(1), (2), applicable to 1998 *et seq.* The opening words formerly read:

118.6 (1) For the purposes of this subdivision,

Subpara. (a)(ii) of the definition "designated educational institution" in subsec. 118.6(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Subpara. (a)(i) of the definition "designated educational institution" and subpara. (a)(ii) of the definition "qualifying educational program" in subsec. 118.6(1) amended by 1994, c. 28, s. 28, in force August 1, 1995. These subparas. formerly read:

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act* or recognized by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students* of the Province of Quebec, or

. . . . .

(ii) a benefit, if any, received by the student by reason of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for students* of the Province of Quebec, or

That portion of subsec. 118.6(1) preceding the first definition substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 93(1), applicable after June 1990. That portion formerly read:

118.6 (1) For the purposes of this section

That portion of the definition "qualifying education program" preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 93(2), to substitute "described in the definition "designated educational institution" (other than an institution described in subparagraph (a)(ii) thereof) "for "described in subparagraph (a)(i) of the definition "designated educational institution" ", applicable to 1991 *et seq.*

(2) Education credit — There may be deducted in computing an individual's tax payable under this Part for a taxation year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(a) $200 is multiplied by the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution, and

(b) $60 is multiplied by the number of months in the year (other than months described in paragraph (a)), each of which is a month during which the individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program,

if the enrolment is proved by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsec-

tion (1), the individual is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

Proposed Amendment — 118.6(2)B

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 64, will amend the closing words of the description of B in subsec. 118.6(2) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 118.6 of the Act provides a tax credit computed by reference to the number of months in a calendar year in which a student is enrolled in a qualified educational program at a designated educational institution. The expressions "qualified educational program" and "designated educational institution" are defined in subsection 118.6(1). Essentially, the education tax credit is granted to students enrolled in post-secondary and vocational job-training courses which qualify for the purposes of the tuition fee tax credit. In the case of vocational schools, fees paid on behalf of students who are under 16 years of age do not qualify for the tuition fee tax credit. The amendment clarifies that a similar restriction applies for the purposes of the education tax credit.

Related Provisions: 118.6(3) — Disabled individuals may be enrolled part-time; 118.61(2) — Carryforward of unused credits; 118.8 — Transfer of unused credits to spouse; 118.9 — Transfers to supporting person; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt; 146.02 — LLP (loan from RRSP to fund education).

History: Subsec. 118.6(2) amended by 1999, c. 22, subsec. 34(3), applicable to 1998 *et seq.* The subsec. formerly read:

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times \$200 \times B$$

where

A is the appropriate percentage for the year, and

B is the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution,

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the student is enrolled in the program to obtain skills for, or improve the student's skills in, an occupation.

The formula in subsec. 118.6(2) amended by 1998, c. 19, s. 27, applicable to 1997 *et seq.* except that, for the 1997 taxation year, the reference to "$200" shall be read as a reference to "$150". It formerly read:

$$A \times \$100^{20} \times B$$

The formula in subsec. 118.6(2) amended by 1997, c. 25, s. 28, applicable to 1996 *et seq.* It formerly read:

$$A \times \$80^{20} \times B$$

The formula in subsec. 118.6(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 57(1), to substitute "$80" for "$60", applicable to 1992 *et seq.*

The description of B in subsec. 118.6(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 93(3), applicable to 1991 *et seq.* That description formerly read:

B is the number of months in the year during which the individual is a student in full-time attendance at a designated educational institution and enrolled in a qualifying educational program at the institution,

I.T. Technical News: No. 13 (employer-paid educational costs).

Forms: T2202: Education amount certificate; T2202A: Tuition and education amounts certificate.

(3) Disabled students — In calculating the amount deductible under subsection (2) in computing an individual's tax payable under this Part for a taxation year, the reference in that subsection to "full-time student" shall be read as "student" if either

(a) an amount may be deducted under section 118.3 in respect of the individual for the year; or

(b) the individual has in the year a mental or physical impairment the effects of which on the individual have been certified in writing, to be such that the individual cannot reasonably be expected to be enrolled as a full-time student while so impaired, by a medical doctor or, where the impairment is

(i) an impairment of sight, by a medical doctor or an optometrist,

(ii) a hearing impairment, by a medical doctor or an audiologist,

(iii) an impairment with respect to the individual's ability in feeding and dressing themself, or in walking, by a medical doctor or an occupational therapist, or

(iv) an impairment with respect to the individual's ability in perceiving, thinking and remembering, by a medical doctor or a psychologist.

Related Provisions: 146.02(1)"full-time student" — Student eligible under 118.6(3) qualifies as full-time student for LLP (loan from RRSP to fund education); 146.1(2)(g.1)(i)(B) — Disabled student may receive RESP funds when enrolled part-time.

History: Subsec. 118.6(3) amended by 1999, c. 22, subsec. 37(4), applicable to certifications made

(a) after February 18, 1997, in the case of a hearing impairment referred to in subpara. 118.6(3)(b)(ii); and

(b) after February 24, 1998, in any other case.

The subsec. formerly read:

(3) Application of subsec. (2) to disabled individuals — In calculating the amount deductible under subsection (2) in computing the tax payable under this Part for a taxation year by an individual

(a) in respect of whom an amount may be deducted under section 118.3 for the year, or

(b) who has in the year a mental or physical impairment, if a medical doctor or, where the impairment is an impairment of sight, a medical doctor or an optometrist, has certified in writing that the effects of the impairment on the individual are such that the individual cannot reasonably be expected to be enrolled as a full-time student while so impaired,

the reference in that subsection to "full-time student" shall be read as "student".

Subsec. 118.6(3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 57(2), applicable to 1992 *et seq.*

Pre-RSC History [s. 118.6]: S. 118.6 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* See former 110(1)(g).

[20]Not indexed for inflation.

Definitions [s. 118.6]: "amount", "appropriate percentage" — 248(1); "arm's length" — 251(1); "audiologist" — 118.4(2); "Canada" — 255; "designated educational institution" — 118.6(1); "employment", "individual" — 248(1); "Lieutenant Governor in Council" — *Interpretation Act* 35(1); "medical doctor" — 118.4(2); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "occupational therapist" — 118.4(2); "office", "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "psychologist" — 118.4(2); "qualifying educational program", "specified educational program" — 118.6(1); "tax payable" — 248(2); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.6]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-515R2: Education tax credit.

Information Circulars [s. 118.6]: 92-3: Guidelines for refunds beyond the normal three year period.

118.61 (1) Unused tuition and education tax credits — In this section, an individual's unused tuition and education tax credits at the end of a taxation year is the amount determined by the formula

$$A + (B - C) - (D + E)$$

where

A is the individual's unused tuition and education tax credits at the end of the preceding taxation year;

B is the total of all amounts each of which may be deducted under section 118.5 or 118.6 in computing the individual's tax payable under this Part for the year;

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under section 118.5 or 118.6;

Proposed Amendment — 118.61(1)C

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 65(1), will amend the description of C in subsec. 118.61(1) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 118.61 of the Act provides for the deduction of a student's carryforward of unused tuition and education tax credits, as calculated at the end of the previous year. The amendments to the description of C in subsection 118.6(1) and to paragraph 118.61(2)(b) make the calculation of the student's unused tuition and education tax credits compatible with the ordering provided under section 118.92 for the claiming of non-refundable credits. As provided under that section, the tuition fee and education tax credits, as well as the carryforward of the unused portion of those credits, must be claimed before any part of those credits can be transferred to a spouse or supporting individual and before claiming any donation or dividend tax credit.

D is the amount that the individual may deduct under subsection (2) for the year; and

E is the tuition and education tax credits transferred for the year by the individual to the individual's spouse, parent or grandparent.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 8, will replace "spouse," with "spouse, common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 118.81 — Tuition and education credits transferred; 257 — Formula cannot calculate to less than zero; 128(2)(g)(ii) — Effect of bankruptcy on unused credits.

History: Subsec. 118.61(1) added by 1998, c. 19, s. 28, applicable to 1997 *et seq.*

(2) Deduction of carryforward — For the purpose of computing an individual's tax payable under this Part for a taxation year, there may be deducted the lesser of

(a) the individual's unused tuition and education tax credits at the end of the preceding taxation year, and

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under section 118.5 or 118.6 or this section.

Proposed Amendment — 118.61(2)(b)

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 65(2), will amend para. 118.61(2)(b) to read as above, applicable to 1999 *et seq.*

Technical Notes: See under 118.61(1)C.

Related Provisions: 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 128(2)(e), 128(2)(f)(iv) — On bankruptcy, only trustee can claim carryforward.

History: Subsec. 118.61(2) added by 1998, c. 19, s. 28, applicable to 1997 *et seq.*

Definitions [s. 118.61]: "amount", "common-law partner" — 248(1); "grandparent" — 252(2)(d); "individual" — 248(1); "parent" — 252(2)(a); "spouse" — 252(4)(a); "taxation year" — 249; "tuition and education tax credits transferred" — 118.81; "unused tuition and education tax credits" — 118.61(1).

118.62 Credit for interest on student loan — For the purpose of computing an individual's tax payable under this Part for a taxation year, there may be deducted the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of all amounts (other than any amount paid on account of or in satisfaction of a judgement) each of which is an amount of interest paid in the year (or in any of the five preceding taxation years that are after 1997, to the extent that it was not included in computing a deduction under this section for any other taxation year) by the individual or a person related to the individual on a loan made to, or other amount owing by, the individual under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or a law of a province governing the granting of financial assistance to students at the post-secondary school level.

Related Provisions: 20(1)(c) — Interest deductible when money borrowed to earn income; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(a) — Application in year individual becomes bankrupt.

History: S. 118.62 added by 1999, c. 22, s. 38, applicable to 1998 *et seq.*

Definitions [s. 118.62]: "amount", "appropriate percentage" — 248(1); "individual", "person" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2)–(6); "taxation year" — 249.

118.7 Credit for UI [EI] premium and CPP contribution — For the purpose of computing the tax payable

under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of

(a) the total of all amounts each of which is an amount payable by the individual as an employee's premium for the year under the *Employment Insurance Act*, not exceeding the maximum amount of such premiums payable by the individual for the year under that Act,

(b) the total of all amounts each of which is an amount payable by the individual for the year as an employee's contribution under the *Canada Pension Plan* or under a provincial pension plan defined in section 3 of that Act, not exceeding the maximum amount of such contributions payable by the individual for the year under the plan, and

(c) the total of all amounts each of which is an amount payable by the individual in respect of self-employed earnings for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act, not exceeding the maximum amount of such contributions payable by the individual for the year under the plan.

Related Provisions: 56(1)(a)(iv) — Pension benefits, UI/EI benefits, etc.; 117(1) — Tax payable under this Part; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Tax payable by non-resident individual; 118.95(a) — Application in year individual becomes bankrupt; 126.1 — Employer's UI premium tax credit for 1993.

History: Para. 118.7B(a) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Pre-RSC History: S. 118.7 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.* See former 8(1)(k), (l), 60(h).

Selected Cases [s. 118.7]: *Ashby v. Canada*, [1996] 1 C.T.C. 2464 (TCC) (Deductions made but not remitted differ from case where deductions not made).

Definitions [s. 118.7]: "amount", "appropriate percentage", "employee", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-516R2: Tuition tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T1 Sched. 8: Calculation of CPP contributions on self-employment and other earnings.

118.8 Transfer of unused credits to spouse — For the purpose of computing the tax payable under this Part for a taxation year by an individual who, at any time in the year, is a married person (other than an individual who, by reason of a breakdown of their marriage, is living separate and apart from the individual's spouse at the end of the year and for a period of 90 days commencing in the year), there may be deducted an amount determined by the formula

Proposed Amendment — 118.8 opening words

118.8 Transfer of unused credits to spouse or common-law partner — For the purpose of computing the tax payable under this Part for a taxation year by an individual who, at any time in the year, is a married person or a person who is in a common-law partnership (other than an individual who, by reason of a breakdown of their marriage or common-law partnership, is living separate and apart from the individual's spouse or common-law partner at the end of the year and for a period of 90 days commencing in the year), there may be deducted an amount determined by the formula

Application: 2000, c. 12 (Bill C-23), s. 133, will amend the opening words of s. 118.8 to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

$$A + B - C$$

where

A is the tuition and education tax credits transferred for the year by the spouse to the individual;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

B is the total of all amounts each of which is deductible under subsection 118(2) or (3) or 118.3(1) in computing the spouse's tax payable under this Part for the year; and

C is the amount, if any, by which

(a) the amount that would be the spouse's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under subsection 118(1) because of paragraph (c) of the description of B in that subsection or under section 118.61 or 118.7)

exceeds

(b) the lesser of

(i) the total of all amounts that may be deducted under section 118.5 or 118.6 in computing the spouse's tax payable under this Part for the year, and

(ii) the amount that would be the spouse's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under section 118, 118.3, 118.61 or 118.7).

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 117(1) — Tax payable under this Part; 118.3(2) — Disability credit claim for disabled dependant; 118.61(2) — Carryforward of unused credits; 118.91 — Individual resident in Canada for part of the year; 118.92 — Ordering of credits; 118.93 — Credits in separate returns; 118.94 — Computing tax payable by a non-resident individual; 118.95(b) — Application in year individual becomes bankrupt; 252(4) — Extended meaning of "spouse"; 257 — Formula cannot calculate to less than zero.

History: Para. (a) of the description of C in s. 118.8 amended by 2000, c. 19, s. 26, applicable to 2000 *et seq.* The para. formerly read:

(a) the amount that would be the spouse's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under subsection 118(1) because of paragraph (b.1) or (c) of the description of B in that subsection or under section 118.61 or 118.7)

Para. (a) of the description of C in s. 118.8 amended by 1999, c. 22, s. 39, applicable to 1998 *et seq.* Para. (a) formerly read:

(a) the amount that would be the spouse's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under subsection 118(1) because of paragraph (c) of the description of B in that subsection or under section 118.61 or 118.7)

The descriptions of A and C in s. 118.8 amended by 1998, c. 19, subsecs. 29(1), (2), applicable to 1997 *et seq.* A and C formerly read:

A is the lesser of $850[20] and the total of all amounts each of which is deductible under section 118.5 or 118.6 in computing the spouse's tax payable under this Part for the year;

. . . . .

C is the spouse's tax payable under this Part for the year computed before any deductions under this Division (other than a deduction under subsection 118(1) because of paragraph (c) of the description of B in that subsection or under section 118.7).

The descriptions of A, B and C in s. 118.8 amended by 1997, c. 25, s. 29, applicable to 1996 *et seq.* A, B, and C formerly read:

A is the lesser of $680[20] and the total of all amounts that the individual's spouse may deduct under section 118.5 or 118.6 for the year;

B is the total of all amounts each of which is an amount that the individual's spouse may deduct for the year under subsection 118(2) or (3) or 118.3(1); and

C is the amount of the individual's spouse's tax payable under this Part for the year computed before any deductions under this Division (other than a deduction under subsection 118(1) by reason of paragraph 118(1)(c) or under section 118.7).

The description of A in s. 118.8 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 58, applicable to 1992 *et seq.* That description formerly read:

A is the lesser of $600 and the total of all amounts each of which is an amount that the individual's spouse may deduct for the year under section 118.5 or 118.6;

Pre-RSC History: S. 118.8 added by 1988, c. 55, s. 92, applicable (by subsec. 92(2), as amended by 1991, c. 49, s. 243, deemed to have come into force September 13, 1988) to 1988 *et seq.*

Definitions [s. 118.8]: "amount", "common-law partner", "common-law partnership""individual" — 248(1); "marriage" — 252(4)(b); "married" — 252(4)(c); "spouse" — 252(4)(a); "tax payable" — 248(2); "taxation year" — 249; "tuition and education tax credits transferred" — 118.81.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-470R: Employees' fringe benefits; IT-513R: Personal tax credits; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit; IT-517R: Pension tax credit; IT-519R2: Medical expense and disability tax credits and attendant care expense deduction.

Forms: T1 Sched. 2: Amounts transferred from spouse.

118.81 Tuition and education tax credits transferred — In this subdivision, the tuition and education tax credits transferred for a taxation year by a person to an individual is the lesser of

(a) the amount determined by the formula

$$A - B$$

where

A is the lesser of

(i) the total of all amounts that may be deducted under section 118.5 or 118.6 in computing the person's tax payable under this Part for the year, and

(ii) $850[20], and

B is the amount that would be the person's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under section 118, 118.3, 118.61 or 118.7), and

(b) the amount for the year that the person designates in writing for the purpose of section 118.8 or 118.9.

Related Provisions: 118.61(2) — Carryforward of unused credits; 257 — Formula cannot calculate to less than zero.

History: S. 118.81 added by 1998, c. 19, subsec. 30(1), applicable to 1997 *et seq.*

Definitions [s. 118.81]: "amount", "individual", "person" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

118.9 Transfer to parent or grandparent — Where for a taxation year a parent or grandparent of an individual (other than an individual in respect of whom the individual's spouse deducts an amount under section 118 or 118.8 for the year) is the only person designated in writing by the individual for the year for the purpose of this section, there may be deducted in computing the tax payable under this Part for the year by the parent or grandparent, as the case may be, the tuition and education tax credits transferred for the year by the individual to the parent or grandparent, as the case may be.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

History [s. 118.9]: S. 118.9 amended by 1998, c. 19, subsec. 30(1), applicable to 1997 *et seq.* It formerly read:

118.9 (1) Transfers to supporting person — Where the parent or grandparent of an individual (other than an individual in respect of whom the individual's spouse deducts an amount under section 118 or 118.8 for the year) files with the Minister for a taxation year a prescribed form containing prescribed information, there may be deducted in computing the tax payable by the parent or grandparent, as the case may be, under this Part for the year an amount determined by the formula

$$A - B$$

where

A is the lesser of $850[20] and the total of all amounts each of which is deductible under section 118.5 or 118.6 in computing the individual's tax payable under this Part for the year; and

B is the amount of the individual's tax payable under this Part for the year computed before any deductions under this Division (other than sections 118, 118.3 and 118.7).

(2) Only one claim per student — Where in computing his or her tax payable under this Part for a taxation year a parent or grandparent of an individual has deducted an amount under section 118 in respect of the individual, that parent or grandparent, as the case may be, is the only person entitled to deduct an amount for the year under subsection (1) in respect of the individual and in any other case only such one of the parents and grandparents of the individual as is designated for the year in writing by the individual is entitled to make such a deduction for the year.

[20]Not indexed for inflation.

The description of A in subsec. 118.9(1) amended by 1997, c. 25, s. 30, applicable to 1996 *et seq.* The description of A formerly read:

A is the lesser of $680[20] and the total of all amounts that the individual may deduct under section 118.5 or 118.6 for the year; and

The description of A in subsec. 118.9(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 59, applicable to 1992 *et seq.* That description formerly read:

A is the lesser of

(a) $600, and

(b) the total of all amounts each of which is an amount that the individual may deduct under section 118.6 for the year or an amount that the individual would have been entitled to deduct under subsection 118.5(1) for the year if the reference in paragraph 118.5(1)(a) to "the amount of any fees for the individual's tuition paid in respect of the year to the educational institution" were read as a reference to "that portion of the individual's fees paid in respect of the year that may reasonably be considered to have been paid in respect of a qualifying educational program of an educational institution described in subparagraph (a)(i) of the definition "designated educational institution" in subsection 118.6(1)"; and

The description of A in subsec. 118.9(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 94, applicable to fees relating to periods after June 1990. That description formerly read:

A is the lesser of $600 and the total of all amounts each of which is an amount the individual may deduct for the year under section 118.5 or 118.6; and

Pre-RSC History [s. 118.9]: S. 118.9 added by 1988, c. 55, s. 92, applicable (by subsec. 92(2), as amended by 1994, c. 7, Sch. II (1991, c. 49), s. 243, deemed to have come into force September 13, 1988) to 1988 *et seq.*

Definitions [s. 118.9]: "amount", "common-law partner" — 248(1); "grandparent" — 252(2)(d); "individual", "Minister" — 248(1); "parent" — 252(2)(a); "prescribed" — 248(1); "spouse" — 252(4)(a); "tax payable" — 248(2); "taxation year" — 249; "tuition and education tax credits transferred" — 118.81; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 118.9]: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-326R3: Returns of deceased persons as "another person"; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-470R: Employees' fringe benefits; IT-515R2: Education tax credit; IT-516R2: Tuition tax credit.

118.91 Part-year residents — Notwithstanding sections 118 to 118.9, where an individual is resident in Canada throughout part of a taxation year and throughout another part of the year is non-resident, for the purpose of computing the individual's tax payable under this Part for the year,

(a) the amount deductible for the year under each such provision in respect of the part of the year that is not included in the period or periods referred to in paragraph (b) shall be computed as though such part were the whole taxation year; and

(b) the individual shall be allowed only

(i) such of the deductions permitted under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6, 118.62 and 118.7 as can reasonably be considered wholly applicable, and

(ii) such part of the deductions permitted under sections 118 (other than subsection 118(3)), 118.3, 118.8 and 118.9 as can reasonably be considered applicable

to the period or periods in the year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year,

except that the amount deductible for the year by the individual under each such provision shall not exceed the amount that would have been deductible under that provision had the individual been resident in Canada throughout the year.

Related Provisions: 114 — Individual resident in Canada during only part of year; 117(1) — Tax payable under this Part; 217(c) — Election respecting certain payments.

History: Subpara. 118.91(b)(i) amended by 1999, c. 22, s. 40, applicable to 1998 *et seq.* The subpara. formerly read:

(i) such of the deductions permitted under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6 and 118.7 as can reasonably be considered wholly applicable, and

The opening words of s. 118.91 and the closing words of para. (b) substituted by 1994, c. 21, subsecs. 55(1), (2), applicable to 1992 *et seq.*, except that a taxpayer may elect that the amendment not apply to the taxpayer's 1992 taxation year by notifying the Minister of National Revenue in writing before the end of December 1994. The substituted portions formerly read:

118.91 Notwithstanding the provisions of sections 118 to 118.9, where an individual is resident in Canada throughout part of a taxation year and throughout some other part of the year is not resident in Canada, is not employed in Canada and is not carrying on business in Canada, for the purpose of computing the individual's tax payable under this Part for the year,

. . . . .

to the period or periods in the year throughout which the individual is resident in Canada, is employed in Canada or is carrying on business in Canada, computed as though the period or periods were the whole taxation year,

S. 118.91 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 95, applicable to 1988 *et seq.* S. 118.91 formerly read:

118.91 Individual resident in Canada for part of the year — Notwithstanding sections 118 to 118.9, where an individual is resident in Canada during part of a taxation year and during some other part of the year is not resident in Canada, is not employed in Canada and is not carrying on business in Canada, unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income for the year, no amounts may be deducted under those sections for the purpose of computing the individual's tax payable under this Part for the year except the total of

(a) the deductions permitted under sections 118.1, 118.2, 118.5, 118.6 and 118.7 to taxpayers resident in Canada throughout the year for the purpose of computing tax payable under this Part for the year that may reasonably be considered wholly applicable to the individual for the period or periods in the year throughout which the individual is resident in Canada, employed in Canada or carrying on business in Canada; and

(b) such part of the deductions permitted under sections 118, 118.3, 118.8 and 118.9 to taxpayers resident in Canada throughout the year for the purpose of computing tax payable under this Part for the year as may reasonably be considered applicable to the individual for the period or periods referred to in paragraph (a).

Pre-RSC History: S. 118.91 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.*

Definitions [s. 118.91]: "amount" — 248(1); "Canada" — 255; "carrying on business" — 253; "employed", "individual", "non-resident" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1).

118.92 Ordering of credits — In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsection 118(3) and sections 118.3, 118.61, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1, 118.62 and 121.

[20] Not indexed for inflation.

Related Provisions: 117(1) — Tax payable under this Part.

History: S. 118.92 amended by 1999, c. 22, s. 41, applicable to 1998 *et seq.* It formerly read:

> 118.92 In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsection 118(3) and sections 118.3, 118.61, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1 and 121.

S. 118.92 amended by 1998, c. 19, s. 31, applicable to 1997 *et seq.* It formerly read:

> 118.92 In computing the tax payable under this Part by an individual the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsection 118(3) and sections 118.3, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1 and 121.

Pre-RSC History: S. 118.92 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.*

Definitions [s. 118.92]: "individual" — 248(1); "tax payable" — 248(2).

Interpretation Bulletins: IT-523: Order of provisions applicable in computing an individual's taxable income and tax payable.

118.93 Credits in separate returns — Where a separate return of income with respect to a taxpayer is filed under subsection 70(2), 104(23) or 150(4) for a particular period and another return of income under this Part with respect to the taxpayer is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the tax payable under this Part by the taxpayer in those returns, the total of all deductions claimed in all those returns under any of subsection 118(3) and sections 118.1 to 118.7 and 118.9 shall not exceed the total that could be deducted under those provisions for the year with respect to the taxpayer if no separate returns were filed under subsections 70(2), 104(23) and 150(4).

Related Provisions: 114.2 — Deductions in separate returns; 117(1) — Tax payable under this Part.

Pre-RSC History: S. 118.93 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.*

Definitions [s. 118.93]: "calendar year" — *Interpretation Act* 37(1)(a); "taxpayer" — 248(1).

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person"; IT-513R: Personal tax credits; IT-517R: Pension tax credit.

118.94 Tax payable by non-resident — Sections 118 and 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who at no time in the year is resident in Canada unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year.

Related Provisions: 117(1) — Tax payable under this Part; 217 — Election respecting certain payments.

History: S. 118.94 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 96, applicable to 1988 *et seq.* S. 118.94 formerly read:

> 118.94 Computing tax payable by a non-resident individual — Sections 118 and 118.2, subsections 118.3(2) and (3) and sections 118.5 to 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who at no time in the year is resident in Canada, except that, where all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year, for the purpose of computing the individual's tax payable under this Part for the year there may be deducted the amounts that would have been deductible under those provisions for the purpose of computing the individual's tax payable under this Part for the year had the individual been resident in Canada throughout the year.

Pre-RSC History: S. 118.94 added by 1988, c. 55, s. 92, applicable to 1988 *et seq.*

Definitions [s. 118.94]: "amount" — 248(1); "individual" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-513R: Personal tax credits.

Forms: T1E-NR: Declaration of support of non-resident dependent spouse and children.

118.95 Credits in year of bankruptcy — Notwithstanding sections 118 to 118.9, for the purpose of computing an individual's tax payable under this Part for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the individual shall be allowed only

(a) such of the deductions as the individual is entitled to under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6, 118.62 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

(b) such part of the deductions as the individual is entitled to under sections 118 (other than subsection 118(3)), 118.3, 118.8 and 118.9 as can reasonably be considered applicable to the taxation year,

except that the total of the amounts so deductible for all taxation years of the individual in the calendar year under any of those provisions shall not exceed the amount that would have been deductible under that provision in respect of the calendar year if the individual had not become bankrupt.

Related Provisions [s. 118.95]: 122.5(7) — Parallel rule for GST credit; 122.61(3.1) — Parallel rule for Child Tax Benefit; 128(2)(e)(iii) — Credits allowed on return by trustee.

History: Para. 118.95(a) amended by 1999, c. 22, s. 42, applicable to 1998 *et seq.* It formerly read:

> (a) such of the deductions as the individual is entitled to under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

S. 118.95 added by 1998, c. 19, s. 136, applicable to bankruptcies that occur after April 26, 1995.

Definitions [s. 118.95]: "bankrupt" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "individual" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 118.95]: IT-513R: Personal tax credits.

119. (1) Averaging for farmers and fishermen [obsolete] — Where an individual's chief source of income has been farming or fishing for a taxation year (in this section referred to as the "year of averaging") and the 4 immediately preceding years for which the individual has filed returns of income as required by this Part (in this section referred to as the "preceding years"), if the individual, on or before the day on or before which the individual was required to file a return of the individual's income for the year of averaging, or on or before the day on or before which the individual would have been required to file such a return if any tax had been payable by the individual for the year of averaging, files with the Minister an election in prescribed form, the tax payable under this Part for the year of averaging is an amount determined by the following rules:

(a) ascertain the amount, if any, remaining after deducting from the income for each year of the averaging period (which, in this section, means the year of averaging and the preceding years) all deductions permitted for that year by Division C, except the deduc-

tions permitted by section 110.4 of this Act or section 109 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or any amount in respect of a loss for the 3 years immediately following the year of averaging or any amount in respect of a loss deducted under this paragraph from income for a preceding taxation year in the averaging period,

(b) determine the amount (in this section referred to as the "average gross income") equal to 1/5 of the amount by which

(i) the total of the amounts determined under paragraph (a) for the years in the averaging period,

exceeds

(ii) the total of the amounts that would be deductible in respect of the losses for the taxation years in the averaging period in computing the taxable income for the year immediately following the year of averaging if the individual's income from the same business for that year were the total of the amounts determined under paragraph (a) for the years in the averaging period,

(c) determine the amount (in this section referred to as the "average net income") for each year in the averaging period equal to the average gross income minus the deductions permitted for that year by section 109 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(d) determine the amount (in this section referred to as the "average tax") for each year in the averaging period equal to the tax that would be payable under this Part for the year if the taxable income for the year were the average net income for the year and no amount were deductible under subsection 127(5) for the year,

(e) determine the amount, if any, by which

(i) the total of the average taxes as determined under paragraph (d)

exceeds

(ii) the total of all amounts each of which is an amount deducted under subsection 127(5) in computing the tax payable for the preceding years other than any amount deemed by subsection 127.1(3) to have been so deducted,

(f) where

(i) the total of all amounts each of which is the amount deemed by subsection 120(2) to have been paid on account of tax under this Part for a preceding year in the averaging period,

exceeds

(ii) the amount that would be determined under subparagraph (i) if the taxable income for each preceding year were the average net income for that year,

add to the amount, if any, determined under paragraph (e) the amount of that excess,

(g) where paragraph (f) does not apply, deduct from the amount, if any, determined under paragraph (e) the amount, if any, by which

(i) the amount determined under subparagraph (f)(ii)

exceeds

(ii) the amount determined under subparagraph (f)(i), and

(h) deduct from the amount resulting from the application of paragraph (f) or (g), as the case may be, the total of the taxes payable under this Part for the preceding years computed without reference to section 120.2,

and the remainder, if any, obtained under paragraph (h) is the tax payable under this Part for the year of averaging and no further deduction may be made therefrom under any other provision of this Part except subsection 127(5).

Related Provisions: 117(1) — Tax payable under this Part; 119(4) — Election; 127.55 — Minimum tax not applicable.

Pre-RSC History: Para. 119(1)(h) amended by 1988, c. 55, subsec. 93(1), to add "computed without reference to section 120.2", applicable to 1987 *et seq.*

Para. 119(1)(a), and all that portion of subsec. 119(1) following para. (c) substituted by 1984, c. 1, subsecs. 61(1) and (2). Para. 119(1)(a), as substituted, applicable to 1980 *et seq.*, and that portion of subsec. 119(1) following para. (c) as substituted, applicable to 1983 *et seq.* Para. 119(1)(a) and that portion of subsec. 119(1) following para. (c) formerly read:

(a) ascertain the amount, if any, remaining after deducting from the income for each year of the averaging period (which, in this section, means the year of averaging and the preceding years) all deductions permitted for that year by Division C except the deductions permitted by section 109 or any amount in respect of a loss for the year immediately following the year of averaging;

. . . . .

(d) determine the amount (in this section referred to as the "average tax") for each year in the averaging period equal to the tax that would be payable under this Part for the year if the taxable income for the year were the average net income for the year;

(d.1) where

(i) the aggregate of all amounts each of which is the amount deemed by subsection 120(2) to have been paid on account of tax under this Part for a preceding year in the averaging period,

exceeds

(ii) the amount that would be determined under subparagraph (i) if the taxable income for each preceding year were the average net income for that year,

add to the aggregate of the average taxes as determined under paragraph (d) the amount of that excess;

(d.2) where paragraph (d.1) does not apply, deduct from the aggregate of the average taxes as determined under paragraph (d) the amount, if any, by which

(i) the amount determined under subparagraph (d.1)(ii)

exceeds

(ii) the amount determined under subparagraph (d)(i); and

(e) deduct from the resulting amount as determined under paragraph (d.1) or (d.2), as the case may be, for the years in the averaging period the aggregate of the taxes payable under this Part for the preceding years;

and the remainder obtained under paragraph (e) is the tax payable under this Part for the year of averaging and no further deduction may be made therefrom under any other provision of this Part.

Paras. 119(1)(d.1), (d.2) added, 119(1)(e) substituted by 1980-81-82-83, c. 48, subsec. 65(1), applicable to 1980 *et seq.* Para. (e) formerly read:

(e) deduct from the aggregate of the average taxes as determined under paragraph (d) for the years in the averaging period the aggregate of the taxes payable under this Part for the preceding years;

Selected Cases [subsec. 119(1)]: *Israel v. The Queen*, [1979] C.T.C. 468 (FCTD) (Company to which taxpayer transferred farming business held not to have income from farming in the year; income averaging not permitted); *Wilfley v. The Queen*, [1974] C.T.C. 510 (FCTD) (Income averaging permitted to incorporator of company to operate farm); *Kuhl et al. v. The Queen*, [1973] C.T.C. 846 (FCTD) (Income averaging permitted to incorporators of company to operate farm where incorporators working for company as independent contractors).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Forms: T2011: Election to average income by farmers and fishermen.

(2) Refunds — Where this section is applicable to the computation of an individual's tax for a taxation year, the amount, if any, by which the total of

(a) the total of taxes payable under this Part for the preceding years, and

(b) the amount, if any, by which

(i) the amount determined under subparagraph (1)(f)(ii)

exceeds

(ii) the amount determined under subparagraph (1)(f)(i)

exceeds the total of

(c) the amount, if any, determined under paragraph (1)(e), and

(d) the amount, if any, by which

(i) the amount determined under subparagraph (1)(f)(i)

exceeds

(ii) the amount determined under subparagraph (1)(f)(ii)

shall be deemed to be an overpayment made when the notice of assessment for the year of averaging was mailed.

Pre-RSC History: Paras. 119(2)(b), (c) and (d) substituted by 1984, c. 1, subsecs. 61(3) and (4), to substitute "para. (f)" for "para. (d.1)" in paras. 119(2)(b) and (d), applicable to 1983 *et seq.* Para. (c) formerly read:

(c) the aggregate of the average taxes as determined under paragraph (1)(d) for the years in the averaging period, and

Subsec. 119(2) substituted by 1980-81-82-83, c. 48, subsec. 65(2), applicable to 1980 *et seq.* Subsec. (2) formerly read:

(2) Where this section is applicable to the computation of an individual's tax for a taxation year and the aggregate of the taxes payable under this Part for the preceding years exceeds the aggregate of the average taxes as determined under paragraph (1)(d) for the years in the averaging period, the excess shall be deemed to be an overpayment made when the notice of assessment for the year of averaging was mailed.

(3) Assessment — The provisions of this Part relating to the assessment of tax, interest and penalties apply with such modifications as the circumstances require to an assessment whereby, for the purposes of this section, it is determined by the Minister that no tax is payable under this Part for the year of averaging or that an overpayment has been made as described in subsection (2).

(4) Where subsec. (1) election null — An election under subsection (1) is a nullity unless the earliest of the "preceding years" ended before 1988 and is one of the 6 years immediately preceding the year of averaging.

Pre-RSC History: Subsec. 119(4) amended by 1988, c. 55, subsec. 93(2), to add "ended before 1988 and" and to substitute "immediately preceding" for "immediately prior to", applicable to 1988 *et seq.*

(5) Revocation of election — An election filed under subsection (1) may be revoked by the individual

(a) at any time before the Minister has first assessed the individual's tax for the year of averaging; or

(b) during the 30 day period immediately following any assessment by the Minister of the individual's tax for the year of averaging.

(6) Limitation as to election — No election may be filed under this section by a taxpayer for a taxation year if

(a) the averaging period resulting from the election would include a year that was included in an averaging period resulting from a previous election by the taxpayer under this section that has not been revoked under subsection (5); or

(b) an amount has been added or deducted under section 110.4 in computing the taxable income of the taxpayer for the year or any other year of the averaging period.

Pre-RSC History: Subsec. 119(6) substituted by 1980-81-82-83, c. 140, s. 78, applicable to the 1982 and subsequent taxation years, formerly read:

(6) No election may be filed under this section for a taxation year if the averaging period resulting from the election would include a year that was included in an averaging period resulting from a previous election that has not been revoked under subsection (5).

(7) Rents or trust income from farming or fishing — For the purposes of subsection (1),

(a) rents dependent on the lessee's gross production in the course of farming or fishing, and

(b) income from a trust or estate to the extent that it can reasonably be regarded as having been derived from farming or fishing,

shall be deemed to be income from farming or fishing.

(8) Losses — Any amount in respect of a loss deducted in making a calculation under paragraph (1)(a) and any amount in respect of a loss described in subparagraph (1)(b)(ii) shall, for the purpose of computing taxable income for taxation years following the year of averaging, be deemed to have been deducted in respect of that loss in computing taxable income for a taxation year preceding the year for which the loss was determined.

Pre-RSC History: Subsec. 119(8) substituted by 1984, c. 1, subsec. 61(5), applicable to 1983 *et seq.* Subsec. (8) formerly read:

(8) Any amount in respect of a loss deducted in making a calculation under paragraph (1)(a) shall, for the purpose of section 111, be deemed to have been deducted in respect of that loss under this Act; and any amount in respect of a loss included in computing an aggregate for the purpose of subparagraph (1)(b)(ii) shall, for the purpose of section 111, be deemed to have been deductible in respect of that loss under this Act.

(9) Investment tax credit — Where this section is applicable to the computation of an individual's tax payable for a taxation year, the amount, if any, by which

(a) the amount described in subparagraph (1)(e)(ii)

exceeds

(b) the amount described in subparagraph (1)(e)(i)

shall be added in computing the individual's investment tax credit at the end of that year, and paragraph 12(1)(t) and subsections 13(7.1) and 53(2) shall not apply to any amount deducted under subsection 127(5) for that year, or any subsequent taxation year, that may reasonably be attributed to the amount added under this subsection.

Pre-RSC History: All that portion of subsec. 119(9) preceding para. (a) amended by 1985, c. 45, subsec. 64(1), to substitute "Where this section is applicable" for "For the purposes of subsection 127(9), where this section is applicable", applicable to 1985 *et seq.*

Subsec. 119(9) added by 1984, c. 1, subsec. 61(5), applicable to 1983 *et seq.*

(10) Idem — Notwithstanding the definition "investment tax credit" in subsection 127(9), where a taxpayer has filed an election under subsection (1) for a year of averaging, in computing the taxpayer's investment tax credit at the end of any of the preceding years, there shall not be included any amount in respect of property acquired, or an expenditure made, in or after the year of averaging.

Pre-RSC History: Subsec. 119(10) substituted by 1985, c. 45, subsec. 64(2), applicable to 1985 *et seq.* Subsec. (10) formerly read:

> (10) Notwithstanding subsection 127(9), where a taxpayer has filed an election under subsection (1) for a year of averaging, no amount shall, in computing his investment tax credit at the end of any of the preceding years, be included in respect of property acquired, or an expenditure made, in or after the year of averaging.

Subsec. 119(10) added by 1984, c. 1, subsec. 61(5), applicable to 1983 *et seq.*

Definitions [s. 119]: "amount", "assessment" — 248(1); "estate" — 104(1), 248(1); "farming", "fishing", "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 119]: IT-156R: Feedlot operators; IT-433R: Farming or fishing — use of cash method.

Proposed Addition — New 119

119. Former resident — credit for tax paid — If at any particular time an individual was deemed by subsection 128.1(4) to have disposed of a capital property that was a taxable Canadian property of the individual throughout the period that began at the particular time and that ends at the first time, after the particular time, at which the individual disposes of the property, there may be deducted in computing the individual's tax payable under this Part for the taxation year that includes the particular time the lesser of

(a) that proportion of the individual's tax for the year otherwise payable under this Part (within the meaning assigned by paragraph (a) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7)) that

(i) the individual's taxable capital gain from the disposition of the property at the particular time

is of

(ii) the amount determined under paragraph 114(a) in respect of the individual for the year, and

(b) that proportion of the individual's tax payable under Part XIII in respect of dividends received during the period by the individual in respect of the property and amounts deemed under Part XIII to have been paid during the period to the individual as dividends from corporations resident in Canada, to the extent that the amounts can reasonably be considered to relate to the property, that

(i) the amount by which the individual's loss from the disposition of the property at the end of the period is reduced by subsection 40(3.7)

is of

(ii) the total amount of those dividends.

Related Provisions: 126(2.21) — Foreign tax credit for former resident; 128.1(6)(b)(iii) — Effect of election by returning former resident; 128.3 — Shares acquired on rollover deemed to be same shares for s. 119; 152(6)(c.1) — Minister required to reassess past year to allow additional deduction; 161(7)(a)(i), 164(5)(a.1) — Effect of carryback of loss; 180.1(1.4) — Deduction against individual surtax.

Definitions [proposed s. 119]: "amount" — 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "individual", "property" — 248(1); "resident in Canada" — 250; "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 66, will repeal s. 119 applicable to 1995 *et seq.*, and add the above s. 119, applicable to dispositions after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

Technical Notes: Existing section 119 of the Act provides for a five-year block averaging for farmers and fishermen. Since the section is no longer active, it is repealed effective for the 1995 and subsequent taxation years.

New section 119 of the Act, which is unrelated to repealed section 119, provides a special tax credit in certain cases where the "stop-loss" rule in new subsection 40(3.7) of the Act applies to an individual who ceased to be resident in Canada.

Under amended subsection 128.1(4) of the Act, individuals who emigrate from Canada are treated as having disposed of most properties, for proceeds equal to the fair market value of the properties. Such an individual may therefore be treated as having realized an accrued gain immediately before leaving Canada, and will be subject to tax on the gain. If the individual subsequently receives dividends in respect of the same property, a loss realized on a later disposition of the property may be reduced by new subsection 40(3.7) of the Act, and thus may not be available to offset the gain that resulted from the subsection 128.1(4) deemed disposition. Part or all of the tax liability arising from the gain would thus remain payable. However, the individual may also have paid tax on those post-departure dividends, under Part XIII of the Act.

New section 119 addresses this possible overlap between the tax resulting from the subsection 128.1(4) deemed disposition of a capital property and the Part XIII tax on dividends that reduce the taxpayer's loss on the property. In general terms, the rule allows a tax credit equal to the tax on those dividends, up to the amount of the tax on the capital gain that arose on emigration from Canada.

More specifically, section 119 allows the individual to deduct, in computing tax otherwise payable under Part I of the Act for the taxation year in which subsection 128.1(4) treated the individual as having disposed of the property, the lesser of two amounts. The first amount, described in paragraph 119(a), is in effect the amount of tax attributable to the gain on the property. This amount is computed as the proportion of the individual's Part I tax for that year that the taxable capital gain on the particular property is of the individual's total income for the year, as determined under new paragraph 114(a) of the Act.

The second amount, set out in paragraph 119(b), is the Part XIII withholding tax paid (or deemed to have been paid) by the individual on dividends that, under new subsection 40(3.7), have reduced the individual's loss from the disposition of the property. This amount is computed as the proportion of the individual's Part XIII tax in respect of dividends in respect of the property that the subsection 40(3.7) loss reduction is of the total amount of those dividends.

A consequential amendment to subsection 152(6) of the Act ensures that any necessary assessments of tax will be made in order to take account of the effect of new section 119.

120. (1) Income not earned in a province — There shall be added to the tax otherwise payable under this Part by an individual for a taxation year an amount that bears the same relation to 52% of the tax otherwise payable under this Part by the individual for the year that

(a) the individual's income for the year, other than the individual's income earned in the year in a province,

bears to

(b) the individual's income for the year.

Proposed Amendment — Reduction in non-resident's tax rate

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Income Not Earned in a Province*

(12) That, for the 2000 and subsequent taxation years, the surtax applicable to an individual's income not earned in a province be reduced to 48 per cent from 52 per cent.

Federal budget, supplementary information, February 28, 2000: *Reduction in Federal Surtax for Non-Residents*

Individuals who have income which is considered to have been earned in Canada, but which is not considered to be earned in a province, pay a special federal surtax in addition to their regular federal tax. Individuals with such income include

- deemed residents, such as members of the Armed Forces who reside outside of Canada and therefore have no province of residence;
- Canadian residents with income from a permanent establishment in a foreign country; and
- non-residents who have business or employment income taxable in Canada.

The federal surtax for non-residents, which is currently 52 per cent of basic federal tax, ensures that deemed residents and others with income not earned in a province face a total income tax burden roughly comparable to that of Canadian residents. The surtax, which was introduced in 1972, is calculated to approximate provincial taxes. The surtax percentage has been adjusted on several occasions since 1972 to reflect changes in average provincial tax rates.

In light of recent changes in provincial tax rates, the budget proposes to reduce the federal surtax on income not earned in a province from 52 per cent of basic federal tax to 48 per cent.

This measure will apply for the 2000 and subsequent taxation years.

Related Provisions: 117(1) — Tax payable under this Part; 120(3) — "Income for the year" defined; 120(4) — Income earned in the year in a province.

Pre-RSC History: That portion of subsec. 120(1) preceding para. (a) amended by 1990, c. 39, s. 26, to substitute "52%" for "47%" and "by the individual" for "by him", applicable to 1989 *et seq.* except that for the 1989 taxation year, the reference to "52%" shall be read as a reference to "49.5%".

That portion of subsec. 120(1) preceding para. (a) substituted by 1980-81-82-83, c. 140, subsec. 79(1), applicable to the 1982 and subsequent taxation years, to substitute "47%" for "43%".

All that portion of subsec. 120(1) preceding para. (a) substituted by 1977-78, c. 1, subsec. 57(1), applicable to 1977 *et seq.*, to substitute "43%" for "30%".

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-434R: Rental of real property by individual.

(2) Amount deemed paid in prescribed manner [Quebec abatement] — Each individual is deemed to have paid, in prescribed manner and on prescribed dates, on account of the individual's tax under this Part for a taxation year an amount that bears the same relation to 3% of the tax otherwise payable under this Part by the individual for the year that

(a) the individual's income earned in the year in a province that, on January 1, 1973, was a province providing schooling allowances within the meaning of the *Youth Allowances Act*, chapter Y-1 of the Revised Statutes of Canada, 1970,

bears to

(b) the individual's income for the year.

Related Provisions: 117(1) — Tax payable under this Part; 120(3) — "Income for the year" defined; 152(1)(b) — Determination of amount on assessment; 152(4.2)(d) — Redetermination at taxpayer's request; 160.1 — Where excess refunded.

Pre-RSC History: Subsec. 120(2) substituted by 1980-81-82-83, c. 48, subsec. 66(1), applicable to 1980 *et seq.* Subsec. (2) formerly read:

(2) Deduction from tax re income earned in province providing schooling allowances — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year an amount that bears the same relation to 3% of the tax otherwise payable under this Part by him for the year that

(a) his income earned in the year in a province that, on the 1st day of January, 1973, was a province providing schooling allowances within the meaning of the *Youth Allowances Act*,

bears to

(b) his income for the year.

Para. 120(2)(a) substituted by 1973-74, c. 45, s. 8, applicable to 1974 *et seq.* Para. 120(2)(a) formerly read:

(a) his income earned in the year in a province providing schooling allowances, within the meaning of the *Youth Allowances Act*,

Federal-Provincial Fiscal Arrangements . . . Act: S. 27 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*, R.S.C. 1985, c. F-8, provides an additional 13.5% credit for residents of Quebec.

Selected Cases [subsec. 120(2)]: *Hollinger v. The Queen*, [1974] C.T.C. 693 (FCA) (Amounts received by passive partner in U.S. business constituted income from business; no provincial abatement).

Regulations: 6401 (prescribed date is December 31 of each year).

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

(2.1) Idem — Where section 119 is applicable to the computation of an individual's tax for a taxation year (referred to in that section as the "year of averaging"), notwithstanding subsection (2), the amount deemed by that subsection to have been paid on account of the individual's tax under this Part for the year shall be equal to the amount that would be determined under that subsection if the reference therein to "the tax otherwise payable under this Part by the individual for the year" were read as a reference to "the amount that would be the tax otherwise payable under this Part by the individual if the individual's taxable income for the year were the individual's average net income (within the meaning of paragraph 119(1)(c)) for the year".

Proposed Repeal — 120(2.1)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 67(1), will repeal subsec. 120(2.1), applicable to 1996 *et seq.*

Technical Notes: Subsection 120(2.1) of the Act provides a special rule for computing the amount that is considered, under subsection 120(2), to have been paid on behalf of an individual's tax for a taxation year. This special rule applies where existing section 119 of the Act applies to the individual for the year. Existing section 119 is no longer active, and is replaced with a new, unrelated rule. Subsection 120(2.1) is therefore repealed, for the 1996 and subsequent taxation years.

Pre-RSC History: Subsec. 120(2.1) added by 1980-81-82-83, c. 48, subsec. 66(1), applicable to 1980 *et seq.*

(2.2) Amount deemed paid [First Nations tax] — An individual is deemed to have paid on the last day of a taxation year, on account of the individual's tax under this Part for the year, an amount equal to the individual's income tax payable for the year to an Aboriginal government pursuant to a law of that government made in accordance with a tax sharing agreement between that government and the Government of Canada.

Related Provisions: 81(1)(a) — Deduction for amounts exempted under *Indian Act*; 152(1)(b) — Determination of amount on assessment; 152(4.2)(d) — Redetermination at taxpayer's request; 156.1(1)"net tax owing"(b)B, E, F, 156.1(1.3) — First Nations tax counted for instalment purposes.

History: Subsec. 120(2.2) added by 2000, c. 19, subsec. 27(1), applicable to 1999 *et seq.*

(3) Definition of "the individual's income for the year" — For the purpose of this section, "the individual's income for the year" means

(a) in the case of an individual to whom section 114 applies who was resident in Canada during part of the year and during some other part of the year was not resident in Canada, the amount that would be deter-

mined under that section to be the individual's taxable income for the year if that section were read without reference to the words following paragraph 114(b);

(b) in the case of an individual to whom section 115 applies who was not resident in Canada at any time in the taxation year, the amount that would be determined under Division D to be the individual's taxable income for the year if subsection 115(1) were read without reference to the words following paragraph 115(1)(c); and

Proposed Amendment — 120(3)(a), (b)

(3) Definition of "individual's income for the year" — In subsections (1) and (2), an "individual's income for the year" means

(a) if section 114 applies to the individual in respect of the year, the amount determined under paragraph 114(a) in respect of the individual for the year; and

(b) if the individual was non-resident throughout the year, the individual's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 67(2), will amend subsec. 120(3) to read as above, applicable to 1998 *et seq.* (subject to further amendments above and below).

Technical Notes: Section 120 of the Act sets out rules that integrate the federal and provincial income tax systems for individuals. Subsection 120(1) imposes an additional amount of federal tax on income that is not subject to provincial or territorial tax, while subsection 120(2) provides part of the tax abatement for income earned in Quebec (the rest is found in legislation concerning federal-provincial fiscal arrangements).

For the purposes of subsections 120(1) and (2) of the Act, subsection 120(3) defines the phrase "the individual's income for the year" where sections 114 or 115 of the Act — dealing with part-year residents and non-residents, respectively — apply in respect of the individual for the year. Subsection 120(3) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment makes no substantive change, but keeps the reference in step with the changes to section 114. For additional information, see the commentary on section 114.

(c) in the case of an individual who is a specified individual in relation to the year, the individual's income for the year computed without reference to paragraph 20(1)(ww).

History: The opening words of subsec. 120(3) amended, para. 120(3)(c) added, by 2000, c. 19, subsecs. 27(2), (3), applicable to 2000 *et seq.* The opening words formerly read:

(3) Definition of "the individual's income for the year" — In subsections (1) and (2), "the individual's income for the year" means

(3.1) [Repealed under former Act]

Pre-RSC History: Subsec. 120(3.1) repealed by 1986, c. 6, subsec. 66(1), applicable to 1986 *et seq.* Subsec. (3.1) formerly read:

(3.1) Additional deduction from tax — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year the amount, if any, by which

(a) $50 or, where the individual's spouse was resident in Canada during the year, $50 plus the amount, if any, by which $50 exceeds the amount, if any, of that spouse's tax otherwise payable under this Part for the year computed without reference to section 120.1

exceeds

(b) 10% of the amount by which the individual's tax otherwise payable under this Part for the year exceeds $6,000,

except that where the individual's return of income is filed pursuant to subsection 70(2) or 150(4) or paragraph 104 (23)(d) or 128(2)(e), the individual's spouse was resident in Canada during the year and an excess is determined under paragraph (a) for the year, the excess shall, notwithstanding that determination, be deemed to be nil.

All that portion of subsec. 120(3.1) following para. (b) amended by 1985, c. 45, subsec. 65(1), to substitute reference to para. 128(2)(e) for reference to subsec. 128(2), applicable to 1984 *et seq.*

Subsec. 120(3.1) substituted by 1984, c. 1, subsec. 62(1), applicable to 1984 *et seq.* except that the references to "$50" in subsection 120(3.1) shall be read as references to "$200" for the 1984 taxation year and "$100" for the 1985 taxation year. Subsec. (3.1) formerly read:

(3.1) There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year an amount equal to the aggregate of

(a) $200, and

(b) where during the year the individual had a spouse who was resident in Canada, the amount, if any, by which

(i) $200

exceeds

(ii) the amount, if any, of his spouse's tax otherwise payable under this Part for the year computed without reference to section 120.1,

except that, where the individual's return of income is filed pursuant to subsection 70(2), 128(2) or 150(4) or paragraph 104(23)(d), the excess otherwise computed under paragraph (b) in respect of that return shall be deemed to be nil.

Subsec. 120(3.1) substituted by 1980-81-82-83, c. 140, subsec. 79(2), applicable to the 1982 and subsequent taxation years. Subsec. (3.1) formerly read:

(3.1) There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year an amount equal to the greater of

(a) $200 and

(b) 9% of the tax otherwise payable under this Part by the individual for the year, or $500, whichever is the lesser.

Subsec. 120(3.1) substituted by 1978-79, c. 5, s. 3, applicable to 1979 *et seq.* Subsec. (3.1) formerly read:

(3.1) There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year an amount, not exceeding $500, equal to the aggregate of

(a) the greater of $200 and 9% of the tax otherwise payable under this Part by the individual for the year, and

(b) the product obtained when $50 is multiplied by the number of children each of whom

(i) has not attained the age of 18 years before the end of the year, and

(ii) was resident in Canada during the year,

and in respect of whom an amount was deductible by the individual under paragraph 109(1)(b), (d) or (e) from his income for the year for the purpose of computing his taxable income for the year.

Subsec. 120(3.1) substituted by 1977-78, c. 1, subsec. 57(2), applicable to 1977 *et seq.* except that in its application to the 1978 taxation year, the reference in para. 120(3.1)(a) to $200 shall be read as a reference to $300. Subsec. (3.1) formerly read:

(3.1) There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year an amount equal to the greater of

(a) $200, and

(b) 9% of the tax otherwise payable under this Part by the individual for the year, or $500, whichever is the lesser.

Para. 120(3.1)(b) substituted by 1976-77, c. 10, subsec. 52(5), applicable to 1977 *et seq.*, to substitute "9%" for "8%".

Para. 120(3.1)(b) substituted by 1974-75-76, c. 71, s. 3, applicable to 1975 *et seq.*

Paras. 120(3.1)(a), (b) substituted by 1974-75-76, c. 26, subsecs. 77(1), (2), applicable, as to para. 120(3.1)(a), to 1974 *et seq.*, except that, in its application to 1974, para. 120(3.1)(a) shall be read as follows: "(a) $150, and", as to para. 120(3.1)(b), to 1975 *et seq.* Paras. (a), (b) formerly read:

(a) $100, and

(b) 5% of the tax otherwise payable under this Part by the individual for the year, or $500, whichever is the lesser.

Subsec. 120(3.1) substituted by 1973-74, c. 30, s. 17, applicable to 1973 *et seq.* Subsec. (3.1) formerly read:

(3.1) There may be deducted from the tax otherwise payable under this Part by an individual for the 1972 taxation year an amount equal to 3% of the aggregate of

(a) the tax otherwise payable under this Part by the individual for the year, and

(b) any amount added to the tax otherwise payable under this Part by the individual for the year pursuant to subsection (1).

Subsec. 120(3.1) added by 1972, c. 9, s. 1.

(4) Definitions — In this section,

"income earned in the year in a province" means amounts determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance;

Pre-RSC History: *The definition "income earned in the year in a province" was para. 120(4)(a).*

Regulations: 2600–2607 (rules determining income earned in the year in a province).

Interpretation Bulletins: IT-434R: Rental of real property by individual.

"province [para. 120(4)(b)]" — [Repealed under former Act]

Pre-RSC History: Para. 120(4)(b) repealed by 1980-81-82-83, c. 48, subsec. 66(2), applicable to 1980 *et seq.* Paras. (b) formerly read:

(b) "province" does not include the Yukon Territory; and

Para. 120(4)(b) substituted by 1977-78, c. 32, s. 29, applicable to 1978 *et seq.* Para. (b) formerly read:

(b) "province" does not include the Northwest Territories or the Yukon Territory; and

"tax otherwise payable under this Part" by an individual for a taxation year means the total of

(a) the greater of

(i) the individual's minimum amount for the year determined under section 127.51, and

(ii) the amount that, but for this section, would be the individual's tax payable under this Part for the year if this Part were read without reference to

(A) subsection 120.4(2) and sections 126, 127, 127.4 and 127.41, and

Proposed Amendment — 120(4)"tax otherwise payable under this Part"(a)(ii)(A)

(A) section 119, subsection 120.4(2) and sections 126, 127, 127.4 and 127.41, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 67(3), will amend cl. (a)(ii)(A) of the definition "tax otherwise payable under this Part" in subsec. 120(4) to read as above, applicable to 1996 *et seq.* except that, in its application to taxation years that end before 2000, subsec. (3) of the amending legislation shall be read as follows:

(3) Paragraph (b) of the definition "tax otherwise payable under this Part" in subsection 120(4) of the Act is replaced by the following:

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if this Part were read without reference to any of sections 119, 126, 127 and 127.4.

Technical Notes: Subsection 120(4) includes a definition of "tax otherwise payable under this Part". The amendment to this subsection, which applies to the 1996 and subsequent taxation years, excludes from the definition any deduction from tax in respect of the new credit, under section 119 of the Act, for certain taxes paid by a former resident of Canada. In order to take into account an amendment to the definition of "tax otherwise payable under this Part" in the 1999 budget bill (Bill C-25), a special transitional rule is provided for taxation years that end before 2000.

(B) where the individual is a specified individual in relation to the year, section 121 in its application to dividends included in computing the individual's split income for the year, and

(b) where the individual is a specified individual in relation to the year, the amount, if any, by which

(i) 29% of the individual's split income for the year

exceeds

(ii) the total of all amounts each of which is an amount that may be deducted under section 121 and that can reasonably be considered to be in respect of a dividend included in computing the individual's split income for the year.

Related Provisions: 117(1) — Tax payable under this Part; 127(17) — "Tax otherwise payable".

History: The definition "tax otherwise payable under this Part" in subsec. 120(4) amended by 2000, c. 19, subsec. 27(3), applicable to 2000 *et seq.* It formerly read:

"tax otherwise payable under this Part" by an individual for a taxation year means the greater of

(a) the amount, if any, by which the total of

(i) the individual's minimum amount for the year determined under section 127.51, and

(ii) any amount required under subsection 120.1(2) to be added to the tax payable by the individual for the year under this Part,

exceeds any amount that may be deducted under subsection 120.1(1) from the tax payable by the individual for the year under this Part, and

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if this Part were read without reference to any of sections 126, 127 and 127.4.

Para. (b) of the definition "tax otherwise payable under this Part" in subsec. 120(4) amended by 1999, c. 22, s. 43, applicable to 1998 *et seq.*

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if the individual were not entitled to any deduction under any of sections 126, 127, 127.2 and 127.4.

Pre-RSC History: *The definition "tax otherwise payable under this Part" was para. 120(4)(c). See Table of Concordance.*

Para. 120(4)(c) substituted by 1986, c. 55, s. 37, applicable to taxation years commencing after 1985. Para. (c) formerly read:

"tax otherwise payable under this Part", in relation to a taxation year, means the amount that, but for this section and subsection 117(6), would be the tax payable by a taxpayer under this Part for the taxation year if the taxpayer were not entitled to any deduction under any of sections 126, 127, 127.2 and 127.4.

Para. 120(4)(c) amended by 1986, c. 6, subsec. 66(2), applicable to 1985 *et seq.*, to substitute "any of sections 126, 127, 127.2 and 127.4" for "section 126, 127 or 127.2".

Para. 120(4)(c) substituted by 1984, c. 1, subsec. 62(2), applicable to 1982 *et seq.* Para. (c) formerly read:

(c) "tax otherwise payable under this Part" means the amount that, but for this section and subsection 117(6), would be the tax payable by a taxpayer under this Part for the taxation year in respect of which the expression is being applied if the taxpayer were not entitled to any deduction under section 126 or 127.

Para. 120(4)(c) amended by 1980-81-82-83, c. 48, subsec. 66(3), applicable to 1979 *et seq.* Para. (b) formerly read:

(c) "tax otherwise payable under this Part" means

(i) where a taxpayer's tax for the taxation year in respect of which the expression is being applied is computed in accordance with the table prescribed under subsection 117(6), the tax so computed, and

(ii) in any other case the amount that, but for this section, would be the tax payable by a taxpayer under this Part for the taxation year in respect of which the expression is being applied if the

taxpayer were not entitled to any deduction under section 126 or 127.

Subpara. 120(4)(c)(ii) substituted by 1974-75-76, c. 26, subsec. 77(3), applicable on and after August 1, 1974, to delete reference to s. 126.1.

Subpara. 120(4)(c)(ii) substituted by 1973-74, c. 51, s. 18, in force August 1, 1974, to add reference to s. 126.1.

Selected Cases [s. 120]: *Lemaire v. Canada*, [1995] 1 C.T.C. 2844 (TCC) (Tax Court cannot grant relief from provincial taxation or order refund of provincial taxes deducted at source).

Definitions [s. 120]: "amount" — 248(1); "Canada" — 255; "income earned in the year in a province" — 120(4); "income for the year" — 120(3); "individual", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "regulation" — 248(1); "resident in Canada" — 250; "specified individual", "split income" — 120.4(1), 248(1); "tax otherwise payable" — 120(4); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

I.T. Application Rules [s. 120]: 40(1), (2); 49(3).

120.1 [Repealed]

History [120.1]: S. 120.1 repealed by 2000, c. 19, s. 28, applicable to 1998 *et seq.* It formerly read:

120.1 (1) Forward averaging credit — There may be deducted from the amount that would, but for this section, be the tax otherwise payable under this Part (other than the tax payable with respect to a return of income referred to in subsection 110.4(5)) by an individual for a taxation year an amount equal to the product obtained when

(a) the amount specified in the individual's election for the year under subsection 110.4(2) and, where the individual's legal representative has filed on the individual's behalf an election under subsection (2) for the year, the individual's accumulated averaging amount at the end of the year

is multiplied by

(b) the percentage referred to in paragraph 117(2)(c).

(2) Year of death — Where an individual dies in a taxation year before 1998 (and is resident in Canada at the time of death) and the individual's legal representative files with the individual's return of income (other than a return of income referred to in subsection 110.4(5)) for the year an election in prescribed form on or before the day on or before which the return is required to be filed, there shall be added to the amount that would, but for this section, be the individual's tax payable for the year under this Part with respect to the return of income an amount equal to the amount, if any, by which

(a) the total of the taxes that would have been payable by the individual under this Part for the three immediately preceding taxation years if the individual's taxable income otherwise determined for each of those years were increased by 1/3 of the individual's accumulated averaging amount at the end of the year in which the individual died and if this Part were read without reference to sections 119 to 127.3

exceeds

(b) the total of the taxes that would have been payable by the individual under this Part for the three immediately preceding taxation years if this Part were read without reference to sections 119 to 127.3.

(3) Deduction and additions — Each amount deducted or added under subsection (1) or (2) in computing the tax payable under this Part by an individual for a taxation year shall, notwithstanding those subsections, be equal to the total of

(a) the amount that would, but for this subsection, be determined for the year under subsection (1) or (2), as the case may be, and

(b) an amount equal to that proportion of 52% of the amount referred to in paragraph (a) that

(i) the individual's income for the year, other than the individual's income earned in the year in a province,

is of

(ii) the individual's income for the year.

(4) Presumption — Where the amount deductible by an individual under subsection (1) exceeds the amount that would, but for that subsection, be the individual's tax otherwise payable under this Part for the year, the excess shall be deemed to be an amount paid by the individual, on the day the individual was required to file the election under subsection 110.4(2), on account of the individual's tax for the year under this Part.

(5) Reduction — Notwithstanding subsection (4), the amount of the excess referred to in that subsection shall be reduced by an amount equal to that proportion of 16.5% of the amount of the excess that

(a) the individual's income earned in the year in a province that, on January 1, 1973, was a province providing schooling allowances (within the meaning of the *Youth Allowances Act*, chapter Y-1 of the Revised Statutes of Canada, 1970)

is of

(b) the individual's income for the year.

(6) Individual not resident — Where an individual was not resident in Canada throughout the taxation years referred to in paragraph (2)(b), the amount determined under that paragraph shall be equal to the amount that would have been so determined if the individual had been resident in Canada throughout those years and the individual's incomes for those years had been from sources in Canada.

(7) Application — This section does not apply to an individual described in subsection (6) unless the individual's legal representatives have, on or before the day on or before which they were required to file the individual's return of income under this Part for the taxation year in which the individual died (or would have been required to file such a return had tax been payable by the individual under this Part for the year), filed a return of the individual's income for each of the three taxation years referred to in paragraph (2)(b) in the same form and containing the same information as the return that the individual, or legal representatives, would have been required to file under this Part if the individual had been resident in Canada throughout each of those three years and if tax had been payable by the individual under this Part for each of those three years.

(8) Amount required to be included — Where an amount is required by virtue of this section to be included in computing the individual's tax otherwise payable under this Part for a taxation year, the references in subsection 120(1) and section 121 of this Act and subsection 120(3.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to "the tax otherwise payable under this Part" shall be read as references to "the amount that would, but for section 120.1, be the tax otherwise payable under this Part".

That portion of para. 120.1(3)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 97, to substitute "52%" for "47%", applicable to 1989 *et seq.* except that for the 1989 taxation year "52%" shall be read as "49.5%".

Pre-RSC History [s. 120.1]: Subsecs. 120.1(1)–(3) substituted by 1988, c. 55, s. 94, applicable with respect to elections filed for 1988 *et seq.* The subsecs. formerly read:

120.1 (1) There may be deducted from the amount that would, but for this section, be the tax otherwise payable under this Part (other than the tax payable with respect to a return of income referred to in subsection 110.4(5)) by an individual for a taxation year an amount equal to the product obtained when

(a) the amount specified in his election for the year under subsection 110.4(2) and, where he died in the year and was resident in Canada at the time of his death, his accumulated averaging amount at the end of the year

is multiplied by

(b) the percentage referred to in paragraph 117(5.2)(j).

(2) There shall be added to the amount that would, but for this section, be the tax otherwise payable under this Part (other than the tax payable with respect to a return of income referred to in subsection 110.4(5)) by an individual for a taxation year an amount equal to

(a) the product obtained when the amount deducted under subsection 110.4(1) in computing his taxable income for the year is multiplied by the percentage referred to in paragraph 117(5.2)(j); and

(b) where he died in the year and was resident in Canada at the time of his death, the amount, if any, by which

(i) the aggregate of the taxes that would have been payable by him under this Part for the three immediately preceding taxation years if his taxable income otherwise determined

for each of those years were increased by 1/3 of his accumulated averaging amount at the end of the year in which he died and if this Part were read without reference to sections 118 to 127.3

exceeds

(ii) the aggregate of the taxes that would have been payable by him under this Part for the three immediately preceding taxation years if this Part were read without reference to sections 118 to 127.3.

(3) **Where change of province of residence** — Notwithstanding subsections (1) and (2),

(a) the amount deducted under subsection (1),

(b) the product determined under paragraph (2)(a), and

(c) the amount, if any, determined under paragraph (2)(b)

for a taxation year shall be equal to the aggregate of

(d) the amount that would, but for this subsection, be determined for the year under that subsection or that paragraph, as the case may be, and

(e) an amount equal to that proportion of 47% of the amount referred to in paragraph (d) that

(i) the individual's income for the year, other than his income earned in the year in a province,

is of

(ii) his income for the year.

Para. 120.1(2)(b) substituted by 1984, c. 45, subsec. 38(1), applicable to 1982 *et seq.* Para. (b) formerly read:

(b) where he died in the year and was resident in Canada at the time of his death, the amount, if any, by which

(i) the aggregate of the taxes that would, if this Part were read without reference to sections 118 to 127.3, have been payable by him under this Part for the three immediately preceding taxation years if he had specified, for each of those years in elections under subsection 110.4(2), 1/3 of his accumulated averaging amount at the end of the year in which he died

exceeds

(ii) the aggregate of the taxes that would, if this Part were read without reference to sections 118 to 127.3, have been payable by him under this Part for the three immediately preceding taxation years.

Subsecs. 120.1(3), (5) substituted by the said c. 45, subsecs. 38(2), (3), applicable to 1983 *et seq.* The subsecs. formerly read:

(3) **Individual not resident** — Notwithstanding subsections (1) and (2), where an individual was not resident in a province on the last day of a taxation year,

(a) the amount deducted under subsection (1),

(b) the product determined under paragraph (2)(a), and

(c) the amount, if any, determined under paragraph (2)(b)

for that year shall be equal to 147% of the amount that would otherwise be determined under that subsection or that paragraph, as the case may be.

.....

(5) **Individual resident** — Notwithstanding subsection (4), where an individual was resident on the last day of a taxation year in a province that, on the 1st day of January 1973, was a province providing schooling allowances within the meaning of the *Youth Allowance Act*, the amount of the excess referred to in that subsection shall be reduced by an amount equal to 16.5% of the amount thereof.

Subsecs. 120.1(1), (2) substituted by 1984, c. 1, subsecs. 63(1), (2), applicable to 1982 *et seq.* The subsecs. formerly read:

120.1 (1) **Deduction** — There may be deducted from the amount that would, but for this section, be the tax otherwise payable under this Part by an individual for a taxation year an amount equal to the product obtained when

(a) the amount included under subsection 110.4(2) in computing his taxable income for the year, and, where he died in the year and was resident in Canada throughout the year, his accumulated averaging amount at the end of the year,

is multiplied by

(b) the percentage referred to in paragraph 117(5.2)(j).

(2) **Addition** — There shall be added to the amount that would, but for this section, be the tax otherwise payable under this Part by an individual for a taxation year an amount equal to

(a) the product obtained when the amount deducted under subsection 110.4(1) in computing his taxable income for the year is multiplied by the percentage referred to in paragraph 117(5.2)(j); and

(b) where he died in the year and was resident in Canada at the time of his death, the aggregate of

(i) the amount, if any, by which

(A) the aggregate of his taxes that would have been payable under this Part for the three immediately preceding taxation years if his taxable income otherwise determined for each of those years were increased by 1/3 of his accumulated averaging amount at the end of the year and if this Part were read without reference to subsection (3) and sections 120, 121, 126 and 127,

exceeds

(B) the aggregate of his taxes that would have been payable under this Part for the three immediately preceding taxation years if this Part were read without reference to subsection (3) and sections 120, 121, 126 and 127, and

(ii) the amount, if any, by which

(A) the aggregate of the amounts that would have been deemed to be paid by him on account of his tax for the three immediately preceding taxation years under subsection (4) if this Part were read without reference to subsections (3) and 120(1)

exceeds

(B) the aggregate of the amounts that would have been deemed to be paid by him on account of his tax for the three immediately preceding taxation years under subsection (4) if his taxable income otherwise determined for each of those years were increased by 1/3 of his accumulated averaging amount at the end of the year and if this Part were read without reference to subsections (3) and 120(1).

S. 120.1 added by 1980-81-82-83, c. 140, s. 80, applicable to 1982 *et seq.*

Selected Cases [s. 120.1]: *Miller v. MNR*, [1990] 2 C.T.C. 4 (FCTD); rev'd [1993] 1 C.T.C. 269, (sub nom. *Miller v. R.*) 93 D.T.C. 5035 (FCA) (Amendment of election permitted subsequent to filing).

120.2 (1) Minimum tax carry-over — There may be deducted from the amount that, but for this section, section 120 and subsection 120.4(2), would be an individual's tax payable under this Part for a particular taxation year such amount as the individual claims not exceeding the lesser of

(a) the portion of the total of the individual's additional taxes determined under subsection (3) for the 7 taxation years immediately preceding the particular year that was not deducted in computing the individual's tax payable under this Part for a taxation year preceding the particular year, and

(b) the amount, if any, by which

(i) the amount that, but for this section, section 120 and subsection 120.4(2), would be the individual's tax payable under this Part for the particular year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4

exceeds

(ii) the individual's minimum amount for the particular year determined under section 127.51.

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 120.2(2) repealed by 1988, c. 55, subsec. 95(1), applicable to 1987 *et seq.* Subsec. (2) formerly read:

(2) **Death of individual** — Notwithstanding subsection (1), where an individual dies in a taxation year (in this subsection referred to as

the "year of death"), in computing for each of the 3 taxation years (in this subsection referred to as the "particular year") preceding the year of death the amount that, but for sections 120 and 120.1 and this section, would be the tax payable under this Part by him for the particular year, there may be deducted, in addition to any amount that may be deducted under subsection (1), such amount as may be claimed not exceeding the lesser of

(a) the portion of the aggregate of his additional taxes determined under subsection (3) for the 7 taxation years immediately preceding the particular year and any taxation year subsequent to the particular year that was not deducted in computing his tax payable under this Part for any other taxation year, and

(b) the amount, if any, by which

(i) the amount that, but for subsection 117(6), sections 120 and 120.1 and this section, would be his tax payable under this Part for the particular year if he were not entitled to any deduction under any of sections 126, 127 and 127.2 to 127.4

exceeds

(ii) his minimum amount for the particular year determined under section 127.51.

(3) Additional tax determined — For the purposes of subsection (1), additional tax of an individual for a taxation year is the amount, if any, by which

(a) the individual's minimum amount for the year determined under section 127.51

exceeds the total of

(b) the amount that, but for section 120 and subsection 120.4(2), would be the individual's tax payable under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4, and

(c) that proportion of the amount, if any, by which

(i) the individual's special foreign tax credit for the year determined under section 127.54

exceeds

(ii) the total of all amounts deductible under section 126 from the individual's tax for the year

that

(iii) the amount of the individual's foreign taxes for the year within the meaning assigned by subsection 127.54(1)

is of

(iv) the amount that would be the individual's foreign taxes for the year within the meaning assigned by subsection 127.54(1) if the definition "foreign taxes" in that subsection were read without reference to "⅔ of".

Related Provisions: 117(1) — Tax payable under this Part.

(4) Where subsec. (1) does not apply — Subsection (1) does not apply in respect of

(a) an individual's return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4); or

(b) a taxation year of an individual in respect of which the individual has made an election under section 119.

Proposed Amendment — 120.2(4)

(4) Where subsection (1) does not apply — Subsection (1) does not apply in respect of an individual's return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4).

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 68, will amend subsec. 120.2(4) to read as above, applicable to 1996 *et seq.*

Technical Notes: Section 120.2 of the Act allows an individual to apply additional taxes, imposed for a given year under the section 127.5 minimum tax, against the individual's ordinary Part I tax liabilities for following years. Paragraph 120.2(4)(b) prevents such a carryforward in respect of any taxation year in which the taxpayer has elected under existing section 119 of the Act. Existing section 119 no longer applies, and is replaced with an unrelated new rule. Subsection 120.2(4) is therefore restructured to remove its reference to section 119. This amendment applies to the 1996 and subsequent taxation years.

History: The opening words of subsec. 120.2(1), subpara. 120.2(1)(b)(i) and para. 120.2(3)(b) amended by 2000, c. 19, subsecs. 29(1)–(3), applicable to 2000 *et seq.* The opening words, the subpara. and para. formerly read:

(1) There may be deducted from the amount that, but for this section and sections 120 and 120.1, would be the tax payable under this Part by an individual for a particular taxation year such amount as the individual may claim not exceeding the lesser of

. . . . .

(i) the amount that, but for this section, subsection 117(6), sections 120 and 120.1, would be the individual's tax payable under this Part for the particular year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.2 to 127.4

. . . . .

(b) the amount that, but for subsection 117(6) and sections 120 and 120.1, would be the tax payable by the individual under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.2 to 127.4, and

Para. 120.2(4)(a) amended by 1998, c. 19, s. 137, applicable to taxation years that begin after April 26, 1995. Para. 120.2(4)(a) formerly read:

(a) a return of income of an individual filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4); or

Pre-RSC History [s. 120.2]: That portion of subsecs. (3), (4) preceding para. (a) of each amended to delete reference to subsec. (2) by 1988, c. 55, subsecs. 95(2),(3), applicable to 1987 *et seq.*

S. 120.2 added by 1986, c. 55, s. 38; subsec. 120.2(1) applicable to taxation years commencing after 1985, and subsecs. (2), (3) and (4) applicable to taxation years commencing after 1983.

Selected Cases [s. 120.2]: *Netupsky v. Canada*, [1995] 1 C.T.C. 2321 (TCC) (Alternative minimum tax not unconstitutional).

Definitions [s. 120.2]: "amount", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

120.3 CPP/QPP disability [or other] benefits for previous years — There shall be added in computing an individual's tax payable under this Part for a particular taxation year the total of all amounts each of which is the amount, if any, by which

(a) the amount that would have been the tax payable under this Part by the individual for a preceding taxation year if that portion of any amount not included in computing the individual's income for the particular year because of subsection 56(8) and that relates to the preceding year had been included in computing the individual's income for the preceding year

exceeds

(b) the tax payable under this Part by the individual for the preceding year.

History: S. 120.3 added by 1994, c. 7, Sch. II (1991, c. 49), s. 98, applicable to 1990 *et seq.*

Definitions [s. 120.3]: "amount", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

120.31 Lump-sum payments — (1) Definitions — The definitions in subsection 110.2(1) apply in this section.

(2) Addition to tax payable — There shall be added in computing an individual's tax payable under this Part for

a particular taxation year the total of all amounts each of which is the amount, if any, by which

(a) the individual's notional tax payable for an eligible taxation year to which a specified portion of a qualifying amount received by the individual relates and in respect of which an amount is deducted under section 110.2 in computing the individual's taxable income for the particular year

exceeds

(b) the individual's tax payable under this Part for the eligible taxation year.

Forms: T1198: Statement of qualifying retroactive lump-sum payment.

(3) Notional tax payable — For the purpose of subsection (2), an individual's notional tax payable for an eligible taxation year, calculated for the purpose of computing the individual's tax payable under this Part for a taxation year (in this subsection referred to as "the year of receipt") in which the individual received a qualifying amount, is the total of

(a) the amount, if any, by which

(i) the amount that would be the individual's tax payable under this Part for the eligible taxation year if the total of all amounts, each of which is the specified portion, in relation to the eligible taxation year, of a qualifying amount received by the individual before the end of the year of receipt, were added in computing the individual's taxable income for the eligible taxation year

exceeds

(ii) the total of all amounts each of which is an amount, in respect of a qualifying amount received by the individual before the year of receipt, that was included because of this paragraph in computing the individual's notional tax payable under this Part for the eligible taxation year, and

(b) where the eligible taxation year ended before the taxation year preceding the year of receipt, an amount equal to the amount that would be calculated as interest payable on the amount determined under paragraph (a) if it were so calculated

(i) for the period that began on May 1 of the year following the eligible taxation year and that ended immediately before the year of receipt, and

(ii) at the prescribed rate that is applicable for the purpose of subsection 164(3) with respect to the period.

Regulations: 4301(b) (prescribed rate of interest).

History: S. 120.31 added by 2000, c. 19, s. 30, applicable to 1995 *et seq.* and, notwithstanding subsecs. 152(4) to (5), any assessment of an individual's tax payable under the Act for any taxation year that ended before 1999 shall be made as is necessary to take into account the application of s. 120.31.

Definitions [s. 120.31]: "amount" — 248(1); "eligible taxation year" — 110.2(1), 120.31(1); "individual" — 248(1); "notional tax payable" — 120.31(3); "prescribed" — 248(1); "qualifying amount", "specified portion" — 110.2(1), 120.31(1); "taxable income" — 248(1); "taxation year" — 249; "year of receipt" — 120.31(3).

120.4 Tax on split income [Kiddie tax] — (1) Definitions — The definitions in this subsection apply in this section.

"excluded amount", in respect of an individual for a taxation year, means an amount that is the income from a property acquired by or for the benefit of the individual as a consequence of the death of

(a) a parent of the individual; or

(b) any person, if the individual is

(i) enrolled as a full-time student during the year at a post-secondary educational institution (as defined in subsection 146.1(1)), or

(ii) an individual in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year.

Related Provisions: 248(8) — Occurrences as a consequence of death.

"specified individual", in relation to a taxation year, means an individual who

(a) had not attained the age of 17 years before the year;

(b) at no time in the year was non-resident; and

(c) has a parent who is resident in Canada at any time in the year.

Related Provisions: 248(1)"specified individual" — Definition applies to entire Act.

"split income", of a specified individual for a taxation year, means the total of all amounts (other than excluded amounts) each of which is

(a) an amount required to be included in computing the individual's income for the year

(i) in respect of taxable dividends received by the individual in respect of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange or shares of the capital stock of a mutual fund corporation), or

(ii) because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange),

(b) a portion of an amount included because of the application of paragraph 96(1)(f) in computing the individual's income for the year, to the extent that the portion

(i) is not included in an amount described in paragraph (a), and

(ii) can reasonably be considered to be income derived from the provision of goods or services by a partnership or trust to or in support of a business carried on by

(A) a person who is related to the individual at any time in the year,

(B) a corporation of which a person who is related to the individual is a specified shareholder at any time in the year, or

(C) a professional corporation of which a person related to the individual is a shareholder at any time in the year, or

(c) a portion of an amount included because of the application of subsection 104(13) or 105(2) in respect of a trust (other than a mutual fund trust) in computing the individual's income for the year, to the extent that the portion

(i) is not included in an amount described in paragraph (a), and

(ii) can reasonably be considered

(A) to be in respect of taxable dividends received in respect of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange or shares of the capital stock of a mutual fund corporation),

(B) to arise because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a prescribed stock exchange), or

(C) to be income derived from the provision of goods or services by a partnership or trust to or in support of a business carried on by

(I) a person who is related to the individual at any time in the year,

(II) a corporation of which a person who is related to the individual is a specified shareholder at any time in the year, or

(III) a professional corporation of which a person related to the individual is a shareholder at any time in the year.

Related Provisions: 20(1)(ww) — Split income deducted from income for regular tax purposes; 56(5), 74.4(2)(g), 74.5(13) — Attribution rules do not apply to split income; 120.4(2) — Tax on split income; 248(1)"split income" — Definition applies to entire Act.

(2) Tax on split income — There shall be added to a specified individual's tax payable under this Part for a taxation year 29% of the individual's split income for the year.

Related Provisions: 20(1)(ww) — Split income deducted from income for regular tax purposes; 120.2(1), 120.2(1)(b)(i) — No AMT carryover allowed against split-income tax; 120.4(3) — Minimum amount of income-splitting tax; 160(1.2) — Parent jointly liable with child for tax.

(3) Tax payable by a specified individual — Notwithstanding any other provision of this Act, where an individual is a specified individual in relation to a taxation year, the individual's tax payable under this Part for the year shall not be less than the amount by which

(a) the amount added under subsection (2) to the individual's tax payable under this Part for the year

exceeds

(b) the total of all amounts each of which is an amount that

(i) may be deducted under section 121 or 126 in computing the individual's tax payable under this Part for the year, and

(ii) can reasonably be considered to be in respect of an amount included in computing the individual's split income for the year.

History: S. 120.4 added by 2000, c. 19, s. 30, applicable to 2000 *et seq.*

Defintions [s. 120.4]: "amount", "business" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "excluded amount" — 120.4(1); "individual" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident" — 248(1); "parent" — 252(2)(a); "person", "prescribed", "professional corporation", "property" — 248(1); "related" — 251(2)–(6); "resident in Canada" — 250; "share", "shareholder" — 248(1); "specified individual" — 120.4(1), 248(1); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

121. Deduction for taxable dividends — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year ⅔ of any amount that is required by paragraph 82(1)(b) to be included in computing the individual's income for the year.

Related Provisions: 82(2) — Dividends deemed received by taxpayer; 117(1) — Tax payable under this Part; 118.92 — Ordering of credits.

Pre-RSC History: S. 121 substituted by 1986, c. 55, s. 39, applicable with respect to taxable dividends received after 1986. S. 121 formerly read:

> 121. Deduction in respect of taxable dividends — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year 68% of any amount that is, by paragraph 82(1)(b), required to be included in computing his income for the year.

S. 121 substituted by 1980-81-82-83, c. 140, s. 81, applicable with respect to dividends received after 1981, to substitute "68%" for "¾".

S. 121 substituted by 1977-78, c. 1, s. 58, applicable with respect to taxable dividends received after 1976, to substitute "¾" for "⅘".

Definitions [s. 121]: "amount", "individual" — 248(1); "taxation year" — 249.

I.T. Application Rules: 40(1), (2).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-295R4: Taxable dividends received after 1987 by spouse; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-524: Trusts — flow-through of taxable dividends to a beneficiary after 1987.

122. (1) Tax payable by *inter vivos* trust — Notwithstanding section 117, the tax payable under this Part by an *inter vivos* trust on its amount taxable for a taxation year shall be 29% of its amount taxable for the year.

Related Provisions: 104(2) — Multiple trusts can be considered as one, to prevent multiplication of low rate of tax for testamentary trusts; 122(2) — Exception.

Selected Cases [subsec. 122(1)]: *Robinson (Trustee of) v. R.*, [1998] 1 C.T.C. 272 (FCA) (Limited partner nevertheless carries on the business of the partnership).

Interpretation Bulletins: IT-83R3: Non-profit organizations — taxation of income from property.

(1.1) Deductions [personal credits] not permitted [to trust] — No deduction may be made under section 118 in computing the tax payable by a trust for a taxation year.

Pre-RSC History: Subsec. 122(1) amended to substitute "29%" for "34%" and subsec. (1.1) added, by 1988, c. 55, s. 96, applicable to 1988 *et seq.*

Subsec. 122(1) substituted by 1985, c. 45, subsec. 66(1), applicable to 1985 *et seq.* Subsec. 122(1) formerly read:

> 122. (1) Tax payable by *inter vivos trust* — Notwithstanding section 117, the amount determined under that section to be the tax payable under this Part by an *inter vivos* trust other than a mutual fund trust upon its amount taxable for a taxation year is the greater of
>
> (a) 34% of its amount taxable for the year, and
>
> (b) the amount otherwise determined thereunder to be its tax payable under this Part upon its amount taxable for the year.

Para. 122(1)(a) substituted by 1980-81-82-83, c. 140, subsec. 82(1), applicable to the 1982 and subsequent taxation years, to substitute "34%" for "35%".

Interpretation Bulletins: IT-83R3: Non-profit organizations — taxation of income from property; IT-406R2: Tax payable by an *inter vivos* trust.

(2) Where subsec. (1) does not apply — Subsection (1) is not applicable for a taxation year of an *inter vivos* trust other than a mutual fund trust if the trust

(a) was established before June 18, 1971;

(b) was resident in Canada on June 18, 1971 and without interruption thereafter until the end of the year;

(c) did not carry on any active business in the year;

(d) has not received any property by way of gift since June 18, 1971; and

Proposed Addition — 122(2)(d.1)

(d.1) was not a trust to which a contribution, within the meaning assigned by section 94, was made after June 22, 2000; and

Application: The June 22, 2000 draft legislation, s. 18, will add para. 122(2)(d.1), applicable to taxation years that begin after 2000.

Technical Notes: Subsection 122(1) of the Act provides that, instead of graduated income tax rates, *inter vivos* trusts are generally subject to top marginal rates of income tax on their undistributed income. Subsection 122(2) permits graduated income tax rates for certain *inter vivos* trusts established before June 18, 1971. One of the conditions for an *inter vivos* trust continuing to qualify for graduated income tax rates is that it not receive any gifts after June 18, 1971.

Paragraph 122(2)(d.1) is introduced so that the graduated income tax rates cease to apply to a trust in the event that, after June 22, 2000, a "contribution" is made to the trust. The expression "contribution" is defined in new section 94.

This amendment applies to taxation years that begin after 2000.

(e) has not, after June 18, 1971, incurred

(i) any debt, or

(ii) any other obligation to pay an amount,

to, or guaranteed by, any person with whom any beneficiary of the trust was not dealing at arm's length.

Proposed Addition — 122(2)(f)

(f) has not received any property after December 17, 1999, where

(ii) the property was received as a result of a transfer from another trust,

(ii) subsection (1) applied to a taxation year of the other trust that began before the property was so received, and

(iii) no change in the beneficial ownership of the property resulted from the transfer.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 69, will add para. 122(2)(f), applicable to 1999 *et seq.*

Technical Notes: Subsection 122(1) provides that *inter vivos* trusts are generally subject to income tax at top marginal income tax rates. Subsection 122(2) of the Act permits certain pre-1972 *inter vivos* trusts access to graduated income tax rates.

Subsection 122(2) is amended to ensure that this special treatment does not apply to a trust in the event that property has been transferred after December 17, 1999 to the trust from another trust to which subsection 122(1) applies, if there was no change in the beneficial ownership of the property on its transfer.

This amendment applies to the 1999 and subsequent taxation years.

Interpretation Bulletins: IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-406R2: Tax payable by an *inter vivos* trust.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 122(3) repealed by 1985, c. 45, subsec. 66(2), applicable to 1985 *et seq.* Subsec. 122(3) formerly read:

(3) Tax payable by mutual fund trust — Notwithstanding section 117, the amount determined under that section to be the tax payable under this Part by a mutual fund trust upon its amount taxable for a taxation year is the aggregate of

(a) 34% of the lesser of

(i) the amount, if any, by which its taxable capital gains for the year from dispositions of property exceeds the aggregate of its allowable capital losses for the year from dispositions of property and the amount, if any, deducted under paragraph 111(1)(b) from its income for the year for the purpose of computing its taxable income, and

(ii) its taxable income for the year, and

(b) the greater of

(i) 34% of the amount, if any, by which the amount determined under subparagraph (a)(ii) exceeds the amount determined under subparagraph (a)(i), and

(ii) the amount that would, but for this subsection, be determined under section 117 to be its tax payable under this Part upon its amount taxable for the year if its amount taxable were equal to the amount of the excess described in subparagraph (i).

Subpara. 122(3)(a)(i) substituted by 1984, c. 1, subsec. 64(1), to substitute "deducted" for "deductible", applicable to 1983 *et seq.* with respect to amounts deductible under paragraph 111(1)(b) in respect of losses determined for 1983 *et seq.*

All that portion of para. 122(3)(a) preceding subpara. (i) and subpara. 122(3)(b)(i) substituted by 1980-81-82-83, c. 140, subsecs. 82(2) and 82(3), applicable to the 1982 and subsequent taxation years, to substitute "34%" for "35%".

Para. 122(1)(a), all that portion of para. 122(3)(a) preceding subpara. (i), subpara. 122(3)(b)(i) substituted by 1976-77, c. 10, subsecs. 52(6)–(8), applicable to 1977 *et seq.*, to substitute "35%" for "39%".

Definitions [s. 122]: "allowable capital loss" — 38(b), 248(1); "amount", "business" — 248(1); "Canada" — 255; "*inter vivos* trust" — 108(1), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "person", "property" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 122]: 78-5R3: Communal organizations.

122.1 [Repealed under former Act]

Pre-RSC History: S. 122.1 repealed by 1985, c. 45, s. 67, applicable to 1985 *et seq.* S. 122.1 formerly read:

122.1 (1) Deduction from tax otherwise payable — An individual (other than a trust) who resided in a prescribed province on December 31, 1978 shall deduct from the tax otherwise payable under this Part by him for the 1978 taxation year an amount equal to the lesser of

(a) $100, and

(b) the amount that would, but for this subsection, be the tax payable by him under this Part for the year.

(2) Deduction from tax otherwise payable — An individual (other than a trust) who resided on December 31, 1977 in a province (other than the Northwest Territories, the Yukon Territory or a province prescribed for the purposes of subsection (1)) with which the Government of Canada did not, on April 10, 1978, have a tax collection agreement pursuant to Part III of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977* shall deduct from the tax otherwise payable under this Part by him for the 1977 taxation year an amount equal to the lesser of

(a) $85, and

(b) the amount that would, but for this subsection, be the tax payable by him under this Part for the year.

(3) Application — Notwithstanding subsections (1) and (2) and 248(2), no deduction shall be made under this section except for the purposes of determining, after the day on or before which an individual was required to file his return of income for a taxation year, the balance of tax, interest and penalties unpaid or his overpayment of tax for the year, and except for those purposes, any reference in this Act to his tax, tax payable, or tax otherwise payable for that year shall be read as a reference to his tax, tax payable or tax otherwise payable, as the case may be, for the year before the deduction provided under this section.

(4) When overpayment arises — For the purposes of subsection 164(3), the portion of any overpayment that arose as a consequence of a deduction made by an individual pursuant to subsection (2) shall be deemed to have arisen on the day the portion is refunded or applied on other liability.

S. 122.1 added by 1977-78, c. 32, s. 30, applicable, as to subsec. 122.1(1), to the 1978 taxation year, as to subsecs. 122.1(2), (4), to the 1977 taxation year, and, as to subsec. 122.1(3), to the 1977 and 1978 taxation years.

122.2 (1) [Repealed]

History: 1998, c. 19, s. 138(1), amended subpara. 122.2(1)(b)(i), as it read in its application to the 1992 taxation year, to read as follows, in force June 18, 1998.

(i) the total of all amounts each of which would be the income for the year of the individual or a supporting person of an eligible child of the individual for the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income

Subsec. 122.2(1) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 10(2), applicable to 1993 *et seq.* Subsec. (1) formerly read:

122.2 (1) Where an individual who has an eligible child files with the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year a prescribed form, containing prescribed information, completed by the individual or, where the individual resided at the end of the year with a supporting person of that child, jointly by the individual and that supporting person, the amount, if any, by which

(a) the total of

(i) the product obtained when $559[22] is multiplied by the number of eligible children of the individual for the year, and

(ii) the total of all amounts each of which is, in respect of an eligible child of the individual for the year who is under 7 years of age at the end of the year, the amount, if any, by which $200[22] exceeds 25% of such portion of all amounts deducted under section 63 for the year as may reasonably be considered to have been paid in respect of the child

exceeds

(b) 5% of the amount, if any, by which

(i) the total of all amounts each of which is the income for the year of the individual or a supporting person of an eligible child of the individual for the year

exceeds

(ii) $24,090[22]

shall be deemed to be an amount paid by the individual, in prescribed manner and on prescribed dates, on account of the individual's tax under this Part for the year.

Pre-RSC History: Para. 122.2(1)(a) substituted by 1988, c. 55, subsec. 97(1), applicable to 1988 *et seq.* except that for the 1988 taxation year the reference to "$200" in subpara. 122.2(1)(a)(ii) shall be read as a reference to "$100". Para. 122.2(1)(a) formerly read:

(a) the product obtained when $524 is multiplied by the number of children each of whom was an eligible child of the individual for the year

Subpara. 122.2(1)(b)(ii) substituted by 1988, c. 55, subsec. 97(2), applicable to 1988 *et seq.* Subsec. 122.2(1)(b)(ii) formerly read:

(ii) $23,500

Para. 122.2(1)(a) amended by 1986, c. 6, subsec. 67(1), to substitute "$524" for "$343", applicable to 1986 *et seq.*, except that the reference to "$524" shall be read as a reference to "$454" for the 1986 taxation year and "$489" for the 1987 taxation year.

Subpara. 122.2(1)(b)(ii) amended by 1986, c. 6, subsec. 67(2), applicable to 1986 *et seq.*, to substitute "$23,500" for "$26,330".

Subsec. 122.2(1) substituted by 1984, c. 1, subsec. 65(1), applicable to 1983 *et seq.* Subsec. 122.2(1) formerly read:

122.2 (1) Amount deemed paid in prescribed manner — Where an individual (other than a trust) files with his return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year a prescribed form, containing prescribed information, completed

(a) jointly by the individual and his spouse, where the individual was married and resided with his spouse at the end of December of the year, and

(b) by the individual, in any other case,

the amount, if any, by which

(c) the product obtained when $200 is multiplied by the number of children each of whom was an eligible child of the individual for the year

exceeds

(d) 5% of the amount, if any, by which the income of the individual's family for the year exceeds $18,000

shall be deemed to be an amount paid by him, in prescribed manner and on prescribed dates, on account of his tax under this Part for the year.

All that portion of subsec. 122.2(1) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 67(1), applicable to 1980 *et seq.* That portion formerly read:

122.2 (1) Where an individual (other than a trust) files with his return of income under this Part for a taxation year a prescribed form, containing prescribed information, completed

1982 Application: 1980-81-82-83, c. 140, s. 83 provides as follows:

83. In its application to the 1982 taxation year, paragraph 122.2(1)(c) shall be read as follows:

(c) the product obtained when the aggregate of

(i) $50, and

(ii) $200

is multiplied by the number of children each of whom was an eligible child of the individual for the year

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Maximum tax credit per child: for 1979, $218; for 1980, $238; for 1981, $261; for 1982, $343; for 1983, $343; for 1984, $367; for 1985, $384; for 1986, $454; for 1987, $489; for 1988, $559; for 1989, $565; for 1990, $575; for 1991, $585; for 1992, $601.

Additional amount: for 1988, $100; for 1989, $200.

Family income threshold: for 1979, $19,620; for 1980, $21,380; for 1981, $23,470; for 1982, $26,330; for 1983 to 1985, $26,330; for 1986, $23,500; for 1987, $23,760; for 1988, $24,090; for 1989, $24,355; for 1990, $24,769; for 1991, $25,215; for 1992, $25,921.

(2) [Repealed]

History: Subsec. 122.2(2) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 10(2), applicable to 1993 *et seq.* Subsec. (2) formerly read:

(2) Definitions — In this section,

"eligible child" of an individual for a taxation year means a child in respect of whom the individual

(a) is entitled to receive a family allowance under the *Family Allowances Act*

(i) in December of the year, or

(ii) where the child died or attained the age of 18 years during any month in the year, in that month, or

(b) would be entitled to receive a family allowance under the *Family Allowances Act* in December of the year if under that Act such an allowance were payable in the month in which the child becomes a child of the individual or becomes resident in Canada;

"supporting person" of an eligible child of an individual for a taxation year means

(a) where the individual was married and resided with the individual's spouse at the end of the year, that spouse,

(b) where the eligible child is the child of the individual and another person who resided together at the end of the year, that other person, and

(c) any taxpayer who deducted an amount under section 118 for the year in respect of an eligible child of the individual.

The definition "eligible child" in subsec. 122.2(2) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 10(1), applicable to the 1992 taxation year. The definition formerly read:

"eligible child" of an individual for a taxation year means a child in respect of whom the individual is entitled

(a) in January of the following taxation year, or

[22]Indexed by s. 117.1.

(b) where the child died or attained 18 years of age during any month in the year, in that month

to receive a family allowance under the *Family Allowances Act*;

Pre-RSC History: *The definition "eligible child" was para. 122.2(2)(a); "supporting person", 122.2(2)(b).*

Para. 122.2(2)(a) substituted and subpara. 122.2(2)(b)(iii) amended to substitute "section 118" for "section 109", by 1988, c. 55, subsecs. 97(3), (4), applicable to 1988 *et seq.* Para. 122.2(2)(a) formerly read:

(a) "eligible child" of an individual for a taxation year means a child in respect of whom the individual is entitled to receive or would, but for the death of the child in the year while he was resident in Canada, be entitled to receive in January of the following year a family allowance under the *Family Allowances Act, 1973*; and

Para. 122.2(2)(a) amended by 1986, c. 44, s. 1, to substitute "is entitled to receive or would, but for the death of the child in the year while he was resident in Canada, be entitled to receive" for "was entitled to receive", applicable to 1986 *et seq.*

Para. 122.2(2)(b) substituted by 1984, c. 1, subsec. 65(2), applicable to 1983 *et seq.* Para. 122.2(2)(b) formerly read:

(b) "income of the individual's family" for a taxation year means the aggregate of

(i) the income for the year of the individual, and

(ii) the income for the year of his spouse while married, if the individual resided with his spouse at the end of December of the year.

Para. 122.2(2)(a) substituted by 1980-81-82-83, c. 48, subsec. 67(2), applicable to 1980 *et seq.* Para. 122.2(2)(a) formerly read:

(a) "eligible child" of an individual for a taxation year means a child who had not attained the age of 18 years before the end of the year and in respect of whom the individual was entitled to receive a family allowance under the *Family Allowances Act, 1973* in December of the year, or would have been so entitled if under the Act such an allowance were payable in the month in which a child is born or becomes resident in Canada; and

Para. 122.2(2)(b) substituted by 1980-81-82-83, c. 47, subsec. 24(1).

Selected Cases [s. 122.2]: *Morrow v. R.*, [1997] 3 C.T.C. 2652 (TCC) (Child tax credit to be applied against total of federal and provincial tax payable, not just federal).

Pre-RSC History [s. 122.2]: S. 122.2 added by 1978-79, c. 5, s. 4, applicable to 1978 *et seq.*

122.3 (1) Deduction from tax payable where employment out of Canada [Overseas employment tax credit] — Where an individual is resident in Canada in a taxation year and, throughout any period of more than 6 consecutive months that commenced before the end of the year and included any part of the year (in this subsection referred to as the "qualifying period")

(a) was employed by a person who was a specified employer, other than for the performance of services under a prescribed international development assistance program of the Government of Canada, and

(b) performed all or substantially all the duties of the individual's employment outside Canada

(i) in connection with a contract under which the specified employer carried on business outside Canada with respect to

(A) the exploration for or exploitation of petroleum, natural gas, minerals or other similar resources,

(B) any construction, installation, agricultural or engineering activity, or

(C) any prescribed activity, or

(ii) for the purpose of obtaining, on behalf of the specified employer, a contract to undertake any of the activities referred to in clause (i)(A), (B) or (C),

there may be deducted, from the amount that would, but for this section, be the individual's tax payable under this Part for the year, an amount equal to that proportion of the tax otherwise payable under this Part for the year by the individual that the lesser of

(c) an amount equal to that proportion of $80,000 that the number of days

(i) in that portion of the qualifying period that is in the year, and

(ii) on which the individual was resident in Canada

is of 365, and

(d) 80% of the individual's income for the year from that employment that is reasonably attributable to duties performed on the days referred to in paragraph (c)

is of

(e) the amount, if any, by which

(i) where section 114 does not apply to the individual in respect of the year, the individual's income for the year, and

(ii) where section 114 applies to the individual in respect of the year, the total of

(A) the individual's income for the period or periods in the year referred to in paragraph 114(a), and

(B) the amount that would be determined under paragraph 114(b) in respect of the individual for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(iii) the total of all amounts each of which is an amount deducted by the individual under section 110.6 or paragraph 111(1)(b) or deductible by the individual under paragraph 110(1)(d.2), (d.3), (f) or (j) for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be.

Proposed Amendment — 122.3(1)(e)

(e) the amount, if any, by which

(i) if the individual is resident in Canada throughout the year, the individual's income for the year, and

(ii) if the individual is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b) or deductible under paragraph 110(1)(d.2), (d.3), (f) or (j) in computing the individual's taxable income for the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 70, will amend para. 122.3(1)(e) to read as above, applicable to 1998 *et seq.*

Technical Notes: Section 122.3 of the Act provides a tax credit to Canadian residents who are employed outside Canada by a specified employer for at least six months in connection with resource, construction, installation, agricultural or engineering contracts or for the purpose of obtaining those contracts. This credit — commonly known as the Overseas Employment Tax Credit (OETC) — effectively eliminates 80% of the Canadian tax arising on the first $100,000 of salary or wages earned from such foreign employment.

The OETC is determined by multiplying an employee's Part I tax otherwise payable for a taxation year by a fraction: the numerator of that fraction, determined under paragraphs 122.3(c) and (d) of

the Act, generally consists of the lesser of $80,000 and 80% of the individual's overseas employment income for the year; the denominator, determined under paragraph 122.3(1)(e), is the individual's income for the year (or, where section 114 of the Act applies, for the period or periods in the year throughout which the individual is resident in Canada) reduced by certain deductions listed in subparagraph 122.3(1)(e)(iii).

Paragraph 122.3(1)(e) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment makes no substantive change, but keeps the reference in step with the changes to section 114. For additional information, see the commentary on section 114.

Related Provisions: 117(1) — Tax payable under this Part; 122.3(1.1) — No credit for incorporated employee. 126(1)(b)(i)(E)(II) — Foreign tax credit.

History: Subpara. 122.3(1)(e)(i) amended by 2000, c. 19, subsec. 31(1), applicable to 1998 *et seq.* The subpara. formerly read:

> (i) where section 114 is not applicable to the individual in respect of the year, the total of the individual's income for the year and the amount, if any, included pursuant to subsection 110.4(2) in computing the individual's taxable income for the year, and

Subpara. 122.3(1)(e)(ii) substituted by 1994, c. 21, subsec. 56(1), applicable to 1992 *et seq.*, except that a taxpayer may elect that the amendment not apply to the taxpayer's 1992 taxation year by so notifying the Minister of National Revenue in writing before the end of December 1994. Subpara. 122.3(1)(c)(ii) formerly read:

> (ii) on which the individual was resident in Canada or carrying on business in Canada,

Subpara. 122.3(1)(e)(ii) substituted by 1994, c. 21, subsec. 56(2), applicable to 1993 *et seq.* That subpara. formerly read:

> (ii) where section 114 is applicable to the individual in respect of the year, the individual's income for the period or periods in the year referred to in paragraph 114(a)

That portion of para. 122.3(1)(b) preceding cl. (i)(A) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 99, applicable to 1985 *et seq.* That portion formerly read:

> (b) performed all or substantially all the duties of the individual's employment in one or more countries other than Canada
>
> (i) in connection with a contract under which the specified employer carried on business in that country or those countries with respect to

Pre-RSC History: Subpara. 122.3(1)(e)(iii) amended by 1988, c. 55, s. 98, to substitute "110(1)(d.2), (d.3), (f) or (j)" for "110(1)(d.2), (d.3), (f) or (j) or section 110.1", applicable to 1988 *et seq.*

Subpara. 122.3(1)(e)(iii) amended by 1986, c. 6, subsec. 68(1), applicable to 1985 *et seq.*, to substitute "under section 110.6 or paragraph 111(1)(b) or deductible by him under paragraph 110(1)(d.2), (d.3), (f) or (j) or section 110.1" for "under paragraph 111(1)(b) or deductible by him under paragraph 110(1)(f) or section 110.1".

Para. 122.3(1)(d) amended by 1985, c. 45, s. 68, to substitute "from that employment" for "from employment", applicable to 1985 *et seq.*

Selected Cases [subsec. 122.3(1)]: *Gonsalves v. R.*, [2000] 1 C.T.C. 2436 (TCC) (No requirement that employer be the main contractor); *Timmins v. R.*, [1999] 2 C.T.C. 133 (FCA) (Not necessary for there to be predominant profit motive for business to be carried on); *Gabie v. R.*, [1999] 1 C.T.C. 2352 (TCC) (Engineering activity did not have to be performed by professional engineer. Engineering activity included software engineering).

Regulations: 3400 (prescribed international development assistance program for 122.3(1)(a)); 6000 (prescribed activity for 122.3(1)(b)(i)(C) is activity under contract with UN).

Interpretation Bulletins: IT-497R3: Overseas employment tax credit.

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T626: Overseas employment tax credit.

(1.1) Excluded income — No amount may be included under paragraph (1)(d) in respect of an individual's income for a taxation year from the individual's employment by an employer where

(a) the employer carries on a business of providing services and does not employ in the business throughout the year more than 5 full-time employees;

(b) the individual

(i) does not deal at arm's length with the employer, or is a specified shareholder of the employer, or

(ii) where the employer is a partnership, does not deal at arm's length with a member of the partnership, or is a specified shareholder of a member of the partnership; and

(c) but for the existence of the employer, the individual would reasonably be regarded as an employee of a person or partnership that is not a specified employer.

History: Subsec. 122.3(1.1) added by 1997, c. 25, s. 31, applicable to 1997 *et seq.*

(2) Definitions — In subsection (1),

"specified employer" means

(a) a person resident in Canada,

(b) a partnership in which interests that exceed in total value 10% of the fair market value of all interests in the partnership are owned by persons resident in Canada or corporations controlled by persons resident in Canada, or

(c) a corporation that is a foreign affiliate of a person resident in Canada;

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

"tax otherwise payable under this Part for the year" means the amount that, but for this section, sections 120 and 120.2, subsection 120.4(2) and sections 121, 126, 127 and 127.4, would be the tax payable under this Part for the year.

History: The definition "tax otherwise payable under this Part for the year" in subsec. 122.3(2) amended by 2000, c. 19, subsec. 31(2), applicable to 2000 *et seq.* It formerly read:

> "tax otherwise payable under this Part for the year" means the amount that, but for this section and sections 120, 120.1, 120.2, 121, 126, 127 and 127.2 to 127.4, would be the tax payable under this Part for the year.

Pre-RSC History: *The definition "specified employer" was para. 122.3(2)(a); "tax otherwise payable ...", 122.3(2)(b).*

Para. 122.3(2)(b) substituted by 1986, c. 55, s. 40, to add reference to section 120.2, applicable to 1984 *et seq.*

Para. 122.3(2)(b) amended by 1986, c. 6, subsec. 68(2), to substitute "and 127.2 to 127.4" for "127.2 or 127.3", applicable to 1985 *et seq.*

Para. 122.3(2)(b) substituted by 1984, c. 45, s. 39, applicable to 1984 *et seq.* Para. 122.3(2)(b) formerly read:

> (b) "tax otherwise payable under this Part for the year" means the amount, if any, by which the tax payable under this Part for the taxation year (before making any addition under section 120.1 or any deduction under section 120.1, 121, 126, 127, 127.2 or 127.3) exceeds the amount, if any, deemed by subsection 120(2) to have been paid on account of tax under this Part for the year.

Pre-RSC History [s. 122.3]: S. 122.3 added by 1984, c. 1, subsec. 66(1), applicable by 1984, c. 45, subsec. 103(1) (deemed in force January 19, 1984) to 1984 *et seq.* except that in its application to a qualifying period referred to in section 122.3 that

(a) commenced before 1984, or

(b) commenced before 1987, where an individual was employed throughout the qualifying period in connection with a contract referred to in subpara. 122.3(1)(b)(i) that was entered into before August 16, 1983,

para. 122.3(1)(a) shall be read without reference to the words "other than for the performance of services under a prescribed international development assistance program of the Government of Canada".

Definitions [s. 122.3]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "employed", "employer", "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "individual" — 248(1); "person" — 248(1); "qualifying period" — 122.3(1); "resident in Canada" — 250; "specified employer" — 122.3(2); "specified shareholder" — 248(1); "tax otherwise payable" — 122.3(2); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249.

122.4 [Repealed under former Act]

Pre-RSC History: S. 122.4 repealed by 1990, c. 45, s. 47, applicable to 1991 *et seq.* S. 122.4 had read:

122.4 (1) **Definitions** — Subject to subsection (2), in this section,

"eligible individual" for a taxation year means an individual (other than a trust) who, at the end of the year, is

(a) married,

(b) a parent of a child, or

(c) 19 years of age or over;

"qualified relation" of an individual for a taxation year means

(a) not more than one person who, in the year, was the spouse of the individual other than a person who, at the end of the year or, where the person died in the year, at the time of death, was living apart from the individual by reason of the breakdown of their marriage, and

(b) a person, other than an eligible individual or a person in respect of whom an amount is deemed to have been paid by any other individual under this section for the year, who is

(i) a person in respect of whom the individual, or the spouse referred to in paragraph (a), was the only person who deducted an amount under section 118 for the year, or

(ii) a person (other than a person referred to in subparagraph (i)) who is a child of the individual and who was living with the individual at the end of the year.

(2) **Persons not eligible individuals or qualified relations** — An individual shall be deemed not to be an eligible individual or a qualified relation of an individual for a taxation year where he was a person

(a) referred to in paragraph 149(1)(a) or (b) for the year;

(b) confined in the year to a prison or similar institution for a period or periods the aggregate of which in the year was more than six months; or

(c) who at no time in the year was resident in Canada.

(3) **Amount deemed paid on account of tax** — Where an eligible individual for a taxation year files with his return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form, containing prescribed information, completed by the individual or, where the individual was married and was living with his spouse at the end of the year, jointly by the individual and his spouse, the amount, if any, by which the aggregate of

(a) $140 for the eligible individual,

(b) $140 for a qualified relation of the individual for the year who was the individual's spouse, and

(c) the product obtained when $70 is multiplied by the number of other qualified relations of the individual for the year,

exceeds 5% of the amount, if any, by which

(d) the aggregate of all amounts each of which is the income for the year of

(i) the individual,

(ii) the individual's spouse, where the spouse is a qualified relation of the individual for the year,

(iii) a parent (other than a person referred to in subparagraph (i) and (ii)) of a child where the child is a qualified relation of the individual for the year and the parent and the individual were living together at the end of the year, or

(iv) a person (other than a person referred to in any of subparagraphs (i) to (iii)) who deducted an amount under section 118 for the year in respect of a qualified relation of the individual, other than in respect of the individual's spouse

exceeds

(e) $18,000

shall be deemed to be an amount paid by him at the end of the year on account of his tax under this Part for the year.

(4) **Filing by married individuals** — Notwithstanding subsection (3), where two individuals are married to each other and one is a qualified relation of the other for a taxation year, only one of them may file a prescribed form under subsection (3) for the year.

Paras. 122.4(3)(a) to (c) amended by 1990, c. 39, subsec. 27(1), to substitute "$140" for "$70" in (a) and (b) and "$70" for "$35" in (c) and to delete "himself" from the end of (a), applicable to the 1989 and 1990 taxation years except that for the 1989 taxation year the references to "$140" and "$70" shall be read as references to "$100" and "$50" respectively.

Para. 122.4(3)(e) substituted by subsec. 27(2) of the said c. 39, applicable to the 1990 taxation year. Para. (e) formerly read:

(e) $16,000.

Para. (c) of the definition "eligible individual" in subsec. 122.4(1), amended by 1988, c. 55, subsec. 99(1), to substitute "19" for "18", applicable to 1988 *et seq.*

Subpara. (b)(i) of the definition "qualified relation" in subsec. 122.4(1), amended by 1988, c. 55, subsec. 99(2), to substitute "the spouse" for "his spouse" and "deducted an amount under section 118" for "claimed a deduction under section 109", applicable to 1988 *et seq.*

Para. 122.4(2)(c) substituted by 1988, c. 55, subsec. 99(3), applicable to 1988 *et seq.* Para. 122.4(2)(c) formerly read:

(c) not resident in Canada at any time in the year.

Subsec. 122.4(3) amended by 1988, c. 55, subsec. 99(4), to substitute, in para. (a), "$70" for "$50", in para. (b), "$70" for "$50" and "the individual's spouse" for "his spouse", in para. (c), "$35" for "$25", in subpara. (d)(iv), "section 118" for "section 109", and in para. (e), "$16,000" for "$15,000", applicable to 1988 *et seq.*

All that portion of para. (b) of the definition "qualified relation" in subsec. 122.4(1) preceding subpara. (i) substituted by 1987, c. 46, subsec. 44(1), to add "or a person in respect of whom an amount is deemed to have been paid by any other individual under this section for the year", applicable to 1987 *et seq.*

Para. 122.4(3)(d) substituted by 1987, c. 46, subsec. 44(2), applicable to 1987 *et seq.* Para. 122.4(3)(d) formerly read:

(d) the aggregate of the individual's income for the year and, where the individual's spouse was a qualified relation of the individual for the year, the spouse's income for the year

S. 122.4 added by 1986, c. 55, s. 41, applicable to 1986 *et seq.*

122.5 (1) [GST credit] Definitions — In this section,

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of

(a) the individual, or

(b) the individual's qualified relation for the year

if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

History: The definition "adjusted income" in subsec. 122.5(1) amended by 1998, c. 19, subsec. 139(1), applicable to 1992 *et seq.* It formerly read:

"adjusted income" of an individual for a taxation year means the total of all amounts each of which is the income of the year of

(a) the individual, or

(b) the individual's qualified relation for the year.

(c) [Repealed]

Para. (c) of "adjusted income" in subsec. 122.5(1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(1), applicable to 1992 *et seq.* Para. (c) formerly read:

(c) a person (other than the individual or the individual's qualified relation for the year) who deducts for the year an amount under section 118 in respect of a qualified dependant of the individual for the year;

"eligible individual" for a taxation year means an individual (other than a trust) who, at the end of December 31 of that year, is resident in Canada and is

(a) married,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 11, will replace "married" with "married or in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) a parent of a child, or

(c) 19 years of age or over;

Related Provisions: 122.5(2) — Persons deemed not to be eligible individuals; 252(4)(c) — "Married" includes certain people living common-law.

History: The opening words of the definition "eligible individual" in subsec. 122.5(1) amended by 1998, c. 19, subsec. 139(2), applicable after April 26, 1995. The opening words formerly read:

> "eligible individual" for a taxation year means an individual (other than a trust) who, at the end of December of that year, is resident in Canada and is

"qualified dependant" of an individual for a taxation year means a person who is

(a) a person in respect of whom the individual or the individual's qualified relation for the year is the only person who deducts an amount under section 118 for the year, or

(b) a child of the individual residing with the individual at the end of the year,

and who is not

(c) an eligible individual for the year,

(d) the qualified relation of an individual for the year, or

(e) a person in respect of whom an amount is deemed under this section to be paid by any other individual for the year;

Related Provisions: 122.5(2) — Persons deemed not to be qualified dependants.

"qualified relation" of an individual for a taxation year means the person who, at the end of the year, is the individual's cohabiting spouse (within the meaning assigned by section 122.6).

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 122.5(2) — Persons deemed not to be qualified relations; 163(2)(c.1) — False statements or omissions; 252(4) — Extended meaning of "spouse".

History: "Qualified relation" in subsec. 122.5(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(2), applicable to 1992 *et seq.* except that in its application to the 1992 taxation year, it shall be read as follows:

> "qualified relation" of an individual for a taxation year means the person who, at the beginning of the 1993 calendar year, is the individual's cohabiting spouse (within the meaning assigned by section 122.6).

The definition formerly read:

> "qualified relation" of an individual for a taxation year means the person, if any, who is either
>
> (a) the individual's spouse, or
>
> (b) the other parent of a child of the individual, if the child is a qualified dependant of the individual,
>
> who is of the opposite sex to the individual and who, at the end of the year, is not living separate and apart from the individual by reason of the breakdown of their marriage or other conjugal relationship.

(2) Persons not eligible individuals, qualified relations or qualified dependants — Notwithstanding subsection (1), a person shall be deemed not to be an eligible individual for a taxation year or a qualified relation or qualified dependant of an individual for a taxation year where the person

(a) dies before the end of the year;

(b) is, at the end of the year, a person described in paragraph 149(1)(a) or (b); or

(c) is, at the end of the year, confined to a prison or similar institution and has been so confined for a period of, or periods the total of which in the year was more than, 6 months.

(3) Deemed payment on account — Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) is filed under this Part for a taxation year in respect of an eligible individual and the individual applies therefor in writing, ¼ of the amount, if any, by which the total of

(a) $190[23],

(b) $190[23] for a person who is the qualified relation of the individual for the year,

(c) $190[23], where the individual has no qualified relation for the year and is entitled to deduct an amount for the year under subsection 118(1) because of paragraph (b) of the description of B in subsection 118(1) in respect of a qualified dependant of the individual for the year,

(d) the product obtained when $100[23] is multiplied by the number of qualified dependants of the individual for the year, other than a qualified dependant in respect of whom an amount is included by reason of paragraph (c) in computing an amount deemed to be paid under this subsection for the year, and

(e) where the individual has no qualified relation for the year,

(i) if the individual has one or more qualified dependants for the year, $105, and

(ii) if the individual has no qualified dependant for the year, the lesser of

(A) $105[16], and

(B) 2% of the amount, if any, by which

(I) the individual's income for the year

exceeds

(II) $6,546[16],

exceeds

(f) 5% of the amount, if any, by which

(i) the individual's adjusted income for the year

[16]Indexed by s. 117.1 after 1999 — ed.

[23]Indexed by s. 117.1 after 1990 — ed.

exceeds

(ii) $26,284[24],

shall be deemed to be an amount paid by the individual on account of the individual's tax payable under this Part for the year during each of the months specified for that year under subsection (4).

Related Provisions: 117.1(1) — Annual adjustment; 122.5(5) — Exceptions; 152(1)(b) — Assessment; 160.1(1)(b) — Where excess refunded; 160.1(1.1) — Liability for refunds by reason of section 122.5; 163(2)(c.1) — False statements or omissions — penalty; 164(2.1) — Application respecting refunds under section 122.5.

History: Subcl. 122.5(3)(e)(ii)(B)(II), subpara. 122.5(3)(f)(ii) amended by 2000, c. 14, subsecs. 38(1), (2), applicable to 1999 *et seq.* They formerly read:

(II) $6,456[16],

. . . . .

(ii) $25,921[24],

Para. 122.5(3)(e) amended by 1999, c. 26, s. 41, applicable to amounts deemed to be paid in specified months that are after June 1999. The para. formerly read:

(e) where the individual has no qualified relation for the year, the lesser of

(i) $100[25], and

(ii) 2% of the amount, if any, by which

(A) the individual's income for the year

exceeds

(B) the amount determined for the year for the purposes of paragraph (c) of the description of B in subsection 118(1),

Para. 122.5(3)(c) amended to substitute "because of paragraph (b) of the description of B in subsection 118(1)" for "by reason of paragraph 118(1)(b)", and cl. 122.5(3)(e)(ii)(B) amended to substitute "paragraph (c) of the description of B in subsection 118(1)" for "paragraph 118(1)(c)", by 1997, c. 25, subsecs. 32(1), (2), applicable April 25, 1997.

The opening words of subsec. 122.5(3) substituted by 1994, c. 21, subsec. 57(1), applicable to 1992 *et seq.* The opening words of that subsec. formerly read:

(3) Amount deemed paid on account of tax [GST credit] — Where an eligible individual for a taxation year files with the individual's return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) under this Part for the year a prescribed form, containing prescribed information, ¼ of the amount, if any, by which the total of

Subpara. 122.5(3)(f)(ii) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 11, applicable to 1992 *et seq.* Subpara. (f)(ii) formerly read:

(ii) the amount referred to in subparagraph 122.2(1)(b)(ii) for the year,

Information Circulars: 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T1-GSTC: The Federal Goods and Services Tax Credit.

(3.1) Adjustment of certain amounts [annual indexing] — For the purpose of subsection (3) and notwithstanding subsection 117.1(1), the amounts, in respect of the amounts of $190, $100 and $105 referred to in subsection (3), used for the purpose of determining amounts deemed to be paid during months specified under subsection (4)

(a) for the 1999 taxation year are deemed to be $205, $107 and $107, respectively;

(b) for the 2000 taxation year shall be equal to the greater of the amounts referred to in paragraph (a) and the amounts that would otherwise be determined to be paid during those months if this Act were read without reference to this subsection; and

(c) for the 2001 and subsequent taxation years shall be computed without reference to paragraphs (a) and (b).

Related Provisions: 117.1(1), (1.1) — Indexing generally.

History: Subsec. 122.5(3.1) added by 2000, c. 14, subsec. 38(3), applicable to 1999 *et seq.*

(4) Months specified — For the purposes of this section, the months specified for a taxation year are July and October of the immediately following taxation year and January and April of the second immediately following taxation year.

(5) Exceptions — Notwithstanding subsection (3),

(a) where an individual is a qualified relation of another individual for a taxation year, only one of them may apply under that subsection for the year;

(b) where the total of all amounts, deemed under that subsection to be paid by an individual for a taxation year during months specified for the year, is less than $100[26], the total shall be deemed to be paid by the individual during the first month specified for the year, and no other amount shall be deemed to be paid under that subsection by the individual for the year; and

(c) no amount shall be deemed to be paid under that subsection by an individual for a taxation year during a month specified for that year where the individual died before that month or was not resident in Canada at the beginning of that month.

Related Provisions: 122.5(6) — Qualified relation of a deceased eligible individual.

History: Para. 122.5(5)(a) substituted by 1994, c. 21, subsec. 57(2), applicable to 1992 *et seq.* That para. formerly read:

(a) where an individual is a qualified relation of another individual for a taxation year, only one of them may file a prescribed form under that subsection for the year;

Para. 122.5(5)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(3). Para. (b) formerly read:

(b) where the total of all amounts, each of which is an amount deemed under that subsection to be paid by an individual for a taxation year during a month specified for the year, is less than

(i) one dollar, the total shall be deemed to be nil, and

(ii) $100 but not less than one dollar, the total shall be deemed to be paid by the individual during the first month specified for the year, and no other amount shall be deemed to be paid under that subsection by the individual for the year; and

Para. 122.5(5)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(4), applicable to 1989 *et seq.* Para. (c) formerly read:

(c) no amount shall be deemed to be paid under that subsection by an individual for a taxation year

(i) during a month specified for that year where the individual died before that month or was not resident in Canada at the beginning of that month, or

(ii) where the individual's return of income under this Part for the year and prescribed form under this section are not filed within 3 years after the end of the year.

(6) Qualified relation of deceased eligible individual — Notwithstanding paragraph (5)(c), on written application made, on or before the day on or before which a return of income (other than a return of income filed

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[16]Indexed by s. 117.1 after 1999 — ed.

[24]Indexed by s. 117.1 after 1992.

[25]Indexed by s. 117.1 after 1990.

[26]Not indexed.

under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) of a deceased person is required to be filed under this Part for the taxation year in which the person died (or would have been so required if the person were liable to pay tax under this Part for that year), by an individual who

(a) is the deceased person's qualified relation for the taxation year in respect of which a payment under this section would, but for that paragraph, be made, and

(b) is not an individual to whom that paragraph applies,

each amount that, but for that paragraph, would be deemed to be paid under subsection (3) by the deceased person during a month specified for a taxation year shall be deemed to be paid during the month on account of the individual's tax payable under this Part for that year.

History: The opening words of subsec. 122.5(6) substituted by 1994, c. 21, subsec. 57(3), applicable to 1992 *et seq.* The opening words formerly read:

(6) Qualified relation of a deceased individual — Notwithstanding paragraph (5)(c), on application made in prescribed form containing prescribed information within 60 days after a person's death (or within such longer period as the Minister considers reasonable in the circumstances) by an individual who

Subsec. 122.5(6) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 60(5), applicable to 1989 *et seq.* Subsec. (6) formerly read:

(6) Qualified relation of a deceased eligible individual — Notwithstanding subparagraph (5)(c)(i), on application made in prescribed form containing prescribed information within 60 days after a person's death (or within such longer period as the Minister considers reasonable in the circumstances) by an individual who

(a) is the deceased person's qualified relation for the taxation year in respect of which a payment under this section would, but for that subparagraph, be made, and

(b) is not an individual to whom that subparagraph applies,

each amount that, but for that subparagraph, would be deemed to be paid under subsection (3) by the deceased person during a month specified for a taxation year shall be deemed to be paid during the month on account of the individual's tax payable under this Part for that year.

(7) Effect of bankruptcy — For the purpose of this section, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the amount determined for the year under clause (3)(e)(ii)(B) shall include the amount determined for the purpose of paragraph (c) of the description of B in subsection 118(1) for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

Related Provisions: 118.95 — Parallel rule for other credits; 122.61(3.1) — Parallel rule for Child Tax Benefit.

History: Subsec. 122.5(7) added by 1998, c. 19, subsec. 139(3), applicable to bankruptcies that occur after April 26, 1995.

Pre-RSC History [s. 122.5]: S. 122.5 added by 1990, c. 45, s. 48, applicable to 1989 *et seq.* except that

(a) in its application to the 1989 taxation year, subsec. (4) shall be read as follows:

(4) For the purposes of this section, the months specified for the 1989 taxation year are December 1990 and April 1991.

and

(b) in its application to the 1989 and 1990 taxation years, para. (5)(a) shall be read as follows:

(a) where an individual is a qualified relation of another individual for a taxation year, only one of them may file a prescribed form under subsection (3) for the year and, where subsection 122.4(4) is applicable to those two individuals for the year, only the individual who files a prescribed form under subsection 122.4(3) for the year is the individual who may file the prescribed form under subsection (3) for the year;

Definitions [s. 122.5]: "adjusted income" — 122.5(1); "amount", "bankrupt" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "eligible individual" — 122.5(1); "individual" — 248(1); "marriage" — 252(4)(b); "married" — 252(4)(c); "parent" — 252(2); "person", "prescribed" — 248(1); "qualified dependant", "qualified relation" — 122.5(1); "resident in Canada" — 250; "spouse" — 252(4)(a); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

122.51 (1) [Refundable medical expense supplement] Definitions — The definitions in this subsection apply in this section.

"adjusted income" of an individual for a taxation year has the meaning assigned by section 122.6.

"eligible individual" for a taxation year means an individual (other than a trust)

(a) who is resident in Canada throughout the year (or, if the individual dies in the year, throughout the portion of the year before the individual's death);

(b) who, before the end of the year, has attained the age of 18 years; and

(c) whose incomes for the year from all

(i) offices and employments (computed without reference to paragraph 6(1)(f)), and

(ii) businesses each of which is a business carried on by the individual either alone or as a partner actively engaged in the business

total $2,500 or more.

Related Provisions: 117.1(1)(b.1) — Annual indexing for inflation.

History: Subsec. 122.51(1) added by 1998, c. 19, s. 32, applicable to 1997 *et seq.*

(2) Deemed payment on account of tax — Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) is filed in respect of an eligible individual for a particular taxation year that ends at the end of a calendar year, there is deemed to be paid at the end of the particular year on account of the individual's tax payable under this Part for the particular year the amount determined by the formula

$$A - B$$

where

A is the lesser of

(a) $500, and

(b) 25/17 of the total of all amounts each of which is the amount determined by the formula in subsection 118.2(1) for the purpose of computing the individual's tax payable under this Part for a taxation year that ends in the calendar year; and

B is 5% of the amount, if any, by which

(a) the total of all amounts each of which is the individual's adjusted income for a taxation year that ends in the calendar year

exceeds

(b) the sum of

(i) the greatest total that may be determined in respect of an individual for the year under para-

graph (a) of the description of B in subsection 118(1), and

(ii) the dollar amount used for the year in computing the amount that may be claimed under subsection 118.3(1) in respect of an individual who has attained the age of 18 years before the end of the year.

Related Provisions: 117.1(1)(b.1) — Annual indexing for inflation; 152(1)(b) — Assessment; 163(2)(c.2) — False statements or omissions — penalty; 257 — Formula cannot calculate to less than zero.

History: Para. (b) of the description of B in subsec. 122.51(2) amended by 2000, c. 14, s. 39, applicable to 2000 *et seq.* It formerly read:

(b) $17,419[27].

The description of B in subsec. 122.51(2) amended by 2000, c. 19, s. 32, applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, para. (b) of the description of B in subsec. 122.51(2) shall be read as follows:

(b) $16,745.

The description of B formerly read:

B is 5% of the amount, if any, by which

(a) the individual's adjusted income for the particular year

exceeds

(b) $16,069

Subsec. 122.51(2) added by 1998, c. 19, s. 32, applicable to 1997 *et seq.*

Definitions [s. 122.51]: "adjusted income" — 122.51(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "eligible individual" — 122.51(1); "employment", "individual", "office" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxation year" — 249.

Subdivision a.1 — Canada Child Tax Benefit

122.6 Definitions — In this subdivision,

"adjusted earned income" — [Repealed]

Related Provisions: 122.62(5) — Death of cohabiting spouse; 122.62(6) — Separation from cohabiting spouse.

History: The definition "adjusted earned income" in s. 122.6 repealed by 1998, c. 21, s. 92, applicable with respect to overpayments deemed to arise during months that are after June 1998. The definition formerly read:

"adjusted earned income" of an individual for a taxation year means the total of all amounts each of which is the earned income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year;

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse"with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 122.51(1)"adjusted income" — Definition applies for purposes of refundable medical expense supplement; 122.62(5) — Death of cohabiting spouse; 122.62(6) — Separation from cohabiting spouse.

History: The definition "adjusted income" in s. 122.6 amended by 1998, c. 19, subsec. 140(1), applicable in determining the adjusted income of an individual for the 1992 and subsequent taxation years. The definition formerly read:

"adjusted income" of an individual for a taxation year means the total of all amounts each of which is the income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year;

"base taxation year", in relation to a month, means

(a) where the month is any of the first 6 months of a calendar year, the taxation year that ended on December 31 of the second preceding calendar year, and

(b) where the month is any of the last 6 months of a calendar year, the taxation year that ended on December 31 of the preceding calendar year;

"cohabiting spouse" of an individual at any time means the person who at that time is the individual's spouse and who is not at that time living separate and apart from the individual and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage, for a period of at least 90 days that includes that time;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4)(a) — Extended meaning of "spouse".

"earned income" — [Repealed]

History: The definition "earned income" in s. 122.6 repealed by 1998, c. 21, s. 92, applicable with respect to overpayments deemed to arise during months that are after June 1998. The definition formerly read:

"earned income" of an individual for a taxation year has the meaning assigned by subsection 63(3);

"eligible individual" in respect of a qualified dependant at any time means a person who at that time

(a) resides with the qualified dependant,

(b) is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of the qualified dependant,

(c) is resident in Canada or, where the person is the cohabiting spouse of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,

(d) is not described in paragraph 149(1)(a) or (b), and

(e) is, or whose cohabiting spouse is, a Canadian citizen or a person who

(i) is a permanent resident (within the meaning assigned by the *Immigration Act*),

(ii) is a visitor in Canada or the holder of a permit in Canada (within the meanings assigned by the *Immigration Act*) who was resident in Canada throughout the 18 month period preceding that time, or

(iii) was determined before that time under the *Immigration Act*, or regulations made under that Act, to be a Convention refugee,

[27] Indexed by 117.1(1) after 1997 — ed.

and, for the purposes of this definition,

(f) where a qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent,

(g) the presumption referred to in paragraph (f) does not apply in prescribed circumstances, and

(h) prescribed factors shall be considered in determining what constitutes care and upbringing;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 122.62(1) — Eligible individuals.

History: Para. (c) of the definition "eligible individual" in s. 122.6 amended by 1999, c. 22, s. 44, applicable after February 23, 1998. It formerly read:

(c) is resident in Canada,

Subpara. (e)(iii), paras. (g) and (h) of the definition "eligible individual" in s. 122.6 amended by 1998, c. 19, subsec. 140(2), (3); subpara. (e)(iii) applicable after 1992, and paras. (g) and (h) applicable after August 27, 1995. Subpara. (e)(iii) and paras. (g) and (h) formerly read:

(iii) was determined before that time by the Convention Refugee Determination Division of the Immigration and Refugee Board to be a Convention refugee,

. . . . .

(g) the presumption referred to in paragraph (f) does not apply in circumstances set out in regulations made by the Governor in Council on the recommendation of the Minister of Human Resources Development, and

(h) factors to be considered in determining what constitutes care and upbringing may be set out in regulations made by the Governor in Council on the recommendation of the Minister of Human Resources Development;

Paras. 122.6"eligible individual"(g), (h) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Selected Cases [subsec. 122.6"eligible individual"]: *Burton v. R.*, [2000] 1 C.T.C. 2727 (TCC) (Must reside in same house as children to get child tax credit).

Regulations: 6301 (for para. (g) — circumstances where the presumption in para. (f) does not apply); 6302 (for para. (h) — factors to be considered).

"qualified dependant" at any time means a person who at that time

(a) has not attained the age of 18 years,

(b) is not a person in respect of whom an amount was deducted under paragraph (a) of the description of B in subsection 118(1) in computing the tax payable under this Part by the person's spouse for the base taxation year in relation to the month that includes that time, and

(c) is not a person in respect of whom a special allowance under the *Children's Special Allowances Act* is payable for the month that includes that time;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

"return of income" filed by an individual for a taxation year means

(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is filed or required to be filed under this Part for the year, and

(b) in any other case, a prescribed form containing prescribed information, that is filed with the Minister.

Related Provisions: 164(2.3) — Form deemed to be a return of income.

History: The title before s. 122.6 amended to add the word "Canada" by 1998, c. 21, s. 91, applicable after June 1998.

Definitions [s. 122.6]: "amount" — 248(1); "base taxation year" — 122.6; "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "cohabiting spouse" — 122.6; "common-law partner", "common-law partnership" — 248(1); "earned income" — 63(3), 122.6; "individual" — 248(1); "marriage" — 252(4); "Minister" — 248(1); "parent" — 252(2); "prescribed" — 248(1); "qualified dependant" — 122.6; "resident" — 250; "spouse" — 252(4); "taxation year" — 249.

Forms [s. 122.6]: RC64: Children's special allowances application and cancellation form; RC66: Child tax benefit application; RC68: Children's special allowances information sheet; CTB9: Child tax benefit — statement of income.

122.61 (1) Deemed overpayment [Child Tax Benefit] — Where a person and, where the Minister so demands, the person's cohabiting spouse at the end of a taxation year have filed a return of income for the year, an overpayment on account of the person's liability under this Part for the year is deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

$$1/12[(A - B) + C]$$

where

A is the total of

(a) the product obtained by multiplying $1,090[28] by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month,

(b) the product obtained by multiplying $75[28] by the number of qualified dependants, in excess of 2, in respect of whom the person was an eligible individual at the beginning of the month, and

(c) the amount determined by the formula

$$D - E$$

where

D is the product obtained by multiplying $213[28] by the number of qualified dependants who have not attained the age of 7 years before the month and in respect of whom the person is an eligible individual at the beginning of the month, and

E is 25% of the total of all amounts deducted under section 63 in respect of qualified

[28]Indexed by 122.61(5) after base taxation year 1996.

dependants in computing the income for the year of the person or the person's cohabiting spouse;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2 1/2%) of the amount, if any, by which

(a) the person's adjusted income for the year

exceeds

(b) the dollar amount, as adjusted annually and referred to in paragraph 117(2)(a), that is used for the calendar year following the base taxation year; and

C is the amount determined by the formula

$$F - (G \times H)$$

where

F is, where the person is, at the beginning of the month, an eligible individual in respect of

(a) only one qualified dependant, $1,155[28], and

(b) two or more qualified dependants, the total of

(i) $1,155[28] for the first qualified dependant,

(ii) $955[28] for the second qualified dependant, and

(iii) $880[28] for each of the third and subsequent qualified dependants,

G is the amount, if any, by which the person's adjusted income for the year exceeds $21,214[28], and

H is the proportion (expressed as a percentage rounded to the nearest one-tenth of one per cent) that

(a) the total that would be determined under the description of F in respect of the eligible individual if that description were applied without reference to the fourth and subsequent qualified dependants in respect of whom the person is an eligible individual

is of

(b) the amount by which

(i) the amount referred to in paragraph (b) of the description of B

exceeds

(ii) $21,214.

Proposed Amendment — Child Tax Benefit

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Canada Child Tax Benefit*

(6) That the provisions of the Act relating to the base benefit and National Child Benefit supplement payable under the Canada Child Tax Benefit be modified in accordance with proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on February 28, 2000.

Federal budget, supplementary information, February 28, 2000: *Canada Child Tax Benefit*

The Canada Child Tax Benefit (CCTB) is a key element of federal assistance to families. It is an income-tested benefit that has two components: the CCTB base benefit for low- and middle-income families and the National Child Benefit (NCB) supplement for low-income families.

The budget proposes a five-year plan to increase CCTB benefits by $2.5 billion annually by 2004, divided almost equally between low- and middle-income families. Together with increases announced in previous budgets, annual CCTB benefits will exceed $9 billion in 2004, of which low-income families will receive about $6 billion and middle-income families about $3 billion.

The Government's goal is to increase the maximum CCTB benefit for the first child to $2,400 by 2004 from $1,975, the currently scheduled amount for July 2000. The five-year plan will achieve this objective through a number of actions. First, the CCTB will be fully indexed. Second, both the base benefit and the NCB supplement will be increased beyond indexation. Third, the income thresholds at which the base benefit begins to be reduced and the NCB supplement is fully phased out will be increased. Fourth, the reduction rate for the base benefit will be lowered. Finally, the Children's Special Allowance, which provides benefits parallel to the CCTB to provincial agencies for children in care, will be increased.

The following changes, summarized in Tables A7.18 and A7.19, will be legislated for 2000 and 2001.

- Effective January 2000, CCTB parameters will be fully indexed based on the change in the CPI over the 12-month period ending on September 30 of the preceding year. As the CCTB program year begins in July, benefits will be adjusted in July 2000 and indexation benefits for the January to June 2000 period will be paid in the second half of the year. The higher level of benefits from July to December 2000 will be maintained until future indexation raises benefits further.

- In July 2000, the CCTB base benefit will increase by $70 per child, including indexation. The income thresholds at which the CCTB base benefit begins to be reduced and the NCB supplement is fully phased out will be set equal to the second tax bracket threshold. Consequently, these CCTB thresholds will be fully indexed, as the tax bracket threshold is, and will also follow any increases in the tax bracket threshold beyond indexation. The income threshold at which the NCB supplement begins to be reduced will also be indexed.

- By July 2001, the NCB supplement will be increased by $200 per child, including indexation, from the currently scheduled July 2000 levels of $955 for the first child, $755 for the second child and $680 for each subsequent child. The $200 benefit increase per child will enrich the NCB supplement by $500 million annually as of July 2001.

Chart A7.1 shows CCTB benefits, income thresholds at which benefits are reduced, and benefit reduction rates for a two-child family in July 2001.

[chart not reproduced — ed.]

These changes will bring the maximum CCTB benefit for the first child to $2,056 in July 2000 and $2,265 in July 2001, well on the way to the five-year goal of $2,400. For the second child, the goal is to raise the maximum CCTB benefit to $2,200 in 2004. There are also additional benefits for children under the age of seven for whom no child care expense is claimed and for larger families. Maximum benefits for a two-child family with one child under the age of seven will reach $4,550 in July 2001 and $4,832 in July 2004.

Benefits for a typical two-child family with an income of $60,000 will increase from their pre-budget 2000 level of $733 to $967 in July 2001 and $1,541 in July 2004.

Table A7.18

[28]Indexed by 122.61(5) after base taxation year 1996.

Changes to the Components of the Canada Child Tax Benefit

	Maximum benefit (as of July 1999)	Indexed amount 2000{1} (starting January 1)	Maximum benefit 2000{2} (starting July 1)	Maximum benefit 2001{5} (starting July 1)
		(dollars)		
Base Benefit				
Basic amount	1,020	1,034	1,090 {3}	1,110
Additional benefit				
for third child	75	7	7	77
Additional benefit for				
children under 7 years	213	216	216	220
NCB Supplement				
First child	785	79	966 {4}	1,155 {6}
Second child	585	59	763 {4}	955 {6}
Third child	510	517	687 {4}	880 {6}
Total Benefit				
First child	1,805	1,83	2,056	2,265
Second child	1,605	1,627	1,853	2,065
Third child	2,067	1,627	1,605	1,853

Notes:

1 1.4 per cent increase based on July 1999 benefit level.

2 Excludes indexation benefits for the January to June period, to be paid in the second half of the year. These benefits are the differences between the first and second columns of the table.

3 Increase of $70 per child, including indexation.

4 Includes the $170 per child provided in the 1999 budget. The benefit reduction rates for family income above the threshold will be 11.1 per cent for one-child families, 19.9 per cent for two-child families, and 27.8 per cent for families with three or more children.

5 For 2001, it assumes an indexation factor of 1.8 per cent.

6 Increase of $200 per child, including indexation.

Table A7.19

Changes to the Income Thresholds of the Canada Child Tax Benefit

	As of July 1999	Starting July 1, 2000	Starting July 1, 2001
		(dollars)	
Income Thresholds			
Base benefit	25,921	30,004	30,544
NCB Supplement			
Start phase-out	20,921	21,214	21,596
End phase-out	27,750 -	30,004	30,544

CCRA news release, February 29, 2000: The February 28, 2000 Federal Budget speech by the Honourable Paul Martin, Minister of Finance, included some changes to the Canada Child Tax Benefit (CCTB), the Goods and Services Tax/Harmonized Sales Tax (GST/HST) credit and the Children's Special Allowances (CSA). The following information, which is effective July 2000, will show you what these changes will mean to you.

Budget changes to the Canada Child Tax Benefit (CCTB) for July 2000

CCTB Component	July 1999	Budget 2000 July 2000{*}
base amount	$1,020	$1,104
supplement for 3rd and additional child(ren)	$75	$77
supplement for children under age 7	$213	$219
base threshold	$25,921	$30,004
benefit reduction — one-child family	2.5%	2.5%
rates — 2 plus child family	5.0%	5.0%
NCBS amount for 1st child	$785	$977
2nd child	585	771
3rd & subsequent children	510	694
NCBS threshold	$20,921	$21,214
NCBS phase out — one child family	11.5%	11.1%
rate — two child family	20%	19.9%
— 3 or more child family	27.5%	27.8%

Notes:

* these numbers have been calculated to reflect indexing

Approximate family income level where you will no longer receive the CCTB:

Family size	July 1999	July 2000
one child family	$66,700	$74,000
two child family	$66,700	$74,000
three child family	$88,600	$97,700

> assumes that all children are over the age of 7

> slight variances exist for the basic benefit amount for residents of Alberta.

Canada Child Tax Benefit

Guideline Table effective July 2000 - June 2001

Family Net Income ($)	One Child ($/month)	Two Children ($/month)	Three Children ($/month)	Four Children ($/month)
under 21,214	173.41	329.66	485.91	642.16
22,000	166.14	316.63	467.70	623.95
23,000	156.89	300.04	444.54	600.79
24,000	147.64	283.46	421.37	577.62
25,000	138.39	266.88	398.20	554.45
26,000	129.14	250.29	375.04	531.29
27,000	119.89	233.71	351.87	508.12
28,000	110.64	217.13	328.70	484.95
29,000	101.39	200.54	305.54	461.79
30,000	92.14	184.00	282.41	438.62
31,000	89.92	179.85	278.26	411.30
35,000	81.59	163.18	261.60	360.01
40,000	71.17	142.35	240.76	339.18
45,000	60.75	121.51	219.93	318.35
50,000	50.34	100.68	199.10	297.51
55,000	39.92	79.85	178.26	276.68
60,000	29.50	59.01	157.43	255.85
65,000	19.09	38.18	136.60	235.01
70,000	8.67	17.35	115.76	214.18
75,000	0	0	94.93	193.35
80,000	0	0	74.10	172.51
85,000	0	0	53.26	151.68
90,000	0	0	32.43	130.85
95,000	0	0	11.60	110.01
100,000	0	0	0	89.18
110,000	0	0	0	47.51
120,000	0	0	0	5.85

Notes:

1. These calculations are assuming all children are over the age of 7. There is an additional supplement of $219.00 for each child under the age of 7. This additional supplement for chil-

dren under the age of 7 is reduced by 25% of the amount of child care expenses claimed by the client or their spouse.

2. Slight variances exist for the basic benefit amount for residents of Alberta.
3. These amounts are for the Federal CCTB program (basic benefit plus National Child Benefit Supplement) exclusive of any amount to which a client may be eligible under any existing provincial or territorial benefit or credit program.
4. The amounts represent the monthly CCTB entitlement paid to eligible families with children under age 18.
5. These amounts are only to be used as a guideline.

Changes to the Children's Special Allowances (CSA) for July 2000

CSA Component	July 1999	Budget 2000 July 2000
base amount	$1,020	$1,104
NCBS amount	$ 785	$ 977
TOTAL	$1,805	$2,081

Notes:

* this will benefit 48,288 children in the care of 274 provincial and territorial agencies.
* monthly payment per child will increase from $150.42 to $173.42.

Related Provisions: 74.1(2) — No attribution of income from Child Tax Benefit; 122.63 — Agreement with province to vary calculation; 152(1.2) — Provisions applicable to determination of overpayment; 152(3.2), (3.3) — Determination of deemed overpayment; 160.1(1)(b) — No interest on repayment of Child Tax Benefit overpayment; 160.1(2.1) — Liability for refunds by reason of section 122.61; 164(1) — Refunds; 164(2.2) — Application respecting refunds re section 122.61; 164(2.3) — Form deemed to be a return of income; 164(3) — No interest on late payment of Child Tax Benefit; 257 — Formula amounts cannot calculate to less than zero.

History: Para. (a) of the description of A, and the descriptions of B, G and H in subsec. 122.61(1) amended by 2000, c. 14, subsecs. 40(1), (2), and (4), applicable with respect to overpayments deemed to arise during months that are after June 2000. Those portions formerly read:

(a) the product obtained by multiplying $1,020 by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month,

. . . . .

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2½%) of the amount, if any, by which the person's adjusted income for the year exceeds $29,590[28]; and

. . . . .

G is the amount, if any, by which the person's adjusted income for the year exceeds $20,921[28], and

H is, where the person is an eligible individual in respect of

(a) only one qualified dependant, 11.0%,

(b) two qualified dependants, 19.7%, and

(c) three or more qualified dependants, 27.6%.

Paras. (a) and (b) of the description of F in subsec. 122.61(1) amended by the said c. 14, subsec. 40(3), applicable with respect to overpayments deemed to arise during months that are after June 2000 except that, with respect to overpayments deemed to arise during months that are after June 2000 and before July 2001, the references to "$1,155", "$955" and "$880" shall be read as references to "$977", "$771" and "$694", respectively. Paras. (a) and (b) formerly read:

(a) only one qualified dependant, $955[28], and

(b) two or more qualified dependants, the total of

(i) $955[28] for the first qualified dependant,

(ii) $755[28] for the second qualified dependant, and

(iii) $680[28] for each, if any, of the third and subsequent qualified dependants,

The opening words of the description of F in subsec. 122.61(1) amended by 2000, c. 19, s. 33, deemed to have come into force on June 18, 1998. They formerly read:

F is, where the person is an eligible individual in respect of

The description of B in subsec. 122.61(1) amended by 1999, c. 26, subsec. 36(1), applicable to the calculation of overpayments deemed to arise during months that are after June 2000. The description formerly read:

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2½%) of the amount, if any, by which the person's adjusted income for the year exceeds $25,921; and

Paras. (a) and (b) of the description of F, and paras. (a) to (c) of the description of H in subsec. 122.61(1) amended by the said c. 26, subsec. 36(2), applicable to the calculation of overpayments deemed to arise during months that are after June 1999 except that, in their application to overpayments deemed to arise during months that are after June 1999 and before July 2000, the reference to "$955" in para. (a) of the description of F shall be read as "$785" (by 2000, c. 19, s. 73, deemed to have come into force on June 17, 1999), the references to "$955", "$755" and "$680" in subparas. (b)(i) to (iii) of F, as amended, shall be read as references to "$785", "$585" and "$510", respectively; and the references to "11.0%", "19.7%" and "27.6%" in paras. (a) to (c) of H, as amended, shall be read as references to "11.5%", "20.1%" and "27.5%", respectively. The paras. in descriptions F and H formerly read:

(a) only one qualified dependant, $605, and

(b) two or more qualified dependants, the total of

(i) $605 for the first qualified dependant,

(ii) $405 for the second qualified dependant, and

(iii) $330 for each, if any, of the third and subsequent qualified dependants,

. . . . .

(a) only one qualified dependant, 12.1%,

(b) two qualified dependants, 20.2%, and

(c) three or more qualified dependants, 26.8%.

Subsec. 122.61(1) amended by 1998, c. 21, subsec. 93(1), applicable with respect to overpayments deemed to arise during months that are after June 1998. The subsec. formerly read:

(1) Where a person and, where the Minister so demands, the person's cohabiting spouse at the end of a taxation year have filed a return of income for the year, an overpayment on account of the person's liability under this Part for the year shall be deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula

$$\frac{1}{12}(A - B)$$

where

A is the total of

(a) the product obtained by multiplying $1,020[28] by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month,

(b) the product obtained by multiplying $75[28] by the number of qualified dependants, in excess of 2, in respect of whom the person was an eligible individual at the beginning of the month,

(c) where the person is, at the beginning of the month, an eligible individual in respect of one or more qualified dependants, the amount determined by the formula

$$\left(C \times \left(\frac{D - \$3,750^{28}}{\$6,250^{29}}\right)\right) - (G \times H)$$

where

C is, where the person is an eligible individual in respect of

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[28]Indexed by 122.61(5) after base taxation year 1996.

[29]Indexed by 122.61(5.1) after base taxation year 1996.

(i) only one qualified dependant, $605[28], and

(ii) two or more qualified dependants, the total of

(A) $605[28] for the first qualified dependant,

(B) $405[28] for the second qualified dependant, and

(C) $330[28] for each, if any, of the third and subsequent qualified dependants,

D is the lesser of $10,000[28] and the person's adjusted earned income for the year,

G is the amount, if any, by which the person's adjusted income for the year exceeds $20,921,[30]and

H is, where the person is an eligible individual in respect of

(i) only one qualified dependant, 12.1%,

(ii) two qualified dependants, 20.2%, and

(iii) three or more qualified dependants, 26.8%, and

(d) the amount determined by the formula

E – F

where

E is the product obtained by multiplying $213[28] by the number of qualified dependants who have not attained the age of 7 years before the month and in respect of whom the person is an eligible individual at the beginning of the month, and

F is 25% of the total of all amounts deducted under section 63 in respect of qualified dependants in computing the income for the year of the person or the person's cohabiting spouse; and

B is 5% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2½%) of the amount, if any, by which the person's adjusted income for the year exceeds $25,921[28].

Para. (c) of the description of A in subsec. 122.61(1) amended by 1997, c. 26, subsec. 80(1), applicable to overpayments deemed to arise during months that are after June 1997. Para. (c) formerly read:

(c) where the person is, at the beginning of the month, an eligible individual in respect of one or more qualified dependants, the amount determined by the formula

C – D

where

C is the lesser of $500[31] and 8% of the amount, if any, by which the person's adjusted earned income for the year exceeds $3,750,[31] and

D is 10% of the amount, if any, by which the person's adjusted income for the year exceeds $20,921,[32] and

For more History, see at end of s. 122.64

Interpretation Bulletins: IT-495R2: Child care expenses.

Forms: CTB1: Child tax benefit notice.

(2) Exceptions — Notwithstanding subsection (1), where a particular month is the first month during which an overpayment that is less than $10 (or such other amount as is prescribed) is deemed under that subsection to have arisen on account of a person's liability under this Part for the base taxation year in relation to the particular month, any such overpayment that would, but for this subsection, reasonably be expected at the end of the particular month to arise during another month in relation to which the year is the base taxation year shall be deemed to arise under that subsection during the particular month and not during the other month.

(3) Non-residents and part-year residents — For the purposes of this section, unless a person was resident in Canada throughout a taxation year,

(a) for greater certainty, the person's income for the year shall be deemed to be equal to the amount that would have been the person's income for the year had the person been resident in Canada throughout the year; and

(b) the person's earned income for the year shall not exceed that portion of the amount that would, but for this paragraph, be the person's earned income that is included because of section 114 or subsection 115(1) in computing the person's taxable income or taxable income earned in Canada, as the case may be, for the year.

(3.1) Effect of bankruptcy — For the purposes of this subdivision, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

(c) [Repealed]

Related Provisions: 118.95, 122.5(7) — Parallel rule for personal credits and GST credit.

History: Paras. 122.61(3.1)(a) and (b) amended and para. (c) repealed by 1998, c. 21, s. 94, in force on June 18, 1998. The paras. formerly read:

(a) the individual's earned income for the year shall include the individual's earned income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy;

(b) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(c) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

Subsec. 122.61(3.1) added by 1998, c. 19, s. 141, applicable to bankruptcies that occur after April 26, 1995.

For more History, see at end of s. 122.64

(4) Amount not to be charged, etc. — A refund of an amount deemed by this section to be an overpayment on account of a person's liability under this Part for a taxation year

(a) shall not be subject to the operation of any law relating to bankruptcy or insolvency;

(b) cannot be assigned, charged, attached or given as security;

(c) does not qualify as a refund of tax for the purposes of the *Tax Rebate Discounting Act*;

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[28]Indexed by 122.61(5) after base taxation year 1996.

[30]Indexed by 122.61(6) after base taxation year 1991.

[31]Were indexed by 122.61(5) after base taxation year 1991.

[32]Were indexed by 122.61(6) after base taxation year 1991.

(d) cannot be retained by way of deduction or set-off under the *Financial Administration Act*; and

(e) is not garnishable moneys for the purposes of the *Family Orders and Agreements Enforcement Assistance Act*.

(5) Annual adjustment [indexing] — Each amount expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1998, the amount to be used under that subsection for the month is the total of

(a) the amount that would, but for subsection (7), be the relevant amount used under subsection (1) for the month that is one year before the particular month, and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph (a)

by

(ii) the amount, adjusted in such manner as is prescribed and rounded to the nearest one-thousandth or, where the result obtained is equidistant from 2 such consecutive one thousandths, to the higher thereof, that is determined by the formula

$$\frac{A}{B} - 1$$

where

A is the Consumer Price Index (within the meaning assigned by subsection 117.1(4)) for the 12-month period that ended on September 30 of the base taxation year, and

B is the Consumer Price Index for the 12 month period preceding the period referred to in the description of A.

Related Provisions: 117.1(1) — Indexing of other amounts; 122.61(6) — Adjustment to amounts of $1,090, $213 and $75; 122.61(6.1) — Exception; 122.61(7) — Rounding of adjusted amounts; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 122.61(5), the formula and the description of A in subpara. 122.61(5)(b)(ii) amended by 2000, c. 14, subsecs. 40(5)-(7), applicable with respect to overpayments deemed to arise during months that are after June 2000. Those portions formerly read:

(5) Annual adjustment [indexing] — Each amount expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1996, the amount to be used under that subsection for the month is equal to the total of

. . . . .

$$\frac{A}{B} - 1.03$$

. . . . .

A is the Consumer Price Index (within the meaning assigned by subsection 117.1(4)) for the 12 month period that ended on March 31 in the calendar year following the base taxation year, and

The opening words of subsec. 122.61(5) amended by 1999, c. 26, subsec. 36(4), applicable in respect of months that are after June 1997. They formerly read:

(5) Each amount (other than the amounts of $6,250 and $20,921) expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1996, the amount to be used under that subsection for the month is equal to the total of

The opening words of subsec. 122.61(5) amended by 1997, c. 26, subsec. 80(2), applicable to overpayments deemed to arise during months that are after June 1997. These words formerly read:

(5) Each amount (other than the amount of $20,921) expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1991, the amount to be used under that subsection for the month is equal to the total of

For more History, see at end of s. 122.64

(5.1) [Repealed]

History: Subsec. 122.61(5.1) repealed by 1998, c. 21, subsec. 93(2), applicable with respect to overpayments deemed to arise during months that are after June 1998. The subsec. formerly read:

(5.1) Annual adjustment [indexing] — The amount of $6,250 referred to in subsection (1) shall be adjusted so that the amount to be used under that subsection for a month in relation to a base taxation year that is after 1996 is equal to the amount by which

(a) the amount of $10,000 referred to in that subsection, as adjusted and rounded under this section for the year,

exceeds

(b) the amount of $3,750 referred to in that subsection, as adjusted and rounded under this section for the year.

Subsec. 122.61(5.1) added by 1997, c. 26, subsec. 80(3), applicable to overpayments deemed to arise during months that are after June 1997.

For more History, see at end of s. 122.64

(6) Adjustment to certain amounts — For the purpose of subsection (5), the amount of $1,090, and the amounts in respect of the amounts of $213 and $75, referred to in subsection (1), that are used for the purpose of determining the amount deemed to be an overpayment arising during particular months that are

(a) after June 2000 and before July 2001, are deemed to be $1,104, $219 and $77, respectively;

(b) after June 2001 and before July 2002, shall be equal to the greater of the amounts deemed under paragraph (a) to be an overpayment arising during the months referred to in that paragraph and the amounts that would otherwise be determined for those particular months if this Act were read without reference to this subsection; and

(c) after June 2002, shall be computed without reference to paragraphs (a) and (b).

History [122.61(6)]: Subsec. 122.61(6) added by 2000, c. 14, subsec. 40(8), applicable with respect to overpayments deemed to arise during months that are after June 2000.

History [former 122.61(6)]: Subsec. 122.61(6) repealed by 1999, c. 26, subsec. 36(5), applicable in respect of months that are after June 1997. The subsec. formerly read:

(6) Idem — The amount of $20,921 referred to in subsection (1) shall be adjusted so that the amount to be used thereunder for a month in relation to a base taxation year that is after 1991 is equal to the amount by which

(a) the amount of $25,921 referred to in subsection (1), as adjusted and rounded under this section for the year,

exceeds

(b) the product obtained by multiplying the amount of $500 referred to in subsection (1), as adjusted and rounded under this section for the year, by 10.

For more History, see at end of s. 122.64

(6.1) Exception — Where section 122.63 applies for the purpose of calculating an overpayment deemed under subsection (1) to arise during a month referred to in paragraph (6)(a) or (b) on account of a person's tax liability, the amount determined under subparagraph (5)(b)(ii) in respect of the person for the month is deemed to be

(a) zero, where the month is referred to

(i) in paragraph (6)(a), or

(ii) in paragraph (6)(b) and the amount otherwise determined under subparagraph (5)(b)(ii) is less than 0.014; and

(b) 1090/1104 of the amount otherwise determined under that subparagraph, in any other case.

History [122.61(6.1)]: Subsec. 122.61(6.1) added by 2000, c. 14, subsec. 40(8), applicable with respect to overpayments deemed to arise during months that are after June 2000.

(7) Rounding — Where an amount referred to in subsection (1), when adjusted as provided in subsection (5), is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, where it is equidistant from 2 such consecutive multiples, to the higher thereof.

History [s. 122.61]: See at end of s. 122.64.

Definitions [s. 122.61]: "adjusted earned income", "adjusted income" — 122.6; "amount" — 248(1); "base taxation year" — 122.6; "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "cohabiting spouse" — 122.6; "common-law partner" — 248(1); "earned income", "eligible individual" — 122.6; "Minister", "person" — 248(1); "qualified dependant" — 122.6; "resident" — 250; "return of income" — 122.6; "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

122.62 (1) Eligible individuals — For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

Related Provisions: 220(2.1) — Waiver of requirement under 122.62(1) to file notice; 241(4)(b) — Disclosure of taxpayer information for purposes of administering the Act.

History: Subsec. 122.62(1) amended by 1998, c. 19, subsec. 142(1), applicable after August 27, 1995. Subsec. 122.62(1) formerly read:

(1) For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister of Human Resources Development a notice in a form authorized, and containing information required, by that Minister.

Subsec. 122.62(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: CTB1: Child tax benefit notice.

(2) Extension for notices — The Minister may at any time extend the time for filing a notice under subsection (1).

History: Subsec. 122.62(2) amended by 1998, c. 19, subsec. 142(1), applicable after August 27, 1995. Subsec. 122.62(2) formerly read:

(2) The Minister of Human Resources Development may at any time extend the time for filing a notice under subsection (1).

Subsec. 122.62(2) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

(3) Exception — Where at the beginning of 1993 a person is an eligible individual in respect of a qualified dependant, subsection (1) does not apply to the person in respect of the qualified dependant if the qualified dependant was an eligible child (within the meaning assigned by subsection 122.2(2) because of subparagraph (a)(i) in the definition "eligible child" in that subsection) of the individual for the 1992 taxation year.

(4) Person ceasing to be an eligible individual — Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall notify the Minister of that fact before the end of the first month following the particular month.

History: Subsec. 122.62(4) amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. 122.62(4) formerly read:

(4) Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall inform the Minister of Human Resources Development of that fact, in such form as that minister may require, before the end of the first month following the particular month.

Subsec. 122.62(4) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: RC65: Child tax benefit — election to change marital status.

(5) Death of cohabiting spouse — Where

(a) before the end of a particular month the cohabiting spouse of an eligible individual in respect of a qualified dependant dies, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the individual so elects, before the end of the eleventh month after the particular month, in a form that is acceptable to the Minister,

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (6) or (7), the individual's adjusted income for the year is deemed to be equal to the individual's income for the year.

History: The portion of subsec. 122.62(5) after para. (b) amended by 1998, c. 21, para. 95(a), in force on June 18, 1998. That portion formerly read:

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (6) or (7),

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

Former subsec. 122.62(5) repealed, 122.62(6) renumbered as 122.62(5) and amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Former subsecs. 122.62(5) and (6) formerly read:

(5) Waiver — The Minister of Human Resources Development may at any time waive the requirement

(a) under subsection (1) to file a notice; or

(b) under subsection (4) to inform that minister that the person has ceased to be an eligible individual in respect of a particular qualified dependant.

(6) Death of cohabiting spouse — Where before the end of a particular month the cohabiting spouse of an eligible individual in respect of a qualified dependant dies and the individual so elects, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister of Human Resources Development, for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month subject to any subsequent election under subsection (7) or (8), the individual's adjusted income for the year shall be

deemed to be equal to the individual's income for the year and the individual's adjusted earned income for the year shall be deemed to be equal to the individual's earned income for the year.

Subsecs. 122.62(5), (6) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: RC65: Child tax benefit — election to change marital status.

(6) Separation from cohabiting spouse — Where

(a) before the end of a particular month an eligible individual in respect of a qualified dependant begins to live separate and apart from the individual's cohabiting spouse, because of a breakdown of their marriage, for a period of at least 90 days that includes a day in the particular month, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the individual so elects, before the end of the eleventh month after the particular month, in a form that is acceptable to the Minister,

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (5) or (7), the individual's adjusted income for the year is deemed to be equal to the individual's income for the year.

History: The portion of subsec. 122.62(6) after para. (b) amended by 1998, c. 21, para. 95(b), in force on June 18, 1998. That portion formerly read:

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (5) or (7),

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

Former subsec. 122.62(7) renumbered as 122.62(6) and amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. 122.62(7) formerly read:

(7) Where before the end of a particular month an eligible individual in respect of a qualified dependant commences to live separate and apart from the individual's cohabiting spouse, because of a breakdown of their marriage, for a period of at least 90 days that includes a day in the particular month and the individual so elects, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister of Human Resources Development, for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month subject to any subsequent election under subsection (6) or (8), the individual's adjusted income for the year shall be deemed to be equal to the individual's income for the year and the individual's adjusted earned income for the year shall be deemed to be equal to the individual's earned income for the year.

Former subsec. 122.62(7) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: RC65: Child tax benefit — election to change marital status.

(7) Person becoming a cohabiting spouse — Where

(a) at any particular time before the end of a particular month a taxpayer has become the cohabiting spouse of an eligible individual, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the taxpayer and the eligible individual jointly so elect in prescribed form filed with the Minister before the end of the eleventh month after the particular month,

for the purpose of determining the amount deemed by subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the eligible individual's liability under this Part for the year, the taxpayer is deemed to have been the eligible individual's cohabiting spouse throughout the period that began immediately before the end of the base taxation year in relation to the particular month and ended at the particular time.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

History: Former subsec. 122.62(8) renumbered as 122.62(7) and amended by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. (8) formerly read:

(8) Where at any particular time before the end of a particular month a taxpayer has become the cohabiting spouse of an eligible individual and the taxpayer and the eligible individual jointly so elect, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister of Human Resources Development, the taxpayer shall be deemed to have been the eligible individual's cohabiting spouse throughout the period commencing immediately before the end of the base taxation year in relation to the particular month and ending at the particular time for the purpose of determining the amount deemed by subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the eligible individual's liability under this Part for the year.

Former subsec. 122.62(8) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Forms: RC65: Child tax benefit — election to change marital status.

(8), (9) [Repealed]

History: Subsec. 122.62(9) repealed by 1998, c. 19, subsec. 142(2), applicable after August 27, 1995. Subsec. 122.62(9) formerly read:

(9) Advice of Department of Human Resources Development — The Minister may obtain the advice of the Department of Human Resources Development as to whether

(a) a taxpayer is an eligible individual in respect of a qualified dependant;

(b) a person is a qualified dependant; or

(c) a person is a taxpayer's cohabiting spouse.

Subsec. 122.62(9) amended by 1996, c. 11, para. 97(1)(e), to substitute "Department of Human Resources Development" for "Department of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Definitions [s. 122.62]: "adjusted earned income", "adjusted income", "cohabiting spouse" — 122.6; "common-law partner", "common-law partnership" — 248(1); "eligible individual" — 122.6; "individual" — 248(1); "marriage" — 252(4); "Minister", "person", "prescribed" — 248(1); "qualified dependant" — 122.6; "taxpayer" — 248(1).

122.63 (1) Agreement — The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under paragraph (a) of the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purpose of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

History: Subsec. 122.63(1) amended by 1998, c. 19, s. 143, applicable after August 27, 1995. Subsec. 122.63(1) formerly read:

> (1) The Minister of Finance and the Minister of Human Resources Development may enter jointly into an agreement with the government of a province whereby the amounts determined under paragraph (a) in the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purposes of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

Subsec. 122.63(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996. However, this change will effectively be superseded by (Bill C-69) 1998, c. 19 reproduced as proposed amendments above.

For more History, see at end of s. 122.64

(2) Idem — The amounts determined under paragraph (a) of the description of A in subsection 122.61(1) for a base taxation year because of any agreement entered into with a province and referred to in subsection (1) shall be based on the age of qualified dependants of eligible individuals, or on the number of such qualified dependants, or both, and shall result in an amount in respect of a qualified dependant that is not less, in respect of that qualified dependant, than 85% of the amount that would otherwise be determined under that paragraph in respect of that qualified dependant for that year.

(3) Idem — Any agreement entered into with a province and referred to in subsection (1) shall provide that, where the operation of the agreement results in a total of all amounts, each of which is an amount deemed under subsection 122.61(1) to be an overpayment on account of the liability under this Part for a taxation year of a person subject to the agreement, that exceeds 101% of the total of such overpayments that would have otherwise been deemed to have arisen under subsection 122.61(1), the excess shall be reimbursed by the government of the province to the Government of Canada.

Definitions [s. 122.63]: "amount" — 248(1); "base taxation year", "eligible individual" — 122.6; "person" — 248(1); "province" — *Interpretation Act* 35(1); "qualified dependant" — 122.6; "resident" — 250.

122.64 (1) Confidentiality of information — Information obtained under this Act or the *Family Allowances Act* by or on behalf of the Minister of Human Resources Development is deemed to be obtained on behalf of the Minister of National Revenue for the purposes of this Act.

Related Provisions: 241 — Rules applicable to taxpayer information; 122.64(2), (3) — Intergovernmental disclosure.

History: Subsec. 122.64(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

(2) Communication of information — Notwithstanding subsection 241(1), an official (as defined in subsection 241(10)) may provide information obtained under subsection 122.62(1), (4), (5), (6) or (7) or the *Family Allowances Act*

> (a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or
>
> (b) to an official of the Department of Human Resources Development for the purposes of the administration of the *Family Allowances Act*, the *Canada Pension Plan* or the *Old Age Security Act*.

Related Provisions: 122.64(4) — Offence.

History: Subsec. 122.64(2) amended by 1998, c. 19, subsec. 144(1), applicable after August 27, 1995 except that, before July 12, 1996, the reference in para. 122.64(2)(b) to "Human Resources Development" shall be read as a reference to "National Health and Welfare". Subsec. 122.64(2) formerly read:

> (2) Notwithstanding subsection 241(1), an official or authorized person may provide information obtained under subsection 122.62(1), (4), (6), (7) or (8) or the *Family Allowances Act*
>
> (a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or
>
> (b) to an official of the Department of Human Resources Development, for the purposes of the administration of the *Children's Special Allowances Act*, the *Canada Pension Plan* and the *Old Age Security Act*.

Para. 122.64(2)(b) amended by 1996, c. 11, para. 97(1)(e), to substitute "Department of Human Resources Development" for "Department of National Health and Welfare", in force July 12, 1996.

For more History, see at end of s. 122.64

Regulations: 3003 (prescribed law of a province).

(3) Taxpayer's address — Notwithstanding subsection 241(1), an official or authorized person may provide a taxpayer's name and address that has been obtained by or on behalf of the Minister of National Revenue for the purposes of this subdivision, for the purposes of the administration or enforcement of Part I of the *Family Orders and Agreements Enforcement Assistance Act*.

Related Provisions: 122.61(4)(e) — Child Tax Benefit not garnishable under the *Family Orders and Agreements Enforcement Assistance Act*; 122.64(4) — Offence.

(4) Offence — Every person to whom information has been provided under subsection (2) or (3) and who knowingly uses, communicates or allows to be communicated that information for any purpose other than that for which it was provided is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both that fine and imprisonment.

Related Provisions: 239(2.2), (2.21) — Offence with respect to confidential information.

(5) [Repealed]

History [subsec. 122.64(5)]: Subsec. 122.64(5) repealed by 1998, c. 19, subsec. 144(2), applicable after August 27, 1995. Subsec. 122.64(5) formerly read:

> (5) "official" and "authorized person" — For the purposes of subsections (2) and (3), "official" and "authorized person" have the meanings assigned by subsection 241(10).

For more History, see at end of s. 122.64

Definitions [s. 122.64]: "authorized person", "official" — 241(10); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "taxpayer" — 248(1).

History [ss. 122.6–122.64]: Ss. 122.6 to 122.64 enacted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 12(1), 122.6 to 122.63 applicable to overpayments deemed to arise during months after 1992; and, with respect to

(a) any amount deemed by subsec. 122.61(1) to be an overpayment on account of an individual's liability under Part I

(i) during any month before July 1993, the individual's cohabiting spouse at the end of 1991 includes a person who

(A) is of the opposite sex to the individual,

(B) is at the beginning of the month a parent of a child of whom the individual is a parent, and

(C) is not living separate and apart from the individual for a period of at least 90 days that includes December 31, 1991, and

(ii) during any month after June 1993 and before July 1994, the cohabiting spouse of an individual at the end of 1992 includes the person of the opposite sex who, at the end of 1992, was cohabiting with the individual in a conjugal relationship and

(A) had so cohabited with the individual throughout a 12 month period ending before the end of 1992, or

(B) is a parent of a child of whom the individual is a parent,

and, for the purpose of this subparagraph, where before the end of 1992 the individual and the person cohabited in a conjugal relationship, they shall be deemed to be cohabiting in a conjugal relationship at the end of 1992, unless they were not cohabiting at that time for a period of at least 90 days that includes that time because of a breakdown of their conjugal relationship; and

(b) any amount deemed by subsec. 122.61(1) to be an overpayment on account of a person's liability under Part I arising in any month in relation to which the 1992 taxation year is the base taxation year, the expression "earned income" as defined in s. 122.6 shall be deemed to have the meaning assigned by subsec. 63(3) as that subsec. reads in its application to the 1993 taxation year.

S. 122.64 is deemed to have come into force January 1, 1993.

Subsec. 12(3) of 1994, c. 7, Sch. VII (1992, c. 48) provides as follows:

(3) The Minister of National Revenue may during any month

(a) in relation to which the 1991 taxation year is the base taxation year, and

(b) that is before the month in which that minister mails to an individual a notice of determination of the amounts deemed by subsection 122.61(1) of the Act, as enacted by subsection (1), to be overpayments on account of the individual's liability under Part I of the Act for the 1991 taxation year,

pay to the individual, in respect of a qualified dependant who was an eligible child (within the meaning assigned by subsection 122.2(2) of the Act) of the individual for the 1992 taxation year, an amount not exceeding the amount that would be deemed by the said subsection 122.61(1) to be an overpayment on account of the individual's liability under Part I of the Act for the 1991 taxation year that would have arisen in that month or a preceding month if the individual's adjusted income and adjusted earned income for the 1991 taxation year were equal to zero and if the individual had filed a return of income for that year, and any amount so paid shall be deemed to be an amount refunded on account of the individual's liability under Part I of the Act for the 1991 taxation year that arose as a consequence of the operation of the said subsection 122.61(1).

Subdivision b — Rules Applicable to Corporations

123. (1) Rate for corporations — The tax payable under this Part for a taxation year by a corporation on its taxable income or taxable income earned in Canada, as the case may be, (in this section referred to as its "amount taxable") for the year is, except where otherwise provided,

(a) 38% of its amount taxable for the year.

(b)–(d) [Repealed under former Act]

Proposed Amendment — Reduction in corporate tax rate

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Tax Reduction for Corporations*

(7) That, for taxation years that end after December 31, 2000 (pro-rated for years that straddle that date),

(a) a deduction be provided from the tax otherwise payable under Part I of the Act for the year by a corporation (other than a corporation that is throughout the year a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation, a mutual fund corporation, or a non-resident-owned investment corporation), equal to 1 per cent of the amount by which the corporation's taxable income for the year exceeds the total of

(i) the total of the amounts in respect of which the corporation applied the deductions from tax provided by subsection 125.1(1) or (2) of the Act,

(ii) 3 times the resource allowance deducted under paragraph 20(1)(v.1) of the Act in computing the corporation's income for the year, and

(iii) if the corporation is a credit union, the amount in respect of which the corporation applied the deduction from tax provided by subsection 137(3) of the Act, and

(b) a deduction be provided from the tax otherwise payable under Part I of the Act for the year by a Canadian-controlled private corporation, equal to 1 per cent of the amount by which the corporation's taxable income for the year exceeds the total of

(i) the amounts that would, if subparagraph (a) applied to the corporation, be determined under clauses (a)(i) to (iii) in respect of the corporation for the year,

(ii) the least of the amounts determined under paragraphs 125(1)(a) to (c) of the Act in respect of the corporation's small business deduction for the year,

(iii) the corporation's aggregate investment income determined under subsection 129(4) of the Act for the year, and

(iv) 100/7 times the amount deducted from the corporation's tax for the year in accordance with the rules described in paragraph (8).

[See under 125(1) for the accelerated reduction for Canadian-controlled private corporations — ed.]

Federal budget, supplementary information, February 28, 2000: *Corporate Tax Rate Reduction*

Canada must ensure that its business income tax system is internationally competitive. This is important because business income tax rates have a significant impact on the level of business investment, employment, productivity, wages and incomes.

Canada's tax rates for small businesses and the manufacturing and processing (M&P) sector are already competitive. Also, the resource sector (crude oil, natural gas and mining) benefits from special deductions, such as the resource allowance when it exceeds provincial royalties, accelerated exploration and development expenses and fast write-offs for certain capital assets, all of which serve to reduce its effective tax rate.

However, higher overall corporate tax rates apply to other sectors of the economy. These sectors include the fast-growing service and knowledge-based firms that are likely to influence the pace of Canada's future economic and social development.

In addition, Canada imposes a capital tax on large corporations that is higher than in most G-7 countries.

Therefore, the Government intends to reduce, within five years, the federal corporate income tax rate from 28 to 21 per cent on business income not currently eligible for special tax treatment.

As an initial step in achieving this tax rate reduction, the budget proposes that, effective January 1, 2001, the federal corporate income tax rate on such income be reduced by 1 percentage point from 28 to 27 per cent. This rate change will be prorated for taxation years that include January 1, 2001.

The tax rate reduction will not apply to income that benefits from preferential corporate tax treatment such as small business and Canadian M&P income, investment income that benefits from refundable tax provisions or income from non-renewable natural resource activities. The reduction will also not apply to mutual fund corporations, mortgage investment corporations, and investment corporations (as defined in the Income Tax Act), which qualify for special tax provisions.

Faster Corporate Tax Rate Reduction for Small Business

[See Proposed Amendment under 125(1) — ed.]

Related Provisions: 117(1) — Tax payable under this Part; 123.2 — Corporate surtax; 124 — Provincial tax abatement for corporations; 125 — Small business deduction; 125.1 — Manufacturing and processing credit; 133(3) — Tax rate for non-resident-owned investment corporation; 137.1(9) — Tax rate for deposit insurance corporation; 157(1) — Monthly instalment requirements; 161(4.1) — Interest on unpaid taxes; 182 — Surtax on tobacco manufacturers; 219(1) — Additional tax on foreign corporations.

Pre-RSC History: Para. 123(1)(b) repealed by 1988, c. 28, s. 250, applicable to taxation years commencing after December 22, 1989. Para. 123(1)(b) formerly read:

(b) 5% of the amount taxable earned by the corporation in the year in the Nova Scotia offshore area.

Para. 123(1)(a) amended to substitute "38%" for "43%", and paras. 123(1)(c), (d) repealed by 1988, c. 55, subsecs. 100(1) and (2), applicable to taxation years ending after June 1987, except that in its application to taxation years ending after June 1987 and commencing before July 1988, para. 123(1)(a) shall be read as follows:

(a) the amount, if any, by which the aggregate of

(i) that proportion of 46% of its amount taxable for the year that the number of days in the year that are before July 1987 is of the number of days in the year,

(ii) that proportion of 45% of its amount taxable for the year that the number of days in the year that are after June, 1987 and before July 1988 is of the number of days in the year,

(iii) that proportion of 38% of its amount taxable for the year that the number of days in the year that are after June 1988 is of the number of days in the year,

(iv) in the case of a corporation that was throughout the year a Canadian-controlled private corporation, that proportion of 1% of the lesser of

(A) the amount, if any, by which

(I) its amount taxable for the year

exceeds the aggregate of

(II) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(III) 2 times the aggregate of amounts deducted under subsection 126(2) by the corporation from its tax for the year otherwise payable under this Part, and

(B) the amount determined under clause 129(3)(a)(i)(B) in respect of the corporation for the year,

that the number of days in the year that are after June 1987 and before 1988 is of the number of days in the year, and

(v) in the case of a corporation that was throughout the year an investment corporation or a mutual fund corporation, that proportion of 1% of the lesser of

(A) its amount taxable for the year, and

(B) its taxed capital gains for the year (within the meaning assigned by subsection 130(3)) for the year

that the number of days in the year that are after June 1987 and before July 1988 is of the number of days in the year

exceeds

(vi) in the case of a corporation that was throughout the year a Canadian-controlled private corporation, that proportion of 7% of the lesser of the amounts determined under clauses (iv)(A) and (B) in respect of the corporation for the year that the number of days in the year that are after 1987 and before July 1988 is of the number of days in the year, and

Paras. 123(1)(c) and (d) formerly read:

(c) in the case of a corporation that was throughout the year a Canadian-controlled private corporation, 3% of the lesser of

(i) the amount, if any, by which

(A) its amount taxable for the year

exceeds the aggregate of

(B) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(C) 2 times the aggregate of amounts deducted under subsection 126(2) by the corporation from its tax for the year otherwise payable under this Part, and

(ii) the amount determined under clause 129(3)(a)(i)(B) in respect of the corporation for the year, and

(d) in the case of a corporation that was throughout the year an investment corporation or a mutual fund corporation, 3% of the lesser of its amount taxable for the year and its taxed capital gains (within the meaning assigned by subsection 130(3)) for the year.

Para. 123(1)(a) amended to substitute "43%" for "46%", and paras. 123(1)(c), (d) added, by 1986, c. 55, s. 42, applicable to taxation years ending after June 30, 1987, except that with respect to taxation years ending after June 1987 and commencing before July 1989 the following shall apply:

(a) in the application of para. 123(1)(a) there shall be added to the amount otherwise determined under that paragraph in respect of a corporation for a taxation year the aggregate of

(i) that proportion of 3% of its amount taxable for the year that the number of days in the year that are before July 1987 is of the number of days in the year,

(ii) that proportion of 2% of its amount taxable for the year that the number of days in the year that are after June 1987 and before July 1988 is of the number of days in the year, and

(iii) that proportion of 1% of its amount taxable for the year that the number of days in the year that are after June 1988 and before July 1989 is of the number of days in the year;

(b) in the application of para. 123(1)(c) there shall be deducted from the amount otherwise determined under that paragraph in respect of a corporation for a taxation year the aggregate of

(i) that proportion of 3% of the lesser of the amounts determined under subparagraphs (i) and (ii) of that paragraph in respect of the corporation for the year that the number of days in the year that are before July 1987 is of the number of days in the year,

(ii) that proportion of 2% of the lesser of the amounts determined under subparagraphs (i) and (ii) of that paragraph in respect of the corporation for the year that the number of days in the year that are after June 1987 and before July 1988 is of the number of days in the year, and

(iii) that proportion of 1% of the lesser of the amounts determined under subparagraphs (i) and (ii) of that paragraph in respect of the corporation for the year that the number of days in the year that are after June 1988 and before July 1989 is of the number of days in the year; and

(c) in the application of paragraph 123(1)(d) there shall be deducted from the amount otherwise determined under that paragraph in respect of a corporation for a taxation year the aggregate of

(i) that proportion of 3% of the lesser of its amount taxable and its taxed capital gains for the year that the number of days in the year that are before July 1987 is of the number of days in the year,

(ii) that proportion of 2% of the lesser of its amount taxable and its taxed capital gains for the year that the number of days in the year that are after June 1987 and before July 1988 is of the number of days in the year, and

(iii) that proportion of 1% of the lesser of its amount taxable and its taxed capital gains for the year that the number of days in the year that are after June 1988 and before July 1989 is of the number of days in the year.

Selected Cases [subsec. 123(1)]: *Groupe Commerce, Cie D'assurances v. R.*, [1999] 4 C.T.C. 54 (FCA) (No refundable dividend tax available to insurance companies).

Forms: T2-FTC-Sched. 1 Supp: 1987 and subsequent taxation years; T2B-CORPAC: Recalculation and update of corporation income and/or

tax; T2 SCH 7: Calculation of aggregate investment income and active business income.

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 123(2) repealed by 1988, c. 28, s. 250, applicable to taxation years commencing after December 22, 1989. Subsec. 123(2) formerly read:

(2) Definitions — In this section,

"amount taxable earned by the corporation in the year in the Nova Scotia offshore area" means the amount determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance;

"Nova Scotia offshore area" means the geographic area determined by regulations made on the recommendation of the Minister of Finance.

Pre-RSC History [s. 123]: S. 123 substituted by 1984, c. 29, s. 90, applicable to taxation years commencing after June 22, 1984. S. 123 formerly read:

123. Rate for corporations — The tax payable by a corporation under this Part upon its taxable income or taxable income earned in Canada, as the case may be, (in this section referred to as the "amount taxable") is, except where otherwise provided,

(a) for the 1972 taxation year, 50%,

(b) for the 1973 taxation year, 49%,

(c) for the 1974 taxation year, 48%,

(d) for the 1975 taxation year, 47%, and

(e) for the 1976 and subsequent taxation years, 46%,

of the amount taxable.

Definitions [s. 123]: "amount taxable" — 123(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1).

123.1 Corporation surtax — There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation (other than a corporation that was throughout the year an investment corporation or a non-resident-owned investment corporation) an amount equal to that proportion of 5% of the amount, if any, by which

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.2 and 126 (except for the purposes of subsection 125(1) and section 125.1), subsections 127(3) and (5), 127.2(1) and 127.3(1) of this Act and paragraph 123(1)(b) and subsection 127(13) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and if subsection 124(1) of this Act were read without reference to the words "in a province" in that subsection

exceeds

(b) in the case of a Canadian-controlled private corporation to which subsection 125(1) applies, the amount, if any, by which

(i) 15% of the least of the amounts, if any, determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year

exceeds

(ii) the amount, if any, determined under paragraph 125.1(1)(b) in respect of the corporation for the year,

(c) in the case of a mutual fund corporation, the least of the amounts that would be determined under paragraphs (a) to (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the corporation for the year if this Act were read without reference to this section, and

(d) in any other case, nil

that the number of days in that portion of the year that is after June 30, 1985 and before 1987 is of the number of days in the year.

Pre-RSC History: Para. 123.1(a) amended by 1986, c. 55, s. 43, to substitute "sections 123.2 and 126" for "section 126", applicable to 1987 *et seq.*

S. 123.1 added by 1986, c. 6, s. 69, applicable to 1985 *et seq.*

Definitions [s. 123.1]: "amount" — 248(1); "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1); "investment corporation" — 130(3), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "tax payable" — 248(2); "taxation year" — 249(1).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Pre-RSC History [former s. 123.1]: S. 123.1 repealed by 1985, c. 45, s. 69, applicable to 1985 *et seq.* S. 123.1 formerly read:

123.1 Deduction in computing tax otherwise payable — There may be deducted from the tax otherwise payable under this Part for the 1972 or 1973 taxation year by a corporation liable to pay tax for the year computed under section 123 or 143, an amount equal to 7% of,

(a) in the case of the 1972 taxation year of the corporation, its tax for the year so computed, minus any amount deductible under section 125 or 130 from its tax for the year otherwise payable under this Part; and

(b) in the case of the 1973 taxation year of the corporation, that proportion of its tax for the year so computed, minus any amount deductible under section 125 or 130 from its tax for the year otherwise payable under this Part, that the number of days in that portion of the year that is before 1973 is of the number of days in the whole year.

S. 123.1 added by 1972, c. 9, s. 2.

123.2 Corporation surtax — There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation (other than a corporation that was throughout the year a non-resident-owned investment corporation) an amount equal to 4% of the amount, if any, by which

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.3 and 125 to 126 and subsections 127(3), (5), (27) to (31), (34) and (35) and 137(3) and as if subsection 124(1) did not contain the words "in a province"

exceeds

(b) in the case of a corporation that was throughout the year an investment corporation or a mutual fund corporation, the amount determined for A in the definition "refundable capital gains tax on hand" in subsection 131(6) in respect of the corporation for the year, and

(c) in any other case, nil.

Related Provisions: 141.1 — Insurance corporation deemed not to be private corporation; 157(1) — Tax instalment requirements; 161(4.1) — Interest on unpaid taxes; 182 — Surtax on tobacco manufacturers; Reg. 8602 — Prescribed portion of amount determined under 123.2.

History: Para. 123.2(a) amended by 1999, c. 22, s. 45, applicable to 1998 *et seq.* It formerly read:

(a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 123.3 and 125 to 126 and subsections 127(3) and (5) and 137(3) and as if subsection 124(1) did not contain the words "in a province"

The portion of s. 123.2 before para. (b) amended by 1996, c. 21, s. 24, applicable to taxation years that end after February 27, 1995 except that, in applying s. 123.2, as amended, to a taxation year that began before February 28, 1995, the amount otherwise determined under that section shall be reduced by that proportion of ¼ of that amount that the number of days in

the year that are before February 28, 1995 is of the number of days in the year. The portion formerly read:

> 123.2 There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation (other than a corporation that was throughout the year a non-resident-owned investment corporation) an amount equal to 3% of the amount, if any, by which
>
> > (a) the tax payable under this Part by the corporation for the year determined without reference to this section, sections 125 to 126 and subsections 127(3) and (5) and 137(3) and as if subsection 124(1) did not contain the words "in a province" therein
>
> exceeds

Para. 123.2(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 61, applicable to 1992 *et seq.* except that, in its application to a corporation's taxation year beginning before 1992, there shall be deducted from the amount determined under the para. in respect of the corporation for the year an amount equal to that proportion of the amount determined under subsec. 137(3) in respect of the corporation for the year that the number of days in the year that are before 1992 is of the number of days in the year. Para. 123.2(a) formerly read:

> (a) the tax payable under this Part by the corporation for the year determined without reference to this section and sections 125 to 126 and subsections 127(3) and (5) of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and as if subsection 124(1) of this Act were read without reference to the words "in a province" in that subsection

Pre-RSC History: Paras. 123.2(a) to (c) substituted for paras. (a) to (d) by 1990, c. 39, s. 28, applicable [by subsec. 28(2), as amended by 1993, c. 24, s. 156, deemed to have come into force on October 23, 1990] to taxation years ending after June 1989 except that, in its application to a taxation year of a corporation commencing before July 1989, there shall be deducted from the amount determined under para. 123.2(a) in respect of the corporation for the year an amount equal to that proportion of the aggregate of,

> (a) where the corporation was (or, but for subsec. 136(1) or 137(7), would have been) a Canadian-controlled private corporation throughout the year, the amount determined under subsec. 125(1) in respect of the corporation for the year,
>
> (b) the amount determined under subsec. 125.1(1) in respect of the corporation for the year, and
>
> (c) where the corporation was a Canadian-controlled private corporation throughout the year, 4/5 of the least of the amounts determined under subpara. 129(3)(a)(i) to (iii) in respect of the corporation for the year,

that the number of days in the year that are before July 1989 is of the number of days in the year. Paras. 123.2(a) to (d) formerly read:

> (a) the tax payable under this Part by the corporation for the year determined without reference to paragraph 123(1)(b), section 123.1, this section, section 125.2, section 126 (except for the purposes of subsection 125(1) and sections 125.1 and 129), and subsections 127(3), (5) and (13), 127.2(1) and 127.3(1) and as if subsection 124(1) were read without reference to the words "in a province" therein
>
> exceeds
>
> (b) in the case of a corporation that was throughout the year a Canadian-controlled private corporation, 4/5 of the least of the amounts determined under subparagraphs 129(3)(a)(i) to (iii) in respect of the corporation for the year,
>
> (c) in the case of a corporation that was throughout the year an investment corporation or a mutual fund corporation, the amount determined under subparagraph 131(6)(d)(i) in respect of the corporation for the year, and
>
> (d) in any other case, nil.

Paras. 123.2(a) and (b) amended by 1988, c. 55, s. 101, to add reference to s. 125.2 in para. (a) and to substitute "4/5 of the least of" for "the least of" in para. (b), applicable to 1988 *et seq.*, except that in its application to a taxation year of a corporation commencing before 1988 and ending after 1987, there shall be added to the amount determined under para. 123.2(b) in respect of the corporation for the year an amount equal to that proportion of 1/5 of the least of the amounts determined under subparas. 129(3)(a)(i) to (iii) in respect of the corporation for the year that the number of days in the year that are before 1988 is of the number of days in the year.

S. 123.2 added by 1986, c. 55, s. 44, applicable to 1987 *et seq.*, except that in the application of section 123.2 to a taxation year of a corporation commencing before 1987 and ending after 1986, the amount determined under that section in respect of the corporation for the year shall be deemed to be that proportion of the amount otherwise determined under that section in respect of the corporation for the year that the number of days in the year that are after 1986 is of the number of days in the year.

Definitions [s. 123.2]: "amount" — 248(1); "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "investment corporation" — 130(3), 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "tax payable" — 248(2).

Interpretation Bulletins [s. 123.2]: IT-243R4: Dividend refund to private corporations.

Forms [s. 123.2]: T2 SCH 37: Calculation of unused Part I.3 tax credit and unused surtax credit; T2215: Corporate surtax — 1988 *et seq.*

Pre-RSC History [former s. 123.2]: S. 123.2 repealed by 1985, c. 45, s. 69, applicable to 1985 *et seq.* S. 123.2 formerly read:

> 123.2 (1) Corporation surtax — Subject to subsection (2), there shall be added to the tax otherwise payable under this Part for a taxation year by a corporation an amount equal to that proportion of 10% of the amount, if any, by which
>
> > (a) the tax otherwise payable under this Part by the corporation for that year (determined as if the expression "in a province other than the Northwest Territories or the Yukon Territory" in section 124 were read as "in all the provinces" and determined without reference to this section, section 126 or subsection 127(5))
>
> exceeds the aggregate of
>
> > (b) 30% of the corporation's Canadian manufacturing and processing profits for the year as determined for the purposes of section 125.1, and
> >
> > (c), (d) [Repealed]
> >
> > (e) where the corporation was a private corporation throughout the year, 38/25ths of the amount determined under paragraph 129(3)(a) in respect of the corporation for the year,
>
> that
>
> > (f) the number of days in that portion of the year that is after April 1974 and before May 1975,
>
> is of
>
> > (g) the number of days in that year.
>
> (2) Corporations to which surtax not to apply — Subsection (1) does not apply to a corporation
>
> > (a) that was an investment corporation, a mortgage investment corporation within the meaning assigned by subsection 130.1(6), a mutual fund corporation, a deposit insurance corporation within the meaning assigned by paragraph 137.1(5)(a) or a non-resident-owned investment corporation throughout the relevant taxation year; or
> >
> > (b) in respect of which any amount was deducted from its tax otherwise payable under this Part for the year by virtue of section 125.

Paras. 123.2(1)(a) substituted, (c), (d) and subsec. 123.2(3) repealed by 1974-75-76, c. 71, s. 4, applicable, as to para. 123.2(1)(a), to 1975 *et seq.* and, as to paras. 123.2(1)(c), (d) and subsec. 123.2(3), to 1977 *et seq.* In para. 123.2(1)(a) reference to subsec. 127(5) is added. Paras. 123.2(1)(c), (d) and subsec. 123.2(3) formerly read:

> > (c) for
> >
> > > (i) the 1974 taxation year, 30%,
> > >
> > > (ii) the 1975 taxation year, 28%, and
> > >
> > > (iii) the 1976 taxation year, 25%
> >
> > of the corporation's taxable production profits from oil or gas wells in Canada for the year,
> >
> > (d) 25% of the corporation's taxable production profits from mineral resources in Canada for the year, and
>
> . . . . .
>
> (3) Calculation of percentage for particular taxation year — For the purposes of paragraph (1)(c), where a corporation has a taxation year (in this subsection referred to as "the particular taxation year") part of which is before and part of which is after the commencement of the 1975 or 1976 calendar year (in this subsection referred to as "the particular calendar year"), the percentage referred to in that

paragraph for the particular taxation year shall be the percentage equal to the aggregate of

(a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year is of the number of days after May 6, 1974 in the particular taxation year, and

(b) that proportion of the percentage so referred to for the taxation year immediately preceding the particular taxation year that the number of days after May 6, 1974 in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year is of the number of days after May 6, 1974 in the particular taxation year.

S. 123.2 added by 1974-75-76, c. 26, subsec. 78(1), applicable to the 1974 and subsequent taxation years except that, where a corporation has a taxation year part of which is before May 7, 1974 and part of which is after May 6, 1974, subsection 123.2(1) shall be read as if there were included in the aggregate of the amounts determined under paragraphs (b) to (e) thereof 38% of 66⅔% of the amount by which

(a) the aggregate of the corporation's taxable production profits from oil or gas wells in Canada for the year, as determined pursuant to section 124.2 of the said Act (read without reference to subparagraph (1)(c)(iii) thereof and without regard to subsection 80(3) of this Act), and its taxable production profits from mineral resources in Canada for the year, as determined pursuant to section 124.1 of the said Act, (read without reference to subparagraph (1)(c)(iii) thereof and without regard to subsection 80(2) of this Act),

exceeds

(b) the aggregate of the amounts determined under subsections 80(2) and (3) of this Act, if they were read without reference to paragraphs 80(2)(i) and 80(3)(i), in respect of the corporation.

123.3 Refundable tax on CCPC's investment income — There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation that is throughout the year a Canadian-controlled private corporation an amount equal to 6⅔% of the lesser of

(a) the corporation's aggregate investment income for the year (within the meaning assigned by subsection 129(4)), and

(b) the amount, if any, by which its taxable income for the year exceeds the least of the amounts determined in respect of it for the year under paragraphs 125(1)(a) to (c).

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before adding this refundable tax; 125(1)(b)(i), 126(7)"tax for the year otherwise payable under this Part"(b), (c) — Refundable tax ignored for foreign tax credit purposes; 129(3)(a)(i)A — Refund of tax (plus 20 points of regular tax on the same income).

History: S. 123.3 added by 1996, c. 21, s. 25, applicable to taxation years that end after June 1995 except that, in its application to such taxation years that begin before July 1995, the reference in s. 123.3 to "6 ⅔%" shall be read as "that proportion of 6 ⅔% that the number of days in the year that are after June 1995 is of the number of days in the year".

Definitions [s. 123.3]: "Canadian-controlled private corporation" — 125(7), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Pre-RSC History [former s. 123.3]: Former s. 123.3 repealed by 1985, c. 45, s. 69, applicable to 1985 *et seq.* S. 123.3 formerly read:

123.3 Corporation surtax — There shall be added to the tax otherwise payable under this Part for a taxation year by a corporation (other than a corporation that was throughout the year an investment corporation or a non-resident-owned investment corporation) an amount equal to that proportion of 5% of the amount, if any, by which

(a) the tax otherwise payable under this Part by the corporation for the year determined without reference to this section, sections 123.4 and 126 (except for the purposes of section 125.1 and subsections 125(1) and (1.1)), subsections 127(3), (5) and (13) and as if subsection 124(1) were read without reference to the words "in a province" therein

exceeds

(b) in the case of a mutual fund corporation, the least of the amounts that would be determined under clauses 131(6)(d)(i)(A), (B) and (C) in respect of the corporation for the year if this Act were read without reference to this section and section 123.4, and

(c) in any other case, nil

that the number of days in that portion of the year that is after December 31, 1979 and before January 1, 1982 is of the number of days in the year.

Paras. 123.3(a) and (b) substituted by 1980-81-82-83, c. 140, subsec. 84(1) and (2), applicable after 1981, to substitute "section 123.4 and 126" for "section 126" in para. (a) and to substitute "this section and section 123.4" for "this section" in para. (b).

S. 123.3 added by 1980-81-82-83, c. 48, s. 68, applicable to 1980 *et seq.*

Former s. 123.3 repealed by 1974-75-76, c. 71, s. 5, applicable to 1976 *et seq.* S. 123.3 formerly read:

123.3 Rate of tax for corporation with taxable production profits — Notwithstanding section 123, the tax payable under this Part for a taxation year by a corporation that has taxable production profits from mineral resources in Canada for the year or taxable production profits from oil or gas wells in Canada for the year (in this section referred to as "taxable production profits") is,

(a) where the aggregate of its taxable production profits is not less than its taxable income or taxable income earned in Canada for the year, as the case may be, 50% of its taxable income or taxable income earned in Canada, as the case may be; and

(b) in any other case, the aggregate of

(i) 50% of the aggregate of its taxable production profits, and

(ii) the amount of the tax payable for the year that would be determined under section 123, except where otherwise provided, in respect of the corporation, if the "amount taxable" referred to therein was

(A) its taxable income, or

(B) its taxable income earned in Canada,

minus the aggregate of its taxable production profits.

Former s. 123.3 added by 1974-75-76, c. 26, subsec. 78(1), applicable to 1974 *et seq.*

Transitional rule for former s. 123.3: See note to s. 124.2.

123.4 [Repealed under former Act]

Pre-RSC History [former s. 123.4]: S. 123.4 repealed by 1985, c. 45, s. 69, applicable to 1985 *et seq.* S. 123.4 formerly read:

123.4 Corporation surtax — There shall be added to the tax otherwise payable under this Part for a taxation year by a corporation (other than a corporation that was throughout the year an investment corporation or a non-resident-owned investment corporation) an amount equal to that proportion of 5% of the amount, if any, by which

(a) the tax otherwise payable under this Part by the corporation for the year determined without reference to this section, sections 123.3, 123.5 and 126 (except for the purposes of section 125.1 and subsections 125(1) and (1.1)), subsections 127(3), (5), (13), 127.2(1) and 127.3(1) and as if subsection 124(1) were read without reference to the words "in a province" therein

exceeds

(b) in the case of a Canadian-controlled private corporation

(i) to which subsection 125(1) applies, the amount, if any, by which

(A) 15% of the least of the amounts, if any, determined for the corporation for the year under paragraphs 125(1)(a) to (d)

exceeds

(B) the amount, if any, determined for the corporation for the year under paragraph 125.1(1)(b), or

(ii) to which subsection 125(1.1) applies, the amount, if any, by which

(A) 23⅓% of the lesser of the amounts, if any, determined for the corporation for the year under paragraphs 125(1.1)(a) and (b)

exceeds

(B) the lesser of the amount, if any, determined for the corporation for the year under paragraph 125.1(1)(a) and 6% of the lesser of the amounts, if any, determined for the corporation for the year under paragraphs 125(1.1)(a) and (b),

(c) in the case of a mutual fund corporation, the least of the amounts that would be determined under clauses 131(6)(d)(i)(A) to (C) in respect of the corporation for the year if this Act were read without reference to this section and sections 123.3 and 123.5, and

(d) in any other case, nil

that the number of days in that portion of the year that is after 1981 and before 1983 is of the number of days in the year.

Para. 123.4(a) substituted by 1984, c. 1, subsec. 67(1), to add "127.2(1) and 127.3(1)", applicable to 1982 *et seq.*

S. 123.4 added by 1980-81-82-83, c. 140, s. 85.

123.5 [Repealed under former Act]

Pre-RSC History [s. 123.5]: S. 123.5 repealed by 1985, c. 45, s. 69, applicable to 1985 *et seq.* S. 123.5 formerly read:

123.5 Idem — There shall be added to the tax otherwise payable under this Part for a taxation year by a corporation (other than a corporation that was throughout the year an investment corporation or a non-resident-owned investment corporation) an amount equal to that proportion of 2½% of the amount, if any, by which

(a) the tax otherwise payable under this Part by the corporation for the year determined without reference to this section, sections 123.4 and 126 (except for the purposes of section 125.1 and subsections 125(1) and (1.1)), subsections 127(3), (5), (13), 127.2(1) and 127.3(1) and as if subsection 124(1) were read without reference to the words "in a province" therein

exceeds

(b) in the case of a Canadian-controlled private corporation

(i) to which subsection 125(1) applies, the amount, if any, by which

(A) 15% of the least of the amounts, if any, determined for the corporation for the year under paragraphs 125(1)(a) to (d)

exceeds

(B) the amount, if any, determined for the corporation for the year under paragraph 125.1(1)(b), or

(ii) to which subsection 125(1.1) applies, the amount, if any, by which

(A) 23⅓% of the lesser of the amounts, if any, determined for the corporation for the year under paragraphs 125(1.1)(a) and (b),

exceeds

(B) the lesser of the amount, if any, determined for the corporation for the year under paragraph 125.1 (1)(a) and 6% of the lesser of the amounts, if any, determined for the corporation for the year under paragraphs 125(1.1)(a) and (b),

(c) in the case of a mutual fund corporation, the least of the amounts that would be determined under clauses 131(6)(d)(i)(A) to (C) in respect of the corporation for the year if this Act were read without reference to this section and section 123.4, and

(d) in any other case, nil

that the number of days in that portion of the year that is after 1982 and before 1984 is of the number of days in the year.

Para. 123.5(a) substituted by 1984, c. 1, subsec. 68(1), to add "127.2(1) and 127.3(1)", applicable to 1983 *et seq.*

S. 123.5 added by 1980-81-82-83, c. 140, s. 85.

124. (1) Deduction from corporation tax — There may be deducted[33] from the tax otherwise payable by a corporation under this Part for a taxation year an amount equal to 10% of the corporation's taxable income earned in the year in a province.

Related Provisions: 117(1) — Tax payable under this Part; 123.2(a) — 10% reduction applies for corporate surtax even if income not earned in a province; 133(4) — No deduction for non-resident-owned investment corporation.

Pre-RSC History: Subsec. 124(1) amended to substitute "in a province" for "in a province other than the Yukon Territory", by 1980-81-82-83, c. 48, s. 69, applicable to 1980 *et seq.*

Subsec. 124(1) amended to substitute "other than the Yukon Territory" for "other than the Northwest Territories or the Yukon Territory", by 1977-78, c. 32, s. 31, applicable to 1978 *et seq.*

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province and of a foreign enterprise in Canada; IT-347R2: Crown corporations; IT-393R2: Election re tax on rents and timber royalties — non-residents.

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 124(2) repealed by 1974-75-76, c. 71, s. 6, applicable to 1976 *et seq.* Subsec. 124(2) formerly read:

(2) Idem — There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to 15% of the lesser of

(a) its taxable production profits from mineral resources in Canada for the year; and

(b) the amount, if any, by which its taxable income earned in the year exceeds the aggregate of

(i) 4 times the amount, if any, deductible under section 125 from the tax for the year otherwise payable by it under this Part, and

(ii) its Canadian investment income and its foreign investment income (within the meanings assigned by subsection 129(4)) for the year.

All that portion of subsec. 124(2) preceding subpara. (b)(i) substituted by 1974-75-76, c. 26, subsec. 79(1), applicable to taxation years ending after May 6, 1974. That portion formerly read:

(2) There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year ending after 1976, an amount equal to 15% of the lesser of

(a) its taxable production profits from mineral resources earned in the year in a province, and

(b) the amount, if any, by which its taxable income earned in the year in a province exceeds the aggregate of

(2.1), (2.2) [Repealed under former Act]

Pre-RSC History: Subsecs. 124(2.1), (2.2) repealed by 1974-75-76, c. 71, s. 6, applicable to 1976 *et seq.* Subsecs. 124(2.1), (2.2) formerly read:

(2.1) Idem — There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to

(a) for its 1974 taxation year, 10%,

(b) for its 1975 taxation year, 12%, and

(c) for its 1976 and subsequent taxation years, 15%

of the lesser of

(d) its taxable production profits from oil and gas wells in Canada for the year, and

(e) the amount, if any, by which the amount described in paragraph 124(2)(b) exceeds the amount described in paragraph 124(2)(a).

(2.2) Calculation of percentage for particular taxation year — For the purposes of subsection (2.1), where a corporation has a taxation year (in this subsection referred to as "the particular taxation year") part of which is before and part of which is after the commencement of the 1975 or 1976 calendar year (in this subsection

[33] Complementing the abatement allowed by subsec. 124(1) are the income taxes imposed, at various rates, by all the provinces. See introductory pages.

referred to as "the particular calendar year"), the percentage referred to in subsection (2.1) for the particular taxation year shall be the percentage equal to the aggregate of

(a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year is of the number of days after May 6, 1974 in the particular taxation year, and

(b) that proportion of the percentage so referred to for the taxation year immediately preceding the particular taxation year that the number of days after May 6, 1974 in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year is of the number of days after May 6, 1974 in the particular taxation year.

Subsecs. 124(2.1), (2.2) added by 1974-75-76, c. 26, subsec. 79(2), applicable to taxation years ending after May 6, 1974.

(3) Crown agents — Notwithstanding subsection (1), no deduction may be made under this section from the tax otherwise payable under this Part for a taxation year by a corporation in respect of any taxable income of the corporation for the year that is not, because of an Act of Parliament, subject to tax under this Part or by a prescribed federal Crown corporation that is an agent of Her Majesty.

Related Provisions: 27 — Prescribed federal Crown corporations are subject to Part I tax; 149(6) — Apportionment rule.

History: Subsec. 124(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 62, applicable to 1992 *et seq.* Subsec. (3) formerly read:

(3) No deduction may be made under this section from the tax otherwise payable under this Part for a taxation year by a prescribed federal Crown corporation that is an agent of Her Majesty.

Pre-RSC History: Subsec. 124(3) amended by 1984, c. 31, Schedule II, proclaimed in force September 1, 1984, to substitute "a prescribed federal Crown corporation" for "a corporation specified in Schedule D to the *Financial Administration Act*".

Regulations: 7100 (prescribed federal Crown corporation).

Interpretation Bulletins: IT-347R2: Crown corporations.

(4) Definitions — In this section,

"province" includes the Newfoundland offshore area and the Nova Scotia offshore area;

Pre-RSC History: *The definition "province" was para. 124(4)(b).*

Para. 124(4)(b) amended to add "and the Nova Scotia offshore area" by 1988, c. 28, s. 251, applicable to taxation years commencing after December 22, 1989.

Para. 124(4)(b) added by 1987, c. 3, s. 234, applicable (by 1991, c. 49, s. 237) to taxation years commencing after April 4, 1987.

Former para. 124(4)(b) repealed by 1974-75-76, c. 26, subsec. 79(3), applicable to taxation years ending after May 6, 1974. Para. 124(4)(b) formerly read:

(b) "taxable production profits from mineral resources earned in the year in a province" means the amount determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance.

Interpretation Act: R.S.C. 1985, c. I-21, subsec. 35(1):

"province" means a province of Canada, and includes the Yukon Territory and the Northwest Territories;

Regulations: 400–413 (taxable income earned in the year in a province).

"taxable income earned in the year in a province" means the amount determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance.

Pre-RSC History: *The definition "taxable income earned..." was para. 124(4)(a).*

Regulations: 400–413 (taxable income earned in the year in a province).

Definitions [s. 124]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "mineral resource", "Newfoundland offshore area", "Nova Scotia offshore area" — 248(1); "province" — 124(4), *Interpretation Act* 35(1); "taxable income" — 2(2), 248(1); "taxable income earned in the year in a province" — 124(4); "taxation year" — 249.

124.1 [Repealed under former Act]

Pre-RSC History: S. 124.1 repealed by 1974-75-76, c. 71, s. 7, applicable to 1976 *et seq.* (see also "transitional rule" under history to s. 124.2). S. 124.1 formerly read:

124.1 (1) "Taxable production profits from a mineral resource in Canada" defined — For the purposes of this Part, "taxable production profits from mineral resources in Canada" of a corporation for a taxation year means the amount, if any, by which the aggregate of

(a) where the corporation has production from a mineral resource in Canada operated by it, the amount, if any, included in computing its income for the year by virtue of subsection 59(2,1) and paragraphs 59(3.2)(b) and (c), less any deduction allowed in computing its income by virtue of subsection 64(1.1), and

(b) the amount, if any, of the aggregate of its incomes for the year from

(i) the production in Canada of

(A) petroleum, natural gas or related hydrocarbons, or

(B) metals or minerals to any stage that is not beyond the prime metal stage or its equivalent,

from mineral resources in Canada operated by it,

(ii) the processing in Canada of ores from mineral resources in Canada not operated by it to any stage that is not beyond the prime metal stage or its equivalent, and

(iii) a rental or royalty, the amount of which is computed by reference to the amount or value of production from a mineral resource in Canada,

exceeds

(c) the aggregate of its losses for the year from those sources, computed in accordance with this Act, on the assumption that it had during the taxation year no incomes or losses except from those sources and was allowed no deductions in computing its income for the taxation year other than

(i) amounts deductible under any of section 66 (other than amounts in respect of foreign exploration and development expenses as defined therein) and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules, 1971* where the corporation has no taxable production profits from oil or gas wells in Canada and, in any other case, such proportion of those amounts as may reasonably be regarded as wholly applicable to mineral resources in Canada,

(ii) the amount, if any, by which the aggregate of the losses referred to in paragraph 124.2(1)(c) exceeds the aggregate of the incomes referred to in paragraphs 124.2(1)(a) and (b),

(iii) such part of the aggregate of amounts deducted under section 65 for the year as is in respect of sources of income described in any of subparagraphs (b)(i), (ii) and (iii),

(iv) where no amount is deducted pursuant to subparagraph 124.2(1)(c)(iv) in computing its taxable production profits from oil or gas wells in Canada for the year, the amounts deductible or deducted, as the case may be, under subsection 66.1(2) or (3) and subsection 66.2(2) for the year, and

(v) such other deductions as may reasonably be regarded as applicable to the sources of income described in any of subparagraphs (b)(i), (ii) and (iii).

(2) Person having interest deemed to be an operator — For the purposes of this section, a person who has an interest in the proceeds of production from a mineral resource in Canada under an agreement providing that he is to share in the profits remaining after deducting the operating costs of the mineral resource shall be deemed to be a person who operates the mineral resource.

(3) Income or loss — Income or loss from a source described in paragraph (1)(b) does not include income or loss derived from transporting or processing petroleum, natural gas or related hydrocarbons.

S. 124.1 added by 1974-75-76, c. 26, subsec. 80(1), applicable to taxation years ending after May 6, 1974 and, where a corporation has a taxation year part of which is before May 7, 1974 and part of which is after May 6,

1974, in computing its taxable production profits from mineral resources in Canada for the year, the following rules apply:

(a) determine the portion of the amount that would be computed under subsection 124.1(1) if no amounts were deducted in computing that amount under paragraph 20(1)(a) or section 65 or 66 (other than amounts in respect of foreign exploration and development expenses as defined therein) or section 66.1 or 66.2 or under subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules, 1971*, that may reasonably be regarded as having been earned before May 7, 1974,

(b) determine the proportion of that part of the amount deductible under paragraph 20(1)(a) for the taxation year that may reasonably be regarded as having been deducted in respect of property acquired for the purpose of earning income from the sources referred to in paragraphs 124.1(1)(a) and (b) that the number of days in that portion of the taxation year that is before May 7, 1974 is of the number of days in the taxation year,

(c) determine the amount deductible under section 66 or under subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules, 1971* for the taxation year in respect of Canadian exploration and development expenses that may reasonably be regarded as wholly applicable to income from sources referred to in paragraph 124.1(1)(b),

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the amount by which the amount determined under paragraph (a) exceeds the amount determined under paragraph (b),

(e) determine the portion of the amount that would be computed under subsection 124.1(1) for the taxation year if no amounts were deducted in computing that amount under paragraph 20(1)(a) or section 65, 66 (other than amounts in respect of foreign exploration and development expenses as defined therein), 66.1 or 66.2 or under subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules, 1971* and that may reasonably be regarded as having been earned after May 6, 1974,

(f) determine the proportion of the part described in paragraph (b) that the number of days in that portion of the taxation year that is after May 6, 1974 is of the number of days in the taxation year,

(g) determine the amount deductible under subparagraph 124.1(1)(c)(iv) for the taxation year,

(h) determine the amount by which the amount described in paragraph (e) exceeds the aggregate of the amounts described in paragraphs (d), (f) and (g), and

(i) determine the amount deductible under section 65 of the said Act with respect to the amount determined in paragraph (h),

and the corporation's taxable production profits from mineral resources in Canada for that corporation's taxation year part of which is before May 7, 1974 and part of which is after May 6, 1974 is the amount by which the amount determined under paragraph (h) exceeds the amount determined under paragraph (i).

Selected Cases [s. 124.1]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits").

124.2 [Repealed under former Act]

Pre-RSC History: S. 124.2 repealed by 1974-75-76, c. 71, s. 7, applicable to 1976 *et seq.* S. 124.2 formerly read:

124.2 (1) **"Taxable production profits from oil or gas wells in Canada" defined** — For the purposes of this Part, "taxable production profits from oil or gas wells in Canada" of a corporation for a taxation year means the amount, if any, by which the aggregate of

(a) where no amount is included in computing the taxable production profits from mineral resources in Canada of the corporation by virtue of paragraph 124.1(1)(a) and the corporation has production from an oil or gas well in Canada operated by it, the amount, if any, included in computing its income for the year by virtue of subsection 59(2.1) and paragraphs 59(3.2)(b) and (c), less any deduction allowed in computing its income by virtue of subsection 64(1.1), and

(b) the amount if any, of the aggregate of its incomes for the year from

(i) the production of petroleum, natural gas or related hydrocarbons from oil or gas wells in Canada operated by it, and

(ii) rentals or royalties, the amounts of which are computed by reference to the amount or value of production from oil or gas wells in Canada,

exceeds

(c) the aggregate of its losses for the year from those sources, computed in accordance with this Act, on the assumption that it had during the taxation year no incomes or losses except from those sources, and was allowed no deductions in computing its income for the taxation year other than

(i) amounts deductible under any of section 66 (other than amounts in respect of foreign exploration and development expenses as defined therein) and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules, 1971* to the extent that those amounts are not deductible pursuant to subparagraph 124.1(1)(c)(i),

(ii) the amount, if any, by which the aggregate of the losses referred to in paragraph 124.1(1)(c) exceeds the aggregate of the incomes referred to in paragraphs 124.1(1)(a) and (b),

(iii) such part of the aggregate of amounts deducted under section 65 for the year as is in respect of sources of income described in subparagraphs (b)(i) and (ii),

(iv) where the corporation has production from oil or gas wells in Canada operated by it, the amounts deductible or deducted, as the case may be, under subsection 66.1(2) or (3) and 66.2(2) for the year, and

(v) such other deductions as may reasonably be regarded as applicable to the sources of income described in subparagraphs (b)(i) and (ii).

(2) **Person having an interest deemed to be an operator** — For the purposes of this section, a person who has an interest in the proceeds of production from an oil or gas well in Canada under an agreement providing that he is to share in the profits remaining after deducting the operating costs of the oil or gas well shall be deemed to be a person who operates the oil or gas well.

(3) **Income or loss** — Income or loss from the production in Canada of petroleum, natural gas or related hydrocarbons from an oil or gas well does not include income or loss derived from transporting or processing petroleum, natural gas or related hydrocarbons.

Transitional rule: 1974-75-76, c. 71, s. 8, as amended by 1980-81-82-83, c. 47, s. 42 (deemed in force December 2, 1975), provides as follows:

8. Where a corporation that would have taxable production profits from oil or gas wells in Canada within the meaning of section 124.2 of the said Act or taxable production profits from a mineral resource in Canada within the meaning of section 124.1 of the said Act for the year if the Act read as it read in its application to the 1975 taxation year has a taxation year part of which is before 1976 and part of which is after 1975, the following rules apply:

(a) determine

(i) the taxable income of the corporation for the year, and

(ii) the tax that would otherwise be payable under Part I of the said Act by the corporation for the year

as if the said Act read as it read in its application to the 1975 taxation year, without reference to section 126 or subsection 127(5) thereof and without reference to this section,

(b) determine the proportion of the amount determined under subparagraph (a)(ii) that the number of days in the taxation year before 1976 is of the number of days in the taxation year,

(c) determine

(i) the taxable income of the corporation for the year, and

(ii) the tax would otherwise be payable under Part I of the said Act by the corporation for the year

as if the said Act read as it read in its application to the 1976 and subsequent taxation years, without reference to section 126 or subsection 127(5) thereof and without reference to this section,

(d) determine the proportion of the amount determined under subparagraph (c)(ii) that the number of days in the taxation year after 1975 is of the number of days in the taxation year,

(e) determine the aggregate of the amounts that would be deductible from the tax for the year otherwise payable under Part I of the said Act by the corporation, under section 126 of the said

Act read without reference to paragraph (7)(d) thereof, as if the said tax otherwise payable by it were equal to the aggregate of the amounts determined under paragraphs (b) and (d) and any amount so determined under subsection 126(2) of the said Act shall be deemed, for the purposes of paragraph 126(7)(b) of the said Act, to be the amount deducted under subsection 126(2) for the year,

(f) determine the amount that would be deductible by the corporation for the year under subsection 127(5) of the said Act from the tax for the year otherwise payable under Part I of the said Act by it as if the said tax payable were the amount by which

(i) the aggregate of all amounts determined under paragraphs (b) and (d)

exceeds

(ii) the aggregate determined under paragraph (e)

and the amount so determined is the amount deducted under subsection 127(5) of the said Act for the year,

(g) the tax payable for the year under Part I of the said Act by the corporation is the amount by which

(i) the aggregate of all amounts determined under paragraphs (b) and (d)

exceeds

(ii) the aggregate of the amounts determined under paragraphs (e) and (f),

(h) the taxable income or taxable income earned in Canada, as the case may be, of the corporation for the year is the aggregate of

(i) the proportion of the amount determined under subparagraph (a)(i) that the number of days in the taxation year before 1976 is of the number of days in the taxation year, and

(ii) the proportion of the amount determined under subparagraph (c)(i) that the number of days in the taxation year after 1975 is of the number of days in the taxation year, and

(i) the amount deducted or deductible, as the case may be, for the taxation year under paragraph 20(1)(a) or (b), section 65 or 66 or subsection 66.1(2) or (3) or 66.2(2) of the said Act is the aggregate of

(i) the proportion of the amounts deducted or deductible by virtue of those provisions in the determination of taxable income under paragraph (a) that the number of days in the taxation year before 1976 is of the number of days in the taxation year, and

(ii) the proportion of the amounts deducted or deductible by virtue of those provisions in the determination of taxable income under paragraph (c) that the number of days in the taxation year after 1975 is of the number of days in the taxation year.

S. 124.2 added by 1974-75-76, c. 26, subsec. 80(1), applicable to taxation years ending after May 6, 1974, and where a corporation has a taxation year part of which is before May 7, 1974 and part of which is after May 6, 1974, in computing its taxable production profits from oil or gas wells in Canada for the year, the following rules apply:

(a) determine the portion of the amount that would be computed under subsection 124.2(1) if no amounts were deducted in computing that amount under paragraph 20(1)(a) or section 65 or 66 (other than amounts in respect of foreign exploration and development expenses as defined therein) or section 66.1 or 66.2 or under subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules, 1971*, and that may reasonably be regarded as having been earned before May 7, 1974,

(b) determine the proportion of that part of the amount deductible under paragraph 20(1)(a) for the taxation year that may reasonably be regarded as having been deducted in respect of property acquired for the purpose of earning income from sources referred to in paragraph 124.2(1)(b) from the production in Canada of petroleum, natural gas or related hydrocarbons that the number of days in that portion of the taxation year that is before May 7, 1974 is of the number of days in the taxation year,

(c) determine the amount deductible under section 66 or under subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules, 1971* in respect of Canadian exploration and development expenses that may not reasonably be regarded as being wholly applicable to sources referred to in paragraph 124.1(1)(b) to the extent that they are not allowed as a deduction under subparagraph 124.1(1)(c)(i),

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the amount by which the amount determined under paragraph (a) exceeds the amount determined under paragraph (b),

(e) determine the portion of the amount that would be computed under subsection 124.2(1) if no amounts were deducted in computing the amount under paragraph 20(1)(a) or section 65, 66, 66.1 or 66.2 or under subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules, 1971* and that may reasonably be regarded as having been earned after May 6, 1974,

(f) determine the proportion of the part described in paragraph (b) that the number of days in that portion of the taxation year that is after May 6, 1974 is of the number of days in the taxation year,

(g) determine the amount deductible under subparagraph 124.2(1)(c)(iv),

(h) determine the amount by which the amount described in paragraph (e) exceeds the aggregate of the amounts described in paragraphs (d), (f) and (g), and

(i) determine the amount deductible under section 65 of the said Act with respect to the amount determined in paragraph (h),

and the corporation's taxable production profits from oil or gas wells in Canada for that corporation's taxation year part of which is before May 7, 1974 and part of which is after May 6, 1974 is the amount by which the amount determined under paragraph (h) exceeds the amount determined under paragraph (i).

Selected Cases [s. 124.2]: *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits").

125. (1) Small business deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 16% of the least of

(a) the amount, if any, by which the total of

(i) the total of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada (other than the income of the corporation for the year from a business carried on by it as a member of a partnership), and

(ii) the specified partnership income of the corporation for the year

exceeds the total of

(iii) the total of all amounts each of which is a loss of the corporation for the year from an active business carried on in Canada (other than a loss of the corporation for the year from a business carried on by it as a member of a partnership), and

(iv) the specified partnership loss of the corporation for the year,

(b) the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(i) 10/3 of the total of the amounts that would be deductible under subsection 126(1) from the tax for the year otherwise payable under this Part by it if those amounts were determined without reference to section 123.3,

(ii) 10/4 of the total of amounts deducted under subsection 126(2) from the tax for the year otherwise payable by it under this Part, and

(iii) the amount, if any, of the corporation's taxable income for the year that is not, because of an Act of Parliament, subject to tax under this Part, and

(c) the corporation's business limit for the year.

Proposed Amendment — Accelerated tax reduction for CCPCs

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Accelerated Tax Reduction for Small Business Corporations*

(8) That, for taxation years that end after December 31, 2000 (pro-rated for years that straddle that date), a deduction be provided from the tax otherwise payable under Part I of the Act for the year by a corporation that is throughout the year a Canadian-controlled private corporation, equal to 7 per cent of the amount by which

(a) the least of

(i) 150 per cent of the corporation's business limit for the year under paragraph 125(1)(c) of the Act,

(ii) the amount that would be the corporation's net active business income under paragraph 125(1)(a) of the Act for the year if the references in the definition "specified partnership income" in subsection 125(7) of the Act to $200,000 and $548 were read as references to $300,000 and $822, respectively, and

(iii) the taxable income amount determined under paragraph 125(1)(b) of the Act in respect of the corporation for the year, less the corporation's aggregate investment income determined under subsection 129(4) of the Act for the year,

exceeds

(b) the total of

(i) the least of the amounts determined under paragraphs 125(1)(a) to (c) of the Act in respect of the corporation's small business deduction for the year,

(ii) the total of the amounts in respect of which the corporation applied the deductions from tax provided by subsection 125.1(1) or (2) of the Act,

(iii) 3 times the resource allowance deducted under paragraph 20(1)(v.1) of the Act in computing the corporation's income for the year, and

(iv) if the corporation is a credit union, the amount in respect of which the corporation applied the deduction from tax provided by subsection 137(3) of the Act.

Federal budget, supplementary information, February 28, 2000: *Faster Corporate Tax Rate Reduction for Small Business*

[See under 123(1) for the general rate reduction from 28% to 21% — ed.]

Canada provides very favourable tax treatment for small business; this has a direct impact on their cost of doing business. For example, the lower tax rate on the first $200,000 of active business income alone provides the small business sector with more than $2.5 billion of tax assistance annually, allowing the retention of earnings for expansion. However, income earned by small businesses in excess of the $200,000 threshold is currently subject to the general corporate tax rate of 28 per cent or, for M&P income, to the 21-per-cent M&P rate.

Small businesses that are currently taxed at the 28-per-cent tax rate on their active business income in excess of the $200,000 small business limit will benefit from the proposed 1 percentage point reduction in the general tax rate next year and from the further reductions planned for the future. However, in order to provide additional and more immediate support for this sector, the budget proposes to advance the planned 7-percentage-point rate reduction for small business.

Specifically, the corporate tax rate on income between $200,000 and $300,000 earned by a Canadian-controlled private corporation (CCPC) from an active business carried on in Canada will be reduced to 21 per cent from 28 per cent, effective January 1, 2001 (prorated for taxation years that include that date).

Associated corporations will share the additional $100,000 of income eligible for the faster rate reduction in proportion to their share of the $200,000 small business limit. Income eligible for this lower rate will be reduced to the extent that a corporation has M&P income subject to the reduced M&P tax rate or income from resource activities.

Table A7.20 illustrates the impact of this faster access to the reduced 21-per-cent rate for a small business.

Table A7.20

	Part 1 tax based on	
	Existing rates	Proposed rates
Business income	$ 375,000	$ 375,000
Income eligible for:		
Existing small business rate	$ 200,000	$ 200,000
Faster access to reduced rate{1}	n/a	$ 100,000
General corporate rate	$ 175,000	$ 75,000
Applicable federal tax rates on:{2}		
Small business income	12%	12%
Income eligible for faster access to the reduced rate	n/a	21%
Remaining income{3}	28%	27%
Applicable surtax on all income{4}	1.12%	1.12%
Part 1 tax on:	$ 24,000	$ 24,000
Small busines income		
Income eligible for faster access to the reduced rate	n/a	$ 21,000
Remaining income	$ 49,000	$ 20,250
Surtax $4,200	$ 4,200	
Total Part 1 tax	$ 77,200	$ 69,450

Notes:

1 Reduced to the extent that the firm has M&P income subject to the reduced M& tax rate or income from resource activities.

2 Taking into account the 10-per-cent provincial tax abatement.

3 Excluding resource income (such income will continue to be taxed at 28 per cent) and investment income.

4 The surtax remains at 4 per cent of the 28-per-cent corporate tax rate.

Federal Corporate Tax Rates

Table A7.21 presents the federal corporate tax rates on various types of income, before and after the proposed rate reduction.

Table A7.21

	Current rates	Proposed rates January 1, 2001	Target rates
	(per cent, after provincial		
On first $200,000 of CCPC's active business income{1}	12	12	12
On CCPC's active business income between $200,000 and $300,000{2}	28	21	21
On M & P income	21	21	21
On resource income{3}	21	21	21
On other income	28	27	21

Notes:

1 The $200,000 limit is reduced where taxable capital exceeds $10 million. Investment income earned by a CCPC will continue to be taxed at 28 per cent, plus the 62 1/4 3 per cent refundable tax on investment income tax. A portion of these taxes is refundable on the payment of dividends in order to provide integration of corporate and personal tax systems.

2 Reduced to the extent of M&P income subject to a rate reduction or income from resource activities.

3 After taking into account the 25-per-cent resource allowance deduction.

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before claiming small business deduction; 125(2)–(5) — Restriction of deduction to $200,000 of active business income; 125(5.1) — Elimination of

small business deduction for large corporations; 137(3), (4) — Credit unions — small business deduction.

History: The opening words of subsec. 125(1) amended by 1998, c. 19, subsec. 145(1), applicable to taxation years that end after June 1988, except that there shall be added to the amount otherwise determined under subsec. 125(1), as amended, in respect of a corporation's taxation year that began before July 1988 and ended after June 1988, that proportion of 5% of the least of the amounts determined under paras. 125(1)(a) to (c) in respect of the corporation for the year that the number of days in the year that are before July 1988 is of the number of days in the year. The opening words formerly read:

> 125 (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout a taxation year, a Canadian-controlled private corporation, an amount equal to 16% of the least of

1998, c. 19, subsec. 304(1), repealed subsecs. 102(1) and (5) of 1988, c. 55 (which amended that portion of subsec. 125(1) preceding para. (a)), deemed to have come into force on September 13, 1988. (The repeal of those subsecs. is strictly consequential on the amendment to 125(1) in subsec. 145(1) of the said c. 19 (see above).)

Subpara. 125(1)(b)(i) amended by 1996, c. 21, subsec. 26(1), applicable to taxation years that end after June 1995. Subpara. (i) formerly read:

> (i) 10/3 of the total of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part,

Subpara. 125(1)(b)(iii) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 63(1), applicable to 1992 *et seq.*

Pre-RSC History: That portion of subsec. 125(1) preceding para. (a) amended by 1988, c. 55, subsec. 102(1), to substitute "throughout a taxation year" for "throughout the year" and "16%" for "21%" applicable to taxation years ending after June 1988, except that there shall be added to the amount otherwise determined under subsec. 125(1), in respect of a taxation year of a corporation commencing before July 1988 and ending after June 1988, that proportion of 5% of the least of the amounts determined under paras. 125(1)(a) to (c) in respect of the corporation for the year that the number of days in the year that are before July 1988 is of the number of days in the year.

Subpara. 125(1)(b)(i) substituted and subpara. 125(1)(b)(ii) amended to substitute "10/4 of the aggregate" for "2 times the aggregate", by 1988, c. 55, subsec. 102(2), applicable to taxation years ending after June 1987, except that in its application to taxation years ending after June 1987 and commencing before July 1988, subparas. 125(1)(b)(i) and (ii) shall be read as follows:

> (i) 10/4 of the aggregate of amounts that would be deductible under subsection 126(1) from the tax for the year otherwise payable by it under this Part if the amount determined under subparagraph 126(7)(d)(i) were determined without reference to subparagraph 123(1)(a)(iv), and
>
> (ii) 2 times the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable by it under this Part, and

Subpara. 125(1)(b)(i) formerly read:

> (i) 10/4 of the aggregate of amounts that would be deductible under subsection 126(1) from the tax for the year otherwise payable by it under this Part if the amount determined under subparagraph 126(7)(d)(i) were determined without reference to paragraph 123(1)(c), and

Subpara. 125(1)(b)(i) substituted by 1986, c. 55, subsec. 45(2), applicable to taxation years ending after June 1987. Subpara. 125(1)(b)(i) formerly read:

> (i) 10/4 of the aggregate of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part, and

Subsec. 125(1) substituted by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(1) formerly read:

> (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation (other than a corporation that carried on a non-qualifying business in Canada in the year) that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 21% of the least of
>
> (a) the amount, if any, by which the aggregate of
>
> (i) the aggregate of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada other than the income of the corporation from a business carried on by it as a member of a partnership,
>
> (ii) the aggregate of all amounts each of which is an amount in respect of a partnership of which the corporation was a member (other than a partnership to which it was joined in the year) equal to the lesser of
>
> (A) for each fiscal period of the partnership coinciding with or ending in the year, the corporation's income from an active business carried on in Canada by it as a member of the partnership, and
>
> (B) the specified limit of the corporation for the year in respect of the partnership, and
>
> (iii) the aggregate of all amounts each of which is an amount in respect of a group of connected partnerships to which the corporation was joined in the year equal to the lesser of
>
> (A) the amount, if any, by which
>
> (I) the aggregate of all amounts each of which is an amount in respect of a partnership in the group for a fiscal period of the partnership coinciding with or ending in the year, equal to the corporation's income from an active business carried on in Canada by it as a member of the partnership
>
> exceeds
>
> (II) the aggregate of all amounts each of which is an amount in respect of a partnership in the group for a fiscal period of the partnership coinciding with or ending in the year, equal to the corporation's loss from an active business carried on in Canada by it as a member of the partnership, and
>
> (B) the specified limit of the corporation for the year in respect of the group of connected partnerships
>
> exceeds the aggregate of
>
> (iv) the aggregate of all amounts each of which is a loss of the corporation for the year from an active business carried on in Canada (other than a loss from a business carried on by it as a member of a partnership to which it was joined in the year), and
>
> (v) the aggregate of all amounts each of which is an amount in respect of a group of connected partnerships to which the corporation was joined in the year equal to the amount, if any, by which the amount determined in respect of the corporation for the year under subclause (iii)(A)(II) exceeds the amount determined in respect of the corporation for the year under subclause (iii)(A)(I);
>
> (b) the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of
>
> (i) 10/4 of the aggregate of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part, and
>
> (ii) 2 times the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable by it under this Part,
>
> (c) the corporation's business limit for the year, and
>
> (d) the amount, if any, by which the corporation's total business limit for the year exceeds its cumulative deduction account at the end of the immediately preceding taxation year.

Para. 125(1)(a) substituted by 1980-81-82-83, c. 48, subsec. 70(1), applicable with respect to fiscal periods of partnerships commencing after December 11, 1979. Para. 125(1)(a) formerly read:

> (a) the amount, if any, by which
>
> (i) the aggregate of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada,
>
> exceeds
>
> (ii) the aggregate of all amounts each of which is a loss of the corporation for the year from an active business carried on in Canada,

That portion of subsec. 125(1) preceding para. (a) substituted, and that portion of subsec. 125(1) following para. (d) repealed by 1979, c. 5, subsecs. 38(1), (2), applicable, as to the substituted portion, to taxation years commencing after 1979 in respect of corporations in existence on October

23, 1979 and to taxation years commencing after October 23, 1979 in any other case. The portion preceding para. (a) formerly read:

> 125. (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 25% of the least of

The portion following para. (d) formerly read:

> except that in applying this section for a taxation year after the 1972 taxation year, the reference in this subsection to "25%" shall be read as a reference to "24%" for the 1973 taxation year, "23%" for the 1974 taxation year, "22%" for the 1975 taxation year, and "21%" for the 1976 and subsequent taxation years

Selected Cases [subsec. 125(1)]: *Protos Shipping Ltd. v. Canada*, [1989] 1 C.T.C. 1 (FCTD) (Capital dividend account calculable for years before taxpayer becomes Canadian-controlled private corporation); *Freeway Properties Inc. v. The Queen*, [1985] 1 C.T.C. 222 (FCTD) (Profit from land trading active business income); *Morbane Developments Ltd. v. MNR*, [1983] C.T.C. 338 (FCA) (Compensation for expropriation active business income, not Canadian investment income); *The Queen v. B & J Music Ltd.*, [1983] C.T.C. 50 (FCA); leave to appeal to SCC refused (1983), 50 N.R. 159 (note) (Capital dividend account calculable for years before taxpayer becomes Canadian-controlled private corporation); *The Queen v. Cadboro Bay Holdings Ltd.*, [1977] C.T.C. 186 (FCTD) (Rental income from shopping centre active business income); *ESG Holdings Ltd. v. The Queen*, [1976] C.T.C. 295 (FCA) (Income from business carried on by independent agent for taxpayer active business income); *The Queen v. Rockmore Investments Ltd.*, [1976] C.T.C. 291 (FCA) (Whether business active is question of fact).

Interpretation Bulletins: IT-362R: Patronage dividends; IT-458R2: Canadian-controlled private corporation. See also list at end of s. 125.

Information Circulars: 88-2, para. 11: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 16 (Parthenon Investments case).

Forms: T2 SCH 7: Calculation of aggregate investment income and active business income; T2 SCH 341: Nova Scotia corporate tax reduction for new small businesses; T2S(7)(A): Income from corporate partnerships; T549: New Brunswick small business corporate tax reduction; T700: Saskatchewan corporate tax reduction for new small businesses; T708: Prince Edward Island small business deduction; T745 — Newfoundland corporate tax reduction for new small businesses; T1001: Northwest Territories small business deduction.

(1.1) [Repealed under former Act]

Pre-RSC History: Subsec. 125(1.1) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. (1.1) formerly read:

> (1.1) Idem — There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation and that carried on a non-qualifying business in Canada in the year, an amount equal to 12⅔% of the lesser of
>
> (a) the amount, if any, by which the aggregate of
>
> (i) the aggregate of all amounts each of which is the income of the corporation for the year from a business carried on in Canada that is an active business or a non-qualifying business other than the income of the corporation from a business carried on by it as a member of a partnership,
>
> (ii) the aggregate of all amounts each of which is an amount in respect of a partnership of which the corporation was a member (other than a partnership to which it was joined in the year) equal to the lesser of
>
> (A) for each fiscal period of the partnership coinciding with or ending in the year, the corporation's income from an active business or a non-qualifying business carried on in Canada by it as a member of the partnership, and
>
> (B) the specified limit of the corporation for the year in respect of the partnership, and
>
> (iii) the aggregate of all amounts each of which is an amount in respect of a group of connected partnerships to which the corporation was joined in the year equal to the lesser of
>
> (A) the amount, if any, by which
>
> (I) the aggregate of all amounts each of which is an amount in respect of a partnership in the group for a fiscal period of the partnership coinciding with or ending in the year, equal to the corporation's income from a business that is an active business or a non-qualifying business carried on in Canada by it as a member of the partnership
>
> exceeds
>
> (II) the aggregate of all amounts each of which is an amount in respect of a partnership in the group for a fiscal period of the partnership coinciding with or ending in the year, equal to the corporation's loss from a business that is an active business or a non-qualifying business carried on in Canada by it as a member of the partnership, and
>
> (B) the specified limit of the corporation for the year in respect of the group of connected partnerships
>
> exceeds the aggregate of
>
> (iv) the aggregate of all amounts each of which is a loss of the corporation for the year from a business that is an active business or a non-qualifying business carried on in Canada (other than a loss from a business carried on by it as a member of a partnership to which it was joined in the year), and
>
> (v) the aggregate of all amounts each of which is an amount in respect of a group of connected partnerships to which the corporation was joined in the year equal to the amount, if any, by which the amount determined in respect of the corporation for the year under subclause (iii)(A)(II) exceeds the amount determined in respect of the corporation for the year under subclause (iii)(A)(I); and
>
> (b) the least of the amounts that would be determined under paragraphs (1)(b), (c) and (d) in respect of the corporation for the year if subsection (1) applied to the corporation in respect of the year.

Para. 125(1.1)(a) substituted by 1980-81-82-83, c. 48, subsec. 70(2), applicable with respect to fiscal periods of partnerships commencing after December 11, 1979. Para. 125(1.1)(a) formerly read:

> (a) the amount, if any, by which
>
> (i) the aggregate of all amounts each of which is the income of the corporation for the year from a business carried on in Canada that is an active business or a non-qualifying business,
>
> exceeds
>
> (ii) the aggregate of all amounts each of which is a loss of the corporation for the year from a business carried on in Canada that is an active business or a non-qualifying business; and

Subsec. 125(1.1) added by 1979, c. 5, subsec. 38(3), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979, and to taxation years commencing after October 23, 1979 in any other case.

Selected Cases [subsec. 125(1.1)]: *Hawboldt Hydraulics (Canada) Inc. Estate (Trustee of) v. Canada*, [1992] 2 C.T.C. 363 (FCTD) (Particular equipment used by taxpayer primarily in manufacturing or processing of goods for sale or lease); *Qit-Fer et Titane Inc. v. Canada*, [1996] 2 C.T.C. 30 (FCA) (Manufacturing and processing deduction not allowed in respect of mining activities; gerund and infinitive forms of verbs have same meaning); *Rolls Royce (Canada) Ltd. v. Canada*, [1991] 2 C.T.C. 252 (FCTD); aff'd [1993] 1 C.T.C. 272, 93 D.T.C. 5031 (FCA) (Overhauling of aircraft engines not manufacturing or processing); *International Mercantile Factors Ltd. v. Canada*, [1990] 2 C.T.C. 137 (FCTD); aff'd (Dec. 15, 1992), File A-520/522/524/525-90 (FCA) [unreported] (Taxpayer not Canadian-controlled private corporation where nominees of two public companies holding 50% of shares have majority on board).

(2) Interpretation of "business limit" — For the purposes of this section, a corporation's "business limit" for a taxation year is $200,000 unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its business limit for the year is nil.

Related Provisions: 125(3)–(5) — Business limit to be shared among associated corporations; 125(5.1) — Elimination of small business deduction for large corporations; 248(1)"business limit" — Definition applies to entire Act.

Pre-RSC History: Subsec. 125(2) substituted by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(2) formerly read:

(2) For the purposes of this section,

(a) a corporation's "business limit" for a taxation year is $200,000, and

(b) its "total business limit" for a taxation year is $1,000,000,

unless the corporation is a member of an associated group in the year, in which case, except as otherwise provided in this section, its business limit for the year is nil and its total business limit for the year is nil.

Subsec. 125(2) substituted by 1984, c. 1, subsec. 69(1), applicable to 1983 *et seq.* Subsec. 125(2) formerly read:

(2) Amount of business limit and total business limit — For the purposes of this section,

(a) a corporation's "business limit" for a taxation year is $200,000, and

(b) its "total business limit" for a taxation year is $1,000,000,

unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its business limit for the year is nil and its total business limit for the year is nil.

Paras. 125(2)(a) and (b) substituted by 1980-81-82-83, c. 140, subsec. 86(1), to substitute the business limit of "$200,000" for "$150,000" and to substitute the total business limit of "$1,000,000" for "$750,000," applicable to the 1982 and subsequent taxation years.

Paras. 125(2)(a), (b) substituted by 1976-77, c. 4, subsec. 49(1), applicable to 1976 *et seq.* Paras. 125(2)(a), (b) formerly read:

(a) a corporation's "business limit" for a taxation year is $100,000, and

(b) its "total business limit" for a taxation year is $500,000,

Paras. 125(2)(a), (b) substituted by 1974-75-76, c. 26, subsec. 81(1), applicable to 1974 *et seq.* Paras. 125(2)(a), (b) formerly read:

(a) a corporation's "business limit" for a taxation year is $50,000, and

(b) its "total business limit" for a taxation year is $400,000,

Interpretation Bulletins: See list at end of s. 125.

Information Circulars: 88-2, para. 18: General anti-avoidance rule — section 245 of the *Income Tax Act*.

(3) Associated corporations — Notwithstanding subsection (2), if all of the Canadian-controlled private corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of the amounts so allocated, as the case may be, is $200,000, the business limit for the year of each of the corporations is the amount so allocated to it.

Related Provisions: 125(4) — Failure to file agreement; 125(5) — Special rules for business limit; 256(1) — Associated corporations.

Pre-RSC History: Subsec. 125(3) substituted by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(3) formerly read:

(3) Member of an associated group — Notwithstanding subsection (2), if

(a) all of the members of an associated group in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section,

(i) they allocate an amount to one or more of the members for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $200,000, and

(ii) they allocate an amount to one or more of the members for the taxation year and the aggregate of the amounts so allocated, as the case may be, is $1,000,000, and

(b) the amount allocated under subparagraph (a)(ii) to each member for the taxation year is not less than that member's cumulative deduction account at the end of the immediately preceding taxation year,

the business limit for the year of each member to whom amounts have been allocated under subparagraphs (a)(i) and (ii) is the amount so allocated to the member under subparagraph (a)(i) and the total business limit for the year of each member to whom amounts have been so allocated is the amount so allocated to the member under subparagraph (a)(ii).

Subsec. 125(3) substituted by 1984, c. 1, subsec. 69(1), applicable to 1983 *et seq.* Subsec. 125(3) formerly read:

(3) Associated corporations — Notwithstanding subsection (2), if

(a) all of the Canadian-controlled private corporations of a group that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section,

(i) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $200,000, and

(ii) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $1,000,000, and

(b) the amount so allocated under subparagraph (a)(ii) to each such corporation for the taxation year is not less than that corporation's cumulative deduction account at the end of the immediately preceding taxation year,

the business limit for the year of each of the corporations is the amount so allocated to it under subparagraph (a)(i) and the total business limit for the year of each of the corporations is the amount so allocated to it under subparagraph (a)(ii).

Subparas. 125(3)(a)(i) and (ii) substituted by 1980-81-82-83, c. 140, subsec. 86(2), to substitute "$200,000" for "$150,000" in subpara. (i) and to substitute "$1,000,000" for "$750,000," in subpara. (ii). Subparas. 125(3)(a)(i) and (ii) applicable to the 1982 and subsequent taxation years.

Subparas. 125(3)(a)(i), (ii) substituted by 1976-77, c. 4, subsec. 49(2), applicable to 1976 *et seq.* Subparas. 125(3)(a)(i), (ii) formerly read:

(i) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $100,000, and

(ii) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $500,000, and

Subparas. 125(3)(a)(i), (ii) substituted by 1974-75-76, c. 26, subsec. 81(2), applicable to 1974 *et seq.* Subparas. 125(3)(a)(i), (ii) formerly read:

(i) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $50,000, and

(ii) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $400,000, and

Forms: T2 SCH 23: Agreement among associated Canadian-controlled private corporations to allocate the business limit; T2 SCH 49: Agreement among associated Canadian-controlled private corporations to allocate the expenditure limit.

(4) Failure to file agreement — If any of the Canadian-controlled private corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal $200,000, and in any such case, notwithstanding subsection (2), the business limit for the year of each of the corporations is the amount so allocated to it.

Related Provisions: 256(1) — Associated corporations.

Pre-RSC History: Subsec. 125(4) substituted by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. (4) formerly read:

> (4) If any member of an associated group in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section,
>
> (a) allocate an amount to one or more of the members for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $200,000, and
>
> (b) allocate an amount to one or more of the members for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $1,000,000,
>
> and in any such case, notwithstanding subsection (2), the business limit for the year of each member is the amount so allocated to the member under paragraph (a) and the total business limit for the year of each member is the amount so allocated to the member under paragraph (b).

Subsec. 125(4) substituted by 1984, c. 1, subsec. 69(1), applicable 1983 *et seq.* Subsec. (4) formerly read:

> (4) If any of the Canadian-controlled private corporations of a group that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section,
>
> (a) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $200,000, and
>
> (b) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $1,000,000,
>
> and in any such case, notwithstanding subsection (2), the business limit for the year of each of the corporations is the amount so allocated to it under paragraph (a) and the total business limit for the year of each of the corporations is the amount so allocated to it under paragraph (b).

Paras. 125(4)(a) and (b) substituted by 1980-81-82-83, c. 140, subsec. 86(3), to substitute "$200,000" for "$150,000" and to substitute "$1,000,000" for "$750,000," applicable to the 1982 and subsequent taxation years.

Paras. 125(4)(a), (b) substituted by 1976-77, c. 4, subsec. 49(3), applicable to 1976 *et seq.* Paras. (a), (b) formerly read:

> (a) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $100,000, and
>
> (b) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $500,000,

Paras. 125(4)(a), (b) substituted by 1974-75-76, c. 26, subsec. 81(3), applicable to 1974 *et seq.* Paras. (a), (b) formerly read:

> (a) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $50,000, and
>
> (b) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $400,000,

Selected Cases [subsec. 125(4)]: *Deneschuk Building Supplies Ltd. v. Canada*, [1996] 3 C.T.C. 2039 (TCC) (No time limit within which allocation to share business limit between associated corporations must be filed if not demanded by Minister).

(5) Special rules for business limit — Notwithstanding subsections (2) to (4),

(a) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in 2 or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the business limit of the first corporation for each taxation year ending in the calendar year in which it is associated with the other corporation that ends after the first such taxation year ending in that calendar year is, subject to the application of paragraph (b), an amount equal to the lesser of

(i) its business limit determined under subsection (3) or (4) for the first such taxation year ending in the calendar year, and

(ii) its business limit determined under subsection (3) or (4) for the particular taxation year ending in the calendar year; and

(b) where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, its business limit for the year is that proportion of its business limit for the year determined without reference to this paragraph that the number of days in the year is of 365.

History: The opening words of subsec. 125(5) amended by 1995, c. 3, subsec. 35(1), applicable to taxation years that end after June 1994. The opening words formerly read:

> (5) Special rules for business limit — Notwithstanding any other provision of this section,

Para. 125(5)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 63(2), applicable to taxation years ending after December 20, 1991. Para. (a) formerly read:

> (a) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in two or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the business limit of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (b), an amount equal to its business limit for the first such taxation year determined without reference to paragraph (b); and

Pre-RSC History: Subsec. 125(5) substituted by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(5) formerly read:

> (5) Where two taxation years ending in same year — Notwithstanding anything in this section, where a Canadian-controlled private corporation has 2 taxation years ending in the same calendar year (otherwise than by reason of a change made in the usual and accepted fiscal period of the corporation) and is associated in each of those taxation years with a member of an associated group that has only one taxation year ending in the calendar year, the business limit of the corporation under this Part for the second taxation year ending in the calendar year is nil.

Subsec. 125(5) substituted by 1984, c. 1, subsec. 69(1), applicable to 1983 *et seq.* Subsec. 125(5) formerly read:

> (5) Where two taxation years ending in same year — Where a Canadian-controlled private corporation has 2 taxation years ending in the same calendar year (otherwise than by reason of a change made in the usual and accepted fiscal period of the corporation) and is associated in each of those taxation years with another Canadian-controlled private corporation that has only one taxation year ending in the calendar year, notwithstanding anything in this section, the business limit of the first-mentioned corporation under this Part for the second taxation year ending in the calendar year is nil.

(5.1) Business limit reduction — Notwithstanding subsections (2) to (5), a Canadian-controlled private corporation's business limit for a particular taxation year ending in a calendar year is the amount, if any, by which its business limit otherwise determined for the particular year exceeds the amount determined by the formula

$$A \times \frac{B}{\$11,250}$$

where

A is the amount that would, but for this subsection, be the corporation's business limit for the particular year; and

B is

(a) where the corporation is not associated with any other corporation in the particular year, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for its preceding taxation year, and

(b) where the corporation is associated with one or more other corporations in the particular year, the total of all amounts each of which would, but for subsections 181.1(2) and (4), be the tax payable under Part I.3 by the corporation or any such other corporation for its last taxation year ending in the preceding calendar year.

Related Provisions: 87(2)(j.92) — Amalgamations — continuing corporation; 127(10.2) — Reduction in SR&ED investment tax credits for large corporations.

History: Subsec. 125(5.1) amended by 1996, c. 21, subsec. 26(2), to substitute "$11,250" for "$10,000", applicable

(a) where a corporation is not associated with any other corporation in a particular taxation year and the corporation's preceding taxation year began after February 27, 1995, to the corporation's particular year and subsequent taxation years; and

(b) where a particular corporation is associated with one or more other corporations in a particular taxation year that ends in a calendar year and the last taxation year of the particular corporation and of each of the other corporations that ended in the preceding calendar year began after February 27, 1995, to the particular year and subsequent taxation years of the particular corporation.

For the purpose of applying subsection 125(5.1), the amount that would, but for subsecs. 181.1(2) and (4), be a corporation's tax payable under Part I.3 for a taxation year that began before February 28, 1995 shall be determined without reference to the 1996, c. 21, s. 47 amendment to subsec. 181.1(1).

Subsec. 125(5.1) added by 1995, c. 3, subsec. 35(2), applicable to taxation years that end after June 1994 except that, in its application to taxation years that begin before July 1994, it shall be read as follows:

(5.1) Notwithstanding subsections (2) to (5), a Canadian-controlled private corporation's business limit for a particular taxation year ending in a calendar year is the amount, if any, by which its business limit otherwise determined for the particular year exceeds the amount determined by the formula

$$A \times \frac{B}{\$10,000} \times \frac{C}{D}$$

where

A is the amount that would, but for this subsection, be the corporation's business limit for the particular year;

B is

(a) where the corporation is not associated with any other corporation in the particular year, the lesser of $10,000 and the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for its preceding taxation year, and

(b) where the corporation is associated with one or more other corporations in the particular year, the lesser of $10,000 and the total of all amounts each of which would, but for subsections 181.1(2) and (4), be the tax payable under Part I.3 by the corporation or any such other corporation for its last taxation year ending in the preceding calendar year;

C is the number of days in the particular year that are after June 1994; and

D is the number of days in the particular year.

Subsec. 35(4) of 1995, c. 3 provides that, notwithstanding any other provision of the Act or of the amending legislation, nothing in this amendment shall affect the amount of interest payable under the Act in respect of a corporation for any period or part thereof that is before July 1994.

(6) Corporate partnerships — Where in a taxation year a corporation is a member of a particular partnership and in the year the corporation or a corporation with which it is associated in the year is a member of one or more other partnerships and it may reasonably be considered that one of the main reasons for the separate existence of the partnerships is to increase the amount of a deduction of any corporation under subsection (1), the specified partnership income of the corporation for the year shall, for the purposes of this section, be computed in respect of those partnerships as if all amounts each of which is the income of one of the partnerships for a fiscal period ending in the year from an active business carried on in Canada were nil except for the greatest of those amounts.

Related Provisions: 125(6.1) — Corporation deemed member of partnership; 125(6.2) — Specified partnership income deemed nil.

(6.1) Corporation deemed member of partnership — For the purposes of this section, a corporation that is a member, or is deemed by this subsection to be a member, of a partnership that is a member of another partnership shall be deemed to be a member of the other partnership and the corporation's share of the income of the other partnership for a fiscal period shall be deemed to be equal to the amount of that income to which the corporation was directly or indirectly entitled.

(6.2) Specified partnership income deemed nil — Notwithstanding any other provision of this section, where a corporation is a member of a partnership that was controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation) or by any combination thereof at any time in its fiscal period ending in a taxation year of the corporation, the income of the partnership for that fiscal period from an active business carried on in Canada shall, for the purposes of computing the specified partnership income of a corporation for the year, be deemed to be nil.

Related Provisions: 125(6.3) — Partnership deemed to be controlled; 256(5.1), (6.2) — Controlled directly or indirectly.

Regulations: 6700 (prescribed venture capital corporation).

(6.3) Partnership deemed to be controlled — For the purposes of subsection (6.2), a partnership shall be deemed to be controlled by one or more persons at any time if the total of the shares of that person or those persons of the income of the partnership from any source for the fiscal period of the partnership that includes that time exceeds ½ of the income of the partnership from that source for that period.

(7) Definitions — In this section,

"active business carried on by a corporation" means any business carried on by the corporation other than a specified investment business or a personal services business and includes an adventure or concern in the nature of trade;

Related Provisions: 129(6) — Investment income from associated corporation deemed to be active business income; 248(1) — Definition of "active business" for purposes other than s. 125.

Pre-RSC History: *The definition "active business" was para. 125(7)(a).*

For earlier history, see under former para. 125(6)(d) below (at end of subsec. (7)).

Selected Cases [subsec. 125(7)"active business"]: *McCutcheon Farms Ltd. v. MNR*, [1991] 1 C.T.C. 50 (FCTD) (Interest on deposits not active business income).

Interpretation Bulletins: See list at end of s. 125.

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation

(a) controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), or by any combination thereof,

(b) that would, if each share of the capital stock of a corporation that is owned by a non-resident person or a public corporation (other than a prescribed venture capital corporation) were owned by a particular person, be controlled by the particular person, or

(c) a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

Proposed Amendment — 125(7)"Canadian-controlled private corporation"

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than

(a) a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), by one or more corporations described in paragraph (c), or by any combination of them,

(b) a corporation that would, if each share of the capital stock of a corporation that is owned by a non-resident person, by a public corporation (other than a prescribed venture capital corporation), or by a corporation described in paragraph (c) were owned by a particular person, be controlled by the particular person, or

(c) a corporation a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 71, will amend the definition "Canadian-controlled private corporation" in subsec. 125(7) to read as above, applicable to taxation years that begin after 1999.

Technical Notes: Section 125 of the Act provides for a corporate tax reduction (called the "small business deduction") in respect of income of a Canadian-controlled private corporation (CCPC) from an active business carried on by it in Canada.

Subsection 125(7) of the Act defines "Canadian-controlled private corporation", among other terms. This definition applies not only to the small business deduction under section 125 of the Act but also, through its incorporation by reference into subsection 248(1) of the Act, to the Act as a whole.

Currently, a corporation is a CCPC if it is a private corporation and a Canadian corporation (both of which terms are defined in subsection 89(1) of the Act), and it is not controlled, directly or indirectly in any manner whatever by one or any combination of public corporations (other than prescribed venture capital corporations) or non-resident persons. A corporation controlled by a group of non-residents or public corporations is not considered a CCPC if each share held by non-residents or public corporations, when attributed to a notional person, results in the notional person having control of the underlying corporation. Nor is a corporation a CCPC if it lists its stock on a prescribed stock exchange in Canada (Regulation 3200) or outside of Canada (Regulation 3201).

This amendment ensures that a corporation controlled by a Canadian resident corporation that lists its shares on a prescribed stock exchange outside of Canada is not a CCPC. This mirrors the treatment of corporations controlled by a Canadian resident corporation that lists its shares on a prescribed stock exchange in Canada (public corporation). Under the current definition these corporations are not CCPCs.

This amendment applies to taxation years beginning after 1999.

Related Provisions: 136 — Co-operative corporation may be private corporation for purposes of s. 125; 137(7) — Credit union may be private corporation for purposes of s. 125; 248(1)"Canadian-controlled private corporation" — Definition applies to entire Act; 251(5) — Control by related groups, options, etc.; 256(5.1), (6.2) — Controlled directly or indirectly.

History: The definition "Canadian-controlled private corporation" in subsec. 125(7) amended by 1998, c. 19, subsec. 145(2), applicable after 1995. The definition formerly read:

> "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation) or by any combination thereof;

Pre-RSC History: *The definition "Canadian-controlled private corporation" was para. 125(7)(b).*

For earlier history, see under former para. 125(6)(a) below (at end of subsec. (7)).

Selected Cases [subsec. 125(7)"Canadian-controlled private corporation"]: *Parthenon Investments Ltd. v. R.*, [1997] 3 C.T.C. 152 (FCA) (Interposition of U.S. company in corporate chain did not destroy CCPC status where ultimate control held by Canadian residents); *Scandia Plate v. The Queen*, [1982] C.T.C. 431 (FCTD) (Taxpayer not Canadian-controlled private corporation when ownership of shares passing from non-resident parent to resident manager retained until following taxation year).

Regulations: 3200, 3201 (prescribed stock exchange; not yet amended to apply for purposes of 125(7)); 6700 (prescribed venture capital corporation).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-243R4: Dividend refund to private corporations; IT-458R2: Canadian-controlled private corporation; IT-484R2: Business investment losses. See also list at end of s. 125.

I.T. Technical News: No. 3 (Canadian-controlled private corporation); No. 16 (*Parthenon Investments* case).

"income of the corporation for the year from an active business" means the total of

(a) the corporation's income for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, other than income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4)), and

(b) the amount, if any, included under subsection 12(10.2) in computing the corporation's income for the year;

History: Para. (a) of the definition "income of the corporation for the year from an active business" in subsec. 125(7) amended by 1996, c. 21, subsec. 26(3), applicable to taxation years that end after June 1995. Para. (a) formerly read:

> (a) the corporation's income for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, other than income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1)), and

The definition "income of the corporation..." in subsec. 125(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 63(3), applicable to 1991 *et seq.* That definition formerly read:

> "income of the corporation for the year from an active business" means the income of the corporation for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, but does not include income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1));

Pre-RSC History: *The definition "income of a corporation..." was para. 125(7)(c).*

For earlier history, see under former para. 125(6)(e) below (at end of subsec. (7)).

"personal services business" carried on by a corporation in a taxation year means a business of providing services where

(a) an individual who performs services on behalf of the corporation (in this definition and paragraph 18(1)(p) referred to as an "incorporated employee"), or

(b) any person related to the incorporated employee

is a specified shareholder of the corporation and the incorporated employee would reasonably be regarded as an officer or employee of the person or partnership to whom or to which the services were provided but for the existence of the corporation, unless

(c) the corporation employs in the business throughout the year more than five full-time employees, or

(d) the amount paid or payable to the corporation in the year for the services is received or receivable by it from a corporation with which it was associated in the year;

Related Provisions: 18(1)(p) — Limitation on deductions from personal services business income; 122.3(1.1) — Restriction on overseas employment tax credit for incorporated employee; 207.6(3) — Retirement compensation arrangement for incorporated employee; 248(1)"personal services business" — Definition applies to entire Act.

Pre-RSC History: *The definition "personal services business" was para. 125(7)(d).*

For earlier history, see under former para. 125(6)(g.1) below (at end of subsec. (7)).

Selected Cases [subsec. 125(7)"personal services business"]: *Hughes & Co. Holdings Ltd. v. MNR*, [1994] 2 C.T.C. 170 (FCTD) ("More than five employees" means at least six employees).

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-406R2: Tax payable by an *inter vivos* trust; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt. See also list at end of s. 125.

Forms: CPT-1: Request for a ruling as to the status of a worker under the *Canada Pension Plan* or *Unemployment Insurance Act*.

"specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where

(a) the corporation employs in the business throughout the year more than 5 full-time employees, or

(b) any other corporation associated with the corporation provides, in the course of carrying on an active business, managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than 5 full-time employees if those services had not been provided;

Related Provisions: 95(1) — Analogous definition of "investment business" for FAPI purposes; 125(7)"active business" — No small business deduction for specified investment business; 129(4)"income" — Dividend refund available for income from specified investment business; 129(6) — Income from associated corporation deemed to be active business income; 248(1)"specified investment business" — Definition applies to entire Act.

History: The definition "specified investment business" in subsec. 125(7) amended by 1998, c. 19, subsec. 145(3), applicable to 1995 *et seq.* The definition formerly read:

> "specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless
>
> (a) the corporation employs in the business throughout the year more than five full-time employees, or
>
> (b) in the course of carrying on an active business, any other corporation associated with it provides managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than five full-time employees if those services had not been provided;

Pre-RSC History: *The definition "specified investment business" was para. 125(7)(e).*

For earlier history, see under former para. 125(6)(h) below (at end of subsec. (7)).

Selected Cases [subsec. 125(7)"specified investment business"]: *Lerric Investments Corp. v. R.*, [1999] 2 C.T.C. 2714 (TCC) (Sharing of employees not acceptable for purposes of qualification).

Regulations: 6701 (prescribed labour-sponsored venture capital corporation).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-406R2: Tax payable by an *inter vivos* trust. See also list at end of s. 125.

"specified partnership income" of a corporation for a taxation year means the amount determined by the formula

$$A + B$$

where

A is the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the lesser of

(a) the total of all amounts each of which is an amount in respect of an active business carried on in Canada by the corporation as a member of the partnership determined by the formula

$$G - H$$

where

G is the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period of the business that ends in the year or an amount included in the corporation's income for the year from the business because of subsection 34.2(5), and

H is the total of all amounts deducted in computing the corporation's income for the year from the business (other than amounts that were deducted in computing the income of the partnership from the business), and

(b) the amount determined by the formula

$$\frac{K}{L} \times M$$

where

K is the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada,

L is the total of all amounts each of which is the income of the partnership for a fiscal period referred to in paragraph (a) from an active business carried on in Canada, and

M is the lesser of

(i) $200,000 and

(ii) the product obtained when $548 is multiplied by the total of all amounts each of which is the number of days contained in a fiscal period of the partnership ending in the year, and

B is the lesser of

(a) the total of the amounts determined in respect of the corporation for the year under subparagraphs (1)(a)(iii) and (iv), and

(b) the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the amount determined by the formula

N – O

where

N is the amount determined in respect of the partnership for the year under paragraph (a) of the description of A, and

O is the amount determined in respect of the partnership for the year under paragraph (b) of the description of A;

Related Provisions: 125(6) — Corporate partnerships; 125(6.2) — Specified partnership income deemed nil; 257 — Formula amounts cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 125.

History: The description of G in the definition "specified partnership income" in subsec. 125(7) amended by 1996, c. 21, subsec. 26(4), applicable to 1995 *et seq.* The description of G formerly read:

G is the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from the business, and

Para. (a) of the description of A, and the description of K, in the definition "specified partnership income" in subsec. 125(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 100(1), (2) applicable to 1985 *et seq.* Those portions formerly read:

(a) the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by it as a member of the partnership, and

. . . . .

K is the amount determined under paragraph (a),

Pre-RSC History: *The definition "specified partnership income" was para. 125(7)(f). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(f) "specified partnership income" of a corporation for a taxation year means the aggregate of

(i) the aggregate of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the lesser of

(A) the aggregate of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by it as a member of the partnership, and

(I) the total of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from the business

exceeds

(II) the total of all amounts each of which is an amount deducted in computing the corporation's income for the year from the business (other than an amount that was deducted in computing the income of the partnership from the business), and

(B) that proportion of the lesser of

(I) $200,000 and

(II) the product obtained when $548 is multiplied by the aggregate of all amounts each of which is the number of days contained in a fiscal period of the partnership ending in the year

that

(III) the amount determined under clause (A)

is of

(IV) the aggregate of all amounts each of which is the income of the partnership for a fiscal period referred to in clause (A) from an active business carried on in Canada, and

(ii) the lesser of

(A) the aggregate of the amounts determined in respect of the corporation for the year under subparagraphs (1)(a)(iii) and (iv), and

(B) the aggregate of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the amount, if any, by which

(I) the amount determined in respect of the partnership for the year under clause (i)(A)

exceeds

(II) the amount determined in respect of the partnership for the year under clause (i)(B); and

"specified partnership loss" of a corporation for a taxation year means the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year determined by the formula

A + B

where

A is the total of all amounts each of which is the corporation's share of the loss (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by the corporation as a member of the partnership, and

B is the total of all amounts each of which is an amount determined by the formula

G – H

where

G is the amount determined for H in the definition "specified partnership income" in this subsection for the year in respect of the corporation's income from an active business carried on in Canada by the corporation as a member of the partnership, and

H is the amount determined for G in the definition "specified partnership income" in this subsection for the year in respect of the corporation's share of the income from the business.

Related Provisions: 257 — Formula amount cannot calculate to less than zero.

History: The definition "specified partnership loss" in subsec. 125(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 100(3), applicable to 1985 *et seq.* That definition formerly read:

"specified partnership loss" of a corporation for a taxation year means the total of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year

equal to the corporation's share of a loss (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by it as a member of the partnership.

Pre-RSC History: *The definition "specified partnership loss" was para. 125(7)(g). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(g) "specified partnership loss" of a corporation for a taxation year means the aggregate of all amounts each of which is an amount in respect of a partnership of which the corporation was a member in the year equal to the corporation's share of a loss (determined in accordance with subdivision j of Division B) of the partnership for a fiscal period ending in the year from an active business carried on in Canada by it as a member of the partnership.

Related Provisions [subsec. 125(7)]: 48.1 — Election to trigger capital gains exemption on ceasing to be CCPC.

Pre-RSC History [subsecs. 125(6)–(7)]: Subsec. 125(6) substituted and subsecs. 125(6.1) to (6.3) added by 1988, c. 55, subsec. 102(3). Subsecs. 125(6) and (6.1) applicable to fiscal periods of partnerships commencing after February 10, 1988; subsecs. 125(6.2) and (6.3) applicable to fiscal periods of partnerships commencing after 1988. Subsec. 125(6) formerly read:

(6) Corporate partnerships — Notwithstanding any other provision of this section, where in a taxation year a corporation is a member of a particular partnership and in the year the corporation or a corporation with which it is associated in the year is a member of another partnership and it may reasonably be concluded that

(a) the separate existence of the partnerships is not solely for the purpose of carrying on the businesses of the partnerships in the most effective manner, and

(b) one of the main reasons for the separate existence of the partnerships is to increase the amount of a deduction of any corporation under subsection (1),

the specified partnership income of the corporation for the year shall, for the purposes of this section, be computed as if all amounts each of which is the income of one of the partnerships for a fiscal period ending in the year from an active business carried on in Canada were nil except for the greatest of such amounts.

Subpara. 125(7)(d)(i) amended by 1988, c. 55, subsec. 102(4), to substitute "paragraph 18(1)(p)" for "paragraphs 8(3)(a.1) and 18(1)(p)", applicable to 1988 *et seq.*

Subsecs. 125(6), (7) substituted and (6.1), (6.2) and (6.3) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsecs. 125(6) to (7) formerly read:

(6) Definitions — In this section and section 129,

(a) "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation) or by any combination thereof;

(b) "cumulative deduction account" — "cumulative deduction account" of a corporation at the end of any taxation year means the amount, if any, by which the aggregate of

(i) the corporation's cumulative deduction account at the end of the immediately preceding taxation year computed without reference to subsection (8.1),

(ii) the amount, if any, by which the corporation's taxable income for the taxation year exceeds 4 times the least of the amounts determined under subparagraphs 129(3)(a)(i) to (iv) in respect of the corporation for the year,

(iii) the aggregate of

(A) ⅓ of the amount, if any, by which

(I) the aggregate of all amounts each of which is a dividend (other than the portion thereof referred to in subclause (B)(I)) that was deductible under section 112 or subsection 113(1) from the corporation's income for the year

exceeds

(II) 4 times the amount of the tax under Part IV that would be payable by the corporation for the year on the assumption that no amount was claimed by the corporation for the year under paragraph 186(1)(c) or (d) (other than the part thereof referred to in subclause (B)(II), and

(B) ½ of the amount, if any, by which

(I) the aggregate of all amounts each of which is the portion of a dividend that was deductible under section 112 from the corporation's income for the year and on which tax under Part II can reasonably be considered to be payable by the corporation from which the dividend was received

exceeds

(II) an amount not exceeding 4 times such part of the amount of the tax under Part IV that would be payable by the corporation for the year on the assumption referred to in subclause (A)(II) as may be claimed by the corporation,

(iii.1) where the year is its first taxation year ending after 1982, the amount, if any, of the prescribed addition to the cumulative deduction account of the corporation, and

(iii.2) the aggregate of all amounts each of which is an amount required to be added to the amount of the cumulative deduction account of the corporation at the end of the year under subsection (8.4)

exceeds the aggregate of

(iv) the aggregate of

(A) ⅓ of the lesser of

(I) the aggregate of all amounts each of which is a qualifying taxable dividend paid by the corporation in the year, and

(II) the aggregate of all amounts each of which is a taxable dividend paid in the year by the corporation to another member of an associated group to which the corporation belongs, other than the portion of any such dividend on which tax under Part II was paid by the corporation, and

(B) ½ of the amount, if any, by which

(I) the aggregate of all amounts each of which is a qualifying taxable dividend paid by the corporation in the year

exceeds

(II) ¾ of the amount determined under clause (A),

(iv.1) where the year is its first taxation year ending after 1982, the amount, if any, of the prescribed reduction in the cumulative deduction account of the corporation, and

(iv.2) the aggregate of all amounts each of which is an amount required to be deducted in computing the cumulative deduction account of the corporation at the end of the year under subsection (8.5)

except that, where the corporation carried on a non-qualifying business in Canada in the year, the reference in subparagraphs (iii) and (iv) to "⅓" shall be read as references to "½";

(c) "qualifying taxable dividends paid" by a corporation in a taxation year means, where the corporation was in the year a member of an associated group, the taxable dividends paid in the year by the corporation to another member of the group (in this paragraph referred to as the "recipient"), other than the portion of any such dividend on which tax under Part IV would be payable by the recipient if it is assumed that no amount was claimed by the recipient for the year under paragraph 186(1)(c) or (d) for any year commencing after March 1983;

(d) "active business" carried on by a corporation in a taxation year means the business of manufacturing or processing property for sale or lease, mining, operating an oil or gas well, prospecting, exploring or drilling for natural resources, construction, logging, farming, fishing, selling property as a principal, transportation or any other business carried on by the corporation other than a specified investment business, a non-qualifying business or a personal services business;

(e) "income of the corporation for the year from an active business" means the income of the corporation from an active business carried on by it, including any income pertaining to or incident to that business and amounts deemed by subsection 129(6) to be income from an active business, but does not in-

clude income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1));

(f) "non-qualifying business" carried on by a corporation in a taxation year means

(i) the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor,

(ii) a business of providing services if more than 66⅔% of the gross revenue for the year of that business derived from services

(A) is derived from services provided to, or performed for or on behalf of, one entity, and

(B) can reasonably be attributed to services performed by persons who are specified shareholders of the corporation or persons related thereto

unless the corporation employs in the business throughout the year more than five full-time employees who are not specified shareholders of the corporation or persons related thereto, or

(iii) a business the principal purpose of which is to provide managerial, administrative, financial, maintenance or other similar services, to lease property (other than real property), or to provide any such services and to lease property (other than real property), to one or more businesses connected at any time in the year with the corporation;

but does not include a personal services business;

(g) "income of the corporation for the year" from a non-qualifying business means the income of the corporation from a non-qualifying business carried on by it, including any income pertaining to or incident to that business and amounts deemed by subsection 129(6) to be income from a non-qualifying business, but does not include income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1));

(g.1) "personal services business" carried on by a corporation in a taxation year means a business of providing services where

(i) an individual who performs services on behalf of the corporation (in this paragraph and paragraphs 8(3)(a.1) and 18(1)(p) referred to as an "incorporated employee"), or

(ii) any person related to the incorporated employee

is a specified shareholder of the corporation and the incorporated employee would reasonably be regarded as an officer or employee of the entity to which the services were provided but for the existence of the corporation, unless

(iii) the corporation employs in the business throughout the year more than five full-time employees who are not specified shareholders of the corporation or who are not related to any specified shareholder of the corporation, or

(iv) the amount paid or payable to the corporation in the year for the services is received or receivable by it from a corporation with which it was associated in the year;

(h) "specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless the corporation employs in the business throughout the year more than five full-time employees who are not specified shareholders of the corporation or persons related thereto;

(i) "specified limit" of a corporation for a taxation year

(i) in respect of a partnership of which it was a member (other than a partnership to which the corporation was joined in the year) means that proportion of $200,000 that

(A) the aggregate of all amounts each of which is the corporation's share of the income (determined in accordance with subdivision j) of the partnership for a fiscal period of the partnership ending in or coinciding with the year from an active business carried on by it in Canada as a member of the partnership

is of

(B) the aggregate of all amounts each of which is the income of the partnership from an active business carried on in Canada for a fiscal period of the partnership ending in or coinciding with the year,

except that where the corporation carried on a non-qualifying business in the year, the references in this subparagraph to "active business" shall be read as references to "active business or a non-qualifying business", and

(ii) in respect of a group of connected partnerships means that proportion of $200,000 that

(A) the amount, if any, determined in respect of the corporation for the year under clause (1)(a)(iii)(A) in respect of the group if the reference therein to the "corporation's income" were read as a reference to "the corporation's share of the income (determined in accordance with subdivision j)" and the reference therein to "the corporation's loss" were read as a reference to "the corporation's share of the loss (determined in accordance with subdivision j)"

is of

(B) the amount, if any, by which

(I) the aggregate of all amounts each of which is the income of a partnership in the group from an active business carried on in Canada for a fiscal period of the partnership ending in or coinciding with the year

exceeds

(II) the aggregate of all amounts each of which is a loss of a partnership in the group from an active business carried on in Canada for a fiscal period of the partnership ending in or coinciding with the year,

except that where the corporation carried on a non-qualifying business in the year, the references in this subparagraph to "active business" shall be read as references to "active business or a non-qualifying business" and the reference in clause (A) to "clause (1)(a)(iii)(A)" shall be read as a reference to "clause (1.1)(a)(iii)(A)";

(j) "income or loss of a partnership" for a fiscal period from a business carried on in Canada means the aggregate of all amounts each of which is the share of the income or loss (determined in accordance with subdivision j) of a person who was a member of the partnership from the business for the taxation year of the person in which the fiscal period ends or with which the fiscal period coincides;

(k) "total income of a partnership" for a fiscal period means the amount, if any, by which

(i) the aggregate of all amounts each of which is an amount in respect of the partnership that is included by virtue of subdivision j as the income of a person who was a member of the partnership for the taxation year of the person in which the fiscal period ends or with which the fiscal period coincides

exceeds

(ii) the aggregate of all amounts each of which is an amount in respect of the partnership that is included by virtue of subdivision j as the loss of a person who was a member of the partnership for the taxation year of the person in which the fiscal period ends or with which the fiscal period coincides;

(l) "total loss of a partnership" for a fiscal period means the amount, if any, by which the amount determined in subparagraph (k)(ii) exceeds the amount determined in subparagraph (k)(i); and

(m) **"associated group"** — "associated group" in a taxation year means a group of corporations each member of which

(i) is associated at any time in the year with every other member of the group, and

(ii) is either a Canadian-controlled private corporation or a corporation that was, at any time after August 15, 1983 and before the end of the year, a Canadian-controlled private corporation.

(6.1) **Cumulative deduction account** — For the purposes of subparagraphs (6)(b)(iii) and (iv), where, at any time in a taxation year, a particular corporation has received a taxable dividend from or

paid a taxable dividend to another corporation as part of a transaction or event or a series of transactions or events that resulted in a transfer of property in respect of which subsection (8.4) applies, the following rules apply:

(a) the particular corporation shall be deemed not to have received or paid, as the case may be, the taxable dividend; and

(b) the amount of tax under Part IV payable by the particular corporation for the year and the amount of its dividend refund for the year in respect of the taxable dividend received or paid, as the case may be, shall be deemed to be nil.

(6.2) Taxation years after 1982 — In computing the cumulative deduction account of a corporation for a taxation year ending after 1982, the following rules apply:

(a) the reference in clause (6)(b)(iii)(A) to "⅔" shall be read as a reference to "3/2" with respect to any dividend described in subclause (6)(b)(iii)(A)(I) that was paid to the corporation by another corporation where that other corporation was associated with the corporation at the time that it paid the dividend and where it carried on a non-qualifying business in Canada during its taxation year that included that time; and

(b) the reference in clause (6)(b)(iv)(A) to "⅔" shall be read as a reference to "3/2" with respect to any dividend described in that clause that was paid by the corporation to another corporation, if that other corporation carried on a non-qualifying business in Canada during its taxation year in which it received the dividend.

(6.3) Determination of cumulative deduction account — Where a corporation (in this subsection referred to as the "payer corporation") has, at any time after November 12, 1981 and in its taxation year that ends in a particular calendar year, paid a dividend that is received by an associated corporation (in this subsection referred to as the "recipient corporation" in its taxation year that ends in another calendar year, for the purpose of determining the qualifying taxable dividends paid by the payer corporation and the cumulative deduction accounts of the payer corporation and the recipient corporation after that time,

(a) the dividend shall be deemed to have been paid by the payer corporation and received by the recipient corporation on the first day of the calendar year following the calendar year in which the dividend was paid or, where the recipient corporation ceased to exist after March 1983 and before that day, on the day before the recipient corporation ceased to exist, and the dividend shall be deemed not to have been paid or received on any other day; and

(b) where tax under Part IV would (if it is assumed that no amount was claimed by the recipient corporation under paragraph 186(1)(c) or (d) for any year commencing after March 1983) be payable by the recipient corporation in respect of the dividend, that tax shall be deemed to be payable on the dividend in respect of the taxation year of the recipient corporation that includes the day referred to in paragraph (a) and not to be payable on a dividend in respect of any other year.

(7) Assumptions to be made — For the purposes of subparagraph (6)(c)(ii), assumptions shall be made,

(a) in respect of any particular taxable dividend paid in a taxation year by a corporation to another corporation connected with it (within the meaning of subsection 186(4)), that an amount equal to the proportion thereof referred to in paragraph 186(1)(b) is a portion of the dividend on which tax is payable by the other corporation under Part IV; and

(b) that no tax is payable under Part IV in respect of any portion not referred to in paragraph (a) of a taxable dividend that is paid by a corporation to another corporation with which the corporation

(i) is not associated in the taxation year in which the dividend is paid, and

(ii) is connected within the meaning of subsection 186(4) at the time the dividend is paid

unless a certified copy of the directors' resolution referred to in paragraph 186(1)(b.1) electing to pay tax on that portion has been filed with the return of income of the payer corporation for the year in which the dividend was paid.

Subparas. 125(6)(b)(i), (iii.2), (iv)–(iv.2), paras. 125(6)(c), (6.2)(b) and subsecs. 125(6.1), (6.3) substituted and para. 125(6)(m) added by 1984, c. 1, subsecs. 69(2)–(9). Subpara. 125(6)(b)(i), para. 125(6.2)(b) and subsecs. 125(6.1), (6.3) as substituted, applicable for the purpose of computing cumulative deduction accounts for 1982 *et seq.*; subpara. 125(6)(b)(iii.2) applicable to 1982 *et seq.*; subparas. 125(6)(b)(iv)–(iv.2) applicable to 1982 *et seq.*, except that as to subpara. 125(6)(b)(iv) see under "Application — 1984, c. 1" below and as to subparas. (iv.1) and (iv.2)

(a) for taxation years ending before 1983, subparagraph 125(6)(b)(iv.1) shall be read as follows:

"(iv.1) the amount, if any, of the specified reduction in the cumulative deduction account of the corporation for the year, and", and

(b) subparagraph 125(6)(b)(iv.2) is applicable to 1980 *et seq.*

Para. 125(6)(c) is applicable to 1983 *et seq.*; para. 125(6)(m) applicable to 1983, except that for the purposes of subsection 125(8.5), subsection (6) is applicable to 1980 *et seq.* and, in its application to the 1980, 1981 and 1982 taxation years, paragraph 125(6)(m) shall be read as though subparagraph (ii) thereof read:

"(ii) is a Canadian-controlled private corporation."

Subpara. 125(6)(b)(i) substituted to add "computed without reference to subsection (8.1)"; subpara. (iii.2) substituted to delete "(8.1)" located immediately before "(8.4)"; subpara. (iv) formerly read:

(iv) the aggregate of

(A) ⅓ of the amount, if any, by which

(I) the aggregate of all amounts each of which is a qualifying taxable dividend (other than the portion thereof referred to in subclause (B)(I)) paid by the corporation in the year

exceeds

(II) the amount, if any, by which 4 times the amount of its dividend refund for the year exceeds the amount determined under subclause (B)(II), and

(B) ⅔ of the amount, if any, by which

(I) the aggregate of all amounts each of which is the portion of a qualifying taxable dividend paid by the corporation in the year on which tax under Part II can reasonably be considered to be payable by the corporation

exceeds

(II) an amount equal to 4 times the lesser of the amount of its dividend refund for the year and 25% of the aggregate determined in subclause (I),

Subpara. 125(6)(b)(iv.2) substituted to delete "or (8.6)" located immediately after "(8.5)"; subpara. 125(6)(c) formerly read:

(c) "qualifying taxable dividends paid" by a corporation in a taxation year means the aggregate of

(i) the taxable dividends paid before April 11, 1978 by the corporation in the year,

(ii) all amounts each of which was a taxable dividend paid after April 10, 1978 and before 1982 by the corporation in the year, other than the portion of any such dividend that was paid to a private corporation (other than a prescribed venture capital corporation) that was not at the time the dividend was paid associated with the corporation and on which no tax was payable by the recipient thereof under Part IV, and

(iii) the taxable dividends paid after 1981 by the corporation in the year to a Canadian-controlled private corporation (in this subparagraph referred to as the "recipient corporation") that was at the time the dividend was paid associated with the corporation, other than the portion of any such dividend on which tax under Part IV was paid by the recipient corporation;

Subsecs. 125(6.1), (6.3) and para. 125(6.2)(b) formerly read:

(6.1) Cumulative deduction account — For the purposes of subparagraphs (6)(b)(iii) and (iv), where, at any time in a taxation year,

(a) a particular corporation has received a taxable dividend from or paid a taxable dividend to another corporation (other than a corporation that did not deal at arm's length with the particular corporation) as part of a transaction or event or a series of transactions or events that resulted in a transfer of property in respect of which subsection (8.4) applies, or

(b) a particular corporation has received a taxable dividend from or paid a taxable dividend to another corporation as part of a transaction or event or a series of transactions or events that resulted in a transfer of a business or the disposition, issuance, redemption, acquisition or cancellation of one or more shares of the capital stock of a corporation in respect of which subsection

(8.1) applies or where the taxable dividend was paid or received in contemplation of such a transaction or event or series of transactions or events or such a transfer, disposition, issuance, redemption, acquisition or cancellation,

the following rules apply:

(c) the particular corporation shall be deemed not to have received or paid, as the case may be, the taxable dividend; and

(d) the amount of tax under Part IV payable by the particular corporation for the year and the amount of its dividend refund (within the meaning assigned by subsection 129(1)) for the year in respect of the taxable dividend received or paid, as the case may be, shall be deemed to be nil.

. . . . .

(b) the reference in clause (6)(b)(iv)(A) to "4/3" shall be read as a reference to "3/2" with respect to any dividend described in subclause (6)(b)(iv)(A)(I) that was paid by the corporation to another corporation where that other corporation carried on a non-qualifying business in Canada during its taxation year in which it received the dividend.

. . . . .

(6.3) Determination of cumulative deduction account — Where a corporation (in this subsection referred to as the "payer corporation") has, at any time after November 12, 1981 and in its taxation year that ends in a particular calendar year, paid a dividend that is received by an associated corporation (in this subsection referred to as the "recipient corporation") in its taxation year that ends in another calendar year, for the purpose of determining the cumulative deduction account of the payer corporation and the recipient corporation after that time,

(a) the dividend shall be deemed to have been paid by the payer corporation and received by the recipient corporation on the first day of the calendar year following the particular calendar year in which the dividend was paid; and

(b) where tax under Part IV was paid by the recipient corporation in respect of the dividend or where the dividend resulted in a dividend refund (within the meaning assigned by subsection 129(1)) to the payer corporation, such tax or dividend refund shall be deemed to have been paid or received, as the case may be, on the first day of the calendar year following the particular calendar year.

Application — 1984, c. 1 — Subsec. 69(11) provides that where a corporation has a taxation year part of which is before 1982 and part of which is after 1981, the amount determined under subparagraph 125(6)(b)(iv) as amended by subsec. 69(4) of 1984, c. 1, shall be computed as if that subparagraph read as follows:

(iv) 4/3 of the amount, if any, by which the aggregate of

(A) the 1981 qualifying taxable dividends paid,

(B) the 1982 qualifying taxable dividends paid, and

(C) the aggregate of all amounts each of which is deemed by paragraph 15.1(2)(c) to be a qualifying taxable dividend paid by the corporation in the year

exceeds 4 times its qualifying dividend refund for the year,

and for the purposes of this application subsection,

(a) "1981 qualifying taxable dividends paid" by a corporation in a taxation year means the amount, if any, by which the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year and before 1982 exceeds the amount, if any, by which the lesser of

(i) the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year and before 1982 to a particular corporation that was, at the time the dividend was paid, a private corporation (other than a venture capital corporation as prescribed for the purposes of paragraph 125(6)(a)) that was connected (within the meaning assigned by subsection 186(4)), but not associated, with the corporation, and

(ii) the amount, if any, by which the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year to the particular corporation exceeds an amount equal to that proportion of 4 times the corporation's dividend refund for the year that the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year to the particular corporation is of the aggregate of all taxable dividends paid by the corporation in the year

exceeds

(iii) the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year to the particular corporation on which the particular corporation has elected to pay Part IV tax pursuant to paragraph 186(1)(b.1);

(b) "1982 qualifying taxable dividends paid" by a corporation in a taxation year means the amount, if any, by which the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year and after 1981 to a Canadian-controlled private corporation that was associated with the corporation at the time the dividend was paid exceeds an amount equal to that proportion of 4 times the corporation's dividend refund that

(i) the aggregate of all amounts each of which is a taxable dividend paid by the corporation in the year and after 1981 to a Canadian-controlled private corporation that was associated with the corporation at the time the dividend was paid

is of

(ii) the aggregate of all taxable dividends paid by the corporation in the year and after 1981; and

(c) "qualifying dividend refund for the year" means the amount, if any, by which the corporation's dividend refund for the year exceeds 1/4 of the aggregate of all taxable dividends paid by the corporation in the year and after 1981 other than such dividends as are 1982 qualifying taxable dividends paid.

Paras. 125(6)(c), (d), (g), subparas. 125(6)(b)(iii), (iii.1), (iv), (iv.1), the portion of subpara. 125(6)(i)(i) preceding cl. (A) thereof, and the portion of subpara. 125(6)(i)(ii) preceding cl. (A) thereof, substituted; para. 125(6)(g.1), subpara. 125(6)(b)(iv.2) and subsecs. 125(6.1)–(6.3) added; and para. 125(6)(f) amended by adding immediately after subpara. (iii) thereof, "but does not include a personal services business" by 1980-81-82-83, c. 140, subsecs. 86(1)–(12). For application rules see below under "Application — 1980-81-82-83, c. 140". The substituted provisions formerly read:

(iii) 4/3 of the amount, if any, by which the aggregate of amounts deductible under section 112 or subsection 113(1) from the corporation's income for the year exceeds 4 times the amount of the tax under Part IV payable by the corporation for the year, and

(iii.1) the amount, if any, of the specified addition to the cumulative deduction account of the corporation for the year

(iv) 4/3 of the amount, if any, by which the aggregate of the qualifying taxable dividends paid by the corporation in the year exceeds 4 times its dividend refund (within the meaning assigned by subsection 129(1)) for the year, and

(iv.1) the amount, if any, of the specified reduction in the cumulative deduction account of the corporation for the year

. . . . .

(c) "qualifying taxable dividends paid" by a corporation in a year means the aggregate of

(i) the taxable dividends paid by the corporation in the year and before April 11, 1978, and

(ii) all amounts each of which is a taxable dividend paid by the corporation in the year and after April 10, 1978 other than the portion of any such dividend that is paid to a private corporation (other than a prescribed venture capital corporation) that is not associated with the corporation and on which no tax is payable by the recipient thereof under Part IV;

(d) "active business" carried on by a corporation in a taxation year means the business of manufacturing or processing property for sale or lease, mining, operating an oil or gas well, prospecting, exploring or drilling for natural resources, construction, logging, farming, fishing, selling property as a principal, transportation or any other business carried on by the corporation other than a specified investment business or a non-qualifying business;

. . . . .

(g) "income of the corporation for the year" from a non-qualifying business means the income of the corporation from a non-qualifying business carried on by it, including any income pertaining to or incident to that business and amounts deemed by subsection 129(6) to be income from a non-qualifying business, but does not include income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1));

. . . . .

(i) in respect of a partnership of which it was a member (other than a partnership to which the corporation was joined in the year) means that proportion of $150,000 that

. . . . .

(ii) in respect of a group of connected partnerships means that proportion of $150,000 that

Application — 1980-81-82-83, c. 140 — Subparas. 125(6)(b)(iii), (iii.1), (iv), and (iv.1), are applicable to 1982 *et seq.* except that for taxation years ending before 1983:

(a) subpara. 125(6)(b)(iii.1) shall be read as follows:

"(iii.1) the amount, if any, of the specified addition to the cumulative deduction account of the corporation for the year," and

(b) subpara. 125(6)(b)(iv.1) shall be read as follows:

"(iv.1) the amount, if any, of the specified reduction in the cumulative deduction account of the corporation for the year, and".

Para. 125(6)(c) is applicable with respect to taxable dividends paid after 1981; para. 125(6)(d), the amendment to para. 125(6)(f) and paras. 125(6)(g) and (g.1) are applicable to taxation years commencing after November 12, 1981; the portion of subpara. 125(6)(i)(i) and the portion of subpara. 125(6)(i)(ii) preceding cl. (A) of each, are applicable with respect to fiscal periods of partnerships coinciding with, or ending in, the 1982 and subsequent taxation years of corporations; subsecs. 125(6.1)–(6.3) are applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

Paras. 125(6)(a), (h), subparas. 125(6)(c)(ii), (f)(iii) substituted, paras. 125(6)(i)–(l) added by 1980-81-82-83, c. 48, subsecs. 70(3)–(6), applicable, as to para. 125(6)(a), to 1979 *et seq.*, as to subpara. 125(6)(c)(ii), to taxation years ending after April 10, 1978, as to paras. 125(6)(i)–(l), with respect to fiscal periods of partnerships commencing after December 11, 1979, and, as to subpara. 125(6)(f)(iii) and para. 125(6)(h), to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Para. 125(6)(a), subparas. 125(6)(c)(ii), (f)(iii) and para. 125(6)(h) formerly read:

(a) "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations or by any combination thereof;

. . . . .

(ii) all amounts each of which is a taxable dividend paid by the corporation in the year and after April 10, 1978 other than the portion of any such dividend that is paid to a private corporation that is not associated (within the meaning of section 256) with the corporation and on which no tax is payable by the recipient thereof under Part IV;

. . . . .

(iii) a business the principal purpose of which is to provide managerial, administrative, financial, maintenance or other similar services, including the leasing of property, to one or more businesses connected at any time in the year with the corporation;

. . . . .

(h) "specified investment business" carried on by a corporation in a taxation year means a business (other than the business of leasing property other than real property) the principal purpose of which is to derive income from property, unless the corporation employs in the business throughout the year more than five full-time employees who are not specified shareholders of the corporation or persons related thereto.

All that portion of subsec. 125(6) preceding para. (a), para. 125(6)(b) substituted, paras. 125(6)(d)–(h) added by 1979, c. 5, subsecs. 38(4), (5), (6), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case (see also "Application — 1979, c. 5"). The substituted portion and para. formerly read:

(6) In this section,

. . . . .

(b) "cumulative deduction account" of a corporation at the end of any taxation year means the amount, if any, by which the aggregate of

(i) the corporation's cumulative deduction account at the end of the immediately preceding taxation year,

(ii) the amount, if any, by which the corporation's taxable income for the taxation year exceeds 4 times the least of the amounts determined under subparagraphs 129(3)(a)(i) to (iv) in respect of the corporation for the year,

(iii) 4/3 of the amount, if any, by which the aggregate of amounts deductible under section 112 or subsection 113(1) from the corporation's income for the year exceeds 4 times the amount of the tax under Part IV payable by the corporation for the year

exceeds

(iv) 4/3 of the amount, if any, by which the aggregate of the qualifying taxable dividends paid by the corporation in the year exceeds 4 times that proportion of its dividend refund (within the meaning assigned by subsection 129(1)) for the year that

(A) the aggregate of the qualifying taxable dividends paid by it in the year

is of

(B) the aggregate of the taxable dividends paid by it in the year; and

Application — 1979, c. 5 — Subsecs. 38(9), (10) provide as follows:

(9) Subsection (5) is applicable for the purposes of computing the cumulative deduction account of a corporation at the end of any taxation year ending after October 23, 1979 except that subparagraph 125(6)(b)(iv) of the Act, as amended, by deleting the reference to a proportion of a dividend refund, by subsection (5) of this section, is applicable for the purpose of computing the cumulative deduction account of a corporation at the end of any taxation year ending after November 16, 1978.

(10) For the purposes of paragraph 70(11)(c) (now 70(12)) of the Act, as amended by subsection 23(2) of this Act, the definitions "active business", "non-qualifying business" and "specified investment business" in subsection 125(6) of the said Act, as enacted by subsection (6) of this section, are applicable after May 25, 1978.

Subpara. 125(6)(b)(iv) substituted, para. 125(6)(c) and subsec. 125(7) added by 1977-78, c. 32, subsecs. 32(1), (2), applicable in computing the cumulative deduction account of a corporation at any time after April 10, 1978. Subpara. 125(6)(b)(iv) formerly read:

(iv) 4/3 of the amount, if any, by which the amount of taxable dividends paid by the corporation in the year exceeds 4 times its dividend refund (within the meaning assigned by subsection 129(1)) for the year.

Para. 125(6)(b) substituted by 1977-78, c. 1, subsec. 59(1), applicable to 1978 *et seq.* (see also under "Application — 1977-78, c. 1"). Para. 125(6)(b) formerly read:

(b) "cumulative deduction account" of a corporation at the end of any taxation year means the amount, if any, by which the aggregate of

(i) the corporation's taxable incomes for taxation years commencing after 1971 and ending not later than the end of the particular year, and

(ii) 4/3 of the amounts deductible under section 112 or subsection 113(1) from the corporation's incomes for those years

exceeds the aggregate of

(iii) 4/3 of the taxable dividends paid by the corporation in those years, and

(iv) 4 times the amount, if any, by which the corporation's refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) at the end of the particular year exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for the particular year.

Application — 1977-78, c. 1 — Subsecs. 59(3), (4) provide as follows:

(3) Where a corporation has a taxation year part of which is before 1978 and part of which is after 1977, the following rules apply:

(a) the amount determined under subparagraph 125(6)(b)(iii) of the said Act, as amended by this section, be computed as if the

phrase "4 times the amount of the tax under Part IV payable by the corporation for the year" read as "the aggregate of 3 times the amount of the tax under Part IV payable on dividends received by the corporation in the year and before 1978 and 4 times the amount of the tax payable under Part IV on dividends received by the corporation in the year and after 1977"; and

(b) the amount determined under subparagraph 125(6)(b)(iv) of the said Act, as amended by this section, shall be computed as if that subparagraph read:

"(iv) 4/3 of the amount that is the aggregate of

(A) the amount, if any, by which the aggregate of taxable dividends paid by the corporation in the year and before 1978, exceeds 3 times its dividend refund (within the meaning assigned by subsection 129(1)) for the year, and

(B) the amount, if any, by which the aggregate of taxable dividends paid by the corporation in the year and after 1977, exceeds 4 times the amount, if any, by which its dividend refund (within the meaning assigned by subsection 129(1)) for the year exceeds 1/3 of the aggregate of taxable dividends paid by the corporation in the year and before 1978."

(4) For the purpose of determining a corporation's cumulative deduction account at the end of its 1978 taxation year or, where it has more than one taxation year ending in 1978, the first of those years, subparagraph 125(6)(b)(i) shall read as follows:

"(i) the corporation's cumulative deduction account at the end of its last taxation year ending in 1977 within the meaning of this Act as it read in its application to the corporation's 1977 taxation year,".

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(8) formerly read:

(8) Rules applicable — Where any particular amount paid or payable to a corporation (in this subsection referred to as the "recipient corporation") by another corporation (in this subsection referred to as the "associated corporation") with which the recipient corporation was associated in any particular taxation year would otherwise be included in computing the income of the recipient corporation for the particular year from a non-qualifying business, the following rules apply:

(a) in computing the recipient corporation's income for the year from a non-qualifying business

(i) there shall not be included any portion (in this subsection referred to as the "specified portion") of the particular amount that was or may be deductible in computing the income of the associated corporation for any taxation year from an active business carried on by it in Canada, and

(ii) no deduction shall be made in respect of any outlay or expense, to the extent that that outlay or expense may reasonably be regarded as having been made or incurred by the recipient corporation for the purpose of gaining or producing the specified portion;

(b) the specified portion shall be deemed to be income of the recipient corporation for the particular year from carrying on an active business in Canada and the recipient corporation shall be deemed not to have carried on a non-qualifying business with respect to such income; and

(c) any outlay or expense, to the extent described in subparagraph (a)(ii), shall be deemed to have been made or incurred by the recipient corporation for the purpose of gaining or producing that income.

Para. 125(8)(b) substituted by 1980-81-82-83, c. 48, subsec. 70(7), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Para. 125(8)(b) formerly read:

(b) the specified portion shall be deemed to be income of the recipient corporation for the particular year from carrying on an active business in Canada; and

Subsec. 125(8) added by 1979, c. 3, subsec. 38(7), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

(8.1) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8.1) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(8.1) formerly read:

(8.1) Adjustments to the cumulative deduction account — Notwithstanding any other provisions of this Act, where, as a result of a transaction or event or a series of transactions or events,

(a) a corporation ceases to be associated with another corporation, or

(b) a business of a corporation is transferred either directly or indirectly to another corporation,

and it may reasonably be considered that one of the main reasons therefor is to effect an increase in the amount that, but for the transaction or event or series of transactions or events, would otherwise be deductible under subsection (1) or (1.1), the cumulative deduction account of any corporation for its taxation year immediately preceding any taxation year in which all or a portion of the increase would otherwise be deductible by it (and for the purposes of this section, the corporation shall, where it had no such immediately preceding taxation year, be deemed to have had such a year) shall be deemed to be the aggregate of its cumulative deduction account at the end of that preceding year, computed without reference to this subsection, and an amount equal to the amount required to eliminate the increase in respect of the corporation for the year.

Subsec. 125(8.1) substituted by 1984, c. 1, subsec. 69(10), applicable for the purpose of computing cumulative deduction accounts of corporation for 1982 *et seq.*, except that subsection 125(8.1) does not apply where the increase referred to therein arose as a result of a transaction or event that occurred before April 6, 1983, or as part of a series of transactions or events that commenced before that date; subsec. 125(8.1) formerly read:

(8.1) Adjustments to the cumulative deduction account — Where, at any time, as part of a transaction or event that occurred after December 1, 1982 or a series of transactions or events that commenced after December 1, 1982,

(a) a business of a corporation (in this subsection referred to as the "business corporation") has been transferred, either directly or indirectly, to a person (in this subsection referred to as the "transferee") with whom the business corporation did not deal at arm's length at the time of the transfer and a result of the transfer is that the total amount that may be deducted under this section in a taxation year in respect of income derived from that business is or may be increased,

(b) one or more shares of the capital stock of a corporation (in this subsection referred to as the "transferred corporation") have been disposed of by a shareholder or issued by the transferred corporation and a result of the disposition or issuance is that the total amount that may be deducted under this section in a taxation year by any corporation with respect to its income derived from carrying on any business is or may be increased, or

(c) one or more shares of the capital stock of a corporation (in this subsection referred to as the "redeeming corporation") have been redeemed, acquired or cancelled (otherwise than as part of a transaction or event or a series of transactions or events that result in a transfer of property in respect of which subsection (8.4) applies by the redeeming corporation and a result of the redemption, acquisition or cancellation is that the total amount that may be deducted under this section in a taxation year by any corporation with respect to its income derived from carrying on any business is or may be increased,

the following rules apply:

(d) in the case of a transfer of a business in circumstances described in paragraph (a), there shall, at the end of the transferee's taxation year immediately preceding its taxation year that included the time of the transfer (and for the purposes of this section the transferee shall be deemed to have had such a taxation year even though such a year did not exist), be added in computing its cumulative deduction account such portion of the amount of the cumulative deduction account of the business corporation at the end of its taxation year that included the time of the commencement of the transaction or event or series of transactions or events that resulted in the transfer as may reasonably be attributed to the income derived from that business;

(e) in the case of a disposition or issuance of one or more shares in circumstances described in paragraph (b), where a result thereof is that the transferred corporation or the new corporation (where there has been an amalgamation, within the mean-

ing assigned by subsection 87(1), of a transferred corporation) will cease to be associated, without ceasing to not deal at arm's length, with any other corporation (in this paragraph referred to as a "former associated corporation"), there shall be added in computing the cumulative deduction account of any former associated corporation (but not in respect of more than one such corporation) at the end of its taxation year that included the time of the disposition or issuance, the amount of the cumulative deduction account of the transferred corporation at the end of its taxation year that included that time;

(f) in the case of a redemption, acquisition or cancellation of one or more shares in circumstances described in paragraph (c), where a result thereof is that the redeeming corporation will cease to be associated, without ceasing to not deal at arm's length, with any other corporation (in this paragraph referred to as a "former associated corporation"), there shall be added in computing the cumulative deduction account of any former associated corporation (but not in respect of more than one such corporation) at the end of its taxation year that included the time of the redemption, acquisition or cancellation, the amount of the cumulative deduction account of the redeeming corporation at the end of its taxation year that included that time; and

(g) where, by virtue of paragraph (e) or (f) or this paragraph, an amount has been added in computing the cumulative deduction account of a corporation (in this paragraph referred to as the "former associated corporation") and that former associated corporation ceases, at any particular time, to be associated with any corporation (in this paragraph referred to as the "continuing corporation") as a result of a disposition, issuance, redemption, acquisition or cancellation of one or more shares of the capital stock of the former associated corporation in respect of which this subsection would not apply if this subsection were read without reference to this paragraph, there shall be added in computing the cumulative deduction account of the continuing corporation (but not in respect of more than one such continuing corporation) at the end of its taxation year that included the time of such disposition, issuance, redemption, acquisition or cancellation, an amount equal to the lesser of

(i) the aggregate of all amounts each of which is an amount that was added in computing the cumulative deduction account of the former associated corporation by virtue of paragraph (e) or (f) or this paragraph, and

(ii) the aggregate of

(A) the amount of the cumulative deduction account of the former associated corporation at the end of its taxation year that included the time of such disposition, issuance, redemption, acquisition or cancellation, and

(B) the aggregate of all amounts each of which is an amount deducted by the former associated corporation under paragraph (6)(b)(iv) in computing its cumulative deduction account in taxation years commencing after its last taxation year in which an amount was added, by virtue of paragraph (e) or (f) or this paragraph, in computing its cumulative deduction account and ending on or before the end of its taxation year that includes the time of such disposition, issuance, redemption, acquisition or cancellation that is attributable to dividends paid by it to a person other than the continuing corporation or a corporation that is associated with the continuing corporation at that particular time.

Subsec. 125(8.1) added by 1980-81-82-83, c. 140, subsec. 86(13), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

(8.2) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8.2) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(8.2) formerly read:

(8.2) Where an adjustment to the cumulative deduction account of a corporation is required pursuant to subsection (8.1) in order to eliminate an increase referred to in that subsection for a taxation year and all or a portion of the increase could be eliminated for the year by adjustments in respect of one or more other corporations, the increase may be eliminated in such manner as the corporations agree, and where they fail to notify the Minister of their agreement on the request of the Minister and within a reasonable time thereof, the increase shall be eliminated in such manner as may be determined by the Minister in order to give effect to that subsection.

Subsec. 125(8.2) substituted by 1984, c. 1, subsec. 69(10), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.* Subsec. 125(8.2) formerly read:

(8.2) Idem — For the purposes of subsection (8.1),

(a) where, at any time after December 1, 1982, there has been a transfer of a business, in respect of which subsection (8.1) did not apply, by a corporation (in this paragraph referred to as the "transferor") to another corporation (in this paragraph referred to as the "transferee") with which it did not deal at arm's length and the transfer of the business was followed by a disposition, issuance, redemption, acquisition or cancellation of one or more shares of the capital stock of the transferee to which subsection (8.1) applied, paragraph (8.1)(d) shall apply to the transfer of the business as if the business was transferred by the transferor on the first day of the taxation year of the transferee immediately following the transferee's taxation year that included the time of such disposition, issuance, redemption, acquisition or cancellation and, where the transferor has ceased to exist at the time of such disposition, issuance, redemption, acquisition or cancellation, it shall be deemed to have been in existence at that time and to have had at that time a cumulative deduction account that was its cumulative deduction account at the end of its taxation year that included the time of the transfer of the business;

(b) where, at any time after December 1, 1982, there has been a transfer of a business, in respect of which subsection (8.1) did not apply, by a corporation (in this paragraph referred to as the "transferor") to another corporation (in this paragraph referred to as the "transferee") with which it did not deal at arm's length and the transfer of the business is followed by a disposition, issuance, redemption, acquisition or cancellation of one or more shares of the capital stock of the transferor to which subsection (8.1) does not apply (otherwise than in the course of a winding-up to which subsection 88(1) applies) and a result of the disposition, issuance, redemption, acquisition or cancellation is that the transferor will cease to be associated with the transferee, paragraph (8.1)(d) shall apply to the transfer of the business as if the business was transferred to the transferee on the first day of its taxation year immediately following its taxation year that included the time of such disposition, issuance, redemption, acquisition or cancellation;

(c) where a particular corporation was not in existence at the time of a transfer of a business or at the time of a disposition, issuance, redemption, acquisition or cancellation of one or more shares of the capital stock of any corporation, in determining whether the particular corporation dealt at arm's length with any other corporation at that time,

(i) the particular corporation shall be deemed to have been in existence at that time, and

(ii) the persons who were its shareholders immediately before the commencement of the transaction or event or series of transactions or events referred to in subsection (8.1) shall be deemed to be its shareholders at the time of such transfer, disposition, issuance, redemption, acquisition or cancellation; and

(d) where it may reasonably be considered that one of the principal purposes of one or more transactions or events or series of transactions or events was to cause persons to deal at arm's length so as to render subsection (8.1) inapplicable with respect to a transfer of a business, a disposition or issuance of one or more shares of the capital stock of a corporation, or the redemption, acquisition or cancellation by a corporation of one or more shares of its capital stock, such persons shall be deemed not to deal with each other at arm's length.

Subsec. 125(8.2) added by 1980-81-82-83, c. 140, subsec. 86(13), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

(8.3) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8.3) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(8.3) formerly read:

(8.3) Where a corporation (in this subsection referred to as the "transferor") has ceased to carry on a business and another corporation (in this subsection referred to as the "transferee") has commenced to carry on that business, for the purposes of subsection (8.1) the transferor shall be deemed to have transferred the business

to the transferee at the time that the transferee commenced to carry on that business.

Subsec. 125(8.3) substituted by 1984, c. 1, subsec. 69(10), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.* Subsec. 125(8.3) formerly read:

(8.3) Idem — Where, after December 1, 1982 a corporation (in this subsection referred to as the "transferor") has ceased to carry on a business and another corporation (in this subsection referred to as the "transferee") with which it did not deal at arm's length commenced to carry on that business, for the purposes of subsection (8.1) the transferor shall be deemed to have transferred the business to the transferee at the time that the transferee commenced to carry on that business.

Subsec. 125(8.3) added by 1980-81-82-83, c. 140, subsec. 86(13), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

(8.4) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8.4) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(8.4) formerly read:

(8.4) Where, at any time in a taxation year of a corporation (in this subsection referred to as the "transferee"), property of another corporation (in this subsection referred to as the "transferor") has been transferred to the transferee in the course of a series of transactions or events described in paragraph 55(3)(b) (in this subsection referred to as the "transfer transactions") that commenced after November 12, 1981, there shall be added to the amount of the cumulative deduction account of the transferee at the end of its taxation year immediately preceding its taxation year that included the time of the transfer (and for the purposes of this section, the transferee shall, where it had no such immediately preceding taxation year, be deemed to have had such a year) the amount, if any, by which

(a) that proportion of the amount of the cumulative deduction account of the transferor that

(i) the fair market value of the property immediately before the commencement of the transfer transactions

is of

(ii) the fair market value of all the property of the transferor immediately before such commencement

exceeds

(b) 4 times the amount of the tax, if any, payable for the year under paragraph 186(1)(a) by the transferee or the shareholder of the transferee, as the case may be, that may reasonably be attributed to a dividend received in the year in the course of the transfer transactions,

and, for the purposes of this subsection, the amount of the cumulative deduction account of the transferor shall be deemed to be an amount equal to the aggregate of

(c) the amount of the cumulative deduction account of the transferor at the end of its taxation year immediately preceding its taxation year in which the transfer transactions commenced; and

(d) the aggregate of all amounts each of which is the amount of the transferor's taxable income derived from carrying on an active business or non-qualifying business for each taxation year ending in the period starting at the beginning of its taxation year that includes the time of commencement of the transfer transactions and ending at the end of its taxation year that includes the time of completion of the transfer transactions.

Subsec. 125(8.4) substituted by 1984, c. 1, subsec. 69(10), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*, except that subsec. 125(8.4) does not apply with respect to a transfer of property in the course of a series of transactions or events

(1) that commenced before December 2, 1982 unless the transferor and the transferee so agree, and

(2) that commenced after December 1, 1982 and before April 6, 1983 unless the transferor and the transferee so agree and were not dealing with each other at arm's length at the time of the transfer.

Subsec. 125(8.4) formerly read:

(8.4) Idem — Where, at any time in a taxation year of a corporation (in this subsection referred to as the "transferee"), property of another corporation (in this subsection referred to as the "transferor") has been transferred to the transferee as part of a transaction or event or a series of transactions or events to which subsection 55(2) would, but for paragraph 55(3)(b), apply that commenced after December 1, 1982 (in this subsection referred to as the "transfer transactions") and the transferor and transferee were dealing at arm's length at that time, there shall be added to the amount of the cumulative deduction account of the transferee at the end of its taxation year immediately preceding its taxation year that included the time of the transfer (and for the purposes of this section it shall be deemed to have had such a taxation year even though such a year did not exist) the amount, if any, by which

(a) that proportion of the amount of the cumulative deduction account of the transferor that

(i) the fair market value of the property immediately before the commencement of the transfer transactions

is of

(ii) the fair market value of all the property of the transferor at the time referred to in subparagraph (i)

exceeds

(b) four times the amount of tax, if any, payable by the transferee or the shareholder of the transferee, as the case may be, for the year under paragraph 186(1)(a) that may reasonably be attributed to a dividend received in the year in the course of the transfer transactions,

and for the purposes of this subsection, the amount of the cumulative deduction account of the transferor shall be deemed to be an amount equal to the aggregate of

(c) the amount of the cumulative deduction account of the transferor at the end of its taxation year immediately preceding its taxation year in which the transfer transactions commenced, and

(d) the aggregate of all amounts each of which is the amount of the transferor's taxable income derived from carrying on an active business or non-qualifying business for each taxation year ending in the period starting at the beginning of its taxation year that includes the time of commencement of the transfer transactions and ending at the end of its taxation year that includes the time of completion of the transfer transactions.

Subsec. 125(8.4) added by 1980-81-82-83, c. 140, subsec. 86(13), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

(8.5) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8.5) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(8.5) formerly read:

(8.5) Where a corporation (in this subsection referred to as the "payer") that is a member of an associated group in a particular taxation year pays a dividend in the particular taxation year to another member of the group (in this subsection referred to as the "recipient"), there shall be deducted from the cumulative deduction account of the recipient at the end of its taxation year in which the dividend was paid an amount equal to the lesser of

(a) the amount included for the taxation year by the recipient in respect of the dividend in determining the amount described in subparagraph (6)(b)(iii) in respect of that taxation year; and

(b) the amount that is equal to that proportion of the amount, if any, by which

(i) the aggregate of all amounts determined under subparagraphs (6)(b)(iv) to (iv.2) in respect of the payer for the particular taxation year

exceeds

(ii) the aggregate of all amounts determined under subparagraphs (6)(b)(i) to (iii.2) in respect of the payer for the particular taxation year,

that

(iii) the amount determined under paragraph (a) in respect of the dividend

is of

(iv) the aggregate of all amounts each of which is an amount determined under paragraph (a) in respect of each dividend paid in the particular taxation year by the payer to any member of the group in the particular taxation year.

Subsec. 125(8.5) substituted by 1984, c. 1, subsec. 69(10), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*, except that subsection 125(8.5) is applicable with respect

to dividends paid by the payer in its 1980 and subsequent taxation years. Subsec. 125(8.5) formerly read:

(8.5) Idem — Where

(a) an amount has been added, at any time, in computing the cumulative deduction account of a particular corporation by virtue of subsection (8.1) in respect of a transfer of a business

and, at any subsequent time,

(b) the particular corporation becomes associated with the business corporation referred to in paragraph (8.1)(d) or, where the business corporation referred to in paragraph (8.1)(d) has ceased to exist by virtue of a winding-up to which subsection 88(1) applied or by virtue of an amalgamation (within the meaning assigned by subsection 87(1)), becomes associated with its parent or the new corporation (either of which in this subsection is referred to as the "successor corporation"),

there shall be deducted from the amount of the cumulative deduction account of the business corporation or the successor corporation, as the case may be, at the end of its taxation year immediately preceding its taxation year that includes that subsequent time, an amount equal to the lesser of

(c) the amount referred to in paragraph (a), and

(d) the amount of the cumulative deduction account of the particular corporation at the end of its taxation year that includes that subsequent time.

Subsec. 125(8.5) added by 1980-81-82-83, c. 140, subsec. 86(13), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

(8.6) [Repealed under former Act]

Pre-RSC History: Subsec. 125(8.6) repealed by 1984, c. 1, subsec. 69(10), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.* Subsec. 125(8.6) formerly read:

(8.6) Idem — Where

(a) an amount has been added, at any time, in computing the cumulative deduction account of a particular corporation by virtue of subsection (8.1) in respect of a disposition, issuance, redemption, acquisition or cancellation of one or more shares of the capital stock of any other corporation

and, at any subsequent time,

(b) a corporation that was

(i) the transferred corporation referred to in paragraph (8.1)(b),

(ii) the redeeming corporation referred to in paragraph (8.1)(c), or

(iii) the former associated corporation referred to in paragraph (8.1)(g),

becomes associated with the particular corporation or, where the particular corporation has ceased to exist by virtue of a winding-up to which subsection 88(1) applied or by virtue of an amalgamation (within the meaning assigned by subsection 87(1)), becomes associated with its parent or the new corporation (either of which in this subsection is referred to as the "successor corporation"),

there shall be deducted in computing the cumulative deduction account of the particular corporation or the successor corporation, as the case may be, at the end of its taxation year immediately preceding its taxation year that includes that subsequent time, an amount equal to the lesser of

(c) the amount referred to in paragraph (a), and

(d) the amount of the cumulative deduction account of the corporation referred to in subparagraphs (b)(i) to (iii), as the case may be, at the end of its taxation year that includes that subsequent time.

Subsec. 125(8.6) added by 1980-81-82-83, c. 140, subsec. 86(13), applicable for the purpose of computing cumulative deduction accounts of corporations for 1982 *et seq.*

(9) [Repealed under former Act]

Pre-RSC History: Subsec. 125(9) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(9) formerly read:

(9) "Definitions" — For the purposes of this section,

(a) "business connected" at any time in a taxation year with a corporation means any business carried on by an individual, a partnership or another corporation if at that time more than 20% of the shares of any class of the capital stock of the corporation are owned, directly or indirectly, by

(i) the individual,

(ii) one or more members of the partnership,

(iii) one or more specified shareholders of the other corporation, or

(iv) the other corporation

as the case may be, and for the purposes of this definition,

(v) shares of the corporation owned by a person related to the individual referred to in subparagraph (i), a member of a partnership referred to in subparagraph (ii) or a shareholder referred to in subparagraph (iii) shall be deemed to be owned by that individual, member or shareholder, as the case may be, and not by the person who actually owned the shares,

(vi) a trust of which any individual, member or shareholder referred to in any of subparagraphs (i) to (iii) or any person related thereto is a beneficiary shall be deemed to be related to an individual referred to in subparagraph (i), a member of a partnership referred to in subparagraph (ii) or a shareholder referred to in subparagraph (iii), as the case may be; and

(vii) each member of a partnership shall be deemed to own that proportion of all the shares of any class of the capital stock of a corporation that are property of the partnership at that time that the fair market value at that time of his interest in the partnership is of the fair market value at that time of the interests of all members in the partnership;

(b) "entity" includes a partnership, a person other than a member of a related group and one or more persons who are members of a related group; and,

(c) "specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and for the purposes of this definition

(i) a taxpayer shall be deemed to own each share of the capital stock of a corporation owned at that time by a person with whom he does not deal at arm's length,

(ii) each beneficiary of a trust shall be deemed to own that proportion of all of such shares owned by the trust at that time that the fair market value at that time of his beneficial interest in the trust is of the fair market value at that time of all beneficial interests in the trust,

(iii) each member of a partnership shall be deemed to own that proportion of all the shares of any class of the capital stock of a corporation that are property of the partnership at that time that the fair market value at that time of his interest in the partnership is of the fair market value at that time of the interests of all members in the partnership, and

(iv) an individual who performs services on behalf of a corporation that would be carrying on a personal services business if the individual or any person related to the individual were at that time a specified shareholder of the corporation shall be deemed to be a specified shareholder of the corporation at that time if he, or any person or partnership with whom he does not deal at arm's length, is, or by virtue of any arrangement, may become, entitled, directly or indirectly, to not less than 10% of the assets or the shares of any class of the capital stock of the corporation or any corporation related thereto,

Subpara. 125(9)(a)(vii) added by 1980-81-82-83, c. 140, subsec. 86(14), and para. 125(9)(c) substituted by subsec. 86(15), both changes applicable to taxation years commencing after November 12, 1981. Para. 125(9)(c) formerly read:

(c) "specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year,

not less than 10% of the issued shares of any class of the capital stock of the corporation and for the purposes of this definition

(i) a taxpayer shall be deemed to own each share of the capital stock of the corporation owned at that time by a person with whom he does not deal at arm's length, and

(ii) each beneficiary of a trust shall be deemed to own that proportion of all of such shares owned by the trust at that time that the fair market value at that time of his beneficial interest in the trust is of the fair market value at that time of all beneficial interests in the trust.

All that portion of subsec. 125(9) preceding para. (a) substituted, by 1980-81-82-83, c. 48, subsec. 70(8), applicable to taxation years commencing after October 28, 1980. That portion formerly read:

(9) For the purposes of paragraphs (6)(f) and (h),

Subsec. 125(9) added by 1979, c. 5, subsec. 38(7), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

(9.1) [Repealed under former Act]

Pre-RSC History: Subsec. 125(9.1) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(9.1) formerly read:

(9.1) Business connected — For the purposes of this section, where a business is at any time a business connected with one or more corporations, that business shall be deemed to be a business connected with any other corporation that is controlled at that time by the one or more corporations.

Subsec. 125(9.1) added by 1980-81-82-83, c. 48, subsec. 70(9) applicable to taxation years commencing after October 28, 1980.

(10) [Repealed under former Act]

Pre-RSC History: Subsec. 125(10) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(10) formerly read:

(10) Where corporation a member of a partnership — For the purposes of subparagraph (6)(f)(ii), where a corporation was a member of a partnership at any time in a taxation year,

(a) there shall be included in the gross revenue for the year of a particular business carried on by the corporation in Canada, that proportion of the gross revenue of that business carried on in Canada by the partnership, for the fiscal period of the partnership coinciding with or ending in that year, that the corporation's share of the income of the partnership from that business for that fiscal period is of the income of the partnership from that business for that fiscal period; and

(b) clause (A) thereof shall be read as if the reference to "one entity" were a reference to "a number of entities that is not more than the number of members of the partnership at the end of the fiscal period of the partnership coinciding with or ending in that year".

Subsec. 125(10) added by 1979, c. 5, subsec. 38(7), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

(11) [Repealed under former Act]

Pre-RSC History: Subsec. 125(11) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(11) formerly read:

(11) Where corporation deemed to employ more than five full-time employees — For the purposes of paragraph (6)(h), a particular corporation shall be deemed to employ in its business more than five full-time employees throughout a taxation year if

(a) in the course of carrying on an active business, any other corporation associated with it, or a corporation that carried on a business connected (within the meaning assigned by paragraph (9)(a)) with it, provides managerial, administrative, financial, maintenance or other similar services to the particular corporation in the year; and

(b) the particular corporation could reasonably be expected to require more than the equivalent of five full-time employees if those services had not been provided.

Subsec. 125(11) added by 1979, c. 5, subsec. 38(7), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

(12) [Repealed under former Act]

Pre-RSC History: Subsec. 125(12) repealed by 1980-81-82-83, c. 140, subsec. 86(16), applicable to taxation years ending after 1982. Subsec. 125(12) formerly read:

(12) Definitions — For the purposes of paragraph (6)(b),

(a) "specified addition to the cumulative deduction account" of a corporation for a taxation year means the aggregate of

(i) where subparagraph (ii) does not apply to the corporation in the year and where the corporation carried on a non-qualifying business in Canada in the year and did not carry on such a business in Canada in its immediately preceding taxation year, an amount equal to 1/8 of its cumulative deduction account at the end of the immediately preceding taxation year,

(ii) where the corporation is a corporation formed as a result of an amalgamation (within the meaning of section 87) or merger, the taxation year is its first taxation year commencing after the amalgamation or merger and the corporation carried on a non-qualifying business in Canada in the year, an amount equal to 1/8 of the aggregate of amounts each of which is the cumulative deduction account, immediately before the amalgamation or merger, of a predecessor corporation that did not carry on a non-qualifying business in its last taxation year, and

(iii) where the corporation carried on a non-qualifying business in Canada in the year, 1/8 of the amount, if any, added under paragraph 88(1)(e.3) to the corporation's cumulative deduction account at the end of the year in respect of a subsidiary that did not carry on a non-qualifying business in the taxation year in which it was wound up; and

(b) "specified reduction in the cumulative deduction account" of a corporation for a taxation year means the aggregate of

(i) where subparagraph (ii) does not apply to the corporation in the year and where the corporation did not carry on a non-qualifying business in Canada in the year and carried on such a business in its immediately preceding taxation year, an amount equal to 1/9 of its cumulative deduction account at the end of the immediately preceding taxation year,

(ii) where the corporation is a corporation formed as a result of an amalgamation (within the meaning of section 87) or merger, the taxation year is its first taxation year commencing after the amalgamation or merger and the corporation did not carry on a non-qualifying business in Canada in the year, an amount equal to 1/9 of the aggregate of amounts each of which is the cumulative deduction account, immediately before the amalgamation or merger, of a predecessor corporation that carried on a non-qualifying business in its last taxation year, and

(iii) where the corporation did not carry on a non-qualifying business in Canada in the year, 1/9 of the amount, if any, added under paragraph 88(1)(e.3) to the corporation's cumulative deduction account at the end of the year in respect of a subsidiary that carried on a non-qualifying business in the taxation year in which it was wound up,

and, for greater certainty, a business carried on by a corporation in any taxation year preceding the taxation year of the corporation in respect of which subsection (1.1) came into force shall be deemed not to be a non-qualifying business.

Subsec. 125(12) added by 1979, c. 5, subsec. 38(7), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

(13) [Repealed under former Act]

Pre-RSC History: Subsec. 125(13) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(13) formerly read:

(13) Connected partnerships — For the purposes of this section,

(a) a partnership of which a corporation was a member in a taxation year (hereinafter referred to as the "first partnership") is connected with another partnership (hereinafter referred to as the "second partnership") if

(i) more than 50% of the total income or loss, as the case may be, of the first partnership for its fiscal periods ending

in or coinciding with the taxation year is included in the determination of the income of a particular person or a particular group of persons, and

(ii) more than 50% of the total income or loss, as the case may be, of the second partnership for its fiscal periods ending in or coinciding with the taxation year is included in the determination of the income of

(A) the particular person,

(B) the particular group of persons,

(C) any corporation associated with the particular person or with any member of the particular group of persons,

(D) any group of corporations each member of which is associated with the particular person or with any member of the particular group of persons, or

(E) any groups of persons each member of which is a person or a member of a group of persons described in any of clauses (A) to (D),

(b) "group of connected partnerships" means a group consisting of a partnership and all other partnerships with which the partnership is connected,

(c) a corporation is joined in a taxation year to a partnership if the partnership is connected in the year with another partnership and, with respect to both such partnerships, the corporation was a person or a member of a group of persons referred to in paragraph (a), and

(d) a corporation is joined in a taxation year to a group of connected partnerships if it is joined in the year to any partnership in that group.

Subsec. 125(13) added by 1980-81-82-83, c. 48, subsec. 70(10), applicable with respect to fixed periods of partnerships commencing after December 11, 1979.

(14) [Repealed under former Act]

Pre-RSC History: Subsec. 125(14) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(14) formerly read:

(14) **Idem** — Where the members of a particular partnership carry on a business and the Minister is satisfied that

(a) the existence of the particular partnership in a taxation year is not solely for the purpose of carrying on the business in the most effective manner, and

(b) one of the main reasons for such existence in the year is to increase the amount of a deduction under subsection (1) or (1.1),

if the Minister so directs,

(c) any other partnership shall be deemed to be connected in the year with the particular partnership and any corporation that is a member of that other partnership shall be deemed to be joined in the year to the particular partnership, or

(d) the specified limit of any corporation for the year in respect of the particular partnership shall be reduced to an amount that is reasonable in the circumstances.

Subsec. 125(14) added by 1980-81-82-83, c. 48, subsec. 70(10), applicable with respect to fixed periods of partnerships commencing after December 11, 1979.

(15) [Repealed under former Act]

Pre-RSC History: Subsec. 125(15) repealed by 1984, c. 45, s. 40, applicable to 1985 *et seq.* Subsec. 125(15) formerly read:

(15) **Appeal** — On an appeal from an assessment made pursuant to a direction under subsection (14), the Tax Court of Canada or the Federal Court may

(a) confirm the direction;

(b) vacate the direction if it determines that none of the main reasons for the existence of the particular partnership is to increase the amount of a deduction under subsection (1) or (1.1); or

(c) vary the direction and refer the matter back to the Minister for reassessment.

Subsec. 125(15) substituted by 1980-81-82-83, c. 158, s. 58, to substitute "Tax Court of Canada" for "Tax Review Board", applicable from July 18, 1983.

Subsec. 125(15) added by 1980-81-82-83, c. 48, subsec. 70(10), applicable with respect to fixed periods of partnerships commencing after December 11, 1979.

Definitions [s. 125]: "active business" — 125(7) (see also "income from ..."), 248(1); "amount", "assessment" — 248(1); "associated" — 256; "business" — 248(1); "business limit" — 125(2)-(5); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "carrying on business" — 253; "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "dividend", "employee" — 248(1); "fiscal period" — 249(2)(b), 249.1; "in Canada" — 255; "income from active business" — 125(7); "incorporated employee" — 125(7); "personal services business", "Minister", "non-resident", "person" — 248(1); "personal services business" — 125(7), 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700; "private corporation" — 89(1), 136, 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "share" — 248(1); "specified investment business" — 125(7), 248(1); "specified partnership income" — 125(7); "specified partnership loss" — 125(7); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 125]: IT-64R3: Corporations: association and control — after 1988; IT-73R5: The small business deduction; IT-151R4: Scientific research and experimental development expenditures; IT-189R2: Corporations used by practising members of professions; IT-243R4: Dividend refund to private corporations.

125.1 (1) Manufacturing and processing profits deductions — There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to 7% of the lesser of

(a) the amount, if any, by which the corporation's Canadian manufacturing and processing profits for the year exceed, where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(b) the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(i) where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(ii) 10/4 of the total of amounts deducted under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation, and

(iii) where the corporation was a Canadian-controlled private corporation throughout the year, its aggregate investment income for the year (within the meaning assigned by subsection 129(4)).

Selected Cases [para. 125.1(1)(b)]: *Lehman Bookbinding Ltd. v. MNR*, [1995] 2 C.T.C. 129 (FCTD) (Critical element was not whether there was manufacturing and processing, but whether activity was in respect of goods for sale).

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before claiming M&P deduction; 125.1(2) — Credit for generating electrical energy; 182 — Manufacturing of tobacco — surtax.

History: Subpara. 125.1(1)(b)(iii) amended by 1996, c. 21, s. 27, applicable to taxation years that end after June 1995. Subpara. (iii) formerly read:

(iii) where the corporation was a Canadian-controlled private corporation throughout the year, the amount determined under clause 129(3)(a)(i)(B) in respect of the corporation for the year.

That portion of subsec. 125.1(1) preceding para. (a) amended to substitute "7% for "5%" by 1994, c. 7, Sch. VIII (1993, c. 24), s. 64, applicable to 1993 *et seq.* except that, in its application to taxation years commencing

before 1994, the reference in the subsec. to "7%" shall be read as a reference to the total of

(a) that proportion of 5% that the number of days in the year that are before 1993 is of the number of days in the year,

(b) that proportion of 6% that the number of days in the year that are in 1993 is of the number of days in the year, and

(c) that proportion of 7% that the number of days in the year that are after 1993 is of the number of days in the year.

Pre-RSC History: Subsec. 125.1(1) substituted by 1988, c. 55, subsec. 103(1), applicable to taxation years ending after June 1988, except that in its application to taxation years ending after June 1988 and commencing before July 1991, subsec. 125.1(1) shall be read as follows:

125.1 (1) There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to the aggregate of

(a) that proportion of 7% of the lesser of

(i) the amount, if any, by which the corporation's Canadian manufacturing and processing profits for the year exceed, where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(ii) the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of

(A) where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(B) where the year commenced before July, 1988, 2 times the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation,

(C) where the year commenced after June, 1988, 1¾ of the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation, and

(D) where the corporation was a Canadian-controlled private corporation throughout the year, the amount determined under clause 129(3)(a)(i)(B) in respect of the corporation for the year

that the number of days in the year that are before July, 1988 is of the number of days in the year,

(b) that proportion of 2% of the lesser of the amounts determined under subparagraphs (a)(i) and (ii) in respect of the corporation for the year that the number of days in the year that are after June, 1988 and before July, 1989 is of the number of days in the year,

(c) that proportion of 3% of the lesser of the amounts determined under subparagraphs (a)(i) and (ii) in respect of the corporation for the year that the number of days in the year that are after June, 1989 and before July, 1990 is of the number of days in the year,

(d) that proportion of 4% of the lesser of the amounts determined under subparagraphs (a)(i) and (ii) in respect of the corporation for the year that the number of days in the year that are after June, 1990 and before July, 1991 is of the number of days in the year,

(e) that proportion of 5% of the lesser of the amounts determined under subparagraphs (a)(i) and (ii) in respect of the corporation for the year that the number of days in the year that are after June, 1991 is of the number of days in the year, and

(f) where the corporation was a Canadian-controlled private corporation throughout the year, that proportion of 5% of the lesser of

(i) the corporation's Canadian manufacturing and processing profits for the year, and

(ii) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year

that the number of days in the year that are before July, 1988 is of the number of days in the year.

Subsec. 125.1(1) formerly read:

125.1 (1) **Deduction from corporate tax: manufacturing and processing profits** — There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to the aggregate of

(a) 7% of the lesser of

(i) the amount, if any, by which the corporation's Canadian manufacturing and processing profits for the year exceed the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(ii) the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of

(A) [Repealed]

(B) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(C) 2 times the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation, and

(D) the amount, if any, by which the aggregate of the corporation's Canadian investment income for the year and its foreign investment income for the year (within the meanings assigned by subsection 129(4)) exceeds the amount, if any, deducted under paragraph 111(1)(b) from the corporation's income for the year; and

(b) 5% of the lesser of

(i) the corporation's Canadian manufacturing and processing profits for the year, and

(ii) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year.

That portion of para. 125.1(1)(a) preceding subpara. (i) amended to substitute "7%" for "9%" and all that portion of subsec. 125.1(1) following para. (b) repealed by 1986, c. 55, subsecs. 46(1), (2), applicable to taxation years ending after June 1987, except that there shall be deducted from the amount otherwise determined under paragraph 125.1(1)(a) in respect of a taxation year of a corporation commencing before July 1987 and ending after June 1987 that proportion of 1% of the lesser of the amounts determined under subparagraphs 125.1(1)(a)(i) and (ii) in respect of the corporation for the year that

(a) the number of days in the year that are before July, 1987

is of

(b) the number of days in the year.

That portion of subsec. 125.1(1) following para. (b) formerly read:

except that in applying this section for a taxation year after the 1973 taxation year, the reference in paragraph (a) to "9%" shall be read as a reference to "8%" for the 1974 taxation year, "7%" for the 1975 taxation year, and "6%" for the 1976 and subsequent taxation years.

Subsec. 46(3) of 1986, c. 55 (as substituted by s. 201), provides as follows:

(3) There shall be added to the amount otherwise determined in respect of a corporation for a taxation year under subsection 125.1(1) that proportion of 1% of the lesser of

(a) the corporation's Canadian manufacturing and processing profits for the year, and

(b) the least of the amounts determined under paragraphs 125(1)(a) to (c) of the said Act in respect of the corporation for the year

that the number of days in the year that are after June, 1987 and before July, 1988 is of the number of days in the year.

Subpara. 125.1(1)(a)(i), clause 125.1(1)(a)(ii)(B), subpara. 125.1(1)(b)(ii) substituted by 1984, c. 45, subsecs. 41(1)–(3), to substitute references to para. 125(1)(c) for (d), applicable to 1985 *et seq.*

Cl. 125.1(1)(a)(ii)(D) substituted by 1984, c. 1, s. 70, to substitute "deducted" for "deductible", applicable to 1983 *et seq.* and with respect to amount deductible under para. 111(1)(b) in respect of losses determined for 1983 *et seq.*

Cl. 125.1(1)(a)(ii)(A) repealed by 1976-77, c. 4, s. 50, applicable to 1976 *et seq.* Cl. 125.1(1)(a)(ii)(A) formerly read:

(A) the aggregate of

(I) the lesser of the amounts determined under paragraphs 124(2)(a) and (b) in respect of the corporation for the year, and

(II) the lesser of the amounts determined under paragraphs 124(2.1)(d) and (e) in respect of the corporation for the year,

Cl. 125.1(1)(a)(ii)(A) substituted by 1974-75-76, c. 26, s. 82, applicable to 1974 *et seq.* Cl. 125.1(1)(a)(ii)(A) formerly read:

(A) where the year ends after 1976, the lesser of the amounts determined under paragraphs 124(2)(a) and (b) in respect of the corporation for the year,

Selected Cases [subsec. 125.1(1)]: *Allarcom Pay Television Ltd. v. R.*, [2000] 1 C.T.C. 273 (FCA); aff'g [1996] 3 C.T.C. 2608 (TCC) (Cable TV contracts were supply of services, not goods); *Publi-Hebdos Inc. v. Canada*, [1995] 2 C.T.C. 330 (FCTD) (Free newspapers not held for sale or lease); *Tenneco Canada Inc. v. Canada*, [1991] 1 C.T.C. 323 (FCA) (Taxpayer carrying on servicing business not manufacturing or processing goods for sale in Canada); *Nowsco Well Service Ltd. v. Canada*, [1990] 1 C.T.C. 416 (FCA) (Taxpayer in well-servicing business allowed to claim manufacturing and processing deduction); *Dixie X-Ray Associates Ltd. v. The Queen*, [1988] 1 C.T.C. 69 (FCTD) (Manufacturing and processing credit disallowed when substance of business is provision of services); *Canadian Marconi Co. v. The Queen*, [1986] 2 C.T.C. 465 (SCC) (Short-term investment earnings are income from active business; "Canadian manufacturing and processing profits" not restricted to income from manufacturing or processing); *Levi Strauss of Canada Inc. v. The Queen*, [1982] C.T.C. 65 (FCA) (Manufacturing and processing deduction reduced when services rendered by contractor not considered as taxpayer's "cost of labour").

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

Forms: T2 SCH 27: Calculation of Canadian manufacturing and processing profits; T2 SCH 300: Newfoundland manufacturing and processing profits tax credit; T2 SCH 320: PEI manufacturing and processing profits tax credit; T2 SCH 321: PEI corporate investment tax credit; T2 SCH 344: Nova Scotia manufacturing and processing investment tax credit; T2 SCH 381: Manitoba manufacturing and processing tax credit; T2 SCH 401: Saskatchewan manufacturing and processing tax credit; T2 SCH 402: Saskatchewan manufacturing and processing investment tax credit; T2 SCH 404: Saskatchewan manufacturing and processing profits tax credit; T2 SCH 440: Yukon manufacturing and processing profits tax credit; T2 SCH 460: Northwest Territories investment tax credit; T2 SCH 480: Nunavut investment tax credit; T86: Manitoba manufacturing investment tax credit.

(2) Generating electrical energy for sale — A corporation that generates electrical energy for sale, or produces steam for use in the generation of electrical energy for sale, in a taxation year may deduct from its tax otherwise payable under this Part for the year 7% of the amount determined by the formula

$$A - B$$

where

A is the amount, if any, that would, if the definition "manufacturing or processing" in subsection (3), and in subsection 1104(9) of the *Income Tax Regulations*, were read without reference to paragraph (h) of those definitions (other than for the purpose of applying section 5201 of the *Income Tax Regulations*) and if subsection (5) applied for the purpose of subsection (1), be the lesser of

(a) the amount determined under paragraph (1)(a) in respect of the corporation for the year, and

(b) the amount determined under paragraph (1)(b) in respect of the corporation for the year; and

B is the amount, if any, that is the lesser of

(a) the amount determined under paragraph (1)(a) in respect of the corporation for the year, and

(b) the amount determined under paragraph (1)(b) in respect of the corporation for the year.

Proposed Amendment — 125.1(2) — Production of steam for sale

Notice of Ways and Means Motion, federal budget, February 28, 2000: *M&Rate for Producing Steam for Sale*

(42) That, for the purpose only of applying the manufacturing and processing profits tax rate reduction in subsection 125.1(2) of the Act for the 2000 and subsequent taxation years, the production of steam for sale be considered manufacturing or processing.

Federal budget, supplementary information, February 28, 2000: *Manufacturing and Processing Tax Rate Reduction Extended to Income from Sale of Steam*

Since 1973, the Government has provided a tax credit to reduce the rate of corporate tax applicable to Canadian manufacturing and processing profits. Before the February 16, 1999, budget, the definition of manufacturing and processing (M&P) had specifically excluded the production or processing of electrical energy or steam for sale. That budget proposed the extension of the M&P tax credit to corporations that produce, for sale, electrical energy or steam used in the generation of electricity.

This budget proposes to extend the M&P tax credit to corporations that produce, for sale, steam for uses other than the generation of electricity. This change will ensure that all producers of steam for sale will face the same income tax rate. Access to the credit will be phased in beginning January 1, 2000, with a three-percentage-point reduction. In each of the two subsequent years, there will be additional two-percentage-point reductions. The phase-in to M&P treatment will be completed in 2002. These proposed rate reductions will be prorated for taxation years that straddle calendar years.

Related Provisions: 125.1(5) — Interpretation; 257 — Formula cannot calculate to less than zero.

History: Subsec. 125.1(2) added by 2000, c. 19, subsec. 34(1), applicable to taxation years that end after 1998 except that, in its application to such a taxation year that begins before 2002, the reference to "7%" shall be read as a reference to the total of

(a) 0% multiplied by the number of days in the year that are before 1999,

(b) that proportion of "1%" that the number of days in the taxation year that are in the year is of the number of days in the taxation year,

(c) that proportion of "3%" that the number of days in the taxation year that are in the 2000 calendar year is of the number of days in the taxation year,

(d) that proportion of "5%" that the number of days in the taxation year that are in the 2001 calendar year is of the number of days in the taxation year,

(e) that proportion of "7%" that the number of days in the taxation year that are in the 2002 calendar year is of the number of days in the taxation year, and

(f) that proportion of "7%" that the number of days in the taxation year that are in the 2003 calendar year is of the number of days in the taxation year.

Pre-RSC History [former subsec. 125.1(2)]: Former subsec. 125.1(2) repealed by 1988, c. 55, subsec. 103(2), applicable to 1987 *et seq.* Subsec. 125.1(2) formerly read:

(2) Determination of percentage referred to in paras. (1)(a) and (b) for certain taxation years — Where a corporation has a taxation year (in this subsection referred to as the "particular taxation year"), part of which is before and part of which is after the commencement of any of the calendar years 1973, 1974, 1975 and 1976 (in this subsection referred to as the "particular calendar year"), the percentage referred to in paragraph (1)(a) for the particular taxation year, when the reference to that percentage is read as provided in subsection (1), is the percentage that is equal to the aggregate of

(a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year, is of the number of days in the whole of the particular taxation year, and

(b) that proportion of the percentage, if any, so referred to for the taxation year immediately preceding the particular taxation

year that the number of days in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year, is of the number of days in the whole of the particular taxation year,

and where a corporation has a taxation year part of which is before and part of which is after the commencement of 1973, the percentage referred to in paragraph (1)(b) for that taxation year is that proportion of that percentage that the number of days in that portion of that taxation year that is in 1973 is of the number of days in the whole of that taxation year.

(3) **Definitions** — In this section,

"Canadian manufacturing and processing profits" of a corporation for a taxation year means such portion of the total of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada as is determined under rules prescribed for that purpose by regulation made on the recommendation of the Minister of Finance to be applicable to the manufacturing or processing in Canada of goods for sale or lease; and

Pre-RSC History: *The definition "Canadian manufacturing and processing profits" was para. 125.1(3)(a).*

Selected Cases [subsec. 125.1(3)"Canadian manufacturing and processing profits"]: *Mont-Sutton Inc. v. R.*, [2000] 1 C.T.C. 311 (FCA) (No "rental" of snow at ski resort; "surface construction" considered); *Industrial Forestry Service Ltd. v. MNR*, [1992] 1 C.T.C. 2182 (TCC) (Creation of digital maps and aerial triangulation qualified for manufacturing and processing deduction); *Crown Tire Service Ltd. v. The Queen*, [1983] C.T.C. 412 (FCTD) (Repair contracts where ownership of equipment retained by customers do not constitute manufacturing or processing of goods for sale or lease); *The Queen v. McGraw-Hill Ryerson Ltd.*, [1982] C.T.C. 167 (FCA) (Taxpayer retaining control over quality of products allowed to claim manufacturing and processing deduction); *Canadian Clyde Tube Forgings Ltd. v. The Queen*, [1982] C.T.C. 21 (FCA) (Amount paid to contractor for service not normally rendered by taxpayer's employees not included in "cost of labour"); *Canadian Wirevision Ltd. v. The Queen*, [1979] C.T.C. 122 (FCA) (Taxpayer not entitled to deduction since television and radio signals not "goods"); *St. Catharines Standard Ltd. v. The Queen*, [1978] C.T.C. 258 (FCTD) (Salaries to employees of newspaper publisher included in calculation of manufacturing and processing credit).

Regulations: 5200–5204 (Canadian manufacturing and processing profits).

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

"manufacturing or processing" does not include

(a) farming or fishing,

(b) logging,

(c) construction,

(d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation of petroleum or natural gas,

(e) extracting minerals from a mineral resource,

(f) processing

(i) ore (other than iron ore or tar sands ore) from a mineral resource located in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource located in Canada to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource located in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(g) producing industrial minerals,

(h) producing or processing electrical energy or steam, for sale,

(i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility,

(j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(k) Canadian field processing, or

(l) any manufacturing or processing of goods for sale or lease, if, for any taxation year of a corporation in respect of which the expression is being applied, less than 10% of its gross revenue from all active businesses carried on in Canada was from

(i) the selling or leasing of goods manufactured or processed in Canada by it, and

(ii) the manufacturing or processing in Canada of goods for sale or lease, other than goods for sale or lease by it.

Related Provisions: 127(11)(a) — Meaning of "manufacturing or processing" for investment tax credit purposes; Reg. 1104(9) — Definition of manufacturing or processing for Class 29 purposes.

History: Paras. (d) to (k) of the definition "manufacturing or processing" in subsec. 125.1(3) amended by 1997, c. 25, s. 33, applicable to taxation years that begin after 1996. Paras. (d) to (k) formerly read:

(d) operating an oil or gas well, extracting petroleum or natural gas from a natural accumulation thereof or processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(e) extracting minerals from a mineral resource,

(f) processing ore (other than iron ore or tar sands) from a mineral resource located in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(g) processing iron ore from a mineral resource located in Canada to any stage that is not beyond the pellet stage or its equivalent,

(h) processing tar sands from a mineral resource located in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(i) producing industrial minerals other than sulphur produced by processing natural gas,

(j) producing or processing electrical energy or steam, for sale,

(k) processing gas, if such gas is processed as part of the business of selling or distributing gas in the course of operating a public utility, or

Paras. (f) to (h) of "manufacturing or processing" in subsec. 125.1(3) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 101, to add "located in Canada" in (f) and (g) and "from a mineral resource located in Canada" in (h), applicable to 1990 *et seq.*

Pre-RSC History: *The definition "manufacturing or processing" was para. 125.1(3)(b). See Table of Concordance.*

Subpara. 125.1(3)(b)(iv) amended by 1986, c. 6, subsec. 31(2), applicable to taxation years ending after March 1985, to add "extracting petroleum or natural gas from a natural accumulation thereof".

Subparas. 125.1(3)(b)(vi) and (vi.1) substituted and (vi.2) added by 1985, c. 45, s. 70, applicable to 1985 *et seq.* Subparas. (b)(vi) and (vi.1) formerly read:

(vi) processing, to the prime metal stage or its equivalent, ore (other than iron ore) from a mineral resource,

(vi.1) processing, to the pellet stage or its equivalent, iron ore from a mineral resource,

Subpara. 125.1(3)(b)(vi) substituted and subpara. 125.1(3)(b)(vi.1) added by 1980-81-82-83, c. 140, s. 87, applicable to taxation years commencing after November 12, 1981. Subpara. (b)(vi) formerly read:

(vi) processing, to the prime metal stage or its equivalent, ore from a mineral resource,

Subpara. 125.1(3)(b)(iv) substituted by 1980-81-82-83, c. 48, s. 71, applicable to 1981 *et seq.* Subpara. (b)(iv) formerly read:

(iv) operating an oil or gas well,

Subpara. 125.1(3)(b)(vii) substituted by 1977-78, c. 1, s. 60, applicable to 1977 *et seq.* Subpara. (b)(vii) formerly read:

(vii) producing industrial minerals,

Selected Cases [subsec. 125.1(3)"manufacturing or processing"]: *Mont-Sutton Inc. v. R.*, [2000] 1 C.T.C. 311 (FCA) (No "rental" of snow at ski resort; "surface construction" considered); *Qit-Fer et Titane Inc. v. Canada*, [1996] 2 C.T.C. 30 (FCA) (Gerund and infinitive forms of verbs have same meaning); *The Queen v. Nova Construction Co. Ltd.*, [1986] 1 C.T.C. 68 (FCA) (Credit refused where profits from product not derived from manufacturing or processing); *Halliburton Services Ltd. v. The Queen*, [1985] 2 C.T.C. 52 (FCTD) (Profit on processing of product considered manufacturing or processing profit); *Nova Scotia Sand and Gravel Ltd. v. The Queen*, [1980] C.T.C. 378 (FCA) (Taxpayer excavating sand and gravel allowed manufacturing and processing credit).

Interpretation Bulletins: IT-92R2: Income of contractors; IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax; IT-411R: Meaning of "construction".

I.T. Technical News: No. 8 (pre-delivery service of new vehicles); No. 19 (Canadian manufacturing and processing profits — change to Interpretation Bulletin IT-145R).

(4) Determination of gross revenue — For the purposes of paragraph (l) of the definition "manufacturing or processing" in subsection (3), where a corporation was a member of a partnership at any time in a taxation year,

(a) there shall be included in the gross revenue of the corporation for the year from all active businesses carried on in Canada, that proportion of the gross revenue from each such business carried on in Canada by means of the partnership, for the fiscal period of the partnership coinciding with or ending in that year, that the corporation's share of the income of the partnership from that business for that fiscal period is of the income of the partnership from that business for that fiscal period; and

(b) there shall be included in the gross revenue of the corporation for the year from all activities described in subparagraphs (l)(i) and (ii) of the definition "manufacturing or processing" in subsection (3), that proportion of the gross revenue from each such activity engaged in in the course of a business carried on by means of the partnership, for the fiscal period of the partnership coinciding with or ending in that year, that the corporation's share of the income of the partnership from that business for that fiscal period is of the income of the partnership from that business for that fiscal period.

(5) Interpretation — For the purpose of the description of A in subsection 125.1(2) and for the purpose of applying the *Income Tax Regulations* (other than section 5201 of the Regulations) to that subsection other than the description of B,

(a) electrical energy is deemed to be a good; and

(b) the generation of electrical energy for sale, or the production of steam for use in the generation of electrical energy for sale, is deemed to be, subject to paragraph (l) of the definition "manufacturing or processing" in subsection (3), manufacturing or processing.

History: Subsec. 125.1(5) added by 2000, c. 19, subsec. 34(2), applicable to taxation years that end after 1998.

Pre-RSC History [s. 125.1]: S. 125.1 added by 1973-74, c. 29, subsec. 1(1), applicable (by subsec. 1(2)) to 1973 *et seq.*

1973-74, c. 29, subsecs. 1(3), (4) provide as follows:

(3) Procedure where motion filed with speaker — Where, at any time after March 31, 1974, a motion for the consideration of the House of Commons, signed by not less than sixty members of the House, is filed with the Speaker to the effect that section 125.1 of the *Income Tax Act*, as enacted by subsection (1), be amended, or to the effect that subsection (2) be amended, so as to

(a) discontinue the deduction that would otherwise be permitted by the said section 125.1,

(b) reduce the amount of the deduction that would otherwise be permitted by that section, or

(c) in any other manner, restrict the application of the provisions of that section,

for any period commencing after the motion is filed, the House of Commons shall, within the first fifteen days next after the motion is filed that the House is sitting, in accordance with the Rules of the House, take up and consider the motion, and if the motion, with or without amendments, is approved by the House, the Minister of Finance shall forthwith take such steps as are necessary in order that a measure in his name giving effect to the motion may be placed before the House without delay.

(4) Time for deciding questions — All questions in connection with any motion taken up and considered by the House of Commons pursuant to subsection (3) shall be debated without interruption and decided not later than the end of the third sitting day next after the day the motion is first so taken up and considered, and any measure required to be placed before the House pursuant to that subsection giving effect to any such motion shall be placed before the House not later than the end of the fifteenth sitting day next after the day the motion, with or without amendments, is approved by the House, and all questions in connection with any such measure shall be debated without interruption and decided not later than the end of the seventh sitting day next after the day the measure is first so placed before the House.

Selected Cases [s. 125.1]: *Range Grain Co. v. R.*, [1997] 2 C.T.C. 227 (FCTD) (Gross revenues of commission agent do not include funds provided by principal to carry out contracts); *NRB Inc. v. Canada*, [1993] 1 C.T.C. 2435 (TCC) (Amounts paid to subcontractors included in computing cost of manufacturing and processing labour); *International Petrodata Inc v. Canada*, [1993] 1 C.T.C. 2189 (TCC) (Compilation of technical data recorded on computer tapes and microfiches was manufacturing or processing); *Rolls Royce (Canada) Ltd. v. Canada*, [1993] 1 C.T.C. 272 (FCA); leave to appeal to SCC refused (1993), 158 N.R. 400 (note) (Rebuilding motors not manufacturing or processing); *Lomex Inc. v. MNR*, [1992] 2 C.T.C. 2678 (TCC) (Picking up and transporting raw materials to plant was "receiving" raw materials for manufacturing and processing under paragraph 5202(a)(ii) of Regulations); *Nettoyeurs Shefford Inc. v. MNR*, [1992] 2 C.T.C. 2353 (TCC) (Laundry business not manufacturing or processing); *Tuyauteries Saglac Inc. v. MNR*, [1992] 2 C.T.C. 2307 (TCC) (Customizing and installing piping was manufacturing and processing); *Hawboldt Hydraulics (Canada) Inc. Estate (Trustee of) v. Canada*, [1992] 2 C.T.C. 363 (FCTD) (Equipment used to manufacture replacement parts was used in manufacturing or processing goods for sale); *Tenneco Canada Inc. v. Canada*, [1991] 1 C.T.C. 323 (FCA) (Assembling parts produced elsewhere not manufacturing despite adjustments made to parts).

Definitions [s. 125.1]: "amount", "business" — 248(1); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian field processing" — 248(1); "Canadian manufacturing and processing profits" — 125.1(3); "corporation" — 248(1), *Interpretation Act* 35(1); "gross revenue" — 125.1(4), 248(1); "manufacturing or processing" — 125.1(3); "mineral resource", "oil or gas well", "tar sands" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

125.2 (1) Deduction of [pre-1992] Part VI tax — There may be deducted in computing the tax payable under this Part for a taxation year by a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) an amount equal to such part as the corporation claims of its unused Part VI tax credits for any of its 7 immediately preceding taxation years ending before 1992, to the extent that that amount does not exceed the amount, if any, by which

(a) its tax payable under this Part (determined without reference to this section) for the year

exceeds the total of

(b) the amount that would, but for subsection 190.1(3), be its tax payable under Part VI for the year, and

(c) the lesser of its Canadian surtax payable (within the meaning assigned by subsection 125.3(4)) for the year and the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

Related Provisions: 123.2(a) — Corporate surtax applies to total tax before claiming this credit; 181.1(4)–(7) — Credit of surtax against Part VI tax after 1991. See also Related Provisions and Definitions at end of 125.2.

History: Subsec. 125.2(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 65(1), applicable to 1992 *et seq.* and, where a corporation elected under subsection 111(2) (of the amending legislation — see under subsec. 190.1(2)) to have subsection 111(1) (of the amending legislation) apply to its taxation years ending in 1991, to all such years except that in its application to such years, subsec. 125.2(1) shall be read without reference to:

(a) the expression "the total of",

(b) the word "and" at the end of para. 125.2(1)(b), and

(c) para. 125.2(1)(c),

and the reference therein to "1992" shall be read as "1991". Subsec. 125.2(1) formerly read:

(1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) an amount equal to the total of

(a) its tax payable under Part VI for the year, and

(b) such part of its unused Part VI tax credits for the seven taxation years immediately preceding and the three taxation years immediately following the year as the corporation may claim.

Special Application: 1994, c. 7, Sch. II (1991, c. 49), s. 102 provides that in its application to corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), for taxation years beginning before February 21, 1990, subsec. 125.2(1) shall be read as follows:

"125.2(1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) an amount equal to the lesser of

(a) the total of

(i) its tax payable under Part VI for the year, and

(ii) such part of its unused Part VI tax credits for the 3 taxation years immediately following the year as the corporation claims; and

(b) that proportion of its tax otherwise payable under this Part for the year that the number of days in the year that are after February 20, 1990 is of the number of days in the year."

Forms: T2 SCH 42: Calculation of unused Part VI tax credit and unused Part I tax credit.

(2) Idem — For the purposes of this section,

(a) an amount may not be claimed under subsection (1) in computing a corporation's tax payable under this Part for a particular taxation year in respect of its unused Part VI tax credit for another taxation year until its unused Part VI tax credits for taxation years preceding the other year that may be claimed for the particular year have been claimed; and

(b) an amount in respect of a corporation's unused Part VI tax credit for a taxation year may be claimed under subsection (1) in computing its tax payable under this Part for another taxation year only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of that unused Part VI tax credit in computing its tax payable under this Part for a taxation year preceding that other year.

(3) Definition of "unused Part VI tax credit" — For the purposes of this section, "unused Part VI tax credit" of a corporation for a taxation year is the lesser of

(a) its tax payable under Part VI (determined without reference to subsections 190.1(1.1) and (3)) for the year, and

(b) the amount determined by the formula

$$A - B$$

where

A is its tax payable under Part VI for the year (determined without reference to subsection 190.1(3)), and

B is the amount, if any, by which

(i) the amount that would, but for this section, be its tax payable under this Part for the year

exceeds

(ii) the lesser of its Canadian surtax payable (within the meaning assigned by subsection 125.3(4)) and the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

History: Subsec. 125.2(3) substituted by 1994, c. 21, s. 58, applicable for the purpose of computing the amount that may be deducted by a corporation under subsec. 125.2(1),

(a) subject to paragraphs (b) and (c), for taxation years that end before 1992 in respect of unused Part VI tax credits for taxation years that end after 1991;

(b) where the corporation has elected under subsec. 111(2) of 1993, c. 24 [see under subsec. 190.1(2)], for its taxation years that end before 1991 in respect of unused Part VI tax credits for taxation years that end after 1990, except that for the purpose of computing its unused Part VI tax credits under subsec. 125.2(3) for taxation years that end in 1991, the amount determined under subpara. (ii) of the description of B in subsec. 125.2(3) shall be deemed to be nil; and

(c) where paragraph (b) does not apply and the corporation elected under paragraph 88(2)(b) of 1994, c. 21, [see under subpara. 190.11(b)(i)], for its taxation years that end before 1992 in respect of unused Part VI tax credits for taxation years that end after 1990, except that

(i) for the purpose of computing its unused Part VI tax credits under subsec. 125.2(3) for its taxation years that end in 1991, the amount determined under subpara. (ii) of the description of B in subsec. 125.2(3) shall be deemed to be nil, and

(ii) for the purpose of computing the amount that it may deduct under subsec. 125.2(1) for its taxation years that end in 1991, para. 125.2(3)(a) shall be read as follows:

(a) its tax payable under Part VI (determined without reference to subsection 190.1(3)) for the year, and

Subsec. 125.2(3) formerly read:

(3) For the purposes of this section, "unused Part VI tax credit" of a corporation for a taxation year ending after 1991 means the amount determined by the formula

$$A - B$$

where

A is the corporation's tax payable under Part VI for the year (determined without reference to subsection 190.1(3)), and

B is the amount, if any, by which

(a) the amount that would, but for this section, be its tax payable under this Part for the year

exceeds

(b) the lesser of its Canadian surtax payable (within the meaning assigned by subsection 125.3(4)) and the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

Subsec. 125.2(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 65(2), applicable for the purpose of computing the amount that may be deducted by a corporation under subsec. 125.2(1)

(a) subject to paragraph (b), for taxation years ending before 1992 in respect of unused Part VI tax credits for taxation years ending after 1991; or

(b) where the corporation elected under subsection 111(2) (of the amending legislation — see under subsec. 190.1(2)) to have subsection 111(1) (of the amending legislation) apply to its taxation years ending in 1991, for its taxation years ending before 1991 in respect of unused Part VI tax credits for taxation years ending after 1990, except that, for the purpose of computing its unused Part VI tax credits under subsec. 125.2(3), as amended, for taxation years ending in 1991, the amount determined under paragraph (b) in the description of B in the said subsection 125.2(3) shall be deemed to be nil.

Subsec. 125.2(3) formerly read:

(3) Definition of "unused Part VI tax credit" — In this section, "unused Part VI tax credit" of a corporation for a taxation year means the amount, if any, by which the corporation's tax payable under Part VI for the year exceeds the amount that would, but for this section, be its tax payable under this Part for the year.

Special Application: 1994, c. 7, Sch. II (1991, c. 49), s. 102 provides that in its application to corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), subsec. 125.2(3) shall be read as follows:

"(3) For the purposes of this section, "unused Part VI tax credit" of a corporation for a taxation year commencing before February 21, 1990 means the amount, if any, by which the corporation's tax payable under Part VI for the year exceeds the amount deductible under subsection (1) in computing its tax payable under this Part for the year."

Related Provisions [s. 125.2]: 87(2)(j.9) — Amalgamation; 88(1)(e.2) — Windings-up; 152(6) — Reassessment; 161(7)(a)(vi) — Interest — Effect of carryback of loss, etc.; 164(5.1)(g) — Refund of taxes — Interest payable in respect of repayment of amount in controversy; 257 — Formula cannot calculate to less than zero.

Pre-RSC History [s. 125.2]: S. 125.2 added by 1988, c. 55, s. 104, applicable to 1988 *et seq.*, except that for the purposes of s. 125.2 the unused Part VI tax credit of the corporation for each taxation year ending before 1988 shall be deemed to be nil.

Definitions [s. 125.2]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "tax payable" — 248(2); "taxation year" — 249; "unused Part VI tax credit" — 125.2(3).

Forms: T2 SCH 42: Calculation of unused Part VI tax credit and unused Part I tax credit.

125.3 (1) Deduction of [pre-1992] Part I.3 tax — There may be deducted in computing the tax payable under this Part for a taxation year by a corporation (other than a corporation that was throughout the year a financial institution, within the meaning assigned by section 190) an amount equal to such part as the corporation claims of its unused Part I.3 tax credits for any of its 7 immediately preceding taxation years ending before 1992, to the extent that that amount does not exceed the amount, if any, by which

(a) its Canadian surtax payable for the year

exceeds

(b) the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year.

Related Provisions: 87(2)(j.9) — Amalgamations — continuing corporation; 88(1)(e.2) — Winding-up; 123.2(a) — Corporate surtax applies to total tax before claiming this credit.

History: Subsec. 125.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 66(1), applicable to 1992 *et seq.* Subsec. (1) formerly read:

(1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation an amount equal to the lesser of

(a) the total of

(i) its tax payable under Part I.3 for the year, and

(ii) such part of its unused Part I.3 tax credits for the 7 taxation years immediately preceding and the 3 taxation years immediately following the year as the corporation may claim; and

(b) its Canadian surtax payable for the year.

Forms: T2 SCH 37: Calculation of unused Part I.3 tax credit and unused surtax credit.

(1.1) Idem — There may be deducted in computing the tax payable under this Part for a taxation year by a corporation that was a financial institution (within the meaning assigned by section 190) throughout the year an amount equal to such part as the corporation claims of its unused Part I.3 tax credits for any of its 7 immediately preceding taxation years ending before 1992, to the extent that that amount does not exceed the lesser of

(a) the amount, if any, by which its Canadian surtax payable for the year exceeds the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year, and

(b) the amount, if any, by which its tax payable under this Part (determined without reference to this section and section 125.2) for the year exceeds the amount that would, but for subsections 181.1(4) and 190.1(3), be the total of its taxes payable under Parts I.3 and VI for the year.

Related Provisions: 152(6)(f) — Assessments; 161(7)(a)(vii) — Interest — effect of carryback of loss, etc.; 164(5.1)(h) — Refund of taxes — effect of carryback of loss, etc.; 181.1(4)–(7) — Credit of surtax against Part I.3 tax after 1991.

History: Subsec. 125.3(1.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 66(1), applicable to 1992 *et seq.*

(2) Special rules — For the purposes of this section,

(a) no amount may be claimed under subsection (1) in computing a corporation's tax payable under this Part for a particular taxation year in respect of its unused Part I.3 tax credit for another taxation year until its unused Part I.3 tax credits for taxation years preceding the other year that may be claimed for the particular year have been claimed; and

(b) an amount in respect of a corporation's unused Part I.3 tax credit for a taxation year may be claimed under subsection (1) in computing its tax payable under this Part for another taxation year only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of that unused Part I.3 tax credit in computing its tax payable under this Part for a taxation year preceding that other year.

(3) Acquisition of control — Where, at any time, control of a corporation has been acquired by a person or group of persons, no amount in respect of its unused Part I.3 tax credit for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time and no amount in respect of its unused Part I.3 tax credit for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time, except that

(a) where a business was carried on by the corporation in a taxation year ending before that time, its unused Part I.3 tax credit for that year is deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year and only to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of its income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, its income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the particular year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business,

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) where a business was carried on by the corporation throughout a taxation year ending after that time, its unused Part I.3 tax credit for that year is deductible by the corporation for a particular taxation year ending before that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit in the particular year and only to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of its income for the particular year from that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, its income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the particular year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business,

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

Related Provisions: 256(6)–(9) — Whether control acquired; 256(9) — Date of acquisition of control.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

(4) Definitions — For the purposes of this section,

"Canadian surtax payable" of a corporation for a taxation year means

(a) in the case of a corporation that is non-resident throughout the year, the lesser of

(i) the amount determined under section 123.2 in respect of the corporation for the year, and

(ii) its tax payable under this Part for the year, and

(b) in any other case, the lesser of

(i) the prescribed proportion of the amount determined under section 123.2 in respect of the corporation for the year, and

(ii) its tax payable under this Part for the year;

History: The definition "Canadian surtax payable" in subsec. 125.3(4) substituted by 1994, c. 21, s. 59, applicable to 1994 *et seq.* That definition formerly read:

"Canadian surtax payable" of a corporation for a taxation year means

(a) in the case of a corporation that is throughout the year not resident in Canada, the amount determined under section 123.2 in respect of the corporation for the year, and

(b) in any other case, the prescribed proportion of the amount determined under section 123.2 in respect of the corporation for the year;

Regulations: 8602 (prescribed proportion).

"unused Part I.3 tax credit" of a corporation for a taxation year means

(a) where the year ended before 1992, the amount, if any, by which its tax payable under Part I.3 for the year exceeds the amount deductible under subsection (1) in computing its tax payable under this Part for the year, and

(b) where the year ends after 1991, the amount, if any, by which the corporation's tax payable under Part I.3 for the year (determined without reference to subsection 181.1(4)) exceeds its Canadian surtax payable under this Part for the year.

Related Provisions: 87(2)(j.9) — Amalgamations; 88(1)(e.2) — Winding-up.

History: "Unused Part I.3 tax credit" in subsec. 125.3(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 66(2), applicable for the purpose of computing the amount that may be deducted under subsec. 125.3(1) for taxation years ending after June 1989. The definition formerly read:

"unused Part I.3 tax credit" of a corporation for a taxation year means the amount, if any, by which the corporation's tax payable under Part I.3 for the year exceeds the amount deductible under subsection (1) in computing its tax payable under this Part for the year.

Forms: T2 SCH 37: Calculation of unused Part I.3 tax credit and unused surtax credit.

Pre-RSC History [s. 125.3]: S. 125.3 added by 1990, c. 39, s. 29, applicable (by subsec. 29(2), as amended by 1991, c. 49, s. 254) to taxation years ending after June 1989 except that, in its application to a taxation year of a corporation commencing before July 1989, the definition "Canadian surtax payable" in subsec. 125.3(4) shall be read as follows:

"Canadian surtax payable" of a corporation for a taxation year means that proportion of

(a) in the case of a corporation that is throughout the year not resident in Canada, the amount determined under section 123.2 in respect of the corporation for the year, and

(b) in any other case, the prescribed proportion of the amount determined under section 123.2 in respect of the corporation for the year

that the number of days in the year that are after June 1989 is of the number of days in the year;

The amendment ensures that the definition applies without reference to the new surtax credit provided under Part I.3 (see subsec. 181.1(4)). In other words, Part I.3 liability, for purposes of calculating the amount of any excess of that liability over Canadian surtax payable, is determined before accounting for the reduction of Part I.3 tax by the new surtax credit.

Definitions [s. 125.3]: "amount", "business" — 248(1); "Canada" — 255; "Canadian surtax payable" — 125.3(4); "corporation" — 248(1), *Interpretation Act* 35(1); "farm loss" — 111(8), 248(1); "financial institution" — 190(1); "non-capital loss" — 111(8), 248(1); "prescribed" — 248(1); "resident" — 250; "taxable income" — 2(2), 248(1); "taxation year" — 249; "unused Part I.3 tax credit" — 125.3(4).

Canadian Film or Video Production Tax Credit

Proposed Amendment — Changes to Film/Video Production Credit

Federal budget, supplementary information, February 28, 2000: *Simplified Film Tax Incentives*

The Canadian film and television production industry has achieved considerable expansion in recent years with the support of the federal and provincial governments. Federal support for Canada's film industry includes two tax credits in respect of qualifying labour expenditures:

- the Canadian Film or Video Production Tax Credit (CFVPTC, generally equal to 25 per cent of eligible labour expenses), for film or video productions certified by the Minister of Canadian Heritage as meeting specific Canadian ownership and artistic criteria [section 125.4 — ed.]; and
- the Film or Video Production Services Tax Credit (FVPSTC, generally equal to 11 per cent of eligible Canadian labour expenses), for other film or video productions produced in Canada [section 125.5 — ed.].

In some cases, the CFVPTC may be difficult for Canadian film producers to access, particularly where financing arrangements are complex. The Government therefore intends to review the rules respecting the CFVPTC, in consultation with industry associations, to develop criteria for a streamlined mechanism for delivering the CFVPTC incentive. The objective of these discussions is to design criteria that

- result in a simplified calculation for the CFVPTC, based more closely on Canadian labour content;
- reflect the original objectives of the existing eligibility requirements for film and video productions that were announced in the 1995 budget; and
- are revenue-neutral in terms of the level of support to be given by the Government.

125.4 (1) Definitions — The definitions in this subsection apply in this section.

"assistance" means an amount, other than a prescribed amount or an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing a taxpayer's income for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

Related Provisions: 87(2)(j.94) — Amalgamations — continuing corporation; 125.4(5) — Credit is deemed to be assistance for all purposes under the Act.

History: The definition "assistance" in subsec. 125.4(1) amended by 1999, c. 22, s. 46, applicable to amounts received after February 23, 1998. It formerly read:

> "assistance" means an amount, other than an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

Regulations: 1106(8) (prescribed amount).

"Canadian film or video production" has the meaning assigned by regulation.

Regulations: 1101(5k.1) (separate class for Canadian film or video production); 1106(3) (definition of "Canadian film or video production"); Sch. II:Cl. 10(x) (CCA class for Canadian film or video production).

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage

(a) certifying that the production is a Canadian film or video production, and

(b) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

Related Provisions: 125.4(3) — Tax credit where certificate issued; 125.4(6) — Revocation of certificate.

"investor" means a person, other than a prescribed person, who is not actively engaged on a regular, continuous and substantial basis in a business carried on through a permanent establishment (as defined by regulation) in Canada that is a Canadian film or video production business.

Related Provisions: 125.4(4) — No credit where investor can deduct any amount.

Regulations: 1106(7) (prescribed person); 8201 (permanent establishment).

"labour expenditure" of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production means, in the case of a corporation that is not a qualified corporation for the year, nil, and in the case of a corporation that is a qualified corporation for the year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost or, in the case of depreciable property, the capital cost to the corporation of the property:

(a) the salary or wages directly attributable to the production that are incurred after 1994 and in the year, or the preceding taxation year, by the corporation for the stages of production of the property, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year (other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the year, or that preceding year, to the corporation for the stages of production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to

(i) an individual who is not an employee of the corporation, to the extent that the amount paid

(A) is attributable to services personally rendered by the individual for the production of the property, or

(B) is attributable to and does not exceed the salary or wages of the individual's employees for personally rendering services for the production of the property,

(ii) another taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees for personally rendering services for the production of the property,

(iii) another taxable Canadian corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is

attributable to services rendered personally by the individual for the production of the property, or

(iv) a partnership that is carrying on business in Canada, to the extent that the amount paid

(A) is attributable to services personally rendered by an individual who is a member of the partnership for the production of the property, or

(B) is attributable to and does not exceed the salary or wages of the partnership's employees for personally rendering services for the production of the property, and

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another taxable Canadian corporation (in this section referred to as the "parent"), and

(ii) the corporation and the parent have agreed that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of that production and that would be included in the labour expenditure of the corporation in respect of the property for the particular taxation year because of paragraph (a) or (b) if

(iii) the corporation had had such a particular taxation year, and

(iv) the expenditure were incurred by the corporation for the same purpose as it was by the parent and were paid at the same time and to the same person or partnership as it was by the parent.

Related Provisions: 13(7)–(7.4) — Capital cost of depreciable property; 125.4(1), 248(1) — Extended meaning of salary or wages; 125.4(2) — Rules governing labour expenditure.

"qualified corporation" for a taxation year means a corporation that is throughout the year a prescribed taxable Canadian corporation the activities of which in the year are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a business that is a Canadian film or video production business.

Regulations: 8201 (permanent establishment).

"qualified labour expenditure" of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production means the lesser of

(a) the amount, if any, by which

(i) the total of

(A) the labour expenditure of the corporation for the year in respect of the production, and

(B) the amount by which the total of all amounts each of which is the labour expenditure of the corporation for a preceding taxation year in respect of the production exceeds the total of all amounts each of which is a qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began

exceeds

(ii) where the corporation is a parent, the total of all amounts each of which is an amount that is the subject of an agreement in respect of the production referred to in paragraph (c) of the definition "labour expenditure" between the corporation and its wholly-owned corporation, and

(b) the amount determined by the formula

$$A - B$$

where

A is 48% of the amount by which

(i) the cost or, in the case of depreciable property, the capital cost to the corporation of the production at the end of the year,

exceeds

(ii) the total of all amounts each of which is an amount of assistance in respect of that cost that, at the time of the filing of its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that cost), and

B is the total of all amounts each of which is the qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began.

Related Provisions: 257 — Formula cannot calculate to less than zero.

"salary or wages" does not include an amount described in section 7 or any amount determined by reference to profits or revenues.

Related Provisions: 125.4(2)(a) — Meaning of "remuneration"; 248(1)"salary or wages" — Definition extended to include all income from employment.

(2) Rules governing labour expenditure of a corporation — For the purpose of the definition "labour expenditure" in subsection (1),

(a) remuneration does not include remuneration determined by reference to profits or revenues; and

(b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician — clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty.

Proposed Addition — 125.4(2)(c)

(c) that definition does not apply to an amount to which section 37 applies.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 72, will add para. 125.4(2)(c), applicable after November 1999.

Technical Notes: Section 125.4 of the Act generally provides for a tax credit in respect of qualified labour expenditures incurred after 1994 by a qualified corporation for the production of a Canadian film or video production certified by the Minister of Canadian Heritage.

Paragraph 125.4(2)(a) of the Act is amended to clarify that qualified labour expenditures do not include an amount claimed as an expenditure in respect of Scientific Research and Experimental Development under section 37 of the Act.

This amendment applies after November 30, 1999.

(3) Tax credit — Where

(a) a qualified corporation for a taxation year files with its return of income for the year

(i) a Canadian film or video production certificate issued in respect of a Canadian film or video production of the corporation,

(ii) a prescribed form containing prescribed information, and

(iii) each other document prescribed in respect of the production, and

(b) the principal filming or taping of the production began before the end of the year,

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 25% of its qualified labour expenditure for the year in respect of the production.

Proposed Amendment — Administration of Film Production Credit

Revenue Canada news release, July 21, 1999: *Minister Dhaliwal announces Revenue Canada initiatives for film industry in Canada*

The Honourable Herb Dhaliwal, Minister of National Revenue and M.P. (Vancouver South-Burnaby), today announced a number of initiatives resulting from extensive consultations between Revenue Canada and representatives of the film production industry in Canada.

"I am pleased to announce a series of measures that will provide certainty for the film industry in Canada along with enhanced service for film studios, producers, and actors," Mr. Dhaliwal said. "These streamlined procedures will assist the industry in complying with Canada's tax laws and ensure that Canada receives its fair share of the total taxes paid by non-resident actors."

The Minister announced that Revenue Canada will establish a Film Services Unit (FSU) to handle all tax procedures involving the film and television production industry in Canada, including the determination of taxes for non-resident actors and the administration of federal tax credits for non-resident and Canadian film productions.

The Minister said Revenue Canada already has a number of industry-specific groups similar to the new FSU, including a recently-established unit to administer tax incentives for the Scientific Research and Experimental Development program.

"The film industry in Canada is dynamic and growing in economic and cultural importance," Minister Dhaliwal stated. "The new Film Services Unit will ensure that our tax administration is responsive to the industry's changing circumstances."

In addition, Revenue Canada will establish the Film Industry Advisory Committee comprised of industry representatives. This committee will provide advice to the Minister and the Department on industry-related matters on a regular and ongoing basis. The Committee will be patterned along the lines of other sectoral advisory committees which currently serve the Minister.

Finally, the Minister indicated that a special interdepartmental working group will be formed to streamline administration of the Canadian Film or Video Production Tax credit. "This is a relatively new program and we recognize that its administration needs some improvement," said Mr. Dhaliwal.

Today's announcements result from consultations that began in January when Mr. Dhaliwal invited more than 40 representatives of the film industry, including actors, from Canada and the United States to discuss taxation issues. Consultations have continued with a working group co-chaired by Canadian film producers Fitch Cady of Vancouver and Patrick Whitley of Toronto. Industry stakeholders that helped in developing the Revenue Canada initiatives include the Canadian Film and Television Production Association, the Canadian Motion Picture Distributors Association, the Motion Picture Association of America, and major U.S. film companies such as Walt Disney Studios, Warner's, Universal and Paramount.

Industry representatives have indicated support for the new initiatives.

Mr. Whitley said, "We found Mr. Dhaliwal and his department very responsive to some important industry concerns. Film is a major growth industry in Canada and its significance was taken seriously by Revenue Canada. The changes made are the result of many hours of hard work by Revenue Canada and the film industry working group."

Mr. Cady added, "It was a pleasure to work closely with the Minister and the Department on these issues. I am confident that the changes that have been put in place will serve the industry well now and in the future.

Elizabeth McDonald, president and chief executive officer of the Canadian Film and Television Production Association (CFTPA), said the CFTPA had been actively involved in the process of consultation with Revenue Canada. "Several of our members attended the meeting with the Minister in January. They and our staff continued to work toward this practical and equitable solution," said Ms. McDonald.

"The film industry representatives have all contributed immensely to today's announcements by their good will and persistence," Mr. Dhaliwal said. "I want to personally thank everyone involved for working together to resolve these important matters."

For more information, contact: Colette Gentes-Hawn, Media Relations, Revenue Canada, (613) 957-3522; Heather Bala, Press Secretary, Office of the Minister, (613) 995-7018.

Related Provisions: 87(2)(j.94) — Amalgamations — continuing corporation; 123.2(a) — Corporate surtax applies to total tax before claiming film/video credit; 125.4(4) — No credit where investor can claim deduction; 125.4(5) — Credit constitutes assistance for purposes of the Act generally; 125.4(6) — Credit lost retroactively if certificate revoked; 125.5(4) — No film/video production services credit if Canadian film/video credit is available under 125.4; 152(1)(b) — Assessment of credit; 157(3)(e) — Reduction in monthly instalment to reflect credit; 163(2)(f) — Penalty for false statement or omission; 164(1)(a)(ii) — Refund of credit before assessment; 220(6) — Assignment of refund permitted.

History: The closing words of subsec. 125.4(3) amended by 1997, c. 25, s. 34, applicable to 1996 *et seq.* The closing words formerly read:

> the corporation is deemed to have paid, on the day referred to in paragraph 157(1)(b) on or before which the corporation would be required to pay the remainder of its tax payable under this Part for the year if such a remainder were payable, an amount on account of its tax payable under this Part for the year equal to 25% of its qualified labour expenditure for the year in respect of the production.

Regulations: 1101(5k.1)(a) (separate class for CCA purposes).

Forms: RC4164: Claiming a Canadian film or video production tax credit — guide to Form T1131; T2 SCH 302: Additional certificate numbers for the Newfoundland film and video industry tax credit; T2 SCH 345: Additional certificate numbers for the Nova Scotia film industry tax credit; T2 SCH 365: Additional certificate numbers for the New Brunswick film tax credit; T2 SCH 382: Additional certificate numbers for the Manitoba film and video production tax credit; T2 SCH 410: Additional certificate numbers for the Saskatchewan film employment tax credit; T1131: Claiming a Canadian film or video production tax credit; T1196: B.C. film and television tax credit; T1197: B.C. production services tax credit.

(4) Exception — This section does not apply to a Canadian film or video production where an investor, or a partnership in which an investor has an interest, directly or indirectly, may deduct an amount in respect of the production in computing its income for any taxation year.

(5) When assistance received — For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Related Provisions: 12(1)(x) — Inclusion of assistance in income; 13(7.4) — Reduction in capital cost of depreciable property to reflect assistance; 53(2)(k) — Reduction in ACB of capital property to reflect assistance.

(6) Revocation of a certificate — A Canadian film or video production certificate in respect of a production may be revoked by the Minister of Canadian Heritage where

(a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or

(b) the production is not a Canadian film or video production,

and, for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

History: S. 125.4 added by 1996, c. 21, s. 28, applicable to 1995 *et seq.* except that, in applying the definition "qualified corporation" in subsec. 125.4(1) in respect of a film or video production the principal photography of which began before July 1996, the words "are primarily" in that definition shall be read as "include".

Definitions [s. 125.4]: "amount" — 248(1); "assistance" — 125.4(1), (5); "balance-due day" — 248(1); "business" — 248(1); "Canada" — 255; "Canadian film or video production", "Canadian film or video production certificate" — 125.4(1); "capital cost" — of depreciable property 13(7)–(7.4), (10), 70(12), 128.1(1)(c), 128.1(4)(c); "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "employee", "individual" — 248(1); "investor" — 125.4(1); "labour expenditure" — 125.4(1), (2); "parent" — 125.4(1)"labour expenditure"(c)(i); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "qualified corporation"; "qualified labour expenditure" — 125.4(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 125.4]*; "regulation" — 248(1); "remuneration" — 125.4(2)(a); "salary or wages" — 125.4(1), 248(1); "share", "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249.

Film or Video Production Services Tax Credit

125.5 (1) Definitions — The definitions in this subsection apply in this section.

"accredited film or video production certificate", in respect of a film or video production, means a certificate issued by the Minister of Canadian Heritage certifying that the production is an accredited production.

Related Provisions: 125.5(3) — Tax credit where certificate issued; 125.5(6) — Revocation of certificate.

"accredited production" has the meaning assigned by regulation.

Regulations: 9300 (meaning of accredited production).

"assistance" means an amount, other than an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

"Canadian labour expenditure" of a corporation for a taxation year in respect of an accredited production means, in the case of a corporation that is not an eligible production corporation in respect of the production for the year, nil, and in any other case, subject to subsection (2), the total of the following amounts in respect of the production to the extent that they are reasonable in the circumstances:

(a) the salary or wages directly attributable to the production that are incurred by the corporation after October 1997, and in the year or the preceding taxation year, and that relate to services rendered in Canada for the stages of production of the production, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year to employees of the corporation who were resident in Canada at the time the payments were made (other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production, that relates to services rendered in Canada after October 1997 and in the year, or that preceding year, to the corporation for the stages of production of the production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to a person or a partnership, that carries on a business in Canada through a permanent establishment (as defined by regulation), and that is

(i) an individual resident in Canada at the time the amount is paid and who is not an employee of the corporation, to the extent that the amount paid

(A) is attributable to services personally rendered by the individual in Canada in respect of the accredited production, or

(B) is attributable to and does not exceed the salary or wages paid by the individual to the individual's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(ii) another corporation that is a taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages paid to the other corporation's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(iii) another corporation that is a taxable Canadian corporation, all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual who was resident in Canada and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally in Canada by the individual in respect of the accredited production, or

(iv) a partnership, to the extent that the amount paid

(A) is attributable to services personally rendered in respect of the accredited production by an individual who is resident in Canada and who is a member of the partnership, or

(B) is attributable to and does not exceed the salary or wages paid by the partnership to its employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production, and

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another corporation that is a taxable Canadian corporation (in this section referred to as the "parent"), and

(ii) the corporation and the parent have filed with the Minister an agreement that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of the production and that would be included in the Canadian labour expenditure of the corporation in respect of the production for the particular taxation year because of paragraph (a) or (b) if

(iii) the corporation had had such a particular taxation year, and

(iv) the expenditure were incurred by the corporation for the same purpose as it was incurred by the parent and were paid at the same time and to the same person or partnership as it was paid by the parent.

Related Provisions: 13(7)–(7.4) — Capital cost of depreciable property; 87(2)(j.94) — Amalgamations — continuing corporation; 125.5(1), 248(1) — Extended meaning of salary or wages; 125.5(2) — Rules governing labour expenditure.

Regulations: 8201 (permanent establishment).

"eligible production corporation", in respect of an accredited production for a taxation year, means a corporation, the activities of which in the year in Canada are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a film or video production business or a film or video production services business and that

(a) owns the copyright in the accredited production throughout the period during which the production is produced in Canada, or

(b) has contracted directly with the owner of the copyright in the accredited production to provide production services in respect of the production, where the owner of the copyright is not an eligible production corporation in respect of the production,

except a corporation that is

Proposed Amendment — 125.5(1)"eligible production corporation"

except a corporation that is, at any time in the year,

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 73, will amend the portion of the definition "eligible production corporation" in subsec. 125.5(1) after para. (b) and before para. (c) to read as above, applicable after November 1999.

Technical Notes: The film or video production services tax credit is generally available in respect of qualifying Canadian labour expenditures of an "eligible production corporation" (as defined in subsection 125.5(1) of the Act) that carries on a business in Canada that is primarily a film or video production business or a production services business. An eligible production corporation does not include a corporation which is a tax-exempt entity, a corporation controlled by one or more tax-exempt entities or a prescribed labour-sponsored venture capital corporation.

The definition of "eligible production corporation" is amended to clarify that such corporations will not qualify as eligible production corporations if they are at any time in their taxation year such a corporation.

This amendment applies after November 30, 1999.

(c) a person all or part of whose taxable income is exempt from tax under this Part,

(d) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under this Part, or

(e) prescribed to be a labour-sponsored venture capital corporation for the purpose of section 127.4.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly.

Regulations: 6701 (prescribed labour-sponsored venture capital corporation); 8201 (permanent establishment).

"qualified Canadian labour expenditure" of an eligible production corporation for a taxation year in respect of an accredited production means the amount, if any, by which

(a) the total of all amounts each of which is the corporation's Canadian labour expenditure for the year or a preceding taxation year

exceeds the aggregate of

(b) the total of all amounts, each of which is an amount of assistance that can reasonably be considered to be in respect of amounts included in the total determined under paragraph (a) in respect of the corporation for the year that, at the time of filing its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that expenditure),

(c) the total of all amounts, each of which is the qualified Canadian labour expenditure of the corporation in respect of the accredited production for a preceding taxation year before the end of which the principal filming or taping of the production began, and

(d) where the corporation is a parent, the total of all amounts each of which is included in the total determined under paragraph (a) in respect of the corporation for the year and is the subject of an agreement in respect of the accredited production referred to in paragraph (c) of the definition "Canadian labour expenditure" between the corporation and its subsidiary wholly-owned corporation.

"salary or wages" does not include an amount described in section 7 or an amount determined by reference to profits or revenues.

Related Provisions: 125.5(2)(a) — Meaning of "remuneration"; 248(1)"salary or wages" — Definition extended to include all income from employment.

History: Subsec. 125.5(1) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(2) Rules governing Canadian labour expenditure of a corporation — For the purpose of the definition "Canadian labour expenditure" in subsection (1),

(a) remuneration does not include remuneration determined by reference to profits or revenues;

(b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the accredited production include only the services that are

rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician — clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty;

(c) that definition does not apply to an amount to which section 37 applies; and

(d) for greater certainty, that definition does not apply to an amount that is not a production cost including an amount in respect of advertising, marketing, promotion, market research or an amount related in any way to another film or video production.

History: Subsec. 125.5(2) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(3) Tax credit — Subject to subsection (4), where

(a) an eligible production corporation in respect of an accredited production for a taxation year files with its return of income for the year

(i) a prescribed form containing prescribed information in respect of the production,

(ii) an accredited film or video production certificate in respect of the production, and

(iii) each other document prescribed in respect of the production, and

(b) the principal filming or taping of the production began before the end of the year,

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 11% of its qualified Canadian labour expenditure for the year in respect of the production.

Related Provisions: 87(2)(j.94) — Amalgamations — continuing corporation; 123.2(a) — Corporate surtax applies to total tax before claiming film/video credit; 125.5(4) — No credit where Canadian film/video credit allowed under 125.4; 125.5(5) — Credit constitutes assistance for purposes of the Act generally; 125.5(6) — Credit lost retroactively if certificate revoked; 152(1)(b) — Assessment of credit; 157(3)(e) — Reduction in monthly instalments to reflect credit; 163(2)(g) — Penalty for false statement or omission; 164(1)(a)(ii) — Refund of credit before assessment.

History: Subsec. 125.5(3) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

Forms: T1177: Claiming a film or video production services tax credit.

(4) Canadian film or video production — Subsection (3) does not apply in respect of a production in respect of which an amount is deemed to have been paid under subsection 125.4(3).

History: Subsec. 125.5(4) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(5) When assistance received — For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Related Provisions: 12(1)(x) — Inclusion of assistance into income; 13(7.4) — Reduction in capital cost of depreciable property to reflect assistance; 53(2)(k) — Reduction in ACB of capital property to reflect assistance.

History: Subsec. 125.5(5) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

(6) Revocation of certificate — An accredited film or video production certificate in respect of an accredited production may be revoked by the Minister of Canadian Heritage where

(a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or

(b) the production is not an accredited production,

and, for the purpose of subparagraph (3)(a)(ii), a certificate that has been revoked is deemed never to have been issued.

History: Subsec. 125.5(6) added by 1998, c. 19, s. 145.1, applicable to taxation years that end after October 1997.

Definitions [s. 125.5]: "accredited film or video production certificate", "accredited production" — 125.5(1); "amount" — 248(1); "assistance" — 125.5(1), (5); "business" — 248(1); "Canada" — 255; "Canadian labour expenditure" — 125.5(1); "carries on business in Canada" — 253; "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); eligible production corporation" — 248(1); "employee", "individual" — 248(1); "parent" — 125.5(1)"Canadian labour expenditure"(c)(i); "permanent establishment" — Reg. 8201; "person", "prescribed" — 248(1); "qualified Canadian labour expenditure" — 125.5(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 125.5]*; "regulation" — 248(1); "remuneration" — 125.5(2)(a); "resident in Canada" — 250; "salary or wages" — 125.5(1), 248(1); "share" — 248(1); "subsidiary wholly-owned corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249.

Subdivision c — Rules Applicable to All Taxpayers

126. (1) Foreign tax deduction [foreign tax credit] — A taxpayer who was resident in Canada at any time in a taxation year may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to

(a) such part of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada (except, where the taxpayer is a corporation, any such tax or part thereof that may reasonably be regarded as having been paid by the taxpayer in respect of income from a share of the capital stock of a foreign affiliate of the taxpayer) as the taxpayer may claim,

not exceeding, however,

(b) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that

(i) the amount, if any, by which the total of the taxpayer's qualifying incomes exceeds the total of the taxpayer's qualifying losses

(A) for the year, if the taxpayer is resident in Canada throughout the year, and

(B) for the part of the year throughout which the taxpayer is resident in Canada, if the taxpayer is non-resident at any time in the year,

from sources in that country, on the assumption that

(C) no businesses were carried on by the taxpayer in that country,

(D) where the taxpayer is a corporation, it had no income from shares of the capital stock of a foreign affiliate of the taxpayer, and

(E) where the taxpayer is an individual,

(I) no amount was deducted under subsection 91(5) in computing the taxpayer's income for the year, and

(II) if the taxpayer deducted an amount under subsection 122.3(1) from the taxpayer's tax otherwise payable under this Part for the year, the taxpayer's income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) for the year,

is of

(ii) the total of

(A) the amount, if any, by which,

(I) where section 114 does not apply to the taxpayer in respect of the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) where section 114 applies to the taxpayer in respect of the year, the total of the taxpayer's income for the period or periods in the year referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the taxpayer for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(III) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 or paragraph 111(1)(b), or deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, for the year or in respect of the period or periods referred to in subclause (II), as the case may be, and

Proposed Amendment — 126(1)(b)(ii)(A)

(A) the amount, if any, by which,

(I) if the taxpayer was resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) if the taxpayer was non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, in computing the taxpayer's taxable income for the year, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 74(1), will amend cl. 126(1)(b)(ii)(A) to read as above, applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, subcl. (A)(I) shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)".

Technical Notes: Section 126 of the Act provides rules under which taxpayers may deduct, from tax otherwise payable, amounts they have paid in respect of foreign taxes. The present amendments introduce three sorts of changes to these "foreign tax credit" rules. Most importantly, a new foreign tax credit is introduced for non-resident individuals who were formerly resident in Canada. This new credit, along with a comparable credit for non-resident beneficiaries of trusts that are resident in Canada, is found in new subsections 126(2.21) and (2.22).

Second, the existing foreign tax credit for non-residents of Canada, in subsection 126(2.2), is modified to reflect changes to the rules that apply to emigrant taxpayers under subsection 128.1(4) of the Act.

Third, several of the provisions in section 126 are modified to take account of changes to section 114 of the Act.

All of these changes are described in detail in the following notes.

Subsection 126(1) of the Act provides a tax credit in respect of foreign non-business income tax — that is, foreign taxes levied on investment and other non-business income. The credit is determined by multiplying the taxpayer's Part I tax otherwise payable for a taxation year by a fraction: the numerator of that fraction, determined under 126(1)(b)(i), consists of the taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) from sources in the particular country calculated on certain assumptions; the denominator of that fraction, determined under paragraph 126(1)(b)(ii), consists generally of the amount by which the taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) exceeds the deductions listed in subclause 126(1)(b)(ii)(A)(III).

Clause 126(1)(b)(ii)(A) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment removes a reference in subclause 126(1)(b)(ii)(A)(I) to section 114, updates the reference to that section in the following subclause, and simplifies subclause 126(1)(b)(ii)(A)(III)'s reference to the taxpayer's taxable income for the year. These changes keep the provision in step with the changes to section 114. For additional information, see the commentary on section 114.

(B) the amount, if any, added under section 110.5 in computing the taxpayer's taxable income for the year.

Proposed Amendment — Authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (7) That, subject to the general limits imposed under section 126 of the Act, an authorized foreign bank be entitled to deduct, in computing its tax payable under Part I of the Act for a taxation year, an amount in respect of withholding taxes imposed by the government of a foreign country or of a political subdivision of that country, provided that

(a) the bank was not, at any time in the year, resident in that country, and

(b) the taxes were withheld in respect of income for the year from a business carried on by the bank in Canada,

to the extent that the amount does not exceed the tax that would otherwise be payable on that income under Part I of the Act.

Department of Finance news release, February 11, 1999: *Foreign Tax Credit*

Canadian banks may claim, in computing their Canadian income tax payable, a credit in respect of taxes paid to a foreign government on income subject to tax in Canada. It is not considered appropriate to give identical treatment to foreign banks, because taxes payable to Canada in respect of a business carried on in Canada should have priority over taxes that are paid to a government in a foreign bank's home jurisdiction.

However, a foreign bank may also pay withholding tax to the government of a third country in respect of income that is subject to tax in Canada. In these circumstances, it is appropriate to al-

low the foreign bank a tax credit in computing its tax payable in Canada on that income.

It is proposed that a new foreign tax credit be added to the *Income Tax Act* in respect of withholding taxes paid by a foreign bank to governments of countries other than its country of residence on business income subject to tax in Canada.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

Related Provisions: 20(11), 20(12) — Deduction instead of credit for foreign taxes paid; 20(12) — Foreign non-business income tax; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 104(22.1) — Foreign tax credit allocated to beneficiary of trust; 110.5 — Addition to corporation's taxable income to increase foreign tax credit; 123.2(a) — Corporate surtax applies to total tax before claiming foreign tax credit; 126(6) — Separate deduction in respect of each country; 126(7)"tax for the year otherwise payable under this Part" — Tax for the year otherwise payable; 126(8) — Incomes deemed from separate sources; 129(3) — Refundable dividend tax on hand; 133(4) — No foreign tax deduction for non-resident-owned investment corporations; 138(8) — No deduction for tax paid on life insurance business income; 144(8.1) — Employees profit sharing plan — foreign tax deduction; 161(6.1) — Delay in interest on foreign tax credit adjustment; 180.1(1.1) — Individual surtax — foreign tax deduction; Canada-U.S. tax treaty, Art. XXIX B:6, 7 — Credit for U.S. estate taxes. See additional Related Provisions and Definitions at end of s. 126.

History: Subcl. 126(1)(b)(ii)(A)(I) amended by 2000, c. 19, subsec. 35(1), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the subcl. shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The subcl. formerly read:

> (I) where section 114 is not applicable to the taxpayer in respect of the year, the total of the taxpayer's income for the year and the amount, if any, added under subsection 110.4(2) in computing the taxpayer's taxable income for the year, and

The portion of subpara. 126(1)(b)(i) before cl. (C) amended by 1999, c. 22, subsec. 47(1), applicable to taxation years that begin after February 24, 1998 The portion formerly read:.

> (i) the total of the taxpayer's incomes from sources in that country, excluding any portion thereof that was deductible by the taxpayer under subparagraph 110(1)(f)(i) or in respect of which an amount was deducted by the taxpayer under section 110.6,
>
> (A) for the year, if section 114 is not applicable, or
>
> (B) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a),
>
> on the assumption that

Subcl. 126(1)(b)(ii)(A)(II) substituted by 1994, c. 21, subsec. 60(1), applicable to 1993 *et seq.* That subcl. formerly read:

> (II) where section 114 is applicable to the taxpayer in respect of the year, the taxpayer's income for the period or periods in the year referred to in paragraph 114(a)

Pre-RSC History: Subcl. 126(1)(b)(ii)(A)(III) amended by 1988, c. 55, subsec. 105(1), to substitute "under section 110.6 or paragraph 111(1)(b)" for "under paragraph 111(1)(b) or section 110.6" and "section 112 or 113" for "section 110.1, 112 or 113", applicable to 1988 *et seq.*

Subpara. 126(1)(b)(ii) substituted by 1987, c. 46, subsec. 45(1), applicable to 1985 *et seq.* Subpara. 126(1)(b)(ii) formerly read:

> (ii) the amount, if any, by which
>
> (A) where section 114 is not applicable to the taxpayer in respect of the year, the aggregate of his income for the year and the amounts, if any, included under subsection 110.4(2) and section 110.5 in computing his taxable income for the year, and
>
> (B) where section 114 is applicable to the taxpayer in respect of the year, his income for the period or periods in the year referred to in paragraph (a) of that section
>
> exceeds
>
> (C) the aggregate of all amounts each of which is an amount
>
> (I) deducted by the taxpayer under paragraph 111(1)(b) or section 110.6, or
>
> (II) deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 110.1, 112 or 113
>
> for the year or in respect of the period or periods referred to in clause (B), as the case may be.

Subcl. 126(1)(b)(i)(E)(II) substituted by 1986, c. 55, subsec. 47(1), applicable to taxation years commencing after 1985. Subcl. 126(1)(b)(i)(E)(II) formerly read:

> (II) the taxpayer's income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) for the year,

All that portion of subpara. 126(1)(b)(i) preceding cl. (A) amended by 1986, c. 6, subsec. 70(1), applicable to 1985 *et seq.* to add "or in respect of which an amount was deducted by him under section 110.6".

Subcls. 126(1)(b)(ii)(C)(I) and (II) substituted to add reference, respectively, to section 110.6, and to paragraphs 110(1)(d.1), (d.2), (d.3), (j), by 1986, c. 6, subsec. 70(2), applicable to 1985 *et seq.*

Cl. 126(1)(b)(ii)(A) substituted by 1985, c. 45, subsec. 71(1), applicable to 1985 *et seq.* Cl. 126(1)(b)(ii)(A) formerly read:

> (A) where section 114 is not applicable to the taxpayer in respect of the year, the total of his income for the year and the amount, if any, included pursuant to subsection 110.4(2) in computing his taxable income for the year, or

Subcl. 126(1)(b)(ii)(C)(II) substituted by 1984, c. 45, subsec. 42(1), to add reference to para. 110(1)(d), applicable to 1984 *et seq.*

Cl. 126(1)(b)(i)(E), subpara. 126(1)(b)(ii) substituted by 1984, c. 1, subsecs. 71(1), (2). Cl. 126(1)(b)(i)(E), as substituted, applicable to 1984 *et seq.* Subpara. 126(1)(b)(ii) applicable to 1983 and with respect to amounts deductible under para. 111(1)(b) in respect of losses determined for 1983 *et seq.* Cl. 126(1)(b)(i)(E), subpara. 126(1)(b)(ii) formerly read:

> (E) where the taxpayer is an individual, no amount was deducted under subsection 91(5) in computing his income for the year,
>
> . . . . .
>
> (ii) the taxpayer's income
>
> (A) for the year, if section 114 is not applicable, or
>
> (B) if section 114 is applicable, for the period or periods in the year referred to in paragraph (a) thereof,
>
> minus any amounts deductible by him under paragraph 110(1)(f), section 110.1, paragraph 111(1)(b) or section 112 or 113 for the year or such period or periods, as the case may be.

All that portion of subpara. 126(1)(b)(i) preceding cl. (A) and all that portion of subpara. 126(1)(b)(ii) following cl. (B) substituted by 1980-81-82-83, c. 140, subsecs. 88(1) and (2), applicable to 1982 *et seq.* Those portions formerly read:

> (i) the aggregate of the taxpayer's incomes from sources in that country
>
> . . . . .
>
> minus any amounts deductible under section 110.1, paragraph 111(1)(b) or section 112 or 113 for the year or such period or periods, as the case may be.

All that portion of subpara. 126(1)(b)(ii) following cl. (B) substituted by 1976-77, c. 4, subsec. 51(1), applicable to 1976 *et seq.*, to add references to section 110.1.

Cls. 126(1)(b)(i)(C) substituted, 126(1)(b)(i)(E) added by 1974-75-76, c. 26, subsecs. 83(1), (2), applicable, as to cl. 126(1)(b)(i)(C), to 1972 *et seq.*, and as to cl. 126(1)(b)(i)(E), to 1974 *et seq.*

All that portion of subsec. 126(1) preceding subpara. (b)(i) substituted by 1973-74, c. 14, subsecs. 39(1), (2), applicable to 1972 *et seq.*

Selected Cases [subsec. 126(1)]: *Dagenais v. R.*, [2000] 2 C.T.C. 2022 (TCC) (Foreign tax credit not available with respect to U.S. lottery winnings; no double taxation); *Interprovincial Pipe Line Co. v. MNR*, [1968] C.T.C. 156 (SCC) (To determine income from a source, taxpayer required to deduct interest paid to Canadian lenders from interest received from U.S. subsidiary).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-243R4: Dividend refund to private corporations; IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-395R: Foreign tax credit — foreign-source capital gains and losses; IT-506: Foreign income taxes as a deduction from income; IT-520: Unused foreign tax credits — carryforward and carryback. See also list at end of s. 126.

Forms: T2 SCH 5: Tax calculation supplementary — corporations; T2 SCH 21: Federal foreign income tax credits and federal logging tax credit; T2036: Provincial foreign tax credits; T2209: Federal foreign tax credits.

(2) Idem — Where a taxpayer who was resident in Canada at any time in a taxation year carried on business in the year in a country other than Canada, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount not exceeding the least of

(a) such part of the total of the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country and the taxpayer's unused foreign tax credits in respect of that country for the seven taxation years immediately preceding and the three taxation years immediately following the year as the taxpayer may claim,

(b) the amount determined under subsection (2.1) for the year in respect of businesses carried on by the taxpayer in that country, and

(c) the amount by which

(i) the tax for the year otherwise payable under this Part by the taxpayer

exceeds

(ii) the amount or the total of amounts, as the case may be, deducted under subsection (1) by the taxpayer from the tax for the year otherwise payable under this Part.

Related Provisions: 87(2)(z) — Amalgamation; 88(1)(e.7) — Winding-up; 94(3)(b) [proposed] — Application to trust deemed resident in Canada; 104(22.1) — Foreign tax credit allocated to beneficiary of trust; 110.5 — Additions for foreign tax deductions; 125 — Small business deduction; 126(2.1) — Amount determined for purposes of para. (2)(b); 126(2.3) — Rules relating to unused foreign tax credit; 126(6) — Separate deduction in respect of each country; 129(3) — Refundable dividend tax on hand; 133(4) — No foreign tax credit for non-resident-owned investment corporation; 138(8) — No foreign credit for life insurance business; 152(6) — Reassessment; 152(6)(f.1) — Minister required to reassess past year to allow unused foreign tax credit; 161(6.1) — Delay in interest on foreign tax credit adjustment; 161(7)(a)(iv.1), 164(5)(e), 164(5.1) — Effect of carryback of loss. See additional Related Provisions and Definitions at end of s. 126.

Pre-RSC History: Para. 126(2)(a) substituted by 1984, c. 45, subsec. 42(2), to substitute "his unused foreign tax credits" for "his foreign-tax carryover" and to substitute "for the seven taxation years immediately preceding and the three taxation years immediately following the year as the taxpayer may claim" for "for the year as the taxpayer may claim", applicable to the computation of tax for 1984 *et seq.*

Subsec. 126(2) substituted by 1973-74, c. 14, subsec. 39(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 126(2)]: *Collins v. The Queen*, [1985] 1 C.T.C. 342 (Ont CA) (Payment of tax in U.S. does not affect calculation of tax sought to be evaded when taxpayer charged with tax evasion); *The Queen v. Bank of Nova Scotia*, [1981] C.T.C. 162 (FCA) (Taxpayer liable for income tax in U.K. entitled to use weighted average exchange rate during fiscal period); *Icanda Ltd. v. MNR*, [1972] C.T.C. 163 (FCTD) (Taxpayer receiving U.S. tax refund not allowed foreign tax credit).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-520: Unused foreign tax credits — carryforward and carryback. See also list at end of s. 126.

I.T. Technical News: No. 8 (treatment of United States unitary state taxes).

Forms: T2 SCH 5: Tax calculation supplementary — corporations; T2 SCH 21: Federal foreign income tax credits and federal logging tax credit; T2036: Provincial foreign tax credits; T2209: Federal foreign tax credits.

(2.1) Amount determined for purposes of para. (2)(b) — For the purposes of paragraph (2)(b), the amount determined under this subsection for a year in respect of businesses carried on by a taxpayer in a country other than Canada is the total of

(a) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that

(i) the amount, if any, by which the total of the taxpayer's qualifying incomes exceeds the total of the taxpayer's qualifying losses

(A) for the year, if the taxpayer is resident in Canada throughout the year, and

(B) for the part of the year throughout which the taxpayer is resident in Canada, if the taxpayer is non-resident at any time in the year,

is of

(ii) the total of

(A) the amount, if any, by which

(I) where section 114 does not apply to the taxpayer in respect of the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) where section 114 applies to the taxpayer in respect of the year, the total of the taxpayer's income for the period or periods referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the taxpayer for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(III) the total of all amounts each of which is an amount deducted by the taxpayer under section 110.6 or paragraph 111(1)(b), or deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, for the year or in respect of the period or periods referred to in subclause (II), as the case may be, and

Proposed Amendment — 126(2.1)(a)(ii)(A)

(A) the amount, if any, by which

(I) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, in computing the taxpayer's taxable income for the year, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec 74(2), will amend cl. 126(2.1)(a)(ii)(A) to read as above, applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, subcl. (A)(I) shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)".

Technical Notes: Subsection 126(2.1) of the Act sets out a limit for the amount of a taxpayer's deduction under subsection 126(2) in respect of businesses carried on by the taxpayer in a country other than Canada.

The limit is the total of amounts computed under paragraphs 126(2.1)(a) and (b). The paragraph (a) amount is computed by multiplying the taxpayer's Part I tax otherwise payable for a taxation year by a fraction. The numerator of that fraction, determined under subparagraph 126(2.1)(a)(i), generally consists of a taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) from businesses carried on by the taxpayer in the particular country. The denominator of this fraction, determined under subparagraph 126(2.1)(a)(ii), consists generally of the amount by which the taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) exceeds the deductions listed in subclause 126(2.1)(a)(i)(A)(III).

Clause 126(2.1)(a)(ii)(A) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114. The changes update the references in the clause to section 114. For additional information, see the commentary on section 114.

(B) the amount, if any, added under section 110.5 in computing the taxpayer's taxable income for the year, and

(b) that proportion of the amount, if any, added under subsection 120(1) to the tax for the year otherwise payable under this Part by the taxpayer that

(i) the amount determined under subparagraph (a)(i) in respect of the country

is of

(ii) the amount, if any, by which,

(A) where section 114 does not apply to the taxpayer in respect of the year, the taxpayer's income for the year, and

(B) where section 114 applies to the taxpayer in respect of the year, the total of the taxpayer's income for the period or periods referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the taxpayer for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(C) the taxpayer's income earned in the year in a province (within the meaning assigned by subsection 120(4)).

Related Provisions: 126(8) — Incomes deemed from separate sources. See also Related Provisions and Definitions at end of s. 126.

History: Subcl. 126(2.1)(a)(ii)(A)(I) amended by 2000, c. 19, subsec. 35(2), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the subcl. shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The subcl. formerly read:

(I) where section 114 is not applicable to the taxpayer in respect of the year, the total of the taxpayer's income for the year and the amount, if any, included under subsection 110.4(2) in computing the taxpayer's taxable income for the year, and

Subparas. 126(2.1)(a)(i) and (b)(i) amended by 1999, c. 22, subsecs. 47(2), (3), applicable to taxation years that begin after February 24, 1998. The subparas. formerly read:

(i) the total of the taxpayer's incomes

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a),

from businesses carried on by the taxpayer in that country, other than any portion of that income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income for the year

(i) the total of the taxpayer's incomes described in subparagraph (a)(i)

Subcl. 126(2.1)(a)(ii)(A)(II) and subpara. (2.1)(b)(ii) substituted by 1994, c. 21, subsecs. 60(2), (3), applicable to 1993 *et seq.* That subcl. and that subpara. formerly read:

(II) where section 114 is applicable to the taxpayer in respect of the year, the taxpayer's income for the period or periods in the year referred to in paragraph 114(a)

. . . . .

(ii) the taxpayer's income, other than the taxpayer's income earned in the year in a province (within the meaning assigned by subsection 120(4)),

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the period or periods in the year referred to in paragraph 114(a).

That portion of subpara. 126(2.1)(a)(i) following cl. (B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 103(1), applicable to taxation years ending after July 13, 1990. That portion formerly read:

from businesses carried on by the taxpayer in that country

Pre-RSC History: Subcl. 126(2.1)(a)(ii)(A)(III) amended by 1988, c. 55, subsec. 105(2), to substitute "or section 112 or 113" for "or section 110.1, 112 or 113", applicable to 1988 *et seq.*

Subpara. 126(2.1)(a)(ii) substituted by 1987, c. 46, subsec. 45(2), applicable to 1985 *et seq.* Subpara. 126(2.1)(a)(ii) formerly read:

(ii) the amount, if any, by which

(A) where section 114 is not applicable to the taxpayer in respect of the year, the aggregate of his income for the year and the amounts, if any, included under subsection 110.4(2) and section 110.5 in computing his taxable income for the year, and

(B) where section 114 is applicable to the taxpayer in respect of the year, his income for the period or periods in the year referred to in paragraph (a) of that section

exceeds

(C) the aggregate of all amounts each of which is an amount

(I) deducted by the taxpayer under paragraph 111(1)(b) or section 110.6, or

(II) deductible by the taxpayer under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 110.1, 112 or 113

for the year or in respect of the period or periods referred to in clause (B), as the case may be; and

Subcls. 126(2.1)(a)(ii)(C)(I) and (II) substituted to add reference, respectively, to section 110.6, and to paras. 110(1)(d.1), (d.2), (d.3), (j), by 1986, c. 6, subsec. 70(3), applicable to 1985 *et seq.*

Cl. 126(2.1)(a)(ii)(A) substituted by 1985, c. 45, subsec. 71(2), applicable to 1985 *et seq.* Cl. 126(2.1)(a)(ii)(A) formerly read:

(A) where section 114 is not applicable to the taxpayer in respect of the year, the total of his income for the year and the amount, if any, included pursuant to subsection 110.4(2) in computing his taxable income for the year, or

Subcl. 126(2.1)(a)(ii)(C)(II) substituted by 1984, c. 45, subsec. 42(3), to add reference to para. 110(1)(d), applicable to 1984 *et seq.*

Subpara. 126(2.1)(a)(ii) substituted by 1984, c. 1, subsec. 71(3), applicable to 1983 and with respect to amounts deductible under para. 111(1)(b) in respect of losses determined for 1983 *et seq.* Subpara. 126(2.1)(a)(ii) formerly read:

(ii) the taxpayer's income

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the period or periods in the year referred to in paragraph (a) thereof,

minus any amounts deductible under section 110.1, paragraph 111(1)(b) or section 112 or 113 for the year or such period or periods, as the case may be, and

All that portion of subpara. 126(2.1)(b)(ii) preceding cl. (A) substituted by 1979, c. 5, s. 39, applicable to 1978 *et seq.* That portion formerly read:

(ii) the taxpayer's income, other than his income earned in the year in a province,

All that portion of subpara. 126(2.1)(a)(ii) following cl. (B) substituted by 1976-77, c. 4, subsec. 51(1), to add reference to section 110.1, applicable to 1976 *et seq.*

Subsec. 126(2.1) added by 1973-74, c. 14, subsec. 39(2), applicable to 1972 *et seq.*

Interpretation Bulletins: See list at end of s. 126.

Forms: T2036: Provincial foreign tax credits.

(2.2) Non-residents' foreign tax deduction — Where at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of property that was deemed by subsection 48(2), as it read in its application before 1993, or paragraph 128.1(4)(e) to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to

(a) the amount of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada that may reasonably be regarded as having been paid by the taxpayer in respect of any gain or profit from the disposition of that property

not exceeding, however,

Proposed Amendment — 126(2.2)

(2.2) Non-resident's foreign tax deduction — If at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of a property that was deemed by subsection 48(2), as it read in its application before 1993, or by paragraph 128.1(4)(e), as it read in its application before October 2, 1996, to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to the lesser of

(a) the amount of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada that can reasonably be regarded as having been paid by the taxpayer in respect of any gain or profit from the disposition of the property, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 74(3), will amend the portion of subsec. 126(2.2) before para. (b) to read as above, applicable to 1996 *et seq.*

Technical Notes: Canada generally makes foreign tax credits available only to persons who are resident in Canada. The only current exception to this principle is subsection 126(2.2), which provides a foreign tax credit to a non-resident individual who, as an emigrant from Canada, made the election provided under existing subparagraph 128.1(4)(b)(iv) of the Act in respect of one or more properties that were not taxable Canadian property.

With this election and the provision of security, the individual emigrant could choose to treat the properties as taxable Canadian property. That meant, on the one hand, that the individual was not treated as having disposed of those properties on emigration; but on the other hand, that any post-departure gain on the properties remained subject to Canadian tax (assuming no tax treaty applied). On the ultimate disposition of the deemed taxable Canadian property, subsection 126(2.2) allowed the former Canadian resident a credit for foreign tax on the gain.

Under the new rules for emigrants from Canada, the election in subparagraph 128.1(4)(b)(iv) is no longer available. Subsection 126(2.2) is therefore amended to apply only to properties that were deemed to be taxable Canadian properties under the election as it read before October 2, 1996. This amendment applies to the 1996 and subsequent taxation years.

Subsection 126(2.2) is also amended, with application to the 1998 and subsequent taxation years, to reflect the changes to section 114 of the Act. For additional information, see the commentary on section 114.

(b) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that

(i) the taxable capital gain from the disposition of that property

is of

(ii) the amount that would be the taxpayer's taxable income earned in Canada

(A) for the year, if section 114 is not applicable, or

(B) if section 114 is applicable, for the portion of the year referred to in paragraph 114(b)

if subsection 115(1) were read without reference to that portion thereof following paragraph 115(1)(c).

Proposed Amendment — 126(2.2)(b)(ii), (iii)

(ii) if the taxpayer is non-resident throughout the year, the taxpayer's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f), and

(iii) if the taxpayer is resident in Canada at any time in the year, the amount that would have been the taxpayer's taxable income earned in Canada for the year if the part of the year throughout which the taxpayer was non-resident were the whole taxation year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 74(4), will amend subpara. 126(2.2)(b)(ii) to read as above, and add subpara. (iii), applicable to 1998 *et seq.*

Technical Notes: See under 126(2.2).

Related Provisions: 114 — Residence in Canada for part of year; 126(2.21)–(2.23) — Credit for former resident;; 115(1) — Non-resident's taxable income; 126(7) — "tax for the year otherwise payable under this Part". See additional Related Provisions and Definitions at end of s. 126.

History: The opening words of subsec. 126(2.2) substituted by 1994, c. 21, subsec. 60(4), applicable after 1992. The opening words formerly read:

(2.2) Where at any time in a taxation year a taxpayer who was not at that time resident in Canada disposed of property that was deemed by subsection 48(2) to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to

Pre-RSC History: Subsec. 126(2.2) added by 1974-75-76, c. 26, subsec. 83(3), applicable to 1974 *et seq.*

Interpretation Bulletins: IT-395R: Foreign tax credit — foreign-source capital gains and losses; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident. See also list at end of s. 126.

Proposed Addition — 126(2.21)–(2.23)

(2.21) Former resident — deduction — If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired because of the application, at any time (in this subsection referred to as the "acquisition time") after October 1, 1996, of paragraph 128.1(4)(c), there may be deducted from the individual's tax otherwise payable under this Part for the year (in this subsection referred to as the "emigration year") that includes the time immediately before the acquisition time an amount not exceeding the lesser of

(a) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued while the individual was resident in Canada and before the time the individual last ceased to be resident in Canada, and

(b) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the individual for the emigration year

exceeds

(ii) the amount of such tax that would have been payable if the particular property had not been deemed by subsection 128.1(4) to have been disposed of in the emigration year.

Related Provisions: 119 — Former resident — credit for tax paid; 126(2.22) — Parallel credit to trust after distribution to non-resident beneficiary; 126(2.23) — Reduction where foreign tax credit available under foreign system; 128.3 — Shares acquired on rollover deemed to be same shares for 126(2.21); 152(6)(f.1) — Minister required to reassess past year to allow credit; 161(7)(a)(iv.1), 164(5)(e), 164(5.1) — Effect of carryback of loss; Canada-U.S. Tax Convention Art. XIII:1 — Gain on real property taxable by country in which property is situated.

(2.22) Former resident — trust beneficiary — If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired at any time (in this subsection referred to as the "acquisition time") on a distribution after October 1, 1996 to which paragraphs 107(2)(a) to (c) do not apply only because of subsection 107(5), the trust may deduct from its tax otherwise payable under this Part for the year (in this subsection referred to as the "distribution year") that includes the acquisition time an amount not exceeding the lesser of

(a) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued before the distribution and after the latest of the times, before the distribution, at which

(iii) the trust became resident in Canada,

(iv) the individual became a beneficiary under the trust, or

(v) the trust acquired the property, and

(b) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the trust for the distribution year

exceeds

(ii) the amount of such tax that would have been payable by the trust for the distribution year if the particular property had not been distributed to the individual.

Related Provisions: 104(22.1) — Foreign tax credit to beneficiary of trust; 126(2.23) — Reduction where foreign tax credit available under foreign system; 128.3 — Shares acquired on rollover deemed to be same shares for 126(2.22); 152(6)(f.1) — Minister required to reassess past year to allow credit; 161(7)(a)(iv.1), 164(5)(e), 164(5.1) — Effect of carryback of loss; 220(4.6)–(4.63) — Security for tax on distribution of taxable Canadian property by trust to non-resident beneficiary; Canada-U.S. Tax Convention Art. XIII:1 — Gain on real property taxable by country in which property is situated.

(2.23) Where foreign credit available — For the purposes of subsections (2.21) and (2.22), in computing, in respect of the disposition of a property by an individual in a taxation year, the total amount of taxes paid by the individual for the year to one or more governments of countries other than Canada, there shall be deducted any tax credit (or other reduction in the amount of a tax) to which the individual was entitled for the year, under the law of any of those countries or under a tax treaty between Canada and any of those countries, because of taxes paid or payable by the individual under this Act in respect of the disposition or a previous disposition of the property.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 126(2.23).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 74(5), will add subsecs. 126(2.21) to (2.23), applicable to 1996 *et seq.*

Technical Notes: In some circumstances, an individual who is a former resident of Canada may be subject to tax in another country on a gain that accrued while the individual was resident in Canada, and that has already been subject to Canadian tax on emigration. Similarly, the non-resident beneficiary of a Canadian trust who receives trust property on a distribution may be taxed abroad on a gain that accrued while the property was held by the trust, and that has been taxed in Canada on the distribution.

EXAMPLE — double taxation of pre-departure gain

Lee emigrates from Canada to Treatyland at a time when he owns a house in Treatyland. Lee bought the house while resident in Canada; at the time of emigration, the house has an adjusted cost base of $60,000 and a fair market value of $100,000. The resulting $40,000 latent capital gain will produce a taxable capital gain of $30,000 immediately before departure, and that taxable capital gain will be subject to Canadian tax.

Assume that the house increases in value to $120,000 after Lee leaves Canada, and that Lee sells the property in 2005 for that amount.

In principle, the gain that has been subject to Canadian tax ought not to be taxed a second time. However, Treatyland may not yet recognize the tax effect of changes in residence and may simply tax Lee, when the property is disposed of, on the full amount of the his gain since first acquiring the property. In that case, Treatyland will tax not only the $20,000 gain realized since Lee left Canada, but also the $40,000 gain

that accrued while Lee was resident in Canada. In the end, Lee is taxed twice on the same gain.

The best way to alleviate such results is to modify Canada's tax treaties to ensure appropriate recognition for the Canadian tax that arises on departure. However, treaty changes can take considerable time. As an interim measure, new subsection 126(2.21) provides limited credits against an individual's Canadian tax that arises in the year of the individual's departure from Canada, for post-departure foreign taxes. These foreign taxes can comprise both business-income and non-business-income taxes (defined in subsection 126(7)). New subsection 126(2.22) provides similar limited credits against a trust's Canadian tax that arose in the year of a distribution by the trust to a non-resident beneficiary, for the beneficiary's subsequent foreign taxes. It is intended that these interim foreign tax credits will be reviewed by the Government of Canada as appropriate treaty changes are put in place.

Subsections 126(2.21) and (2.22) will apply, in most cases, only for taxes paid to countries with which Canada has a tax treaty. Exceptions are provided for taxes imposed by a foreign country on gains on real property situated in that country. In keeping with the general international principle that the country in which real property is located has the first right to tax gains on that real property, Canada will always provide credit for such taxes. Similarly, credit for those taxes will be available regardless whether Canada has a tax treaty with the particular country.

More specifically, subject to the conditions described above, the credit provided to an individual under new subsection 126(2.21) is computed on a property-by-property basis, as the lesser of two amounts.

The first amount, described in paragraph 126(2.21)(a), is the total of those portions of the foreign taxes paid in respect of the disposition of the property that can reasonably be considered to relate to the portion of the gain or profit in question that arose before the individual's emigration from Canada. Where the property in question is real property situated outside Canada, the creditable taxes are those paid to the government of the country where the property is located or, to the government of another country in which the individual is resident and with which Canada has a tax treaty. [Note that a tax paid to the government of a political subdivision of a country is included for this purpose in the taxes paid to the government of the country. See the definitions "business-income tax" and "non-business-income tax" in subsection 126(7) of the Act.]

The second amount, described in paragraph 126(2.21)(b), is in effect the amount of the individual's tax under Part I of the Act for the year of emigration that is attributable to the deemed disposition of the particular property under paragraph 128.1(4)(b) of the Act. In determining this amount, previous applications of subsection 126(2.21) are taken into account.

EXAMPLE — operation of new credit

In the example above, Lee will be able to claim a credit for the lesser of 2/3 ($40,000/$60,000) of the Treatyland tax on the total amount of the gain, and the Canadian tax that arose because of the deemed disposition on emigration. The credit will be applied against Lee's Canadian tax for the emigration year, with amended subsection 152(6) allowing any necessary reassessment.

Note that since the property in question (a house) is real property, Lee could also claim a credit for tax paid to another treaty country in respect of his pre-emigration gain, if he lived in that other country. For example, if the house were located not in Treatyland but in Nontreatyland, Lee could — as a resident of Treatyland – claim a credit in respect of both Treatyland tax and Nontreatyland tax .

New subsection 126(2.22) sets out a comparable rule in respect of distributions after October 1, 1996 by Canadian-resident trusts to non-resident individuals. While the general operation of this rule is very similar to that of new subsection 126(2.21), it should be noted that in this case the credit involves two taxpayers: foreign taxes paid by the beneficiary are creditable against Canadian taxes paid by the trust.

A consequential amendment to subsection 152(6) of the Act ensures that any necessary assessments of tax will be made in order to take account of the effect of new subsections 126(2.21) and (2.22).

New subsections 126(2.21) and (2.22) apply to the 1996 and subsequent taxation years.

New subsection 126(2.23) of the Act limits the availability of the new foreign tax credits under subsections 126(2.21) and (2.22). This rule requires that in computing, for the purposes of these new credits, the foreign tax an individual has paid in respect of the disposition of a property, the individual must first take into account any relevant tax credit (or other reduction in tax) that the individual is entitled to in respect of the property under the law of a foreign country or under a tax treaty between Canada and a foreign country. This is intended to ensure that the credits under new subsections 126(2.21) and (2.22) are only available to the extent that another country is not required to give credit for Canadian tax in respect of the disposition or a prior disposition of the property.

Subsection 126(2.23) applies to the 1996 and subsequent taxation years.

Department of Finance news release, June 5, 2000: *Detailed Notice of Ways and Means Motion Tabled*

Secretary of State (International Financial Institutions) Jim Peterson, on behalf of Finance Minister Paul Martin, today tabled a detailed Notice of Ways and Means Motion in the House of Commons to provide for the implementation of previously announced amendments to the *Income Tax Act*.

These amendments include the following:

- amendments relating to taxpayer migration, which were released in draft form on December 17, 1999. The main purpose of these proposals is to enhance Canada's ability to tax capital gains accrued by emigrants while resident in Canada. Under the Motion tabled today, the seven-year expiry date for the provision of relief against double taxation is proposed to be deferred pending the renegotiation of tax treaties with Canada's treaty partners. The Government will monitor the need for a definitive expiry date as additional countries implement protection against double taxation in respect of capital gains in renegotiated treaties;

. . . . .

Proposed Amendment — Alternatives to Former Resident's Credit

Department of Finance news release, September 10, 1999: *Taxpayer Migration and Trusts: Technical Backgrounder*

Comments received on the December 1998 detailed proposals regarding taxpayer migration and trusts identified two major concerns: the need for flexibility in accepting security for the later payment of any tax arising from the deemed disposition on departure; and possible overlap between Canadian and foreign taxes. This backgrounder describes the government's proposed response to each of these two concerns. These changes, together with modifications to address more technical issues raised in connection with the December 1998 proposals, will be included in the proposals when they are put into bill form with the 1999 budget legislation.

[For the first proposal, "Security for later payment", see under 220.1 — ed.]

2. Interaction of Canadian and foreign taxes

The second major concern raised by submissions is the possibility of overlap between Canada's taxation of an emigrating individual's pre-departure capital gains and the later taxation of the same economic value — whether as a capital gain or in another form — by the individual's new country of residence. It was observed that this overlap, if it is not relieved by one country or the other, may result in a total effective tax rate that is well above the prevailing Canadian rate.

In many cases, changes to Canada's tax treaties will resolve issues of overlapping Canadian and foreign tax. To allow an op-

portunity for treaties to be revised, the December proposals included a time-limited credit for certain foreign taxes paid on predeparture gains on property other than foreign real estate. A credit would also be available, with no time limit, for certain taxes paid on gains on foreign real estate.

It is reasonable to expect, however, that other situations will arise where Canada's rules and the rules of another country conflict, and where resolution through a tax treaty is not possible in the short term. Provided that Canadian and/or foreign tax is paid at full Canadian rates (in other words, that there is no net avoidance of tax), it may be appropriate in certain of these cases for Canada to recognize and accommodate the foreign tax. Therefore, while the government will continue its efforts to find treaty solutions, it will also consider other options where the scale and the frequency of a problem make that appropriate.

(2.3) Rules relating to unused foreign tax credit — For the purposes of this section,

(a) the amount claimed under paragraph (2)(a) by a taxpayer for a taxation year in respect of a country shall be deemed to be in respect of the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country to the extent of the amount of that tax, and the remainder, if any, of the amount so claimed shall be deemed to be in respect of the taxpayer's unused foreign tax credits in respect of that country that may be claimed for the taxation year;

(b) no amount may be claimed under paragraph (2)(a) in computing a taxpayer's tax payable under this Part or Part I.1 for a particular taxation year in respect of the taxpayer's unused foreign tax credit in respect of a country for a taxation year until the taxpayer's unused foreign tax credits in respect of that country for taxation years preceding the taxation year that may be claimed for the particular taxation year have been claimed; and

(c) an amount in respect of a taxpayer's unused foreign tax credit in respect of a country for a taxation year may be claimed under paragraph (2)(a) in computing the taxpayer's tax payable under this Part or Part I.1 for a particular taxation year only to the extent that it exceeds the total of all amounts each of which is the amount that may reasonably be considered to have been claimed in respect of that unused foreign tax credit in computing the taxpayer's tax payable under this Part or Part I.1 for a taxation year preceding the particular taxation year.

Related Provisions: 87(2)(z) — Amalgamations; 88(1)(e.7) — Winding-up.

Pre-RSC History: Para. 126(2.3)(b) amended to substitute "tax payable under this Part or Part I.1" for "tax payable under this Part" and para. 126(2.3)(c) substituted by 1986, c. 55, subsec. 47(2), applicable to 1986 *et seq.* Para. 126(2.3)(c) formerly read:

(c) an amount in respect of a taxpayer's unused foreign tax credit in respect of a country for a taxation year may be claimed under paragraph (2)(a) in computing his tax payable under this Part for a particular taxation year only to the extent that it exceeds the aggregate of amounts claimed in respect of that unused foreign tax credit in computing his tax payable under this Part for taxation years preceding the particular taxation year.

Subsec. 126(2.3) added by 1984, c. 45, subsec. 42(4), applicable to 1984 *et seq.*

Interpretation Bulletins: IT-520: Unused foreign tax credits — carryforward and carryback. See also list at end of s. 126.

(3) Employees of international organizations — Where an individual is resident in Canada at any time in a taxation year, there may be deducted from the individual's tax for the year otherwise payable under this Part an amount equal to that proportion of the tax for the year otherwise payable under this Part by the individual that

(a) the individual's income

(i) for the year, where section 114 is not applicable to the individual in respect of the year, and

(ii) for the period or periods in the year referred to in paragraph 114(a), where section 114 is applicable to the individual in respect of the year,

Proposed Amendment — 126(3)(a)(i), (ii)

(i) for the year, if the individual is resident in Canada throughout the year, and

(ii) for the part of the year throughout which the individual was resident in Canada, if the individual is non-resident at any time in the year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 74(6), will amend subparas. 126(3)(a)(i) and (ii) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 126(3) of the Act provides a tax credit to Canadian-resident employees of international governmental organizations other than prescribed international governmental organizations. The amount of the credit is limited to the amount of any levy in lieu of taxes charged to the employee by the organization on the employee's remuneration.

The credit that may be claimed under subsection 126(3) is determined by multiplying the employee's Part I tax otherwise payable for a taxation year by a fraction. The numerator of that fraction, determined under paragraph 126(3)(a), consists of the employee's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the employee is resident in Canada) from employment with the organization; the denominator of the fraction, determined under paragraph 126(3)(b), consists generally of the amount by which the employee's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the employee is resident in Canada) exceeds the deductions listed in subparagraph 126(3)(b)(iii).

Subsection 126(3) is amended, with application to the 1998 and subsequent taxation years, to revise its references to section 114 of the Act to reflect changes to that section. For additional information, see the commentary on section 114.

from employment with an international organization (other than a prescribed international organization), as defined for the purposes of section 2 of the *Foreign Missions and International Organizations Act*

is of

(b) the amount, if any, by which

(i) where section 114 does not apply to the individual in respect of the year, the individual's income for the year computed without reference to paragraph 20(1)(ww), and

(ii) where section 114 applies to the individual in respect of the year, the total of the individual's income for the period or periods in the year referred to in paragraph 114(a) and the amount that would be determined under paragraph 114(b) in respect of the individual for the year if subsection 115(1) were read without reference to paragraphs 115(1)(d) to (f)

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j), in computing the individual's taxable income for the year or in

respect of the period or periods referred to in subparagraph (ii), as the case may be,

Proposed Amendment — 126(3)(b)

(b) the amount, if any, by which

(i) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(ii) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j), in computing the taxpayer's taxable income for the year, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 74(7), will amend para. 126(3)(b) to read as above, applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, subpara. (b)(i) shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)".

Technical Notes: See under 126(3)(a)(i), (ii).

except that the amount deductible under this subsection in computing the individual's tax payable under this Part for the year may not exceed that proportion of the total of all amounts each of which is an amount paid by the individual to the organization as a levy (the proceeds of which are used to defray expenses of the organization), computed by reference to the remuneration received by the individual in the year from the organization in a manner similar to the manner in which income tax is computed, that

(c) the individual's income for the year from employment with the organization

is of

(d) the amount that would be the individual's income for the year from employment with the organization if this Act were read without reference to paragraph 81(1)(a).

Related Provisions: 110(1)(f)(iii), (iv) — Deductions for income from certain international organizations; 126(7)"tax for the year otherwise payable under this Part" — Tax for year otherwise payable defined. See additional Related Provisions and Definitions at end of s. 126.

History: Subpara. 126(3)(b)(i) amended by 2000, c. 19, subsec. 35(3), applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, the subpara. shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)". The subpara. formerly read:

(i) where section 114 does not apply to the individual in respect of the year, the total of the individual's income for the year and the amount, if any, included under subsection 110.4(2) in computing the individual's taxable income for the year, and

Subparas. 126(3)(b)(i) and (ii) substituted by 1994, c. 21, subsec. 60(5), applicable to 1993 *et seq.* Those subparas. formerly read:

(i) the total of the individual's income for the year and the amount, if any, included pursuant to subsection 110.4(2) in computing the individual's taxable income for the year, where section 114 is not applicable to the individual in respect of the year, or

(ii) the individual's income for the period or periods in the year referred to in paragraph 114(a), where section 114 is applicable to the individual in respect of the year,

That portion of para. 126(3)(a) following subpara. (ii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 67(1), applicable to 1991 *et seq.* That portion formerly read:

from employment with an organization, as defined in section 3 of the *Privileges and Immunities (International Organizations) Act*

All that portion of subsec. 126(3) between subpara. (b)(ii) and para. (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 67(2), applicable to 1991 *et seq.* That portion formerly read:

exceeds

(iii) the total of all amounts each of which is an amount deducted by the individual under section 110.6 or paragraph 111(1)(b), or deductible by the individual under paragraph 110(1)(d) or (f), for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be,

except that where the organization referred to in paragraph (a) is neither the United Nations nor a specialized agency that is brought into relationship with the United Nations in accordance with Article 63 of the Charter of the United Nations, the amount deductible under this subsection by the individual may not exceed that proportion of the total of all amounts each of which is an amount paid by the individual to the organization as a levy (the proceeds of which are used to defray expenses of the organization) computed by reference to the remuneration received by the individual in the year from the organization in a manner similar to the manner in which income tax is computed that

Pre-RSC History: Subpara. 126(3)(b)(iii) amended by 1988, c. 55, subsec. 105(3), to substitute "under paragraph 110(1)(d) or (f)," for "under paragraph 110(1)(d) or (f) or section 110.1", applicable to 1988 *et seq.*

Subsec. 126(3) substituted by 1986, c. 6, subsec. 70(4), applicable to 1985 *et seq.* Subsec. 126(3) formerly read:

(3) In addition to any other deduction permitted by this section, an individual who was resident in Canada at any time in a taxation year may deduct from the tax for the year otherwise payable under this Part by him an amount equal to the least of

(a) an amount paid to an organization, as defined for the purposes of section 3 of the *Privileges and Immunities (International Organizations) Act*, by whom he was employed, in payment of a levy (the proceeds of which are used to defray expenses of the organization) computed by reference to the remuneration received by him in the year from the organization in a manner similar to the manner in which income tax is computed,

(b) that proportion of the tax for the year otherwise payable under this Part by him that

(i) the remuneration by reference to which the levy was computed,

is of

(ii) the taxpayer's income for the year, and

(c) that proportion of the amount referred to in paragraph (a) so paid to the organization that

(i) the amount included in computing the taxpayer's income for the year from employment with the organization

is of

(ii) the amount that would be included in computing the taxpayer's income for the year from employment with the organization if this Act were read without reference to paragraph 81(1)(a).

All that portion of subsec. 126(3) preceding subpara. (b)(i) substituted by 1973-74, c. 14, subsec. 39(2) (part), applicable to 1972 *et seq.*

International organization: S. 2 of the *Foreign Missions and International Organizations Act* (1991, c. 41) defines "international organization" to mean "any intergovernmental organization of which two or more states are members".

Interpretation Bulletins: See list at end of s. 126.

(4) Portion of foreign tax not included — For the purposes of this Act, an income or profits tax paid by a person resident in Canada to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country does not include a tax, or that portion of a tax, imposed by that country or by that state, province or other political subdi-

vision, as the case may be, that would not be imposed if the person were not entitled under this section or under section 113 to a deduction in respect thereof.

Related Provisions: See Related Provisions and Definitions at end of s. 126.

Interpretation Bulletins: See list at end of s. 126.

(4.1) No economic profit — If a taxpayer acquires a property, other than a capital property, at any time after February 23, 1998 and it is reasonable to expect at that time that the taxpayer will not realize an economic profit in respect of the property for the period that begins at that time and ends when the taxpayer next disposes of the property, the total amount of all income or profits taxes (referred to as the "foreign tax" for the purpose of subsection 20(12.1)) in respect of the property for the period, and in respect of related transactions, paid by the taxpayer for any year to the government of any country other than Canada or to the government of a state, province or other political subdivision of such a country, is not included in computing [the] taxpayer's business-income tax or non-business-income tax for any taxation year.

Related Provisions: 20(12.1) — Deduction from income for amount disallowed as credit by 126(4.1); 126(4.4) — Certain dispositions ignored for 126(4.1).

(4.2) Short-term securities acquisitions — If at any particular time a taxpayer disposes of a property that is a share or debt obligation and the period that began at the time the taxpayer last acquired the property and ended at the particular time is one year or less, the amount included in business-income tax or non-business-income tax paid by the taxpayer for a particular taxation year on account of all taxes (referred to in this subsection and subsections (4.3) and 161(6.1) as the "foreign tax") that are

(a) paid by the taxpayer in respect of dividends or interest in respect of the period that are included in computing the taxpayer's income from the property for any taxation year,

(b) otherwise included in business-income tax or non-business-income tax for any taxation year, and

(c) similar to the tax levied under Part XIII

shall, subject to subsection (4.3), not exceed the amount determined by the formula

$$A \times (B - C) \times D / E$$

where

A is 40%, if the foreign tax would otherwise be included in business-income tax, and 30%, if the foreign tax would otherwise be included in non-business-income tax,

B is the total of the taxpayer's proceeds from the disposition of the property at the particular time and the amount of all dividends or interest from the property in respect of the period included in computing the taxpayer's income for any taxation year,

C is the total of the cost at which the taxpayer last acquired the property and any outlays or expenses made or incurred by the taxpayer for the purpose of disposing of the property at the particular time,

D is the amount of foreign tax that would otherwise be included in computing the taxpayer's business-income tax or non-business-income tax for the particular year, and

E is the total amount of foreign tax that would otherwise be included in computing the taxpayer's business-income tax or non-business-income tax for all taxation years.

Related Provisions: 112(2.3) — No domestic deduction on dividend rental arrangement; 126(4.3) — Exceptions; 126(4.4) — Certain dispositions ignored for 126(4.2); 161(6.1) — Delay in interest on foreign tax credit adjustment; 257 — Formula cannot calculate to less than zero.

(4.3) Exceptions — Subsection (4.2) does not apply to a property of a taxpayer

(a) that is a capital property;

(b) that is a debt obligation issued to the taxpayer that has a term of one year or less and that is held by no one other than the taxpayer at any time;

(c) that was last acquired by the taxpayer before February 24, 1998; or

(d) in respect of which any foreign tax is, because of subsection (4.1), not included in computing the taxpayer's business-income tax or non-business-income tax.

(4.4) Dispositions ignored — For the purposes of subsections (4.1) and (4.2) and the definition "economic profit" in subsection (7),

(a) a disposition or acquisition of property deemed to be made by subsection 45(1), section 70 or 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 149(10) is not a disposition or acquisition, as the case may be; and

(b) a disposition

(i) to which section 51.1 applies, of a convertible obligation in exchange for a new obligation,

(ii) to which subsection 86(1) applies, of old shares in exchange for new shares, or

(iii) to which subsections 87(4) and (8) apply, of old shares in exchange for new shares,

is not a disposition, and the convertible obligation and the new obligation, or the old shares and the new shares, as the case may be, are deemed to be the same property.

History [subsecs. 126(4)–(4.4)]: Subsecs. 126(4.1) to (4.4) added by 1999, c. 22, subsec. 47(4), applicable to 1998 *et seq.*

(5) Foreign tax — A tax paid to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country may, subject to prescribed conditions, be deemed, for the purposes of this Act, to be an income or profits tax paid to the government of that country.

Related Provisions: See Related Provisions and Definitions at end of s. 126.

Pre-RSC History: Subsecs. 126(4), (5) substituted by 1973-74, c. 14, subsec. 39(3), applicable to 1972 *et seq.*

Regulations: No prescribed conditions at present. Regulations prescribing conditions were revoked effective 1972.

Interpretation Bulletins: See list at end of s. 126.

(5.1) Deductions for specified capital gains — Where in a taxation year an individual has claimed a deduction under section 110.6 in computing the individual's taxable income for the year, for the purposes of this section the individual shall be deemed to have claimed the deduction under section 110.6 in respect of such taxable capital gains or portion thereof as the individual may specify in the individual's return of income required to be filed pursuant to section 150 for the year or, where the individual has failed to so specify, in respect of such taxa-

ble capital gains as the Minister may specify in respect of the taxpayer for the year.

Related Provisions: See Related Provisions and Definitions at end of s. 126.

Pre-RSC History: Subsec. 126(5.1) added by 1986, c. 6, subsec. 70(5), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-395R: Foreign tax credit — foreign-source capital gains and losses. See also list at end of s. 126.

(6) Construction of subsecs. (1) and (2) — For greater certainty, where a taxpayer's income for a taxation year is in whole or in part from sources in more than one country other than Canada, subsections (1) and (2) shall be read as providing for separate deductions in respect of each of the countries other than Canada.

Related Provisions: See Related Provisions and Definitions at end of s. 126.

Interpretation Bulletins: See list at end of s. 126.

(7) Definitions — In this section,

"business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (in this definition referred to as the "business country") means, subject to subsections (4.1) and (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of any country other than Canada or to the government of a state, province or other political subdivision of any such country that can reasonably be regarded as tax in respect of the income of the taxpayer from any business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that can reasonably be regarded as relating to an amount that

(a) any other person or partnership has received or is entitled to receive from that government, or

(b) was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income for the year;

Proposed Amendment — Oil and Gas Production Sharing

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Foreign Tax Credits — Oil and Gas Production Sharing*

(32) That, in applying the foreign tax credit rules in section 126 of the Act in respect of an oil or gas business carried on in a taxation year by a resident of Canada in a country, other than Canada, that imposes an income or profits tax on other business income, there be treated as foreign taxes paid by the taxpayer for the year amounts that

(a) become receivable in the year by a government of that country (or its agent) because of an obligation of the taxpayer in respect of the business,

(b) are computed by reference to the amount or value of oil or gas produced or extracted, net of operating and capital costs,

(c) are not royalties under the foreign country's law, payments made in a purely commercial capacity or otherwise creditable foreign taxes, and

(d) do not exceed, in total, 40 per cent of the taxpayer's income from the business for the year, less amounts otherwise creditable as foreign taxes,

and that this provision apply to those taxation years of a taxpayer that begin after the earlier of December 31, 1999 and a date selected by the taxpayer (which date may in no case be earlier than December 31, 1994).

[See also Resolution (39) under 66(4) — ed.]

Federal budget, supplementary information, February 28, 2000: *Foreign Tax Credit and Oil and Gas Production Sharing Agreements*

To limit the impact of the application of Canadian and foreign taxes on the same income, Canada provides its residents with "foreign tax credits" for income or profits taxes they have paid to another country. In most cases, it is clear whether a foreign tax is sufficiently similar to Canada's income tax to qualify for these credits. However, the characterization of a levy as an income tax is less clear with respect to certain levies imposed in some oil- and gas-producing countries.

The levies in question are imposed under "production sharing agreements" between the governments of the countries concerned (or their agents) and Canadian-resident companies. Under a typical production sharing agreement, the company undertakes to conduct exploration activities within a defined territory and, where the exploration efforts are successful, to develop the resource property and exploit it commercially. At the commercial exploitation stage, the resource production is divided between the company and the foreign government, often through a state-owned corporation, according to a sharing formula agreed to in the contract. Such formulas, which vary from contract to contract, typically grant the company enough of the resource production to cover its costs and to generate a profit. Production sharing agreements generally set out in detail how costs are to be recovered over time, what proportion of the production must be allocated to the state in any given year, and other key terms.

Most of the countries that enter into such agreements with Canadian companies also impose a corporate income tax. Rather than applying the tax separately, however, these countries integrate their income tax into the production sharing agreements themselves. In effect, part of the foreign government's share of the production under the agreement is characterized as a payment in satisfaction of the Canadian company's income tax liability to that government.

Because a production sharing agreement both allocates oil and gas production and incorporates the foreign country's income tax, it can be difficult to determine which portion of the foreign government's share is on account of an income tax. Indeed, the *Income Tax Act*'s current foreign tax credit rules may deny credit for any and all payments made pursuant to such agreements. The uncertainty Canadian companies face as a result can put them at a disadvantage relative to those foreign competitors whose domestic taxation rules [most notably the United States and the United Kingdom — ed.] provide foreign tax credits in similar circumstances.

The budget proposes to introduce amendments to the *Income Tax Act* that will clarify the eligibility for a business foreign tax credit of certain payments made by Canadian resident taxpayers to foreign governments on account of levies imposed in connection with production sharing agreements. The proposed amendments will set out those circumstances in which a levy will be considered to be, in substance, an income tax paid by a taxpayer.

More specifically, the proposed amendments will require that, for a foreign levy to qualify, it must be computed by reference to net income, after recognition of relevant expenses, and must not be, under the agreement, either a royalty or any other consideration paid for the exploitation of the resource. Because the amendments are intended to accommodate situations where the foreign income tax is calculated pursuant to a production sharing agreement, as opposed to being assessed separately, the proposed rules will apply only where the foreign country otherwise imposes what can be regarded as an income tax.

The amount eligible for a foreign tax credit cannot, under the proposal, exceed 40 per cent of the taxpayer's income from the business for the year and will be subject to the existing rules of the Act governing the claiming of business foreign tax credits and the carry-overs of unused credits. The 40 per cent rate is an approximation of the Canadian corporate rate and is the same proxy rate currently used for other foreign tax credit purposes.

The amendments to the business foreign tax credit provisions of the Act will also include specific rules for the recognition of a

taxpayer's foreign exploration and development expenses (FEDE), discussed in the next section. [See Resolution (33) reproduced under 126(7)"qualifying incomes" — ed.] While there already exists a general requirement in the Act for taxpayers to recognize FEDE in computing the amount of foreign tax credit that can be claimed in respect of foreign source income, these rules will specify how FEDE will be allocated to a particular foreign country for purposes of claiming a foreign tax credit.

The new rules will apply for foreign income taxes paid by any given taxpayer, pursuant to production sharing agreements, in taxation years that begin after the earlier of December 31, 1999, and a date chosen by the taxpayer (which date cannot in any case be earlier than December 31, 1994).

Related Provisions: 104(22.3) — Deduction in computing non-business-income tax of trust; 126(4) — Portion of foreign tax not included; 126(5) — Foreign tax. See additional Related Provisions and Definitions at end of s. 126.

History: The portion of the definition "business-income tax" in subsec. 126(7) before para. (a) amended by 1999, c. 22, subsec. 47(5), applicable to 1998 *et seq.* The portion formerly read:

> "business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (in this definition referred to as the "business country") means such portion of any income or profits tax paid by the taxpayer for the year to the government of any country other than Canada or to the government of a state, province or other political subdivision of any such country as can reasonably be regarded as tax in respect of the income of the taxpayer from any business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that can reasonably be regarded as relating to an amount that

The definition "business-income tax" in subsec. 126(7) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 103(2), applicable to taxation years ending after July 13, 1990. That definition formerly read:

> "business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (in this definition referred to as the "business country") means such portion of any income or profits tax paid by the taxpayer for the year to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country as may reasonably be regarded as tax in respect of the income of the taxpayer from any business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that may reasonably be regarded as relating to an amount that any other person or partnership has received or is entitled to receive from that government;

Pre-RSC History: *The definition "business-income tax" was para. 126(7)(a).*

See at the end of subsec. 126(7).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-506: Foreign income taxes as a deduction from income; IT-520: Unused foreign tax credits — carryforward and carryback.

I.T. Technical News: No. 8 (treatment of United States unitary state taxes).

"economic profit" of a taxpayer in respect of a property for a period means the part of the taxpayer's profit, from the business in which the property is used, that is attributable to the property in respect of the period or to related transactions, determined as if the only amounts deducted in computing that part of the profit were

(a) interest and financing expenses incurred by the taxpayer and attributable to the acquisition or holding of the property in respect of the period or to a related transaction,

(b) income or profits taxes payable by the taxpayer for any year to the government of any country other than Canada or to the government of any state, province or other political subdivision of such a country, in respect of the property for the period or in respect of a related transaction, or

(c) other outlays and expenses that are directly attributable to the acquisition, holding or disposition of the property in respect of the period or to a related transaction;

Related Provisions: 126(4.4) — Certain dispositions ignored for purposes of this definition.

History: The definition "economic profit" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to 1998 *et seq.*

"foreign-tax carryover [para. 126(7)(b)]" — [Repealed under former Act]

"non-business-income tax" paid by a taxpayer for a taxation year to the government of a country other than Canada means, subject to subsections (4.1) and (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of that country, or to the government of a state, province or other political subdivision of that country, that

(a) was not included in computing the taxpayer's business-income tax for the year in respect of any business carried on by the taxpayer in any country other than Canada,

(b) was not deductible by virtue of subsection 20(11) in computing the taxpayer's income for the year, and

(c) was not deducted by virtue of subsection 20(12) in computing the taxpayer's income for the year,

but does not include a tax, or the portion of a tax,

(c.1) that is in respect of an amount deducted because of subsection 104(22.3) in computing the taxpayer's business-income tax,

(d) that would not have been payable had the taxpayer not been a citizen of that country and that cannot reasonably be regarded as attributable to income from a source outside Canada,

(e) that may reasonably be regarded as relating to an amount that any other person or partnership has received or is entitled to receive from that government,

(f) that, where the taxpayer deducted an amount under subsection 122.3(1) from the taxpayer's tax otherwise payable under this Part for the year, may reasonably be regarded as attributable to the taxpayer's income from employment to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) for the year,

(g) that can reasonably be attributed to a taxable capital gain or a portion thereof in respect of which the taxpayer or a spouse of the taxpayer has claimed a deduction under section 110.6,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(h) that may reasonably be regarded as attributable to any amount received or receivable by the taxpayer in respect of a loan for the period in the year during which it was an eligible loan (within the meaning assigned by subsection 33.1(1)), or

(i) that can reasonably be regarded as relating to an amount that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income for the year;

Related Provisions: 4(1) — Income or loss from a source; 104(22.3) — Deduction in computing non-business-income tax of trust; 252(4)(a) —

Extended meaning of "spouse"; Canada-U.S. Tax Treaty Art. XXIX B:6 — U.S. estate tax allowed for foreign tax credit purposes. See additional Related Provisions and Definitions at end of s. 126.

History: The opening words of the definition "non-business-income tax" in subsec. 126(7) amended by 1999, c. 22, subsec. 47(6), applicable to 1998 *et seq.* The opening words formerly read:

> "non-business-income tax" paid by a taxpayer for a taxation year to the government of a country other than Canada means such portion of any income or profits tax paid by the taxpayer for the year to the government of that country, or to the government of a state, province or other political subdivision of that country, as

Para. (g) of the definition "non-business-income tax" in subsec. 126(7) amended by 1995, c. 3, subsec. 36(2), applicable to 1994 *et seq.* Para. (g) formerly read:

> (g) that may reasonably be attributed to a taxable capital gain or a portion thereof in respect of which the taxpayer has claimed a deduction for the year under section 110.6;

Para. (c.1) of the definition "non-business-income tax" in subsec. 126(7) added by 1994, c. 21, subsec. 60(6), applicable to taxation years ending after November 12, 1981.

Para. (i) of "non-business-income tax" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 103(3), applicable to taxation years ending after July 13, 1990.

Pre-RSC History: *The definition "non-business-income tax" was para. 126(7)(c). See Table of Concordance.*

See at the end of subsec. 126(7).

Selected Cases [subsec. 126(7)"non-business-income tax"]: *The Queen v. Hoffman*, [1985] 2 C.T.C. 347 (FCTD) (Amounts withheld from income of U.S. citizen working in Canada not deductible as foreign non-business income tax).

Interpretation Bulletins: IT-201R2: Foreign tax credit — trust and beneficiaries; IT-395R: Foreign tax credit — foreign-source capital gains and losses; IT-506: Foreign income taxes as a deduction from income. See also list at end of s. 126.

"qualifying incomes" of a taxpayer from sources in a country means incomes from sources in the country, determined without reference to

(a) any portion of income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income,

(b) for the purpose of subparagraph 126(1)(b)(i), any portion of income in respect of which an amount was deducted under section 110.6 by the taxpayer, and

(c) any income from a source in the country if any income of the taxpayer from the source would be tax-exempt income;

Proposed Amendment — Foreign exploration and development expenses

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Foreign Tax Credit*

(33) That, in computing a taxpayer's income for a year from sources in a foreign country for the purposes of the foreign tax credit rules in section 126 of the Act, there be deducted an amount equal to the total of

(a) the greater of

(i) the maximum amount that

(A) would, if the taxpayer's only foreign resource income for the year (determined under subparagraph 66(4)(b)(ii) of the Act) were from those sources, be deductible under subsection 66(4) of the Act in computing the taxpayer's income for the year, and

(B) can reasonably be considered to relate to those sources, and to be in respect of foreign exploration and development expenses incurred in a taxation year that begins before 2001, and

(ii) the amount deducted under subsection 66(4) of the Act in computing the taxpayer's income for the year that can reasonably be considered to relate to those sources and to be in respect of foreign exploration and development expenses incurred in a taxation year that begins before 2001, and

(b) the greater of

(i) the maximum amount that would be deductible in computing the taxpayer's income for the year in respect of those sources in connection with a balance described in paragraph (35) [reproduced under 66(15)"foreign exploration and development expenses" — ed.] if the amount determined under paragraph (37) [reproduced under 66(4) — ed.] were nil, and

(ii) the amount deducted in computing the taxpayer's income for the year in respect of those sources in connection with a balance described in paragraph (35),

and that this paragraph apply to taxation years of a taxpayer that begin after the earlier of December 31, 1999 and the date selected by the taxpayer for the application of the rule described in paragraph (32).

Federal budget, supplementary information, February 28, 2000: [See last two paragraphs under 126(7)"business-income tax" — ed.]

History: The definition "qualifying incomes" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to taxation years that begin after February 24, 1998.

"qualifying losses" of a taxpayer from sources in a country means losses from sources in the country, determined without reference to

(a) any portion of income that was deductible under subparagraph 110(1)(f)(i) in computing the taxpayer's taxable income,

(b) for the purpose of subparagraph 126(1)(b)(i), any portion of income in respect of which an amount was deducted by the taxpayer under section 110.6, and

(c) any loss from a source in the country if any income of the taxpayer from the source would be tax-exempt income;

History: The definition "qualifying losses" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to taxation years that begin after February 24, 1998.

"related transactions", in respect of a taxpayer's ownership of a property for a period, means transactions entered into by the taxpayer as part of the arrangement under which the property was owned;

History: The definition "related transactions" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to 1998 *et seq.*

"tax for the year otherwise payable under this Part" means

(a) in paragraph (1)(b) and subsection (3), the amount determined by the formula

$$A - B$$

where

A is the amount that would be the tax payable under this Part for the year if that tax were determined without reference to section 120.3 and before making any deduction under any of sections 121, 122.3 and 125 to 127.41, and

B is the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of tax payable under this Part,

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3 and 124 to 127.41), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3 and 124 to 127.41);

Related Provisions: 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 126.

History: The descriptions of A and B in para. (a), and paras. (b) and (c) of the definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 2000, c. 19, subsecs. 35(4)-(6), the description of A and paras. (b) and (c) applicable to 1998 *et seq.* and the description of B applicable to 1999 *et seq.* The descriptions and the paras. formerly read:

A is the amount that would be the tax payable under this Part for the year if that tax were determined without reference to sections 120.1 and 120.3 and before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.41, and

B is the amount, if any, deemed by subsection 120(2) to have been paid on account of tax payable under this Part,

. . . . .

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.1, 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.1, 120.3 and 123.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41);

Paras. (b) and (c) of the definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 1996, c. 21, s. 29, applicable to taxation years that end after June 1995. Paras. (b) and (c) formerly read:

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.1 and 120.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.1 and 120.3 and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.41);

The definition "tax for the year otherwise payable under this Part" in subsec. 126(7) amended by 1995, c. 3, subsec. 36(1), applicable to taxation years that end after February 22, 1994. The definition formerly read:

"tax for the year otherwise payable under this Part" means

(a) in paragraph (1)(b) and subsection (3), the amount determined by the formula

$$A - B$$

where

A is the amount that would be the tax payable under this Part for the year if that tax were determined without reference to sections 120.1 and 120.3 of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to taxation years beginning before December 22, 1989, and before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.4, and

B is the amount, if any, deemed by subsection 120(2) to been paid on account of tax payable under this Part for the year,

(b) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to sections 120.1 and 120.3 of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to taxation years beginning before December 22, 1989, and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4), and

(c) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1) and sections 120.1 and 120.3 of this Act and paragraph 123(1)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to taxation years beginning before December 22, 1989, and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4);

The description of A in para. (a), and paras. (b), (c) of "tax for the year..." in subsec. 126(7) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 103(4), (5), to add, in each, reference to s. 120.3 and "as it read in its application to taxation years beginning before December 22, 1989", applicable to 1990 *et seq.*

Pre-RSC History: *The definition "tax for the year ..." was para. 126(7)(d). The pre-R.S.C. version read:*

(d) "tax for the year otherwise payable under this Part" means

(i) in paragraph (1)(b) and subsection (3), the amount, if any, by which

(A) the amount that would be the tax payable under this Part for the year if that tax were determined without reference to section 120.1 and paragraph 123(1)(b) and before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.4

exceeds

(B) the amount, if any, deemed by subsection 120(2) to have been paid on account of tax payable under this Part for the year,

(ii) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to section 120.1 and paragraph 123(1)(b) and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4), and

(iii) in subsection (2.1), the tax for the year payable under this Part (determined without reference to subsection 120(1), section 120.1 and paragraph 123(1)(b) and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4); and

See at the end of subsec. 126(7).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"tax-exempt income" means income of a taxpayer from a source in a country in respect of which

(a) the taxpayer is, because of a tax treaty with that country, entitled to an exemption from all income or profits taxes, imposed in that country, to which the treaty applies, and

(b) no income or profits tax to which the treaty does not apply is imposed in any country other than Canada;

History: The definition "tax-exempt income" added to subsec. 126(7) by 1999, c. 22, subsec. 47(7), applicable to taxation years that begin after February 24, 1998.

"unused foreign tax credit" of a taxpayer in respect of a country for a taxation year means the amount determined by the formula

$$A - (B + C)$$

where

A is the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country,

B is the amount, if any, deductible under subsection (2) in respect of that country in computing the taxpayer's tax payable under this Part for the year, and

C is that portion of business income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country that may reasonably be considered to have been deducted in computing the taxpayer's tax payable under Part I.1 for the year.

Related Provisions: 152(6)(f.1) — Minister required to reassess past year to allow unused foreign tax credit; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 126.

Pre-RSC History: *The definition "unused foreign tax credit" was para. 126(7)(e). The pre-R.S.C. version read:*

> *(e) "unused foreign tax credit" of a taxpayer in respect of a country for a taxation year means the amount, if any, by which*
>
> *(i) the business-income tax paid by him for the year in respect of businesses carried on by him in that country*
>
> *exceeds the aggregate of*
>
> *(ii) the amount, if any, deductible under subsection (2) in respect of that country in computing his tax payable under this Part for the year, and*
>
> *(iii) that portion of business income tax paid by him for the year in respect of businesses carried on by him in that country that may reasonably be considered to have been deducted in computing his tax payable under Part I.1 for the year.*

See below.

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Pre-RSC History [subsec. 126(7)]: Subpara. 126(7)(d)(i) substituted, and 126(7)(d)(ii) and (iii) amended to substitute in each "the tax for the year payable under this Part (determined without reference to section 120.1 and paragraph 123(1)(b)" for "the tax for the taxation year payable under this Part (determined without reference to section 120.1 and paragraphs 123(1)(b), (c) and (d)" by 1988, c. 55, subsec. 105(4) applicable to 1987 *et seq.*, except that in their application to taxation years ending after 1986 and commencing before July 1988, subparas. 126(7)(d)(i) to (iii) shall be read as follows:

> (i) in paragraph (1)(b) and subsection (3), the amount, if any, by which
>
> (A) the amount that would be that tax payable under this Part for the year if that tax were determined without reference to section 120.1 and paragraph 123(1)(b), before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.4 and as if the lesser of the amounts determined under clauses 123(1)(a)(iv)(A) and (B) were the amount taxable (within the meaning assigned by subsection 123(1)) for the year
>
> exceeds
>
> (B) the amount, if any, deemed by subsection 120(2) to have been paid on account of tax payable under this Part for the year,
>
> (ii) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the year payable under this Part (determined without reference to section 120.1, subparagraphs 123(1)(a)(iv), (v) and (vi) and paragraph 123(1)(b) and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4), and
>
> (iii) in subsection (2.1) the tax for the year payable under this Part (determined without reference to subsection 120(1), section 120.1, subparagraphs 123(1)(a)(iv), (v) and (vi) and paragraph 123(1)(b) and before making any deduction under any of sections 121, 122.3, 124 to 127 and 127.2 to 127.4); and

Subpara. 126(7)(d)(i) formerly read:

> (i) in paragraph (1)(b) and subsection (3), the amount, if any, by which
>
> (A) the amount that would be the tax payable under this Part for the year if that tax were determined without reference to section 120.1 and paragraph 123(1)(b), before making any deduction under any of sections 121, 122.3, 125 to 127 and 127.2 to 127.4 and as if the lesser of the amounts determined under subparagraphs 123(1)(c)(i) and (ii) were the amount taxable (within the meaning assigned by subsection 123(1)) for the year and subsection 124(1) were read without reference to the words "in a province" therein
>
> exceeds
>
> (B) the amount, if any, deemed by subsection 120(2) to have been paid on account of tax payable under this Part for the year,

Subpara. 126(7)(c)(viii) added by 1987, c. 46, subsec. 45(3), applicable with respect to taxation years commencing after December 17, 1987.

Subparas. 126(7)(c)(vi) and (d)(i) to (iii) substituted by 1986, c. 55, subsecs. 47(3), (4); subpara. 126(7)(c)(vi) applicable to taxation years commencing after 1985 and subparas. 126(7)(d)(i) to (iii) applicable to 1987 *et seq.* Subparas. 126(7)(c)(vi) and (d)(i) to (iii) formerly read:

> (vi) that may reasonably be regarded as attributable to the taxpayer's income from employment to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) for the year; or
>
> . . . . .
>
> (i) in paragraph (1)(b) and subsection (3), the amount, if any, by which the tax for the taxation year otherwise payable under this Part before making any addition under section 120.1 and any deduction under any of sections 120.1, 121, 122.3, 125 to 127 and 127.2 to 127.4 exceeds the amount, if any, deemed by virtue of subsection 120(2) to have been paid on account of tax under this Part for the year,
>
> (ii) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the taxation year otherwise payable under this Part before making any addition under section 120.1 and any deduction under any of sections 120.1, 121, 122.3, 124 to 127 and 127.2 to 127.4, and
>
> (iii) in subsection (2.1), the tax for the taxation year otherwise payable under this Part before making any addition under subsection 120(1) or section 120.1 and any deduction under any of sections 120.1, 121, 122.3, 124 to 127 and 127.2 to 127.4; and

All that portion of para. 126(7)(e) following subpara. (i) amended to substitute "exceeds the aggregate of" for "exceeds" and to add subpara. 126(7)(e)(iii) by 1986, c. 55, subsec. 47(5), applicable to 1986 *et seq.*

Subpara. 126(7)(c)(vii) added by 1986, c. 6, subsec. 70(6), applicable to 1985 *et seq.*

Subparas. 126(7)(d)(i) to (iii) amended by 1986, c. 6, subsec. 70(7), applicable to 1985 *et seq.*, to substitute, at the beginning of subpara. (i), reference to subsection (3) for one to paragraph (3)(b), and "127.2 to 127.4" for "127.2 and 127.3" in each of subparas. (i) to (iii).

Para. 126(7)(b) repealed and para. 126(7)(e) added by 1984, c. 45, subsecs. 42(5), (6). The repeal of para. 126(7)(b) is applicable to 1984 *et seq.* and para. 126(7)(e) is applicable to the computation of tax for 1984 *et seq.*, except that the unused foreign tax credit for the 1983 and preceding taxation years shall be reduced by any amount in respect thereof that may reasonably be regarded as having been claimed for any of those years under paragraph 126(2)(a) in respect of a foreign tax carryover. Para. 126(7)(b) formerly read:

> (b) "foreign-tax carryover" — "foreign-tax carryover" of a taxpayer in respect of a country for a taxation year means the lesser of
>
> (i) the amount, if any, by which
>
> (A) the amount determined under paragraph (2)(a) in respect of the taxpayer for the immediately preceding taxation year in respect of that country,
>
> exceeds
>
> (B) the amount deducted in the immediately preceding taxation year in respect of that country under subsection (2) by the taxpayer from the tax for that year otherwise payable under this Part by him, and
>
> (ii) the aggregate of all amounts each of which is an amount in respect of one of the 5 immediately preceding taxation years, equal to the amount, if any, by which
>
> (A) the business-income tax paid by him for the year in respect of businesses carried on by him in that country
>
> exceeds
>
> (B) the amount deducted in respect of that country under subsection (2) by him from the tax for the year otherwise payable under this Part by him;

Subpara. 126(7)(c)(vi) added and para. 126(7)(d) substituted by 1984, c. 1, subsecs. 71(4) and (5). Subpara. (c)(vi) applicable to 1984 *et seq.* and para. (d) applicable to 1982 *et seq.*

Para. 126(7)(a), subparas. 126(7)(d)(i) to (iii), and all that portion of subpara. 126(7)(c) following subpara. (iii) substituted, and subparas. 126(7)(c)(iv) and (v) added, by 1980-81-82-83, c. 140, subsecs. 88(3) to (5). Para. 126(7)(a) and the portion of para. 126(7)(c) following subpara. (iii) and subparas. 126(7)(c)(iv) and (v), are applicable to taxation years commencing after November 12, 1981. Subparas. 126(7)(d)(i) to (iii) are applicable to the 1982 and subsequent taxation years. The provisions of subsec. 126(7) formerly read as follows:

> (a) "business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by him in a country other than Canada (in this paragraph referred to as the "business country") means such portion of any income or profits tax paid by him for the year to the government of any country other than Canada or to the government of a state, province or other political subdivision of any such country as may reasonably be regarded as tax in respect of the in-

come of the taxpayer from any business carried on by him in the business country;

. . . . .

but does not include the portion of any tax that would not have been payable had the taxpayer not been a citizen of that country and that cannot reasonably be regarded as attributable to income from a source outside Canada; and

. . . . .

(i) in paragraphs (1)(b) and (3)(b), the amount, if any, by which the tax for the taxation year otherwise payable under this Part before making any deduction under any of sections 121 and 125 to 127 exceeds the amount, if any, deemed by virtue of subsection 120(2) to have been paid on account of tax under this Part for the year,

(ii) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the taxation year otherwise payable under this Part before making any deduction under section 121 or any of sections 124 to 127, and

(iii) in subsection (2.1), the tax for the taxation year otherwise payable under this Part before making any addition under subsection 120(1) or any deduction under section 121 or any of sections 124 to 127.

Subparas. 126(7)(c)(iii), (d)(i)–(iii) substituted by 1980-81- 82-83, c. 48, subsecs. 72(1), (2), applicable to 1980 *et seq.* Subparas. 126(7)(c)(iii), (d)(i)–(iii) formerly read:

(iii) was not deducted by virtue of subsection 20(12) in computing the taxpayer's income for the year; and

. . . . .

(i) in paragraphs (1)(b) and (3)(b), the tax for that taxation year otherwise payable under this Part before making any deduction under any of sections 121 and 125 to 127,

(ii) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the taxation year otherwise payable under this Part before making any deduction under subsection 120(2), section 121 or any of sections 124 to 127 or by virtue of section 30 of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*, and

(iii) in subsection (2.1), the tax for the taxation year otherwise payable under this Part before making any addition under subsection 120(1) or any deduction under subsection 120(2), section 121 or any of sections 124 to 127 or by virtue of section 30 of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*.

Subparas. 126(7)(d)(ii), (iii) were substituted by 1980-81-82-83, c. 47, subsec. 24(2), applicable to 1978 *et seq.* Subparas. 126(7)(d)(ii), (iii) formerly read:

(ii) in subparagraph (2)(c)(i) and paragraph (2.2)(b), the tax for the taxation year otherwise payable under this Part before making any deduction under subsection 120(2) or section 121, or any of sections 124 to 127 or by virtue of section 6 of the *Established Programs (Interim Arrangements) Act*, and

(iii) in subsection (2.1), the tax for the taxation year otherwise payable under this Part before making any addition under subsection 120(1) or any deduction under subsection 120(2), section 121 or any of sections 124 to 127 or by virtue of section 6 of the *Established Programs (Interim Arrangements) Act*.

Subpara. 126(7)(c)(iii) added by 1977-78, c. 32, s. 33, applicable to 1978 *et seq.*

Subpara. 126(7)(d)(i) substituted by 1976-77, c. 4, subsec. 51(3), applicable to 1976 *et seq.* Subpara. 126(7)(d)(i) formerly read:

(i) in paragraphs (1)(b) and (3)(b), the tax for the taxation year otherwise payable under this Part before making any deduction under section 121, subsection 124(2) or (2.1) or any of sections 125 to 127, and

All that portion of para. 126(7)(c) following subpara. (i) and subparas. 126(7)(d)(i) and (ii) substituted by 1974-75-76, c. 26, subsecs. 83(4), (5), applicable to 1974 *et seq.* That portion of para. 126(7)(c) and subparas. 126(7)(d)(i) and (ii) formerly read:

(ii) was not deductible by virtue of subsection 20(11) in computing the taxpayer's income for the year;

plus such additional amounts as may be prescribed in respect of income or profits tax paid to the government of that country on a dividend received by the taxpayer or by a foreign affiliate of the taxpayer; and

. . . . .

(i) in paragraphs (1)(b) and (3)(b), the tax for the taxation year otherwise payable under this Part before making any deduction under section 121, subsection 124(2) or any of sections 125 to 127, and

(ii) in subparagraph (2)(c)(i), the tax for the taxation year otherwise payable under this Part before making any deduction under subsection 120(2) or section 121, or any of sections 124 to 127 or by virtue of section 6 of the *Established Programs (Interim Arrangements) Act*, and

Para. 126(7)(a) and subpara. 126(7)(c)(ii) substituted by 1973-74, c. 30, subsecs. 18(1), (2), applicable to 1973 *et seq.* Para. 126(7)(a) and subpara. 126(7)(c)(ii) formerly read:

(a) "business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by him in a country other than Canada (in this paragraph referred to as the "business country") means such portion of any income or profits tax paid by him for the year to the government of any country other than Canada or to a state, province or other political subdivision of any such country as but does not include a tax, or the portion of a tax, that may reasonably be regarded as relating to an amount that

(i) may reasonably be regarded as tax in respect of the income of the taxpayer from any business carried on by him in the business country, or

(ii) was not deductible by virtue of subsection 20(12) in computing the taxpayer's income for the year;

. . . . .

(ii) was not deductible by virtue of subsection 8(9) or subsection 20(11) or (12) in computing the taxpayer's income for the year

Subpara. 126(7)(d)(i) substituted by 1973-74, c. 29, s. 2, applicable to 1973 et seq. Subpara. 126(7)(d)(i) formerly read:

(i) in paragraph (1)(b) and subsection (3), the tax for the taxation year otherwise payable under this Part before making any deduction under any of section 121, subsection 124(2), section 125, section 127 or this section,

Cls. 126(7)(b)(i)(B), (ii)(B), subpara. 126(7)(d)(ii) substituted, subpara. 126(7)(d)(iii) added by 1973-74, c. 14, subsecs. 39(4)–(6), applicable to 1972 *et seq.*

(8) Deemed separate source — For the purpose of this section, if any income from a source in a particular country would be tax-exempt income but for the fact that a portion of the income is subject to an income or profits tax imposed by the government of a country other than Canada or of a state, province or other political subdivision of such a country, the portion is deemed to be income from a separate source in the particular country.

History: Subsec. 126(8) added by 1999, c. 22, subsec. 47(8), applicable to taxation years that begin after February 24, 1998.

Related Provisions [s. 126]: 4(3) — Whether deductions are applicable to a particular source; 60(o)(iii) — Deduction for legal expenses in appealing assessment of tax deducted under s. 126; 80.1(2) — Election re interest for expropriation assets required; 87(2.11) — Vertical amalgamations; 104(22)–(22.4) — Trusts — allocation of foreign-source income to beneficiaries; 127.54(2) — Minimum tax — foreign tax credit; 180.1(1.1) — Foreign tax credit on individual surtax; 258(3) — Certain dividends on preferred shares deemed to be interest; 258(5) — Deemed interest on certain shares; Canada–U.S. tax treaty, Art. XXIV — Elimination of double taxation.

Selected Cases [s. 126]: *Taylor v. Canada*, [1991] 1 C.T.C. 304 (FCA) (No carryforward of "non-capital loss of other years" incurred during non-residency).

Definitions [s. 126]: "amount", "business" — 248(1); "business-income tax" — 126(7); "Canada" — 255; "capital property" — 54, 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "distribution year" — 126(2.22); "disposition", "dividend" — 248(1); "economic profit" — 126(7); "emigration year" — 126(2.21); "employment" — 248(1); "foreign affiliate" — 95(1), 248(1); "foreign tax" — 126(4.2); "individual" — 248(1); "non-business-income tax" — 126(7); "non-resident", "office", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying incomes", "qualifying losses", "related transactions" — 126(7); "resident", "resident

in Canada" — 250; "share" — 248(1); "source" — 126(8); "spouse" — 252(4)(a); "tax for the year otherwise payable" — 126(7); "tax-exempt income" — 126(7); "tax payable" — 248(2); "tax treaty", "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "time of disposition" — 128.1(4)(b); "trust" — 104(1), 248(1), (3); "unused foreign tax credit" — 126(7).

I.T. Application Rules [s. 126]: 40(1), (2).

Interpretation Bulletins [s. 126]: IT-183: Foreign tax credit — member of a partnership; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-194: Foreign tax credit — part-time residents; IT-201R2: Foreign tax credit — trust and beneficiaries; IT-270R2: Foreign tax credit and deduction; IT-497R3: Overseas employment tax credit.

Forms: T2209: Federal foreign tax credits.

126.1 (1) [UI premium tax credit] Definitions — In this section,

"1992 cumulative premium base" of an employer on any particular day means the total of all qualifying employer premiums of the employer for the period beginning on January 1, 1992 and ending on the day that is 365 days earlier than the particular day that became payable on or before the last day of that period;

"1992 premium base" of an employer means the total of all qualifying employer premiums for 1992 of the employer;

"1993 cumulative premium base" of an employer on any particular day means the total of all qualifying employer premiums of the employer for the period beginning on January 1, 1993 and ending on the particular day that became payable on or before the last day of that period;

"1993 premium base" of an employer means the total of all qualifying employer premiums for 1993 of the employer;

"employer" at any time means any person or partnership (other than a person who at that time is exempt because of any of paragraphs 149(1)(a) to (d), (h.1), (o) to (o.2), (o.4) to (s) and (u) to (y) from tax under this Part on all or part of the person's taxable income) that has a qualifying employee in 1992 or 1993;

"qualifying employee" of an employer means,

(a) where the employer is not exempt because of subsection 149(1) from tax under this Part on all or part of the employer's taxable income,

(i) any employee of the employer, other than any employee whose remuneration is not deductible in computing income from a business or property, and

(ii) any person in respect of whom the employer is deemed under any regulation under the *Unemployment Insurance Act* to be an employer for the purpose of determining an employer's UI premium, and

(b) in any other case, any employee of the employer;

"qualifying employer premium" for a period of an employer means that portion of the employer's UI premium that can reasonably be attributed to the remuneration paid in the period to qualifying employees of the employer;

"remittance date" for 1993 of an employer means the day prescribed under the *Unemployment Insurance Act* on or before which the employer is required to remit a UI premium in respect of remuneration paid in 1993;

"UI premium" of an employer means a premium under subsection 51(2) of the *Unemployment Insurance Act* payable,

(a) where the employer is a partnership, by the members of the partnership in respect of remuneration paid by the partnership to employees of the partnership, and

(b) in any other case, by the employer.

(2) Associated employers — For the purposes of this section,

(a) employers that are corporations that are associated with each other at any time shall be deemed to be employers that are associated with each other at that time; and

(b) where 2 employers

(i) would, but for this paragraph, not be associated with each other at any time, and

(ii) are associated, or are deemed by this subsection to be associated, with another corporation at that time,

they shall be deemed to be associated with each other at that time.

Related Provisions: 126.1(3) — Rules for individuals and partnerships.

(3) Idem — In determining for the purpose of this section whether 2 or more employers are associated with each other at any time, and in determining whether an employer is at any time a specified employer in relation to another employer,

(a) where an employer at any time is an individual, the employer shall be deemed at that time to be a corporation all the issued shares of the capital stock of which, having full voting rights under all circumstances, are owned by the individual; and

(b) where an employer at any time is a partnership,

(i) the employer shall be deemed at that time to be a corporation having one class of issued shares, which shares have full voting rights under all circumstances, and

(ii) each member of the partnership shall be deemed to own at that time the greatest proportion of the number of issued shares of the capital stock of the corporation that

(A) the member's share of the income or loss of the partnership from any source for the fiscal period of the partnership that includes that time

is of

(B) the income or loss of the partnership from that source for that period

and for the purpose of this paragraph, where the income and loss of the partnership from any source for that period are nil, that proportion shall be computed as if the partnership had income from that source for that period in the amount of $1,000,000.

(4) Business carried on by another employer — Where at any time before 1994 an employer (referred to in this subsection and subsection (5) as the "successor") carries on, as a separate business or as part of another business, a business or part of a business that was carried on at any earlier time after 1991 by a specified employer in relation to the successor (which business or part of a

business is referred to in this subsection as the "specified business"), in determining

(a) the UI premium tax credit of the specified employer and the successor, and

(b) each amount that is or would, but for subsection (13), be deemed by subsection (12) to be paid to the specified employer or the successor at any time after the successor began to carry on the specified business,

that portion of the qualifying employer premiums for any period of the specified employer that can reasonably be considered to relate to the specified business shall be deemed not to be qualifying employer premiums for the period of the specified employer and to be qualifying employer premiums for the period of the successor.

(5) Definition of "specified employer" — For the purposes of subsection (4), "specified employer" at any time in relation to a successor means any particular employer with whom the successor at that time is not or would not be dealing at arm's length if,

(a) where the particular employer ceased to exist before that time, the particular employer were in existence at that time, and

(b) the particular employer were controlled at that time by each person or group of persons who at any time in 1992 or 1993 controlled the particular employer,

except that a particular employer is not a specified employer in relation to a successor where the successor is, for the purposes of this section, deemed by paragraph 87(2)(mm) or 88(1)(e.2) to be a continuation of, and the same corporation as, the particular employer.

(6) UI premium tax credit — Where an employer (other than a partnership) files with the Minister a prescribed form containing prescribed information, an overpayment on account of the employer's liability under this Part for the employer's last taxation year beginning before 1994 equal to the employer's UI premium tax credit shall be deemed to have arisen on the later of March 1, 1994 and the day on which the form is so filed.

Related Provisions: 87(2)(mm) — Amalgamations — continuing corporation; 126.1(11) — UI premium tax credit — associated employers; 152(1.2) — Provisions applicable to determination of overpayment; 152(3.4), (3.5) — Determination of credit by Minister; 164(1.6) — Refund of credit by Minister.

Forms: 93-098: Claim for UI premium tax credit.

(7) Idem — Where a member of a partnership, acting on behalf of all of the members of the partnership, files with the Minister a prescribed form containing prescribed information, an overpayment on account of each taxpayer's liability under this Part for the taxpayer's last taxation year beginning before 1994 equal to that portion of the partnership's UI premium tax credit that can reasonably be considered to be the taxpayer's share thereof shall be deemed to have arisen on the later of March 1, 1994 and the day on which the form is so filed.

Related Provisions: 152(3.4), (3.5) — Determination of credit by Minister; 164(1.6) — Refund of credit by Minister.

(8) Definition of "UI premium tax credit" — For the purposes of this section, an employer's "UI premium tax credit" is the lesser of

(a) the amount, if any, by which $30,000 exceeds the amount, if any, by which the employer's 1992 premium base exceeds $30,000, and

(b) the amount, if any, by which the employer's 1993 premium base exceeds the employer's 1992 premium base,

unless the employer is associated at the end of 1993 with any other employer, in which case, subject to subsection (11), the employer's UI premium tax credit is nil.

(9) Allocation by associated employers — An employer that is a member of a group of employers that are associated with each other at the end of 1993 (referred to in this subsection and in subsections (10) and (11) as "associated employers") may file with the Minister an agreement in prescribed form on behalf of the associated employers allocating among them an amount not exceeding the lesser of

(a) the amount, if any, by which $30,000 exceeds the amount, if any, by which the total of the 1992 premium bases of all of the associated employers exceeds $30,000, and

(b) the amount, if any, by which

(i) the total of the 1993 premium bases of all of the associated employers

exceeds

(ii) the total of the 1992 premium bases of all of the associated employers.

(10) Allocation by the Minister — The Minister may request any of the associated employers to file with the Minister an agreement referred to in subsection (9) and, where the employer does not file the agreement within 30 days after receiving the request, the Minister may allocate among them an amount not exceeding the lesser of the amounts determined under paragraphs (9)(a) and (b).

(11) UI premium tax credit — associated employers — For the purposes of this section, the least amount allocated to an associated employer under an agreement described in subsection (9) or the amount allocated to the employer by the Minister under subsection (10), as the case may be, is the UI premium tax credit of the employer.

(12) Prepayment of UI premium tax credit — Where before March 1994 an employer or, where the employer is a partnership, any member of the partnership acting on behalf of all of the members of the partnership, files with the Minister a prescribed form containing prescribed information, the Minister shall, subject to subsection (13), be deemed to have paid to the employer on account of the overpayment determined under subsection (6) in respect of the employer, and the employer shall be deemed, for the purpose of paragraph 12(1)(x), to have received and, for the purposes of the *Unemployment Insurance Act* and regulations made under it, to have remitted to the Receiver General on account of the employer's UI premium, on each remittance date for 1993, an amount that is equal to,

(a) where the employer was not associated with any other employer on the remittance date, the lesser of

(i) the amount, if any, by which the lesser of

(A) the amount, if any, by which $30,000 exceeds the amount, if any, by which the 1992 premium base of the employer exceeds $30,000, and

(B) the amount, if any, by which

(I) the 1993 cumulative premium base of the employer on the remittance date

exceeds

(II) the 1992 cumulative premium base of the employer on the remittance date

exceeds the total of all amounts deemed or that would, but for subsection (13), be deemed by this subsection to have been paid to the employer before the remittance date, and

(ii) the amount determined by the formula

$$A - (B + C)$$

where

A is the total of all UI premiums of the employer payable on or before the remittance date that can reasonably be attributed to remuneration paid in the period beginning on January 1, 1993 and ending on the remittance date,

B is the total of all amounts (determined without reference to this subsection) remitted by the employer to the Receiver General on or before the remittance date on account of the UI premiums referred to in the description of A, and

C is the total of all amounts deemed or that would, but for subsection (13), be deemed by this subsection to have been paid to the employer before the remittance date; and

(b) where the employer (in this paragraph referred to as the "particular employer") was associated on the remittance date with any other employer (in this paragraph referred to as an "associated employer"), the lesser of

(i) the amount that would be determined under paragraph (a) in respect of the particular employer on the remittance date if the particular employer were not associated on the remittance date with any other employer, and

(ii) the amount, if any, by which the lesser of

(A) the amount, if any, by which $30,000 exceeds the amount, if any, by which the total of the 1992 premium bases of the particular employer and all associated employers exceeds $30,000, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is the 1993 cumulative premium base of the particular employer or an associated employer on the remittance date

exceeds

(II) the total of all amounts each of which is the 1992 cumulative premium base of the particular employer or an associated employer on the remittance date

exceeds the total of

(C) all amounts each of which is an amount deemed or that would, but for subsection (13), be deemed by this subsection to have been paid to the particular employer or an associated employer before the remittance date, and

(D) all amounts each of which is an amount that would be determined under subparagraph (a)(ii) in respect of an associated employer on the remittance date if the associated employer were not associated on that date with any other employer.

Related Provisions: 126.1(13) — Amount deemed paid to a partnership; 126.1(14), (15) — Excess prepayments; 257 — Formula cannot calculate to less than zero.

(13) Idem — Where an amount would, but for this subsection, be deemed by subsection (12) to be paid at any time to a partnership, that portion of the amount that can reasonably be considered to be a taxpayer's share of it shall be deemed not to have been paid to the partnership and to have been paid at that time by the Minister to the taxpayer on account of the overpayment determined under subsection (7) in respect of the taxpayer.

(14) Excess prepayment — Where the total of all amounts paid under subsection (12) to a taxpayer exceeds the taxpayer's UI premium tax credit, the excess shall be deemed to have been refunded to the taxpayer, on the taxpayer's last remittance date for 1993, on account of the taxpayer's liability under this Part for the taxpayer's last taxation year beginning before 1994.

(15) Idem — Where the total of all amounts paid under subsection (13) to a taxpayer in respect of a partnership exceeds that portion of the partnership's UI premium tax credit that can reasonably be considered to be the taxpayer's share of it, the excess shall be deemed to have been refunded to the taxpayer, on the partnership's last remittance date for 1993, on account of the taxpayer's liability under this Part for the taxpayer's last taxation year beginning before 1994.

History [s. 126.1]: S. 126.1 enacted by 1994, c. 8, s. 14, applicable after 1992.

Definitions [s. 126.1]: "1992 cumulative premium base", "1992 premium base", "1993 cumulative premium base", "1993 premium base" — 126.1(1); "arm's length" — 251; "associated" — 126.1(2), (3), 256; "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employee" — 248(1); "employer" — 126.1(1); "fiscal period" — 249.1; "individual", "Minister" — 248(1); "prescribed", "property" — 248(1); "qualifying employee" — 126.1(1); "qualifying employer" — 126.1(1), (4); "remittance date" — 126.1(1); "share" — 248(1); "specified employer" — 126.1(5); "successor" — 126.1(4); "taxation year" — 249; "UI premium" — 126.1(1); "UI premium tax credit" — 126.1(8), (11).

Pre-RSC History [former s. 126.1]: Former s. 126.1 repealed by 1974-75-76, c. 26, s. 84, applicable on and after August 1, 1974. (Replaced re contributions made after July 31, 1974 by subsecs. 127(3), (4).)

S. 126.1 added by 1973-74, c. 51, s. 19, in force August 1, 1974, and applicable with respect to amounts contributed as provided therein on or after that date.

127. (1) Logging tax deduction [credit] — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount equal to the lesser of

(a) ⅔ of any logging tax paid by the taxpayer to the government of a province in respect of income for the year from logging operations in the province, and

(b) 6⅔% of the taxpayer's income for the year from logging operations in the province referred to in paragraph (a),

except that in no case shall the total of amounts in respect of all provinces that would otherwise be deductible under this subsection from the tax otherwise payable under this Part for the year by the taxpayer exceed 6⅔% of the amount that would be the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be, if this Part were read without reference to paragraphs 60(b), (c) to (c.2), (i) and (v) and sections 62, 63 and 64.

Related Provisions: 117(1) — "Tax otherwise payable".

History: That portion of subsec. 127(1) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 68(1), applicable to 1991 *et seq.* That portion formerly read:

> except that in no case shall the total of amounts in respect of all provinces that would otherwise be deductible under this section from the tax otherwise payable by the taxpayer under this Part for the year exceed 6⅔% of the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be.

Pre-RSC History: Subsec. 127(1) substituted by 1976-77, c. 4, subsec. 52(1), applicable to 1976 *et seq.* Subsec. 127(1) formerly read:

> 127. (1) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount equal to the lesser of
>
> (a) ⅔ of any logging tax paid by the taxpayer to the government of a province in respect of income for the year from logging operations in the province, and
>
> (b) 6⅔% of the taxpayer's income for the year from logging operations in the province referred to in paragraph (a),
>
> except that in no case shall the aggregate of amounts in respect of all provinces that would otherwise be deductible under this section from the tax otherwise payable by the taxpayer under this Part for the year exceed 6⅔% of the amount, if any, by which the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be, exceeds the aggregate of
>
> (c) the lesser of the amounts determined under paragraphs 124(2)(a) and (b) in respect of the corporation for the year, and
>
> (d) the lesser of the amounts determined under paragraphs 124(2.1)(d) and (e) in respect of the corporation for the year.

All that portion of subsec. 127(1) following para. (b) substituted by 1974-75-76, c. 26, subsec. 85(1), applicable to 1977 *et seq.* That portion of subsec. 127(1) formerly read:

> except that in no case shall the aggregate of amounts in respect of all provinces that would otherwise be deductible under this section from the tax otherwise payable by the taxpayer under this Part for the year exceed 6⅔% of the amount, if any, by which the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be, exceeds, where the taxation year ends after 1976, the lesser of
>
> (c) the amount, if any, in respect of the taxpayer determined under paragraph 124(2)(a) for the year, and
>
> (d) the amount, if any, in respect of the taxpayer determined under paragraph 124(2)(b) for the year.

Application to 1976: 1977-78, c. 1, s. 61 provides that in its application to the 1976 taxation year, subsec. 127(1) shall be deemed to have read as follows:

> 127. (1) Logging tax deduction — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount equal to the lesser of
>
> (a) ⅔ of any logging tax paid by the taxpayer to the government of a province in respect of income for the year from logging operations in the province; and
>
> (b) 6⅔% of the taxpayer's income for the year from logging operations in the province referred to in paragraph (a).

Selected Cases [subsec. 127(1)]: *The Queen v. British Columbia Forest Products Ltd.*, [1986] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (Feb. 28, 1986), Doc. 19677 [unreported] (Investment tax credit must be deducted from capital cost where taxpayer received assistance from government as a deduction from tax); *MacMillan Bloedel (Alberni) Ltd. v. MNR*, [1973] C.T.C. 295 (FCTD) (Interest received by taxpayer on promissory note from subsidiary deducted from income when calculating logging tax credit).

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money.

Forms: T2 SCH 5: Tax calculation supplementary — corporations.

(2) Definitions — In subsection (1),

"income for the year from logging operations in the province" has the meaning assigned by regulation;

Pre-RSC History: *The definition "income for the year from logging ..." was para. 127(2)(a).*

Regulations: 700(1), (2) (meaning of "income for the year from logging operations in a province").

"logging tax" means a tax imposed by the legislature of a province that is declared by regulation to be a tax of general application on income from logging operations.

Pre-RSC History: *The definition "logging tax" was para. 127(2)(b).*

Regulations: 700(3) (provinces are B.C. and Quebec).

Selected Cases [subsec. 127(2)]: *British Columbia Forest Products Ltd. v. MNR*, [1971] C.T.C. 270 (SCC) (Computation of income "from all sources" to be determined under provisions of the Act less allowable deductions).

(3) Contributions to registered parties and candidates [political contribution credit] — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is a monetary contribution made by the taxpayer in the year to a registered party or to a candidate whose nomination has been confirmed in an election of a member or members to serve in the House of Commons of Canada (in this section referred to as "the total"),

(a) 75% of the total, if the total does not exceed $200,

(b) $150 plus 50% of the amount by which the total exceeds $200, if the total exceeds $200 and does not exceed $550, or

(c) the lesser of

(i) $325 plus 33⅓% of the amount by which the total exceeds $550, and

(ii) $500,

if payment of each monetary contribution that is included in the total is proven by filing a receipt with the Minister, signed by a registered agent of the registered party or by the official agent of the candidate whose nomination has been confirmed, as the case may be, that contains prescribed information.

Related Provisions: 18(1)(n) — No deduction from income for political contributions; 120(4) — "Tax otherwise payable under this Part"; 123.2(a) — Corporate surtax applies to total tax before claiming political tax credit; 127(3.1) — Issue of receipts; 127(3.2) — Deposit of amounts contributed; 127(4) — Interpretation; 127(4.1) — Definition of "amount contributed"; 127(4.2) — Allocation of amount contributed among partners; 230.1 — Books and records relating to political contributions.

History: Subsec. 127(3) amended by 2000, c. 9, s. 560, applicable to 2000 *et seq.* except that, in its application to money contributions made after 1999 and before the coming into force (see below) of 2000, c. 9, the references in 127(3) to "a monetary contribution made", "monetary contribution" and a "candidate whose nomination has been confirmed" shall be read as references to "an amount contributed", "amount contributed" and "an officially nominated candidate", respectively.

2000, c. 9 comes into force November 30, 2000 unless, before that time, the Chief Electoral Officer has published a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of this Act have been made and that this Act may come into force accordingly.

Subsec. 127(3) formerly read:

> (3) Contributions to registered parties and candidates — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is an amount contributed by the taxpayer in the year to a registered party or to an officially nominated candidate at an election of a member or members to serve in the House of Commons of Canada (in this section referred to as "the total"),
>
> (a) 75% of the total if the total does not exceed $100,
>
> (b) $75 plus 50% of the amount by which the total exceeds $100 if the total exceeds $100 and does not exceed $550, or
>
> (c) the lesser of
>
> (i) $300 plus 33⅓% of the amount by which the total exceeds $550 if the total exceeds $550, and
>
> (ii) $500,

if payment of each amount contributed that is included in the total is proven by filing a receipt with the Minister, signed by a registered agent of the registered party or by the official agent of the officially nominated candidate, as the case may be, that contains prescribed information.

Regulations: 2000 (prescribed information).

Interpretation Bulletins: IT-143R2: Meaning of "eligible capital expenditure".

Information Circulars: 75-2R4: Contributions to a registered political party or to a candidate at a federal election.

Forms: T2092: Contributions to a registered party — information return; T2093: Contributions to a candidate at an election — information return.

(3.1) Issue of receipts — A receipt referred to in subsection (3) shall not be issued

(a) by a registered agent of a registered party, or

(b) by an official agent of a candidate whose nomination has been confirmed

otherwise than in respect of a monetary contribution and to the contributor who made it.

Related Provisions: 238(1) — Offences.

History: Subsec. 127(3.1) amended by 2000, c. 9, s. 560, in force November 30, 2000 unless, before that time, the Chief Electoral Officer has published a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of this Act [2000, c. 9] have been made and that this amendment may come into force accordingly.

Subsec. 127(3.1) formerly read:

(3.1) Issue of receipts — A receipt referred to in subsection (3) shall not be issued

(a) by a registered agent of a registered party, or

(b) by an official agent of an officially nominated candidate

otherwise than in respect of an amount contributed and to the contributor of such an amount.

(3.2) Deposit of amounts contributed — An official agent of a candidate whose nomination has been confirmed — other than in an electoral district referred to in Schedule 3 to the *Canada Elections Act* — who receives a monetary contribution, shall without delay deposit it in an account in the name of the official agent, in his or her capacity as such, in a branch or other office in Canada of a Canadian financial institution as defined in section 2 of the *Bank Act*, or in an authorized foreign bank, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act.

Related Provisions: 238(1) — Offences.

History: Subsec. 127(3.2) amended by 2000, c. 9, s. 560, in force November 30, 2000 unless, before that time, the Chief Electoral Officer has published a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of this Act [2000, c. 9] have been made and that this amendment may come into force accordingly.

Subsec. 127(3.2) formerly read:

(3.2) Deposit of amounts contributed — Where an amount contributed has been received by an official agent of an officially nominated candidate other than an officially nominated candidate in any of the electoral districts referred to in Schedule III to the *Canada Elections Act*, the official agent shall forthwith deposit that amount contributed in an account standing to the credit of the official agent in the agent's capacity as such in the records of a branch or other office in Canada of

(a) a bank;

(b) a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee; or

(c) a credit union.

Information Circulars: 75-2R4: Contributions to a registered political party or to a candidate at a federal election.

(4) Definitions — In subsections (3), (3.1), (3.2) and (4.1), the terms "official agent", "registered agent" and "registered party" have the meanings assigned to them by subsection 2(1) of the *Canada Elections Act* and the expression "candidate whose nomination has been confirmed" means a person whom the Chief Electoral Officer has, under subsection 71(1) of the *Canada Elections Act*, confirmed as a candidate in an election.

History: Subsec. 127(4) amended by 2000, c. 9, s. 560, in force November 30, 2000 unless, before that time, the Chief Electoral Officer has published a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of this Act [2000, c. 9] have been made and that this amendment may come into force accordingly.

Subsec. 127(4) formerly read:

(4) Definitions — In subsections (3), (3.1), (3.2) and (4.1), the terms "official agent", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act* and the term "officially nominated candidate" means a person in respect of whom a nomination paper and deposit have been filed as referred to in the definition "official nomination" in that section of that Act.

Canada Elections Act, R.S.C. 1985, c. E-2, s. 2:

2. In this Act,

"official agent" means an agent appointed in the manner set out in subsection 215(1) and specially charged with the paying of all legal expenses on account of the management or conduct of an election;

"official nomination" means the filing of all the documents required to be filed pursuant to subsection 81(1) and the compliance with all the requirements of that subsection at any time between the date of the proclamation and the hour fixed for the close of nominations on nomination day;

"registered agent" means a person whose name is recorded in the registry of agents of registered parties maintained by the Chief Electoral Officer pursuant to subsection 33(1) and includes the chief agent of a registered party and an electoral district agent;

"registered party" means a political party that is registered pursuant to section 24;

(4.1) Definition of ["money contribution"] "amount contributed" — In subsections (3), (3.1), (3.2) and (4.2), "monetary contribution" made by a taxpayer means a contribution made by the taxpayer to a registered party or to a candidate whose nomination has been confirmed in the form of cash or in the form of a negotiable instrument issued by the taxpayer, but does not include

(a) a monetary contribution made by an official agent of a candidate whose nomination has been confirmed or a registered agent of a registered party (in the agent's capacity as official agent or registered agent, as the case may be) to another such official agent or registered agent, as the case may be; or

(b) a monetary contribution in respect of which the taxpayer has received or is entitled to receive a financial benefit of any kind (other than a prescribed financial benefit or a deduction under subsection (3)) from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan or deduction from tax or an allowance or otherwise.

History: Subsec. 127(4.1) amended by 2000, c. 9, s. 560, in force November 30, 2000 unless, before that time, the Chief Electoral Officer has published a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of this Act [2000, c. 9] have been made and that this amendment may come into force accordingly.

Subsec. 127(4.1) formerly read:

(4.1) Definition of "amount contributed" ["monetary contribution"] — In subsections (3), (3.1) and (3.2), "amount contributed" by a taxpayer means a contribution by the taxpayer to a registered party or an officially nominated candidate in the form of cash or in

the form of a negotiable instrument issued by the taxpayer, but does not include

(a) a contribution made by an official agent of an officially nominated candidate or a registered agent of a registered party (in the agent's capacity as such official agent or registered agent, as the case may be) to another such official agent or registered agent, as the case may be; or

(b) a contribution in respect of which the taxpayer has received or is entitled to receive a financial benefit of any kind (other than a prescribed financial benefit or a deduction pursuant to subsection (3)) from a government, municipality or other public authority, whether as a grant, subsidy, forgivable loan or deduction from tax or an allowance or otherwise.

(4.2) Allocation of amount contributed among partners — Where a taxpayer was, at the end of a taxation year of a partnership, a member of the partnership, the taxpayer's share of any monetary contribution made by the partnership in that taxation year that would, if the partnership were a person, be a monetary contribution referred to in subsection (3), is, for the purposes of that subsection, deemed to be a monetary contribution made by the taxpayer in the taxpayer's taxation year in which the taxation year of the partnership ended.

Related Provisions: 53(2)(c)(iii) — Reduction in ACB of partnership interest.

History: Subsec. 127(4.2) amended by 2000, c. 9, s. 560, in force November 30, 2000 unless, before that time, the Chief Electoral Officer has published a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of this Act [2000, c. 9] have been made and that this amendment may come into force accordingly.

Subsec. 127(4.2) formerly read:

(4.2) Allocation of amount contributed among partners — Where a taxpayer was, at the end of a taxation year of a partnership, a member of the partnership, the taxpayer's share of any amount contributed by the partnership in that taxation year that would, if the partnership were a person, be an amount contributed referred to in subsection (3), shall, for the purposes of that subsection, be deemed to be an amount contributed by the taxpayer in the taxpayer's taxation year in which the taxation year of the partnership ended.

Pre-RSC History: Para. 127(3.2)(a) substituted by 1992, c. 1, Sch. V, s. 17, applicable from February 28, 1992. Para. (3.2)(a) formerly read:

(a) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies;

Para. 127(3.2)(c) substituted by 1985, c. 45, subsec. 72(1). Para. 127(3.2)(c) formerly read:

(c) a credit union within the meaning assigned by subsection 137(6).

Subsec. 127(4.1) substituted by 1984, c. 1, subsec. 72(1), applicable with respect to contributions made after April 19, 1983. Subsec. 127(4.1) formerly read:

(4.1) "Amount contributed" defined — For the purposes of subsections (3), (3.1) and (3.2) and section 230.1, "amount contributed" means a contribution to a registered party or an officially nominated candidate in the form of cash or in the form of a negotiable instrument issued by the person making the contribution, but does not include a contribution made by an official agent of an officially nominated candidate or a registered agent of a registered party (in his capacity as such official agent or registered agent, as the case may be) to another such official agent or registered agent, as the case may be.

Subsecs. 127(3)–(4.2) substituted for subsecs. 127(3)–(4.1) by 1976-77, c. 4, subsec. 52(2), applicable, as to subsecs. 127(2)–(4.1), after May 25, 1976, and as to subsec. 127(4.2), with respect to amounts contributed after June 23, 1975. Subsecs. 127(3)–(4.1) formerly read:

(3) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the aggregate of all amounts each of which is an amount contributed by the taxpayer in the year to a registered party or to a candidate at an election of a member or members to serve in the House of Commons of Canada (in this section referred to as "the aggregate"),

(a) 75% of the aggregate if the aggregate does not exceed $100,

(b) $75 plus 50% of the amount by which the aggregate exceeds $100 if the aggregate exceeds $100 and does not exceed $550, or

(c) the lesser of

(i) $300 plus 33⅓% of the amount by which the aggregate exceeds $550 if the aggregate exceeds $550, and

(ii) $500,

if payment of each amount contributed that is included in the aggregate is proven by filing receipts with the Minister, signed by a registered agent of the registered party or by the official agent of the candidate, as the case may be, that contain prescribed information.

(3.1) A receipt referred to in subsection (3) shall not be issued

(a) by a registered agent of a registered party, or

(b) by an official agent of a candidate

otherwise than in respect of an amount contributed and to the contributor thereof.

(3.2) Where an amount contributed has been received by an official agent of a candidate other than a candidate in any of the electoral districts referred to in Schedule III to the *Canada Elections Act*, the official agent shall forthwith deposit that amount contributed in an account standing to the credit of the official agent in his capacity as such in the records of a branch or other office in Canada of

(a) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies;

(b) a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee; or

(c) a credit union within the meaning assigned by subsection 137(6).

(4) For the purposes of subsections (3), (3.1), (3.2) and (4.1), the terms "candidate", "official agent", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act*.

(4.1) For the purposes of subsections (3), (3.1) and (3.2) and section 230.1, "amount contributed" means a contribution to a registered party or candidate in the form of cash or in the form of a negotiable instrument issued by the person making the contribution, but does not include a contribution made by an official agent of a candidate or a registered agent of a registered party (in his capacity as such official agent or registered agent, as the case may be) to another such official agent or registered agent, as the case may be.

Subsecs. 127(3)–(12) substituted for subsecs. 127(3), (4) by 1974-75-76, c. 71, s. 9, applicable, as to subsecs. 127(3)–(4.1), in respect of amounts contributed after June 23, 1975, and, as to subsecs. 127(5)–(12), to 1975 *et seq.* Subsecs. 127(3), (4) formerly read:

(3) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the aggregate of amounts contributed by the taxpayer in the year to registered parties and candidates at an election of a member or members to serve in the House of Commons of Canada (in this section referred to as "the amount contributed"),

(a) 75% of the amount contributed if the amount contributed does not exceed $100,

(b) $75 plus 50% of the amount by which the amount contributed exceeds $100 if the amount contributed exceeds $100 and does not exceed $550, and

(c) the lesser of

(i) $300 plus 33⅓% of the amount by which the amount contributed exceeds $550 if the amount contributed exceeds $550, and

(ii) $500,

if payment of each amount that is included in the amount contributed is proven by filing receipts with the Minister, signed by a registered agent of the registered party or by the official agent of the candidate, as the case may be, that contain prescribed information.

(4) For the purposes of subsection (3), the terms "candidate", "official agent", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act*.

Subsecs. 127(3), (4) added by 1974-75-76, c. 26, subsec. 85(2), applicable in respect of contributions made after July 1974. (For previous history see note to s. 126.1.)

(5) Investment tax credit — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount not exceeding the lesser of

(a) the total of

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired before the end of the year or of the taxpayer's SR&ED qualified expenditure pool at the end of the year or of a preceding taxation year, and

(ii) the lesser of

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of a subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the subsequent year, and

(B) the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds the amount, if any, determined under subparagraph (i), and

(b) where Division E.1 applies to the taxpayer for the year, the amount, if any, by which the total of

(i) the taxpayer's tax otherwise payable under this Part for the year, and

(ii) the taxpayer's tax payable under Part I.1 for the year before deducting any amount under subsection 180.1(1.2)

exceeds the taxpayer's minimum amount for the year determined under section 127.51.

Related Provisions: 12(1)(t) — Income inclusion for ITCs; 13(7.1) — Deemed capital cost; 13(21)"undepreciated capital cost"I — Reduction in u.c.c. of property to reflect ITCs; 37(1)(e) — Deduction for scientific research and experimental development; 53(2)(k)(ii) — Deduction from ACB of property to reflect ITCs; 66.1(6)"cumulative Canadian exploration expense"L — Reduction in CCEE; 87(2.11) — Vertical amalgamations; 117(1), 120(4) — "Tax otherwise payable under this Part"; 123.2(a) — Corporate surtax applies to total tax before claiming ITC; 127(8) — ITC of partnership; 127(11.2) — Time of expenditure and acquisition; 127(26) — Expenditure unpaid within 180 days of end of year; 127.1(3) — Refundable ITC deemed claimed under 127(5); 128(2)(e)(iii)(C) — No credit on return filed by trustee following individual's discharge from bankruptcy; 149(10)(c) — Where corporation becomes or ceases to be exempt; 152(6) — Reassessment; 164(5), (5.1) — Effect of carryback of loss; 180.1(1.2) — Individual surtax — deductions from tax; 192(10) — SPTC claim deemed to be deducted as ITC; 220(6), (7) — Assignment of ITC refund by corporation.

History: Subpara. 127(5)(a)(i) and cl. 127(5)(a)(ii)(A) amended by 1996, c. 21, subsecs. 30(1), (2), applicable to taxation years that begin after 1995. Subpara. (a)(i) and cl. (a)(ii)(A) formerly read:

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, before the end of the year, and

. . . . .

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year, to the extent that the investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the taxation year in which the property was acquired, or the expenditure was made, as the case may be, and

Subsec. 127(5) amended by 1994, c. 8, subsec. 15(1), applicable to taxation years that begin after 1993. Subsec. (5) formerly read:

(5) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount not exceeding the least of

(a) the taxpayer's annual investment tax credit limit for the year,

(b) the total of

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, before the end of the year, and

(ii) the lesser of

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year, to the extent that the investment tax credit was not deductible under this subsection or subsection 180.1(1.2) for the taxation year in which the property was acquired, or the expenditure was made, as the case may be, and

(B) the amount, if any, by which the taxpayer's tax otherwise payable by the taxpayer under this Part for the year exceeds the amount, if any, determined under subparagraph (i), and

(c) where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which the total of

(i) the taxpayer's tax otherwise payable under this Part for the year, and

(ii) the taxpayer's tax payable under Part I.1 for the year before deducting any amount under subsection 180.1(1.2),

exceeds the taxpayer's minimum amount for the year determined under section 127.51.

Pre-RSC History: Subsec. 127(5) substituted by 1988, c. 55, subsec. 106(1), applicable to 1988 *et seq.*, and for the 1986 and 1987 taxation years subsec, 127(5) shall be read as follows:

(5) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount equal to the lesser of the aggregate of

(a) an amount not exceeding the lesser of

(i) his investment tax credit at the end of the year in respect of property acquired, or an expenditure made, before April 20, 1983, and

(ii) the aggregate of

(A) $15,000, and

(B) ½ the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds $15,000,

(b) an amount not exceeding the lesser of

(i) his investment tax credit at the end of the year in respect of property acquired, or an expenditure made, after April 19, 1983 and before the end of the year, and

(ii) the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds the amount, if any, determined under paragraph (a), and

(c) an amount not exceeding the lesser of

(i) his investment tax credit at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year and after April 19, 1983, to the extent that the investment tax credit was not deductible under this subsection in the taxation year in which the property was acquired, or the expenditure was made, as the case may be, and

(ii) the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds the aggregate of the amounts, if any, determined under paragraphs (a) and (b)

and, where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which his tax otherwise payable under this Part for the year exceeds his minimum amount for the year determined under section 127.51.

Subsec. 127(5) formerly read:

(5) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount equal to the aggregate of

(a) an amount not exceeding the lesser of

(i) his investment tax credit at the end of the year in respect of property acquired, or an expenditure made, before April 20, 1983, and

(ii) the aggregate of

(A) $15,000, and

(B) ½ the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds $15,000;

(b) an amount not exceeding the lesser of

(i) his investment tax credit at the end of the year in respect of property acquired, or an expenditure made, after April 19, 1983 and before the end of the year, and

(ii) the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds the amount, if any, determined under paragraph (a); and

(c) an amount not exceeding the lesser of

(i) his investment tax credit at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year and after April 19, 1983, to the extent that the investment tax credit was not deductible under this subsection in the taxation year in which the property was acquired, or the expenditure was made, as the case may be, and

(ii) the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds the aggregate of the amounts, if any, determined under paragraphs (a) and (b).

Subsec. 127(5) substituted by 1984, c. 1, subsec. 72(2). Subsec. 127(5) formerly read:

(5) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount not exceeding the lesser of

(a) his investment tax credit at the end of the year, and

(b) the aggregate of

(i) $15,000, and

(ii) ½ the amount, if any, by which the tax otherwise payable by him under this Part for the year exceeds $15,000.

Subsec. 127(5) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

Selected Cases [subsec. 127(5)]: *Atcon Construction Ltd. v. R.*, [2000] 2 C.T.C. 2691 (TCC) (Rock crushing was not extraction of minerals); *Lehman Bookbinding Ltd. v. MNR*, [1995] 2 C.T.C. 129 (FCTD) (Critical element was not whether there was manufacturing and processing, but whether activity was in respect of goods for sale); *Hawboldt Hydraulics (Canada) Inc. Estate (Trustee of) v. Canada*, [1992] 2 C.T.C. 363 (FCTD) (Equipment used to manufacture replacement parts was used in manufacturing or processing goods for sale); *GA Borstad Associates Ltd. v. MNR*, [1992] 2 C.T.C. 2146 (TCC) (Investment tax credit not applicable in respect of salaries payable but not paid in taxation year); *Tenneco Canada Inc. v. Canada*, [1991] 1 C.T.C. 323 (FCA) (Taxpayer carrying on servicing business denied investment tax credits when not manufacturing or processing goods for sale in Canada); *O'Neill v. The Queen*, [1984] C.T.C. 682 (FCTD) (Investment tax credit disallowed when equipment not "qualified property").

Regulations: 4600–4609.

Interpretation Bulletins: IT-92R2: Income of contractors; IT-151R4: Scientific research and experimental development expenditures; IT-411R: Meaning of "construction".

Information Circulars: 78-4R3: Investment tax credit rates.

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

Application Policies: SR&ED 96-03: Claimants' entitlements and responsibilities; SR&ED 96-05: Penalties under subsec. 163(2).

Forms: T2 SCH 31: Investment tax credit — corporations; T661 — Claim for SR&ED carried on in Canada; T665: Simplified claim for expenditures incurred in carrying on SR&ED in Canada; T2038 (Ind.): Investment tax credit (individuals); T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

(6) Investment tax credit of cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation within the meaning assigned by subsection 136(2) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by that subsection to be remitted to the Receiver General, an amount, not exceeding the amount, if any, by which

(a) its investment tax credit at the end of the immediately preceding taxation year in respect of property acquired and expenditures made before the end of that preceding taxation year

exceeds the total of

(b) the amount deducted under subsection (5) from its tax otherwise payable under this Part for the immediately preceding taxation year in respect of property acquired and expenditures made before the end of that preceding taxation year, and

(c) the total of all amounts each of which is the amount deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,

and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3)

(d) shall be deducted in computing the taxpayer's investment tax credit at the end of the taxation year, and

(e) shall be deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

Related Provisions: 12(1)(t) — Inclusion in income of ITCs; 13(7.1)"— Deemed capital cost; 13(21)"undepreciated capital cost"I — Reduction in u.c.c. to reflect ITCs; 53(2)(k)(ii) — Deduction from ACB of property to reflect ITCs; 66.1(6)"cumulative Canadian exploration expense"L — Reduction in CCEE.

Pre-RSC History: Paras. 127(6)(a), (b) amended to add to each the words "in respect of property acquired and expenditures made before the end of that preceding taxation year"; para. 127(6)(d) amended to substitute "shall be deducted" for "is the amount required to be deducted" by 1985, c. 45, subsecs. 72(2)–(4), applicable to 1985 *et seq.*

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Subsec. 127(6) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

Interpretation Bulletins: IT-362R: Patronage dividends.

Forms: T2 SCH 31: Investment tax credit — corporations; T2038A: Business investment tax credit (prior to November 17, 1978).

(7) Investment tax credit of testamentary trust [or communal organization] — Where, in a particular taxation year of a taxpayer who is a beneficiary under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for its taxation year that ends in that particular taxation year, the trust may, in its return of income for its taxation year that ends in that particular taxation year, designate the portion of that amount that can, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the

trust in respect of any other beneficiary of the trust, and that portion shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and shall be deducted in computing the investment tax credit of the trust at the end of its taxation year that ends in that particular taxation year.

Related Provisions: 53(2)(h)(ii) — Reduction in ACB of interest in trust; 127(11.2) — Time of expenditure and acquisition.

History: Subsec. 127(7) amended by 1996, c. 21, subsec. 30(3), applicable to taxation years that begin after 1995. Subsec. (7) formerly read:

> (7) Where, in a particular taxation year of a taxpayer who is a beneficiary under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for its taxation year ending in that particular taxation year, the trust may, in its return of income under this Part for its taxation year ending in that particular taxation year, designate such portion of that amount as may, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the trust in respect of any other beneficiary of that trust, and that portion shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and shall be deducted in computing the investment tax credit of the trust at the end of its taxation year ending in that particular taxation year.

Pre-RSC History: Subsec. 127(7) amended to substitute "under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143," for "under a trust," by 1986, c. 55, subsec. 48(1), applicable to designations of amounts determined in respect of a trust in respect of property acquired and expenditures made by the trust after 11:00 a.m., EDST, October 3, 1986, other than designations of amounts determined in respect of property acquired, and expenditures made, by an *inter-vivos* trust after that time and before 1987 where

> (a) the trust was obliged to acquire the property or make the expenditure pursuant to an agreement in writing entered into by the trust before that time,
>
> (b) the beneficiary of the trust, in respect of whom the designation is made, was a beneficiary of the trust before that time or became a beneficiary of the trust after that time and before 1987 pursuant to an obligation to do so contained in an agreement in writing entered into by the beneficiary before that time, and
>
> (c) neither of the agreements referred to in paragraph (a) or (b) was subject to a condition,

except that the benefit of any designation of an amount determined in respect of property acquired or expenditures made by an *inter-vivos* trust after that time shall be taken into account only for the purpose of Part I in respect of the beneficiary and not of any other person and shall not be taken into account for the purposes of paragraph 87(2)(qq).

Subsec. 127(7) amended by 1986, c. 6, subsec. 71(1), to add reference to para. (e.1), applicable with respect to property acquired and expenditures made after May 23, 1985, other than property acquired and expenditures made after that date under the terms of an agreement in writing entered into on or before that date.

Subsec. 127(7) amended by 1985, c. 45, subsec. 72(5), to substitute "paragraph (a) or (b) of the definition "investment tax credit" in subsection (9)" for "paragraph (9)(a), (a.1), (a.2), (c) or (d.1)", "ending in that particular taxation year, the trust may" for "ending in that particular year, the trust may", "shall be added in computing" for "is the amount required to be added in computing", and "shall be deducted in computing" for "is the amount required to be deducted in computing", applicable to 1985 *et seq.*

Subsec. 127(7) substituted by 1980-81-82-83, c. 140, subsec. 89(1), applicable with respect to property acquired after October 28, 1980 to add a reference to "or (d.1)" and "under this Part."

Subsec. 127(7) substituted by 1977-78, c. 1, subsec. 61(2), applicable to 1977 *et seq.*, to add "(a.1), (a.2)".

Subsec. 127(7) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

Application Policies: SR&ED 2000-01: Cost of materials.

Forms: T2038 (Ind): Investment tax credit (individuals) for 1984 *et seq.*; T2 SCH 31: Investment tax credit — corporations.

(8) Investment tax credit of partnership — Subject to subsection (28), where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular year, under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if

> (a) except for the purpose of subsection (13), the partnership were a person and its fiscal period were its taxation year, and
>
> (b) in the case of a taxpayer who is a specified member of the partnership in the taxation year of the partnership, that definition were read without reference to paragraph (a.1) thereof, and paragraph (e.1) of that definition were read without reference to subparagraphs (ii) to (iv) thereof,

the portion of that amount that can reasonably be considered to be the taxpayer's share thereof shall be added in computing the investment tax credit of the taxpayer at the end of the particular year.

Related Provisions: 53(2)(c)(vi) — Reduction in ACB of partnership interest; 96(2.1)–(2.4) — Limited partnerships; 127(8.1) — ITC of limited partner; 127(8.3) — ITC not allocated to limited partners; 127(8.4) — Election — renunciation of allocated credits; 127(11.2) — Time of expenditure and acquisition; 127(23) — Taxation year of partnership for rules governing allocation of assistance; 127(28) — Recapture of ITC where partnership property converted to commercial use.

History: The opening words of subsec. 127(8) amended by 1999, c. 22, subsec. 48(1), applicable to dispositions and conversions of property that occur after February 23, 1998 The opening words formerly read:

> (8) Where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular year, under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if

Subsec. 127(8) amended by 1996, c, 21, subsec. 30(5), applicable to taxation years that begin after 1995. Subsec. (8) formerly read:

> (8) Where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership, for its taxation year ending in that particular taxation year, under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if
>
> (a) paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, and
>
> (b) in the case of a taxpayer who is a specified member of the partnership in the taxation year of the partnership,
>
> (i) paragraph (a) of that definition were read without reference to subparagraph (a)(ii) thereof, and
>
> (ii) paragraph (e.1) of that definition were read without reference to the words "the amount of an expenditure made by the taxpayer under paragraph (11.1)(c)",
>
> the portion of that amount that may reasonably be considered to be the taxpayer's share thereof shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year.

Subpara. 127(8)(b)(ii) amended by 1996, c. 21, subsec. 30(4), applicable to taxation years that end after December 2, 1992 and begin before 1996. Subpara. (b)(ii) formerly read:

> (ii) paragraph (e.1) of that definition were read without reference to the words "or that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(c)",

Pre-RSC History: Subsec. 127(8) substituted by 1988, c. 55, subsec. 106(2), applicable in respect of expenditures made after December 15, 1987 except that, where a taxpayer acquired a partnership interest before December 16, 1987, or after December 15, 1987

> (a) pursuant to an obligation in writing entered into before December 16, 1987,
>
> (b) and before June 1988 pursuant to the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province, or

(c) and before June 1988 as part of an offering of securities where

(i) the offering was made pursuant to the terms of an offering memorandum that contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(ii) the offering memorandum was distributed before December 16, 1987,

(iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before December 16, 1987, and

(iv) the sale of the securities was substantially in accordance with the offering memorandum,

subsec. 127(8) shall not apply in respect of the taxpayer to expenditures made by the partnership after December 15, 1987 and before 1989 pursuant to

(d) an obligation in writing entered into by the partnership before December 16, 1987,

(e) the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province, or

(f) the terms of an offering memorandum described in paragraph (c) and pursuant to which securities were distributed.

Subsec. 127(8) formerly read:

(8) Where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (iii) thereof, for its taxation year ending in that particular taxation year, the portion of that amount that may reasonably be considered to be the taxpayer's share thereof shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year.

Subsec. 127(8) amended by 1986, c. 55, subsec. 48(2), to substitute "in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (iii) thereof," for "in subsection (9)", applicable with respect to expenditures made after November 30, 1985.

Subsec. 127(8) amended by 1986, c. 6, subsec. 71(1), to add reference to para. (e.1), applicable with respect to property acquired and expenditures made after May 23, 1985, other than property acquired and expenditures made after that date under the terms of an agreement in writing entered into on or before that date.

Subsec. 127(8) substituted by 1985, c. 45, subsec. 72(5), applicable to 1985 *et seq.* Subsec. 127(8) formerly read:

(8) Where in a particular taxation year of a taxpayer who is a member of a partnership, an amount would, if the partnership were a taxpayer, be determined in respect of the partnership under paragraph (9)(a), (a.1), (a.2), (c) or (d.1) for its taxation year ending in that particular taxation year, the portion of that amount that may reasonably be considered to be the taxpayer's share thereof is the amount required to be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year.

Subsec. 127(8) substituted by 1980-81-82-83, c. 140, subsec. 89(1), applicable with respect to property acquired after October 28, 1980, to add as reference to "(d.1)".

Subsec. 127(8) substituted by 1977-78, c. 1, subsec. 61(2), applicable to 1977 *et seq.*, to add "(a.1), (a.2)".

Subsec. 127(8) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

Forms: T2038 (Ind): Investment tax credit (individuals) for 1984 *et seq.*; T2 SCH 31: Investment tax credit — corporations.

(8.1) Investment tax credit of limited partner — Where a taxpayer is a limited partner of a partnership at the end of the partnership's taxation year, the amount referred to under subsection (8) as the amount which can reasonably be considered to be the taxpayer's share of the amounts that would be determined under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9) in respect of the partnership for the year shall not exceed the lesser of

(a) such portion of the amount thereof so determined without reference to this subsection, as is considered to have arisen by virtue of the expenditure by the partnership of an amount equal to the taxpayer's expenditure base (as determined under subsection (8.2)) in respect of the partnership at the end of the year, and

(b) the taxpayer's at-risk amount in respect of the partnership at the end of the year,

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8.2) — Expenditure base; 127(8.3) — ITC not allocated to limited partners; 127(8.5) — "At-risk amount", "limited partner".

History: The opening words of subsec. 127(8.1) amended by 1996, c. 21, subsec. 30(6), applicable to taxation years that begin after 1995. The opening words formerly read:

(8.1) Where a taxpayer is a limited partner of a partnership at the end of the partnership's taxation year, the amount referred to under subsection (8) as the amount which may reasonably be considered to be the taxpayer's share of the amounts that would be determined under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, in respect of the partnership for the year shall not exceed the lesser of

Pre-RSC History: Subsec. 127(8.1) added by 1986, c. 55, subsec. 48(3), applicable after February 25, 1986.

(8.2) Expenditure base — For the purposes of subsection (8.1), a taxpayer's expenditure base in respect of a partnership at the end of a taxation year of the partnership is the lesser of

(a) the amount, if any, by which the total of

(i) the taxpayer's at-risk amount in respect of the partnership at the time the taxpayer last became a limited partner of the partnership,

(ii) all amounts described in subparagraph 53(1)(e)(iv) contributed by the taxpayer after the time the taxpayer last became a limited partner of the partnership and before the end of the year that may reasonably be considered to have increased the taxpayer's at-risk amount in respect of the partnership at the end of the taxation year in which the contribution was made, and

(iii) the amount, if any, by which

(A) the total of all amounts each of which is the taxpayer's share of any income of the partnership as determined under paragraph 96(1)(f) for the year, or a preceding year ending after the time the taxpayer last became a limited partner of the partnership,

exceeds

(B) the total of all amounts each of which is the taxpayer's share of any loss of the partnership as determined under paragraph 96(1)(g) for one of those years

exceeds the total of

(iv) all amounts received by the taxpayer after the time the taxpayer last became a limited partner of the partnership and before the end of the year as, on account or in lieu of payment of, or in satisfaction of, a distribution of the taxpayer's share of partnership profits or partnership capital, and

(v) the total of all amounts each of which is the amount of an expenditure of the partnership referred to in paragraph (8.1)(a) in respect of the taxpayer for a preceding year, and

(b) that proportion of the lesser of

(i) the total of all amounts each of which is, if the partnership were a person and its fiscal period were its taxation year,

(A) an amount a specified percentage of which would be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for the year, or

(B) the amount that would be the SR&ED qualified expenditure pool of the partnership at the end of the year, and

(ii) the total of all amounts each of which is the amount determined under paragraph (a) in respect of each of the limited partners of the partnership at the end of the year

that

(iii) the amount determined in respect of the taxpayer under paragraph (a) for the year

is of

(iv) the amount determined under subparagraph (ii).

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8.5) — "At-risk amount", "limited partner".

History: Subpara. 127(8.2)(b)(i) amended by 1996, c. 21, subsec. 30(7), applicable to taxation years that begin after 1995. Subpara. (b)(i) formerly read:

(i) the total of all amounts each of which is an amount a specified percentage of which would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, for the taxation year, and

Pre-RSC History: Subsec. 127(8.2) added by 1986, c. 55, subsec. 48(3), applicable after February 25, 1986.

(8.3) Investment tax credit not allocated to limited partners — Where

(a) the amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (a.1), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for a taxation year

exceeds

(b) the total of all amounts each of which is the amount determined, under subsections (8) and (8.1), to be the share thereof of a limited partner of the partnership,

such portion of the excess as is reasonable in the circumstances (having regard to the investment in the partnership, including debt obligations of the partnership, of each of those members of the partnership who was a member of the partnership throughout the fiscal period of the partnership and who was not a limited partner of the partnership during the fiscal period of the partnership) shall, for the purposes of subsection (8), be considered to be the amount that may reasonably be considered to be that member's share of the amount described in paragraph (a).

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8) — Election — renunciation of allocated credits; 127(8.4) — Election; 127(8.5) — "At-risk amount", "limited partner".

History: Para. 127(8.3)(a) amended by 1996, c. 21, subsec. 30(8), applicable to taxation years that begin after 1995. Para. (a) formerly read:

(a) the amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if paragraph (a) of that definition were read without reference to subparagraph (a)(iii) thereof, for a taxation year

Pre-RSC History: Subsec. 127(8.3) added by 1986, c. 55, subsec. 48(3), applicable after February 25, 1986.

(8.4) Idem — Notwithstanding subsection (8), where, pursuant to subsections (8) and (8.3) an amount would, but for this subsection, be required to be added in computing the investment tax credit of a taxpayer for a taxation year, where the taxpayer so elects in prescribed form and manner in the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for the year, such portion of the amount as is elected by the taxpayer shall, for the purposes of this section, be deemed not to have been required by subsection (8) to have been added in computing the taxpayer's investment tax credit at the end of the year.

Related Provisions: 96(2.2) — At-risk amount; 96(2.4) — Limited partner; 127(8.5) — "At-risk amount", "limited partner".

Pre-RSC History: Subsec. 127(8.4) added by 1986, c. 55, subsec. 48(3), applicable after February 25, 1986.

Forms: T932: Election by a member of a partnership to renounce investment tax credits pursuant to subsection 127(8.4).

(8.5) Definitions — In subsections (8.1) to (8.4), the words "at-risk amount" of a taxpayer and "limited partner" of a partnership have the meanings assigned to those words by subsections 96(2.2) and (2.4), respectively.

Pre-RSC History: Subsec. 127(8.5) added by 1986, c. 55, subsec. 48(3), applicable after February 25, 1986.

(9) Idem — In this section,

Pre-RSC History: *The opening words also referred to s. 127.1. See now subsec. 127.1(2.1).*

That portion of subsec. 127(9) preceding the first definition amended to add "and section 127.1" by 1986, c. 55, subsec. 48(4), applicable after May 23, 1985.

"annual investment tax credit limit" — [Repealed]

History: The definition "annual investment tax credit limit" in subsec. 127(9) repealed by 1994, c. 8, subsec. 15(2), applicable to taxation years that begin after 1993. The definition formerly read:

"annual investment tax credit limit" of a taxpayer for a taxation year means

(a) in the case of a corporation, the total of

(i) ¾ of the corporation's tax otherwise payable under this Part for the year, and

(ii) where the corporation is a Canadian-controlled private corporation throughout the year, 3% of the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(b) in any other case, the total of

(i) $24,000, and

(ii) ¾ of the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds $24,000;

Pre-RSC History: The definition "annual investment tax credit" added by 1988, c. 55, subsec. 106(14), applicable to 1988 *et seq.*, except that

(a) in the case of any such taxation year commencing before 1988, the annual investment tax credit limit of a taxpayer shall be the aggregate of

(i) that proportion of the amount of the taxpayer's tax otherwise payable, as defined in subsec. 127(17), for the year that the number of days in the year that are before 1988 is of the number of days in the year, and

(ii) that proportion of the amount that would be the taxpayer's annual investment tax credit limit for the year pursuant to the definition "annual investment tax credit limit" if that definition were applicable for the year, that the number of days in the year that are after 1987 is of the number of days in the year, and

(b) in the case of any such taxation year commencing before July, 1988, subpara. (a)(ii) of the definition "annual investment tax credit limit" in subsec. 127(9) shall be read as follows:

(ii) where the corporation is a Canadian-controlled private corporation throughout the year, ¼ of the amount, if any, by which

(A) the aggregate of

(I) that proportion of 15% of the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year that the number of days in the year that are before July, 1987 is of the number of days in the year,

(II) that proportion of 14% of the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year that the number of days in the year that are after June, 1987 and before July, 1988 is of the number of days in the year, and

(III) that proportion of 12% of the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year that the number of days in the year that are after June, 1988 is of the number of days in the year

exceeds the aggregate of

(B) in the case of any such taxation year ending before July, 1988, the amount, if any, determined under paragraph 125.1(1)(b) in respect of the corporation for the year,

(C) in the case of any such taxation year commencing before July, 1988 and ending after June, 1988, the amount, if any, determined under paragraph 125.1(1)(f), as set out in subsection 103(3) of *An Act to amend the Income Tax Act, the Canada Pension Plan, the Unemployment Insurance Act, 1971, the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977 and Certain Related Acts*, enacted in 1988, in respect of the corporation for the year, and

(D) the amount, if any, determined in respect of the corporation for the taxation year under subsection 46(3) of *An Act to amend the Income Tax Act and a related Act*, being chapter 55 of the Statutes of Canada, 1986, as enacted by section 201 of *An Act to amend the Income Tax Act, the Canada Pension Plan, the Unemployment Insurance Act, 1971, the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977 and Certain Related Acts*, enacted in 1988, and

"approved project" means a project with a total capital cost of depreciable property, determined without reference to subsection 13(7.1) or (7.4), of not less than $25,000 that has, on application in writing before July, 1988, been approved by such member of the Queen's Privy Council for Canada as is designated by the Governor in Council for the purposes of this definition in relation to projects in the appropriate province or region of a province;

Pre-RSC History: "Approved project" in subsec. 127(9) amended by 1990, c. 1, subsec. 29(1), to substitute "such member of the Queen's Privy Council for Canada as is designated by the Governor in Council for the purposes of this definition in relation to projects in the appropriate province or region of a province" for "the Minister of Regional Industrial Expansion", in force February 23, 1990.

"Approved project" in subsec. 127(9) amended to substitute "$25,000" for "$50,000" by 1986, c. 55, subsec. 48(5), applicable with respect to projects approved after February 25, 1986. (For earlier history, see end of subsec. 127(9).)

"approved project property" — [Repealed]

History: The definition "approved project property" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

"approved project property" of a taxpayer means property that is certified by the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act* to be property that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer, and to be

(a) a prescribed building, to the extent that it is acquired by the taxpayer after May 23, 1985 and before 1993, or

(b) prescribed machinery and equipment acquired by the taxpayer after May 23, 1985 and before 1993,

that has been acquired pursuant to a plan by the taxpayer to use the property in Cape Breton primarily for an approved purpose in an approved project or, in the case of a prescribed building, to be leased by the taxpayer to a lessee (other than a person exempt from tax under this Part by virtue of section 149) who can reasonably be expected to use the building pursuant to a plan to use it in Cape Breton primarily for an approved purpose in an approved project, or

(c) part of a prescribed building to the extent that the part is acquired by the taxpayer after May 23, 1985 and before 1993 to be

(i) used by the taxpayer, or

(ii) leased by the taxpayer to a lessee (other than a person exempt from tax under this Part by virtue of section 149) who can reasonably be expected to use that part

pursuant to a plan to use that part in Cape Breton primarily for an approved purpose in an approved project, or

(d) where the taxpayer is a leasing corporation, prescribed machinery and equipment acquired by the taxpayer after May 23, 1985 and before 1993, to be leased by the taxpayer in the ordinary course of carrying on a business in Canada to a lessee (other than a person exempt from tax under this Part by virtue of section 149) who can reasonably be expected to use the property in Cape Breton primarily for an approved purpose in an approved project, but this paragraph only applies if the first lessee of the property commenced use of the property after May 23, 1985,

and for the purposes of this definition,

(e) "for an approved purpose" means for the purpose of

(i) any of the activities described in subparagraphs (c)(i) to (ix), (xi) and (xii) of the definition "qualified property" in this subsection,

(ii) farming, or

(iii) a prescribed activity, and

(f) "leasing corporation" means a corporation the principal business of which is leasing property, manufacturing property that it sells or leases, the lending of money, the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or selling or servicing a type of property that it also leases, or any combination thereof;

Pre-RSC History: That portion of "approved project property" preceding para. (a) in subsec. 127(9) amended by 1990, c. 1, subsec. 29(2), to substitute "the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act*" for "the Minister of Regional Industrial Expansion", in force February 23, 1990.

That portion of the definition "approved project property" preceding para. (a) in subsec. 127(9) amended to substitute "and to be" for "and that is" by 1986, c. 55, subsec. 48(6), applicable after May 23, 1985. (For earlier history, see end of subsec. 127(9).)

Regulations: 4604(1) (prescribed building); 4604(2) (prescribed machinery and equipment); 4605 (prescribed activity).

"Cape Breton" means Cape Breton Island and that portion of the Province of Nova Scotia within the following described boundary:

beginning at a point on the southwesterly shore of Chedabucto Bay near Red Head, said point being S 70 degrees E (Nova Scotia grid meridian) from Geodetic Station Sand, thence in a southwesterly direction to a point on the northwesterly boundary of highway 344, said point being southwesterly 240' from the intersection of King Brook with said highway boundary, thence northwesterly to Crown post 6678, thence continuing northwesterly to Crown post

6679, thence continuing northwesterly to Crown post 6680, thence continuing northwesterly to Crown post 6681, thence continuing northwesterly to Crown post 6632, thence continuing northwesterly to Crown post 6602, thence northerly to Crown post 8575; thence northerly to Crown post 6599, thence continuing northerly to Crown post 6600, thence northwesterly to the southwest angle of the Town of Mulgrave, thence along the westerly boundary of the Town of Mulgrave and a prolongation thereof northerly to the Antigonish-Guysborough county line, thence along said county line northeasterly to the southwesterly shore of the Strait of Canso, thence following the southwesterly shore of the Strait of Canso and the northwesterly shore of Chedabucto Bay southeasterly to the place of beginning;

"certified property" of a taxpayer means any property (other than an approved project property) described in paragraph (a) or (b) of the definition "qualified property" in this subsection

(a) that was acquired by the taxpayer

(i) after October 28, 1980 and

(A) before 1987, or

(B) before 1988 where the property is

(I) a building under construction before 1987, or

(II) machinery and equipment ordered in writing by the taxpayer before 1987,

(ii) after 1986 and before 1989, other than a property included in subparagraph (i),

(iii) after 1988 and before 1995,

(iv) after 1994 and before 1996 where

(A) the property is acquired by the taxpayer for use in a project that was substantially advanced by or on behalf of the taxpayer, as evidenced in writing, before February 22, 1994, and

(B) construction of the project by or on behalf of the taxpayer begins before 1995, or

(v) after 1994 where the property

(A) is acquired by the taxpayer under a written agreement of purchase and sale entered into by the taxpayer before February 22, 1994,

(B) was under construction by or on behalf of the taxpayer on February 22, 1994, or

(C) is machinery or equipment that will be a fixed and integral part of property under construction by or on behalf of the taxpayer on February 22, 1994,

and that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer, and

(b) that is part of a facility as defined for the purposes of the *Regional Development Incentives Act*, chapter R-3 of the Revised Statutes of Canada, 1970, and was acquired primarily for use by the taxpayer in a prescribed area;

History: Subpara. (a)(iii) of the definition "certified property" in subsec. 127(9) amended and subparas. (iv) and (v) added by 1995, c. 3, subsec. 37(1), applicable to property acquired and expenditures incurred after 1994. Subpara. (a)(iii) formerly read:

(iii) after 1988,

Pre-RSC History: Subpara. (a)(ii) of the definition "certified property" in subsec. 127(9) amended to substitute "after 1986 and before 1989" for "after 1986", and subpara. (a)(iii) added, by 1988, c. 55, subsec. 106(3), applicable to 1988 *et seq.*

Para. (a) of the definition "certified property" substituted by 1986, c. 55, subsec. 48(7), applicable after February 25, 1986. Para. (a) formerly read:

(a) that was acquired by the taxpayer after October 28, 1980 and

(i) before 1987, or

(ii) before 1988 where the property is

(A) a building under construction before 1987, or

(B) machinery and equipment ordered in writing by the taxpayer before 1987

and has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by him, and

(For earlier history, see end of subsec. 127(9).)

Selected Cases [subsec. 127(9)"certified property"]: *Newfoundland Tractor and Equipment Co. v. Canada*, [1996] 2 C.T.C. 2250 (TCC) ("Use" does not include leasing); *Fibreco Pulp Inc. v. Canada*, [1994] 2 C.T.C. 114 (FCTD) (Chemi-thermo-mechanical pulp mill was certified property).

Regulations: 4602 (prescribed area).

"contract payment" means

(a) an amount paid or payable to a taxpayer, by a taxable supplier in respect of the amount, for scientific research and experimental development to the extent that it is performed

(i) for or on behalf of a person or partnership entitled to a deduction in respect of the amount because of subparagraph 37(1)(a)(i) or (i.1), and

(ii) at a time when the taxpayer is dealing at arm's length with the person or partnership, or

(b) an amount, other than a prescribed amount, payable by a Canadian government or municipality or other Canadian public authority or by a person exempt, because of section 149, from tax under this Part on all or part of the person's taxable income for scientific research and experimental development to be performed for it or on its behalf;

Related Provisions: 127(18)–(22) — Reduction of qualified expenditures to reflect contract payment; 127(25) — Anti-avoidance — deemed contract payment.

History: Para. (a) of the definition "contract payment" in subsec. 127(9) amended by 1996, c. 21, subsec. 30(11), applicable to taxation years that begin after 1995. Para. (a) formerly read:

(a) an amount payable for scientific research and experimental development to the extent that it can reasonably be considered to have been performed for, or on behalf of, a person entitled to a deduction in respect of the amount because of subparagraph 37(1)(a)(i) or clause 37(1)(a)(ii)(D), or

1998, c. 19, s. 306, amended subsec. 30(26) of the *Income Tax Act Budget Amendment Act* (S.C. 1996, c. 21) (Bill C-36) to read as follows, and added subsec. (26.1), deemed to have come into force on June 20, 1996:

(26) Subject to subsection (26.1), subsections (1) to (3) and (5) to (23), subsections 127(11.4) and (11.5) of the Act, as enacted by subsection (24), and subsections 127(13) to (25) of the Act, as enacted by subsection (25), apply to taxation years that begin after 1995. [This is unchanged except for "subject to subsection (26.1)" — ed.]

(26.1) Where, because of the application of subsection (26), an amount paid or payable by a person or partnership to a taxpayer with whom the person or partnership does not deal at arm's length otherwise

(a) would be a qualified expenditure of the person or partnership but would not be a contract payment received or receivable by the taxpayer, or

(b) would not be a qualified expenditure of the person or partnership but would be a contract payment received or receivable by the taxpayer,

the amount is deemed not to be a qualified expenditure of the person or partnership and not to be a contract payment received or receivable by the taxpayer.

"Contract payment" in subsec. 127(9) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 68(2), applicable to amounts that become payable after December 20, 1991. That definition formerly read:

"contract payment" means

(a) an amount payable by a person resident in Canada for scientific research and experimental development related to the business of that person,

(b) an amount, other than a prescribed amount, payable by a Canadian government, municipality or other Canadian public authority or by a person exempt from tax under Part I by virtue of section 149 for scientific research and experimental development to be performed for it or on its behalf, or

(c) an amount payable by a person not resident in Canada if that person is entitled to a deduction under clause 37(1)(a)(ii)(D) in respect of the amount;

Pre-RSC History: Para. (c) of "contract payment" in subsec. 127(9) amended by 1988, c. 55, subsec. 106(3.1), to substitute "clause 37(1)(a)(ii)(D)" for "subparagraph 37(1)(a)(v)", applicable with respect to expenditures made after December 15, 1987, other than expenditures made after that date and before 1989 pursuant to

(a) an obligation entered into in writing before December 16, 1987,

(b) the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before December 16, 1987 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province, or

(c) the terms of an offering memorandum distributed as part of an offering of securities where

(i) the offering memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(ii) the offering memorandum was distributed before December 16, 1987,

(iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before December 16, 1987, and

(iv) the sale of the securities was substantially in accordance with the offering memorandum,

and if, where the expenditure is made after December 15, 1987 by way of a payment made to an entity described in subpara. 37(1)(a)(ii), the scientific research and experimental development to be performed pursuant to that payment is so performed before 1989.

Regulations: 4606 (prescribed amount).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

Application Policies: SR&ED 94-04: Definition of "contract payment" in subsec. 127(9).

"designated region" — [Repealed under former Act]

Pre-RSC History: For History, see end of subsec. 127(9).

"eligible taxpayer" means

(a) a corporation other than a non-qualifying corporation,

(b) an individual other than a trust,

(c) a trust all the beneficiaries of which are eligible taxpayers, and

(d) a partnership all the members of which are eligible taxpayers,

and, for the purpose of this definition, a beneficiary of a trust is a person or partnership that is beneficially interested in the trust;

Related Provisions: 248(25) — Meaning of "beneficially interested".

History: The definition "eligible taxpayer" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"first term shared-use-equipment" of a taxpayer means depreciable property of the taxpayer (other than prescribed depreciable property of a taxpayer) that is used by the taxpayer, during its operating time in the period (in this subsection and subsection (11.1) referred to as the "first period") beginning at the time the property was acquired by the taxpayer and ending at the end of the taxpayer's first taxation year ending at least 12 months after that time, primarily for the prosecution of scientific research and experimental development in Canada, but does not include general purpose office equipment or furniture;

Related Provisions: 88(1)(e.3) closing words — Winding-up — parent deemed continuation of subsidiary; 127(11.5)(b) — Adjustments to qualified expenditures.

History: The definition "first term shared-use-equipment" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

Regulations: 2900(9) (prescribed depreciable property).

"Gaspé Peninsula" means that portion of the Gaspé region of the Province of Quebec that extends to the western border of Kamouraska County and includes the Magdalen Islands;

"government assistance" means assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than as a deduction under subsection (5) or (6);

Related Provisions: 248(16)–(18) — GST input tax credits deemed to be government assistance.

"investment tax credit" of a taxpayer at the end of a taxation year means the amount, if any, by which the total of

(a) the total of all amounts each of which is the specified percentage of the capital cost to the taxpayer of certified property or qualified property acquired by the taxpayer in the year,

(a.1) 20% of the taxpayer's SR&ED qualified expenditure pool at the end of the year,

(b) the total of amounts required by subsection (7) or (8) to be added in computing the taxpayer's investment tax credit at the end of the year,

(c) the total of all amounts each of which is an amount determined under paragraph (a), (a.1) or (b) in respect of the taxpayer for any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

(d) the total of all amounts each of which is an amount required by subsection 119(9) to be added in computing the taxpayer's investment tax credit at the end of the year or at the end of any of the 10 taxation years immediately preceding the year,

(e) the total of all amounts each of which is an amount required by subsection (10.1) to be added in computing the taxpayer's investment tax credit at the end of the year or at the end of any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

(e.1) the total of all amounts each of which is the specified percentage of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the capital cost to the taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) for taxation years that began before 1996,

(iii) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for taxation years that began before 1996, or

(iv) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), and

(e.2) the total of all amounts each of which is the specified percentage of 1/4 of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(e) for taxation years that began before 1996, or

(ii) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20),

in respect of first term shared-use-equipment or second term shared-use-equipment, and, for that purpose, a repayment made by the taxpayer in any taxation year preceding the first taxation year that ends coincidentally with the first period or the second period in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, is deemed to have been incurred by the taxpayer in that first taxation year,

exceeds the total of

(f) the total of all amounts each of which is an amount deducted under subsection (5) from the tax otherwise payable under this Part by the taxpayer for a preceding taxation year in respect of property acquired, or an expenditure incurred, in the year or in any of the 10 taxation years immediately preceding or the 2 taxation years immediately following the year, or in respect of the taxpayer's SR&ED qualified expenditure pool at the end of such a year,

(g) the total of all amounts each of which is an amount required by subsection (6) to be deducted in computing the taxpayer's investment tax credit

(i) at the end of the year, or

(ii) [Repealed]

(iii) at the end of any of the 9 taxation years immediately preceding or the 3 taxation years immediately following the year,

(h) the total of all amounts each of which is an amount required by subsection (7) to be deducted in computing the taxpayer's investment tax credit

(i) at the end of the year, or

(ii) [Repealed]

(iii) at the end of any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,

(i) the total of all amounts each of which is an amount claimed under subparagraph 192(2)(a)(ii) by the taxpayer for the year or a preceding taxation year in respect of property acquired, or an expenditure made, in the year or the 10 taxation years immediately preceding the year,

(j) where the taxpayer is a corporation control of which has been acquired by a person or group of persons at any time before the end of the year, the amount determined under subsection (9.1) in respect of the taxpayer, and

(k) where the taxpayer is a corporation control of which has been acquired by a person or group of persons at any time after the end of the year, the amount determined under subsection (9.2) in respect of the taxpayer,

except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of an outlay, expense or expenditure that would, if this Act were read without reference to subsections (26) and 78(4), be made or incurred by the taxpayer in the course of earning income in a particular taxation year, and no amount shall be added under paragraph (b) in computing the taxpayer's investment tax credit at the end of a particular taxation year in respect of an outlay, expense or expenditure made or incurred by a trust or a partnership in the course of earning income, if

(l) any of the income is exempt income, or

Proposed Amendment — 127(9)"investment tax credit"(l)

(l) any of the income is exempt income or is exempt from tax under this Part,

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 75, will amend para. (l) of the definition "investment tax credit" in subsec. 127(9) to read as above, applicable to all taxation years.

Technical Notes: Subsection 127(9) of the Act provides definitions that are used in the provisions relating to the investment tax credit ("ITC").

The definition "investment tax credit" was amended by S.C. 1998, c. 19, ss. 33(1) [formerly Bill C-28] to exclude expenditures in respect of which a taxpayer has not filed a prescribed form with Revenue Canada within one year after the taxpayer's filing-due date for the taxation year in which the expenditure was incurred. That amendment, which applied to all taxation years, incorrectly replaced the reference to "income exempt from tax under this Part" in the former "post-amble" to the definition "investment tax credit" with the concept "exempt income". The phrase "income exempt from tax under this Part" excluded from the definition of "investment tax credit" amounts incurred by a person whose taxable income is exempt from tax, as well as income that is exempt income for the purpose of calculating income under section 3 of the Act. Paragraph (l) of the definition "investment tax credit" is amended to correct this oversight, applicable to all taxation years.

(m) the taxpayer does not file with the Minister a prescribed form containing prescribed information in respect of the amount on or before the day that is one year after the taxpayer's filing-due date for the particular year;

Related Provisions: 37(11) — Filing deadline for R&D claims; 66(10.1)(b) — Joint exploration corporation; 87(2)(qq) — Amalgamations — continuation of corporation; 87(2.11) — Vertical amalgamations; 88(1)(e.3) — Flow-through of ITC to parent on wind-up of corporation; 127(7) — ITC of testamentary trust; 127(8) — ITC of partnership; 127(9.1) — Where control acquired before end of year; 127(9.2) — Where control acquired after beginning of year; 127(10.1) — Addition to ITC for SR&ED done by CCPC; 127(10.8) — Regeneration of ITCs where entitlement to assistance expires; 127(11.1), (11.2) — ITC calculation rules; 127(26) — Expenditure unpaid within 180 days of end of year; 127(27), (29) — Reduction of ITC where property converted to commercial use; 127(28) — Recapture of negative ITC; 127.1(2), (2.01) — Refundable investment tax credit; 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(10)(c) — Where corporation becomes or ceases to be exempt; 248(1)"investment tax

credit" — Definition applies to entire Act; 256(6)–(9) — Whether control acquired (for paras. (j), (k)).

History: The portion of the definition "investment tax credit" in subsec. 127(9) after para. (k) amended by 1998, c. 19, subsec. 33(1), applicable to all taxation years except that, if the taxpayer's filing-due date for the year is before June 1996, the taxpayer may file the prescribed form referred to in para. (m) before June 1997, and, for this purpose, the definition "filing-due date" in subsec. 248(1) applies to all taxation years. The closing words formerly read:

> except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of any qualified expenditure incurred by the taxpayer in the course of earning income from a business, or in respect of any certified property or qualified property acquired by the taxpayer for use in the course of earning income from a business, if any of the income from that business is exempt from tax under this Part;

Paras. (a), (c), that portion between paras. (e) and (g), subparas. (g)(iii) and (h)(iii), and the closing words of the definition "investment tax credit" in subsec. 127(9) amended, subparas. (g)(ii) and (h)(ii) repealed, para. (a.1) added, by 1996, c. 21, subsecs. 30(12) to (17), applicable to taxation years that begin after 1995. These portions of the definition formerly read:

> (a) the total of all amounts each of which is the specified percentage of
>
> > (i) the capital cost to the taxpayer of approved project property, certified property, qualified construction equipment, qualified property, qualified small-business property or qualified transportation equipment acquired by the taxpayer in the year,
> >
> > (ii) a qualified expenditure made by the taxpayer in the year, or
> >
> > (iii) the taxpayer's qualified Canadian exploration expenditure for the year,
>
> . . . . .
>
> (c) the total of all amounts each of which is
>
> > (i) an amount determined under paragraph (a) or (b) in respect of the taxpayer for any of the 5 taxation years immediately preceding the year, where the property was acquired, or the qualified expenditure was made, before April 20, 1983, or
> >
> > (ii) an amount determined under paragraph (a) or (b) in respect of the taxpayer for any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year, where the property was acquired, or the qualified expenditure was made, after April 19, 1983 or the qualified Canadian exploration expenditure was for a taxation year ending after November 30, 1985,
>
> . . . . .
>
> (e.1) the total of all amounts each of which is the specified percentage of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b), the amount of an expenditure made by the taxpayer under paragraph (11.1)(c) or the prescribed proxy amount of the taxpayer under paragraph (11.1)(f), and
>
> (e.2) the total of all amounts each of which is the specified percentage of ¼ of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that can reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(e) in respect of first term shared-use-equipment or second term shared-use-equipment, and, for that purpose, a repayment made by the taxpayer in any taxation year preceding the first taxation year ending coincidentally with the first period or the second period in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, shall be deemed to have been made by the taxpayer in that first taxation year,
>
> exceeds the total of
>
> (f) the total of all amounts each of which is an amount deducted under subsection (5) from the tax otherwise payable under this Part by the taxpayer for a preceding taxation year in respect of
>
> > (i) property acquired, or an expenditure made, in any of the 5 taxation years immediately preceding the year, where the property was acquired, or the expenditure was made, before April 20, 1983, or
> >
> > (ii) property acquired, or an expenditure made, in the year or in any of the 10 taxation years immediately preceding or the 2 taxation years immediately following the year, where the property was acquired, or the expenditure was made, after April 19, 1983,
>
> . . . . .
>
> (g)(ii) in respect of property acquired, or an expenditure made, before April 20, 1983, at the end of any of the 4 taxation years immediately preceding the year, or
>
> (g)(iii) in respect of property acquired, or an expenditure made, after April 19, 1983, at the end of any of the 9 taxation years immediately preceding or the 3 taxation years immediately following the year,
>
> . . . . .
>
> (h)(ii) in respect of property acquired, or an expenditure made, before April 20, 1983, at the end of any of the 5 taxation years immediately preceding the year, or
>
> (h)(iii) in respect of property acquired, or an expenditure made, after April 19, 1983, at the end of any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year,
>
> . . . . .
>
> except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of any qualified expenditure incurred by the taxpayer in the course of earning income from a business, or in respect of any certified property or qualified property acquired by the taxpayer for use in the course of earning income from a business, if any of the income from that business is exempt from tax under this Part;

Subpara. (a)(i) of the definition "investment tax credit" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(3), applicable to property acquired after December 2, 1992. Subpara. (a)(i) formerly read:

> (i) the capital cost to the taxpayer of a qualified property, qualified transportation equipment, qualified construction equipment, approved project property or certified property acquired by the taxpayer in the year,

Para. (e.1) of the definition "investment tax credit" in subsec. 127(9) amended, para. (e.2) added, by 1994, c. 8, subsec. 15(4), applicable to taxation years ending after December 2, 1992. Para. (e.1) formerly read:

> (e.1) the total of all amounts each of which is the specified percentage of that part of a repayment made by the taxpayer in the year or in any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year that may reasonably be considered to be a repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b) or that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(c)

The closing words of the definition "investment tax credit" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(5), applicable to property acquired after December 2, 1992. They formerly read:

> except that no amount shall be included in the total determined under any of paragraphs (a) to (e.1) in respect of any qualified Canadian exploration expenditure or qualified expenditure made by the taxpayer in the course of earning income from a business, or in respect of any certified property, qualified property or approved project property acquired by the taxpayer for use in the course of earning income from a business, if any of the income from that business is exempt from tax under this Part;

That portion of "investment tax credit" following para. (k) in subsec. 127(9) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(1), applicable to property acquired and expenditures made by a taxpayer after July 13, 1990, other than property acquired and expenditures made after that day and before 1992

> (a) under an agreement in writing entered into by the taxpayer before July 14, 1990; or
>
> (b) for the purpose of completing the construction of property that was under construction by or on behalf of the taxpayer before July 14, 1990.

Pre-RSC History: The definition "investment tax credit" in subsec. 127(9) amended by 1988, c. 55, subsecs. 106(4) to (9), to substitute "the

10 taxation years immediately preceding" for "the 7 taxation years immediately preceding" in subpara. (c)(ii), paras. (d), (e), (e.1), subparas. (f)(ii), (h)(iii) and para. (i); to substitute "that part of a repayment" for "that portion of a repayment" in para. (e.1); and to substitute "at the end of any of the 9 taxation years immediately preceding" for "at the end of any of the 6 taxation years immediately preceding" in subpara. (g)(iii), applicable to 1988 *et seq.*

Paras. (j), (k) of the definition "investment tax credit" in subsec. 127(9) amended by 1987, c. 46, subsec. 46(1), to substitute, in each, "group of persons" for "persons" and, in (k), "the end of the year" for "the commencement of the year", applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date (see "Interpretation" below).

Para. (a) and subpara. (c)(ii) of the definition "investment tax credit" in subsec. 127(9) substituted, para. (a) applicable with respect to expenditures made after November 30, 1985, and subpara. (c)(ii) substituted to add "or the qualified Canadian exploration expenditure was for a taxation year ending after November 30, 1985", applicable to taxation years ending after November 1982, by 1986, c. 55, subsecs. 48(8), (9). Para. (a) formerly read:

> (a) the aggregate of all amounts each of which is the specified percentage of the capital cost to him of a qualified property, qualified transportation equipment, qualified construction equipment, approved project property or certified property acquired by him in the year or the specified percentage of a qualified expenditure made by him in the year,

(For earlier History, see end of subsec. 127(9).)

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

> 72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money; IT-151R4: Scientific research and experimental development expenditures.

Information Circulars: 78-4R3: Investment tax credit rates.

Forms: T2 SCH 38: Investment tax credit (ITC) — corporations; T661 — Claim for SR&ED carried on in Canada; T665: Simplified claim for expenditures incurred in carrying on SR&ED in Canada; T2038 (Ind): Investment tax credit (ITC) — individuals; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"non-government assistance" means an amount that would be included in income by virtue of paragraph 12(1)(x) if that paragraph were read without reference to subparagraphs 12(1)(x)(vi) and (vii);

"non-qualifying corporation" at any time means

(a) a corporation that is, at that time, not a Canadian-controlled private corporation,

(b) a corporation that would be liable to pay tax under Part I.3 for the taxation year of the corporation that includes that time if that Part were read without reference to subsection 181.1(4) and if the amount determined under subsection 181.2(3) in respect of the corporation for the year were determined without reference to amounts described in any of paragraphs 181.2(3)(a), (b), (d) and (f) to the extent that the amounts so described were used to acquire property that would be qualified small-business property if the corporation were not a non-qualifying corporation, or

(c) a corporation that at that time is related for the purposes of section 181.5 to a corporation described in paragraph (b);

History: The definition "non-qualifying corporation" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"qualified Canadian exploration expenditure" — [Repealed]

History: The definition "qualified Canadian exploration expenditure" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified Canadian exploration expenditure" of a taxpayer for a taxation year means the prescribed expenditure of the taxpayer for the year;

Pre-RSC History: The definition "qualified Canadian exploration expenditure" added to subsec. 127(9) by 1986, c. 55, subsec. 48(15), applicable to expenditures made after November 30, 1985.

Regulations: 4608 (prescribed expenditure).

"qualified construction equipment" — [Repealed]

History: The definition "qualified construction equipment" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified construction equipment" of a taxpayer means prescribed equipment acquired by the taxpayer after April 19, 1983 and before 1989 that has not been used, or acquired for use or lease, for any purpose whatever before its acquisition by the taxpayer and that is
>
> (a) to be used by the taxpayer principally for the purpose of construction in Canada in the course of carrying on a business other than a business
>
> (i) the income from which is exempt from income tax by virtue of any provision of this Act, or
>
> (ii) the income from which is not included in the taxpayer's income or, in the case of a non-resident person, in the taxpayer's taxable income earned in Canada, or
>
> (b) to be leased by the taxpayer, if
>
> (i) the equipment is leased by the taxpayer in the ordinary course of carrying on a business in Canada, the income from which is other than income referred to in subparagraph (a)(i) or (ii), to a lessee who can reasonably be expected to use the equipment principally for the purpose and under the circumstances referred to in paragraph (a), and
>
> (ii) the taxpayer is a corporation whose principal business is a business described in subparagraph (d)(i) of the definition "qualified property" in this subsection or is a taxpayer whose principal business is a construction business;

Pre-RSC History: All that portion of the definition "qualified construction equipment" preceding para. (a) in subsec. 127(9) amended by 1986, c. 55, subsec. 48(10), to substitute "after April 19, 1983 and before 1989" for "after April 19, 1983", applicable after February 25, 1986.

(For earlier history, see end of subsec. 127(9).)

Regulations: 4603 (prescribed equipment).

"qualified expenditure" incurred by a taxpayer in a taxation year means

(a) an amount that is an expenditure incurred in the year by the taxpayer in respect of scientific research and experimental development that is an expenditure

(i) for first term shared-use-equipment or second term shared-use-equipment,

(ii) described in paragraph 37(1)(a), or

(iii) described in subparagraph 37(1)(b)(i), or

(b) a prescribed proxy amount of the taxpayer for the year (which, for the purpose of paragraph (e), is deemed to be an amount incurred in the year),

but does not include

(c) a prescribed expenditure incurred in the year by the taxpayer,

(d) where the taxpayer is a corporation, an expenditure specified by the taxpayer for the year for the purpose of clause 194(2)(a)(ii)(A),

(e) [Repealed]

(f) an expenditure (other than an expenditure that is salary or wages of an employee of the taxpayer) incurred by the taxpayer in respect of scientific research and experimental development to the extent that it is performed by another person or partnership at a time when the taxpayer and the person or partnership to which the expenditure is paid or payable do not deal with each other at arm's length,

(g) an expenditure described in paragraph 37(1)(a) that is paid or payable by the taxpayer to or for the benefit of a person or partnership that is not a taxable supplier in respect of the expenditure, other than an expenditure in respect of scientific research and experimental development directly undertaken by the taxpayer, and

(h) an amount that would otherwise be a qualified expenditure incurred by the taxpayer in the year to the extent of any reduction in respect of the amount that is required under any of subsections (18) to (20) to be applied;

Related Provisions: 18(9)(e) — Prepaid expenses deemed incurred in later taxation year; 127(11.5) — Adjustments to qualified expenditures; 127(13)–(16) — Agreement to transfer expenditures to non-arm's length person who performs research; 127(18)–(21) — Reduction to reflect government assistance; 127(24) — Anti-avoidance rule — exclusion from qualified expenditure; 127(26) — Amounts not paid within 180 days of end of year.

History: Para. (e) repealed and paras. (f) and (g) of the definition "qualified expenditure" in subsec. 127(9) amended by 1998, c. 19, subsec. 33(2), applicable to taxation years that begin after 1995. The paras. formerly read:

(e) subject to subsection (11.4), an amount in respect of which the taxpayer does not file with the Minister a prescribed form containing prescribed information on or before the day that is 12 months after the taxpayer's filing-due date for the particular taxation year in which the amount would have been incurred if this Act were read without reference to subsections (26) and 78(4) where the particular year begins after 1995,

(f) an expenditure (other than an expenditure that is salary or wages of an employee of the taxpayer) incurred by the taxpayer in respect of scientific research and experimental development to the extent that it is performed for or on behalf of the taxpayer at a time when the taxpayer and the person or partnership to which the expenditure is paid or payable do not deal with each other at arm's length,

(g) an expenditure described in paragraph 37(1)(a), other than an expenditure on scientific research and experimental development directly undertaken by the taxpayer, that is paid or payable by the taxpayer to or for the benefit of a person or partnership that is not a taxable supplier in respect of the expenditure, and

The definition "qualified expenditure" in subsec. 127(9) amended by 1996, c. 21, subsec. 30(10), applicable to taxation years that begin after 1995. It formerly read:

"qualified expenditure" means an expenditure in respect of scientific research and experimental development incurred by a taxpayer that is an expenditure in respect of first term shared-use-equipment or second term shared-use-equipment or an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i) and includes an amount that is a prescribed proxy amount of a taxpayer, but does not include

(a) a prescribed expenditure,

(b) in the case of a taxpayer that is a corporation, an expenditure specified by the taxpayer for the purposes of clause 194(2)(a)(ii)(A), or

(c) subject to subsection (11.4), an expenditure in respect of which the taxpayer does not, by the day on or before which the taxpayer's return of income under this Part for the taxpayer's taxation year after that in which the expenditure was incurred is required to be filed, or would be required to be filed if tax under this Part were payable by the taxpayer for that following year, file with the Minister a prescribed form containing prescribed information;

1998, c. 19, s. 306, amended subsec. 30(26) of the *Income Tax Act Budget Amendment Act* (S.C. 1996, c. 21) (Bill C-36) to read as follows, and added subsec. (26.1), deemed to have come into force on June 20, 1996:

(26) Subject to subsection (26.1), subsections (1) to (3) and (5) to (23), subsections 127(11.4) and (11.5) of the Act, as enacted by subsection (24), and subsections 127(13) to (25) of the Act, as enacted by subsection (25), apply to taxation years that begin after 1995. [This is unchanged except for "subject to subsection (26.1)" — ed.]

(26.1) Where, because of the application of subsection (26), an amount paid or payable by a person or partnership to a taxpayer with whom the person or partnership does not deal at arm's length otherwise

(a) would be a qualified expenditure of the person or partnership but would not be a contract payment received or receivable by the taxpayer, or

(b) would not be a qualified expenditure of the person or partnership but would be a contract payment received or receivable by the taxpayer,

the amount is deemed not to be a qualified expenditure of the person or partnership and not to be a contract payment received or receivable by the taxpayer.

Para. (c) of the definition "qualified expenditure" in subsec. 127(9) added by 1994, c. 21, subsec. 61(1), applicable after February 21, 1994 to expenditures incurred at any time except that, for an expenditure incurred by a taxpayer in a taxation year ending before February 22, 1994, the taxpayer may file the prescribed form referred to in para. (c) by the later of the day referred to in that para. and September 13, 1994.

The opening words of the definition "qualified expenditure" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(6), applicable to taxation years ending after December 2, 1992. They formerly read:

"qualified expenditure" means an expenditure in respect of scientific research and experimental development made by a taxpayer after March 31, 1977 that qualifies as an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i), but does not include

Regulations: 2900(4) (prescribed proxy amount); 2902 (prescribed expenditure).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-151R4: Scientific research and experimental development expenditures.

Information Circulars: 97-1: SR&ED — Administrative guidelines for software development.

Application Policies: SR&ED 96-01: Reclassification of SR&ED expenditures per subsec. 127(11.4)..

Forms: T2 SCH 301: Newfoundland scientific research and experimental development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 360: New Brunswick research and development tax credit; T2 SCH 380: Manitoba research and development tax credit; T2 SCH 403: Saskatchewan research and development tax credit; T661 — Claim for SR&ED carried on in Canada; T1129: Newfoundland research and development tax credit (individuals); T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"qualified property" of a taxpayer means property (other than an approved project property or a certified property) that is

(a) a prescribed building to the extent that it is acquired by the taxpayer after June 23, 1975, or

(b) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975,

that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is

(c) to be used by the taxpayer in Canada primarily for the purpose of

(i) manufacturing or processing goods for sale or lease,

(ii) farming or fishing,

(iii) logging,

(iv) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation of petroleum or natural gas,

(v) extracting minerals from a mineral resource,

(vi) processing

(A) ore (other than iron ore or tar sands ore) from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or

(C) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent,

(vii) producing industrial minerals,

(viii) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(ix) Canadian field processing,

(x) exploring or drilling for petroleum or natural gas,

(xi) prospecting or exploring for or developing a mineral resource,

(xii) storing grain, or

(xiii) harvesting peat,

(c.1) to be used by the taxpayer in Canada primarily for the purpose of producing or processing electrical energy or steam in a prescribed area, where

(i) all or substantially all of the energy or steam

(A) is used by the taxpayer for the purpose of gaining or producing income from a business (other than the business of selling the product of the particular property), or

(B) is sold directly (or indirectly by way of sale to a provincially regulated power utility operating in the prescribed area) to a person related to the taxpayer, and

(ii) the energy or steam is used by the taxpayer or the person related to the taxpayer primarily for the purpose of manufacturing or processing goods in the prescribed area for sale or lease, or

(d) to be leased by the taxpayer to a lessee (other than a person exempt from tax under this Part because of section 149) who can reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraphs (c)(i) to (xiii), but this paragraph does not apply to property that is prescribed for the purpose of paragraph (b) unless use of the property by the first person to whom it was leased began after June 23, 1975 and

(i) the property is leased in the ordinary course of carrying on a business in Canada by a corporation whose principal business is leasing property, lending money, purchasing conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing all or part of the sale price of merchandise or services, or any combination thereof,

(ii) the property is manufactured and leased in the ordinary course of carrying on business in Canada by a corporation whose principal business is manufacturing property that it sells or leases,

(iii) the property is leased in the ordinary course of carrying on business in Canada by a corporation whose principal business is selling or servicing property of that type, or

(iv) the property is a fishing vessel, including the furniture, fittings and equipment attached to it, leased by an individual (other than a trust) to a corporation, controlled by the individual, that carries on a fishing business in connection with one or more commercial fishing licences issued by the Government of Canada to the individual,

and, for the purpose of this definition, "Canada" includes the offshore region prescribed for the purpose of the definition "specified percentage";

Related Provisions: 127(11) — Interpretation.

History: Subparas. (c)(ii) to (xii) of the definition "qualified property" in subsec. 127(9) amended by 1997, c. 25, subsec. 35(1), applicable to taxation years that begin after 1996. Subparas. (c)(ii) to (xii) formerly read:

(ii) operating an oil or gas well, extracting petroleum or natural gas from a natural accumulation thereof or processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(iii) extracting minerals from a mineral resource,

(iv) processing ore (other than iron ore or tar sands) from a mineral resource to a stage that is not beyond the prime metal stage or its equivalent,

(v) processing iron ore from a mineral resource to a stage that is not beyond the pellet stage or its equivalent,

(vi) processing tar sands to a stage that is not beyond the crude oil stage or its equivalent,

(vii) exploring or drilling for petroleum or natural gas,

(viii) prospecting or exploring for or developing a mineral resource,

(ix) logging,

(x) farming or fishing,

(xi) storing grain,

(xii) producing industrial minerals,

Para. (c.1) of "qualified property" in subsec. 127(9) added applicable to property acquired after 1991, and subpara. (d)(iv) added applicable to 1980 *et seq.*, by 1994, c. 21, subsecs. 61(2), (3).

Subpara. (c)(xiii) added to the definition "qualified property" in subsec. 127(9) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(2), applicable to 1985 *et seq.*

Para. (d) of the definition "qualified property" in subsec. 127(9) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(3), applicable to property acquired after July 13, 1990. Para. (d) formerly read:

(d) to be leased by the taxpayer to a lessee (other than a person exempt from tax under section 149) who can reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraphs (c)(i) to (xii), but this paragraph does not apply in respect of property that is a prescribed property for the purposes of paragraph (b) unless

(i) the property is leased by the taxpayer in the ordinary course of carrying on a business in Canada and the taxpayer is a corporation whose principal business is leasing property, manufacturing property that it sells or leases, the lending of money, the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or selling or servicing a type of property that it also leases, or any combination thereof, and

(ii) use of the property by the first lessee commenced after June 23, 1975;

That portion of the definition "qualified property" following para. (d) in subsec. 127(9) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(4), applicable after February 25, 1986.

Selected Cases [subsec. 127(9)"qualified property"]: *Service Pause Café Mat Inc. v. R.*, [2000] 2 C.T.C. 2339 (TCC) (Coffee grounds transformed into goods for sale; credit available); *Burger King Restaurants of Canada Inc. v. R.*, [2000] 2 C.T.C. 1 (FCA) (Quantitative aspect (space) will govern unless compelling evidence provided as to qual-

itative (investment, salaries, service) aspect); *Allarcom Pay Television Ltd. v. R.*, [2000] 1 C.T.C. 273 (FCA); aff'g [1996] 3 C.T.C. 2608 (TCC) (Cable TV contracts were supply of services, not goods); *Newfoundland Tractor and Equipment Co. v. Canada*, [1996] 2 C.T.C. 2250 (TCC) ("Use" does not include leasing).

Regulations: 4600 (prescribed building, machinery); 4610 (prescribed area for para. (c.1)).

Forms: T2 SCH 321: PEI corporate investment tax credit.

"qualified small-business property" — [Repealed]

History: The definition "qualified small-business property" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified small-business property" means property, acquired by a taxpayer who was an eligible taxpayer at the time the property was acquired, that, if this subsection were read without reference to subsection (11.2), would be
>
> (a) certified property of the taxpayer if the definition "certified property" were read without the reference in it to paragraph (a) of the definition "qualified property" and without reference to subparagraphs (a)(i) and (ii) of it and if the reference in subparagraph (a)(iii) of it to "after 1988" were read as a reference to "after December 2, 1992 and before 1994",
>
> (b) qualified construction equipment of the taxpayer if the definition "qualified construction equipment" were read without reference to paragraph (b) of it and if the reference in it to "after April 19, 1983 and before 1989" were read as a reference to "after December 2, 1992 and before 1994",
>
> (c) qualified property of the taxpayer if the definition "qualified property" were read without reference to paragraphs (a) and (d) of it and if the reference in paragraph (b) of it to "after June 23, 1975" were read as a reference to "after December 2, 1992 and before 1994", or
>
> (d) qualified transportation equipment of the taxpayer if the definition "qualified transportation equipment" were read without reference to paragraph (b) of it and if the reference in it to "after November 16, 1978 and before 1989" were read as a reference to "after December 2, 1992 and before 1994",
>
> and where the property was acquired by the taxpayer to be leased to a person with whom the taxpayer does not deal at arm's length and the property is used by the person in Canada primarily for the purposes described in any of the definitions "qualified construction equipment", "qualified property" and "qualified transportation equipment", for the purposes of this subsection, the taxpayer shall be deemed to have acquired the property for that use;

The definition "qualified small-business property" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"qualified transportation equipment" — [Repealed]

History: The definition "qualified transportation equipment" in subsec. 127(9) repealed by 1996, c. 21, subsec. 30(9), applicable to taxation years that begin after 1995. It formerly read:

> "qualified transportation equipment" of a taxpayer means prescribed equipment acquired by the taxpayer after November 16, 1978 and before 1989 that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is
>
> (a) to be used by the taxpayer principally for the purpose of transporting passengers, property or passengers and property, in Canada or to and from Canada, in the ordinary course of carrying on a business in Canada other than a business
>
> (i) the income from which is exempt from income tax by virtue of any provision of this Act, or
>
> (ii) the income from which is not included in the taxpayer's income or, in the case of a non-resident person, the taxpayer's taxable income earned in Canada, or
>
> (b) to be leased by the taxpayer, if
>
> (i) the equipment is leased by the taxpayer in the ordinary course of carrying on a business in Canada, the income from which is other than income referred to in subparagraph (a)(i) or (ii), to a lessee who can reasonably be expected to use the equipment principally for the purposes and under the circumstances referred to in paragraph (a), and
>
> (ii) the taxpayer is a corporation whose principal business is a business described in subparagraph (d)(i) of the definition "qualified property" in this subsection or is a taxpayer whose principal business is passenger, property or passenger and property transport;

Pre-RSC History: That portion of the definition "qualified transportation equipment" preceding para. (a) in subsec. 127(9) amended by 1986, c. 55, subsec. 48(11), to substitute "after November 16, 1978 and before 1989" for "after November 16, 1978", applicable after February 25, 1986.

(For earlier history, see end of subsec. 127(9).)

Selected Cases [subsec. 127(9)"qualified transportation equipment"]: *McMynn v. Canada*, [1995] 1 C.T.C. 2417 (TCC) ("Transport" used as noun is broader than "transporting").

Regulations: 4601 (prescribed equipment).

"SR&ED qualified expenditure pool" of a taxpayer at the end of a taxation year means the amount determined by the formula

$$A + B - C$$

where

A is the total of all amounts each of which is a qualified expenditure incurred by the taxpayer in the year,

B is the total of all amounts each of which is an amount determined under paragraph (13)(e) for the year in respect of the taxpayer, and in respect of which the taxpayer files with the Minister a prescribed form containing prescribed information by the day that is 12 months after the taxpayer's filing-due date for the year, and

C is the total of all amounts each of which is an amount determined under paragraph (13)(d) for the year in respect of the taxpayer;

Proposed Amendment — SR&ED tax credits

Revenue Canada news release, June 17, 1999: *Dhaliwal reports progress on research and development tax credit action plan*

The Honourable Herb Dhaliwal, Minister of National Revenue and M.P. (Vancouver South-Burnaby), today reported on the progress that Revenue Canada has made in completing the steps called for in his Action Plan to improve the Scientific Research and Experimental Development (SR&ED) program.

Specifically, Mr. Dhaliwal summarized several accomplishments since the last progress report delivered in March 1999:

A consulting firm, Stitt Feld Handy Houston ADR of Ottawa and Toronto, has been selected to develop a dispute resolution system for the SR&ED program.

Through a joint industry/government initiative, Jean Claude Gavrel, a software specialist with extensive industry experience, has been retained for SR&ED's National Technology Sector Specialist (NTSS) program. Mr. Gavrel is an Information Technology executive with more than 20 years of experience in managing and implementing high technology product development and research programs. Other specialists will be identified in the future to supplement the Department's technology experience. The SR&ED program is being reorganized to bring Headquarters and field offices under one program head. Consultations with all regional offices have been completed and a framework has been established to strengthen the focus on the science and incentive aspects of the program.

Mr. Dhaliwal announced his Action Plan in a document entitled Building Partnerships in November 1998. The Action Plan responded to concerns and recommendations received from the industry at a Vancouver conference in June 1998. A key component of the Action Plan has been the establishment of a Steering Committee composed of industry representatives. The Steering Committee meets frequently to monitor progress of the Action

Plan and to co-ordinate industry sector-specific working committees.

"With the progress made to date and with continued support from industry, Revenue Canada is on track to have a totally revitalized SR&ED program by the end of this year," Mr. Dhaliwal said.

The Minister added that the SR&ED program now delivers about $1.4 billion of federal assistance to Canadian business, and the number of participants nationwide has been growing at about 13% each year. The Minister also reiterated the commitment made in the last federal budget to invest more than $1.8 billion by 2003 to build on the knowledge and innovation initiatives introduced in previous budgets.

The action plan and SR&ED program information are available on Revenue Canada's Web site at: www.rc.gc.ca/sred Businesses interested in the SR&ED program should contact: Norine Heselton, Director General, (613) 946-3447.

Proposed Amendment — Provincial SR&ED super-deductions

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 12(1)(x) — ed.]

Proposed Amendment — Administration of R&D credits

Revenue Canada news release, March 10, 1999: *Federal plan moving ahead to improve incentives for SR&ED*

Revenue Canada's action plan to improve its Scientific Research and Experimental Development (SR&ED) program is moving to full implementation, the Honourable Herb Dhaliwal, Minister of National Revenue and MP (Vancouver South-Burnaby) reported today.

"Our progress to date shows the strong commitment of my department and the Government of Canada to making the federal incentive program for industrial research and development fair, friendly, and client-centred," Mr. Dhaliwal said. "One of my key objectives as Minister of National Revenue is to make sure that this action plan for research and development becomes a reality."

Mr. Dhaliwal outlined a number of developments which illustrate the progress made since the action plan was announced in November, 1998.

In less than one year, the backlog of SR&ED claims has been reduced by two-thirds. As part of the plan's objective to make the SR&ED program more client centred, Revenue Canada has named account executives to work with research-intensive companies in Vancouver and Ottawa. Also, the Department has made a preclaim review of research projects available in six Canadian cities. These reviews will be extended to all parts of Canada within the next year. Eleven representatives from technology-based industries have been named to a national steering committee that meets regularly to oversee the implementation of the action plan. Joint training has started in the aerospace industry and is planned for other industries. Revenue Canada has released a publication called A Guide to Conducting a Technical Review. This publication has been released to the field and is being circulated for consultation. Sector committees have been formed in 11 industries, including automotive, pharmaceuticals, software, oil and gas, communications, and chemicals. These committees will clarify eligibility issues and develop interpretation guidelines for the federal SR&ED tax incentives. In April, Revenue Canada expects to process almost all SR&ED claims within 120 days.

In addition, Mr. Dhaliwal confirmed that the Department will have an independent SR&ED directorate separate from other tax audit activities. The directorate will manage a program that channels about $1.3 billion into industrial research and development in Canada every year.

The Director General of this new SR&ED program directorate is Norine Heselton, Vice-President, Policy, Information Technology Association of Canada, who joined Revenue Canada on an executive interchange in January. Ms. Heselton is a former telecommunications executive and a past chair of the Ottawa-Carleton Board of Trade.

The action plan and SR&ED program information are available on Revenue Canada's Web site at: http://www.rc.gc.ca/sred

For media information, please contact: Michel Proulx , Media Relations, Revenue Canada, (613) 946-3461; Heather Bala, Office of the Minister of National Revenue, (613) 995-7018. Businesses interested in the SR&ED program should contact: Jim Millen, Director, (613) 957-9390.

Federal budget, supplementary information, February 28, 2000: *Scientific Research and Experimental Development*

Canada provides one of the most generous tax incentive regimes among industrialized countries for scientific research and experimental development (SR&ED). It is important that this support only benefits those activities to which the program was intended to apply.

In claiming credits for SR&ED (including information technology), three basic criteria must be met:

- scientific or technological uncertainty,
- scientific or technological advancement, and
- scientific or technological content.

Technological advancement is a key element of the program. Technological advancement does not include the application of technology that is merely new to a particular taxpayer or industry. In particular, development work that is routine in nature does not qualify as SR&ED. While the definition of SR&ED was amended in 1985 to include experimental development, consistent with international usage, experimental development does not include projects involving only routine engineering or routine development.

This is reflected in the Canada Customs and Revenue Agency's administrative guidelines for software development, which were developed in consultation with industry.

Nevertheless, the administration of the SR&ED program has come under increasing pressure, particularly in regard to its application to information technology. A disproportionate number of disputes between taxpayers and the Government continue to be in the area of information technology. The Canada Customs and Revenue Agency has been faced with a number of very large and complex claims, many of which are not consistent with its administrative guidelines. These claims are in respect of internal use software, such as management information systems and automated services.

Many of the large claims have been made by corporations whose core business is not software development. CCRA has determined that substantially all of these claims reflect the application of available technology, which result in business improvements but do not embody technological advancement that the SR&ED program is intended to benefit. The Government is committed to rigorously applying the existing well established three basic criteria to address the backlog of SR&ED claims related to information technology.

In addition, the Government will consult with industry representatives to ensure that the guidelines on software development, in particular internal use software, both reflect government policy and provide clarity and certainty of application for compliance purposes as well as administration. Once consultations are completed, the Government will determine whether amendments to the *Income Tax Act* are required.

Related Provisions: 127(5)(a)(i), 127(5)(a)(ii)(A) — Investment tax credit; 127(9)"investment tax credit"(a.1) — 20% of pool claimable; 127(10.1)(b) — Additional ITC for CCPC; 127(13) — Transfer of pool to other taxpayer; 127(14) — Identification of amounts transferred as current or capital; 257 — Formula cannot calculate to less than zero.

History: The definition "SR&ED qualified expenditure pool" added to subsec. 127(9) by 1996, c. 21, subsec. 30(18), applicable to taxation years that begin after 1995.

Application Policies: SR&ED 94-01: Retroactive claims for scientific research (TPRs); SR&ED 95-04R: Conflict of interest with regard to outside consultants; SR&ED 96-05: Penalties under subsec. 163(2);

SR&ED 96-07: Prototypes, custom products/commercial assets, pilot plants and experimental production..

Forms: T661 — Claim for SR&ED carried on in Canada; T665: Simplified claim for expenditures incurred in carrying on SR&ED in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"second term shared-use-equipment" of a taxpayer means property of the taxpayer that was first term shared-use-equipment of the taxpayer and that is used by the taxpayer, during its operating time in the period (in this subsection and subsection (11.1) referred to as the "second period") beginning at the time the property was acquired by the taxpayer and ending at the end of the taxpayer's first taxation year ending at least 24 months after that time, primarily for the prosecution of scientific research and experimental development in Canada;

Related Provisions: 88(1)(e.3) closing words — Winding-up — parent deemed continuation of subsidiary; 127(11.5)(b) — Adjustments to qualified expenditures.

History: The definition "second term shared-use-equipment" added to subsec. 127(9) by 1994, c. 8, subsec. 15(9), applicable to property acquired after December 2, 1992.

"specified percentage" means

(a) in respect of a qualified property

(i) acquired before April, 1977, 5%,

(ii) acquired after March 31, 1977 and before November 17, 1978 primarily for use in

(A) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 10%,

(B) a prescribed designated region, 7½%, and

(C) any other area in Canada, 5%,

(iii) acquired primarily for use in the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula,

(A) after November 16, 1978 and before 1989, 20%,

(B) after 1988 and before 1995, 15%,

(C) after 1994, 15% where the property

(I) is acquired by the taxpayer under a written agreement of purchase and sale entered into by the taxpayer before February 22, 1994,

(II) was under construction by or on behalf of the taxpayer on February 22, 1994, or

(III) is machinery or equipment that will be a fixed and integral part of property under construction by or on behalf of the taxpayer on February 22, 1994, and

(D) after 1994, 10% where the property is not property to which clause (C) applies,

(iv) acquired after November 16, 1978 and before February 26, 1986 primarily for use in a prescribed offshore region, 7%,

(v) acquired primarily for use in a prescribed offshore region and

(A) after February 25, 1986 and before 1989, 20%,

(B) after 1988 and before 1995, 15%,

(C) after 1994, 15% where the property

(I) is acquired by the taxpayer under a written agreement of purchase and sale entered into by the taxpayer before February 22, 1994,

(II) was under construction by or on behalf of the taxpayer on February 22, 1994, or

(III) is machinery or equipment that will be a fixed and integral part of property under construction by or on behalf of the taxpayer on February 22, 1994, and

(D) after 1994, 10% where the property is not property to which clause (C) applies,

(vi) acquired primarily for use in a prescribed designated region and

(A) after November 16, 1978 and before 1987, 10%,

(B) in 1987, 7%,

(C) in 1988, 3%, and

(D) after 1988, 0%, and

(vii) acquired primarily for use in Canada (other than a property described in subparagraph (iii), (iv), (v) or (vi)), and

(A) after November 16, 1978 and before 1987, 7%,

(B) in 1987, 5%,

(C) in 1988, 3%, and

(D) after 1988, 0%,

(b) in respect of qualified transportation equipment acquired

(i) before 1987, 7%

(ii) in 1987, 5%, and

(iii) in 1988, 3%,

(c) in respect of qualified construction equipment acquired

(i) before 1987, 7%,

(ii) in 1987, 5%, and

(iii) in 1988, 3%,

(d) in respect of certified property

(i) included in subparagraph (a)(i) of the definition "certified property" in this subsection, 50%,

(ii) included in subparagraph (a)(ii) of that definition, 40%, and

(iii) in any other case, 30%,

(e) in respect of a qualified expenditure

(i) made after March 31, 1977 and before November 17, 1978 in respect of scientific research and experimental development to be carried out in

(A) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 10%,

(B) a prescribed designated region, 7½%, and

(C) any other area in Canada, 5%,

(ii) made by a taxpayer after November 16, 1978 and before the taxpayer's taxation year that includes November 1, 1983 or made by the taxpayer in the taxpayer's taxation year that includes November 1, 1983 or a subsequent taxation year if the taxpayer deducted an amount under section 37.1 in computing the taxpayer's income for the year,

(A) where the expenditure was made by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would,

if it had sufficient taxable income for the year, be entitled to a deduction under section 125 in computing its tax payable under this Part for the year, 25%, and

(B) where clause (A) is not applicable and the qualified expenditure was in respect of scientific research and experimental development to be carried out in

(I) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 20%, and

(II) any other area in Canada, 10%,

(iii) made by a taxpayer in the taxpayer's taxation year that ends after October 31, 1983 and before January 1, 1985, other than a qualified expenditure in respect of which subparagraph (ii) is applicable,

(A) where the expenditure was made by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would, if it had sufficient taxable income for the year, be entitled to a deduction under section 125 in computing its tax payable under this Part for the year, 35%, and

(B) where clause (A) is not applicable and the qualified expenditure was in respect of scientific research and experimental development to be carried out in

(I) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 30%, and

(II) any other area in Canada, 20%,

(iv) made by a taxpayer

(A) after the taxpayer's 1984 taxation year and before 1995, or

(B) after 1994 under a written agreement entered into by the taxpayer before February 22, 1994,

(other than a qualified expenditure in respect of which subparagraph (ii) applies) in respect of scientific research and experimental development to be carried out in

(C) the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or the Gaspé Peninsula, 30%, and

(D) in any other area in Canada, 20%, and

(v) made by a taxpayer after 1994, 20% where the amount is not an amount to which clause (iv)(B) applies,

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the capital cost to the taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) or (e) for taxation years that began before 1996, or

(iii) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for taxation years that began before 1996,

the specified percentage that applied in respect of the property, the expenditure or the prescribed proxy amount, as the case may be,

(f.1) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), 20%,

(g) in respect of an approved project property acquired

(i) before 1989, 60%, and

(ii) after 1988, 45%,

(h) in respect of the qualified Canadian exploration expenditure of a taxpayer for a taxation year, 25%, and

(i) in respect of qualified small-business property, 10%.

Related Provisions: 13(27)(f) — Interpretation — available for use; 127(10.1) — Additional amount for R&D; 127(10.8) — Regeneration of ITCs where entitlement to assistance expires.

History: Para. (f) of the definition "specified percentage" in subsec. 127(9) amended and para. (f.1) added, by 1998, c. 19, s. 146, applicable to taxation years that begin after 1995. Para. (f) formerly read:

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b), the amount of an expenditure made by the taxpayer under paragraph (11.1)(c) or (e), or the prescribed proxy amount of a taxpayer under paragraph (11.1)(f), the specified percentage that was applicable in respect of the property, the expenditure or the prescribed proxy amount, as the case may be,

Cl. (a)(iii)(B) of the definition "specified percentage" in subsec. 127(9) amended and cls. (C) and (D) added by 1995, c. 3, subsec. 37(2), applicable to property acquired and expenditures incurred after 1994. Cl. (a)(iii)(B) formerly read:

(B) after 1988, 15%,

Cl. (a)(v)(B) of the definition "specified percentage" in subsec. 127(9) amended and cls. (C) and (D) added by 1995, c. 3, subsec. 37(3), applicable to property acquired and expenditures incurred after 1994. Cl. (a)(v)(B) formerly read:

(B) after 1988, 15%,

Subpara. (e)(iv) of the definition "specified percentage" in subsec. 127(9) amended and subpara. (v) added by 1995, c. 3, subsec. 37(4), applicable to property acquired and expenditures incurred after 1994. Subpara. (e)(iv) formerly read:

(iv) made by a taxpayer in [the taxpayer's] 1985 taxation year or a subsequent taxation year, other than a qualified expenditure in respect of which subparagraph (ii) is applicable, in respect of scientific research and experimental development to be carried out in

(A) the Province of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland or the Gaspé Peninsula, 30%, and

(B) any other area in Canada, 20%,

Para. (f) of the definition "specified percentage" in subsec. 127(9) amended by 1994, c. 8, subsec. 15(7), applicable to taxation years ending after December 2, 1992. Para. (f) formerly read:

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced the capital cost to the taxpayer of a property under paragraph (11.1)(b) or that reduced the amount of an expenditure made by the taxpayer under paragraph (11.1)(c), the specified percentage that was applicable in respect of the property or expenditure, as the case may be,

Para. (i) added to the definition "specified percentage" in subsec 127(9) by 1994, c. 8, subsec. 15(8), applicable to property acquired after December 2, 1992.

Pre-RSC History: "Specified percentage" amended by 1988, c. 55, subsecs. 106(10) to (13), to substitute subparas. (a)(iii), (a)(v), para. (g) and to substitute subparas. (d)(ii) and (iii) for (d)(ii), applicable to 1988 *et seq.* Subparas. (a)(iii), (a)(v) and (d)(ii) and para. (g) formerly read:

(iii) acquired after November 16, 1978 primarily for use in the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or the Gaspé Peninsula, 20%,

. . . . .

(v) acquired after February 25, 1986 primarily for use in a prescribed offshore region, 20%,

. . . . .

(ii) in any other case, 40%,

. . . . .

(g) in respect of an approved project property, 60%, and

"Specified percentage" amended to substitute subpara. (a)(iii) and paras. (b) to (d) and subparas. (a)(iv) to (vii) added, applicable after February 25, 1986, and para. (h) added, applicable with respect to expenditures made after November 30, 1985, by 1986, c. 55, subsecs. 48(12), (13), (14). Subpara. (a)(iii) formerly read:

(iii) acquired after November 16, 1978 primarily for use in

(A) the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or the Gaspé Peninsula, 20%,

(B) a prescribed designated region, 10%, and

(C) any other area in Canada, 7%,

Paras. (b) to (d) formerly read:

(b) in respect of qualified transportation equipment, 7%,

(c) in respect of qualified construction equipment, 7%,

(d) in respect of certified property, 50%,

Regulations: 4607 (prescribed designated region); 4609 (prescribed offshore region).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

Information Circulars: 78-4R3: Investment tax credit rates; 87-5: Capital cost of property where trade-in is involved.

"taxable supplier" in respect of an amount means

(a) a person resident in Canada or a Canadian partnership, or

(b) a non-resident person, or a partnership that is not a Canadian partnership,

(i) by which the amount was payable, or

(ii) by or for whom the amount was receivable

in the course of carrying on a business through a permanent establishment (as defined by regulation) in Canada.

History: Para. (b) of the definition "taxable supplier" in subsec. 127(9) amended by 1998, c. 19, subsec. 33(3), applicable to taxation years that begin after 1995. Para. (b) formerly read:

(b) a non-resident person, or a partnership that is not a Canadian partnership,

(i) by which the amount was payable, or

(ii) by or for the benefit of which the amount was receivable in the course of carrying on a business through a permanent establishment (as defined by regulation) in Canada.

The definition "taxable supplier" added to subsec. 127(9) by 1996, c. 21, subsec. 30(18), applicable to taxation years that begin after 1995.

Regulations: 8201 (permanent establishment).

Pre-RSC History [subsec. 127(9)]: All that portion of subsec. 127(9) preceding the definition "approved project" amended to substitute "In this section and section 127.1," for "In this section," by 1986, c. 55, subsec. 48(4), applicable after May 23, 1985.

The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Subsec. 127(9) amended by 1986, c. 6, subsecs. 31(2) and 71(2)–(13), to add "approved project", "approved project property", "Cape Breton", applicable after May 23, 1985; to add "contract payment", applicable with respect to expenditures made after November 21, 1985, other than expenditures made after that date under the terms of an agreement in writing entered into on or before that date; to add "government assistance", "non-government assistance", applicable with respect to property acquired and expenditures made after May 23, 1985, other than property acquired and expenditures made after that date under the terms of an agreement in writing entered into on or before that date; to repeal the definition of "designated region", applicable in respect of property acquired in 1985 *et seq.*; to amend all that portion of "certified property" preceding para. (a), applicable after May 23, 1985 by adding "(other than an approved project property)" and substituting para. (a) (for former version see below), applicable after 1985; to substitute para. (a) of "investment tax credit", applicable after May 23, 1985 except that, in its application to property acquired and expenditures made after May 23, 1985 under the terms of an agreement in writing entered into on or before that date, para. (a) shall be read as follows:

(a) the aggregate of all amounts each of which is the specified percentage of the capital cost to him, determined without reference to subsection 13(7.1), of a qualified property, qualified transportation equipment, qualified construction equipment, approved project property or certified property acquired by him in the year or the specified percentage of a qualified expenditure made by him in the year, determined without reference to subsection 13(7.1),

to add para. (e.1) to "investment tax credit", applicable with respect to property acquired and expenditures made after May 23, 1985, other than property acquired and expenditures made after that date under the terms of an agreement in writing entered into on or before that date; to add paras. (j), (k) to "investment tax credit", applicable with respect to acquisitions of control occurring after May 23, 1985, other than acquisitions of control made under the terms of an agreement in writing entered into before May 24, 1985; to amend all that portion of "qualified property" preceding para. (a) by adding "an approved project property or", applicable after May 23, 1985; to amend (by subsec. 31(2)) subpara. (c)(ii) of "qualified property", applicable to taxation years ending after March 1985 by adding "extracting petroleum or natural gas from a natural accumulation thereof"; to amend cls. (a)(ii)(B), (a)(iii)(B) and (e)(i)(B) of "specified percentage" by substituting "a prescribed designated region" for "designated region", applicable in respect of property acquired in 1985 *et seq.*; to add para. (f) to "specified percentage", applicable with respect to property acquired and expenditures made after May 23, 1985, other than property acquired and expenditures made after that date under the terms of an agreement in writing entered into on or before that date; and to add para. (g) to "specified percentage", applicable after May 23, 1985. The repealed and substituted definitions formerly read:

["certified property"]

(a) that was acquired by the taxpayer after October 28, 1980 and before 1986 and has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by him, and

. . . . .

"designated region" means a region of Canada, other than the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or the Gaspé Peninsula, that is designated as such under the *Regional Development Incentives Act*;

. . . . .

["investment tax credit"]

(a) the aggregate of all amounts each of which is the specified percentage of the capital cost to him, determined without reference to subsection 13(7.1), of a qualified property, qualified transportation equipment, qualified construction equipment or certified property acquired by him in the year or the specified percentage of a qualified expenditure made by him in the year, determined without reference to subsection 13(7.1),

Subsec. 127(9) substituted by 1985, c. 45, subsec. 72(5), applicable to 1985 *et seq.*, to incorporate and amend the definitions previously contained in subsecs. 127(9), (10) and (10.1) and to add the definition of "specified percentage". Subsecs. 127(9), (10) and (10.1) formerly read:

(9) "Investment tax credit" defined — For the purposes of subsections (5) to (8) and subject to subsection (11.1), "investment tax credit" of a taxpayer at the end of a taxation year means the amount, if any, by which the aggregate of

(a) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property, qualified transportation equipment or qualified construction equipment acquired by him in the year or the amount of a qualified expenditure in respect of scientific research made by him in the year, determined without reference to subsection 13(7.1),

(a.1) where, after March 31, 1977, the taxpayer has acquired a qualified property primarily for use in, or made a qualified expenditure in respect of scientific research to be carried out in, the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or in the Gaspé Peninsula, an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of that qualified property acquired by him in the year or the amount of that qualified expenditure made by him in the year, determined without reference to subsection 13(7.1),

(a.2) where, after March 31, 1977, the taxpayer has acquired a qualified property primarily for use in, or made a qualified expenditure in respect of scientific research to be carried out in, a prescribed designated region, an amount equal to 2½% of the aggregate of all amounts each of which is the capital cost to him of that qualified property acquired by him in the year or the amount of that qualified expenditure made by him in the year, determined without reference to subsection 13(7.1),

(b) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property, qualified transportation equipment or qualified construction equipment, acquired by him, or the amount of a qualified expenditure in respect of scientific research made by him, in any of the 7 taxation years immediately preceding or the 3 taxation years immediately following that year, determined without reference to subsection 13(7.1),

(b.1) where, after March 31, 1977, the taxpayer has acquired a qualified property primarily for use in, or made a qualified expenditure in respect of scientific research to be carried out in, the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or in the Gaspé Peninsula, an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of that qualified property acquired by him, or the amount of that qualified expenditure made by him, in any of the 7 taxation years immediately preceding or the 3 taxation years immediately following that year, determined without reference to subsection 13(7.1),

(b.2) where, after March 31, 1977, the taxpayer has acquired a qualified property primarily for use in, or made a qualified expenditure in respect of scientific research to be carried out in, a prescribed designated region, an amount equal to 2½% of the aggregate of all amounts each of which is the capital cost to him of that qualified property acquired by him, or the amount of that qualified expenditure made by him, in any of the 7 taxation years immediately preceding or the 3 taxation years immediately following that year, determined without reference to subsection 13(7.1),

(c) an amount equal to the aggregate of all amounts each of which is an amount required to be added in computing his investment tax credit at the end of the year by virtue of subsection (7) or (8),

(d) the aggregate of all amounts each of which is an amount required by subsection (7) or (8) to be added in computing his investment tax credit at the end of any of the 7 taxation years immediately preceding or the 3 taxation years immediately following that year,

(d.1) an amount equal to 50% of the aggregate of all amounts each of which is the capital cost to him of certified property acquired by him in the year, determined without reference to subsection 13(7.1),

(d.2) an amount equal to 50% of the aggregate of all amounts each of which is the capital cost to him of certified property acquired by him in any of the 7 taxation years immediately preceding or the 3 taxation years immediately following that year, determined without reference to subsection 13(7.1),

(d.3) the aggregate of all amounts each of which is an amount required by subsection 119(9) to be added in computing his investment tax credit at the end of the year or at the end of any of the 7 taxation years immediately preceding the year,

(d.4) where the taxpayer is, throughout the year, a Canadian-controlled private corporation and the aggregate of its taxable income for the immediately preceding taxation year and the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year in which the corporation's immediately preceding taxation year ended does not exceed the aggregate of the business limits (as determined under section 125) of the corporation and the associated corporations for those years, the amount, if any, by which

(i) 35% of the lesser of

(A) the aggregate of all amounts each of which is the portion of an expenditure incurred in the year to which paragraph (11.1)(c) is applicable in the year that the taxpayer has designated in its return of income under this Part for the year, and

(B) the taxpayer's expenditure limit for the year

exceeds

(ii) the aggregate of all amounts each of which is an amount determined under paragraph (a), (a.1), (a.2), (b), (b.1) or (b.2) in respect of an expenditure referred to in clause (i)(A), and

(d.5) an amount equal to the aggregate of all amounts each of which is an amount required by paragraph (d.4) to be added in computing his investment tax credit at the end of any of the 7 taxation years immediately preceding or the 3 taxation years immediately following that year

exceeds the aggregate of

(e) the aggregate of all amounts each of which is that portion of the amount deducted under subsection (5) from the tax otherwise payable under this Part by the taxpayer for a preceding taxation year that is in respect of property acquired or an expenditure made in the year or in the 7 taxation years immediately preceding or the 2 taxation years immediately following the year,

(f) the aggregate of all amounts each of which is an amount required by subsection (6) or (7) to be deducted in computing his investment tax credit at the end of the year or at the end of any of the 7 taxation years immediately preceding or the 3 taxation years immediately following the year, and

(g) the aggregate of all amounts each of which is an amount claimed under subparagraph 192(2)(a)(ii) by the taxpayer for the year or a preceding taxation year in respect of property acquired or an expenditure made in the year or the 7 taxation years immediately preceding the year.

. . . . .

(10) Qualified property — For the purposes of subsection (9), a "qualified property" of a taxpayer means a property (other than a certified property) that is

(a) a prescribed building to the extent that it is acquired by the taxpayer after June 23, 1975, or

(b) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975,

that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is

(c) to be used by him in Canada primarily for the purpose of

(i) manufacturing or processing of goods for sale or lease,

(ii) operating an oil or gas well or processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent,

(iii) extracting minerals from a mineral resource,

(iv) processing, to the prime metal stage or its equivalent, ore (other than iron ore) from a mineral resource,

(iv.1) processing, to the pellet stage or its equivalent, iron ore from a mineral resource,

(v) exploring or drilling for petroleum or natural gas,

(vi) prospecting or exploring for or developing a mineral resource,

(vii) logging,

(viii) farming or fishing,

(ix) the storing of grain, or

(x) producing industrial minerals, or

(d) to be leased by the taxpayer, to a lessee (other than a person exempt from tax under section 149) who can reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraphs (c)(i) to (x), but this paragraph does not apply in respect of property that is a prescribed property for the purposes of paragraph (b), unless

(i) the property is leased by the taxpayer in the ordinary course of carrying on a business in Canada and the taxpayer is a corporation whose principal business is

(A) leasing property,

(B) manufacturing property that it sells or leases,

(C) the lending of money,

(D) the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills

of exchange or other obligations representing part or all of the sale price of merchandise or services, or

(E) selling or servicing a type of property that it also leases,

or any combination thereof, and

(ii) use of the property by the first lessee commenced after June 23, 1975.

(10.1) **Definitions** — For the purposes of subsections (9) and (10),

(a) "**Gaspé Peninsula**" — "Gaspé Peninsula" means that portion of the Gaspé region of the Province of Quebec that extends to the western border of Kamouraska County and includes the Magdalen Islands;

(b) "**prescribed designated region**" — "prescribed designated region" means a region of Canada, other than the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or the Gaspé Peninsula, that is designated as such under the *Regional Development Incentives Act*;

(c) "**qualified expenditure**" — "qualified expenditure" means an expenditure in respect of scientific research made by a taxpayer after March 31, 1977 that qualifies as an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i), but does not include

(i) a prescribed expenditure, and

(ii) in the case of a taxpayer that is a corporation, an expenditure specified by the taxpayer for the purposes of clause 194(2)(a)(ii)(A);

(d) "**qualified transportation equipment**" — "qualified transportation equipment" of a taxpayer means prescribed equipment acquired by him after November 16, 1978 that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is

(i) to be used by him principally for the purpose of transporting passengers, property or passengers and property, in Canada or to and from Canada, in the ordinary course of carrying on a business in Canada other than a business

(A) the income from which is exempt from income tax by virtue of any provision of this Act, or

(B) the income from which is not included in his income or, in the case of a non-resident person, his taxable income earned in Canada, or

(ii) to be leased by the taxpayer, if

(A) the equipment is leased by the taxpayer in the ordinary course of carrying on a business in Canada, the income from which is other than income referred to in clause (i)(A) or (B), to a lessee who can reasonably be expected to use the equipment principally for the purposes and under the circumstances referred to in subparagraph (i), and

(B) the taxpayer is a corporation whose principal business is a business described in any of clauses 127(10)1(d)1(i)1(A) to (E), or any combination thereof, or is a taxpayer whose principal business is passenger, property or passenger and property transport;

(e) "**certified property**" — "certified property" of a taxpayer means any property described in paragraph (10)(a) or (b)

(i) that was acquired by the taxpayer after October 28, 1980 and before 1986 and has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by him, and

(ii) that is part of a facility as defined for the purposes of the *Regional Development Incentives Act* and was acquired primarily for use by the taxpayer in a prescribed area; and

(f) "**qualified construction equipment**" — "qualified construction equipment" of a taxpayer means prescribed equipment acquired for use or lease, for any purpose whatever before its acquisition by him and that is

(i) to be used by the taxpayer principally for the purpose of construction in Canada in the course of carrying on a business other than a business

(A) the income from which is exempt from income tax by virtue of any provision of this Act, or

(B) the income from which is not included in his income or, in the case of a non-resident person, in his taxable income earned in Canada, or

(ii) to be leased by the taxpayer, if

(A) the equipment is leased by the taxpayer in the ordinary course of carrying on in Canada a business the income from which is other than income referred to in clause (i)(A) or (B), to a lessee who can reasonably be expected to use the equipment principally for the purpose referred to in subparagraph (i), and

(B) the taxpayer is a corporation whose principal business is a business described in any of clauses 127(10)1(d)1(i)1(A) to (E) or in any combination thereof, or is a taxpayer whose principal business is a construction business.

Selected Cases [subsec. 127(9)]: *Atcon Construction Ltd. v. R.*, [2000] 2 C.T.C. 2691 (TCC) (Rock crushing was not extraction of minerals); *Burger King Restaurants of Canada Inc. v. R.*, [2000] 2 C.T.C. 1 (FCA) (Preparation of fast food was "processing".); *Mont-Sutton Inc. v. R.*, [2000] 1 C.T.C. 311 (FCA) (No "rental" of snow at ski resort; "surface construction" considered); *Com Dev Ltd. v. R.*, [1999] 2 C.T.C. 2566 (TCC) (Cost-plus contracts more likely to indicate purchase of scientific research); *McMynn v. R.*, [1997] 3 C.T.C. 16 (FCTD) ("Use" is direct use by taxpayer claiming ITC, not rental to others for their use); *Minicom Data Corp. v. Canada*, [1992] 2 C.T.C. 2196 (TCC) (Interest on money borrowed to acquire head office site not prescribed scientific research and experimental development expense); *Mother's Pizza Parlour et al. v. The Queen*, [1988] 2 C.T.C. 197 (FCA) (Investment tax credit refused where building not used "primarily" for processing of goods); *Lor-Wes Contracting Ltd. v. The Queen*, [1985] 2 C.T.C. 79 (FCA) (Investment tax credit allowed when subcontractor's work integral and necessary part of contract); *Halliburton Services Ltd. v. The Queen*, [1985] 2 C.T.C. 52 (FCTD) (Investment tax credit allowed on contractor's movable equipment); *Bunge of Canada Ltd. v. The Queen*, [1984] C.T.C. 284 (FCA) (Loading systems in grain elevators "qualified property" for investment tax credit).

Pre-RSC History [former subsec. 127(9)]: Below is the history of subsec. 127(9) prior to the amendment by 1985, c. 45.

Paras. 127(9)(d.4), (d.5) added by 1984, c. 45, subsec. 43(1), applicable to expenditures made in 1985 *et seq.*

Paras. 127(9)(a)–(b.2), (d), (d.2), (e), (f) substituted and paras. (d.3), (g) added by 1984, c. 1, subsecs. 72(3)–(7). Paras. 127(9)(a)–(b.2), (d.2), (e)–(g), as substituted, applicable with respect to property acquired and expenditures made after April 19, 1983, except that

(a) para. 127(9)(d.3) is applicable to 1983 *et seq.*; and

(b) for the 1983 taxation year, the reference in subsec. 127(9) to "3 taxation years" shall be read as a reference to "2 taxation years";

para. (d) applicable with respect to amounts allocated to a taxpayer under subsec. 127(7) or (8) in respect of property acquired and expenditures made after April 19, 1983. Para. 127(9)(a) substituted to add "or qualified construction equipment"; paras. 127(9)(b)–(b.2), (d), (d.2), (e) and (f) formerly read:

(b) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property or qualified transportation equipment acquired by him in any of the 5 immediately preceding taxation years or the amount of a qualified expenditure in respect of scientific research made by him in any of the 5 immediately preceding taxation years, determined without reference to subsection 13(7.1),

(b.1) where, after March 31, 1977, the taxpayer has acquired a qualified property primarily for use in, or made a qualified expenditure in respect of scientific research to be carried out in, the Province of Newfoundland, Prince Edward Island, Nova Scotia or New Brunswick or in the Gaspé Peninsula, an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of that qualified property acquired by him in any of the 5 immediately preceding taxation years or the amount of that qualified expenditure

made by him in any of the 5 immediately preceding taxation years, determined without reference to subsection 13(7.1),

(b.2) where, after March 31, 1977, the taxpayer has acquired a qualified property primarily for use in, or made a qualified expenditure in respect of scientific research to be carried out in, a prescribed designated region, an amount equal to 2½% of the aggregate of all amounts each of which is the capital cost to him of that qualified property acquired by him in any of the 5 immediately preceding taxation years or the amount of that qualified expenditure made by him in any of the 5 immediately preceding taxation years, determined without reference to subsection 13(7.1),

. . . . .

(d) the aggregate of all amounts each of which is an amount required to be added in computing his investment tax credit at the end of any of the five immediately preceding taxation years by virtue of subsection (6) or (7).

. . . . .

(d.2) an amount equal to 50% of the aggregate of all amounts each of which is the capital cost to him of certified property acquired by him in any of the 5 immediately preceding taxation years, determined without reference to subsection 13(7.1),

. . . . .

(e) the aggregate of all amounts each of which is that portion of the amount deducted under subsection (5) from the tax for the year otherwise payable under this Part by the taxpayer for any of the 5 immediately preceding taxation years that is in respect of qualified property, qualified transportation equipment or certified property acquired by him in those years or a qualified expenditure in respect of scientific research made by him in those years

(f) the aggregate of all amounts each of which is an amount required to be deducted in computing his investment tax credit at the end of the year or at the end of any of the five immediately preceding taxation years by virtue of subsection (6) or (7).

Paras. 127(9)(d.1), (d.2) added, (e) substituted by 1980-81-82-83, c. 48, subsecs. 73(1), (2), applicable, as to paras. 127(9)(d.1), (d.2), in respect of property acquired after October 28, 1980, and, as to para. 127(9)(e), after November 16, 1978. Para. 127(9)(e) formerly read:

(e) the aggregate of all amounts each of which is that portion of the amount deducted under subsection (5) from the tax for the year otherwise payable under this Part by the taxpayer for any of the 5 immediately preceding taxation years that is in respect of qualified property acquired by him in those years or a qualified expenditure in respect of scientific research made by him in those years, and

All that portion of subsec. 127(9) preceding para. (a.1), para. 127(9)(b) substituted by 1979, c. 5, subsecs. 40(1), (2), applicable in respect of qualified property and qualified transportation equipment acquired after November 16, 1978 and in respect of qualified expenditures incurred after November 16, 1978. That portion and para. 127(9)(b) formerly read:

(9) For the purposes of subsections (5) to (8), "investment tax credit" of a taxpayer at the end of a taxation year means the amount, if any, by which the aggregate of

(a) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property acquired by him in the year or the amount of a qualified expenditure in respect of scientific research made by him in the year, determined without reference to subsection 13(7.1),

(b) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property acquired by him in any of the 5 immediately preceding taxation years or the amount of a qualified expenditure in respect of scientific research made by him in any of the 5 immediately preceding taxation years, determined without reference to subsection 13(7.1),

All that portion of subsec. 127(9) preceding para. (c), para. 127(9)(e) substituted by 1977-78, c. 1, subsecs. 61(3), (4), applicable to 1977 *et seq.* That portion and para. 127(9)(e) formerly read:

(9) "Investment tax credit" — For the purposes of subsections (5) to (8), "investment tax credit" of a taxpayer at the end of a taxation year means the amount, if any, by which the aggregate of

(a) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property acquired by him in the year, determined without reference to subsection 13(7.1),

(b) an amount equal to 5% of the aggregate of all amounts each of which is the capital cost to him of a qualified property acquired by him in any of the five immediately preceding taxation years, determined without reference to subsection 13(7.1),

. . . . .

(e) the aggregate of all amounts each of which is that portion of the amount deducted under subsection (5) from the tax for the year otherwise payable under this Part by the taxpayer for any of the five immediately preceding taxation years that is in respect of qualified property acquired by him in those years, and

Subsec. 127(9) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

(9.1) Control acquired before the end of the year — Where a taxpayer is a corporation the control of which has been acquired by a person or group of persons (each of whom is in this subsection referred to as the "purchaser") at any time (in this subsection referred to as "that time") before the end of a taxation year of the corporation, the amount determined for the purposes of paragraph (j) of the definition "investment tax credit" in subsection (9) is the amount, if any, by which

(a) the amount, if any, by which

(i) the total of all amounts added in computing its investment tax credit at the end of the year in respect of a property acquired, or an expenditure made, before that time

exceeds

(ii) the total of all amounts each of which is an amount

(A) deducted in computing its investment tax credit at the end of the year under paragraph (f) or (g) of the definition "investment tax credit" in subsection (9), or

(B) deducted in computing its investment tax credit at the end of the taxation year immediately preceding the year under paragraph (i) of that definition,

to the extent that the amount may reasonably be considered to have been so deducted in respect of a property or expenditure in respect of which an amount is included in subparagraph (i)

exceeds the total of

(b) [Repealed under former Act]

(c) the amount, if any, by which its refundable Part VII tax on hand at the end of the year exceeds the total of all amounts each of which is an amount designated under subsection 192(4) in respect of a share issued by it

(i) in the period commencing one month before that time and ending at that time, or

(ii) after that time,

and before the end of the year, and

(d) that proportion of the amount that, but for subsections (3) and (5) and sections 126, 127.2 and 127.3, would be its tax payable under this Part for the year that,

(i) where throughout the year the corporation carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which an amount is included in computing its investment tax

credit at the end of the year, the amount, if any, by which the total of all amounts each of which is

(A) its income for the year from the particular business, or

(B) its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the particular business before that time

exceeds

(C) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business or the other business,

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) its taxable income for the year.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year-end on change of control; 256(6)–(9) — Whether control acquired.

Pre-RSC History: That portion of subsec. 127(9.1) preceding para. (a) amended by 1987, c. 46, subsec. 46(2), to substitute "the control of which" for "control of which", and "group of persons" for "persons", applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" following history of subsec. 127(9.2).

Para. 127(9.1)(b) repealed by 1987, c. 46, subsec. 46(3), applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date except that, for acquisitions of control occurring after April 1986 and before January 16, 1987 or before 1988 where the persons acquiring the control were obliged on January 15, 1987 to acquire the control pursuant to the terms of agreements in writing entered into on or before January 15, 1987, the references to "May 1, 1986" in the paragraph shall be read as "January 1, 1989". See "Interpretation" following history of subsec. 127(9.2). Para. 127(9.1)(b) formerly read:

(b) the proportion of its refundable investment tax credit for the year (within the meaning assigned by subsection 127.1(2)) that

(i) the aggregate of all amounts each of which is an amount included in computing its investment tax credit at the end of the year

(A) in respect of property acquired, or an expenditure made, by it in the year and after April 19, 1983 and before the earlier of that time and May 1, 1986, or

(B) pursuant to paragraph (b) of the definition "investment tax credit" in subsection (9) in respect of a property acquired, or an expenditure made, after April 19, 1983 and before the earlier of that time and May 1, 1986

is of

(ii) the aggregate of all amounts each of which is an amount determined under subparagraph (a)(iv) or (vi) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the corporation for the year,

Para. 127(9.1)(d) amended by 1987, c. 46, subsec. 46(4), to substitute subparas. (i) to (iii) applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date except that, in respect of acquisitions of control occurring before June 6, 1987, subparagraph 127(9.1)(d)(i) shall be read without reference to clause 127(9.1)(d)(i)(C). See "Interpretation" following history of subsec. 127(9.2). Subparas. 127(9.1)(d)(i) to (iii) formerly read:

(i) where that time is in a preceding taxation year and throughout the year the corporation carried on a particular business in the course of the carrying on of which a property was acquired, or an expenditure was made, before that time in respect of which an amount is included in computing its investment tax credit at the end of the year, the aggregate of all amounts each of which is

(A) its income for the year from the particular business,

(B) its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the particular business before that time, or

(C) the amount, if any, by which the aggregate of the corporation's taxable capital gains for the year from the disposition of property owned by the corporation at that time, other than property that was acquired from the purchaser or a person who did not deal at arm's length with the purchaser, exceeds the aggregate of the corporation's allowable capital losses for the year from the disposition of such property, or

(ii) where that time is in the year, the aggregate of all amounts each of which is

(A) the corporation's income for the year from a business carried on by it before that time,

(B) its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the business referred to in clause (A), or

(C) the amount, if any, by which the aggregate of the corporation's taxable capital gains for the year from the disposition of property owned by the corporation before that time, other than property that was acquired from the purchaser or a person who did not deal at arm's length with the purchaser, exceeds the aggregate of the corporation's allowable capital losses for the year from the disposition of such property

is of

(iii) the amount, if any, by which the corporation's income for the year exceeds the aggregate of all amounts each of which is an amount deductible by it for the year under section 112 or 113.

Subsec. 127(9.1) added by 1986, c. 6, subsec. 71(15), applicable with respect to acquisitions of control occurring after May 23, 1985, other than acquisitions of control made under the terms of an agreement in writing entered into before May 24, 1985.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement.

Forms: T2 SCH 31: Investment tax credit — corporations.

Pre-RSC History [former subsec. 127(9.1)]: Former subsec. 127(9.1) repealed by 1986, c. 6, subsec. 71(14), applicable to amalgamations occurring after May 23, 1985 and windings-up commencing after May 23, 1985. Subsec. (9.1) formerly read:

(9.1) **Investment tax credit and employment tax credit on amalgamation** — Where after March 31, 1977 there has been an amalgamation within the meaning of subsection 87(1) and one or more of the predecessor corporations had an investment tax credit or employment tax credit for any taxation year any portion of which was not deducted by it in computing its tax otherwise payable under this Part for any taxation year, for the purposes only of determining the investment tax credit and employment tax credit of the new corporation for any taxation year preceding any taxation year of the new corporation, the new corporation shall be deemed to be the same corporation as, and a continuation of, each such predecessor corporation.

Former subsec. 127(9.1) substituted by 1977-78, c. 4, subsec. 5(1), to add references to employment tax credit.

Former subsec. 127(9.1) added by 1977-78, c. 1, subsec. 61(5), applicable to 1977 *et seq.*

(9.2) Control acquired after the end of the year — Where a taxpayer is a corporation the control of which has been acquired by a person or group of persons at any time (in this subsection referred to as "that time") after the end of a taxation year of the corporation, the amount determined for the purposes of paragraph (k) of the definition "investment tax credit" in subsection (9) is the amount, if any, by which

(a) the total of all amounts each of which is an amount included in computing its investment tax credit at the end of the year in respect of a property acquired, or an expenditure made, after that time

exceeds the total of

(b) [Repealed under former Act]

(c) its refundable Part VII tax on hand at the end of the year, and

(d) that proportion of the amount that, but for subsections (3) and (5) and sections 126, 127.2 and 127.3, would be its tax payable under this Part for the year that,

(i) where the corporation acquired a property or made an expenditure, in the course of carrying on a particular business throughout the portion of a taxation year that is after that time, in respect of which an amount is included in computing its investment tax credit at the end of the year, the amount, if any, by which the total of all amounts each of which is

(A) its income for the year from the particular business, or

(B) where the corporation carried on a particular business in the year, its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the particular business before that time

exceeds

(C) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) for the year by the corporation in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) its taxable income for the year.

Related Provisions: 139.1(18) — Holding corporation deemed not to acquire control of insurer on demutualization; 249(4) — Deemed year-end on change of control; 256(6)–(9) — Whether control acquired.

Pre-RSC History: That portion of subsec. 127(9.2) preceding para. (a) amended by 1987, c. 46, subsec. 46(5), to substitute "the control of which" for "control of which", "group of persons" for "persons" and "the end of a taxation year" for "the commencement of a taxation year", applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date. See "Interpretation" below.

Para. 127(9.2)(b) repealed by 1987, c. 46, subsec. 46(6), applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date except that, for acquisitions of control occurring after April 1986 and before January 16, 1987 or before 1988 where the persons acquiring the control were obliged on January 15, 1987 to acquire the control pursuant to the terms of agreements in writing entered into on or before January 15, 1987, the references to "May 1, 1986" in the paragraph shall be read as "January 1, 1989". See "Interpretation" below. Para. 127(9.2)(b) formerly read:

(b) that proportion of its refundable investment tax credit for the year (within the meaning assigned by subsection 127.1(2)) that

(i) the aggregate of all amounts each of which is an amount included in computing its investment tax credit at the end of the year

(A) in respect of property acquired, or an expenditure made, by it in the year and after that time and before May 1, 1986, or

(B) pursuant to paragraph (b) of the definition "investment tax credit" in subsection (9) in respect of a property acquired or an expenditure made after that time and before May 1, 1986

is of

(ii) the aggregate of all amounts each of which is an amount determined under subparagraph (a)(iv) or (vi) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the corporation for the year,

Para. 127(9.2)(d) amended by 1987, c. 46, subsec. 46(7), to substitute subparas. (i) to (iii), applicable in respect of acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date except that, in respect of acquisitions of control occurring before June 6, 1987, subpara. 127(9.2)(d)(i) shall be read without reference to cl. 127(9.2)(d)(i)(C). See "Interpretation" below. Subparas. 127(9.2)(d)(i) to (iii) formerly read:

(i) where that time is in the year, the aggregate of all amounts each of which is

(A) the corporation's income for the year from a business carried on by it after that time, or

(B) the amount, if any, by which the aggregate of the corporation's taxable capital gains for the year from the disposition of property after that time exceeds the aggregate of the corporation's allowable capital losses for the year from the disposition of property after that time, or

(ii) where that time is in a subsequent taxation year and the corporation acquired a property or made an expenditure, in the course of carrying on a particular business throughout the portion of a taxation year that is after that time, in respect of which an amount is included in computing its investment tax credit at the end of the year, the aggregate of

(A) its income for the year from the particular business, and

(B) where the corporation carried on the particular business in the year, its income for the year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the corporation in carrying on the particular business before that time

is of

(iii) the amount, if any, by which the corporation's income for the year exceeds the aggregate of all amounts each of which is an amount deductible by it for the year under section 112 or 113.

Subsec. 127(9.2) added by 1986, c. 6, subsec. 71(15), applicable with respect to acquisitions of control occurring after May 23, 1985, other than acquisitions of control made under the terms of an agreement in writing entered into before May 24, 1985.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the *[Income Tax Act]* affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

Forms: T2 SCH 31: Investment tax credit — corporations.

Pre-RSC History [former subsec. 127(10)]: Below is the history of subsec. 127(10) prior to its incorporation into subsec. 127(9) by 1985, c. 45.

Subpara. 127(10)(c)(iv) substituted and subpara. 127(10)(c)(iv.1) added by 1980-81-82-83, c. 140, subsec. 89(2), applicable to taxation years commencing after November 12, 1981. Subpara. 127(10)(c)(iv) formerly read:

> (iv) processing, to the prime metal stage or its equivalent, ore from a mineral resource,

All that portion of subsec. 127(10) preceding para. (c), subpara. 127(10)(c)(ii) substituted by 1980-81-82-83, c. 48, subsecs. 73(3), (4), applicable, as to that portion, in respect of property acquired after October 28, 1980, and, as to subpara. 127(10)(c)(ii), in respect of property acquired after the 1980 taxation year. That portion and subpara. 127(10)(c)(ii) formerly read:

> (10) For the purposes of subsection (9), a "qualified property" of a taxpayer means
>
> (a) a prescribed building to the extent that it is acquired by the taxpayer after June 23, 1975, or
>
> (b) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975
>
> that has not been used for any purpose whatever before it was acquired by the taxpayer and that is
>
> . . . . .
>
> (ii) operating an oil or gas well,

Paras. 127(10)(a), (b), subpara. 127(10)(d)(ii) substituted by 1979, c. 5, subsecs. 40(3), (4), applicable in respect of qualified property and qualified transportation equipment acquired after November 16, 1978 and in respect of qualified expenditures incurred after November 16, 1978. Paras. 127(10)(a), (b), subpara. 127(10)(d)(ii) formerly read:

> (a) a prescribed building to the extent that it is
>
> (i) acquired by the taxpayer after June 23, 1975 and before July 1, 1980, or
>
> (ii) acquired by the taxpayer after June 30, 1980, if installation of the footings or other base support for the building was commenced by the taxpayer after June 23, 1975 and before July 1, 1980 and the building was completed in substantial accordance with plans and specifications agreed to in writing by the taxpayer before July 1, 1980, or
>
> (b) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975 and before July 1, 1980
>
> . . . . .
>
> (ii) use of the property by the first lessee commenced after June 23, 1975 and before July 1, 1980.

Paras. 127(10)(a), (b), all that portion of para. 127(10)(d) preceding subpara. (i), subpara. 127(10)(d)(ii) substituted, subpara. 127(10)(c)(x) added by 1977-78, c. 1, subsecs. 61(6)–(9), applicable (except subpara. 127(10)(c)(x)) to 1977 *et seq.*, subpara. 127(10)(c)(x) with respect to acquisitions of property after March 31, 1977. Paras. 127(10)(a), (b), that portion of para. 127(10)(d), subpara. 127(10)(d)(ii) formerly read:

> (a) a prescribed building to the extent that it is
>
> (i) acquired by the taxpayer after June 23, 1975 and before July 1, 1977, or
>
> (ii) acquired by the taxpayer after June 30, 1977, if installation of the footings or other base support for the building was commenced by the taxpayer after June 23, 1975 and before July 1, 1977 and the building was completed in substantial accordance with plans and specifications agreed to in writing by the taxpayer before July 1, 1977, or
>
> (b) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975 and before July 1, 1977
>
> . . . . .
>
> (d) to be leased by the taxpayer, to a lessee (other than a person exempt from tax under section 149) who can reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraph (c)(i) to (ix), but this paragraph does not apply in respect of property that is prescribed property for the purposes of paragraph (b), unless
>
> . . . . .
>
> (ii) use of the property by the first lessee commenced after June 23, 1975 and before July 1, 1977.

Cl. 127(10)(d)(i)(E) added by 1976-77, c. 4, subsec. 52(3), applicable to 1975 *et seq.*

Subsec. 127(10) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

Pre-RSC History [former subsec. 127(9.2)]: Former subsec. 127(9.2) repealed by 1986, c. 6, subsec. 71(14), applicable to amalgamations occurring after May 23, 1985 and windings-up commencing after May 23, 1985. Subsec. (9.2) formerly read:

> (9.2) Investment tax credit and employment tax credit on winding-up — Where after March 31, 1977 there has been a winding-up within the meaning of subsection 88(1) and the subsidiary had an investment tax credit or employment tax credit for any taxation year any portion of which was not deducted by it in computing its tax otherwise payable under this Part for any taxation year, for the purposes only of determining the investment tax credit and employment tax credit of the parent for any taxation year preceding any taxation year of the parent, the parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary.

Former subsec. 127(9.2) substituted by 1977-78, c. 4, subsec. 5(1), to add references to employment tax credit.

Former subsec. 127(9.2) added by 1977-78, c. 1, subsec. 61(5), applicable to 1977 *et seq.*

(10) Ascertainment of certain property — The Minister may

(a) obtain the advice of the appropriate minister for the purposes of the *Regional Development Incentives Act*, chapter R-3 of the Revised Statutes of Canada, 1970, as to whether any property is property as described in paragraph (b) of the definition "certified property" in subsection (9);

(b) obtain a certificate from the appropriate minister for the purposes of the *Regional Development Incentives Act* certifying that any property specified therein is property as described in paragraph (b) of that definition; or

(c) provide advice to the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act* as to whether any property qualifies for certification under the definition "approved project property" in subsection (9).

Pre-RSC History: Subsec. 127(10) amended by 1990, c. 1, subsec. 29(3), to substitute "appropriate Minister for the purposes of the *Regional Development Incentives Act*" in paras. (a), (b) and "member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act*" in para. (c), for "Minister of Regional Industrial Expansion", in force February 23, 1990.

Para. 127(10)(c) added by 1987, c. 46, subsec. 46(8), applicable after June 5, 1987.

Subsec. 127(10) substituted and former subsec. 127(10) incorporated into a revised subsec. 127(9) by 1985, c. 45, subsec. 72(6), applicable to 1985 *et seq.* Subsec. 127(10) as enacted by the said c. 45 corresponds to the former subsec. 127(10.2) which formerly read:

> (10.2) The Minister may
>
> (a) obtain the advice of the Department of Regional Economic Expansion as to whether any property is property as described in subparagraph (10.1)(e)(ii); or
>
> (b) obtain a certificate from the Minister of Regional Economic Expansion certifying that any property specified therein is property as described in subparagraph (10.1)(e)(ii).

Subsec. 127(10.2) (predecessor to subsec. 127(10) as enacted by 1985, c. 45) added by 1980-81-82-83, c. 48, subsec. 73(8), applicable in respect of property acquired after October 28, 1980.

Selected Cases [subsec. 127(10)]: *Publi-Hebdos Inc. v. Canada*, [1995] 2 C.T.C. 330 (FCTD) (Free newspapers not held for sale or lease);

Coopers & Lybrand Limited v. Canada, [1994] 2 C.T.C. 336 (FCA) ("For sale" does not mean "for use in repair process").

Pre-RSC History [former subsec. 127(10.1)]: Below is the history of subsec. 127(10.1) prior to its incorporation into subsec. 127(9) by 1985, c. 45.

Para. 127(10.1)(c) substituted and para. 127(10.1)(f) added by 1984, c. 1, subsecs. 72(8), (9). Para. 127(10.1)(c), as substituted, applicable with respect to expenditures made after April 19, 1983, formerly read:

> (c) "qualified expenditure" — "qualified expenditure" means an expenditure in respect of scientific research made by a taxpayer after March 31, 1977 that qualifies as an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i), but does not include a prescribed expenditure;

All that portion of subsec. 127(10.1) preceding para. (a), all that portion of para. 127(10.1)(d) preceding subpara. (i) substituted, para. 127(10.1)(e) added by 1980-81-82-83, c. 48, subsecs. 73(5)–(7), applicable in respect of property acquired after October 28, 1980. Those portions formerly read:

> (10.1) For the purposes of subsection (9),
>
> . . . . .
>
> (d) "qualified transportation equipment" of a taxpayer means prescribed equipment acquired by him after November 16, 1978 that has not been used for any purpose whatever before it was acquired by the taxpayer and that is

Paras. 127(10.1)(c) substituted, (d) added by 1979, c. 5, subsec. 40(5), applicable in respect of qualified property and qualified transportation equipment acquired after November 16, 1978 and in respect of qualified expenditures incurred after November 16, 1978. Para. 127(10.1)(c) formerly read:

> (c) "qualified expenditure" means an expenditure in respect of scientific research made by a taxpayer after March 31, 1977 and before July 1, 1980 that qualifies as an expenditure described in paragraph 37(1)(a) or subparagraph 37(1)(b)(i), but does not include a prescribed expenditure.

Subsec. 127(10.1) added by 1977-78, c. 1, subsec. 61(10), applicable to 1977 *et seq.*

(10.1) Additions to investment tax credit — For the purpose of paragraph (e) of the definition "investment tax credit" in subsection (9), where a corporation was throughout a taxation year a Canadian-controlled private corporation, there shall be added in computing the corporation's investment tax credit at the end of the year the amount that is 15% of the least of

(a) such amount as the corporation claims;

(b) the SR&ED qualified expenditure pool of the corporation at the end of the year; and

(c) the corporation's expenditure limit for the year.

Related Provisions: 88(1)(e.8) — Winding-up; 127(10.2)–(10.4) — Expenditure limit and associated corporations; 127(10.7) — Further additions to ITCs; 127.1(2)"refundable investment tax credit"(f)(i) — Addition to refundable ITC; 127.1(2.01) — Addition to refundable investment tax credit; 136 — Cooperative can be private corporation for purposes of 127(10.1).

History: Subsec. 127(10.1) amended by 1996, c. 21, subsec. 30(19), applicable to taxation years that begin after 1995. Subsec. (10.1) formerly read:

> (10.1) For the purpose of paragraph (e) of the definition "investment tax credit" in subsection (9), where a corporation was throughout a particular taxation year a Canadian-controlled private corporation, there shall be added in computing the corporation's investment tax credit at the end of the particular year the amount determined by the formula
>
> $$\left[\frac{35}{100} \times A\right] - B$$
>
> where
>
> A is the lesser of
>
> (a) the total of all expenditures described in any of subparagraphs (e)(iv) and (v) of the definition "specified percentage" in subsection (9) made by the corporation in the particular year and that were designated by it in its return of income under this Part for the particular year, and
>
> (b) the corporation's expenditure limit for the particular year; and
>
> B is the total of all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection (9) in respect of an expenditure referred to in paragraph (a) of the description of A.

Subsec. 127(10.1) amended by 1995, c. 3, subsec. 37(5), applicable to taxation years that begin after 1995. Subsec. (10.1) formerly read:

> (10.1) For the purpose of paragraph (e) of the definition "investment tax credit" in subsection (9), where a taxpayer was throughout a particular taxation year a Canadian-controlled private corporation the taxable income of which, for the taxation year preceding the particular year together with the taxable incomes of all corporations with which it was associated in the particular year for their taxation years ending in the calendar year preceding the calendar year in which the taxpayer's particular year ended, does not exceed twice the total of the business limits (as determined under section 125) of the taxpayer and the associated corporations for those preceding years, the amount, if any, by which
>
> (a) 35% of the lesser of
>
> (i) the total of all expenditures described in subparagraph (e)(iv) of the definition "specified percentage" in subsection (9) made by the taxpayer in the particular year and that were designated by it in its return of income under this Part for the particular year, and
>
> (ii) the taxpayer's expenditure limit for the particular year
>
> exceeds
>
> (b) the total of all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection (9) in respect of an expenditure referred to in subparagraph (a)(i)
>
> shall be added in computing the taxpayer's investment tax credit at the end of the particular year.

Subsec. 127(10.1) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.1) formerly read:

> (10.1) For the purposes of paragraph (e) of the definition "investment tax credit" in subsection (9), where a taxpayer was throughout its taxation year a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year immediately preceding the calendar year in which the corporation's year ended does not exceed the total of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years, the amount, if any, by which
>
> (a) 35% of the lesser of
>
> (i) the total of all expenditures described in subparagraph (e)(iv) of the definition "specified percentage" in subsection (9) made by it in the year and that were designated by the taxpayer in its return of income under this Part for the year, and
>
> (ii) the taxpayer's expenditure limit for the year
>
> exceeds
>
> (b) the total of all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection (9) in respect of an expenditure referred to in subparagraph (a)(i)
>
> shall be added in computing the taxpayer's investment tax credit at the end of the taxation year.

Pre-RSC History: Subsec. 127(10.1) substituted and incorporated into a revised subsec. 127(9) by 1985, c. 45, subsec. 72(6), applicable to 1985 *et seq.* Subsec. 127(10.1) as enacted by the said c. 45 corresponds to the former para. 127(9)(d.4). See history to subsec. 127(9) for former version of para. 127(9)(d.4).

Forms: T2 SCH 31: Investment tax credit — corporations.

(10.2) Expenditure limit determined — For the purpose of subsection (10.1), a corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$$(\$4{,}000{,}000 - 10A) \times \frac{B}{\$200{,}000}$$

where

A is the greater of $200,000 and either

(a) where the corporation is associated with one or more other corporations in the particular year and the particular year ends in a calendar year, the total of all amounts each of which is the taxable income of the corporation or such an associated corporation for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year), or

(b) where paragraph (a) does not apply, the corporation's taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year), and

B is the total of the business limits under section 125 for the particular year of the corporation and any such other corporations for the particular year,

unless the corporation is associated in the particular year with one or more other Canadian-controlled private corporations, in which case, except as otherwise provided in this section, its expenditure limit for the particular year is nil.

Related Provisions: 87(2)(oo) — Effect of amalgamation; 88(1)(e.8) — Winding-up; 125(5.1) — Elimination of business limit (and therefore the expenditure limit) for large corporations; 127(10.3)–(10.6) — Expenditure limit to be shared among associated corporations; 127(10.6)(c) — Short taxation year; 257 — Formula cannot calculate to less than zero.

History: The description of A in subsec. 127(10.2) amended by 1997, c. 25, subsec. 35(2), applicable to taxation years that begin after 1995. It formerly read:

A is the greater of

(a) $200,000, and

(b) the taxable income of the corporation for its preceding taxation year or, if it is associated with one or more other corporations in the particular year, the taxable income of the corporation for its last taxation year ending in the preceding calendar year plus the taxable incomes of all such other corporations for their last taxation years ending in the preceding calendar year, and

Subsec. 127(10.2) amended by 1995, c. 3, subsec. 37(5), applicable to taxation years that begin after 1995. Subsec. (10.2) formerly read:

(10.2) For the purpose of subsection (10.1), a corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$$\$4{,}000{,}000 - 10A$$

where

A is the greater of

(a) $200,000, and

(b) the total of the taxable income of the corporation for the taxation year preceding the particular year and the taxable incomes of all corporations with which it was associated in the particular year for their taxation years ending in the calendar year preceding the calendar year in which the taxpayer's particular year ended,

unless the corporation is associated in the particular year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its expenditure limit for the particular year is nil.

Subsec. 127(10.2) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.2) formerly read:

(10.2) For the purposes of subsection (10.1), a corporation's expenditure limit for a taxation year is $2,000,000 unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its expenditure limit for the year is nil.

Pre-RSC History: Subsec. 127(10.2) substituted by 1985, c. 45, subsec. 72(6), applicable to 1985 *et seq.* Subsec. 127(10.2) as enacted by the said c. 45 corresponds to the former subsec. (10.3) which read:

(10.3) "Expenditure limit" determination — For the purposes of paragraph (9)(d.4), a corporation's "expenditure limit" for a taxation year is $2,000,000 unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its expenditure limit for the year is nil.

Subsec. 127(10.3) (predecessor to subsec. 127(10.2)) added by 1984, c. 45, subsec. 43(2), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(10.3) Associated corporations — If all of the Canadian-controlled private corporations that are associated with each other in a taxation year file with the Minister in prescribed form an agreement whereby, for the purpose of subsection (10.1), they allocate an amount to one or more of them for the year and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed the amount determined for the year by the formula in subsection (10.2), the expenditure limit for the year of each of the corporations is the amount so allocated to it.

History: Subsec. 127(10.3) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.3) formerly read:

(10.3) If all of the Canadian-controlled private corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of subsection (10.1), they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of the amounts so allocated, as the case may be, is $2,000,000, the expenditure limit for the year of each of the corporations is the amount so allocated to it.

Pre-RSC History: Subsec. 127(10.3) substituted by 1985, c. 45, subsec. 72(6), applicable to 1985 *et seq.* Subsec. 127(10.3) as enacted by the said c. 45 corresponds to the former 127(10.4) which read:

(10.4) Notwithstanding subsection (10.3), if all of the Canadian-controlled private corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of paragraph (9)(d.4), they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is $2,000,000, the annual expenditure limit for the year of each of the corporations is the amount so allocated to it.

Subsec. 127(10.4) (predecessor to subsec. 127(10.3) as enacted by 1985, c. 45) added by 1984, c. 45, subsec. 43(2), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

Forms: T2 SCH 23: Agreement among associated Canadian-controlled private corporations to allocate the business limit; T2 SCH 49: Agreement among associated Canadian-controlled private corporations to allocate the expenditure limit.

(10.4) Failure to file agreement — If any of the Canadian-controlled private corporations that are associated with each other in a taxation year fails to file with the Minister an agreement as contemplated by subsection (10.3) within 30 days after notice in writing by the Minister is forwarded to any of them that such an agreement is required for the purposes of this Part, the Minister shall, for the purpose of subsection (10.1), allocate an amount to one or more of them for the year, which amount or the total of which amounts, as the case may be, shall equal the amount determined for the year by the formula in subsection (10.2), and in any such case the expenditure limit for the year of each of the corporations is the amount so allocated to it.

History: Subsec. 127(10.4) amended by 1994, c. 8, subsec. 15(10), applicable to taxation years that begin after 1993. Subsec. (10.4) formerly read:

(10.4) If any of the Canadian-controlled private corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (10.3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purposes of subsection (10.1), allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal $2,000,000, and in any such case the expenditure limit for the year of each of the corporations is the amount so allocated to it.

Pre-RSC History: Subsec. 127(10.4) substituted by 1985, c. 45, subsec. 72(6), applicable to 1985 *et seq.* Subsec. 127(10.4) as enacted by the said c. 45 corresponds to former subsec. 127(10.5) which read:

(10.5) Failure to file agreement — If any of the Canadian-controlled private corporations that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (10.4) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purposes of paragraph (9)(d.4), allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal $2,000,000, and in any such case, notwithstanding subsection (10.3), the expenditure limit for the year of each of the corporations is the amount so allocated to it.

Subsec. 127(10.5) (predecessor to subsec. 127(10.4) enacted by 1985, c. 45) added by 1984, c. 45, subsec. 43(2), applicable to 1985 *et seq.*

(10.5) [Repealed under former Act]

Pre-RSC History: See History following subsec. 127(10.4).

(10.6) Expenditure limit determination in certain cases — Notwithstanding any other provision of this section,

(a) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in two or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the expenditure limit of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (b), an amount equal to its expenditure limit for the first such taxation year determined without reference to paragraph (b);

(b) where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, its expenditure limit for the year is that proportion of its expenditure limit for the year determined without reference to this paragraph that the number of days in the year is of 365; and

(c) for the purpose of subsection (10.2), where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, the taxable income and business limit of the corporation for the year shall be determined by multiplying those amounts by the ratio that 365 is of the number of days in that year.

History: Para. 127(10.6)(c) added by 1995, c. 3, subsec. 37(6), applicable to taxation years that begin after 1995.

Pre-RSC History [former subsec. 127(10.6)]: Former subsec. 127(10.6) added by 1984, c. 45, subsec. 43(2), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

(10.7) Further additions to investment tax credit [repaid assistance] — Where a taxpayer has in a particular taxation year repaid an amount of government assistance, non-government assistance or a contract payment that was applied to reduce

(a) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) for a preceding taxation year that began before 1996,

(b) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for a preceding taxation year that began before 1996, or

(c) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20) for a preceding taxation year,

there shall be added to the amount otherwise determined under subsection (10.1) in respect of the taxpayer for the particular year the amount, if any, by which

(d) the amount that would have been determined under subsection (10.1) in respect of the taxpayer for that preceding year if subsections (11.1) and (18) to (20) had not applied in respect of the government assistance, non-government assistance or contract payment, as the case may be, to the extent of the amount so repaid,

exceeds

(e) the amount determined under subsection (10.1) in respect of the taxpayer for that preceding year.

Related Provisions: 127(10.8) — Further additions to investment tax credits.

History: Subsec. 127(10.7) amended by 1996, c. 21, subsec. 30(20), applicable to taxation years that begin after 1995. Subsec. (10.7) formerly read:

(10.7) Further additions to investment tax credits [repaid assistance] — Where a taxpayer has in a particular taxation year repaid an amount of government assistance, non-government assistance or a contract payment that had, because of subsection (11.1), resulted in a reduction of the amount of a qualified expenditure for a preceding taxation year, there shall be added to the amount otherwise determined under subsection (10.1) in respect of the taxpayer for the particular year the amount, if any, by which

(a) the amount that would have been determined under subsection (10.1) in respect of the taxpayer for that preceding year if subsection (11.1) had not applied in respect of the government assistance, non-government assistance or contract payment, as the case may be, to the extent of the amount so repaid,

exceeds

(b) the amount determined under subsection (10.1) in respect of the taxpayer for that preceding year.

Subsec. 127(10.7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(5), applicable to amounts repaid after May 23, 1985.

(10.8) Further additions to investment tax credit [expired assistance] — For the purposes of paragraph (e.1) of the definition "investment tax credit" in subsection (9), subsection (10.7) and paragraph 37(1)(c), an amount of government assistance, non-government assistance or a contract payment that

(a) was applied to reduce

(i) the capital cost to a taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by a taxpayer under paragraph (11.1)(c) for taxation years that began before 1996,

(iii) the prescribed proxy amount of a taxpayer under paragraph (11.1)(f) for taxation years that began before 1996, or

(iv) a qualified expenditure incurred by a taxpayer under any of subsections (18) to (20),

(b) was not received by the taxpayer, and

(c) ceased in a taxation year to be an amount that the taxpayer can reasonably be expected to receive,

is deemed to be the amount of a repayment by the taxpayer in the year of the government assistance, non-government assistance or contract payment, as the case may be.

Related Provisions: 127(9)"investment tax credit"(e.1), (e.2) — Repayment of assistance; 127(9)"specified percentage"(f) — Repayment of assistance.

History: Subsec. 127(10.8) amended by 1996, c. 21, subsec. 30(20), applicable to taxation years that begin after 1995. Subsec. (10.8) formerly read:

(10.8) Idem [expired assistance] — For the purposes of paragraph (e.1) of the definition "investment tax credit" in subsection (9), subsection (10.7) and paragraph 37(1)(c), where an amount of assistance that

(a) was applied in reduction of

(i) the capital cost to a taxpayer of a property, because of paragraph (11.1)(b), or

(ii) the amount of a qualified expenditure made by a taxpayer, because of paragraph (11.1)(c),

(b) was not received by the taxpayer, and

(c) ceased in a taxation year to be an amount that the taxpayer can reasonably be expected to receive,

that amount shall be deemed to be an amount of assistance repaid by the taxpayer in the year.

Subsec. 127(10.8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 68(3), applicable to 1991 *et seq.*

(11) Interpretation — For the purposes of the definition "qualified property" in subsection (9),

(a) "manufacturing or processing" does not include any of the activities

(i) referred to in any of paragraphs (a) to (e) and (g) to (i) of the definition "manufacturing or processing" in subsection 125.1(3),

(ii) that would be referred to in paragraph (f) of that definition if that paragraph were read without reference to the expression "located in Canada",

(iii) that would be referred to in paragraph (j) of that definition if that paragraph were read without reference to the expression "in Canada", or

(iv) that would be referred to in paragraph (k) of that definition if the definition "Canadian field processing" in subsection 248(1) were read without reference to the expression "in Canada"; and

(b) for greater certainty, the purposes referred to in paragraph (c) of the definition "qualified property" in subsection (9) do not include

(i) storing (other than the storing of grain), shipping, selling or leasing finished goods,

(ii) purchasing raw materials,

(iii) administration, including clerical and personnel activities,

(iv) purchase and resale operations,

(v) data processing, or

(vi) providing facilities for employees, including cafeterias, clinics and recreational facilities.

History: Subparas. 127(11)(a)(i) and (ii) amended, subparas. (iii) and (iv) added, by 1997, c. 25, subsec. 35(3), applicable to taxation years that begin after 1996. Subparas. (a)(i) and (i) formerly read:

(i) referred to in any of paragraphs (a) to (e) and (i) to (k) of the definition "manufacturing or processing" in subsection 125.1(3), or

(ii) that would be referred to in any of paragraphs (f) to (h) of that definition if those paragraphs were read without reference to the expression "located in Canada"; and

Para. 127(11)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(6), applicable to 1990 *et seq.* Para. 127(11)(a) formerly read:

(a) "manufacturing or processing" does not include any of the activities referred to in paragraphs (a) to (k) of the definition "manufacturing or processing" in subsection 125.1(3); and

Pre-RSC History: Subsec. 127(11) amended by 1985, c. 45, subsec. 72(7), applicable to 1985 *et seq.*, to substitute, before para. (a), "the purposes of the definition 'qualified property' in subsection (9)" for "the purposes of subsection (10)"; in para. (b), "referred to in paragraph (c) of the definition 'qualified property' in subsection (9)" for "referred to in subparagraphs (10)(c)(i) to (x)"; in subpara. (b)(i), "selling or leasing finished goods" for "selling and leasing of finished goods"; in subpara. (b)(ii) "purchasing raw materials" for "purchasing of raw materials"; and in subpara. (b)(v), "data processing, or" for "data processing, and".

All that portion of para. 127(11)(b) preceding subpara. (i) substituted by 1977-78, c. 1, subsec. 61(11), applicable to 1977 *et seq.* to substitute "(x)" for "(ix)".

Subsec. 127(11) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

Selected Cases [subsec. 127(11)]: *Burger King Restaurants of Canada Inc. v. R.*, [2000] 2 C.T.C. 1 (FCA) (Quantitative aspect (space) will govern unless compelling evidence provided as to qualitative (investment, salaries, service) aspect).

Interpretation Bulletins: IT-411R: Meaning of "construction".

(11.1) Investment tax credit — For the purposes of the definition "investment tax credit" in subsection (9),

(a) the capital cost to a taxpayer of a property shall be computed as if no amount were added thereto by virtue of section 21;

(b) the capital cost to a taxpayer of a property shall be deemed to be the capital cost to the taxpayer of the property, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance or non-government assistance that can reasonably be considered to be in respect of, or for the acquisition of, the property and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the property was acquired, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(c) [Repealed]

(c.1) the amount of a taxpayer's qualified Canadian exploration expenditure for a taxation year shall be deemed to be the amount of the taxpayer's qualified Canadian exploration expenditure for the year as otherwise determined less the amount of any government assistance, non-government assistance or contract payment (other than assistance under the *Petroleum Incentives Program Act* or the *Petroleum Incentives Program Act*, Chapter P-4.1 of the Statutes of Alberta, 1981) in respect of expenditures included in determining the taxpayer's qualified Canadian exploration expenditure for the year that, at the time of the filing of the taxpayer's return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive; and

(d) where at a particular time a taxpayer who is a beneficiary of a trust or a member of a partnership has received, is entitled to receive or can reasonably be expected to receive government assistance, non-government assistance or a contract payment, the amount thereof that may reasonably be considered to be in respect of, or for the acquisition of, depreciable property of the trust or partnership or in respect of an expenditure by the trust or partnership shall be deemed to have been received at that time by the trust or partnership, as the case may be, as government assistance, non-government assistance or as a contract payment in re-

spect of the property or the expenditure, as the case may be.

(e), (f) [Repealed]

Related Provisions: 12(1)(x) — Payments as inducement or reimbursement etc.; 127(9)"investment tax credit"(e.1), (e.2) — Inclusion in ITC; 127(10.7), (10.8) — Further additions to ITCs; 248(16) — GST — input tax credit and rebate; 248(18) — GST — repayment of input tax credit.

History: Paras. 127(11.1)(c), (e) and (f) repealed by 1996, c. 21, subsecs. 30(21), (22), applicable to taxation years that begin after 1995. Paras. (c), (e) and (f) formerly read:

(c) the amount of a qualified expenditure (other than a prescribed proxy amount or an amount determined under paragraph (e)) made by a taxpayer shall be deemed to be the amount of the qualified expenditure, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance, non-government assistance or contract payment that can reasonably be considered to be in respect of the expenditure and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the expenditure was made, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

. . . . .

(e) the amount of a qualified expenditure made by a taxpayer in the taxation year ending coincidentally with the end of the first period (within the meaning assigned in the definition "first term shared-use-equipment" in subsection (9)) or the second period (within the meaning assigned in the definition "second term shared-use-equipment" in subsection (9)) in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, of the taxpayer shall be deemed to be ¼ of the capital cost of the equipment that would be determined in accordance with paragraphs (a) and (b) if paragraph (b) were read as

"(b) the capital cost to a taxpayer of a property shall be deemed to be the capital cost to the taxpayer of the property, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance, non-government assistance or contract payment that can reasonably be considered to be in respect of, or for the acquisition of, the property and that, at the time of the filing of the return of income under this Part for the taxation year ending coincidentally with the first period, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;"; and

(f) the prescribed proxy amount of a taxpayer for a taxation year shall be deemed to be the prescribed proxy amount of the taxpayer for the taxation year less the amount of any government assistance, non-government assistance or contract payment that can reasonably be considered to be in respect of an expenditure described in subparagraph 37(8)(a)(ii), other than an expenditure described in clause (B) of that subparagraph, and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the expenditure was made, the taxpayer has received, is entitled to receive or can reasonably be expected to receive.

Paras. 127(11.1)(b), (c) amended, paras. (e), (f) added, by 1994, c. 8, subsecs. 15(11), (12), applicable to taxation years ending after December 2, 1992. Paras. (b), (c) formerly read:

(b) the capital cost to a taxpayer of a property shall be deemed to be the capital cost to the taxpayer of the property, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance or non-government assistance in respect of, or for the acquisition of, the property that, at the time of the filing of the return of income for the taxation year in which the property was acquired, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(c) the amount of a qualified expenditure made by a taxpayer shall be deemed to be the amount of the qualified expenditure, determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance, non-government assistance or contract payment in respect of the expenditure that, at the time of the filing of the return of income for the taxation year in which the expenditure was made, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

Pre-RSC History: Para. 127(11.1)(c.1) added by 1986, c. 55, subsec. 48(16), applicable with respect to expenditures made after November 30, 1985.

Subsec. 127(11.1) substituted by 1986, c. 6, subsec. 71(16), applicable with respect to property acquired and expenditures made after May 23, 1985, other than property acquired and expenditures made after that date under the terms of an agreement in writing entered into on or before that date. Subsec. 127(11.1) formerly read:

(11.1) For the purposes of the definition "investment tax credit" in subsection (9),

(a) the capital cost to a taxpayer of a property shall be computed as if no amount were added thereto by virtue of section 21; and

(b) where a taxpayer has acquired a property after 1980 for the purpose of earning resource profits (within the meaning assigned by regulations made for the purposes of section 65), the capital cost to him of that property shall be computed as if the references in paragraph (a) of the definition to "subsection 13(7.1)" were read as references to "paragraph 13(7.1)(e)".

Former subsec. 127(11.1) repealed and substituted by an amended version of former subsec. 127(11.2), by 1985, c. 45, subsec. 72(7), applicable to 1985 *et seq.* Former subsec. 127(11.2) read:

(11.2) For the purposes of subsection (9),

(a) the capital cost to a taxpayer of property shall be computed as if no amount were added thereto by virtue of section 21; and

(b) where a taxpayer has acquired property after 1980 for the purpose of earning resource profits (within the meaning assigned by regulations made for the purposes of section 65), the capital cost to him of that property shall be computed as if the references in subsection (9) to "subsection 13(7.1)" were read as references to "paragraph 13(7.1)(e)".

Subsec. 127(11.2) (predecessor to subsec. 127(11.1) as enacted by 1985, c. 45), added by 1980-81-82-83, c. 48, subsec. 73(9); para. 127(11.2)(a) applicable in respect of any election under s. 21 made in respect of a taxation year ending after October 28, 1980 and in respect of any election made in an amended or late-filed return filed after that date.

Selected Cases [subsec. 127(11.1)]: *Com Dev Ltd. v. R.*, [1999] 2 C.T.C. 2566 (TCC) (Cost-plus contracts more likely to indicate purchase of scientific research).

Interpretation Bulletins [subsec. 127(11.1)]: IT-151R4: Scientific research and experimental development expenditures.

Pre-RSC History [former subsec. 127(11.1)]: Subsec. 127(11.1) formerly read as follows prior to substitution by 1985, c. 45:

(11.1) Application of ss. (9) after November 16, 1978 — In applying subsection (9) in respect of

(a) a qualified property or qualified transportation equipment acquired after November 16, 1978, or qualified construction equipment acquired after April 19, 1983, the references in paragraphs (a) and (b) thereof to "5%" shall be read as references to "7%", the references in paragraphs (a.1) and (b.1) thereof to "5%" shall be read as references to "13%" and the references in paragraphs (a.2) and (b.2) thereof to "2½%" shall be read as references to "3%";

(b) a qualified expenditure incurred by a taxpayer after November 16, 1978 and before his taxation year that includes November 1, 1983, or a qualified expenditure incurred by him in that taxation year or a subsequent taxation year if he deducted an amount under section 37.1 in computing his income for the year,

(i) where the expenditure was incurred by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would, if it had sufficient taxable income for the year, be entitled to a deduction under section 125 in computing its tax payable under this Part for the year, the references in paragraphs (a) and (b) thereof to "5%" shall be read as references to "25%" and the references in paragraphs (a.1), (a.2), (b.1) and (b.2) thereof to "2½%" or "5%", as the case may be, shall be read as references to "0%", and

(ii) in any other case, the references in paragraphs (a), (a.1), (b) and (b.1) thereof to "5%" shall be read as references to "10%" and the references in paragraphs (a.2) and (b.2) thereof to "2½%" shall be read as references to "0%"; and

(c) a qualified expenditure incurred by a taxpayer in his taxation year that includes November 1, 1983 or a subsequent taxation year, other than a qualified expenditure referred to in paragraph (b), the references in paragraphs (a) and (b) thereof to "5%" shall be read as references to "20%", the references in

paragraphs (a.1) and (b.1) thereof to "5%" shall be read as references to "10%" and the references in paragraphs (a.2) and (b.2) thereof to "2½%" shall be read as references to "0%".

Para. 127(11.1)(c) substituted by 1984, c. 45, subsec. 43(3), applicable to expenditures made in 1985 *et seq.* Para. 127(11.1)(c) formerly read:

(c) a qualified expenditure incurred by a taxpayer in his taxation year that includes November 1, 1983 or a subsequent taxation year, other than a qualified expenditure referred to in paragraph (b),

(i) where the expenditure was incurred by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would, if it had sufficient taxable income for the year, be entitled to a deduction under section 125 in computing its tax payable under this Part for the year, the references in paragraphs (a) and (b) thereof to "5%" shall be read as references to "35%" and the references in paragraphs (a.1), (a.2), (b.1) and (b.2) thereof to "2½%" or "5%", as the case may be, shall be read as references to "0%", and

(ii) in any other case, the references in paragraphs (a) and (b) thereof to "5%" shall be read as references to "20%", the references in paragraphs (a.1) and (b.1) thereof to "5%" shall be read as references to "10%" and the references in paragraphs (a.2) and (b.2) thereof to "2½%" shall be read as references to "0%".

Para. 127(11.1)(a), and all that portion of para. 127(11.1)(b) preceding subpara. (ii) substituted and para. 127(11.1)(c) added by 1984, c. 1, subsecs. 72(10)–(12). Subpara. 127(11.1)(b)(i), as substituted, applicable with respect to property acquired and expenditures made after April 19, 1983. Para. 127(11.1)(a) substituted to add "or qualified construction equipment acquired after April 19, 1983". That portion of para. 127(11.1)(b) preceding subpara. (ii) formerly read:

(b) a qualified expenditure incurred after November 16, 1978,

(i) where the expenditure was incurred by a Canadian-controlled private corporation in a taxation year of the corporation in which it is or would, if it had sufficient taxable income for the year, be entitled to a deduction under subsection 125(1) in computing its tax payable under this Part for the year, the references in paragraphs (a) and (b) thereof to "5%" shall be read as references to "25%" and the references in paragraphs (a.1), (a.2), (b.1) and (b.2) thereof to "2½%" or "5%", as the case may be, shall be read as references to "0%", and

(ii) in any other case, the references in paragraphs (a), (a.1), (b) and (b.1) thereof to "5%" shall be read as references to "10%" and the references in paragraphs (a.2) and (b.2) thereof to "2½%" shall be read as references to "0%".

Subsec. 127(11.1) added by 1979, c. 5, subsec. 40(6), applicable in respect of qualified property and qualified transportation equipment acquired after November 16, 1978 and in respect of qualified expenditures incurred after November 16, 1978.

(11.2) Time of expenditure and acquisition — In applying subsections (5), (7) and (8), paragraphs (a) and (a.1) of the definition "investment tax credit" in subsection (9) and section 127.1,

(a) certified property, qualified property and first term shared-use-equipment are deemed not to have been acquired, and

(b) expenditures incurred to acquire property described in subparagraph 37(1)(b)(i) are deemed not to have been incurred

by a taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

Related Provisions: 13(26) — No CCA until property available for use; 37(1.2) — No R&D deduction for capital expenditure until property available for use; 248(19) — When property available for use.

History: Subsec. 127(11.2) amended by 1996, c. 21, subsec. 30(23), applicable to taxation years that begin after 1995. Subsec. (11.2) formerly read:

(11.2) In applying subsections (5), (7) and (8), paragraph (a) of the definition "investment tax credit" in subsection (9) and section 127.1,

(a) property described in subparagraph (a)(i) of the definition "investment tax credit" in subsection (9) shall be deemed not to have been acquired,

(b) property that is first term shared-use-equipment the expenditure for which is a qualified expenditure included in subparagraph (a)(ii) of the definition "investment tax credit" in subsection (9) shall be deemed not to have been acquired, and

(c) expenditures incurred to acquire property described in subparagraph 37(1)(b)(i) shall be deemed not to have been incurred,

by the taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

Subsec. 127(11.2) amended by 1995, c. 3, subsec. 37(7), applicable to property acquired and expenditures incurred after February 21, 1994. Subsec. (11.2) formerly read:

(11.2) Idem — For the purposes of this section and section 127.1, property described in subparagraph (a)(i) of the definition "investment tax credit" in subsection (9) shall be deemed not to have been acquired, and expenditures made to acquire property described in subparagraph 37(1)(b)(i) shall be deemed not to have been made, by a taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

Subsec. 127(11.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 104(7), applicable to property acquired and expenditures made after 1989.

Selected Cases [subsec. 127(11.2)]: *Saskatchewan Wheat Pool v. R.*, [1999] 2 C.T.C. 369 (FCA); leave to appeal to SCC refused (Apr. 13, 2000), File 27346 (ITC should not be higher for taxpayer who capitalizes interest).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

Advance Tax Rulings: ATR-44: Utilization of deductions and credits within a related corporate group.

Pre-RSC History [former 127(11.2)]: Former subsec. 127(11.2) repealed by 1988, c. 55, subsec. 106(15), applicable to 1989 *et seq.* Subsec. 127(11.2) formerly read:

(11.2) Idem — For the purposes of the definition "investment tax credit" in subsection (9), where a taxpayer has acquired an approved project property in a taxation year, in computing his investment tax credit for a subsequent taxation year the reference to "7 taxation years immediately preceding" in that definition shall be read as "10 taxation years immediately preceding" in respect of that property.

Subsec. 127(11.2) added by 1986, c. 6, subsec. 71(16), applicable after May 23, 1985. (For history of former subsec. 127(11.2), see history under subsec. 127(11.1).)

(11.3) Decertification of approved project property — For the purposes of the definition "approved project property" in subsection (9), a property that has been certified by the Minister of Regional Industrial Expansion, the Minister of Industry, Science and Technology or the member of the Queen's Privy Council for Canada appointed to be the Minister for the purposes of the *Atlantic Canada Opportunities Agency Act* may have its certification revoked by the latter Minister where

(a) an incorrect statement was made in the furnishing of information for the purpose of obtaining the certificate, or

(b) the taxpayer does not conform to the plan described in that definition,

and a certificate that has been so revoked shall be void from the time of its issue.

Related Provisions: 241(4) — Communication of information — exception.

Pre-RSC History: That portion of subsec. 127(11.3) preceding para. (a) substituted by 1990, c. 1, subsec. 29(4), in force February 23, 1990. That portion formerly read:

(11.3) Approved project property — For the purpose of the definition "approved project property" in subsection (9), a property that has been certified by the Minister of Regional Industrial Expansion may have its certification revoked by that Minister where

Subsec. 127(11.3) added by 1986, c. 6, subsec. 71(16), applicable after May 23, 1985.

(11.4) [Repealed]

History: Subsec. 127(11.4) repealed by 1998, c. 19, subsec. 33(5), applicable to 1997 *et seq.* Subsec. 127(11.4) formerly read:

(11.4) Paragraph (m) of the definition "investment tax credit" in subsection (9) does not apply to an expenditure incurred in a taxation year by a taxpayer if the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable for the year by the taxpayer, as an expenditure in respect of scientific research and experimental development.

Subsec. 127(11.4) amended by 1998, c. 19, subsec. 33(4), applicable to 1996 *et seq.* Subsec. 127(11.4) formerly read:

(11.4) Paragraph (e) of the definition "qualified expenditure" in subsection (9) does not apply to an expenditure incurred in a taxation year by a taxpayer where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable for the year by the taxpayer, as an expenditure in respect of scientific research and experimental development.

Subsec. 127(11.4) amended by 1996, c. 21, subsec. 30(24), applicable to taxation years that begin after 1995. Subsec. (11.4) formerly read:

(11.4) Reclassified expenditures — Paragraph (c) of the definition "qualified expenditure" in subsection (9) does not apply to an expenditure incurred in a taxation year by a taxpayer where the expenditure is reclassified by the Minister on an assessment of the taxpayer's tax payable under this Part for the year, or on a determination that no tax under this Part is payable for the year by the taxpayer, as an expenditure in respect of scientific research and experimental development.

Subsec. 127(11.4) added by 1994, c. 21, subsec. 61(4), applicable after February 21, 1994 to expenditures incurred at any time.

Application Policies: SR&ED 96-03: Claimants' entitlements and responsibilities..

(11.5) Adjustments to qualified expenditures — For the purpose of the definition "qualified expenditure" in subsection (9),

(a) the amount of an expenditure (other than a prescribed proxy amount or an amount described in paragraph (b)) incurred by a taxpayer in a taxation year is deemed to be the amount of the expenditure, determined without reference to subsections 13(7.1) and (7.4) and after the application of subsection (11.6); and

(b) the amount of an expenditure incurred by a taxpayer in the taxation year that ends coincidentally with the end of the first period (within the meaning assigned in the definition "first term shared-use-equipment" in subsection (9)) or the second period (within the meaning assigned in the definition "second term shared-use-equipment" in subsection (9)) in respect of first term shared-use-equipment or second term shared-use-equipment, respectively, of the taxpayer is deemed to be ¼ of the capital cost of the equipment determined after the application of subsection (11.6) in accordance with the following rules:

(i) the capital cost to the taxpayer shall be computed as if no amount were added thereto because of section 21, and

(ii) the capital cost to the taxpayer is determined without reference to subsections 13(7.1) and (7.4).

Related Provisions: 12(1)(x)(vi) — Income inclusion from reimbursement or assistance; 127(11.6) — Non-arm's length costs; 127(18) — Reduction of qualified expenditures.

History: Subsec. 127(11.5) added by 1996, c. 21, subsec. 30(24), applicable to taxation years that begin after 1995.

(11.6) Non-arm's length costs — For the purpose of subsection (11.5), where

(a) a taxpayer would, if this Act were read without reference to subsection (26), incur at any time an expenditure as consideration for a person or partnership (referred to in this subsection as the "supplier") rendering a service (other than a service rendered by a person as an employee of the taxpayer) or providing a property to the taxpayer, and

(b) at that time the taxpayer does not deal at arm's length with the supplier,

the amount of the expenditure incurred by the taxpayer for the service or property and the capital cost to the taxpayer of the property are deemed to be

(c) in the case of a service rendered to the taxpayer, the lesser of

(i) the amount of the expenditure otherwise incurred by the taxpayer for the service, and

(ii) the adjusted service cost to the supplier of rendering the service, and

(d) in the case of a property sold to the taxpayer, the lesser of

(i) the capital cost to the taxpayer of the property otherwise determined, and

(ii) the adjusted selling cost to the supplier of the property.

Related Provisions: 12(1)(x)(vi) — Income inclusion from reimbursement or assistance; 127(11.7) — Meaning of adjusted selling cost and adjusted service cost; 127(11.8) — Interpretation; 127(24) — Exclusion from qualified expenditure.

History: Subsec. 127(11.6) added by 1996, c. 21, subsec. 30(24), applicable to expenditures incurred in taxation years that begin after 1995.

(11.7) Definitions — The definitions in this subsection apply in this subsection and subsection (11.6).

"adjusted selling cost" to a person or partnership (referred to in this definition as the "supplier") of a property is the amount determined by the formula

$$A - B$$

where

A is

(a) where the property is purchased from another person or partnership with which the supplier does not deal at arm's length, the lesser of

(i) the cost to the supplier of the property, and

(ii) the adjusted selling cost to the other person or partnership of the property, and

(b) in any other case, the cost to the supplier of the property,

and for the purpose of paragraph (b),

(c) where part of the cost to a supplier of a particular property is attributable to another property acquired by the supplier from a person or partnership with which the supplier does not deal at arm's length, that part of the cost is deemed to be the lesser of

(i) the amount of that part of the cost otherwise determined, and

(ii) the adjusted selling cost to the person or the partnership of the other property,

(d) where part of the cost to a supplier of a property is attributable to a service (other than a service rendered by a person as an employee of the supplier) rendered to the supplier by a person or partnership with which the supplier does not deal at arm's length, that part of the cost is deemed to be the lesser of

(i) the amount of that part of the cost otherwise determined, and

(ii) the adjusted service cost to the person or partnership of rendering the service, and

(e) no part of the cost to a supplier of a property that is attributable to remuneration based on profits or a bonus paid or payable to an employee of the supplier shall be included, and

B is the total of all amounts each of which is the amount of government assistance or non-government assistance that can reasonably be considered to be in respect of the property and that the supplier has received, is entitled to receive or can reasonably be expected to receive.

Related Provisions: 127(11.8) — Interpretation; 257 — Formula cannot calculate to less than zero.

"adjusted service cost" to a person or partnership (referred to in this definition as the "supplier") of rendering a particular service is the amount determined by the formula:

$$A - B - C - D - E$$

where

A is the cost to the supplier of rendering the particular service,

B is the total of all amounts each of which is the amount, if any, by which

(a) the cost to the supplier for a service (other than a service rendered by a person as an employee of the supplier) rendered by a person or partnership that does not deal at arm's length with the supplier to the extent that the cost is incurred for the purpose of rendering the particular service

exceeds

(b) the adjusted service cost to the person or partnership referred to in paragraph (a) of rendering the service referred to in that paragraph to the supplier,

C is the total of all amounts each of which is the amount, if any, by which

(a) the cost to the supplier of a property acquired by the supplier from a person or partnership that does not deal at arm's length with the supplier

exceeds

(b) the adjusted selling cost to the person or partnership referred to in paragraph (a) of the property,

to the extent that the excess relates to the cost of rendering the particular service,

D is the total of all amounts each of which is remuneration based on profits or a bonus paid or payable to an employee of the supplier to the extent that it is included in the cost to the supplier of rendering the particular service, and

E is the total of all amounts each of which is government assistance or non-government assistance that can reasonably be considered to be in respect of rendering the particular service and that the supplier has received, is entitled to receive or can reasonably be expected to receive;

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 127(11.7) added by 1996, c. 21, subsec. 30(24), applicable to expenditures incurred in taxation years that begin after 1995.

(11.8) Interpretation for non-arm's length costs — For the purposes of this subsection and subsections (11.6) and (11.7),

(a) the cost to a person or partnership (referred to in this paragraph as the "supplier") of rendering a service or providing a property to another person or partnership (referred to in this paragraph as the "recipient") with which the supplier does not deal at arm's length does not include,

(i) where the cost to the recipient of the service rendered or property provided by the supplier would, but for this paragraph, be a cost to the recipient incurred in rendering a particular service or providing a particular property to a person or partnership with which the recipient does not deal at arm's length, any expenditure of the supplier to the extent that it would, if it were incurred by the recipient in rendering the particular service or providing the particular property, be excluded from a cost to the recipient because of this paragraph, and

(ii) in any other case, any expenditure of the supplier to the extent that it would, if it were incurred by the recipient, not be a qualified expenditure of the recipient;

(b) paragraph 69(1)(c) does not apply in determining the cost of a property; and

(c) the leasing of a property is deemed to be the rendering of a service.

History: Subsec. 127(11.8) added by 1996, c. 21, subsec. 30(24), applicable to expenditures incurred in taxation years that begin after 1995.

(12) Interpretation — For the purposes of subsection 13(7.1), where, pursuant to a designation or an allocation from a trust or partnership, an amount is required by subsection (7) or (8) to be added in computing the investment tax credit of a taxpayer at the end of the taxpayer's taxation year, the portion thereof that can reasonably be considered to relate to depreciable property shall be deemed to have been received by the partnership or trust, as the case may be, at the end of its fiscal period in respect of which the designation or allocation was made as assistance from a government for the acquisition of depreciable property.

Pre-RSC History: Subsec. 127(12) substituted by 1980-81-82-83, c. 140, subsec. 89(3), applicable after November 12, 1981. Subsec. 127(12) formerly read:

> (12) For the purposes of subsection 13(7.1), where, pursuant to a designation or an allocation from a trust or partnership, an amount is required by subsection (7) or (8) to be added in computing the investment tax credit of a taxpayer at the end of his taxation year, such amount shall be deemed to have been received at the end of its fiscal period in respect of which the designation or allocation was made by the trust or partnership, as the case may be, as assistance from a government for the acquisition of depreciable property.

Subsec. 127(12) added by 1974-75-76, c. 71, subsec. 9(1), applicable to 1975 *et seq.*

(12.1) Idem — For the purposes of section 37, where, pursuant to a designation or an allocation from a trust or partnership, an amount is required by subsection (7) or (8) to be added in computing the investment tax credit of a

taxpayer at the end of the taxpayer's taxation year, the portion thereof that may reasonably be regarded as relating to expenditures of a current nature in respect of scientific research and experimental development that are qualified expenditures shall, at the end of the fiscal period of the trust or partnership, as the case may be, in respect of which the designation or allocation was made, reduce the total of such expenditures of a current nature as may be claimed by the trust or partnership in respect of scientific research and experimental development.

Pre-RSC History: The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Subsec. 127(12.1) amended by 1985, c. 45, subsec. 72(8), applicable to 1985 *et seq.* to substitute "that may reasonably be regarded as relating to expenditures of a current nature in respect of scientific research that are qualified expenditures" for "that can reasonably be considered to relate to expenditures of a current nature in respect of scientific research that are qualified expenditures (within the meaning assigned by subsection (10.1))".

Subsec. 127(12.1) added by 1980-81-82-83, c. 140, subsec. 89(3), applicable after November 12, 1981.

(12.2) Idem — For the purposes of paragraphs 53(2)(c), (h) and (k), where in a taxation year a taxpayer has deducted under subsection (5) an amount that may reasonably be regarded as attributable to amounts included in computing the investment tax credit of the taxpayer at the end of the year in respect of property acquired, or an expenditure made, in a subsequent taxation year, the taxpayer shall be deemed to have made the deduction under that subsection in that subsequent taxation year.

Pre-RSC History: Subsec. 127(12.2) substituted by 1985, c. 45, subsec. 72(8), applicable to 1985 *et seq.* Subsec. 127(12.2) formerly read:

> (12.2) For the purposes of paragraphs 53(2)(c), (h) and (k), where in a taxation year a taxpayer has deducted under subsection (5) or (6) an amount that may reasonably be attributable to amounts included under subsection (9) in computing the investment tax credit of the taxpayer in respect of property acquired, or an expenditure made, in a subsequent taxation year, the taxpayer shall be deemed to have made the deduction under subsection (5) or (6), as the case may be, in that subsequent taxation year.

Subsec. 127(12.2) added by 1984, c. 1, subsec. 72(13).

(12.3) Idem — For the purposes of the determination of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), where, pursuant to a designation by a trust, an amount is required by subsection (7) to be added in computing the investment tax credit of a taxpayer at the end of the taxpayer's taxation year, the portion thereof that can reasonably be considered to relate to a qualified Canadian exploration expenditure of the trust for a taxation year shall be deemed to have been received by the trust at the end of its taxation year in respect of which the designation was made as assistance from a government in respect of that expenditure.

Related Provisions: 248(16) — GST — input tax credit and rebate deemed to be assistance; 248(18) — GST — repayment of input tax credit.

Pre-RSC History: Subsec. 127(12.3) added by 1986, c. 55, subsec. 48(17), applicable with respect to expenditures made after November 30, 1985.

(13) Agreement to transfer qualified expenditures — Where a taxpayer (referred to in this subsection and subsections (15) and (16) as the "transferor") and another taxpayer (referred to in this subsection and subsection (15) as the "transferee") file with the Minister an agreement or an amended agreement in respect of a particular taxation year of the transferor, the least of

(a) the amount specified in the agreement for the purpose of this subsection,

(b) the amount that but for the agreement would be the transferor's SR&ED qualified expenditure pool at the end of the particular year, and

(c) the total of all amounts each of which is an amount that, if the transferor were dealing at arm's length with the transferee, would be a contract payment

(i) for the performance of scientific research and experimental development for, or on behalf of, the transferee,

(ii) that is paid by the transferee to the transferor on or before the day that is 180 days after the end of the particular year, and

(iii) that would be in respect of

(A) a qualified expenditure that

(I) would be incurred by the transferor in the particular year (if this Act were read without reference to subsections (26) and 78(4)) in respect of that portion of the scientific research and experimental development that was performed at a time when the transferor did not deal at arm's length with the transferee, and

(II) is paid by the transferor on or before the day that is 180 days after the end of the particular year, or

(B) an amount added because of this subsection to the transferor's SR&ED qualified expenditure pool at the end of the particular year where the amount is attributable to an expenditure in respect of the scientific research and experimental development

is deemed to be

(d) an amount determined in respect of the transferor for the particular year for the purpose of determining the value of C in the definition "SR&ED qualified expenditure pool" in subsection (9), and

(e) an amount determined in respect of the transferee for the transferee's first taxation year that ends at or after the end of the particular year for the purpose of determining the value of B in the definition "SR&ED qualified expenditure pool" in subsection (9),

and where the total of all amounts each of which is an amount specified in an agreement filed with the Minister under this subsection in respect of a particular taxation year of a transferor exceeds the amount that would be the transferor's SR&ED qualified expenditure pool at the end of the particular year if no agreement were filed with the Minister in respect of the particular year, the least of the amounts determined under paragraphs (a) to (c) in respect of each such agreement is deemed to be nil.

Related Provisions: 37(1)(e)(iii) — Reduced SR&ED deduction; 127(8)(a) — Partnership not a person for purposes of this subsection; 127(14) — Identification of amounts transferred as current or capital; 127(15) — Filing requirements; 127(16) — Anti-avoidance; 127(17) — Assessment of other years to take agreement into account; 127(29) — Recapture of ITC of allocating taxpayer.

History: Subsec. 127(13) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Pre-RSC History: Former subsec. 127(13) repealed by 1988, c. 55, subsec. 106(15), applicable to 1989 *et seq.* Subsec. 127(13) formerly read:

> (13) Employment tax credit — There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year an amount not exceeding his employment tax credit at the end of the year.

Subsecs. 127(13) added by 1977-78, c. 4, subsec. 5(2).

Selected Cases [former subsec. 127(13)]: *410285 Ontario Ltd. v. MNR*, [1985] 1 C.T.C. 2377 (TCC) (Taxpayer corporation can rely on confirmed Department of Employment and Immigration information when hiring employees to qualify for employment tax credits).

Forms: T1146: Agreement to transfer qualified expenditures incurred re SR&ED contracts.

(14) Identification of amounts transferred — Where

(a) a transferor and a transferee have filed an agreement under subsection (13) in respect of a taxation year of the transferor,

(b) the agreement includes a statement identifying the amount specified in the agreement for the purpose of subsection (13), or a part of that amount, as being related to

(i) a particular qualified expenditure included in the value of A in the formula in the definition "SR&ED qualified expenditure pool" in subsection (9) for the purpose of determining the transferor's SR&ED qualified expenditure pool at the end of the year, or

(ii) a particular amount included in the value of B in the formula in that definition for the purpose of determining the transferor's SR&ED qualified expenditure pool at the end of the year that is deemed by paragraph (d) to be a qualified expenditure, and

(c) the total of all amounts so identified in agreements filed by the transferor under subsection (13) as being related to the particular expenditure or the particular amount does not exceed the particular expenditure or the particular amount, as the case may be,

for the purposes of this section (other than the description of A in the definition "SR&ED qualified expenditure pool" in subsection (9)) and section 127.1,

(d) the amount so identified that is included in the value of B in the formula in that definition for the purpose of determining the transferee's SR&ED qualified expenditure pool at the end of the taxation year of the transferee is deemed to be a qualified expenditure either of a current nature or of a capital nature, incurred by the transferee in that year, where the particular expenditure or the particular amount was an expenditure of a current nature or of a capital nature, as the case may be, and

(e) except for the purpose of paragraph (b), the amount of the transferor's qualified expenditures of a current nature incurred in the taxation year of the transferor in respect of which the agreement is made is deemed not to exceed the amount by which the amount of such expenditures otherwise determined exceeds the total of all amounts identified under paragraph (b) by the transferor in agreements filed under subsection (13) in respect of the year as being related to expenditures of a current nature.

History: Subsec. 127(14) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Pre-RSC History: Former subsec. 127(14) repealed by 1988, c. 55, subsec. 106(15), applicable to 1989 *et seq.* Subsec. 127(14) formerly read:

> (14) Employment tax credit of cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation within the meaning assigned by subsection 136(2) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by that subsection to be remitted to the Receiver General an amount not exceeding the amount, if any, by which
>
> (a) its employment tax credit at the end of the immediately preceding taxation year,
>
> exceeds the aggregate of
>
> (b) the amount deducted under subsection (13) from its tax otherwise payable under this Part for the immediately preceding taxation year, and
>
> (c) the aggregate of all amounts deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,
>
> and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3)
>
> (d) shall be deducted in computing the taxpayer's employment tax credit at the end of the taxation year, and
>
> (e) shall be deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

Subsec. 127(14) amended by 1980-81-82-83, c. 48, s. 115, to substitute "Receiver General" for "Receiver General of Canada".

Subsec. 127(14) added by 1977-78, c. 4, subsec. 5(2).

(15) Invalid agreements — An agreement or amended agreement referred to in subsection (13) between a transferor and a transferee is deemed not to have been filed with the Minister for the purpose of that subsection where

(a) it is not in prescribed form;

(b) it is not filed

(i) on or before the transferor's filing-due date for the particular taxation year to which the agreement relates,

(ii) in the period within which the transferor may serve a notice of objection to an assessment of tax payable under this Part for the particular year, or

(iii) in the period within which the transferee may serve a notice of objection to an assessment of tax payable under this Part for its first taxation year that ends at or after the end of the transferor's particular year;

(c) it is not accompanied by,

(i) where the transferor is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the transferor is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made,

(iii) where the transferee is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the transferee is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made; or

(d) an agreement amending the agreement has been filed in accordance with subsection (13) and this subsection, except where subsection (16) applies to the original agreement.

History: Subsec. 127(15) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Pre-RSC History [former subsec. 127(15)]: Former subsec. 127(15) repealed by 1988, c. 55, subsec. 106(15), applicable to 1989 *et seq.* Subsec. 127(15) formerly read:

(15) Employment tax credit of trust — Where a taxpayer is a beneficiary under a trust and an amount is determined in respect of the trust under subsection (16) at the end of a taxation year of the trust, the trust may, in its return of income for that taxation year, designate such portion of that amount as may, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and as was not designated by the trust in respect of any other beneficiary of the trust, and that portion shall be added to the employment tax credit of the taxpayer at the end of the taxation year of the taxpayer in which the taxation year of the trust ends and shall be deducted by the trust from its employment tax credit at the end of its taxation year.

Subsec. 127(15) added by 1977-78, c. 4, subsec. 5(2).

(16) Non-arm's length parties — Where a taxpayer does not deal at arm's length with another taxpayer as a result of a transaction, event or arrangement, or a series of transactions or events, the principal purpose of which can reasonably be considered to have been to enable the taxpayers to enter into an agreement referred to in subsection (13), for the purpose of paragraph (13)(e) the least of the amounts determined under paragraphs (13)(a) to (c) in respect of the agreement is deemed to be nil.

Related Provisions: 248(10) — Series of transactions.

History: Subsec. 127(16) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Pre-RSC History [former subsec. 127(16)]: Former subsec. 127(16) repealed by 1988, c. 55, subsec. 106(15), applicable to 1989 *et seq.* Subsec. 127(16) formerly read:

(16) "Employment tax credit" defined — For the purposes of subsections (13) to (15) and subsections 87(2) and 88(1), "employment tax credit" of a taxpayer at the end of a taxation year means the amount, if any, by which the aggregate of

(a) his taxpayer employment credits, determined in prescribed manner, for that taxation year and any of the five immediately preceding taxation years, and

(b) the aggregate of all amounts each of which is an amount required to be added in computing his employment tax credit at the end of that taxation year or at the end of any of the five immediately preceding taxation years by virtue of subsection (15)

exceeds the aggregate of

(c) the aggregate of all amounts each of which is an amount deducted by him under subsection (13) in any of the five immediately preceding taxation years in respect of

(i) his taxpayer employment credits as so determined, and

(ii) amounts added to his employment tax credit by virtue of subsection (15),

for each of those taxation years, and

(d) the aggregate of all amounts each of which is an amount required to be deducted in computing his employment tax credit at the end of that taxation year or at the end of any of the five immediately preceding taxation years by virtue of subsection (14) or (15).

All that portion of subsec. 127(16) preceding para. (a) amended by 1986, c. 6, subsec. 71(17), applicable with respect to windings-up commencing after May 23, 1985, to substitute "For the purposes of subsections (13) to (15) and subsections 87(2) and 88(1)" for "For the purposes of subsections (9.1), (9.2) and (13) to (15)".

Subsec. 127(16) added by 1977-78, c. 4, subsec. 5(2).

(17) Assessment — Notwithstanding subsections 152(4) and (5), such assessment of the tax, interest and penalties payable by any taxpayer in respect of any taxation year that began before the day an agreement or amended agreement is filed under subsection (13) or (20) shall be made as is necessary to take into account the agreement or the amended agreement.

History: Subsec. 127(17) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Former subsec. 127(17) repealed by 1994, c. 8, subsec. 15(13), applicable to taxation years that begin after 1993. Subsec. (17) formerly read:

(17) Definition of "tax otherwise payable" — In this section, "tax otherwise payable" by a taxpayer under this Part for a taxation year means the amount that would, but for subsection (5) and sections 120.1 and 120.2, be the tax payable by the taxpayer under this Part for the year.

Pre-RSC History [former subsec. 127(17)]: Former subsec. 127(17) substituted by 1988, c. 55, subsec. 106(16), applicable to 1988 *et seq.* Subsec. 127(17) formerly read:

(17) "Tax otherwise payable" — In this section, "tax otherwise payable" by a taxpayer under this Part means the amount that would, but for section 120.1, be the tax otherwise payable by the taxpayer under this Part.

Subsec. 127(17) added by 1980-81-82-83, c. 140, subsec. 89(4), applicable to 1982 *et seq.*

(18) Reduction of qualified expenditures — Where on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection as the "taxpayer") the taxpayer has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development, the amount by which the particular amount exceeds all amounts applied for preceding taxation years under this subsection or subsection (19) or (20) in respect of the particular amount shall be applied to reduce the taxpayer's qualified expenditures otherwise incurred in the year that can reasonably be considered to be in respect of the scientific research and experimental development.

Related Provisions: 127(9)"investment tax credit"(e.1)(iv), 127(9)"investment tax credit"(e.2)(ii) — Inclusion in ITC; 127(9)"qualified expenditure"(h) — Exclusion from qualified expenditure; 127(10.7)(c), (d) — Further addition to ITC; 127(11.5) — Adjustments to qualified expenditures; 127(21) — Failure to allocate; 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(18) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(19) Reduction of qualified expenditures — Where on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection as the "recipient") the recipient has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development and the particular amount exceeds the total of

(a) all amounts applied for preceding taxation years under this subsection or subsection (18) or (20) in respect of the particular amount,

(b) the total of all amounts each of which would be a qualified expenditure that is incurred in the year by the recipient and that can reasonably be considered to be in respect of the scientific research and experimental development if subsection (18) did not apply to the particular amount, and

(c) the total of all amounts each of which would, but for the application of this subsection to the particular amount, be a qualified expenditure

(i) that was incurred by a person or partnership in a taxation year of the person or partnership that ended in the recipient's taxation year, and

(ii) that can reasonably be considered to be in respect of the scientific research and experimental development to the extent that it was performed by the person or partnership at a time when the person or partnership was not dealing at arm's length with the recipient,

the particular amount shall be applied to reduce each qualified expenditure otherwise determined that is referred to in paragraph (c).

Related Provisions: 127(9)"investment tax credit"(e.1)(iv), 127(9)"investment tax credit"(e.2)(ii) — Inclusion in ITC; 127(9)"qualified expenditure"(h) — Exclusion from qualified expenditure; 127(21) — Failure to allocate; 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(19) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(20) Agreement to allocate — Where

(a) on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection and subsection (22) as the "taxpayer") the taxpayer has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development,

(b) subsection (19) does not apply to the particular amount in respect of the year, and

(c) the taxpayer and a person or partnership (referred to in this subsection and subsection (22) as the "transferee") with which the taxpayer does not deal at arm's length file an agreement or amended agreement with the Minister,

the lesser of

(d) the amount specified in the agreement, and

(e) the total of all amounts each of which would, but for the agreement, be a qualified expenditure

(i) that was incurred by the transferee in a particular taxation year of the transferee that ended in the taxpayer's taxation year, and

(ii) that can reasonably be considered to be in respect of the scientific research and experimental development to the extent that it was performed by the transferee at a time when the transferee was not dealing at arm's length with the taxpayer

shall be applied to reduce the qualified expenditures otherwise determined that are described in paragraph (e).

Related Provisions: 127(9)"investment tax credit"(e.1)(iv), (e.2)(ii) — Inclusion in ITC; 127(9)"qualified expenditure"(h) — Exclusion from qualified expenditure; 127(17) — Assessment of other years to take agreement into account; 127(21) — Failure to allocate; 127(22) — Filing requirements; 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(20) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

Forms: T1145: Agreement to allocate assistance for SR&ED expenditures between persons not dealing at arm's length.

(21) Failure to allocate — Where on or before the filing-due date for a taxation year of a person or partnership (referred to in this subsection as the "recipient") the recipient has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can reasonably be considered to be in respect of scientific research and experimental development and subsection (19) does not apply to the particular amount in respect of the year, the lesser of

(a) the total of all amounts each of which is a qualified expenditure

(i) that was incurred by a particular person or partnership in a taxation year of the particular person or partnership that ended in the recipient's taxation year, and

(ii) that can reasonably be considered to be in respect of the scientific research and experimental development to the extent that it was performed by the particular person or partnership at a time when the particular person or partnership was not dealing at arm's length with the recipient, and

(b) the amount, if any, by which the particular amount exceeds the total of amounts applied for the year and preceding taxation years under subsection (18), (19) or (20) in respect of the particular amount

is deemed for the purposes of this section to be an amount of government assistance received at the end of the particular year by the particular person or partnership in respect of the scientific research and experimental development.

Related Provisions: 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(21) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(22) Invalid agreements — An agreement or amended agreement referred to in subsection (20) between a taxpayer and a transferee is deemed not to have been filed with the Minister where

(a) it is not in prescribed form;

(b) it is not filed

(i) on or before the taxpayer's filing-due date for the particular taxation year to which the agreement relates,

(ii) in the period within which the taxpayer may serve a notice of objection to an assessment of tax payable under this Part for the particular year, or

(iii) in the period within which the transferee may serve a notice of objection to an assessment of tax payable under this Part for its first taxation year that ends at or after the end of the taxpayer's particular year;

(c) it is not accompanied by,

(i) where the taxpayer is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the taxpayer is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer its affairs authorized the agreement to be made,

(iii) where the transferee is a corporation and its directors are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the transferee is a corporation and its directors are not legally entitled to administer its affairs, a certified copy of the document by which the

person legally entitled to administer its affairs authorized the agreement to be made; or

(d) an agreement amending the agreement has been filed in accordance with subsection (20) and this subsection.

Related Provisions: 127(23) — Partnership's taxation year and filing-due date.

History: Subsec. 127(22) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(23) Partnership's taxation year — For the purposes of subsections (18) to (22), the taxation year of a partnership is deemed to be its fiscal period and its filing-due date for a taxation year is deemed to be the day that would be its filing-due date for the year if it were a corporation.

History: Subsec. 127(23) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(24) Exclusion from qualified expenditure — Where

(a) a person or partnership (referred to in this subsection as the "first person") does not deal at arm's length with another person or partnership (referred to in this subsection as the "second person"),

(b) there is an arrangement under which an amount is paid or payable by the first person to a person or partnership with which the first person deals at arm's length and an amount is received or receivable by the second person from a person or partnership with which the second person deals at arm's length, and

(c) one of the main purposes of the arrangement can reasonably be considered to be to cause the amount paid or payable by the first person to be a qualified expenditure,

the amount paid or payable by the first person is deemed not to be a qualified expenditure.

Related Provisions: 127(11.6) — Non-arm's length costs.

History: Subsec. 127(24) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(25) Deemed contract payment — Where

(a) a person or partnership (referred to in this subsection as the "first person") deals at arm's length with another person or partnership (referred to in this subsection as the "second person"),

(b) there is an arrangement under which an amount is paid or payable by the first person to a person or partnership (other than the second person) and a particular amount is received or receivable in respect of scientific research and experimental development by the second person from a person or partnership that is not a taxable supplier in respect of the particular amount, and

(c) one of the main purposes of the arrangement can reasonably be considered to be to cause the amount received or receivable by the second person not to be a contract payment,

the amount received or receivable by the second person is deemed to be a contract payment in respect of scientific research and experimental development.

History: Subsec. 127(25) added by 1996, c. 21, subsec. 30(25), applicable to taxation years that begin after 1995.

(26) Unpaid amounts — For the purposes of subsections (5) to (25) and section 127.1, a taxpayer's expenditure described in paragraph 37(1)(a) that is unpaid on the day that is 180 days after the end of the taxation year in which the expenditure is otherwise incurred is deemed

(a) not to have been incurred in the year; and

(b) to be incurred at the time it is paid.

Related Provisions: 127(11.6) — Non-arm's length costs.

History: Subsec. 127(26) added by 1996, c. 21, subsec. 30(25), applicable to amounts that are incurred at any time, except that it does not apply to amounts that are paid on or before September 18, 1996.

(27) Recapture of investment tax credit — Where

(a) a taxpayer acquired a particular property from a person or partnership in a taxation year of the taxpayer or in any of the 10 preceding taxation years,

(b) the cost of the particular property was a qualified expenditure to the taxpayer,

(c) the cost of the particular property is included in an amount, a percentage of which can reasonably be considered to be included in computing the taxpayer's investment tax credit at the end of the taxation year, and

(d) in the year and after February 23, 1998, the taxpayer converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of the amount that can reasonably be considered to be included in computing the taxpayer's investment tax credit in respect of the particular property and the amount that is the percentage (described in paragraph (c)) of

(e) if the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of that property, and

(f) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition.

Related Provisions: 37(1)(c.2) — Deduction allowed in subsequent year; 127(28) — Recapture of ITC of partnership; 127(29) — Recapture of ITC of allocating taxpayer; 127(32) — Meaning of "cost of the particular property"; 127(33) — No application to certain non-arm's length transfers.

(28) Recapture of investment tax credit of partnership — For the purpose of computing the amount determined under subsection (8) in respect of a partnership at the end of a particular fiscal period, where

(a) a particular property, the cost of which is a qualified expenditure, is acquired by the partnership from a person or partnership in the particular fiscal period or in any of the 10 preceding fiscal periods of the partnership,

(b) the cost of the particular property is included in an amount, a percentage of which can reasonably be considered to have been included in computing the amount determined under subsection (8) in respect of the partnership at the end of a fiscal period, and

(c) in the particular fiscal period and after February 23, 1998, the partnership converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there shall be deducted in computing the amount determined under subsection (8) in respect of the partnership at the end of the particular fiscal period the lesser of

(d) the amount that can reasonably be considered to have been included in respect of the particular property in computing the amount determined under subsection (8) in respect of the partnership, and

(e) the percentage (described in paragraph (b)) of

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with the partnership, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition.

Related Provisions: 127(30) — Addition to tax where ITC goes negative; 127(32) — Meaning of "cost of the particular property"; 127(33) — No application to certain non-arm's length transfers.

(29) Recapture of investment tax credit of allocating taxpayer — Where

(a) a taxpayer acquired a particular property from a person or partnership in a taxation year or in any of the 10 preceding taxation years,

(b) the cost of the particular property was a qualified expenditure to the taxpayer,

(c) all or part of the qualified expenditure can reasonably be considered to have been the subject of an agreement made under subsection (13) by the taxpayer and another taxpayer (in this subsection referred to as the "transferee"), and

(d) in the year and after February 23, 1998, the taxpayer converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

(e) the amount that can reasonably be considered to have been included in computing the transferee's investment tax credit in respect of the qualified expenditure that was the subject of the agreement, and

(f) the amount determined by the formula

$$A \times B - C$$

where

A is the percentage applied by the transferee in determining its investment tax credit in respect of the qualified expenditure that was the subject of the agreement,

B is

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition, and

C is the amount, if any, added to the taxpayer's tax payable under subsection (27) in respect of the particular property.

Related Provisions: 37(1)(c.2) — Deduction allowed in subsequent year; 127(32) — Meaning of "cost of the particular property"; 127(33) — No application to certain non-arm's length transfers; 257 — Formula cannot calculate to less than zero.

(30) Addition to tax — Where a taxpayer is a member of a partnership and the total of

(a) the total of all amounts each of which is the lesser of the amounts described in paragraphs (28)(d) and (e) in respect of a property of the partnership, and

(b) the total of all amounts each of which is the lesser of the amounts described in paragraphs (35)(c) and (d) in respect of a property of the partnership,

exceeds the amount that would be determined in respect of the partnership under subsection (8) if that subsection were read without reference to subsections (28) and (35), the portion of the excess that can reasonably be considered to be the taxpayer's share of the excess shall be added to the taxpayer's tax otherwise payable under this Part for the year.

Related Provisions: 37(1)(c.3) — Deduction allowed in subsequent year; 53(1)(e)(xiii) — Addition to adjusted cost base of partnership interest; 127(31) — Tiered partnership.

(31) Tiered partnership — Where a taxpayer is a member of a particular partnership that is a member of another partnership and an amount would be added to the particular partnership's tax payable under this Part for the year pursuant to subsection (30) if the particular partnership were a person and its fiscal period were its taxation year, that amount is deemed to be an amount that is the lesser of the amounts described in paragraphs (28)(d) and (e), in respect of a property of the particular partnership, that is required by subsection (28) to be deducted in computing the amount under subsection (8) in respect of the particular partnership at the end of the fiscal period.

(32) Meaning of cost — For the purposes of subsections (27), (28) and (29), "cost of the particular property" to a taxpayer shall not exceed the amount paid by the taxpayer to acquire the particular property from a transferor of the particular property and, for greater certainty, does not include amounts paid by the taxpayer to maintain, modify or transform the particular property.

(33) Certain non-arm's length transfers — Subsections (27) to (29), (34) and (35) do not apply to a taxpayer or partnership (in this subsection referred to as the "transferor") that disposes of a property to a person or partnership (in this subsection and subsections (34) and (35) referred to as the "purchaser"), that does not deal at arm's length with the transferor, if the purchaser acquired the property in circumstances where the cost of the property to the purchaser would have been an expenditure of the purchaser described in subclause 37(8)(a)(ii)(A)(III) or (B)(III) but for subparagraph 2902(b)(iii) of the *Income Tax Regulations*.

Related Provisions: 127(34), (35) — Recapture on disposition or conversion to commercial use.

(34) Recapture of investment tax credit — Where, at any particular time in a taxation year and after February 23, 1998, a purchaser (other than a partnership) converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (33) or that is another property that incorporates a property acquired in such circumstances; and

(b) that was first acquired, or that incorporates a property that was first acquired, by a person or partnership (in this subsection referred to as the "original user") with which the purchaser did not deal at arm's length at the time at which the purchaser acquired the prop-

erty, in the original user's taxation year or fiscal period that includes the particular time (on the assumption that the original user had such a taxation year or fiscal period) or in any of the original user's 10 preceding taxation years or fiscal periods,

there shall be added to the purchaser's tax otherwise payable under this Part for the year the lesser of

(c) the amount

(i) included, in respect of the property, in the investment tax credit of the original user, or

(ii) where the original user is a partnership, that can reasonably be considered to have been included in respect of the property in computing the amount determined under subsection (8) in respect of the original user, and

(d) the amount determined by applying the percentage that was applied by the original user in determining the amount referred to in paragraph (c) to

(i) if the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

Related Provisions: 37(1)(c.2) — Deduction allowed in subsequent year; 127(33) — No application to certain non-arm's length transfers.

(35) Recapture of investment tax credit — Where, at any particular time in a fiscal period and after February 23, 1998, a purchaser is a partnership that converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (33) or that is another property that incorporates a property acquired in such circumstances, and

(b) that was first acquired, or that incorporates a property that was first acquired, by a person or partnership (in this subsection referred to as the "original user") with which the purchaser did not deal at arm's length at the time at which the purchaser acquired the property, in the original user's taxation year or fiscal period that includes the particular time (on the assumption that the original user had such a taxation year or fiscal period) or in any of the original user's 10 preceding taxation years or fiscal periods,

there shall be deducted in computing the amount determined under subsection (8) in respect of the purchaser at the end of the fiscal period the lesser of

(c) the amount

(i) included, in respect of the property, in the investment tax credit of the original user, or

(ii) where the original user is a partnership, that can reasonably be considered to have been included in respect of the property in computing the amount determined under subsection (8) in respect of the original user, and

(d) the amount determined by applying the percentage that was applied by the original user in determining the amount referred to in paragraph (c) to

(i) if the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

Related Provisions: 127(30) — Addition to tax where ITC goes negative; 127(33) — No application to certain non-arm's length transfers.

History [subsecs. 127(27)–(35)]: Subsecs. 127(27) to (35) added by 1999, c. 22, subsec. 48(2), applicable to dispositions and conversions of property that occur after February 23, 1998.

Selected Cases [s. 127]: *Longley v. MNR*, [2000] 2 C.T.C. 382 (BC CA); aff'g [1999] 4 C.T.C. 108 (BC SC) (Minister held liable for damages and punitive damages where acting in bad faith against legal advice received).

Definitions [s. 127]: "acquired" — 256(7)–(9); "active business" — 248(1); "adjusted selling cost", "adjusted service cost" — 127(11.7); "allowable capital loss" — 38(b), 248(1); "amount" — 127(11.6), 248(1); "annual investment tax credit limit", "approved project", "approved project property" — 127(9); "arm's length" — 251(1); "assessment" — 248(1); "assistance" — 79(4), 125.4(5), 248(16), (18); "associated" — 256; "at-risk amount" — 96(2.2), 127(8.5); "available for use" — 13(27)–(32), 248(19); "bank" — *Interpretation Act* 35(1); "beneficially interested" — 248(25); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 127(9)"qualified property"(d), 255; "Canadian-controlled private corporation" — 125(7), 136(1), 248(1); "Canadian field processing" — 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian partnership" — 102(1), 248(1); "Cape Breton" — 127(9); "capital cost" — 13(7.1)–(7.4), 127(11.1)(a), (b); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "certified property" — 127(9); "contract payment" — 127(9), (25); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — 127(11.8)(a); "cost of the particular property" — 127(32); "credit union" — 137(6), 248(1); "depreciable property" — 13(21), 248(1); "eligible taxpayer" — 127(9); "employee", "exempt income" — 248(1); "expenditure" — 127(11.6), (26); "farm loss" — 111(8), 248(1); "filing-due date" — 127(23), 248(1); "first-term shared-use-equipment" — 127(9); "fiscal period" — 249(2)(b), 249.1; "Gaspé Peninsula", "government assistance" — 127(9); "incurred" — 127(26); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "investment tax credit" — 127(9), 248(1); "legislature" — *Interpretation Act* 35(1); "limited partner" — 96(2.4), 127(8.5); "manufacturing or processing" — 127(11)(a); "mineral resource", "Minister" — 248(1); "monetary contribution" — 127(4.1); "non-capital loss" — 111(8), 248(1); "non-government assistance", "non-qualifying corporation" — 127(9); "non-resident" — 248(1); "official agent" — 127(4); "oil or gas well" — 248(1); "permanent establishment" — Reg. 8201; "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "purchaser" — 127(33); "purposes" — 127(11)(b); "qualified Canadian exploration expenditure" — 127(9), (11.1)(c.1); "qualified construction equipment" — 127(9); "qualified expenditure" — 127(9), (14), (24); "qualified property", "qualified small-business property", "qualified transportation equipment" — 127(9); "record" — 248(1); "refundable Part VII tax on hand" — 192(3), 248(1); "registered agent", "registered party" — 127(4); "regulation" — 248(1); "resident in Canada" — 250; "SR&ED qualified expenditure pool" — 127(9), (14); "scientific research and experimental development" — 37(13), 248(1); "second-term shared-use-equipment" — 127(9); "series of transactions" — 248(10); "service" — 127(11.8)(c); "share", "specified future tax consequence", "specified member" — 248(1); "specified percentage" — 127(9); "tar sands" — 248(1); "tax otherwise payable" — 117(1), 120(4), 127(17); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable supplier" — 127(9); "taxation year" — 127(23), 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "transferor" — 127(13); "trust" — 104(1), 248(1), (3); "undepreciated capital cost" — 13(21), 248(1); "writing" — *Interpretation Act* 35(1).

127.1 (1) Refundable investment tax credit — Where a taxpayer (other than a person exempt from tax under section 149) files

(a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(f) or subsection 150(4)) for a taxation year, or

(b) with a prescribed form amending a return referred to in paragraph (a)

a prescribed form containing prescribed information, the taxpayer is deemed to have paid on the taxpayer's balance-due day for the year an amount on account of the taxpayer's tax payable under this Part for the year equal to the lesser of

(c) the taxpayer's refundable investment tax credit for the year, and

(d) the amount designated by the taxpayer in the prescribed form.

Related Provisions: 13(24) — Acquisition of control — limitation re calculation of refundable investment tax credit; 127(14) — Identification of amounts transferred as current or capital; 127.1(3) — Refundable ITC deemed claimed under 127(5); 136 — Cooperative not private corporation — exception; 152(1) — Assessment; 157(3)(e) — Reduction in monthly corporate instalments to reflect credit; 160.1 — Where excess refunded; 164(1)(a) — Refunds; 220(6) — Assignment of refund by corporation permitted; 256(2.1) — Anti-avoidance.

History: Para. 127.1(1)(a) amended by 1998, c. 19, s. 147, applicable to taxation years that begin after April 26, 1995. Para. 127.1(1)(a) formerly read:

(a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, or

The portion of subsec. 127.1(1) between paras. (b) and (c) amended by 1997, c. 25, subsec. 36(1), applicable to taxation years that end after February 22, 1994. This portion formerly read:

a prescribed form containing prescribed information, the taxpayer shall be deemed to have paid, on the day on which the return referred to in paragraph (a) or the form referred to in paragraph (b), as the case may be, is filed, an amount, on account of the taxpayer's tax under this Part for the year, equal to the lesser of

Pre-RSC History: That portion of subsec. 127.1(1) following para. (b) substituted by 1988, c. 55, subsec. 107(1), applicable to 1983 *et seq.* That portion of subsec. 127.1(1) formerly read:

a prescribed form containing prescribed information, he shall be deemed to have paid, on the day on which the return referred to in paragraph (a) or the form referred to in paragraph (b), as the case may be, is filed, an amount, on account of his tax under this Part for the year, equal to his refundable investment tax credit for the year.

Application Policies: SR&ED 96-03: Claimants' entitlements and responsibilities; SR&ED 96-05: Penalties under subsec. 163(2).

(2) Definitions — In this section,

"excluded corporation" for a taxation year means a corporation that is, at any time in the year,

(a) controlled directly or indirectly, in any manner whatever, by

(i) one or more persons exempt from tax under this Part by virtue of section 149,

(ii) Her Majesty in right of a province, a Canadian municipality or any other public authority, or

(iii) any combination of persons each of whom is a person referred to in subparagraph (i) or (ii), or

(b) related to any person referred to in paragraph (a);

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

"qualifying corporation" for a particular taxation year that ends in a calendar year means

(a) a corporation that is a Canadian-controlled private corporation throughout the particular year (other than a corporation associated with another corporation in the particular year) the taxable income of which for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) does not exceed its business limit for that preceding year, or

(b) a corporation that is a Canadian-controlled private corporation throughout the particular year and associated with another corporation in the particular year, where the total of all amounts each of which is the taxable income of the corporation or such an associated corporation for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year) does not exceed the total of all amounts each of which is the business limit of the corporation or such an associated corporation for that last year;

Related Provisions: 87(2)(oo), (oo.1) — Effect of amalgamation; 88(1)(e.9) — Winding-up; 127.1(2.01) — Additional refundable amount for corporation that is not a qualifying corporation.

History: The definition "qualifying corporation" in subsec. 127.1(2) amended by 1997, c. 25, subsec. 36(2), applicable to taxation years that begin after 1995. It formerly read:

"qualifying corporation" for a particular taxation year means a corporation that is, throughout the particular year, a Canadian-controlled private corporation the taxable income of which for its preceding taxation year or, if it is associated with one or more other corporations in the particular year, the taxable income of the corporation for its last taxation year ending in the preceding calendar year plus the taxable incomes of all such other corporations for their last taxation years ending in the preceding calendar year, does not exceed the total of the business limits (as determined under section 125) of the corporation and the other corporations for those preceding years, except that for a particular taxation year that begins before 1996 the total of the business limits shall be determined under section 125 as that section read in its application to taxation years ending before July 1994;

The definition "qualifying corporation" in subsec. 127.1(2) amended by 1995, c. 3, s. 38, applicable to taxation years that end after June 1994. The definition formerly read:

"qualifying corporation" for a particular taxation year means a corporation that is, throughout the particular year, a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the particular year for their taxation years ending in the calendar year immediately preceding the calendar year in which the particular year of the corporation ended does not exceed the total of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years;

"refundable investment tax credit" of a taxpayer for a taxation year means, in the case of a taxpayer who is

(a) a qualifying corporation for the year,

(b) an individual other than a trust, or

(c) a trust each beneficiary of which is a person referred to in paragraph (a) or (b),

an amount equal to 40% of the amount, if any, by which

(d) the total of all amounts included in computing the taxpayer's investment tax credit at the end of the year

(i) in respect of property (other than qualified small-business property) acquired, or a qualified expenditure (other than an expenditure in respect of which an amount is included under paragraph (f) in computing the taxpayer's refundable investment tax credit for the year) incurred, by the taxpayer in the year, or

(ii) because of paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a property (other than qualified small-business property) acquired or a qualified expenditure (other than an expenditure in respect of which an amount is included under paragraph (f) in computing the taxpayer's refundable investment tax credit for the year) incurred

exceeds

(e) the total of

(i) the portion of the total of all amounts deducted under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (d), and

(ii) the portion of the total of all amounts required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (d),

plus, where the taxpayer is a qualifying corporation (other than an excluded corporation) for the year, the amount, if any, by which

(f) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred by the taxpayer in the year, and

(ii) all amounts determined under paragraph (a.1) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

exceeds

(g) the total of

(i) the portion of the total of all amounts deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (f), and

(ii) the portion of the total of all amounts required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (f).

Related Provisions: 88(1)(e.8) — Winding-up; 127(14) — Identification of amounts transferred as current or capital; 127.1(2.01) — Addition to refundable investment tax credit; 256(2.1) — Anti-avoidance; 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

History: Para. (f) of the definition "refundable investment tax credit" in subsec. 127.1(2) amended by 1996, c. 21, subsec. 31(1), applicable to taxation years that begin after 1995. Para. (f) formerly read:

(f) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred in the year, and

(ii) all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which amounts are included in subparagraph (i),

The definition "refundable investment tax credit" in subsec. 127.1(2) amended by 1994, c. 8, subsec. 16(1), applicable to taxation years ending after December 2, 1992. The definition formerly read:

"refundable investment tax credit" for a taxation year means,

(a) in the case of a taxpayer who is

(i) a qualifying corporation for the year,

(ii) an individual other than a trust, or

(iii) a trust each beneficiary of which is a person referred to in subparagraph (i) or (ii),

an amount equal to 40% of the amount, if any, by which

(iv) the total of all amounts each of which is an amount included in computing the taxpayer's investment tax credit at the end of the year

(A) in respect of property acquired, or an expenditure made (other than a qualified Canadian exploration expenditure or an expenditure in respect of which an amount is included under subparagraph (vi) or (b)(ii) in computing the taxpayer's refundable investment tax credit for the year), by the taxpayer in the year and after April 19, 1983,

(B) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a property acquired, or an expenditure made (other than a qualified Canadian exploration expenditure or an expenditure in respect of which an amount is included under subparagraph (vi) or (b)(ii) in computing the taxpayer's refundable investment tax credit for the year), after April 19, 1983, or

(C) in respect of the taxpayer's qualified Canadian exploration expenditure for the year, or pursuant to paragraph (b) of that definition in respect of a qualified Canadian exploration expenditure for the year, other than an amount included under subparagraph (b)(iii)

exceeds

(v) the total of

(A) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under subparagraph (iv), and

(B) such portion of the total of all amounts each of which is an amount required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under subparagraph (iv),

plus, in the case of a qualifying corporation for the year, other than an excluded corporation for the year, the amount, if any, by which

(vi) the total of

(A) the total of all amounts each of which is an amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year in respect of an expenditure, other than an expenditure of a capital nature, made by it after May 23, 1985 and in the year, and

(B) the total of all amounts each of which is an amount determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of an expenditure for which an amount is included in clause (A)

exceeds

(vii) the total of

(A) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under subparagraph (vi), and

(B) such portion of the total of all amounts each of which is an amount required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under subparagraph (vi), and

(b) in the case of any other taxpayer, the total of

(i) 20% of the amount, if any, calculated for the year in respect of the taxpayer, by which the total determined under subparagraph (a)(iv) in respect of property acquired or an expenditure made before 1988, exceeds the total determined under subparagraph (a)(v) in respect of property acquired or an expenditure made before 1988,

(ii) 40% of the amount, if any, by which

(A) the total of all amounts each of which is an amount included in computing the taxpayer's investment tax credit at the end of the year

(I) in respect of an approved project property acquired by the taxpayer in the year and before 1988, or

(II) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of an approved project property acquired before 1988

exceeds

(B) the total of

(I) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under clause (A), and

(II) such portion of the total of all amounts each of which is an amount required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under clause (A), and

(iii) where the taxation year commences before 1988, 40% of the amount, if any, by which

(A) the total of all amounts each of which is an amount included in computing the taxpayer's investment tax credit at the end of the year

(I) in respect of the taxpayer's qualified Canadian exploration expenditure for the year, or

(II) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a qualified Canadian exploration expenditure for the year,

exceeds

(B) the total of

(I) such portion of the total of all amounts each of which is an amount deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the total determined under clause (A), and

(II) such portion of the total of all amounts each of which is an amount required by subsection 127(6) or (7) to be deducted in computing the taxpayer's investment tax credit at the end of the year as may reasonably be considered to be in respect of the total determined under clause (A).

Pre-RSC History: Cl. (a)(iv)(A) of "refundable investment tax credit" in subsec. 127.1(2) amended to substitute "after April 19, 1983" for "after April 19, 1983 and before 1989", cl. (a)(iv)(B) amended to substitute "after April 19, 1983" for "by him in the year and after April 19, 1983 and before 1989", and cl. (a)(iv)(C) substituted by 1988, c. 55, subsec. 107(2), applicable after May 23, 1985 except that, in its application before December, 1985, subpara. (a)(iv) of "refundable investment tax credit" shall be read without reference to the words "a qualified Canadian exploration expenditure or" in cls. (A) or (B) and without reference to cl. (C). Cl. (a)(iv)(C) formerly read:

(C) where the taxation year commences before 1989,

(I) in respect of his qualified Canadian exploration expenditure for the year, or

(II) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a qualified Canadian exploration expenditure for the year,

other than an amount included under subparagraph (b)(iii)

Subpara. (b)(i) of "refundable investment tax credit" amended to add "in respect of property acquired or an expenditure made before 1988" (in two places), subcls. (b)(ii)(A)(I) and (II) and that portion of subpara. (b)(iii) preceding cl. (A) amended to substitute, in each, "1988" for "1989", by 1988, c. 55, subsecs. 107(3) to (5), applicable after June 17, 1987.

Cls. (a)(iv)(A), (B) of the definition "refundable investment tax credit" in subsec. 127.1(2) substituted and (C) added, by 1986, c. 55, subsec. 49(1), applicable after May 23, 1985, except that in its application before December 1985, subparagraph (a)(iv) of the definition shall be read without reference to the words "a qualified Canadian exploration expenditure or" in clauses (A) and (B) and without reference to clause (C). Cls. (a)(iv)(A), (B) formerly read:

(A) in respect of property acquired, or an expenditure made (other than an expenditure in respect of which an amount is included under subparagraph (vi) in computing his refundable investment tax credit for the year), by him in the year and after April 19, 1983 and before May 1986, or

(B) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of a property acquired, or an expenditure made, after April 19, 1983 and before May 1986

Para. (b) of the definition "refundable investment tax credit" substituted by 1986, c. 55, subsec. 49(2), applicable after May 23, 1985, except that in its application before December 1985, para. (b) shall be read without reference to subpara. (iii). Para. (b) formerly read:

(b) in the case of any other taxpayer, 20% of the amount, if any, calculated for the year in respect of that other taxpayer, by which the aggregate determined under subparagraph (a)(iv) exceeds the aggregate determined under subparagraph (a)(v).

Subsec. 127.1(2) substituted by 1986, c. 6, s. 72, applicable with respect to property acquired and expenditures made after May 23, 1985. Subsec. 127.1(2) formerly read:

(2) "Refundable investment tax credit" defined — For the purposes of this section, "refundable investment tax credit" for a taxation year means, in the case of a taxpayer that is

(a) a corporation that was, throughout the year, a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year immediately preceding the calendar year in which the year of the corporation ended does not exceed the aggregate of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years,

(b) an individual other than a trust, or

(c) a trust each beneficiary of which is a person described in paragraph (a) or (b),

an amount equal to 40% of the amount, if any, by which

(d) the aggregate of all amounts each of which is an amount included in computing his investment tax credit at the end of the year

(i) in respect of property acquired, or an expenditure made, by him in the year and after April 19, 1983 and before May 1986, or

(ii) pursuant to paragraph (b) of the definition "investment tax credit" in subsection 127(9) in respect of property acquired, or an expenditure made, after April 19, 1983 and before May, 1986

exceeds

(e) the aggregate of

(i) such portion of the aggregate of all amounts each of which is an amount deducted by him under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to be so deducted for the year) as may reasonably be considered to be in respect of the aggregate determined under paragraph (d), and

(ii) such portion of the aggregate of all amounts, each of which is an amount required by subsection 127(6) or (7) to be deducted in computing his investment tax credit at the

end of the year, as may reasonably be considered to be in respect of the aggregate determined under paragraph (d),

and in the case of any other taxpayer, 20% of the amount, if any, calculated for the year in respect of that other taxpayer, by which the aggregate determined under paragraph (d) exceeds the aggregate determined under paragraph (e).

Para. 127.1(2)(a) amended to substitute "ending in the calendar year immediately preceding the calendar year in which the year of the corporation ended" for "ending in the calendar year in which the immediately preceding taxation year of the corporation ended" and "those preceding years" for "those years", and para. 127.1(2)(d) substituted, by 1985, c. 45, subsecs. 73(1), (2), applicable to 1985 *et seq.* Para. 127.1(2)(d) formerly read:

(d) the aggregate of all amounts each of which is an amount included in computing his investment tax credit at the end of the year pursuant to paragraph 127(9)(a), (a.1), (a.2), (c), (d.1) or (d.4) in respect of property acquired, or an expenditure made, after April 19, 1983 and before May 1986

Para. 127.1(2)(a) substituted and para. 127.1(2)(d) substituted to add reference to para. 127(9)(d.4) by 1984, c. 45, subsecs. 44(1), (2) respectively, applicable to 1985 *et seq.* Para. 127.1(2)(a) formerly read:

(a) a Canadian-controlled private corporation that is, or would be if it had sufficient income for the year from carrying on an active business in Canada, entitled to a deduction under section 125 in computing its tax payable under this Part for the year,

(2.01) Addition to refundable investment tax credit — In the case of a taxpayer that is a Canadian-controlled private corporation other than a qualifying corporation or an excluded corporation, the refundable investment tax credit of the taxpayer for a taxation year is 40% of the amount, if any, by which

(a) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a current nature) incurred by the taxpayer in the year, and

(ii) all amounts determined under paragraph (a.1) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

exceeds

(b) the total of

(i) the portion of the total of all amounts deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to have been so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (a), and

(ii) the portion of the total of all amounts required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (a)

plus the amount, if any, by which

(c) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred by the taxpayer in the year, and

(ii) all amounts determined under paragraph (a.1) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

exceeds

(d) the total of

(i) the portion of the total of all amounts deducted by the taxpayer under subsection 127(5) for the year or a preceding taxation year (other than an amount deemed by subsection (3) to have been so deducted for the year) that can reasonably be considered to be in respect of the total determined under paragraph (c), and

(ii) the portion of the total of all amounts required by subsection 127(6) to be deducted in computing the taxpayer's investment tax credit at the end of the year that can reasonably be considered to be in respect of the total determined under paragraph (c).

History: Paras. 127.1(2.01)(a), (c) amended by 1996, c. 21, subsecs. 31(2), (3), applicable to taxation years that begin after 1995. Paras. (a), (c) formerly read:

(a) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a current nature) incurred in the year, and

(ii) all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

. . . . .

(c) the total of

(i) the portion of the amount required by subsection 127(10.1) to be added in computing the taxpayer's investment tax credit at the end of the year that is in respect of qualified expenditures (other than expenditures of a capital nature) incurred in the year, and

(ii) all amounts determined under paragraph (a) of the definition "investment tax credit" in subsection 127(9) in respect of expenditures for which an amount is included in subparagraph (i)

Subsec. 127.1(2.01) added by 1994, c. 8, subsec. 16(2), applicable to taxation years beginning after 1993.

(2.1) Application of subsec. 127(9) — The definitions in subsection 127(9) apply to this section.

Origin 1985 [subsec. 127.1(2.1)]: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 127(9)).

Selected Cases [s. 127.1(2.1)]: *Allarcom Pay Television Ltd. v. R.*, [2000] 1 C.T.C. 273 (FCA); aff'g [1996] 3 C.T.C. 2608 (TCC) (Cable TV contracts were supply of services, not goods).

(3) Deemed deduction — For the purposes of this Act, the amount deemed under subsection (1) to have been paid by a taxpayer for a taxation year shall be deemed to have been deducted by the taxpayer under subsection 127(5) for the year.

Pre-RSC History [s. 127.1]: S. 127.1 added by 1984, c. 1, subsec. 73(1), applicable to 1982 *et seq.* except that the prescribed form referred to in subsec. (1) may be filed at any time on or before April 18, 1984.

Definitions [s. 127.1]: "active business" — 125(7), 248(1); "amount" — 248(1); "approved project property" — 127(9), 127.1(2.1); "associated" — 256(1); "balance-due day" — 248(1); "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "excluded corporation" — 127.1(2); "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified Canadian exploration expenditure", "qualified expenditure", "qualified small-business property" — 127(9), 127.1(2.1); "qualifying corporation", "refundable investment tax credit" — 127.1(2); "related" — 251(2); "scientific research and experimental development" — 37(13), 248(1); "specified employee", "specified future tax consequence" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 127.1]: IT-151R4: Scientific research and experimental development expenditures.

127.2 (1) Share-purchase tax credit — There may be deducted from the tax otherwise payable under this Part by a taxpayer for a taxation year an amount not exceeding the total of

(a) the taxpayer's share-purchase tax credit for the year, and

(b) the taxpayer's unused share-purchase tax credit for the taxation year immediately following the year.

(2) Persons exempt from tax — Where a taxpayer who was throughout a taxation year a person described in any of paragraphs 149(1)(e) to (y) files with the taxpayer's return of income under this Part for the year a prescribed form containing prescribed information, the taxpayer shall be deemed to have paid, on the day on which the return is filed, an amount, on account of the taxpayer's tax under this Part for the year, equal to the taxpayer's share-purchase tax credit for the year.

(3) Trust — Where, in a particular taxation year of a taxpayer who is a beneficiary under a trust, an amount is included in computing the share-purchase tax credit of the trust for its taxation year ending in that particular taxation year, the trust may, in its return of income for its taxation year ending in that particular taxation year, designate as attributable to the taxpayer such portion of that amount

(a) as may, having regard to all the circumstances (including the terms and conditions of the trust arrangement), reasonably be considered to be attributable to the taxpayer, and

(b) as was not designated by the trust in respect of any other beneficiary of that trust,

and, where the trust so designates such a portion, an amount equal to that portion shall be

(c) added in computing the share-purchase tax credit of the taxpayer for the particular taxation year, and

(d) deducted in computing the share-purchase tax credit of the trust for its taxation year ending in the particular taxation year.

Related Provisions: 53(2)(h)(iii) — Deduction from cost base of beneficiary's capital interest in a trust.

(3.1) Exclusion of certain trusts — For the purposes of subsection (3), a trust does not include a trust that is

(a) governed by an employee benefit plan or a revoked deferred profit sharing plan; or

(b) exempt from tax under section 149.

Pre-RSC History: Subsec. 127.2(3.1) added by 1984, c. 45, subsec. 45(1), applicable after April 25, 1984.

(4) Partnership — Where, in a taxation year of a taxpayer who is a member of a partnership, an amount is included in computing the share-purchase tax credit of the partnership for its fiscal period ending in that year, such portion of that amount as may reasonably be considered to be the taxpayer's share thereof shall be

(a) added in computing the share-purchase tax credit of the taxpayer for that year; and

(b) deducted in computing the share-purchase tax credit of the partnership for that fiscal period.

Related Provisions: 53(2)(c)(vii) — Deductions from cost base of partnership interest.

(5) Cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation (within the meaning assigned by subsection 136(2)) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by subsection 135(3) to be remitted to the Receiver General, an amount not exceeding the amount, if any, by which

(a) the amount that would, but for this subsection, be its share-purchase tax credit for the taxation year in which it made the payment if that year had ended immediately before the particular time

exceeds

(b) the total of all amounts each of which is the amount deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,

and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3) shall be

(c) deducted in computing the share-purchase tax credit of the taxpayer for the taxation year, and

(d) deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

(6) Definitions — In this section,

"share-purchase tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the total of all amounts each of which is an amount designated by a corporation under subsection 192(4) in respect of a share acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder,

B is the total of all amounts each of which is an amount required by subsection (3) or (4) to be added in computing the taxpayer's share-purchase tax credit for the year, and

C the total of all amounts each of which is an amount required by subsection (3), (4) or (5) to be deducted in computing the taxpayer's share-purchase tax credit for the year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "share-purchase tax credit" was para. 127.2(6)(a). See Table of Concordance.*

"unused share-purchase tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's share-purchase tax credit for the year,

B the taxpayer's tax otherwise payable under this Part for the year, the amount deemed by subsection (2) to have been paid on account of the taxpayer's tax payable under this Part for the year or, where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds the taxpayer's minimum amount for the year determined under section 127.51, as the case may be, and

C is the taxpayer's refundable Part VII tax on hand at the end of the year.

Related Provisions: 248(1)"unused share-purchase tax credit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "unused share-purchase tax credit" was para. 127.2(6)(b). See Table of Concordance.*

Subpara. 127.2(6)(b)(ii) substituted by 1988, c. 55, s. 108, applicable to 1986 *et seq.* Subpara. 127.2(6)(b)(ii) formerly read:

(ii) his tax otherwise payable under this Part for the year or the amount deemed by subsection (2) to have been paid on account of his tax payable under this Part for the year, as the case may be, and

Subparas. 127.2(6)(b)(ii), (iii) substituted and subpara. (iv) repealed by 1984, c. 45, subsec. 45(2), applicable to 1982 *et seq.* Subparas. (ii)–(iv) formerly read:

(ii) the amount deducted under subsection (1) from his tax otherwise payable under this Part for the year in respect of his share-purchase tax credit for the year or the amount deemed by subsection (2) to have been paid on account of his tax payable under this Part for the year, as the case may be,

(iii) the lesser of

(A) the amount determined under subparagraph 192(2)(a)(i) in respect of the taxpayer for the year, and

(B) his refundable Part VII tax on hand at the end of the year, and

(iv) the amount, if any, by which the tax otherwise payable under this Part by the taxpayer for the year exceeds the aggregate of the amounts determined under subparagraphs (ii) and (iii) in respect of the taxpayer for the year.

(7) Definition of "tax otherwise payable" — In this section, "tax otherwise payable" under this Part by a taxpayer means the amount that would, but for this section and section 120.1, be the tax payable under this Part by the taxpayer.

(8) Deemed cost of acquisition — For the purposes of this Act, where, at any time in a taxation year, a taxpayer has acquired a share and is the first registered holder of the share, other than a broker or dealer in securities, and an amount is, at any time, designated by a corporation under subsection 192(4) in respect of the share, the following rules apply:

(a) the taxpayer shall be deemed to have acquired the share at a cost to the taxpayer equal to the amount by which

(i) its cost to the taxpayer as otherwise determined

exceeds

(ii) the amount so designated in respect of the share; and

(b) where the amount determined under subparagraph (a)(ii) exceeds the amount determined under subparagraph (a)(i), the excess shall

(i) where the share is a capital property to the taxpayer, be deemed to be a capital gain of the taxpayer for the year from the disposition of that property, and

(ii) in any other case, be included in computing the income of the taxpayer for the year,

and the cost to the taxpayer of the share shall be deemed to be nil.

Related Provisions: 192(4.1) — Paid-up capital of designated share.

(9) Partnership — For the purposes of this section and subsection 193(5), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

(10) Election re first holder — Where a share of a public corporation has been lawfully distributed to the public in accordance with a prospectus, registration statement or similar document filed with a public authority in Canada pursuant to and in accordance with the law of Canada or of any province, and, where required by law, accepted for filing by such a public authority, the corporation, if it has designated an amount under subsection 192(4) in respect of the share, may, in the prescribed form required to be filed under that subsection, elect that, for the purposes of this section, the first person, other than a broker or dealer in securities, to have acquired the share (and no other person) shall be considered to be the first person to be a registered holder of the share.

Pre-RSC History: Subsec. 127.2(10) added by 1984, c. 45, subsec. 45(3), applicable after June 1983 except that an election thereunder may be made by notifying the Minister of National Revenue in writing at any time before March 21, 1985.

(11) Calculation of consideration — For greater certainty,

(a) for the purposes of this section and Part VII, the amount of consideration for which a share is acquired and issued includes the amount of any consideration for the designation under subsection 192(4) in respect of the share; and

(b) the amount received by a corporation as consideration for a designation under subsection 192(4) in respect of a share issued by it shall not be included in computing its income.

Pre-RSC History: Subsec. 127.2(11) added by 1984, c. 45, subsec. 45(3), applicable to 1982 *et seq.*

Pre-RSC History [s. 127.2]: S. 127.2 added by 1984, c. 1, subsec. 73(1), applicable to 1982, *et seq.* except that the prescribed form referred to in subsec. (2) may be filed at any time on or before the day that is 90 days after January 19, 1984.

Selected Cases [s. 127.2]: *598606 Ontario Ltd. v. MNR*, [1993] 1 C.T.C. 2001 (TCC); appealed to FCTD (Feb. 11, 1993), File T-367-93 (Failure to make designation by filing prescribed form disentitles taxpayer to claim share-purchase tax credit).

Definitions [s. 127.2]: "amount" — 248(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan", "employee benefit plan" — 248(1); "person" — 127.2(9), 248(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 248(1); "refundable Part VII tax on hand" — 192(3), 248(1); "share" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

127.3 (1) Scientific research and experimental development tax credit — There may be deducted from the tax otherwise payable under this Part by a taxpayer for a taxation year an amount not exceeding the total of the taxpayer's

(a) scientific research and experimental development tax credit for the year, and

(b) unused scientific research and experimental development tax credit for the taxation year immediately following the year.

Related Provisions: 117(1) — Tax payable under this Part; 194(4.2) — Where amount may not be designated; 195(5) — Evasion of tax; 195(6) — Undue deferral of refundable tax.

Selected Cases [subsec. 127.3(1)]: *Groupmark Canada Ltd. v. Canada*, [1993] 1 C.T.C. 234 (FCTD) (Amounts paid to related company before and after SRTC note issued were "consideration" for note); *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

(2) Definitions — In this section,

"scientific research and experimental development tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount equal to

(a) where the taxpayer is a corporation, 50%, or

(b) where the taxpayer is an individual other than a trust, 34%

of an amount designated by a corporation under subsection 194(4) in respect of

(c) a share acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder thereof,

(d) a bond, debenture, bill, note, mortgage or similar obligation (in this section referred to as a "debt obligation") acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of that debt obligation, or

(e) a right acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to have acquired that right, and

B is the total of all amounts required by subsection (5) to be deducted in computing the taxpayer's scientific research and experimental development tax credit for the year;

Related Provisions: 248(1)"scientific research and experimental development tax credit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "scientific research ... tax credit" was para. 127.3(2)(a). See Table of Concordance.*

The concluding portion of para. 127.3(2)(a) amended by 1984, c. 45, subsec. 46(1), to substitute "scientific research" for "research", applicable to 1982 *et seq.*

"unused scientific research and experimental development tax credit" of a taxpayer for a taxation year means the amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's scientific research and experimental development tax credit for the year,

B is the taxpayer's tax otherwise payable under this Part for the year or, where Division E.1 is applicable to the taxpayer for the year, the amount, if any, by which the taxpayer's tax otherwise payable under this Part for the year exceeds the taxpayer's minimum amount for the year determined under section 127.51, as the case may be, and

C is the taxpayer's refundable Part VIII tax on hand at the end of the year.

Related Provisions: 248(1)"unused scientific research and experimental development tax credit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "unused scientific... tax credit" was para. 127.3(2)(b). See Table of Concordance.*

Subpara. 127.3(2)(b)(ii) substituted by 1988, c. 55, s. 109, applicable to 1986 *et seq.* Subpara. 127.3(2)(b)(ii) formerly read:

(ii) his tax otherwise payable under this Part for the year, and

Subparas. 127.3(2)(b)(ii), (iii) substituted and (b)(iv) repealed by 1984, c. 45, subsec. 46(2), applicable to 1982 *et seq.* Subparas. 127.3 (2)(b)(ii)–(iv) formerly read:

(ii) the amount deducted under subsection (1) from his tax otherwise payable under this Part for the year in respect of his scientific research tax credit for the year,

(iii) the lesser of

(A) the amount determined under subparagraph 194(2)(a)(i) in respect of the taxpayer for the year, and

(B) his refundable Part VIII tax on hand at the end of the year, and

(iv) the amount, if any, by which the tax otherwise payable under this Part by the taxpayer for the year exceeds the aggregate of the amounts determined under subparagraphs (ii) and (iii) in respect of the taxpayer for the year.

Selected Cases [subsec. 127.3(2)]: *Loewen v. MNR*, [1994] 2 C.T.C. 75 (FCA) (Acquisition and disposition of SRTC debenture was not an adventure in nature of trade).

(3) Trust — For the purposes of this section and section 53, where a taxpayer, other than a broker or dealer in securities, is a beneficiary under a trust and an amount is designated by a corporation under subsection 194(4) in respect of a share, debt obligation or right acquired by the trust in a taxation year of the trust where the trust is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be,

(a) the trust may, in its return of income for that year, specify such portion of that amount as may, having regard to all the circumstances (including the terms and conditions of the trust arrangement), reasonably be considered to be attributable to the taxpayer and as was not specified by the trust in respect of any other beneficiary under that trust; and

(b) the portion specified pursuant to paragraph (a) shall be deemed to be an amount designated on the last day of that year by the corporation under subsection 194(4) in respect of a share, debt obligation or right, as the case may be, acquired by the taxpayer on that day where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be.

Related Provisions: 53(2)(h)(iv) — Deductions from cost base of beneficiary's capital interest in a trust.

(3.1) Exclusion of certain trusts — For the purposes of subsection (3), a trust does not include a trust that is

(a) governed by an employee benefit plan or a revoked deferred profit sharing plan; or

(b) exempt from tax under section 149.

Pre-RSC History: Subsec. 127.3(3.1) added by 1984, c. 45, subsec. 46(3), applicable after April 25, 1984.

(4) Partnership — For the purposes of this section and section 53, where a taxpayer, other than a broker or dealer in securities, is a member of a partnership and an amount is designated by a corporation under subsection 194(4) in respect of a share, debt obligation or right acquired by the partnership in a taxation year of the partnership where the partnership is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be, such portion of that amount as may reasonably be considered to be the taxpayer's share thereof shall be deemed to be an amount designated on the last day of that year by the corporation under subsection 194(4) in respect of a share, debt obligation or right, as the case

may be, acquired by the taxpayer on that day where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of the share or debt obligation or to have acquired the right, as the case may be.

Related Provisions: 53(2)(c)(viii) — Deductions from cost base of partnership interest re scientific research and experimental development tax credit.

(5) Cooperative corporation — Where at any particular time in a taxation year a taxpayer that is a cooperative corporation (within the meaning assigned by subsection 136(2)) has, as required by subsection 135(3), deducted or withheld an amount from a payment made by it to any person pursuant to an allocation in proportion to patronage, the taxpayer may deduct from the amount otherwise required by subsection 135(3) to be remitted to the Receiver General, an amount not exceeding the amount, if any, by which

(a) the amount that would, but for this subsection, be its scientific research and experimental development tax credit for the taxation year in which it made the payment if that year had ended immediately before the particular time

exceeds

(b) the total of all amounts each of which is the amount deducted by virtue of this subsection from any amount otherwise required to be remitted by subsection 135(3) in respect of payments made by it before the particular time and in the taxation year,

and the amount, if any, so deducted from the amount otherwise required to be remitted by subsection 135(3) shall be

(c) deducted in computing the scientific research and experimental development tax credit of the taxpayer for the taxation year, and

(d) deemed to have been remitted by the taxpayer to the Receiver General on account of tax under this Part of the person to whom that payment was made.

(6) Deduction from cost — For the purposes of this Act, where at any time in a taxation year a taxpayer has acquired a share, debt obligation or right and is the first registered holder of the share or debt obligation or the first person to have acquired the right, as the case may be, other than a broker or dealer in securities, and an amount is, at any time, designated by a corporation under subsection 194(4), in respect of the share, debt obligation or right, the following rules apply:

(a) the taxpayer shall be deemed to have acquired the share, debt obligation or right at a cost to the taxpayer equal to the amount by which

(i) its cost to the taxpayer as otherwise determined

exceeds

(ii) 50% of the amount so designated in respect thereof; and

(b) where the amount determined under subparagraph (a)(ii) exceeds the amount determined under subparagraph (a)(i), the excess shall

(i) where the share, debt obligation or right, as the case may be, is a capital property to the taxpayer, be deemed to be a capital gain of the taxpayer for the year from the disposition of that property, and

(ii) in any other case, be included in computing the income of the taxpayer for the year,

and the cost to the taxpayer of the share, debt obligation or right, as the case may be, shall be deemed to be nil.

Related Provisions: 194(4.1) — Computation of paid-up capital of designated share.

Pre-RSC History: All that portion of para. 127.3(6)(b) following subpara. (ii) substituted by 1984, c. 45, subsec. 46(4), to add "debt obligation or right, as the case may be", applicable to 1982 *et seq.*

(7) Partnership — For the purposes of this section and Part VIII, a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

(8) Definition of "tax otherwise payable" — In this section, "tax otherwise payable" under this Part by a taxpayer means the amount that would, but for this section and section 120.1, be the tax payable under this Part by the taxpayer.

(9) Election re first holder — Where a share or debt obligation of a public corporation has been lawfully distributed to the public in accordance with a prospectus, registration statement or similar document filed with a public authority in Canada pursuant to and in accordance with the law of Canada or of any province, and, where required by law, accepted for filing by that public authority, the corporation, if it has designated an amount under subsection 194(4) in respect of the share or debt obligation, may, in the prescribed form required to be filed under that subsection, elect that, for the purposes of this section, the first person, other than a broker or dealer in securities, to have acquired the share or debt obligation, as the case may be, (and no other person) shall be considered to be the first person to be a registered holder thereof.

Pre-RSC History: Subsec. 127.3(9) added by 1984, c. 45, subsec. 46(5), applicable after September 1983 except that an election thereunder may be made by notifying the Minister of National Revenue in writing at any time on or before the day that is 90 days after December 20, 1984.

(10) Calculation of consideration — For greater certainty,

(a) for the purposes of this section and Part VIII, the amount of consideration for which a share, debt obligation or right was acquired and issued or granted includes the amount of any consideration for the designation under subsection 194(4) in respect of the share, debt obligation or right; and

(b) the amount received by a corporation as consideration for a designation under subsection 194(4) in respect of a share, debt obligation or right issued or granted by it shall not be included in computing its income.

Pre-RSC History: Subsec. 127.3(10) added by 1984, c. 45, subsec. 46(5), applicable to 1982 *et seq.*

Pre-RSC History [s. 127.3]: The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

S. 127.3 added by 1984, c. 1, subsec. 73(1), applicable to 1982 *et seq.* except that for the purposes of computing the scientific research tax credit of a taxpayer for his 1983 taxation year, where the taxpayer so elects in his return of income under Part I for the year, subparas. 127.3(2)(a)(iii), (iv) and (v) shall be read as if the references therein to "in the year" were references to "in the year or within 60 days after the end of the year (to the extent that no amount is included in respect of that acquisition in computing his scientific research tax credit for a subsequent taxation year)".

Selected Cases [s. 127.3]: *Mort (C.L.) v. Canada*, [1993] 1 C.T.C. 99 (FCTD) (Financing arrangements "substantially advanced" when moratorium on SRTC program announced).

Definitions [s. 127.3]: "amount" — 248(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan", "employee benefit plan", "individual", "Minister" — 248(1); "person" — 127.3(7), 248(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "refundable Part VIII tax on hand" — 194(3), 248(1); "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

127.4 (1) [Labour-sponsored funds tax credit] Definitions — In this section,

"approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation, but does not include

(a) a share issued by a registered labour-sponsored venture capital corporation the venture capital business of which was discontinued before the time of the issue, and

(b) a share issued by a prescribed labour-sponsored venture capital corporation (other than a registered labour-sponsored venture capital corporation) if, at the time of the issue, every province under the laws of which the corporation is a prescribed labour-sponsored venture capital corporation has suspended or terminated its assistance in respect of the acquisition of shares of the capital stock of the corporation;

Related Provisions: 131(8) — Prescribed LSVCC is a mutual fund corporation; 204.8(2) — Determining when an RLSVCC discontinues its business; 211.7(1)"approved share" — Definition applies to Part XII.5.

History: The definition "approved share" in subsec. 127.4(1) amended by 2000, c. 19, subsec. 36(1), applicable to 1999 *et seq.* It formerly read:

"approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation;

The definition "approved share" in subsec. 127.4(1) amended by 1997, c. 25, subsec. 37(1), applicable to 1996 *et seq.* It formerly read:

"approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation acquired or irrevocably subscribed and paid for by an individual where the individual is or will be the first person, other than a broker or dealer in securities, to be a registered holder thereof;

"Approved share" in subsec. 127.4(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 105(1), applicable after 1988. That definition formerly read:

"approved share" means a share of the capital stock of a prescribed labour-sponsored venture capital corporation acquired by an individual where the individual is the first person, other than a broker or dealer in securities, to be a registered holder of that share;

Regulations: 100(5) (reduction in withholding where share purchased from payroll); 6701 (prescribed labour-sponsored venture capital corporation).

"labour-sponsored funds tax credit" — [Repealed]

History: The definition "labour-sponsored funds tax credit" in subsec. 127.4(1) repealed by 1997, c. 25, subsec. 37(2), applicable to 1996 *et seq.* It formerly read:

"labour-sponsored funds tax credit" of an individual for a taxation year means the amount computed under subsection (3) in respect of the individual for that year;

"net cost" to an individual of an approved share means the amount, if any, by which

(a) the amount of consideration paid by the individual to acquire or subscribe for the share

exceeds

(b) the amount of any assistance (other than an amount included in computing a tax credit of the individual in respect of that share) provided or to be provided by a government, municipality or any public authority in respect of, or for the acquisition of, the share;

Related Provisions: 211.7(1)"net cost" — Definition applies to Part XII.5.

History: "Net cost" in subsec. 127.4(1) amended to substitute that portion preceding para. (b) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 105(1), applicable after 1988. That portion formerly read:

"net cost" to an individual of an approved share means the amount by which

(a) the amount of the consideration for which the share was issued to the individual

exceeds

"original acquisition" of a share means the first acquisition of the share, except that

(a) where the share is irrevocably subscribed and paid for before its first acquisition, subject to paragraphs (b) and (c), the original acquisition of the share is the first transaction whereby the share is irrevocably subscribed and paid for,

(b) a share is deemed never to have been acquired and never to have been irrevocably subscribed and paid for unless the first registered holder of the share is, subject to paragraph (c), the first person to either acquire or irrevocably subscribe and pay for the share, and

(c) for the purpose of this definition, a broker or dealer in securities acting in that capacity is deemed never to acquire or subscribe and pay for the share and never to be the registered holder of the share;

Related Provisions: 127.4(5.1) — Direction for original acquisition to be deemed to occur at beginning of year; 204.8(1)"original acquisition" — Definition applies to Part X.3; 211.7(1)"original acquisition" — Definition applies to Part XII.5.

History: The definition "original acquisition" added to subsec. 127.4(1) by 1997, c. 25, subsec. 37(3), applicable after 1995.

"qualifying trust" for an individual in respect of a share means

(a) a trust governed by a registered retirement savings plan, under which the individual is the annuitant, that is not a spousal plan (in this definition having the meaning assigned by subsection 146(1)) in relation to another individual, or

(b) a trust governed by a registered retirement savings plan, under which the individual or the individual's spouse is the annuitant, that is a spousal plan in relation to the individual or the individual's spouse, if the individual and no other person claims a deduction under subsection 127.4(2) in respect of the share;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 127.4(6)(a) — Credit to individual for investment by qualifying trust; 211.7(1)"qualifying trust" — Definition applies to Part XII.5.

History: The definition "qualifying trust" in subsec. 127.4(1) amended by 1999, c. 22, subsec. 49(1), applicable to 1998 *et seq.* It formerly read:

"qualifying trust" for an individual in respect of a share means a trust governed by a registered retirement savings plan where

(a) the individual makes contributions to the trust and those contributions (and no other funds) can reasonably be considered to have been used by the trust to acquire or subscribe for the share, and

(b) the annuitant under the plan is the individual or a spouse of the individual;

The definition "qualifying trust" added to subsec. 127.4(1) by 1994, c. 8, subsec. 17(1), applicable to 1992 *et seq.*

"tax otherwise payable" by an individual means the amount that, but for this section, would be the individual's tax payable under this Part.

History: The definition "tax otherwise payable" in subsec. 127.4(1) amended by 2000, c. 19, subsec. 36(1), applicable to 1998 *et seq.*

"tax otherwise payable" by an individual means the amount that would, but for this section and section 120.1, be the tax payable under this Part by the individual.

(1.1) Amalgamations or mergers — Subsections 204.8(2) and 204.85(3) apply for the purpose of this section.

History: Subsec. 127.4(1.1) added by 2000, c. 19, subsec. 36(2), applicable after February 16, 1999.

(2) Deduction of labour-sponsored funds tax credit — There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year such amount as the individual claims not exceeding the individual's labour-sponsored funds tax credit limit for the year.

Related Provisions: 127.4(5) — Determination of labour-sponsored funds tax credit limit; 204.82 — Recovery of credit; 211.7 — Recovery of credit where share redeemed or disposed of; 211.8 — Clawback of credit on disposition of share.

History: Subsec. 127.4(2) amended by 1999, c. 22, subsec. 49(2), applicable to 1998 *et seq.* It formerly read:

(2) Subject to subsections (3) and (4), there may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year such amount as the individual claims not exceeding the individual's labour-sponsored funds tax credit limit for the year.

Subsec. 127.4(2) amended by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.* and, for the 1992 to 1995 taxation years, subsec. (2) shall be read as follows:

(2) There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year the lesser of $1,000 and the individual's labour-sponsored funds tax credit (determined as if an approved share in respect of which an individual receives a payment under section 211.9 had never been either acquired nor irrevocably subscribed and paid for).

Subsec. (2) formerly read:

(2) There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year the lesser of $1,000 and the individual's labour-sponsored funds tax credit for the year.

Subsec. 127.4(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 69, applicable to 1992 *et seq.* Subsec. (2) formerly read:

(2) There may be deducted from the tax otherwise payable by an individual (other than a trust) for a taxation year the lesser of $700 and the individual's labour-sponsored funds tax credit for the year.

Regulations: 100(5) (reduction in withholding where share purchased from payroll).

(3) [Repealed]

History: Subsec. 127.4(3) repealed by 1999, c. 22, subsec. 49(3), applicable to 1998 *et seq.* It formerly read:

(3) 3-year cooling-off period — Subject to subsection (4), no amount may be deducted under subsection (2) from an individual's tax otherwise payable for a taxation year that ends after 1996 where

(a) an approved share of the capital stock of a corporation is redeemed, acquired or cancelled by the corporation

(i) after March 5, 1996 (otherwise than pursuant to a request in writing made to the corporation before March 6, 1996), and

(ii) in the year or in either of the 2 preceding taxation years; and

(b) the original acquisition of the share was by the individual or by a qualifying trust for the individual in respect of the share.

Subsec. 127.4(3) amended by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.* Subsec. (3) formerly read:

(3) Computation of tax credit — The labour-sponsored funds tax credit of an individual for a taxation year is the total of all amounts, in respect of an approved share acquired or irrevocably subscribed and paid for by the individual (or by a qualifying trust for the individual in respect of the share) in the year or within 60 days after the end of the year (to the extent that it was not deducted in computing the individual's tax payable under this Part for the preceding taxation year), each of which is

(a) where a tax credit is provided under the law of a province in respect of the acquisition of, or subscription for, the share by the individual or the trust, and the share is not a share of a registered labour-sponsored venture capital corporation (within the meaning assigned by section 204.8), the amount, if any, by which

(i) 40% of the net cost to the individual or the trust of the share

exceeds

(ii) the amount of the tax credit so provided; and

(b) in any other case, where the information return described in paragraph 204.81(6)(c) in respect of the share was filed with the individual's return of income under this Part for the year (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)), 20% of the net cost to the individual or the trust of the share.

Subsec. 127.4(3) amended by 1994, c. 8, subsec. 17(2), applicable to 1992 *et seq.* Subsec. (3) formerly read:

(3) The labour-sponsored funds tax credit of an individual for a taxation year is the total of all amounts, in respect of an approved share acquired or irrevocably subscribed and paid for by the individual in the year or within 60 days after the end of the year (to the extent that it was not deducted in computing the individual's tax payable under this Part for the preceding taxation year), each of which is

(a) where a tax credit is provided under the law of a province in respect of the acquisition of, or subscription for, the share by the individual, and the share is not a share of a registered labour-sponsored venture capital corporation (within the meaning assigned by section 204.8), the amount, if any, by which

(i) 40% of the net cost to the individual of the share

exceeds

(ii) the amount of the tax credit so provided, and

(b) in any other case, where the information return described in paragraph 204.81(6)(c) in respect of the share is filed with the individual's return of income under this Part for the year (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)), 20% of the net cost to the individual of the share.

Subsec. 127.4(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 105(2), applicable after 1988. Subsec. (3) formerly read:

(3) The labour-sponsored funds tax credit of an individual for a taxation year is the total of all amounts in respect of an approved share acquired by the individual in the year or within 60 days after the end of the year (to the extent it was not deducted in computing the individual's tax payable under this Part for the immediately preceding taxation year), each of which is

(a) where a tax credit is provided under the law of a province in respect of the acquisition of the share by the individual, the amount, if any, by which

(i) 40% of the net cost to the individual of the share

exceeds

(ii) the amount of the tax credit so provided, and

(b) in any other case, 20% of the net cost to the individual of the share.

Pre-RSC History: See under subsec. 127.4(4).

(4) [Repealed]

History: Subsec. 127.4(4) repealed by 1999, c. 22, subsec. 49(3), applicable to 1998 *et seq.* It formerly read:

(4) Exceptions to cooling-off period — Subsection (3) does not apply to an individual for a taxation year as a consequence of the redemption, acquisition or cancellation of a share where

(a) the individual dies in the year and before the redemption, acquisition or cancellation;

(b) the individual's labour-sponsored funds tax credit in respect of the original acquisition of the share is nil;

(c) tax becomes payable under Part XII.5 because of the redemption, acquisition or cancellation;

(d) an amount determined under regulations made for the purpose of clause 204.81(1)(c)(v)(F) is directed to be remitted to the Receiver General in order to permit the redemption, acquisition or cancellation; or

(e) the individual becomes either disabled and permanently unfit for work or terminally ill in the year

(i) after the last original acquisition in the year of any approved share by the individual or by a qualifying trust for the individual in respect of that share, and

(ii) before the redemption, acquisition or cancellation.

Subsec. 127.4(4) amended by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.* Subsec. (4) formerly read:

(4) Idem — Notwithstanding subsection (3), where paragraph (3)(a) applies in computing an individual's labour-sponsored funds tax credit for a taxation year in respect of an approved share and the amount of the tax credit referred to in that paragraph is less than 20% of the consideration for which the share was issued, the amount determined under that paragraph for the year in respect of the share shall be deemed to be nil.

Subsec. 127.4(4) amended by 1994, c. 8, subsec. 17(2), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Notwithstanding subsection (3), where paragraph (3)(a) is applicable in computing an individual's labour-sponsored fund tax credit for a taxation year in respect of an approved share acquired by the individual and the amount of the tax credit referred to in that paragraph is less than 20% of the consideration for which the share was issued, the amount determined under that paragraph for the year in respect of the share shall be deemed to be nil.

Pre-RSC History: Subsecs. 127.4(3) and (4) substituted by 1988, c. 55, s. 110, applicable to 1988 *et seq.* Subsecs. (3) and (4) formerly read:

(3) Computation of tax credit — The labour-sponsored funds tax credit of an individual for a taxation year is the aggregate of all amounts in respect of an approved share acquired by him in the year or within 60 days after the end of the year (to the extent that it was not included in computing his tax payable for a previous taxation year) each of which is the amount, if any, by which

(a) 40% of the net cost to him of the share

exceeds

(b) any tax credit provided under the law of a province in respect of the acquisition of the share by the individual.

(4) Idem — Notwithstanding subsection (3), where the tax credit referred to in paragraph (3)(b) is less than 20% of the consideration for which the share was issued, the amount determined under that subsection in respect of the share shall be deemed to be nil.

(5) Labour-sponsored funds tax credit limit — For the purpose of subsection (2), an individual's labour-sponsored funds tax credit limit for a taxation year is the lesser of

(a) $750, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is the individual's labour-sponsored funds tax credit in respect of an original acquisition in the year or in the first 60 days of the following taxation year of an approved share

exceeds

(ii) the portion of the total described in subparagraph (i) that was deducted under subsection (2) in computing the individual's tax payable under this Part for the preceding taxation year.

Related Provisions: 127.4(5.1) — Extension of investment deadline by CCRA so that acquisition deemed made at beginning of year; 127.4(6) — Determination of labour-sponsored funds tax credit.

History: Para. 127.4(5)(a) amended by 1999, c. 22, subsec. 49(4), applicable to 1998 *et seq.* It formerly read:

(a) $525, and

Subsec. 127.4(5) added by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.*, except that in its application to the 1996 taxation year, subsec. (5) shall be read as follows:

(5) For the purpose of subsection (2), an individual's labour-sponsored funds tax credit limit for a taxation year is the lesser of

(a) the total of

(i) the lesser of $1,000 and the amount, if any, by which

(A) the total of all amounts each of which is the individual's labour-sponsored funds tax credit in respect of an original acquisition after 1995 and before March 6, 1996 of an approved share

exceeds

(B) such portion of the amount deducted under subsection (2) in computing the individual's tax payable under this Part for the 1995 taxation year as is attributable to the original acquisition after 1995 of an approved share, and

(ii) the amount, if any, by which $525 exceeds the amount determined under subparagraph (i) in respect of the individual for the year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is the individual's labour-sponsored funds tax credit in respect of an original acquisition in the year or in the first 60 days of the following taxation year of an approved share

exceeds

(ii) the portion of the total described in subparagraph (i) that was deducted under subsection (2) in computing the individual's tax payable under this Part for the preceding taxation year.

(5.1) Deemed original acquisition — If the Minister so directs, an original acquisition of an approved share that occurs in an individual's taxation year (other than in the first 60 days of the year) is deemed for the purpose of this section to have occurred at the beginning of the year and not at the time it actually occurred.

History: Subsec. 127.4(5.1) added by 1999, c. 22, subsec. 49(5), applicable to acquisitions that are made after 1997.

(6) Labour-sponsored funds tax credit — For the purpose of subsection (5), an individual's labour-sponsored funds tax credit in respect of an original acquisition of an approved share is equal to the least of

(a) 15% of the net cost to the individual (or to a qualifying trust for the individual in respect of the share) for the original acquisition of the share by the individual or by the trust,

(b) nil, where the share was issued by a registered labour-sponsored venture capital corporation unless the information return described in paragraph 204.81(6)(c) is filed with the individual's return of income for the taxation year for which a claim is made under subsection (2) in respect of the original acquisition of the share (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)),

(c) nil, where the individual dies after December 5, 1996 and before the original acquisition of the share, and

(d) nil, where a payment in respect of the disposition of the share has been made under section 211.9.

Related Provisions: 211.7(1)"labour-sponsored funds tax credit" — Determination of credit for purposes of Part XII.5.

History: The opening words of subsec. 127.4(6) amended by 1999, c. 22, subsec. 49(6), applicable to 1998 *et seq.* The opening words formerly read:

(6) For the purposes of subsections (4) and (5), an individual's labour-sponsored funds tax credit in respect of an original acquisition of an approved share is equal to the least of

Subsec. 127.4(6) added by 1997, c. 25, subsec. 37(4), applicable to 1996 *et seq.*, except that the reference to "15%" in para. (6)(a) shall be read as "20%" for original acquisitions that occurred before March 6, 1996.

Pre-RSC History [s. 127.4]: S. 127.4 added by 1986, c. 6, s. 73, applicable to shares acquired after May 23, 1985.

Definitions [s. 127.4]: "amount" — 248(1); "annuitant" — 146(1); "approved share" — 127.4(1); "business", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "discontinued" — 204.8(2); "individual" — 248(1); "labour-sponsored funds tax credit" — 127.4(1), (6); "labour-sponsored funds tax credit limit" — 127.4(5); "Minister" — 248(1); "net cost" — 127.4(1); "original acquisition" — 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "province" — *Interpretation Act* 35(1); "qualifying trust" — 127.4(1); "registered labour-sponsored venture capital corporation" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "share" — 248(1); "spouse" — 252(4)(a); "tax otherwise payable" — 127.4(1); "tax payable" — 248(2); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Forms [s. 127.4]: T5006 Supp: Statement of registered LSVCC class A shares.

127.41 (1) Part XII.4 tax credit [qualifying environmental trust beneficiary] — In this section, the Part XII.4 tax credit of a taxpayer for a particular taxation year means the total of

(a) all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the tax payable under Part XII.4 by a qualifying environmental trust for a taxation year (in this paragraph referred to as the "trust's year") that ends in the particular year,

B is the amount, if any, by which the total of all amounts in respect of the trust that were included (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing the taxpayer's income for the particular year exceeds the total of all amounts in respect of the trust that were deducted (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing that income, and

C is the trust's income for the trust's year, computed without reference to subsections 104(4) to (31) and sections 105 to 107, and

(b) in respect of each partnership of which the taxpayer was a member, the total of all amounts each of which is the amount that can reasonably be considered to be the taxpayer's share of the relevant credit in respect of the partnership and, for this purpose, the relevant credit in respect of a partnership is the amount that would, if a partnership were a person and its fiscal period were its taxation year, be the Part XII.4 tax credit of the partnership for its taxation year that ends in the particular year.

Related Provisions: 87(2)(j.93) — Amalgamations — continuing corporation; 126(7)"tax for the year otherwise payable under this Part" — Credit under 127.41 ignored for foreign tax credit purposes.

History: The description of A in para. 127.41(1)(a) amended by 1998, c. 19, s. 34, applicable to taxation years that end after February 18, 1997. The description of A formerly read:

A is the tax payable under Part XII.4 by a mining reclamation trust for a taxation year (in this paragraph referred to as the "trust's year") that ends in the particular year,

The description of B in para. 127.41(1)(a) amended by the said c. 19, s. 148, applicable to taxation years that end after February 22, 1994. The description formerly read:

B is the amount, if any, by which the total of all amounts in respect of the trust that were included (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing the taxpayer's income for the particular year exceeds the total of all amounts in respect of the trust that were deducted because of the application of subsection 107.3(1) in computing such income, and

Subsec. 127.41(1) added by 1995, c. 3, s. 39, applicable to taxation years that end after February 22, 1994.

(2) Reduction of Part I tax — There may be deducted from a taxpayer's tax otherwise payable under this Part for a taxation year such amount as the taxpayer claims not exceeding the taxpayer's Part XII.4 tax credit for the year.

History: Subsec. 127.41(2) added by 1995, c. 3, s. 39, applicable to taxation years that end after February 22, 1994.

(3) Deemed payment of Part I tax — There is deemed to have been paid on account of the tax payable under this Part by a taxpayer (other than a taxpayer exempt from such tax) for a taxation year on the taxpayer's balance-due day for the year, such amount as the taxpayer claims not exceeding the amount, if any, by which

(a) the taxpayer's Part XII.4 tax credit for the year

exceeds

(b) the amount deducted under subsection (2) in computing the taxpayer's tax payable under this Part for the year.

Related Provisions: 152(1)(b) — Assessment of amount deemed paid; 157(3)(e) — Reduction in monthly corporate instalments to reflect credit; 163(2)(e) — Penalty for false statement or omission.

History: The opening words of subsec. 127.41(3) amended by 1997, c. 25, s. 38, applicable to 1996 *et seq.* The opening words formerly read:

(3) There shall be deemed to have been paid on account of tax payable under this Part by a taxpayer (other than a taxpayer exempt from such tax) for a taxation year, where the taxpayer is an individual, on the individual's balance-due day for the year and, where the taxpayer is a corporation, on the day referred to in paragraph 157(1)(b) on or before which the remainder of the taxes payable under this Part for the year by the taxpayer would be required to be paid if such a remainder were payable, such amount as the taxpayer claims not exceeding the amount, if any, by which

Subsec. 127.41(3) added by 1995, c. 3, s. 39, applicable to taxation years that end after February 22, 1994.

Definitions [s. 127.41]: "amount", "balance-due day" — 248(1); "fiscal period" — 249(2)(b), 249.1; "Part XII.4 tax credit" — 127.41(1); "qualifying environmental trust" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1); "trust's year" — 107.3(1).

DIVISION E.1 — MINIMUM TAX

127.5 Obligation to pay minimum tax — Notwithstanding any other provision of this Act but subject to subsection 120.4(3) and section 127.55, where the amount that, but for section 120, would be determined under Division E to be an individual's tax payable for a taxation year is less than the amount determined under paragraph (a) in respect of the individual for the year, the individual's tax payable under this Part for the year is the total of

(a) the amount, if any, by which

(i) the individual's minimum amount for the year determined under section 127.51

exceeds

(ii) the individual's special foreign tax credit determined under section 127.54 for the year, and

(b) the amount, if any, required by section 120 to be added to the individual's tax otherwise payable under this Part for the year.

Related Provisions: 117(1) — "Tax payable" to be calculated without reference to minimum tax; 120.2 — Minimum tax carryover; 127.54(2) — Foreign tax credit; 127.55 — Where minimum tax not applicable.

History: S. 127.5 amended by 2000, c. 19, s. 37, applicable to 1998 *et seq.* except that, in its application to the 1998 and 1999 taxation years, s. 127.5 shall be read without reference to the expression "subsection 120.4(3) and". It formerly read:

> 127.5 Notwithstanding any other provision of this Act but subject to section 127.55, where the amount that, but for sections 120 and 120.1, would be determined under Division E to be the tax payable by an individual for a taxation year is less than the amount determined under subparagraph (a)(i) in respect of the individual, the tax payable under this Part for the year by the individual is the amount, if any, by which
>
> (a) the total of
>
> (i) the amount, if any, by which the minimum amount for the year of the individual determined under section 127.51 exceeds the individual's special foreign tax credit determined under section 127.54 for the year, and
>
> (ii) the total of all amounts required under sections 120 and 120.1 to be added to the tax otherwise payable under this Part by the individual for the year
>
> exceeds
>
> (b) the amount, if any, that may be deducted under subsection 120.1(1) from the tax otherwise payable under this Part by the individual for the year.

The opening words of subsec. 127.5 amended by 1998, c. 19, s. 149, applicable to 1992 *et seq.* The opening words formerly read:

> 127.5 Notwithstanding any other provision of this Act, but subject to section 127.55, where the amount that, but for sections 120 and 120.1, would be determined under Division E to be the tax payable by an individual for a taxation year is less than the amount determined under subparagraph (a)(i) in respect of the individual, the tax payable under this Part for the year by the individual (other than a related segregated fund trust within the meaning assigned by paragraph 138.1(1)(a) or a mutual fund trust) is the amount, if any, by which

Definitions [s. 127.5]: "amount", "individual" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-270R2: Foreign tax credit.

Forms: T3 Sched. 12: Calculation of minimum tax; T7B-2: Calculation of instalments on minimum tax; T7B-3: Calculation of instalments on minimum tax (farmers and fishermen); T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions.

127.51 Minimum amount determined — An individual's minimum amount for a taxation year is the amount determined by the formula

$$A (B - C) - D$$

where

A is the appropriate percentage for the year;

B is the individual's adjusted taxable income for the year determined under section 127.52;

C is the individual's basic exemption for the year determined under section 127.53; and

D is the individual's basic minimum tax credit for the year determined under section 127.531.

Related Provisions: 127(5) — Investment tax credit; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: S. 127.51 substituted by 1988, c. 55, s. 111, applicable to 1988 *et seq.* S. 127.51 formerly read:

> 127.51 An individual's minimum amount for a taxation year is 17% of the amount, if any, by which his adjusted taxable income for the year determined under section 127.52 exceeds his basic exemption for the year as determined under section 127.53.

Definitions [s. 127.51]: "appropriate percentage", "individual" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

Forms: T3 Sched. 12: Calculation of minimum tax; T7B-2: Calculation of instalments on minimum tax; T7B-3: Calculation of instalments on minimum tax (farmers and fishermen); T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions.

127.52 (1) Adjusted taxable income determined — Subject to subsection (2), an individual's adjusted taxable income for a taxation year is the amount that would be the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, if it were computed on the assumption that

(a) [Repealed]

(b) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a rental or leasing property (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f), and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is the individual's taxable capital gain for the year from the disposition of a rental or leasing property owned by the individual or by a partnership

exceeds

(B) the total of all amounts each of which is the individual's allowable capital loss for the year from the disposition of a rental or leasing property owned by the individual or by a partnership

exceeds the total of all amounts each of which is the individual's loss for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a film property referred to in paragraph (w) of Class 10 of Schedule II to the *Income Tax Regulations* (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a film property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f), and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is the individual's taxable capital gain for the year from the disposition of such a film property owned by the individual or by a partnership

exceeds

(B) the total of all amounts each of which is the individual's allowable capital loss for the year from the disposition of such a film property owned by the individual or by a partnership

exceeds the total of all amounts each of which is the individual's loss for the year from such a film property owned by the individual or by a partnership (other than amounts included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c.1) where, during a partnership's fiscal period that ends in the year (other than a fiscal period that ends because of the application of subsection 99(1)), the individual is a limited partner of the partnership or a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or the individual's interest in the partnership is an interest for which an identification number is required to be, or has been, obtained under section 237.1,

(i) the individual's share of allowable capital losses of the partnership for the fiscal period were the lesser of

(A) the total of all amounts each of which is the individual's

(I) share of a taxable capital gain for the fiscal period from the disposition of property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

(II) taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year, and

(B) the individual's share of allowable capital losses of the partnership for the fiscal period,

(ii) the individual's share of each loss from a business of the partnership for the fiscal period were the lesser of

(A) the individual's share of the loss, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is the individual's

1. share of a taxable capital gain for the fiscal period from the disposition of property used by the partnership in the business (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

2. taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year

exceeds

(II) the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and

(iii) the individual's share of losses from property of the partnership for the fiscal period were the lesser of

(A) the total of

(I) the individual's share of incomes for the fiscal period from properties of the partnership, and

(II) the amount, if any, by which the total of all amounts each of which is the individual's

1. share of a taxable capital gain for the fiscal period from the disposition of property held by the partnership for the purpose of earning income from property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

2. taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year,

exceeds the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and

(B) the individual's share of losses from property of the partnership for the fiscal period;

(c.2) where, during a fiscal period of a partnership that ends in the year (other than a fiscal period that ends because of the application of subsection 99(1)),

(i) the individual is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or

(ii) the partnership owns a rental or leasing property or a film property and the individual is a member of the partnership,

the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of the individual's acquisition of the partnership interest were the lesser of

(iii) the total of all amounts otherwise so deductible, and

(iv) the total of all amounts each of which is the individual's share of any income of the partnership for the fiscal period, determined in accordance with subsection 96(1);

(c.3) the total of all amounts each of which is an amount deductible in computing the individual's income for the year in respect of a property for which an identification number is required to be, or has been, obtained under section 237.1 (other than an amount to which any of paragraphs (b) to (c.2) applies) were nil;

(d) except in respect of dispositions of property occurring before 1986 or to which section 79 applies,

(i) sections 38 and 41 were read without the references therein to "3/4 of", other than in the case of a capital gain from a disposition that is the making of a gift of property to a qualified donee (as defined in subsection 149.1(1)), and

(ii) each amount deemed by subsection 104(21) to be a taxable capital gain for the year of the individual were equal to 4/3 of that amount;

(e) the total of all amounts deductible under section 65, 66, 66.1, 66.2 or 66.4 or under subsection 29(10) or (12) of the *Income Tax Application Rules* in computing the individual's income for the year were the lesser of the amounts otherwise so deductible by the individual for the year and the total of

(i) the individual's income for the year from royalties in respect of, and such part of the individual's income, other than royalties, for the year as may reasonably be considered as attributable to, the production of petroleum, natural gas and minerals, determined before deducting those amounts, and

(ii) all amounts included in computing the individual's income for the year under section 59;

(e.1) the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a property that is a flow-through share (if the individual is the person to whom the share was issued under an agreement referred to in the definition "flow-through share" in subsection 66(15)), a Canadian resource property or a foreign resource property were the lesser of the total of the amounts otherwise so determined for the year and the amount, if any, by which

(i) the total of all amounts each of which is an amount described in subparagraph (e)(i) or (ii), determined without reference to paragraphs 20(1)(c) to (f),

exceeds

(ii) the total of all amounts each of which is an amount deductible under section 65, 66, 66.1, 66.2 or 66.4 or under subsection 29(10) or (12) of the *Income Tax Application Rules* in computing the individual's income for the year;

(f) subsection 82(1) were read without reference to that portion following paragraph 82(1)(a);

(g) the total of all amounts deductible under section 104 in computing the income of a trust for the year were equal to the total of

(i) the total of all amounts otherwise deductible under that section, and

(ii) the total of all amounts each of which is 1/3 of

(A) amounts designated by the trust under subsection 104(21) for the year, or

(B) that portion of a net taxable capital gain of the trust that may reasonably be considered to

(I) be part of an amount included, by virtue of subsection 104(13) or section 105, in computing the income for the year of a non-resident beneficiary of the trust, or

(II) have been paid in the year by a trust governed by an employee benefit plan to a beneficiary thereunder;

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1) and the amount that would be deductible under paragraph 110(1)(f) if paragraph (d) were applicable in computing the individual's income for the year;

(h.1) the formula in paragraph 110.6(21)(a) were read as

$$A - B$$

(i) in computing the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, the only amounts deductible under

(i) paragraphs 111(1)(a), (c), (d) and (e) were the lesser of

(A) the amount deducted under those paragraphs for the year, and

(B) the total of all amounts that would be deductible under those paragraphs for the year if

(I) paragraphs (b), (c) and (e) of this subsection, as they read in respect of taxation years that began after 1985 and before 1995, applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any of those years, and

(II) paragraphs (b) to (c.3), (e) and (e.1) of this subsection applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any taxation year that begins after 1994, and

(ii) paragraph 111(1)(b) were the lesser of

(A) the total of all amounts each of which is an amount that can reasonably be considered to be the amount that the individual would have deducted under paragraph 111(1)(b) had paragraph (d) of this subsection been applicable in computing the amount deductible under paragraph 111(1)(b), and

(B) the total of all amounts that would be deductible under that paragraph for the year if

(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began before 1995, and

(II) paragraphs (c.1) and (d) of this subsection applied in computing the individual's net capital loss for any taxation year that begins after 1994; and

(j) the *Income Tax Application Rules* were read without reference to section 40 of that Act.

Related Provisions: 127.52(2) — Certain CCA claims by partnership deemed claimed by partner; 127.52(2.1) — Specified member of partnership — anti-avoidance rule; 127.52(3) — Rental or leasing property; 248(8) — Occurrences as a consequence of death.

History: Para. 127.52(1)(a) repealed by 1999, c. 22, subsec. 50(2), applicable to 1998 *et seq.* The para. formerly read:

(a) the total of all amounts deductible under any of paragraphs 8(1)(m) and 60(i) to (j.2) in computing the individual's income for the year were the lesser of

(i) the total of the amounts otherwise so deductible, and

(ii) the total of

(A) the amount otherwise so deductible under paragraph 60(i) by reason of subsection 146(6.1), and

(B) all amounts each of which was included in computing the individual's income for the year and is a single payment out of or under a deferred profit sharing plan, a superannuation or pension fund or plan or a foreign retirement arrangement

(I) as a consequence of the death, withdrawal from the fund, plan or arrangement or termination of employment of a person,

(II) on the winding-up of the fund, plan or arrangement in full satisfaction of all rights of the payee in or under the fund, plan or arrangement, or

(III) to which the individual is entitled because of an amendment to the fund, plan or arrangement;

Subsec. 50(1) of the said c. 22 provides the following transitional rule, applicable to 1994 *et seq.* and, notwithstanding subsecs 152(4) to (5) of the Act, such assessment of an individual's tax payable under the Act for any taxation year shall be made as is necessary to take into account the application of subsec. 50(1).

(1) Where an individual's tax payable under Part I of the Act for a particular taxation year that began after 1993 and before 1998 is greater than the tax that would have been so payable if the Act were read without reference to paragraph 127.52(1)(a) and the individual was resident in Canada throughout, and was not a bankrupt at any time in, the period that began immediately after the end of the particular year and that ended at the end of 1997, the individual's minimum amount for the particular year under section 127.51 of the Act is deemed to be equal to the amount, if any, by which

(a) the amount that would be the individual's minimum amount for the particular year determined without reference to this subsection

exceeds

(b) the part of the individual's additional tax for the particular year determined under subsection 120.2(3) of the Act that can reasonably be considered to be attributable to the application of paragraph 127.52(1)(a) of the Act and not deductible in computing the individual's tax payable under Part I of the Act for any of the taxation years that began after the end of the particular year and before 1998.

Paras. 127.52(1)(b) and (c) amended, and paras. (c.1) to (c.3), (e.1), and (h.1), added, by 1998, c. 19, subsec. 150(1)–(3), paras. (b), (c) to (c.3), and (e.1) applicable to taxation years of an individual that begin after 1994, and (h.1) applicable to the 1994 and 1995 taxation years. Paras. 127.52(1)(b) and (c) formerly read:

(b) the total of all amounts deductible by the individual under paragraph 20(1)(a) for the year in respect of residential properties were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which

(i) the total of the individual's incomes for the year from the renting or leasing of residential properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a),

exceeds

(ii) the total of the individual's losses for the year from the renting or leasing of residential properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a);

(c) the total of all amounts deductible by the individual under paragraph 20(1)(a) for the year in respect of film properties were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which

(i) the total of the individual's incomes for the year from the renting or leasing of film properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a),

exceeds

(ii) the total of the individual's losses for the year from the renting or leasing of film properties owned by the individual or by a partnership, computed without reference to paragraph 20(1)(a);

Cl. 127.52(1)(i)(i)(B) amended by the said c. 19, subsec. 150(4), applicable to all taxation years. Cl. 127.52(1)(i)(i)(B) formerly read:

(B) the amounts that would be deductible under those paragraphs for the year if paragraphs (b), (c) and (e) of this subsection were applicable in computing the individual's non-capital loss, restricted farm loss, farm loss and the limited partnership loss for any taxation year beginning after 1985, and

Cl. 127.52(1)(i)(ii)(B) amended by the said c. 19, subsec. 150(5), applicable to all taxation years except that, in determining an individual's adjusted taxable income for taxation years that began before 1995, subcl. 127.52(1)(i)(ii)(B)(I) shall be read as follows:

"(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began after 1985 and before 1995, and"

Cl. 127.52(1)(i)(ii)(B) formerly read:

(B) the total of all amounts that would be deductible under paragraph 111(1)(b) if paragraph (d) of this subsection were applicable in computing the total referred to in the definition "net capital loss" in subsection 111(8) for any taxation year commencing after 1985; and

Subpara. 127.52(1)(d)(i) amended by the said c. 19, s. 35, applicable to taxation years that begin after 1996. Subpara. 127.52(1)(d)(i) formerly read:

(i) sections 38 and 41 were read without the references therein to "¾ of", and

Para. 127.52(1)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 70, applicable to 1991 *et seq.* Para. (1)(d) formerly read:

(d) except in respect of dispositions of property occurring before 1986 or to which section 79 applies, sections 38 and 41 were read without the references to the fraction set out in those two sections;

Cl. 127.52(1)(a)(ii)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 106(1), applicable to 1990 *et seq.* That cl. formerly read:

(B) the total of all amounts each of which was included in computing the individual's income for the year and which is a single payment out of or under a deferred profit sharing plan or a superannuation or pension fund or plan

(I) as a consequence of the death, withdrawal from the fund or plan or termination of employment of a person,

(II) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(III) to which the individual is entitled by virtue of an amendment to the fund or plan;

Para. 127.52(1)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 106(2), applicable to 1986 *et seq.*, except that in its application to the 1986 to 1988 taxation years the para. shall be read as follows:

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of paragraph 110(1)(i) and subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1) of this Act and subsection 110.4(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years ending before 1988 and the amount that would be deductible under paragraph 110(1)(f) if paragraph (d) were applicable in computing the individual's income for the year;

Para. (1)(h) formerly read:

(h) the only amounts deductible under sections 110 to 110.7 in computing the individual's taxable income for the year or the individual's taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of paragraphs 110(1)(f) and (i) and subsections 110(2), 110.6(2), (2.1), (3) and (12) and 110.7(1) of this Act and subsection 110.4(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, computed without reference to this section;

Subpara. 127.52(1)(i)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 106(3), applicable to taxation years beginning after 1985. Subpara. (1)(i)(i) formerly read:

(i) paragraphs 111(1)(a), (c) and (d) were the lesser of

(A) the amount deducted under each of those paragraphs, and

(B) the amount that would be deductible under each of those paragraphs if paragraphs (b), (c) and (e) of this subsection were applicable in determining the amount for E in the definition "non-capital loss" in subsection 111(8) for any taxation year commencing after 1985, and

Pre-RSC History: Para. 127.52(1)(a) substituted by 1990, c. 35, s. 11, applicable to 1990 *et seq.* except that in its application to the 1990 taxation year the para. shall be read as follows:

(a) the aggregate of all amounts deductible under any of paragraphs 8(1)(m) and (m.1) and 60(i) to (j.2) in computing the individual's income for the year were the lesser of

(i) the aggregate of the amounts otherwise so deductible, and

(ii) the aggregate of all amounts each of which was included in computing the individual's income for the year and that is a single payment out of or under a deferred profit sharing plan or a superannuation or pension fund or plan

(A) as a consequence of the death, withdrawal from the fund or plan or termination of employment of a person,

(B) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(C) to which the individual is entitled by reason of an amendment to the fund or plan;

Para. 127.52(1)(a) formerly read:

(a) the aggregate of all amounts deductible under any of paragraphs 8(1)(m) and (m.1) and 60(i) to (k) in computing his income for the year were the lesser of

(i) the aggregate of the amounts otherwise so deductible by him, and

(ii) the aggregate of all amounts each of which was included in computing his income for the year and which is a single payment out of or pursuant to a deferred profit sharing plan or a superannuation or pension fund or plan

(A) upon the death, withdrawal from the fund or plan or termination of employment of a person,

(B) upon the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(C) to which he is entitled by virtue of an amendment to the fund or plan;

Para. 127.52(1)(d) substituted by 1988, c. 55, subsec. 112(1) applicable to 1986 *et seq.* Para. 127.52(1)(d) formerly read:

(d) sections 38 and 41 were read without the references therein to "½ of" in respect of dispositions of property occurring after 1985;

That portion of subpara. 127.52(1)(g)(ii) preceding subcl. (B)(I) amended to substitute "each of which is ⅓ of" for "each of which is", by 1988, c. 55, subsec. 112(2), applicable to 1988 *et seq.*, except that in its application to taxation years ending before 1990 the reference to "⅓" in subpara. 127.52(1)(g)(ii) shall be read as a reference to "½".

Para. 127.52(1)(h) substituted by 1988, c. 55, subsec. 112(3), applicable to 1987 *et seq.* except that, in its application to the 1987 taxation year, para. 127.52(1)(h) shall be read as follows:

(h) the only amounts deductible under sections 109 to 110.7 in computing his taxable income for the year or his taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of subsection 109(1), paragraphs 110(1)(a) to (c), (e), (f), (g) and (i) and subsections 110(2), 110.4(1), 110.6(2), (3) and (12) and 110.7(1) computed without reference to this section;

Para. 127.52(1)(h) formerly read:

(h) the only amounts deductible under sections 109 to 110.6 in computing his taxable income for the year or his taxable income earned in Canada for the year, as the case may be, were the amounts deducted under any of subsections 109(1), paragraphs 110(1)(a) to (c), (e), (f), (g) and (i) and subsections 110(2), 110.4(1) and 110.6(2), (3) and (12) computed without reference to this section;

Advance Tax Rulings: ATR-28: Redemption of capital stock of family farm corporation.

(2) Partnerships — For the purposes of subsection (1) and this subsection, any amount deductible under a provision of this Act in computing the income or loss of a partnership for a fiscal period is, to the extent of a member's share of the partnership's income or loss, deemed to be deductible by the member under that provision in computing the member's income for the taxation year in which the fiscal period ends.

History: Subsec. 127.52(2) amended by 1998, c. 19, subsec. 150(6), applicable to taxation years of an individual that begin after 1994. Subsec. 127.52(2) formerly read:

(2) For the purposes of paragraphs (1)(b) and (c), where an individual was a member of that partnership at the end of its fiscal period, any amount deducted by that partnership as a deduction under paragraph 20(1)(a) in respect of a residential property or a film property in computing its income shall, to the extent of the individual's share thereof, be deemed to have been deducted by the individual under that paragraph in computing the individual's income in respect of the property for the taxation year in which the fiscal period ended.

(2.1) Specified member of a partnership — Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of this section to the member's interest in the partnership, the member is deemed for the purpose of this section to have been a specified member of the partnership at all times since becoming a member of the partnership.

Related Provisions: 40(3.131) — Parallel rule for negative adjusted cost base of partnership interest.

History: Subsec. 127.52(2.1) added by 1998, c. 19, subsec. 150(7), applicable after April 26, 1995.

(3) Definitions — For the purposes of this section,

"film property" means a property described in paragraph (n) of Class 12, or paragraph (w) of Class 10, of Schedule II to the *Income Tax Regulations*;

Pre-RSC History: The definition "film property" in subsec. 127.52(3) amended to substitute "Class 12 or paragraph (w) of Class 10, of Schedule II" for "Class 12 of Schedule II" by 1988, c. 55, subsec. 112(4), applicable with respect to property acquired after 1987.

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and";

History: The definition "limited partner" added to subsec. 127.52(3) by 1998, c. 19, subsec. 150(9), applicable to taxation years of an individual that begin after 1994.

"rental or leasing property" means a property that is a rental property or a leasing property for the purpose of section 1100 of the *Income Tax Regulations*.

Related Provisions: 127.52(1)(b), (c.2)(ii) — Application of minimum tax.

History: The definition "rental or leasing property" added to subsec. 127.52(3) by 1998, c. 19, subsec. 150(9), applicable to taxation years of an individual that begin after 1994.

Regulations: 1100(14)–(14.2) (definition of rental property); 1100(17)–(20) (definition of leasing property).

"residential property" — [Repealed]

History: The definition "residential property" repealed by 1998, c. 19, subsec. 150(8), applicable to taxation years of an individual that begin after 1994. The definition formerly read:

> "residential property" means a property described in Class 31 or 32 of Schedule II to the *Income Tax Regulations* and furniture, fixtures and equipment, if any, located in, and ancillary to, that property.

Definitions [s. 127.52]: "allowable capital loss" — 38(a), 248(1); "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "capital gain" — 54, 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition"; of capital property — 54; "employment" — 248(1); "farm loss" — 111(8), 248(1); "film property" — 127.52(3); "fiscal period" — 248(1), 249(2)(b), 249.1; "flow-through share" — 66(15), 248(1); "foreign retirement arrangement" — 248(1); "identical" — 40(3.5), 248(12); "individual" — 248(1); "limited partner" — 127.52(3); "limited partnership loss" — 96(2.1)(e), 248(1); "mineral" — 248(1); "non-capital loss" — 111(8), 248(1); "person", "property", "regulation" — 248(1); "rental or leasing property", "residential property" — 127.52(3); "restricted farm loss" — 31, 248(1); "specified member" — 127.52(2.1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Forms [s. 127.52]: T3 Sched. 12: Calculation of minimum tax; T7B-2: Calculation of instalments on minimum tax; T7B-3: Calculation of instalments on minimum tax (farmers and fishermen); T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions.

127.53 (1) Basic exemption — An individual's basic exemption for a taxation year is

(a) $40,000, in the case of an individual other than a trust;

(b) $40,000, in the case of a testamentary trust or an *inter vivos* trust described in subsection 122(2); and

(c) in any other case, nil.

(2) Multiple trusts — Notwithstanding paragraph (1)(b), where more than one trust described in that paragraph arose as a consequence of contributions to the trusts by an individual and those trusts have filed with the Minister in prescribed form an agreement whereby, for the purpose of this Division, they allocate an amount to one or more of them for a taxation year and the total of the amounts so allocated does not exceed $40,000, the basic exemption for the year of each of the trusts is the amount so allocated to it.

Related Provisions: 104(2) — Grouping of multiple trusts for regular tax purposes.

Forms: T3 Sched. 6: Trusts' agreement to allocate the basic exemption from minimum tax.

(3) Failure to file agreement — Notwithstanding paragraph (1)(b), where more than one trust described in that paragraph arose as a consequence of contributions to the trusts by an individual and no agreement as contemplated by subsection (2) has been filed with the Minister before the expiry of 30 days after notice in writing has been forwarded by the Minister to any of the trusts that such an agreement is required for the purpose of an assessment of tax under this Part, the Minister may, for the purpose of this Division, allocate an amount to one or more of the trusts for a taxation year, the total of all of which amounts does not exceed $40,000, and the basic exemption for the year of each of the trusts is the amount so allocated to it.

Definitions [s. 127.53]: "amount", "assessment", "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "Minister", "prescribed" — 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 127.53]: IT-406R2: Tax payable by an *inter vivos* trust.

Forms [s. 127.53]: T3 Sched. 12: Calculation of minimum tax; T691: Alternative minimum tax; T691A: Minimum tax supplement — multiple jurisdictions.

127.531 Basic minimum tax credit determined — An individual's basic minimum tax credit for a taxation year is the total of amounts that may be deducted in computing the individual's tax payable for the year under this Part under any of subsections 118(1) and (2), sections 118.1 and 118.2, subsection 118.3(1) and sections 118.5 to 118.7.

Pre-RSC History: S. 127.531 added by 1988, c. 55, s. 113, applicable to 1988 *et seq.*

Selected Cases [s. 127.531]: *Sherman v. R.*, [2000] 1 C.T.C. 2696 (TCC) ("May be deducted" not the same as "has been deducted").

Definitions [s. 127.531]: "amount", "individual" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

127.54 (1) Definitions — In this section,

"foreign income" of an individual for a taxation year means the total of

(a) the individual's incomes for the year from businesses carried on by the individual in countries other than Canada, and

(b) the individual's incomes for the year from sources in countries other than Canada in respect of which the individual has paid non-business-income taxes, within the meaning assigned by subsection 126(7), to governments of countries other than Canada;

"foreign taxes" of an individual for a taxation year means the total of the business-income taxes, within the meaning assigned by subsection 126(7), paid by the individual for the year in respect of businesses carried on by the individual in countries other than Canada and ⅔ of the non-business-income taxes, within the meaning assigned by that subsection, paid by the individual for the year to the governments of countries other than Canada.

(2) Foreign tax credit — For the purposes of section 127.5, an individual's special foreign tax credit for a taxation year is the greater of

(a) the total of all amounts deductible under section 126 from the individual's tax for the year, and

(b) the lesser of

(i) the individual's foreign taxes for the year, and

(ii) 17% of the individual's foreign income for the year.

Definitions [s. 127.54]: "amount", "business" — 248(1); "Canada" — 255; "foreign income", "foreign taxes" — 127.54(1); "individual" — 248(1); "taxation year" — 249.

127.55 Application of section 127.5 — Section 127.5 does not apply in respect of

(a) a return of income of an individual filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4);

(b) a taxation year of an individual in respect of which the individual has made an election under section 119;

Proposed Repeal — 127.55(b)

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 76, will repeal para. 127.55(b), applicable to 1996 *et seq.*

Technical Notes: Section 127.55 of the Act limits the application of the alternative minimum tax set out in section 127.5 of the Act. Paragraph 127.55(b) refers to existing section 119. Existing section 119 is no longer active, and is replaced with a new, unrelated rule. Paragraph 127.55(b) is therefore repealed, for the 1996 and subsequent taxation years.

(c) an individual for the taxation year in which the individual dies;

(d) an individual for the 1986 taxation year if the individual dies in 1987;

(e) a trust described in paragraph 104(4)(a) or (a.1) for its taxation year that includes the day determined in respect of the trust under that paragraph; and

(f) a taxation year of a trust throughout which the trust is

(i) a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),

(ii) a mutual fund trust, or

(iii) a trust prescribed to be a master trust.

History: Para. 127.55(f) added by 1998, c. 19, s. 151, applicable to 1992 *et seq.*

Para. 127.55(e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 71, applicable to 1993 *et seq.* Para. (e) formerly read:

(e) a trust described in paragraph 104(4)(a) for its taxation year in which the spouse referred to in that paragraph dies.

Para. 127.55(e) added by 1994, c. 7, Sch. II (1991, c. 49), s. 107, applicable to 1986 *et seq.*

Pre-RSC History: Para. 127.55(c) substituted and para. 127.55(d) added by 1988, c. 55, s. 114, applicable to 1986 *et seq.* Para. 127.55(c) formerly read:

(c) a return of income for the 1986 taxation year of an individual who dies in 1986.

Definitions [s. 127.55]: "individual" — 248(1); "mutual fund trust" — 132(6); "prescribed" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 127.55]: IT-326R2: Returns of deceased persons as "another person".

Pre-RSC History [Div. E.1]: Division E.1 (ss. 127.5 to 127.55) added by 1986, c. 55, s. 50, applicable to taxation years commencing after 1985.

DIVISION F — SPECIAL RULES APPLICABLE IN CERTAIN CIRCUMSTANCES

Bankruptcies

128. (1) Where corporation bankrupt — Where a corporation has become a bankrupt, the following rules are applicable:

(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt for all purposes of this Act;

(b) the estate of the bankrupt shall be deemed not to be a trust or an estate for the purposes of this Act;

(c) the income and the taxable income of the corporation for any taxation year of the corporation during which it was a bankrupt and for any subsequent year shall be calculated as if

(i) the property of the bankrupt did not pass to and vest in the trustee in bankruptcy on the receiving order being made or the assignment filed but remained vested in the bankrupt, and

(ii) any dealing in the estate of the bankrupt or any act performed in the carrying on of the business of the bankrupt estate by the trustee was done as agent on behalf of the bankrupt and any income of the trustee from such dealing or carrying on is income of the bankrupt and not of the trustee;

(d) a taxation year of the corporation shall be deemed to have commenced on the day the corporation became a bankrupt and a taxation year of the corporation that would otherwise have ended after the corporation became a bankrupt shall be deemed to have ended on the day immediately before the day on which the corporation became a bankrupt;

(e) where, in the case of any taxation year of the corporation ending during the period the corporation is a bankrupt, the corporation fails to pay any tax payable by the corporation under this Act for any such year, the corporation and the trustee in bankruptcy are jointly and severally liable to pay the tax, except that

(i) the trustee is only liable to the extent of the property of the bankrupt in the trustee's possession, and

(ii) payment by either of them shall discharge the joint obligation;

(f) in the case of any taxation year of the corporation ending during the period the corporation is a bankrupt, the corporation shall be deemed not to be associated with any other corporation in the year; and

(g) where an absolute order of discharge is granted in respect of the corporation, for the purposes of section 111 any loss of the corporation for any taxation year preceding the year in which the order of discharge was granted is not deductible by the corporation in computing its taxable income for the taxation year of the corporation in which the order was granted or any subsequent year.

Related Provisions: 39(1)(c)(iv)(B) — Business investment loss on debt of bankrupt corporation; 50(1) — Capital loss on debts and shares of bankrupt corporation; 56.3 — No debt forgiveness reserve inclusion while corporation bankrupt; 80(1)"forgiven amount"B(i) — Debt forgiveness rules do not apply; 129(1.1) — No dividend refund on dividend paid to bankrupt controlling corporation; 181.1(3)(b) — Where tax not payable; 227(5) — Amount in trust not part of estate.

Regulations: 206(2) (information return).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988; IT-179R: Change of fiscal period (to be revised re bankrupt corporations — see I.T. Technical News No. 8); IT-206R: Separate businesses.

I.T. Technical News: No. 8 (bankrupt corporation — change of fiscal period).

(2) Where individual bankrupt — Where an individual has become a bankrupt, the following rules are applicable:

(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt for all purposes of this Act;

(b) the estate of the bankrupt shall be deemed not to be a trust or an estate for the purposes of this Act;

(c) the income and the taxable income of the individual for any taxation year during which the individual was a bankrupt and for any subsequent year shall be calculated as if

(i) the property of the bankrupt did not pass to and vest in the trustee in bankruptcy on the receiving order being made or the assignment filed but remained vested in the bankrupt, and

(ii) any dealing in the estate of the bankrupt or any act performed in the carrying on of the business of the bankrupt estate by the trustee was done as agent on behalf of the bankrupt and any income of the trustee from such dealing or carrying on is income of the bankrupt and not of the trustee;

(d) except for the purposes of subsections 146(1), 146.01(4) and 146.02(4) and Part X.1,

(i) a taxation year of the individual is deemed to have begun at the beginning of the day on which the individual became a bankrupt, and

(ii) the individual's last taxation year that began before that day is deemed to have ended immediately before that day;

(d.1) where, by reason of paragraph (d), a taxation year of the individual is not a calendar year,

(i) paragraph 146(5)(b) shall, for the purpose of the application of subsection 146(5) to the taxation year, be read as follows:

"(b) the amount, if any, by which

(i) the taxpayer's RRSP deduction limit for the particular calendar year in which the taxation year ends

exceeds

(ii) the total of the amounts deducted under this subsection and subsection (5.1) in computing the taxpayer's income for any preceding taxation year that ends in the particular calendar year.",

and

(ii) paragraph 146(5.1)(b) shall, for the purpose of the application of subsection 146(5.1) to the taxation year, be read as follows:

"(b) the amount, if any, by which

(i) the taxpayer's RRSP deduction limit for the particular calendar year in which the taxation year ends

exceeds

(ii) the total of the amount deducted under subsection (5) in computing the taxpayer's income for the year and the amounts deducted under this subsection and subsection (5) in computing the taxpayer's income for any preceding taxation year that ends in the particular calendar year.";

(d.2) where, by reason of paragraph (d), the individual has two taxation years ending in a calendar year, each amount deducted in computing the individual's income for either of the taxation years shall be deemed, for the purposes of the definition "unused RRSP deduction room" in subsection 146(1) and Part X.1, to have been deducted in computing the individual's income for the calendar year;

(e) where the individual was a bankrupt at any time in a calendar year the trustee shall, within 90 days from the end of the year, file a return with the Minister, in prescribed form, on behalf of the individual of the individual's income for any taxation year occurring in the calendar year computed as if

(i) the only income of the individual for that taxation year was the income for the year, if any, arising from dealings in the estate of the bankrupt or acts performed in the carrying on of the business of the bankrupt by the trustee,

(ii) in computing the individual's taxable income for that taxation year, no deduction were permitted by Division C, other than

(A) an amount under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 to the extent that the amount is in respect of an amount included in income under subparagraph (i) for that taxation year, and

(B) an amount under section 111 to the extent that the amount was in respect of a loss of the individual for any taxation year that ended before the individual was discharged absolutely from bankruptcy, and

(iii) in computing the individual's tax payable under this Part for that taxation year, no deduction were allowed

(A) under section 118, 118.2, 118.3, 118.5, 118.6, 118.8 or 118.9,

(B) under section 118.1 with respect to a gift made by the individual on or after the day the individual became bankrupt,

(B.1) under section 118.62 with respect to interest paid on or after the day on which the individual became bankrupt, and

(C) under subsection 127(5) with respect to an expenditure incurred or property acquired by the individual in any taxation year that ends after the individual was discharged absolutely from bankruptcy,

and the trustee is liable to pay any tax so determined for that taxation year;

(f) notwithstanding paragraph (e), the individual shall file a separate return of the individual's income for any taxation year during which the individual was a bankrupt, computed as if

(i) the income required to be reported in respect of the year by the trustee under paragraph (e) was not the income of the individual,

(ii) in computing income, the individual was not entitled to deduct any loss sustained by the trustee in the year in dealing with the estate of the bankrupt or in carrying on the business of the bankrupt,

(iii) in computing the individual's taxable income for the year, no amount were deductible under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 in respect of an amount included in income under subparagraph (e)(i), and no amount were deductible under section 111, and

(iv) in computing the individual's tax payable under this Part for the year, no amount were deductible under

(A) section 118.1 in respect of a gift made before the day on which the individual became bankrupt,

(B) section 118.62 in respect of interest paid before the day on which the individual became bankrupt, or

(C) section 118.61 or 120.2 or subsection 127(5),

and the individual is liable to pay any tax so determined for that taxation year;

(g) notwithstanding subparagraphs (e)(ii) and (iii) and (f)(iii) and (iv), where at any time an individual was discharged absolutely from bankruptcy,

(i) in computing the individual's taxable income for any taxation year that ends after that time, no amount shall be deducted under section 111 in respect of losses for taxation years that ended before that time,

(ii) in computing the individual's tax payable under this Part for any taxation year that ends after that time,

(A) no amount shall be deducted under section 118.61 or 120.2 in respect of an amount for any taxation year that ended before that time,

(B) no amount shall be deducted under section 118.1 in respect of a gift made before the individual became bankrupt,

(B.1) no amount shall be deducted under section 118.62 in respect of interest paid before the day on which the individual became bankrupt, and

(C) no amount shall be deducted under subsection 127(5) in respect of an expenditure incurred or a property acquired by the individual in any taxation year that ended before that time, and

(iii) the individual's unused tuition and education tax credits at the end of the last taxation year that ended before that time is deemed to be nil;

(h) where, in a taxation year commencing after an order of discharge has been granted in respect of the individual, the trustee deals in the estate of the individual who was a bankrupt or performs any act in the carrying on of the business of the individual, paragraphs (e), (f) and (g) shall apply as if the individual were a bankrupt in the year; and

(i) the portion of the individual's non-capital loss for a particular taxation year in which paragraph (e) applied in respect of the individual and any preceding taxation year that does not exceed the lesser of

(i) the amount of the individual's allowable business investment losses for the particular taxation year, and

(ii) any portion of the individual's non-capital loss for that particular year that was not deducted in computing the individual's taxable income for any taxation year in which paragraph (e) applied in respect of the individual or any preceding taxation year,

shall, for the purpose of determining the individual's cumulative gains limit under section 110.6 for taxation years following the taxation year in which paragraph (e) was last applicable in respect of the individual, be deemed not to have been an allowable business investment loss.

Related Provisions: 56.2, 56.3 — No debt forgiveness reserve inclusion while individual bankrupt; 80(1)"forgiven amount"B(i) — Debt forgiveness rules do not apply; 118.95 — Credits allowed on return filed by bankrupt individual; 120.2(4)(a) — No minimum tax carryover on individual's return under 128(2)(f); 122.5(7) — GST credit for year of bankruptcy; 122.61(3.1) — Child Tax Benefit for year of bankruptcy; 127.1(1)(a) — No refundable investment tax credit on individual's return under 128(2)(f); 127.55 — Minimum tax not applicable; 150(3) — Trustee in bankruptcy required to file return; 227(5) — Amount in trust not part of estate; Reg. 2701(2) — Calculation of group term life insurance benefit where individual bankrupt.

History: Para. 128(2)(d) and subpara. (f)(iv) amended by 1999, c. 22, subsecs. 51(1) and (3), para. (d) applicable to 1999 *et seq.*, and subpara. (f)(iv) applicable to bankruptcies that occur after 1997. Cls. 128(2)(e)(iii)(B.1) and (g)(ii)(B.1) added by the said c. 22, subsecs. 51(2) and (4), applicable to bankruptcies that occur after 1997. The para. and subpara. formerly read:

(d) except for the purposes of subsections 146(1) and 146.01(4), (9) and (10) and Part X.1, a taxation year of the individual shall be deemed to have begun on the day in the calendar year on which the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day the individual became a bankrupt;

. . . . .

(iv) in computing the individual's tax payable under this Part for the year, no amount were deductible under section 118.1 in respect of a gift made before the day the individual became bankrupt or under section 118.61 or 120.2 or subsection 127(5),

The portion of para. 128(2)(e) after subpara. (i), the portion of para. 128(2)(f) after subpara. (ii), and para. 128(2)(g), amended by 1998, c. 19, subsecs. 152(1)–(3), applicable to bankruptcies that occur after April 26, 1995 except that, in applying subsec. 128(2), as amended, to taxation years that ended before 1997,

(a) cl. 128(2)(e)(iii)(A) shall be read without reference to "118.61";

(b) subpara. 128(2)(f)(iv) shall be read without reference to "118.61 or";

(c) cl. 128(2)(g)(ii)(A) shall be read without reference to "118.61 or"; and

(d) para. 128(2)(g) shall be read without reference to subparagraph (iii).

Those portions and para. (g) formerly read:

(ii) in computing taxable income, the individual was not entitled to any deduction permitted by Division C for that taxation year except any deduction permitted by section 111, and

(iii) in computing the tax payable under this Part by the individual, the individual was not entitled to deduct any amount under any of sections 118 to 118.3, 118.5, 118.6, 118.8 and 118.9,

and the trustee is liable to pay any tax payable under this Part by the individual in respect of that taxable income for that taxation year;

. . . . .

(iii) in computing taxable income, the individual was not entitled to any deduction under section 111 with respect to any losses for a previous taxation year,

and the individual is liable to pay any tax payable under this Part by the individual in respect of that taxable income for the taxation year;

. . . . .

(g) where an absolute order of discharge is granted in respect of the individual, for the purpose of section 111 any loss of the individual for a taxation year preceding the year in which the order of discharge was granted is not deductible by the individual in computing the individual's taxable income for the taxation year in which the order was granted or any subsequent year;

Para. 128(2)(d) amended by 1994, c. 8, s. 18, applicable to 1993 *et seq.* Para. (d) formerly read:

(d) except for the purposes of subsections 146(1) and 146.01(4) and (9) and Part X.1, a taxation year of the individual shall be deemed to have begun on the day in the calendar year on which the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day the individual became a bankrupt;

Para. 128(2)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 72, applicable to 1992 *et seq.* Para. (2)(d) formerly read:

(d) except for the purposes of subsection 146(1) and Part X.1, a taxation year of the individual shall be deemed to have commenced on the day in the calendar year on which the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day on which the individual became a bankrupt;

Pre-RSC History: Para. 128(2)(d) amended to add "except for the purpose of subsection 146(1) and Part X.1," and to substitute "the individual's" for "his", and paras. (d.1), (d.2) added, by 1990, c. 35, s. 12, applicable to 1991 *et seq.*

Subpara. 128(2)(e)(iii) added by 1988, c. 55, s. 115, applicable to 1988 *et seq.*

Paras. 128(2)(d.1), (d.2) repealed, applicable to 1986 *et seq.*, para. 128(2)(i) added, applicable to 1985 *et seq.* by 1986, c. 6, subsecs. 74(1), (2). Paras. (d.1), (d.2) formerly read:

(d.1) each indexed security investment plan under which the individual was the participant at the end of the taxation year deemed by

paragraph (d) to have ended shall be deemed to have been terminated immediately before that time and, notwithstanding paragraph 47.1(10)(f), the individual's capital gain or capital loss for the year from each such plan shall be the amount of the individual's gain or loss, as the case may be, for the year from that plan and the taxpayer shall be deemed not to have a capital loss from that plan for any subsequent taxation year;

(d.2) where paragraph 47.1(10)(f) was applicable to the individual in respect of an indexed security investment plan in the taxation year deemed by paragraph (d) to have ended, the individual shall, notwithstanding paragraph 47.1(10)(f), be deemed to have a capital loss for the year from the plan equal to the aggregate of all amounts that are obtained by determining every amount that, but for this paragraph, would have been a capital loss of the individual from the plan for that year or any subsequent taxation year and not to have a capital loss from the plan for any subsequent taxation year;

Paras. 128(2)(d.1), (d.2) added by 1984, c. 1, s. 74, applicable with respect to bankruptcies occurring after September 1983.

Regulations: 206(2) (information return).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-179R: Change of fiscal period; IT-206R: Separate businesses; IT-415R2: Deregistration of registered retirement savings plans; IT-513R: Personal tax credits.

(3) [Repealed]

History: Subsec. 128(3) repealed by 1998, c. 19, subsec. 152(4), applicable to bankruptcies that occur after April 26, 1995. Subsec. 128(3) formerly read:

(3) Definitions of "bankrupt" and "estate of the bankrupt" — In this section, "bankrupt" and "estate of the bankrupt" have the meanings assigned by the *Bankruptcy and Insolvency Act*.

Subsec. 128(3) amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

"Bankrupt": S. 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended) defines "bankrupt" as follows:

"bankrupt" means a person who has made an assignment or against whom a receiving order has been made or the legal status of that person;

"estate of the bankrupt" *per se* is not defined therein.

Definitions [s. 128]: "allowable business investment loss" — 38(c), 248(1); "amount" — 248(1); "associated" — 128(1)(f), 256; "bankrupt" — 248(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "capital gain", "capital loss" — 39(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "estate of the bankrupt" — 248(1); "individual", "Minister" — 248(1); "non-capital loss" — 111(8), 248(1); "prescribed", "property" — 248(1); "RRSP deduction limit" — 146(1), 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 128(2)(d), 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unused tuition and education tax credits" — 118.61(1) [technically does not apply to s. 128].

Changes in Residence

128.1 (1) Immigration — For the purposes of this Act, where at a particular time a taxpayer becomes resident in Canada,

(a) **year-end, fiscal period** — where the taxpayer is a corporation or a trust,

(i) the taxpayer's taxation year that would otherwise include the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the taxpayer shall be deemed to have begun at the particular time, and

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before the particular time;

(b) **deemed disposition** — the taxpayer is deemed to have disposed, at the time (in this subsection referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than, if the taxpayer is an individual,

(i) property that would be taxable Canadian property if the taxpayer had been resident in Canada at no time in the taxpayer's last taxation year that began before the particular time,

Proposed Amendment — 128.1(1)(b)(i)

(i) property that is a taxable Canadian property,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 77(1), will amend subpara. 128.1(1)(b)(i) to read as above, applicable to changes in residence that occur after October 1, 1996.

Technical Notes: Section 128.1 of the Act sets out the income tax effects of becoming or ceasing to be resident in Canada. The present amendments make several important additions to section 128.1, including:

- a more comprehensive deemed disposition of property by individual emigrants;
- greater clarity as to the exclusion of certain pension and other rights from the deemed dispositions on emigration and immigration;
- special accommodation of individuals (other than trusts) who, having emigrated from Canada, re-establish residence in Canada;
- the ability for post-emigration losses in effect to reduce gains realized as a result of the deemed disposition on emigration;
- information reporting requirements for individuals who emigrate from Canada; and
- in certain circumstances, a deemed end to the fiscal period of a business carried on by an individual emigrant.

In addition, these amendments make a number of clarifying and updating changes to section 128.1. They also revise the section as necessary to reflect other amendments such as the restructured definition "taxable Canadian property" and the changes to section 114 of the Act.

Subsection 128.1(1) of the Act sets out rules that apply where a taxpayer becomes resident in Canada. Paragraph 128.1(1)(b) treats a taxpayer who becomes resident in Canada as having disposed of the taxpayer's property, with certain exceptions, for proceeds equal to the property's fair market value. This disposition is deemed to have taken place immediately before the time that is immediately before the time at which the taxpayer becomes resident.

The properties excluded from the deemed disposition on immigration under paragraph 128.1(1)(b) are essentially those properties that were, ignoring any relevant tax treaty, already subject to tax in Canada. Subparagraph 128.1(1)(b)(i) sets out one type of excluded property, being taxable Canadian property. Subparagraph 128.1(1)(b)(i) is amended, with application after October 1, 1996, to simplify its description of taxable Canadian property. This change is a consequence of the relocation of the main definition of taxable Canadian property to subsection 248(1) of the Act.

(ii) property that is described in the inventory of a business carried on by the taxpayer in Canada at the time of disposition,

(iii) eligible capital property in respect of a business carried on by the taxpayer in Canada at the time of disposition,

(iv) property in respect of which the taxpayer elected under paragraph 48(1)(c), as it read in its application before 1993, or subparagraph (4)(b)(iv) in respect of the last preceding time the taxpayer ceased to be resident in Canada, and

(v) a right to acquire shares of the capital stock of a corporation where section 7 would apply if the tax-

payer disposed of the right to a person with whom the taxpayer was dealing at arm's length,

Proposed Amendment — 128.1(1)(b)(iv), (v)

(iv) an excluded right or interest of the taxpayer (other than an interest in a non-resident testamentary trust that was never acquired for consideration),

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 77(2), will amend subpara. 128.1(1)(b)(iv) to read as above, and repeal subpara. (v), applicable to changes in residence that occur after October 1, 1996.

Technical Notes: As described above, paragraph 128.1(1)(b) of the Act provides for a deemed disposition of most properties owned by a taxpayer who becomes resident in Canada. Subparagraph 128.1(1)(b)(iv) excludes from this deemed disposition property that was the subject of an election under existing subparagraph 128.1(4)(b)(iv) of the Act — an election not to be treated as having disposed of the property on an earlier emigration from Canada. One of the effects of having made the election is that the property is deemed to be taxable Canadian property, which in any case is (as a result of subparagraph 128.1(1)(b)(i)) excluded from the deemed disposition on immigration. The current version of subparagraph 128.1(1)(b)(iv) is thus not necessary, and can be replaced with a different rule.

New subparagraph 128.1(1)(b)(iv) excludes from the deemed disposition on immigration any property (other than an interest acquired for no consideration in a non-resident testamentary trust) that is an "excluded right or interest" of the taxpayer. As defined in new subsection 128.1(10) of the Act, the term "excluded right or interest" includes many kinds of income rights and other properties. Since the term also encompasses rights under agreements referred to in subsections 7(1) and 7(1.1) of the Act (options of employees to acquire shares of a corporation or units of a mutual fund trust), existing subparagraph 128.1(1)(b)(v), which refers only to employee stock options, is unnecessary and is repealed.

for proceeds equal to its fair market value at the time of disposition;

(c) **deemed acquisition** — the taxpayer shall be deemed to have acquired at the particular time each property deemed by paragraph (b) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property;

(c.1) **deemed dividend to immigrating corporation** — if the taxpayer is a particular corporation that immediately before the time of disposition owned a share of the capital stock of another corporation resident in Canada, a dividend is deemed to have been paid by the other corporation, and received by the particular corporation, immediately before the time of disposition, equal to the amount, if any, by which the fair market value of the share immediately before the time of disposition exceeds the total of

(i) the paid-up capital in respect of the share immediately before the time of disposition, and

(ii) if the share immediately before the time of disposition was taxable Canadian property that is not treaty-protected property, the amount by which, at the time of disposition, the fair market value of the share exceeds its cost amount;

(c.2) **deemed dividend to shareholder of immigrating corporation** — if the taxpayer is a corporation and an amount has been added to the paid-up capital in respect of a class of shares of the corporation's capital stock because of paragraph (2)(b),

(i) the corporation is deemed to have paid, immediately before the time of disposition, a dividend on the issued shares of the class equal to the amount of the paid-up capital adjustment in respect of the class, and

(ii) a dividend is deemed to have been received, immediately before the time of disposition, by each person (other than a person in respect of whom the corporation is a foreign affiliate) who held any of the issued shares of the class equal to that proportion of the dividend so deemed to have been paid that the number of shares of the class held by the person immediately before the time of disposition is of the number of issued shares of the class outstanding immediately before the time of disposition; and

(d) **foreign affiliate** — where the taxpayer was, immediately before the particular time, a foreign affiliate of another taxpayer that is resident in Canada,

(i) the affiliate shall be deemed to have been a controlled foreign affiliate (within the meaning assigned by subsection 95(1)) of the other taxpayer immediately before the particular time, and

(ii) such amount as is prescribed shall be included in the foreign accrual property income (within the meaning assigned by subsection 95(1)) of the affiliate for its taxation year ending immediately before the particular time.

Related Provisions: 44(2)(d) — Exchanges of property; 52(8) — Cost of corporation's shares on its becoming resident in Canada; 53(1)(b.1) — Addition to ACB for deemed dividend under 128.1(1)(c.2); 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 70(5.3) — Value of shares of corporation holding life insurance policy; 84(7) — When deemed dividend payable; 94(3)(c) [proposed] — Application to trust deemed resident in Canada; 96(8) — Cost of properties of partnership when partner becomes resident in Canada; 106(1.1)(b) — Deemed cost of income interest in trust; 107(1.1)(b)(ii) — Deemed cost of income interest in trust; 114 — Individual resident during only part of year; 139.1(5) — Value of ownership rights in insurer during demutualization; 215(1.1) — Limitation on requirement to withhold tax on deemed dividend under 128.1(1)(c.1); Reg. 808(1.1) — Investment allowance for branch tax deemed nil before immigration.

History: The opening words of para. 128.1(1)(b) amended, paras. 128.1(1)(c.1) and (c.2) added, by 1999, c. 22, subsecs. 52(1), (2), applicable to corporations that become resident in Canada after February 23, 1998. The opening words formerly read:

(b) the taxpayer shall be deemed to have disposed, at the time (in this subsection referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than

Subsec. 128.1(1) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

Regulations: 5907(13) (prescribed amount of FAPI; expected to be amended to apply to 128.1(1)(d)(ii)).

I.T. Application Rules: 26(10) (ITAR 26 does not apply to property owned since before 1972).

Interpretation Bulletins: IT-259R3: Exchanges of property.

(2) **Paid-up capital adjustment** — If a corporation becomes resident in Canada at a particular time,

(a) for the purposes of subsection (1) and this subsection, the "paid-up capital adjustment" in respect of a particular class of shares of the corporation's capital stock in respect of that acquisition of residence is the positive or negative amount determined by the formula

$$(A \times B/C) - D$$

where

A is the amount, if any, by which

(i) the total of all amounts each of which is an amount deemed by paragraph (1)(c) to be the cost to the corporation of property deemed under that paragraph to have been acquired by the corporation at the particular time

exceeds

(ii) the total of all amounts each of which is the amount of a debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at the particular time,

B is the fair market value at the particular time of all of the shares of the particular class,

C is the total of all amounts each of which is the fair market value at the particular time of all of the shares of a class of shares of the corporation's capital stock, and

D is the paid-up capital at the particular time, determined without reference to this subsection, in respect of the particular class; and

(b) for the purposes of this Act, in computing the paid-up capital in respect of a class of shares of the corporation's capital stock at any time after the particular time and before the time, if any, at which the corporation next becomes resident in Canada, there shall be

(i) added the amount of the paid-up capital adjustment in respect of the particular class, if that amount is positive and the corporation so elects for all such classes in respect of that acquisition of residence by notifying the Minister in writing within 90 days after the particular time, and

(ii) deducted, if the amount of the paid-up capital adjustment in respect of the particular class is negative, the absolute value of that amount.

Related Provisions: 128.1(1)(c.2) — Deemed dividend to shareholder of immigrating corporation; 257 — Formula cannot calculate to less than zero.

History: Subsec. 128.1(2) amended by 1999, c. 22, subsec. 52(3), applicable to corporations that become resident in Canada after February 23, 1998, except that an election made under subpara. 128.1(2)(b)(i), as amended, is deemed to have been made in a timely manner if it is made by the corporation, with the consent of all who were shareholders of the corporation immediately before the time of disposition (within the meaning assigned by para. 128.1(1)(b)), before April 1, 1999. The subsec. formerly read:

(2) **Idem — paid-up capital** — For the purposes of this Act, where at a particular time a corporation becomes resident in Canada, in computing the paid-up capital at any time after the particular time in respect of a particular class of shares of the capital stock of the corporation, there shall be deducted the amount determined by the formula

$$\frac{A}{B} \times (C - D)$$

where

A is the paid-up capital, determined without reference to this subsection, of the particular class of shares at the particular time;

B is the paid-up capital, determined without reference to this subsection, in respect of all of the shares of the corporation at the particular time;

C is the total of

(a) the paid-up capital, determined without reference to this subsection, in respect of all of the shares of the corporation at the particular time,

(b) all amounts each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at the particular time, and

(c) any amount claimed under paragraph 219(1)(j) by the corporation for its last taxation year that began before the particular time; and

D is the total of

(a) all amounts each of which is deemed by paragraph (1)(c) to be the cost to the corporation of property (other than property described in paragraph (d)) deemed under paragraph (1)(c) to have been acquired by the corporation at the particular time,

(b) all amounts each of which is the cost amount to the corporation, immediately after the particular time, of property (other than a Canadian resource property or property described in paragraph (a) or (d)),

(c) the total of

(i) all Canadian exploration and development expenses incurred by the corporation before the particular time, except to the extent that those expenses were deducted in computing a taxpayer's income for a taxation year that ended before the particular time,

(ii) the corporation's cumulative Canadian exploration expense at the particular time (within the meaning assigned by subsection 66.1(6)),

(iii) the corporation's cumulative Canadian development expense at the particular time (within the meaning assigned by subsection 66.2(5)), and

(iv) the corporation's cumulative Canadian oil and gas property expense at the particular time (within the meaning assigned by subsection 66.4(5)), and

(d) the total of all amounts each of which is the paid-up capital in respect of a share of the capital stock of another corporation resident in Canada and connected with the corporation (within the meaning that would be assigned by subsection 186(4) if the references therein to "payer corporation" and "particular corporation" were read as references to the other corporation and the corporation, respectively) immediately after the particular time, owned by the corporation at the particular time.

Para. (c) of the description of C in subsec. 128.1(2) amended by 1998, c. 19, s. 153, applicable to taxation years that begin after 1995 except that, in its application to taxation years that begin in 1996, the reference in para. (c) to "paragraph 219(1)(j)" shall be read as a reference to "paragraph 219(1)(h) as it read in its application to the 1995 taxation year or paragraph 219(1)(j)". Para. (c) formerly read:

(c) any amount claimed under paragraph 219(1)(h) by the corporation for its last taxation year that began before the particular time; and

Subsec. 128.1(2) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

(3) Paid-up capital adjustment — In computing the paid-up capital at any time in respect of a class of shares of the corporation's capital stock, there shall be deducted an amount equal to the lesser of A and B, and added an amount equal to the lesser of A and C, where

A is the absolute value of the difference between

(a) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid before that time by the corporation, and

(b) the total that would be determined under paragraph (a) if this Act were read without reference to subsection (2),

B is the total of all amounts required by subsection (2) to be added in computing the paid-up capital in respect of the class before that time, and

C is the total of all amounts required by subsection (2) to be subtracted in computing the paid-up capital in respect of the class before that time.

History: Subsec. 128.1(3) amended by 1999, c. 22, subsec. 52(3), applicable to corporations that become resident in Canada after February 23, 1998. The subsec. formerly read:

(3) Idem — In computing the paid-up capital at any time in respect of a class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(a) the amount, if any, by which

(i) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid before that time by the corporation

exceeds

(ii) the total that would be determined under subparagraph (i) if this Act were read without reference to subsection (2), and

(b) the total of all amounts required by subsection (2) to be deducted in computing the paid-up capital in respect of that class of shares before that time.

Subsec. 128.1(3) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

(4) Emigration — For the purposes of this Act, where at any particular time a taxpayer ceases to be resident in Canada,

Proposed Amendment — Foreign exploration and development expenses

Notice of Ways and Means Motion, federal budget, February 28, 2000: (38) That, where a taxpayer ceases after February 27, 2000 to reside in Canada,

(a) the taxpayer's FEDE deduction for the taxpayer's last year of residence in Canada in respect of expenses incurred in taxation years that began before 2001 be limited to the greater of the taxpayer's foreign resource income for that year and 10 per cent of the taxpayer's FEDE balance at the end of that year, and

(b) the taxpayer be permitted for each subsequent taxation year of residence outside Canada to deduct up to 10 per cent of the taxpayer's FEDE balance at the end of that subsequent year in computing the taxpayer's taxable income earned in Canada.

[For the full text of the proposals on FEDE and the accompanying Budget Supplementary Information, see under 66(4) — ed.]

(a) **year-end, fiscal period** — where the taxpayer is a corporation or a trust,

(i) the taxpayer's taxation year that would otherwise include the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the taxpayer shall be deemed to have begun at the particular time, and

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before the particular time;

Proposed Addition — 128.1(4)(a.1)

(a.1) **fiscal period** — if the taxpayer is an individual (other than a trust) and carries on a business at the particular time, otherwise than through a permanent establishment (as defined by regulation) in Canada,

(i) the fiscal period of the business is deemed to have ended immediately before the particular time and a new fiscal period of the business is deemed to have begun at the particular time, and

(ii) for the purpose of determining the fiscal period of the business after the particular time, the taxpayer is deemed not to have established a fiscal period of the business before the particular time;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 77(3), will add para. 128.1(4)(a.1), applicable to changes in residence that occur after October 1, 1996.

Technical Notes: Subsection 128.1(4) sets out rules that apply where a taxpayer ceases to be resident in Canada. New paragraph 128.1(4)(a.1) provides that the fiscal period of any business carried on by an individual emigrant (other than a trust), otherwise than through a permanent establishment in Canada, is deemed to have ended immediately before the emigration time and a new fiscal period of the business is deemed to have begun at the emigration time. This ensures the appropriate measurement of the individual's pre-departure income or loss from the business. The paragraph, which applies to changes in residence after October 1, 1996, also allows the emigrant to choose a new fiscal period of the business.

(b) **deemed disposition** — the taxpayer shall be deemed to have disposed, at the time (in this paragraph and paragraph (d) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than

(i) where the taxpayer is an individual, property that would be taxable Canadian property if the taxpayer had been resident in Canada at no time in the taxpayer's last taxation year that began before the particular time,

(ii) where the taxpayer is an individual, property that is described in the inventory of a business carried on by the taxpayer in Canada at the particular time,

(iii) where the taxpayer is an individual, a right to receive a payment described in any of paragraphs 212(1)(h) and (j) to (q), a right under a registered education savings plan or a right to receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(iv) where the taxpayer is an individual other than a trust, each capital property not described in any of subparagraphs (i) to (iii) in respect of which, on or before the taxpayer's balance-due day for the taxation year in which the taxpayer ceased to be resident in Canada, the taxpayer elects in prescribed manner and furnishes to the Minister security acceptable to the Minister for the payment of the additional tax that would have been payable by the taxpayer under this Part for the year had the taxpayer not so elected,

(v) where the taxpayer is an individual other than a trust and was, during the 10 years immediately preceding the particular time, resident in Canada for a period or periods totalling 60 months or less, property that was

(A) owned by the taxpayer at the time the taxpayer last became resident in Canada, or

(B) acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada, and

(vi) a right to acquire shares of the capital stock of a corporation where section 7 would apply if the taxpayer disposed of the right to a person with whom the taxpayer was dealing at arm's length,

for proceeds equal to its fair market value at the time of disposition, which proceeds shall be deemed to have become receivable and to have been received by the taxpayer at the time of disposition;

Proposed Amendment — 128.1(4)(b)

(b) **deemed disposition** — the taxpayer is deemed to have disposed, at the time (in this paragraph and paragraph (d) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer other than, if the taxpayer is an individual,

(i) real property situated in Canada, a Canadian resource property or a timber resource property,

(ii) capital property used in, eligible capital property in respect of or property described in the inventory of, a business carried on by the taxpayer through a permanent establishment (as defined by regulation) in Canada at the particular time,

(iii) an excluded right or interest of the taxpayer,

(iv) if the taxpayer is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property that was owned by the taxpayer at the time the taxpayer last became resident in Canada or that was acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada, and

(v) any property in respect of which the taxpayer elects under paragraph (6)(a) for the taxation year that includes the first time, after the particular time, at which the taxpayer becomes resident in Canada,

for proceeds equal to its fair market value at the time of disposition, which proceeds are deemed to have become receivable and to have been received by the taxpayer at the time of disposition;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 77(3), will amend para. 128.1(4)(b) to read as above, applicable to changes in residence that occur after October 1, 1996.

S. 78 of the amending legislation provides:

78. (1) If an individual ceased at any time after 1992 and before October 2, 1996 to be resident in Canada and so elects in writing and files the election with the Minister of National Revenue before the end of the sixth month following the month in which this Act is assented to, subparagraph 128.1(4)(b)(iii) of the Act as it read at that time shall, in respect of the cessation of residence, be read as enacted by this Act and as though subsection 128.1(10) of the Act, as enacted by this Act, applied.

(2) Where an individual makes an election under subsection (1), notwithstanding subsections 152(4) to (5) of the Act, any reassessment of the individual's tax, interest or penalties for any year shall be made that is necessary to take the election into account.

Technical Notes: Paragraph 128.1(4)(b) treats a taxpayer who ceases to be resident in Canada as having disposed of the taxpayer's property, for proceeds equal to fair market value. This disposition is deemed to have taken place at a "time of disposition" that is immediately before the time that is immediately before the time the taxpayer ceases to be resident. The time of cessation of residence is referred to in the provision as the "particular time" and in these notes as the "emigration time."

Where the taxpayer is an individual, certain types of property are exempted from the deemed disposition. These properties, generally, are those that would be subject to Canadian taxation in the hands of a non-resident.

Paragraph 128.1(4)(b) is amended to ensure that this policy is better reflected in the legislation. Under amended paragraph 128.1(4)(b), an individual emigrant from Canada is treated as having disposed of all property other than:

(i) real property situated in Canada, Canadian resource properties and timber resource properties;

(ii) property of a business carried on by the individual, at the emigration time, through a permanent establishment in Canada – including capital property, eligible capital property and property described in the inventory of the business;

(iii) property that is an "excluded right or interest" of the individual. As defined in new subsection 128.1(10) of the Act, the term "excluded right or interest" includes many kinds of income rights and other properties. See the commentary on new subsection 128.1(10) for more details;

(iv) certain property of short-term residents (see below); and

(v) certain property of a short-term non-resident (see the commentary on new subsection 128.1(6) of the Act).

Since the definition "excluded right or interest" in new subsection 128.1(10) encompasses rights under agreements referred to in subsections 7(1) and 7(1.1) of the Act (options of employees to acquire shares of a corporation or units of a mutual fund trust), existing subparagraph 128.1(4)(b)(vi), which refers only to employee stock options, is unnecessary and is repealed.

Under new subparagraph 128.1(4)(b)(iv), an individual (other than a trust) who has been resident in Canada for 60 months or less during the 10-year period preceding the cessation of residence is not deemed to dispose of any property that the individual owned on becoming resident in Canada, or that the individual inherited after becoming resident here. (This exception was formerly provided under subparagraph 128.1(4)(b)(v) of the Act.)

Where an individual (other than a trust) ceases to be resident in Canada after October 1, 1996 and re-establishes Canadian residence at a later time, a special rule, set out in new subsection 128.1(6), enables the individual to exclude all property from the deemed disposition in respect of the cessation of residence. For additional information, see the commentary on subsection 128.1(6).

Two additional points should be noted. First, where an emigrating individual owns shares of a corporation which owns a life insurance policy under which the individual's life is insured, upon the deemed disposition at departure of the individual's shares in the corporation, a special rule contained in amended subsection 70(5.3) of the Act will be used in the valuation of the corporation's shares — the cash surrender value of the life insurance policy owned by the corporation will be treated as the fair market value of that policy. Second, the Regulations will be amended after these amendments receive Royal Assent, so that the definition "permanent establishment" in section 8201 of the Regulations will apply for the purpose of subparagraph 128.1(4)(b)(ii) of the Act.

Amended paragraph 128.1(4)(b) generally applies after October 1, 1996. In addition, an individual who ceased to be a Canadian resident after 1992 and before October 2, 1996 may also elect to exclude from the deemed disposition at emigration property described in the definition "excluded right or interest" in new subsection 128.1(10) of the Act. This election must be made in writing filed with the Minister of National Revenue within six months of these amendments receiving Royal Assent. It should also be noted that this election will cause amended subparagraph 115(1)(a)(i) of the Act to apply. For additional information, see the commentary on subsection 115(1).

Transition

Paragraph 128.1(4)(b) of the Act treats a person who ceases to be resident in Canada as having disposed of most of the person's properties. The changes these amendments introduce to that deemed disposition apply, as a general matter, after October 1, 1996. However, certain of the changes are relieving clarifications of the scope of the deemed disposition. This provision allows a taxpayer who ceased to be resident in Canada after 1992 and before October 2, 1996 to elect that those relieving changes apply to that cessation of residence. In particular, an election under this provision will allow an individual who ceased to be resident in Canada after 1992 and before October 2, 1996 to rely on the new definition "excluded right or interest" in new subsection 128.1(10) of the Act in respect of that cessation of residence, for the purpose of the deemed disposition rules under subsection 128.1(4) of the Act.

It should be noted that such an election, which must be made in writing filed with the Minister of National Revenue before the end of the sixth month following Royal Assent to these amendments, will also cause certain changes to section 115 of the Act to apply. For additional information, see the commentary on section 115 and 128.1(4)(d)–(f).

Notice of Ways and Means Motion (re taxpayer migration), June 5, 2000: See under 128.1(4)(d)–(f).

(c) **reacquisition** — the taxpayer shall be deemed to have reacquired, at the particular time, each property deemed by paragraph (b) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property;

(d) **individual** — notwithstanding paragraphs (b) and (c), where a taxpayer who is an individual other than a trust so elects in prescribed manner, on or before the taxpayer's balance-due day for the taxation year that includes the particular time, in respect of any property described in subparagraph (b)(i) or (ii), the taxpayer shall be deemed to have disposed of the property at the time of disposition for proceeds equal to its fair market value at that time, and to have reacquired the property at the particular time at a cost equal to those proceeds;

(e) **deemed [taxable Canadian] property** — capital property in respect of which a taxpayer elects under subparagraph (b)(iv) shall be deemed to be taxable Canadian property of the taxpayer from the particular time until the earlier of

(i) the time when the taxpayer disposes of the property, and

(ii) the time when the taxpayer next becomes resident in Canada; and

(f) **losses on election** — where a taxpayer elects under subparagraph (b)(iv) or paragraph (d),

(i) the taxpayer's income for the taxation year that includes the particular time shall be deemed to be the greater of

(A) that income otherwise determined, and

(B) the lesser of

(I) that income determined without reference to this subsection, and

(II) that income determined without reference to subparagraph (b)(iv) and paragraph (d), and

(ii) the amount of each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time shall be deemed to be the lesser of

(A) that amount otherwise determined, and

(B) the greater of

(I) that amount determined without reference to this subsection, and

(II) that amount determined without reference to subparagraph (b)(iv) and paragraph (d).

Proposed Amendment — 128.1(4)(d)–(f)

(d) **individual — elective disposition** — notwithstanding paragraphs (b) to (c), if the taxpayer is an individual (other than a trust) and so elects in prescribed form and manner in respect of a property described in subparagraph (b)(i) or (ii),

(i) the taxpayer is deemed to have disposed of the property at the time of disposition for proceeds equal to its fair market value at that time and to have reacquired the property at the particular time at a cost equal to those proceeds,

(ii) the taxpayer's income for the taxation year that includes the particular time is deemed to be the greater of

(A) that income determined without reference to this subparagraph, and

(B) the lesser of

(I) that income determined without reference to this subsection, and

(II) that income determined without reference to subparagraph (i), and

(iii) each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time is deemed to be the lesser of

(A) that amount determined without reference to this subparagraph, and

(B) the greater of

(I) that amount determined without reference to this subsection, and

(II) that amount determined without reference to subparagraph (i); and

(d.1) **employee CCPC stock option shares** — if the taxpayer is deemed by paragraph (b) to have disposed of a share which was acquired under circumstances to which subsection 7(1.1) applied, there shall be deducted from the taxpayer's proceeds of disposition the amount that would, if section 7 were read without reference to subsection 7(1.6), be added under paragraph 53(1)(j) in computing the adjusted cost base to the taxpayer of the share as a consequence of the deemed disposition.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 77(4), will amend para. 128.1(4)(d) to read as above, add para. (d.1) and repeal paras. (e) and (f), applicable to changes in residence that occur after October 1, 1996 except for para. (d.1) which is applicable to changes in residence that occur after 1992.

Technical Notes: Paragraph 128.1(4)(b) treats taxpayers that cease to be resident in Canada as having disposed of their property, subject to certain exceptions, for proceeds equal to the property's fair market value. Paragraph 128.1(4)(d) allows an individual (other than a trust) to choose to treat certain of the properties that would otherwise be exempt from that deemed disposition as having been disposed of. An emigrant might make this choice if, for example, the emigrant wanted to realize a latent loss on such a property in order to offset a gain resulting from the deemed disposition.

This optional deemed disposition is retained in amended paragraph (d). In addition, the paragraph reproduces the effect of existing paragraph 128.1(4)(f), which ensures that losses realized as a result of a paragraph (d) election may only offset the increase, if any, in the taxpayer's income as a result of the deemed disposition on emigration. With this effect now provided in paragraph (d) itself, paragraph (f) is no longer necessary and is repealed.

New paragraph 128.1(4)(d.1) is introduced to ensure appropriate tax consequences where an individual (other than a trust) emigrates from Canada holding shares acquired under a employee stock option granted by a Canadian-controlled private corporation (CCPC). Under section 7 of the Act, an individual who acquires shares under an employee stock option agreement is deemed to have received an employment benefit equal to the fair market value of the shares at the time of acquisition less the price paid by the individual to acquire the shares. In the case of CCPC options, subsection 7(1.1) defers the income inclusion to the year in which the individual disposes of the shares. When this occurs, the amount of the benefit is added (by virtue of paragraph 53(1)(j)) to the adjusted cost base (ACB) of the shares, thus affecting the capital gain (or loss) determined in connection with the disposition of the shares.

New subsection 7(1.6) provides that the deemed disposition rules in subsection 128.1(4) do not apply for the purposes of section 7. Thus, in the case of shares acquired by an individual under a CCPC option, there is no income inclusion under section 7 triggered by the individual's emigration and similarly no adjustment to the ACB of the shares under paragraph 53(1)(j). However, for capital gains purposes, new paragraph 128.1(4)(d.1) applies to reduce the individual's proceeds of disposition in respect of the shares by the amount that would have been added to the ACB of the shares (by virtue of paragraph 53(1)(j)) had there been a deemed disposition for the purposes of section 7. This ensures that the individual's capital gain (or loss) determined in connection with the deemed disposition on emigration takes into account the amount that will eventually be taxed under section 7.

EXAMPLE — CCPC shares acquired under employee stock option

From 1993 to 1998, Katharine was employed by a Canadian-controlled private corporation (CCPC). Part of Katharine's compensation for 1995 was an option to buy 100 shares of the corporation at a price of $1 a share. In 1996, when the shares were worth $2 each, Katharine exercised the option. In 1999, when the shares are worth $6 each, Katharine emigrates from Canada.

Under amended paragraph 128.1(4)(b), Katharine will be treated as having disposed of the shares for proceeds of $600 (= 100 × $6 fair market value). Ordinarily, the disposition would trigger an income inclusion of $100 under section 7 (= 100 × ($2 - $1)), a corresponding addition of $100 to the ACB of the shares under paragraph 53(1)(j) (resulting in a total ACB of $200), a deduction of $25 (= .25 × $100) under paragraph 110(1)(d.1) in computing taxable income, and a taxable capital gain of $300 (= .75 × ($600 - $200).

However, as a result of new subsection 7(1.6), Katharine will not be subject to any income inclusion under section 7 in respect of the deemed disposition and, thus, there will be no addition to the ACB of the shares under paragraph 53(1)(j). Were it not for new paragraph 128.1(4)(d.1), this would result in Katharine having a taxable capital gain of $375 (= .75 ($600 - $100)) on the deemed disposition of the shares under paragraph 128.1(4)(b), and an additional income inclusion of $100 minus $25 on the actual disposition of the shares.

Paragraph 128.1(4)(d.1) addresses this by deducting from the proceeds of disposition, for capital gains purposes, the $100 that paragraph 53(1)(j) would have added to the ACB of the shares if there had been an income inclusion under section 7 on emigration. As a result, Katharine will realize a taxable capital gain of $300 on the deemed disposition of the shares (and an additional income inclusion of $100 less $25 when she actually disposes of the shares).

Existing paragraph 128.1(4)(e) relates to the election, under existing subparagraph (b)(iv), to exclude from the deemed disposition on emigration a property that is not taxable Canadian property. If an emigrant uses this optional exclusion, paragraph (e) treats the property as taxable Canadian property of the taxpayer until the property is disposed of or the taxpayer returns to Canada. Since the subparagraph (b)(iv) election is no longer available, paragraph (e) is repealed.

New paragraph 128.1(4)(d.1) applies to changes in residence after 1992. The other amendments described above apply to changes in residence after October 1, 1996.

Notice of Ways and Means Motion (re taxpayer emigration), October 2, 1996: *Property used in carrying on business in Canada*

(3) That any capital property used by a non-resident person at any time after October 1, 1996 in carrying on a business (other than an insurance business) in Canada, and that ceases at any subsequent time to be so used by that person (otherwise than by reason of the property's disposition) be deemed to have been disposed of by the person for proceeds equal to the property's fair market value at that subsequent time.

Information reporting

(4) That all individuals who cease at any time after 1995 to be Canadian residents and who own at that time property the total fair market value of which is greater than $25,000 be required to provide a report in prescribed form listing each property that they owned at that time (other than a personal-use property that has a fair market value of less than $10,000).

Deemed disposition on emigration

(5) That the deemed disposition on emigration under subsection 128.1(4) of the Act be revised, in respect of an individual who at any time after October 1, 1996 ceases to be resident in Canada, to:

(a) provide for the mandatory deemed disposition and reacquisition at fair market value of all the individual's property other than

(i) real property situated in Canada,

(ii) capital property used in, or property described in an inventory of, a business carried on by the individual through a permanent establishment in Canada immediately before that time, and

(iii) property described in subparagraph 128.1(4)(b)(iii), (v) or (vi) of the Act, and

(b) permit the individual to provide security acceptable to the Minister of National Revenue for the payment of any tax liability arising as a result of the deemed disposition described in subparagraph (a).

Trust distributions

(6) That

(a) any property (other than property described in any of clauses (5)(a)(i) to (iii)) distributed by a trust at any time after October 1, 1996 to a non-resident beneficiary be deemed to have been disposed of by the trust at its fair market value at that time, and that the trust or the beneficiary be allowed to provide security acceptable to the Minister of National Revenue for the payment of any tax arising as a result of the deemed disposition of any property that was taxable Canadian property, and

(b) any property that was taxable Canadian property of a trust and that was distributed by the trust to a beneficiary on or before October 1, 1996 be deemed, for greater certainty, to be taxable Canadian property of the beneficiary after that date.

[For resolutions (1) and (2) in the same Notice of Ways and Means Motion, see under 115(1)(b) — ed.]

Technical Background

Taxpayer Migration

1. Overview

This Notice of Ways and Means Motion expresses the Government's intention to recommend certain changes to the income tax rules that apply to taxpayers who enter or leave Canada. Most of these changes are rather technical in nature. The most far-reaching proposals will require a more comprehensive deemed disposition and reacquisition of an emigrant's property, and will impose new reporting requirements on individual emigrants.

The Government recognizes the significance of these proposed changes, and invites Canadians to comment on them as they proceed toward implementation.

2. The current rules

Canada is among the very few countries that impose any special tax rules on individuals who become or cease to be residents. The main purpose of these rules, which have applied since 1972, is to ensure that immigrants and emigrants are taxed in Canada on all their gains on Canadian property, and on other gains that accrued while they were resident in Canada.

Immigration

A taxpayer who becomes a resident of Canada is generally treated as having disposed of and reacquired all of the taxpayer's property at its fair market value. This ensures that Canada will tax only that part of any gain on the property that accrued after the person became resident here. Property in respect of which any gain was already subject to tax in Canada ("taxable Canadian property", or TCP) is not subject to this deemed disposition. That is because Canada's *Income Tax Act* subjects the full amount of such gains to tax when the property is actually disposed of.

Example

N. moved to Canada from Country A in 1985. At the time of the move, N. owned an apartment building situated in Country A, and one in Canada. Each property cost N. $75,000 (or the equivalent), and each had a fair market value in 1985 of $100,000. N. sold both buildings in 1995, for $125,000 each.

For Canadian tax purposes N. was treated as having disposed of and reacquired the building in Country A for $100,000 before becoming a resident of Canada. N.'s tax cost of the building is now $100,000. Canada will thus tax only the $18,750 taxable capital gain ($25,000 capital gain X 75%) on the building in Country A that accrued while N. was a resident of Canada. Since the Canadian building is taxable Canadian property, N. was not treated as having disposed of it in 1985. Canada will tax, in 1995, the full $37,500 taxable capital gain ($50,000 capital gain X 75%) on that building.

Emigration

A taxpayer who ceases to be resident in Canada is generally treated as having disposed of and reacquired, at fair market value, all the taxpayer's property other than taxable Canadian property, stock options, and certain pension and similar rights. Individuals (other than trusts, which are individuals for tax purposes) can also choose not to be treated as having disposed of any non-TCP, provided they give security for any tax they would otherwise have had to pay.

Example

X. moved to Country B from Canada in 1990. At the time of the move, X. owned an apartment building situated in Country B, and one in Canada. Each property cost X. $75,000 (or the equivalent), and each had a fair market value in 1990 of $100,000. X. sold both buildings in 1995, for $125,000 each.

For Canadian tax purposes X. was treated as having disposed of and reacquired the building in Country B for $100,000 before ceasing to be a resident of Canada. Canada thus taxed the $18,750 taxable capital gain ($25,000 capital gain X 75%) on the Country B building that accrued while X. was a resident of Canada. But Canada will not tax X.'s post-departure gain on that building. Since the Canadian building is taxable Canadian property, X. was not treated as having disposed of it in 1990. Canada will tax the full $37,500 taxable capital gain ($50,000 capital gain X 75%) on that building.

Special rules

Several special rules apply to particular kinds of taxpayer. A Canadian trust, for example, may distribute property to a non-resident beneficiary: the rules treat that distribution as a fair market value disposition, except where the property is taxable Canadian property. Other rules treat property that is acquired on a tax-deferred ("rollover") basis in exchange for TCP as being itself TCP.

3. What will change

The most important changes proposed in this Notice of Ways and Means Motion relate to individuals (including trusts) who emigrate from Canada. First, the class of properties treated as having been sold on emigration will be expanded. Anyone who ceases to be a resident of Canada after October 1, 1996 will be treated as having disposed of and reacquired all property (including taxable Canadian property) other than Canadian real estate, Canadian business property and the properties described in current *Income Tax Act* subparagraphs 128.1(4)(b)(iii) (pension and other rights), (v) (certain property of short-term residents) and (vi) (stock options). This will have the effect of determining the emigrant's tax liability in respect of any accrued capital gains. The emigrant can either pay the tax immediately, or give Revenue Canada security for paying it later (without interest charges), when the property is actually sold.

Second, all individual emigrants who own property with a total value of more than $25,000 will be required to report their property holdings to Revenue Canada. An exception will be made for any personal-use property (a defined term that includes clothing, household goods, cars, etc.) with a value of less than $10,000. This reporting requirement will apply to all individuals who have left Canada after 1995, and will take the form of a schedule or similar document to be included with those persons' income tax returns for the year they left Canada.

Other changes include:

- Extending to 5 years the period for determining whether certain shares and partnership and trusts interests are taxable Canadian property. This will make it more difficult for non-resident taxpayers to manipulate the status of a share or interest by changing the investment mix of the corporation, partnership or trust.
- Deeming a disposition and reacquisition at fair market value of any capital property (such as shares or bonds held on capital account) that ceases to be used by a non-resident person in carrying on a business in Canada. This will reduce the opportunity for non-residents to avoid Canadian tax by changing the use of a property to benefit from tax-treaty protection.
- Deeming a disposition at fair market value of all property (other than Canadian real estate) distributed by a trust to a non-resident beneficiary (with the trust and beneficiary being provided the right to provide security for the tax otherwise payable), and clarifying that taxable Canadian property distributed by a trust remains taxable Canadian property to the beneficiary.
- Clarifying that property may be taxable Canadian property not only to non-residents, but also to residents of Canada. This will ensure that a number of aspects of the migration rules work as intended.

4. Next steps

The Government invites comment on these proposals. Comments may be directed to the Minister of Finance.

Notes: For an overview of the proposed amendments, see Douglas Powrie, "Taxpayer Migration: The December 1998 Proposals", *International Tax Planning* (Federated Press), Vol. VIII No. 2 (1999), pp. 556-564.

Questions and Answers on Proposed Changes

Background

Q. What events led up to the changes being announced today?

A. The Auditor-General raised certain concerns about a 1991 tax ruling [see ATR-70 — ed.] that allowed a taxpayer to transfer property out of Canada without being subject to immediate capi-

tal gains tax in Canada. The Finance Committee examined the issue and found that Revenue Canada's interpretation of the law as it stood in 1991 was legally correct in the context of a system that taxed emigrating Canadians on their property gains only when they ultimately sold the property.

The Committee noted, however, that Canada's right to impose tax on former Canadian residents was sometimes limited under the terms of its tax treaties with other countries. It thus recommended that the system be changed to ensure that Canadian tax be assessed at the point when property is transferred to persons living outside of Canada, or when the individual or trust owning the property leaves the country. These changes implement this recommendation.

Structure of previous system

Q. How did the system work that was in effect before today?

A. The previous system provided that gains on property owned by individuals or trusts when they moved from Canada were either taxable in Canada or, if a tax treaty applied, in their new country of residence, when the property was ultimately sold. Similar rules applied to trust distributions to foreign beneficiaries: either the trust would pay tax when the property was distributed, or the beneficiaries would be liable to tax in Canada or in their country of residence.

Effect on trusts

Q. Will the proposed changes affect transactions like that highlighted in the Auditor General's report?

A. Yes. These changes will ensure that gains on property held in a trust are subject to Canadian tax when the trust moves, or the property is distributed to people who live outside Canada.

The transaction described in the Auditor General's report involved the distribution of Canadian property by a trust to a beneficiary that lived in another country. If that transaction were to take place today, any gains accruing on the property while it was owned by the trust would be subject to Canadian tax — with the tax being payable either on distribution or, where security is provided, when the property is sold by the beneficiary.

Family trusts

Q. Does this eliminate the tax advantages associated with family trusts?

A. This issue is not specifically about family trusts. Any remaining tax advantages that family trusts may have had were eliminated by the changes announced in the 1995 budget.

The changes being made today concern all taxpayers who move out of Canada or who, in the case of trusts, distribute property to persons living outside of Canada. In effect, the changes ensure that gains arising while living in Canada will ultimately be subject to Canadian tax, and they apply equally to individuals and trusts. (Corporations are already taxable on such gains when they leave Canada, and this rule is to be maintained.)

Timing of announcement

Q. Should these changes have been announced before today?

A. The government has acted as soon as it was reasonable to do so. In May of this year the Auditor-General identified a concern with the tax system. The government immediately referred the issue to the Finance Committee, which examined the issue and issued its report two weeks ago. The government is now proposing to implement the Committee's recommendations, with effect as of today.

Retroactivity

Q. Why isn't the government giving these changes retroactive effect?

A. It would be inappropriate and unfair to tell taxpayers that their past actions will now be retroactively taxed under a set of rules that they couldn't have known about before today. The changes announced today reflect a new policy — one that taxpayers will have to take into account in their future affairs.

Consultation

Q. Will there be an opportunity for taxpayers to comment on the proposed changes before they are implemented?

A. The changes are reasonable and responsive to the concerns that the Auditor-General and the Finance Committee raised but, as is the case with all income tax proposals, taxpayers' comments on the effect of these changes are invited and will be taken into account in developing the implementing legislation.

Effect of proposed changes

Q. What do these changes do?

A. Most significantly, the changes will treat individuals and trusts who leave Canada as having realized any gains accrued on their property up to that point in time. They will have the option of paying the tax on those gains when they file their tax return for the year they leave Canada or, by providing security to Revenue Canada, can defer their payment until the property is sold.

In other words, the proposed changes ensure that all emigrants from Canada — including trusts — will pay Canadian tax on any capital gains that have accrued in Canada up to the time of departure. They also apply to ensure that trust distributions to foreign beneficiaries will be subject to Canadian tax. In both cases, the Canadian tax can be paid immediately, or security can be provided to Revenue Canada to pay the tax, without interest charges, when the property is actually sold.

The proposals also include several technical changes:

- to tighten the rules for taxing non-residents of Canada on gains they realize from the sale of interests in partnerships and trusts which have significant interests in Canadian property;
- to ensure that Canadian tax is payable with respect to gains from property used by non-residents in carrying on business in Canada;
- to confirm that the term "taxable Canadian property" applies to Canadian residents as well as non-residents, thus ensuring that a resident planning to leave Canada can't limit the gains which are taxable in Canada by exchanging TCP for non-TCP before he leaves;
- to clarify that Canadian tax with respect to gains on trust property distributed to non-resident beneficiaries before today will (subject to Canada's tax treaties) be taxed in the beneficiaries' hands if the trust wasn't liable to tax itself; and
- to require all individuals and trusts leaving Canada to file an information return reporting all of the significant assets they hold at the point of departure.

Compliance concerns

Q. What new obligations will this place on taxpayers?

A. To minimize any immediate tax burden that these changes might otherwise create, the emigrant will be able to pay the tax when the property is actually sold, provided the emigrant gives Revenue Canada security for that later payment. No interest will be charged on the tax liability during this period.

The changes will also require departing Canadians to file an information return listing all of their significant assets. This return, which in the case of individuals is required to be filed by April 30 of the year following the year of departure, will not be required for taxpayers having property with a total value of less than $25,000.

Department of Finance press release, October 2, 1996: *Taxpayer Migration Rules to be Tightened*

Finance Minister Paul Martin today announced major changes to the income tax rules for people who leave Canada. These changes will ensure that taxpayers who move or transfer property from Canada will remain subject to Canadian tax on their gains from such property.

"Canada already has one of the strictest systems in the world when it comes to taxpayer migration," the Minister said. "This will make our system even better."

The Minister noted that the Auditor General had raised the issue of Canada's taxpayer migration rules in his report earlier this year, and that the House of Commons Finance Committee recently made several recommendations for improving Canada's

tax system in this regard. Today's changes follow the recommendations of the Committee majority.

"From now on, all emigrants — including trusts — will be subject to Canadian tax on any gains that have accrued up to the time of departure, other than on Canadian real estate and a limited group of other assets — which Canada always retains the right to tax," Mr. Martin explained. "The only people this will not apply to are people who have been in Canada only temporarily."

Until now, emigrants have not been taxed on gains on certain Canadian property at the time they leave. Instead, either Canada or (where a tax treaty applies) their new country taxes those gains when they actually dispose of the property.

People who leave Canada under the new rules will calculate their tax as though they had disposed of all their property other than Canadian real estate and certain other assets. They can either pay the tax immediately or give Revenue Canada security for paying it at a later date.

In addition, today's changes implement the technical recommendations put forward by the Committee, including those regarding trusts that distribute property to non-residents.

A copy of the Notice of Ways and Means Motion tabled by the Minister today, accompanied by the Minister's remarks on tabling, is attached. A technical background note and a series of questions and answers relating to the changes are also attached.

For further information: Brian Ernewein, Tax Legislation Division, (613) 992-3045.

Related Provisions: 7(1.6) — Deemed disposition does not apply to stock option rules; 10(12) — Non-resident ceasing to use inventory — deemed disposition; 28(4), (4.1) — Farmer or fisherman ceasing to be resident in Canada; 44(2)(d) — Exchanges of property; 53(4) — Effect on ACB of share, partnership interest or trust interest; 54"superficial loss"(c) — Superficial loss rule does not apply; 70(5.3) — Value of shares of corporation that owns life insurance policy; 74.2(3) — Application of spousal attribution rule to disposition on emigration; 104(4)(a.3) — Deemed disposition of property by trust on emigration of transferor; 106(1.1)(b) — Deemed cost of income interest in trust; 107(1.1)(b)(ii) — Deemed cost of income interest in trust; 114 — Individual resident during only part of year; 119 — Credit where stop-loss rule in 40(3.7) applies; 126(2.2) — Foreign tax credit on property deemed to be taxable Canadian property; 126(2.21), (2.22) — Foreign tax credit after emigration; 128.1(1)(b) — Deemed disposition on immigration; 128.1(5) — Deemed disposition does not increase instalment requirements; 128.1(6) — Returning former resident; 128.1(8) — Post-emigration loss; 128.1(9) — Information reporting; 139.1(5) — Value of ownership rights in insurer during demutualization; 159(4), (4.1) — Election where subsec. 128.1(4) applies; 219.1 — Tax on corporate emigration; 220(3.2) — Late filing of elections under 128.1(4)(b)(iv) and 128.1(4)(d); 220(4.5)–(4.54) — Deferral of payment of departure tax; 226 — Demand for payment of taxes owing when taxpayer leaving Canada, and seizure of goods; Canada-U.S. Tax Convention Art. XIII:6, 7 — effect of emigration to U.S. on future capital gains; Canada-U.K. Tax Convention Art. 13:9 — effect of emigration to U.K. on future capital gains.

History: Subpara. 128.1(4)(b)(iii) amended by 1998, c. 19, s. 36, applicable to changes of residence that occur after October 1, 1996. Subpara. 128.1(4)(b)(iii) formerly read:

> (iii) where the taxpayer is an individual, a right to receive a payment described in any of paragraphs 212(1)(h) and (j) to (q) or a right to receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

Subsec. 128.1(4) enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

Regulations: 600(c), (c.1) (late filing of elections under (4)(b)(iv) and (4)(d)); 1300 (election under 128.1(4)(b)(iv)); 1302 (election under 128.1(4)(d)); 8201 (permanent establishment; to be prescribed for (4)(b)(ii)).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-137R3: Additional tax on certain corporations carrying on business in Canada; IT-259R3: Exchanges of property; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

Advance Tax Rulings: ATR-70: Distribution of taxable Canadian property by a trust to a non-resident. [This was the 1991 ruling criticized by the Auditor General in 1996 that led to the October 2, 1996 proposals — ed.].

Forms: T2061: Election by emigrant to defer deemed disposition of property and capital gains thereon; T2061A: Election by emigrant to report deemed dispositions of taxable Canadian property and capital gains and/or losses thereon.

Proposed Addition — 128.1(5)–(9)

(5) Instalment interest — If an individual is deemed by subsection (4) to have disposed of a property in a taxation year, in applying sections 155 and 156 and subsections 156.1(1) to (3) and 161(2), (4) and (4.01) and any regulations made for the purposes of those provisions, the individual's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(a) the individual's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (4) did not apply to the individual for the year.

Technical Notes: Sections 155 and 156 of the Act set out rules for computing the instalment obligations of individuals for a taxation year. Subsections 161(2), (4) and (4.01) of the Act set out rules for computing the interest payable by taxpayers on any deficiency in instalments made during a taxation year.

New subsection 128.1(5) of the Act provides a special rule for computing the instalment and instalment interest obligation of an individual for a taxation year in which the individual ceases to be a resident of Canada. This subsection applies to exclude, in computing an individual's liability for instalments for the year, the tax attributable to any deemed disposition under paragraph 128.1(4)(b), where that paragraph has the effect of increasing the individual's total tax payable under Parts I and I.1 of the Act for the year.

New subsection 128.1(5) applies to changes in residence that occur after October 1, 1996.

(6) Returning former resident — If an individual (other than a trust) becomes resident in Canada at a particular time in a taxation year and the last time (in this subsection referred to as the "emigration time"), before the particular time, at which the individual ceased to be resident in Canada was after October 1, 1996,

(a) subject to paragraph (b), if the individual so elects in writing and files the election with the Minister on or before the individual's filing-due date for the year, paragraphs (4)(b) and (c) do not apply to the individual's cessation of residence at the emigration time in respect of all properties that were taxable Canadian properties of the individual throughout the period that began at the emigration time and that ends at the particular time;

(b) where, if a property in respect of which an election under paragraph (a) is made had been acquired by the individual at the emigration time at a cost equal to its fair market value at the emigration time and had been disposed of by the individual immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, the application of subsection 40(3.7) would reduce the amount that would,

but for subsection 40(3.7) and this subsection, be the individual's loss from the disposition,

(i) the individual is deemed to have disposed of the property at the time of disposition (within the meaning assigned by paragraph (4)(b)) in respect of the emigration time for proceeds of disposition equal to the total of

(A) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(B) the amount, if any, by which that reduction exceeds the lesser of

(I) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(II) the amount, if any, which the individual specifies for the purposes of this paragraph in the election under paragraph (a) in respect of the property,

(ii) the individual is deemed to have reacquired the property at the emigration time at a cost equal to the amount, if any, by which the amount determined under clause (i)(A) exceeds the lesser of that reduction and the amount specified by the individual under subclause (i)(B)(II), and

(iii) for the purposes of section 119, the individual is deemed to have disposed of the property immediately before the particular time;

(c) if the individual so elects in writing and files the election with the Minister on or before the individual's filing-due date for the year, in respect of each property that the individual owned throughout the period that began at the emigration time and that ends at the particular time and that is deemed by paragraph (1)(b) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs (1)(c) and (4)(b) the individual's proceeds of disposition at the time of disposition (within the meaning assigned by paragraph (4)(b)), and the individual's cost of acquiring the property at the particular time, are deemed to be those proceeds and that cost, determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the individual's gain from the disposition of the property deemed by paragraph (4)(b) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual specifies for the purposes of this paragraph in the election; and

(d) notwithstanding subsections 152(4) to (5), any assessment of tax that is payable under this Act by the individual for any taxation year that is before the year that includes the particular time and that is not before the year that includes the emigration time shall be made that is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by a taxpayer in respect of any period that is before the day on which the taxpayer's return of income for the taxation year that includes the particular time is filed, or

(ii) any penalty payable under this Act.

Technical Notes: New subsection 128.1(6) of the Act provides special rules that apply to an individual (other than a trust) who ceases to be resident in Canada at any time after October 1, 1996 (the "emigration time") and re-establishes Canadian residence at any particular time after that time. These rules allow the individual in effect to unwind the application of paragraphs 128.1(4)(b) and (c) to properties that were owned by the individual throughout the period beginning at the emigration time and ending at the particular time.

In broad terms, new subsection 128.1(6) means that an emigrant who returns to Canada at any time after emigration will no longer be treated as having realized accrued gains on departure. Four points should be noted about these rules. First, because there is no certain way of knowing which emigrants will return to Canada, this rule does not directly affect the obligations that arise on emigration. Rather, the rule does allow the returning individual retrospectively to modify the obligations. As a practical matter, it is expected that most individuals who plan to return to Canada will use the security provisions of subsection 220(4.5) to defer payment of any tax arising as a result of emigration. In that case, the main effect of new subsection 128.1(6) will be to allow the security to be given back intact to the returning emigrant.

Second, these rules do not affect any interest or penalties owing by an individual, including interest and penalties levied on taxes in respect of the individual's emigration, calculated without reference to the rule.

Third, these rules include features designed to prevent surplus-stripping. Without these features, a resident of Canada could use a temporary period of non-residence to extract, as dividends subject only to low-rate withholding tax, value that represents accrued gains.

Fourth, the rules require separate elections in respect of taxable Canadian property (paragraph (a)) and other property (paragraph (c)). The effects of the elections differ: the paragraph (a) election removes taxable Canadian properties from the deemed disposition and reacquisition on emigration, subject to special rules in paragraph (b); while the paragraph (c) election adjusts the emigration proceeds of disposition and the returning adjusted cost base of the other properties. Each election covers all property of the given sort, but the returning individual may choose to make one election and not the other.

Paragraph 128.1(6)(a) allows the individual to make an election in respect of property that was taxable Canadian property at the emigration time and throughout the period that the individual was non-resident. The effect of making this election is that paragraphs 128.1(4)(b) and (c) do not apply in respect of all such properties of the individual for the taxation year that includes the emigration time.

Where an individual has made an election under paragraph 128.1(6)(a), paragraph 128.1(6)(b) provides special surplus-stripping rules in respect of the property covered by the election. The basic purpose of paragraph (b) is to ensure that gains that accrued before emigration from Canada, and that have been extracted in the form of dividends during the individual's residence abroad, are subject to Canadian tax as gains.

Paragraph 128.1(6)(b) applies, in respect of a paragraph (a) taxable Canadian property, where two conditions are met:

— a loss has accrued on the property during the individual's period of non-residence — that is, the property's fair market value immediately before the individual becomes resident is less than its fair market value when the individual left Canada; and

— if the individual had acquired the property for its fair market value on emigration, and disposed of the property immediately before becoming resident, new subsection 40(3.7) (which applies to current and former non-resident individuals a version of the stop-loss rules in section 112 of the Act) would reduce the loss.

Where these conditions are met, paragraph (b) has four related effects. First, it treats the individual as having disposed of the property immediately before emigration, notwithstanding the paragraph (a) election. Second, it establishes the individual's proceeds of disposition of the property at that time, as the total of:

(A) the adjusted cost base of the property on emigration; and

(B) the amount, if any, by which the notional loss reduction under subsection 40(3.7) exceeds the lesser of (I) the adjusted cost base on emigration, and (II) an amount chosen by the individual.

Third, paragraph 128.1(6)(b) treats the individual as having reacquired the property on emigration, at a cost equal to the excess, if any, of the property's adjusted cost base on emigration (the (A) and (B)(I) amount above) over the lesser of the notional loss reduction under subsection 40(3.7) and the amount chosen by the individual in (B)(II) above.

The practical result of the second and third effects is that the income (in this case, dividends) that gives rise to the notional subsection 40(3.7) loss reduction is recharacterized as gains. Those gains are, subject to election, distributed between the post-return period and the deemed disposition on emigration.

Fourth, paragraph 128.1(6)(b) treats the individual, for the purposes of new section 119 of the Act, as having disposed of the property immediately before returning to Canada. This ensures that appropriate credit is given for any tax withheld under Part XIII of the Act on the income that triggered the application of paragraph 128.1(6)(b).

EXAMPLE — 128.1(6)(b)

Marie emigrates from Canada in 1999. Marie is the majority shareholder of a Canadian-controlled private corporation (CCPC) when she leaves Canada. The shares, which are taxable Canadian property to Marie, have a fair market value (FMV) at that time of $50,000 and an adjusted cost base (ACB) of $15,000, for a latent gain of $35,000. Marie receives $35,000 of dividends from the CCPC in 2000. In 2001, Marie returns to Canada. At that time, the shares have a FMV of $15,000. Marie uses the election in subsection 128.1(6) to minimize the tax consequences of her earlier emigration from Canada.

If Marie actually disposed of the shares immediately before re-establishing Canadian residence, subsection 40(3.7) of the Act would reduce her loss. Therefore, paragraph 128.1(6)(b) applies in respect of the shares.

Under paragraph 128.1(6)(b), Marie is treated as having disposed of and reacquired the shares on emigration. Assuming she elects $10,000, Marie's emigration proceeds of disposition are deemed to be $40,000, being the emigration ACB ($15,000) plus the difference between the subsection 40(3.7) reduction ($35,000) and the ACB/specified amount ($10,000). Marie thus realizes a $25,000 capital gain in the emigration year.

Marie's reacquisition cost is deemed to be $5,000, being the original ACB ($15,000) minus the lesser of the subsection 40(3.7) reduction ($35,000) and the specified amount ($10,000). Since the shares have a FMV of $15,000, Marie will eventually realize a gain of $10,000 (subject to other adjustments to ACB and FMV).

The result is that Marie's $25,000 gain on departure and remaining $10,000 latent gain equal the $35,000 she extracted in the form of dividends. The full $35,000 will thus be realized as capital gains, and section 119 will give Marie credit for any withholding tax she paid on the dividends.

Marie could have altered the timing of her capital gains on the shares. For example, if she had elected an amount of $5,000 under paragraph (a) in respect of the property, Marie's emigration proceeds of disposition would have been $45,000 ($15,000 ACB + ($35,000 40(3.7) reduction - $5,000 elected amount)), giving an emigration gain of $30,000. This would have been balanced by an increase in Marie's reacquisition cost from $5,000 to $10,000, which in turn would reduce the eventual gain Marie will realize on the shares.

New paragraph 128.1(6)(c) allows the returning individual to make an election, in respect of each property the individual owned at the emigration time and throughout the non-resident period that is subject to a deemed acquisition on immigration, under paragraph 128.1(1)(c) of the Act. In general, this describes property other than taxable Canadian property. The election adjusts, on a property-by-property basis, both the proceeds of disposition that were deemed to arise as a consequence of the deemed disposition in paragraph 128.1(4)(b) on the individual's earlier emigration, and the deemed acquisition cost under paragraph 128.1(1)(c).

Specifically, each of these amounts is adjusted by subtracting the least of:

- the amount that would otherwise be the individual's gain on the property as a result of the deemed disposition in paragraph 128.1(4)(b),
- the fair market value of the property immediately before the individual becomes resident in Canada, and
- any other amount specified by the individual.

As a result of these adjustments, the returning individual can generally defer Canadian tax on gains that had accrued before emigration, while still protecting from Canadian tax gains that accrued during periods of non-residence.

EXAMPLE — 128.1(6)(c)

Noah emigrates from Canada in 1999. Noah owns shares of a foreign corporation. When Noah leaves, the shares have a fair market value of $25,000 and an adjusted cost base of $15,000, for an accrued gain of $10,000. In 2012, Noah returns to Canada. At that time the shares have a fair market value of $80,000. Noah chooses to take advantage of the election in paragraph 128.1(6)(c) to control the tax consequences of ceasing to be a Canadian resident. Because he had a capital loss in 1999 of $7,000 from another source, Noah is content to realize a $7,000 capital gain on emigration, but he does not want to realize the other $3,000 accrued gain. Noah therefore chooses an elected amount of $3,000.

Noah's proceeds of disposition under paragraph 128.1(4)(b) are deemed to be $22,000, being the proceeds of disposition that would otherwise be determined under paragraph 128.1(4)(b) ($25,000) minus the least of:

- the amount that would have been Noah's gain on the shares under 128.1(4)(b) had this paragraph not applied ($10,000);
- the fair market value of the property at the particular time ($80,000); and
- the elected amount specified ($3,000).

Noah thus reduces his emigration-year gain to $7,000. The same $3,000 that reduces Noah's emigration proceeds is also subtracted from his reacquisition cost under paragraph 128.1(1)(c) ($80,000), leaving his new adjusted cost base in respect of the property $77,000. The property thus has a latent gain of $3,000 at the time Noah re-establishes Canadian residence in 2012.

Noah could have deferred tax on the full $10,000 gain that accrued before emigration, by increasing his elected amount in respect of the shares to $10,000.

New subsection 128.1(6) applies to changes in residence that occur after October 1, 1996. The subsection provides that, notwithstanding the Act's ordinary rules governing assessments, any necessary assessments of tax will be made in order to take account of the effect of this new subsection.

A special transitional rule accommodates individuals who cease to be resident in Canada after October 1, 1996 and before these amendments receive Royal Assent, and who wish to make elections under new subsection 128.1(6). The elections for these transition period emigrants will be considered to have been made in a timely manner if they are made on or before the

individual's filing-due date for the taxation year that includes the day on which Royal Assent is received.

In addition, the Regulations will be amended to ensure that the Minister of National Revenue has discretion under the "fairness package" to allow elections under new subsection 128.1(6) to be late-filed. For additional information, see the commentary in the Appendix.

Related Provisions: 40(3.7) — Stop-loss rule applicable while non-resident; 128.1(7) — Returning trust beneficiary; 128.3 — Shares acquired on rollover deemed to be same shares for 128.1(6); 161(7)(a)(xi), 164(5)(h.02), 164(5.1) — Effect of carryback of loss; 220(3.2) — Late filing of elections under (6)(a) and (c); 220(4.5)-(4.54) — Deferral of payment of tax on emigration.

Regulations: 600(c) (late filing of elections under (6)(a) and (c)).

(7) Returning trust beneficiary — If an individual (other than a trust)

(a) becomes resident in Canada at a particular time in a taxation year,

(b) owns at the particular time a property that the individual last acquired on a trust distribution to which subsection 107(2) would, but for subsection 107(5), have applied and at a time (in this subsection referred to as the "distribution time") that was after October 1, 1996 and before the particular time, and

(c) was a beneficiary of the trust at the last time, after October 1, 1996 and before the particular time, at which the individual ceased to be resident in Canada,

the following rules apply:

(d) subject to paragraphs (e) and (f), if the individual and the trust jointly so elect in writing and file the election with the Minister on or before the earlier of their filing-due dates for their taxation years that include the particular time, subsection 107(2.1) does not apply to the distribution in respect of all properties acquired by the individual on the distribution that were taxable Canadian properties of the individual throughout the period that began at the distribution time and that ends at the particular time;

(e) paragraph (f) applies in respect of the individual, the trust and a property in respect of which an election under paragraph (d) is made where, if the individual

(i) had been resident in Canada at the distribution time,

(ii) had acquired the property at the distribution time at a cost equal to its fair market value at that time,

(iii) had ceased to be resident in Canada immediately after the distribution time, and

(iv) had, immediately before the particular time, disposed of the property for proceeds of disposition equal to its fair market value immediately before the particular time,

the application of subsection 40(3.7) would reduce the amount that would, but for that subsection and this subsection, have been the individual's loss from the disposition;

(f) where this paragraph applies in respect of an individual, a trust and a property,

(i) notwithstanding paragraph 107(2.1)(a), the trust is deemed to have disposed of the property at the distribution time for proceeds of disposition equal to the total of

(A) the cost amount to the trust of the property immediately before the distribution time, and

(B) the amount, if any, by which the reduction under subsection 40(3.7) described in paragraph (e) exceeds the lesser of

(I) the cost amount to the trust of the property immediately before the distribution time, and

(II) the amount, if any, which the individual and the trust jointly specify for the purposes of this paragraph in the election under paragraph (d) in respect of the property, and

(ii) notwithstanding paragraph 107(2.1)(b), the individual is deemed to have acquired the property at the distribution time at a cost equal to the amount, if any, by which the amount otherwise determined under paragraph 107(2)(b) exceeds the lesser of the reduction under subsection 40(3.7) described in paragraph (e) and the amount specified under subclause (i)(B)(II);

(g) if the individual and the trust jointly so elect in writing and file the election with the Minister on or before the later of their filing-due dates for their taxation years that include the particular time, in respect of each property that the individual owned throughout the period that began at the distribution time and that ends at the particular time and that is deemed by paragraph (1)(b) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs 107(2.1)(a) and (b), the trust's proceeds of disposition under paragraph 107(2.1)(a) at the distribution time, and the individual's cost of acquiring the property at the particular time, are deemed to be those proceeds and that cost determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the trust's gain from the disposition of the property deemed by paragraph 107(2.1)(a) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual and the trust jointly specify for the purposes of this paragraph in the election;

(h) if the trust ceases to exist before the individual's filing-due date for the individual's taxation year that includes the particular time,

(i) an election or specification described in this subsection may be made by the individual alone in writing if the election is filed with the Minister on or before that filing-due date, and

(ii) if the individual alone makes such an election or specification, the individual and the trust are jointly and severally liable for any amount payable under this Act by the trust as a result of the election or specification; and

(i) notwithstanding subsections 152(4) to (5), such assessment of tax payable under the Act by the trust or the individual for any year that is before the year that includes the particular time and that is not

before the year that includes the distribution time shall be made as is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by the trust or the individual in respect of any period that is before the individual's filing-due date for the taxation year that includes the particular time, or

(ii) any penalty payable under this Act.

Technical Notes: New subsection 128.1(7) of the Act provides special rules, which parallel new subsection 128.1(6) of the Act, applicable to an individual trust beneficiary (other than one that is itself a trust) who emigrates from Canada, receives distributions of trust property as a non-resident, and then re-establishes residence in Canada while still owning the property. In general terms, these rules allow the beneficiary and the trust to jointly elect, upon the beneficiary's return to Canada, to unwind the tax consequences to the trust that occurred when it distributed the property to the non-resident beneficiary.

A number of conditions must be met for the application of these rules: the individual must have been a resident of Canada and then ceased to be resident in Canada after October 1, 1996; the individual must have been a beneficiary of the trust at the time he or she ceased to be resident in Canada; the distribution must occur after October 1, 1996 and before the individual re-establishes residence in Canada; the distribution must be such that subsection 107(2) of the Act would have applied but for subsection 107(5); and the individual must re-establish residence in Canada after October 1, 1996 while still owning the property distributed by the trust.

Where these conditions are met, paragraph (d) provides an election for taxable Canadian property similar to the election provided in paragraph 128.1(6)(a). Paragraphs (e) and (f) provide anti-stripping rules similar to those provided by paragraph 128.1(6)(b). Paragraph (g) provides an election for property other than taxable Canadian property, similar to the election provided in paragraph 128.1(6)(c).

Paragraph (h) provides a special rule applicable if the trust ceases to exist before the individual's filing-due date for his or her taxation year during which he or she re-establishes residence in Canada. In such cases, the elections or specifications provided in new subsection 128.1(7) can be made by the individual alone. However, the individual and the trust will then be jointly and severally liable for any amount payable under the Act by the trust as a result of the election or specification.

Paragraph (i) allows any assessment of tax to be made that is necessary for the elections under new subsection 128.1(7) to be taken into account, but provides that no such assessment shall affect the computation of interest or penalties payable.

New subsection 128.1(7) applies to changes in residence that occur after October 1, 1996. A special transitional rule accommodates individuals who cease to be resident in Canada after October 1, 1996 and before these amendments receive Royal Assent, and who wish to make elections under new subsection 128.1(7). The elections for these transition period emigrants will be considered to have been made in a timely manner if they are made on or before the individual's filing-due date for the taxation year that includes the day on which Royal Assent is received.

In addition, it is proposed that the Regulations be amended to ensure that the Minister of National Revenue has discretion under the "fairness package" to allow elections under new subsection 128.1(7) to be late-filed.

Related Provisions: 40(3.7) — Stop-loss rule applicable while non-resident; 128.1(6) — Returning former resident; 128.3 — Shares acquired on rollover deemed to be same shares for 128.1(7); 161(7)(a)(xi), 164(5)(b.02), 164(5.1) — Effect of carryback of loss; 220(3.2) — Late filing of elections under (7)(d) and (g); 220(4.5)-(4.54) — Deferral of payment of tax on emigration.

Regulations: 600(c) (late filed elections under (7)(d), (g)).

(8) Post-emigration loss — If an individual (other than a trust)

(a) was deemed by paragraph (4)(b) to have disposed of a capital property at any particular time after October 1, 1996,

(b) has disposed of the property at a later time at which the property was a taxable Canadian property of the individual, and

(c) so elects in writing in the individual's return of income for the taxation year that includes the later time,

there shall, except for the purpose of paragraph (4)(c), be deducted from the individual's proceeds of disposition of the property at the particular time, and added to the individual's proceeds of disposition of the property at the later time, an amount equal to the least of

(d) the amount specified in respect of the property in the election,

(e) the amount that would, but for the election, be the individual's gain from the disposition of the property at the particular time, and

(f) the amount that would be the individual's loss from the disposition of the property at the later time, if the loss were determined having reference to every other provision of this Act including, for greater certainty, subsection 40(3.7) and section 112, but without reference to the election.

Technical Notes: New subsection 128.1(8) of the Act provides relief to an individual (other than a trust) who disposes of a taxable Canadian property, after having emigrated from Canada, for proceeds that are less than the deemed proceeds that arose under paragraph 128.1(4)(b) in respect of the property when the individual emigrated.

Under subsection 128.1(8) the individual may elect to reduce the proceeds of disposition that were deemed to arise under paragraph 128.1(4)(b) in respect of a property by the least of:

- an amount specified by the individual;
- the amount that would be the individual's gain from the deemed disposition of the property under paragraph 128.1(4)(b), but for this subsection; and
- the amount that would be the individual's loss from the disposition of the property at the time the property is actually disposed of, if the loss were determined with reference to every other provision in the Act (including the stop-loss rules in subsection 40(3.7) and section 112 of the Act) but this subsection.

The same amount is added to the individual's proceeds of disposition realized at the time of actual disposition.

EXAMPLE — 128.1(8)

Odile emigrates from Canada in 1999, owning a capital interest in a trust resident in Canada that she purchased in 1997. The interest has a fair market value at the emigration time of $150,000 and an adjusted cost base of $40,000, for a latent gain of $110,000 on departure. Odile's tax is assessed on that basis, and she posts security for the tax.

In 2001, Odile sells her trust interest for $60,000. Since Odile has realized a smaller gain than assumed in her tax assessment on emigration, she elects under subsection 128.1(8) to reduce the gain she was deemed to have realized when she emigrated.

To obtain the maximum benefit from the subsection, Odile specifies an amount of $90,000 in respect of the election. Her proceeds of disposition at the emigration time are deemed to be $60,000, being the proceeds of disposition that would otherwise be determined under paragraph 128.1(4)(b) ($150,000) minus the least of:

- the amount specified ($90,000);

- the amount that would have been her taxable gain in respect of the trust interest under 128.1(4)(b) had this paragraph not applied ($110,000); and
- the amount that would have been her loss on actual disposition of the trust interest had this paragraph not applied ($150,000 - $60,000 = $90,000).

The same $90,000 amount is added to Odile's proceeds of the actual disposition of the trust interest. The result is that, in respect of the trust interest, Odile is treated as having realized a $20,000 gain in 1999, and no gain or loss on the actual disposition of the property in 2001.

It should be noted that the election in subsection 128.1(8) does not affect any interest or penalties owing by the individual at the time of making the election, including interest and penalties levied on taxes in respect of the property, calculated without reference to the subsection.

A consequential amendment to subsection 152(6) of the Act ensures that any necessary assessments of tax will be made in order to take account of the effect of new subsection 128.1(8).

New subsection 128.1(8) applies to changes in residence that occur after October 1, 1996. A special transitional rule accommodates individuals who cease to be resident in Canada after October 1, 1996 and before these amendments receive Royal Assent, and who wish to make the election under new subsection 128.1(8). The election for these transition period emigrants will be considered to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the day on which Royal Assent is received.

In addition, the Regulations will be amended to ensure that the Minister of National Revenue has discretion under the "fairness package" to allow an election under new subsection 128.1(8) to be late-filed.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 128.1(7); 152(6)(f.2) — Minister required to reassess past year to allow unused foreign tax credit; 164(7)(a)(xi), 164(5)(b.02), 164(5.1) — Effect of carryback of loss; 220(3.2) — Late filing of election under (8)(c).

Regulations: 600(c) (late filed elections under (8)(c)).

(9) Information reporting — An individual who ceases at a particular time in a taxation year to be resident in Canada, and who owns immediately after the particular time one or more reportable properties the total fair market value of which at the particular time is greater than $25,000, shall file with the Minister in prescribed form, on or before the individual's filing-due date for the year, a list of all the reportable properties that the individual owned immediately after the particular time.

Technical Notes: New subsection 128.1(9) of the Act requires an individual who ceases to be resident in Canada after 1995 to file with the Minister of National Revenue, in prescribed form, a list of all the reportable properties that the individual owned at emigration time. This reporting requirement does not apply where the total fair market value of the individual's reportable properties at emigration time is $25,000 or less. However, where an individual owns reportable properties at emigration time with a total fair market value greater than $25,000, the individual must disclose all reportable properties on the information reporting form.

The term "reportable property" is defined in new subsection 128.1(10). For additional information, see the commentary on that subsection.

New subsection 128.1(9) applies to changes in residence that occur after 1995. The information reporting form must be filed on or before the individual's filing-due date for the year of emigration from Canada. However, a special transitional rule accommodates individuals who cease to be resident in Canada after 1995 and before these amendments receive Royal Assent – a form filed by these transition period emigrants will be considered to have been filed in a timely manner if it is filed on or before the individual's filing-due date for the taxation year that includes the day on which Royal Assent for these amendments is received.

Related Provisions: 128.1(10)"reportable property" — Exclusions.

(10) Definitions — The definitions in this subsection apply in this section.

"excluded right or interest" of a taxpayer that is an individual means

(a) a right of the individual under, or an interest of the individual in a trust governed by,

(i) a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",

(ii) a registered retirement income fund,

(iii) a registered education savings plan,

(iv) a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan",

(v) an employees profit sharing plan,

(vi) an employee benefit plan (other than an employee benefit plan described in subparagraph (b)(i) or (ii)),

(vii) a plan or arrangement (other than an employee benefit plan) under which the individual has a right to receive in a year remuneration in respect of services rendered by the individual in the year or a prior year,

(viii) a superannuation or pension fund or plan (other than an employee benefit plan),

(ix) a retirement compensation arrangement,

(x) a foreign retirement arrangement, or

(xi) a registered supplementary unemployment benefit plan;

(b) a right of the individual to a benefit under an employee benefit plan that is

(i) a plan or arrangement described in paragraph (j) of the definition "salary deferral arrangement" in subsection 248(1) that would, but for paragraphs (j) and (k) of that definition, be a salary deferral arrangement, or

(ii) a plan or arrangement that would, but for paragraph 6801(e) of the *Income Tax Regulations*, be a salary deferral arrangement,

to the extent that the benefit can reasonably be considered to be attributable to services rendered by the individual in Canada;

(c) a right of the individual under an agreement referred to in subsection 7(1) or (1.1);

(d) a right of the individual to a retiring allowance,

(e) a right of the individual under, or an interest of the individual in, a trust that is

(i) an employee trust,

(ii) an amateur athlete trust,

(iii) a cemetery care trust, or

(iv) a trust governed by an eligible funeral arrangement;

(f) a right of the individual to receive a payment under

(i) an annuity contract, or

(ii) an income-averaging annuity contract;

(g) a right of the individual to a benefit under

(i) the *Canada Pension Plan* or a provincial plan described in section 3 of that Act,

(ii) the *Old Age Security Act*,

(iii) a provincial pension plan prescribed for the purpose of paragraph 60(v), or

(iv) a plan or arrangement instituted by the social security legislation of a country other than Canada or of a state, province or other political subdivision of such a country;

(h) a right of the individual to a benefit described in any of subparagraphs 56(1)(a)(iii) to (vi);

(i) a right of the individual to a payment out of a NISA Fund No. 2;

(j) an interest of the individual in a personal trust resident in Canada if the interest was never acquired for consideration and did not arise as a consequence of a qualifying disposition by the individual (within the meaning that would be assigned by subsection 107.4(1) if that subsection were read without reference to paragraphs 107.4(1)(h) and (i));

(k) an interest of the individual in a non-resident testamentary trust if the interest was never acquired for consideration; or

(l) an interest of the individual in a life insurance policy in Canada, except for that part of the policy in respect of which the individual is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust.

Technical Notes: New subsection 128.1(10) of the Act contains two new definitions that are used in section 128.1: "excluded right or interest" and "reportable property".

In general terms, an individual's excluded rights or interests include rights of the individual to future benefits or other payments under certain plans or arrangements, many of which are employer-sponsored or legislated in nature. It also includes interests of the individual in certain trusts and insurance contracts. The definition "excluded right or interest" is relevant for three main purposes.

First, the definition is relevant for paragraphs 128.1(1)(b) and (4)(b) of the Act, which treat individuals as having disposed of (and to have immediately reacquired) most of their property on immigrating to or emigrating from Canada. With one exception that applies with regard to individuals immigrating to Canada (see subparagraph 128.1(1)(b)(iv) for more details), excluded rights or interests are exempted from these deemed disposition rules.

Second, the definition is relevant for subclause 78(1) of the amending Notice of Ways and Means Motion, which allows individuals who emigrated from Canada after 1992 but before October 2, 1996 to elect to have their excluded rights or interests exempted from the deemed disposition rules at departure. For additional information, see the commentary on clause 78.

Third, the definition is relevant for the purpose of the information reporting requirement under new subsection 128.1(9) of the Act, which exempts from the reporting requirement certain properties that fall within the definition "excluded right or interest".

Paragraph (a) of the definition "excluded right or interest" refers to rights of the individual under, or an interest of the individual in a trust governed by, certain plans. The plans referred to in this paragraph include pension plans (including registered pension plans), retirement compensation arrangements, registered retirement savings plans, registered retirement income funds and foreign retirement arrangements (defined in section 6803 of the Regulations to mean certain Individual Retirement Accounts established under the United States Internal Revenue Code). Also included are deferred profit sharing plans, employee profit sharing plans, employee benefit plans (EBPs) (other than those described in paragraph (b) of this definition) and plans under which the individual has a right to receive remuneration for services rendered in the year or a previous year (including, for example, salary deferral arrangements (SDAs), unfunded bonus deferrals, self-funded leaves of absence and phantom stock plans). Registered supplementary unemployment benefit plans and registered education savings plans are also included in this paragraph.

Paragraph (b) of the definition refers to rights of the individual to a benefit under an EBP that would be an SDA if it were not specifically exempted from being an SDA by virtue of paragraphs (j) and (k) of the definition of "salary deferral arrangement" in subsection 248(1) of the Act or by virtue of paragraph 6801(c) of the Regulations. (The former exemption is for deferred salary arrangements for professional athletes, the latter for deferred salary arrangements for National Hockey League on-ice officials.) Only the right that relates to the portion of the benefit that is attributable to services rendered by the individual in Canada is included in "excluded right or interest".

Paragraph (c) of the definition refers to rights of the individual under an agreement referred to in subsection 7(1) or (1.1) of the Act. Those subsections refer to agreements under which employees of a corporation or of a mutual fund trust are granted certain rights to acquire shares of the corporation (or a related corporation) or units of the trust.

Paragraph (d) of the definition refers to rights of the individual to a retiring allowance.

Paragraph (e) of the definition refers to rights of the individual under, or an interest of the individual in, an employee trust, an amateur athlete trust, a cemetery care trust or a trust governed by an eligible funeral arrangement.

Paragraph (f) of the definition refers to rights of the individual to receive payments under an annuity contract or an income-averaging annuity contract.

Paragraph (g) of the definition refers to rights of the individual to benefits under the *Canada Pension Plan*, the Québec Pension Plan, the Old Age Security Act and the Saskatchewan Pension Plan. It also refers to rights of the individual to benefits under foreign social security arrangements.

Paragraph (h) of the definition refers to rights of the individual to benefits referred to in subparagraphs 56(1)(a)(iii) to (vi) of the Act. Those subparagraphs refer to death benefits, certain employment insurance benefits, certain benefits provided in connection with the Canada-United States Agreement on Automotive Products and prescribed benefits received under government assistance programs.

Paragraph (i) of the definition refers to a right of the individual to a payment out of a NISA ("net income stabilization account") Fund No. 2 under the Farm Income Protection Act.

Paragraph (j) of the definition refers to an interest of the individual in a personal trust resident in Canada, provided the interest was never acquired (by any person) for consideration and did not arise as a consequence of a transfer by the individual that would be a "qualifying disposition" under subsection 107.4(1) if that subsection were read without reference to paragraphs 107.4(1)(h) and (i). See further in this regard, the commentary on new subsections 107.4(1), 108(6) and 108(7) and new paragraph 107.4(3)(h). Each of these provisions is relevant for the purposes of determining the scope of paragraph (j).

Paragraph (k) of the definition refers to an interest of the individual in a non-resident testamentary trust, provided the interest was never acquired (by any person) for consideration.

Paragraph (l) of the definition refers to an interest of the individual in a life insurance policy in Canada (except for that part of the policy in respect of which the individual is deemed by

paragraph 138.1(1)(e) of the Act to have an interest in a related segregated fund trust).

Related Provisions: 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 128.1(1)(b)(iv) — No deemed disposition on immigration; 128.1(4)(b)(iii) — No deemed disposition on emigration; 128.1(4)(d.1) — Where share acquired under stock option before emigration; 128.1(10)"reportable property" — No requirement to report most excluded personal property.

"reportable property" of an individual at a particular time means any property other than

(a) money that is legal tender in Canada and deposits of such money;

(b) property that would be an excluded right or interest of the individual if the definition "excluded right or interest" in this subsection were read without reference to paragraphs (c), (j) and (l) of that definition;

(c) if the individual is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property described in subparagraph (4)(b)(iv) that is not taxable Canadian property; and

(d) any item of personal-use property the fair market value of which, at the particular time, is less than $10,000.

Technical Notes: The definition "reportable property" is relevant for the purpose of the information reporting requirement, for individuals who emigrate from Canada, under new subsection 128.1(9) of the Act.

"Reportable property" means any property of the individual other than the following:

(a) money that is legal tender in Canada and deposits of such money;

(b) property falling within the definition "excluded right or interest" in new subsection 128.1(10) of the Act, except for employee options in shares of corporations or in units of mutual fund trusts, certain interests in personal trusts resident in Canada, and interests in a life insurance policy in Canada;

(c) for individuals (other than trusts) who were resident in Canada for 60 months or less in the 120-month period that precedes the time of emigration, property, other than taxable Canadian property, that was owned by the individual before the individual became resident in Canada or that was acquired by the individual by inheritance or bequest after becoming resident in Canada; and

(d) any item of personal-use property the fair market value of which at emigration time is less than $10,000.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 77(5), will add subsecs. 128.1(5) to (9), applicable (other than subsec. 128.1(9) and the definition "reportable property" in subsec. 128.1(10)) to changes in residence that occur after October 1, 1996, and

(a) an election made under any of paras. 128.1(6)(a) and (c), 128.1(7)(d) and (g) and 128.1(8)(c) by an individual who ceased to be resident in Canada before the day on which this Act is assented to, is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes that day; and

(b) a form described in subsec. 128.1(9), filed by an individual who ceased to be resident in Canada before the day on which this Act is assented to, is deemed to have been filed in a timely manner if it is filed on or before the individual's filing-due date for the taxation year that includes that day.

Subsec. 128.1(9) and the definition "reportable property" in subsec. 128.1(10) apply to changes in residence that occur after 1995.

Definitions [s. 128.1]: "adjusted cost base" — 54, 248(1); "amateur athlete trust" — 143.1(1), 248(1); "amount", "annuity" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "balance-due day", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian exploration and development expenses", "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "cemetery care trust" — 148.1(1), 248(1); "class of shares" — 248(6); "consideration" — 108(7); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount", "dividend" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition", "eligible capital property" — 54, 248(1); "distribution time" — 128.1(7)(b); "eligible funeral arrangement" — 148.1(1), 248(1); "emigration time" — 128.1(6); "employee benefit plan" — 248(1); "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "excluded right or interest" — 128.1(10); "farm loss" — 111(8), 248(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign accrual property income" — 95(1), (2), 248(1); "foreign affiliate" — 95(1), 248(1); "foreign retirement arrangement" — 248(1), Reg 6803; "income-averaging annuity contract", "individual", "inventory" — 248(1); "limited partnership loss" — 96(2.1), 248(1); "life insurance policy in Canada" — 138(12), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "paid-up capital adjustment" — 128.1(2)(a); "permanent establishment" — Reg. 8201; "person", "personal trust" — 248(1); "personal-use property" — 54, 248(1); "prescribed" — 248(1); "proceeds of disposition" — 54; "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "reportable property" — 128.1(10); "resident", "resident in Canada" — 250; "restricted farm loss" — 31(1.1), 248(1); "retirement compensation arrangement", "retiring allowance" — 248(1); "salary deferral arrangement"; "share", "shareholder" — 248(1); "specified future tax consequence" — 248(1); "taxable Canadian property" — 248(1); "taxation year" — 249, 250.1(a); "taxpayer" — 248; "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "time of disposition" — 128.1(1)(b), 128.1(4)(b); "treaty-protected property" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

128.2 (1) Cross-border mergers — Where a corporation formed at a particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (each of which is referred to in this section as a "predecessor") is at the particular time resident in Canada, a predecessor that was not immediately before the particular time resident in Canada shall be deemed to have become resident in Canada immediately before the particular time.

(2) Idem — Where a corporation formed at a particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations is at the particular time not resident in Canada, a predecessor that was immediately before the particular time resident in Canada shall be deemed to have ceased to be resident in Canada immediately before the particular time.

(3) Windings-up excluded — For greater certainty, subsections (1) and (2) do not apply to reorganizations occurring solely because of the acquisition of property of one corporation by another corporation, pursuant to the purchase of the property by the other corporation or because of the distribution of the property to the other corporation on the winding-up of the corporation.

History [s. 128.2]: S. 128.2 enacted by 1994, c. 21, s. 62, applicable after 1992 except that where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (i.e., elects before the end of December 1994 for new subsec. 250(5.1) to apply in respect of a continuance before 1993), the section applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction.

Definitions [s. 128.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "predecessor" — 128.2(1); "property" — 248(1); "resident in Canada" — 250.

Proposed Addition — 128.3

128.3 Former resident — replaced shares — If, in a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and (ii) or section 86 or 87 apply, a person acquires a share (in this section referred to as the "new share") in exchange for another share (in this section referred to as the "old share"), for the purposes of section 119, subsections 126(2.21) to (2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6), the person is deemed not to have disposed of the old share, and the new share is deemed to be the same share as the old share.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 79, will add s. 128.3, applicable after October 1, 1996.

Technical Notes: New section 128.3 of the Act applies to shares ("old shares") that were received in exchange for other shares ("new shares") on a tax-deferred basis pursuant to section 51 (convertible property), subparagraphs 85.1(1)(a)(i) or (ii) (transfer of property to a corporation by shareholders), section 86 (exchange of shares by a shareholder in the course of a reorganization of a company's capital) or section 87 (amalgamation) of the Act. For the purposes of section 119 and subsections 126(2.21) to (2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6) of the Act, the individual is deemed not to have disposed of the old shares, and the new shares are deemed to be the old shares. This ensures that the relief available under those provisions is not lost as a result of such a share-for-share exchange.

New section 128.3 applies after October 1, 1996.

Definitions [s. 128.3]: "new share", "old share" — 128.3; "person", "share" — 248(1).

Private Corporations

129. (1) Dividend refund to private corporation — Where a return of a corporation's income under this Part for a taxation year is made within 3 years after the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(i) 1/3 of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time when it was a private corporation, and

(ii) its refundable dividend tax on hand at the end of the year; and

(b) shall, with all due dispatch, make the dividend refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 15.1(2)(b) — Amount paid on small business development bond not a dividend for 129(1); 129(2) — Application to other liability; 131(5) — Mutual fund corporation deemed to be a private corporation; 141.1 — Insurance corporation deemed not to be private corporation; 152(1)(a) — Determination of refund by Minister; 157(3) — Reduction in instalment obligations to reflect dividend refund; 160.1 — Where excess refunded; 186(5) — Deemed private corporation; 260(7) — Securities lending arrangement — amount deemed paid as a taxable dividend. See additional Related Provisions and Definitions at end of s. 129.

History: Para. 129(1)(b) amended by 1998, c. 19, s. 154, applicable after April 27, 1989. Para. 129(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the corporation for the year.

Subpara. 129(1)(a)(i) amended by 1996, c. 21, subsec. 32(1), applicable to taxation years that end after June 1995 except that, in its application to such taxation years that began before July 1995, the subpara. shall be read as follows:

(i) an amount in respect of taxable dividends paid by the corporation on shares of its capital stock in the year and at a time when it was a private corporation equal to the total of

(A) 1/4 of all such dividends paid before July 1995, and

(B) 1/3 of all such dividends paid after June 1995,

Subpara. (a)(i) formerly read:

(i) 1/4 of all taxable dividends paid by the corporation in the year and at a time when it was a private corporation on shares of its capital stock, and

All that portion of subsec. 129(1) preceding subpara. (a)(ii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(1), applicable to 1993 *et seq.* except that in its application to taxation years beginning before 1993 and ending after 1992, subpara. 129(1)(a)(i) shall be read as follows:

(i) the total of

(A) 1/4 of all taxable dividends paid by the corporation on shares of its capital stock in the year and before 1993, where the corporation was a private corporation at the end of the year, and

(B) 1/4 of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time after 1992 when it was a private corporation, and

That portion formerly read:

129. (1) Dividend refund to private corporation — Where a corporation was, at the end of any taxation year, a private corporation and a return of its income for the year has been made within 3 years from the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(i) 1/4 of all taxable dividends paid by it in the year on shares of its capital stock, and

Pre-RSC History: Para. 129(1)(b) substituted by 1990, c. 39, s. 30, applicable after April 27, 1989. Para. 129(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within

(i) the 6 year period referred to in paragraph 152(4)(b), where that paragraph applies, and

(ii) the 3 year period referred to in paragraph 152(4)(c), in any other case.

Subpara. 129(1)(a)(i) amended to substitute "1/4 of all taxable dividends" for "1/3 of all taxable dividends", by 1988, c. 55, subsec. 116(1), applicable to 1988 *et seq.*, except that, in its application to taxation years commencing before 1988 and ending after 1987, subpara. 129(1)(a)(i) shall be read as follows:

(i) the aggregate of 1/3 of all taxable dividends paid by it in the year and before 1988 and 1/4 of all taxable dividends paid by it in the year and after 1987 on shares of its capital stock, and

Subpara. 129(1)(a)(i) amended to substitute "1/3" for "1/4" by 1986, c. 55, subsec. 51(1), applicable to 1987 *et seq.*, except that in its application to a taxation year commencing before 1987 and ending after 1986, subpara. 129(1)(a)(i) shall be read as follows:

(i) the aggregate of 1/4 of all taxable dividends paid by it in the year and before 1987 and 1/3 of all taxable dividends paid by it in the year and after 1986, on shares of its capital stock, and

Subsec. 129(1) amended by 1984, c. 45, subsec. 47(1), to substitute "3" for "4" and "and a return of its income" for "if a return of its income" in that portion preceding para. (a); to substitute "6" for "7" in subpara. (b)(i); and to substitute "3" for "4" in subpara. (b)(ii), applicable with respect to dividend refunds for 1983 *et seq.*

Para. 129(1)(b) substituted by 1984, c. 1, subsec. 75(1), applicable after April 19, 1983. Para. 129(1)(b) formerly read:

(b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within 4 years from the end of the year.

Subpara. 129(1)(a)(i) substituted by 1977-78, c. 1, subsec. 62(1), applicable to 1978 *et seq.*, to substitute "1/4" for "1/3"; and where a corporation has a taxation year part of which is before 1978 and part of which is after 1977, the subpara. shall be read as follows:

"(i) the aggregate of 1/3 of all taxable dividends paid by it in the year and before 1978 and 1/4 of all taxable dividends paid by it in the year and after 1977, on shares of its capital stock, and".

Selected Cases [subsec. 129(1)]: *Canwest Capital Inc. v. Canada*, [1996] 1 C.T.C. 2974 (TCC) (Normal application of provision not to be altered by subsection 129(1.2)); *King George Hotels Ltd. v. The Queen*, [1981] C.T.C. 87 (FCA) (Refundable dividend tax not created when property management business generates active business income).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-432R2: Benefits conferred on shareholders.

(1.1) Dividends paid to bankrupt controlling corporation — In determining the dividend refund for a taxation year ending after 1977 of a particular corporation, no amount may be included by virtue of subparagraph (1)(a)(i) in respect of a taxable dividend paid to a shareholder that

(a) was a corporation that controlled (within the meaning assigned by subsection 186(2)) the particular corporation at the time the dividend was paid; and

(b) was a bankrupt (within the meaning assigned by subsection 128(3)) at any time during that taxation year of the particular corporation.

Pre-RSC History: Subsec. 129(1.1) added by 1977-78, c. 1, subsec. 62(2), applicable to 1978 *et seq.*

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(1.2) Dividends deemed not to be taxable dividends — Where a dividend is paid on a share of the capital stock of a corporation and the share (or another share for which the share was substituted) was acquired by its holder in a transaction or as part of a series of transactions one of the main purposes of which was to enable the corporation to obtain a dividend refund, the dividend shall, for the purpose of subsection (1), be deemed not to be a taxable dividend.

Related Provisions: 87(2)(aa), (ii) — Amalgamations; 88(1)(e.5) — Winding-up; 129(7) — Capital gains dividend excluded; 248(10) — Series of transactions. See additional Related Provisions and Definitions at end of s. 129.

Pre-RSC History: Subsec. 129(1.2) added by 1988, c. 55, subsec. 116(2) applicable with respect to dividends paid after 4 p.m. EDST, September 25, 1987 to a person who is exempt from tax under s. 149 or is a corporation other than a private corporation and to dividends paid after November 27, 1987.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(2) Application to other liability — Instead of making a refund that might otherwise be made under subsection (1), the Minister may, where the corporation is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refundable to that other liability and notify the corporation of that action.

Selected Cases: *MNR v. 159890 Canada Inc.*, [1997] 3 C.T.C. 284 (FCTD) (Jeopardy orders not to be sought where other means available to Minister to secure tax).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(2.1) Interest on dividend refund — Where a dividend refund for a taxation year is paid to, or applied to a liability of, a corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(a) the day that is 120 days after the end of the year, and

(b) the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

and ending on the day on which the refund is paid or applied.

Related Provisions: 161.1 — Offset of refund interest of corporation against arrears interest.

History: Subsec. 129(2.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(2), applicable to dividend refunds paid or applied with respect to taxation years beginning after 1991.

Selected Cases [subsec. 129(2.1)]: *Canwest Capital Inc. v. Canada*, [1996] 1 C.T.C. 2974 (TCC) (Dividend was not caught by anti-avoidance provision).

Regulations: 4301(b) (prescribed rate of interest).

(2.2) Excess interest on dividend refund — Where, at any particular time, interest has been paid to, or applied to a liability of, a corporation under subsection (2.1) in respect of a dividend refund and it is determined at a subsequent time that the dividend refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the dividend refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 129(2.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(2), applicable to dividend refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(3) Definition of "refundable dividend tax on hand" — In this section, "refundable dividend tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which the total of

(a) where the corporation was a Canadian-controlled private corporation throughout the year, the least of

(i) the amount determined by the formula

$$A - B$$

where

A is 26 2/3% of the corporation's aggregate investment income for the year, and

B is the amount, if any, by which

(I) the amount deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part

exceeds

(II) 9⅓% of its foreign investment income for the year,

(ii) 26⅔% of the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(A) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(B) 25/9 of the total of amounts deducted under subsection 126(1) from its tax for the year otherwise payable under this Part, and

(C) 10/4 of the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, and

(iii) the corporation's tax for the year payable under this Part determined without reference to section 123.2,

(b) the total of the taxes under Part IV payable by the corporation for the year, and

(c) where the corporation was a private corporation at the end of its preceding taxation year, the corporation's refundable dividend tax on hand at the end of that preceding year

exceeds

(d) the corporation's dividend refund for its preceding taxation year.

Related Provisions: 129(3.1) — Grandfathering for property disposed of before November 13, 1981; 141.1 — Insurance corporation deemed not to be private corporation; 257 — Formula cannot calculate to less than zero.

History: Subsec. 129(3) substituted by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995 except that, in their application to such taxation years that began before July 1995, in computing the amount determined under each of subparas. 129(3)(a)(i) and (ii) there shall be deducted an amount equal to that proportion of 1/4 of the amount otherwise determined under the subpara. that the number of days in the year that are before July 1995 is of the number of days in the year. Subsec. 129(3) formerly read:

(3) In this section, "refundable dividend tax on hand" of a corporation at the end of any particular taxation year means the amount, if any, by which the total of

(a) the total of all amounts each of which is an amount in respect of a taxation year commencing after it last became a private corporation and ending not later than the end of the particular taxation year and, where the taxation year commences after November 12, 1981, throughout which the corporation was a Canadian-controlled private corporation, equal to, in respect of taxation years ending before 1978, the least of, in respect of taxation years ending after 1977 and commencing before 1987, 2/3 of the least of, in respect of taxation years commencing after 1986 and before 1988, the least of, and in respect of taxation years commencing after 1987, 4/5 of the least of

(i) 25% of the total of all amounts each of which is

(A) in respect of a taxation year ending before November 13, 1981, the amount, if any, by which the total of its Canadian investment income for the year and its foreign investment income for the year exceeds the amount deductible under paragraph 111(1)(b) from the corporation's income for the year, or

(B) in respect of a taxation year ending after November 12, 1981, the amount, if any, by which the total of the amounts that would, if subsection (4) were read without reference to C in the definition "Canadian investment income" in that subsection, be its Canadian investment income for the year and its foreign investment income for the year, exceeds the total of

(I) the amount, if any, deducted under paragraph 111(1)(b) from the corporation's income for the year, and

(II) the total of all amounts each of which is the amount of the corporation's loss for the year from a source that is property,

(ii) the amount, if any, by which the total of

(A) 25% of the corporation's Canadian investment income for the year, and

(B) the amount, if any, by which 30% of the corporation's foreign investment income for the year exceeds the total of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part,

exceeds 25% of the amount, if any, deducted under paragraph 111(1)(b) from the corporation's income for the year,

(iii) 25% of the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(A) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(B) 10/3 of the total of amounts deducted under subsection 126(1) from its tax for the year otherwise payable under this Part, and

(C) 10/4 of the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, and

(iv) 5/4 of the amount of the corporation's tax for the year payable under this Part determined without reference to section 123.2,

(b) the total of the taxes under Part IV payable by the corporation for the particular taxation year and any previous taxation years ending after it last became a private corporation, and

(b.1) the amount, if any, of the corporation's addition at December 31, 1986 of refundable dividend tax on hand

exceeds the total of

(c) the total of the corporation's dividend refunds for taxation years ending after it last became a private corporation and before the particular taxation year,

(d) the amount, if any, of the corporation's reduction at December 31, 1977 of refundable dividend tax on hand, and

(e) the amount, if any, of the corporation's reduction at December 31, 1987 of refundable dividend tax on hand.

That portion of subsec. 129(3) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(3), applicable to 1993 *et seq.* That portion formerly read:

(3) In this section, "refundable dividend tax on hand" of a private corporation at the end of any particular taxation year means the amount, if any, by which the total of

Pre-RSC History: That portion of para. 129(3)(a) preceding subpara. (i) substituted by 1988, c. 55, subsec. 116(3), applicable with respect to taxation years commencing after 1987. That portion formerly read:

(a) the aggregate of all amounts each of which is an amount in respect of a taxation year commencing after it last became a private corporation and ending not later than the end of the particular taxation year and, where the taxation year commences after November 12, 1981, throughout which the corporation was a Canadian-controlled private corporation, equal to, in respect of taxation years ending before 1978 or commencing after 1986, the least of, and in respect of taxation years ending after 1977 and commencing before 1987, 2/3 of the least of

Cl. 129(3)(a)(ii)(B) amended to substitute "30%" for "40%" by 1988, c. 55, subsec. 116(4), applicable with respect to the determination of amounts under that cl. in respect of taxation years ending after 1987, ex-

cept that, in its application to taxation years commencing before 1988 and ending after 1987, cl. 129(3)(a)(ii)(B) shall be read as follows:

(B) the amount, if any, by which the aggregate of

(I) that proportion of 40% of the corporation's foreign investment income for the year that the number of days in the year that are before 1988 is of the number of days in the year, and

(II) that proportion of 30% of the corporation's foreign investment income for the year that the number of days in the year that are after 1987 is of the number of days in the year

exceeds the aggregate of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part,

Subpara. 129(3)(a)(iii) substituted by 1988, c. 55, subsec. 116(5), applicable with respect to the determination of amounts under subpara. 129(3)(a)(iii) in respect of taxation years commencing after June 1988. Subpara. 129(3)(a)(iii) formerly read:

(iii) 25% of the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of

(A) 4 times the amount, if any, deductible under subsection 125(1),

(B) [Repealed]

(C) 10/4 of the aggregate of amounts deducted under subsection 126(1), and

(D) 2 times the aggregate of amounts deducted under subsection 126(2)

from the tax for the year otherwise payable by it under this Part, and

Subpara. 129(3)(a)(iv) substituted by 1988, c. 55, subsec. 116(6), applicable with respect to the determination of amounts under subpara. 129(3)(a)(iv) in respect of taxation years commencing after 1987. Subpara. 129(3)(a)(iv) formerly read:

(iv) the amount of tax payable under this Part by the corporation for the year determined without reference to section 123.2,

Para. 129(3)(e) added by 1988, c. 55, subsec. 116(7), applicable to 1988 *et seq.*

All that portion of para. 129(3)(a) preceding subpara. (i) amended by 1986, c. 55, subsec. 51(2), applicable to taxation years commencing after 1986, to substitute "taxation years ending before 1978 or commencing after 1986, the least of, and in respect of taxation years ending after 1977 and commencing before 1987," for "taxation years before 1978, the least of, and in respect of taxation years ending after 1977".

Subpara. 129(3)(a)(iv) amended to substitute "tax payable under this Part by the corporation for the year determined without reference to section 123.2," for "the tax for the year otherwise payable by it under this Part, and" and para. 129(3)(b.1) added by 1986, c. 55, subsecs. 51(3), (4), applicable to 1987 *et seq.*

Cl. 129(3)(a)(iii)(B) repealed by 1984, c. 45, subsec. 47(2), applicable to 1985 *et seq.*. Clause 129(3)(a)(iii)(B) formerly read:

(B) 8 times the amount, if any, deductible under subsection 125(1.1),

Subcl. 129(3)(a)(i)(B)(I), all that portion of subpara. 129(3)(a)(ii) following cl. (B) substituted by 1984, c. 1, subsecs. 75(2), (3), applicable to 1983 *et seq.* and with respect to amounts deductible under para. 111(1)(b) in respect of losses determined for 1983 *et seq.*, to substitute "if any, deducted" for "deductible" wherever that expression appeared.

All that portion of para. 129(3)(a) preceding subpara. 129(3)(a)(ii) substituted by 1980-81-82-83, c. 140, subsec. 90(1). That portion formerly read:

(a) the aggregate of amounts each of which is an amount in respect of any taxation year commencing after it last became a private corporation and ending not later than the end of the particular taxation year equal to, in respect of taxation years ending before 1978, the least of, and in respect of taxation years ending after 1977, 2/3 of the least of

(i) 25% of the amount, if any, by which the aggregate of its Canadian investment income for the year and its foreign investment income for the year exceeds the amount deductible under paragraph 111(1)(b) from the corporation's income for the year,

Subpara. 129(3)(a)(iii) substituted by 1979, c. 5, subsec. 41(1), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Subpara. 129(3)(a)(iii) formerly read:

(iii) 25% of the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of

(A) 4 times the amount, if any, deductible under section 125,

(B) 10/4 of the aggregate of amounts deducted under subsection 126(1), and

(C) 2 times the aggregate of amounts deducted under subsection 126(2)

from the tax for the year otherwise payable by it under this Part, and

(iv) the amount of the tax for the year otherwise payable by it under this Part, and

Subsec. 129(3) substituted by 1977-78, c. 1, subsec. 62(3), applicable to 1978 *et seq.* Subsec. 129(3) formerly read:

(3) In this section, "refundable dividend tax on hand" of a private corporation at the end of any particular taxation year means the aggregate of amounts each of which is an amount in respect of any taxation year commencing after it last became a private corporation and ending not later than the end of the particular taxation year, equal to the least of

(a) 25% of the amount, if any, by which the aggregate of its Canadian investment income for the year and its foreign investment income for the year exceeds the amount deductible under paragraph 111(1)(b) from the corporation's income for the year,

(b) the amount, if any, by which the aggregate of

(i) 25% of the corporation's Canadian investment income for the year, and

(ii) the amount, if any, by which 40% of the corporation's foreign investment income for the year exceeds the aggregate of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part,

exceeds 25% of the amount deductible under paragraph 111(1)(b) from the corporation's income for the year,

(c) 25% of the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of

(i) 4 times the amount, if any, deductible under section 125,

(ii) 10/4 of the aggregate of amounts deducted under subsection 126(1), and

(iii) 2 times the aggregate of amounts deducted under subsection 126(2)

from the tax for the year otherwise payable by it under this Part, and

(d) the amount of the tax for the year otherwise payable by it under this Part,

plus the aggregate of the taxes under Part IV payable by the corporation for the particular taxation year and any previous taxation years ending after it last became a private corporation, and minus the aggregate of the corporation's dividend refunds for taxation years ending after it last became a private corporation and before the particular taxation year.

Para. 129(3)(d) substituted by 1974-75-76, c. 26, subsec. 86(1), applicable to taxation years ending after May 6, 1974. Para. 129(3)(d) formerly read:

(d) the amount, if any, by which the tax for the year otherwise payable by it under this Part exceeds the aggregate of

(i) the amount, if any, deductible under subsection 124(2), and

(ii) the amount, if any, deductible under section 127

from the tax for the year otherwise payable by it under this Part,

All that portion of subsec. 129(3) following para. (d) substituted by 1973-74, c. 14, s. 40, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

Forms: T713: Addition at December 31, 1986 of RDTOH.

(3.1) [Repealed]

History: Subsec. 129(3.1) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. Subsec. (3.1) formerly read:

(3.1) Definition of "reduction at December 31, 1977 of refundable dividend tax on hand" — In subsection (3), "reduction at December 31, 1977 of refundable dividend tax on hand" of a cor-

poration means the amount that is 1/3 of the amount, if any, by which the total of

(a) the amount, if any, of the corporation's refundable dividend tax on hand at the end of its 1977 taxation year, and

(b) the amount, if any, of the tax under Part IV payable by the corporation for its 1978 taxation year in respect of taxable dividends received by it in that year and before 1978,

exceeds the total of

(c) the corporation's dividend refund, if any, for its 1977 taxation year, and

(d) 1/3 of the taxable dividends, if any, paid by the corporation in its 1978 taxation year and before 1978.

Pre-RSC History: Subsec. 129(3.1) added by 1977-78, c. 1, subsec. 62(3), applicable to 1978 *et seq.*

Proposed Addition — 129(3.1)

(3.1) Application — Where, in a taxation year that begins after November 12, 1981, a corporation that last became a private corporation on or before that date and that was throughout the year a private corporation, other than a Canadian-controlled private corporation, has included in its income for the year an amount in respect of property that the corporation

(a) disposed of before November 13, 1981,

(b) was obligated to dispose of under the terms of an agreement in writing entered into before November 13, 1981, or

(c) is deemed by subsection 44(2) to have disposed of at any time after November 12, 1981 because of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 in respect of the disposition that occurred before November 13, 1981,

paragraph 3(a) shall apply as if the corporation were a Canadian-controlled private corporation throughout the year, except that the total of the amounts determined under that paragraph in respect of the corporation for the year shall not exceed the amount that would be so determined if the only income of the corporation for the year were the amount included in respect of the disposition of such property.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 80, will add subsec. 129(3.1), applicable to taxation years that end after June 1995 and before 2003.

Technical Notes: New subsection 129(3.1) revives a transitional rule previously contained in subsection 129(3.2). That transitional rule allowed a private corporation, other than a Canadian-controlled private corporation (CCPC), to include in its refundable dividend tax on hand (RDTOH) for taxation years commencing after November 12, 1981 certain income in respect of property disposed of by it before November 13, 1981. The rule was intended to allow certain private corporations that were not CCPCs to benefit for a transitional period from some aspects of the RDTOH scheme that became, after 1981, limited only to CCPCs.

The RDTOH computation rules were subsequently simplified for taxation years ending after June 1995. As part of this simplification process, subsection 129(3.2) was repealed on the assumption that it had fulfilled its transitional function. It has since been determined that, despite the passage of almost 14 years since the transitional provision was enacted, at least one taxpayer was still using subsection 129(3.2) in 1995. The rule is therefore being revived for taxation years ending after June 1995 and before 2003, in order to give adequate opportunity for this and any other taxpayers who may be relying on the rule to adjust to the 1981 RDTOH provisions.

New subsection 129(3.1) applies to taxation years that end after June 1995 and before 2003.

(3.2) [Repealed]

Proposed Amendment — Restoration of 129(3.2)

Letter from Department of Finance, May 18, 1999:

Dear [xxx]

SUBJECT: *Repeal of subsection 129(3.2) of the Income Tax Act*

This is in response to your letters dated March 30, 1999 and April 21, 1999 regarding the repeal of subsection 129(3.2) of the *Income Tax Act*, and the effect of that repeal on [xxx]. As you know, subsection 129(3.2) was a transitional provision that allowed a private corporation, other than a Canadian-controlled private corporation, to include in its refundable dividend tax on hand for taxation years commencing after November 12, 1981 certain income in respect of property disposed of by it before November 13, 1981.

According to the information you have provided, [xxx] has relied on subsection 129(3.2) for calculating income taxes on property income which it has continued to earn under an agreement entered into on February 20, 1974. You have provided a letter showing that Revenue Canada has, until recently, accepted the applicability of subsection 129(3.2) with respect to this income. However, you state that the repeal of the subsection effective for taxation years ending after June 1995 has led Revenue Canada to review [xxx]'s corporate income tax returns for the 1996, 1997 and 1998 taxation years. Your concern is that your client will lose the benefit of the grandfathering that was available to it under subsection 129(3.2) unless the repeal is reversed.

We have reviewed this matter and agree with you that the repeal of subsection 129(3.2) was not intended to effect any substantive change to the law. Rather, it was our understanding at the time that taxpayers were no longer relying on this transitional provision, and hence that the grandfathering was no longer necessary. From our policy point of view, the effect on your client is therefore an unintended result.

I can confirm therefore that we will recommend an amendment to the *Income Tax Act* to revive subsection 129(3.2), so as to continue the grandfathering that was previously available under that subsection, effective for taxation years ending after June 1995. However, since the subsection was intended only as a transitional rule, it is our view that it should not apply for an indefinite period of time. Accordingly, we believe that it would be appropriate to terminate the effect of the revived subsection for taxation years ending after November 12, 2001, thus allowing corporations such as your client a 20-year transition period to rely on subsection 129(3.2). We shall therefore recommend, for inclusion in the next package of income tax technical amendments, the restoration of the subsection for the period from 1995 to November 12, 2001.

I trust that this addresses the concerns you have raised in your letters. I am forwarding a copy of this letter to Revenue Canada to let them know of our intention to recommend this change.

Thank you for bringing this matter to our attention.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

c.c.: Mr. Jim Gauvreau

Revenue Canada

History: Subsec. 129(3.2) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.1) formerly read:

(3.2) Application — Where, in a taxation year commencing after November 12, 1981, a corporation that last became a private corporation on or before that date and that was throughout the year a private corporation, other than a Canadian-controlled private corporation, has included in its income for the year an amount in respect of property that the corporation

(a) disposed of before November 13, 1981,

(b) was obligated to dispose of under the terms of an agreement in writing entered into before November 13, 1981, or

(c) is deemed by subsection 44(2) to have disposed of at any time after November 12, 1981 by virtue of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 in respect of the disposition that occurred before November 13, 1981,

paragraph (3)(a) shall apply as if the corporation were a Canadian-controlled private corporation throughout the year, except that the total of the amounts determined under that paragraph in respect of the year shall not exceed the amount that would be so determined if the only income of the corporation for the year were the amount included in respect of the disposition of such property.

Pre-RSC History: Subsec. 129(3.2) added by 1980-81-82-83, c. 140, subsec. 90(2).

(3.3) [Repealed]

History: Subsec. 129(3.3) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.3) formerly read:

(3.3) Definition of "addition at December 31, 1986 of refundable dividend tax on hand" — In subsection (3), "addition at December 31, 1986 of refundable dividend tax on hand" of a corporation means the amount that is ½ of the amount, if any, by which

(a) the amount, if any, of the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1987, determined without reference to paragraph (3)(b.1),

exceeds the total of

(b) the amount, if any, of the tax payable under Part IV by the corporation for its last taxation year commencing before 1987 in respect of taxable dividends received by it in that year and after 1986,

(c) ¼ of the taxable dividends, if any, paid by the corporation before 1987 in its last taxation year commencing before 1987, and

(d) any amount added under paragraph 88(1)(e.5) in computing the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1987 in respect of the refundable dividend tax on hand of a subsidiary (within the meaning assigned by subsection 88(1)) for its 1987 or 1988 taxation year.

Pre-RSC History: Subsec. 129(3.3) added by 1986, c. 55, subsec. 51(5), applicable to 1987 *et seq.*

(3.4) [Repealed]

History: Subsec. 129(3.4) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.4) formerly read:

(3.4) Reduction under para. (3.3)(a) — Where a corporation has received a taxable dividend after February 25, 1986 and before 1987 as part of a transaction effected after February 25, 1986 or series of transactions each of which was effected after that day and it may be reasonably considered that one of the main purposes thereof was to increase the corporation's refundable dividend tax on hand at the end of a taxation year by virtue of the application of subsection (3.3), the amount otherwise determined under paragraph (3.3)(a) in respect of the corporation shall be reduced by the tax payable under Part IV by the corporation in respect of the dividend.

Pre-RSC History: Subsec. 129(3.4) added by 1986, c. 55, subsec. 51(5), applicable with respect to taxable dividends received after February 25, 1986.

(3.5) [Repealed]

History: Subsec. 129(3.5) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (3.5) formerly read:

(3.5) Definition of "reduction at December 31, 1987 of refundable dividend tax on hand" — In subsection (3), "reduction at December 31, 1987 of refundable dividend tax on hand" of a corporation means the amount that is ¼ of the amount, if any, by which

(a) the amount, if any, of the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1988, determined without reference to paragraph (3)(e),

exceeds the total of

(b) the amount, if any, of the tax payable under Part IV by the corporation for its last taxation year commencing before 1988 in respect of taxable dividends received by it in that year and after 1987,

(c) ⅓ of the taxable dividends, if any, paid by the corporation before 1988 in its last taxation year commencing before 1988,

(d) any amount added, under paragraph 88(1)(e.5) in computing the corporation's refundable dividend tax on hand at the end of its last taxation year beginning before 1988, in respect of the refundable dividend tax on hand of a subsidiary (within the meaning assigned by subsection 88(1)) for a taxation year ending after 1987, and

(e) an amount equal to that proportion of ⅕ of the least of the amounts determined under subparagraphs (3)(a)(i) to (iv) in respect of its last taxation year commencing before 1988 that the number of days in the year that are after 1987 is of the number of days in the year.

Para. 129(3.5)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 108, applicable to 1988 *et seq.* Para. (d) formerly read:

(d) any amount added under paragraph 88(1)(e.5) in computing the corporation's refundable dividend tax on hand at the end of its last taxation year commencing before 1988 in respect of the refundable dividend tax on hand of a subsidiary (within the meaning assigned by subsection 88(1)) for a taxation year commencing after 1987, and

Pre-RSC History: Subsec. 129(3.5) added by 1988, c. 55, subsec. 116(8), applicable to 1988 *et seq.*

(4) Definitions — The definitions in this subsection apply in this section.

History: The opening words of subsec. 129(4) amended by 1996, c. 21, subsec. 32(2), applicable to tax years that end after June 1995. They formerly read:

(4) In subsection (3),

"aggregate investment income" of a corporation for a taxation year means the amount, if any, by which the total of all amounts, each of which is

(a) the amount, if any, by which

(i) the eligible portion of the corporation's taxable capital gains for the year

exceeds the total of

(ii) the eligible portion of its allowable capital losses for the year, and

(iii) the amount, if any, deducted under paragraph 111(1)(b) in computing its taxable income for the year, or

(b) the corporation's income for the year from a source that is a property, other than

(i) exempt income,

(ii) an amount included under subsection 12(10.2) in computing the corporation's income for the year,

(iii) the portion of any dividend that was deductible in computing the corporation's taxable income for the year, and

(iv) income that, but for paragraph 108(5)(a), would not be income from a property,

exceeds the total of all amounts, each of which is the corporation's loss for the year from a source that is a property;

Related Provisions: 123.3 — Refundable tax on CCPC's investment income; 129(3)(a)(i)A — Refund of 26⅔% of aggregate investment income; 129(4)"income" or "loss" — Specified investment business income and income relating to an active business; 131(11)(b) — Application of definition to labour-sponsored venture capital corporation.

History: The definition "aggregate investment income" added to subsec. 129(4) by 1996, c. 21, subsec. 32(2), applicable to tax years that end after June 1995.

Interpretation Bulletins: IT-484R2: Business investment losses.

"Canadian investment income" — [Repealed]

History: The definition "Canadian investment income" in subsec. 129(4) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. It formerly read:

"Canadian investment income" of a corporation for a taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the amount determined by the formula

$$(K - L) - (M - N)$$

where

K is the total of such of the corporation's taxable capital gains for the year from dispositions of property as may reasonably be considered to be income from sources in Canada,

L is the total of all amounts each of which is the portion of a taxable capital gain referred to in the description of K in this definition from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation,

M is the total of such of the corporation's allowable capital losses for the year from dispositions of property as may reasonably be considered to be losses from sources in Canada, and

N is the total of all amounts each of which is the portion of an allowable capital loss referred to in the description of M in this definition from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation,

B is the total of all amounts each of which is the corporation's income for the year from a source in Canada that is property (other than exempt income, an amount included under subsection 12(10.2) in the corporation's income for the year, any dividend the amount of which was deductible in computing its taxable income for the year or income that, but for paragraph 108(5)(a), would not be income from a property), determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they can reasonably be regarded as having been made or incurred for the purpose of earning income from that property[, and]

C is the total of all amounts each of which is the corporation's loss for the year from a source in Canada that is a property;

The description of B in "Canadian investment income" in subsec. 129(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 73(4), applicable to 1991 *et seq.* That description formerly read:

B is the total of all amounts each of which is the corporation's income for the year from a source in Canada that is property (other than exempt income, any dividend the amount of which was deductible in computing its taxable income for the year or income that, but for paragraph 108(5)(a), would not be income from a property), determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning income from that property, and

Pre-RSC History: *The definition "Canadian investment income" was para. 129(4)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(a) "Canadian investment income" of a corporation for a taxation year means the amount, if any, by which the aggregate of

(i) the amount, if any, by which

(A) the amount by which

(I) the aggregate of such of the corporation's taxable capital gains for the year from dispositions of property as may reasonably be considered to be income from sources in Canada,

exceeds

(II) the aggregate of all amounts each of which is the portion of a taxable capital gain referred to in subclause (I) from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation

exceeds

(B) the amount by which

(I) the aggregate of such of the corporation's allowable capital losses for the year from dispositions of property as may reasonably be considered to be losses from sources in Canada,

exceeds

(II) the aggregate of all amounts each of which is the portion of an allowable capital loss referred to in subclause (I) from the disposition by it of a property, other than a designated property, that may reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation, and

(ii) all amounts each of which is the corporation's income for the year from a source in Canada that is property (other than exempt income, any dividend the amount of which was deductible in computing its taxable income for the year or income that, but for paragraph 108(5)(a), would not be income from a property), determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning income from that property

exceeds

(iii) the aggregate of amounts each of which is the corporation's loss for the year from a source in Canada that is a property; and

Subpara. 129(4)(a)(ii) amended by 1985, c. 45, subsec. 74(1), to delete the words "income from real property of a corporation that is not a Canadian-controlled private corporation" which preceded "or income that, but for paragraph 108(5)(a)", applicable to taxation years commencing after November 12, 1981.

Subcls. 129(4)(a)(i)(A)(II), 129(4)(a)(i)(B)(II) substituted by 1984, c. 1, subsecs. 75(4), (5), applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to an agreement in writing entered into on or before that date, to add "an investment corporation, a mortgage investment corporation or a mutual fund corporation".

Subparas. 129(4)(a)(i) and (ii) substituted by 1980-81-82-83, c. 140, subsec. 90(3). Subpara. 129(4)(a)(i) applicable with respect to dispositions occurring after November 12, 1981 otherwise than pursuant to an agreement in writing entered into on or before that date. Subpara. 129(4)(ii) applicable to taxation years commencing after November 12, 1981. Those portions of para. 129(4)(a) formerly read:

(i) the amount, if any, by which the aggregate of such of the corporation's taxable capital gains for the year from dispositions of property as may reasonably be considered to be income from sources in Canada exceeds the aggregate of such of the corporation's allowable capital losses for the year from dispositions of property as may reasonably be considered to be losses from sources in Canada, and

(ii) all amounts each of which is the corporation's income for the year from a source in Canada that is a property (other than exempt income, any dividend the amount of which was deductible in computing its taxable income for the year or income from real property of a corporation that is not a Canadian-controlled private corporation) determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning the income from that property,

All that portion of para. 129(4)(a) after subpara. (i) substituted by 1979, c. 5, subsec. 41(2), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation

years commencing after October 23, 1979 in any other case. That portion formerly read:

> (ii) all amounts each of which is the corporation's income for the year (other than exempt income or any dividend the amount of which was deductible under section 112 from its income for the year) from a source in Canada that is a property (other than a property used or held by the corporation in the year in the course of carrying on a business), determined, for greater certainty, after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning the income from that property,
>
> (iii) all amounts each of which is the corporation's income for the year (other than exempt income) from a source in Canada that is a business other than an active business, determined, for greater certainty, after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning the income from that business,
>
> exceeds the aggregate of amounts each of which is a loss of the corporation for the year from a source in Canada that is a property or business other than an active business; and

Subpara. 129(4)(a)(ii) substituted by 1974-75-76, c. 26, subsec. 86(2), applicable to taxation years ending after May 6, 1974. Subpara. 129(4)(a)(ii) formerly read:

> (ii) all amounts each of which is the corporation's income for the year (other than exempt income or any dividend the amount of which was deductible under section 112 from its income for the year) from a source in Canada that is a property, determined, for greater certainty, after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning the income from that property,

"eligible portion" of a corporation's taxable capital gains or allowable capital losses for a taxation year is the total of all amounts each of which is the portion of a taxable capital gain or an allowable capital loss, as the case may be, of the corporation for the year from a disposition of a property that, except where the property was a designated property (within the meaning assigned by subsection 89(1)), cannot reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation or a mutual fund corporation;

Related Provisions: 248(5) — Substituted property.

History: The definition "eligible portion" added to subsec. 129(4) by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.

"foreign investment income" of a corporation for a taxation year is the amount that would be its aggregate investment income for the year if

(a) every amount of its income, loss, capital gain or capital loss for the year that can reasonably be regarded as being from a source in Canada were nil,

(b) no amount were deducted under paragraph 111(1)(b) in computing its taxable income for the year, and

(c) this Act were read without reference to paragraph (a) of the definition "income" or "loss" in this subsection;

History: The definition "foreign investment income" in subsec. 129(4) amended by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. It formerly read:

> "foreign investment income" of a corporation for a taxation year means the amount that would be determined under the definition "Canadian investment income" in this subsection in respect of the corporation for the year if the references in that definition to "in Canada" were read as references to "outside Canada" and this Act were read without reference to subsection (4.1).

Pre-RSC History: *The definition "foreign investment income" was para. 129(4)(b).*

Para. 129(4)(b) substituted by 1980-81-82-83, c. 48, subsec. 74(1), applicable to taxation years commencing after 1979 in the case of a corporation in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Para. 129(4)(b) formerly read:

> (b) "foreign investment income" of a corporation for a taxation year means the amount that would be determined under paragraph (a) in respect of the corporation for the year if the references in paragraph (a) to "in Canada" were read as references to "outside Canada".

Para. 129(4)(b) substituted by 1979, c. 5, subsec. 41(3), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Para. (b) formerly read:

> (b) "foreign investment income" of a corporation for a taxation year means the amount, if any, by which
>
> (i) the amount that would be determined under paragraph (a) in respect of the corporation for the year if the references in paragraph (a) to "in Canada" were read as references to "outside Canada",
>
> exceeds
>
> (ii) the aggregate of all amounts deductible under section 113 from the corporation's income for the year.

"income" or "loss" of a corporation for a taxation year from a source that is a property

(a) includes the income or loss from a specified investment business carried on by it in Canada other than income or loss from a source outside Canada, but

(b) does not include the income or loss from any property

(i) that is incident to or pertains to an active business carried on by it, or

(ii) that is used or held principally for the purpose of gaining or producing income from an active business carried on by it.

Related Provisions: 129(4)"foreign investment income"(c) — Para. (a) ignored for purposes of determining foreign investment income.

History: The definition "income" or "loss" added to subsec. 129(4) by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.

Selected Cases [subsec. 129(4)]: *Actra Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA); rev'g [1995] 2 C.T.C. 2671 (TCC) (Allocation of assets to particular fund was rebuttable presumption only); *Irving Garber Sales Canada Ltd. v. MNR*, [1992] 2 C.T.C. 261 (FCTD) (Term deposit interest was active business income to extent of business requirements, balance was investment income); *Echo Bay Mines Ltd. v. Canada*, [1992] 2 C.T.C. 182 (FCTD) (Gains from settlement of forward sales contracts for silver were "resource profits"); *Canadian Marconi Co. v. The Queen*, [1986] 2 C.T.C. 465 (SCC) (Short-term investment earnings income from active business; "Canadian manufacturing and processing profits" not restricted to income from manufacturing or processing); *Ensite Ltd. v. The Queen*, [1986] 2 C.T.C. 459 (SCC) (Deposits as security for foreign currency loans in financing manufacturing plant were "property used or held in the carrying out of its business"; interest earned not foreign investment income); *Burri v. MNR*, [1985] 2 C.T.C. 42 (FCTD) (Income from apartment building "from source in Canada that is property" qualifies as "Canadian investment income"); *Morbane Developments Ltd. v. MNR*, [1983] C.T.C. 338 (FCA) (Compensation payment from expropriation income was from active business); *The Queen v. Brown Boveri Howden Inc.*, [1983] C.T.C. 301 (FCA) (Interest on short-term notes originating from property used by corporation in the course of its business not "Canadian investment income"); *The Queen v. Marsh & McLennan*, [1983] C.T.C. 231 (FCA) (Income from investments used in carrying on of business excluded from "Canadian investment income" when investments and main business interdependent); *Riviera Hotel Co. Ltd. v. The Queen*, [1982] C.T.C. 30 (FCTD) (Income from hotel business not "Canadian investment income"); *Supreme Theatres v. The Queen*, [1981] C.T.C. 190 (FCTD) (Rental income part of active business).

(4.1) [Repealed]

History: Subsec. 129(4.1) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (4.1) formerly read:

> (4.1) Interpretation of "income" or "loss" — For the purposes of the definition "Canadian investment income" in subsection (4) and subsection (6), "income" or "loss" of a corporation for a year from a source in Canada that is a property includes the income or loss from a specified investment business carried on by it in Canada other than income or loss from a source outside Canada but does not include income or loss
>
> (a) from any other business;
>
> (b) from any property that is incident to or pertains to an active business carried on by it; or
>
> (c) from any property used or held principally for the purpose of gaining or producing income from an active business carried on by it.

Pre-RSC History: Paras. 129(4.1)(b), (c) substituted by 1984, c. 45, subsec. 47(3), to delete "or a non-qualifying business", located after references to an "active business", applicable to 1985 *et seq.*

Subsec. 129(4.1) added by 1979, c. 5, subsec. 41(4), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

Selected Cases [subsec. 129(4.1)]: *Shamita Inc. v. R.*, [1998] 2 C.T.C. 2974 (TCC) (Income from a property includes more than just income from a specified investment business).

(4.2) [Repealed]

History: Subsec. 129(4.2) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (4.2) formerly read:

> (4.2) Idem — For the purposes of the definition "foreign investment income" in subsection (4), "income" or "loss" of a corporation for a year from a source outside Canada that is a property does not include the income or loss from any property
>
> (a) that is incident to or pertains to an active business carried on by it; or
>
> (b) that is used or held principally for the purpose of gaining or producing income from an active business carried on by it.

Pre-RSC History: Paras. 129(4.2)(a), (b) substituted by 1984, c. 45, subsec. 47(4), to delete "or a non-qualifying business" located after references to "active business", applicable to 1985 *et seq.*

Subsec. 129(4.2) added by 1980-81-82-83, c. 48, subsec. 74(2), applicable to taxation years commencing after 1979 in the case of a corporation in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case.

(4.3) [Repealed]

History: Subsec. 129(4.3) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995.Subsec. (4.3) formerly read:

> (4.3) Definition of "designated property" — In this section, "designated property" has the meaning assigned by subsection 89(1).

Pre-RSC History: Subsec. 129(4.3) substituted by 1985, c. 45, subsec. 74(2), applicable after November 12, 1981. Subsec. 129(4.3) formerly read:

> (4.3) "Designated property" — In subparagraph 4(a)(i), "designated property" means any particular property of a corporation that last became a private corporation before November 13, 1981 and that was acquired by it
>
> (a) before November 13, 1981, or
>
> (b) after November 12, 1981 pursuant to an agreement in writing entered on or before that date,
>
> or a replacement property (within the meaning of section 44) for any such particular property disposed of by virtue of an event referred to in subparagraph 54(h)(ii), (iii) or (iv).

All that portion of subsec. 129(4.3) preceding para. (a) substituted by 1984, c. 1, subsec. 75(6), applicable after November 12, 1981, to substitute "private corporation" for "Canadian-controlled private corporation".

Subsec. 129(4.3) added by 1980-81-82-83, c. 140, subsec. 90(4), applicable after November 12, 1981.

(5) [Repealed]

History: Subsec. 129(5) repealed by 1996, c. 21, subsec. 32(2), applicable to taxation years that end after June 1995. Subsec. (5) formerly read:

> (5) Reduction of refundable dividend tax on hand — Notwithstanding any other provision of this section, the least of the amounts determined under subparagraphs (3)(a)(i) to (iv) in respect of the 1972 or 1973 taxation year of a corporation is,
>
> (a) in respect of its 1972 taxation year, 93% of the least of the amounts so determined; and
>
> (b) in respect of its 1973 taxation year, the total of
>
> (i) 93% of that proportion of the least of the amounts so determined that the number of days in that portion of the year that is before 1973 is of the number of days in the whole year, and
>
> (ii) 100% of that proportion of the least of the amounts so determined that the number of days in that portion of the year that is after 1972 is of the number of days in the whole year.

Pre-RSC History: All that portion of subsec. 129(5) preceding para. (a) substituted by 1977-78, c. 1, subsec. 62(4), applicable to 1978 *et seq.* That portion formerly read:

> (5) Notwithstanding any other provision of this section, the least of the amounts determined under paragraphs (3)(a) to (d) in respect of the 1972 or 1973 taxation year of a corporation is,

Subsec. 129(5) added by 1972, c. 9, s. 3.

(6) Investment income from associated corporation deemed to be active business income — Where any particular amount paid or payable to a corporation (in this subsection referred to as the "recipient corporation") by another corporation (in this subsection referred to as the "associated corporation") with which the recipient corporation was associated in any particular taxation year commencing after 1972, would otherwise be included in computing the income of the recipient corporation for the particular year from a source in Canada that is a property, the following rules apply:

(a) for the purposes of subsection (4), in computing the recipient corporation's income for the year from a source in Canada that is a property,

(i) there shall not be included any portion (in this subsection referred to as the "deductible portion") of the particular amount that was or may be deductible in computing the income of the associated corporation for any taxation year from an active business carried on by it in Canada, and

(ii) no deduction shall be made in respect of any outlay or expense, to the extent that that outlay or expense may reasonably be regarded as having been made or incurred by the recipient corporation for the purpose of gaining or producing the deductible portion; and

(b) for the purposes of this subsection and section 125,

(i) the deductible portion shall be deemed to be income of the recipient corporation for the particular year from an active business carried on by it in Canada, and

(ii) any outlay or expense, to the extent described in subparagraph (a)(ii), shall be deemed to have been made or incurred by the recipient corporation for the purpose of gaining or producing that income.

Related Provisions: 125(3) — Allocation of active business income among associated corporations; 256(1) — Associated corporations.

Pre-RSC History: Subpara. 129(6)(a)(i) and para. 129(6)(b) substituted by 1984, c. 45, subsecs. 47(5), (6), applicable to 1985 *et seq.* Subpara. 129(6)(a)(i) and para. 129(6)(b) formerly read:

> (i) there shall not be included any portion (in this subsection referred to as the "deductible portion") of the particular amount

that was or may be deductible in computing the income of the associated corporation for any taxation year from an active business or a non-qualifying business carried on by it in Canada, and

. . . . .

(b) for the purposes of this subsection and section 125,

(i) the deductible portion shall be deemed to be income of the recipient corporation for the particular year from an active business or a non-qualifying business, as the case may be, carried on by it in Canada, and where the deductible portion is deemed to be income from an active business, the recipient corporation shall be deemed not to have carried on a non-qualifying business with respect to such income,

(ii) any outlay or expense, to the extent described in subparagraph (a)(ii), shall be deemed to have been made or incurred by the recipient corporation for the purpose of gaining or producing that income, and

(iii) where the recipient corporation does not have income from an active business carried on by it in Canada in the year, it shall be deemed to have carried on a non-qualifying business in Canada in the year and, in any other case, if the recipient corporation so elects in its return of income under this Part for the year, it shall be deemed to have carried on a non-qualifying business in Canada in the year.

Subpara. 129(6)(b)(i) substituted by 1980-81-82-83, c. 48, subsec. 74(3), applicable to taxation years commencing after 1979 in the case of a corporation in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Subpara. 129(6)(b)(i) formerly read:

(i) the deductible portion shall be deemed to be income of the recipient corporation for the particular year from an active business or a non-qualifying business, as the case may be, carried on by it in Canada,

Subsec. 129(6) substituted by 1979, c. 5, subsec. 41(5), applicable to taxation years commencing after 1979 in respect of corporations in existence on October 23, 1979 and to taxation years commencing after October 23, 1979 in any other case. Subsec. 129(6) formerly read:

(6) Where any particular amount paid or payable to a corporation (in this subsection referred to as the "recipient corporation") by another corporation (in this subsection referred to as the "associated corporation") with which the recipient corporation was associated in any particular taxation year commencing after 1972, would otherwise be included in computing the income or loss, as the case may be, of the recipient corporation for the particular year from a source that is property or a business other than an active business, the following rules apply:

(a) for the purposes of subsection (4), in computing that income or loss, as the case may be,

(i) there shall not be included any portion (in this subsection referred to as the "deductible portion") of the particular amount that was or may be deductible in computing the income or loss, as the case may be, of the associated corporation for any taxation year from an active business carried on by it in Canada, and

(ii) no deduction shall be made in respect of any outlay or expense, to the extent that that outlay or expense may reasonably be regarded as having been made or incurred by the recipient corporation for the purpose of gaining or producing the deductible portion; and

(b) for the purposes of this subsection and section 125,

(i) the deductible portion shall be deemed to be income of the recipient corporation for the particular year from carrying on an active business in Canada, and

(ii) any outlay or expense, to the extent described in subparagraph (a)(ii), shall be deemed to have been made or incurred by the recipient corporation for the purpose of gaining or producing that income.

Subsec. 129(6) added by 1973-74, c. 30, s. 19.

Selected Cases [subsec. 129(6)]: *Norco Development Ltd. v. The Queen*, [1985] 1 C.T.C. 130 (FCTD) (Interest payments from partnership of corporations active business income when corporations associated).

Interpretation Bulletins: IT-73R5: The small business deduction; IT-243R4: Dividend refund to private corporations.

(7) Meaning of "taxable dividend" — For the purposes of this section, "taxable dividend" does not include a capital gains dividend within the meaning assigned by subsection 131(1).

Related Provisions: 129(1.2) — Dividends deemed not to be taxable dividends; 157(3) — Private, mutual fund and non-resident owned investment corporations.

Pre-RSC History: Subsec. 129(7) added by 1977-78, c. 1, subsec. 62(5), applicable with respect to capital gains dividends paid after March 31, 1977.

(8) Application of section 125 — Expressions used in this section and not otherwise defined for the purposes of this section have the same meanings as in section 125.

Pre-RSC History: Subsec. 129(8) added by 1984, c. 45, subsec. 47(7), applicable to 1985 *et seq.*

Selected Cases [s. 129]: *Groupe Commerce, Cie D'assurances v. R.*, [1999] 4 C.T.C. 54 (FCA); aff'g [1996] 3 C.T.C. 2066 (TCC) (No refundable dividend tax available to insurance companies); *L'Heureux v. Canada*, [1995] 1 C.T.C. 2850 (TCC) (Circular calculations of tax proper in certain "butterfly" transactions).

Definitions [s. 129]: "active business" — 125(7), 129(8), 248(1); "aggregate investment income" — 129(4); "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "associated corporation" — 256(1); "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "Canadian investment income" — 129(4), (8); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "designated property" — 89(1), 129(4.3); "dividend" — 248(1); "dividend refund" — 129(1); "eligible portion" — 129(4); "exempt income" — 248(1); "foreign investment income", "foreign investment loss" — 129(4); "income" — from property 129(4.1), (4.2); "income of the corporation for the year from an active business" — 125(7), 129(6), 129(8); "investment corporation" — 130(3), 248(1); "investment tax credit" — 127(9), 248(1); "loss" — from property 129(4.1), (4.2); "Minister" — 248(1); "prescribed rate" — Reg. 4301; "private corporation" — 89(1), 131(5), 186(5), 248(1); "property" — 129(4.1), (4.2), 248(1); "refundable dividend tax on hand" — 129(3); "series of transactions or events" — 248(10); "share" — 248(1); "specified investment business" — 125(7), 248(1); "substituted property" — 248(5); "tax payable" — 248(2); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 129(1.2), 129(7), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Investment Corporations

130. (1) Deduction from tax — A corporation that was, throughout a taxation year, an investment corporation may deduct from the tax otherwise payable by it under this Part for the year an amount equal to 20% of the amount, if any, by which its taxable income for the year exceeds its taxed capital gains for the year.

Related Provisions: 131(10) — Investment corporation can elect not to be restricted financial institution; 142.2(1)"financial institution"(c)(i) — Investment corporation not subject to mark-to-market rules.

Pre-RSC History: Subsec. 130(1) amended by 1988, c. 55, s. 117, to substitute "20%" for "22%", applicable to taxation years ending after 1987, except that in its application to a taxation year of a corporation commencing before July 1988, there shall be added to the amount determined under subsec. 130(1), in respect of the corporation for the year the aggregate of

(a) that proportion of 5% of the excess determined under that subsection in respect of the corporation for the year that the number of days in the year that are before July, 1987 is of the number of days in the year,

(b) that proportion of 4% of the excess determined under that subsection in respect of the corporation for the year that the number of days in the year that are after June, 1987 and before 1988 is of the number of days in the year, and

(c) that proportion of 7% of the excess determined under that subsection in respect of the corporation for the year that the number of days in the year that are after 1987 and before July, 1988 is of the number of days in the year.

Subsec. 130(1) amended by 1986, c. 55, subsec. 52(1), to substitute "22%" for "16⅔", applicable by subsec. 52(2) (as amended by 1988, c. 55, s. 202, deemed in force on December 19, 1986) to 1987 *et seq.* except that in its application to

(a) a taxation year of a corporation commencing before 1987 and ending after 1986, there shall be deducted from the amount determined under subsection 130(1) in respect of the corporation for the year that proportion of 1/12 of the excess determined under that subsection in respect of the corporation for the year that the number of days in the year that are before 1987 is of the number of days in the year; and

(b) taxation years ending after 1986 and commencing before 1988, there shall be added to the amount otherwise determined under that subsection in respect of a corporation for a taxation year the aggregate of

(i) that proportion of 3% of the excess determined under that subsection that the number of days in the year that are before July 1987 is of the number of days in the year, and

(ii) that proportion of 2% of the excess determined under that subsection that the number of days in the year that are after June 1987 and before 1988 is of the number of days in the year.

Subsec. 130(1) substituted by 1977-78, c. 1, subsec. 63(1), applicable to 1978 *et seq.*, to substitute "16⅔" for "25"; and where a corporation that is entitled to a deduction under subsec. 130(1) has a taxation year part of which is before 1978 and part of which is after 1977, the deduction under that subsection from the tax otherwise payable by the corporation under Part I of the Act for its 1978 taxation year shall be increased by an amount determined according to the following rules:

(a) determine the proportion that the number of days in the corporation's 1978 taxation year that are in 1977 is of the number of days in the whole taxation year;

(b) determine the amount, if any, by which the corporation's taxable income for the year exceeds its taxed capital gains for the year;

(c) determine the product that is obtained when the proportion determined under paragraph (a) is multiplied by the amount determined under paragraph (b);

and the amount by which the deduction under subsec. 130(1) shall be so increased is equal to 1/12 of the product determined under para. (c).

Interpretation Bulletins: IT-98R2: Investment corporations.

(2) Application of subsecs. 131(1) to (3.2) and (6) — Where a corporation was an investment corporation throughout a taxation year (other than a corporation that was a mutual fund corporation throughout the year), subsections 131(1) to (3.2) and (6) apply in respect of the corporation for the year

(a) as if the corporation had been a mutual fund corporation throughout that and all previous taxation years ending after 1971 throughout which it was an investment corporation; and

(b) as if its capital gains redemptions for that and all previous taxation years ending after 1971, throughout which it would, but for the assumption made by paragraph (a), not have been a mutual fund corporation, were nil.

History: The opening words of subsec. 130(2) amended by 1998, c. 19, subsec. 155(1), applicable to 1993 *et seq.* The opening words formerly read:

(2) Application of subsecs. 131(1) to (3.2) — Where a corporation was throughout a taxation year an investment corporation (other than a mutual fund corporation), subsections 131(1) to (3.2) apply in respect of the corporation for the year

That portion of subsec. 130(2) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 74, applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991. That portion formerly read:

(2) Application of ss. 131(1) to (3) — Where a corporation was, throughout a taxation year, an investment corporation other than a mutual fund corporation, subsections 131(1) to (3) are applicable in respect of the corporation for the year

Interpretation Bulletins: IT-98R2: Investment corporations.

Forms: T5 Segment; T5 Summary: Return of investment income; T5 Supplementary: Statement of investment income.

(3) Meaning of expressions "investment corporation" and "taxed capital gains" — For the purposes of this section,

(a) a corporation is an "investment corporation" throughout any taxation year in respect of which the expression is being applied if it complied with the following conditions:

(i) it was throughout the year a Canadian corporation that was a public corporation,

(ii) at least 80% of its property throughout the year consisted of shares, bonds, marketable securities or cash,

(iii) not less than 95% of its income (determined without reference to subsection 49(2)) for the year was derived from, or from dispositions of, investments described in subparagraph (ii),

(iv) not less than 85% of its gross revenue for the year was from sources in Canada,

(v) not more than 25% of its gross revenue for the year was from interest,

(vi) at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or of a province or a Canadian municipality,

(vii) no person would have been a specified shareholder of the corporation in the year if

(A) the portion of the definition "specified shareholder" in subsection 248(1) before paragraph (a) were read as follows:

""specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purposes of this definition,"

(B) paragraph (a) of that definition were read as follows:

"(a) a taxpayer is deemed to own each share of the capital stock of a corporation owned at that time by a person related to the taxpayer,"

(C) that definition were read without reference to paragraph (d) of that definition,

and

(D) paragraph 251(2)(a) were read as follows:

"(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 19 years of age, or

(ii) the individual's spouse;"

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(viii) an amount not less than 85% of the total of

(A) ⅔ of the amount, if any, by which its taxable income for the year exceeds its taxed capital gains for the year, and

(B) the amount, if any, by which all taxable dividends received by it in the year to the extent of the amount thereof deductible under section 112 or 113 from its income for the year exceeds the amount that the corporation's non-capital loss for the year would be if the amount determined in respect of the corporation for the year under paragraph 3(b) was nil,

(less any dividends or interest received by it in the form of shares, bonds or other securities that had not been sold before the end of the year) was distributed, otherwise than by way of capital gains dividends, to its shareholders before the end of the year; and

(b) the amount of the "taxed capital gains" of a taxpayer for a taxation year is the amount, if any, by which

(i) its taxable capital gains for the year from dispositions of property

exceeds

(ii) the total of its allowable capital losses for the year from dispositions of property and the amount, if any, deducted under paragraph 111(1)(b) for the purpose of computing its taxable income for the year.

Related Provisions: 4(1) — Income or loss from a source; 112 — Deduction of dividends received; 113 — Deduction for dividends from foreign affiliate; 130(2) — Application of mutual fund corporation rules; 130(4) — Wholly owned subsidiaries; 132(5) — Taxed capital gains definition applies to mutual fund trusts; 184(2) — Tax on excess dividend paid by corporation; 248(1)"investment corporation" — Definition applies to entire Act.

History: S.C. 1999, c. 22, s. 92 amended the amendment made to subpara. 130(3)(a)(vii) by S.C. 1998, c. 19 (Bill C-28) and amended the application so that it is applicable to corporations for taxation years that begin after June 20, 1996 except that, by subsec. 155(4) of S.C. 1998, c. 19 (as amended by 1999, c. 22), where

(a) a corporation was an investment corporation on June 20, 1996,

(b) a particular person is a specified shareholder of the corporation in the year, and

(c) the particular person

(i) was a specified shareholder of the corporation on June 20, 1996, or

(ii) both

(A) was a specified shareholder of the corporation at any time after June 20, 1996 and before August 14, 1998, and

(B) would have been a specified shareholder of the corporation on June 20, 1996 if subpara 130(3)(a)(vii), as amended, were read without reference to clauses (B) and (D),

subpara. 130(3)(a)(vii), as amended, does not apply to the corporation, with respect to the particular person and persons related to the particular person, except as provided in subsections 155(5) to (11) of the said c. 19, which were also amended by 1999, c. 22 (see below). These amendments by 1999, c. 22 are deemed to have come into force on June 18, 1998. The amendment made by S.C. 1998, c. 19 read:

(vii) no person would be a specified shareholder of the corporation in the year if, in the definition "specified shareholder" in subsection 248(1),

(A) the portion of that definition before paragraph (a) were read as follows:

"specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purpose of this definition,

and

(B) the reference in paragraph (d) of that definition to "not less than 10%" were read as a reference to "more than 25%", and

Subsecs. 155(5) to (11) of S.C. 1998, c. 19, (as amended by 1999, c. 22, s. 92, deemed to have come into force on June 18, 1998) provide:

(5) [The amendment to subpara. 130(3)(a)(vii)] applies to a corporation that was an investment corporation on June 20, 1996 for a taxation year that begins after that day if, at any time after that day and before the end of the year, a particular person described in paragraph [155(4)(b) of the said c. 19 (above)] in respect of the corporation for the year contributes capital to the corporation or acquires a share of the capital stock of the corporation other than by a permitted acquisition.

(6) [The amendment to subpara. 130(3)(a)(vii)] applies to a corporation that was an investment corporation on June 20, 1996 for a taxation year that begins after that day where, at any time after that day and before the end of the year, a newly related person in respect of the corporation

(a) contributed capital to the corporation; or

(b) held at any particular time property (in this paragraph referred to as an "ineligible investment") that is

(i) a share of the capital stock of the corporation, or

(ii) a share of the capital stock of a corporation, or an interest in a partnership or trust, that held an ineligible investment at the particular time.

(7) For the purpose of subsection (6), a newly related person in respect of a corporation at any time means a person who, at any other time that is before that time and after June 20, 1996, became related to a particular person described in paragraph [155(4)(b) of the said c. 19 (above)] in respect of the corporation, but does not include a person who would, if the taxation year of the corporation that includes that other time had ended immediately before that other time, have been a particular person described in paragraph [155(4)(b) of the said c. 19 (above)] in respect of the corporation for the year.

(8) [Repealed by 1999, c. 22, s. 92]

(9) For the purposes of subsections (5) to (8),

(a) where at a particular time

(i) a trust that existed on June 20, 1996 distributes a share of the capital stock of a corporation to a person who was a beneficiary under the trust throughout the period from June 20, 1996 to the particular time in satisfaction of all or any part of the beneficiary's capital interest in the trust, or

(ii) a partnership that existed on June 20, 1996 distributes, on ceasing to exist, a share of the capital stock of a corporation or an interest in a share to a person who was a member of the partnership throughout the period from June 20, 1996 to the particular time,

the share is deemed to have been owned by the beneficiary or member from the later of June 20, 1996 and the time the share was last acquired by the trust or partnership until the particular time; and

(b) where a person who is a beneficiary of a trust or a member of a partnership is deemed by paragraph (b), (c) or (e) of the definition "specified shareholder" in subsection 248(1) of the Act to own a share owned by the partnership or trust, the person is deemed to have acquired the share at the later of the time the share was acquired by the trust or partnership and the time the person last became a beneficiary of the trust or a member of the partnership.

(10) At any time on or after the day of the death of a person described in paragraph [155(4)(c) of the said c. 19 (above)] in respect of a corporation and before the third anniversary of that day,

(a) the estate of the deceased person is deemed to be a person described in paragraphs (4)(b) and (c) [of the said c. 19 (above)] who is related to each person who, throughout the period that begins at the end of June 20, 1996 and ends at the time of death, was related to the deceased person;

(b) notwithstanding subsection (7), the estate is deemed not to be a newly related person in respect of the corporation;

(c) notwithstanding subsection (11), the acquisition of shares of the corporation's capital stock by the estate from the deceased person is deemed to be a permitted acquisition; and

(d) the estate is deemed not to be a trust for the purposes of subparagraph (9)(a)(i) of this Act and paragraphs (b) and (e) of the definition "specified shareholder" in subsection 248(1) of the *Income Tax Act*.

(11) The definitions in this subsection apply in subsections (4) to (10) [of the said c. 19 (above)] and this subsection.

"permitted acquisition" means an acquisition by a particular person of a share of a class of the capital stock of a corporation that was

(a) held, at each particular time after June 20, 1996 and before the time at which the particular person acquired it, or

(b) issued after June 20, 1996 by the corporation as a stock dividend and held, at each particular time after the time the share was issued and before the time at which the particular person acquired it,

by the particular person or by a person who was related to the particular person throughout the period that begins at the end of June 20, 1996 and ends at the particular time if, immediately after the time at which the particular person acquires the share, the total percentage of the issued shares of that class held by the particular person and persons related to the particular person (or in the case of acquisitions before August 14, 1998, by the particular person and persons with whom the particular person did not deal at arm's length immediately after the acquisition) does not exceed the permitted percentage for the particular person in respect of that class of shares.

"permitted percentage" for a particular person in respect of any class of shares of the capital stock of a corporation means

(a) in respect of acquisitions of shares before August 14, 1998, the greatest percentage that is the total percentage of the issued shares of a class of the capital stock of the corporation held at the end of June 20, 1996 by the particular person and persons with whom the particular person did not at that time deal at arm's length; and

(b) in any other case, the greater of

(i) the greatest percentage that is the total percentage of the issued shares of a class of the capital stock of the corporation held at the end of June 20, 1996 by the particular person and persons related to the particular person, and

(ii) the greatest percentage that is the total percentage of the issued shares of a class of the capital stock of the corporation held at the beginning of August 14, 1998 by the particular person and persons related to the particular person.

"related persons" and persons related to each other have, for purposes other than applying the definitions "permitted acquisition" and "permitted percentage" in respect of acquisitions of shares before August 14, 1998, the meaning that would be assigned by section 251 of the Act if paragraph 251(2)(a) of the Act were read as follows:

(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 19 years of age, or

(ii) the individual's spouse;

"specified shareholder" has the meaning assigned by subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2).

Subpara. 130(3)(a)(vii) amended by 1998, c. 19, subsec. 155(2) (but subsequently replaced by an amendment by 1999, c. 22 (see above)), applicable to corporations for taxation years that begin after June 20, 1996 except that, by subsec. 155(4) of the said c. 19, where

(a) a corporation was an investment corporation on June 20, 1996,

(b) a particular person would be a specified shareholder of the corporation in the year, within the meaning assigned by subpara. 130(3)(a)(vii) if this amendment applied to the corporation for the year, and,

(c) the particular person would have been a specified shareholder of the corporation on June 20, 1996, within the meaning assigned by subpara. 130(3)(a)(vii) if this amendment applied to the corporation for the year that includes that day,

subpara. 130(3)(a)(vii) does not apply to the corporation, with respect to the particular person and persons related to the particular person, except as provided in subsections 155(5) to (8) of the said c. 19. Subpara. 130(3)(a)(vii) formerly read:

(vii) none of its shareholders at any time in the year held more than 25% of the issued shares of the capital stock of the corporation, and

Subpara. 130(3)(a)(iii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 109(1), to add "(determined without reference to subsection 49(2))", applicable to 1990 *et seq.*

Pre-RSC History: Subpara. 130(3)(b)(ii) substituted by 1984, c. 1, s. 76, applicable to 1983 *et seq.* and with respect to amounts deductible under para. 111(1)(b) in respect of losses determined for 1983 *et seq.*, to substitute "deducted" for "deductible".

Cl. 130(3)(a)(viii)(A) and all that portion of subpara. 130(3)(a)(viii) following cl. (B) substituted by 1980-81-82-83, c. 48, subsecs. 75(1), (2), applicable, as to cl. 130(3)(a)(viii)(A), to taxation years ending after December 11, 1979, and, as to that portion, with respect to dividends becoming payable after December 11, 1979. Cl. 130(3)(a)(viii)(A) and that portion formerly read:

(A) 75% of the amount, if any, by which its taxable income for the year exceeds its taxed capital gains for the year, and.

. . . . .

(less any dividends or interest received by it in the form of shares, bonds or other securities that had not been sold before the end of the year) was distributed, otherwise than by way of a stock dividend, to its shareholders before the end of the year; and

All that portion of subpara. 130(3)(a)(viii) following cl. (B) substituted by 1979, c. 5, s. 42, applicable with respect to stock dividends paid after November 16, 1978. That portion formerly read:

(less any dividends or interest received by it in the form of shares, bonds or other securities that had not been sold before the end of the year) was distributed to its shareholders before the end of the year; and

Cl. 130(3)(a)(viii)(B) substituted by 1974-75-76, c. 26, s. 87, applicable to 1972 *et seq.*

Selected Cases [subsec. 130(3)]: *Canadian & Foreign Securities Co. Ltd. v. MNR*, [1972] C.T.C. 391 (FCTD) ("Securities" include promissory notes; requirements for investment corporation not met).

Interpretation Bulletins: IT-98R2: Investment corporations.

(4) Wholly owned subsidiaries — Where a corporation so elects in its return of income under this Part for a taxation year, each of the corporation's properties that is a share or indebtedness of another Canadian corporation that is at any time in the year a subsidiary wholly owned corporation of the corporation shall, for the purposes of subparagraphs (3)(a)(ii) and (vi), be deemed not to be owned by the corporation at any such time in the year, and each property owned by the other corporation at that time shall, for the purposes of those subparagraphs, be deemed to be owned by the corporation at that time.

History: Subsec. 130(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 109(2), applicable to 1987 *et seq.*, and an election referred to in the subsec. in respect of a corporation's taxation year for which a return of income under Part I of the Act was made before December 18, 1991 shall be deemed to have been made in the corporation's return of income for that year if the election is filed in writing with the Minister of National Revenue before March 17, 1992.

Interpretation Bulletins: IT-98R2: Investment corporations.

Definitions [s. 130]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "capital gain" — 39(1)(a), 248(1); "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "gross revenue" — 248(1); "investment corporation" — 130(3)(a), 248(1); "mutual fund corporation" — 131(8), 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "share", "shareholder", "subsidiary wholly owned corporation" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3)(b).

Information Circulars [s. 130]: 78-14R2: Guidelines for trust companies and other persons responsible for filing T3-IND, T3R-G, T3RIF-IND, T3RIF-G, T3H-IND, T3H-G, T3D, T3P, T3S, T3RI, T3F.

Mortgage Investment Corporations

130.1 (1) Deduction from tax — In computing the income for a taxation year of a corporation that was, throughout the year, a mortgage investment corporation,

(a) there may be deducted the total of

(i) all taxable dividends, other than capital gains dividends, paid by the corporation during the year or within 90 days after the end of the year to the extent that those dividends were not deductible by the corporation in computing its income for the preceding year, and

(ii) ¾ of all capital gains dividends paid by the corporation during the period commencing 91 days after the commencement of the year and ending 90 days after the end of the year; and

(b) no deduction may be made under section 112 in respect of taxable dividends received by it from other corporations.

Related Provisions: 142.2(1)"financial institution"(c)(ii) — Mortgage investment corporation not subject to mark-to-market rules; 181.3(3)(a) — Capital of financial institution.

Pre-RSC History: Subpara. 130.1(1)(a)(ii) amended by 1988, c. 55, subsec. 118(1) to substitute "¾" for "½", applicable to taxation years ending after June 1988, except that for taxation years ending after June 1988 and commencing before 1990, the reference to "¾" in subpara. 130.1(1)(a)(ii) shall, in respect of the corporation for the year, be read as a reference to the fraction determined as the aggregate of

(a) that proportion of ½ that the number of days in the year that are before July, 1988 is of the number of days in the year,

(b) that proportion of ⅔ that the number of days in the year that are after June, 1988 and before 1990 is of the number of days in the year, and

(c) that proportion of ¾ that the number of days in the year that are after 1989 is of the number of days in the year.

Subpara. 130.1(1)(a)(i) substituted by 1977-78, c. 1, s. 64, applicable to 1972 *et seq.*

(2) Dividend equated to bond interest — For the purposes of this Act, any amount received from a mortgage investment corporation by a shareholder of the corporation as or on account of a taxable dividend, other than a capital gains dividend, shall be deemed to have been received by the shareholder as interest payable on a bond issued by the corporation after 1971.

Related Provisions: 130.1(3) — Application; 214(3)(e) — Non-resident withholding tax.

(3) Application of subsec. (2) — Subsection (2) applies where the taxable dividend (other than a capital gains dividend) described in that subsection was paid during a taxation year throughout which the paying corporation was a mortgage investment corporation or within 90 days thereafter.

(4) Election re capital gains dividend — Where at any particular time during the period that begins 91 days after the beginning of a taxation year of a corporation that was, throughout the year, a mortgage investment corporation and ends 90 days after the end of the year, a dividend is paid by the corporation to shareholders of the corporation, if the corporation so elects in respect of the full amount of the dividend in prescribed manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the amount, if any, by which

(i) ⅘ of the taxed capital gains of the corporation for the year

exceeds

(ii) the total of all dividends, and parts of dividends, paid by the corporation during the period and before the particular time that are deemed by this paragraph to be capital gains dividends; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition, in the year and after February 22, 1994, by the taxpayer of capital property.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 184(2) — Tax on excessive elections; 184(3) — Election to treat excess as separate dividend; 185(4) — Joint and several liability from excessive elections.

History: Subsec. 130.1(4) amended by 1995, c. 3, subsec. 40(1), applicable to dividends paid after February 22, 1994. Subsec. (4) formerly read:

(4) Electing capital gains dividend — Where at any particular time during the period beginning 91 days after the beginning of a taxation year of a corporation that was, throughout the year, a mortgage investment corporation and ending 90 days after the end of the year, a dividend is paid by the corporation to shareholders of the corporation,

(a) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the amount, if any, by which

(A) ⅘ of the corporation's qualifying taxed capital gains for the year

exceeds

(B) the total of all dividends, and parts of dividends, paid by the corporation during the period and before the particular time that are deemed by this subparagraph to be capital gains dividends,

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year, and

(iii) any election under paragraph (b) made by the corporation in respect of the dividend shall be deemed not to have been made; and

(b) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the amount, if any, by which

(A) ⅘ of the corporation's non-qualifying taxed capital gains for the year

exceeds

(B) the total of all dividends, and parts of dividends, paid by the corporation during the period and before the particular time that are deemed by this subparagraph to be capital gains dividends, and

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6,

(A) that property shall be deemed to have been non-qualifying real property of the taxpayer, within the meaning of that section, disposed of by the taxpayer in the year, and

(B) the taxpayer's eligible real property gain for the year, within the meaning of that section, from the disposition of that property shall be deemed to be nil.

Subsec. 130.1(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(1), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Where at any particular time during the period commencing 91 days after the commencement of a taxation year of a corporation that was, throughout the year, a mortgage investment corporation and ending 90 days after the end of the year, a dividend is paid by the corporation to shareholders of the corporation, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time,

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed

(i) 4/3 of the taxed capital gains of the corporation for the year

minus

(ii) such part, if any, of each dividend paid by the corporation during the period and before the particular time as is deemed by this subsection to be a capital gains dividend; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Pre-RSC History: Subpara. 130.1(4)(a)(i) amended by 1988, c. 55, subsec. 118(2), to substitute "4/3 of" for "2 times", applicable to taxation years ending after June 1988, except that for taxation years ending after June 1988 and commencing before 1990, the reference to "4/3" in subpara. 130.1(4)(a)(i) shall, in respect of the corporation for the year, be read as a reference to the aggregate of

(a) that proportion of 2 that the number of days in the year that are before July, 1988 is of the number of days in the year,

(b) that proportion of 3/2 that the number of days in the year that are after June, 1988 and before 1990 is of the number of days in the year, and

(c) that proportion of 4/3 that the number of days in the year that are after 1989 is of the number of days in the year.

Para. 130.1(4)(b) substituted by 1988, c. 55, subsec. 118(3), applicable to 1985 *et seq.* Para. 130.1(4)(b) formerly read:

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as or on account of the dividend shall not be included in computing his income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from the disposition by him in the year of capital property.

Para. 130.1(4)(b) amended by 1986, c. 6, s. 75, applicable to 1985 *et seq.*, to substitute "any other provision of this Act" for "anything in this Act" and "disposition by him in the year of capital property" for "disposition of capital property".

Regulations: 2104.1 (prescribed manner, prescribed form).

Forms: T5 Segment; T5 Summary: Return of investment income; T5 Supplementary: Statement of investment income; T2012: Election in respect of a capital gains dividend.

(4.1) Application of subsecs. 131(1.1) to (1.4) — Where at any particular time a mortgage investment corporation paid a dividend to its shareholders and subsection (4) would have applied to the dividend except that the corporation did not make an election under subsection (4) on or before the day on or before which it was required by that subsection to be made, subsections 131(1.1) to (1.4) apply with such modifications as the circumstances require.

Pre-RSC History: Subsec. 130.1(4.1) added by 1985, c. 45, subsec. 75(1), applicable with respect to dividends paid after 1984.

(5) Public corporation — Notwithstanding any other provision of this Act, a mortgage investment corporation shall be deemed to be a public corporation.

(6) Meaning of "mortgage investment corporation" — For the purposes of this section, a corporation is a "mortgage investment corporation" throughout a taxation year if, throughout the year,

(a) it was a Canadian corporation;

(b) its only undertaking was the investing of funds of the corporation and it did not manage or develop any real property;

(c) none of the property of the corporation consisted of

(i) debts owing to the corporation that were secured on real property situated outside Canada,

(ii) debts owing to the corporation by non-resident persons, except any such debts that were secured on real property situated in Canada,

(iii) shares of the capital stock of corporations not resident in Canada, or

(iv) real property situated outside Canada, or any leasehold interest in such property;

(d) there were 20 or more shareholders of the corporation and no person would have been a specified shareholder of the corporation at any time in the year if

(i) the portion of the definition "specified shareholder" in subsection 248(1) before paragraph (a) were read as follows:

" "specified shareholder" of a corporation at any time means a taxpayer who owns, directly or indirectly, at that time, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purposes of this definition,"

(ii) paragraph (a) of that definition were read as follows:

"(a) a taxpayer is deemed to own each share of the capital stock of a corporation owned at that time by a person related to the taxpayer,"

(iii) that definition were read without reference to paragraph (d) of that definition, and

(iv) paragraph 251(2)(a) were read as follows:

"(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 18 years of age, or

(ii) the individual's spouse;"

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(e) any holders of preferred shares of the corporation had a right, after payment to them of their preferred dividends, and payment of dividends in a like amount per share to the holders of the common shares of the corporation, to participate *pari passu* with the holders of the common shares in any further payment of dividends;

(f) the cost amount to the corporation of such of its property as consisted of

(i) debts owing to the corporation that were secured, whether by mortgages or in any other manner, on houses (as defined in section 2 of the *National Housing Act*) or on property included within a housing project (as defined in that section), and

(ii) amounts of any deposits standing to the corporation's credit in the records of

(A) a bank or other corporation any of whose deposits are insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec, or

(B) a credit union,

plus the amount of any money of the corporation was at least 50% of the cost amount to it of all of its property;

(g) the cost amount to the corporation of all real property of the corporation, including leasehold interests in such property, (except real property acquired by the corporation by foreclosure or otherwise after default made on a mortgage or agreement of sale of real property) did not exceed 25% of the cost amount to it of all of its property;

(h) its liabilities did not exceed 3 times the amount by which the cost amount to it of all of its property exceeded its liabilities, where at any time in the year the cost amount to it of such of its property as consisted of property described in subparagraphs (f)(i) and (ii) plus the amount of any money of the corporation was less than ⅔ of the cost amount to it of all of its property; and

(i) its liabilities did not exceed 5 times the amount by which the cost amount to it of all its property exceeded its liabilities, where paragraph (h) is not applicable.

Related Provisions: 130.1(7) — How shareholders counted; 130.1(8) — First taxation year; 142.2(1)"financial institution"(c)(ii) — Mortgage investment corporation not subject to mark-to-market rules; 248(1)"mortgage investment corporation" — Definition applies to entire Act; 253.1 — Deeming rule re investments in limited partnerships.

History: Para. 130.1(6)(d) amended by 1999, c. 22, subsec. 53(1), applicable in determining whether a corporation is a mortgage investment corporation for a taxation year that begins after January 14, 1998, except that the amendment applies to the corporation, with respect to a particular person and persons related to the particular person, only as provided in subsections (4) to (10) of the amending legislation if

(a) the corporation was a mortgage investment corporation at the end of January 14, 1998,

(b) the particular person is a specified shareholder of the corporation at any time in the year, and

(c) the particular person

(i) was a specified shareholder of the corporation at the end of January 14, 1998, or

(ii) both

(A) was a specified shareholder of the corporation at any time after January 14, 1998 and before August 14, 1998, and

(B) would have been a specified shareholder of the corporation at the end of January 14, 1998 if para. 130.1(6)(d), as amended, were read without reference to subparas. (ii) and (iv).

Subsections 53(4) to (10) of the said c. 22 provide:

(4) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that begins after that day if a person who at any time in the year is a specified shareholder of the corporation contributes capital to the corporation, or acquires a share of the corporation's capital stock other than by a permitted acquisition, at any time after January 14, 1998 and before the end of the year.

(5) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that begins after that day if a newly related person in respect of a person who at any time in the year is a specified shareholder of the corporation

(a) contributes capital to the corporation, or

(b) holds property (in this paragraph referred to as an "ineligible investment") that is

(i) a share of the capital stock of the corporation, or

(ii) a share of the capital stock of a corporation that holds an ineligible investment

at any time after January 14, 1998 and before the end of the year.

(6) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that ends after that day if

(a) at any particular time after January 14, 1998 and before the end of the year, a mortgage lender is a specified shareholder of the corporation; and

(b) at any time that is in the taxation year that includes the particular time and that is after January 14, 1998, any person contributes capital to the corporation or acquires from the corporation a share of the corporation's capital stock, other than a share that was issued to the person as a stock dividend.

(7) [The amendments] apply to a corporation that was a mortgage investment corporation at the end of January 14, 1998 for a taxation year that ends after 2007 if a mortgage lender is a specified shareholder of the corporation at any time in the year or in a taxation year that ends before the year and after 2007.

(8) For the purposes of subsections (4) to (7),

(a) if at a particular time

(i) a trust distributes a share of the capital stock of a corporation to a person who was a beneficiary under the trust throughout the period from the end of January 14, 1998 to the particular time in satisfaction of all or any part of the beneficiary's capital interest in the trust, or

(ii) a partnership distributes, to a person who was a member of the partnership throughout the period from the end of January 14, 1998 to the particular time, on the partnership ceasing to exist or on the ceasing of the person to be a member of the partnership, a share of the capital stock of a corporation or an interest in such a share,

the share is deemed to have been owned by the beneficiary or member throughout the period that begins at the later of the end of January 14, 1998 and the time the share was last acquired by the trust or partnership and that ends at the particular time; and

(b) if a person who is a beneficiary under a trust or who is a member of a partnership is deemed by paragraph (b), (c) or (e) of the definition "specified shareholder" in subsection 248(1) of the Act to own a share owned by the trust or partnership, the person is deemed to own the share and to have acquired the share at the later of the time the share was acquired by the trust or partnership and the time the person last became a beneficiary under the trust or a member of the partnership.

(9) At any time on or after the day of the death of a person described in paragraph (3)(c) [see application above] in respect of a corporation and before the third anniversary of that day,

(a) the estate of the deceased person is deemed to be a person described in paragraphs (3)(b) and (c) [see application above] who is related to each person who, throughout the period that begins at the beginning of January 15, 1998 and ends at the time of death, was related to the deceased person;

(b) notwithstanding subsection (10),

(i) the estate is deemed not to be a newly related person in respect of the corporation, and

(ii) the acquisition of shares of the corporation's capital stock by the estate from the deceased person is deemed to be a permitted acquisition; and

(c) the estate is deemed not to be a trust for the purposes of subparagraph (8)(a)(i) and paragraphs (b) and (e) of the definition "specified shareholder" in subsection 248(1) of the Act.

(10) The definitions in this subsection apply in subsections (3) [i.e., the application above] to (9) and this subsection.

"mortgage lender" means a particular corporation where the ordinary business of

(a) the particular corporation, or

(b) a corporation (other than a mortgage investment corporation) or partnership affiliated with the particular corporation

includes the holding of debts that are secured, whether by mortgage or in any other manner, on houses (as defined in section 2 of the *National Housing Act*) or on property included within a housing project (as defined in that section).

"newly related persons" means persons who are related to each other and who became so related after January 14, 1998.

"permitted acquisition" means an acquisition by a particular person of a share of a class of the capital stock of a corporation that was

(a) held, at each particular time after January 14, 1998 and before the time at which the particular person acquired it, or

(b) issued after January 14, 1998 by the corporation as a stock dividend and held, at each particular time after the time the share was issued and before the time at which the particular person acquired it,

by the particular person or by a person who was related to the particular person throughout the period that began at the beginning of January 15, 1998 and that ends at the particular time if, immediately after the time at which the particular person acquires the share, the percentage of the issued shares of that class held by the particular person and persons related to the particular person (or in the case of acquisitions before August 14, 1998, by the particular person and persons with whom the particular person did not deal at arm's length immediately after the acquisition) does not exceed the permitted percentage for the particular person in respect of that class of shares.

"permitted percentage" for a particular person in respect of a class of shares of the capital stock of a corporation means

(a) in respect of acquisitions of shares before August 14, 1998, the percentage of the issued shares of that class held at the end of January 14, 1998 by the particular person and persons with whom the particular person did not at that time deal at arm's length; and

(b) in any other case, the greater of

(i) the percentage of the issued shares of that class held at the end of January 14, 1998 by the particular person and persons related at that time to the particular person, and

(ii) the percentage of the issued shares of that class held at the beginning of August 14, 1998 by the particular person and persons related at that time to the particular person.

"related persons" and persons related to each other have, for purposes other than applying the definitions "permitted acquisition" and "permitted percentage" in respect of acquisitions of shares before August 14, 1998, the meaning that would be assigned by section 251 of the Act if paragraph 251(2)(a) of the Act were read as follows:

(a) an individual and

(i) the individual's child (as defined in subsection 70(10)) who is under 19 years of age, or

(ii) the individual's spouse;

"specified shareholder" has the meaning assigned by paragraph 130.1(6)(d) of the Act, as enacted by subsection (1).

Para. 130.1(6)(d) formerly read:

(d) subject to subsections (7) and (8), the number of shareholders of the corporation was not less than twenty and no one shareholder held more than 25% of the issued shares of the capital stock of the corporation;

Subpara. 130.1(6)(f)(i) amended by 1998, c. 19, s. 156, deemed to have come into force on June 23, 1993. It formerly read:

(i) debts owing to the corporation that were secured on residential property, as defined in the *Residential Mortgage Financing Act*, chapter 49 of the Statutes of Canada, 1973-74, whether by mortgages or in any other manner, and

Pre-RSC History: Cl. 130.1(6)(f)(ii)(B) substituted by 1985, c. 45, subsec. 75(2). That clause formerly read:

(B) a credit union within the meaning assigned by subsection 137(6),

"Residential Property": Subsec. 2(1) of the *Residential Mortgage Financing Act*, R.S.C. 1985, c. R-6, defines "residential property" as follows:

"residential property" means a house or the property included within a housing project.

Subsec. 2(2) defines "house" and "housing project" by reference to the *National Housing Act*, R.S.C. 1985, c. N-11, s.2 (as amended by c. 25 (4th Supp.), s. 1(2)), which in turn provides:

"house" means a building or movable structure intended for human habitation containing not more than two family housing units, together with the land, if any, on which the building or movable structure is situated;

"housing project" means a project consisting of one or more houses, one or more multiple-family dwellings, housing accommodation of the hostel or dormitory type, one or more condominium units or any combination thereof, together with any public space, recreational facilities, commercial space and other buildings appropriate to the project, but does not include a hotel;

(7) How shareholders counted — In paragraph (6)(d), a trust governed by a registered pension plan or deferred profit sharing plan by which shares of the capital stock of a corporation are held shall be counted as four shareholders of the corporation for the purpose of determining the number of shareholders of the corporation, but as one shareholder for the purpose of determining whether any person is a specified shareholder (as defined for the purpose of that paragraph).

Pre-RSC History: Subsec. 130.1(7) amended by 1999, c. 22, subsec. 53(2), applicable on the same basis as the amendment to para. 130.1(6)(d). It formerly read:

(7) For the purposes of paragraph (6)(d), a trust governed by a registered pension plan or deferred profit sharing plan by which shares of the capital stock of a corporation are held shall be counted as four shareholders of the corporation, and a trust governed by a registered retirement savings plan by which shares of the capital stock of a corporation are held shall be counted as one shareholder of the corporation, but, for the purpose of calculating the limitation on the holding of shares of the capital stock of a mortgage investment corporation by a trust governed by a registered pension plan or deferred profit sharing plan, the trust shall be counted as one shareholder.

(8) First taxation year — For the purposes of subsection (6), a corporation that was incorporated after 1971 shall be deemed to have complied with paragraph (6)(d) throughout the first taxation year of the corporation in which it carried on business if it complied with that paragraph on the last day of that taxation year.

(9) Definitions — In this section,

"liabilities" of a corporation at any particular time means the total of all debts owing by the corporation, and all other obligations of the corporation to pay an amount, that were outstanding at that time;

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 130.1(9) repealed by 1995, c. 3, subsec. 40(2.1), applicable after February 22, 1994. The definition formerly read:

> "non-qualifying real property" of a corporation has the meaning assigned by subsection 131(6);

The definition "non-qualifying real property" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2.1), applicable to 1992 *et seq.*

"non-qualifying taxed capital gains" — [Repealed]

History: The definition "non-qualifying taxed capital gains" in subsec. 130.1(9) repealed by 1995, c. 3, subsec. 40(2), applicable after February 22, 1994. The definition formerly read:

> "non-qualifying taxed capital gains" of a mortgage investment corporation for a taxation year means the amount, if any, by which
>
> (a) the amount by which its taxable capital gains for the year from dispositions of its non-qualifying real property exceeds the amounts determined under paragraph (b) of the definition "qualifying taxed capital gains" in respect of those dispositions
>
> exceeds the total of
>
> (b) the amount by which its allowable capital losses for the year from dispositions of its non-qualifying real property exceeds the amounts determined under paragraph (d) of the definition "qualifying taxed capital gains" in respect of those dispositions,
>
> (c) the amount, if any, deducted under paragraph 111(1)(b) in computing its taxable income for the year, and
>
> (d) the amount, if any, by which the total of the amounts, if any, determined under paragraphs (c) and (d) of the definition "qualifying taxed capital gains" in respect of the corporation for the year exceeds the total of the amounts, if any, determined under paragraphs (a) and (b) of that definition in respect of the corporation for the year;

The definition "non-qualifying taxed capital gains" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2.1), applicable to 1992 *et seq.*

"qualifying taxed capital gains" — [Repealed]

History: The definition "qualifying taxed capital gains" in subsec. 130.1(9) repealed by 1995, c. 3, subsec. 40(2), applicable after February 22, 1994. The definition formerly read:

> "qualifying taxed capital gains" of a mortgage investment corporation for a taxation year means the amount, if any, by which the total of
>
> (a) its taxable capital gains for the year from dispositions of property, other than its non-qualifying real property, and
>
> (b) all amounts each of which is an amount determined by the formula
>
> $$A \times \frac{B}{C}$$
>
> where
>
> A is its taxable capital gain for the year from the disposition of a non-qualifying real property of the corporation,
>
> B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and
>
> C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of
>
> exceeds the total of
>
> (c) its allowable capital losses for the year from dispositions of property, other than its non-qualifying real property,
>
> (d) all amounts each of which is an amount determined by the formula
>
> $$D \times \frac{E}{F}$$
>
> where
>
> D is its allowable capital loss for the year from the disposition of a non-qualifying real property of the corporation,
>
> E is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and
>
> F is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of, and
>
> (e) the amount, if any, by which the total of the amounts determined under paragraphs (b) and (c) of the definition "non-qualifying taxed capital gains" in respect of the corporation for the year exceeds the amount, if any, determined under paragraph (a) of that definition in respect of the corporation for the year.

The definition "qualifying taxed capital gains" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2.1), applicable to 1992 *et seq.*

"taxed capital gains" has the meaning assigned by paragraph 130(3)(b).

History: Definition "taxed capital gains" added to subsec. 130.1(9) by 1995, c. 3, subsec. 40(3), applicable after February 22, 1994.

Former definition "taxed capital gains" repealed, by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 75(2), applicable to 1992 *et seq.* "Taxed capital gains" formerly read:

> "taxed capital gains" has the meaning assigned by paragraph 130(3)(b).

History [subsec. 130.1(9)]: Definitions "non-qualifying real property", "non-qualifying taxed capital gains" and "qualifying taxed capital gains" added, and "taxed capital gains" repealed, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 75(2), (2.1), applicable to 1992 *et seq.* "Taxed capital gains" formerly read:

> "taxed capital gains" has the meaning assigned by paragraph 130(3)(b).

Pre-RSC History [subsec. 130.1(9)]: *The definition "liabilities" was para. 130.1(9)(a); "taxed capital gains", 130.1(9)(b).*

Pre-RSC History [s. 130.1]: S. 130.1 added by 1973-74, c. 49, s. 18(1), applicable to any taxation year of a mortgage investment corporation commencing after 1971.

Definitions [s. 130.1]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "bank" — *Interpretation Act* 35(1); "capital gain" — 39(1)(a), 248(1); "capital gains dividend" — 130.1(4); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "common share", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "eligible real property gain" — 110.6(1); "liabilities" — 130.1(9); "mortgage investment corporation" — 130.1(6), 248(1); "non-qualifying real property" — 130.1(9), 131(6); "non-qualifying taxed capital gains" — 130.1(9); "preferred share", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 130.1(5), 248(1); "qualifying taxed capital gains" — 130.1(9); "received" — 248(7); "record", "registered pension plan" — 248(1); "resident in Canada" — 250; "share", "shareholder", "specified shareholder" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxed capital gains" — 130.1(3)(b), 130.1(9); "taxpayer" — 248(1);"trust" — 104(1), 248(1), (3); "undertaking" — 253.1(a).

Mutual Fund Corporations

131. (1) Election re capital gains dividend — Where at any particular time a dividend became payable by a corporation, that was throughout the taxation year in which the dividend became payable a mutual fund corporation, to shareholders of any class of its capital stock, if the corporation so elects in respect of the full amount of the dividend in prescribed manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

> (a) the dividend shall be deemed to be a capital gains dividend payable out of the corporation's capital gains dividend account to the extent that it does not exceed the corporation's capital gains dividend account at the particular time; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition, in the year and after February 22, 1994, by the taxpayer of capital property.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 84(7) — When deemed dividend deemed payable; 112(4)(d), 112(4.1)(d), 112(4.2)(d) — Capital gains dividend excluded from stop-loss and share inventory valuation rules; 112(6) — No deduction for capital gains dividend; 129(7) — No dividend refund for capital gains dividend; 130(2) — Application to investment corporation; 130(3) — Meaning of investment corporation and taxed capital gains; 131(1.1) — Deemed date of election; 131(4) — Application of s. 84; 132.2 — Mutual fund reorganizations; 152(1) — Assessment; 142.2(1)"financial institution"(c)(iii) — Mutual fund corporation not subject to mark-to-market rules; 184(2) — Tax on excessive elections; 184(3) — Election to treat excess as separate dividend; 212(2) — No withholding tax on capital gains dividend.

History: Subsec. 131(1) amended by 1995, c. 3, subsec. 41(1), applicable to dividends paid after February 22, 1994. Subsec. (1) formerly read:

(1) Where at any particular time a dividend became payable, by a corporation that was throughout the taxation year in which the dividend became payable a mutual fund corporation, to shareholders of any class of shares of its capital stock,

(a) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend payable out of the corporation's capital gains dividend account to the extent that it does not exceed the corporation's capital gains dividend account at the particular time,

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year, and

(iii) any election under paragraph (b) made by the corporation in respect of the dividend shall be deemed not to have been made; and

(b) if the corporation so elects in respect of the full amount of the dividend, in prescribed form and manner and at or before the earlier of the particular time and the first day on which any part of the dividend was paid,

(i) the dividend shall be deemed to be a capital gains dividend payable out of the corporation's non-qualifying real property capital gains dividend account to the extent that it does not exceed the corporation's non-qualifying real property capital gains dividend account at the particular time, and

(ii) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6,

(A) that property shall be deemed to have been a non-qualifying real property of the taxpayer, within the meaning of that section, disposed of by the taxpayer in the year, and

(B) the taxpayer's eligible real property gain for the year from the disposition of that property shall be deemed to be nil.

Subsec. 131(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(1), applicable to 1992 *et seq.* Subsec. (1) formerly read:

131. (1) Where at any particular time after 1971 a dividend has become payable by a corporation that was, throughout the taxation year in which the dividend became payable, a mutual fund corporation, to shareholders of any class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time,

(a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the corporation's capital gains dividend account at the particular time; and

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account or in lieu of payment of, or in satisfaction of the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from a disposition of capital property and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

Pre-RSC History: Para. 131(1)(b) substituted by 1988, c. 55, subsec. 119(1), applicable with respect to 1988 *et seq.* Para 131(1)(b) formerly read:

(b) notwithstanding any other provision of this Act, any amount received by a taxpayer in a taxation year as, on account or in lieu of payment of, or in satisfaction of the dividend shall not be included in computing his income for the year as income from a share of the capital stock of the corporation, but shall be deemed to be a capital gain of the taxpayer for the year from the disposition by him in the year of capital property.

Para. 131(1)(b) amended by 1986, c. 6, s. 76, to substitute "any other provision of this Act" for "anything in this Act other than subsection 47.1(18)" and "disposition by him in the year of capital property" for "disposition of capital property", applicable to 1985 *et seq.* except that in respect of the 1985 taxation year the words "notwithstanding any other provision of this Act" shall be read as "notwithstanding any other provisions of this Act other than subsection 47.1(18)".

Para. 131(1)(b) substituted by 1984, c. 1, s. 77, applicable with respect to amounts received after September 30, 1983, to add "other than subsection 47.1(18)".

Regulations: 2104 (prescribed manner of making election).

Interpretation Bulletins: IT-98R2: Investment corporations; IT-243R4: Dividend refund to private corporations; IT-328R3: Losses on shares on which dividends have been received.

Forms: T5 Segment; T5 Summ: Return of investment income; T5 Supp: Statement of investment income; T2055: Election in respect of a capital gains dividend under subsection 131(1); RC4169: Tax treatment of mutual funds for individuals.

(1.1) Deemed date of election — Where at any particular time a dividend has become payable by a mutual fund corporation to shareholders of any class of shares of its capital stock and subsection (1) would have applied to the dividend except that the election referred to in that subsection was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if

(a) the election is thereafter made in prescribed manner and prescribed form;

(b) an estimate of the penalty in respect of the election is paid by the corporation when the election is made; and

(c) the directors or other person or persons legally entitled to administer the affairs of the corporation have, before the time the election is made, authorized the election to be made.

Related Provisions: 130(2) — Application to investment corporation; 131(1.2) — Request to make election; 131(1.3), (1.4) — Penalty; 152(1) — Assessment.

Regulations: 2104(f) (prescribed manner).

(1.2) Request to make election — The Minister may at any time, by written request served personally or by registered mail, request that an election referred to in paragraph (1.1)(a) be made by a mutual fund corporation and where the mutual fund corporation on which such a request is served does not comply therewith within 90 days after service of the request, subsection (1.1) does not apply to such an election made thereafter by it.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

(1.3) Penalty — For the purposes of this section, the penalty in respect of an election referred to in paragraph (1.1)(b) is an amount equal to the lesser of

(a) 1% per annum of the amount of the dividend referred to in the election for each month or part of a month during the period commencing with the time that the dividend became payable, or the first day on which any part of the dividend was paid if that day is earlier, and ending with the day on which the election was made, and

(b) the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period referred to in paragraph (a) bears to 12.

(1.4) Assessment and payment of penalty — The Minister shall, with all due dispatch, examine each election referred to in paragraph (1.1)(a), assess the penalty payable and send a notice of assessment to the mutual fund corporation and the corporation shall pay forthwith to the Receiver General, the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

Related Provisions: 152(1) — Assessment.

Pre-RSC History: Subsecs. 131(1.1)–(1.4) added by 1980-81-82-83, c. 48, s. 76, applicable with respect to dividends that become payable after 1974.

(2) Capital gains refund to mutual fund corporation — Where a corporation was, throughout a taxation year, a mutual fund corporation and a return of its income for the year has been made within 3 years from the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this section referred to as its "capital gains refund" for the year) equal to the lesser of

(i) 21% of the total of

(A) all capital gains dividends paid by the corporation in the period commencing 60 days after the commencement of the year and ending 60 days after the end of the year, and

(B) its capital gains redemptions for the year, and

(ii) the corporation's refundable capital gains tax on hand at the end of the year; and

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 130(2) — Application; 131(3) — Application to other liability; 131(3.1), (3.2) — Interest; 152(1) — Assessment; 157(3)(c) — Reduction in instalment obligations to reflect capital gains refund; 160.1 — Where excess refunded.

History: Para. 131(2)(b) amended by 1998, c. 19, subsec. 157(1), applicable after April 27, 1989. Para. 131(2)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the corporation for the year.

Pre-RSC History: Para. 131(2)(b) substituted by 1990, c. 39, s. 31, applicable after April 27, 1989. Para. 131(2)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within

(i) the 6 year period referred to in paragraph 152(4)(b), where that paragraph applies, and

(ii) the 3 year period referred to in paragraph 152(4)(c), in any other case.

That portion of subpara. 131(2)(a)(i) preceding cl. (A) amended by 1988, c. 55, subsec. 119(2), to substitute "21%" for "18⅔%", applicable to taxation years ending after June 1988, except that in its application to taxation years ending after June 1988 and before 1990, the reference in subpara. 131(2)(a)(i) to "21%" shall be read as a reference to "18⅔%".

Subsec. 131(2) substituted by 1984, c. 45, s. 48, applicable after April 19, 1983, except that in the application of subsec. 131(2) to capital gains refunds for the 1982 and preceding taxation years the references therein to "3" and "6" shall be read as references to "4" and "7" respectively. Subsec. 131(2) formerly read:

(2) Where a corporation was, throughout a taxation year, a mutual fund corporation, if a return of its income for the year has been made within 4 years from the end of the year the Minister

(a) may, upon mailing the notice of assessment for the year, refund without application therefor an amount (in this section referred to as its "capital gains refund" for the year) equal to the lesser of

(i) 18% of the aggregate of

(A) all capital gains dividends paid by the corporation in the period commencing 60 days after the commencement of the year and ending 60 days after the end of the year, and

(B) its capital gains redemption for the year, and

(ii) the corporation's refundable capital gains tax on hand at the end of the year; and

(b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within 4 years from the end of the year.

All that portion of subpara. 131(2)(a)(i) preceding cl. (A) substituted by 1979, c. 5, subsec. 43(1), applicable to taxation years ending after November 16, 1978. That portion formerly read:

(i) 20% of the aggregate of

Cl. 131(2)(a)(i)(A) substituted by 1973-74, c. 30, subsec. 20(1), applicable to the first taxation year commencing after July 27, 1973 and to all subsequent taxation years. Cl. 131(2)(a)(i)(A) formerly read:

(A) all capital gains dividends paid by the corporation in the year, and

Interpretation Bulletins: IT-98R2: Investment corporations.

(3) Application to other liability — Instead of making a refund that might otherwise be made under subsection (2), the Minister may, where the corporation is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the corporation of that action.

Related Provisions: 130(2) — Application to investment corporation; 152(1) — Assessment.

(3.1) Interest on capital gains refund — Where a capital gains refund for a taxation year is paid to, or applied to a liability of, a corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(a) the day that is 120 days after the end of the year, and

(b) the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

and ending on the day the refund is paid or applied.

Related Provisions: 130(2) — Application to investment corporation; 131(3.2) — Excess interest on capital gains refund; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 131(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(2), applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(b) (prescribed rate of interest).

(3.2) Excess interest on capital gains refund — Where at any particular time interest has been paid to, or applied to a liability of, a corporation under subsection (3.1) in respect of a capital gains refund and it is determined at a subsequent time that the capital gains refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the capital gains refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 130(2) — Application to investment corporation; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 131(3.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(2), applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(4) Application of section 84 — Section 84 does not apply to deem a dividend to have been paid by a corporation to any of its shareholders, or to deem any of the shareholders of a corporation to have received a dividend on any shares of the capital stock of the corporation, if at the time the dividend would, but for this subsection, be deemed by that section to have been so paid or received, as the case may be, the corporation was a mutual fund corporation.

Related Provisions: 131(11)(c) — Rules re prescribed labour-sponsored venture capital corporations; 132.2(1)(o)(i) — Mutual fund reorganization.

(5) Dividend refund to mutual fund corporation — A corporation that was a mutual fund corporation throughout a taxation year

(a) is deemed for the purposes of paragraph 87(2)(aa) and section 129 to have been a private corporation throughout the year, except that its refundable dividend tax on hand at the end of the year (within the meaning assigned by subsection 129(3)) shall be determined without reference to paragraph 129(3)(a); and

(b) where it was not an investment corporation throughout the year, is deemed for the purposes of Part IV to have been a private corporation throughout the year except that, in applying subsection 186(1) to the corporation in respect of the year, that subsection shall be read without reference to paragraph 186(1)(b).

Related Provisions: 112 — Deduction of dividends received by resident corporation; 113 — Deduction of dividend from foreign affiliate; 131(1) — Election re capital gains dividend; 131(2) — Capital gains refund; 131(4) — Application of s. 84; 131(11)(c) — Rules re prescribed labour-sponsored venture capital corporations; 152(1) — Assessment; 157(3) — Private, mutual fund, non-resident-owned investment corporations.

History: Subsec. 131(5) amended by 1998, c. 19, subsec. 157(2), applicable to 1993 *et seq.* Subsec. 131(5) formerly read:

(5) A corporation that was, throughout a taxation year, a mutual fund corporation other than an investment corporation shall, for the purposes of paragraph 87(2)(aa), section 129 and Part IV, be deemed to have been a private corporation throughout the year, except that

(a) its refundable dividend tax on hand at the end of the year (within the meaning assigned by subsection 129(3)) shall be determined without reference to paragraph (a) of that subsection; and

(b) in its application to the corporation in respect of the year, subsection 186(1) shall be read without reference to paragraph 186(1)(b).

Para. 131(5)(a) amended by 1996, c. 21, subsec. 33(1), applicable to taxation years that end after June 1995. Para. (a) formerly read:

(a) for the purposes of section 129, its refundable dividend tax on hand at the end of the year shall be deemed to be the amount, if any, by which the total of

(i) the total of amounts each of which is an amount in respect of the year or any preceding taxation year throughout which it is deemed by this subsection to have been a private corporation, equal to the tax under Part IV payable by it for that year, and

(i.1) the amount, if any, of the corporation's addition at December 31, 1986 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.3)),

exceeds the total of

(ii) the total of amounts each of which is the corporation's dividend refund for any previous taxation year described in subparagraph (i),

(iii) the amount, if any, of the corporation's reduction at December 31, 1977 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.1)), and

(iv) the amount, if any, of the corporation's reduction at December 31, 1987 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.5)); and

Pre-RSC History: Subpara. 131(5)(a)(iv) added by 1988, c. 55, subsec. 119(3), applicable with respect to 1988 *et seq.*

All that portion of para. 131(5)(a) preceding subpara. (ii) substituted (with subpara. (i.1) being added) by 1986, c. 55, subsec. 53(1), applicable to 1987 *et seq.* That portion formerly read:

(a) for the purposes of section 129, its refundable dividend tax on hand at the end of the year shall be deemed to be the amount, if any, by which

(i) the aggregate of amounts each of which is an amount in respect of the year or any previous taxation year throughout which it is deemed by this subsection to have been a private

corporation, equal to the tax under Part IV payable by it for that year,

exceeds the aggregate of

Para. 131(5)(a) substituted by 1977-78, c. 1, s. 65, applicable to 1978 *et seq.* Para. 131(5)(a) formerly read:

(a) for the purposes of section 129 its refundable dividend tax on hand at the end of the year shall be deemed to be the amount, if any, by which

(i) the aggregate of amounts each of which is an amount in respect of the year or any previous taxation year throughout which it is deemed by this subsection to have been a private corporation, equal to the tax under Part IV payable by it for that year,

exceeds

(ii) the aggregate of amounts each of which is the corporation's dividend refund for any previous taxation year described in subparagraph (i); and

(6) Definitions — In this section,

"capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which

(a) its capital gains, for all taxation years that began more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation

exceeds

(b) the total of

(i) its capital losses, for all taxation years that began more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

(ii) all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year that ended more than 60 days before that time, and

(iii) all amounts each of which is an amount in respect of any taxation year that ended more than 60 days before that time throughout which it was a mutual fund corporation, equal to $^{100}/_{21}$ of its capital gains refund for that year;

Related Provisions: 88(2)(a)(i.1) — Winding-up; 87(2)(bb) — Amalgamation — addition to amounts determined under 131(6)"capital gains dividend account"(a) and (b).

History: The definition "capital gains dividend account" in subsec. 131(6) amended by 1995, c. 3, subsec. 41(3), applicable after February 22, 1994. The definition formerly read:

"capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which the total of

(a) its capital gains, for all taxation years beginning more than 60 days before that time, from dispositions of property (other than its non-qualifying real property) after 1971 and before that time while it was a mutual fund corporation, and

(b) all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is its capital gain, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation,

B is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and

C is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of by it

exceeds the total of

(c) its capital losses, for all taxation years beginning more than 60 days before that time, from dispositions of property (other than its non-qualifying real property) after 1971 and before that time while it was a mutual fund corporation,

(d) all amounts each of which is an amount determined by the formula

$$D \times \frac{E}{F}$$

where

D is its capital loss, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation,

E is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with February 1992, and

F is the number of calendar months in the period that begins with the later of the calendar month in which the property was last acquired by it and January 1972 and ends with the calendar month in which the property was disposed of by it,

(e) all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year ending more than 60 days before that time, other than any such dividends that became payable out of the corporation's non-qualifying real property capital gains dividend account,

(f) all amounts each of which is an amount in respect of any taxation year ending more than 60 days before that time throughout which it was a mutual fund corporation, equal to 100/21 of its capital gains refund for that year, and

(g) the amount, if any, by which the total of the amounts determined under paragraphs (b) and (c) of the definition "non-qualifying real property capital gains dividend account" in respect of the corporation at that time exceeds the amount determined under paragraph (a) of that definition in respect of the corporation at that time;

"Capital gains dividend account" in subsec. 131(6) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(3), applicable to 1992 *et seq.* That definition formerly read:

"capital gains dividend account" of a mutual fund corporation at any time means the amount determined by the formula

$$A - (B + C + D)$$

where

A is the total amount of the corporation's capital gains, for all taxation years commencing more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

B is the total amount of the corporation's capital losses, for all taxation years commencing more than 60 days before that time, from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

C is the total amount of all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year ending more than 60 days before that time, and

D is the total of all amounts each of which is an amount in respect of any taxation year ending more than 60 days before that time throughout which the corporation was a mutual fund corporation, equal to 100/21 of its capital gains refund for that year;

Pre-RSC History: *The definition "capital gains dividend account" was para. 131(6)(b). See Table of Concordance.*

Cl. 131(6)(b)(ii)(C) amended by 1988, c. 55, subsec. 119(5), to substitute "any taxation year" for "any taxation year of the corporation" and "100/21 of" for "50/9" times", applicable with respect to the determination of amounts under cl. 131(6)(b)(ii)(C), in respect of taxation years ending after June 1988, except that in its application with respect to the determination of amounts under that clause in respect of taxation years ending

before 1990, the reference to "100/21" shall be read as a reference to "75/14".

Cl. 131(6)(b)(ii)(C) substituted by 1979, c. 5, subsec. 43(3), applicable to taxation years ending after November 16, 1978 except that in its application to taxation years ending before November 17, 1978 the reference in cl. 131(6)(b)(ii)(C) to "50/9" shall be read as a reference to "5". Cl. (b)(ii)(C) formerly read:

> (C) all amounts each of which is an amount in respect of any taxation year of the corporation ending more than 60 days before that time throughout which it was a mutual fund corporation, equal to 5 times its capital gains refund for that year;

Para. 131(6)(b) substituted by 1973-74, c. 30, subsec. 20(2), applicable to the first taxation year commencing after July 27, 1973 and to all subsequent taxation years. Para. 131(6)(b) formerly read:

> (b) "capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which
>
> (i) its capital gains from dispositions of property after 1971 and before that time while it was a mutual fund corporation,
>
> exceeds
>
> (ii) the aggregate of
>
> (A) its capital losses from dispositions of property after 1971 and before that time while it was a mutual fund corporation,
>
> (B) all capital gains dividends that became payable by the corporation before that time and after the end of the last taxation year ending before that time, and
>
> (C) all amounts each of which is an amount in respect of any taxation year of the corporation ending before that time throughout which it was a mutual fund corporation, equal to 5 times its capital gains refund for that year;

"capital gains redemptions" of a mutual fund corporation for a taxation year means the amount determined by the formula

$$\frac{A}{B} \times (C + D)$$

where

A is the total of all amounts paid by the corporation in the year on the redemption of shares of its capital stock,

B is the total of the fair market value at the end of the year of all the issued shares of its capital stock and the amount determined for A in respect of the corporation for the year,

C is 100/21 of the corporation's refundable capital gains tax on hand at the end of the year, and

D is the amount determined by the formula

$$(K + L) - (M + N)$$

where

K is the amount of the fair market value at the end of the year of all the issued shares of the corporation's capital stock,

L is the total of all amounts each of which is the amount of any debt owing by the corporation, or of any other obligation of the corporation to pay an amount, that was outstanding at that time,

M is the total of the cost amounts to the corporation at that time of all its properties, and

N is the amount of any money of the corporation on hand at that time;

Related Provisions: 130(2) — Application to investment corporation; 132.2(1)(p) — Mutual fund reorganizations; 257 — Formula amount cannot calculate to less than zero.

Pre-RSC History: *The definition "capital gains redemptions" was para. 131(6)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

> *(a) "capital gains redemptions" of a mutual fund corporation for a taxation year means that proportion of*
>
> *(i) the aggregate of*
>
> *(A) 100/21 of its refundable capital gains tax on hand at the end of the year, and*
>
> *(B) the amount, if any, by which the aggregate of the fair market value at the end of the year of all of the issued shares of its capital stock and all amounts each of which is the amount of any debt owing by the corporation, or of any other obligation of the corporation to pay an amount, that was outstanding at that time exceeds the aggregate of the cost amounts to it at that time of all of its properties and the amount of any money of the corporation on hand at that time,*
>
> *that*
>
> *(ii) the aggregate of amounts paid by it in the year on the redemption of shares of its capital stock*
>
> *is of*
>
> *(iii) the aggregate of the fair market value at the end of the year of all of the issued shares of its capital stock and the amount determined under subparagraph (ii) in respect of the corporation for the year;*

Cl. 131(6)(a)(i)(A) amended by 1988, c. 55, subsec. 119(4), to substitute "100/21 of" for "50/9 times", applicable to taxation years ending after June 1988, except that in its application to taxation years ending before 1990, the reference to "100/21" shall be read as a reference to "75/14".

Cl. 131(6)(a)(i)(A) amended by 1979, c. 5, subsec. 43(2), applicable to taxation years ending after November 16, 1978. Cl. (a)(i)(A) formerly read:

> (A) 5 times its refundable capital gains tax on hand at the end of the year, and

"dividend refund [para. 131(6)(c)]" — [Repealed under former Act]

Pre-RSC History: Former para. 131(6)(c) repealed by 1985, c. 45, s. 76, applicable to 1985 *et seq.* That para. formerly read:

> (c) "dividend refund" of a corporation for a taxation year has the meaning assigned by subsection 129(1);

"non-qualifying real property" — [Repealed]

History: The definition "non-qualifying real property" in subsec. 131(6) repealed by 1995, c. 3, subsec. 41(2), applicable after February 22, 1994. The definition formerly read:

> "non-qualifying real property" of a corporation or trust (other than a personal trust) means property disposed of by the corporation or trust after February 1992 that at the time of its disposition is
>
> (a) real property,
>
> (b) a share of the capital stock of a corporation, the fair market value of which is derived principally from real property, other than real property that was used
>
> (i) throughout that part of the 24-month period immediately preceding that time while it was owned by the corporation or a corporation related to the corporation, or
>
> (ii) throughout all or substantially all of the time in the period preceding that time during which it was owned by the corporation or a corporation related to the corporation,
>
> principally in an active business carried on by the corporation or a corporation related to it, but not including a share of the capital stock of a corporation the fair market value of which is derived principally from real property owned by another corporation the shares of which would, if owned by the corporation or the trust, not be non-qualifying real property of the corporation or the trust,
>
> (c) an interest in a partnership or trust, the fair market value of which is derived principally from real property, other than real property that was used
>
> (i) throughout that part of the 24-month period immediately preceding that time while it was property of the partnership or trust, or

(ii) throughout all or substantially all of the time in the period preceding that time during which it was property of the partnership or trust,

principally in an active business carried on by one or more persons as members of the partnership or by the trust, or

(d) an interest or an option in respect of property described in any of paragraphs (a) to (c),

and, for the purposes of this definition, an "active business" carried on by a person at any time means a business carried on by the person at that time other than a business (other than a business carried on by a credit union or a business of leasing property that is not real property) the principal purpose of which is to derive income from property (including interest, dividends, rents or royalties), unless the person or, where the person carries on the business as a member of a partnership, the partnership

(e) employs in the business at that time more than 5 individuals on a full-time basis, or

(f) in the course of carrying on the business has managerial, administrative, financial, maintenance or other similar services provided to it at that time and the person or partnership could reasonably be expected to require more than 5 full-time employees if those services had not been so provided;

The closing words of para. (b) of the definition "non-qualifying real property" in subsec. 131(6) substituted by 1994, c. 21, s. 63, applicable to 1992 *et seq.* The closing words formerly read:

principally in an active business carried on by the corporation or a corporation related to it,

"Non-qualifying real property" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(3.1), applicable to 1992 *et seq.*

"non-qualifying real property capital gains dividend account" — [Repealed]

History: The definition "non-qualifying real property capital gains dividend account" in subsec. 131(6) repealed by 1995, c. 3, subsec. 41(2), applicable after February 22, 1994. The definition formerly read:

"non-qualifying real property capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which

(a) the total of all amounts each of which is the amount by which its capital gain, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation exceeds the amount determined under paragraph (b) of the definition "capital gains dividend account" in respect of that disposition

exceeds the total of

(b) all amounts each of which is the amount by which its capital loss, for a taxation year beginning more than 60 days before that time, from the disposition of a non-qualifying real property of the corporation before that time while it was a mutual fund corporation exceeds the amount determined under paragraph (d) of the definition "capital gains dividend account" in respect of that disposition,

(c) all capital gains dividends that became payable by the corporation before that time and more than 60 days after the end of the last taxation year ending more than 60 days before that time, other than any such dividends that became payable out of the corporation's capital gains dividend account, and

(d) the amount, if any, by which the total of all amounts determined under paragraphs (c) to (f) of the definition "capital gains dividend account" in respect of the corporation at that time exceeds the total of all amounts determined under paragraphs (a) and (b) of that definition in respect of the corporation at that time;

"Non-qualifying real property capital gains dividend account" added to subsec. 131(6) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 76(3.1), applicable to 1992 *et seq.*

"refundable capital gains tax on hand" of a mutual fund corporation at the end of a taxation year means the amount determined by the formula

A – B

where

A is the total of all amounts each of which is an amount in respect of that or any previous taxation year throughout which the corporation was a mutual fund corporation, equal to the least of

(a) 28% of its taxable income for the year,

(b) 28% of its taxed capital gains for the year, and

(c) the tax payable by it under this Part for the year determined without reference to section 123.2, and

B is the total of all amounts each of which is an amount in respect of any previous taxation year throughout which the corporation was a mutual fund corporation, equal to its capital gains refund for the year.

Related Provisions: 87(2)(bb) — Amalgamation — addition to amounts determined under 131(6)"refundable capital gains tax on hand"A and B; 130(2) — Application to investment corporation; 131(7) — Taxed capital gains defined; 132.2(1)(l) — RCGTOH minus capital gains refund added to RCGTOH of transferee on qualifying exchange of property between mutual funds; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "refundable capital gains tax on hand" was para. 131(6)(d). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(d) "refundable capital gains tax on hand" of a mutual fund corporation at the end of a taxation year means the amount, if any, by which

(i) the aggregate of amounts each of which is an amount in respect of that or any previous taxation year throughout which it was a mutual fund corporation, equal to the least of

(A) 28% of its taxable income for the year,

(B) 28% of its taxed capital gains for the year, and

(C) the tax payable by it under this Part for the year determined without reference to section 123.2,

exceeds

(ii) the aggregate of amounts each of which is an amount in respect of any previous taxation year throughout which it was a mutual fund corporation, equal to its capital gains refund for the year.

Cls. 131(6)(d)(i)(A) and (B) amended by 1988, c. 55, subsec. 119(6), to substitute in each "28%" for "36%", applicable with respect to the determination of amounts under those clauses in respect of taxation years ending after June 1988, except that in its application to a taxation year of a corporation commencing before July 1988 and ending after June 1988

(a) there shall be added to the amount determined under cl. 131(6)(d)(i)(A) in respect of the corporation for the year that proportion of 8% of its taxable income for the year that the number of days in the year that are before July 1988 is of the number of days in the year; and

(b) there shall be added to the amount determined under cl. 131(6)(d)(i)(B) in respect of the corporation for the year that proportion of 8% of its taxed capital gains for the year that the number of days in the year that are before July 1988 is of the number of days in the year.

Cl. 131(6)(d)(i)(C) substituted by 1986, c. 55, subsec. 53(2), applicable to 1987 *et seq.* That clause formerly read:

(C) where the taxation year ended after May 6, 1974, the tax payable under this Part by it for the year;

Cls. 131(6)(d)(i)(A), (B) amended by 1979, c. 5, subsec. 43(4), applicable to taxation years ending after November 16, 1978 except that in its application to taxation years ending before November 17, 1978 the references to "36%" shall be read as references to "40%". Cls. (d)(i)(A), (B) formerly read:

(A) 40% of its taxable income for the year,

(B) 40% of its taxed capital gains for the year, and

Subpara. 131(6)(d)(i) substituted by 1974-75-76, c. 26, s. 88, applicable to taxation years ending after May 6, 1974. Subpara. 131(6)(d)(i) formerly read:

(i) the aggregate of amounts each of which is an amount in respect of that or any previous taxation year throughout which it was a mutual fund corporation, equal to 40% of the lesser of its taxable income for the year and its taxed capital gains for the year,

(7) Definition of "taxed capital gains" — In subsection (6), "taxed capital gains" of a taxpayer for a taxation year has the meaning assigned by subsection 130(3).

(8) Meaning of "mutual fund corporation" — Subject to subsection (8.1), a corporation is, for the purposes of this section, a mutual fund corporation at any time in a taxation year if, at that time, it was a prescribed labour-sponsored venture capital corporation or

(a) it was a Canadian corporation that was a public corporation;

(b) its only undertaking was

(i) the investing of its funds in property (other than real property or an interest in real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the corporation, or

(iii) any combination of the activities described in subparagraphs (i) and (ii), and

(c) the issued shares of the capital stock of the corporation included shares

(i) having conditions attached thereto that included conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid, or

(ii) qualified in accordance with prescribed conditions relating to the redemption of the shares,

and the fair market value of such of the issued shares of its capital stock as had conditions attached thereto that included such conditions or as were so qualified, as the case may be, was not less than 95% of the fair market value of all of the issued shares of the capital stock of the corporation (such fair market values being determined without regard to any voting rights attaching to shares of the capital stock of the corporation).

Related Provisions: 131(8.1) — Corporation deemed not to be mutual fund corporation; 132.2(1)(q) — Corporation deemed not to be mutual fund corporation after rollover of property to mutual fund trust; 142.2(1)"financial institution"(c)(iii) — Mutual fund corporation not subject to mark-to-market rules; 248(1)"mutual fund corporation" — Definition applies to entire Act; 253.1 — Deeming rule re investments in limited partnerships.

History: Subparas. 131(8)(b)(i) and (ii) amended by 1998, c. 19, subsec. 157(3), applicable to 1994 *et seq.* Subparas. 131(8)(b)(i) and (ii) formerly read:

(i) the investing of its funds in property (other than real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the corporation, or

Para. 131(8)(b) amended by 1995, c. 21, s. 67, applicable to 1994 *et seq.* Para. (b) formerly read:

(b) its only undertaking was the investing of funds of the corporation; and

That portion of subsec. 131(8) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 110(1), applicable to 1990 *et seq.* That portion formerly read:

(8) Meaning of expression "mutual fund corporation" — For the purposes of this Act, a corporation is a mutual fund corporation at any time in a taxation year if at that time

Regulations: 6701 (prescribed labour-sponsored venture capital corporation).

I.T. Technical News: No. 6 (mutual funds trading — meaning of "investing its funds in property" in 131(8)(b)(i)); No. 14 (reporting of derivative income by mutual funds).

Advance Tax Rulings: ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

(8.1) Idem — Where, at any time, it can reasonably be considered that a corporation, having regard to all the circumstances, including the terms and conditions of the shares of its capital stock, was established or is maintained primarily for the benefit of non-resident persons, the corporation shall be deemed not to be a mutual fund corporation after that time unless

(a) throughout the period beginning on the later of February 21, 1990 and the day of its incorporation and ending at that time, all or substantially all of its property consisted of property other than

(i) real property situated in Canada (including any interest therein or option in respect thereof, whether or not the property is in existence), and

(ii) property that would, if

(A) the corporation were non-resident,

(B) paragraph 115(1)(b) were read without reference to subparagraphs 115(1)(b)(i) and (ii), and

(C) the property were disposed of,

be taxable Canadian property of the corporation; or

Proposed Amendment — 131(8.1)(a)

(a) throughout the period that begins on the later of February 21, 1990 and the day of its incorporation and ends at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (b) of that definition; or

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 81, will amend para. 131(8.1)(a) to read as above, applicable after October 1, 1996.

Technical Notes: Section 131 of the Act sets out rules relating to the taxation of mutual fund corporations and their shareholders.

Subsection 131(8.1) of the Act provides that a corporation is not a mutual fund corporation after a particular time if, at that time, it is reasonable to conclude that the corporation was established or maintained primarily for the benefit of non-resident persons. Two conditions provide exceptions to this rule. The first of these conditions, which is set out in paragraph 131(8.1)(a), is met if, throughout the period that started on February 21, 1990 (or if later, the date of incorporation) and that ends at the particular time, all or substantially all of the corporation's property consisted of property other than Canadian real property, options therein and other taxable Canadian property.

Paragraph 131(8.1)(a) is replaced, with effect after October 1, 1996, with new wording that incorporates changes in the definition of "taxable Canadian property" and the relocation of that definition from paragraph 115(1)(b) of the Act to subsection 248(1) of the Act.

(b) it has not issued a share (other than a share issued as a stock dividend) of its capital stock after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the share was issued to that person under an agreement in writing entered into before February 21, 1990.

Related Provisions: 248(4) — Interest in real property.

History: Subsec. 131(8.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 110(2), applicable after February 20, 1990.

(9) Reduction of refundable capital gains tax on hand — Notwithstanding any other provision of this section, the amount determined for A in the definition "refundable capital gains tax on hand" in subsection (6) in respect of the 1972 or 1973 taxation year of a corporation is,

(a) in respect of its 1972 taxation year, 91.25% of the amount so determined; and

(b) in respect of its 1973 taxation year, the total of

(i) 91.25% of that proportion of the amount so determined that the number of days in that portion of the year that is before 1973 is of the number of days in the whole year, and

(ii) 100% of that proportion of the amount so determined that the number of days in that portion of the year that is after 1972 is of the number of days in the whole year.

Related Provisions: 131(1) — Election re capital gains dividend; 131(6) — Definitions.

Pre-RSC History: Subsec. 131(9) added by 1972, c. 9, s. 4.

(10) Restricted financial institution — Notwithstanding any other provision of this Act, a mutual fund corporation or an investment corporation that at any time would, but for this subsection, be a restricted financial institution shall, if it has so elected in prescribed manner and prescribed form before that time, be deemed not to be a restricted financial institution at that time.

Related Provisions: 112(2.1) — Where no deduction of dividend permitted.

Pre-RSC History: Subsec. 131(10) added by 1988, c. 55, subsec. 119(7), applicable after December 15, 1987 except that the prescribed form referred to therein may be filed at any time before March 14, 1989.

Forms: T2143: Election not to be a restricted financial institution.

(11) Rules respecting prescribed labour-sponsored venture capital corporations — Notwithstanding any other provision of this Act, in applying this Act to a corporation that was at any time a prescribed labour-sponsored venture capital corporation,

(a) for the purposes of subparagraphs 129(3)(a)(i) and (ii), the amount deducted under paragraph 111(1)(b) from the corporation's income for each taxation year ending after that time shall be deemed to be nil;

(b) the definition "aggregate investment income" in subsection 129(4) shall be read without reference to paragraph (a) of that definition in its application to taxation years that end after that time;

(c) notwithstanding subsection (4), if it so elects in its return of income under this Part for a taxation year ending after that time, subsection 84(1) applies for that year and all subsequent taxation years;

(d) subsection (5) does not apply for taxation years ending after that time; and

(e) the amount of the corporation's capital dividend account at any time after that time shall be deemed to be nil.

Related Provisions: 186.1 — Exempt corporations.

History: Para. 131(11)(b) amended by 1996, c. 21, subsec. 33(2), applicable to taxation years that end after June 1995. Para. (b) formerly read:

(b) the value of A in the definition "Canadian investment income" in subsection 129(4) shall be deemed to be zero for taxation years ending after that time;

Subsec. 131(11) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 110(3), applicable to 1990 *et seq.*

Definitions [s. 131]: "active business" — 248(1); "amount", "assessment", "business" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "capital dividend account" — 89(1) [technically not applicable to s. 131]; "capital gain" — 39(1)(a), 248(1); "capital gains dividend account", "capital gains redemptions" — 131(6); "capital gains refund" — 131(2); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "credit union" — 137(6), 248(1); "dividend" — 248(1); "interest" — in real property 248(4); "investment corporation" — 130(3), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), (8.1), 132.2(1)(o)(i), 132.2(1)(q), 248(1); "non-qualifying real property", "non-qualifying real property capital gains dividend account" — 131(6); "payable" — 84(7); "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed rate" — Reg. 4301; "private corporation" — 89(1), 248(1); "property" — 248(1); "public corporation" — 89(1), 248(1); "received" — 248(7); "refundable capital gains tax on hand" — 131(6); "resident in Canada" — 250; "restricted financial institution", "share", "shareholder", "stock dividend" — 248(1); "tax payable" — 248(2); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3)(b), 131(7); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "undertaking" — 253.1(a); "writing" — *Interpretation Act* 35(1).

Regulations [s. 131]: 6701 (prescribed labour-sponsored venture capital corporation).

Mutual Fund Trusts

132. (1) Capital gains refund to mutual fund trust — Where a trust was, throughout a taxation year, a mutual fund trust and a return of its income for the year has been made within 3 years from the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this section referred to as its "capital gains refund" for the year) equal to the lesser of

(i) 21.75% of the trust's capital gains redemptions for the year, and

(ii) the trust's refundable capital gains tax on hand at the end of the year; and

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the trust within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the trust for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 104(21) — Allocation of capital gains and losses to beneficiaries; 127.55(f)(ii) — No minimum tax on mutual fund trust; 132(2) — Application to other liability; 132(2.1), (2.2) — Interest; 132.1 — Deduction for certain amounts designated by mutual fund trust; 132.2 — Mutual fund reorganizations; 142.2(1)"financial institution"(d) — Mutual fund trust not subject to mark-to-market rules; 152(1) — Assessment: 160.1 — Where excess refunded.

History: Para. 132(1)(b) amended by 1998, c. 19, subsec. 158(1), applicable after April 27, 1989. Para. 132(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the trust within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the trust for the year.

Pre-RSC History: Para. 132(1)(b) substituted by 1990, c. 39, s. 32, applicable after April 27, 1989. Para. 132(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the trust within

(i) the 6 year period referred to in paragraph 152(4)(b), where that paragraph applies, and

(ii) the 3 year period referred to in paragraph 152(4)(c), in any other case.

Subpara. 132(1)(a)(i) amended by 1988, c. 55, subsec. 120(1), to substitute "21.75%" for "17%", applicable to 1988 *et seq.* except that in its application to taxation years ending after 1987 and before 1990 the reference to "21.75%" shall be read as a reference to "19⅓%".

Subsec. 132(1) substituted by 1984, c. 45, s. 49, applicable after April 19, 1983, except that in the application of subsec. 132(1) to capital gains refunds for the 1982 and preceding taxation years the references therein to "3" and "6" shall be read as references to "4" and "7", respectively. Subsec. 132(1) formerly read:

> 132. (1) Capital gains refund to mutual fund trust — Where a trust was, throughout a taxation year, a mutual fund trust, if a return of its income for the year has been made within 4 years from the end of the year the Minister
>
> (a) may, upon mailing the notice of assessment for the year, refund without application therefor an amount (in this section referred to as its "capital gains refund" for the year) equal to the lesser of
>
> (i) 17% of the trust's capital gains redemptions for the year, and
>
> (ii) the trust's refundable capital gains tax on hand at the end of the year; and
>
> (b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the trust within 4 years from the end of the year.

Subpara. 132(1)(a)(i) substituted by 1980-81-82-83, c. 140, subsec. 91(1), applicable to 1982 *et seq.*, to substitute "17%" for "17.5%".

Subpara. 132(1)(a)(i) substituted by 1976-77, c. 10, subsec. 52(9), applicable to 1977 *et seq.*, to substitute "17.5%" for "20%".

Forms: T184: Capital gains refund for a mutual fund trust.

(2) Application to other liability — Instead of making a refund that might otherwise be made under subsection (1) the Minister may, where the trust is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the trust of that action.

Related Provisions: 132(4) — Definitions; 132(6) — Meaning of mutual fund corporation; 152(1) — Assessment.

(2.1) Interest on capital gains refund — Where a capital gains refund for a taxation year is paid to, or applied to a liability of, a mutual fund trust, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is 45 days after the later of

(a) the day that is 90 days after the end of the year, and

(b) the day on which the trust's return of income under this Part for the year was filed under section 150

and ending on the day on which the refund is paid or applied.

Related Provisions: 132(2.2) — Excess interest on capital gains refund; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 132(2.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 77, applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(b) (prescribed rate of interest).

(2.2) Excess interest on capital gains refund — Where at any particular time interest has been paid to, or applied to a liability of, a trust under subsection (2.1) in respect of a capital gains refund and it is determined at a subsequent time that the capital gains refund was less than that in respect of which interest was so paid or applied,

(a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the capital gains refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the trust at the particular time;

(b) the trust shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the trust in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 132(2.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 77, applicable to capital gains refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(3) Application of subsec. 104(20) — In its application in respect of a mutual fund trust, subsection 104(20) shall be read as if the reference therein to "a dividend (other than a taxable dividend)" were read as a reference to "a capital dividend".

Pre-RSC History: Subsec. 132(3) substituted by 1988, c. 55, subsec. 120(2), applicable to 1988 *et seq.* Subsec. 132(3) formerly read:

> (3) In its application in respect of a mutual fund trust, subsection 104(20) shall be read as if paragraph (a) thereof were read
>
> (a) without the reference therein to "other than a taxable dividend", and
>
> (b) as if the reference therein to "a dividend" were read as a reference to "a capital dividend".

(4) Definitions — In this section,

"capital gains redemptions" of a mutual fund trust for a taxation year means the amount determined by the formula

$$\frac{A}{B} \times (C + D)$$

where

A is the total of all amounts paid by the trust in the year on the redemption of units of the trust,

B is the total of the fair market value at the end of the year of all the issued units of the trust and the amount determined for A in respect of the trust for the year,

C is 100/21.75 of the trust's refundable capital gains tax on hand at the end of the year, and

D is the amount determined by the formula

$$(K + L) - (M + N)$$

where

K is the amount of the fair market value at the end of the year of all the issued units of the trust,

L is the total of all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay an amount, that was outstanding at that time,

M is the total of the cost amounts to the trust at that time of all its properties, and

N is the amount of any money of the trust on hand at that time;

Related Provisions: 132.2(1)(p) — Mutual fund reorganizations; 257 — Formula amount cannot calculate to less than zero.

Pre-RSC History: *The definition "capital gains redemptions" was para. 132(4)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(a) "capital gains redemptions" of a mutual fund trust for a taxation year means that proportion of

(i) the aggregate of

(A) 100/21.75 of its refundable capital gains tax on hand at the end of the year, and

(B) the amount, if any, by which the aggregate of the fair market value at the end of the year of all of the issued units of the trust and all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay an amount, that was outstanding at that time exceeds the aggregate of the cost amounts to it at that time of all of its properties and the amount of any money of the trust on hand at that time,

that

(ii) the aggregate of amounts paid by it in the year on the redemption of units of the trust,

is of

(iii) the aggregate of the fair market value at the end of the year of all of the issued units of the trust and the amount determined under subparagraph (ii) in respect of the trust for the year; and

Cl. 132(4)(a)(i)(A) amended by 1988, c. 55, subsec. 120(3), to substitute "100/21.75 of" for "100/17 times", applicable to 1988 *et seq.*, except that in its application to taxation years ending after 1987 and before 1990 the reference to "100/21.75" shall be read as a reference to "100/19⅓".

Cl. 132(4)(a)(i)(A) substituted by 1980-81-82-83, c. 140, subsec. 91(2), applicable to 1982 *et seq.*, to substitute "100/17" for "100/17.5".

Cl. 132(4)(a)(i)(A) amended by 1976-77, c. 10, subsec. 52(9.1), applicable to 1977 *et seq.*, to substitute "100/17.5" for "5".

"refundable capital gains tax on hand" of a mutual fund trust at the end of a taxation year means the amount determined by the formula

A – B

where

A is the total of all amounts each of which is an amount in respect of that or any previous taxation year throughout which the trust was a mutual fund trust, equal to the least of

(a) 29% of its taxable income for the year,

(b) 29% of its taxed capital gains for the year, and

(c) where the taxation year ended after May 6, 1974, the tax payable under this Part by it for the year, and

B is the total of all amounts each of which is an amount in respect of any previous taxation year throughout which the trust was a mutual fund trust, equal to its capital gains refund for the year.

Related Provisions: 132(5) — Taxed capital gains defined; 132.2(1)(l) — Addition to RCGTOH on qualifying exchange of property between mutual funds; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "refundable capital gains tax on hand" was para. 132(4)(b). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(b) "refundable capital gains tax on hand" of a mutual fund trust at the end of a taxation year means the amount, if any, by which

(i) the aggregate of amounts each of which is an amount in respect of that or any previous taxation year throughout which it was a mutual fund trust, equal to the least of

(A) 29% of its taxable income for the year,

(B) 29% of its taxed capital gains for the year, and

(C) where the taxation year ended after May 6, 1974, the tax payable under this Part by it for the year,

exceeds

(ii) the aggregate of amounts each of which is an amount in respect of any previous taxation year throughout which it was a mutual fund trust, equal to its capital gains refund for the year.

Cls. 132(4)(b)(i)(A) and (B) amended by 1988, c. 55, subsec. 120(4), to substitute in each "29%" for "34%", applicable with respect to the determination of amounts under cls. 132(4)(b)(i)(A) and (B), in respect of 1988 *et seq.*

Cls. 132(4)(b)(i)(A) and (B) substituted by 1980-81-82-83, c. 140, subsec. 91(3), applicable to 1982 *et seq.*, to substitute "34%" for "35%".

Cl. 132(4)(b)(i)(A) and (B) amended by 1976-77, c. 10, subsec. 52(10), applicable to 1977 *et seq.*, to substitute "35%" for "40%".

Subpara. 132(4)(b)(i) substituted by 1974-75-76, c. 26, s. 89, applicable to taxation years ending after May 6, 1974. Subpara. 132(4)(b)(i) formerly read:

(i) the aggregate of amounts each of which is an amount in respect of that or any previous taxation year throughout which it was a mutual fund trust, equal to 40% of the lesser of its taxable income for the year and its taxed capital gains for the year,

(5) Definition of "taxed capital gains" — In subsection (4), "taxed capital gains" of a taxpayer for a taxation year has the meaning assigned by subsection 130(3).

(6) Meaning of "mutual fund trust" — Subject to subsection (7), for the purposes of this section, a trust is a mutual fund trust at any time if at that time

(a) it was a unit trust resident in Canada,

(b) its only undertaking was

(i) the investing of its funds in property (other than real property or an interest in real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust, or

(iii) any combination of the activities described in subparagraphs (i) and (ii), and

(c) it complied with prescribed conditions relating to the number of its unit holders, dispersal of ownership of its units and public trading of its units.

Proposed Amendment — Trusts with no prospectus filed to be qualified investment

Letter from Department of Finance, December 10, 1998: See under Reg. 4900(1)(d).

Related Provisions: 104(21) — Allocation of capital gains and losses to beneficiaries; 132(6.1) — Election to be MFT from beginning of first year; 132(6.2) — Retention of MFT status to end of year; 132.11 — Optional December 15 year-end; 132.1(1)(q) — Trust deemed not to be MFT after rollover of property to another trust; 142.2(1)"financial institution"(d) — MFT not subject to mark-to-market rules; 156(2) — Payment of tax by MFT; 210.1(b) — MFT not subject to Part XII.2 tax; 212(9)(c) — Interest received by MFT and paid to non-residents — withholding tax exemption; 248(1)"mutual fund trust" — Definition applies to entire Act; 253.1 — Deeming rule re investments in limited partnerships.

History: Subparas. 132(6)(b)(i) and (ii) amended, and the closing words repealed, by 1998, c. 19, subsecs. 158(2), (3), applicable to 1994 *et seq.* Subparas. 132(6)(b)(i) and (ii) and the closing words formerly read:

(i) the investing of its funds in property (other than real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the trust, or

. . . . .

except that where a trust's first taxation year ended after 1971 and the trust has, after 1971 and on or before the day on or before which it was required by section 150 to file its return of income for that year, become a mutual fund trust, it shall, if it so elected in that return, be deemed to have been a mutual fund trust from the commencement of that year until the day on which it so became a mutual fund trust.

Para. 132(6)(b) amended by 1995, c. 21, s. 68, applicable to 1994 *et seq.* Para. (b) formerly read:

(b) its only undertaking was the investing of funds of the trust, and

That portion of subsec. 132(6) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 111(1), to add "Subject to subsection (7)", applicable after February 20, 1990.

Subsec. 132(6) substituted by 1973-74, c. 14, s. 41.

Regulations: 4801 (prescribed conditions).

I.T. Technical News: No. 6 (mutual funds trading — meaning of "investing its funds in property" in 132(6)(b)(i)); No. 14 (reporting of derivative income by mutual funds).

Advance Tax Rulings: ATR-62: Mutual fund distribution limited partnership — amortization of selling commissions.

Forms: RC4169: Tax treatment of mutual funds for individuals.

(6.1) Election to be mutual fund — Where a trust becomes a mutual fund trust at any particular time before the 91st day after the end of its first taxation year, and the trust so elects in its return of income for that year, the trust is deemed to have been a mutual fund trust from the beginning of that year until the particular time.

History: Subsec. 132(6.1) amended by 1999, c. 22, s. 54, applicable to 1998 *et seq.* It formerly read:

(6.1) Where a trust becomes a mutual fund trust at any particular time before the 91st day after the end of the calendar year in which its first taxation year began, and the trust so elects in its return of income under this Part for that first year, the trust is deemed to have been a mutual fund trust from the beginning of that first year until the particular time.

Subsec. 132(6.1) added by 1998, c. 19, subsec. 158(4), applicable to 1994 *et seq.*

Proposed Addition — 132(6.2)

(6.2) Retention of status as mutual fund trust — A trust is deemed to be a mutual fund trust throughout a calendar year where

(a) at any time in the year, the trust would, if this section were read without reference to this susection, have ceased to be a mutual fund trust

(i) because the condition described in paragraph 108(2)(a) ceased to be satisfied, or

(ii) because of the application of paragraph 132: (6)(c);

(b) the trust was a mutual fund trust at the beginning of the year; and

(c) the trust would, throughout the portion of the year throughout which it was in existence, have been a mutual fund trust if

(i) in the case where the condition described in paragraph 108(2)(a) was satisfied at any time in the year, that condition were satisfied throughout the year,

(ii) subsection (6) were read without reference to paragraph (c) of that subsection, and

(iii) this section were read without reference to this subsection.

Related Provisions: 250(6.1) — Parallel rule for trusts generally.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 82(1), will add subsec. 132(6.2), applicable to 1990 *et seq.*

Technical Notes: New subsection 132(6.2) of the Act is a rule that applies where a mutual fund trust ceases to exist. The taxation year of the mutual fund trust (determined with reference to paragraph 249(1)(b)) is not affected by its termination, unless paragraph 132.2(1)(b) applies. Consequently, the last taxation year of a mutual fund trust under the existing income tax rules is generally the calendar year in which it terminates. This leads to unintended consequences under a number of provisions of the Act (including the capital gains refund measure in subsection 132(1), the exemption from the alternative minimum tax in subparagraph 127.55(f)(ii) and the exemption from Part XII.2 tax in section 210.1) that require that a trust be a mutual fund trust throughout a taxation year.

New subsection 132(6.2) is intended to address these unintended consequences. A trust is deemed to be a mutual fund trust throughout a calendar year where:

- but for new subsection 132(6.2), at any time in the year the trust would have ceased to be a mutual fund trust because of the non-application of paragraph 108(2)(a) (i.e., units cease to be redeemable) or the application of 132(6)(c) (i.e., 150 unitholder requirement no longer satisfied);
- the trust was a mutual fund trust at the beginning of the year; and
- the trust would, throughout the portion of the year throughout which it was in existence, have been a mutual fund trust if
  - — where the condition in paragraph 108(2)(a) was satisfied at the beginning of the year, that condition were satisfied throughout the year, and
  - — paragraph 132(6)(c) and subsection 132(6.2) were not taken into account.

This amendment, which is similar to new subsection 250(6.1), applies to the 1990 and subsequent taxation years.

(7) Idem — Where, at any time, it can reasonably be considered that a trust, having regard to all the circumstances, including the terms and conditions of the units of the trust, was established or is maintained primarily for the benefit of non-resident persons, the trust shall be deemed not to be a mutual fund trust after that time unless

(a) throughout the period beginning on the later of February 21, 1990 and the day of its creation and ending at that time, all or substantially all of its property consisted of property other than

(i) real property situated in Canada (including any interest therein or option in respect thereof, whether or not the property is in existence), and

(ii) property that would, if

(A) the trust were non-resident,

(B) paragraph 115(1)(b) were read without reference to subparagraphs 115(1)(b)(i) and (ii), and

(C) the property were disposed of,

be taxable Canadian property of the trust; or

(b) it has not issued a unit (other than a unit issued to a person in satisfaction of the person's right under the trust to an amount referred to in paragraph 104(13)(c)) of the trust after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990.

Proposed Amendment — 132(7)(a), (b)

(a) throughout the period that began on the later of February 21, 1990 and the day of its creation and ended at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (b) of that definition; or

(b) it has not issued any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out

of the trust's income, determined before the application of subsection 104(6) or out of the trust's capital gains) of the trust after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 82(2), will amend paras. 132(7)(a) and (b) to read as above, para. 132(7)(a) applicable after October 1, 1996, and para. 132(7)(b) applicable after February 20, 1990.

Technical Notes: Under subsection 132(7) of the Act, a trust does not qualify as a mutual fund trust in certain cases where it is reasonable to conclude that the trust was established primarily for the benefit of non-resident persons. The provision's purpose was to discourage the use of mutual fund trusts as intermediaries through which non-residents could invest in Canadian real estate and other taxable Canadian property without recognizing any gains on the disposition of units in trust. However, transitional relief was intended to be provided in the case of a trust which did not issue units after February 20, 1990 otherwise than as a capitalization of an income distribution.

Subsection 132(7) is amended to change references to Canadian real estate, and to specified other taxable Canadian property in section 115, to references to the same types of property in the new definition "taxable Canadian property" in subsection 248(1).

Subsection 132(7) is also amended to ensure that the transitional relief operates as described above. The amendment also ensures that this transitional relief is not interrupted by reason only of an issue of units in satisfaction of payments made out of a trust's capital gains.

Related Provisions: 248(4) — Interest in real property.

History: Subsec. 132(7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 111(2), applicable after February 20, 1990.

Definitions [s. 132]: "amount", "assessment" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital gains redemptions" — 132(4); "capital gains refund" — 132(1); "capital property" — 54, 248(1); "cost amount", "dividend" — 248(1); "interest" — in real property 248(4); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident", "person" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "refundable capital gains tax on hand" — 132(4); "resident in Canada" — 250; "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxed capital gains" — 130(3), 132(5); "trust" — 104(1), 248(1), (3); "undertaking" — 253.1(a); "unit trust" — 108(2), 248(1); "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 132]: 78-14R2: Guidelines for trust companies and other persons responsible for filing T3R-IND, T3R-G, T3RIF-IND, T3RIF-G, T3H-IND, T3H-G, T3D, T3P, T3S, T3RI, T3F.

132.1 (1) Amounts designated by mutual fund trust — Where a trust in its return of income under this Part for a taxation year throughout which it was a mutual fund trust designates an amount in respect of a particular unit of the trust owned by a taxpayer at any time in the year equal to the total of

(a) such amount as the trust may determine in respect of the particular unit for the year not exceeding the amount, if any, by which

(i) the total of all amounts that were determined by the trust under subsection 104(16) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for taxation years of the trust commencing before 1988

exceeds

(ii) the total of all amounts determined by the trust under this paragraph for the year or a preceding taxation year in respect of all units of the trust, other than amounts determined in respect of the particular unit for the year under this paragraph, and

(b) such amount as the trust may determine in respect of the particular unit for the year not exceeding the amount, if any, by which

(i) the total of all amounts described in subparagraph 53(2)(h)(i.1) that became payable by the trust after 1987 and before the year

exceeds

(ii) the total of all amounts determined by the trust under this paragraph for the year or a preceding taxation year in respect of all units of the trust, other than amounts determined in respect of the particular unit for the year under this paragraph,

the amount so designated shall

(c) subject to subsection (3), be deductible in computing the income of the trust for the year, and

(d) be included in computing the income of the taxpayer for the taxpayer's taxation year in which the year of the trust ends, except that where the particular unit was owned by two or more taxpayers during the year, such part of the amount so designated as the trust may determine shall be included in computing the income of each such taxpayer for the taxpayer's taxation year in which the year of the trust ends if the total of the parts so determined is equal to the amount so designated.

Related Provisions: 12(1)(m) — Income inclusion — benefits from trust; 132.2(1)(n) — Mutual fund reorganization — continuation of trust; 214(3)(f.1) — Non-resident withholding tax.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Forms: RC4169: Tax treatment of mutual funds for individuals.

(2) Adjusted cost base of unit where designation made — In computing, at any time in a taxation year of a taxpayer, the adjusted cost base to the taxpayer of a unit in a mutual fund trust, there shall be added that part of the amount included under subsection (1) in computing the taxpayer's income that is reasonably attributable to the amount determined under paragraph (1)(b) by the trust for its taxation year ending in the year in respect of the unit owned by the taxpayer.

Related Provisions: 12(1)(m) — Amounts to be included from business or property — benefits from trusts; 53(1)(d.2) — Addition to adjusted cost base of share.

(3) Limitation on current year deduction — The total of amounts deductible by reason of paragraph (1)(c) in computing the income of a trust for a taxation year shall not exceed the amount that would be the income of the trust for the year if no deductions were made under this section and subsection 104(6).

Related Provisions: 132.2(1)(n) — Mutual fund reorganization — continuation of trust.

(4) Carryover of excess — The amount, if any, by which the total of all amounts each of which is an amount designated for the year under subsection (1) exceeds the amount deductible under this section in computing the income of the trust for the year, shall, for the purposes of paragraph (1)(c) and subsection (3), be deemed designated under subsection (1) by the trust for its immediately following taxation year.

Related Provisions: 132.2(1)(n) — Mutual fund reorganization — continuation of trust.

(5) Where designation has no effect — Where it is reasonable to conclude that an amount determined by a mutual fund trust

(a) under paragraph (1)(a) or (b) for a taxation year of the trust in respect of a unit owned at any time in the year by a taxpayer who was a person exempt from tax under this Part by reason of subsection 149(1), or

(b) under paragraph (1)(d) for the year in respect of the amount designated under subsection (1) for the year in respect of the unit

differs from the amount that would have been so determined for the year in respect of the taxpayer had the taxpayer not been a person exempt from tax under this Part by reason of subsection 149(1), the amount designated for the year in respect of the unit under subsection (1) shall have no effect for the purposes of paragraph (1)(c).

Related Provisions: 132.2(1)(n) — Mutual fund reorganization — continuation of trust.

Pre-RSC History [s. 132.1]: S. 132.1 added by 1988, c. 55, s. 121, applicable to 1988 *et seq.*

Definitions [s. 132.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "Canadian property" — 133(8); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "person" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

132.11 (1) Taxation year of mutual fund trust — Notwithstanding any other provision of this Act, where a trust (other than a prescribed trust) that was a mutual fund trust on the 74th day after the end of a particular calendar year so elects in writing filed with the Minister with the trust's return of income for the trust's taxation year that includes December 15 of the particular year,

(a) the trust's taxation year that began before December 16 of the particular year and, but for this paragraph, would end at the end of the particular year (or, where the first taxation year of the trust began after December 15 of the preceding calendar year and no return of income was filed for a taxation year of the trust that ended at the end of the preceding calendar year, at the end of the preceding calendar year) is deemed to end at the end of December 15 of the particular year;

(b) where the trust's taxation year ends on December 15 because of paragraph (a), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and ends at the end of December 15 of the following calendar year or at such earlier time as is determined under paragraph 132.2(1)(b) or subsection 142.6(1); and

(c) each fiscal period of the trust that begins in a taxation year of the trust that ends on December 15 because of paragraph (a) or that ends in a subsequent taxation year of the trust shall end no later than the end of the year or the subsequent year, as the case may be.

Related Provisions: 132.11(2) — Where trust is member of partnership; 132.11(3) — Where trust is beneficiary of another trust; 132.11(6) — Additional income.

(2) Electing trust's share of partnership income and losses — Where a trust is a member of a partnership a fiscal period of which ends in a calendar year after December 15 of the year and a particular taxation year of the trust ends on December 15 of the year because of subsection (1), each amount otherwise determined under paragraph 96(1)(f) or (g) to be the trust's income or loss for a subsequent taxation year of the trust is deemed to be the trust's income or loss determined under paragraph 96(1)(f) or (g) for the particular year and not for the subsequent year.

(3) Electing trust's income from other trusts — Where a particular trust is a beneficiary under another trust a taxation year of which (in this subsection referred to as the "other year") ends in a calendar year after December 15 of the year and a particular taxation year of the trust ends on December 15 of the year because of subsection (1), each amount determined or designated under subsection 104(13), (19), (21), (22) or (29) for the other year that would otherwise be included, or taken into account, in computing the income of the particular trust for a subsequent taxation year of the trust shall

(a) be included, or taken into account, in computing the particular trust's income for the particular year; and

(b) not be included, or taken into account, in computing the particular trust's income for the subsequent year.

(4) Amounts paid or payable to beneficiaries — For the purposes of subsections 52(6) and 104(6) and (13) and subsections (5) and (6) and notwithstanding subsection 104(24), each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular taxation year and not at any other time.

Proposed Amendment — 132.11(4)

(4) Amounts paid or payable to beneficiaries — For the purposes of subsections (5) and (6) and subsections 104(6) and (13), notwithstanding subsection 104(24), each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year, is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular year and not at any other time.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 83(1), will amend subsec. 132.11(4) to read as above, applicable to 2000 *et seq.*

Technical Notes: Section 132.11 of the Act generally allows mutual fund trusts to elect to have taxation years that end on December 15, rather than on December 31.

Subsection 132.11(4) is designed to permit distributions made in the last 16 days of a calendar year in respect of a trust's taxation year ending on December 15 of the calendar year to be treated as if they were made at the end of that taxation year. Subsection 132.11(6) generally permits a trust that has a December 15 taxation year end to distribute additional income to its unitholders, to the extent that this income is reflected by amounts made payable to these unitholders. Both of these subsections are worded so that rights to these distributions are treated as rights to which subsection 52(6) applies, with the result that there is no capital gain on the satisfaction of these rights.

Subsections 132.11(4) and (6) are amended to reflect the repeal of subsection 52(6) and the introduction of paragraphs (g) and (h) of the definition "disposition" in subsection 248(1). As a consequence of these paragraphs, there is no disposition (and, as a

consequence no capital gain or loss) that arises on the mere satisfaction of the right to enforce payment from a mutual fund trust.

(5) Special rules where change in status of beneficiary — Where an amount is deemed by subsection (4) to have been paid or to have become payable at the end of December 15 of a calendar year by a trust to a beneficiary who was not a beneficiary under the trust at that time,

(a) notwithstanding any other provision of this Act, where the beneficiary did not exist at that time, except for the purpose of this paragraph, the first taxation year of the beneficiary is deemed to include the period that begins at that time and ends immediately before the beginning of the first taxation year of the beneficiary;

(b) the beneficiary is deemed to exist throughout the period described in paragraph (a); and

(c) where the beneficiary was not a beneficiary under the trust at that time, the beneficiary is deemed to have been a beneficiary under the trust at that time.

Related Provisions: 132.11(4) — Amounts paid to beneficiary from December 16-31.

(6) Additional income of electing trust — Where a particular amount is designated under this subsection by a trust in its return of income for a particular taxation year that ends on December 15 because of subsection (1) or throughout which the trust was a mutual fund trust and the trust does not designate an amount under subsection 104(13.1) or (13.2) for the particular year,

(a) the particular amount shall be added in computing its income for the particular year;

(b) for the purposes of subsections 104(6) and (13), each portion of the particular amount that is allocated under this paragraph to a beneficiary under the trust in the trust's return of income for the particular year in respect of an amount paid or payable to the beneficiary in the particular year shall be considered to be additional income of the trust for the particular year (determined without reference to subsection 104(6)) that was paid or payable, as the case may be, to the beneficiary at the end of the particular year; and

(c) for the purpose of subsection 52(6), where a portion of the particular amount is allocated to a beneficiary under paragraph (b) in respect of an amount that became payable to the beneficiary in the particular year, the right to the amount so payable shall be considered to be a right to enforce payment by the trust to the beneficiary out of the trust's income (determined without reference to the provisions of this Act) for the particular year.

Proposed Repeal — 132.11(6)(c)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 83(2), will repeal para. 132.11(6)(c), applicable to 2000 *et seq.*

Technical Notes: See under 132.11(4).

Related Provisions: 132.11(4) — Amounts paid to beneficiary from December 16-31; 220(3.21)(b) — Late filing, amendment or revocation of designation or allocation.

(7) Deduction — Subject to subsection (8), the lesser of the amount designated under subsection (6) by a trust for a taxation year and the total of all amounts each of which is allocated by the trust under paragraph (6)(b) in respect of the year shall be deducted in computing the trust's income for the following taxation year.

Related Provisions: 132.11(8) — Anti-avoidance rule.

(8) Anti-avoidance — Subsection (7) does not apply in computing the income of a trust for a taxation year where it is reasonable to consider that the designation under subsection (6) for the preceding taxation year was part of a series of transactions or events that includes a change in the composition of beneficiaries under the trust.

History [s. 132.11]: S. 132.11 added by by 1999, c. 22, s. 55, applicable to 1998 *et seq.*

Definitions [s. 132.11]: "amount" — 248(1); "fiscal period" — 249.1; "Minister" — 248(1); "mutual fund trust" — 132(6)-(7), 132.2(1)(q), 248(1); "prescribed" — 248(1); "share" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

132.2 (1) Mutual funds — qualifying exchange [rollover] — Where a mutual fund corporation or a mutual fund trust has at any time disposed of a property to a mutual fund trust in a qualifying exchange,

(a) the transferee shall be deemed to have acquired the property at the time (in this subsection referred to as the "acquisition time") that is immediately after the time that is immediately after the transfer time, and not to have acquired the property at the transfer time;

(b) subject to paragraph (o), the last taxation years of the funds that began before the transfer time shall be deemed to have ended at the acquisition time, and their next taxation years shall be deemed to have begun immediately after those last taxation years ended;

(c) the transferor's proceeds of disposition of the property and the transferee's cost of the property shall be deemed to be the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greatest of

(A) the cost amount to the transferor of the property at the transfer time or, where the property is depreciable property, the lesser of its capital cost and its cost amount to the transferor immediately before the transfer time,

(B) the amount that the funds have agreed upon in respect of the property in their election in respect of the qualifying exchange, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property;

(d) where the property is depreciable property and its capital cost to the transferor exceeds the transferor's proceeds of disposition of the property under paragraph (c), for the purposes of sections 13 and 20 and any regulations made for the purposes of paragraph 20(1)(a),

(i) the property's capital cost to the transferee shall be deemed to be the amount that was its capital cost to the transferor, and

(ii) the excess shall be deemed to have been allowed to the transferee in respect of the property under regulations made for the purposes of paragraph 20(1)(a) in computing income for taxation years ending before the transfer time;

(e) where two or more depreciable properties of a prescribed class are disposed of by the transferor to the transferee in the same qualifying exchange, paragraph (c) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor at the time of making the election in respect

of the qualifying exchange or, if the transferor does not so designate any such order, in the order designated by the Minister;

(f) each property of a fund, other than

(i) depreciable property of a prescribed class to which paragraph (g) would, but for this paragraph, apply, and

(ii) property disposed of by the transferor to the transferee at the transfer time

shall be deemed to have been disposed of, and to have been reacquired by the fund, immediately before the acquisition time for an amount equal to the lesser of

(iii) the fair market value of the property at the transfer time, and

(iv) the greater of

(A) its cost amount or, where the property is depreciable property, the lesser of its capital cost and its cost amount to the disposing fund at the transfer time, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(g) where the undepreciated capital cost to a fund of depreciable property of a prescribed class immediately before the acquisition time exceeds the total of

(i) the fair market value of all the property of that class immediately before the acquisition time, and

(ii) the amount in respect of property of that class otherwise allowed under regulations made for the purposes of paragraph 20(1)(a) or deductible under subsection 20(16) in computing the fund's income for the taxation year that includes the transfer time,

the excess shall be deducted in computing the fund's income for the taxation year that includes the transfer time and shall be deemed to have been allowed in respect of property of that class under regulations made for the purposes of paragraph 20(1)(a);

(h) except as provided in paragraph (p), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be

(i) nil, where the particular property is a unit of the transferee, and

(ii) the particular property's fair market value at the transfer time, in any other case;

(i) the transferor's proceeds of disposition of any units of the transferee received as consideration for the disposition of the property that were disposed of by the transferor within 60 days after the transfer time in exchange for shares of the transferor shall be deemed to be nil;

(j) where shares of the transferor have been disposed of by a taxpayer to the transferor in exchange for units of the transferee within 60 days after the transfer time,

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units shall be deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time, and

(ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purposes of applying section 39.1 in respect of the taxpayer after that disposition, the transferee shall be deemed to be the same entity as the transferor;

(k) where a share to which paragraph (j) applies would, but for this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1), 146.1(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the transfer time and the time at which it is disposed of in accordance with paragraph (j);

(l) there shall be added to the amount determined under the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the transferee for its taxation years that begin after the transfer time the amount, if any, by which

(i) the transferor's refundable capital gains tax on hand (within the meaning assigned by subsection 131(6) or 132(4), as the case may be) at the end of its taxation year that includes the transfer time

exceeds

(ii) the transferor's capital gains refund (within the meaning assigned by paragraph 131(2)(a) or 132(1)(a), as the case may be) for that year;

(m) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing its taxable income for a taxation year that begins after the transfer time;

(n) where the transferor is a mutual fund trust, for the purposes of subsections 132.1(1) and (3) to (5), the transferee shall be deemed after the transfer time to be the same mutual fund trust as, and a continuation of, the transferor;

(o) where the transferor is a mutual fund corporation,

(i) for the purposes of subsection 131(4), the transferor is deemed in respect of any share disposed of in accordance with paragraph (j) to be a mutual fund corporation at the time of the disposition, and

(ii) for the purposes of Part I.3, the transferor's taxation year that, but for this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time (except that, for greater certainty, nothing in this paragraph shall affect the computation of any amount determined under this Part);

(p) for the purpose of determining the funds' capital gains redemptions (as defined in subsection 131(6) or 132(4)), for their taxation years that include the transfer time,

(i) the total of the cost amounts to the transferor of all its properties at the end of the year is deemed to be the total of all amounts each of which is

(A) the transferor's proceeds of disposition of a property that was transferred to a transferee on the qualifying exchange, or

(B) the cost amount to the transferor at the end of the year of a property that was not transferred on the qualifying exchange, and

(ii) the transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(q) except as provided in subparagraph (o)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

Related Provisions: 7(1.4) — Exchange of options giving mutual fund trust employee right to acquire units; 54"superficial loss"(c) — No superficial loss on deemed disposition and reacquisition.

History: Para. 132.2(1)(k) amended by 1999, c. 22, s. 56, applicable after 1997. It formerly read:

(k) where a share to which paragraph (j) applies would, but for this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share shall be deemed to be a qualified investment until the earlier of the day that is 60 days after the transfer time and the time at which it is disposed of in accordance with paragraph (j);

The opening words of para. 132.2(1)(h), paras. 132.2(1)(o) and (p) amended, and para. (q) added, by 1998, c. 19, subsecs. 159(1), (2), applicable after June 1994 except that, where

(a) a qualifying exchange (as defined in subsec. 132.2(2)) between funds occurs before November 1996, and

(b) the funds jointly elect in writing filed with the Minister of National Revenue before October 1998,

subsec. 132.2(1) shall be read without reference to para. 132.2(1)(p), as amended, in its application to the exchange. The opening words of para. 132.2(1)(h) and paras. 132.2(1)(o) and (p) formerly read:

(h) the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property shall be deemed to be

. . . . .

(o) where the transferor is a mutual fund corporation, for the purposes of Part I.3, the transferor's taxation year that, but for this paragraph, would have ended at the acquisition time shall be deemed to have ended immediately before the transfer time (except that, for greater certainty, nothing in this paragraph affects the computation of any amount determined under this Part); and

(p) the transferor shall, notwithstanding subsections 131(8) and 132(6), be deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years beginning after the transfer time.

Subsec. 132.2(1) added by 1995, c. 21, s. 69, applicable after June 1994.

Regulations: 1105 (prescribed classes of depreciable property).

(2) Definitions — In this section,

"qualifying exchange" means a transfer at any time (in this section referred to as the "transfer time") of all or substantially all of the property of a mutual fund corporation or mutual fund trust to a mutual fund trust (in this section referred to as the "transferor" and "transferee", respectively, and as the "funds") where

(a) all or substantially all of the shares issued by the transferor and outstanding immediately before the transfer time are within 60 days after the transfer time disposed of to the transferor,

(b) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee, and

(c) the funds jointly elect, by filing a prescribed form with the Minister within 6 months after the transfer time, to have this section apply with respect to the transfer;

History: Para. (b) of the definition "qualifying exchange" in subsec. 132.2(2) amended by 1998, c. 19, subsec. 159(3), applicable after June 1994. Para. (b) formerly read:

(b) no person disposing of shares in the transferor to the transferor within that 60 day period receives any consideration for those shares other than units of the transferee, and

The definition "qualifying exchange" in subsec. 132.2(2) added by 1995, c. 21, s. 69, applicable after June 1994, except that an election referred to in para. (c) of the definition "qualifying exchange" in subsec. 132.2(2) shall be deemed to have been made in a timely manner where it is made before December 31, 1995.

Forms: T1169: Election on disposition of property by a mutual fund corporation (or a mutual fund trust) to a mutual fund trust.

"share" means a share of the capital stock of a mutual fund corporation and a unit of a mutual fund trust.

History: The definition "share" in subsec. 132.2(2) added by 1995, c. 21, s. 69, applicable after June 1994.

Definitions [s. 132.2]: "acquisition time" — 132.2(1)(a); "cost amount" — 248(1); "depreciable property" — 13(21), 248(1); "farm loss" — 111(8), 248(1); "limited partnership loss" — 96(2.1)(e), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "proceeds of disposition" — 54; "prescribed", "property" — 248(1); "qualifying exchange" — 132.2(2); "regulation" — 248(1); "restricted farm loss" — 31, 248(1); "share" — 132.2(2); "taxable income" — 2(2), 248(1); "taxation year" — 132.2(1)(b), 249; "transfer time" — 132.2(2)"qualifying exchange"; "undepreciated capital cost" — 13(21), 248(1).

Non-Resident-Owned Investment Corporations

Proposed Amendment — Elimination of NROs

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 133(8)"non-resident owned investment corporation" — ed.]

133. (1) Computation of income — In computing the income of a non-resident-owned investment corporation for a taxation year,

(a) no deduction may be made in respect of interest on its bonds, debentures, securities or other indebtedness, and

(b) no deduction may be made under subsection 65(1),

and its income and taxable income shall be computed as if

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(c) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian property or property that would be taxable Canadian property if at no time in the year the corporation had been resident in Canada,

Proposed Amendment — 133(1)(c)

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 84(1), will amend para. 133(1)(c) to read as above, applicable after October 1, 1996.

Technical Notes: Section 133 of the Act provides rules for the taxation of non-resident-owned investment corporations on a basis that approximates the treatment that would apply if its non-resident shareholders had invested directly in Canada.

Subsection 133(1) of the Act provides rules for computing the income and taxable income of a non-resident-owned investment corporation. Paragraph 133(1)(c) provides that the only taxable capital gains and allowable capital losses that are included in

computing such a corporation's income are those from dispositions of taxable Canadian property.

Paragraph 133(1)(c) is amended, with application after October 1, 1996, to reflect the changes in the definition of "taxable Canadian property" and that definition's relocation from subsection 115(1) to subsection 248(1) of the Act.

(d) any taxable capital gain or allowable capital loss of the corporation were an amount equal to 4/3 of the amount thereof otherwise determined, and

(e) subsection 83(2) were read without reference to paragraph 83(2)(b).

Related Provisions: 104(10) — Where dividends and interest paid to trust for non-residents; 104(11) — Dividend received from NRO; 134 — NRO not a Canadian corporation etc.; 186.1(b) — NRO not subject to Part IV tax; 212(9)(a) — Dividends received by trust from NRO — no withholding tax; Canada–U.S. tax treaty, Art. XXIX:6(b) — Treaty provisions inapplicable to NRO.

Pre-RSC History: Para. 133(1)(d) amended by 1988, c. 55, s. 122, to substitute "4/3 of" for "2 times", applicable to taxation years ending after June 1988, except that for taxation years ending after June 1988 and commencing before 1990, the reference to "4/3" shall, in respect of the corporation for the year, be read as a reference to the aggregate of

(a) that proportion of 2 that the number of days in the year that are before July 1988 is of the number of days in the year,

(b) that proportion of 3/2 that the number of days in the year that are after June 1988 and before 1990 is of the number of days in the year, and

(c) that proportion of 4/3 that the number of days in the year that are after 1989 is of the number of days in the year.

Regulations: 502 (annual certificate of changes of ownership of shares and debt).

(2) Non-resident-owned investment corporations — In computing the taxable income of a non-resident-owned investment corporation for a taxation year, no deduction may be made from its income for the year, except

(a) interest received in the year from other non-resident-owned investment corporations;

(b) taxes paid to the government of a country other than Canada in respect of any part of the income of the corporation for the year derived from sources therein; and

(c) net capital losses as provided for by section 111.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation.

Pre-RSC History: Para. 133(2)(c) substituted by 1984, c. 1, s. 78, applicable in computing taxable income for 1982 *et seq.* Para. 133(2)(c) formerly read:

(c) net capital losses for taxation years preceding and the taxation year immediately following the taxation year, as provided for by section 111.

(3) Special tax rate — The tax payable under this Part by a corporation for a taxation year when it was a non-resident-owned investment corporation is an amount equal to 25% of its taxable income for the year.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 157(3)(d) — Instalments payable by NRO.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

(4) No deduction for foreign taxes — No deduction from the tax payable under this Part by a non-resident-owned investment corporation may be made under section 124 or in respect of taxes paid to the government of a country other than Canada.

Related Provisions: 88(2)(a)(iv) — Winding-up of Canadian corporation; 111 — Losses deductible; 115 — Non-residents' taxable income; 133(8) — Non-resident-owned investment corporation.

(5) [Repealed under former Act]

Pre-RSC History: Subsec. 133(5) repealed by 1977-78, c. 1, subsec. 66(1), applicable after December 31, 1978. Subsec. (3) provides that at all times after 1971 and before 1979, subsec. 133(5) shall be deemed to have read as follows:

(5) 1971 undistributed income and capital surplus on hand — For the purposes of this Act,

(a) in computing at any particular time the 1971 undistributed income on hand of a corporation that was at any time a non-resident-owned investment corporation, there shall be deducted the amount, if any, by which

(i) the amount that would, but for this paragraph, be the amount of the corporation's 1971 undistributed income on hand at the particular time computed without reference to any amount referred to in paragraph 196(4)(c)

exceeds

(ii) the corporation's surplus at that time, determined in prescribed manner, for such of the taxation years in the period commencing with the 1950 taxation year and ending with the 1971 taxation year as were taxation years throughout which the corporation was not a non-resident-owned investment corporation; and

(b) in computing at any particular time the 1971 capital surplus on hand of a corporation that was at any time a non-resident-owned investment corporation, there shall be added to the amount thereof otherwise determined the amount of the excess described in paragraph (a).

Subpara. 133(5)(a)(ii) substituted by 1973-74, c. 14, subsec. 42(1), applicable to 1972 *et seq.*

(6) Allowable refund to non-resident-owned investment corporations — If the return of a non-resident-owned investment corporation's income for a taxation year has been made within 3 years from the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year, refund without application therefor its allowable refund for the year; and

(b) shall, with all due dispatch, make that allowable refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 133(7) — Application to other liability; 133(7.01), (7.02) — Interest; 152(1) — Assessment of refund; 157(3) — Reduction in instalment obligations to reflect allowable refund; 160.1 — Where excess refunded.

History: Para. 133(6)(b) amended by 1998, c. 19, s. 160, applicable after April 27, 1989. Para. 133(6)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the corporation for the year.

Pre-RSC History: Para. 133(6)(b) substituted by 1990, c. 39, s. 33, applicable after April 27, 1989. Para. 133(6)(b) formerly read:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within

(i) the 6 year period referred to in paragraph 152(4)(b), where that paragraph applies, and

(ii) the 3 year period referred to in paragraph 152(4)(c), in any other case.

Subsec. 133(6) amended by 1984, c. 45, s. 50, to substitute "3" for "4" in that portion of subsec. 133(6) preceding para. (a) and to amend para. 133(6)((b), applicable after April 19, 1983, except that in the application of subsec. 133(6) to allowable refunds for the 1982 and preceding taxation

years the references therein to "3" and "6" shall be read as references to "4" and "7" respectively. Para. 133(6)(b) formerly read:

> (b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the corporation within 4 years from the end of the year.

Selected Cases [subsec. 133(6)]: *The Great Atlantic & Pacific Tea Co. Ltd. v. The Queen*, [1979] C.T.C. 509 (SCC) (Refund not available when dividend paid prior to end of taxation year).

(7) Application to other liability — Instead of making a refund that might otherwise be made under subsection (6), the Minister may, where the taxpayer is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the taxpayer of that action.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation.

(7.01) Interest on allowable refund — Where an allowable refund for a taxation year is paid to, or applied to a liability of, a non-resident-owned investment corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

> (a) the day that is 120 days after the end of the year, and
>
> (b) the day on which the corporation's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

and ending on the day the refund is paid or applied.

Related Provisions: 133(7.02) — Where excess interest paid; 161.1 — Offset of refund interest of corporation against arrears interest.

History: Subsec. 133(7.01) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 78, applicable to allowable refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(b) (prescribed rate of interest).

(7.02) Excess interest on allowable refund — Where at any particular time interest has been paid to, or applied to a liability of, a corporation under subsection (7.01) in respect of an allowable refund and it is determined at a subsequent time that the allowable refund was less than that in respect of which interest was so paid or applied,

> (a) the amount by which the interest that was so paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the allowable refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;
>
> (b) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable, computed from the particular time to the day of payment; and
>
> (c) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J apply, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 133(7.02) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 78, applicable to allowable refunds paid or applied with respect to taxation years beginning after 1991.

Regulations: 4301(a) (prescribed rate of interest).

(7.1) Election re capital gains dividend — Where at any particular time after 1971 a dividend has become payable by a non-resident-owned investment corporation to shareholders of any class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:

> (a) the dividend shall be deemed to be a capital gains dividend to the extent that it does not exceed the corporation's capital gains dividend account immediately before the particular time; and
>
> (b) any amount received by another non-resident-owned investment corporation in a taxation year as, on account or in lieu of payment of, or in satisfaction of the capital gains dividend shall not be included in computing its income for the year.

Related Provisions: 83(2) — Capital dividends; 84(7) — When dividend payable; 88(2)(b)(i) — Winding-up of Canadian corporation; 133(7.2) — Simultaneous dividends; 133(7.3) — Application of subsecs. 131(1.1)–(1.4); 133(8) — Canadian property; 133(8) — Capital gains dividend account; 133(8) — Taxable dividend; 212(2) — No withholding tax on capital gains dividends paid to non-residents.

Pre-RSC History: Para. 133(7.1)(a) substituted by 1980-81-82-83, c. 47, subsec. 24(3). Para. (a) formerly read:

> (a) the dividend shall be deemed to be a capital gains dividend to the extent that the portion thereof in excess of the corporation's 1971 undistributed income on hand immediately before the particular time does not exceed the corporation's capital gains dividend account immediately before the particular time; and

Regulations: 2105 (prescribed manner of making election).

Interpretation Bulletins: IT-149R4: Winding-up dividend.

Forms: T5 Segment; T5 Summ: Return of investment income; T5 Supp: Statement of investment income; T2063: Election in respect of a capital gains dividend under subsection 133(7.1).

(7.2) Simultaneous dividends — Where a dividend becomes payable at the same time on more than one class of shares of the capital stock of a non-resident-owned investment corporation, for the purposes of subsection (7.1), the dividend on any such class of shares shall be deemed to become payable at a different time than the dividend on the other class or classes of shares and to become payable in the order designated

> (a) by the corporation on or before the day on or before which the election described in subsection (7.1) is required to be filed; or
>
> (b) in any other case, by the Minister.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 89(3) — Simultaneous dividends.

(7.3) Application of subsecs. 131(1.1) to (1.4) — Where at any particular time a non-resident-owned investment corporation paid a dividend to its shareholders and subsection (7.1) would have applied to the dividend except that the corporation did not make an election under that subsection on or before the day on or before which it was required by that subsection to be made, subsections 131(1.1) to (1.4) apply with such modifications as the circumstances require.

Pre-RSC History: Subsec. 133(7.3) substituted and subsecs. 133 (7.4)–(7.6) repealed by 1985, c. 45, s. 77. Subsecs. 133(7.3)–(7.6) formerly read:

> (7.3) Deemed date of election — Where at any particular time a dividend has become payable by a non-resident-owned investment corporation to shareholders of any class of shares of its capital stock and subsection (7.1) would have applied to the dividend except that

the election referred to therein was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if

(a) the election is thereafter made in prescribed manner and prescribed form;

(b) an estimate of the penalty in respect of the election is paid by the corporation when the election is made; and

(c) the directors or other person or persons legally entitled to administer the affairs of the corporation have, before the time the election is made, authorized the election to be made.

(7.4) **Request to make election** — The Minister may at any time, by written request served personally or by registered mail, request that an election referred to in paragraph (7.3)(a) be made by a non-resident-owned investment corporation and where the corporation on which such a request is served does not comply therewith within 90 days after service of the request, subsection (7.3) does not apply to such an election made thereafter by it.

(7.5) **Penalty** — For the purposes of this section, the penalty in respect of an election referred to in paragraph (7.3)(b) is an amount equal to the lesser of

(a) 1% per annum of the amount of the dividend referred to in the election for each month or part of a month during the period commencing with the time that the dividend became payable, or the first day on which any part of the dividend was paid if that day is earlier, and ending with the day on which the election was made; and

(b) the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period referred to in paragraph (a) bears to 12.

(7.6) **Assessment and payment of penalty** — The Minister shall, with all due dispatch, examine each election referred to in paragraph (7.3)(a), assess the penalty payable and send a notice of assessment to the non-resident-owned investment corporation and the corporation shall pay forthwith to the Receiver General, the amount, if any, by which the penalty so assessed exceeds the aggregate of all amounts previously paid on account of that penalty.

Subsecs. 133(7.2) substituted, 133(7.3)–(7.6) added by 1980-81-82-83, c. 48, s. 77, applicable, as to subsec. 133(7.2), to 1980 *et seq.*, and, as to subsecs. 133(7.3)–(7.6), with respect to dividends becoming payable after 1974. Subsec. 133(7.2) formerly read:

(7.2) Where a dividend has become payable at the same time on more than one class of shares of the capital stock of a non-resident-owned investment corporation, for the purposes of subsection (7.1), the dividend on any such class of shares shall be deemed to have become payable at a different time than the dividend on the other class or classes of shares and such dividends shall be deemed to have become payable in the order designated in prescribed manner by the corporation or, in the event that the corporation does not so designate any such order, in the order designated by the Minister.

Subsec. 133(7.2) added by 1973-74, c. 14, subsec. 42(2), applicable to 1972 *et seq.*

(8) Definitions — In this section,

"allowable refund" of a non-resident-owned investment corporation for a taxation year means the total of amounts each of which is an amount in respect of a taxable dividend paid by the corporation in the year on a share of its capital stock, determined by the formula

$$\frac{A}{B} \times C$$

where

A is the corporation's allowable refundable tax on hand immediately before the dividend was paid,

B is the greater of the amount of the dividend so paid and the corporation's cumulative taxable income immediately before the dividend was paid, and

C is the amount of the dividend so paid;

Pre-RSC History: *The definition "allowable refund" was para. 133(8)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(a) "allowable refund" of a non-resident-owned investment corporation for a taxation year means the aggregate of amounts each of which is an amount in respect of a taxable dividend paid by the corporation in the year on a share of its capital stock, equal to that proportion of the dividend that

(i) the corporation's allowable refundable tax on hand immediately before the dividend was paid

is of

(ii) the greater of the amount of the dividend so paid and the corporation's cumulative taxable income immediately before the dividend was paid;

"Canadian property" means

(a) property of a corporation that would be taxable Canadian property if at no time in the year the corporation had been resident in Canada, and

Proposed Amendment — 133(8)"Canadian property"(a)

(a) taxable Canadian property, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 84(2), will amend para. (a) of the definition "Canadian property" in subsec. 133(8) to read as above, applicable after October 1, 1996.

Technical Notes: Subsection 133(8) of the Act sets out certain definitions that apply for the purposes of section 133.

Paragraph (a) of the definition of "Canadian property" in subsection 133(8) is amended, with application after October 1, 1996, to reflect the changes in the definition of "taxable Canadian property" and that definition's relocation from subsection 115(1) to subsection 248(1) of the Act.

(b) any other property not being foreign property within the meaning assigned by section 206;

Pre-RSC History: *The definition "Canadian property" was para. 133(8)(b).*

Para. 133(8)(b) substituted by 1974-75-76, c. 26, subsec. 90(1), applicable to 1972 *et seq.*

"capital gains dividend account" of a non-resident-owned investment corporation at any particular time means the amount determined by the formula

$$A - B$$

where

A is the total of the following amounts in respect of the period commencing January 1, 1972 and ending immediately after the corporation's last taxation year ending before the particular time:

(a) the corporation's capital gains for taxation years ending in the period from dispositions in the period of Canadian property or shares of another non-resident-owned investment corporation, and

(b) amounts received by the corporation in the period as, on account or in lieu of payment of, or in satisfaction of capital gains dividends from other non-resident-owned investment corporations, and

B is the total of the following amounts in respect of the period referred to in the description of A:

(a) the corporation's capital losses for taxation years ending in the period from dispositions in the period of Canadian property or shares of another non-resident-owned investment corporation,

(b) all capital gains dividends that became payable by the corporation before the particular time, and

(c) the amount determined by the formula

$$0.25 \times (M - N)$$

where

M is the total of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property or property that would be taxable Canadian property if at no time in the period the corporation had been resident in Canada, and

Proposed Amendment — 133(8)"capital gains dividend account"B(c)M

M is the total of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 84(3), will amend the description of M in para. (c) of the definition "capital gains dividend account" in subsec. 133(8) to read as above, applicable after October 1, 1996.

Technical Notes: The description of M in paragraph (c) of the definition of "capital gains dividend account" in subsection 133(8) is amended, with application after October 1, 1996, to reflect the changes in the definition of "taxable Canadian property" and that definition's relocation from subsection 115(1) to subsection 248(1) of the Act.

N is the total of the corporation's capital losses for the taxation years ending in the period from dispositions in the period of property of the kinds referred to in the description of M;

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 257 — Formula amounts cannot calculate to less than zero.

Pre-RSC History: *The definition "capital gains dividend account" was para. 133(8)(c). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(c) "capital gains dividend account" of a non-resident-owned investment corporation at any particular time means the amount, if any, by which the aggregate of the following amounts in respect of the period commencing January 1, 1972 and ending immediately after its last taxation year ending before the particular time, namely:

(i) the corporation's capital gains for taxation years ending in the period from dispositions in the period of Canadian property or shares of another non-resident-owned investment corporation, and

(ii) amounts received by the corporation in the period as, on account or in lieu of payment of, or in satisfaction of capital gains dividends from other non-resident-owned investment corporations,

exceeds the aggregate of

(iii) the corporation's capital losses for taxation years ending in the period from dispositions in the period of Canadian property or shares of another non-resident-owned investment corporation,

(iv) 25% of the amount, if any, by which the aggregate of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property or property that would be taxable Canadian property if at no time in the period the corporation had been resident in Canada, exceeds the aggregate of its capital losses for those years from dispositions in the period of such property, and

(v) all capital gains dividends that became payable by the corporation before the particular time;

"non-resident-owned investment corporation" means a corporation incorporated in Canada that, throughout the whole of the period commencing on the later of June 18, 1971 and the day on which it was incorporated and ending on the last day of the taxation year in respect of which the expression is being applied, complied with the following conditions:

(a) all of its issued shares and all of its bonds, debentures and other funded indebtedness were

(i) beneficially owned by non-resident persons (other than any foreign affiliate of a taxpayer resident in Canada),

(ii) owned by trustees for the benefit of non-resident persons or their unborn issue, or

(iii) owned by a non-resident-owned investment corporation, all of the issued shares of which and all of the bonds, debentures and other funded indebtedness of which were beneficially owned by non-resident persons or owned by trustees for the benefit of non-resident persons or their unborn issue, or by two or more such corporations,

(b) its income for each taxation year ending in the period was derived from

(i) ownership of or trading or dealing in bonds, shares, debentures, mortgages, bills, notes or other similar property or any interest therein,

(ii) lending money with or without security,

(iii) rents, hire of chattels, charterparty fees or remunerations, annuities, royalties, interest or dividends,

(iv) estates or trusts, or

(v) disposition of capital property,

(c) not more than 10% of its gross revenue for each taxation year ending in the period was derived from rents, hire of chattels, charterparty fees or charterparty remunerations,

(d) its principal business in each taxation year ending in the period was not

(i) the making of loans, or

(ii) trading or dealing in bonds, shares, debentures, mortgages, bills, notes or other similar property or any interest therein,

(e) it has, not later than 90 days after the commencement of its first taxation year commencing after 1971, elected in prescribed manner to be taxed under this section, and

(f) it has not, before the end of the last taxation year in the period, revoked in prescribed manner the election so made by it,

except that in no case shall a new corporation (within the meaning assigned by section 87) formed as a result of an amalgamation after June 18, 1971 of two or more predecessor corporations be regarded as a non-resident-owned investment corporation unless each of the predecessor corporations was, immediately before the amalgamation, a non-resident-owned investment corporation;

Proposed Amendment — Elimination of NROs

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Non-Resident-Owned Investment Corporations*

(27) That,

(a) a corporation that elected before February 28, 2000 to be taxed as a non-resident-owned investment corporation cease to be such a corporation no later than the end of its last taxation year that begins before 2003, and

(b) no election to be taxed as a non-resident-owned investment corporation be permitted after February 27, 2000.

Federal budget, supplementary information, February 28, 2000: *Non-Resident-Owned Investment Corporations*

Section 133 of the *Income Tax Act* allows a foreign-owned Canadian corporation to elect to be a "non-resident-owned investment corporation" (NRO). By so doing, income received by the corporation is taxed at the same 25-per-cent rate that would apply to income paid to a non-resident from a Canadian source that is subject to the maximum rate of Part XIII withholding tax. The tax is then refunded when the NRO pays dividends to its foreign parent, at which time withholding tax applies on the dividends. The intended effect of the provision is to place the non-resident shareholder of the NRO in a position similar to that of non-resident investors who hold investments directly.

However, NROs are increasingly being used in ways that erode the Canadian tax base. For example, an NRO may be used to lend money indirectly to an affiliated Canadian corporation. This transaction results in an interest deduction at full rates for the Canadian corporation, while the interest income is subject only to a refundable 25-per-cent tax in the NRO's hands. In addition, this tax planning strategy can allow a double interest deduction for non-resident shareholders, if these shareholders borrow money in order to invest in the NRO.

The budget proposes to repeal the NRO provisions for elections made after February 27, 2000. To allow for an orderly restructuring of their operations, existing NROs will be entitled to retain their status until the end of their last taxation year that begins before 2003. However, existing NROs will not be allowed to issue new shares, other than by way of reorganization, or increase debt levels to finance new investments, subject to grandfathering of arrangements in writing entered into before February 28, 2000.

Related Provisions: 108(1) — "excluded property"; 248(1)"non-resident-owned investment corporation" — Definition applies to entire Act.

Pre-RSC History: *The definition "non-resident-owned investment corporation" was para. 133(8)(d).*

Regulations: 500, 501 (prescribed manner of making and revoking election).

I.T. Application Rules: 59(2) (application of conditions in para. (a) during 1972-75).

Interpretation Bulletins: IT-290: NRO investment corporations — meaning of principal business; IT-465R: Non-resident beneficiaries of trusts.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation.

"taxable dividend" does not include a capital gains dividend.

Pre-RSC History: *The definition "taxable dividend" was para. 133(8)(e).*

(9) Definitions — In the definition "allowable refund" in subsection (8),

"allowable refundable tax on hand" of a corporation at any particular time means the amount determined by the formula

$$(A + B + C) - (D + E + F)$$

where

A is the total of all amounts each of which is an amount in respect of any taxation year commencing after 1971 and ending before the particular time, equal to the tax under this Part payable by the corporation for the year,

B is an amount equal to 15% of the amount determined for B in the definition "cumulative taxable income" in this subsection in respect of the corporation,

C where the corporation's 1972 taxation year commenced before 1972, is an amount equal to 10% of the amount that would be determined for C in the definition "cumulative taxable income" in this subsection if the reference in the description of C in that definition to "the 1972 taxation year or any taxation year commencing after 1971 and ending before the particular time" were read as a reference to "the 1972 taxation year",

D is the total of all amounts each of which is an amount, in respect of the 1972 taxation year or any taxation year commencing after 1971 and ending before the particular time, determined by the formula

$$0.25 \times [L - (M + N)]$$

where

L is the total of the corporation's taxable capital gains for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the assumption set out in paragraph (1)(d),

M is the total of the corporation's allowable capital losses for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the same assumption, and

N is the amount deductible from the corporation's income for the year by virtue of paragraph (2)(c),

E is the total of all amounts each of which is an amount equal to 1/3 of any amount paid or credited by the corporation after the commencement of its 1972 taxation year and before the particular time, as, on account or in lieu of payment of, or in satisfaction of interest, and

F is the total of all amounts each of which is an amount in respect of any taxable dividend paid by the corporation on a share of its capital stock before the particular time and after the commencement of its first taxation year commencing after 1971, equal to the amount in respect of the dividend determined under the definition "allowable refund" in subsection (8);

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 87(2)(cc) — Amalgamation — non-resident-owned investment corporation; 257 — Formula amounts cannot calculate to less than zero.

Pre-RSC History: *The definition "allowable refundable tax on hand" was para. 133(9)(a). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(a) "allowable refundable tax on hand" of a corporation at any particular time means the amount, if any, by which the aggregate of

(i) all amounts each of which is an amount in respect of any taxation year commencing after 1971 and ending before the particular time, equal to the tax under this Part payable by the corporation for the year,

(ii) 15% of the amount determined under subparagraph (b)(ii) in respect of the corporation, and

(ii.1) where the corporation's 1972 taxation year commenced before 1972, 10% of the amount that would be determined under subparagraph (b)(iii) if the reference in that subparagraph to "the 1972 taxation year or any taxation year referred to in subparagraph (i)" were read as a reference to "the 1972 taxation year"

exceeds the aggregate of amounts each of which is

(iii) an amount in respect of the 1972 taxation year or any taxation year referred to in subparagraph (i), equal to 25% of the amount, if any, by which the aggregate of the corporation's taxable capital gains for the year from dispositions after 1971 of property described in paragraph (1)(c) exceeds the aggregate of

(A) its allowable capital losses for the year from dispositions after 1971 of property described in that paragraph, and

(B) the amount deductible from its income for the year by virtue of paragraph (2)(c)

(such gains and losses being computed in accordance with the assumption set forth in paragraph (1)(d)),

(iv) 1/3 of any amount paid or credited by the corporation after the commencement of its 1972 taxation year and before the particular time, as, on account or in lieu of payment of, or in satisfaction of interest, or

(v) an amount in respect of any taxable dividend paid by the corporation on a share of its capital stock before the particular time and after the commencement of its first taxation year commencing after 1971, equal to the amount in respect of the dividend determined under paragraph (8)(a); and

Subpara. 133(9)(a)(ii.1) added by 1974-75-76, c. 26, subsec. 90(3), applicable to 1972 *et seq.*

"cumulative taxable income" of a corporation at any particular time means the amount determined by the formula

$$(A + B) - (C + D + E)$$

where

A is the total of the corporation's taxable incomes for taxation years commencing after 1971 and ending before the particular time,

B where the corporation's 1972 taxation year commenced before 1972, is the amount determined by the formula

$$L - (M + N)$$

where

L is the corporation's taxable income for its 1972 taxation year,

M is the total of all amounts received by the corporation as described in paragraph 196(4)(b), and

N is the lesser of the amount determined under paragraph 196(4)(e) in respect of the corporation and the amount, if any, by which the total of amounts determined under paragraphs 196(4)(d) to (f) in respect of the corporation exceeds the total of amounts determined under paragraphs 196(4)(a) to (c) in respect of the corporation,

C is the total of all amounts each of which is an amount, in respect of the 1972 taxation year or any taxation year commencing after 1971 and ending before the particular time, determined by the formula

$$P - (Q + R)$$

where

P is the total of the corporation's taxable capital gains for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the assumption set out in paragraph (1)(d),

Q is the total of the corporation's allowable capital losses for the year from dispositions after 1971 of property described in paragraph (1)(c), computed in accordance with the same assumption, and

R is the amount deductible from the corporation's income for the year by virtue of paragraph (2)(c),

D is the total of all amounts each of which is an amount equal to 4/3 of any amount paid or credited by the corporation, after the commencement of its 1972 taxation year and before the particular time, as, on account or in lieu of payment of, or in satisfaction of interest, and

E is the total of all amounts each of which is the amount of any taxable dividend paid by the corporation on a share of its capital stock before the particular time and after the commencement of its first taxation year commencing after 1971.

Related Provisions: 88(2)(a) — Winding-up of Canadian corporation; 157(3) — Private, mutual and non-resident-owned investment corporation; 257 — Formula amounts cannot calculate to less than zero.

Pre-RSC History: *The definition "cumulative taxable income" was para. 133(9)(b). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(b) "cumulative taxable income" of a corporation at any particular time means the amount, if any, by which the aggregate of

(i) its taxable incomes for taxation years commencing after 1971 and ending before the particular time, and

(ii) where the corporation's 1972 taxation year commenced before 1972, the amount, if any, by which its taxable income for that year exceeds the aggregate of

(A) all amounts received by the corporation as described in paragraph 196(4)(b), and

(B) the lesser of the amount determined under paragraph 196(4)(e) in respect of the corporation and the amount, if any, by which the aggregate of amounts determined under paragraphs 196(4)(d) to (f) in respect of the corporation exceeds the aggregate of amounts determined under paragraphs 196(4)(a) to (c) in respect of the corporation,

exceeds the aggregate of amounts each of which is

(iii) an amount in respect of the 1972 taxation year or any taxation year referred to in subparagraph (i), equal to the amount, if any, by which the aggregate of the corporation's taxable capital gains for the year from dispositions after 1971 of property described in paragraph (1)(c) exceeds the aggregate of

(A) its allowable capital losses for the year from dispositions after 1971 of property described in that paragraph, and

(B) the amount deductible from its income for the year by virtue of paragraph (2)(c)

(such gains and losses being computed in accordance with the assumption set forth in paragraph (1)(d)),

(iv) 4/3 of any amount paid or credited by the corporation, after the commencement of its 1972 taxation year and before the particular time, as, on account or in lieu of payment of, or in satisfaction of interest, or

(v) the amount of any taxable dividend paid by the corporation on a share of its capital stock before the particular time and after the commencement of its first taxation year commencing after 1971.

Selected Cases [subsec. 133(9)]: *The Great Atlantic & Pacific Tea Co. Ltd. v. The Queen*, [1979] C.T.C. 509 (SCC) (Refund not available when dividend paid prior to end of taxation year).

Definitions [s. 133]: "allowable capital loss" — 38(b), 248(1); "allowable refund" — 133(8); "allowable refundable tax on hand" — 133(9); "amount", "annuity", "assessment" — 248(1); "Canada" — 255; "Canadian property" — 133(8); "capital gain" — 39(1)(a), 248(1); "capital gains dividend" — 133(7.1); "capital gains dividend account" — 133(8); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "cumulative taxable income" — 133(9); "dividend" — 248(1); "estate" — 104(1), 248(1); "foreign affiliate" — 95(1), 248(1); "gross revenue" — 248(1); "incorporated in Canada" — 248(1)"corporation incorporated in Canada"; "Minister" — 248(1); "net capital loss" — 111(8), 248(1); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "payable" — 84(7); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "resident in Canada" — 250; "share", "shareholder" — 248(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 133(8), 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Regulations [s. 133]: 500–502 (prescribed manner of making and revoking elections; certified statement required with annual return).

134. Non-resident-owned corporation not a Canadian corporation, etc. — Notwithstanding any other provision of this Act, a non-resident-owned investment corporation that would, but for this section, be a Canadian corporation, taxable Canadian corporation or private corporation shall be deemed not to be a Canadian

corporation, taxable Canadian corporation or private corporation, as the case may be, except for the purposes of section 87, subsection 88(2) and sections 212.1 and 219.

Pre-RSC History: S. 134 substituted by 1985, c. 45, subsec. 78(1), applicable after 1984. S. 134 formerly read:

> 134. N.R.O. deemed not to be Canadian or private corporation — Notwithstanding any other provision of this Act, a non-resident-owned investment corporation that would, but for this section, be a Canadian corporation or private corporation shall be deemed not to be a Canadian corporation or private corporation, as the case may be, except for the purposes of subsection 88(2) and sections 87, 212.1 and 219.

S. 134 substituted by 1980-81-82-83, c. 140, s. 92, applicable after November 12, 1981 to substitute "sections 87, 212.1 and 219" for "sections 87 and 219".

S. 134 substituted by 1977-78, c. 1, s. 67, applicable after December 31, 1978, to substitute "subsection 88(2)" for "subsections 83(1) and 88(2)".

S. 134 substituted by 1973-74, c. 14, s. 43, applicable to 1972 *et seq.*

Definitions [s. 134]: "Canadian corporation" — 89(1), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "private corporation", "taxable Canadian corporation" — 89(1), 248(1).

Patronage Dividends

135. (1) Deduction in computing income — Notwithstanding anything in this Part, there may be deducted, in computing the income of a taxpayer for a taxation year, the total of the payments made, pursuant to allocations in proportion to patronage, by the taxpayer

(a) within the year or within 12 months thereafter to the taxpayer's customers of the year; and

(b) within the year or within 12 months thereafter to the taxpayer's customers of a previous year, the deduction of which from income of a previous taxation year was not permitted.

Related Provisions: 20(1)(u) — Deduction from income for amount allowed under 135(1); 135(2) — Limitation — non-member customers; 135(4) — Definitions; 136 — Cooperative deemed not to be private corporation; 157(2) — Exemption from instalment obligations where taxable income not over $10,000; 181.2(3)(j) — Large corporations tax — deduction from capital; 212(1)(g) — Non-resident withholding tax.

Selected Cases [subsec. 135(1)]: *The Queen v. Consumers' Co-operative Refineries Ltd.*, [1987] 2 C.T.C. 204 (FCA) (Deduction of patronage dividends allowed even though payments not made to all customers); *Interprovincial Co-operative Ltd. v. The Queen*, [1987] 1 C.T.C. 222 (FCTD) (Different billing procedures did not affect right to deduction by cooperative); *Sedgewick Co-operative Association Ltd. v. The Queen*, [1984] C.T.C. 14 (FCTD) (Capital gain added to business income for calculation of patronage dividends).

Regulations: 218 (information return).

Interpretation Bulletins: See list at end of s. 135.

Forms: T2 SCH 16: Patronage dividend deduction.

(2) Limitation where non-member customer — Notwithstanding subsection (1), if the taxpayer has not made allocations in proportion to patronage in respect of all the taxpayer's customers of the year at the same rate, with appropriate differences for different types or classes of goods, products or services, or classes, grades or qualities thereof, the amount that may be deducted under subsection (1) is an amount equal to the lesser of

(a) the total of the payments mentioned in that subsection, and

(b) the total of

(i) the part of the income of the taxpayer for the year attributable to business done with members, and

(ii) the allocations in proportion to patronage made to non-member customers of the year.

Related Provisions: 135(2.1) — Carryforward.

Pre-RSC History: That portion of subsec. 135(2) preceding para. (a) amended by 1987, c. 46, subsec. 47(1), to substitute "under subsection (1)" for "under this section", applicable to 1987 *et seq.*

Interpretation Bulletins: See list at end of s. 135.

(2.1) Deduction carried over — Where, in a taxation year ending after 1985, all or a portion of a payment made by a taxpayer pursuant to an allocation in proportion to patronage to the taxpayer's customers who are members is not deductible in computing the taxpayer's income for the year because of the application of subsection (2) (in this subsection referred to as the "undeducted amount"), there may be deducted in computing the taxpayer's income for a subsequent taxation year, an amount equal to the lesser of

(a) the undeducted amount, except to the extent that that amount was deducted in computing the taxpayer's income for any preceding taxation year, and

(b) the amount, if any, by which

(i) the taxpayer's income for the subsequent taxation year (computed without reference to this subsection) attributable to business done with the taxpayer's customers of that year who are members

exceeds

(ii) the amount deducted in computing the taxpayer's income for the subsequent taxation year by virtue of subsection (1) in respect of payments made by the taxpayer pursuant to allocations in proportion to patronage to the taxpayer's customers of that year who are members.

Pre-RSC History: Subsec. 135(2.1) added by 1987, c. 46, subsec. 47(2), applicable to 1987 *et seq.*

Interpretation Bulletins: See list at end of s. 135.

(3) Amount to be deducted or withheld from payment to customer — Where at any particular time in a calendar year and after 1971 a payment pursuant to an allocation in proportion to patronage is made by a taxpayer to a person who is resident in Canada and is not exempt from tax under section 149, the taxpayer shall, notwithstanding any agreement or any law to the contrary, deduct or withhold therefrom an amount equal to 15% of the lesser of the amount of the payment and the amount, if any, by which

(a) the total of the amount of the payment and the amounts of all other payments pursuant to allocations in proportion to patronage made by the taxpayer to that person in the calendar year and before the particular time

exceeds

(b) $100,

and forthwith remit that amount to the Receiver General on behalf of that person on account of that person's tax under this Part.

Related Provisions: 127(6) — Investment tax credit of cooperative corporation; 135(2) — Limitation — non-member customers; 135(6) — Amount of payment to customers; 227(1), (4), (5), (8.3), (8.4), (9), (9.2), (9.4), (11), (12), (13) — Witholding taxes — administration and enforcement; 227.1 — Liability of directors.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

That portion of subsec. 135(3) preceding para. (a) substituted by 1973-74, c. 14, s. 44.

Interpretation Bulletins: See list at end of s. 135.

Forms: T2 SCH 16: Patronage dividend deduction; T4A Supp: Statement of pension, retirement, annuity, and other income; RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form.

(4) Definitions — For the purposes of this section,

"allocation in proportion to patronage" for a taxation year means an amount credited by a taxpayer to a customer of that year on terms that the customer is entitled to or will receive payment thereof, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the taxpayer from, on behalf of or to the customer, whether as principal or as agent of the customer or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof, if

(a) the amount was credited

(i) within the year or within 12 months thereafter, and

(ii) at the same rate in relation to quantity, quality or value aforesaid as the rate at which amounts were similarly credited to all other customers of that year who were members or to all other customers of that year, as the case may be, with appropriate differences aforesaid for different classes, grades or qualities, and

(b) the prospect that amounts would be so credited was held out by the taxpayer to the taxpayer's customers of that year who were members or non-member customers of that year, as the case may be;

Related Provisions: 135(1) — Deduction for allocations; 212(1)(g) — Withholding tax on allocations to non-residents.

"consumer goods or services" means goods or services the cost of which was not deductible by the taxpayer in computing the income from a business or property;

"customer" means a customer of a taxpayer and includes a person who sells or delivers goods or products to the taxpayer, or for whom the taxpayer renders services;

"income of the taxpayer attributable to business done with members" of any taxation year means that proportion of the income of the taxpayer for the year (before making any deduction under this section) that the value of the goods or products acquired, marketed, handled, dealt in or sold or services rendered by the taxpayer from, on behalf of, or for members, is of the total value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the taxpayer from, on behalf of, or for all customers during the year;

"member" means a person who is entitled as a member or shareholder to full voting rights in the conduct of the affairs of the taxpayer (being a corporation) or of a corporation of which the taxpayer is a subsidiary wholly-owned corporation;

"non-member customer" means a customer who is not a member;

"payment" includes

(a) the issue of a certificate of indebtedness or shares of the taxpayer or of a corporation of which the taxpayer is a subsidiary wholly-owned corporation if the taxpayer or that corporation has in the year or within 12 months thereafter disbursed an amount of money equal to the total face value of all certificates or shares so issued in the course of redeeming or purchasing certificates of indebtedness or shares of the taxpayer or that corporation previously issued,

(b) the application by the taxpayer of an amount to a member's liability to the taxpayer (including, without restricting the generality of the foregoing, an amount applied in fulfilment of an obligation of the member to make a loan to the taxpayer and an amount applied on account of payment for shares issued to a member) pursuant to a by-law of the taxpayer, pursuant to statutory authority or at the request of the member, or

(c) the amount of a payment or transfer by the taxpayer that, under subsection 56(2), is required to be included in computing the income of a member,

Pre-RSC History: *The definition "allocation in proportion to patronage" was para. 135(4)(a); "consumer goods or services", 135(4)(b); "customer", 135(4)(c); "income of the taxpayer attributable ... members", 135(4)(d); "member", 135(4)(e); "non-member customer", 135(4)(f); "payment", 135(4)(g).*

Interpretation Bulletins: See list at end of s. 135.

(5) Holding out prospect of allocations — For the purpose of this section a taxpayer shall be deemed to have held out the prospect that amounts would be credited to a customer of a taxation year by way of allocation in proportion to patronage, if

(a) throughout the year the statute under which the taxpayer was incorporated or registered, its charter, articles of association or by-laws or its contract with the customer held out the prospect that amounts would be so credited to customers who are members or non-member customers, as the case may be; or

(b) prior to the commencement of the year or prior to such other day as may be prescribed for the class of business in which the taxpayer is engaged, the taxpayer has published an advertisement in prescribed form in a newspaper or newspapers of general circulation throughout the greater part of the area in which the taxpayer carried on business holding out that prospect to customers who are members or non-member customers, as the case may be, and has filed copies of the newspapers with the Minister before the end of the 30th day of the taxation year or within 30 days from the prescribed day, as the case may be.

Related Provisions: 20(1)(u) — Patronage dividends.

Interpretation Bulletins: See list at end of s. 135.

(6) Amount of payment to customer — For greater certainty, the amount of any payment pursuant to an allocation in proportion to patronage is the amount thereof determined before deducting any amount required by subsection (3) to be deducted or withheld from that payment.

Related Provisions: 20(1)(u) — Deduction — patronage dividends; 135(3) — Amount to be deducted or withheld from payment to customer; 157(2) — Exemption from instalment obligations where taxable income not over $10,000.

Interpretation Bulletins: See list at end of s. 135.

(7) Payment to customer to be included in income — Where a payment pursuant to an allocation in proportion to patronage (other than an allocation in respect of consumer goods or services) has been received by the taxpayer, the amount of the payment shall be included in computing the recipient's income for the taxation year in which the payment was received and, without restricting the generality of the foregoing, where a certificate of indebtedness or a share was issued to a person pursuant to an allocation in proportion to patronage, the amount of the payment by virtue of the issue thereof shall be included in computing the recipient's income for the taxation year in which the certificate or share was received and not in computing the recipient's income for

the year in which the indebtedness was subsequently discharged or the share was redeemed.

Related Provisions: 20(1)(u) — Patronage dividend deduction; 212(1)(g) — Non-resident withholding tax.

Interpretation Bulletins: See list at end of s. 135.

Forms: T2 SCH 16: Patronage dividend deduction; T4A Supp: Statement of pension, retirement, annuity, and other income; RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form.

(8) Patronage dividends — For the purposes of this section, where

(a) a person has sold or delivered a quantity of goods or products to a marketing board established by or pursuant to a law of Canada or a province,

(b) the marketing board has sold or delivered the same quantity of goods or products of the same class, grade or quality to a taxpayer of which the person is a member, and

(c) the taxpayer has credited that person with an amount based on the quantity of goods or products of that class, grade or quality sold or delivered to it by the marketing board,

the quantity of goods or products referred to in paragraph (c) shall be deemed to have been sold or delivered by that person to the taxpayer and to have been acquired by the taxpayer from that person.

Pre-RSC History: Subsec. 135(8) added by 1974-75-76, c. 26, s. 91, applicable to 1969 *et seq.*

Definitions [s. 135]: "amount", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "share", "subsidiary wholly-owned corporation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1). See also 135(4).

Regulations [s. 135]: 218 (information return).

Interpretation Bulletins [s. 135]: IT-362R: Patronage dividends; IT-493: Agency cooperative corporations.

Cooperative Corporations

136. (1) Cooperative not private corporation — Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157, the definition "mark-to-market property" in subsection 142.2(1) and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

History: Subsec. 136(1) amended by 1998, c. 19, s. 161, applicable to taxation years that end after February 22, 1994. Subsec. 136(1) formerly read:

> 136. (1) Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation shall be deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157 and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

Subsec. 136(1) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 112, to substitute "125, 125.1" for "123.1, 125", applicable after June 1988 except that in its application before April 28, 1989, the subsec. shall be read without the reference to s. 152.

Pre-RSC History: Subsec. 136(1) amended by 1990, c. 39, s. 34, to substitute "127.1, 152 and 157" for "127.1 and 157", applicable after April 27, 1989.

Subsec. 136(1) amended by 1986, c. 55, s. 54, applicable after 1985, to substitute "sections 15.1" for "section 15.1" and to add "and the definition 'small business corporation' in subsection 248(1) as it applies for the purposes of paragraph 39(1)(c)".

Subsec. 136(1) substituted by 1986, c. 6, s. 77, to add reference to s. 123.1, applicable to 1985 *et seq.*

Subsec. 136(1) and heading substituted by 1985, c. 45, subsec. 79(1), applicable to 1985 *et seq.*, to delete reference to sections 123.4 and 123.5, and to add reference to section 157. The heading formerly read: "Cooperative corporation deemed not to be private corporation".

Subsec. 136(1) substituted by 1984, c. 45, s. 51, to add reference to ss. 15.1, 127 and 127.1, applicable after December 11, 1979, except that subsec. 136(1) shall, in its application to the 1984 and prior taxation years, be read without reference to sections 127 and 127.1.

Subsec. 136(1) substituted by 1980-81-82-83, c. 140, s. 93, applicable to taxation years ending after 1981 to substitute "sections 123.4, 123.5 and 125" for "section 125."

Subsec. 136(1) substituted by 1973-74, c. 14, s. 45, applicable to 1972 *et seq.*

(2) Definition of "cooperative corporation" — In this section, "cooperative corporation" means a corporation that was incorporated by or under a law of Canada or a province providing for the establishment of the corporation or respecting the establishment of cooperative corporations for the purpose of marketing (including processing incident to or connected therewith) natural products belonging to or acquired from its members or customers, of purchasing supplies, equipment or household necessaries for or to be sold to its members or customers or of performing services for its members or customers, if

(a) the statute by or under which it was incorporated, its charter, articles of association or by-laws or its contracts with its members or its members and customers held out the prospect that payments would be made to them in proportion to patronage;

(b) none of its members (except other cooperative corporations) have more than one vote in the conduct of the affairs of the corporation; and

(c) at least 90% of its members are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming, and at least 90% of its shares, if any, are held by those persons or partnerships.

Proposed Amendment — 136(2)(c)

Letter from Department of Finance, June 11,1999:

Dear [xxx]

This is in response to your letter dated June 4, 1999 to Len Farber respecting paragraph 136(2)(c) of the *Income Tax Act* and subsection 4900(12) of the *Income Tax Regulations*. Paragraph 136(2)(c) of the Act provides, as part of the definition of "cooperative corporation" in section 136, that at least 90% of a cooperative's shares must be held by members who are individuals, other cooperative corporations or corporations or partnerships that carry on the business of farming. Subsection 4900(12) of the Regulations provides that shares of specified cooperative corporations are qualified investments that may be held in an RRSP. You are concerned that the ability of a cooperative's members to hold their shares in RRSPs could, because the RRSPs may not be "members", cause the corporation to lose its cooperative status under section 136.

You have been advised by officials of the Tax Legislation Division that an amendment to paragraph 136(2)(c) is anticipated which would ensure that a cooperative does not lose its status as a consequence of its members contributing their shares to their RRSPs. You are seeking confirmation in writing of this information.

I can confirm that we intend to recommend that paragraph 136(2)(c) of the Act be amended to enable individual members of a cooperative to contribute their shares to their own RRSPs without any adverse consequences to the cooperative under the Act. The details of the amendment to be recommended remain to be developed. In general terms, however, I would foresee it being

structured either as a rule which attributed the shares held by an RRSP to the annuitant, or which reformed paragraph 136(2)(c) to provide that shares contributed to an RRSP by a cooperative member would be treated as shares held by individuals who are members of a cooperative. We will recommend that this amendment apply to the 1998 and subsequent taxation years.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

Pre-RSC History: Para. 136(2)(c) substituted by 1987, c. 46, s. 48, applicable to 1987 *et seq.* Para.136(2)(c) formerly read:

(c) at least 90% of its members are individuals or other cooperative corporations and at least 90% of its shares, if any, are held by such persons.

Related Provisions [s. 136]: 15.1(3) — Eligible small business corporation; 89(1)"paid-up capital"(b) — Paid-up capital of cooperative corporation; 125 — Small business deduction; 127(6) — Investment tax credit of cooperative corporation; 135 — Patronage dividend; 137 — Deductions in computing income; 181.1(3)(f) — Certain cooperative corporations exempt from Part I.3 tax; 248(1) — "share" includes a share of a cooperative corporation.

Definitions [s. 136]: "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "farming", "individual", "person" — 248(1); "private corporation" — 89(1), 248(1); "province" — *Interpretation Act* 35(1); "share", "small business corporation" — 248(1).

Interpretation Bulletins [s. 136]: IT-493: Agency cooperative corporations.

Credit Unions, Savings and Credit Unions, and Deposit Insurance Corporations

137. (1) [Repealed under former Act]

Pre-RSC History: Subsec. 137(1) repealed by 1988, c. 55, subsec. 123(1), applicable (by subsec. 123(4), as amended by 1991, c. 49, s. 244, deemed in force September 13, 1988) to taxation years of a credit union that commence after June 17, 1987 and end after 1987, except that, in its application to the first such taxation year, subsec. 137(1) shall be read as follows:

137. (1) In computing the income for a taxation year of a credit union or a savings and credit union (in this Act referred to as a "credit union")

(c) there shall be included any amount deducted under paragraph (a) or (b) as a reserve in computing the credit union's income for the immediately preceding taxation year; and

(d) there may be deducted the prescribed amount of the credit union's 1971 reserve adjustment.

Subsec. 137(1) formerly read:

137. (1) **Deductions in computing income** — In computing the income for a taxation year of a credit union or a savings and credit union (in this Act referred to as a "credit union"),

(a) there may be deducted as a reserve in respect of bonds, debentures, agreements of sale, mortgages or hypothecs, in lieu of any deduction in respect thereof under paragraph 20(1)(l), such amount as may be claimed by the credit union, not exceeding a prescribed amount;

(b) there may be deducted as a reserve in respect of debts owing to the credit union (other than any debt described in paragraph (a)), in lieu of any deduction in respect thereof under paragraph 20(1)(l), such amount as may be claimed by the credit union, not exceeding a prescribed amount;

(c) there shall be included any amount deducted under paragraph (a) or (b) as a reserve in computing the credit union's income for the immediately preceding taxation year; and

(d) no deduction may be made under section 33.

(2) Payments pursuant to allocations in proportion to borrowing — Notwithstanding anything in this Part, there may be deducted, in computing the income for a taxation year of a credit union, the total of bonus interest payments and payments pursuant to allocations in proportion to borrowing made by the credit union within the year or within 12 months thereafter to members of the credit union, to the extent that those payments were not deductible under this subsection in computing the income of the credit union for the immediately preceding taxation year.

Related Provisions: 110.1(1)(a) — 137(2) ignored for purposes of charitable donations limit; 135 — Patronage dividends; 137(6) — Maximum cumulative reserve; 157(2) — Instalment obligations — special case; 181.3(3)(a) — Capital of financial institution.

Pre-RSC History: Subsec. 137(2) substituted by 1980-81-82-83, c. 48, subsec. 78(1), applicable to taxation years ending after October 28, 1980. Subsec. 137(2) formerly read:

(2) Notwithstanding anything in this Part, there may be deducted, in computing the income for a taxation year of a credit union, the aggregate of the payments made, pursuant to allocations in proportion to borrowing, by the credit union within the year or within 12 months thereafter to members of the credit union, to the extent that such payments were not deductible under this subsection in computing the income of the credit union for the immediately preceding taxation year.

Interpretation Bulletins: IT-483: Credit unions.

(3) Additional deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a credit union, an amount equal to 16% of the amount, if any, by which the lesser of

(a) the corporation's taxable income for the year, and

(b) the amount, if any, by which 4/3 of the corporation's maximum cumulative reserve at the end of the year exceeds the corporation's preferred-rate amount at the end of the immediately preceding taxation year

exceeds

(c) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year.

Related Provisions: 123.2 — Corporation surtax calculated before deducting credit under 137(3).

Pre-RSC History: That portion of subsec. 137(3) preceding para. (a) amended to substitute "16%" for "21%", by 1988, c. 55, subsec. 123(2), applicable to taxation years ending after June 1988, except that in its application to a taxation year of a corporation commencing before July 1988 and ending after June 1988, there shall be added to the amount otherwise determined under subsec. 137(3) in respect of the corporation for the year that proportion of 5% of the excess determined under subsec. 137(3) in respect of the corporation for the year that the number of days in the year that are before July 1988 is of the number of days in the year.

Subsec. 137(3) substituted by 1984, c. 45, subsec. 52(1), applicable to 1985 *et seq.* Subsec. 137(3) formerly read:

(3) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a credit union, an amount equal to 25% of the lesser of

(a) the amount, if any, by which

(i) the corporation's taxable income for the year

exceeds

(ii) the least of the amounts determined under paragraphs 125(1)(a) to (d) in respect of the corporation for the year, and

(b) the amount, if any, by which

(i) 4/3 of the corporation's maximum cumulative reserve at the end of the year

exceeds

(ii) the aggregate of the corporation's preferred-rate amount (within the meaning assigned by subsection 190(2)) at the end of the immediately preceding taxation year and the amount determined under subparagraph (a)(ii),

except that in applying this subsection for a taxation year after the 1972 taxation year, the reference in this subsection to "25%" shall be read as a reference to "24%" for the 1973 taxation year, "23%" for the 1974 taxation year, "22%" for the 1975 taxation year, and "21%" for the 1976 and subsequent taxation years.

Subpara. 137(3)(b)(ii) substituted by 1973-74, c. 14, subsec. 46(1), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-483: Credit unions.

(4) Amount deemed deductible under section 125 — For the purposes of this Act, any amount deductible or any deduction under subsection (3) from the tax otherwise payable by a credit union under this Part for a taxation year shall be deemed to be an amount deductible or a deduction, as the case may be, under section 125 from that tax.

Related Provisions: 125 — Small business deduction; 137(6) — Maximum cumulative reserve.

Interpretation Bulletins: IT-483: Credit unions.

(4.1) Payments in respect of shares — Notwithstanding any other provision of this Act, an amount paid or payable by a credit union to a member thereof in respect of a share of a class of the capital stock of the credit union (other than any such amount paid or payable as or on account of a reduction of the paid-up capital, redemption, acquisition or cancellation of the share by the credit union to the extent of the paid-up capital of the share) shall, where the share is not listed on a prescribed stock exchange, be deemed to have been paid or payable, as the case may be, by the credit union as interest and to have been received or to have been receivable, as the case may be, by the member as interest.

Related Provisions: 12(1)(c) — Interest included in income; 84(4) — Deemed dividend on reduction of paid-up capital where share is listed on prescribed stock exchange; 137(4.2) — Deemed interest not a dividend.

History: Subsec. 137(4.1) substituted by 1994, c. 21, s. 64, applicable to transactions occurring after December 21, 1992. That subsec. formerly read:

(4.1) Amount paid in respect of members' share deemed paid as interest — Notwithstanding any other provisions of this Act, any amount paid or payable by a credit union to a member thereof in respect of the member's share in the credit union, other than any such amount paid or payable as or on account of a reduction of the paid-up capital, redemption, acquisition or cancellation by the credit union of the member's share to the extent of the paid-up capital of that share, shall be deemed to have been paid or payable, as the case may be, by the credit union as interest and, when received by the member, to have been received by the member as interest.

Regulations: 3200 (prescribed stock exchange; needs to be amended to apply to 137(4.1)).

Interpretation Bulletins: IT-483: Credit unions.

(4.2) Deemed interest not a dividend — Notwithstanding any other provision of this Act, an amount that is deemed by subsection (4.1) to be interest shall be deemed not to be a dividend.

Related Provisions: 84(2) — Deemed dividend on winding-up; 84(3) — Deemed dividend on redemption of shares; 84(4) — Deemed dividend — reduction of paid-up capital.

History: Subsec. 137(4.2) substituted by 1994, c. 21, s. 64, applicable to transactions occurring after December 21, 1992. That subsec. formerly read:

(4.2) Application of section 84 — Subsections 84(2), (3) and (4) do not apply to deem a dividend to have been paid by a corporation to any of its shareholders, or to deem any of the shareholders of a corporation to have received a dividend on any shares of the capital stock of the corporation, if at the time the dividend would, but for this subsection, be deemed by subsection 84(2), (3) or (4) to have been so paid or received, as the case may be, the corporation was a credit union.

Pre-RSC History: Subsecs. 137(4.1) substituted, 137(4.2) added by 1974-75-76, c. 26, subsec. 92(1), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-483: Credit unions.

(4.3) Determination of preferred-rate amount of a corporation — For the purposes of subsection (3),

(a) the preferred-rate amount of a corporation at the end of a taxation year is an amount equal to the total of its preferred-rate amount at the end of its immediately preceding taxation year and 25/4 of the amount deductible under section 125 from the tax for the year otherwise payable by it under this Part;

(b) where at any time a new corporation has been formed as a result of an amalgamation of two or more predecessor corporations, within the meaning of subsection 87(1), it shall be deemed to have had a taxation year ending immediately before that time and to have had, at the end of that year, a preferred-rate amount equal to the total of the preferred-rate amounts of each of the predecessor corporations at the end of their last taxation years; and

(c) where there has been a winding-up as described in subsection 88(1), the preferred-rate amount of the parent (referred to in that subsection) at the end of its taxation year immediately preceding its taxation year in which it received the assets of the subsidiary (referred to in that subsection) on the winding-up shall be deemed to be the total of the amount that would otherwise be its preferred-rate amount at the end of that year and the preferred-rate amount of the subsidiary at the end of its taxation year in which its assets were distributed to the parent on the winding-up.

Pre-RSC History: Para. 137(4.3)(a) substituted by 1988, c. 55, subsec. 123(3), applicable to taxation years commencing after June 1988, except that in the application of para. 137(4.3)(a) to the first taxation year of a corporation commencing after June 1988, the preferred-rate amount of the corporation at the end of its immediately preceding taxation year (in this subsection referred to as "that year") shall be deemed to be an amount equal to the aggregate of its preferred-rate amount at the end of the taxation year immediately preceding that year and 4 times the amount deductible under s. 125 from the tax otherwise payable by the corporation under Part I for that year. Para. 137(4.3)(a) formerly read:

(a) the preferred-rate amount of a corporation at the end of a taxation year is

(i) where the taxation year ended in 1984, the amount determined under paragraph 190(2)(b), and

(ii) for any other taxation year, the aggregate of its preferred-rate amount at the end of its immediately preceding taxation year and 4 times the amount deductible under section 125 from the tax otherwise payable by the corporation under this Part for the year;

Subsec. 137(4.3) added by 1984, c. 45, subsec. 52(3), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-483: Credit unions.

(5) Member's income — Where a payment has been received by a taxpayer from a credit union in a taxation year in respect of an allocation in proportion to borrowing, the amount thereof shall, if the money so borrowed was used by the taxpayer for the purpose of earning income from a business or property (otherwise than to acquire property the income from which would be exempt or to acquire a life insurance policy), be included in computing the taxpayer's income for the year.

(5.1) Allocations of taxable dividends and capital gains — A credit union (referred to in this subsection and in subsection (5.2) as the "payer") may, at any time within 120 days after the end of its taxation year, elect in prescribed form to allocate in respect of the year to a

member that is a credit union such portion of each of the following amounts as may reasonably be regarded as attributable to the member:

(a) the total of all amounts each of which is the amount of a taxable dividend received by the payer from a taxable Canadian corporation in the year;

(b) the amount if any, by which

(i) the total of all amounts each of which is the amount by which the payer's capital gain from the disposition of a property in the year exceeds the payer's taxable capital gain from the disposition

exceeds

(ii) the total of all amounts each of which is the amount by which the payer's capital loss from the disposition of a property in the year exceeds the payer's allowable capital loss from the disposition; and

(c) each amount deductible under paragraph (5.2)(c) in computing the payer's taxable income for the year.

Related Provisions: 137(5.2) — Allocations of taxable dividends and capital gains.

History: Para. 137(5.1)(b) substituted and para. (c) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 113(1), applicable to 1988 *et seq*. Para. (b) formerly read:

(b) the amount, if any, by which the total of the payer's taxable capital gains from dispositions of property in the year exceeds the total of its allowable capital losses from dispositions of property in the year.

Pre-RSC History: Subsec. 137(5.1) added by 1980-81-82-83, c. 48, subsec. 78(2), applicable to taxation years ending after October 28, 1980.

Interpretation Bulletins: IT-483: Credit unions.

Forms: T2004: Election by a credit union to allocate taxable dividends and net non-taxable capital gains to member credit unions.

(5.2) Idem — Notwithstanding any other provision of this Act,

(a) there shall be deducted from the amount that would, but for this subsection, be deductible under section 112 in computing a payer's taxable income for a taxation year such portion of the total referred to in paragraph (5.1)(a) as the payer allocated to its members under subsection (5.1) in respect of the year;

(b) there shall be included in computing the income of a payer for a taxation year an amount equal to that portion of the amount referred to in paragraphs (5.1)(b) and (c) that the payer allocated under subsection (5.1) in respect of the year to its members; and

(c) each amount allocated under subsection (5.1) to a member may be deducted by that member in computing the member's taxable income for its taxation year that includes the last day of the payer's taxation year in respect of which the amount was so allocated.

History: Para. 137(5.2)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 79, applicable to 1991 *et seq*. Para. (c) formerly read:

(c) each amount allocated to a member under subsection (5.1) may be deducted by that member in computing its taxable income for its taxation year during which the amount was so allocated.

Para. 137(5.2)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 113(2), applicable to 1988 *et seq*. Para. (b) formerly read:

(b) there shall be included in computing the income of a payer for a taxation year an amount equal to that portion of the amount referred to in paragraph (5.1)(b) that the payer allocated to its members under subsection (5.1) in respect of the year; and

Pre-RSC History: Subsec. 137(5.2) added by 1980-81-82-83, c. 48, subsec. 78(2), applicable to taxation years ending after October 28, 1980.

Interpretation Bulletins: IT-483: Credit unions.

(6) Definitions — In this section,

"allocation in proportion to borrowing" for a taxation year means an amount credited by a credit union to a person who was a member of the credit union in the year on terms that the member is entitled to or will receive payment thereof, computed at a rate in relation to

(a) the amount of interest payable by the member on money borrowed from the credit union, or

(b) the amount of money borrowed by the member from the credit union,

if the amount was credited at the same rate in relation to the amount of interest or money, as the case may be, as the rate at which amounts were similarly credited for the year to all other members of the credit union of the same class;

Pre-RSC History: *The definition "allocation in proportion to borrowing" was para. 137(6)(a).*

All that portion para. 137(6)(a) following subpara. (ii) substituted, para. 137(6)(a.1) added by 1980-81-82-83, c. 48, subsecs. 78(3), (4), applicable to taxation years ending after October 28, 1980. That portion formerly read:

if the amount was credited within the year or within 12 months thereafter and at the same rate in relation to the amount of interest or money, as the case may be, as the rate at which amounts were similarly credited in the year to all other members of the credit union of the same class and for this purpose a class includes all members for whom the rates of interest payable in relation to the money borrowed are the same;

All that portion of para. 137(6)(a) following subpara. (ii) substituted by 1974-75-76, c. 26, subsec. 92(3), applicable to 1972 *et seq.*

"bonus interest payment" for a taxation year means an amount credited by a credit union to a person who was a member of the credit union in the year on terms that the member is entitled to or will receive payment thereof, computed at a rate in relation to

(a) the amount of interest payable in respect of the year by the credit union to the member on money standing to the member's credit from time to time in the records or books of account of the credit union, or

(b) the amount of money standing to the member's credit from time to time in the year in the records or books of account of the credit union,

if the amount was credited at the same rate in relation to the amount of interest or money, as the case may be, as the rate at which amounts were similarly credited in the year to all other members of the credit union of the same class;

Pre-RSC History: *The definition "bonus interest payment" was para. 137(6)(a.1).*

"credit union" means a corporation, association or federation incorporated or organized as a credit union or cooperative credit society if

(a) it derived all or substantially all of its revenues from

(i) loans made to, or cashing cheques for, members,

(ii) debt obligations or securities of, or guaranteed by, the Government of Canada or a province, a Canadian municipality, or an agency thereof, or debt obligations or securities of a municipal or public body performing a function of government in Canada or an agency thereof,

(iii) debt obligations of or deposits with, or guaranteed by, a corporation, commission or association not less than 90% of the shares or capital of which

was owned by the Government of Canada or a province or by a municipality in Canada,

(iv) debt obligations of or deposits with, or guaranteed by, a bank, or debt obligations of or deposits with a corporation licensed or otherwise authorized under a law of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(v) charges, fees and dues levied against members or members of members,

(vi) loans made to or deposits with a credit union or cooperative credit society of which it is a member, or

(vii) a prescribed revenue source,

(b) all or substantially all the members thereof having full voting rights therein were corporations, associations or federations

(i) incorporated as credit unions or cooperative credit societies, all of which derived all or substantially all of their revenues from the sources described in paragraph (a), or all or substantially all of the members of which were credit unions, cooperatives or a combination thereof,

(ii) incorporated, organized or registered under, or governed by a law of Canada or a province with respect to cooperatives, or

(iii) incorporated or organized for charitable purposes,

or were corporations, associations or federations no part of the income of which was payable to, or otherwise available for the personal benefit of, any shareholder or member thereof, or

(c) the corporation, association or federation would be a credit union by virtue of paragraph (b) if all the members (other than individuals) having full voting rights in each member thereof that is a credit union were members having full voting rights in the corporation, association or federation;

Related Provisions: 89(1)"paid-up capital"(b) — PUC of credit union; 137.1(7) — Deposit insurance corporation deemed not credit union; 157(2) — Exemption from instalment obligations where taxable income not over $10,000; 248(1)"credit union" — Definition applies to entire Act; 248(1)"share" — Share of a credit union is a share; Reg. 9002(3) — Mark-to-market rules — property held by credit union.

Pre-RSC History: *The definition "credit union" was para. 137(6)(b).*

Interpretation Bulletins: IT-320R2: RRSP — qualified investments; IT-483: Credit unions.

"maximum cumulative reserve" of a credit union at the end of any particular taxation year means an amount determined by the formula

$$0.05 \times (A + B)$$

where

A is the total of all amounts each of which is the amount of any debt owing by the credit union to a member thereof or of any other obligation of the credit union to pay an amount to a member thereof, that was outstanding at the end of the year, including, for greater certainty, the amount of any deposit standing to the credit of a member of the credit union in the records of the credit union, but excluding, for greater certainty, any share in the credit union of any member thereof, and

B is the total of all amounts each of which is the amount, as of the end of the year, of any share in the credit union of any member thereof;

Pre-RSC History: *The definition "maximum cumulative reserve" was para. 137(6)(c). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(c) "maximum cumulative reserve" of a credit union at the end of any particular taxation year means an amount equal to 5% of the aggregate of amounts each of which is

(i) the amount of any debt owing by the credit union to a member thereof or of any other obligation of the credit union to pay an amount to a member thereof, that was outstanding at the end of the year, including, for greater certainty, the amount of any deposit standing to the credit of a member of the credit union in the records of the credit union, but excluding, for greater certainty, any share in the credit union of any member thereof, or

(ii) the amount, as of the end of the year, of any share in the credit union of any member thereof; and

I.T. Application Rules: 58(3.2) (reduction in maximum cumulative reserve to reflect level at end of 1971).

"member" of a credit union means a person who is recorded as a member on the records of the credit union and is entitled to participate in and use the services of the credit union.

Related Provisions: Reg. 1404(2)"acquisition costs"(a)(iii.1) — Insurer established to provide insurance to credit union members — policy reserves.

Pre-RSC History: *The definition "member" was para. 137(6)(d).*

Pre-RSC History [subsec. 137(6)]: Cl. 137(6)(b)(i)(D) amended by 1992, c. 1, Sch. V, s. 18, to substitute "a bank" for "a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies," applicable from February 28, 1992.

Cls. 137(6)(b)(i)(B)–(D), all that portion of subpara. 137(6)(b)(ii) preceding cl. (B), para. 137(6)(d) substituted, cl. 137(6)(b)(i)(G), subpara. 137(6)(b)(iii) added by 1980-81-82-83, c. 48, subsecs. 78(5)–(9), applicable after October 28, 1980. Cls. 137(6)(b)(i)(B)-(D), that portion of subpara. 137(6)(b)(ii) and para. 137(6)(d) formerly read:

(B) bonds or securities of or loans to, or guaranteed by, the Government of Canada or a province, a Canadian municipality, or an agency thereof, or bonds or securities of or loans to a municipal or public body performing a function of government in Canada or an agency thereof,

(C) bonds of a corporation, commission or association not less than 90% of the shares or capital of which was owned by the government of Canada or a province or by a municipality in Canada,

(D) loans to or deposits with a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies, or loans to or deposits with a corporation licensed or otherwise authorized under a law of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

. . . . .

(ii) all or substantially all the members thereof were corporations, associations or federations

(A) incorporated as credit unions or cooperative credit societies, all of which derived all or substantially all of their revenues from the sources described in subparagraph (i), or all of whose shares are owned by credit unions, cooperatives or a combination thereof,

. . . . .

(d) "member" of a credit union means a person who is entitled as a member or shareholder to full voting rights in the conduct of the affairs of the credit union.

Para. 137(6)(b) substituted by 1974-75-76, c. 26, subsec. 92(3), applicable to 1972 *et seq.*

(7) Credit union not private corporation — Notwithstanding any other provision of this Act, a credit union that would, but for this section, be a private corporation shall be deemed not to be a private corporation except for the purposes of sections 123.1, 125, 127, 127.1, 152 and 157 and the definition "small business corporation" in subsection 248(1) as it applies for the purposes of paragraph 39(1)(c).

Pre-RSC History: Subsec. 137(7) amended by 1990, c. 39, s. 35, to substitute "127.1, 152 and 157" for "127.1 and 157", applicable after April 27, 1989.

Subsec. 137(7) amended by 1986, c. 55, s. 55, applicable after 1985, to add "and the definition "small business corporation" in subsection 248(1) as it applies for the purposes of paragraph 39(1)(c)".

Subsec. 137(7) amended by 1986, c. 6, s. 78, to add reference to s. 123.1, applicable to 1985 *et seq.*

Subsec. 137(7) substituted by 1985, c. 45, subsec. 80(1), applicable to 1985 *et seq.*, to delete reference to sections 123.4 and 123.5 and to add reference to section 157.

Subsec. 137(7) substituted by 1984, c. 45, subsec. 52(3), to add reference to ss. 127 and 127.1, applicable to 1985 *et seq.*

Subsec. 137(7) substituted by 1980-81-82-83, c. 140, s. 94, applicable to taxation years ending after 1981 to substitute "sections 123.4, 123.5 and 125" for "section 125."

Subsec. 137(7) substituted by 1973-74, c. 14, subsec. 46(2), applicable to 1972 *et seq.*

Definitions [s. 137]: "allocation in proportion to borrowing" — 137(6); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "bank" — *Interpretation Act* 35(1); "bonus interest payment" — 137(6); "business" — 248(1); "class" — of shares 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "dividend" — 137(4.1), (4.2), 248(1); "interest" — 137(4.1), (4.2); "life insurance policy" — 138(12), 248(1); "maximum cumulative reserve", "member" — 137(6); "payer" — 137(5.1); "person" — 248(1); "preferred-rate amount" — 137(4.3); "prescribed" — 248(1); "private corporation" — 89(1), 137(7), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "record", "share", "shareholder", "small business corporation" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

I.T. Application Rules [s. 137]: 58 (property of credit union acquired before 1972).

Interpretation Bulletins [s. 137]: IT-483: Credit unions.

137.1 (1) Amounts included in income of deposit insurance corporation — For the purpose of computing the income for a taxation year of a taxpayer that is a deposit insurance corporation, the following rules apply:

(a) the corporation's income shall, except as otherwise provided in this section, be computed in accordance with the rules applicable in computing income for the purposes of this Part; and

(b) there shall be included in computing the corporation's income such of the following amounts as are applicable:

(i) the total of profits or gains made in the year by the corporation in respect of bonds, debentures, mortgages, notes or other similar obligations owned by it that were disposed of by it in the year, and

(ii) the total of each such portion of each amount, if any, by which the principal amount, at the time it was acquired by the corporation, of a bond, debenture, mortgage, note or other similar obligation owned by the corporation at the end of the year exceeds the cost to the corporation of acquiring it as was included by the corporation in computing its profit for the year.

Related Provisions: 137.1(3) — Deductions from income of deposit insurance corporation; 137.1(5) — Deposit insurance corporation defined; 137.1(10) — Amounts paid by a deposit insurance corporation; 137.2 — Valuation of property owned since before 1975; 142.2(1)"financial institution"(c)(iv) — Deposit insurance corporation not subject to mark-to-market rules.

Pre-RSC History: Subpara. 137.1(1)(b)(iii) repealed by 1988, c. 55, subsec. 124(1), applicable to taxation years after the first taxation year that commences after June 17, 1987 and ends after 1987. Subpara. 137.1(1)(b)(iii) formerly read:

(iii) any amount deducted under paragraph (3)(c) as a reserve for the immediately preceding taxation year.

(2) Amounts not included in income — The amount of any premiums or assessments received or receivable by a taxpayer that is a deposit insurance corporation from its member institutions in a taxation year shall not be included in computing its income.

Related Provisions: 137.1(4) — Limitation on deduction; 137.1(11) — Deductions for payments by member institution.

Pre-RSC History: Subsec. 137.1(2) substituted by 1980-81-82-83, c. 140, subsec. 95(1), applicable to 1981 and subsequent taxation years, to add the words "or receivable".

(3) Amounts deductible in computing income of deposit insurance corporation — There may be deducted in computing the income for a taxation year of a taxpayer that is a deposit insurance corporation such of the following amounts as are applicable:

(a) the total of losses sustained in the year by the corporation in respect of bonds, debentures, mortgages, notes or other similar obligations owned by it and issued by a person other than a member institution that were disposed of by it in the year;

(b) the total of each such portion of each amount, if any, by which the cost to the corporation of acquiring a bond, debenture, mortgage, note or other similar obligation owned by the corporation at the end of the year exceeds the principal amount of the bond, debenture, mortgage, note or other similar obligation, as the case may be, at the time it was so acquired as was deducted by the corporation in computing its profit for the year;

(c) [Repealed under former Act]

(d) the total of all expenses incurred by the taxpayer in collecting premiums or assessments from member institutions;

(e) the total of all expenses incurred by the taxpayer

(i) in the performance of its duties as curator of a bank, or as liquidator or receiver of a member institution when duly appointed as such a curator, liquidator or receiver,

(ii) in the course of making or causing to be made such inspections as may reasonably be considered to be appropriate for the purposes of assessing the solvency or financial stability of a member institution, and

(iii) in supervising or administering a member institution in financial difficulty; and

(f) the total of all amounts each of which is an amount that is not otherwise deductible by the taxpayer for the year or any other taxation year and that is

(i) an amount paid by the taxpayer in the year pursuant to a legal obligation to pay interest on borrowed money used

(A) to lend money to, or otherwise provide assistance to, a member institution in financial difficulty,

(B) to assist in the payment of any losses suffered by members or depositors of a member institution in financial difficulty,

(C) to lend money to a subsidiary wholly-owned corporation of the taxpayer where the

subsidiary is deemed by subsection (5.1) to be a deposit insurance corporation,

(D) to acquire property from a member institution in financial difficulty, or

(E) to acquire shares of the capital stock of a member institution in financial difficulty, or

(ii) an amount paid by the taxpayer in the year pursuant to a legal obligation to pay interest on an amount that would be deductible under subparagraph (i) if it were paid in the year.

Related Provisions: 137.2 — Valuation of property owned since before 1975.

Pre-RSC History: Para. 137.1(3)(c) repealed by 1988, c. 55, subsec. 124(2), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. 137.1(3)(c) formerly read:

(c) such amount as the taxpayer may claim for the year in respect of an investment reserve, not exceeding the lesser of

(i) 1½% of the aggregate of the amortized cost to it at the end of the year of each bond, debenture, mortgage, hypothec, note or other similar obligation owned by it at that time (other than a bond or debenture that matures within one year after that time or a bond, debenture, mortgage, hypothec, note or other similar obligation issued by a member institution), and each amount due and unpaid at that time as or on account of interest payable thereunder to the taxpayer, and

(ii) the aggregate of ⅓ of the amount determined under subparagraph (i) and the amount, if any, deducted by the taxpayer under this paragraph in computing its income for the immediately preceding taxation year;

Subpara. 137.1(3)(e)(iii) and para. 137.1(3)(f) added by 1987, c. 46, subsecs. 49(1), (2), applicable to 1980 *et seq.*

Para. 137.1(3)(a) amended by 1985, c. 45, subsec. 81(1), applicable to 1983 *et seq.*, to substitute "owned by it and issued by a person other than a member institution" for "owned by it".

(4) Limitation on deduction — No deduction shall be made in computing the income for a taxation year of a taxpayer that is a deposit insurance corporation in respect of

(a) any grant, subsidy or other assistance to member institutions provided by it;

(b) an amount equal to the amount, if any, by which the amount paid or payable by it to acquire property exceeds the fair market value of the property at the time it was so acquired;

(c) any amounts paid to its member institutions as allocations in proportion to any amounts described in subsection (2); or

(d) [Repealed under former Act]

(e) any amount that may otherwise be deductible under paragraph 20(1)(p) in respect of debts owing to it by any of its member institutions that has not been included in computing its income for the year or a preceding taxation year.

Related Provisions: 20(1)(p) — Bad debts; 137.1(2) — Amounts not included in income.

Pre-RSC History: Para. 137.1(4)(d) repealed by 1988, c. 55, subsec. 124(3), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. 137.1(4)(d) formerly read:

(d) any amount that may otherwise be deductible under paragraph 20(1)(l) or section 33; or

Para. 137.1(4)(e) amended by 1985, c. 45, subsec. 81(2), to add the words "that has not been included in computing its income for the year or a preceding taxation year", applicable to 1983 *et seq.*

(5) Definitions — In this section,

"amortized cost [para. 137.1(5)(d)]" — [Repealed under former Act]

Pre-RSC History: Para. 137.1(5)(d) repealed by 1988, c. 55, subsec. 124(5), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. 137.1(5)(d) formerly read:

(d) "amortized cost" to a deposit insurance corporation of a bond, debenture, mortgage, hypothec, note or other similar obligation at a particular time means the amount, if any, by which the aggregate of

(i) the lesser of

(A) the cost to the corporation of acquiring the bond, debenture, mortgage, hypothec, note or other similar obligation, and

(B) the fair market value thereof at the time it was acquired, and

(ii) any amount in respect of the bond, debenture, mortgage, hypothec, note or other similar obligation that has been included by virtue of subparagraph (1)(b)(ii) in computing the corporation's income for any taxation year ending before or concurrently with that time,

exceeds the aggregate of

(iii) any amount in respect of the bond, debenture, mortgage, hypothec, note or other similar obligation that was deductible under paragraph (3)(b) in computing the corporation's income for any taxation year ending before or concurrently with that time, and

(iv) the aggregate of all amounts that, before that time, the corporation was entitled to receive as, on account or in lieu of payment of, or in satisfaction of, the principal amount of the bond, debenture, mortgage, hypothec, note or other similar obligation.

"deposit insurance corporation" means

(a) a corporation that was incorporated by or under a law of Canada or a province respecting the establishment of a stabilization fund or board if

(i) it was incorporated primarily

(A) to provide or administer a stabilization, liquidity or mutual aid fund for credit unions, and

(B) to assist in the payment of any losses suffered by members of credit unions in liquidation, and

(ii) throughout any taxation year in respect of which the expression is being applied,

(A) it was a Canadian corporation, and

(B) the cost amount to the corporation of its investment property was at least 50% of the cost amount to it of all its property (other than a debt obligation of, or a share of the capital stock of, a member institution issued by the member institution at a time when it was in financial difficulty), or

(b) a corporation incorporated by the *Canada Deposit Insurance Corporation Act*;

Related Provisions: 137.1(5.1) — Deeming provision; 137.1(8) — Deemed compliance with Act; 181.1(3)(e) — Large Corporations Tax not payable by deposit insurance corporation.

Pre-RSC History: *The definition "deposit insurance corporation" was para. 137.1(5)(a).*

Subcl. 137.1(5)(a)(i)(B)(II) amended by 1987, c. 46, subsec. 49(2.1), to substitute "debt obligation of, or a share of the capital stock of, a member institution issued by the" for "debt obligation issued by a", applicable to 1985 *et seq.*

Subcl. 137.1(5)(a)(i)(B)(II) substituted by 1980-81-82-83, c. 140, subsec. 95(3), applicable to 1981 and subsequent taxation years, to add "(other than a debt obligation issued by a member institution at a time when it was in financial difficulty)".

"investment property" means

(a) bonds, debentures, mortgages, notes or other similar obligations

(i) of or guaranteed by the Government of Canada,

(ii) of the government of a province or an agent thereof,

(iii) of a municipality in Canada or a municipal or public body performing a function of government in Canada,

(iv) of a corporation, commission or association not less than 90% of the shares or capital of which is owned by Her Majesty in right of a province or by a Canadian municipality, or of a subsidiary wholly-owned corporation that is subsidiary to such a corporation, commission or association, or

(v) of an educational institution or a hospital if repayment of the principal amount thereof and payment of the interest thereon is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province,

(b) any deposits, deposit certificates or guaranteed investment certificates with

(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(iii) a credit union or central that is a member of the Canadian Payments Association or a credit union that is a shareholder or member of a central that is a member of the Canadian Payments Association,

(c) any money of the corporation, and

(d) in relation to a particular deposit insurance corporation, debt obligations of, and shares of the capital stock of, a subsidiary wholly-owned corporation of the particular corporation where the subsidiary is deemed by subsection (5.1) to be a deposit insurance corporation;

Pre-RSC History: *The definition "investment property" was para. 137.1(5)(c).*

Cl. 137.1(5)(c)(ii)(A) substituted by 1992, c. 1, Sch. V, s. 19, applicable from February 28, 1992. That cl. formerly read:

(A) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies,

Cl. 137.1(5)(c)(ii)(C) added by 1988, c. 55, subsec. 124(4), applicable to 1988 *et seq.*

Subpara. 137.1(5)(c)(iv) added by 1987, c. 46, subsec. 49(3), applicable to 1985 *et seq.*

"member institution", in relation to a particular deposit insurance corporation, means

(a) a corporation whose liabilities in respect of deposits are insured by, or

(b) a credit union that is qualified for assistance from

that deposit insurance corporation.

Related Provisions: 142.2(1)"financial institution"(c)(iv) — Deposit insurance corporation not subject to mark-to-market rules.

Pre-RSC History: *The definition "member institution" was para. 137.1(5)(b).*

(5.1) Deeming provision — For the purposes of this section, other than subsection (2), paragraph (3)(d), subparagraph (3)(e)(i), subsection (9) and paragraph (11)(a), a subsidiary wholly-owned corporation of a particular corporation described in the definition "deposit insurance corporation" in subsection (5) shall be deemed to be a deposit insurance corporation, and any member institution of the particular corporation shall be deemed to be a member institution of the subsidiary, where all or substantially all of the property of the subsidiary has at all times since the subsidiary was incorporated consisted of

(a) investment property;

(b) shares of the capital stock of a member institution of the particular corporation obtained by the subsidiary at a time when the member institution was in financial difficulty;

(c) debt obligations issued by a member institution of the particular corporation at a time when the member institution was in financial difficulty;

(d) property acquired from a member institution of the particular corporation at a time when the member institution was in financial difficulty; or

(e) any combination of property described in paragraphs (a) to (d).

History: The opening words of subsec. 137.1(5.1) substituted by 1994, c. 21, s. 65, applicable to 1992 *et seq.* The opening words formerly read:

(5.1) For the purposes of this section, other than subsection (2), paragraph (3)(d), subparagraph (3)(e)(i) and subsections (9) and (11), a subsidiary wholly-owned corporation of a particular corporation described in the definition "deposit insurance corporation" in subsection (5) shall be deemed to be a deposit insurance corporation, and any member institution of the particular corporation shall be deemed to be a member institution of the subsidiary, where all or substantially all of the property of the subsidiary has at all times since the subsidiary was incorporated consisted of

Pre-RSC History: Subsec. 137.1(5.1) added by 1987, c. 46, subsec. 49(4), applicable to 1985 *et seq.*

(6) Deemed not to be a private corporation — Notwithstanding any other provision of this Act, a deposit insurance corporation that would, but for this subsection, be a private corporation shall be deemed not to be a private corporation.

(7) Deposit insurance corporation deemed not a credit union — Notwithstanding any other provision of this Act, a deposit insurance corporation that would, but for this subsection, be a credit union shall be deemed not to be a credit union.

Related Provisions: 137 — Credit unions.

(8) Deemed compliance — For the purposes of subsection (5), a corporation shall be deemed to have complied with clause (a)(ii)(B) of the definition "deposit insurance corporation" in subsection (5) throughout the 1975 taxation year if it complied with that clause on the last day of that taxation year.

(9) Special tax rate — The tax payable under this Part by a corporation for a taxation year throughout which it was a deposit insurance corporation (other than a corporation incorporated under the *Canada Deposit Insurance Corporation Act*) is an amount equal to 22% of its taxable income for the year.

Related Provisions: 220(4.3), (4.4) — Security furnished by member institution of a deposit insurance corporation.

Pre-RSC History: Subsec. 137.1(9) amended by 1988, c. 55, subsec. 124(6), to substitute "a taxation year throughout which" for "a taxation year when" and "22%" for "25%", applicable to taxation years ending after June 1988, except that in its application to a taxation year of a corporation commencing before July 1988 and ending after June 1988 there shall be added to the amount determined under subsec. 137.1(9) in respect of the corporation for the year an amount equal to that proportion of 3% of its taxable income for the year that the number of days in the year that are before July 1988 is of the number of days in the year.

(10) Amounts paid by a deposit insurance corporation — Where in a taxation year a taxpayer is a mem-

ber institution, there shall be included in computing its income for the year the total of all amounts each of which is

(a) an amount received by the taxpayer in the year from a deposit insurance corporation that is an amount described in any of paragraphs (4)(a) to (c), to the extent that the taxpayer has not repaid the amount to the deposit insurance corporation in the year,

(b) an amount received from a deposit insurance corporation in the year by a depositor or member of the taxpayer as, on account of, in lieu of payment of, or in satisfaction of, deposits with, or share capital of, the taxpayer, to the extent that the taxpayer has not repaid the amount to the deposit insurance corporation in the year, or

(c) the amount by which

(i) the principal amount of any obligation of the taxpayer to pay an amount to a deposit insurance corporation that is settled or extinguished in the year without any payment by the taxpayer or by the payment by the taxpayer of an amount less than the principal amount

exceeds

(ii) the amount, if any, paid by the taxpayer on the settlement or extinguishment of the obligation

to the extent that the excess is not otherwise required to be included in computing the taxpayer's income for the year or a preceding taxation year.

Related Provisions: 80(1)"forgiven amount" — Debt forgiveness; 137.1(10.1) — Principal amount of an obligation to pay interest; 137.1(12) — Repayment excluded; 220(4.3), (4.4) — Security furnished by a member institution of a deposit insurance corporation.

(10.1) Principal amount of an obligation to pay interest — For the purposes of paragraph (10)(c), an amount of interest payable by a member institution to a deposit insurance corporation on an obligation shall be deemed to have a principal amount equal to that amount.

Related Provisions: 137.1(11) — Deduction for payments by member institution.

Pre-RSC History: Subsec. 137.1(10) substituted and (10.1) added, by 1987, c. 46, subsec. 49(5), applicable to 1983 *et seq.* Subsec. 137.1(10) formerly read:

(10) Amounts paid by deposit insurance corporation — For the purposes of this Act, where a taxpayer is a member institution,

(a) any amount received by it in a taxation year from a deposit insurance corporation of which it is a member that is an amount described in any of paragraphs (4)(a) to (c),

(b) any amount received from a deposit insurance corporation in a taxation year by a depositor of the taxpayer or a member of the taxpayer as, on account or in lieu of payment of, or in satisfaction of, deposits with, or share capital of, the taxpayer or

(c) if at any time in a taxation year any debt or other obligation of the taxpayer to pay an amount to the deposit insurance corporation is settled or extinguished without any payment by the taxpayer or by the payment of an amount less than the principal amount of the debt or obligation, as the case may be, the amount by which the principal amount exceeds the amount, if any, so paid,

shall be included in computing the taxpayer's income for that year.

(11) Deduction by member institutions — There may be deducted in computing the income for a taxation year of a taxpayer that is a member institution such of the following amounts as are applicable:

(a) any amount paid or payable by the taxpayer in the year that is described in subsection (2) to the extent that it was not deducted in computing the taxpayer's income for a preceding taxation year; and

(b) any amount repaid by the taxpayer in the year to a deposit insurance corporation on account of an amount described in paragraph (10)(a) or (b) that was received in a preceding taxation year to the extent that it was not, by reason of subsection (12), excluded from the taxpayer's income for the preceding year.

Pre-RSC History: Subsec. 137.1(11) substituted by 1988, c. 55, subsec. 124(7), applicable to 1983 *et seq.* Subsec. 137.1(11) formerly read:

(11) Deductions for payments by member institution — For the purposes of this Act, where a taxpayer is a member institution, any amount paid or payable by the taxpayer during the year that is described in subsection (2) may be deducted in computing the taxpayer's income for that year.

(12) Repayment excluded — Where

(a) a member institution has in a taxation year repaid an amount to a deposit insurance corporation on account of an amount that was included by virtue of paragraph (10)(a) or (b) in computing its income for a preceding taxation year,

(b) the member institution has filed its return of income required by section 150 for the preceding year, and

(c) on or before the day on or before which the member institution is required by section 150 to file a return of income for the taxation year, it has filed an amended return for the preceding year excluding from its income for that year the amount repaid,

the amount repaid shall be excluded from the amount otherwise included by virtue of paragraph (10)(a) or (b) in computing the member institution's income for the preceding year and the Minister shall make such reassessment of the tax, interest and penalties payable by the member institution for preceding taxation years as is necessary to give effect to the exclusion.

Pre-RSC History: Subsec. 137.1(12) added by 1987, c. 46, subsec. 49(6), applicable to 1983 *et seq.*, except that the amount repaid referred to in the subsection may be excluded from income where the amended return referred to in paragraph (c) thereof is filed at any time on or before the later of

(a) the day on or before which it would be required by the said paragraph to be filed, and

(b) the day that is 90 days after December 17, 1987.

Pre-RSC History [s. 137.1]: S. 137.1 added by 1974-75-76, c. 26, s. 93, subsecs. 137.1(10), (11) are applicable to 1972 *et seq.*, the rest applicable to 1975 *et seq.* [For details contained in c. 26, s. 94, see s. 137.2.]

Definitions [s. 137.1]: "amount" — 248(1); "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 137.1(7), 248(1); "deposit insurance corporation" — 137.1(5), (5.1); "insurance corporation" — 248(1); "investment property" — 137.1(5); "member institution" — 137.1(5); "Minister" — 248(1); "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "share", "shareholder", "subsidiary wholly-owned corporation" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 137.1]: IT-483: Credit unions.

137.2 Computation of income for 1975 and subsequent years — For the purpose of computing the income of a deposit insurance corporation for the 1975 and subsequent taxation years,

(a) property of the corporation that is a bond, debenture, mortgage, note or other similar obligation owned by it at the commencement of the corporation's 1975 taxation year shall be valued at its cost to the corporation less the total of all amounts that, before that time, the corporation was entitled to receive as, on account or in lieu of payment of, or in satisfaction of, the prin-

cipal amount of the bond, debenture, mortgage, note or other similar obligation,

(i) plus a reasonable amount in respect of the amortization of the amount by which the principal amount of the property at the time it was acquired by the corporation exceeded its actual cost to the corporation, or

(ii) minus a reasonable amount in respect of the amortization of the amount by which its actual cost to the corporation exceeded the principal amount of the property at the time it was acquired by the corporation;

(b) property of the corporation that is a debt owing to the corporation (other than property described in paragraph (a) or a debt that became a bad debt before its 1975 taxation year) acquired by it before the commencement of its 1975 taxation year shall be valued at any time at the amount thereof outstanding at that time;

(c) property of the corporation (other than property in respect of which any amount for the year has been included under paragraph (a)) that was acquired, by foreclosure or otherwise, after default made under a mortgage shall be valued at its cost amount to the corporation; and

(d) any other property shall be valued at its cost amount to the corporation.

Origin of s. 137.2: R.S.C. 1985, c. 1 (5th Supp.) (formerly an application rule contained in 1974-75-76, c. 26, s. 94).

Definitions [s. 137.2]: "amount", "cost amount" — 248(1); "deposit insurance corporation" — 137.1(5), (5.1) [does not explicitly apply to 137.2]; "income" — 3; "principal amount", "property" — 248(1); "taxation year" — 249.

Insurance Corporations

138. (1) Insurance corporations — It is hereby declared that a corporation, whether or not it is a mutual corporation, that has, in a taxation year, been a party to insurance contracts or other arrangements or relationships of a particular class whereby it can reasonably be regarded as undertaking

(a) to insure other persons against loss, damage or expense of any kind, or

(b) to pay insurance moneys to other persons

(i) on the death of any person,

(ii) on the happening of an event or contingency dependent on human life,

(iii) for a term dependent on human life, or

(iv) at a fixed or determinable future time,

whether or not such persons are members or shareholders of the corporation, shall, regardless of the form or legal effect of those contracts, arrangements or relationships, be deemed, for the purposes of this Act, to have been carrying on an insurance business of that class in the year for profit, and in any such case, for the purpose of computing the income of the corporation, the following rules apply:

(c) every amount received by the corporation under, in consideration of, in respect of or on account of such a contract, arrangement or relationship shall be deemed to have been received by it in the course of that business,

(d) the income shall, except as otherwise provided in this section, be computed in accordance with the rules applicable in computing income for the purposes of this Part,

(e) all income from property vested in the corporation shall be deemed to be income of the corporation, and

(f) all taxable capital gains and allowable capital losses from dispositions of property vested in the corporation shall be deemed to be taxable capital gains or allowable capital losses, as the case may be, of the corporation.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 138(6) — Deductions for dividends from taxable corporations; 138(9) — Computation of income; 139, 139.1 — Mutualization and demutualization of insurer; 142 — Taxable capital gains where insurer carries on business in Canada and outside Canada; 148(1) — Amount included in life insurance policyholder's income; 149(1)(m), (t) — Exemptions — insurers; 190.1 — Financial institutions capital tax.

Pre-RSC History: All that portion of subsec. 138(1) following para. (b) substituted by 1973-74, c. 14, subsec. 47(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 138(1)]: *Munich Reinsurance Co. (Canada Branch) v. R.*, [2000] 2 C.T.C. 2785 (TCC) (Right to tax refund not property used in business).

(2) Insurer's income or loss — Notwithstanding any other provision of this Act, where a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year

(a) its income or loss for the year from carrying on an insurance business is the amount of its income or loss for the year, computed in accordance with this Act, from the business in Canada; and

(b) no amount shall be included in computing its income for the year in respect of its taxable capital gains and allowable capital losses from dispositions of property (other than property disposed of in a taxation year in which it was designated insurance property) of the insurer used or held by it in the course of carrying on an insurance business.

Related Provisions: 20(7)(c) — No deduction for certain reserves; 20(26) — Deduction for unpaid claims reserve adjustment; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 138(1) — Insurance corporations; 138(6) — Deduction for dividends; 138(9) — Computation of income; 140(1), (2) — Deductions and inclusions in income of insurer; 142 — Application of rule in 138(2)(b) before 1996; 211.1 — Tax on investment income of life insurer.

History: Subsec. 138(2) amended by 1997, c. 25, subsec. 39(1), applicable to 1997 *et seq.* Subsec. (2) formerly read:

(2) Notwithstanding any other provision of this Act, where a life insurer is resident in Canada,

(a) its income for a taxation year from carrying on an insurance business is the amount of its income for the year from carrying on that insurance business in Canada; and

(b) its loss sustained in a taxation year in carrying on an insurance business is the amount of its loss, if any, sustained in the year in carrying on that insurance business in Canada, computed by applying, with such modifications as the circumstances require, the provisions of this Act respecting the computation of income from an insurance business of the class carried on by it.

That portion of subsec. 138(2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 114(1), applicable to 1990 *et seq.* That portion formerly read:

(2) Notwithstanding any other provision of this Act, in the case of an insurer, other than a resident of Canada that does not carry on a life insurance business,

(3) Deductions allowed in computing income [of life insurer] — In computing a life insurer's income for

a taxation year from carrying on its life insurance business in Canada, there may be deducted

(a) such of the following amounts as are applicable:

(i) any amount that the insurer claims as a policy reserve for the year in respect of its life insurance policies, not exceeding the total of amounts that the insurer is allowed by regulation to deduct in respect of the policies,

(ii) any amount that the insurer claims as a reserve in respect of claims that were received by the insurer before the end of the year under its life insurance policies and that are unpaid at the end of the year, not exceeding the total of amounts that the insurer is allowed by regulation to deduct in respect of the policies,

(ii.1) the amount included under paragraph (4)(b) in computing the insurer's income for the taxation year preceding the year,

(iii) an amount equal to the lesser of

(A) the amount, if any, by which the total of policy dividends (except the portion thereof paid out of segregated funds) that became payable by the insurer after its 1968 taxation year and before the end of the year under its participating life insurance policies exceeds the total of amounts deductible under this subparagraph in computing its incomes for taxation years before the year, and

(B) the amount, if any, by which the total of all amounts, each of which is the insurer's income, determined in accordance with prescribed rules, for the year or a preceding taxation year ending after 1968 from its participating life insurance business carried on in Canada exceeds the total of all amounts each of which is an amount deductible under this subparagraph or subparagraph (iv) in computing its incomes for taxation years ending before the year,

(iv) an amount as a reserve for policy dividends that will become payable by the insurer in the immediately following taxation year equal to the least of

(A) that portion of policy dividends that has accrued in the year or a preceding taxation year to or for the benefit of participating life insurance policyholders of the insurer, to the extent that an amount in respect thereof has not been included, either explicitly or implicitly, in the calculation of the amount deductible by the insurer for the year under subparagraph (i) and, for the purpose of this clause, a policy dividend in respect of a life insurance policy shall be deemed to accrue in equal daily amounts between anniversary dates of the policy,

(B) 110% of the amount paid or unconditionally credited in the taxation year immediately following the year in respect of the portion referred to in clause (A) of policy dividends that has accrued in the year or a preceding taxation year, and

(C) the amount, if any, by which the amount described in clause (iii)(B) for the year exceeds the amount described in clause (iii)(A) for the year, and

(v) each amount (other than an amount credited under a participating life insurance policy) that would be deductible under section 140 in computing the insurer's income for the year if the reference in that section to "an insurance business other than a life insurance business" were read as a reference to "a life insurance business in Canada";

(b) [Repealed]

(c) [Repealed under former Act]

(d) [Repealed]

(e) the total of amounts each of which is a policy loan made by the insurer in the year and after 1977;

(f) where the taxation year is the first taxation year of the insurer ending after November 12, 1981, the total of all amounts each of which is the amount, if any, in respect of interest on a policy loan that was included in computing the insurer's income for a taxation year ending before November 13, 1981

(i) to the extent that the interest had accrued to it before the commencement of its 1969 taxation year, or

(ii) to the extent that the interest had been included in computing its income for a preceding taxation year; and

(g) the amount of tax under Part XII.3 payable by the insurer in respect of its taxable Canadian life investment income for the year.

Related Provisions: 4(1) — Income or loss from a source; 18(1)(e.1) — No deduction for unpaid claims; 20(1)(l) — Deductions — reserve for doubtful debts; 20(7)(c) — Policy reserves for non-life insurance business; 20(26) — Deduction for unpaid claims reserve adjustment; 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 138(3.1) — Excess policy dividend deduction deemed deductible; 138(4) — Amounts included in computing income; 138(4.01) — Life insurance policy includes group life benefit or annuity contract; 138(9) — Computation of income; 138(11.91)(d.1) — Computation of income for non-resident insurer; 138(12) — "Maximum tax actuarial reserve"; 139.1(8)(b) — No deduction for policy dividend paid on demutualization; 140 — Adjustments to income of insurance corporation; 148(1) — Amounts included in computing policyholder's income; 148(2) — Policy dividends deemed to be proceeds of disposition; 149(10)(a.1) — Exempt corporations.

History: Subparas. 138(3)(a)(i) and (ii) amended, subpara. (ii.1) added, by 1997, c. 25, subsec. 39(2), applicable to 1996 *et seq.* Subparas. (a)(i) and (ii) formerly read:

(i) such amount in respect of a policy reserve for the year for life insurance policies of a particular class as is allowed by regulation,

(ii) such amount as is allowed by regulation as a reserve in respect of claims that were received by the insurer before the end of the year under life insurance policies and that are unpaid at the end of the year,

Para. 138(3)(b) repealed by 1995, c. 21, subsec. 57(1), applicable to taxation years that begin after February 22, 1994. For taxation years that include February 22, 1994, para. (b) shall be read as follows:

(b) the total of losses sustained in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year and before February 23, 1994;

Para. (b) formerly read:

(b) the total of losses sustained in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year;

Para. 138(3)(d) repealed by 1995, c. 21, subsec. 57(2), applicable to taxation years that end after February 22, 1994. Para. (d) formerly read:

(d) the total of each such portion of each amount, if any, by which the cost to the insurer of acquiring a Canada security owned by it at the end of the year exceeds the principal amount of the security at the time it was so acquired as was deducted by the insurer in computing its profit for the year;

Pre-RSC History: Subpara. 138(3)(a)(ii) added and subpara. 138(3)(a)(iv) substituted by 1988, c. 55, subsecs. 125(1), (2), applicable to taxation years commencing after June 17, 1987 that end after 1987. Subpara. (a)(iv) formerly read:

(iv) an amount as a reserve for policy dividends equal to the least of

(A) the amount of policy dividends that will, according to the financial statements of the insurer as of the end of the year, become payable by the insurer in the immediately following year under its participating life insurance policies,

(B) 110% of the aggregate of policy dividends that become payable by the insurer in the immediately following year under its participating life insurance policies, and

(C) the amount, if any, by which the amount for the year described in clause (iii)(B) exceeds the amount for the year described in clause (iii)(A), and

Para. 138(3)(c) repealed by 1988, c. 55, subsec. 125(3), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. (c) formerly read:

(c) such amount as the insurer may claim for the year in respect of an investment reserve, not exceeding the lesser of

(i) the aggregate of

(A) 1½% of the lesser of

(I) the aggregate of the amortized cost to it at the end of the year of each Canada security owned by it at that time (other than a bond or debenture that matures within 1 year after that time) and each amount due and unpaid at that time as or on account of interest payable thereunder to the insurer, and

(II) $2,000,000,000, and

(B) 1% of the amount, if any, by which the aggregate referred to in subclause (A)(I) exceeds the amount referred to in subclause (A)(II), and

(ii) the aggregate of ⅓ of the amount determined under subparagraph (i) and the amount, if any, by which the amount deducted by the insurer under this paragraph in computing its income for the immediately preceding taxation year exceeds the amount, if any, by which

(A) the amount deductible under paragraph (b) in computing its income for the year,

exceeds

(B) the amount required by paragraph (4)(b) to be included in computing its income for the year;

Para. 138(3)(g) added by 1988, c. 55, subsec. 125(4), applicable to taxation years commencing after June 17, 1987 that end after 1987.

Cl. 138(3)(a)(iii)(B) substituted by 1980-81-82-83, c. 140, subsec. 96(1), applicable to 1981 *et seq.* Cl. (a)(iii)(B) formerly read:

(B) the amount, computed in accordance with prescribed rules, of the insurer's income for the year from its participating life insurance business carried on in Canada,

Para. 138(3)(f) added by 1980-81-82-83, c. 140, subsec. 96(2).

Subparas. 138(3)(a)(ii), (vi), (vii) repealed by 1977-78, c. 1, subsecs. 68(1), (2), applicable to 1978 *et seq.* Subparas. (a)(ii), (vi) and (vii) formerly read:

(ii) such amount in respect of an additional reserve for the year for life insurance policies that are group term insurance policies as is allowed by regulation,

(vi) each amount allocated in the year by the insurer to a policyholder, to the extent that it is required by subparagraph 148(1)(b)(i) to be included in computing the income of the policyholder or would be so required to be included therein but for the exception contained in that paragraph with respect to a registered retirement savings plan or a registered pension fund or plan, and

(vii) the amount of tax under Part XII payable by the insurer in respect of its taxable Canadian life investment income for the year computed in accordance with that Part;

Para. 138(3)(e) added by 1977-78, c. 1, subsec. 68(3), applicable to 1978 *et seq.*

Subpara. 138(3)(c)(i) substituted by 1974-75-76, c. 26, subsec. 95(1), applicable to 1974 *et seq.* Subpara. (c)(i) formerly read:

(i) 1½% of the aggregate of the amortized cost to it at the end of the year of each Canada security owned by it at that time (other than a bond or debenture that matures within 1 year after that time) and each amount due and unpaid at that time as or on account of interest payable thereunder to the insurer, and

Subpara. 138(3)(a)(vi) substituted by 1973-74, c. 14, subsec. 47(2), applicable to 1972 *et seq.*

Para. 138(3)(d) substituted by 1973-74, c. 14, subsec. 47(3), applicable to 1969 *et seq.*

Regulations: 1102(1)(j) (no CCA on property used in life insurance business outside Canada); 1401(1) (policy reserves for pre-1996 policies); 1401(4) (unpaid claims reserve for pre-1996 policies); 1404(1) (policy reserves for post-1995 policies); 1405 (unpaid claims reserve for post-1995 policies); 2402 (amounts to be included in income).

(3.1) Excess policy dividend deduction deemed deductible — For the purposes of clause (3)(a)(iii)(A),

(a) an insurer's 1975-76 excess policy dividend deduction shall be deemed to be an amount that was deductible under subparagraph (3)(a)(iii) in computing its incomes for taxation years before its 1977 taxation year; and

(b) the amount prescribed to be an insurer's 1977 excess policy dividend deduction shall be deemed to be an amount that was deductible under subparagraph (3)(a)(iii) in computing its incomes for taxation years before its 1978 taxation year.

Pre-RSC History: Subsec. 138(3.1) added by 1977-78, c. 1, subsec. 68(4), applicable, as to para. 138(3.1)(a), to 1977 *et seq.*, and, as to para. 138(3.1)(b), to 1978 *et seq.*

Regulations: 2407 (insurer's 1977 excess policy dividend deduction).

(4) Amounts included in computing income — In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there shall be included

(a) each amount deducted under subparagraph (3)(a)(i), (ii) or (iv) in computing the insurer's income for the preceding taxation year;

(b) the amount prescribed in respect of the insurer for the year in respect of its life insurance policies; and

(c) the total of all amounts received by the insurer in the year in respect of the repayment of policy loans or in respect of interest on policy loans.

Related Provisions: 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 138(1) — Insurance corporations; 138(3) — Deductions allowed in computing income; 138(4.01) — Life insurance policy includes group life benefit or annuity contract; 138(4.1)–(4.4) — Amounts included in computing income; 138(9) — Computation of income; 138(11.5)(j.1) — Transfer of business by non-resident insurer; 138(11.91)(d) — Computation of income of non-resident insurer.

History: Subsec. 138(4) amended by 1997, c. 25, subsec. 39(3), applicable to 1996 *et seq.* Subsec. (4) formerly read:

(4) In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there shall be included

(a) each amount deducted by the insurer under subparagraph (3)(a)(i), (ii) or (iv) in computing its income for the immediately preceding taxation year; and

(b), (c) [Repealed]

(d) the total of amounts each of which is an amount received by the insurer in the year in respect of the repayment of a policy loan or in respect of interest on a policy loan.

Para. 138(4)(b) repealed by 1995, c. 21, subsec. 57(3), applicable to taxation years that begin after February 22, 1994. For taxation years that include February 22, 1994, para. (b) shall be read as follows:

(b) the total of profits or gains made in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year and before February 23, 1994; and

Para. (b) formerly read:

(b) the total of profits or gains made in the year by the insurer in respect of Canada securities owned by it that were disposed of by it in the year;

Para. 138(4)(c) repealed by 1995, c. 21, subsec. 57(4), applicable to taxation years that end after February 22, 1994. Para. (c) formerly read:

(c) the total of each such portion of each amount, if any, by which the principal amount, at the time it was acquired by the insurer, of a Canada security owned by it at the end of the year exceeds the cost to the insurer of so acquiring it as was included by the insurer in computing its profit for the year; and

Pre-RSC History: Para. 138(4)(a) amended by 1988, c. 55, subsec. 125(5), to substitute "under subparagraph (3)(a)(i), (ii) or (iv)" for "under subparagraph (3)(a)(i) or (iv) or under paragraph (3)(c)", applicable to taxation years commencing after June 17, 1987 that end after 1987, except that in its application to the first such taxation year, para. 138(4)(a) shall be read as follows:

(a) the amount, if any, by which the aggregate of all amounts each of which is an amount deducted by the insurer under subparagraph (3)(a)(i), (ii) or (iv) or paragraph (3)(c) in computing its income for the immediately preceding taxation year exceeds the prescribed amount of the insurer's 1968 reserve adjustment;

Paras. 138(4)(a) substituted, (4)(d) added by 1977-78, c. 1, subsecs. 68(5), (6), applicable to 1978 *et seq.*, to delete reference to subpara. (3)(a)(ii) in para. 138(4)(a).

Para. 138(4)(c) substituted by 1973-74, c. 14, subsec. 47(4), applicable to 1969 *et seq.*

Regulations: 1404(2) (amount prescribed for 138(4)(b)); 8103 (prescribed amount).

(4.01) Life insurance policy — For the purposes of subsections (3) and (4), a life insurance policy includes a benefit under a group life insurance policy or a group annuity contract.

Related Provisions: Reg. 1408(1)"life insurance policy in Canada" — Same definition for purposes of policy reserve regulations.

History: Subsec. 138(4.01) added by 1997, c. 25, subsec. 39(3), applicable to 1996 *et seq.*

(4.1) Idem — For the purposes of paragraph (4)(a), an insurer shall be deemed to have deducted in computing its income for its 1976 taxation year,

(a) under subparagraph (3)(a)(i), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the lesser of

(A) the amount, if any, of its 1975-76 excess policy reserves, and

(B) the amount, if any, by which its 1975 branch accounting election deficiency exceeds the total of

(I) the amount determined under subparagraph (d)(ii),

(II) the total of amounts each of which is an amount determined under paragraph 13(22)(b) with respect to depreciable property of a prescribed class of the insurer,

(III) the amount determined under subparagraph (b)(ii), and

(IV) the total of amounts each of which is a portion of a non-capital loss that is deemed by subsection 111(7.1) to have been deductible in computing the insurer's income for a taxation year ending before 1977;

(b) under subparagraph (3)(a)(ii), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the lesser of

(A) the amount, if any, of its 1975-76 excess additional group term reserves, and

(B) the amount, if any, by which its 1975 branch accounting election deficiency exceeds the total of

(I) the amount determined under subparagraph (d)(ii),

(II) the total of amounts each of which is an amount determined under paragraph 13(22)(b) with respect to depreciable property of a prescribed class of the insurer, and

(III) the total described in subclause (a)(ii)(B)(IV);

(c) under subparagraph (3)(a)(iv), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the amount, if any, of its 1975-76 excess policy dividend reserve; and

(d) under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the total of

(i) the amount deducted under that paragraph in computing its income from its life insurance business in Canada for its 1976 taxation year, and

(ii) the lesser of

(A) the amount, if any, of its 1975-76 excess investment reserve, and

(B) the amount, if any, of its 1975 branch accounting election deficiency.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(4.2) Idem — For the purposes of paragraph (4)(a), a life insurer shall be deemed to have deducted the following amounts in computing its income for its 1977 taxation year

(a) under subparagraph (3)(a)(i), the amount if any, by which the total of

(i) the insurer's maximum tax actuarial reserve for its 1977 taxation year, if that reserve had been determined on the basis of the rules applicable to its 1978 taxation year,

(ii) where the insurer has deducted the amount of any policy loan made by it in the year in computing its income from its life insurance business in Canada for any taxation year before its 1978 taxation year or not included interest in respect of any such loan in computing its gross investment revenue for any taxation year before its 1978 taxation year, the total of amounts that were outstanding at the end of the insurer's 1977 taxation year each of which is an amount payable to it in respect of a policy loan, and

(iii) that portion of the amount deducted by the insurer under subparagraph (3)(a)(i) in computing its income for its 1977 taxation year that is in respect of segregated fund policies

exceeds

(iv) the amount prescribed to be its 1977 carryforward deduction;

(b) under subparagraph (3)(a)(iv), the total of

(i) the amount deducted under that subparagraph in computing its income from its life insurance business in Canada for its 1977 taxation year, and

(ii) the amount, if any, by which

(A) the amount that would have been deductible under that subparagraph for its 1977 taxation year if that subparagraph were read without reference to clause (3)(a)(iv)(C),

exceeds

(B) the amount determined under subparagraph (i) for that taxation year; and

(c) under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the total of

(i) the amount deducted under that paragraph in computing its income from its life insurance business in Canada for its 1977 taxation year, and

(ii) the amount, if any, by which,

(A) where the insurer has made an election under subsection (9) in respect of its 1975 taxation year, the amount that would have been deductible under paragraph 138(3)(c) of that Act in computing its income for its 1977 taxation year if the insurer had claimed the maximum allowable amount in its 1977 taxation year, or

(B) where the insurer has not made an election under subsection (9) in respect of its 1975 taxation year, the amount that would have been deductible under paragraph 138(3)(c) of that Act in computing its income for its 1977 taxation year if the insurer had claimed the maximum allowable amount in each of its taxation years ending before 1978 and after 1974

exceeds

(C) the amount determined under subparagraph (i).

Related Provisions: 111(7.2) — Non-capital loss of life insurer.

Pre-RSC History: All that portion of para. 138(4.2)(a) following subpara. (ii) substituted by 1979, c. 5, subsec. 44(1), applicable to 1978 *et seq.* That portion formerly read:

exceeds

(iii) the amount prescribed to be its 1977 carryforward deduction;

Subsecs. 138(4.1), (4.2) added by 1977-78, c. 1, subsec. 68(7), applicable, as to subsec. 138(4.1), to 1977 *et seq.*, and, as to subsec. 138(4.2), to 1978 *et seq.*

Regulations: 2408 (1977 carryforward deduction).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(4.3) Idem — For the purposes of paragraph (4)(a), in computing a life insurer's income from carrying on its life insurance business in Canada for its first taxation year ending after 1984, the amount, if any, by which

(a) the total of all amounts each of which is an amount deducted by the insurer in computing its income for a taxation year ending after 1968 and before 1985 in respect of a claim under a life insurance policy that was likely to arise after the end of the particular taxation year in respect of a death that occurred in the particular taxation year

exceeds

(b) the total of all amounts each of which is an amount paid by the insurer or included in computing its income before the commencement of its first taxation year ending after 1984 in respect of amounts described in paragraph (a)

shall be deemed to be an amount that was deducted by the insurer under subparagraph (3)(a)(i) in computing its income from that business for its last taxation year ending before 1985.

Pre-RSC History: Subsec. 138(4.3) added by 1986, c. 6, s. 79, applicable to 1985 *et seq.*

(4.4) Idem — Where, for a period of time in a taxation year, a life insurer

(a) owned land (other than land referred to in paragraph (c) or (d)) or an interest therein that was not held primarily for the purpose of gaining or producing income from the land for the period,

(b) had an interest in a building that was being constructed, renovated or altered,

(c) owned land subjacent to the building referred to in paragraph (b) or an interest therein, or

(d) owned land immediately contiguous to the land referred to in paragraph (c) or an interest therein that was used or was intended to be used for a parking area, driveway, yard, garden or other use necessary for the use or intended use of the building referred to in paragraph (b),

there shall be included in computing the insurer's income for the year, where the land, building or interest was designated insurance property of the insurer for the year, or property used or held by it in the year in the course of carrying on an insurance business in Canada, the total of all amounts each of which is the amount prescribed in respect of the insurer's cost or capital cost, as the case may be, of the land, building or interest for the period, and the amount prescribed shall, at the end of the period, be included in computing

(e) where the land or interest therein is property described in paragraph (a), the cost to the insurer of the land or the interest therein, and

(f) where the land, building or interest therein is property described in paragraphs (b) to (d), the capital cost to the insurer of the interest in the building described in paragraph (b).

Related Provisions: 138(4.5) — Anti-avoidance rule; 138(4.6) — Meaning of "completed"; 248(4) — Interest in real property.

History: The portion of subsec. 138(4.4) between paras. (d) and (e) amended by 1997, c. 25, subsec. 39(4), applicable to 1997 *et seq.* That portion formerly read:

the life insurer shall, where that land or building was property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, include a prescribed amount in computing its income for the year in respect of the cost or capital cost, as the case may be, of the land, building or interest therein to the insurer for the period, and the amount so included shall, at the end of the period, be included in computing

Regulations: 2410 (prescribed amount).

(4.5) Application — Where a life insurer transfers or lends property, directly or indirectly in any manner whatever, to a person or partnership (in this subsection referred to as the "transferee") that is affiliated with the insurer or a person or partnership that does not deal at arm's length with the insurer and

(a) that property,

(b) property substituted for that property, or

(c) property the acquisition of which was assisted by the transfer or loan of that property

was property described in paragraph (4.4)(a), (b), (c) or (d) of the transferee for a period of time in a taxation year of the insurer, the following rules apply:

(d) subsection (4.4) shall apply to include an amount in the insurer's income for the year on the assumption that the property was owned by the insurer for the period, was property described in paragraph (4.4)(a), (b), (c) or (d) of the insurer and was used or held by it in the year in the course of carrying on an insurance business in Canada, and

(e) an amount included in the insurer's income for the year under subsection (4.4) by reason of the application of this subsection shall

(i) where subparagraph (ii) does not apply, be added by the insurer in computing the cost to it of shares of the capital stock of or an interest in the transferee at the end of the year, or

(ii) where the insurer and the transferee have jointly elected in prescribed form on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return pursuant to section 150 for the taxation year that includes the period, be added in computing

(A) where the property is land or an interest therein of the transferee described in paragraph (4.4)(a), the cost to the transferee of the land or the interest therein, and

(B) where the property is land, a building or an interest therein described in paragraphs (4.4)(b) to (d), the capital cost to the transferee of the interest in the building described in paragraph (4.4)(b).

Related Provisions: 248(4) — Interest in real property; 248(5) — Substituted property; 251.1 — Affiliated persons.

History: The opening words of subsec. 138(4.5), and para. (d), amended by 1997, c. 25, subsecs. 39(5), (6), applicable to 1997 *et seq.* The opening words and para. (d) formerly read:

(4.5) Where, after 1987, a life insurer has transferred or lent property, directly or indirectly in any manner whatever, to a transferee that was a designated corporation of the insurer (within the meaning assigned by subsection 2405(3) of the *Income Tax Regulations*) or a person or partnership that does not deal at arm's length with the insurer and

. . . . .

(d) subsection (4.4) shall apply to the insurer to include an amount in the insurer's income for the year on the assumption that the property was owned by the insurer for the period, was property described in paragraph (4.4)(a), (b), (c) or (d) of the insurer and was used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and

(4.6) Completion — For the purposes of subsection (4.4), the construction, renovation or alteration of a building is completed at the earlier of the day on which the construction, renovation or alteration is actually completed and the day on which all or substantially all of the building is used for the purpose for which it was constructed, renovated or altered.

Pre-RSC History: Subsecs. 138(4.4) to (4.6) added by 1988, c. 55, subsec. 125(6), applicable to taxation years commencing after June 17, 1987 that end after 1987.

(5) Deductions not allowed — Notwithstanding any other provision of this Act,

(a) in the case of an insurer, no deduction may be made under paragraph 20(1)(l) in computing its income for a taxation year from an insurance business in Canada in respect of a premium or other consideration for a life insurance policy in Canada or an interest therein; and

(b) in the case of a non-resident insurer or a life insurer resident in Canada that carries on any of its insurance business in a country other than Canada, no deduction may be made under paragraph 20(1)(c) or (d) in computing its income for a taxation year from carrying on an insurance business in Canada, except in respect of

(i) interest on borrowed money used to acquire designated insurance property for the year in respect of the business,

Proposed Amendment — 138(5)(b)(i)

(i) interest on borrowed money used to acquire designated insurance property for the year, or to acquire property for which designated insurance property for the year was substituted property, for the period in the year during which the designated insurance property was held by the insurer in respect of the business,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(1), will amend subpara. 138(5)(b)(i) to read as above, applicable to 1997 *et seq.*

Technical Notes: Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations.

Currently, interest on borrowed money used to acquire designated insurance property for a year may be deducted by an insurer in respect of its insurance business. Interest on borrowed money used to acquire property other than designated insurance property is not deductible. Subparagraph 138(5)(b)(i) is amended to allow interest on borrowed money used to acquire property for which designated insurance property is substituted property to be deducted. As well, the deduction is limited to the interest that relates to the period in the year during which the designated insurance property was held by the insurer.

(ii) interest on amounts payable for designated insurance property for the year in respect of the business,

(iii) interest on deposits received or other amounts held by the insurer that arose in connection with life insurance policies in Canada or with policies insuring Canadian risks, or

(iv) other interest that does not exceed a prescribed amount.

Proposed Repeal — 138(5)(b)(iv)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(2), will repeal subpara. 138(5)(b)(iv), applicable to 1997 *et seq.*

Technical Notes: Paragraph 138(5)(b) of the Act limits the deductibility of interest by resident multinational life insurers and non-resident insurers to those amounts set forth in subparagraphs 138(5)(b)(i) to (iv). Subparagraph 138(5)(b)(iv) was added to the Act to permit a deduction up to a prescribed amount that was to have been set out in regulation 2404 proposed as part of the draft Regulations for insurance companies that were published in September 1997. Changes made to the draft Regulations since their release have eliminated the need for subparagraph 138(5)(b)(iv). Subparagraph 138(5)(b)(iv) is, therefore, repealed.

Related Provisions: 248(4) — Interest in real property; 248(5) — Substituted property.

History: Para. 138(5)(b) amended by 1997, c. 25, subsec. 39(7), applicable to 1997 *et seq.* Para. (b) formerly read:

> (b) in the case of a non-resident insurer or a life insurer resident in Canada that carries on any of its insurance business in a country other than Canada, no deduction may be made under paragraph 20(1)(c) or (d) in computing its income for a taxation year from carrying on an insurance business in Canada, except in respect of interest on
>
> (i) borrowed money used to acquire property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada, to the extent that the interest is paid or payable in respect of that portion of the year during which the property was so used or held,
>
> (ii) amounts payable for its property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada to the extent that the interest is paid or payable in respect of that portion of the year during which the property was so used or held, or
>
> (iii) deposits received or other amounts held by the insurer that arose in connection with life insurance policies in Canada or with policies insuring Canadian risks.

Pre-RSC History: Para. 138(5)(a) substituted by 1988, c. 55, subsec. 125(7), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. (a) formerly read:

> (a) in the case of an insurer, other than a resident of Canada that does not carry on a life insurance business, no deduction may be made under paragraph 20(1)(l) or section 33 in computing its income for a taxation year from its life insurance business in Canada in respect of a premium or other consideration for a life insurance policy in Canada or a Canada security or interest thereon;

Subsec. 138(5) substituted by 1980-81-82-83, c. 140, subsec. 96(3), applicable after November 12, 1981, except subparas. 138(5)(b)(i), (ii) effective for taxation years commencing after November 12, 1981. Subsec. (5) formerly read:

> (5) Notwithstanding any other provision of this Act, in the case of an insurer, other than a resident of Canada that does not carry on a life insurance business,
>
> (a) no deduction may be made under paragraph 20(1)(l) or section 33 in computing its income for a taxation year from its life insurance business in Canada in respect of a premium or other consideration for a life insurance policy in Canada or a Canada security or interest thereon; and
>
> (b) no deduction may be made under paragraph 20(1)(c) or (d) in computing its income for a taxation year from carrying on an insurance business in Canada, except in respect of interest in respect of
>
> (i) borrowed money used to acquire property used by it in, or held by it in the course of, carrying on that insurance business in Canada, to the extent that the interest is paid or payable in respect of that portion of the year during which such property was so used or held,
>
> (ii) amounts payable for property acquired and used by it in, or held by it in the course of, carrying on that insurance business in Canada to the extent that the interest is paid or payable in respect of that portion of the year during which such property was so used or held, or
>
> (iii) deposits received or other amounts held by the insurer that arose in connection with life insurance policies in Canada.

Subsec. 138(5) substituted by 1977-78, c. 1, subsec. 68(8), applicable to 1978 *et seq.* Subsec. (5) formerly read:

> (5) In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, no deduction may be made under paragraph 20(1)(l) or section 33.

Regulations: 2404 (prescribed amount for 138(5)(b)(iv)).

(5.1) No deduction — No deduction shall be made under subsection 20(12) in computing the income of a life insurer resident in Canada in respect of foreign taxes attributable to its insurance business.

Pre-RSC History: Subsec. 138(5.1) added by 1980-81-82-83, c. 140, subsec. 96(3), applicable after November 12, 1981 except in its application to taxation years commencing before April 1983, the expression "insurance business" in subsec. 138(5.1) shall be read as a reference to "insurance business carried on outside Canada".

Interpretation Bulletins: IT-506: Foreign income taxes as a deduction from income.

(5.2) [Repealed]

History: Subsec. 138(5.2) repealed by 1995, c. 21, subsec. 57(5), applicable to dispositions occurring after October 30, 1994, except the disposition of a debt obligation before July 1995 where

> (a) the disposition is part of a series of transactions or events that began before October 31, 1994;
>
> (b) as part of the series of transactions or events, the taxpayer who acquired the debt obligation disposed of property before October 31, 1994; and
>
> (c) it is reasonable to consider that one of the main reasons for the acquisition of the debt obligation by the taxpayer was to obtain a deduction because, as a consequence of the disposition referred to in paragraph (b),
>
> (i) an amount was included in the taxpayer's income for any taxation year, or
>
> (ii) an amount was subtracted from a balance of undeducted outlays, expenses or other amounts of the taxpayer and the subtracted amount exceeded the portion, if any, of the balance that could reasonably be considered to be in respect of the property.

Subsec. (5.2) formerly read:

> (5.2) **Idem** — Notwithstanding paragraph (3)(b) and subsection (11.4), in computing an insurer's income for a taxation year from carrying on an insurance business, no amount shall be deducted in respect of a loss sustained by the insurer on a disposition (other than a disposition occurring as a result of the application of subsection (11.3)) of property that is a share, bond, debenture, mortgage, note, agreement of sale or any other form of indebtedness that was not a capital property of the insurer and was used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in any case where
>
> (a) during the period commencing 30 days before and ending 30 days after the disposition, the insurer or a person or partnership that does not deal at arm's length with the insurer acquired or agreed to acquire the same or an identical property (in this subsection referred to as the "substituted property"), and
>
> (b) at the end of the period referred to in paragraph (a), the insurer or the person or partnership, as the case may be, owned or had a right to acquire the substituted property,
>
> and any such loss shall be added in computing the cost to the insurer or the person or partnership, as the case may be, of the substituted property.

Pre-RSC History: Subsec. 138(5.2) added by 1988, c. 55, subsec. 125(8), applicable to taxation years commencing after June 17, 1987 that end after 1987.

(6) Deduction for dividends from taxable corporations — In computing the taxable income of a life insurer for a taxation year, no deduction from the income of the insurer for the year may be made under section 112 but, except as otherwise provided by that section, there may be deducted from that income the total of taxable dividends (other than dividends on term preferred shares that are acquired in the ordinary course of the business carried on by the life insurer) included in computing the insurer's income for the year and received by the insurer in the year from taxable Canadian corporations.

Related Provisions: 18(1)(c) — Limitation re exempt income; 55(2) — Deemed proceeds or capital gain; 87(2)(x) — Amalgamations; 111(7.2) — "Non-capital loss" of life insurer; 112(2.2), (2.4) — Where no deduction permitted; 112(3)(b)(i) — Reduction in loss on subsequent disposition of share; 112(4)(d) — Loss on share held as inventory; 112(5.2)B(b)(i), (ii) — Adjustment for dividends received on mark-to-market property; 115(1)(d.1) — Deduction from income of non-resident; 141(2) — Life insurance corporation deemed to be public corporation; 148(4) — Income from disposition; 187.2 — Tax on dividends on taxable preferred shares; 187.3 — Tax on dividends on taxable RFI shares; 191(4) — Subsec. 138(6) deemed not to apply; 248(14) — Corporations deemed related; 258 — Deemed dividend on term preferred share.

Pre-RSC History: Subsec. 138(6) amended by 1988, c. 55, subsec. 125(9) to substitute "but, except as otherwise provided by that section," for "but", applicable with respect to dividends received after 8 p.m. EDST, June 18, 1987.

Subsec. 138(6) substituted by 1980-81-82-83, c. 48, subsec. 79(1), applicable with respect to dividends received after November 16, 1978.

Subsec. 138(6) substituted by 1979, c. 5, subsec. 44(2), applicable in respect of dividends received after November 16, 1978. Subsec. 138(6) formerly read:

> (6) In computing the taxable income of a life insurer for a taxation year no deduction from the income of the insurer for the year may be made under section 112 but there may be deducted from such income the aggregate of taxable dividends included in computing the insurer's income for the year and received by the insurer in the year from taxable Canadian corporations.

Subsec. 138(6) substituted by 1977-78, c. 1, subsec. 68(8), applicable to 1978 *et seq.* Subsec. 138(6) formerly read:

> (6) In computing the taxable income of a life insurer for a taxation year no deduction from the income of the insurer for the year may be made under section 112 but there may be deducted from such income the aggregate of
>
> (a) that proportion of the aggregate of taxable dividends included in computing the insurer's income for the year from carrying on its life insurance business in Canada and received by the insurer in the year from taxable Canadian corporations in respect of shares that were non-segregated property of the insurer, that
>
> (i) the lesser of
>
> (A) the insurer's income for the year from carrying on its life insurance business in Canada, and
>
> (B) the amount, if any, by which the insurer's net Canadian life investment income for the year exceeds the amount determined in respect of the insurer for the year under paragraph 209(3)(a)
>
> is of
>
> (ii) the insurer's net Canadian life investment income for the year, and
>
> (b) the aggregate of taxable dividends included in computing the insurer's income for the year from carrying on its insurance business in Canada other than its life insurance business and received by the insurer in the year from taxable Canadian corporations.

Subsec. 138(6) substituted by 1973-74, c. 14, subsec. 47(5), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-52R4: Income bonds and income debentures; IT-328R3: Losses on shares on which dividends have been received; IT-385R2: Disposition of an income interest in a trust.

(7) [Repealed]

History: Subsec. 138(7) repealed by 1997, c. 25, subsec. 39(8), applicable to 1996 *et seq.* Subsec. (7) formerly read:

> (7) Amounts paid to shareholders included in taxable income — The taxable income for a taxation year of a life insurer resident in Canada is its taxable income for the year otherwise computed under this Part, plus 2 times the amount, if any, by which the total of amounts each of which is an amount paid by it after the end of its 1968 taxation year and before the end of the year as, on account or in lieu of payment of, or in satisfaction of dividends or stock dividends or any other amounts that, but for paragraph 84(1)(c.1), would have been dividends, exceeds the total of
>
> (a) the insurer's undistributed income on hand at the end of its 1968 taxation year in respect of which tax under this Part has been paid by it,
>
> (b) the surplus funds derived from operations of the insurer as of the end of the year,
>
> (c) the total of amounts of surplus contributed to the insurer before the end of the year,
>
> (d) ½ the total of amounts that, by virtue of this subsection, have been added to the taxable income of the insurer otherwise computed under this Part in computing its taxable income for taxation years before the year,
>
> (e) where in the taxation year the insurer carried on an insurance business in a country other than Canada, the lesser of
>
> (i) the total of dividends and stock dividends in respect of shares of the capital stock of the insurer paid by it in the year out of property other than property used by the insurer in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and
>
> (ii) the amount of tax for the year paid by the insurer to the government of a country other than Canada under the income tax laws of that country out of property other than property used by the insurer in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada,
>
> (f) where in the taxation year the insurer did not carry on an insurance business in a country other than Canada, the lesser of
>
> (i) the total of dividends and stock dividends in respect of shares of the capital stock of the insurer paid by it in the year, and
>
> (ii) the amount of tax for the year paid by the insurer to the government of a country other than Canada under the income tax laws of that country,
>
> (g) the total of all amounts determined under paragraphs (e) and (f) in respect of the insurer for taxation years before the year, and
>
> (h) the amount, if any, by which the lesser of
>
> (i) the total of amounts paid after the end of the insurer's 1968 taxation year and before 1978 as, on account or in lieu of payment of, or in satisfaction of, dividends or stock dividends in respect of shares of the capital stock of the insurer, and
>
> (ii) the amount, if any, determined in respect of the insurer under paragraph 138(7)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1976 taxation year
>
> exceeds
>
> (iii) the total of amounts of surplus contributed to the insurer before 1978.

Pre-RSC History: That portion of subsec. 138(7) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 79(2), applicable to 1979 *et seq.* That portion formerly read:

> (7) The taxable income for a taxation year of a life insurer resident in Canada is its taxable income for the year otherwise computed under this Part, plus twice the amount, if any, by which the aggregate of amounts paid after the end of its 1968 taxation year and before the end of the year as, on account or in lieu of payment of, or in satisfaction of dividends or stock dividends in respect of shares of the capital stock of the insurer, exceeds the aggregate of

Para. 138(7)(c) substituted, (h) added by 1979, c. 5, subsecs. 44(3), (4), applicable to 1977 *et seq.* Para. (c) formerly read:

> (c) the insurer's contributed surplus,

Para. 138(7)(c), all that portion of para. 138(7)(e) preceding subpara. (i), para. 138(7)(f) substituted by 1977-78, c. 1, subsecs. 68(9)–(11), applicable, as to para. 138(7)(c), to 1977 *et seq.*, and, as to paras. 138(7)(e), (f), to 1978 *et seq.* Para. 138(7)(c), that portion and para. 138(7)(f) formerly read:

> (c) the lesser of
>
> (i) the insurer's accumulated 1968 deficit, and
>
> (ii) the aggregate of the insurer's maximum tax actuarial reserves for its 1968 taxation year for its life insurance policies in Canada,
>
> . . . . .
>
> (e) if the insurer has made an election under subsection (9) in respect of the year, the lesser of

. . . . .

(f) if the insurer has not made an election under subsection (9) in respect of the year, the lesser of

(i) that proportion of the aggregate of dividends and stock dividends in respect of shares of the capital stock of the insurer paid by it in the year that

(A) the insurer's gross investment revenue for the year (except such part thereof as is required by subsection (9) to be included in computing its income for the year)

is of

(B) the insurer's gross investment revenue for the year, and

(ii) the amount of tax for the year paid by the insurer to the government of a country other than Canada under the income tax laws of that country, and

(8) No deduction for foreign tax — No deduction shall be made under section 126 from the tax payable under this Part for a taxation year by a life insurer resident in Canada in respect of such part of an income or profits tax as can reasonably be attributable to income from its insurance business.

Pre-RSC History: Subsec. 138(8) substituted by 1980-81-82-83, c. 140, subsec. 96(4), applicable to taxation years commencing after November 12, 1981. Subsec. 138(8) formerly read:

(8) No deduction shall be made under section 126 from the tax payable under this Part for a taxation year by a life insurer resident in Canada.

(9) Computation of income — Where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carries on an insurance business in Canada and in a country other than Canada, there shall be included in computing its income for the year from carrying on its insurance businesses in Canada the total of

(a) its gross investment revenue for the year from its designated insurance property for the year, and

(b) the amount prescribed in respect of the insurer for the year.

Related Provisions: 88(1)(g) — Winding up — gross investment revenue; 111(7.1) — Effect of election by insurer under ss. 138(9) re 1975 taxation year; 138(3) — Deductions allowed in computing income; 138(7) — Amounts paid to shareholders included in taxable income; 138(11.5)(i) — Transfer of insurance business by non-resident insurer; 138(11.91)(d) — Computation of income for non-resident insurer; 138(11.92)(c) — Computation of income where insurance business transferred; 142 — Taxable capital gains, etc.; 148(1) — Amounts included in computing policyholder's income; 219(4) — Non-resident insurers.

History: Subsec. 138(9) amended by 1997, c. 25, subsec. 39(9), applicable to 1997 *et seq.* Subsec. (9) formerly read:

(9) Where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, there shall be included in computing its income for the year from carrying on its insurance businesses in Canada the total of

(a) that part of its gross investment revenue for the year that is gross investment revenue from property used by it in the year in, or held by it in the year in the course of, carrying on those insurance businesses in Canada, and

(b) such additional amount as is prescribed in respect of the insurer for the year by regulation.

Pre-RSC History: Subsec. 138(9) substituted by 1988, c. 55, subsec. 125(10), applicable to taxation years commencing after June 17, 1987 that end after 1987. Subsec. (9) formerly read:

(9) Where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, there shall be included in computing its income for the year from carrying on that business in Canada, that portion of its gross investment revenue for the year that is gross investment revenue from property used by it in the year in, or held by it in the year in the course of, carrying on that business in Canada.

Subsec. 138(9) substituted by 1977-78, c. 1, subsec. 68(12), applicable to 1978 *et seq.* Subsec. (9) formerly read:

(9) Election as to computation of income — Where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, there shall be included in computing its income for the year from carrying on that business in Canada,

(a) if the insurer has, in prescribed manner and in accordance with prescribed conditions, made an election under this subsection in respect of the year, such part of its gross investment revenue for the year as is gross investment revenue from property used by it in the year in, or held by it in the year in the course of, carrying on that business in Canada, and

(b) in any other case, such part of its gross investment revenue for the year as is determined in accordance with prescribed rules to be applicable to the carrying on by it of that business in Canada,

and if the insurer has not so elected in respect of the year, the amounts deductible under paragraphs (3)(b), (c) and (d) in computing its income for the year, the amounts required by paragraphs (4)(b) and (c) to be included in computing such income, the amounts determined under subparagraphs (12)(o)(ii) and (iv) for the period ending with the year shall be determined in accordance with prescribed rules and the aggregate of taxable dividends for the purposes of each of paragraphs 138(6)(a), 138(6)(b) and 208(2)(b) shall be determined in accordance with rules prescribed for the purposes of each of those paragraphs respectively.

All that portion of subsec. 138(9) following para. (b) substituted by 1973-74, c. 14, subsec. 47(6), applicable to 1972 *et seq.*

Selected Cases [subsec. 138(9)]: *Munich Reinsurance Co. (Canada Branch) v. R.*, [2000] 2 C.T.C. 2785 (TCC) (General provisions of subsec. 138(1) not displaced); *Victory Reinsurance Co. v. MNR*, [1992] 2 C.T.C. 2200 (TCC) (Amount of reserve reported to Superintendent of Insurance was amount of reserve under Act); *London Life Insurance Co. v. The Queen*, [1990] 1 C.T.C. 43 (FCA) (Resident insurer carrying on business out of Canada, although related activities in Canada).

Regulations: 2411 (prescribed amount).

Forms: T2S(1)(L): Tax calculations for life insurance companies (plus schedules L.1 to L.9); T2016: Part XIII tax return — tax on income from Canada of registered non-resident insurers.

(9.1) [Repealed under former Act]

Pre-RSC History [subsec. 138(9.1)]: Subsec. 138(9.1) repealed by 1988, c. 55, subsec. 125(11), applicable to taxation years commencing after June 17, 1987 that end after 1987. Subsec. 138(9.1) formerly read:

(9.1) Gross investment revenue — Where an insurer has made an election under subsection (9) in respect of a taxation year, such part of its gross investment revenue for the year as was, in its return of income required by subsection 150(1) to be filed for that year, included in computing its income for that year from carrying on an insurance business in Canada

(a) shall not be reduced except with the written consent of, and as directed by, the Minister; and

(b) shall be deemed to be its gross investment revenue from property designated by the insurer in that return to be, for the purposes of this Act, property used by it in, or held by it in the course of, carrying on an insurance business in Canada.

Subsec. 138(9.1) added by 1977-78, c. 1, subsec. 68(12), applicable to 1972 *et seq.*

(10) Application of financial institution rules — Notwithstanding sections 142.3, 142.4 and 142.5, where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carries on an insurance business in Canada and in a country other than Canada, in computing its income for the year from carrying on an insurance business in Canada,

(a) sections 142.3 and 142.5 apply only in respect of property that is designated insurance property for the year in respect of the business; and

(b) section 142.4 applies only in respect of the disposition of property that, for the taxation year in which the insurer disposed of it, was designated insurance property in respect of the business.

Related Provisions: 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity.

History: Subsec. 138(10) amended by 1997, c. 25, subsec. 39(9), applicable to 1997 *et seq.* Subsec. (10) formerly read:

(10) Where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carried on an insurance business in Canada and in a country other than Canada, in computing the income of the insurer for the year from carrying on an insurance business in Canada,

(a) sections 142.3 and 142.5 apply with respect to property used by it in the year in, or held by it in the year in the course of, carrying on that business; and

(b) section 142.4 applies with respect to the disposition of property that, in the taxation year in which the insurer disposed of it, was property used by it in the year in, or held by it in the year in the course of, carrying on that business.

Subsec. 138(10) added by 1995, c. 21, subsec. 57(6), applicable to taxation years that end after February 22, 1994.

Pre-RSC History [subsec. 138(10)]: Former subsec. 138(10) repealed by 1977-78, c. 1, subsec. 68(12), applicable to 1978 *et seq.* Subsec. (10) formerly read:

(10) Change in method of computing income — Where an insurer has filed a return of income under this Part for a taxation year wherein its income for that year has been computed using the method required by such of the provisions of subsection (9) as apply in consequence of the insurer's having made the election referred to therein, or, if the insurer has not elected thereunder, using the method required by the other provisions thereof, its income for a subsequent taxation year shall be computed in accordance with the method so used unless the insurer, with the concurrence of the Minister and upon such terms and conditions as are specified by the Minister, adopts the other method and, where appropriate, makes an election under that subsection.

(11) [Repealed]

History: Subsec. 138(11) repealed by 1995, c. 21, subsec. 57(7), applicable to taxation years that begin after February 22, 1994. Subsec. (11) formerly read:

(11) Profit or loss in respect of Canada security — For the purposes of paragraphs (3)(b) and (4)(b),

(a) the profit or gain made by an insurer in a taxation year in respect of a Canada security owned by it that was disposed of by it in the year is the amount by which the proceeds of disposition to which the insurer thereby became entitled exceeds the amortized cost of the security to the insurer at the time of the disposition; and

(b) the loss sustained by an insurer in a taxation year in respect of a Canada security owned by it that was disposed of by it in the year is the amount by which the amortized cost of the security to the insurer at the time of the disposition exceeds the proceeds of the disposition to which the insurer thereby became entitled.

(11.1) Identical properties — For the purpose of section 47, any property of a life insurance corporation that would, but for this subsection, be identical to any other property of the corporation is deemed not to be identical to the other property unless both properties are

(a) designated insurance property of the insurer in respect of a life insurance business carried on in Canada; or

(b) designated insurance property of the insurer in respect of an insurance business in Canada other than a life insurance business.

Related Provisions: 248(12) — Identical properties.

History: Subsec. 138(11.1) amended by 1997, c. 25, subsec. 39(9), applicable to 1997 *et seq.* Subsec. (11.1) formerly read:

(11.1) For the purposes of section 47, any property of a life insurance corporation that would, but for this subsection, be identical to any other property of the corporation shall be deemed not to be identical to that other property unless both properties are

(a) non-segregated property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business in Canada; or

(b) non-segregated property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada other than a life insurance business.

Pre-RSC History: Paras. 138(11.1)(a), (b) substituted for paras. (b), (c) by 1980-81-82-83, c. 140, subsec. 96(5) and amended to add, in each, "by it" and "by it in the year", applicable to taxation years commencing after November 12, 1981.

Para. 138(11.1)(a) repealed by 1977-78, c. 1, subsec. 68(13), applicable to 1978 *et seq.* Para. 138(11.1)(a) formerly read:

(a) included in the same segregated fund of the corporation;

Subsec. 138(11.1) added by 1974-75, c. 26, subsec. 95(2), applicable to 1972 *et seq.*

I.T. Application Rules: 26(8.1) (property owned since before 1972).

Interpretation Bulletins: IT-387R2: Meaning of "identical properties".

(11.2) Computation of capital gain on pre-1969 depreciable property — For the purposes of computing the amount of a capital gain from the disposition of any depreciable property acquired by a life insurer before 1969, the capital cost of the property to the insurer shall be its capital cost determined without reference to paragraph 32(1)(a) of *An Act to amend the Income Tax Act*, chapter 44 of the Statutes of Canada 1968-69, as it read in its application to the 1971 taxation year.

Pre-RSC History: Subsec. 138(11.2) added by 1974-75, c. 26, subsec. 95(2), applicable to 1972 *et seq.*

(11.3) Deemed disposition — Subject to subsection (11.31), where a property of a life insurer resident in Canada that carries on an insurance business in Canada and in a country other than Canada or of a non-resident insurer is

(a) designated insurance property of the insurer for a taxation year, was owned by the insurer at the end of the preceding taxation year and was not designated insurance property of the insurer for that preceding year, or

(b) not designated insurance property for a taxation year, was owned by the insurer at the end of the preceding taxation year and was designated insurance property of the insurer for that preceding year,

the insurer is deemed to have disposed of the property at the beginning of the year for proceeds of disposition equal to its fair market value at that time and to have immediately thereafter reacquired the property at a cost equal to that fair market value.

Proposed Amendment — 138(11.3)

the following rules apply:

(c) the insurer is deemed to have disposed of the property at the beginning of the year for proceeds of disposition equal to its fair market value at that time and to have reacquired the property immediately after that time at a cost equal to that fair market value,

(d) where paragraph (a) applies, any gain or loss arising from the disposition is deemed not to be a gain or loss from designated insurance property of the insurer in the year, and

(e) where paragraph (b) applies, any gain or loss arising from the disposition is deemed to be a gain or

loss from designated insurance property of the insurer in the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(3), will amend the portion of subsec. 138(11.3) after para. (b) to read as above, applicable to 1997 *et seq.*

Technical Notes: Subsection 138(11.3) of the Act provides for a deemed disposition and reacquisition of property owned by a resident multinational life insurer or a non-resident insurer where property either becomes designated insurance property or ceases to be designated insurance property of the insurer. The purpose of the subsection is to ensure that gains and losses from property accruing while property is designated insurance property are included in computing the insurer's income from carrying on an insurance business in Canada.

New paragraphs 138(11.3)(d) and (e) ensure that only gains and losses accruing while property is designated insurance property are included in computing an insurer's income.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply; 138(11.31) — Exception where mark-to-market deemed disposition has applied; 138(11.4) — Loss deductible only in year property disposed of.

History: Subsec. 138(11.3) amended by 1997, c. 25, subsec. 39(10), applicable to 1997 *et seq.* Subsec. (11.3) formerly read:

> (11.3) Subject to subsection (11.31), and except for the purposes of paragraph 20(1)(l), the description of A in the definition "undepreciated capital cost" in subsection 13(21) and paragraph (b) of the description of F in that definition and any regulations made for the purpose of the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,
>
> (a) acquires property for some other purpose and at a later time commences to use that property as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, or
>
> (b) acquires property for use as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada and at a later time commences to use the property for some other purpose,
>
> (c), (d) [Repealed]
>
> the insurer shall be deemed to have disposed of the property at that later time for proceeds of disposition equal to its fair market value at that time and to have immediately thereafter reacquired the property at a cost equal to that fair market value.

The opening words of subsec. 138(11.3) amended by 1995, c. 21, subsec. 57(8), applicable to changes in use of property occurring in taxation years that begin after October 1994. The opening words formerly read:

> (11.3) Except for the purposes of paragraphs (3)(d), (4)(c) and 20(1)(l), the description of A in the definition "undepreciated capital cost" in subsection 13(21) and paragraph (b) of the description of F in that definition and any regulations made for the purpose of the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

Paras. 138(11.3)(c) and (d) repealed by 1995, c. 21, subsec. 57(9), applicable to changes in use of property occurring after February 22, 1994. Paras. (c) and (d) formerly read:

> (c) acquires property that is a bond, debenture, mortgage, agreement of sale or any other form of indebtedness for use as property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business in Canada and at a later time commences to use the property in, or hold it in the course of, carrying on a business other than a life insurance business in Canada, or
>
> (d) acquires property that is a bond, debenture, mortgage, agreement of sale or any other form of indebtedness for use in, or to be held in the course of, carrying on a business other than a life insurance business in Canada and at a later time commences to use the property as property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business in Canada,

That portion of subsec. 138(11.3) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 114(2), applicable to taxation years beginning after June 17, 1987 that end after 1987. That portion formerly read:

> (11.3) Except for the purposes of the definition "amortized cost" in subsection 248(1) as it applies to paragraphs (3)(d) and (4)(c), paragraph 20(1)(l), the description of A in the definition "undepreciated capital cost" in subsection 13(21) and paragraph (b) of the description of F in that definition and any regulations made for the purposes of the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

Pre-RSC History: That portion of subsec. 138(11.3) preceding para. (a) substituted and paras. 138(11.3)(c) and (d) added by 1988, c. 55, subsecs. 125(12), (13), applicable to taxation years commencing after June 17, 1987 that end after 1987. That portion preceding para. (a) formerly read:

> (11.3) Except for the purposes of paragraph (12)(b) as it applies to paragraph (3)(c), subparagraph 13(21)(f)(i), clause 13(21)(f)(iv)(B), paragraphs (3)(d) and (4)(c) and any regulation made under paragraph (12)(l), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

All that portion of subsec. 138(11.3) preceding para. (a) thereof substituted by 1984, c. 1, s. 79, applicable with respect to changes in use of property occurring in taxation years commencing after November 12, 1981. That portion formerly read:

> (11.3) Deemed disposition and reacquisition of property by life insurer — For the purposes of this Part, other than subparagraph 13(21)(f)(i), clause 13(21)(f)(iv)(B), and any regulation made under paragraph 12(1), where a life insurer resident in Canada, or a non-resident insurer, that carries on an insurance business in Canada and in a country other than Canada, at any time,

Subsec. 138(11.3) added by 1980-81-82-83, c. 140, subsec. 96(6), applicable with respect to changes in use of property occurring in taxation years commencing after November 12, 1981.

I.T. Application Rules: 26(17.1) (ITAR 26 does not apply to property owned since before 1972 where 138(11.3) applies).

(11.31) Exclusion from deemed disposition — Subsection (11.3) does not apply

(a) to deem a disposition in a taxation year of a property of an insurer where subsection 142.5(2) deemed the insurer to have disposed of the property in its preceding taxation year; nor

(b) for the purposes of paragraph 20(1)(l), the description of A and paragraph (b) of the description of F in the definition "undepreciated capital cost" in subsection 13(21) and the definition "designated insurance property" in subsection (12).

History: Subsec. 138(11.31) amended by 1997, c. 25, subsec. 39(10), applicable to 1997 *et seq.* Subsec. (11.31) formerly read:

> (11.31) Subsection (11.3) does not apply in respect of a change in use of a property of an insurer where subsection 142.5(2) deemed the insurer to have disposed of the property in the taxation year that ended immediately before the change in use.

Subsec. 138(11.31) added by 1995, c. 21, subsec. 57(10), applicable to changes in use of property occurring in taxation years that begin after October 1994.

(11.4) Deduction of loss — Notwithstanding any other provision of this Act, where an insurer has a loss for a taxation year from the disposition, because of subsection (11.3), of a property other than a specified debt obligation (as defined in subsection 142.2(1)), and the loss would, but for this subsection, have been deductible in the year, the loss shall be deductible only in the taxation year in which the taxpayer disposes of the property otherwise than because of subsection (11.3).

History: Subsec. 138(11.4) amended by 1995, c. 21, subsec. 57(11), applicable to property deemed by subsection 138(11.3) to be disposed of after 1994. Subsec. (11.4) formerly read:

> (11.4) Rules on deemed disposition and reacquisition — Where, but for this subsection, an insurer in a taxation year would, by virtue of subsection (11.3), have realized an otherwise deductible loss for the year in respect of any property, notwithstanding any other provision of this Act, that loss shall be deductible only in the taxation year in which the insurer disposes of the property otherwise than by virtue of subsection (11.3).

Pre-RSC History: Subsec. 138(11.4) added by 1980-81-82-83, c. 140, subsec. 96(6), applicable to taxation years commencing after November 12, 1981.

(11.41) [Repealed]

History: Subsec. 138(11.41) repealed by 1995, c. 21, subsec. 57(12), applicable to changes in use of property occurring after February 22, 1994. Subsec. (11.41) formerly read:

> (11.41) Inclusion of gain — Where, by reason of a change in use referred to in paragraph (11.3)(c) or (d) of a property that is a bond, debenture, mortgage, agreement of sale or any other form of indebtedness, an insurer would, by reason of subsection (11.3), have realized an otherwise taxable gain at any time in respect of such property, that gain shall be included in computing the income of the insurer only in the taxation year in which the insurer disposes of or is deemed to have disposed of the property otherwise than by reason of a change in use of the property referred to in paragraph (11.3)(c) or (d).

Pre-RSC History: Subsec. 138(11.41) added by 1988, c. 55, subsec. 125(14), applicable to taxation years commencing after June 17, 1987 that end after 1987.

(11.5) Transfer of insurance business by non-resident insurer — Where

(a) a non-resident insurer (in this subsection referred to as the "transferor") has, at any time in a taxation year, ceased to carry on all or substantially all of an insurance business carried on by it in Canada in that year,

(b) the transferor has, at that time or within 60 days thereafter, transferred all or substantially all of the property owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in this subsection referred to as the "transferred property") to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor that, immediately after that time, began to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

Proposed Amendment — 138(11.5)(b)

(b) the transferor has, at that time or within 60 days after that time, transferred all or substantially all of the property (in this subsection referred to as the "transferred property") that is owned by it at that time and that was designated insurance property in respect of the business for the taxation year that, because of paragraph (h), ended immediately before that time

(i) to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor that began immediately after that time to carry on that insurance business in Canada, and

(ii) for consideration that includes shares of the capital stock of the transferee,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(4), will amend para. 138(11.5)(b) to read as above, applicable to 1999 *et seq.* except that, where a taxpayer or a taxpayer's legal representative so elects in writing and files with the Minister of National Revenue before 2002 its election in respect of one or more of paras. 138(11.5)(b), (11.91)(e) or (11.94)(b), each of the subsecs. in respect of which the election was made applies to the taxpayer's 1997 and subsequent taxation years.

Technical Notes: Subsection 138(11.5) of the Act sets out the rules that allow a non-resident insurer to transfer, on a tax-deferred basis, an insurance business carried on in Canada to a qualified related corporation. This provision is elective and, in order to be entitled to elect the rollover treatment, the conditions set out in paragraphs 138(11.5)(a) to (d) must be met. Paragraph 138(11.5)(b) requires that the transferor transfer all or substantially all of the property owned by it that was used or held by it in its insurance business in Canada to a qualified related corporation that commences to carry on that insurance business in Canada. The amendment to paragraph 138(11.5)(b) is consequential on the definition "designated insurance property" being added to subsection 138(12) and requires that the transferor transfer all or substantially all of its designated insurance property for the year to a corporation that is a qualified related corporation that commences to carry on that insurance business in Canada.

This amendment applies to the 1999 and subsequent taxation years except that, where the taxpayer or the taxpayer's representative so elects and notifies the Minister in writing before 2002 of the election, amended paragraph 138(11.5)(b) of the Act will apply to the taxpayer's 1997 and subsequent taxation years.

(c) the transferee has, at that time or within 60 days thereafter, assumed or reinsured all or substantially all of the obligations of the transferor that arose in the course of carrying on that insurance business in Canada, and

(d) the transferor and the transferee have jointly elected in prescribed form and in accordance with subsection (11.6),

the following rules apply:

(e) subject to paragraph (k.1), where the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property does not exceed the total of the cost amounts to the transferor, at that time, of the transferred property, the proceeds of disposition of the transferor and the cost to the transferee of the transferred property shall be deemed to be the cost amount, at that time, to the transferor of the transferred property, and in any other case, the provisions of subsection 85(1) shall be applied in respect of the transfer,

(f) where the provisions of subsection 85(1) are not required to be applied in respect of the transfer, the cost to the transferor of any particular property (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by it as consideration for the transferred property shall be deemed to be the fair market value, at that time, of the particular property,

(g) where the provisions of subsection 85(1) are not required to be applied in respect of the transfer, the cost to the transferor of any shares of the capital stock of the transferee received or receivable by the trans-

feror as consideration for the transferred property shall be deemed to be

(i) where the shares are preferred shares of any class of the capital stock of the transferee, the lesser of

(A) the fair market value of those shares immediately after the transfer of the transferred property, and

(B) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the proceeds of disposition of the transferor of the transferred property determined under paragraph (e) exceed the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property,

B is the fair market value, immediately after the transfer of the transferred property, of those preferred shares of that class, and

C is the fair market value, immediately after the transfer of the transferred property, of all preferred shares of the capital stock of the transferee receivable by the transferor as consideration for the transferred property, and

(ii) where the shares are common shares of any class of the capital stock of the transferee, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount, if any, by which the proceeds of disposition of the transferor of the transferred property determined under paragraph (e) exceed the total of the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property and the cost to the transferor of all preferred shares of the capital stock of the transferee receivable by the transferor as consideration for the transferred property,

B is the fair market value, immediately after the transfer of the transferred property, of those shares of that class, and

C is the fair market value, immediately after the transfer of the transferred property, of all common shares of the capital stock of the transferee receivable by the transferor as consideration for the transferred property,

(h) for the purposes of this Act, the transferor and the transferee shall be deemed to have had taxation years ending immediately before that time and, for the purposes of determining the fiscal periods of the transferor and transferee after that time, they shall be deemed not to have established fiscal periods before that time,

(i) for the purpose of determining the amount of gross investment revenue required by subsection (9) to be included in computing the transferor's income for the particular taxation year referred to in paragraph (h) and its gains and losses from its designated insurance property for its subsequent taxation years, the transferor is deemed to have transferred the business referred to in paragraph (a), the property referred to in paragraph (b) and the obligations referred to in paragraph (c) to the transferee on the last day of the particular year,

(j) for the purpose of determining the income of the transferor and the transferee for their taxation years following their taxation years referred to in paragraph (h), amounts deducted by the transferor as reserves under subparagraphs (3)(a)(i), (ii) and (iv), paragraphs 20(1)(l) and (l.1) and 20(7)(c) of this Act and section 33 and paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in its taxation year referred to in paragraph (h) in respect of the transferred property referred to in paragraph (b) or the obligations referred to in paragraph (c) shall be deemed to have been deducted by the transferee, and not the transferor, for its taxation year referred to in paragraph (h),

(j.1) for the purpose of determining the income of the transferor and the transferee for their taxation years following their taxation years referred to in paragraph (h), amounts included under paragraphs (4)(b) and 12(1)(e.1) in computing the transferor's income for its taxation year referred to in paragraph (h) in respect of the insurance policies of the business referred to in paragraph (a) are deemed to have been included in computing the income of the transferee, and not of the transferor, for their taxation years referred to in paragraph (h),

(k) for the purposes of this section, sections 12, 12.3, 12.4, 20, 138.1, 140 and 142, subsections 142.5(5) and (7), paragraphs 142.4(4)(c) and (d), section 148 and Part XII.3, the transferee shall, in its taxation years following its taxation year referred to in paragraph (h), be deemed to be the same person as, and a continuation of, the transferor in respect of the business referred to in paragraph (a), the transferred property referred to in paragraph (b) and the obligations referred to in paragraph (c),

(k.1) except for the purpose of this subsection, where the provisions of subsection 85(1) are not required to be applied in respect of the transfer,

(i) the transferor shall be deemed not to have disposed of a transferred property that is a specified debt obligation (other than a mark-to-market property), and

(ii) the transferee shall be deemed, in respect of a transferred property that is a specified debt obligation (other than a mark-to-market property), to be the same person as, and a continuation of, the transferor,

and for the purpose of this paragraph, "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1),

(k.2) for the purposes of subsections 112(5) to (5.2) and (5.4) and the definition "mark-to-market property" in subsection 142.2(1), the transferee shall be deemed, in respect of the transferred property, to be the same person as, and a continuation of, the transferor,

(l) for the purposes of this subsection and subsections (11.7) and (11.9), the fair market value of consideration received by the transferor from the transferee in respect of the assumption or reinsurance of a particular obligation referred to in paragraph (c) shall be deemed to be the total of the amounts deducted by the transferor as a reserve under subparagraphs (3)(a)(i), (ii) and (iv) and paragraph 20(7)(c) in its taxation year referred to in paragraph (h) in respect of the particular obligation, and

(m) for the purpose of computing the income of the transferor or the transferee for their taxation years following their taxation years referred to in paragraph (h),

(i) an amount in respect of a reinsurance premium paid or payable by the transferor to the transferee in respect of the obligations referred to in paragraph (c), or

(ii) an amount in respect of a reinsurance commission paid or payable by the transferee to the transferor in respect of the amount referred to in subparagraph (i)

under a reinsurance arrangement undertaken to effect the transfer of the insurance business to which this subsection applied shall be included or deducted, as the case may be, only to the extent that may be reasonably regarded as necessary to determine the appropriate amount of income of both the transferor and the transferee.

Related Provisions: 138(11.6) — Time of election; 138(11.7) — Computation of paid-up capital; 138(11.94) — Transfer of business by resident insurer; 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; 181.3(3)(d)(i)(A)(III), 190.13(c)(i)(A)(III) — Effect on capital tax; 219(5.2) — Branch tax — election by non-resident insurer who has transferred business; Reg. 8101(4) — Inclusion in income of transferee re unpaid claims reserve; Reg. 8103(4) — Mark-to-market — transition inclusion; Reg. 9204(3) — Residual portion of specified debt obligation.

History: Para. 138(11.5)(i) amended, para. (j.1) added, by 1997, c. 25, subsecs. 39(11), (12); para. (i) applicable to the transfer by an insurer of an insurance business in its 1997 or a subsequent taxation year; para. (j.1) applicable to 1996 *et seq.* Para. (i) formerly read:

(i) for the purpose of determining the amount of gross investment revenue required to be included in computing the transferor's income for the year under subsection (9) and its gains and losses from property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada for its taxation years following its year referred to in paragraph (h), the transferor shall be deemed to have transferred the business referred to in paragraph (a), the property referred to in paragraph (b) and the obligations referred to in paragraph (c) to the transferee on the last day of its taxation year referred to in paragraph (h),

Para. 138(11.5)(e) amended by 1995, c. 21, subsec. 57(13), applicable to transfers of insurance businesses occurring after February 22, 1994. Para. (e) formerly read:

(e) where the fair market value, at that time, of the consideration (other than shares of the capital stock of the transferee or a right to receive any such shares) received or receivable by the transferor for the transferred property does not exceed the total of the cost amounts to the transferor, at that time, of the transferred property, the proceeds of disposition of the transferor and the cost to the transferee of the transferred property shall be deemed to be the cost amount, at that time, to the transferor of the transferred property, and in any other case, the provisions of subsection 85(1) shall be applied in respect of the transfer,

Para. 138(11.5)(k) amended and paras. (k.1) and (k.2) added by 1995, c. 21, subsec. 57(14); para. (k) applicable to transfers of insurance businesses occurring after October 1994, para. (k.1) applicable to transfers of insurance businesses occurring after February 22, 1994, and para. (k.2) applicable to transfers of insurance businesses occurring at any time (including, for greater certainty, transfers occurring before June 22, 1995). Para. (k) formerly read:

(k) for the purposes of this section, sections 12, 12.3, 12.4, 20, 138.1, 140, 142 and 148 and Part XII.3 of this Act and of section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years and fiscal periods beginning before June 18, 1987, the transferee shall, in its taxation years following its taxation year referred to in paragraph (h), be deemed to be the same person as, and a continuation of, the transferor in respect of the business referred to in paragraph (a), the transferred property referred to in paragraph (b) and the obligations referred to in paragraph (c),

Paras. 138(11.5)(b) and (k) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 114(3), (4), applicable to transfers of an insurance business occurring after December 15, 1987. Paras. (b), (k) formerly read:

(b) the transferor has, at that time or within 60 days thereafter, transferred all or substantially all of the property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in this subsection referred to as the "transferred property") to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor which, immediately after that time, commenced to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

. . . . .

(k) for the purposes of this section and sections 12, 12.3, 12.4, 20, 138.1, 140, 142 and 148 of this Act and section 33 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, the transferee shall, in its taxation years following its taxation year referred to in paragraph (h), be deemed to be the same person as, and a continuation of, the transferor in respect of the business referred to in paragraph (a), the transferred property referred to in paragraph (b) and the obligations referred to in paragraph (c),

Pre-RSC History: Subsec. 138(11.5) substituted by 1988, c. 55, subsec. 125(15), applicable to transfers of an insurance business after December 15, 1987; and, where the transferor has, before December 16, 1987 and with the approval of the Minister of Finance, entered into an agreement to transfer, after December 15, 1987 and before 1988, an insurance business to the transferee and the transferor and the transferee subsequently amend the agreement or enter into another agreement in 1988 in respect of the transfer of the insurance business and the transfer of the insurance business is made before 1989, then, if the amended or subsequent agreement so provides and the transferor and the transferee jointly so elect in accordance with subsec. 138(11.6), the transfer shall be deemed to have occurred on January 1, 1988. Subsec. (11.5) formerly read:

(11.5) Exception — Where a non-resident insurer

(a) has ceased to carry on an insurance business in Canada in a taxation year or is entitled to make an election under subsection 219(4) in respect of a taxation year,

(b) has transferred all property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada to a qualified related corporation of the insurer (within the meaning assigned by subsection 219(8)) or to a corporation resident in Canada that carries on an insurance business in Canada and is a subsidiary wholly-owned corporation of a qualified related corporation of the insurer, and

(c) has jointly so elected, in prescribed form and within the time determined under subsection (11.6), with the corporation to which the property was transferred,

subsection (11.3) shall not apply in respect of the transferred property and, where no election was made under subsection 85(1) in respect of the transferred property, the proceeds of disposition thereof to the non-resident insurer and the cost thereof to the corporation to which it was transferred shall be deemed to be the cost amount to the non-resident insurer of the transferred property.

Subsec. 138(11.5) added by 1980-81-82-83, c. 140, subsec. 96(6), applicable to taxation years commencing after November 12, 1981, except that in its application to transfers of property made before April 1983, the reference in para. 138(11.5)(b) to "all property" shall be read as a reference to "any property".

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Forms: T2100: Joint election in respect of an insurance business transferred by a non-resident insurer.

(11.6) Time of election — Any election under subsection (11.5) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transactions to which the election relates occurred.

Pre-RSC History: Subsec. 138(11.6) added by 1980-81-82-83, c. 140, subsec. 96(6), applicable to taxation years commencing after November 12, 1981.

(11.7) Computation of paid-up capital — Where, after December 15, 1987, subsection (11.5) is applicable in respect of a transfer of property by a non-resident insurer to a qualified related corporation of the insurer and the provisions of subsection 85(1) were not required to be applied in respect of the transfer, the following rules apply:

(a) in computing the paid-up capital, at any time after the transfer, in respect of any particular class of shares of the capital stock of the qualified related corporation, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this subsection as it applies to the transfer, in the paid-up capital in respect of all the shares of the capital stock of the corporation as a result of the transfer,

B is the amount, if any, by which the cost of the transferred property to the corporation, immediately after the transfer, exceeds the fair market value, immediately after the transfer, of any consideration (other than shares of the capital stock of the corporation) received or receivable by the insurer from the corporation for the property, and

C is the increase, if any, determined without reference to this subsection as it applies to the transfer, in the paid-up capital in respect of the particular class of shares as a result of the acquisition by the corporation of the transferred property; and

(b) in computing the paid-up capital, at any time after December 15, 1987, in respect of any particular class of shares of the capital stock of the qualified related corporation, there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid after December 15, 1987 and before that time by the corporation

exceeds

(B) the total of such dividends that would have been determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after December 15, 1987 and before that time.

Related Provisions: 138(11.5)(l) — Transfer of insurance business by non-resident insurer; 257 — Formula cannot calculate to less than zero.

Pre-RSC History: Subsec. 138(11.7) added by 1988, c. 55, subsec. 125(16), applicable after December 15, 1987.

(11.8) Rules on transfers of depreciable property — Where

(a) subsection (11.5) is applicable in respect of a transfer of depreciable property by a non-resident insurer to a qualified related corporation,

(b) the provisions of subsection 85(1) were not required to be applied in respect of the transfer, and

(c) the capital cost to the insurer of the depreciable property exceeds its proceeds of disposition therefor,

for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(d) the capital cost of the depreciable property to the corporation shall be deemed to be the amount that was the capital cost thereof to the insurer, and

(e) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before the transfer.

Pre-RSC History: Subsec. 138(11.8) added by 1988, c. 55, subsec. 125(16), applicable to transfers of property occurring after December 15, 1987.

(11.9) Computation of contributed surplus — Where, after December 15, 1987, subsection (11.5) or 85(1) is applicable in respect of a transfer of property by a person or partnership to an insurance corporation resident in Canada and

(a) the total of

(i) the fair market value, immediately after the transfer, of any consideration (other than shares of the capital stock of the corporation) received or receivable by the person or partnership from the corporation for the transferred property,

(ii) the increase, if any, in the paid-up capital of all the shares of the capital stock of the corporation (determined without reference to subsection (11.7) or 85(2.1) as it applies in respect of the transfer) arising on the transfer, and

(iii) the increase, if any, in the contributed surplus of the corporation (determined without reference to this subsection as it applies in respect of the transfer) arising on the transfer

exceeds

(b) the total of

(i) the total of all amounts each of which is an amount required to be deducted in computing the paid-up capital of a class of shares of the capital stock of the corporation under subsection (11.7) or 85(2.1), as the case may be, as it applies in respect of the transfer, and

(ii) the cost to the corporation of the transferred property,

for the purposes of paragraph 84(1)(c.1) and subsections 219(5.2) and (5.3), the contributed surplus of the corporation arising on the transfer shall be deemed to be the amount, if any, by which the amount of the contributed surplus otherwise determined exceeds the amount, if any, by which the total determined under paragraph (a) exceeds the total determined under paragraph (b).

Related Provisions: 138(11.5)(l) — Transfer of insurance business by non-resident insurer.

Pre-RSC History: Subsec. 138(11.9) added by 1988, c. 55, subsec. 125(16), applicable to transfers of property occurring after December 15, 1987.

(11.91) Computation of income of non-resident insurer — Where, at any time in a particular taxation year,

(a) a non-resident insurer carries on an insurance business in Canada, and

(b) immediately before that time, the insurer was not carrying on an insurance business in Canada or ceased to be exempt from tax under this Part on any income from such business by reason of any Act of Parliament or anything approved, made or declared to have the force of law thereunder,

for the purpose of computing the income of the insurer for the particular taxation year,

(c) the insurer shall be deemed to have had a taxation year ending immediately before the commencement of the particular taxation year,

(d) for the purposes of paragraphs 12(1)(d) and (e), paragraph (4)(a), subsection (9) and the definition "designated insurance property" in subsection (12), the insurer is deemed to have carried on the business in Canada in that preceding year and to have claimed the maximum amounts to which it would have been entitled under paragraphs 20(1)(l) and (l.1) and 20(7)(c) and subparagraphs (3)(a)(i), (ii) and (iv) for that year,

(d.1) for the purposes of subsection 20(22) and subparagraph (3)(a)(ii.1),

(i) the insurer is deemed to have carried on the business referred to in paragraph (a) in Canada in the preceding taxation year referred to in paragraph (c), and

(ii) the amounts, if any, that would have been prescribed in respect of the insurer for the purposes of paragraphs (4)(b) and 12(1)(e.1) for that preceding year in respect of the insurance policies of that business are deemed to have been included in computing its income for that year,

(e) the insurer shall, immediately before the commencement of the particular taxation year, be deemed to have disposed of each property that was owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on the business referred to in paragraph (a) for proceeds of disposition equal to the fair market value of the property at that time and to have reacquired the property at that time at a cost equal to that fair market value, and

Proposed Amendment — 138(11.91)(e)

(e) the insurer is deemed to have disposed, immediately before the beginning of the particular taxation year, of each property owned by it at that time that is designated insurance property in respect of the business referred to in paragraph (a) for the particular taxation year, for proceeds of disposition equal to the fair market value at that time and to have reacquired, at the beginning of the particular taxation year, the property at a cost equal to that fair market value, and

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(5), will amend para. 138(11.91)(e) to read as above, applicable to 1999 *et seq.* except that, where a taxpayer or a taxpayer's legal representative so elects in writing and files with the Minister of National Revenue before 2002 its election in respect of one or more of paras. 138(11.5)(b), (11.91)(e) or (11.94)(b), each of the subsecs. in respect of which the election was made applies to the taxpayer's 1997 and subsequent taxation years.

Technical Notes: Subsection 138(11.91) provides rules for the purpose of computing the income of a non-resident insurer that commences to carry on an insurance business in Canada at any time in a particular taxation year or that ceases to be exempt from tax under Part I of the Act in a particular taxation year. Paragraph 138(11.91)(e) deems an insurer to have disposed, immediately before the beginning of the particular taxation year, of each property owned by the insurer that was used or held by it in the course of carrying on an insurance business in Canada in the year, at its fair market value and to have reacquired it at that time at that fair market value. Paragraph 138(11.91)(e) ensures that non-resident insurers will report the appropriate amount of gain or loss from the disposition of property used in carrying on an insurance business in Canada. Paragraph 138(11.91)(e) is amended to make reference to property that is designated insurance property. This amendment is consequential to the addition in subsection 138(12) of the definition "designated insurance property", applicable to the 1997 and subsequent taxation years.

This amendment applies to the 1999 and subsequent taxation years except, that where the taxpayer or the taxpayer's representative so elects in writing and the files election with the Minister before 2002, amended paragraph 138(11.91)(e) will apply to the taxpayer's 1997 and subsequent taxation years.

(f) where paragraph (e) applies in respect of depreciable property of the insurer and the cost thereof to the insurer immediately before the commencement of the particular taxation year exceeds the fair market value thereof at that time, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost of the property to the insurer at that time shall be deemed to be the cost thereof to the insurer at that time, and

(ii) the excess shall be deemed to have been allowed to the insurer in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before the commencement of the particular taxation year.

Related Provisions: 95(2)(k)(v) — Application to start-up of business of foreign affiliate.

History: Para. 138(11.91)(d) amended, para. (d.1) added, by 1997, c. 25, subsec. 39(13); para. (d) applicable to 1997 *et seq.*, and para. (d.1) applicable to 1996 *et seq.* Para. (d) formerly read:

(d) for the purposes of paragraphs 12(1)(d) and (e), paragraph (4)(a) and subsection (9) and any regulations made under the definition "property used by it in the year in, or held by it in the year in the course of" in subsection (12), the insurer shall be deemed to have carried on the business referred to in paragraph (a) in Canada in the immediately preceding taxation year referred to in paragraph (c) and to have claimed the maximum amounts to which it would have been entitled under subparagraphs (3)(a)(i), (ii) and (iv), paragraphs 20(1)(l) and (l.1) and 20(7)(c) of this Act and section 33 and paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for that year,

Pre-RSC History: Subsec. 138(11.91) added by 1988, c. 55, subsec. 125(16), applicable to taxation years commencing after June 17, 1987 that end after 1987.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(11.92) Computation of income where insurance business is transferred — Where, at any time in a taxation year, an insurer (in this subsection referred to as the "vendor") has disposed of

(a) all or substantially all of an insurance business carried on by it in Canada, or

(b) all or substantially all of a line of business of an insurance business carried on by it in Canada

to a person (in this subsection referred to as the "purchaser") and obligations in respect of the business or line of business, as the case may be, in respect of which a reserve may be claimed under subparagraph (3)(a)(i) or (ii) or paragraph 20(7)(c) (in this subsection referred to as the "obligations") were assumed by the purchaser, the following rules apply:

(c) for the purpose of determining the amount of the gross investment revenue required to be included in computing the income of the vendor and the purchaser under subsection (9) and the amount of the gains and losses of the vendor and the purchaser from designated insurance property for the year

(i) the vendor and the purchaser shall, in addition to their normal taxation years, be deemed to have had a taxation year ending immediately before that time, and

(ii) for the taxation years of the vendor and the purchaser following that time, the business or line of business, as the case may be, disposed of to, and the obligations assumed by, the purchaser shall be deemed to have been disposed of or assumed, as the case may be, on the last day of the taxation year referred to in subparagraph (i),

(d) for the purpose of computing the income of the vendor and the purchaser for taxation years ending after that time,

(i) an amount paid or payable by the vendor to the purchaser in respect of the obligations, or

(ii) an amount in respect of a commission paid or payable by the purchaser to the vendor in respect of the amount referred to in subparagraph (i)

shall be deemed to have been paid or payable or received or receivable, as the case may be, by the vendor or the purchaser, as the case may be, in the course of carrying on the business or line of business, as the case may be, and

(e) where the vendor has disposed of all or substantially all of an insurance business referred to in paragraph (a), the vendor shall, for the purposes of section 219, be deemed to have ceased to carry on that business at that time.

Related Provisions: 181.3(3)(d)(i)(A)(III), 190.13(c)(i)(A)(III) — Effect on capital tax.

History: The opening words of para. 138(11.92)(c) amended by 1997, c. 25, subsec. 39(14), applicable to the disposition by an insurer of an insurance business or a line of business of an insurance business in its 1997 or a subsequent taxation year. The opening words formerly read:

(c) for the purpose of determining the amount of the gross investment revenue required to be included in the income of the vendor and the purchaser under subsection (9) and the amount of the gains and losses of the vendor and the purchaser from property used by it in the year in or held by it in the year in the course of carrying on an insurance business in Canada

Pre-RSC History: Subsec. 138(11.92) added by 1988, c. 55, subsec. 125(16), applicable to dispositions of an insurance business or a line of business of an insurance business occurring after December 15, 1987.

(11.93) Property acquired on default in payment — Where, at any time in a taxation year of an insurer, the beneficial ownership of property is acquired or reacquired by the insurer in consequence of the failure to pay all or any part of an amount (in this subsection referred to as the "insurer's claim") owing to the insurer at that time in respect of a bond, debenture, mortgage, agreement of sale or any other form of indebtedness owned by the insurer, the following rules apply to the insurer:

(a) section 79.1 does not apply in respect of the acquisition or reacquisition;

(b) the insurer shall be deemed to have acquired or reacquired, as the case may be, the property at an amount equal to the fair market value of the property, immediately before that time;

(c) the insurer shall be deemed to have disposed at that time of the portion of the indebtedness represented by the insurer's claim for proceeds of disposition equal to that fair market value and, immediately after that time, to have reacquired that portion of the indebtedness at a cost of nil;

(d) the acquisition or reacquisition shall be deemed to have no effect on the form of the indebtedness; and

(e) in computing the insurer's income for the year or a subsequent taxation year, no amount is deductible under paragraph 20(1)(l) in respect of the insurer's claim.

History: Subsec. 138(11.93) amended by 1995, c. 21, s. 39, applicable to property acquired or reacquired after February 21, 1994, other than acquisitions or reacquisitions pursuant to a court order made before February 22, 1994. Subsec. (11.93) formerly read:

(11.93) Notwithstanding section 79, where, at any time in a taxation year, an insurer has acquired or reacquired the beneficial ownership of property in consequence of another person's failure to pay all or any part of an amount (in this subsection referred to as the "insurer's claim") owing by the other person to the insurer in respect of a bond, debenture, mortgage, agreement of sale or any other form of indebtedness owned by the insurer, the following rules apply:

(a) in computing the other person's proceeds of disposition of the property, there shall be included the amount of the insurer's claim;

(b) any amount paid by the other person after the acquisition or reacquisition, as the case may be, of the property on account of or in satisfaction of the insurer's claim shall be deemed to be a loss of that person from the disposition of the property for that person's taxation year in which payment of that amount was made;

(c) the insurer shall be deemed to have acquired or reacquired, as the case may be, the property at an amount equal to the fair market value of the property, immediately before that time, and to have disposed of the bond, debenture, mortgage, agreement of sale or other form of indebtedness, as the case may be, for proceeds of disposition equal to that fair market value;

(d) the cost amount to the insurer of the insurer's claim shall be deemed to be nil and the insurer's claim shall be deemed to be a bond, debenture, mortgage, agreement of sale or other form of indebtedness, as the case may be; and

(e) in computing the insurer's income for the year or a subsequent year, no amount is deductible in respect of the insurer's claim by reason of paragraph 20(1)(l).

Pre-RSC History: Subsec. 138(11.93) added by 1988, c. 55, subsec. 125(16), applicable to taxation years commencing after June 17, 1987 that end after 1987.

(11.94) Transfer of insurance business by resident insurer — Where

(a) an insurer resident in Canada (in this subsection referred to as the "transferor") has, at any time in a taxation year, ceased to carry on all or substantially all of an insurance business carried on by it in Canada in that year,

(b) the transferor has, at that time or within 60 days thereafter, in the year transferred all or substantially all of the property used or held by it in the year in the course of carrying on that insurance business in Canada to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary

wholly-owned corporation of the transferor which, immediately after that time, began to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

Proposed Amendment — 138(11.94)(b)

(b) the transferor has, at that time or within 60 days after that time,

(i) in the case of a transferor that is a life insurer and that carries on an insurance business in Canada and in a country other than Canada in the year, transferred all or substantially all of the property (in subsection (11.5) referred to as the "transferred property") that is owned by it at that time and that was designated insurance property in respect of the business for the taxation year that, because of paragraph (11.5)(h), ended immediately before that time, or

(ii) in any other case, transferred all or substantially all of the property owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in subsection (11.5) referred to as the "transferred property"),

to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor that, immediately after that time, began to carry on that insurance business in Canada for consideration that includes shares of the capital stock of the transferee,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(6), will amend para. 138(11.94)(b) to read as above, applicable to 1999 *et seq.* except that, where a taxpayer or a taxpayer's legal representative so elects in writing and files with the Minister of National Revenue before 2002 its election in respect of one or more of paras. 138(11.5)(b), (11.91)(e) or (11.94)(b), each of the subsecs. in respect of which the election was made applies to the taxpayer's 1997 and subsequent taxation years.

Technical Notes: Subsection 138(11.94) of the Act provides rules that apply to the transfer of an insurance business carried on in Canada by an insurer resident in Canada to a corporation resident in Canada that is a subsidiary wholly-owned corporation of the insurer on a tax-deferred or rollover basis. This provision can apply if the conditions set out in paragraphs 138(11.94)(a) to (d) are met. Paragraph 138(11.94)(b) requires that the transferor transfer all or substantially all of the property owned by it that was used or held by it in its insurance business in Canada to a subsidiary wholly-owned corporation that commences to carry on that insurance business in Canada. Paragraph 138(11.94)(b) is amended to distinguish a multinational life insurer resident in Canada from other resident insurers. In regards to the former, the defined term "designated insurance property" has been substituted for "property used or held by it in the year in the course of carrying on that insurance business in Canada". In respect of other resident insurers, the rollover provisions continue to apply in respect of "property used or held by it in the year in the course of carrying on that insurance business in Canada".

This amendment applies to the 1999 and subsequent taxation years except that, where the taxpayer or the taxpayer's representative so elects in writing and files the election with the Minister before 2002, amended paragraph 138(11.94)(b) will apply to the taxpayer's 1997 and subsequent taxation years.

(c) the transferee has, at that time or within 60 days thereafter, assumed or reinsured all or substantially all of the obligations of the transferor that arose in the course of carrying on that insurance business in Canada, and

(d) the transferor and the transferee have jointly elected in prescribed form and in accordance with subsection (11.6),

paragraphs (11.5)(e) to (m) and subsections (11.7) to (11.9) apply in respect of the transfer.

Related Provisions: 142.6(5), (6) — Acquisition of specified debt obligation by financial institution in rollover transaction; Reg. 8101(4) — Inclusion in income of transferee re unpaid claims reserve; Reg. 8103(4) — Mark-to-market — transition inclusion; Reg. 9204(3) — Residual portion of specified debt obligation.

History: Para. 138(11.94)(b) amended by 1997, c. 25, subsec. 39(15), applicable to 1997 *et seq.* Para. (b) formerly read:

(b) the transferor has, at that time or within 60 days thereafter, transferred all or substantially all of the property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor which, immediately after that time, commenced to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

Pre-RSC History: Subsec. 138(11.94) added by 1988, c. 55, subsec. 125(16), applicable to transfers of an insurance business after December 15, 1987.

(12) Definitions — In this section,

Pre-RSC History: *The opening words referred to other sections also. See now subsecs. 12.2(12), 13(23.1), 20(27.1), 70(11), 89(1.01), 111(7.11), 115(6) and 116(7) and s. 142.1.*

That portion of subsec. 138(12) preceding para. (a) amended by 1980-81-82-83, c. 140, subsec. 96(7), to add references to sections 12.2, 70, 89, 115, 116, applicable after November 12, 1981.

That portion of subsec. 138(12) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 79(3), to add reference to section 142, applicable to 1978 *et seq.*

That portion of subsec. 138(12) preceding para. (a) substituted by 1977-78, c. 1, subsec. 68(14), to add reference to section 13 and subsection 111(7.1), applicable to 1977 *et seq.*, and to section 20, applicable to 1978 *et seq.*

"accumulated 1968 deficit" — [Repealed]

History: The definition "accumulated 1968 deficit" in subsec. 138(12) repealed by 1997, c. 25, subsec. 39(16), applicable to 1997 *et seq.* The definition formerly read:

"accumulated 1968 deficit" of a life insurer means such amount as can be established by the insurer to be its deficit as of the end of its 1968 taxation year from carrying on its life insurance business in Canada on the assumption that the amounts of its assets and liabilities (including reserves of any kind)

(a) as of the end of any taxation year before its 1968 taxation year, were the amounts thereof determined for the purposes of the relevant authority, and

(b) as of the end of its 1968 taxation year, were

(i) in respect of depreciable property, the capital cost thereof as of the first day of its 1969 taxation year,

(ii) in respect of policy reserves, the insurer's maximum tax actuarial reserves for its 1968 taxation year for life insurance policies issued by it in the course of carrying on its life insurance business in Canada, and

(iii) in respect of other assets and liabilities, the amounts thereof determined as of the end of that year for the purpose of computing its income for its 1969 taxation year;

Pre-RSC History: *The definition "accumulated 1968 deficit" was para. 138(12)(a). See Table of Concordance.*

"amortized cost [para. 138(12)(b)]" — [Repealed under former Act]

Pre-RSC History: Para. 138(12)(b) repealed by 1988, c. 55, subsec. 125(17), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. 138(12)(b) formerly read:

(b) "amortized cost" of a Canada security at a particular time to an insurer means the amount, if any, by which

(i) the aggregate of

(A) the cost to the insurer of acquiring the security, and

(B) any amount in respect of the security that

(I) has been included by virtue of paragraph (4)(c) in computing the insurer's income for, or

(II) has been deemed by virtue of paragraph 142(3)(a) as it read in its application to the 1977 taxation year to be a gain for,

any taxation year ending before or concurrently with that time,

exceeds

(ii) the aggregate of

(A) the aggregate of all amounts that, before that time, the insurer became entitled to receive as, on account or in lieu of payment of, or in satisfaction of the principal amount of the security, and

(B) any amount in respect of the security that

(I) was deductible under paragraph (3)(d) in computing the insurer's income for, or

(II) has been deemed by virtue of paragraph 142(3)(b) as it read in its application to the 1977 taxation year to be a loss for,

any such taxation year;

Subcls. 138(12)(b)(i)(B)(II), (ii)(B)(II) substituted by 1977-78, c. 1, subsecs. 68(15), (16), applicable to 1978 *et seq.* Subcls. 138(12)(b)(i)(B)(II), (ii)(B)(II) formerly read:

(I) has been deemed by virtue of paragraph 142(3)(a) to be a gain for,

(II) has been deemed by virtue of paragraph 142(3)(b) to be a loss for,

Para. 138(12)(b) substituted by 1976-77, c. 4, subsec. 53(1), applicable to 1972 *et seq.*

"amount payable", in respect of a policy loan at a particular time, means the amount of the policy loan and the interest thereon that is outstanding at that time;

Related Provisions: 148(9) — "amount payable".

Pre-RSC History: *The definition "amount payable" was para. 138(12)(b.1).*

Para. 138(12)(b.1) added by 1977-78, c. 1, subsec. 68(17), applicable to 1978 *et seq.*

"Canada security" — [Repealed]

History: The definition "Canada security" in subsec. 138(12) repealed by 1995, c. 21, subsec. 57(15), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

"Canada security" in respect of a life insurer that carried on a business in Canada in a taxation year, means a bond, debenture, mortgage, agreement of sale or any other indebtedness that was property used by it in the year in, or held by it in the year in the course of, carrying on its life insurance business in Canada, other than property included in a segregated fund;

Pre-RSC History: *The definition "Canada security" was para. 138(12)(c).*

Para. 138(12)(c) substituted by 1980-81-82-83, c. 140, subsec. 96(8), applicable to dispositions occurring after November 12, 1981. Para. 138(12)(c) formerly read:

(c) "Canada security" of an insurer means a bond, debenture, mortgage, hypothec or agreement of sale that is non-segregated property used by it in, or held by it in the course of carrying on its life insurance business in Canada;

"cost" — [Repealed]

History: The definition "cost" in subsec. 138(12) repealed by 1995, c. 21, subsec. 57(15), applicable to taxation years that begin after February 22, 1994. The definition formerly read:

"cost" to an insurer of acquiring a mortgage includes any amount advanced by the insurer to the borrower by way of loan under the terms of the mortgage;

Pre-RSC History: *The definition "cost" was para. 138(12)(d).*

"designated insurance property" for a taxation year of an insurer (other than an insurer resident in Canada that at no time in the year carried on a life insurance business) that, at any time in the year, carried on an insurance business in Canada and in a country other than Canada, means property determined in accordance with prescribed rules except that, in its application to any taxation year, "designated insurance property" for the 1996 or a preceding taxation year means property that was, under this subsection as it read in its application to that year, property used by it in the year in, or held by it in the year in the course of carrying on an insurance business in Canada;

Proposed Amendment — 138(12)"designated insurance property"

"designated insurance property" for a taxation year of an insurer (other than an insurer resident in Canada that at no time in the year carried on a life insurance business) that, at any time in the year, carried on an insurance business in Canada and in a country other than Canada, means property determined in accordance with prescribed rules except that, in its application to any taxation year, "designated insurance property" for the 1998 or a preceding taxation year means property that was, under this subsection as it read in its application to taxation years that ended in 1996, property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 85(7), will amend the definition "designated insurance property" in subsec. 138(12) to read as above, applicable to 1997 *et seq.*

Technical Notes: The definition of the expression "designated insurance property" in subsection 138(12) of the Act currently directs insurers (other than resident non-life insurers) to use prescribed rules for the 1997 and subsequent taxation years to determine the property falling within its meaning. For earlier years, the expression is to take its meaning from the meaning, in those years, that the expression "property used by it in the year in, or held by it in the year in the course of carrying on an insurance business in Canada" had. The direction to use the prescribed rules is predicated on the proposed regulations dealing with the taxation of resident multinational life insurers and non-resident insurers that carry on an insurance business in Canada starting to apply in 1997.

The definition is amended to provide that insurers must use the prescribed rules to determine its meaning only for the 1999 and subsequent taxation years. For earlier years, it is to take its meaning from the meaning that the expression "property used by it in the year in, or held by it in the year in the course of carrying on an insurance business in Canada" had for the 1996 taxation year. This amendment is consequential on the application of the proposed regulations being delayed to the 1999 and subsequent taxation years.

Related Provisions: 138(11.31)(b) — Change in use rule for insurance properties does not apply for purposes of this definition; 248(1)"designated insurance property" — Definition applies to entire Act.

History: The definition "designated insurance property" added to subsec. 138(12) by 1997, c. 25, subsec. 39(17), applicable to 1997 *et seq.*

Regulations: 2401, 2405 (prescribed rules).

"gross investment revenue" of an insurer for a taxation year means the amount determined by the formula

$$A + B + C + D + E + F - G$$

where

A is the total of the following amounts included in its gross revenue for the year:

(a) taxable dividends, and

(b) amounts received or receivable as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties, other than amounts in respect of debt obligations to which subsection 142.3(1) applies for the year,

B is its income for the year from each trust of which it is a beneficiary,

C is its income for the year from each partnership of which it is a member,

D is the total of all amounts required by subsection 16(1) to be included in computing its income for the year,

E is the total of

(a) all amounts required by paragraph 142.3(1)(a) to be included in computing its income for the year, and

(b) all amounts required by subsection 12(3) or 20(14) to be included in computing its income for the year except to the extent that those amounts are included in the computation of A,

F is the amount determined by the formula

$$V - W$$

where

V is the total of all amounts included under paragraph 56(1)(d) in computing its income for the year, and

W is the total of all amounts deducted under paragraph 60(a) in computing its income for the year, and

G is the total of all amounts each of which is

(a) an amount deemed by subparagraph 16(6)(a)(ii) to be paid by it in respect of the year as interest, or

(b) an amount deductible under paragraph 142.3(1)(b) in computing its income for the year;

Related Provisions: 148(9) — "interest"; 257 — Formula amounts cannot calculate to less than zero.

History: The description of A in the definition "gross investment revenue" in subsec. 138(12) amended by 1995, c. 21, subsec. 57(17), applicable to taxation years that end after February 22, 1994. The description of A formerly read:

A is the total of all taxable dividends and amounts received or receivable as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties included in its gross revenue for the year,

The description of E in the definition "gross investment revenue" in subsec. 138(12) amended by 1995, c. 21, subsec. 57(18), applicable to taxation years that end after February 22, 1994. The description of E formerly read:

E is the total of all amounts required by subsection 12(3) or 20(14) to be included in computing its income for the year except to the extent that those amounts are included in the computation of A,

The first formula in the definition "gross investment revenue" in subsec. 138(12) amended to add G, and the description of G added, by 1995, c. 21, subsecs. 57(16) and (19), applicable to taxation years that end after October 16, 1991, except that, in its application to taxation years that end before February 23, 1994, the description of G shall be read as follows:

G is the total of all amounts deemed by subparagraph 16(6)(a)(ii) to be paid by it in respect of the year as interest;

In "gross investment revenue" in subsecs. 138(12), the element F was added to the formula, the description of A was amended, and the description of F was added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 114(4.1), (5), (6), applicable to 1990 *et seq.* The description of A formerly read:

A is the total amount of all taxable dividends, interest, rentals and royalties included in the insurer's gross revenue for the year,

Pre-RSC History: *The definition "gross investment revenue" was para. 138(12)(e). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(e) "gross investment revenue" of an insurer for a taxation year means the aggregate of

(i) all taxable dividends, interest, rentals and royalties included in its gross revenue for the year,

(ii) its income for the year from each trust of which it is a beneficiary,

(iii) its income for the year from each partnership of which it is a member,

(iv) all amounts required by subsection 16(1) to be included in computing its income for the year, and

(v) all amounts required by subsection 12(3) or 20(14) to be included in computing its income for the year except to the extent that such amounts are amounts included in computing its gross investment revenue by virtue of subparagraph (i);

Para. 138(12)(e) substituted by 1977-78, c. 1, subsec. 68(18), applicable to 1978 *et seq.* Para. 138(12)(e) formerly read:

(e) "gross investment revenue" of an insurer for a taxation year means the aggregate of its dividend, interest, rental and royalty revenue (other than dividends that are not taxable dividends) for the year and any amounts required by subsection 16(1) to be included in computing its income for the year;

"group term insurance policy [para. 138(12)(p)]" — [Repealed under former Act]

History: This definition was moved from para. 138(12)(p) to subsec. 138(15) in the R.S.C. 1985 (5th Supp.).

"interest", in relation to a policy loan, means the amount in respect of the policy loan that is required to be paid under the terms and conditions of the policy in order to maintain the policyholder's interest in the policy;

Pre-RSC History: *The definition "interest" was para. 138(12)(e.1).*

Para. 138(12)(e.1) added by 1977-78, c. 1, subsec. 68(18), applicable to 1978 *et seq.*

"life insurance policy" includes an annuity contract and a contract all or any part of the insurer's reserves for which vary in amount depending on the fair market value of a specified group of assets;

Related Provisions: 12.2(10) — Riders; 211(1) — "Life insurance policy" for purposes of Part XII.3 tax; 248(1)"life insurance policy" — Definition applies to entire Act.

Pre-RSC History: *The definition "life insurance policy" was para. 138(12)(f).*

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

"life insurance policy in Canada" means a life insurance policy issued or effected by an insurer on the life of a person resident in Canada at the time the policy was issued or effected;

Related Provisions: 128.1(10)"excluded right or interest"(l) — Life insurance policy in Canada excluded from deemed disposition on emigration; 248(1)"life insurance policy in Canada" — Definition applies to entire Act.

Pre-RSC History: *The definition "life insurance policy in Canada" was para. 138(12)(g).*

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

"maximum tax actuarial reserve" for a particular class of life insurance policy for a taxation year of a life insurer means, except as otherwise expressly prescribed, the maximum amount allowable under subparagraph (3)(a)(i)

as a policy reserve for the year in respect of policies of that class;

Pre-RSC History: *The definition "maximum tax actuarial reserve" was para. 138(12)(h).*

"net Canadian life investment income [para. 138(12)(i)]" — [Repealed under former Act]

Pre-RSC History: Para. 138(12)(i) repealed by 1980-81-82-83, c. 48, subsec. 79(4), applicable to 1978 *et seq.* Para. 138(12)(i) formerly read:

> (i) "net Canadian life investment income" has the meaning assigned by subsection 209(2);

"non-segregated property" of an insurer means its property other than property included in a segregated fund;

Related Provisions: 181.3(1)(a) — Taxable capital employed in Canada of financial institution.

Pre-RSC History: *The definition "non-segregated property" was para. 138(12)(j).*

"participating life insurance policy" means a life insurance policy under which the policyholder is entitled to share (other than by way of an experience rating refund) in the profits of the insurer other than profits in respect of property in a segregated fund;

Pre-RSC History: *The definition "participating life insurance policy" was para. 138(12)(k).*

"policy loan" means an amount advanced at a particular time by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy in Canada;

Pre-RSC History: *The definition "policy loan" was para. 138(12)(k.1).*

Para. 138(12)(k.1) substituted by 1988, c. 55, subsec. 125(18), applicable to taxation years commencing after June 17, 1987 that end after 1987. Para. 138(12)(k.1) formerly read:

> (k.1) "policy loan" means an amount advanced at a particular time by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy in Canada but not exceeding the lesser of
>
> (i) the amount so advanced, and
>
> (ii) the amount, if any, by which
>
> (A) the cash surrender value of the policy immediately before that time
>
> exceeds
>
> (B) the aggregate of all amounts each of which is a balance outstanding immediately before that time in respect of an amount so advanced;

Para. 138(12)(k.1) substituted by 1980-81-82-83, c. 48, subsec. 79(5), applicable to 1978 *et seq.*

Para. 138(12)(k.1) added by 1977-78, c. 1, subsec. 68(19), applicable to 1978 *et seq.*

Interpretation Bulletins: IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans.

"property used by it in the year in, or held by it in the year in the course of" — [Repealed]

Related Provisions: 18(5) — Meaning of certain expressions; 138(11.91)(d) — Computation of income of non-resident insurer.

History: The definition "property used by it in the year in, or held by it in the year in the course of" in subsec. 138(12) repealed by 1997, c. 25, subsec. 39(16), applicable to 1997 *et seq.* The definition formerly read:

> "property used by it in the year in, or held by it in the year in the course of" carrying on an insurance business in Canada means, in the case of an insurer (other than a resident of Canada that does not carry on a life insurance business) that carried on an insurance business in Canada and in a country other than Canada, property determined in accordance with prescribed rules;

Pre-RSC History: *The definition "property used by it in the year in, or held by it in the year in the course of" was para. 138(12)(l).*

Para. 138(12)(l) substituted by 1977-78, c. 1, subsec. 68(19), applicable to 1978 *et seq.* Para. 138(12)(l) formerly read:

> (l) "property used in the year in, or held in the course of" carrying on an insurance business in Canada means, in relation to any taxation year of an insurer in respect of which the insurer has made an election under subsection (9), such portion of the property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada (determined without reference to this paragraph) as is designated by it in its return of income for the year required by this Part to be filed with the Minister, to be, for the purposes of this Act, property used by it in, or held by it in the course of carrying on an insurance business in Canada, except that in no case shall the value (within the meaning assigned by paragraph 219(7)(e)) of the portion so designated be less than the amount that would, if the insurer had not so elected, have been the insurer's Canadian investment fund (within the meaning prescribed for that expression for the purposes of Part XIV) at the end of the immediately preceding taxation year;

Selected Cases [subsec. 138(12)"property used ..."]: *Victory Reinsurance Co. v. MNR*, [1992] 2 C.T.C. 2200 (TCC) (Amount of reserve reported to Superintendent of Insurance was amount of reserve under Act).

Regulations: 2400 (prescribed rules).

Interpretation Bulletins: IT-291R2: Transfer of property to a corporation under subsection 85(1).

"qualified related corporation" of a non-resident insurer has the meaning assigned by subsection 219(8);

Pre-RSC History: *The definition "qualified related corporation" was para. 138(12)(l.1).*

Para. 138(12)(l.1) added by 1988, c. 55, subsec. 125(19), applicable to taxation years commencing after June 17, 1987 that end after 1987.

"relevant authority" — [Repealed]

History: The definition "relevant authority" in subsec. 138(12) repealed by 1997, c. 25, subsec. 39(16), applicable to 1997 *et seq.* The definition formerly read:

> "relevant authority", in relation to a life insurer, means
>
> (a) the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or
>
> (b) in any other case, the superintendent of insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated;

Pre-RSC History: *The definition "relevant authority" was para. 138(12)(m).*

Subpara. 138(12)(m)(i) amended by 1987, c. 23, s. 38, in force July 2, 1987. Subpara. (m)(i) formerly read:

> (i) the Superintendent of Insurance for Canada, if the insurer is required by law to report to him, or

"segregated fund" has the meaning given that expression in subsection 138.1(1);

Pre-RSC History: *The definition "segregated fund" was para. 138(12)(n).*

Para. 138(12)(n) substituted by 1977-78, c. 1, subsec. 68(20), applicable to 1978 *et seq.*, to substitute "138.1(1)" for "148(1)".

"surplus funds derived from operations" of an insurer as of the end of a particular taxation year means the amount determined by the formula

$$(A + B + C) - (D + E + F + G + H)$$

where

A is the total of the insurer's income for each taxation year in the period beginning with its 1969 taxation year and ending with the particular year from all insurance businesses carried on by it,

B is the total described in subclause (4.1)(a)(ii)(B)(IV), and

C is the total of all profits or gains made by the insurer in the period in respect of non-segregated property of the

insurer disposed of by it that was used by it in, or held by it in the course of, carrying on an insurance business in Canada, except to the extent that those profits or gains have been or are included in computing the insurer's income or loss, if any, for any taxation year in the period from carrying on an insurance business,

D is the total of its loss, if any, for each taxation year in the period from all insurance businesses carried on by it,

E is the total of all losses sustained by the insurer in the period in respect of non-segregated property disposed of by it that was used by it in, or held by it in the course of, carrying on an insurance business in Canada, except to the extent that those losses have been or are included in computing the insurer's income or loss, if any, for any taxation year in the period from carrying on an insurance business,

F is the total of

(a) all taxes payable under this Part by the insurer, and all income taxes payable by it under the laws of each province, for each taxation year in the period, except such portion thereof as would not have been payable by it if subsection (7) had not been enacted, and

(b) all taxes payable under Parts I.3 and VI by the insurer for each taxation year in the period,

G is the total of all gifts made in the period by the insurer to a person or organization described in paragraph 110.1(1)(a) or (b), and

H is the amount determined by the formula

$$M - N$$

where

M is the amount determined in respect of the insurer for the particular taxation year under clause (3)(a)(iii)(A), and

N is the amount so determined under clause (3)(a)(iii)(B);

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

History: The description of F in the definition "surplus funds derived from operations" in subsec. 138(12) substituted by 1994, c. 21, s. 66, applicable to 1992 *et seq.* That description formerly read:

F is the total of any taxes payable by the insurer under this Part and any income tax payable by it under the laws of any province for each taxation year in the period, except such portion thereof as would not have been payable by it if subsection (7) had not been enacted,

Pre-RSC History: *The definition "surplus funds derived from operations" was para. 138(12)(o). Descriptive subparagraphs have been replaced by the formula. The pre-R.S.C. version read:*

(o) "surplus funds derived from operations" of an insurer as of the end of a particular taxation year means the aggregate of

(i) its income for each taxation year in the period beginning with its 1969 taxation year and ending with the particular year from all insurance businesses carried on by it,

(i.1) the aggregate described in subclause (4.1)(a)(ii)(B)(IV), and

(ii) all profits or gains made by the insurer in the period in respect of non-segregated property of the insurer disposed of by it that was used by it in, or held by it in the course of, carrying on an insurance business in Canada, except to the extent that such profits or gains have been or are included in computing the insurer's income or loss, if any, for any taxation year in the period from carrying on an insurance business,

minus the aggregate of

(iii) its loss, if any, for each taxation year in the period from all insurance businesses carried on by it,

(iv) all losses sustained by the insurer in the period in respect of non-segregated property disposed of by it that was used by it in, or held by it in the course of, carrying on an insurance business in Canada, except to the extent that such losses have been or are included in computing the insurer's income or loss, if any, for any taxation year in the period from carrying on an insurance business,

(v) the aggregate of any taxes payable by the insurer under this Part and any income tax payable by it under the laws of any province for each taxation year in the period, except such portion thereof as would not have been payable by it if subsection (7) had not been enacted,

(vi) all gifts made in the period by the insurer to a person or organization described in paragraph 110.1(1)(a) or (b), and

(vii) the amount, if any, by which the amount determined in respect of the insurer for the particular taxation year under clause (3)(a)(iii)(A) exceeds the amount so determined under clause (3)(a)(iii)(B);

Subpara. 138(12)(o)(vi) amended to substitute "paragraph 110.1(1)(a) or (b)" for "paragraph 110(1)(a) or (b)", by 1988, c. 55, subsec. 125(20), applicable to 1988 *et seq.*

Subpara. 138(12)(o)(i.1) added by 1977-78, c. 1, subsec. 68(21), applicable to 1977 *et seq.*

I.T. Application Rules: 60.1 (reference to "this Part" in description of F includes Part IA of pre-1972 Act).

"1975 branch accounting election deficiency" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$(A + B) - (C + D + E + F + G)$$

where

A is such portion of the total of the insurer's gross investment revenue and all amounts determined under paragraphs (4)(b) and (c) as would have been required to be included in computing its income for its 1975 taxation year if

(a) it had not made the election under subsection 138(9) of that Act in respect of that year, and

(b) where it had made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

B is the total of the amounts deducted in computing the insurer's income for its 1975 taxation year under paragraphs (3)(b) and (d),

C is the total of the insurer's gross investment revenue included in computing its income for its 1975 taxation year and the amounts included in computing its income for that year under paragraphs (4)(b) and (c),

D is such portion of the total of all amounts determined under paragraphs (3)(b) and (d) as would have been deductible in computing the insurer's income for its 1975 taxation year if

(a) it had not made the election under subsection 138(9) of that Act in respect of that year, and

(b) where it had made the election under subsection 138(9) of that Act in respect of its 1974 taxation

year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

E is the amount determined by the formula

$$P - Q$$

where

P is the total of the insurer's outlays or expenses that would have been deductible in computing its income from its insurance businesses for its 1975 taxation year (other than amounts deductible under subsection (3), section 140 and regulations made under paragraph 20(1)(a) and 20(7)(c)), if

(a) it had not made the election under subsection 138(9) of that Act in respect of that year, and

(b) where it had made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

Q is the total of the insurer's outlays or expenses deducted in computing its income from its insurance businesses for its 1975 taxation year (other than amounts deducted under subsection (3), section 140 and regulations made under paragraphs 20(1)(a) and 20(7)(c)),

F is the amount of the insurer's 1975-76 excess policy dividend deduction, and

G is the amount of the insurer's 1975-76 excess policy dividend reserve;

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

Pre-RSC History: *The definition "1975 branch accounting election deficiency" was para. 138(12)(q). Descriptive subparagraphs have been replaced by the formula. See Table of Concordance.*

Para. 138(12)(q) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"1975–76 excess additional group term reserve" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$A - B$$

where

A is the amount that would have been deductible under subparagraph (3)(a)(ii) in computing the insurer's income for its 1976 taxation year if it had claimed the maximum allowable amount under that subparagraph for that year, and

B is the amount deducted under that subparagraph in computing its income for its 1976 taxation year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "1975-76 excess additional group term reserve" was para. 138(12)(w). Descriptive subparagraphs have been replaced by the formula. See Table of Concordance.*

Para. 138(12)(w) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"1975–76 excess capital cost allowance" of depreciable property of a prescribed class of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the amount determined by the formula

$$P - Q$$

where

P is the amount that would have been deductible under paragraph 20(1)(a) by the insurer in computing its income for its 1975 taxation year with respect to that class, if it had claimed the maximum allowable amount under that paragraph in that year with respect to that class and if

(a) it had not made the election under subsection 138(9) of that Act in respect of its 1975 taxation year, and

(b) where it made the election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act, and

Q is the amount deducted under paragraph 20(1)(a) by the insurer in computing its income for its 1975 taxation year with respect to that class,

B is the amount determined by the formula

$$R - S$$

where

R is the amount that would have been deductible under paragraph 20(1)(a) by the insurer in computing its income for its 1976 taxation year with respect to that class if it had claimed the maximum allowable amount under that paragraph in that year and in its 1975 taxation year with respect to that class on the basis of the assumptions made in paragraphs (a) to (d) of the description of A in the definition "1975-76 excess policy dividend reserve" in this subsection, and

S is the amount deducted under paragraph 20(1)(a) by the insurer in computing its income for its 1976 taxation year with respect to that class, and

C is the amount determined by the formula

$$T - U$$

where

T is the amount determined for S, and

U is the amount determined for R;

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

Pre-RSC History: *The definition "1975-76 excess capital cost allowance" was para. 138(12)(u). Descriptive subparagraphs have been replaced by the formula. See Table of Concordance.*

Para. 138(12)(u) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"1975–76 excess investment reserve" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$A - B$$

where

A is the amount that would have been deductible under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by the insurer in computing its income for its 1976 taxation year if it had claimed the maximum allowable amount under that paragraph in that year and that amount was determined without reference to subparagraph 138(3)(c)(ii) of that Act, and

B is the amount deducted by the insurer under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing its income for its 1976 taxation year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "1975-76 excess investment reserve" was para. 138(12)(t). Descriptive subparagraphs have been replaced by the formula. See Table of Concordance.*

Para. 138(12)(t) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"1975–76 excess policy dividend deduction" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$(A + B) - C$$

where

A is the amount determined by the formula

$$P - Q$$

where

P is the amount that would have been deductible under subparagraph (3)(a)(iii) by the insurer in computing its income for its 1975 taxation year if that amount had been determined on the assumptions made in paragraphs (a) to (d) of the description of A in the definition "1975-76 excess policy dividend reserve" in this subsection, and

Q is the amount deducted under subparagraph (3)(a)(iii) by the insurer in computing its income for its 1975 taxation year,

B is the amount determined by the formula

$$R - S$$

where

R is the amount that would have been deductible under subparagraph (3)(a)(iii) by the insurer in computing its income for its 1976 taxation year if that amount had been determined on the basis that the amount of its income for that year from its participating life insurance business carried on in Canada was computed in accordance with prescribed rules on the assumptions made in paragraph (e) of the description of A in the definition "1975-76 excess policy dividend reserve" in this subsection, and

S is the amount deducted by the insurer under subparagraph (3)(a)(iii) in computing its income for its 1976 taxation year, and

C is the amount determined by the formula

$$T - U$$

where

T is the amount determined for S, and

U is the amount determined for R;

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

Pre-RSC History: *The definition "1975-76 excess policy dividend deduction" was para. 138(12)(r). Descriptive subparagraphs have been replaced by the formula. See Table of Concordance.*

Para. 138(12)(r) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"1975–76 excess policy dividend reserve" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

$$A - B$$

where

A is the amount that would have been deductible under subparagraph (3)(a)(iv) by the insurer in computing its income for its 1976 taxation year if

(a) it had not made the election under subsection 138(9) of that Act in respect of its 1975 taxation year,

(b) where it made an election under subsection 138(9) of that Act in respect of its 1974 taxation year, it had adopted for its 1975 taxation year, with the concurrence of the Minister, the method required by subsection 138(9) of that Act if it had not elected under that subsection and the Minister had specified no terms and conditions under subsection 138(10) of that Act,

(c) it had claimed the maximum allowable amount under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing its income for its 1975 taxation year,

(d) it had claimed the maximum allowable amount that would have been deductible under regulations made under paragraph 20(1)(a) in computing its income for its 1975 taxation year with respect to property of each of its prescribed classes, and

(e) the amount of its income for its 1976 taxation year from its participating life insurance business carried on in Canada was computed in accordance

with prescribed rules and as if the amount deducted under subparagraph (3)(a)(iv) by it in computing its income for its 1975 taxation year was the amount that would have been deductible under that subparagraph on the basis of the assumptions made in paragraphs (a) to (d) of this description, and

B is the amount deducted by the insurer under subparagraph (3)(a)(iv) in computing its income for its 1976 taxation year;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "1975-76 excess policy dividend reserve" was para. 138(12)(s). Descriptive subparagraphs have been replaced by the formula. See Table of Concordance.*

Para. 138(12)(s) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"1975–76 excess policy reserves" of an insurer that has made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of its 1975 taxation year means the amount determined by the formula

A – B

where

A is the amount that would have been deductible under subparagraph (3)(a)(i) in computing the insurer's income for its 1976 taxation year if it had claimed the maximum allowable amount under that subparagraph for that year, and

B is the amount deducted under that subparagraph in computing its income for its 1976 taxation year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "1975-76 excess policy reserves" was para. 138(12)(v). Descriptive subparagraphs have been replaced by the formula.*

Para. 138(12)(v) added by 1977-78, c. 1, subsec. 68(22), applicable to 1977 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Related Provisions [subsec. 138(12)]: 211(1) — Definitions.

(13) Variation in "tax basis" and "amortized cost" — Where

(a) in a taxation year that ended after 1968 and before 1978 an insurer carried on a life insurance business in Canada and an insurance business in a country other than Canada,

(b) the insurer did not make an election in respect of the year under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to that year, and

(c) the ratio of the value for the year of the insurer's specified Canadian assets to its Canadian investment fund for the year exceeded one,

each of the amounts included or deducted as follows in respect of the year shall be multiplied by the ratio referred to in paragraph (c):

(d) under paragraph (c), (d), (k) or (l) of the definition "tax basis" in subsection 142.4(1) in determining the tax basis of a debt obligation to the insurer, or

(e) under paragraph (c), (d), (f) or (h) of the definition "amortized cost" in subsection 248(1) in determining the amortized cost of a debt obligation to the insurer.

Related Provisions: 138(14) — Meaning of certain expressions; 142.4(1)"tax basis"(c), (d), (k), (l) — Disposition of specified debt obligation by financial institution.

History: Subsec. 138(13) amended by 1995, c. 21, subsec. 57(20), applicable to taxation years that end after February 22, 1994. Subsec. (13) formerly read:

(13) Where meaning of "amortized cost" varied — For the purposes of the definition "amortized cost" in subsection 248(1), where in a taxation year ending after 1968 and before the particular time referred to in that definition an insurer carried on a life insurance business in Canada and an insurance business in a country other than Canada and has not made an election under subsection 138(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, in respect of that year, each of the amounts referred to in paragraph (c), (d), (f) or (h) in that definition shall, in respect of that year, be deemed to be the greater of

(a) each such amount, and

(b) that proportion of the amount referred to in paragraph (a) that the value for the taxation year of the insurer's specified Canadian assets is of its Canadian investment fund for the taxation year.

Pre-RSC History: Subsec. 138(13) amended to substitute that portion preceding para. (a) by 1988, c. 55, subsec. 125(21), applicable to taxation years commencing after June 17, 1987 that end after 1987. That portion formerly read:

(13) Where meaning of amortized cost varied — For the purposes of paragraph (12)(b), where in a taxation year ending after 1968 and before the particular time referred to in that paragraph an insurer carried on a life insurance business in Canada and an insurance business in a country other than Canada and has not made an election under subsection (9) as it read in its application to the 1977 taxation year in respect of that year, each of the amounts referred to in clause (12)(b)(i)(B) or (b)(ii)(B) shall, in respect of that year, be deemed to be the greater of

All that portion of subsec. 138(13) preceding para. (a) substituted by 1977-78, c. 1, subsec. 68(23), applicable to 1978 *et seq.*, to add "as it read in its application to the 1977 taxation year".

Subsec. 138(13) added by 1976-77, c. 4, subsec. 53(2), applicable to 1972 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(14) Meaning of certain expressions — For the purposes of subsection (13), the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed therefor.

Pre-RSC History: Subsec. 138(14) added by 1976-77, c. 4, subsec. 53(2), applicable to 1972 *et seq.*

Regulations: 2400(4) (draft), 2405(2) (to be repealed) (prescribed meanings).

(15) Definition not to apply — In this section, in construing the meaning of the expression "group term insurance policy", the definition "group term life insurance policy" in subsection 248(1) does not apply.

Pre-RSC History: *Subsec. 138(15) was para. 138(12)(p).*

(16) [Repealed under former Act]

Pre-RSC History [former subsec. 138(15), and subsec. 138(16)]: Former subsec. 138(15) and subsec. (16) repealed by 1977-78, c. 1, subsec. 68(24), applicable to 1978 *et seq.* Subsecs. 138(15), (16) formerly read:

(15) Designation of property by Minister — Notwithstanding paragraph (12)(l), where in a taxation year of an insurer in respect of which the insurer has made an election under subsection (9),

(a) the gross investment revenue of the insurer for the year that would have been determined in accordance with paragraph (9)(b) to be applicable to the carrying on by the insurer of a particular insurance business in Canada if the insurer had not so elected,

exceeds

(b) the gross investment revenue of the insurer for the year from property that the insurer has designated in its return of income for the year to be property used by it in the year in, or held by it in the year in the course of, carrying on that particular insurance business in Canada,

the Minister may designate property of the insurer (other than property designated by the insurer with respect to that particular insurance business or with respect to any other insurance business carried on by the insurer in Canada) to be, for the purposes of this Act, property used by the insurer in the year in, or held by it in the year in the course of, carrying on the particular insurance business in Canada, but the gross investment revenue from property so designated by the Minister shall not be greater than the amount by which the gross investment revenue described in paragraph (a) exceeds the gross investment revenue described in paragraph (b).

(16) **Property deemed to be designated property** — Property of an insurer designated by the Minister pursuant to subsection (15) shall be deemed to be property designated by that insurer for the purposes of paragraph (12)(l).

Subsecs. 138(15), (16) added by 1976-77, c. 4, subsec. 53(2), applicable to 1976 *et seq.*

Definitions [s. 138]: "accumulated 1968 deficit" — 138(12); "affiliated" — 251.1; "allowable capital loss" — 38(b), 248(1); "amortized cost" — 138(13), 248(1); "amount" — 248(1); "amount payable" — (in respect of a policy loan) 138(12); "arm's length" — 251(1); "borrowed money", "business" — 248(1); "Canada" — 255; "Canada security" — 138(12); "Canadian investment fund" — 138(14); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "carrying on business" — 253; "class of shares" — 248(6); "common share" — 248(1); "completed" — 138(4.6); "corporation" — 248(1), *Interpretation Act* 35(1); "cost" — (to an insurer of acquiring a mortgage or hypothec) 138(12); "cost amount" — 248(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "dividend" — 248(1); "fiscal period" — 249(2)(b), 249.1; "gross investment revenue" — 138(12); "identical" — 138(11.1), 248(12); "insurer" — 248(1); "interest in real property" — 248(4); "interest" — in relation to a policy loan 138(12); "life insurance business" — 248(1); "life insurance policy" — 138(4.01), (12), 248(1); "life insurance policy in Canada" — 138(12), 248(1); "life insurer" — 248(1); "maximum tax actuarial reserve" — 138(12); "Minister" — 248(1); "net Canadian life investment income" — 209(2); "1975 branch accounting election deficiency" — 138(12); "1975-76 excess policy dividend deduction" — 138(3.1), 138(12); "1975-76 excess policy dividend reserve", "1975-76 excess additional group term reserves", "1975-76 excess policy reserves" — 138(12); "non-resident" — 248(1); "non-segregated property" — 138(12); "paid-up capital" — 89(1), 138(11.7), 248(1); "participating life insurance policy" — 138(12); "person" — 248(1); "policy dividend" — 139.1(8)(a); "policy loan" — 138(12); "preferred share", "prescribed", "principal amount", "property" — 248(1); "property used by it in the year in, or held by it in the year in the course of" — carrying on an insurance business 138(12); "province" — *Interpretation Act* 35(1); "qualified related corporation" — 138(12), 219(8); "received" — 248(7); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "relevant authority" — 138(12); "resident in Canada" — 250; "segregated fund" — 138(12); "share", "shareholder" — 248(1); "specified Canadian assets" — 138(14); "subsidiary wholly-owned corporation" — 248(1); "substituted property" — 248(5); "surplus funds derived from operations" — 138(12); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer", "term preferred share" — 248(1); "transferred property" — 138(11.94)(b)(i); "value for the taxation year" — 138(14).

138.1 (1) Rules relating to segregated funds — In respect of life insurance policies for which all or any portion of an insurer's reserves vary in amount depending on the fair market value of a specified group of properties (in this section referred to as a "segregated fund"), for the purposes of this Part, the following rules apply:

(a) an *inter vivos* trust (in this section referred to as the "related segregated fund trust") is deemed to be created at the time that is the later of

(i) the day that the segregated fund is created, and

(ii) the day on which the insurer's 1978 taxation year commences,

and to continue in existence throughout the period during which the fund determines any portion of the benefits under those policies that vary in amount depending on the fair market value of the property in the segregated fund (in this section referred to as "segregated fund policies");

(b) property that has been allocated to and that remains a part of the segregated fund, and any income that has accrued on that property is deemed to be the property and income of the related segregated fund trust and not to be the property and income of the insurer;

(c) the insurer is deemed to be

(i) the trustee who has ownership or control of the related segregated fund trust property,

(ii) a resident of Canada in respect of the related segregated fund trust property used or held by it in the course of carrying on the insurer's life insurance business in Canada, and

(iii) a non-resident of Canada in respect of the related segregated fund trust property not used or held by it in the course of carrying on the insurer's life insurance business in Canada;

(d) where at a particular time there is property in the segregated fund that was not funded with premiums paid under a segregated fund policy,

(i) the insurer is deemed to have an interest in the related segregated fund trust that is not in respect of any particular property or source of income, and

(ii) the cost at any time of that interest to the insurer is deemed to be the total of

(A) for property of the trust at that time allocated by the insurer to the segregated fund prior to 1978, the amount that would be its adjusted cost base to the insurer if the interest had been a capital property at all relevant times prior to 1978 and if the rules in this section had been applicable for the taxation years after 1971 and before 1978, and

(B) for property of the trust at that time allocated by the insurer to the segregated fund after 1977, the fair market value of the property at the time it was last allocated to the segregated fund by the insurer;

(e) where at any particular time there is property in the segregated fund that was funded with a portion of the premiums paid before that time under a segregated fund policy,

(i) the respective segregated fund policyholder is deemed to have an interest in the related segregated fund trust that is not in respect of any particular property or source of income,

(ii) the cost of that interest is deemed to be the amount that is the total of

(A) the amount that would be its adjusted cost base to the insurer at December 31, 1977 if the interest had been a capital property at all relevant times prior to 1978 and if the rules in this section (if subsection (3) were read without reference to the expressions "or capital loss" and "or loss") had been applicable for taxation years after 1971 and before 1978, and

(B) the total of amounts each of which is that portion of a premium paid before that time and after the day referred to in subparagraph (a)(ii) under a segregated fund policy that was or is to be used by the insurer to fund property allocated to the segregated fund (other than the portion of the premium that is an acquisition fee), and

(iii) the portion of a premium included in a segregated fund is deemed not to be an amount paid in respect of a premium under the policy;

(f) the income of the related segregated fund trust is deemed for the purposes of subsections 104(6), (13) and (24) to be an amount that has become payable in the year to the beneficiaries under the segregated fund trust and the amount therefor in respect of any particular beneficiary is equal to the amount determined by reference to the terms and conditions of the segregated fund policy;

(g) where at a particular time the fair market value of property transferred by the insurer to the segregated fund results in an increase at that time in the portion of the insurer's reserves for a segregated fund policy held by a policyholder that vary with the fair market value of the segregated fund and a decrease in the portion of its reserves for the policy that do not so vary, the amount of that increase shall,

(i) for the purpose of the determination of H in the definition "adjusted cost basis" in subsection 148(9), be deemed to be proceeds of disposition that the policyholder became entitled to receive at that time,

(ii) for the purpose of computing the adjusted cost base to the policyholder of the policyholder's interest in the related segregated fund trust, be added at that time to the cost to the policyholder of that interest, and

(iii) for the purpose of computing the insurer's income, be deemed to be a payment under the terms and conditions of the policy at that time;

(h) where at a particular time the fair market value of property transferred by the insurer from the segregated fund results in an increase at that time in the portion of the insurer's reserves for a segregated fund policy that do not vary with the fair market value of the segregated fund and a decrease in the portion of its reserves for the policy that so vary, the amount of that increase shall, for the purpose of calculating the insurer's income, be deemed to be a premium received by the insurer at that time;

(i) where at a particular time the policyholder of a segregated fund policy disposes of all or a portion of the policyholder's interest in the related segregated fund trust, that proportion of the amount, if any, by which the acquisition fee with respect to the particular policy exceeds the total of amounts each of which is an amount determined under this paragraph with respect to the particular policy before that time, that

(i) the fair market value of the interest disposed of at that time

is of

(ii) the fair market value of the policyholder's interest in the particular segregated fund trust immediately before that time,

is deemed to be a capital loss of the related segregated fund trust that reduces the policyholder's benefits under the particular policy by that amount for the purposes of subsection (3);

(j) the obligations of an insurer in respect of a benefit that is payable under a segregated fund policy, the amount of which benefit varies with the fair market value of the segregated fund at the time the benefit becomes payable, are deemed to be obligations of the trustee under the related segregated fund trust and not of the insurer and any amount received by the policyholder or that the policyholder became entitled to receive at any particular time in a year in respect of those obligations is deemed to be proceeds from the disposition of an interest in the related segregated fund trust;

(k) a reference to "the terms and conditions of the trust arrangement" in section 104 or subsection 127.2(3) is deemed to include a reference to the terms and conditions of the related segregated fund policy and the trustee is deemed to have designated the amounts referred to in that section in accordance with those terms and conditions; and

(l) where at any time an insurer acquires a share as a first registered holder thereof and allocates the share to a related segregated fund trust, the trust shall be deemed to have acquired the share at that time as the first registered holder thereof for the purpose of computing its share-purchase tax credit and the insurer shall be deemed not to have acquired the share for the purpose of computing its share-purchase tax credit.

Related Provisions: 39(1)(a)(iii) — Meaning of capital gain; 53(1)(l), 53(2)(q) — Adjustments to cost base; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 94.2(10)(a)(ii) — No application to foreign insurance policy of foreign investment entity; 107.4(3)(g) — Application of 138.1(1)(i) on qualifying disposition to trust; 127.55(f)(i) — No minimum tax on related segregated fund trust; 138(11.5)(k) — Transfer of business by non-resident insurer; 138.1(7) — Where subsections (1) to (6) not to apply; 218.1 — Application to non-resident withholding tax; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; Reg. 9000 — Certain segregated funds excluded from definition of "financial institution".

Pre-RSC History: Para. 138.1(1)(f) amended by 1988, c. 55, s. 126, to substitute "an amount that has become payable" for "an amount payable", and "the amount therefor" for "the amount thereof", applicable to 1988 *et seq.*

All that portion of para. 138.1(1)(a) preceding subpara. (i) amended by 1986, c. 6, s. 80, applicable to 1986 *et seq.*, to substitute "in this section referred to as" for "in this section and section 47.1 referred to as".

All that portion of para. 138.1(1)(a) preceding subpara. (i) substituted to add "and section 47.1", para. 138.1(1)(k) substituted to add "or subsection 127.2(3)"; para. 138.1(1)(l) added by 1984, c. 1, subsecs. 80(1), (2). That portion of para. 138.1(1)(a) preceding subpara. (i), as substituted, applicable after September 30, 1983. Para. 138.1(i)(k) as substituted, para. 138.1(1)(l), applicable to 1983 *et seq.*

(2) Rules relating to property in segregated funds at end of 1977 taxation year — Where an insurer holds property at the end of its 1977 taxation year in connection with a segregated fund, the following rules apply:

(a) the property is deemed to have been acquired by the related segregated fund trust on the day determined under paragraph (1)(a) at a cost equal to the adjusted cost base of the property to the insurer on that day and that transaction is deemed to be a transaction between persons not dealing at arm's length;

(b) the property is deemed to have been disposed of by the insurer on the day referred to in paragraph (a) for

proceeds equal to the adjusted cost base of the property to the insurer on that day; and

(c) for the purpose of computing the insurer's income for its 1978 taxation year it shall be deemed to have made a payment to its policyholders in satisfaction of their rights under their segregated fund policies in that year equal to that portion of the amount deducted under subparagraph 138(3)(a)(i) in computing its income for its 1977 taxation year that is in respect of segregated fund policies.

Related Provisions: 39.1(2)B(c), 39.1(5) — Reduction in gain to reflect capital gains exemption election; 138.1(7) — Where subsections (1) to (6) not to apply.

Pre-RSC History: Para. 138.1(2)(c) substituted by 1979, c. 5, s. 45, applicable to 1978 *et seq.*

(3) Capital gains and capital losses of related segregated fund trusts — A capital gain or capital loss of a related segregated fund trust from the disposition of any property shall, to the extent that a policyholder's benefits under a policy or the interest in the trust of any other beneficiary is affected by that gain or loss, be deemed to be a capital gain or capital loss, as the case may be, of the policyholder or other beneficiary and not that of the trust.

Related Provisions: 39.1(2)B(c), 39.1(5) — Reduction in gain to reflect 1994 capital gains exemption election; 53(1)(l)(iv), 53(2)(q)(ii) — Adjustments to cost base; 138.1(7) — Where subsections (1) to (6) not to apply.

(4) Election and allocation — Where at any particular time after 1977, a policyholder withdraws all or part of the policyholder's interest in a segregated fund policy, the trustee of a related segregated fund trust may elect in prescribed manner and prescribed form to treat any capital property of the trust as having been disposed of, whereupon the property shall be deemed to have been disposed of on any day designated by the trustee for proceeds of disposition equal to

(a) the fair market value of the property on that day,

(b) the adjusted cost base to the trust of the property on that day, or

(c) an amount that is neither greater than the greater of nor less than the lesser of the amounts determined under paragraphs (a) and (b),

whichever is designated by the trustee, and to have been reacquired by the trust immediately thereafter at a cost equal to those proceeds, and where the trustee of a related segregated fund trust has made such an election, the following rules apply:

(d) the amount of any capital gain or capital loss resulting from the deemed disposition shall be allocated by the trustee to any policyholder withdrawing all or part of the policyholder's interest in the policyholder's policy at that time to the extent that the amount of the policyholder's benefits under the policy at that time is affected by the capital gain or capital loss in respect of property held by the related segregated fund trust at that time,

(e) the allocation referred to in paragraph (d) is deemed to have been made immediately before the withdrawal,

(f) any capital gain not so allocated is deemed to be allocated in accordance with the terms and conditions of the policy, and

(g) any capital loss not so allocated is deemed to be a superficial loss of each policyholder to the extent that the policyholder's benefits under the policy would be affected by the loss.

Related Provisions: 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election; 53(1)(l)(iii), 53(2)(q)(i) — Adjustments to cost base; 138.1(7) — Where subsections (1) to (6) not to apply.

Regulations: 6100 (prescribed manner and time).

Forms: T3018: Election for deemed disposition and reacquisition of capital property of a life insurance segregated fund under subsection 138.1(4).

(5) Adjusted cost base of property in related segregated fund trust — At any particular time, the adjusted cost base of each capital property of a related segregated fund trust shall be deemed to be the amount, if any, by which

(a) the adjusted cost base of the property to the trust immediately before that time

exceeds

(b) the total of amounts each of which is an amount in respect of the disposition by a policyholder of all or part of the policyholder's interest in the related segregated fund trust at that time equal to that proportion of the amount, if any, by which

(i) the adjusted cost base to the policyholder of that interest at that time

exceeds

(ii) the policyholder's proceeds of the disposition of that interest in the trust

that

(iii) the fair market value of the capital property at that time

is of

(iv) the total of amounts each of which is the fair market value of a capital property of the related segregated fund trust at that time.

Related Provisions: 53(1)(l), 53(2)(q) — ACB of interest in related segregated fund trust; 138(11.5)(k) — Transfer of business by non-resident insurer; 138.1(7) — Where subsections (1) to (6) not to apply.

(6) Definition of "acquisition fee" — In this section, "acquisition fee" means the amount, if any, by which the total of amounts each of which is

(a) that portion of a premium charged by the insurer under a segregated fund policy that is not included in the related segregated fund or cannot reasonably be regarded as an amount required to fund a mortality or maturity benefit,

(b) a transfer from the segregated fund that cannot reasonably be regarded as an amount required to fund a mortality or maturity benefit other than an annual administration fee or charge, or,

(c) any amount by which the proceeds payable to the policyholder under a particular segregated fund policy is reduced on the surrender or partial surrender of the policy that may reasonably be regarded as a surrender fee,

exceeds

(d) the total of amounts each of which is that portion of an amount described in paragraph (a), (b) or (c) that may reasonably be considered to be in respect of an interest in the segregated fund that was disposed of before 1978.

(7) Where subsecs. (1) to (6) do not apply — Subsections (1) to (6) do not apply to the holder of a segregated fund policy with respect to such a policy that is is-

sued or effected as a registered retirement savings plan or a registered retirement income fund or that is issued under a registered pension plan.

Related Provisions: 148(1) — Amounts included in computing policyholder's income.

History: Subsec. 138.1(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 80, applicable to 1991 *et seq.* Subsec. (7) formerly read:

> (7) Where policyholder deemed to be trust, etc. — For the purposes of this section, where a segregated fund policy is issued or effected as a registered retirement savings plan or is issued pursuant to a registered pension plan, the policyholder of the policy shall be deemed to be a trust or a trust or corporation described by paragraph 149(1)(r) or (o), respectively.

Pre-RSC History: Subsec. 138.1(7) amended by 1990, c. 35, s. 29, to substitute "pension plan" for "pension fund or plan", applicable after 1985.

Pre-RSC History [s. 138.1]: S. 138.1 added by 1977-78, c. 1, s. 69, applicable to 1978 *et seq.*

Definitions [s. 138.1]: "acquisition fee" — 138.1(6); "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "capital gain", "capital loss" — 39(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "insurer" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "life insurance business", "prescribed", "property", "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "related segregated fund trust" — 138.1(1)(a); "segregated fund" — 138.1(1); "segregated fund policy" — 138.1(1)(a); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

139. Conversion of insurance corporations into mutual corporations — Where an insurance corporation that is a Canadian corporation applies an amount in payment for shares of the corporation purchased or otherwise acquired by it under a mutualization proposal under Division III of Part VI of the *Insurance Companies Act* or under a law of the province under the laws of which the corporation is incorporated that provides for the conversion of the corporation into a mutual corporation by the purchase of its shares in accordance with that law,

(a) section 15 does not apply to require the inclusion, in computing the income of a shareholder of the corporation, of any part of that amount; and

(b) no part of that amount shall be deemed, for the purpose of subsection 138(7), to have been paid to shareholders or, for the purpose of section 84, to have been received as a dividend.

History: S. 139 amended by 1994, c. 7, Sch. I (1991, c. 47), s. 734, to substitute that portion preceding para. (a), deemed to have come into force June 1, 1992. That portion formerly read:

> 139. Conversion of provincial life insurance corporation into mutual corporation — Where a life insurance corporation that is incorporated under the laws of a province has applied an amount in payment for shares of the corporation purchased by it under the authority of a law of the province that provides for the conversion of the corporation into a mutual corporation by the purchase of its shares in accordance with the provisions of that law,

Definitions [s. 139]: "amount" — 248(1); "Canadian corporation" — 89(1), 248(1); "dividend", "insurance corporation" — 248(1); "; "province" — *Interpretation Act* 35(1); "share", "shareholder" — 248(1).

Demutualization of Insurance Corporations

139.1 (1) Definitions — The definitions in this subsection apply in this section and sections 139.2 and 147.4.

"conversion benefit" means a benefit received in connection with the demutualization of an insurance corporation because of an interest, before the demutualization, of any person in an insurance policy to which the insurance corporation has been a party.

Related Provisions: 139.1(2), (3) — Determining when benefit received; 139.1(11) — Conversion benefit is not a shareholder benefit. See also Related Provisions under "taxable conversion benefit".

"deadline" for a payment in respect of a demutualization of an insurance corporation means the latest of

(a) the end of the day that is 13 months after the time of the demutualization,

(b) where the entire amount of the payment depends on the outcome of an initial public offering of shares of the corporation or a holding corporation in respect of the insurance corporation, the end of the day that is 60 days after the day on which the offering is completed,

(c) where the payment is made after the initial deadline for the payment and it is reasonable to conclude that the payment was postponed beyond that initial deadline because there was not sufficient information available 60 days before that initial deadline with regard to the location of a person, the end of the day that is six months after such information becomes available, and

(d) the end of any other day that is acceptable to the Minister.

Related Provisions: 139.1(1)"initial deadline" — Definition.

"demutualization" means the conversion of an insurance corporation from a mutual company into a corporation that is not a mutual company.

Related Provisions: 139.1(4) — Effect of demutualization; 237(4) — Authority to communicate SIN to agent of shareholder.

"holding corporation" means a corporation that

(a) in connection with the demutualization of an insurance corporation, has issued shares of its capital stock to stakeholders; and

(b) owns shares of the capital stock of the insurance corporation acquired in connection with the demutualization that entitle it to 90% or more of the votes that could be cast in respect of shares under all circumstances at an annual meeting of

(i) shareholders of the insurance corporation, or

(ii) shareholders of the insurance corporation and holders of insurance policies to which the insurance corporation is a party.

Related Provisions: 139.1(4)(e) — Cost to holding corporation of shares acquired on demutualization; 141(3) — Holding corporation deemed to be public corporation.

"initial deadline" for a payment is the time that would, if the definition "deadline" were read without reference to paragraph (c) of that definition, be the deadline for the payment.

"mutual holding corporation" in respect of an insurance corporation, means a mutual company established to hold shares of the capital stock of the insurance corporation, where the only persons entitled to vote at an annual meeting of the mutual company are policyholders of the insurance corporation.

Related Provisions: 139.1(4)(d) — Receipt of ownership rights in MHC on demutualization; 139.2 — Deemed dividend on distribution of property by MHC.

"ownership rights" means

(a) in a particular mutual holding corporation, the following rights and interests held by a person in respect

of the particular corporation because of an interest or former interest of any person in an insurance policy to which an insurance corporation, in respect of which the particular corporation is the mutual holding corporation, has been a party:

(i) rights that are similar to rights attached to shares of the capital stock of a corporation, and

(ii) all other rights with respect to, and interests in, the particular corporation as a mutual company; and

(b) in a mutual insurance corporation, the following rights and interests held by a person in respect of the mutual insurance corporation because of an interest or former interest of any person in an insurance policy to which that corporation has been a party:

(i) rights that are similar to rights attached to shares of the capital stock of a corporation,

(ii) all other rights with respect to, and interests in, the mutual insurance corporation as a mutual company, and

(iii) any contingent or absolute right to receive a benefit in connection with the demutualization of the mutual insurance corporation.

Related Provisions: 139.1(4)(a), (d) — Rollover where shares acquired in exchange for ownership rights.

"person" includes a partnership.

"share" of the capital stock of a corporation includes a right granted by the corporation to acquire a share of its capital stock.

"specified insurance benefit" means a taxable conversion benefit that is

(a) an enhancement of benefits under an insurance policy;

(b) an issuance of an insurance policy;

(c) an undertaking by an insurance corporation of an obligation to pay a policy dividend; or

(d) a reduction in the amount of premiums that would otherwise be payable under an insurance policy.

Related Provisions: 139.1(8) — Effect of stakeholder receiving specified insurance benefit.

"stakeholder" means a person who is entitled to receive or who has received a conversion benefit but, in respect of the demutualization of an insurance corporation, does not include a holding corporation in connection with the demutualization or a mutual holding corporation in respect of the insurance corporation.

Related Provisions: 139.1(4) — Effect of demutualization on stakeholder.

"taxable conversion benefit" means a conversion benefit received by a stakeholder in connection with the demutualization of an insurance corporation, other than a conversion benefit that is

(a) a share of a class of the capital stock of the corporation;

(b) a share of a class of the capital stock of a corporation that is or becomes a holding corporation in connection with the demutualization; or

(c) an ownership right in a mutual holding corporation in respect of the insurance corporation.

Related Provisions: 139.1(2), (3) — Determining when benefit received; 139.1(4)(f) — TCB deemed to be a dividend; 139.1(8)(a) — Policy dividend that is TCB deemed not to be policy dividend; 139.1(10) — Cost of TCB.

(2) Rules of general application — For the purposes of this section,

(a) subject to paragraphs (b) to (g), if in providing a benefit in respect of a demutualization, a corporation becomes obligated, either absolutely or contingently, to make or arrange a payment, the person to whom the undertaking to make or arrange the payment was given is considered to have received a benefit

(i) as a consequence of the undertaking of the obligation, and

(ii) not as a consequence of the making of the payment;

(b) where, in providing a benefit in respect of a demutualization, a corporation makes a payment (other than a payment, made pursuant to the terms of an insurance policy, that is not a policy dividend) at any time on or before the deadline for the payment,

(i) subject to paragraphs (f) and (g), the recipient of the payment is considered to have received a benefit as a consequence of the making of the payment, and

(ii) no benefit is considered to have been received as a consequence of the undertaking of an obligation, that is either contingent or absolute, to make or arrange the payment;

(c) no benefit is considered to have been received as a consequence of the undertaking of an absolute or contingent obligation of a corporation to make or arrange a payment (other than a payment, made pursuant to the terms of an insurance policy, that is not a policy dividend) unless it is reasonable to conclude that there is sufficient information with regard to the location of a person to make or arrange the payment;

(d) where a corporation's obligation to make or arrange a payment in connection with a demutualization ceases on or before the initial deadline for the payment and without the payment being made in whole or in part, no benefit is considered to have been received as a consequence of the undertaking of the obligation unless the payment was to be a payment (other than a policy dividend) pursuant to the terms of an insurance policy;

(e) no benefit is considered to have been received as a consequence of the undertaking of an absolute or contingent obligation of a corporation to make or arrange a payment where

(i) paragraph (a) would, but for this paragraph, apply with respect to the obligation,

(ii) paragraph (d) would, if that paragraph were read without reference to the words "on or before the initial deadline for the payment", apply in respect of the obligation,

(iii) it is reasonable to conclude that there was not, before the initial deadline for the payment, sufficient information with regard to the location of a person to make or arrange the payment, and

(iv) such information becomes available on a particular day after the initial deadline and the obligation ceases not more than six months after the particular day;

(f) no benefit is considered to have been received as a consequence of

(i) an undertaking of an absolute or contingent obligation of a corporation to make or arrange an annuity payment through the issuance of an annuity contract, or

(ii) a receipt of an annuity payment under the contract so issued

where it is reasonable to conclude that the purpose of the undertaking or the making of the annuity payment is to supplement benefits provided under either an annuity contract to which subsection 147.4(1) or paragraph 254(a) applied or a group annuity contract that had been issued under, or pursuant to, a registered pension plan that has wound up;

(g) no benefit is considered to have been received as a consequence of

(i) an amendment to which subsection 147.4(2) would, but for subparagraph 147.4(2)(a)(ii), apply, or

(ii) a substitution to which paragraph 147.4(3)(a) applies;

(h) the time at which a stakeholder is considered to receive a benefit in connection with the demutualization of an insurance corporation is,

(i) where the benefit is a payment made at or before the time of demutualization or is a payment to which paragraph (b) applies, the time at which the payment is made, and

(ii) in any other case, the latest of

(A) the time of the demutualization,

(B) where the extent of the benefit or the stakeholder's entitlement to it depends on the outcome of an initial public offering of shares of the corporation or a holding corporation in respect of the insurance corporation and the offering is completed before the day that is 13 months after the time of the demutualization, the time at which the offering is completed,

(C) where the entire amount of the benefit depends on the outcome of an initial public offering of shares of the corporation or a holding corporation in respect of the insurance corporation, the time at which the offering is completed,

(D) where it is reasonable to conclude that the person conferring the benefit does not have sufficient information with regard to the location of the stakeholder before the later of the times determined under clauses (A) to (C), to advise the stakeholder of the benefit, the time at which sufficient information with regard to the location of the stakeholder to so advise the stakeholder was received by that person, and

(E) the end of any other day that is acceptable to the Minister;

(i) the time at which an insurance corporation is considered to demutualize is the time at which it first issues a share of its capital stock (other than shares of its capital stock issued by it when it was a mutual company if the corporation did not cease to be a mutual company because of the issuance of those shares); and

(j) subject to paragraph (3)(b), the value of a benefit received by a stakeholder is the fair market value of the benefit at the time the stakeholder receives the benefit.

Related Provisions: 49.1 — Acquisition in satisfaction of obligation deemed not to be a disposition.

(3) Special cases — For the purposes of this section,

(a) where benefits under an insurance policy are enhanced (otherwise than by way of an amendment to which subsection 147.4(2) would, but for subparagraph 147.4(2)(a)(ii), apply) in connection with a demutualization, the value of the enhancement is deemed to be a benefit received by the policyholder and not by any other person;

(b) where premiums payable under an insurance policy to an insurance corporation are reduced in connection with a demutualization, the policyholder is deemed, as a consequence of the undertaking to reduce the premiums, to have received a benefit equal to the present value at the time of the demutualization of the additional premiums that would have been payable if the premiums had not been reduced in connection with the demutualization;

(c) the payment of a policy dividend by an insurance corporation or an undertaking of an obligation by the corporation to pay a policy dividend is considered to be in connection with the demutualization of the corporation only to the extent that

(i) the policy dividend is referred to in the demutualization proposal sent by the corporation to stakeholders,

(ii) the obligation to make the payment is contingent on stakeholder approval for the demutualization, and

(iii) the payment or undertaking cannot reasonably be considered to have been made or given, as the case may be, to ensure that policy dividends are not adversely affected by the demutualization;

(d) except for the purposes of paragraphs (c), (e) and (f), where part of a policy dividend is a conversion benefit in respect of the demutualization of an insurance corporation and part of it is not, each part of the dividend is deemed to be a policy dividend that is separate from the other part;

(e) a policy dividend includes an amount that is in lieu of payment of, or in satisfaction of, a policy dividend;

(f) the payment of a policy dividend includes the application of the policy dividend to pay a premium under an insurance policy or to repay a policy loan;

(g) where the demutualization of an insurance corporation is effected by the merger of the corporation with one or more other corporations to form one corporate entity, that entity is deemed to be the same corporation as, and a continuation of, the insurance corporation;

(h) an insurance corporation shall be considered to have become a party to an insurance policy at the time that the insurance corporation becomes liable in respect of obligations of an insurer under the policy; and

(i) notwithstanding paragraph 248(7)(a), where a cheque or other means of payment sent to an address is returned to the sender without being received by the addressee, it is deemed not to have been sent.

Related Provisions: 139.1(2)(i) — Determining time of demutualization; 87(2.2) — Amalgamation of insurers.

(4) Consequences of demutualization — Where a particular insurance corporation demutualizes,

(a) each of the income, loss, capital gain and capital loss of a taxpayer, from the disposition, alteration or dilution of the taxpayer's ownership rights in the particular corporation as a result of the demutualization, is deemed to be nil;

(b) no amount paid or payable to a stakeholder in connection with the disposition, alteration or dilution of the stakeholder's ownership rights in the particular corporation is an eligible capital expenditure;

(c) no election may be made under subsection 85(1) or (2) in respect of ownership rights in the particular corporation;

(d) where the consideration given by a person for a share of the capital stock of the particular corporation or a holding corporation in connection with the demutualization (or for particular ownership rights in a mutual holding corporation in respect of the particular corporation) includes the transfer, surrender, alteration or dilution of ownership rights in the particular corporation, the cost of the share (or the particular ownership rights) to the person is deemed to be nil;

(e) where a holding corporation in connection with the demutualization acquires, in connection with the demutualization, a share of the capital stock of the particular corporation from the particular corporation and issues a share of its own capital stock to a stakeholder as consideration for the share of the capital stock of the particular corporation, the cost to the holding corporation of the share of the capital stock of the particular corporation is deemed to be nil;

(f) where at any time a stakeholder receives a taxable conversion benefit and subsection (14) does not apply to the benefit,

(i) the corporation that conferred the benefit is deemed to have paid a dividend at that time on shares of its capital stock equal to the value of the benefit, and

(ii) subject to subsection (16), the benefit received by the stakeholder is deemed to be a dividend received by the stakeholder at that time;

(g) for the purposes of this Part, where a dividend is deemed by paragraph (f) or by paragraph (16)(i) to have been paid by a non-resident corporation, that corporation is deemed in respect of the payment of the dividend to be a corporation resident in Canada that is a taxable Canadian corporation unless any amount is claimed under section 126 in respect of tax on the dividend;

(h) for the purposes of section 70, subsection 104(4) and section 128.1, the fair market value of rights to benefits that are to be received in connection with the demutualization is, before the time of the receipt, deemed to be nil; and

(i) where a person acquires an annuity contract in respect of which, because of the application of paragraph (2)(f), no benefit is considered to have been received for the purpose of this section,

(i) the cost of the annuity contract to the person is deemed to be nil, and

(ii) section 12.2 does not apply to the annuity contract.

Related Provisions: 12(1)(j), 82(1), 90 — Inclusion in income of deemed dividend; 87(2)(j.6) — Amalgamations — continuing corporation; 139 — Mutualization proposal; 139.1(2)(j) — Value of benefit; 212(2) — Non-resident withholding tax on deemed dividend.

(5) Fair market value of ownership rights — For the purposes of section 70, subsection 104(4) and section 128.1, where an insurance corporation makes, at any time, a public announcement that it intends to seek approval for its demutualization, the fair market value of ownership rights in the corporation is deemed to be nil throughout the period that

(a) begins at that time; and

(b) ends either at the time of the demutualization or, in the event that the corporation makes at any subsequent time a public announcement that it no longer intends to demutualize, at the subsequent time.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(6) Paid-up capital — insurance corporation — Where an insurance corporation resident in Canada has demutualized, in computing the paid-up capital at any particular time in respect of a class of shares of the capital stock of the corporation,

(a) there shall be deducted the total of all amounts each of which would, but for this subsection, have been deemed by subsection 84(1) to have been paid at or before the particular time by the corporation as a dividend on a share of that class because of an increase in paid-up capital (determined without reference to this subsection) in connection with the demutualization; and

(b) there shall be added the amount, if any, by which

(i) the total of all amounts each of which is deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time

exceeds

(ii) the total of all amounts each of which would be deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time, if this Act were read without reference to this subsection.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(7) Paid-up capital — holding corporation — Where a particular corporation resident in Canada was at any time a holding corporation in connection with the demutualization of an insurance corporation, in computing the paid-up capital at any particular time in respect of a class of shares of the capital stock of the particular corporation,

(a) there shall be deducted the total of all amounts each of which is an amount by which the paid-up capital would, but for this subsection, have increased at or before the particular time as a result of the acquisition of shares of a class of the capital stock of the insurance corporation from the corporation on its demutualization; and

(b) there shall be added the amount, if any, by which

(i) the total of all amounts each of which is deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the particular corporation before the particular time

exceeds

(ii) the total of all amounts each of which would be deemed by subsection 84(3), (4) or (4.1) to be a

dividend on shares of that class paid by the particular corporation before the particular time, if this Act were read without reference to this subsection.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(8) Policy dividends — Where the payment of a policy dividend by an insurance corporation is a taxable conversion benefit,

(a) for the purposes of this Act other than this section, the policy dividend is deemed not to be a policy dividend; and

(b) no amount in respect of the policy dividend may be included, either explicitly or implicitly, in the calculation of an amount deductible by the insurer for any taxation year under paragraph 20(7)(c) or subsection 138(3).

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(9) Payment and receipt of premium — Where, in connection with the demutualization of an insurance corporation, a person would, if subsection (2) were read without reference to paragraphs (f) and (g) and paragraph (3)(a) were read without reference to the application of subsection 147.4(2), receive a particular benefit that is a specified insurance benefit,

(a) the insurance corporation that is obligated to pay benefits under the policy to which the particular benefit relates is deemed to have received a premium at the time of the demutualization in respect of that policy equal to the value of the particular benefit;

(b) for the purpose of paragraph (a), to the extent that the obligations of a particular insurance corporation under the policy were assumed by another insurance corporation before the time of the demutualization, the particular corporation is deemed not to be obligated to pay benefits under the policy; and

(c) subject to paragraph (15)(e), where the person receives the particular benefit, the person is deemed to have paid, at the time of demutualization, a premium in respect of the policy to which the benefit relates equal to the value of the particular benefit.

Related Provisions: 39.1(2)(i) — Determining time of demutualization; 139.1(2)(j) — Value of benefit.

(10) Cost of taxable conversion benefit — Where, in connection with the demutualization of an insurance corporation, a stakeholder receives a taxable conversion benefit (other than a specified insurance benefit), the stakeholder is deemed to have acquired the benefit at a cost equal to the value of the benefit.

Related Provisions: 139.1(2)(j) — Value of benefit.

(11) No shareholder benefit — Subsection 15(1) does not apply to a conversion benefit.

(12) Exclusion of benefit from RRSP and other rules — Subject to subsection (14), for the purposes of the provisions of this Act (other than paragraph (9)(c)) that relate to registered retirement savings plans, registered retirement income funds, retirement compensation arrangements, deferred profit sharing plans and superannuation or pension funds or plans, the receipt of a conversion benefit shall be considered to be neither a contribution to, nor a distribution from, such a plan, fund or arrangement.

(13) RRSP registration rules, etc. — For the purposes of this Act, paragraphs 146(2)(c.4) and 146.3(2)(g) and subsection 198(6) shall be applied without reference to any conversion benefit.

(14) Retirement benefit — A conversion benefit received because of an interest in a life insurance policy held by a trust governed by a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan or superannuation or pension fund or plan is deemed to be received under the plan or fund, as the case may be, if it is received by any person (other than the trust).

Related Provisions: 139.1(4)(j) — Deemed dividend where 139.1(12) does not apply.

(15) Employee-paid insurance — Where

(a) a stakeholder receives a conversion benefit because of the stakeholder's interest in a group insurance policy under which individuals have been insured in the course of or because of their employment,

(b) at all times before the payment of a premium described in paragraph (c), the full cost of a particular insurance coverage under the policy was borne by the individuals who were insured under the particular coverage,

(c) the stakeholder pays a premium under the policy in respect of the particular coverage or under another group insurance policy in respect of coverage that has replaced the particular coverage, and

(d) either

(i) the premium is deemed by paragraph (9)(c) to have been paid, or

(ii) it is reasonable to conclude that the purpose of the premium is to apply, for the benefit of the individuals who are insured under the particular coverage or the replacement coverage, all or part of the value of the portion of the conversion benefit that can reasonably be considered to be in respect of the particular coverage,

the following rules apply:

(e) for the purposes of paragraph 6(1)(f) and regulations made for the purposes of subsection 6(4), the premium is deemed to be an amount paid by the individuals who are insured under the particular coverage or the replacement coverage, as the case may be, and not to be an amount paid by the stakeholder, and

(f) no amount may be deducted in respect of the premium in computing the stakeholder's income.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation.

(16) Flow-through of conversion benefits to employees and others — Where

(a) a stakeholder receives a conversion benefit (in this subsection referred to as the "relevant conversion benefit") because of the interest of any person in an insurance policy,

(b) the stakeholder makes a payment of an amount (otherwise than by way of a transfer of a share that was received by the stakeholder as all or part of the relevant conversion benefit and that was not so received as a taxable conversion benefit) to a particular individual

(i) who has received benefits under the policy,

(ii) who has, or had at any time, an absolute or contingent right to receive benefits under the policy,

(iii) for whose benefit insurance coverage was provided under the policy, or

(iv) who received the amount because an individual satisfied the condition in subparagraph (i), (ii) or (iii),

(c) it is reasonable to conclude that the purpose of the payment is to distribute an amount in respect of the relevant conversion benefit to the particular individual,

(d) either

(i) the main purpose of the policy was to provide retirement benefits or insurance coverage to individuals in respect of their employment with an employer, or

(ii) all or part of the cost of insurance coverage under the policy had been borne by individuals (other than the stakeholder),

(e) subsection (14) does not apply to the relevant conversion benefit, and

(f) one of the following applies, namely,

(i) the particular individual is resident in Canada at the time of the payment, the stakeholder is a person the taxable income of which is exempt from tax under this Part and the payment would, if this section were read without reference to this subsection, be included in computing the income of the particular individual,

(ii) the payment is received before December 7, 1999 and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the relevant conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the payment,

(iii) the payment is received after December 6, 1999, the payment would, if this section were read without reference to this subsection, be included in computing the income of the particular individual and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the relevant conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the payment, or

(iv) the payment is received after December 6, 1999 and the payment would, if this section were read without reference to this subsection, not be included in computing the income of the particular individual,

the following rules apply:

(g) subject to paragraph (l), no amount is, because of the making of the payment, deductible in computing the stakeholder's income,

(h) except for the purpose of this subsection and without affecting the consequences to the particular individual of any transaction or event that occurs after the time that the payment was made, the payment is deemed not to have been received by, or made payable to, the particular individual,

(i) the corporation that conferred the relevant conversion benefit is deemed to have paid to the particular individual at the time the payment was made, and the particular individual is deemed to have received at that time, a dividend on shares of the capital stock of the corporation equal to the amount of the payment,

(j) all obligations that would, but for this subsection, be imposed by this Act or the Regulations on the corporation because of the payment of the dividend apply to the stakeholder as if the stakeholder were the corporation, and do not apply to the corporation,

(k) where the relevant conversion benefit is a taxable conversion benefit, except for the purpose of this subsection and the purposes of determining the obligations imposed by this Act or the Regulations on the corporation because of the conferral of the relevant conversion benefit, the stakeholder is deemed, to the extent of the fair market value of the payment, not to have received the relevant conversion benefit, and

(l) where the relevant conversion benefit was a share received by the stakeholder (otherwise than as a taxable conversion benefit),

(i) where the share is, at the time of the payment, capital property held by the stakeholder, the amount of the payment shall, after that time, be added in computing the adjusted cost base to the stakeholder of the share,

(ii) where subparagraph (i) does not apply and the share was capital property disposed of by the stakeholder before that time, the amount of the payment is deemed to be a capital loss of the stakeholder from the disposition of a property for the taxation year of the stakeholder in which the payment is made, and

(iii) in any other case, paragraph (g) shall not apply to the payment.

Related Provisions: 53(1)(d.01) — Addition to ACB for amount under 139.1(16)(l); 87(2)(j.6) — Amalgamations — continuing corporation; 96(3) — Election by members of partnership; 139.1(17) — Flow-through of share benefits.

(17) Flow-through of share benefits to employees and others — Where

(a) because of the interest of any person in an insurance policy, a stakeholder receives a conversion benefit (other than a taxable conversion benefit) that consists of shares of the capital stock of a corporation,

(b) the stakeholder transfers some or all of the shares at any time to a particular individual

(i) who has received benefits under the policy,

(ii) who has, or had at any time, an absolute or contingent right to receive benefits under the policy,

(iii) for whose benefit insurance coverage was provided under the policy, or

(iv) who received the shares because an individual satisfied the condition in subparagraph (i), (ii) or (iii),

(c) it is reasonable to conclude that the purpose of the transfer is to distribute all or any portion of the conversion benefit to the particular individual,

(d) either

(i) the main purpose of the policy was to provide retirement benefits or insurance coverage to individuals in respect of their employment with an employer, or

(ii) all or part of the cost of insurance coverage under the policy had been borne by individuals (other than the stakeholder),

(e) subsection (14) does not apply to the conversion benefit, and

(f) one of the following applies, namely,

(i) the particular individual is resident in Canada at the time of the transfer, the stakeholder is a person the taxable income of which is exempt from tax under this Part and the amount of the transfer would, if this section were read without reference to this subsection, be included in computing the income of the particular individual,

(ii) the transfer is made before December 7, 1999 and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the transfer,

(iii) the transfer is made after December 6, 1999, the amount of the transfer would, if this section were read without reference to this subsection, be included in computing the income of the particular individual and the stakeholder elects in writing filed with the Minister, on a day that is not more than six months after the end of the taxation year in which the stakeholder receives the conversion benefit (or a later day acceptable to the Minister), that this subsection applies in respect of the transfer, or

(iv) the transfer is made after December 6, 1999 and the amount of the transfer would, if this section were read without reference to this subsection, not be included in computing the income of the particular individual,

the following rules apply:

(g) no amount is, because of the transfer, deductible in computing the stakeholder's income,

(h) except for the purpose of this subsection and without affecting the consequences to the particular individual of any transaction or event that occurs after the time that the transfer was made, the transfer is deemed not to have been made to the particular individual nor to represent an amount payable to the particular individual, and

(i) the cost of the shares to the particular individual is deemed to be nil.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 139.1(16) — Flow-through of conversion benefits.

(18) Acquisition of control — For the purposes of subsections 10(10), 13(21.2) and (24), 14(12) and 18(15), sections 18.1 and 37, subsection 40(3.4), the definition "superficial loss" in section 54, section 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2) and 88(1.1) and (1.2), sections 111 and 127 and subsections 249(4) and 256(7), control of an insurance corporation (and each corporation controlled by it) is deemed not to be acquired solely because of the acquisition of shares of the capital stock of the insurance corporation, in connection with the demutualization of the insurance corporation, by a particular corporation that at a particular time becomes a holding corporation in connection with the demutualization where, immediately after the particular time,

(a) the particular corporation is not controlled by any person or group of persons; and

(b) 95% of the fair market value of all the assets of the particular corporation is less than the total of all amounts each of which is

(i) the amount of the particular corporation's money,

(ii) the amount of a deposit, with a financial institution, of such money standing to the credit of the particular corporation,

(iii) the fair market value of a bond, debenture, note or similar obligation that is owned by the particular corporation that had, at the time of its acquisition, a maturity date of not more than 24 months after that time, or

(iv) the fair market value of a share of the capital stock of the insurance corporation held by the particular corporation.

Related Provisions: 87(2)(j.6) — Amalgamations — continuing corporation; 256(6), (6.1) — Meaning of "controlled".

History [s. 139.1]: S. 139.1 added by 2000, c. 19, s. 38, applicable to transactions that occur after December 15, 1998 and, for the purposes of subsecs. 139.1(16) and (17), an election is deemed to have been filed on a timely basis if it is filed not more that 6 months after the end of the month in which the amending legislation is assented to.

Definitions [s. 139.1]: "adjusted cost base" — 54, 248(1); "amount", "annuity" — 248(1); "capital gain" — 39(1), 248(1); "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "controlled" — 256(6), (6.1); "conversion benefit" — 139.1(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deadline" — 139.1(1); "deferred profit sharing plan" — 147(1), 248(1); "demutualization" — 139.1(1); "disposition", "dividend" — 248(1); "eligible capital expenditure" — 14(5), 248(1); "employee", "employer", "employment" — 248(1); "holding corporation" — 139.1(1); "individual" — 248(1); "initial deadline" — 139.1(1); "insurance corporation", "insurance policy", "insurer" — 248(1); "life insurance policy" — 138(12), 248(1); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "mutual holding corporation" — 139.1(1); "non-resident" — 248(1); "ownership rights" — 139.1(1); "paid-up capital" — 89(1), 248(1); "person" — 139.1(1), 248(1); "property", "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "relevant conversion benefit" — 139.1(16)(a); "resident in Canada" — 250; "retirement compensation arrangement" — 248(1); "share" — 139.1(1), 248(1); "shareholder" — 248(1); "specified insurance benefit", "stakeholder" — 139.1(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable conversion benefit" — 139.1(1); "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

139.2 Mutual holding corporations — Where at any time a mutual holding corporation (as defined in subsection 139.1(1)) in respect of an insurance corporation distributes property to a policyholder of the insurance corporation, the mutual holding corporation is deemed to have paid, and the policyholder is deemed to have received from the mutual holding corporation, at that time a dividend on shares of the capital stock of the mutual holding corporation, equal to the fair market value of the property.

Related Provisions: 139.1 — Demutualization.

History: S. 139.2 added by 2000, c. 19, s. 38, applicable to transactions that occur after December 15, 1998.

Definitions [s. 139.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation" — 248(1); "mutual holding corporation" — 139.1(1); "property", "share" — 248(1).

140. (1) [Insurance corporation] Deductions in computing income — In computing the income for a taxation year of an insurance corporation, whether a mu-

tual corporation or a joint stock company, from carrying on an insurance business other than a life insurance business, there may be deducted every amount credited in respect of that business for the year or a preceding taxation year to a policyholder of the corporation by way of a policy dividend, refund of premiums or refund of premium deposits if the amount was, during the year or within 12 months thereafter,

(a) paid or unconditionally credited to the policyholder; or

(b) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the corporation.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer; 149(10)(a.1) — Exempt corporations; Reg. 1401(3)J — Policy reserves — non-life insurance business.

(2) Inclusion in computing income — There shall be included in computing the income of an insurance corporation, whether a mutual corporation or a joint stock company, from carrying on an insurance business for its first taxation year that commences after June 17, 1987 and ends after 1987 (in this subsection referred to as its "1988 taxation year") the amount, if any, by which

(a) the total of all amounts each of which is an amount deducted by the corporation in computing its income for a taxation year ending before its 1988 taxation year pursuant to paragraph 140(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or pursuant to that paragraph by reason of subparagraph 138(3)(a)(v) of that Act as it read in respect of those taxation years in respect of amounts credited to the account of the policyholder on terms that the policyholder is entitled to payment thereof on or before the expiration or termination of the policy

exceeds

(b) the total of all amounts each of which is an amount paid or unconditionally credited to a policyholder or applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the corporation before the corporation's 1988 taxation year in respect of the amounts credited to the account of the policyholder referred to in paragraph (a).

Related Provisions [subsec. 140(2)]: 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of insurance corporations; 138(3) — Deductions allowed in computing income; 138(11.5)(k) — Transfer of business by non-resident insurer.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

History [s. 140]: Subsec. 140(1) amended by substituting "policy dividend" for "dividend", by 2000, c. 19, s. 39, applicable after December 15, 1998.

Pre-RSC History [s. 140]: S. 140 substituted by 1988, c. 55, s. 127, applicable to taxation years commencing after June 17, 1987 that end after 1987. S. 140 formerly read:

140. Deduction in computing income — In computing the income for a taxation year of an insurance corporation, whether a mutual corporation or a joint stock company, from carrying on an insurance business other than a life insurance business, there may be deducted every amount credited in respect of that business for the year to a policyholder of the corporation by way of dividend, refund of premiums or refund of premium deposits if the amount was, during the year or within 12 months thereafter,

(a) paid to the policyholder,

(b) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the corporation, or

(c) credited to the account of the policyholder on terms that he is entitled to payment thereof on or before expiry or termination of the policy.

Definitions [s. 140]: "amount", "business" — 248(1); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation", "life insurance business", "policy dividend" — 139.1(8)(a), 248(1); "taxation year" — 249.

141. (1) Definitions — In this section, "demutualization" and "holding corporation" have the same meaning as in subsection 139.1(1).

(2) Life insurance corporation deemed to be public corporation — Notwithstanding any other provision of this Act, a life insurance corporation that is resident in Canada is deemed to be a public corporation.

(3) Holding corporation deemed to be public corporation — A corporation resident in Canada that is a holding corporation because of its acquisition of shares in connection with the demutualization of a life insurance corporation resident in Canada is deemed to be a public corporation at each time in the specified period of the holding corporation at which the holding corporation would have satisfied conditions prescribed under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) if the words "shareholders, the dispersal of ownership of its shares and the public trading of its shares" in that subparagraph were read as "shareholders and the dispersal of ownership of its shares".

Related Provisions: 141(4) — Meaning of "specified period"; 141(5) — Shares of holding corporation deemed not to be taxable Canadian property.

(4) Specified period — For the purpose of subsection (3), the specified period of a corporation

(a) begins at the time the corporation becomes a holding corporation; and

(b) ends at the first time the corporation is a public corporation because of any provision of this Act other than subsection (3).

(5) Exclusion from taxable Canadian property — [To be replaced by amendment below — ed.] For the purpose of subparagraph 115(1)(b)(iv), a share of the capital stock of a corporation is deemed to be listed at any time on a stock exchange prescribed for the purpose of that subparagraph where

(a) the corporation is

(i) a life insurance corporation resident in Canada that has demutualized and that, at that time, would have satisfied conditions prescribed under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) if the words "shareholders, the dispersal of ownership of its shares and the public trading of its shares" in that subparagraph were read as "shareholders and the dispersal of ownership of its shares", or

(ii) a holding corporation that is deemed by subsection (3) to be a public corporation at that time;

(b) no share of the capital stock of the corporation is listed on any stock exchange at that time; and

(c) that time is not later than six months after the time of demutualization of

(i) the corporation, where the corporation is a life insurance corporation, and

(ii) in any other case, the life insurance corporation in respect of which the corporation is a holding corporation.

Proposed Amendment — 141(5)

(5) Exclusion from taxable Canadian property — For the purpose of paragraph (d) of the definition "taxable Canadian property" in subsection 248(1), a share of the capital stock of a corporation is deemed to be listed at any time on a stock exchange prescribed for the purpose of that definition where

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 86, will amend the opening words of subsec. 141(5) to read as above, applicable after December 15, 1998.

Technical Notes: Under amendments contained in the 1999 budget bill (Bill C-25), new subsection 141(5) of the Act provides for shares issued by a life insurance corporation (or a holding corporation in respect of the life insurance corporation) to be considered, for the purposes of subparagraph 115(1)(b)(iv) of the Act, as listed on a stock exchange for up to six months after the demutualization of the life insurance corporation. As a consequence, such a share is not treated as taxable Canadian property during that period. This treatment accommodates non-resident shareholders wishing to dispose of such shares without Canadian income tax consequences before the shares become listed on a prescribed stock exchange.

Because of the relocation of the definition "taxable Canadian property" from subsection 115(1) to subsection 248(1) of the Act, existing subparagraph 115(1)(b)(iv) is effectively being replaced by paragraph (d) of the definition "taxable Canadian property" in subsection 248(1).

This additional amendment to subsection 141(5) would simply change the reference to subparagraph 115(1)(b)(iv) to a reference to paragraph (d) of the definition "taxable Canadian property" in subsection 248(1). This amendment is intended to apply after December 15, 1998, in order to be consistent with the 1999 budget bill.

Related Provisions: 138(1) — Insurance corporations; 141.1 — Insurance corporation deemed not to be private corporation; 142 — Taxable capital gains of life insurer.

History: S. 141 amended by 2000, c. 19, s. 40, applicable after December 15, 1998. It formerly read:

> 141. Life insurance corporation deemed to be public corporation — Notwithstanding any other provision of this Act, a life insurance corporation that is resident in Canada shall be deemed to be a public corporation.

Definitions [s. 141]: "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "demutualization" — 139.1(1), 141(1); "dividend" — 248(1); "holding corporation" — 139.1(1), 141(1); "insurance corporation", "life insurance corporation" — 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — 248(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "share" — 248(1); "specified period" — 141(4); "taxable Canadian property" — 248(1).

141.1 [Insurance corporation] deemed not to be a private corporation — Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would, but for this section, be a private corporation is deemed not to be a private corporation for the purposes of subsection 55(5), the definition "capital dividend account" in subsection 89(1) and sections 123.3 and 129.

Related Provisions: 141(2) — Life insurance corporation deemed to be public corporation.

History: S. 141.1 amended by 1998, c. 19, s. 162, applicable to taxation years that end after June 1995. S. 141.1 formerly read:

> 141.1 Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would, but for this section, be a private corporation shall be deemed not to be a private corporation for the purposes of subsection 55(5), the definition "capital dividend account" in subsection 89(1) and section 129 of this Act and paragraph 89(1)(b.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Pre-RSC History: S. 141.1 substituted by 1980-81-82-83, c. 140, s. 97, applicable to 1981 *et seq.* S. 141.1 formerly read:

> 141.1 Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would but for this section be a private corporation shall be deemed not to be a private corporation except for the purposes of section 125 and Part VI.

S. 141.1 added by 1974-75-76, c. 26, subsec. 96(1), applicable to the 1974 and subsequent taxation years except that

> (a) where the aggregate of the taxes under Part IV of the said Act payable for the 1972 and 1973 taxation years by a corporation referred to in section 141.1 of the said Act as enacted by this section exceeds the aggregate of its dividend refunds under section 129 of that Act for each of those taxation years, the Minister shall, upon application in writing by the corporation at any time after mailing the corporation's notice of assessment for its 1973 taxation year, refund the excess;
>
> (b) section 129 of the said Act shall continue to apply to a corporation referred to in section 141.1 of the said Act as enacted by this section as though
>
> (i) it continued to be a private corporation,
>
> (ii) its Canadian investment income and foreign investment income were nil for its 1974 and subsequent taxation years, and
>
> (iii) the corporation's dividend refund for its 1973 taxation year were equal to the aggregate of
>
> (A) its dividend refund for that year otherwise determined, and
>
> (B) the refund, if any, referred to in paragraph (a),
>
> (c) subsection 83(2) of the said Act shall continue to apply to a corporation referred to in section 141.1 of the said Act as enacted by this section as though
>
> (i) it continued to be a private corporation, and
>
> (ii) the period referred to in subparagraph 89(1)(b)(i) of the said Act commenced at the time therein referred to but ended at the end of the corporation's 1973 taxation year, and
>
> (d) where a corporation has deducted in its 1972 or 1973 taxation year non-capital losses from dividends otherwise taxable under Part IV of the said Act, the corporation shall, for the purposes of subsection 111(1) of that Act, be deemed not to have claimed any amount under paragraph 186(1)(c) or (d) for its 1972 or 1973 taxation year.

Selected Cases [s. 141.1]: *Groupe Commerce, Cie D'assurances v. R.*, [1999] 4 C.T.C. 54 (FCA); aff'g [1996] 3 C.T.C. 2066 (TCC) (No refundable dividend tax available to insurance companies).

Definitions [s. 141.1]: "insurance corporation", "life insurance corporation" — 248(1); "private corporation" — 89(1), 248(1).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

142. [Repealed]

History: S. 142 repealed by 1997, c. 25, s. 40, applicable to 1997 *et seq.* S. 142 formerly read:

> 142. Taxable capital gains etc. [of life insurer] — Notwithstanding any other provision of this Act, where in a taxation year a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada, such of its taxable capital gains for the year and allowable capital losses for the year
>
> (a) as were from dispositions of property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business, and
>
> (b) as were not from dispositions of property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada,
>
> shall not be included in computing its income for the year.

That portion of s. 142 preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 115, applicable to 1990 *et seq.* That portion formerly read:

> 142. Notwithstanding any other provision of this Act, where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance busi-

ness in Canada and in a country other than Canada, such of its taxable capital gains for the year and allowable capital losses for the year

Pre-RSC History: S. 142 substituted by 1977-78, c. 1, subsec. 70(1), applicable to 1978 *et seq.* S. 142 formerly read:

142. (1) Election re taxable capital gains, etc — Notwithstanding any other provision of this Act, where in a taxation year an insurer (other than a resident of Canada that does not carry on a life insurance business) carried on an insurance business in a country other than Canada,

(a) if the insurer has made an election in respect of the year under subsection 138(9), such of its taxable capital gains for the year and allowable capital losses for the year as were from dispositions of property other than property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and

(b) in any other case, such of its taxable capital gains for the year and allowable capital losses for the year as are prescribed not to relate to an insurance business carried on by it in Canada,

shall not be included in computing its income for the year.

(2) Portion deemed taxable capital gain, etc., of policyholder — Such portion of any taxable capital gain for a taxation year of a life insurance corporation from the disposition of property included in a segregated fund (within the meaning assigned by subsection 148(1))

(a) as would, but for this subsection, have been included in computing the income of the corporation for the year, and

(b) as was allocated in the year by the corporation to a particular policyholder,

shall be deemed not to have been a taxable capital gain of the corporation for the year from the disposition thereof and, except where the policy was issued or effected as a registered retirement savings plan, or is issued pursuant to a registered pension fund or plan, shall be deemed to be a taxable capital gain of the particular policyholder for the year from the disposition of a capital property.

(3) Determination of taxable capital gains, etc — Where in a taxation year a life insurer carried on an insurance business in Canada and elsewhere, and has not made an election under subsection 138(9) in respect of the year, for the purpose of determining its taxable capital gains and allowable capital losses for the year,

(a) the lesser of

(i) the amount, if any, in respect of a particular security that is a specified Canadian asset, by which,

(A) the amount, if any, that would have been required by paragraph 138(4)(b) or (c), as the case may be, to be included in computing the insurer's income for the year in respect of the security if the insurer had made such an election and the security had been a Canada security

exceeds

(B) the amount, if any, in respect of the security that would have been required by paragraph 138(4)(b) or (c), as the case may be, to be included in computing the insurer's income for the year in respect of the security if the insurer's Canadian investment fund for the taxation year and the value for the taxation year of the insurer's specified Canadian assets were equal, and

(ii) the proportion of the amount determined under subparagraph (i) that the insurer's Canadian investment fund for the taxation year is of the value for the taxation year of the insurer's specified Canadian assets,

shall be deemed to be a gain for the year from the disposition in the year of the security determined under subdivision c of Division B of this Part, and

(b) the amount that would be determined under paragraph (a) in respect of a particular security, if the references therein to "required by paragraph 138(4)(b) to be included" were read as a reference to "deductible under paragraph 138(3)(b)", and the reference to "required by paragraph 138(4)(c) to be included" were read as a reference to "deductible under paragraph 138(3)(d)", shall be deemed to be a loss for the year from the disposition in the year of the security determined under subdivision c of Division B of this Part.

(4) Meaning of certain expressions — For the purposes of subsection (3), the expression "Canada security" has the meaning assigned by subsection138(12), and the expressions "Canadian investment fund for a taxation year", "security", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed therefor.

Subsecs. 142(3), (4) added by 1976-77, c. 4, s. 54, applicable to 1972 *et seq.*

Subsec. 142(2) substituted by 1973-74, c. 14, s. 48, applicable to 1972 *et seq.*

142.1 [Repealed]

Origin of s. 142.1: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 138(12)).

History: S. 142.1 repealed by 1997, c. 25, s. 40, applicable to 1997 *et seq.* S. 142.1 formerly read:

142.1 Application of subsec. 138(12) — The definitions in subsection 138(12) apply to section 142.

Financial Institutions

Interpretation

142.2 (1) Definitions — In this section and sections 142.3 to 142.6,

"financial institution" at any time means

(a) a corporation that is, at that time,

(i) a corporation referred to in any of paragraphs (a) to (e.1) of the definition "restricted financial institution" in subsection 248(1),

(ii) an investment dealer, or

(iii) a corporation controlled by one or more persons or partnerships each of which is a financial institution at that time, other than a corporation the control of which was acquired by reason of the default of a debtor where it is reasonable to consider that control is being retained solely for the purpose of minimizing any losses in respect of the debtor's default, and

(b) a trust or partnership more than 50% of the fair market value of all interests in which are held at that time by one or more financial institutions,

but does not include

(c) a corporation that is, at that time,

(i) an investment corporation,

(ii) a mortgage investment corporation,

(iii) a mutual fund corporation, or

(iv) a deposit insurance corporation (as defined in subsection 137.1(5)),

(d) a trust that is a mutual fund trust at that time, nor

(e) a prescribed person or partnership;

Related Provisions: 20(1)(l)(ii) — Reserve for doubtful debts; 20(1)(p)(ii) — Deduction for bad debts; 85(1.4), 87(1.5) — Definition applies to other provisions; 87(2)(e.3), (e.4) — Amalgamations — continuing corporation; 94.1 — Foreign investment entities — accrual rules; 94.2 — Foreign investment entities — mark-to-market; 112(6)(c) — Definition applies to other provisions; 142.5 — Mark-to-market rules applicable to financial institution; 142.6(1) — Becoming or ceasing to be a financial institution; 248(1)"cost amount" — Definition applies to other provisions; 256(6)–(9) — Whether control acquired; Reg. 8103(4) — Mark-to-market — transition inclusion on ceasing to be a financial institution; Reg. 9204(2) — Residual portion of specified debt obligation on ceasing to be a financial institution.

History: Subpara. (a)(i) of the definition "financial institution" in subsec. 142.2(1) amended by 1999, c. 22, s. 57, applicable to taxation years that begin after 1998. It formerly read:

(i) a corporation referred to in any of paragraphs (a) to (e) of the definition "restricted financial institution" in subsection 248(1),

Regulations: 8604 (prescribed financial institutions); 9000 (prescribed person for para. (e) — segregated fund).

I.T. Technical News: No. 14 (reporting of derivative income by mutual funds).

"investment dealer" at any time means a corporation that is, at that time, a registered securities dealer;

Related Provisions: 142.2(1)"financial institution" — Investment dealer is a financial institution; 142.2(1)"mark-to-market property"(c) — debt held by investment dealer subject to mark-to-market rules.

"mark-to-market property" of a taxpayer for a taxation year means property held by the taxpayer in the year that is

(a) a share,

(b) where the taxpayer is not an investment dealer, a specified debt obligation that

(i) was carried at fair market value in the taxpayer's financial statements

(A) for the year, where the taxpayer held the obligation at the end of the year, and

(B) for each preceding taxation year that ended after the taxpayer acquired the obligation, or

(ii) was acquired and disposed of in the year, where it is reasonable to expect that the obligation would have been carried in the taxpayer's financial statements for the year at fair market value if the taxpayer had not disposed of the obligation,

other than a specified debt obligation of the taxpayer that was (or would have been) carried at fair market value

(iii) solely because its fair market value was less than its cost to the taxpayer, or

(iv) because of a default of the debtor, and

(c) where the taxpayer is an investment dealer, a specified debt obligation,

but does not include

(d) a share of a corporation in which the taxpayer has a significant interest at any time in the year, nor

(e) a prescribed property;

Related Provisions: 85(1.4), 87(1.5) — Definition applies to other provisions; 87(2)(e.4), (e.5) — Amalgamations — continuing corporation; 88(1)(h) — Windup — continuing corporation; 94.1(1)"exempt interest"(c) — Mark-to-market property excluded from foreign investment entity accrual rules; 112(6)(c) — Definition applies to other provisions; 136(1) — Cooperative not private corporation — exception; 138(11.5)(k.2) — Transfer of business by non-resident insurer; 142.2(2), (3), (5) — Significant interest; 142.3(3) — Mark-to-market property not subject to rules re income from specified debt obligations; 142.5 — Mark-to-market rules; 248(1)"cost amount" — Definition applies to other provisions; 248(1)"cost amount"(c.1) — Cost amount of mark-to-market property; Reg. 6209(b)(i) — Prescribed securities for lending assets.

Regulations: 9001(2), 9002 (prescribed property for para. (e)).

"specified debt obligation" of a taxpayer means the interest held by the taxpayer in

(a) a loan, bond, debenture, mortgage, note, agreement of sale or any other similar indebtedness, or

(b) a debt obligation, where the taxpayer purchased the interest,

other than an interest in

(c) an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property, or

(d) an instrument issued by or made with a person to whom the taxpayer is related or with whom the taxpayer does not otherwise deal at arm's length, or in which the taxpayer has a significant interest.

Related Provisions: 85(1.4), 87(1.5) — Definition applies to other provisions; 87(2)(e.3) — Amalgamation of holder of obligation; 138(11.5)(k.1) — Definition applies to other provisions; 142.2(1)"mark-to-market property"(b), (c) — Mark-to-market rules for financial institutions; 142.2(2), (3) — Meaning of "significant interest"; 142.3(1) — Income from specified debt obligations; 142.4 — Disposition of specified debt obligation; 142.5 — Mark-to-market rules for financial institutions; 248(1)"cost amount" — Definition applies to other provisions; 248(1)"cost amount"(d.2) — Cost amount of specified debt obligation; 248(1) — Definition of "lending asset"; Reg. 6209(b)(ii) — Prescribed securities for lending assets.

History: The portion of the definition "specified debt obligation" in subsec. 142.2(1) after para. (b) amended by 1998, c. 19, s. 163, applicable to taxation years that end after February 22, 1994. The portion formerly read:

other than an interest in an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property.

For earlier history see at end of s. 142.2.

Regulations: 9004 (prescribed property).

(2) Significant interest — For the purpose of subsection (5) and the definition "mark-to-market property" in subsection (1), a taxpayer has a significant interest in a corporation at any time if

(a) the taxpayer is related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the corporation at that time; or

(b) the taxpayer holds, at that time,

(i) shares of the corporation that give the taxpayer 10% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) shares of the corporation having a fair market value of 10% or more of the fair market value of all the issued shares of the corporation.

Related Provisions: 142.2(3) — Rules for determining significant interest; 142.2(4) — Extended meaning of "related".

(3) Rules re significant interest — For the purpose of determining under subsection (2) whether a taxpayer has a significant interest in a corporation at any time,

(a) the taxpayer shall be deemed to hold each share that is held at that time by a person or partnership to whom the taxpayer is related (otherwise than because of a right referred to in paragraph 251(5)(b));

(b) a share of the corporation acquired by the taxpayer by reason of the default of a debtor shall be disregarded where it is reasonable to consider that the share is being retained for the purpose of minimizing any losses in respect of the debtor's default; and

(c) a share of the corporation that is prescribed in respect of the taxpayer shall be disregarded.

Related Provisions: 142.2(4) — Extended meaning of "related".

Regulations: 9003 (prescribed share for 142.2(3)(c)).

(4) Extension of meaning of "related" — For the purposes of this subsection and subsections (2) and (3), a person or partnership shall be deemed to be related to a

person or partnership where they would be related if, for the purpose of section 251,

(a) every partnership and trust were considered to be a corporation;

(b) subject to paragraph (c), all decisions relating to the conduct of a trust were made by majority vote of the beneficiaries of the trust, with each beneficiary having, at any time, a number of votes equal to the number determined by the formula

$$100 \times \frac{A}{B}$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the total of all amounts each of which is the fair market value at that time of a beneficial interest in the trust; and

(c) where the amount that would be determined for B in paragraph (b) in respect of a trust is nil, the trust were considered not to be controlled by any person, partnership or group each member of which is a person or partnership.

(5) Significant interest — transition — For the purpose of the definition "mark-to-market property" in subsection (1), where

(a) on October 31, 1994, a taxpayer whose 1994 taxation year ends after October 30, 1994 held a share of a corporation in which the taxpayer did not have a significant interest at any time in the year, and

(b) at any time after the end of the year and before May 1995, the taxpayer has a significant interest in the corporation,

the taxpayer has a significant interest in the corporation in the year and in any subsequent taxation year ending before the earliest time referred to in paragraph (b).

Related Provisions: 142.2(2), (3) — Significant interest.

History [s. 142.2]: S. 142.2 added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Definitions [s. 142.2]: "acquired" — 256(7)–(9); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 142.2(1); "fiscal period" — 249(2)(b), 249.1; "income bond", "income debenture", "indexed", "investment corporation" — 130(3)(a), 248(1); "investment dealer" — 142.2(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "person", "prescribed", "property", "registered securities dealer" — 248(1); "related" — 142.2(4), 251(2); "share", "shareholder" — 248(1); "significant interest" — 142.2(2), (3); "small business bond" — 15.2(3), 248(1); "small business development bond" — 15.1(3), 248(1); "specified debt obligation" — 142.2(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1).

Income from Specified Debt Obligations

142.3 (1) Amounts to be included and deducted — Subject to subsections (3) and (4), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

(a) there shall be included in computing the income of the taxpayer for the year the amount, if any, prescribed in respect of the obligation;

(b) there shall be deducted in computing the income of the taxpayer for the year the amount, if any, prescribed in respect of the obligation; and

(c) except as provided by this section, paragraphs 12(1)(d) and (i) and 20(1)(l) and (p) and section 142.4, no amount shall be included or deducted in respect of payments under the obligation (other than fees and similar amounts) in computing the income of the taxpayer for the year.

Related Provisions: 87(2)(e.3) — Amalgamations — continuing corporation; 138(10)(a) — Application to insurance corporation; 138(12)"gross investment revenue"E(a), 138(12)"gross investment revenue"G(b) — Gross investment revenue of insurer; 142.3(3) — Exception for certain obligations; 142.3(4) — Impaired specified debt obligations; 142.4(1)"tax basis"(b), (i) — Disposition of specified debt obligation by financial institution; 142.4(9) — Disposition of part of obligation.

Regulations: 9101 (prescribed amounts).

(2) Failure to report accrued amounts — Subject to subsection (3), where

(a) a taxpayer holds a specified debt obligation at any time in a particular taxation year in which the taxpayer is a financial institution, and

(b) all or part of an amount required by paragraph (1)(a) or subsection 12(3) to be included in respect of the obligation in computing the taxpayer's income for a preceding taxation year was not so included,

that part of the amount shall be included in computing the taxpayer's income for the particular year, to the extent that it was not included in computing the taxpayer's income for a preceding taxation year.

Related Provisions: 142.3(3) — Exception for certain obligations; 142.4(1)"tax basis"(b) — Disposition of specified debt obligation by financial institution.

(3) Exception for certain obligations — Subsections (1) and (2) do not apply for a taxation year in respect of a taxpayer's specified debt obligation that is

(a) a mark-to-market property for the year; or

(b) an indexed debt obligation, other than a prescribed obligation.

(4) Impaired specified debt obligations — Subsection (1) does not apply to a taxpayer in respect of a specified debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(l)(ii) in computing the taxpayer's income for the year.

History [s. 142.3]: The opening words of subsec. 142.3(1) amended, subsec. 142.3(4) added, by 1998, c. 19, subsecs. 164(2), (5), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that ended after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b) of the said c. 19 (see under 20(1)(l)).

The opening words formerly read:

(1) Subject to subsection (3), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

The opening words of subsec. 142.3(1), para. 142.3(1)(c), subsec. 142.3(2) added, former subsec. (2) renumbered as (3) and amended, by 1998, c. 19, subsecs. 164(1), (3), (4), applicable to taxation years that end after February 22, 1994, except that the amendments do not apply to debt obligations disposed of before February 23, 1994. The opening words, para. (c), and subsec. 142.3(2) formerly read:

(1) Subject to subsection (2), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

. . . . .

(c) except as provided by this subsection, paragraphs 12(1)(d) and (i) and 20(1)(l) and (p) and section 142.4, no amount shall be included or deducted in respect of payments under the obli-

gation (other than fees and similar amounts) in computing the income of the taxpayer for the year.

. . . . .

(2) Exception for certain obligations — Subsection (1) does not apply for a taxation year in respect of a specified debt obligation of a taxpayer that is

(a) a mark-to-market property for the year; or

(b) an indexed debt obligation, other than a prescribed obligation.

S. 142.3 added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994, except that it not apply to debt obligations disposed of before February 23, 1994.

Definitions [s. 142.3]: "amount" — 248(1); "financial institution", "investment dealer", "mark-to-market property" — 142.2(1); "prescribed" — 248(1); "specified debt obligation" — 142.2(1); "taxation year" — 249; "taxpayer" — 248(1).

Disposition of Specified Debt Obligations

142.4 (1) Definitions — In this section,

"tax basis" of a specified debt obligation at any time to a taxpayer means the amount, if any, by which the total of all amounts each of which is

(a) the cost of the obligation to the taxpayer,

(b) an amount included under subsection 12(3) or 16(2) or (3), paragraph 142.3(1)(a) or subsection 142.3(2) in respect of the obligation in computing the taxpayer's income for a taxation year that began before that time,

(c) subject to subsection 138(13), where the taxpayer acquired the obligation in a taxation year ending before February 23, 1994, the part of the amount, if any, by which

(i) the principal amount of the obligation at the time it was acquired

exceeds

(ii) the cost to the taxpayer of the obligation

that was included in computing the taxpayer's income for a taxation year ending before February 23, 1994,

(d) subject to subsection 138(13), where the taxpayer is a life insurer, an amount in respect of the obligation that was deemed by paragraph 142(3)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a gain for a taxation year ending before 1978,

(e) where the obligation is an indexed debt obligation, an amount determined under subparagraph 16(6)(a)(i) in respect of the obligation and included in computing the income of the taxpayer for a taxation year beginning before that time,

(f) an amount in respect of the obligation that was included in computing the taxpayer's income for a taxation year ending at or before that time in respect of changes in the value of the obligation attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency, other than an amount included under paragraph 142.3(1)(a),

(g) an amount in respect of the obligation that was included under paragraph 12(1)(i) in computing the taxpayer's income for a taxation year beginning before that time, or

(h) where the obligation was a capital property of the taxpayer on February 22, 1994, an amount required by paragraph 53(1)(f) or (f.1) to be added in computing the adjusted cost base of the obligation to the taxpayer on that day

exceeds the total of all amounts each of which is

(i) an amount deducted under paragraph 142.3(1)(b) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

(j) the amount of a payment received by the taxpayer under the obligation at or before that time, other than

(i) a fee or similar payment, and

(ii) proceeds of disposition of the obligation,

(k) subject to subsection 138(13), where the taxpayer acquired the obligation in a taxation year ending before February 23, 1994, the part of the amount, if any, by which

(i) the cost to the taxpayer of the obligation

exceeds

(ii) the principal amount of the obligation at the time it was acquired

that was deducted in computing the taxpayer's income for a taxation year ending before February 23, 1994,

(l) subject to subsection 138(13), where the taxpayer is a life insurer, an amount in respect of the obligation that was deemed by paragraph 142(3)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a loss for a taxation year ending before 1978,

(m) an amount that was deducted under subsection 20(14) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

(n) where the obligation is an indexed debt obligation, an amount determined under subparagraph 16(6)(a)(ii) in respect of the obligation and deducted in computing the income of the taxpayer for a taxation year beginning before that time,

(o) an amount in respect of the obligation that was deducted in computing the taxpayer's income for a taxation year ending at or before that time in respect of changes in the value of the obligation attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency, other than an amount deducted under paragraph 142.3(1)(b),

(p) an amount in respect of the obligation that was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending at or before that time, or

(q) where the obligation was a capital property of the taxpayer on February 22, 1994, an amount required by paragraph 53(2)(b.2) or (g) to be deducted in computing the adjusted cost base of the obligation to the taxpayer on that day;

Related Provisions: 138(13) — Variation in tax basis of certain insurers; 248(1)"cost amount"(d.2) — Cost amount of specified debt obligation is tax basis.

History: Paras. (b) and (j) of the definition "tax basis" in subsec. 142.4(1) amended by 1998, c. 19, subsecs. 165(1), (2), applicable to taxation years that end after February 22, 1994. Paras. (b) and (j) formerly read:

(b) an amount included under subsection 12(3) or 16(2) or (3) or paragraph 142.3(1)(a) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

. . . . .

(j) the amount of a payment (other than proceeds of disposition of the obligation) received by the taxpayer under the obligation at or before that time in respect of an amount included by any of paragraphs (a) to (f) in determining the tax basis of the obligation to the taxpayer at that time,

Subsec. 142.4(1)"tax basis" added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

"transition amount" of a taxpayer in respect of the disposition of a specified debt obligation has the meaning assigned by regulation.

Related Provisions: 142.4(7)A — Current amount based on transition amount.

Regulations: 9201 (transition amount).

(2) Scope of section — This section applies to the disposition of a specified debt obligation by a taxpayer that is a financial institution, except that this section does not apply to the disposition of a specified debt obligation that is a mark-to-market property for the taxation year in which the disposition occurs.

Related Provisions: 87(2)(e.3) — Amalgamations — continuing corporation; 138(10)(b) — Application to insurance corporation; 142.3(1)(c) — Amount deductible in respect of specified debt obligation; 142.4(9) — Disposition of part of obligation.

(3) Rules applicable to disposition — Where a taxpayer has disposed of a specified debt obligation after February 22, 1994,

(a) except as provided by paragraph 79.1(7)(d) or this section, no amount shall be included or deducted in respect of the disposition in computing the taxpayer's income; and

(b) except where the obligation is an indexed debt obligation (other than a prescribed obligation), paragraph 20(14)(a) shall not apply in respect of the disposition.

Related Provisions: 142.4(2) — Scope of section.

History: Para. 142.4(3)(a) amended by 1998, c. 19, subsec. 165(3), applicable to taxation years that end after February 22, 1994. Para. 142.4(3)(a) formerly read:

(a) except as provided by this section, no amount shall be included or deducted in respect of the disposition in computing the income of the taxpayer; and

Subsec. 142.4(3) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(4) Inclusions and deductions re disposition — Subject to subsection (5), where after 1994 a taxpayer disposes of a specified debt obligation in a taxation year,

(a) where the transition amount in respect of the disposition of the obligation is positive, it shall be included in computing the income of the taxpayer for the year;

(b) where the transition amount in respect of the disposition of the obligation is negative, the absolute value of the transition amount shall be deducted in computing the income of the taxpayer for the year;

(c) where the taxpayer has a gain from the disposition of the obligation,

(i) the current amount of the gain shall be included in computing the income of the taxpayer for the year, and

(ii) there shall be included in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the gain; and

(d) where the taxpayer has a loss from the disposition of the obligation,

(i) the current amount of the loss shall be deducted in computing the taxpayer's income for the year, and

(ii) there shall be deducted in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the loss.

Related Provisions: 39(1)(a)(ii.2) — No capital gain on disposition; 87(2)(g.2) — Amalgamations — continuing corporation; 142.4(2) — Scope of section; 142.4(5) — Where subsec. (4) does not apply; 142.4(7) — Current amount; 142.4(8) — Residual portion; 142.4(9) — Disposition of part of obligation; 142.4(11) — Payments received on or after disposition; Reg. 2405(3)"gross Canadian life investment income"(d.1), (i.1) — Inclusion in/deduction from life insurer's income; Reg. 2411(4.1) — Inclusion in insurer's net investment revenue.

History: Subsec. 142.4(4) amended by 1998, c. 19, subsec. 165(4), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(4) formerly read:

(4) Subject to subsection (5), where after 1994 a taxpayer has, in a taxation year, disposed of a specified debt obligation,

(a) where the current amount in respect of the disposition of the obligation is positive, it shall be included in computing the income of the taxpayer for the year;

(b) where the current amount in respect of the disposition of the obligation is negative, it shall be deducted in computing the income of the taxpayer for the year;

(c) where the taxpayer has a gain from the disposition of the obligation, there shall be included in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the gain; and

(d) where the taxpayer has a loss from the disposition of the obligation, there shall be deducted in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the loss.

Subsec. 142.4(4) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Regulations: 9203, 9204 (prescribed rules — residual portion).

(5) Gain or loss not amortized — Where after February 22, 1994 a taxpayer disposes of a specified debt obligation in a taxation year, and

(a) the obligation is

(i) an indexed debt obligation (other than a prescribed obligation), or

(ii) a debt obligation prescribed in respect of the taxpayer,

(b) the disposition occurred

(i) before 1995,

(ii) after 1994 in connection with the transfer of all or part of a business of the taxpayer to a person or partnership, or

(iii) because of paragraph 142.6(1)(c), or

(c) in the case of a taxpayer other than a life insurance corporation,

(i) the disposition occurred before 1996, and

(ii) the taxpayer elects in writing, filed with the Minister before July 1997, to have this paragraph apply,

the following rules apply:

(d) subsection (4) does not apply to the disposition,

(e) there shall be included in computing the taxpayer's income for the year the amount, if any, by which the

taxpayer's proceeds of disposition exceed the tax basis of the obligation to the taxpayer immediately before the disposition, and

(f) there shall be deducted in computing the taxpayer's income for the year the amount, if any, by which the tax basis of the obligation to the taxpayer immediately before the disposition exceeds the taxpayer's proceeds of disposition.

Related Provisions: 39(1)(a)(ii.2) — No capital gain on disposition; 142.4(2) — Scope of section; Reg. 2411(4)A(c.1), 2411(4)B(a.1) — Inclusion in insurer's net investment revenue.

History: Subsec. 142.4(5) amended by 1998, c. 19, subsec. 165(4), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(5) formerly read:

(5) Where a taxpayer has, in a taxation year and after February 22, 1994, disposed of a specified debt obligation, and either

(a) the obligation is

(i) an indexed debt obligation (other than a prescribed obligation), or

(ii) a debt obligation prescribed in respect of the taxpayer, or

(b) the disposition occurred

(i) before 1995,

(ii) after 1994 in connection with the transfer of all or part of a business of the taxpayer to a person or partnership, or

(iii) because of paragraph 142.6(1)(c),

the following rules apply:

(c) subsection (4) does not apply to the disposition,

(d) where the taxpayer has a gain from the disposition of the obligation, the gain shall be included in computing the income of the taxpayer for the year, and

(e) where the taxpayer has a loss from the disposition of the obligation, the loss shall be deducted in computing the income of the taxpayer for the year.

Subsec. 142.4(5) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Regulations: 9202(2), (4), (5) (debt obligations prescribed for 142.2(5)(a)(ii)).

(6) Gain or loss from disposition of obligation — For the purposes of this section,

(a) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is positive, that amount is the taxpayer's gain from the disposition of the obligation;

(b) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is negative, the absolute value of that amount is the taxpayer's loss from the disposition of the obligation; and

(c) the amount determined under this paragraph in respect of the disposition of a specified debt obligation by a taxpayer is the positive or negative amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's proceeds of disposition,

B is the tax basis of the obligation to the taxpayer immediately before the time of disposition, and

C is the taxpayer's transition amount in respect of the disposition.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Para. 142.4(6)(b) and the description of C in para. 142.4(6)(c) amended by 1998, c. 19, subsec. 165(5), (6), applicable to taxation years that end after February 22, 1994. Para. 142.4(6)(b) and the description of C formerly read:

(b) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is negative, that amount is the taxpayer's loss from the disposition of the obligation; and

. . . . .

C is

(i) where subsection (4) applies to the disposition, the taxpayer's transition amount in respect of the disposition, and

(ii) in any other case, nil.

Subsec. 142.4(6) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(7) Current amount — For the purposes of subsections (4) and (8), the current amount of a taxpayer's gain or loss from the disposition of a specified debt obligation is

(a) where the taxpayer has a gain from the disposition of the obligation, the part, if any, of the gain that is reasonably attributable to a material increase in the probability, or perceived probability, that the debtor will make all payments as required by the obligation; and

(b) where the taxpayer has a loss from the disposition of the obligation, the amount that the taxpayer claims not exceeding the part, if any, of the loss that is reasonably attributable to a default by the debtor or a material decrease in the probability, or perceived probability, that the debtor will make all payments as required by the obligation.

History: Subsec. 142.4(7) amended by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(7) formerly read:

(7) For the purpose of subsection (4), the current amount in respect of the disposition of a specified debt obligation by a taxpayer is the positive or negative amount determined by the formula

$$A + B$$

where

A is the taxpayer's transition amount in respect of the disposition, and

B is

(a) where the taxpayer has a gain from the disposition of the obligation, the part, if any, of the gain that is reasonably attributable to a material increase in the probability, or perceived probability, that the debtor will make all payments as required by the obligation, and

(b) where the taxpayer has a loss from the disposition of the obligation, the negative amount that the taxpayer claims not exceeding in magnitude the part, if any, of the loss that is reasonably attributable to a default by the debtor or a material decrease in the probability, or perceived probability, that the debtor will make all payments as required by the obligation.

Subsec. 142.4(7) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(8) Residual portion of gain or loss — For the purpose of subsection (4), the residual portion of a taxpayer's gain or loss from the disposition of a specified debt obligation is the amount, if any, by which the gain or loss exceeds the current amount of the gain or loss.

Related Provisions: 142.4(7) — Current amount.

History: Subsec. 142.4(8) amended by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(8) formerly read:

(8) For the purpose of subsection (4), where a taxpayer has a gain or loss from the disposition of a specified debt obligation, the residual portion of the gain or loss is the part of the gain or loss that is not included in determining the amount B in the formula in subsection (7) in respect of the disposition.

Subsec. 142.4(8) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(9) Disposition of part of obligation — Where a taxpayer disposes of part of a specified debt obligation, section 142.3 and this section apply as if the part disposed of and the part retained were separate specified debt obligations.

Related Provisions: 248(27) — Partial forgiveness of debt obligation — effect on debtor.

History: Subsec. 142.4(9) amended by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994. Subsec. 142.4(9) formerly read:

> (9) Where a taxpayer disposed of part of a specified debt obligation, this section and any regulations made for the purpose of this section apply as if the part disposed of and the part retained were separate specified debt obligations.

Subsec. 142.4(9) added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

(10) Penalties and bonuses — Notwithstanding subsection 18(9.1), where a taxpayer that holds a specified debt obligation receives a penalty or bonus because of the repayment before maturity of all or part of the principal amount of the debt obligation, the payment is deemed to be received by the taxpayer as proceeds of disposition of the specified debt obligation.

History: Subsec. 142.4(10) added by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994.

(11) Payments received on or after disposition — For the purposes of this section, where at any time a taxpayer receives a payment (other than proceeds of disposition) under a specified debt obligation on or after the disposition of the obligation, the payment is deemed not to have been so received at that time but to have been so received immediately before the disposition.

History [subsec. 142.4(11)]: Subsec. 142.4(11) added by 1998, c. 19, subsec. 165(7), applicable to taxation years that end after February 22, 1994.

History [s. 142.4]: S. 142.4 added by 1995, c. 21, s. 58, applicable to taxation years that end after February 22, 1994.

Definitions [s. 142.4]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "capital property" — 54, 248(1); "current amount" — 142.4(7); "financial institution" — 142.2(1); "indexed debt obligation" — 248(1); "investment dealer" — 142.2(1); "life insurance corporation", "life insurer" — 248(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "person", "prescribed", "principal amount", "regulation" — 248(1); "residual portion" — 142.4(8); "specified debt obligation" — 142.2(1); "tax basis" — 142.4(1); "taxation year" — 249; "taxpayer" — 248(1); "transition amount" — 142.4(1); "writing" — *Interpretation Act* 35(1).

Mark-to-Market Properties

142.5 (1) Income treatment for profits and losses — Where, in a taxation year that begins after October 1994, a taxpayer that is a financial institution in the year disposes of a property that is a mark-to-market property for the year,

(a) there shall be included in computing the taxpayer's income for the year the profit, if any, from the disposition; and

(b) there shall be deducted in computing the taxpayer's income for the year the loss, if any, from the disposition.

Related Provisions: 39(1)(a)(ii.2) — No capital gain on disposition; 138(10)(a) — Application to insurance corporation; 142.5(2) — Deemed disposition at year-end.

(2) Mark-to-market requirement — Where a taxpayer that is a financial institution in a taxation year holds, at the end of the year, a mark-to-market property for the year, the taxpayer shall be deemed

(a) to have disposed of the property immediately before the end of the year for proceeds equal to its fair market value at the time of disposition, and

(b) to have reacquired the property at the end of the year at a cost equal to those proceeds.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply; 88(1)(i) — Windup of subsidiary into parent; 112(5.6)(a)(i) — Stop-loss rules inapplicable; 138(10)(a) — Application to insurance corporation; 138(11.31)(a) — Change in use rules for insurer do not apply; 142.5(4)–(9) — Transitional rules; 142.6(2) — Acquisition date under 142.5(2) to be ignored; 142.6(8)–(10) — Transitional election re year that includes February 22, 1994; Reg. 2405(5) — 142.5(2) to be ignored for definitions in Reg. 2405(3).

I.T. Technical News: No. 14 (reporting of derivative income by mutual funds).

(3) Mark-to-market debt obligation — Where a taxpayer is a financial institution in a particular taxation year that begins after October 1994, the following rules apply with respect to a specified debt obligation that is a mark-to-market property of the taxpayer for the particular year:

(a) paragraph 12(1)(c) and subsections 12(3) and 20(14) and (21) do not apply to the obligation in computing the taxpayer's income for the particular year;

(b) there shall be included in computing the taxpayer's income for the particular year an amount received by the taxpayer in the particular year as, on account of, in lieu of payment of, or in satisfaction of, interest on the obligation, to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year; and

(c) for the purpose of paragraph (b), where the taxpayer was deemed by subsection (2) or paragraph 142.6(1)(b) to have disposed of the obligation in a preceding taxation year, no part of an amount included in computing the income of the taxpayer for that preceding year because of the disposition shall be considered to be in respect of interest on the obligation.

Related Provisions: 138(10)(a) — Application to insurance corporation.

(4) Transition — deduction re non-capital amounts — There may be deducted in computing the income of a taxpayer for the taxpayer's taxation year that includes October 31, 1994 such amount as the taxpayer claims not exceeding a prescribed amount in respect of properties (other than capital properties) disposed of by the taxpayer because of subsection (2).

Related Provisions: 138(11.5)(k) — Transfer of business by non-resident insurer; 142.5(5) — Inclusion re non-capital amounts.

Regulations: 8102(2) (prescribed amount).

(5) Transition — inclusion re non-capital amounts — Where an amount is deducted under subsection (4) in computing a taxpayer's income, there shall be included, in computing the taxpayer's income for each taxation year that begins before 1999 and ends after October 30, 1994, the total of all amounts prescribed for the year.

Related Provisions: 87(2)(g.2) — Amalgamations — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer; Reg. 2402(a.1)A — Inclusion in income from participating life insurance business.

Regulations: 8103 (prescribed amount).

(6) Transition — deduction re net capital gains — Such amount as a taxpayer elects, not exceeding a prescribed amount in respect of capital properties disposed of by the taxpayer because of subsection (2), is deemed to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994 from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property).

Related Provisions: 138(11.5)(k) — Transfer of business by non-resident insurer; 142.5(7) — Inclusion re net capital gains.

Regulations: 8104(2) (prescribed amount).

(7) Transition — inclusion re net capital gains — A taxpayer that elects an amount under subsection (6) is deemed, for each taxation year that begins before 1999 and ends after October 30, 1994, to have a taxable capital gain for the year from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property) equal to the total of all amounts prescribed for the year.

Related Provisions: 87(2)(g.2) — Amalgamations — continuing corporation; 138(11.5)(k) — Transfer of business by non-resident insurer; Reg. 2402(a.1)B — Inclusion in income from participating life insurance business.

Regulations: 8105(2) (prescribed amount).

(8) First deemed disposition of debt obligation — Where

(a) in a particular taxation year that ends after October 30, 1994, a taxpayer disposed of a specified debt obligation that is a mark-to-market property of the taxpayer for the following taxation year, and

(b) either

(i) the disposition occurred because of subsection (2) and the particular year includes October 31, 1994, or

(ii) the disposition occurred because of paragraph 142.6(1)(b),

the following rules apply:

(c) subsection 20(21) does not apply to the disposition, and

(d) where

(i) an amount has been deducted under paragraph 20(1)(p) in respect of the obligation in computing the taxpayer's income for the particular year or a preceding taxation year, and

(ii) section 12.4 does not apply to the disposition,

there shall be included in computing the taxpayer's income for the particular year the amount, if any, by which

(iii) the total of all amounts referred to in subparagraph (i)

exceeds

(iv) the total of all amounts included under paragraph 12(1)(i) in respect of the obligation in computing the taxpayer's income for the particular year or a preceding taxation year.

(9) Transition — property acquired on rollover — Where

(a) a taxpayer acquired a property before October 31, 1994 at a cost less than the fair market value of the property at the time of acquisition,

(b) the property was transferred, directly or indirectly, to the taxpayer by a person that would never have been a financial institution before the transfer if the definition "financial institution" in subsection 142.2(1) had always applied,

(c) the cost is less than the fair market value because subsection 85(1) applied in respect of the disposition of the property by the person, and

(d) subsection (2) deemed the taxpayer to have disposed of the property in its particular taxation year that includes October 31, 1994,

the following rules apply:

(e) where the taxpayer would, but for this paragraph, have a taxable capital gain for the particular year from the disposition of the property, the part of the taxable capital gain that can reasonably be considered to have arisen while the property was held by a person described in paragraph (b) shall be deemed to be a taxable capital gain of the taxpayer from the disposition of the property for the taxation year in which the taxpayer disposes of the property otherwise than because of subsection (2), and not to be a taxable capital gain for the particular year, and

(f) where the taxpayer has a profit (other than a capital gain) from the disposition of the property, the part of the profit that can reasonably be considered to have arisen while the property was held by a person described in paragraph (b) shall be included in computing the taxpayer's income for the taxation year in which the taxpayer disposes of the property otherwise than because of subsection (2), and shall not be included in computing the taxpayer's income for the particular year.

History [s. 142.5]: Subsecs. 142.5(5), (6) and (7) amended by 1998, c. 19, s. 166, applicable to taxation years that end after October 30, 1994. Subsecs. 142.5(5), (6) and (7) formerly read:

(5) Transition — inclusion re non-capital amounts — Where a taxpayer deducts an amount under subsection (4), there shall be included in computing the taxpayer's income for each taxation year that begins before 1999 and ends after October 30, 1994, the prescribed portion for the year of the amount so deducted.

(6) Transition — deduction re net capital gains — Such amount as a taxpayer elects, not exceeding a prescribed amount in respect of capital properties disposed of by the taxpayer because of subsection (2), shall be deemed to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994 from the disposition of property.

(7) Transition — inclusion re net capital gains — Where a taxpayer elects an amount under subsection (6), the taxpayer shall be deemed, for each taxation year that begins before 1999 and ends after October 30, 1994, to have a taxable capital gain for the year from the disposition of property equal to the prescribed portion for the year of the amount so elected.

S. 142.5 added by 1995, c. 21, s. 58, applicable to taxation years that end after October 30, 1994.

Definitions [s. 142.5]: "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "financial institution", "mark-to-market property" — 142.2(1); "non-resident", "prescribed", "property" — 248(1); "specified debt obligation" — 142.2(1); "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Additional Rules

142.6 (1) Becoming or ceasing to be a financial institution — Where, at a particular time after February

22, 1994, a taxpayer becomes or ceases to be a financial institution,

(a) where a taxation year of the taxpayer would not, but for this paragraph, end immediately before the particular time,

(i) except for the purpose of subsection 132(6.1), the taxpayer's taxation year that would otherwise have included the particular time is deemed to have ended immediately before that time and a new taxation year of the taxpayer is deemed to have begun at that time, and

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before that time;

(b) where the taxpayer becomes a financial institution, the taxpayer shall be deemed to have disposed, immediately before the end of its taxation year that ends immediately before the particular time, of each property held by the taxpayer that is

(i) a specified debt obligation (other than a mark-to-market property for the year), or

(ii) where the year ends after October 30, 1994, a mark-to-market property for the year

for proceeds equal to its fair market value at the time of disposition;

(c) where the taxpayer ceases to be a financial institution, the taxpayer shall be deemed to have disposed, immediately before the end of its taxation year that ends immediately before the particular time, of each property held by the taxpayer that is a specified debt obligation (other than a mark-to-market property of the taxpayer for the year), for proceeds equal to its fair market value at the time of disposition; and

(d) the taxpayer shall be deemed to have reacquired, at the end of the taxation year referred to in paragraph (b) or (c), each property deemed by that paragraph to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply to disposition under 142.6(1)(b); 87(2)(g.2) — Application of rule to predecessors corporation on amalgamation; 112(5.6)(a)(ii) — Stop-loss rules inapplicable; 142.4(5)(b)(iii) — Gain or loss not amortized; 142.5(8)(b)(ii) — First deemed disposition of debt obligation; 142.6(2) — Acquisition date under 142.6(1) to be ignored.

(2) Deemed disposition not applicable — For the purposes of this Act, the determination of when a taxpayer acquired a share shall be made without regard to a disposition or acquisition that occurred because of subsection (1) or 142.5(2).

(3) Property not inventory — Where a taxpayer is a financial institution in a taxation year, inventory of the taxpayer in the year does not include property that is

(a) a specified debt obligation (other than a mark-to-market property for the year); or

(b) where the year begins after October 1994, a mark-to-market property for the year.

Related Provisions: 66.3(1)(a)(ii) — Rule in 142.6(3) overrides rule for certain exploration and development shares; 142.6(4) — Property that was inventory before introduction of new rules.

(4) Property that ceases to be inventory — Where a taxpayer that was a financial institution in its particular taxation year that includes February 23, 1994 held, on that day, a specified debt obligation (other than a mark-to-market property for the year) that was inventory of the taxpayer at the end of its preceding taxation year,

(a) the taxpayer shall be deemed to have disposed of the property at the beginning of the particular year for proceeds equal to

(i) where subparagraph (ii) does not apply, the amount at which the property was valued at the end of the preceding taxation year for the purpose of computing the taxpayer's income for the year, and

(ii) where the taxpayer is a bank and the property is prescribed property for the particular year, the cost of the property to the taxpayer (determined without reference to paragraph (b));

(b) for the purpose of determining the taxpayer's profit or loss from the disposition, the cost of the property to the taxpayer shall be deemed to be the amount referred to in subparagraph (a)(i); and

(c) the taxpayer shall be deemed to have reacquired the property, immediately after the beginning of the particular year, at a cost equal to the proceeds of disposition of the property.

(5) Debt obligations acquired in rollover transactions — Where,

(a) on February 23, 1994, a financial institution that is a corporation held a specified debt obligation (other than a mark-to-market property for the taxation year that includes that day) that was at any particular time before that day held by another corporation, and

(b) between the particular time and February 23, 1994, the only transactions affecting the ownership of the property were rollover transactions,

the financial institution shall be deemed, in respect of that obligation, to be the same corporation as, and a continuation of, the other corporation.

Related Provisions: 87(2)(e), (e.2) — Rule overrides normal rules on amalgamation; 87(2)(e.3) — Continuity of corporation on amalgamation; 138(11.5)(k.1) — Continuity of corporation on rollover of insurance business by non-resident; 142.6(6) — Rollover transaction.

(6) Definition of "rollover transaction" — For the purpose of subsection (5), "rollover transaction" means a transaction to which subsection 87(2), 88(1) or 138(11.5) or (11.94) applies, other than a transaction to which paragraph 138(11.5)(e) requires the provisions of subsection 85(1) to be applied.

(7) Superficial loss rule not applicable — Subsection 18(13) does not apply to the disposition of a property by a taxpayer after October 30, 1994 where

(a) the taxpayer is a financial institution when the disposition occurs and the property is a specified debt obligation or a mark-to-market property for the taxation year in which the disposition occurs; or

(b) the disposition occurs because of paragraph (1)(b).

(8) Accrued capital gains and losses election — Where a taxpayer that is a financial institution in its first taxation year that ends after February 22, 1994 so elects by notifying the Minister in writing before July 1998 or within 90 days after the day on which a notice of assessment of tax payable under this Part for the year, notification that no tax is payable under this Part for the year or notification that an election made by the taxpayer under

this subsection is deemed by subsection (9) or (10) not to have been made is mailed to the taxpayer,

(a) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994,

(ii) that was a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time,

(iii) that had a fair market value at that time greater than its adjusted cost base to the taxpayer at that time, and

(iv) that is designated by the taxpayer in the election

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the lesser of

(v) the fair market value of the property at that time, and

(vi) the greater of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property;

(b) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994,

(ii) that was not a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time,

(iii) that had an adjusted cost base to the taxpayer at that time greater than its fair market value at that time, and

(iv) that is designated by the taxpayer in the election

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the greater of

(v) the fair market value of the property at that time, and

(vi) the lesser of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property; and

(c) notwithstanding subsections 152(4) to (5), such assessment of the taxpayer's tax payable under this Act for the taxpayer's last taxation year that ended before February 23, 1994 shall be made as is necessary to take the election into account.

Related Provisions: 142.6(9) — Accrued capital gains election limit; 142.6(10) — Accrued capital losses election limit.

(9) Accrued capital gains election limit — Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(a)(iv), the election is deemed not to have been made where

(a) the amount that would be the taxpayer's taxable capital gains from dispositions of property for the taxpayer's last taxation year that ended before February 23, 1994 if this subsection and subsection (10) did not apply

exceeds the total of

(b) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if this subsection and subsection (10) did not apply,

(c) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if there were sufficient taxable capital gains for the year from dispositions of property, and

(d) the amount, if any, by which

(i) the amount that would be the taxpayer's taxable capital gains for the taxpayer's last taxation year that ended before February 23, 1994 from dispositions of property if no election were made under subsection (8)

exceeds the total of

(ii) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if no election were made under subsection (8), and

(iii) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if no election were made under subsection (8).

(10) Accrued capital losses election limit — Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(b)(iv), the election is deemed not to have been made where

(a) the total of the amounts determined under paragraphs (9)(b) and (c) in respect of the taxpayer exceeds the amount determined under paragraph (9)(a) in respect of the taxpayer; or

(b) the total of all amounts each of which would, if this subsection did not apply, be the taxpayer's allowable capital loss for the taxpayer's last taxation year that ended before February 23, 1994 from the disposition of a property deemed to have been disposed of under paragraph (8)(b) exceeds the total of all amounts each of which is the taxpayer's taxable capital gain for the year from the disposition of a property deemed to have been disposed of under paragraph (8)(a).

History [s. 142.6]: Subpara. 142.6(1)(a)(i) amended by 1999, c. 22, s. 58, applicable after 1997 It formerly read:.

(i) the taxation year of the taxpayer that would otherwise have included the particular time shall be deemed to have ended immediately before that time and a new taxation year of the taxpayer shall be deemed to have begun at that time, and

Subsecs. 142.6(8) to (10) added by 1998, c. 19, s. 167, applicable to 1993 *et seq.*

S. 142.6 added by 1995, c. 21, s. 58; subsec. 142.6(1) applicable after February 22, 1994; subsecs. 142.6(2) to (6) applicable to taxation years that end after February 22, 1994; and subsec. 142.6(7) applicable to dispositions occurring after October 30, 1994, except the disposition of a debt obligation before July 1995 where

(a) the disposition is part of a series of transactions or events that began before October 31, 1994;

(b) as part of the series of transactions or events, the taxpayer who acquired the debt obligation disposed of property before October 31, 1994; and

(c) it is reasonable to consider that one of the main reasons for the acquisition of the debt obligation by the taxpayer was to obtain a deduction because, as a consequence of the disposition referred to in paragraph (b),

(i) an amount was included in the taxpayer's income for any taxation year, or

(ii) an amount was subtracted from a balance of undeducted outlays, expenses or other amounts of the taxpayer and the subtracted amount exceeded the portion, if any, of the balance that could reasonably be considered to be in respect of the property.

Definitions [s. 142.6]: "adjusted cost base" — 54, 248(1); "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "bank" — *Interpretation Act* 35(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 54; "financial institution" — 142.2(1); "fiscal period" — 249.1; "inventory" — 248(1); "mark-to-market property" — 142.2(1); "Minister" — 248(1); "net capital loss" — 111(8), 248(1); "prescribed", "property" — 248(1); "rollover transaction" — 142.6(6); "specified debt obligation" — 142.2(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Communal Organizations

143. (1) Communal organizations — Where a congregation, or one or more business agencies of the congregation, carries on one or more businesses for purposes that include supporting or sustaining the congregation's members or the members of any other congregation, the following rules apply:

(a) an *inter vivos* trust is deemed to be created on the day that is the later of

(i) December 31, 1976, and

(ii) the day the congregation came into existence;

(b) the trust is deemed to have been continuously in existence from the day determined under paragraph (a);

(c) the property of the congregation is deemed to be the property of the trust;

(d) the property of each business agency of the congregation in a calendar year is deemed to be property of the trust throughout the portion of the year throughout which the trust exists;

(e) where the congregation is a corporation, the corporation is deemed to be the trustee having control of the trust property;

(f) where the congregation is not a corporation, its council, committee of leaders, executive committee, administrative committee, officers or other group charged with its management are deemed to be the trustees having control of the trust property;

(g) the congregation is deemed to act and to have always acted as agent for the trust in all matters relating to its businesses and other activities;

(h) each business agency of the congregation in a calendar year is deemed to have acted as agent for the trust in all matters in the year relating to its businesses and other activities;

(i) the members of the congregation are deemed to be the beneficiaries under the trust;

(j) tax under this Part is payable by the trust on its taxable income for each taxation year;

(k) in computing the income of the trust for any taxation year,

(i) subject to paragraph (l), no deduction may be made in respect of salaries, wages or benefits of any kind provided to the members of the congregation, and

(ii) no deduction may be made under subsection 104(6), except to the extent that any portion of the trust's income (determined without reference to that subsection) is allocated to the members of the congregation in accordance with subsection (2);

(l) for the purpose of applying section 20.01 to the trust,

(i) each member of the congregation is deemed to be a member of the trust's household, and

(ii) section 20.01 shall be read without reference to paragraphs 20.01(2)(b) and (c) and subsection 20.01(3); and

(m) where the congregation or one of the business agencies is a corporation, section 15.1 shall, except for the purposes of paragraphs 15.1(2)(a) and (c) (other than subparagraphs 15.1(2)(c)(i) and (ii)), apply as if this subsection were read without reference to paragraphs (c), (d), (g) and(h).

Related Provisions: 108(1)"trust"(c) — S. 143 trust deemed not a trust for certain purposes; 127(7) — Investment tax credit of trust; 143(2) — Election in respect of income.

History: Subsec. 143(1) amended by 2000, c. 19, subsec. 41(1) applicable to 1998 *et seq.* The subsec. formerly read:

143. (1) Where a congregation

(a) the members of which live and work together,

(b) that does not permit any of its members to own any property in the member's own right, and

(c) that requires that its members devote their working lives to the activities of the congregation

carries on one or more businesses or has the effective management or control of one or more corporations, trusts or other persons (which corporations, trusts and other persons are in this section collectively referred to as "business agencies") that carry on one or more businesses for purposes that include supporting or sustaining its members or the members of any other congregation, an *inter vivos* trust shall be deemed to have been in existence on December 31, 1976 and continuously thereafter and the following rules apply:

(d) the property of the congregation and the property of all business agencies of the congregation shall be deemed to be the property of the *inter vivos* trust,

(e) where the congregation is a corporation, the corporation shall be deemed to be the trustee having control of the trust property,

(f) where the congregation is not a corporation, its council, committee of leaders, executive committee, administrative committee, officers or other group charged with the management of the congregation shall be deemed to be the trustees having control of the trust property,

(g) the congregation and all business agencies of the congregation shall be deemed to act and have always acted as agents for the *inter vivos* trust in all matters relating to their business and other activities,

(h) the members of the congregation shall be deemed to be the beneficiaries under the trust,

(i) tax under this Part is payable by the trust on its taxable income for each taxation year,

(j) in computing the income of the trust for any taxation year, no deduction may be made in respect of salaries, wages or benefits of any kind whatever, paid to the members of the congregation, and

(k) where the congregation or one of the business agencies is a corporation, section 15.1 shall, except for the purposes of paragraphs 15.1(2)(a) and (c) (other than subparagraphs 15.1(2)(c)(i) and (ii)), apply as if this subsection were read without reference to paragraphs (d) and (g).

Para. 143(1)(k) added by 1994, c. 21, s. 67, applicable to 1992 *et seq.*

Information Circulars: 78-5R3: Communal organizations.

(2) Election in respect of income — Where the *inter vivos* trust referred to in subsection (1) in respect of a congregation so elects in respect of a taxation year in writing filed with the Minister on or before the trust's filing-due date for the year and all the congregation's participating members are specified in the election in accordance with subsection (5), the following rules apply:

(a) for the purposes of subsections 104(6) and (13), the amount payable in the year to a particular participating member of the congregation out of the income of the trust (determined without reference to subsection 104(6)) is the amount determined by the formula

$$0.8 (A \times B/C) + D + (0.2A - E)/F$$

where

A is the taxable income of the trust for the year (determined without reference to subsection 104(6) and specified future tax consequences for the year),

B is

(i) where the particular member is identified in the election as a person to whom this subparagraph applies (in this subsection referred to as a "designated member"), 1, and

(ii) in any other case, 0.5,

C is the total of

(i) the number of designated members of the congregation, and

(ii) ½ of the number of other participating members of the congregation in respect of the year,

D is the amount, if any, that is specified in the election as an additional allocation under this subsection to the particular member,

E is the total of all amounts each of which is an amount specified in the election as an additional allocation under this subsection to a participating member of the congregation in respect of the year, and

F is the number of participating members of the congregation in respect of the year;

(b) the designated member of each family at the end of the year is deemed to have supported the other members of the family during the year and the other members of the family are deemed to have been wholly dependent on the designated member for support during the year; and

(c) the taxable income for the year of each member of the congregation shall be computed without reference to subsection 110(2).

Related Provisions: 143(3) — Election not binding unless taxes paid; 143(5) — Specification of family members; 257 — Formula cannot calculate to less than zero.

History: Subsec. 143(2) amended by 2000, c. 19, subsec. 41(1), applicable to 1998 *et seq.* The subsec. formerly read:

(2) Election in respect of taxable income — Where the *inter vivos* trust referred to in subsection (1) in respect of a congregation so elects in respect of a taxation year, the amount determined under paragraph (a) for that taxation year shall be deemed to have been payable by the trust in the year to the beneficiaries thereunder in accordance with the following rules:

(a) determine the amount that would be the taxable income of the trust for the year if no deductions were made in respect of expenses incurred for the support, maintenance and satisfaction or personal needs of its members,

(b) determine the amount that is the quotient obtained when the amount so determined is divided by 1¼ times the number of adults who are members of the congregation at the end of the year,

(c) allocate to each family in the congregation at the end of the year the amount equal to the product obtained when the amount determined under paragraph (b) is multiplied by the number of adults in the family at the end of the year, and

(d) allocate among the families in the congregation at the end of the year in such manner as the congregation determines the amount by which the amount determined under paragraph (a) exceeds the total of amounts allocated under paragraph (c) or, if such an allocation is not made and specified in the election under this subsection in respect of the year, allocate to each of the families in the congregation at the end of the year the amount equal to the proportion of the excess that the number of adults in the family at that time is of the number of adults in all of the families in the congregation at that time,

and the total of amounts so allocated to a family shall be deemed to be payable in the year to, and to be received in the year by, the adult member of the family who is specified in the election under this subsection in respect of the year and that member of the family shall be deemed to have supported each of the other members of the family during that taxation year and the other members of the family shall be deemed to have been wholly dependent on that member for support during that taxation year.

Pre-RSC History: Para. 143(2)(a) amended by 1988, c. 55, s. 128, to substitute "and satisfaction or personal needs of its members," for "and satisfaction of the personal needs of its members, and if no deductions were made under sections 110.1, and 110.2,", applicable to 1988 *et seq.*

Information Circulars: 78-5R3: Communal organizations.

(3) Refusal to accept election — An election under subsection (2) in respect of a congregation for a particular taxation year is not binding on the Minister unless all taxes, interest and penalties payable under this Part, as a consequence of the application of subsection (2) to the congregation for preceding taxation years, are paid at or before the end of the particular year.

History: Subsec. 143(3) amended by 2000, c. 19, subsec. 41(1), applicable to 1998 *et seq.* The subsec. formerly read:

(3) Idem — An election under subsection (2) in respect of a taxation year is not binding on the Minister unless

(a) the election is made on or before the day on or before which the *inter vivos* trust is required by section 150 to file a return of income for the year;

(b) all tax, interest and penalties, if any, payable under this Part by adult members designated in accordance with subsection (2) have been paid within the time required by this Act; and

(c) no amounts are, by virtue of subsection 110(2), deducted in computing the taxable income for the year of the members designated in accordance with subsection (2).

Information Circulars: 78-5R3: Communal organizations.

(3.1) Election in respect of gifts — For the purposes of section 118.1, where the fair market value of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) in respect of a congregation would, but for this subsection, be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(a) the trust is deemed not to have made the gift; and

(b) each participating member of the congregation is deemed to have made, in the year, such a gift the fair market value of which is the amount determined by the formula

$$A \times B/C$$

where

A is the fair market value of the gift made by the trust,

B is the amount determined for the year in respect of the member under paragraph (2)(a) as a consequence of an election under subsection (2) by the trust, and

C is the total of all amounts each of which is an amount determined for the year in respect of a participating member of the congregation under paragraph (2)(a) as a consequence of an election under subsection (2) by the trust.

History: Subsec. 143(3.1) amended by 2000, c. 19, subsec. 41(2), the opening words applicable to 1995 *et seq.* and paras. (a), (b) applicable to 1998 *et seq.* The subsec. formerly read:

(3.1) For the purposes of section 118.1, where the fair market value of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) would, but for this subsection, be included in the total charitable gifts, total Crown gifts or total cultural gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(a) the trust shall be deemed not to have made the gift; and

(b) each adult member of a family to whom an amount is deemed under subsection (2) to be payable in the year shall be deemed to have made, in the year, such a gift the fair market value of which is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the fair market value of the gift made by the trust,

B is the amount deemed under subsection (2) to be payable in the year in respect of the trust to the adult member, and

C is the total of all amounts deemed under subsection (2) to be payable in the year in respect of the trust to an adult member of a family.

Subsec. 143(3.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 116(1), applicable to 1990 *et seq.*

Information Circulars: 78-5R3: Communal organizations.

(4) Definitions — For the purposes of this section,

"adult" means an individual who, before the time at which the term is applied, has attained the age of eighteen years or is married;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 11, will replace "married" with "married or in a common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

"business agency", of a congregation at any time in a particular calendar year, means a corporation, trust or other person, where the congregation owned all the shares of the capital stock of the corporation (except directors' qualifying shares) or every interest in the trust or other person, as the case may be, throughout the portion of the particular calendar year throughout which both the congregation and the corporation, trust or other person, as the case may be, were in existence;

"congregation" means a community, society or body of individuals, whether or not incorporated,

(a) the members of which live and work together,

(b) that adheres to the practices and beliefs of, and operates according to the principles of, the religious organization of which it is a constituent part,

(c) that does not permit any of its members to own any property in their own right, and

(d) that requires its members to devote their working lives to the activities of the congregation;

"family" means,

(a) in the case of an unmarried adult, that person and the person's unmarried children who are not adults, and

(b) in the case of a married adult, that person and the person's spouse and the unmarried children of either or both of them who are not adults

but does not include an individual who is included in any other family or who is not a member of the congregation in which the family is included;

Proposed Amendment — 143(4)"family"

"family" means,

(a) in the case of an adult who is unmarried and who is not in a common-law partnership, that person and the person's children who are not adults, not married and not in a common-law partnership, and

(b) in the case of an adult who is married or in a common-law partnership, that person and the person's spouse or common-law partner and the children of either or both of them who are not adults, not married and not in a common-law partnership

but does not include an individual who is included in any other family or who is not a member of the congregation in which the family is included;

Application: 2000, c. 12 (Bill C-23), subsec. 134(1), will amend the definition "family" in subsec. 143(4) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4)(a) — Extended meaning of "spouse".

"member of a congregation" means

(a) an adult, living with the members of the congregation, who conforms to the practices of the religious organization of which the congregation is a constituent part whether or not that person has been formally accepted into the organization, and

(b) an unmarried child, other than an adult, of an adult referred to in paragraph (a), if the child lives with the members of the congregation;

Proposed Amendment — 143(4)"member of the congregation"(b)

(b) a child who is unmarried and not in a common-law partnership, other than an adult, of an adult referred to in paragraph (a), if the child lives with the members of the congregation;

Application: 2000, c. 12 (Bill C-23), subsec. 134(2), will amend para. (b) of the definition "member of the congregation" in subsec. 143(4) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

"participating member", of a congregation in respect of a taxation year, means an individual who, at the end of the year, is an adult who is a member of the congregation;

"religious organization" means an organization, other than a registered charity, of which a congregation is a constituent part, that adheres to beliefs, evidenced by the religious and philosophical tenets of the organization, that include a belief in the existence of a supreme being;

"total charitable gifts" has the meaning assigned by subsection 118.1(1);

"total Crown gifts" has the meaning assigned by subsection 118.1(1);

"total cultural gifts" has the meaning assigned by subsection 118.1(1).

"total ecological gifts" has the same meaning as in subsection 118.1(1).

History: The definition "congregation" in subsec. (4) amended, and the definitions "business agency", "participating member" and "total ecological gifts" added to subsec. (4) by 2000, c. 19, subsecs. 41(3), (4), the definitions "congregation", "business agency" and "participating member" applicable to 1998 *et seq.* except that, for taxation years that end before 2001, the definition "business agency" shall be read as follows:

> "business agency", of a congregation at any time in a particular calendar year, means
>
> (a) a corporation, trust or other person, where the congregation owned all the shares of the capital stock of the corporation (except directors' qualifying shares) or every interest in the trust or other person, as the case may be, throughout the portion of the particular year throughout which both the congregation and the corporation, trust or other person, as the case may be, existed, or
>
> (b) a corporation, trust or other person of which the congregation
>
> (i) has effective management or control throughout the portion of the particular year throughout which both the congregation and the corporation, trust or other person, as the case may be, were in existence, and
>
> (ii) had effective management or control during a taxation year of the corporation, trust or other person that began before March 1999 and ended in the particular year;

and the definition "total ecological gifts", applicable to gifts made after February 27, 1995. The definition "congregation" formerly read:

> "congregation" means a community, society or body of individuals, whether or not incorporated, that adheres to the practices and beliefs of, and operates according to the principles of, the religious organization of which it is a constituent part;

The definitions "total charitable gifts", "total Crown gifts" and "total cultural gifts" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 116(2), applicable to 1990 *et seq.*

Pre-RSC History: *The definition "adult" was para. 143(4)(a); "congregation", 143(4)(b); "family", 143(4)(c); "member of a congregation", 143(4)(d); "religious organization", 143(4)(e); "total charitable gifts", "total Crown gifts" and "total cultural gifts", 143(4)(f).*

(5) Specification of family members — For the purpose of applying subsection (2) to a particular election by the *inter vivos* trust referred to in subsection (1) in respect of a congregation for a particular taxation year,

(a) subject to paragraph (b), a participating member of the congregation is considered to have been specified in the particular election in accordance with this subsection only if the member is identified in the particular election and

(i) where the member's family includes only one adult at the end of the particular year, the member is identified in the particular election as a person to whom subparagraph (i) of the description of B in subsection (2) (in this subsection referred to as the "relevant subparagraph") applies, and

(ii) in any other case, only one of the adults in the member's family is identified in the particular election as a person to whom the relevant subparagraph applies; and

(b) an individual is considered not to have been specified in the particular election in accordance with this subsection if

(i) the individual is one of two individuals who were married to each other at the end of a preceding taxation year of the trust and at the end of the particular year,

(ii) one of those individuals was

(A) where the preceding year ended before 1998, specified in an election under subsection (2) by the trust for the preceding year, and

(B) in any other case, identified in an election under subsection (2) by the trust for the preceding year as a person to whom the relevant subparagraph applied, and

(iii) the other individual is identified in the particular election as a person to whom the relevant subparagraph applies.

History [subsec. 143(5)]: Subsec. 143(5) amended by 2000, c. 19, subsec. 41(5), applicable to 1998 *et seq.* The subsec. formerly read:

> (5) Effect of specification of member of family — Where an adult member (in this subsection referred to as a "specified person") of a family is specified in an election under subsection (2) in respect of a taxation year, no other member of that family may be specified in an election in respect of any subsequent taxation year at the end of which the specified person was a member of that family.

Pre-RSC History [s. 143]: S. 143 added by 1977-78, c. 1, s. 71, applicable to 1977 *et seq.*

Definitions [s. 143]: "adult" — 143(4); "amount", "business" — 248(1); "business agency" — 143(4); "child" — 252(1); "congregation" — 143(4); "corporation" — 248(1), *Interpretation Act* 35(1); "family" — 143(4); "filing-due date", "individual" — 248(1); "inter vivos trust" — 108(1), 248(1); "member of a congregation" — 143(4); "Minister", "officer" — 248(1); "participating member" — 143(4); "person", "property" — 248(1); "qualifying share" — 192(6), 248(1); "registered charity" — 248(1); "religious organization" — 143(4); "share", "specified future tax consequence" — 248(1); "spouse" — 252(4); "taxable income" — 248(1); "taxation year" — 249; "total charitable gifts", "total Crown gifts", "total cultural gifts", "total ecological gifts" — 143(4); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Pre-RSC History [former s. 143]: Former s. 143 was repealed by 1977-78, c. 1, s. 71, applicable to 1977 *et seq.* S. 143 formerly read:

> 143. (1) Electric, gas or steam corporation — This section applies to a Canadian corporation whose gross revenue during a taxation year from the sale for delivery in Canada of electrical energy, gas or steam to
>
> (a) persons with whom it deals at arm's length, and
>
> (b) persons with whom it does not deal at arm's length for resale directly or indirectly for delivery in Canada to persons with whom it does deal at arm's length,
>
> is more than of its total gross revenue for the year, other than exempt income and dividends (in this section referred to as "exempt dividends") received by it to the extent of the amount thereof deductible under section 112 or subsection 113(1) from its income for the year (such a corporation being hereinafter referred to as a "designated corporation").
>
> (2) Taxable income — A designated corporation's taxable income for a taxation year from the sale for delivery in Canada of electrical energy, gas or steam to
>
> (a) persons with whom it deals at arm's length, and
>
> (b) persons with whom it does not deal at arm's length for resale directly or indirectly for delivery in Canada to persons with whom it does deal at arm's length,
>
> (hereinafter referred to as its "class A taxable income") shall, for the purposes of this section, be deemed to be the part of its taxable income for the year that its gross revenue for the year from such sales is of its total gross revenue for the year other than exempt income and exempt dividends; and its taxable income for the year from all other sources (hereinafter referred to as its "class B taxable income") shall, for the purposes of this section, be deemed to be its

taxable income for the year minus its class A taxable income for the year.

(3) **Tax payable** — Notwithstanding section 123 or 123.3, as the case may be, the tax payable under this Part by a designated corporation for a taxation year that is its 1972, 1973 or 1974 taxation year is the aggregate of

(a) the amount that would be determined under section 123 or 123.3, as the case may be, to be its tax payable under this Part for the year if its taxable income for the year were an amount equal to its class B taxable income for the year, and

(b) 48% of its class A taxable income for the year.

(4) **Exceptions** — For the purposes of this section, a transaction shall be deemed not to have been a sale of gas by a corporation unless

(a) the commodity sold was gas for lighting or heating and was not delivered in portable containers, and

(b) the corporation itself had a system for the distribution of gas through which it delivered gas to not less than 100 different customers.

All that portion of subsec. 143(3) preceding para. (b) substituted by 1974-75-76, c. 26, s. 97, applicable to 1972 *et seq.*

143.1 (1) Amateur athletes' reserve funds — Where a national sport organization that is a registered Canadian amateur athletic association receives an amount for the benefit of an individual under an arrangement made under rules of an international sport federation that require amounts to be held, controlled and administered by the organization in order to preserve the eligibility of the individual to compete in a sporting event sanctioned by the federation,

(a) an *inter vivos* trust (in this section referred to as an "amateur athlete trust") shall be deemed to be created on the day that is the later of

(i) the day on which the first such amount is received by the organization, and

(ii) January 1, 1992,

and to exist continuously thereafter until subsection (3) or (4) applies in respect of the trust;

(b) all property required to be held after 1991 under the arrangement shall be deemed to be property of the trust and not property of any other person;

(c) any amount received at any time under the arrangement by the organization shall, to the extent that it would, but for this subsection, be included in computing the individual's income for the taxation year that includes that time, be deemed to be income of the trust for the taxation year and not to be income of the individual;

(d) all amounts paid at any time by the organization under the arrangement to or for the benefit of the individual shall be deemed to be amounts distributed at that time to the individual by the trust;

(e) the individual shall be deemed to be the beneficiary under the trust;

(f) the organization shall be deemed to be the trustee of the trust; and

(g) no tax is payable under this Part by the trust on its taxable income for any taxation year.

Related Provisions: 128.1(10)"excluded right or interest"(e)(ii) — No deemed disposition on emigration of athlete; 149(1)(v) — Exemptions — amateur athlete trust; 210.2(1.1) — Part XII.2 tax payable by amateur athlete trust; 248(1)"amateur athlete trust" — Definition applies to entire Act; 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

Forms: T3ATH-IND: Amateur athlete trust income tax return; T1061: Canadian amateur athlete trust group information return.

(2) Amounts included in beneficiary's income — In computing the income for a taxation year of the beneficiary under an amateur athlete trust, there shall be included the total of all amounts distributed in the year to the beneficiary by the trust.

Related Provisions: 12(1)(z) — Inclusion in income of amateur athlete trust payments; 210.2(1.1) — Application of Part XII.2 tax to amateur athlete trusts; 212(1)(u) — Non-resident withholding tax — amateur athlete trust payments; 214(3)(k) — Non-resident withholding tax.

(3) Termination of amateur athlete trust — Where an amateur athlete trust holds property on behalf of a beneficiary who has not competed in an international sporting event as a Canadian national team member for a period of 8 years that ends in a particular taxation year and begins in the year that is the later of

(a) where the beneficiary has competed in such an event, the year in which the beneficiary last so competed, and

(b) the year in which the trust was created,

the trust shall be deemed to have distributed, at the end of the particular taxation year to the beneficiary, an amount equal to

(c) where the trust is liable to pay tax under Part XII.2 in respect of the particular year, 64% of the fair market value of all property held by it at that time, and

(d) in any other case, the fair market value of all property held by it at that time.

Related Provisions: 210.2(1.1) — Application of Part XII.2 tax to amateur athlete trusts.

(4) Death of beneficiary — Where an amateur athlete trust holds property on behalf of a beneficiary who dies in a year, the trust shall be deemed to have distributed, immediately before the death, to the beneficiary, an amount equal to

(a) where the trust is liable to pay tax under Part XII.2 in respect of the year, 64% of the fair market value of all property held by it at that time; and

(b) in any other case, the fair market value of all property held by it at that time.

Related Provisions: 210.2(1.1) — Application of Part XII.2 tax to amateur athlete trusts.

History [s. 143.1]: S. 143.1 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 81, applicable to 1992 *et seq.* and, where an individual and a national sport organization that received an amount for the benefit of that individual jointly so elect by notifying the Minister of National Revenue in writing, to any taxation year ending after 1987 and before 1992 throughout which the individual was resident in Canada, in which case, with respect to that individual and the trust under which the individual is deemed by s. 143.1 to be a beneficiary,

(a) the reference to "1992" in para. 143.1(1)(a) shall be read as a reference to the taxation year for which the election is made; and

(b) the reference to "1991" in para. 143.1(1)(b) shall be read as a reference to the taxation year before the year for which the election is made.

Definitions [s. 143.1]: "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "beneficiary" — 108(1); "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "property", "registered Canadian amateur athletic association" — 248(1); "taxation year" — 11(2), 249.

Cost of Tax Shelter Investments

143.2 (1) Definitions — The definitions in this subsection apply in this section.

"expenditure" means an outlay or expense or the cost or capital cost of a property.

Related Provisions: 143.2(2) — At-risk adjustment in respect of expenditures; 143.2(6) — Expenditures reduced by at-risk adjustment.

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and".

"limited-recourse amount" means the unpaid principal amount of any indebtedness for which recourse is limited, either immediately or in the future and either absolutely or contingently.

Related Provisions: 143.2(7), (8), (13) — Whether unpaid principal deemed to be limited-recourse amount; 248(1) — Definition of "principal amount"; Reg. 231(6.1) — Limited-recourse amount may be prescribed benefit for purposes of definition of tax shelter.

"taxpayer" includes a partnership.

"tax shelter investment" means

(a) a property that is a tax shelter for the purpose of subsection 237.1(1); or

(b) a taxpayer's interest in a partnership where

(i) an interest in the taxpayer

(A) is a tax shelter investment, and

(B) the taxpayer's partnership interest would be a tax shelter investment if

(I) this Act were read without reference to this paragraph and to the words "having regard to statements or representations made or proposed to be made in connection with the property" in the definition "tax shelter" in subsection 237.1(1),

(II) the references in that definition to "represented" were read as references to "that can reasonably be expected", and

(III) the reference in that definition to "is represented" were read as a reference to "can reasonably be expected",

(ii) another interest in the partnership is a tax shelter investment, or

(iii) the taxpayer's interest in the partnership entitles the taxpayer, directly or indirectly, to a share of the income or loss of a particular partnership where

(A) another taxpayer holding a partnership interest is entitled, directly or indirectly, to a share of the income or loss of the particular partnership, and

(B) that other taxpayer's partnership interest is a tax shelter investment.

Related Provisions: 18.1(13) — Matchable expenditure deemed to be a tax shelter investment; 53(2)(c)(i.3) — Tax shelter investment excluded from certain ACB reductions; 143.2(6) — Limitation on cost of tax shelter investment; 150(1)(d)(ii)(A) — Tax shelter investment does not entitle individual to June 15 filing deadline; 249.1(5) — Election for non-calendar year-end not permitted for tax shelters; Reg. 1100(20.1) — limitation on CCA claim for computer software tax shelter property.

(2) At-risk adjustment — For the purpose of this section, an at-risk adjustment in respect of an expenditure of a particular taxpayer, other than the cost of a partnership interest to which subsection 96(2.2) applies, means any amount or benefit that the particular taxpayer, or another taxpayer not dealing at arm's length with the particular taxpayer, is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness, or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the particular taxpayer may sustain in respect of the expenditure or, where the expenditure is the cost or capital cost of a property, any loss from the holding or disposition of the property.

Related Provisions: 96(2.2) — At-risk amount for limited partnership; 143.2(3) — Exclusions from at-risk adjustment; 143.2(4) — Determination of amount or benefit; 143.2(6) — Expenditures reduced by at-risk adjustment; 143.2(9) — Timing.

(3) Amount or benefit not included — For the purpose of subsection (2), an at-risk adjustment in respect of a taxpayer's expenditure does not include an amount or benefit

(a) to the extent that it is included in determining the value of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer; or

(b) the entitlement to which arises

(i) because of a contract of insurance with an insurance corporation dealing at arm's length with the taxpayer (and, where the expenditure is the cost of an interest in a partnership, with each member of the partnership) under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the business of the taxpayer or the partnership,

(ii) as a consequence of the death of the taxpayer,

(iii) in respect of an amount not included in the expenditure, determined without reference to subparagraph (6)(b)(ii), or

(iv) because of an excluded obligation (as defined in subsection 6202.1(5) of the *Income Tax Regulations*) in relation to a share issued to the taxpayer or, where the expenditure is the cost of an interest in a partnership, to the partnership.

(4) Amount or benefit — For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire property, for greater certainty the amount or benefit to which the taxpayer is entitled under the agreement or arrangement is considered to be not less than the fair market value of the property at that time.

(5) Amount or benefit — For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer, for greater certainty the amount or benefit to which the taxpayer is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

(6) Amount of expenditure — Notwithstanding any other provision of this Act, the amount of any expenditure that is, or is the cost or capital cost of, a taxpayer's tax shelter investment, and the amount of any expenditure of a taxpayer an interest in which is a tax shelter investment, shall be reduced to the amount, if any, by which

(a) the amount of the taxpayer's expenditure otherwise determined

exceeds

(b) the total of

(i) the limited-recourse amounts of

(A) the taxpayer, and

(B) all other taxpayers not dealing at arm's length with the taxpayer

that can reasonably be considered to relate to the expenditure,

(ii) the taxpayer's at-risk adjustment in respect of the expenditure, and

(iii) each limited-recourse amount and at-risk adjustment, determined under this section when this section is applied to each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the expenditure.

Related Provisions: 18.1(13) — Subpara. (6)(b)(ii) inapplicable for matchable expenditures; Reg. 1100(20.1) — limitation on CCA claim for computer software tax shelter property.

(7) Repayment of indebtedness — For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount unless

(a) *bona fide* arrangements, evidenced in writing, were made, at the time the indebtedness arose, for repayment by the debtor of the indebtedness and all interest on the indebtedness within a reasonable period not exceeding 10 years; and

(b) interest is payable at least annually, at a rate equal to or greater than the lesser of

(i) the prescribed rate of interest in effect at the time the indebtedness arose, and

(ii) the prescribed rate of interest applicable from time to time during the term of the indebtedness,

and is paid in respect of the indebtedness by the debtor no later than 60 days after the end of each taxation year of the debtor that ends in the period.

Related Provisions: 143.2(12) — Series of loans or repayments; Reg. 4301(c) (prescribed rate of interest).

(8) Limited-recourse amount — For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount of a taxpayer where the taxpayer is a partnership and recourse against any member of the partnership in respect of the indebtedness is limited, either immediately or in the future and either absolutely or contingently.

(9) Timing — Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness that was, before that time, the unpaid principal amount of a loan or any other form of indebtedness to which subsection (2) applies (in this subsection referred to as the "former amount or benefit") relating to an expenditure of the taxpayer,

(a) the former amount or benefit is considered to have been an amount or benefit under subsection (2) in respect of the taxpayer at all times before that time; and

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the payment of, the repaid amount.

(10) Timing — Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse amount (in this subsection referred to as the "former limited-recourse indebtedness") relating to an expenditure of the taxpayer,

(a) the former limited-recourse indebtedness is considered to have been a limited-recourse amount at all times before that time; and

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the amount of, the repaid amount.

Related Provisions: 231.6 — Foreign-based information.

(11) Short-term debt — Where a taxpayer pays all of the principal of an indebtedness no later than 60 days after that indebtedness arose and the indebtedness would otherwise be considered to be a limited-recourse amount solely because of the application of subsection (7) or (8), that subsection does not apply to the indebtedness unless

(a) any portion of the repayment is made with a limited-recourse amount; or

(b) the repayment can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 60 days after the indebtedness arose.

Related Provisions: 231.6 — Foreign-based information; 251(1) — Arm's length.

(12) Series of loans or repayments — For the purpose of paragraph (7)(a), a debtor is considered not to have made arrangements to repay an indebtedness within 10 years where the debtor's arrangement to repay can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 10 years after it begins.

(13) Information located outside Canada — For the purpose of this section, where it can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of the indebtedness relating to the taxpayer's expenditure is deemed to be a limited-recourse amount relating to the expenditure unless

(a) the information is provided to the Minister; or

(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

(14) Information located outside Canada — For the purpose of this section, where it can reasonably be considered that information relating to whether a taxpayer is not dealing at arm's length with another taxpayer is avail-

able outside Canada and the Minister is not satisfied that the taxpayer is dealing at arm's length with the other taxpayer, the taxpayer and the other taxpayer are deemed not to be dealing with each other at arm's length unless

(a) the information is provided to the Minister; or

(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

(15) Assessments — Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to this section.

Related Provisions: 237(6.1) — Late assessment to deny deduction when penalty unpaid.

History [s. 143.2]: S. 143.2 added by 1998, c. 19, s. 168, applicable to property acquired and to outlays and expenses made or incurred by a taxpayer after November 1994, except that

(a) it does not apply where

(i) the property was acquired, or the outlay or expense was made or incurred, before 1995 pursuant to an agreement in writing made by the taxpayer before December 1994, or

(ii) the property is

(A) a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii) where

(I) the principal photography of the production began before 1995, or, in the case of a production that is a television series, one episode of the series began before 1995, and

(II) the principal photography of the production was completed before March 2, 1995, or

(B) an interest in a partnership (all or substantially all of the property of which is a film production referred to in clause (A)) acquired before 1995 by a taxpayer that is a partnership

and the following conditions are met:

(iii) in the case of an interest that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before December 1994, and

(iv) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

(b) it does not apply to revenue guarantees prescribed for the purpose of subpara. 96(2.2)(d)(ii) that were granted before 1996;

(c) subpara. 143.2(6)(b)(ii) does not apply

(i) to property acquired, or outlays or expenses made or incurred, by a taxpayer before April 27, 1995, or

(ii) to property acquired, or outlays or expenses made or incurred, by a taxpayer before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 where the following conditions are met:

(A) in the case of a property that is a tax shelter for which s. 237.1 requires an identification number, an identification number was obtained before April 27, 1995, and

(B) there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

(d) para. 143.2(7)(a) shall be read without reference to "not exceeding 10 years" where

(i) the indebtedness arises

(A) pursuant to the terms of an agreement in writing made by the taxpayer before April 27, 1995,

(B) before 1996, in respect of the acquisition of a film production prescribed for the purpose of subpara. 96(2.2)(d)(ii) or an interest in a partnership all or substantially all of the property of which is either a film production prescribed for the purpose of that subparagraph or an interest in one or more partnerships all or substantially all of the property of each of which is such a film production, where

(I) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and

(II) the principal photography of the production was completed before March 1996, or

(C) before July 1995

(I) pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(II) pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

1. the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

2. the memorandum was distributed before April 27, 1995,

3. solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

4. the sale of the securities was substantially in accordance with the memorandum, and

5. the funds were expended before 1996 in accordance with the memorandum, and

(ii) the following conditions are met:

(A) in the case of an interest to which clause (i)(A) or (C) applies that is a tax shelter for which s. 237.1 requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(B) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act; and

(e) subsec. 143.2(8) does not apply to a taxpayer in respect of an indebtedness

(i) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred, by the taxpayer

before April 27, 1995, nor

(ii) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred, by the taxpayer,

before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 and there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

Definitions [s. 143.2]: "amount" — 143.2(4), (5.1), (6), 248(1); "arm's length" — 143.2(11), 251(1); "at-risk adjustment" — 143.2(2), (3); "benefit" — 143.2(4), (5.1); "business" — 248(1); "Canada" — 255; "consequence of the death" — 248(8); "expenditure" — 143.2(1), (6); "former limited-recourse indebtedness" — 143.2(9); "insurance corporation" — 248(1); "limited partner" — 143.2(1); "limited-recourse amount" — 143.2(1), (7), (8); "Minister" — 248(1); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "repaid amount" — 143.2(9); "regulation" — 248(1); "specified member" — 248(1), (28); "tax shelter investment" — 143.2(1); "taxpayer" — 143.2(1), 248(1); "taxation year" — 249.

DIVISION G — DEFERRED AND OTHER SPECIAL INCOME ARRANGEMENTS

Employees Profit Sharing Plans

144. (1) Definitions — The definitions in this subsection apply in this section.

"employees profit sharing plan" at a particular time means an arrangement

(a) under which payments computed by reference to

(i) an employer's profits from the employer's business,

(ii) the profits from the business of a corporation with which the employer does not deal at arm's length, or

(iii) any combination of the amounts described in subparagraphs (i) and (ii)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length; and

(b) in respect of which the trustee has, since the later of the beginning of the arrangement and the end of 1949, allocated, either contingently or absolutely, to those employees

(i) in each year that ended at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length,

(ii) in each year that ended at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955),

(iii) in each year that ended after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year,

(iv) in each year that ended after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an employee because the employee ceased to be a beneficiary under the plan in the year, and

(v) in each year that ended after 1991 and at or before the particular time, the total of all amounts each of which is an amount that may be deducted under subsection (9) in computing the employee's income because the employee ceased to be a beneficiary under the plan in the year.

Related Provisions: 94(1)"exempt foreign trust"(g) — Non-resident EPSP excluded from non-resident trust rules; 128.1(10)"excluded right or interest"(a)(v) — No deemed disposition on emigration; 144(9) — Refunds; 144(10) — Payments out of profits; 144(11) — Year-end on becoming DPSP; 147(6) — DPSP deemed not to be EPSP; 233.2(1)"exempt trust"(b)(iv)(B) — foreign EPSP exempt from foreign trust reporting rules; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 248(1)"employees profit sharing plan" — Definition applies to entire Act; 251(1) — Arm's length.

Regulations: 204(3)(b) (no requirement to file regular trust return); 212 (information return).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

"unused portion of a beneficiary's exempt capital gains balance" in respect of a trust governed by an employees profit sharing plan, at any particular time in a taxation year of the beneficiary, means

(a) where the year ends before 2005, the amount, if any, by which the beneficiary's exempt capital gains balance (in this paragraph having the same meaning as in subsection 39.1(1)) in respect of the trust for the year exceeds the total of all amounts each of which is an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust; or

(b) where the year ends after 2004, the amount, if any, by which

(i) the amount, if any, that would, if the definition "exempt capital gains balance" in subsection 39.1(1) were read without reference to "that ends before 2005", be the beneficiary's exempt capital gains balance in respect of the trust for the year

exceeds

(ii) where there has been a disposition of an interest or a part of an interest of the beneficiary in the trust after the beneficiary's 2004 taxation year (other than a disposition that is a part of a transaction described in paragraph (7.1)(c) in which property is received in satisfaction of all or a portion of the beneficiary's interests in the trust), the total of all amounts each of which is an amount by which the adjusted cost base of an interest or a part of an interest disposed of by the beneficiary (other than an interest or a part of an interest that is all or a portion of the beneficiary's interests referred to in paragraph (7.1)(c)) was increased because of paragraph 53(1)(p), and

(iii) in any other case, nil.

History: Subsec. 144(1) amended by 1998, c. 19, subsecs. 169(1) and (2), applicable to 1994 *et seq.*, except that subpara. (a)(iii) is applicable to 1992 *et seq.* Subsec. 144(1) formerly read:

(1) In this section, an "employees profit sharing plan" at a particular time means an arrangement

(a) under which payments computed by reference to

(i) an employer's profits from the employer's business,

(ii) the profits from the business of a corporation with which the employer does not deal at arm's length, or

(iii) any combination of the amounts described in paragraphs (a) and (b)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length, and

(b) in respect of which the trustee has, since the later of the beginning of the arrangement and the end of 1949, allocated, either contingently or absolutely, to those employees

(i) in each year that ended at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length,

(ii) in each year that ended at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955),

(iii) in each year that ended after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year,

(iv) in each year that ended after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an em-

ployee because the employee ceased to be a beneficiary under the plan in the year, and

(v) in each year that ended after 1991 and at or before the particular time, the total of all amounts each of which is an amount that an employee is entitled to deduct under subsection (9) in computing income because the employee ceased to be a beneficiary under the plan in the year.

Subsec. 144(1) substituted by 1994, c. 21, subsec. 68(1), applicable to 1992 *et seq.* and, where an amount was paid to a person before 1993 without first having been allocated to that person, it shall be deemed for the purposes of the subsec. to have been allocated to that person. Subsec. 144(1) formerly read:

(1) **Definition of "employees profit sharing plan"** — In this section, an "employees profit sharing plan" means an arrangement under which payments computed by reference to an employer's profits from the employer's business or by reference to an employer's profits from the employer's business and the profits, if any, from the business of a corporation with whom an employer does not deal at arm's length are made by the employer to a trustee in trust for the benefit of officers or employees of the employer or of a corporation with whom the employer does not deal at arm's length (whether or not payments are also made to the trustee by the officers or employees), and under which the trustee has, since the commencement of the plan or the end of 1949, whichever is the later, each year allocated either contingently or absolutely to individual officers or employees,

(a) all amounts received by the trustee from the employer or from a corporation with whom the employer does not deal at arm's length,

(b) all profits from the trust property (computed without regard to any capital gain made by the trust or capital loss sustained by it at any time since the end of 1955),

(c) all capital gains and capital losses of the trust for taxation years ending after 1971, and

(d) all amounts in respect of which employees who have, after 1971, ceased to be beneficiaries under the arrangement are deemed by subsection (9) to have made a payment on account of tax under this Part,

in such a manner that the total of all those amounts, profits, gains and losses, minus such portion thereof as has been paid to beneficiaries under the trust, is allocated either contingently or absolutely to officers or employees who are beneficiaries thereunder.

(2) No tax while trust governed by a plan — No tax is payable under this Part by a trust on the taxable income of the trust for a taxation year throughout which the trust is governed by an employees profit sharing plan.

Related Provisions: 149(1)(p) — Exemption from tax.

History: Subsec. 144(2) substituted by 1994, c. 21, subsec. 68(1), applicable to 1993 *et seq.* That subsec. formerly read:

(2) No tax is payable under this Part by a trust on the taxable income of the trust for a period during which the trust was governed by an employees profit sharing plan.

(3) Allocation contingent or absolute taxable — There shall be included in computing the income for a taxation year of an employee who is a beneficiary under an employees profit sharing plan each amount that is allocated to the employee contingently or absolutely by the trustee under the plan at any time in the year otherwise than in respect of

(a) a payment made by the employee to the trustee;

(b) a capital gain made by the trust before 1972;

(c) a capital gain of the trust for a taxation year ending after 1971;

(d) a gain made by the trust after 1971 from the disposition of a capital property except to the extent that the gain is a capital gain described in paragraph (c); or

(e) a dividend received by the trust from a taxable Canadian corporation.

(f) [Repealed]

Related Provisions: 6(1)(d) — Inclusion in income from employment; 144(8) — Allocation of credit for dividends; 147(11) — Portion of receipts deductible where EPSP later becomes a DPSP.

History: Para. 144(3)(f) repealed by 1994, c. 21, subsec. 68(2), applicable to 1992 *et seq.*, except that a taxpayer may elect that the repeal not apply to the taxpayer's 1992 taxation year by so notifying Revenue Canada in writing before the end of December 1994. That para. formerly read:

(f) interest received by the trust.

Pre-RSC History: Para. 144(3)(f) substituted by 1988, c. 55, subsec. 129(1), applicable to 1988 *et seq.* Para. 144(3)(f) formerly read:

(f) interest, other than any amount referred to in subsection 110.1(2), received by the trust.

Para. 144(3)(f) added by 1976-77, c. 4, subsec. 55(1), applicable to 1974 *et seq.*

Para. 144(3)(e) substituted by 1973-74, c. 14, subsec. 49(1), applicable to 1972 *et seq.*

Regulations: 212 (information return).

Interpretation Bulletins: IT-379R: Employees' profit sharing plans — allocations to beneficiaries.

Forms: T4PS Segment; T4PS Summary: Return of allocations and payments under employees profit sharing plan; T4PS Supplementary: Statement of employees profit sharing plan allocations and payments.

(4) Allocated capital gains and losses — Each capital gain and capital loss of a trust governed by an employees profit sharing plan from the disposition of any property shall, to the extent that it is allocated by the trust to an employee who is a beneficiary under the plan, be deemed to be a capital gain or capital loss, as the case may be, of the employee from the disposition of that property for the taxation year of the employee in which the allocation was made and, for the purposes of section 110.6, the property shall be deemed to have been disposed of by the employee on the day on which it was disposed of by the trust.

Related Provisions: 6(1)(d) — Allocations etc. under profit sharing plan; 39.1(1)"exempt capital gains balance"C(c), 39.1(6) — Reduction in gain to reflect capital gains exemption election.

History: Subsec. 144(4) amended by 1995, c. 3, s. 42, applicable to 1994 *et seq.* Subsec. (4) formerly read:

(4) Any capital gain of a trust governed by an employees profit sharing plan or any capital loss of the trust for a taxation year ending after 1971 from the disposition of any property shall, to the extent that it has been allocated by the trust to an employee who is a beneficiary under the plan, be deemed to be a capital gain or capital loss, as the case may be, of the employee from the disposition of that property, for the taxation year of the employee in which the allocation was made.

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(4.1) Idem — Notwithstanding subsection 26(6) of the *Income Tax Application Rules*, where at any time before 1976 the trustee of a trust governed by an employees profit sharing plan so elects in prescribed manner, the trust shall be deemed

(a) to have, on December 31, 1971, disposed of each property owned by the trust on that day for proceeds of disposition equal to the fair market value of the property on that day, and

(b) to have, on January 1, 1972, reacquired each property described in paragraph (a) for the amount referred to in that paragraph,

if the trustee under the plan has, before 1976, allocated the total of all capital gains and capital losses resulting from the deemed dispositions among the employees or other beneficiaries under the plan to the extent that the trustee under the plan has not previously so allocated them.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply.

Regulations: 1500(1) (prescribed manner).

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(4.2) Idem — Where a trust governed by an employees profit sharing plan

(a) was governed by an employees profit sharing plan on December 31, 1971, and the trustee of the trust has made an election under subsection (4.1), or

(b) was not governed by an employees profit sharing plan on December 31, 1971,

the trustee of the trust may, in any taxation year after 1973, elect in prescribed manner and prescribed form to treat any capital property of the trust as having been disposed of, in which event the property shall be deemed to have been disposed of on any day designated by the trustee for proceeds of disposition equal to

(c) the fair market value of the property on that day,

(d) the adjusted cost base to the trust of the property on that day, or

(e) an amount that is neither greater than the greater of the amounts determined under paragraphs (c) and (d) nor less than the lesser of the amounts determined under those paragraphs

whichever is designated by the trustee and to have been reacquired by the trust immediately thereafter at a cost equal to those proceeds.

Related Provisions: 54"superficial loss"(c) — Superficial loss rule does not apply.

Pre-RSC History: Subsecs. 144(4.1), (4.2) added by 1974-75-76, c. 26, s. 98, applicable, as to subsec. 144(4.1), to 1972 *et seq.*, and, as to subsec. 144(4.2), to 1974 *et seq.*

Regulations: 1500(2) (prescribed manner).

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

Forms: T3009: Election for deemed disposition and reacquisition of capital property of a trust governed by an employees profit sharing plan under subsection 144(4.2).

(5) Employer's contribution to trust deductible — An amount paid by an employer to a trustee under an employees profit sharing plan during a taxation year or within 120 days thereafter may be deducted in computing the employer's income for the taxation year to the extent that it was not deductible in computing income for a previous taxation year.

Related Provisions: 12(1)(n) — Benefits from employees profit sharing plan — income to employer; 18(1)(k) — Limitation re employer's contribution under profit sharing plan; 20(1)(w) — Employer's contribution under profit sharing plan.

(6) Beneficiary's receipts deductible — An amount received in a taxation year by a beneficiary from a trustee under an employees profit sharing plan shall not be included in computing the beneficiary's income for the year.

Related Provisions: 12(1)(n) — Benefits from employees profit sharing plan — income to employer; 18(1)(k)(i), 20(1)(w) — Deduction for employer's contribution.

(7) Beneficiary's receipts that are not deductible — Notwithstanding subsection (6), such portion of an amount received in a taxation year by a beneficiary from the trustee under an employees profit sharing plan as cannot be established to be attributable to

(a) payments made by the employee to the trustee,

(b) amounts required to be included in computing the income of the employee for that or a previous taxation year,

(c) a capital gain made by the trust before 1972,

(d) a capital gain made by the trust for a taxation year ending after 1971, to the extent allocated by the trust to the beneficiary,

(e) a gain made by the trust after 1971 from the disposition of a capital property, except to the extent that the gain is a capital gain made by the trust for a taxation year ending after 1971,

(f) the portion, if any, of the increase in the value of property transferred to the beneficiary by the trustee that would have been considered to be a capital gain made by the trust in 1971 if the trustee had sold the property on December 31, 1971 for its fair market value at that time, or

(g) a dividend received by the trust from a taxable Canadian corporation other than a dividend described in subsection 83(1), to the extent allocated by the trust to the beneficiary,

shall be included in computing the beneficiary's income for the year in which the amount was received, except that in determining the amount of any payments or other things described in any paragraph of this subsection, the amount thereof otherwise determined shall be reduced by such portion of the total of all capital losses of the trust for taxation years ending after 1971 as has been allocated by the trust to the beneficiary and has not been applied to reduce the amount of any payments or other things described in any other paragraph of this subsection.

Related Provisions: 6(1)(d) — Allocations etc. under profit sharing plan; 212 — Tax on Canadian income of non-resident persons.

Pre-RSC History: Para. 144(7)(g) substituted by 1976-77, c. 4, subsec. 55(2), applicable in respect of dividends received after May 25, 1976. Para. 144(7)(g) formerly read:

(g) a dividend received by the trust from a taxable Canadian corporation, to the extent allocated by the trust to the beneficiary.

Subsec. 144(7) substituted by 1973-74, c. 14, subsec. 49(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-379R: Employees profit sharing plan — allocations to beneficiaries.

Forms: T4PS Segment; T4PS Summary: Return of allocations and payments under employees profit sharing plan; T4PS Supplementary: Statement of employees profit sharing plan allocations and payments.

(7.1) Where property other than money received by beneficiary — Where, at any particular time in a taxation year of a trust governed by an employees profit sharing plan, an amount was received by a beneficiary from the trustee under the plan and the amount so received was property other than money, the following rules apply in respect of each such property so received by the beneficiary at the particular time:

(a) the amount that was the cost amount to the trust of the property immediately before the particular time shall be deemed to be the trust's proceeds of disposition of the property; and

(b) that proportion of

(i) such portion of the amount received by the beneficiary as can be established to be attributable to the payments or other things described in paragraphs (7)(a) to (g) (on the assumption that the amount of any payments or other things described in any such paragraph is the amount thereof determined as provided in subsection (7))

that

(ii) the cost amount to the trust of the property immediately before the particular time

is of

(iii) the cost amounts to the trust of all properties, other than money, so received by the beneficiary at the particular time,

is, subject to paragraph (c), deemed to be

(iv) the cost to the beneficiary of the property, and

(v) for the purposes of subsection (7) but not for the purposes of this subsection, the amount so received by the beneficiary by virtue of the receipt by the beneficiary of the property.

(c) where a particular property received is all or a portion of property received in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes the particular time an election in respect of the particular property in prescribed form, there shall be included in the cost to the beneficiary of the particular property determined under paragraph (b) the least of

(i) the amount, if any, by which the unused portion of the beneficiary's exempt capital gains balance in respect of the trust at the particular time exceeds the total of all amounts each of which is an amount included because of this paragraph in the cost to the beneficiary of another property received by the beneficiary at or before the particular time in the year,

(ii) the amount, if any, by which the fair market value of the particular property at the particular time exceeds the amount deemed by subparagraph (b)(iv) to be the cost to the beneficiary of the particular property, and

(iii) the amount designated in the election in respect of the particular property.

Related Provisions: 39.1(1)"exempt capital gains balance"F(a) — Exempt capital gains balance of flow-through entity.

History: The portion of para. 144(7.1)(b) between subparas. (iii) and (iv) amended, para. 144(7.1)(c) added, by 1998, c. 19, subsec. 169(3), (4); the portion applicable to 1994 *et seq.*, para. (c) applicable to 1994 *et seq.*, and a prescribed form filed under para. 144(7.1)(c) before January 1999 is deemed to be filed on time. The portion of para. 144(7.1)(b) between subparas. (iii) and (iv) formerly read:

shall be deemed to be

Pre-RSC History: Subsec. 144(7.1) added by 1973-74, c. 14, subsec. 49(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-379R: Employees profit sharing plan — allocations to beneficiaries.

Forms: T4PS Segment; T4PS Summary: Return of allocations and payments under employees profit sharing plan; T4PS Supplementary: Statement of employees profit sharing plan allocations and payments.

(8) Allocation of credit for dividends — Where there has been included in computing the income of a trust for a taxation year during which the trust was governed by an employees profit sharing plan taxable dividends from taxable Canadian corporations and there has been allocated by the trustee under the plan for the purposes of this subsection an amount for the year to one or more of the employees who are beneficiaries under the plan, which amount or the total of which amounts does not exceed the amount of the taxable dividends so included, each of the employees who are beneficiaries under the plan shall be deemed to have received a taxable dividend from a taxable Canadian corporation equal to the lesser of

(a) the amount, if any, that would be included in computing the employee's income for the year by virtue of this section, if this section were read without reference to paragraph (3)(e), and

(b) the amount, if any, so allocated for the purposes of this subsection to the employee.

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(8.1) Foreign tax deduction [foreign tax credit] — For the purpose of subsection 126(1), the following rules apply:

(a) such portion of the income for a taxation year of a trust governed by an employees profit sharing plan from sources (other than businesses carried on by it) in a foreign country as

(i) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the plan) to be part of

(A) the income that, by virtue of subsection (3), was included in computing the income for a taxation year of a particular employee who was a beneficiary under the plan, or

(B) the amount, if any, by which

(I) the total of amounts each of which is a capital gain of the trust that, by virtue of subsection (4), was deemed to be a capital gain of the particular employee for a taxation year

exceeds

(II) the total of amounts each of which is a capital loss of the trust that, by virtue of subsection (4), was deemed to be a capital loss of the particular employee for the taxation year, and

(ii) was not designated by the trust in respect of any other employee who was a beneficiary under the plan,

shall, if so designated by the trust in respect of the particular employee in its return of income for the year under this Part, be deemed to be income of the particular employee for the taxation year from sources in that country; and

(b) an employee who is a beneficiary under an employees profit sharing plan shall be deemed to have paid as non-business-income tax for a taxation year, on the income that the employee is deemed by paragraph (a) to have for the year from sources in a foreign country, to the government of that country an amount equal to that proportion of the non-business-income tax paid by the trust governed by the plan for the year to the government of that country, or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) in computing its income for the year) that

(i) the income that the employee is deemed by paragraph (a) to have for the year from sources in that country

is of

(ii) the income of the trust for the year from sources (other than businesses carried on by it) in that country.

Pre-RSC History: Subsec. 144(8.1) substituted by 1973-74, c. 14, subsec. 49(4), applicable to 1972 *et seq.*

(8.2) [Repealed]

History: Subsec. 144(8.2) repealed by 1994, c. 21, subsec. 68(3), applicable to 1992 *et seq.*, except that a taxpayer may elect that the repeal not apply to the taxpayer's 1992 taxation year by so notifying Revenue Canada in writing before the end of December 1994. That subsec. formerly read:

> (8.2) Where interest has been included in computing the income of a trust for a taxation year during which the trust was governed by an employees profit sharing plan, and there has been allocated by the trustee under the plan for the purposes of this subsection an amount for the year to one or more of the employees who are beneficiaries under the plan, which amount or the total of which amounts does not exceed the amount of the interest so included, each of the employees who are beneficiaries under the plan shall be deemed to have received interest equal to the lesser of
>
> (a) the amount, if any, that would be included in computing the employee's income for the year by virtue of this section, if this section were read without reference to paragraph (3)(f), and
>
> (b) the amount, if any, so allocated for the purposes of this subsection to the employee.

Pre-RSC History: That portion of subsec. 144(8.2) preceding para. (a) substituted by 1988, c. 55, subsec. 129(2), applicable to 1988 *et seq.* That portion formerly read:

> (8.2) Allocation of interest income deduction — Where there has been included in computing the income of a trust for a taxation year during which the trust was governed by an employees profit sharing plan, interest, other than any amount referred to in subsection 110.1(2), and there has been allocated by the trustee under the plan for the purposes of this subsection an amount for the year to one or more of the employees who are beneficiaries under the plan, which amount or the aggregate of which amounts does not exceed the amount of such interest so included, each of the employees who are beneficiaries under the plan shall be deemed to have received interest equal to the lesser of

Subsec. 144(8.2) added by 1976-77, c. 4, subsec. 55(3), applicable to 1974 *et seq.*

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(9) Deduction for forfeited amounts — Where a person ceases at any time in a taxation year to be a beneficiary under an employees profit sharing plan and does not become a beneficiary under the plan after that time and in the year, there may be deducted in computing the person's income for the year the amount determined by the formula

$$A - B - \frac{C}{4} - D$$

where

A is the total of all amounts each of which is an amount included in computing the person's income for the year or a preceding taxation year (other than an amount received before that time under the plan or an amount under the plan that the person is entitled at that time to receive) because of an allocation (other than an allocation to which subsection (4) applies) to the person made contingently under the plan before that time;

B is the portion, if any, of the value of A that is included in the value of A because of paragraph 82(1)(b);

C is the total of all taxable dividends deemed to be received by the person because of allocations under subsection (8) in respect of the plan; and

D is the total of all amounts deductible under this subsection in computing the person's income for a preceding taxation year because the person ceased to be a beneficiary under the plan in a preceding taxation year.

Related Provisions: 8(1)(o.1) — Deduction from employment income; 144(3) — Allocation contingent or absolute taxable; 144(10) — Payments out of profits; 152(1) — Assessment; 160.1 — Where excess refunded; 257 — Formula cannot calculate to less than zero.

History: Subsec. 144(9) substituted by 1994, c. 21, subsec. 68(4), applicable to 1992 *et seq.*, except that a taxpayer may elect that the subsec. not apply to the taxpayer's 1992 taxation year by notifying Revenue Canada in writing before the end of December 1994. That subsec. formerly read:

> (9) Refunds — For the purposes of section 164, where an employee who is a beneficiary under an employees profit sharing plan ceases, at any time in a taxation year, to be a beneficiary thereunder, and it is established that
>
> (a) there has been included in computing the income of the employee for that or a previous taxation year an amount by virtue of any allocation made to the employee contingently by the trustee under the plan prior to the time the employee ceased to be a beneficiary thereunder, and
>
> (b) the employee has not at any time received that amount from the trustee under the plan and is not, under the plan, entitled to receive that amount,
>
> the employee shall be deemed to have made, at the time the employee ceased to be a beneficiary under the plan, a payment equal to 15% of that amount on account of tax under this Part for the taxation year in which the employee ceased to be a beneficiary under the plan.

(10) Payments out of profits — Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", the arrangement shall, if the employer so elects in prescribed manner, be deemed, for the purpose of subsection (1), to be an arrangement under which payments computed by reference to the employer's profits are required.

History: Subsec. 144(10) substituted by 1994, c. 21, subsec. 68(4), applicable to 1992 *et seq.* That subsec. formerly read:

> (10) Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", the arrangement shall, if the employer has so elected in prescribed manner, be deemed, for the purpose of subsection (1), to be an arrangement for payments "computed by reference to an employer's profits from the employer's business".

Regulations: 1500(3) (prescribed manner).

Interpretation Bulletins: IT-280R: Employees' profit sharing plans — payments computed by reference to profits.

(11) Taxation year of trust — Where an employees profit sharing plan is accepted for registration by the Minister as a deferred profit sharing plan, the taxation year of the trust governed by the employees profit sharing plan shall be deemed to have ended immediately before the plan is deemed to have become registered as a deferred profit sharing plan pursuant to subsection 147(5).

Definitions [s. 144]: "adjusted cost base" — 54, 248(1); "amount", "business" — 248(1); "Canadian corporation" — 89(1), 248(1); "capital gain", "capital loss" — 39(1), 248(1); "capital property" — 54, 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "Minister", "officer", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 144(11), 249; "trust" — 104(1), 248(1); "unused portion of a beneficiary's exempt capital gains balance" — 144(1).

Information Circulars [s. 144]: 77-1R4: Deferred profit sharing plans; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Supplementary Unemployment Benefit Plans

145. (1) Definitions — In this section,

"registered supplementary unemployment benefit plan" means a supplementary unemployment benefit plan accepted by the Minister for registration for the purposes of this Act in respect of its constitution and operations for the taxation year under consideration;

Related Provisions: 128.1(10)"excluded right or interest"(a)(xi) — No deemed disposition on emigration; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 248(1)"registered supplementary unemployment benefit plan" — Definition applies to entire Act.

Pre-RSC History: *The definition "registered supplementary unemployment benefit plan" was para. 145(1)(a).*

Forms: T3S: Supplementary unemployment benefit plan — income tax return.

"supplementary unemployment benefit plan" means an arrangement, other than an arrangement in the nature of a superannuation or pension fund or plan or an employees profit sharing plan, under which payments are made by an employer to a trustee in trust exclusively for the payment of periodic amounts to employees or former employees of the employer who are or may be laid off for any temporary or indefinite period.

Pre-RSC History: *The definition "supplementary unemployment benefit plan" was para. 145(1)(b).*

Information Circulars: 72-5R: Registration of supplementary unemployment benefit plans; 78-14R2: Guidelines for trust companies and other persons responsible for filing.

(2) No tax while trust governed by plan — No tax is payable under this Part by a trust on the taxable income of the trust for a period during which the trust was governed by a registered supplementary unemployment benefit plan.

Related Provisions: 149(1)(q) — Exemption — trust under a registered supplementary unemployment benefit plan.

Forms: T3S: Supplementary unemployment benefit plan — income tax return.

(3) Amounts received taxable — There shall be included in computing the income of a taxpayer for a taxation year each amount received by the taxpayer under a supplementary unemployment benefit plan from the trustee under the plan at any time in the year.

Related Provisions: 56(1)(g) — Income inclusion; 153(1)(e) — Withholding; 212(1)(k) — Withholding tax on payment to non-resident.

(4) Amounts received on amendment or winding-up of plan — There shall be included in computing the income for a taxation year of a taxpayer who, as an employer, has made any payment to a trustee under a supplementary unemployment benefit plan, any amount received by the taxpayer in the year as a result of an amendment to or modification of the plan or as a result of the termination or winding-up of the plan.

Related Provisions: 56(1)(g) — Income inclusion; 153(1)(e) — Withholding; 212(1)(k) — Withholding tax on payment to non-resident.

(5) Payments by employer deductible — An amount paid by an employer to a trustee under a registered supplementary unemployment benefit plan during a taxation year or within 30 days thereafter may be deducted in computing the employer's income for the taxation year to the extent that it was not deductible in computing income for a previous taxation year.

Related Provisions: 6(1)(a)(i) — Employer's contribution is not a taxable benefit; 18(1)(i) — Limitation re employer's contribution under supplementary unemployment benefit plan; 20(1)(x) — Deduction for employer's contribution.

Definitions [s. 145]: "amount", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "Minister" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1).

Registered Retirement Savings Plans

146. (1) Definitions — In this section,

"annuitant" means

(a) until such time after maturity of the plan as an individual's spouse becomes entitled, as a consequence of the individual's death, to receive benefits to be paid out of or under the plan, the individual referred to in paragraph (a) or (b) of the definition "retirement savings plan" in this subsection for whom, under a retirement savings plan, a retirement income is to be provided, and

(b) thereafter, the spouse referred to in paragraph (a);

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 128.1(10)"excluded right or interest"(a)(i), (a)(ii) — No deemed disposition on emigration of annuitant; 146(16) — RRSP — deduction on transfer of funds; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 248(8) — Occurrences as a consequence of death.

History: Para. (a) of the definition "annuitant" in subsec. 146(1) amended by 1998, c. 19, subsec. 170(1), applicable to taxation years that end after November 1991. Para. (a) formerly read:

(a) until such time after maturity of the plan as his or her spouse becomes entitled, as a consequence of the spouse's death, to receive benefits to be paid out of or under the plan, the individual referred to in paragraph (a) or (b) of the definition "retirement savings plan" in this subsection for whom, under a retirement savings plan, a retirement income is to be provided, and

Pre-RSC History: *The definition "annuitant" was para. 146(1)(a).*

Para. 146(1)(a) substituted by 1979, c. 5, subsec. 46(1), applicable after June 29, 1978. Para. (a) formerly read:

(a) "annuitant" means the individual referred to in subparagraph (j)(i) or (ii) for whom, under a retirement savings plan, a retirement income is to be provided;

Para. 146(1)(a) substituted by 1977-78, c. 32, subsec. 34(1). Para. 146(1)(a) formerly read:

(a) "annuitant" means an individual referred to in subparagraph (j)(i) or (ii) to whom, under a retirement savings plan, any annuity for life is agreed to be paid or is to be provided;

Information Circulars: 72-22R9: Registered retirement savings plans.

Forms: RC4177: Death of an RRSP annuitant [guide].

"benefit" includes any amount received out of or under a retirement savings plan other than

(a) the portion thereof received by a person other than the annuitant that can reasonably be regarded as part of the amount included in computing the income of an annuitant by virtue of subsections (8.8) and (8.9),

(b) an amount received by the person with whom the annuitant has the contract or arrangement described in the definition "retirement savings plan" in this subsection as a premium under the plan,

(c) an amount, or part thereof, received in respect of the income of the trust under the plan for a taxation year for which the trust was not exempt from tax by virtue of paragraph (4)(c), and

(c.1) a tax-paid amount described in paragraph (b) of the definition "tax-paid amount" in this subsection that

relates to interest or another amount included in computing income otherwise than because of this section

and without restricting the generality of the foregoing includes any amount paid to an annuitant under the plan

(d) in accordance with the terms of the plan,

(e) resulting from an amendment to or modification of the plan, or

(f) resulting from the termination of the plan;

Related Provisions: 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP.

History: Para. (c.1) added to the definition "benefit" in subsec. 146(1) by 1998, c. 19, subsec. 170(2), applicable to deaths occurring after 1992.

Pre-RSC History: *The definition "benefit" was para. 146(1)(b). See Table of Concordance.*

Para. 146(1)(b) substituted by 1979, c. 5, subsec. 46(2), applicable after June 29, 1978. Para. (b) formerly read:

(b) "benefit" includes any amount received out of or under a retirement savings plan otherwise than as a premium and without restricting the generality of the foregoing includes any amount paid to an annuitant under the plan

(i) in accordance with the terms of the plan,

(ii) resulting from an amendment to or modification of the plan, or

(iii) resulting from the termination of the plan;

Para. 146(1)(b) substituted by 1974-75-76, c. 26, subsec. 99(1), applicable to 1972 *et seq.*

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

"earned income" of a taxpayer for a taxation year means the amount, if any, by which the total of all amounts each of which is

(a) the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada from

(i) an office or employment, determined without reference to paragraphs 8(1)(c), (m) and (m.2),

(ii) a business carried on by the taxpayer either alone or as a partner actively engaged in the business, or

(iii) property, where the income is derived from the rental of real property or from royalties in respect of a work or invention of which the taxpayer was the author or inventor,

(b) an amount included under paragraph 56(1)(b), (c), (c.1), (c.2), (g) or (o) in computing the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada,

(b.1) an amount received by the taxpayer in the year and at a time when the taxpayer is resident in Canada as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(c) the taxpayer's income for a period in the year throughout which the taxpayer was not resident in Canada from

(i) the duties of an office or employment performed by the taxpayer in Canada, determined without reference to paragraphs 8(1)(c), (m) and (m.2), or

(ii) a business carried on by the taxpayer in Canada, either alone or as a partner actively engaged in the business

except to the extent that the income is exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada, or

(d) in the case of a taxpayer described in subsection 115(2), the total that would be determined under paragraph 115(2)(e) in respect of the taxpayer for the year if

(i) that paragraph were read without reference to subparagraphs 115(2)(e)(iii) and (iv), and

(ii) subparagraph 115(2)(e)(ii) were read without any reference therein to paragraph 56(1)(n),

except any part thereof included in the total determined under this definition by reason of paragraph (c) or exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

exceeds the total of all amounts each of which is

(e) the taxpayer's loss for a period in the year throughout which the taxpayer was resident in Canada from

(i) a business carried on by the taxpayer, either alone or as a partner actively engaged in the business, or

(ii) property, where the loss is sustained from the rental of real property,

(f) an amount deductible under paragraph 60(b), (c) or (c.1), or deducted under paragraph 60(c.2), in computing the taxpayer's income for the year,

(g) the taxpayer's loss for a period in the year throughout which the taxpayer was not resident in Canada from a business carried on by the taxpayer in Canada, either alone or as a partner actively engaged in the business, or

(h) the portion of an amount included under subparagraph (a)(ii) or (c)(ii) in determining the taxpayer's earned income for the year because of subparagraph 14(1)(a)(v)

and, for the purposes of this definition, the income or loss of a taxpayer for any period in a taxation year is the taxpayer's income or loss computed as though that period were the whole taxation year;

History: Para. (b.1) of the definition "earned income" in subsec. 146(1) amended by 1998, c. 19, subsec. 37(3), applicable to amounts received after 1994. Para. (b.1) formerly read:

(b.1) an amount described in paragraph 56(8)(a) received by the taxpayer in the year, where the taxpayer was resident in Canada at the time of receipt,

Para. (h) added by 1998, c. 19, subsec. 170(3), applicable to 1995 *et seq.*

Para. (b) of the definition "earned income" in subsec. 146(1) amended to add reference to para. 56(1)(c.2), para. (b.1) added and para. (f) amended to add ", or deducted under paragraph 60(c.2)", by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 82(1) and (2), applicable to 1991 *et seq.*

Pre-RSC History: *The definition "earned income" was para. 146(1)(c). See Table of Concordance.*

Para. 146(1)(c) substituted by 1990, c. 35, subsec. 13(1), applicable to 1988 *et seq.* except that

(a) in its application to the 1988 taxation year, the para. shall be read as follows:

"(c) "earned income" of a taxpayer for a taxation year means the amount, if any, by which the aggregate of all amounts each of which is

(i) the taxpayer's income for the year from

(A) an office or employment, determined without reference to paragraph 8(1)(m),

(B) the carrying on of a business either alone or as a partner actively engaged in the business, or

(C) property, where such income is derived from the rental of real property or from royalties in respect of a work or invention of which the taxpayer was the author or inventor, or

(ii) an amount included in computing the taxpayer's income for the year

(A) under paragraph 56(1)(b), (c), (c.1), (g) or (o), this section or subsection 147(10) or (15), or

(B) as a superannuation or pension benefit, retiring allowance or death benefit

exceeds the aggregate of all amounts each of which is

(iii) the taxpayer's loss for the year from

(A) the carrying on of a business either alone or as a partner actively engaged in the business, or

(B) property, where such loss is sustained from the rental of real property, or

(iv) an amount deductible in computing the taxpayer's income for the year under paragraph 60(b), (c), (c.1), (j), (j.01), (j.1), (k), (l) or (m) or subsection (6) or (7);" and

(b) in its application to the 1989 taxation year, the para. shall be read as follows:

"(c) "earned income" of a taxpayer for a taxation year means the amount, if any, by which the aggregate of all amounts each of which is

(i) the taxpayer's income for the year from

(A) an office or employment, determined without reference to paragraphs 8(1)(c), (m) and (m.2),

(B) the carrying on of a business either alone or as a partner actively engaged in the business, or

(C) property, where such income is derived from the rental of real property or from royalties in respect of a work or invention of which the taxpayer was the author or inventor, or

(ii) an amount included in computing the taxpayer's income for the year

(A) under paragraph 56(1)(b), (c), (c.1), (g) or (o), this section or subsection 146.3(5) or 147(10) or (15),

(B) as a superannuation or pension benefit, retiring allowance or death benefit

exceeds the aggregate of all amounts each of which is

(iii) the taxpayer's loss for the year from

(A) the carrying on of a business either alone or as a partner actively engaged in the business, or

(B) property, where such loss is sustained from the rental of real property, or

(iv) an amount deductible under paragraph 60(b), (c), (c.1), (j), (j.1), (j.2), (k), (l) or (m) or subsection (6) or (7) in computing the taxpayer's income for the year;"

Para. 146(1)(c) formerly read:

(c) "earned income" means the aggregate of

(i) salary or wages, superannuation or pension benefits, retiring allowances, death benefits, royalties in respect of a work or invention of which the taxpayer was the author or inventor, amounts included in computing the income of the taxpayer by virtue of paragraph 56(1)(b) or (c), amounts received by the taxpayer from a trustee under a supplementary unemployment benefit plan, amounts included in computing the income of the taxpayer by virtue of this section and amounts included in computing the income of the taxpayer by virtue of subsections 146.2(6) and 147(10) and (15),

(ii) income from the carrying on of a business either alone or as a partner actively engaged in the business,

(iii) rental income from real property and

(iv) amounts deductible under paragraph 8(1)(m) in computing the income of the taxpayer,

minus

(v) losses from the carrying on of a business either alone or as a partner actively engaged in the business,

(vi) losses from the rental of real property, and

(vii) amounts deductible under paragraphs 60(j), (j.1), (l) or (m) or under subsection (6) or (7) in computing the income of the taxpayer;

Subpara. 146(1)(c)(iv) amended to substitute "paragraph 8(1)(m)" for "paragraph 8(1)(l) or (m)", by 1988, c. 55, subsec. 130(1), applicable to 1988 *et seq.*

Subpara. 146(1)(c)(vii) amended by 1980-81-82-83, c. 140, subsec. 98(1) to add a reference to paragraphs "60(j.1), (l)" applicable to 1981 *et seq.* except that for the 1981 and 1982 taxation years, subpara. 146(1)(c)(vii) shall be read without a reference to para. 60(l).

Subpara. 146(1)(c)(i) substituted by 1974-75-76, c. 26, subsec. 99(2), applicable to 1974 *et seq.*, to add reference to subsec. 146.2(6).

Para. 146(1)(c) substituted by 1973-74, c. 14, subsec. 50(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 146(1)"earned income"]: *De Giorgio v. Canada*, [1996] 2 C.T.C. 2038 (TCC) (Reported income from company constituted "earned income"); *Goldstein v. Canada*, [1995] 2 C.T.C. 2036 (TCC) (Income retains its character as it flows through partnership); *Switzer v. Canada*, [1995] 1 C.T.C. 2928 (TCC) (Royalties in appropriate circumstances may be earned income).

Interpretation Bulletins: IT-377R: Director's, executor's or juror's fees; IT-434R: Rental of real property by individual.

I.T. Technical News: No. 11 (reporting of amounts paid out of an employee benefit plan).

Forms: T1023: RRSP deduction limit — calculation of earned income.

"issuer" means the person referred to in the definition "retirement savings plan" in this subsection with whom an annuitant has a contract or arrangement that is a retirement savings plan;

Pre-RSC History: *The definition "issuer" was para. 146(1)(c.1).*

Para. 146(1)(c.1) added by 1980-81-82-83, c. 140, subsec. 98(2), applicable after November 12, 1981.

"maturity" means the date fixed under a retirement savings plan for the commencement of any retirement income the payment of which is provided for by the plan;

Pre-RSC History: *The definition "maturity" was para. 146(1)(d).*

Para. 146(1)(d) substituted by 1977-78, c. 32, subsec. 34(2), to substitute "retirement income" for "annuity".

"net past service pension adjustment" of a taxpayer for a taxation year means the positive or negative amount determined by the formula

$$P + Q - G$$

where

P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer,

Q is the total of all amounts each of which is a prescribed amount in respect of the taxpayer for the year, and

G is the amount of the taxpayer's PSPA withdrawals for the year, determined as of the end of the year in accordance with prescribed rules;

Related Provisions: 204.2(1.3) — Net past service pension adjustment for purposes of Part X.1 tax; 257 — Formula cannot calculate to less than zero.

History: The portion of the definition "net past service pension adjustment" before the description of G in subsec. 146(1) substituted by 1994, c. 21, subsec. 69(1), applicable to 1993 *et seq.* That portion of the definition formerly read:

"net past service pension adjustment" of a taxpayer for a taxation year means the positive or negative amount determined by the formula

$$P - G$$

where

P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer, and

All that portion of the definition of "net past service pension adjustment" preceding the description of G amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(3), applicable after 1988. That portion formerly read:

"net past service pension adjustment" of a taxpayer for a taxation year means the amount determined by the formula

$$P - (F + G)$$

where

P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer,

F is the amount of the taxpayer's PSPA transfers for the year, determined as of the end of the year in accordance with prescribed rules, and

Pre-RSC History: *The definition "net past service pension adjustment" was para. 146(1)(d.1). See Table of Concordance.*

Para. 146(1)(d.1) added by 1990, c. 35, subsec. 13(2), applicable after 1988.

Regulations: 8307(5) (prescribed rules); 8308.4(2) (prescribed amount for formula element Q).

"non-qualified investment", in relation to a trust governed by a registered retirement savings plan, means property acquired by the trust after 1971 that is not a qualified investment for the trust;

Pre-RSC History: *The definition "non-qualified investment" was para. 146(1)(e).*

"premium" means any periodic or other amount paid or payable under a retirement savings plan

(a) as consideration for any contract referred to in paragraph (a) of the definition "retirement savings plan" to pay a retirement income, or

(b) as a contribution or deposit referred to in paragraph (b) of that definition for the purpose stated in that paragraph

but, except for the purposes of paragraph (b) of the definition "benefit" in this subsection, paragraph (2)(b.3), subsection (22) and the definition "excluded premium" in subsection 146.02(1), does not include a repayment to which paragraph (b) of the definition "excluded withdrawal" in either subsection 146.01(1) or 146.02(1) applies or an amount that is designated under subsection 146.01(3) or 146.02(3);

Related Provisions: 60(j) — Transfer of superannuation benefits; 60(j.01) — Transfer of surplus; 60(j.2) — Transfer to spousal RRSP; 60(l) — Transfer of RRSP premium refunds.

History: The closing words of the definition "premium" in subsec. 146(1) amended by 1999, c. 22, subsec. 59(1), applicable to 1997 *et seq.* The closing words formerly read:

but, except for the purposes of paragraph (b) of the definition "benefit" in this subsection and paragraph (2)(b.3), does not include a repayment described in subparagraph (b)(ii) of the definition "excluded withdrawal" in subsection 146.01(1) or an amount designated under subsection 146.01(3);

The closing words of the definition "premium" in subsec. 146(1) amended by 1995, c. 3, subsec. 43(1), applicable to 1995 *et seq.* The closing words formerly read:

but, except for the purposes of paragraph (b) of the definition "benefit" and paragraph (2)(b.3), does not include a repayment described in subparagraph (b)(ii) of the definition "excluded withdrawal" in subsection 146.01(1) or designated under subsection 146.01(3);

The definition "premium" in subsec. 146(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(4), to delete "in this subsection" from after "retirement savings plan" in para. (a) and to add that portion following para. (b), applicable to 1992 *et seq.*

Pre-RSC History: *The definition "premium" was para. 146(1)(f).*

Subpara. 146(1)(f)(ii) substituted by 1980-81-82-83, c. 40, subsec. 96(1), in force December 1, 1980, to add "or deposit".

Subpara. 146(1)(f)(i) substituted by 1977-78, c. 32, subsec. 34(3). Subpara. 146(1)(f)(i) formerly read:

(i) as consideration for any agreement referred to in subparagraph (j)(i) to pay an annuity, or

Regulations: Reg. 100(3)(c) (no source withholding where premium is paid by employer directly to RRSP).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

"qualified investment" for a trust governed by a registered retirement savings plan means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the references in that definition to a trust were read as references to the trust governed by the registered retirement savings plan,

(b) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

(c) an annuity described in the definition "retirement income" in respect of the annuitant under the plan, if purchased from a licensed annuities provider,

(c.1) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(c.2) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than the life of the annuitant under the plan (in this definition referred to as the "RRSP annuitant"),

(iv) the day on which the periodic payments began or are to begin (in this paragraph referred to as the "start date") is not later than the end of the year in which the RRSP annuitant attains 70 years of age,

(v) either

(A) the periodic payments are payable for the life of the RRSP annuitant and either there is no guaranteed period under the contract or there is a guaranteed period that begins at the start date and does not exceed a term equal to 90 years minus the lesser of

(I) the age in whole years at the start date of the RRSP annuitant (determined on the as-

sumption that the RRSP annuitant is alive at the start date), and

(II) the age in whole years at the start date of a spouse of the RRSP annuitant (determined on the assumption that a spouse of the RRSP annuitant at the time the contract was acquired is a spouse of the RRSP annuitant at the start date), or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(B) the periodic payments are payable for a term equal to

(I) 90 years minus the age described in subclause (A)(I), or

(II) 90 years minus the age described in subclause (A)(II), and

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs (3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(d) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 132.2(1)(k) — Where share ceases to be qualified investment due to mutual fund reorganization; 146(10.1) — Tax payable on income from non-qualified investments; 207.1(1) — Tax payable by RRSP.

History: Para. (c) of the definition "qualified investment" in subsec. 146(1) amended by 1998, c. 19, subsec. 170(4), and add paras. (c.1) and (c.2), applicable after 1996. Para. (c) formerly read:

(c) an annuity described in the definition "retirement income" in this subsection in respect of the annuitant under the plan, if purchased from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, and

Pre-RSC History: *The definition "qualified investment" was para.146(1)(g).*

Subpara. 146(1)(g)(iii) substituted by 1980-81-82-83, c. 140, subsec. 98(3) applicable after June 29, 1978, to substitute "paragraph (i.1)" for "subparagraph (2)(a)(ii)".

Selected Cases [subsec. 146(1)"qualified investment"]: *The Queen v. Epstein*, [1984] C.T.C. 270 (FCTD) (Mortgage acquired from company controlled by taxpayer was arm's length transaction and qualified investment for RRSP).

Regulations: 221 (information return by issuer of qualified investment); 3200, 3201 (prescribed stock exchanges; but see also ITA 87(10)); 4900, 4901, 5100–5104 (prescribed investments).

I.T. Application Rules: 65(1), (3).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146(10) waived because taxpayers thought they were qualified investments).

Interpretation Bulletins: IT-320R2: Registered retirement savings plans — qualified investments.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"RRSP deduction limit" of a taxpayer for a taxation year means the amount determined by the formula

$$A + B + R - C$$

where

A is the taxpayer's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which

(a) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the preceding taxation year

exceeds the total of all amounts each of which is

(b) the taxpayer's pension adjustment for the preceding taxation year in respect of an employer, or

(c) a prescribed amount in respect of the taxpayer for the year,

C is the taxpayer's net past service pension adjustment for the year, and

R is the taxpayer's total pension adjustment reversal for the year;

Related Provisions: 128(2)(d) — Where individual bankrupt; 146(5) — Amount of RRSP premiums deductible; 146(5.1) — Amount of spousal RRSP premiums deductible; 146(5.21) — Anti-avoidance; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 248(1)"RRSP deduction limit" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero; Reg. 8307(2) — Prescribed condition for registered pension plan.

History: The definition "RRSP deduction limit" in subsec. 146(1) amended by 1998, c. 19, subsec. 37(1), applicable after 1988 except that, for taxation years before 1998, the description of "R" shall be read as "R is nil". The definition formerly read:

"RRSP deduction limit" of a taxpayer for a taxation year means the amount determined by the formula

$$A + B - C$$

where

A is the taxpayer's unused RRSP deduction room at the end of the immediately preceding taxation year,

B is the amount, if any, by which the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the immediately preceding taxation year exceeds the total of all amounts each of which is the taxpayer's pension adjustment for the immediately preceding taxation year in respect of an employer, or a prescribed amount in respect of the taxpayer for the year, and

C is the taxpayer's net past service pension adjustment for the year;

Pre-RSC History: *The definition "RRSP deduction limit" was para. 146(1)(g.1). See Table of Concordance.*

Para. 146(1)(g.1) added by 1990, c. 35, subsec. 13(3), applicable after 1988.

Regulations: 8304.1 (pension adjustment reversal); 8308(2), 8308.2, 8308.4(2), 8309 (prescribed amount).

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan; T452: Notice of Assessment with calculation of RRSP contribution limit; T1023: RRSP deduction limit — calculation of earned income.

"RRSP dollar limit" for a calendar year means

(a) for years other than 1996, the money purchase limit for the preceding year, and

(b) for 1996, $13,500;

Related Provisions: 204.2(1.1) — Cumulative excess amount in respect of RRSPs; 248(1)"RRSP dollar limit" — Definition applies to entire Act.

History: The definition "RRSP dollar limit" in subsec. 146(1) amended by 1996, c. 21, s. 34, applicable after 1995. It formerly read:

> "RRSP dollar limit" for a calendar year means the money purchase limit for the immediately preceding calendar year;

Pre-RSC History: *The definition "RRSP dollar limit" was para. 146(1)(g.2).*

Para. 146(1)(g.2) added by 1990, c. 35, subsec. 13(3), applicable after 1988.

"refund of premiums" means

(a) any amount paid to a spouse of the annuitant out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan), where the annuitant died before the maturity of the plan and the amount was paid as a consequence of the death, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) any amount paid out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan) after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

and for the purpose of paragraph (b), it is assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if the dependant's income for the year preceding the taxation year in which the annuitant died exceeded the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding year;

Related Provisions: 146(8.1) — Deemed receipt of refund of premiums; 146(8.9) — Effect of death where person other than spouse becomes entitled; 146.3(1)"designated benefit" — Application of definition to RRIFs; 248(8) — Occurrences as a consequence of death.

History: Para. (b) of the definition "refund of premiums" in subsec. 146(1) amended by 2000, c. 19, subsec. 42(1), applicable (by subsec. 42(4)) to deaths that occur after 1995 except that, in respect of the death of an individual that occurred after 1995 and before 1999, the para. shall be read as it did before being amended in connection with an amount paid at a particular time out of a registered retirement savings plan or registered retirement income fund, unless the following persons jointly elect otherwise in writing filed with the Minister of National Revenue before May 2000 (or before such later day as is acceptable to the Minister):

> (a) the legal representative of the deceased individual; and
>
> (b) the individual in whose income an amount would be required to be included as a result of the election, or would be so required to be included if Part I of the Act applied.

Subsec. 42(5) of the said c. 19 reads as follows:

> (5) Notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue shall make such assessments, reassessments and additional assessments of tax, interest and penalties and such determinations and redeterminations as are necessary to give effect to an election under subsection (4).

Para. (b) of the definition formerly read:

> (b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan) after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

The closing words of the definition "refund of premiums" in subsec. 146(1) amended by the said c. 19, subsec. 42(2), applicable to 2000 *et seq.* except that, in its application to the 2000 taxation year, the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding taxation year" shall be read as a reference to "$7,044". The closing words formerly read:

> and for the purpose of paragraph (b), it is assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if the dependant's ncome for the year preceding the taxation year in which the annuitant died exceeded the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding year;

The closing words of the definition "refund of premiums" in subsec. 146(1) amended by 1999, c. 22, subsec. 59(2), applicable to 1999 *et seq.* The closing words formerly read:

> and for the purpose of paragraph (b), it is assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if the income of the dependant for the taxation year preceding the taxation year in which the annuitant died exceeded the amount used under paragraph (c) of the description of B in subsection 118(1) for that preceding year;

Paras. (a) and (b) of the definition "refund of premiums" in subsec. 146(1) amended by 1998, c. 19, subsec. 170(5), applicable to deaths occurring after 1992. Paras. (a) and (b) formerly read:

> (a) any amount paid to a spouse of the annuitant out of or under a registered retirement savings plan of the annuitant, where the annuitant died before the maturity of the plan and that amount was paid as a consequence of the death, or
>
> (b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

Paras. (a) and (b) of the definition of "refund of premiums" in subsec. 146(1) substituted by 1994, c. 21, subsec. 69(2), applicable to deaths occurring after 1992. Those paras. formerly read:

> (a) any amount paid to a spouse of the annuitant, as a consequence of the annuitant's death, out of or under a registered retirement savings plan of the annuitant prior to its maturity, or
>
> (b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time the annuitant died, financially dependent on the annuitant for support,

All that portion of the definition "refund of premiums" in subsec. 146(1) following para. (b) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 13, applicable to 1993 *et seq.* That portion formerly read:

> and for the purpose of paragraph (b), it shall be assumed, unless the contrary is established, that a dependant was not financially dependent on the annuitant for support at the time of the annuitant's death if
>
> (c) any person other than the annuitant was permitted a deduction under paragraph 118(1)(d) in respect of the dependant in computing that other person's tax payable under this Part for the taxation year immediately preceding the taxation year in which the annuitant died, or
>
> (d) the income of the dependant for the year referred to in paragraph (c) exceeded $5,000;

Pre-RSC History: *The definition "refund of premiums" was para. 146(1)(h). See Table of Concordance.*

Subpara. 146(1)(h)(ii) substituted by 1990, c. 35, subsec. 13(4), applicable to 1989 *et seq.* Subpara. (1)(h)(ii) formerly read:

> (ii) if the annuitant had no spouse at the time of his death, such portion of the aggregate of amounts paid out of or under all registered retirement savings plans of the annuitant to his child or grandchild (in this paragraph referred to as his "dependant"), who was at the time the annuitant died financially dependent on him for support, as does not exceed (except in the case of a dependant who was dependent on the annuitant by reason of physical or mental infirmity) the amount obtained when $5,000 is multiplied by the amount by which 26 exceeds the number that is the age in whole years of that dependant at the time the annuitant died

Subpara. 146(1)(h)(iii) substituted by 1988, c. 55, subsec. 130(2), applicable to 1988 *et seq.* Subpara. 146(1)(h)(iii) formerly read:

(iii) any person other than the annuitant was permitted a deduction under paragraph 109(1)(d) in respect of the dependant in computing his taxable income for the year immediately preceding the year in which the annuitant died, or

Para. 146(1)(h) substituted by 1979, c. 5, subsec. 46(3), applicable in respect of deaths occurring after June 29, 1978. Para. 146(1)(h) formerly read:

(h) means any amount paid or payable under a retirement savings plan, on or after the death of the annuitant thereunder in the event of his death before maturity, as or on account of

(i) a return of premiums,

(ii) reasonable interest on premiums, or

(iii) a share or interest in or a bonus out of profits or gains;

Para. 146(1)(h) substituted by 1977-78, c. 32, subsec. 34(4), to repeal all that portion following subpara. (iii). That portion formerly read:

and for the purpose of this definition, "premiums" includes payments made to a retirement savings plan by the spouse of the annuitant thereunder;

Subpara. 146(1)(h)(iii) substituted and all that portion following subpara. (iii) added by 1976-77, c. 4, subsec. 56(1), applicable on and after January 1, 1974. Subpara. 146(1)(h)(iii) formerly read:

(iii) a share or interest in or a bonus out of profits or gains;

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: RC4177: Death of an RRSP annuitant [guide].

"registered retirement savings plan" means a retirement savings plan accepted by the Minister for registration for the purposes of this Act as complying with the requirements of this section;

Related Provisions: 128.1(10)"excluded right or interest"(a)(i) — No deemed disposition of RRSP on emigration; 206(2), 206.1 — Tax payable by a trust governed by RRSP; 207.1(1) — Tax payable by RRSP; 207.2 — Return and payment of tax by RRSP; 248(1)"disposition"(g) — Transfer between RRSPs/RRIFs not a disposition; 248(1)"foreign retirement arrangement" — U.S. Individual Retirement Account; 248(1)"registered retirement savings plan" — Definition applies to entire Act.

Pre-RSC History: *The definition "registered retirement savings plan" was para. 146(1)(i).*

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs; IT-528: Transfers of funds between registered plans.

"retirement income" means

(a) an annuity commencing at maturity, and with or without a guaranteed term commencing at maturity, not exceeding the term referred to in paragraph (b), or, in the case of a plan entered into before March 14, 1957, not exceeding 20 years, payable to

(i) the annuitant for the annuitant's life, or

(ii) the annuitant for the lives, jointly, of the annuitant and the annuitant's spouse and to the survivor of them for the survivor's life, or

(b) an annuity commencing at maturity, payable to the annuitant, or to the annuitant for the annuitant's life and to the spouse after the annuitant's death, for a term of years equal to 90 minus either

(i) the age in whole years of the annuitant at the maturity of the plan, or

(ii) where the annuitant's spouse is younger than the annuitant and the annuitant so elects, the age in whole years of the spouse at the maturity of the plan,

issued by a person described in the definition "retirement savings plan" in this subsection with whom an individual may have a contract or arrangement that is a retirement savings plan,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

or any combination thereof;

Pre-RSC History: *The definition "retirement income" was para. 146(1)(i.1). See Table of Concordance.*

Para. 146(1)(i.1) added by 1977-78, c. 32, subsec. 34(5).

Information Circulars: 72-22R9: Registered retirement savings plans; 74-1R5: Form T2037, Notice of purchase of annuity with "plan" funds; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T2037: Notice of purchase of annuity with "plan" funds.

"retirement savings plan" means

(a) a contract between an individual and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, under which, in consideration of payment by the individual or the individual's spouse of any periodic or other amount as consideration under the contract, a retirement income commencing at maturity is to be provided for the individual, or

(b) an arrangement under which payment is made by an individual or the individual's spouse

(i) in trust to a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, of any periodic or other amount as a contribution under the trust,

(ii) to a corporation approved by the Governor in Council for the purposes of this section that is licensed or otherwise authorized under the laws of Canada or a province to issue investment contracts providing for the payment to or to the credit of the holder thereof of a fixed or determinable amount at maturity, of any periodic or other amount as a contribution under such a contract between the individual and that corporation, or

(iii) as a deposit with a branch or office, in Canada, of

(A) a person who is, or is eligible to become, a member of the Canadian Payments Association, or

(B) a credit union that is a shareholder or member of a body corporate referred to as a "central" for the purposes of the *Canadian Payments Association Act*,

(in this section referred to as a "depositary")

to be used, invested or otherwise applied by that corporation or that depositary, as the case may be, for the purpose of providing for the individual, commencing at maturity, a retirement income;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 248(1)"foreign retirement arrangement" — U.S. Individual Retirement Account; 248(1)"retirement savings plan" — Definition applies to entire Act; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: *The definition "retirement savings plan" was para. 146(1)(j).*

Cl. 146(1)(j)(C) added and that portion following substituted by 1980-81-82-83, c. 40, subsec. 96(2), in force December 1, 1980. That portion formerly read:

> to be used, invested or otherwise applied by that corporation resident in Canada or that investment corporation, as the case may be, for the purpose of providing for the individual, commencing at maturity, a retirement income.

Para. 146(1)(j) substituted by 1977-78, c. 32, subsec. 34(6). Para. 146(1)(j) formerly read:

> (j) "retirement savings plan" — means
>
> (i) a contract between an individual and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, under which, in consideration of payment by the individual of any periodic or other amount as consideration under the contract, that person agrees to pay to the individual, commencing at maturity, an annuity for life, or
>
> (ii) an arrangement under which payment is made by an individual
>
> (A) in trust to a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, of any periodic or other amount as a contribution under the trust, or
>
> (B) to a corporation approved by the Governor in Council for the purposes of this section that is licensed or otherwise authorized under the laws of Canada or a province to issue investment contracts providing for the payment to or to the credit of the holder thereof of a fixed or determinable amount at maturity, of any periodic or other amount as a contribution under any such contract between the individual and that corporation,
>
> to be used, invested or otherwise applied by that corporation resident in Canada or that investment corporation, as the case may be, for the purpose of providing to the individual, commencing at maturity, an annuity for life.

Information Circulars: 72-22R9: Registered retirement savings plans; 74-1R5 — Form T2037: Notice of purchase of annuity with "plan" funds; 78-14R2 — Guidelines for trust companies and others; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T4RSP Segment; T4RSP Summ: Return of RRSP income; T4RSP Supp: Statement of RRSP income; T4079: T4RSP and T4RIF guide.

"spousal plan", in relation to a taxpayer, means

(a) a registered retirement savings plan

(i) to which the taxpayer has, at a time when the taxpayer's spouse was the annuitant under the plan, paid a premium, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) that has received a payment out of or a transfer from a registered retirement savings plan or a registered retirement income fund that was a spousal plan in relation to the taxpayer, or

(b) a registered retirement income fund that has received a payment out of or a transfer from a spousal plan in relation to the taxpayer;

Related Provisions: 74.5(12) — Application; 146(5.1) — Deduction for contribution to spousal RRSP; 146(8.3) — Attribution on withdrawal from spousal RRSP; 146.3(5.1) — Amount included in income; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: *The definition "spousal plan" was para. 146(1)(k). See Table of Concordance.*

Para. 146(1)(k) added by 1990, c.35, subsec. 13(5), applicable after 1988.

"tax-paid amount" paid to a person in respect of a registered retirement saving plan means

(a) an amount paid to the person in respect of the amount that would, if this Act were read without reference to subsection 104(6), be income of a trust governed by the plan for a taxation year for which the trust was subject to tax because of paragraph (4)(c), or

(b) where

(i) the plan is a deposit with a depositary referred to in clause (b)(iii)(B) of the definition "retirement savings plan" in this subsection, and

(ii) an amount is received at any time out of or under the plan by the person,

the portion of the amount that can reasonably be considered to relate to interest or another amount in respect of the deposit that was required to be included in computing the income of any person (other than the annuitant) otherwise than because of this section;

Related Provisions: 146(1)"benefit"(c.1) — Whether tax-paid amount is a "benefit"; 146(1)"refund of premiums" — Exclusion of tax-paid amount; 146(8.9) — RRSP income inclusion on death; 146.3(5)(c) — Tax-paid amount from RRIF excluded from income; 146.3(6.2) — RRIF income inclusion on death.

History: The definition "tax-paid amount" added to subsec. 146(1) by 1998, c. 19, subsec. 170(6), applicable to deaths occurring after 1992.

"unused RRSP deduction room" of a taxpayer at the end of a taxation year means,

(a) for taxation years ending before 1991, nil, and

(b) for taxation years that end after 1990, the amount, which can be positive or negative, determined by the formula

$$A + B + R - (C + D)$$

where

A is the taxpayer's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which

(i) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the preceding taxation year

exceeds the total of all amounts each of which is

(ii) the taxpayer's pension adjustment for the preceding taxation year in respect of an employer, or

(iii) a prescribed amount in respect of the taxpayer for the year,

C is the taxpayer's net past service pension adjustment for the year,

D is the total of the amounts deducted by the taxpayer under subsections (5) and (5.1) and paragraph 60(v) in computing the taxpayer's income for the year, and

R is the taxpayer's total pension adjustment reversal for the year.

Related Provisions: 128(2)(d), (d.2) — Where individual bankrupt; 146(1) — RRSP deduction limit; 146(5.21) — Anti-avoidance; 204.2(1.1) — Cumulative excess amount re RRSPs; 248(1)"unused RRSP deduction room" — Definition applies to entire Act; 257 — Formula cannot calculate to less than zero.

History: Para. (b) of the definition "unused RRSP deduction room" in subsec. 146(1) amended 1998, c. 19, subsec. 37(2), applicable after 1988 except that, for taxation years before 1998, the description of "R" shall be read as "R is nil". Para. (b) formerly read:

(b) for taxation years that end after 1990,

(i) the amount, which can be positive or negative, determined by the formula

$$A + B - (C + D)$$

where

A is the taxpayer's unused RRSP deduction room at the end of the immediately preceding taxation year,

B is the amount, if any, by which the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the immediately preceding taxation year exceeds the total of all amounts each of which is the taxpayer's pension adjustment for the immediately preceding taxation year in respect of an employer, or a prescribed amount in respect of the taxpayer for the year,

C is the taxpayer's net past service pension adjustment for the year, and

D is the total of the amounts deducted by the taxpayer under subsections (5) and (5.1) and paragraph 60(v) in computing the taxpayer's income for the year.

(ii) [Repealed]

The opening words of para. (b) of the definition "unused RRSP deduction room" in subsec. 146(1) amended, and subpara. (b)(ii) repealed, by 1997, c. 25, subsecs. 41(1), (2), applicable April 25, 1997. The opening words of para. (b), and subpara. (b)(ii), formerly read:

(b) for taxation years ending after 1990, the lesser of

. . . . .

(ii) the greater of

(A) the total of all amounts each of which is the amount, determined in respect of a particular taxation year that is the year or such of the six taxation years immediately preceding the year as end after 1990, that is the lesser of 18% of the taxpayer's earned income for the taxation year immediately preceding the particular taxation year and the RRSP dollar limit for the particular taxation year, and

(B) ½ of the RRSP dollar limit for the year.

Pre-RSC History: *The definition "unused RRSP deduction room" was para. 146(1)(l). See Table of Concordance.*

Para. 146(1)(l) added by 1990, c. 35, subsec. 13(5), applicable after 1988.

Regulations: 8304.1 (pension adjustment reversal); 8308(2), 8308.2, 8308.4(2) (prescribed amount).

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan.

Selected Cases [subsec. 146(1)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit); *Re Gero*, [1979] C.T.C. 309 (FCTD) (RRSP funds of taxpayer indebted to Crown not exempt from seizure).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs.

(1.1) [Repealed]

History: Subsec. 146(1.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(5), applicable after 1992. [See now subsec. 252(4).] Subsec. (1.1) formerly read:

(1.1) Definition of "spouse" — For the purposes of the definitions "annuitant", "refund of premiums" and "retirement income" in subsection (1), paragraph (3)(b) and subsections (8.8), (8.91) and (16), "spouse" of an individual means a person of the opposite sex

(a) who is married to the individual; or

(b) who is cohabiting with the individual in a conjugal relationship and

(i) has so cohabited for a period of at least one year, or

(ii) is a parent of a child of whom the individual is a parent.

Pre-RSC History: Subsec. 146(1.1) added by 1990, c. 35, subsec. 13(6), applicable after 1987.

(2) Acceptance of plan for registration — The Minister shall not accept for registration for the purposes of this Act any retirement savings plan unless, in the Minister's opinion, it complies with the following conditions:

(a) the plan does not provide for the payment of any benefit before maturity except

(i) a refund of premiums, and

(ii) a payment to the annuitant;

(b) the plan does not provide for the payment of any benefit after maturity except

(i) by way of retirement income to the annuitant,

(ii) to the annuitant in full or partial commutation of retirement income under the plan, and

(iii) in respect of a commutation referred to in paragraph (c.2);

(b.1) the plan does not provide for a payment to the annuitant of a retirement income except by way of equal annual or more frequent periodic payments until such time as there is a payment in full or partial commutation of the retirement income and, where that commutation is partial, equal annual or more frequent periodic payments thereafter;

(b.2) the plan does not provide for periodic payments in a year under an annuity after the death of the first annuitant, the total of which exceeds the total of the payments under the annuity in a year before that death;

(b.3) the plan does not provide for the payment of any premium after maturity;

(b.4) the plan does not provide for maturity after the end of the year in which the annuitant attains 69 years of age;

(c) the plan provides that retirement income under the plan may not be assigned in whole or in part;

(c.1) notwithstanding paragraph (a), the plan permits the payment of an amount to a taxpayer where the amount is paid to reduce the amount of tax otherwise payable under Part X.1 by the taxpayer;

(c.2) the plan requires the commutation of each annuity payable thereunder that would otherwise become payable to a person other than an annuitant under the plan;

(c.3) the plan, where it involves a depositary, includes provisions stipulating that

(i) the depositary has no right of offset as regards the property held under the plan in connection with any debt or obligation owing to the depositary, and

(ii) the property held under the plan cannot be pledged, assigned or in any way alienated as security for a loan or for any purpose other than that of providing for the annuitant, commencing at maturity, a retirement income;

(c.4) the plan requires that no advantage, other than

(i) a benefit,

(i.1) an amount described in paragraph (a) or (c) of the definition "benefit" in subsection (1),

(ii) the payment or allocation of any amount to the plan by the issuer,

(iii) an advantage from life insurance in effect on December 31, 1981, or

(iv) an advantage derived from the provision of administrative or investment services in respect of the plan,

that is conditional in any way on the existence of the plan may be extended to the annuitant or to a person with whom the annuitant was not dealing at arm's length; and

(d) the plan in all other respects complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 139.1(13) — Para. 146(2)(c.4) inapplicable to conversion benefit on demutualization of insurer; 146(3) — Minister may accept plan despite certain other conditions; 146(12) — Change in plan after registration; 146(13.1) — Effect of extending an advantage; 146(13.2) — Where pre-1997 plan does not mature by age 69; 204.2(1.2) — Undeducted RRSP premiums; 248(1)"disposition"(g) — Transfer with same annuitant not a disposition.

History: Para. 146(2)(b.4) amended by 1997, c. 25, subsec. 41(3), applicable after 1996, except that

(a) the amended para. does not apply to a retirement savings plan accepted for registration before 1997;

(b) the amended para. does not apply to a retirement savings plan where the annuitant under the plan attained 70 years of age before 1997;

(c) in applying the para. to a retirement savings plan where the annuitant under the plan attained 69 years of age in 1996, the reference to "69 years of age" shall be read as "70 years of age".

Para. (b.4) formerly read:

(b.4) the plan does not provide for maturity after the end of the year in which the annuitant attains 71 years of age;

Pre-RSC History: Subparas. 146(2)(c.4)(i)–(ii) substituted for subparas. 146(2)(c.4)(i), (ii) by 1990, c. 39, subsec. 36(1), applicable with respect to advantages extended after 1988. Subparas. (c.4)(i), (ii) formerly read:

(i) a benefit or an amount that would, but for subparagraphs (1)(b)(i) and (iii) be a benefit,

(ii) an advantage arising from the registration as a retirement savings plan of the savings portion of a life insurance policy,

Para. 146(2)(c.1) substituted by 1990, c. 35, subsec. 13(7), applicable after 1990. Para. (2)(c.1) formerly read:

(c.1) the plan provides for the payment of all or part of

(i) an excess amount for a year in respect of registered retirement savings plans, within the meaning assigned by subsection 204.2(1), or

(ii) the excess referred to in subsection (8.2);

Paras. 146(2)(a) to (c.1) substituted by 1986, c. 55, subsec. 56(1), applicable to 1986 *et seq.* Those paras. formerly read:

(a) the plan does not

(i) provide for the payment of any benefit before maturity, except by way of

(A) a refund of premiums, or

(B) a payment of all or part of

(I) an excess amount for a year in respect of registered retirement savings plans, within the meaning assigned by subsection 204.2(1), or

(II) the excess referred to in subsection (8.2)

but not exceeding the aggregate of amounts referred to in paragraphs 204.2(1)(a) and (b) paid to the plan in the year, or

(ii) provide for the payment of any benefit after maturity except by way of a retirement income;

(b) the plan does not

(i) provide for the payment of any amount by way of annuity for life except

(A) equal annual or more frequent periodic amounts throughout the lifetime of the annuitant, and

(B) equal annual or more frequent periodic amounts (not exceeding the corresponding annual or other periodic amounts referred to in clause (A)) throughout the period, if any, after the death of the annuitant, for which payment of the annuity is provided for by the plan,

(i.1) provide for the payment of any amount by way of annuity that is not an annuity for life, except equal annual or more frequent periodic amounts,

(ii) provide for the payment of any premium after maturity, or

(iii) provide for maturity before the earliest of such times as

(A) the annuitant attains 60 years of age,

(B) the annuitant or his spouse receives a disability pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, or

(C) where the spouse of the annuitant has died, the annuitant receives a survivor's pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, or

after the end of the year in which the annuitant attains 71 years of age;

(c) the plan includes a provision stipulating that no annuity payable thereunder to an annuitant under the plan is capable either in whole or in part of surrender, commutation or assignment;

(c.1) the plan includes a provision for the payment of all or part of the amount described in clause (a)(i)(B);

Para. 146(2)(c.4) added by 1980-81-82-83, c. 140, subsec. 98(4), applicable by 1984, c. 1, s. 113 (deemed in force on March 30, 1983) to plans issued after March 1983.

Para. 146(2)(c.3) added by 1980-81-82-83, c. 40, subsec. 96(3), in force December 1, 1980.

Cl. 146(2)(a)(i)(B), paras. 146(2)(c); (c.2), subpara. 146(2)(b)(iii) substituted by 1979, c. 5, subsecs. 46(4)–(7), applicable, as to cl. 146(2)(a)(i)(B), to 1977 *et seq.*, as to subpara. 146(2)(b)(iii) and para. 146(2)(c), after June 29, 1978, and, as to para. 146(2)(c.2), to 1979 *et seq.* Cl. (a)(i)(B), subpara. (b)(iii), paras. (c), (c.2) formerly read:

(B) a payment of all or part of an excess amount for a year in respect of registered retirement savings plans within the meaning that would be assigned by subsection 204.2(1) if that subsection were read without reference to paragraph (d) thereof, but not exceeding the aggregate of amounts referred to in paragraphs 204.2(1)(a) and (b) paid to the plan in the year, or

. . . . .

(iii) provide for maturity before such time as the annuitant attains 60 years of age or after the end of the year in which the annuitant attains 71 years of age;

. . . . .

(c) the plan includes a provision stipulating that, except on the death of the annuitant, no annuity payable thereunder is capable either in whole or in part of surrender, commutation or assignment;

(c.2) the plan provides for the commutation of any annuity payable thereunder that would otherwise become payable to a person other than his spouse on or after the death of the annuitant; and

Subparas. 146(2)(a)(ii), (b)(i), (iii), para. 146(2)(c) substituted, para. 146(2)(c.2) added, by 1977-78, c. 32, subsecs. 34(7)–(11). Subparas. (a)(ii), (b)(i), (iii), para. (c) formerly read:

(ii) provide for the payment of any benefit after maturity, except by way of

(A) an annuity to the annuitant for his life, or

(B) an annuity to the annuitant for the lives, jointly, of the annuitant and his spouse and to the survivor of them for his or her life,

commencing at maturity and with or without a guaranteed term, not exceeding 15 years, or, in the case of a plan entered into before the 14th day of March, 1957, not exceeding 20 years, commencing at maturity;

. . . . .

(i) provide for the payment of any amount by way of annuity except

(A) equal annual or other periodic amounts throughout the lifetime of the annuitant, and

(B) equal annual or other periodic amounts (not exceeding the corresponding annual or other periodic amounts referred to in clause (A)) throughout the period, if any, after

the death of the annuitant, for which payment of the annuity is provided for by the plan,

. . . . .

(iii) provide for maturity after such time as the annuitant attains 71 years of age;

(c) the plan includes a provision stipulating that no annuity payable thereunder is capable either in whole or in part of surrender, commutation or assignment;

Subpara. 146(2)(a)(i) substituted, para. 146(2)(c.1) added by 1976-77, c. 4 subsecs. 56(2), (3), applicable, as to subpara. 146(2)(a)(i), to 1976 *et seq.* and, as to para. 146(2)(c.1), in respect of plans that are registered after the day on which 1976-77, c. 4, is assented to. Subpara. (a)(i) formerly read:

(i) provide for the payment of any benefit before maturity, except by way of a refund of premiums, or

Selected Cases [subsec. 146(2)]: *Re Whaling*, [1999] 4 C.T.C. 221 (Ont CA) (Act does not prohibit certain actions with respect to RRSP, but actions may lead to plan ceasing to be RRSP); *Gerol v. A.G. Can.*, [1986] 1 C.T.C. 75 (Ont SC) (No *Charter* violation when maturity date of RRSP fixed with reference to age).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs.

Information Circulars: 72-22R9: Registered retirement savings plans; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T550: Application for registration.

(3) Idem — The Minister may accept for registration for the purposes of this Act any retirement savings plan notwithstanding that the plan

(a) provides for the payment of a benefit after maturity by way of dividend;

(b) provides for any annual or more frequent periodic amount payable

(i) to the annuitant referred to in subparagraph (a)(ii) of the definition "retirement income" in subsection (1) by way of an annuity described in paragraph (a) of that definition to be reduced, in the event of the death of the annuitant's spouse during the lifetime of the annuitant, in such manner as to provide for the payment of equal annual or more frequent periodic amounts throughout the lifetime of the annuitant thereafter,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) to any person by way of an annuity, to be reduced if a pension becomes payable to that person under the *Old Age Security Act*, by an annual or other periodic amount not exceeding the amount payable to that person in that period under that Act,

(iii) to any person by way of an annuity, to be increased or reduced depending on the increase or reduction in the value of a specified group of assets constituting the assets of a separate and distinct account or fund maintained in respect of a variable annuities business by a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada that business,

(iii.1) to any person by way of an annuity under a contract that provides for the increase or reduction of the annuity in accordance only with a change in the interest rate on which the annuity is based, if the interest rate, as increased or reduced, equals or approximates a generally available Canadian market interest rate,

(iv) that may be adjusted annually to reflect

(A) in whole or in part increases in the Consumer Price Index, as published by Statistics Canada under the authority of the *Statistics Act*, or

(B) increases at a rate specified in the annuity contract, not exceeding 4% per annum, or

(v) to the annuitant by way of an annuity to be increased annually to the extent the amount or rate of return that would have been earned on a pool of investment assets (available for purchase by the public and specified in the annuity contract) exceeds an amount or rate specified in the plan and provides that no other increase may be made in the amount payable;

(c) [Repealed under former Act]

(d) provides for the payment of any amount after the death of an annuitant thereunder;

(e) is adjoined to a contract or other arrangement that is not a retirement savings plan; or

(f) contains such other terms and provisions, not inconsistent with this section, as are authorized or permitted by regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 60(l)(ii) — Transfer of RRSP premium refunds; 172(3) — Appeal from refusal to register.

Pre-RSC History: Para. 146(3)(c) repealed by 1986, c. 55, subsec. 56(2), applicable to 1986 *et seq.*. Para. 146(3)(c) formerly read:

(c) provides for the commutation of any annuity payable thereunder if the amount so payable, expressed in terms of a monthly rate, is less than $25;

Subpara. 146(3)(b)(iii.1) added by 1986, c. 6, subsec. 81(1), applicable after 1981.

Subpara. 146(3)(b)(v) added by 1980-81-82-83, c. 140, subsec. 98(5), applicable to annuities issued after November 12, 1981.

Para. 146(3)(d) added by 1979, c. 5, subsec. 46(8), applicable after June 29, 1978.

All that portion of para. 146(3)(b) preceding subpara. (ii), para. 146(3)(c) (substituted for paras. 146(3)(c), (d)), subpara. 146(3)(b)(iv) added by 1977-78, c. 32, subsecs. 34(12)–(14). That portion and paras. 146(3)(c), (d) formerly read:

(b) provides for any annual or other periodic amount payable

(i) to the annuitant by way of an annuity described in clause (2)(a)(ii)(B), to be reduced, in the event of the death of his spouse during the lifetime of the annuitant, in such manner as to provide for the payment of equal annual or other amounts throughout the lifetime of the annuitant thereafter,

(c) provides for the commutation of any annuity payable thereunder

(i) that became so payable on or after the death of the annuitant, or

(ii) if the amount so payable, expressed in terms of a monthly rate, is less than $5;

(d) in the case of an annuity for a guaranteed term, provides for the annuity to be assignable by will, or, in the event of the death of any person to whom any such annuity is payable, to be assignable by the heirs, executors, administrators or other legal representatives of such person in the distribution of his estate, so as to give effect to any testamentary disposition, or to the rights of any person on an intestacy, or to its appropriation to a legacy or a share or interest in the estate;

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-320R2: RRSPs — qualified investments; IT-415R2: Deregistration of RRSPs.

Information Circulars: 72-22R9: Registered retirement savings plans.

(4) No tax while trust governed by plan — Except as provided in subsection (10.1), no tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered retirement savings plan, except that

(a) if the trust has borrowed money (other than money used in carrying on a business) in the year or has, after June 18, 1971, borrowed money (other than money used in carrying on a business) that it has not repaid before the commencement of the year, tax is payable under this Part by the trust on its taxable income for the year;

(b) in any case not described in paragraph (a), if the trust has carried on any business or businesses in the year, tax is payable under this Part by the trust on the amount, if any, by which

(i) the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from that business or those businesses, as the case may be,

exceeds

(ii) such portion of the amount determined under subparagraph (i) in respect of the trust for the year as can reasonably be considered to be income from, or from the disposition of, qualified investments for the trust; and

(c) if the last annuitant under the plan has died, tax is payable under this Part by the trust on its taxable income for each year after the year following the year in which the last annuitant died.

Related Provisions: 104(6)(a.2) — Deduction for amounts paid out to beneficiaries; 146(8.9)A(b), (c) — No income inclusion for tax-paid amounts on death; 146(10.1) — Tax on income from non-qualified investment; 146(20) — Amount credited to deposit RRSP deemed not received by annuitant or any other person; 149(1)(r) — No tax on RRSP; 204.6 — Tax in respect of registered investments; 206(2) — Part XI tax on excess holdings of foreign property; 207.1(1) — Tax on non-qualified investments; Canada-U.S. tax treaty, Art. XVIII:5 — Deferral of income accruing in retirement plan; Art. XXIX:5 — Election to defer U.S. tax on income accruing in RRSP.

History: Paras. 146(4)(b), (c) substituted by 1994, c. 21, subsec. 69(3), applicable to 1993 *et seq.* Those paras. formerly read:

(b) in any case not described in paragraph (a), if the trust has carried on any business or businesses in the year, tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from that business or those businesses; and

(c) if the last annuitant under the plan has died, tax is payable under this Part by the trust on its taxable income for each year after the year of the annuitant's death.

Pre-RSC History: That portion of subsec. 146(4) preceding para. (a) amended by 1986, c. 6, subsec. 81(2), applicable to 1986 *et seq.*, to add "Except as provided in subsection (10.1)".

Para. 146(4)(c) added by 1979, c. 5, subsec. 46(9), applicable to 1979 *et seq.*

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

Information Circulars: 72-22R9: Registered retirement savings plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

(5) Amount of RRSP premiums deductible — There may be deducted in computing a taxpayer's income for a taxation year such amount as the taxpayer claims not exceeding the lesser of

(a) the amount, if any, by which the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(j), (j.1) or (l),

(iii) in respect of which the taxpayer received a payment that was deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year,

(iv) that was deductible under subsection (6.1) in computing the taxpayer's income for any taxation year, or

(iv.1) that would be considered to be withdrawn by the taxpayer as an eligible amount (as defined in subsection 146.01(1) or 146.02(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid

exceeds

(v) the amount, if any, by which

(A) the total of all amounts deducted under subsection 147.3(13.1) in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(B) the total of all amounts, in respect of transfers occurring before 1991 from registered pension plans, deemed by paragraph 147.3(10)(b) or (c) to be a premium paid by the taxpayer to a registered retirement savings plan, and

Selected Cases [para. 146(5)(a)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit); *Corse v. Canada*, [1995] 2 C.T.C. 2168 (TCC) (Deduction for RRSP allowed where taxpayer could never have become entitled to pension benefits).

(b) the taxpayer's RRSP deduction limit for the year.

Related Provisions: 18(1)(u) — Investment counselling and administration fees for RRSP are non-deductible; 18(11)(b) — No deduction for interest on money borrowed to make RRSP contribution; 60(i) — Deduction for RRSP premium paid; 60(j) — Transfer of superannuation benefits; 60(j.1) — Transfer of retiring allowances; 60(l) — Transfer of RRSP premium refunds; 60(v) — Contribution to a provincial pension plan; 146(5.1) — Deduction for contribution to spousal RRSP; 146(5.21) — Anti-avoidance; 146(8.2) — Deduction where non-deducted overcontribution withdrawn from plan; 146(8.21) — Premium deemed not paid; 146(16) — Deduction on transfer of funds; 146(22) — Deadline extension for ice storm and for 1998 PAR; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 204.2(1.2)I(a)(vi) — Amount non-deductible due to 146(5)(a)(iv.1) not included for Part X.1 penalty tax purposes.

History: Subpara. 146(5)(a)(iv.1) amended by 1999, c. 22, subsec. 59(3), applicable to 1998 *et seq.* It formerly read:

(iv.1) that would be considered to be withdrawn by the taxpayer as an eligible amount (within the meaning assigned by subsection 146.01(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid

Subpara. 146(5)(a)(iv.1) added by 1995, c. 3, subsec. 43(2), applicable to the withdrawal of amounts paid after March 1, 1994.

All that portion of para. 146(5)(a) following subpara. (iv) substituted by 1994, c. 21, subsec. 69(4), applicable to 1992 *et seq.* That portion of the para. formerly read:

exceeds the total of all amounts each [of] which is

(v) an amount deducted under subsection 147.3(13.1) in computing the taxpayer's income for the year or a preceding taxation year that ends after 1992, or

(vi) an amount deducted under subsection 147.3(13.1) in computing the taxpayer's income for the 1992 taxation year, other than any portion of the amount that could not have been so deducted if paragraphs 147.3(10)(b) and (c) did not apply in respect of transfers made before 1991, and

Para. 146(5)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(6), applicable (by subsec. 82(13), as amended by 1994, c. 21, s. 136) to 1992 *et seq.* Para. (5)(a) formerly read:

(a) the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(j), (j.1) or (l),

(iii) in respect of which the taxpayer has received a payment that has been deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year, or

(iv) that was deductible under subsection (6.1) in computing the taxpayer's income for any taxation year, and

Pre-RSC History: Subsec. 146(5) substituted by 1990, c. 35, subsec. 13(8), applicable to 1987 *et seq.* except that in its application to the 1987 and 1988 taxation years the subsec. shall be read as follows:

(5) There may be deducted in computing the income for a taxation year of a taxpayer who is the annuitant under a registered retirement savings plan or becomes the annuitant thereunder within 60 days after the end of the year, the aggregate of all amounts each of which is a premium paid by the taxpayer in the year or within 60 days after the end of the year under a registered retirement savings plan under which the taxpayer is the annuitant or becomes the annuitant within 60 days after the end of the year (to the extent that it was neither deducted in computing the taxpayer's income for the preceding taxation year nor designated for any taxation year for the purposes of paragraph 60(j), (j.01), (j.1) or (l), not exceeding the amount, if any, by which

(a) where the taxpayer was employed in the year and

(i) as a consequence thereof was a person who is or may become entitled to benefits under a pension fund or plan that provides for payment of a pension to the taxpayer payable in whole or in part out of contributions made or to be made to the fund or plan or out of or in respect of amounts credited or to be credited in lieu of such contributions by a person other than the taxpayer in respect of the taxpayer's employment in the year,

(ii) contributed an amount in the year to a deferred profit sharing plan of which the taxpayer was a beneficiary, or

(iii) as a consequence thereof was a person in respect of whom a contribution was made by an employer to a deferred profit sharing plan in the year

an amount that, when added to the amount, if any, deductible under paragraph 8(1)(m) in computing the income of the taxpayer for the year, does not exceed the lesser of $3,500 and 20% of the taxpayer's earned income for the year, or

(b) in any other case, the lesser of $7,500 and 20% of the taxpayer's earned income for the year

exceeds the amount, if any, deductible under subsection (6) in computing the taxpayer's income for the year; and

in its application to the 1989 and 1990 taxation years the subsec. shall be read as follows:

(5) There may be deducted in computing the income for a taxation year of a taxpayer who is the annuitant under a registered retirement savings plan or becomes the annuitant thereunder within 60 days after the end of the year, the aggregate of all amounts each of which is a premium paid by the taxpayer in the year or within 60 days after the end of the year under a registered retirement savings plan under which the taxpayer is the annuitant or becomes the annuitant within 60 days after the end of the year (to the extent that it was neither deducted in computing the taxpayer's income for the preceding taxation year nor designated for any taxation year for the purposes of paragraph 60(j), (j.01), (j.1) or (l)), not exceeding the amount, if any, by which

(a) where the taxpayer was employed in the year and

(i) as a consequence thereof was a person who is or may become entitled to benefits under a pension fund or plan in respect of the taxpayer's office or employment in the year,

(ii) contributed an amount in the year to a deferred profit sharing plan of which the taxpayer was a beneficiary, or

(iii) as a consequence thereof was a person in respect of whom a contribution was made by an employer to a deferred profit sharing plan in the year,

an amount that, when added to the amount, if any, deductible under paragraph 8(1)(m) in computing the income of the taxpayer for the year, does not exceed the lesser of $3,500 and 20% of the taxpayer's earned income for the year, or

(b) in any other case, the lesser of $7,500 and 20% of the taxpayer's earned income for the year

exceeds the amount, if any, deductible under subsection (6) in computing the taxpayer's income for the year.

Subsec. 146(5) formerly read:

(5) Amount of premium deductible — There may be deducted in computing the income for a taxation year of a taxpayer who is an annuitant under a registered retirement savings plan or becomes an annuitant thereunder within 60 days after the end of the year, the aggregate of all amounts each of which is the amount of any premium paid by the taxpayer under the plan during the year or within 60 days after the end of the year (to the extent that it was neither deducted in computing his income for a previous year nor designated for the purposes of paragraph 60(j), (j.1) or (l)), not exceeding the amount, if any, by which

(a) where the taxpayer was employed in the year and

(i) as a consequence thereof was a person who is or may become entitled to benefits under a pension plan that provides for payment of a pension to him payable in whole or in part out of contributions made or to be made to the plan or out of or in respect of amounts credited or to be credited in lieu of such contributions by a person other than the taxpayer in respect of the taxpayer's employment in the year,

(ii) contributed an amount in the year to a deferred profit sharing plan of which he was a beneficiary, or

(iii) as a consequence thereof was a person in respect of whom a contribution was made by an employer to a deferred profit sharing plan in the year,

an amount that, when added to the amount, if any, deductible under paragraph 8(1)(m) in computing the income of the taxpayer for the year, does not exceed the lesser of $3,500 and 20% of his earned income for the year, or

(b) in any other case, the lesser of $7,500 and 20% of his earned income for that taxation year

exceeds the amount, if any, deductible under subsection (6) in computing his income for that taxation year.

Para. 146(5)(b) amended by 1986, c. 55, subsec. 56(3), applicable to 1986 *et seq.*, to substitute "$7,500" for "$5,500".

All that portion preceding paragraph 146(5)(b) substituted by 1980-81-82-83, c. 140, subsec. 98(6), applicable with respect to contributions made to registered retirement savings plans for the 1982 and subsequent taxation years. Subsec. 146(5) amended to add a reference to paragraph 60(j.1). Para. 146(5)(a) formerly read:

(a) where the taxpayer was employed in the year and as a consequence thereof was a person who is or may become entitled to benefits under a pension fund or plan that provides for payment of a pension to him payable in whole or in part out of contributions made or to be made to the fund or plan or out of or in respect of amounts credited or to be credited in lieu of such contributions by a person other than the taxpayer in respect of the taxpayer's employment in that year, an amount that, when added to the amount, if any, deductible under paragraph 8(1)(m) in computing the income of the

taxpayer for that year, does not exceed the lesser of $3,500 and 20% of his earned income for that taxation year, or

All that portion of subsec. 146(5) preceding para. (a) substituted by 1980-81-82-83, c. 48, s. 80, applicable to 1979 *et seq.* That portion formerly read:

(5) There may be deducted in computing the income for a taxation year of a taxpayer who is an annuitant under a registered retirement savings plan or becomes, within 60 days after the end of the taxation year, an annuitant thereunder, the aggregate of all amounts each of which is the amount of any premium paid by the taxpayer under the plan during the taxation year or within 60 days after the end of the taxation year (to the extent that it was not deducted in computing his income for a previous taxation year), not exceeding however the amount, if any, by which

Subsec. 146(5) substituted by 1976-77, c. 4, subsec. 56(4), applicable to 1976 *et seq.* Subsec. 146(5) formerly read:

(5) There may be deducted in computing the income for a taxation year of a taxpayer who is an annuitant under a registered retirement savings plan or becomes, within 60 days after the end of the taxation year, an annuitant thereunder, the aggregate of all amounts each of which is the amount of any premium paid by the taxpayer under the plan during the taxation year or within 60 days after the end of the taxation year (to the extent that it was not deductible in computing his income for a previous taxation year), not exceeding however the amount, if any, by which

(a) where the taxpayer was employed in the year and as a consequence thereof was a person who is or may become entitled to benefits under a pension fund or plan that provides for payment of a pension to him payable in whole or in part out of contributions made or to be made to the fund or plan or out of or in respect of amounts credited or to be credited in lieu of such contributions by a person other than the taxpayer in respect of the taxpayer's employment in that year, an amount that, when added to the amount, if any, deductible under paragraph 8(1)(m) in computing the income of the taxpayer for that year, does not exceed the lesser of $2,500 and 20% of his earned income for that taxation year, or

(b) in any other case, the lesser of $4,000 and 20% of his earned income for that taxation year

exceeds the amount, if any, deductible under subsection (6) in computing his income for that taxation year.

Subsec. 146(5) substituted by 1974-75-76, c. 71, s. 10, applicable in respect of premiums paid after June 23, 1975. Subsec. 146(5) formerly read:

(5) There may be deducted in computing the income for a taxation year of a taxpayer who is an annuitant under a registered retirement savings plan or becomes, within 60 days after the end of the taxation year, an annuitant thereunder, the amount of any premium paid by the taxpayer under the plan during the taxation year or within 60 days after the end of the taxation year (to the extent that it was not deductible in computing his income for a previous taxation year), not exceeding however the amount, if any, by which

(a) in the case of a taxpayer in respect of whom any amount is deductible under paragraph 20(1)(q) or (r) in computing the income of any other person for that taxation year (or would be so deductible if that other person were a person taxable under subsection 2(1)), an amount that, when added to the amount deductible under subparagraph 8(1)(m)(i) in computing the income of the taxpayer for that taxation year, does not exceed the lesser of $2,500 and 20% of his earned income for that taxation year; and

(b) in the case of any other taxpayer, the lesser of $4,000 and 20% of his earned income for that taxation year

exceeds the amount, if any, deductible under subsection (6) in computing his income for that taxation year.

Selected Cases [subsec. 146(5)]: *Bouchard v. MNR*, [1996] 1 C.T.C. 2239 (TCC) (Proper time to determine contribution limit is at end of taxation year or within 60 days of following year); *Gadsby v. MNR*, [1989] 1 C.T.C. 441 (FCTD) (Taxpayer entitled to full RRSP deduction when withdrawal from pension plans terminated all rights thereunder); *Wood v. The Queen*, [1985] 2 C.T.C. 16 (FCTD) (Earned income is net of deductions).

Regulations: 100(3)(c) (no source withholding where premium is paid by employer directly to RRSP).

Remission Orders: *Certain Taxpayers Remission Order, 1998-2*, P.C. 1998-2092, s. (judges in Quebec who made contributions in 1989 or 1990); *Certain Taxpayers Remission Order, 1999-2*, P.C. 1999-1855, s. 2 (remission to Quebec judges for excess contributions in 1989-90).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-320R2: RRSPs — qualified investments; IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-2: Contribution to pension plan for past service; ATR-17: Employee benefit plan — purchase of company shares; ATR-37: Refund of premiums transferred to spouse.

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan; T1016: RRSP contribution limit statement; T1023: RRSP deduction limit — calculation of earned income; T2097: Identification of amounts transferred to an RRSP; T4040: RRSPs and other registered plans for retirement [guide].

(5.1) Amount of spousal RRSP premiums deductible — There may be deducted in computing a taxpayer's income for a taxation year such amount as the taxpayer claims not exceeding the lesser of

(a) the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer's spouse (or, where the taxpayer died in the year or within 60 days after the end of the year, an individual who was the taxpayer's spouse immediately before the death) was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(j.2),

(iii) in respect of which the taxpayer or the taxpayer's spouse has received a payment that has been deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year, or

(iv) that would be considered to be withdrawn by the taxpayer's spouse as an eligible amount (as defined in subsection 146.01(1) or 146.02(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the amount, if any, by which the taxpayer's RRSP deduction limit for the year exceeds the amount deducted under subsection (5) in computing the taxpayer's income for the year.

Related Provisions: 60(i) — Deduction for RRSP premiums paid; 60(l) — Transfer of RRSP premium refunds; 60(v) — Contribution to provincial pension plan; 74.5(12)(a) — Attribution rules do not apply to spousal contribution; 146(5) — Deduction for contribution to own plan; 146(8.21) — Premium deemed not paid; 146(8.3) — Attribution of income when amount withdrawn from RRSP; 146(16) — Deduction on transfer of funds; 146(22) — Deadline extension for ice storm; 146.3(5.1) — Attribution on withdrawal from RRIF; 146.3(5.4) — RRIF — Spouse's income; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 204.2(1.2)I(a)(vi) — Amount non-deductible due to 146(5.1)(a)(iv) not included for Part X.1 penalty tax purposes; 252(3), (4) — Extended meaning of "spouse".

History: Subpara. 146(5.1)(a)(iv) amended by 1999, c. 22, subsec. 59(4), applicable to 1998 *et seq.* It formerly read:

> (iv) that would be considered to be withdrawn by the taxpayer's spouse as an eligible amount (within the meaning assigned by subsection 146.01(1)) less than 90 days after it was paid, if earnings in respect of a registered retirement savings plan were considered to be withdrawn before premiums paid under that plan and premiums were considered to be withdrawn in the order in which they were paid, and

Subpara. 146(5.1)(a)(iv) added by 1995, c. 3, subsec. 43(3), applicable to the withdrawal of amounts paid after March 1, 1994.

The opening words of para. 146(5.1)(a) substituted by 1994, c. 21, subsec. 69(5), applicable to 1992 *et seq.* The opening words formerly read:

> (a) the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer's spouse was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

Pre-RSC History: Subsec. 146(5.1) substituted by 1990, c. 35, subsec. 13(8), applicable to 1987 *et seq.* except that

(a) in its application to the 1987 and 1988 taxation years the subsec. shall be read as follows:

> (5.1) There may be deducted in computing the income for a taxation year of a taxpayer whose spouse is the annuitant under a registered retirement savings plan or becomes, within 60 days after the end of the taxation year, the annuitant thereunder, the aggregate of all amounts each of which is a premium paid by the taxpayer in the year or within 60 days after the end of the year under a registered retirement savings plan under which the spouse is the annuitant or becomes, within 60 days after the end of the year, the annuitant (to the extent that it was not deducted in computing the taxpayer's income for the preceding taxation year), not exceeding the amount, if any, by which the amount determined in respect of the taxpayer under whichever of paragraphs (5)(a) and (b) is applicable to the taxpayer exceeds the aggregate of
>
> (a) the aggregate of amounts paid by the taxpayer in the year or within 60 days after the end of the year under a registered retirement savings plan under which the taxpayer is the annuitant, as a premium the amount of which is deducted by the taxpayer under subsection (5) in computing the taxpayer's income for the year, and
>
> (b) the amount, if any, deductible by the taxpayer under subsection (6) in computing the taxpayer's income for the year.; and

(b) in its application to the 1989 and 1990 taxation years, the subsec. shall be read as follows:

> (5.1) There may be deducted in computing the income for a taxation year of a taxpayer whose spouse is the annuitant under a registered retirement savings plan or becomes, within 60 days after the end of the taxation year, the annuitant thereunder, the aggregate of all amounts each of which is a premium paid by the taxpayer in the year or within 60 days after the end of the year under a registered retirement savings plan under which the spouse is the annuitant or becomes, within 60 days after the end of the year, the annuitant (to the extent that is was neither deducted in computing the taxpayer's income for the preceding taxation year nor designated for any taxation year for the purposes of paragraph 60(j.2)), not exceeding the amount, if any, by which the amount determined in respect of the taxpayer under whichever of paragraphs (5)(a) and (b) is applicable to the taxpayer exceeds the aggregate of
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> (a) the aggregate of amounts paid by the taxpayer in the year or within 60 days after the end of the year under a registered retirement savings plan under which the taxpayer is the annuitant, as a premium the amount of which is deducted by the taxpayer under subsection (5) in computing the taxpayer's income for the year, and
>
> (b) the amount, if any, deductible under subsection (6) in computing the taxpayer's income for the year.

Subsec. (5.1) formerly read:

> (5.1) Idem — There may be deducted in computing the income for a taxation year of a taxpayer whose spouse is an annuitant under a registered retirement savings plan or becomes, within 60 days after the end of the taxation year, an annuitant thereunder, the amount paid by the taxpayer to or under the plan during the taxation year or within 60 days after the end of the taxation year (to the extent that it was not deducted in computing his income for a previous taxation year), not exceeding however the amount, if any, by which the amount determined in respect of the taxpayer under whichever of paragraphs (5)(a) and (b) is applicable to him exceeds the aggregate of
>
> (a) the aggregate of amounts paid by the taxpayer in the taxation year or within 60 days after the end of the taxation year under a registered retirement savings plan under which he is the annuitant, as a premium the amount of which is deducted by him in the year under subsection (5); and
>
> (b) the amount, if any, deductible by him under subsection (6) in computing his income for that taxation year.

Subsec. 146(5.1) substituted by 1976-77, c. 4, subsec. 56(4), applicable to 1974 *et seq.*

Subsec. 146(5.1) added by 1974-75-76, c. 26, subsec. 99(3), applicable to 1974 *et seq.*

Selected Cases [subsec. 146(5.1)]: *Gilbert (M.) v. Canada*, [1993] 1 C.T.C. 233 (FCA) (Year in which actual payment made is relevant, not prior year in respect of which deduction taken).

Regulations: 100(3)(c) (deduction of RRSP contribution from payroll reduces source withholding).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Information Circulars: 72-22R9: Registered retirement savings plans.

Forms: T2097: Identification of amounts transferred to an RRSP; T4040: RRSPs and other registered plans for retirement [guide].

(5.2) [Repealed under former Act]

Pre-RSC History: Subsec. 146(5.2) repealed by 1990, c. 35, subsec. 13(9), applicable to 1991 *et seq.* Subsec. (5.2) formerly read:

> (5.2) Pension fund or plan — For the purposes of paragraph (5)(a), "pension fund or plan" does not include
>
> (a) the *Canada Pension Plan*;
>
> (b) a provincial pension plan as defined in section 3 of the *Canada Pension Plan*; or
>
> (c) any similar plan of a country other than Canada.

Subsec. 146(5.2) added by 1976-77, c. 4, subsec. 56(4), applicable in respect of premiums paid after June 23, 1975.

(5.21) Anti-avoidance — Notwithstanding any other provision of this section, where

(a) a registered pension plan is amended or administered in such a manner as to terminate, suspend or delay

> (i) the membership of an individual in the plan for the individual's 1990 taxation year,
>
> (ii) contributions under the plan by or for the benefit of the individual in respect of the year, or
>
> (iii) the accrual of retirement benefits under the plan for the individual in respect of the year, or

(b) a deferred profit sharing plan is amended or administered in such a manner as to terminate, suspend or delay contributions under the plan for the year in respect of an individual,

and one of the main reasons for the termination, suspension or delay may reasonably be considered to be to reduce the pension adjustment of the individual for the year in respect of an employer, the only amount that may be deducted in computing the income for the year of the individual, in respect of premiums paid to registered retirement savings plans, is the amount that would have been deductible had that termination, suspension or delay not occurred.

Pre-RSC History: Subsec. 146(5.21) added by 1990, c. 35, subsec. 13(10), applicable to the 1990 taxation year.

(5.3)–(5.5) [Repealed under former Act]

Pre-RSC History: Subsecs. 146(5.3)–(5.5) repealed by 1986, c. 6, subsec. 81(3), applicable with respect to premiums paid after May 23, 1985 under a registered retirement savings plan in respect of taxable capital gains realized on a disposition of qualified farm property after 1984. Subsecs. 146(5.3)–(5.5) formerly read:

(5.3) Farm capital gain — There may be deducted in computing the income for a taxation year of a taxpayer who

(a) has, after December 31, 1983, disposed of a qualified farm property of the taxpayer, and

(b) is an annuitant under a registered retirement savings plan or becomes an annuitant thereunder within 60 days after the end of the year,

the aggregate of all amounts each of which is the amount of any premium paid by him under the plan during the year or within 60 days after the end of the year (to the extent that it was not designated for the purposes of paragraph 60(j), (j.1) or (l), not exceeding the amount, if any, by which

(c) the lesser of

(i) the aggregate of all amounts each of which is his taxable capital gain for the year or a preceding taxation year from such a disposition, and

(ii) the amount, if any, by which

(A) his farm contribution limit for the year

exceeds

(B) the aggregate of all amounts each of which is an amount deducted by him in the year or a preceding taxation year ending after 1983 under any of subsections (5) or (5.1) or paragraph 8(1)(m),

exceeds

(d) the aggregate of amounts deducted by him under this subsection for preceding taxation years.

(5.4) Definitions — For the purposes of subsection (5.3) and this subsection,

(a) "qualified farm property" — "qualified farm property" of a taxpayer means

(i) a property that was owned on December 31, 1983 by the taxpayer or his spouse and that, at any time after 1971 and before 1984, was

(A) real property used by

(I) the taxpayer, his spouse or any of his children,

(II) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of the taxpayer, his spouse or any of his children, or

(III) a partnership, an interest in which is an interest in a family farm partnership of the taxpayer, his spouse or any of his children

in the course of carrying on the business of farming in Canada,

(B) a share of the capital stock of a family farm corporation of the taxpayer or his spouse, or

(C) an interest in a family farm partnership of the taxpayer or his spouse,

(ii) a replacement property for a qualified farm property of the taxpayer in respect of which the taxpayer or his spouse has made an election under subsection 13(4) or 44(1),

(iii) a share of the capital stock of a family farm corporation of the taxpayer all or substantially all of the assets of which were

(A) qualified farm properties described in subparagraph (i) or (ii) of the taxpayer, or

(B) replacement properties for properties described in clause (A) in respect of which the corporation has made an election under subsection 13(4) or 44(1), or

(iv) an interest in a family farm partnership of the taxpayer all or substantially all of the assets of which were

(A) qualified farm properties described in subparagraph (i) or (ii) of the taxpayer, or

(B) replacement properties for properties described in clause (A) in respect of which the partnership has made an election under subsection 13(4) or 44(1);

(b) "farm contribution limit" — "farm contribution limit" of a taxpayer for a taxation year means the amount, if any, by which

(i) the product obtained when $10,000 is multiplied by the number of calendar years after 1971 and before 1984 during which he or his spouse was a full-time farmer

exceeds

(ii) the aggregate of all amounts each of which is an amount deducted for the year or a preceding taxation year under subsection (5.3) by a person who was his spouse in the year of deduction; and

(c) "full-time farmer" — "full-time farmer" during a calendar year means an individual who, in that year,

(i) owned a share of the capital stock of a family farm corporation of that individual,

(ii) leased land to

(A) a full-time farmer who was his spouse or his child,

(B) a corporation, any share of the capital stock of which was a share of the capital stock of a family farm corporation of his spouse or any of his children, or

(C) a partnership, an interest in which was an interest in a family farm partnership of his spouse or any of his children,

where the land was used in the year in the business of farming in Canada by his spouse, any of his children, the corporation or the partnership, or

(iii) was actively engaged in the business of farming in Canada (other than an individual who in the year had or would, if he had sustained sufficient losses from the business of farming, have had a restricted farm loss for the year).

(5.5) Deemed premium — For the purposes of subsection (5.3), where a taxpayer has attained the age of 71 years in a preceding taxation year, any amount paid by him to acquire an annuity referred to in subparagraph 60(l)(ii) shall be deemed to be a premium paid by him under a registered retirement savings plan under which he is an annuitant.

Para. 146(5.4)(a) substituted by 1985, c. 45, subsec. 82(1), applicable to 1984 *et seq.* Para. 146(5.4)(a) formerly read:

(a) "qualified farm property" — "qualified farm property" of a taxpayer means a property that was owned on December 31, 1983 by the taxpayer or his spouse and that, at any time after 1971 and before 1984, was

(i) real property used by

(A) the taxpayer, his spouse or any of his children,

(B) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of the taxpayer, his spouse or any of his children, or

(C) a partnership, an interest in which is an interest in a family farm partnership of the taxpayer, his spouse or any of his children

in the course of carrying on the business of farming in Canada,

(ii) a share of the capital stock of a family farm corporation of the taxpayer or his spouse, or

(iii) an interest in a family farm partnership of the taxpayer or his spouse;

Subsecs. 146(5.3)–(5.5) added by 1984, c. 45, subsec. 53(1), applicable to 1984 *et seq.*

(6) Disposition of non-qualified investment — Where in a taxation year a trust governed by a registered retirement savings plan disposes of a property that, when acquired, was a non-qualified investment, there may be deducted, in computing the income for the taxation year

of the taxpayer who is the annuitant under the plan, an amount equal to the lesser of

(a) the amount that, by virtue of subsection (10), was included in computing the income of that taxpayer in respect of the acquisition of that property, and

(b) the proceeds of disposition of the property.

Related Provisions: 146(10) — Tax on acquisition of non-qualified investment; 146(11) — Life insurance policy; 259(1) — Election for proportional holdings in trust property.

Pre-RSC History: Subsec. 146(6) substituted by 1977-78, c. 1, subsec. 72(1). Subsec. 146(6) formerly read:

(6) Where in a taxation year a trust governed by a registered retirement savings plan disposes of a non-qualified investment, the cost of which to the trust was included by virtue of subsection (10) in computing the income of the taxpayer who is the annuitant under the plan, there may be deducted, in computing the income of the taxpayer for the taxation year, an amount equal to the lesser of

(a) the cost so included in computing the taxpayer's income, and

(b) the proceeds of disposition of the non-qualified investment.

Selected Cases [subsec. 146(6)]: *Foreman et al. v. MNR*, [1996] 1 C.T.C. 265 (FCTD) (Statutory language required where "series" of transactions attacked).

Regulations: 214(2) (information return).

Interpretation Bulletins: IT-320R2: RRSPs — qualified investments; IT-415R2: Deregistration of registered retirement savings plans.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(6.1) Recontribution of certain withdrawals — There may be deducted in computing a taxpayer's income for a particular taxation year the total of all amounts each of which is such portion of a prescribed premium for the particular year as was not designated for any taxation year for the purposes of paragraph 60(j), (j.1) or (l).

Related Provisions: 60(i) — Deduction for RRSP premiums paid; 127.52(1)(a)(ii)(A) — Addition to adjusted taxable income for minimum tax purposes; 146(5) — Amount of RRSP premiums deductible; 146.01(1)"excluded premium"(c) — Premium deducted under 146(6.1) not eligible for Home Buyers' Plan; 146.02(1)"excluded premium"(d) — Premium deducted under 146(6.1) not eligible for LLP; 152(6) — Reassessment.

Pre-RSC History: Subsec. 146(6.1) added by 1990, c. 35, subsec. 13(11), applicable to 1991 *et seq.*

Regulations: 8307(7) (prescribed premium).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Forms: T2097: Identification of amounts transferred to an RRSP.

(7) Recovery of property used as security — Where in a taxation year a loan, for which a trust governed by a registered retirement savings plan has used or permitted to be used trust property as security, ceases to be extant, and the fair market value of the property so used was included by virtue of subsection (10) in computing the income of the taxpayer who is the annuitant under the plan, there may be deducted, in computing the income of the taxpayer for the taxation year, an amount equal to the amount, if any, remaining when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using the property, or permitting it to be used, as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the amount so included in computing the income of the taxpayer in consequence of the trust's using the property, or permitting it to be used, as security for the loan.

Related Provisions: 60(i) — Deduction in computing income; 146(10) — Where acquisition of non-qualified investment by trust.

Regulations: 214(2) (information return).

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(8) Benefits taxable — There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (as defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

Proposed Amendment — Income inclusion on conversion to Roth IRA

Department of Finance press release, December 18, 1998: [See under 248(1)"foreign retirement arrangement" — ed.]

Related Provisions: 56(1)(h) — Income from RRSP; 60(l) — Transfer of RRSP premium refunds; 139.1(12) — Conversion benefit on demutualization of insurance corporation not taxable; 146(8.01) — Benefits from RRSP re Home Buyers' Plan; 146(8.3) — Attribution from spousal RRSP; 146(12) — Change in plan after registration; 146(16) — Deduction on transfer of funds; 146(20) — Amount credited to deposit RRSP deemed not received by annuitant; 146.01(4) — Home Buyers' Plan — portion of eligible amount not repaid; 146.01(5), (6) — Home Buyers' Plan — other income inclusions; 146.02(4) — LLP — portion of eligible amount not repaid; 146.02(5), (6) — LLP — other income inclusions; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(j) — Withholding of tax at source; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 212(1)(l) — Withholding tax on payments to non-residents.

History: Subsec. 146(8) amended by 1999, c. 22, subsec. 59(5), applicable to 1999 *et seq.* It formerly read:

(8) There shall be included in computing the income of a taxpayer for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (within the meaning assigned by subsection 146.01(1)) in respect of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

Subsec. 146(8) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(7), applicable to 1992 *et seq.* Subsec. (8) formerly read:

(8) There shall be included in computing the income of a taxpayer for a taxation year all amounts received by the taxpayer in the year as a benefit out of or under a registered retirement savings plan, other than an amount that is included in computing the taxpayer's income pursuant to paragraph (12)(b).

Pre-RSC History: Subsec. 146(8) substituted by 1977-78, c. 1, subsec. 72(2), applicable after March 31, 1977. Subsec. 146(8) formerly read:

(8) There shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year as a benefit out of or under a registered retirement savings plan.

Subsec. 146(8) substituted by 1974-75-76, c. 26, subsec. 99(4), applicable to 1972 *et seq.*

Selected Cases: *St-Hilaire v. R.*, [1997] 3 C.T.C. 2711 (TCC) (Receipts from RRSP taxable even if contributions improperly made).

Regulations: 100(1)"remuneration"(i) (payment from RRSP subject to source withholding); 103(4), (6) (withholding requirements on withdrawal from RRSP); 104(3) (no withholding on Home Buyers' Plan withdrawal); 104.1 (no withholding on Lifelong Learning Plan withdrawal); 214(1), (4) (information return).

I.T. Application Rules: 61(2) (where annuitant died before 1972).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Information Circulars: 72-22R9: Registered retirement savings plans.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T4RSP Segment; T4RSP Summ: Return of RRSP income; T4RSP Supp: Statement of RRSP income; T4040: RRSPs and other registered plans for retirement [guide]; T4079: T4RSP and T4RIF guide.

(8.01) Subsequent re-calculation — If a designated withdrawal (as defined in subsection 146.01(1)) or an amount referred to in paragraph (a) of the definition "eligible amount" in subsection 146.02(1) is received by a taxpayer in a taxation year and, at any time after that year, it is determined that the amount is not an excluded withdrawal (as defined in subsection 146.01(1) or 146.02(1)), notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the determination.

History: Subsec. 146(8.01) amended by 1999, c. 22, subsec. 59(5), applicable to 1999 *et seq.* It formerly read:

> (8.01) Idem — subsequent re-calculation — Where an amount referred to in paragraph (a) of the definition "eligible amount" in subsection 146.01(1) is received by a taxpayer in a taxation year and, at any time after that year, it is determined that the amount is not an excluded withdrawal (within the meaning assigned by that subsection), notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the determination.

Subsec. 146(8.01) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(7), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

(8.1) Deemed receipt of refund of premiums — Where a portion of an amount paid out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative would have been a refund of premiums if it had been paid under the plan to a beneficiary of the deceased's estate, it is, to the extent it is so designated jointly by the legal representative and the beneficiary in prescribed form filed with the Minister, deemed to be received by the beneficiary (and not by the legal representative) at the time it was so paid as a benefit that is a refund of premiums.

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 60(l)(v)(B.1) — Rollover of designated benefits to child or grandchild on death; 146(8.9) — Effect of death where person other than spouse becomes entitled; 146.3(6.1) — Parallel rule for RRIFs; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 214(3)(c) — Non-resident withholding tax.

History: Subsec. 146(8.1) amended by 2000, c. 19, subsec. 42(3), applicable to 1999 *et seq.* The subsec. formerly read:

> (8.1) Such portion of an amount paid in a taxation year out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative as, had that portion been paid under the plan to a beneficiary of the deceased's estate, would have been a refund of premiums shall, to the extent it is so designated jointly by the legal representative and the beneficiary in prescribed form filed with the Minister, be deemed to be received by the beneficiary in the year as a benefit that is a refund of premiums.

Pre-RSC History: Subsec. 146(8.1) substituted by 1979, c. 5, subsec. 46(10), applicable after June 29, 1978. 1979, c. 5, subsec. 46(19) provides that in its application in respect of deaths occurring before June 30, 1978, subsec. 146(8.1) shall be read as follows:

> (8.1) For the purposes of paragraphs 60(l) and 61(2)(d), such portion of a refund of premiums under a registered retirement savings plan received by a testamentary trust as
>
> (a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection 104(13) or (14) or section 105, as the case may be, was included in computing the income for a taxation year of a particular beneficiary under the trust, and
>
> (b) was not designated by the trust in respect of any other beneficiary thereunder
>
> shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, be deemed to be a refund of premiums under a registered retirement savings plan received by the particular beneficiary in the year and to be an amount included in computing the beneficiary's income for the year by virtue of subsection (8).

Subsec. 146(8.1) formerly read:

> (8.1) For the purposes of paragraphs 60(l) and 61(2)(d), such portion of a refund of premiums under a registered retirement savings plan received by a testamentary trust as
>
> (a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection 104(13) or (14) or section 105, as the case may be, was included in computing the income for a taxation year of a particular beneficiary under the trust, and
>
> (b) was not designated by the trust in respect of any other beneficiary thereunder,
>
> shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, be deemed to be a refund of premiums under a registered retirement savings plan received by the particular beneficiary in the year and to be an amount included in computing the beneficiary's income for the year by virtue of subsection (8).

Subsec. 146(8.1) added by 1973-74, c. 14, subsec. 50(3), applicable to refunds of premiums under a registered retirement savings plan received by a testamentary trust after 1971.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: T2019: Death of an RRSP annuitant — refund of premiums.

(8.2) Amount deductible — Where

(a) all or any portion of the premiums paid in a taxation year by a taxpayer to one or more registered retirement savings plans under which the taxpayer or the taxpayer's spouse was the annuitant was not deducted in computing the taxpayer's income for any taxation year,

(b) the taxpayer or the taxpayer's spouse can reasonably be regarded as having received a payment from a registered retirement savings plan or a registered retirement income fund in respect of such portion of the undeducted premiums as

(i) was not paid by way of a transfer of an amount from a registered pension plan to a registered retirement savings plan,

(ii) was not paid by way of a transfer of an amount from a deferred profit sharing plan to a registered retirement savings plan in accordance with subsection 147(19), and

(iii) was not paid by way of a transfer of an amount from a provincial pension plan prescribed for the purpose of paragraph 60(v) to a registered retirement savings plan in circumstances to which subsection (21) applied,

(c) the payment is received by the taxpayer or the taxpayer's spouse in a particular taxation year that is

(i) the year in which the premiums were paid by the taxpayer,

(ii) the year in which a notice of assessment for the taxation year referred to in subparagraph (i) was sent to the taxpayer, or

(iii) the year immediately following the year referred to in subparagraph (i) or (ii), and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) the payment is included in computing the taxpayer's income for the particular year,

the payment (except to the extent that it is a prescribed withdrawal) may be deducted in computing the taxpayer's income for the particular year unless it is reasonable to consider that

(e) the taxpayer did not reasonably expect that the full amount of the premiums would be deductible in the taxation year in which the premiums were paid or in the immediately preceding taxation year, and

(f) the taxpayer paid all or any portion of the premiums with the intent of receiving a payment that, but for this paragraph and paragraph (e), would be deductible under this subsection.

Related Provisions: 60(i) — Deduction for RRSP premiums paid; 146(5) — Deduction for contribution to own RRSP; 146(5.1) — Deduction for contribution to spousal RRSP; 146(8.21) — Excess premium deemed not paid; 146(16) — Deduction on transfer of funds; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 252(4) — Extended meaning of "spouse"; Reg. 8307(4) — Eligibility of withdrawn amount for designation.

History: Subpara. 146(8.2)(b)(iii) added by 1994, c. 21, subsec. 69(6), applicable to 1992 *et seq.*

Para. 146(8.2)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(8), applicable to 1991 *et seq.* except that for the 1991 taxation year subpara. (i) shall be read as follows:

(i) was not paid by way of a transfer of an amount from a registered pension plan to a registered retirement savings plan in accordance with any of subsections 147.3(1) and (4) to (7), and

Para. (b) formerly read:

(b) the taxpayer or the taxpayer's spouse can reasonably be regarded as having received a payment from a registered retirement savings plan or a registered retirement income fund in respect of such undeducted premiums,

Pre-RSC History: Subsec. 146(8.2) substituted by 1990, c. 35, subsec. 13(12), applicable with respect to RRSP premiums paid after 1990. Subsec. (8.2) formerly read:

(8.2) Where the aggregate of all premiums paid in a taxation year by a taxpayer to one or more registered retirement savings plans under which he or his spouse is the annuitant is not deductible by the taxpayer in computing his income for the year or the immediately preceding taxation year, and the taxpayer or his spouse can reasonably be regarded as having received, in the year in which a notice of assessment for the year was sent or in the following year, a payment in respect of the part that was not deductible from one or more such registered retirement savings plans, or from one or more registered retirement income funds to which any such plan was transferred, the payment may be deducted in computing the taxpayer's income for the taxation year in which the payment is received and included in his income.

Subsec. 146(8.2) substituted by 1986, c. 55, subsec. 56(4), applicable to 1986 *et seq.* Subsec. 146(8.2) formerly read:

(8.2) Where in a particular taxation year

(a) the lesser of

(i) the amount by which the aggregate of all amounts paid in the year by a taxpayer to one or more registered retirement savings plans under which he or his spouse is an annuitant, other than amounts to which paragraph 60(j), (j.1) or (l) or subsection 146(16) applies, exceeds the aggregate of amounts deducted in computing his income for the preceding taxation year in respect thereof, and

(ii) $5,500,

exceeds

(b) the aggregate of amounts deductible by the taxpayer in computing his income for the year in respect of the amounts referred to in subparagraph (a)(i) in determining his income for the purposes of an assessment under subsection 152(1),

and the taxpayer has received a payment in respect of that excess from one or more of those plans in the year in which the notice of that assessment was sent or in the following year, there may be deducted in computing the income of the taxpayer for such a taxation year in which such a payment is received by him the amount of the payment received in the year but not exceeding the amount by which the excess exceeds the aggregate of any amounts deducted in previous years under this subsection in respect of the particular year.

Subpara. 146(8.2)(a)(i) substituted by 1980-81-82-83, c. 140, subsec. 98(7), to add a reference to para. 60(j.1) and to substitute "preceding taxation year" for "previous year", applicable to the 1981 and subsequent taxation years.

Subsec. 146(8.2) added by 1976-77, c. 4, subsec. 56(5), applicable to 1976 *et seq.*

Regulations: 8307(6) (prescribed withdrawal).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-124R6: Contributions to registered retirement savings plans.

Forms: T746: Calculating your deduction for refund of RRSP excess contributions; T3012: Application for refund of RRSP excess contributions; T3012A: Tax deduction waiver on the refund of your undeducted RRSP contributions.

(8.21) Premium deemed not paid — Where a taxpayer or the taxpayer's spouse has, at any time in a taxation year, received a payment from a registered retirement savings plan or a registered retirement income fund in respect of all or any portion of a premium paid by the taxpayer to a registered retirement savings plan and the payment has been deducted under subsection (8.2) in computing the taxpayer's income for the year, the premium or portion thereof, as the case may be, shall,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) for the purposes of determining, after that time, the amount that may be deducted under subsection (5) or (5.1) in computing the taxpayer's income for the year or a preceding taxation year, and

(b) for the purposes of subsections (8.3) and 146.3(5.1) after that time, in the case of a payment received by the taxpayer,

be deemed not to have been a premium paid by the taxpayer to a registered retirement savings plan.

Related Provisions: 146(8.6) — Spouse's income; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 146(8.21) added by 1990, c. 35, subsec. 13(12), applicable with respect to RRSP premiums paid after 1990.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(8.3) Spousal RRSP payments [attribution rule] — Where at any time in a taxation year a particular amount in respect of a registered retirement savings plan that is a spousal plan in relation to a taxpayer is required by reason of subsection (8) or paragraph (12)(b) to be included in computing the income of the taxpayer's spouse before the plan matures or as a payment in full or partial commutation of a retirement income under the plan and the taxpayer is not living separate and apart from the taxpayer's spouse at that time by reason of the breakdown of their marriage, there shall be included at that time in comput-

ing the taxpayer's income for the year an amount equal to the lesser of

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) the total of all amounts each of which is a premium paid by the taxpayer in the year or in one of the two immediately preceding taxation years to a registered retirement savings plan under which the taxpayer's spouse was the annuitant at the time the premium was paid, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) the particular amount.

Related Provisions: 56(1)(h) — Income from RRSP; 60(j.2) — Transfer to spousal RRSP; 74.5(12) — Regular attribution rule does not apply; 146(8.21) — Premium deemed not paid; 146(8.5) — Ordering; 146(8.6) — Spouse's income; 146(8.7) — Where subsec. (8.3) does not apply; 146.3(5.1) — Parallel rule for RRIFs; 146.3(5.4) — Spouse's income; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(j) — Withholding of tax at source; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 146(8.3) substituted by 1990, c. 35, subsec. 13(13), applicable to 1989 *et seq.* except that in its application to the 1989 and 1990 taxation years the subsec. shall be read as follows:

(8.3) Where at any time in a taxation year a particular amount in respect of a registered retirement savings plan to which a premium deductible under paragraph 60(j.2) or subsection (5.1) has been paid is required under subsection (8) or paragraph (12)(b) to be included in computing the income of the taxpayer's spouse before the plan matures or as a payment in full or partial commutation of a retirement income under the plan, except where the taxpayer is living separate and apart from the taxpayer's spouse at that time by reason of the breakdown of their marriage, all or any part of each premium paid by the taxpayer in the year or in one of the two immediately preceding taxation years that is deductible under paragraph 60(j.2) or subsection (5.1) in computing the taxpayer's income for a year shall be included at that time in computing the taxpayer's income for the year, except to the extent that the aggregate of those premiums or parts thereof exceeds the particular amount.

Subsec. (8.3) formerly read:

(8.3) Amount included in income — Where at any time in a taxation year a particular amount in respect of a registered retirement savings plan to which a premium deductible under subsection (5.1) has been paid is required under subsection (8) or paragraph (12)(b) to be included in computing the income of the taxpayer's spouse before the plan matures or as a payment in full or partial commutation of a retirement income under the plan, except where the taxpayer is living separate and apart from his spouse at that time by reason of the breakdown of their marriage, all or any part of each premium paid by the taxpayer in the year or in one of the two immediately preceding taxation years that is deductible under subsection (5.1) in computing his income for a year shall be included at that time in computing his income for the year, except to the extent that the aggregate of those premiums or parts thereof exceeds the particular amount.

Subsec. 146(8.3) substituted by 1986, c. 55, subsec. 56(4), applicable to 1986 *et seq.* Subsec. 146(8.3) formerly read:

(8.3) Amount to be included in computing income — Where at any particular time in a taxation year a particular amount in respect of a plan to which a contribution deductible under subsection (5.1) has been made would be required by paragraph (12)(b) (if it were read without reference to the words "minus the amount required by subsection (8.3) to be included in computing the income of the taxpayer's spouse") to be included in computing the income for the year of the spouse of a taxpayer, except where the taxpayer is living apart and separated from his spouse at the particular time as a result of the breakdown of their marriage and pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, there shall be included in computing the income for the year of the taxpayer all or any part of the lesser of the particular amount and the aggregate of all amounts each of which was paid by the taxpayer and was

(a) deductible under subsection (5.1) in computing his income for the year; or

(b) deducted under subsection (5.1) in computing his income for one of the 2 immediately preceding taxation years.

Subsec. 146(8.3) amended by 1985, c. 45, subsec. 82(2), to substitute

"all or any part of the lesser of the particular amount and the aggregate of all amounts each of which was paid by the taxpayer and was

(a) deductible under subsection (5.1) in computing his income for the year; or

(b) deducted under subsection (5.1) in computing his income for one of the 2 immediately preceding taxation years."

for

"amounts paid by the taxpayer and deductible under subsection (5.1) in computing his income for the year or deducted under that subsection in computing his income for either of the two immediately preceding taxation years not exceeding, in the aggregate, the particular amount.",

applicable with respect to amounts to which para. 146(12)(b) applies after February 15, 1984.

Subsec. 146(8.3) substituted by 1984, c. 45, subsec. 53(2), to add "except where the taxpayer is living apart and separated from his spouse at the particular time as a result of the breakdown of their marriage and pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement", applicable with respect to amounts to which para. 146(12)(b) applies after February 15, 1984.

Subsec. 146(8.3) added by 1977-78, c. 1, subsec. 72(3), applicable after March 31, 1977.

Selected Cases [subsec. 146(8.3)]: *Gilbert (M.) v. Canada*, [1993] 1 C.T.C. 233 (FCA) (Year in which actual payment made is relevant, not prior year in respect of which deduction taken).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs.

Forms: T2205: Calculation of amounts from a spousal RRSP or RRIF to be included in income.

(8.4) [Repealed under former Act]

Pre-RSC History: Subsec. 146(8.4) repealed, by 1990, c. 35, subsec. 13(14), applicable to 1991 *et seq.* That subsec. formerly read:

(8.4) Interpretation — Where a registered retirement savings plan receives a payment out of or a transfer from

(a) a plan described in subsection (8.3), or

(b) a registered retirement income fund which was a fund described in subsection 146.3(5.1)

the plan shall be deemed to be a registered retirement savings plan to which a premium deductible under subsection (5.1) has been paid.

Subsec. 146(8.4) substituted by 1986, c. 55, subsec. 56(4), applicable to 1986 *et seq.* Subsec. 146(8.4) formerly read:

(8.4) For the purposes of subsection (8.3) a plan to which a payment or transfer described in subsection (16) has been made from a plan described in subsection (8.3) shall be deemed to be a plan to which a contribution deductible under subsection (5.1) has been made.

Subsec. 146(8.4) added by 1977-78, c.1, subsec. 72(3), applicable after March 1977.

(8.5) Ordering — Where a taxpayer has paid more than one premium described in subsection (8.3), such a premium or part thereof paid by the taxpayer at any time shall be deemed to have been included in computing the taxpayer's income by virtue of that subsection before premiums or parts thereof paid by the taxpayer after that time.

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans.

(8.6) Spouse's income — Where, in respect of an amount required at any time in a taxation year to be included in computing the income of a taxpayer's spouse, all or part of a premium has by reason of subsection (8.3) been included in computing the taxpayer's income for the year, the following rules apply:

(a) the premium or part thereof, as the case may be, shall, for the purposes of subsections (8.3) and 146.3(5.1) after that time, be deemed not to have been a premium paid to a registered retirement savings plan under which the taxpayer's spouse was the annuitant; and

(b) an amount equal to the premium or part thereof, as the case may be, may be deducted in computing the income of the spouse for the year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 146(8.21) — Premium deemed not paid; 146.3(5.4) — Spouse's income; 252(4) — Extended meaning of "spouse".

Pre-RSC History: That portion of subsec. 146(8.6) preceding para. (b) substituted by 1990, c. 35, subsec. 13(15), applicable to 1991 *et seq.* That portion formerly read:

(8.6) Where, in respect of an amount received by a taxpayer's spouse, all or part of a premium has by virtue of subsection (8.3) or 146.3(5.1) been included at any time in computing the taxpayer's income for a taxation year,

(a) the premium or part thereof, as the case may be, shall, for the purposes of subsections (8.3) and 146.3(5.1) after that time, be deemed not to have been a premium deductible under subsection (5.1); and

Subsecs. 146(8.5), (8.6) substituted by 1986, c. 55, subsec. 56(4), applicable to 1986 *et seq.* Those subsecs. formerly read:

(8.5) Ordering — Where a taxpayer has paid more than one amount described in subsection (8.3), such an amount or part thereof paid by him at any time shall be deemed to have been included in computing his income by virtue of subsection (8.3) before amounts or parts thereof paid by him after that time.

(8.6) Amounts not to be included more than once — Where all or any part of an amount has, by virtue of subsection (8.3), been included at any particular time in computing a taxpayer's income for a taxation year, that amount or part, as the case may be, shall not subsequently be included in computing that taxpayer's income.

Subsecs. 146(8.5), (8.6) added by 1977-78, c. 1, subsec. 72(3), applicable after March 1977.

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs.

(8.7) Where subsec. (8.3) does not apply — Subsection (8.3) does not apply

(a) in respect of a taxpayer at any time during the year in which the taxpayer died;

(b) in respect of a taxpayer where either the taxpayer or the taxpayer's spouse is a non-resident at the particular time referred to in that subsection;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) in respect of amounts paid out of or under a plan referred to in subsection (12) as an "amended plan" to which paragraph (12)(a) applied before May 26, 1976;

(d) to any payment that is received in full or partial commutation of a registered retirement income fund or a registered retirement savings plan and in respect of which a deduction was made under paragraph 60(l) if, where the deduction was in respect of the acquisition of an annuity, the terms of the annuity provide that it cannot be commuted, and it is not commuted, in whole or in part within 3 years after the acquisition; or

(e) in respect of an amount that is deemed by subsection (8.8) to have been received by an annuitant under a registered retirement savings plan immediately before the annuitant's death.

Pre-RSC History: Para. 146(8.7)(e) added by 1990, c. 35, subsec. 13(16), applicable to 1988 *et seq.*

Para. 146(8.7)(d) added by 1986, c. 55, subsec. 56(5), applicable to 1986 *et seq.*

Subsec. 146(8.7) added by 1977-78, c. 1, subsec. 72(3), applicable after March 31, 1977.

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs.

(8.8) Effect of death where person other than spouse becomes entitled — Where the annuitant under a registered retirement savings plan (other than a plan that had matured before June 30, 1978) dies after June 29, 1978, the annuitant shall be deemed to have received, immediately before the annuitant's death, an amount as a benefit out of or under a registered retirement savings plan equal to the amount, if any, by which

(a) the fair market value of all the property of the plan at the time of death

exceeds

(b) where the annuitant died after the maturity of the plan, the fair market value at the time of the death of the portion of the property described in paragraph (a) that, as a consequence of the death, becomes receivable by a person who was the annuitant's spouse immediately before the death, or would become so receivable should that person survive throughout all guaranteed terms contained in the plan.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60(l)(v)(B.1) — Transfer of RRSP premium refunds; 146(8.7) — Where subsec. (8.3) does not apply; 146(8.9) — Effect of death where person other than spouse becomes entitled; 146.3(6) — Parallel rule for RRIFs; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 214(3)(c) — Non-resident withholding tax; 252(4)(a) — Extended meaning of "spouse".

History: Para. 146(8.8)(b) substituted by 1994, c. 21, subsec. 69(7), applicable to deaths occurring after 1992. That para. formerly read:

(b) the portion thereof that, as a consequence of the annuitant's death, becomes receivable by the annuitant's spouse, or would become so receivable should that spouse survive throughout all guaranteed terms contained in the plan.

Pre-RSC History: Subsec. 146(8.8) amended by 1979, c. 5, subsec. 46(11), applicable after June 29, 1978. Subsec. 146(8.8) formerly read:

(8.8) Where, as a consequence of the death of an individual, a person, other than the spouse of the individual, becomes entitled to receive an amount out of or under a contract or arrangement that was, at the time of the individual's death, a registered retirement savings

plan of the individual that matured or provided for maturity after the day on which this subsection comes into force,

(a) the individual shall be deemed to have received, immediately before his death, an amount out of or under a registered retirement savings plan equal to the fair market value at the time of his death of the amount the person became entitled to receive; and

(b) the plan shall be deemed, for the purposes of this Act, not to be a registered retirement savings plan at any time after the individual's death.

Subsec. 146(8.8) added by 1977-78, c. 32, subsec. 34(15).

Selected Cases: *Slater v. Klassen Estate*, [2000] 2 C.T.C. 100 (Man QB) (RRSP did not pass by will where marriage no longer in existence; no rollover).

Regulations: 214(4) (information return).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: RC4177: Death of an RRSP annuitant [guide].

(8.9) Idem — There may be deducted from the amount deemed by subsection (8.8) to have been received by an annuitant as a benefit out of or under a registered retirement savings plan an amount not exceeding the amount determined by the formula

$$A \times \left[1 - \frac{(B + C - D)}{(B + C)} \right]$$

where

A is the total of

(a) all refunds of premiums in respect of the plan,

(b) all tax-paid amounts in respect of the plan paid to individuals who, otherwise than because of subsection (8.1), received refunds of premiums in respect of the plan, and

(c) all amounts each of which is a tax-paid amount in respect of the plan paid to the legal representative of the annuitant under the plan, to the extent that the legal representative would have been entitled to designate that tax-paid amount under subsection (8.1) if tax-paid amounts were not excluded in determining refunds of premiums;

B is the fair market value of the property of the plan at the particular time that is the later of

(a) the end of the first calendar year that begins after the death of the annuitant, and

(b) the time immediately after the last time that any refund of premiums in respect of the plan is paid out of or under the plan;

C is the total of all amounts paid out of or under the plan after the death of the annuitant and before the particular time; and

D is the lesser of

(a) the fair market value of the property of the plan at the time of the annuitant's death, and

(b) the sum of the values of B and C in respect of the plan.

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 146.3(6.2) — Parallel rule for RRIFs; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP.

History: The description of A in subsec. 146(8.9) amended by 1998, c. 19, subsec. 170(7), applicable to deaths occurring after 1992. The description formerly read:

A is the total of all refunds of premiums in respect of the plan;

Subsec. 146(8.9) substituted by 1994, c. 21, subsec. 69(8), applicable to deaths occurring after 1992. That subsec. formerly read:

(8.9) There may be deducted from the amount deemed by subsection (8.8) to have been received by an annuitant as a benefit out of or under a registered retirement savings plan the total of all amounts each of which is

(a) that portion of an amount paid out of or under the plan that is deemed to be received by a beneficiary as a benefit that is a refund of premiums pursuant to subsection (8.1); or

(b) an amount received under the plan by a child or grandchild of the annuitant as a refund of premiums.

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant.

Advance Tax Rulings: ATR-37: Refund of premiums transferred to spouse.

Forms: RC4177: Death of an RRSP annuitant [guide].

(8.91) Amounts deemed receivable by spouse — Where, as a consequence of the death of an annuitant after the maturity of the annuitant's registered retirement savings plan, the annuitant's legal representative has become entitled to receive amounts out of or under the plan for the benefit of the spouse of the deceased and the legal representative and the spouse file with the Minister a joint election in prescribed form,

(a) the spouse shall be deemed to have become the annuitant under the plan as a consequence of the annuitant's death; and

(b) such amounts shall be deemed to be receivable by the spouse and, when paid, to be received by the spouse as a benefit under the plan, and not to be received by any other person.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 214(3)(c) — Non-resident withholding tax; 248(8) — Occurrences as a consequence of death; 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsecs. 146(8.9), (8.91) enacted by 1979, c. 5, subsec. 46(11), applicable after June 29, 1978.

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-500R: RRSPs — death of an annuitant.

Forms: RC4177: Death of an RRSP annuitant [guide].

(9) Where disposition of property by trust — Where in a taxation year a trust governed by a registered retirement savings plan

(a) disposes of property for a consideration less than the fair market value of the property at the time of the disposition, or for no consideration, or

(b) acquires property for a consideration greater than the fair market value of the property at the time of the acquisition,

the difference between the fair market value and the consideration, if any, shall be included in computing the income for the taxation year of the annuitant under the plan.

Related Provisions: 146(11) — Life insurance policies; 146(12) — Change in plan after registration; 214(3)(c) — Non-resident withholding tax.

Regulations: 214(2) (information return).

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(10) Where acquisition of non-qualified investment by trust — Where at any time in a taxation year a trust governed by a registered retirement savings plan

(a) acquires a non-qualified investment, or

(b) uses or permits to be used any property of the trust as security for a loan,

the fair market value of

(c) the non-qualified investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used,

as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the plan at that time.

Related Provisions: 146(6) — Disposition of non-qualified investment; 146(7) — Recovery of property used as security; 146(10.1) — Tax payable by trust; 146(11) — Life insurance policies; 207.1(1) — Tax payable by RRSP; 214(3)(c) — Non-resident withholding tax; 259(1) — Election for proportional holdings in trust property.

Pre-RSC History: Subsec. 146(10) substituted by 1979, c. 5, subsec. 46(12), applicable in respect of property acquired or used as security after November 16, 1978. Subsec. 146(10) formerly read:

(10) Where in a taxation year a trust governed by a registered retirement savings plan

(a) acquires a non-qualified investment, or

(b) uses or permits to be used any property of the trust as security for a loan,

the cost to the trust of the non-qualified investment or the fair market value, at the time the property is used as security, of the property so used, as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the plan.

Selected Cases [subsec. 146(10)]: *Millward v. The Queen*, [1986] 2 C.T.C. 423 (FCTD) (Cross investments in mortgages made by RRSPs of two partners were not at arm's length and were "non-qualified investments"); *The Queen v. Epstein*, [1984] C.T.C. 270 (FCTD) (Definition of terms in federal legislation may not be the same as under applicable provincial legislation; definition of "mortgagor" considered).

Regulations: 214(2) (information return).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146(10) waived because taxpayers thought they were qualified investments).

Interpretation Bulletins: IT-320R2: RRSP — qualified investments; IT-415R2: Deregistration of RRSPs.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(10.1) Where tax payable [income from non-qualified investment] — Where in a taxation year a trust governed by a registered retirement savings plan holds a property that is a non-qualified investment,

(a) tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than non-qualified investments and no capital gains or losses other than from dispositions of non-qualified investments; and

(b) for the purposes of paragraph (a),

(i) "income" includes dividends described in section 83, and

(ii) paragraphs 38(a) and (b) shall be read without reference to the fractions set out in those paragraphs.

Related Provisions: 146(4) — Tax not otherwise payable by trust; 259(1) — Election for proportional holdings in trust property.

Pre-RSC History: Subpara. 146(10.1)(b)(ii) substituted by 1988, c. 55, subsec. 130(3), applicable to 1988 *et seq.* Subpara. 146(10.1)(b)(ii) formerly read:

(ii) paragraphs 38(a) and (b) shall be read without reference to the words "½ of" where they appear therein.

Subsec. 146(10.1) added by 1986, c. 6, subsec. 81(4), applicable to 1986 *et seq.* in respect of property acquired after October 31, 1985.

Interpretation Bulletins: IT-320R2: RRSPs — qualified investments.

(11) Life insurance policies — Subsections 198(6) and (8) are applicable, with such modifications as the circumstances require, to subsections (6), (9) and (10), except that in the application of subsection 198(8) to the latter subsections paragraph 198(8)(a) shall be read as follows:

(a) "the trust shall be deemed, for the purposes of subsection 146(6), to have disposed of each non-qualified investment that, by virtue of payments under the policy, it was deemed by subsection 146(10) to have acquired, and"

Related Provisions: 139.1(12) — Effect of conversion benefit on demutualization of insurance corporation; 146(1)"qualified investment"(c)-(c.2) — Annuity contracts as qualified investments; 146(11.1) — Subsec. (11) does not apply to contracts issued after 1997.

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs.

(11.1) Exception — Subsection (11) does not apply to annuity contracts issued after 1997.

History: Subsec. 146(11.1) added by 1998, c. 19, subsec. 170(8), applicable after 1997.

(12) Change in plan after registration — Where, on any day after a retirement savings plan has been accepted by the Minister for registration for the purposes of this Act, the plan is revised or amended or a new plan is substituted for it, and the plan as revised or amended or the new plan, as the case may be (in this subsection referred to as the "amended plan"), does not comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act, subject to subsection (13.1), the following rules apply:

(a) the amended plan shall be deemed, for the purposes of this Act, not to be a registered retirement savings plan; and

(b) the taxpayer who was the annuitant under the plan before it became an amended plan shall, in computing the taxpayer's income for the taxation year that includes that day, include as income received at that time an amount equal to the fair market value of all the property of the plan immediately before that time.

Related Provisions: 146(2) — Requirements for registration; 146(8.3) — Spousal RRSP payments; 146(8.7) — Where ss. (8.3) does not apply; 146(13) — Change in plan after registration; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 146(13.2), (13.3) — Pre-1997 plan that does not mature by age 69 is deemed deregistered; 204.1 — Tax in respect of over-contribution to deferred income plans; 204.2(1.4) — Deemed receipt where RRSP or RRIF amended; 214(3)(c) — Non-resident withholding tax.

Pre-RSC History: That portion of subsec. 146(12) preceding para. (a) substituted by 1990, c. 39, subsec. 36(2), applicable with respect to revisions, amendments and substitutions made after 1988. That portion formerly read:

(12) Where, on any day after a retirement savings plan has been accepted by the Minister for registration for the purposes of this Act, the plan is revised or amended or a new plan is substituted therefor, and the plan as revised or amended or the new plan substituted therefor, as the case may be, (hereinafter in this subsection referred to as the "amended plan") does not comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act, the following rules apply:

Subsec. 146(12) amended by 1986, c. 55, subsec. 56(6), to substitute "on any day" for "at any time" following "Where,", applicable to 1986 *et seq.* and to substitute para. 146(12)(b) applicable after May 25, 1976 but in its application in respect of plans to which para. 146(12)(a) had application on or before that date, para. 146(12)(b) shall be read as follows:

> (b) there shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year that, by virtue of subsection (8) or (9), would have been so included if the amended plan had been a registered retirement savings plan at the time he received those amounts and no deduction shall be made under paragraph 60(a) in respect of those amounts in computing his income for that year.

Para. 146(12)(b) formerly read:

> (b) the taxpayer who was the annuitant under the plan before it became an amended plan shall, in computing his income for a taxation year, include as income received at that time, an amount equal to the fair market value of all the property of the plan immediately before that time minus the amount required by subsection (8.3) to be included in computing the income of the taxpayer's spouse.

Para. 146(12)(b) substituted by 1977-78, c. 1, subsec. 72(4), applicable after March 31, 1977 except that in its application in respect of plans to which para. 146(12)(a) applied on or before May 25, 1976, para. 146(12)(b) shall be read as follows:

> (b) there shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year that, by virtue of subsection (8) or (9), would have been so included if the amended plan had been a registered retirement savings plan at the time he received those amounts, and no deduction shall be made under paragraph 60(a) in respect of those amounts in computing his income for that year.

Para. 146(12)(b) formerly read:

> (b) an amount equal to the fair market value at that time of all the property of the plan shall be included, as income received at that time, in computing the income for a taxation year of the individual who was the annuitant under the plan before it became an amended plan.

Para. 146(12)(b) substituted by 1976-77, c. 4, subsec. 56(6), applicable after May 25, 1976 except that in its application in respect of plans to which para. 146(12)(a) had application on or before that date, para. 146(12)(b) shall be read as follows:

> (b) there shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year that, by virtue of subsection (8) or (9), would have been so included if the amended plan had been a registered retirement savings plan at the time he received those amounts, and no deduction shall be made under paragraph 60(a) in respect of those amounts in computing his income for that year.

Para. 146(12)(b) formerly read:

> (b) there shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year that, by virtue of subsection (8) or (9), would have been so included if the amended plan had been a registered retirement savings plan at the time he received those amounts, and no deduction shall be made under paragraph 60(a) in respect of those amounts in computing his income for that year.

Selected Cases [subsec. 146(12)]: *Phenix Estate (Trustee of) v. Bank of Nova Scotia*, [1989] 1 C.T.C. 442 (Sask CA) (Plan deregistered when assets pledged as security).

Regulations: 214(3) (information return).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T4RSP Segment; T4RSP Summary: Return of RRSP income; T4RSP Supplementary: Statement of RRSP income; T2205: Calculation of amounts to be included in income out of spousal RRSP or RRIF; T4079: T4RSP and T4RIF guide.

(13) Idem — For the purposes of subsection (12), an arrangement under which a right or obligation under a retirement savings plan is released or extinguished either wholly or in part and either in exchange or substitution for any right or obligation, or otherwise (other than an arrangement the sole object and legal effect of which is to revise or amend the plan) or under which payment of any amount by way of loan or otherwise is made on the security of a right under a retirement savings plan, shall be deemed to be a new plan substituted for that retirement savings plan.

Related Provisions: 146(2), (3) — Acceptance of plan registration; 146(16) — Deduction on transfer of funds.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

(13.1) RRSP advantages — Where an issuer of a registered retirement savings plan or any person not dealing at arm's length with the issuer has extended an advantage to the annuitant of the plan (or to a person not dealing at arm's length with the annuitant) and that advantage would have been prohibited if the plan had met the requirement for registration contained in paragraph (2)(c.4),

(a) paragraphs (12)(a) and (b) do not apply by reason only of the extension of that advantage; and

(b) the issuer is liable to a penalty equal to the greater of $100 and the amount or value of that advantage.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 146(2)(c.4) — Prohibition against extending advantage; 146(5)(a) — Amount of RRSP premiums deductible.

Pre-RSC History: Subsec. 146(13.1) substituted by 1990, c. 39, subsec. 36(3), applicable with respect to advantages extended after 1988. Subsec. 146(13.1) formerly read:

> (13.1) Presumption — Where on any day after June 30, 1982 an advantage is extended or continues to be extended as a consequence of the existence of a registered retirement savings plan and that advantage would be prohibited if the plan met the requirement for registration contained in paragraph (2)(c.4), the plan shall be deemed to become an amended plan as of that or any subsequent day that is specified by the Minister in a notice given by registered mail to the issuer and to the annuitant.

Subsec. 146(13.1) added by 1980-81-82-83, c. 140, subsec. 98(8).

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

Information Circulars: 72-22R9: Registered retirement saving plans.

(13.2) Maturity after age 69 — For the purpose of subsection (12), where a retirement savings plan accepted for registration before 1997 does not mature by the end of the particular year in which the annuitant under the plan attains 69 years of age,

(a) the plan is deemed to have been amended immediately after the particular year; and

(b) the plan as amended is deemed not to comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act.

Related Provisions: 146(12)(b) — Deregistration and income inclusion as a result of deemed amendments to plan; 146(13.3) — Notification required that plan will be deregistered; 147(10.6) — Parallel rules for DPSPs.

History: Subsecs. 146(13.2) added by 1997, c. 25, subsec. 41(4), applicable after 1996, except that

> (a) it does not apply to a retirement savings plan where the annuitant under the plan attained 70 years of age before 1997;
>
> (b) in applying the subsec. to a retirement savings plan where the annuitant under the plan attained 69 years of age in 1996, the references in that provisions to "69 years of age" shall be read as "70 years of age";
>
> (c) it does not apply to a retirement savings plan where an annuity contract was issued before March 6, 1996 under, pursuant to or as the plan to provide the retirement income under the plan and, under the

terms and conditions of the contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the plan is fixed and determined and is after the year in which the annuitant attains

(A) 69 years of age, where the annuitant had not attained that age before 1997, or

(B) 70 years of age, where the annuitant attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined; and

(d) it does not apply to a retirement savings plan that is part of a life insurance policy that was issued before March 6, 1996 and that has a life insurance component that is not a retirement savings plan where, under the terms and conditions of the policy as they read immediately before that day,

(i) the amount of each premium, if any, subsequently payable in respect of the life insurance component of the policy, and a date by which each such premium is to be paid, are fixed and determined,

(ii) the amount payable under the policy because of the death of the annuitant (determined without reference to any amount payable as, on account of, in lieu of payment of or in satisfaction of, a policy dividend or related interest) is fixed and determined, and

(iii) insurance on the life of the annuitant is provided under the policy for a period of time after the year in which the annuitant attains

(A) 69 years of age, where the annuitant had not attained that age before 1997, or

(B) 70 years of age, where the annuitant attained 69 years of age in 1996.

Where, because of (d) above, the subsec. does not apply to a retirement savings plan that is part of a life insurance policy, any part of a premium paid under the policy after March 5, 1996 that was not fixed and determined under the terms and conditions of the policy as they read at the end of that day is deemed, for the purposes of subsecs. 146(5), (5.1) and (8.2), not to have been paid under the policy.

(13.3) Notice — Where a retirement savings plan accepted for registration before 1997 does not prevent maturity after the particular year in which the annuitant under the plan attains 69 years of age, the issuer of the plan shall, before July of the particular year, notify the annuitant in writing that, pursuant to subsections (12) and (13.2), the plan will cease to be a registered retirement savings plan if it does not mature by the end of the particular year, except that no such notification is required where, before that month,

(a) the plan has matured; or

(b) arrangements have been made for the plan to mature, or for the property under the plan to be transferred or otherwise paid out of the plan, by the end of the particular year.

Related Provisions: 162(7) — Penalty for failure to comply.

History: Subsecs. 146(13.3) added by 1997, c. 25, subsec. 41(4), applicable on the same basis as subsec. 146(13.2)

(14) Premiums paid in taxation year — Where any amount has been paid in a taxation year as a premium under a retirement savings plan that was, at the end of that taxation year, a registered retirement savings plan, the amount so paid shall be deemed, for the purposes of this Act, to have been paid in that year as a premium under a registered retirement savings plan.

Related Provisions: 146(1) — "Retirement savings plan".

(15) Plan not registered at end of year entered into — Notwithstanding anything in this section, where an amount is received in a taxation year as a benefit under a registered retirement savings plan that was not, at the end of the year in which the plan was entered into, a registered retirement savings plan, such part, if any, of the amount so received as may be prescribed shall be deemed, for the purposes of this Act, to have been received in the taxation year otherwise than as a benefit or other payment under a registered retirement savings plan.

Regulations: Part I.

(16) Transfer of funds — Notwithstanding any other provision in this section, a registered retirement savings plan may at any time be revised or amended to provide for the payment or transfer before the maturity of the plan, on behalf of the annuitant under the plan (in this subsection referred to as the "transferor"), of any property thereunder by the issuer thereof

(a) to a registered pension plan for the benefit of the transferor or to a registered retirement savings plan or registered retirement income fund under which the transferor is the annuitant, or

(b) to a registered retirement savings plan or registered retirement income fund under which the spouse or former spouse of the transferor is the annuitant, where the transferor and the transferor's spouse or former spouse are living separate and apart and the payment or transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the transferor and the transferor's spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

and, where there has been such a payment or transfer of such property on behalf of the transferor before the maturity of the plan,

(c) the amount of the payment or transfer shall not, solely because of the payment or transfer, be included in computing the income of the transferor or the transferor's spouse or former spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) no deduction may be made under subsection (5), (5.1) or (8.2) or section 8 or 60 in respect of the payment or transfer in computing the income of any taxpayer, and

(e) where the payment or transfer was made to a registered retirement savings plan, for the purposes of subsection (8.2), the amount of the payment or transfer shall be deemed not to be a premium paid to that plan by the taxpayer.

Related Provisions: 60(l) — Transfer of RRSP premium refunds; 146.3(14) — Transfer of RRIF on marriage breakdown; 160.2(1) — Joint and several liability in respect of amounts received out of or under RRSP; 204.2(1) — Excess amount for a year for RRSP; 204.2(2) — Where terminated plan deemed to continue to exist; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

History: Para. 146(16)(b) amended applicable after 1992, and all that portion of subsec. (16) following para. (b) amended applicable to 1991 *et*

seq., by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 82(9) and (10). Those portions formerly read:

> (b) to a registered retirement savings plan or registered retirement income fund under which the spouse or former spouse of the transferor is the annuitant, where the transferor and the transferor's spouse or former spouse are living separate and apart and the payment or transfer is made pursuant to a decree, order or judgment of a competent tribunal, or a written separation agreement, relating to a division of property between the transferor and the transferor's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of the marriage or other relationship,
>
> and on the payment or transfer of such property before the maturity of the plan,
>
> (c) the amount so paid or transferred on behalf of the transferor shall not by reason only of that payment or transfer be included by virtue of subsection (8) in computing the income of the transferor or the spouse or former spouse, and
>
> (d) no deduction may be made under subsection (5), (5.1) or (8.2) or section 8 or 60, in respect of the amount so paid or transferred, in computing the income of any taxpayer.

Pre-RSC History: That portion of subsec. 146(16) preceding para. (c) substituted by 1990, c. 35, subsec. 13(17), applicable with respect to

> (a) revisions or amendments made to registered retirement savings plans after 1989, and
>
> (b) a payment or transfer of property made after 1989 on behalf of the annuitant (in this paragraph referred to as the "transferor") under a registered retirement savings plan, other than a payment or transfer pursuant to a revision or amendment made to the plan before 1990 where the payment or transfer is to a registered retirement savings plan or a registered retirement income fund under which the transferor's spouse or former spouse (within the meaning assigned by subsections 146(1.1) and 252(3) of the said Act, as enacted by subsections 13(6) and 28(1), for the purposes of subsection 146(16) of the said Act) is the annuitant,

and para. 146(16)(a), as it applies with respect to revisions or amendments made to registered retirement savings plans in 1988 and 1989, shall be read as follows:

> (a) to a registered retirement savings plan or registered retirement income fund under which
>
> (i) the transferor is the annuitant, or
>
> (ii) the spouse or former spouse of the transferor, from whom the transferor is living separate and apart, is the annuitant and the payment or transfer is made pursuant to a decree, order or judgment of a competent tribunal, or a written separation agreement, relating to a division of property between the transferor and the transferor's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of the marriage or other relationship, or

That portion of subsec. 146(16) formerly read:

> (16) Notwithstanding anything in this section, a registered retirement savings plan may at any time be revised or amended to provide for the payment or transfer, on behalf of the annuitant under the plan (in this subsection referred to as the "transferor"), of any property thereunder by the issuer thereof
>
> (a) to any issuer of another registered retirement savings plan or carrier of a registered retirement income fund under which
>
> (i) the transferor is the annuitant, or
>
> (ii) the spouse or former spouse of the transferor, from whom he is living apart, is the annuitant and the payment or transfer is made pursuant to a decree, order or judgment of a competent tribunal, or a written separation agreement, relating to a division of property between the transferor and his spouse or former spouse in settlement of rights arising out of their marriage, on or after the breakdown of the marriage, or
>
> (b) as a contribution to or under a registered pension plan,
>
> and upon the payment or transfer of such property before the year in which the transferor attains 72 years of age

Para. 146(16)(b) amended by 1990, c. 35, s. 29, to substitute "registered plan" for "fund or plan", applicable after 1985.

Subsec. 146(16) amended by 1986, c. 55, subsec. 56(7), to substitute, in the portion preceding para. (a), "in this subsection" for "in this section" and "any property thereunder" for "any funds thereunder", to substitute that portion of para. (a) preceding subpara. (i), to delete para. (c) (redesignating paras. (d) and (e) as (c) and (d)), and to substitute "transfer of such property" for "transfer of such funds" in that portion between paras. (b) and (c), applicable to 1986 *et seq.* That portion of para. (a) preceding subpara. (i) and para. (c) formerly read:

> (a) to any issuer under another registered retirement savings plan under which
>
> . . . . .
>
> (c) after the earliest of the times described in subparagraph (2)(b)(iii), to a carrier (within the meaning of paragraph 146.3(1)(b)) of a registered retirement income fund under which he is the annuitant (within the meaning of paragraph 146.3(1)(a)),

Those portions of subsec. 146(16) preceding para. (b) and following para. (c) substituted by 1980-81-82-83, c. 140, subsecs. 98(9) and (10) respectively, applicable to the 1982 and subsequent taxation years. The substituted portions formerly read:

> (16) Notwithstanding anything in this section, a registered retirement savings plan may at any time be revised or amended to provide for the payment or transfer, on behalf of the annuitant under the plan, of any funds thereunder by the person described in paragraph (1)(j) with whom the annuitant has a contract or arrangement
>
> (a) to any such person under another registered retirement savings plan under which he is the annuitant,
>
> . . . . .
>
> and upon the payment or transfer of such funds before the year in which he attains 72 years of age
>
> (d) the amount so paid or transferred on behalf of the annuitant shall not by reason only of such payment or transfer be included by virtue of subsection (8) in computing his income, and
>
> (e) no deduction may be made under subsection (5) or (8.2) or section 8 or 60, in respect of the amount so paid or transferred, in computing the income of the taxpayer for a taxation year.

All that portion of subsec. 146(16) following para. (b) and preceding para. (d) substituted by 1979, c. 5, subsec. 46(13), applicable, in respect of para. 146(16)(c), after June 29, 1978, and; in respect of the remainder of that portion to 1979 *et seq.* The material substituted formerly read:

> (c) where the annuitant has attained 60 years of age, to a carrier (within the meaning of paragraph 146.3(1)(b)) of a registered retirement income fund under which he is the annuitant (within the meaning of paragraph 146.3(1)(a)),
>
> and upon the payment or transfer of such funds

Subsec. 146(16) substituted by 1977-78, c. 32, subsec. 34(16). Subsec. 146(16) formerly read:

> (16) Notwithstanding anything in this section, a registered retirement savings plan may at any time be revised or amended to provide for the payment or transfer, on behalf of the annuitant under the plan, of any funds thereunder by the person described in paragraph (1)(j) with whom the annuitant has a contract or arrangement
>
> (a) to another such person under a registered retirement savings plan, or
>
> (b) as a contribution to or under a registered pension fund or plan,
>
> and upon the payment or transfer of such funds
>
> (c) the amount so paid or transferred on behalf of the annuitant shall not by reason only of such payment or transfer be included by virtue of subsection (8) in computing his income, and
>
> (d) no deduction may be made under subsection (5) or (8.2) or section 8 or 60, in respect of the amount so paid or transferred, in computing the income of the taxpayer for a taxation year.

Subsec. 146(16) substituted by 1976-77, c. 4, subsec. 56(7), applicable to 1976 *et seq.* Subsec. 146(16) formerly read:

> (16) Notwithstanding anything in this section, a registered retirement savings plan may at any time be revised or amended with the approval of the Minister to provide for the payment or transfer, on behalf of the annuitant under the plan, of any funds thereunder by the person described in paragraph (1)(j) with whom the annuitant has a contract or arrangement
>
> (a) to another such person under a registered retirement savings plan, or

(b) as a contribution to or under a registered pension fund or plan,

and upon the payment or transfer of such funds

(c) the amount so paid or transferred on behalf of the annuitant shall not by reason only of such payment or transfer be included in computing his income, and

(d) no deduction may be made under subsection (5) or section 60 in respect of the amount so paid or transferred in computing the income of the taxpayer for a taxation year.

Regulations: 214(5), (6) (information return).

Remission Orders: *Certain Taxpayers Remission Order, 1999-2*, 1999-1855, s. 2 (remission to Quebec judges for excess contributions in 1989-90 transferred under 146(16)).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-415R2: Deregistration of RRSPs; IT-528: Transfers of funds between registered plans.

Information Circulars: 72-22R9: Registered retirement savings plans; 74-1R5: Form T2037, Notice of purchase of annuity with "plan" funds; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2033: Direct transfer under para. 146(16)(a) or 146.3(2)(e); T2220: Transfer between retirement savings plans or retirement income funds on marriage breakdown.

(17) [Repealed under former Act]

Pre-RSC History: Subsec. 146(17) repealed by 1990, c. 35, subsec. 13(18), applicable with respect to RRSP premiums paid after 1990; and with respect to RRSP premiums paid before 1991 subsec. 146(17) shall be read as follows:

(17) For the purposes of this section, where before a particular time a taxpayer has received a payment described in paragraph (2)(c.1) (as it read in 1990), the amounts paid by the taxpayer to registered retirement savings plans under which the taxpayer or the taxpayer's spouse is the annuitant in the year in respect of which that payment is made to the taxpayer are deemed to be the amounts so paid by the taxpayer to such plans in that year less the aggregate of all such payments received by the taxpayer in respect of that year before the particular time.

Subsec. 146(17) formerly read:

(17) Interpretation — For the purposes of this section, where before a particular time a taxpayer has received a payment described in paragraph (2)(c.1), the amounts paid by him to registered retirement savings plans under which he or his spouse is the annuitant in the year in respect of which that payment is made to him are deemed to be the amounts so paid by him to such plans in that year less the aggregate of all such payments received by him in respect of that year before the particular time.

Subsec. 146(17) amended by 1986, c. 55, subsec. 56(7), applicable to 1986 *et seq.* to substitute "paragraph (2)(c.1)" for "clause (2)(a)(i)(B)".

Subsec. 146(17) added by 1976-77, c. 4, subsec. 56(8), applicable to 1976 *et seq.*

(18) [Repealed under former Act]

Pre-RSC History: Subsec. 146(18) repealed by 1986, c. 55, subsec. 56(7), applicable to 1986 *et seq.* Subsec. 146(18) formerly read:

(18) Where plan matures before annuitant attains age of 60 — Where a registered retirement savings plan that was entered into

(a) before April 10, 1978 which provides that the plan may, in accordance with the terms and conditions thereof on that day, mature at a time after the annuitant thereunder attains 60 years of age, or

(b) after April 10, 1978

matures

(c) after the day on which this section comes into force, and

(d) before the earliest of the times described in subparagraph (2)(b)(iii)

the plan shall, immediately before its maturity, be deemed to have become an amended plan that does not comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act.

Para. 146(18)(d) substituted by 1979, c. 5, subsec. 46(14), applicable after June 29, 1978. Para. 146(18)(d) formerly read:

(d) before the annuitant thereunder attains 60 years of age;

Subsec. 146(18) added by 1977-78, c. 32, subsec. 34(17).

(19) [Repealed under former Act]

Pre-RSC History: Subsec. 146(19) repealed by 1986, c. 55, subsec. 56(7), applicable to 1986 *et seq.* Subsec. 146(19) formerly read:

(19) Transitional — Where, after April 10, 1978 and before the day that is 60 days after the day on which this subsection comes into force,

(a) an individual attains 71 years of age, and

(b) a registered retirement savings plan under which he is the annuitant is revised or amended in a manner such that an amount would otherwise be required by paragraph (12)(b) to be included in computing his income for a taxation year,

the following rules apply:

(c) the plan shall be deemed not to have been so revised or amended during that period;

(d) the plan shall be deemed to be so revised or amended on the day that is 121 days after the day on which this section comes into force;

(e) in computing the individual's income for the taxation year in which he is required by subsection (8) to include in his income an amount received by him out of or under a plan referred to in paragraph (b), there may be deducted such portion of any amount received by him in the year out of or under the plan as may reasonably be regarded as having been

(i) used by him to provide for himself a retirement income, or

(ii) paid by him into a registered retirement income fund under which he is the annuitant (within the meaning of paragraph 146.3(1)(a))

within 120 days after the day on which this subsection comes into force;

(f) for the purposes of paragraph 146.3(2)(f), an amount paid by the individual into a registered retirement income fund under which he is the annuitant (within the meaning of paragraph 146.3(1)(a)) shall be deemed to be property transferred from a registered retirement savings plan, under which he is the annuitant, to the extent that the amount so paid is deductible by him under paragraph (e) in computing his income; and

(g) where an amount referred to in paragraph (e) has been used by the individual to acquire for himself an annuity described in paragraph (1)(i.1), to the extent that the amount so used is deductible by him under paragraph (e) in computing his income, any payments made under the annuity shall be deemed to be payments made under a registered retirement savings plan.

Subsec. 146(19) added by 1977-78, c. 32, subsec. 34(17).

(20) Credited or added amount deemed not received — Where

(a) an amount is credited or added to a deposit with a depositary referred to in subparagraph (b)(iii) of the definition "retirement savings plan" in subsection (1) as interest or income in respect of the deposit,

(b) the deposit is a registered retirement savings plan at the time the amount is credited or added to the deposit, and

(c) during the calendar year in which the amount is credited or added or during the preceding calendar year, the annuitant under the plan was alive,

the amount shall be deemed not to be received by the annuitant or any other person solely because of the crediting or adding.

Related Provisions: 81(1)(r) — No income inclusion where amount credited or added to foreign retirement arrangement; 146(8) — Tax on withdrawals from plan.

History: Subsec. 146(20) substituted by 1994, c. 21, subsec. 69(9), applicable to deaths occurring after 1992. That subsec. formerly read:

(20) Where amount credited or added deemed not received — Where an amount is credited or added to a deposit with a depositary referred to in subparagraph (b)(iii) of the definition "retirement savings plan" in subsection (1) as interest or income in respect of the deposit, and where

(a) the deposit is a registered retirement savings plan at the time the amount is credited or added to the deposit, and

(b) the annuitant under the plan is alive during the year in which the amount is credited or added,

the amount shall be deemed not to be received by the annuitant by reason only of the crediting or adding.

Pre-RSC History: Subsec. 146(20) added by 1980-81-82-83, c. 40, subsec. 96(4), in force December 1, 1980.

Selected Cases [subsec. 146(20)]: *Foreman (P.M.) v. MNR*, [1992] 2 C.T.C. 2621 (TCC) (No artificiality where taxpayer repaid loan from RRSP with proceeds of bank loan in December, then borrowed from RRSP in January to repay bank).

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

Information Circulars: 72-22R9: Registered retirement savings plans.

(21) Prescribed provincial pension plans — Where

(a) an amount (other than an amount that is part of a series of periodic payments) is transferred directly from an individual's account under a provincial pension plan prescribed for the purpose of paragraph 60(v)

(i) to a registered retirement savings plan or registered retirement income fund under which the individual, or a spouse or former spouse of the individual, is the annuitant,

(ii) to acquire from a licensed annuities provider an annuity that would be described in subparagraph 60(l)(ii) if the individual, or a spouse or former spouse of the individual, were the taxpayer referred to in that subparagraph and if that subparagraph were read without reference to clause 60(l)(ii)(B), or

(iii) to an account under the plan of a spouse or former spouse of the individual, and

(b) if the transfer is in respect of a spouse or former spouse of the individual,

(i) the individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property in settlement of rights arising out of, or on the breakdown of, their marriage, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) the amount is transferred as a consequence of the individual's death,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

the following rules apply:

(c) the amount shall not, solely because of the transfer, be included because of subparagraph 56(1)(a)(i) in computing the income of a taxpayer, and

(d) no deduction may be made under any provision of this Act in respect of the transfer in computing the income of a taxpayer.

Related Provisions: 56(1)(d.2) — Income inclusion; 70(3.1) — Rights or things; 146.3(2)(f)(vii) — Conditions for RRIF — transfer of funds under 146(21); 148(1)(e) — Amounts included in computing policyholder's income; 204.2(1.2)I(a)(iii) — Transfer under 146(21) excluded from cumulative excess RRSP amount; 212(1)(h)(iii.1)(A), 212(1)(h)(iv.1) — Transfers under 146(21) excluded from withholding tax on pension benefits.

History: Subsec. 146(21) amended by 1999, c. 22, subsec. 59(6), applicable to transfers made after 1994. It formerly read:

(21) Where an amount (other than an amount that is part of a series of periodic payments) is transferred on behalf of a particular individual directly from a provincial pension plan prescribed for the purpose of paragraph 60(v)

(a) to a registered retirement savings plan or a registered retirement income fund under which the particular individual is the annuitant,

(b) to a registered retirement savings plan or registered retirement income fund under which the spouse or former spouse of the particular individual is the annuitant, where the particular individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the particular individual and the spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

(c) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity that would be described in subparagraph 60(l)(ii) if the particular individual were the taxpayer referred to therein and if that subparagraph were read without reference to clause (B) thereof, or

(d) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity that would be described in subparagraph 60(l)(ii) if the particular individual's spouse or former spouse were the taxpayer referred to therein and if that subparagraph were read without reference to clause (B) thereof, where the particular individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individual and the spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

except where the amount arose as a consequence of the death of an individual (other than the particular individual or a spouse or former spouse of the particular individual),

(e) the amount shall not, solely because of that transfer, be included because of subparagraph 56(1)(a)(i) in computing the income of a taxpayer, and

(f) no deduction may be made under any provision of this Act in respect of the transfer in computing the income of a taxpayer.

Subsec. 146(21) added by 1994, c. 21, subsec. 69(10), applicable to transfers occurring after 1991, except that

(a) where a taxpayer elects under subsec. 26(10) of 1994, c. 21 [i.e. with respect to subpara. 60(l)(v)], subsec. 146(21) does not apply in respect of transfers made on behalf of the taxpayer in 1992; and

(b) with respect to transfers made in 1992,

(i) the word "spouse", wherever it appears in subsec. 146(21), shall have the meaning assigned by subsec. 146(1.1) as it read in its application to that year, and

(ii) the word "marriage" in paras. 146(21)(b) and (d), shall be read as "marriage or other conjugal relationship".

Regulations: 7800(1) (prescribed provincial pension plan is the Saskatchewan Pension Plan).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(22) Deemed payment of RRSP premiums and provincial pension plan contributions [extension of contribution deadline] — If the Minister so directs,

(a) except for the purposes of subparagraphs (5)(a)(iv.1) and (5.1)(a)(iv), an amount paid by an individual in a taxation year (other than an amount paid in the first 60 days of the year) as a contribution to an account under a prescribed provincial pension plan or as a premium is deemed to have been paid at the beginning of the year and not at the time it was actually paid;

(b) all or part of the amount may be designated in writing by the individual for the purpose of paragraph 60(j), (j.1) or (l) or subsection 146.01(3) or 146.02(3); and

(c) the designation is deemed to have been made in the individual's return of income for the preceding taxation year or in a prescribed form filed with that return, as the case may be.

History: Subsec. 146(22) added by 1999, c. 22, subsec. 59(6), applicable to amounts paid after 1997.

Definitions [s. 146]: "amount" — 248(1); "annuitant" — 146(1); "annuity" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "benefit" — 146(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carrying on business" — 253; "child" — 252(1); "common-law partner", "common-law partnership" — 248(1); "consequence of the death", "consequence of the annuitant's death", "consequence of the individual's death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "depositary" — 146(1)"retirement savings plan"(b)(iii); "designated withdrawal" — 146.01(1); "earned income" — 146(1); "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "farm loss" — 111(8), 248(1); "farming" — 248(1); "former spouse" — 252(3), (4); "individual" — 248(1); "interest in a family farm partnership" — 70(10); "issuer" — 146(1); "legal representative" — 248(1); "licensed annuities provider" — 147(1), 248(1); "life insurance policy" — 138(12), 248(1); "listed" — 87(10); "listed personal property" — 54, 248(1); "marriage" — 252(4)(b); "maturity" — 146(1); "Minister" — 248(1); "money purchase limit" — 147.1(1), 248(1); "net past service pension adjustment", "non-qualified investment" — 146(1); "office" — 248(1); "PSPA withdrawals" — Reg. 8307(5); "parent" — 252(2); "past service pension adjustment" — 248(1), Reg. 8303; "pension adjustment" — 248(1), Reg. 8301(1); "person" — 248(1); "premium" — 146(1); "prescribed" — 248(1); "prescribed withdrawal" — Reg. 8306(6); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 146(1); "RRSP deduction limit", "RRSP dollar limit" — 146(1), 248(1); "received" — 146(20); "refund of premiums" — 146(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "resident" — 250; "retirement income" — 146(1); "retirement savings plan" — 146(1), 248(1); "retiring allowance", "salary or wages", "separation agreement", "share" — 248(1); "spousal plan" — 146(1); "spouse" — 252(3), (4)(a); "superannuation or pension benefit" — 248(1); "tax-paid amount" — 146(1); "tax payable" — 248(2); "taxable capital gain" — 38, 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "total pension adjustment reversal" — 248(1); "trust" — 104(1), 248(1), (3); "unused RRSP deduction room" — 146(1), 248(1); "writing" — *Interpretation Act* 35(1).

Home Buyers' Plan

146.01 (1) Definitions — In this section,

"annuitant" has the meaning assigned by subsection 146(1);

"benefit" has the meaning assigned by subsection 146(1);

"completion date", in respect of an amount received by an individual, is

(a) where the amount was received before March 2, 1993, October 1, 1993,

(b) where the amount was received after March 1, 1993 and before March 2, 1994, October 1, 1994, and

(c) in any other case, October 1 of the calendar year following the calendar year in which the amount was received;

History: Paras. (b) and (c) substituted for para. (b) in the definition "completion date" in subsec. 146.01(1) by 1995, c. 3, subsec. 44(1), applicable to 1994 *et seq.* Para. (b) formerly read:

(b) in any other case, October 1, 1994;

The definition "completion date" added to subsec. 146.01(1) by 1994, c. 8, subsec. 19(3), applicable to 1992 *et seq.*

"designated withdrawal" of an individual is an amount received by the individual, as a benefit out of or under a registered retirement savings plan, pursuant to the individual's written request in the prescribed form referred to in paragraph (a) of the definition "eligible amount" (as that definition read in its application to amounts received before 1999), paragraph (a) of the definition "regular eligible amount" or paragraph (a) of the definition "supplemental eligible amount";

History: The definition "designated withdrawal" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"eligible amount" of an individual is a regular eligible amount or supplemental eligible amount of the individual;

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under Home Buyers' Plan ineligible for RRSP contribution; 146.01(2) — Interpretation; 146.01(3), (4) — Repayment of eligible amounts to RRSP.

History: The definition "eligible amount" in subsec. 146.01(1) amended by 1999, c. 22, subsec. 60(1), applicable to amounts received after 1998. It formerly read:

"eligible amount" in respect of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan where

(a) the amount is received after February 25, 1992 pursuant to the written request of the individual in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

(b) the individual is resident in Canada at the particular time and entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(c) the individual acquires the qualifying home (or replacement property for the qualifying home) after February 25, 1992 and before the completion date in respect of the amount,

(d) neither the individual nor the individual's spouse acquired the qualifying home more than 30 days before the particular time,

(d.1) if the particular time is after March 1, 1994,

(i) the individual did not have an owner-occupied home in the period that began at the beginning of the fourth preceding calendar year that ended before the particular time and ended on the 31st day before the particular time, and

(ii) the individual's spouse did not have an owner-occupied home in the period referred to in subparagraph (i)

(A) that is inhabited by the individual during the spouse's marriage to the individual, or

(B) that is a share of the capital stock of a cooperative housing corporation that relates to a housing unit that is inhabited by the individual during the spouse's marriage to the individual,

(e) unless the individual acquired the qualifying home before the particular time, the individual is resident in Canada throughout the period beginning immediately after the particular time and ending at the earliest of any time at which the individual acquired the qualifying home or any replacement property for the qualifying home,

(f) the total of the amount and all eligible amounts received by the individual at or before the particular time does not exceed $20,000,

(g) if the particular time is after March 1, 1993 and before March 2, 1994, neither the individual, nor another individual who was, at any time after February 25, 1992 and before the particular time, a spouse of the individual, received an eligible amount before March 2, 1993,

(h) if the particular time is after March 1, 1994 and before 1995, the individual did not receive an eligible amount before March 2, 1994, and

(i) if the particular time is after 1994, the individual did not receive an eligible amount before the calendar year that includes the particular time;

Para. (a) of the definition "eligible amount" in subsec. 146.01(1) amended and (d.1) added by 1995, c. 3, subsecs. 44(2) and (3), applicable to 1994 *et seq.* Para. (a) formerly read:

(a) the amount is received after February 25, 1992 and before March 2, 1994 pursuant to the written request of the individual in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

Paras. (g) to (i) substituted for para. (g) in the definition "eligible amount" in subsec. 146.01(1) by 1995, c. 3, subsec. 44(4); para. (g) applicable to 1992 *et seq.*, and paras. (h) and (i) applicable to 1994 *et seq.* Para. (g) formerly read:

(g) if the particular time is after March 1, 1993, neither the individual, nor another individual who was, at any time after February 25, 1992 and before the particular time, a spouse of the individual, received an eligible amount before March 2, 1993;

The definition of "eligible amount" in subsec. 146.01(1) amended by 1994, c. 8, subsec. 19(1), applicable to 1992 *et seq.* The definition formerly read:

"eligible amount" in respect of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan where

(a) the amount is received after February 25, 1992 and before March 2, 1993 pursuant to the written request of the individual in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

(b) the individual is resident in Canada at the particular time and entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(c) the individual acquires the qualifying home (or replacement property for the qualifying home) after February 25, 1992 and before October 1, 1993,

(d) neither the individual nor the individual's spouse acquired the qualifying home more than 30 days before the particular time,

(e) unless the individual acquired the qualifying home before the particular time, the individual is resident in Canada throughout the period beginning immediately after the particular time and ending at the earliest of any time at which the individual acquired the qualifying home or any replacement property for the qualifying home, and

(f) the total of the amount and all eligible amounts received by the individual at or before the particular time does not exceed $20,000;

Forms: T1036: Home buyers' plan — request to withdraw funds from an RRSP; RC4135: Home Buyers' Plan [guide].

"excluded premium" in respect of an individual means a premium under a registered retirement savings plan where the premium

(a) was designated by the individual for the purposes of paragraph 60(j), (j.1), (j.2) or (l),

(b) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund, deferred profit sharing plan or a provincial pension plan prescribed for the purpose of paragraph 60(v),

(c) was deductible under subsection 146(6.1) in computing the individual's income for any taxation year, or

(d) was deducted in computing the individual's income for the 1991 taxation year;

History: Para. (b) of "excluded premium" in subsec. 146.01(1) substituted by 1994, c. 21, s. 70, applicable to 1992 *et seq.* That para. formerly read:

(b) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan,

"excluded withdrawal" of an individual means

(a) an eligible amount received by the individual,

(b) a particular amount (other than an eligible amount) received while the individual was resident in Canada and in a calendar year if

(i) the particular amount would be an eligible amount of the individual if the definition "regular eligible amount" were read without reference to paragraphs (c) and (g) of that definition and the definition "supplemental eligible amount" were read without reference to paragraphs (d) and (f) of that definition,

(ii) a payment (other than an excluded premium) equal to the particular amount is made by the individual under a retirement saving plan that is, at the end of the taxation year of the payment, a registered retirement savings plan under which the individual is the annuitant,

(iii) the payment is made before the particular time that is

(A) if the individual was not resident in Canada at the time the individual filed a return of income for the taxation year in which the particular amount was received, the earlier of

(I) the end of the following calendar year, and

(II) the time at which the individual filed the return,

(B) where clause (A) does not apply and the particular amount would, but for subclause (2)(c)(ii)(A)(II), be an eligible amount, the end of the second following calendar year, and

(C) in any other case, the end of the following calendar year, and

(iv) either

(A) if the particular time is before 2000, the payment is made, as a repayment of the particular amount, to the issuer of the registered retirement savings plan from which the particular amount was received, no other payment is made as a repayment of the particular amount and that issuer is notified of the payment in prescribed

form submitted to the issuer at the time the payment is made, or

(B) the payment is made after 1999 and before the particular time and the payment (and no other payment) is designated under this clause as a repayment of the particular amount in prescribed form filed with the Minister on or before the particular time (or before such later time as is acceptable to the Minister), or

(c) an amount (other than an eligible amount) that is received in a calendar year before 1999 and that would be an eligible amount of the individual if the definition "eligible amount", as it applied to amounts received before 1999, were read without reference to paragraphs (c) and (e) of that definition, where the individual

(i) died before the end of the following calendar year, and

(ii) was resident in Canada throughout the period that began immediately after the amount was received and ended at the time of the death;

Related Provisions: 146(1)"premium" — Definition excludes repayment described in para. (b); 146(8) — Home Buyers' Plan withdrawal not to be included in income; 146.01(2)(c) — Special rules.

History: The definition "excluded withdrawal" in subsec. 146.01(1) amended by 1999, c. 22, subsec. 60(2), applicable to amounts received after 1996, except that the portion of para. (b) of the definition before subpara. (ii), as amended, shall in its application to amounts received before 1999 be read as follows:

(b) a particular amount (other than an eligible amount), received in a calendar year, that would be an eligible amount of the individual if

(i) the definition "eligible amount" were read without reference to paragraphs (c) and (e) of that definition,

The definition formerly read:

"excluded withdrawal" in respect of an individual means

(a) an eligible amount received by the individual, or

(b) an amount (other than an eligible amount) that would, if the definition "eligible amount" were read without reference to paragraphs (c) and (e) thereof, be an eligible amount received by the individual out of or under a registered retirement savings plan in respect of which a person is the issuer, where either

(i) the individual

(A) died before the end of the calendar year that includes the completion date in respect of the amount, and

(B) was resident in Canada throughout the period beginning immediately after the amount was received and ending at the time of the death, or

(ii) the amount is repaid before the end of the calendar year described in clause (i)(A) to a registered retirement savings plan in respect of which the person is the issuer (or, where the individual was not resident in Canada at the time the individual filed a return of income under this Part for the taxation year in which the amount was received by the individual, before the earlier of the end of the calendar year described in clause (i)(A) and the time at which the individual filed that return) and the issuer is notified of the repayment in prescribed form submitted to the issuer at the time the repayment is made,

except that where an amount would, but for subclause (2)(c)(ii)(A)(II), be an eligible amount, subparagraph (b)(ii) applies in respect of the amount as if the first reference therein to "described in clause (i)(A)" were read as "following the calendar year described in clause (i)(A)";

That portion of the definition of "excluded withdrawal" in subsec. 146.01(1) following para. (a) amended by 1994, c. 8, subsec. 19(2), applicable to 1992 *et seq.* That portion formerly read:

(b) an amount (other than an eligible amount) that would, if the definition "eligible amount" were read without reference to paragraphs (c) and (e) of that definition, be an eligible amount received by the individual out of or under a registered retirement savings plan in respect of which a person is the issuer, where either

(i) the individual died before 1994 and was resident in Canada throughout the period beginning immediately after the amount was received and ending at the time of the death, or

(ii) the amount is repaid before 1994 to a registered retirement savings plan in respect of which the person is the issuer (or, where the individual was not resident in Canada at the time the individual filed a return of income under this Part for the taxation year in which the amount was received by the individual, before the earlier of January 1, 1994 and the time the individual filed that return) and the issuer is notified of the repayment in prescribed form submitted to the issuer at the time the repayment is made,

except that, where an amount would, but for subclause (2)(c)(ii)(A)(II), be an eligible amount, subparagraph (b)(ii) applies in respect of the amount as if the first reference therein to "1994" were "1995";

Regulations: 104(3) — No tax withheld at source on excluded withdrawal.

Forms: T1037: Designating your RRSP contributions as your 1995 repayment under the Home buyers' plan.

"HBP balance" of an individual at any time means the amount, if any, by which the total of all eligible amounts received by the individual at or before that time exceeds the total of

(a) all amounts designated under subsection (3) by the individual for taxation years that ended before that time, and

(b) all amounts each of which is included under subsection (4) or (5) in computing the individual's income for a taxation year that ended before that time;

Related Provisions: 150(1.1)(b)(iv) — Individual with HBP balance must file tax return.

History: The definition "HBP balance" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"issuer" has the meaning assigned by subsection 146(1);

"participation period" of an individual means each period

(a) that begins at the beginning of a calendar year in which the individual receives an eligible amount, and

(b) that ends immediately before the beginning of the first subsequent calendar year at the beginning of which the individual's HBP balance is nil;

History: The definition "participation period" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"premium" has the meaning assigned by subsection 146(1);

"qualifying home" means

(a) a housing unit located in Canada, or

(b) a share of the capital stock of a cooperative housing corporation, the holder of which is entitled to possession of a housing unit located in Canada,

except that, where the context so requires, a reference to a qualifying home that is a share described in paragraph (b) means the housing unit to which the share described in that paragraph relates;

"quarter" means any of the following periods in a calendar year:

(a) the period beginning on January 1 and ending on March 31,

(b) the period beginning on April 1 and ending on June 30,

(c) the period beginning on July 1 and ending on September 30, and

(d) the period beginning on October 1 and ending on December 31;

"regular eligible amount" of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan if

(a) the amount is received pursuant to the individual's written request in a prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence,

(b) the individual entered into an agreement in writing before the particular time for the acquisition of it or with respect to its construction,

(c) the individual

(i) acquires the qualifying home (or a replacement property for the qualifying home) before the completion date in respect of the amount, or

(ii) dies before the end of the calendar year that includes the completion date in respect of the amount,

(d) neither the individual nor the individual's spouse acquired the qualifying home more than 30 days before the particular time,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(e) the individual did not have an owner-occupied home in the period

(i) that began at the beginning of the fourth preceding calendar year that ended before the particular time, and

(ii) that ended on the 31st day before the particular time,

(f) the individual's spouse did not, in the period referred to in paragraph (e), have an owner-occupied home

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(i) that was inhabited by the individual during the spouse's marriage to the individual, or

(ii) that was a share of the capital stock of a cooperative housing corporation that relates to a housing unit inhabited by the individual during the spouse's marriage to the individual,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(g) the individual

(i) acquired the qualifying home before the particular time and is resident in Canada at the particular time, or

(ii) is resident in Canada throughout the period that begins at the particular time and ends at the earlier of the time of the individual's death and the earliest time at which the individual acquires the qualifying home or a replacement property for it,

(h) the total of the amount and all other eligible amounts received by the individual in the calendar year that includes the particular time does not exceed $20,000, and

(i) the individual's HBP balance at the beginning of the calendar year that includes the particular time is nil;

History: The definition "regular eligible amount" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable to amounts received after 1998.

"replacement property" for a particular qualifying home in respect of an individual, or of a specified disabled person in respect of the individual, means another qualifying home that

(a) the individual or the specified disabled person agrees to acquire, or begins the construction of, at a particular time that is after the latest time that the individual made a request described in the definition "designated withdrawal" in respect of the particular qualifying home,

(b) at the particular time, the individual intends to be used by the individual or the specified disabled person as a principal place of residence not later than one year after its acquisition, and

(c) none of the individual, the individual's spouse, the specified disabled person or that person's spouse had acquired before the particular time;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

History: The definition "replacement property" in subsec. 146.01(1) amended by 1999, c. 22, subsec. 60(3), applicable after 1998. It formerly read:

> "replacement property" for a particular qualifying home in respect of an individual means another qualifying home where
>
> (a) the individual
>
> (i) agreed to acquire, or
>
> (ii) began the construction of
>
> the other qualifying home at a particular time that is after the latest time that the individual requested a withdrawal in respect of the particular qualifying home under paragraph (a) of the definition "eligible amount",
>
> (b) the individual intended, at the particular time, that the other qualifying home be used by the individual as a principal place of residence not later than one year after its acquisition, and
>
> (c) neither the individual nor the individual's spouse had acquired the other qualifying home before the particular time.

"specified disabled person", in respect of an individual at any time, means a person who

(a) is the individual or is related at that time to the individual, and

(b) would be entitled to a deduction under subsection 118.3(1) in computing tax payable under this Part for the person's taxation year that includes that time if that subsection were read without reference to paragraph (c) of that subsection;

Related Provisions: 146.01(1)"supplemental eligible amount" — Withdrawal to acquire accessible home for specified disabled person.

History: The definition "specified disabled person" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable after 1998.

"spouse" — [Repealed]

History: Definition of "spouse" in subsec. 146.01(1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 83(2), applicable to 1992 taxation year only. The definition read:

"spouse" has the meaning assigned by subsection 146(1.1).

"supplemental eligible amount" of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan if

(a) the amount is received pursuant to the individual's written request in a prescribed form identifying a specified disabled person in respect of the individual and setting out the location of a qualifying home

(i) that has begun to be used by that person as a principal place of residence, or

(ii) that the individual intends to be used by that person as a principal place of residence not later than one year after its first acquisition after the particular time,

(b) the purpose of receiving the amount is to enable the specified disabled person to live

(i) in a dwelling that is more accessible by that person or in which that person is more mobile or functional, or

(ii) in an environment better suited to the personal needs and care of that person,

(c) the individual or the specified disabled person entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(d) either

(i) the individual or the specified disabled person acquires the qualifying home (or a replacement property for it) after 1998 and before the completion date in respect of the amount, or

(ii) the individual dies before the end of the calendar year that includes the completion date in respect of the amount,

(e) none of the individual, the spouse of the individual, the specified disabled person or the spouse of that person acquired the qualifying home more than 30 days before the particular time,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(f) either

(i) the individual or the specified disabled person acquired the qualifying home before the particular time and the individual is resident in Canada at the particular time, or

(ii) the individual is resident in Canada throughout the period that begins at the particular time and ends at the earlier of the time of the individual's death and the earliest time at which

(A) the individual acquires the qualifying home or a replacement property for it, or

(B) the specified disabled person acquires the qualifying home or a replacement property for it,

(g) the total of the amount and all other eligible amounts received by the individual in the calendar year that includes the particular time does not exceed $20,000, and

(h) the individual's HBP balance at the beginning of the calendar year that includes the particular time is nil.

History: The definition "supplemental eligible amount" added to subsec. 146.01(1) by 1999, c. 22, subsec. 60(4), applicable to amounts received after 1998.

(2) Special rules — For the purposes of this section,

(a) an individual shall be considered to have acquired a qualifying home if the individual acquired it jointly with one or more other persons;

(a.1) an individual shall be considered to have an owner-occupied home at any time where, at that time, the individual owns, whether jointly with another person or otherwise, a housing unit or a share of the capital stock of a cooperative housing corporation and

(i) the housing unit is inhabited by the individual as the individual's principal place of residence at that time, or

(ii) the share was acquired for the purpose of acquiring a right to possess a housing unit owned by the corporation and that unit is inhabited by the individual as the individual's principal place of residence at that time;

(b) where an individual agrees to acquire a condominium unit, the individual shall be deemed to have acquired it on the day the individual is entitled to immediate vacant possession of it;

(c) except for the purposes of subparagraph (g)(ii) of the definition "regular eligible amount" and subparagraph (f)(ii) of the definition "supplemental eligible amount", an individual or a specified disabled person in respect of the individual is deemed to have acquired, before the completion date in respect of a designated withdrawal received by the individual, the qualifying home in respect of which the designated withdrawal was received if

(i) neither the qualifying home nor a replacement property for it was acquired by the individual or the specified disabled person before that completion date, and

(ii) either

(A) the individual or the specified disabled person

(I) is obliged under the terms of a written agreement in effect on that completion date to acquire the qualifying home (or a replacement property for it) on or after that date, and

(II) acquires the qualifying home or a replacement property for it before the day that is one year after that completion date, or

(B) the individual or the specified disabled person made payments, the total of which equalled or exceeded the total of all designated withdrawals that were received by the individual in respect of the qualifying home,

(I) to persons with whom the individual was dealing at arm's length,

(II) in respect of the construction of the qualifying home or a replacement property for it, and

(III) in the period that begins at the time the individual first received a designated withdrawal in respect of the qualifying home and that ends before that completion date; and

(d) an amount received by an individual in a particular calendar year is deemed to have been received by the individual at the end of the preceding calendar year and not at any other time if

(i) the amount is received in January of the particular year (or at such later time as is acceptable to the Minister),

(ii) the amount would not be an eligible amount if this section were read without reference to this paragraph, and

(iii) the amount would be an eligible amount if the definition "regular eligible amount" in subsection (1) were read without reference to paragraph (i) of that definition and the definition "supplemental eligible amount" were read without reference to paragraph (h) of that definition.

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under Home Buyers' Plan ineligible for RRSP contribution.

History: Para. 146.01(2)(c) amended, paras. (d) and (e) repealed, and para. (f) amended and renumbered as para. (d), by 1999, c. 22, subsec. 60(5), applicable to amounts received after 1998. Paras. (c)–(f) formerly read:

(c) where

(i) neither a qualifying home in respect of which an individual withdrew an amount described in paragraph (a) of the definition "eligible amount" in subsection (1) nor a replacement property for the qualifying home has been acquired by the individual before the completion date in respect of the amount, and

(ii) either

(A) the individual

(I) is obliged under the terms of a written agreement in effect on that completion date to acquire the qualifying home (or a replacement property for the qualifying home) on or after that date,

(II) acquires the qualifying home or a replacement property for the qualifying home before the day that is one year after that completion date, and

(III) is resident in Canada throughout the period beginning on that completion date and ending on the earlier of October 1 in the first calendar year beginning after that date and the earliest of any day on which the individual acquires the qualifying home or a replacement property for the qualifying home, or

(B) the individual made payments

(I) to persons with whom the individual was dealing at arm's length,

(II) in respect of the construction of the qualifying home or a replacement property for the qualifying home, and

(III) in the period beginning at the time the individual first withdrew an amount described in paragraph (a) of that definition in respect of the qualifying home and ending before that completion date,

and the total of all payments so made was not less than the total of all amounts described in that paragraph in respect of the qualifying home that were withdrawn by the individual,

except for the purpose of this paragraph, the individual shall be deemed to have acquired the qualifying home before that completion date;

(d) where

(i) an individual or a spouse of the individual receives an eligible amount before March 2, 1993,

(ii) at a particular time after March 1, 1993 and before April 1993 (or at such later time in 1993 as is acceptable to the Minister), the individual receives another amount that would, if the definition "eligible amount" in subsection (1) were read without reference to paragraph (g) thereof, be an eligible amount, and

(iii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the other amount was received was made before March 2, 1993 or at such later time as is acceptable to the Minister,

except for the purposes of paragraphs (a) to (f) of the definition "eligible amount" in subsection (1) and the purposes of this paragraph, the other amount shall be deemed to have been received by the individual on March 1, 1993 and not at the particular time and any premium paid by the individual or the individual's spouse after March 1, 1993 and before the particular time under a registered retirement savings plan shall be deemed to have been paid on March 1, 1993;

(e) where

(i) at a particular time after March 1, 1994 and before April 1994 (or at such later time in 1994 as is acceptable to the Minister), an individual receives an amount that would, if paragraph (g) of the definition "eligible amount" in subsection (1) were read without reference to the words "and before March 2, 1994" and that definition were read without reference to paragraphs (d.1) and (h) thereof, be an eligible amount,

(ii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the amount was received was made before March 2, 1994 or, where the individual received an eligible amount before March 2, 1994, at such later time as is acceptable to the Minister, and

(iii) the individual does not elect by notifying the Minister in writing before the end of 1995 that this paragraph not apply

except for the purposes of this paragraph and paragraphs (a) to (f) of the definition "eligible amount" in subsection (1), that amount shall be deemed to have been received by the individual on March 1, 1994 and not at the particular time and any premium paid under a registered retirement savings plan by the individual or the individual's spouse after March 1, 1994 and before the particular time shall be deemed to have been paid on March 1, 1994; and

(f) where

(i) an individual receives an eligible amount in a particular calendar year,

(ii) at a particular time in January of the following calendar year (or at such later time in that following year as is acceptable to the Minister), an individual receives another amount that would, if the definition "eligible amount" in subsection (1) were read without reference to paragraph (i) thereof, be an eligible amount, and

(iii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the other amount was received was made before the end of the particular calendar year

except for the purposes of this paragraph and paragraphs (a) to (h) of the definition "eligible amount" in subsection (1), the other amount shall be deemed to have been received by the individual at the end of the particular calendar year and not at the particular time.

Para. 146.01(2)(a.1) added by 1995, c. 3, subsec. 44(5), applicable to 1994 *et seq.*

Subparas. 146.01(2)(d)(ii) and (iii) amended by 1995, c. 3, subsec. 44(6), applicable to 1992 *et seq.* Subparas. (ii) and (iii) formerly read:

(ii) at a particular time after March 1, 1993 and before April 1993 the individual receives another amount that would, if the reference to "March 1, 1993" in paragraph (g) of the definition "eligible

amount" in subsection (1) were read as "March 1993", be an eligible amount, and

(iii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the other amount was received was made before March 2, 1993,

Paras. 146.01(2)(e) and (f) substituted for para. (e) by 1995, c. 3, subsec. 44(7); para. (e) applicable to 1992 *et seq.*, and para. (f) applicable to 1995 *et seq.* Para. (e) formerly read:

(e) where

(i) at a particular time after March 1, 1994 and before April 1994, an individual receives an amount that would, if the reference to "March 2, 1994" in paragraph (a) of the definition "eligible amount" in subsection (1) were read as "April 1994", be an eligible amount, and

(ii) the request described in paragraph (a) of the definition "eligible amount" in subsection (1) pursuant to which the amount was received was made before March 2, 1994,

except for the purposes of paragraphs (b) to (g) of the definition "eligible amount" in subsection (1) and the purposes of this paragraph, that amount shall be deemed to have been received by the individual on March 1, 1994 and not at the particular time and any premium paid by the individual or the individual's spouse after March 1, 1994 and before the particular time under a registered retirement savings plan shall be deemed to have been paid on March 1, 1994.

Para. 146.01(2)(c) amended, paras. (d) and (e) added, by 1994, c. 8, subsec. 19(4), applicable to 1992 *et seq.* Para. (c) formerly read:

(c) where

(i) neither a qualifying home in respect of which an individual withdrew an amount described in paragraph (a) of the definition "eligible amount" in subsection (1) nor a replacement property for the qualifying home has been acquired by the individual before October 1, 1993, and

(ii) either

(A) the individual

(I) is obliged under the terms of a written agreement in effect on October 1, 1993 to acquire the qualifying home (or a replacement property for the qualifying home) on or after that day,

(II) acquires the qualifying home or a replacement property for the qualifying home before October 1, 1994, and

(III) is resident in Canada throughout the period beginning on October 1, 1993 and ending on the earlier of October 1, 1994 and the earliest of any day on which the individual acquires the qualifying home or a replacement property for the qualifying home, or

(B) the individual made payments

(I) to persons with whom the individual was dealing at arm's length,

(II) in respect of the construction of the qualifying home or a replacement property for the qualifying home, and

(III) in the period beginning at the time the individual first withdrew an amount described in paragraph (a) of that definition in respect of the qualifying home and ending before October 1, 1993,

and the total of all payments so made was not less than the total of all amounts described in that paragraph in respect of the qualifying home that were withdrawn by the individual,

except for the purposes of this paragraph, the individual shall be deemed to have acquired the qualifying home on September 30, 1993.

Forms: RC4135: Home Burers' Plan [guide].

(3) Repayment of eligible amount — An individual may designate a single amount for a taxation year in a prescribed form filed with the individual's return of income for the year if the amount does not exceed the lesser of

(a) the total of all amounts (other than excluded premiums, repayments to which paragraph (b) of the definition "excluded withdrawal" in subsection (1) applies and amounts paid by the individual in the first 60 days of the year that can reasonably be considered to have been deducted in computing the individual's income, or designated under this subsection, for the preceding taxation year) paid by the individual in the year or within 60 days after the end of the year under a retirement savings plan that is at the end of the year or the following taxation year a registered retirement savings plan under which the individual is the annuitant, and

(b) the amount, if any, by which

(i) the total of all eligible amounts received by the individual before the end of the year

exceeds the total of

(ii) all amounts designated by the individual under this subsection for preceding taxation years, and

(iii) all amounts each of which is an amount included in computing the income of the individual under subsection (4) or (5) for a preceding taxation year.

Related Provisions: 146.02(1)"excluded premium"(a) — Amount claimed under Home Buyers' Plan ineligible for LLP.

History: The opening words of subsec. 146.01(3) amended by 1999, c. 22, subsec. 60(6), applicable to 1999 *et seq.* The opening words formerly read:

(3) An individual may designate a single amount for a taxation year in prescribed form filed with the individual's return of income required to be filed for the year or, if a return of income for the year is not required to be filed, filed with the Minister on or before the individual's filing-due date for the year, where the amount does not exceed the lesser of

Para. 146.01(3)(a) amended by the said c. 22, subsec. 60(7), applicable to 1996 *et seq.* The para. formerly read:

(a) the total of all amounts (other than excluded premiums and amounts paid by the individual in the first 60 days of the year that can reasonably be considered to have been either deducted in computing the individual's income for the preceding taxation year or designated under this subsection for the preceding taxation year) paid by the individual in the year or within 60 days after the end of the year under a retirement savings plan that is at the end of the year or the following taxation year a registered retirement savings plan under which the individual is the annuitant, and

The opening words of subsec. 146.01(3) amended by 1996, c. 21, s. 35, applicable to 1995 *et seq.* They formerly read:

(3) An individual may designate a single amount for a taxation year in prescribed form filed with the individual's return of income under this Part for the year or, if that return is not required to be filed, filed with the Minister on or before the balance-due day of the individual for the year, where the amount does not exceed the lesser of

Subsec. 146.01(3) amended by 1995, c. 3, subsec. 44(8), applicable to 1995 *et seq.* Subsec. (3) formerly read:

(3) An amount (other than an excluded premium) paid by an individual at a particular time in a taxation year under a retirement savings plan that was at the end of the year a registered retirement savings plan under which the individual is the annuitant may be designated by the individual under this subsection (in prescribed form submitted to the issuer of the plan at the time of the payment or at such later time as is acceptable to the Minister) to the extent that the amount so paid does not exceed the amount, if any, by which

(a) the total of all eligible amounts received by the individual before the particular time

exceeds the total of

(b) all amounts designated under this subsection in respect of amounts paid before the particular time to registered retirement savings plans under which the individual is the annuitant, and

(c) all amounts each of which is an amount included in computing the income of the individual under subsection (4) or (5) for a taxation year ending before the particular time.

Forms: T1 General Sched. 7: RRSP contributions, transfers and designations of repayments under the home buyers' plan; T1037: Designating your RRSP contributions as your 1995 repayment under the Home buyers' plan; RC4135: Home Buyers' Plan [guide].

(4) Portion of eligible amount not repaid — There shall be included in computing an individual's income for a particular taxation year included in a particular participation period of the individual the amount determined by the formula

$$\frac{(A - B - C)}{(15 - D)} - E$$

where

A is

(a) where

(i) the individual died or ceased to be resident in Canada in the particular year, or

(ii) the completion date in respect of an eligible amount received by the individual was in the particular year

nil, and

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years included in the particular period,

B is

(a) nil, if the completion date in respect of an eligible amount received by the individual was in the preceding taxation year, and

(b) in any other case, the total of all amounts each of which is designated under subsection (3) by the individual for a preceding taxation year included in the particular period;

C is the total of all amounts each of which is included under this subsection or subsection (5) in computing the individual's income for a preceding taxation year included in the particular period;

D is the lesser of 14 and the number of taxation years of the individual ending in the period beginning

(a) where the completion date in respect of an eligible amount received by the individual was before 1995, January 1, 1995, and

(b) in any other case, January 1 of the first calendar year beginning after the completion date in respect of an eligible amount received by the individual

and ending at the beginning of the particular year, and

E is

(a) if the completion date in respect of an eligible amount received by the individual was in the preceding taxation year, the total of all amounts each of which is designated under subsection (3) by the individual for the particular year or any preceding taxation year included in the particular period, and

(b) in any other case, the amount designated under subsection (3) by the individual for the particular year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 146.01(4) before the formula, para. (b) of the description of A in the formula, and the descriptions of B, C and E, amended by 1999, c. 22, subsecs. 60(8)–(11), applicable to 1999 *et seq.* That portion and those descriptions formerly read:

(4) Where portion of eligible amount not repaid — There shall be included in computing the income of an individual for a particular taxation year ending after 1994 the amount determined by the formula

. . . . .

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years;

. . . . .

B is

(a) where the particular year is the 1995 taxation year, nil, and

(b) in any other case, the total of all amounts designated by the individual under subsection (3) for preceding taxation years;

C is the total of all amounts each of which is an amount included under this subsection or subsection (5) in computing the income of the individual for a preceding taxation year;

. . . . .

E is

(a) where the particular year is the 1995 taxation year, the total of all amounts each of which is an amount designated under subsection (3) by the individual for the particular year or a preceding taxation year,

(b) where the particular year begins after 1995 and the completion date in respect of an eligible amount received by the individual was in the preceding taxation year, the total of all amounts each of which is designated under subsection (3) by the individual for the particular year or a preceding taxation year, and

(c) in any other case, the total of all amounts designated under subsection (3) by the individual for the particular year.

Para. (a) of the description of A in subsec. 146.01(4) amended by 1995, c. 3, subsec. 44(9), applicable to 1994 *et seq.* Para. (a) formerly read:

(a) where the individual died or ceased to be resident in Canada in the particular year, nil, and

The descriptions of D and E in subsec. 146.01(4) amended by 1995, c. 3, subsec. 44(10), applicable to 1994 *et seq.* The descriptions of D and E formerly read:

D is the lesser of 14 and the number of taxation years of the individual ending in the period beginning on January 1, 1995 and ending at the beginning of the particular year; and

E is

(a) where the particular year is the 1995 taxation year, the total of all amounts each of which is an amount designated by the individual under subsection (3) for the particular year or any of the 3 preceding taxation years, and

(b) in any other case, the total of all amounts designated under subsection (3) by the individual for the particular year.

Subsec. 146.01(4) amended by 1994, c. 8, subsec. 19(5), applicable to 1992 *et seq.* Subsec. (4) formerly read:

(4) Where portion of eligible amount not repaid — There shall be included in computing the income of an individual for a particular taxation year ending after 1993 the amount determined by the formula

$$\frac{(A - B - C)}{(15 - D)} - E$$

where

A is

(a) where the individual died or ceased to be resident in Canada in the particular year, nil, and

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years;

B is

(a) where the particular year is the 1994 taxation year, nil, and

(b) in any other case, the total of all amounts designated by the individual under subsection (3) for preceding taxation years;

C is the total of all amounts each of which is an amount included under this subsection or subsection (5) in computing the income of the individual for a preceding taxation year;

D is the lesser of 14 and the number of taxation years of the individual ending in the period beginning on January 1, 1994 and ending at the beginning of the particular year; and

E is

(a) where the particular year is the 1994 taxation year, the total of all amounts each of which is an amount designated by the individual under subsection (3) for the particular year or either of the 2 preceding taxation years, and

(b) in any other case, the total of all amounts designated under subsection (3) by the individual for the particular year.

Forms: RC4135: Home Buyers' Plan [guide].

(5) Where individual becomes a non-resident — Where at any time in a taxation year an individual ceases to be resident in Canada, there shall be included in computing the income of the individual for the period in the year during which the individual was resident in Canada the amount, if any, by which

(a) the total of all amounts each of which is an eligible amount received by the individual in the year or a preceding taxation year

exceeds the total of

(b) all amounts designated under subsection (3) by the individual in respect of amounts paid not later than 60 days after that time and before the individual files a return of income for the year, and

(c) all amounts included under subsection (4) or this subsection in computing the individual's income for preceding taxation years.

Related Provisions: 56(1)(h.1) — Home buyers' plan — income inclusion.

History: Para. 146.01(5)(c) amended by 1999, c. 22, subsec. 60(12), applicable to 1999 *et seq.* It formerly read:

(c) all amounts included under subsection (4) in computing the income of the individual for preceding taxation years.

Para. 146.01(5)(b) amended by 1995, c. 3, subsec. 44(11), applicable to 1995 *et seq.* Para. (b) formerly read:

(b) all amounts designated by the individual under subsection (3) that are paid not later than 90 days after that time and before the individual files a return of income under this Part for the year, and

(6) Death of individual — If an individual dies at any time in a taxation year, there shall be included in computing the individual's income for the year the amount, if any, by which

(a) the individual's HBP balance immediately before that time

exceeds

(b) the amount designated under subsection (3) by the individual for the year.

Related Provisions: 56(1)(h.1) — Home buyers' plan — income inclusion; 146.01(7) — Optional transfer of repayment obligation to spouse.

History: Subsec. 146.01(6) amended by 1999, c. 22, subsec. 60(14), applicable to 2000 *et seq.* The subsec. formerly read:

(6) **Where individual dies** — Where an individual dies at any time in a taxation year, there shall be included in computing the income of the individual for the year the amount, if any, by which

(a) the total of all excluded withdrawals in respect of the individual received before that time (other than excluded withdrawals in respect of the individual that were repaid as described in the definition "excluded withdrawal" in subsection (1))

exceeds the total of

(b) all amounts designated by the individual under subsection (3) that were paid before that time, and

(c) all amounts each of which is an amount included under subsection (4) or (5) in computing the income of the individual for a preceding taxation year.

Para. 146.01(6)(a) amended by 1999, c. 22, subsec. 60(13), applicable to the 1997 to 1999 taxation years. It formerly read:

(a) the total of all excluded withdrawals in respect of the individual received by the individual before that time (other than excluded withdrawals in respect of the individual repaid as described in subparagraph (b)(ii) of the definition "excluded withdrawal" in subsection (1) before that time)

(7) Exception — If a spouse of an individual was resident in Canada immediately before the individual's death at a particular time in a taxation year and the spouse and the individual's legal representatives jointly so elect in writing in the individual's return of income for the year,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) subsection (6) does not apply to the individual;

(b) the spouse is deemed to have received a particular eligible amount at the particular time equal to the amount that, but for this subsection, would be determined under subsection (6) in respect of the individual;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) for the purposes of subsection (4) and paragraph (d), the completion date in respect of the particular amount is deemed to be

(i) if the spouse received an eligible amount before the death (other than an eligible amount received in a participation period of the spouse that ended before the beginning of the year), the completion date in respect of that amount, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) in any other case, the completion date in respect of the last eligible amount received by the individual; and

(d) for the purpose of subsection (4), the completion date in respect of each eligible amount received by the spouse, after the death and before the end of the

spouse's participation period that includes the time of the death, is deemed to be the completion date in respect of the particular amount.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Subsec. 146.01(7) amended by 1999, c. 22, subsec. 60(15), applicable to deaths that occur after 1998 except that, for deaths that occur in 1999, subpara. 146.01(7)(c)(ii), as amended, shall be read as follows:

(ii) in any other case,

(A) the completion date in respect of an eligible amount, if any, received by the individual in a participation period of the individual that includes the time of the death, or

(B) if clause (A) does not apply, October 1, 2000; and

Subsec. (7) formerly read:

(7) Where subsec. (6) does not apply — Where

(a) an individual's spouse was resident in Canada immediately before the death of the individual in a taxation year,

(b) the spouse and the individual's legal representatives jointly so elect in writing in the individual's return of income under this Part for the year, and

(c) either

(i) the spouse or the individual did not receive any eligible amount before the death, or

(ii) the spouse and the individual both received eligible amounts before the death and all the completion dates in respect of those amounts were the same or occurred before 1995,

the following rules apply:

(d) subsection (6) does not apply to the individual;

(e) the spouse shall be deemed to have received an eligible amount at the time of the death equal to the amount that would, but for this subsection, be determined under subsection (6) in respect of the individual;

(f) for the purpose only of determining whether an amount received after the death is an eligible amount in respect of the spouse, the spouse shall be deemed to have received all eligible amounts in respect of the individual at the times that those amounts were received by the individual; and

(g) the completion date in respect of the eligible amount deemed by paragraph (e) to have been received by the spouse shall be deemed to be

(i) where the spouse received an eligible amount before the death, the completion date in respect of that amount,

(ii) where subparagraph (i) does not apply and the individual received an eligible amount before the death, the completion date in respect of that amount, and

(iii) in any other case, October 1 of the year.

Subsec. 146.01(7) amended by 1995, c. 3, subsec. 44(12), applicable to 1994 *et seq.* Subsec. (7) formerly read:

(7) Idem — Where an individual's spouse was resident in Canada immediately before the death of the individual in a taxation year and the spouse and the individual's legal representative jointly so elect in writing in the individual's return of income under this Part for the year,

(a) subsection (6) does not apply in respect of the individual; and

(b) except for the purposes of subsections (9) and (10), the spouse shall be deemed to have received an eligible amount at the time of the individual's death equal to the amount that would, but for this subsection, be determined under subsection (6) in respect of the individual.

Para. 146.01(7)(b) amended by 1994, c. 8, subsec. 19(6), applicable to 1992 *et seq.* Para. (b) formerly read:

(b) except for the purpose of subsection (9), the spouse shall be deemed to have received an eligible amount at the time of the individual's death equal to the amount that would, but for this subsection, be determined under subsection (6) in respect of the individual

(8) Filing of prescribed form — A prescribed form referred to in this section that is submitted to an issuer shall be filed with the Minister by the issuer not later than 15 days after the quarter in which it was submitted to the issuer.

Forms: T1 Sched. 7: RRSP unclaimed contributions, transfers, and designations of repayment under the Home buyers' plan; T1036: Home buyers' plan — request to withdraw funds from an RRSP; T1037: Designating your RRSP contributions as your 1995 repayment under the Home buyers' plan; T1048: Home buyers' plan — 1993 income inclusion for certain RRSP contributions.

(9) [Repealed]

History: Subsec. 146.01(9) repealed by 1995, c. 3, subsec. 44(13), applicable to 1994 *et seq.* Subsec. (9) formerly read:

(9) Income inclusion for 1992 — There shall be included in computing the income for the 1992 taxation year of an individual who was resident in Canada at the end of that year an amount equal to the lesser of

(a) the net premium balance for the year of the individual, and

(b) the total of

(i) all eligible amounts received by the individual before March 2, 1993, and

(ii) the lesser of

(A) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual's spouse is the annuitant, and

(B) the amount, if any, by which

(I) the total of all eligible amounts received before March 2, 1993 by the individual's spouse

exceeds

(II) the net premium balance for the year of the individual's spouse.

Subsec. 146.01(9) amended by 1994, c. 8, subsec. 19(7), applicable to 1992 *et seq.* Subsec. (9) formerly read:

(9) Income inclusion — There shall be included in computing the income for the 1992 taxation year of an individual who was resident in Canada at the end of that year an amount equal to the lesser of

(a) the net premium balance of the individual, and

(b) the total of

(i) all amounts each of which is an eligible amount received in 1992 or 1993 by the individual, and

(ii) the lesser of

(A) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual's spouse is the annuitant, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is an eligible amount received in 1992 or 1993 by the individual's spouse

exceeds

(II) the net premium balance of the individual's spouse.

(10) [Repealed]

History: Subsec. 146.01(10) repealed by 1995, c. 3, subsec. 44(13), applicable to 1994 *et seq.* Subsec. (10) formerly read:

(10) Income inclusion for 1993 — There shall be included in computing the income for the 1993 taxation year of an individual who

was resident in Canada at the end of that year an amount equal to the lesser of

(a) the net premium balance for the year of the individual, and

(b) the total of

(i) all eligible amounts received after March 1, 1993 and before March 2, 1994 by the individual, and

(ii) the lesser of

(A) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after December 2, 1992 and before March 2, 1994 under registered retirement savings plans under which the individual's spouse is the annuitant, and

(B) the amount, if any, by which

(I) the total of all eligible amounts received after March 1, 1993 and before March 2, 1994 by the individual's spouse

exceeds

(II) the net premium balance for the year of the individual's spouse.

Subsec. 146.01(10) added by 1994, c. 8, subsec. 19(7), applicable to 1992 *et seq.* (Former subsec. 146.01(10) became new 146.01(11); see History following subsec. 146.01(11).)

(11) [Repealed]

History: Subsec. 146.01(11) repealed by 1995, c. 3, subsec. 44(13), applicable to 1994 *et seq.* Subsec. (11) formerly read:

(11) **Net premium balance for 1992** — For the purpose of subsection (9), the net premium balance for the 1992 taxation year of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after February 25, 1992 and before 1994 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992 or 1993 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1993).

Subsec. 146.01(11) substituted for former subsec. 146.01(10) by 1994, c. 8, subsec. 19(7), applicable to 1992 *et seq.* (Former subsec. 146.01(11) became 146.01(13); see History following subsec. 146.01(13).) Former subsec. (10) read:

(10) **Net premium balance** — For the purposes of subsection (9), the net premium balance of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after February 25, 1992 and before 1994 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992 or 1993 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1993).

(12) [Repealed]

History: Subsec. 146.01(12) repealed by 1995, c. 3, subsec. 44(13), applicable to 1994 *et seq.* Subsec. (12) formerly read:

(12) **Net premium balance for 1993** — For the purpose of subsection (10), the net premium balance for the 1993 taxation year of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after December 2, 1992 and before March 2, 1994 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after December 2, 1992 and before 1995 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992, 1993 or 1994 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1994).

Subsec. 146.01(12) substituted for former subsec. 146.01(10) by 1994, c. 8, subsec. 19(7), applicable to 1992 *et seq.* (Former subsec.146.01(11) became 146.01(13); see History following subsec.146.01(13).) Subsec. 146.01(10) formerly read:

(10) **Net premium balance** — For the purposes of subsection (9), the net premium balance of an individual is the amount, if any, by which

(a) the total of all premiums (other than excluded premiums in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under registered retirement savings plans under which the individual or the individual's spouse is the annuitant

exceeds

(b) the total of all amounts each of which is an amount received by the individual or the individual's spouse after February 25, 1992 and before 1994 and included under subsection 146(8) or (8.3) in computing the individual's income for the 1992 or 1993 taxation year (other than an amount in respect of which an amount is deductible under paragraph 146(8.6)(b) in computing the income of the individual or in respect of premiums paid by the individual after March 1, 1993).

(13) [Repealed]

History: Subsec. 146.01(13) repealed by 1995, c. 3, subsec. 44(13), applicable to 1994 *et seq.* Subsec. (13) formerly read:

(13) **Assessments** — Notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to subsections (9) and (10).

Subsec. 146.01(11) renumbered as (13) and amended by 1994, c. 8, subsec. 19(7), applicable to 1992 *et seq.* Former subsec. (11) read:

(11) **Assessments** — Notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to amounts included in income under subsection (9).

History [s. 146.01]: S. 146.01 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 83, applicable to 1992 *et seq.*; and in applying s. 146.01 before 1993, subsec. (1) shall be read as if it included the following definition:

"spouse" has the meaning assigned by subsection 146(1.1).

Definitions [s. 146.01]: "amount" — 248(1); "annuitant" — 146(1), 146.01(1); "arm's length" — 251(1); "benefit" — 146(1), 146.01(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "common-law partner", "common-law partnership" — 248(1); "completion date" — 146.01(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "designated withdrawal" — 146.01(1); "eligible amount", "excluded premium", "excluded withdrawal" — 146.01(1); "filing-due date" — 150(1), 248(1); "HBP balance" — 146.01(1); "have an owner-occupied home" — 146.01(2)(a.1); "individual" — 248(1); "issuer" — 146(1), 146.01(1); "legal representative", "Minister" — 248(1); "net premium balance" — 146.01(1.1), (12); "owner-occupied home" — 146.01(2)(a.1); "participation period" — 146.01(1); "person" — 248(1); "premium" — 146(1), 146.01(1); "prescribed", "property" — 248(1); "qualifying home", "quarter" — 146.01(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regular eligible amount" — 146.01(1); "related" —

251(2)–(6); "resident", "resident in Canada" — 250; "retirement savings plan" — 146(1), 248(1); "share" — 248(1); "specified disabled person" — 146.01(1); "spouse" — 252(3), (4)(a); "supplemental eligible amount" — 146.01(1); "taxation year" — 128(2)(d), 249; "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Lifelong Learning Plan

146.02 (1) Definitions — The definitions in this subsection apply in this section.

"annuitant" has the meaning assigned by subsection 146(1).

"benefit" has the meaning assigned by subsection 146(1).

"eligible amount" of an individual means a particular amount received at a particular time in a calendar year by the individual as a benefit out of or under a registered retirement savings plan if

(a) the particular amount is received after 1998 pursuant to the individual's written request in a prescribed form;

(b) in respect of the particular amount, the individual designates in the form a person (in this definition referred to as the "designated person") who is the individual or the individual's spouse;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) the total of the particular amount and all other eligible amounts received by the individual at or before the particular time and in the year does not exceed $10,000;

(d) the total of the particular amount and all other eligible amounts received by the individual at or before the particular time (other than amounts received in participation periods of the individual that ended before the year) does not exceed $20,000;

(e) the individual did not receive an eligible amount at or before the particular time in respect of which someone other than the designated person was designated (other than an amount received in a participation period of the individual that ended before the year);

(f) the designated person

(i) is enrolled at the particular time as a full-time student in a qualifying educational program, or

(ii) has received written notification before the particular time that the designated person is absolutely or contingently entitled to enrol before March of the following year as a full-time student in a qualifying educational program;

(g) the individual is resident in Canada throughout the period that begins at the particular time and ends immediately before the earlier of

(i) the beginning of the following year, and

(ii) the time of the individual's death;

(h) except where the individual dies after the particular time and before April of the following year, the designated person is enrolled as a full-time student in a qualifying educational program after the particular time and before March of the following year and

(i) the designated person completes the program before April of the following year,

(ii) the designated person does not withdraw from the program before April of the following year, or

(iii) less than 75% of the tuition paid, after the beginning of the year and before April of the following year, in respect of the designated person and the program is refundable; and

(i) if an eligible amount was received by the individual before the year, the particular time is neither

(i) in the individual's repayment period for the individual's participation period that includes the particular time, nor

(ii) after January (or a later month where the Minister so permits) of the fifth calendar year of that participation period.

Related Provisions: 146(5)(a)(iv.1), 146(5.1)(a)(iv) — Amount withdrawn within 90 days under LLP ineligible for RRSP contribution; 146.01(2) — Interpretation; 146.02(3), (4) — Repayment of eligible amounts to RRSP.

Forms: RC96: LLP — request to withdraw funds from an RRSP; RC4112: Lifelong learning plan (guide).

"excluded premium" of an individual means a premium that

(a) was designated by the individual for the purpose of paragraph 60(j), (j.1) or (l) or subsection 146.01(3);

(b) was a repayment to which paragraph (b) of the definition "excluded withdrawal" in subsection 146.01(1) applies;

(c) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund, deferred profit sharing plan or a provincial pension plan prescribed for the purpose of paragraph 60(v); or

(d) was deductible under subsection 146(6.1) in computing the individual's income for any taxation year.

"excluded withdrawal" of an individual means

(a) an eligible amount received by the individual; or

(b) a particular amount (other than an eligible amount) received while the individual was resident in Canada and in a calendar year if

(i) the particular amount would be an eligible amount of the individual if the definition "eligible amount" were read without reference to paragraphs (g) and (h) of that definition,

(ii) a payment (other than an excluded premium) equal to the particular amount is paid by the individual under a retirement savings plan that is, at the end of the taxation year of payment, a registered retirement savings plan under which the individual is the annuitant,

(iii) the payment is made before the particular time that is,

(A) if the individual was not resident in Canada at the time the individual filed a return of income for the taxation year in which the particular amount was received, the earlier of

(I) the end of the following calendar year, and

(II) the time at which the individual filed the return, and

(B) in any other case, the end of the following calendar year, and

(iv) the payment (and no other payment) is designated under this subparagraph as a repayment of the particular amount in prescribed form filed with the Minister on or before the particular time (or before such later time as is acceptable to the Minister).

Related Provisions: 146(1)"premium" — Definition excludes repayment described in para. (b); 146(8) — LLP withdrawal not to be included in income.

"full-time student" in a taxation year includes an individual to whom subsection 118.6(3) applies for the purpose of computing tax payable under this Part for the year or the following taxation year.

"LLP balance" of an individual at any time means the amount, if any, by which the total of all eligible amounts received by the individual at or before that time exceeds the total of

(a) all amounts designated under subsection (3) by the individual for taxation years that ended before that time, and

(b) all amounts each of which is included under subsection (4) or (5) in computing the individual's income for a taxation year that ended before that time.

Related Provisions: 150(1.1)(b)(iv) — Individual with LLP balance must file tax return.

"participation period" of an individual means each period

(a) that begins at the beginning of a calendar year

(i) in which the individual receives an eligible amount, and

(ii) at the beginning of which the individual's LLP balance is nil; and

(b) that ends immediately before the beginning of the first subsequent calendar year at the beginning of which the individual's LLP balance is nil.

"premium" has the meaning assigned by subsection 146(1).

"qualifying educational program" means a qualifying educational program (as defined in subsection 118.6(1)) at a designated educational institution (as defined in subsection 118.6(1)), except that the definition "qualifying educational program" in subsection 118.6(1) shall be read

(a) without reference to paragraphs (a) and (b) of that definition; and

(b) as if the expression "3 consecutive weeks" were "3 consecutive months".

"repayment period" of an individual for a participation period of the individual in respect of a person designated under paragraph (b) of the definition "eligible amount" means the period, if any, within the participation period

(a) that begins

(i) at the beginning of the third calendar year within the participation period, if the person would not be entitled to claim an amount under subsection 118.6(2) in respect of at least three months in each of the second and third calendar years within the participation period, if that subsection were read without reference to paragraph (b) of the description of B in that subsection,

(ii) at the beginning of the fourth calendar year within the participation period, if subparagraph (i) does not apply and the person would not be entitled to claim an amount under subsection 118.6(2) in respect of at least three months in each of the third and fourth calendar years within the participation period, if that subsection were read without reference to paragraph (b) of the description of B in that subsection,

(iii) at the beginning of the fifth calendar year within the participation period, if subparagraphs (i) and (ii) do not apply and the person would not be entitled to claim an amount under subsection 118.6(2) in respect of at least three months in each of the fourth and fifth calendar years within that period, if that subsection were read without reference to paragraph (b) of the description of B in that subsection, and

(iv) in any other case, at the beginning of the sixth calendar year within the participation period; and

(b) that ends at the end of the participation period.

Forms: RC96: LLP — request to withdraw funds from an RRSP; RC4112: Lifelong learning plan (guide).

(2) Rule of application — For the purpose of the definition "eligible amount" in subsection (1), a particular person is deemed to be the only person in respect of whom a particular amount was designated under paragraph (b) of that definition if

(a) an individual received the particular amount;

(b) the individual files a prescribed form with the Minister in which the particular person is specified in connection with the receipt of the particular amount;

(c) the particular amount would be an eligible amount of the individual if

(i) that definition were read without reference to paragraphs (b) and (e) of that definition, and

(ii) each reference in the portion of that definition after paragraph (d) to "designated person" were read as "individual" or "individual's spouse"; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) the Minister so permits.

Related Provisions: 146(5)(a)(iv.1); 146(5.1)(a)(iv) — Amount withdrawn within 90 days under LLP ineligible for RRSP contribution.

Forms: RC96: LLP — request to withdraw funds from an RRSP.

(3) Repayment of eligible amount — An individual may designate a single amount for a taxation year in prescribed form filed with the individual's return of income for the year if the amount does not exceed the lesser of

(a) the total of all amounts (other than excluded premiums, repayments to which paragraph (b) of the definition "excluded withdrawal" in subsection (1) applies and amounts paid by the individual in the first 60 days of the year that can reasonably be considered to have been deducted in computing the individual's income, or designated under this subsection, for the preceding taxation year) paid by the individual in the year or

within 60 days after the end of the year under a retirement savings plan that is at the end of the year or the following taxation year a registered retirement savings plan under which the individual is the annuitant, and

(b) the individual's LLP balance at the end of the year.

Forms: RC96: LLP — request to withdraw funds from an RRSP.

(4) If portion of eligible amount not repaid — There shall be included in computing an individual's income for a particular taxation year that begins after 2000 the amount determined by the formula

$$[(A - B - C)/(10 - D)] - E$$

where

A is

(a) nil, if

(i) the individual died or ceased to be resident in Canada in the particular year, or

(ii) the beginning of the particular year is not included in a repayment period of the individual, and

(b) in any other case, the total of all eligible amounts received by the individual in preceding taxation years (other than taxation years in participation periods of the individual that ended before the particular year);

B is

(a) nil, if the particular year is the first taxation year in a repayment period of the individual, and

(b) in any other case, the total of all amounts designated under subsection (3) by the individual for preceding taxation years (other than taxation years in participation periods of the individual that ended before the particular year);

C is the total of all amounts each of which is included under this subsection or subsection (5) in computing the individual's income for a preceding taxation year (other than a taxation year included in a participation period of the individual that ended before the particular year);

D is the lesser of nine and the number of taxation years of the individual that end in the period that

(a) begins at the beginning of the individual's last repayment period that began at or before the beginning of the particular year, and

(b) ends at the beginning of the particular year; and

E is

(a) if the particular year is the first taxation year within a repayment period of the individual, the total of the amount designated under subsection (3) by the individual for the particular year and all amounts so designated for preceding taxation years (other than taxation years in participation periods of the individual that ended before the particular year), and

(b) in any other case, the amount designated under subsection (3) by the individual for the particular year.

Related Provisions: 56(1)(h.1) — Inclusion in income; 257 — Formula cannot calculate to less than zero.

Forms: RC4112: Lifelong learning plan (guide).

(5) Ceasing residence in Canada — If at any time in a taxation year an individual ceases to be resident in Canada, there shall be included in computing the individual's income for the period in the year during which the individual was resident in Canada the amount, if any, by which

(a) the total of all amounts each of which is an eligible amount received by the individual in the year or a preceding taxation year

exceeds the total of

(b) all amounts designated under subsection (3) by the individual in respect of amounts paid not later than 60 days after that time and before the individual files a return of income for the year, and

(c) all amounts included under subsection (4) or this subsection in computing the individual's income for preceding taxation years.

Related Provisions: 56(1)(h.2) — LLP — income inclusion.

(6) Death of individual — If an individual dies at any time in a taxation year, there shall be included in computing the individual's income for the year the amount, if any, by which

(a) the individual's LLP balance immediately before that time

exceeds

(b) the amount designated under subsection (3) by the individual for the year.

Related Provisions: 56(1)(h.2) — LLP — income inclusion; 146.01(7) — Optional transfer of repayment obligation to spouse.

(7) Exception — If a spouse of an individual was resident in Canada immediately before the individual's death at a particular time in a taxation year and the spouse and the individual's legal representatives jointly so elect in writing in the individual's return of income for the year,

(a) subsection (6) does not apply to the individual;

(b) the spouse is deemed to have received a particular eligible amount at the particular time equal to the amount that, but for this subsection, would be determined under subsection (6) in respect of the individual;

(c) subject to paragraph (d), for the purpose of applying this section after the particular time, the spouse is deemed to be the person designated under paragraph (b) of the definition "eligible amount" in subsection (1) in respect of the particular amount; and

(d) where the spouse received an eligible amount before the particular time in the spouse's participation period that included the particular time and the particular individual designated under paragraph (b) of the definition "eligible amount" in subsection (1) in respect of that eligible amount was not the spouse, for the purpose of applying this section after the particular time the particular individual is deemed to be the person designated under that paragraph in respect of the particular amount.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History [s. 146.02]: S. 146.02 added by 1999, c. 22, s. 61, applicable after 1998.

Definitions [s. 146.02]: "amount" — 248(1); "annuitant", "benefit" — 146(1), 146.01(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "eligible amount", "excluded premium", "excluded withdrawal", "full-time student" — 146.02(1); "individual", "legal representative", "Minister" — 248(1); "LLP balance" — 146.02(1); "month" — *Interpretation Act* 35(1); "participation period" — 146.02(1); "person" — 248(1); "premium" — 146(1), 146.02(1); "prescribed", "registered pension plan" — 248(1); "qualifying educational program" — 146.02(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "repayment period" — 146.02(1); "resident in Canada" — 250; "retirement savings plan" — 146(1), 248(1); "revocable" — 146.1(2.1); "spouse" — 252(4); "taxation year" — 249; "written" — *Interpretation Act* 35(1)"writing".

Forms: RC96: LLP — request to withdraw funds from an RRSP; RC4112: Lifelong learning plan (guide).

Registered Education Savings Plans

146.1 (1) Definitions — In this section,

Related Provisions: 204.9(1.1) — Application of subsec. 146.1(1).

"accumulated income payment" under an education savings plan means any amount paid out of the plan, other than a payment described in any of paragraphs (a) and (c) to (e) of the definition "trust", to the extent that the amount so paid exceeds the fair market value of any consideration given to the plan for the payment of the amount;

Related Provisions: 146.1(2)(d.1) — Limitations on accumulated income payments; 146.1(7.1) — Accumulated income payments included in recipient's income; 153(1)(t) — Withholding of tax at source from payments; 204.94 — Tax on accumulated income payments not transferred to RRSP.

History: The definition "accumulated income payment" in subsec. 146.1(1) amended by 1999, c. 22, subsec. 62(1), applicable after 1997. It formerly read:

> "accumulated income payment" under an education savings plan means any amount paid out of the plan, other than a payment described in any of paragraphs (a), (c), (d) and (e) of the definition "trust", to the extent that the amount so paid exceeds the fair market value of any consideration given to the plan for the payment of the amount;

The definition "accumulated income payment" added to subsec. 146.1(1) by 1998, c. 19, subsec. 38(4), applicable after 1997.

Regulations: 103(4), 103(6)(g), 103(8) (withholding at source); 200(2)(j) (information return).

"beneficiary", in respect of an education savings plan, means a person, designated by a subscriber, to whom or on whose behalf an educational assistance payment under the plan is agreed to be paid if the person qualifies under the plan;

Related Provisions: 146.1(2)(j) — Restrictions on who can be beneficiaries.

Pre-RSC History: *The definition "beneficiary" was para. 146.1(1)(a).*

"contribution" into an education savings plan does not include an amount paid into the plan by the Minister of Human Resources Development under Part III.1 of the *Department of Human Resources Development Act*;

History: The definition "contribution" added to subsec. 146.1(1) by 1999, c. 22, subsec. 62(3), applicable after 1997.

"education savings plan" means a contract made at any time between

(a) either

(i) one individual (other than a trust), or

(ii) an individual (other than a trust) and the spouse of the individual, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) a person or organization (in this section referred to as a "promoter")

under which the promoter agrees to pay or to cause to be paid educational assistance payments to or for one or more beneficiaries;

Proposed Amendment — RESPs as trusts

Department of Finance news release, July 20, 1999: *Technical Change Announced for Registered Education Savings Plans*

Finance Minister Paul Martin today announced that he will propose changes to the *Income Tax Act* to accommodate a common industry practice concerning registered education savings plans (RESPs).

Under the current legislative framework, an RESP must be structured as a contractual arrangement. However, over the years many RESPs have been structured as trust arrangements.

The proposed changes will allow Canadian trust companies to issue RESPs structured as trust arrangements. This will accommodate a long-standing industry practice and recognize that a trust arrangement is an appropriate vehicle in which to allow Canadians to save for their children's education.

The Minister indicated that draft legislation to implement this proposal will be released at the earliest opportunity.

For further information: Dave Wurtele, Tax Legislation Division, (613) 992-4390; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080

History: The definition "education savings plan" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable to contracts made after 1997. The definition formerly read:

> "education savings plan" means a contract entered into at any time between an individual (in this section referred to as a "subscriber") and a person or organization (in this section referred to as a "promoter") under which, in consideration of payment by the subscriber of any periodic or other amount as consideration under the contract, the promoter agrees to pay or to cause to be paid to or for a beneficiary educational assistance payments;

Pre-RSC History: *The definition "education savings plan" was para. 146.1(1)(c).*

"educational assistance payment" means any amount, other than a refund of payments, paid out of an education savings plan to or for an individual to assist the individual to further the individual's education at a post-secondary school level;

Related Provisions: 146.1(2)(g), (g.1) — Limitations on educational assistance payments; 146.1(7) — Educational assistance payments included in income; 153(1)(t) — Withholding of tax at source from payments; 212(1)(r) — Tax on educational assistance payments.

History: The definition "educational assistance paymen" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable after 1997. The definition formerly read:

> "educational assistance payment" means any amount, other than a refund of payments, paid or payable under an education savings plan to or for a beneficiary to assist the beneficiary to further the beneficiary's education at the post-secondary school level;

Pre-RSC History: *The definition "educational assistance payment" was para. 146.1(1)(b).*

Regulations: 200(2)(j) (information return).

"post-secondary educational institution" means

(a) an educational institution in Canada that is described in paragraph (a) of the definition "designated educational institution" in subsection 118.6(1), or

(b) an educational institution outside Canada that is a university, college or other educational institution that provides courses at a post-secondary school level at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks;

History: The definition "post-secondary education institution" (formerly 146.1(1)(c.1) before consolidation in R.S.C. 1985 (5th Supp.)) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(2), applicable after February 20, 1990.

"pre-1972 income" — [Repealed]

History: The definition "pre-1972 income" in subsec. 146.1(1) repealed by 1998, c. 19, subsec. 38(1), applicable after 1997. The definition formerly read:

"pre-1972 income" means the total of all amounts each of which is the income (within the meaning of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the particular taxation year) for a taxation year ending before 1972 of a trust governed by an education savings plan;

Pre-RSC History: *The definition "pre-1972 income" was para. 146.1(1)(d).*

"qualified investment" for a trust governed by a registered education savings plan means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the reference in that definition to "a trust governed by a deferred profit sharing plan or revoked plan" were read as a reference to "a trust governed by a registered education savings plan",

(b) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

(c) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(d) an investment that was acquired by the trust before October 28, 1998, and

(e) a prescribed investment;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed listed on prescribed stock exchange; 132.2(1)(k) — Where share ceases to be qualified investment due to mutual fund reorganization; 146.1(2.1)(a) — Acquisition of non-qualified investment makes plan revocable; 207.1(3) — Tax payable by RESP on holding non-qualified investments.

History: The definition "qualified investment" added to subsec. 146.1(1) by 1999, c. 22, subsec. 62(3), applicable after 1997.

Regulations: 3200 (prescribed stock exchange in Canada); 4900 (prescribed investment).

"qualifying educational program" has the meaning that would be assigned by the definition of that expression in subsection 118.6(1) if that definition were read without reference to paragraph (a);

History: The definition "qualifying educational program" in subsec. 146.1(1) amended by 1997, c. 25, subsec. 42(1), applicable to 1996 *et seq.* It formerly read:

"qualifying educational program" has the meaning assigned by subsection 118.6(1);

The definition "qualifying educational program" added to subsec. 146.1(1) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(2), applicable after February 20, 1990.

"RESP annual limit" for a year means,

(a) for 1990 to 1995, $1,500,

(b) for 1996, $2,000, and

(c) for 1997 and subsequent years, $4,000;

Related Provisions: 146.1(2)(k) — Contributions not to exceed RESP annual limit; 204.9"excess amount"(a) — Penalty tax on exceeding RESP annual limit.

History: The definition "RESP annual limit" added to subsec. 146.1(1) by 1998, c. 19, subsec. 38(4), applicable after 1989.

"refund of payments" at any time under a particular registered education savings plan means

(a) a refund at that time of a contribution that had been made at a previous time, if the contribution was made

(i) otherwise than by way of a transfer from another registered education savings plan, and

(ii) into the particular plan by or on behalf of a subscriber under the particular plan, or

(b) a refund at that time of an amount that was paid at a previous time into the particular plan by way of a transfer from another registered education savings plan, where the amount would have been a refund of payments under the other plan if it had been paid at the previous time directly to a subscriber under the other plan;

History: The definition "refund of payments" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable to 1997 *et seq.* The definition formerly read:

"refund of payments" means any amount (not in excess of the total of amounts paid by or on behalf of a subscriber under an education savings plan) paid or payable to the subscriber, the subscriber's heirs, executors or assigns as or on account of a refund of amounts paid to the plan by or on behalf of the subscriber under the plan;

Pre-RSC History: *The definition "refund of payments" was para. 146.1(1)(e).*

"registered education savings plan" means

(a) an education savings plan registered for the purposes of this Act, or

(b) a registered education savings plan as it is amended from time to time

but, except for the purposes of subsections (7) and (7.1) and Part X.4, a plan ceases to be a registered education savings plan immediately after the day as of which its registration is revoked under subsection (13);

Related Provisions: 128.1(10)"excluded right or interest"(a)(iii) — No deemed disposition of RESP on emigration; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 248(1)"registered education savings plan" — Definition applies to entire Act.

History: The definition "registered education savings plan" in subsec. 146.1(1) amended by 1998, c. 19, subsec. 38(2), applicable after 1997. The definition formerly read:

"registered education savings plan" means an education savings plan accepted by the Minister for registration for the purposes of this Act as complying with the requirements of this section;

Pre-RSC History: *The definition "registered education savings plan" was para. 146.1(1)(f).*

Information Circulars: 93-3: Registered education savings plans.

"subscriber" under an education savings plan at any time means

(a) each individual with whom the promoter of the plan entered into the plan,

(b) an individual who has before that time acquired a subscriber's rights under the plan pursuant to a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the individual and a subscriber under the plan in settlement of rights arising out of, or on the breakdown of, their marriage, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) after the death of a subscriber under the plan, any other person (including the estate of the subscriber) who makes contributions into the plan in respect of a beneficiary

but does not include an individual who, before that time, disposed of the individual's rights as a subscriber under the plan in the circumstances described in paragraph (b);

History: The definition "subscriber" added to subsec. 146.1(1) by 1998, c. 19, subsec. 38(4), applicable to contracts made after 1997.

"tax-paid-income" — [Repealed]

History: The definition "tax-paid-income" in subsec. 146.1(1) repealed by 1998, c. 19, subsec. 38(1), applicable after 1997. The definition formerly read:

"tax-paid-income" means the amount determined by the formula

$$A - (B - C)$$

where

A is the fair market value on December 31, 1971 of all the property of a trust governed by an education savings plan,

B is the total of all amounts paid to the plan on or before December 31, 1971 by or on behalf of the subscriber under the plan, and

C is the total amount of all refunds of payments made under the plan on or before December 31, 1971; and

Pre-RSC History: *The definition "tax-paid income" was para. 146.1(1)(g). See Table of Concordance.*

"trust", except in this definition and the definition "education savings plan", means any person who irrevocably holds property under an education savings plan for any of, or any combination of, the following purposes:

(a) the payment of educational assistance payments,

(b) the payment after 1997 of accumulated income payments,

(c) the refund of payments,

(c.1) the repayment of amounts under Part III.1 of the *Department of Human Resources Development Act*,

(d) the payment to, or to a trust in favour of, designated educational institutions in Canada referred to in subparagraph (a)(i) of the definition of that expression in subsection 118.6(1), or

(e) the payment to a trust that irrevocably holds property pursuant to a registered education savings plan for any of the purposes set out in paragraphs (a) to (d).

Related Provisions: 104(1) — Reference to trust or estate; 108(1)"trust"(a) — "trust" does not include a RESP for certain purposes.

History: Para. (c.1) added to the definition "trust" in subsec. 146.1(1) by 1999, c. 22, subsec. 62(2), applicable after 1997.

The portion of the definition "trust" in subsec. 146.1(1) before para. (c) amended by 1998, c. 19, subsec. 38(3), applicable after 1997. The portion formerly read:

"trust", except in this definition, means any person who irrevocably holds property pursuant to an education savings plan for

(a) the payment of educational assistance payments,

(b) the payment of scholarships or other amounts to persons, other than a beneficiary, to assist them to further their education at the post-secondary school level,

That portion of the definition of "trust" in subsec. 146.1(1) preceding para. (a) amended to substitute "holds property" for "holds property or money", and para. (e) amended to substitute "holds property pursuant to a registered education savings plan" for "holds money or property transferred to it", by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 118(4), (5), applicable after July 13, 1990.

Pre-RSC History: *The definition "trust" was para. 146.1(1)(h).*

Subpara. 146.1(1)(h)(iv) substituted by 1988, c. 55, s. 131, applicable to 1988 *et seq.* Subpara. 146.1(1)(h)(iv) formerly read:

(iv) the payment to, or to a trust in favour of, designated educational institutions in Canada referred to in clause 110(9)(a)(i)(A), or

Para. 146.1(1)(h) substituted by 1979, c. 5, subsec. 47(1), applicable with respect to amounts paid after 1978. Para. 146.1(1)(h) formerly read:

(h) "trust" means any person who irrevocably holds property or money pursuant to an education savings plan for

(i) the payment of educational assistance payments,

(ii) the payment of scholarships to persons other than a beneficiary,

(iii) the refund of payments,

(iv) the payment to, or to a trust in favour of, designated educational institutions in Canada referred to in clause 110(9)(a)(i)(A), or

(v) the payment to another trust that irrevocably holds money or property transferred to it for any of the purposes set out in subparagraphs (i) to (iv).

(2) Conditions for registration — The Minister shall not accept for registration for the purposes of this Act any education savings plan of a promoter unless, in the Minister's opinion, the following conditions are complied with:

(a) the plan provides that the property of any trust governed by the plan (after the payment of trustee and administration charges) is irrevocably held for any of the purposes described in the definition "trust" in subsection (1) by a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee;

(b) at the time of the application by the promoter for registration of the plan, there are not fewer than 150 plans entered into with the promoter each of which complied, at the time it was entered into, with all the other conditions set out in this subsection, as it read at that time;

(b.1) application for registration of the plan is made by the promoter in prescribed form containing prescribed information;

(c) the promoter and all trusts governed by the plan are resident in Canada;

(d) the plan does not allow for any payment before 1998 to a subscriber, other than a refund of payments, unless the subscriber is also the beneficiary under the plan;

(d.1) subject to subsection (2.2), the plan does not allow accumulated income payments under the plan, or

the plan allows an accumulated income payment at a particular time only if

(i) the payment is made to, or on behalf of, a person and not jointly to, or on behalf of, more than one person,

(ii) the particular time is after 1997,

(iii) the person is resident in Canada at the particular time,

(iv) either

(A) the person is a subscriber under the plan at the particular time, or

(B) an individual died at any previous time and was a subscriber under the plan immediately before death,

(v) each individual in respect of whom a subscriber has made a contribution into the plan

(A) has before the particular time attained 21 years of age and is not, at the particular time, eligible under the plan to receive an educational assistance payment, or

(B) has died before the particular time, and

(vi) either

(A) the particular time is after the 9th year that follows the year in which the plan was entered into, or

(B) each individual in respect of whom a subscriber has made a contribution into the plan has died before the particular time and was, or was related to, a subscriber under the plan (or was the nephew, niece, great nephew or great niece of a subscriber under the plan);

(e) the plan is substantially similar to the type of plan described in or annexed to a prospectus filed by the promoter with a securities commission in Canada or a body performing a similar function in a province;

(f) in the event that a trust governed by the plan is terminated, the property held by the trust is required to be used for any of the purposes described in the definition "trust" in subsection (1);

(g) the plan does not allow for the payment of educational assistance payments before 1997 to an individual unless the individual is, at the time the payment is made, a student in full-time attendance at a post-secondary educational institution and enrolled in a qualifying educational program at the institution;

(g.1) the plan does not allow for the payment of an educational assistance payment to or for an individual at any time after 1996 unless

(i) either

(A) the individual is at that time enrolled as a full-time student in a qualifying educational program at a post-secondary educational institution, or

(B) the individual is at that time enrolled as a student in a qualifying educational program at a post-secondary educational institution and has at that time a mental or physical impairment the effects of which on the individual have been certified in writing, by a person described in paragraph 118.3(1)(a.2) in relation to the individual's impairment, to be such that the individual cannot reasonably be expected to be enrolled as a full-time student, and

(ii) either

(A) the individual has satisfied the condition set out in subparagraph (i) throughout at least 13 consecutive weeks in the 12-month period that ends at that time, or

(B) the total of the payment and all other educational assistance payments made under a registered educational savings plan of the promoter to or for the individual in the 12-month period that ends at that time does not exceed $5,000 or such greater amount as the Minister of Human Resources Development approves in writing with respect to the individual;

(g.2) the plan does not allow for any contribution into the plan, other than a contribution made by or on behalf of a subscriber under the plan in respect of a beneficiary under the plan or a contribution made by way of transfer from another registered education savings plan;

(h) the plan provides that no payments may be made into the plan by or on behalf of a subscriber after the 21st year following the year in which the plan is entered into;

(i) the plan provides that it must be terminated on or before the last day of the 25th year following the year in which the plan is entered into;

(i.1) if the plan allows accumulated income payments in accordance with paragraph (d.1), the plan provides that it must be terminated before March of the year following the year in which the first such payment is made out of the plan;

(i.2) the plan does not allow for the receipt of property by way of direct transfer from another registered education savings plan after the other plan has made any accumulated income payment;

(j) if the plan allows more than one beneficiary under the plan at any one time, the plan provides

(i) that each of the beneficiaries under the plan is required to be connected to each living subscriber under the plan, or to have been connected to a deceased original subscriber under the plan, by blood relationship or adoption,

(ii) that a contribution into the plan in respect of a beneficiary is permitted to be made only if

(A) the beneficiary had not attained 21 years of age before the time of the contribution, or

(B) the contribution is made by way of transfer from another registered education savings plan that allows more than one beneficiary at any one time, and

(iii) that an individual is permitted to become a beneficiary under the plan at any particular time only if

(A) the individual had not attained 21 years of age before the particular time, or

(B) the individual was, immediately before the particular time, a beneficiary under another registered education savings plan that allows more than one beneficiary at any one time;

(k) the plan does not allow the total of all contributions made into the plan in respect of a beneficiary for a year (other than contributions made by way of transfer from registered education savings plans) to exceed the RESP annual limit for the year;

(l) the plan provides that the promoter shall, within 90 days after an individual becomes a beneficiary under the plan, notify the individual (or, where the individual is under 19 years of age at that time and ordinarily resides with a parent of the individual, that parent) in writing of the existence of the plan and the name and address of the subscriber in respect of the plan;

(m) the Minister has no reasonable basis to believe that the promoter will not take all reasonable measures to ensure that the plan will continue to comply with the conditions set out in paragraphs (a), (c) to (d.1) and (f) to (l) for its registration for the purposes of this Act; and

(n) the Minister has no reasonable basis to believe that the plan will become revocable.

Proposed Amendment — RESPs as Trusts

Department of Finance news release, July 20, 1999: See under 146.1(1)"education savings plan".

Related Provisions: 146.1(2.1) — RESP becoming revocable; 146.1(2.2) — Waiver of conditions for disabled beneficiary; 146.1(3) — Deemed registration; 146.1(4) — Registration of plans without prospectus; 146.1(4.1) — Amendments must be filed with CCRA; 146.1(13) — Revocation where plan ceases to comply with requirements; 172(3) — Appeal from refusal to register; 204.9(1)"excess amount" — Limit on RESP contributions; 204.91 — Tax payable by subscribers.

History: Para. 146.1(2)(b.1) added, subpara. 146.1(2)(j)(ii) amended and subpara. (iii) added, by 1999, c. 22, subsecs. 62(4) and (7), applicable to plans entered into after 1998. Subpara. (j)(ii) formerly read:

(ii) that a contribution into the plan in respect of a beneficiary is permitted to be made only if

(A) the beneficiary had not attained 21 years of age at the time the plan was entered into,

(B) the contribution is made by way of transfer from another registered education savings plan into which a contribution had been made before the transfer in respect of the beneficiary, or

(C) the contribution is made (after a contribution to which clause (B) applied was made) into the plan in respect of the beneficiary;

The opening words of para. 146.1(2)(d.1) amended, para. 146.1(2)(n) added, by the said c. 22, subsecs. 62(5) and (8), applicable after 1997. The opening words formerly read:

(d.1) the plan does not allow accumulated income payments under the plan, or the plan allows an accumulated income payment at a particular time under the plan only if

Para. 146.1(2)(g.1) amended by the said c. 22, subsec. 62(6), applicable to plans entered into after February 20, 1990, except that

(a) for plans entered into before 1998, references in the amendment to "individual" shall be read as "beneficiary"; and

(b) subpara. 146.1(2)(g.1)(ii), as amended, does not apply to plans entered into before 1999.

Para. (g.1) formerly read:

(g.1) the plan does not allow for the payment of educational assistance payments after 1996 to an individual unless the individual is, at the time the payment is made, enrolled in a qualifying educational program as a full-time student at a post-secondary educational institution;

The opening words of subsec. 146.1(2), paras. 146.1(2)(b) and (m) amended by 1998, c. 19, subsecs. 38(5), (6), and (11), applicable to applications made after 1997. Those provisions formerly read:

(2) Conditions for acceptance of plan for registration — The Minister shall not accept for registration for the purposes of this Act any education savings plan of a promoter unless, in the Minister's opinion, it complies with the following conditions:

. . . . .

(b) at the time of the application by the promoter for registration of the plan, there are not fewer than 150 subscribers who have entered into education savings plans with the promoter each of which complied, at the time it was entered into, with all the other conditions set out in this subsection, or subsection 146.1(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as the case may be, as the applicable subsection read at that time;

. . . . .

(m) the plan complies with prescribed conditions,

Para. 146.1(2)(d) amended, and add para. (d.1) added, by the said c. 19, subsec. 38(7), applicable to 1998 *et seq.* Para. 146.1(2)(d) formerly read:

(d) the plan does not allow for any payment to a subscriber other than a refund of payments unless the subscriber is also the beneficiary under the plan;

Para. 146.1(2)(g) amended, and add paras. (g.1) and (g.2) added, by the said c. 19, subsec. 38(8), paras. (g) and (g.1) applicable to plans entered into after February 20, 1990 except that, for plans entered into before 1998, the references to "an individual" and "the individual" in para. (g.1) shall be read as "a beneficiary" and "the beneficiary"; and para. (g.2) applicable to 1997 *et seq.* Para. 146.1(2)(g) formerly read:

(g) the plan does not allow for the payment of educational assistance payments to an individual unless the individual is, at the time the payment is made, a student in full-time attendance at a post-secondary educational institution and enrolled in a qualifying educational program at the institution;

Paras. 146.1(2)(i.1) and (i.2) added, and para. (j) amended, by the said c. 19, subsec. 38(9), applicable to 1998 *et seq.*, except that

(a) para. (j) does not apply to plans entered into before July 14, 1990; and

(b) subpara. (j)(ii) does not apply to plans entered into before 1998.

Para. (j) formerly read:

(j) where the plan provides that a subscriber may name more than one beneficiary under the plan at any one time, the plan provides that each of the beneficiaries under the plan is required to be connected to the subscriber by blood relationship or adoption;

Para. 146.1(2)(k) amended by the said c. 19, subsec. 38(10), applicable to plans entered into after February 20, 1990. Para. 146.1(2)(k) formerly read:

(k) the plan provides that the total of all payments made into the plan in respect of a beneficiary for a year shall not exceed $2,000;

Para. 146.1(2)(k) amended by 1997, c. 25, subsec. 42(2), applicable to 1996 *et seq.*, except in respect of plans entered into before February 21, 1990. Para. (k) formerly read:

(k) the plan provides that the total of all payments made into the plan in respect of a beneficiary for a year shall not exceed $1,500;

Paras. 146.1(2)(a), (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(6), applicable to plans entered into after February 20, 1990. Paras. (a), (b) formerly read:

(a) the plan provides that the property of any trust established under the plan (after payment of trustee and administration charges) is irrevocably held for any of the purposes described in the definition "trust" in subsection (1);

(b) at the time of the application by the promoter for registration of the plan, there are not less than 150 subscribers who have entered into education savings plans with the promoter that comply with the conditions set out in paragraphs (a) and (c) to (g);

Para. 146.1(2)(c) amended to substitute "governed by the plan" for "established under the plan", and para. (f) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 118(7), (8), applicable after July 13, 1990. Para. (f) formerly read:

(f) in the event that a trust established under the plan is terminated, the property or money held by the trust is required to be used for any of the purposes described in the definition "trust" in subsection (1); and

Paras. 146.1(2)(g) to (m) substituted for para. (g) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(9), paras. (g) to (i), (k) and (m) applicable to plans entered into after February 20, 1990, para. (j) applicable to plans entered into after July 13, 1990, and para. (l) applicable to plans entered into after March 1991. Para. (g) formerly read:

(g) the plan in all other respects complies with any regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Regulations: No prescribed conditions for 146.1(2)(m).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Information Circulars: 93-3: Registered education savings plans.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T550: Application for registration; T1171: Tax withholding waiver on accumulated income payments from RESPs; T1172: Additional tax on accumulated income payments from RESPs.

(2.1) RESP is revocable [if...] — For the purposes of paragraphs (2)(n) and (12.1)(d), a registered education savings plan is revocable at any time after October 27, 1998 at which

(a) a trust governed by the plan acquires property that is not a qualified investment for the trust;

(b) property held by a trust governed by the plan ceases to be a qualified investment for the trust and the property is not disposed of by the trust within 60 days after that time;

(c) a trust governed by the plan begins carrying on a business; or

(d) a trustee that holds property in connection with the plan borrows money for the purposes of the plan, except where

(i) the money is borrowed for a term not exceeding 90 days,

(ii) the money is not borrowed as part of a series of loans or other transactions and repayments, and

(iii) none of the property of the trust is used as security for the borrowed money.

Related Provisions: 146.1(12.1) — Notice of intent to revoke registration; 146.1(12.2), (13) — Revocation of registration.

History: Subsec. 146.1(2.1) added by 1999, c. 22, subsec. 62(9) applicable after 1997.

(2.2) Waiver of conditions for accumulated income payments — The Minister may, on written application of the promoter of a registered education savings plan, waive the application of the conditions in subparagraphs (2)(d.1)(v) and (vi) in respect of the plan where a beneficiary under the plan suffers from a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the beneficiary from enrolling in a qualifying educational program at a post-secondary educational institution.

History: Subsec. 146.1(2.2) added by 1999, c. 22, subsec. 62(9) applicable after 1997.

(3) Deemed registration — Where in any year an education savings plan cannot be accepted for registration solely because the condition set out in paragraph (2)(b) has not been complied with, if the plan is subsequently registered, it shall be deemed to have been registered on the first day of January of

(a) the year in which all of the conditions set out in subsection (2) (except in paragraph (2)(b)) were complied with, or

(b) the year preceding the year in which the plan was subsequently registered,

whichever is the later.

Related Provisions: 146.1(12) — Deemed date of registration; 212(1)(r) — Non-residents — registered education savings plan.

Information Circulars: 93-3: Registered education savings plans.

(4) Registration of plans without prospectus — Notwithstanding paragraph (2)(e), where a promoter has not filed a prospectus in respect of an education savings plan referred to in that paragraph, the Minister may register the plan if the promoter is not otherwise required by the laws of Canada or a province to file such a prospectus with a securities commission in Canada or a body performing a similar function in a province and the plan complies with the other conditions set out in subsection (2).

History: Subsec. 146.1(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(10), applicable to plans registered after February 20, 1990. Subsec. 146.1(4) formerly read:

(4) Registration of plans in existence on October 15, 1973 — Notwithstanding paragraph (2)(e), where a promoter has not filed a prospectus referred to in that paragraph, the Minister may register an education savings plan if the plan was in existence on October 15, 1973 and as of that date the other conditions set out in subsection (2) had been complied with.

(4.1) Obligation to file amendment — When a registered education savings plan is amended, the promoter shall file the text of the amendment with the Minister not later than 60 days after the day on which the plan is amended.

Related Provisions: 162(7) — Penalty for failure to comply.

History: Subsec. 146.1(4.1) added by 1998, c. 19, subsec. 38(12), in force on June 18, 1998.

(5) Trust not taxable — No tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered education savings plan.

Related Provisions: 18(11)(h) — No deduction for interest paid on money borrowed to make RESP contribution; 149(1)(u) — Exemption from tax.

Information Circulars: 93-3: Registered education savings plans.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(6) Subscriber not taxable — No tax is payable by a subscriber on the income of a trust for a taxation year after 1971 throughout which the trust was governed by a registered education savings plan.

Related Provisions: 146.1(5) — Trust not taxable; 204.91 — Tax payable by subscribers; 212(1)(r) — Non-residents — registered education savings plan.

(6.1) Transfers between plans — Where property irrevocably held by a trust governed by a registered education savings plan (in this subsection referred to as the "transferor plan") is transferred to a trust governed by another registered education savings plan (in this subsection referred to as the "transferee plan"),

(a) [Repealed]

(b) for the purposes of this paragraph, subparagraph (2)(d.1)(vi) and paragraphs (2)(h) and (i), the transferee plan is deemed to have been entered into on the day that is the earlier of

(i) the day on which the transferee plan was entered into, and

(ii) the day on which the transferor plan was entered into; and

(c) notwithstanding subsections (7) and (7.1), no amount shall be included in computing the income of any person because of the transfer.

Related Provisions: 146.1(2)(g.2), (i.2) — Restrictions on transfers between RESPs; 209.4(5) — Transfers between RESPs.

History: Para. 146.1(6.1)(a) repealed, para. (b) amended, and para. (c) added, by 1998, c. 19, subsecs. 38(13), (14), para. (a) applicable to transfers made after 1996, para. (b) applicable after 1997, and para. (c) applicable to transfers made after 1997. Paras. (a) and (b) formerly read:

(a) for the purposes of Part X.4,

(i) the transferee plan shall be deemed to be the same plan as, and a continuation of, the transferor plan, and

(ii) the transfer of property shall be deemed not to be a payment made into the transferee plan; and

(b) for the purposes of this paragraph and paragraphs (2)(h) and (i), the transferee plan shall be deemed to have been entered into on the earlier of

(i) the day on which the transferee plan was entered into, and

(ii) the day on which the transferor plan was entered into.

Subsec. 146.1(6.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 118(11), applicable after February 20, 1990.

Information Circulars: 93-3: Registered education savings plans.

(7) Educational assistance payments — There shall be included in computing an individual's income for a taxation year the total of all educational assistance payments paid out of registered education savings plans to or for the individual in the year.

Related Provisions: 56(1)(q) — Income inclusion from RESP; 60(x) — Deduction for repayment of Canada Education Savings Grant; 153(1)(t) — Withholding of tax at source; 212(1)(r) — Withholding tax on RESP payments to non-residents.

History: Subsec. 146.1(7) amended by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(7) formerly read:

(7) Amounts to be included in beneficiary's income — There shall be included in computing the income for a taxation year of a taxpayer who is or was a beneficiary under a registered education savings plan, the amount, if any, by which the total of

(a) educational assistance payments paid to the taxpayer or on the taxpayer's behalf in the year under the plan, and

(b) amounts paid to the taxpayer or on the taxpayer's behalf to the extent that those amounts may reasonably be regarded as a distribution of property that had been transferred from a trust established under a registered education savings plan, of property substituted therefor or of income from any such property

exceeds

(c) the taxpayer's portion of the tax-paid-income in the year under the plan.

Pre-RSC History: Subsec. 146.1(7) substituted by 1979, c. 5, subsec. 47(2), applicable with respect to amounts paid after 1978. Subsec. 146.1(7) formerly read:

(7) Amount to be included in beneficiary's income — There shall be included in computing the income of a beneficiary for a taxation year ending after 1973 under a registered education savings plan, the amount, if any, by which

(a) the aggregate of educational assistance payments paid to or for the beneficiary in the year under the plan

exceeds

(b) the beneficiary's portion of the tax-paid-income in the year under the plan.

Regulations: 200(2)(j) (information return).

Information Circulars: 93-3: Registered education savings plans.

(7.1) Other income inclusions — There shall be included in computing a taxpayer's income for a taxation year

(a) each accumulated income payment received in the year by the taxpayer under a registered education savings plan; and

(b) each amount received in the year by the taxpayer in full or partial satisfaction of a subscriber's interest under a registered education savings plan (other than any excluded amount in respect of the plan).

Related Provisions: 146.1(7.2) — Excluded amount; 153(1)(t) — Withholding of tax at source.

History: Subsec. 146.1(7.1) added by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.*

Regulations: 103(4), 103(6)(g), 103(8) (withholding of 20% at source); 200(2)(j) (information return).

(7.2) Excluded amount — For the purpose of paragraph (7.1)(b), an excluded amount in respect of a registered education savings plan is

(a) any amount received under the plan;

(b) any amount received in satisfaction of a right to a refund of payments under the plan; or

(c) any amount received by a taxpayer under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the taxpayer and the taxpayer's spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

History: Subsec. 146.1(7.2) added by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.*

(8) [Repealed]

History: Subsec. 146.1(8) repealed by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(8) formerly read:

(8) Definition of "beneficiary's portion of the tax-paid-income" — For the purposes of subsection (7), a "beneficiary's portion of the tax-paid-income" for a taxation year under a registered education savings plan means the greater of

(a) the lesser of

(i) one-third of the pre-1972 income reported on or before April 30, 1972 by the trust governed by the plan to the subscriber as having been earned in respect of amounts paid to the plan by or on behalf of the subscriber, and

(ii) the amount, if any, by which

(A) the pre-1972 income reported on or before April 30, 1972 by the trust governed by the plan to the subscriber as having been earned in respect of amounts paid to the plan by or on behalf of the subscriber

exceeds

(B) the total of all amounts, if any, referred to in paragraph (7)(c) in respect of preceding taxation years, and

(b) the amount of the tax-paid-income actually allocated under the trust governed by the plan to the beneficiary in the year.

(9) [Repealed]

History: Subsec. 146.1(9) repealed by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(9) formerly read:

(9) Limitation on allocation of tax-paid-income — For the purposes of paragraph (8)(b), no amount of the tax-paid-income shall be allocated in a particular taxation year if an allocation has been made in respect of the same amount in a previous taxation year.

(10) [Repealed]

History: Subsec. 146.1(10) repealed by 1998, c. 19, subsec. 38(15), applicable to 1998 *et seq.* Subsec. 146.1(10) formerly read:

(10) Allocation of tax-paid-income — For the purposes of this subsection and subsections (8) and (9), in any taxation year there shall be allocated by the trust governed by a registered education savings plan an amount of the tax-paid-income to a beneficiary that is not less than the amount determined under paragraph (8)(a) for the year.

(11) Trust deemed to be *inter vivos* trust — For any taxation year during which an education savings plan is not registered, a trust governed by the plan shall be deemed, for the purposes of section 122, to be a trust referred to in subsection 122(1) established after June 17, 1971.

(12) Deemed date of registration — Subject to subsection (3), an education savings plan that is registered

(a) before 1976 shall be deemed to have been registered since the later of

(i) January 1, 1972, and

(ii) the first day of January of the year in which the plan was created; and

(b) after 1975 shall be deemed to have been registered on the first day of January in the year of registration.

(12.1) Notice of intent to revoke registration — When a particular day is

(a) a day on which a registered education savings plan ceases to comply with the conditions of subsection (2) for the plan's registration,

(b) a day on which a registered education savings plan ceases to comply with any provision of the plan,

(c) the last day of a month in respect of which tax is payable under Part X.4 by an individual because of contributions made, or deemed for the purpose of Part X.4 to have been made, by or on behalf of the individual into a registered education savings plan,

(d) a day on which a registered education savings plan is revocable, or

(e) a day on which a person fails to comply with a condition or obligation imposed under Part III.1 of the *Department of Human Resources Development Act* that applies with respect to a registered education savings plan,

the Minister may send written notice (referred to in this subsection and subsection (12.2) as a "notice of intent") to the promoter of the plan that the Minister proposes to revoke the registration of the plan as of the day specified in the notice of intent, which day shall not be earlier than the particular day.

Related Provisions: 146.1(2.1) — RESP becoming revocable; 146.1(12.2) — Notice of revocation; 172(3)(e.1) — Appeal to Federal Court of Appeal from giving of notice of intent; 180(1)(c.1) — Deadline for filing appeal to Federal Court of Appeal; 248(7) — Notice deemed received on day mailed.

History: Paras. 146.1(12.1)(d) and (e) added by 1999, c. 22, subsec. 62(10), applicable after 1997.

Subsec. 146.1(12.1) added by 1998, c. 19, subsec. 38(16), applicable after 1997.

(12.2) Notice of revocation — When the Minister sends a notice of intent to revoke the registration of a registered education savings plan to the promoter of the plan, the Minister may, after 30 days after the receipt by the promoter of the notice, send written notice (referred to in this subsection and subsection (13) as a "notice of revocation") to the promoter that the registration of the plan is revoked as of the day specified in the notice of revocation, which day shall not be earlier than the day specified in the notice of intent.

Related Provisions: 146.1(13) — Revocation; 248(7) — Notice deemed received on day mailed.

History: Subsec. 146.1(12.2) added by 1998, c. 19, subsec. 38(16), applicable after 1997.

(13) Revocation of registration — When the Minister sends a notice of revocation of the registration of a registered education savings plan under subsection (12.2) to the promoter of the plan, the registration of the plan is revoked as of the day specified in the notice of revocation, unless the Federal Court of Appeal or a judge thereof, on application made at any time before the determination of an appeal under subsection 172(3), orders otherwise.

Related Provisions: 146.1(2) — Requirements for registration; 146.1(5) — Trust becomes taxable after revocation; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 146.1(13) amended by 1998, c. 19, subsec. 38(16), applicable after 1997. Subsec. 146.1(13) formerly read:

(13) Where at any time an education savings plan that has been accepted by the Minister for registration for the purposes of this Act ceases to comply with the requirements of this section for its registration as such, the Minister may revoke its registration as of any date after that time and shall give notice of the revocation by registered mail to the subscriber and to the promoter.

(13.1) RESP information — Every trustee under a registered education savings plan shall, in prescribed form and manner, file with the Minister information returns in respect of the plan.

Related Provisions: 146.1(15) — Information returns by promoters.

History: Subsec. 146.1(13.1) added by 1998, c. 21, s. 74, in force June 18, 1998.

(14) [Repealed]

History: Subsec. 146.1(14) repealed by 1998, c. 19, subsec. 38(16), applicable after 1997. Subsec. 146.1(14) formerly read:

(14) Rules applicable to revoked plan — Where at any time in a taxation year the Minister revokes the registration of an education savings plan that had previously been accepted for registration, there shall be included in computing the income of the subscriber under the plan for that year the amount, if any, by which

(a) the fair market value at that time of all of the property of the trust governed by the plan

exceeds

(b) the amount by which

(i) the total of all amounts each of which is

(A) an amount paid to the plan by or on behalf of the subscriber, or

(B) the amount of the pre-1972 income reported on or before April 30, 1972 by the trust governed by the plan to the subscriber as having been earned in respect of amounts paid to the plan by or on behalf of the subscriber

exceeds

(ii) the total of all refunds of payments paid or payable under the plan to the subscriber.

(15) Regulations — The Governor in Council may make regulations requiring promoters of education savings plans to file information returns in respect of the plans.

Related Provisions: 146.1(13.1) — Information returns by trustees.

History: Subsec. 146.1(15) added by 1998, c. 19, subsec. 38(17), in force on June 18, 1998.

Pre-RSC History [s. 146.1]: S. 146.1 added by 1974-75-76, c. 26, s. 100, applicable to 1972 *et seq.*

Definitions [s. 146.1]: "accumulated income payment" — 146.1(1); "adoption" — 251(6)(c); "amount", "annuity" — 248(1); "beneficiary" — 146.1(1); "blood relationship" — 251(6)(a); "borrowed money", "business" — 248(1); "Canada" — 255; "common-law partner", "common-law partnership" — 248(1); "connected" — 251(6); "contribution" — 146.1(1); "corporation" — 248(1), *Interpretation Act* 35(1); "educational assistance payment", "education savings plan" — 146.1(1); "excluded amount" — 146.1(7.2); "Governor in Council" — *Interpretation Act* 35(1); "individual" — 248(1); "licensed annuities provider" — 147(1), 248(1); "Minister" — 248(1); "nephew", "niece" — 252(2)(g); "notice of intent" — 146.1(12.1); "notice of revocation" — 146.1(12.2); "parent" — 252(2); "person" — 248(1); "portion" — 146.1(8); "prescribed" — 248(1); "promoter" — 146.1(1)"education savings plan"(b); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 146.1(1); "RESP annual limit", "refund of payments" — 146.1(1); "registered education savings plan" — 146.1(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "share" — 248(1); "spouse" — 252(4)(a); "subscriber" — 146.1(1); "sub-

stituted property" — 248(5); "taxable income" — 2(2), 248(1); "taxation year" — 249; "tax-paid income" — 146.1(1); "trust" — 104(1), 108(1), 146.1(1), 248(1), (3); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

Registered Home Ownership Savings Plans

146.2 (1)–(3) [Repealed under former Act]

Pre-RSC History: Subsecs. 146.2(1) to (3) repealed by 1986, c. 6, subsec. 82(1), applicable to 1986 *et seq.* Subsecs. (1) to (3) formerly read:

146.2 (1) Definitions — In this section,

(a) "beneficiary" in respect of a home ownership savings plan means an individual (other than a trust) 18 years of age or over to whom, under a home ownership savings plan, a single payment is agreed to be paid but does not include an individual to whom, under a home ownership savings plan, a single payment is agreed to be paid as a consequence of the death of another individual;

(b) "contribution" means any periodic or other amount paid by an individual under a home ownership savings plan as a payment referred to in paragraph (d) for the purpose stated in that paragraph;

(c) [Repealed]

(d) "home ownership savings plan" means an arrangement under which payment is made by an individual

(i) in trust to a corporation resident in Canada and licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(ii) as a deposit with a branch or office, in Canada, of

(A) a person who is, or is eligible to become, a member of the Canadian Payments Association, or

(B) a credit union that is a shareholder or member of a body corporate referred to as a "central" for the purposes of the *Canadian Payments Association Act*,

(in this section referred to as a "depositary"),

of any periodic or other amount as a payment under the trust or the deposit arrangement, as the case may be, to be used, invested or otherwise applied by that corporation or depositary, for the purpose of providing to that individual as the beneficiary under the arrangement an amount to be used for the purchase by him of his owner-occupied home;

(e) "non-qualified investment" in relation to a trust governed by a registered home ownership savings plan means property acquired by the trust that is not a qualified investment for such trust;

(f) "owner-occupied home" of a taxpayer means a housing unit or a share of the capital stock of a co-operative housing corporation owned, whether jointly with another person or otherwise, in a taxation year or within 60 days after the end of the year by the taxpayer, if the housing unit was, or if the share was acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation that was, inhabited by the taxpayer at any time in the year or within 60 days after the end of the year and was situated in Canada;

(g) "qualified investment" for a trust governed by a registered home ownership savings plan means

(i) an investment that would be described in any of subparagraphs 204(e)(i) to (ix) (except subparagraphs (iii), (vi) and (viii) thereof) if the reference in paragraph 204(e) to a trust governed by a deferred profit sharing plan or a revoked plan were read as a reference to a trust governed by a registered home ownership savings plan,

(ii) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

(iii) a mortgage or interest therein, secured by real property situated in Canada, other than a mortgage in respect of which the mortgagor is the beneficiary or a person with whom the beneficiary does not deal at arm's length, and

(iv) such other investments as may be prescribed by any regulations of the Governor in Council made on the recommendation of the Minister of Finance; and

(h) "registered home ownership savings plan" means a home ownership savings plan accepted by the Minister for registration for the purposes of this Act.

(2) Registration — The Minister shall not accept for registration for the purposes of this Act any home ownership savings plan unless, in his opinion, the following conditions are complied with:

(a) the plan does not provide for any payment to be made to the beneficiary under or out of the plan other than

(i) a single payment to the beneficiary to be used by him for the purchase of his owner-occupied home, or

(ii) as a refund of the excess described in paragraph (7)(a) together with any interest, profits or gains attributable thereto;

(b) the plan includes a provision stipulating that the payment to the beneficiary thereunder is not capable either in whole or in part of surrender or assignment except to the spouse of the beneficiary on the death of the beneficiary;

(b.1) the plan, where it involves a depositary, includes a provision stipulating that the depositary has no right of offset as regards the property held under the plan in connection with any debt or obligation to the depositary that the beneficiary under the plan owes or may thereafter owe;

(c) the plan includes a provision stipulating that the terms of the plan cannot be revised, amended or varied except

(i) to provide that the single payment referred to in paragraph (a) shall, on the death of the beneficiary, be paid to his spouse, or

(ii) to delete a provision of the type referred to in subparagraph (i);

(d) the plan includes a provision stipulating that the trustee or depositary, as the case may be, shall, on the death of the beneficiary, transfer or distribute all the property held under the plan;

(e) the beneficiary and the trust established under the plan or the depositary involved in the plan, as the case may be, are resident in Canada;

(f) the beneficiary has not previously been a beneficiary under a registered home ownership savings plan and has not previously claimed a deduction under subsection (4);

(g) the beneficiary or his spouse with whom he is residing does not own, whether jointly with another person or otherwise, real property, any portion of which was used at any time in the year as a dwelling place by any individual;

(h) the beneficiary or his spouse with whom he is residing does not have an interest in a partnership that owns, whether jointly or otherwise, real property, any portion of which was used at any time in the year as a dwelling place by any individual;

(h.1) the plan requires that no benefit or loan, other than

(i) a benefit the amount of which is required to be included in computing the beneficiary's income,

(ii) an amount referred to in any of paragraphs (6)(a) to (c), or

(iii) the benefit derived from the provision of administrative or investment services in respect of the plan,

that is conditional in any way on the existence of the plan may be extended to the beneficiary or to a person with whom he was not dealing at arm's length; and

(i) the plan in all other respects complies with any regulations of the Governor in Council made on the recommendation of the Minister of Finance.

(3) No tax while trust governed by plan — Except as provided in subsection (14), no tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered home ownership savings plan, except that if the trust has

(a) borrowed money in the year or has borrowed money that it has not repaid before the commencement of the year,

(b) received a gift of property (other than a contribution) in the year or has received a gift of property and has not divested itself

of the property or any property substituted therefor before the commencement of the year, or

(c) carried on any business or businesses in the year

tax is payable under this Part by the trust

(d) where paragraph (a) or (b) applies, on its taxable income for the year, and

(e) where neither paragraph (a) nor (b) applies and where paragraph (c) applies, on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from the business or businesses, as the case may be.

Para. 146.2(1)(c) repealed by 1984, c. 1, subsec. 81(1), applicable to 1985 *et seq.* and in its application to the 1983 and 1984 taxation years, paragraph 146.2(1)(c) shall be read as follows:

(c) "new home furnishings", in relation to the acquisition thereof by a taxpayer, means any of the following furnishings that have not been used or acquired for use before the later of April 20, 1983 and the date of their acquisition by the taxpayer by any person for any purpose, other than display, namely,

(i) furniture designed for use in the home, other than any item of furniture listed or described in, or containing as a component part thereof any item listed or described in, any of subparagraphs (v) to (viii),

(ii) counter top stoves, clothes washers, clothes dryers, dishwashers, floor polishers, freezers, ovens, refrigerators, rug shampooers, stoves or vacuum cleaners, other than any such item with a purchase price of less than $100,

(iii) curtains, drapes, blinds or interior window shutters, or

(iv) rugs, carpets or underpadding,

but does not include

(v) any item listed or described in any of subparagraphs (i) to (iv) if the item is for outdoor use or is acquired by the taxpayer for the purpose of gaining or producing income,

(vi) clocks, musical instruments and home entertainment equipment including games tables, computers, projectors, recording equipment, radios, stereos, televisions or video games,

(vii) humidifiers, dehumidifiers, air cleaners or conditioners, and

(viii) listed personal property;

Para. 146.2(1)(c) formerly read:

(c) "home furnishings" — "home furnishings" means property as defined by regulation used to furnish a home;

Para. 146.2(2)(f) substituted by 1984, c. 1, subsec. 81(2), applicable to 1983 *et seq.* Para. 146.2(2)(f) formerly read:

(f) the beneficiary has not previously been a beneficiary under a registered home ownership savings plan;

Para. 146.2(2)(h.1) added by 1980-81-82-83, c. 140, subsec. 99(1), applicable by 1984, c. 1, s. 114 (deemed in force on March 30, 1983), to plans issued after March 1983.

Paras. 146.2(2)(b.1) added, (d), (e) substituted by 1980-81-82-83, c. 40, subsecs. 97(2), (3), in force December 1, 1980. Paras. 146(2)(d), (e) formerly read:

(d) the plan includes a provision stipulating that the trustee shall, on the death of the beneficiary, transfer or distribute all the property of the trust governed by the plan;

(e) the beneficiary and the trust established under the plan are resident in Canada;

Para. 146.2(1)(d) substituted by 1980-81-82-83, c. 40, subsec. 97(1), in force December 1, 1980. Para. 146.2(1)(d) formerly read:

(d) "home ownership savings plan" means an arrangement under which payment is made by an individual in trust to a corporation resident in Canada and licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, of any periodic or other amount as a payment under the trust to be used, invested or otherwise applied by that corporation for the purpose of providing to that individual as the beneficiary under the arrangement an amount to be used for the purchase by him of his owner-occupied home;

Paras. 146.2(2)(g), (h) substituted by 1977-78, c. 1, subsec. 73(1), applicable to 1978 *et seq.* Paras. 146.2(2)(g), (h) formerly read:

(g) the beneficiary does not own, whether jointly with another person or otherwise, real property in Canada, any portion of which was used at any time in the year as a dwelling place by any individual;

(h) the beneficiary does not have an interest in a partnership that owns, whether jointly or otherwise, real property in Canada any portion of which was used at any time in the year as a dwelling place by any individual; and

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 146.2(4) repealed by 1986, c. 6, subsec. 82(2), applicable with respect to contributions made under, and amounts received out of or under, registered home ownership savings plans after May 22, 1985. Subsec. 146.2(4) formerly read:

(4) Amount of contribution deductible — There may be deducted in computing the income for a taxation year of a taxpayer who, at any time in the year, is a beneficiary under a registered home ownership savings plan, the amount of any contribution paid by the taxpayer under the plan during the year not exceeding the lesser of

(a) $1,000; and

(b) $10,000 minus the aggregate of contributions made by him in respect of previous years.

All that portion of subsec. 146.2(4) preceding para. (a) substituted by 1977-78, c. 1, subsec. 73(2), applicable to 1978 *et seq.* That portion formerly read:

(4) There may be deducted in computing the income for a taxation year of a taxpayer who is a beneficiary under a registered home ownership savings plan or becomes, within 60 days after the end of the taxation year, a beneficiary thereunder, the amount of any contribution paid by the taxpayer under the plan during the year or within 60 days after the end of the year (to the extent that it has not been deducted in computing his income for a previous year), not exceeding the lesser of

1984 Application: 1984, c. 1, subsec. 81(3) (as amended by 1984, c. 45, s. 54) provides that, in its application to the 1983 and 1984 taxation years, subsec. 146.2(4) shall be read as follows:

(4) There may be deducted in computing the income for a taxation year of a taxpayer who, at any time in the year, is a beneficiary under a registered home ownership savings plan, the amount of any contribution paid by the taxpayer under the plan during the year not exceeding the least of

(a) $1,000

(b) the aggregate of all contributions paid by the taxpayer in the year and before April 20, 1983 plus the amount, if any, by which

(i) the lesser of

(A) the aggregate of all contributions paid by the taxpayer in the year and after April 19, 1983, and

(B) $1,000

exceeds

(ii) the aggregate of all amounts each of which is an amount that, by virtue of subparagraph (6)(a)(ii), is not required to be included in computing the taxpayer's income pursuant to subsection (6), and

(c) $10,000 minus the aggregate of all contributions made by him in respect of previous taxation years,

except that where

(d) the taxpayer or his spouse with whom he resided during the year did not, at any time after 1981 and before the date of acquisition of the owner-occupied home described in paragraph (f), own (whether jointly with another person or otherwise) real property any portion of which was used after 1981 as a dwelling place, and

(e) all amounts in the plan have been received in the year by the taxpayer as a beneficiary in satisfaction of all his rights under the plan and have been used by him during the period beginning on April 20, 1983 and ending on the day that is 60 days after the end of the year, to acquire within that period his owner-occupied home or his owner-occupied home and new home furnishings therefor,

the taxpayer may deduct under this subsection a specified amount if

(f) his owner-occupied home had not been used for any purpose other than display before its acquisition by him and is inhabited by him before the end of the period referred to in paragraph (e),

(g) no person other than the taxpayer has deducted a specified amount under this subsection for a taxation year in respect of the acquisition of the same owner-occupied home, and

(h) no amount has been, and in no case will be, paid to any person under section 34.16 of the *National Housing Act* in respect of the same owner-occupied home;

and for the purposes of this section,

(i) a taxpayer who

(i) acquired his owner-occupied home described in paragraph (f) at any time after April 19, 1983 and before March 2, 1985,

(ii) was otherwise eligible to become a beneficiary under a registered home ownership savings plan before 1985 and immediately before such acquisition, and

(iii) was not a beneficiary (at any time before filing an election in prescribed form) or an applicant to become a beneficiary (at the time of filing such an election) under a registered home ownership savings plan,

shall, if he so elects before May 1, 1986, be deemed, from the time of such election, to have been a beneficiary under a registered home ownership savings plan at the commencement of

(iv) the 1983 taxation year, where he acquired his owner-occupied home before January 1, 1984,

(v) the 1984 taxation year, where he acquired his owner-occupied home after February 29, 1984 and before March 2, 1985, or

(vi) the 1983 or the 1984 taxation year, where he acquired his owner-occupied home after December 31, 1983 and before March 1, 1984,

and to have complied with all the requirements of paragraph (e) in respect of that year;

(j) "specified amount" in relation to a taxpayer for a taxation year means an amount equal to the lesser of

(i) the amount determined in respect of the taxpayer for the year under paragraph (c), and

(ii) the amount, if any, by which the aggregate of the cost to the taxpayer of his owner-occupied home described in paragraph (f) and of the new home furnishings therefor and the taxpayer's total contributions under a registered home ownership savings plan in the year exceeds the aggregate of all amounts each of which is an amount that, by virtue of paragraph (6)(a), was not required to be included in computing his income for the year or the immediately preceding taxation year pursuant to subsection (6) or that was deducted in computing his income for the year under subsection (6.1), as the case may be; and

(k) a taxpayer who would have been entitled to claim a deduction of a specified amount in respect of a dwelling place in the 1983 or 1984 taxation year were it not for the fact that, for reasons beyond his control, the dwelling place could not be registered under the relevant land registration laws at the time he commenced to occupy the dwelling place shall be deemed to have acquired the dwelling place at the time he commenced its occupation if the dwelling place is registered before 1986, and where the taxpayer has commenced to occupy the dwelling place in 1983 and all amounts in the registered home ownership savings plan have been received in 1984 by him as a beneficiary in satisfaction of all his rights under the plan,

(i) the taxpayer is deemed to have received all amounts in the plan in 1983 in satisfaction of all his rights under the plan, and

(ii) any amount contributed to his plan in 1984 is deemed, for the purpose of computing the specified amount, to be a contribution made by the taxpayer in respect of previous taxation years.

1978 Application: 1977-78, c. 1, subsec. 73(12) provides that in its application to the 1978 taxation year, all that portion of subsec. 146.2(4) preceding para. (a) shall be read as follows:

(4) There may be deducted in computing the income for a taxation year of a taxpayer who, at any time in the year, is a beneficiary under a registered home ownership savings plan, the amount of any contribution paid by the taxpayer under the plan during the year (to the extent that it has not been deducted in computing his income for a previous year), not exceeding the lesser of

(5), (6) [Repealed under former Act]

Pre-RSC History: Subsec. 146.2(5) repealed, applicable to 1986 *et seq.*, subsec. 146.2(6) repealed, applicable with respect to contributions made under, and amounts received out of or under, registered home ownership savings plans after May 22, 1985, by 1986, c. 6, subsecs. 82(3), (4). Subsecs. 146.2(5) and (6) formerly read:

(5) Persons who may not deduct — No amount may be deducted by a taxpayer under subsection (4) for a taxation year if, in that year and the immediately preceding taxation year, he or his spouse with whom he resided during both years

(a) had an owner-occupied home as defined in paragraph (1)(f) if that paragraph were read without reference to the phrase "or within 60 days after the end of the year" where it appears therein;

(b) owned, whether jointly with another person or otherwise, real property, any portion of which was used in those years as a dwelling place by any individual; or

(c) had an interest in a partnership that owned, whether jointly or otherwise, real property, any portion of which was used in those years as a dwelling place by any individual.

(6) Receipts from plan to beneficiary to be included in income — There shall be included in computing the income of a taxpayer for a taxation year the aggregate of all amounts each of which is an amount received by him as a beneficiary in the year out of or under a registered home ownership savings plan, except to the extent that such amount

(a) is a payment to the taxpayer and is used by him in the year or within 60 days after the end of the year to acquire his owner-occupied home;

(b) has been deemed by subsection (9) to have been received by a beneficiary and has been included in computing any taxpayer's income; or

(c) is that portion of a refund, made within 120 days after the end of the immediately preceding taxation year, that is the excess described in paragraph (7)(a).

All that portion of subsec. 146.2(6) preceding para. (a) substituted by 1980-81-82-83, c. 40, subsec. 97(4), in force December 1, 1980. That portion formerly read:

(6) Receipts from trust to beneficiary to be included in income — There shall be included in computing the income of a taxpayer for a taxation year the aggregate of all amounts each of which is an amount received by him in the year from a trust governed by a registered home ownership savings plan, except to the extent that such amount

Subsecs. 146.2(5), (6) substituted by 1977-78, c. 1, subsec. 73(3), applicable to 1977 *et seq.* Subsecs. 146.2(5), (6) formerly read:

(5) No amount may be deducted by a taxpayer under subsection (4) for a taxation year in which

(a) he had an owner-occupied home as defined in paragraph (1)(f) if that paragraph were read without reference to the phrase "or within 60 days after the end of the year" where it appears therein;

(b) he owned, whether jointly with another person or otherwise, real property in Canada, any portion of which was used in the year as a dwelling place by any individual; or

(c) he had an interest in a partnership that owned, whether jointly or otherwise, real property in Canada, any portion of which was used in the year as a dwelling place by any individual.

(6) There shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year from a

trust governed by a registered home ownership savings plan, except to the extent that such amounts

(a) are used by the taxpayer in the year or within 60 days after the end of the year to purchase

(i) his owner-occupied home, or

(ii) home furnishings for

(A) the owner-occupied home referred to in subparagraph (i), or

(B) the owner-occupied home of his spouse; or

(b) have been deemed by subsection (9) to have been received by a beneficiary and have been included in computing any taxpayer's income.

1984 Application: 1984, c. 1, subsec. 81(5) provides that in its application to the 1984 taxation year, para. 146.2(6)(a) shall read:

(a) is a payment to the taxpayer that he used in the year or within 60 days after the end of the year to acquire his owner-occupied home described in paragraph (4)(f), to acquire such a home and new home furnishings therefor or to acquire his owner-occupied home;

1984, c. 1, subsec. 81(4) provides that in its application to the 1983 taxation year, para. 146.2(6)(a) shall read:

(a) is a payment

(i) to the taxpayer that he used in the year or within 60 days after the end of the year to acquire his owner-occupied home described in paragraph (4)(f), to acquire such a home and new home furnishings therefor or to acquire his owner-occupied home, or

(ii) in the case of a taxpayer who was a beneficiary under such a plan on April 19, 1983, to the taxpayer that he used in the year or within 60 days after the end of the year to purchase new home furnishings for his personal use in Canada if such purchase is proven by filing receipts with his return of income for the year under this Part;

1977 Application: 1977-78, c. 1, subsec. 73(13) provides that in their application to the 1977 taxation year, subsec. 146.2(5) shall be read without reference to the expression "or his spouse with whom he resided during both years" and the reference to "real property" in paras. 146.2(5)(b), (c) shall be read as a reference to "real property in Canada". In its application to the 1977 taxation year, para. 146.2(6) shall be read as follows:

(a) is a payment to the taxpayer and is used by him in the year or within 60 days after the end of the year to acquire

(i) his owner-occupied home, or

(ii) home furnishings for the owner-occupied home referred to in subparagraph (i) or the owner-occupied home of his spouse;.

(6.1) [Repealed under former Act]

Pre-RSC History: Subsec. 146.2(6.1) repealed by 1986, c. 6, subsec. 82(5), applicable to 1986 *et seq*. Subsec. 146.2(6.1) formerly read:

(6.1) Deduction in computing income — Where, by virtue of subsection (6), an amount has been included in computing the income of a taxpayer for a particular taxation year, there may be deducted in computing the income of the taxpayer for the taxation year that is one of the 3 taxation years next succeeding the particular taxation year and in which his owner-occupied home is acquired, the lesser of

(a) the aggregate of all amounts each of which is an amount that was used by him in the particular taxation year or in any taxation year subsequent to the particular taxation year that is not subsequent to the taxation year to acquire his owner-occupied home, and

(b) the amount, if any, by which the amount so included in computing his income exceeds the portion thereof in respect of which an amount has been deducted pursuant to paragraph 60(j) or subsection 61(1) in computing the taxpayer's income for the particular taxation year,

except that no amount may be deducted by the taxpayer for a year under this subsection if an amount has been deducted under this subsection in computing his income for any preceding taxation year.

Para. 146.2(6.1)(b) substituted and the portion following added by 1979, c. 5, subsec. 48(1), applicable to 1978 *et seq*. Para. 146.2(6.1)(b) formerly read:

(b) the amount, if any, by which the amount so included in computing his income exceeds the portion thereof in respect of which an amount has been deducted pursuant to paragraph 60(j) or subsection 61(1) in computing the taxpayer's income for the particular taxation year.

Subsec. 146.2(6.1) added by 1977-78, c. 1, subsec. 73(3), applicable to payments out of a registered home ownership savings plan that were included in computing a taxpayer's income for the 1975 or any subsequent taxation year.

(7), (7.1), (8) [Repealed under former Act]

Pre-RSC History: Subsecs. 146.2(7), (7.1), (8) repealed by 1986, c. 6, subsec. 82(6), applicable with respect to revocations that are effective as of any date after May 22, 1985. Subsecs. 146.2(7), (7.1), (8) formerly read:

(7) Revocation — Where at any time after a home ownership savings plan has been accepted for registration for the purposes of this Act

(a) a taxpayer makes a contribution in respect of the plan for a taxation year in excess of the amount deductible by him under subsection (4) and the excess, together with any interest, profits or gains attributable thereto, has not been refunded to the taxpayer out of the plan within 120 days after the end of the year,

(b) the Minister is satisfied that the requirements of subsection (2) were not complied with at the time the plan was registered or that the plan subsequently failed to meet the requirements of paragraph (2)(a), (b), (c), (d) or (i), or

(c) the Minister is satisfied that, in respect of the registration of a second plan, the provisions of subsection (17) were not complied with,

the Minister may, where paragraph (a) applies, revoke the registration of the plan as of any date following the day that is 120 days after the end of the year, or where paragraph (b) or (c) applies, revoke the registration of the plan referred to therein as of any day and he shall thereafter give notice of his action by registered mail to the trust or depositary, as the case may be, and to the beneficiary.

(7.1) Idem — Where on any day after June 30, 1982 a benefit or loan is extended or continues to be extended as a consequence of the existence of a registered home ownership savings plan and that benefit or loan would be prohibited if the plan met the requirement for registration contained in paragraph (2)(h.1), the Minister may revoke the registration of the plan as of that or any subsequent day that is specified by the Minister in a notice given by registered mail to the trust or depositary, as the case may be, and to the beneficiary.

(8) Deemed realization on revocation by Minister — Where at any time the Minister revokes the registration of a registered home ownership savings plan pursuant to subsection (7) or (7.1), the beneficiary shall be deemed at that time to have received as a beneficiary out of or under a registered home ownership savings plan an amount equal to the fair market value at that time of all the property of the plan and, notwithstanding subsection (6), no amount may be deducted in computing his income in respect of any amounts used to purchase an owner-occupied home.

Subsec. 146.2(7.1) added and subsec. 146.2(8) substituted by 1980-81-82-83, c. 140, subsec. 99(2), to add a reference to subsec. (7.1).

Subsec. 146.2(8) substituted by 1980-81-82-83, c. 40, subsec. 97(7), in force December 1, 1980. Subsec. 146.2(8) formerly read:

(8) Where at any time the Minister revokes the registration of a registered home ownership savings plan pursuant to subsection (7), the beneficiary shall be deemed at that time to have received from a trust governed by a registered home ownership savings plan an amount equal to the fair market value at that time of all the property of the trust and, notwithstanding subsection (6), no amount may be deducted in computing his income in respect of any amounts used to purchase an owner-occupied home or home furnishings.

Para. 146.2(7)(a) and all that portion of subsec. 146.2(7) following para. (c) substituted by 1980-81-82-83, c. 40, subsecs. 97(5), (6), in force December 1, 1980. Para. 146.2(7)(a) and that portion formerly read:

(a) a taxpayer makes a contribution in respect of the plan for a taxation year in excess of the amount deductible by him under subsection (4) and the excess, together with any interest, profits or gains attributable thereto, has not been refunded to the taxpayer by the trustee of a trust governed by the plan within 120 days after the end of the year,

. . . . .

the Minister may, where paragraph (a) applies, revoke the registration of the plan as of any date following the day that is 120 days after the end of the year, or where paragraph (b) or (c) applies, revoke the registration of the plan referred to therein as of any day and he shall thereafter give notice of his action by registered mail to the trustee and to the beneficiary.

Para. 146.2(7)(b) substituted by 1977-78, c. 1, subsec. 73(4), applicable after March 31, 1977. Para. 146.2(7)(b) formerly read:

(b) the Minister is satisfied that the plan failed to comply with the requirements of subsection (2) at the time it was registered, or

Subsec. 146.2(7) substituted by 1976-77, c. 4, s. 57, applicable to 1976 *et seq.* Subsec. 146.2(7) formerly read:

(7) Where at any time after a home ownership savings plan has been accepted for registration for the purposes of this Act

(a) a taxpayer makes a contribution in respect of the plan for a taxation year in excess of the amount deductible by him under subsection (4) and the excess, together with any interest, profits or gains attributable thereto, has not been refunded to the taxpayer by the trustee of a trust governed by the plan within 120 days after the end of the year, or

(b) the Minister is satisfied that the plan failed to comply with the requirements of subsection (2) at the time it was registered,

the Minister may, where paragraph (a) applies, revoke the registration of the plan as of any date following the day that is 120 days after the end of the year, or where paragraph (b) applies, revoke the registration of the plan as of any day and he shall thereafter give notice of his action by registered mail to the trustee and to the beneficiary.

(8.1) [Repealed under former Act]

Pre-RSC History: Subsec. 146.2(8.1) repealed by 1986, c. 6, subsec. 82(7), applicable to 1986 *et seq.* Subsec. 146.2(8.1) formerly read:

(8.1) Rules applicable to certain taxation years after RHOSP entered into — In respect of a particular taxation year of a beneficiary under a registered home ownership savings plan that is the 21st taxation year of the beneficiary after his taxation year in which the plan was entered into, and in respect of taxation years subsequent thereto, the following rules apply:

(a) the beneficiary shall be deemed to have received as a beneficiary in the particular taxation year, out of or under a registered home ownership savings plan, an amount equal to the fair market value of all the property of the plan as at the end of the immediately preceding taxation year;

(b) notwithstanding subsections (6) and (6.1), no amount may be deducted in computing the beneficiary's income in respect of any amounts used to acquire an owner-occupied home in the particular taxation year or any subsequent taxation year; and

(c) for the particular taxation year and all taxation years subsequent to that year, the plan shall be deemed for the purposes of this Act not to be a registered home ownership savings plan.

Para. 146.2(8.1)(a) substituted by 1980-81-82-83, c. 40, subsec. 97(8), in force December 1, 1980. Para. 146.2(8.1)(a) formerly read:

(a) the beneficiary shall be deemed to have received in the particular taxation year, from a trust governed by a registered home ownership savings plan, an amount equal to the fair market value of all the property of the trust as at the end of the immediately preceding taxation year;

Subsec. 146.2(8.1) added by 1977-78, c. 1, subsec. 73(5).

(9), (10) [Repealed under former Act]

Pre-RSC History: Subsecs. 146.2(9), (10) repealed by 1986, c. 6, subsec. 82(8), applicable with respect to deaths occurring after May 22, 1985. Subsecs. 146.2(9), (10) formerly read:

(9) Deemed realization on death — In the event of the death of a beneficiary, he shall, subject to subsection (10), be deemed to have received as a beneficiary out of or under a registered home ownership savings plan immediately before his death an amount equal to the fair market value at that time of all the property of the plan of which he was the beneficiary.

(10) Deemed receipt from plan — Where on the death of a beneficiary as a consequence thereof the spouse of the beneficiary becomes entitled to receive a single payment out of or under a registered home ownership savings plan and the spouse receives that payment within 15 months after the death of the beneficiary, that payment shall for the purposes of subsection (6), be deemed to be an amount received by the spouse as a beneficiary out of or under a registered home ownership savings plan and no amount in respect of that payment shall be deemed to have been received by the deceased beneficiary immediately before his death.

Subsecs. 146.2(9), (10) substituted by 1980-81-82-83, c. 40, subsec. 97(9), in force December 1, 1980. Subsecs. 146.2(9), (10) formerly read:

(9) In the event of the death of a beneficiary, an amount equal to the fair market value at that time of all the property of the trust governed by a registered home ownership savings plan of which he was the beneficiary shall (subject to subsection (10)), be deemed to have been received by him immediately before his death from a trust governed by the plan.

(10) Where on the death of a beneficiary and as a consequence thereof the spouse of the beneficiary becomes entitled to receive a single payment from a trust governed by a registered home ownership savings plan and the spouse receives that payment within 15 months after the death of the beneficiary, that payment shall, for the purposes of subsection (6), be deemed to be an amount received by the spouse from a trust governed by a registered home ownership savings plan and no amount in respect of that payment shall be deemed to have been received by the deceased beneficiary immediately before his death.

(11)–(21) [Repealed under former Act]

Pre-RSC History: Subsecs. 146.2(11) to (21) repealed by 1986, c. 6, subsec. 82(9), applicable to 1986 *et seq.* Subsecs. 146.2(11) to (21) formerly read:

(11) Amount received from revoked plan deemed exempt income — For the purpose of paragraph 20(1)(c), any amount received by a taxpayer from a registered home ownership savings plan or from such a plan the registration of which has been revoked by the Minister pursuant to subsection (7) shall be deemed to be exempt income.

(12) Non-qualified investment — Where in a taxation year a trust governed by a registered home ownership savings plan

(a) acquires a non-qualified investment, or

(b) uses or permits to be used a property of the trust as security for a loan,

the fair market value of

(c) the non-qualified investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used

as the case may be, shall be included in computing the income for the year of the taxpayer who is the beneficiary under the plan.

(13) Disposition by trust of non-qualified investment — Where in a taxation year a trust governed by a registered home ownership savings plan disposes of a property that, when acquired, was a non-qualified investment, there may be deducted in computing the income for the taxation year of the taxpayer who is the beneficiary under the plan, an amount equal to the lesser of

(a) the amount that, by virtue of subsection (12), was included in computing the income of that taxpayer in respect of the acquisition of that property; and

(b) the proceeds of disposition of the property.

(14) Idem — Where a trust governed by a registered home ownership savings plan has acquired a property that is a non-qualified investment,

(a) tax payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than the property that is a non-qualified investment or no capital gains or capital losses other than from the disposition of such property, as the case may be, and

(b) for the purposes of paragraph (a)

(i) "income" includes dividends described in section 83, and

(ii) paragraphs 38(a) and (b) shall be read without reference to the words "½ of" where they appear therein.

(15) Where disposition of property by trust — Where in a taxation year a trust governed by a registered home ownership savings plan

(a) disposes of property for a consideration greater than the fair market value of the property at the time of the disposition, or

(b) acquires property for a consideration less than the fair market value of the property at the time of the acquisition, or for no consideration,

the difference between such fair market value and the consideration, if any, shall be included in computing the income for the taxation year of the beneficiary under the plan.

(16) Deemed realization — Where in a taxation year a loan for which a trust governed by a registered home ownership savings plan has used or permitted to be used trust property as security ceases to be extant, and the fair market value of the property so used was included by virtue of subsection (12) in computing the income of the taxpayer who is the beneficiary under the plan, there may be deducted in computing the income of the taxpayer for the taxation year an amount equal to the amount, if any, remaining when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using or permitting to be used the property as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the amount so included in computing the income of the taxpayer in consequence of the trust's using or permitting to be used the property as security for the loan.

(17) Registration of "second plan" — Where a beneficiary under a registered home ownership savings plan (in this section referred to as the "first plan") enters into another arrangement described in paragraph (1)(d) (in this section referred to as the "second plan"), the Minister may, notwithstanding paragraphs (2)(f), (g) and (h), register the second plan if

(a) all amounts in the first plan have been paid or transferred, on behalf of the beneficiary, to the second plan;

(b) the second plan complies with the requirements of paragraphs (2)(a) to (d) and (i) at the time of the payment or transfer; and

(c) the beneficiary and the trust established under the second plan, or the depositary involved in the second plan, as the case may be, are resident in Canada at the time of the payment or transfer.

(18) Transfer of funds — Notwithstanding anything in this section, a registered home ownership savings plan may at any time be revised or amended to provide for the payment or transfer, on behalf of the beneficiary under the plan, of all funds thereunder by the corporation with whom the beneficiary has an arrangement described in paragraph (1)(d) to any corporation with whom the beneficiary has such an arrangement, and upon such payment or transfer of those funds

(a) the amount so paid or transferred on behalf of the beneficiary shall not, by reason only of the payment or transfer, be included in computing his income under subsection (6); and

(b) no deduction may be made under subsection (4) or section 60 in respect of the amount so paid or transferred in computing the income of the beneficiary for a taxation year.

(19) Idem — For the purposes of subsections (4) and (8.1) and paragraph (7)(a), the first plan of a particular beneficiary, his second plan and any subsequent such second plans are deemed to be one plan.

(20) Where amount credited or added deemed not received — Where an amount is credited or added to a deposit with a depositary referred to in subparagraph (1)(d)(ii) as interest or income in respect of the deposit, and where

(a) the deposit is a registered home ownership savings plan at the time the amount is credited or added to the deposit, and

(b) the beneficiary under the plan is alive at the time the amount is credited or added,

the amount shall be deemed not to be received by the beneficiary by reason only of such crediting or adding.

(21) Payment other than single payment — Notwithstanding anything in this section, where

(a) at any time after April 19, 1983 and before 1984 an individual receives a payment as a beneficiary out of or under a registered home ownership savings plan,

(b) the individual was the beneficiary under such a plan on April 19, 1983, and

(c) the individual uses an amount equal to the payment to purchase on or before February 29, 1984 new home furnishings for his use in Canada,

the Minister shall not revoke the plan pursuant to paragraph (7)(b) by reason only that such payment was made out of or under the plan to the individual.

Subsec. 146.2(21) added by 1984, c. 1, subsec. 81(6).

Para. 146.2(17)(c) substituted by 1980-81-82-83, c. 40, subsec. 97(10), in force December 1, 1980. Para. 146.2(17)(c) formerly read:

(c) the beneficiary and the trust established under the second plan are resident in Canada at the time of the payment or transfer.

Subsec. 146.2(20) added by 1980-81-82-83, c. 40, subsec. 97(11), in force December 1, 1980.

All that portion of subsec. 146.2(12) following para. (b) substituted by 1979, c. 5, subsec. 48(2), applicable in respect of property acquired or used as security after November 16, 1978. That portion formerly read:

the cost to the trust of the non-qualified investment or the fair market value at the time the property is used as security of the property so used, as the case may be, shall be included in computing the income for the year of the taxpayer who is the beneficiary under the plan.

All that portion of subsec. 146.2(18) preceding para. (a) substituted by 1979, c. 5, subsec. 48(3), to substitute "any" corporation for "another" corporation.

Subsec. 146.2(13) substituted by 1977-78, c. 1, subsec. 73(6). Subsec. 146.2(13) formerly read:

(13) Where in a taxation year a trust governed by a registered home ownership savings plan disposes of a non-qualified investment, the cost of which was included by virtue of subsection (12) in computing the income of the taxpayer who is the beneficiary under the plan, there may be deducted in computing the income of the taxpayer for the taxation year an amount equal to the lesser of

(a) the cost so included in computing the taxpayer's income; and

(b) the proceeds of disposition of the non-qualified investment.

All that portion of subsec. 146.2(14) preceding para. (a) substituted by 1977-78, c. 1, subsec. 73(6). That portion formerly read:

(14) Where a trust has acquired a property that is a non-qualified investment,

Subsec. 146.2(19) substituted by 1977-78, c. 1, subsec. 73(7), to add reference to subsec. (8.1).

Subsecs. 146.2(17)–(19) added by 1976-77, c. 4, s. 57, applicable to 1976 *et seq.*

(22) Contributions to R.H.O.S.P. after May 22, 1985 — There shall be included in computing the income of a taxpayer for the 1985 taxation year an amount equal to that portion of the income of a registered home ownership savings plan, under which the taxpayer is a beneficiary, that can reasonably be considered to have accrued to the end of 1985, to have become receivable or to have been received before the end of 1985, and to be attributable to amounts contributed after May 22, 1985 to or under the plan.

Pre-RSC History: Subsec. 146.2(22) added by 1986, c. 6, subsec. 82(10), applicable to the 1985 taxation year.

(23) Application of subsec. 146.2(1) of R.S.C., 1952, c. 148 — The definitions in subsection 146.2(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year, apply to subsection (22).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Origin of subsec. 146.2(23): R.S.C. 1985, c. 1 (5th Supp.).

Pre-RSC History [s. 146.2]: S. 146.2 added by 1974-75-76, c. 26, s. 100, applicable to 1974 *et seq.* except that in its application to the 1974 taxation year the references therein to "60 days" shall be read as "90 days" and where a contribution is made to a registered home ownership savings plan before April 1, 1975, the plan shall be deemed to have been registered on January 1, 1975 and the contribution shall be deemed to have been made on that date.

Registered Retirement Income Funds

146.3 (1) Definitions — In this section,

"annuitant" under a retirement income fund at any time means

(a) the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund, where the first individual is alive at that time,

(b) after the death of the first individual, a spouse (in this paragraph[34] referred to as the "surviving spouse") of the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund after the death of the first individual, where the surviving spouse is alive at that time and the undertaking was made pursuant to an election described in that definition of the first individual or with the consent of the legal representative of the first individual, and

Proposed Amendment — 146.3(1)"annuitant"(b), (c)

(b) after the death of the first individual, a spouse or common-law partner (in this definition referred to as the "survivor") of the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund after the death of the first individual, where the survivor is alive at that time and the undertaking was made pursuant to an election described in that definition of the first individual with the consent of the legal representative of the first individual, and

(c) after the death of the survivor, another spouse or common-law partner of the survivor to whom the carrier has undertaken, with the consent of the legal representative of the survivor, to make payments described in the definition "retirement income fund" out of or under the fund after the death of the survivor, where that other spouse or common-law partner is alive at that time;

Application: 2000, c. 12 (Bill C-23), s. 136, will amend paras. (b) and (c) of the definition "annuitant" in subsec. 146.3(1) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) after the death of the surviving spouse, another spouse of the surviving spouse to whom the carrier has undertaken, with the consent of the legal representative of the surviving spouse, to make payments described in the definition "retirement income fund" out of or under the fund after the death of the surviving spouse, where that other spouse is alive at that time;

Related Provisions: 252(4)(a) — Extended meaning of "spouse" and "former spouse".

History: The definition "annuitant" in subsec. 146.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(1), applicable to deaths occurring after 1990. The definition formerly read:

> "annuitant" under a retirement income fund at any particular time means the individual to whom the carrier has undertaken to make the payments described in the definition "retirement income fund" in this subsection out of or under the fund;

Pre-RSC History: *The definition "annuitant" was para. 146.3(1)(a).*

Forms: RC4178: Death of a RRIF annuitant [guide].

"carrier" of a retirement income fund means

(a) a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business,

(b) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(c) a corporation approved by the Governor in Council for the purposes of section 146 that is licensed or otherwise authorized under the laws of Canada or a province to issue investment contracts, or

(d) a person referred to as a depositary in section 146,

that has agreed to make payments under a retirement income fund to the individual who is the annuitant under the fund;

Pre-RSC History: *The definition "carrier" was para. 146.3(1)(b).*

Subpara. 146.3(1)(b)(iv) added by 1980-81-82-83, c. 40, subsec. 98(1), in force December 1, 1980. See Table of Concordance.

Forms: T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

"designated benefit" of an individual in respect of a registered retirement income fund means the total of

(a) such amounts paid out of or under the fund after the death of the last annuitant thereunder to the legal representative of that annuitant

(i) as would, had they been paid under the fund to the individual, have been refunds of premiums (in this paragraph having the meaning assigned by subsection 146(1)) if the fund were a registered retirement savings plan that had not matured before the death, and

(ii) as are designated jointly by the legal representative and the individual in prescribed form filed with the Minister, and

(b) amounts paid out of or under the fund after the death of the last annuitant thereunder to the individual that would be refunds of premiums had the fund been a registered retirement savings plan that had not matured before the death;

Related Provisions: 146.3(6.1) — Designated benefit deemed received; 146.3(6.11) — Transfer of designated benefit.

History: The definition "designated benefit" added to subsec. 146.3(1) by 1994, c. 21, subsec. 71(2), applicable to deaths occurring after 1992.

Forms: T1090: Death of a RRIF annuitant — designated benefit.

"minimum amount" under a retirement income fund for a year is the amount determined by the formula

$$(A \times B) + C$$

where

A is the total fair market value of all properties held in connection with the fund at the beginning of the year

[34] *Sic.* This should read "in this definition".

(other than annuity contracts held by a trust governed by the fund that, at the beginning of the year, are not described in paragraph (b.1) of the definition "qualified investment");

B is

(a) where the first annuitant under the fund elected in respect of the fund under paragraph (b) of the definition "minimum amount" in this subsection, as it read before 1992, or under subparagraph 146.3(1)(f)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to use the age of another individual, the prescribed factor for the year in respect of the other individual,

(b) where paragraph (a) does not apply and the first annuitant under the fund so elects before any payment has been made under the fund by the carrier, the prescribed factor for the year in respect of an individual who was the spouse of the first annuitant at the time of the election, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) in any other case, the prescribed factor for the year in respect of the first annuitant under the fund, and

C is, where the fund governs a trust, the total of all amounts each of which is

(a) a periodic payment under an annuity contract held by the trust at the beginning of the year (other than an annuity contract described at the beginning of the year in paragraph (b.1) of the definition "qualified investment") that is paid to the trust in the year, or

(b) if the periodic payment under such an annuity contract is not made to the trust because the trust disposed of the right to that payment in the year, a reasonable estimate of that payment on the assumption that the annuity contract had been held throughout the year and no rights under the contract were disposed of in the year;

Related Provisions: 146.3(1)"retirement income fund" — Requirement to withdraw minimum amount annually; 146.3(2)(e.1), (e.2) — Requirement for carrier to retain enough property to pay out minimum amount; 146.3(5.1) — Amount included in income; 252(4) — Extended meaning of spouse; Reg. 100(1)"remuneration"(j.1), 103(6)(d.1) — Withholding tax on payments; *Income Tax Conventions Interpretation Act* 5"periodic pension payment"(c) — Withdrawal of more than twice the minimum amount per year is not "periodic".

History: The definition "minimum amount" in subsec. 146.3(1) amended by 1998, c. 19, subsec. 171(1), applicable

(a) to 1998 *et seq.* with respect to

(i) retirement income funds entered into after February 1986, and

(ii) retirement income funds entered into before March 1986 and revised or amended after February 1986 and before 1998;

(b) to the year in which a retirement income fund is first revised or amended after 1997 and to subsequent years, if the fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1998; and

(c) with respect to a retirement income fund that governs a trust that, after July 1997, holds a contract for an annuity, to all years that begin after the first day

(i) that is after July 1997, and

(ii) on which the trust holds such a contract.

The definition formerly read:

"minimum amount" under a retirement income fund for the year in which the fund is entered into is nil and for each subsequent year is the product obtained when the fair market value of the property held in connection with the fund at the beginning of that subsequent year is multiplied by

(a) where the first annuitant under the fund elected in respect of the fund under paragraph (b), as it read before 1992, or under subparagraph 146.3(1)(f)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read before 1986, to use the age of another individual, the prescribed amount for that subsequent year in respect of the other individual,

(b) where paragraph (a) does not apply and the first annuitant under the fund so elects before any payment has been made under the fund by the carrier, the prescribed amount for that subsequent year in respect of an individual who was the spouse of the first annuitant at the time of the election, or

(c) in any other case, the prescribed amount for that subsequent year in respect of the first annuitant under the fund;

The definition "minimum amount" in subsec. 146.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(2), applicable

(a) to 1992 *et seq.* with respect to retirement income funds

(i) entered into after February 1986, and

(ii) entered into before March 1986 and revised or amended after February 1986 and before 1992; and

(b) to the taxation year in which a retirement income fund is first revised or amended after February 1986 and to subsequent taxation years, where the fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1992.

However, the amended definition does not apply, for the purposes of subsec. 146.3(5.1), prescribed rules made for the purpose of subsection 153(1) of the Act, and section 5 of the *Income Tax Conventions Interpretation Act*, to payments made before 1993. The definition formerly read:

"minimum amount" under a retirement income fund

(a) for the year in which the fund was entered into is nil and

(b) for each subsequent year, the amount determined by the formula

$$\frac{A}{90-B}$$

where

A is the fair market value of the property held in connection with the fund at the beginning of the year, and

B is

(i) the number that is, or would be, the age in whole years of the annuitant at the beginning of the year, or

(ii) where the annuitant so elects before any payment has been made by the carrier of the fund, the number that is or would be the age in whole years of the annuitant's spouse at the beginning of the year;

Pre-RSC History: *The definition "minimum amount" was para. 146.3(1)(b.1).*

Para. 146.3(1)(b.1) added by 1986, c. 55, subsec. 57(1), applicable

(a) for 1986 *et seq.* with respect to RRIFs entered into after February 1986; and

(b) with respect to each RRIF that was entered into before March 1986 and that is revised or amended after February 1986, for the taxation year in which it is revised or amended, and following taxation years.

Regulations: 7308 (prescribed factor).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 78-18R5: Registered retirement income funds.

"property held" in connection with a retirement income fund means property held by the carrier of the fund, whether held by the carrier as trustee or beneficial owner thereof, the value of which, or the income or loss from

which, is relevant in determining the amount for a year payable to the annuitant under the fund;

Pre-RSC History: *The definition "property held" was para. 146.3(1)(c).*

Para. 146.3(1)(c) substituted by 1986, c. 55, subsec. 57(2), applicable

(a) for 1986 *et seq.* with respect to RRIF entered into after February 1986; and

(b) with respect to each RRIF that was entered into before March 1986 and that is revised or amended after February 1986, for the taxation year in which it is revised or amended, and the following taxation years.

Subsec. 146.3(1)(c) formerly read:

(c) "property held in connection with the arrangement" means property held by a carrier of a retirement income fund, whether held by the carrier as trustee or beneficial owner thereof,

(i) the value of which, or

(ii) the income or loss from which

is relevant in determining the amount payable in a year to the annuitant under the fund;

"qualified investment" for a trust governed by a registered retirement income fund means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the references in that definition to "a trust governed by a deferred profit sharing plan or revoked plan" were read as references to "a trust governed by a registered retirement income fund",

(b) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

(b.1) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(b.2) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than

(A) if the annuitant under the fund (in this paragraph referred to as the "RRIF annuitant") has made the election referred to in the definition "retirement income fund" in respect of the fund and a spouse, the life of the RRIF annuitant or the life of the spouse, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(B) in any other case, the life of the RRIF annuitant,

(iv) the day on which the periodic payments began or are to begin (in this paragraph referred to as the "start date") is not later than the end of the year following the year in which the contract was acquired by the trust,

(v) either

(A) the periodic payments are payable for the life of the RRIF annuitant or the joint lives of the RRIF annuitant and the RRIF annuitant's spouse and either there is no guaranteed period under the contract or there is a guaranteed period that begins at the start date and does not exceed a term equal to 90 years minus the lesser of

(I) the age in whole years at the start date of the RRIF annuitant (determined on the assumption that the RRIF annuitant is alive at the start date), and

(II) the age in whole years at the start date of a spouse of the RRIF annuitant (determined on the assumption that a spouse of the RRIF annuitant at the time the contract was acquired is a spouse of the RRIF annuitant at the start date), or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(B) the periodic payments are payable for a term equal to

(I) 90 years minus the age described in subclause (A)(I), or

(II) 90 years minus the age described in subclause (A)(II), and

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(c) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 132.2(1)(k) — Where share ceases to be qualified investment due to mutual fund reorganization; 146.3(7) — Tax on acquisition of non-qualified investment; 146.3(9) — Tax on income from non-qualified investment; 207.1(4) — Tax on holding of non-qualified investment.

History: Paras. (b.1) and (b.2) added to the definition "qualified investment" in subsec. 146.3(1) by 1998, c. 19, subsec. 171(2), applicable after 1996.

Pre-RSC History: *The definition "qualified investment" was para. 146.3(1)(d).*

Para. 146.3(1)(d) substituted by 1980-81-82-83, c. 48, subsec. 81(1), applicable to 1981 *et seq.* Para. 146.3(1)(d) formerly read:

(d) "qualified investment" for a registered retirement income fund means property that would be a qualified investment for a registered retirement savings plan other than property that is a life annuity contract:

Regulations: 221 (information return by issuer of qualified investment); 3200, 3201 (prescribed stock exchanges; but see also ITA 87(10)); 4900, 4901, 5100–5104 (prescribed investments).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146(10) waived because taxpayers thought they were qualified investments).

Information Circulars: 78-18R5: Registered retirement income funds.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"registered retirement income fund" means a retirement income fund accepted by the Minister for registration for the purposes of this Act and registered under the Social Insurance Number of the first annuitant under the fund;

Related Provisions: 18(1)(u) — Investment counselling fees for RRSP are non-deductible; 128.1(10)"excluded right or interest"(a)(ii) — No deemed disposition of RRIF on emigration; 248(1)"disposition"(g) — Transfer between RRSPs/RRIFs not a disposition; 248(1)"registered retirement income fund" — Definition applies to entire Act.

Pre-RSC History: *The definition "registered retirement income fund" was para. 146.3(1)(e).*

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs; IT-528: Transfers of funds between registered plans.

Forms: T2033: Direct transfer of RRSP property.

"retirement income fund" means an arrangement between a carrier and an annuitant under which, in consideration for the transfer to the carrier of property, the carrier undertakes to pay to the annuitant and, where the annuitant so elects, to the annuitant's spouse after the annuitant's death, in each year that begins not later than the first calendar year after the year in which the arrangement was entered into one or more amounts the total of which is not less than the minimum amount under the arrangement for the year, but the amount of any such payment shall not exceed the value of the property held in connection with the arrangement immediately before the time of the payment.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 146.3(1)"minimum amount" — determination of minimum amount to be paid out; 248(1)"retirement income fund" — Definition applies to entire Act.

History: The definition "retirement income fund" in subsec. 146.3(1) substituted by 1994, c. 21, subsec. 71(1), applicable

(a) to 1992 *et seq.* with respect to

(i) retirement income funds entered into after February 1986, and

(ii) retirement income funds entered into before March 1986 and revised or amended after February 1986 and before 1992; and

(b) where a retirement income fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1992, to the taxation year in which the fund is first revised or amended after February 1986 and to subsequent taxation years.

That definition formerly read:

"retirement income fund" means an arrangement between a carrier and an annuitant under which, in consideration for the transfer to the carrier of property (including money), the carrier undertakes to pay to the annuitant and, where the annuitant so elects, to the annuitant's spouse after the annuitant's death,

(a) in each year, commencing not later than the first calendar year after the year in which the arrangement is entered into, one or more amounts the total of which is not less than the minimum amount under the arrangement for a year, but the amount of any such payment shall not exceed the value of the property held in connection with the arrangement immediately before the time of the payment, and

(b) at the end of the year in which the last payment under the arrangement is, in accordance with the terms and conditions of the arrangement, required to be made, an amount equal to the value of the property, if any, held in connection with the arrangement at that time.

Pre-RSC History: *The definition "retirement income fund" was para. 146.3(1)(f).*

Para. 146.3(1)(f) substituted by 1986, c. 55, subsec. 57(3), applicable:

(a) for 1986 *et seq.* with respect to registered retirement income funds entered into after February 1986; and

(b) with respect to each registered retirement income fund that was entered into before March 1986 and that is revised or amended after February 1986, for the taxation year in which it is revised or amended, *et seq.*

Para. 146.3(1)(f) formerly read:

(f) "retirement income fund" means an arrangement between a carrier and an individual under which, in consideration for the transfer to the carrier of property (including money), the carrier undertakes to pay to the individual and, where the individual so elects, to his spouse after his death should he die before the arrangement ceases,

(i) in each year, commencing with the first complete calendar year after the arrangement is entered into, one or more amounts, the aggregate of which is equal to the amount that would be payable in the year under a single premium annuity contract purchased at a cost equal to the fair market value of the property held in connection with the arrangement at the beginning of the year if

(A) the annuity provided for equal annual payments throughout its term,

(B) the interest rate, if any, used in computing the annuity payment were such rate as the annuitant designates in respect of the year, not exceeding 6% per annum, and

(C) the term of the annuity in years were equal to the number that is

(I) the difference between 90 and the number that is, or would be, the age in whole years of the individual at the beginning of the year, or

(II) if the individual's spouse is younger than the individual and he so elects before the beginning of the first complete calendar year after the arrangement is entered into, the difference between 90 and the number that is, or would be, the age in whole years of his spouse at the beginning of the year,

but the amount of any such payment shall not exceed the value of the property held in connection with the arrangement immediately before the time of the payment, and

(ii) at the end of the year in which the last payment under the arrangement is, in accordance with the terms and conditions of the arrangement, required to be made, an amount equal to the value of the property, if any, held in connection with the arrangement at that time.

Subpara. 146.3(1)(f)(i) substituted by 1980-81-82-83, c. 140, subsec. 100(1), applicable to 1982 *et seq.* Subpara. 146.3(1)(f)(i) formerly read:

(i) in each year commencing with the first complete calendar year after the arrangement is entered into, in one or more payments, an amount equal to that proportion of the value of the property held in connection with the arrangement at the beginning of the year that one is of the number that is

(A) the difference between 90 and the number that is, or would be, the age in whole years of the individual at the beginning of the year, or

(B) if the individual's spouse is younger than the individual and he so elects before the beginning of the first complete calendar year after the arrangement is entered into, the difference be-

tween 90 and the number that is, or would be, the age in whole years of his spouse at the beginning of the year,

but the amount of any such payment shall not exceed the value of the property held in connection with the arrangement immediately before the time of the payment, and

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

Information Circulars: 78-18R5: Registered retirement income funds.

(1.1) [Repealed]

History: Subsec. 146.3(1.1) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(3), applicable after 1992 [see now subsec. 252(4)]; and, in applying the subsec. in 1991 and 1992, the reference therein to "minimum amount" shall be read as ""annuitant", "minimum amount"". Subsec. (1.1) formerly read:

(1.1) **Definition of "spouse"** — For the purposes of the definitions "minimum amount" and "retirement income fund" in subsection (1) paragraph (2)(d), subparagraph (2)(f)(iv), subsection (6) and paragraph (14)(b), "spouse" has the meaning assigned by subsection 146(1.1).

Pre-RSC History: Subsec. 146.3(1.1) added by 1990, c. 35, subsec. 14(1), applicable after 1987.

(2) Acceptance of fund for registration — The Minister shall not accept for registration for the purposes of this Act any retirement income fund of an individual unless, in the Minister's opinion, the following conditions are complied with:

(a) the fund provides that the carrier shall make only those payments described in any of paragraphs (d) and (e), the definition "retirement income fund" in subsection (1) and paragraph (14)(b);

(b) the fund provides that payments thereunder may not be assigned in whole or in part;

(c) where the carrier is a person referred to as a depository in section 146, the fund provides that

(i) the carrier has no right of offset as regards the property held in connection with the fund in respect of any debt or obligation owing to the carrier, and

(ii) the property held in connection with the fund cannot be pledged, assigned or in any way alienated as security for a loan or for any purpose other than that of the making by the carrier to the annuitant those payments described in paragraph (a);

(d) the fund provides that, except where the annuitant's spouse becomes the annuitant under the fund, the carrier shall, as a consequence of the death of the annuitant, distribute the property held in connection with the fund at the time of the annuitant's death or an amount equal to the value of such property at that time;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(e) the fund provides that, at the direction of the annuitant, the carrier shall transfer all or part of the property held in connection with the fund, or an amount equal to its value at the time of the direction (other than property required to be retained in accordance with the provision described in paragraph (e.1) or (e.2)), together with all information necessary for the continuance of the fund, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant;

(e.1) where the fund does not govern a trust or the fund governs a trust created before 1998 that does not hold an annuity contract as a qualified investment for the trust, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant, the transferor shall retain an amount equal to the lesser of

(i) the fair market value of such portion of the property as would, if the fair market value thereof does not decline after the transfer, be sufficient to ensure that the minimum amount under the fund for the year in which the transfer is made may be paid to the annuitant in the year, and

(ii) the fair market value of all the property;

(e.2) where paragraph (e.1) does not apply, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant, the transferor shall retain property in the fund sufficient to ensure that the total of

(i) all amounts each of which is the fair market value, immediately after the transfer, of a property held in connection with the fund that is

(A) property other than an annuity contract, or

(B) an annuity contract described, immediately after the transfer, in paragraph (b.1) of the definition "qualified investment" in subsection (1), and

(ii) all amounts each of which is a reasonable estimate, as of the time of the transfer, of the amount of an annual or more frequent periodic payment under an annuity contract (other than an annuity contract described in clause (i)(B)) that the trust may receive after the transfer and in the year of the transfer

is not less than the amount, if any, by which the minimum amount under the fund for that year exceeds the total of all amounts received out of or under the fund before the transfer that are included in computing the income of the annuitant under the fund for that year;

(f) the fund provides that the carrier shall not accept property as consideration thereunder other than property transferred from

(i) a registered retirement savings plan under which the individual is the annuitant,

(ii) another registered retirement income fund under which the individual is the annuitant,

(iii) the individual to the extent only that the amount of the consideration was an amount described in subparagraph 60(l)(v),

(iv) a registered retirement income fund or registered retirement savings plan of the individual's spouse or former spouse under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individual and the individual's spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(v) a registered pension plan of which the individual is a member (within the meaning assigned by subsection 147.1(1)),

(vi) a registered pension plan in accordance with subsection 147.3(5) or (7), or

(vii) a provincial pension plan in circumstances to which subsection 146(21) applies;

(g) the fund requires that no benefit or loan, other than

(i) a benefit the amount of which is required to be included in computing the annuitant's income,

(ii) an amount referred to in paragraph (5)(a) or (b), or

(iii) the benefit derived from the provision of administrative or investment services in respect of the fund,

that is conditional in any way on the existence of the fund may be extended to the annuitant or to a person with whom the annuitant was not dealing at arm's length; and

(h) the fund in all other respects complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 139.1(13) — Para. 146(2)(c.4) inapplicable to conversion benefit on demutualization of insurer; 146.3(11) — Change in fund after registration; 146.3(14) — Transfers; 172(3) — Appeal from refusal to register; 248(1)"disposition"(g) — Transfer with same annuitant not a disposition; 248(8) — Occurrences as a consequence of death; 252(4) — Extended meaning of "spouse" and "former spouse".

History: Para. 146.3(2)(a) amended by 1998, c. 19, subsec. 171(3), applicable to taxation years that end after November 1991. Para. 146.3(2)(a) formerly read:

(a) the fund provides that the carrier shall make only those payments described in paragraphs (d) and (e), the definition "retirement income [fund]" in subsection (1) and paragraph (14)(b);

Para. 146.3(2)(e) and the opening words of para. (e.1) amended, para. 146.3(2)(e.2) added, by the said c. 19, subsecs. 171(4)–(6), applicable to retirement income funds entered into after July 13, 1990 and, in the application of para. (e) to retirement income funds entered into before July 14, 1990, the para. shall be read without reference to the words "in prescribed form and manner". Para. 146.3(2)(e) and the opening words of para. (e.1) formerly read:

(e) the fund provides that, at the direction of the annuitant, the carrier shall, in prescribed form and manner, transfer all or part of the property held in connection with the fund, or an amount equal to its value at the time of such direction (other than property required to be retained in accordance with the provision described in paragraph (e.1)), together with all information necessary for the continuance of the fund, to any person who has agreed to be a carrier of another registered retirement income fund of the annuitant;

(e.1) the fund provides that where an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to any person who has agreed to be a carrier of another registered retirement income fund, as described in paragraph (e), the carrier shall retain an amount equal to the lesser of

Subpara. 146.3(2)(f)(vii) added by 1994, c. 21, subsec. 71(3), applicable after 1991.

Para. 146.3(2)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(4), applicable after 1990. Para. (d) formerly read:

(d) the fund provides that, except where the annuitant's spouse becomes the annuitant under the fund pursuant to the terms of the fund or the provisions of the will of the deceased annuitant, the carrier shall, as a consequence of the death of the annuitant, distribute the property held in connection with the fund at the time of death or an amount equal to the value of the property at that time;

Subpara. 146.3(2)(f)(iv) amended applicable after 1992, and subparas. (f)(v) and (vi) added applicable after August 29, 1990, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 84(5) and (6). Subpara. (f)(iv) formerly read:

(iv) a registered retirement income fund or registered retirement savings plan of the individual's spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, relating to a division of property between the individual and the individual's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of their marriage or other relationship;

Para. 146.3(2)(e) amended to add "(other than property required to be retained in accordance with the provision described in paragraph (e.1))", and para. (e.1) added, by 1994, c. 7, Sch. II (1991, c. 49), s. 119, applicable to RIFs entered into after July 13, 1990.

Pre-RSC History: Subpara. 146.3(2)(f)(iv) substituted by 1990, c. 35, subsec. 14(2), applicable after 1987. Subpara. (2)(f)(iv) formerly read:

(iv) a registered retirement income fund or registered retirement savings plan of his spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, relating to a division of property between the annuitant and his spouse or former spouse in settlement of rights arising out of their marriage, on or after the breakdown of their marriage;

Subsec. 146.3(2) substituted by 1986, c. 55, subsec. 57(4), applicable

(a) for 1986 *et seq.* with respect to registered retirement income funds entered into after February 1986; and

(b) with respect to each registered retirement income fund that was entered into before March 1986 and that is revised or amended after February 1986, for the taxation year in which it is revised or amended, *et seq.*

Subsec. 146.3(2) formerly read:

(2) Acceptance of fund for registration — The Minister shall not accept for registration for the purposes of this Act any retirement income fund unless, in his opinion, the following conditions are complied with:

(a) the fund provides that the carrier shall make the payments described in paragraph (1)(f) and no other payments under the fund;

(b) the fund includes a provision stipulating that, except on the death of the annuitant, no payment thereunder is capable either in whole or in part of surrender, commutation or assignment;

(b.1) the fund, where the carrier is a person referred to in subparagraph (1)(b)(iv), includes provisions stipulating that

(i) the carrier has no right of offset as regards the property held under the fund in connection with any debt or obligation owing to the carrier, and

(ii) the property held under the fund cannot be pledged, assigned or in any way alienated for a loan or for any purpose other than that of the making by the carrier to the annuitant those payments described in paragraph (1)(f);

(c) the individual is not an annuitant under another registered retirement income fund;

(d) the fund includes a provision stipulating that, except where the annuitant's spouse becomes the annuitant under the fund pursuant to the terms of the fund or the provisions of the will of the deceased annuitant, the carrier shall, as a consequence of the death of the annuitant, distribute the property held in connection with the arrangement at the time of his death or an amount equal to the value of such property at that time;

(e) the fund includes a provision stipulating that, at the direction of the annuitant, the carrier shall, in prescribed form and manner, transfer all the property held in connection with the arrangement or an amount equal to its value at the time of such direction, together with all information necessary for the continuance of the fund, to any person who is a carrier;

(f) the fund includes a provision stipulating that the carrier shall not accept property as consideration thereunder other than property transferred from

(i) a registered retirement savings plan under which the individual is the annuitant (within the meaning of paragraph 146(1)(a)), or

(ii) another registered retirement income fund under which the individual is the annuitant;

(f.1) the fund requires that no benefit or loan, other than

(i) a benefit the amount of which is required to be included in computing the annuitant's income,

(ii) an amount referred to in paragraph (5)(a) or (b), or

(iii) the benefit derived from the provision of administrative or investment services in respect of the fund,

that is conditional in any way on the existence of the fund may be extended to the annuitant or to a person with whom he was not dealing at arm's length; and

(g) the fund in all other respects complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Para. 146.3(2)(f.1) added by 1980-81-82-83, c. 140, subsec. 100(2), applicable by 1984, c. 1, s. 115 (deemed in force on March 30, 1983), to plans issued after March 1983.

Para. 146.3(2)(b.1) added by 1980-81-82-83, c. 40, subsec. 98(2), in force December 1, 1980.

Para. 146.3(2)(e) substituted by 1979, c. 5, subsec. 49(1), to delete "other" from before "person".

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans.

Information Circulars: 78-18R5: Registered retirement income funds; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T550: Application for registration; T2033: Direct transfer under para. 146(16)(a) or 146.3(2)(e).

(3) No tax while trust governed by fund — Except as provided in subsection (9), no tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered retirement income fund of an individual, except that if the trust has

(a) borrowed money in the year or has borrowed money that it has not repaid before the commencement of the year,

(b) received a gift of property (other than a transfer from a registered retirement savings plan under which the individual is the annuitant (within the meaning of subsection 146(1)) or a transfer from a registered retirement income fund under which the individual is the annuitant)

(i) in the year, or

(ii) in a preceding year and has not divested itself of the property or any property substituted therefor before the commencement of the year, or

(c) carried on any business or businesses in the year,

tax is payable under this Part by the trust,

(d) where paragraph (a) or (b) applies, on its taxable income for the year, and

(e) where neither paragraph (a) nor (b) applies and where paragraph (c) applies, on the amount, if any, by which

(i) the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from the business or businesses, as the case may be,

exceeds

(ii) such portion of the amount determined under subparagraph (i) in respect of the trust for the year as can reasonably be considered to be income from, or from the disposition of, qualified investments for the trust.

Related Provisions: 146.3(3.1) — Exception; 146.3(9) — Tax on income from non-qualified investments; 146.3(15) — Amount earned on RRIF deposit account not taxable to annuitant; 149(1)(x) — RRIF exempt from tax; 206(2) — Part XI tax on excess holdings of foreign property; 207.1(4) — Tax on holding non-qualified investments; 248(5) — Substituted property; Canada-U.S. tax treaty, Art. XVIII:5 — Deferral of income accruing in retirement plan.

History: Para. 146.3(3)(e) substituted by 1994, c. 21, subsec. 71(4), applicable to 1993 *et seq.* That para. formerly read:

(e) where neither paragraph (a) nor (b) applies and where paragraph (c) applies, on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from the business or businesses, as the case may be.

Information Circulars: 78-18R5: Registered retirement income funds.

(3.1) Exception — Notwithstanding subsection (3), if the last annuitant under a registered retirement income fund has died, tax is payable under this Part by the trust governed by the fund on its taxable income for each year after the year following the year in which the last annuitant under the fund died.

Related Provisions: 104(6)(a.2) — Deduction for amounts paid out to beneficiaries.

History: Subsec. 146.3(3.1) substituted by 1994, c. 21, subsec. 71(5), applicable to 1993 *et seq.* That subsec. formerly read:

(3.1) Notwithstanding subsection (3), if the last annuitant under a registered retirement income fund has died, tax is payable under this Part by the trust governed by the fund on its taxable income for each year after the year of the annuitant's death.

Pre-RSC History: Subsec. 146.3(3.1) added by 1979, c. 5, subsec. 49(2), applicable to 1979 *et seq.*

(4) Disposition or acquisition of property by trust — Where at any time in a taxation year a trust governed by a registered retirement income fund

(a) disposes of property for a consideration less than the fair market value of the property at the time of the disposition, or for no consideration, or

(b) acquires property for a consideration greater than the fair market value of the property at the time of the acquisition,

2 times the difference between that fair market value and the consideration, if any, shall be included in computing the income for the taxation year of the taxpayer who is the annuitant under the fund at that time.

Related Provisions: 212(1)(q), 214(3)(i) — Non-resident withholding tax.

Regulations: 215(3) (information return).

Information Circulars: 78-18R5: Registered retirement income funds.

(5) Benefits taxable — There shall be included in computing the income of a taxpayer for a taxation year all amounts received by the taxpayer in the year out of or under a registered retirement income fund other than the portion thereof that can reasonably be regarded as

(a) part of the amount included in computing the income of another taxpayer by virtue of subsections (6) and (6.2); or

(b) an amount received in respect of the income of the trust under the fund for a taxation year for which the trust was not exempt from tax by virtue of subsection (3.1).

(c) an amount that relates to interest, or to another amount included in computing income otherwise than because of this section, and that would, if the fund were a registered retirement savings plan, be a tax-paid amount (within the meaning assigned by paragraph (b) of the definition "tax-paid amount" in subsection 146(1)).

Related Provisions: 56(1)(t) — Income from RRIF; 60(l) — Transfer of refund of premium under RRSP; 139.1(12) — Conversion benefit on demutualization of insurance corporation not taxable; 146.3(1)"retirement income fund" — Requirement to withdraw minimum amount annually; 146.3(15) — Amount earned in RRIF deposit account not taxable; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(l) — Withholding of tax on RRIF payments; 160.2(2) — Joint and several liability where non-annuitant receives amount from RRIF; 212(1)(q) — Withholding tax on RRIF payment to non-resident; Canada-U.S. tax treaty, Art. XVIII:7 — Deferral of income accruing in retirement plan.

History: Para. 146.3(5)(c) added by 1998, c. 19, subsec. 171(7), applicable to deaths that occur after 1992.

Pre-RSC History: Subsec. 146.3(5) substituted by 1979, c. 5, subsec. 49(3), applicable after June 29, 1978. Subsec. 146.3(5) formerly read:

(5) There shall be included in computing the income of a taxpayer for a taxation year all amounts received by him in the year out of or under a registered retirement income fund.

Regulations: 215(2) (information return).

Information Circulars: 78-18R5: Registered retirement income funds.

Forms: T4040: RRSPs and other registered plans for retirement [guide].; T4RIF Segment; T4RIF Summ: Return of income out of a registered retirement income fund; T4RIF Supp: Statement of income from a registered retirement income fund.

(5.1) Amount included in income — Where at any time in a taxation year a particular amount in respect of a registered retirement income fund that is a spousal plan (within the meaning assigned by subsection 146(1)) in relation to a taxpayer is required to be included in the income of the taxpayer's spouse and the taxpayer is not living separate and apart from the taxpayer's spouse at that time by reason of the breakdown of their marriage, there shall be included at that time in computing the taxpayer's income for the year an amount equal to the least of

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) the total of all amounts each of which is a premium (within the meaning assigned by subsection 146(1)) paid by the taxpayer in the year or in one of the two immediately preceding taxation years to a registered retirement savings plan under which the taxpayer's spouse was the annuitant (within the meaning assigned by subsection 146(1)) at the time the premium was paid,

(b) the particular amount, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is an amount in respect of the fund that is required, in the year and at or before that time, to be included in the income of the taxpayer's spouse

exceeds

(ii) the minimum amount under the fund for the year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 60(l) — Transfer of refund of premiums under RRSP; 60(j.2) — Transfer to spousal RRSP; 146(8.21) — Premium deemed not paid; 146(8.3) — Spousal RRSP payments; 146(8.6) — RRSP — Spouse's income; 146.3(5.4) — Spouse's income; 146.3(5.5) — Application of subsec. (5.1); 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 146.3(5.1) substituted by 1990, c. 35, subsec. 14(3), applicable to 1989 *et seq.* except that in its application to the 1989 and 1990 taxation years the subsec. shall be read as follows:

(5.1) Where at any time in a taxation year a particular amount, in respect of a registered retirement income fund that received property from a registered retirement savings plan to which a premium deductible under paragraph 60(j.2) or subsection 146(5.1) has been paid, is required to be included in the income of the taxpayer's spouse, except where the taxpayer is living separate and apart from the taxpayer's spouse at that time by reason of the breakdown of their marriage, all premiums paid by the taxpayer in the year or in one of the two immediately preceding taxation years to the extent that they were deductible under paragraph 60(j.2) or subsection 146(5.1) in computing the taxpayer's income for a year shall be included at that time in computing the taxpayer's income for the year to the extent that the aggregate of the particular amounts paid in the year exceeds the minimum amount under the fund for the year.

Subsec. (5.1) formerly read:

(5.1) Where at any time in a taxation year a particular amount in respect of a registered retirement income fund, that received property from a registered retirement savings plan to which a premium deductible under subsection 146(5.1) has been paid, is required to be included in the income of the taxpayer's spouse, except where the taxpayer is living separate and apart from his spouse at that time by reason of the breakdown of their marriage, all premiums paid by the taxpayer in the year or in one of the two immediately preceding taxation years to the extent that they were deductible under subsection 146(5.1) in computing his income for a year shall be included at that time in computing the taxpayer's income for the year to the extent that the aggregate of the particular amounts paid in the year exceeds the minimum amount under the fund for the year.

1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(10), provides that the amended definition of "minimum amount" in subsec. 146.3(1) does not apply for the purposes of subsec. 146.3(5.1) to payments made before 1993.

See also after subsec. 146.3(5.5).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-124R6: Contributions to registered retirement savings plans.

Forms: T4RIF Segment; T4RIF Summ: Return of income out of a registered retirement income fund; T4RIF Supp: Statement of income from a registered retirement income fund; T2205: Calculation of amounts from a spousal RRSP or RRIF to be included in income.

(5.2) [Repealed under former Act]

Pre-RSC History: Subsec. 146.3(5.2) repealed by 1990, c. 35, subsec. 14(4), applicable to 1991 *et seq.* Subsec. (5.2) formerly read:

(5.2) Interpretation — A registered retirement income fund to which a payment or transfer has been made from a registered retirement income fund described in subsection (5.1) shall be deemed to be a fund described in subsection (5.1).

See also after subsec. 146.3(5.5).

(5.3) Ordering — Where a taxpayer has paid more than one premium described in subsection (5.1), such a premium or part thereof paid by the taxpayer at any time shall be deemed to have been included in computing the taxpayer's income by virtue of that subsection before premiums or parts thereof paid by the taxpayer after that time.

Pre-RSC History: See after subsec. 146.3(5.5).

(5.4) Spouse's income — Where, in respect of an amount required at any time in a taxation year to be included in computing the income of a taxpayer's spouse, all or part of a premium has, by reason of subsection (5.1), been included in computing the taxpayer's income for the year, the following rules apply:

(a) the premium or part thereof, as the case may be, shall, for the purposes of subsections (5.1) and 146(8.3) after that time, be deemed not to have been a premium paid to a registered retirement savings plan under which the taxpayer's spouse was the annuitant (within the meaning assigned by subsection 146(1)); and

(b) an amount equal to the premium or part thereof, as the case may be, deducted in computing the income of the spouse for the year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 146(8.6) — Spouse's income; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: That portion of subsec. 146.3(5.4) preceding para. (b) substituted, by 1990, c. 35, subsec. 14(5), applicable to 1991 *et seq.* That portion of (5.4) formerly read:

(5.4) Where, in respect of an amount received by a taxpayer's spouse, all or part of a premium has, by virtue of subsection (5.1) or 146(8.3), been included at any time in computing the taxpayer's income for a taxation year,

(a) the premium or part thereof, as the case may be, shall, for the purposes of subsection (5.1) or 146(8.3) after that time, be deemed not to have been a premium deductible by him under subsection 146(5.1), and

(5.5) Where subsec. (5.1) does not apply — Subsection (5.1) does not apply

(a) in respect of a taxpayer at any time during the year in which the taxpayer dies;

(b) in respect of a taxpayer where either the taxpayer or the annuitant is a non-resident at the particular time referred to in that subsection;

(c) to any payment that is received in full or partial commutation of a registered retirement savings plan or a registered retirement income fund and in respect of which a deduction was made under paragraph 60(l) if, where the deduction was in respect of the acquisition of an annuity, the terms of the annuity provide that it cannot be commuted, and it is not commuted, in whole or in part within 3 years after the acquisition; or

(d) in respect of an amount that is deemed by subsection (6) to have been received by an annuitant under a registered retirement income fund immediately before the annuitant's death.

Pre-RSC History: Para. 146.3(5.5)(d) added by 1990, c. 35, subsec. 14(6), applicable to 1988 *et seq.*

Pre-RSC History [subsecs. 146.3(5.1)–(5.5)]: Subsecs. 146.3(5.1) to (5.5) added by 1986, c. 55, subsec. 57(5), applicable

(a) for 1986 *et seq.* with respect to RRIFs entered into after February 1986; and

(b) with respect to each RRIF that was entered into before March 1986 and that is revised or amended after February 1986, for the taxation year in which it is revised or amended and subsequent taxation years.

(6) Where last annuitant dies — Where the last annuitant under a registered retirement income fund dies, that annuitant shall be deemed to have received, immediately before death, an amount out of or under a registered retirement income fund equal to the fair market value of the property of the fund at the time of the death.

Related Provisions: 56(1)(t) — Income from RRIF; 146(8.8) — Parallel rule for RRSPs; 146.3(5.5) — Application of subsec. (5.1); 146.3(6.2) — Amount deductible; 160.2(2) — Joint and several liability for tax owing on payment from RRIF; 212(1)(q), 214(3)(i) — Non-resident withholding tax; 252(4)(a) — Extended meaning of "spouse"; 257 — Formula cannot calculate to less than zero.

History: Subsec. 146.3(6) substituted by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992. That subsec. formerly read:

(6) Effect of death where person other than spouse becomes entitled — Where the last annuitant under a registered retirement income fund dies, the annuitant shall be deemed to have received, immediately before the annuitant's death, an amount out of or under a registered retirement income fund equal to the amount, if any, by which

(a) the fair market [value] of all the property of the fund at the time of death

exceeds

(b) the portion thereof that, as a consequence of the death, becomes receivable by the annuitant's spouse.

Regulations: 215(4) (information return).

Forms: RC4178: Death of a RRIF annuitant [guide].

(6.1) Designated benefit deemed received — A designated benefit of an individual in respect of a registered retirement income fund that is received by the legal representative of the last annuitant under the fund shall be deemed

(a) to be received by the individual out of or under the fund at the time it is received by the legal representative; and

(b) except for the purpose of the definition "designated benefit" in subsection (1), not to be received out of or under the fund by any other person.

Related Provisions: 60(l)(v)(B.1) — Rollover of designated benefits to child or grandchild on death; 146(8.1) — Parallel rule for RRSPs; 212(1)(q), 214(3)(i) — Non-resident withholding tax.

History: Subsec. 146.3(6.1) substituted by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992. That subsec. formerly read:

(6.1) Amount deemed received by child or grandchild as a result of death — Such portion of an amount paid in a taxation year out of or under a registered retirement income fund after the death of the last annuitant thereunder to the annuitant's legal representative as, had that portion been paid under the fund to a beneficiary of the deceased's estate, would have been a refund of premiums (within the meaning assigned by subsection 146(1)) if the fund were a registered retirement savings plan shall, to the extent it is so designated jointly by the legal representative and the beneficiary in prescribed form filed with the Minister, be deemed

(a) to be received by the beneficiary in the year as a benefit that is a refund of premiums under a registered retirement savings plan (within the meanings assigned by subsection 146(1)); and

(b) not to be received out of or under a registered retirement income fund.

Forms: RC4178: Death of a RRIF annuitant [guide].

(6.11) Transfer of designated benefit — For the purpose of subparagraph 60(l)(v), the eligible amount of a particular individual for a taxation year in respect of a registered retirement income fund is nil unless the particular individual was

(a) a spouse of the last annuitant under the fund, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) a child or grandchild of that annuitant who was dependent because of physical or mental infirmity on that annuitant,

in which case the eligible amount shall be determined by the formula

$$A \times \left[1 - \frac{(B - C)}{D} \right]$$

where

A is the portion of the designated benefit of the particular individual in respect of the fund that is included because of subsection (5) in computing the particular individual's income for the year,

B is the minimum amount under the fund for the year,

C is the lesser of

(a) the total amounts included because of subsection (5) in computing the income of an annuitant under the fund for the year in respect of amounts received by the annuitant out of or under the fund, and

(b) the minimum amount under the fund for the year, and

D is the total of all amounts each of which is the portion of a designated benefit of an individual in respect of the fund that is included because of subsection (5) in computing the individual's income for the year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 146.3(6.11) added by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992.

Forms: RC4178: Death of a RRIF annuitant [guide].

(6.2) Amount deductible — There may be deducted from the amount deemed by subsection (6) to be received by an annuitant out of or under a registered retirement income fund an amount not exceeding the amount determined by the formula

$$A \times \left[1 - \frac{(B + C - D)}{(B + C)} \right]$$

where

A is the total of

(a) all designated benefits of individuals in respect of the fund,

(b) all amounts that would, if the fund were a registered retirement savings plan, be tax-paid amounts (in this subsection having the meaning assigned by subsection 146(1)) in respect of the fund received by individuals who received, otherwise than because of subsection (6.1), designated benefits in respect of the fund, and

(c) all amounts each of which is an amount that would, if the fund were a registered retirement savings plan, be a tax-paid amount in respect of the fund received by the legal representative of the last annuitant under the fund, to the extent that the legal representative would have been entitled to designate that tax-paid amount under paragraph (a) of the definition "designated benefit" in subsection (1) if tax-paid amounts were not excluded in determining refunds of premiums (as defined in subsection 146(1));

B is the fair market value of the property of the fund at the particular time that is the later of

(a) the end of the first calendar year that begins after the death of the annuitant, and

(b) the time immediately after the last time that any designated benefit in respect of the fund is received by an individual;

C is the total of all amounts paid out of or under the fund after the death of the last annuitant thereunder and before the particular time; and

D is the lesser of

(a) the fair market value of the property of the fund at the time of the death of the last annuitant thereunder, and

(b) the sum of the values of B and C in respect of the fund.

Related Provisions: 146(8.9) — Parallel rule for RRSPs.

History: The description of A in subsec. 146.3(6.2) amended by 1998, c. 19, subsec. 171(8), applicable to deaths that occur after 1992. The description formerly read:

A is the total of all designated benefits of individuals in respect of the fund;

Subsec. 146.3(6.2) substituted by 1994, c. 21, subsec. 71(6), applicable to deaths occurring after 1992. That subsec. formerly read:

(6.2) Amount deductible — There may be deducted from the amount deemed by subsection (6) to have been received by an annuitant under a registered retirement income fund the total of all amounts each of which is

(a) that portion of an amount paid out of or under the fund that is deemed to be received by a beneficiary as a benefit that is a refund of premiums pursuant to subsection (6.1), or

(b) an amount paid under the fund to a child or grandchild of the annuitant that would be a refund of premiums (within the meaning assigned by subsection 146(1)) had the fund been a registered retirement savings plan

and each amount described in paragraph (b) that is paid to a child or grandchild of the deceased shall be deemed to be received by the child or grandchild, as the case may be, as a benefit that is a refund of premiums under a registered retirement savings plan (within the meanings assigned by subsection 146(1)) and not to be received out of or under a registered retirement income fund.

Pre-RSC History: Para. 146.3(6.1)(a) and all that portion of subsec. 146.3(6.2) following para. (b) substituted by 1980-81-82-83, c. 48, subsecs. 81(2), (3), applicable with respect to amounts received after December 11, 1979. Para. 146.3(6.1)(a) and that portion formerly read:

(a) to be received by the beneficiary in the year as a benefit that is a refund of premiums (within the meanings assigned by paragraphs 146(1)(b) and (h)); and

. . . . .

and all amounts described in paragraph (b) shall be deemed not to be received out of or under a registered retirement income fund.

Subsec. 146.3(6) substituted, subsecs. (6.1), (6.2) added, by 1979, c. 5, subsec. 49(3), applicable after June 29, 1978. Subsec. 146.3(6) formerly read:

(6) Where, as a consequence of the death of an individual, a person, other than the spouse of the individual, becomes entitled to receive an amount out of or under an arrangement that was, immediately before the individual's death, a registered retirement income fund of the individual,

(a) the individual shall be deemed to have received, immediately before his death, an amount out of or under a registered retirement income fund equal to the fair market value at the time of his death of the amount the person became entitled to receive, and

(b) the fund shall be deemed, for the purposes of this Act, not to be a registered retirement income fund at any time after the individual's death.

Forms: RC4178: Death of a RRIF annuitant [guide].

(7) Acquisition of non-qualified investment by trust — Where at any time in a taxation year a trust governed by a registered retirement income fund

(a) acquires an investment that is not a qualified investment, or

(b) uses or permits to be used a property of the trust as security for a loan,

the fair market value of

(c) the investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used

as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the fund at that time.

Related Provisions: 146.3(9) — Tax payable where non-qualified investment acquired; 146.3(10) — Recovery of property used as security; 212(1)(q), 214(3)(i) — Non-resident withholding tax; 259(1) — Election for proportional holdings in trust property.

Pre-RSC History: All that portion of subsec. 146.3(7) following para. (b) substituted by 1979, c. 5, subsec. 49(4), applicable in respect of property acquired or used as security after November 16, 1978. That portion formerly read:

> the cost to the trust of the investment or the fair market value, at the time the property is used as security, of the property so used, as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the fund at that time.

Regulations: 215(3) (information return).

Remission Orders: *Lionaird Capital Corporation Notes Remission Order*, P.C. 1999-737 (tax under 146(10) waived because taxpayers thought they were qualified investments).

(8) Disposition of non-qualified investment — Where at any time in a taxation year a trust governed by a registered retirement income fund disposes of a property that, when acquired, was not a qualified investment, there may be deducted in computing the income for the taxation year of the taxpayer who is the annuitant under the fund at that time, an amount equal to the lesser of

(a) the amount that, by virtue of subsection (7), was included in computing the income of a taxpayer in respect of the acquisition of that property, and

(b) the proceeds of disposition of the property.

Related Provisions: 259(1) — Election for proportional holdings in trust property.

Regulations: 215(3) (information return).

(9) Tax payable where non-qualified investment acquired — Where a trust governed by a registered retirement income fund has acquired a property that is not a qualified investment,

(a) tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than the property that is not a qualified investment or no capital gains or capital losses other than from the disposition of that property, as the case may be; and

(b) for the purposes of paragraph (a),

(i) "income" includes dividends described in section 83, and

(ii) paragraphs 38(a) and (b) shall be read without reference to the fractions set out therein.

Related Provisions: 146.3(3) — No tax while trust governed by fund; 146.3(7) — Acquisition of non-qualified investment by trust; 149(1)(x) — RRIF exemption. 201.7(4) — Tax payable by RRIF on non-qualified investments; 259(1) — Election for proportional holdings in trust property.

Pre-RSC History: Subpara. 146.3(9)(b)(ii) substituted by 1988, c. 55, s. 132, applicable to 1988 *et seq.* Subpara. 146.3(9)(b)(ii) formerly read:

> (ii) paragraphs 38(a) and (b) shall be read without references to the words "½ of " where they appear therein.

Information Circulars: 78-18R5: Registered retirement income funds.

(10) Recovery of property used as security — Where at any time in a taxation year a loan for which a trust governed by a registered retirement income fund has used or permitted to be used trust property as security ceases to be extant, and the fair market value of the property so used was included by virtue of subsection (7) in computing the income of a taxpayer who was the annuitant under the fund, there may be deducted in computing the income for a taxation year of the taxpayer who is at that time the annuitant, an amount equal to the amount, if any, remaining when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using or permitting to be used the property as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the amount so included in computing the income of a taxpayer in consequence of the trust's using or permitting to be used the property as security for the loan.

Regulations: 215(3) (information return).

(11) Change in fund after registration — Where, on any day after a retirement income fund has been accepted by the Minister for registration for the purposes of this Act, the fund is revised or amended or a new fund is substituted therefor, and the fund as revised or amended or the new fund substituted therefor, as the case may be, (in this subsection referred to as the "amended fund") does not comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act, the following rules apply:

(a) the amended fund shall be deemed, for the purposes of this Act, not to be a registered retirement income fund; and

(b) the taxpayer who was the annuitant under the fund before it became an amended fund shall, in computing the taxpayer's income for the taxation year that includes that day, include as income received out of the fund at that time an amount equal to the fair market value of all the property held in connection with the fund immediately before that time.

Related Provisions: 146.3(2) — Requirements for acceptance for registration; 146.3(12) — Where arrangement deemed to be new fund substituted for RRIF; 146.3(13) — Where fund deemed revised or amended; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 153(1)(l) — Withholdings; 204.2(1.4) — Deemed receipt where RRSP or RRIF amended; 212(1)(q), 214(3)(i) — Non-resident withholding tax.

Information Circulars: 78-18R5: Registered retirement income funds.

Forms: T2205: Calculation of amounts from a spousal RRSP or RRIF to be included in income.

(12) Idem — For the purposes of subsection (11), an arrangement under which a right or obligation under a retirement income fund is released or extinguished either wholly or in part and either in exchange or substitution for any right or obligation, or otherwise (other than an arrangement the sole object and legal effect of which is to revise or amend the fund) or under which payment of any amount by way of loan or otherwise is made on the secur-

ity of a right under a retirement income fund, shall be deemed to be a new fund substituted for the retirement income fund.

Regulations: 215(4) (information return).

(13) Idem — Where at any time a benefit or loan is extended or continues to be extended as a consequence of the existence of a registered retirement income fund and that benefit or loan would be prohibited if the fund met the requirement for registration contained in paragraph (2)(g), for the purposes of subsection (11), the fund shall be deemed to have been revised or amended at that time so that it fails to meet the requirement for registration contained in paragraph (2)(g).

(14) Transfers — Notwithstanding anything in this section, an amount

(a) transferred as described in paragraph (2)(e), or

(b) transferred from a registered retirement income fund of an annuitant to a registered retirement income fund or registered retirement savings plan of the annuitant's spouse or former spouse under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the annuitant and the annuitant's spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

shall be deemed not to be an amount received by the annuitant out of or under a registered retirement income fund.

Related Provisions: 146(16)(b) — Transfer of RRSP on marriage breakdown; 146.3(2)(c) — Acceptance of fund for registration; 252(3), (4) — Extended meaning of "spouse" and "former spouse".

History: Para. 146.3(14)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 84(7), applicable after 1992. Para. (b) formerly read:

(b) transferred from a registered retirement income fund of an annuitant to a registered retirement income fund or a registered retirement savings plan of the annuitant's spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, relating to a division of property between the annuitant and the annuitant's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of their marriage or other relationship,

Pre-RSC History: Para. 146.3(14)(b) substituted by 1990, c. 35, subsec. 14(7), applicable after 1987. Para. (b) formerly read:

(b) transferred from a registered retirement income fund of an annuitant to a registered retirement income fund or a registered retirement savings plan of the annuitant's spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement, relating to a division of property between the annuitant and the annuitant's spouse or former spouse in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of their marriage or other relationship,

Subsecs. 146.3(11) to (14) substituted by 1986, c. 55, subsec. 57(6). Subsecs. 146.3(11) to (14) formerly read:

(11) Revocation of registration — Where at any time after a retirement income fund has been accepted for registration for the purposes of this Act the Minister is satisfied that the requirements of subsection (2) were not complied with at the time the fund was registered or that the fund subsequently failed to continue to comply with those requirements, the Minister may revoke the registration of the funds as of any day and he shall thereafter give notice of his action by registered mail to the carrier and to the annuitant.

(11.1) Idem — Where on any day after June 30, 1982 a benefit or loan is extended or continues to be extended as a consequence of the existence of a registered retirement income fund and that benefit or loan would be prohibited if the fund met the requirement for registration contained in paragraph (2)(f.1), the Minister may revoke the registration of the fund as of that or any subsequent day that is specified by the Minister in a notice given by registered mail to the carrier and to the annuitant.

(12) Deemed realization on revocation — Where at any time the Minister revokes the registration of a registered retirement income fund pursuant to subsection (11) or (11.1), the annuitant shall be deemed at that time to have received out of or under a registered retirement income fund an amount equal to the fair market value at that time of all property held in connection with the arrangement.

(13) Where revocation of no force or effect — Where notice as described in subsection (11) has been given for failure to comply with the requirement of paragraph (2)(c), if, within 90 days of the giving of that notice, the annuitant satisfies the Minister that the requirement has been complied with, the revocation of the registration of the fund shall be deemed not to have occurred.

(14) Transfer — Notwithstanding anything in this section, a transfer described in paragraph (2)(e) shall be deemed not to be an amount received by the annuitant out of or under a registered retirement income fund.

Subsec. 146.3(11.1) added by 1980-81-82-83, c. 140, subsec. 100(3).

Subsec. 146.3(12) substituted by 1980-81-82-83, c. 140, subsec. 100(3), to add a reference to subsec. (11.1).

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Remission Orders: *Certain Taxpayers Remission Order, 1999-2*, 1999-1855, s. 2 (remission to Quebec judges for excess contributions in 1989-90 transferred under 146.3(14)).

Information Circulars: 78-18R5: Registered retirement income funds; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T2033: Direct transfer under para. 146(16)(a) or 146.3(2)(e); T2220: Transfer between RRSPs or RRIFs on marriage breakdown.

(15) Credited or added amount deemed not received — Where

(a) an amount is credited or added to a deposit with a depositary referred to in paragraph (d) of the definition "carrier" in subsection (1) as interest or income in respect of the deposit,

(b) the deposit is a registered retirement income fund at the time the amount is credited or added to the deposit, and

(c) during the calendar year in which the amount is credited or added or during the preceding calendar year, the annuitant under the fund was alive,

the amount shall be deemed not to be received by the annuitant or any other person solely because of the crediting or adding.

History: Subsec. 146.3(15) substituted by 1994, c. 21, subsec. 71(7), applicable to deaths occurring after 1992. That subsec. formerly read:

(15) Where amount credited or added deemed not received — Where an amount is credited or added to a deposit with a depositary referred to in paragraph (d) of the definition "carrier" in subsection (1) as interest or income in respect of the deposit, and where

(a) the deposit is a registered retirement income fund at the time the amount is credited or added to the deposit, and

(b) the annuitant under the fund is alive during the year in which the amount is credited or added,

the amount shall be deemed not to be received by the annuitant by reason only of the crediting or adding.

Pre-RSC History: Subsec. 146.3(15) added by 1980-81-82-83, c. 40, subsec. 98(3), in force December 1, 1980.

Pre-RSC History [s. 146.3]: S. 146.3 added by 1977-78, c. 32, s. 35.

Definitions [s. 146.3]: "amount" — 248(1); "annuitant" — 146.3(1); "annuity" — 248(1); "arm's length" — 251(1); "beneficial owner" — 248(3); "calendar year" — *Interpretation Act* 37(1)(a); "capital gain", "capital loss" — 39(1), 248(1); "carrier" — 146.3(1); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act*; "depositary" — 146(1)"retirement savings plan"(b)(iii), 146.3(1)"carrier"(d); "former spouse" — 252(3), (4)(a); "held" — 146.3(1); "individual", "legal representative" — 248(1); "licensed annuities provider" — 147(1), 248(1); "listed" — 87(10); "marriage" — 252(4)(b); "minimum amount" — 146.3(1); "Minister", "non-resident", "person", "prescribed", "property" — 248(1); "property held" — 146.3(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 146.3(1); "received" — 146.3(15); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "retirement income fund" — 146.3(1), 248(1); "separation agreement" — 248(1); "spouse" — 252(3), (4)(a); "substituted property" — 248(5); "surviving spouse" — 146.3(1)"annuitant"(b); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Deferred Profit Sharing Plans

147. (1) Definitions — In this section,

"deferred profit sharing plan" means a profit sharing plan accepted by the Minister for registration for the purposes of this Act, on application therefor in prescribed manner by a trustee under the plan and an employer of employees who are beneficiaries under the plan, as complying with the requirements of this section;

Related Provisions: 128.1(10)"excluded right or interest"(a)(iv) — No deemed disposition of DPSP on emigration.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

"forfeited amount", under a deferred profit sharing plan or a plan the registration of which has been revoked pursuant to subsection (14) or (14.1), means an amount to which a beneficiary under the plan has ceased to have any rights, other than the portion thereof, if any, that is payable as a consequence of the death of the beneficiary to a person who is entitled thereto by virtue of the participation of the beneficiary in the plan;

"licensed annuities provider" means a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business;

Related Provisions: 248(1)"licensed annuities provider" — Definition applies to entire Act.

History: The definition "licensed annuities provider" added to subsec. 147(1) by 1997, c. 25, subsec. 43(1), applicable after 1991.

"profit sharing plan" means an arrangement under which payments computed by reference to an employer's profits from the employer's business, or by reference to those profits and the profits, if any, from the business of a corporation with which the employer does not deal at arm's length, are or have been made by the employer to a trustee in trust for the benefit of employees or former employees of that employer.

Related Provisions: 147(16) — Payments out of profits; 248(1)"deferred profit sharing plan", "profit sharing plan" — Definitions apply to entire Act; 248(8) — Occurrences as a consequence of death.

Pre-RSC History: Subsec. 147(1) substituted by 1990, c. 35, subsec. 15(1), applicable after 1990. Subsec. 147(1) formerly read:

> 147. (1) Definitions — In this Act,
>
> (a) "deferred profit sharing plan" defined — "deferred profit sharing plan" means a profit sharing plan accepted by the Minister for registration for the purposes of this Act, upon application therefor in prescribed manner by a trustee under the plan and an employer of employees who are beneficiaries under the plan, as complying with the requirements of this section; and
>
> (b) "profit sharing plan" — "profit sharing plan" means an arrangement under which payments computed by reference to his profits from his business or by reference to his profits from his business and the profits, if any, from the business of a corporation with whom he does not deal at arm's length are or have been made by an employer to a trustee in trust for the benefit of employees of that employer or employees of any other employer, whether or not payments are or have been also made to the trustee by the employees.

Regulations: 1501 (prescribed manner).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits.

Information Circulars: 77-1R4: Deferred profit sharing plans; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity. See also list at end of s. 147.

Forms: T3D: Income tax return for DPSP or revoked DPSP.

(1.1) Participating employer — An employer is considered to participate in a profit sharing plan where the employer makes or has made payments under the plan to a trustee in trust for the benefit of employees or former employees of the employer.

History: Subsec. 147(1.1) added by 1997, c. 25, subsec. 43(2), applicable after 1988.

(2) Acceptance of plan for registration — The Minister shall not accept for registration for the purposes of this Act any profit sharing plan unless, in the Minister's opinion, it complies with the following conditions:

(a) the plan provides that each payment made under the plan to a trustee in trust for the benefit of beneficiaries thereunder is the total of amounts each of which is required to be allocated by the trustee in the year in which it is received by the trustee, to the individual beneficiary in respect of whom the amount was so paid;

(a.1) the plan includes a stipulation that no contribution may be made to the plan other than

(i) a contribution made in accordance with the terms of the plan by an employer for the benefit of the employer's employees who are beneficiaries under the plan, or

(ii) an amount transferred to the plan in accordance with subsection (19);

(b) the plan does not provide for the payment of any amount to an employee or other beneficiary thereunder by way of loan;

(c) the plan provides that no part of the funds of the trust governed by the plan may be invested in notes, bonds, debentures, bankers' acceptances or similar obligations of

(i) an employer by whom payments are made in trust to a trustee under the plan for the benefit of beneficiaries thereunder, or

(ii) a corporation with whom that employer does not deal at arm's length;

(d) the plan provides that no part of the funds of the trust governed by the plan may be invested in shares of a corporation at least 50% of the property of which consists of notes, bonds, debentures, bankers' acceptances or similar obligations of an employer or a corporation described in paragraph (c);

(e) the plan includes a provision stipulating that no right or interest under the plan of an employee who is a beneficiary thereunder is capable, either in whole or in part, of surrender or assignment;

(f) the plan includes a provision stipulating that each of the trustees under the plan shall be resident in Canada;

(g) the plan provides that, if a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee is not a trustee under the plan, there shall be at least 3 trustees under the plan who shall be individuals;

(h) the plan provides that all income received, capital gains made and capital losses sustained by the trust governed by the plan must be allocated to beneficiaries under the plan on or before a day 90 days after the end of the year in which they were received, made or sustained, as the case may be, to the extent that they have not been allocated in years preceding that year;

(i) the plan provides that each amount allocated or reallocated by a trustee under the plan to a beneficiary under the plan vest irrevocably in that beneficiary,

(i) in the case of an amount allocated or reallocated before 1991, at a time that is not later than 5 years after the end of the year in which it was allocated or reallocated, unless the beneficiary becomes, before that time, an individual who is not an employee of any employer who participates in the plan, and

(ii) in the case of any other amount, not later than the later of the time of allocation or reallocation and the day on which the beneficiary completes a period of 24 consecutive months as a beneficiary under the plan or under any other deferred profit sharing plan for which the plan can reasonably be considered to have been substituted;

(i.1) the plan requires that each forfeited amount under the plan and all earnings of the plan reasonably attributable thereto be paid to employers who participate in the plan, or be reallocated to beneficiaries under the plan, on or before the later of December 31, 1991 and December 31 of the year immediately following the calendar year in which the amount is forfeited, or such later time as is permitted in writing by the Minister under subsection (2.2);

(j) the plan provides that a trustee under the plan inform, in writing, all new beneficiaries under the plan of their rights under the plan;

(k) the plan provides that, in respect of each beneficiary under the plan who has been employed by an employer who participates in the plan, all amounts vested under the plan in the beneficiary become payable

(i) to the beneficiary, or

(ii) in the event of the beneficiary's death, to another person designated by the beneficiary or to the beneficiary's estate,

not later than the earlier of

(iii) the end of the year in which the beneficiary attains 69 years of age, and

(iv) 90 days after the earliest of

(A) the death of the beneficiary,

(B) the day on which the beneficiary ceases to be employed by an employer who participates in the plan where, at the time of ceasing to be so employed, the beneficiary is not employed by another employer who participates in the plan, and

(C) the termination or winding-up of the plan,

except that the plan may provide that, on election by the beneficiary, all or any part of the amounts payable to the beneficiary may be paid

(v) in equal instalments payable not less frequently than annually over a period not exceeding 10 years from the day on which the amount became payable, or

(vi) by a trustee under the plan to a licensed annuities provider to purchase for the beneficiary an annuity where

(A) payment of the annuity is to begin not later than the end of the year in which the beneficiary attains 69 years of age, and

(B) the guaranteed term, if any, of the annuity does not exceed 15 years;

(k.1) the plan requires that no benefit or loan, other than

(i) a benefit the amount of which is required to be included in computing the beneficiary's income,

(ii) an amount referred to in paragraph (10)(b),

(ii.1) an amount paid pursuant to or under the plan by a trustee under the plan to a licensed annuities provider to purchase for a beneficiary under the plan an annuity to which subparagraph (k)(vi) applies,

(iii) a benefit derived from an allocation or reallocation referred to in subsection (2), or

(iv) the benefit derived from the provision of administrative or investment services in respect of the plan,

that is conditional in any way on the existence of the plan may be extended to a beneficiary thereunder or to a person with whom the beneficiary was not dealing at arm's length;

(k.2) the plan provides that no individual who is

(i) a person related to the employer,

(ii) a person who is, or is related to, a specified shareholder of the employer or of a corporation related to the employer,

(iii) where the employer is a partnership, a person related to a member of the partnership, or

(iv) where the employer is a trust, a person who is, or is related to, a beneficiary under the trust

may become a beneficiary under the plan; and

(l) the plan, in all other respects, complies with regulations of the Governor in Council made on the recommendation of the Minister of Finance.

Related Provisions: 56(1)(d.2)(iii) — Income from annuity purchased with plan funds is taxable; 146(5.21)(b) — Anti-avoidance; 147(1.1) — Meaning of "participates" in a profit sharing plan; 147(2.1) — Terms limiting contributions; 147(2.2) — Reallocation of forfeitures; 147(10)(a) — Amount used to purchase annuity under 147(2)(k)(vi) is not taxable; 147(10.3) — Amount contributed to or forfeited under a plan; 147(10.6) — Where pre-1997 annuity has not begun by age 69; 147(14) — Revocation of registration where plan ceases to comply with requirements; 147(17) — Meaning of "other beneficiary"; 147(21) — Restrictions re transfers from DPSPs; 172(3) — Appeal from refusal to register, revocation of registration, etc.; 198–204 — Taxes on DPSPs and revoked plans; 204.1(3) — Tax payable by DPSP on excess contributions; 204.2(4) — Definition of "excess amount" for a DPSP.

History: Para. 147(2)(k) amended by 1997, c. 25, subsec. 43(3), applicable after 1996, except that

(a) where a beneficiary under a profit sharing plan attained 70 years of age before 1997,

(i) in applying subpara. (iii) in respect of the beneficiary, that subpara. shall be read as follows:

(iii) 90 days after the day on which the beneficiary attains 71 years of age, and

(ii) in applying cl. (vi)(A) in respect of the beneficiary, the reference in that clause to "the end of the year in which the beneficiary attains 69 years of age" shall be read as "the day on which the beneficiary attains 71 years of age", and

(b) where a beneficiary under a profit sharing plan attained 69 years of age in 1996, in applying subpara. (iii) and cl. (vi)(A) in respect of the beneficiary, the references in those provisions to "69 years of age" shall be read as "70 years of age".

Para. (k) formerly read:

(k) the plan provides that, in respect of each employee who is a beneficiary under the plan, all amounts vested in the employee become payable to the employee or, in the event of the employee's death, to a beneficiary designated by the employee or to the employee's estate, not later than 90 days after the earliest of

(i) the death of the employee,

(ii) the day on which the employee ceases to be employed by an employer who makes or has made payments under the plan to a trustee under the plan,

(iii) the day on which the employee becomes 71 years of age, and

(iv) the termination or winding up of the plan,

except that the plan may provide that, on election by the employee, all or any part of the amounts payable to the employee may be paid

(v) in equal instalments payable not less frequently than annually over a period not exceeding 10 years from the day on which the amount became payable, or

(vi) by a trustee under the plan to a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, to purchase for the employee an annuity commencing not later than a day 71 years after the day of the employee's birth, the guaranteed term of which, if any, does not exceed 15 years;

Subpara. 147(2)(k.1)(ii) amended, and subpara. (ii.1) added, by 1997, c. 25, subsec. 43(4), applicable after 1991. Subpara. (k.1)(ii) formerly read:

(ii) an amount referred to in paragraph (10)(a) or (b),

The opening words of para. 147(2)(c), and para. (d), substituted by 1994, c. 21, subsecs. 72(1), (2), applicable to 1993 *et seq.* Those portions formerly read:

(c) the plan provides that no part of the funds of the trust governed by the plan may be invested in notes, bonds, debentures or similar obligations of

. . . . .

(d) the plan provides that no part of the funds of the trust governed by the plan may be invested in shares of a corporation at least 50% of the property of which consists of notes, bonds, debentures or similar obligations of an employer or a corporation described in paragraph (c);

Pre-RSC History: Para. 147(2)(a.1) added, (i) substituted, and (i.1) added, by 1990, c. 35, subsecs. 15(2), (3), applicable after 1990. Para. (i) formerly read:

(i) the plan provides that all amounts allocated or reallocated by a trustee under the plan to a beneficiary under the plan vest irrevocably in that beneficiary not later than 5 years after the end of the year in which the amounts are so allocated or reallocated unless that beneficiary becomes, before that time, a person who is not an employee of any employer who makes or has made payments under the plan;

Subpara. 147(2)(k.2)(ii) substituted by 1984, c. 45, s. 55 to delete "(within the meaning assigned by paragraph 125(9)(c))" which formerly followed "a specified shareholder", applicable to 1985 *et seq.*

Paras. 147(2)(k.1) and (k.2) added by 1980-81-82-83, c. 140, subsec. 101(1), applicable by 1984, c. 1, s. 116 (deemed in force on March 30, 1983), to plans registered after March 1983, except that paragraph 147(2)(k.2) shall be deemed, for the purposes of subsections 147(9.1) and (10.3), to have come into force on January 1, 1982.

Regulations: 4900(2) (obligations described in 147(2)(c) are not qualified investments).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-281R2: Elections on single payments from a deferred profit-sharing plan; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary; IT-517R: Pension tax credit.

Information Circulars: 74-1R5: Form T2037 — Notice of purchase of annuity with "plan" funds; 78-14R2: Guidelines for trust companies and other persons responsible for filing. See also list at end of s. 147.

Forms: T2037: Notice of purchase of annuity with "plan" funds; T2214: Application for registration as a deferred profit sharing plan.

(2.1) Terms limiting contributions — The Minister shall not accept for registration for the purposes of this Act a profit sharing plan unless it includes terms that are adequate to ensure that the requirements of subsection (5.1) in respect of the plan will be satisfied for each calendar year.

(2.2) Reallocation of forfeitures — The Minister may, on written application, extend the time for satisfying the requirements of paragraph (2)(i.1) where

(a) the total of the forfeited amounts arising in a calendar year is greater than normal because of unusual circumstances; and

(b) the forfeited amounts are to be reallocated on a reasonable basis to a majority of beneficiaries under the plan.

Pre-RSC History: Subsecs. 147(2.1), (2.2) added by 1990, c. 35, subsec. 15(4), applicable after 1990.

(3) Acceptance of employees profit sharing plan for registration — The Minister shall not accept for registration for the purposes of this Act any employees profit sharing plan unless all the capital gains of or made by the trust governed by the plan before the date of application for registration of the plan and all the capital losses of or sustained by the trust before that date have been allocated by the trustee under the plan to employees and other beneficiaries thereunder.

(4) Capital gains determined — For the purposes of subsections (3) and (11), such amount as may be determined by the Minister, on request in prescribed manner by the trustee of a trust governed by an employees profit sharing plan, shall be deemed to be the amount of

(a) the capital gains of or made by the trust governed by the plan before the date of application for registration of the plan, or

(b) the capital losses of or sustained by the trust before that date,

as the case may be.

(5) Registration date — Where a profit sharing plan is accepted by the Minister for registration as a deferred profit sharing plan, the plan shall be deemed to have become registered as a deferred profit sharing plan

(a) on the date the application for registration of the plan was made; or

(b) where in the application for registration a later date is specified as the date on which the plan is to commence as a deferred profit sharing plan, on that date.

Related Provisions: 144(11) — Taxation year of trust accepted as DPSP.

(5.1) Contribution limits — For the purposes of subsections (2.1) and (9) and paragraph (14)(c.4), the re-

quirements of this subsection in respect of a deferred profit sharing plan are satisfied for a calendar year if, in the case of each beneficiary under the plan and each employer in respect of whom the beneficiary's pension credit (as prescribed by regulation) for the year under the plan is greater than nil,

(a) the total of all amounts each of which is the beneficiary's pension credit (as prescribed by regulation) for the year in respect of the employer under a deferred profit sharing plan does not exceed the lesser of

(i) ½ of the money purchase limit for the year, and

(ii) 18% of the amount that would be the beneficiary's compensation (within the meaning assigned by subsection 147.1(1)) from the employer for the year if the definition "compensation" in subsection 147.1(1) were read without reference to paragraph (b) of that definition;

(b) the total of all amounts each of which is the beneficiary's pension credit (as prescribed by regulation) for the year under a deferred profit sharing plan in respect of

(i) the employer, or

(ii) any other employer who, at any time in the year, does not deal at arm's length with the employer

does not exceed ½ of the money purchase limit for the year; and

(c) the total of

(i) the beneficiary's pension adjustment for the year in respect of the employer, and

(ii) the total of all amounts each of which is the beneficiary's pension adjustment for the year in respect of any other employer who, at any time in the year, does not deal at arm's length with the employer

does not exceed the lesser of

(iii) the money purchase limit for the year, and

(iv) 18% of the total of all amounts each of which is the beneficiary's compensation (within the meaning assigned by subsection 147.1(1)) for the year from the employer or any other employer referred to in subparagraph (ii).

Related Provisions: 147(2.1) — Terms limiting contributions; 147(5.11) — Compensation; 147(9) — Limitation on deduction; 147(14) — Revocation of registration; 147(22) — Excess transfer; 147.1(8) — Pension adjustment limits; Reg. 8301(11) — Timing of contributions.

Pre-RSC History: Subsec. 147(5.1) added by 1990, c. 35, subsec. 15(5), applicable after 1990.

Regulations: 8301(2), (3) (pension credit under DPSP).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: See list at end of s. 147.

Registered Plans Division Newsletters: 96-1 (Changes to retirement savings limits).

(5.11) Compensation — Where at any time in a calendar year an individual ceases to be employed by an employer,

(a) for the purposes of paragraph (5.1)(a), the amount that would be the individual's compensation (in this subsection having the meaning assigned by subsection 147.1(1)) from the employer for the year if the definition "compensation" in subsection 147.1(1) were read without reference to paragraph (b) of that definition shall be deemed to be the greater of

(i) that amount determined without reference to this paragraph, and

(ii) the amount that would be the individual's compensation from the employer for the immediately preceding year if the definition "compensation" in subsection 147.1(1) were read without reference to paragraph (b) of that definition; and

(b) for the purposes of paragraph (5.1)(c), the individual's compensation from the employer for the year shall be deemed to be the greater of

(i) that compensation determined without reference to this paragraph, and

(ii) the individual's compensation from the employer for the immediately preceding year.

Pre-RSC History: Subsec. 147(5.11) added by 1990, c. 35, subsec. 15(5), applicable after 1990.

(6) Deferred plan not employees profit sharing plan — For a period during which a plan is a deferred profit sharing plan, the plan shall be deemed, for the purposes of this Act, not to be an employees profit sharing plan.

Related Provisions: 144(11) — Year-end of EPSP on becoming DPSP.

(7) No tax while trust governed by plan — No tax is payable under this Part by a trust on the taxable income of the trust for a period during which the trust was governed by a deferred profit sharing plan.

Related Provisions: 149(1)(s) — Exemption for DPSP; 198 — Tax on acquisition of non-qualified investments and use of assets as security; 206(2) — Part XI tax on excess holdings of foreign property; 207.1(2) — Tax payable by DPSP on holding non-qualified investments.

(8) Amount of employer's contribution deductible — Subject to subsection (9), there may be deducted in computing the income of an employer for a taxation year the total of all amounts each of which is an amount paid by the employer in the year or within 120 days after the end of the year to a trustee under a deferred profit sharing plan for the benefit of the employer's employees who are beneficiaries under the plan, to the extent that the amount was paid in accordance with the terms of the plan and was not deducted in computing the employer's income for a preceding taxation year.

Related Provisions: 6(1)(a)(i) — Employer's contribution to DPSP not a taxable benefit; 20(1)(y) — Employer's contribution to DPSP deductible; 147(5.1) — Contribution limits; 147(9), (9.1) — Limitations on deduction; 147(20) — Taxation of amount transferred; 204.1(3) — Tax payable by DPSP on excess amount.

Pre-RSC History: Subsec. 147(8) substituted by 1990, c. 35, subsec. 15(6), applicable to 1991 *et seq.* with respect to amounts paid to DPSPs after 1990. Subsec. (8) formerly read:

(8) There may be deducted in computing the income of an employer for a taxation year the aggregate of each amount paid by the employer in the year or within 120 days after the end of the year, to a trustee under a deferred profit sharing plan for the benefit of employees of the employer who are beneficiaries under the plan, not exceeding, however, in respect of each individual employee in respect of whom the amounts so paid by the employer were paid by him, an amount equal to the least of

(a) the aggregate of each amount so paid by the employer in respect of that employee,

(b) $3,500 minus the aggregate of all amounts, each of which is the amount, if any, required to be paid to or under a registered pension plan of the employer or of a person related to the employer in order to provide benefits thereunder to that employee in respect of services rendered by him in the year that, if paid in

the year, would be deductible in computing the income of the payer for the year, under

(i) paragraph 20(1)(q), or

(ii) paragraph 20(1)(s), if the employer had sought the approval required for purposes of that paragraph, and

(c) 20% of the salary or wages paid in the year to the employee by the employer,

to the extent that such amount was not deductible in computing the income of the employer for a previous taxation year.

Para. 147(8)(b) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

All that portion of para. 147(8)(b) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 101(2), applicable with respect to taxation years commencing after November 12, 1981. The substituted portion formerly read:

(b) $3,500 minus the amount, if any, determined in prescribed manner, required to be paid to or under a registered pension fund or plan in order to provide benefits thereunder to that employee in respect of services rendered by him in the year that, if paid in the year, would be deductible in computing the employer's income for the year, under

Para. 147(8)(b) substituted by 1980-81-82-83, c. 48, s. 82, applicable to taxation years ending after 1980 in respect of amounts paid after 1980. Para. 147(8)(b) formerly read:

(b) $3,500 minus the amount, if any, deductible under paragraph 20(1)(q) in respect of that employee in computing the income of the employer for the taxation year, and

Para. 147(8)(b) substituted by 1976-77, c. 4, subsec. 58(1), applicable to 1976 *et seq.*, to substitute "$3,500" for "$2,500".

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(9) Limitation on deduction — Where the requirements of subsection (5.1) in respect of a deferred profit sharing plan are not satisfied for a calendar year by reason that the pension credits of a beneficiary under the plan in respect of a particular employer do not comply with paragraph (5.1)(a) or the beneficiary's pension credits or pension adjustments in respect of a particular employer and other employers who do not deal at arm's length with the particular employer do not comply with paragraph (5.1)(b) or (c), the particular employer is not entitled to a deduction under subsection (8) in computing the particular employer's income for any taxation year in respect of an amount paid to a trustee under the plan in the calendar year except to the extent expressly permitted in writing by the Minister, and, for the purposes of this subsection, an amount paid to a trustee of a deferred profit sharing plan in the first two months of a calendar year shall be deemed to have been paid in the immediately preceding year and not to have been paid in the year to the extent that the amount can reasonably be considered to be in respect of the immediately preceding year.

Pre-RSC History: Subsec. 147(9) substituted by 1990, c. 35, subsec. 15(6), applicable to 1990 *et seq.* with respect to amounts paid to DPSPs after 1990. Subsec. (9) formerly read:

(9) Where each of two or more taxpayers not dealing at arm's length would, but for this subsection, be entitled to a deduction under subsection (8) in computing his income for a taxation year in respect of amounts paid by him to a trustee under one or more deferred profit sharing plans in respect of the same person, not more than one of the taxpayers is entitled, in computing his income for that year, to a deduction under that subsection in respect of that person, and in the event of failure on the part of the taxpayers otherwise entitled to a deduction under that subsection to agree as to the taxpayer by whom the deduction may be made, no deduction thereunder may be made by either or any of them in computing his income for that year.

(9.1) No deduction — Notwithstanding subsection (8), no deduction shall be made in computing the income of an employer for a taxation year in respect of an amount paid by the employer for the year to a trustee under a deferred profit sharing plan in respect of a beneficiary who is described in paragraph (2)(k.2) in respect of the plan.

Pre-RSC History: Subsec. 147(9.1) added by 1980-81-82-83, c. 140, subsec. 101(3), applicable with respect to taxation years commencing after 1981.

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(10) Amounts received taxable — There shall be included in computing the income of a beneficiary under a deferred profit sharing plan for a taxation year the amount, if any, by which

(a) the total of all amounts received by the beneficiary in the year from a trustee under the plan (other than as a result of acquiring an annuity described in subparagraph (2)(k)(vi) under which the beneficiary is the annuitant)

exceeds

(b) the total of all amounts each of which is an amount determined for the year under subsection (10.1), (11) or (12) in relation to the plan and in respect of the beneficiary.

Related Provisions: 56(1)(d.2)(iii) — Income from annuity purchased with plan funds is taxable; 56(1)(i) — Deferred profit sharing plan; 60(j) — Transfer of superannuation benefits; 104(27.1) — DPSP benefits; 128.1(10)"excluded right or interest"(a)(iv) — No deemed disposition of DPSP on emigration; 139.1(12) — Conversion benefit on demutualization of insurance corporation not taxable; 147(10.1) — Single payment on retirement etc.; 147(10.4) — Income on disposal of shares; 147(11) — Portion of receipts deductible; 147(18) — Inadequate consideration on purchase from or sale to trust; 147(20) — Taxation of amount transferred; 153(1)(h) — Withholdings; 212(1)(m), 214(3)(d) — Withholding tax on payments to non-residents.

History: Subsec. 147(10) amended by 1997, c. 25, subsec. 43(5), applicable to 1992 *et seq.* Subsec. (10) formerly read:

(10) There shall be included in computing the income of a beneficiary under a deferred profit sharing plan for a taxation year the amount by which the total of the amounts received by the beneficiary in the year from a trustee under the plan exceeds the total of

(a) any amounts determined for the year under subsection (10.1), (11) or (12) in relation to the plan and in respect of the beneficiary, and

(b) amounts paid by a trustee under the plan pursuant to the plan to a person described in subparagraph (2)(k)(vi) to purchase an annuity described in that subparagraph.

Pre-RSC History: All that portion of subsec. 147(10) preceding para. (b) substituted by 1973-74, c. 14, subsec. 51(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 147(10)]: *The Queen v. Powell*, [1980] C.T.C. 382 (FCTD) (Increase in value of shares from time of acquisition in deferred profit sharing plan included in income).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits; IT-281R2: Elections on single payments from a deferred profit-sharing plan; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary; IT-528: Transfers of funds between registered plans.

Information Circulars: See list at end of s. 147.

Advance Tax Rulings: ATR-31: Funding of divorce settlement amount from DPSP.

(10.1) Single payment on retirement, etc. — For the purposes of subsections (10) and (10.2), where a beneficiary under a deferred profit sharing plan has received, in a taxation year and when the beneficiary was resident in Canada, from a trustee under the plan a single payment

that included shares of the capital stock of a corporation that was an employer who contributed to the plan or of a corporation with which the employer did not deal at arm's length on the beneficiary's withdrawal from the plan or retirement from employment or on the death of an employee or former employee and has made an election in respect thereof in prescribed manner and prescribed form, the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is the amount, if any, by which the fair market value of those shares, immediately before the single payment was made, exceeds the cost amount to the plan of those shares at that time.

Related Provisions: 147(10) — Amounts received taxable; 147(10.2) — Single payment on retirement etc.; 147(11) — Portion of receipts deductible.

Regulations: 1503 (prescribed manner, prescribed form).

Interpretation Bulletins: IT-281R2: Election on single payments from a deferred profit-sharing plan; IT-528: Transfers of funds between registered plans.

Forms: T2078: Election under subsection 147(10.1) in respect of a single payment received from a deferred profit sharing plan.

(10.2) Idem — Where a trustee under a deferred profit sharing plan has at any time in a taxation year made under the plan a single payment that included shares referred to in subsection (10.1) to a beneficiary who was resident in Canada at the time and the beneficiary has made an election under that subsection in respect of that payment,

(a) the trustee shall be deemed to have disposed of those shares for proceeds of disposition equal to the cost amount to the trust of those shares immediately before the single payment was made;

(b) the cost to the beneficiary of those shares shall be deemed to be their cost amount to the trust immediately before the single payment was made;

(c) the cost to the beneficiary of each of those shares shall be deemed to be the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount determined under paragraph (a) in respect of all of those shares,

B is the fair market value of that share at the time the single payment was made, and

C is the fair market value of all those shares at the time the single payment was made; and

(d) for the purposes of paragraph 60(j), the cost to the beneficiary of those shares is an eligible amount in respect of the beneficiary for the year.

Pre-RSC History: Para. 147(10.2)(d) added by 1990, c. 35, subsec. 15(7), applicable after 1988.

Subsecs. 147(10.1), (10.2) substituted by 1986, c. 6, subsec. 83(1), applicable with respect to terminations of interests in deferred profit sharing plans occurring after May 23, 1985. Subsecs. 147(10.1), (10.2) formerly read:

(10.1) Single payment on withdrawal, retirement or death — For the purposes of subsections (10) and (10.2), where in a taxation year a beneficiary under a deferred profit sharing plan has received, at a time when he was resident in Canada, from a trustee under the plan a single payment that included property that was neither money nor an amount described in paragraph (10)(b) upon his withdrawal from the plan or retirement from employment or upon the death of an employee or former employee and has made an election in respect thereof in prescribed manner and prescribed form, the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is the amount computed in accordance with the following rules:

(a) determine the amount by which the aggregate of

(i) the aggregate of the amounts that the beneficiary, employee or former employee would have received out of or pursuant to the plan if

(A) he had withdrawn from the plan on January 1, 1972,

(B) there had been no change in the terms and conditions of the plan after June 18, 1971 and before January 2, 1972, and

(C) any term or condition of the plan that would, in the event that he had withdrawn from the plan on January 1, 1972, have reduced the amount of any payment or payments that would, if he remained a member of the plan for a specified period of time after December 31, 1971, have been made to him in respect of years ending before 1972, were not a term or condition of the plan,

to the extent that the aggregate would have been included in computing his income if

(D) it was so received by him, and

(E) subsection 40(1) of the *Income Tax Application Rules, 1971* did not apply to deem the aggregate not to be his income,

(ii) each amount determined, for any taxation year after the 1971 taxation year, under subsection (11) or (12), in relation to the plan and in respect of the beneficiary, employee or former employee,

(iii) each amount allocated, at a time when the plan was a deferred profit sharing plan and before the beneficiary received the single payment, to the beneficiary, employee or former employee by a trustee under the plan in respect of

(A) an amount paid after 1971 by an employer to a trustee under the plan for the benefit of employees who were beneficiaries under the plan,

(B) income of the trust governed by the plan for the 1972 or any subsequent taxation year, computed on the assumption that the trust had not made any capital gains or sustained any capital losses,

(C) an amount forfeited (within the meaning assigned by subsection 201(3)) in the trust after 1971, or

(D) a capital gain made by the trust after 1971,

exceeds the aggregate of

(iv) each amount received, at a time after 1971 when the plan was a deferred profit sharing plan and before the beneficiary received the single payment, by the beneficiary, employee or former employee from a trustee under the plan,

(v) each amount allocated, at a time when the plan was a deferred profit sharing plan and before the beneficiary received the single payment, to the beneficiary, employee or former employee in respect of a capital loss sustained by the trust after 1971, and

(vi) each amount forfeited (within the meaning assigned by subsection 201(3)) in the trust in respect of the beneficiary, employee or former employee at a time after 1971 when the plan was a deferred profit sharing plan,

(b) determine the amount by which the amount of the single payment exceeds the amount determined under paragraph (a), and

(c) the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is the lesser of

(i) the fair market value, at the time the single payment was made, of the property that was included in the single payment and that was neither money nor an amount described in paragraph (10)(b), and

(ii) the amount determined under paragraph (b).

(10.2) Idem — Where in a taxation year a trustee under a deferred profit sharing plan has made a single payment to a beneficiary under

the plan and the beneficiary has made an election under subsection (10.1) in respect of that payment

(a) the trustee shall be deemed to have disposed of each property that was included in the single payment and that was neither money nor an amount described in paragraph (10)(b) for proceeds of disposition equal to the cost amount to the trust of the property immediately before the single payment was made;

(b) the cost to the beneficiary of all such property shall be deemed to be the fair market value, at the time the single payment was made, of such property minus the amount determined for the year under subsection (10.1) in relation to the plan and in respect of the beneficiary; and

(c) the cost to the beneficiary of each such property shall be deemed to be the proportion of the amount determined under paragraph (b) that the fair market value, at the time the single payment was made, of that property is of the fair market value at that time of all such property.

Subsecs. 147(10.1), (10.2) added by 1973-74, c. 14, subsec. 51(2), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan; IT-528: Transfers of funds between registered plans.

Forms: TD2: Tax deduction waiver for a direct transfer of an eligible retiring allowance.

(10.3) Amount contributed to or forfeited under a plan — There shall be included in computing the income for a taxation year of a beneficiary described in paragraph (2)(k.2) the total of amounts allocated or reallocated to the beneficiary in the year in respect of

(a) any amount contributed after December 1, 1982 by an employer to, or

(b) any forfeited amount under

a deferred profit sharing plan or a plan the registration of which has been revoked pursuant to subsection (14) or (14.1).

Pre-RSC History: Subsec. 147(10.3) substituted by 1990, c. 35, subsec. 15(8), applicable after 1990. Subsec. (10.3) formerly read:

(10.3) Amount contributed to or forfeited in a trust — There shall be included in computing the income for a taxation year of a beneficiary described in paragraph (2)(k.2) the aggregate of amounts allocated or reallocated to him in the year in respect of any amount

(a) contributed after December 1, 1982 by an employer to, or

(b) forfeited (within the meaning assigned by subsection 201(3)) in

a trust governed by a deferred profit sharing plan or a plan whose registration has been revoked pursuant to subsection (14) or (14.1).

Subsec. 147(10.3) added by 1980-81-82-83, c. 140, subsec. 101(4), applicable with respect to taxation years commencing after 1981.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(10.4) Income on disposal of shares — Where a taxpayer has a share in respect of which the taxpayer has made an election under subsection (10.1), there shall be included in computing the taxpayer's income for the taxation year in which the taxpayer disposed of or exchanged the share or ceased to be a resident of Canada, whichever is the earlier, the amount, if any, by which the fair market value of the share at the time the taxpayer acquired it exceeds the cost to the taxpayer, determined under paragraph (10.2)(c), of the share at the time the taxpayer acquired it.

Related Provisions: 110(1)(d.3) — Employer's shares — deduction from taxable income; 147(10.5) — Order of disposal of shares.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan.

(10.5) Order of disposal of shares — For the purposes of subsection (10.4), a taxpayer shall be deemed to have disposed of or exchanged shares that are identical properties in the order in which the taxpayer acquired them.

Pre-RSC History: Subsecs. 147(10.4), (10.5) added by 1986, c. 6, subsec. 83(2), applicable (by subsec. 83(3) as amended by 1986, c. 55, s. 82) with respect to terminations of interests in DPSPs occurring after May 23, 1985.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan.

(10.6) Commencement of annuity after age 69 — Where an amount is paid before 1997 pursuant to or under a deferred profit sharing plan to purchase for a beneficiary under the plan an annuity to which subparagraph (2)(k)(vi) applies, and payment of the annuity has not begun by the end of the particular year in which the beneficiary attains 69 years of age,

(a) the beneficiary is deemed to have disposed of the annuity immediately after the particular year and to have received as proceeds of the disposition an amount equal to the fair market value of the annuity at the end of the particular year;

(b) the beneficiary is deemed to have acquired immediately after the particular year an interest in the annuity as a separate and newly issued annuity contract at a cost equal to the amount referred to in paragraph (a); and

(c) the issue and acquisition of the contract referred to in paragraph (b) are deemed not to be pursuant to or under a deferred profit sharing plan.

Related Provisions: 56(1)(d.2)(iii) — Beneficiary required to include fair market value of annuity in income; 146(13.2) — Parallel rules for RRSPs; 198(6)(d) — Life insurance policy purchased with DPSP maturing by age 69.

History: Subsec. 147(10.6) added by 1997, c. 25, subsec. 43(6), applicable after 1996 except that

(a) where a beneficiary under a profit sharing plan attained 70 years of age before 1997, the subsec. does not apply to an annuity purchased for the beneficiary;

(b) where a beneficiary under a profit sharing plan attained 69 years of age in 1996, in applying subsec. (10.6) to an annuity purchased for the beneficiary, the reference to "69 years of age" shall be read as "70 years of age"; and

(c) the subsec. does not apply to an annuity purchased before March 6, 1996 for a beneficiary under a deferred profit sharing plan where, under the terms and conditions of the annuity contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after the year in which the beneficiary attains

(A) 69 years of age, where the beneficiary had not attained that age before 1997, or

(B) 70 years of age, where the beneficiary attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined.

(11) Portion of receipts deductible — For the purposes of subsections (10), (10.1) and (12), where an amount was received in a taxation year from a trustee under a deferred profit sharing plan by an employee or other beneficiary thereunder, and the employee was a beneficiary under the plan at a time when the plan was an employees profit sharing plan, the amount determined for the year under this subsection in relation to the plan and

in respect of the beneficiary is such portion of the total of the amounts so received in the year as does not exceed

(a) the total of

(i) each amount included in respect of the plan in computing the income of the employee for the year or for a previous taxation year by virtue of section 144,

(ii) each amount paid by the employee to a trustee under the plan at a time when it was an employees profit sharing plan, and

(iii) each amount that was allocated to the employee or other beneficiary by a trustee under the plan, at a time when it was an employees profit sharing plan, in respect of a capital gain made by the trust before 1972,

minus

(b) the total of

(i) each amount received by the employee or other beneficiary in a previous taxation year from a trustee under the plan at a time when it was an employees profit sharing plan,

(ii) each amount received by the employee or other beneficiary in a previous taxation year from a trustee under the plan at a time when it was a deferred profit sharing plan, and

(iii) each amount allocated to the employee or other beneficiary by a trustee under the plan, at a time when it was an employees profit sharing plan, in respect of a capital loss sustained by the trust before 1972.

Related Provisions: 147(10) — Amounts received taxable; 147(17) — Meaning of "other beneficiary".

Pre-RSC History: All that portion of subsec. 147(11) preceding subpara. (a)(ii) substituted by 1973-74, c. 14, subsec. 51(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(12) Idem — For the purposes of subsections (10) and (10.1), where an amount was received in a taxation year from a trustee under a deferred profit sharing plan by an employee or other beneficiary thereunder, and the employee has made a payment in the year or a previous year to a trustee under the plan at a time when the plan was a deferred profit sharing plan, the amount determined for the year under this subsection in relation to the plan and in respect of the beneficiary is such portion of the total of the amounts so received in the year (minus any amount determined for the year under subsection (11) in relation to the plan and in respect of the beneficiary) as does not exceed

(a) the total of all amounts each of which was so paid by the employee in the year or a previous year to the extent that the payment was not deductible in computing the employee's income,

minus

(b) the total of all amounts each of which was received by the employee or other beneficiary from a trustee under the plan, at a time when it was a deferred profit sharing plan, to the extent that it was included in the computation of an amount determined for a previous year under this subsection in relation to the plan and in respect of the employee or other beneficiary.

Related Provisions: 60(j) — Transfer of superannuation benefits; 147(10) — Amounts received taxable; 147(11) — Portion of receipts deductible; 147(17) — Meaning of "other beneficiary".

Pre-RSC History: Subsec. 147(12) substituted by 1973-74, c. 14, subsec. 51(4), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit-sharing plan; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(13) Appropriation of trust property by employer — Where funds or property of a trust governed by a deferred profit sharing plan have been appropriated in any manner whatever to or for the benefit of a taxpayer who is

(a) an employer by whom payments are made in trust to a trustee under the plan, or

(b) a corporation with which that employer does not deal at arm's length,

otherwise than in payment of or on account of shares of the capital stock of the taxpayer purchased by the trust, the amount or value of the funds or property so appropriated shall be included in computing the income of the taxpayer for the taxation year of the taxpayer in which the funds or property were so appropriated, unless the funds or property or an amount in lieu thereof equal to the amount or value of the funds or property was repaid to the trust within one year from the end of the taxation year, and it is established by subsequent events or otherwise that the repayment was not made as part of a series of appropriations and repayments.

Related Provisions: 201 — Tax on forfeitures; 214(3)(d) — Non-resident withholding tax; 248(10) — Series of transactions.

(14) Revocation of registration — Where, at any time after a profit sharing plan has been accepted by the Minister for registration for the purposes of this Act,

(a) the plan has been revised or amended or a new plan has been substituted therefor, and the plan as revised or amended or the new plan substituted therefor, as the case may be, ceased to comply with the requirements of this section for its acceptance by the Minister for registration for the purposes of this Act,

(b) any provision of the plan has not been complied with,

(c) the plan is a plan that did not, as of January 1, 1968,

(i) comply with the requirements of paragraphs (2)(a), (b) to (h), (j) and (k), and paragraph 147(2)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on January 1, 1972, and

(ii) provide that the amounts held by the trust for the benefit of beneficiaries thereunder that remain unallocated on December 31, 1967 must be allocated or reallocated, as the case may be, before 1969,

(c.1) the plan becomes a revocable plan pursuant to subsection (21),

(c.2) the plan does not comply with the requirements of paragraphs (2)(a) to (k) and (l),

(c.3) in the case of a plan that became registered after March, 1983, the plan does not comply with the requirements of paragraphs (2)(k.1) and (k.2),

(c.4) the requirements of subsection (5.1) in respect of the plan are not satisfied for a calendar year, or

(c.5) an employer who participates in the plan fails to file an information return reporting a pension adjustment of a beneficiary under the plan as and when required by regulation,

the Minister may revoke the registration of the plan,

(d) where paragraph (a) applies, as of the date that the plan ceased so to comply, or any subsequent date,

(e) where paragraph (b) applies, as of the date that any provision of the plan was not so complied with, or any subsequent date,

(f) where paragraph (c) applies, as of any date following January 1, 1968,

(g) where paragraph (c.1) applies, as of the date on which the plan became a revocable plan, or any subsequent date,

(h) where paragraph (c.2) or (c.3) applies, as of the date on which the plan did not so comply, or any subsequent date, but not before January 1, 1991,

(i) where paragraph (c.4) applies, as of the end of the year for which the requirements of subsection (5.1) in respect of the plan are not satisfied, or any subsequent date, and

(j) where paragraph (c.5) applies, as of any date after the date by which the information return was required to be filed,

and the Minister shall thereafter give notice of the revocation by registered mail to a trustee under the plan and to an employer of employees who are beneficiaries under the plan.

Related Provisions: 147(2) — Requirements for registration; 147(10.3) — Amount contributed to or forfeited under a plan; 147(15) — Rules applicable to revoked plan; 172(3)(c) — Appeal from refusal to register, revocation of registration, etc.; 198 — Tax on non-qualified investments and use of assets as security; 204 — "Revoked plan"; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: Subpara. 147(14)(c)(i) substituted, paras. (c.1) to (c.5) and (g) to (j) added, by 1990, c. 35, subsecs. 15(9) to (11), paras. (c.1) and (g) applicable after 1988, the remainder after 1990. Subpara. (c)(i) formerly read:

(i) comply with the conditions described in paragraphs (2)(a) to (k), and

All that portion of subsec. 147(14) following para. (c) substituted by 1976-77, c. 4, subsec. 58(2), applicable after May 25, 1976. That portion formerly read:

the Minister may revoke the registration of the plan as of any date following

(d) where paragraph (a) applies, the date that the plan ceased so to comply,

(e) where paragraph (b) applies, the date that any provision of the plan was not so complied with, and

(f) where paragraph (c) applies, January 1, 1968,

and he shall thereafter give notice of his action by registered mail to a trustee under the plan and to an employer of employees who are beneficiaries under the plan.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(14.1) Idem — Where on any day after June 30, 1982 a benefit or loan is extended or continues to be extended as a consequence of the existence of a deferred profit sharing plan and that benefit or loan would be prohibited if the plan met the requirement for registration contained in paragraph (2)(k.1), the Minister may revoke the registration of the plan as of that or any subsequent day that is specified by the Minister in a notice given by registered mail to a trustee under the plan and to an employer of employees who are beneficiaries under the plan.

Related Provisions: 147(15) — Rules applicable to revoked plan; 198 — Tax on non-qualified investments and use of assets as security; 204 — "Revoked plan"; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 147(14.1) added by 1980-81-82-83, c. 140, subsec. 101(5).

(15) Rules applicable to revoked plan — Where the Minister revokes the registration of a deferred profit sharing plan, the plan (in this section referred to as the "revoked plan") shall be deemed, for the purposes of this Act, not to be a deferred profit sharing plan, and notwithstanding any other provision of this Act, the following rules shall apply:

(a) the revoked plan shall not be accepted for registration for the purposes of this Act or be deemed to have become registered as a deferred profit sharing plan at any time within a period of one year commencing on the date the plan became a revoked plan;

(b) subsection (7) does not apply to exempt the trust governed by the plan from tax under this Part on the taxable income of the trust for a taxation year in which, at any time therein, the trust was governed by the revoked plan;

(c) no deduction shall be made by an employer in computing the employer's income for a taxation year in respect of an amount paid by the employer to a trustee under the plan at a time when it was a revoked plan;

(d) there shall be included in computing the income of a taxpayer for a taxation year

(i) all amounts received by the taxpayer in the year from a trustee under the revoked plan that, by virtue of subsection (10), would have been so included if the revoked plan had been a deferred profit sharing plan at the time the taxpayer received those amounts, and

(ii) the amount or value of any funds or property appropriated to or for the benefit of the taxpayer in the year that, by virtue of subsection (13), would have been so included if the revoked plan had been a deferred profit sharing plan at the time of the appropriation of the funds or property; and

(e) the revoked plan shall be deemed, for the purposes of this Act, not to be an employees profit sharing plan or a retirement compensation arrangement.

Related Provisions: 128.1(10)"excluded right or interest"(a)(iv) — Emigration — no deemed disposition of interest in revoked plan; 147(14), (14.1) — Revocation of DPSP; 147(18) — Inadequate consideration on purchase from or sale to trust; 214(3)(d) — Non-resident withholding tax.

Pre-RSC History: Para. 147(15)(e) amended by 1990, c. 35, subsec. 15(12), to add "or a retirement compensation arrangement", applicable after October 8, 1986.

(16) Payments out of profits — Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", the arrangement shall be deemed, for the purpose of subsection (1), to be an arrangement for payments "computed by reference to an employer's profits from the employer's business".

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits.

(17) Interpretation of "other beneficiary" — Where the expression "employee or other beneficiary" under a

profit sharing plan occurs in this section, the words "other beneficiary" shall be construed as meaning any person, other than the employee, to whom any amount is or may become payable by a trustee under the plan as a result of payments made to the trustee under the plan in trust for the benefit of employees, including the employee.

Related Provisions: 202(1) — Returns and payment of estimated tax.

(18) Inadequate consideration on purchase from or sale to trust — Where a trust governed by a deferred profit sharing plan or revoked plan

(a) disposes of property to a taxpayer for a consideration less than the fair market value of the property at the time of the transaction, or for no consideration, or

(b) acquires property from a taxpayer for a consideration greater than the fair market value of the property at the time of the transaction,

the difference between that fair market value and the consideration, if any

(c) shall, for the purposes of subsections (10) and (15), be deemed to be an amount received by the taxpayer at the time of the disposal or acquisition, as the case may be, from a trustee under the plan as if the taxpayer were a beneficiary under the plan, and

(d) is an amount taxable under section 201 for the calendar year in which the trust disposes of or acquires the property, as the case may be.

Related Provisions: 201 — 50% tax payable on amount taxable.

Pre-RSC History: That portion of subsec. 147(18) following para. (b) substituted by 1990, c. 35, subsec. 15(13), applicable after 1990. That portion formerly read:

the difference between such fair market value and the consideration, if any, shall be deemed to be,

(c) for the purposes of subsections (10) and (15), an amount received by the taxpayer from a trustee under the plan as if the taxpayer were a beneficiary under the plan, and

(d) for the purposes of section 201, an amount forfeited in the trust and reallocated to the taxpayer, as if the taxpayer were an employee who was a beneficiary under the plan,

at the time of the disposal or acquisition, as the case may be.

Para. 147(18)(c) substituted by 1974-75-76, c. 26, s. 101, applicable to 1974 *et seq.* Para. 147(18)(c) formerly read:

(c) for the purposes of subsection (10), an amount received by the taxpayer from a trustee under the plan as if the taxpayer were a beneficiary under the plan, and

Information Circulars: 77-1R4 — Deferred profit sharing plans.

(19) Transfer to RPP, RRSP or DPSP — An amount is transferred from a deferred profit sharing plan in accordance with this subsection if the amount

(a) is not part of a series of periodic payments;

(b) is transferred on behalf of an individual

(i) who is an employee or former employee of an employer who participated in the plan on the employee's behalf, or

(ii) who is entitled to the amount as a consequence of the death of an employee or former employee referred to in subparagraph (i) and who was, at the date of the employee's death, a spouse of the employee,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

in full or partial satisfaction of the individual's entitlement to benefits under the plan;

(c) would, if it were paid directly to the individual, be included under subsection (10) in computing the individual's income for a taxation year; and

(d) is transferred for the benefit of the individual directly to

(i) a registered pension plan,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a deferred profit sharing plan that can reasonably be expected to have at least 5 beneficiaries at all times throughout the calendar year in which the transfer is made.

Related Provisions: 60(j) — Transfer of superannuation benefits; 60(j.2) — Transfer to spousal RRSP; 60(k) — re 1989 — Transfers to DPSPs; 104(27.1) — DPSP benefits; 146(8.2) — Amount deductible where withdrawn after mistaken contribution; 147(2)(a.1) — Acceptance of plan for registration; 147(10.2) — Single payment on retirement etc.; 147(20) — Taxation of amount transferred; 147(22) — Excess transfer; 248(8) — Occurrences as a consequence of death; 248(10) — Series of transactions.

History: Subpara. 147(19)(b)(ii) amended by 1998, c. 19, s. 172, applicable after 1992. Subpara. 147(19)(b)(ii) formerly read:

(ii) who is entitled to the amount as a consequence of the death of an employee or former employee referred to in subparagraph (i) and who was, at the date of the employee's death, a spouse (within the meaning assigned by subsection 146(1.1)) of the employee,

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: See list at end of s. 147.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2151: Record of direct transfer of a "single amount".

(20) Taxation of amount transferred — Where an amount is transferred on behalf of an individual in accordance with subsection (19),

(a) the amount shall not, by reason only of that transfer, be included by virtue of this section in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

Related Provisions: 56(1)(i) — Amount received taxable; 212(1)(m)(i) — Transferred amount not subject to non-resident withholding tax.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(21) Restriction re transfers — A deferred profit sharing plan becomes a revocable plan at any time that an amount is transferred from the plan to a registered pension plan, a registered retirement savings plan or another deferred profit sharing plan unless

(a) the transfer is in accordance with subsection (19); or

(b) the amount is deductible under paragraph 60(j) or (j.2) of this Act or paragraph 60(k) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by the individual on whose behalf the transfer is made.

Related Provisions: 147(14)(c.1) — Revocation of registration.

Pre-RSC History: Subsecs. 147(19) to (21) added by 1990, c. 35, subsec. 15(14), applicable in respect of amounts transferred after 1988.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(22) Excess transfer — Where

(a) the transfer of an amount from a deferred profit sharing plan in a calendar year on behalf of a beneficiary under the plan would, but for this subsection, be in accordance with subsection (19), and

(b) the requirements of subsection (5.1) in respect of the plan are not satisfied for the year by reason that the beneficiary's pension credits or pension adjustments do not comply with any of paragraphs (5.1)(a) to (c),

such portion of the amount transferred as may reasonably be considered to derive from amounts allocated or reallocated to the beneficiary in the year or from earnings reasonably attributable to those amounts shall, except to the extent otherwise expressly provided in writing by the Minister, be deemed to be an amount that was not transferred in accordance with subsection (19).

Pre-RSC History: Subsec. 147(22) added by 1990, c. 35, subsec. 15(14), applicable in respect of amounts transferred after 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Definitions [s. 147]: "amount", "annuity", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital gain", "capital loss" — 39(1), 248(1); "common-law partner" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "employed", "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "employer", "employment" — 248(1); "estate" — 104(1), 248(1); "forfeited amount" — 147(1); "identical" — 248(12); "individual" — 248(1); "licensed annuities provider" — 147(1); "Minister" — 248(1); "money purchase limit" — 147.1(1), 248(1); "other beneficiary" — 147(17); "participate" — 147(1.1); "pension adjustment" — 248(1), Reg. 8301(1); "person", "prescribed" — 248(1); "profit sharing plan" — 147(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "related" — 251(2); "resident in Canada" — 250; "retirement compensation arrangement" — 248(1); "revoked plan" — 147(15); "series of transactions" — 248(10); "share", "specified shareholder" — 248(1); "spouse" — 252(4)(a); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 147]: 74-1R5: Form T2037 — Notice of purchase of annuity with "plan" funds; 77-1R4: Deferred profit sharing plans; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Pension Plans

147.1 (1) Definitions — In this section and sections 147.2 and 147.3,

"actuary" means a Fellow of the Canadian Institute of Actuaries;

"administrator" of a pension plan means the person or body of persons that has ultimate responsibility for the administration of the plan;

Related Provisions: 147.1(6) — Administrator; 147.1(7) — Obligations of administrator.

"average wage" for a calendar year means the amount that is obtained by dividing by 12 the total of all amounts each of which is the wage measure for a month in the 12 month period ending on June 30 of the immediately preceding calendar year;

"compensation" of an individual from an employer for a calendar year means the total of all amounts each of which is

(a) an amount in respect of

(i) the individual's employment with the employer, or

(ii) an office in respect of which the individual is remunerated by the employer

that is required (or that would be required but for paragraph 81(1)(a) as it applies with respect to the *Indian Act*) by section 5 or 6 to be included in computing the individual's income for the year, except such portion of the amount as

(iii) may reasonably be considered to relate to a period throughout which the individual was not resident in Canada, and

(iv) is not attributable to the performance of the duties of the office or employment in Canada or is exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

(b) a prescribed amount, or

(c) an amount acceptable to the Minister in respect of remuneration received by the individual from any employer for a period in the year throughout which the individual was not resident in Canada, to the extent that the amount is not otherwise included in the total;

Related Provisions: 147(5.1) — DPSP Contribution limits; 147(5.11) — Compensation; 147.1(8) — Pension adjustment limits; 147.1(9) — Pension adjustment limits — multi-employer plans.

Regulations: 8507 (prescribed amount).

Information Circulars: 98-2: Prescribed compensation for registered pension plans.

"defined benefit provision" of a pension plan means terms of the plan under which benefits in respect of each member are determined in any way other than that described in the definition "money purchase provision" in this subsection;

Related Provisions: 60(j.01) — Transfer of surplus.

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-528: Transfers of funds between registered plans.

"member" of a pension plan means an individual who has a right, either immediate or in the future and either absolute or contingent, to receive benefits under the plan, other than an individual who has such a right only by reason of the participation of another individual in the plan;

Related Provisions: 128.1(10)"excluded right or interest"(a)(viii) — No deemed disposition on emigration of member.

"money purchase limit" for a calendar year means

(a) for years before 1990, nil,

(b) for 1990, $11,500,

(c) for 1991 and 1992, $12,500,

(d) for 1993, $13,500,

(e) for 1994, $14,500,

(f) for 1995, $15,500, and

(g) for years after 1995 and before 2003, $13,500,

(h) for 2003, $14,500,

(i) for 2004, $15,500, and

(j) for each year after 2004, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 2004,

rounded to the nearest multiple of $10, or, if that product is equidistant from 2 such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the preceding year;

Related Provisions: 146(1) — RRSP dollar limit; 147.1(8) — Pension adjustment limits; 147.1(9) — Pension adjustment limits — multi-employer plans; 248(1)"money purchase limit" — Definition applies to entire Act.

History: Paras. (g) to (j) of the definition "money purchase limit" in subsec. 147.1(1) amended by 1997, c. 25, s. 44, applicable after 1996. Paras. (g) to (j) formerly read:

(g) for 1996, $13,500,

(h) for 1997, $14,500,

(i) for 1998, $15,500, and

(j) for each year after 1998, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1998,

rounded to the nearest multiple of $10, or, if that product is equidistant from 2 such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the preceding year;

Paras. (g) to (j) substituted for para. (g) of the definition "money purchase limit" in subsec. 147.1(1), by 1996, c. 21, s. 36, applicable after 1995. Para. (g) formerly read:

(g) for each year thereafter, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1995,

rounded to the nearest multiple of $10, or, if that product is equidistant from two such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the immediately preceding calendar year;

"Money purchase limit" in subsec. 147.1(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 85(1), applicable after 1991. That definition formerly read:

"money purchase limit" for a calendar year means

(a) for years preceding 1990, nil,

(b) for 1990, $11,500,

(c) for 1991, $12,500,

(d) for 1992, $13,500,

(e) for 1993, $14,500,

(f) for 1994, $15,500, and

(g) for each year thereafter, the greater of

(i) the product of

(A) $15,500, and

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1994,

rounded to the nearest multiple of ten dollars, or, if that product is equidistant from two such consecutive multiples, to the higher thereof, and

(ii) the money purchase limit for the immediately preceding calendar year;

Registered Plans Division Newsletters: 96-1 (Changes to retirement savings limits).

"money purchase provision" of a pension plan means terms of the plan

(a) which provide for a separate account to be maintained in respect of each member, to which are credited contributions made to the plan by, or in respect of, the member and any other amounts allocated to the member, and to which are charged payments made in respect of the member, and

(b) under which the only benefits in respect of a member are benefits determined solely with reference to, and provided by, the amount in the member's account;

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-528: Transfers of funds between registered plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

"multi-employer plan" in a calendar year has the meaning assigned by regulation;

Related Provisions: 147.1(9) — Pension adjustment limits — multi-employer plans; 252.1 — Where union is employer; Reg. 8510(5) — Special rules — multi-employer plan.

Regulations: 8500(1), 8510(1) (meaning of "multi-employer plan").

"participating employer", in relation to a pension plan, means an employer who has made, or is required to make, contributions to the plan in respect of the employer's employees or former employees, or payments under the plan to the employer's employees or former employees, and includes a prescribed employer;

Regulations: 8308(7)(c) (prescribed employer).

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

"past service event" has the meaning assigned by regulation;

Related Provisions: 147.1(10) — Past service benefits.

Regulations: 8300(1), (2) (past service event).

"single amount" means an amount that is not part of a series of periodic payments;

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

"specified multi-employer plan" in a calendar year has the meaning assigned by regulation;

Related Provisions: 252.1 — Where union is employer.

Regulations: 8510(2), (3) (meaning of "specified multi-employer plan").

"spouse" — [Repealed]

History: "Spouse" repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 85(2), applicable after 1992. [See now subsec. 252(4).] That definition formerly read:

"spouse" of an individual has the meaning assigned by subsection 146(1.1);

"wage measure" for a month means the average weekly wages and salaries of

(a) the Industrial Aggregate in Canada for the month as published by Statistics Canada under the *Statistics Act*, or

(b) in the event that the Industrial Aggregate ceases to be published, such other measure for the month as is prescribed by regulation under the *Canada Pension Plan* for the purposes of paragraph 18(5)(b) of that Act.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(2) Registration of plan — The following rules apply with respect to the registration of pension plans:

(a) the Minister shall not register a pension plan unless

(i) application for registration is made in prescribed manner by the plan administrator,

(ii) the plan complies with prescribed conditions for registration, and

(iii) where the plan is required to be registered under the *Pension Benefits Standards Act, 1985* or a similar law of a province, application for such registration has been made;

(b) where a pension plan that was submitted for registration before 1992 is registered by the Minister, the registration is effective from the day specified in writing by the Minister; and

(c) where a pension plan that is submitted for registration after 1991 is registered by the Minister, the registration is effective from the later of

(i) January 1 of the calendar year in which application for registration is made in prescribed manner by the plan administrator, and

(ii) the day the plan began.

Related Provisions: 149(1)(o) — Exemption — pension trust; 172(5) — Deemed refusal to register; 241(4)(j) — Communication of information — exception.

History: Paras. 147.1(2)(b) and (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 85(3), applicable after 1990. Paras. (b) and (c) formerly read:

(b) where a pension plan that is submitted for registration before 1991 is registered by the Minister, the registration is effective from such day as is specified in writing by the Minister; and

(c) where a pension plan that is submitted for registration after 1990 is registered by the Minister, the registration is effective from the later of

(i) January 1 of the calendar year in which application for registration is made in prescribed manner by the plan administrator, and

(ii) the day of commencement of the plan.

Regulations: Part LXXXV; 8501(1) (prescribed conditions); 8512(1), (2) (prescribed conditions, prescribed manner).

Information Circulars: 72-13R8: Employees' pension plans [partly superseded by new Regulations].

Registered Plans Division Newsletters: 95-1 (New approach to plan registration); 95-2 (Registered plan division services); 95-6 (Specimen pension plans — speeding up the process); 95-7 (Quebec simplified pension plans); 98-1 (Simplified pension plans).

Forms: T510: Application for registration of a pension plan.

(3) Deemed registration — Where application is made to the Minister for registration of a pension plan for the purposes of this Act and, where the manner for making the application has been prescribed, the application is made in that manner by the administrator,

(a) subject to paragraph (b), the plan is, for the purposes of this Act other than paragraphs 60(j) and (j.2) and sections 147.3 and 147.4, deemed to be a registered pension plan throughout the period that begins on the latest of

(i) January 1 of the calendar year in which the application is made,

(ii) the day of commencement of the plan, and

(iii) January 1, 1989

and ending on the day on which a final determination is made with respect to the application; and

(b) where the final determination made with respect to the application is a refusal to register the plan, this Act shall, after the day of the final determination, apply as if the plan had never been deemed, under paragraph (a), to be a registered pension plan, except that

(i) any information return otherwise required to be filed under subsection 207.7(3) before the particular day that is 90 days after the day of the final determination is not required to be filed until the particular day, and

(ii) subsections 227(8) and (8.2) are not applicable with respect to contributions made to the plan on or before the day of the final determination.

Related Provisions: 172(3) — Appeal from refusal to register, revocation of registration, etc.; 172(5) — Deemed refusal to register.

History: The opening words of para. 147.1(3)(a) amended by 1998, c. 19, s. 173, applicable after 1996. The opening words formerly read:

(a) subject to paragraph (b), the plan shall, for the purposes of this Act other than paragraphs 60(j) and (j.2) and section 147.3, be deemed to be a registered pension plan throughout the period commencing on the latest of

Registered Plans Division Newsletters: 95-1 (New approach to plan registration); 95-2 (Registered plan division services); 95-6 (Specimen pension plans — speeding up the process); 95-7 (Quebec simplified pension plans); 98-1 (Simplified pension plans).

(4) Acceptance of amendments — The Minister shall not accept an amendment to a registered pension plan unless

(a) application for the acceptance is made in prescribed manner by the plan administrator;

(b) the plan as amended complies with prescribed conditions for registration; and

(c) the amendment complies with prescribed conditions.

Related Provisions: 147.1(15) — Plan as registered.

Regulations: 8501(1), 8511 (prescribed conditions); 8512 (prescribed manner).

Registered Plans Division Newsletters: 95-6 (Specimen pension plans — speeding up the process); 95-7 (Quebec simplified pension plans); 98-1 (Simplified pension plans).

Forms: T920: Application for acceptance of an amendment to an RPP.

(5) Additional conditions — The Minister may, at any time, impose reasonable conditions applicable with respect to registered pension plans, a class of such plans or a particular registered pension plan.

Registered Plans Division Newsletters: 96-3 (Flexible pension plans); 98-1 (Simplified pension plans).

(6) Administrator — There shall, for each registered pension plan, be a person or a body of persons that has ultimate responsibility for the administration of the plan and, except as otherwise permitted in writing by the Minister, the person or a majority of the persons who constitute the body shall be a person or persons resident in Canada.

Related Provisions: 147.1(7) — Obligations of administrator; 147.1(11) — Revocation of registration — notice of intention; 250 — Residents.

(7) Obligations of administrator — The administrator of a registered pension plan shall

(a) administer the plan in accordance with the terms of the plan as registered except that, where the plan fails to comply with the prescribed conditions for registration or any other requirement of this Act or the regulations, the administrator may administer the plan as if it were amended to so comply;

(b) before July, 1990, in the case of a person or body that is the administrator on January 1, 1989 or be-

comes the administrator before June, 1990, and, in any other case, within 30 days after becoming the administrator, inform the Minister in writing

(i) of the name and address of the person who is the administrator, or

(ii) of the names and addresses of the persons who constitute the body that is the administrator; and

(c) where there is any change in the information provided to the Minister in accordance with this paragraph or paragraph (b), inform the Minister in writing, within 60 days after the change, of the new information.

Related Provisions: 147.1(11) — Revocation of registration; 147.1(15) — Plan as registered; 147.1(18) — Regulations; 238(1) — Offences; 248(7)(a) — Mail deemed received on day mailed.

Regulations: Part LXXXV (prescribed conditions).

Forms: T3P: Employees' pension plan information and income tax return.

(8) Pension adjustment limits — Except as otherwise provided by regulation, a registered pension plan (other than a multi-employer plan) becomes, at the end of a calendar year after 1990, a revocable plan where

(a) the pension adjustment for the year of a member of the plan in respect of a participating employer exceeds the lesser of

(i) the money purchase limit for the year, and

(ii) 18% of the member's compensation from the employer for the year; or

(b) the total of

(i) the pension adjustment for the year of a member of the plan in respect of a participating employer, and

(ii) the total of all amounts each of which is the member's pension adjustment for the year in respect of an employer who, at any time in the year, does not deal at arm's length with the employer referred to in subparagraph (i)

exceeds the money purchase limit for the year.

Related Provisions: 147(5.1)(c) — Contribution limits; 147.1(11) — Revocation of registration — notice of intention; 147.3(13) — Excess transfer; 252.1 — Multi-employer plan — union as employer.

Regulations: 8509(12) (limitation on application of 147.1(8)); 8518 (where subsec. 147.1(8) not to apply).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 98-2: Prescribed compensation for registered pension plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions); 96-1 (Changes to retirement savings limits).

Forms: T10: Summary of PARs.

(9) Idem — multi-employer plans — Except as otherwise provided by regulation, a registered pension plan that is a multi-employer plan (other than a specified multi-employer plan) in a calendar year after 1990 becomes, at the end of the year, a revocable plan where

(a) for a member and an employer, the total of all amounts each of which is the member's pension credit (as prescribed by regulation) for the year in respect of the employer under a defined benefit or money purchase provision of the plan exceeds the lesser of

(i) the money purchase limit for the year, and

(ii) 18% of the member's compensation from the employer for the year; or

(b) for a member, the total of all amounts each of which is the member's pension credit (as prescribed by regulation) for the year in respect of an employer under a defined benefit or money purchase provision of the plan exceeds the money purchase limit for the year.

Related Provisions: 147.1(11) — Revocation of registration — notice of intention; 147.1(14) — Anti-avoidance — multi-employer plans; 147.3(13) — Excess transfer; Reg. 8301 — Pension adjustment.

Regulations: 8301(4)–(6), (8) (pension credit); 8509(12) (limitation on application of 147.1(9)).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 98-2: Prescribed compensation for registered pension plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions); 95-7 (Quebec simplified pension plans); 96-1 (Changes to retirement savings limits); 98-1 (Simplified pension plans).

(10) Past service benefits — With respect to each past service event that is relevant to the determination of benefits in respect of a member under a defined benefit provision of a registered pension plan, such benefits as are in respect of periods after 1989 and before the calendar year in which the event occurred shall be determined, for the purpose of a payment to be made from the plan or a contribution to be made to the plan at a particular time, with regard to the event only if

(a) where the member is alive at the particular time and except as otherwise provided by regulation, the Minister has certified in writing, before the particular time, that prescribed conditions are satisfied,

(b) where the member died before the particular time and the event occurred before the death of the member,

(i) this subsection did not require that the event be disregarded in determining benefits that were payable to the member immediately before the member's death (or that would have been so payable had the member been entitled to receive benefits under the provision immediately before the member's death), or

(ii) the event, as it affects the benefits provided to each individual who is entitled to benefits as a consequence of the death of the member, is acceptable to the Minister,

(c) where the member died before the particular time and the event occurred after the death of the member, the event, as it affects the benefits provided to each individual who is entitled to benefits as a consequence of the death of the member, is acceptable to the Minister, and

(d) no past service event that occurred before the event is required by reason of the application of this subsection to be disregarded at the particular time in determining benefits in respect of the member,

and, for the purposes of this subsection as it applies with respect to contributions that may be made to a registered pension plan, where application has been made for a certification referred to in paragraph (a) and the Minister has not refused to issue the certification, the Minister shall be deemed to have issued the certification.

Related Provisions: 147.1(11) — Revocation of registration — notice of intention; 147.1(18) — Regulations; 147.2(1) — Pension contributions deductible — employer contributions; 241(4)(c) — Communication of information — exception; 248(8) — Occurrences as a consequence of death.

Regulations: 8300(6) (prescribed rules); 8306 (certification not required); 8307(2) (prescribed conditions); 8308(1) (benefits provided before registration); 8519 (prescribed manner).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

Forms: T1004: Application for certification of a provisional past service pension adjustment.

(11) Revocation of registration — notice of intention — Where, at any time after a pension plan has been registered by the Minister,

(a) the plan does not comply with the prescribed conditions for registration,

(b) the plan is not administered in accordance with the terms of the plan as registered,

(c) the plan becomes a revocable plan,

(d) a condition imposed by the Minister in writing and applicable with respect to the plan (including a condition applicable generally to registered pension plans or a class of such plans and a condition first imposed before 1989) is not complied with,

(e) a requirement under subsection (6) or (7) is not complied with,

(f) a benefit is paid by the plan, or a contribution is made to the plan, contrary to subsection (10),

(g) the administrator of the plan fails to file an information return or actuarial report relating to the plan or to a member of the plan as and when required by regulation,

(h) a participating employer fails to file an information return relating to the plan or to a member of the plan as and when required by regulation, or

(i) registration of the plan under the *Pension Benefits Standards Act, 1985* or a similar law of a province is refused or revoked,

the Minister may give notice (in this subsection and subsection (12) referred to as a "notice of intent") by registered mail to the plan administrator that the Minister proposes to revoke the registration of the plan as of a date specified in the notice of intent, which date shall not be earlier than the date as of which,

(j) where paragraph (a) applies, the plan failed to so comply,

(k) where paragraph (b) applies, the plan was not administered in accordance with its terms as registered,

(l) where paragraph (c) applies, the plan became a revocable plan,

(m) where paragraph (d) or (e) applies, the condition or requirement was not complied with,

(n) where paragraph (f) applies, the benefit was paid or the contribution was made,

(o) where paragraph (g) or (h) applies, the information return or actuarial report was required to be filed, and

(p) where paragraph (i) applies, the registration referred to in that paragraph was refused or revoked.

Related Provisions: 147.1(8) — Pension adjustment limits; 147.1(9) — Pension adjustment limits — multi-employer plans; 147.1(12) — Notice of revocation; 147.1(13) — Revocation of registration; 147.1(15) — Meaning of "plan" as registered; 147.1(18)(b) — Regulations; 147.3(12) — Restriction re transfers; 147.4(1)(d) — RPP annuity contract; 172(3) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

Regulations: 8501(2); 8503(15).

(12) Notice of revocation — Where the Minister gives a notice of intent to the administrator of a registered pension plan, or the plan administrator applies to the Minister in writing for the revocation of the plan's registration, the Minister may,

(a) where the plan administrator has applied to the Minister in writing for the revocation of the plan's registration, at any time after receiving the administrator's application, and

(b) in any other case, after 30 days after the day of mailing of the notice of intent,

give notice (in this subsection and in subsection (13) referred to as a "notice of revocation") by registered mail to the plan administrator that the registration of the plan is revoked as of the date specified in the notice of revocation, which date may not be earlier than the date specified in the notice of intent or the administrator's application, as the case may be.

(13) Revocation of registration — Where the Minister gives a notice of revocation to the administrator of a registered pension plan, the registration of the plan is revoked as of the date specified in the notice of revocation, unless the Federal Court of Appeal or a judge thereof, on application made at any time before the determination of an appeal pursuant to subsection 172(3), orders otherwise.

Related Provisions: 147.1(12) — Notice of revocation; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

(14) Anti-avoidance — multi-employer–plans — Where at any time the Minister gives written notice to the administrators of two or more registered pension plans, each of which is a multi-employer plan, that this subsection is applicable in relation to those plans with respect to a calendar year,

(a) each of those plans that is a specified multi-employer plan in the year shall, for the purposes of subsection (9) (other than for the purpose of determining the pension credits referred to in paragraphs (9)(a) and (b)), be deemed to be a multi-employer plan that is not a specified multi-employer plan; and

(b) the totals determined for the year under paragraphs (9)(a) and (b) shall be the amounts that would be determined if all the plans were a single plan.

Registered Plans Division Newsletters: 95-7 (Quebec simplified pension plans); 98-1 (Simplified pension plans).

(15) Plan as registered — Any reference in this Act and the regulations to a pension plan as registered means the terms of the plan on the basis of which the Minister has registered the plan for the purposes of this Act and as amended by

(a) each amendment that has been accepted by the Minister, and

(b) each amendment that has been submitted to the Minister for acceptance and that the Minister has neither accepted nor refused to accept, if it is reasonable to expect the Minister to accept the amendment,

and includes all terms that are not contained in the documents constituting the plan but that are terms of the plan by reason of the *Pension Benefits Standards Act, 1985* or a similar law of a province.

(16) Separate liability for obligations — Every person who is a member of a body that is the administrator of a registered pension plan is subject to all obligations im-

posed on administrators by this Act or a regulation as if the person were the administrator of the plan.

Related Provisions: 238(1) — Offences.

(17) Superintendent of Financial Institutions — The Minister may, for the purposes of this Act, obtain the advice of the Superintendent of Financial Institutions with respect to any matter relating to pension plans.

(18) Regulations — The Governor in Council may make regulations

(a) prescribing conditions for the registration of pension plans and enabling the Minister to impose additional conditions or waive any conditions that are prescribed;

(b) prescribing circumstances under which a registered pension plan becomes a revocable plan;

(c) specifying the manner of determining, or enabling the Minister to determine, the portion of a member's benefits under a registered pension plan that is in respect of any period;

(d) requiring administrators of registered pension plans to make determinations in connection with the computation of pension adjustments, past service pension adjustments, total pension adjustment reversals or any other related amounts (all such amounts referred to in this subsection as "specified amounts");

(e) requiring that the method used to determine a specified amount be acceptable to the Minister, where more than one method would otherwise comply with the regulations;

(f) enabling the Minister to permit or require a specified amount to be determined in a manner different from that set out in the regulations;

(g) requiring that any person who has information required by another person in order to determine a specified amount provide the other person with that information;

(h) enabling the Minister to require any person to provide the Minister with information relating to the method used to determine a specified amount;

(i) enabling the Minister to require any person to provide the Minister with information relevant to a claim that paragraph (10)(a) is not applicable by reason of an exemption provided by regulation;

(j) respecting applications for certifications for the purposes of subsection (10);

(k) enabling the Minister to waive the requirement for a certification for the purposes of subsection (10);

(l) prescribing rules for the purposes of subsection (10), so that that subsection applies or does not apply with respect to benefits provided as a consequence of particular transactions, events or circumstances;

(m) requiring any person to provide the Minister or the administrator of a registered pension plan with information in connection with an application for certification for the purposes of subsection (10);

(n) requiring any person who obtains a certification for the purposes of subsection (10) to provide the individual in respect of whom the certification was obtained with an information return;

(o) requiring administrators of registered pension plans to file information with respect to amendments to such plans and to the arrangements for funding benefits thereunder;

(p) requiring administrators of registered pension plans to file information returns respecting such plans;

(q) enabling the Minister to require any person to provide the Minister with information for the purpose of determining whether the registration of a pension plan may be revoked;

(r) requiring administrators of registered pension plans to submit reports to the Minister, prescribing the class of persons by whom the reports shall be prepared and prescribing information to be contained in those reports;

(s) enabling the Minister to impose any requirement that may be imposed by regulation made under paragraph (r);

(t) defining, for the purposes of this Act, the expressions "multi-employer plan", "past service event", "past service pension adjustment", "pension adjustment", "specified multi-employer plan" and "total pension adjustment reversal"; and

(u) generally to carry out the purposes and provisions of this Act relating to registered pension plans and the determination and reporting of specified amounts.

Related Provisions: 221 — Regulations generally; 238(1) — Offences.

History [147.1(18)]: Paras. 147.1(18)(d) and (t) amended by 1998, c. 19, subsecs. 39(1), (2), applicable after 1996. Paras. (d) and (t) formerly read:

> (d) requiring administrators of registered pension plans to make determinations in connection with the computation of pension adjustments, past service pension adjustments or any other related amounts (all such amounts referred to in this subsection as "specified amounts");
>
> . . . . .
>
> (t) defining the expressions "multi-employer plan", "past service event", "past service pension adjustment", "pension adjustment" and "specified multi-employer plan"; and

Regulations: 8300–8520.

Forms: T3P: Employees' pension plan income tax return; T10: Pension adjustment reversal; T10 Summ: Summary of PARs; T10 Segment.

Related Provisions [s. 147.1]: 87(2)(q) — Amalgamations — registered plans.

Pre-RSC History [s. 147.1]: S. 147.1 added by 1990, c. 35, s. 16, subsecs. (1) to (15), applicable after 1988 except that, of the definitions in subsec. (1), "money purchase provision" is applicable after 1985 and "defined benefit provision" and "single amount" are applicable after 1987.

Definitions [s. 147.1]: "actuary", "administrator" — 147.1(1); "amount" — 248(1); "as registered" — 147.1(15); "average wage" — 147.1(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "compensation" — 147.1(1); "consequence of the death" — 248(8); "defined benefit provision" — 147.1(1); "employer", "employment" — 248(1); "Governor in Council" — *Interpretation Act* 35(1); "individual" — 248(1); "member" — 147.1(1); "Minister" — 248(1); "money purchase limit" — 147.1(1), 248(1); "money purchase provision" — 147.1(1); "multi-employer plan" — 147.1(1), Reg. 8500(1), 8510(1); "office" — 248(1); "participating employer" — 147.1(1); "past service event" — 147.1(1), Reg. 8300(1), (2); "past service pension adjustment" — 248(1), Reg. 8303; "pension adjustment" — 248(1), Reg. 8301(1); "pension credit" — Reg. 8301(2)–(8), (10), (16); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "regulation" — 248(1); "resident in Canada" — 250; "single amount" — 147.1(1); "specified amount" — 147.1(18)(d); "specified multi-employer plan" — 147.1(1), Reg. 8510(2), (3); "spouse" — 146(1.1), 147.1(1), 252(4)(a); "total pension adjustment reversal" — 248(1); "wage measure" — 147.1(1); "writing" — *Interpretation Act* 35(1).

147.2 (1) Pension contributions deductible — employer contributions — For a taxation year ending after 1990, there may be deducted in computing the income of a taxpayer who is an employer the total of all amounts each of which is a contribution made by the employer after 1990 and either in the taxation year or within

120 days after the end of the taxation year to a registered pension plan in respect of the employer's employees or former employees, to the extent that

(a) in the case of a contribution in respect of a money purchase provision of a plan, the contribution was made in accordance with the plan as registered and in respect of periods before the end of the taxation year;

(b) in the case of a contribution in respect of the defined benefit provisions of a plan (other than a specified multi-employer plan), the contribution

(i) is an eligible contribution,

(ii) was made to fund benefits provided to employees and former employees of the employer in respect of periods before the end of the taxation year, and

(iii) complies with subsection 147.1(10);

(c) in the case of a contribution made to a plan that is a specified multi-employer plan, the contribution was made in accordance with the plan as registered and in respect of periods before the end of the taxation year; and

(d) the contribution was not deducted in computing the income of the employer for a preceding taxation year.

Related Provisions: 6(1)(a)(i) — Employer's contribution not a taxable benefit; 20(1)(q) — Employer's contributions deductible; 147.1(8), (9) — Pension adjustment limits; 147.2(2) — Employer contributions — defined benefit provisions.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(2) Employer contributions — defined benefit provisions — For the purposes of subsection (1), a contribution made by an employer to a registered pension plan in respect of the defined benefit provisions of the plan is an eligible contribution if it is a prescribed contribution or if it complies with prescribed conditions and is made pursuant to a recommendation by an actuary in whose opinion the contribution is required to be made so that the plan will have sufficient assets to pay benefits under the defined benefit provisions of the plan, as registered, in respect of the employees and former employees of the employer, where

(a) the recommendation is based on an actuarial valuation that complies with the following conditions, except the conditions in subparagraphs (iii) and (iv) to the extent that they are inconsistent with any other conditions that apply for the purpose of determining whether the contribution is an eligible contribution:

(i) the effective date of the valuation is not more than 4 years before the day on which the contribution is made,

(ii) actuarial liabilities and current service costs are determined in accordance with an actuarial funding method that produces a reasonable matching of contributions with accruing benefits,

(iii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made,

(iv) the valuation is prepared in accordance with generally accepted actuarial principles,

(v) the valuation complies with prescribed conditions, which conditions may include conditions regarding the benefits that may be taken into account for the purposes of the valuation, and

(vi) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers in respect of their employees and former employees, and

(b) the recommendation is approved by the Minister in writing,

and, for the purposes of this subsection and except as otherwise provided by regulation,

(c) the benefits taken into account for the purposes of a recommendation may include anticipated cost-of-living and similar adjustments where the terms of a pension plan do not require that those adjustments be made but it is reasonable to expect that they will be made, and

(d) a recommendation with respect to the contributions required to be made by an employer in respect of the defined benefit provisions of a pension plan may be prepared without regard to such portion of the assets of the plan apportioned to the employer in respect of the employer's employees and former employees as does not exceed the least of

(i) the amount of actuarial surplus in respect of the employer,

(ii) 20% of the amount of actuarial liabilities apportioned to the employer in respect of the employer's employees and former employees, and

(iii) the greater of

(A) 2 times the estimated amount of current service contributions that would, if there were no actuarial surplus, be required to be made by the employer and the employer's employees for the 12 months immediately following the effective date of the actuarial valuation on which the recommendation is based, and

(B) the amount that would be determined under subparagraph (ii) if the reference therein to "20%" were read as a reference to "10%".

Related Provisions: 147.2(3) — Filing of actuarial report.

History: Para. 147.2(2)(b) amended by 1998, c. 19, subsec. 174(1), applicable after March 1996. Para. 147.2(2)(b) formerly read:

(b) the recommendation is approved in writing by the Minister on the advice of the Superintendent of Financial Institutions,

Regulations: 8515(5) (prescribed conditions); 8516(1) (prescribed contribution).

Information Circulars: 72-13R8: Employees' pension plans.

Registered Plans Division Newsletters: 95-3 (Actuarial report content); 96-1 (Changes to retirement savings limits).

(3) Filing of actuarial report — Where, for the purposes of subsection (2), a person seeks the Minister's approval of a recommendation made by an actuary in connection with the contributions to be made by an employer to a registered pension plan in respect of the defined benefit provisions of the plan, the person shall file with the Minister a report prepared by the actuary that contains the recommendation and any other information required by the Minister.

Related Provisions: Reg. 8410 — Actuarial report required on demand.

Registered Plans Division Newsletters: 95-3 (Actuarial report content).

(4) Amount of employee's pension contributions deductible — There may be deducted in computing the

income of an individual for a taxation year ending after 1990 an amount equal to the total of

(a) **service after 1989** — the total of all amounts each of which is a contribution (other than a prescribed contribution) made by the individual in the year to a registered pension plan in respect of a period after 1989, to the extent that the contribution was made in accordance with the plan as registered,

Proposed Amendment — 147.2(4)(a)

(a) **service after 1989** — the total of all amounts each of which is a contribution (other than a prescribed contribution) made by the individual in the year to a registered pension plan that is in respect of a period after 1989 or that is a prescribed eligible contribution, to the extent that the contribution was made in accordance with the plan as registered,

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 87, will amend para. 147.2(4)(a) to read as above, applicable to contributions made after 1990.

Technical Notes: Subsection 147.2(4) of the Act provides rules that govern the deductibility of employee contributions to registered pension plans (RPPs). Paragraph 147.2(4)(a) allows an individual to deduct contributions made after 1990 to an RPP in respect of years after 1989, to the extent that the contributions are made in accordance with the terms of the plan as registered. This rule applies whether a contribution is made under a money purchase provision or a defined benefit provision, and whether a contribution is a current service contribution or a past service contribution.

Paragraph 147.2(4)(a) is amended to allow an individual to deduct, in addition to the contributions described above, prescribed eligible contributions. Draft subsection 8501(6.2) of the Regulations prescribes, for this purpose, certain employee contributions that are made under a defined benefit provision of an RPP pursuant to an arrangement under which members of the plan make contributions towards an unfunded liability under the plan. For further details, refer to the commentary on draft subsections 8501(6.1) and (6.2) of the Regulations in Appendix D.

(b) **service before 1990 while not a contributor** — the least of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a contribution (other than an additional voluntary contribution or a prescribed contribution) made by the individual in the year or a preceding taxation year and after 1945 to a registered pension plan in respect of a particular year before 1990, if all or any part of the particular year is included in the individual's eligible service under the plan and if

(I) in the case of a contribution that the individual made before March 28, 1988 or was obliged to make under the terms of an agreement in writing entered into before March 28, 1988, the individual was not a contributor to the plan in the particular year, or

(II) in any other case, the individual was not a contributor to any registered pension plan in the particular year

exceeds

(B) the total of all amounts each of which is an amount deducted, in computing the individual's income for a preceding taxation year, in respect of contributions included in the total determined in respect of the individual for the year under clause (A),

(ii) $3,500, and

(iii) the amount determined by the formula

$$(\$3,500 \times Y) - Z$$

where

Y is the number of calendar years before 1990 each of which is a year

(A) all or any part of which is included in the individual's eligible service under a registered pension plan to which the individual has made a contribution that is included in the total determined under clause (i)(A) and in which the individual was not a contributor to any registered pension plan, or

(B) all or any part of which is included in the individual's eligible service under a registered pension plan to which the individual has made a contribution

(I) that is included in the total determined under clause (i)(A), and

(II) that the individual made before March 28, 1988 or was obliged to make under the terms of an agreement in writing entered into before March 28, 1988, and in which the individual was not a contributor to the plan, and

Z is the total of all amounts each of which is an amount deducted, in computing the individual's income for a preceding taxation year,

(A) in respect of contributions included in the total determined in respect of the individual for the year under clause (i)(A), or

(B) where the preceding year was before 1987, under subparagraph 8(1)(m)(ii) (as it read in its application to that preceding year) in respect of additional voluntary contributions made in respect of a year that satisfies the conditions in the description of Y, and

(c) **service before 1990 while a contributor** — the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a contribution (other than an additional voluntary contribution, a prescribed contribution or a contribution included in the total determined in respect of the individual for the year under clause (b)(i)(A)) made by the individual in the year or a preceding taxation year and after 1962 to a registered pension plan in respect of a particular year before 1990 that is included, in whole or in part, in the individual's eligible service under the plan

exceeds

(B) the total of all amounts each of which is an amount deducted, in computing the individual's income for a preceding taxation year, in respect of contributions included in the total determined in respect of the individual for the year under clause (A), and

(ii) the amount, if any, by which $3,500 exceeds the total of the amounts deducted by reason of paragraphs (a) and (b) in computing the individual's income for the year.

Related Provisions: 8(1)(m) — Employee's RPP contributions deductible; 56(1)(a)(i) — Pension benefits taxable when received; 147.1(8), (9) — Pension adjustment limits; 147.2(5) — Teachers; 147.2(6) — Additional deduction for year taxpayer dies; 152(6)(f) — Minister required to reassess past year to allow additional deduction following death; 257 — Formula cannot calculate to less than zero.

History: Cl. (B) of the description of Z in subpara. 147.2(4)(b)(iii) amended by 1998, c. 19, subsec. 174(2), applicable to 1991 *et seq.* Cl. (B) formerly read:

> (B) under subparagraph 8(1)(m)(ii) (as it read in its application to the 1990 taxation year) in respect of additional voluntary contributions made in respect of a year that satisfies the conditions in the description of Y, and

Selected Cases [subsec. 147.2(4)]: *Corbett v. R.*, [1999] 4 C.T.C. 231 (FCA); aff'g [1999] 1 C.T.C. 2590 (TCC) (Contributions allowed under amended plan were grandfathered and deductible).

Regulations: 100(3)(a) (deduction of pension contribution from payroll reduces source withholding); 8501(6.2) (prescribed eligible contribution); 8502(b)(i), 8503(4)(a), (b) (RPP contributions permitted by employee).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

Forms: T4040: RRSPs and other registered plans for retirement [guide].

(5) Teachers — For the purpose of determining whether a teacher may deduct an amount contributed by the teacher to a registered pension plan in computing the teacher's income for a taxation year ending after 1990 and before 1995 during which the teacher was employed by Her Majesty or a person exempt from tax for the year under section 149,

(a) clause (4)(b)(i)(A) shall be read without reference to subclauses (4)(b)(i)(A)(I) and (II); and

(b) the description of Y in subparagraph (4)(b)(iii) shall be read as follows:

> "Y is the number of calendar years before 1990 each of which is a year all or any part of which is included in the individual's eligible service under a registered pension plan to which the individual has made a contribution that is included in the total determined under clause (i)(A), and"

Related Provisions: 8(7) (applicable before 1991).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

(6) Deductible contributions when taxpayer dies — Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's income for the year and the preceding taxation year,

(a) paragraph (4)(b) shall be read without reference to subparagraph (ii) and as if the reference to "the least of" were a reference to "the lesser of"; and

(b) paragraph (4)(c) shall be read without reference to subparagraph (ii) and the words "the lesser of".

Related Provisions [subsec. 147.2(6)]: 152(6)(f) — Minister required to reassess past year to allow additional deduction; 163(4)(b.1) — Additional deduction ignored when calculating penalties; 164(5)(h.01), 164(5.1)(h.01) — No back interest on refund where past year reassessed.

History [subsec. 147.2(6)]: Subsec. 147.2(6) added by 1998, c. 19, subsec. 174(3), applicable to taxpayers who die after 1992.

Related Provisions [s. 147.2]: 87(2)(q) — Amalgamations — registered plans.

Pre-RSC History [s. 147.2]: S. 147.2 added by 1990, c. 35, s. 16, applicable after 1988.

Definitions [s. 147.2]: "actuary" — 147.1(1); "additional voluntary contribution", "amount" — 248(1); "as registered" — 147.1(15); "defined benefit provision" — 147.1(1); "eligible contribution" — 147.2(2); "employee", "employer", "individual", "Minister" — 248(1); "money purchase provision", "participating employer" — 147.1(1); "person", "prescribed", "registered pension plan", "regulation" — 248(1); "specified multi-employer plan" — 147.1(1), Reg. 8510(2), (3); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

147.3 (1) Transfer — money purchase to money purchase, RRSP or RRIF — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(c) is transferred directly to

(i) another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 146(8.2) — Amount deductible where withdrawn after mistaken contribution; 147.3(9) — Taxation of amount transferred; 147.3(13) — Excess transfer. See additional Related provisions at end of s. 147.3.

History: Subsec. 147.3(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(1), to split off subparas. (c)(i) and (ii) and to add subpara. (iii), applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2151: Record of direct transfer of a "single amount".

(2) Transfer — money purchase to defined benefit — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(c) is transferred directly to another registered pension plan to fund benefits provided in respect of the member under a defined benefit provision of that plan.

Related Provisions: 147.1(10) — Past service benefits; 147.3(9) — Taxation of amount transferred; 147.3(13) — Excess transfer. See additional Related provisions at end of s. 147.3.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2151: Record of direct transfer of a "single amount".

(3) Transfer — defined benefit to defined benefit — An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if the amount

(a) is a single amount;

(b) consists of all or any part of the property held in connection with a defined benefit provision of the transferor plan;

(c) is transferred directly to another registered pension plan to be held in connection with a defined benefit provision of the other plan; and

(d) is transferred as a consequence of benefits becoming provided under the defined benefit provision of the other plan to one or more individuals who were members of the transferor plan.

Related Provisions: 147.3(9) — Taxation of amount transferred. See additional Related Provisions at end of s. 147.3.

Regulations: 8517 (prescribed amount).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Forms: T2151: Record of direct transfer of a "single amount".

(4) Transfer — defined benefit to money purchase, RRSP or RRIF — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of a member in full or partial satisfaction of benefits to which the member is entitled, either absolutely or contingently, under a defined benefit provision of the plan as registered;

(c) does not exceed a prescribed amount; and

(d) is transferred directly to

(i) another registered pension plan and allocated to the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 146(8.2) — Amount deductible where withdrawn after mistaken contribution; 147.3(9) — Taxation of amount transferred. See additional Related Provisions at end of s. 147.3.

History: Subsec. 147.3(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(2), applicable to transfers occurring after 1988 except that in its application to such transfers occurring before August 30, 1990, para. (d) shall be read as follows:

(d) is transferred directly to

(i) another registered pension plan and allocated to the member under a money purchase provision of that plan, or

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)).

Subsec. 147.3(4) formerly read:

(4) Transfer — defined benefit to money purchase or RRSP — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a defined benefit provision of the plan as registered;

(c) does not exceed a prescribed amount; and

(d) is transferred directly to another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan or to a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)).

Regulations: 8517 (prescribed amount).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2151: Record of direct transfer of a "single amount".

(4.1) Transfer of surplus — defined benefit to money purchase — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is transferred in respect of the actuarial surplus under a defined benefit provision of the plan; and

(b) is transferred directly to another registered pension plan and allocated under a money purchase provision of that plan to one or more members of that plan.

Related Provisions: 60(j.01) — Transfer of surplus.

History: Subsec. 147.3(4.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(2), applicable to transfers occurring after 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions); 95-5 (Conversion of a defined benefit provision to a money purchase provision).

Forms: T2151: Record of direct transfer of a "single amount".

(5) Transfer to RPP, RRSP or RRIF for spouse on marriage breakdown — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

Proposed Amendment — 147.3(5)(a)

(a) is a single amount no portion of which relates to an actuarial surplus;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 88(1), will amend para. 147.3(5)(a) to read as above, applicable to transfers that occur after November 1999.

Technical Notes: Section 147.3 of the Act provides rules governing the transfer of funds from registered pension plans (RPPs) to registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and other RPPs.

Subsection 147.3(5) of the Act permits the direct transfer of a lump sum amount from an RPP to another RPP, an RRSP or a RRIF for the benefit of the spouse or former spouse of a plan member, where the spouse or former spouse is entitled to the amount pursuant to a court order or written agreement relating to a division of property on marriage breakdown.

Paragraph 147.3(5)(a) is amended to deny the transfer of an amount relating to actuarial surplus. This change is consistent with the transfer rules set out in subsections 147.3(4) and (7), which do not permit a plan member's share of an actuarial surplus to be transferred tax-free to another registered plan.

(b) is transferred on behalf of an individual who is a spouse or former spouse of a member of the plan and who is entitled to the amount under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the member and the individual in settlement of rights arising out of, or on a breakdown of, their marriage; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace

"marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 146.3(2)(f)(vi) — Conditions for RRIF; 147.3(9) — Taxation of amount transferred; 252(3), (4) — Extended meaning of "spouse" and "former spouse". See additional Related Provisions at end of s. 147.3.

History: Subsec. 147.3(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(2), applicable to transfers occurring after August 29, 1990 except that in applying the subsec. before 1993, the reference in para. (b) to "marriage" shall be read as a reference to "marriage or other conjugal relationship". Subsec. (5) formerly read:

(5) Transfer to RPP or RRSP for spouse on marriage breakdown — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of an individual who is a spouse or former spouse of a member of the plan and who is entitled to the amount pursuant to a decree, order or judgment of a competent tribunal, or a written agreement, relating to a division of property between the member and the individual in settlement of rights arising out of or on a breakdown of their marriage or other conjugal relationship; and

(c) is transferred directly to another registered pension plan for the benefit of the individual or to a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)).

Interpretation Bulletins: IT-440R2: Transfer of rights to income; IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2151: Record of direct transfer of a "single amount".

(6) Transfer — pre-1991 contributions — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member who is entitled to the amount as a return of contributions made by the member under a defined benefit provision of the plan before 1991, or as interest (computed at a rate not exceeding a reasonable rate) in respect of those contributions; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the member,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 147.3(9) — Taxation of amount transferred. See additional Related Provisions at end of s. 147.3.

History: Para. 147.3(6)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(3), to split off subparas. (i) and (ii) and add subpara. (iii), applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions); 98-2 (Treating excess member contributions under a registered pension plan).

Forms: T2151: Record of direct transfer of a "single amount".

(7) Transfer — lump sum benefits on death — An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of an individual who is entitled to the amount as a consequence of the death of a member of the plan and who was a spouse or former spouse of the member at the date of the member's death; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

Related Provisions: 104(27) — Pension benefits; 146.3(2)(f)(vi) — Conditions for RRIF; 147.3(9) — Taxation of amount transferred; 248(8) — Occurrences as a consequence of death; 252(3), (4)(a) — Extended definition of "spouse" and "former spouse". See additional Related Provisions at end of s. 147.3.

History: Para. 147.3(7)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(4), to split off subparas. (i) and (ii) and add subpara. (iii), applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Forms: T2151: Record of direct transfer of a "single amount".

Proposed Addition — 147.3(7.1)

(7.1) Transfer where money purchase plan replaces money purchase plan — An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount is transferred in respect of the surplus (as defined by regulation) under a money purchase provision (in this subsection referred to as the "former provision") of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a

money purchase provision (in this subsection referred to as the "current provision") of the other plan;

(d) the amount is transferred in conjunction with the transfer of amounts from the former provision to the current provision on behalf of all or a significant number of members of the transferor plan whose benefits under the former provision are replaced by benefits under the current provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

Regulations: 8500(1)"surplus", 8500(1.1) (meaning of "surplus").

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 88(2), will add subsec. 147.3(7.1), applicable to transfers that occur after 1998.

Technical Notes: New subsection 147.3(7.1) of the Act is introduced to permit surplus to be transferred directly from a money purchase provision of an RPP to a money purchase provision of another RPP, where the second plan replaces all or part of the first plan. Subsection 147.3(7.1) is intended to apply to situations involving the reorganization of a money purchase RPP, such as the splitting of one plan into two or more plans or the transfer of one group of employees from one plan to another. The subsection ensures that money purchase surplus can be transferred directly to a replacement money purchase plan. This will enable an employer to use the surplus, for example, to satisfy its obligations to make contributions under the money purchase provision, to make additional allocations to plan members or to pay plan expenses.

Subsection 147.3(7.1) provides that the term "surplus" has the meaning assigned by the Regulations. Subsection 8500(1) of the Regulations, in conjunction with draft subsection 8500(1.1), defines "surplus" for this purpose. "Surplus" under a money purchase provision of an RPP is the portion of the unallocated amount held under the provision that is not attributable to forfeited amounts, employer contributions that will be allocated to members as part of the regular allocation of contributions, or to certain earnings of the plan. Generally, a money purchase surplus would exist only if actuarial surplus was originally transferred from a defined benefit provision of an RPP and if the actuarial surplus was not credited to the members' accounts under the money purchase provision at the time of the transfer.

The following conditions must be met in order for the subsection to apply with respect to the transfer of money purchase surplus:

- the surplus must be transferred in conjunction with the transfer of amounts on behalf of all or a significant number of members of the transferor plan whose money purchase benefits are being replaced by money purchase benefits under the recipient plan; and
- the transfer must be approved in writing by the Minister of National Revenue.

Appendix D contains consequential amendments to Parts LXXXIII and LXXXV of the Regulations to reflect the introduction of subsection 147.3(7.1).

(8) Transfer where money purchase plan replaces defined benefit plan — An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount consists of all or any portion of the property held in connection with a defined benefit provision of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan and used to satisfy employer obligations to make contributions under the money purchase provision;

Proposed Amendment — 147.3(8)(b), (c)

(b) the amount is transferred in respect of the actuarial surplus under a defined benefit provision of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 88(3), will amend paras. 147.3(8)(b) and (c) to read as above, applicable to transfers that occur after 1990.

Technical Notes: Subsection 147.3(8) of the Act permits, in certain circumstances, the direct transfer of property from a defined benefit provision of an RPP to a money purchase provision of another RPP. Subsection 147.3(8) is intended to accommodate the transfer of actuarial surplus where a defined benefit RPP is replaced by a money purchase RPP. One of the conditions that must be met in order for the subsection to apply is that the recipient plan must provide that the surplus be used to satisfy the obligation of employers to make contributions under the recipient plan.

Subsection 147.3(8) is amended to eliminate the condition that the surplus be used to satisfy employer contribution obligations. This will permit the surplus to be used for other purposes relating to the operation of the plan, such as to pay plan expenses or to make additional allocations to plan members. In addition, subsection 147.3(8) is amended to clarify that the provision is intended to apply only to accommodate the transfer of actuarial surplus. It should be noted that paragraph 8506(2)(c) of the Regulations prohibits employer contributions to a money purchase provision where there is a surplus under the provision.

(d) the amount is transferred in conjunction with the transfer of amounts from the defined benefit provision to the money purchase provision on behalf of all or a significant number of members of the transferor plan whose benefits under the defined benefit provision are replaced by benefits under the money purchase provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

Related Provisions: 147.3(9) — Taxation of amount transferred; 147.3(10) — Division of transferred amount. See additional Related Provisions at end of s. 147.3.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions); 95-5 (Conversion of a defined benefit provision to a money purchase provision); 98-1 (Simplified pension plans).

Forms: T2151: Record of direct transfer of a "single amount".

(9) Taxation of amount transferred — Where an amount is transferred in accordance with any of subsections (1) to (8),

(a) the amount shall not, by reason only of that transfer, be included by reason of subparagraph 56(1)(a)(i) in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

Related Provisions: 147.3(11) — Division of transferred amount; 147.3(14.1) — Transfer of property between benefit provisions of the same plan; 212(1)(h)(iii.1)(A) — Amount transferred under 147.3 ex-

cluded from withholding tax on pension benefits. See additional Related provisions at end of s. 147.3.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(10) Idem — Where, on behalf of an individual, an amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") to another plan or fund (in this subsection referred to as the "transferee plan") that is a registered pension plan, a registered retirement savings plan or a registered retirement income fund and the transfer is not in accordance with any of subsections (1) to (7),

(a) the amount is deemed to have been paid from the transferor plan to the individual;

(b) subject to paragraph (c), the individual shall be deemed to have paid the amount as a contribution or premium to the transferee plan; and

(c) where the transferee plan is a registered retirement income fund, for the purposes of subsection 146(5) and Part X.1, the individual shall be deemed to have paid the amount at the time of the transfer as a premium under a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by subsection 146(1)).

Related Provisions: 146(5)(a)(v)(B) — Amount of RRSP premiums deductible; 147.3(11) — Division of transferred amount; 147.3(12) — Restriction re transfers; 147.3(13.1) — Withdrawal of excessive transfers to RRSPs and RRIFs; 147.3(14.1) — Transfer of property between benefit provisions of the same plan. See additional Related Provisions at end of s. 147.3..

History: Para. 147.3(10)(a) amended by 1998, c. 19, subsec. 175(1), applicable to transfers that occur after July 30, 1997. Para. 147.3(10)(a) formerly read:

(a) notwithstanding section 254, the amount shall be deemed to have been paid from the transferor plan to the individual;

Subsec. 147.3(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(5), applicable to transfers occurring after August 29, 1990. Subsec. (10) formerly read:

(10) Where an amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") to another registered pension plan or to a registered retirement savings plan (in this subsection referred to as the "transferee plan") on behalf of an individual and the transfer is not in accordance with any of subsections (1) to (7),

(a) notwithstanding section 254, the amount shall be deemed to have been paid from the transferor plan to the individual; and

(b) the individual shall be deemed to have paid the amount as a contribution or premium to the transferee plan.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(11) Division of transferred amount — Where an amount is transferred from a registered pension plan to another registered pension plan, to a registered retirement savings plan or to a registered retirement income fund and a portion, but not all, of the amount is transferred in accordance with any of subsections (1) to (8),

(a) subsection (9) applies with respect to the portion of the amount that is transferred in accordance with any of subsections (1) to (8); and

(b) subsection (10) applies with respect to the remainder of the amount.

Related Provisions: 147.3(14.1) — Transfer of property between benefit provisions of the same plan.

History: That portion of subsec. 147.3(11) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(6), to add "or to a registered retirement income fund", applicable to transfers occurring after August 29, 1990.

(12) Restriction re transfers — A registered pension plan becomes a revocable plan at any time that an amount is transferred from the plan to another registered pension plan, to a registered retirement savings plan or to a registered retirement income fund unless

(a) the amount is transferred in accordance with any of subsections (1) to (8); or

(b) where the amount is transferred on behalf of an individual,

(i) the amount is deductible by the individual under paragraph 60(j) or (j.2), or

(ii) the *Pension Benefits Standards Act, 1985* or a similar law of a province prohibits the payment of the amount to the individual.

Related Provisions: 147.1(11) — Revocation of registration — notice of intention. See additional Related Provisions at end of s. 147.3.

History: That portion of subsec. 147.3(12) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(7), to add "or to a registered retirement income fund", applicable to transfers occurring after August 29, 1990.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(13) Excess transfer — Where

(a) the transfer in a calendar year of an amount from a registered pension plan on behalf of a member of the plan would, but for this subsection, be in accordance with subsection (1) or (2), and

(b) the plan becomes, at the end of the year, a revocable plan as a consequence of an excess determined under any of paragraphs 147.1(8)(a) and (b) and (9)(a) and (b) with respect to the member (whether or not such an excess is also determined with respect to any other member),

such portion of the amount transferred as may reasonably be considered to derive from amounts allocated or reallocated to the member in the year or from earnings reasonably attributable to those amounts shall, except to the extent otherwise expressly provided in writing by the Minister, be deemed to be an amount that was not transferred in accordance with subsection (1) or (2), as the case may be.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

(13.1) Withdrawal of excessive transfers to RRSPs and RRIFs — There may be deducted in computing the income of an individual for a taxation year the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount included under subsection 146(8), (8.3) or (12) or 146.3(5), (5.1) or (11) in computing the individual's income for the year, to the extent that the amount is not a prescribed withdrawal,

exceeds

(ii) the total of all amounts each of which is an amount deductible under paragraph 60(l) or subsection 146(8.2) in computing the income of the individual for the year, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount that was

(A) transferred to a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1), as the case may be),

(B) included in computing the income of the individual for the year or a preceding taxation year, and

(C) deemed by paragraph (10)(b) or (c) to have been paid by the individual as a premium to a registered retirement savings plan,

exceeds

(ii) the total of all amounts each of which is an amount

(A) deductible under this subsection in computing the individual's income for a preceding taxation year, or

(B) deducted under subsection 146(5) in computing the individual's income for a preceding taxation year, to the extent that the amount can reasonably be considered to be in respect of an amount referred to in subparagraph (i).

Related Provisions: 60(i) — Premium or payment under RRSP or RRIF; 146(5) — Amount of RRSP premiums deductible; 146(8.2) — Amount deductible where withdrawn after mistaken contribution; Reg. Reg. 8307(4) — Eligibility of withdrawn amount for designation.

History: Subsec. 147.3(13.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 86(8), applicable to 1992 *et seq.* except that in its application to the 1992 taxation year it shall be read as follows:

(13.1) There may be deducted in computing the income of an individual for the 1992 taxation year the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount included under subsection 146(8), (8.3) or (12) or 146.3(5), (5.1) or (11) in computing the individual's income for a taxation year ending after 1988 and before 1993, to the extent that the amount is not a prescribed withdrawal,

exceeds

(ii) the total of all amounts each of which is an amount deductible under paragraph 60(l) or subsection 146(8.2) in computing the income of the individual for a taxation year ending after 1988 and before 1993, and

(b) the amount, if any, by which

(i) the total of all amounts each of which is an amount

(A) transferred to a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1), as the case may be),

(B) included in computing the income of the individual for the year or a preceding taxation year, and

(C) deemed by paragraph (10)(b) or (c) to have been paid by the individual as a premium to a registered retirement savings plan,

exceeds

(ii) the total of all amounts each of which is an amount deducted under subsection 146(5) in computing the individual's income for a preceding taxation year, to the extent that the amount can reasonably be considered to be in respect of an amount referred to in subparagraph (i).

Regulations: 8307(6) (prescribed withdrawal).

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T1043: Calculating your deduction to offset RRSP or RRIF income if an excess amount from an RPP has been transferred to an RRSP or a RRIF.

(14) Deemed transfer — For the purposes of this section and the regulations, where property held in connection with a particular pension plan is made available to pay benefits under another pension plan, the property shall be deemed to have been transferred from the particular plan to the other plan.

(14.1) Transfer of property between provisions — Where property held in connection with a benefit provision of a registered pension plan is made available to pay benefits under another benefit provision of the plan, subsections (9) to (11) apply in respect of the transaction by which the property is made so available in the same manner as they would apply if the other benefit provision were in another registered pension plan.

History: Subsec. 147.3(14.1) added by 1998, c. 19, s. 40, applicable to transactions that occur after July 30, 1997.

(15) [Repealed]

History: Subsec. 147.3(15) repealed by 1998, c. 19, subsec. 175(2), applicable after 1996. Subsec. 147.3(15) formerly read:

(15) Annuity contract commencing after age 69 — Where, under circumstances in which paragraph 254(a) applies, an individual receives before 1997 an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, and payment of the annuity has not begun by the end of the particular year in which the individual attains 69 years of age,

(a) that interest is deemed not to exist after the particular year;

(b) the individual is deemed to have received immediately after the particular year the payment of a single amount from the plan equal to the fair market value of the interest at the end of the particular year;

(c) the individual is deemed to have acquired immediately after the particular year an interest in the annuity contract as a separate and newly issued annuity contract at a cost equal to the amount referred to in paragraph (b); and

(d) the issue and acquisition of the newly issued annuity contract are deemed not to be pursuant to or under a registered pension plan.

Subsec. 147.3(15) added by 1997, c. 25, s. 45, applicable after 1996, except that

(a) it does not apply to an individual who attained 70 years of age before 1997;

(b) in applying the subsec. to an individual who attained 69 years of age in 1996, the reference to "69 years of age" shall be read as a reference to "70 years of age"; and

(c) it does not apply to an annuity contract where an individual received an interest in the contract before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which the annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, where the individual had not attained that age before 1997, or

(B) 70 years of age, where the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined.

Related Provisions [s. 147.3]: 60(j) — Transfer of superannuation benefits; 60(j.01) — transfer of surplus; 60(j.1) — Transfer of retiring allowances; 60(l) — Transfer of refund of RRSP premium; 147(19)–(22) — Transfer to RPP, RRSP or DPSP; 147.1(3)(a) — Deemed registration; Reg. 8502(k).

Pre-RSC History [s. 147.3]: S. 147.3 added by 1990, c. 35, s. 16, applicable in respect of amounts transferred after 1987 except that in its

application in respect of amounts transferred before 1989 the section shall be read as follows:

147.3 (1) An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if the amount

(a) is a single amount;

(b) consists of all or any part of the property held in connection with a defined benefit provision of the transferor plan;

(c) is transferred directly to another registered pension plan to be held in connection with a defined benefit provision of that other plan; and

(d) is transferred as a consequence of benefits becoming provided under the defined benefit provision of the other plan to one or more individuals who were members of the transferor plan.

(2) Where an amount is transferred in accordance with subsection (1),

(a) the amount shall not, by reason only of that transfer, be included by reason of subparagraph 56(1)(a)(i) in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

Definitions [s. 147.3]: "administrator" — 147.1(1); "amount" — 248(1); "as registered" — 147.1(15); "calendar year" — *Interpretation Act* 37(1)(a); "common-law partner", "common-law partnership" — 248(1); "consequence of the death" — 248(8); "defined benefit provision" — 147.1(1); "employer", "forfeited amount" — 147(1); "individual" — 248(1); "marriage" — 252(4)(b); "member" — 147.1(1); "Minister" — 248(1); "money purchase provision" — 147.1(1); "prescribed withdrawal" — Reg. 8306(6); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "single amount" — 147.1(1); "spouse" — 252(3), (4)(a); "surplus" — Reg. 8500(1), (1.1); "taxpayer" — 248(1); "transfer", "transferred" — 147.3(14); "writing" — *Interpretation Act* 35(1).

Forms [s. 147.3]: T4040: RRSPs and other registered plans for retirement [guide].

147.4 (1) RPP annuity contract — Where

(a) at any time an individual acquires, in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, an interest in an annuity contract purchased from a licensed annuities provider,

(b) the rights provided for under the contract are not materially different from those provided for under the plan as registered,

(c) the contract does not permit premiums to be paid at or after that time, other than a premium paid at that time out of or under the plan to purchase the contract,

(d) either the plan is not a plan in respect of which the Minister may, under subsection 147.1(11), give a notice of intent to revoke the registration of the plan or the Minister waives the application of this paragraph with respect to the contract and so notifies the administrator of the plan in writing, and

(e) the individual does not acquire the interest as a consequence of a transfer of property from the plan to a registered retirement savings plan or a registered retirement income fund,

the following rules apply for the purposes of this Act:

(f) the individual is deemed not to have received an amount out of or under the registered pension plan as a consequence of acquiring the interest, and

(g) other than for the purposes of sections 147.1 and 147.3, any amount received at or after that time by any individual under the contract is deemed to have been received under the registered pension plan.

Related Provisions: 147.4(2) — Amendment to RPP annuity contract.

History: Subsec. 147.4(1) added by 1998, c. 19, s. 176, applicable to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(2) Amended contract — Where

(a) an amendment is made at any time to an annuity contract to which subsection (1) or paragraph 254(a) applies, other than an amendment the sole effect of which is to

(i) provide for an earlier annuity commencement that avoids the application of paragraph (4)(b), or

(ii) enhance benefits under the annuity contract in connection with the demutualization (as defined by subsection 139.1(1)) of an insurance corporation that is considered for the purpose of section 139.1 to have been a party to the annuity contract, and

(b) the rights provided for under the contract are materially altered as a consequence of the amendment,

the following rules apply for the purposes of this Act:

(c) each individual who has an interest in the contract immediately before that time is deemed to have received at that time the payment of an amount under a pension plan equal to the fair market value of the interest immediately before that time,

(d) the contract as amended is deemed to be a separate annuity contract issued at that time otherwise than pursuant to or under a superannuation or pension fund or plan, and

(e) each individual who has an interest in the separate annuity contract immediately after that time is deemed to have acquired the interest at that time at a cost equal to the fair market value of the interest immediately after that time.

Related Provisions: 139.1(2)(g) — No demutualization benefit.

History: Para. 147.4(2)(a) amended by 2000, c. 19, subsec. 43(1), applicable to amendments and substitutions that occur after December 15, 1998. The para. formerly read:

(a) an amendment is made at any time to an annuity contract to which subsection (1) or paragraph 254(a) applies (other than an amendment the sole effect of which is to provide for an earlier annuity commencement that avoids the application of paragraph (4)(b)), and

Subsec. 147.4(2) added by 1998, c. 19, s. 176, applicable to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(3) New contract — For the purposes of this Act, where an annuity contract (in this subsection referred to as the "original contract") to which subsection (1) or paragraph 254(a) applies is, at any time, substituted by another contract,

(a) if the rights provided for under the other contract

(i) are not materially different from those provided for under the original contract, or

(ii) are materially different from those provided for under the original contract only because of an enhancement of benefits that can reasonably be considered to have been provided solely in connection with the demutualization (as defined by subsection 139.1(1)) of an insurance corporation that is considered for the purposes of section 139.1 to have been a party to the original contract,

the other contract is deemed to be the same contract as, and a continuation of, the original contract; and

(b) in any other case, each individual who has an interest in the original contract immediately before that time is deemed to have received at that time the payment of an amount under a pension plan equal to the fair market value of the interest immediately before that time.

Related Provisions: 139.1(2)(g) — No demutualization benefit due to substitution under 147.4(3)(a).

History: Para. 147.4(3)(a) amended by 2000, c. 19, subsec. 43(2), applicable to amendments and substitutions that occur after December 15, 1998. The para. formerly read:

(a) if the rights provided for under the other contract are not materially different from those provided for under the original contract, the other contract is deemed to be the same contract as, and a continuation of, the original contract; and

Subsec. 147.4(3) added by 1998, c. 19, s. 176, applicable to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(4) RPP annuity contract beginning after age 69 — For the purposes of this Act, where, under circumstances to which paragraph 254(a) applied, an individual acquired before 1997 an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, and payment of the annuity has not begun by the end of the particular year in which the individual attains 69 years of age,

(a) the interest is deemed not to exist after the particular year;

(b) the individual is deemed to have received immediately after the particular year the payment of an amount from the plan equal to the fair market value of the interest at the end of the particular year;

(c) the individual is deemed to have acquired immediately after the particular year an interest in the contract as a separate annuity contract issued immediately after the particular year at a cost equal to the amount referred to in paragraph (b); and

(d) the issue and acquisition of the separate annuity contract are deemed not to be pursuant to or under a registered pension plan.

History: Subsec. 147.4(4) added by 1998, c. 19, s. 176, applicable after 1996, except that

(a) it does not apply to an individual who attained 70 years of age before 1997;

(b) in applying it to an individual who attained 69 years of age in 1996, the reference in that provision to "69 years of age" shall be read as a reference to "70 years of age"; and

(c) it does not apply to an annuity contract if an individual received an interest in the contract before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which the annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, if the individual had not attained that age before 1997, or

(B) 70 years of age, if the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined.

Definitions [147.4]: "annuity" — 248(1); demutualization" — 139.1(1); "individual", "licensed annuities provider", "Minister", "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "writing" — *Interpretation Act* 35(1).

Life Insurance Policies

148. (1) Amounts included in computing policyholder's income — There shall be included in computing the income for a taxation year of a policyholder in respect of the disposition of an interest in a life insurance policy, other than a policy that is or is issued pursuant to

(a) a registered pension plan,

(b) a registered retirement savings plan,

(b.1) a registered retirement income fund,

(c) an income-averaging annuity contract,

(d) a deferred profit sharing plan, or

(e) an annuity contract where

(i) the payment for the annuity contract was deductible under paragraph 60(l) in computing the policyholder's income, or

(ii) the policyholder acquired the annuity contract in circumstances to which subsection 146(21) applied,

the amount, if any, by which the proceeds of the disposition of the policyholder's interest in the policy that the policyholder, beneficiary or assignee, as the case may be, became entitled to receive in the year exceeds the adjusted cost basis to the policyholder of that interest immediately before the disposition.

Related Provisions: 20(1)(e.2) — Deduction for premiums on life insurance used as collateral; 56(1)(j) — Income inclusion — life insurance policy proceeds; 60(s) — Deduction of policy loan repayment; 138(3) — Deductions allowed in computing income; 138.1(7) — Where segregated fund policyholder deemed to be trust, etc.; 148(2) — Deemed proceeds of disposition; 148(9)"adjusted cost basis"C — disposition amount included in adjusted cost basis. See additional Related Provisions and Definitions at end of s. 148.

History: Para. 148(1)(e) substituted by 1994, c. 21, s. 73, applicable to dispositions occurring after August 1992. That para. formerly read:

(e) an annuity contract, the payment for which was deductible in computing the policyholder's income by virtue of paragraph 60(l),

Para. 148(1)(b.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(1), applicable to 1991 *et seq.*

Pre-RSC History: Subsec. 148(1) substituted by 1980-81-82-83, c. 140, subsec. 102(1), applicable with respect to dispositions occurring after November 12, 1981. Subsec. 148(1) formerly read:

148. (1) There shall be included in computing the income for a taxation year of a policyholder in respect of the disposition of an interest in a life insurance policy other than,

(a) an annuity contract that is not a life annuity contract as defined by regulation, or

(b) a policy that is or is issued pursuant to

(i) a registered pension fund or plan,

(ii) a registered retirement savings plan,

(iii) an income-averaging annuity contract, or

(iv) a deferred profit sharing plan

the amount, if any, by which the proceeds of the disposition of that interest in the policy that the policyholder, beneficiary or assignee, as the case may be, became entitled to receive in that year exceeds the adjusted cost basis to the policyholder of that interest immediately before the disposition.

Subsec. 148(1) substituted by 1977-78, c. 1, subsec. 74(1), applicable to 1978 *et seq.* except that, with respect to the 1972 to 1977 taxation years, that portion of para. 148(1)(b) preceding subpara. (i) shall be deemed to have read as follows:

(a) in respect of any life insurance policy (other than a policy that is issued or effected as a registered retirement savings plan or that is issued pursuant to a registered pension fund or plan) all or any part of the insurer's reserves for which vary in amount depending on the

fair market value of a specified group of assets (in this section referred to as a "segregated fund"),

Subsec. 148(1) formerly read:

148. (1) There shall be included in computing the income for a taxation year of a policyholder,

(a) in respect of any life insurance policy other than an annuity contract, the amount, if any, by which the proceeds of the disposition of an interest in the policy that he became entitled to receive in the year exceeds the adjusted cost basis of the policy to the policyholder as of the time of the disposition; and

(b) in respect of any life insurance policy (other than a policy that is issued or effected as a registered retirement savings plan) all or any part of the insurer's reserves for which vary in amount depending upon the fair market value of a specified group of assets (in this section referred to as a "segregated fund"),

(i) such portion of any amount allocated to the policyholder in the year under the policy as was allocated out of gross revenue of the insurer from the segregated fund, other than gross revenue that is a dividend (other than a taxable dividend) received by the insurer on a share of the capital stock of any corporation, and

(ii) such portion of any taxable capital gain for a taxation year of the insurer as is deemed by subsection 142(2) to be a taxable capital gain of the policyholder.

Para. 148(1)(b) substituted by 1973-74, c. 14, s. 52, applicable to 1972 *et seq.*

Selected Cases [subsec. 148(1)]: *Canada v. Chrysler Canada Ltd.*, [1991] 2 C.T.C. 156 (FCTD); additional reasons at [1992] 1 C.T.C. 61, (sub nom. *Canada v. Chrysler Canada Ltd. (No. 2)*) (FCTD) (Employee stock ownership plan held to be an employee benefit plan as defined and taxable pursuant to paragraph 6(1)(g)).

Regulations: 217(2) (information return).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-244R3: Gifts by individuals of life insurance policies as charitable donations; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

(1.1) Amount included in computing taxpayer's income — There shall be included in computing the income for a taxation year of a taxpayer in respect of a disposition of an interest in a life insurance policy described in paragraph (e) of the definition "disposition" in subsection (9) the amount, if any, by which the amount of a payment described in paragraph (e) of that definition that the taxpayer became entitled to receive in the year exceeds the amount that would be the taxpayer's adjusted cost basis of the taxpayer's interest in the policy immediately before the disposition if, for the purposes of the definition "adjusted cost basis" in subsection (9), the taxpayer were, in respect of that interest in the policy, the policyholder.

Related Provisions: 56(1)(j) — Life insurance policy proceeds included in income. See additional Related Provisions and Definitions at end of s. 148.

Pre-RSC History: Subsec. 148(1.1) added by 1979, c. 5, subsec. 50(1), applicable to 1980 *et seq.*

Regulations: 217(2) (information return).

(2) Deemed proceeds of disposition — For the purposes of subsections (1) and 20(20) and the definition "adjusted cost basis" in subsection (9),

(a) where at any time a policyholder becomes entitled to receive under a life insurance policy a particular amount as, on account of, in lieu of payment of or in satisfaction of, a policy dividend, the policyholder shall be deemed

(i) to have disposed of an interest in the policy at that time, and

(ii) to have become entitled to receive proceeds of the disposition equal to the amount, if any, by which

(A) the particular amount

exceeds

(B) the part of the particular amount applied immediately after that time to pay a premium under the policy or to repay a policy loan under the policy, as provided for under the terms and conditions of the policy;

(b) where in a taxation year a holder of an interest in, or a person whose life is insured or who is the annuitant under, a life insurance policy (other than an annuity contract or an exempt policy) last acquired after December 1, 1982 or an annuity contract (other than a life annuity contract, as defined by regulation, entered into before November 13, 1981 or a prescribed annuity contract) dies, the policyholder shall be deemed to have disposed of the policyholder's interest in the policy or the contract, as the case may be, immediately before the death;

(c) where, as a consequence of a death, a disposition of an interest in a life insurance policy is deemed to have occurred under paragraph (b), the policyholder immediately after the death shall be deemed to have acquired the interest at a cost equal to the accumulating fund in respect thereof, as determined in prescribed manner, immediately after the death; and

(d) where at any time a life insurance policy last acquired after December 1, 1982, or a life insurance policy to which subsection 12.2(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies by virtue of paragraph 12.2(9)(b) of that Act, ceases to be an exempt policy (otherwise than as a consequence of the death of an individual whose life is insured under the policy or at a time when that individual is totally and permanently disabled), the policyholder shall be deemed to have disposed of the policyholder's interest in the policy at that time for proceeds of disposition equal to the accumulating fund with respect to the interest, as determined in prescribed manner, at that time and to have reacquired the interest immediately after that time at a cost equal to those proceeds.

Related Provisions: See Related Provisions and Definitions at end of s. 148.

History: Para. 148(2)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(2), applicable to policy dividends received or receivable in taxation years beginning after December 20, 1991. Para. (a) formerly read:

(a) where at a particular time a policyholder became entitled to receive under a life insurance policy an amount as, on account or in lieu of payment of, or in satisfaction of, a policy dividend, the policyholder shall be deemed to have disposed of an interest in the policy at that time and that amount shall be deemed to be proceeds of the disposition that the policyholder became entitled to receive at that time;

That portion of subsec. 148(2) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(1), to add reference to subsec. 20(20), applicable to dispositions occurring after 1989.

Pre-RSC History: Para. 148(2)(b) amended by 1985, c. 45, subsec. 83(1), applicable with respect to deaths occurring in taxation years commencing after 1982, to substitute "(other than an annuity contract or an exempt policy)" for "(other than an annuity contract or a policy that was an exempt policy on December 31 of the immediately preceding year)" and to add "or a prescribed annuity contract" after "entered into before November 13, 1981".

Subsec. 148(2) substituted by 1980-81-82-83, c. 140, subsec. 102(2), applicable with respect to dispositions occurring after November 12, 1981. Subsec. 148(2) formerly read:

> (2) For the purposes of subsection (1) and paragraph (9)(a), where at a particular time a policyholder became entitled to receive under a life insurance policy an amount as, on account or in lieu of payment of, or in satisfaction of, a policy dividend, the policyholder shall be deemed to have disposed of an interest in the policy at that time and the amount shall be deemed to be proceeds of the disposition that he became entitled to receive at that time.

Regulations: 301 (life annuity contract); 304 (prescribed annuity contract); 307 (accumulating fund).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-210R2: Income of deceased persons — periodic payments and investment tax credit; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death.

(3) Special rules for certain policies — For the purposes of this section, where all or any part of an insurer's reserves for a life insurance policy vary in amount depending on the fair market value of a specified group of properties (in this subsection referred to as a "segregated fund"),

(a) in computing the adjusted cost basis of the policy,

(i) an amount paid by the policyholder or on the policyholder's behalf as or on account of premiums under the policy or to acquire an interest in the policy shall, to the extent that the amount was used by the insurer to acquire property for the purposes of the segregated fund, be deemed not to have been so paid, and

(ii) any transfer of property by the insurer from the segregated fund that resulted in an increase in the portion of its reserves for the policy that do not vary with the fair market value of the segregated fund shall be deemed to have been a premium paid under the policy by the policyholder; and

(b) the proceeds of the disposition of an interest in the policy shall be deemed not to include the portion thereof, if any, payable out of the segregated fund.

Pre-RSC History: Para. 148(3)(c) repealed by 1977-78, c. 1, subsec. 79(2), applicable to 1978 *et seq.* Para. 148(3)(c) formerly read:

> (c) any transfer of property by the insurer to the segregated fund that resulted in an increase in the portion of the insurer's reserves for the policy that vary with the fair market value of the segregated fund and in a decrease in the portion of its reserves for the policy that do not so vary, shall be deemed to be a disposition of an interest in the policy entitling the policyholder to receive proceeds of disposition equal to the amount of the increase.

(4) Income from disposition — For the purpose of computing a taxpayer's income from the disposition (other than a disposition deemed to have occurred under paragraph (2)(a) or a disposition described in paragraph (b) of the definition "disposition" in subsection (9)) of a part of the taxpayer's interest in a life insurance policy (other than an annuity contract) last acquired after December 1, 1982 or an annuity contract, the adjusted cost basis to the taxpayer, immediately before the disposition, of the part is the proportion of the adjusted cost basis to the taxpayer of the taxpayer's interest immediately before the disposition that

(a) the proceeds of the disposition

are of

(b) the accumulating fund with respect to the taxpayer's interest, as determined in prescribed manner, immediately before the disposition.

Pre-RSC History: Subsec. 148(4) added by 1980-81-82-83, c. 140, subsec. 102(3), applicable with respect to dispositions occurring after November 12, 1981. (For history of former 148(4), see under subsecs. (4.1), (5).)

Regulations: 307 (accumulating fund).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(4.1), (5) [Repealed under former Act]

Pre-RSC History: Former subsec. 148(4) and subsecs. (4.1), (5) repealed by 1977-78, c. 1, subsec. 74(2), applicable to 1978 *et seq.* Those subsecs. formerly read:

> (4) Dividend deduction from tax — That proportion of any policyholder allocation from a segregated fund made to a policyholder by an insurer at any time in its taxation year that
>
> (a) such portion of the insurer's gross revenue for the year from the fund as was taxable dividends received by it in the year from taxable Canadian corporations
>
> is of
>
> (b) the insurer's gross revenue for the year from the fund,
>
> shall be deemed to be a taxable dividend received by the policyholder from a taxable Canadian corporation in respect of shares of the capital stock thereof.
>
> (4.1) Interest deduction from tax — That proportion of any policyholder allocation from a segregated fund made to a policyholder by an insurer at any time in its taxation year that
>
> (a) such portion of the insurer's gross revenue for the year from the fund as would, if the insurer were an individual, be interest for the purposes of section 110.1 received by it in the year
>
> is of
>
> (b) the insurer's gross revenue for the year from the fund,
>
> shall, for the purposes of section 110.1, be deemed to be interest received by the policyholder.
>
> (5) Deductions for foreign tax — For the purposes of section 126 the following rules apply:
>
> (a) that proportion of any policyholder allocation from a segregated fund made by an insurer to a policyholder at any time in its taxation year that
>
> (i) such portion of the insurer's gross revenue for the year from the fund as was dividends or interest payments received by it in the year from a non-resident person
>
> is of
>
> (ii) the insurer's gross revenue for the year from the fund
>
> shall be deemed to be income of the policyholder from sources in a country other than Canada; and
>
> (b) the policyholder shall be deemed to have paid as income tax to the government of that other country, on the amount deemed by paragraph (a) to be his income from sources in that other country, an amount equal to that proportion of the allocation that
>
> (i) the aggregate of taxes paid by the insurer to the governments of countries other than Canada for the year in respect of the dividends and interest payments so received by it (to the extent that such taxes were deducted in calculating, for the purposes of the relevant authority, the amount of the fund as of the end of the year)
>
> is of
>
> (ii) the insurer's gross revenue for the year from the fund.

Subsec. 148(4.1) added by 1974-75-76, c. 26, s. 102, applicable to 1974 *et seq.*

(6) Proceeds receivable as annuity — Where, under the terms of a life insurance policy (other than an annuity contract) last acquired before December 2, 1982, a policyholder became entitled to receive from the insurer at any time before the death of the person whose life was insured

thereunder, all the proceeds (other than policy dividends) payable at that time under the policy in the form of an annuity contract or annuity payments,

(a) the payments shall be regarded as annuity payments made under an annuity contract;

(b) the purchase price of the annuity contract shall be deemed to be the adjusted cost basis of the policy to the policyholder immediately before the first payment under that contract became payable; and

(c) the annuity contract or annuity payments shall be deemed not to be proceeds of the disposition of an interest in the policy.

Related Provisions: 148(10)(b) — References to "person whose life was insured". See also Related Provisions and Definitions at end of s. 148.

(7) Disposition at non-arm's length and similar cases — Where, otherwise than by virtue of a deemed disposition under paragraph (2)(b), an interest of a policyholder in a life insurance policy is disposed of by way of a gift (whether during the policyholder's lifetime or by the policyholder's will), by distribution from a corporation or by operation of law only to any person, or in any manner whatever to any person with whom the policyholder was not dealing at arm's length, the policyholder shall be deemed thereupon to become entitled to receive proceeds of the disposition equal to the value of the interest at the time of the disposition, and the person who acquires the interest by virtue of the disposition shall be deemed to acquire it at a cost equal to that value.

Related Provisions: See Related Provisions and Definitions at end of s. 148.

Pre-RSC History: All that portion of subsec. 148(6) preceding para. (a) and subsec. 148(7) substituted by 1980-81-82-83, c. 140, subsecs. 102(4), (5), applicable, as to that portion of subsec. 148(6), after December 1, 1982, and, as to subsec. 148(7), with respect to dispositions occurring after November 12, 1981. That portion of subsec. 148(6) and subsec. 148(7) formerly read:

(6) Where, under the terms of a life insurance policy other than an annuity contract, a policyholder became entitled to receive from the insurer at a particular time before the death of the person whose life was insured thereunder, all of the proceeds (other than policy dividends) payable at that time under the policy in the form of an annuity contract or annuity payments,

. . . . .

(7) Where an interest of a policyholder in a life insurance policy other than an annuity contract that is not a life annuity contract as defined by regulation, is disposed of by way of gift (whether during his lifetime or by his will), by distribution from a corporation or by operation of law only to any person, or in any manner whatever to any person with whom the policyholder was not dealing at arm's length, the policyholder shall be deemed thereupon to become entitled to receive proceeds of the disposition equal to the value of the interest at the time of the disposition, and the person who acquires the interest by virtue of the disposition shall be deemed to acquire it at a cost equal to such value.

Subsec. 148(7) substituted by 1977-78, c. 1, subsec. 74(3), applicable to 1978 *et seq.*, to add "that is not a life annuity contract as defined by regulation,".

(8) Idem — Notwithstanding any other provision in this section, where

(a) an interest of a policyholder in a life insurance policy (other than an annuity contract) has been transferred to the policyholder's child for no consideration, and

(b) a child of the policyholder or a child of the transferee is the person whose life is insured under the policy,

the interest shall be deemed to have been disposed of by the policyholder for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer, and to have been acquired by the person who acquired the interest at a cost equal to those proceeds.

Related Provisions: 148(8.1) — *Inter vivos* transfer to spouse; 148(8.2) — Transfer to spouse at death; 252(4) — Extended meaning of "spouse". See additional Related Provisions and Definitions at end of s. 148.

History: Paras. 148(8)(a), (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(2), applicable to transfers and distributions occurring after 1989. Paras. (a), (b) formerly read:

(a) an interest of a policyholder in a life insurance policy (other than an annuity contract) has been transferred to

(i) the policyholder's spouse or child, for no consideration,

(ii) the spouse or a former spouse of the policyholder, in settlement of rights arising out of their marriage, or

(iii) an individual, pursuant to a decree, order or judgment of a competent tribunal made in accordance with prescribed provisions of the law of a province if that individual is a person within a prescribed class of persons referred to in those provisions, and

(b) the transferee or a child of the policyholder or transferee is the person whose life is insured under the policy,

Pre-RSC History: Subsec. 148(8) added by 1984, c. 45, subsec. 56(1), applicable to taxation years commencing after 1982.

Subsec. 148(8) repealed by 1977-78, c. 1, subsec. 74(3), applicable after March 31, 1978. Subsec. 148(8) formerly read:

(8) Policy held on October 22, 1968 — Where

(a) a policyholder owned an interest in a life insurance policy on October 22, 1968 and has not disposed of it on or before the policy's tax anniversary date, and

(b) the value of the interest on the policy's tax anniversary date (computed without regard to any premium that became payable on that date) exceeds the adjusted cost basis of the policy as of that date (computed without reference to this subsection and without regard to any premium that became payable on that date, but after deducting all policy dividends that became payable on that date),

the policyholder shall, for the purposes of paragraph (9)(a), be deemed

(c) to have acquired the interest on the policy's tax anniversary date at a cost equal to its value referred to in paragraph (b),

(d) to have not, on or before that date, been entitled to receive any proceeds of disposition of an interest in the policy, and

(e) to have not, before that date, paid or had paid on his behalf any amount as or on account of premiums payable under the policy.

Regulations: 6500(1) (prescribed provisions and prescribed class of persons, for former 148(8)(a)(iii)).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(8.1) *Inter vivos* transfer to spouse — Notwithstanding any other provision of this section, where

(a) an interest of a policyholder in a life insurance policy (other than a policy that is, or is issued under, a plan or contract referred to in any of paragraphs (1)(a) to (e)) is transferred to

(i) the policyholder's spouse, or

(ii) a former spouse of the policyholder in settlement of rights arising out of their marriage, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(iii) [Repealed]

(b) both the policyholder and the transferee are resident in Canada at the time of the transfer,

unless an election is made in the policyholder's return of income under this Part for the taxation year in which the interest was transferred to have this subsection not apply, the interest shall be deemed to have been disposed of by the policyholder for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer and to have been acquired by the transferee at a cost equal to those proceeds.

Related Provisions: 73(1) — *Inter vivos* transfer of property of spouse, etc., or trust; 148(8.2) — Transfer to spouse at death; 252(3), (4) — Extended meaning of "spouse" and "former spouse". See additional Related Provisions and Definitions at end of s. 148.

History: Subpara. 148(8.1)(a)(iii) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(3), applicable after 1992. Subpara. (a)(iii) formerly read:

(iii) an individual of the opposite sex under an order for the support or maintenance of the individual made by a competent tribunal in accordance with the laws of a province, where the individual and the taxpayer cohabited in a conjugal relationship before the date of the order, and

Subsec. 148(8.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(3), applicable to transfers and dispositions occurring after 1989, except that, in its application with respect to transfers and distributions occurring in 1990, an election referred to in this subsec. made by a policyholder or the legal representative of a deceased policyholder by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992] shall be deemed to have been made in the policyholder's return of income under Part I of the Act for the 1990 taxation year.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(8.2) Transfer to spouse at death — Notwithstanding any other provision of this section, where, as a consequence of the death of a policyholder who was resident in Canada immediately before the policyholder's death, an interest of the policyholder in a life insurance policy (other than a policy that is or is issued under a plan or contract referred to in any of paragraphs (1)(a) to (e)) is transferred or distributed to the policyholder's spouse who was resident in Canada immediately before the death, unless an election is made in the policyholder's return of income under this Part for the taxation year in which the policyholder died to have this subsection not apply, the interest shall be deemed to have been disposed of by the policyholder immediately before the death for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer and to have been acquired by the spouse at a cost equal to those proceeds.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 70(6) — Where transfer or distribution to spouse or trust; 148(9)"adjusted cost basis"G.1 — "adjusted cost basis"; 248(8) — Occurrences as a consequence of death; 252(3), (4) — Extended meaning of "spouse" and "former spouse". See additional Related Provisions and Definitions at end of s. 148.

History: Subsec. 148(8.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(3), applicable to transfers and dispositions occurring after 1989, except that, in its application with respect to transfers and distributions occurring in 1990, an election referred to in this subsec. made by a policyholder or the legal representative of a deceased policyholder by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992] shall be deemed to have been made in the policyholder's return of income under Part I of the Act for the 1990 taxation year.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(9) Definitions — In this section and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Related Provisions: 12.2(12) — Application of subsecs. 138(12) and 148(9). See additional Related Provisions and Definitions at end of s. 148.

Pre-RSC History: The opening words of subsec. 148(9) also referred to s. 12.2. See now subsec. 12.2(12).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-379R: Employees profit sharing plans — allocations to beneficiaries.

"adjusted cost basis" to a policyholder as at a particular time of the policyholder's interest in a life insurance policy means the amount determined by the formula

$$(A + B + C + D + E + F + G + G.1) - (H + I + J + K + L)$$

where

A is the total of all amounts each of which is the cost of an interest in the policy acquired by the policyholder before that time but not including an amount referred to in the description of B or E,

B is the total of all amounts each of which is an amount paid before that time by or on behalf of the policyholder in respect of a premium under the policy, other than amounts referred to in clause (2)(a)(ii)(B), in subparagraph (iii) of the description of C in paragraph (a) of the definition "proceeds of the disposition" or in subparagraph (b)(i) of that definition,

C is the total of all amounts each of which is an amount in respect of the disposition of an interest in the policy before that time that was required to be included in computing the policyholder's income or taxable income earned in Canada for a taxation year,

D is the total of all amounts each of which is an amount in respect of the policyholder's interest in the policy that was included by virtue of subsection 12(3) or section 12.2 or of paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the policyholder's income for any taxation year ending before that time or the portion of an amount paid to the policyholder in respect of the policyholder's interest in the policy on which tax was imposed by virtue of paragraph 212(1)(o) before that time,

E is the total of all amounts each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan not exceeding the total of the proceeds of the disposition, if any, in respect of that loan and the amount, if any, described in the description of J but not including any payment of interest thereon, any loan repayment that was deductible under paragraph 60(s) of this Act or paragraph 20(1)(hh) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as it applied in taxation years before 1985) or any loan repayment referred to in clause (2)(a)(ii)(B),

F is the amount, if any, by which the cash surrender value of the policy as at its first anniversary date after March 31, 1977 exceeds the adjusted cost basis (deter-

mined under the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it would have read on that date if subsection 148(8) of that Act, as it read in its application to the period ending immediately before April 1, 1978, had not been applicable) of the policyholder's interest in the policy on that date,

G is, in the case of an interest in a life annuity contract, as defined by regulation, to which subsection 12.2(1) applies for the taxation year that includes that time (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest), the total of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing before that time,

G.1 [is,] in the case of an interest in a life insurance policy (other than an annuity contract) to which subsection (8.2) applied before that time, the total of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year beginning before that time,

H is the total of all amounts each of which is the proceeds of the disposition of the policyholder's interest in the policy that the policyholder became entitled to receive before that time,

I is the total of all amounts each of which is an amount in respect of the policyholder's interest in the policy that was deducted by virtue of subsection 20(19) in computing the policyholder's income for any taxation year commencing before that time,

J is the amount payable on March 31, 1978 in respect of a policy loan in respect of the policy,

K is the total of all amounts each of which is an amount received before that time in respect of the policy that the policyholder was entitled to deduct under paragraph 60(a) in computing the policyholder's income for a taxation year, and

L is

(a) in the case of an interest in a life insurance policy (other than an annuity contract) that was last acquired after December 1, 1982 by the policyholder, the total of all amounts each of which is the net cost of pure insurance, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing after May 31, 1985 and before that time,

(b) in the case of an interest in an annuity contract to which subsection 12.2(1) applies for the taxation year that includes that time (or would apply if the contract had an anniversary day in the year and while the taxpayer held the interest), the total of all annuity payments paid in respect of the interest before that time and while the policyholder held the interest, or

(c) in the case of an interest in a contract referred to in the description of G, the total of all amounts each of which is a mortality loss, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest before that time;

Related Provisions: 12.2(5) — Amounts included in income — taxpayer's interest in an annuity contract; 148(2) — Deemed proceeds of disposition; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 148.

History: The description of B in the definition "adjusted cost basis" in subsec. 148(9) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(4), applicable to amounts paid in taxation years commencing after December 20, 1991. The description formerly read:

B is the total of all amounts each of which is an amount paid before that time, by the policyholder or on the policyholder's behalf, in respect of a premium under the policy,

The description of E in "adjusted cost basis" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(5), applicable to loan repayments occurring in taxation years beginning after December 20, 1991. The description formerly read:

E is the total of all amounts each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan not exceeding the total of the proceeds of the disposition, if any, in respect of that loan and the amount, if any, referred to in the description of J but not including any payment of interest thereon or any repayment of the loan that was deductible pursuant to paragraph 20(1)(hh) or 60(s),

G.1 and its description added to "adjusted cost basis" by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 87(3.1), (6), applicable to transfers and distributions occurring after 1989.

The description of G in "adjusted cost basis" amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 121(4), to substitute "subsection 12.2(1)" for "subsection 12.2(1) or (3)" and to add "(or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest)", applicable to policies last acquired after 1989.

Para. (b) of the description of L in para. 148(9)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 121(5), applicable to policies last acquired after 1989. Para. (b) formerly read:

(b) in the case of an interest in an annuity contract to which subsection 12.2(1) or (3) applies, the total of all amounts each of which is an annuity payment paid in respect of the interest before that time and while the policyholder held the interest, or

Pre-RSC History: *The definition "adjusted cost basis" was para. 148(9)(a). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(a) "adjusted cost basis" to a policyholder as at a particular time of his interest in a life insurance policy means the amount, if any, by which the aggregate of

(i) the cost of each interest in the policy acquired by him before that time but not including an amount referred to in subparagraph (ii) or (iv),

(ii) all amounts each of which is an amount paid before that time, by him or on his behalf, in respect of a premium under the policy,

(iii) the aggregate of all amounts, each of which is an amount in respect of the disposition of an interest in the policy before that time that was required to be included in computing his income or taxable income earned in Canada for a taxation year,

(iii.1) the aggregate of all amounts each of which is an amount in respect of his interest in the policy that was included by virtue of subsection 12(3), section 12.2 or paragraph 56(1)(d.1) in computing his income for any taxation year ending before that time or the portion of an amount paid to him in respect of his interest in the policy on which tax was imposed by virtue of paragraph 212(1)(o) before that time,

(iv) all amounts, each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan not exceeding the aggregate of the proceeds of the disposition, if any, in respect of that loan and the amount, if any, described in subparagraph (vii) but not including any payment of interest thereon or any repayment of the loan that was deductible pursuant to paragraph 20(1)(hh) or 60(s),

(v) the amount, if any, by which the cash surrender value of the policy as at its first anniversary date after March 31, 1977 exceeds the adjusted cost basis (determined under this Act as it would have read on that date if subsection (8) had not been applicable) of his interest in the policy on that date, and

(v.1) in the case of an interest in a life annuity contract, as defined by regulation, to which subsection 12.2(1) or (3) applies for the taxation year that includes that time, the aggregate of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing before that time

exceeds the aggregate of

(vi) the aggregate of amounts each of which is proceeds of the disposition of his interest in the policy that he became entitled to receive before that time,

(vi.1) the aggregate of all amounts each of which is an amount in respect of his interest in the policy that was deducted by virtue of subsection 20(19) in computing his income for any taxation year commencing before that time,

(vii) the amount payable on March 31, 1978 in respect of a policy loan in respect of the policy,

(viii) the aggregate of all amounts each of which is an amount received before that time in respect of the policy that he was entitled to deduct under paragraph 60(a) in computing his income for a taxation year;

(ix) in the case of an interest in a life insurance policy (other than an annuity contract) that was last acquired after December 1, 1982 by the policyholder, the aggregate of all amounts each of which is the net cost of pure insurance, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing after May 31, 1985 and before that time,

(x) in the case of an interest in an annuity contract to which subsection 12.2(1) or (3) applies, the aggregate of all amounts each of which is an annuity payment paid in respect of the interest before that time and while the policyholder held the interest, and

(xi) in the case of an interest in a contract described in subparagraph (v.1), the aggregate of all amounts each of which is a mortality loss, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest before that time;

See at end of subsec. 148(9).

Regulations: 301 (life annuity contract — for 148(9)"adjusted cost basis"G); 308 (net cost of pure insurance — for 148(9)"adjusted cost basis"L(a)).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-149R4: Winding-up dividend; IT-355R2: Interest on loans to buy life insurance policies and annuity contracts, and interest on policy loans; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death. See additional Related Provisions and Definitions at end of s. 148.

"amount payable", in respect of a policy loan, has the meaning assigned by subsection 138(12);

Pre-RSC History: *The definition "amount payable" was para. 148(9)(a.1).*

See at end of subsec. 148(9).

"cash surrender value" at a particular time of a life insurance policy means its cash surrender value at that time computed without regard to any policy loans made under the policy, any policy dividends (other than paid-up additions) payable under the policy or any interest payable on those dividends;

Related Provisions: Reg. 1408(1)"cash surrender value" — Definition applies for policy reserve calculation.

Pre-RSC History: *The definition "cash surrender value" was para. 148(9)(b).*

See at end of subsec. 148(9).

"child" of a policyholder includes a child as defined in subsection 70(10);

Related Provisions: 252(1) — Extended meaning of "child".

Pre-RSC History: *The definition "child" was para. 148(9)(b.1).*

See at end of subsec. 148(9).

"disposition", in relation to an interest in a life insurance policy, includes

(a) a surrender thereof,

(b) a policy loan made after March 31, 1978,

(c) the dissolution of that interest by virtue of the maturity of the policy,

(d) a disposition of that interest by operation of law only, and

(e) the payment by an insurer of an amount (other than an annuity payment, a policy loan or a policy dividend) in respect of a policy (other than a policy described in paragraph (1)(a), (b), (c), (d) or (e)) that is a life annuity contract, as defined by regulation, entered into after November 16, 1978, and before November 13, 1981,

but does not include

(f) an assignment of all or any part of an interest in the policy for the purpose of securing a debt or a loan other than a policy loan,

(g) a lapse of the policy in consequence of the premiums under the policy remaining unpaid, if the policy was reinstated not later than 60 days after the end of the calendar year in which the lapse occurred,

(h) a payment under a policy as a disability benefit or as an accidental death benefit,

(i) an annuity payment,

(j) a payment under a life insurance policy (other than an annuity contract) that

(i) was last acquired before December 2, 1982, or

(ii) is an exempt policy

in consequence of the death of any person whose life was insured under the policy, or

(k) any transaction or event by which an individual becomes entitled to receive, under the terms of an exempt policy, all of the proceeds (including or excluding policy dividends) payable under the policy in the form of an annuity contract or annuity payments, if, at the time of the transaction or event, the individual whose life is insured under the policy was totally and permanently disabled;

Related Provisions: 60(s) — Deduction of policy loan repayment; 148(10)(b) — References to "person whose life was insured"; 248(8) — Occurrences as a consequence of death. See additional Related Provisions and Definitions at end of s. 148.

Pre-RSC History: *The definition "disposition" was para. 148(9)(c). See Table of Concordance.*

See at end of subsec. 148(9).

Regulations: 301 (life annuity contract — for 148(9)"disposition"(e)).

Interpretation Bulletins: IT-85R2: Health and welfare trusts for employees; IT-87R2: Policyholders' income from life insurance policies.

"interest", in relation to a policy loan, has the meaning assigned by subsection 138(12);

Pre-RSC History: *The definition "interest" was para. 148(9)(c.1).*

See at end of subsec. 148(9).

"life insurance policy" — [Repealed under former Act]

"policy loan" means an amount advanced by an insurer to a policyholder in accordance with the terms and conditions of the life insurance policy;

Pre-RSC History: *The definition "policy loan" was para. 148(9)(e).* See at end of subsec. 148(9).

"premium" under a policy includes

(a) interest paid after 1977 to a life insurer in respect of a policy loan, other than interest deductible in the 1978 or any subsequent taxation year pursuant to paragraph 20(1)(c) or (d), and

(b) a prepaid premium under the policy to the extent that it cannot be refunded otherwise than on termination or cancellation of the policy,

but does not include

(c) where the interest in the policy was last acquired after December 1, 1982, that portion of any amount paid after May 31, 1985 under the policy with respect to

(i) an accidental death benefit,

(ii) a disability benefit,

(iii) an additional risk as a result of insuring a substandard life,

(iv) an additional risk in respect of the conversion of a term policy into another policy after the end of the year,

(v) an additional risk under a settlement option,

(vi) an additional risk under a guaranteed insurability benefit, or

(vii) any other prescribed benefit that is ancillary to the policy;

Related Provisions: 60(s) — Repayment of policy loan. See additional Related provisions and Definitions at end of s. 148.

Pre-RSC History: *The definition "premium" was para. 148(9)(e.1). See Table of Concordance.*

See at end of subsec. 148(9).

"proceeds of the disposition" of an interest in a life insurance policy means the amount of the proceeds that the policyholder, beneficiary or assignee, as the case may be, is entitled to receive on a disposition of an interest in the policy and for greater certainty,

(a) in respect of a surrender or maturity thereof, means the amount determined by the formula

$$(A - B) - C$$

where

A is the cash surrender value of that interest in the policy at the time of surrender or maturity,

B is that portion of the cash surrender value represented by A that is applicable to the policyholder's interest in the related segregated fund trust as referred to in paragraph 138.1(1)(e), and

C is the total of amounts each of which is

(i) an amount payable at that time by the policyholder in respect of a policy loan in respect of the policy,

(ii) a premium under the policy that is due but unpaid at that time, or

(iii) an amount applied, immediately after the time of the surrender, to pay a premium under the policy, as provided for under the terms and conditions of the policy,

(b) in respect of a policy loan made after March 31, 1978 means the lesser of

(i) the amount of the loan, other than the part thereof applied, immediately after the loan, to pay a premium under the policy, as provided for under the terms and conditions of the policy, and

(ii) the amount, if any, by which the cash surrender value of the policy immediately before the loan was made exceeds the total of the balances outstanding at that time of any policy loans in respect of the policy,

(c) in respect of a payment described in paragraph (e) of the definition "disposition" in this subsection, means the amount of that payment, and

(d) in respect of a disposition deemed to have occurred under paragraph (2)(b), means the accumulating fund in respect of the interest, as determined in prescribed manner,

(i) immediately before the time of death in respect of a life insurance policy (other than an annuity contract) last acquired after December 1, 1982, or

(ii) immediately after the time of death in respect of an annuity contract;

Related Provisions: 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 148.

History: The description of C in para. (a) of "proceeds of the disposition" in subsec. 148(9) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(7), applicable to surrenders occurring in taxation years commencing after December 20, 1991. That description formerly read:

C is the total of all amounts each of which is an amount payable at that time by the policyholder in respect of a policy loan in respect of the policy or a premium under the policy that is due but unpaid at that time,

Subpara. (b)(i) of "proceeds of the disposition" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 87(8), applicable to policy loans made in taxation years beginning after December 20, 1991. That subpara. formerly read:

(i) the amount of the loan, and

Pre-RSC History: *The definition "proceeds of the disposition" was para. 148(9)(e.2). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(e.2) "proceeds of the disposition" of an interest in a life insurance policy means the amount of the proceeds that the policyholder, beneficiary or assignee, as the case may be, is entitled to receive on a disposition of an interest in the policy and for greater certainty,

(i) in respect of a surrender or maturity thereof, means the amount, if any, by which

(A) the cash surrender value of that interest in the policy at the time of surrender or maturity (excluding that portion of the cash surrender value that is applicable to a policyholder's interest in the related segregated fund trust as referred to in paragraph 138.1(1)(e))

exceeds

(B) the aggregate of amounts each of which is an amount payable at that time by the policyholder in respect of a policy loan in respect of the policy or a premium under the policy that is due but unpaid at that time,

(ii) in respect of a policy loan made after March 31, 1978 means the lesser of

(A) the amount of the loan, and

(B) the amount, if any, by which the cash surrender value of the policy immediately before the loan was made exceeds the aggregate of the balances outstanding at that time of any policy loans in respect of the policy,

(iii) in respect of a payment described in subparagraph (c)(iv.1), means the amount of such payment, and

(iv) in respect of a disposition deemed to have occurred under paragraph (2)(b), means the accumulating fund in respect of the interest, as determined in prescribed manner,

(A) immediately before the time of death in respect of a life insurance policy (other than an annuity contract) last acquired after December 1, 1982, or

(B) immediately after the time of death in respect of an annuity contract;

See at end of subsec. 148(9).

"relevant authority" — [Repealed]

History: The definition "relevant authority" in subsec. 148(9) repealed by 1997, c. 25, s. 46, applicable April 25, 1997. It formerly read:

"relevant authority" has the meaning assigned by subsection 138(12);

Pre-RSC History: *The definition "relevant authority" was para. 148(9)(e.3).*

See at end of subsec. 148(9).

"tax anniversary date", in relation to a life insurance policy, means the second anniversary date of the policy to occur after October 22, 1968;

Pre-RSC History: *The definition "tax anniversary date" was para. 148(9)(f).*

See at end of subsec. 148(9).

"value" at a particular time of an interest in a life insurance policy means

(a) where the interest includes an interest in the cash surrender value of the policy, the amount in respect thereof that the holder of the interest would be entitled to receive if the policy were surrendered at that time, and

(b) in any other case, nil.

Pre-RSC History [subsec. 148(9)"value"]: *The definition "value" was para. 148(a)(g).*

See at end of subsec. 148(9).

Pre-RSC History [subsec. 148(9)]: Subpara. 148(9)(a)(v.1) amended by 1990, c. 39, subsec. 37(1), to substitute "subsection 12.2(1) or (3) applies for the taxation year that includes that time," for "subsection 12.2(1), (3) or (4) applies for the taxation year that includes that time or would apply if the contract had a third anniversary in the year," applicable (by subsec. 37(3), as amended by 1991, c. 49, s. 255) with respect to policies issued after 1989.

Subpara. 148(9)(a)(x) amended by subsec. 37(2) of 1990, c. 39, to substitute "subsection 12.2(1) or (3) applies," for "subsection 12.2(1), (3) or (4) applies or would apply if the contract had a third anniversary in the taxation year that includes that time," applicable (by subsec. 37(3), as amended by 1991, c. 49, s. 255) with respect to policies issued after 1989.

Subpara. 148(9)(a)(iv) amended by 1985, c. 45, subsec. 83(2), applicable to 1982 *et seq.*, to substitute "in respect of that loan" for "in respect of that loan (within the meaning of paragraph (e.2))" and "any repayment of the loan that was deductible pursuant to paragraph 20(1)(hh) or 60(s)" for "any repayment of a loan that was deductible pursuant to paragraph 20(1)(hh)".

Subpara. 148(9)(c)(x) added by 1985, c. 45, subsec. 83(3), applicable with respect to transactions or events occurring after December 1, 1982.

Para. 148(9)(d) repealed and para. 148(9)(e.3) added by 1985, c. 45, subsecs. 83(4) and (5). Para. 148(9)(d) formerly read:

(d) "life insurance policy" and "relevant authority" have the meaning given those expressions in subsection 138(12);

Subpara. 148(9)(b.1) added by 1984, c. 45, subsec. 56(2), applicable to taxation years commencing after 1982.

Subpara. 148(9)(a)(v.1) substituted to add "as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing before that time"; subpara. 148(9)(a)(ix) substituted to add "as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing after May 31, 1985 and before that time,"; subpara. 148(9)(a)(xi) substituted by 1984, c. 1, subsecs. 82(1)–(3), applicable to taxation years commencing after 1982. Subpara. 148(9)(a)(xi) formerly read:

(xi) in the case of an interest described in subparagraph (v.1), the aggregate of all amounts each of which is a mortality loss in respect of the interest, as determined in prescribed manner, before that time;

All that portion of subsec. 148(9) preceding para. (a), subparas. 148(9)(a)(iii), (iii.1), para. (b), subparas. (c)(iv.1), (vii), (viii), and para. (e.1) substituted, subparas. 148(9)(a)(v.1), (ix)–(xi), (e.2)(iv) added by 1980-81-82-83, c. 140, subsecs. 102(6)–(14). (For application, see "Application" below.) The substituted provisions formerly read:

(9) In this section,

. . . . .

(iii) all amounts, each of which is an amount in respect of the disposition of an interest in the policy before that time that was required by paragraph (1)(a) as it read for the 1977 taxation year, subsection (1), section 16 or paragraph 56(1)(d) to be included in computing his income for a taxation year,

(iii.1) all amounts each of which is an amount in respect of his interest in the policy that was included by virtue of subsection 12(3) in computing his income for any taxation year commencing before that time,

. . . . .

(b) "cash surrender value" at a particular time of a life insurance policy means its cash surrender value at that time computed without regard to any policy dividends payable thereunder or any interest payable on such dividends;

. . . . .

(iv.1) the payment by an insurer of an amount (other than an annuity payment, a policy loan or a policy dividend) in respect of a policy (other than a policy described in paragraph (1)(b)) that is a life annuity contract, as defined by regulation, entered into after November 16, 1978,

. . . . .

(vii) a termination of the policy in consequence of the death or total and permanent disability of any person whose life was insured under the policy, or

(viii) an annuity payment under a life annuity contract;

. . . . .

(e.1) "premium" under a policy includes interest paid after 1977 to a life insurer in respect of a policy loan other than interest deductible in the 1978 or any subsequent taxation year pursuant to paragraph 20(1)(c) or (d);

Subparas. 148(9)(a)(iii.1), (vi.1) added by 1980-81-82-83, c. 48, subsecs. 83(1), (2), applicable to taxation years commencing after October 28, 1980.

1980-81-82-83, c. 140, subsecs. 102(16)–(21) provide:

That portion of subsec. 148(9) preceding para. (a) is applicable to taxation years commencing after 1982.

Subparas. 148(9)(a)(iii), (iii.1) are applicable after November 12, 1981.

Subparas. 148(9)(a)(v.1), (ix)–(xi) are applicable to taxation years commencing after 1982.

Para. 148(9)(b) is applicable after 1971.

Subparas. 148(9)(c)(iv.1), (vii)–(ix) are applicable with respect to dispositions occurring after November 12, 1981.

Para. 148(9)(e.1) is applicable after November 12, 1981.

Subpara. 148(9)(e.2)(iv) is applicable with respect to dispositions occurring after December, 1, 1982.

Subparas. 148(9)(a)(iv), (e.2)(ii) substituted, (c)(iv.1), (e.2)(iii) added by 1979, c. 5, subsecs. 50(2)–(4), applicable, as to subparas. 148(9)(a)(iv), (e.2)(ii), after March 31, 1978, and, as to (c)(iv.1), (e.2)(iii), to 1980 *et seq.* Subparas. 148(9)(a)(iv), (e.2)(ii) formerly read:

(iv) all amounts, each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan in respect of the policy but not including any payment of interest thereon or any repayment of a loan that was deductible pursuant to paragraph 20(1)(hh), and

. . . . .

(ii) in respect of an assignment of all or any part of an interest in the policy for the purpose of securing a policy loan made after March 31, 1978, means the amount of the policy loan;

Para. 148(9)(e.1) substituted by 1977-78, c. 32, s. 36, applicable after March 31, 1978, to add "after 1977".

Paras. 148(9)(a), (c), (e) substituted, (a.1), (c.1), (e.1), (e.2) added by 1977-78, c. 1, subsecs. 74(4)–(6), applicable (as to para. 148(9), (a.1)) to 1978 *et seq.* (as to paras. 148(9)(a), (c), (c.1), (e.1), (e.2)) after March 31, 1978. Paras. 148(9)(a), (c), (e) formerly read:

(a) "adjusted cost basis" to a policyholder as of a particular time of an interest in a life insurance policy means the amount, if any, by which

(i) the aggregate of the cost to him of acquiring all his interests in the policy and all amounts paid by him or on his behalf before that time as or on account of premiums under the policy,

exceeds

(ii) all proceeds of disposition of his interests in the policy that he became entitled to receive before that time, except to the extent that such proceeds were required to be included in computing his income for a taxation year by virtue of paragraph (1)(a);

. . . . .

(c) "disposition" in relation to a life insurance policy or an interest therein includes a surrender or termination, a disposition by operation of law only, or the maturity of the policy, but does not include

(i) a termination of the policy in consequence of the death or total and permanent disability of any person whose life was insured under the policy,

(ii) an assignment of all or any part of any interest in the policy for the purpose only of securing a debt or a loan, or

(iii) a lapse of the policy in consequence of the premiums under the policy remaining unpaid, if the policy was reinstated not later than 60 days after the end of the calendar year in which the lapse occurred;

. . . . .

(e) "policyholder allocation" from a segregated fund means an amount allocated by an insurer to a policyholder that is required by paragraph (1)(b) to be included in computing the policyholder's income;

Subpara. 148(9)(c)(i) substituted by 1973-74, c. 30, s. 21, applicable to 1973 *et seq.* Subpara. 148(9)(c)(i) formerly read:

(i) a termination of the policy in consequence of the death of any person whose life was insured under the policy.

(9.1) Application of subsec. 12.2(11) — The definitions in subsection 12.2(11) apply to this section.

Origin of subsec. 148(9.1): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 12.2(11)).

(10) Life annuity contracts — For the purposes of this section,

(a) a reference to "insurer" or "life insurer" shall be deemed to include a reference to a person who is licensed or otherwise authorized under a law of Canada or a province to issue contracts that are annuity contracts;

(b) a reference to a "person whose life was insured" shall be deemed to include a reference to an annuitant under a life annuity contract, as defined by regulation, entered into before November 17, 1978;

(c) where a policyholder is a person who has held an interest in a life insurance policy continuously since its issue date, the interest shall be deemed to have been acquired on the later of the date on which

(i) the policy came into force, and

(ii) the application in respect of the policy signed by the policyholder was filed with the insurer;

(d) except as otherwise provided, a policyholder shall be deemed not to have disposed of or acquired an interest in a life insurance policy (other than an annuity contract) as a result only of the exercise of any provision (other than a conversion into an annuity contract) of the policy; and

(e) where an interest in a life insurance policy (other than an annuity contract) last acquired before December 2, 1982 to which subsection 12.2(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, does not apply has been acquired by a taxpayer from a person with whom the taxpayer was not dealing at arm's length, the interest shall be deemed to have been last acquired by the taxpayer before December 2, 1982.

Related Provisions: 12.2(13) — Application of subsec. 148(10); 56(1)(j) — Life insurance policy proceeds. See also below.

Pre-RSC History: Para. 148(10)(e) added by 1984, c. 45, subsec. 56(3), applicable to taxation years commencing after 1982.

Subsec. 148(10) substituted by 1980-81-82-83, c. 140, subsec. 102(15), to add a reference to s. 12.2 and to add paras. (c), (d), applicable after November 12, 1981, except para. 148(10)(d) applicable after 1971.

Para. 148(10)(b) substituted by 1979, c. 5, subsec. 50(5), applicable to 1980 *et seq.* Para. 148(10)(b) formerly read:

(b) a reference to a "person whose life was insured" shall be deemed to include a reference to an annuitant under such a life annuity contract.

Subsec. 148(10) added by 1977-78, c. 1, subsec. 74(7), applicable after March 1978.

Regulations: 301 (meaning of "life annuity contract").

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Related Provisions [s. 148]: 12.2 — Accrual of income on certain life insurance policies including annuity contracts; 20(1)(c), 20(2.2) — Deductibility of interest and compound interest on money borrowed to acquire a life insurance policy; 20(2.1) — Deductibility of interest paid or incurred in respect of a policy loan; 20(19) — Deduction from payment under an annuity contract for amounts previously included in income; 20(20) — Deduction re disposition of life insurance policy for accrued income previously included in income; 56(1)(d), (d.1) — Inclusion in income of annuity payments in respect of annuities not subject to accrual rules under subsec. 12.2; 60(a) — Deduction of capital element of annuity payments; 70(3.1) — "Rights or things" not to include interest in a life insurance policy; 70(5.3) — Valuation of shares of a corporation where it is beneficiary of life insurance policy on deceased; 87(2.2) — Amalgamation of insurance corporations; 88(1)(g) — Winding-up of subsidiary insurance corporations; 89(1)"capital dividend account"(d) — When gains on life insurance policy issued on or before June 28, 1982 included in capital dividend account; 89(2)(a) — When gain on life insurance policy issued on or before June 28, 1982, excluded from capital dividend account; 115(1)(a)(vi), 116(5.1), (5.2) — Proceeds of disposition by non-resident of life insurance policy in Canada; 138 — Insurance corporations; 138.1 — Rules relating to segregated funds.

Definitions [s. 148]: "accumulating fund" — Reg. 307; "adjusted cost basis" — 148(9); "amount" — 248(1); "amount payable" — (in respect of a policy loan) 148(9); "anniversary day" — 12.2(11), 148(9.1); "annuity" — 248(1); "arm's length" — 251(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "cash surrender value" — 148(9); "child" — 70(10), 148(9), 252(1); "common-law partner", "common-law partnership" — 248(1); "consequence of a death", "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — (in relation to an interest in a life insurance policy) 148(9); "dividend" — 248(1); "exempt policy" — 12.2(11), 148(9.1); "former spouse" — 252(3), (4)(a); "gross revenue", "income-averaging annuity contract", "individual" — 248(1); "insurer" — 148(10)(a), 248(1); "interest" — (in relation to a policy loan) 148(9); "life annuity contract" — Reg. 301; "life insurance policy" — 138(12), 248(1); "life insurer" — 148(10)(a), 248(1); "marriage" — 252(4)(b); "non-resident" — 248(1); "paid-up addition" — 12.2(10); "person" — 248(1); "person whose life was insured" — 148(10)(b); "policy dividend" — 139.1(8)(a); "policy loan", "premium" — 148(9); "prescribed" — 248(1); "prescribed annuity contract" — Reg. 304; "proceeds of the disposition" (of an interest in a life insurance policy) — 148(9); "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "segregated fund" — 138.1(1); "segregated fund policy" — 138.1(1)(a); "share" — 248(1); "spouse" — 252(3), (4)(a); "taxable Canadian corporation" — 89(1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "third anniversary" — 12.2(11), 148(9.1); "value" (of an interest in a life insurance policy) — 148(9).

Regulations [s. 148]: 300–310.

Eligible Funeral Arrangements

148.1 (1) Definitions — In this section,

"cemetery care trust" means a trust established pursuant to an Act of a province for the care and maintenance of a cemetery;

Related Provisions: 128.1(10)"excluded right or interest"(e)(iii) — No deemed disposition on emigration of individual; 149(1)(s.2) — No tax on cemetery care trust; 248(1)"cemetery care trust" — Definition applies to entire Act.

History: The definition "cemetery care trust" added to subsec. 148.1(1) by 1998, c. 19, subsec. 177(4), applicable to 1993 *et seq.*

Regulations: 204(3)(d.1) (cemetery care trust need not file T3 return).

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"cemetery services" with respect to an individual means property (including interment vaults, markers, flowers, liners, urns, shrubs and wreaths) and services that relate directly to cemetery arrangements in Canada in consequence of the death of the individual including, for greater certainty, property and services to be funded out of a cemetery care trust;

History: The definition "cemetery services" added to subsec. 148.1(1) by 1998, c. 19, subsec. 177(4), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"custodian" of an arrangement means

(a) where a trust is governed by the arrangement, a trustee of the trust, and

(b) in any other case, a qualifying person who receives a contribution under the arrangement as a deposit for the provision by the person of funeral or cemetery services;

Related Provisions: 212(1)(v) — Withholding tax on payment by custodian to non-resident person.

History: Para. (b) of the definition "custodian" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(2), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) in any other case, a qualifying person who receives a contribution under the arrangement as a deposit for the provision by the person of funeral services;

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-531: Eligible funeral arrangements.

"eligible funeral arrangement" at a particular time means an arrangement established and maintained by a qualifying person solely for the purpose of funding funeral or cemetery services with respect to one or more individuals and of which there is one or more custodians each of whom was resident in Canada at the time the arrangement was established, where

(a) each contribution made before the particular time under the arrangement was made for the purpose of funding funeral or cemetery services to be provided by the qualifying person with respect to an individual, and

(b) for each such individual, the total of all relevant contributions made before the particular time in respect of the individual does not exceed

(i) $15,000, where the arrangement solely covers funeral services with respect to the individual,

(ii) $20,000, where the arrangement solely covers cemetery services with respect to the individual, and

(iii) $35,000, in any other case,

and, for the purpose of this definition, any payment (other than the portion of the payment to be applied as a contribution to a cemetery care trust) that is made in consideration for the immediate acquisition of a right to burial in or on property that is set apart or used as a place for the burial of human remains or of any interest in a building or structure for the permanent placement of human remains, shall be considered to have been made pursuant to a separate arrangement that is not an eligible funeral arrangement;

Related Provisions: 128.1(10)"excluded right or interest"(e)(iv) — No deemed disposition on emigration of individual; 149(1)(s.1) — No tax on eligible funeral arrangement; 212(1)(v) — Withholding tax on payment from eligible funeral arrangement to non-resident; 248(1)"eligible funeral arrangement" — Definition applies to entire Act.

History: The definition "eligible funeral arrangement" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(1), applicable to 1993 *et seq.* The definition formerly read:

"eligible funeral arrangement" at a particular time means an arrangement established and maintained by a qualifying person solely for the purpose of funding funeral services with respect to one or more individuals and of which there is one or more custodians each of whom was resident in Canada at the time the arrangement was established, where

(a) each contribution made before the particular time under the arrangement was made for the purpose of funding funeral services to be provided by the qualifying person with respect to an individual, and

(b) for each such individual, the total of all relevant contributions made before the particular time in respect of the individual under the arrangement does not exceed $15,000;

Regulations: 201(1)(f) (information return on return of funds); 202(2)(m) (information return on payment to non-resident).

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"funeral or cemetery services" with respect to an individual means funeral services with respect to the individual, cemetery services with respect to the individual or any combination of such services;

History: The definition "funeral or cemetery services" added to subsec. 148.1(1) by 1998, c. 19, subsec. 177(4), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"funeral services" with respect to an individual means property and services (other than cemetery services with respect to the individual) that relate directly to funeral arrangements in Canada in consequence of the death of the individual;

Related Provisions: 255 — "Canada" includes coastal waters.

History: The definition "funeral services" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(1), applicable to 1993 *et seq.* The definition formerly read:

"funeral services" with respect to an individual means property and services that relate directly to funeral, burial, cremation or cemetery arrangements in Canada in consequence of the death of the individual or to any combination of such arrangements;

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"qualifying person" means a person licensed or otherwise authorized under the laws of a province to provide funeral or cemetery services with respect to individuals;

History: The definition "qualifying person" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(1), applicable to 1993 *et seq.* The definition formerly read:

"qualifying person" means a person licensed or otherwise authorized under the laws of a province to provide funeral services for individuals;

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"relevant contribution" in respect of an individual under a particular arrangement means

(a) a contribution under the particular arrangement (other than a contribution made by way of a transfer

from an eligible funeral arrangement) for the purpose of funding funeral or cemetery services with respect to the individual, or

(b) such portion of a contribution to another arrangement that was an eligible funeral arrangement (other than any such contribution made by way of a transfer from any eligible funeral arrangement) as can reasonably be considered to have subsequently been used to make a contribution under the particular arrangement by way of a transfer from an eligible funeral arrangement for the purpose of funding funeral or cemetery services with respect to the individual.

Related Provisions: 148.1(1)"eligible funeral arrangement"(b) — Dollar limits on relevant contributions.

History: Paras. (a) and (b) of the definition "relevant contribution" in subsec. 148.1(1) amended by 1998, c. 19, subsec. 177(3), applicable to 1993 *et seq.* Paras. (a) and (b) formerly read:

(a) a contribution under the particular arrangement (other than a contribution made by way of a transfer from an eligible funeral arrangement) for the purpose of funding funeral services with respect to the individual, or

(b) such portion of a contribution to another arrangement that was an eligible funeral arrangement (other than any such contribution made by way of a transfer from any eligible funeral arrangement) as can reasonably be considered to have subsequently been used to make a contribution under the particular arrangement by way of a transfer from an eligible funeral arrangement for the purpose of funding funeral services with respect to the individual.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(2) Exemption for eligible funeral arrangements — Notwithstanding any other provision of this Act,

(a) no amount that has accrued, is credited or is added to an eligible funeral arrangement shall be included in computing the income of any person solely because of such accrual, crediting or adding;

(b) subject to paragraph (c) and subsection (3), no amount shall be

(i) included in computing a person's income solely because of the provision by another person of funeral or cemetery services under an eligible funeral arrangement, or

(ii) included in computing a person's income because of the disposition of an interest under an eligible funeral arrangement or an interest in a trust governed by an eligible funeral arrangement; and

(c) subparagraph (b)(ii) shall not affect the consequences under this Act of the disposition of any right under an eligible funeral arrangement to payment for the provision of funeral or cemetery services.

Related Provisions: 149(1)(s.1) — No tax on trust governing an eligible funeral arrangement; 149(1)(s.2) — No tax on cemetery care trust.

History: Paras. 148.1(2)(b) and (c) amended by 1998, c. 19, subsec. 177(5), applicable to 1993 *et seq.* Paras. 148.1(2)(b) and (c) formerly read:

(b) subject to paragraph (c) and subsection (3), no amount shall be

(i) included in computing a person's income solely because of the provision by another person of funeral services under an eligible funeral arrangement, or

(ii) included in computing a person's income because of the disposition of an interest under an eligible funeral arrangement or an interest in a trust governed by an eligible funeral arrangement; and

(c) subparagraph (b)(ii) shall not affect the consequences under this Act of the disposition of any right under an eligible funeral arrangement to payment for the provision of funeral services.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(3) Income inclusion on return of funds — Where at any particular time in a taxation year a particular amount is distributed (otherwise than as payment for the provision of funeral or cemetery services with respect to an individual) to a taxpayer from an arrangement that was, at the time it was established, an eligible funeral arrangement and the particular amount is paid from the balance in respect of the individual under the arrangement, there shall be added in computing the taxpayer's income for the year from property the lesser of the particular amount and the amount determined by the formula

$$A + B - C$$

where

A is the balance in respect of the individual under the arrangement immediately before the particular time (determined without regard to the value of property in a cemetery care trust);

B is the total of all payments made from the arrangement before the particular time for the provision of funeral or cemetery services with respect to the individual (other than cemetery services funded by property in a cemetery care trust); and

C is the total of all relevant contributions made before the particular time in respect of the individual under the particular arrangement (other than contributions in respect of the individual that were in a cemetery care trust).

Related Provisions [subsec. 148.1(3)]: 12(1)(z.4) — Inclusion into income from property; 212(1)(v) — Withholding tax on payment to non-resident; 257 — Formula cannot calculate to less than zero.

History [148.1(3)]: Subsec. 148.1(3) amended by 1998, c. 19, subsec. 177(6), applicable to 1993 *et seq.* Subsec. 148.1(3) formerly read:

(3) Where at any particular time in a taxation year a particular amount is distributed (otherwise than as payment for the provision of funeral services with respect to an individual) to a taxpayer from an arrangement that was, at the time it was established, an eligible funeral arrangement and the particular amount is paid from the balance in respect of the individual under the arrangement, there shall be added in computing the taxpayer's income for the year from property the lesser of the particular amount and the amount determined by the formula

$$A + B - C$$

where

A is the balance in respect of the individual under the arrangement immediately before the particular time;

B is the total of all payments made from the arrangement before the particular time for the provision of funeral services with respect to the individual; and

C is the total of all relevant contributions made before that time in respect of the individual under the particular arrangement.

Regulations [subsec. 148.1(3)]: 201(1)(f) (information return).

Interpretation Bulletins [subsec. 148.1(3)]: IT-531: Eligible funeral arrangements.

History [s. 148.1]: S. 148.1 added by 1995, c. 21, s. 62, applicable to 1993 *et seq.*

Definitions [s. 148.1]: "amount" — 248(1); "Canada" — 255; "custodian" — 148.1(1); "eligible funeral arrangement" — 148.1(1), 248(1); "funeral services" — 148.1(1); "individual", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying person", "relevant contribution" — 148.1(1); "resident in Canada" — 250; "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

DIVISION H — EXEMPTIONS

Miscellaneous Exemptions

149. (1) Miscellaneous exemptions — No tax is payable under this Part on the taxable income of a person for a period when that person was

(a) **employees of a country other than Canada** — an officer or servant of the government of a country other than Canada whose duties require that person to reside in Canada

(i) if, immediately before assuming those duties, the person resided outside Canada,

(ii) if that country grants a similar privilege to an officer or servant of Canada of the same class,

(iii) if the person was not, at any time in the period, engaged in a business or performing the duties of an office or employment in Canada other than the person's position with that government, and

(iv) if the person was not during the period a Canadian citizen;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1)(b) — Family members and servants; 212(14)(c)(i) — Certificate of exemption; Canada-U.S. tax treaty, Art. XIX — Government service; Canada-U.S. tax treaty, Art. XXVIII — Diplomatic agents and consular officers; Canada-UK Tax Convention, Art. 25 — Diplomatic and consular officials.

(b) **members of the family and servants of employees of a country other than Canada** — a member of the family of a person described in paragraph (a) who resides with that person, or a servant employed by a person described in that paragraph,

(i) if the country of which the person described in paragraph (a) is an officer or servant grants a similar privilege to members of the family residing with and servants employed by an officer or servant of Canada of the same class,

(ii) in the case of a member of the family, if that member was not at any time lawfully admitted to Canada for permanent residence, or at any time in the period engaged in a business or performing the duties of an office or employment in Canada,

(iii) in the case of a servant, if, immediately before assuming his or her duties as a servant of a person described in paragraph (a), the servant resided outside Canada and, since first assuming those duties in Canada, has not at any time engaged in a business in Canada or been employed in Canada other than by a person described in that paragraph, and

(iv) if the member of the family or servant was not during the period a Canadian citizen;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules.

(c) **municipal authorities** — a municipality in Canada, or a municipal or public body performing a function of government in Canada;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1)(d)–(d.5) — Municipal or provincial corporations.

(d) **corporations owned by the Crown** — a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by Her Majesty in right of Canada or a province;

Proposed Amendment — 149(1)(d)

(d) **corporations owned by the Crown** — a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(1), will amend para. 149(1)(d) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: Section 149 of the Act exempts certain taxpayers from tax under Part I of the Act and provides special rules for such taxpayers.

Paragraphs 149(1)(d) to (d.6) of the Act exempt from tax the taxable income of any corporation, commission or association 100% (or in some instances 90%) of the shares or capital of which is owned by the federal government, a provincial government or a municipality in Canada. The exemption also applies to a wholly-owned subsidiary of such a corporation, commission or association. Paragraphs 149(1)(d) to (d.4) and (d.6) are amended strictly to clarify that the ownership test referred to in those paragraphs can be met through combined ownership. For example, where the federal government and a provincial government each owns 50% of the shares of a corporation, the taxable income of the corporation will be exempt by virtue of paragraph 149(1)(d).

This amendment applies to taxation years and fiscal periods that begin after 1998. However, a corporation, commission or association may, through an election in writing filed with the Minister of National Revenue within six months after this amendment is assented to, choose that this amendment apply only after November 1999.

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d) amended by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998. Para. 149(1)(d) formerly read:

(d) a corporation, commission or association not less than 90% of the shares or capital of which was owned by Her Majesty in right of Canada or a province or by a Canadian municipality, or a wholly-owned corporation subsidiary to such a corporation, commission or association, but this paragraph does not apply

(i) to such a corporation, commission or association if a person other than Her Majesty in right of Canada or a province or a Canadian municipality had, during the period, a right under a contract, in equity or otherwise either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of that corporation, commission or association, and

(ii) to such a wholly-owned subsidiary corporation if a person other than Her Majesty in right of Canada or a province or a Canadian municipality had, during the period, a right under a contract, in equity or otherwise either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of that wholly-owned subsidiary corporation or of the corporation, commission or association of which it is a wholly-owned subsidiary corporation;

Selected Cases [para. 149(1)(d)]: *Entreprises Chelsea Ltée v. MNR*, [1970] C.T.C. 598 (Exch.) (Wholly owned subsidiary of municipality allowed exemption from tax on sale profit).

Interpretation Bulletins: IT-347R2: Crown corporations.

(d.1) **corporations 90% owned by the Crown** — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by Her Majesty in right of Canada or a province;

Proposed Amendment — 149(1)(d.1)

(d.1) **corporations 90% owned by the Crown** — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(1), will amend para. 149(1)(d.1) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: See under 149(1)(d).

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.1) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.2) **wholly-owned corporations** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

Proposed Amendment — 149(1)(d.2)

(d.2) **wholly-owned corporations** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(1), will amend para. 149(1)(d.2) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: See under 149(1)(d).

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.11) — Election for corporation that was taxable before 1999 to remain taxable; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.2) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.3) **90% owned corporations** — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by

(i) Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period, or

Proposed Amendment — 149(1)(d.3)(i)

(i) one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period, or

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(2), will amend subpara. 149(1)(d.3)(i) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: See under 149(1)(d).

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period;

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.11) — Election for corporation that was taxable before 1999 to remain taxable; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.3) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.4) **combined [Crown] ownership** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

Proposed Amendment — 149(1)(d.4)

(d.4) **combined [Crown] ownership** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(3), will amend para. 149(1)(d.4) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: See under 149(1)(d).

Related Provisions: 27(2) — Prescribed federal Crown corporations are taxable; 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.11) — Election for corporation that was taxable before 1999 to remain taxable; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.4) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.5) **municipal corporations** — subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more municipalities in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.2) — Meaning of "outside the geographical boundaries"; 149(1.3) — Meaning of capital ownership; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.5) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(d.6) **[subsidiaries of municipal corporations]** — subject to subsections (1.2) and (1.3), a particular corporation all the shares (except directors' qualifying shares) or of the capital of which was owned by another corporation, commission or association to which paragraph (d.5) or this paragraph applies for the period if the income for the period of the particular corporation from activities carried on outside

Proposed Amendment — 149(1)(d.6)

(d.6) **subsidiaries of municipal corporations** — subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which paragraph (d.5) or this paragraph applies for the period if the income for the period of the particular corporation from activities carried on outside

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(4), will amend the opening words of para. 149(1)(d.6) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: See under 149(1)(d).

(i) if paragraph (d.5) applies to the other corporation, commission or association, the geographical boundaries of the municipalities referred to in that paragraph in its application to that other corporation, commission or association, or

(ii) if this paragraph applies to the other corporation, commission or association, the geographical boundaries of the municipalities referred to in subparagraph (i) in its application to that other corporation, commission or association, does not exceed 10% of its income for the period;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1.1) — No exemption where other person has a right to acquire shares; 149(1.2) — Meaning of "outside the geographical boundaries"; 181.1(3)(c) — Exemption from Part I.3 tax; 212(1)(b)(ii)(C)(IV) — No withholding tax on bond interest paid to non-residents; 227(14) — Exemption from tax under other Parts; 227(16) — Corporation deemed not private corporation for Part IV tax; Reg. 1216 — Exemption from Part XII tax.

History: Para. 149(1)(d.6) added by 1998, c. 19, applicable to taxation years and fiscal periods that begin after 1998.

(e) **certain organizations** — an agricultural organization, a board of trade or a chamber of commerce, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 149(12) — Information returns; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

(f) **registered charities** — a registered charity;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149.1 — Charities; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts; 248(1)"registered charity" — Registration provisions; Canada-U.S. tax treaty, Art. XXI:1 — Religious, literary, scientific, educational or charitable organization — exemption from tax.

Pre-RSC History: Para. 149(1)(f) substituted by 1976-77, c. 4, subsec. 59(1), applicable to 1977 *et seq.* Para. 149(1)(f) formerly read:

(f) charitable organizations — a charitable organization, whether or not incorporated, all the resources of which were devoted to charitable activities carried on by the organization itself and no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;

Selected Cases [para. 149(1)(f)]: *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Hutterian Brethren et al. v. The Queen*, [1980] C.T.C. 1 (FCA) (Charitable organization exemption not applicable to taxpayer conducting business).

(g) [Repealed under former Act]

Pre-RSC History: Para. 149(1)(g) repealed by 1976-77, c. 4, subsec. 59(1), applicable to 1977 *et seq.* (See para. 149(1)(l).) Para. 149(1)(g) formerly read:

(g) non-profit corporation — a corporation that was constituted exclusively for charitable purposes, no part of whose income was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof, that has not, since June 1, 1950, acquired control of any other corporation and that, during the period,

(i) did not carry on any business,

(ii) had no debts incurred since June 1, 1950, other than obligations arising in respect of salaries, rents and other current operating expenses, and

(iii) except in the case of a corporation that was, before 1940, constituted exclusively for charitable purposes, expended amounts each of which is

(A) an expenditure in respect of charitable activities carried on by the corporation itself, or

(B) a gift to any donee described in paragraph 110(1)(a) or (b), and

the aggregate of which is not less than 90% of the corporation's income for the period;

Cls. 149(1)(g)(iii)(A), (B) substituted for cls. 149(1) (g)(iii) (A)–(D) by 1974-75-76, c. 26, subsec. 103(1), applicable to 1974 *et seq.* Cls. 149(1)(h)(iii)(A)–(D) formerly read:

(A) an expenditure in respect of charitable activities carried on by the corporation itself,

(B) a gift to an organization in Canada the income of which for the period is exempt from tax under this Part by virtue of paragraph (f),

(C) a gift to a corporation resident in Canada the income of which for the period is exempt from tax under this Part by virtue of this paragraph, or

(D) a gift to Her Majesty in right of Canada or a province or to a Canadian municipality, and

(h) [Repealed under former Act]

Pre-RSC History: Para. 149(1)(h) repealed by 1976-77, c. 4, subsec. 59(1), applicable to 1977 *et seq.* (See para. 149(1)(l).) Para. 149(1)(h) formerly read:

(h) charitable trusts — a trust all the property of which is held absolutely in trust exclusively for charitable purposes, that has not, since June 1, 1950, acquired control of any corporation and that, during the period,

(i) did not carry on any business,

(ii) had no debts incurred since June 1, 1950, other than obligations arising in respect of salaries, rents and other current operating expenses, and

(iii) expended amounts each of which is

(A) an expenditure in respect of charitable activities carried on by the trust itself, or

(B) a gift to any donee described in paragraph 110(1)(a) or (b), and

the aggregate of which is not less than 90% of the income of the trust for the period;

Cls. 149(1)(h)(iii)(A), (B) substituted for cls. 149(1)(h)(iii)(A)–(C) by 1974-75-76, c. 26, subsec. 103(2), applicable to 1974 *et seq.* Cls. 149(1)(h)(iii)(A)–(C) formerly read:

(A) an expenditure in respect of charitable activities carried on by the trust itself,

(B) a gift to an organization in Canada the income of which for the period is exempt from tax under this Part by virtue of paragraph (f), or

(C) a gift to a corporation resident in Canada the income of which for the period is exempt from tax under this Part by virtue of paragraph (g), and

(h.1) **Association of Universities and Colleges of Canada** — the Association of Universities and Colleges of Canada, incorporated by the *Act to incorporate Association of Universities and Colleges of Canada*, chapter 75 of the Statutes of Canada, 1964-65;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c), 227(14) — Exemption from tax under other Parts.

(i) **certain housing corporations** — a corporation that was constituted exclusively for the purpose of providing low-cost housing accommodation for the aged, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

(j) **non-profit corporations for scientific research and experimental development** — a corporation that was constituted exclusively for the purpose of carrying on or promoting scientific research and experimental development, no part of whose income was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof, that has not acquired control of any other corporation and that, during the period,

(i) did not carry on any business, and

(ii) expended amounts in Canada each of which is

(A) an expenditure on scientific research and experimental development (within the meaning that would be assigned by paragraph 37(8)(a) if subsection 37(8) were read without reference to paragraph 37(8)(d)) directly undertaken by or on behalf of the corporation, or

(B) a payment to an association, university, college or research institute or other similar institution, described in clause 37(1)(a)(ii)(A) or (B) to be used for scientific research and experimental development, and

the total of which is not less than 90% of the amount, if any, by which the corporation's gross revenue for the period exceeds the total of all amounts paid in the period by the corporation because of subsection (7.1);

Related Provisions: 37(1)(a)(ii)(C), 37(1)(a)(iii) — Deduction for R&D payments to corporation described in 149(1)(j); 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 149(7) — Prescribed form to be filed; 149(8), (9) — Interpretation rules; 149(9) — Rules; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts; 256(6)–(9) — Whether control acquired.

History: Cl. 149(1)(j)(ii)(A) and the closing words of subpara. 149(1)(j)(ii) amended by 1996, c 21, subsecs. 37(2), (3); cl. (j)(ii)(A) applicable to taxation years that end after November 1991, closing words applicable to taxation years that begin after June 1995. Cl. 149(1)(j)(ii)(A) and the closing words of subpara. 149(1)(j)(ii) formerly read:

(A) an expenditure on scientific research and experimental development (within the meaning that would be assigned by subsection 37(7) if that subsection were read without reference to paragraph 37(8)(d)) directly undertaken by or on behalf of the corporation, or

. . . .

the total of which is not less than 90% of the corporation's income for the period;

Pre-RSC History: Cls. 149(1)(j)(ii)(A) and (B) substituted by 1988, c. 55, subsec. 133(1), applicable after December 15, 1987. Cls. 149(1)(j)(ii)(A) and (B) formerly read:

(A) an expenditure on scientific research and experimental development directly undertaken by or on behalf of the corporation, or

(B) a payment to an association, university, college or research institution, described in subparagraph 37(1)(a)(ii) or (iii) to be used for scientific research and experimental development, and

Regulations: 2900(1) (definition of SR&ED, except where work performed pursuant to agreement in writing entered into before February 28, 1995).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

Information Circulars: 86-4R3: Scientific research and experimental development.

Application Policies: SR&ED 96-10: Third party payments — approval process.

(k) **labour organizations** — a labour organization or society or a benevolent or fraternal benefit society or order;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules.

Selected Cases [para. 149(1)(k)]: *Actra Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA); rev'g [1995] 2 C.T.C. 2671 (TCC) (Allocation of assets to a particular fund was rebuttable presumption only); *O'Brien v. The Queen*, [1985] 1 C.T.C. 285 (FCTD) (Distributed profits not taxable in hands of union members when placed in union's strike funds and newspaper operated by unions).

Interpretation Bulletins: IT-389R: Vacation pay trusts established under collective agreements.

(l) **non-profit organizations** — a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(2) — Income not to include taxable capital gains; 149(3) — Application of subsec. (1); 149(5) — Exception re investment income of certain clubs; 149(12) — Information returns; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts; 248(1) — "person"; 248(1) — "registered Canadian amateur athletic association"; Reg. 4900(1)(r) — Debt of non-profit corporation as qualified investment for RRSP, etc.

Pre-RSC History: Para. 149(1)(l) substituted by 1976-77, c. 4, subsec. 59(2), applicable to 1977 *et seq.* Para. 149(1)(l) formerly read:

> (l) a club, society or association organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;

Para. 149(1)(l) substituted by 1974-75-76, c. 26, subsec. 103(3), applicable to 1972 *et seq.*

Selected Cases [para. 149(1)(l)]: *Elm Ridge Country Club Inc. v. MNR*, [1999] 3 C.T.C. 163 (FCA); leave to appeal to SCC refused (1999), 246 N.R. 200 (note) (Interest income is income from property of non-profit organization); *LIUNA Local 527 Members' Training Trust Fund v. Canada*, [1992] 2 C.T.C. 2410 (TCC) (Trust fund exempted from tax on interest earned from surplus funds); *Gull Bay Development Corp. v. The Queen*, [1984] C.T.C. 159 (FCTD) (Profits from logging operations exempt from tax when funds used for social and charitable activities on reserve).

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property; IT-304R2: Condominiums; IT-409: Winding-up of a non-profit organization; IT-496: Non-profit organizations.

I.T. Technical News: No. 4 (condominium corporations).

Advance Tax Rulings: ATR-29: Amalgamation of social clubs.

(m) **mutual insurance corporations** — a mutual insurance corporation that received its premiums wholly from the insurance of churches, schools or other charitable organizations;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

(n) **housing companies** — a limited-dividend housing company (within the meaning of that expression as defined in section 2 of the *National Housing Act*), all or substantially all of the business of which is the construction, holding or management of low-rental housing projects;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149.1(1) — Definitions — "non-qualified investment"; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

Limited-dividend housing company: *National Housing Act*, R.S.C. 1985, c. N-11, s. 2 provides:

> "limited-dividend housing company" means a company incorporated to construct, hold and manage a low-rental housing project, the dividends payable by which are limited by the terms of its charter or instrument of incorporation to five per cent per annum or less;

Pre-RSC History: Para. 149(1)(n) substituted by 1979, c. 5, s. 51, applicable to taxation years commencing after 1978. Para. 149(1)(n) formerly read:

> (n) a limited dividend housing company within the meaning of that expression as defined by the *National Housing Act*;

Para. 149(1)(n) substituted by 1976-77, c. 4, subsec. 59(3), applicable to 1976 *et seq.*, to substitute "company" for "corporation".

(o) **pension trusts** — a trust governed by a registered pension plan;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 138.1(7) — Where policyholder deemed to be trust, etc.; 205 — Application of Part XI to pension trust; 210.1(c) — Pension trust not subject to Part XII.2 tax; Canada-U.S. tax treaty, Art. XXI:2 — Exemption from tax.

Pre-RSC History: Para. 149(1)(o) amended by 1990, c. 35, s. 29, to substitute "plan" for "fund or plan", applicable after 1985.

Para. 149(1)(o) substituted by 1979, c. 5, s. 51, applicable to taxation years commencing after 1978. Para. 149(1)(o) formerly read:

> (o) a trust or corporation established or incorporated solely in connection with, or for the administration of, a registered pension fund or plan;

(o.1) **pension corporations** — a corporation

(i) incorporated and operated throughout the period either

(A) solely for the administration of a registered pension plan, or

(B) for the administration of a registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement, where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and

(ii) accepted by the Minister as a funding medium for the purpose of the registration of the pension plan;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 149(1)(q.1) — No tax on RCA trust; 181.1(3)(c) — Exemption from Part I.3 tax; 205 — Application of Part XI to pension corporation; 227(14) — Exemption from tax under other Parts; Canada-U.S. tax treaty, Art. XXI:2 — Exemption from tax.

History: Para. 149(1)(o.1) amended by 1998, c. 19, subsec. 178(2), applicable to 1994 *et seq.* Para. 149(1)(o.1) formerly read:

> (o.1) a corporation incorporated and operated throughout the period solely for the administration of a registered pension plan and accepted by the Minister as a funding medium for the purposes of the registration of a pension plan;

Pre-RSC History: Para. 149(1)(o.1) amended by 1990, c. 35, s. 29, to substitute "plan" for "fund or plan" (twice), applicable after 1985.

(o.2) **idem** — a corporation

(i) incorporated before November 17, 1978 solely in connection with, or for the administration of, a registered pension plan,

(ii) that has at all times since the later of November 16, 1978 and the date on which it was incorporated

(A) limited its activities to acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest therein owned by the corporation, another corporation described by this subparagraph and subparagraph (iv) or a registered pension plan,

(B) made no investments other than in real property or an interest therein or investments that a pension plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(C) borrowed money solely for the purpose of earning income from real property or an interest therein,

(ii.1) that throughout the period

(A) limited its activities to

(I) acquiring Canadian resource properties by purchase or by incurring Canadian exploration expense or Canadian development expense, or

(II) holding, exploring, developing, maintaining, improving, managing, operating or

disposing of its Canadian resource properties,

(B) made no investments other than in

(I) Canadian resource properties,

(II) property to be used in connection with Canadian resource properties described in clause (A),

(III) loans secured by Canadian resource properties for the purpose of carrying out any activity described in clause (A) with respect to Canadian resource properties, or

(IV) investments that a pension fund or plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(C) borrowed money solely for the purpose of earning income from Canadian resource properties, or

(iii) that made no investments other than investments that a pension fund or plan was permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(A) the assets of which were at least 98% cash and investments,

(B) that had not issued debt obligations or accepted deposits, and

(C) that had derived at least 98% of its income for the period that is a taxation year of the corporation from, or from the disposition of, investments

if, at all times since the later of November 16, 1978 and the date on which it was incorporated,

(iv) all of the shares, and rights to acquire shares, of the capital stock of the corporation are owned by

(A) one or more registered pension plans,

(B) one or more trusts all the beneficiaries of which are registered pension plans,

(C) one or more related segregated fund trusts (within the meaning assigned by paragraph 138.1(1)(a)) all the beneficiaries of which are registered pension plans, or

(D) one or more prescribed persons, or

(v) in the case of a corporation without share capital, all the property of the corporation has been held exclusively for the benefit of one or more registered pension plans,

and for the purposes of subparagraph (iv), where a corporation has been formed as a result of the merger of two or more other corporations, it shall be deemed to be the same corporation as, and a continuation of, each such other corporation and the shares of the merged corporations shall be deemed to have been altered, in form only, by virtue of the merger and to have continued in existence in the form of shares of the corporation formed as a result of the merger;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c) — Exemption from Part I.3 tax; 205 — Application of Part XI; 206(2.1) — Exemption from Part XI tax when proportional holdings election made; 212(14)(c)(i) — Certificate of exemption; 227(14) — Exemption from tax under other Parts; 248(4) — Interest in real property; 259(5)"qualified corporation" — proportional holdings in trust property.

Pre-RSC History: Para. 149(1)(o.2) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "pension fund or plan" (or "plans" for "funds or plans") (in six places), applicable after 1985.

Cl. 149(1)(o.2)(ii)(B), subcl. (ii.1)(B)(IV), subpara. (iii) amended by 1986, c. 40, s. 41, to substitute "*Pension Benefits Standards Act, 1985*" for "*Pension Benefits Standards Act*", applicable January 1, 1987.

Cl. 149(1)(o.2)(iv)(D) added by 1984, c. 1, subsec. 83(1), applicable to taxation years commencing after 1978.

Subparas. 149(1)(o.2)(ii.1) added, (iv) substituted by 1980-81-82-83, c. 140, subsecs. 103(1), (2), applicable to taxation years commencing after 1978.

Paras. 149(1)(o.1), (o.2) added by 1979, c. 5, s. 51, applicable to taxation years commencing after 1978.

Regulations: 4802 (prescribed persons).

I.T. Technical News: No. 1 (permissible activities of pension fund realty corporations).

(o.3) **prescribed small business investment corporations** — a corporation that is prescribed to be a small business investment corporation;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 181.1(3)(c) — Exemption from Part I.3 tax; 227(14) — Exemption from tax under other Parts.

Pre-RSC History: Para. 149(1)(o.3) added by 1985, c. 6, subsec. 84(1), applicable with respect to periods occurring after October 31, 1985.

Regulations: 5101.

(o.4) **master trusts** — a trust that is prescribed to be a master trust and that elects to be such a trust under this paragraph in its return of income for its first taxation year ending in the period;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 127.55(f)(iii) — Trust not subject to minimum tax; 205 — Application of Part XI; 206(2.1) — Exemption from Part XI tax when proportional holdings election made; 210.1(c) — Trust not subject to Part XII.2 tax; 248(1)"disposition"(f)(vi) — Rollover from one trust to another; 259(1) — Election for proportional holdings in trust property; 259(3) — Qualified trusts.

Pre-RSC History: Para. 149(1)(o.4) added by 1987, c. 46, subsec. 50(1), applicable to 1987 *et seq.*

Regulations: 5001 (master trust).

(p) **trusts under profit sharing plan** — a trust under an employees profit sharing plan to the extent provided by section 144;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 144(2) — No tax while trust governed by plan; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(q) **trusts under a registered supplementary unemployment benefit plan** — a trust under a registered supplementary unemployment benefit plan to the extent provided by section 145;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 145(2) — No tax while trust governed by plan; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(q.1) **RCA trusts** — an RCA trust (within the meaning assigned by subsection 207.5(1));

Related Provisions: 149(1)(o.1)(i)(B) — No tax on corporation administering RCA trust; 207.7(1) — Part XI.3 tax on RCA trust; 210.1(c) — RCA trust not subject to Part XII.2 tax.

Pre-RSC History: Para. 149(1)(q.1) added by 1987, c. 46, subsec. 50(2), applicable after October 8, 1986.

(r) **trusts under registered retirement savings plan** — a trust under a registered retirement savings plan to the extent provided by section 146;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 138.1(7) — Where policyholder deemed to be trust, etc.; 146(4) — No tax while trust governed by plan; 146(10) — Tax on beneficiary when RRSP acquires non-qualified investment; 146(10.1) — Tax on income from non-qualified investments;

207.1(1) — Tax on holding non-qualified investment; 210.1(c) — RRSP not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

Interpretation Bulletins: IT-415R2: Deregistration of RRSPs.

Information Circulars: 72-22R9: Registered retirement savings plans.

(s) **trusts under deferred profit sharing plan** — a trust under a deferred profit sharing plan to the extent provided by section 147;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 147(7) — No tax while trust governed by plan; 198 — Tax on acquisition of non-qualified investment or use of assets as security; 207.1(2) — Tax on holding non-qualified investment; 210.1(c) — DPSP not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

(s.1) **trust governed by eligible funeral arrangement** — a trust governed by an eligible funeral arrangement;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 148.1(2) — No tax on income accruing in funeral arrangement or on provision of funeral or cemetary services.

History: Para. 149(1)(s.1) added by 1995, c. 21, s. 63, applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(s.2) **cemetery care trust** — a cemetery care trust;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules.

History: Para. 149(1)(s.2) added by 1998, c. 19, subsec. 178(3), applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(t) **farmers' and fishermen's insurer** — an insurer that, throughout the period, is not engaged in any business other than insurance if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, not less than 20% of the total of the gross premium income (net of reinsurance ceded) earned in the period by the insurer and, where the insurer is not a prescribed insurer, by all other insurers that

(i) are specified shareholders of the insurer,

(ii) are related to the insurer, or

(iii) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever by, the insurer,

is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen;

Related Provisions: 138 — Insurance corporations; 149(4.1) — Extent of exemption; 149(4.2) — Application of subsection (1); 149(4.3) — Computation of taxable income of insurer; 181.1(3)(c) — Exemption from Part I.3 tax; 212(14)(c)(i) — Certificate of exemption; 227(14) — Exemption from tax under other Parts; 256(5.1), (6.2) — Controlled directly or indirectly.

History: Para. 149(1)(t) amended by 1997, c. 25, subsec. 47(1), applicable to 1996 *et seq.* Para. (t) formerly read:

(t) an insurer who, during the period, was not engaged in any business other than insurance if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, not less than 25% of the total of the gross premium income (net of reinsurance ceded) earned in the period by the insurer and, where the insurer is not a prescribed insurer, of all other insurers that

(i) were specified shareholders of the insurer,

(ii) were related to the insurer, or

(iii) where the insurer is a mutual corporation, were part of a group that controlled, directly or indirectly in any manner whatever, or were controlled, directly or indirectly in any manner whatever, by the insurer,

was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen;

Para. 149(1)(t) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(1), applicable to 1989 *et seq.* Para. (t) formerly read:

(t) an insurer, who was engaged during the period in no business other than insurance, if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated not less than 25% of the gross premium income (net of reinsurance ceded) of the insurer and all other insurers that were specified shareholders of the insurer or were related to the insurer or, where the insurer is a mutual corporation, all other insurers that were part of a group that controlled or were controlled by the insurer for the period was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen;

Pre-RSC History: Para. 149(1)(t) substituted by 1988, c. 55, subsec. 133(2), applicable to 1989 *et seq.* Para. (t) formerly read:

(t) an insurer, who was engaged during the period in no business other than insurance, if, in the opinion of the Minister on the advice of the Superintendent of Financial Institutions, 50% of its gross premium income for the period was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen;

Para. 149(1)(t) amended by 1987, c. 23, s. 39, to substitute "Superintendent of Financial Institutions" for "Superintendent of Insurance", in force July 2, 1987.

Regulations: 4802(2) (prescribed insurers).

(u) **registered education savings plans** — a trust governed by a registered education savings plan to the extent provided by section 146.1;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 146.1(5) — Trust not taxable; 212(14)(c)(i) — Certificate of exemption.

(v) **amateur athlete trust** — an amateur athlete trust;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 143.1 — Rules for amateur athletic trusts; 210.1(c) — Amateur athlete trust not subject to Part XII.2 tax; 210.2(1.1) — Tax payable by amateur athlete trust.

History: Para. 149(1)(v) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(1), applicable to 1988 *et seq.*

Pre-RSC History: Para. 149(1)(v) repealed by 1986, c. 6, subsec. 84(2), applicable to 1986 *et seq.* Para. 149(1)(v) formerly read:

(v) registered home ownership savings plan — a trust governed by a registered home ownership savings plan to the extent provided by section 146.2;

Paras. 149(1)(u), (v) added by 1974-75-76, c. 26, subsec. 103(4), applicable, as to para. 149(1)(u), to 1972 *et seq.*, and, as to para. 149(1)(v), to 1974 *et seq.*

(w) **trusts to provide compensation** — a trust established as required under a law of Canada or of a province in order to provide funds out of which to compensate persons for claims against an owner of a business identified in the relevant law where that owner is unwilling or unable to compensate a customer or client, if no part of the property of the trust, after payment of its proper trust expenses, is available to any person other than as a consequence of that person being a customer or client of a business so identified;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

Pre-RSC History: Para. 149(1)(w) added by 1976-77, c. 4, subsec. 59(4), applicable to 1975 *et seq.*

(x) **registered retirement income funds** — a trust governed by a registered retirement income fund to the extent provided by section 146.3;

Related Provisions: 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 146.3(3) — No tax while trust governed by fund; 146.3(7) — Tax on beneficiary when RRIF acquires non-qualified investment; 146.3(9) — Tax on income from non-qualified investments; 207.1(4) — Tax on holding non-qualified investments; 210.1(c) — RRIF not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

Pre-RSC History: Para. 149(1)(x) added by 1977-78, c. 32, s. 37.

(y) **trusts to provide vacation pay** — a trust established pursuant to the terms of a collective agreement between an employer or an association of employers and employees or their labour organization for the sole purpose of providing for the payment of vacation or holiday pay, if no part of the property of the trust, after payment of its reasonable expenses, is

(i) available at any time after 1980, or

(ii) paid after December 11, 1979

to any person (other than a person described in paragraph (k)) otherwise than as a consequence of that person being an employee or an heir or legal representative thereof; or

Related Provisions: 16(2) — Obligation issued at discount; 94.1(1)"exempt taxpayer"(b) — Exclusion from foreign investment entity accrual rules; 210.1(c) — Trust not subject to Part XII.2 tax; 212(14)(c)(i) — Certificate of exemption.

Pre-RSC History: Para. 149(1)(y) added by 1980-81-82-83, c. 48, s. 84, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-389R: Vacation pay trusts established under collective agreements.

(z) **qualifying environmental trust** — a qualifying environmental trust.

Related Provisions: 12(1)(z.1), 107.3(1) — Tax on beneficiary; 211.6 — Part XII.4 tax on trust.

History: Para. 149(1)(z) amended by 1998, c. 19, s. 41, applicable to 1997 *et seq.* Para. 149(1)(z) formerly read:

(z) mining reclamation trust — a mining reclamation trust.

Para. 149(1)(z) added by 1995, c. 3, s. 45, applicable to 1994 *et seq.*

Interpretation Bulletins [subsec. 149(1)]: IT-465R: Non-resident beneficiaries of trusts.

(1.1) Exception — Paragraphs (1)(d) to (d.6) do not apply to a corporation, commission or association during a period in which a person other than Her Majesty in right of Canada or a province or a municipality in Canada had a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently to, or to acquire, shares or capital of the corporation, commission or association.

Proposed Amendment — 149(1.1)

(1.1) Exception — Where at any time a person other than Her Majesty in right of Canada or a province or a municipality in Canada has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of a corporation, commission or association, paragraphs (1)(d) to (d.6) apply as if the right had been exercised and the shares or capital had been so acquired immediately before that time and held at that time by the person.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(5), will amend subsec. 149(1.1) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in the subsec. shall be read as a reference to "at any time after November 1999".

Technical Notes: Subsection 149(1.1) of the Act stipulates that, in order for a corporation, commission or association to benefit from the exemption provided under any of paragraphs 149(1)(d) to (d.6), only the federal government, a province or a municipality in Canada can have the right to acquire shares or capital of the corporation, commission or association. The amendment to subsection 149(1.1) ensures that entities that need only to meet a 90% (rather than a 100%) ownership test would still quality for the exemption under paragraph 149(1)(d.2), (d.3) or (d.5), as the case may be, provided that non-governmental entities do not, collectively, own shares or capital (or rights to such shares or capital) in excess of 10%.

This amendment applies to taxation years and fiscal periods that begin after 1998. However, a corporation, commission or association may, through an election in writing filed with the Minister of National Revenue within six months after this amendment is assented to, choose that this amendment apply only after November 1999.

History: Subsec. 149(1.1) added by 1998, c. 19, subsec. 178(4), applicable to taxation years and fiscal periods that begin after 1998.

Forms [subsec. 149(1.1)]: RC4107E, Registered charities: education, advocacy and political activities (draft) [guide].

Proposed Addition — 149(1.11)

(1.11) Election — Subsection (1) does not apply in respect of a person's taxable income for a taxation year that begins after 1998 where

(a) paragraph (1)(d) did not apply in respect of the person's taxable income for the person's last taxation year that began before 1999;

(b) paragraph (1)(d.2), (d.3) or (d.4) would, but for this subsection, have applied in respect of the person's taxable income for the person's first taxation year that began after 1998;

(c) there has been no change in the ownership of the shares or capital of the person (other than a change with respect to directors' qualifying shares) since the beginning of the person's first taxation year that began after 1998;

(d) the person has elected in writing in its return of income for its first taxation year that began after 1998 that this subsection apply; and

(e) the person has not notified the Minister in writing before the year that the election has been revoked.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(5), will add subsec. (1.11), applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: A number of entities which were taxable before 1999 became, as a result of the amendment to paragraph 149(1)(d) of the Act and the addition of paragraphs 149(1)(d.2) to (d.4), exempt under those paragraphs with respect to their post-1998 fiscal periods. This result, which is appropriate from a tax policy standpoint, may not be beneficial for a limited number of entities since it would trigger the application of subsection 149(10) which provides, among other things, that any gain or loss that accrued before the entities become tax-exempt are to be recognized before the change of status. Accordingly, this amendment allows an entity, which has become exempt because of any of paragraphs 149(1)(d.2) to (d.4) but which was taxable for its last taxation year that began before 1999, to elect to retain its

taxable status provided there has been no change in the share or capital ownership of the entity since the beginning of the entity's first taxation year that began after 1998.

(1.2) Income test [for municipal corporation] — For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality does not include income from activities carried on under an agreement in writing between

(a) the corporation, commission or association, and

(b) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of,

(c) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(d) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and

(e) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality.

Proposed Amendment — 149(1.2)

(1.2) Income test [for municipal corporation] — For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality does not include income from activities carried on

(a) under an agreement in writing between

(i) the corporation, commission or association, and

(ii) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of,

(iii) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and

(v) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality; or

(b) in a province as

(i) a producer of electrical energy or natural gas, or

(ii) a distributor of electrical energy, heat, natural gas or water,

where the activities are regulated under the laws of the province.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 89(6), will amend subsec. 149(1.2) to read as above, applicable to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsec. (1.1) shall be read as a reference to "at any time after November 1999".

Technical Notes: Subsection 149(1.2) of the Act excludes, for the purposes of paragraphs 149(1)(d.5) and (d.6), certain income from the determination of whether more than 10% of the income of an entity to which one of those two paragraphs applies is derived from activities carried on outside the geographical boundaries of the municipality or municipalities that own the entity. The amendment ensures that income from activities carried on in a province by an entity, as a producer of electrical energy or natural gas or as a distribution of electrical energy, heat, natural gas or water, is not included in the determination where those activities are regulated under the laws of the province.

Related Provisions: 149(1.3) — Determination of capital ownership; 256(6), (6.1) — Meaning of "controlled".

History: Subsec. 149(1.2) added by 1998, c. 19, subsec. 178(4), applicable to taxation years and fiscal periods that begin after 1998.

(1.3) Capital ownership [by municipality] — For the purposes of paragraph (1)(d.5) and subsection (1.2), 90% of the capital of a corporation that has issued share capital is owned by one or more municipalities only when the municipalities own shares of the capital stock of the corporation that give the municipalities 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation.

History: Subsec. 149(1.3) added by 1998, c. 19, subsec. 178(4), applicable to taxation years and fiscal periods that begin after 1998.

(2) Determination of income — For the purposes of paragraphs (1)(e), (i), (j) and (l), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the total of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of such income shall be deemed to be the amount thereof determined on the assumption that the amount of any taxable capital gain or allowable capital loss is nil.

History: Subsec. 149(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(2), applicable to 1992 *et seq.* Subsec. (2) formerly read:

> (2) Income not to include taxable capital gains — For the purposes of paragraphs (1)(e), (i), (j) and (l), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the total of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of that income shall be deemed to be the amount thereof otherwise determined less the amount of any taxable capital gains included therein.

Pre-RSC History: Subsec. 149(2) substituted by 1976-77, c. 4, subsec. 59(5), applicable to 1977 *et seq.* Subsec. 149(2) formerly read:

> (2) For the purposes of paragraphs (1)(e) to (j) and paragraph (1)(l), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the aggregate of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of such income shall be deemed to be the amount thereof otherwise determined less the amount of any taxable capital gains included therein.

Interpretation Bulletins: IT-409: Winding-up of a non-profit organization.

(3) Application of subsec. (1) — Subsection (1) does not apply in respect of the taxable income of a benevolent or fraternal society or order from carrying on a life insurance business or, for greater certainty, from the sale of property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business.

Related Provisions: 16(2) — Obligation issued at discount; 149(4) — Computation of taxable income; 212(14)(c)(i) — Certificate of exemption.

Pre-RSC History: Subsec. 149(3) substituted by 1988, c. 55, subsec. 133(3), applicable to taxation years commencing after June 17, 1987 that end after 1987. Subsec. 149(3) formerly read:

> (3) Subsec. (1) not applicable — Subsection (1) does not apply in respect of the taxable income of a benevolent or fraternal benefit society or order from carrying on a life insurance business.

Selected Cases [subsec. 149(3)]: *Actra Fraternal Benefit Society v. R.*, [1997] 3 C.T.C. 61 (FCA); rev'g [1995] 2 C.T.C. 2671 (TCC) (Allocation of assets to a particular fund was rebuttable presumption only).

(4) Idem — For the purposes of subsection (3), the taxable income of a benevolent or fraternal benefit society or order from carrying on a life insurance business shall be computed on the assumption that it had no income or loss from any other sources.

(4.1) Income exempt under 149(1)(t) — Subject to subsection (4.2), subsection (1) applies to an insurer described in paragraph (1)(t) only in respect of the part of its taxable income for a taxation year determined by the formula

$$\frac{(A \times B \times C)}{D}$$

where

A is its taxable income for the year;

B is

> (a) ½, where less than 25% of the total of the gross premium income (net of reinsurance ceded) earned in the year by it and, where it is not a prescribed insurer for the purpose of paragraph (1)(t), by all other insurers that
>
> > (i) are specified shareholders of the insurer,
> >
> > (ii) are related to the insurer, or
> >
> > (iii) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever by, the insurer,
>
> is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen; and
>
> (b) 1 in any other case;

C is the part of the gross premium income (net of reinsurance ceded) earned by it in the year that, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which it is incorporated, is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen; and

D is the gross premium income (net of reinsurance ceded) earned by it in the year.

Related Provisions: 149(4.2) — Application of subsection (1): computation of taxable income of insurer; 256(5.1), (6.2) — Controlled directly or indirectly.

History: Subsec. 149(4.1) amended by 1997, c. 25, subsec. 47(2), applicable to 1996 *et seq.* Subsec. (4.1) formerly read:

> (4.1) Idem — Subject to subsection (4.2), subsection (1) applies in respect of an insurer described in paragraph (1)(t) only in respect of that proportion of the insurer's taxable income for a taxation year that
>
> > (a) the part of the gross premium income (net of reinsurance ceded) earned in the year by the insurer that, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, was in respect of insurance of farm property, property used in fishing or residences of farmers or fishermen
>
> is of
>
> > (b) the gross premium income (net of reinsurance ceded) earned in the year by the insurer.

Subsec. 149(4.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(2), applicable to 1989 *et seq.* Subsec. (4.1) formerly read:

> (4.1) Subject to subsection (4.2), subsection (1) shall apply in respect of an insurer described in paragraph (1)(t) only in respect of that proportion of the insurer's taxable income for a taxation year that
>
> > (a) the insurer's gross premium income (net of reinsurance ceded) for the year that in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen
>
> is of
>
> > (b) its gross premium income (net of reinsurance ceded) for the year
>
> and, in computing the taxable income of the insurer for the taxation year, the insurer shall be deemed to have claimed or deducted in each of the taxation years preceding the year the greater of such amount as it claimed or deducted or such amount as it may have been entitled to claim or deduct under paragraphs 20(1)(a), 20(7)(c) and 138(3)(a) and section 140 to the extent that that amount does not exceed its taxable income otherwise determined for the preceding taxation year.

Pre-RSC History: Subsec. 149(4.1) added by 1988, c. 55, subsec. 133(4), applicable to 1989 *et seq.*

(4.2) Idem — Subsection (4.1) does not apply to an insurer described in paragraph (1)(t) in respect of the taxable income of the insurer for a taxation year where more than 90% of the total of the gross premium income (net of reinsurance ceded) earned in the year by the insurer and, where the insurer is not a prescribed insurer, all other insurers that

> (a) are specified shareholders of the insurer,
>
> (b) are related to the insurer, or
>
> (c) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever, by the insurer,

is in respect of insurance of property used in farming or fishing or residences of farmers or fishermen.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly.

History: The closing words of subsec. 149(4.2) amended by 1997, c. 25, subsec. 47(3), applicable to 1996 *et seq.* The closing words formerly read:

> is in respect of insurance of farm property, property used in fishing or residences of farmers or fishermen.

Subsec. 149(4.2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(2), applicable to 1989 *et seq.* Subsec. (4.2) formerly read:

> (4.2) Subsection (4.1) shall not apply in respect of an insurer described in paragraph (1)(t) in respect of the taxable income of the insurer for a taxation year where more than 90% of the gross premium income (net of reinsurance ceded) of the insurer and all other insurers that were specified shareholders of the insurer or were related to the insurer or, where the insurer is a mutual corporation, all other insurers that were part of a group that controlled or were controlled by the insurer for the year was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen.

Pre-RSC History: Subsec. 149(4.2) added by 1988, c. 55, subsec. 133(4), applicable to 1989 *et seq.*

(4.3) Computation of taxable income of insurer — For the purposes of this Part, in computing the taxable income of an insurer for a particular taxation year, the insurer shall be deemed to have deducted under paragraphs

20(1)(a), 20(7)(c) and 138(3)(a) and section 140 in each taxation year preceding the particular year and in respect of which paragraph (1)(t) applied to the insurer, the greater of

(a) the amount it claimed or deducted under those provisions for that preceding year, and

(b) the greatest amount that could have been claimed or deducted under those provisions to the extent that the total thereof does not exceed the amount that would be its taxable income for that preceding year if no amount had been claimed or deducted under those provisions.

History: Subsec. 149(4.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 122(2), applicable to 1989 *et seq.*, except that in its application to the 1989 and 1990 taxation years the subsec. shall be read as follows:

(4.3) In computing the taxable income of an insurer described in paragraph (1)(t) for a taxation year in respect of which subsection (1) applies to the insurer, the insurer shall be deemed to have claimed or deducted in each of its taxation years preceding the year the greater of such amount as it claimed or deducted and such amount as it was entitled to claim or deduct under paragraphs 20(1)(a), 20(7)(c) and 138(3)(a) and section 140 to the extent that that amount does not exceed its taxable income otherwise determined for the preceding taxation year.

(5) Exception re investment income of certain clubs — Notwithstanding subsections (1) and (2), where a club, society or association was for any period, a club, society or association described in paragraph (1)(l) the main purpose of which was to provide dining, recreational or sporting facilities for its members (in this subsection referred to as the "club"), an *inter vivos* trust shall be deemed to have been created on the later of the commencement of the period and the end of 1971 and to have continued in existence throughout the period, and, throughout that period, the following rules apply:

(a) the property of the club shall be deemed to be the property of the trust;

(b) where the club is a corporation, the corporation shall be deemed to be the trustee having control of the trust property;

(c) where the club is not a corporation, the officers of the club shall be deemed to be the trustees having control of the trust property;

(d) tax under this Part is payable by the trust on its taxable income for each taxation year;

(e) the income and taxable income of the trust for each taxation year shall be computed on the assumption that it had no incomes or losses other than

(i) incomes and losses from property, and

(ii) taxable capital gains and allowable capital losses from dispositions of property, other than property used exclusively for and directly in the course of providing the dining, recreational or sporting facilities provided by it for its members;

(f) in computing the taxable income of the trust for each taxation year

(i) there may be deducted, in addition to any other deductions permitted by this Part, $2,000, and

(ii) no deduction shall be made under section 112 or 113; and

(g) the provisions of subdivision k of Division B (except subsections 104(1) and (2)) do not apply in respect of the trust.

Related Provisions: 16(2) — Obligation issued at discount; 212(14)(c)(i) — Certificate of exemption.

Pre-RSC History: Subpara. 149(5)(f)(ii) amended to substitute "under section 112 or 113" for "under section 109, 112 or 113", by 1988, c. 55, subsec. 133(5), applicable to 1988 *et seq.*

Subpara. 149(5)(f)(ii) substituted, para. 149(5)(h) repealed by 1984, c. 1, subsecs. 83(2), (3). As substituted, subpara. 149(5)(f)(ii) applicable to 1984 *et seq.* Subpara. 149(5)(f)(ii) and para. 149(5)(h) formerly read:

(ii) no deduction shall be made under section 109, 112 or 113 or paragraph 110(1)(d).

. . . . .

(h) Part VII does not apply in respect of dividends received by the trust.

Selected Cases [subsec. 149(5)]: *Elm Ridge Country Club Inc. v. MNR*, [1999] 3 C.T.C. 163 (FCA); leave to appeal to SCC refused (1999), 246 N.R. 200 (note) (Interest income is income from property of non-profit organization); *Point Grey Golf & Country Club v. R.*, [2000] 2 C.T.C. 312 (FCA) (Interest income was income from property).

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property; IT-406R2: Tax payable by an *inter vivos* trust; IT-409: Winding-up of a non-profit organization.

Advance Tax Rulings: ATR-29: Amalgamation of social clubs.

(6) Apportionment rule — Where it is necessary for the purpose of this section to ascertain the taxable income of a taxpayer for a period that is a part of a taxation year, the taxable income for the period shall be deemed to be the proportion of the taxable income for the taxation year that the number of days in the period is of the number of days in the taxation year.

Related Provisions: 124(3) — Crown agents; 149(10) — Corporation becoming or ceasing to be exempt; 212(14)(c)(i) — Certificate of exemption; 249.1(1)(b)(i) — Exempt individuals not subject to forced calendar year-end.

Interpretation Bulletins: IT-347R2: Crown corporations; IT-409: Winding-up of a non-profit organization.

(7) [Prescribed form for R&D corporation —] Time for filing — A corporation the taxable income of which for a taxation year is exempt from tax under this Part because of paragraph (1)(j) shall file with the Minister a prescribed form containing prescribed information on or before its filing-due date for the year.

Related Provisions: 149(7.1) — Penalty for late filing.

History: Subsec. 149(7) added by 1996, c. 21, subsec. 37(4), applicable to taxation years that end after February 27, 1995, except that a form referred to in subsec. 149(7) that is filed with the Minister of National Revenue on or before September 18, 1996 is deemed to have been filed on a timely basis.

Forms: T661: Claim for scientific research and experimental development expenditures carried on in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

Pre-RSC History [former subsec. 149(7)]: Former subsec. 149(7) repealed by 1976-77, c. 4, subsec. 59(6), applicable to 1977 *et seq.* Subsec. 149(7) formerly read:

(7) For the purpose of paragraph (1)(g) or (h),

(a) when deemed not to have acquired control of another corporation — a corporation is controlled by another corporation or by a trust if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to

(i) the other corporation or the trust, or

(ii) the other corporation or the trust and persons with whom the other corporation or the trust does not deal at arm's length,

but a corporation or trust shall be deemed not to have acquired control of a corporation if it has not purchased (or otherwise acquired for a consideration) any of the shares in the capital stock of that corporation;

(b) gifts — there shall be included in computing a corporation's or trust's income all gifts received by the corporation or trust,

including gifts received from a person described in paragraph (1)(g) or (h), other than

(i) a gift received subject to a trust or direction that the property given, or property substituted therefor, is to be held permanently by the corporation or trust for the purpose of gaining or producing income therefrom, or

(ii) a gift or portion of a gift in respect of which it is established that the donor (other than a person described in paragraph (1)(g) or (h)) has not been allowed a deduction under paragraph 110(1)(a) or a gift made by a person (other than a person described in paragraph (1)(g) or (h)) who was not taxable under section 2 for the taxation year in which the gift was made; and

(c) subsections 104(6) and (12) are not applicable in determining a trust's income.

Para. 149(7)(b) substituted by 1974-75-76, c. 26, subsec. 103(5), applicable after November 18, 1974. Para. 149(7)(b) formerly read:

(b) there shall be included in computing a corporation's or trust's income all gifts received by the corporation or trust, other than

(i) a gift received subject to a trust or direction that the property given, or property substituted therefor, is to be held permanently by the corporation or trust for the purpose of gaining or producing income therefrom, or

(ii) a gift or portion of a gift in respect of which it is established that the donor has not been allowed a deduction under paragraph 110(1)(a) or a gift made by a person who was not taxable under section 2 for the taxation year in which the gift was made; and

(7.1) Penalty for failure to file on time — Where a corporation fails to file the prescribed form as required by subsection (7) for a taxation year, it is liable to a penalty equal to the amount determined by the formula

$$A \times B$$

where

A is the greater of

(a) $500, and

(b) 2% of its taxable income for the year; and

B is the lesser of

(a) 12, and

(b) the number of months in whole or in part that are in the period that begins on the day on or before which the prescribed form is required to be filed and ends on the day it is filed.

History: Subsec. 149(7.1) added by 1996, c 21, subsec. 37(4), applicable to taxation years that end after February 27, 1995.

(8) Interpretation of para. (1)(j) — For the purpose of paragraph (1)(j),

(a) a corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to

(i) the other corporation, or

(ii) the other corporation and persons with whom the other corporation does not deal at arm's length,

but a corporation shall be deemed not to have acquired control of a corporation if it has not purchased (or otherwise acquired for a consideration) any of the shares in the capital stock of that corporation; and

(b) there shall be included in computing a corporation's income and in determining its gross revenue the amount of all gifts received by the corporation and all amounts contributed to the corporation to be used for scientific research and experimental development.

Related Provisions: 212(14)(c)(i) — Certificate of exemption; 256(6), (6.1) — Extended meaning of "control".

History: Para. 149(8)(b) amended by 1996, c 21, subsec. 37(5), applicable to taxation years that begin after June 1995. Para. (b) formerly read:

(b) there shall be included in computing a corporation's income all gifts received by the corporation and all amounts contributed to the corporation to be used for scientific research and experimental development.

Regulations: 2900(1) (definition of SR&ED, except where work performed pursuant to agreement in writing entered into before February 28, 1995; but see also ITA 248(1)"scientific research and experimental development").

(9) Rules for determining gross revenue — In determining the gross revenue of a corporation for the purpose of determining whether it is described by paragraph (1)(j) for a taxation year,

(a) there may be deducted an amount not exceeding its gross revenue for the year computed without including or deducting any amount under this subsection; and

(b) there shall be included any amount that has been deducted under this subsection for the preceding taxation year.

Related Provisions: 212(14)(c)(i) — Certificate of exemption; 248(1) — Definition of "gross revenue".

History: Subsec. 149(9) amended by 1996, c 21, subsec. 37(6), applicable to taxation years that begin after June 1995. Subsec. (9) formerly read:

(9) Rules — In computing the income of a corporation for the purpose of determining whether it is described by paragraph (1)(j) for a taxation year,

(a) there may be deducted an amount not exceeding its income for the year computed without including or deducting any amount under this subsection; and

(b) there shall be included any amount that has been deducted under this subsection for the immediately preceding taxation year.

Pre-RSC History: Para. 149(9)(a) substituted by 1980-81-82-83, c. 48, subsec. 84(2), to delete "preceding the taxation year" from the expression "for the year preceding the taxation year", applicable to taxation years commencing after October 28, 1980.

Subsec. 149(9) substituted by 1976-77, c. 4, subsec. 59(7), applicable to 1977 *et seq.* Subsec. 149(9) formerly read:

(9) In computing the income of a corporation or a trust for the purpose of determining whether it is described by paragraph (1)(g), (h) or (j) for a taxation year

(a) there may be deducted an amount not exceeding its income for the year preceding the taxation year computed without including or deducting any amount under this subsection, and

(b) there shall be included any amount that has been deducted under this subsection for the immediately preceding taxation year.

(10) Exempt corporations [becoming or ceasing to be exempt] — Where, at any time (in this subsection referred to as "that time"), a corporation becomes or ceases to be exempt from tax under this Part on its taxable income otherwise than by reason of paragraph (1)(t), the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time is deemed to have ended immediately before that time, a new taxation year of the corporation is deemed to have begun at that time and, for the purpose of determining the taxpayer's fiscal period after that time, the taxpayer is deemed not to have established a fiscal period before that time;

(a.1) for the purpose of computing the corporation's income for its first taxation year ending after that time, the corporation shall be deemed to have deducted under sections 20, 138 and 140 in computing its income for its taxation year ending immediately before that time, the greatest amount that could have been

claimed or deducted for that year as a reserve under those sections;

(b) the corporation is deemed to have disposed, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before that time, of each property that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 111 and 126, subsections 127(5) to (26) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

Proposed Amendment — 149(10)(c)

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 94.1 to 94.3, 111 and 126, subsections 127(5) to (35) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

Application: The June 22, 2000 draft legislation, s. 19, will amend para. 149(10)(c) to read as above, applicable to each corporation that, after 2000, becomes or ceases to be exempt from tax on its taxable income under Part I of the Act.

Technical Notes: Subsection 149(10) of the Act applies where, at a particular time, a corporation becomes or ceases to be exempt from tax under Part I on its taxable income (otherwise than by reason of the exemption for certain insurers in paragraph 149(1)(t)). A new taxation year is considered to start at the particular time and the corporation's properties are deemed to have been disposed of at fair market value and reacquired at the particular time for the same amount. Paragraph 149(10)(c) provides that the corporation is, for specified purposes in the Act, treated as a new corporation. One of the specified purposes is with regard to the investment tax credit regime set out in subsections 127(5) to (26).

Paragraph 149(10)(c) is amended to make a reference to additional rules for the investment tax credit that are set out in subsections 127(27) to (35). This amendment is strictly consequential on the earlier enactment of these subsections.

Paragraph 149(10)(c) is also amended so that it also applies for the purposes of sections 94.1 to 94.3 (foreign investment entities). For example, a corporation's "deferral amount" (as defined in new subsection 94.2(1)) in respect of any interest it holds in a foreign investment entity is determined without reference to taxation years that occurred before the corporation's change of status. This will typically result in a nil deferral amount for the corporation.

These amendments apply to corporations that, after 2000, become or cease to be exempt from tax on their taxable income under Part I of the Act.

(d) where, immediately before the disposition time, the corporation's cumulative eligible capital in respect of a business exceeds the total of

(i) ¾ of the fair market value of the eligible capital property in respect of the business, and

Proposed Amendment — 149(10)(d)(i)

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This is expected to affect 149(10)(d)(i) — ed.]

(ii) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time.

Related Provisions: 16(2), (3) — Obligation issued at discount; 54"superficial loss"(c), (g) — Superficial loss rule does not apply; 87(2.1)(b) — Losses of predecessor corporation; 89(1.2) — Capital dividend account of corporation ceasing to be tax-exempt; 100 — Disposition of an interest in a partnership; 124(3) — Crown agents; 149(6) — Apportionment rule; 212(14) — Certificate of exemption; 216(1) — Alternative re rents and timber royalties; 219(2) — Exempt corporations; 227(14) — Application of Parts III, IV and VI to certain public corporations.

History: Paras. 149(10)(a), (b) to (d) amended by 1998, c. 19, subsecs. 178(5), (6), applicable to a corporation that becomes or ceases to be exempt from tax on its taxable income under Part I of the Act after April 26, 1995. Those paras. formerly read:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended immediately before that time and a new taxation year of the corporation shall be deemed to have commenced at that time;

. . . . .

(b) the corporation shall be deemed to have disposed, immediately before the time that is immediately before that time, of each property (other than, where, at that time, the corporation ceases to be exempt from tax under this Part on its taxable income, a Canadian resource property or a foreign resource property) that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;

(c) where paragraph (b) applies in respect of depreciable property of the corporation and the capital cost thereof to the corporation immediately before the disposition exceeds the fair market value thereof at that time, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost of the property to the corporation at that time shall be deemed to be the amount that was its capital cost thereof immediately before the disposition, and

(ii) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before that time; and

(d) notwithstanding section 111, no amount is deductible in computing the corporation's taxable income for a taxation year ending after that time in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year ending before that time to the extent that the loss could have been applied to reduce the corporation's taxable income for taxation years ending before that time.

Para. 149(10)(a.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(3), applicable to 1992 *et seq.*

Pre-RSC History: That portion of subsec. 149(10) preceding para. (a) amended to substitute "under this Part on its taxable income otherwise than by reason of paragraph (1)(t)," for "under this Part on its taxable income," by 1988, c. 55, subsec. 133(6), applicable to 1989 *et seq.*

All that portion of subsec. 149(10) preceding subpara. (c)(ii) substituted by 1987, c. 46, subsec. 50(3), applicable where a corporation

(a) ceases after January 15, 1987 to be exempt from tax under Part I of the Act on its taxable income; or

(b) becomes exempt from tax under Part I of the Act on its taxable income after June 5, 1987, other than where a corporation becomes exempt from tax under Part I on its taxable income after that day as a result of the acquisition of shares of the capital stock of the corporation or of another corporation pursuant to

(i) an agreement entered into on or before that day, or

(ii) a take-over bid made in accordance with the applicable securities legislation in Canada and a take-over bid circular or similar document to give notice to the public of the take-over bid was filed with a public authority or stock exchange in Canada on or before that day.

That portion of subsec. 149(10) formerly read:

(10) Where at any time after November 12, 1981 a corporation ceases to be exempt from tax under this Part on its taxable income, the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended at that time and a new taxation year shall be deemed to have commenced immediately thereafter;

(b) the corporation shall be deemed to have disposed, immediately before that time, of each property, other than a Canadian resource property or foreign resource property, that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property immediately after that time at a cost equal to that fair market value; and

(c) where paragraph (b) applies in respect of depreciable property of the corporation and the capital cost thereof to the corporation immediately before that time exceeds the fair market value thereof at that time, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost of the property to the corporation immediately after that time shall be deemed to be the amount that was its capital cost thereof immediately before that time, and

Para. 149(10)(d) added by 1987, c. 46, subsec. 50(4), applicable where a corporation becomes or ceases to be exempt from tax under Part I of the Act after June 5, 1987.

Para. 149(10)(b) amended by 1985, c. 45, subsec. 84(1), to substitute "other than a Canadian resource property or foreign resource property" for "other than a property described in any of paragraphs 59(2)(a) to (e)", applicable to taxation years commencing after 1984.

Subsec. 149(10) added by 1980-81-82-83, c. 140, subsec. 103(3).

Interpretation Bulletins: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

Pre-RSC History [former subsec. 149(10)]: Subsec. 149(10) repealed by 1980-81-82-83, c. 48, subsec. 84(3), applicable to taxation years commencing after October 28, 1980. Subsec. (10) formerly read:

(10) Election by non-profit corporation for scientific research — For the purpose of determining whether a corporation has complied with the requirements of subparagraph (1)(j)(ii) for its first taxation year after its incorporation, the whole or any part of amounts expended by it in the immediately subsequent taxation year shall, if it so elects, be deemed to have been expended by it in the first taxation year and not in the subsequent taxation year.

Subsec. 149(10) substituted by 1976-77, c. 4, subsec. 59(7), applicable to 1977 *et seq.* Subsec. 149(10) formerly read:

(10) Election by charitable trust or corporation — For the purpose of determining whether a corporation or trust has complied with the requirements of subparagraph (1)(g)(iii), (1)(h)(iii) or (1)(j)(ii) for its first taxation year after its incorporation or creation, the whole or any part of amounts expended by it in the immediately subsequent taxation year shall, if it so elects, be deemed to have been expended by it in the first taxation year and not in the subsequent taxation year.

(11) [Repealed]

History: Subsec. 149(11) repealed by 1998, c. 19, subsec. 178(7), in force on June 18, 1998. Subsec. 149(11) formerly read:

(11) Exception — Subsection (10) does not apply to a corporation that ceases to be exempt from tax under this Part after November 12, 1981 by reason of control of the corporation being acquired by a person or persons pursuant to an agreement in writing entered into on or before that date.

Pre-RSC History: Subsec. 149(11) added by 1980-81-82-83, c. 140, subsec. 103(3).

(12) Information returns — Every person who, because of paragraph (1)(e) or (l), is exempt from tax under this Part on all or part of the person's taxable income shall, within 6 months after the end of each fiscal period of the person and without notice or demand therefor, file with the Minister an information return for the period in prescribed form and containing prescribed information, if

(a) the total of all amounts each of which is a taxable dividend or an amount received or receivable by the person as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties in the period exceeds $10,000;

(b) at the end of the person's preceding fiscal period the total assets of the person (determined in accordance with generally accepted accounting principles) exceeded $200,000; or

(c) an information return was required to be filed under this subsection by the person for a preceding fiscal period.

Related Provisions: 162(7)(a) — Penalty for failure to file; 233 — Demand for information return.

History: Subsec. 149(12) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 88(4), applicable to fiscal periods ending after 1992.

Forms: T1044: Non-profit organization (NPO) information return; T4117; Income tax guide to the Non-Profit Organization (NPO) information return (guide).

Pre-RSC History [s. 149]: The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Selected Cases [s. 149]: *Lutheran Life Insurance Society of Canada v. Canada*, [1991] 2 C.T.C. 284 (FCTD) (Non-profit fraternal benefit society cannot deduct income from non-insurance fraternal sources from investment income; fraternal dividends deductible from life insurance income when paid back for non-insurance fraternal purposes).

Definitions [s. 149]: "allowable capital loss" — 38(b), 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "cemetery care trust" — 148.1(1), 248(1); "control" — 149(8); "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "depreciable property" — 13(21), 248(1); "dividend", "employed" — 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employees profit sharing plan" — 144(1), 248(1); "employment" — 248(1); "farm loss" — 111(8), 248(1); "farming" — 248(1); "filing-due date" — 150(1), 248(1); "fishing" — 248(1); "foreign resource property" — 66(15), 248(1); "gross revenue" — 149(8)(b), 149(9), 248(1); "Her Majesty" — *Interpretation Act* 35(1); "insurer" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "interest" in real property — 248(4); "life insurance business" — 248(1); "limited partnership loss" — 96(2.1)(e), 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "office" — 248(1); "outside the geographical boundaries" — 149(1.2); "owned" — 149(1.3); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 149]*; "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "related" — 251(2); "restricted farm loss" — 31, 248(1); "retirement compensation arrangement", "scientific research and experimental develpment" — 248(1), Reg. 2900(1); "servant" — 248(1)"employment"; "share", "shareholder", "specified shareholder", "subsidiary wholly-owned corporation" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 149]: IT-151R4: Scientific research and experimental development expenditures; IT-167R6: Registered pension plans — employee's contributions; IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-362R: Patronage dividends.

Charities

149.1 (1) Definitions — In this section,

Related Provisions: 172(6), 187.7 — Application of subsec. 149.1(1).

"charitable foundation" means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization;

Related Provisions: 149 — Exemptions; 149.1(6.1) — Charitable purposes; 149.1(12)(b) — Rules — income.

Pre-RSC History: *The definition "charitable foundation" was para. 149.1(1)(a).*

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property; IT-111R2: Annuities purchased from charitable organizations. See also list at end of s. 149.1.

Forms: T4063: Registering a charity for income tax purposes [guide]; RC4108: Registered charities and the Income Tax Act [guide].

"charitable organization" means an organization, whether or not incorporated,

(a) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(d) where it has been designated as a private foundation or public foundation pursuant to subsection (6.3) of this section or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or has applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the definition "registered charity" in subsection 248(1), not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arm's length and, for the purpose of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

Related Provisions: 149 — Exemptions; 149.1(6), (6.2) — Whether resources devoted to charitable activities; 149.1(6.3) — Designation as public foundation, etc.; 149.1(6.4) — Registered national arts service organization deemed to be charitable organization; 149.1(12)(b) — Rules — income; 188(1) — Revocation tax.

Pre-RSC History: *The definition "charitable organization" was para. 149.1(1)(b). See also "Transitional" under Pre-RSC History at end of s. 149.1.*

See at end of subsec. 149.1(1).

Selected Cases [subsec. 149.1(1)"charitable organization"]: *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Everywoman's Health Centre Society (1988) v. Canada*, [1991] 2 C.T.C. 320 (FCA) (Free-standing abortion clinic is a charity within common law meaning); *National Model Railroad Association v. MNR*, [1989] 1 C.T.C. 300 (FCA) (Taxpayer not charitable organization when activities have a "public character"); *Toronto Volgograd Committee v. MNR*, [1988] 1 C.T.C. 365 (FCA) (Registration refused when activities political); *Positive Action Against Pornography v. MNR*, [1988] 1 C.T.C. 232 (FCA) (Registration refused when society not constituted for "advancement of education"); *Native Communications Society of B.C. v. MNR*, [1986] 2 C.T.C. 170 (FCA) (Objects of non-profit corporation for benefit of community held charitable).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property; IT-111R2: Annuities purchased from charitable organizations. See also list at end of s. 149.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T2095: Registered charities — application for re-designation; T4063: Registering a charity for income tax purposes [guide]; RC4108: Registered charities and the Income Tax Act [guide].

"charitable purposes" includes the disbursement of funds to qualified donees;

Pre-RSC History: *The definition "charitable purposes" was para. 149.1(1)(c).*

"charity" means a charitable organization or charitable foundation;

Related Provisions: 149(1)(f) — Exemptions for registered charity; 149(1)(l) — Non-profit organizations; 188(1) — Revocation tax; 248(1) — "registered charity".

Pre-RSC History: *The definition "charity" was para. 149.1(1)(d).*

Forms: T2050: Application to register a charity under the ITA; T2095: Registered charities — application for re-designation; RC4108: Registered charities and the Income Tax Act [guide].

"disbursement quota" for a taxation year of a charitable foundation means the amount determined by the formula

$$A + A.1 + B + \frac{C \times 0.045\ [D - (E + F)]}{365} + G$$

where

A is 80% of the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

(a) a gift of capital received by way of bequest or inheritance,

(b) a gift received subject to a trust or direction to the effect that the property given, or property substituted therefor, is to be held by the foundation for a period of not less than 10 years, or

(c) a gift received from a registered charity,

A.1 is 80% of the total of all amounts each of which is the amount of a gift received in a preceding taxation year, to the extent that the amount of the gift

(a) is expended in the year, and

(b) was excluded from the disbursement quota of the foundation

(i) because of paragraph (a) of the description of A for a taxation year that begins after 1993, or

(ii) because of paragraph (b) of the description of A,

B is

(a) in the case of a private foundation, the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift, or

(b) in the case of a public foundation, 80% of the total of all amounts each of which is an amount received by it in its immediately preceding taxation

year from a registered charity, other than an amount that is a specified gift,

C is the number of days in the taxation year,

D is the prescribed amount for the year in respect of property (other than a prescribed property) or a portion thereof owned by the foundation at any time in the immediately preceding 24 months that was not used directly in charitable activities or administration,

E is 5/4 of the total of the amounts determined for A and A.1 for the year in respect of the foundation,

F is the amount equal to

(a) in the case of a private foundation, the amount determined as the value of B for the year in accordance with paragraph (a) of the description of B, or

(b) in the case of a public foundation, 5/4 of the amount determined as the value of B for the year in accordance with paragraph (b) of the description of B, and

G is, for each of the first 10 taxation years of the foundation commencing after 1983, a portion of the amount, if any, by which

(a) 90% of the amount, if any, by which the amount deducted by the foundation, for its last taxation year that commenced before 1984, pursuant to paragraph 149.1(18)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read for that year, exceeds the total of the amounts determined in respect of the foundation under clauses 149.1(1)(e)(iv)(B) to (D) of that Act for its first taxation year commencing after 1983

exceeds

(b) the total of all amounts each of which is an amount that, for a preceding taxation year, has been determined as the value of G or included under subparagraph 149.1(1)(e)(v) of the above-mentioned Act in determining the disbursement quota of the foundation,

that is not less than the amount obtained when such excess is divided by the difference between 10 and the number of preceding taxation years of the foundation that commenced after 1983 and before the year.

Related Provisions: 149.1(1.2) — Authority of Minister — calculation of prescribed amount; 149.1(4.1) — Anti-avoidance rule re disbursement quota; 149.1(8) — Accumulated property deemed expended on charitable activities; 149.1(12) — Rules; 149.1(21)(c) — Disbursement excess of registered charity; 248(5) — Substituted property; 257 — Formula cannot calculate to less than zero.

History: The formula in the definition "disbursement quota" in subsec. 149.1(1) amended by 1998, c. 19, subsec. 179(1), applicable to taxation years that end after November 1991 except that, for such taxation years that began before 1993, the formula shall be read without reference to "A.1". The formula formerly read:

$$0.8A + A.1 + B + \frac{C \times 0.045\ [D - (E + F)]}{365} + G$$

The portion of the description of A in the definition "disbursement quota" in subsec. 149.1(1) before para. (a) amended by the said c. 19, subsec. 179(2), applicable to taxation years that end after November 1991. The portion formerly read:

A is the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

The element A.1 added to the formula, its description added to the definition of "disbursement quota" in subsec. 149.1(1) and the description of E amended, by 1994, c. 21, subsecs. 74(1) to (3), applicable to taxation years that begin after 1992. The description of E formerly read:

E is the amount equal to 3/4 of the amount determined as the value of A for the year,

That portion of the description of A in "disbursement quota" in subsec. 149.1(1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(1), to substitute "subsection 110.1(2) or 118.1(2)" for "paragraph 110.1(1)(a) or 118.1(1)(a)", applicable to 1988 *et seq.* except that in its application to the 1988 taxation year, that reference shall be read as "subsection 110.2 or 118.1(2) of this Act or paragraph 110(1)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years ending before 1988".

Pre-RSC History: *The definition "disbursement quota" was para. 149.1(1)(e). It contained descriptive subparagraphs instead of the present formula. The pre-R.S.C. version read:*

(e) "disbursement quota" for a taxation year of a charitable foundation means an amount equal to the aggregate of

(i) 80% of the aggregate of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in paragraph 110.1(1)(a) or 118.1(1)(a) in its immediately preceding taxation year, other than

(A) a gift of capital received by way of bequest or inheritance,

(B) a gift received subject to a trust or direction to the effect that the property given, or property substituted therefor, is to be held by the foundation for a period of not less than 10 years, or

(C) a gift received from a registered charity,

(ii) in the case of a private foundation, the aggregate of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift,

(iii) in the case of a public foundation, 80% of the aggregate of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift,

(iv) the proportion that the number of days in the year is of 365 of 4½% of the amount, if any, by which

(A) the prescribed amount for the year in respect of property (other than a prescribed property) or a portion thereof owned by the foundation at any time in the immediately preceding 24 months that was not used directly in charitable activities or administration

exceeds the aggregate of

(B) 5/4 of the amount determined in respect of the foundation under subparagraph (i) for the year,

(C) the amount determined in respect of the foundation under subparagraph (ii) for the year, and

(D) 5/4 of the amount determined in respect of the foundation under subparagraph (iii) for the year, and

(v) in each of its first 10 taxation years commencing after 1983, a portion of the amount, if any, by which

(A) 90% of the amount, if any, by which the amount deducted by the foundation, for its last taxation year that commenced before 1984, pursuant to paragraph (18)(a), as it read for that year, exceeds the aggregate of the amounts determined in respect of the foundation under clauses (iv)(B) to (D) for its first taxation year commencing after 1983

exceeds

(B) the aggregate of all amounts each of which is an amount included under this subparagraph in determining the disbursement quota of the foundation for a preceding taxation year,

that is not less than the amount obtained when such excess is divided by the difference between 10 and the number of preceding taxation years of the foundation that commenced after 1983 and before the year.

See at end of subsec. 149.1(1).

Regulations: 3701 (prescribed amount).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations. See also list at end of s. 149.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T3010: Registered charity information return and public information return (Schedules 2, 4: disbursement quota calculation); T4033: Completing the registered charity information return [guide]; RC4108: Registered charities and the Income Tax Act [guide].

"non-qualified investment" of a private foundation means

(a) a debt (other than a pledge or undertaking to make a gift) owing to the foundation by

(i) a person (other than an excluded corporation)

(A) who is a member, shareholder, trustee, settlor, officer, official or director of the foundation,

(B) who has, or is a member of a group of persons who do not deal with each other at arm's length who have, contributed more than 50% of the capital of the foundation, or

(C) who does not deal at arm's length with any person described in clause (A) or (B), or

(ii) a corporation (other than an excluded corporation) controlled by the foundation, by any person or group of persons referred to in subparagraph (i), by the foundation and any other private foundation with which it does not deal at arm's length or by any combination thereof,

(b) a share of a class of the capital stock of a corporation (other than an excluded corporation) referred to in paragraph (a) held by the foundation (other than a share listed on a prescribed stock exchange or a share that would be a qualifying share within the meaning assigned by subsection 192(6) if that subsection were read without reference to the expression "issued after May 22, 1985 and before 1987"), and

(c) a right held by the foundation to acquire a share referred to in paragraph (b),

and, for the purpose of this definition, an "excluded corporation" is

(d) a limited-dividend housing company to which paragraph 149(1)(n) applies,

(e) a corporation all of the property of which is used by a registered charity in its administration or in carrying on its charitable activities, or

(f) a corporation all of the issued shares of which are held by the foundation;

Related Provisions: 149.1(21)(c) — Disbursement excess of registered charity; 189 — Tax regarding non-qualified investment; 256(6), (6.1) — Meaning of "controlled".

History: Para. (b) of "non-qualified investment" in subsec. 149.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(2), applicable with respect to shares issued after May 22, 1985, other than shares issued before 1986 to which subsec. 192(6) of the former Act, as it read on May 22, 1985, is applicable. Para. (b) formerly read:

(b) a share of a class of the capital stock of a corporation (other than an excluded corporation) referred to in paragraph (a) held by the foundation (other than a share listed on a prescribed stock exchange or a share that would be a qualifying share within the meaning assigned by subsection 192(6) if that subsection were read without reference to the words "after May 22, 1985 and before 1987"), and

That portion of "non-qualified investment" following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(3), applicable to taxation years beginning after 1983. That portion formerly read:

and, for the purpose of this definition, an "excluded corporation" is a limited dividend housing company to which paragraph 149(1)(n) applies or a corporation the operations of which are confined to the holding of property used by a registered charity in its administration or in carrying on its charitable activities;

Pre-RSC History: *The definition "non-qualified investment" was para. 149.1(1)(e.1). See Table of Concordance.*

See at end of subsec. 149.1(1).

Regulations: 3200 (prescribed stock exchange).

"private foundation" means a charitable foundation that is not a public foundation;

Related Provisions: 149.1(6.3) — Designation as public foundation, etc.; 149.1(13) — Designation of private foundation as public; 189 — Tax on private foundation with non-qualified investments; 248(1)"private foundation" — Definition applies to entire Act.

Pre-RSC History: *The definition "private foundation" was para. 149.1(1)(f).*

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property. See also list at end of s. 149.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T2095: Registered charities — application for re-designation.

"public foundation" means a charitable foundation of which,

(a) where the foundation has been registered after February 15, 1984 or designated as a charitable organization or private foundation pursuant to subsection (6.3) or to subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(i) more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(ii) not more than 50% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or members of a group of such persons who do not deal with each other at arm's length, or

(b) in any other case,

(i) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm's length, and

(ii) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm's length

and, for the purpose of subparagraph (a)(ii), a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

Related Provisions: 149.1(6.3) — Designation as public foundation, etc.; 149.1(13) — Designation of private foundation as public; 248(1)"private foundation" — Definition applies to entire Act.

Pre-RSC History: *The definition "public foundation" was para. 149.1(1)(g). See Table of Concordance.*

See at end of subsec. 149.1(1).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-83R3: Non-profit organizations — Taxation of income from property. See also list at end of s. 149.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T2095: Registered charities — application for re-designation.

"qualified donee" means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1);

Pre-RSC History: *The definition "qualified donee" was para. 149.1(1)(h).*

See at end of subsec. 149.1(1).

"qualified investment [para. 149.1(1)(i)]" — [Repealed under former Act]

"related business", in relation to a charity, includes a business that is unrelated to the objects of the charity if substantially all persons employed by the charity in the carrying on of that business are not remunerated for that employment;

Pre-RSC History: *The definition "related business" was para. 149.1(1)(j).*

Selected Cases [subsec. 149.1(1)"related business"]: *Alberta Institute on Mental Retardation v. The Queen*, [1987] 2 C.T.C. 70 (FCA); leave to appeal to SCC refused (1988), 87 N.R. 397 (note), (sub nom. *Alta. Institute on Mental Retardation v. MNR*) (Taxpayer operating for charitable purpose carrying on "related business" when income used in charitable activities).

"specified gift" means that portion of a gift, made in a taxation year by a registered charity, that is designated as a specified gift in its information return for the year;

Pre-RSC History: *The definition "specified gift" was para. 149.1(1)(k).*

See at end of subsec. 149.1(1).

Information Circulars: 80-10R: Registered charities: operating a registered charity.

"taxation year" means, in the case of a registered charity, a fiscal period.

Pre-RSC History: *The definition "taxation year" was para. 149.1(1)(l).*

Pre-RSC History [subsec. 149.1(1)]: Subpara. 149.1(1)(b)(iv) amended by 1988, c. 55, subsec. 134(1), to substitute "pursuant to subsection (6.3) or 110(8.1) or (8.2) or has applied after February 15, 1984 for registration under paragraph 110(8)(c) or under the definition "registered charity" in subsection 248(1)" for "pursuant to subsection 110(8.1) or (8.2) or has applied for registration under paragraph 110(8)(c) after February 15, 1984," applicable to 1988 *et seq.*

That portion of subpara. 149.1(1)(e)(i) preceding cl. (A) amended by 1988, c. 55, subsec. 134(2), to substitute "paragraph 110.1(1)(a) or 118.1(1)(a)" for "paragraph 110(1)(a)", applicable to 1988 *et seq.* except that in its application to the 1988 taxation year, the reference to "paragraph 110(1)(a) or paragraph 118.1(1)(a)", in subpara. 149.1(1)(e)(i) shall be read as a reference to "paragraph 110(1)(a), 110.1(1)(a) or 118.1(1)(a)".

That portion of subpara. 149.1(1)(g)(i) preceding cl. (A) amended to substitute "subsection (6.3) or 110(8.1) or (8.2)" for "subsection 110(8.1) or (8.2)", and para. 149.1(1)(h) substituted by 1988, c. 55, subsecs. 134(3), (4), applicable to 1988 *et seq.* Para. 149.1(1)(h) formerly read:

> (h) "qualified donee" — "qualified donee" means a donee described in any of subparagraphs 110(1)(a)(i) to (vii) or paragraph 110(1)(b);

All that portion of subpara. 149.1(1)(e)(iv) preceding cl. (B) substituted, all that portion of para. 149.1(1)(e) following subpara. (v) repealed by 1986, c. 55, subsecs. 58(1), (2), applicable with respect to taxation years commencing after 1983. Those portions formerly read:

> (iv) the proportion described in subparagraph (vi) of 4½% of the amount, if any, by which
>
> (A) the aggregate of all amounts each of which is the proportion described in subparagraph (vii) of the value, determined in prescribed manner, at the beginning of the year, of such portion of a property (other than a prescribed property) owned by the foundation at that time as, for a period in its immediately preceding taxation year, was owned by the foundation and not used directly in charitable activities or administration
>
> exceeds the aggregate of
>
> . . . . .
>
> and, for the purposes of this definition,
>
> (vi) the proportion of the percentage specified in subparagraph (iv) is the proportion that the number of days in the year is of 365, and
>
> (vii) the proportion of the value determined pursuant to clause (iv)(A) is the proportion that the number of days in the period referred to in that clause is of the number of days for which the foundation, during its immediately preceding taxation year, owned the property described in that clause;

That portion of subsec. 149.1(1) preceding para. (a) substituted to add "section 172 and Part V"; paras. 149.1(1)(b), (e), (g) and (k) substituted, para. (e.1) added and para. (i) repealed by 1984, c. 45, subsecs. 57(1)–(6). That portion preceding para. (a), paras. (e), (e.1) and (k) and the repeal of para. (i) are applicable to taxation years commencing after 1983, para. (b) is applicable to taxation years commencing after 1984 and para. (g) is applicable to taxation years commencing after 1983, except that in its application to such a taxation year commencing prior to 1985, cls. 149.1(1)(g)(i)(A) and (B) shall be read as follows:

> (A) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm's length, and
>
> (B) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm's length, or

Paras. (b), (e), (g), (i) and (k) formerly read:

> (b) "charitable organization" means an organization, whether or not incorporated, all the resources of which are devoted to charitable activities carried on by the organization itself and no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof;
>
> . . . . .
>
> (e) "disbursement quota" for a taxation year of a private foundation means an amount equal to the aggregate of
>
> (i) the greater of
>
> (A) 5% of the fair market value of all capital properties of the foundation, calculated as of the commencement of the taxation year of the foundation but excluding
>
> (I) qualified investments of the foundation,
>
> (II) capital properties used directly by the foundation in charitable activity or in the administration of the foundation, and
>
> (III) any other property accumulated by the foundation with the consent of the Minister given pursuant to subsection (8), and
>
> (B) 90% of the income for the year derived by the foundation from the capital properties described in clause (A), except those capital properties described in subclauses (I) to (III) thereof, and
>
> (ii) 90% of the amount by which the income of the foundation for the year exceeds the income derived by the foundation in that year as determined under clause (i)(B);
>
> . . . . .
>
> (g) "public foundation" means a charitable foundation of which
>
> (i) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm's length, and
>
> (ii) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm's length;
>
> . . . . .
>
> (i) "qualified investment" for a private foundation means
>
> (i) an investment that would be described in any of subparagraphs 204(e)(i), (ii), (iv), (v) or (vii) if the reference in paragraph 204(e) to a trust governed by a deferred profit sharing plan or a revoked plan were read as a reference to a private foundation,

(ii) a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a prescribed stock exchange in Canada,

(iii) a mortgage or interest therein, secured by real property situated in Canada, other than a mortgage in respect of which the mortgagor is

(A) a director, trustee or employee of the foundation or a person with whom any such director, trustee or employee does not deal at arm's length, or

(B) a person or member of a group of persons who do not deal with each other at arm's length who or that contributed or otherwise paid to the foundation more than 75% of the capital contributed to or otherwise paid in to it,

(iv) an interest in a corporation described in paragraph 149(1)(i),

(v) a share in the capital stock of a limited-dividend housing company within the meaning of that expression as defined by the *National Housing Act*,

(vi) a share in the capital stock of a mutual fund corporation,

(vii) a unit of a mutual fund trust,

(viii) a share in the capital stock of a public corporation,

(ix) a warrant or right listed on a prescribed stock exchange in Canada that gives the owner thereof the right to acquire, either immediately or in the future, any property that is a qualified investment within the meaning of any other subparagraph of this paragraph,

(x) a balance standing to the credit of the private foundation in the records of a credit union within the meaning assigned by subsection 137(6), and

(xi) such other investments as may be prescribed by any regulations of the Governor in Council made on the recommendation of the Minister of Finance;

. . . . .

(k) the relevant percentages referred to in paragraph (2)(b), subparagraph (3)(b)(i) and subsection (5) are

(i) 50% where the immediately preceding taxation year is 1976,

(ii) 60% where the immediately preceding taxation year is 1977,

(iii) 70% where the immediately preceding taxation year is 1978, and

(iv) 80% where the immediately preceding taxation year is a year after 1978; and

Selected Cases [subsec. 149.1(1)]: *Alliance for Life v. MNR*, [1999] 3 C.T.C. 1 (FCA) (Political activity overcame charitable objects); *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Interfaith Development Education Assn., Burlington v. MNR*, [1997] 3 C.T.C. 271 (FCA) (Restricted interpretation given to "advancement of education").

(1.1) Exclusions — For the purposes of paragraphs (2)(b), (3)(b), (4)(b) and (21)(a), the following shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee:

(a) a specified gift; and

(b) an expenditure on political activities made by a charitable organization or a charitable foundation.

Pre-RSC History: Subsec. 149.1(1.1) substituted by 1986, c. 6, subsec. 85(1), applicable to 1985 *et seq.* Subsec. 149.1(1.1) formerly read:

(1.1) Effect where gift is specified gift — For the purposes of paragraphs (2)(b), (3)(b), (4)(b) and (21)(a), a specified gift shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee.

Subsec. 149.1(1.1) added by 1984, c. 45, subsec. 57(7), applicable to taxation years commencing after 1983.

Information Circulars: 80-10R: Registered charities: operating a registered charity; 87-1: Registered charities — ancillary and incidental political activities.

(1.2) Authority of Minister — For the purposes of the determination of D in the definition "disbursement quota" in subsection (1), the Minister may

(a) authorize a change in the number of periods chosen by a charitable foundation in determining the prescribed amount; and

(b) accept any method for the determination of the fair market value of property or a portion thereof that may be required in determining the prescribed amount.

Pre-RSC History: Subsec. 149.1(1.2) added by 1986, c. 55, subsec. 58(3), applicable with respect to taxation years commencing after 1983.

(2) Revocation of registration of charitable organization — The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

(a) carries on a business that is not a related business of that charity; or

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of

(i) the amount that would be the value of A for the year, and

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Related Provisions: 149.1(1.1) — Exclusions; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188 — Revocation tax; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration; 248(1)"registered charity" — Application for registration.

History: Subparas. 149.1(2)(b)(i) and (ii) amended by 1998, c. 19, subsec. 179(3), applicable to taxation years that end after November 1991. Subparas. 149.1(2)(b)(i) and (ii) formerly read:

(i) 80% of the amount that would be determined for the year for A, and

(ii) the amount that would be determined for the year for A.1,

Para. 149.1(2)(b) substituted by 1994, c. 21, subsec. 74(4), applicable to taxation years that begin after 1992. That para. formerly read:

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to 80% of the amount that would be determined for the year for A in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Pre-RSC History: Para. 149.1(2)(b) substituted by 1984, c. 45, subsec. 57(8), applicable to taxation years commencing after 1983. Para. (b) formerly read:

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts that, in the aggregate, are at least equal to the relevant percentage of the aggregate of amounts for which it issued receipts described in paragraph 110(1)(a) in its immediately preceding taxation year.

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations. See also list at end of s. 149.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(3) Revocation of registration of public foundation — The Minister may, in the manner described in section 168, revoke the registration of a public foundation

for any reason described in subsection 168(1) or where the foundation

(a) carries on a business that is not a related business of that charity;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(c) since June 1, 1950, acquired control of any corporation;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or

(e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

Related Provisions: 149.1(1.1) — Exclusions; 149.1(12) — Rules; 149.1(18) — Rules relating to computation of income; 149.1(20) — Rule regarding disbursement excess; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Revocation tax; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration; 248(1)"registered charity" — Application for registration; 256(6)–(9) — Whether control acquired.

Pre-RSC History: Para. 149.1(3)(b) substituted by 1984, c. 45, subsec. 57(9), applicable to taxation years commencing after 1983. Para. (b) formerly read:

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts that, in the aggregate, are at least equal to the greater of

(i) the relevant percentage of the aggregate of amounts for which it issued receipts described in paragraph 110(1)(a) in its immediately preceding taxation year, other than amounts that are gifts described in subparagraph (12)(b)(i), and

(ii) 90% of its income for the year;

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(4) Revocation of registration of private foundation — The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(c) since June 1, 1950, acquired control of any corporation; or

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

Related Provisions: 149.1(1.1) — Exclusions; 149.1(12) — Rules; 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Revocation tax; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration; 248(1)"registered charity" — Application for registration; 256(6)–(9) — Whether control acquired.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(4.1) Revocation of registration of registered charity — Where a registered charity has made a gift to another registered charity and it may reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities, the Minister may, in the manner described in section 168, revoke the registration of the charity that made the gift and, where it may reasonably be considered that the charities acted in concert, of the other charity.

Related Provisions: 172(3)(a) — Appeal from refusal to register, revocation of registration, etc.; 180(1) — Appeals to Federal Court of Appeal; 188(1) — Revocation tax; 230(2) — Charity must keep books and records to allow Minister to determine if there are grounds for revocation of registration.

History: Subsec. 149.1(4.1) added by 1984, c. 45, subsec. 57(10), applicable to taxation years commencing after 1983.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(5) Reduction — The Minister may, on application made to the Minister in prescribed form by a registered charity, specify an amount in respect of the charity for a taxation year and, for the purpose of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, that amount shall be deemed to be an amount expended by the charity in the year on charitable activities carried on by it.

Pre-RSC History: Subsec. 149.1(5) substituted by 1984, c. 45, subsec. 57(11), applicable to 1984 *et seq.* Subsec. 149.1(5) formerly read:

(5) Exception — Notwithstanding paragraph (2)(b) and subparagraph (3)(b)(i), the Minister shall not revoke the registration of a charity pursuant to that paragraph or subparagraph, whichever is applicable, where, in a taxation year of the charity in which it fails to meet the requirements of whichever of that paragraph and subparagraph is applicable to it and in its immediately preceding taxation years subsequent to 1976 but not exceeding 4 in number, it expended on charitable activities carried on by it and by way of gifts made by it to qualified donees amounts that, in the aggregate, are at least equal to the relevant percentages of those amounts for which it issued receipts described in paragraph 110(1)(a) in its taxation years, subsequent to 1975 but not exceeding 5 in number, immediately preceding the year in which it so fails to meet the requirements of paragraph (2)(b) or subparagraph (3)(b)(i), whichever is applicable.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T2094: Registered charities — Application to reduce disbursement quota.

(6) Devoting resources to charitable activity — A charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that

(a) it carries on a related business;

(b) in any taxation year, it disburses not more than 50% of its income for that year to qualified donees; or

(c) it disburses income to a registered charity that the Minister has designated in writing as a charity associated with it.

Related Provisions: 149.1(7) — Designation of associated charities; 149.1(12)(b) — Rules — income.

Information Circulars: 77-6: Registered charities: designation as associated charities; 80-10R: Registered charities: operating a registered charity.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

(6.1) Charitable purposes — For the purposes of the definition "charitable foundation" in subsection (1),

where a corporation or trust devotes substantially all of its resources to charitable purposes and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable purposes, and

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

Information Circulars: 87-1: Registered charities — ancillary and incidental political activities.

(6.2) Charitable activities — For the purposes of the definition "charitable organization" in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable activities, and

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

Pre-RSC History: Subsecs. 149.1(6.1), (6.2) added by 1986, c. 6, subsec. 85(2), applicable to 1985 *et seq.*

Selected Cases [subsec. 149.1(6.2)]: *N.D.G. Neighbourhood Assoc. v. Revenue Canada*, [1988] 2 C.T.C. 14 (FCA) (Registration refused when activities political).

Information Circulars: 87-1: Registered charities — ancillary and incidental political activities.

(6.3) Designation as public foundation, etc. — The Minister may, by notice sent by registered mail to a registered charity, on the Minister's own initiative or on application made to the Minister in prescribed form, designate the charity to be a charitable organization, private foundation or public foundation and the charity shall be deemed to be registered as a charitable organization, private foundation or public foundation, as the case may be, for taxation years commencing after the day of mailing of the notice unless and until it is otherwise designated under this subsection or its registration is revoked under subsection (2), (3), (4), (4.1) or 168(2).

Related Provisions: 149.1(13) — Designation of private foundation as public; 172(3) — Appeal from refusal to designate; 244(5) — Proof of service by mail; 244(14) — Notice presumed mailed on date of notice; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 149.1(6.3) added by 1988, c. 55, subsec. 134(5), applicable to 1988 *et seq.*

Forms: T2095: Registered charities — application for re-designation.

(6.4) National arts service organizations — Where an organization that

(a) has, on written application to the Minister of Communications describing all of its objects and activities, been designated by that Minister on approval of those objects and activities to be a national arts service organization,

(b) has, as its exclusive purpose and its exclusive function, the promotion of arts in Canada on a nation-wide basis,

(c) is resident in Canada and was formed or created in Canada, and

(d) complies with prescribed conditions

applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section, paragraph 38(a.1), sections 110.1, 118.1, 168, 172, 180 and 230 and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or as if it were a registered charity that is designated as a charitable organization, as the case may be.

Proposed Amendment — 149.1(6.4) closing words

applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section, paragraph 38(a.1), sections 110.1, 118.1, 168, 172, 180 and 230, subsection 241(3.2) and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or as if it were a registered charity that is designated as a charitable organization, as the case may be.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 90, will amend the closing words of subsec. 149.1(6.4) to read as above, in force on Royal Assent.

Technical Notes: Subsection 149.1(6.4) of the Act provides that a national arts service organization that is designated by the Minister of Canadian Heritage and registered by the Minister of National Revenue as meeting prescribed criteria shall be treated, for income tax purposes, as if it were a registered charity that is designated as a charitable organization. To this end, that subsection includes references to various provisions of the Act that apply to a charitable organization. The amendment corrects an oversight by adding a reference to subsection 241(3.2) which deals with the communication of information relating to a registered charity.

Related Provisions: 149.1(6.2) — Charitable activities; 149.1(6.5) — Revocation of designation.

History: The closing words of subsec. 149.1(6.4) amended by 1998, c. 19, s. 41.1, applicable after February 18, 1997. The portion formerly read:

> applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section and sections 110.1, 118.1, 168, 172, 180 and 230 and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or a registered charity that is designated as a charitable organization, as the case may be.

Subsec. 149.1(6.4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(4), applicable after July 13, 1990 except that, where an organization has applied to the Minister of National Revenue for registration under the subsec. before December 17, 1991 and the Minister of National Revenue has accepted the application as meeting the requirements of that subsec., the organization shall be deemed to have become registered under the subsec.:

> (a) where in the application a day later than the day the application is made is specified as the day on which the organization is to become registered, on that later day; and
>
> (b) in any other case, on the day the application was made.

1995, c. 11: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act

of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Regulations: 8700 (prescribed conditions for 149.1(6.4)(d)).

(6.5) Revocation of designation — The Minister of Communications may, at any time, revoke the designation of an organization made for the purpose of subsection (6.4) where

(a) an incorrect statement was made in the furnishing of information for the purpose of obtaining the designation, or

(b) the organization has amended its objects after its last designation was made,

and, where the designation is so revoked, the organization shall be deemed for the purpose of section 168 to have ceased to comply with the requirements of this Act for its registration under this Act.

History: Subsec. 149.1(6.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(4), applicable after July 13, 1990.

1995, c. 11: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

(7) Designation of associated charities — On application made to the Minister in prescribed form, the Minister may, in writing, designate a registered charity as a charity associated with one or more specified registered charities where the Minister is satisfied that the charitable aim or activity of each of the registered charities is substantially the same, and on and after a date specified in such a designation, the charities to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be associated.

Related Provisions: 149.1(6)(c) — Disbursement to associated charity.

Information Circulars: 77-6: Registered charities: designation as associated charities; 80-10R: Registered charities: operating a registered charity.

Forms: T2050: Application to register a charity under the ITA; T3011: Registered charities — Application for designation as associated charities; RC4108: Registered charities and the Income Tax Act [guide].

(8) Accumulation of property — A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions, and over such period of time, as the Minister specifies in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any income earned in respect of the property so accumulated, shall be deemed

(a) to have been expended on charitable activities carried on by the charity in the taxation year in which it was so accumulated; and

(b) not to have been expended in any other year.

History: Subsec. 149.1(8) substituted by 1994, c. 21, subsec. 74(5), applicable to taxation years that begin after 1992. That subsec. formerly read:

(8) A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose on such terms and conditions and over such period of time, if any, as is specified by the Minister in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any income earned in respect of the property so accumulated, shall be deemed to have been expended on charitable activities carried on by the charity in the taxation year in which it was so accumulated.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(9) Idem — Property accumulated by a registered charity as provided in subsection (8), including any income earned in respect of that property, that is not used for the particular purpose for which it was accumulated either

(a) before the expiration of any period of time specified by the Minister in the Minister's approval of the accumulation, or

(b) at an earlier time at which the registered charity decides not to use the property for that purpose

shall, notwithstanding subsection (8), be deemed to be income of the charity for, and the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph (a) expires or the time referred to in paragraph (b) occurs, as the case may be.

History: That portion of subsec. 149.1(9) following para. (b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 123(5), applicable to 1988 *et seq*. That portion formerly read:

shall, notwithstanding subsection (8), be deemed to be income of the charity and the amount of a gift for which it issued a receipt described in paragraph 110.1(1)(a) or subsection 118.1(2) in its taxation year in which the period referred to in paragraph (a) expires if that paragraph is applicable or in which the earlier time referred to in paragraph (b) occurs if that paragraph is applicable.

Pre-RSC History: That portion of subsec. 149.1(9) following para. (b) amended to substitute "paragraph 110.1(1)(a) or subsection 118.1(2)" for "paragraph 110(1)(a)", by 1988, c. 55, subsec. 134(6), applicable in respect of gifts made by donors in the 1988 or subsequent taxation years of the donors.

All that portion of subsec. 149.1(9) following para. (b) substituted by 1984, c. 45, subsec. 57(12), applicable to taxation years commencing after 1983. That portion formerly read:

shall, notwithstanding subsection (8), be deemed to be income of the charity for its taxation year in which the period referred to in paragraph (a) expires if that paragraph is applicable or in which the earlier time referred to in paragraph (b) occurs if that paragraph is applicable.

(10) Deemed charitable activity — An amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization shall be deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it.

Related Provisions: 149.1(12)(b) — Rules — income.

(11) [Repealed under former Act]

Pre-RSC History: Subsec. 149.1(11) repealed by 1984, c. 45, subsec. 57(13), applicable to taxation years commencing after 1983. Subsec. (11) formerly read:

(11) Income not to include taxable capital gains — For the purposes of this section, in computing the part, if any, of the aggregate of any amounts that is not less than a percentage specified in any subsection of this section of any income for a period, the amount of such income shall be deemed to be the amount thereof computed without taking into account capital gains and losses.

(12) Rules — For the purposes of this section,

(a) a corporation is controlled by a charitable foundation if more than 50% of the corporation's issued share capital, having full voting rights under all circumstances, belongs to

(i) the foundation, or

(ii) the foundation and persons with whom the foundation does not deal at arm's length,

but, for the purpose of paragraph (3)(c) or (4)(c), as the case may be, a charitable foundation shall be deemed not to have acquired control of a corporation if it has not purchased or otherwise acquired for consideration more than 5% of the issued shares of any class of the capital stock of that corporation;

(b) there shall be included in computing the income of a charity for a taxation year all gifts received by it in the year including gifts from any other charity but not including

(i) a specified gift or a gift referred to in paragraph (a) or (b) of the description of A in the definition "disbursement quota" in subsection (1),

(ii) any gift or portion of a gift in respect of which it is established that the donor is not a charity and

(A) has not been allowed a deduction under paragraph 110.1(1)(a) in computing the donor's taxable income or under subsection 118.1(3) in computing the donor's tax payable under this Part, or

(B) was not taxable under section 2 for the taxation year in which the gift was made, or

(iii) any gift or portion of a gift in respect of which it is established that the donor is a charity and that the gift was not made out of the income of the donor; and

(c) subsections 104(6) and (12) are not applicable in computing the income of a charitable foundation that is a trust.

Related Provisions: 256(6), (6.1) — Control.

Pre-RSC History: Cl. 149.1(12)(b)(ii)(A) substituted by 1988, c. 55, subsec. 134(7), applicable in respect of gifts made by donors in the 1988 or subsequent taxation years of the donors. Cl. 149.1(12)(b)(ii)(A) formerly read:

(A) has not been allowed a deduction under paragraph 110(1)(a) in computing his taxable income, or

All that portion of para. 149.1(12)(a) following subpara. (ii) and subpara. 149.1(12)(b)(i) substituted by 1984, c. 45, subsecs. 57(14), (15), applicable to taxation years commencing after 1983. That portion of para. (a) following subpara. (ii) and subpara. (b)(i) formerly read:

but a charitable foundation shall be deemed not to have acquired control of a corporation if it has not purchased or otherwise acquired for a consideration any of the shares in the capital stock of that corporation;

. . . . .

(i) any gift received subject to a trust or direction to the effect that the property given, or property substituted therefor, is to be held by the charity for a period of not less than 10 years,

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations. See also list at end of s. 149.1.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(13) Designation of private foundation as public — On application made to the Minister by a private foundation, the Minister may, on such terms and conditions as the Minister considers appropriate, designate the foundation to be a public foundation, and on and after the date specified in such a designation, the foundation to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be a public foundation.

Related Provisions: 149.1(6.3) — Designation as public foundation, etc.

Forms: T2095: Registered charities — application for re-designation.

(14) Information returns — Every registered charity shall, within 6 months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand therefor.

Related Provisions: 149.1(15) — Public information return may be disclosed to the public; 150(1.1)(a) — Charity not required to file corporate tax return; Reg. 204(3)(c) — Annual T3 return not required.

Pre-RSC History: Subsec. 149.1(14) substituted by 1984, c. 45, subsec. 57(16), to substitute "6" for "3", applicable to 1984 *et seq.*

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T3010: Registered charities information return; T4033: Completing the registered charity information return [guide]; RC4108: Registered charities and the Income Tax Act [guide].

(15) Information may be communicated — Notwithstanding section 241,

(a) the information contained in a public information return referred to in subsection (14) shall be communicated or otherwise made available to the public by the Minister in such manner as the Minister deems appropriate; and

(b) the Minister may make available to the public in such manner as the Minister deems appropriate an annual listing of all registered or previously registered charities indicating for each the name, location, registration number, date of registration and, in the case of a charity the registration of which has been revoked, annulled or terminated, the effective date of the revocation, annulment or termination.

Related Provisions: 241(3.2) — Additional disclosure permitted of charity information.

Pre-RSC History: Subsec. 149.1(15) substituted by 1979, c. 5, s. 52. Subsec. 149.1(15) formerly read:

(15) Notwithstanding section 241, the information contained in a public information return referred to in subsection (14) shall be communicated or otherwise made available to the public by the Minister in such manner as he deems appropriate.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(16) [Repealed under former Act]

Pre-RSC History: Subsec. 149.1(16) repealed by 1984, c. 45, subsec. 57(17), applicable to taxation years commencing after 1983. Subsec. 149.1(16) formerly read:

(16) Penalty tax — Where the registration of a charity is revoked in the manner described in section 168, the charity shall, on or before the day that is one year after the day on which such revocation is effective, pay a special tax under this Part equal to the amount by which

(a) the fair market value of all its assets on the day that notice of the Minister's intention to revoke its registration is mailed,

exceeds the aggregate of

(b) the fair market value on that day of any assets of the charity transferred by it after that day and within one year from that day to a registered charity or to a qualified donee,

(c) amounts paid by the charity after that day in respect of *bona fide* debts of the charity that were outstanding on that day, and

(d) the amount of such reasonable expenses as are incurred by the charity within the period described in paragraph (b).

Para. 149.1(16)(a) substituted by 1977-78, c. 1, subsec. 75(1), applicable to 1977 *et seq.*

(17) [Repealed under former Act]

Pre-RSC History: Subsec. 149.1(17) repealed by 1984, c. 45, subsec. 57(17), applicable to taxation years commencing after 1983. Subsec. 149.1(17) formerly read:

(17) Idem — A person, not being a registered charity or a qualified donee, who, on or after the day that notice of the Minister's intention to revoke the registration of a charity is mailed, receives any amount from that charity is jointly and severally liable with the

charity for that portion of the tax imposed on the charity by subsection (16) that is equal to the amount by which

(a) the amount received by him from the charity,

exceeds

(b) the aggregate of amounts received by him from the charity each of which is an amount described in paragraph (16)(c) or (d).

That portion of subsec. 149.1(17) preceding para. (a) amended by 1977-78, c. 1, subsec. 75(2), to substitute "on or after the day that notice of the Minister's intention to revoke the registration of a charity is mailed" for "after the day on which the revocation of the registration of a charity is effective", applicable to 1977 *et seq.*

(18) [Repealed under former Act]

Pre-RSC History: Subsec. 149.1(18) repealed by 1984, c. 45, subsec. 57(17), applicable to taxation years commencing after 1983. Subsec. 149.1(18) formerly read:

(18) Rules relating to computation of income — In computing the income of a charitable foundation for a taxation year for the purpose of subparagraphs (1)(e)(ii) or (3)(b)(ii)

(a) there may be deducted an amount not exceeding its income for the year computed without including or deducting any amount under this subsection; and

(b) there shall be included any amount that has been deducted under this subsection for the immediately preceding taxation year.

Para. 149.1(18)(a) substituted by 1980-81-82-83, c. 48, subsec. 84.1(1), to delete "preceding the taxation year" from the expression "for the year preceding the taxation year", applicable to taxation years commencing after October 28, 1980.

All that portion preceding para. 149.1(18)(a) substituted by 1977-78, c. 1, subsec. 75(2), applicable to 1977 *et seq.*

(19) [Repealed under former Act]

Pre-RSC History: Subsec. 149.1(19) repealed by 1980-81-82-83, c. 48, subsec. 84.1(2), applicable to taxation years commencing after October 28, 1980. Subsec. 149.1(19) formerly read:

(19) Election in respect of first taxation year — For the purpose of determining whether a charitable foundation has complied with the requirements of subparagraph (3)(b)(ii) or paragraph (4)(b), as the case may be, for its first taxation year after its incorporation or creation, the whole or any part of amounts expended by it in the immediately subsequent taxation year shall, if it so elects, be deemed to have been expended by it in the first taxation year and not in the subsequent taxation year.

(20) Rule regarding disbursement excess — Where a registered charity has expended a disbursement excess for a taxation year, the charity may, for the purpose of determining whether it complies with the requirements of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, for the immediately preceding taxation year of the charity and 5 or less of its immediately subsequent taxation years, include in the computation of the amounts expended on charitable activities carried on by it and by way of gifts made by it to qualified donees, such portion of that disbursement excess as was not so included under this subsection for any preceding taxation year.

Related Provisions: 149.1(21) — "Disbursement excess" defined.

Pre-RSC History: Subsec. 149.1(20) substituted by 1984, c. 45, subsec. 57(18), applicable to 1984 *et seq.* Subsec. 149.1(20) formerly read:

(20) Where a charity has, with the prior approval in writing of the Minister, expended a disbursement excess for a taxation year for a particular purpose specified by the Minister in the approval and on such terms and conditions, if any, as were specified by the Minister therein, the charity may, for the purpose of determining whether it complies with the requirements of paragraph (2)(b) or (4)(b) or subparagraph (3)(b)(ii), as the case may be, for its taxation years immediately subsequent to that taxation year but not exceeding three in number, include in the computation of the amounts expended on charitable activities carried on by it and by way of gifts made by it to qualified donees, such portion of the disbursement excess for that taxation year as was not so included under this subsection for a previous taxation year.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(21) Definition of "disbursement excess" — For the purpose of subsection (20), "disbursement excess" for a taxation year of a charity means the amount, if any, by which

(a) the total of amounts expended in the year by the charity on charitable activities carried on by it or by way of gifts made by it to qualified donees

exceeds

(b) in the case of a charitable foundation, its disbursement quota for the year, and

(c) in the case of a charitable organization, the total of

(i) the amount that would be the value of A for the year, and

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Related Provisions: 149.1(1.1) — Exclusions.

History: Subparas. 149.1(21)(c)(i) and (ii) amended by 1998, c. 19, subsec. 179(4), applicable to taxation years that end after November 1991. Subparas. 149.1(21)(c)(i) and (ii) formerly read:

(i) 80% of the amount that would be determined for the year for A, and

(ii) the amount that would be determined for the year for A.1,

Para. 149.1(21)(c) amended by 1994, c. 21, subsec. 74(6), applicable to taxation years that begin after 1992. Para. (c) formerly read:

(c) in the case of a charitable organization, 80% of the amount that would be determined for the year for A in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

Pre-RSC History: Paras. 149.1(21)(b), (c) substituted by 1984, c. 45, subsec. 57(19), applicable to 1984 *et seq.* Paras. 149.1(21)(b) and (c) formerly read:

(b) in the case of a charitable foundation, the aggregate of its income for the year computed without regard to subsection (18) and the amount, if any, required by paragraph (18)(b) to be included in computing its income for the year; and

(c) in the case of a charitable organization, the aggregate of amounts for which it issued receipts described in paragraph 110(1)(a) in its immediately preceding taxation year.

Forms: T3010: Registered charity information return and public information return (Schedule 2, line 19: net disbursement excess); T4033: Completing the registered charity information return [guide]; RC4108: Registered charities and the Income Tax Act [guide].

Pre-RSC History [s. 149.1]: S. 149.1 added by 1976-77, c. 4, subsec. 60(1), applicable to 1977 *et seq.*

1976-77, c. 4, subsecs. 60(3)–(5) provide:

(3) An organization that, on December 31, 1976, was a registered Canadian charitable organization within the meaning of that expression for the purposes of the *Income Tax Act* as it read in its application to the 1976 taxation year, shall, after that day, be deemed to be a registered charity within the meaning of that expression for the purposes of the *Income Tax Act* as amended by this Act until such time, if any, as its registration is revoked.

(4) For the purpose of applying the definition "disbursement quota" in paragraph 149.1(1)(e) of the *Income Tax Act*, as enacted by this section, in respect of the 1977 and 1978 taxation years of private foundations, there shall be substituted for the percentage appearing in clause (A) thereof the following percentages in respect of the following taxation years:

(a) in respect of 1977 taxation years commencing in 1976, zero per cent;

(b) in respect of 1977 and 1978 taxation years commencing in 1977, 3 per cent; and

(c) in respect of all other 1978 taxation years, 4 per cent.

(5) For the purpose of applying the provisions of subsection 149.1(18) of the *Income Tax Act*, as enacted by this section, in respect of the 1977 taxation year of a foundation, paragraphs (a) and (b) thereof shall be read and construed as follows:

(a) there may be deducted an amount not exceeding its income for the 1976 taxation year computed without including or deducting any amount under subsection 149(9) as it read in its application to that taxation year, and

(b) there shall be included any amount that has been deducted for the 1976 taxation year under subsection 149(9) as it read in its application to that taxation year;

Definitions [s. 149.1]: "acquired" — 149.1(12)(a), 256(7)–(9); "amount" — 248(1); "arm's length" — 251(1); "associated" — 149.1(7); "charitable activities" — 149.1(6), (6.1), (6.2); "charitable foundation", "charitable organization", "charitable purposes", "charity" — 149.1(1); "class" — of shares 248(6); "control" — 149.1(12)(a), 256(6)–(9); "controlled" — 149.1(12)(a), 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "disbursement excess" — 149.1(21); "disbursement quota" — 149.1(1); "income" — of charity 149.1(12)(b); "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-qualified investment" — 149.1(1); "person", "prescribed" — 248(1); "private foundation" — 149.1(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public foundation" — 149.1(1), 248(1); "qualified donee" — 149.1(1); "qualifying share" — 192(6), 248(1); "registered charity" — 149.1(6.4), 248(1); "related business" — 149.1(1); "resident in Canada" — 250; "share" — 248(1); "specified gift" — 149.1(1); "substituted property" — 248(5); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 149.1(1), 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 149.1]: IT-496: Non-profit organizations.

DIVISION I — RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

Returns

150. (1) Filing returns of income — general rule — Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,

(a) **corporations** — in the case of a corporation, by or on behalf of the corporation within six months after the end of the year if

(i) at any time in the year the corporation

(A) is resident in Canada,

(B) carries on business in Canada,

(C) has a taxable capital gain, or

(D) disposes of a taxable Canadian property, or

(ii) tax under this Part is, or but for a tax treaty would be, payable by the corporation for the year;

Proposed Administrative Development — Corporate tax returns

CCRA web page, 1999-2000: *Corporate Income Tax Redesign*

Revenue Canada's aim is to make the administration of taxes more efficient for businesses, tax professionals and governments. We recognize that reducing the compliance burden of all levels of government on Canadian businesses is a critical factor in making Canada more competitive. The Corporate Income Tax Redesign is a major step towards the client-oriented, electronic commerce based tax system we plan to put in place over the next five years.

The redesign will result in changes to the way you file your T2 returns and financial statements, and it will offer new filing options. Our Corporation Income Tax Processing Redesign newsletter provides details about the changes.

Your corporation's processing tax centre may have changed

If your corporation is located in the areas served by the Charlottetown, Belleville, Hamilton or Kitchener-Waterloo Tax Services Offices, please file T2 Corporation Income Tax returns prepared after April 3, 2000 to: Tax Centre Summerside, PEI C1N 6A2

Faster and More Accurate

Revenue Canada is developing a faster and more accurate processing system for corporation income tax returns. Instead of manually checking information, we will verify the information electronically in the new system. We will also offer corporations the option of filing income tax returns using electronic data interchange (EDI). Our redesigned system will give Canadian corporations a secure, fast and paperless way to file returns.

We have developed a General Index of Financial Information (GIFI) that will collect balance sheet, income statements, and retained earnings information from corporations in a codified format while allowing corporations to be flexible in how they structure and present this information.

We will be continually posting updates concerning our redesign on this site to keep you informed. For more information about this initiative, see: http://www.ccra-adrc.gc.ca/tax/business/t2return/index-e.html

Related Provisions: 115(1)(b) — Dispositions of taxable Canadian property; 162(2.1) — Minimum non-filing penalty for non-resident corporation; 183(1) — Return deadline for tobacco manufacturers' surtax; 235 — Penalty on large corporations for failure to file return even where no balance owing; 236 — Execution of documents by corporations; 250(1) — Meaning of resident of Canada; 253 — Extended meaning of carrying on business in Canada. See additional Related Provisions and Definitions at end of 150(1) and at end of s. 150.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-304R2: Condominiums.

Information Circulars: See list at end of subsec. 150(1).

Forms: RC1: Request for a business number; RC6: Request to convert to the business number; RC57: Request for a business number — Quebec; T2: Corporation income tax return; T2 Short: A simpler return for eligible corporations; T2 SCH 46: Part II — tobacco manufacturers' surtax; T2 SCH 341: Nova Scotia corporate tax reduction for new small businesses; T2 SCH 100: Balance sheet information; T2 SCH 101: Opening balance sheet information; T2 SCH 125: Opening statement information; T2 SCH 141: Notes checklist; T2 SCH 400: Saskatchewan royalty tax rebate calculation (corporations); T2 SCH 424: B.C. two-year tax holiday for new small businesses; T2-FTC: Sched 1 — 1987 *et seq.*; T2S(1)(L): Tax calculations for life insurance companies (plus schedules L.1 to L.9); T9R-C: Remittance form — corporations; T549: New Brunswick small business corporate tax reduction; T562: Label — corporation income tax return; T700: Saskatchewan corporate tax reduction for new small businesses; T708: Prince Edward Island small business deduction; T745: Newfoundland new small business deduction; T800: Manitoba corporate tax reduction for new small businesses; T1001: Northwest Territories small business deduction; T2130: Reconciliation of net income per financial statements with net income for tax purposes; T2131: Supplementary information schedule; T2203: Provincial and territorial taxes — multiple jurisdictions; T4012: T2 corporation income tax guide (guide).

(b) **deceased individuals** — in the case of an individual who dies after October of the year and before the day that would be the individual's filing due date for the year if the individual had not died, by the individual's legal representatives on or before the day that is the later of the day on or before which the return would otherwise be required to be filed and the day that is 6 months after the day of death;

Related Provisions: 70(2) — Return for rights or things; 70(7)(a) — Special rules applicable re trust for benefit of spouse; 127.55 — Minimum tax not applicable; 150(1)(d)(iii) — Deadline for deceased's cohabiting spouse; 150(4) — Death of partner or proprietor of business; 159(1) — Payments on behalf of others. See additional Related Provisions and Definitions at end of 150(1) and at end of s. 150.

History: Para. 150(1)(b) amended by 1996, c 21, subsec. 38(1), applicable to 1995 *et seq.* Para. (b) formerly read:

> (b) in the case of an individual who dies after October in the year and before May in the immediately following taxation year, by the individual's legal representatives within 6 months after the day of death;

Regulations: 206 (information return).

Information Circulars: See list at end of subsec. 150(1).

Forms: T4011: Preparing returns for deceased persons [guide]. See also under 150(1)(d).

(c) **trusts or estates** — in the case of an estate or trust, within 90 days from the end of the year;

Related Provisions: 104(23) — Testamentary trusts; 159(1) — Payments on behalf of others. See additional Related Provisions and Definitions at end of 150(1) and at end of s. 150.

Regulations: 204 (information return).

Information Circulars: 78-14R2: Guidelines for trust companies and other persons responsible for filing T3R-IND, T3R-G, T3RIF-IND, T3RIF-G, T3H-IND, T3H-G, T3D, T3P, T3S, T3RI and T3F returns. See also list at end of subsec. 150(1).

Forms: 94-115: Election to report a capital gain on property owned by a personal trust at the end of February 22, 1994; T3: Trust income tax and information return, with schedules; T3 Summ: Summary of trust income allocations and designations; T3 Supp: Statement of trust income; T3ATH-IND: Amateur athlete trust income tax return; T3D: Income tax return for DPSP or revoked DPSP; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T3P: Employees' pension plan income tax return; T3S: Supplementary unemployment benefit plan — income tax return; T1013: Consent form; T1061: Canadian amateur athlete trust group information return; T1139: Reconciliation of business income for tax purposes.

(d) **individuals** — in the case of any other person, on or before

(i) the following April 30 by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative (in this paragraph referred to as the person's "guardian"),

(ii) the following June 15 by that person or, if the person is unable for any reason to file the return, by the person's guardian where the person is

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)), or

(B) at any time in the year a cohabiting spouse (within the meaning assigned by section 122.6) of an individual to whom clause (A) applies, or

(iii) where at any time in the year the person is a cohabiting spouse (within the meaning assigned by section 122.6) of an individual to whom paragraph (b) applies for the year, on or before the day that is the later of the day on or before which the person's return would otherwise be required to be filed and the day that is 6 months after the day of the individual's death; or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor of Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 70(7)(a) — Special rules applicable re trust for benefit of spouse; 96(1.6) — Members of partnership deemed to carry on business of partnership for purposes of s. 150; 180.2(5) — Return required by residents and non-residents for OAS clawback calculation; 237(1) — Application for Social Insurance Number. See additional Related Provisions and Definitions at end of 150(1) and at end of s. 150.

History: Cl. 150(1)(d)(ii)(A) amended by 1998, c. 19, subsec. 180(1), applicable to 1995 *et seq.* Cl. 150(1)(d)(ii)(A) formerly read:

> (A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelters (within the meaning assigned by subsection 237.1(1)), or

Para. 150(1)(d) amended by 1996, c. 21, subsec. 38(2), applicable to 1995 *et seq.* Para. (d) formerly read:

> (d) individuals — in the case of any other person, on or before April 30 in the next year by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative; or

Forms: T1 General: Individual income tax return; T1-Adj: Adjustment request; T1C: Provincial tax credits; T1-CP Summ: Return in respect of certified productions; T1-CP Supp: Statement of certified productions; T1-MTR: Manitoba tax reduction; T1-KS: T1 keying schedule; T2 SCH 301: Newfoundland scientific research and experimental development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 420: B.C. royalty and deemed income rebate calculation and application; T2 SCH 421: B.C. mining exploration tax credit; T2 SCH 441: Yukon mineral exploration tax credit; T78: Manitoba mineral tax rebate application (individuals); T79: Alberta royalty tax rebate calculation and application (individuals); T81 (IND): B.C. royalty and deemed income rebate calculation and application; T82: Saskatchewan royalty tax rebate calculation (individuals); T87: British Columbia refundable tax credits; T89: Alberta stock savings plan tax credit; T1159: Income tax return: electing under s. 216; T1199: Yukon mineral exploration tax credit.

(e) **designated persons** — in a case where no person described by paragraph (a), (b) or (d) has filed the return, by such person as is required by notice in writing from the Minister to file the return, within such reasonable time as the notice specifies.

Related Provisions [subsec. 150(1)]: 149(12) — Non-profit organizations — information return; 149.1(14) — Charity information returns; 150.1 — Electronic filing; 162(1) — Penalty for late filing; 220(3) — Extension of time for filing return; 233.1 — Return of transactions with related non-residents; 248(1) — Definition of "filing-due date"; Reg. 229 — Partnership information returns; Reg. 8409 — Registered pension plan information return; *Interpretation Act* 26 — Extension of deadline where it falls on Sunday or holiday. See also Related Provisions and Definitions at end of s. 150.

History [subsec. 150(1)]: The portion of subsec. 150(1) before para. (b) amended by 1999, c. 22, subsec. 63(1), applicable to taxation years that begin after 1998. The portion formerly read:

> (1) Returns — A return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and in the case of an individual, for each taxation year for which tax is payable by the individual or in which the individual has a taxable capital gain or has disposed of a capital property, shall, without notice or demand therefor, be filed with the Minister in prescribed form and containing prescribed information,
>
> (a) in the case of a corporation, by or on behalf of the corporation within 6 months from the end of the year;

That portion of subsec. 150(1) preceding para. (a) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 14, applicable to 1993 *et seq.* That portion formerly read:

> 150. (1) A return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and in the case of an individual, for each taxation year for which tax is payable or would be payable if this Part were read without reference to sections 127.2 and 127.3, in which the individual has a taxable capital gain or has disposed of a capital property, or for which a payment has been received by the individual under section 164.1, shall, without notice or demand therefor, be filed with the Minister in prescribed form and containing prescribed information,

Para. 150(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 124, applicable to deaths occurring after October 1990. Para. 150(1)(b) formerly read:

> (b) deceased persons — in the case of a person who has died without making the return, by the person's legal representatives, within 6 months from the day of death,

Pre-RSC History [subsec. 150(1)]: All that portion of subsec. 150(1) preceding para. (a) amended by 1986, c. 44, s. 2, to substitute "in which the individual has a taxable capital gain or has disposed of a capital property, or for which a payment has been received by the individual under section 164.1," for "or in which the individual has a taxable capital gain or has disposed of a capital property", applicable to 1986 *et seq.*

All that portion of subsec. 150(1) preceding para. (a) substituted by 1986, c. 6, s. 86, applicable to 1985 *et seq.* That portion of subsec. 150(1) formerly read:

> 150. (1) Returns — A return of the income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and for each taxation year for which a tax is payable, or would be payable if this Part were read without reference to sections 127.2 and 127.3, in the case of an individual shall, without notice or demand therefor, be filed with the Minister in prescribed form and containing prescribed information,

Para. 150(1)(d) amended by 1985, c. 45, subsec. 85(1), to substitute "guardian, committee or other" for "guardian, curator, tutor, committee or other".

All that portion of subsec. 150(1) preceding para. (a) substituted by 1984, c. 45, s. 58, to add "(other than a corporation that was a registered charity throughout the year)" and "or would be payable if this Part were read without reference to sections 127.2 and 127.3,", applicable to 1983 *et seq.*

Selected Cases [subsec. 150(1)]: *Hooper et al. v. The Queen*, [1982] C.T.C. 95 (FCTD) (Crown's liability for act of negligence bestowing right to refunds).

Information Circulars [subsec. 150(1)]: 78-5R3: Communal organizations; 94-3: List of forms and publications available for use by the public; 97-2: Customized forms — returns and information slips; 00-1: Voluntary disclosures program.

Forms: T2203: Provincial and territorial taxes — multiple jurisdictions.

(1.1) Exception — Subsection (1) does not apply to a taxation year of a taxpayer if

(a) the taxpayer is a corporation that was a registered charity throughout the year; or

(b) the taxpayer is an individual unless

(i) tax is payable under this Part by the individual for the year,

(ii) where the individual is resident in Canada at any time in the year, the individual has a taxable capital gain or disposes of capital property in the year,

(iii) where the individual is non-resident throughout the year, the individual has a taxable capital gain or disposes of a taxable Canadian property in the year, or

(iv) at the end of the year the individual's HBP balance or LLP balance (as defined in subsection 146.01(1) or 146.02(1)) is a positive amount.

Related Provisions: 149.1(14) — Charity must file information return.

History: Subsec. 150(1.1) added by 1999, c. 22, subsec. 63(2), applicable to taxation years that begin after 1998.

(2) Demands for returns — Every person, whether or not the person is liable to pay tax under this Part for a taxation year and whether or not a return has been filed under subsection (1) or (3), shall, on demand from the Minister, served personally or by registered letter, file, within such reasonable time as may be stipulated in the demand, with the Minister in prescribed form and containing prescribed information a return of the income for the taxation year designated in the demand.

Related Provisions: 162(2) — Repeated penalties; 233 — Demand for information return; 238(1) — Fine or imprisonment for failure to file; 248(7)(a) — Mail deemed received on day mailed. See additional Related Provisions and Definitions at end of s. 150.

Selected Cases [subsec. 150(2)]: *Aulakh v. Canada*, [1995] 2 C.T.C. 526 (Alta Prov Ct) (Crown has choice of proceeding under section 150 or by way of prosecution); *Miller v. Canada*, [1994] 2 C.T.C. 2230 (TCC) (Penalties vacated where evidence of personal service of demand was insufficient); *Skalbania, N.M., Ltd. v. Canada*, [1989] 2 C.T.C. 183 (BC Co Ct) (Request to file tax returns made under wrong provision; taxpayer's appeal against conviction allowed); *The Queen v. Merkle*, [1979] C.T.C. 519 (Alta CA) (Putting tax file in accountant's hands within time limit was valid defence); *Regina v. Harvey*, 74 D.T.C. 6250 (BC Co Ct) (Conviction of taxpayer not receiving demand to file tax returns overturned).

(3) Trustees, etc. — Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return for a taxation year as required by this section shall file a return in prescribed form of that person's income for that year.

Related Provisions: 159 — Payments on behalf of others; 162(3) — Penalties; 163(1) — Repeated failures. See additional Related provisions and Definitions at end of s. 150.

Regulations: 204 (information returns).

(4) Death of partner or proprietor — Where

(a) subsection 34.1(9) or 34.2(8) applies in computing an individual's income for a taxation year from a business, or

(b) an individual who carries on a business in a taxation year dies in the year and after the end of a fiscal period of the business that ends in the year, another fiscal period of the business (in this subsection referred to as the "short period") ends in the year because of the individual's death, and the individual's legal representative elects that this subsection apply,

the individual's income from businesses for short periods, if any, shall not be included in computing the individual's income for the year and the individual's legal representative shall file an additional return of income for the year in respect of the individual as if the return were filed in respect of another person and shall pay the tax payable under this Part by that other person for the year computed as if

(c) the other person's only income for the year were the amount determined by the formula

$$A + B - C$$

where

A is the total of all amounts each of which is the individual's income from a business for a short fiscal period,

B is the total of all amounts each of which is an amount deducted under subsection 34.2(8) in computing the individual's income for the taxation year in which the individual dies, and

C is the total of all amounts each of which is an amount included under subsection 34.1(9) in computing the individual's income for the taxation year in which the individual dies, and

(d) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual is entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the individual's

taxable income or tax payable under this Part, as the case may be, for the year.

Related Provisions: 34.1(9)(d)(ii) — Additional income inclusion for off-calendar business year; 34.2(8)(d)(ii) — Deduction for 1995 stub period reserve; 70 — Rules for year of death; 114.2 — Deductions in separate returns; 118.93 — Credits in separate returns; 120.2(4)(a) — No minimum tax carryover; 127.1(1)(a) — No refundable investment tax credit; 127.55 — Minimum tax not applicable to year of death; 150(1)(b) — Deadline for deceased's return; 162(5) — Penalties — failure to provide information return; 163(1) — Repeated failures; 257 — Formula cannot calculate to less than zero. See additional Related Provisions and Definitions at end of s. 150.

History: Subsec. 150(4) amended by 1998, c. 19, subsec. 180(2), applicable to 1996 *et seq.* Subsec. 150(4) formerly read:

(4) Where a taxpayer who is a partner or an individual who is a proprietor of a business died after the end of a fiscal period but before the end of the calendar year in which the fiscal period ended, the taxpayer's income as such partner or proprietor for the period commencing immediately after the end of the fiscal period and ending at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died unless the taxpayer's legal representative has elected otherwise, in which case the legal representative shall file a separate return of income for the period under this Part and pay the tax for the period under this Part as if

(a) the taxpayer were another person;

(b) the period were a taxation year;

(c) that other person's only income for the period were that person's income as such partner or proprietor for that period; and

(d) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the taxpayer was entitled under sections 110, 118 to 118.7 and 118.9 for the period in computing the taxpayer's taxable income or tax payable under this Part, as the case may be, for the period.

Pre-RSC History: Para. 150(4)(d) substituted by 1988, c. 55, s. 135, applicable to 1988 *et seq.* Para. 150(4)(d) formerly read:

(d) subject to section 114.2, that other person were entitled to the deductions to which the taxpayer was entitled under sections 109 to 110.2 for the period in computing his taxable income for the period.

Subsec. 150(4) substituted by 1985, c. 45, subsec. 85(2), applicable to 1985 *et seq.* Subsec. 150(4) formerly read:

(4) Where a partner or an individual who is a proprietor of a business died after the close of a fiscal period but before the end of the calendar year in which the fiscal period closed, a separate return of the taxpayer's income as a member of the partnership or as a proprietor of the business, after the close of the fiscal period to the time of death, may be filed and, if such a separate return is filed, the tax under this Part shall be paid on the taxpayer's income as such member or proprietor after the close of the fiscal period to the time of death as if that income were the income of another person.

Interpretation Bulletins [subsec. 150(4)]: IT-278R2: Death of a partner or of a retired partner; IT-326R3: Returns of deceased persons as "another person".

Forms: T4011: Preparing returns for deceased persons [guide].

Related Provisions [s. 150]: 11 — Proprietor of business; 149.1(14) — Registered charity information returns; 151 — Estimate of tax; 152(6) — Reassessment; 162 — Penalties; 163 — Failure to file return; 180.1(3) — Individual surtax — return; 220(3) — Extension for filing return; 238 — Offences.

Definitions [s. 150]: "amount", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "capital property" — 54, 248(1); "carries on business in Canada" — 253; "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "estate" — 104(1), 248(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "HBP balance" — 146.01(1); "individual" — 248(1); "LLP balance" — 146.02(1); "legal representative", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "person", "prescribed", "property", "registered charity" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "tax treaty", "taxable Canadian property" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 150]: IT-109R2: Unpaid amounts.

150.1 (1) Definition of "electronic filing" — For the purposes of this section, "electronic filing" means using electronic media in a manner specified in writing by the Minister.

(2) Filing of return by electronic transmission — A person who meets the criteria specified in writing by the Minister may file a return of income for a taxation year by way of electronic filing.

Proposed Amendment — Internet Filing

Revenue Canada news release, June 15, 1999: *Internet filing pilot project for tax returns in 2000*

The Honourable Herb Dhaliwal, Minister of National Revenue and M.P. (Vancouver South-Burnaby), today announced that next year a pilot project will allow approximately 3.5 million Canadians to file their 1999 tax returns via the Internet.

"I am pleased to tell Canadians that next year a national pilot project will be implemented to allow selected individuals to file their next tax return using the Internet. I know Canadians have been asking for this option in recent years. Revenue Canada is now in a position to offer Internet filing because security concerns have been addressed," Mr. Dhaliwal said.

Next year, those eligible for participation will receive an invitation and a unique identifier that will allow them to use this new filing option. The pilot Internet filing project will be open to those who used commercial software to prepare their own 1998 tax return and then filed a computer-generated paper return. The use of commercially available tax preparation software approved by Revenue Canada will be mandatory.

"We want to make filing as convenient as possible for Canadians," said the Minister. "In the last few years we have implemented a variety of methods giving Canadians the most modern options for filing their tax returns."

Internet filing is the third and newest electronic filing option offered to individuals by Revenue Canada. The first, EFILE is an automated system that allows individuals to file their tax return using the services of a third party, called an electronic filer. The electronic filer prepares tax returns using special tax software, and then transmits the income tax information, through secure communication lines, to Revenue Canada.

The second option introduced was TELEFILE, an automated system that allows Revenue Canada to accept income tax returns over the telephone.

"In the last year, we have seen another significant increase of the use of these electronic filing options by Canadians," Mr. Dhaliwal said.

The Minister noted the positive response that Canadians have shown to electronic options that improve efficiency and respond to client demands.

- The number of EFILE tax returns received increased by more than 284,000 over 1998 to 5.3 million — an increase of more than 5.6%.
- The number of TELEFILE tax returns received increased by more than 169,000 over 1998 to 548,521 — an increase of more than 44.7%.
- On average, it took the Department slightly less than 2 weeks to process an electronic return.
- Revenue Canada continues to process returns filed on paper within a 4 to 6 week period.

For media information, contact: Colette Gentes-Hawn, Media Relations Officer, Communications Branch, (613) 957-3522; Heather Bala, Office of the Minister, (613) 995-7018.

CCRA news release, March 2, 2000: *Introducing NETFILE!*

The Canada Customs and Revenue Agency is launching a new pilot project for the 1999 tax filing period: NETFILE, a system that will enable more than 3.8 million Canadians to send in their individual tax returns over the Internet. If you used tax preparation software last year, we sent you an invitation, including an access code for the website at http://www.netfile.gc.ca.

However, you will need to equip yourself with certified software... and some restrictions apply.

Just think! No hard copy return to print and mail!

A faster refund - in about two weeks!

Safety and confidentiality assured!

Available 7 days a week!

And, we still offer the following programs and services:

TELEFILE: A telephone-based system for filing individual tax returns.

T.I.P.S.: Tax Information Phone Service.

EFILE: Electronic filing of tax returns.

DIRECT DEPOSIT: Instead of getting a cheque, have your refund deposited directly in your bank account.

Whether for NETFILE or any of the other electronic services, consult your tax return kit or visit our website at http://www.ccra-adrc.gc.ca and go to the Electronic Services page.

FOR FURTHER INFORMATION PLEASE CONTACT: Canada Customs and Revenue Agency, Lynda-Joan Fortin, Communications Manager, (418) 649-3127; or Louise Moissan, EFILE Co-ordinator, (418) 649-4022.

Related Provisions: 244(21) — Proof of electronic filing; 244(22) — Electronic filing of information return.

Forms: T183: Information return for electronic filing of an individual's income tax and benefit return; T200: Electronic filing application for returns of individuals; T200 corp: Corporate EFILE application; T4077(E): EFILE: Electronic filing for individuals (guide); RC4018: Electronic Filers Manual (guide).

(3) Deemed date of filing — For the purposes of section 150, where a return of income of a taxpayer for a taxation year is filed by way of electronic filing, it shall be deemed to be a return of income filed with the Minister in prescribed form on the day the Minister acknowledges acceptance of it.

(4) Declaration — Where a return of income of a taxpayer for a taxation year is filed by way of electronic filing by a particular person (in this subsection referred to as the "filer") other than the person who is required to file the return, the person who is required to file the return shall make an information return in prescribed form containing prescribed information, sign it, retain a copy of it and provide the filer with the information return, and that return and the copy shall be deemed to be a record referred to in section 230 in respect of the filer and the other person.

History: Subsec. 150.1(4) substituted by 1994, c. 21, s. 75, applicable after 1991. That subsec. formerly read:

(4) Where a return of income of a taxpayer for a taxation year is filed by way of electronic filing by a particular person (in this subsection referred to as the "filer") other than the person who is required to file the return, the filer shall, if required by regulation, obtain from the other person a signed statement in prescribed form, retain one copy of the statement and provide the other person with a copy, and the statement shall be deemed to be a record referred to in section 230 in respect of the filer and the other person.

Forms: T183: Information return for electronic filing of an individual's income tax and benefit return; T183 corp: Information return for corporations filing electronically; RC4018: Electronic Filers Manual (guide).

(5) Application to other Parts — This section also applies to Parts I.1 to XIII, with such modifications as the circumstances require.

History [s 150.1]: S. 150.1 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 89, applicable to 1992 *et seq.*; and subsec. 150.1(5), in its application to Parts X, X.1, X.2, X.4, XI, XI.1 and XI.2, applies after 1991 as if subsecs. (1) to (4) applied after 1991.

Selected Cases [s. 150.1]: *Crisanti v. Canada*, [1996] 2 C.T.C. 2603 (TCC) (Late filing penalty applied in respect of electronically filed return).

Definitions [s. 150.1]: "electronic filing" — 150.1(1); "filer" — 150.1(4); "Minister", "person", "prescribed", "regulation" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Forms: T4077(E): EFILE: Electronic filing for individuals (guide).

Estimate of Tax

151. Estimate of tax — Every person required by section 150 to file a return of income shall in the return estimate the amount of tax payable.

Related Provisions: 104(23) — Testamentary trusts; 150 — Returns; 155 — Farmers and fishermen; 156.1(4) — Payment of balance owing — individuals; 157(1), (2) — Corporations; 162(3) — Penalty — failure to complete return; 180.1 — Individual surtax — Estimate of tax; 183(3) — Provision applicable to Part II; 187(3) — Provision applicable to Part IV; 193(8) — Provision applicable to Part VII; 195(8) — Provision applicable to Part VIII; 219(3) — Provision applicable to Part XIV.

Selected Cases [s. 151]: *The Queen v. Reid*, [1988] 1 C.T.C. 313 (Alta CA) (Requirement to estimate tax in tax return not Charter violation).

Definitions [s. 151]: "amount", "person" — 248(1).

Assessment

152. (1) Assessment — The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine

(a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

Related Provisions: 152(1.4) — Determination of income of partnership; 152(2) — Notice of assessment; 152(4), (5) — Reassessment; 158 — Remainder payable forthwith upon assessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 166 — Irregularity or error in assessment; 244(15) — Date when assessment made.

History: Para. 152(1)(b) amended by 2000, c. 19, subsec. 44(1), applicable to 1999 *et seq.* The para. formerly read:

(b) the amount of tax, if any, deemed by subsection 120(2), 122.5(3), 122.51(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

Para. 152(1)(b) amended by 1998, c. 19, subsec. 42(1), applicable to 1997 *et seq.*, except that for the 1997 taxation year the reference to "subsection 120(2)," shall be read as a reference to "subsection 120(2), 120.1(4),". Para. 152(1)(b) formerly read:

(b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 125.4(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) amended by 1996, c. 21, s. 39, applicable to 1995 *et seq.* Para. (b) formerly read:

(b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) amended by 1995, c. 3, subsec. 46(1), applicable to taxation years that end after February 22, 1994. Para. (b) formerly read:

(b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) substituted by 1994, c. 21, subsec. 76(1), applicable to 1993 *et seq.* That para. formerly read:

(b) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on

account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) to be an overpayment.

Para. 152(1)(b) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(1), applicable to 1993 *et seq.* Para. (1)(b) formerly read:

(b) the amount of tax, if any, deemed under subsection 119(2), 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 127.2(2), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year.

Pre-RSC History: See under subsec. 152(3.1).

Selected Cases [subsec. 152(1)]: *Schatten v. MNR*, [1996] 2 C.T.C. 13D (FCTD) (Minister must process return even if of the view that taxpayer non-resident); *Ginsberg v. Canada*, [1994] 2 C.T.C. 2063 (TCC) (Once significant delay established, onus on Crown to establish delay not unreasonable. Delay of one and a half years *prima facie* unreasonable); *Rodmon Constr. Inc. v. The Queen*, [1975] C.T.C. 73 (FCTD) (Assessment vacated where Minister failed to act with "all due dispatch").

Forms: T452: Notice of assessment.

(1.1) Determination of losses — Where the Minister ascertains the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year and the taxpayer has not reported that amount as such a loss in the taxpayer's return of income for that year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of the loss and shall send a notice of determination to the person by whom the return was filed.

Related Provisions: 111 — Losses deductible; 152(1.4) — Determination of loss of partnership; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 244(14) — Presumption re date of mailing of notice of determination; 244(15) — Determination deemed made on date mailed; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: See under subsec. 152(3.1).

Selected Cases [subsec. 152(1.1)]: *Burnet v. MNR*, [1999] 3 C.T.C. 60 (FCA) (Minister had duty to issue notice of determination of loss).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-512: Determination and redetermination of losses.

Information Circulars: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(1.11) Determination pursuant to subsec. 245(2) — Where at any time the Minister ascertains the tax consequences to a taxpayer by reason of subsection 245(2) with respect to a transaction, the Minister

(a) shall, in the case of a determination pursuant to subsection 245(8), or

(b) may, in any other case,

determine any amount that is relevant for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act and, where such a determination is made, the Minister shall send to the taxpayer, with all due dispatch, a notice of determination stating the amount so determined.

Related Provisions: 152(1.111) — Definitions in subsec. 245(1) apply; 152(1.12) — Limitation; 152(1.3) — Determination binding; 244(14) — Presumption re date of mailing of notice of determination; 244(15) — Determination deemed made on date mailed; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: See under subsec. 152(3.1).

Forms: T1008: Notice of determination/redetermination.

(1.111) Application of subsec. 245(1) — The definitions in subsection 245(1) apply to subsection (1.11).

Origin of subsec. 152(1.111): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 245(1)).

(1.12) When determination not to be made — A determination of an amount shall not be made with respect to a taxpayer under subsection (1.11) at a time where that amount is relevant only for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act for a taxation year ending before that time.

Pre-RSC History: See under subsec. 152(3.1).

(1.2) Provisions applicable — Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with such modifications as the circumstances require, to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 or 126.1 to be an overpayment on account of a taxpayer's liability under this Part, except that

(a) subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11);

(b) an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer; and

(c) subsection 164(4.1) does not apply to a determination made under subsection (1.4).

Related Provisions: 96(2.1) — Limited partnership losses; 111 — Losses deductible; 160.2(3) — Minister may assess recipient under RRSP or RRIF.

History: Subsec. 152(1.2) amended by 1998, c. 19, subsec. 181(1), applicable in respect of determinations made after June 18, 1998. Subsec. 152(1.2) formerly read:

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with such modifications as the circumstances require, to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 or 126.1 to be an overpayment on account of a taxpayer's liability under this Part, except that subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer.

Subsec. 152(1.2) amended by 1994, c. 8, subsec. 20(1), applicable after 1992. Subsec. (1.2) formerly read:

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, are applicable, with such modifications as the circumstances require, to a determination or a redetermination and to determining or redetermining amounts under this Division, except that subsections (1) and (2) are not applicable to determinations made under subsections (1.1) and (1.11) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer.

Pre-RSC History: See under subsec. 152(3.1).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-512: Determination and redetermination of losses.

(1.3) Determination binding — For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year or makes a determination under subsection (1.11) with respect to a taxpayer, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purpose of calculating the income, taxable

income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer, as the case may be, for any taxation year.

Related Provisions: 96(2.1) — Limited partnership loss; 111 — Losses deductible; 160.2(3) — Minister may assess recipient under RRSP or RRIF.

Pre-RSC History: See under subsec.152(3.1).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-512: Determination and redetermination of losses.

(1.4) Determination in respect of a partnership — The Minister may, within 3 years after the day that is the later of

(a) the day on or before which a member of a partnership is, or but for subsection 220(2.1) would be, required under section 229 of the *Income Tax Regulations* to make an information return for a fiscal period of the partnership, and

(b) the day the return is filed,

determine any income or loss of the partnership for the fiscal period and any deduction or other amount, or any other matter, in respect of the partnership for the fiscal period that is relevant in determining the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, any member of the partnership for any taxation year under this Part.

Related Provisions: 152(1.2)(c) — Subsec. 164(4.1) does not apply to determination under 152(1.4); 152(1.5), (1.6) — Notice of determination; 152(1.7) — Determination binding; 152(1.8) — Assessment where partnership found not to exist; 165(1.15) — Objection to determination; 244(15) — Determination deemed made on date mailed.

History: Subsec. 152(1.4) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.5) Notice of determination — Where a determination is made under subsection (1.4) in respect of a partnership for a fiscal period, the Minister shall send a notice of the determination to the partnership and to each person who was a member of the partnership during the fiscal period.

Related Provisions: 152(1.6) — Determination valid even if notice not received by partners; 244(14) — Presumption re date of mailing of determination; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 152(1.5) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.6) Absence of notification — No determination made under subsection (1.4) in respect of a partnership for a fiscal period is invalid solely because one or more persons who were members of the partnership during the period did not receive a notice of the determination.

History: Subsec. 152(1.6) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.7) Binding effect of determination — Where the Minister makes a determination under subsection (1.4) or a redetermination in respect of a partnership,

(a) subject to the rights of objection and appeal of the member of the partnership referred to in subsection 165(1.15) in respect of the determination or redetermination, the determination or redetermination is binding on the Minister and each member of the partnership for the purposes of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, the members for any taxation year under this Part; and

(b) notwithstanding subsections (4), (4.01), (4.1) and (5), the Minister may, before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination, assess the tax, interest, penalties or other amounts payable and determine an amount deemed to have been paid or to have been an overpayment under this Part in respect of any member of the partnership and any other taxpayer for any taxation year as may be necessary to give effect to the determination or redetermination or a decision of the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada.

History: Subsec. 152(1.7) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(1.8) Time to assess — Where, as a result of representations made to the Minister that a person was a member of a partnership in respect of a fiscal period, a determination is made under subsection (1.4) for the period and the Minister, the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada concludes at a subsequent time that the partnership did not exist for the period or that, throughout the period, the person was not a member of the partnership, the Minister may, notwithstanding subsections (4), (4.1) and (5), within one year after that subsequent time, assess the tax, interest, penalties or other amounts payable, or determine an amount deemed to have been paid or to have been an overpayment under this Part, by any taxpayer for any taxation year, but only to the extent that the assessment or determination can reasonably be regarded

(a) as relating to any matter that was relevant in the making of the determination made under subsection (1.4);

(b) as resulting from the conclusion that the partnership did not exist for the period; or

(c) as resulting from the conclusion that the person was, throughout the period, not a member of the partnership.

Related Provisions [subsec. 152(1.8)]: 165(1.1)(a), (d) — Limitation of right to object; 169(2)(a), (d) — Limitation of right to appeal.

History: Subsec. 152(1.8) added by 1998, c. 19, subsec. 181(2), applicable in respect of determinations made after June 18, 1998.

(2) Notice of assessment — After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

Related Provisions: 158 — Remainder payable forthwith after assessment mailed; 244(14), (15) — Mailing date of assessment.

Pre-RSC History: See under subsec. 152(3.1).

Forms: NR14: Formal demand for non-resident tax information return; NR30: Non-resident tax assessment remittance form; NR67, NR67A, T67A, T67AC, T67AN, T452, T453, T456, T457, T492: Notices of assessment.

(3) Liability not dependent on assessment — Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Related Provisions: 152(4), (6), (8) — Assessment and reassessment; 160.2(3) — Minister may assess recipient; 165 — Objections to assessments; 166 — Assessment not to be vacated by reason of improper procedures; 169 — Appeal.

Pre-RSC History: See under subsec.152(3.1).

Selected Cases [subsec. 152(3)]: *Guaranty Properties Ltd. v. Canada*, [1990] 2 C.T.C. 94 (FCA); leave to appeal to SCC refused (1991),

49 B.L.R. 320 (note) (Amalgamating company not relieved of taxes prior to amalgamation; notice of reassessment valid).

(3.1) Definition of "normal reassessment period" — For the purposes of subsections (4), (4.01), (4.2), (4.3), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends 4 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends 3 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year.

Related Provisions: 136(1) — Cooperative corporation may be private corporation for purposes of s. 152; 137(7) — Credit union may be private corporation; 152(4), (6), (8) — Assessment and reassessment; 160.2(3) — Minister may assess recipient; 165 — Objections to assessments; 166 — Irregularities; 169, 172 — Appeal; 244(14) — Notice presumed mailed on date of notice; 244(15) — Date when assessment made.

History: The opening words of subsec. 152(3.1) amended by 1999, c. 22, subsec. 63.1(1), applicable to appeals disposed of after June 17, 1999. The opening words formerly read:

(3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is

Subsec. 152(3.1) amended by 1998, c. 19, subsec. 181(3), applicable after April 27, 1989. The subsec. formerly read:

(3.1) For the purposes of subsections (4), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends 4 years after the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year or the day of mailing of a notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends 3 years after the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year or the day of mailing of a notification that no tax is payable by the taxpayer for the year.

That portion of subsec. 152(3.1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 90(1), to add reference to subsection (4.3), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991.

That portion of subsec. 152(3.1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 125(1), to add reference to subsec. (4.2), applicable to assessments and redeterminations made in respect of 1985 *et seq.*

Selected Cases [subsec. 152(3.1)]: *Continental Bank of Canada v. R.*, [1998] 4 C.T.C. 77 (SCC) (Minister not permitted to completely change basis of assessment long after reassessment period); *APL Oil & Gas Ltd. v. Canada*, [1996] 3 C.T.C. 2001 (TCC) (Minister could not repudiate valid assessment because of a correctable error).

Pre-RSC History [subsecs. 152(1)–(3.1)]: Para. 152(1)(b) substituted by 1990, c. 45, s. 49, applicable to 1989 *et seq.* except that in its application to the 1989 and 1990 taxation years the para. shall be read as follows:

(b) the amount of tax, if any, deemed under subsection 119(2), 120(2), 120.1(4), 122.2(1), 122.4(3), 122.5(3), 127.1(1), 127.2(2), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year.

Para. 152(1)(b) formerly read:

(b) the amount of tax, if any, deemed by subsection 119(2), 120(2), 120.1(4), 122.2(1), 127.1(1), 127.2(2), 144(9), 210.2(3) or (4) to have been paid on account of his tax under this Part for the year.

Subsec. 152(3.1) added by 1990, c. 39, subsec. 38(1), applicable (by subsec. 38(5), as amended by 1991, c. 49, s. 256) after April 27, 1989 (and deemed to have come into force on that day), other than with respect to a taxation year of a taxpayer for which a notice of an original assessment under Part I in respect of the taxpayer for the year, or a notification that no tax is payable by the taxpayer for the year, was mailed on or before April 27, 1986.

S.C. 1990, c. 39, subsec. 38(5.1), added by 1991, c. 49, s. 256, reads as follows:

(5.1) For greater certainty, in the period after April 27, 1989 and before October 23, 1990, the Minister of National Revenue may assess or reassess tax, interest and penalties and a taxpayer may file a waiver under the said Act as if this Act had been assented to on April 27, 1989, and any assessment or reassessment so made or waiver so filed before October 23, 1990 shall be deemed to have the same effect as it would have had if this Act had been assented to on April 27, 1989.)

Para. 152(1)(b) amended to substitute "144(9), 210.2(3) or (4)" for "144(9) or 164(6)" by 1988, c. 55, subsec. 136(1), applicable to 1988 *et seq.*

Subsecs. 152(1.11), (1.12) added and subsecs. (1.2), (1.3) substituted by 1988, c. 55, subsecs. 136(2), (3). Subsecs. 152(1.2) and (1.3) formerly read:

(1.2) **Provisions applicable** — The provisions of paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing and reassessing tax, are applicable, with such modifications as the circumstances require, to a determination or redetermination and to determining and redetermining amounts under this Division, except that subsections (1) and (2) are not applicable to determinations made under subsection (1.1) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer.

(1.3) **Determination binding** — For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year.

Subsecs. 152(1.1) to (1.3) amended by 1986, c. 55, subsec. 59(1), applicable after February 25, 1986 to substitute, in each, "farm loss or limited partnership loss" for "or farm loss".

Para. 152(1)(b) was amended by 1985, c. 45, subsec. 86(1), to add reference to subsections 120.1(4) and 164(6) and to substitute "on account of his tax" for "on account of the tax", applicable to 1983 *et seq.*

Subsec. 152(1.1) amended by 1985, c. 45, subsec. 86(2), to substitute "and the taxpayer has not reported that amount as such a loss in his return" for "and that amount is different from the amount reported by the taxpayer in his return".

Para. 152(1)(b), subsecs. 152(1.1) to (1.3) substituted by 1984, c. 1, subsecs. 84(1), (2), applicable to 1983 *et seq.* Para. 152(1)(b), subsecs. 152(1.1) to (1.3) formerly read:

(b) the amount of tax, if any, deemed by subsection 120(2) or 122.2(1) to have been paid on account of the tax under this Part for the year.

. . . . .

(1.1) **Determination of losses** — Where the Minister ascertains the amount of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year and that amount is different from the amount reported by the taxpayer in his return of income for that year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of the taxpayer's non-capital loss, net capital loss or restricted farm loss, as the case may be, and shall send a notice of determination to the person by whom the return was filed.

(1.2) **Provisions applicable** — The provisions of paragraphs 56(1)(l) and 60(o) and this Division and Division J, as they relate to

an assessment or reassessment and to assessing tax and reassessing tax, are applicable, *mutatis mutandis*, to a determination or redetermination and to determining and redetermining amounts under this Division, except that subsections (1) and (2) are not applicable to determinations made under subsection (1.1) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year may be made by the Minister only at the request of the taxpayer.

(1.3) **Determination binding** — For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year, as the case may be, subject to the taxpayer's rights of objection and appeal in respect of the determination and subject to any redetermination by the Minister, the determination is binding on both the Minister and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year.

Para. 152(1)(b) substituted by 1980-81-82-83, c. 48, subsec. 85(1), applicable to 1980 *et seq.* Para. (b) formerly read as follows:

(b) the amount of tax, if any, deemed to be paid by him for the year by virtue of subsection 122.2(1).

Subsec. 152(1) substituted by 1978-79, c. 5, s. 5, applicable to 1978 *et seq.* Subsec. (1) formerly read:

(1) The Minister shall, with all due dispatch, examine each return of income, assess the tax for the taxation year, the interest and penalties, if any, payable and determine the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year.

Subsecs. 152(1.1), (1.2) substituted, (1.3) added by 1977-78, c. 1, s. 76. Subsecs. 152(1.1), (1.2) formerly read:

(1.1) **Determination of loss** — The Minister may determine the amount of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year where, in his opinion, the amount thereof is different from the amount reported by the taxpayer in his return of income for the year.

(1.2) **Provisions applicable** — The provisions of paragraphs 56(1)(l) and 60(o) and this Division and Division J, as they relate to an assessment or reassessment and to assessing tax and reassessing tax, are applicable, *mutatis mutandis*, to a determination or redetermination and to determining and redetermining amounts under this Division.

Subsecs. 152(1) substituted, (1.1), (1.2) added by 1976-77, c. 4, s. 61, applicable to assessments and reassessments made, to assessing tax and reassessing tax, to determinations and redeterminations made and to determining and redetermining amounts after 1976-77, c. 4, is assented to. Subsec. 152(1) formerly read:

152. (1) The Minister shall, with all due despatch, examine each return of income and assess the tax for the taxation year and the interest and penalties, if any, payable

(3.2) Determination of deemed overpayment [Child Tax Benefit] — A taxpayer may, during any month, request in writing that the Minister determine the amount deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for a taxation year that arose during the month or any of the 11 preceding months.

Related Provisions: 152(3.3) — Notice of determination.

History: Subsec. 152(3.2) added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(2), applicable to months that are after 1992.

(3.3) Notice of determination [Child Tax Benefit] — On receipt of the request referred to in subsection (3.2), the Minister shall, with all due dispatch, determine the amounts deemed by subsection 122.61(1) to be overpayments on account of the taxpayer's liability under this Part that arose during the months in respect of which the request was made or determine that there is no such amount, and shall send a notice of the determination to the taxpayer.

History: Subsec. 152(3.3) added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(2), applicable to months that are after 1992.

(3.4) Determination of UI premium tax credit — A taxpayer may request in writing that the Minister determine the amount deemed by subsection 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under this Part for a taxation year.

Related Provisions: 152(3.5) — Notice of determination.

History: Subsecs. 152(3.4) added by 1994, c. 8, subsec. 20(2), applicable after 1992.

(3.5) Notice of determination [UI premium tax credit] — On receipt of the request referred to in subsection (3.4), the Minister shall, with all due dispatch, determine the amount deemed by subsection 126.1(6) or (7), as the case may be, to be an overpayment on account of the taxpayer's liability under this Part for a taxation year, or determine that there is no such amount, and shall send a notice of the determination to the taxpayer.

History: Subsecs. 152(3.5) added by 1994, c. 8, subsec. 20(2), applicable after 1992.

(4) Assessment and reassessment [limitation period] — The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

(i) is required pursuant to subsection (6) or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection (6) of tax payable by another taxpayer,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length,

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,

(v) is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66, or

(vi) is made in order to give effect to the application of subsection 118.1(15) or (16).

Related Provisions: 12(2.2) — Late assessment where amount elected re 12(1)(x) inclusion; 13(6) — Misclassified property; 21(5) — Late as-

sessment to permit capitalization of interest; 67.5(2) — Late assessment re illegal payments; 69(12) — Late assessment on disposition of property below market value; 80.04(9) — Late assessment re transfer of forgiven amount of debt to related person; 104(5.31) — Revocation beyond the deadline of trust's election to defer 21-year deemed disposition; 118.1(11) — Late assessment on determination of value of cultural property; 127(17) — Assessment re ITC SR&ED pool beyond the deadline; 128.1(6)(d) — Late assessment to eliminate departure tax paid by taxpayer who returns to Canada; 143.2(15) — Limitation period inapplicable to reassessment of tax shelter investment; 146(8.01) — Home Buyer's Plan & LLP — late assessment of tax on withdrawal; 152(1.7) — Limitation period re determination of partnership income or loss; 152(3.1) — Normal reassessment period; 152(4.01) — Limitation on extended assessments; 152(4.1) — Where waiver revoked; 152(4.2) — Reassessment with taxpayer's consent; 152(4.3) — Consequential assessment; 152(5) — Limitation on assessments; 158 — Payment of balance on assessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 161.1(7) — Late assessment to allow interest offset allocation; 164(1)(b) — Refunds; 165(1.1) — Limitation of right to object; 165(5) — Effect of filing of notice of objection; 169(2) — Limitation of right to appeal; 173(2) — Time during consideration not to count; 174(5) — Time during consideration of question not counted; 184(4) — Late assessment after election re excess capital dividend; 231.6 — Foreign-based information; 237.1(6.2) — Late assessment denying tax shelter deduction while penalty unpaid; 244(15) — Date when assessment made.

History: Subsec. 152(4) amended by 1998, c. 19, subsec. 181(4), applicable after April 27, 1989, except that in applying the subsec.

(a) before August 1997, it shall be read without reference to subpara. (b)(vi);

and

(b) to a taxation year before the 1996 taxation year, it shall be read without reference to subpara. (b)(v).

Subsec. 152(4) formerly read:

(4) Subject to subsection (5), the Minister may at any time assess tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, and may

(a) at any time, if the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year,

(b) before the day that is 3 years after the expiration of the normal reassessment period for the taxpayer in respect of the year, if

(i) an assessment or reassessment of the tax of the taxpayer was required pursuant to subsection (6) or would have been required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) there is reason, as a consequence of the assessment or reassessment of another taxpayer's tax pursuant to this paragraph or subsection (6), to assess or reassess the taxpayer's tax for any relevant taxation year,

(iii) there is reason, as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, to assess or reassess the taxpayer's tax for any relevant taxation year, or

(iv) there is reason, as a consequence of an additional payment or reimbursement of any income or profits tax to or by the government of a country other than Canada, to assess or reassess the taxpayer's tax for any relevant taxation year, and

(c) within the normal reassessment period for the taxpayer in respect of the year, in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require, except that a reassessment, an additional assessment or an assessment may be made under paragraph (b) after the normal reassessment period for the taxpayer in respect of the year only to the extent that it may reasonably be regarded as relating to

(d) the assessment or reassessment referred to in subparagraph (b)(i) or (ii),

(e) the transaction referred to in subparagraph (b)(iii), or

(f) the additional payment or reimbursement referred to in subparagraph (b)(iv).

Pre-RSC History: Subsec. 152(4) substituted by 1990, c. 39, subsec. 38(2), applicable (by subsec. 38(5), as amended by 1991, c. 49, s. 256) after April 27, 1989 (and deemed to have come into force on that day), other than with respect to a taxation year of a taxpayer for which a notice of an original assessment under Part I in respect of the taxpayer for the year, or a notification that no tax is payable by the taxpayer for the year, was mailed on or before April 27, 1986.

1990, c. 39, subsec. 38(5.1), added by 1991, c. 49, s. 256, reads as follows:

(5.1) For greater certainty, in the period after April 27, 1989 and before October 23, 1990, the Minister of National Revenue may assess or reassess tax, interest and penalties and a taxpayer may file a waiver under the said Act as if this Act had been assented to on April 27, 1989, and any assessment or reassessment so made or waiver so filed before October 23, 1990 shall be deemed to have the same effect as it would have had if this Act had been assented to on April 27, 1989.)

Subsec. (4) formerly read:

(4) [Assessment of tax] — The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the taxation year, and may

(a) at any time, if the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within 3 years from the day of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year,

(b) within 6 years from the day referred to in subparagraph (a)(ii), if

(i) an assessment or reassessment of the tax of the taxpayer was required pursuant to subsection (6) or would have been required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) there is reason, as a consequence of the assessment or reassessment of another taxpayer's tax pursuant to this paragraph or subsection (6), to assess or reassess the taxpayer's tax for any relevant taxation year,

(iii) there is reason, as a consequence of a transaction involving the taxpayer and a non-resident person with whom he was not dealing at arm's length, to assess or reassess the taxpayer's tax for any relevant taxation year, or

(iv) there is reason, as a consequence of an additional payment or reimbursement of any income or profits tax to or by the government of a country other than Canada, to assess or reassess the taxpayer's tax for any relevant taxation year, and

(c) within 3 years after the day referred to in subparagraph (a)(ii), in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require, except that a reassessment, an additional assessment or assessment may be made under paragraph (b) after 3 years from the day referred to in subparagraph (a)(ii) only to the extent that it may reasonably be regarded as relating to

(d) the assessment or reassessment referred to in subparagraph (b)(i) or (ii);

(e) the transaction referred to in subparagraph (b)(iii), or

(f) the additional payment or reimbursement referred to in subparagraph (b)(iv).

That portion of subsec. 152(4) following subpara. (b)(ii) substituted by 1988, c. 55, subsec. 136(4), applicable to assessments relating to transac-

tions entered into, payments made and reimbursements received after 1987. That portion formerly read:

> (c) within 3 years from the day referred to in subparagraph (a)(ii), in any other case,
>
> reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require, except that a reassessment, an additional assessment or assessment may be made under paragraph (b) after 3 years from the day referred to in subparagraph (a)(ii) only to the extent that it may reasonably be regarded as relating to the assessment or reassessment referred to in that paragraph.

All that portion of subsec. 152(4) following subpara. (a)(i) substituted by 1984, c. 45, subsec. 59(1), to substitute references to "3 years" for "4 years" and to substitute "6 years" for "7 years", applicable to 1983 *et seq.*

Para. 152(4)(b) substituted, para. 152(4)(c) added by 1984, c. 1, subsec. 84(3), applicable after April 19, 1983. Para. (b) formerly read:

> (b) within 4 years from the day referred to in subparagraph (a)(ii), in any other case,
>
> reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require.

Selected Cases [subsec. 152(4)]: *Continental Steel Ltd. v. R.*, [2000] 1 C.T.C. 2732 (TCC) (Statutory limitation not applicable where error ought to have been discovered); *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *Continental Bank of Canada v. R.*, [1998] 4 C.T.C. 77 (SCC) (Minister not permitted to completely change basis of assessment long after reassessment period); *APL Oil & Gas Ltd. v. Canada*, [1996] 3 C.T.C. 2001 (TCC) (Minister could not repudiate valid assessment because of a correctable error); *Nesbitt v. Canada*, 96 D.T.C. 6588 (FCA) (Mathematical error can constitute misrepresentation); *Duthie Estate v. Canada*, [1995] 2 C.T.C. 157 (FCTD) (Minister has power to issue contradictory assessments); *Paramount Productions Inc. v. Canada*, [1993] 2 C.T.C. 47 (FCTD) (Limitation period ran even where assessment erroneous); *Dauphinais (P.) v. MNR*, [1993] 1 C.T.C. 2056 (TCC) (Day on which assessment made excluded in computing delay within which Minister may reassess); *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Minister not bound by position taken in earlier assessment); *Solberg (S.J.) v. Canada*, [1992] 2 C.T.C. 208 (FCTD) (Mistaken reference in waiver was technical defect only and did not preclude reassessment under Part I); *Lornport Investments Ltd. v. Canada*, [1992] 1 C.T.C. 351 (FCA) (Second notice of reassessment, later vacated, does not nullify first notice of reassessment); *Dick v. MNR*, [1991] 2 C.T.C. 2034 (TCC); appealed to FCTD (Aug. 30, 1991), File T-2251-91 (Since Minister failed to show fraud or misrepresentation reassessments for two taxation years statute-barred); *Canadian Marconi Co. v. Canada*, [1991] 2 C.T.C. 352 (FCA); leave to appeal to SCC refused (1992), 90 D.L.R. (4th) viii (note) (Minister has no power to reassess once statutory period has expired); *Cal Investments Ltd. v. Canada*, [1990] 2 C.T.C. 418 (FCTD) (Waiver without corporate seal valid where signed by an officer of the company with implied authority; corporate seal discretionary provision for Minister's benefit); *Flanagan v. The Queen*, [1987] 2 C.T.C. 167 (FCA) (Notice of reassessment not sent when still retained by Minister); *Davis v. The Queen*, [1984] C.T.C. 564 (FCTD) (Alleged misrepresentation for reassessment must not be proved before out-of-court settlement); *Burroughs v. The Queen*, [1982] C.T.C. 414 (FCTD) (Notice must be "sent", not necessarily "received", within prescribed time); *Saykaly v. MNR*, [1976] C.T.C. 702 (FCTD) (Reassessments justified upon presumption of misrepresentation when taxpayer not reporting benefit from transactions); *Bisson v. MNR*, [1972] C.T.C. 446 (FCTD) (Minister cannot reassess when taxpayer had no intention to defraud); *Bronze Memorials Ltd. v. MNR*, [1969] C.T.C. 620 (Exch.) (Minister not allowed to reassess after expiry of four-year limitation period from original assessment when no proof of fraud).

I.T. Application Rules: 62(1) (152(4) applies to assessments since December 23, 1971).

Interpretation Bulletins: IT-64R3: Corporations: Association and control — after 1988; IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money; IT-185R: Losses from theft, defalcation or embezzlement; IT-384R: Reassessment where option exercised in subsequent year.

Information Circulars: 75-7R3: Reassessment of a return of income; 77-11: Sales tax reassessments — deductibility in computing income; 84-1: Revision of capital cost allowance claims and other permissive deductions; 92-3: Guidelines for refunds beyond the normal three year period.

Forms: T2029: Waiver in respect of the normal reassessment period.

(4.01) Assessment to which para. 152(4)(a) or (b) applies — Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a) or (4)(b) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(a) where paragraph (4)(a) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in a waiver filed with the Minister in respect of the year; and

(b) where paragraph (4)(b) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subparagraph (4)(b)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph (4)(b)(ii),

(iii) the transaction referred to in subparagraph (4)(b)(iii),

(iv) the payment or reimbursement referred to in subparagraph (4)(b)(iv),

(v) the reduction referred to in subparagraph (4)(b)(v), or

(vi) the application referred to in subparagraph (4)(b)(vi).

Related Provisions: 152(1.7) — Limitation period re determination of partnership income or loss; 152(3.1) — Normal reassessment period.

History: Subsec. 152(4.01) added by 1998, c. 19, subsec. 181(4), applicable after April 27, 1989, except that in applying the subsec.

(a) before August 1997, it shall be read without reference to subpara. (b)(vi); and

(b) to a taxation year before the 1996 taxation year, it shall be read without reference to subpara. (b)(v).

(4.1) Where waiver revoked — Where the Minister would, but for this subsection, be entitled to reassess, make an additional assessment or assess tax, interest or penalties by virtue only of the filing of a waiver under subparagraph (4)(a)(ii), the Minister may not make such reassessment, additional assessment or assessment after the day that is six months after the date on which a notice of revocation of the waiver in prescribed form is filed.

Related Provisions: 152(1.7) — Limitation period re determination of partnership income or loss; 152(4.2) — Reassessment with taxpayer's consent; 165(1.2) — No objection permitted where right to object waived; 169(2.2) — No appeal where right to object or appeal waived.

Pre-RSC History: Subsec. 152(4.1) added by 1984, c. 45, subsec. 59(2), applicable after February 15, 1984, except that in the application of subsec. 152(4.1) to a waiver filed before February 16, 1984 that is revoked by a notice of revocation filed before 1986, the reference therein to "six months" shall be read as a reference to "one year".

Forms: T652: Notice of revocation of waiver.

(4.2) [Reassessment with taxpayer's consent] — Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining, at any time after the expiration of the normal reassessment period for a taxpayer who is an

individual (other than a trust) or a testamentary trust in respect of a taxation year,

(a) the amount of any refund to which the taxpayer is entitled at that time for that year, or

(b) a reduction of an amount payable under this Part by the taxpayer for that year,

the Minister may, if application therefor has been made by the taxpayer,

(c) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year, and

(d) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Related Provisions: 152(3.1) — Normal reassessment period; 152(4.3) — Consequential assessment; 164(1.5) — Refunds; 164(3.2) — Interest on refunds and repayments; 165(1.2) — Limitation of right to object; 225.1(1) — No collection restrictions following assessment.

History: Para. 152(4.2)(d) amended by 2000, c. 19, subsec. 44(2), applicable to 1999 *et seq.* The para. formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) amended by 1998, c. 19, subsec. 42(2), applicable to 1997 *et seq.*, except that for the 1997 taxation year the reference to "subsection 120(2)," shall be read as a reference to "subsection 120(2), 120.1(4),". Para. 152(4.2)(d) formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 119(2), 122.61(1) or 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) amended by 1995, c. 3, subsec. 46(2), applicable to taxation years that end after February 22, 1994. Para. (d) formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2), 122.61(1) or 126.1(6) or (7) to be an overpayment on account of the taxpayer's liability under this Part for the year,

Para. 152(4.2)(d) amended by 1994, c. 8, subsec. 20(3), applicable after 1992, except that in its application to redeterminations made in respect of the 1991 and 1992 taxation years, the para. shall be read as follows:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. (d) formerly read:

(d) redetermine the amount, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. 152(4.2)(d) substituted by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 15(3), applicable to redeterminations made in respect of 1991 *et seq.* except that, in its application to redeterminations made in respect of the 1991 and 1992 taxation years, the para. shall be read as follows:

(d) redetermine the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Para. (4.2)(d) formerly read:

(d) redetermine the amount of tax, if any, deemed by subsection 119(2), 120(2), 120.1(4), 122.2(1), 122.5(3), 127.1(1), 144(9) or 210.2(3) or (4) of this Act or subsection 122.4(3) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years ending before 1991, to have been paid on account of the taxpayer's tax under this Part for that year.

Subsec. 152(4.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 125(2), applicable to assessments and redeterminations made in respect of 1985 *et seq.*

Information Circulars: 75-7R3: Reassessment of a return of income; 92-3: Guidelines for refunds beyond the normal three year period.

Application Policies: SR&ED 94-01: Retroactive claims for scientific research (TPRs).

(4.3) Consequential assessment — Notwithstanding subsections (4), (4.1) and (5), where the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may, or where the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of a subsequent taxation year and the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the particular year, reassess the tax, interest or penalties payable, or redetermine an amount deemed to have been paid or to have been an overpayment, under this Part by the taxpayer in respect of the subsequent taxation year, but only to the extent that the reassessment or redetermination can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.

Related Provisions: 152(3.1) — Normal reassessment period; 152(4.4) — Definition of "balance"; 165(1.1) — Limitation of right to object to assessments or determinations; 169(2) — Limitation of right to appeal.

History: Subsec. 152(4.3) substituted by 1994, c. 21, subsec. 76(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991 except that, where the day referred to as "the day on which all rights of objection and appeal expire or are determined in respect of the particular year" occurred before June 10, 1993, the subsec. shall be read as if that reference were a reference to June 10, 1993. That subsec. formerly read:

(4.3) Notwithstanding subsections (4), (4.1) and (5), where the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may or, where the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of another taxation year and the end of the day that is one year after the day on which all rights of objection and appeal have expired or been determined in respect of the particular year, reassess the tax, interest or penalties payable, or redetermine an amount deemed to have been paid, under this Part by the taxpayer in respect of the other taxation year, but only for the purpose of giving effect to any provision of this Act requiring the inclusion, or allowing the deduction, of an amount in computing a balance of the taxpayer for the other year, to the extent that the inclusion or deduction can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.

Subsec. 152(4.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 90(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991 except that where the day referred to in subsec. (4.3) as "the day on which all rights of objection and appeal have expired or been determined in respect of the particular year" occurs before June 10, 1993, subsec. (4.3) shall be read as if that reference were to June 10, 1993.

(4.4) Definition of "balance" — For the purpose of subsection (4.3), a "balance" of a taxpayer for a taxation year is the income, taxable income, taxable income

earned in Canada or any loss of the taxpayer for the year, or the tax or other amount payable by, any amount refundable to, or any amount deemed to have been paid or to have been an overpayment by, the taxpayer for the year.

Related Provisions: 152(4.3) — Consequential assessment; 165(1.11)(b) — Balance adjustment to be requested specifically on large corporation's notice of objection.

History: Subsec. 152(4.4) substituted by 1994, c. 21, subsec. 76(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991. That subsec. formerly read:

> (4.4) For the purposes of subsection (4.3), a "balance" of a taxpayer for a taxation year is the income, taxable income earned in Canada or any loss of the taxpayer for the year, or the tax or other amount payable by, any amount refundable to, or any amount deemed to have been paid by, the taxpayer for the year.

Subsec. 152(4.4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 90(2), applicable to reassessments and redeterminations in respect of taxation years made after June 10, 1993 that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after December 20, 1991.

(5) Limitation on assessments — There shall not be included in computing the income of a taxpayer for a taxation year, for the purpose of an assessment, reassessment or additional assessment made under this Part after the taxpayer's normal reassessment period in respect of the year, any amount that was not included in computing the taxpayer's income for the purpose of an assessment, reassessment or additional assessment made under this Part before the end of the period.

Related Provisions: 12(2.2) — Deemed outlay or expense; 67.5(2) — Reassessments; 110.4(6) — Forward averaging — death of a taxpayer; 127(17) — Assessment re ITC SR&ED pool beyond the deadline; 152(1.7) — Limitation period re determination of partnership income or loss; 152(3.1) — Normal reassessment period; 152(4.01) — Limitation on extended assessments; 152(4.2) — Assessment; 152(4.3) — Consequential assessment; 152(9) — Minister allowed to raise alternative ground of assessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 161.1(7) — Late assessment to allow interest offset allocation.

History: Subsec. 152(5) amended by 1998, c. 19, subsec. 181(5), applicable after April 27, 1989. Subsec. 152(5) formerly read:

> (5) There shall not be included in computing the income of a taxpayer for a taxation year, for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties under this Part that is made after the normal reassessment period for the taxpayer in respect of the year, any amount
>
> (a) that was not included in computing the taxpayer's income for the purposes of an assessment of tax under this Part made before the end of the normal reassessment period for the taxpayer;
>
> (b) in respect of which the taxpayer establishes that the failure so to include it did not result from any misrepresentation that is attributable to negligence, carelessness or wilful default or from any fraud in filing a return of the taxpayer's income or supplying any information under this Act; and
>
> (c) where any waiver has been filed by the taxpayer with the Minister, in the form and within the time referred to in subsection (4), with respect to a taxation year to which the reassessment, additional assessment or assessment of tax, interest or penalties, as the case may be, relates, that the taxpayer establishes cannot reasonably be regarded as relating to a matter specified in the waiver.

Pre-RSC History: That portion of subsec. 152(5) preceding para. (b) substituted by 1990, c. 39, subsec. 38(3), applicable (by subsec. 38(5), as amended by 1991, c. 49, s. 256) after April 27, 1989 (and deemed to have come into force on that date), other than with respect to a taxation year of a taxpayer for which a notice of an original assessment under Part I in respect of the taxpayer for the year, or a notification that no tax is payable by the taxpayer for the year, was mailed on or before April 27, 1986.

1990, c. 39, subsec. 38(5.1), added by 1991, c. 49, s. 256, reads as follows:

> (5.1) For greater certainty, in the period after April 27, 1989 and before October 23, 1990, the Minister of National Revenue may assess or reassess tax, interest and penalties and a taxpayer may file a waiver under the said Act as if this Act had been assented to on April 27, 1989, and any assessment or reassessment so made or waiver so filed before October 23, 1990 shall be deemed to have the same effect as it would have had if this Act had been assented to on April 27, 1989.

That portion formerly read:

> (5) [Assessment] — Notwithstanding subsection (4), there shall not be included in computing the income of a taxpayer, for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties under this Part that is made after the expiration of 3 years from the day referred to in subparagraph (4)(a)(ii), any amount
>
> (a) that was not included in his income for the purposes of an assessment of tax under this Part made before the expiration of 3 years from that day,

That portion of subsec. 152(5) preceding para. (b) substituted by 1984, c. 45, subsec. 59(3), to substitute "3" for "4" and to substitute "not included in his income" for "not included in computing his income", applicable to 1983 *et seq.*

Subsec. 152(5) substituted by 1973-74, c. 14, s. 53, applicable to 1972 *et seq.*

Selected Cases [subsec. 152(5)]: *Merswolke v. Canada*, [1995] 1 C.T.C. 2524 (TCC) (Subsec. 152(5) does not authorize reassessment without authority of subsecs. 152(4), (4.2) or (4.3)).

I.T. Application Rules: 62(1) (where waiver filed before December 23, 1971).

Interpretation Bulletins: IT-241: Reassessments made after the four-year limit.

(6) Reassessment where certain deductions claimed — Where a taxpayer has filed for a particular taxation year the return of income required by section 150 and an amount is subsequently claimed by the taxpayer or on the taxpayer's behalf for the year as

(a) a deduction under paragraph 3(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by virtue of the taxpayer's death in a subsequent taxation year and the consequent application of section 71 of that Act in respect of an allowable capital loss for the year,

(b) a deduction under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(b.1) a deduction under paragraph 60(i) in respect of a premium (within the meaning assigned by subsection 146(1)) paid in a subsequent taxation year under a registered retirement savings plan where the premium is deductible by reason of subsection 146(6.1),

(c) a deduction under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(c.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

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(c.1) a deduction under section 119 in respect of a disposition in a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 91(1), will amend para. 152(6)(c.1) to read as above, applicable to taxation years that end after October 1, 1996.

Technical Notes: A number of provisions of the Act allow a taxpayer to carry back amounts from one taxation year to reduce the taxpayer's income, taxable income or tax for a prior year. Where an amount is carried back under one of these provisions,

subsection 152(6) of the Act directs the Minister of National Revenue to reassess the taxpayer's tax for the relevant year or years to take the carry-back into account.

Subsection 152(6) is amended to include in its list of carry-back provisions new section 119 and new subsections 126(2.21) and (2.22) and 128.1(8) of the Act. These additions apply to taxation years that end after October 1, 1996. As well, a taxpayer who wishes to use the newly-added provisions will be deemed to have filed the prescribed form required under subsection 152(6) in a timely manner if the form is filed on or before the later of the normal deadline for filing the form and the taxpayer's filing-due date for the taxation year that includes the day on which Royal Assent for these amendments is received.

(d) a deduction under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(e) a deduction under subsection 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(f) a deduction under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

Proposed Addition — 152(6)(f.1), (f.2)

(f.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(f.2) a deduction under subsection 128.1(8) as a result of a disposition in a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 91(2), will add paras. 152(6)(f.1) and (f.2), applicable to taxation years that end after October 1, 1996.

In respect of

(a) a deduction under s. 119, or an adjustment under subsec. 128.1(8), in respect of a disposition by a taxpayer, or

(b) a deduction under subsec. 126(2.21) or (2.22) in respect of foreign taxes paid by a taxpayer,

the taxpayer is deemed to have filed a prescribed form described in subsec. 152(6) in a timely manner if the taxpayer files the form with the Minister on or before the later of the day on or before which the taxpayer would, but for this application, be required to file the form and the taxpayer's filing-due date for the taxation year that includes the day on which the amending legislation is assented to.

Technical Notes: See under 152(6)(c.1).

(g) a deduction under subsection 147.2(4) because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, or

(h) a deduction by virtue of an election for a subsequent taxation year under paragraph 164(6)(c) or (d) by the taxpayer's legal representative,

by filing with the Minister, on or before the day on or before which the taxpayer is, or would be if a tax under this Part were payable by the taxpayer for that subsequent taxation year, required by section 150 to file a return of income for that subsequent taxation year, a prescribed form amending the return, the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the deduction claimed.

Related Provisions: 111 — Losses deductible; 150 — Returns; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 161(7)(b)(iii) — Effect of carryback of loss, etc.; 164(5), (5.1) — No back interest on refund where past year reassessed; 165(1.1) — Limitation of right to object to assessments or determinations; 169(2)(a) — Limitation of right to appeal.

History: Para. 152(6)(g) added by 1998, c. 19, subsec. 181(6), applicable to taxpayers who die after 1992.

Pre-RSC History: Para. 152(6)(f) added by 1990, c. 39, subsec. 38(4), applicable to taxation years ending after June 1989.

Para. 152(6)(b.1) added by 1990, c. 35, s. 17, applicable to 1991 *et seq.*

Para. 152(6)(c) amended to substitute "section 118.1" for "section 110", para. 152(6)(e) substituted and paras. 152(6)(f) and (g) repealed, by 1988, c. 55, subsecs. 136(5), (6), applicable to 1988 *et seq.* Paras. 152(6)(e), (f) and (g) formerly read:

(e) a deduction under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year,

(f) a deduction under subsection 127.3(1) in respect of his unused scientific research and experimental development tax credit for a subsequent taxation year,

(g) a deduction under subsection 120.2(2) in respect of his minimum tax for a subsequent taxation year, or

Paras. 152(6)(g), (h) added by 1986, c. 55, subsec. 59(2), applicable to taxation years commencing after 1983.

The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Para. 152(6)(c.1) added by 1984, c. 45, subsec. 59(4), applicable to 1984 *et seq.*, except that an amount may be claimed as a deduction referred to in para. 152(6)(c.1) by filing the prescribed form referred to in subsec. 152(6) at any time on or before the later of

(a) the day on or before which it would be required by subsec. 152(6) to be filed, and

(b) the day that is 90 days after December 20, 1984.

Subsec. 152(6) substituted by 1984, c. 1, subsec. 84(4), applicable after April 19, 1983, except that where the subsequent taxation year referred to in subsec. 152(6), as substituted, is a taxation year ending after 1982, the prescribed form referred to in subsec. 152(6) may be filed for the subsequent taxation year at any time on or before the later of

(a) the day on or before which it would be required by the said subsec. 152(6) to be filed, and

(b) the day that is 90 days after the day on which this Act is assented to.

Subsec. 152(6) formerly read:

(6) Idem — Where a taxpayer has filed the return of income required by section 150 for a taxation year and, within one year from the day on or before which he was required by section 150 to file the return, has amended the return by filing with the Minister a prescribed form claiming a deduction from income under section 111 in respect of a loss for the taxation year immediately following that year, the Minister shall reassess the taxpayer's tax for the year.

Subsec. 152(6) substituted by 1980-81-82-83, c. 48, subsec. 85(2), applicable after December 11, 1979. Subsec. 152(6) formerly read:

(6) Where a taxpayer has filed the return of income required by section 150 for a taxation year and, within one year from the day on or before which he was required by section 150 to file the return for that year, has filed an amended return for the year claiming a deduction from income under section 111 in respect of a loss for the taxation year immediately following that year, the Minister shall reassess the taxpayer's tax for the year.

Selected Cases [subsec. 152(6)]: *A. & M. Johnson Contracting Ltd. v. R.*, [1998] 3 C.T.C. 2583 (TCC) (Courts will not grant mandamus compelling Minister to reassess).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-232R3: Losses — their deductibility in the loss year or in other years; IT-520: Unused foreign tax credits — carryforward and carryback.

Information Circulars: 75-7R3: Reassessment of a return of income.

Forms: NR67B: Non-resident notice of reassessment; T1ADJ: Adjustment request; T2 SCH 4: Corporation loss continuity and application; T67B, T67BCD, T67BD, T458, T459, T493: Notices of reassessment.

Proposed Addition — 152(6.1)

(6.1) Reassessment where amount included in income under subsec. 91(1) is reduced — Where

(a) a taxpayer has filed for a particular taxation year the return of income required by section 150,

(b) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year of the affiliate that ends in the particular year and is

(i) attributable to the amount prescribed to be the deductible loss of the affiliate for the year that arose in a subsequent year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(ii) included in the description of F of the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the year, and

(c) the taxpayer has filed with the Minister, on or before the filing-due-date for the taxpayer's subsequent taxation year, a prescribed form amending the return,

the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the reduction in the amount included under subsection 91(1) in computing the income of the taxpayer for the year.

Related Provisions: Reg. 5903(1) — Loss carryback.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 91(3), will add subsec. 152(6.1) to read as above, applicable to taxation years of foreign affiliates that begin after November 30, 1999.

Technical Notes: New subsection 152(6.1) of the Act is consequential to the extension of the deductible loss carryover period for foreign accrual property losses in the description of F in the definition "foreign accrual property income" in subsection 95(1) and section 5903 of the Regulations. Subsection 152(6.1) provides for the reassessment of all relevant taxation years (other than taxation years preceding the particular taxation year) where the taxpayer has filed a prescribed form carrying back a deductible loss from a subsequent taxation year that reduces the taxpayer's income for the particular year under subsection 91(1).

(7) Assessment not dependent on return or information — The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

Related Provisions: 152(4) — Reassessment; 160.2(3) — Minister may assess recipient under RRSP or RRIF; 165 — Objections to assessments; 169 — Appeal to Tax Court of Canada.

Selected Cases [subsec. 152(7)]: *The Queen v. Balanko*, [1988] 1 C.T.C. 317 (FCTD) (Gambling gains not income for net worth assessment); *Gentile v. The Queen*, [1988] 1 C.T.C. 253 (FCTD) (Taxpayer taxable on his income from all sources; assessment on net worth basis); *Chhabra v. The Queen*, [1988] 1 C.T.C. 84 (FCTD) (Taxpayer's tax returns accepted when flawed financial statements used by Minister); *Danielson v. MNR*, [1986] 2 C.T.C. 341 (FCTD) (Assessment to be challenged by objection and appeal, not by application for *certiorari*); *Werry v. The Queen*, [1976] C.T.C. 221 (FCA) (Burden of proof is on taxpayer to justify new trial relating to net worth assessment; evidence insufficient).

(8) Assessment deemed valid and binding — An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

Related Provisions: 152(3) — Liability for tax not affected by incorrect or incomplete assessment; 152(4) — Reassessment; 158 — Assessed amount payable forthwith; 160(2) — Minister may assess transferee; 160.2(3) — Minister may assess recipient; 165 — Objections to assessments; 166 — Assessment not to be vacated by reason of improper procedures; 172 — Appeal; 225.1 — Collection restrictions while assessment under objection or appeal.

Selected Cases [subsec. 152(8)]: *Friedberg v. R.*, [2000] 2 C.T.C. 370 (FCA) (Error on face of notice of assessment was not error in assessment); *Régime des Rentes pour les Employés de Direction de Gestion RST Inc. v. MNR*, [1993] 1 C.T.C. 2091 (TCC) (Assessment of trust, rather than trustee, invalid); *Lornport Investments Ltd. v. Canada*, [1992] 1 C.T.C. 351 (FCA) (Second notice of reassessment, later vacated, does not nullify first notice of reassessment); *Canadian Marconi Co. v. Canada*, [1991] 2 C.T.C. 352 (FCA); leave to appeal to SCC refused (1992), 90 DLR (4th) viii (note) (Minister has no power to reassess once statutory period has expired); *Guaranty Properties Ltd. v. Canada*, [1990] 2 C.T.C. 94 (FCA); leave to appeal to SCC refused (1991), 49 B.L.R. 320 (note) (Amalgamating company not relieved of taxes prior to amalgamation); *Stephens (Estate) v. The Queen*, [1987] 1 C.T.C. 88 (FCA) (Notices of reassessment not void when bearing name and signature other than Minister); *The Queen v. Lambert*, [1974] C.T.C. 516 (FCTD) (Answers of taxpayer in examination for discovery cannot be used in criminal proceedings).

(9) Alternative basis for assessment — The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this Act

(a) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and

(b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

Related Provisions: 152(5) — Limitation on income inclusion after normal reassessment period.

History: Subsec. 152(9) added by 1999, c. 22, subsec. 63.1(2), applicable to appeals disposed of after June 17, 1999.

I.T. Technical News: No. 16 (*Continental Bank* case).

Proposed Addition — 152(10)

(10) Where tax deemed not to be assessed — Notwithstanding any other provision of this section, an amount of tax for which adequate security is accepted by the Minister under subsection 220(4.5) or (4.6) is, until the end of the period during which the security is accepted by the Minister, deemed for the purpose of any agreement entered into by or on behalf of the Government of Canada under section 7 of the *Federal-Provincial Fiscal Arrangements Act* not to have been assessed under this Act.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 91(4), will add subsec. 152(10), applicable to taxation years that end after October 1, 1996.

Technical Notes: New subsection 152(10) of the Act provides that an amount of tax for which adequate security is accepted by the Minister of National Revenue under subsection 220(4.5) or (4.6) of the Act shall not be treated as an amount assessed under the Act, for the period during which such security is accepted, for the purpose of any agreement entered into by the federal government under section 7 of the Federal-Provincial Fiscal Arrangements Act.

New subsection 152(10) applies to taxation years that end after October 1, 1996.

Definitions [s. 152]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment" — 248(1); "balance" — 152(4.4); "Canadian-controlled private corporation" — 125(7), 248(1); "farm loss" — 111(8), 248(1); "foreign accrual property income" — 95(1), (2), 248(1); "foreign

affiliate" — 95(1), 248(1); "limited partnership loss" — 96(2.1)(e), 248(1); "listed personal property" — 54, 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "non-resident" — 248(1); "normal reassessment period" — 152(3.1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered retirement savings plan" — 146(1), 248(1); "restricted farm loss" — 31, 248(1); "tax consequences" — 152(1.111), 245(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 248(1); "transaction" — 152(1.111), 245(1); "trust" — 104(1), 108(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Payment of Tax

153. (1) Withholding — Every person paying at any time in a taxation year

(a) salary or wages or other remuneration,

(b) a superannuation or pension benefit,

(c) a retiring allowance,

(d) a death benefit,

(d.1) an amount described in subparagraph 56(1)(a)(iv),

(e) an amount as a benefit under a supplementary unemployment benefit plan,

(f) an annuity payment or a payment in full or partial commutation of an annuity,

(g) fees, commissions or other amounts for services,

(h) a payment under a deferred profit sharing plan or a plan referred to in section 147 as a revoked plan,

(i) [Repealed]

(j) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",

(k) an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,

(l) a payment out of or under a registered retirement income fund or a fund referred to in subsection 146.3(11) as an "amended fund",

(m) a prescribed benefit under a government assistance program;

(m.1) [Repealed]

(n) one or more amounts to an individual who has elected for the year in prescribed form in respect of all such amounts,

(o) an amount described in paragraph 115(2)(c.1),

(p) a contribution under a retirement compensation arrangement,

(q) an amount as a distribution to one or more persons out of or under a retirement compensation arrangement,

(r) an amount on account of the purchase price of an interest in a retirement compensation arrangement,

(s) an amount described in paragraph 56(1)(r), or

(t) a payment made under a plan that was a registered education savings plan

shall deduct or withhold therefrom such amount as is determined in accordance with prescribed rules and shall, at such time as is prescribed, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a financial institution (within the meaning that would be assigned by the definition "financial institution" in subsection 190(1) if that definition were read without reference to paragraphs (1)'financial institution'(d) and (1)'financial institution'(e) thereof).

Proposed Amendment — Authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (11) That an authorized foreign bank that is subject to the restrictions and requirements referred to in subsection 524(2) of the *Bank Act* not be permitted to accept remittances made to the account of the Receiver General under section 153 of the Act.

Department of Finance news release, February 11, 1999: *Remittance of Withholding Amounts*

Taxpayers may pay taxes owing under the *Income Tax Act* in respect of most types of income by making a remittance to the account of the Receiver General at a bank or other financial institution. This service is permitted to facilitate the payment of income taxes.

It is proposed that the Canadian branch of a foreign bank be permitted to accept tax payments on behalf of the Receiver General of Canada in the same manner as Canadian resident banks unless the foreign bank is subject to the restrictions and requirements (relating primarily to deposit-taking) referred to in subsection 524(2) of the *Bank Act*.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

Related Provisions: 78(1)(b) — Withholding of tax on unpaid amounts; 153(1.1) — Undue hardship — reduction in withholding; 153(1.2) — Election to increase withholding; 153(1.3) — Payments of tax by trustee; 153(3) — Amount withheld deemed received by payee; 154 — Tax transfer payments to provinces; 221.2 — Transfers of balances from one account to other; 227 — Withholding taxes — administration and enforcement; 227.1 — Corporation's directors liable for unremitted source deductions; 238(1) — Offences; 248(7)(b)(i) — Remittance deemed made when received; 252.1(d) — Where union is employer; Canada-U.S. tax treaty, Art. XVII — Withholding of taxes in respect of personal services.

History: Para. 153(1)(d.1) amended by 1998, c. 19, s. 182, deemed to have come into force on June 30, 1996. Para. 153(1)(d.1) formerly read:

(d.1) an amount as a benefit under the *Employment Insurance Act*,

Paras. 153(1)(s) and (t) added by the said c. 19, s. 43, para. (s) applicable to payments made after 1992, and para. (t) applicable to payments made after 1997.

Para. 153(1)(d.1) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 153(1)(i) repealed by 1996, c. 23, s. 175, in force January 1, 1998. Para. (i) formerly read:

(i) a training allowance under the *National Training Act*,

Para. 153(1)(m) substituted for paras. (m), (m.1) by 1994, c. 21, s. 77, applicable to payments made after October 1991. Those paras. formerly read:

(m) an amount as a benefit under the *Labour Adjustment Benefits Act*,

(m.1) an income assistance payment made pursuant to an agreement under section 5 of the *Department of Labour Act*,

That portion of subsec. 153(1) following para. (r) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 91, applicable after 1992. That portion formerly read:

shall deduct or withhold therefrom such amount as may be determined in accordance with prescribed rules and shall, at such time as may be prescribed, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be.

1994, c. 7, Sch. VIII (1993, c. 24), subsec. 82(10), provides that the amended definition of "minimum amount" in subsec. 146.3(1) does not apply, for the purposes of prescribed rules made under subsec. 153(1), with respect to payments made before 1993.

Paras. 153(1)(f), (l) substituted, (m.1) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 126(1)–(3), applicable to payments made after July 13, 1990. Paras. (f), (l) formerly read:

(f) an annuity payment,

. . . . .

(l) a payment out of or under a registered retirement income fund,

Pre-RSC History: All that portion of subsec. 153(1) following para. (o) amended by 1987, c. 46, subsec. 51(1), to add paras. (p), (q), (r) and to substitute "under this Part or Part XI.3, as the case may be" for "under this Part", applicable with respect to amounts paid after March 27, 1987.

Para. 153(1)(d) substituted by 1985, c. 45, subsec. 87(1), applicable to 1985 *et seq.* Para. 153(1)(d) formerly read:

(d) an amount upon or after the death of an officer or employee, in recognition of his service, to his legal representative or widow or to any other person whatsoever,

Para. 153(1)(o) added by 1985, c. 45, subsec. 87(2).

All that portion of subsec. 153(1) preceding para. (b) and all that portion of subsec. 153(1) following para. (k) substituted by 1980-81-82-83, c. 140, subsecs. 104(1), (2). Those portions formerly read:

153. (1) Every person paying

(a) salary or wages or other remuneration to an officer or employee,

. . . . .

(l) a payment out of or under a registered retirement income fund, or

(m) a termination payment,

at any time in a taxation year shall deduct or withhold therefrom such amount as may be determined in accordance with prescribed rules and shall, at such time as may be prescribed, remit that amount to the Receiver General on account of the payee's tax for the year under this Part.

Para. 153(1)(m) applicable with respect to amounts paid after 1981, except that in its application to payments made after November 12, 1981 in respect of a termination of an office or employment that occurred on or before that date, it shall be read as follows:

(m) a termination payment,

Para. 153(1)(i) substituted by 1980-81-82-83, c. 109, subsec. 19(3), in force August 2, 1982. Para. (i) formerly read:

(i) an adult training allowance under the *Adult Occupational Training Act*,

All that portion of subsec. 153(1) following para. (m) substituted by 1980-81-82-83, c. 48, subsec. 86(1), applicable to 1979 *et seq.* That portion formerly read:

at any time in a taxation year shall deduct or withhold therefrom such amount as may be prescribed and shall, at such time as may be prescribed, remit that amount to the Receiver General of Canada on account of the payee's tax for the year under this Part.

Para. 153(1)(m) added by 1979, c. 5, subsec. 53(1).

Para. 153(1)(l) added by 1977-78, c. 32, s. 39.

Paras. 153(1)(i)–(k) added by 1976-77, c. 4, subsec. 62(1).

Selected Cases [subsec. 153(1)]: *Manke v. R.*, [1999] 1 C.T.C. 2186 (TCC) (Minister has constructive receipt of source deductions, even if not remitted); *Ashby v. Canada*, [1996] 1 C.T.C. 2464 (TCC) (Deductions made but not remitted differ from case where deductions not made); *Cana Construction Co. v. Canada*, [1995] 1 C.T.C. 2122 (TCC) (Prime contractor maintained full control of funds to pay wages and required to withhold source deduction); *Mollenhauer Ltd. v. Canada*, [1992] 2 C.T.C. 121 (FCTD) (Contractor which undertook to pay subcontractor's employees' "salary or wages or other remuneration" liable for failing to make and remit source deductions despite not being the employer); *The Queen v. Coopers & Lybrand Ltd.*, [1980] C.T.C. 367 (FCA) (Taxpayer company responsible for wages to employees, liable for amount of payroll deductions); *Dauphin Plains Credit Union Ltd. v. Xyloid Industries Ltd. et al.*, [1980] C.T.C. 247 (SCC) (UIC and CPP amounts deducted, but not remitted, held in trust for Crown); *The Queen v. National Indian Brotherhood*, [1978] C.T.C. 680 (FCTD) (Taxpayer corporation not resident on reserve required to remit income tax from salaries paid to Indians); *Re G & G Equipment*, 74 D.T.C. 6407 (B.C.S.C.) (Tax to be withheld when paying wages to employees of related company).

Regulations: 100–108 (withholding and remittance requirements); 110 (prescribed persons for the closing words of 153(1)); 200 (information returns); 5502 (prescribed benefits for 153(1)(m)).

Interpretation Bulletins: IT-337R3: Retiring allowances; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

Information Circulars: 75-6R: Required withholding from amounts paid to non-resident persons performing services in Canada; 72-22R9: Registered retirement savings plans; 92-3: Guidelines for refunds beyond the normal three year period. See also "Employers' Guide to Payroll Deductions".

I.T. Technical News: No. 11 (reporting of amounts paid out of an employee benefit plan).

Forms: PD7AR: Remittance form; PD7A: Tax deduction — Canada Pension Plan — unemployment insurance remittance return; PD20: Employer registration; PD20-NR: Non-resident tax remitter registration; RC4157(E): Employers' guide: — filing the T4A slip and summary form; RC4163: Employers' guide — remitting payroll deductions; TD3F: Fisherman's election for tax deductions at source; T4A Supp: Statement of pension, retirement, annuity and other income; T4A: Segment; T4A Summ: Summary of remuneration paid (pension, retirement, annuity, and other income); T4 Segment; T4A-RCA Summ: Return of distributions from an RCA; T4A-RCA Supp: Statement of amounts paid from an RCA; T216: Remitting deductions at source; T475: Magnetic media filing transmittal — Service bureau customer; T619: Magnetic media transmittal; T695: T4A/T4A-NR data tape transmittal; T709: Magnetic media filing program — filing tips for service bureau customer; T730: Preparation of T4-T4A summaries and supplementaries; T734: Remittance form for employer's tax deduction on contribution paid to RCA; T735: Withholding tax remitter for RCAs; T736: Registration form for custodians or third person purchasers withholding Part XIII tax from non-residents for RCAs; T875: T4 data tape transmittal; T4001: Employer's guide to payroll deductions — Basic information (guide); T4032: Payroll deductions tables (guide); T4127: Payroll deductions formulas for computer programs (guide); T4130: Employer's guide to payroll deductions — taxable benefits (guide); T5 filing transmittal; TD1: Claiming your 1994 personal tax credits.

(1.1) Undue hardship — Where the Minister is satisfied that the deducting or withholding of the amount otherwise required to be deducted or withheld under subsection (1) from a payment would cause undue hardship, the Minister may determine a lesser amount and that amount shall be deemed to be the amount determined under that subsection as the amount to be deducted or withheld from that payment.

Related Provisions: 180.2(6) — Reduced withholding available on old age security benefits; 227(8) — Withholding taxes; 227.1 — Liability of directors.

(1.2) Election to increase withholding — Where a taxpayer so elects in prescribed manner and prescribed form, the amount required to be deducted or withheld under subsection (1) from any payment to the taxpayer shall be deemed to be the total of

(a) the amount, if any, otherwise required to be deducted or withheld under that subsection from that payment, and

(b) the amount specified by the taxpayer in that election with respect to that payment or with respect to a class of payments that includes that payment.

Related Provisions: 227.1 — Liability of directors.

Pre-RSC History: Subsec. 153(1.1) substituted by 1980-81-82-83, c. 48, subsec. 86(2), applicable to 1979 *et seq.*, to substitute "determined" for "prescribed".

Subsecs. 153(1.1), (1.2) substituted by 1979, c. 5, subsec. 53(2) to delete "referred to in any of paragraphs (1)(a) to (k)" after "from a payment" in subsec. (1.1) and "that is referred to in any of paragraphs (1)(a) to (k)" after "payment to him" in subsec. (1.2).

Subsec. 153(1.1), all that portion of subsec. 153(1.2) preceding para. (a) substituted by 1976-77, c. 4, subsec. 62(2), to substitute "(k)" for "(h)".

Subsecs. 153(1.1), (1.2) added by 1973-74, c. 30, s. 22.

Regulations: 109 (prescribed manner for making election, and effect).

Forms: TD3: Request for income tax deductions on non-employment income.

(1.3) [Repealed]

History: Subsec. 153(1.3) repealed by 1996, c 21, s. 40, applicable June 20, 1996. Subsec. (1.3) formerly read:

> (1.3) Payments by trustee, etc. — For the purposes of subsection (1), where a trustee who is administering, managing, distributing, winding up, controlling or otherwise dealing with the property, business, estate or income of another person authorizes or otherwise causes a payment referred to in that subsection to be made on behalf of that other person, the trustee shall be deemed to be a person making the payment and the trustee and that other person shall be jointly and severally liable in respect of the amount required under that subsection to be deducted or withheld and to be remitted on account of the payment.

Selected Cases [subsec. 153(1.3)]: *Coopers & Lybrand Ltd. v. Canada*, [1994] 2 C.T.C. 2244 (TCC) (Agent held liable for source deductions not withheld).

(1.4) [Repealed]

History: Subsec. 153(1.4) repealed by 1996, c 21, s. 40, applicable June 20, 1996. Subsec. (1.4) formerly read:

> (1.4) Definition of "trustee" — In subsection (1.3), "trustee" includes a liquidator, receiver, receiver-manager, trustee in bankruptcy, assignee, executor, administrator, sequestrator or any other person performing a function similar to that performed by any such person.

Pre-RSC History: Subsecs. 153(1.3), (1.4) added by 1980-81-82-83, c. 48, subsec. 86(3).

(2) [Repealed]

History: Subsec. 153(2) repealed by 1994, c. 8, s. 21, applicable to 1995 *et seq.*; for the 1994 taxation year, subsec. 153(2) reads as follows:

> (2) Subject to sections 155, 156 and 156.1, where amounts have been deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of the remuneration and other payments from which such amounts have been deducted or withheld and which the individual had received in the year is equal to or greater than ¾ of the individual's income for the year, the individual shall, on or before the individual's balance-due day for the year, pay to the Receiver General the remainder of the individual's tax for the year as estimated under section 151.

Subsec. (2) formerly read:

> (2) Payment of remainder — Where amounts were deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of the remuneration and other payments from which the amounts were deducted or withheld and which the individual received in the year is equal to or greater than ¾ of the individual's income for the year, the individual shall, on or before the individual's balance-due day for the year, pay to the Receiver General the remainder of the individual's tax for the year as estimated under section 151.

Subsec. 153(2) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 126(4), applicable to 1990 *et seq.* Subsec. 153(2) formerly read:

> (2) Where amounts have been deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of the remuneration and other payments from which such amounts have been deducted or withheld and which the individual had received in the year is equal to or greater than ¾ of the individual's income for the year, the individual shall, on or before April 30 in the next year, pay to the Receiver General the remainder of the individual's tax for the year as estimated under section 151.

Pre-RSC History: Subsec. 153(2) substituted by 1980-81-82-83, c. 140, subsec. 104(3).

Forms: T7DR: Remittance form.

(3) Deemed effect of deduction — When an amount has been deducted or withheld under subsection (1), it shall, for all the purposes of this Act, be deemed to have been received at that time by the person to whom the remuneration, benefit, payment, fees, commissions or other amounts were paid.

Related Provisions: 78(1)(b) — Unpaid amounts; 227 — Withholding taxes — rules; 227.1 — Liability of directors.

Selected Cases [subsec. 153(3)]: *Fraser v. R.*, [1997] 3 C.T.C. 3 (FCA) (Source deductions belonged to employee, not to employer).

(4) Unclaimed dividends, interest and proceeds — Where at the end of a taxpayer's taxation year the person beneficially entitled to an amount received by the taxpayer after 1984 and before the year as or in respect of dividends, interest or proceeds of disposition of property is unknown to the taxpayer, the taxpayer shall remit to the Receiver General on or before the day that is 60 days after the end of the year on account of the tax payable under this Act by that person an amount equal to

(a) in the case of dividends, 33⅓% of the total amount of the dividends,

(b) in the case of interest, 50% of the total amount of the interest, and

(c) in the case of proceeds of disposition of property, 50% of the total of all amounts each of which is the amount, if any, by which the proceeds of disposition of a property exceed the total of any outlays and expenses made or incurred by the taxpayer for the purpose of disposing of the property (to the extent that those outlays and expenses were not deducted in computing the taxpayer's income for any taxation year or attributable to any other property),

except that no remittance under this subsection shall be required in respect of an amount that was included in computing the taxpayer's income for the year or a preceding taxation year or in respect of an amount on which the tax under this subsection was previously remitted.

Related Provisions: 153(5) — Effect of deduction; 227.1 — Liability of directors.

Pre-RSC History: Subsec. 153(4) substituted by 1987, c. 46, subsec. 51(2), applicable with respect to taxation years commencing after 1986. Subsec. 153(4) formerly read:

> (4) Dividends received by brokers — Where an amount has been received by a broker or dealer in securities in the period of 12 months immediately preceding a taxation year as or in respect of dividends on shares the beneficial ownership of which is unknown to him at the end of the taxation year, the broker or dealer shall remit an amount equal to 25% thereof to the Receiver General at such time as may be prescribed on account of the beneficial owner's tax under this Part or Part XIII for the taxation year in which the dividend was received by the broker or dealer.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Regulations: 108(4) (remittance deadline).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada.

Information Circulars: 71-9R: Unclaimed dividends.

(5) Deemed effect of remittance — An amount remitted by a taxpayer under subsection (4) in respect of dividends, interest or proceeds of disposition of property shall be deemed

(a) to have been received by the person beneficially entitled thereto; and

(b) to have been deducted or withheld from the amount otherwise payable by the taxpayer to the person entitled thereto.

Related Provisions: 227(6), (9) — Withholding taxes; 227(10) — Assessment; 227(13) — Withholding tax; 227.1 — Liability of directors.

Pre-RSC History: Subsec. 153(5) substituted by 1987, c. 46, subsec. 51(2), applicable with respect to taxation years commencing after 1986. Subsec. 153(5) formerly read:

> (5) **Effect of deduction** — Where an amount has been remitted to the Receiver General under subsection (4), it shall for all purposes of this Act be deemed,
>
> (a) to have been received by the beneficial owner of the dividends, and
>
> (b) to have been deducted or withheld from such amount as would otherwise be payable by the broker or dealer to the beneficial owner in respect of the dividends.

Selected Cases [s. 153]: *Hrab v. Canada*, [1995] 2 C.T.C. 2105 (TCC) (Failure by employer to deduct taxes at source does not affect taxpayer's liability to pay tax on income received).

Definitions [s. 153]: "amount", "annuity", "balance-due day", "business", "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend", "employee" — 248(1); "estate" — 104(1), 248(1); "income-averaging annuity contract", "individual", "Minister", "person", "prescribed", "property" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "retirement compensation arrangement", "retiring allowance", "salary or wages", "superannuation or pension benefit" — 248(1); "supplementary unemployment benefit plan" — 145(1), 248(1); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1); "trustee" — 153(1.4).

154. (1) Agreements providing for tax transfer payments — The Minister may, with the approval of the Governor in Council, enter into an agreement with the government of a province to provide for tax transfer payments and the terms and conditions relating to such payments.

(2) Tax transfer payment — Where, on account of the tax for a taxation year payable by an individual under this Part, an amount has been deducted or withheld under subsection 153(1) on the assumption that the individual was resident in a place other than the province in which the individual resided on the last day of the year, and the individual

(a) has filed a return of income for the year with the Minister,

(b) is liable to pay tax under this Part for the year, and

(c) is resident on the last day of the year in a province with which an agreement described in subsection (1) has been entered into,

the Minister may make a tax transfer payment to the government of the province not exceeding an amount equal to the product obtained by multiplying the amount or the total of the amounts so deducted or withheld by a prescribed rate.

History: Para. 154(2)(a) amended by 1998, c. 19, s. 183, applicable to 1996 *et seq.* Para. 154(2)(a) formerly read:

> (a) has filed a return under this Act,

Regulations: 3300 (prescribed rate is 40%).

(3) Payment deemed received by individual — Where, pursuant to an agreement entered into under subsection (1), an amount has been transferred by the Minister to the government of a province with respect to an individual, the amount shall, for all purposes of this Act, be deemed to have been received by the individual at the time the amount was transferred.

(4) Payment deemed received by Receiver General — Where, pursuant to an agreement entered into under subsection (1), an amount has been transferred by the government of a province to the Minister with respect to an individual, the amount shall, for all purposes of this Act, be deemed to have been received by the Receiver General on account of the individual's tax under this Part for the year in respect of which the amount was transferred.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

(5) Amount not to include refund — In this section, an amount deducted or withheld does not include any refund made in respect of that amount.

Related Provisions [s. 154]: 228 — Applying payments under collection agreements.

Definitions [s. 154]: "amount" — 154(5), 248(1); "individual", "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — 249.

155. (1) [Instalments —] Farmers and fishermen — Subject to section 156.1, every individual whose chief source of income for a taxation year is farming or fishing shall, on or before December 31 in the year, pay to the Receiver General in respect of the year, ⅔ of

(a) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(b) the individual's instalment base for the preceding taxation year.

Related Provisions: 31 — Loss from farming where farming not chief source of income; 104(23)(e) — Alternative rule for testamentary trust; 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 151 — Estimate of tax; 156(1) — Other individuals; 156.1 — No instalment required; 161(2) — Interest on late or insufficient instalments; 161(4) — Limitation on interest — farmers and fishermen; 163.1 — Penalty for late or deficient instalments; 248(7) — Receipt of things mailed.

History: Subsec. 155(1) amended by 1994, c. 8, s. 22, applicable to 1994 *et seq.* Subsec. (1) formerly read:

> (1) Subject to section 156.1, every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 153(2) applies, shall pay to the Receiver General in respect of each taxation year
>
> (a) on or before December 31 in the year, ⅔ of
>
> (i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or
>
> (ii) the individual's instalment base for the immediately preceding taxation year; and
>
> (b) on or before the individual's balance-due day for the year, the remainder of the individual's tax as estimated under section 151.

Subsec. 155(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 127, applicable to 1990 *et seq.* Subsec. 155(1) formerly read:

> 155. (1) Subject to section 156.1, every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 153(2) applies, shall pay to the Receiver General
>
> (a) on or before December 31 in each taxation year, ⅔ of
>
> (i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3, or
>
> (ii) the individual's instalment base for the immediately preceding taxation year; and
>
> (b) on or before April 30 in the next year, the remainder of the individual's tax as estimated under section 151.

Pre-RSC History: 1986, c. 55, s. 60, provides that in its application to the 1986 taxation year, subpara. 155(1)(a)(i) shall be read as follows:

> "(i) the amount estimated by the individual to be the tax payable under this Part by him for the year computed without reference to sections 127.2 and 127.3 and Division E.1, or".

Subpara. 155(1)(a)(i) substituted by 1984, c. 45, s. 60, to add "computed without reference to sections 127.2 and 127.3", applicable with respect to amounts deducted under ss. 127.2 and 127.3 in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares,

debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984.

All that portion of subsec. 155(1) preceding para. (a) substituted by 1980-81-82-83, c. 140, s. 105.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Forms: T4F Summ: Summary of remuneration; T4F Supp: Statement of fishing income; T7B: Instalment guide for farmers and fishermen; T7B-3: Calculation of instalments on minimum tax (farmers and fishermen); T2042: Statement of farming income and expenses; T2121: Statement of fishing activities.

(2) Definition of "instalment base" — In this section, "instalment base" of an individual for a taxation year means the amount determined in prescribed manner to be the individual's instalment base for the year.

Regulations: 5300 (instalment base).

Pre-RSC History [s. 155]: S. 155 substituted by 1973-74, c. 14, s. 54, applicable to 1972 *et seq.*

Definitions [s. 155]: "balance-due day" — 248(1); "farming", "fishing", "individual" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

156. (1) [Instalments —] Other individuals — Subject to section 156.1, in respect of each taxation year every individual (other than one to whom section 155 applies for the year) shall pay to the Receiver General

(a) on or before March 15, June 15, September 15 and December 15 in the year, an amount equal to ¼ of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(ii) the individual's instalment base for the preceding taxation year, or

(b) on or before

(i) March 15 and June 15 in the year, an amount equal to ¼ of the individual's instalment base for the second preceding taxation year, and

(ii) September 15 and December 15 in the year, an amount equal to ½ of the amount, if any, by which

(A) the individual's instalment base for the preceding taxation year

exceeds

(B) ½ of the individual's instalment base for the second preceding taxation year.

Related Provisions: 104(23)(e) — Alternative rule for testamentary trust; 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 156.1(2) — No instalment required; 156.1(4) — Payment of balance by April 30; 161(2) — Interest on instalments; 161(4.01) — Minimum instalment payments to avoid interest charges; 163.1 — Penalty for late or deficient instalments; 248(7) — Receipt of things mailed.

History: The opening words of subsec. 156(1) amended by 1994, c. 8, subsec. 23(1), applicable to amounts that become payable after June 1994. They formerly read:

(1) Subject to section 156.1, every individual, other than one to whom subsection 153(2) or section 155 applies, shall pay to the Receiver General in respect of each taxation year

The closing words of subsec. 156(1) after para. (b) repealed by 1994, c. 8, subsec. 23(2), applicable to 1994 *et seq.* They formerly read:

and, on or before the individual's balance-due day for the year, the remainder of the individual's tax estimated under section 151.

Subsec. 156(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 92, applicable to 1992 *et seq.* Subsec. (1) formerly read:

(1) Subject to section 156.1, every individual, other than one to whom subsection 153(2) or section 155 applies, shall pay to the Receiver General in respect of each taxation year

(a) on or before March 15, June 15, September 15 and December 15 in the year, an amount equal to ¼ of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year, or

(ii) the individual's instalment base for the preceding taxation year; and

(b) on or before the individual's balance-due day for the year, the remainder of the individual's tax estimated under section 151.

Subsec. 156(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 128, applicable to 1990 *et seq.* Subsec. 156(1) formerly read:

156. (1) Subject to section 156.1, every individual, other than one to whom subsection 153(2) or section 155 applies, shall pay to the Receiver General

(a) on or before March 15, June 15, September 15 and December 15 in each taxation year, an amount equal to ¼ of

(i) the amount estimated by the individual to be the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3, or

(ii) the individual's instalment base for the immediately preceding taxation year; and

(b) on or before April 30 in the next year, the remainder of the individual's tax as estimated under section 151.

Pre-RSC History: That portion of para. 156(1)(a) preceding subpara. (i) substituted by 1988, c. 55, s. 137, applicable to 1990 *et seq.* That portion formerly read:

(a) on or before March 31, June 30, September 30 and December 31, respectively, in each taxation year, an amount equal to ¼ of

1986, c. 55, s. 61, provides that in its application to the 1986 taxation year, subpara. 156(1)(a)(i) shall be read as follows:

"(i) the amount estimated by the individual to be the tax payable under this Part by him for the year computed without reference to sections 127.2 and 127.3 and Division E.1, or".

Subpara. 156(1)(a)(i) substituted by 1984, c. 45, s. 61, to add "computed without reference to sections 127.2 and 127.3", applicable with respect to amounts deducted under ss. 127.2 and 127.3 in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984.

Subsec. 156(1) substituted by 1973-74, c. 14, subsec. 55(1), applicable to 1972 *et seq.*

Selected Cases [subsec. 156(1)]: *Canada v. Ritchie (E.S.)*, [1993] 2 C.T.C. 24 (FCA) (Interest due on instalments where additional income received after instalment due date).

Forms: P110: Paying your income tax by instalments (pamphlet); T7B: Instalment guide for individuals; T7B-2: Calculation of instalments on minimum tax; T1033-WS: Worksheet for calculating instalment payments.

(2) Payment by mutual fund trusts — Notwithstanding subsection (1), the amount payable by a mutual fund trust to the Receiver General on or before any day referred to in paragraph (1)(a) in a taxation year shall be deemed to be the amount, if any, by which

(a) the amount so payable otherwise determined under that subsection,

exceeds

(b) ¼ of the trust's capital gains refund (within the meaning assigned by section 132) for the year.

Related Provisions: 156.1 — No instalment required.

(3) Definition of "instalment base" — In this section, "instalment base" of an individual for a taxation year

means the amount determined in prescribed manner to be the individual's instalment base for the year.

Related Provisions: 120(2) — Deemed payment of tax; 161(2) — Interest on instalments; 161(4) — Limitation of instalment base.

Pre-RSC History: Subsec. 156(3) added by 1973-74, c. 14, subsec. 55(2), applicable to 1972 *et seq.*

Regulations: 5300 (instalment base).

Pre-RSC History [s. 156]: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Definitions [s. 156]: "amount", "balance-due day" — 248(1); "individual" — 248(1); "instalment base" — 156(3), Reg. 5300(1); "mutual fund trust" — 132(6); "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249.

156.1 (1) [Instalments exemption —] Definitions — For the purposes of this section,

"instalment threshold" of an individual for a taxation year means

(a) in the case of an individual resident in the Province of Quebec at the end of the year, $1,200, and

(b) in any other case, $2,000;

"net tax owing" by an individual for a taxation year means

(a) in the case of an individual resident in the Province of Quebec at the end of the year, the amount determined by the formula

$$A - C - D - F$$

and

(b) in any other case, the amount determined by the formula

$$A + B - C - E - F$$

where

A is the total of the taxes payable under this Part and Parts I.1, I.2 and X.5 by the individual for the year,

B is the total of all income taxes payable by the individual for the year under any law of a province or of an Aboriginal government with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province or Aboriginal government under that law,

C is the total of the taxes deducted or withheld under section 153 and Part I.2 on behalf of the individual for the year,

D is the amount determined under subsection 120(2) in respect of the individual for the year,

E is the total of all amounts deducted or withheld on behalf of the individual for the year under a law of a province or of an Aboriginal government with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province or Aboriginal government under that law, and

F is the amount determined under subsection 120(2.2) in respect of the individual for the year.

Related Provisions: 156.1(1) — Rules for calculating formula elements A and B: 156.1(1.2) — Rule for calculating D; 156.1(1.3) — Rule for calculating F — First Nations Tax; 257 — Formulas cannot calculate to less than zero.

History: The formulas in paras. (a) and (b), the descriptions of B and E of the definition "net tax owing" in subsec. 156.1(1) amended, and the description of F added, by 2000, c. 19, subsecs. 45(1)–(4), applicable to 1999 *et seq.* The formulas and the descriptions formerly read:

$$A - C - D$$

. . . . .

$$A + B - C - E$$

. . . . .

B is the total of all income taxes payable by the individual for the year under any Act of a province with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province under that Act,

. . . . .

E is the total of all income taxes deducted or withheld on behalf of the individual for the year under any Act of a province with which the Minister of Finance has entered into an agreement for the collection of income taxes payable by individuals to the province under that Act.

The description of A in para. (b) of the definition "net tax owing" in subsec. 156.1(1) amended by 1998, c. 19, s. 44, applicable to 1998 *et seq.* The description formerly read:

A is the total of the taxes payable under this Part and Parts I.1 and I.2 by the individual for the year,

The portion of the definition "net tax owing" in subsec. 156.1(1) after the description of E repealed by 1997, c. 25, subsec. 48(1), applicable to amounts that become payable after 1995. That portion formerly read:

and for the purposes of this definition, income taxes payable for a taxation year by an individual are determined after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year and prescribed tax credits) and before taking into consideration amounts referred to in subparagraphs 161(7)(a)(ii) to (v).

The descriptions of A and C in para. (b) of the definition of "net tax owing" in subsec. 156.1(1) amended by 1996, c. 21, subsec. 40.1(1), applicable to 1996 *et seq.*, except that for the 1996 taxation year, A shall be read as follows:

A is the total of

(i) the taxes payable under this Part and Part I.1 by the individual for the year, and

(ii) half the tax payable under Part I.2 by the individual for the year,

The descriptions of A and C formerly read:

A is the total of the income taxes payable by the individual for the year under this Part and Part I.1,

. . . . .

C is the total of all income taxes deducted or withheld under section 153 on behalf of the individual for the year,

Forms: P110: Paying your income tax by instalments (pamphlet); T7B: Instalment guide for individuals.

(1.1) Values of A and B in "net tax owing" — For the purposes of determining the values of A and B in the definition "net tax owing" in subsection (1), income taxes payable by an individual for a taxation year are determined

(a) before taking into consideration the specified future tax consequences for the year; and

(b) after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year, prescribed tax credits and amounts deemed to have been paid because of the application of either subsection 120(2) or (2.2)).

History: Para. 156.1(1.1)(b) amended by 2000, c. 19, subsec. 45(5), applicable to 1999 *et seq.* The para. formerly read:

(b) after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year, prescribed tax credits and the amount deemed to have been paid because of the application of subsection 120(2)).

Subsec. 156.1(1.1) added by 1997 c. 25, subsec. 48(2), applicable to amounts that become payable after 1995.

(1.2) Value of D in "net tax owing" — For the purpose of determining the value of D in the definition "net tax owing" in subsection (1), the amount deemed by subsection 120(2) to have been paid on account of an individual's tax under this Part for a taxation year is determined before taking into consideration the specified future tax consequences for the year.

History: Subsec. 156.1(1.2) added by 1997 c. 25, subsec. 48(2), applicable to amounts that become payable after 1995.

(1.3) Value of F in "net tax owing" — For the purpose of determining the value of F in the definition "net tax owing" in subsection (1), the amount deemed by subsection 120(2.2) to have been paid on account of an individual's tax under this Part for a taxation year is determined before taking into consideration the specified future tax consequences for the year.

History: Subsec. 156.1(1.3) added by 2000, c. 19, subsec. 45(6), applicable to 1999 *et seq.*

(2) No instalment required — Sections 155 and 156 do not apply to an individual for a particular taxation year where

(a) the individual's chief source of income for the particular year is farming or fishing and the individual's net tax owing for the particular year, or either of the 2 preceding taxation years, does not exceed the individual's instalment threshold for that year; or

(b) the individual's net tax owing for the particular year, or for each of the 2 preceding taxation years, does not exceed the individual's instalment threshold for that year.

Related Provisions: 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 157(2.1) — Threshold of $1,000 for corporations; 161(2) — Interest on late or insufficient instalments.

Forms: T7B: Instalment guide for individuals.

(3) Idem — Sections 155 and 156 do not require the payment of any amount in respect of an individual that would otherwise become due under either of those sections on or after the day on which the individual dies.

(4) Payment of remainder — Every individual shall, on or before the individual's balance-due day for each taxation year, pay to the Receiver General in respect of the year the amount, if any, by which the individual's tax payable under this Part for the year exceeds the total of

(a) all amounts deducted or withheld under section 153 from remuneration or other payments received by the individual in the year, and

(b) all other amounts paid to the Receiver General on or before that day on account of the individual's tax payable under this Part for the year.

Related Provisions: 104(23)(e) — Alternative rule for testamentary trust; 161(1) — Interest payable if balance not paid on time.

History [s. 156.1]: S. 156.1 amended by 1994, c. 8, s. 24, subsecs. 156.1(1) to (3) applicable to amounts that become payable after June 1994 and subsec. 156.1(4) applicable to 1994, *et seq.* S. 156.1 formerly read:

> 156.1 (1) No instalment required — Where the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (v) or (viii) that was excluded or deducted, as the case may be) under this Part and Part I.1 by an individual for a particular taxation year or for the taxation year preceding that year is not more than the total of $1,000 and the amount, if any, determined in respect of the individual for that year under subsection 120(2),
>
> (a) sections 155 and 156 do not apply to that individual for the particular year; and
>
> (b) the individual shall pay to the Receiver General, on or before the individual's balance-due day for the particular year, the individual's tax as estimated under section 151 for the particular year.
>
> (2) Idem — Paragraphs 155(1)(a) and 156(1)(a) and (b) do not require the payment of any amount in respect of an individual that would otherwise become due under any of those paragraphs on or after the day on which the individual died.

Subsec. 156.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 93, applicable to 1992 *et seq.* Subsec. (2) formerly read:

> (2) Idem — Paragraphs 155(1)(a) and 156(1)(a) do not require the payment of any amount in respect of an individual that would otherwise become due under either of those paragraphs on or after the day on which the individual dies.

That portion of subsec. 156.1(1) preceding para. (a) amended by 1994, c. 7, Sch. VI (1992, c. 29), s. 6, applicable to 1992 *et seq.* That portion formerly read:

> 156.1 (1) Where the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (v) that was excluded or deducted, as the case may be) under this Part and Part I.1 by an individual for a particular taxation year or for the taxation year immediately preceding that year is not more than the total of $1,000 and the amount, if any, determined in respect of the individual for the particular year under subsection 120(2),

S. 156.1 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 129, applicable to 1990 *et seq.* Subsec. 156.1(1) is applicable, in addition, with respect to amounts referred to in para. 161(7)(a) in respect of subsequent taxation years referred to in that para. ending after 1989, except that, in its application to a taxation year ending before 1990, the reference in para. 156.1(1)(b) to "the individual's balance-due day for" shall be read as a reference to "April 30 in the year immediately following". S. 156.1 formerly read:

> 156.1 No instalment required — Where the total of the taxes payable under this Part and Part I.1 by an individual for a particular taxation year or for the taxation year immediately preceding that year is not more than the total of $1,000 and the amount, if any, determined in respect of the individual for that year under subsection 120(2),
>
> (a) section 155 or 156, as the case may be, is not applicable in respect of that individual for the particular taxation year,
>
> (b) the taxpayer shall pay to the Receiver General, on or before April 30 in the year immediately following the particular taxation year, the taxpayer's tax as estimated under section 151 for the particular taxation year.

Pre-RSC History [s. 156.1]: That portion of s. 156.1 preceding para. (a) amended by 1990, c. 39, s. 39, to substitute "the aggregate of the taxes payable under this Part and Part I.1" for "the tax payable under this Part (computed without reference to sections 127.2 and 127.3)", applicable to 1989 *et seq.*

That portion of s. 156.1 preceding para. (a) substituted by 1984, c. 45, s. 62, applicable to 1984 *et seq.* That portion formerly read:

> 156.1 Where the tax payable under this Part by an individual for a particular taxation year after 1971 or for the taxation year immediately preceding that year is not more than $400,

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

S. 156.1 added by 1973-74, c. 14, s. 56.

Definitions [s. 156.1]: "amount", "balance-due day", "farming", "fishing", "individual" — 248(1); "instalment threshold", "net tax owing" — 156.1(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "specified future tax consequence" — 248(1); "taxpayer" — 248(1); "taxation year" — 249.

157. (1) Payment by corporations — Every corporation shall, in respect of each of its taxation years, pay to the Receiver General

(a) either

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the total of the amounts estimated by it to be the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year,

(ii) on or before the last day of each month in the year, an amount equal to 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first two months in the year, an amount equal to 1/12 of its second instalment base for the year, and on or before the last day of each of the following months in the year, an amount equal to 1/10 of the amount remaining after deducting the amount computed pursuant to this subparagraph in respect of the first two months from its first instalment base for the year; and

(b) the remainder of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year

(i) on or before the end of the third month following the end of the year, where

(A) an amount was deducted by virtue of section 125 in computing the tax payable under this Part by the corporation for the year or its immediately preceding taxation year,

(B) the corporation is, throughout the year, a Canadian-controlled private corporation,

(C) a particular calendar year immediately preceded the calendar year in which the year ends, and

(D) either

(I) the corporation is not associated with another corporation in the taxation year and its taxable income for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) does not exceed its business limit for that preceding year, or

(II) where the corporation is associated with another corporation in the taxation year, the total of all amounts each of which is the taxable income of the corporation or such an associated corporation for its last taxation year that ended in the particular calendar year (determined before taking into consideration the specified future tax consequences for that last year) does not exceed the total of all amounts each of which is the business limit of the corporation or such an associated corporation for that last year, or

(ii) on or before the end of the second month following the end of the year, in any other case.

Related Provisions: 87(2)(oo), (oo.1) — Effect of amalgamation; 88(1)(e.8), (e.9) — Winding-up; 151 — Estimate of tax; 157(2), (2.1), (3) — Special cases; 161(1) — Interest on taxes due; 161(2) — Interest on unpaid tax instalments; 161(2.2) — Interest on instalments; 161(4.1) — Minimum instalment payments to avoid interest charges; 163.1 — Penalty for late or deficient instalments; 221.2 — Transfers of instalments to other years' accounts; 248(1)"balance-due day"(d) — Deadline under 157(1)(b) is the balance-due day of corporation; 248(7) — Receipt of things mailed; 256 — Associated corporations.

History: Cls. 157(1)(b)(i)(B)–(D) substituted for cl. (B) by 1997, c. 25, subsec. 49(1), applicable to amounts that become payable after 1995, except that, for taxation years that end before 1998, subcl. (D)(II) shall be read as follows:

"(II) where the corporation is associated with another corporation in the year,

1. the total of the taxable income of the corporation for its immediately preceding taxation year (determined before taking into consideration the specified future tax consequences for that preceding year) and the total of the taxable incomes of all such associated corporations for their taxation years that ended in the particular calendar year (determined before taking into consideration the specified future tax consequences for those years)

does not exceed

2. the total of the business limit of the corporation for its immediately preceding taxation year and the total of the business limits of all such associated corporations for their taxation years that ended in the particular calendar year, or

Cl. (b)(i)(B) formerly read:

(B) the corporation is, throughout the year, a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year immediately preceding the calendar year in which the taxation year of the corporation ended does not exceed the total of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years, or

Subpara. 157(1)(a)(i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(1), applicable to 1992 *et seq.* Subpara. (a)(i) formerly read:

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the total of the amounts estimated by it to be the taxes payable under this Part and Part VI.1 by it for the year,

That portion of para. 157(1)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(2), to add reference to Parts I.3 and VI, applicable to 1992 *et seq.*

Pre-RSC History: Subpara. 157(1)(a)(i) substituted by 1990, c. 39, subsec. 40(1), applicable to 1990 *et seq.* Subpara. (a)(i) formerly read:

(i) on or before the last day of each month in the year, the aggregate of an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year computed without reference to section 123.1, paragraph 125.2(1)(a), section 127.2 and 127.3 and an amount equal to 1/12 of the amount estimated by it to be the tax payable under Part VI.1 by it for the year,

Subpara. 157(1)(a)(i) and that portion of para. 157(1)(b) preceding subpara. (i) substituted by 1988, c. 55, subsecs. 138(1), (2), applicable to 1988 *et seq.*, except that in applying subpara. 157(1)(a)(i) to the 1988 taxation year it shall be read without reference to the words "paragraph 125.2(1)(a)". Subpara. 157(1)(a)(i) and that portion of para. (b) formerly read:

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year computed without reference to sections 123.1, 127.2 and 127.3,

. . . . .

(b) the remainder of the tax payable by it under this Part for the year

Subsec. 157(1) substituted by 1986, c. 6, subsec. 87(1), applicable with respect to 1985 *et seq.*, except that in its application to the 1985 taxation year, the subsec. shall be read as follows:

157. (1) Every corporation shall, during the 15 month period ending 3 months after the close of a taxation year, pay to the Receiver General

(a) either

(i) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year computed without reference to sections 123.1, 127.2 and 127.3,

(ii) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first 2 months in that period, an amount equal to 1/12 of its second instalment base for the year, and on or before the last day of each of the next following 10 months in that period, an amount equal to 1/10 of the amount remaining after deducting the amount computed pursuant to this subparagraph in respect of the first 2 months of the period from its first instalment base for the year; and

(b) the remainder of the tax as estimated by it under section 151,

(i) on or before the end of the third month following the end of the year, where

(A) an amount was deducted by virtue of section 125 in computing the tax payable under this Part by the corporation for the year or its immediately preceding taxation year, and

(B) the corporation is, throughout the year, a Canadian-controlled private corporation whose taxable income for the immediately preceding taxation year together with the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year immediately preceding the calendar year in which the taxation year of the corporation ended does not exceed the aggregate of the business limits (as determined under section 125) of the corporation and the associated corporations for those preceding years, or

(ii) on or before the last day of the fourteenth month of the period, in any other case.

Subsec. (1) formerly read:

157. (1) Corporations — Every corporation shall, during the 15 month period ending 3 months after the close of a taxation year, pay to the Receiver General

(a) either

(i) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year computed without reference to sections 123.3 to 123.5, 127.2 and 127.3,

(ii) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first 2 months in that period, an amount equal to 1/12 of its second instalment base for the year, and on or before the last day of each of the next following 10 months in that period, an amount equal to 1/10 of the amount remaining after deducting the amount computed pursuant to this subparagraph in respect of the first 2 months of the period from its first instalment base for the year; and

(b) the remainder of the tax as estimated by it under section 151,

(i) on or before the last day of the period, where the corporation is, throughout the year, a Canadian-controlled private corporation and the aggregate of its taxable income for the immediately preceding taxation year and the taxable incomes of all corporations with which it was associated in the year for their taxation years ending in the calendar year in which the immediately preceding taxation year of the corporation ended does not exceed the aggregate of the business limits (as determined under section 125) of the corporation and the associated corporations for those years, or

(ii) on or before the last day of the fourteenth month of the period, in any other case.

All that portion of subsec. 157(1) preceding subpara. (b)(i) substituted by 1985, c. 45, subsec. 88(1), applicable to 1986 *et seq.*, but subsec. 88(1) of said statute repealed by 1986, c. 6, s. 131, deemed in force October 29, 1985.

Subparas. 157(1)(b)(i) and (1)(b)(ii) substituted by 1985, c. 45, subsecs. 88(2), (3), applicable, as to subpara. (1)(b)(i), to 1985 *et seq.* and as to subpara. (1)(b)(ii), to 1986 *et seq.*, but subsecs. 88(2), (3) of said statute repealed by 1986, c. 6, s. 131, deemed in force October 29, 1985.

Subparas. 157(1)(a)(i) and (b)(i) substituted by 1984, c. 45, subsecs. 63(1), (2). Reference to ss. 127.2 and 127.3 was added to subpara. (a)(i), applicable with respect to amounts deducted under ss. 127.2 and 127.3 in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984. As substituted, subpara. (b)(i) is applicable to 1985 *et seq.* Subpara. (b)(i) formerly read:

(i) on or before the last day of the period, where an amount was deducted by virtue of section 125 in computing the tax payable under this Part by the corporation for the year or for its immediately preceding taxation year, or

Subpara. 157(1)(a)(i) substituted by 1980-81-82-83, c. 140, s. 106, applicable to taxation years ending after 1981. Subpara. (a)(i) formerly read:

(i) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year computed without reference to section 123.3,

All that portion of subsec. 157(1) preceding para. (b) substituted by 1980-81-82-83, c. 48, subsec. 87(1), applicable, except as to subpara. 157(1)(a)(i), to taxation years commencing after October 28, 1980, and as to subpara. 157(1)(a)(i), to taxation years ending after December 31, 1979. That portion formerly read:

157. (1) Every corporation shall, during the 15 months period ending 3 months after the close of each taxation year, pay to the Receiver General of Canada,

(a) either

(i) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year computed without reference to section 123.2,

(ii) on or before the last day of each of the first 12 months in that period, an amount equal to 1/12 of its instalment base for the immediately preceding taxation year, or on or before the last day of each of the first 2 months in that period, an amount equal to 1/12 of its instalment base for the second taxation year preceding the year, and on or before the last day of each of the next following 10 months in that period, an amount equal to 1/10 of the amount remaining after deducting the amount computed pursuant to this subparagraph in respect of the first 2 months of the period from its instalment base for the immediately preceding taxation year; and

1980-81-82-83, c. 48, subsec. 87(2), provides that in its application to the 1980 taxation year, para. (b) shall be read as follows:

(b) the amount, if any, by which the remainder of the tax as estimated by it under section 151 exceeds the amount added under section 123.3 to the tax for the year otherwise payable under this Part by the corporation

(i) on or before the last day of the period, where an amount was deducted by virtue of section 125 in computing the tax payable under this Part by the corporation for the year or for its immediately preceding taxation year, or

(ii) on or before the last day of the fourteenth month of the period, in any other case,

and the amount added under section 123.3 to the tax for the year otherwise payable under this Part by the corporation for the year, on or before the later of June 30, 1980 and the day referred to in subparagraph (i) or (ii), as the case may be.

Subpara. 157(1)(b)(i) substituted by 1976-77, c. 4, s. 63, applicable to 1976 *et seq.* Subpara. (b)(i) formerly read:

(i) on or before the last day of the period, where an amount was deducted by virtue of section 125 in computing the tax payable under this Part by the corporation for its immediately preceding taxation year, or

Subpara. 157(1)(a)(i), para. 157(1)(b) substituted by 1974-75-76, c. 26, subsecs. 104(1), (2), applicable, as to subpara. 157(1)(a)(i), to 1974, 1975 and 1976 taxation years and for 1977 *et seq.* to be read as it read immediately before the coming into force of subsec. 104(1), and, as to para.

157(1)(b), to taxation years ending after November 18, 1974. Subpara. (a)(i), para. (b) formerly read:

(i) on or before the last day of the first 12 months in that period, an amount equal to 1/12 of the amount estimated by it to be the tax payable under this Part by it for the year,

. . . . .

(b) on or before the last day of the period, the remainder of the tax as estimated under section 151.

Subsec. 157(1) substituted by 1973-74, c. 14, subsec. 57(1), applicable to 1972 *et seq.*

Forms: T7B CORP: Corporation instalment guide.

(2) Special case [co-op or credit union] — Where in a taxation year a corporation

(a) has held out the prospect that it will make allocations in proportion to patronage as described in section 135, or

(b) is a credit union,

and for the year or the preceding taxation year

(c) its taxable income (determined before taking into consideration the specified future tax consequences for the year or that preceding year, as the case may be) was not more than $10,000, and

(d) no tax was payable by it under any of Parts I.3, VI and VI.1 (determined before taking into consideration the specified future tax consequences for the year or that preceding year, as the case may be),

it may, instead of paying the instalments required by subsection (1), pay to the Receiver General at the end of the third month following the end of the year the total of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year.

Related Provisions: 135 — Patronage dividend deduction; 151 — Estimate of tax; 161(3) — Special 3% interest charge repealed.

History: The portion of subsec. 157(2) before para. (c) amended by 1998, c. 19, subsec. 184(1), applicable to taxation years that end after February 22, 1994. The portion formerly read:

(2) Where a corporation

(a) has held out the prospect that it will make allocations in proportion to its customers of a taxation year as described by section 135, or

(b) is a credit union,

and for the year or the immediately preceding taxation year

Paras. 157(2)(c) and (d) amended by 1997, c. 25, subsec. 49(2), applicable to amounts that become payable after 1995. Paras. (c) and (d) formerly read:

(c) its taxable income was not more than $10,000, and

(d) no tax was payable by it under any of Parts I.3, VI and VI.1,

All that portion of subsec. 157(2) following para. (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(3), applicable to 1992 *et seq.* That portion formerly read:

(d) no tax was payable by it under Part VI.1,

it may, instead of paying the instalments required by subsection (1), pay to the Receiver General at the end of the third month following the end of the year the total of the taxes payable by it under this Part and Part VI.1 for the year.

Pre-RSC History: That portion of subsec. 157(2) following para. (b) substituted by 1988, c. 55, subsec. 138(3), applicable to 1988 *et seq.* That portion formerly read:

and its taxable income for the year or the immediately preceding taxation year is not more than $10,000, it may, instead of paying the instalments required by subsection (1), pay to the Receiver General at the end of the third month following the end of the year the whole of the tax payable by it under this Part for the year.

All that portion of subsec. 157(2) following para. (b) substituted by 1985, c. 45, subsec. 88(4), applicable to 1986 *et seq.* That portion formerly read:

and its taxable income for the year is estimated by it to be not more than $10,000, it may, instead of paying the instalments required by subsection (1), pay to the Receiver General, at the end of the period referred to in subsection (1), the whole of the tax as estimated by it under section 151.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Subsec. 157(2) substituted by 1974-75-76, c. 26, subsec. 104(3), applicable to 1972 *et seq.*

(2.1) Idem [$1,000 threshold] — Where

(a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by a corporation for a taxation year (determined before taking into consideration the specified future tax consequences for the year), or

(b) the corporation's first instalment base for the year

is not more than $1,000, the corporation may, instead of paying the instalments required for the year by paragraph (1)(a), pay to the Receiver General, under paragraph (1)(b), the total of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year.

Related Provisions: 156.1(1) — No instalment required.

History: Para. 157(2.1)(a) amended by 1997, c. 25, subsec. 49(3), applicable to amounts that become payable after 1995. Para. (a) formerly read:

(a) the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (x) that was excluded or deducted, as the case may be) under this Part and Parts I.3, VI and VI.1 by a corporation for a taxation year, or

Subsec. 157(2.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(4), applicable to 1992 *et seq.* Subsec. (2.1) formerly read:

(2.1) Where

(a) the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (viii) that was excluded or deducted, as the case may be) under this Part and Part VI.1 by a corporation for a taxation year, or

(b) the corporation's first instalment base for the year

is not more than $1,000, the corporation may, instead of paying the instalments required by paragraph (1)(a) for the year, pay to the Receiver General, pursuant to paragraph (1)(b), the total of the taxes payable by it under this Part and Part VI.1 for the year.

Para. 157(2.1)(a) amended by 1994, c. 7, Sch. VI (1992, c. 29), s. 7, to substitute "161(7)(a)(ii) to (viii)" for "161(7)(a)(ii) to (vii)", applicable to 1992 *et seq.*

Para. 157(2.1)(a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 130, applicable

(a) to 1990 *et seq.*; and

(b) with respect to amounts referred to in para. 161(7)(a), in respect of subsequent taxation years referred to in that para. ending after 1989.

Para. (a) formerly read:

(a) the total of the taxes payable under this Part, Part I.3 and Part VI.1 by a corporation for a taxation year, or

Pre-RSC History: Para. 157(2.1)(a) substituted by 1990, c. 39, subsec. 40(2), applicable to 1990 *et seq.* Para. (a) formerly read:

(a) the aggregate of the tax payable under this Part (computed without reference to sections 127.2 and 127.3) and the tax payable under Part VI.1 by a corporation for a taxation year, or

Subsec. 157(2.1) substituted by 1988, c. 55, subsec. 138(4), applicable to 1988 *et seq.* Subsec. (2.1) formerly read:

(2.1) Where the tax payable under this Part (computed without reference to sections 127.2 and 127.3) by a corporation for a taxation year or its first instalment base for the year is not more than $1,000, the corporation may, instead of paying the instalments required by paragraph (1)(a) for the year, pay to the Receiver General, pursuant to paragraph (1)(b), all of its tax as estimated by it under section 151 for the year.

Subsec. 157(2.1) added by 1984, c. 45, subsec. 63(3), applicable to 1984 *et seq.*

(3) Private, mutual fund and non-resident-owned investment corporations — Notwithstanding subsection (1), the amount payable for a taxation year by a corporation to the Receiver General on or before the last day of any month in the year shall be deemed to be the amount, if any, by which

(a) the amount so payable as determined under that subsection for the month

exceeds

(b) where the corporation is neither a mutual fund corporation nor a non-resident-owned investment corporation, 1/12 of the corporation's dividend refund (within the meaning assigned by subsection 129(1)) for the year,

(c) where the corporation is a mutual fund corporation, 1/12 of the total of

(i) the corporation's capital gains refund (within the meaning assigned by section 131) for the year, and

(ii) the amount that, by virtue of subsection 131(5), is the corporation's dividend refund (within the meaning assigned by section 129) for the year,

(d) where the corporation is a non-resident-owned investment corporation, 1/12 of the corporation's allowable refund (within the meaning assigned by section 133) for the year, and

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

Related Provisions: 131(5) — Dividend refund to mutual fund corporation; 136 — Cooperative not private corporation — exception.

History: Para. 157(3)(e) amended by 1998, c. 19, subsec. 184(2), applicable to taxation years that end after February 22, 1994 except that,

(a) for taxation years that ended before 1995, the para. shall be read without reference to "125.4(3)"; and

(b) for taxation years that ended before November 1997, the para. shall be read without reference to "125.5(3)".

Para. 157(3)(e) formerly read:

(e) 1/12 of the total of all amounts each of which is an amount deemed by subsection 125.4(3) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

Para. 157(3)(e) amended by 1996, c 21, s. 41, applicable to 1995 *et seq.* Para. (e) formerly read:

(e) 1/12 of the amount deemed by subsection 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

Para. 157(3)(e) added by 1995, c. 3, s. 47, applicable to taxation years that end after February 22, 1994.

Para. 157(3)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 94(5), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) where the corporation is a private corporation, 1/12 of the corporation's dividend refund (within the meaning assigned by section 129) for the year,

Pre-RSC History: All that portion of subsec. 157(3) preceding para. (b) substituted by 1985, c. 45, subsec. 88(5), applicable to 1986 *et seq.* That portion formerly read:

(3) Private corporation, mutual fund corporations and non-resident-owned investment corporations — Notwithstanding subsection (1), the amount payable by a corporation to the Receiver General on or before the last day of any of the first 12 months in the 15 months period referred to therein ending 3 months after the close of a taxation year shall be deemed to be the amount, if any, by which

(a) the amount so payable otherwise determined under that subsection,

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(4) Definitions — In this section, "first instalment base" and "second instalment base" of a corporation for a taxation year have the meanings prescribed by regulation.

Pre-RSC History: Subsec. 157(4) substituted by 1980-81-82-83, c. 48, subsec. 87(3), applicable to taxation years commencing after October 28, 1980. Subsec. 157(4) formerly read:

(4) "instalment base" defined — In this section, "instalment base" of a corporation for a taxation year means the amount determined in prescribed manner to be its instalment base for the year.

Subsec. 157(4) added by 1973-74, c. 14, subsec. 57(2), applicable to 1972 *et seq.*

Regulations: 5301 (meaning of "first instalment base", "second instalment base").

Definitions [s. 157]: "amount" — 248(1); "associated" — 256; "business limit" — 125(2)–(5.1), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "first instalment base" — 157(4), Reg. 5301(1); "mutual fund corporation" — 131(8); "non-resident-owned investment corporation" — 133(8), 248(1); "prescribed" — 248(1); "resident in Canada" — 250; "second instalment base" — 157(4), Reg. 5301(2); "share" — 248(1); "specified future tax consequence" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249.

158. Payment of remainder — Where the Minister mails a notice of assessment of any amount payable by a taxpayer, that part of the amount assessed then remaining unpaid is payable forthwith by the taxpayer to the Receiver General.

Related Provisions: 156.1(4) — Obligation of individual to pay balance by balance-due date; 157(1)(b) — Obligation of corporation to pay balance; 164(3) — Interest on overpayments; 220(4) — Security for taxes; 222–225 — Collection of taxes; 225.1 — Collection restrictions; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: S. 158 substituted by 1985, c. 45, subsec. 89(1), applicable with respect to notices of assessment mailed after October 29, 1985. S. 158 formerly read:

158. (1) The taxpayer shall, within 30 days from the day of mailing of the notice of assessment, pay to the Receiver General any part of the assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or appeal from the assessment is outstanding.

(2) Where, in the opinion of the Minister, a taxpayer is attempting to avoid payment of taxes, the Minister may direct that all taxes, penalties and interest be paid forthwith upon assessment.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Selected Cases [s. 158]: *Lambert v. The Queen*, [1976] C.T.C. 611 (FCA) (Subsequent reassessment not affecting validity of issued certificate in respect of unpaid balance for tax).

Definitions [s. 158]: "assessment", "Minister", "taxpayer" — 248(1).

Forms [s. 158]: T7D: Statement of account; T118A: Reminder of past due account.

159. (1) Person acting for another — For the purposes of this Act, where a person is a legal representative of a taxpayer at any time,

(a) the legal representative is jointly and severally liable with the taxpayer

(i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the legal representative is at that time in possession or control, in the capacity of legal representative, of property that belongs or

belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate, and

(ii) to perform any obligation or duty imposed under this Act on the taxpayer at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the legal representative acting in that capacity; and

(b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the legal representative acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

Related Provisions: 150(3) — Obligation to file taxpayer's return; 227.1 — Liability of corporate directors; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 159(1) amended by 1998, c. 19, s. 185, in force on June 18, 1998. Subsec. 159(1) formerly read:

(1) **Payment on behalf of others** — Where the Minister mails to a person required by section 150 to file a return of the income of a taxpayer for a taxation year a notice of assessment of any amount payable for the year by or in respect of the taxpayer, that part of the amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General to the extent that the person has or had, at any time after the end of the taxation year, in his or her possession or control property belonging to the taxpayer or the taxpayer's estate and on payment thereof the person shall be deemed to have made the payment on behalf of the taxpayer.

Pre-RSC History: Subsec. 159(1) substituted by 1985, c. 45, subsec. 90(1), applicable with respect to notices of assessment mailed after October 29, 1985. Subsec. 159(1) formerly read:

159. (1) Every person required by section 150 to file a return of the income of any other person for a taxation year shall, within 30 days from the day of mailing of the notice of assessment, pay all taxes, penalties and interest payable by or in respect of that person to the extent that he has or had, at any time since the taxation year, in his possession or control property belonging to that person or his estate and shall thereupon be deemed to have made that payment on behalf of the taxpayer.

(2) Certificate before distribution — Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

Related Provisions: 159(3) — Liability where property distributed with no certificate; 159(3.1) — Appropriation of property; 220(4) — Security for taxes; 227.1 — Liability of directors for withholding taxes.

History: Subsec. 159(2) amended by 1998, c. 19, s. 185, in force on June 18, 1998. Subsec. 159(2) formerly read:

(2) Every person (other than a trustee in bankruptcy) who is an assignee, liquidator, receiver, receiver-manager, administrator, executor or any other like person (in this section referred to as the "responsible representative") administering, winding up, controlling or otherwise dealing with a property, business or estate of another person shall, before distributing to one or more persons any property over which the responsible representative has control in the capacity of the responsible representative, obtain a certificate from the Minister, by applying therefor in prescribed form, certifying that all amounts

(a) for which any taxpayer is liable under this Act in respect of the taxation year in which the distribution is made, or any preceding taxation year, and

(b) for the payment of which the responsible representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

That portion of subsec. 159(2) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 131, applicable to applications made after December 17, 1991. That portion formerly read:

(2) Every person (other than a trustee in bankruptcy) who is an assignee, liquidator, receiver, receiver-manager, administrator, executor, or any other like person, (in this section referred to as the "responsible representative") administering, winding up, controlling or otherwise dealing with a property, business or estate of another person, before distributing to one or more persons any property over which the responsible representative has control in that capacity, shall obtain a certificate from the Minister certifying that all amounts

Pre-RSC History: Subsec. 159(2) substituted by 1985, c. 45, subsec. 90(1). Subsec. 159(2) formerly read:

(2) Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, before distributing any property under his control, shall obtain a certificate from the Minister certifying that taxes, interest or penalties that have been assessed under this Act and are chargeable against or payable out of the property have been paid or that security for the payment thereof has, in accordance with subsection 220(4), been accepted by the Minister.

Selected Cases [subsec. 159(2)]: *Pâquet v. MNR*, [1992] 1 C.T.C. 2699 (TCC) (Appellant not responsible representative of taxpayer corporation, not personally liable for payment of tax owed by latter); *Flemming Estate v. MNR*, [1983] C.T.C. 321 (FCTD); rev'd in part [1984] C.T.C. 352, (sub nom. *The Queen v. Parsons)* (FCA) (No need to seek certificate from Minister when requirements of section do not cover directors of corporation).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; CPP-2: Canada pension plan — status of employer where trustee in bankruptcy, receiver or receiver and manager is appointed; UI-3: *Unemployment Insurance Act* — status of employer where trustee in bankruptcy, receiver or receiver and manager is appointed.

Information Circulars: 82-6R2: Clearance certificate; 98-1; Collections policies.

Forms: TX19: Asking for clearance certificate.

(3) Personal liability — Where a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection, the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed, and the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection, and the provisions of this Division apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152.

Related Provisions: 159(3.1) — Appropriation of property.

History: Subsec. 159(3) amended by 1998, c. 19, s. 185, in force on June 18, 1998. Subsec. 159(3) formerly read:

(3) Where a responsible representative distributes to one or more persons property over which the responsible representative has control in that capacity without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection, the responsible representative is personally liable for the payment of those amounts to the extent of the value of the property distributed and the Minister may assess the responsible representative therefor

in the same manner and with the same effect as an assessment made under section 152.

Pre-RSC History: Subsec. 159(3) substituted by 1985, c. 45, subsec. 90(1). Subsec. 159(3) formerly read:

(3) Liability — Distribution of property without a certificate required by subsection (2) renders the person required to obtain the certificate personally liable for the unpaid taxes, interest and penalties.

Selected Cases [subsec. 159(3)]: *Flemming Estate v. MNR*, [1983] C.T.C. 321 (FCTD); rev'd in part [1984] C.T.C. 352, (sub nom. *The Queen v. Parsons)* (FCA) (No need to seek certificate from Minister when requirements of section do not cover directors of corporation).

Interpretation Bulletins: IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Information Circulars: 98-1: Collections policies.

(3.1) Appropriation of property — For the purposes of subsections (2) and (3), an appropriation by a legal representative of a taxpayer of property in the possession or control of the legal representative acting in that capacity is deemed to be a distribution of the property to a person.

History: Subsec. 159(3.1) added by 1998, c. 19, s. 185, in force on June 18, 1998.

(4) Election on emigration — Where an individual to whom subsection 128.1(4) applies

(a) so elects in prescribed manner on or before the individual's balance-due day for the taxation year in which the individual ceased to be resident in Canada, and

(b) furnishes to the Minister security acceptable to the Minister for payment of any tax under this Act the payment of which is deferred by the election,

all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that would be that tax if this Act were read without reference to subsection 128.1(4) may, subject to subsection (4.1), be paid in such number of equal annual instalments as is specified in the election by the individual.

Proposed Repeal — 159(4), (4.1)

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 92(1), will repeal subsecs. 159(4) and (4.1), applicable to individuals who cease to be resident in Canada after October 1, 1996.

Technical Notes: Subsections 159(4) and (4.1) of the Act allow an individual who has ceased to be resident in Canada to elect to pay any tax resulting from the deemed disposition of property under subsection 128.1(4) of the Act in up to six annual instalments, provided the individual gives the Minister of National Revenue adequate security.

The present amendments include, in new subsections 220(4.5) and 220(4.6) of the Act, more comprehensive and more liberal security rules than these. Subsections 159(4) and (4.1) are therefore repealed, with application to individuals who cease to be resident in Canada after October 1, 1996.

Related Provisions: 159(4.1) — Instalment requirements; 159(7) — Form and manner of election, and interest.

History: Subsec. 159(4) substituted by 1994, c. 21, s. 78, applicable to changes in residence occurring after 1992. That subsec. formerly read:

(4) Election where subsec. 48(1) applicable — Where subsection 48(1) is applicable in respect of a taxpayer who has ceased to be resident in Canada in a taxation year, and the taxpayer so elects and furnishes the Minister with security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the taxpayer for the year, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be, if this Act were read without reference to subsection 48(1), may be paid in such number (not exceeding 6) of equal consecutive annual instalments as is specified by the taxpayer in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Pre-RSC History: Subsec. 159(4) substituted by 1984, c. 45, s. 64, to delete "whether such security is by way of a charge of any kind on property of the taxpayer or any other person or by way of guarantee from any other person," formerly after "payment of which is deferred by the election", applicable after February 15, 1984.

Subsec. 159(4) added by 1973-74, c. 14, s. 58, applicable to 1972 *et seq.*

Regulations: 1301 (prescribed manner of making election).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Forms: T2074: Election, under subsection 159(4) of the ITA, to defer payment of income tax on the deemed disposition of property.

(4.1) Idem — Where an individual to whom subsection 128.1(4) applies elects under subsection (4),

(a) the number of equal annual instalments provided in the election shall be deemed to be the lesser of 6 and such other number as is specified in the election by the individual;

(b) the first instalment shall be paid on or before the individual's balance-due day for the taxation year; and

(c) each subsequent instalment shall be paid on or before the next following anniversary of the day described in paragraph (b).

Proposed Repeal — 159(4.1)

See under 159(4).

History: Subsec. 159(4.1) added by 1994, c. 21, s. 78, applicable to changes in residence occurring after 1992.

(5) Election where certain provisions applicable [on death] — Where subsection 70(2), (5) or (5.2) of this Act or subsection 70(9.4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, is applicable in respect of a taxpayer who has died, and the taxpayer's legal representative so elects and furnishes the Minister with security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any provision of this Part or the *Income Tax Application Rules* respecting the time within which payment shall be made of the tax payable under this Part by the taxpayer for the taxation year in which the taxpayer died, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be, if this Act were read without reference to subsections 70(2), (5) and (5.2) and the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, were read without reference to subsections 70(2), (5), (5.2) and (9.4) of that Act, may be paid in such number (not exceeding 10) of equal consecutive annual instalments as is specified by the legal representative in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Related Provisions: 159(5.1) — Pre-1972 professional business; 159(6) — Meaning of "tax payable under this Part"; 159(7) — Form and manner of election, and interest.

Pre-RSC History: Subsec. 159(5) substituted by 1984, c. 45, s. 64, to delete "whether such security is by way of a charge of any kind on property that was property of the taxpayer or is property of any other person or by way of guarantee from any other person," formerly after "payment of which is deferred by the election", applicable after February 15, 1984.

Subsec. 159(5) substituted by 1977-78, c. 32, s. 8, applicable in respect of deaths occurring after 1977. Subsec. 159(5) formerly read:

> (5) Election where ss. 70(2) or (5) applicable — Where subsection 70(2) or (5) is applicable in respect of a taxpayer who has died, and the taxpayer's legal representative so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, whether such security is by way of a charge of any kind on property that was property of the taxpayer or is property of any other person or by way of guarantee from any other person, notwithstanding any provision of this Part or the *Income Tax Application Rules, 1971* respecting the time within which payment shall be made of the tax payable under this Part by the taxpayer for the taxation year in which he died, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be, if this Act were read without reference to subsections 70(2) and (5), may be paid in such number (not exceeding 6) of equal consecutive annual instalments as is specified by the legal representative in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Subsec. 159(5) added by 1973-74, c. 14, s. 58, applicable to 1972 *et seq.*

Regulations: 1001 (prescribed manner of making election).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-125R4: Dispositions of resource properties; IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner.

Forms: T2075: Election to defer payment of income tax under subsec. 159(5) by a deceased taxpayer's legal representative or trustee; T4011: Preparing returns for deceased persons [guide].

(5.1) Idem [pre-1972 professional business] — Where, in the taxation year in which a taxpayer dies, an amount is included in computing the taxpayer's income by virtue of paragraph 23(3)(c) of the *Income Tax Application Rules*, the provisions of subsection (5) apply, with such modifications as the circumstances require, as though the amount were an amount included in computing the taxpayer's income for the year by virtue of subsection 70(2) or an amount deemed to have been received by the taxpayer by virtue of subsection 70(5).

Related Provisions: 70(2) — Deceased taxpayer — amounts receivable; 70(5) — Depreciable and other capital property.

Pre-RSC History: Subsec. 159(5.1) added by 1974-75-76, c. 26, s. 105, applicable to 1972 *et seq.*

I.T. Application Rules: 23(3).

Interpretation Bulletins: IT-212R3: Income of deceased persons — rights or things; IT-278R2: Death of a partner or of a retired partner.

(6) Idem — For the purposes of subsection (5), the "tax payable under this Part" by a taxpayer for the taxation year in which the taxpayer died includes any tax payable under this Part by virtue of an election in respect of the taxpayer's death made by the taxpayer's legal representative under subsection 70(2) or under the provisions of that subsection as they are required to be read by virtue of the *Income Tax Application Rules*.

Pre-RSC History: Subsec. 159(6) added by 1973-74, c. 14, s. 58, applicable to 1972 *et seq.*

(6.1) Election where subsec. 104(4) applicable — Where a day determined under paragraph 104(4)(a), (a.1), (b) or (c) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any other provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(a), (a.1), (b) or (c), as the case may be, may be paid in such number (not exceeding 10) of equal consecutive annual instalments as is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Proposed Amendment — 159(6.1)

(6.1) Election where subsec. 104(4) applicable — Where a day determined under paragraph 104(4)(a), (a.1), (a.2), (a.3), (b) or (c) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any other provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of the part of that tax that is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(a), (a.1), (a.2), (a.3), (b) or (c), as the case may be, may be paid in the number (not exceeding 10) of equal consecutive annual instalments that is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 92(2), will amend subsec. 159(6.1) to read as above, applicable to 2000 *et seq.*

Technical Notes: Subsection 159(6.1) of the Act permits payments of a trust's tax liability resulting from a deemed disposition under paragraph 104(4)(a), (a.1), (b) or (c) to be paid (with interest) over 10 years.

Subsection 159(6.1) is amended so that this rule also applies in regard to a trust's tax liability resulting from a deemed disposition under new paragraphs 104(4)(a.2) and (a.3), described in the notes above.

Related Provisions: 104(5.3) — Election to postpone deemed disposition; 159(7) — Form and manner of election, and interest.

History: Subsec. 159(6.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 95, applicable to 1993 *et seq.*

Forms: T2223: Election under s. 159(6.1) by trust to defer payment of income tax.

(7) Form and manner of election and interest — Every election made by a taxpayer under subsection (4) or (6.1) or by the legal representative of a taxpayer under subsection (5) shall be made in prescribed form and on condition that, at the time of payment of any amount payment of which is deferred by the election, the taxpayer shall pay to the Receiver General interest on the amount at the prescribed rate in effect at the time the election was made, computed from the day on or before which the amount would, but for the election, have been required to be paid to the day of payment.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 159(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 95, applicable to 1993 *et seq.* Subsec. (7) formerly read:

> (7) Every election made by a taxpayer under subsection (4) or by the legal representative of a taxpayer under subsection (5), as the case may be, shall be made in prescribed form and in prescribed manner and on condition that, at the time of payment of any amount payment of which is deferred by the election, the taxpayer shall pay to the Receiver General interest on the amount at the prescribed rate in effect at the time the election was made computed from the day on or before which the amount would, but for the election, have been required to be paid to the day of payment.

Pre-RSC History: Subsec. 159(7) substituted by 1985, c. 45, subsec. 90(2). Subsec. 159(7) formerly read:

> (7) Every election made by a taxpayer under subsection (4) or by the legal representative of a taxpayer under subsection (5), as the case may be, shall be made by him in prescribed form and in prescribed manner, and on condition of payment, at the time of payment of any amount the payment of which is deferred by the election, of interest on that amount, at the rate per annum prescribed for the purposes of this subsection at the time of the making of the election, from the day on or before which payment of that amount would, but for the election, have been required to be made to the day of payment thereof.

Subsec. 159(7) added by 1973-74, c. 14, s. 58, applicable to 1972 *et seq.*

Selected Cases [subsec. 159(7)]: *Agnew (Estate) v. The Queen*, [1978] C.T.C. 351 (FCA) (Interest rate held to be rate at time of election to defer tax payment).

Regulations: 4301(a) (prescribed rate of interest).

Forms: T2074: Election, under subsection 159(4) of the *Income Tax Act*, to defer payment of income tax on deemed disposition of property; T2075: Election to defer payment of income tax under subsec. 159(5) by a deceased taxpayer's legal representative or trustee; T2223: Election under s. 159(6.1) by trust to defer payment of income tax.

Selected Cases [s. 159]: *Armstrong v. R.*, [1998] 4 C.T.C. 2006 (TCC) (Assessment under this provision did not revive right to attack assessments); *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Agent or instrumentality used to distribute deemed dividend liable under section 215 or section 159); *Westbrook Management Ltd. v. Canada*, [1996] 1 C.T.C. 2516 (TCC) (Assessment cannot raise a liability which has become statute-barred).

Definitions [s. 159]: "amount", "assessment", "balance-due day" — 248(1); "Canada" — 255; "individual", "legal representative", "Minister", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "taxation year" — 249; "tax payable under this Part" — 159(6); "taxpayer" — 248(1).

160. (1) Tax liability re property transferred not at arm's length — Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

(a) the person's spouse or a person who has since become the person's spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor of Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) a person who was under 18 years of age, or

(c) a person with whom the person was not dealing at arm's length,

the following rules apply:

(d) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

(e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.

Related Provisions: 74–75.1 — Attribution of income on non-arm's length transfers; 160(3.1) — Fair market value of undivided interest in property; 160(4) — Transfer to spouse on breakdown of marriage; 248(5) — Substituted property; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: Subpara. 160(1)(e)(ii) amended by 1987, c. 46, s. 52, to substitute "in or in respect of" for "in respect of" and "or any" for "or of any".

Para. 160(1)(d) amended by 1986, c. 6, s. 88, to substitute "sections 74 to 75.1, in respect of any income" for "section 74, 75 or 75.1, as the case may be, in respect of income", applicable after May 21, 1985.

Subsec. 160(1) substituted by 1980-81-82-83, c. 140, s. 107, applicable with respect to transfers of property occurring after November 12, 1981. Subsec. (1) formerly read:

> 160. (1) **Tax on income from property transferred between husband and wife or to minors** — Where a person has, on or after the 1st day of May, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever,
>
> (a) to his spouse or to a person who has since become his spouse, or
>
> (b) to a person who was under 18 years of age,
>
> the following rules are applicable:
>
> (c) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of section 74 or section 75, as the case may be, in respect of income from the property so transferred or from property substituted therefor; and
>
> (d) the transferee and transferor are jointly and severally liable to pay the lesser of
>
> (i) any amount that the transferor was liable to pay under this Act on the day of the transfer, and
>
> (ii) a part of any amount that the transferor was so liable to pay equal to the value of the property so transferred;
>
> but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.

Selected Cases [subsec. 160(1)]: *Medland v. R.*, [1999] 4 C.T.C. 293 (FCA); aff'g [1997] 1 C.T.C. 2702 (TCC) (Transfer may be direct or indirect); *Gaucher v. R.*, [2000] 2 C.T.C. 2734 (TCC) (Transferor's liability for tax could not be re-tried by transferee after court had already determined liability); *Ho-A-Shoo v. Canada (Attorney General)*, [2000] 2 C.T.C. 155 (Ont SCJ) (Unassessed interest may not be contemplated by provision); *Biderman v. R.*, [2000] 2 C.T.C. 35 (FCA); aff'g [1998] 4 C.T.C. 2144 (TCC) (Improper disclaimer of estate meant property had been acquired and later transferred; provision applicable); *LeBlanc v. R.*, [1999] 1 C.T.C. 2825 (TCC) (Withdrawals from RRSP to fund obligation to support spouse not transfers); *Michaud v. R.*, [1998] 4 C.T.C. 2675 (TCC) (Payment of mortgage as part of family obligations is not a transfer); *Ruffolo v. R.*, [1998] 4 C.T.C. 2114 (TCC) (Dividends not carved out from concept of transfer); *Algoa Trust v. R.*, [1998] 4 C.T.C. 2001 (TCC) (No new tax debt established and no need for new assessment); *Cooke v. R.*, [1997] 2 C.T.C. 254 (FCA) (Transfer not made "pursuant" to agreement which contained no mention of any transfer of

property); *Placements R.I.O. Inc. v. R.*, [1997] 2 C.T.C. 2513 (TCC) (What matters is the "transfer" of property, not the particular means by which it occurs); *Heavyside v. Canada*, [1997] 2 C.T.C. 1 (FCA) (Extinguishment of transferor's tax liability by discharge from bankruptcy does not affect transferee's separate and continuing liability); *155579 Canada Inc. v. Canada*, [1997] 1 C.T.C. 2011 (TCC) (Dividend is "transfer" of property); *Gamache v. Canada*, [1996] 3 C.T.C. 2597 (TCC) (Tax liability was discharged by bankruptcy; transferee not liable under provision); *Hamel v. MNR*, [1996] 2 C.T.C. 2046 (TCC) (Indirect transfer can trigger liability for assessment); *Caplan v. MNR*, [1995] 2 C.T.C. 2932D (TCC) (Where tax debtor granted discharge from bankruptcy, no longer any tax liability in year of transfer and assessment issued thereafter was ineffective); *Route Canada Real Estate Inc. v. Canada*, [1995] 2 C.T.C. 2430 (TCC) (Underlying tax liability of transferor is relevant); *Cox v. Canada*, [1995] 2 C.T.C. 2094 (TCC) (Transactions void against trustee valid unless challenged by trustee; transfer was effective if not attacked); *Achtem v. MNR*, [1995] 1 C.T.C. 2941 (TCC) (Liability of transferee extends to all amounts owing by transferor at date of transfer); *Davis v. Canada*, [1994] 2 C.T.C. 2033 (TCC) (Consideration given for transfer of property by way of dividend); *Delisle v. Canada*, [1995] 1 C.T.C. 2007 (TCC) (Taxpayer never had benefit of money transferred to her account and acted as agent only for transferor); *Dupuis (A.C.) v. Canada*, [1993] 2 C.T.C. 2032 (TCC) (Assessment under provision not subject to limitation periods in subsection 152(4)); *Algoa Trust v. Canada*, [1993] 1 C.T.C. 2294 (TCC) (Cash dividend but not stock dividend is transfer of property under provision); *Mah (F.) v. Canada*, [1993] 1 C.T.C. 422 (FCTD) (Transferee not liable under provision unless and until he had knowledge of transfer and took steps in relation to property); *Kostiuk (B.) v. MNR*, [1993] 1 C.T.C. 31 (FCTD) (Transfer of property effective at time agreement executed); *Furfaro-Siconolfi v. MNR*, [1990] 1 C.T.C. 188 (FCTD); appealed to FCA (Dec. 1989), File A-572-89 ("Transferred" means transfer of beneficial ownership, not necessarily possession).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-258R2: Transfer of property to a spouse; IT-260R: Transfer of property to a minor; IT-369R: Attribution of trust income to settlor; IT-510: Transfers and loans of property made after May 22, 1985 to a related minor; IT-511R: Interspousal and certain other transfers and loans of property.

Information Circulars: 98-1: Collections policies.

I.T. Technical News: No. 4 (section 160 — the *Davis* case).

(1.1) Joint liability where subsec. 69(11) applies — Where a particular person or partnership is deemed by subsection 69(11) to have disposed of a property at any time, the person referred to in that subsection to whom a benefit described in that subsection was available in respect of a subsequent disposition of the property or property substituted for the property is jointly and severally liable with each other taxpayer to pay a part of the other taxpayer's liabilities under this Act in respect of each taxation year equal to the amount determined by the formula

A – B

where

A is the total of amounts payable under this Act by the other taxpayer in respect of the year, and

B is the amount that would, if the particular person or partnership were not deemed by subsection 69(11) to have disposed of the property, be determined for A in respect of the other taxpayer in respect of the year,

but nothing under this subsection is deemed to limit the liability of the other taxpayer under any other provision of this Act.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 160(1.1) added by 1998, c. 19, subsec. 186(1), applicable in respect of dispositions that are deemed by subsec. 69(11) to occur after April 26, 1995.

(1.2) Joint liability — tax on split income — A parent of a specified individual is jointly and severally liable with the individual for the amount required to be added because of subsection 120.4(2) in computing the specified individual's tax payable under this Part for a taxation year if, during the year, the parent

(a) carried on a business that purchased goods or services from a business the income of which is directly or indirectly included in computing the individual's split income for the year;

(b) was a specified shareholder of a corporation that purchased goods or services from a business the income of which is directly or indirectly included in computing the individual's split income for the year;

(c) was a specified shareholder of a corporation, dividends on the shares of the capital stock of which were directly or indirectly included in computing the individual's split income for the year;

(d) was a shareholder of a professional corporation that purchased goods or services from a business the income of which is directly or indirectly included in computing the individual's split income for the year; or

(e) was a shareholder of a professional corporation, dividends on the shares of the capital stock of which were directly or indirectly included in computing the individual's split income for the year.

History: Subsec. 160(1.2) added by 2000, c. 19, s. 46, applicable to 2000 *et seq.*

(2) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Related Provisions: 152 — Assessment.

History: Subsec. 160(2) amended by 1998, c. 19, subsec. 186(2), in force on June 18, 1998. Subsec. 160(2) formerly read:

(2) Minister may assess transferee — The Minister may at any time assess a transferee in respect of any amount payable by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Selected Cases [subsec. 160(2)]: *Phillips (E.) v. Canada*, [1993] 2 C.T.C. 2110 (TCC) (Assessment under provision cannot include amounts in respect of transferor's provincial tax liability).

(3) Discharge of liability — Where a particular taxpayer has become jointly and severally liable with another taxpayer under this section in respect of part or all of a liability under this Act of the other taxpayer,

(a) a payment by the particular taxpayer on account of that taxpayer's liability shall to the extent of the payment discharge the joint liability; but

(b) a payment by the other taxpayer on account of that taxpayer's liability discharges the particular taxpayer's liability only to the extent that the payment operates to reduce that other taxpayer's liability to an amount less than the amount in respect of which the particular taxpayer is, by this section, made jointly and severally liable.

History: Subsec. 160(3) amended by 1998, c. 19, subsec. 186(2), in force on June 18, 1998. Subsec. 160(3) formerly read:

(3) Rules applicable — Where a transferor and transferee have, by virtue of subsection (1), become jointly and severally liable in re-

spect of part or all of a liability of the transferor under this Act, the following rules apply:

(a) a payment by the transferee on account of the transferee's liability shall to the extent thereof discharge the joint liability; but

(b) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by subsection (1), made jointly and severally liable.

Proposed Addition — 160(3.1)

(3.1) Fair market value of undivided interest — For the purposes of this section and section 160.4, the fair market value at any time of an undivided interest in a property, expressed as a proportionate interest in that property, is, subject to subsection (4), deemed to be equal to the same proportion of the fair market value of that property at that time.

Application: Bill C-24 (Second Reading in the Senate June 28, 2000) (GST technical bill), s. 170, will add subsec. 160(3.1), applicable to transfers of property made after June 4, 1999.

Technical Notes: Section 160 of the *Income Tax Act* provides rules under which a transferee of property may be liable for unpaid taxes of the transferor when the two parties are not dealing at arm's length. In general, this liability is limited to the amount by which the fair market value of the property (at the time it is transferred) exceeds the consideration, if any, given for the property. New subsection 160(3.1) provides a rule for determining the fair market value of a proportionate undivided interest in property for the purposes of applying section 160.

Under new subsection 160(3.1), the fair market value of each proportionate undivided interest in a property is deemed to be equal to that same proportion of the fair market value of the whole of the property. For example, if a husband and wife each have a 50% undivided interest in real property, the fair market value of each of their interests is deemed to be equal to 50% of the fair market value of the real property. This rule is subject to the special rule in subsection 160(4) that deems the value of the interest to be nil when it is transferred pursuant to a decree, order or judgment of a tribunal on a marriage breakdown.

Clause 98 adds a parallel provision to the *Excise Tax Act* as new subsection 325(1.1).

This amendment applies to transfers of property made after June 4, 1999.

(4) Special rules re transfer of property to spouse — Notwithstanding subsection (1), where at any time a taxpayer has transferred property to the taxpayer's spouse pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written separation agreement and, at that time, the taxpayer and the spouse were separated and living apart as a result of the breakdown of their marriage, the following rules apply:

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor of Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) in respect of property so transferred after February 15, 1984,

(i) the spouse shall not be liable under subsection (1) to pay any amount with respect to any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

(ii) for the purposes of paragraph (1)(e), the fair market value of the property at the time it was transferred shall be deemed to be nil, and

(b) in respect of property so transferred before February 16, 1984, where the spouse would, but for this paragraph, be liable to pay an amount under this Act by virtue of subsection (1), the spouse's liability in respect of that amount shall be deemed to have been discharged on February 16, 1984,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor of Council. See also the transitional rules reproduced under 248(1)"common-law partner".

but nothing in this subsection shall operate to reduce the taxpayer's liability under any other provision of this Act.

Related Provisions: 248(5) — Substituted property; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 160(4) added by 1984, c. 45, s. 65, applicable after February 15, 1984.

Selected Cases [subsec. 160(4)]: *Cartier v. R.*, [2000] 2 C.T.C. 2709 (TCC) (Transfer not in consideration of marriage contract); *Cooke v. R.*, [1997] 2 C.T.C. 254 (FCA) (Transfer not made "pursuant" to agreement which contained no mention of any transfer of property).

Information Circulars: 98-1: Collections policies.

Selected Cases [s. 160]: *Gosselin v. R.*, [1997] 2 C.T.C. 2830 (TCC) (50-50 shareholding meant factual non-arm's length); *Sinnott v. Canada*, [1996] 3 C.T.C. 2144 (TCC) (No consideration given for transfer of funds to pay household expenses); *Hewett v. Canada*, [1996] 1 C.T.C. 2675 (TCC) (Value of property for application of provision is value to transferor, not transferee).

Definitions [s. 160]: "amount", "assessment", "business", "common-law partner", "common-law partnership" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "fair market value" — 160(3.1); "individual" — 248(1); "marriage" — 252(4)(b); "Minister" — 248(1); "parent" — 252(2)(a); "person", "professional corporation", "property", "separation agreement", "share", "shareholder" — 248(1); "specified individual" — 120.4(1), 248(1); "specified shareholder" — 248(1); "split income" — 120.4(1), 248(1); "spouse" — 252(4)(a); "substituted property" — 248(5); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

160.1 (1) Where excess refunded — Where at any time the Minister determines that an amount has been refunded to a taxpayer for a taxation year in excess of the amount to which the taxpayer was entitled as a refund under this Act, the following rules apply:

(a) the excess shall be deemed to be an amount that became payable by the taxpayer on the day on which the amount was refunded; and

(b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess (other than any portion thereof that can reasonably be considered to arise as a consequence of the operation of section 122.5 or 122.61) from the day it became payable to the date of payment.

Related Provisions: 160.1(3) — Assessment; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(1.1) Liability for refunds by reason of section 122.5 [GST credit] — Where a person is a qualified relation of an individual for a taxation year (within the meaning assigned by subsection 122.5(1)), the person and the individual are jointly and severally liable to pay any

excess described in subsection (1) that was refunded in respect of the year to, or applied to a liability of, the individual as a consequence of the operation of section 122.5, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Related Provisions: 160.1(3) — Assessment.

(2) [Repealed]

(2.1) Liability for refunds by reason of section 122.61 [Child Tax Benefit] — Where a person was a cohabiting spouse (within the meaning assigned by section 122.6) of an individual at the end of a taxation year, the person and the individual are jointly and severally liable to pay any excess described in subsection (1) that was refunded in respect of the year to, or applied to a liability of, the individual as a consequence of the operation of section 122.61 if the person was the individual's cohabiting spouse at the time the excess was refunded, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor of Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 160.1(3) — Assessment.

(2.2) Liability for excess refunds under section 126.1 to partners [UI premium tax credit] — Every taxpayer who, on the day on which an amount has been refunded to, or applied to the liability of, a member of a partnership as a consequence of the operation of subsection 126.1(7) or (13) in excess of the amount to which the member was so entitled, is a member of that partnership is jointly and severally liable with each other taxpayer who on that day is a member of the partnership to pay the excess and to pay interest on the excess, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

(3) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1) or (2.2), and this Division applies, with such modifications as the circumstance require, in respect of an assessment made under this section as though it were made under section 152.

(4) Where amount applied to liability — Where an amount is applied to a liability of a taxpayer to Her Majesty in right of Canada in excess of the amount to which the taxpayer is entitled as a refund under this Act, this section applies as though that amount had been refunded to the taxpayer on the day on which it was so applied.

History [s. 160.1]: Subsec. 160.1(2.2) added, subsec. (3) amended, by 1994, c. 8, s. 25, applicable to 1993 *et seq.* Subsec. (3) formerly read:

> (3) Assessment — The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1), and this Division applies, with such modifications as the circumstances require, to an assessment made under this section as though it had been made under section 152.

Para. 160.1(1)(b) amended by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 16(1), to add reference to s. 122.61, applicable after 1992.

Subsec. 160.1(2) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 16(2), applicable to 1993 *et seq.* Subsec. (2) formerly read:

> (2) Joint and several liability — Where an individual resided at the end of a taxation year with a person who was a supporting person (within the meaning assigned by subsection 122.2(2)) of an eligible child of the individual for that year, the individual and that person are jointly and severally liable to pay any excess described in subsection (1) that was refunded to the individual in respect of the year as a consequence of the operation of section 122.2 or 164.1 and interest on such excess, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Subsec. 160.1(2.1) added, and subsec. (3) amended by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 16(3), applicable to 1991 *et seq.* except that in its application to the 1991 and 1992 taxation years subsec. (3) shall be read as follows:

> (3) The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2) or (2.1), and the provisions of this Division apply, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Subsec. 160.1(3) formerly read:

> (3) The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer by virtue of subsection (1) or (1.1) or for which the taxpayer is liable by virtue of subsection (2) of this section or subsection 160.1(2.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Para. 160.1(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 132(1), to add "(other than any portion thereof that can reasonably be considered to arise as a consequence of the operation of section 122.5)", applicable to 1989 *et seq.*

Subsec. 160.1(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 132(2), applicable to 1990 *et seq.*

Pre-RSC History [s. 160.1]: Subsec. 160.1(1.1) substituted by 1990, c. 45, subsec. 50(1), applicable to 1989 *et seq.* Subsec. (1.1) formerly read:

> (1.1) [Idem.] — Where at any time the Minister determines that as a consequence of the operation of section 122.4 an amount has been refunded to a taxpayer for a taxation year in excess of the amount to which he was entitled as a refund, the rules set out in subsection (1) apply.

Former subsec. 160.1(2.1) repealed by 1990, c. 45, subsec. 50(2), applicable to 1991 *et seq.* Subsec. (2.1) formerly read:

> (2.1) Joint liability for refunds by reason of section 122.4 — Where a person who was the spouse of an individual in a taxation year was a qualified relation (within the meaning assigned by subsection 122.4(1)) of the individual for the year, the person and the individual are jointly and severally liable to pay any excess described in subsection (1) or (1.1) that was refunded to the individual in respect of the year as a consequence of the operation of section 122.4 and interest on that excess, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Para. 160.1(1)(b) substituted by 1990, c. 39, s. 41, applicable with respect to interest to be calculated in respect of periods that are after September 1989. Para. 160.1(1)(b) formerly read:

> (b) the taxpayer shall pay interest at the rate prescribed for the purposes of subsection 161(1) on the excess from the day it became payable to the date of payment.

That portion of subsec. 160.1(1) preceding para. (a) substituted by 1988, c. 55, s. 139, applicable with respect to refunds for 1988 *et seq.* That portion formerly read:

> 160.1 (1) Where excess refunded — Where at any time the Minister determines that as a consequence of the operation of subsection 119(2), 120(2), section 122.2, subsection 127.1(1), 127.2(2), 129(1), 131(2), 132(1), 133(6) or 144(9), section 164.1 or subsection 192(5) or 194(5) an amount has been refunded to a taxpayer for a taxation year in excess of the amount to which he was entitled as a refund, the following rules apply:

S. 160.1 amended by 1986, c. 55, s. 62 to add subsecs. (1.1) and (2.1) and to add "or (1.1)" following "subsection (1)" and "or (2.1)" following "subsection (2)" in subsec. 160.1(3), applicable to 1986 *et seq.*

All that portion of subsec. 160.1(1) preceding para. (a) amended by 1986, c. 44, subsec. 3(1), to substitute "133(6) or 144(9), section 164.1 or subsection 192(5)" for "133(6), 144(9), 192(5)", applicable to 1986 *et seq.*

Subsec. 160.1(2) amended by 1986, c. 44, subsec. 3(2), to substitute "Joint and several liability" for "Individual and supporting person jointly and severally liable" as the heading, "who was a supporting person (within the meaning assigned by subsection 122.2(2))" for "who was (within the meaning assigned by subsection 122.2(2)) a supporting person", and "section 122.2 or 164.1" for "section 122.2", applicable to 1986 *et seq.*

S. 160.1 substituted by 1984, c. 1, s. 85, applicable with respect to amounts refunded after 1983. S. 160.1 formerly read:

> 160.1 (1) **Where Minister determines** — Where at any time the Minister determines that by reason of the application of section 122.2 an amount has been refunded to an individual for a taxation year in excess of the amount to which he was then thereby entitled, the following rules apply:
>
> (a) the excess shall be deemed to be an amount payable by the individual on the later of
>
> (i) the day on which he files his return of income for the year, and
>
> (ii) November 30 of the calendar year immediately following the year, or the day on which the redetermination is made, whichever is earlier, and
>
> (b) the individual shall pay interest at the rate prescribed for the purposes of subsection 161(1) on the excess from the day it becomes payable to the date of payment.
>
> (2) **Individual and spouse jointly and severally liable** — Where an individual was married and resided with his spouse at the end of December of a taxation year, the individual and his spouse are jointly and severally liable to pay the excess described in subsection (1) in respect of the year and interest thereon; but nothing in this subsection shall be deemed to limit the liability of the individual under any other provision of this Act.
>
> (3) **Assessment** — The Minister may at any time assess an individual in respect of any amount payable by him by virtue of subsection (1) or for which he is liable by virtue of subsection (2) and the provisions of this Division are applicable *mutatis mutandis* in respect of an assessment made under this section as though it had been made under section 152.

S. 160.1 added by 1978-79, c. 5, s. 6.

Definitions [s. 160.1]: "amount", "assessment" — 248(1); "child" — 252(1); "common-law partner", "common-law partnership", "individual", "Minister" — 248(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer" — 248(1).

160.2 (1) Joint and several liability in respect of amounts received out of or under RRSP — Where

(a) an amount is received out of or under a registered retirement savings plan by a taxpayer other than an annuitant (within the meaning assigned by subsection 146(1)) under the plan, and

(b) that amount or part thereof would, but for paragraph (a) of the definition "benefit" in subsection 146(1), be received by the taxpayer as a benefit (within the meaning assigned by that definition),

the taxpayer and the last annuitant under the plan are jointly and severally liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146(8.8) that the total of all amounts each of which is an amount determined under paragraph (b) in respect of the taxpayer is of the amount included in computing the annuitant's income by virtue of that subsection, but nothing in this subsection shall be deemed to limit the liability of the annuitant under any other provision of this Act.

Interpretation Bulletins: IT-500R: RRSPs — death of an annuitant.

(2) Joint and several liability in respect of amounts received out of or under RRIF — Where

(a) an amount is received out of or under a registered retirement income fund by a taxpayer other than an annuitant (within the meaning assigned by subsection 146.3(1)) under the fund, and

(b) that amount or part thereof would, but for paragraph 146.3(5)(a), be included in computing the taxpayer's income for the year of receipt pursuant to subsection 146.3(5),

the taxpayer and the annuitant are jointly and severally liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146.3(6) that the amount determined under paragraph (b) is of the amount included in computing the annuitant's income by virtue of that subsection, but nothing in this subsection shall be deemed to limit the liability of the annuitant under any other provision of this Act.

(3) Minister may assess recipient — The Minister may at any time assess a taxpayer in respect of any amount payable by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

(4) Rules applicable — Where a taxpayer and an annuitant have, by virtue of subsection (1) or (2), become jointly and severally liable in respect of part or all of a liability of the annuitant under this Act, the following rules apply:

(a) a payment by the taxpayer on account of the taxpayer's liability shall to the extent thereof discharge the joint liability; but

(b) a payment by the annuitant on account of the annuitant's liability only discharges the taxpayer's liability to the extent that the payment operates to reduce the annuitant's liability to an amount less than the amount in respect of which the taxpayer was, by subsection (1) or (2), as the case may be, made jointly and severally liable.

Pre-RSC History [s. 160.2]: S. 160.2 added by 1979, c. 5, s. 54, applicable in respect of deaths occurring after November 16, 1978.

Definitions [s. 160.2]: "amount", "assessment", "Minister" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "taxpayer" — 248(1).

Interpretation Bulletins [s. 160.2]: IT-500R: RRSPs — death of an annuitant.

160.3 (1) Liability in respect of amounts received out of or under RCA trust — Where an amount required to be included in the income of a taxpayer by virtue of paragraph 56(1)(x) is received by a person with whom the taxpayer is not dealing at arm's length, that person is jointly and severally liable with the taxpayer to pay a part of the taxpayer's tax under this Part for the taxation year in which the amount is received equal to the amount by which the taxpayer's tax for the year exceeds the amount that would be the taxpayer's tax for the year if the amount had not been received, but nothing in this sub-

section shall be deemed to limit the liability of the taxpayer under any other provision of this Act.

(2) Minister may assess recipient — The Minister may at any time assess a person in respect of any amount payable by the person by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

(3) Rules applicable — Where a taxpayer and another person have, by virtue of subsection (1), become jointly and severally liable in respect of part or all of a liability of the taxpayer under this Act, the following rules apply:

(a) a payment by the other person on account of the other person's liability shall to the extent thereof discharge the joint liability; but

(b) a payment by the taxpayer on account of the taxpayer's liability only discharges the other person's liability to the extent that the payment operates to reduce the taxpayer's liability to an amount less than the amount in respect of which the other person was, by subsection (1), made jointly and severally liable.

Related Provisions [s. 160.3]: Part XI.3 — Tax in respect of retirement compensation arrangements.

Pre-RSC History [s. 160.3]: S. 160.3 added by 1987, c. 46, s. 53, applicable after October 8, 1986.

Definitions [s. 160.3]: "amount" — 248(1); "arm's length" — 251(1); "assessment", "Minister", "person" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

160.4 (1) Liability in respect of transfers by insolvent corporations — Where property is transferred at any time by a corporation to a taxpayer with whom the corporation does not deal at arm's length at that time and the corporation is not entitled because of subsection 61.3(3) to deduct an amount under section 61.3 in computing its income for a taxation year because of the transfer or because of the transfer and one or more other transactions, the taxpayer is jointly and severally liable with the corporation to pay an amount of the corporation's tax under this Part for the year equal to the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the corporation under any other provision of this Act.

Related Provisions: 160(3.1) — Fair market value of undivided interest in property.

(2) Indirect transfers — Where

(a) property is transferred at any time from a taxpayer (in this subsection referred to as the "transferor") to another taxpayer (in this subsection referred to as the "transferee") with whom the transferor does not deal at arm's length,

(b) the transferor is liable because of subsection (1) or this subsection to pay an amount of the tax of another person (in this subsection referred to as the "debtor") under this Part, and

(c) it can reasonably be considered that one of the reasons of the transfer would, but for this subsection, be to prevent the enforcement of this section,

the transferee is jointly and severally liable with the transferor and the debtor to pay an amount of the debtor's tax under this Part equal to the lesser of the amount of such tax that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any provision of this Act.

(3) Minister may assess recipient — The Minister may at any time assess a person in respect of any amount payable by the person because of this section and the provisions of this Division apply, with such modifications as the circumstances require, in respect of an assessment made under this section, as though it had been made under section 152.

(4) Rules applicable — Where a corporation and another person have, because of subsection (1) or (2), become jointly and severally liable in respect of part or all of a liability of the corporation under this Act

(a) a payment by the other person on account of that person's liability shall to the extent thereof discharge the joint liability; and

(b) a payment by the corporation on account of the corporation's liability discharges the other person's liability only to the extent that the payment operates to reduce the corporation's liability to an amount less than the amount in respect of which the other person was, by subsection (1) or (2), as the case may be, made liable.

History [s. 160.4]: S. 160.4 added by 1995, c. 21, s. 40, applicable to transfers that occur after December 20, 1994.

Definitions [s. 160.4]: "amount" — 248(1); "arm's length" — 251(1); "corporation" — 248(1), *Interpretation Act* 35(1); "debtor" — 160.4(2)(b); "fair market value" — 160(3.1); "Minister", "person", "property" — 248(1); "taxation year" — 249(1); "taxpayer" — 248(1); "transferee", "transferor" — 160.4(2)(a).

Interest

161. (1) General [interest on late balances] — Where at any time after a taxpayer's balance-due day for a taxation year

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

Related Provisions: 18(1)(t) — Interest is non-deductible; 150 — Filing of returns; 156.1(4) — Due date for payment of balance; 161(5), (6.1), (7) — Special rules; 161.1 — Offset of refund interest of corporation against arrears interest; 164(3) — Interest on refunds paid by CCRA; 220(4.5)(b)(i) — No interest on unpaid departure tax where security provided; 220(4.6)(d)(i) — No interest on unpaid tax on distribution of property by trust to non-resident beneficiary where security provided; 221.1 — Application of interest where legislation retroactive; 227(8.3), (9.3) — Interest on certain withholding taxes not paid; 248(11) — Interest compounded daily.

History: The opening words of subsec. 161(1) amended by 1997, c. 25, subsec. 50(1), applicable to 1996 *et seq.* The opening words formerly read:

(1) Where at any time after the day on or before which a taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for a taxation year (or would be so required if a remainder of such tax were payable),

Subsec. 161(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(1), applicable to 1992 *et seq.* Subsec. (1) formerly read:

> 161. (1) Where at any time after the day on or before which a taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for a taxation year,
>
> (a) the amount of the taxpayer's tax payable for the year under this Part
>
> exceeds
>
> (b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part for the year,
>
> the person liable to pay the tax shall pay to the Receiver General interest at the prescribed rate on the excess computed for the period during which that excess is outstanding.

Clause 117 of 1994, c. 21 provides: "Notwithstanding any other provision of the Act [i.e., the *Income Tax Act*] or of this Act, nothing in this Act shall affect the amount of any interest payable under the *Income Tax Act* by a life insurance corporation in respect of any period, or part of a period, that is before March 15, 1993."

Pre-RSC History: That portion of subsec. 161(1) preceding para. (a) substituted by 1988, c. 55, subsec. 140(1), applicable for the purpose of calculating interest with respect to tax payable for 1989 *et seq.* That portion of subsec. (1) formerly read:

> 161. (1) Where at any time after the day on or before which a return of a taxpayer's income was required under this Part to be filed for a taxation year,

Subsec. 161(1) substituted by 1984, c. 1, subsec. 86(1) (as amended by 1985, c. 45, subsec. 147(1)), applicable (by 1985, c. 45, subsec. 147(2)) for the purpose of calculating interest for any period or portion of a period that is after April 19, 1983. Subsec. (1) formerly read:

> 161. (1) Where the amount paid on account of tax payable by a taxpayer under this Part for a taxation year before the expiration of the time allowed for filing the return of the taxpayer's income is less than the amount of tax payable for the year under this Part, the person liable to pay the tax shall pay interest at a prescribed rate per annum on the difference between those two amounts from the expiration of the time for filing the return of income to the day of payment.

Selected Cases [subsec. 161(1)]: *Koenig v. R.*, [1997] 2 C.T.C. 3077 (TCC) (Instruction to apply overpayment from earlier year to later year meant that taxpayer had paid taxes by due date); *Rath v. The Queen*, [1982] C.T.C. 207 (FCA) (No interest exigible on amounts refunded in error).

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 161(1) applies to interest payable in respect of any period after December 23, 1971).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(2) Interest on instalments — In addition to the interest payable under subsection (1), where a taxpayer who is required by this Part to pay a part or instalment of tax has failed to pay all or any part thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the amount was required to be paid to the day of payment, or to the beginning of the period in respect of which the taxpayer is required to pay interest thereon under subsection (1), whichever is earlier.

Related Provisions: 18(1)(t) — Interest is non-deductible; 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements; 155–157 — Times for instalments; 161(4) — Limitation — farmers and fishermen; 161(4.01) — Limitation — other individuals; 161(4.1) — Limitation — corporations; 161(5), (6.1), (7) — Special rules; 161(8) — Deemed instalments; 161(10) — When amount deemed paid; 163.1 — Penalty for late or deficient instalments; 211.5(2) — Interest on instalments of Part XII.3 tax; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 49(4) of 1996, c. 21, provides that no interest is payable under subsec. 161(2) in respect of any amount that became payable before July 1995 because of subsec. 190.1(1.2).

Pre-RSC History: Subsec. 161(2) substituted by 1985, c. 45, subsec. 91(1). Subsec. 161(2) formerly read:

> (2) In addition to the interest payable under subsection (1), where a taxpayer, being required by this Part to pay a part or instalment of tax, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at the rate per annum prescribed for the purposes of subsection (1) from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he becomes liable to pay interest thereon under subsection (1), whichever is earlier.

Selected Cases [subsec. 161(2)]: *Canada v. Ritchie (E.S.)*, [1993] 2 C.T.C. 24 (FCA) (Interest due on instalments where additional income received after instalment due date); *Union Gas Ltd. v. MNR*, [1991] 1 C.T.C. 1 (FCA) (Interest on deficiency when instalments not satisfying current year's tax liability).

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 161(2) applies to interest payable in respect of any period after December 23, 1971.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(2.1) Exception — Where the total of all amounts each of which is an amount of interest payable under subsection (2) by a taxpayer, including any interest payable under subsection (2) because of its application under section 36 of the *Canada Pension Plan* to any amount paid or payable under that Act, or under any provision of an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act that is similar to subsection (2) does not exceed $25 for a taxation year, the Minister shall not assess the interest.

History: Subsec. 161(2.1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(1). Subsec. 161(2.1) formerly read:

> (2.1) Where the total of all amounts each of which is an amount of interest payable by a taxpayer under subsection (2) or under any similar provision of an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act does not exceed $25 for a taxation year, the Minister shall not assess that interest.

Pre-RSC History: Subsec. 161(2.1) added by 1984, c. 45, subsec. 66(1), applicable to 1984 *et seq.*

(2.2) Contra interest [offset interest] — Notwithstanding subsections (1) and (2), the total amount of interest payable by a taxpayer (other than a testamentary trust) under those subsections, for the period that begins on the first day of the taxation year for which a part or instalment of tax is payable and ends on the taxpayer's balance-due day for the year, in respect of the taxpayer's tax or instalments of tax payable for the year shall not exceed the amount, if any, by which

> (a) the total amount of interest that would be payable for the period by the taxpayer under subsections (1) and (2) in respect of the taxpayer's tax and instalments of tax payable for the year if no amount were paid on account of the tax or instalments
>
> exceeds
>
> (b) the amount of interest that would be payable under subsection 164(3) to the taxpayer in respect of the period on the amount that would be refunded to the tax-

payer in respect of the year or applied to another liability if

(i) no tax were payable by the taxpayer for the year,

(ii) no amount had been remitted under section 153 to the Receiver General on account of the taxpayer's tax for the year,

(iii) the rate of interest prescribed for the purpose of subsection (1) were prescribed for the purpose of subsection 164(3), and

(iv) the latest of the days described in paragraphs 164(3)(a), (b) and (c) were the first day of the year.

Related Provisions: 161.1 — Corporations — offset of refund interest and arrears interest.

History: Subsec. 161(2.2) amended by 1997, c. 25, subsec. 50(2), applicable to 1996 *et seq.* Subsec. (2.2) formerly read:

(2.2) Interest on instalments [offset interest] — Notwithstanding subsections (1) and (2), the total amount of interest payable by a taxpayer (other than a testamentary trust) under those subsections for the period commencing on the first day of the taxation year for which a part or instalment of tax is payable and ending

(a) where the taxpayer is a corporation, on the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under this Part for the year or would be so required if a remainder of the tax were payable, and

(b) in the case of an individual, on the individual's balance-due day for the year,

in respect of the tax or instalments thereof payable for the year shall not exceed the amount, if any, by which

(c) the total amount of interest that would be payable for the period by the taxpayer under subsections (1) and (2) in respect of the taxpayer's tax and instalments thereof payable for the year if no amount were paid on account of the tax or instalments

exceeds

(d) the amount of interest that would be payable under subsection 164(3) to the taxpayer in respect of the period on the amount that would be refunded to the taxpayer in respect of the year or applied to another liability if

(i) no tax were payable by the taxpayer for the year,

(ii) no amount had been remitted under section 153 to the Receiver General on account of the taxpayer's tax for the year,

(iii) the rate of interest prescribed for the purpose of subsection (1) were prescribed for the purpose of subsection 164(3), and

(iv) the latest of the days described in paragraphs 164(3)(a), (b) and (c) were the first day of the year.

Para. 161(2.2)(d) amended by 1996, c. 21, s. 42, applicable to interest that is calculated in respect of periods after June 1995. Para. (d) formerly read:

(d) the amount of interest that would be payable under subsection 164(3) to the taxpayer in respect of the period on the amount that would be refunded to the taxpayer in respect of the year or applied to another liability if no tax were payable by the taxpayer for the year, no amount had been remitted to the Receiver General on account of the taxpayer's tax for the year under section 153 and the latest of the days described in paragraphs 164(3)(a), (b) and (c) were the first day of the year.

Para. 161(2.2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(2), applicable to 1990 *et seq.* Para. (b) formerly read:

(b) in any other case, on April 30 in the taxation year immediately following the year,

Pre-RSC History: Subsec. 161(2.2) added by 1987, c. 46, s. 54, applicable with respect to taxation years commencing after 1986.

Regulations: Reg. 4301(a) (prescribed rate of interest).

(3) [Repealed]

History: Subsec. 161(3) repealed by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(3), applicable to 1988 *et seq.* Para. 161(3) formerly read:

(3) In addition to the interest payable under subsection (1), where a corporation that paid tax for a taxation year under subsection 157(2) had a taxable income for the year of more than $10,000 or had a tax payable for the year under Part VI.1, it shall, forthwith after assessment, pay to the Receiver General an amount of interest equal to 3% of the total of the taxes payable by it under this Part and Part VI.1 for the year.

Pre-RSC History: Subsec. 161(3) substituted by 1988, c. 55, subsec. 140(2), applicable to 1988 *et seq.* Subsec. 161(3) formerly read:

(3) Special case — In addition to the interest payable under subsection (1), where a corporation that paid tax under subsection 157(2) had a taxable income for the taxation year of more than $10,000, it shall, forthwith after assessment, pay an amount equal to 3% of the tax payable under this Part for the taxation year.

(4) Limitation — farmers and fishermen — For the purposes of subsection (2) and section 163.1, where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 155(1), the individual shall be deemed to have been liable to pay on or before the day referred to in subsection 155(1) a part or instalment computed by reference to

(a) the amount, if any, by which

(i) the tax payable under this Part by the individual for the year, determined before taking into consideration the specified future tax consequences for the year,

exceeds

(ii) the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

(b) the individual's instalment base for the preceding taxation year, or

(c) the amount stated to be the amount of the instalment payable by the individual for the year in the notice, if any, sent to the individual by the Minister,

whichever method gives rise to the least amount required to be paid by the individual on or before that day.

Related Provisions: 107(5.1) — Trust's gain on distrubition to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements.

History: Subpara. 161(4)(a)(ii) amended by 2000, c. 19, subsec. 47(1), applicable to 1999 *et seq.* The subpara. formerly read:

(ii) the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

Para. 161(4)(a) amended by 1997, c. 25, subsec. 50(3), applicable to 1996 *et seq.* Para. (a) formerly read:

(a) the amount, if any, by which the tax payable under this Part by the individual for the year exceeds the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year,

See also History for 161(4.01).

(4.01) Limitation — other individuals — For the purposes of subsection (2) and section 163.1, where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 156(1), the individual shall be deemed to have been liable to pay on or before each day

referred to in subsection 156(1) a part or instalment computed by reference to

(a) the amount, if any, by which

(i) the tax payable under this Part by the individual for the year, determined before taking into consideration the specified future tax consequences for the year,

exceeds

(ii) the amounts deemed by subsections 120(2) and (2.2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

(b) the individual's instalment base for the preceding taxation year,

(c) the amounts determined under paragraph 156(1)(b) in respect of the individual for the year, or

(d) the amounts stated to be the amounts of instalments payable by the individual for the year in the notices, if any, sent to the individual by the Minister,

reduced by the amount, if any, determined under paragraph 156(2)(b) in respect of the individual for the year, whichever method gives rise to the least total amount of such parts or instalments required to be paid by the individual by that day.

Related Provisions: 107(5.1) — Trust's gain on distribution to non-resident beneficiary does not increase instalment requirements; 128.1(5) — Deemed disposition on emigration does not increase instalment requirements.

History: Subpara. 161(4.01)(a)(ii) amended by 2000, c. 19, subsec. 47(2), applicable to 1999 *et seq.* The subpara. formerly read:

(ii) the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year, determined before taking into consideration the specified future tax consequences for the year,

Para. 161(4.01)(a) amended by 1997, c. 25, subsec. 50(4), applicable to 1996 *et seq.* Para. (a) formerly read:

(a) the amount, if any, by which the tax payable under this Part by the individual for the year exceeds the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year,

The closing words of subsec. 161(4.01) substituted by 1994, c. 21, subsec. 79(1), applicable to 1992 *et seq.* The closing words formerly read:

reduced by the amount, if any, determined under paragraph 156(2)(b) in respect of the individual for the year, whichever method gives rise to the least amount required to be paid by the individual on or before that day.

Subsecs. 161(4) and (4.01) substituted for subsec. (4) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(2), applicable to 1992 *et seq.* except that in its application with respect to instalments of tax that became payable on or before June 10, 1993, the subsec. shall be read without reference to the words "and section 163.1". Subsec. (4) formerly read:

(4) Limitation respecting individuals — For the purposes of subsection (2), where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to

(a) the amount estimated by the individual to be the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3, or

(b) the individual's instalment base for the immediately preceding taxation year,

the individual shall be deemed to have been liable to pay a part or instalment computed by reference to the lesser of

(c) the amount, if any, by which the tax payable under this Part by the individual for the year computed without reference to sections 127.2 and 127.3 exceeds the amount deemed by subsection 120(2) to have been paid on account of the individual's tax under this Part for the year, and

(d) the individual's instalment base for the immediately preceding taxation year.

Pre-RSC History: Para. 161(4)(a) and (c) substituted by 1984, c. 45, subsecs. 66(2), (3), to add "computed without reference to sections 127.2 and 127.3", applicable with respect to amounts deducted under ss. 127.2 and 127.3 in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984.

Para. 161(4)(c) substituted by 1980-81-82-83, c. 48, subsec. 88(1), applicable to 1980 *et seq.* Para. 161(4)(c) formerly read:

(c) the tax payable under this Part by him for the year, and

Subsec. 161(4) substituted by 1973-74, c. 14, subsec. 59(1), applicable to 1972 *et seq.*

(4.1) Limitation — corporations — For the purposes of subsection (2) and section 163.1, where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), the corporation shall be deemed to have been liable to pay on or before each day referred to in subparagraphs 157(1)(a)(i) to (iii) a part or instalment computed by reference to

(a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by the corporation for the year, determined before taking into consideration the specified future tax consequences for the year,

(b) its first instalment base for the year, or

(c) its second instalment base and its first instalment base for the year,

reduced by the amount, if any, determined under any of paragraphs 157(3)(b) to (d) in respect of the corporation for the year, whichever method gives rise to the least total amount of such parts or instalments of tax for the year.

History: Para. 161(4.1)(a) amended by 1997, c. 25, subsec. 50(5), applicable to 1996 *et seq.* Para. (a) formerly read:

(a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by the corporation for the year,

The closing words of subsec. 161(4.1) substituted by 1994, c. 21, subsec. 79(2), applicable to 1992 *et seq.* The closing words formerly read:

reduced by the amount, if any, determined under any of paragraphs 157(3)(b) to (d) in respect of the corporation for the year, whichever method gives rise to the least amount required to be paid by the corporation on or before that day.

Clause 117 of 1994, c. 21 provides: "Notwithstanding any other provision of the Act [i.e., the *Income Tax Act*] or of this Act, nothing in this Act shall affect the amount of any interest payable under the *Income Tax Act* by a life insurance corporation in respect of any period, or part of a period, that is before March 15, 1993."

Subsec. 161(4.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(2), applicable to 1992 *et seq.* except that in its application with respect to instalments of tax that became payable on or before June 10, 1993, the subsec. shall be read without reference to the words "and section 163.1". Subsec. (4.1) formerly read:

(4.1) Limitation respecting corporations — For the purposes of subsection (2), where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), the corporation shall be deemed to have been liable to pay a part or instalment computed by reference to

(a) the total of the taxes payable under this Part and Part VI.1 by it for the year,

(b) its first instalment base for the year, or

(c) its second instalment base and its first instalment base for the year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 157(1)(a)(i) to (iii).

Pre-RSC History: Para. 161(4.1)(a) substituted by 1990, c. 39, subsec. 42(1), applicable to 1990 *et seq.* Para. (a) formerly read:

(a) the aggregate of

(i) the tax payable under this Part by it for the year computed without reference to section 123.1, paragraph 125.2(1)(a) and sections 127.2 and 127.3, and

(ii) the tax payable under Part VI.1 by it for the year,

Para. 161(4.1)(a) substituted by 1988, c. 55, subsec. 140(3), applicable to 1988 *et seq.*, except that

(a) for the purposes of computing interest on instalments payable for a corporation's 1988 taxation year that commenced in 1987,

(i) the tax for the year payable under Part VI.1 of the said Act by the corporation shall, for the purpose of para. 161(4.1)(a) be deemed to be nil, and

(ii) the tax for the year payable under Part I of the said Act by the corporation shall, for the purpose of para. 161(4.1)(a) be determined as if the Act were read without reference to para. 110(1)(k) thereof; and

(b) in applying subpara. 161(4.1)(a)(i) to the 1988 taxation year it shall be read without reference to the words "paragraph 125.2(1)(a) and".

Para. (a) formerly read:

(a) the tax payable under this Part by it for the year computed without reference to sections 123.1, 127.2 and 127.3,

Para. 161(4.1)(a) substituted by 1986, c. 6, subsec. 89(1), to add reference to section 123.1, applicable to 1985 *et seq.*

Para. 161(4.1)(a) amended by 1985, c. 45, subsec. 91(2), to delete reference to s. 123.3.

Para. 161(4.1)(a) substituted by 1984, c. 45, subsec. 66(4), to add reference to ss. 127.2 and 127.3, applicable with respect to amounts deducted under ss. 127.2 and 127.3 in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984.

Subsec. 161(4.1) substituted by 1980-81-82-83, c. 48, subsec. 88(2), applicable as to 161(4.1), other than para. (a), to taxation years commencing after October 28, 1980, and as to para. 161(4.1)(a), to taxation years ending after December 31, 1979. Subsec. (4.1) formerly read:

(4.1) For the purposes of subsection (2), where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), the corporation shall be deemed to have been liable to pay a part or instalment computed by reference to

(a) the tax payable under this Part by it for the year computed without reference to section 123.2,

(b) its instalment base for the immediately preceding taxation year, or

(c) its instalment base for the second taxation year preceding the year and its instalment base for the immediately preceding taxation year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 157(1)(a)(i) to (iii).

Para. 161(4.1)(a) substituted by 1974-75-76, c. 26, subsec. 106(1), applicable to 1974 *et seq.* except that for the 1977 and subsequent taxation years paragraph 161(4.1)(a) shall be read as it read immediately before the coming into force of subsec. 106(1). Para (a) formerly read:

(a) the tax payable under this Part by it for the year,

Subsec. 161(4.1) added by 1973-74, c. 14, subsec. 59(2), applicable to 1972 *et seq.*

Regulations: 5301(7), (9) (instalment obligations of parent after windup of subsidiary).

(5) Participation certificates — Notwithstanding any other provision in this section, no interest is payable in respect of the amount by which the tax payable by a person is increased by a payment made by The Canadian Wheat Board on a participation certificate previously issued to the person until 30 days after the payment is made.

(6) Income of resident from a foreign country in blocked currency — Where the income of a taxpayer for a taxation year, or part thereof, is from sources in another country and the taxpayer by reason of monetary or exchange restrictions imposed by the law of that country is unable to transfer it to Canada, the Minister may, if the Minister is satisfied that payment as required by this Part of the whole of the additional tax under this Part for the year reasonably attributable to income from sources in that country would impose extreme hardship on the taxpayer, postpone the time for payment of the whole or a part of that additional tax for a period to be determined by the Minister, but no such postponement may be granted if any of the income for the year from sources in that country has been

(a) transferred to Canada,

(b) used by the taxpayer for any purpose whatever, other than payment of income tax to the government of that other country on income from sources in that country, or

(c) disposed of by the taxpayer,

and no interest is payable under this section in respect of that additional tax, or part thereof, during the period of postponement.

Interpretation Bulletins: IT-351: Income from a foreign source — blocked currency.

(6.1) Foreign tax credit adjustment — Notwithstanding any other provision in this section, where the tax payable under this Part by a taxpayer for a particular taxation year is increased because of

(a) an adjustment of an income or profits tax payable by the taxpayer to the government of a country other than Canada or to the government of a state, province or other political subdivision of such a country, or

(b) a reduction in the amount of foreign tax deductible under subsection 126(1) or (2) in computing the taxpayer's tax otherwise payable under this Part for the particular year, as a result of the application of subsection 126(4.2) in respect of a share or debt obligation disposed of by the taxpayer in the taxation year following the particular year,

no interest is payable, in respect of the increase in the taxpayer's tax payable, for the period

(c) that ends 90 days after the day on which the taxpayer is first notified of the amount of the adjustment, if paragraph (a) applies, and

(d) before the date of the disposition, if paragraph (b) applies.

Related Provisions: 248(1)"specified future tax consequence"(c) — Adjustment under 161(6.1) is a specified future tax consequence.

History: Subsec. 161(6.1) amended by 1999, c. 22, s. 64, applicable to 1998 *et seq.* It formerly read:

(6.1) Adjustment of foreign tax payable — Notwithstanding any other provision in this section, where the tax payable under this Part by a taxpayer for a taxation year is increased by virtue of an adjustment of an income or profits tax payable by the taxpayer to the government of a country other than Canada or to the government of a state, province or other political subdivision of any such country, no interest is payable, in respect of the increase in the taxpayer's tax payable, for the period ending 90 days after the day on which the taxpayer is first notified of the amount of the adjustment.

Pre-RSC History: Subsec. 161(6.1) added by 1980-81-82-83, c. 140, s. 108, applicable with respect to notifications made after 1980.

(6.2) Flow-through share renunciations — Where the tax payable under this Part by a taxpayer for a taxation year is more than it otherwise would be because of a

consequence for the year described in paragraph (b) of the definition "specified future tax consequence" in subsection 248(1) in respect of an amount purported to be renounced in a calendar year, for the purposes of the provisions of this Act (other than this subsection) relating to interest payable under this Act, an amount equal to the additional tax payable is deemed

(a) to have been paid on the taxpayer's balance-due day for the taxation year on account of the taxpayer's tax payable under this Part for the year; and

(b) to have been refunded on April 30 of the following calendar year to the taxpayer on account of the taxpayer's tax payable under this Part for the taxation year.

History: Subsec. 161(6.2) added by 1997, c. 25, subsec. 50(6), applicable to 1996 *et seq.*

(7) **Effect of carryback of loss, etc.** — For the purpose of computing interest under subsection (1) or (2) on tax or a part of an instalment of tax for a taxation year, and for the purpose of section 163.1,

(a) the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is deemed to be the amount that it would be if the consequences of the deduction or exclusion of the following amounts were not taken into consideration:

(i) [Repealed under former Act]

Proposed Addition — 161(7)(a)(i)

(i) any amount deducted under section 119 in respect of a disposition in a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 93(1), will add subpara. 161(7)(a)(i), applicable to taxation years that end after October 1, 1996.

Technical Notes: Section 161 of the Act provides for the payment of interest on outstanding amounts of tax payable under Part I of the Act, as well as on late or deficient instalments in respect of such tax.

Subsection 161(7) provides that, where the amount of tax payable for a taxation year is reduced because of certain deductions or exclusions arising from tax credits, the carryback of losses, or events in subsequent years, interest on any unpaid tax for the taxation year is calculated without regard to the reduction until the latest of several dates.

Paragraph 161(7)(a) is amended to include in its list of deductions and exclusions: a deduction under new section 119 of the Act in respect of the disposition of a taxable Canadian property of the taxpayer in a subsequent year; a deduction under new subsection 126(2.21) or (2.22) of the Act in respect of a disposition in a subsequent year; and deductions under new subsections 128.1(6) to (8) of the Act in respect of an election in a subsequent year.

These amendments apply to taxation years that end after October 1, 1996.

(ii) any amount deducted under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(iii) any amount excluded from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(iv) any amount deducted under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(iv.1) any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

Proposed Amendment — 161(7)(a)(iv.1)

(iv.1) any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 93(2), will amend subpara. 161(7)(a)(iv.1) to read as above, applicable to taxation years that end after October 1, 1996.

Technical Notes: See under 161(7)(a)(i).

(iv.2) any amount deducted in computing the taxpayer's income for the year by virtue of an election in a subsequent taxation year under paragraph 164(6)(c) or (d) by the taxpayer's legal representative,

(v) any amount deducted under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(vi) any amount deducted under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(vi.1) [Repealed under former Act]

(vii) any amount deducted under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(viii) any amount deducted, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),

(viii.1) any amount deducted under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year,

(ix) any amount deducted under subsection 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year, and

(x) any amount deducted under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year; and

Proposed Addition — 161(7)(a)(xi)

(xi) any amount deducted under any of subsections 128.1(6) to (8) from the taxpayer's proceeds of disposition of a property because of an election made in a return of income for a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion subsec. 93(3), will add subpara. 161(7)(a)(xi), applicable to taxation years that end after October 1, 1996.

Technical Notes: See under 161(7)(a)(i).

(b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the

year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is the latest of

(i) the first day immediately following that subsequent taxation year,

(ii) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,

(iii) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed in accordance with subsection 49(4) or 152(6) or paragraph 164(6)(e), the day on which the amended return or prescribed form was filed, and

(iv) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

Related Provisions: 162(11) — Effect of carryback of losses etc.; 248(1)"specified future tax consequence"(a) — Deduction or exclusion of amount referred to in 161(7)(a) is a specified future tax consequence.

History: The opening words of para. 161(7)(a) amended, subpara. 161(7)(a)(viii.1) added, the closing words of para. 161(7)(a) repealed, and the opening words of subpara. 161(7)(b) amended, by 1998, c. 19, subsec. 187(1) to (4); para. 161(7)(a), the opening words and the repeal of the closing words applicable to amounts that become payable after December 1995, subpara. 161(7)(a)(viii.1) applicable to taxpayers who die after 1992. The opening words of para. 161(7)(a), the closing words of para. 161(7)(a) and the opening words of subpara. 161(7)(b) formerly read:

(a) the tax payable by the taxpayer under this Part and Parts I.3, VI and VI.1 for the year shall be deemed to be the amount that it would have been if none of the following amounts, namely,

. . . . .

were so excluded or deducted for the year, as the case may be; and

. . . . .

(b) the amount by which the tax payable by the taxpayer under this Part and Parts I.3, VI and VI.1 for the year is reduced because of the exclusion or deduction, as the case may be, of an amount described in any of subparagraphs (a)(ii) to (x) of this subsection and subparagraph 161(7)(a)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 shall be deemed to have been paid by the taxpayer on account of the taxpayer's tax payable for the year under this Part on the day that is the latest of

Subparas. 161(7)(a)(ix) and (x) amended by 1997, c. 25, subsec. 50(7); subpara. (ix) applicable to 1992 *et seq.*, and subpara. (x) applicable to 1991 *et seq.* Subparas. (ix) and (x) formerly read:

(ix) any amount deducted for a subsequent taxation year under subsection 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer, or

(x) any amount deducted for a subsequent taxation year under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer,

Subpara. 161(7)(a)(viii) amended by 1997, c. 26, s. 85, applicable to 1997 *et seq.* Subpara. (a)(viii) formerly read:

(viii) any amount excluded from the amount determined under clause 12(1)(x.1)(ii)(A) because of subclause 12(1)(x.1)(ii)(A)(II) in respect of a fuel tax rebate repayment made in a subsequent taxation year,

That portion of subsec. 161(7) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(3), applicable to instalments of tax that become payable after June 10, 1993. That portion formerly read:

(7) Effect of carryback of loss, etc. — For the purpose of computing interest under subsection (1) or (2) on tax or a part or an instalment of tax for a taxation year,

That portion of para. 161(7)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(4), to add reference to Parts I.3, VI and VI.1, applicable to 1992 *et seq.*

Subpara. 161(7)(a)(ix) added applicable to 1992 *et seq.*, and (x) added applicable to 1991*et seq.*, by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(5).

That portion of para. 161(7)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 96(6), applicable to 1991 *et seq.*, except that in its application to the 1991 taxation year the para. shall be read without reference to the words "and Parts I.3, VI and VI.1". That portion formerly read:

(b) the amount by which the tax payable under this Part for the year is reduced because of the exclusion or deduction, as the case may be, of an amount described in any of subparagraphs (a)(ii) to (viii) is deemed to have been paid by the taxpayer on account of the taxpayer's tax payable for the year under this Part on the day that is the latest of

Subpara. 161(7)(a)(viii) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 8(1), applicable to 1992 *et seq.*

That portion of para. 161(7)(b) preceding subpara. (i) amended by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 8(2), applicable to 1992 *et seq.* That portion formerly read:

(b) the amount by which the tax payable by the taxpayer under this Part for the year is reduced by virtue of the exclusion or deduction, as the case may be, of an amount described in any of subparagraphs (a)(ii) to (vii) of this subsection and subparagraph 161(7)(a)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, shall be deemed to have been paid by the taxpayer on account of the taxpayer's tax payable for the year under this Part on the day that is that latest of

Pre-RSC History: Subpara. 161(7)(a)(vii) added by 1990, c. 39, subsec. 42(2), applicable to taxation years ending after June 1989.

Subpara. 161(7)(a)(iv) amended to substitute "section 118.1" for "section 110", subpara. 161(7)(a)(vi) substituted and subparas. 161(7)(a)(vi.1) and (vii) repealed, by 1988, c. 55, subsecs. 140(4), (5), applicable to 1988 *et seq.* Paras. 161(7)(a)(vi) to (vii) formerly read:

(vi) any amount deducted under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year,

(vi.1) any amount deducted under subsection 120.2(2) in respect of his minimum tax for a subsequent taxation year, or

(vii) any amount deducted under subsection 127.3(1) in respect of his unused scientific research and experimental development tax credit for a subsequent taxation year,

Subpara. 161(7)(a)(vi.1) added by 1986, c. 55, s. 63, applicable to a taxation year commencing after 1983.

Subpara. 161(7)(a)(i) repealed by 1986, c. 6, subsec. 89(2), applicable to 1986 *et seq.* Subpara. 161(7)(a)(i) formerly read:

(i) any amount deducted under paragraph 3(e) by virtue of his death in a subsequent taxation year and the consequent application of section 71 in respect of an allowable capital loss for the year,

Subpara. 161(7)(a)(iv.2) added by 1986, c. 6, subsec. 89(3), applicable to 1985 *et seq.*

Subparas. 161(7)(b)(ii), (iii) amended by 1986, c. 6, subsec. 89(4), to substitute, in (ii) "the taxpayer's or his legal representative's" for "the taxpayer's" and, in (iii), "income for the year" for "income for the taxation year" and to add reference to paragraph 164(6)(e), applicable to 1985 *et seq.*

Para. 161(7)(b) substituted by 1985, c. 45, subsec. 91(3), applicable with respect to subsequent taxation years referred to therein, ending after 1984. Para. 161(7)(b) formerly read:

(b) the amount by which the tax payable by the taxpayer under this Part for the year is reduced by virtue of the exclusion or deduction, as the case may be, of an amount described in any of subparagraphs (a)(i) to (vii) shall be deemed to have been paid by the taxpayer, on account of his tax payable for the year under this Part, on the later of

(i) the day on which his return of income under section 150 was filed for that subsequent taxation year, and

(ii) the day on or before which he is, or would be if a tax under this Part were payable by him for that subsequent taxation year, required to file his return of income under section 150 for that subsequent taxation year.

Subpara. 161(7)(a)(iv.1) added by 1984, c. 45, subsec. 66(5), applicable to 1984 *et seq.*

Subsec. 161(7) substituted by 1984, c. 1, subsec. 86(2), applicable where the subsequent taxation year referred to in subsec. 161(7), as substituted,

ends after 1982, except that in its application to a subsequent taxation year ending before April 20, 1983, the amount determined in respect of a taxpayer under para. 161(7)(b) shall be deemed to have been paid by him on the first day immediately following the subsequent taxation year. Subsec. 161(7) formerly read:

> (7) **Effect of carryback of loss** — Where a taxpayer is entitled to deduct under section 111 in computing his taxable income for a taxation year an amount in respect of a loss for the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), for the purpose of computing interest under subsection (1) or (2) on tax or a part or instalment of tax for the taxation year for any portion of the period in respect of which the interest is payable on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 in respect of that loss.

Selected Cases [subsec. 161(7)]: *Connaught v. Canada*, [1995] 1 C.T.C. 216 (FCTD) (Taxpayer not permitted to use previously unclaimed deductions to offset income later assessed).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(8) Certain amounts deemed to be paid as instalments — For the purposes of subsection (2), where in a taxation year an amount has been paid by a non-resident person pursuant to subsection 116(2) or (4) or an amount has been paid on that person's behalf by another person in accordance with subsection 116(5), the amount shall be deemed to have been paid by that non-resident person in the year as an instalment of tax on the first day on which the non-resident person was required under this Act to pay an instalment of tax for that year.

Pre-RSC History: Subsec. 161(8) added by 1974-75-76, c. 26, subsec. 106(2), applicable to 1974 *et seq.*

(9) Definitions of "instalment base", etc. — In this section,

(a) "instalment base" of an individual for a taxation year means the amount determined in prescribed manner to be the individual's instalment base for the year; and

(b) "first instalment base" and "second instalment base" of a corporation for a taxation year have the meanings prescribed by regulation.

Pre-RSC History [subsec. 161(9)]: Subsec. 161(9) substituted by 1980-81-82-83, c. 48, subsec. 88(3), applicable to taxation years commencing after October 28, 1980. Subsec. (9) formerly read as follows:

> (9) **Definition of "instalment base"** — In this section, "instalment base" of a taxpayer for a taxation year means the amount determined in prescribed manner to be the taxpayer's instalment base for the year.

Subsec. 161(9) added by 1977-78, c. 4, s. 6.

Regulations: 5300 ("instalment base"); 5301 ("first instalment base", "second instalment base").

(10) When amount deemed paid — For the purposes of subsection (2), where an amount has been deducted by virtue of paragraph 127.2(1)(a) or 127.3(1)(a) in computing the tax payable under this Part by a taxpayer for a taxation year, the amount so deducted shall be deemed to have been paid by the taxpayer

(a) in the case of a taxpayer who has filed a return of income under this Part for the year as required by section 150, on the last day of the year; and

(b) in any other case, on the day on which the taxpayer filed the taxpayer's return of income under this Part for the year.

Pre-RSC History: Subsec. 161(10) added by 1984, c. 45, subsec. 66(6), applicable with respect to amounts deducted under ss. 127.2 and 127.3 in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984.

(11) Interest on penalties — Where a taxpayer is required to pay a penalty, the taxpayer shall pay the penalty to the Receiver General together with interest thereon at the prescribed rate computed,

(a) in the case of a penalty payable under section 162, 163 or 235, from the day on or before which

(i) the taxpayer's return of income for a taxation year in respect of which the penalty is payable was required to be filed, or would have been required to be filed if tax under this Part were payable by the taxpayer for the year, or

(ii) the information return, return, ownership certificate or other document in respect of which the penalty is payable was required to be made,

as the case may be, to the day of payment;

(b) in the case of a penalty payable for a taxation year because of section 163.1, from the taxpayer's balance-due day for the year to the day of payment of the penalty;

(b.1) in the case of a penalty under subsection 237.1(7.4), from the day on which the taxpayer became liable to the penalty to the day of payment; and

(c) in the case of a penalty payable by reason of any other provision of this Act, from the day of mailing of the notice of original assessment of the penalty to the day of payment.

Related Provisions: 18(1)(t) — Interest and penalty are non-deductible; 161.1 — Offset of refund interest of corporation against arrears interest; 163(2.9) — Partnership liable to interest on penalty re tax shelters; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Para. 161(11)(b.1) added by 1998, c. 19, subsec. 187(5), applicable after December 1, 1994.

Para. 161(11)(b) amended by 1997, c. 25, subsec. 50(8), applicable to 1996 *et seq.* Para. (b) formerly read:

> (b) in the case of a penalty payable for a taxation year by reason of section 163.1, from the day on or before which the taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for the year to the day of payment of the penalty; and

That portion of para. 161(11)(a) preceding subpara. (i) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 133(4), to substitute "under" for "by reason of" and add reference to s. 235.

Pre-RSC History: Subsec. 161(11) substituted by 1988, c. 55, subsec. 140(6). Subsec. 161(11) formerly read:

> (11) **Interest on penalty** — Where a taxpayer is required by this Part to pay a penalty and fails to pay all or any part thereof as required, he shall pay to the Receiver General interest at the prescribed rate on the amount he failed to pay computed,
>
> (a) in the case of a penalty payable by virtue of subsection 162(1), (2) or (3) or 163(1) or (2), from the day on or before which the taxpayer's return of income for the taxation year in respect of which the penalty is payable was, or would have been if tax under this Part were payable by him for the year, required to be filed to the day of payment; and
>
> (b) in the case of a penalty payable by virtue of any other provision of this Act, from the day of mailing of the notice of original assessment of the penalty to the day of payment.

Subsec. 161(11) added by 1986, c. 6, subsec. 89(5), applicable as of January 1, 1987, except that interest is not payable under subsection (11) for any part of a period before that day.

Selected Cases [subsec. 161(11)]: *Ford v. Canada*, [1994] 2 C.T.C. 2395 (TCC) (No penalty where filing within 90 days of retroactive agreements for spousal and child support); *Reemark Chelsea Terraces Project Ltd. v. Canada*, [1993] 1 C.T.C. 2727 (TCC) (Amount of interest and penalty for late return not adjusted on reassessment giving effect to loss carryback reducing income to nil).

Regulations: 4301(a) (prescribed rate of interest).

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(12) [Repealed]

History [subsec. 161(12)]: Subsec. 161(12) repealed by 2000, c. 19, subsec. 47(3), in force June 29, 2000 (Royal Assent). The subsec. formerly read:

> (12) Partnership liable to interest — Where a partnership is liable to a penalty under subsection 237.1(7.4), sections 152, 158 to 160.1, this section and sections 164 to 167 and Division J apply, with such modifications as the circumstances require, with respect to interest on the penalty as if the partnership were a corporation.

Subsec. 161(12) added by 1998, c. 19, subsec. 187(6), applicable after December 1, 1994.

Pre-RSC History [s. 161]: The expression "scientific research and experimental development" substituted for "scientific research" by 1986, c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985.

Selected Cases [s. 161]: *Prodor v. R.*, [1997] 3 C.T.C. 179 (FCTD) (Applicable interest rate is that prescribed in particular statute, not as provided in *Federal Court Act*).

Definitions [s. 161]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment"; "balance-due day" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "foreign tax" — 126(4.2); "individual" — 248(1); "instalment base" — 161(9); "Minister" — 123(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "share", "specified future tax consequence" — 248(1); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "writing" — *Interpretation Act* 35(1).

Offset of Refund Interest and Arrears Interest

161.1 (1) Definitions — The definitions in this subsection apply in this section.

"accumulated overpayment amount", of a corporation for a period, means the overpayment amount of the corporation for the period together with refund interest (including, for greater certainty, compound interest) that accrued with respect to the overpayment amount before the date specified under paragraph (3)(b) by the corporation in its application for the period.

"accumulated underpayment amount", of a corporation for a period, means the underpayment amount of the corporation for the period together with arrears interest (including, for greater certainty, compound interest) that accrued with respect to the underpayment amount before the date specified under paragraph (3)(b) by the corporation in its application for the period.

"arrears interest" means interest computed under paragraph (5)(b), 129(2.2)(b), 131(3.2)(b), 132(2.2)(b), 133(7.02)(b) or 160.1(1)(b), subsection 161(1) or (11), paragraph 164(3.1)(b) or (4)(b) or subsection 187(2).

"overpayment amount", of a corporation for a period, means the amount referred to in subparagraph (2)(a)(i) that is refunded to the corporation, or the amount referred to in subparagraph (2)(a)(ii) to which the corporation is entitled.

"refund interest" means interest computed under subsection 129(2.1), 131(3.1), 132(2.1), 133(7.01) or 164(3) or (3.2).

"underpayment amount", of a corporation for a period, means the amount referred to in paragraph (2)(b) payable by the corporation on which arrears interest is computed.

(2) Concurrent refund interest and arrears interest — A corporation may apply in writing to the Minister for the reallocation of an accumulated overpayment amount for a period that begins after 1999 on account of an accumulated underpayment amount for the period if, in respect of tax paid or payable by the corporation under this Part or Part I.3, II, IV, IV.1, VI, VI.1 or XIV,

(a) refund interest for the period

(i) is computed on an amount refunded to the corporation, or

(ii) would be computed on an amount to which the corporation is entitled, if that amount were refunded to the corporation; and

(b) arrears interest for the period is computed on an amount payable by the corporation.

Related Provisions: 161.1(3) — Contents of and deadline for application; 161.1(5) — Where refund previously paid.

(3) Contents of application — A corporation's application referred to in subsection (2) for a period is deemed not to have been made unless

(a) it specifies the amount to be reallocated, which shall not exceed the lesser of the corporation's accumulated overpayment amount for the period and its accumulated underpayment amount for the period;

(b) it specifies the effective date for the reallocation, which shall not be earlier than the latest of

(i) the date from which refund interest is computed on the corporation's overpayment amount for the period, or would be so computed if the overpayment amount were refunded to the corporation,

(ii) the date from which arrears interest is computed on the corporation's underpayment amount for the period, and

(iii) January 1, 2000; and

(c) it is made on or before the day that is 90 days after the latest of

(i) the day of mailing of the first notice of assessment giving rise to any portion of the corporation's overpayment amount to which the application relates,

(ii) the day of mailing of the first notice of assessment giving rise to any portion of the corporation's underpayment amount to which the application relates,

(iii) if the corporation has served a notice of objection to an assessment referred to in subparagraph (i) or (ii), the day of mailing of the notification under subsection 165(3) by the Minister in respect of the notice of objection,

(iv) if the corporation has appealed, or applied for leave to appeal, from an assessment referred to in subparagraph (i) or (ii) to a court of competent jurisdiction, the day on which the court dismisses the application, the application or appeal is discontinued or final judgment is pronounced in the appeal, and

(v) the day of mailing of the first notice to the corporation indicating that the Minister has determined any portion of the corporation's overpayment amount to which the application relates, if the

overpayment amount has not been determined as a result of a notice of assessment mailed before that day.

Related Provisions: 161.1(4) — Amount reallocated is deemed to have been refunded.

(4) Reallocation — The amount to be reallocated that is specified under paragraph (3)(a) by a corporation is deemed to have been refunded to the corporation and paid on account of the accumulated underpayment amount on the date specified under paragraph (3)(b) by the corporation.

Related Provisions: 161.1(6) — Consequential reallocations.

(5) Repayment of refund — If an application in respect of a period is made under subsection (2) by a corporation and a portion of the amount to be reallocated has been refunded to the corporation, the following rules apply:

(a) a particular amount equal to the total of

(i) the portion of the amount to be reallocated that was refunded to the corporation, and

(ii) refund interest paid or credited to the corporation in respect of that portion

is deemed to have become payable by the corporation on the day on which the portion was refunded; and

(b) the corporation shall pay to the Receiver General interest at the prescribed rate on the particular amount from the day referred to in paragraph (a) to the date of payment.

Related Provisions: 248(11) — Interest compounded daily.

(6) Consequential reallocations — If a particular reallocation of an accumulated overpayment amount under subsection (4) results in a new accumulated overpayment amount of the corporation for a period, the new accumulated overpayment amount shall not be reallocated under this section unless the corporation so applies in its application for the particular reallocation.

(7) Assessments — Notwithstanding subsections 152(4), (4.01) and (5), the Minister shall assess or reassess interest and penalties payable by a corporation in respect of any taxation year as necessary in order to take into account a reallocation of amounts under this section.

Related Provisions: 165(1.1) — Limitation of right to object to assessment.

Proposed Amendment — Extension of s. 161.1 to individuals

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Offsetting of Interest on Personal Tax Overpayments and Underpayments*

(23) That, for individuals other than trusts, the taxable amount of refund interest accruing over any period after 1999 on overpayments of income tax be reduced by the amount of any arrears interest accruing over the same period on unpaid income tax.

Federal budget, supplementary information, February 28, 2000: *Offsetting of Interest on Personal Tax Overpayments and Underpayments*

An individual who has made an overpayment of income tax may be entitled to receive refund interest from the government on the overpayment. Refund interest is included in income for tax purposes, in the same manner as interest from other sources.

If, on the other hand, an individual has failed to pay an amount of income tax when due, the individual is required to pay arrears interest to the government. Arrears interest is not deductible in computing a taxpayer's income for tax purposes.

The taxation of refund interest and non-deductibility of arrears interest can produce inappropriate results in situations where an individual who owes interest on unpaid tax from one taxation year is concurrently owed interest on a tax overpayment from a different taxation year. In this circumstance, the cost of the non-deductible interest payable by the individual exceeds the after-tax value of the taxable interest receivable by the individual. In many instances, this difference results from the non-deductibility of interest paid and the inclusion in income of interest received.

This budget proposes a relieving mechanism for these individuals. Refund interest accruing over a period will be taxable only to the extent that it exceeds any arrears interest that accrued over the same period to which the refund interest relates. As under current practice, the individual's notice of assessment will indicate the full amount of refund interest. In addition, the Canada Customs and Revenue Agency will issue an information slip indicating the amount, if any, of the refund interest that must be included in the individual's income for tax purposes.

This measure will apply to individuals other than trusts in respect of arrears and refund interest amounts that accrue concurrently after 1999, regardless of the taxation year to which the amounts relate.

History: S. 161.1 added by 2000, c. 19, s. 48, applicable after 1999.

Definitions [s. 161.1]: "accumulated overpayment amount", "accumulated underpayment amount" — 161.1(1); "amount" — 248(1); "arrears interest" — 161.1(1); "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "overpayment amount" — 161.1(1); "prescribed" — 248(1); "refund interest" — 161.1(1); "taxation year" — 249; "underpayment amount" — 161.1(1); "writing" — *Interpretation Act* 35(1).

Penalties

162. (1) Failure to file return of income — Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

Related Provisions: 162(2.1) — Minimum penalty for non-resident corporation; 162(11) — Effect of carryback of losses, etc.; 235 — Additional penalty on large corporation for late filing even where no balance owing. See additional Related Provisions and Definitions at end of s. 162.

Selected Cases [subsec. 162(1)]: *Ford v. Canada*, [1994] 2 C.T.C. 2395 (TCC) (No penalty where return filed within 90 days of retroactive agreements for spousal and child support); *Reemark Chelsea Terraces Project Ltd. v. Canada*, [1993] 1 C.T.C. 2727 (TCC) (Amount of interest and penalty for late return not adjusted on reassessment giving effect to loss carry-back reducing income to nil); *Carlson v. The Queen*, [1973] C.T.C. 360 (FCTD) (Filing "temporary" return containing an income "estimate"; penalty applied for late filing of tax return).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1: Voluntary disclosures program.

(2) Repeated failure to file — Every person

(a) who fails to file a return of income for a taxation year as and when required by subsection 150(1),

(b) on whom a demand for a return for the year has been served under subsection 150(2), and

(c) by whom, before the time of failure, a penalty was payable under this subsection or subsection (1) in respect of a return of income for any of the 3 preceding taxation years

is liable to a penalty equal to the total of

(d) an amount equal to 10% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(e) the product obtained when 2% of the tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 20, from the date on which the return was required to be filed to the date on which the return was filed.

Related Provisions: 162(2.1) — Minimum penalty for non-resident corporation; 162(11) — Effect of carryback of losses, etc. See additional Related Provisions and Definitions at end of s. 162.

Selected Cases [subsec. 162(2)]: *Roy v. R.*, [1998] 2 C.T.C. 2982 (TCC) (Penalty calculated on amount of undisclosed income before any deduction for CCA); *Wichartz v. Canada*, [1995] 1 C.T.C. 2866 (TCC) (No liability for penalty until penalty assessed).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1: Voluntary disclosures program.

(2.1) Failure to file — non-resident corporation — Notwithstanding subsections (1) and (2), if a non-resident corporation is liable to a penalty under subsection (1) or (2) for failure to file a return of income for a taxation year, the amount of the penalty is the greater of

(a) the amount computed under subsection (1) or (2), as the case may be, and

(b) an amount equal to the greater of

(i) $100, and

(ii) $25 times the number of days, not exceeding 100, from the day on which the return was required to be filed to the day on which the return is filed.

Related Provisions: 150(1)(a)(i), (ii) — Obligation on non-resident to file return.

History: Subsec. 162(2.1) added by 1999, c. 22, s. 65, applicable to taxation years that begin after 1998.

Selected Cases [subsec. 162(2.1)]: *Roy v. R.*, [1998] 2 C.T.C. 2982 (TCC) (Penalty calculated on amount of undisclosed income before any deduction for CCA).

(3) Failure to file by trustee — Every person who fails to file a return as required by subsection 150(3) is liable to a penalty of $10 for each day of default but not exceeding $50.

Related Provisions: See Related Provisions and Definitions at end of s. 162.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1: Voluntary disclosures program.

(4) Ownership certificate — Every person who

(a) fails to complete an ownership certificate as required by section 234,

(b) fails to deliver an ownership certificate in the manner prescribed at the time prescribed and at the place prescribed by regulations made under that section, or

(c) cashes a coupon or warrant for which an ownership certificate has not been completed pursuant to that section,

is liable to a penalty of $50.

Related Provisions: See Related Provisions and Definitions at end of s. 162.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1: Voluntary disclosures program.

(5) Failure to provide information on form — Every person who fails to provide any information required on a prescribed form made under this Act or a regulation is liable to a penalty of $100 for each such failure, unless

(a) in the case of information required in respect of another person or partnership, a reasonable effort was made by the person to obtain the information from the other person or partnership; or

(b) in the case of a failure to provide a Social Insurance Number on a return of income, the person had applied for the assignment of the Number and had not received it at the time the return was filed.

Related Provisions: 162(8.1) — Where partnership liable to penalty. See also Related provisions and Definitions at end of s. 162.

History: Para. 162(5)(a) amended by 1998, c. 19, subsec. 188(1), in force on June 18, 1998. Para. 162(5)(a) formerly read:

(a) in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person; or

That portion of subsec. 162(5) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 134(1), to substitute "is liable" for "is, except where, in the case of an individual, the Minister has waived the penalty, liable".

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(6) Failure to provide identification number — Every person or partnership who fails to provide on request their Social Insurance Number or their business number to a person required under this Act or a regulation to make an information return requiring the number is liable to a penalty of $100 for each such failure, unless

(a) an application for the assignment of the number is made within 15 days after the request was received; and

(b) the number is provided to the person who requested the number within 15 days after the person or partnership received it.

Related Provisions: 162(8.1) — Where partnership liable to penalty; 237(1), (1.1), (2) — Obligation to apply for and provide Social Insurance Number on information return. See additional Related provisions and Definitions at end of s. 162.

History: Subsec. 162(6) amended by 1998, c. 19, subsec. 188(2), in force on June 18, 1998. Subsec. 162(6) formerly read:

(6) Failure to provide Social Insurance Number — Every individual who fails to provide on request the individual's Social Insurance Number to a person required under this Act or a regulation to make an information return requiring the individual's Social Insurance Number is liable to a penalty of $100 for each such failure, unless

(a) an application by the individual for the assignment of a Social Insurance Number was made not later than 15 days after the person made the request; and

(b) the Number was provided to the person within 15 days after the individual received it.

That portion of subsec. 162(6) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 134(2), to substitute "is liable" for "is, except where the Minister has waived the penalty, liable".

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(7) Failure to comply — Every person (other than a registered charity) or partnership who fails

(a) to file an information return as and when required by this Act or the regulations, or

(b) to comply with a duty or obligation imposed by this Act or the regulations

is liable in respect of each such failure, except where another provision of this Act (other than subsection (10) or (10.1) or 163(2.22)) sets out a penalty for the failure, to a penalty equal to the greater of $100 and the product ob-

tained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Related Provisions: 149(4.1), 188 — Revocation of registration and penalty tax for registered charity; 162(8.1) — Where partnership liable to penalty. See additional Related Provisions and Definitions at end of s. 162.

History: Subsec. 162(7) amended by 1997, c. 25, subsec. 51(1), applicable to returns required to be filed on or before a day that is after 1997 and to duties and obligations first imposed after 1997. Subsec. (7) formerly read:

(7) Failure to comply with Act or regulation — Every person (other than a registered charity) who fails

(a) to file an information return as and when required by this Act or a regulation, or

(b) to comply with a duty or obligation imposed by this Act or a regulation

is liable in respect of each such failure, except where another provision of this Act (other than subsection (10)) sets out a penalty for the failure, to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

The opening words of subsec. 162(7) substituted by 1994, c. 21, s. 80, applicable June 15, 1994. The opening words formerly read:

(7) Every person

Information Circulars: 89-4: Tax shelter reporting; 92-2: Guidelines for the cancellation and waiver of interest and penalties; 00-1: Voluntary disclosures program.

(7.1) Failure to make partnership information return — Where a member of a partnership fails to file an information return as a member of the partnership for a fiscal period of the partnership as and when required by this Act or the regulations and subsection (10) does not set out a penalty for the failure, the partnership is liable to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Related Provisions: 96(1) — Taxation of partnership; 162(8.1) — Rules where partnership is liable to penalty. See additional Related Provisions and Definitions at end of s. 162.

History: Subsec. 162(7.1) amended by 1997, c. 25, subsec. 51(1), applicable to returns required to be filed on or before a day that is after 1997 and to duties and obligations first imposed after 1997. Subsec. (7.1) formerly read:

(7.1) Where a member of a partnership fails to file an information return as a member of the partnership for a fiscal period of the partnership as and when required by this Act or a regulation, the partnership is liable to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

(8) Repeated failure to file — Where

(a) a penalty was payable under subsection (7.1) in respect of a failure by a member of a partnership to file an information return as a member of the partnership for a fiscal period of the partnership,

(b) a demand for the return or for information required to be contained in the return has been served under section 233 on the member, and

(c) a penalty was payable under subsection (7.1) in respect of the failure by a member of a partnership to file an information return as a member of the partnership for any of the 3 preceding fiscal periods,

the partnership is liable, in addition to the penalty under subsection (7.1), to a penalty of $100 for each member of the partnership for each month or part of a month, not exceeding 24 months, during which the failure referred to in paragraph (a) continues.

Related Provisions: 162(8.1) — Rules where partnership is liable to penalty. See additional Related Provisions and Definitions at end of s. 162.

(8.1) Rules where partnership liable to a penalty — Where a partnership is liable to a penalty under subsection (5), (6), (7), (7.1), (8) or (10), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

History: Subsec. 162(8.1) amended by 1998, c. 19, subsec. 188(3), in force on June 18, 1998. Subsec. 162(8.1) formerly read:

(8.1) Where partnership liable to penalty — Where a partnership is liable to a penalty under subsection (7), (7.1), (8), (10) or (10.1), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

Subsec. 162(8.1) amended by 1997, c. 25, subsec. 51(2), applicable to returns required to be filed on or before a day that is after 1997 and to duties and obligations first imposed after 1997. Subsec. (8.1) formerly read:

(8.1) Rules where partnership is liable to penalty — Where a partnership is liable to a penalty under subsection (7.1) or (8), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with such modifications as the circumstances require, with respect to the penalty as if the partnership were a corporation.

(9) [Repealed]

History: Subsec. 162(9) repealed by 1998, c. 19, subsec. 188(4), applicable after December 1, 1994. Subsec. 162(9) formerly read:

(9) Tax shelter identification number — Every person who

(a) files false or misleading information with the Minister in an application under subsection 237.1(2) for an identification number for a tax shelter, or

(b) whether as a principal or as an agent, sells, issues or accepts a contribution for the acquisition of an interest in a tax shelter before the Minister has issued an identification number therefor,

is liable to a penalty equal to the greater of

(c) $500, and

(d) 3% of the total of all amounts each of which is the cost to each person who acquired an interest in the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be.

(10) Failure to furnish foreign-based information — Every person or partnership who,

(a) knowingly or under circumstances amounting to gross negligence, fails to file an information return as and when required by any of sections 233.1 to 233.4, or

(b) where paragraph (a) does not apply, knowingly or under circumstances amounting to gross negligence, fails to comply with a demand under section 233 to file a return

is liable to a penalty equal to the amount determined by the formula

$$(\$500 \times A \times B) - C$$

where

A is

(c) where paragraph (a) applies, the lesser of 24 and the number of months, beginning with the month in which the return was required to be filed, during any part of which the return has not been filed, and

(d) where paragraph (b) applies, the lesser of 24 and the number of months, beginning with the month in which the demand was served, during any part of which the return has not been filed,

B is

(e) where the person or partnership has failed to comply with a demand under section 233 to file a return, 2, and

(f) in any other case, 1, and

C is the penalty to which the person or partnership is liable under subsection (7) in respect of the return.

Related Provisions: 162(7) — Initial calculation of penalty; 162(8.1) — Where partnership liable to penalty; 162(10.1) — Additional penalty; 163(2.4)–(2.91) — Penalty for false statement or omission in return; 233.5 — Due diligence defence; 257 — Formula cannot calculate to less than zero. See also Related Provisions and Definitions at end of s. 162.

History: Subsec. 162(10) amended by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998. Subsec. (10) formerly read:

(10) Every corporation

(a) that fails to file an information return required by section 233.1,

(b) on which a demand under section 233 has been served for the return, and

(c) that does not comply with the demand within 90 days after the day the demand was served on it,

is liable in respect of each such failure, in addition to the penalty under subsection (7), to a penalty of $1,000 for each month or part of a month, not exceeding 24 months, during which the failure continues.

(10.1) Additional penalty — Where

(a) a person or partnership is liable to a penalty under subsection (10) for the failure to file a return (other than an information return required to be filed under section 233.1),

(b) if paragraph (10)(a) applies, the number of months, beginning with the month in which the return was required to be filed, during any part of which the return has not been filed exceeds 24, and

(c) if paragraph (10)(b) applies, the number of months, beginning with the month in which the demand referred to in that paragraph was served, during any part of which the return has not been filed exceeds 24,

the person or partnership is liable, in addition to the penalty determined under subsection (10), to a penalty equal to the amount determined by the formula

$$A - B$$

where

A is

(d) where the return is required to be filed under section 233.2, 5% of the total of all amounts each of which is the fair market value of property transferred or loaned (determined as of the time of the transfer or loan) because of which there would, if no other transfer or loan were taken into account, be an obligation to file the return,

Proposed Amendment — 162(10.1)A(d)

(d) where the return is required to be filed under section 233.2 in respect of a trust, 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required,

Application: The June 22, 2000 draft legislation, subsec. 20(1), will amend para. (d) of the description of A in subsec 162(10.1) to read as above, applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: Subsection 162 and 163 of the Act impose penalties for infractions such as failing to provide certain information on a return, failing to file a return for a taxation year, and making false statements on a return.

Subsection 162(10.1) of the Act imposes a penalty on any person or partnership that is more than 24 months late in filing an information return that the person or partnership was required to file under any of sections 233.1 to 233.4. (This penalty applies in addition to the penalties imposed under subsections 162(7) and (10)).

The penalty imposed under subsection 162(10.1) with respect to a particular information return is equal to a specified amount less the amount of the penalties imposed under subsections 162(7) and (10) with respect to the return. The specified amount with respect to an information return for a trust required to be filed by a person or partnership under section 233.2 is equal to 5% of the total fair market value of any property transferred or loaned to the trust that, if no other loan or transfer were taken into account, would have imposed an obligation on the person or partnership to file the return.

Subsection 162(10.1) is amended as a consequence of amendments made to section 233.2, by changing the manner in which the specified amount is determined. The specified amount is now to be determined with reference to the fair market value of "contributions" made by the person or partnership to the trust.

(e) where the return is required to be filed under section 233.3 for a taxation year or fiscal period, 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a specified foreign property (as defined by subsection 233.3(1)) of the person or partnership, and

(f) where the return is required to be filed under section 233.4 for a taxation year or fiscal period in respect of a foreign affiliate of the person or partnership, 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a property of the person or partnership that is a share of the capital stock or indebtedness of the affiliate, and

B is the total of the penalties to which the person or partnership is liable under subsections (7) and (10) in respect of the return.

Related Provisions: 162(7) — Initial calculation of penalty; 162(10.11) — Application to trust contributions; 162(10.2) — Shares or debt owned by controlled foreign affiliate; 162(10.3) — Application to partnerships; 162(10.4) — Application to non-resident trusts; 163(2.4)–(2.91) — Penalty for false statement or omission in return; 233.5 — Due diligence defence to penalty; 257 — Formula cannot calculate to less than zero.

History: Subsec. 162(10.1) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

Proposed Addition — 162(10.11)

(10.11) Application to trust contributions — Subsections 94(1) and (2) apply for the purpose of paragraph (d) of the description of A in subsection (10.1), except that for this purpose the definition "arm's length transfer" in subsection 94(1) shall be read without reference to subparagraph (a)(v) of that definition.

Application: The June 22, 2000 draft legislation, subsec. 20(2), will add subsec. 162(10.11), applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: New subsection 162(10.11) provides that, for the purpose of the calculation in subsection 162(10.1), the definitions and rules in subsections 94(1) and (2) generally ap-

ply. Subsection 162(10.11) is similar to amended subsection 233.2(2), described in greater detail in the commentary below.

This amendment applies to returns in respect of taxation years that begin after 2000.

(10.2) Shares or debt owned by controlled foreign affiliate — For the purpose of paragraph (f) of the description of A in subsection (10.1),

(a) shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership; and

(b) the cost amount at any time of such shares or indebtedness to the person or partnership is deemed to be equal to 20% of the cost amount at that time to the controlled foreign affiliate of the shares or indebtedness.

Related Provisions: 162(10.3) — Application to partnerships; 162(10.4) — Application to non-resident trusts.

History: Subsec. 162(10.2) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(10.3) Application to partnerships — For the purposes of paragraph (f) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a partnership,

Proposed Amendment — 162(10.3)

(10.3) Application to partnerships — For the purposes of paragraph (f) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

Application: The June 22, 2000 draft legislation, subsec. 20(3), will amend the opening words of subsec. 162(10.3) to read as above, applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: Existing paragraph 94(1)(d) of the Act provides for non-resident trusts to be treated as foreign affiliates, but is being repealed as a consequence of the introduction of new rules for non-resident trusts in section 94. Subsections 162(10.3) and (10.4) are rules affecting the calculation of penalty tax in respect of a person's or partnership's failure to file a return in respect of a foreign affiliate.

Subsections 163(2.6) and (2.91) are similar provisions that affect the calculation of penalty tax in respect of false statements and omissions in such a return.

Subsections 162(10.3) and 163(2.6) are amended to reflect the changes to section 94 under which non-resident trusts are no longer treated as foreign affiliates. Subsections 162(10.4) and 163(2.91) are repealed for the same reason.

These amendments apply to returns in respect of taxation years that begin after 2000.

(a) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(b) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

History: Subsec. 162(10.3) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(10.4) Application to non-resident trusts — For the purposes of this subsection, paragraph (f) of the description of A in subsection (10.1) and subsection (10.2),

(a) a non-resident trust is deemed to be a controlled foreign affiliate of each beneficiary of which the trust is a controlled foreign affiliate for the purpose of section 233.4;

(b) the trust is deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares;

(c) each beneficiary under the trust is deemed to own at any time the number of the issued shares of the corporation that is equal to the proportion of 100 that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(d) the cost amount to a beneficiary at any time of a share of the corporation is deemed to be equal to the amount determined by the formula

$$\frac{A}{B}$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the number of shares deemed under paragraph (c) to be owned at that time by the beneficiary in respect of the corporation.

Proposed Repeal — 162(10.4)

Application: The June 22, 2000 draft legislation, subsec. 20(4), will repeal subsec. 162(10.4), in force on Royal Assent.

Technical Notes: See under 162(10.3).

History: Subsec. 162(10.4) added by 1997, c. 25, subsec. 51(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(11) Effect of subsequent events — For the purpose of computing a penalty under subsection (1) or (2) in respect of a person's return of income for a taxation year, the person's tax payable under this Part for the year shall be determined before taking into consideration the specified future tax consequences for the year.

History: Subsec. 162(11) amended by 1997, c. 25, subsec. 51(4), applicable to 1996 *et seq.* Subsec. (11) formerly read:

(11) Effect of carryback of losses etc. — In determining a person's tax for a taxation year for the purpose of computing a penalty under subsection (1) or (2) in respect of the person's return of income for the year, paragraph 161(7)(a) applies with such modifications as the circumstances require.

Subsec. 162(11) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 134(3), applicable to amounts referred to in para. 161(7)(a) in respect of subsequent taxation years referred to in that para. ending after July 13, 1990.

Related Provisions [s. 162]: 18(1)(t) — Penalties are non-deductible; 161(11) — Interest on penalty; 180.1(4), 180.2(6), 181.7, 183(3), 183.2(2), 187(3), 187.6, 189(8), 190.21, 191.4(2), 193(8), 195(8), 196(4), 202(3), 204.3(2), 204.7(3), 204.87, 204.93, 204.94(4), 207(3), 207.2(3), 207.4(2), 207.7(4), 208(4), 209(5), 210.2(7), 211.5, 211.6(5), 211.91(3), 219(3), 247(11) — Provisions of s. 162 apply for purposes of Parts I.1, I.2, I.3, II, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, X, X.1, X.2, X.3, X.4, X.5, XI, XI.1, XI.2, XI.3, XII, XII.1, XII.2, XII.3, XII.4, XII.6, XIV and XVI.1 respectively; 220(3.1) — Waiver of penalty or interest; 227(10.01), (10.1) — Provisions of s. 162 apply to withholding taxes under Parts XII.5 and XIII; 238(1), (3) — Offences; 239(3) — Penalty assessment cannot be issued after charge laid if person convicted.

Pre-RSC History [s. 162]: S. 162 substituted by 1988, c. 55, s. 141 (as amended (subsecs. (7.1) and (8.1) being added) by 1994, c. 7, Sched. II, s. 245, deemed to have come into force September 13, 1988), subsecs. (7.1)

to (8.1) applicable as of December 17, 1991, subsec. (9) applicable as of September 1, 1989. S. 162 formerly read:

> 162. (1) **Penalties** — Every person who has failed to file a return as and when required by subsection 150(1) is liable to a penalty equal to the aggregate of
>
> (a) an amount equal to 5% of the tax that was unpaid when the return was required to be filed; and
>
> (b) the product obtained when 1% of the tax that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding twelve, in the period between the date on which the return was required to be filed and the date on which the return was filed.
>
> (2) **Idem** — Every person who has failed to file a return as required by subsection 150(3) is liable to a penalty of $10 for each day of default but not exceeding $50.
>
> (3) **Failure to complete information** — Every person who has failed to complete the information on a prescribed form as required by or pursuant to section 150 is, unless in the case of an individual the Minister has waived it, liable to a penalty
>
> (a) of 1% of the amount by which the tax payable under this Part exceeds the amount deemed by subsection 120(2) to have been paid on account of tax under this Part for the year but, whether he is taxable or not, not less than $25 or more than $100, or
>
> (b) in the case of an individual, of such lesser amount as the Minister may have fixed in respect of the specific failure.

Subsec. 162(1) substituted by 1980-81-82-83, c. 48, subsec. 89(1), applicable with respect to returns required to be filed, but not filed, before 1982 and with respect to returns required to be filed after 1981. Subsec. 162(1) formerly read:

> 162. (1) Every person who has failed to make a return as and when required by subsection 150(1) is liable to a penalty of
>
> (a) an amount equal to 5% of the tax that was unpaid when the return was required to be filed, if the tax payable under this Part that was unpaid at that time was less than $10,000, and
>
> (b) $500, if at the time the return was required to be filed tax payable under this Part equal to $10,000 or more was unpaid.

Para. 162(3)(a) substituted by 1980-81-82-83, c. 48, subsec. 89(2), applicable to 1980 *et seq.* Para. 162(3)(a) formerly read as follows:

> (a) of 1% of the tax payable under this Part but, whether he is taxable or not, not less than $25 or more than $100, or

Definitions [s. 162]: "amount", "business number" — 248(1); "controlled foreign affiliate" — 95(1), 162(10.3), (10.4)(a), 248(1); "corporation" — 162(10.4)(b), 248(1), *Interpretation Act* 35(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 162(10.3), 248(1); "individual", "Minister", "non-resident" — 248(1); "owned" — 162(10.2); "person", "prescribed", "property" — 248(1); "received" — 248(7); "registered charity", "regulation" — 248(1); "tax shelter" — 237.1(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 162]: 00-1: Voluntary disclosures program.

163. (1) Repeated failures [to report income] — Every person who

(a) fails to report an amount required to be included in computing the person's income in a return filed under section 150 for a taxation year, and

(b) had failed to report an amount required to be so included in any return filed under section 150 for any of the three preceding taxation years

is liable to a penalty equal to 10% of the amount described in paragraph (a), except where the person is liable to a penalty under subsection (2) in respect of that amount.

Related Provisions: 163(3) — Burden of proof. See also Related Provisions and Definitions at end of s. 163.

Pre-RSC History: Subsec. 163(1) substituted by 1988, c. 55, s. 142. Subsec. 163(1) formerly read:

> 163. (1) **Wilful failure to file return** — Every person who wilfully attempts to evade payment of the tax payable by him under this Part by failing to file a return of income as and when required by subsection 150(1) is liable to a penalty of 50% of the amount by which
>
> (a) the tax sought to be evaded
>
> exceeds
>
> (b) that portion of the amount deemed by subsection 120(2) to have been paid on account of his tax under this Part that is reasonably attributable to the amount referred to in paragraph (a).

Subsec. 163(1) substituted by 1980-81-82-83, c. 48, subsec. 90(1), applicable to 1980 *et seq.* Subsec. 163(1) formerly read:

> 163. (1) Every person who wilfully attempts to evade payment of the tax payable by him under this Part by failing to file a return of income as and when required by subsection 150(1) is liable to a penalty of 50% of the amount of the tax sought to be evaded.

Selected Cases [subsec. 163(1)]: *The Queen v. Pongrantz*, [1982] C.T.C. 259 (FCA) (Repeated failure to file return on time not wilful evasion); *Hawrish v. MNR*, [1976] C.T.C. 748 (FCA) (Penalties imposed after four-year limit period quashed when no wilful tax evasion). (Note: the current version of subsec. 163(1) no longer requires that the failure have been wilful).

Information Circulars: 00-1: Voluntary disclosures program.

(2) False statements or omissions — Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of

(a) the amount, if any, by which

(i) the amount, if any, by which

(A) the tax for the year that would be payable by the person under this Act

exceeds

(B) the amounts that would be deemed by subsections 120(2) and (2.2) to have been paid on account of the person's tax for the year

if the person's taxable income for the year were computed by adding to the taxable income reported by the person in the person's return for the year that portion of the person's understatement of income for the year that is reasonably attributable to the false statement or omission and if the person's tax payable for the year were computed by subtracting from the deductions from the tax otherwise payable by the person for the year such portion of any such deduction as may reasonably be attributable to the false statement or omission

exceeds

(ii) the amount, if any, by which

(A) the tax for the year that would have been payable by the person under this Act

exceeds

(B) the amounts that would be deemed by subsections 120(2) and (2.2) to have been paid on account of the person's tax for the year

had the person's tax payable for the year been assessed on the basis of the information provided in the person's return for the year,

(b) [Repealed]

(c) the total of all amounts each of which is the amount, if any, by which

(i) the amount that would be deemed by subsection 122.61(1) to be an overpayment on account of the

person's liability under this Part for the year that arose during a particular month or, where that person is a cohabiting spouse (within the meaning assigned by section 122.6) of an individual at the end of the year and at the beginning of the particular month, of that individual's liability under this Part for the year that arose during the particular month, as the case may be, if that total were calculated by reference to the information provided

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor of Council. See also the transitional rules reproduced under 248(1)"common-law partner".

exceeds

(ii) the amount that is deemed by subsection 122.61(1) to be an overpayment on account of the liability of that person or that individual, as the case may be, under this Part for the year that arose during the particular month,

(c.1) the amount, if any, by which

(i) the total of all amounts each of which is an amount that would be deemed by section 122.5 to be paid by that person during a month specified for the year or, where that person is a qualified relation of an individual for the year (within the meaning assigned by subsection 122.5(1)), by that individual, as the case may be, if that total were calculated by reference to the information provided in the prescribed form filed for the year under section 122.5

exceeds

(ii) the total of all amounts each of which is an amount that is deemed under section 122.5 to be paid by that person or that qualified relation during a month specified for the year,

(c.2) the amount, if any, by which

(i) the amount that would be deemed under subsection 122.51(2) to be paid on account of the person's tax payable under this Part for the year if the amount were calculated by reference to the information provided in the return

exceeds

(ii) the amount that is deemed under subsection 122.51(2) to be paid on account of the person's tax payable under this Part for the year,

(d) the amount, if any, by which

(i) the amount that would be deemed by subsection 127.1(1) to be paid for the year by the person if that amount were calculated by reference to the information provided in the return or form filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person,

(e) the amount, if any, by which

(i) the amount that would be deemed by subsection 127.41(3) to have been paid for the year by the person if that amount were calculated by reference to the person's claim for the year under that subsection

exceeds

(ii) the maximum amount that the person is entitled to claim for the year under subsection 127.41(3),

(f) the amount, if any, by which

(i) the amount that would be deemed by subsection 125.4(3) to have been paid for the year by the person if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person, and

(g) the amount, if any, by which

(i) the amount that would be deemed by subsection 125.5(3) to have been paid for the year by the person if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person.

Related Provisions: 163(2.1) — Interpretation; 163(3) — Burden of proof; 163.2(15)(c) — Deemed liability for certain acts of employee; 239(1) — Offence — false statements. See also Related Provisions and Definitions at end of s. 163.

History: Cls. 163(2)(a)(i)(B) and (2)(a)(ii)(B) amended by 2000, c. 19, subsecs. 49(1), (2), applicable to 1999 *et seq.* The cls. formerly read:

(B) the amount that would be deemed by subsection 120(2) to have been paid on account of the person's tax for the year

. . . . .

(B) the amount that would have been deemed by subsection 120(2) to have been paid on account of the person's tax for the year

The opening words of subsec. 163(2) amended by 1998, c. 19, subsec. 189(1), applicable after June 20, 1996. The opening words of subsec. 163(2) formerly read:

(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of the greater of $100 and 50% of the total of

Para. 163(2)(c.2) amended by 1998, c. 19, s. 45, applicable to 1997 *et seq.* Para. 163(2)(c.2) formerly read:

(c.2) the amount, if any, by which

(i) the amount that would be deemed under section 126.1 to be an overpayment on account of the person's liability under this Part for the year if the amount were calculated by reference to the information provided

exceeds

(ii) the amount that is deemed under section 126.1 to be an overpayment on account of the person's liability under this Part for the year,

Para. 163(2)(g) added by 1998, c. 19, subsec. 189(2), applicable after October 1997.

Para. 163(2)(f) added by 1996, c 21, s. 43, applicable to 1995 *et seq.*

Para. 163(2)(e) added by 1995, c. 3, s. 48, applicable to taxation years that end after February 22, 1994.

Para. 163(2)(c.2) added by 1994, c. 8, subsec. 26(1), applicable after 1992.

Para. 163(2)(b) repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 17(1), applicable to 1993 *et seq.* Para. (b) formerly read:

(b) the amount, if any, by which

(i) the amount that would be deemed by subsection 122.2(1) to be paid for the year by the person or, where the person is a supporting person of an eligible child of an individual for the year (within the meaning assigned by subsection 122.2(2)) and

resided with the individual at the end of the year, by that individual, as the case may be, if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by subsection 122.2(1) to be paid for the year by the person or the individual referred to in subparagraph (i), as the case may be,

Para. 163(2)(c) was added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 17(2), applicable to 1991 *et seq.*

Pre-RSC History: Former para. 163(2)(c) repealed applicable to 1991 *et seq.*, and para. (c.1) added applicable to 1989 *et seq.*, by 1990, c. 45, subsecs. 51(1), (2). Para. (c) formerly read:

(c) the amount, if any, by which

(i) the amount that would be deemed by subsection 122.4(3) to be paid for the year by him or, where he is the spouse and a qualified relation of an eligible individual for the year (within the meanings assigned by subsection 122.4(1)), by that individual, as the case may be, if that amount were calculated by reference to the information provided in the prescribed form filed for the year pursuant to subsection 122.4(3)

exceeds

(ii) the amount that is deemed by subsection 122.4(3) to be paid for the year by him or the eligible individual of whom he is the spouse, as the case may be, and

Subsec. 163(2) substituted by 1988, c. 55, s. 142. Subsec. (2) formerly read:

(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of

(a) 25% of the amount, if any, by which

(i) the amount, if any, by which

(A) the tax for the year that would be payable by him under this Act

exceeds

(B) the amount that would be deemed by subsection 120(2) to have been paid on account of his tax for the year

if his taxable income for the year were computed by adding to the taxable income reported by him in his return for the year that portion of his understatement of income for the year that is reasonably attributable to the false statement or omission

exceeds

(ii) the amount, if any, by which

(A) the tax for the year that would have been payable by him under this Act

exceeds

(B) the amount that would have been deemed by subsection 120(2) to have been paid on account of his tax for the year

had his tax payable for the year been assessed on the basis of the information provided in his return for the year,

(b) 25% of the amount, if any, by which

(i) the amount that would be deemed by subsection 122.2(1) to be paid for the year by him or, where he is a supporting person of an eligible child of an individual for the year (within the meaning assigned by subsection 122.2(2)) and resided with the individual at the end of the year, by that individual, as the case may be, if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by subsection 122.2(1) to be paid for the year by him or the individual referred to in subparagraph (i), as the case may be,

(b.1) 25% of the amount, if any, by which

(i) the amount that would be deemed by subsection 122.4(3) to be paid for the year by him or, where he is the spouse and a qualified relation of an eligible individual for the year (within the meanings assigned by subsection 122.4(1)), by that individual, as the case may be, if that amount were calculated by reference to the information provided in the prescribed form filed for the year pursuant to subsection 122.4(3)

exceeds

(ii) the amount that is deemed by subsection 122.4(3) to be paid for the year by him or the eligible individual of whom he is the spouse, as the case may be,

(c) 25% of the amount, if any, by which

(i) the amount that would be deemed by subsection 127.1(1) to be paid for the year by him if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by subsection 127.1(1) to be paid for the year by him, and

(d) 25% of the amount, if any, by which

(i) the amount that would be deemed by subsection 127.2(2) to be paid for the year by him if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by subsection 127.2(2) to be paid for the year by him.

Para. 163(2)(b.1) added by 1986, c. 55, subsec. 64(1), applicable to 1986 *et seq.*

Para. 163(2)(b) substituted, (c), (d) added by 1984, c. 1, subsec. 87(1), applicable to 1983 *et seq.* Para. (b) formerly read:

(b) 25% of the amount, if any, by which

(i) the amount that would be deemed by subsection 122.2(1) to be paid for the year by him or his spouse, as the case may be, if that amount were calculated by reference to the information provided in the form

exceeds

(ii) the amount that is deemed by subsection 122.2(1) to be paid for the year by him or his spouse, as the case may be.

Para. 163(2)(a) substituted by 1980-81-82-83, c. 48, subsec. 90(2), applicable to 1980 *et seq.* Para. (a) formerly read:

(a) 25% of the amount, if any, by which

(i) the tax for the year that would be payable by him under this Act if his taxable income for the year were computed by adding to the taxable income reported by him in his return for the year that portion of his understatement of income for the year that is reasonably attributable to the false statement or omission

exceeds

(ii) the tax for the year that would have been payable by him under this Act had his tax payable for the year been assessed on the basis of the information provided in his return for the year, and

Subsec. 163(2) substituted by 1978-79, c. 5, s. 7. Subsec. (2) formerly read:

(2) Statements or omissions in return — Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made, or has participated in, assented to or acquiesced in the making of, a statement or omission (in this section referred to as a "false statement") in a return, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of 25% of the amount, if any, by which

(a) the tax for the year that would be payable by him under this Act if his taxable income for the year were computed by adding to the taxable income reported by him in his return for the year that portion of his understatement of income for the year that is reasonably attributable to the false statement

exceeds

(b) the tax for the year that would have been payable by him under this Act had his tax payable for the year been assessed on the basis of the information provided in his return for the year.

Subsec. 163(2) substituted by 1977-78, c. 1, s. 77, applicable after March 31, 1977. Subsec. (2) formerly read:

(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made, or has participated in, assented to or acquiesced in the making of, a statement or omission in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation, as a result of which the tax that would have been payable by him for a taxation year if the tax had been assessed on the basis of the information provided in the return, certificate, statement or answer is less than the tax payable by him for the year, is liable to a penalty of 25% of the amount by which the tax that would so have been payable is less than the tax payable by him for the year.

Selected Cases [subsec. 163(2)]: *Hildebrandt v. R.*, [1997] 3 C.T.C. 2936 (TCC) (Failure to keep adequate records of substantial business was gross negligence); *Findlay v. R.*, [1997] 3 C.T.C. 2010 (TCC) (Gross negligence of tax return preparer attributed to taxpayer and penalties applied); *MacDonald v. R.*, [1997] 3 C.T.C. 2195 (TCC) (Penalties applid even when CCA available to reduce net tax payable to nil; penalties relate to undeclared income, not amount of tax payable); *Skukan v. Canada*, [1997] 1 C.T.C. 2228 (TCC) (Minister must have more than hearsay evidence to impose penalties); *Wiese v. Canada*, [1995] 2 C.T.C. 2246 (TCC) (Persistent failure to comply with statutory duty to report income sufficient to justify penalty); *Hudson Bay Mining & Smelting Co. v. Canada*, [1989] 2 C.T.C. 309 (FCA); leave to appeal to SCC refused (1990), 106 N.R. 16 (note), (sub nom. *Hudson Bay Mining & Smelting Co. v. MNR)* (Company making non-refundable "gift" after sale transaction; amount paid held to be part of sale transaction); *The Queen v. Sharma*, [1987] 2 C.T.C. 253 (Ont SC) (Civil penalty upon tax evasion not criminal guilt under Charter); *De Graaf v. The Queen*, [1985] 1 C.T.C. 374 (FCTD) (Penalties imposed on sole operator of business); *Venne v. The Queen*, [1984] C.T.C. 223 (FCTD) (Penalties quashed when taxpayer relied completely on bookkeeper); *The Queen v. Columbia Enterprises Ltd.*, [1983] C.T.C. 204 (FCA) (Penalty levied when intent and conduct of accountant attributed to taxpayer); *May v. The Queen*, [1982] C.T.C. 66 (FCTD) (Penalty levied for failing to report profit on income account); *The Queen v. Whittle*, 79 D.T.C. 5011 (BC SC) (Assessment of penalty is administrative and civil matter; writ of prohibition denied); *Cloutier v. The Queen*, [1978] C.T.C. 702 (FCTD) (Penalty for gross negligence upheld against taxpayer failing to include advances from controlled corporation); *Beech v. The Queen*, [1977] C.T.C. 361 (FCTD) (Penalty upheld against taxpayer not providing accountants with sufficient information); *Danalan Investments Ltd. v. MNR*, [1973] C.T.C. 251 (FCTD) (Penalties imposed on taxpayer not revealing relationships with associated companies); *MNR v. Weeks*, [1972] C.T.C. 60 (FCTD) (No false statement where taxpayer relied on accountant's error); *MNR v. Panko*, [1971] C.T.C. 467 (SCC) (Penalties imposed after taxpayer convicted for same offences); *Udell v. MNR*, [1969] C.T.C. 704 (Exch.) (Taxpayer not liable for penalty upon errors due to gross negligence of accountant).

Interpretation Bulletins: IT-256R: Gains from theft, defalcation or embezzlement.

Information Circulars: 73-10R3: Tax evasion.

Application Policies: SR&ED 96-05: Penalties under subsec. 163(2)..

(2.1) Interpretation — For the purposes of subsection (2), the taxable income reported by a person in the person's return for a taxation year shall be deemed not to be less than nil and the "understatement of income" for a year of a person means the total of

(a) the amount, if any, by which

(i) the total of all amounts that were not reported by the person in the person's return and that were required to be included in computing the person's income for the year

exceeds

(ii) the total of such of the amounts deductible by the person in computing the person's income for the year under the provisions of this Act as were wholly applicable to the amounts referred to in subparagraph (i) and were not deducted by the person in computing the person's income for the year reported by the person in the person's return,

(b) the amount, if any, by which

(i) the total of all amounts deducted by the person in computing the person's income for the year reported by the person in the person's return

exceeds

(ii) the total of such of the amounts referred to in subparagraph (i) as were deductible by the person in computing the person's income for the year in accordance with the provisions of this Act, and

(c) the amount, if any, by which

(i) the total of all amounts deducted by the person (otherwise than by virtue of section 111) from the person's income for the purpose of computing the person's taxable income for the year reported by the person in the person's return

exceeds

(ii) the total of all amounts deductible by the person (otherwise than by virtue of section 111) from the person's income for the purpose of computing the person's taxable income for the year in accordance with the provisions of this Act.

Related Provisions: 163(3) — Burden of proof; 163(4) — Effect of carryback of losses etc.

Pre-RSC History: All that portion of subsec. 163(2.1) preceding para. (a) amended by 1985, c. 45, s. 92, to substitute "and the 'understatement of income' for a year of a person" for "and the 'understatement of income for a year' of a person".

Paras. 163(2.1)(a), (b) substituted by 1977-78, c. 32, s. 40, applicable in respect of statements or omissions made after April 10, 1978. Paras. 163(2.1)(a), (b) formerly read:

(a) the amount, if any, by which the aggregate of

(i) the amount of his gross revenue for the year not reported by him in his return, and

(ii) each amount not reported by him in his return that was required to be included in computing his income for the year by virtue of subparagraph 40(1)(a)(ii), paragraph 12(1)(d) or (e) or subsection 59(2) or (2.1)

exceeds

(iii) the aggregate of the amounts deductible by him for the purpose of computing his income for the year under the provisions of this Act (other than by virtue of paragraph 20(1)(a) or (b) or section 28) that were wholly attributable to the amounts referred to in subparagraph (i) or (ii) and were not deducted by him in computing his income for the year reported by him in his return,

(b) the amount, if any, by which

(i) the aggregate of amounts deducted by him in computing his income for the year reported by him in his return

exceeds

(ii) the aggregate of amounts deductible by him in his return in computing his income for the year in accordance with the provisions of this Act, and

Subsec. 163(2.1) added by 1977-78, c. 1, s. 77, applicable after March 31, 1977.

(2.2) False statement or omission — Every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a renunciation that was to have been effective as of a particular date and that is purported to have been made under any of subsections 66(10) to (10.3), (12.6), (12.601) and (12.62), otherwise than because of

the application of subsection 66(12.66), is liable to a penalty of 25% of the amount, if any, by which

(a) the amount set out in the renunciation in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses

exceeds

(b) the amount in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses, as the case may be, that the corporation was entitled under the applicable subsection to renounce as of that particular date.

Related Provisions: 163(2.21) — Penalty relating to 66(12.66); 163(3) — Burden of proof. See also Related Provisions and Definitions at end of s. 163.

History: The opening words of subsec. 163(2.2) amended by 1997, c. 25, subsec. 52(1), applicable to acts and omissions that occur after April 25, 1997 except that, in connection with purported renunciations made before 1999, the expression "(12.601) and (12.62)" in subsec. (2.2) shall be read as "(12.601), (12.62) and (12.64)". The opening words formerly read:

(2.2) Every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in any renunciation that is effective as of a particular date and that is made under any of subsections 66(10) to (10.3), (12.6), (12.601), (12.62) and (12.64) is liable to a penalty of 25% of the amount, if any, by which

The opening words of subsec. 163(2.2) amended by 1994, c. 8, subsec. 26(2), applicable from May 12, 1994. They formerly read:

(2.2) Every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in any renunciation that is effective as of a particular date and that is made under any of subsections 66(10) to (10.3), (12.6), (12.62) and (12.64) is liable to a penalty of 25% of the amount, if any, by which

Pre-RSC History: Subsec. 163(2.2) added by 1986, c. 55, subsec. 64(2).

(2.21) False statement or omissions with respect to look-back rule — A person is liable to the penalty determined under subsection (2.22) where the person,

(a) knowingly or under circumstances amounting to gross negligence has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a document required to be filed under subsection 66(12.73) in respect of a renunciation purported to have been made because of the application of subsection 66(12.66); or

(b) fails to file the document on or before the day that is 24 months after the day on or before which it was required to be filed.

History: Subsec. 163(2.21) added by 1997, c. 25, subsec. 52(2), applicable April 25, 1997.

(2.22) Penalty — For the purpose of subsection (2.21), the penalty to which a person is liable in respect of a document required to be filed under subsection 66(12.73) is equal to 25% of the amount, if any, by which

(a) the portion of the excess referred to in subsection 66(12.73) in respect of the document that was known or that ought to have been known by the person

exceeds

(b) where paragraph (2.21)(b) does not apply, the portion of the excess identified in the document, and

(c) in any other case, nil.

Related Provisions: 162(7) — Additional penalty. See additional Related Provisions and Definitions at end of s. 163.

History: Subsec. 163(2.22) added by 1997, c. 25, subsec. 52(2), applicable April 25, 1997.

(2.3) Idem — Every person who, knowingly or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of, a false statement or omission in a prescribed form required to be filed under subsection 66(12.691) or (12.701) is liable to a penalty of 25% of the amount, if any, by which

(a) the assistance required to be reported in respect of a person or partnership in the prescribed form

exceeds

(b) the assistance reported in the prescribed form in respect of the person or partnership.

Related Provisions: See Related Provisions and Definitions at end of s. 163.

History: Subsec. 163(2.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 135(1).

(2.4) False statement or omission [re foreign asset reporting] — Every person or partnership who, knowingly or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in, the making of a false statement or omission in a return is liable to a penalty of

(a) where the return is required to be filed under section 233.1, $24,000;

(b) where the return is required to be filed under section 233.2, the greater of

(i) $24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value of property transferred or loaned (determined as of the time of the transfer or loan) because of which there would, if no other transfer or loan were taken into account, be an obligation to file the return;

Proposed Amendment — 163(2.4)(b)

(b) where the return is required to be filed under section 233.2 in respect of a trust, the greater of

(i) $24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required;

Application: The June 22, 2000 draft legislation, subsec. 21(1), will amend para. 163(2.4)(b) to read as above, applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: Subsection 163(2.4) of the Act imposes a penalty on any person or partnership that, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to, or acquiesced in, the making of a false statement or omission in a return required to be filed under any of sections 233.1 to 233.6. The penalty under paragraph 163(2.4)(b) relates to a return required to be filed under section 233.2. The existing penalty is the greater of $24,000 and 5% of the total fair market value of the property that the person or partnership loaned or transferred to the trust that gave rise to the obligation to file.

Paragraph 163(2.4)(b) is amended as a consequence of changes made to the non-resident trust rules in section 94 and the annual reporting requirement in respect of non-resident trusts under section 233.2. Under amended section 233.2, a person is subject to the annual reporting requirement where a "contribution" is made to the trust by the person.

Accordingly, amended paragraph 163(2.4)(b) provides for a penalty for a person equal the greater of $24,000 and 5% of a specified amount in respect of the return. The specified amount for a

person is essentially equal to 5% of the fair market value of "contributions" made by the person. The specified amount is calculated in the same way as the specified amount under amended subsection 162(10.1) in respect of late-filed returns. Under new subsection 163(2.41), the definitions and rules in subsections 94(1) and (2) generally apply. Subsection 163(2.41) is similar to amended subsection 233.2(2), described in greater detail in the commentary below.

This amendment applies to returns in respect of taxation years that begin after 2000.

(c) where the return is required to be filed under section 233.3 for a taxation year or fiscal period, the greater of

(i) $24,000, and

(ii) 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a specified foreign property (as defined by subsection 233.3(1)(a)) of the person or partnership in respect of which the false statement or omission is made;

(d) where the return is required to be filed under section 233.4 for a taxation year or fiscal period, the greater of

(i) $24,000, and

(ii) 5% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a property of the person or partnership that is a share of the capital stock or indebtedness of the foreign affiliate in respect of which the return is being filed; and

(e) where the return is required to be filed under section 233.6 for a taxation year or fiscal period, the greater of

(i) $2,500, and

(ii) 5% of the total of

(A) all amounts each of which is the fair market value of a property that is distributed to the person or partnership in the year or period by the trust and in respect of which the false statement or omission is made, and

(B) all amounts each of which is the greatest unpaid principal amount of a debt that is owing to the trust by the person or partnership in the year or period and in respect of which the false statement or omission is made.

Related Provisions: 162(10), (10.1) — Penalty for failure to file return; 163(2.41) — Application to trust contributions; 163(2.5) — Shares or debt owned by controlled foreign affiliate; 163(2.6), (2.7) — Application to partnerships; 163(2.9) — Where partnership liable to penalty; 163(2.91) — Application to non-resident trusts; 233.5 — Due diligence defence to penalty.

History: Subsec. 163(2.4) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

Proposed Addition — 163(2.41)

(2.41) Application to trust contributions — Subsections 94(1) and (2) apply for the purpose of subparagraph (b)(ii), except that for this purpose the definition "arm's length transfer" in subsection 94(1) shall be read without reference to subparagraph (a)(v) of that definition.

Application: The June 22, 2000 draft legislation, subsec. 21(2), will add subsec. 163(2.41), applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: See under 163(2.4)(b).

(2.5) Shares or debt owned by controlled foreign affiliate — For the purpose of paragraph (2.4)(d),

(a) shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership; and

(b) the cost amount at any time of such shares or indebtedness to the person or partnership is deemed to be equal to 20% of the cost amount at that time to the controlled foreign affiliate of the shares or indebtedness.

Related Provisions: 163(2.6) — Application to partnerships; 163(2.91) — Application to non-resident trusts.

History: Subsec. 163(2.5) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.6) Application to partnerships — For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a partnership

Proposed Amendment — 163(2.6)

(2.6) Application to partnerships — For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

Application: The June 22, 2000 draft legislation, subsec. 21(3), will amend the opening words of para. 163(2.6) to read as above, applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: See under 162(10.3).

(a) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(b) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

History: Subsec. 163(2.6) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.7) Application to partnerships — For the purpose of subsection (2.4), each act or omission of a member of a partnership in respect of an information return required to be filed by the partnership under section 233.3, 233.4 or 233.6 is deemed to be an act or omission of the partnership in respect of the return.

Related Provisions: 163(2.8) — Tiers of partnerships.

History: Subsec. 163(2.7) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.8) Application to members of partnerships — For the purposes of this subsection and subsection (2.7), a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

History: Subsec. 163(2.8) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.9) Where partnership liable to penalty — Where a partnership is liable to a penalty under subsection (2.4) or section 163.2 or 237.1, sections 152, 158 to 160.1, 161,

and 164 to 167 and Division J apply, with any changes that the circumstances require, in respect of the penalty as if the partnership were a corporation.

History: Subsec. 163(2.9) amended by 2000, c. 19, subsec. 49(3), in force June 29, 2000 (Royal Assent). The subsec. formerly read:

> (2.9) Where a partnership is liable to a penalty under subsection (2.4), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

Subsec. 163(2.9) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(2.91) Application to non-resident trusts — For the purposes of this subsection, paragraph (2.4)(d) and subsection (2.5),

(a) a non-resident trust is deemed to be a controlled foreign affiliate of each beneficiary of which the trust is a controlled foreign affiliate for the purpose of section 233.4;

(b) the trust is deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares;

(c) each beneficiary under the trust is deemed to own at any time the number of the issued shares of the corporation that is equal to the proportion of 100 that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(d) the cost amount to a beneficiary at any time of a share of the corporation is deemed to be equal to the amount determined by the formula

$$\frac{A}{B}$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the number of shares deemed under paragraph (c) to be owned at that time by the beneficiary in respect of the corporation.

Proposed Repeal — 163(2.91)

Application: The June 22, 2000 draft legislation, subsec. 21(4), will repeal subsec. 163(2.91), applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: See under 162(10.3).

History: Subsec. 163(2.91) added by 1997, c. 25 subsec. 52(3), applicable to returns required to be filed on or before a day that is after April 29, 1998.

(3) Burden of proof in respect of penalties — Where, in an appeal under this Act, a penalty assessed by the Minister under this section or section 163.2 is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Related Provisions: 15.1(5) — Small business development bond — penalties; 15.2(5) — Small business bond — penalties; 163.2(10) — Exception where valuation wrong by more than prescribed percentage.

History: Subsec. 163(3) amended by 2000, c. 19, subsec. 49(4), in force June 29, 2000 (Royal Assent). The subsec. formerly read:

> (3) Where, in any appeal under this Act, any penalty assessed by the Minister under this section is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Selected Cases [subsec. 163(3)]: *Dick v. MNR*, [1991] 2 C.T.C. 2034 (TCC) appealed to FCTD (Aug. 30, 1991), File T-2251-91 (Since Minister failed to show fraud or misrepresentation reassessments for two taxation years statute-barred); *Levy v. MNR*, [1989] 2 C.T.C. 151 (FCTD) (Penalties reduced in proportion to reduction of taxpayer's income under net worth assessments); *The Queen v. Taylor*, [1984] C.T.C. 436 (FCTD) (Burden of proof in appeal from assessment and in appeal of penalty remains with taxpayer and Crown respectively); *Decore v. The Queen*, [1974] C.T.C. 791 (FCA) (Penalty denied when accountant of taxpayer not grossly negligent).

(4) Effect of carryback of losses etc. — In determining under subsection (2.1) the understatement of income for a taxation year of a person, the following amounts shall be deemed not to be deductible or excludable in computing the person's income for the year:

(a) any amount that may be deducted under section 41 in respect of the person's listed-personal-property loss for a subsequent taxation year;

(b) any amount that may be excluded from the person's income because of section 49 in respect of the exercise of any option in a subsequent taxation year;

(b.1) any amount that may be deducted under subsection 147.2(4) in computing the person's income for the year because of the application of subsection 147.2(6) as a result of the person's death in the subsequent taxation year; and

(c) any amount that may be deducted in computing the person's income for the year because of an election made under paragraph 164(6)(c) or (d) in a subsequent taxation year by the person's legal representative.

History: Para. 163(4)(b.1) added by 1998, c. 19, subsec. 189(3), applicable to taxpayers who die after 1992.

Subsec. 163(4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 135(2), applicable to amounts referred to in the subsec. in respect of subsequent taxation years ending after July 13, 1990.

Related Provisions [s. 163]: 18(1)(t) — Penalty is non-deductible; 161(11) — Interest on penalty; 180.1(4), 180.2(6), 181.7, 183(3), 183.2(2), 187(3), 187.6, 189(8), 190.21, 191.4(2), 193(8), 195(8), 196(4), 202(3), 204.3(2), 204.7(3), 204.87, 204.93, 204.94(4), 207(3), 207.2(3), 207.4(2), 207.7(4), 208(4), 209(5), 210.2(7), 211.5, 211.6(5), 211.91(3), 219(3), 247(11) — Provisions of s. 163 apply for purposes of Parts I.1, I.2, I.3, II, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, X, X.1, X.2, X.3, X.4, X.5, XI, XI.1, XI.2, XI.3, XII, XII.1, XII.2, XII.3, XII.4, XII.6, XIV and XVI.1 respectively; 220(3.1) — Waiver of penalty; 227(10.01), (10.1) — Provisions of s. 163 apply to withholding taxes under Parts XII.5 and XIII; 239(3) — Penalty assessment cannot be issued after charge laid if person convicted.

Selected Cases [s. 163]: *Côté v. R.*, [1999] 3 C.T.C. 2373 (TCC) (Gifts valid but valuations exaggerated; penalties upheld); *Pompa v. Canada*, [1995] 1 C.T.C. 466 (FCA) (Judge cannot use facts from another proceeding where those facts not entered in evidence in case to be decided).

Definitions [s. 163]: "amount", "assessment" — 248(1); "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian oil and gas property expense" — 66.4(5), 248(1); "child" — 252(1); "common-law partner" — 248(1); "controlled foreign affiliate" — 95(1), 163(2.91)(a), 248(1); "corporation" — 163(2.91)(b), 248(1), *Interpretation Act* 35(1); "fiscal period" — 249.1; "individual", "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "owned" — 163(2.5); "person", "prescribed", "property" — 248(1); "restricted farm loss" — 31, 248(1); "return" — 163(2); "spouse" — 252(4)(a); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "understatement of income" — 163(2.1).

Information Circulars [s. 163]: 73-10R3: Tax evasion.

163.1 Penalty for late or deficient instalments — Every person who fails to pay all or any part of an instalment of tax for a taxation year on or before the day on or before which the instalment is required by this Part to be

paid is liable to a penalty equal to 50% of the amount, if any, by which

(a) the interest payable by the person under section 161 in respect of all instalments for the year

exceeds the greater of

(b) $1,000, and

(c) 25% of the interest that would have been payable by the person under section 161 in respect of all instalments for the year if no instalment had been made for that year.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 161(2.2) — Offset interest from prepaying instalments; 161(4) — Interest — limitation — farmers and fishermen; 161(4.01) — Limitation — other individuals; 161(4.1) — Limitation — corporations; 161(7) — Effect of carryback of loss, etc.; 161(11) — Interest on penalties; 211.5(2) — Interest on instalments of Part XII.3 tax. See also Related Provisions at end of s. 163.

Pre-RSC History: S. 163.1 added by 1988, c. 55, s. 143, applicable with respect to instalments of tax payable for taxation years commencing after June 1989.

Definitions [s. 163.1]: "amount" — 248(1); "instalment" — 155–157; "person" — 248(1); "taxation year" — 249.

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

Misrepresentation of a Tax Matter by a Third Party

163.2 (1) Definitions — The definitions in this subsection apply in this section.

"culpable conduct" means conduct, whether an act or a failure to act, that

(a) is tantamount to intentional conduct;

(b) shows an indifference as to whether this Act is complied with; or

(c) shows a wilful, reckless or wanton disregard of the law.

"entity" includes an association, a corporation, a fund, a joint venture, an organization, a partnership, a syndicate and a trust.

"excluded activity", in respect of a false statement, means the activity of

(a) promoting or selling (whether as principal or agent or directly or indirectly) an arrangement, an entity, a plan, a property or a scheme (in this definition referred to as the "arrangement") where it can reasonably be considered that

(i) subsection 66(12.68) applies to the arrangement,

(ii) the definition "tax shelter" in subsection 237.1(1) applies to a person's interest in the arrangement, or

(iii) one of the main purposes for a person's participation in the arrangement is to obtain a tax benefit; or

(b) accepting (whether as principal or agent or directly or indirectly) consideration in respect of the promotion or sale of an arrangement.

"false statement" includes a statement that is misleading because of an omission from the statement.

"gross compensation" of a particular person at any time, in respect of a false statement that could be used by or on behalf of another person, means all amounts to which the particular person, or any person not dealing at arm's length with the particular person, is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of the statement.

Related Provisions: 163.2(12)(c) — Exclusion of penalty assessed to another person under subsec. (5).

"gross entitlements" of a person at any time, in respect of a planning activity or a valuation activity of the person, means all amounts to which the person, or another person not dealing at arm's length with the person, is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of the activity.

Related Provisions: 163.2(12) — Special rules re gross entitlements.

"participate" includes

(a) to cause a subordinate to act or to omit information; and

(b) to know of, and to not make a reasonable attempt to prevent, the participation by a subordinate in an act or an omission of information.

"person" includes a partnership.

"planning activity" includes

(a) organizing or creating, or assisting in the organization or creation of, an arrangement, an entity, a plan or a scheme; and

(b) participating, directly or indirectly, in the selling of an interest in, or the promotion of, an arrangement, an entity, a plan, a property or a scheme.

"subordinate", in respect of a particular person, includes any other person over whose activities the particular person has direction, supervision or control whether or not the other person is an employee of the particular person or of another person, except that, if the particular person is a member of a partnership, the other person is not a subordinate of the particular person solely because the particular person is a member of the partnership.

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

"valuation activity" of a person means anything done by the person in determining the value of a property or a service.

(2) Penalty for misrepresentations in tax planning arrangements — Every person who makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by another person (in subsections (6) and (15) referred to as the "other person") for a purpose of this Act is liable to a penalty in respect of the false statement.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 161(11) — Interest on penalty; 163(2.9) — Where partnership is liable to penalty; 163(3) — Burden of proof of penalty is on CCRA; 163.2(3) — Amount of penalty; 163.2(6) — Reliance in good faith on information provided; 163.2(8) — Multiple false statements in respect of one arrangement; 163.2(12) — Special rules re gross entitlements; 163.2(14) — Where penalty applies under both (2) and (4); 163.2(15) — Transfer of liability of certain employees to employer; 220(3.1) — Waiver of penalty; 239(3) — Penalty cannot be assessed after charge laid if person convicted. See also Related Provisions at end of s. 163 re application to other Parts.

(3) Amount of penalty — The penalty to which a person is liable under subsection (2) in respect of a false statement is

(a) where the statement is made in the course of a planning activity or a valuation activity, the greater of $1,000 and the total of the person's gross entitlements, at the time at which the notice of assessment of the penalty is sent to the person, in respect of the planning activity and the valuation activity; and

(b) in any other case, $1,000.

(4) Penalty for participating in a misrepresentation — Every person who makes, or participates in, assents to or acquiesces in the making of, a statement to, or by or on behalf of, another person (in this subsection and subsections (5) and (6), paragraph 12(c) and subsection (15) referred to as the "other person") that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by or on behalf of the other person for a purpose of this Act is liable to a penalty in respect of the false statement.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 161(11) — Interest on penalty; 163(2.9) — Where partnership is liable to penalty; 163(3) — Burden of proof of penalty is on CCRA; 163.2(5) — Amount of penalty; 163.2(6) — Reliance in good faith on information provided; 163.2(14) — Where penalty applies under both (2) and (4); 163.2(15) — Transfer of liability of certain employees to employer; 220(3.1) — Waiver of penalty; 239(3) — Penalty cannot be assessed after charge laid if person convicted. See also Related Provisions at end of s. 163 re application to other Parts.

(5) Amount of penalty — The penalty to which a person is liable under subsection (4) in respect of a false statement is the greater of

(a) $1,000, and

(b) the lesser of

(i) the penalty to which the other person would be liable under subsection 163(2) if the other person made the statement in a return filed for the purposes of this Act and knew that the statement was false, and

(ii) the total of $100,000 and the person's gross compensation, at the time at which the notice of assessment of the penalty is sent to the person, in respect of the false statement that could be used by or on behalf of the other person.

Related Provisions: 163.2(4) — Meaning of "other person".

(6) Reliance in good faith — For the purposes of subsections (2) and (4), a person (in this subsection and in subsection (7) referred to as the "advisor") who acts on behalf of the other person is not considered to have acted in circumstances amounting to culpable conduct in respect of the false statement referred to in subsection (2) or (4) solely because the advisor relied, in good faith, on information provided to the advisor by or on behalf of the other person or, because of such reliance, failed to verify, investigate or correct the information.

Related Provisions: 163.2(2), (4) — Meaning of "other person"; 163.2(7) — No application to "excluded activity" such as selling tax shelters.

(7) Non-application of subsec. (6) — Subsection (6) does not apply in respect of a statement that an advisor makes (or participates in, assents to or acquiesces in the making of) in the course of an excluded activity.

(8) False statements in respect of a particular arrangement — For the purpose of applying this section (other than subsections (4) and (5)),

(a) where a person makes or furnishes, participates in the making of or causes another person to make or furnish, two or more false statements, the false statements are deemed to be one false statement if the statements are made or furnished in the course of

(i) one or more planning activities that are in respect of a particular arrangement, entity, plan, property or scheme, or

(ii) a valuation activity that is in respect of a particular property or service; and

(b) for greater certainty, a particular arrangement, entity, plan, property or scheme includes an arrangement, an entity, a plan, a property or a scheme in respect of which

(i) an interest is required to have, or has, an identification number issued under section 237.1 that is the same number as the number that applies to each other interest in the property,

(ii) a selling instrument in respect of flow-through shares is required to be filed with the Minister because of subsection 66(12.68), or

(iii) one of the main purposes for a person's participation in the arrangement, entity, plan or scheme, or a person's acquisition of the property, is to obtain a tax benefit.

(9) Clerical services — For the purposes of this section, a person is not considered to have made or furnished, or participated in, assented to or acquiesced in the making of, a false statement solely because the person provided clerical services (other than bookkeeping services) or secretarial services with respect to the statement.

(10) Valuations — Notwithstanding subsections (6) and 163(3), a statement as to the value of a property or a service (which value is in this subsection referred to as the "stated value"), made by the person who opined on the stated value or by a person in the course of an excluded activity is deemed to be a statement that the person would reasonably be expected to know, but for circumstances amounting to culpable conduct, is a false statement if the stated value is

(a) less than the product obtained when the prescribed percentage for the property or service is multiplied by the fair market value of the property or service; or

(b) greater than the product obtained when the prescribed percentage for the property or service is multiplied by the fair market value of the property or service.

Related Provisions: 163.2(11) — Exception where valuation was reasonable and made in good faith.

(11) Exception — Subsection (10) does not apply to a person in respect of a statement as to the value of a property or a service if the person establishes that the stated value was reasonable in the circumstances and that the statement was made in good faith and, where applicable, was not based on one or more assumptions that the person knew or would reasonably be expected to know, but for circumstances amounting to culpable conduct, were unreasonable or misleading in the circumstances.

(12) Special rules — For the purpose of applying this section,

(a) where a person is assessed a penalty that is referred to in subsection (2) the amount of which is based on the person's gross entitlements at any time in respect of a planning activity or a valuation activity and another assessment of the penalty is made at a later time,

(i) if the person's gross entitlements in respect of the activity are greater at that later time, the assessment of the penalty made at that later time is deemed to be an assessment of a separate penalty, and

(ii) in any other case, the notice of assessment of the penalty sent before that later time is deemed not to have been sent;

(b) a person's gross entitlements at any time in respect of a planning activity or a valuation activity, in the course of which the person makes or furnishes, participates in the making of or causes another person to make or furnish a false statement, shall exclude the total of all amounts each of which is the amount of a penalty (other than a penalty the assessment of which is void because of subsection (13)) determined under paragraph (3)(a) in respect of the false statement for which notice of the assessment was sent to the person before that time; and

(c) where a person is assessed a penalty that is referred to in subsection (4), the person's gross compensation at any time in respect of the false statement that could be used by or on behalf of the other person shall exclude the total of all amounts each of which is the amount of a penalty (other than a penalty the assessment of which is void because of subsection (13)) determined under subsection (5) to the extent that the false statement was used by or on behalf of that other person and for which notice of the assessment was sent to the person before that time.

Related Provisions: 163.2(4) — Meaning of "other person".

(13) Assessment void — For the purposes of this Act, if an assessment of a penalty that is referred to in subsection (2) or (4) is vacated, the assessment is deemed to be void.

(14) Maximum penalty — A person who is liable at any time to a penalty under both subsections (2) and (4) in respect of the same false statement is liable to pay a penalty that is not more than the greater of

(a) the total amount of the penalties to which the person is liable at that time under subsection (2) in respect of the statement, and

(b) the total amount of the penalties to which the person is liable at that time under subsection (4) in respect of the statement.

(15) Employees — Where an employee (other than a specified employee or an employee engaged in an excluded activity) is employed by the other person referred to in subsections (2) and (4),

(a) subsections (2) to (5) do not apply to the employee to the extent that the false statement could be used by or on behalf of the other person for a purpose of this Act; and

(b) the conduct of the employee is deemed to be that of the other person for the purposes of applying subsection 163(2) to the other person.

Related Provisions: 163.2(2), (4) — Meaning of "other person".

History [s. 163.2]: S. 163.2 added by 2000, c. 19, s. 50, applicable to statements made after June 29, 2000 (Royal Assent).

Definitions [s. 163.2]: advisor" — 163.2(6); "amount" — 248(1); "arm's length" — 251(1); "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "culpable conduct" — 163.2(1); "employee" — 248(1); "entity", "excluded activity" — 163.2(1); "false statement" — 163.2(1); "flow-through share" — 66(15), 248(1); "gross compensation" — 163.2(1), (12)(c); "gross entitlements" — 163.2(1); "Minister" — 248(1); "other person" — 163.2(2), (4); "participates" — 163.2(1); "person" — 163.2(1), 248(1); "planning activity" — 163.2(1); "prescribed", "property", "specified employee" — 248(1); "subordinate", "tax benefit" — 163.2(1); "trust" — 104(1), 248(1), (3); "valuation activity" — 163.2(1).

Refunds

164. (1) Refunds — If the return of a taxpayer's income for a taxation year has been made within 3 years from the end of the year, the Minister

(a) may,

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income under this Part for the year to have paid an amount on account of its tax payable under this Part for the year by reason of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund without application therefor, all or any part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year, and

(ii) on or after mailing the notice of assessment for the year, refund without application therefor, any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i); and

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

Proposed Amendment — 164(1)(a), (b)

(a) may,

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the

total determined under paragraph (g) of that definition in respect of the taxpayer for the year,

(ii) before mailing the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)) or an eligible production corporation (as defined in subsection 125.5(1)) and an amount is deemed under subsection 125.4(3) or 125.5(3) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(iii) on or after mailing the notice of assessment for the year, refund any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i) or (ii); and

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(iii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 94(1), will amend paras. 164(1)(a) and (b) to read as above, applicable to 1999 *et seq.*

Technical Notes: Subsection 164(1) of the Act provides rules governing refunds of overpayments of tax.

Subparagraph 164(1)(a)(ii) of the Act is amended to authorize the Minister of National Revenue to refund all or part of a corporation's claim for a taxation year of a Canadian Film or Video Production Tax Credit under section 125.4 or of a Film or Video Production Services Tax Credit under section 125.5 of the Act, before having issued an assessment in respect of the corporation for the year.

Former subparagraph 164(1)(a)(ii) of the Act is re-numbered as subparagraph (iii) and, along with subparagraph (i), is amended to conform to the language in amended subparagraph (ii). Paragraph 164(1)(b) is amended to reflect the re-numbering of subparagraph 164(1(a)(ii) as subparagraph 164(1)(a)(iii).

Related Provisions: 144(9) — Employees profit sharing plans — refunds; 160.1 — Where excess refunded; 164(1.8) — Request to pay refund to prescribed province; 164(2.2) — Child Tax Benefit form deemed to be a return of income; 164(3) — Interest on refunds; 220(6) — Assignment of corporation's tax refund; *Tax Rebate Discounting Act* — Assignment of personal income tax refund to tax return preparer.

History: Subpara. 164(1)(a)(i) amended by 1998, c. 19, subsec. 190(1), applicable to taxation years that end after December 2, 1992. Subpara. 164(1)(a)(i) formerly read:

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (within the meaning assigned by subsection 127.1(2)) and claims in the taxpayer's return of income under this Part for the year to have paid an amount on account of the taxpayer's tax under this Part for the year by reason of subsection 127.1(1) in respect of the taxpayer's refundable investment tax credit for the year (within the meaning assigned by subsection 127.1(2)), refund without application therefor, all or any part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under subparagraph (a)(vi) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under subparagraph (a)(vii) of that definition in respect of the taxpayer for the year, and

Para. 164(1)(b) amended by 1998, c. 19, subsec. 190(2), applicable after April 27, 1989. Para. 164(1)(b) formerly read:

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable by the taxpayer for the year.

Pre-RSC History: Para. 164(1)(b) substituted by 1990, c. 39, subsec. 43(1), applicable after April 27, 1989. Para. 164(1)(b) formerly read:

(b) shall, with all due dispatch, make such a refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within

(i) the 6 year period referred to in paragraph 152(4)(b), where that paragraph applies, and

(ii) the 3 year period referred to in paragraph 152(4)(c), in any other case.

Subsec. 164(1) substituted by 1988, c. 55, subsec. 144(1). Subsec. 164(1) formerly read:

164. (1) **Refund** — If the return of a taxpayer's income for a taxation year has been made within 3 years from the end of the year, the Minister

(a) may, on or after mailing the notice of assessment for the year, refund without application therefor, any overpayment for the year; and

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within

(i) the 6 year period referred to in paragraph 152(4)(b), where that paragraph applies, and

(ii) the 3 year period referred to in paragraph 152(4)(c), in any other case.

Para. 164(1)(a) amended by 1985, c. 45, subsec. 93(1), to substitute "any overpayment for the year" for "any overpayment made on account of the tax".

Subsec. 164(1) substituted by 1984, c. 45, subsec. 67(1), to substitute "3" for "4" in that portion preceding para. (a) and in subpara. (b)(ii) and to substitute "6" for "7" in subpara. (b)(i), applicable with respect to refunds for 1983 *et seq.*

Para. 164(1)(b) substituted by 1984, c. 1, subsec. 88(1), applicable after April 19, 1983. Para. 164(1)(b) formerly read:

(b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within 4 years from the end of the year.

Para. 164(1)(a) substituted by 1978-79, c. 5, s. 8, applicable to 1978 *et seq.*, to substitute "on or after" for "upon".

Selected Cases [subsec. 164(1)]: *Interprovincial Steel and Pipe Corp. Ltd. v. The Queen*, [1986] 2 C.T.C. 473 (FCA) (Minister's power of assessment cannot be used to collect interest previously over-refunded).

Information Circulars: 75-7R3: Reassessment of a return of income; 92-3: Guidelines for refunds beyond the normal three-year period.

Forms: T1-DD: Direct deposit request — individuals.

(1.1) Repayment on objections and appeals — Subject to subsection (1.2), where a taxpayer

(a) has under section 165 served a notice of objection to an assessment and the Minister has not within 120 days after the day of service confirmed or varied the assessment or made a reassessment in respect thereof, or

(b) has appealed from an assessment to the Tax Court of Canada,

and has applied in writing to the Minister for a payment or surrender of security, the Minister shall, where no authorization has been granted under subsection 225.2(2) in respect of the amount assessed, with all due dispatch repay all amounts paid on account of that amount or surrender security accepted therefor to the extent that

(c) the lesser of

(i) the total of the amounts so paid and the value of the security, and

(ii) the amount so assessed

exceeds

(d) the total of

(i) the amount, if any, so assessed that is not in controversy, and

(ii) where the taxpayer is a large corporation (within the meaning assigned by subsection 225.1(8)), ½ of the amount so assessed that is in controversy.

Related Provisions: 164(1.6) — 164(1.1) does not apply to security under s. 116; 225.1(7) — Limitation on collection restrictions — large corporations.

History: Para. 164(1.1)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(1), applicable after June 10, 1993, except that, where a taxpayer has served a notice of objection under the Act with respect to a notice of assessment of tax, interest or penalties under the Act mailed before 1992, the reference in subpara. (ii) to "½" shall, in application before 1994 with respect to that notice of objection, be read as "¼". Para. (d) formerly read:

(d) the amount, if any, so assessed that is not in controversy.

Pre-RSC History: Para. 164(1.1)(b) amended by 1988, c. 61, subsec. 45(1), to delete "or to the Federal Court-Trial Division, otherwise than pursuant to subsection 172(1)" from the end, in force January 1, 1991.

Subsec. 164(1.1) amended by 1988, c. 55, subsec. 144(2). Subsec. (1.1) formerly read:

(1.1) Subject to subsection (1.2), where a taxpayer

(a) has under section 165 served a notice of objection to an assessment and the Minister has not within 120 days after the day of service confirmed or varied the assessment or made a reassessment in respect thereof, or

(b) has appealed from an assessment to the Tax Court of Canada or to the Federal Court — Trial Division, otherwise than pursuant to subsection 172(1),

and has applied in writing to the Minister for a payment or surrender of security, the Minister shall with all due dispatch repay all amounts paid on account of the amount assessed or surrender security accepted therefor to the extent that

(c) the lesser of

(i) the aggregate of the amounts so paid and the value of the security, and

(ii) the amount so assessed

exceeds

(d) the amount, if any, so assessed that is not in controversy.

(1.2) Collection in jeopardy — Notwithstanding subsection (1.1), where, on application by the Minister made within 45 days after the receipt by the Minister of a written request by a taxpayer for repayment of an amount or surrender of a security, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of the taxpayer would be jeopardized by the repayment of the amount or the surrender of the security to the taxpayer under that subsection, the judge shall order that the repayment of the amount or a part thereof not be made or that the security or part thereof not be surrendered or make such other order as the judge considers reasonable in the circumstances.

Related Provisions: 225.2(2) — Lifting of collection restrictions where collection of tax in jeopardy.

(1.3) Notice of application — The Minister shall give 6 clear days notice of an application under subsection (1.2) to the taxpayer in respect of whom the application is made.

Related Provisions: *Interpretation Act* 27(1) — Calculation of "clear days".

(1.31) Application of subsecs. 225.2(4), (10), (12) and (13) — Where an application under subsection (1.2) is made by the Minister, subsections 225.2(4), (10), (12) and (13) are applicable in respect of the application with such modifications as the circumstances require.

Pre-RSC History [ss. 164(1.2), (1.3), (1.31)]: Subsecs. 164(1.2) and (1.3) substituted and subsec. (1.31) added by 1988, c. 55, subsec. 144(2). Subsecs. (1.2) and (1.3) formerly read:

(1.2) Collection in jeopardy — Where it may reasonably be considered that collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a repayment of an amount or surrender of security to the taxpayer under subsection (1.1), the Minister may direct that the repayment of the amount or a part thereof not be made or that the security or part thereof not be surrendered and shall give notice of the direction to the taxpayer by personal service or by registered letter addressed to the taxpayer at his latest known address.

(1.3) Applications of subsections 225.2(2) to (8) — Where, pursuant to subsection (1.2), the Minister has given notice to the taxpayer of a direction, subsections 225.2(2) to (8) are applicable in respect of the direction with such modifications as the circumstances require.

Subsecs. 164(1.1)–(1.3) added by 1985, c. 45, subsec. 93(2), applicable with respect to notices of objection served after 1984 and to appeals from assessments objected to after 1984.

(1.4) Provincial refund — Where, at any time, a taxpayer is entitled to a refund or repayment on account of taxes imposed by a province or as a result of a deduction in computing the taxes imposed by a province and the Government of Canada has agreed to make the refund or repayment on behalf of the province, the amount thereof shall be a liability of the Minister of National Revenue to the taxpayer.

Pre-RSC History: Subsec. 164(1.4) added by 1987, c. 46, s. 55, applicable in respect of amounts refundable or repayable after December 17, 1987.

(1.5) [Late refund of overpayment] — Notwithstanding subsection (1), the Minister may, on or after mailing a notice of assessment for a taxation year, refund all or any portion of any overpayment of a taxpayer for the year

(a) if the taxpayer is an individual (other than a trust) or a testamentary trust and the taxpayer's return of income under this Part for the year was filed later than 3 years after the end of the year; or

(b) where an assessment or a redetermination was made under subsection 152(4.2) or 220(3.1) or (3.4) in respect of the taxpayer.

Related Provisions: 152(4.2) — Reassessment with taxpayer's consent; 164(3.2) — Interest on refunds and repayments.

History: Para. 164(1.5)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(2), to add reference to subsection 220(3.1), applicable to 1985 *et seq.*

Subsec. 164(1.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(1), applicable to refunds for 1985 *et seq.*

Information Circulars: 75-7R3: Reassessment of a return of income; 92-3: Guidelines for refunds beyond the normal three-year period.

(1.6) Refund of UI premium tax credit — Notwithstanding subsection (1), where an overpayment on account of a taxpayer's liability under this Part is deemed to have arisen under subsection 126.1(6) or (7), the Minister shall, with all due dispatch, refund the amount of the overpayment without application for it.

Related Provisions: 164(3) — No interest on refund.

History: Subsec. 164(1.6) added by 1994, c. 8, subsec. 27(1), applicable after 1992.

(1.7) Limitation of repayment on objections and appeals — Subsection (1.1) does not apply in respect of an amount paid or security furnished under section 116 by a non-resident person.

History: Subsec. 164(1.7) added by 1994, c. 8, subsec. 164(1.7), applicable from May 12, 1994.

(1.8) Request to pay refund to province — An individual (other than a trust) may, in the individual's return of income for a taxation year, request the Minister to pay to Her Majesty in right of a prescribed province all or any part of a refund for the year claimed by the individual in the return and, where the individual makes such a request,

(a) the Minister may make the payment to Her Majesty in right of the province in accordance with the request; and

(b) the amount of the payment is deemed to have been refunded under this section to the individual at the time a notice of an original assessment of tax payable under this Part by the individual for the year, or a notification that no tax is payable under this Part by the individual for the year, is sent to the individual.

Related Provisions: 241(4)(m) — Disclosure of information by CCRA to prescribed province.

History: Subsec. 164(1.8) added by 1998, c. 19, subsec. 190(3), applicable to requests made in returns of income for 1997 *et seq.* taxation years filed after 1997.

Subsec. 190(12) of the said c. 19 provides that for the purpose of applying subsec. 164(1.8), Ontario is deemed to be a prescribed province until the *Income Tax Regulations* are amended to prescribe a province for the purpose of subsec. 164(1.8).

Regulations: None yet, but subsec. 190(12) of the 1995-97 technical bill (1998, c. 19) deems Ontario to be a prescribed province until Regulations are provided. Ontario is to be prescribed in the Regulations (Department of Finance Technical Notes, December 1997).

(2) Application to other debts — Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Related Provisions: 164(2.1) — Application of GST credit; 164(2.2) — Application to refunds under s. 122.61; 164(3.2) — Interest on refunds and repayments; 164(7) — Overpayment defined; 165 — Objections to assessments; 169 — Appeals; 172 — Appeals; 203 — Set-off of Part X refund; 224.1 — Set-off of tax debt against other amount owing by the Crown to the taxpayer; 227 — Withholding taxes; 241(4)(d)(xiii)(B) — Disclosure of information by CCRA to provincial officials for set-off purposes.

History: Subsec. 164(2) amended by 1998, c. 19, subsec. 190(4), in force on June 18, 1998. Subsec. 164(2) formerly read:

(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is liable or about to become liable to make any payment to Her Majesty in right of Canada, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

Subsec. 164(2) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(2), to substitute "to Her Majesty in right of Canada" for "under this Act", and "other debts" for "other taxes" in the heading.

Pre-RSC History: Subsec. 164(2) substituted by 1984, c. 45, subsec. 67(1), to substitute "making a refund or repayment" for "making a refund" and "the amount of the refund or repayment" for "the amount of the overpayment", applicable after February 15, 1984.

(2.1) Application respecting refunds under s. 122.5 [GST credit] — Where an amount deemed under section 122.5 to be paid by an individual during a month specified for a taxation year is applied under subsection (2) to a liability of the individual and the individual's return of income for the year is filed on or before the individual's balance-due day for the year, the amount is deemed to have been so applied on the day on which the amount would have been refunded if the individual were not liable to make a payment to Her Majesty in right of Canada.

History: Subsec. 164(2.1) amended by 1998, c. 19, subsec. 190(5), in force on June 18, 1998. Subsec. 164(2.1) formerly read:

(2.1) Where an amount deemed under section 122.5 to be paid by an individual during a month specified for a taxation year is, in accordance with subsection (2), applied to a liability of the individual, for the purposes of that subsection, the amount shall, to the extent that it is so applied, be deemed to be paid on the latest of

(a) the last day of the month,

(b) where the month is the first month specified for a taxation year ending after 1989, the day that is the earlier of the day the amount is applied and the last day of the second month specified for the year, and

(c) where the individual's return of income for the year or the individual's prescribed form for the year referred to in subsection 122.5(3) is filed after the day on or before which the return is required to be filed, the day the amount is applied.

Pre-RSC History: Subsec. 164(2.1) added by 1990, c. 45, subsec. 52(1), applicable to 1989 *et seq.*

(2.2) Application respecting refunds re section 122.61 [Child Tax Benefit] — Subsection (2) does not apply to a refund to be made to a taxpayer and arising because of section 122.61 except to the extent that the taxpayer's liability referred to in that subsection arose from the operation of paragraph 160.1(1)(a) with respect to an amount refunded to the taxpayer in excess of the amount to which the taxpayer was entitled because of section 122.61.

(2.3) [Child Tax Benefit] Form deemed to be a return of income — For the purpose of subsection (1), where a taxpayer files the form referred to in paragraph (b) of the definition "return of income" in section 122.6 for a taxation year, the form shall be deemed to be a return of the taxpayer's income for that year and a notice of assessment thereof shall be deemed to have been mailed by the Minister.

History: Subsecs. 164(2.2), (2.3) added by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 18(1), applicable to overpayments arising after 1992.

(3) Interest on refunds and repayments — Where under this section an amount in respect of a taxation year (other than an amount or portion thereof that can reasonably be considered to arise from the operation of section 122.5, 122.61 or 126.1) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period beginning on the day that is the latest of

(a) where the taxpayer is an individual, the day that is 45 days after the individual's balance-due day for the year,

(b) where the taxpayer is a corporation, the day that is 120 days after the end of the year,

(c) where the taxpayer is

(i) a corporation, the day on which its return of income for the year was filed under section 150, unless the return was filed on or before the corporation's filing-due date for the year, and

(ii) an individual, the day that is 45 days after the day on which the individual's return of income for the year was filed under section 150,

(d) in the case of a refund of an overpayment, the day the overpayment arose, and

(e) in the case of a repayment of an amount in controversy, the day an overpayment equal to the amount of

the repayment would have arisen if the total of all amounts payable on account of the taxpayer's liability under this Part for the year were the amount by which

(i) the lesser of the total of all amounts paid on account of the taxpayer's liability under this Part for the year and the total of all amounts assessed by the Minister as payable under this Part by the taxpayer for the year

exceeds

(ii) the amount repaid,

and ending on the day the amount is refunded, repaid or applied, unless the amount of the interest so calculated is less than $1, in which event no interest shall be paid or applied under this subsection.

Related Provisions: 12(1)(c) — Interest is taxable; 129(2.1) — Interest on dividend refund; 131(3.1), 132(2.1) — Interest on capital gains refund; 133(7.01) — Interest on allowable refund; 161.1 — Offset of refund interest of corporation against arrears interest; 202(3), (4) — Application of certain Provisions of Part I; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Paras. 164(3)(a), (c) amended by 1996, c 21, subsecs. 44(1), (2), applicable to 1995 *et seq.* Paras. (a) and (c) formerly read:

(a) where the taxpayer is an individual, the day that is 45 days after the day on or before which the taxpayer's return of income under this Part for the year was required to be filed under section 150 or would have been required to be so filed if tax under this Part were payable by the taxpayer for the year,

. . . . .

(c) the day or, where the taxpayer is an individual, the day that is 45 days after the day, on which the taxpayer's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed,

The opening words of 164(3) amended by 1994, c. 8, subsec. 27(2), applicable after 1992. They formerly read:

(3) Where under this section an amount in respect of a taxation year (other than an amount or portion thereof that can reasonably be considered to arise because of section 122.5 or 122.61) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day that is the latest of

Paras. 164(3)(a), (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 97(3), (4), applicable to returns of income filed after 1992. Paras. (a) and (c) formerly read:

(a) where the taxpayer is an individual, the day on or before which the taxpayer's return of income under this Part for the year was required to be filed under section 150 or would have been required to be so filed if tax under this Part were payable by the taxpayer for the year,

. . . . .

(c) the day on which the taxpayer's return of income under this Part for the year was filed under section 150, unless the return was filed on or before the day on or before which it was required to be filed, or would have been required to be filed if tax under this Part were payable by the taxpayer for the year,

That portion of subsec. 164(3) preceding para. (a) amended to add reference to s. 122.61, by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 18(2), applicable to overpayments arising after 1992.

Pre-RSC History: That portion of subsec. 164(3) preceding para. (a) substituted by 1990, c. 45, subsec. 52(2), applicable to 1989 *et seq.* That portion formerly read:

(3) Where under this section an amount in respect of a taxation year is refunded or repaid to a taxpayer or applied to another liability, the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day that is the latest of the following days:

That portion of subsec. 164(3) preceding para. (a) amended by 1986, c. 6, subsec. 90(1), to substitute "an amount in respect of a taxation year is refunded or repaid to a taxpayer" for "an amount paid on account of a taxpayer's tax under this Part for a taxation year is refunded or repaid", applicable as of January 1, 1987, except that interest is not payable under subsection (3) for any part of a period before that day on an amount refunded or repaid in respect of interest or a penalty paid by a taxpayer.

Paras. 164(3)(d), (e) substituted by 1986, c. 6, subsec. 90(2), applicable as of January 1, 1987, with the exception noted above. Paras. 164(3)(d), (e) formerly read:

(d) in the case of a refund of an overpayment of tax, the day the overpayment arose, and

(e) in the case of a repayment of tax in controversy, the day an overpayment equal to the amount of the repayment would have arisen if the tax payable by the taxpayer under this Part for the year were the amount by which

(i) the lesser of the amount paid on account of his tax payable under this Part for the year and the amount assessed by the Minister as tax payable under this Part by the taxpayer for the year

exceeds

(ii) the amount repaid,

Subsec. 164(3) substituted by 1985, c. 45, subsec. 93(4), applicable with respect to refunds and repayments made or applied after 1984, except that with respect to refunds or repayments of amounts paid by taxpayers in respect of taxes for the 1984 or a preceding taxation year

(a) paragraph 164(3)(a) shall be read without reference to the words "where the taxpayer is an individual";

(b) subsection 164(3) shall be read without reference to paragraph (b) thereof; and

(c) paragraph 164(3)(c) shall be read without reference to the words "unless the return was filed before the day on or before which it was required to be filed, or would have been required to be filed if tax under this Part were payable by him for the year".

Subsec. 164(3) formerly read:

(3) Interest on overpayments — Where an amount in respect of an overpayment for a taxation year is refunded, or applied under this section on other liability, interest at a prescribed rate per annum shall be paid or applied thereon for the period beginning with the latest of

(a) the day when the overpayment arose,

(b) the day on or before which the return of income for the year was required to be filed or would have been required to be filed if tax were payable for the year, and

(c) the day when the return of income for the year was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than $1, in which event no interest shall be paid or applied under this subsection.

Subsec. 164(3) substituted by 1984, c. 1, subsec. 88(2), applicable with respect to interest paid or applied after April 19, 1983. Subsec. 164(3) formerly read:

(3) Where an amount in respect of an overpayment is refunded, or applied under this section on other liability, interest at a prescribed rate per annum shall be paid or applied thereon for the period commencing with the latest of

(a) the day when the overpayment arose,

(b) the day on or before which the return of the income in respect of which the tax was paid was required to be filed, and

(c) the day when the return of income was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than $1, in which event no interest shall be paid or applied under this subsection.

Regulations: 4301(b) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 164(3) applies to interest payable in respect of any period after December 23, 1971).

(3.1) Idem — Where at a particular time interest has been paid to, or applied to a liability of, a taxpayer under subsection (3) or (3.2) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied,

(a) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in re-

spect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as "the amount payable") that became payable under this Part by the taxpayer at the particular time;

(b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount payable computed from that particular time to the day of payment; and

(c) the Minister may at any time assess the taxpayer in respect of the amount payable and, where the Minister makes such an assessment, the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 20(1)(ll) — Deduction on repayment of interest; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: That portion of subsec. 164(3.1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(3), to substitute "under subsection (3) or (3.2)" for "pursuant to subsection (3)", applicable to refunds for 1985 *et seq.*

Pre-RSC History: Para. 164(3.1)(b) substituted by 1985, c. 45, subsec. 93(5). Para. 164(3.1)(b) formerly read:

(b) the taxpayer shall pay interest, at the rate prescribed for the purposes of subsection 161(1), on the amount payable for the period beginning at the particular time and ending on the date of payment; and

Subsec. 164(3.1) added by 1984, c. 1, subsec. 88(2), applicable with respect to interest paid or applied after April 19, 1983.

Regulations: 4301(a) (prescribed rate of interest).

(3.2) Idem — Notwithstanding subsection (3), where the amount of an overpayment of a taxpayer for a taxation year is determined because of an assessment made under subsection 152(4.2) or 220(3.1) or (3.4) and an amount in respect thereof is refunded to, or applied to another liability of, the taxpayer under subsection (1.5) or (2), the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day the Minister received the application therefor, in a form satisfactory to the Minister, and ending on the day the amount is refunded or applied, unless the amount of the interest so calculated is less than $1, in which case no interest shall be paid or applied under this subsection.

Related Provisions: 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

History: Subsec. 164(3.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(5), applicable to 1985 *et seq.* Subsec. (3.2) formerly read:

(3.2) Notwithstanding subsection (3), where the amount of an overpayment of a taxpayer for a taxation year is determined because of subsection 152(4.2) or 220(3.4) and an amount in respect thereof is refunded to, or applied to another liability of, the taxpayer under subsection (1.5) or (2), the Minister shall pay or apply interest thereon at the prescribed rate for the period beginning on the day that the Minister received, in a form satisfactory to the Minister, the relevant application and ending on the day the amount is refunded or applied, unless the amount of the interest so calculated is less than $1, in which case no interest shall be paid or applied under this subsection.

Subsec. 164(3.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 136(4), applicable to refunds for 1985 *et seq.*

Regulations: 4301(b) (prescribed rate of interest).

(4) Interest on interest repaid — Where at any particular time interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of the repayment of an amount in controversy made to, or applied to a liability of, the taxpayer and it is determined at a subsequent time that the repayment or a part thereof is payable by the taxpayer under this Part, the following rules apply:

(a) the interest so paid or applied on that part of the repayment that is determined at the subsequent time to be payable by the taxpayer under this Part shall be deemed to be an amount (in this subsection referred to as the "interest excess") that became payable under this Part by the taxpayer at the particular time;

(b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the interest excess computed from the particular time to the day of payment; and

(c) the Minister may at any time assess the taxpayer in respect of the interest excess and, where the Minister makes such an assessment, the provisions of this Division and Division J are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

Related Provisions: 12(1)(c) — Interest is taxable; 20(1)(ll) — Deduction for interest repaid; 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Pre-RSC History: All that portion of subsec. 164(4) preceding para. (b) amended by 1986, c. 6, subsec. 90(3), to substitute, in the portion preceding para. (a), "the repayment of an amount in controversy" for "a repayment of tax in controversy", applicable as of January 1, 1987.

Subsec. 164(4) substituted by 1985, c. 45, subsec. 93(6), applicable with respect to repayments made or applied after 1984. Subsec. 164(4) formerly read:

(4) Idem — Where, by a decision of the Minister under section 165 or by a decision of the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada, it is finally determined that the tax payable by a taxpayer for a taxation year under this Part is less than the amount assessed by the assessment under section 152 to which the objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment for the taxation year, the interest payable under subsection (3) on that overpayment shall be computed at the rate per annum prescribed for the purposes of subsection 161(2) instead of that prescribed for the purposes of subsection (3).

Subsec. 164(4) substituted by 1980-81-82-83, c. 158, s. 58, to substitute "Tax Court of Canada" for "Tax Review Board", applicable from July 18, 1983.

Selected Cases [subsec. 164(4)]: *MNR v. Gunnar Mining Ltd.*, [1970] C.T.C. 152 (Exch.) (Taxpayer not entitled to interest on overpayment; Tax Appeal Board lacks jurisdiction to substitute judgment previously delivered).

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 164(4) applies to interest payable in respect of any period after December 23, 1971).

(4.1) Duty of Minister — Where the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a taxpayer resident in Canada,

(a) referred an assessment back to the Minister for reconsideration and reassessment, or

(b) varied or vacated an assessment,

the Minister shall with all due dispatch, whether or not an appeal from the decision of the Court has been or may be instituted,

(c) where the assessment has been referred back to the Minister, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the taxpayer, and

(d) refund any overpayment resulting from the variation, vacation or reassessment,

and the Minister may repay any tax, interest or penalties or surrender any security accepted therefor by the Minister to that taxpayer or any other taxpayer who has filed another objection or instituted another appeal if, having regard to the reasons given on the disposition of the appeal, the Minister is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, the *Federal Court Act* or the *Supreme Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court, appeal from the decision of the Court notwithstanding any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph (c).

Related Provisions: 152(1.2)(c) — Subsec. 164(4.1) does not apply to determination under 152(1.4); 169(2)(a) — Limitation of right to appeal.

Pre-RSC History: Subsec. 164(4.1) substituted by 1988, c. 61, subsec. 13(2), in force January 1, 1991. Subsec. 164(4.1) formerly read:

(4.1) Where the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a taxpayer resident in Canada,

(a) referred an assessment back to the Minister for reconsideration and reassessment,

(b) varied or vacated an assessment, or

(c) ordered the Minister to repay tax, interest or penalties,

the Minister shall with all due dispatch, whether or not an appeal from the decision of the Court has been or may be instituted,

(d) where the assessment has been referred back to him, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the taxpayer,

(e) refund any overpayment resulting from the variation, vacation or reassessment, and

(f) where paragraph (c) is applicable, repay any tax, interest or penalties as ordered,

and the Minister may repay any tax, interest or penalties or surrender any security accepted therefor by him to any other taxpayer who has filed an objection or instituted an appeal if, having regard to the reasons given on the disposition of the appeal, he is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the *Federal Court Act* or the *Supreme Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court, appeal from the decision of the Court notwithstanding any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph (d), and any such appeal from a decision of the Tax Court of Canada shall proceed as if it were an appeal from the assessment that was referred back, varied or vacated.

Paras. 164(4.1)(d), (e) substituted by 1985, c. 45, subsec. 93(8), to move the words "unless otherwise directed in writing by the taxpayer" from (e) to (d), applicable after February 15, 1984.

Subsec. 164(4.1) added by 1984, c. 45, subsec. 67(2), applicable after February 15, 1984.

Selected Cases [subsec. 164(4.1)]: *Indalex Ltd. v. The Queen*, [1986] 2 C.T.C. 482 (FCA) (Appeal from certain assessments partially successful and litigation continued; Minister issues reassessments in accordance with Trial Division judgment; such reassessments do not cancel original assessments).

(5) Effect of carryback of loss, etc. — For the purpose of subsection (3), the portion of any overpayment of the tax payable by a taxpayer for a taxation year that arose as a consequence of

(a) the deduction of an amount, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),

Proposed Addition — 164(5)(a.1)

(a.1) any amount deducted under section 119 in respect of the disposition of a taxable Canadian property in a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 94(2), will add para. 164(5)(a.1), applicable to taxation years that end after October 1, 1996.

Technical Notes: Section 164 of the Act relates to tax refunds. Subsection 164(5) provides that, where the tax payable for a taxation year is reduced because of listed deductions or exclusions that relate to subsequent years, interest payable to a taxpayer on any resulting overpayment of tax is to be calculated as if the overpayment had arisen on the latest of several dates.

These amendments add to the list of deductions and exclusions: a deduction under new section 119 of the Act in respect of a disposition of taxable Canadian property by a taxpayer in a subsequent taxation year; a deduction under new subsection 126(2.21) or (2.22) in respect of foreign taxes paid for a subsequent taxation year; and deductions under new subsections 128.1(6) to (8) of the Act in respect of an election in a subsequent taxation year.

These amendments apply to taxation years that end after October 1, 1996.

(b) the deduction of an amount under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(c) the exclusion of an amount from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(d) the deduction of an amount under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

Proposed Amendment — 164(5)(e)

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 94(3), will amend para. 164(5)(e) to read as above, applicable to taxation years that end after October 1, 1996.

Technical Notes: See under 164(5)(a.1).

(f) the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(g) the deduction of an amount under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(h) the deduction of an amount under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,

Proposed Addition — 164(5)(h.02)

(h.02) the deduction under any of subsections 128.1(6) to (8) of an amount from the taxpayer's proceeds of disposition of a property, because of an election made in a return of income for a subsequent taxation year,

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 94(4), will add para. 164(5)(h.02), applicable to taxation years that end after October 1, 1996.

Technical Notes: See under 164(5)(a.1).

(h.1) the deduction of an amount in computing the taxpayer's income for the year by virtue of an election for a subsequent taxation year under paragraph (6)(c) or (d) by the taxpayer's legal representative,

(h.2) the deduction of an amount under subsection 181.1(4) in respect of an unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year, or

(h.3) the deduction of an amount under subsection 190.1(3) in respect of an unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year,

shall be deemed to have arisen on the day that is the latest of

(i) the first day immediately following that subsequent taxation year,

(j) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,

(k) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under paragraph (6)(e) or subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and

(l) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

Related Provisions: 161(7) — Effect of loss carryback.

History: Para. 164(5)(h.01) added by 1998, c. 19, subsec. 190(6), applicable to taxpayers who die after 1992.

Para. 164(5)(a) amended by 1997, c. 26, subsec. 86(1), applicable to 1997 *et seq.* Para. (a) formerly read:

(a) the deduction of an amount under subclause 12(1)(x.1)(ii)(A)(II) in respect of a fuel tax rebate repayment made in a subsequent taxation year,

Paras. 164(5)(h.2) and (h.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(6), (h.2) applicable to 1992 *et seq.*, and (h.3) applicable to 1991 *et seq.*

Para. 164(5)(a) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 9(1), applicable to 1992 *et seq.*

Pre-RSC History: Para. 164(5)(h) added by 1990, c. 39, subsec. 43(2), applicable to taxation years ending after June 1989.

Para. 164(5)(d) substituted by 1988, c. 55, subsec. 144(3), applicable to 1988 *et seq.* Para. 164(5)(d) formerly read:

(d) the deduction of an amount under section 110 in respect of a gift made in a subsequent year or under section 111 in respect of a loss for a subsequent taxation year,

Para. 164(5)(g) substituted and para. (h) repealed by 1988, c. 55, subsec. 144(4), applicable to 1988 *et seq.* Paras. 164(5)(g) and (h) formerly read:

(g) the deduction of an amount under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year,

(h) the deduction of an amount under subsection 127.3(1) in respect of his unused scientific research and experimental development tax credit for a subsequent taxation year,

Para. 164(5)(h.2) repealed by 1988, c. 55, subsec. 144(5), applicable to 1988 *et seq.* Para. 164(5)(h.2) formerly read:

(h.2) the deduction of an amount under subsection 120.2(2) in respect of his minimum tax for a subsequent taxation year,

Para. 164(5)(h) amended by 1986, c. 6, subsec. 15(3), to substitute "scientific research and experimental development" for "scientific research", applicable to taxation years ending after May 23, 1985.

Para. 164(5)(h.2) added by 1986, c. 55, subsec. 65(1), applicable to taxation years commencing after 1983.

Para. 164(5)(a) repealed by 1986, c. 6, subsec. 90(4), applicable to 1986 *et seq.* Para. 164(5)(a) formerly read:

(a) the deduction of an amount under paragraph 3(e) by virtue of his death in a subsequent taxation year and the consequent application of section 71 in respect of an allowable capital loss for the year,

Para. 164(5)(h.1) added by 1986, c. 6, subsec. 90(5) and paras. (j), (k) amended by subsec. 90(6), to substitute, in (j), "the taxpayer's or his legal representative's" for "the taxpayer's" and, in (k), "the taxpayer's income for the year" for "the taxpayer's income for the taxation year" and "filed under subsection 49(4) or 152(6) or paragraph (6)(e)" for "filed in accordance with subsection 49(4) or 152(6)", applicable to 1985 *et seq.*

Subsec. 164(5) amended by 1985, c. 45, subsec. 93(10), applicable with respect to subsequent taxation years referred to therein ending after 1984, to re-letter the next four paragraphs after para. (d) as (e) to (h) instead of (d.1) to (g) and to substitute all that portion following para. (g), which portion formerly read:

shall be deemed to have arisen on the later of

(h) the day on which his return of income under section 150 was filed for that subsequent taxation year, and

(i) the day on or before which the taxpayer is, or would be if tax under this Part were payable by him for that subsequent taxation year, required to file his return of income under section 150 for that subsequent taxation year.

Para. 164(5)(d.1) added by 1984, c. 45, subsec. 67(3), applicable to 1984 *et seq.*

Subsec. 164(5) substituted by 1984, c. 1, subsec. 88(3), applicable where the subsequent taxation year referred to in subsec. 164(5), as substituted, ends after 1982, except that in its application to a subsequent taxation year ending before April 20, 1983, the portion of any overpayment of the tax payable by a taxpayer, referred to in subsec. 164(5), as substituted, shall be deemed to have arisen on the first day immediately following the subsequent taxation year. Subsec. 164(5) formerly read:

(5) Where a taxpayer is entitled to deduct under section 111 in computing his taxable income for a taxation year an amount in respect of a loss for the taxation year immediately following the taxation year (in this subsection referred to as "the loss year"), and the amount of the tax payable for the taxation year is relevant in determining an overpayment for the purpose of computing interest under subsection (3) for any portion of a period ending on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 in respect of that loss.

(5.1) Idem — Where a repayment made under subsection (1.1) or (4.1) or an amount applied under subsection (2) in respect of a repayment, or a part thereof, may reasonably be regarded as being in respect of a claim made by a taxpayer in an objection to or appeal from an assessment of tax for a taxation year for

(a) the deduction of an amount, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),

(b) the deduction of an amount under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

(c) the exclusion of an amount from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(d) the deduction of an amount under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)) for a subsequent taxation year,

(f) the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(g) the deduction of an amount under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,

(h) the deduction of an amount under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,

(h.1) the deduction of an amount in computing the taxpayer's income for the year by virtue of an election for a subsequent taxation year under paragraph (6)(c) or (d) by the taxpayer's legal representative,

(h.2) the deduction of an amount under subsection 181.1(4) in respect of an unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year, or

(h.3) the deduction of an amount under subsection 190.1(3) in respect of an unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year,

interest shall not be paid or applied thereon for any part of a period that is before the latest of

(i) the first day immediately following that subsequent taxation year,

(j) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,

(k) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under paragraph (6)(e) or subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and

(l) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

Proposed Amendment — 164(5.1)

(5.1) Interest — disputed amounts — Where a portion of a repayment made under subsection (1.1) or (4.1), or an amount applied under subsection (2) in respect of a repayment, can reasonably be regarded as being in respect of a claim made by the taxpayer in an objection to or appeal from an assessment of tax for a taxation year for a deduction or exclusion described in subsection (5) in respect of a subsequent taxation year, interest shall not be paid or applied on the portion for any part of a period that is before the latest of the dates described in paragraphs (5)(i) to (l).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 94(5), will amend subsec. 164(5.1) to read as above, applicable to taxation years that end after October 1, 1996.

Technical Notes: Subsection 164(5) of the Act provides that, where the tax payable for a taxation year is reduced because of certain deductions or exclusions arising from tax credits, the carryback of losses, or events in subsequent years, interest payable to a taxpayer on any resulting overpayment of tax is to be calculated as if the overpayment had arisen on the latest of several dates. Subsection 164(5.1) of the Act, which deals with the calculation of interest on repayments of amounts in dispute, parallels the rules contained in subsection 164(5).

Subsection 164(5.1) is amended to simplify its structure and to accommodate the new deductions listed in the commentary on subsection 164(5), above.

History: Para. 164(5.1)(h.01) added by 1998, c. 19, subsec. 190(7), applicable to taxpayers who die after 1992.

Para. 164(5.1)(a) amended by 1997, c. 26, subsec. 86(2), applicable to 1997 *et seq.* Para. (a) formerly read:

> (a) the deduction of an amount under subclause 12(1)(x.1)(ii)(A)(II) in respect of a fuel tax rebate repayment made in a subsequent taxation year,

Paras. 164(5.1)(h.2) and (h.3) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(7), (h.2) applicable to 1992 *et seq.*, and (h.3) applicable to 1991 *et seq.*

Para. 164(5.1)(a) added by 1994, c. 7, Sch. VI (1992, c. 29), subsec. 9(2), applicable to 1992 *et seq.*

Pre-RSC History: Para. 164(5.1)(h) added by 1990, c. 39, subsec. 43(3), applicable to taxation years ending after June 1989.

Para. 164(5.1)(d) amended by 1988, c. 55, subsec. 144(6), to substitute "section 118.1" for "section 110", applicable to 1988 *et seq.*

Para. 164(5.1)(g) substituted and para. 164(5.1)(h) repealed by 1988, c. 55, subsec. 144(7), applicable to 1988 *et seq.* Paras. 164(5.1)(g) and (h) formerly read:

> (g) the deduction of an amount under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year,
>
> (h) the deduction of an amount under subsection 127.3(1) in respect of his unused scientific research and experimental development tax credit for a subsequent taxation year,

Para. 164(5.1)(h.2) repealed by 1988, c. 55, subsec. 144(8), applicable to 1988 *et seq.* Para. 164(5.1)(h.2) formerly read:

> (h.2) the deduction of an amount under subsection 120.2(2) in respect of his minimum tax for a subsequent taxation year,

Para. 164(5.1)(h) amended by 1986, c. 6, subsec. 15(3), to substitute "scientific research and experimental development" for "scientific research", applicable to taxation years ending after May 23, 1985.

Para. 164(5.1)(h.2) added by 1986, c. 55, subsec. 65(2), applicable to taxation years commencing after 1983.

Para. 164(5.1)(a) repealed by 1986, c. 6, subsec. 90(7), applicable to 1986 *et seq.* Para. 164(5.1)(a) formerly read:

> (a) the deduction of an amount under paragraph 3(e), by virtue of his death in a subsequent taxation year and the consequent application of section 71 in respect of an allowable capital loss for the year,

Para. 164(5.1)(h.1) added by 1986, c. 6, subsec. 90(8), and paras. (j), (k) amended by subsec. 90(9), to substitute, in (j), "the taxpayer's or his legal representative's" for "the taxpayer's" and, in (k), "the taxpayer's income for the year" for "the taxpayer's income for the taxation year" and "filed under subsection 49(4) or 152(6) or paragraph (6)(e)" for "filed in accordance with subsection 49(4) or 152(6)", applicable to 1985 *et seq.*

Subsec. 164(5.1) added by 1985, c. 45, subsec. 93(11), applicable with respect to repayments made or applied after 1984, except that where the subsequent taxation year referred to therein ends before 1985, paras. (5.1)(i) to (l) shall be read as follows:

> (i) the day on which the taxpayer's return of income under section 150 was filed for that subsequent taxation year, and
>
> (j) the day on or before which the taxpayer is, or would be if tax under this Part were payable by him for that subsequent taxation

year, required to file his return of income under section 150 for that subsequent taxation year.

(6) Where disposition of property by legal representative of deceased taxpayer — Where in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative has, within the first taxation year of the estate,

(a) disposed of capital property of the estate so that the total of all amounts each of which is a capital loss from the disposition of a property exceeds the total of all amounts each of which is a capital gain from the disposition of a property, or

(b) disposed of all of the depreciable property of a prescribed class of the estate so that the undepreciated capital cost to the estate of property of that class at the end of the first taxation year of the estate is, by virtue of subsection 20(16) or any regulation made under paragraph 20(1)(a), deductible in computing the income of the estate for that year,

notwithstanding any other provision of this Act, the following rules apply:

(c) such parts of one or more capital losses of the estate from the disposition of properties in the year (the total of which is not to exceed the excess referred to in paragraph (a)) as the legal representative so elects, in prescribed manner and within a prescribed time, are deemed (except for the purpose of subsection 112(3) and this paragraph) to be capital losses of the deceased taxpayer from the disposition of the properties by the taxpayer in the taxpayer's last taxation year and not to be capital losses of the estate from the disposition of those properties,

(d) such part of the amount of any deduction described in paragraph (b) (not exceeding the amount that, but for this subsection, would be the total of the non-capital loss and the farm loss of the estate for its first taxation year) as the legal representative so elects, in prescribed manner and within a prescribed time, shall be deductible in computing the income of the taxpayer for the taxpayer's taxation year in which the taxpayer died and shall not be an amount deductible in computing any loss of the estate for its first taxation year,

(e) the legal representative shall, at or before the time prescribed for filing the election referred to in paragraphs (c) and (d), file an amended return of income for the deceased taxpayer for the taxpayer's taxation year in which the taxpayer died to give effect to the rules in those paragraphs, and

(f) in computing the taxable income of the deceased taxpayer for a taxation year preceding the year in which the taxpayer died, no amount may be deducted in respect of an amount referred to in paragraph (c) or (d).

Related Provisions: 152(1) — Assessment; 152(6)(h) — Reassessment to give effect to election: 161(7)(b)(iii) — Effect of carryback of loss, etc.; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

History: Para. 164(6)(c) amended by 1998, c. 19, subsec. 190(8), applicable to deaths that occur after 1993. Para. 164(6)(c) formerly read:

(c) such part of one or more capital losses from the disposition of properties referred to in paragraph (a) (the total of which amounts is not to exceed the excess referred to in that paragraph) as the legal representative so elects, in prescribed manner and within a prescribed time, shall be deemed to be capital losses of the deceased taxpayer from the disposition of the properties by the taxpayer in the taxpayer's taxation year in which the taxpayer died and not to be capital losses of the estate from the disposition of those properties for its first taxation year,

Clause 191 of 1998, c. 19, provides:

191. Where

(a) the first taxation year of an estate of an individual ended after April 26, 1995 and before 1997,

(b) the estate had a capital loss from the disposition after the year and before 1997 of a share of the capital stock of a corporation that was owned by the individual or the estate on April 26, 1995 and acquired by the estate as a consequence of the individual's death, and

(c) the individual's legal representative so elects in writing filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to,

the following rules apply:

(d) the disposition is deemed to have occurred in the first taxation year of the estate,

(e) an election under paragraph 164(6)(c) of the Act, as enacted by subsection 190(8), for the year is deemed to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to, and

(f) an amended return of income under Part I of the Act for the individual's last taxation year is deemed for the purpose of paragraph 164(6)(e) of the Act to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to.

Pre-RSC History: Para. 164(6)(a) substituted by 1986, c. 6, subsec. 90(10), applicable (by subsec. 90(16), added by 1986, c. 55, s. 83) with respect to deaths occurring after December 31, 1984. Para. 164(6)(a) formerly read:

(a) disposed of capital property of the estate so that the aggregate of amounts each of which is a capital loss from the disposition of any property of the estate exceeds the aggregate of all amounts each of which is a capital gain from the disposition of any property of the estate, or

All that portion of subsec. 164(6) following para. (b) substituted by 1986, c. 6, subsec. 90(11), applicable (by subsec. 90(16), added by 1986, c. 55, s. 83) with respect to deaths occurring after December 31, 1984. That portion of subsec. 164(6) formerly read:

the legal representative shall be deemed to have paid, on account of tax under this Part payable by the estate for its first taxation year, an amount equal to the amount, if any, by which

(c) the tax under this Part payable by the deceased taxpayer for the taxation year in which he died

exceeds

(d) the amount that would have been the tax under this Part payable by the deceased taxpayer for the taxation year in which he died if

(i) such part of the excess described in paragraph (a) as the legal representative so elects, in prescribed manner and within prescribed time, had been a capital loss of the deceased taxpayer for that year, and

(ii) such part of the amount of any deduction described in paragraph (b) (not exceeding the amount that, but for this subsection, would be the aggregate of the non-capital loss and the farm loss of the estate for the year) as the legal representative so elects, in prescribed manner and within prescribed time, had been deducted in computing the income of the deceased taxpayer for that year,

and for the purposes of sections 3 and 111, in computing the income, non-capital loss, net capital loss and farm loss of the estate for its first taxation year,

(e) the part referred to in subparagraph (d)(i) shall be deemed not to have been a loss of the estate, and

(f) the part referred to in subparagraph (d)(ii) is not deductible in computing any loss of the estate for the year.

All that portion of subsec. 164(6) following subpara. (d)(i) and preceding para. (e) substituted by 1984, c. 1, subsec. 88(4), applicable to 1983 *et seq.* That portion formerly read:

(ii) such part of the amount of any deduction described in paragraph (b) (not exceeding the amount that, but for this subsection, would be the non-capital loss of the estate for the year) as the legal representative so elects, in prescribed manner and

within prescribed time, had been deducted in computing the income of the deceased taxpayer for that year,

and for the purposes of sections 3 and 111, in computing the income, net capital loss and non-capital loss of the estate for its first taxation year,

Para. 164(6)(b) substituted by 1977-78, c. 1, s. 78, applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add "subsection 20(16) or".

All those portions of subsec. 164(6) preceding para. (a) and following para. (d) and preceding para. (e) substituted by 1974-75-76, c. 26, subsecs. 107(1), (2), applicable to estates of taxpayers who died after May 6, 1974. Those portions formerly read:

(6) Where in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative has, within the 12-month period immediately following the death of the taxpayer,

. . . . .

and for the purpose of section 111, in computing the net capital loss and non-capital loss of the estate for its first taxation year,

Regulations: 1000 (prescribed manner, prescribed time).

Interpretation Bulletins: IT-140R3: Buy-sell agreements; IT-484R2: Business investment losses.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(6.1) Realization of deceased employees' options — Notwithstanding any other provision of this Act, if a right to acquire securities (as defined in subsection 7(7)) under an agreement in respect of which a benefit was deemed by paragraph 7(1)(e) to have been received by a taxpayer (in this subsection referred to as "the right") is exercised or disposed of by the taxpayer's legal representative within the first taxation year of the estate of the taxpayer and the representative so elects in prescribed manner and on or before a prescribed day,

(a) the amount, if any, by which

(i) the amount of the benefit deemed by paragraph 7(1)(e) to have been received by the taxpayer in respect of the right

exceeds the total of

(ii) the amount, if any, by which the value of the right immediately before the time it was exercised or disposed of exceeds the amount, if any, paid by the taxpayer to acquire the right, and

(iii) where in computing the taxpayer's taxable income for the taxation year in which the taxpayer died an amount was deducted under paragraph 110(1)(d) in respect of the benefit deemed by paragraph 7(1)(e) to have been received by the taxpayer in that year by reason of paragraph 7(1)(e) in respect of that right, ¼ of the amount, if any, by which the amount determined under subparagraph (i) exceeds the amount determined under subparagraph (ii),

shall be deemed to be a loss of the taxpayer from employment for the year in which the taxpayer died;

(b) there shall be deducted in computing the adjusted cost base to the estate of the right at any time the amount of the loss that would be determined under paragraph (a) if that paragraph were read without reference to subparagraph (a)(iii); and

(c) the legal representative shall, at or before the time prescribed for filing the election under this subsection, file an amended return of income for the taxpayer for the taxation year in which the taxpayer died to give effect to paragraph (a).

Related Provisions: 53(2)(t) — Deduction from adjusted cost base of right to acquire shares or units.

History: The opening words of subsec. 164(6.1) amended by 1999, c. 22, s. 66, applicable to deaths that occur after February 1998. The opening words formerly read:

(6.1) Exercise or disposition of employee stock option by legal representative of deceased employee — Where, within the first taxation year of the estate of a deceased taxpayer, a right to acquire shares under an agreement in respect of which a benefit was deemed by paragraph 7(1)(e) to have been received by the taxpayer (in this subsection referred to as "the right") is exercised or disposed of by the taxpayer's legal representative, notwithstanding any other provision of this Act, where the taxpayer's legal representative elects in prescribed manner and on or before a prescribed day,

Subsec. 164(6.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(8), applicable to deaths occurring after July 13, 1990.

(7) Definition of "overpayment" — In this section, "overpayment" of a taxpayer for a taxation year means

(a) where the taxpayer is not a corporation, the total of all amounts paid on account of the taxpayer's liability under this Part for the year minus all amounts payable in respect thereof; and

(b) where the taxpayer is a corporation, the total of all amounts paid on account of the corporation's liability under this Part or Parts I.3, VI or VI.1 for the year minus all amounts payable in respect thereof.

History: Subsec. 164(7) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 97(9), applicable to 1992 *et seq.* Subsec. (7) formerly read:

(7) In this section, "overpayment" of a taxpayer for a taxation year means the total of all amounts paid on account of the taxpayer's liability under this Part for the year minus all amounts payable in respect thereof.

Pre-RSC History: Subsec. 164(7) substituted by 1985, c. 45, subsec. 93(12). Subsec. 164(7) formerly read:

(7) In this section, "overpayment" of a taxpayer for a taxation year means the aggregate of all amounts paid on account of his tax under this Part for the year minus all amounts payable by him under this Part for the year.

Subsec. 164(7) substituted by 1984, c. 1, subsec. 88(5), applicable to 1983 *et seq.* Subsec. 164(7) formerly read:

(7) "Overpayment" defined — In this section, "overpayment" means the aggregate of all amounts paid on account of tax minus all amounts payable under this Act or an amount so paid where no amount is so payable.

Related Provisions [s. 164]: 144(9) — Refunds — employees profit sharing plans. See also Related Provisions at end of s. 163.

Selected Cases [s. 164]: *Koenig v. R.*, [1997] 2 C.T.C. 3077 (TCC) (Instruction to apply overpayment from earlier year to later year meant that taxpayer had paid taxes by due date).

Definitions [s. 164]: "allowable capital loss" — 38(b), 248(1); "amount", "assessment", "balance-due day" — 248(1); "Canada" — 255; "capital loss" — 39(1)(b), 248(1); "capital property" — 54, 248(1); "clear days" — *Interpretation Act* 27(1); "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "eligible production corporation" — 125.5(1); "estate" — 104(1), 248(1); "farm loss" — 111(8); "Federal Court" — *Interpretation Act* 35(1); "filing-due date", "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "legal representative" — 248(1); "listed personal property" — 54, 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "overpayment" — 164(7); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified corporation" — 125.4(1); "regulation" — 248(1); "security" — *Interpretation Act* 35(1); "share" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 248(1); "writing" — *Interpretation Act* 35(1).

164.1 [Repealed]

History: S. 164.1 repealed by 1994, c. 7, Sch. VII (1992, c. 48), subsec. 19(2), applicable to 1993 *et seq.* S. 164.1 formerly read:

164.1 (1) Prepayment of child tax credit — Notwithstanding any other provision of this Act, the Minister may, after the beginning of a taxation year and without application therefor, pay to an individual for the year in respect of each eligible child (within the meaning

assigned by subsection 122.2(2)) of the individual for the year, one or more amounts, the total of which does not exceed ⅔ of,

(a) where the child was under 6 years of age at the end of the preceding taxation year and no amount was deducted under section 63 for that year in respect of any child of the individual under 6 years of age at the end of that year, the total of the amounts of $559[14] and $200[14] referred to in paragraph 122.2(1)(a), and

(b) in any other case, $559[14],

if

(c) an amount was deemed under subsection 122.2(1) to have been paid for the preceding taxation year by

(i) the individual, or

(ii) the individual's spouse, where that spouse died after the end of that preceding year,

in respect of the child, and

(d) for that preceding year,

(i) the total determined under subparagraph 122.2(1)(b)(i) in respect of the individual, or

(ii) the individual's income, where the individual's spouse died after the end of that preceding year,

did not exceed,

(iii) where the amount or amounts to be paid because of this subsection are in respect of 3 or more eligible children of the individual, $24,090, and

(iv) in any other case, ⅔ of $24,090.[14]

(2) **Nature of payment** — Each amount paid under subsection (1) to or applied under subsection (4) in respect of an individual for a taxation year shall be deemed to be on account of an amount deemed by subsection 122.2(1) to have been paid by the individual for the year.

(3) **Idem** — Where the total of all amounts paid under subsection (1) to or applied under subsection (4) in respect of an individual for a taxation year exceeds the amount deemed by subsection 122.2(1) to have been paid by the individual for the year, the excess shall be deemed to have been refunded to the individual on account of the individual's tax under this Part for the year on the day on or before which the individual's return of income under this Part for the year is required to be filed under section 150 or would be required to be so filed if tax under this Part were payable by him for the year.

(4) **Applying amount on debt** — Where an individual is liable or about to become liable to make any payment under this Act, the Minister may, instead of paying to the individual an amount that might otherwise be paid in a taxation year under subsection (1), apply the amount to the liability and notify the individual of that action.

All that portion of subsec. 164.1(1) following para. (b) substituted by subsec. 19(1) of the said c. 48, applicable to the 1992 taxation year. That portion formerly read:

if, for the preceding taxation year,

(c) an amount was deemed under subsection 122.2(1) to have been paid by the individual in respect of the child, and

(d) the total determined under subparagraph 122.2(1)(b)(i) in respect of the individual did not exceed,

(i) where the amount or amounts to be paid by reason of this subsection are in respect of 3 or more eligible children of the individual, $24,090, and

(ii) in any other case, ⅔ of $24,090.[14]

Para. 164.1(1)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 137, to substitute "any child of the individual under 6 years of age at the end of that year" for "the child", applicable to 1989 *et seq.*

Pre-RSC History: Para. 164.1(1)(d) substituted by 1990, c. 42, applicable to 1990 *et seq.* Para. 164.1(1)(d) formerly read:

(d) the aggregate determined under subparagraph 122.2(1)(b)(i) in respect of the individual did not exceed ⅔ of the amount of $24,090.

Subsec. 164.1(1) substituted by 1988, c. 55, s. 145, applicable to 1988 *et seq.*, except that, in its application to the 1988 taxation year, para. 164.1(1)(a) shall be read as follows:

(a) where the child was under 6 years of age at the end of the preceding taxation year and no amount has been deducted for that year under section 63 in respect of any eligible child (within the meaning assigned by paragraph 122.2(2)(a)) of the individual for the year, $709, and

Subsec. 164.1(1) formerly read:

164.1 (1) **Prepayment of child tax credit** — Notwithstanding any other provision of this Act, the Minister may, after the beginning of a taxation year and without application therefor, pay to an individual for the year one or more amounts, the aggregate of which does not exceed $300 or such greater amount as may be prescribed for the year, in respect of an eligible child (within the meaning assigned by paragraph 122.2(2)(a)) of the individual for the year where, for the preceding taxation year,

(a) an amount was deemed under subsection 122.2(1) to have been paid by the individual with respect to the child; and

(b) the aggregate determined under subparagraph 122.2(1)(b)(i) in respect of the individual did not exceed $15,000.

S. 164.1 added by 1986, c. 44, s. 4, applicable to 1986 *et seq.*

Objections to Assessments

165. (1) Objections to assessment — A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

(ii) the day that is 90 days after the day of mailing of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

Related Provisions: 164(4) — Interest on overpayments; 165(1.1), (1.2) — Limitations on right to object; 165(1.11) — Large corporations — detail required on notice of objection; 165(2) — Service of notice of objection; 165(2.1) — Application of 165(1)(a); 165(3) — Duties of Minister on receipt of notice of objection; 166.1, 166.2 — Applications for extension of time to object; 167(1) — Application to Tax Court of Canada for time extension; 173(2), 174(5) — Time during consideration not to count; 225.1(2) — Collection restrictions; 244(10) — Proof that no notice of objection filed; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: Subpara. 165(1)(a)(i) amended by 1996, c. 21, s. 45, applicable to 1995 *et seq.* Subpara. (a)(i) formerly read:

(i) the day that is one year after the balance-due day of the taxpayer for the year, and

Subsec. 165(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991. Subsec. 165(1) formerly read:

165. (1) A taxpayer who objects to an assessment under this Part may, within 90 days from the day of mailing of the notice of assessment, serve on the Minister a notice of objection in duplicate in prescribed form setting out the reasons for the objection and all relevant facts.

Selected Cases [subsec. 165(1)]: *Chevron Canada Resources Ltd. v. R.*, [1999] 3 C.T.C. 140 (FCA); rev'g [1997] 2 C.T.C. 2624 (TCC) (No objection allowed following agreement on certain computational matters); *LaForme v. Canada*, [1991] 2 C.T.C. 28 (FCTD) (Tax Court had no jurisdiction to hear appeal where no notice of objection to assessment filed; Federal Court precluded by section 29 of *Federal Court Act* from granting

[14] Indexed by s. 117.1 after 1988.

relief and declarations sought); *The Queen v. Garry Bowl Ltd.*, [1974] C.T.C. 457 (FCA) (No objection possible where nil assessment); *Vineland Quarries & Crushed Stone Ltd. v. MNR*, [1971] C.T.C. 501, 635 (FCTD) (Appeal quashed where taxpayer had not filed notice of objection).

Information Circulars: 98-1: Collections policies.

Forms: T400A: Notice of objection. (The prescribed form does not have to be used, however. See 165(2).).

(1.1) Limitation of right to object to assessments or determinations — Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 161.1(7), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(b) under subsection (3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph (a), or

(c) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to (5),

the taxpayer may object to the assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

Related Provisions: 169(2) — Limitation of right to appeal.

History: Para. 165(1.1)(a) amended by 2000, c. 19, s. 51, applicable after 1999. The para. formerly read:

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

The portion of subsec. 165(1.1) before para. (b) and the portion after para. (c) amended by 1998, c. 19, subsecs. 192(1), (2), applicable in respect of determinations made after June 18, 1998. Those portions formerly read:

(1.1) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest or penalties payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6) or 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

. . . . .

the taxpayer may object to the assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded as relating to a matter that gave rise to the assessment or determination and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

Para. 165(1.1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(1), to add reference to subsection 152(4.3).

Subsec. 165(1.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991.

Selected Cases [subsec. 165(1.1)]: *Chevron Canada Resources Ltd. v. R.*, [1999] 3 C.T.C. 140 (FCA); rev'g [1997] 2 C.T.C. 2624 (TCC) (No objection allowed following agreement on certain computational matters).

(1.11) Objections by large corporations — Where a corporation that was a large corporation in a taxation year (within the meaning assigned by subsection 225.1(8)) objects to an assessment under this Part for the year, the notice of objection shall

(a) reasonably describe each issue to be decided;

(b) specify in respect of each issue, the relief sought, expressed as the amount of a change in a balance (within the meaning assigned by subsection 152(4.4)) or a balance of undeducted outlays, expenses or other amounts of the corporation; and

(c) provide facts and reasons relied on by the corporation in respect of each issue.

Related Provisions: 165(1.12) — Late compliance with 165(1.11); 165(1.13) — Corporation may only object on grounds raised; 169(2.1)(a) — Appeal only on grounds raised in objection.

History: Subsec. 165(1.11) added by 1995, c. 21, s. 70, applicable after September 26, 1994 for notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23, 1995.

Subsec. 70(2) of 1995, c. 21 provides that where a taxpayer submits, to a Chief of Appeals referred to in subsec. 165(2), in writing before March 1995 the information required by subsec. 165(1.11) to be provided in a notice of objection served by the taxpayer before 1995, the taxpayer shall be deemed to have complied with subsec. 165(1.11) with respect to that notice.

(1.12) Late compliance — Notwithstanding subsection (1.11), where a notice of objection served by a corporation to which that subsection applies does not include the information required by paragraph (1.11)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may in writing request the corporation to provide the information, and those paragraphs shall be deemed to be complied with in respect of the issue if, within 60 days after the request is made, the corporation submits the information in writing to a Chief of Appeals referred to in subsection (2).

History: Subsec. 165(1.12) added by 1995, c. 21, s. 70, applicable after September 26, 1994 to notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23, 1995.

(1.13) Limitation on objections by large corporations — Notwithstanding subsections (1) and (1.1), where under subsection (3) a particular assessment was made for a taxation year pursuant to a notice of objection served by a corporation that was a large corporation in the year (within the meaning assigned by subsection 225.1(8)), except where the objection was made to an earlier assessment made under any of the provisions or circumstances referred to in paragraph (1.1)(a), the corporation may object to the particular assessment in respect of an issue

(a) only if the corporation complied with subsection (1.11) in the notice with respect to that issue; and

(b) only with respect to the relief sought in respect of that issue as specified by the corporation in the notice.

Related Provisions: 165(1.14) — Application.

History: Subsec. 165(1.13) added by 1995, c. 21, s. 70, applicable after September 26, 1994 to notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23, 1995.

(1.14) Application of subsec. (1.13) — Where a particular assessment is made under subsection (3) pursuant to an objection made by a taxpayer to an earlier assessment, subsection (1.13) does not limit the right of the taxpayer to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

History: Subsec. 165(1.14) added by 1995, c. 21, s. 70, applicable after September 26, 1994 to notices of objection filed at any time except a notice of objection to an assessment for a taxation year where an appeal under Division J of the Act of the assessment has been instituted before June 23 1995.

(1.15) Partnership — Notwithstanding subsection (1), where the Minister makes a determination under subsection 152(1.4) in respect of a fiscal period of a partnership, an objection in respect of the determination may be made only by one member of the partnership, and that member must be either

(a) designated for that purpose in the information return made under section 229 of the *Income Tax Regulations* for the fiscal period; or

(b) otherwise expressly authorized by the partnership to so act.

History: Subsec. 165(1.15) added by 1998, c. 19, subsec. 192(3), applicable in respect of determinations made after June 18, 1998.

(1.2) Determination of fair market value [Limitation on objections] — Notwithstanding subsection[s] (1) [and (1.1)], no objection may be made [by a taxpayer] to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) [nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer].

Related Provisions: 169(2.2) — No appeal permitted where right to object or appeal waived.

History: Subsec. 165(1.2) amended by 1995, c. 38, s. 4, in force July 12, 1996. Subsec. 165(1.2) formerly read:

> (1.2) Limitation on objections — Notwithstanding subsections (1) and (1.1), no objection may be made by a taxpayer to an assessment made under subsection 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

The words in square brackets shown in the 1995, c. 38 version were unintentionally deleted by 1995, c. 38 and should be restored.

Subsec. 165(1.2) amended by 1995, c. 21, s. 70, applicable after September 26, 1994 to waivers signed at any time. Subsec. (1.2) formerly read:

> (1.2) Idem — Notwithstanding subsection (1), no objection may be made to an assessment made under subsection 152(4.2), 169(3) or 220(3.1).

Subsec. 165(1.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(2), to add reference to subsections 169(3) and 220(3.1).

Subsec. 165(1.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable after 1990.

(2) Service — A notice of objection under this section shall be served by being addressed to the Chief of Appeals in a District Office or a Taxation Centre of the Canada Customs and Revenue Agency and delivered or mailed to that Office or Centre.

Related Provisions: 165(6) — Acceptance of notice of objection; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 165(2) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(a), proclaimed into force November 1, 1999.

"Department of National Revenue" substituted for "Department of National Revenue, Taxation" in subsec. 165(2) by 1994, c. 13, subsec. 8(1), in force May 12, 1994.

Subsec. 165(2) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991. Subsec. 165(2) formerly read:

> (2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Deputy Minister of National Revenue for Taxation at Ottawa.

Selected Cases [subsec. 165(2)]: *Wichartz v. Canada*, [1994] 2 C.T.C. 2344 (TCC) (Informal letter of complaint held to constitute objection).

Forms: T400A: Notice of objection. (The prescribed form does not have to be used, however.).

(2.1) Application — Notwithstanding any other provision of this Act, paragraph (1)(a) shall apply only in respect of assessments, determinations and redeterminations under this Part, Part I.1 and Part I.2.

History: Subsec. 165(2.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(1), applicable to objections made after December 17, 1991.

(3) Duties of Minister — On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

Related Provisions: 152(9) — Minister may raise new basis for assessment during appeal process; 165(5) — Normal reassessment limitations do not apply to reassessment under 165(3); 169 — Appeals; 244(5) — Proof of service by mail; 244(14) — Date of mailing presumed to be date of notification; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 165(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(3). Subsec. (3) formerly read:

> (3) On receipt of a notice of objection under this section, the Minister shall,
>
> (a) with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, or
>
> (b) where the taxpayer indicates in the notice of objection that the taxpayer wishes to appeal immediately to the Tax Court of Canada and waives reconsideration of the assessment and the Minister consents, file a copy of the notice of objection with the Registrar of that Court,
>
> and the Minister shall thereupon notify the taxpayer by registered mail of the action taken.

Pre-RSC History: Para. 165(3)(b) substituted by 1988, c. 61, subsec. 14(1), in force January 1, 1991. Para. (b) formerly read:

> (b) where the taxpayer indicates in the notice of objection that he wishes to appeal immediately either to the Tax Court of Canada or to the Federal Court and that he waives reconsideration of the assessment and the Minister consents, file a copy of the notice of objection with the Registrar of the Tax Court or in the Registry of the Federal Court, as the case may be,

Para. 165(3)(b) substituted by 1980-81-82-83, c. 158, s. 58, to substitute "Tax Court of Canada" for "Tax Review Board", applicable from July 18, 1983.

Selected Cases [subsec. 165(3)]: *Maglioccetti v. Canada*, [1996] 3 C.T.C. 2660 (TCC) (Taxpayer established on balance of probability that Minister had not mailed notice of assessment); *Bowen v. MNR*, [1991] 2 C.T.C. 266 (FCA) (Notice of confirmation of assessment received after deadline for filing notice of appeal and obtaining extension; application for extension of time for filing dismissed); *Walkem v. MNR*, [1971] C.T.C. 513 (FCTD) (Taxpayer's appeal dismissed against assessments replaced by subsequent reassessments).

I.T. Application Rules: 62(4).

Interpretation Bulletins: IT-241: Reassessments made after the four-year limit.

Information Circulars: 98-1: Collections policies.

Forms: T2008A-1 to 4: Notification of confirmation by the Minister; T2008C: Notification of confirmation by District Office or Taxation Centre Settlement.

(3.1) [Repealed]

History: Subsec. 165(3.1) repealed by 1998, c. 19, subsec. 192(4), applicable after August 27, 1995. Subsec. 165(3.1) formerly read:

(3.1) Decision by Minister of Human Resources Development — Notwithstanding subsection (3), on receipt of a notice of objection to a determination that includes matters relating to whether, for the purposes of subdivision a.1 of Division E,

(a) a taxpayer is an eligible individual in respect of a qualified dependant,

(b) a person is a qualified dependant, or

(c) a person is a taxpayer's cohabiting spouse,

the Minister of National Revenue shall refer those matters to the Minister of Human Resources Development who shall, with all due dispatch, decide the matters and notify the Minister of National Revenue of the decision.

Subsec. 165(3.1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996. This will effectively be superseded by the repeal of this provision as per draft legislation of April 26, 1995.

Subsec. 165(3.1) added by 1994, c. 7, Sch. VII (1992, c. 48), s. 20, deemed to have come into force January 1, 1993.

(3.2) [Repealed]

History: Subsec. 165(3.2) repealed by 1998, c. 19, subsec. 192(4), applicable after August 27, 1995. Subsec. 165(3.2) formerly read:

(3.2) Reconsideration of determination — On receipt of the notification of a decision of the Minister of Human Resources Development under subsection (3.1), the Minister of National Revenue shall, with all due dispatch, reconsider the determination to which the decision relates and vacate, confirm or vary the determination or redetermine in accordance with the decision, and shall thereupon notify the taxpayer in writing of that action.

Subsec. 165(3.2) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996. This will effectively be superseded by the repeal of this provision as per draft legislation of April 26, 1996.

Subsecs. 165(3.2) added by 1994, c. 7, Sch. VII (1992, c. 48), s. 20, deemed to have come into force January 1, 1993.

(4) [Repealed]

History: Subsec. 165(4) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 98(3). Subsec. (4) formerly read:

(4) Effect of filing of notice of objection — Where the Minister files a copy of a notice of objection pursuant to paragraph (3)(b), the Minister shall be deemed, for the purpose of section 169, to have confirmed the assessment to which the notice relates and the taxpayer who served the notice shall be deemed to have thereupon instituted an appeal in accordance with that section.

Pre-RSC History: Subsec. 165(4) amended by 1988, c. 61, subsec. 14(2), to delete "or subsection 172(2), as the case may be" from the end, in force January 1, 1991.

(5) Validity of reassessment — The limitations imposed under subsections 152(4) and (4.01) do not apply to a reassessment made under subsection (3).

History: Subsec. 165(5) amended by 1998, c. 19, subsec. 192(5), applicable after April 27, 1989. Subsec. 165(5) formerly read:

(5) A reassessment made by the Minister pursuant to subsection (3) is not invalid by reason only of not having been made within the period determined under paragraph 152(4)(b) or (c), as the case may be, within which the Minister may reassess tax payable.

Pre-RSC History: Subsec. 165(5) substituted by 1990, c. 39, s. 44, applicable after April 27, 1989. Subsec. 165(5) formerly read:

(5) A reassessment made by the Minister pursuant to subsection (3) is not invalid by reason only of not having been made within 3 years from the day of mailing of a notice of an original assessment or of a notification described in subsection 152(4).

Subsec. 165(5) substituted by 1984, c. 45, s. 68, to substitute the heading "Validity of reassessment" for "Idem" and to substitute "3 years" for "4 years", applicable with respect to 1983 *et seq.*

Interpretation Bulletins: IT-241: Reassessments made after the four-year limit.

(6) Validity of notice of objection — The Minister may accept a notice of objection served under this section that was not served in the manner required by subsection (2).

History: Subsec. 165(6) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(2), applicable to objections made after January 16, 1992. Subsec. (6) formerly read:

(6) Waiver as to service of notice — The Minister may accept a notice of objection under this section notwithstanding that it was not served in duplicate or in the manner required by subsection (2).

(7) Notice of objection not required — Where a taxpayer has served in accordance with this section a notice of objection to an assessment and thereafter the Minister reassesses the tax, interest, penalties or other amount in respect of which the notice of objection was served or makes an additional assessment in respect thereof and sends to the taxpayer a notice of the reassessment or of the additional assessment, as the case may be, the taxpayer may, without serving a notice of objection to the reassessment or additional assessment,

(a) appeal therefrom to the Tax Court of Canada in accordance with section 169; or

(b) amend any appeal to the Tax Court of Canada that has been instituted with respect to the assessment by joining thereto an appeal in respect of the reassessment or the additional assessment in such manner and on such terms, if any, as the Tax Court of Canada directs.

Related Provisions: 169(2.1)(b) — Grounds for appeal by large corporation.

History: That portion of subsec. 165(7) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 138(3), applicable to 1986 *et seq.* That portion formerly read:

(7) No notice of objection required in respect of reassessment or additional assessment — Where a taxpayer has served a notice of objection to an assessment in accordance with this section and thereafter the Minister reassesses the taxpayer's tax for the taxation year in respect of which the notice of objection was served or makes an additional assessment in respect thereof, and sends to the taxpayer a notice of the reassessment or of the additional assessment, as the case may be, the taxpayer may, without serving a notice of objection to the reassessment or additional assessment,

Pre-RSC History: Paras. 165(7)(a), (b) substituted by 1988, c. 61, subsec. 14(3), in force January 1, 1991. Paras. 165(7)(a), (b) formerly read:

(a) appeal therefrom to the Tax Court of Canada or the Federal Court in accordance with section 169 or subsection 172(2); or

(b) if an appeal to the Tax Court of Canada or the Federal Court has been instituted with respect to the assessment, amend such appeal by joining thereto an appeal in respect of the reassessment or the additional assessment in such manner and on such terms, if any, as the Tax Court of Canada or the Federal Court directs.

Paras. 165(7)(a), (b) substituted by 1980-81-82-83, c. 158, s. 58, to substitute "Tax Court of Canada" for "Tax Review Board" and "Board", applicable from July 18, 1983.

Selected Cases [subsec. 165(7)]: *Lehner v. MNR*, [1997] 2 C.T.C. 309 (FCA) (Taxpayer not permitted to amend appeals disposed of by consent judgment); *Stephens v. The Queen*, [1977] C.T.C. 590 (FCTD) (Appeal from reassessment rejected when appeal from assessment disposed of).

Related Provisions [s. 165]: See Related Provisions at end of s. 163.

Selected Cases [s. 165]: *Nova Ban-Corp. Ltd. v. Tottrup*, [1989] 2 C.T.C. 304 (FCTD) (*Canada Business Corporations Act* does not provide basis for creditor to commence proceedings in the Federal Court in name of debtor in respect of assessment of tax against debtor).

Definitions [s. 165]: "amount", "assessment" — 248(1); "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "filing-due date" — 150(1), 248(1); "individual", "Minister", "prescribed" — 248(1); "large corporation" — 225.1(8); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 248(1); "trust" — 104(1), 108(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

General

166. Irregularities — An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

Related Provisions: 152(3) — Liability for tax not affected by incorrect or incomplete assessment; 152(8) — Assessment valid despite error; 158 — Assessment payable forthwith; 165(3) — Objections — Duties of Minister. See also Related Provisions annotation at end of s. 163.

Selected Cases [s. 166]: *Kyte v. Canada*, [1997] 2 C.T.C. 15 (FCA) (Provision covers error in certificate amount in subsec. 227.1(2)).

Definitions [s. 166]: "assessment", "person" — 248(1).

166.1 (1) Extension of time [to object] by Minister — Where no notice of objection to an assessment has been served under section 165, nor any request under subsection 245(6) made, within the time limited by those provisions for doing so, the taxpayer may apply to the Minister to extend the time for serving the notice of objection or making the request.

Related Provisions: 244(10) — Proof that no notice of objection filed.

(2) Contents of application — An application made under subsection (1) shall set out the reasons why the notice of objection or the request was not served or made, as the case may be, within the time otherwise limited by this Act for doing so.

(3) How application made — An application under subsection (1) shall be made by being addressed to the Chief of Appeals in a District Office or a Taxation Centre of the Canada Customs and Revenue Agency and delivered or mailed to that Office or Centre, accompanied by a copy of the notice of objection or a copy of the request, as the case may be.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 166.1(3) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(b), proclaimed into force November 1, 1999.

"Department of National Revenue" substituted for "Department of National Revenue, Taxation" in subsec. 166.1(3) by 1994, c. 13, subsec. 8(1), applicable May 12, 1994.

(4) Idem — The Minister may accept an application under this section that was not made in the manner required by subsection (3).

(5) Duties of Minister — On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the taxpayer in writing of the Minister's decision.

Related Provisions: 166.2(1) — Extension of time by Tax Court; 244(14) — Date of mailing presumed to be date of notification; .

History: Subsec. 166.1(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 99. Subsec. (5) formerly read:

> (5) On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the taxpayer of the decision by registered mail.

(6) Date of objection or request if application granted — Where an application made under subsection (1) is granted, the notice of objection or the request, as the case may be, shall be deemed to have been served or made on the day the decision of the Minister is mailed to the taxpayer.

(7) When order to be made — No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

History: S. 166.1 added by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992.

Definitions [s. 166.1]: "assessment", "Minister", "taxpayer" — 248(1); "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "writing" — *Interpretation Act* 35(1).

166.2 (1) Extension of time [to object] by Tax Court — A taxpayer who has made an application under subsection 166.1[(1)] may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

(2) How application made — An application under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, or by sending by registered mail addressed to an office of the Registry, 3 copies of the documents referred to in subsection 166.1(3) and 3 copies of the notification, if any, referred to in subsection 166.1(5).

Proposed Amendment — 166.2(2)

(2) How application made — An application under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the documents referred to in subsection 166.1(3) and three copies of the notification, if any, referred to in subsection 166.1(5).

Application: Bill C-24 (Second Reading in the Senate June 28, 2000) (GST technical bill), s. 171, will amend subsec. 166.2(2) to read as above, in force on Royal Assent.

Technical Notes: Section 166.2 of the *Income Tax Act* allows a person to apply to the Tax Court of Canada for an extension of time to file an objection or a request, if the person has previously applied to the Minister for an extension and that application was refused or not responded to within 90 days. Subsection 166.2(2) details how the application to the Tax Court is to be made.

Similarly, section 167 of the *Income Tax Act* allows a person to apply to the Tax Court for an extension of time to bring an appeal to the Tax Court, if the person has not done so within the

time limits set out in section 169. Subsection 167(3) details how this application to the Tax Court is to be made.

To avoid inconsistencies between these provisions and the *Tax Court of Canada Act*, subsections 166.2(2) and 167(3) are amended to provide that the application in question is to be filed in the Registry of the Tax Court in accordance with the provisions of that Act. Similar amendments are made under clauses 91 and 92 to subsections 304(2) and 305(3) of the *Excise Tax Act*.

These amendments come into force on Royal Assent.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [subsec. 166.2(2)]: *Bordieri v. Canada*, [1995] 2 C.T.C. 15 (FCA) (Courier service does not comply with statutory requirement).

(3) Copy to Commissioner — The Tax Court of Canada shall send a copy of each application made under this section to the office of the Commissioner of Customs and Revenue.

History: Subsec. 166.2(3) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(a), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 166.2(3) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(4) Powers of Court — The Tax Court of Canada may grant or dismiss an application made under subsection (1) and, in granting an application, may impose such terms as it deems just or order that the notice of objection be deemed to have been served on the date of its order.

(5) When application to be granted — No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 166.1(1) as soon as circumstances permitted.

Related Provisions: 169 — Appeals.

History: S. 166.2 added by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992.

Selected Cases [s. 166.2]: *Construction Dinamo Inc. v. R.*, [2000] 2 C.T.C. 2865 (TCC) (Objection mailed on last day was properly received).

Definitions [s. 166.2]: "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "Minister", "taxpayer" — 248(1).

167. (1) Extension of time to appeal — Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

Selected Cases [subsec. 167(1)]: *Kershaw v. Canada*, [1992] 1 C.T.C. 301 (FCA) (Application to extend time to file notice of objection granted).

(2) Contents of application — An application made under subsection (1) shall set out the reasons why the appeal was not instituted within the time limited by section 169 for doing so.

History: Subsecs. 167(1), (2) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992. Those subsecs. formerly read:

167. (1) Application to Tax Court of Canada for time extension — Where no objection to an assessment under section 165, appeal to the Tax Court of Canada under section 169 or request under subsection 245(6) has been made or instituted within the time limited by that provision for doing so, an application may be made to the Tax Court of Canada for an order extending the time within which a notice of objection may be served, an appeal instituted or a request made, and the Court may, if in its opinion the circumstances of the case are such that it would be just and equitable to do so, make an order extending the time of objecting, appealing or making a request and may impose such terms as it deems just.

(2) Idem — The application referred to in subsection (1) shall set out the reasons why it was not possible to serve the notice of objection, institute the appeal to the Court or make the request under subsection 245(6), as the case may be, within the time otherwise limited by this Act for so doing.

Pre-RSC History: Subsecs. 167(1), (2) substituted by 1988, c. 55, subsec. 146(1). Subsecs. 167(1), (2) formerly read:

167. (1) Application to [Tax Court] for time extension — Where no objection to an assessment under section 165 or appeal to the Tax Court of Canada under section 169 has been made or instituted within the time limited by section 165 or 169, as the case may be, for doing so, an application may be made to the Tax Court of Canada for an order extending the time within which a notice of objection may be served or an appeal instituted and the Court may, if in its opinion the circumstances of the case are such that it would be just and equitable to do so, make an order extending the time for objecting or appealing and may impose such terms as it deems just.

(2) Idem — The application referred to in subsection (1) shall set forth the reasons why it was not possible to serve the notice of objection or institute the appeal to the Court within the time otherwise limited by this Act for so doing.

"Tax Court of Canada" substituted for "Tax Review Board" and "Court" for "Board" in subsecs. 167(1), (2) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

(3) How application made — An application under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, or by sending by registered mail addressed to an office of the Registry, 3 copies of the application accompanied by 3 copies of the notice of appeal.

Proposed Amendment — 167(3)

(3) How application made — An application made under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the application accompanied by three copies of the notice of appeal.

Application: Bill C-24 (Second Reading in the Senate June 28, 2000) (GST technical bill), s. 172, will amend subsec. 167(3) to read as above, in force on Royal Assent.

Technical Notes: See under 166.2(2).

Related Provisions: 165(2) — Service.

History: Subsec. 167(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992. Subsec. 167(3) formerly read:

(3) An application under subsection (1) shall be made by filing with the Registrar of the Tax Court of Canada or by sending by registered mail addressed to the Registrar of the Tax Court of Canada at

Ottawa three copies of the application accompanied by three copies of a notice of objection or notice of appeal, as the case may be.

Pre-RSC History: "Tax Court of Canada" substituted for "Tax Review Board" in subsec. 167(3) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

(4) Copy to Deputy Attorney General — The Tax Court of Canada shall send a copy of each application made under this section to the office of the Deputy Attorney General of Canada.

History: Subsec. 167(4) added by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992.

Pre-RSC History: (For former 167(4) see History to 167(5).)

(5) When order to be made — No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

Related Provisions: 169 — Appeal.

History: Subsec. 167(5) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 139, applicable to applications filed after January 16, 1992. Subsec. 167(5) formerly read:

(5) No order shall be made under subsection (1)

(a) unless the application to extend the time for objecting or appealing, or making the request, as the case may be, is made within one year after the expiration of the time otherwise limited by this Act for objecting to or appealing from the assessment in respect of which the application is made or for making the request under subsection 245(6), as the case may be;

(b) if the Tax Court of Canada has previously made an order extending the time for objecting to or appealing from the assessment or making the request, as the case may be; and

(c) unless the Tax Court of Canada is satisfied that

(i) but for the circumstances mentioned in subsection (1), an objection, appeal or request would have been made or instituted within the time otherwise limited by this Act for so doing,

(ii) the application was brought as soon as circumstances permitted it to be brought, and

(iii) there are reasonable grounds for objecting to or appealing from the assessment or making the request.

Pre-RSC History: Former subsec. 167(4) repealed, 167(5) substituted, by 1988, c. 61, ss. 15, 45(2), in force January 1, 1991. Subsecs. (4), (5) formerly read:

(4) Application for time extension to Federal Court — Where no appeal to the Federal Court of Canada under section 172 has been instituted within the time limited by that section, an application may be made to the Federal Court of Canada by notice filed in the Court and served on the Deputy Attorney General of Canada at least 14 days before the application is returnable for an order extending the time within which such appeal may be instituted and the Court may, if in its opinion the circumstances of the case are such that it would be just and equitable to do so, make an order extending the time for appealing and may impose such terms as it deems just.

(5) When order to be made — No order shall be made under subsection (1) or (4)

(a) unless the application to extend the time for objecting, appealing or making the request, as the case may be, is made within one year after the expiration of the time otherwise limited by this Act for objecting to or appealing from the assessment in respect of which the application is made or for making the request under subsection 245(6), as the case may be;

(b) if the Tax Court of Canada or Federal Court has previously made an order extending the time for objecting to or appealing from the assessment or making the request, as the case may be; and

(c) unless the Tax Court of Canada or Federal Court is satisfied that

(i) but for the circumstances mentioned in subsection (1) or (4), as the case may be, an objection, appeal or request would have been made or instituted within the time otherwise limited by this Act for so doing,

(ii) the application was brought as soon as circumstances permitted it to be brought, and

(iii) there are reasonable grounds for objecting to or appealing from the assessment or making the request.

Subsec. 167(5) substituted by 1988, c. 55, subsec. 146(2). Subsec. 167(5) formerly read:

(5) When order to be made — No order shall be made under subsection (1) or (4)

(a) unless the application to extend the time for objecting or appealing is made within one year after the expiration of the time otherwise limited by this Act for objecting to or appealing from the assessment in respect of which the application is made;

(b) if the Tax Court of Canada or Federal Court has previously made an order extending the time for objecting to or appealing from the assessment; and

(c) unless the Tax Court of Canada or Federal Court is satisfied that,

(i) but for the circumstances mentioned in subsection (1) or (4), as the case may be, an objection or appeal would have been made or taken within the time otherwise limited by this Act for so doing,

(ii) the application was brought as soon as circumstances permitted it to be brought, and

(iii) there are reasonable grounds for objecting to or appealing from the assessment.

"Tax Court of Canada or Federal Court" substituted for "Board or Court" in paras. 167(5)(b), (c) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Selected Cases [subsec. 167(5)]: *Kershaw v. Canada*, [1992] 1 C.T.C. 301 (FCA) (Application to extend time to file notice of objection granted); *Minuteman Press of Canada Co. Ltd. v. MNR*, [1988] 1 C.T.C. 440 (FCA) (Taxpayer's notice of appeal not application for extension of delays; appeal dismissed when filed after prescribed delay); *The Queen v. Pennington*, [1987] 1 C.T.C. 235 (FCA) (Circumstances not justifying application for extension of time to file late notice of objection); *The Queen v. Tohms*, [1985] 2 C.T.C. 130 (FCA) (Extension allowed due to physical condition of taxpayer); *MacIsaac v. The Queen*, [1983] C.T.C. 213 (FCTD) (Revision of assessments cannot be obtained after time for filing notice of objection expired); *Tic Toc Tours Ltd. v. MNR*, [1982] C.T.C. 264 (FCA) (Extension permitted where accountant failed to file notice of objection in time).

Definitions [s. 167]: "taxpayer" — 248(1).

Revocation of Registration of Certain Organizations and Associations

168. (1) Notice of intention to revoke registration — Where a registered charity or a registered Canadian amateur athletic association

(a) applies to the Minister in writing for revocation of its registration,

(b) ceases to comply with the requirements of this Act for its registration as such,

(c) fails to file an information return as and when required under this Act or a regulation,

(d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,

(e) fails to comply with or contravenes any of sections 230 to 231.5, or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

Related Provisions: 149.1(2) — Revocation of registration of charity; 149.1(3) — Revocation of registration of public foundation; 149.1(6.4), (6.5) — Application of s. 168 to registered national arts service organizations; 172(3)(a) — Appeal from revocation; 180(1) — Appeals to Federal Court of Appeal; 188(1), (2) — Revocation tax; 230(2) — Charity must keep records to allow Minister to determine if there are grounds for revocation of registration; 244(5) — Proof of service by mail; 248(1)"registered Canadian amateur athletic association", "registered charity" — Application for registration; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: Para. 168(1)(e) amended by 1986, c. 6, s. 91, to substitute "any of sections 230 to 231.5" for "section 230 or 231".

Subsec. 168(1) amended by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.* to substitute "registered charity" for "registered Canadian charitable organization".

Selected Cases [subsec. 168(1)]: *Maccabi Canada v. MNR*, [1998] 4 C.T.C. 21 (FCA) (No demographic element to be read into definition of "registered Canadian amateur athletic association"); *Renaissance International v. MNR*, [1982] C.T.C. 393 (FCA) (Failing to file notice of intention to revoke registration violated rules of natural justice).

Interpretation Bulletins: IT-496: Non-profit organizations.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T280: Information — Registered charities and registered Canadian amateur athletic associations; T1189: Application to register a Canadian amateur athletic association under the ITA; T2050: Application to register a charity under the ITA; T2052: Registered Canadian amateur athletic association return of information.

(2) Revocation of registration — Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

Related Provisions: 149.1(4) — Revocation of registration of private foundation; 172(3) — Appeal from refusal to register or revocation of registration; 180 — Appeals to Federal Court of Appeal; 188(1) — Revocation tax.

Pre-RSC History: Subsec. 168(2) substituted by 1984, c. 45, s. 69, to substitute "charity" for "organization" and to substitute "on" for "upon", applicable to taxation years commencing after 1983.

"Registered charity" substituted for "registered Canadian charitable organization" in subsec. 168(2) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Information Circulars [s. 168]: 80-10R: Registered charities: operating a registered charity.

Definitions [s. 168]: "contravene" — *Interpretation Act* 35(1); "Minister", "person", "registered Canadian amateur athletic association", "registered charity", "regulation" — 248(1); "writing" — *Interpretation Act* 35(1).

DIVISION J — APPEALS TO THE TAX COURT OF CANADA AND THE FEDERAL COURT

Proposed Amendment — Division J — Title

Application: Bill C-40 (First Reading June 15, 2000), s. 144, will amend the heading before s. 169 by substituting "Federal Court of Appeal" for "Federal Court", in force on a day to be fixed by order of the Governor in Council.

169. (1) Appeal — Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

Related Provisions: 152(9) — Minister may raise new basis for assessment during appeal; 167 — Application for time extension; 170 — Informal procedure appeals; 173(2), 174(5) — Time during consideration not to count; 175 — General procedure appeals; 179.1 — Where no reasonable grounds for appeal; 225.1(3) — Collection restrictions; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

Selected Cases [subsec. 169(1)]: *Dural Products Ltd. v. MNR*, [1992] 2 C.T.C. 2734 (TCC); on appeal (Dissolved former wholly-owned subsidiary's right of appeal against assessment cannot be assigned to parent corporation); *460354 Ontario Inc. v. MNR*, [1992] 2 C.T.C. 287 (FCTD) (Reassessment of dissolved corporation was valid administrative proceeding brought within 5 years of dissolution in accordance with Ontario *Business Corporations Act*, s. 241; appeal therefrom was valid as final stage of proceeding commenced by reassessment, and not commencement of an action).

Information Circulars: 98-1: Collections policies.

Forms: T400A: Notice of objection; TLA4: Notification of rejection of notice of objection; TLA7: Filing appeals to the Tax Court of Canada.

(2) Limitation of right to appeal from assessments or determinations — Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(b) under subsection 165(3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph (a), or

(c) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to (5),

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1), but only to the extent that the reasons for the appeal can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the taxpayer to appeal from an assessment or a determination issued or made before that time.

Related Provisions: 165(1.1) — Limitation of right to object to assessments or determinations.

History: The portion of subsec. 169(2) before para. (b) and the portion after para. (c) amended by 1998, c. 19, subsecs. 193(1), (2), applicable in respect of determinations made after June 18, 1998. Those portions formerly read:

(2) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest or penalties payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

. . . . .

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1) only to the extent that the reasons for the appeal can reasonably be regarded as relating to a matter that gave rise to the assessment or determination and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the taxpayer to appeal from an assessment or a determination issued or made before that time.

Para. 169(2)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 100(1), to add reference to subsection 152(4.3).

S. 169 renumbered as subsec. 169(1), and subsec. (2) added, by 1994, c. 7, Sch. II (1991, c. 49), s. 140, applicable to appeals from assessments or determinations objected to after December 17, 1991.

(2.1) Limitation on appeals by large corporations — Notwithstanding subsections (1) and (2), where a corporation that was a large corporation in a taxation year (within the meaning assigned by subsection 225.1(8)) served a notice of objection to an assessment under this Part for the year, the corporation may appeal to the Tax Court of Canada to have the assessment vacated or varied only with respect to

(a) an issue in respect of which the corporation has complied with subsection 165(1.11) in the notice, or

(b) an issue described in subsection 165(1.14) where the corporation did not, because of subsection 165(7), serve a notice of objection to the assessment that gave rise to the issue

and, in the case of an issue described in paragraph (a), the corporation may so appeal only with respect to the relief sought in respect of the issue as specified by the corporation in the notice.

Related Provisions: 171(1) — Jurisdiction of Tax Court on appeal.

History: Subsec. 169(2.1) added by 1995, c. 21, s. 71, applicable to appeals instituted after June 22, 1995.

(2.2) Waived issues — Notwithstanding subsections (1) and (2), for greater certainty a taxpayer may not appeal to the Tax Court of Canada to have an assessment under this Part vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the taxpayer.

Related Provisions: 165(1.2) — No objection permitted where right to object waived.

History: Subsec. 169(2.2) added by 1995, c. 21, s. 71, applicable after June 22, 1995 to waivers signed at any time.

(3) Disposition of appeal on consent — Notwithstanding section 152, for the purpose of disposing of an appeal made under a provision of this Act, the Minister may at any time, with the consent in writing of the taxpayer, reassess tax, interest, penalties or other amounts payable under this Act by the taxpayer.

Related Provisions: 165(1.2) — Limitation of right to object; 169(4) — Provisions applicable; 225.1(1) — No collection restrictions following assessment.

(4) Provisions applicable — Division I applies, with such modifications as the circumstances require, in respect of a reassessment made under subsection (3) as though it had been made under section 152.

History: Subsecs. 169(3) and (4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 100(2).

Pre-RSC History: Para. 169(b) substituted by 1984, c. 45, s. 70, to substitute "90" for "180", applicable to notices of objection served after December 20, 1984.

"Tax Court of Canada" substituted for "Tax Review Board" in the heading preceding s. 169 in that portion of s. 169 preceding para. (a) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Selected Cases [s. 169]: *495187 Ontario Ltd. v. MNR*, [1992] 1 C.T.C. 356 (FCA) (Sole shareholder of dissolved corporation allowed to appeal reassessment against company); *Bowen v. MNR*, [1991] 2 C.T.C. 266 (FCA) (Notice of confirmation of assessment received after deadline for filing notice of appeal and obtaining extension; application for extension of time for filing dismissed); *Minuteman Press of Canada Co. Ltd. v. MNR*, [1988] 1 C.T.C. 440 (FCA) (Taxpayer's notice of appeal not found to be extension of time; appeal dismissed when filed after the 90-day limit); *Danielson v. MNR*, [1986] 2 C.T.C. 341 (FCTD) (Application for *certiorari* not appropriate procedure for appeal against assessment); *Hart et al. v. MNR*, [1986] 2 C.T.C. 63 (FCTD); appealed to FCA (May 30, 1986), File A-329-86 (Income tax assessment cannot be challenged by motion to quash); *Gibbs v. MNR*, [1984] C.T.C. 434 (FCTD) (Assessment cannot be challenged by motion to quash); *The Queen v. Parsons; The Queen v. Flemming Estate*, [1984] C.T.C. 352 (FCA) (Assessment can be challenged only upon appeal provisions, not by motion to quash); *The Queen v. B & J Music Ltd.*, [1980] C.T.C. 287 (FCTD) (Assessment not in issue; Tax Review Board had no jurisdiction to hear appeal).

Definitions [s. 169]: "assessment", "Minister", "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

I.T. Application Rules [ss. 169–180]: 62(5).

170. (1) [Informal Procedure appeals —] Notice to Commissioner — Where an appeal is made to the Tax Court of Canada under section 18 of the *Tax Court of Canada Act*, the Court shall forthwith send a copy of the notice of the appeal to the office of the Commissioner of Customs and Revenue.

History: Subsec. 170(1) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(b), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 170(1) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(2) Notice, etc., to be forwarded to Tax Court of Canada — Forthwith after receiving notice under sub-

section (1) of an appeal, the Commissioner of Customs and Revenue shall forward to the Tax Court of Canada copies of all returns, notices of assessment, notices of objection and notification, if any, that are relevant to the appeal.

History: Subsec. 170(2) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(b), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 170(2) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

Related Provisions [s. 170]: 169 — Appeal.

Pre-RSC History [s. 170]: Subsec. 170(1) amended by 1988, c. 61, s. 16, to add "under section 18 of the *Tax Court of Canada Act*" and to substitute "a copy of the notice" for "a note", in force January 1, 1991.

"Tax Court of Canada" substituted for "Board" in s. 170 by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Definitions [s. 170]: "assessment" — 248(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25.

I.T. Application Rules [s. 170]: 62(5).

171. (1) Disposal of appeal — The Tax Court of Canada may dispose of an appeal by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment,

(ii) varying the assessment, or

(iii) referring the assessment back to the Minister for reconsideration and reassessment.

Related Provisions: 152(1.2) — Assessment — provisions applicable; 152(9) — Minister may raise new basis for assessment during appeal process; 169 — Appeal; 202(3) Returns and payment of estimated tax — provisions applicable; 227(7) — Withholding taxes; 227(10) — Assessment.

Selected Cases [subsec. 171(1)]: *Ashby v. Canada*, [1996] 1 C.T.C. 2464 (TCC) (Deductions made but not remitted differ from case where deductions not made); *Low (A.H.) v. Canada*, [1993] 2 C.T.C. 2227 (TCC) (Court had no jurisdiction to order payment of refund); *McCambridge v. The Queen*, [1979] C.T.C. 473 (FCA) (Appeal to Tax Review Board cannot be disposed of by administrative action; requires positive order or judgment by member of Tax Review Board).

(2), (3) [Repealed under former Act]

Pre-RSC History: Subsecs. 171(2), (3) repealed by 1984, c. 45, s. 71, applicable with respect to appeals disposed of after December 20, 1984. Subsecs. 171(2), (3) formerly read:

(2) Assessment under s. 246 — Where an appeal relates to an assessment or reassessment made pursuant to a direction given under section 246, the Tax Court of Canada has no jurisdiction to vacate or vary the assessment in so far as it is made in accordance with that direction; and, if it appears that the only matter at issue in the appeal is whether one of the purposes of the transaction or transactions was the avoidance or reduction of taxes, the Tax Court of Canada shall forthwith dismiss the appeal.

(3) Costs — No costs may be awarded by the Tax Court of Canada on the disposition of an appeal.

(4) [Repealed]

History: Subsec. 171(4) repealed by 1994, c. 7, Sch. IX (1993, c. 27), s. 215, applicable June 10, 1993. Subsec. (4) formerly read:

(4) Copy of decision to Minister and appellant — On the disposition of an appeal referred to in section 18 of the *Tax Court of Canada Act*, the Tax Court of Canada shall forthwith forward, by registered mail, a copy of the decision and written reasons, if any, given therefor to the Minister and the appellant.

Pre-RSC History: Subsec. 171(4) substituted by 1988, c. 61, s. 17, in force January 1, 1991. Subsec. 171(4) formerly read:

(4) Copy of decision to Minister and appellant — Upon the disposition of an appeal, the Tax Court of Canada shall forthwith forward, by registered mail, a copy of the decision and any written reasons given therefor to the Minister and the appellant.

"Tax Court of Canada" substituted for "Board" in s. 171 by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Definitions [s. 171]: "assessment", "Minister" — 248(1).

172. (1), (2) [Repealed under former Act]

Pre-RSC History: Subsecs. 172(1), (2) repealed by 1988, c. 61, subsec. 18(1), in force January 1, 1991. Subsecs. 172(1), (2) formerly read:

172. (1) Appeal — The Minister or the taxpayer may, within 120 days from the day on which the Registrar of the Tax Court of Canada mails the decision on an appeal under section 169 to the Minister and the taxpayer, appeal to the Federal Court of Canada.

(2) Appeal to Federal Court of Canada — Where a taxpayer has served a notice of objection to an assessment under section 165, he may, in place of appealing to the Tax Court of Canada under section 169, appeal to the Federal Court of Canada at a time when, under section 169, he could have appealed to the Tax Court of Canada.

"Tax Court of Canada" substituted for "Tax Review Board" in subsecs. 172(1), (2) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

(3) Appeal from refusal to register, revocation of registration, etc. — Where the Minister

(a) refuses to register an applicant for registration as a charitable organization, private foundation, public foundation or Canadian amateur athletic association, or gives notice under subsection 149.1(2), (3), (4) or (4.1) or 168(1) to any such organization, foundation or association that the Minister proposes to revoke its registration,

(a.1) designates or refuses to designate a registered charity pursuant to subsection 149.1(6.3) of this Act or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) refuses to issue a certificate of exemption under subsection 212(14),

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan, or

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Related Provisions: 147.1(13) — Revocation of registration; 149.1(6.4) — Application to registered national arts service organizations; 168(2) — Revocation of registration of certain organizations; 172(4), (5) — Deemed refusal to register; 175 — Institution of appeals; 180(1) — Deadline for filing notice of appeal; 204.81(9) — Right of appeal; 212(14) — Certificate of exemption.

History: Para. 172(3)(e) and the closing words of subsec. 172(3) amended, and para. (e.1) added, by 1998, c. 19, subsecs. 46(1), (2), applicable after 1997. Para. 172(3)(e) and the closing words of subsec. 172(3) formerly read:

> (e) refuses to accept for registration for the purposes of this Act any education savings plan or revokes the registration of any such plan,
>
> . . . . .
>
> the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Para. 172(3)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 141, to substitute "149.1(2), (3), (4) or (4.1) or 168(1)" for "168(1)", applicable after 1989.

Pre-RSC History: All that portion of subsec. 172(3) following para. (e) substituted by 1990, c. 35, subsec. 18(1), applicable after 1988. That portion formerly read:

> (f) [Repealed]
>
> (g) refuses to accept for registration for the purposes of this Act any retirement income fund or revokes the registration of any such fund,
>
> the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g) or a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), may appeal from such decision or from the giving of such notice to the Federal Court of Appeal.

Para. 172(3)(a.1) amended by 1988, c. 55, subsec. 147(1), to substitute "subsection 110(8.1) or (8.2) or 149.1(6.3)" for "subsection 110(8.1) or (8.2)", applicable to 1988 *et seq.*

Para. 172(3)(f) repealed, and all that portion of subsec. 172(3) following para. (g) substituted to delete reference to paragraph (f) following "in a case described in paragraph (b), (d), (e)", by 1986, c. 6, subsecs. 92(1), (2). Para. (f) formerly read:

> (f) refuses to accept for registration for the purposes of this Act any home ownership savings plan or revokes the registration of any such plan, or

Para. 172(3)(a) and that portion of subsec. 172(3) following para. (g) substituted and para. (a.1) added by 1984, c. 45, subsecs. 72(1), (2), applicable with respect to designations and applications made after February 15, 1984. Para. 172(3)(a) and that portion following para. (g) formerly read:

> (a) refuses to register an applicant for registration as a registered charity or registered Canadian amateur athletic association, or gives notice under subsection 168(1) to such a charity or association that he proposes to revoke its registration
>
> . . . . .
>
> the applicant or the charity or association, as the case may be, in a case described in paragraph (a), the applicant in a case described in paragraph (b), (d), (e), (f) or (g) or a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), may, notwithstanding section 24 of the *Federal Court Act*, appeal from such decision or from the giving of such notice to the Federal Court of Appeal.

Para. 172(3)(g) added, all that portion after para. (f) substituted by 1977-78, c. 32, subsec. 41(1), to add reference to para. (g).

Para. 172(3)(a), all that portion of subsec. 172(3) following para. (f) substituted by 1977-78, c. 1, subsecs. 79(1), (2), applicable to 1977 *et seq.*, to substitute "charity" for "organization".

"Registered charity" substituted for "registered Canadian charitable organization" in para. 172(3)(a) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

All that portion of subsec. 172(3) following para. (d) substituted by 1974-75-76, c. 26, subsec. 108(1), applicable, as to para. 172(3)(e), to 1972 *et seq.*, and, as to para. 172(3)(f), to 1974 *et seq.* That portion formerly read:

> the applicant or the organization or association, as the case may be, in a case described in paragraph (a), the applicant in a case described in paragraph (b) or (d), or a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), may, notwithstanding section 24 of the *Federal Court Act*, appeal from such decision or from the giving of such notice to the Federal Court of Appeal.

Selected Cases [subsec. 172(3)]: *Interfaith Development Education Assn., Burlington v. MNR*, [1997] 3 C.T.C. 271 (FCA) (Restricted interpretation given to "advancement of education"); *Vancouver Regional FreeNet Association v. MNR*, [1996] 3 C.T.C. 102 (FCA) (Provision of access to information on Internet free of charge was charitable activity); *Polish Canadian Television Production Society v. MNR*, [1987] 1 C.T.C. 319 (FCA) (Application for registration as charitable organization for association refused despite multicultural purposes); *Scarborough Community Legal Services v. The Queen*, [1985] 1 C.T.C. 98 (FCA) (Refusal of registration as charitable organization not subject to judicial process when decision strictly administrative).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T285: Information re appeal from Minister's refusal to register as a charity or Canadian amateur athletic association.

(4) Deemed refusal to register — For the purposes of subsection (3), the Minister shall be deemed to have refused

(a) to register an applicant for registration as a charitable organization, private foundation, public foundation or Canadian amateur athletic association,

(a.1) to designate a registered charity pursuant to an application under subsection 149.1(6.3) of this Act or subsection 110(8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

(b) to accept for registration for the purposes of this Act any retirement savings plan or profit sharing plan,

(c) to issue a certificate of exemption under subsection 212(14),

(d) to accept for registration for the purposes of this Act any education savings plan, or

(e) [Repealed under former Act]

(f) to accept for registration for the purposes of this Act any retirement income fund,

where the Minister has not notified the applicant of the disposition of the application within 180 days after the filing of the application with the Minister, and, in any such case, an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

Related Provisions: 167(4) — Application for time extension; 180 — Appeals to Federal Court of Appeal.

Pre-RSC History: Para. 172(4)(a.1) amended by 1988, c. 55, subsec. 147(2), to substitute "subsection 110(8.2) or 149.1(6.3)" for "subsection 110(8.2)", applicable to 1988 *et seq.*

Para. 172(4)(e) repealed by 1986, c. 6, subsec. 92(3). Para. 172(4)(e) formerly read:

> (e) to accept for registration for the purposes of this Act any home ownership savings plan, or

Para. 172(4)(a) amended to substitute "charitable organization, private foundation, public foundation or Canadian amateur athletic association" for "registered charity or registered Canadian amateur athletic association"; that portion of subsec. 172(4) following para. (f) substituted; and para. (a.1) added by 1984, c. 45, subsecs. 72(3), (4), applicable with re-

spect to designations and applications made after February 15, 1984. That portion following para. (f) formerly read:

> where he has not notified the applicant for registration or for the certificate, as the case may be, of his disposition of the application within 180 days after the filing of the application with him, and, in any such case, an appeal from such refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

Para. 172(4)(f) added by 1977-78, c. 32, subsec. 41(2).

"Registered charity" substituted for "registered Canadian charitable organization" in para. 172(4)(a) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Paras. 172(4)(d), (e) added by 1974-75-76, c. 26, subsec. 108(2), applicable, as to para. 172(4)(d), to 1972 *et seq.*, and, as to para. 172(4)(e), to 1974 *et seq.*

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(5) Idem — For the purposes of subsection (3), the Minister shall be deemed to have refused

(a) to register for the purposes of this Act any pension plan, or

(b) to accept an amendment to a registered pension plan

where the Minister has not notified the applicant of the Minister's disposition of the application within 1 year after the filing of the application with the Minister, and, in any such case, an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

History: Subsec. 172(5) added by 1990, c. 35, subsec. 18(2), applicable after 1988.

(6) Application of subsec. 149.1(1) — The definitions in subsection 149.1(1) apply to this section.

Origin of subsec. 172(6): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsec. 149.1(1)).

Definitions [s. 172]: "administrator" — 147.1(1); "Canadian amateur athletic association" — 110(8), 248(1); "charitable foundation", "charitable organization", "charitable purposes", "charity" — 149.1(1); "employee", "employer", "Minister" — 248(1); "private foundation" — 149.1(1), 248(1); "profit sharing plan" — 147(1); "promoter" — 146.1(1); "public foundation" — 149.1(1), 248(1); "registered Canadian amateur athletic association", "registered charity" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "retirement income fund" — 146.3(1), 248(1); "retirement savings plan" — 146(1), 248(1); "taxpayer" — 248(1).

Information Circulars [s. 172]: 80-10R: Registered charities: operating a registered charity.

173. (1) References to Tax Court of Canada — Where the Minister and a taxpayer agree in writing that a question of law, fact or mixed law and fact arising under this Act, in respect of any assessment, proposed assessment, determination or proposed determination, should be determined by the Tax Court of Canada, that question shall be determined by that Court.

Related Provisions: 174 — Reference of common questions to Tax Court; 225.1(4) — Collection by the Minister.

(2) Time during consideration not to count — The time between the day on which proceedings are instituted in the Tax Court of Canada to have a question determined pursuant to subsection (1) and the day on which the question is finally determined shall not be counted in the computation of

(a) the periods determined under subsection 152(4),

(b) the time for service of a notice of objection to an assessment under section 165, or

(c) the time within which an appeal may be instituted under section 169,

for the purpose of making an assessment of the tax payable by the taxpayer who agreed in writing to the determination of the question, for the purpose of serving a notice of objection thereto or for the purpose of instituting an appeal therefrom, as the case may be.

Pre-RSC History: Para. 173(2)(a) substituted by 1990, c. 39, s. 45, applicable after April 27, 1989. Para. 173(2)(a) formerly read:

(a) the 3 year and 6 year periods referred to in subsection 152(4),

Subsec. 173(1) substituted, that portion of subsec. 173(2) preceding para. (a) amended to substitute "Tax Court of Canada" for "Federal Court", and para. 173(2)(c) amended to delete "or subsection 172(2)" from the end, by 1988, c. 61, s. 19, in force January 1, 1991. Subsec. 173(1) formerly read:

> 173. (1) References to Federal Court of questions of law, etc. — Where the Minister and a taxpayer agree in writing that a question of law, fact, or mixed law and fact arising under this Act should be determined by the Federal Court, that question shall be determined by the Court pursuant to subsection 17(3) of the *Federal Court Act*.

Para. 173(2)(a) substituted by 1984, c. 45, s. 73, to substitute "3" for "4" and "6" for "7", applicable with respect to 1983 *et seq.*

Para. 173(2)(a) substituted by 1984, c. 1, s. 89, applicable after April 19, 1983. Para. 173(2)(a) formerly read:

(a) the 4 year period referred to in subsection 152(4),

Definitions [s. 173]: "assessment", "Minister", "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

174. (1) Reference of common questions to Tax Court of Canada — Where the Minister is of the opinion that a question of law, fact or mixed law and fact arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments or proposed assessments in respect of two or more taxpayers, the Minister may apply to the Tax Court of Canada for a determination of the question.

Related Provisions: 173 — Reference to Tax Court; 225.1(4) — Collection by the Minister; 248(10) — Series of transactions.

Selected Cases [subsec. 174(1)]: *Quemet Corp. v. The Queen*, [1979] C.T.C. 414 (FCTD) (Joinder of taxpayer and vendor for evidence of fictitious purchases of goods "sold").

See also Selected Cases under subsec. 174(3).

(2) Application to Court — An application under subsection (1) shall set out

(a) the question in respect of which the Minister requests a determination,

(b) the names of the taxpayers that the Minister seeks to have bound by the determination of the question, and

(c) the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of tax payable by each of the taxpayers named in the application,

and a copy of the application shall be served by the Minister on each of the taxpayers named in the application and on any other persons who, in the opinion of the Tax Court of Canada, are likely to be affected by the determination of the question.

(3) Where Tax Court of Canada may determine question — Where the Tax Court of Canada is satisfied that a determination of the question set out in an application under this section will affect assessments or proposed assessments in respect of two or more taxpayers who have been served with a copy of the application and who

are named in an order of the Tax Court of Canada pursuant to this subsection, it may

(a) if none of the taxpayers so named has appealed from such an assessment, proceed to determine the question in such manner as it considers appropriate; or

(b) if one or more of the taxpayers so named has or have appealed, make such order joining a party or parties to that or those appeals as it considers appropriate and proceed to determine the question.

Selected Cases [subsec. 174(3)]: *The Queen v. Bisson*, [1978] C.T.C. 332 (FCTD) (Petition seeking joinder of parties allowed for determination of respective shareholdings); *The Queen v. Dain*, [1973] C.T.C. 801 (FCTD) (Application for joinder of parties must be made to tribunal seized with taxpayer's appeal, Federal Court had no jurisdiction from decision of Tax Review Board).

See also Selected Cases under subsec. 174(1).

(4) Determination final and conclusive — Subject to subsection (4.1), where a question set out in an application under this section is determined by the Tax Court of Canada, the determination thereof is final and conclusive for the purposes of any assessments of tax payable by the taxpayers named by it pursuant to subsection (3).

Selected Cases [subsec. 174(4)]: *Stern v. The Queen*, [1984] C.T.C. 647 (FCTD) (Former wife required to participate in litigation when joined as defendant).

(4.1) Appeal — Where a question set out in an application under this section is determined by the Tax Court of Canada, the Minister or any of the taxpayers who have been served with a copy of the application and who are named in an order of the Court pursuant to subsection (3) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, or the *Federal Court Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal from the determination.

(5) Time during consideration of question not counted — The time between the day on which an application under this section is served on a taxpayer pursuant to subsection (2) and

(a) in the case of a taxpayer named in an order of the Tax Court of Canada pursuant to subsection (3), the day on which the determination becomes final and conclusive and not subject to any appeal, or

(b) in the case of any other taxpayer, the day on which the taxpayer is served with notice that the taxpayer has not been named in an order of the Tax Court of Canada pursuant to subsection (3),

shall not be counted in the computation of

(c) the periods determined under subsection 152(4),

(d) the time for service of a notice of objection to an assessment under section 165, or

(e) the time within which an appeal may be instituted under section 169,

for the purpose of making an assessment of the tax, interest or penalties payable by the taxpayer, serving a notice of objection thereto or instituting an appeal therefrom, as the case may be.

Pre-RSC History: Para. 174(5)(c) substituted by 1990, c. 39, s. 46, applicable after April 27, 1989. Para. 174(5)(c) formerly read:

(c) the 3 year and 6 year periods referred to in subsection 152(4),

Subsec. 174(1) amended to substitute "to Tax Court" for "to Federal Court or Tax Court" in the heading, and "the Minister may apply to the Tax Court of Canada" for "he may apply to the Tax Court of Canada or, with the concurrence of the taxpayers involved, to the Federal Court–Trial Division"; that portion of subsec. 174(2) following para. (c) amended to substitute "Tax Court of Canada" for "Tax Court of Canada or the Federal Court–Trial Division, as the case may be"; that portion of subsec. 174(3) preceding para. (a) amended to substitute "Tax Court of Canada" for "Tax Court of Canada or Federal Court" in the heading, and "Tax Court of Canada" first for "Tax Court of Canada or the Federal Court–Trial Division" and then for "Tax Court of Canada or Federal Court, as the case may be"; subsec. 174(4) amended to substitute "Tax Court of Canada" for "Tax Court of Canada or the Federal Court–Trial Division"; subsec. 174(4.1) and paras. 174(5)(a), (b), (e) substituted, by 1988, c. 61, s. 20, in force January 1, 1991. Subsec. 174(4.1) and paras. 174(5)(a), (b), (e) formerly read:

(4.1) Appeal — Where a question set forth in an application under this section is determined by the Tax Court of Canada or the Federal Court–Trial Division, the Minister or any of the taxpayers who have been served with a copy of the application and who are named in an order of the Tax Court of Canada or the Federal Court, as the case may be, pursuant to subsection (3), may, in accordance with the provisions of this Act or the *Federal Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court, appeal from the determination

. . . . .

(a) in the case of a taxpayer named in an order of the Tax Court of Canada or the Federal Court–Trial Division, as the case may be, pursuant to subsection (3), the day on which the determination becomes final and conclusive and not subject to any appeal, or

(b) in the case of any other taxpayer, the day on which he is served with notice that he has not been named in an order of the Tax Court of Canada or the Federal Court, as the case may be, pursuant to subsection (3),

. . . . .

(e) the time within which an appeal may be instituted under section 169 or subsection 172(2),

Para. 174(5)(c) substituted by 1984, c. 45, s. 74, to substitute "3" for "4" and "6" for "7", applicable with respect to 1983 *et seq.*

Para. 174(5)(c) substituted by 1984, c. 1, s. 90, applicable after April 19, 1983. Para. 174(5)(c) formerly read:

(c) the 4 year period referred to in subsection 152(4),

"Tax Court of Canada" substituted for "Tax Review Board" and "Board" and "Federal Court" for "Court" in subsecs. 174(1)–(4.1) and paras. 174(5)(a), (b) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Subsecs. 174(1), (3)–(5) substituted ((4.1) being added) by 1979, c. 5, subsecs. 55(1), (2). Subsecs. 174(1), (3)–(5) formerly read:

174. (1) Where the Minister is of the opinion that a question of law, fact or mixed law and fact arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments in respect of two or more taxpayers, he may apply to the Tax Review Board or the Federal Court–Trial Division for a determination of the question.

. . . . .

(3) Where the Tax Review Board or the Federal Court–Trial Division is satisfied that a determination of the question set forth in an application under this section will affect assessments in respect of two or more taxpayers who have been served with a copy of the application and who are named in an order of the Board or the Court, as the case may be, pursuant to this subsection, it may

(a) if none of the taxpayers so named has appealed from such an assessment, proceed to determine the question in such manner as it considers appropriate, or

(b) if one or more of the taxpayers so named has or have appealed, make such order joining a party or parties to that or those appeals as it considers appropriate.

(4) Where a question set forth in an application under this section is determined by the Tax Review Board or the Federal Court–Trial Division, the determination thereof is, subject to any appeal therefrom in accordance with the *Federal Court Act*, final and conclusive for the purposes of any assessments of tax payable by the taxpayers named by it pursuant to subsection (3),

(5) The time between the day on which an application under this section is served on a taxpayer pursuant to subsection (2), and

(a) in the case of a taxpayer named in an order of the Tax Review Board or the Federal Court–Trial Division, as the case may be, pursuant to subsection (3), the day on which the ques-

tion is finally determined pursuant to paragraph (3)(a) or on which an order is made under paragraph (3)(b), or

(b) in the case of any other taxpayer, the day on which he is served with notice that he has not been named in an order of the Board or the Court, as the case may be, pursuant to subsection (3),

shall not be counted in the computation of

(c) the 4-year period referred to in subsection 152(4),

(d) the time for service of a notice of objection to an assessment under section 165, or

(e) the time within which an appeal may be instituted under section 169 or subsection 172(2),

for the purpose of making an assessment of the tax payable by the taxpayer, serving a notice of objection thereto or instituting an appeal therefrom, as the case may be.

Definitions [s. 174]: "assessment", "Minister", "person", "series of transactions", "taxpayer" — 248(1).

175. Institution of appeals — An appeal to the Tax Court of Canada under this Act, other than one referred to in section 18 of the *Tax Court of Canada Act*, shall be instituted in the manner set out in that Act or in any rules made under that Act.

Related Provisions: 170(1) — Informal procedure appeals.

History: S. 175 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 101. S. 175 formerly read:

175. (1) An appeal to the Tax Court of Canada under this Act, other than one referred to in section 18 of the *Tax Court of Canada Act*, shall be instituted

(a) in the manner set out in the *Tax Court of Canada Act* or any rules made under that Act; or

(b) by the filing by the Minister in the Registry of the Tax Court of Canada of a copy of a notice of objection pursuant to paragraph 165(3)(b).

(2) Service of originating document — Where a copy of a notice of objection is filed in the Registry of the Tax Court of Canada by the Minister pursuant to paragraph 165(3)(b) and the Minister files the copy of the notice of objection, together with two additional copies thereof and a certificate as to the latest known address of the taxpayer, an officer of the Registry of the Court shall, after verifying the accuracy of the copies, forthwith on behalf of the Minister serve the copy of the notice of objection on the taxpayer by sending the additional copies thereof by registered mail addressed to the taxpayer at the address set out in the certificate.

(3) Certificate — Where copies have been served on a taxpayer under subsection (2), a certificate signed by an officer of the Registry of the Tax Court of Canada as to the date of filing and the date of mailing of the copies shall be transmitted to the office of the Deputy Attorney General of Canada and that certificate is evidence of the date of filing and the date of service of the document referred to therein.

Pre-RSC History: S. 175 substituted by 1988, c. 61, s. 21, in force January 1, 1991. S. 175 formerly read:

175. (1) Institution of appeals — An appeal to the Federal Court under this Act, other than an appeal to which section 180 applies, shall be instituted,

(a) in the case of an appeal by a taxpayer,

(i) in the manner set forth in section 48 of the *Federal Court Act*, or

(ii) by the filing by the Minister in the Registry of the Federal Court of a copy of a notice of objection pursuant to paragraph 165(3)(b); and

(b) in the case of an appeal by the Minister, in the manner provided by the Federal Court Rules for the commencement of an action.

(2) Counterclaim or cross-demand — If the respondent to an appeal from a decision of the Tax Court of Canada desires to appeal from that decision, he may do so, whether or not the time fixed by section 172 has expired, by a counterclaim or cross-demand instituted in accordance with the Federal Court Rules.

(3) Deemed action — An appeal instituted under this section shall be deemed to be an action in the Federal Court to which the *Federal Court Act* and the Federal Court Rules applicable to an ordinary action apply, except as varied by special rules made in respect of such appeals, and except that

(a) the Rules concerning joinder of parties and causes of action do not apply except to permit the joinder of appeals instituted under this section;

(b) a copy of a notice of objection filed in the Registry of the Federal Court by the Minister pursuant to paragraph 165(3)(b) shall be deemed to be a statement of claim or declaration that was filed in the Registry of the Federal Court by the taxpayer and served by him on the Minister on the day on which it was so filed by the Minister; and

(c) an originating document or copy of a notice of objection filed by the Minister in the Registry of the Federal Court shall be served in the manner provided in subsection (4).

(4) Service of originating document — Where an appeal is instituted by the Minister under this section or a copy of a notice of objection is filed in the Registry of the Federal Court by him pursuant to paragraph 165(3)(b) and the Minister files the originating document or the copy of the notice of objection, together with two copies or additional copies thereof and a certificate as to the latest known address of the taxpayer, an officer of the Registry of the Court shall, after verifying the accuracy of the copies, forthwith on behalf of the Minister serve the originating document or the copy of the notice of objection on the taxpayer by sending the copies or additional copies thereof by registered mail addressed to him at the address set forth in the certificate.

(5) Certificate — Where copies have been served on a taxpayer under subsection (4), a certificate signed by an officer of the Registry of the Federal Court as to the date of filing and the date of mailing of the copies shall be transmitted to the office of the Deputy Attorney General of Canada and such certificate is evidence of the date of filing and the date of service of the document referred to therein.

"Tax Court of Canada" substituted for "Tax Review Board" in subsec. 175(2) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Selected Cases [s. 175]: *Laird v. The Queen*, [1987] 1 C.T.C. 255 (FCTD) (Not in interest of justice to resolve issue by default judgment when Crown failed to file defence within limitation period); *Tucker v. The Queen*, [1978] C.T.C. 700 (FCTD) (Each notice of objection should be treated as originating separate action); *Fredericton Housing Ltd. v. The Queen*, [1973] C.T.C. 400 (FCA) (Improperly signed statement of claim not voided when containing necessary facts); *Thorson v. MNR*, 72 D.T.C. 6459 (FCTD) (Application to strike out taxpayer's notice of appeal dismissed when case not beyond doubt).

Definitions [s. 175]: "Minister", "taxpayer" — 248(1).

176. (1) Notice, etc., to be forwarded to Tax Court of Canada — As soon as is reasonably practicable after receiving notice of an appeal to the Tax Court of Canada, other than one referred to in section 18 of the *Tax Court of Canada Act*, the Minister shall cause to be transmitted to the Tax Court of Canada and to the appellant, copies of all returns, notices of assessment, notices of objection and notifications, if any, that are relevant to the appeal.

Selected Cases [subsec. 176(1)]: *Gernhart v. R.*, [2000] 1 C.T.C. 192 (FCA); rev'g [1997] 2 C.T.C. 23 (FCTD) (Requirement to file income tax returns with Tax Court is unreasonable seizure; provision unconstitutional).

(2) Documents to be transferred to Federal Court — As soon as is reasonably practicable after receiving notice of an appeal to the Federal Court of Appeal in respect of which section 180 applies, the Minister shall cause to be transmitted to the Registry of the Federal Court copies of all documents that are relevant to the decision of the Minister appealed from.

Proposed Amendment — 176(2)

(2) Documents to be transferred to Federal Court of Appeal — As soon as is reasonably practica-

ble after receiving notice of an appeal to the Federal Court of Appeal in respect of which section 180 applies, the Minister shall cause to be transmitted to the registry of that Court copies of all documents that are relevant to the decision of the Minister appealed from.

Application: Bill C-40 (First Reading June 15, 2000), s. 145, will amend subsec. 176(2) to read as above, in force on a day to be fixed by order of the Governor in Council.

Pre-RSC History: S. 176 substituted by 1988, c. 61, s. 21, in force January 1, 1991. S. 176 formerly read:

> 176. (1) Transfer of relevant documents to the Federal Court — Where an appeal to the Federal Court is from a decision of the Tax Court of Canada, the Registrar thereof shall, upon being notified of the appeal, cause to be transmitted to the Registry of the Federal Court all papers filed with the Tax Court of Canada on the appeal thereto together with a transcript of the record of the proceedings before the Tax Court of Canada.
>
> (2) Idem — Where an appeal to the Federal Court is from a decision of the Minister, the Minister shall, upon the institution of the appeal, cause to be transmitted to the Registry of the Federal Court copies of all documents relevant to the assessment or, in the case of an appeal to which section 180 applies, to the decision of the Minister appealed from.

"Tax Court of Canada" substituted for "Tax Review Board" in subsec. 176(1) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Definitions [s. 176]: "assessment", "Minister" — 248(1).

177. [Repealed under former Act]

Pre-RSC History: S. 177 repealed by 1988, c. 61, s. 21, in force January 1, 1991. S. 177 formerly read:

> 177. Disposal of appeal — The Federal Court may dispose of an appeal, other than an appeal to which section 180 applies, by
>
> (a) dismissing it; or
>
> (b) allowing it and
>
> (i) vacating the assessment,
>
> (ii) varying the assessment,
>
> (iii) restoring the assessment, or
>
> (iv) referring the assessment back to the Minister for reconsideration and reassessment.

178. [Repealed under former Act]

Pre-RSC History: S. 178 repealed by 1988, c. 61, s. 21, in force January 1, 1991. S. 178 formerly read:

> 178. (1) Court may order payment of tax, etc. — The Federal Court may, in delivering judgment disposing of an appeal, order payment or repayment of tax, interest, penalties or, subject to subsection (2), costs by the taxpayer or the Minister.
>
> (2) Costs payable by Minister in certain cases — Where, on an appeal by the Minister, other than by way of cross-appeal, from a decision of the Tax Court of Canada, the amount of
>
> (a) tax, refund or amount payable under subsection 196(2) (in the case of an assessment of the tax or determination of the refund or the amount payable, as the case may be) that is in controversy does not exceed $10,000, or
>
> (b) loss (in the case of a determination of the loss) that is in controversy does not exceed $20,000,
>
> the Federal Court, in delivering judgment disposing of the appeal, shall order the Minister to pay all reasonable and proper costs of the taxpayer in connection therewith.

Paras. 178(2)(a), (b) substituted by 1984, c. 45, s. 75, applicable with respect to appeals disposed of after December 20, 1984. Paras. 178(2)(a) and (b) formerly read:

> (a) tax, refund or amount payable under subsection 196(2) (in the case of an assessment or determination, as the case may be) that is in controversy does not exceed $2,500, or
>
> (b) loss, (in the case of a determination) that is in controversy does not exceed $5,000,

"Tax Court of Canada" substituted for "Tax Review Board" in that portion of subsec. 178(2) preceding para. (a) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Subsec. 178(2) substituted by 1976-77, c. 4, s. 64, applicable to assessments and determinations made after 1976-77, c. 4, is assented to. Subsec. 178(2) formerly read:

> (2) Where, on an appeal by the Minister other than by way of cross-appeal, from a decision of the Tax Review Board, the amount of tax that is in controversy does not exceed $2,500, the Federal Court, in delivering judgment disposing of the appeal, shall order the Minister to pay all reasonable and proper costs of the taxpayer in connection therewith.

179. Hearings *in camera* — Proceedings in the Federal Court under this Division may, on the application of the taxpayer, be held *in camera* if the taxpayer establishes to the satisfaction of the Court that the circumstances of the case justify *in camera* proceedings.

Pre-RSC History: S. 179 substituted by 1985, c. 45, s. 94. S. 179 formerly read:

> 179. Proceedings may be held in camera — Proceedings under this Division shall be held in camera upon request made to the Federal Court by the taxpayer.

Selected Cases [s. 179]: *Roseland Farms Ltd. v. Canada*, [1996] 1 C.T.C. 176 (FCA) (Names of investors permitted to be given *in camera*).

Definitions [s. 179]: "taxpayer" — 248(1).

179.1 No reasonable grounds for appeal — Where the Tax Court of Canada disposes of an appeal by a taxpayer in respect of an amount payable under this Part or where such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not it awards costs, order the taxpayer to pay to the Receiver General an amount not exceeding 10% of any part of the amount that was in controversy in respect of which the Court determines that there were no reasonable grounds for the appeal, if in the opinion of the Court one of the main purposes for instituting or maintaining any part of the appeal was to defer the payment of any amount payable under this Part.

Related Provisions: 18(1)(t) — No deduction for payments under Act.

History: S. 179.1 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 102, applicable after June 10, 1993, with respect to appeals instituted after June 1992. S. 179.1 formerly read:

> 179.1 Where the Tax Court of Canada disposes of an appeal by a taxpayer in respect of an amount payable under this Part or where such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not it awards costs, order the taxpayer to pay to the Receiver General an amount not exceeding 10% of the amount that was in controversy if it determines that there were no reasonable grounds for the appeal and one of the main purposes for instituting or maintaining the appeal was to defer the payment of an amount payable under this Part.

Pre-RSC History: S. 179.1 amended by 1988, c. 61, s. 22, to substitute "Tax Court of Canada" for "Tax Court of Canada or the Federal Court–Trial Division", in force January 1, 1991.

S. 179.1 added by 1985, c. 45, subsec. 95(1), applicable with respect to appeals from assessments objected to after 1984.

Definitions [s. 179.1]: "amount", "Minister", "taxpayer" — 248(1).

180. (1) Appeals to Federal Court of Appeal — An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the time the decision of the Minister to refuse the application for registration or for a certificate of exemption, to revoke the registration, to designate or to refuse to designate was mailed, or otherwise commu-

nicated in writing, by the Minister to the party instituting the appeal,

(b) the mailing of notice to the registered charity or registered Canadian amateur athletic association under subsection 149.1(2), (3), (4) or (4.1) or 168(1),

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Related Provisions: 172(4) — Deemed refusal to register; 212(14) — Certificate of exemption; 248(7)(a) — Mail deemed received on day mailed.

History: Para. 180(1)(c.1) added by 1998, c. 19, s. 47, applicable after 1997.

Para. 180(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 142, to substitute "149.1(2), (3), (4) or (4.1) or 168(1)" for "168(1)", applicable after 1989.

Pre-RSC History: Subsec. 180(1) amended by 1990, c. 35, s. 19, to substitute, in para. (a), "mailed, or otherwise communicated in writing, by the Minister to the party" for "served by the Minister by registered mail on the party", in para. (b), "the mailing" for "from the mailing", and to add paras. (c), (d), applicable after 1988.

Para. 180(1)(a) amended by 1985, c. 45, s. 96, to substitute "to revoke the registration, to designate or to refuse to designate" for "or to revoke the registration of the profit sharing plan".

"Registered charity" substituted for "registered Canadian charitable organization" in para. 180(1)(b) by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Forms: T285: Information re appeal from Minister's refusal to register as a charity or Canadian amateur athletic association.

(2) No jurisdiction in Tax Court of Canada or Federal Court–Trial Division — Neither the Tax Court of Canada nor the Federal Court–Trial Division has jurisdiction to entertain any proceeding in respect of a decision of the Minister from which an appeal may be instituted under this section.

Pre-RSC History: "Tax Court of Canada" substituted for "Tax Review Board" by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

(3) Summary disposition of appeal — An appeal to the Federal Court of Appeal instituted under this section shall be heard and determined in a summary way.

Related Provisions: 172(4) — Deemed refusal to register; 176(2) — Transfer of relevant documents to the Federal Court.

Definitions [s. 180]: "administrator" — 147.1(1); "Minister" — 248(1); "profit sharing plan" — 147(1); "promoter" — 146.1(1); "registered Canadian amateur athletic association", "registered charity", "registered pension plan" — 248(1); "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 180]: 80-10R: Registered charities: operating a registered charity.

PART I.1 — INDIVIDUAL SURTAX

180.1 (1) Individual surtax — Every individual shall pay a tax under this Part for each taxation year equal to 5% of the amount, if any, by which the tax payable under Part I by the individual for the year exceeds $12,500.

Proposed Amendment — Elimination of 5% surtax

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Individual Surtax*

(5) That the 5 per cent surtax required to be paid by an individual

(a) be based on the individual's tax otherwise payable under Part I of the Act in excess of $15,500, for the 2000 taxation year, and

(b) be reduced to 4 per cent of the individual's tax otherwise payable under Part I of the Act in excess of $18,500, for the 2001 and subsequent taxation years.

Federal budget, supplementary information, February 28, 2000: *5% Surtax*

Under the current rules, a 5% surtax applies to basic federal tax in excess of $12,500 (at an income level of about $65,000). The budget proposes to raise this amount to $18,500 (at an income level of about $85,000) effective July 1, 2000. Raising the surtax threshold to $18,500 of basic federal tax as of July 1, 2000, means that, for the 2000 taxation year, the 5% surtax would apply on basic federal tax in excess of $15,500.

The budget also proposes to reduce the surtax rate from 5% to 4% effective January 1, 2001.

The 5% surtax will be eliminated within the next five years.

History: Subsec. 180.1(1) amended by 2000, c. 19, subsec. 52(2), applicable to 2000 *et seq.* The subsec. formerly read:

(1) Individual surtax — Every individual shall pay a tax under this Part for each taxation year equal to the total of

(a) ½ of the amount, if any, by which

(i) 3% of the individual's tax payable under Part I for the year

exceeds

(ii) the amount, if any, by which

(A) $250

exceeds

(B) 6% of the amount, if any, by which

(I) the individual's tax payable under Part I for the year

exceeds

(II) $8,333, and

(b) 5% of the amount, if any, by which the tax payable under Part I by the individual for the year exceeds $12,500.

Para. 180.1(1)(a) amended by the said c. 19, subsec. 52(1), applicable to the 1999 taxation year. The para. formerly read:

(a) the amount, if any, by which

Para. 180.1(1)(a) amended by 1999, c. 22, s. 67, applicable to 1998 *et seq.* except that, in its application to the 1998 taxation year, the portion of subpara. 180.1(1)(a)(ii) before cl. (B), as amended, shall be read as follows:

(ii) 50% of the amount, if any, by which

(A) the lesser of $250 and the amount computed under subparagraph (i) for the year

exceeds

Para. (a) formerly read:

(a) 3% of the tax payable under Part I by the individual for the year, and

Para. 180.1(1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 103(1), to substitute "3% of the tax" for "5% of tax", applicable to 1992 *et seq.* except that for the 1992 taxation year the reference to "3%" shall be read as "4½%".

Para. 180.1(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 143, to substitute "5%" for "3%" and "$12,500" for "$15,000", applicable to 1991 *et seq.*

Pre-RSC History: Subsec. 180.1(1) substituted by 1990, c. 39, subsec. 47(1), applicable to 1989 *et seq.* except that for the 1989 taxation year, the

references to "5%" and "3%" in the subsec. shall be read as references to "4%" and "1½%", respectively. Subsec. 180.1(1) formerly read:

> 180.1 (1) Every individual liable to pay tax under Part I for a taxation year shall pay a tax equal to 3% of his tax payable under Part I for the year.

Subsec. 180.1(1) substituted by 1986, c. 55, s. 66, applicable to 1986 *et seq.*, except that in its application to the 1986 taxation year, it shall be read as follows:

> 180.1 (1) Every individual liable to pay tax under Part I for a taxation year shall pay a tax equal to the aggregate of
>
> (a) 1½% of his tax payable under Part I for the year,
>
> (b) 5% of the amount, if any, by which his tax payable under Part I for the year exceeds $6,000, and
>
> (c) 5% of the amount, if any, by which his tax payable under Part I for the year exceeds $15,000

Subsec. (1) formerly read:

> 180.1 (1) Every individual (other than a mutual fund trust) liable to pay tax under Part I for a taxation year shall pay a tax equal to,
>
> (a) for the 1986 taxation year, the aggregate of
>
> (i) 5% of the amount, if any, by which his tax payable under Part I for the year exceeds $6,000, and
>
> (ii) 5% of the amount, if any, by which his tax payable under Part I for the year exceeds $15,000; and
>
> (b) for the 1985 taxation year, 50% of the aggregate that would be determined under paragraph (a) if the reference therein to "1986" were read as a reference to "1985".

(1.1) Foreign tax deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year (computed without reference to subsection (1.2)) by an individual the amount, if any, by which

(a) the total of all amounts that would be

(i) deductible by the individual under section 126 for the year, or

(ii) the individual's special foreign tax credit for the year determined under section 127.54,

if the references in section 126 to "the tax for the year otherwise payable under this Part by the taxpayer" were read as "the total of the tax for the year otherwise payable under this Part by the individual and the tax for the year that would be payable by the individual under Part I.1 but for subsections 180.1(1.1) and (1.2)"

exceeds

(b) the total of all amounts deductible by the individual under section 126 for the year and the individual's special foreign tax credit for the year determined under section 127.54.

Related Provisions: 180.1(1.4) — Former resident — credit for tax paid on emigration.

History: Subsec. 180.1(1.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 103(2), applicable to 1988 *et seq.* Subsec. (1.1) formerly read:

> (1.1) There may be deducted from the tax otherwise payable under this Part for a taxation year by an individual the amount, if any, by which
>
> (a) the total of all amounts that would be
>
> (i) deductible by the individual under section 126 for the year, or
>
> (ii) the individual's special foreign tax credit for the year determined under section 127.54,
>
> if the references in section 126 to "the tax for the year otherwise payable under this Part by the individual (or "taxpayer")" were read as "the total of the tax for the year otherwise payable under this Part by the individual (or "taxpayer") and the tax for the year that would be payable by the individual (or "taxpayer") under Part I.1 but for subsection 180.1(1.1)"
>
> exceeds
>
> (b) the total of all amounts deductible by the individual (or "taxpayer") under section 126 for the year and the individual's special foreign tax credit for the year determined under section 127.54.

Pre-RSC History: Subsec. 180.1(1.1) added by 1986, c. 55, s. 66, applicable to 1986 *et seq.*

Interpretation Bulletins: IT-270R2: Foreign tax credit.

(1.2) Deduction from tax [investment tax credit] — There may be deducted from the tax otherwise payable under this Part for a taxation year by an individual the amount, if any, by which the amount determined under paragraph 127(5)(a) in respect of the individual for the year exceeds the amount, if any, deducted under subsection 127(5) for the year by the individual other than an amount deemed by subsection (1.3) to be so deducted.

Related Provisions: 180.1(1.3) — Amount deducted deemed claimed as investment tax credit.

History: Subsec. 180.1(1.2) amended by 1994, c. 8, s. 28, applicable to taxation years beginning after 1993. Subsec. (1.2) formerly read:

> (1.2) There may be deducted from the tax otherwise payable under this Part for a taxation year by an individual an amount not exceeding the lesser of
>
> (a) ¾ of the amount that would be the individual's tax otherwise payable under this Part for the year if the individual deducted the amount, if any, allowed to be deducted under subsection (1.1) for the year, and
>
> (b) the amount, if any, by which the amount determined under paragraph 127(5)(b) in respect of the individual for the year exceeds the amount, if any, deducted by the individual under subsection 127(5) for the year.

Pre-RSC History: Subsec. 180.1(1.2) added by 1988, c. 55, s. 148, applicable to 1988 *et seq.*

(1.3) Idem — For the purposes of this Act, the amount deducted under subsection (1.2) for a taxation year shall be deemed to be an amount deducted under subsection 127(5) for the year.

History: Subsec. 180.1(1.3) amended by 1994, c. 8, s. 28, applicable to taxation years beginning after 1993. Subsec. (1.3) formerly read:

> (1.3) Amount deemed deducted under subsec. (1.2) — For the purposes of this Act, other than for the purpose of determining the amount under paragraph (1.2)(b) for the year, the amount deducted under subsection (1.2) for a taxation year shall be deemed to be an amount deducted under subsection 127(5) for the year.

Pre-RSC History: Subsec. 180.1(1.3) added by 1988, c. 55, s. 148, applicable to 1988 *et seq.*

Proposed Addition — 180.1(1.4)

(1.4) Former resident — credit for tax paid — There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year (computed without reference to subsections (1.1) and (1.2)) the amount, if any, by which

(a) the amount that would be deductible under section 119 in computing the individual's tax payable under Part I for the year if, in applying for that purpose paragraph (a) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7), the reference in that paragraph to "tax payable under this Part for the year" were read as a reference to "the total of taxes that, but for subsections 180.1(1.1), (1.2) and (1.4), would be payable under this Part and Part I.1 for the year"

exceeds

(b) the amount deductible under section 119 in computing the individual's tax payable under Part I for the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 95(1), will add subsec. 180.1(1.4), applicable after October 1, 1996.

Technical Notes: Section 180.1 of the Act imposes a surtax on individuals at a rate of 3% of the tax payable under Part I of the Act. An additional 5% surtax is imposed on that portion of an individual's Part I tax in excess of $12,500.

New subsection 40(3.7) of the Act provides a "stop-loss" rule that may apply to reduce the loss of an individual from the disposition of property at a particular time, where the individual was non-resident at any time before the particular time and received dividends in respect of the property while non-resident. New section 119 of the Act provides a special tax credit in certain cases where subsection 40(3.7) applies to an individual who ceased to be resident in Canada. If an individual's Part I tax for the year that includes the emigration is less than the amount deductible under section 119, new subsection 180.1(1.4) of the Act provides that the individual may deduct the balance from the tax otherwise payable under Part I.1 of the Act for that year.

(2) Meaning of tax payable under Part I — For the purposes of subsection (1), the tax payable under Part I by an individual for a taxation year is the amount, if any, by which

(a) where section 119 is applicable in computing the individual's tax payable for the year, the amount that would be the individual's average tax for the year of averaging, as determined under paragraph 119(1)(d), if the expression "deductible under subsection 127(5)" in that paragraph were read as "added under subsection 120(1) or deductible under sections 122.3, 126, 127 and 127.2 to 127.4", and

(b) in any other case, the amount that would be the individual's tax payable under that Part for the year if that Part were read without reference to subsection 120(1) and sections 122.3, 126, 127, 127.2 to 127.4 and 127.54

exceeds

(c) where the individual was throughout the year a mutual fund trust, the least of the amounts determined under paragraphs (a), (b) and (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the trust for the year, and

(d) in any other case, nil.

Proposed Amendment — 180.1(2)

(2) Meaning of tax payable under Part I — For the purposes of subsection (1), the tax payable under Part I by an individual for a taxation year is the amount, if any, by which

(a) the amount that would be the individual's tax payable under that Part for the year if that Part were read without reference to section 119, subsection 120(1) and sections 122.3, 126, 127, 127.4 and 127.54

exceeds

(b) if the individual was throughout the year a mutual fund trust, the least of the amounts determined under paragraphs (a), (b) and (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the trust for the year, and

(c) in any other case, nil.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 95(2), will amend subsec. 180.1(2) to read as above, applicable after October 1, 1996.

Technical Notes: Subsection 180.1(2) of the Act provides rules for calculating Part I tax for the purposes of determining the base for tax under Part I.1 of the Act ("surtax"). Essentially, the tax base for surtax is the individual's tax payable for the year under Part I of the Act, calculated without reference to certain amounts. Paragraphs 180.1(2)(a) and (b) are amended to add to the list of those amounts an amount deductible under new section 119 of the Act in respect of a former resident of Canada.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 180.2(1.4).

(3) Return — Every individual liable to pay tax under this Part for a taxation year shall, on or before the day on or before which the individual is required by section 150 to file a return of income for the year under Part I, or would be so required if the individual were liable to pay tax under Part I for the year,

(a) file with the Minister, without notice or demand therefor, a return for the year under this Part in prescribed form and containing prescribed information; and

(b) pay the tax under this Part for the year for which the individual is liable.

Related Provisions: 150.1(5) — Electronic filing.

Pre-RSC History: Subsec. 180.1(3) substituted by 1990, c. 39, subsec. 47(2), applicable to 1989 *et seq.* Subsec. (3) formerly read:

(3) Estimate of tax — Every individual required by section 150 to file a return of income for a taxation year shall in the return estimate the amount of tax payable by him under this Part for the year.

Subsecs. 180.1(2), (3) substituted by 1986, c. 55, s. 66, applicable to 1986 *et seq.* Subsecs. 180.1(2), (3) formerly read:

(2) Meaning of "tax payable under Part I" — For the purposes of subsection (1), the "tax payable under Part I" by an individual for a taxation year is,

(a) where section 119 is applicable in computing his tax payable for the year, the amount that would be his average tax for the year of averaging, as determined under paragraph (1)(d) thereof, if the expression "deductible under subsection 127(5)" in that paragraph were read as "added under subsection 120(1) or deductible under subsection 120(3.1) and sections 122.3, 126, 127 and 127.2 to 127.4"; and

(b) in any other case, the amount that would be his tax payable under that Part for the year if that Part were read without reference to subsections 120(1) and (3.1) and sections 122.3, 126, 127 and 127.2 to 127.4.

(3) Estimate of tax — Every individual (other than a mutual fund trust) required by section 150 to file a return of income for a taxation year shall in the return estimate the amount of tax payable by him under this Part for the year.

Forms: T1 General income tax return, Schedule 1, line 419.

(4) Provisions applicable to Part — Sections 151, 152, 155, 156, 156.1 and 158 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 180.1(4) amended by 1990, c. 39, subsec. 47(2), to substitute "sections 151, 152, 155" for "sections 152, 153, 155", applicable to 1989 *et seq.*

Pre-RSC History [s. 180.1]: S. 180.1 substituted for ss. 180.1, 180.2 by 1986, c. 6, s. 93, applicable to the 1985 and 1986 taxation years except that by 1987, c. 46, s. 56 subsec. 180.1(4) is applicable to 1987 *et seq.* Ss. 180.1, 180.2 formerly read:

180.1 (1) Individual surtax — Every individual, other than a mutual fund trust, liable to pay tax under Part I for a taxation year shall pay a tax for the 1976 taxation year equal to 10% of the amount, if any, by which the tax payable under Part I by him for the 1976 taxation year exceeds $8,000.

(2) "Tax payable under Part I" defined — For the purposes of subsection (1), the "tax payable under Part I" by an individual for the 1976 taxation year is the amount that would be the tax payable by him under that Part for that taxation year if that Part were read

without reference to subsections 120(1) and (2) and no abatement were allowed under the *Established Programs (Interim Arrangements) Act*.

180.2 (1) **Estimate of tax** — Every individual, other than a mutual fund trust, required by section 150 to file a return of income for the 1976 taxation year shall in the return estimate the amount of tax payable by him under this Part.

(2) **Provisions applicable to this Part** — Sections 152, 155, 156, 156.1 and 158 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part.

Definitions [s. 180.1]: "amount", "individual" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "tax payable" — 248(2); "taxation year" — 249.

Pre-RSC History: Part I.1 (ss. 180.1, 180.2) added by 1976-77, c. 4, s. 65, applicable to the 1976 taxation year.

PART I.2 — TAX ON OLD AGE SECURITY BENEFITS

180.2 (1) Definitions — The definitions in this subsection apply in this Part.

"adjusted income" of an individual for a taxation year means the amount that would be the individual's income under Part I for the year if no amount were deductible under paragraph 60(w) nor included in respect of a gain from a disposition of property to which section 79 applies.

"base taxation year", in relation to a month, means

(a) where the month is any of the first 6 months of a calendar year, the taxation year that ended on December 31 of the second preceding calendar year, and

(b) where the month is any of the last 6 months of a calendar year, the taxation year that ended on December 31 of the preceding calendar year.

"return of income" in respect of an individual for a taxation year means

(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is filed or required to be filed under Part I for the year, and

(b) in any other case, a prescribed form containing prescribed information.

Related Provisions: 60(v.1) — UI benefit repayment; 60(w) — Other deductions — tax under Part I.2.

History: Subsec. 180.2(1) added by 1996, c. 21, s. 46 applicable after June 1996. Former subsec. (1) (now subsec. (2)) read:

(1) **Tax payable** — Every individual (other than a trust) shall pay a tax under this Part for each taxation year that is equal to the lesser of

(a) the total of all amounts each of which is the amount of any pension, supplement or spouse's allowance under the *Old Age Security Act* included in computing the individual's income under Part I for the year, to the extent that no deduction is allowed under paragraph 60(n) for the year or any subsequent taxation year in respect of that amount, and

(b) 15% of the amount, if any, by which

(i) the amount that would be the individual's income under Part I for the year if no amount were

(A) deductible under paragraph 60(w), or

(B) included in respect of a gain from a disposition of property to which section 79 applies

in computing that income

exceeds

(ii) $50,000.[35]

Selected Cases [subsec. 180.2(1)]: *Swantje v. Canada*, [1996] 1 C.T.C. 355 (SCC) (Section not affected by Canada–Germany Tax Agreement).

(2) Tax payable — Every individual shall pay a tax under this Part for each taxation year equal to the amount determined by the formula

$$A(1 - B)$$

where

A is the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the amount of any pension, supplement or spouse's allowance under the *Old Age Security Act* included in computing the individual's income under Part I for the year

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouse's" with "spouse's or common-law partner's", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

exceeds

(ii) the amount of any deduction allowed under subparagraph 60(n)(i) in computing the individual's income under Part I for the year, and

(b) 15% of the amount, if any, by which the individual's adjusted income for the year exceeds $50,000[36]; and

B is the rate of tax payable by the individual under Part XIII on amounts described in paragraph (a) of the description of A.

Related Provisions: 117.1(1)(b) — Indexing for inflation; 180.2(3) — Withholding of tax from OAS benefits.

History: Subsec. 180.2(2) renumbered (from (1)) and amended by 1996, c. 21, s. 46, applicable to 1996 *et seq.* Former subsec. (2) (now subsec. (5)) read:

(2) **Return** — Every individual liable to pay tax under this Part for a taxation year shall, on or before the day on or before which the individual is required by section 150 to file a return of income for the year under Part I, or would be so required if the individual were liable to pay tax under Part I for the year,

(a) file with the Minister, without notice or demand therefor, a return for the year under this Part in prescribed form and containing prescribed information; and

(b) pay the tax under this Part for the year for which the individual is liable.

Forms: T1 General income tax return, lines 235 and 422.

(3) Withholding — Where at any time Her Majesty pays an amount described in paragraph (a) of the description of A in subsection (2) in respect of a month to an individual, there shall be deducted or withheld from that amount on account of the individual's tax payable under this Part for the year the amount determined under subsection (4) in respect of that amount.

Related Provisions: 227 — Rules applicable to withholding.

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[35] Indexed by s. 117.1 after 1988. See table after s. 117.1.

[36] Indexed by s. 117.1 to $53,215 for 1992-2000 — ed.

History: Subsec. 180.2(3) added by 1996, c. 21, s. 46, applicable to amounts paid after June 1996. Former subsec. (3) (now subsec. (6)) read:

(3) Provisions applicable to Part — Sections 151, 152 and 158 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(4) Determination of amount to be withheld — The amount determined in respect of a particular amount described in subsection (3) is

(a) where the individual has filed a return of income for the base taxation year in relation to the month in which the particular amount is paid, the lesser of

(i) the amount by which the particular amount exceeds the amount of tax payable under Part XIII by the individual on the particular amount, and

(ii) the amount determined by the formula

$$(0.0125A - \$625)(1 - B)$$

Proposed Amendment — 180.2(4)(a)(ii)

$$(0.0125A - \$665)(1-B)$$

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 96, will amend the formula in subpara. 180.2(4)(a)(ii) to read as above, applicable to amounts paid after November 1999.

Technical Notes: Section 180.2 of the Act provides for the recovery of Old Age Security (OAS) benefits paid to an individual to the extent that the individual's income for a year exceeds a partially indexed $50,000 threshold ($53,215 for 1999). In 1996, the structure of the recovery of OAS benefits was modified by providing for tax to be withheld on the benefits. Given that the amount of the benefits recovered is computed, in part, by reference to 15% of the individual's income in excess of $50,000 (or effectively 1.25% of the excess on a monthly basis), the formula in subsection 180.2(4) includes an amount of $625, which is equal to 1.25% of $50,000. However, because the recovery of OAS benefits through withholding was introduced in 1996, at the time where the partially indexed threshold was equal to $53,215, the amount used in the formula should have then been set at $665, i.e., 1.25% of $53,215. This amendment corrects this oversight.

where

A is the individual's adjusted income for the base taxation year, and

B is the rate of tax payable under Part XIII by the individual on the particular amount;

(b) where the individual has not filed a return of income for the base taxation year in relation to the month and

(i) the Minister has demanded under subsection 150(2) that the individual file the return, or

(ii) the individual was non-resident at any time in the base taxation year,

the amount by which the particular amount exceeds the amount of tax payable under Part XIII by the individual on the particular amount; and

(c) in any other case, nil.

Related Provisions: 117.1(1)(b) — Indexing for inflation; 180.2(5) — Obligation to file return; 257 — Formula cannot calculate to less than zero.

History: Subsec. 180.2(4) added by 1996, c. 21, s. 46, applicable to amounts paid after June 1996.

(5) Return — Every individual liable to pay tax under this Part for a taxation year shall

(a) file with the Minister, without notice or demand therefor,

(i) where the individual is resident in Canada throughout the taxation year, a return for the year under this Part in prescribed form and containing prescribed information on or before the individual's filing-due date for the year, and

(ii) in any other case, a return of income for the year on or before the individual's balance-due day for the year; and

(b) pay the individual's tax payable under this Part for the year on or before the individual's balance-due day for the year.

Related Provisions: 180.2(4)(b)(ii) — No OAS benefits paid to non-resident who does not file return.

History: Subsec. 180.2(5) renumbered (from (2)) and amended by 1996, c. 21, s. 46, applicable to 1996 *et seq.*

(6) Provisions applicable to this Part — Subsection 150(3), sections 150.1, 151 and 152, subsections 153(1.1), (1.2) and (3), sections 155 to 156.1 and 158 to 167 and Division J of Part I apply to this Part with any modifications that the circumstances require.

History: Subsec. 180.2(6) renumbered (from (3)) and amended by 1996, c. 21, s. 46, applicable to 1996 *et seq.*

History [s. 180.2]: Para. 180.2(1)(a) amended by 1994, c. 7, Sch. VII (1992, c. 48), s. 21, to substitute, "*Old Age Security Act*" for "*Old Age Security Act* or family allowance under the *Family Allowances Act*", and "paragraph 60(n)" for "paragraph 60(n) or (p)", applicable to 1993 *et seq.*

Subpara. 180.2(1)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 144, applicable to 1989 *et seq.* That subpara. formerly read:

(i) the amount that would, but for paragraph 60(w), be the individual's income under Part I for the year

Definitions [s. 180.2]: "adjusted income" — 180.2(1); "amount", "balance-due day" — 248(1); "base taxation year" — 180.2(1); "calendar year" — *Interpretation Act* 37(1)(a); "common-law partner" — 248(1); "filing-due date" — 150(1), 248(1); "individual" — 248(1); "Minister", "non-resident" — 248(1); "resident in Canada" — 250; "return of income" — 180.2(1); "tax payable" — 248(2); "taxation year" — 249.

Interpretation Bulletins: IT-326R3: Returns of deceased persons as "another person".

Pre-RSC History [Part I.2]: Part I.2 (s. 180.2) added by 1990, c. 39, s. 48, applicable to 1989 *et seq.*, except that the reference to "the lesser of" in subsec. 180.2(1) shall be read as a reference to "⅓ of the lesser of" for the 1989 taxation year and "⅔ of the lesser of" for the 1990 taxation year.

PART I.3 — TAX ON LARGE CORPORATIONS

181. (1) Definitions — For the purposes of this Part,

"financial institution", in respect of a taxation year, means a corporation that at any time in the year is

(a) a bank or credit union,

(b) an insurance corporation that carries on business in Canada,

(c) authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public,

(d) authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real estate or investing in mortgages on real estate,

(e) a registered securities dealer,

(f) a mortgage investment corporation, or

(g) a prescribed corporation;

Related Provisions: 142.2(1)"financial institution"(a)(i), 248(1)"restricted financial institution"(e.1), "specified financial institution"(e.1) — Prescribed corporation under this definition deems to be FI, RFI and SFI.

History: Para. (e) of the definition "financial institution" in subsec. 181(1) amended by 1995, c. 21, s. 72, applicable to taxation years that end after June 1989. Para. (e) formerly read:

(e) registered or licensed under the laws of a province to trade in securities,

Para. (f) of "financial institution" in subsec. 181(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 145, applicable to taxation years ending after June 1989. Para. (f) formerly read:

(f) a deposit insurance corporation (within the meaning assigned by subsection 137.1(5)) or a corporation deemed by subsection 137.1(5.1) to be a deposit insurance corporation, or

Regulations: 8604 (prescribed corporations).

"long-term debt" means,

(a) in the case of a bank, its subordinated indebtedness (within the meaning assigned by section 2 of the *Bank Act*) evidenced by obligations issued for a term of not less than 5 years,

(b) in the case of an insurance corporation, its subordinated indebtedness (within the meaning assigned by section 2 of the *Insurance Companies Act*) evidenced by obligations issued for a term of not less than 5 years, and

(c) in the case of any other corporation, its subordinated indebtedness (within the meaning that would be assigned by section 2 of the *Bank Act* if the definition of that expression in that section were applied with such modifications as the circumstances require) evidenced by obligations issued for a term of not less than 5 years,

but does not include, where the corporation is a prescribed federal Crown corporation for the purpose of section 27, any indebtedness evidenced by obligations issued to and held by Her Majesty in right of Canada;

History: The definition "long-term debt" in subsec. 181(1) substituted by 1994, c. 21, s. 81, applicable after May 31, 1992. That definition formerly read:

"long-term debt" means

(a) in the case of a bank, its indebtedness evidenced by bank debentures within the meaning assigned by the *Bank Act*, and

(b) in the case of a financial institution that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years (other than, where the financial institution is a prescribed federal Crown corporation for the purposes of section 27, such indebtedness evidenced by obligations issued to and held by Her Majesty in right of Canada);

Para. (b) of "long-term debt" amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 104, applicable to 1991 *et seq.* Para. (b) formerly read:

(b) in the case of a corporation that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years;

"reserves", in respect of a corporation for a taxation year, means the amount at the end of the year of all of the corporation's reserves, provisions and allowances (other than allowances in respect of depreciation or depletion) and, for greater certainty, includes any provision in respect of deferred taxes.

I.T. Technical News: No. 18 (*Oerlikon Aérospatiale* case).

Selected Cases [subsec. 181(1)]: *Manufacturers Life Insurance Co. v. R.*, [2000] 1 C.T.C. 2481 (TCC) (Balance sheet figures to be used for capital tax base; amounts were not "reserves" or "surpluses"); *Oerlikon Aérospatiale Inc. v. R.*, [1999] 4 C.T.C. 358 (FCA); leave to appeal to SCC refused (May 11, 2000), File 27532 (Accounting treatment governs computation of tax; reserves as shown in financial statements to be included).

(2) Prescribed expressions — For the purposes of this Part, the expressions "attributed surplus", "Canadian assets", "Canadian premiums", "Canadian reserve liabilities", "permanent establishment", "total assets", "total premiums" and "total reserve liabilities" have such meanings as may be prescribed.

Regulations: 8600 (prescribed meanings of expressions).

(3) Determining values and amounts — For the purposes of determining the carrying value of a corporation's assets or any other amount under this Part in respect of a corporation's capital, investment allowance, taxable capital or taxable capital employed in Canada for a taxation year or in respect of a partnership in which a corporation has an interest,

(a) the equity and consolidation methods of accounting shall not be used; and

(b) subject to paragraph (a) and except as otherwise provided in this Part, the amounts reflected in the balance sheet

(i) presented to the shareholders of the corporation (in the case of a corporation that is neither an insurance corporation to which subparagraph (ii) applies nor a bank) or the members of the partnership, as the case may be, or, where such a balance sheet was not prepared in accordance with generally accepted accounting principles or no such balance sheet was prepared, the amounts that would be reflected if such a balance sheet had been prepared in accordance with generally accepted accounting principles, or

(ii) accepted by the Superintendent of Financial Institutions, in the case of a bank or an insurance corporation that is required by law to report to the Superintendent, or the superintendent of insurance or other similar officer or authority of the province under whose laws the corporation is incorporated, in the case of an insurance corporation that is required by law to report to that officer or authority,

shall be used.

Related Provisions: 190(2) — Rules in 181(3) apply to Part VI also.

I.T. Technical News: No. 18 (*Oerlikon Aérospatiale* case).

(4) Limitations respecting inclusions and deductions — Unless a contrary intention is evident, no provision of this Part shall be read or construed to require the inclusion or to permit the deduction, in computing the amount of a corporation's capital, investment allowance, taxable capital or taxable capital employed in Canada for a taxation year, of any amount to the extent that that amount has been included or deducted, as the case may be, in computing the first-mentioned amount under, in accordance with or by reason of any other provision of this Part.

Related Provisions: 190(2) — Rules in 181(4) apply to Part VI also; 248(28) — Similar rule for the Act as a whole.

Definitions [s. 181]: "amount" — 248(1); "bank" — *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "insurance corporation" — 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "province" — *Interpretation Act* 35(1); "registered securities dealer" — 248(1); "taxation year" — 249.

181.1 (1) Tax payable — Every corporation shall pay a tax under this Part for each taxation year equal to 0.225% of the amount, if any, by which

(a) its taxable capital employed in Canada for the year

exceeds

(b) its capital deduction for the year.

Related Provisions: 125.3 — Deduction re Part I.3 tax; 132.2(1)(o)(ii) — Deemed taxation year of mutual fund corporation on reorganization; 157(1), (2.1) — Instalments — corporations; 161(1) — Interest; 161(4.1) — Interest — limitation respecting corporations; 181.1(2) — Reduction for short taxation year; 181.6 — Return; 190.1(1) — Financial institutions capital tax; 235 — Penalty on large corporation for late filing.

History: The opening words of subsec. 181.1(1) amended by 1996, c. 21, s. 47, applicable to taxation years that end after February 27, 1995, except that, in its application to taxation years that began before February 28, 1995, there shall be deducted from the tax otherwise payable under subsec. 181.1(1), an amount equal to that proportion of 1/9 of the tax otherwise payable under that subsection of the Act that the number of days in the year that were before February 28, 1995 is of the number of days in the year.

For the purpose of applying subsection 125(5.1), the amount that would, but for subsecs. 181.1(2) and (4), be a corporation's tax payable under Part I.3 for a taxation year that began before February 28, 1995 shall be determined without reference to the above amendment to subsec. 181.1(1).

The opening words formerly read:

(1) Every corporation shall pay a tax under this Part for each taxation year equal to 0.2% of the amount, if any, by which

That portion of subsec. 181.1(1) preceding para. (a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 146(1), to substitute "0.2%" for "0.175%", applicable to 1991 *et seq.* except that, in its application to taxation years commencing before 1991 and ending after 1990, there may be deducted from the tax otherwise payable under the subsec. an amount equal to that proportion of 1/8 of the tax otherwise payable under the subsec. that the number of days in the year that are before 1991 is of the number of days in the year.

(2) Short taxation years — Where a taxation year of a corporation is less than 51 weeks, the amount determined under subsection (1) for the year in respect of the corporation shall be reduced to that proportion of that amount that the number of days in the year is of 365.

Related Provisions: 132.2(1)(o) — Deemed taxation year of mutual fund corporation on reorganization.

History: Subsec. 181.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(1), applicable to 1992 *et seq.* Subsec. (2) formerly read:

(2) Where a taxation year of a corporation is less than 51 weeks, the tax payable under this Part for the year by the corporation shall be that proportion of its tax otherwise payable under this Part for the year that the number of days in the year is of 365.

(3) Where tax not payable — No tax is payable under this Part for a taxation year by a corporation

(a) that was a non-resident-owned investment corporation throughout the year;

(b) that was a bankrupt (within the meaning assigned by subsection 128(3)) at the end of the year;

(c) that was throughout the year exempt from tax under section 149 on all of its taxable income;

(d) that neither was resident in Canada nor carried on business through a permanent establishment in Canada at any time in the year;

(e) that was throughout the year a deposit insurance corporation (within the meaning assigned by subsection 137.1(5)) or a corporation deemed by subsection 137.1(5.1) to be a deposit insurance corporation; or

(f) that was throughout the year a corporation described in subsection 136(2) the principal business of which was marketing (including processing incidental to or connected therewith) natural products belonging to or acquired from its members or customers.

Related Provisions: 125.3(1) — Large corporations tax.

History: Para. 181.1(3)(f) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(2), applicable to taxation years ending after June 1989.

Para. 181.1(3)(e) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 146(2), applicable to taxation years ending after June 1989.

Interpretation Bulletins: IT-347R2: Crown corporations.

(4) Deduction — There may be deducted from a corporation's tax otherwise payable under this Part for a taxation year an amount equal to the total of

(a) its Canadian surtax payable for the year, and

(b) such part as the corporation claims of its unused surtax credits for its 7 immediately preceding and 3 immediately following taxation years,

to the extent that that total does not exceed the amount by which

(c) the amount that would, but for this subsection, be its tax payable under this Part for the year

exceeds

(d) the total of all amounts each of which is the amount deducted under subsection 125.3(1) in computing the corporation's tax payable under Part I for a taxation year ending before 1992 in respect of its unused Part I.3 tax credit (within the meaning assigned by section 125.3) for the year.

Related Provisions: 87(2)(j.91) — Amalgamation; 87(2.11) — Vertical amalgamations; 125.2, 125.3 — Credit of Parts VI and I.3 tax against surtax before 1992; 161(7)(a)(ix), 164(5)(h.1), 164(5.1)(h.2) — Effect of carryback of loss etc.; 181.6 — Return.

History: Para. 181.1(4)(c) substituted by 1994, c. 21, s. 82, applicable to 1992 *et seq.* That para. formerly read:

(c) the amount that would, but for this section, be its tax payable under this Part for the year

Subsec. 181.1(4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

Forms: T2 SCH 37: Calculation of unused Part I.3 tax credit and unused surtax credit.

(5) Idem — For the purposes of this subsection and subsections (4), (6) and (7),

(a) an amount may not be claimed under subsection (4) in computing a corporation's tax payable under this Part for a particular taxation year in respect of its unused surtax credit for another taxation year until its unused surtax credits, if any, for taxation years preceding the other year that may be claimed under this Part for the particular year have been claimed; and

(b) an amount in respect of a corporation's unused surtax credit for a taxation year may be claimed under subsection (4) in computing its tax payable under this Part for another taxation year only to the extent that it exceeds the total of all amounts each of which is an amount claimed in respect of that unused surtax credit in computing its tax payable under this Part or Part VI for a taxation year preceding that other year.

Related Provisions: 87(2.11) — Vertical amalgamations.

History: Subsec. 181.1(5) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

(6) Definitions — For the purposes of this subsection and subsections (4), (5) and (7),

"Canadian surtax payable" of a corporation for a taxation year has the meaning assigned by subsection 125.3(4);

"unused surtax credit" for a taxation year ending after 1991

(a) of a corporation (other than a corporation that was throughout the year a financial institution, within the

meaning assigned by section 190) means the amount, if any, by which

(i) its Canadian surtax payable for the year

exceeds the total of

(ii) the amount that would, but for subsection (4), be its tax payable under this Part for the year, and

(iii) the amount, if any, deducted under section 125.3 in computing the corporation's tax payable under Part I for the year, and

(b) of a corporation that was throughout the year a financial institution (within the meaning assigned by section 190) means the lesser of

(i) the amount, if any, by which

(A) its Canadian surtax payable for the year

exceeds the total of

(B) the amount that would, but for subsection (4), be its tax payable under this Part for the year, and

(C) the amount, if any, deducted under section 125.3 in computing the corporation's tax payable under Part I for the year, and

(ii) the amount, if any, by which its tax payable under Part I for the year exceeds the amount that would, but for subsection (4) and subsection 190.1(3), be the total of its taxes payable under Parts I.3 and VI for the year.

Related Provisions: 87(2.11) — Vertical amalgamations; 256(9) — Date of acquisition of control.

History: Subsec. 181.1(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

(7) Acquisition of control — Where at any time control of a corporation has been acquired by a person or group of persons, no amount in respect of its unused surtax credit for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time and no amount in respect of its unused surtax credit for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time, except that

(a) the corporation's unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation throughout the subsequent year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year that ended before that time (in this paragraph referred to as the "preceding year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, the corporation's income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing the corporation's taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

Related Provisions: 87(2.11) — Vertical amalgamations; 256(6)–(9) — Anti-avoidance — deemed exercise of right to increase voting power.

History: Paras. 181.1(7)(a) and (b) amended by 1998, c. 19, s. 194, applicable to acquisitions of control that occur after April 26, 1995. Paras. 181.1(7)(a) and (b) formerly read:

(a) where a business was carried on by the corporation in a taxation year ending before that time, its unused surtax credit for that year is deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout

the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year; and

(b) where a business was carried on by the corporation throughout a taxation year ending after that time, its unused surtax credit for that year is deductible by the corporation for a particular taxation year ending before that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit in the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties of the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year.

Subsec. 181.1(7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 105(3), applicable to 1992 *et seq.*

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

Definitions [s. 181.1]: "acquired" — 256(7)–(9); "amount" — 181(3), 248(1); "business" — 248(1); "capital deduction" — 181.5(1); "Canadian surtax payable" — 125.3(4), 181.1(6); "carrying on business in Canada" — 253; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "farm loss" — 111(8); "financial institution" — 190(1); "non-capital loss" — 111(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "permanent establishment" — 181(2), Reg. 8602; "property" — 248(1); "resident in Canada" — 250; "taxable capital employed in Canada" — 181.2(1), 181.3(1), 181.4; "taxable income" — 2(2), 248(1); "taxation year" — 249; "unused surtax credit" — 181.1(6).

181.2 (1) Taxable capital employed in Canada — The taxable capital employed in Canada of a corporation for a taxation year (other than a financial institution or a corporation that was throughout the year not resident in Canada) is the prescribed proportion of the corporation's taxable capital for the year.

Related Provisions: 66(12.6012) — Definition used for limitation on renunciation of Canadian development expenses to flow-through shareholder as Canadian exploration expense; 181(4) — Limitations respecting inclusions and deductions; 181.3(1) — Taxable capital employed in Canada of financial institution.

Regulations: 8601 (prescribed proportion).

(2) Taxable capital — The taxable capital of a corporation (other than a financial institution) for a taxation year is the amount, if any, by which its capital for the year exceeds its investment allowance for the year.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions.

(3) Capital — The capital of a corporation (other than a financial institution) for a taxation year is the amount, if any, by which the total of

(a) the amount of its capital stock (or, in the case of a corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses at the end of the year,

(b) the amount of its reserves for the year, except to the extent that they were deducted in computing its income for the year under Part I,

(b.1) the amount of its deferred unrealized foreign exchange gains at the end of the year,

(c) the amount of all loans and advances to the corporation at the end of the year,

(d) the amount of all indebtedness of the corporation at the end of the year represented by bonds, debentures, notes, mortgages, bankers' acceptances or similar obligations,

(e) the amount of any dividends declared but not paid by the corporation before the end of the year,

(f) the amount of all other indebtedness (other than any indebtedness in respect of a lease) of the corporation at the end of the year that has been outstanding for more than 365 days before the end of the year, and

(g) where the corporation was a member of a partnership at the end of the year, that proportion of the amount, if any, by which

(i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would be determined under this paragraph and paragraphs (b) to (d) and (f) in respect of the partnership at the end of its last fiscal period that ends at or before the end of the year (if paragraphs (b) to (d) and (f) applied to partnerships in the same way that they apply to corporations)

exceeds

(ii) the amount of the partnership's deferred unrealized foreign exchange losses at the end of that period

that the member's share of the partnership's income or loss for that period is of the partnership's income or loss for that period

exceeds the total of

(h) the amount of its deferred tax debit balance at the end of the year,

(i) the amount of any deficit deducted in computing its shareholders' equity at the end of the year, and

(j) any amount deducted under subsection 135(1) in computing its income under Part I for the year, to the

extent that the amount can reasonably be regarded as being included in the amount determined under any of paragraphs (a) to (g) in respect of the corporation for the year.

(k) the amount of its deferred unrealized foreign exchange losses at the end of the year.

Possible Future Amendment — Joint debt

Letter from Department of Finance, August 6, 1997:

Dear [xxx]

This is in response to your memorandum dated July 29, 1997 respecting the application of the Large Corporation Tax (LCT) to joint debt. You are concerned that joint debt may be fully taxed in the hands of each co-borrower under the LCT, even though the advance is divided among those borrowers. Using the example provided in your note, a joint debt in the amount of $400 million might be shared so that one party is advanced $100 million and the other, $300 million. You believe that the aggregate addition to capital in respect of the debt should be $400 million for the two borrowers; your concern is that, under the current law, each of them would be required to add $400 million to capital with the result that a total of $800 million would be subject to LCT.

Your concern is based on the current wording of subsection 181(3) of the Act, which provides that, "except as otherwise provided under this Part", the amounts to be used in calculating LCT are those set out on the taxpayer's balance sheet, prepared in accordance with GAAP. You feel that the definition of capital in paragraph 181.2(3) of the Act "provides otherwise" for these purposes, and hence, that the amounts set out on the balance sheet may not be relevant.

As you have described it, GAAP currently provides that only the portion of a jointly-incurred debt that is actually advanced to a borrower is recorded as a liability on the balance sheet. A note to the balance sheet indicates the full value of the joint debt in order to disclose the legal liability of the borrower for that part of the debt that was not received by that borrower. If subsection 181(3) applies, you reason that the taxpayers in your example would be taxed on $100 million and $300 million in capital respectively. If subsection 181(3) does not apply, each taxpayer would be taxed on the full amount of their legal indebtedness, being $400 million.

In our view, the definition of capital in subsection 181.2(3) of the Act does not constitute an exception to the application of subsection 181(3) of the Act. Rather, our intention — which we believe to be reflected in the existing legislation — is that subsection 181(3) apply to use the amounts reflected in a borrower's balance sheet to quantify the amounts included in its capital.

That being said, there may be a risk of double-counting in the application of the LCT to jointly-incurred debt. As notes to the financial statements are an integral part of the balance sheet, there is a possibility that the amount set out in the notes would be assessed as the corporation's capital in respect of a joint debt. If this were to occur, each co-borrower under a joint debt would be taxed for the full amount of the debt, irrespective of the amount actually advanced to that borrower.

In principle, we agree that the amount of a joint debt should only be taxed once, and we hope to discuss this matter further with Revenue Canada officials to determine whether that result can be achieved under the current law. If that proves unsuccessful, we are prepared to consider legislative changes to ensure this outcome. As noted, GAAP currently allocates joint debt based on the amount of cash advanced to each co-borrower — for LCT purposes, other factors may be relevant in making such an allocation. If a change to the law should prove necessary, we would be pleased [to] have your views in this respect.

If you would like to discuss this matter in more detail, please feel free to contact Robin Maley (992-4859) or Brian Ernewein (992-3045) of the Division directly.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Related Provisions: 132.2(1)(o) — Deemed year-end of mutual fund corporation on reorganization; 181(4) — Limitations respecting inclusions and deductions.

History: Paras. 181.2(3)(b.1) and 181.2(3)(k) added, para. 181.2(3)(g) amended, by 1998, c. 19, subsecs. 195(1) to (3), applicable to 1995 *et seq.* Para. 181.2(3)(g) formerly read:

> (g) where the corporation was a member of a partnership at the end of the year, that proportion of the total of all amounts (other than amounts owing to the member or to corporations that are other members of the partnership) that would be determined under this paragraph and paragraphs (b) to (f) in respect of the partnership at the end of its last fiscal period ending at or before the end of the year (if the references in paragraphs (b) to (f) to "corporation" were read as references to "partnership") that the member's share of the partnership's income or loss for that period is of the partnership's income or loss for that period,

Para. 181.2(3)(d) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 106(1), to add "bankers' acceptances", applicable to taxation years ending after December 20, 1991.

Para. 181.2(3)(j) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 147(1), applicable to taxation years ending after June 1989.

Selected Cases [subsec. 181.2(3)]: *Oerlikon Aérospatiale Inc. v. R.*, [1999] 4 C.T.C. 358 (FCA); leave to appeal to SCC refused (May 11, 2000), File 27532 (Capital includes all reserves not deducted in computation); *Autobus Thomas Inc., v. R.*, [2000] D.T.C. 6165 (FCA); aff'g [1999] 2 C.T.C. 2001 (TCC) (Amounts owed under instalment sales contracts included in calculation of capital).

I.T. Technical News: No. 18 (*Oerlikon Aérospatiale* case).

(4) Investment allowance — The investment allowance of a corporation (other than a financial institution) for a taxation year is the total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation that is

(a) a share of another corporation,

(b) a loan or advance to another corporation (other than a financial institution),

(c) a bond, debenture, note, mortgage or similar obligation of another corporation (other than a financial institution),

(d) long-term debt of a financial institution,

(d.1) a loan or advance to, or a bond, debenture, note, mortgage or similar obligation of, a partnership all of the members of which, throughout the year, were other corporations (other than financial institutions) that were not exempt from tax under this Part (otherwise than because of paragraph 181.1(3)(d)),

(e) an interest in a partnership, or

(f) a dividend payable to the corporation at the end of the year on a share of the capital stock of another corporation,

other than a share of the capital stock of, a dividend payable by, or indebtedness of, a corporation that is exempt from tax under this Part (otherwise than because of paragraph 181.1(3)(d)).

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 181.1(6) — Deemed amount of loan.

History: Para. 181.2(4)(d.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 106(2), applicable to 1991 *et seq.*

That portion of subsec. 181.2(4) following para. (e) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 147(2), applicable to taxation years ending after June 1989. That portion formerly read:

> other than a share of the capital stock or indebtedness of a corporation that is exempt from tax under section 149 on all of its taxable income.

Selected Cases [subsec. 181.2(4)]: *Federated Co-operatives Ltd. v. R.*, [2000] 2 C.T.C. 2382 (TCC) (Bankers' acceptances not "investment allowances", nor "loans" or "advances").

(5) Value of interest in partnership — For the purposes of subsection (4), the carrying value, at the end of a taxation year, of an interest of a corporation in a partnership shall be deemed to be an amount equal to that proportion of

(a) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, described in any of paragraphs (4)(a) to (d) and (f), other than an asset that is a share of the capital stock of, a dividend payable by, or indebtedness of, a corporation that is exempt from tax under this Part (otherwise than because of paragraph 181.1(3)(d)),

that

(b) the corporation's share of the partnership's income or loss for that period

is of

(c) the partnership's income or loss for that period.

History: Para. 181.2(5)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 147(3), applicable to taxation years ending after June 1989. That para. formerly read:

(a) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, described in paragraphs (4)(a) to (d) (other than an asset that is a share of the capital stock or indebtedness of a corporation that is exempt from tax under section 149 on all of its taxable income),

(6) Loan — For the purpose of subsection (4), where a corporation made a particular loan to a trust that neither

(a) made any loans or advances to nor received any loans or advances from, nor

(b) acquired any bond, debenture, note, mortgage or similar obligation of nor issued any bond, debenture, note, mortgage or similar obligation to

a person not related to the corporation, as part of a series of transactions in which the trust made a loan to another corporation (other than a financial institution) to which the corporation is related, the least of

(c) the amount of the particular loan,

(d) the amount of the loan from the trust to the other corporation, and

(e) the amount, if any, by which

(i) the total of all amounts each of which is the amount of a loan from the trust to any corporation

exceeds

(ii) the total of all amounts each of which is the amount of a loan (other than the particular loan) from any corporation to the trust

at any time shall be deemed to be the amount of a loan from the corporation to the other corporation at that time.

History: Subsec. 181.2(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 106(3), applicable after June 1989.

Definitions [s. 181.2]: "amount" — 181(3), 181.2(6), 248(1); "carrying value" — 181(2); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 181(1); "fiscal period" — 249(2)(b), 249.1; "long-term debt" — 181(1); "permanent establishment" — 181(2), Reg. 8602; "reserves" — 181(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

181.3 (1) Taxable capital employed in Canada of financial institution — The taxable capital employed in Canada of a financial institution for a taxation year is the total of

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution (other than property held by the institution primarily for the purpose of resale that was acquired by the financial institution, in the year or the preceding taxation year, as a consequence of another person's default, or anticipated default, in respect of a debt owed to the institution) that is tangible property used in Canada and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12),

(b) the total of all amounts each of which is an amount in respect of a partnership in which the financial institution has an interest at the end of the year equal to that proportion of

(i) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, that is tangible property used in Canada

that

(ii) the financial institution's share of the partnership's income or loss for that period

is of

(iii) the partnership's income or loss for that period, and

(c) an amount that is equal to

(i) in the case of a financial institution other than an insurance corporation, that proportion of its taxable capital for the year that its Canadian assets at the end of the year is of its total assets at the end of the year,

(ii) in the case of an insurance corporation that was resident in Canada at any time during the year and carried on a life insurance business at any time in the year, the total of

(A) that proportion of the amount, if any, by which the total of

(I) its taxable capital for the year, and

(II) the amount prescribed for the year in respect of the corporation

exceeds

(III) the amount prescribed for the year in respect of the corporation

that its Canadian reserve liabilities as at the end of the year is of the total of

(IV) its total reserve liabilities as at the end of the year, and

(V) the amount prescribed for the year in respect of the corporation, and

(B) the amount, if any, by which

(I) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that may reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(II) the total of all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)) to the extent that it was included in the amount determined under subclause (I) and was deducted in computing its income under Part I for the year,

(III) the total of all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i) to the extent that it was included in the amount determined under subclause (I) and was deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year, and

(IV) the total of all amounts each of which is the amount outstanding (including any interest accrued thereon) as at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it was deducted in computing the total determined under subclause (III),

(iii) in the case of an insurance corporation that was resident in Canada at any time in the year and throughout the year did not carry on a life insurance business, that proportion of its taxable capital for the year that the total amount of its Canadian premiums for the year is of its total premiums for the year, and

(iv) in the case of an insurance corporation that was throughout the year not resident in Canada and carried on an insurance business in Canada at any time in the year, its taxable capital for the year.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 190.11 — Taxable capital employed in Canada for Part VI tax.

History: Cl. 181.3(1)(c)(ii)(A) substituted by 1994, c. 21, subsec. 83(1), applicable

(a) to taxation years that end after February 25, 1992; and

(b) where a corporation elects under para. 84(2)(b) of the amending legislation [see under 190.11(b)(i) below], to its 1991 and subsequent taxation years; and, notwithstanding subsecs. 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made as are consequential on the application of the above amendment to the corporation's taxation years that end before February 26, 1992.

Cl. (c)(ii)(A) formerly read:

(A) that proportion of its taxable capital for the year that its Canadian reserve liabilities as at the end of the year is of its total reserve liabilities as at the end of the year, and

Para. 181.3(1)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 107, applicable to taxation years ending after June 1989. Para. (a) formerly read:

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that is tangible property used in Canada (and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12)),

Regulations: 8605 (prescribed amounts for 181.3(1)(c)(ii)(A)(II), (III) and (V)).

(2) Taxable capital of financial institution — The taxable capital of a financial institution for a taxation year is the amount, if any, by which its capital for the year exceeds its investment allowance for the year.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 190.12 — Taxable capital for Part VI tax.

(3) Capital of financial institution — The capital of a financial institution for a taxation year is

(a) in the case of a financial institution other than an insurance corporation, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt,

(ii) the amount of its capital stock (or, in the case of an institution incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(iii) the amount of its reserves for the year, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(iv) the amount of its deferred tax debit balance at the end of the year,

(v) the amount of any deficit deducted in computing its shareholders' equity at the end of the year, and

(vi) any amount deducted under subsection 130.1(1) or 137(2) in computing its income under Part I for the year, to the extent that the amount can reasonably be regarded as being included in the amount determined under subparagraph (i), (ii) or (iii) in respect of the institution for the year;

(b) in the case of an insurance corporation that was resident in Canada at any time in the year and carried on a life insurance business at any time in the year, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt, and

(ii) the amount of its capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses

exceeds the total of

(iii) the amount of its deferred tax debit balance at the end of the year, and

(iv) the amount of any deficit deducted in computing its shareholders' equity at the end of the year;

(c) in the case of an insurance corporation that was resident in Canada at any time in the year and throughout the year did not carry on a life insurance business, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt,

(ii) the amount of its capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(iii) the amount of its reserves for the year, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(iv) the amount of its deferred tax debit balance at the end of the year,

(v) the amount of any deficit deducted in computing its shareholders' equity at the end of the year, and

(vi) the total amount of its deferred acquisition expenses in respect of its property and casualty insurance business in Canada, to the extent that it can reasonably be attributed to an amount included in the amount determined under subparagraph (iii); and

(d) in the case of an insurance corporation that was throughout the year not resident in Canada and carried on an insurance business in Canada at any time in the year, the total at the end of the year of

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) the corporation's surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under this Part or Part VI for the year

exceeds the total of all amounts each of which is

(II) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and

(III) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and

(B) the corporation's attributed surplus for the year,

(ii) any other surpluses relating to its insurance businesses carried on in Canada,

(iii) the amount of its long-term debt that may reasonably be regarded as relating to its insurance businesses carried on in Canada, and

(iv) the amount, if any, by which

(A) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that may reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(B) the total of all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)) to the extent that it was included in the amount determined under clause (A) and was deducted in computing its income under Part I for the year,

(C) the total of all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i) to the extent that it was included in the amount determined under clause (A) and was deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year,

(D) the total of all amounts each of which is the amount outstanding (including any interest accrued thereon) as at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it was deducted in computing the amount determined under clause (C), and

(E) the total amount of its deferred acquisition expenses in respect of its property and casualty insurance business in Canada, to the extent that it can reasonably be attributed to an amount included in the amount determined under clause (A).

Proposed Amendment — Capital of authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (5) That, for the purposes of Part I.3 and Part VI of the Act, the capital of an authorized foreign bank be an amount equal to 10% of the bank's risk-weighted assets as determined under prescribed rules based on the risk-weighted asset guidelines of the Superintendent of Financial Institutions.

Department of Finance news release, February 11, 1999: *Capital Tax*

Banks are subject to capital tax under Part I.3 and Part VI of the *Income Tax Act*. While the definitions of "capital" for regulatory and tax purposes differ slightly, the components of a Canadian bank's regulatory capital are generally subject to capital tax. Thus, the regulatory capital requirements applicable to Canadian banks guarantee that those entities have a minimum amount of taxable capital employed in Canada.

Because foreign banks having branches in Canada will be subject to the capital adequacy requirements imposed by the banks' home countries, the branches themselves will not be required to comply with Canadian capital requirements applicable to Canadian banks. Given that Canadian capital taxes are based to a large extent on the capital requirements imposed by Canadian regulators, a foreign branch could pay substantially less capital tax than its domestic competitors.

A new capital tax base is proposed to apply to foreign banks. For tax purposes, the capital of a foreign bank that has a Canadian branch will equal 10% of the "risk-weighted assets" of the Canadian branch, which will be defined, for these purposes, with regard to the risk-weighted asset requirements currently used by the Office of the Superintendent of Financial Institutions.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 190.13 — Capital for Part VI tax.

History: Subpara. 181.3(3)(d)(i) amended by 1998, c. 19, s. 196, applicable to 1994 *et seq.* Subpara. 181.3(3)(d)(i) formerly read:

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)), computed as if no tax were payable under this Part or Part VI for the year, and its attributed surplus for the year,

Subpara. 181.3(3)(c)(vi) added by 1994, c. 21, subsec. 83(2), applicable to 1992 *et seq.*

Subpara. 181.3(3)(d)(i) substituted by 1994, c. 21, subsec. 83(3), applicable to 1992 *et seq.* That subpara. formerly read:

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)) and its attributed surplus for the year,

Cl. 181.3(3)(d)(iv)(E) added by 1994, c. 21, subsec. 83(4), applicable to 1992 *et seq.*

Subpara. 181.3(3)(a)(vi) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 148(1), applicable to taxation years ending after June 1989.

(4) Investment allowance of financial institution — The investment allowance of a financial institution for a taxation year is,

(a) in the case of a financial institution that was resident in Canada at any time in the year, the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that is a share of the capital stock or long-term debt of another financial institution (other than an institution that is exempt from tax under this Part) that is related to the institution (and, in the case of a financial institution that is an insurance corporation, that is non-segregated property within the meaning assigned by subsection 138(12)),

(b) in the case of an insurance corporation that was throughout the year not resident in Canada, the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that

(i) is non-segregated property (within the meaning assigned by subsection 138(12)),

(ii) is a share of the capital stock or long-term debt of another financial institution (other than an institution that is exempt from tax under this Part) that is related to the institution, and

(iii) was used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, and

(c) in any other case, nil,

and, for the purposes of this subsection, a credit union and another credit union of which the credit union is a shareholder or member shall be deemed to be related to each other.

Related Provisions: 181(4) — Limitations respecting inclusions and deductions; 181.5(6) — Whether corporations related.

History: Para. 181.3(4)(a), subpara. (4)(b)(ii) and that portion of subsec. (4) following para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 148(3), (4), (5), applicable to taxation years ending after June 1989. Those portions formerly read:

(a) in the case of a financial institution that was resident in Canada at any time in the year, the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution that is a share of the capital stock or long-term debt of another financial institution that is related to the institution (and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12)),

. . . . .

(ii) is a share of the capital stock or long-term debt of another financial institution that is related to the institution, and

. . . . .

and, for the purposes of this subsection,

(d) a credit union and another credit union of which the credit union is a shareholder or member, as the case may be, shall be deemed to be related to each other, and

(e) a particular deposit insurance corporation (within the meaning assigned by subsection 137.1(5)), a subsidiary wholly owned corporation of the particular deposit insurance corporation that is deemed by subsection 137.1(5.1) to be a deposit insurance corporation and a corporation that in relation to the particular deposit insurance corporation is a member institution (within the meaning assigned by subsection 137.1(5)) shall be deemed to be related to each other.

Selected Cases [s. 181.3]: *Manufacturers Life Insurance Co. v. R.*, [2000] 1 C.T.C. 2481 (TCC) (Balance sheet figures to be used for capital tax base; amounts were not "reserves" or "surpluses").

Definitions [s. 181.3]: "amount" — 181(3), 248(1); "attributed surplus" — 181(2), Reg. 2405(3), 8602; "Canada" — 255; "Canadian assets", "Canadian premiums", "Canadian reserve liabilities" — 181(2), Reg. 8602; "carrying on business in Canada" — 253; "carrying value" — 181(2); "credit union" — 137(6), 248(1); "financial institution" — 181(1); "fiscal period" — 249, 249.1; "insurance corporation", "life insurance business" — 248(1); "long-term debt" — 181(1); "related" — 181.3(4), 181.5(6), (7), 251(2); "reserves" — 181(1); "resident in Canada" — 250; "share", "subsidiary wholly-owned corporation" — 248(1); "taxation year" — 249; "total assets", "total premiums", "total reserve liabilities" — 181(2), Reg. 8602.

181.4 Taxable capital employed in Canada of non-resident — The taxable capital employed in Canada for a taxation year of a corporation (other than a financial institution) that was throughout the year not resident in Canada is the amount, if any, by which

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation used by it in the year in, or held by it in the year in the course of, carrying on any business carried on by it during the year through a permanent establishment in Canada

exceeds the total of

(b) the amount of the corporation's indebtedness at the end of the year (other than indebtedness described in any of paragraphs 181.2(3)(c) to (f)) that may reasonably be regarded as relating to a business carried on by it during the year through a permanent establishment in Canada,

(c) the total of all amounts each of which is the carrying value at the end of the year of an asset described in subsection 181.2(4) of the corporation that was used by it in the year in, or held by it in the year in the course of, carrying on any business carried on by it during the year through a permanent establishment in Canada, and

(d) the total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation that

(i) is a ship or aircraft operated by the corporation in international traffic or is personal property used in its business of transporting passengers or goods by ship or aircraft in international traffic, and

(ii) was used by the corporation in the year in, or held by it in the year in the course of, carrying on any business during the year through a permanent establishment in Canada,

if the country in which the corporation is resident imposed neither a capital tax for the year on similar assets nor a tax for the year on the income from the operation of a ship or aircraft in international traffic, of any corporation resident in Canada during the year.

History: Subpara. 181.4(d)(i) amended by 1998, c. 19, s. 197, applicable to 1995 *et seq.*

(i) is a ship or aircraft operated by the corporation in international traffic or is personal property used in its business of transporting passengers or goods in international traffic, and

Para. 181.4(d) added by 1994, c. 7, Sch. II (1991, c. 49), s. 149, applicable to taxation years ending after June 1989.

Definitions [s. 181.4]: "amount" — 181(3), 248(1); "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "carrying value" — 181(2); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 181(1); "international traffic" — 248(1); "permanent establishment" — 181(2), Reg. 8602; "resident in Canada" — 250.

181.5 (1) Capital deduction — The capital deduction of a corporation for a taxation year is $10,000,000 unless

the corporation was related to another corporation at any time in the year, in which case, subject to subsection (4), its capital deduction for the year is nil.

(2) Related corporations — A corporation that is related to any other corporation at any time in a taxation year of the corporation ending in a calendar year may file with the Minister in prescribed form an agreement on behalf of the related group of which the corporation is a member under which an amount that does not exceed $10,000,000 is allocated among all corporations that are members of the related group for each taxation year of each such corporation ending in the calendar year and at a time when it was a member of the related group.

Related Provisions: 181.5(4) — Amount allocated; 181.5(6) — Corporations deemed not related.

Forms: T2 SCH 36: Agreement among related corporations — Part I.3 tax.

(3) Idem — The Minister may request a corporation that is related to any other corporation at the end of a taxation year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount among the members of the related group of which the corporation is a member for the year not exceeding $10,000,000.

(4) Idem — The least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (2) or by the Minister pursuant to subsection (3) is the capital deduction of that member for that taxation year.

(5) Idem — Where a corporation (in this subsection referred to as the "first corporation") has more than one taxation year ending in the same calendar year and is related in 2 or more of those taxation years to another corporation that has a taxation year ending in that calendar year, the capital deduction of the first corporation for each such taxation year at the end of which it is related to the other corporation is an amount equal to its capital deduction for the first such taxation year.

(6) Idem — Two corporations that would, but for this subsection, be related to each other by reason only of

(a) the control of any corporation by Her Majesty in right of Canada or a province, or

(b) a right referred to in paragraph 251(5)(b),

are, for the purposes of this section and subsection 181.3(4), deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purposes of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

Related Provisions: 256(6), (6.1) — Meaning of "control".

History: The closing words of subsec. 181.5(6) amended by 1998, c. 19, s. 198, applicable after April 26, 1995. The closing words formerly read:

> shall, for the purposes of this section and subsection 181.3(4), be deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it may reasonably be considered that one of the main purposes of the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purposes of determining whether a corporation is related to any other corporation, the corporations shall, for the purposes of this section, be deemed to be in the same position in relation to each other as if the taxpayer owned the shares.

(7) Related corporations that are not associated — For the purposes of subsection 181.3(4) and this section, a Canadian-controlled private corporation and another corporation to which it would, but for this subsection, be related at any time shall be deemed not to be related to each other at that time where the corporations are not associated with each other at that time.

History: Subsec. 181.5(7) added by 1994, c. 7, Sch. II (1991, c. 49), s. 150, applicable to 1991 *et seq.* and, where a corporation so elected by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that where such an election is made before December 11, 1993, the election shall be deemed to have been made before 1992] (and, where applicable, by filing with the Minister in prescribed form a revised agreement for the purposes of subsec. 181.5(2)), to its 1989 and 1990 taxation years.

Definitions [s. 181.5]: "amount" — 181(3), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 181.5(6), (7), 251(2); "related group" — 251(4); "share" — 248(1); "taxation year" — 249.

181.6 Return — Every corporation that is or would, but for subsection 181.1(4), be liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I, a return of capital for the year in prescribed form containing an estimate of the tax payable under this Part by it for the year.

Related Provisions: 150.1(5) — Electronic filing; 235 — Penalty for failure to file return even where no balance owing.

History: S. 181.6 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 108, to add "that is or would, but for subsection 181.1(4), be", applicable to 1992 *et seq.*

Definitions [s. 181.6]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "taxation year" — 249.

Forms: T2 SCH 33: Part I.3 tax on large corporations; T2 SCH 34: Part I.3 tax on financial institutions; T2 SCH 35: Part I.3 tax on large insurance corporations; T2 SCH 342: Nova Scotia tax on large corporations; T2 SCH 343: Nova Scotia tax on large corporations — agreement among related corporations; T2 SCH 37: Calculation of unused Part I.3 tax credit and unused surtax credit; T2 SCH 361: New Brunswick tax on large corporations; T2 SCH 362: New Brunswick tax on large corporations — agreement among related corporations.

181.7 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require and, for the purpose of this section, paragraph 152(6)(a) shall be read as follows:

> "(a) a deduction under section 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) for a subsequent taxation year,"

Related Provisions [s. 181.7]: 157(1), (2), (2.1) — Instalment and payment obligations; 161(1), (4.1) — Interest.

History: S. 181.7 substituted for 181.7 to 181.9 by 1994, c. 7, Sch. VIII (1993, c. 24), s. 109, applicable to 1992 *et seq.* Ss. 181.7 to 181.9 formerly read:

181.7 (1) Payment of tax — Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year

(a) either

(i) on or before the last day of each month in the year, 1/12 of the amount estimated by it to be its tax payable under this Part for the year,

(ii) on or before the last day of each month in the year, 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first two months in the year, 1/12 of its second instalment base for the year, and on or before the last day of each of the following months in the year, 1/10 of the amount by which its first instalment base for the year exceeds 1/6 of its second instalment base for the year; and

(b) the remainder of its tax payable under this Part for the year, on or before the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under Part I for the year or would be so required if a remainder of that tax were payable and, where the corporation so elects in its return of income under this Part for the year, if clause 157(1)(b)(i)(A) were read as follows:

"(A) the corporation carried on an active business in Canada in the year or in its immediately preceding taxation year, and"

(2) Instalment bases — In this section,

(a) the first instalment base of a corporation for a particular taxation year is the product obtained when the tax payable under this Part by the corporation for its taxation year immediately preceding the particular year is multiplied by the ratio that 365 is of the number of days in that preceding year, and

(b) the second instalment base of a corporation for a particular taxation year is the amount of the first instalment base of the corporation for its taxation year immediately preceding the particular year,

but where a particular taxation year of a corporation that was formed as a result of an amalgamation or merger is its first taxation year ending after the amalgamation or merger, as the case may be,

(c) its first instalment base for the particular year is the total of all amounts each of which is the product obtained when the tax payable under this Part by a corporation that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger is multiplied by the ratio that 365 is of the number of days in that year, and

(d) its second instalment base for the particular year is the total of all amounts each of which is an amount equal to the first instalment base of a corporation that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger.

181.8 (1) Interest — Where, at any time after the day on or before which a corporation is required to pay the remainder of its tax payable under this Part for a taxation year,

(a) the amount of its tax payable under this Part for the year

exceeds

(b) the total of all amounts each of which is the amount paid at or before that time on account of its tax payable and applied as at that time by the Minister against the corporation's liability for an amount payable under this Part for the year,

the corporation shall pay to the Receiver General interest at a prescribed rate on the excess, computed for the period during which that excess is outstanding.

(2) Idem — Where a corporation that is required by this Part to pay an instalment of tax has failed to pay all or any part thereof on or before the day on or before which the instalment was required to be paid, it shall pay to the Receiver General, in addition to the interest payable under subsection (1), interest at a prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the earlier of the day of payment and the beginning of the period in respect of which the corporation is required to pay interest thereon under that subsection.

(3) Limitation on instalments — For the purposes of subsection (2), where a corporation is required to pay an instalment of tax for a taxation year computed by reference to a method described in subsection 181.7(1), the corporation shall be deemed to have been liable to pay an instalment computed by reference to

(a) its tax payable under this Part for the year,

(b) its first instalment base for the year, or

(c) its second instalment base for the year and its first instalment base for the year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 181.7(1)(a)(i) to (iii).

181.9 Provisions applicable to Part — Sections 152, 158 and 159; subsections 161(2.1), (2.2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Para. 181.7(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 151, applicable to taxation years ending after June 1989, except that, in its application to taxation years ending before 1991, an election referred to in the para. made by a corporation by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that where such an election is made before December 11, 1993, the election shall be deemed to have been made before 1992] shall be deemed to have been made by the corporation in its return of income under Part I.3 for the taxation year to which the election relates. Para. 181.7(1)(b) formerly read:

(b) the remainder of its tax payable under this Part for the year, on or before the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under Part I for the year or would be so required if a remainder of that tax were payable.

181.71 Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: S. 181.71 added by 1998, c. 19, s. 199, applicable to taxation years that end after June 1989.

Pre-RSC History [Part I.3]: Part I.3 (ss. 181.1–181.9) added by 1990, c. 39, s. 48, applicable (by subsec. 48(3), as amended by 1991, c. 49, s. 257) to taxation years ending after June 1989, except that

(a) in its application to the taxation year of a corporation commencing before July 1989, there may be deducted from the tax otherwise payable under Part I.3 by the corporation for the year an amount equal to that proportion of such tax that the number of days in the year that are before July 1989 is of the number of days in the year;

(b) in its application to taxation years of a corporation commencing before 1990, subsec. 181.7(1) shall be read as follows:

181.7 (1) Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year,

(a) in the case of a taxation year ending before 1990, the tax payable by it under this Part for the year on or before the later of January 15, 1990 and the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under Part I for the year or would be so required if a remainder of that tax were payable, and

(b) in the case of a taxation year ending after 1989,

(i) either

(A) on or before the last day of each month ending in the year and after 1989, an amount equal to the amount estimated by it to be its tax payable under this Part for the year divided by the number of months ending in the year and after 1989,

(B) on or before the last day of each month ending in the year and after 1989, an amount equal to its first instalment base for the year divided by the number of months ending in the year and after 1989, or

(C) on or before the last day of the first two months ending in the year and after 1989, an amount equal to its second instalment base for the

year divided by the number of months ending in the year and after 1989, and on or before the last day of each of the following months in the year, an amount equal to the amount by which

(I) its first instalment base for the year

exceeds

(II) (that proportion of its second instalment base for the year that 2 is of the number of months ending in the year and after 1989,

divided by the number of such following months, and

(ii) the remainder of its tax payable under this Part for the year, on the day on or before which the corporation is, pursuant to paragraph 157(1)(b), required to pay the remainder of its tax payable under Part I for the year or would be so required if a remainder of that tax were payable and clause 157(1)(b)(i)(A) were read as follows:

"(A) the corporation carried on an active business in Canada in the year or in its immediately preceding taxation year, and,"

(c) for the purposes of subsec. 181.7(2), the tax payable by a corporation under Part I.3,

(i) for a taxation year ending before July 1989 shall be deemed to be the amount that would be its tax payable under that Part for that year if that Part applied in respect of that year and its capital deduction under that Part for the year were its capital deduction under that Part for its first taxation year ending after June 1989, and

(ii) for its first taxation year ending after June 1989 shall be deemed to be the product obtained when its tax payable under that Part for that year is multiplied by the ratio that the number of days in that year is of the number of days in that year ending after June 1989; and

(d) in its application to taxation years of a corporation commencing before 1990, the reference in subsec. 181.8(3) to "subparagraphs 181.7(1)(a)(i) to (iii)" shall be read as a reference to "clauses 181.7(1)(b)(i)(A) to (C)".

PART II — TOBACCO MANUFACTURERS' SURTAX

182. (1) Surtax — Every corporation shall pay a tax under this Part for each taxation year equal to 40% of that proportion of the corporation's Part I tax on tobacco manufacturing profits for the year that

(a) the number of days in the year that are after February 8, 1994 and before February 9, 2000

is of

(b) the number of days in the year.

Proposed Amendment — 182(1)

182. (1) Surtax — Every corporation shall pay a tax under this Part for each taxation year equal to 40% of the corporation's Part I tax on tobacco manufacturing profits for the year.

Application: Bill C-24 (Second Reading in the Senate June 28, 2000) (GST technical bill), s. 173, will amend subsec. 182(1) to read as above, applicable to taxation years that end after February 8, 2000.

Technical Notes: Part II of the *Income Tax Act* imposes a surtax on a corporation's tax under Part I of that Act on profits from tobacco manufacturing. The surtax was initially enacted for a 3-year period beginning February 9, 1994, and was subsequently extended to February 8, 2000. The amendment to subsection 182(1) removes the termination date in the provision, thereby making the surtax permanent. The reference to the initial date of application of the surtax is also removed, since it is not relevant to the current or future taxation years.

Department of Finance news release, November 5, 1999: *Tobacco Tax Increases Announced*

Minister of National Revenue Martin Cauchon, on behalf of Finance Minister Paul Martin, today tabled in the House of Commons a Notice of Ways and Means Motion to amend the *Excise Tax Act* and the *Income Tax Act* to increase excise taxes on cigarettes and tobacco sticks and to make permanent the current 40 per cent surtax on the profits of tobacco manufacturers.

[Description of increases in excise taxes omitted — ed.]

The motion also proposes that, effective February 9, 2000, the current 40% surtax on the profits of tobacco manufacturers imposed under the *Income Tax Act* be made permanent. The tobacco manufacturers' surtax was initially introduced on February 9, 1994 on a three-year temporary basis. It was extended for three years from February 1997 and is scheduled to expire on February 8, 2000. The tax raises about $70 million annually.

"The measures introduced today reaffirm the Government's determination to reduce tobacco consumption in Canada," Minister Martin said. Health Minister Allan Rock added, "Tax increases are one part of our overall strategy to reduce smoking rates, particularly among younger Canadians. We must also intensify our efforts to reduce this leading cause of preventable death through means such as tough anti-tobacco advertising, upcoming labelling and information reporting regulations, and other measures."

For further information: Jean-Michel Catta, Public Affairs and Operations Division, (613) 947-7255; Karl Littler, Senior Policy Advisor — Tax Policy, Office of the Minister of Finance, (613) 996-3170; Jean-François Thibault, Excise Tax, (613) 996-0346; Miodrag Jovanovic, Business Income Tax, (613) 992-1569.

Notice of Ways and Means Motion, November 5, 1999: That it is expedient to amend the *Excise Tax Act* and the *Income Tax Act* to provide, among other things:

[*Excise Tax Act* amendments omitted — ed.]

8. That the temporary 40% surtax on profits from tobacco manufacturing under Part II of the *Income Tax Act* be made permanent.

Related Provisions: 183 — Return and payment of tax.

History: Para. 182(1)(a) amended by 1997, c. 26, s. 77, applicable to taxation years ending after February 8, 1997. Para. (a) formerly read:

(a) the number of days in the year that are after February 8, 1994 and before February 9, 1997

(2) Definitions — In this Part,

"Part I tax on tobacco manufacturing profits" of a corporation for a taxation year means 21% of the amount determined by the formula

$$\left(\frac{A \times B}{C}\right) - D$$

where

A is the amount that would be the corporation's Canadian manufacturing and processing profits for the year, within the meaning assigned by subsection 125.1(3), if the total of all amounts, each of which is the corporation's loss for the year from an active business, other than tobacco manufacturing, carried on by it in Canada, were equal to the lesser of

(a) that total otherwise determined, and

(b) the total of all amounts, each of which is the amount of the corporation's income for the year from an active business, other than tobacco manufacturing, carried on by it in Canada.

B is the corporation's tobacco manufacturing capital and labour cost for the year,

C is the total of the corporation's cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year, within

the meanings assigned by regulations made for the purposes of section 125.1, and

D is

(a) where the corporation is a Canadian-controlled private corporation throughout the year, the corporation's business limit for the year as determined for the purpose of section 125, and

(b) in any other case, nil;

Related Provisions: 257 — Formula cannot calculate to less than zero.

Regulations: 5202, 5204 (cost of manufacturing and processing capital, cost of manufacturing and processing labour).

"tobacco manufacturing" means any activity (other than farming) relating to the manufacture or processing in Canada of tobacco or tobacco products in or into any form that is, or would after any further activity become, suitable for smoking;

"tobacco manufacturing capital and labour cost" of a corporation for a taxation year means the total of the amounts that would be the corporation's cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year, within the meanings assigned by regulations made for the purpose of section 125.1, if the manufacturing or processing referred to in the definition "qualified activities" in those regulations were tobacco manufacturing.

Regulations: 5202, 5204 (cost of manufacturing and processing capital, cost of manufacturing and processing labour).

History: S. 182 added by 1994, c. 29, s. 16, applicable to taxation years ending after February 8, 1994.

Definitions [s. 182]: "active business", "amount" — 248(1); "business limit" — 125(2)–(5); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "carried on in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "farming" — 248(1); "Part I tax on tobacco manufacturing profits" — 182(2); "taxation year" — 249; "tobacco manufacturing", "tobacco manufacturing capital and labour cost" — 182(2).

183. (1) Return — Every corporation that is liable to pay tax under this Part for a taxation year shall file with the Minister a return for the year in prescribed form not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I.

Related Provisions: 150(1)(a) — Deadline for Part I return; 150.1(5) — Electronic filing.

Forms: T2 SCH 46: Part II — tobacco manufacturers' surtax.

(2) Payment — Every corporation shall pay to the Receiver General on or before the later of June 30, 1994 and the last day of the second month after the end of each taxation year its tax payable under this Part for the year.

Proposed Amendment — 183(2)

(2) Payment — Every corporation shall pay to the Receiver General on or before its balance-due day for each taxation year its tax payable under this Part for the year.

Application: Bill C-24 (Second Reading in the Senate June 28, 2000) (GST technical bill), s. 174, will amend subsec. 183(2) to read as above, applicable to taxation years that end after February 8, 2000.

Technical Notes: Subsection 183(2) of the *Income Tax Act* specifies the date in respect of each taxation year by which a corporation is required to pay its tax payable under Part II of that Act. This amendment replaces the requirement that the tax be paid on or before the last day of the second month after the end of a taxation year with a requirement that the tax be paid on or before the corporation's balance-due day for the year. The balance-due day is defined in subsection 248(1) of the Act in part by reference, in the case of corporations, to section 157 of the Act. In general, this day is the last day of the second month following the end of the year, except in the case of certain Canadian-controlled private corporations, for which it is the last day of the third month following the end of the year.

The amendment also removes the reference to June 30, 1994, the earliest payment due date for the surtax imposed under subsection 182(1) of the Act, since it is not relevant to the current or future taxation years.

(3) Provisions applicable — Subsections 150(2) and (3), sections 151, 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require.

History: S. 183 added by 1994, c. 29, s. 16, applicable to taxation years ending after February 8, 1994.

Definitions [s. 183]: "balance-due day" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "taxation year" — 249.

Pre-RSC History [former Part II]: Former Part II (ss. 181, 182) repealed by 1986, c. 55, s. 68, applicable with respect to taxes payable for taxation years commencing after 1986. Part II had read:

Part II — Tax on Corporation Paying Dividend out of Small Business Income

181. (1) **Tax imposed** — Every corporation shall on or before the last day of the third month after the end of each taxation year pay a tax under this Part for that taxation year equal to the lesser of

(a) 12½% of the aggregate of taxable dividends paid by the corporation in the year and before 1987 and at a time when the corporation was not exempt from tax under Part I, other than taxable dividends paid in respect of a small business development bond to a person with whom the corporation was dealing at arm's length, and

(b) 1/9 of the corporation's preferred-earnings amount at the end of the year.

(2) **"Preferred-earnings amount"** — In this Part, "preferred-earnings amount" of a corporation at the end of any taxation year means the amount, if any, by which the aggregate of

(a) the corporation's preferred-earnings amount, if any, at the end of the immediately preceding taxation year, and

(b) where subsection 125(1) applies to the corporation in respect of the year and the corporation is not exempt from tax under Part I at any time in the year, 3/4 of the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year

exceeds the aggregate of

(c) the aggregate of taxable dividends paid by the corporation in the immediately preceding taxation year and the tax payable by the corporation under this Part pursuant to subsection (1) for the immediately preceding taxation year, to the extent that such aggregate does not exceed the corporation's preferred-earnings amount at the end of that year,

(d) 9 times the amount of the tax paid by the corporation for the year pursuant to subsection (4), and

(e) where subsection 190(1) applies to the corporation at any particular time in the year, 3/4 of the amount of the corporation's preferred-rate amount (within the meaning assigned by paragraph 190(2)(b)) at that time.

(3) **Taxation years before 1983** — The preferred-earnings amount of a corporation at the end of taxation years commencing before 1983 shall be deemed to be nil.

(4) **Amalgamation and winding-up** — Where there has been an amalgamation or merger of two or more corporations or a winding-up (within the meaning assigned by subsection 88(1)) of a subsidiary and the tax under this Part that would have been payable as a consequence of,

(a) in the case of an amalgamation or merger, the distribution of all the property of the predecessor corporations to their shareholders immediately before the amalgamation or merger, or

(b) in the case of a winding-up, the distribution of all the property of the parent and the subsidiary to their shareholders immediately before the winding-up,

exceeds the tax under this Part that would have been payable by the amalgamated or merged corporation, or the parent, as the case may be, as a consequence of the distribution of all of its property immediately after the amalgamation, merger or winding-up, the amalgamated or merged corporation or the parent, as the case may be, shall, on or before the last day of the third month after the end of its first taxation year ending after the amalgamation, merger or winding-up, pay a tax under this Part equal to such excess.

(5) Payment of tax — Where a taxpayer has

(a) received an amount in a taxation year from a corporation

(i) as consideration for the disposition of any shares of the capital stock of a corporation to a person with whom the taxpayer was not dealing at arm's length,

(ii) as a taxable dividend, other than a taxable dividend paid out of retained earnings of the corporation except its retained earnings attributable

(A) to any other corporation, or

(B) to the disposition of any of its property, other than a disposition in the ordinary course of its business, to a person with whom the corporation was not dealing at arm's length, or

(iii) as a loan, or

(b) become indebted in a taxation year to a corporation

and the amount was received or the indebtedness was incurred as part of a transaction effected or to be effected after November 12, 1981 or as part of a series of transactions each of which was or is to be effected after that day and it may reasonably be considered that one of the main purposes thereof was to avoid the tax that might otherwise have been or become payable under this Part by reason of a distribution of property of any particular corporation, the particular corporation shall, on or before the last day of the third month after the end of the year, pay a tax under this Part for the taxation year of the particular corporation in which the amount was received or the indebtedness was incurred by the taxpayer equal to the amount of the tax that is or may be avoided by reason of the transaction or series of transactions.

(6) Application — Subsection (5) does not apply with respect to any loan or indebtedness where at the time the loan was made or the indebtedness was incurred *bona fide* arrangements were made for the repayment thereof within a reasonable time or where subsection 15(2) was applicable with respect to the loan or the indebtedness.

182. (1) Filing of return and payment of tax — Every corporation that is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

(2) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay computed from the day on or before which the tax was required to be paid to the day of payment.

(3) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsections 161(7) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Former para. 181(1)(a) amended by 1986, c. 55, s. 67, to substitute "in the year and before 1987" for "in the year".

Former subsec. 182(3) substituted by 1986, c. 6, s. 94, to add reference to subsection 161(11).

Former para. 181(2)(b) amended by 1985, c. 45, s. 97, to substitute "where subsection 125(1) applies to the corporation in respect of the year and the corporation is not exempt" for "where the corporation is not exempt", applicable to taxation years commencing after 1982, except that in its application to the 1983 and 1984 taxation years, the reference to "(c)" shall be read as a reference to "(d)".

Former subsecs. 182(2), (3) substituted by 1985, c. 45, subsec. 98(1), subsec. 182(3), applicable with respect to subsequent taxation years referred to in subsec. 161(7) ending after May 9, 1985. Subsecs. 182(2), (3) formerly read:

(2) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on the day on or before which it was required to pay the tax, it shall, on payment of the amount in default, pay interest at the prescribed rate from the day on or before which it was required to make the payment to the day of payment.

(3) Provisions applicable — Sections 151, 152, 158, 159 and 162 to 167 and Division J of Part I are applicable, with such modifications as the circumstances require, to this Part.

Former para. 181(2)(b) substituted by 1984, c. 45, s. 76, to substitute the reference to para. 125(c) for (d), applicable to 1985 *et seq.*

Former Part II added by 1980-81-82-83, c. 140, s. 109, applicable after November 12, 1981, except that no return for a taxation year under Part II is required to be filed, and no tax under Part II is payable before the day that is 30 days after March 30, 1983.

History of Pre-1978 Part II: The headings preceding s. 181 repealed by 1977-78, c. 1, s. 80, applicable after December 31, 1977. Those headings had read:

PART II — TAX ON REDEMPTION OR ACQUISITION BY CORPORATION OF CAPITAL STOCK THEREOF

S. 181 repealed by 1977-78, c. 1, s. 81, applicable in respect of purchases of shares after March 31, 1977. S. 181 formerly read:

181. (1) Tax on excess of purchase price paid — Where a corporation has, at any time in a taxation year and after 1971, purchased any of its shares in the open market in the manner in which shares would normally be purchased by any member of the public in the open market and the purchase is not an acquisition to which section 182 applies, the corporation shall, on or before the day on or before which it is required to file its return of income under Part I for the year, pay a tax under this Part of 25% on the amount, if any, by which the purchase price paid by the corporation for the shares exceeds the lesser of

(a) the paid-up capital in respect thereof immediately before the purchase, and

(b) the paid-up capital limit of the corporation immediately before the purchase.

(2) Definitions — In subsection (1) "paid-up capital limit" of a corporation and "paid-up capital" in respect of any share have the meanings assigned by subsection 89(1).

Ss. 182, 183 repealed by 1977-78, c. 1, subsec. 82(1), applicable in respect of acquisitions or redemptions of shares after December 31, 1977. Ss. 182, 183 formerly read:

182. (1) Tax on premium paid on redemption or acquisition — Where a corporation, other than a non-resident-owned investment corporation, has in a taxation year redeemed or acquired any of its shares, other than a common share, at a premium, the corporation shall, on or before the day on or before which it is required to file its return of income under Part I for the taxation year in which the share was redeemed or acquired,

(a) in the case of any such redemption or acquisition where

(i) the share was issued on or before February 19, 1953, and

(ii) the maximum amount payable by the corporation in respect of the redemption or acquisition of the share was fixed, by or in accordance with the law under which the corporation was incorporated, on or before February 19, 1953, and has not been increased since that date,

pay a tax under this Part of 20% on the amount of the premium on the share; and

(b) in the case of any such redemption or acquisition, other than a redemption or acquisition to which paragraph (a) applies, where

(i) the share was issued on or before June 18, 1971, and

(ii) the maximum amount payable by the corporation in respect of the redemption or acquisition of the share was fixed, by or in accordance with the law under which the corporation was incorporated, on or before June 18, 1971 and has not been increased since that date,

pay a tax under this Part on the amount of the premium on the share equal to

(iii) 20% thereof, if the amount of the premium on the share was not more than 10% of the amount referred to in paragraph (2)(a) or (b), as the case may be, and

(iv) 30% thereof, if the amount of the premium on the share was more than 10% of the amount referred to in paragraph (2)(a) or (b), as the case may be.

(2) **When share deemed redeemed at premium** — For the purpose of this section, a share has been redeemed or acquired at a premium if the amount payable by the corporation in respect of the redemption or acquisition exceeds the paid-up capital in respect of the share immediately before the redemption or acquisition and the premium is the amount of the excess.

183. (1) **Information return** — Every corporation that has in a taxation year

(a) purchased any of its shares in the open market in the manner described in subsection 181(1), or

(b) redeemed or acquired any of its shares, other than a common share,

shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file a return of the transaction in prescribed form.

(2) **Interest** — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on the day on or before which it was required to pay the tax, it shall, on payment of the amount in default, pay interest at a prescribed rate per annum from the day on or before which it was required to make the payment to the day of payment.

(3) **Provisions applicable to this Part** — Section 152, sections 162 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part.

Subsec. 182(2) substituted by 1974-75-76, c. 26, s. 109, applicable in respect of acquisitions or redemptions of shares after May 6, 1974. Subsec. 182(2) formerly read:

(2) For the purpose of this section, a share has been redeemed or acquired at a premium if the amount payable by the corporation in respect of the redemption or acquisition exceeds

(a) the par value of the share, if it had a par value, or

(b) if the share had no par value, that proportion of the paid-up capital of the corporation, immediately prior to the redemption or acquisition of the share, with respect to the class of shares to which the share belongs that one is of the number of issued shares of the class immediately prior to the redemption or acquisition of the share,

and the premium is the amount of the excess.

Application — Former Part II: 1977-78, c. 1, subsec. 82(3) provides that in respect of acquisitions or redemptions of shares after May 6, 1974, subparas. 182(1)(b)(iii) and (iv) shall be read as follows:

(iii) 20% thereof, if the amount of the premium on the share was not more than 10% of the paid-up capital in respect of the share, and

(iv) 30% thereof, if the amount of the premium on the share was more than 10% of the paid-up capital in respect of the share.

1977-78, c. 1, subsec. 82(4) provides that after March 31, 1977 and before 1978, subsec. 183(1) shall be read as follows:

183. (1) Every corporation that has in a taxation year redeemed or acquired any of its shares, other than a common share, at a premium, shall on or before the day on or before which it is required to file its return of income under Part I for the year, file a return of the transaction in prescribed form.

PART II.1 — TAX ON CORPORATE DISTRIBUTIONS

183.1 (1) Application of Part — This Part applies to a corporation (other than a mutual fund corporation) for a taxation year in which the corporation, at any time in the year,

(a) was a public corporation; or

(b) was resident in Canada and had a class of shares outstanding that were purchased and sold in the manner in which such shares normally are purchased and sold by any member of the public in the open market.

(2) Tax payable — Where, as a part of a transaction or series of transactions or events,

(a) a corporation, or any person with whom the corporation was not dealing at arm's length, has, at any time, paid an amount, directly or indirectly, to any person as proceeds of disposition of any property, and

(b) all or any portion of the amount may reasonably be considered, having regard to all the circumstances, to have been paid as a substitute for dividends that would otherwise have been paid in the normal course by the corporation,

the corporation shall, on or before the day on or before which it is required to file its return of income under Part I for its taxation year that includes that time, pay a tax of 45% of that amount or portion thereof, as the case may be.

Related Provisions: 248(10) — Series of transactions.

(3) Stock dividend — Where, as a part of a transaction or series of transactions or events,

(a) a share was issued by a corporation as a stock dividend and the amount of the stock dividend was less than the fair market value of the share at the time that it was issued, and

(b) the share or any other share of the capital stock of the corporation was purchased, directly or indirectly, by the corporation, or by a person with whom the corporation was not dealing at arm's length, for an amount in excess of its paid-up capital,

that excess shall, for the purposes of subsection (2), be deemed to have been paid as a substitute for dividends that would otherwise have been paid in the normal course by the corporation.

(4) Purchase of shares — Where, as a part of a transaction or series of transactions or events,

(a) a share of the capital stock of a corporation was purchased, directly or indirectly, by the corporation, or any person with whom the corporation was not dealing at arm's length, and

(b) any portion of the amount paid for the share may reasonably be considered, having regard to all the circumstances, as consideration for a dividend that had been declared, but not yet paid, on the share,

that portion of the amount shall, for the purposes of subsection (2), be deemed to have been paid as a substitute for dividends that would otherwise have been paid in the normal course by the corporation notwithstanding that the dividend was actually paid thereafter.

(5) Indirect payment — Where, as a part of a transaction or series of transactions or events, a person received a payment from a corporation, or from any person with whom the corporation was not dealing at arm's length, in consideration, in whole or in part, for paying an amount to any other person as proceeds of disposition of any property, the corporation shall, for the purposes of subsection (2), be deemed to have paid the amount indirectly to the other person.

(6) Where subsec. (2) does not apply — Subsection (2) does not apply if none of the purposes of the transaction or series of transactions or events referred to therein

may reasonably be considered, having regard to all the circumstances, to have been to enable shareholders of a corporation who are individuals or non-resident persons to receive an amount, directly or indirectly, as proceeds of disposition of property rather than as a dividend on a share that was of a class that was listed on a stock exchange or that was purchased and sold in the manner in which shares are normally purchased and sold by any member of the public in the open market.

(7) Where subsec. 110.6(8) does not apply — Where this section has been applied in respect of an amount, subsection 110.6(8) does not apply to the capital gain in respect of which the amount formed all or a part of the proceeds of disposition.

Pre-RSC History: S. 183.1 substituted by 1988, c. 55, s. 149, applicable with respect to transactions entered into on or after September 13, 1988, other than transactions that are part of a series of transactions, determined without reference to subsec. 248(10) commencing before September 13, 1988 and completed before 1989. S. 183.1 formerly read:

183.1 (1) Tax payable — Where, as part of a transaction or series of transactions or events, shares of the capital stock of a corporation (other than a mutual fund corporation as defined in subsection 131(8)) resident in Canada (in this section referred to as the "acquiring corporation") have, in a taxation year of the acquiring corporation, been acquired by the corporation or any other person or a partnership and

(a) subsection 84(2) or (3) was not applicable in respect of the acquisition of the shares,

(b) the consideration for the acquisition of the shares exceeded the paid-up capital of the shares immediately before the acquisition, and

(c) one of the main purposes of the transaction or series of transactions or events can reasonably be considered to have been to enable shareholders of the acquiring corporation who are individuals to realize, either directly or indirectly, a distribution of corporate surplus by the acquiring corporation as proceeds of disposition of a share,

the acquiring corporation shall, on or before the day on or before which it is required to file its return of income under Part I for its taxation year in which the shares were acquired, pay a tax of 50% of the amount by which the consideration for the acquisition of the shares exceeded their paid-up capital immediately before the acquisition.

(2) Idem — For the purposes of subsection (1),

(a) where a person or partnership has acquired property that can reasonably be considered to have been substituted for a share of the capital stock of a corporation, the person or partnership shall be deemed to have acquired the share for which the property was substituted for consideration equal to the purchase price of the property; and

(b) a distribution of corporate surplus by an acquiring corporation shall be deemed to have occurred where the consideration for the acquisition of a share is provided or is to be provided, directly or indirectly in any manner whatever, by the acquiring corporation and that consideration exceeded the paid-up capital of the share immediately before the acquisition.

(3) Non-application of subsection (1) — Subsection (1) does not apply with respect to an acquisition, at any time, of a share of the capital stock of an acquiring corporation as a part of a series of transactions or events to the extent that the subsection has been applied with respect to any acquisition, before that time, of that share as part of the series.

(4) Restrictions — For greater certainty, subsection (1) does not apply with respect to an acquisition of a share of the capital stock of an acquiring corporation where the acquisition was part of a series of transactions or events the principal purpose of which was to effect

(a) an acquisition of control of the acquiring corporation or a predecessor corporation (within the meaning assigned by section 87) of the acquiring corporation, as the case may be, by one or more persons or partnerships (which persons or partnerships are referred to in this paragraph as the "purchaser") unless the purchaser was not dealing at arm's length with the person or partnership that controlled or all of the persons or partnerships that were part of a group that controlled the acquiring corporation or the predecessor corporation, as the case may be, immediately before the commencement of the series;

(b) the acquisition of all of the shares of the acquiring corporation owned by a person or partnership that was dealing at arm's length with the acquiring corporation in order to increase the degree of control of the acquiring corporation or a predecessor corporation (within the meaning assigned by section 87) of the acquiring corporation, as the case may be, by those shareholders that controlled the acquiring corporation or the predecessor corporation, as the case may be, immediately before the commencement of the series; or

(c) the acquisition of a prescribed share of the capital stock of the acquiring corporation owned by an employee of the acquiring corporation or a corporation with which it did not deal at arm's length where the employee was dealing at arm's length with each such corporation immediately before the commencement of the series, and

(i) the consideration for the acquisition of the share did not exceed the lesser of the cost or adjusted cost base of the share to the employee immediately before the acquisition and the acquisition of the share was provided for in an employee share purchase agreement, under which the employee acquired the share, in order to protect the employee against any loss in respect of the share, or

(ii) the consideration for the acquisition of the share did not exceed its fair market value, immediately before the acquisition, and the acquisition of the share was provided for in an employee share purchase agreement, under which the employee acquired the share, in order to provide a market for the share.

(5) Amalgamation — Where an acquiring corporation has been formed as a result of an amalgamation (within the meaning assigned by section 87) of two or more predecessor corporations,

(a) for the purposes of paragraph (4)(a), where the one or more persons or partnerships that controlled or were part of a group that controlled the acquiring corporation immediately after the amalgamation did not control a predecessor corporation immediately before the amalgamation, that person or partnership or group of persons or partnerships that controlled the acquiring corporation immediately after the amalgamation shall be deemed to have acquired control of that predecessor corporation; and

(b) for the purposes of paragraph (4)(b), where the shareholders that controlled the acquiring corporation immediately after the amalgamation controlled a predecessor corporation immediately before the amalgamation and their degree of control of the acquiring corporation immediately after the amalgamation exceeded their degree of control of the predecessor corporation immediately before the amalgamation, those shareholders shall be deemed to have increased their degree of control of the predecessor corporation.

(6) Prevailing provisions — Subsection (1) does not apply to an acquisition of a share of the capital stock of an acquiring corporation to the extent that subsection 84(8) or section 84.1 or 212.1 applied or subsection 110.6(8), 245(1.1) or 247(1) has been applied in respect of the acquisition or the transaction or series of transactions or events of which the acquisition was a part.

Definitions [s. 183.1]: "adjusted cost base" — 54, 248(1); "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "capital gain" — 39(1)(a), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "employee", "individual" — 248(1); "mutual fund corporation" — 131(8), 248(1); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "property" — 248(1); "public corporation" — 89(1), 248(1); "resident in Canada" — 250; "series of transactions or events" — 248(10); "share", "shareholder" — 248(1); "substituted property" — 248(5); "taxation year" — 249.

183.2 (1) Return — Every corporation liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of

income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2141: Part II.1 tax return — tax on corporate distributions.

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 160.1(1) and 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History [Part II.1]: Part II.1 (ss. 183.1, 183.2) added by 1987, c. 46, s. 57, applicable with respect to acquisitions of shares after November 27, 1986 other than shares acquired before 1987 pursuant to a written commitment made before November 28, 1986, except that, with respect to shares acquired before 1987, the reference in subsection 183.1(1) to "50%" shall be read as a reference to "33⅓%".

Definitions [s. 183.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "taxation year" — 249.

PART III — ADDITIONAL TAX ON EXCESSIVE ELECTIONS

184. (1) [Repealed under former Act]

Pre-RSC History: Subsec. 184(1) repealed by 1977-78, c. 1, subsec. 83(1), applicable with respect to dividends payable after December 31, 1978 except that with respect to dividends payable after March 31, 1977 and before 1979, the subsec. shall be read as follows:

> 184. (1) Where a corporation has elected in accordance with subsection 83(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock and the full amount of the dividend exceeds the aggregate of the portion thereof deemed by that subsection to be payable out of its tax-paid undistributed surplus on hand and the portion thereof so deemed to be payable out of its 1971 capital surplus on hand, the corporation shall, at the time of the election, pay a tax under this Part equal to ½ of the excess

Subsec. 184(1) formerly read:

> 184. (1) Tax on excess of dividend paid over portion payable out of tax-paid undistributed surplus or 1971 capital surplus — Where a corporation has elected in accordance with subsection 83(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock and the full amount of the dividend exceeds the aggregate of the portion thereof deemed by that subsection to be payable out of its tax-paid undistributed surplus on hand and the portion thereof so deemed to be payable out of its 1971 capital surplus on hand, the corporation shall, at the time of the election, pay a tax under this Part equal to the amount of the excess.

(2) Tax on excessive elections — Where a corporation has elected in accordance with subsection 83(2), 130.1(4) or 131(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock and the full amount of the dividend exceeds the portion thereof deemed by that subsection to be a capital dividend or capital gains dividend, as the case may be, the corporation shall, at the time of the election, pay a tax under this Part equal to ¾ of the excess.

Related Provisions: 18(1)(t) — Tax is non-deductible; 87(2)(z.2) — Amalgamation — continuing corporation; 184(3) — Election to treat excess as a separate dividend.

Pre-RSC History: Subsec. 184(2) substituted by 1986, c. 6, subsec. 95(1), applicable with respect to capital gains dividends paid after November 21, 1985 other than such dividends declared on or before that day, and with respect to life insurance capital dividends paid after May 23, 1985. Subsec. 184(2) formerly read:

> (2) Tax on excess of capital dividend or capital gains dividend paid by corporation — Where a corporation has elected in accordance with subsection 83(2) or (2.1), 130.1(4) or 131(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock and the full amount of the dividend exceeds the portion thereof deemed by that subsection to be a capital dividend, a life insurance capital dividend or a capital gains dividend, as the case may be, the corporation shall, at the time of the election, pay a tax under this Part equal to
>
> (a) where the corporation has elected in accordance with subsection 83(2) or (2.1) or 130.1(4), ¾ of the excess, and
>
> (b) where the corporation has elected in accordance with subsection 131(1), ⅓ of the excess.

Subsec. 184(2) substituted by 1980-81-82-83, c. 140, subsec. 110(1).

Para. 184(2)(a) substituted by 1977-78, c. 1, subsec. 83(2), applicable with respect to dividends payable after March 31, 1977, to substitute "¾" for "the amount".

Subsec. 184(2) substituted by 1973-74, c. 49, subsec. 18(3), to add reference to subsec. 130.1(4) and para. (b).

Interpretation Bulletins: IT-66R6: Capital dividends.

(2.1) Reduction of excess — Notwithstanding subsection (2), where a corporation has elected in accordance with subsection 83(2) in respect of the full amount of a dividend that became payable by it at a particular time in its 1988 taxation year and before June 18, 1987, the amount of the excess referred to in subsection (2) in respect of the dividend shall be deemed, for the purposes of subsection (2), to be the amount of the excess that would have been determined under subsection (2) in respect of the dividend if the corporation's taxation year had ended on December 31, 1987.

Pre-RSC History: Subsec. 184(2.1) added by 1988, c. 55, s. 150.

Interpretation Bulletins: IT-66R6: Capital dividends.

(3) Election to treat excess as separate dividend — Where, in respect of a dividend payable at a particular time after 1971, a corporation would, but for this subsection, be required to pay a tax under this Part equal to all or a portion of an excess referred to in subsection (2) of this section or subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, it may elect in prescribed manner on or before a day that is not later than 90 days after the day that is the later of December 15, 1977 and the day of mailing of the notice of assessment in respect of the tax that would otherwise be payable under this Part, and on such an election being made, subject to subsection (4), the following rules apply:

(a) the amount by which the full amount of the dividend exceeds the amount of the excess shall be deemed for the purposes of the election that the corporation made in respect of the dividend under subsection 83(2), 130.1(4) or 131(1) of this Act or subsection 83(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and for all other purposes of this Act to be the full amount of a separate dividend that became payable at the particular time;

(b) such part of the excess as the corporation may claim shall, for the purposes of any election in respect thereof under subsection 83(2), 130.1(4) or 131(1) of this Act or subsection 83(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and, where the corporation has so elected, for all purposes of this Act, be deemed to be the full amount of a separate dividend that became payable immediately after the particular time;

(c) the amount by which the excess exceeds any portion deemed by paragraph (b) to be a separate dividend for all purposes of this Act shall be deemed to be a separate dividend that is a taxable dividend that became payable at the particular time; and

(d) each person who held any of the issued shares of the class of shares of the capital stock of the corpora-

tion in respect of which the full amount of the dividend was paid shall be deemed

(i) not to have received any portion of the dividend, and

(ii) to have received at the time the dividend was paid the proportion of any separate dividend, determined under paragraph (a), (b) or (c), that the number of shares of that class held by the person at the time the dividend was paid is of the number of shares of that class outstanding at that time except that, for the purpose of Part XIII, a separate dividend that is a taxable dividend, a capital dividend or a life insurance capital dividend shall be deemed to have been paid on the day that the election in respect of this subsection is made.

Related Provisions: 184(4) — Concurrence with election; 220(3.2), Reg. 600(b) — Late filing of election or revocation.

Regulations: 2106 (prescribed manner).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-66R6: Capital dividends.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3.1) Election to treat dividend as loan — Where a corporation has elected in accordance with subsection 83(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the full amount of any dividend that became payable by it at a particular time after March 31, 1977 and before 1979 and the corporation made a reasonable attempt to correctly determine its tax-paid undistributed surplus on hand immediately before the particular time and its 1971 capital surplus on hand immediately before the particular time and all or any portion of the dividend

(a) has given rise to a gain from the disposition of a share of the corporation by virtue of subsection 40(3), or

(b) is an excess referred to in subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

if the corporation so elects under this subsection,

(c) in any case referred to in paragraph (a), not later than December 31, 1982 or such earlier day as is 90 days after the latest of

(i) February 26, 1981,

(ii) the day on which a notice of assessment or reassessment is mailed to a shareholder of the corporation in respect of a gain referred to in paragraph (a), and

(iii) such day as is agreed to by the Minister in writing, or

(d) in any other case, not later than 90 days after the later of

(i) February 26, 1981, and

(ii) the day on which the Minister notifies the corporation by registered letter that it has an excess referred to in subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the dividend,

and the penalty referred to in subsection (5) in respect of the election is paid by the corporation at the time the election is made, the following rules apply:

(e) the whole dividend or such portion of it as the corporation may claim shall, for the purposes of this Act, be deemed not to be a dividend but to be a loan made at the particular time by the corporation to the persons who received all or any portion of the dividend if the full amount of the loan is repaid to the corporation before such date as is stipulated by the Minister and the corporation satisfies such terms and conditions as are specified by the Minister, and

(f) sections 15 and 80.4 do not apply to such a loan.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [subsec. 184(3.1)]: *Special Risks Holdings Inc. v. Canada*, [1995] 1 C.T.C. 202 (FCA); affirming [1994] 2 C.T.C. 274 (FCTD) (No reasonable attempt to correctly determine surpluses).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-66R6: Capital dividends.

(3.2) Idem — Where a corporation has elected in accordance with subsection 83(2) in respect of the full amount of any dividend that became payable by it at a particular time after December 3, 1985 and before 1986 and the corporation made a reasonable attempt to correctly determine its capital dividend account immediately before the particular time and all or any portion of the dividend is an excess referred to in subsection (2), if

(a) the corporation so elects under this subsection not later than 90 days after the later of

(i) December 19, 1986, and

(ii) the day on which the Minister notifies the corporation by registered letter that it has an excess referred to in subsection (2) in respect of the dividend, and

(b) the penalty referred to in subsection (5) in respect of the election is paid by the corporation at the time the election under this subsection is made,

the following rules apply:

(c) the whole dividend or such portion of it as the corporation may claim shall, for the purposes of this Act, be deemed not to be a dividend but to be a loan made at the particular time by the corporation to the persons who received all or any portion of the dividend if the full amount of the loan is repaid to the corporation before such date as is stipulated by the Minister and the corporation satisfies such terms and conditions as are specified by the Minister, and

(d) sections 15 and 80.4 do not apply to such a loan.

Related Provisions: 248(7)(a) — Mail deemed received on day mailed.

Interpretation Bulletins: IT-66R6: Capital dividends.

(4) Concurrence with election — An election under subsection (3) is not valid unless

(a) it is made with the concurrence of the corporation and all its shareholders

(i) who received or were entitled to receive all or any portion of the dividend in respect of which a tax would, but for subsection (3), be payable under this Part, and

(ii) whose addresses were known to the corporation; and

(b) either

(i) it is made on or before the day that is 30 months after the day on which the dividend became payable, or

(ii) each shareholder described in subparagraph (a)(i) concurs with the election, in which case, notwithstanding subsections 152(4) to (5), such as-

sessment of the tax, interest and penalties payable by each such shareholder for any taxation year may be made as is necessary to take the corporation's election into account.

Related Provisions: 185 — Assessment of tax.

(5) Penalty — The penalty in respect of an election under subsection (3.1) or (3.2) in relation to a particular dividend is an amount equal to the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period commencing on the day the dividend became payable and ending on the day on which that election was made is of 12.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 220(3.1) — Waiver of penalty by CCRA.

History: Subsec. 184(4) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 152, applicable to elections made after July 13, 1990. Subsec. 184(4) formerly read:

> (4) Concurrence with election — An election under subsection (3), (3.1) or (3.2) is not valid unless it is made with the concurrence of the corporation and all the shareholders who received or were entitled to receive all or any portion of the dividend in respect of which a tax would, but for subsection (3), (3.1) or (3.2), be payable under this Part or under Part I and whose addresses were known to the corporation.

Pre-RSC History: Subsec. 184(3.2) added, subsec. 184(4) amended to substitute "subsection (3), (3.1) or (3.2)" for "subsection (3) or (3.1)" (in two places), and subsec. 184(5) amended to substitute "subsection (3.1) or (3.2)" for "subsection (3.1)", by 1986, c. 55, s. 69.

Paras. 184(3)(a), (b) substituted by 1986, c. 6, subsec. 95(2), to delete, from each, reference to subsection 83(2.1), applicable with respect to dividends paid after May 23, 1985.

Para. 184(3)(b) substituted by 1984, c. 1, s. 91, applicable after March 29, 1983, to add the reference to subsec. 83(2).

Paras. 184(3)(a), (b), subpara. 184(3)(d)(ii) substituted by 1980-81-82-83, c. 140, subsecs. 110(2), (3).

Para. 184(3)(d), subsec. 184(4) substituted, subsecs. 184(3.1), (5) added by 1980-81-82-83, c. 48, subsecs. 91(1), (2); para. 184(3)(d) applicable for the purpose of determining the amount on which a corporation may make an election under subsections 83(2), 130.1(4) and 131(1) at any time after December 11, 1979. Para. 184(3)(d), subsec. 184(4) formerly read:

> (d) each person who held any of the issued shares of the class of shares of the capital stock of the corporation in respect of which the full amount of the dividend was paid, shall be deemed to have received at the time the dividend was paid the proportion of any separate dividend determined under paragraph (a), (b) or (c), that the number of shares of that class held by him at the time the dividend was paid is of the number of shares of that class outstanding at that time except that for the purpose of Part XIII, a separate dividend that is a taxable dividend or a capital dividend shall be deemed to have been paid on the day that the election in respect of this subsection is made.
>
> (4) Idem — An election under subsection (3) is not valid unless it is made with the concurrence of the corporation and all the shareholders who received or were entitled to receive all or any portion of the dividend in respect of which a tax would, but for that subsection, be payable under this Part and whose addresses were known to the corporation.

Subsecs. 184(3), (4) added by 1977-78, c. 1, subsec. 83(3), applicable with respect to dividends that became payable after 1971.

Definitions [s. 184]: "amount", "assessment" — 248(1); "capital dividend" — 83(2), 248(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "life insurance capital dividend", "Minister", "person", "prescribed", "share", "shareholder" — 248(1); "taxable dividend" — 89(1), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

185. (1) Assessment of tax — The Minister shall, with all due dispatch, examine each election made by a corporation in accordance with subsection 83(2), 130.1(4) or 131(1), assess the tax, if any, payable under this Part in respect of the election and send a notice of assessment to the corporation.

Related Provisions: 184 — Tax on excessive election; 227(14) — No application to corporation exempt under s. 149.

(2) Payment of tax and interest — Where an election has been made by a corporation in accordance with subsection 83(2), 130.1(4) or 131(1) and the Minister mails a notice of assessment under this Part in respect of the election, that part of the amount assessed then remaining unpaid and interest thereon at the prescribed rate computed from the day of the election to the day of payment is payable forthwith by the corporation to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 248(7) — Mail deemed received on day mailed; 248(11) — Interest compounded daily.

Regulations: 4301(a) (prescribed rate of interest).

(3) Provisions applicable to Part — Subsections 152(3), (4), (5), (7) and (8) and 161(11), sections 163 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(4) Joint and several liability from excessive elections — Each person who has received a dividend from a corporation in respect of which the corporation elected under subsection 83(2), 130.1(4) or 131(1) is jointly and severally liable with the corporation to pay that proportion of the corporation's tax payable under this Part because of the election that

(a) the amount of the dividend received by the person

is of

(b) the full amount of the dividend in respect of which the election was made,

but nothing in this subsection limits the liability of any person under any other provision of this Act.

Related Provisions: 185(5) — Assessment; 185(6) — Rules applicable.

History: Subsec. 185(4) added by 1994, c. 7, Sch. II (1991, c. 49), s. 153, applicable to dividends paid after July 13, 1990.

(5) Assessment — The Minister may, at any time after the last day on which a corporation may make an election under subsection 184(3) in respect of a dividend, assess a person in respect of any amount payable under subsection (4) in respect of the dividend, and the provisions of Division I of Part I apply, with such modifications as the circumstances require, to an assessment made under this subsection as though it were made under section 152.

History: Subsec. 185(5) added by 1994, c. 7, Sch. II (1991, c. 49), s. 153, applicable to dividends paid after July 13, 1990.

(6) Rules applicable — Where under subsection (4) a corporation and another person have become jointly and severally liable to pay part or all of the corporation's tax payable under this Part in respect of a dividend described in subsection (4),

(a) a payment at any time by the other person on account of the liability shall, to the extent of the payment, discharge the joint liability after that time; and

(b) a payment at any time by the corporation on account of its liability shall discharge the other person's liability only to the extent of the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of

(i) the amount of the corporation's liability, immediately before that time, under this Part in respect of the full amount of the dividend, and

(ii) the amount of the payment,

B is the amount of the corporation's liability, immediately before that time, under this Act,

C is the amount of the dividend received by the other person, and

D is the full amount of the dividend.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 185(6) added by 1994, c. 7, Sch. II (1991, c. 49), s. 153, applicable to dividends paid after July 13, 1990.

Pre-RSC History: Subsecs. 185(1) and (2) substituted by 1986, c. 6, s. 96 to delete, from each, reference to subsection 83(2.1), applicable with respect to dividends paid after May 23, 1985.

Subsec. 185(3) substituted by 1986, c. 6, subsec. 96(1), to add reference to subsection 161(11).

Subsecs. 185(2), (3) substituted by 1985, c. 45, subsec. 99, applicable after 1984. Subsecs. 185(2), (3) formerly read:

(2) **Payment of tax and interest** — Where an election has been made by a corporation in accordance with subsection 83(2) or (2.1), 130.1(4) or 131(1), the corporation shall, within 30 days from the day of the mailing of the notice of assessment under this Part in respect of the election, pay to the Receiver General the portion of the assessed tax and penalties then remaining unpaid whether or not an objection to or appeal from the assessment is outstanding and shall, in addition, pay interest on that portion at a prescribed rate per annum from the day of the election until the day of payment whether or not it was paid within the period of 30 days.

(3) **Provisions applicable to this Part** — Subsection 152(3), (4), (5) and (8), sections 163 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

Subsecs. 185(1), (2) substituted by 1984, c. 1, s. 92. Subsecs. 185(1), (2) formerly read:

185. (1) **Assessment of tax** — The Minister shall, with all due dispatch, examine each election made by a corporation in accordance with subsection 83(2), 130.1(4) or 131(1), as the case may be, assess the tax payable under this Part, if any, in respect of the election, and send a notice of assessment to the corporation.

(2) **Payment of tax and interest** — Where an election has been made by a corporation in accordance with subsection 83(2), 130.1(4) or 131(1), as the case may be, the corporation shall, within 30 days from the day of the mailing of the notice of assessment under this Part in respect of the election, pay to the Receiver General the portion of the assessed tax and penalties then remaining unpaid whether or not an objection to or appeal from the assessment is outstanding and shall, in addition, pay interest on that portion at a prescribed rate per annum from the day of the election until the day of payment whether or not it was paid within the period of 30 days.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Subsecs. 185(1), (2) substituted by 1977-78, c. 1, s. 84, applicable after December 31, 1978, to delete references to subsec. 83(1).

Subsecs. 185(1), (2) substituted by 1973-74, c. 49, subsec. 18(3), to add references to subsec. 130.1(4).

Definitions [s. 185]: "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301.

PART IV — TAX ON TAXABLE DIVIDENDS RECEIVED BY PRIVATE CORPORATIONS

186. (1) Tax on assessable dividends — Every corporation (in this section referred to as the "particular corporation") that is at any time in a taxation year a private corporation or a subject corporation shall, on or before the last day of the third month after the end of the year, pay a tax under this Part for the year equal to the amount, if any, by which the total of

(a) 1/3 of all assessable dividends received by the particular corporation in the year from corporations other than payer corporations connected with it, and

(b) all amounts, each of which is an amount in respect of an assessable dividend received by the particular corporation in the year from a private corporation or a subject corporation that was a payer corporation connected with the particular corporation, equal to that proportion of the payer corporation's dividend refund (within the meaning assigned by paragraph 129(1)(a)) for its taxation year in which it paid the dividend that

(i) the amount of the dividend received by the particular corporation

is of

(ii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend and at a time when it was a private corporation or a subject corporation

exceeds 1/3 of the total of

(c) such part of the particular corporation's non-capital loss and farm loss for the year as it claims, and

(d) such part of the particular corporation's

(i) non-capital loss for any of its 7 taxation years immediately preceding or 3 taxation years immediately following the year, and

(ii) farm loss for any of its 10 taxation years immediately preceding or 3 taxation years immediately following the year

as it claims, not exceeding the portion thereof that would have been deductible under section 111 in computing its taxable income for the year if subparagraph 111(3)(a)(ii) were read without reference to the words "the particular taxation year and" and if the corporation had sufficient income for the year.

Related Provisions: 15.1(1), 15.2(1) — Interest on small business development bond or small business bond not a dividend for Part IV tax; 18(1)(t) — Part IV tax is non-deductible; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation; 88(1.1) — Non-capital losses, etc., of subsidiary; 88(1.3) — Computation of income and tax of parent; 129(1) — Part IV tax is refundable; 129(3)(b) — "Refundable dividend tax on hand"; 131(5) — Dividend refund to mutual fund corporation; 186(6) — Partnerships; 186.1 — Exempt corporations; 186.2 — Exempt dividends; 227(14) — No tax on corporation exempt under s. 149; 227(16) — Municipal or provincial corporation excepted.

History: Subsec. 186(1) amended by 1996, c. 21, subsec. 48(1), applicable to taxation years that end after June 1995 except that, in respect of any such taxation year that begins before July 1995,

(a) in the application of subsec. 186(1) to amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and before July 1995, the references to "1/3" shall be read as "1/4";

(b) amounts deducted by the corporation for the year under paras. 186(1)(c) and (d)

(i) are deemed to have been deducted in respect of amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and after June 1995, and

(ii) to the extent that the amounts so deducted exceed the amounts referred to in subpara. (i), are deemed to have been deducted in respect of amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and before July 1995.

Subsec. (1) formerly read:

(1) **Tax on certain taxable dividends** — Every corporation (in this section referred to as the "particular corporation") that was, at any time in a taxation year, a corporation (other than a private corporation) resident in Canada and controlled, whether by reason of a

beneficial interest in one or more trusts or otherwise, by or for the benefit of an individual (other than a trust) or a related group of individuals (other than trusts) (in this Part referred to as a "subject corporation") or a private corporation shall, on or before the last day of the third month after the end of the year, pay a tax under this Part for the year equal to 1/4 of the amount, if any, by which the total of

(a) all amounts received by the particular corporation in the year and at a time when it was a subject corporation or a private corporation as, on account of, in lieu of payment of or in satisfaction of, taxable dividends from corporations (other than payer corporations connected with it),

(i) that are deductible under subsection 112(1) from its income for the year, or

(ii) to the extent of the amounts in respect of those dividends that are deductible under paragraph 113(1)(a), (b) or (d) or subsection 113(2) from its income for the year, and

(b) all amounts, each of which is an amount in respect of a taxable dividend, in respect of which an amount is deductible under subsection 112(1) in computing its taxable income for the year, received by the particular corporation in the year and at a time when it was a subject corporation or a private corporation from a subject corporation or a private corporation that was a payer corporation connected with the particular corporation equal to that proportion of

(i) 4 times the dividend refund of the payer corporation for its taxation year in which it paid the dividend

that

(ii) the amount in respect of the dividend so received by the particular corporation

is of

(iii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend and at a time when it was a subject corporation or a private corporation,

(b.1) [Repealed under former Act]

exceeds the total of

(c) such part of the particular corporation's non-capital loss and such part of its farm loss for the year as it may claim, and

(d) such part of the particular corporation's

(i) non-capital loss for a taxation year that is any of the 7 taxation years immediately preceding or the 3 taxation years immediately following the year, and

(ii) farm loss for a taxation year that is any of the 10 taxation years immediately preceding or the 3 taxation years immediately following the year

as it may claim, not exceeding the portion thereof that would have been deductible under section 111 in computing the corporation's taxable income for the year if subparagraph 111(3)(a)(ii) were read without reference to the words "the particular taxation year and" and if the corporation had sufficient income for the year.

That portion of para. 186(1)(a) and of 186(1)(b) preceding subpara. (i) of each amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 110(1) and (2), applicable to dividends received after 1992. Those portions formerly read:

(a) all amounts received by the particular corporation in the year as, on account or in lieu of payment of, or in satisfaction of, taxable dividends from corporations other than payer corporations connected with it,

. . . . .

(b) all amounts, each of which is an amount in respect of a taxable dividend, in respect of which an amount is deductible under subsection 112(1) from its income for the year, received by the particular corporation in the year from a corporation (in this section referred to as the "payer corporation") connected with the particular corporation equal to that proportion of

Subpara. 186(1)(b)(iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 110(3), applicable to dividends paid in the 1992 or a subsequent taxation year, except that with respect to dividends paid in a taxation year commencing before 1993 and ending after 1992, the subpara. shall be read as follows:

(iii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend that were paid before 1993 or at a time when the payer corporation was a subject corporation or a private corporation

Subpara. (b)(iii) formerly read:

(iii) the total of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend,

Pre-RSC History: That portion of subsec. 186(1) preceding para. (a) substituted, and subpara. (b)(i) amended to substitute "4 times" for "3 times", by 1988, c. 55, subsecs. 151(1) and (3), applicable with respect to taxable dividends received in 1988 *et seq.* except that in the application of subsec. 186(1) to a taxation year of a corporation commencing before 1988 and ending after 1987, the following rules apply:

(a) in their application to amounts described in paras. 186(1)(a) and (b) that are received by the corporation in the year and before 1988, the reference in subsec. 186(1) to "1/4" and the reference in subpara. 186(1)(b)(i) to "4" shall be read as references to "1/3" and "3" respectively; and

(b) amounts deducted for the year by the corporation under para. 186(1)(c) or (d) shall

(i) be deemed to have been deducted in respect of amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and before 1988, and

(ii) to the extent that the amounts so deducted exceed the amounts referred to in subpara. (i) (above), be deemed to have been deducted in respect of amounts described in paras. 186(1)(a) and (b) that were received by the corporation in the year and after 1987.

That portion preceding para. 186(1)(a) formerly read:

186. (1) **Taxes payable on certain taxable dividends** — Every corporation (in this section referred to as the "particular corporation") that was, at any time in a taxation year, a corporation (other than a private corporation) resident in Canada and controlled directly or indirectly in any manner whatever, whether by virtue of a beneficial interest in one or more trusts or otherwise, by or for the benefit of an individual (other than a trust) or a related group of individuals (other than trusts) (in this Part referred to as a "subject corporation") or a private corporation shall, on or before the last day of the third month after the end of the year, pay a tax under this Part for the year equal to 1/3 of the amount, if any, by which the aggregate of

That portion of para. 186(1)(b) preceding subpara. (i) amended by 1988, c. 55, subsec. 151(2), to add ", in respect of which an amount is deductible under subsection 112(1) from its income from the year,", applicable to dividends received after June 18, 1987.

All that portion of subsec. 186(1) preceding para. (a) amended to substitute "a corporation (other than a private corporation)" for "a corporation, other than a private corporation," and "equal to 1/3" for "equal to 1/4", and subpara. 186(1)(b)(i) amended to substitute "3 times" for "4 times", by 1986, c. 55, subsecs. 70(1), (2), applicable with respect to taxable dividends received in the 1987 and subsequent taxation years except that, for a taxation year commencing before 1987 and ending after 1986, the following rules apply:

(a) in their application to amounts described in paragraphs 186(1)(a) and (b) that are received by the corporation in the year and before 1987, the reference in subsection 186(1) to "1/3", and the reference in subparagraph (b)(i) to "3" shall be read as references to "1/4" and "4" respectively; and

(b) amounts deducted by the corporation under paragraph 186(1)(c) or (d) for the year shall

(i) be deemed to have been deducted in respect of amounts described in paragraphs 186(1)(a) and (b) that were received by the corporation in the year and after 1986, and

(ii) to the extent that the amounts deducted exceed the amounts referred to in subparagraph (i) [above], be deemed to have been deducted in respect of amounts described in paragraphs 186(1)(a) and (b) that were received by the corporation in the year and before 1987.

Para. 186(1)(b.1) repealed by 1984, c. 45, subsec. 77(1), applicable to 1985 *et seq.* Para. (b.1) formerly read:

(b.1) an amount not exceeding the aggregate of

(i) all amounts each of which is an amount in respect of a taxable dividend received after April 10, 1978 by the particular corporation in the year from a payer corporation connected with the particular corporation but not controlled by it, and

(ii) the lesser of

(A) all amounts each of which is an amount in respect of a taxable dividend received after April 10, 1978 by the particular corporation in the year from a payer corporation controlled by, but not associated with, the particular corporation, and

(B) all amounts each of which is a taxable dividend paid by the particular corporation in the year to an individual,

in respect of which the directors of the particular corporation (or where the directors of the particular corporation are not legally entitled to administer the affairs of the particular corporation, the person or persons legally entitled to administer its affairs) have, by resolution made within 6 months from the later of the end of the year and December 31, 1979, elected to pay tax under this Part,

Paras. 186(1)(c), (d) substituted by 1984, c. 1, subsec. 93(1), applicable with respect to the computation of tax for the 1983 and subsequent taxation years and with respect to a taxpayer's non-capital losses and farm losses determined for the 1983 and subsequent taxation years. Paras. 186(1)(c), (d) formerly read:

(c) such part of the particular corporation's non-capital loss for the year as it may claim, and

(d) such part of the particular corporation's non-capital loss for a taxation year during which it was a private corporation or a subject corporation that is any of the 5 taxation years immediately preceding and the taxation year immediately following the taxation year as the corporation may claim, not exceeding, however, the portion of that loss that

(i) is not deductible under section 111 from the corporation's income for the taxation year, and

(ii) would be so deductible if the reference in paragraph 111(1)(a) to "income for the year" were read as a reference to "income for the year plus the amount on which the taxpayer would be required to pay tax for the year under Part IV if subsection 186(1) were read without reference to paragraph (d) thereof".

All that portion of subsec. 186(1) preceding para. (a) and all that portion of para. 186(1)(d) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsecs. 111(1), (2), applicable to taxation years commencing after November 12, 1981. Those portions formerly read:

186. (1) **Tax payable by private corporation on certain taxable dividends received by it** — Every corporation (in this section referred to as the "particular corporation") that was, at any time in a taxation year, a private corporation (other than a prescribed venture capital corporation) shall, on or before the last day of the 3rd month after the end of the year, pay a tax under this Part for the year equal to ¼ of the amount, if any, by which the aggregate of

. . . . .

(d) such part of the particular corporation's non-capital loss for a taxation year during which it was a private corporation that is any of the 5 taxation years immediately preceding and the taxation year immediately following the taxation year as the corporation may claim, not exceeding, however, the portion of that loss that

All that portion of subsec. 186(1) preceding para. (a) substituted by 1980-81-82-83, c. 48, s. 92, applicable to 1977 *et seq.* That portion formerly read:

186. (1) Every corporation (in this section referred to as the "particular corporation") that was, at any time in a taxation year, a private corporation shall, on or before the last day of the 3rd month after the end of the year, pay a tax under this Part for the year equal to ¼ of the amount, if any, by which the aggregate of

Para. 186(1)(b.1) substituted by 1979, c. 5, s. 56, applicable in respect of dividends received after November 16, 1978. Para. 186(1)(b.1) formerly read:

(b.1) all amounts each of which is an amount in respect of a taxable dividend received after April 10, 1978 by the particular corporation in the year from a payer corporation connected with the particular corporation in respect of which the directors of the particular corporation (or where the directors of the corporation are not legally entitled to administer the affairs of the corporation, the person or persons legally entitled to administer its affairs) have, by resolution made within 6 months from the end of the year, elected to pay tax under this Part,

Para. 186(1)(b.1) added by 1977-78, c. 32, subsec. 42(1), applicable in respect of dividends received after April 10, 1978

Subsec. 186(1) substituted by 1977-78, c. 1, subsec. 85(1), applicable to dividends received in taxation years commencing after 1976 except that in its application to dividends received in taxation years ending before 1978, subsec. 186(1) shall be read as follows:

(1) Every corporation (in this section referred to as the "particular corporation") that was, at any time in a taxation year, a private corporation shall, on or before the last day of the 3rd month after the end of the year, pay a tax under this Part for the year equal to ⅓ of the amount, if any, by which the aggregate of

(a) all amounts received by the particular corporation in the year as, on account or in lieu of payment of, or in satisfaction of, taxable dividends from corporations other than payer corporations connected by it,

(i) that are deductible under subsection 112(1) from its income for the year, or

(ii) to the extent of the amounts in respect of those dividends that are deductible under paragraph 113(1) (a), (b) or (d) or subsection 113(2) from its income for the year, and

(b) all amounts each of which is an amount in respect of a taxable dividend received by the particular corporation in the year from a corporation (in this section referred to as the "payer corporation") connected with the particular corporation, equal to that proportion of

(i) 3 times the dividend refund of the payer corporation for its taxation year in which it paid the dividend,

that

(ii) the amount in respect of the dividend so received by the particular corporation

is of

(iii) the aggregate of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend

exceeds the aggregate of

(c) such part of the particular corporation's non-capital loss for the year as it may claim, and

(d) such part of the particular corporation's non-capital loss for a taxation year during which it was a private corporation that is any of the 5 taxation years immediately preceding and the taxation year immediately following the taxation year as the corporation may claim, not exceeding, however, the portion of that loss that

(i) is not deductible under section 111 from its income for the taxation year, and

(ii) would be so deductible if the reference in paragraph 111(1)(a) to "income for the year" were read as a reference to "income for the year plus the amount on which the taxpayer would be required to pay tax for the year under Part IV if subsection 186(1) were read without reference to paragraph (d) thereof".

Subsec. 186(1) formerly read:

186. (1) Every corporation that was, at any time in a taxation year, a private corporation shall, on or before the last day of the 3rd month after the end of the year, pay a tax under this Part for the year equal to ⅓ of the amount, if any, by which the aggregate of

(a) all amounts received by it in the year and after 1971 as, on account or in lieu of payment of, or in satisfaction of, taxable dividends from corporations other than corporations controlled by it,

(i) that are deductible under subsection 112(1) from its income for the year, or

(ii) to the extent of the amounts in respect of those dividends that are deductible under paragraphs 113(1) (a), (b) or (d) or subsection 113(2) from its income for the year, and

(b) all amounts each of which is an amount in respect of a taxable dividend received by it in the year and after 1971 from a private corporation (in this paragraph referred to as the "payer corporation") controlled by it, equal to that proportion of

(i) 3 times the dividend refund of the payer corporation for its taxation year in which it paid the dividend,

that

(ii) the amount in respect of the dividend so received by the corporation

is of

(iii) the aggregate of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend,

exceeds the aggregate of

(c) such part of the corporation's non-capital loss for the year as it may claim, and

(d) such part of the corporation's non-capital loss for a taxation year during which it was a private corporation that is any of the 5 taxation years immediately preceding and the taxation year immediately following the taxation year as the corporation may claim, not exceeding, however, the portion of that loss that

(i) is not deductible under section 111 from the corporation's income for the taxation year, and

(ii) would be so deductible if the reference in paragraph 111(1)(a) to "income for the year" were read as a reference to "income for the year plus the amount on which the taxpayer would be required to pay tax for the year under Part IV if subsection 186(1) were read without reference to paragraph (d) thereof"

1977-78, c. 1, subsec. 85(5) provides that where a corporation has a taxation year part of which is before 1978 and part of which is after 1977, the following rules apply:

(a) for those amounts described in paragraphs 186(1)(a) and (b) that are received by the corporation in the year and before 1978, the reference to "¼" in subsection 186(1) of that Act shall be read as a reference to "⅓" and the references to "4" in subparagraph (b)(i) thereof shall be read as a reference to "3"; and

(b) where, in computing the tax payable by the corporation under Part IV of the Act for the year, an amount is deductible under paragraph 186(1)(c) or (d) thereof, that amount shall

(i) be deducted in computing the amount described in paragraphs 186(1)(a) and (b) thereof received by the corporation in the year and before 1978, to the extent of those amounts, and

(ii) to the extent that the amount deductible exceeds the amounts referred to in subparagraph (i), be deducted in computing the amounts described in paragraphs 186(1)(a) and (b) thereof received by the corporation in the year and after 1977.

Subpara. 186(1)(a)(ii) substituted by 1974-75-76, c. 26, s. 110, applicable in respect of dividends received after 1971 except that in respect of dividends received before May 7, 1974 it shall be read without reference to para. 113(1)(d).

Interpretation Bulletins: IT-232R3: Losses — their deductibility in the loss year or in other years; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

Information Circulars: 88-2, para. 14: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-32: Rollover of fixed assets from Opco into Holdco; ATR-35: Partitioning of assets to get specific ownership — "butterfly".

Forms: T2 SCH 3: Dividends received, taxable dividends paid, and Part IV tax calculation.

(1.1) Reduction where Part IV.1 tax payable — Notwithstanding subsection (1), where an assessable dividend was received by a corporation in a taxation year and was included in an amount in respect of which tax under Part IV.1 was payable by the corporation for the year, the tax otherwise payable under this Part by the corporation for the year shall be reduced

(a) where the assessable dividend is described in paragraph (1)(a), by 10% of the assessable dividend, and

(b) where the assessable dividend is described in paragraph (1)(b), by 30% of the amount determined under that paragraph in respect of the assessable dividend.

History: Subsec. 186(1.1) amended by 1996, c. 21, subsec. 48(1), applicable to taxation years that end after June 1995 except that, in applying amended subsec. (1.1) to any such taxation year that begins before July 1995 to amounts described in para. 186(1.1)(b) that were received by the corporation in the year and before July 1, 1995, the reference to "30%" shall be read as "40%". Subsec. (1.1) formerly read:

(1.1) Reduction in tax — Notwithstanding subsection (1), where a taxable dividend referred to in paragraph (1)(a) or (b) was received by a corporation in a taxation year and was included in an amount in respect of which tax under Part IV.1 was payable by the corporation for the year, the tax otherwise payable under this Part by the corporation for the year shall be reduced

(a) where the dividend is a taxable dividend referred to in paragraph (1)(a), by 10% of the amount determined in respect of that dividend under that paragraph; and

(b) where the dividend is a taxable dividend referred to in paragraph (1)(b), by 10% of the amount determined in respect of that dividend under that paragraph.

Pre-RSC History: Subsec. 186(1.1) added by 1988, c. 55, subsec. 151(4), applicable to dividends received after June 18, 1987.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

(2) When corporation controlled — For the purposes of this Part, other than for the purpose of determining whether a corporation is a subject corporation, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length.

Related Provisions: 88(1)(d.2) — Winding-up — when taxpayer last acquired control; 111(3)(a) — Limitation on deductibility; 112(1) — Deduction of taxable dividends received by corporation resident in Canada; 113(1) — Deduction re dividend received from foreign affiliate; 195(6) — Undue deferral of refundable tax.

Pre-RSC History: Subsec. 186(2) substituted by 1980-81-82-83, c. 140, subsec. 111(3), applicable to taxation years commencing after November 12, 1981. Subsec. 186(2) formerly read:

(2) For the purpose of this Part, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length.

Selected Cases [subsec. 186(2)]: *Special Risks Holdings Inc. v. The Queen*, [1986] 1 C.T.C. 201 (FCA) (Taxpayer exercising *de facto* control of subject corporation; arm's length relationship considered).

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-489R: Non-arm's length sale of shares to a corporation.

(3) Definitions — The definitions in this subsection apply in this Part.

"assessable dividend" means an amount received by a corporation at a time when it is a private corporation or a subject corporation as, on account of, in lieu of payment of or in satisfaction of, a taxable dividend from a corporation, to the extent of the amount in respect of the dividend that is deductible under section 112, paragraph 113(1)(a), (b) or (d) or subsection 113(2) in computing the recipient corporation's taxable income for the year.

"subject corporation" means a corporation (other than a private corporation) resident in Canada and controlled, whether because of a beneficial interest in one or more trusts or otherwise, by or for the benefit of an individual (other than a trust) or a related group of individuals (other than trusts).

History: Subsec. 186(3) added by 1996, c. 21, subsec. 48(2), applicable to taxation years that end after June 1995.

Pre-RSC History: Former subsec. 186(3) repealed by 1985, c. 45, s. 100. Subsec. 186(3) formerly read:

(3) Definition of "dividend refund" — In this Part, "dividend refund" of a corporation for a taxation year has the meaning assigned by subsection 129(1).

Subsec. 186(3) substituted by 1984, c. 45, subsec. 77(2), applicable to 1985 *et seq.* Subsec. 186(3) formerly read:

(3) Meaning of "dividend refund" and "cumulative deduction account" — In this Part, "dividend refund" of a corporation for a taxation year has the meaning assigned by subsection 129(1) and "cumulative deduction account" of a corporation at the end of a taxation year has the meaning assigned by paragraph 125(6)(b).

Subsec. 186(3) substituted by 1977-78, c. 1, subsec. 85(2), applicable with respect to dividends received in taxation years commencing after 1976. Subsec. 186(3) formerly read:

(3) Meaning of "dividend refund" — In this Part, "dividend refund" of a corporation for a taxation year has the meaning assigned by subsection 129(1).

(4) Corporations connected with particular corporation — For the purposes of this Part, a payer corporation is connected with a particular corporation at any time in a taxation year (in this subsection referred to as the "particular year") of the particular corporation if

(a) the payer corporation is controlled (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) by the particular corporation at that time; or

(b) the particular corporation owned, at that time,

(i) more than 10% of the issued share capital (having full voting rights under all circumstances) of the payer corporation, and

(ii) shares of the capital stock of the payer corporation having a fair market value of more than 10% of the fair market value of all of the issued shares of the capital stock of the payer corporation.

Related Provisions: 186(2) — Extended meaning of "controlled".

Pre-RSC History: Para. 186(4)(a) substituted by 1984, c. 1, subsec. 93(2), applicable with respect to dividends received after April 19, 1983 other than dividends declared on or before that date, to add "(otherwise than by virtue of a right referred to in paragraph 251(5)(b))".

All that portion of para. 186(4)(b) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 111(4), applicable to taxation years commencing after November 12, 1981. That portion formerly read:

(b) the payer corporation is a private corporation and the particular corporation owned, at that time,

Para. 186(4)(b) substituted by 1977-78, c. 32, subsec. 42(2), applicable in respect of dividends received after April 10, 1978. Para. 186(4)(b) formerly read:

(b) the payer corporation is a private corporation and

(i) the particular corporation owned, at that time,

(A) more than 10% of the issued share capital (having full voting rights under all circumstances) of the payer corporation, and

(B) shares of the capital stock of the payer corporation having a fair market value of more than 10% of the fair market value of all of the issued shares of the capital stock of the payer corporation, and

(ii) the aggregate of

(A) the particular corporation's cumulative deduction account at the end of the particular year, and

(B) all amounts each of which is an amount in respect of a corporation associated with the particular corporation, equal to its cumulative deduction account at the end of its taxation year ending in the particular year,

does not exceed $750,000.

Subsec. 186(4) added by 1977-78, c. 1, subsec. 85(2), applicable with respect to dividends received in taxation years commencing after 1976.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-489R: Non-arm's length sale of shares to a corporation.

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-55: Amalgamation followed by sale of shares.

(5) Deemed private corporation — A corporation that is at any time in a taxation year a subject corporation shall, for the purposes of paragraph 87(2)(aa) and section 129, be deemed to be a private corporation at that time, except that its refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) at the end of the year shall be determined without reference to paragraph 129(3)(a).

History: Subsec. 186(5) amended by 1996, c. 21, subsec. 48(3), applicable to taxation years that end after June 1995. Subsec. (5) formerly read:

(5) A corporation that is at any time a subject corporation shall, for the purposes of paragraphs 87(2)(aa) and 88(1)(e.5) and section 129, be deemed to be a private corporation at that time, except that its refundable dividend tax on hand at the end of any taxation year shall be deemed to be the amount, if any, by which the total of

(a) the total of the taxes under this Part payable by the corporation for the year and any previous taxation years ending after it last became a subject corporation, and

(a.1) the amount, if any, of the corporation's addition at December 31, 1986 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.3)),

exceeds the total of

(b) the total of the corporation's dividend refunds for taxation years ending after it last became a subject corporation and before the year, and

(c) the amount, if any, of the corporation's reduction at December 31, 1987 of refundable dividend tax on hand (within the meaning assigned by subsection 129(3.5)).

That portion of subsec. 186(5) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 110(4), applicable to 1993 *et seq.* That portion formerly read:

(5) Presumption — A corporation that was at the end of a taxation year commencing after November 12, 1981 a subject corporation or a private corporation that was at any time in the year a subject corporation shall, for the purposes of paragraphs 87(2)(aa) and 88(1)(e.5) and section 129, be deemed to have been a private corporation at the times in the year that it was a subject corporation, except that its refundable dividend tax on hand at the end of the year shall be deemed to be the amount, if any, by which the total of

Pre-RSC History: That portion of subsec. 186(5) between paras. (a.1) and (b) amended to substitute "exceeds the total of" for "exceeds", and subpara. 186(5)(c) added by 1988, c. 55, subsec. 151(5), applicable to 1988 *et seq.*

All that portion of subsec. 186(5) preceding para. (b) amended to add "the aggregate of" at the end of that portion preceding para. (a), to substitute "under this Part" for "under Part IV" in para. (a), and to add para. (a.1), by 1986, c. 55, subsec. 70(3), applicable with respect to 1987 *et seq.*

Subsec. 186(5) added by 1980-81-82-83, c. 140, subsec. 111(5), applicable to taxation years commencing after November 12, 1981.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

(6) Partnerships — For the purposes of this Part,

(a) all amounts received in a fiscal period by a partnership as, on account or in lieu of payment of, or in sat-

isfaction of, taxable dividends shall be deemed to have been received by each member of the partnership in the member's fiscal period or taxation year in which the partnership's fiscal period ends, to the extent of that member's share thereof; and

(b) each member of a partnership shall be deemed to own at any time that proportion of the number of the shares of each class of the capital stock of a corporation that are property of the partnership at that time that the member's share of all dividends received on those shares by the partnership in its fiscal period that includes that time is of the total of all those dividends.

Pre-RSC History: Subsec. 186(6) added by 1988, c. 55, subsec. 151(6), applicable with respect to fiscal periods ending after June 18, 1987.

Selected Cases [s. 186]: *943963 Ontario Inc. v. R.*, [1999] 4 C.T.C. 2119 (TCC) (Part IV tax applicable to all dividends and deemed dividends, including those from "safe income"); *L'Heureux v. Canada*, [1995] 1 C.T.C. 2850 (TCC) (Circular calculations of tax proper in certain "butterfly" transactions).

Definitions [s. 186]: "amount" — 248(1); "assessable dividend" — 186(3); "Canada" — 255; "class of shares" — 248(6); "connected" — 186(4); "controlled" — 186(2); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "dividend refund" — 129(1); "farm loss" — 111(8); "fiscal period" — 249(2), 249.1; "individual", "insurance corporation" — 248(1); "non-capital loss" — 111(8), 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "particular corporation" — 186(1); "person" — 248(1); "private corporation" — 89(1), 186(5), 227(16), 248(1); "related group" — 251(4); "resident in Canada" — 250; "share" — 248(1); "subject corporation" — 186(3); "taxable dividend" — 89(1), 186.2, 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1).

Interpretation Bulletins [s. 186]: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

186.1 Exempt corporations — No tax is payable under this Part for a taxation year by a corporation

(a) that was, at any time in the year, a bankrupt (within the meaning assigned by subsection 128(3)); or

(b) that was, throughout the year,

(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

(iii) an insurance corporation,

(iv) a prescribed labour-sponsored venture capital corporation,

(v) a prescribed investment contract corporation,

(vi) a non-resident-owned investment corporation, or

(vii) a registered securities dealer that was throughout the year a member of a prescribed stock exchange in Canada.

Related Provisions: 131(11)(d) — Rules re prescribed labour-sponsored venture capital corporations; 227(14) — Application to exempt corporations; 227(16) — Application to municipal and provincial corporations.

History: Para. 186.1(b) amended by 1998, c. 19, s. 200, applicable after February 22, 1994 except that, in its application to taxation years that ended before 1997, the para. shall be read without reference to subpara. (vii). Para. 186.1(b) formerly read:

(b) that was, throughout the year, a prescribed labour-sponsored venture capital corporation, a prescribed investment contract corporation, an insurance corporation, a corporation described in paragraph 39(5)(b) or (c) or a non-resident-owned investment corporation.

Pre-RSC History: Para. 186.1(b) amended by 1987, c. 46, s. 58, to substitute "a prescribed labour-sponsored venture capital corporation, a prescribed investment contract corporation" for "a prescribed venture capital corporation, a prescribed labour-sponsored venture capital corporation, a prescribed investment contract corporation", applicable to taxation years ending after February 18, 1987.

Para. 186.1(b) substituted by 1986, c. 6, s. 97, to add "a prescribed labour-sponsored venture capital corporation", applicable to 1985 *et seq.*

Para. 186.1(b) substituted by 1984, c. 1, s. 94, applicable to taxation years commencing after November 12, 1981, except that with respect to insurance corporations it is applicable to the 1981 and subsequent taxation years; to substitute "described in paragraph 39(5)(b) or (c) or a non-resident-owned investment corporation" for "described in paragraph 39(5)(c)".

S. 186.1 substituted by 1980-81-82-83, c. 140, s. 112, applicable to taxation years commencing after November 12, 1981, except that with respect to insurance corporations it is applicable to the 1981 and subsequent taxation years. S. 186.1 formerly read:

186.1 Bankrupt corporations — No tax is payable under this Part by a corporation for a taxation year ending after 1977 in which the corporation was, at any time, a bankrupt within the meaning assigned by subsection 128(3).

S. 186.1 added by 1977-78, c. 1, s. 86, applicable to 1978 *et seq.*

Definitions [s. 186.1]: "bank" — *Interpretation Act* 35(1); "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "insurance corporation" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "province" — *Interpretation Act* 35(1); "taxation year" — 249.

Regulations [s. 186.1]: 6701 (prescribed labour-sponsored venture capital corporation); 6703 (prescribed investment contract corporation).

Interpretation Bulletins [s. 186.1]: IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation.

186.2 Exempt dividends — For the purposes of subsection 186(1), dividends received in a taxation year by a corporation that was, throughout the year, a prescribed venture capital corporation from a corporation that was a prescribed qualifying corporation with respect to those dividends shall be deemed not to be taxable dividends.

Pre-RSC History: S. 186.2 added by 1987, c. 46, s. 59, applicable with respect to dividends received in taxation years ending after February 18, 1987 except that in its application to dividends received before February 19, 1987 the reference in section 186.2 to "a corporation that was a prescribed qualifying corporation with respect to such dividends" shall be read as a reference to "a corporation".

Definitions [s. 186.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "prescribed" — 248(1); "prescribed venture capital corporation" — Reg. 6700; "taxable dividend" — 89(1), 248(1); "taxation year" — 249.

Regulations [s. 186.2]: 6700 (prescribed venture capital corporation); 6704 (prescribed qualifying corporation).

Interpretation Bulletins [s. 186.2]: IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation; IT-328R3: Losses on shares on which dividends have been received.

187. (1) Information return — Every corporation that is liable to pay tax under this Part for a taxation year in respect of a dividend received by it in the year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file a return for the year under this Part in prescribed form.

Related Provisions: 150(1)(a) — Corporations — Part I return; 150.1(5) — Electronic filing; 186 — Tax payable on certain taxable dividends.

Interpretation Bulletins: IT-269R3: Part IV tax on dividends received by a private corporation or a subject corporation.

Forms: T2 Corporate income tax return, "Part IV Tax on Taxable Dividends Received".

(2) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which the tax was re-

quired to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay computed from the day on or before which the tax was required to be paid to the day of payment.

Related Provisions: 161.1 — Offset of refund interest of corporation against arrears interest; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Pre-RSC History: Subsec. 187(2) substituted by 1985, c. 45, subsec. 101(1). Subsec. 187(2) formerly read:

> (2) Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on the day on or before which it was required to pay the tax, it shall, on payment of the amount in default, pay interest at a prescribed rate per annum from the day on or before which it was required to make the payment to the day of payment.

Regulations: 4301(a) (prescribed rate of interest).

(3) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsections 161(7) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 187(3) substituted by 1986, c. 6, s. 98, to add reference to subsection 161(11).

Subsec. 187(3) substituted by 1985, c. 45, subsec. 101(1), applicable with respect to subsequent taxation years referred to in subsec. 161(7) ending after May 9, 1985. Subsec. 187(3) formerly read:

> (3) Sections 151, 152, 158, 159 and 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

Definitions [s. 187]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "taxation year" — 249.

PART IV.1 — TAXES ON DIVIDENDS ON CERTAIN PREFERRED SHARES RECEIVED BY CORPORATIONS

187.1 Definition of "excepted dividend" — In this Part, "excepted dividend" means a dividend

(a) received by a corporation on a share of the capital stock of a foreign affiliate of the corporation, other than a dividend received by a specified financial institution on a share acquired in the ordinary course of the business carried on by the institution;

(b) received by a corporation from another corporation (other than a corporation described in any of paragraphs (a) to (f) of the definition "financial intermediary corporation" in subsection 191(1)) in which it has or would have, if the other corporation were a taxable Canadian corporation, a substantial interest (as determined under section 191) at the time the dividend was paid;

(c) received by a corporation that was, at the time the dividend was received, a private corporation or a financial intermediary corporation (within the meaning assigned by subsection 191(1));

(d) received by a corporation on a short-term preferred share of the capital stock of a taxable Canadian corporation other than a dividend described in paragraph (b) or (c) of the definition "excluded dividend" in subsection 191(1); or

(e) received by a corporation on a share (other than a taxable RFI share or a share that would be a taxable preferred share if the definition "taxable preferred share" in subsection 248(1) were read without reference to paragraph (a) of that definition) of the capital stock of a mutual fund corporation.

Related Provisions: 191(4)(d) — Deemed excepted dividend.

History: Para. 187.1(a) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 154, applicable to dividends received after 1987. Para. (a) formerly read:

> (a) received by a corporation on a share of the capital stock of a foreign affiliate of the corporation where the share was not acquired by the corporation in the ordinary course of the business carried on by the corporation;

Definitions [s. 187.1]: "business" — 248(1); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "foreign affiliate" — 248(1); "mutual fund corporation" — 131(8), 248(1); "private corporation" — 89(1), 248(1); "received" — 248(7); "share", "short-term preferred share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxable preferred share", "taxable RFI share" — 248(1).

187.2 Tax on dividends on taxable preferred shares — Every corporation shall, on or before the last day of the second month after the end of each taxation year, pay a tax under this Part for the year equal to 10% of the total of all amounts each of which is a dividend, other than an excepted dividend, received by the corporation in the year on a taxable preferred share (other than a share of a class in respect of which an election under subsection 191.2(1) has been made) to the extent that an amount in respect of the dividend was deductible under section 112 or 113 or subsection 138(6) in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible; 87(4.2) — Exchanged shares; 186(1.1) — Reduction in tax; 187.4 — Amounts received by partnerships; 187.5 — Information return; 191(3) — Substantial interest; 191(4)(d) — Deemed dividends; 227(14) — No tax on corporation exempt under s. 149.

Definitions [s. 187.2]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "excepted dividend" — 187.1; "received" — 248(7); "share" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-88R2: Stock dividends.

Advance Tax Rulings: ATR-46: Financial difficulty.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

187.3 (1) Tax on dividends on taxable RFI shares — Every restricted financial institution shall, on or before the last day of the second month after the end of each taxation year, pay a tax under this Part for the year equal to 10% of the total of all amounts each of which is a dividend, other than an excepted dividend, received by the institution at any time in the year on a share acquired by any person before that time and after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 that was, at the time the dividend was paid, a taxable RFI share to the extent that an amount in respect of the dividend was deductible under section 112 or 113 or subsection 138(6) in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year.

Related Provisions: 87(4.2) — Exchanged shares; 186(1.1) — Reduction in tax; 187.3(2) — Time of acquisition of share; 187.4 — Partnerships; 187.5 — Information return; 191(3) — Substantial interest.

Advance Tax Rulings: ATR-46: Financial difficulty.

(2) Time of acquisition of share — For the purposes of subsection (1),

(a) a share of the capital stock of a corporation acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 pursuant to an agreement in writing entered into before that time shall be deemed to have been acquired by that person before that time;

(b) a share of the capital stock of a corporation acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 with a public authority pursuant to and in accordance with the securities legislation of the jurisdiction in which the shares are distributed shall be deemed to have been acquired by that person before that time;

(c) a share (in this paragraph referred to as the "new share") of the capital stock of a corporation that is acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 in exchange for

(i) a share of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 or is a grandfathered share, or

(ii) a debt obligation of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, or issued after that time pursuant to an agreement in writing entered into before that time,

where the right to the exchange for the new share and all or substantially all the terms and conditions of the new share were established in writing before that time shall be deemed to have been acquired by that person before that time;

(d) a share of a class of the capital stock of a Canadian corporation listed on a prescribed stock exchange in Canada that is acquired by a person after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 on the exercise of a right

(i) that was issued before that time and listed on a prescribed stock exchange in Canada, and

(ii) the terms of which at that time included the right to acquire the share,

where all or substantially all the terms and conditions of the share were established in writing before that time shall be deemed to have been acquired by that person before that time;

(e) where a share that was owned by a particular restricted financial institution at 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 has, by one or more transactions between related restricted financial institutions, been transferred to another restricted financial institution, the share shall be deemed to have been acquired by the other restricted financial institution before that time unless at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and before the share was transferred to the other restricted financial institution the share was owned by a shareholder who, at that particular time, was a person other than a restricted financial institution related to the other restricted financial institution; and

(f) where, at any particular time, there has been an amalgamation within the meaning assigned by section 87, and

(i) each of the predecessor corporations was a restricted financial institution throughout the period from 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 to the particular time and the predecessor corporations were related to each other throughout that period, or

(ii) each of the predecessor corporations and the new corporation is a corporation described in any of paragraphs (a) to (d) of the definition "restricted financial institution" in subsection 248(1),

a taxable RFI share acquired by the new corporation from a predecessor corporation on the amalgamation shall be deemed to have been acquired by the new corporation at the time it was acquired by the predecessor corporation.

Definitions [s. 187.3]: "amount" — 248(1); "class of shares" — 248(6); "dividend" — 248(1); "excepted dividend" — 187.1; "grandfathered share", "person" — 248(1); "related" — 251(2); "restricted financial institution", "share" — 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxable RFI share" — 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Regulations [s. 187.3]: 3200 (prescribed stock exchange); 6201 (prescribed shares).

Interpretation Bulletins [s. 187.3]: IT-88R2: Stock dividends.

187.4 Partnerships — For the purposes of this Part,

(a) all amounts received in a fiscal period by a partnership as, on account or in lieu of payment of, or in satisfaction of, dividends shall be deemed to have been received by each member of the partnership in the member's fiscal period or taxation year in which the partnership's fiscal period ends, to the extent of that member's share thereof;

(b) each member of a partnership shall be deemed to own at any time that proportion of the number of the shares of each class of the capital stock of a corporation that are property of the partnership at that time that the member's share of all dividends received on those shares by the partnership in its fiscal period that includes that time is of the total of all those dividends; and

(c) a reference to a person includes a partnership.

Definitions [s. 187.4]: "amount" — 248(1); "class of shares" — 248(6); "dividend" — 248(1); "fiscal period" — 249(2), 249.1; "person" — 187.4(c), 248(1); "share" — 248(1); "taxation year" — 249.

187.5 Information return — Every corporation liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which it is required by section 150 to file its return of income for the year under Part I, a return for the year under this Part in prescribed form containing an estimate of the taxes payable by it under sections 187.2 and 187.3 for the year.

Related Provisions: 150.1(5) — Electronic filing.

Definitions [s. 187.5]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "taxation year" — 249.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

187.6 Provisions applicable to Part — Sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

187.61 Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: S. 187.61 added by 1998, c. 19, s. 201, applicable after 1987.

Pre-RSC History [Part IV.1]: Part IV.1 (ss. 187.1 to 187.6) added by 1988, c. 55, s. 152, applicable with respect to dividends received after 1987 (and for this purpose where a dividend is received at any time after December 15, 1987 and before 1988 on a share, and it may reasonably be considered, having regard to all the circumstances including the amount of any dividends that may be paid or declared on the share after 1987, that the dividend was paid at that time to avoid or limit the application of Part

IV.1, the dividend shall be deemed for the purposes of that Part to have been received on January 1, 1988 and the reference in s. 187.2 and subsec. 187.3(1) to "in computing its taxable income for the year or under subsection 115(1) in computing its taxable income earned in Canada for the year" shall be read as a reference to "in computing its taxable income or under subsection 115(1) in computing its taxable income earned in Canada"), except that in the application of s. 187.2 to a dividend received on a share issued

(a) before April 22, 1988, or

(b) after April 21, 1988 and before 1989

(i) pursuant to an agreement in writing entered into before April 22, 1988, or

(ii) as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before April 22, 1988 with a public authority pursuant to and in accordance with the securities legislation of the jurisdiction in which the shares are distributed,

the reference therein to "(other than a share of a class in respect of which an election under subsection 191.2(1) has been made)" shall be read as a reference to "(other than a short-term preferred share, a share that would be a short-term preferred share if the references to "December 15, 1987" and "December 16, 1987" in the definition "short-term preferred share" in subsection 248(1) were read as references to "8:00 p.m. Eastern Daylight Saving Time, June 18, 1987" or a share of a class in respect of which an election under subsection 191.2(1) has been made)".

PART V — TAX IN RESPECT OF REGISTERED CHARITIES

187.7 Application of subsec. 149.1(1) — The definitions in subsection 149.1(1) apply to this Part.

Origin of s. 187.7: R.S.C. 1985, c. 1 (5th Supp.).

188. (1) Revocation tax — Where the registration of a charity is revoked, the charity shall, on or before the day (in this subsection referred to as the "payment day") in a taxation year that is one year after the day on which the revocation is effective,

(a) pay a tax under this Part for the year equal to the amount determined by the formula

$$A + B - C - D - E - F$$

where

A is the total of all amounts each of which is the fair market value of an asset of the charity on the day (in this section referred to as the "valuation day") that is 120 days before the day on which notice of the Minister's intention to revoke its registration is mailed,

B is the total of all amounts each of which is the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in the period (in this section referred to as the "winding-up period") that begins on the valuation day and ends immediately before the payment day, or an amount received by it in the winding-up period from a registered charity,

C is the total of all amounts each of which is the fair market value, at the time of the transfer, of an asset transferred by it in the winding-up period to a qualified donee,

D is the total of all amounts each of which is expended by it in the winding-up period on charitable activities carried on by it,

E is the total of all amounts each of which is paid by it in the winding-up period in respect of its debts that were outstanding on the valuation day and not included in determining the value of D, and

F is the total of all amounts each of which is a reasonable expense incurred by it in the winding-up period and not included in determining the value of D; and

(b) file with the Minister a return in prescribed form and containing prescribed information, without notice or demand therefor.

Related Provisions: 149.1(6.4) — Application to registered national arts service organizations; 257 — Formula cannot calculate to less than zero.

History: Subsec. 188(1) substituted by 1994, c. 21, s. 84, applicable where the registration of a charity is revoked pursuant to a notice of intention to revoke its registration that is mailed after 1992. That subsec. formerly read:

(1) Where the registration of a charity is revoked, the charity shall, on or before the day in a taxation year that is one year after the day on which the revocation is effective, pay a tax for the year under this Part equal to the amount, if any, by which the total of

(a) the fair market value, on the day that notice of the Minister's intention to revoke its registration is mailed, of all its assets on that day, and

(b) the total of all gifts for which it issued receipts described in subsection 110.1(2) or 118.1(2) after the day referred to in paragraph (a) and all amounts received after that day from registered charities

exceeds the total of

(c) the fair market value on the day referred to in paragraph (a) of each asset of the charity transferred by it to a qualified donee within the period commencing immediately after that day and expiring at the end of one year from the day on which the revocation is effective,

(d) amounts expended by it within the period described in paragraph (c) on charitable activities carried on by it,

(e) amounts paid by the charity after the day referred to in paragraph (a) in respect of *bona fide* debts of the charity that were outstanding on that day, and

(f) the amount of such reasonable expenses as are incurred by the charity within the period described in paragraph (c).

Para. 188(1)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 155, applicable to 1988 *et seq.* Para. (b) formerly read:

(b) the total of all amounts each of which is an amount of a gift for which it issued a receipt described in paragraph 110.1(1)(a) or subsection 118.1(2) after the day referred to in paragraph (a) or an amount received after that date from a registered charity.

Pre-RSC History: Para. 188(1)(b) substituted by 1988, c. 55, s. 153, applicable to 1988 *et seq.*, except that in its application to the 1988 taxation year the reference to "paragraph 110.1(1)(a)" shall be read as a reference to "paragraph 110(1)(a) or 110.1(1)(a)". Para. 188(1)(b) formerly read:

(b) the aggregate of all amounts each of which is the amount of a gift for which it issued a receipt described in paragraph 110(1)(a) after the day referred to in paragraph (a) or an amount received after that day from a registered charity,

Para. 188(1)(b) substituted by 1988, c. 55, s. 153, applicable to 1988 *et seq.*, except that in its application to the 1988 taxation year the reference to "paragraph 110.1(1)(a)" shall be read as a reference to "paragraph 110(1)(a) or 110.1(1)(a)". Para. 188(1)(b) formerly read:

(b) the aggregate of all amounts each of which is the amount of a gift for which it issued a receipt described in paragraph 110(1)(a) after the day referred to in paragraph (a) or an amount received after that day from a registered charity,

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide].

(2) Idem — A person (other than a qualified donee) who, after the valuation day of a charity, receives an amount from the charity is jointly and severally liable with the charity for the tax payable under subsection (1) by the

charity in an amount not exceeding the amount by which the total of all such amounts so received by the person exceeds the total of all amounts each of which is

(a) a portion of such an amount that is included in determining an amount in the description of C, D, E or F in subsection (1) in respect of the charity, or

(b) the consideration given by the person in respect of such an amount.

History: Subsec. 188(2) substituted by 1994, c. 21, s. 84, applicable where the registration of a charity is revoked pursuant to a notice of intention to revoke its registration that is mailed after 1992. That subsec. formerly read:

(2) A person (other than a qualified donee) who, on or after the day that notice of the Minister's intention to revoke the registration of a charity is mailed, receives any amount from that charity is jointly and severally liable with the charity for the tax imposed on the charity by subsection (1) in an amount not exceeding the amount by which the amount so received by the person from the charity exceeds the total of

(a) the total of amounts so received by the person from the charity each of which is an amount described in paragraph (1)(d), (e) or (f), and

(b) the consideration, if any, given by the person in respect of the amount so received by the person.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(3) Transfer of property tax — Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

Related Provisions: 149.1(6.4) — Application to registered national arts service organizations.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(4) Idem — Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(5) Definitions — In this section,

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

A – B

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

Related Provisions: 257 — Formula cannot calculate to less than zero.

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

A – B

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History [s. 188]: *The definition "net asset amount" was 188(5)(a); "net value" was 188(5)(b). The pre-R.S.C. versions read:*

(a) "net asset amount" of a charitable foundation at any time means the amount by which the fair market value at that time of all the property owned by the foundation at that time exceeds the aggregate of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time; and

(b) "net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount by which the fair market value of the property on that day exceeds the amount of any consideration given to the foundation for the transfer.

S. 188 added by 1984, c. 45, s. 78, applicable to taxation years commencing after 1983.

Definitions [s. 188]: "amount" — 248(1); "charitable foundation", "charitable organization", "charitable purposes", "charity", "disbursement quota" — 149.1(1), 187.7; "Minister" — 248(1); "net asset amount" — 188(5); "net value" — 188(5); "non-qualified investment" — 149.1(1), 187.7; "person", "prescribed" — 248(1); "private foundation" — 149.1(1), 187.7; "property" — 248(1); "public foundation", "qualified donee", "qualified investment" — 149.1(1), 187.7; "registered charity" — 248(1); "related business", "specified gift" — 149.1(1), 187.7; "valuation day" — 188(1)(a)A; "winding-up period" — 188(1)(a)B.

189. (1) Tax regarding non-qualified investment — Where at any particular time in a taxation year a debt (other than a debt in respect of which subsection 80.4(1) applies or would apply but for subsection 80.4(3)) is owing by a taxpayer to a registered charity that is a private foundation and at that time the debt was a non-qualified investment of the foundation, the taxpayer shall pay a tax under this Part for the year equal to the amount, if any, by which

(a) the amount that would be payable as interest on that debt for the period in the year during which it was outstanding and was a non-qualified investment of the foundation if the interest were payable at such prescribed rates as are in effect from time to time during the period

exceeds

(b) the amount of interest for the year paid on that debt by the taxpayer not later than 30 days after the end of the year.

Related Provisions: 149.1(6.4) — Application to registered national arts service organizations.

Regulations: 4301(c) (prescribed rate of interest).

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(2) Computation of interest on debt — For the purpose of paragraph (1)(a), where a debt in respect of which subsection (1) applies (other than a share or right that is deemed by subsection (3) to be a debt) is owing by a taxpayer to a private foundation, interest on that debt for the

period referred to in that paragraph shall be computed at the least of

(a) such prescribed rates as are in effect from time to time during the period,

(b) the rate per annum of interest on that debt that, having regard to all the circumstances (including the terms and conditions of the debt), would have been agreed on, at the time the debt was incurred, had the taxpayer and the foundation been dealing with each other at arm's length and had the ordinary business of the foundation been the lending of money, and

(c) where that debt was incurred before April 22, 1982, a rate per annum equal to 6% plus 2% for each calendar year after 1982 and before the taxation year referred to in subsection (1).

Regulations: 4301(c) (prescribed rate of interest).

(3) Share deemed to be debt — For the purpose of subsection (1), where a share, or a right to acquire a share, of the capital stock of a corporation held by a private foundation at any particular time during the corporation's taxation year was at that time a non-qualified investment of the foundation, the share or right shall be deemed to be a debt owing at that time by the corporation to the foundation

(a) the amount of which was equal to,

(i) in the case of a share or right last acquired before April 22, 1982, the greater of its fair market value on April 21, 1982 and its cost amount to the foundation at the particular time, or

(ii) in any other case, its cost amount to the foundation at the particular time,

(b) that was outstanding throughout the period for which the share or right was held by the foundation during the year, and

(c) in respect of which the amount of interest paid in the year is equal to the total of all amounts each of which is the amount of a dividend received on the share by the foundation in the year,

and the reference in paragraph (1)(a) to "such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "⅔ of such prescribed rates as are in effect from time to time during the period".

(4) Computation of interest with respect to a share — For the purposes of subsection (3), where a share or right in respect of which that subsection applies was last acquired before April 22, 1982, the reference therein to "⅔ of such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "the lesser of

(a) a rate per annum equal to 4% plus 1% for each 5 calendar years contained in the period commencing after 1982 and ending before the particular time, and

(b) a rate per annum equal to ⅔ of such prescribed rates as are in effect from time to time during the year".

(5) Share substitution — For the purpose of subsection (3), where a share or right is acquired by a charity in exchange for another share or right in a transaction after April 21, 1982 to which section 51, 85, 85.1, 86 or 87 applies, it shall be deemed to be the same share or right as the one for which it was substituted.

(6) Taxpayer to file return and pay tax — Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under [sub]section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

History: The opening words of subsec. 189(6), and para. (6)(c), substituted by 1994, c. 21, subsecs. 85(1), (2), applicable after 1992. The opening words and para. (c) formerly read:

(6) Every taxpayer who is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which the taxpayer is required, or would be required if tax were payable by the taxpayer under Part I or if, in the case of a charity, the registration thereof had not been revoked, to file a return of income or an information return under Part I for the year,

. . . . .

(c) except where subsection 188(1) applies with respect to the payment of the tax, pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

Forms: T2046: Tax return where registration of a charity is revoked; T2140: Part V tax return — tax on non-qualified investments of a registered charity.

(7) Interest — Where a taxpayer is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the tax was required to be paid to the day of payment.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Pre-RSC History: Subsec. 189(7) added (and former subsec. (7) renumbered as (8)) by 1985, c. 45, s. 102, applicable after May 9, 1985, except that interest is not payable under subsec. 189(7) on tax payable by a taxpayer under Part V for any period or portion of a period that is before May 10, 1985.

Regulations: 4301 (prescribed rate of interest).

(8) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 189(8) substituted by 1986, c. 6, s. 99, to add reference to subsection 161(11).

Former subsec. 189(7) amended and renumbered 189(8) by 1985, c. 45, s. 102, applicable after May 9, 1985. Former subsec. 189(7) read:

(7) Provisions applicable — Subsections 150(2) and (3), sections 152 and 158, subsection 161(1) and sections 162 to 167 and Division J of Part I are applicable, with such modifications as the circumstances require, to this Part.

Pre-RSC History [s. 189]: S. 189 added by 1984, c. 45, s. 78, applicable to taxation years commencing after 1983.

Selected Cases [s. 189]: *Jabs Construction Ltd. v. R.*, [1999] 3 C.T.C. 2556 (TCC) (Where specific provision allows for mitigation of tax results, no abuse, but rather, use of Act).

Definitions [s. 189]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "charitable foundation", "charitable organization", "charitable purposes", "charity" — 149.1(1), 187.7; "corporation" — 248(1); *Interpretation Act*

35(1); "disbursement quota", "dividend", "Minister" — 248(1); "non-qualified investment" — 149.1(1), 187.7; "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "private foundation" — 149.1(1), 187.7, 248(1); "public foundation", "qualified donee", "qualified investment" — 149.1(1), 187.7; "registered charity" — 248(1); "related business" — 149.1(1), 187.7; "share" — 248(1); "specified gift", "taxation year" — 149.1(1), 187.7; "taxpayer" — 248(1).

Pre-RSC History [former Part V]: Former Part V, entitled "Refundable Tax in Respect of Ineligible Investments", was repealed by 1973-74, c. 14, s. 60, applicable to 1972 *et seq.*

PART VI — TAX ON CAPITAL OF FINANCIAL INSTITUTIONS

190. (1) Definitions — For the purposes of this Part,

"financial institution" means a corporation that

(a) is a bank,

(b) is authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public,

(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real estate or investing in mortgages on real estate,

(d) is a life insurance corporation that carries on business in Canada, or

(e) is a corporation all or substantially all of the assets of which are shares or indebtedness of corporations described in any of paragraphs (a) to (d) or this paragraph to which the corporation is related;

Related Provisions: 253 — Extended meaning of "carrying on business in Canada".

History: Paras. (d), (e) added to "financial institution" in subsec. 190(1) by 1994, c. 7, Sch. II (1991, c. 49), subsec. 156(1), applicable to taxation years ending after February 20, 1990.

"long-term debt" means

(a) in the case of a bank, its subordinated indebtedness (within the meaning assigned by section 2 of the *Bank Act*) evidenced by obligations issued for a term of not less than 5 years,

(b) in the case of an insurance corporation, its subordinated indebtedness (within the meaning assigned by section 2 of the *Insurance Companies Act*) evidenced by obligations issued for a term of not less than 5 years, and

(c) in the case of any other corporation, its subordinated indebtedness (within the meaning that would be assigned by section 2 of the *Bank Act* if the definition of that expression in that section were applied with such modifications as the circumstances require) evidenced by obligations issued for a term of not less than 5 years;

History: The definition "long-term debt" in subsec. 190(1) substituted by 1994, c. 21, subsec. 86(1), applicable after May 31, 1992. That definition formerly read:

"long-term debt" means

(a) in the case of a bank, its indebtedness evidenced by bank debentures, within the meaning assigned by the *Bank Act*, and

(b) in the case of a corporation that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years.

"reserves", in respect of a financial institution for a taxation year, means the amount at the end of the year of all of the institution's reserves, provisions and allowances (other than allowances in respect of depreciation or depletion) and, for greater certainty, includes any provision in respect of deferred taxes.

History: The definition "reserves" added to subsec. 190(1) by 1994, c. 21, subsec. 86(2), applicable to 1992 *et seq.*

(1.1) Prescribed meanings — For the purposes of this Part, the expressions "attributed surplus", "Canadian assets", "Canadian reserve liabilities", "total assets" and "total reserve liabilities" have the meanings that are prescribed.

History: Subsec. 190(1.1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 156(2), applicable to taxation years ending after February 20, 1990. Subsec. (1.1) formerly read:

(1.1) Prescribed expressions — For the purposes of this Part, the expressions "Canadian assets" and "total assets" have the meanings as may be prescribed.

Regulations: 8603 (prescribed meanings of expressions).

(2) Application of subsecs. 181(3) and (4) — Subsections 181(3) and (4) apply to this Part with such modifications as the circumstances require.

History: Subsec. 190(2) substituted by 1994, c. 21, subsec. 86(3), applicable to 1992 *et seq.* That subsec. formerly read:

(2) Accounting method — For the purposes of reporting, calculating or determining an amount under this Part on a non-consolidated basis, the equity method of accounting shall not be used.

Pre-RSC History [s. 190]: Subsec. 190(1) substituted, subsec. 190(1.1) added by 1990, c. 39, s. 49, applicable to 1990 *et seq.* Subsec. 190(1) formerly read:

190. (1) Definitions — In this Part,

"bank" means a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies;

"financial institution" means a corporation that

(a) is a bank,

(b) is authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public, or

(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real estate or investing money in mortgages or hypothecs on real estate;

"long-term debt" means

(a) in the case of a corporation that is a bank, indebtedness evidenced by bank debentures, within the meaning assigned by the *Bank Act* or the *Quebec Savings Banks Act*, and

(b) in the case of a corporation that is not a bank, subordinate indebtedness evidenced by obligations issued for a term of not less than five years.

Definitions [s. 190]: "amount" — 248(1); "bank" — *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "life insurance corporation", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1).

Calculation of Capital Tax

190.1 (1) Tax payable — Every corporation that is a financial institution at any time during a taxation year shall pay a tax under this Part for the year equal to 1.25% of the amount, if any, by which its taxable capital employed in Canada for the year exceeds its capital deduction for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible; 125.2 — Deduction of Part VI tax; 157(1) — Instalment and payment obligations; 161(1), (4.1) — Interest; 181.1(1) — Large Corporations Tax; 190.1(1.1) — Additional tax on life insurance corporations; 190.1(1.2) — Additional tax on deposit-taking institutions; 227(14) — No tax on corporation exempt under s. 149.

Application — s. 190.1: S. 157 of 1994, c. 7, Sch. II (1991, c. 49) provides that in its application to taxation years beginning before February

21, 1990 of corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), s. 190.1 shall be read as follows:

190.1 Every corporation that is a financial institution at any time during a taxation year shall pay a tax under this Part for the year equal to that proportion of 1.25% of the amount, if any, by which its taxable capital employed in Canada for the year exceeds its capital deduction for the year that the number of days in the year that are after February 20, 1990 is of 365.

(1.1) Additional tax payable by life insurance corporations — Every life insurance corporation that carries on business in Canada at any time in a taxation year shall pay a tax under this Part for the year, in addition to any tax payable under subsection (1), equal to 1% of the amount determined by the formula

$$(A - B) \times \frac{C}{365}$$

where

A is its taxable capital employed in Canada for the year;

B is its capital allowance for the year; and

C is the number of days in the year that are after February 25, 1992 and before 1999.

Proposed Amendment — 190.1(1.1)C

C is the number of days in the year that are after February 25, 1992 and before 2001.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 97, will amend the description of C in subsec. 190.1(1.1) to read as above, applicable to taxation years that end after 1998.

Technical Notes: Subsection 190.1(1.1) of the Act imposes an additional temporary tax on the capital employed in Canada for a taxation year of a life insurer in excess of its capital allowance. The additional tax, which was first announced in the 1992 budget, was scheduled to expire on December 31, 1998. The description of C in the subsection is amended to extend the application of the additional tax for two further years — until December 31, 2000.

Dept. of Finance news release, July 29, 1999: *Update on income tax regulations for multinational insurance corporations*

. . . . .

Also, the additional capital tax on life insurers, introduced in 1992, will be extended for two further years, to the 2000 taxation year.

[For the complete text of this news release, see under Reg. 2400–2401 — ed.]

Related Provisions: 18(1)(t) — Tax is non-deductible; 125.2(3)(a) — No carryback of additional tax to year where it did not apply; 157(1) — Instalment and payment obligations; 161(1), (4.1) — Interest; 190.11 (Application rule) — Exclusion of deferred realized gains from taxable capital employed in Canada; 211.1 — Tax on investment income of life insurer; 227(14) — No tax on corporation exempt under s. 149; 257 — Formula cannot calculate to less than zero.

History: The description of C in subsec. 190.1(1.1) amended by 1997, c. 25, subsec. 53(1), applicable after February 25, 1992. The description of C formerly read:

C is the number of days in the year that are after February 25, 1992 and before 1996.

Subsec. 190.1(1.1) added by 1994, c. 21, s. 87, applicable to taxation years ending after February 25, 1992 and, where a corporation elects under paragraph 88(2)(b) of the amending legislation [see under 190.11(b)(i) below], to its 1991 and subsequent taxation years, in which case:

(a) the reference in subsec. 190.1(1.1) to "February 25, 1992" shall be read as a reference to "the day immediately preceding the first day of the corporation's first taxation year that ends after 1990", and

(b) notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are consequential on the application of subsec. 190.1(1.1) to the corporation's taxation years that end before February 26, 1992.

(1.2) Additional tax payable by deposit-taking institutions — Every corporation (other than a life insurance corporation) that is a financial institution at any time in a taxation year shall pay a tax under this Part for the year, in addition to any tax payable under subsection (1), equal to the amount determined by the formula

$$0.0015 \times (A - B) \times \frac{C}{365}$$

where

A is the corporation's taxable capital employed in Canada for the year;

B is its enhanced capital deduction for the year; and

C is the number of days in the year that are after February 27, 1995 and before November 2000.

Proposed Amendment — Surtax extended to October 2001

Federal budget, supplementary information, February 28, 2000: *Capital Tax Surcharge on Large Deposit-Taking Institutions*

The budget proposes that the capital tax surcharge on large deposit-taking institutions, which was introduced in the 1995 budget, and extended in subsequent budgets, will be further extended to October 31, 2001. As announced by the Government in its June 25, 1999, paper *Reforming Canada's Financial Services Sector*, a review of the application of this surcharge is, however, underway and the results will be announced when the financial sector review legislation is tabled.

This surcharge applies to financial institutions as defined under Part VI of the *Income Tax Act* except life insurance companies. The surcharge will continue to apply at a rate of 12% of the capital tax imposed under Part VI, calculated before any credit for income taxes and with a capital deduction of $400 million. The surcharge is not eligible to be offset by tax payable under Part I of the Act.

The surcharge will be prorated for taxation years that straddle October 31, 2001.

Related Provisions: 190.17 — Enhanced capital deduction; 257 — Formula cannot calculate to less than zero.

History: The description of C in subsec. 190.1(1.2) amended by 2000, c. 19, s. 53, applicable to taxation years that end after February 27, 1995. It formerly read:

C is the number of days in the year that are after February 27, 1995 and before November 1999.

The description of C in subsec. 190.1(1.2) amended by 1999, c. 22, s. 68, applicable to taxation years that end after February 27, 1995. It formerly read:

C is the number of days in the year that are after February 27, 1995 and before November 1998.

The description of C in subsec. 190.1(1.2) amended by 1998, c. 19, s. 48, applicable to taxation years that end after February 27, 1995. The description of C formerly read:

C is the number of days in the year that are after February 27, 1995 and before November 1997.

The description of C in subsec. 190.1(1.2) amended by 1997, c. 25, subsec. 53(2), applicable to taxation years that end after February 27, 1995. The description of C formerly read:

C is the number of days in the year that are after February 27, 1995 and before November 1996.

Subsec. 190.1(1.2) added by 1996, c. 21, subsec. 49(1), applicable to taxation years that end after February 27, 1995. Subsec. 49(4) provides that no interest is payable under subsec. 161(2) in respect of any amount that became payable before July 1995 because of subsec. 190.1(1.2).

(2) Short taxation years — Where a taxation year of a corporation is less than 51 weeks, the amount determined under subsection (1) for the year in respect of the corporation shall be reduced to that proportion of that amount that the number of days in the year is of 365.

History: Subsec. 190.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991. Subsec. 190.1(2) formerly read:

> (2) Short taxation years — Where a taxation year of a corporation is less than 51 weeks, the tax payable for the year by the corporation under this Part shall be that proportion of its tax otherwise payable under this Part for the year that the number of days in the year is of 365.

(3) Deduction — There may be deducted in computing a corporation's tax payable under this Part for a taxation year an amount equal to the total of

(a) the amount, if any, by which

(i) the corporation's tax payable under Part I for the year

exceeds the lesser of

(ii) the corporation's Canadian surtax payable (within the meaning assigned by section 125.3) for the year, and

(iii) the amount that would, but for subsection 181.1(4), be its tax payable under Part I.3 for the year, and

(b) such part as the corporation claims of its unused Part I tax credits and unused surtax credits for its 7 taxation years immediately before and its 3 taxation years immediately after the year,

to the extent that that amount does not exceed the amount by which

(c) the amount that would, but for subsection (1.2) and this subsection, be its tax payable under this Part for the year

exceeds

(d) the total of all amounts each of which is the amount deducted under subsection 125.2(1) in computing the corporation's tax payable under Part I for a taxation year ending before 1992 in respect of its unused Part VI tax credit (within the meaning assigned by section 125.2) for the year.

Related Provisions: 87(2)(j.91) — Amalgamations — continuing corporation; 87(2.11) — Vertical amalgamations; 125.2(3)(a) — Limitation on carryover of Part VI tax; 161(7)(a)(x), 164(5)(h.2), 164(5.1)(h.3) — Effect of carryback of loss etc.; 190.2 — Return.

History: Para. 190.1(3)(c) amended by 1996, c. 21, subsec. 49(2), applicable to taxation years that end after February 27, 1995. Para. (c) formerly read:

> (c) the amount that would, but for this subsection, be its tax payable under this Part for the year

Subsec. 190.1(3) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years,

(a) paras. (a) and (b) shall be read as follows:

> "(a) the corporation's tax payable under Part I for the year, and
>
> (b) such part as the corporation claims of its unused Part I tax credits for its 7 taxation years immediately before and 3 taxation years immediately after the year," and

(b) the reference in para. (d) to "1992" shall be read as "1991".

Forms: T2 SCH 42: Calculation of unused Part VI tax credit and unused Part I tax credit.

(4) Idem — For the purposes of this subsection and subsections (3), (5) and (6),

(a) an amount may not be claimed under subsection (3) in computing a corporation's tax payable under this Part for a particular taxation year

(i) in respect of its unused Part I tax credit for another taxation year, until its unused Part I tax credits for taxation years preceding the other year that may be claimed under this Part for the particular year have been claimed, and

(ii) in respect of its unused surtax credit for another taxation year, until its unused surtax credits for taxation years preceding the other year that may be claimed under Part I.3 or this Part for the particular year have been claimed; and

(b) an amount may be claimed under subsection (3) in computing a corporation's tax payable under this Part for a particular taxation year

(i) in respect of its unused Part I tax credit for another taxation year, only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of that unused Part I tax credit in computing its tax payable under this Part for a taxation year preceding the particular year, and

(ii) in respect of its unused surtax credit for another taxation year, only to the extent that it exceeds the total of all amounts each of which is the amount claimed in respect of the unused surtax credit

(A) in computing its tax payable under this Part for a taxation year preceding the particular year, or

(B) in computing its tax payable under Part I.3 for the particular year or a taxation year preceding the particular year.

Related Provisions: 87(2.11) — Vertical amalgamations.

History: Subsec. 190.1(4) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years, subsec. (4) shall be read without reference to subparas. (a)(ii) and (b)(ii).

(5) Definitions — For the purposes of subsections (3), (4) and (6),

"unused Part I tax credit" of a corporation for a taxation year ending after 1991 means the amount, if any, by which

(a) the corporation's tax payable under Part I for the year

exceeds the total of

(b) the amount that would, but for subsection (3), be its tax payable under this Part for the year, and

(c) the corporation's Canadian surtax payable (within the meaning assigned by section 125.3) for the year;

"unused surtax credit" of a corporation for a taxation year has the meaning assigned by subsection 181.1(6).

Related Provisions [subsec. 190.1(5)]: 87(2.11) — Vertical amalgamations.

History: 1994, c. 21, subsec. 87(3), provides that where

> (a) a corporation elected under subsec. 111(2) of S.C. 1993, c. 24 (Bill C-92), as described in the History annotation below,

and

(b) the corporation does not elect under para. 88(2)(b) of 1994, c. 21 [see under subpara. 190.11(b)(i), below],

for the purposes of determining the corporation's unused Part I tax credit for the 1991 taxation year, subsec. 190.1(5) shall be read as follows:

(5) For the purpose of computing the amount that may, because of paragraph (3)(b), be deducted by a corporation in computing its tax payable under this Part for a particular taxation year, in respect of its tax payable under Part I for a taxation year ending in 1991, and for the purposes of subsections (4) and (6), the corporation's "unused Part I tax credit" for the 1991 taxation year is the lesser of

(a) the amount, if any, by which its tax payable under Part I for the 1991 taxation year exceeds the amount that would, but for subsection (3), be its tax payable under this Part for that year, and

(b) its tax payable under this Part (determined without reference to subsections (1.1) and (3)) for the particular year.

Subsec. 190.1(5) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years, subsec. (5) shall be read as follows [but see History annotation above]:

(5) For the purposes of this subsection and subsections (3), (4) and (6), "unused Part I tax credit" of a corporation for a taxation year ending after 1990 means the amount, if any, by which its tax payable under Part I for the year exceeds the amount that would, but for subsection (3), be its tax payable under this Part for the year.

(6) Acquisition of control — Where at any time control of a corporation was acquired by a person or group of persons, no amount in respect of its unused Part I tax credit or unused surtax credit for a taxation year ending before that time is deductible by the corporation for a taxation year ending after the time and no amount in respect of its unused Part I tax credit or unused surtax credit for a taxation year ending after that time is deductible by the corporation for a taxation year ending before that time, except that

(a) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's tax payable under Part I for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation for profit or with a reasonable expectation of profit throughout the subsequent year, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year (in this paragraph referred to as the "preceding year") that ended before that time to the extent of that proportion of the corporation's tax payable under Part I for the particular year that

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

Related Provisions: 87(2.11) — Vertical amalgamations; 256(6)–(9) — Anti-avoidance — deemed exercise of right to increase voting power.

History: Paras. 190.1(6)(a) and (b) amended by 1998, c. 19, s. 202, applicable to acquisitions of control that occur after April 26, 1995 Paras. 190.1(6)(a) and (b) formerly read:

(a) where a business was carried on by the corporation in a taxation year ending before that time, its unused Part I tax credit and unused surtax credit for that year are deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all the income of which was derived

from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year; and

(b) where a business was carried on by the corporation throughout a taxation year ending after that time, its unused Part I tax credit and unused surtax credit for that year are deductible by the corporation for a particular taxation year ending before that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit in the particular year and only to the extent of that proportion of the corporation's tax payable under this Part for the particular year that

(i) the amount, if any, by which

(A) the total of its income under Part I for the particular year from that business and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income under Part I for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income under Part I for the particular year.

Subsec. 190.1(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 111, applicable to 1992 *et seq.* and, where a corporation that was a financial institution (within the meaning assigned by s. 190) throughout each of its taxation years ending in 1991 so elects by notifying the Minister in writing before December 11, 1993, to its taxation years ending in 1991, except that, in its application to such years, subsec. (6) shall be read without reference to the expressions "or unused surtax credit" and "and unused surtax credit".

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

Definitions [s. 190.1]: "acquired" — 256(7)–(9); "amount" — 181(3), 190(2), 248(1); "business" — 248(1); "Canadian surtax payable" — 125.3(4); "capital allowance" — 190.16; "capital deduction" — 190.15; "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "enhanced capital deduction" — 190.17; "farm loss" — 111(8), 248(1); "financial institution" — 190(1); "non-capital loss" — 111(8), 248(1); "property" — 248(1); "tax payable" — 248(2); "taxable capital employed in Canada" — 190.11; "taxation year" — 249; "unused Part I credit", "unused surtax credit" — 190.1(5).

190.11 Taxable capital employed in Canada — For the purposes of this Part, the taxable capital employed in Canada of a financial institution for a taxation year is,

(a) in the case of a financial institution other than a life insurance corporation, that proportion of its taxable capital for the year that its Canadian assets at the end of the year is of its total assets at the end of the year;

(b) in the case of a life insurance corporation that was resident in Canada at any time in the year, the total of

(i) that proportion of the amount, if any, by which the total of

(A) its taxable capital for the year, and

(B) the amount prescribed for the year in respect of the corporation

exceeds

(C) the amount prescribed for the year in respect of the corporation

that its Canadian reserve liabilities as at the end of the year is of the total of

(D) its total reserve liabilities as at the end of the year, and

(E) the amount prescribed for the year in respect of the corporation, and

(ii) the amount, if any, by which

(A) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that can reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(B) all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)), to the extent that it is included in the amount determined under clause (A) and is deducted in computing its income under Part I for the year,

(C) all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i), to the extent that it is included in the amount determined under clause (A) and is deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year, and

(D) all amounts each of which is the amount outstanding (including any interest accrued thereon) at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it is deducted in computing the total determined under clause (C); and

(c) in the case of a life insurance corporation that was non-resident throughout the year, its taxable capital for the year.

Proposed Amendment — Application of S.C. 1998, c. 19 amendment to 190.11

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 121, will amend the application of the amendment made to s. 190.11 by S.C. 1998, c. 19, s. 206 to replace references to "1999" with "2001", applicable to taxation years that end after 1998.

Technical Notes: Subsection 190.1(1.1) of the *Income Tax Act* imposes an additional temporary Part VI tax on the taxable capital employed in Canada of life insurance corporations. Section 206 of the *Income Tax Amendments Act, 1997* provided that deferred realized gains and losses of life insurance corporations on investment properties would not be added or deducted in computing the Part VI tax base. Consequential on the extension of the additional tax to December 31, 2000, this amendment extends the exclusion of deferred realized gains and losses in calculating the Part VI tax base to the same date.

Related Provisions: 181.3(1) — Taxable capital employed in Canada for Part I.3 tax; 257 — Formula cannot calculate to less than zero [applies to amending legislation by virtue of *Interpretation Act* subsec. 42(3)].

History: Clause 206 of 1998, c. 19, reads as follows:

> 206. Where an amount in respect of deferred realized gains or losses of a life insurance corporation is added or deducted, as the case may be, in computing its taxable capital employed in Canada or capital under Part VI of the Act for a taxation year that ends after February 25, 1992 and began before 1999, the amount determined by the formula
>
> $$(A - B) \times C/D$$
>
> shall be deducted, or, where the amount is negative, the absolute value of the amount shall be added, in computing the corporation's taxable capital employed in Canada under Part VI of the Act for the year, where
>
> A is the corporation's taxable capital employed in Canada for the year under Part VI of the Act (determined without reference to this section);
>
> B is the amount that would be the value of A if no amount were added or deducted in computing the corporation's taxable capital employed in Canada or capital for the year under Part VI of the Act in respect of its deferred realized gains or losses, as the case may be;
>
> C is the number of days in the year that are after February 25, 1992 and before 1999; and
>
> D is the number of days in the year.

Subpara. 190.11(b)(i) substituted by 1994, c. 21, s. 88, applicable (by subsec. 88(2)):

> (a) to taxation years that end after February 25, 1992; and
>
> (b) where a corporation so elects by notifying Revenue Canada in writing before the end of December 1994, to its 1991 and subsequent taxation years; and where such an election is made, notwithstanding subsecs. 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made to the corporation's taxation years ending before February 26, 1992 as are consequential on the election.

That subpara. formerly read:

> (i) that proportion of its taxable capital for the year that its Canadian reserve liabilities at the end of the year is of its total reserve liabilities at the end of the year, and

S. 190.11 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 158, applicable to taxation years ending after February 20, 1990. S. 190.11 formerly read:

> 190.11 For the purposes of this Part, the taxable capital employed in Canada of a corporation for a taxation year is that proportion of its taxable capital for the year that its Canadian assets for the year are of its total assets for the year.

Definitions [s. 190.11]: "amount" — 181(3), 190(2), 248(1); "Canadian assets" — 190(1.1), Reg. 8602, 8603(a); "Canadian reserve liabilities" — 190(1.1), Reg. 2405(3), Reg. 8602, Reg. 8603(b); "capital allowance" — 190.16; "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "life insurance corporation" — 248(1); "reserves" — 190(1); "resident in Canada" — 250; "taxable capital" — 190.12; "taxation year" — 249; "total assets" — 190(1.1), Reg. 8602, Reg. 8603(a); "total reserve liabilities" — 190(1.1), Reg. 2405(3), Reg. 8602, Reg. 8603(b).

Regulations: 8605 (prescribed amounts for 190.11(b)(i)(B), (C) and (E)).

190.12 Taxable capital — For the purposes of this Part, the taxable capital of a corporation for a taxation year is the amount, if any, by which its capital for the year exceeds the total determined under section 190.14 in respect of its investments for the year in financial institutions related to it.

Related Provisions: 181.3(2) — Taxable capital for Part I.3 tax.

Definitions [s. 190.12]: "amount" — 181(3), 190(2), 248(1); "capital" — 190.13; "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "investments in financial institutions" — 190.14; "taxation year" — 249.

190.13 Capital — For the purposes of this Part, the capital of a financial institution for a taxation year is,

(a) in the case of a financial institution other than a life insurance corporation, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt,

(ii) the amount of its capital stock (or, in the case of an institution incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(iii) the amount of its reserves, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total at the end of the year of

(iv) the amount of its deferred tax debit balance, and

(v) the amount of any deficit deducted in computing its shareholders' equity;

(b) in the case of a life insurance corporation that was resident in Canada at any time in the year, the amount, if any, by which the total at the end of the year of

(i) the amount of its long-term debt, and

(ii) the amount of its capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses

exceeds the total at the end of the year of

(iii) the amount of its deferred tax debit balance, and

(iv) the amount of any deficit deducted in computing its shareholders' equity; and

(c) in the case of a life insurance corporation that was non-resident throughout the year, the total at the end of the year of

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) its surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under Part I.3 or this Part for the year

exceeds the total of all amounts each of which is

(II) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and

(III) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and

(B) its attributed surplus for the year,

(ii) any other surpluses relating to its insurance businesses carried on in Canada,

(iii) the amount of its long-term debt that can reasonably be regarded as relating to its insurance businesses carried on in Canada, and

(iv) the amount, if any, by which

(A) the amount of its reserves for the year (other than its reserves in respect of amounts payable out of segregated funds) that can reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada

exceeds the total of

(B) all amounts each of which is the amount of a reserve (other than a reserve described in subparagraph 138(3)(a)(i)), to the extent that it is included in the amount determined under clause (A) and is deducted in computing its income under Part I for the year,

(C) all amounts each of which is the amount of a reserve described in subparagraph 138(3)(a)(i), to the extent that it is included in the amount determined under clause (A) and is deductible under subparagraph 138(3)(a)(i) in computing its income under Part I for the year, and

(D) all amounts each of which is the amount outstanding (including any interest accrued thereon) at the end of the year in respect of a policy loan (within the meaning assigned by subsection 138(12)) made by the corporation, to the extent that it is deducted in computing the amount determined under clause (C).

Proposed Amendment — Capital of authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (5) That, for the purposes of Part I.3 and Part VI of the Act, the capital of an authorized foreign bank be an amount equal to 10% of the bank's risk-weighted assets as determined under prescribed rules based on the risk-weighted asset guidelines of the Superintendent of Financial Institutions.

Department of Finance news release, February 11, 1999: [See under 181.3(3).]

Related Provisions: 181.3(3) — Capital for Part I.3 tax.

History: Subpara. 190.13(c)(i) amended by 1998, c. 19, s. 203, applicable to 1994 *et seq.* Subpara. 190.13(c)(i) formerly read:

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)), computed as if no tax were payable by it under Part I.3 or this Part for the year, and its attributed surplus for the year,

The opening words of para. 190.13(a) substituted by 1994, c. 21, subsec. 89(1), applicable to 1992 *et seq.* The opening words of that para. formerly read:

(a) in the case of a financial institution other than a life insurance corporation, the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

All that portion of para. 190.13(a) between subparas. (ii) and (iv) substituted by 1994, c. 21, subsec. 89(2), applicable to 1992 *et seq.* That portion of the para. formerly read:

(iii) the amount of its provisions or reserves (including, for greater certainty, any provision or reserve in respect of deferred taxes), except to the extent that they are deducted in computing its income under Part I for the year,

exceeds the total so computed of

The opening words of para. 190.13(b) substituted by 1994, c. 21, subsec. 89(3), applicable to 1992 *et seq.* The opening words of that para. formerly read:

(b) in the case of a life insurance corporation that was resident in Canada at any time in the year, the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

That portion of para. 190.13(b) between subparas. (ii) and (iii) substituted by 1994, c. 21, subsec. 89(4), applicable to 1992 *et seq.* That portion of the para. formerly read:

exceeds the total so computed of

All that portion of para. 190.13(c) preceding subpara. (ii) substituted by 1994, c. 21, subsec. 89(5), applicable to 1992 *et seq.* That portion of the para. formerly read:

(c) in the case of a life insurance corporation that was non-resident throughout the year, the total, computed at the end of the year on a non-consolidated basis, of

(i) the greater of its surplus funds derived from operations (within the meaning assigned by subsection 138(12)) and its attributed surplus for the year,

S. 190.13 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 159, applicable to taxation years ending after February 20, 1990. S. 190.13 formerly read:

190.13 For the purposes of this Part, the capital of a corporation for a taxation year is the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

(a) the amount of its long-term debt,

(b) the amount of its capital stock (or, in the case of a corporation incorporated without share capital, the amount of its members' contributions), retained earnings, contributed surplus and any other surpluses, and

(c) the amount of its provisions or reserves (including, for greater certainty, any reserve or provision in respect of deferred taxes), except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(d) the amount of its deferred tax debit balance, and

(e) the amount of any deficit deducted in computing its shareholders' equity at the end of the year.

Definitions [s. 190.13]: "amount" — 181(3), 190(2), 248(1); "attributed surplus" — 190(2), Reg. 2405(3), 8602, 8603(b); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "insurance corporation", "life insurance corporation" — 248(1); "long-term debt", "reserves" — 190(1); "taxation year" — 249.

190.14 Investment in related institutions — A corporation's investments[37] for a taxation year in a financial institution related to it is,

(a) in the case of a corporation that was resident in Canada at any time in the year, the total of

(i) all amounts each of which is the carrying value at the end of the year of

(A) any share of the capital stock of the financial institution, or

(B) any long-term debt of the financial institution

that is owned by the corporation at the end of the year (and, where the corporation is a life insurance corporation, that is non-segregated property within the meaning assigned by subsection 138(12)), and

(ii) the amount of any surplus of the financial institution contributed by the corporation, other than an amount included under subparagraph (i); and

(b) in the case of a life insurance corporation that was non-resident throughout the year, the total that would,

[37] *Sic.* Should be "investment" — ed.

if the corporation were resident in Canada in the year, be determined under paragraph (a) in respect of the corporation for the year in respect of shares and long-term debt of the financial institution that were used by the corporation in, or held by it in the year in the course of, carrying on an insurance business in Canada and in respect of surplus of the financial institution contributed by the corporation.

Related Provisions: 190.15(6) — Related financial institution.

History: All that portion of subpara. 190.14(a)(i) preceding cl. (B) substituted by 1994, c. 21, s. 90, applicable to 1992 *et seq.* That portion of the subpara. formerly read:

(i) the cost to it, that would be shown on its balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis, of

(A) any share of the capital stock of the financial institution, and

S. 190.14 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 159, applicable to taxation years ending after February 20, 1990. S. 190.14 formerly read:

190.14 Investment in related institutions — A corporation's investments for a taxation year in a financial institution related to it is the total of

(a) the cost to it, which would be shown on its balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis, of

(i) any share of the capital stock of the financial institution, and

(ii) any long-term debt of the financial institution

owned by the corporation at the end of the year, and

(b) the amount of any surplus of the institution at the end of the year contributed by the corporation, other than an amount included under paragraph (a).

Definitions [s. 190.14]: "amount" — 181(3), 190(2), 248(1); "carrying value" — 181(3), 190(2); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "life insurance corporation" — 248(1); "long-term debt" — 190(1); "related" — 190.15(6), 251; "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

190.15 (1) Capital deduction — For the purposes of this Part, the capital deduction of a corporation for a taxation year during which it was at any time a financial institution is the total of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which its taxable capital employed in Canada for the year exceeds $200,000,000,

unless the corporation was related to another financial institution at the end of the year, in which case, subject to subsection (4), its capital deduction for the year is nil.

(2) Related financial institution — A corporation that is a financial institution at any time during a taxation year and that was related to another financial institution at the end of the year may file with the Minister an agreement in prescribed form on behalf of the related group of which the corporation is a member under which an amount that does not exceed the total of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a financial institution for the year that is a member of the related group, exceeds $200,000,000

is allocated among the members of the related group for the taxation year.

Related Provisions: 190.15(6) — Where corporations deemed not related.

Forms: T2 SCH 39: Agreement among related financial institutions Part VI tax.

(3) Idem — The Minister may request a corporation that is a financial institution at any time during a taxation year and that was related to any other financial institution at the end of the year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount among the members of the related group of which the corporation is a member for the year not exceeding the total of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a financial institution for the year that is a member of the related group, exceeds $200,000,000.

History: Paras. 190.15(1)(b), (2)(b), (3)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 160(1)–(3), applicable to 1990 *et seq.* Those paras. formerly read:

(b) 1/5 of the amount, if any, by which the amount that would be the corporation's taxable capital for the year if its capital deduction for the year were nil exceeds $200,000,000,

. . . . .

(b) 1/5 of the amount, if any, by which the total of all amounts, each of which is the amount that would be the taxable capital of a financial institution that is a member of the related group if its capital deduction for the year were nil, exceeds $200,000,000

. . . . .

(b) 1/5 of the amount if any, by which the total of all amounts, each of which is the amount that would be the taxable capital of a financial institution that is a member of the related group if its capital deduction for the year were nil, exceeds $200,000,000.

(4) Idem — For the purposes of this Part, the least amount allocated for a taxation year to each member of a related group under an agreement described in subsection (2) or by the Minister pursuant to subsection (3) is the capital deduction for the taxation year of that member, but, if no such allocation is made, the capital deduction of each member of the related group for that year is nil.

(5) Idem — Where a corporation (in this subsection referred to as the "first corporation") has more than one taxation year ending in the same calendar year and is related in 2 or more of those taxation years to another corporation that has a taxation year ending in that calendar year, the capital deduction of the first corporation for each such taxation year at the end of which it is related to the other corporation is, for the purposes of this Part, an amount equal to its capital deduction for the first such taxation year.

Related Provisions: 190.16(5) — Rule in 190.15(5) applies to allocation of capital allowance; 190.17(5) — Rule in 190.15(5) applies to allocation of enhanced capital deduction.

(6) Idem — Two corporations that would, but for this subsection, be related to each other solely because of

(a) the control of any corporation by Her Majesty in right of Canada or a province, or

(b) a right referred to in paragraph 251(5)(b),

are, for the purposes of this section and section 190.14, deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisi-

tion of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purpose of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

Related Provisions: 190.16(5) — Rule in 190.15(6) applies to allocation of capital allowance; 190.17(5) — Rule in 190.15(6) applies to allocation of enhanced capital deduction; 256(6), (6.1) — Meaning of "control".

History: The closing words of subsec. 190.15(6) amended by 1998, c. 19, s. 204, applicable after April 26, 1995. The closing words formerly read:

> shall, for the purposes of this section and section 190.14, be deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes of the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations shall, for the purposes of this section, be deemed to be in the same position in relation to each other as if the taxpayer owned the shares.

Subsec. 190.15(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 112, applicable to 1989 *et seq.*

Pre-RSC History [ss. 190.1–190.15]: Ss. 190.1 to 190.15 substituted for ss. 190.1 to 190.18 by 1990, c. 39, s. 50, applicable to 1990 *et seq.* Ss. 190.1 to 190.18 formerly read:

Calculation of Capital Tax

190.1 (1) **Tax payable** — Every corporation that is a financial institution at any time during a taxation year shall pay a tax under this Part for the year equal to 1.25% of the amount, if any, by which its taxable capital employed in Canada for the year exceeds its capital deduction for the year.

(2) **Tax calculated** — The tax payable under this Part by a corporation for a taxation year is the amount determined by the formula

$$.0125 \times A \times \frac{B}{365}$$

where

A is its taxable capital for the year determined under section 190.11; and

B is the number of days in the year on which it is a financial institution.

190.11 **Taxable capital (A)** — The taxable capital of a corporation for a taxation year is the amount determined by the formula

$$(C - D) \times \frac{E}{F} - (G + H)$$

where

C is its capital for the immediately preceding taxation year determined under section 190.12;

D is the total of its investments for the year in financial institutions related to it determined under section 190.13;

E is its Canadian assets for the year determined under section 190.14;

F is its total assets for the year determined under section 190.15;

G is its investment allowance for the year determined under section 190.16; and

H is its capital deduction for the year determined under section 190.17.

190.12 **Capital (C)** — The capital of a corporation for a taxation year is,

(a) in the case of a corporation that is a bank, the amount, if any, by which the total, computed at the end of the year on a non-consolidated basis, of

(i) the outstanding long-term debt issued by the bank,

(ii) its tax-paid appropriations for contingencies, and

(iii) its capital stock, contributed surplus, general reserve and retained earnings balances that would be shown in its statement of changes in shareholders' equity for the year under paragraph 215(3)(d), and Schedule N to the *Bank Act* or paragraph 53(2)(d) and Schedule D to the *Quebec Savings Banks Act* if that statement were required to be prepared on a non-consolidated basis,

exceeds any debit balance of its tax allowable appropriations for contingencies; and

(b) in the case of a corporation that is not a bank, the total, computed at the end of the year on a non-consolidated basis, of

(i) the outstanding long-term debt issued by the corporation,

(ii) its paid-up capital,

(iii) its retained earnings, contributed surplus and any other surplus, and

(iv) its reserves, other than any reserve of a reasonable amount for deferred income tax or that is permitted to be deducted in computing the income of the corporation.

190.13 **Investments in related financial institutions** — A corporation's investment for a taxation year in a financial institution related to it is the total of

(a) the cost to it, that would be shown on its balance sheet at the end of the immediately preceding taxation year if its balance sheet were prepared on a non-consolidated basis, of

(i) any share of the capital stock of the institution, and

(ii) any long-term debt of the institution

owned by the corporation at the end of that preceding taxation year; and

(b) the amount of any surplus of the institution at the end of the immediately preceding taxation year contributed by the corporation, other than any amount included under paragraph (a).

190.14 **Canadian assets of corporation (E)** — The Canadian assets of a corporation for a taxation year is the amount determined by the formula

$$I - (D + P)$$

where

I is the total of the amounts at which the assets of the corporation (which are required or, if the corporation were a bank to which the *Bank Act* applied, would be required to be reported under subsection 223(1) and Schedule Q of the *Bank Act* if Schedule Q thereof were prepared on a non-consolidated basis) would be shown on its balance sheet at the end of its immediately preceding taxation year if its balance sheet were prepared on a non-consolidated basis;

D is the total of the corporation's investments for the year in financial institutions related to it determined under section 190.13; and

P is the total of amounts outstanding at the end of the immediately preceding taxation year on account of deposits made by the corporation that are described in paragraph (c) of the definition "eligible loan" in subsection 33.1(1).

190.15 **Total assets of corporation (F)** — The total assets of a corporation for a taxation year is the amount determined by the formula

$$J - D$$

where

J is the total of the amounts at which the assets of the corporation would be shown on its balance sheet at the end of its immediately preceding taxation year if its balance sheet were prepared on a non-consolidated basis; and

D is the total of its investments for the year in financial institutions related to it determined under section 190.13.

190.16 **Investment allowance (G)** — The investment allowance of a corporation for a taxation year is the amount determined by the formula

$$(C - D) \times \frac{K}{F}$$

where

C is its capital for the immediately preceding taxation year determined under section 190.12;

D is the total of its investments for the year in financial institutions related to it determined under section 190.13;

K is the cost to it, that would be shown on its balance sheet at the end of its immediately preceding taxation year if its balance sheet were prepared on a non-consolidated basis, of shares of the capital stock of other corporations resident in Canada (other than financial institutions related to it at the end of that preceding taxation year) not less than 20% of the issued share capital (having full voting rights under all circumstances) of which is owned by it at the end of that preceding taxation year; and

F is its total assets for the year determined under section 190.15.

190.17 (1) **Capital deduction (H)** — Subject to subsection (4), the capital deduction of a corporation for a taxation year during which it was at any time a financial institution is the aggregate of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the amount that would be the corporation's taxable capital for the year if its capital deduction for the year were nil exceeds $200,000,000,

unless the corporation was related to another financial institution at the end of the immediately preceding taxation year.

(2) **Capital deduction (H) of related group** — A corporation that is a financial institution at any time during a taxation year and that was related to another financial institution at the end of the immediately preceding taxation year may file with the Minister in prescribed form an agreement on behalf of the related group of which the corporation is a member under which an amount that does not exceed the aggregate of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the aggregate of all amounts, each of which is the amount that would be the taxable capital of a financial institution that is a member of the related group if its capital deduction for the year were nil, exceeds $200,000,000

is allocated among the members of the related group for the taxation year.

(3) **Allocation by Minister** — The Minister may request a corporation that is a financial institution at any time during a taxation year and that was related to any other financial institution at the end of the immediately preceding taxation year to file with him an agreement referred to in subsection (2) and if the corporation does not file such an agreement within 30 days after receiving the request, the Minister shall allocate an amount among the members of the related group of which the corporation is a member for the year not exceeding the aggregate of $200,000,000 and the lesser of

(a) $20,000,000, and

(b) 1/5 of the amount, if any, by which the aggregate of all amounts, each of which is the amount that would be the taxable capital of a financial institution that is a member of the related group if its capital deduction for the year were nil, exceeds $200,000,000.

(4) **Capital deduction of related corporation** — The amount allocated for a taxation year to each member of a related group under an agreement described in subsection (2) or by the Minister pursuant to subsection (3) is the capital deduction for the taxation year of that member but, if no such allocation is made, the capital deduction of each member of the related group for that year is nil.

Special Rules

190.18 (1) **Calculations for new corporations** — For the purposes of calculating the tax payable under this Part by a corporation (other than a corporation formed as a result of an amalgamation within the meaning assigned by section 87) for its first taxation year, any determination or calculation required to be made under this Part by reference to the corporation's immediately preceding taxation year shall be made by reference to the first taxation year of that corporation.

(2) **Amalgamations** — Subject to subsection (3), for the purposes of calculating the tax payable under this Part by a new corporation formed as a result of an amalgamation within the meaning assigned by section 87, the new corporation shall be deemed to be the same corporation as and a continuation of each predecessor corporation.

(3) **Fiscal periods of new corporation** — Subsection (2) does not affect the determination of the fiscal period of the new corporation or its predecessor corporations for the purposes of determining the taxation year of the corporation under subsection 249(1).

Subsec. 190.1(2) substituted by 1988, c. 55, s. 154, applicable to 1988 *et seq.* Subsec. 190.1(2) formerly read:

(2) **Tax (N) calculated** — The capital tax payable under this Part by a corporation for a taxation year is the amount determined by the formula

$$.01 \times A \times \frac{B}{365}$$

where

A is its taxable capital for the year determined under section 190.11; and

B is the number of days in the year that are after 1985 and before 1988 on which it is a financial institution.

S. 190.14 substituted by 1988, c. 55, s. 155, applicable to 1988 *et seq.* S. 190.14 formerly read:

190.14 **Canadian assets of a corporation (E)** — The Canadian assets of a corporation for a taxation year is the amount determined by the formula

$$I - D$$

where

I is the total of the amounts at which the assets of the corporation (which are required or, if the corporation were a bank to which the *Bank Act* applied, would be required to be reported under subsection 223(1) and Schedule Q to the *Bank Act* if Schedule Q thereof were prepared on a non-consolidated basis) would be shown on its balance sheet at the end of its immediately preceding taxation year if its balance sheet were prepared on a non-consolidated basis; and

D is the total of its investments for the year in financial institutions related to it determined under section 190.13.

Subsecs. 190.17(1) to (3) substituted by 1988, c. 55, s. 156, applicable to 1988 *et seq.*. For a taxation year commencing before 1988 and ending after 1987, there shall be added in determining a corporation's capital deduction under section 190.17 that proportion of the amount, if any, by which

(a) the amount that would, but for this subsection, be the taxable capital of the corporation for the year

exceeds

(b) 80% of the amount, if any, by which

(i) the amount that would be the taxable capital of the corporation for the year if its capital deduction for the year were nil

exceeds

(ii) where the corporation was not related to another financial institution at the end of the immediately preceding taxation year, $300,000,000, and

(iii) in any other case, that proportion of $300,000,000 that

(A) the amount that would, but for this subsection, be the capital deduction of the corporation for the year

is of

(B) the aggregate of all amounts each of which is the amount that would, but for this subsection, be the capital deduction for the year of the corporation or another financial institution to which the corporation was related at the end of the immediately preceding taxation year

that

(c) the number of days in the year that are before 1988

is of

(d) the number of days in the year.

Subsecs. 190.17(1) to (3) formerly read:

190.17 (1) **Capital deduction (H)** — Subject to subsection (4), the capital deduction of a corporation for a taxation year during which it was at any time a financial institution is $300,000,000, unless the

corporation was related to another financial institution at the end of the immediately preceding taxation year.

(2) **Capital deduction (H) of related group** — A corporation that is a financial institution at any time during a taxation year and that was related to another financial institution at the end of the immediately preceding taxation year may file with the Minister in prescribed form an agreement on behalf of the related group of which it is a member under which an amount that does not exceed $300,000,000 is allocated among the members of the related group for the taxation year.

(3) **Allocation of capital deduction by Minister** — The Minister may request a corporation that is a financial institution at any time during a taxation year and that was related to any other financial institution at the end of the immediately preceding taxation year to file with him an agreement referred to in subsection (2) and if the corporation does not file such an agreement within 30 days after receiving the request, the Minister shall allocate an amount not exceeding $300,000,000 among the members of the related group for the taxation year.

Definitions [s. 190.15]: "amount" — 181(3), 190(2), 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "financial institution" — 190(1); "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 190.15(6), 251; "related group" — 251(4); "taxation year" — 249.

190.16 (1) Capital allowance — For the purposes of this Part, the capital allowance for a taxation year of a life insurance corporation that carries on business in Canada at any time in the year is the total of

(a) $10,000,000,

(b) 1/2 of the amount, if any, by which the lesser of

(i) $50,000,000, and

(ii) its taxable capital employed in Canada for the year

exceeds $10,000,000,

(c) 1/4 of the amount, if any, by which the lesser of

(i) $100,000,000, and

(ii) its taxable capital employed in Canada for the year

exceeds $50,000,000,

(d) 1/2 of the amount, if any, by which the lesser of

(i) $300,000,000, and

(ii) its taxable capital employed in Canada for the year

exceeds $200,000,000, and

(e) 3/4 of the amount, if any, by which its taxable capital employed in Canada for the year exceeds $300,000,000,

unless the corporation is related at the end of the year to another life insurance corporation that carries on business in Canada, in which case, subject to subsection (4), its capital allowance for the year is nil.

(2) Related life insurance corporation — A life insurance corporation that carries on business in Canada at any time in a taxation year and that is related at the end of the year to another life insurance corporation that carries on business in Canada may file with the Minister an agreement, in prescribed form on behalf of the related group of life insurance corporations of which the corporation is a member, under which an amount that does not exceed the total of

(a) $10,000,000,

(b) 1/2 of the amount, if any, by which the lesser of

(i) $50,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $10,000,000,

(c) 1/4 of the amount, if any, by which the lesser of

(i) $100,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $50,000,000,

(d) 1/2 of the amount, if any, by which the lesser of

(i) $300,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $200,000,000, and

(e) 3/4 of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group, exceeds $300,000,000

is allocated among the members of that related group for the year.

Forms: T2 SCH 40: Agreement among related life insurance corporations.

(3) Idem — The Minister may request a life insurance corporation that carries on business in Canada at any time in a taxation year and that, at the end of the year, is related to any other life insurance corporation that carries on business in Canada to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate among the members of the related group of life insurance corporations of which the corporation is a member for the year an amount not exceeding the total of

(a) $10,000,000,

(b) 1/2 of the amount, if any, by which the lesser of

(i) $50,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $10,000,000,

(c) 1/4 of the amount, if any, by which the lesser of

(i) $100,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $50,000,000,

(d) 1/2 of the amount, if any, by which the lesser of

(i) $300,000,000, and

(ii) the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $200,000,000, and

(e) ¾ of the amount, if any, by which the total of all amounts, each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group, exceeds $300,000,000.

(4) Idem — For the purposes of this Part, the least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (2) or by the Minister under subsection (3) is the capital allowance for that year of the member.

(5) Provisions applicable to Part — Subsections 190.15(5) and (6) apply to this section with such modifications as the circumstances require.

History [s. 190.16]: S. 190.16 added by 1994, c. 21, s. 91, applicable

(a) to taxation years ending after February 25, 1992; and

(b) where a corporation elects under para. 88(2)(b) of 1994, c. 21 [see under subpara. 190.11(b)(i) above], to its 1991 and subsequent taxation years; and, notwithstanding subsecs. 152(4) to (5), such assessments and determinations shall be made as are consequential on the application of s. 190.16 to the corporation's taxation years ending before February 26, 1992.

Definitions [s. 190.16]: "amount", "business" — 248(1); "Canada" — 255; "carrying on business in Canada" — 253; "life insurance corporation", "Minister", "prescribed" — 248(1); "related" — 251(2); "related group" — 251(4); "taxable capital employed in Canada" — 190.11; "taxation year" — 249.

190.17 (1) Enhanced capital deduction — For the purpose of subsection 190.1(1.2), the enhanced capital deduction of a corporation for a taxation year is $400,000,000, unless the corporation was related to a financial institution (other than a life insurance corporation) at the end of the year, in which case, subject to subsection (4), the corporation's enhanced capital deduction for the year is nil.

Related Provisions: 190.1(1.2) — Additional tax payable by deposit-taking institutions; 190.17(2)–(4) — Allocation of deduction among related institutions.

(2) Related financial institution — A corporation that is a financial institution at any time in a taxation year and that is related to another financial institution (other than a life insurance corporation) at the end of the year may file with the Minister an agreement in prescribed form on behalf of the related group of which the corporation is a member under which an amount that does not exceed $400,000,000 is allocated among the members of the group for the year.

(3) Minister's powers — The Minister may request a corporation that is a financial institution at any time in a taxation year and that is related to any other financial institution (other than a life insurance corporation) at the end of the year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount that does not exceed $400,000,000 among the members of the related group of which the corporation is a member for the year.

(4) Least amount allocated — The least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (2) or by the Minister under subsection (3) is the enhanced capital deduction for the taxation year of the member, but, if no such allocation is made, the enhanced capital deduction of the member for the year is nil.

(5) Provisions applicable to Part — Subsections 190.15(5) and (6) apply to this section with such modifications as the circumstances require.

History [s. 190.17]: S. 190.17 added by 1996, c. 21, s. 50, applicable to taxation years that end after February 27, 1995.

190.19 [Repealed under former Act]

Pre-RSC History: S. 190.19 repealed by 1988, c. 55, s. 157, applicable with respect to transactions entered into on or after September 13, 1988, other than

(a) transactions that are part of a series of transactions, determined without reference to subsec. 248(10), commencing before September 13, 1988 and completed before 1989; or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

S. 190.19 formerly read:

190.19 Artificial reduction of capital tax — Where it may reasonably be considered that one of the main purposes of a transaction or series of transactions is to reduce unduly or artificially the capital tax payable under this Part by a corporation, the tax payable under this Part by the corporation shall be calculated without reference to that transaction or series of transactions.

Administrative Provisions

190.2 Return — A corporation that is or would, but for subsection 190.1(3), be liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I, a return of capital for the year in prescribed form containing an estimate of the tax payable under this Part by it for the year.

Related Provisions: 150.1(5) — Electronic filing; 235 — Penalty for late filing of return even where no balance owing.

History: S. 190.2 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 113, applicable to 1991 *et seq.* S. 190.2 formerly read:

190.2 A corporation liable to pay a tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the corporation is required by section 150 to file its return of income for the year under Part I, a return of capital for that year in prescribed form containing an estimate of the tax payable by it for the year.

Definitions [s. 190.2]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Forms [s. 190.2]: T2 SCH 38: Part VI tax on capital of financial institutions; T2 SCH 42: Calculation of unused Part VI tax credit and unused Part I tax credit.

190.21 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require and, for the purpose of this section, paragraph 152(6)(a) shall be read as follows:

"(a) a deduction under subsection 190.1(3) in respect of any unused surtax credit or unused Part I tax credit (within the meanings assigned by subsection 190.1(5)) for a subsequent taxation year,".

History: S. 190.21 substituted for ss. 190.21 to 190.24 by 1994, c. 7, Sch. VIII (1993, c. 24), s. 114, applicable to 1992 *et seq.*; and in its application to the 1991 taxation year, s. 190.24 shall be read as follows:

190.24 Provisions applicable to Part — Section 152, subsection 157(2.1), sections 158 and 159, subsection 161(2.1), (2.2), (7) and

(11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require and, for the purpose of this section, paragraph 152(6)(a) shall be read as follows:

(a) a deduction under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) for a subsequent taxation year,

Ss. 190.21 to 190.24 formerly read:

190.21 **Payment of tax** — Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year

(a) either

(i) on or before the last day of each month in the year, 1/12 of the amount estimated by it to be its tax payable under this Part for the year,

(ii) on or before the last day of each month in the year, 1/12 of its first instalment base for the year, or

(iii) on or before the last day of each of the first two months in the year, 1/12 of its second instalment base for the year, and on or before the last day of each of the following months in the year, 1/10 of the amount by which its first instalment base for the year exceeds 1/6 of its second instalment base for the year; and

(b) on or before the end of the second month following the end of the year, the remainder of its tax payable under this Part for the year.

190.22 **Instalment bases** — For the purposes of section 190.21,

(a) the first instalment base of a corporation for a particular taxation year is the product obtained when the tax payable under this Part by the corporation for its taxation year immediately preceding the particular year is multiplied by the ratio that 365 is of the number of days in that preceding year, and

(b) the second instalment base of a corporation for a particular taxation year is the amount of the first instalment base of the corporation for its taxation year immediately preceding the particular year,

but where a particular taxation year of a corporation that was formed as a result of an amalgamation or merger is its first taxation year ending after the amalgamation or merger, as the case may be,

(c) its first instalment base for the particular year is the total of all amounts each of which is the product obtained when the tax payable under this Part by a corporation, that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger is multiplied by the ratio that 365 is of the number of days in that year, and

(d) its second instalment base for the particular year is the total of all amounts each of which is an amount equal to the first instalment base of a corporation, that entered into the amalgamation or merger, for its last taxation year preceding the amalgamation or merger.

190.23 (1) **Interest** — Where at any time after the day on or before which a corporation is required to pay the remainder of its tax payable under this Part for a taxation year,

(a) the amount of its tax payable under this Part for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of its tax payable and applied as at that time by the Minister against the corporation's liability for an amount payable under this Part for the year,

the corporation shall pay to the Receiver General interest at a prescribed rate on the excess, computed for the period during which that excess is outstanding.

(2) **Idem** — Where a corporation that is required by this Part to pay an instalment of tax has failed to pay all or any part thereof on or before the day on or before which the instalment was required to be paid, it shall pay to the Receiver General, in addition to the interest payable under subsection (1), interest at a prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the earlier of the day of payment and the beginning of the period in respect of which the corporation is required to pay interest thereon under that subsection.

(3) **Limitation on instalments** — For the purposes of subsection (2), where a corporation is required to pay an instalment of tax for a taxation year computed by reference to a method described in section 190.21, the corporation shall be deemed to have been liable to pay an instalment computed by reference to

(a) its tax payable under this Part for the year,

(b) its first instalment base for the year, or

(c) its second instalment base for the year and its first instalment base for the year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in subparagraphs 190.21(a)(i) to (iii).

190.24 **Provisions applicable to Part** — Section 152, subsection 157(2.1), sections 158 and 159, subsections 161(2.1), (2.2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Para. 161(1)(a) of 1994, c. 7, Sch. II (1991, c. 49) provides that in its application to taxation years commencing before July 1990 of corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), s. 190.21 shall be read as follows:

190.21 Every corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General in respect of the year

(a) where the year ended before July 1990, the tax payable by it under this Part for the year on or before the later of July 31, 1990 and the end of the second month following the end of the year; and

(b) where the year ended after June 1990,

(i) either

(A) on or before July 31, 1990, an amount equal to that proportion of the amount estimated by it to be its tax payable under this Part for the year that

(I) the number of days in the year that are after February 20, 1990 and before July 1990

is of

(II) the number of days in the year that are after February 20, 1990,

and on or before the last day of each month ending in the year and after June 1990, an amount equal to the amount, if any, by which

(III) the amount estimated by it to be its tax payable under this Part for the year

exceeds

(IV) the amount payable by the corporation on or before July 31, 1990, as would be determined under this clause if this clause were read without reference to that part thereof following subclause (II) thereof

divided by the number of months ending in the year and after June 1990, or

(B) on or before July 31, 1990, an amount equal to that proportion of its first instalment base for the year that

(I) the number of days in the year that are after February 20, 1990 and before July 1990

is of

(II) the number of days in the year,

and on or before the last day of each month ending in the year and after June 1990, an amount equal to its first instalment base for the year divided by the number of months in the year, and

(ii) on or before the end of the second month following the end of the year, the remainder of its tax payable under this Part for the year.

Subsec. 161(2) of 1994, c. 7, Sch. II (1991, c. 49) provides that for the purposes of s. 190.22, the tax payable under Part VI by a corporation described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1) shall be deemed to be

(a) for a taxation year ending before February 21, 1990, the amount that would be its tax payable under that Part for the year if that Part applied in respect of that year and its capital deduction under that Part

for that year were its capital deduction under that Part for its first taxation year ending after February 20, 1990; and

(b) for its first taxation year ending after February 20, 1990, the product obtained when its tax payable under that Part for the year is multiplied by the ratio that the number of days in the year is of the number of days in the year after February 20, 1990.

Para. 161(1)(b) of 1994, c. 7, Sch. II (1991, c. 49) provides that in its application to taxation years commencing before July 1990 of corporations described in para. (d) or (e) of the definition "financial institution" in subsec. 190(1), subsec. 190.23(3) shall be read as follows:

(3) For the purposes of subsection (2), where a corporation is required to pay an instalment of tax for a taxation year computed by reference to a method described in section 190.21, the corporation shall be deemed to have been liable to pay an instalment computed by reference to

(a) its tax payable under this Part for the year, or

(b) its first instalment base for the year,

whichever method gives rise to the least amount required to be paid by the corporation on or before the days referred to in clauses 190.21(b)(i)(A) and (B).

Pre-RSC History: Ss. 190.21–190.24 substituted by 1990, c. 39, s. 51, applicable to 1990 *et seq.* (And see 1991, c. 49 History to ss. 190.21, 190.22, and 190.23 above.) Ss. 190.21–190.24 formerly read:

190.21 Instalments — A corporation liable to pay tax under this Part for a taxation year shall pay to the Receiver General on or before the last day of each three month period, if any, in the year an instalment determined by the formula

$$\left(\frac{3}{L} \times M\right) - N$$

where

L is the number of months in the taxation year;

M is the tax payable under this Part by the corporation for the year; and

N is the aggregate of all amounts each of which is the amount that would by reason of subsection 157(1) be required to be paid by the corporation as an instalment of tax payable under Part I for the year on or before the last day of a month in the three month period, if such instalment were computed by reference to the method described in subsection 161(4.1) that is applicable in respect of the corporation for the year.

190.22 Payment of remainder of tax — A corporation shall pay on or before the last day of the second month ending after the end of a taxation year, the remainder, if any, of the tax payable under this Part by the corporation for the year.

190.23 Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, it shall pay to the Receiver General interest at the rate prescribed for the purposes of section 161 on the amount that it failed to pay computed from the day on or before which the amount was required to be paid to the day of payment.

190.24 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

S. 190.21 substituted by 1988, c. 55, s. 158, applicable to 1988 *et seq.*, except that the amount determined under "N" in respect of a corporation for the 1988 taxation year shall be deemed to be nil. S. 190.21 formerly read:

190.21 Instalments — A corporation liable to pay capital tax under this Part for a taxation year shall pay to the Receiver General on or before the last day of each three month period, if any, in the year an instalment determined by the formula

$$\frac{L}{M} \times N$$

where

L is the number of months in the taxation year that end after 1985, before 1988 and within the three month period;

M is the number of months in the taxation year that end after 1985 and before 1988; and

N is the capital tax payable under this Part by it for the year.

The word "tax" substituted for the words "capital tax" wherever "capital tax" appears in subsecs. 190.1(1), 190.18(1), (2) and ss. 190.19, 190.2, 190.22, 190.23, by 1988, c. 55, s. 195, applicable to 1988 *et seq.* Part VI (ss. 190 to 190.24) added by 1986, c. 6, s. 100, applicable after May 23, 1985, except that a return of capital under the Part is not required to be filed until 30 days after February 13, 1986.

Pre-RSC History [former Part VI]: Former Part VI (ss. 190, 191) repealed by 1984, c. 45, s. 79, applicable to 1985 *et seq.* Part VI formerly read:

Part VI — Tax When Corporation Becomes a Non-Canadian-Controlled Private Corporation

190. (1) Tax on preferred-rate amount when corporation becomes ineligible for small business deduction — Where, at any time in a taxation year and after 1971, a corporation becomes a private corporation that is controlled directly or indirectly in any manner whatever by one or more non-resident persons and the private corporation

(a) was, at any previous time, a Canadian-controlled private corporation, or

(b) is a new corporation formed by virtue of an amalgamation within the meaning of subsection 87(1) that occurred after March 31, 1977, and one or more of the predecessor corporations was, at any time prior to the amalgamation, a Canadian-controlled private corporation,

a tax of 25% is payable by the corporation under this Part for the year on its preferred-rate amount at that time.

(2) Definitions — In this Part,

(a) "dividend refund" — "dividend refund" of a corporation for a taxation year has the meaning assigned by subsection 129(1); and

(b) "preferred-rate amount" — "preferred-rate amount" of a corporation at any particular time in a taxation year means the aggregate of

(i) its preferred-rate amount, if any, at the end of the immediately preceding taxation year,

(ii) 4 times the amount deductible under section 125 from the tax otherwise payable by the corporation under Part I for the year, and

(iii) 4/3 of the aggregate of amounts each of which is an amount in respect of a taxable dividend received by it in the year, after 1971 and before the particular time from another corporation controlled directly or indirectly in any manner whatever by it, equal to the amount so received to the extent that

(A) payment thereof by the other corporation operated to reduce the other corporation's preferred-rate amount, and

(B) the amount so received was not an amount in respect of which tax under Part VII of this Act as it read on March 31, 1977, was payable by the corporation,

less the aggregate of

(iv) 4/3 of the amount, if any, by which the aggregate of taxable dividends paid by the corporation in the year, and before the particular time, exceeds 4 times its dividend refund for the year, and

(v) all amounts on which tax under this Part has become payable by the corporation as a result of any transaction occurring in the year and before the particular time.

191. (1) Payment of tax by instalments — Every corporation by which any tax under this Part is payable for a taxation year shall,

(a) on or before the day on or before which it is required to file its return of income under Part I for the year,

(i) file a return for the year under this Part in prescribed form, and

(ii) pay to the Receiver General 1/5 of the tax under this Part payable by it for the year; and

(b) on or before the day on or before which it is required to file its return of income under Part I for each of the 4 immediately following taxation years, pay to the Receiver General 1/5 of the tax under this Part payable by it for the year.

(2) **Interest** — Where a corporation by which any tax under this Part is payable for a taxation year has failed to pay all or any part of any instalment thereof on the day on or before which it was required to pay that instalment, it shall, on payment of the amount in default, pay interest at a prescribed rate per annum from the day on or before which it was required to make the payment to the day of payment.

(3) **Provisions applicable to Part** — Sections 151, 152 and 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Subsec. 190(1) substituted by 1977-78, c. 1, subsec. 87(1), applicable to taxation years ending after March 31, 1977. Subsec. 190(1) formerly read:

190. (1) Where at any time in a taxation year and after 1971 a corporation that was, at a previous time, a Canadian-controlled private corporation becomes a private corporation that is controlled directly or indirectly in any manner whatever by one or more non-resident persons, a tax of 25% is payable by the corporation under this Part for the year on its preferred-rate amount at that time

Cl. 190(2)(b)(iii)(B), subpara. 190(2)(b)(iv) substituted by 1977-78, c.1, subsecs. 87(2), (3), applicable, as to clause 190(2)(b)(iii)(B), after March 31, 1977, and, as to subpara. 190(2)(b)(iv), to 1978 *et seq.*, except that where a corporation has a 1978 taxation year part of which is before 1978 and part of which is after 1977, the amount determined under subpara. 190(2)(b)(iv) for its 1978 taxation year is 4/3 of the amount that is the aggregate of

(a) the amount, if any, by which the amount of taxable dividends paid by the corporation in the year and before 1978 exceeds 3 times its dividend refund (within the meaning assigned by subsec. 129(1)) for the year, and

(b) the amount, if any, by which the amount of taxable dividends paid by the corporation in the year and after 1977 exceeds 4 times the amount, if any, by which its dividend refund (within the meaning assigned by subsec. 129(1)) for the year exceeds 1/3 of the amount of taxable dividends paid by the corporation in the year and before 1978.

Cl. 190(2)(b)(iii)(B), subpara. 90(2)(b)(iv) formerly read:

(B) the amount so received was not an amount in respect of which tax under Part VII was payable by the corporation,

. . . . .

(iv) 4/3 of the amount, if any, by which the aggregate of taxable dividends paid by the corporation in the year, after 1971 and before the particular time exceeds 3 times its dividend refund for the year, and

S. 190 substituted by 1973-74, c. 14, s. 61, applicable to 1972 *et seq.*

190.211 Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: S. 190.211 added by 1998, c. 19, subsec. 205(1), applicable after May 23, 1985.

PART VI.1 — TAX ON CORPORATIONS PAYING DIVIDENDS ON TAXABLE PREFERRED SHARES

191. (1) Definitions — In this Part,

"excluded dividend" means a dividend

(a) paid by a corporation to a shareholder that had a substantial interest in the corporation at the time the dividend was paid,

(b) paid by a corporation that was a financial intermediary corporation or a private holding corporation at the time the dividend was paid,

(c) paid by a particular corporation that would, but for paragraphs (h) and (i) of the definition "financial intermediary corporation" in this subsection, have been a financial intermediary corporation at the time the dividend was paid, except where the dividend was paid to a controlling corporation in respect of the particular corporation or to a specified person (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to such a controlling corporation,

(d) paid by a mortgage investment corporation, or

(e) that is a capital gains dividend within the meaning assigned by subsection 131(1);

Related Provisions: 191(4)(d) — Deemed excluded dividend.

"financial intermediary corporation" means a corporation that is

(a) a corporation described in subparagraph (b)(ii) of the definition "retirement savings plan" in subsection 146(1),

(b) an investment corporation,

(c) a mortgage investment corporation,

(d) a mutual fund corporation,

(e) a prescribed venture capital corporation, or

(f) a prescribed labour-sponsored venture capital corporation,

but does not include

(g) a prescribed corporation,

(h) a corporation that is controlled by or for the benefit of one or more corporations (each of which is referred to in this subsection as a "controlling corporation") other than financial intermediary corporations or private holding corporations unless the controlling corporations and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the controlling corporations do not own in the aggregate shares of the capital stock of the corporation having a fair market value of more than 10% of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation (those fair market values being determined without regard to any voting rights attaching to those shares), or

(i) any particular corporation in which another corporation (other than a financial intermediary corporation or a private holding corporation) has a substantial interest unless the other corporation and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the other corporation do not own in the aggregate shares of the capital stock of the particular corporation having a fair market value of more than 10% of the fair market value of all of the issued and outstanding shares of the capital stock of the particular corporation (those fair market values being determined without regard to any voting rights attaching to those shares);

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

Regulations: 6700 (prescribed venture capital corporation); 6701 (prescribed labour-sponsored venture capital corporation).

"private holding corporation" means a private corporation the only undertaking of which is the investing of its funds, but does not include

(a) a specified financial institution,

(b) any particular corporation that owns shares of another corporation in which it has a substantial interest, except where the other corporation would, but for that substantial interest, be a financial intermediary corporation or a private holding corporation, or

(c) any particular corporation in which another corporation owns shares and has a substantial interest, except where the other corporation would, but for that substantial interest, be a private holding corporation.

History: Para. (b) of "private holding corporation" in subsec. 191(1) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 162, applicable to 1988 *et seq.* Para. (b) formerly read:

(b) any particular corporation that owns shares of another corporation in which it has a substantial interest except where the other corporation is a financial intermediary corporation or a corporation that would, but for such substantial interest, be a private holding corporation, or

Related Provisions: 253.1 — Deeming rule re investments in limited partnerships.

(2) Substantial interest — For the purposes of this Part, a shareholder has a substantial interest in a corporation at any time if the corporation is a taxable Canadian corporation and

(a) the shareholder is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the corporation at that time; or

(b) the shareholder owned, at that time,

(i) shares of the capital stock of the corporation that would give the shareholder 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation,

(ii) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the corporation,

and either

(iii) shares (other than shares that would be taxable preferred shares if the definition "taxable preferred share" in subsection 248(1) were read without reference to subparagraph (b)(iv) thereof and if they were issued after June 18, 1987 and were not grandfathered shares) of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all those shares of the capital stock of the corporation, or

(iv) in respect of each class of shares of the capital stock of the corporation, shares of that class having a fair market value of 25% or more of the fair market value of all the issued shares of that class,

and for the purposes of this paragraph, a shareholder shall be deemed to own at any time each share of the capital stock of a corporation that is owned, otherwise than by reason of this paragraph, at that time by a person to whom the shareholder is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)).

Related Provisions: 191(3) — Substantial interest.

(3) Idem — Notwithstanding subsection (2),

(a) where it can reasonably be considered that the principal purpose for a person acquiring an interest that would, but for this subsection, be a substantial interest in a corporation is to avoid or limit the application of Part I or IV.1 or this Part, the person shall be deemed not to have a substantial interest in the corporation;

(b) where it can reasonably be considered that the principal purpose for an acquisition of a share of the capital stock of a corporation (in this paragraph referred to as the "issuer") by any person (in this paragraph referred to as the "acquirer") who had, immediately after the time of the acquisition, a substantial interest in the issuer from another person who did not, immediately before that time, have a substantial interest in the issuer, was to avoid or limit the application of Part I or IV.1 or this Part with respect to a dividend on the share, the acquirer and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the acquirer shall be deemed not to have a substantial interest in the issuer with respect to any dividend paid on the share;

(c) a corporation described in paragraphs (a) to (f) of the definition "financial intermediary corporation" in subsection (1) shall be deemed not to have a substantial interest in another corporation unless it is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the other corporation;

(d) any partnership or trust, other than

(i) a partnership all the members of which are related to each other otherwise than by reason of a right referred to in paragraph 251(5)(b),

(ii) a trust in which each person who is beneficially interested is

(A) related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other person who is beneficially interested in the trust and who is not a registered charity, or

(B) a registered charity

and, for the purpose of this subparagraph, where a particular person who is beneficially interested in the trust is an aunt, uncle, niece or nephew of another person, the particular person and any person who is a child or descendant of the particular person shall be deemed to be related to the other person and to any person who is the child or descendant of the other person, or

(iii) a trust in which only one person (other than a registered charity) is beneficially interested,

shall be deemed not to have a substantial interest in a corporation; and

(e) where at any time a shareholder holds a share of the capital stock of a corporation to which paragraph (g) of the definition "taxable preferred share" in subsection 248(1) or paragraph (e) of the definition "taxable RFI share" in that subsection applies to deem the share to be a taxable preferred share or a taxable RFI share, the shareholder shall be deemed not to have a substantial interest in the corporation at that time.

Related Provisions: 248(25) — Beneficially interested.

History: Paras. 191(3)(a) and (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 115(1), applicable to dividends paid or received after December 20, 1991. Paras. (a) and (b) formerly read:

(a) where it may reasonably be considered, having regard to all the circumstances, that the principal purpose for a person acquiring an interest that would, but for this subsection, be a substantial interest in a corporation is to avoid or limit the application of this Part or Part IV.1 the person shall be deemed not to have a substantial interest in the corporation;

(b) where it may reasonably be considered, having regard to all the circumstances, that the principal purpose for an acquisition of a share of the capital stock of a corporation (in this paragraph referred to as the "issuer") by any person (in this paragraph referred to as the "acquirer") that had, immediately after the time of the acquisition, a substantial interest in the issuer from another person that did not, immediately before that time, have a substantial interest in the issuer, was to avoid or limit the application of this Part or Part IV.1 with respect to a dividend on the share, the acquirer and specified persons (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1)) in relation to the acquirer shall be deemed not to have a substantial interest in the issuer with respect to any dividend paid on the share;

Subparas. 191(3)(d)(ii) and (iii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 115(2), applicable after 1990. Subparas. (d)(ii) and (iii) formerly read:

(ii) a trust in which all persons who are beneficially interested, within the meaning assigned by subsection 94(7), are related to each other (otherwise than by reason of a right referred to in paragraph 251(5)(b)) and, for the purposes of this subparagraph, where a particular person who is so beneficially interested in the trust is an aunt, uncle, niece or nephew of another person, the particular person and any person who is a child or descendant of the particular person shall be deemed to be related to the other person and any person who is a child or descendant of the other person, or

(iii) a trust in which only one person is beneficially interested, within the meaning assigned by subsection 94(7),

(4) Deemed dividends — Where at any particular time

(a) a share of the capital stock of a corporation is issued,

(b) the terms or conditions of a share of the capital stock of a corporation are changed, or

(c) an agreement in respect of a share of the capital stock of a corporation is changed or entered into,

and the terms or conditions of the share or the agreement in respect of the share specify an amount in respect of the share, including an amount for which the share is to be redeemed, acquired or cancelled (together with, where so provided, any accrued and unpaid dividends thereon) and where paragraph (a) applies, the specified amount does not exceed the fair market value of the consideration for which the share was issued, and where paragraph (b) or (c) applies, the specified amount does not exceed the fair market value of the share immediately before the particular time, the amount of any dividend deemed to have been paid on a redemption, acquisition or cancellation of the share to which subsection 84(2) or (3) applies shall

(d) for the purposes of this Part and section 187.2, be deemed to be an excluded dividend and an excepted dividend, respectively, unless

(i) where paragraph (a) applies, the share was issued for consideration that included a taxable preferred share, or

(ii) where paragraph (b) or (c) applies, the share was, immediately before the particular time, a taxable preferred share, and

(e) be deemed not to be a dividend to which subsection 112(2.1) or 138(6) applies to deny a deduction with respect to the dividend in computing the taxable income of a corporation under subsection 112(1) or (2) or 138(6), unless

(i) where paragraph (a) applies, the share was issued for consideration that included a term preferred share or for the purpose of raising capital or as part of a series of transactions or events the purpose of which was to raise capital, and

(ii) where paragraph (b) or (c) applies, the share was, immediately before the particular time, a term preferred share, or the terms or conditions of the share were changed, or the agreement in respect of the share was changed or entered into for the purpose of raising capital or as part of a series of transactions or events the purpose of which was to raise capital.

Related Provisions: 87(2)(rr) — Amalgamations — continuing corporation; 87(4.2)(f) — Amalgamations — where amount specified for purposes of 191(4); 248(10) — Series of transactions.

(5) Where subsec. (4) does not apply — Subsection (4) does not apply to the extent that the total of

(a) the amount paid on the redemption, acquisition or cancellation of the share, and

(b) all amounts each of which is an amount (other than an amount deemed by subsection 84(4) to be a dividend) paid, after the particular time and before the redemption, acquisition or cancellation of the share, on a reduction of the paid-up capital of the corporation in respect of the share

exceeds the specified amount referred to in subsection (4).

Pre-RSC History [subsecs. 191(4), (5)]: 1988, c. 55, subsec. 159(2), provides that in the application of subsecs. 191(4) and (5) with respect to a particular time referred to in subsec. 191(4) that is before April 22, 1988, the reference in subsec. 191(4) to "specify an amount in respect of the share, including an amount for which the share is to be redeemed, acquired or cancelled (together with, where so provided, any accrued and unpaid dividends thereon), and where paragraph (a) applies, the specified amount does not exceed the fair market value of the consideration for which the share was issued, and where paragraph (b) or (c) applies, the specified amount does not exceed the fair market value of the share immediately before the particular time" shall be read as a reference to "provide that the share is to be redeemed, acquired or cancelled" and the reference in subsec. 191(5) to "the specified amount referred to in subsection (4)" shall be read as a reference to "where paragraph (4)(a) applies, the fair market value of the consideration for which the share was issued, and where paragraph (4)(b) or (c) applies, the fair market value of the share immediately before its terms and conditions were changed or the agreement in respect of the share was changed or entered into, as the case may be". See also the History note at the end of Part VI.1.

Definitions [s. 191]: "aunt" — 252(2)(e); "beneficially interested" — 248(25); "capital gain" — 39(1)(a), 248(1); "child" — 252(1); "class of shares" — 248(6); "control" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "excluded dividend", "financial intermediary corporation" — 191(1); "grandfathered share" — 248(1); "investment corporation" — 130(3)(a), 248(1); "mortgage investment corporation" — 130.1(6), 248(1); "mutual fund corporation" — 131(8), 248(1); "nephew", "niece" — 252(2)(g); "paid-up capital" — 89(1), 248(1); "person", "prescribed" — 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed venture capital corporation" — Reg. 6700; "private corporation" — 89(1), 248(1); "private holding corporation" — 191(1); "registered charity" — 248(1); "related" — 251(2); "series of transactions or events" — 248(10); "share", "shareholder", "specified financial institution" — 248(1); "substantial interest" — 191(2), (3); "taxable Canadian corporation" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable preferred share", "taxable RFI share", "term preferred share" — 248(1); "trust" — 104(1), 248(1), (3); "uncle" — 252(2)(f); "undertaking" — 253.1(a).

191.1 (1) Tax on taxable dividends — Every taxable Canadian corporation shall pay a tax under this Part for each taxation year equal to the amount, if any, by which

(a) the total of

(i) 66⅔% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year and after 1987 on short-term preferred shares exceeds the corporation's dividend allowance for the year,

(ii) 40% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year and after

1987 on taxable preferred shares (other than short-term preferred shares) of all classes in respect of which an election under subsection 191.2(1) has been made exceeds the amount, if any, by which the corporation's dividend allowance for the year exceeds the total of the dividends referred to in subparagraph (i),

(iii) 25% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year and after 1987 on taxable preferred shares (other than short-term preferred shares) of all classes in respect of which an election under subsection 191.2(1) has not been made exceeds the amount, if any, by which the corporation's dividend allowance for the year exceeds the total of the dividends referred to in subparagraphs (i) and (ii), and

(iv) the total of all amounts each of which is an amount determined for the year in respect of the corporation under paragraph 191.3(1)(d)

exceeds

(b) the total of all amounts each of which is an amount determined for the year in respect of the corporation under paragraph 191.3(1)(c).

Related Provisions: 18(1)(t) — Tax is non-deductible; 87(4.2) — Exchanged shares; 110(1)(k) — Deduction of ¾ of Part VI.1 tax from taxable income; 157(1)–(3) — Payment of Part VI.1 tax; 161(4.1) — Limitation respecting corporations; 191.3(6) — Payment by transferor corporation; 227(14) — No tax on corporation exempt under s. 149.

Pre-RSC History: 1988, c. 55, subsec. 159(2), provides that in the application of subsec. 191.1(1) to shares issued before December 16, 1987 (other than shares deemed by the Act to have been issued after December 15, 1987) the references therein to "short-term preferred shares" shall be read as references to "short-term preferred shares issued after December 15, 1987". See also the History note at the end of Part VI.1.

Advance Tax Rulings: ATR-46: Financial difficulty.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

(2) Dividend allowance — For the purposes of this section, a taxable Canadian corporation's "dividend allowance" for a taxation year is the amount, if any, by which

(a) $500,000

exceeds

(b) the amount, if any, by which the total of taxable dividends (other than excluded dividends) paid by it on taxable preferred shares, or shares that would be taxable preferred shares if they were issued after June 18, 1987 and were not grandfathered shares, in the calendar year immediately preceding the calendar year in which the taxation year ended exceeds $1,000,000,

unless the corporation is associated in the taxation year with one or more other taxable Canadian corporations, in which case, except as otherwise provided in this section, its dividend allowance for the year is nil.

Related Provisions: 87(2)(rr) — Amalgamations — continuing corporation.

(3) Associated corporations — If all of the taxable Canadian corporations that are associated with each other in a taxation year and that have paid taxable dividends (other than excluded dividends) on taxable preferred shares in the year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year, and the amount so allocated or the total of the amounts so allocated, as the case may be, is equal to the total dividend allowance for the year of those corporations and all other taxable Canadian corporations with which each such corporation is associated in the year, the dividend allowance for the year for each of the corporations is the amount so allocated to it.

Forms: T1174: Agreement among associated corporations.

(4) Total dividend allowance — For the purposes of this section, the "total dividend allowance" of a group of taxable Canadian corporations that are associated with each other in a taxation year is the amount, if any, by which

(a) $500,000

exceeds

(b) the amount, if any, by which the total of taxable dividends (other than excluded dividends) paid by those corporations on taxable preferred shares, or shares that would be taxable preferred shares if they were issued after June 18, 1987 and were not grandfathered shares, in the calendar year immediately preceding the calendar year in which the taxation year ended exceeds $1,000,000.

Related Provisions: 87(2)(rr) — Amalgamations — continuing corporation.

(5) Failure to file agreement — If any of the taxable Canadian corporations that are associated with each other in a taxation year and that have paid taxable dividends (other than excluded dividends) on taxable preferred shares in the year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section, allocate an amount to one or more of them for the taxation year, which amount or the total of which amounts, as the case may be, shall equal the total dividend allowance for the year for those corporations and all other taxable Canadian corporations with which each such corporation is associated in the year, and the dividend allowance for the year of each of the corporations is the amount so allocated to it.

(6) Dividend allowance in short years — Notwithstanding any other provision of this section,

(a) where a corporation has a taxation year that is less than 51 weeks, its dividend allowance for the year is that proportion of its dividend allowance for the year determined without reference to this paragraph that the number of days in the year is of 365; and

(b) where a taxable Canadian corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in a calendar year and is associated in two or more of those taxation years with another taxable Canadian corporation that has a taxation year ending in that calendar year, the dividend allowance of the first corporation for each taxation year in which it is associated with the other corporation ending in that calendar year is, subject to the application of paragraph (a), an amount equal to the amount that would be its dividend allowance for the first such taxation year if the allowance were determined without reference to paragraph (a).

Definitions [s. 191.1]: "amount" — 248(1); "associated" — 256; "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "dividend allowance" — 191.1(2); "excluded dividend" — 191(1); "grandfathered share", "Minister", "prescribed", "share", "short-term preferred share" — 248(1); "taxable Canadian corporation", "taxable dividend" — 89(1), 248(1); "taxable

preferred share" — 248(1); "taxation year" — 249; "total dividend allowance" — 191.1(4); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 191.1]: IT-88R2: Stock dividends.

191.2 (1) Election — For the purposes of determining the tax payable by reason of subparagraphs 191.1(1)(a)(ii) and (iii), a taxable Canadian corporation (other than a financial intermediary corporation or a private holding corporation) may make an election with respect to a class of its taxable preferred shares the terms and conditions of which require an election to be made under this subsection by filing a prescribed form with the Minister

(a) not later than the day on or before which its return of income under Part I is required by section 150 to be filed for the taxation year in which shares of that class are first issued or first become taxable preferred shares; or

(b) within the 6 month period commencing on any of the following days, namely,

(i) the day of mailing of any notice of assessment of tax payable under this Part or Part I by the corporation for that year,

(ii) where the corporation has served a notice of objection to an assessment described in subparagraph (i), the day of mailing of a notice that the Minister has confirmed or varied the assessment,

(iii) where the corporation has instituted an appeal in respect of an assessment described in subparagraph (i) to the Tax Court of Canada, the day of mailing of a copy of the decision of the Court to the taxpayer, and

(iv) where the corporation has instituted an appeal in respect of an assessment described in subparagraph (i) to the Federal Court of Canada or the Supreme Court of Canada, the day on which the judgment of the Court is pronounced or delivered or the day on which the corporation discontinues the appeal.

Related Provisions: 87(4.2)(e) — Amalgamation; 187.2 — Tax on dividends on taxable preferred shares.

Pre-RSC History: 1988, c. 55, subsec. 159(4), provides that where a prescribed form referred to in subsec. 191.2(1) is filed before March 14, 1989 it shall be deemed to have been filed on the day on or before which it is required by that subsec. to be filed. See also the history note at the end of Part VI.1.

Forms: T769: Election under section 191.2 by an issuer of taxable preferred shares to pay Part VI.1 tax at a rate of 40%.

(2) Time of election — An election with respect to a class of taxable preferred shares filed in accordance with subsection (1) shall be deemed to have been filed before any dividend on a share of that class is paid.

(3) Assessment — Where an election has been filed under subsection (1), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any corporation for any relevant taxation year in order to take into account the election.

Definitions [s. 191.2]: "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "financial intermediary corporation" — 191(1); "Minister", "prescribed" — 248(1); "private holding corporation" — 191(1); "share" — 248(1); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxable preferred share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Interpretation Bulletins [s. 191.2]: IT-88R2: Stock dividends.

191.3 (1) Agreement respecting liability for tax — Where a corporation (in this section referred to as the "transferor corporation") and a taxable Canadian corporation (in this section referred to as the "transferee corporation") that was related (otherwise than because of a right referred to in paragraph 251(5)(b) or because of the control of any corporation by Her Majesty in right of Canada or a province) to the transferor corporation

(a) throughout a particular taxation year of the transferor corporation (or, where the transferee corporation came into existence in that year, throughout the part of that year in which the transferee corporation was in existence), and

(b) throughout the last taxation year of the transferee corporation ending at or before the end of the particular taxation year (or, where the transferor corporation came into existence in that last taxation year of the transferee corporation, throughout that part of that last year in which the transferor corporation was in existence)

file as provided in subsection (2) an agreement or amended agreement with the Minister under which the transferee corporation agrees to pay all or any portion, as is specified in the agreement, of the tax for that taxation year of the transferor corporation that would, but for the agreement, be payable under this Part by the transferor corporation (other than any tax payable by the transferor corporation by reason of another agreement made under this section), the following rules apply, namely,

(c) the amount of tax specified in the agreement is an amount determined for that taxation year of the transferor corporation in respect of the transferor corporation for the purpose of paragraph 191.1(1)(b),

(d) the amount of tax specified in the agreement is an amount determined in respect of the transferee corporation for its last taxation year ending at or before the end of that taxation year of the transferor corporation for the purpose of subparagraph 191.1(1)(a)(iv), and

(e) the transferor corporation and the transferee corporation are jointly and severally liable to pay the amount of tax specified in the agreement and any interest or penalty in respect thereof.

Related Provisions: 87(2)(ss) — Amalgamations — continuing corporation; 110(1)(k) — Part VI.1 tax; 191.3(1.1) — Consideration for entering into agreement deemed to be nil; 191.3(6) — Payment by transferor corporation; 256(6), (6.1) — Meaning of "control".

History: The opening words of subsec. 191.3(1) and paras. (a) and (b) amended by 1998, c. 19, s. 207, applicable to taxation years of a transferor corporation that begin after 1994, except that the amendment to the opening words applies only to taxation years of the transferor corporation that end after April 26, 1995.

Subsec. 207(3) of the said c. 19 provides that where an agreement under subsec. 191.3(2) can be made between a transferor corporation and a transferee corporation solely because of the amendment to para. 191.3(1)(a) or (b), the agreement is deemed to have been filed on time if it is filed with the Minister of National Revenue before October 1998.

The opening words of subsec. 191.3(1) and paras. (a) and (b) formerly read:

(1) Where a corporation (in this section referred to as the "transferor corporation") and a taxable Canadian corporation (in this section referred to as the "transferee corporation") which was related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the transferor corporation

(a) throughout a taxation year of the transferor corporation, and

(b) throughout the last taxation year of the transferee corporation ending at or before the end of that taxation year of the transferor corporation,

Forms: T2 SCH 45: Agreement respecting liability for Part VI.1 tax.

(1.1) Consideration for agreement — For the purposes of Part I of this Act, where property is acquired at any time by a transferee corporation as consideration for entering into an agreement with a transferor corporation that is filed under this section,

(a) where the property was owned by the transferor corporation immediately before that time,

(i) the transferor corporation shall be deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and

(ii) the transferor corporation shall not be entitled to deduct any amount in computing its income as a consequence of the transfer of the property, except any amount arising as a consequence of subparagraph (i);

(b) the cost at which the property was acquired by the transferee corporation at that time shall be deemed to be equal to the fair market value of the property at that time;

(c) the transferee corporation shall not be required to add an amount in computing its income solely because of the acquisition at that time of the property; and

(d) no benefit shall be deemed to have been conferred on the transferor corporation as a consequence of the transferor corporation entering into an agreement filed under this section.

History: Subsec. 191.3(1.1) added by 1995, c. 21, s. 41, applicable to 1988 *et seq.*

(2) Manner of filing agreement — An agreement or amended agreement referred to in subsection (1) between a transferor corporation and a transferee corporation shall be deemed not to have been filed with the Minister unless

(a) it is in prescribed form;

(b) it is filed on or before the day on or before which the transferor corporation's return for the year in respect of which the agreement is filed is required to be filed under this Part or within the 90 day period commencing on the day of mailing of a notice of assessment of tax payable under this Part or Part I by the transferor corporation for the year or by the transferee corporation for its taxation year ending in the calendar year in which the taxation year of the transferor corporation ends or the mailing of a notification that no tax is payable under this Part or Part I for that taxation year;

(c) it is accompanied by,

(i) where the directors of the transferor corporation are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made,

(ii) where the directors of the transferor corporation are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer the corporation's affairs authorized the agreement to be made,

(iii) where the directors of the transferee corporation are legally entitled to administer its affairs, a certified copy of their resolution authorizing the agreement to be made, and

(iv) where the directors of the transferee corporation are not legally entitled to administer its affairs, a certified copy of the document by which the person legally entitled to administer the corporation's affairs authorized the agreement to be made; and

(d) where the agreement is not an agreement to which subsection (4) applies, an agreement amending the agreement has not been filed in accordance with this section.

(e) [Repealed]

History: Para. 191.3(2)(e) repealed by 1994, c. 7, Sch. II (1991, c. 49), s. 163, applicable to 1989 *et seq.* Para. (e) formerly read:

(e) no tax is payable under Part I by the transferor corporation for its taxation year in respect of which the agreement is filed.

(3) Assessment — Where an agreement or amended agreement between a transferor corporation and a transferee corporation has been filed under this section with the Minister, the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest and penalties payable under this Act by the transferor corporation and the transferee corporation for any relevant taxation year in order to take into account the agreement or amended agreement.

(4) Related corporations — Where, at any time, a corporation has become related to another corporation and it may reasonably be considered, having regard to all the circumstances, that the main purpose of the corporation becoming related to the other corporation was to transfer, by filing an agreement or an amended agreement under this section, the benefit of a deduction under paragraph 110(1)(k) to a transferee corporation, the amount of the tax specified in the agreement shall, for the purposes of paragraph (1)(c), be deemed to be nil.

(5) Assessment of transferor corporation — The Minister may at any time assess a transferor corporation in respect of any amount for which it is jointly and severally liable by reason of paragraph (1)(e) and the provisions of Division I of Part I are applicable in respect of the assessment as though it had been made under section 152.

(6) Payment by transferor corporation — Where a transferor corporation and a transferee corporation are by reason of paragraph (1)(e) jointly and severally liable in respect of tax payable by the transferee corporation under subparagraph 191.1(1)(a)(iv) and any interest or penalty in respect thereof, the following rules apply:

(a) a payment by the transferor corporation on account of the liability shall, to the extent thereof, discharge the joint liability; and

(b) a payment by the transferee corporation on account of its liability discharges the transferor corporation's liability only to the extent that the payment operates to reduce the transferee corporation's liability under this Act to an amount less than the amount in respect of which the transferor corporation was, by paragraph (1)(e), made jointly and severally liable.

Definitions [s. 191.3]: "acquired" — 256(7)–(9); "amount", "assessment" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "control" — 256(6)–(9); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2); "tax payable" — 248(2); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "transferee corporation", "transferor corporation" — 191.3(1).

Interpretation Bulletins [s. 191.3]: IT-88R2: Stock dividends.

191.4 (1) Information return — Every corporation that is or would, but for section 191.3, be liable to pay tax under this Part for a taxation year shall, not later than the

day on or before which it is required by section 150 to file its return of income for the year under Part I, file with the Minister a return for the year under this Part in prescribed form containing an estimate of the tax payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing; 157(1) — Payment of Part VI.1 tax; 157(2), (2.1) — Special cases; 161(4.1) — Limitation respecting corporations.

Forms: T2 SCH 43: Calculation of Parts IV.1 and VI.1 taxes.

(2) Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I apply to this Part with such modifications as the circumstances require.

History: Subsec. 191.4(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 116, applicable to 1992 *et seq.* Subsec. (2) formerly read:

> (2) Sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(3) Provisions applicable — Crown corporations — Section 27 applies to this Part with any modifications that the circumstances require.

History: Subsec. 191.4(3) added by 1998, c. 19, s. 208, applicable after 1987.

Definitions [s. 191.4]: "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Pre-RSC History [Part VI.1]: Part VI.1 (ss. 191 to 191.4) enacted by 1988, c. 55, subsec. 159(1), applicable to 1988 *et seq.* (For special application rules re subsecs. 191(4) and (5), 191.1(1) and 191.2(1), see heading "Special application" under those respective subsections.) 1988, c. 55, subsec. 159(3) provides that where a dividend is paid at any time after December 15, 1987 and before 1988 on a share, and it may reasonably be considered, having regard to all the circumstances, including the amount of any dividends that may be paid or declared on the share after 1987, that the dividend was paid at that time to avoid or limit the application of Part VI.1, the dividend shall be deemed for the purposes of that Part to have been paid on January 1, 1988.

Interpretation Bulletins [Part VI.1]: IT-88R2: Stock dividends.

PART VII — REFUNDABLE TAX ON CORPORATIONS ISSUING QUALIFYING SHARES

192. (1) Corporation to pay tax — Every corporation shall pay a tax under this Part for a taxation year equal to the total of all amounts each of which is an amount designated under subsection (4) in respect of a share issued by it in the year.

Related Provisions: 227.1(1) — Liability of directors for unpaid Part VII tax.

(2) Definition of "Part VII refund" — In this Part, the "Part VII refund" of a corporation for a taxation year means an amount equal to the lesser of

(a) the total of

(i) the amount, if any, by which the share-purchase tax credit of the corporation for the year exceeds the amount, if any, deducted in respect thereof by it for the year under subsection 127.2(1) from its tax otherwise payable under Part I for the year or the amount deemed by subsection 127.2(2) to have been paid on account of its tax payable under Part I for the year, as the case may be, and

(ii) such amount as the corporation may claim, not exceeding the amount that would, if paragraph (i) of the definition "investment tax credit" in subsection 127(9) were read without reference to the words "the year or", be its investment tax credit at the end of the year in respect of property acquired, or an expenditure made, after April 19, 1983 and on or before the last day of the year, and

(b) the refundable Part VII tax on hand of the corporation at the end of the year.

Related Provisions: 248(1)"lawyer" — Definition applies to entire Act.

Pre-RSC History: Subpara. 192(2)(a)(ii) amended to substitute "paragraph (i) of the definition "investment tax credit" in subsection 127(9)" for "paragraph 127(9)(g)", by 1985, c. 45, subsec. 103(1), applicable to 1985 *et seq.*

Selected Cases [subsec. 192(2)]: *598606 Ontario Ltd. v. MNR*, [1993] 1 C.T.C. 2001 (TCC) (SRTC denied where issuer failed to file prescribed form within prescribed time).

(3) Definition of "refundable Part VII tax on hand" — In this Part, "refundable Part VII tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which

(a) the total of the taxes payable by it under this Part for the year and all preceding taxation years

exceeds the total of

(b) the total of its Part VII refunds for all preceding taxation years, and

(c) the total of all amounts each of which is an amount of tax included in the total described in paragraph (a) in respect of a share that was issued by the corporation and that, at the time it was issued, was not a qualifying share.

Related Provisions: 248(1)"refundable Part VII tax on hand" — Definition applies to entire Act.

(4) Corporation may designate amount — Every taxable Canadian corporation may, by filing a prescribed form with the Minister at any time on or before the last day of the month immediately following the month in which it issued a qualifying share of its capital stock (other than a share issued before July, 1983 or after 1986, or a share in respect of which the corporation has, on or before that day, designated an amount under subsection 194(4)), designate, for the purposes of this Part and Part I, an amount in respect of that share not exceeding 25% of the amount by which

(a) the amount of the consideration for which the share was issued

exceeds

(b) the amount of any assistance (other than an amount included in computing the share-purchase tax credit of a taxpayer in respect of that share) provided or to be provided by a government, municipality or any other public authority in respect of, or for the acquisition of, the share.

Related Provisions: 127.2(10) — Election re first holder; 127.2(11) — Calculation of consideration; 193(2) — Corporation to make payment on account of tax; 193(7) — Avoidance of tax.

Pre-RSC History: All that portion of subsec. 192(4) preceding para. (a) amended by 1986, c. 6, subsec. 101(1), to substitute "a qualifying share of its capital stock" for "a share of its capital stock", applicable in respect of shares of a corporation issued after May 22, 1985, other than shares issued before 1986

> (a) under the terms of an agreement in writing entered into by the corporation before May 23, 1985; or
>
> (b) as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by such public authority.

Regulations: 227 (information returns).

(4.1) Computing paid-up capital after designation — Where a corporation has designated an amount under subsection (4) in respect of shares issued at any time after May 23, 1985, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that includes those shares

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of those shares in the paid-up capital in respect of all shares of that class, determined without reference to this subsection as it applies to those shares,

exceeds

(ii) the amount, if any, by which the total amount of consideration for which those shares were issued exceeds the total amount designated by the corporation under subsection (4) in respect of those shares; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after May 23, 1985 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after May 23, 1985 and before the particular time.

Related Provisions: 127.2(8) — Deemed cost of designated share.

Pre-RSC History: Subsec. 192(4.1) added by 1986, c. 6, subsec. 101(2), applicable after May 23, 1985.

(5) Presumption — For the purposes of this Act, the Part VII refund of a corporation for a taxation year shall be deemed to be an amount paid on account of its tax under this Part for the year on the last day of the second month following the end of the year.

(6) Definition of "qualifying share" — In this Part, "qualifying share", at any time, means a prescribed share of the capital stock of a taxable Canadian corporation issued after May 22, 1985 and before 1987.

Related Provisions: 248(1)"qualifying share" — Definition applies to entire Act.

Regulations: 6203 (prescribed shares).

(7) Effect of obligation to acquire shares — When determining under section 251 whether a corporation and any other person do not deal with each other at arm's length for the purposes of any regulations made for the purposes of subsection (6), a person who has an obligation in equity, under a contract or otherwise, either immediately or in the future and either absolutely or contingently, to acquire shares in a corporation, shall be deemed to be in the same position in relation to the control of the corporation as if that person owned the shares.

Pre-RSC History: Subsecs. 192(6), (7) substituted by 1986, c. 6, subsec. 101(3), applicable in respect of shares of a corporation issued after May 22, 1985, other than shares issued before 1986

(a) under the terms of an agreement in writing entered into by the corporation before May 23, 1985; or

(b) as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by such public authority.

Subsecs. 192(6), (7) formerly read:

(6) **"Qualifying share" defined** — For the purposes of this Act, "qualifying share", at any time, means a share (other than a share acquired by a taxpayer under circumstances referred to in section 66.3) of the capital stock of a taxable Canadian corporation issued after June 30, 1983 and before 1987 for consideration (other than consideration that consists of or includes another share of the capital stock of the corporation) where, at that time, the share was a prescribed share or where, at that time,

(a) under the terms or conditions of the share, the amount (in this section referred to as the "dividend entitlement") of the dividends that the corporation may declare or pay on the share, or that the holder may receive on the share, is not limited by way of a formula or otherwise to a maximum amount;

(b) the amount (in this section referred to as the "liquidation entitlement") that the holder is entitled to receive on the share on the dissolution, liquidation, or winding-up of the corporation is not limited by way of a formula or otherwise to a maximum amount; and

(c) none of the following, namely, the corporation, a person with whom the corporation does not deal at arm's length or a partnership or trust of which the corporation (or a person with whom the corporation does not deal at arm's length) is a member or beneficiary,

(i) has either absolutely or contingently the right or obligation, at any time

(A) to redeem, acquire or cancel the share in whole or in part, other than for an amount equal to or substantially equal to the fair market value (determined without reference to any such right or obligation) of the share or the part thereof, as the case may be, at that time, or

(B) to convert the share into another security, other than into another security the fair market value of which is at that time equal to or substantially equal to the fair market value (determined without reference to any such right or obligation) of the share at that time,

(ii) has either absolutely or contingently the obligation, at any time, to reduce the paid-up capital of the corporation in respect of the share, or

(iii) could, at the time the share was issued reasonably have been expected

(A) within 2 years of that time, to redeem, acquire or cancel the share in whole or in part or convert it into another security (other than into another security of the corporation that would, if it were issued for consideration that does not consist of or include a share of the capital stock of the corporation, be a qualifying share), or

(B) to reduce the paid-up capital of the corporation in respect of the share.

(7) **Idem** — For the purposes of subsection (6),

(a) the dividend entitlement of the share shall be deemed not to be limited to a maximum amount where it may reasonably be considered that all or substantially all of the amount of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of paragraph (6)(a);

(b) the liquidation entitlement of a share shall be deemed not to be limited to a maximum amount where it may reasonably be considered that all or substantially all of the amount of the liquidation entitlement is determinable by reference to the liquida-

tion entitlement of another share of the capital stock of the corporation that meets the requirements of paragraph (6)(b); and

(c) where a corporation has merged or amalgamated with one or more other corporations, the corporation formed as a result of the merger or amalgamation shall be deemed to be the same corporation as, and a continuation of, each of its predecessor corporations and a share issued on the merger or amalgamation as consideration for another share shall be deemed to be the same share as the share for which it was issued.

(8) Late designation — Where a taxable Canadian corporation that issued a share does not designate an amount under subsection (4) in respect of the share on or before the day on or before which the designation was required by that subsection, the corporation shall be deemed to have made the designation on that day if

(a) the corporation has filed with the Minister a prescribed information return relating to the share-purchase tax credit in respect of the share within the time that it would have been so required to file the return had the designation been made on that day, and

(b) within 3 years after that day, the corporation has

(i) designated an amount in respect of the share by filing a prescribed form with the Minister, and

(ii) paid to the Receiver General, at the time the prescribed form referred to in subparagraph (i) is filed, an amount that is a reasonable estimate of the penalty payable by the corporation for the late designation in respect of the share,

except that, where the Minister has mailed a notice to the corporation that a designation has not been made in respect of the share under subsection (4), the designation and payment described in paragraph (b) must be made by the corporation on or before the day that is 90 days after the day of the mailing.

Pre-RSC History: Subpara. 192(8)(b)(ii) substituted by 1984, c. 45, s. 80, to add "at the time the prescribed form referred to in subparagraph (i) is filed" and to substitute "estimate of the penalty" for "estimate of the amount of the penalty", applicable after June 1983.

(9) Penalty for late designation — Where, pursuant to subsection (8), a corporation made a late designation in respect of a share issued in a month, the corporation shall pay, for each month or part of a month that elapsed during the period beginning on the last day on or before which an amount could have been designated by the corporation under subsection (4) in respect of the share and ending on the day that the late designation is made, a penalty for the late designation in respect of the share in an amount equal to 1% of the amount designated in respect of the share, except that the maximum penalty payable under this subsection by the corporation for a month shall not exceed $500.

(10) Deemed deduction — For the purposes of this Act, other than the definition "investment tax credit" in subsection 127(9), the amount, if any, claimed under subparagraph (2)(a)(ii) by a taxpayer for a taxation year shall be deemed to have been deducted by the taxpayer under subsection 127(5) for the year.

Pre-RSC History: Subsec. 192(10) substituted by 1985, c. 45, subsec. 103(2), applicable to 1985 *et seq.* Subsec. 192(10) formerly read:

(10) Deemed deduction — For the purposes of this Act, other than subsection 127(9), the amount, if any, claimed under subparagraph (2)(a)(ii) by a taxpayer for a taxation year shall be deemed to have been deducted by him under subsection 127(5) for the taxation year.

(11) Restriction — Where at any time a corporation has designated an amount under subsection (4) in respect of a share, no amount may be designated by the corporation at any subsequent time in respect of that share.

Selected Cases [s. 192]: *598606 Ontario Ltd. v. MNR*, [1993] 1 C.T.C. 2001 (TCC); appealed to FCTD (Feb. 11, 1993), File T-367-93 (Failure to make designation by filing prescribed form disentitles taxpayer to claim share-purchase tax credit).

Definitions [s. 192]: "amount" — 248(1); "arm's length" — 251(1); "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend", "Minister" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "property" — 248(1); "qualifying share" — 192(6), 248(1); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 192]: IT-328R3: Losses on shares on which dividends have been received.

193. (1) Corporation to file return — Every corporation that is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

Forms: T2112: Corporation Part VII tax return.

(2) Corporation to make payment on account of tax — Where, in a particular month in a taxation year, a corporation issues a share in respect of which it designates an amount under section 192, the corporation shall, on or before the last of the month following the particular month, pay to the Receiver General on account of its tax payable under this Part for the year an amount equal to the total of all amounts so designated.

(3) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay computed from the day on or before which the amount was required to be paid to the day of payment.

Related Provisions: 248(11) — Interest compounded daily.

Pre-RSC History: Subsec. 193(3) substituted by 1985, c. 45, subsec. 104(1). Subsec. 193(3) formerly read:

(3) Interest amount in default — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which it was required to pay the tax, it shall, on payment of the amount in default, pay interest thereon at the prescribed rate for the period beginning on the day following the day on or before which it was required to make the payment and ending on the day of payment.

Regulations: 4301(a) (prescribed rate of interest).

(4) Idem — For the purposes of computing interest payable by a corporation under subsection (3) for any month or months in the period commencing on the first day of a taxation year and ending two months after the last day of the year in which period the corporation has designated an amount under section 192 in respect of a share issued by it in a particular month in the year, the corporation shall be deemed to have been liable to pay, on or before the last day of the month immediately following the particular month, a part or an instalment of tax for the year equal to that proportion of the amount, if any, by which its tax payable under this Part for the year exceeds its Part VII refund for the year that

(a) the total of all amounts so designated by it under section 192 in respect of shares issued by it in the particular month

is of

(b) the total of all amounts so designated by it under section 192 in respect of shares issued by it in the year.

Pre-RSC History: That portion of subsec. 193(4) preceding para. (a) amended to substitute "in the period commencing on the first day of a taxation year and ending two months after the last day of the year" for "in the 14 month period ending 2 months after the end of a taxation year", by 1985, c. 45, subsec. 104(2), applicable to 1986 *et seq.*

(5) Evasion of tax — Where a corporation that is liable to pay tax under this Part in respect of a share issued by it wilfully, in any manner whatever, evades or attempts to evade payment of the tax and a purchaser of the share or, where the purchaser is a partnership, a member of the partnership knew or ought to have known, at the time the share was acquired, that the corporation would wilfully evade or attempt to evade the tax, for the purposes of section 127.2, the share shall be deemed not to have been acquired.

(6) Undue deferral — Where, in a transaction or as part of a series of transactions, a taxpayer acquires a share of a corporation that the taxpayer controls (within the meaning assigned by subsection 186(2)) and it may reasonably be considered that one of the main purposes of the acquisition was to reduce for a period interest on the taxpayer's liability for tax under this Part, the share shall, for the purposes of section 127.2 and this Part (other than this subsection), be deemed not to have been acquired by the taxpayer and not to have been issued by the corporation until the end of that period.

Related Provisions: 248(10) — Series of transactions.

(7) Avoidance of tax — Where, as part of a series of transactions or events one of the main purposes of which may reasonably be considered to be the avoidance of tax that might otherwise have been or become payable under Part II by any corporation, a particular corporation has issued a share in a taxation year in respect of which it has designated an amount under subsection 192(4), the particular corporation shall, on or before the last day of the second month after the end of the year, pay a tax under this Part for the year equal to 125% of the amount of tax under Part II that is or may be avoided by reason of the series of transactions or events.

(7.1) Tax on excess — Where a corporation has in a taxation year made an election under subsection 127.2(10) in respect of any share that was part of a distribution of shares referred to in that subsection and, at the end of that year or any subsequent taxation year,

(a) the total of the amounts designated under subsection 192(4) in respect of those shares as evidenced by the prescribed information returns required by regulation to be filed with the Minister by a taxpayer other than the corporation

exceeds

(b) the total of the amounts designated under subsection 192(4) in respect of those shares acquired by the taxpayer and in respect of which another taxpayer was required by regulation to provide the taxpayer with a prescribed information return relating to the designation under that subsection,

the taxpayer is liable to pay a tax under this Part for the taxation year at the end of which there is such an excess equal to the amount of the excess, which tax is to be paid to the Receiver General within 60 days after the end of the taxation year, and the excess shall be included in determining the total under paragraph (b) for any taxation year of the taxpayer subsequent to that year.

Pre-RSC History: Subsec. 193(7.1) added by 1984, c. 45, s. 81, applicable after June 1983.

(8) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 193(8) amended by 1986, c. 6, s. 102, to add reference to subsection 161(11).

Definitions [s. 193]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "person" — 127.2(9), 248(1); "prescribed" — 248(1); "series of transactions" — 248(10); "share", "taxpayer" — 248(1); "taxation year" — 249.

Pre-RSC History [Part VII]: Part VII (ss. 192, 193) enacted by 1984, c. 1, subsec. 95(1), applicable after June 1983, except that any designation under subsec. 192(4) made on or before the day that is 90 days after January 19, 1984 shall be deemed to have been made on or before the day referred to in subsec. 192(4).

Pre-RSC History [former Part VII]: Part VII (ss. 192, 193) repealed by 1977-78, c. 1, s. 88, applicable to dividends paid or received after March 31, 1977. Part VII formerly read:

PART VII — TAX ON RECIPIENT OF DIVIDEND PAID OUT OF DESIGNATED SURPLUS

192. (1) **Tax where dividend paid out of designated surplus** — Where a corporation has at any time in a taxation year and after 1971 received from a corporation resident in Canada and controlled by it a taxable dividend the amount of which was or would have been, but for subsection 112(5), deductible under subsection 112(1) for the purpose of computing its taxable income for the year, the corporation by which the dividend was received shall, on or before the day on or before which it is required to file its return of income under Part I for the year, pay a tax under this Part of 25% on the portion of the dividend that was paid out of the designated surplus of the payer corporation.

(2) **Where dividend received by trader or dealer in securities** — Where a trader or dealer in securities (other than a corporation) has at any time in a taxation year and after 1971 received a taxable dividend from a corporation resident in Canada that would, if the trader or dealer had been a corporation, have been controlled by the trader or dealer, the trader or dealer shall, on or before the day on or before which he is required to file his return of income under Part I for the year, pay a tax under this Part of 25% on the portion of the dividend that was paid out of the designated surplus of the corporation.

(3) **Where amalgamation of 2 or more corporations** — For the purposes of this Part, where at any time in a taxation year and after 1971 there has been an amalgamation of 2 or more corporations at a time when one or more of the corporations (in this subsection referred to as a "controlled corporation") were controlled by another or others of those corporations (in this subsection referred to as a "controlling corporation"),

(a) each controlling corporation shall be deemed to have received a taxable dividend immediately before the amalgamation from each corporation controlled by it at that time,

(b) each such taxable dividend so received from a controlled corporation shall be deemed to have been paid out of the controlled corporation's designated surplus immediately before the amalgamation, and

(c) the amount of any such dividend so received by a controlling corporation from a corporation controlled by it shall be deemed to be the greater of

(i) the amount that would have been payable to it on the winding-up of the controlled corporation immediately before the amalgamation if the subscribed capital had been repaid and what remained to be distributed on the winding-up were an amount equal to the designated surplus of the controlled corporation immediately before the amalgamation, and

(ii) the amount that would have been received by it as dividends on its shares of the capital stock of the controlled corporation immediately before the amalgamation, if at that time

(A) the maximum amount available for dividends were an amount equal to the designated surplus of the controlled corporation immediately before the amalgamation, and

(B) the controlled corporation had distributed that amount by way of dividends to its shareholders, in accordance with their respective rights to receive dividends.

(4) **Where corporation controlled** — For the purpose of this section, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length.

(5) **When dividend paid out of designated surplus** — For the purpose of this section,

(a) where the amount of a corporation's earnings for a control period that was available for payment of dividends was, at the time a particular taxable dividend was paid, equal to or greater than the particular dividend plus all other taxable dividends paid by the payer corporation at the same time as the particular dividend, no part of the particular dividend shall be regarded as having been paid out of designated surplus; and

(b) in any other case, the portion of the particular dividend that shall be deemed to have been paid out of designated surplus is that proportion of the lesser of

(i) the aggregate of the particular dividend and all other taxable dividends paid by the payer corporation at the same time as the particular dividend, minus the amount, if any, of the payer corporation's earnings for the control period that was available for payment of dividends at that time, and

(ii) the designated surplus of the payer corporation immediately before that time,

that the particular dividend is of the aggregate of the particular dividend and all other dividends paid by the payer corporation at the same time as the particular dividend.

(6) **Where dividends paid at same time on more than one class of shares** — For the purpose of subsection (5), where a corporation has, at the same time, paid dividends on its issued shares of different classes and one of the classes of shares had full voting rights under all circumstances and another had not, the dividends on the shares of the class that had full voting rights under all circumstances shall be deemed to have been paid immediately after the dividends on the other shares.

(7) **Idem** — For the purpose of subsection (5), dividends paid on the same day shall, subject to subsection (6), be deemed to have been paid at the same time.

(8) **Meaning of "control period"** — In this section "control period" means the period from the commencement of the payer corporation's taxation year in which the control was acquired to the end of the taxation year in which the dividend was paid.

(9) **Determination of amount of earnings available for payment of dividend** — For the purposes of this section, the amount of a corporation's earnings for a control period that was available for payment of dividends at a particular time is the amount by which the aggregate of

(a) the amount, if any, by which

(i) the amount of its earnings for the control period that was available for payment of dividends at the end of its 1971 taxation year (within the meaning assigned by subsection 28(5) of this Act as it read in its application to the 1971 taxation year),

exceeds

(ii) all amounts on which the corporation has, before the particular time, elected to pay tax under Part IX,

(b) its incomes for taxation years ending after 1971 that are in the control period,

(c) 2 times the amount, if any, of the corporation's refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) at the commencement of the control period, and

(d) the aggregate of its dividend refunds (within the meaning assigned by subsection 129(1)), if any, for taxation years ending after 1971 that are in the control period,

exceeds the aggregate of

(e) its income or profits taxes paid or payable, for taxation years ending after 1971 that are in the control period,

(i) under this Act, or

(ii) to a government of

(A) a province,

(B) a country other than Canada, or

(C) a state, province or other political subdivision of a country other than Canada

except to the extent that those taxes were deductible in computing the income of the corporation under Part I for any of those years,

(f) the corporation's net capital losses, non-capital losses and restricted farm losses for taxation years ending after 1971 that are in the control period, other than the first taxation year in the control period,

(g) all taxable dividends paid by the corporation in the control period after 1971 and before the particular time, to the extent that they were not paid out of designated surplus,

(h) the amount that would, if this Act as it read in its application to the 1971 taxation year were applicable to the period consisting of that part of the corporation's 1972 taxation year that is before 1972, be the aggregate of

(i) dividends paid by the corporation, and

(ii) dividends deemed to have been received by its shareholders

in the control period after its 1971 taxation year and before 1972, to the extent that they were not paid out of designated surplus, and

(i) where the control period commenced after 1971, all taxable dividends received by the corporation in the control period and before the particular time from corporations resident in Canada and controlled by it to the extent that those dividends

(i) were not paid out of designated surplus, and

(ii) would have been paid out of designated surplus on the assumption made by subsection (10) with respect to the corporation.

(10) **Assumption respecting payments out of designated surplus** — The assumption made by this subsection with respect to a corporation resident in Canada (in this subsection referred to as the "controlled corporation") that was controlled by another corporation (in this subsection referred to as the "controlling corporation") in a control period is that

(a) the designated surplus, and

(b) the amount of the earnings for the control period that was available for payment of dividends

of each corporation, other than the controlled corporation, resident in Canada (hereinafter referred to as a "chain corporation"), control of which was acquired by the controlling corporation by virtue of its acquisition of control of the controlled corporation, were computed as if

(c) each corporation that controlled the chain corporation, at the time the controlling corporation acquired control of the controlled corporation, had acquired control of the chain corporation at that time, and

(d) taxable dividends received by the chain corporation after that time from another corporation that it controlled were

(i) included in computing the chain corporation's designated surplus, and

(ii) not included in computing the amount of the chain corporation's earnings for a control period that was available for payment of dividends

to the extent that such dividends

(iii) were not paid out of designated surplus, and

(iv) would, on the assumption made by this subsection, have been paid out of designated surplus.

(10.1) **Life insurance corporation's control period earnings** — Notwithstanding anything contained in subsection (9), the amount of a life insurance corporation's earnings for a control period that was available for payment of dividends at a particular time is the aggregate of the amount thereof determined under subsection (9) and 2 times the aggregate of all income or profits taxes paid or payable by the corporation, for taxation years ending after 1971 that are in the control period, to a government of a country other than Canada or to a state, province or other political subdivision of a country other than Canada.

(11) **Application of ss. (1) to dividends received by certain corporations** — Where 2 corporations have, from May 10, 1950, or earlier, to the time of the acquisition hereinafter referred to of control of one of the corporations (hereinafter in this subsection referred to as the "payer corporation") by the other corporation (hereinafter in this subsection referred to as the "receiving corporation"), been subsidiary controlled corporations and

(a) been subsidiary to the same corporation, or

(b) been subsidiary to separate non-resident corporations and become subsidiary to the same non-resident corporation as a result of one of the non-resident corporations acquiring control of the payer corporation or the receiving corporation from the other non-resident corporation,

and the receiving corporation has acquired control of the payer corporation by the purchase from the corporation to which they were or have become subsidiary of shares of the capital stock of the payer corporation for a consideration not exceeding

(c) in the case of shares that had a par value, the par value thereof, and

(d) in the case of shares that had no par value, the proportion of the paid-up capital of the payer corporation with respect to the class of shares to which the shares so acquired belong that the number of shares so acquired is of the number of issued shares of the class,

subsection (1) is not applicable to a dividend paid by the payer corporation to the receiving corporation.

(12) **Idem** — For the purpose of this section, dividends paid by a payer corporation in the control period before the control was acquired shall be deemed to have been paid out of designated surplus.

(13) **"Designated surplus" defined** — In this section, "designated surplus" at any particular time after 1971 of a corporation resident in Canada means,

(a) where control of the corporation was acquired before the end of the corporation's 1972 taxation year, the amount, if any, by which the aggregate of

(i) the lesser of

(A) the amount in respect of the corporation that would be determined at the end of 1971 under subparagraph 28(6)(b)(ii) of the Act as it read in its application to the 1971 taxation year if the provisions of this Act, as it so read were applicable to the corporation's 1972 taxation year, and

(B) the amount, if any, by which

(I) the amount that the corporation's 1971 undistributed income on hand would be at the commencement of 1972 if subsection 196(4) were read without reference to paragraphs (c) and (f) thereof,

exceeds

(II) the amount of the corporation's earnings for the control period that was available for the payment of dividends (within the meaning assigned by subsection 28(5) of this Act as it read in its application to the 1971 taxation year) at the end of 1971, and

(ii) where control of the corporation was acquired after 1971, all taxable dividends received by the corporation in the control period after 1971 and before the particular time from corporations resident in Canada and controlled by it, to the extent that the dividends

(A) were not paid out of designated surplus, and

(B) would have been paid out of designated surplus on the assumption made by subsection (10) with respect to the corporation,

exceeds the aggregate of

(iii) the amount, if any, by which

(A) the aggregate of all amounts each of which is an amount on which the corporation has, before the particular time, elected to pay tax under Part IX,

exceeds

(B) the amount in respect of the corporation determined under subclause (i)(B)(II), and

(iv) all taxable dividends paid by the corporation after 1971 to the extent that they were paid out of designated surplus; and

(b) in any other case, the amount, if any, by which the aggregate of

(i) the corporation's 1971 undistributed income on hand at the particular time,

(ii) the corporation's post-1971 undistributed surplus at the end of its last taxation year before the control was acquired, and

(iii) all taxable dividends received by the corporation in the control period and before the particular time from corporations resident in Canada and controlled by it, to the extent that the dividends

(A) were not paid out of designated surplus, and

(B) would have been paid out of designated surplus on the assumption made by subsection (10) with respect to the corporation,

exceeds the aggregate of

(iv) the amount, if any, by which

(A) the aggregate of amounts that would be determined at the end of the corporation's 1971 taxation year under subparagraphs 82(1)(a)(i) to (vii) of this Act as it read in its application to the 1971 taxation year if

(I) paragraph 82(1)(a) thereof were read without reference to subparagraph (iii) thereof, and

(II) references in paragraph 82(1)(a) (except clause (vii)(A)) thereof to "1917" were read as references to "1950",

exceeds

(B) the aggregate of the incomes (within the meaning of this Act as it read in its application to the 1971 taxation year) of the corporation for taxation years beginning with the 1950 taxation year and ending with the 1971 taxation year,

(v) all amounts received by the corporation after its 1971 taxation year and before 1972 that would, within the meaning of this Act as it read in its application to the 1971 taxation year, be dividends received or deemed to have been received by it,

(vi) 2 times the amount, if any, of the corporation's refundable tax on hand (within the meaning assigned by subsection 129(3)) at the end of its last taxation year before the control was acquired, and

(vii) all taxable dividends paid by the corporation after 1971 to the extent that they were paid out of designated surplus.

(14) **Life insurance corporation** — Notwithstanding anything contained in subsection (13), the designated surplus of a life insurance corporation at any time means the amount that is at the credit of its shareholders' account at that time.

(15) **"Post-1971 undistributed surplus" defined** — For the purposes of this section, a corporation's "post-1971 undistributed surplus" at the end of any particular taxation year means the aggregate of its incomes for taxation years beginning with the 1972 taxation year and ending with the particular year, minus the aggregate of the following amounts:

(a) each net capital loss, non-capital loss and restricted farm loss of the corporation for any such year;

(b) each expense incurred or disbursement made by the corporation during any such year that was not allowed as a deduction in computing income for any of those years under Part I, except an expense or disbursement

(i) incurred or made in respect of the acquisition of property including eligible capital property,

(ii) that has been added in computing the adjusted cost base to the corporation of any property, or

(iii) in respect of the repayment of loans or capital;

(c) each taxable dividend paid by the corporation in any such year after 1971; and

(d) each amount on which tax under Part II was payable in respect of the redemption or acquisition by the corporation in any such year of any shares of its capital stock.

(16) Application of ss. (15) — Where, in the case of a corporation referred to in subsection 66(6), 66.1(4) or 66.2(3) as a "predecessor corporation", subsection (15) is being applied to determine the post-1971 undistributed surplus of the corporation at any particular time after such time after 1971 as all or substantially all of the property of the corporation described in subsection 66(6), 66.1(4) or 66.2(3) has been acquired as described in that subsection, there shall not be included in the amount or amounts deductible under any paragraph of subsection (15) any amount in respect of expenses incurred by the corporation included in the aggregate or amount, as the case may be, determined under paragraph 66(6)(a), 66.1(4)(a) or 66.2(3)(a), as the case may be.

(17) Idem — For the purposes of computing

(a) a corporation's earnings for a control period under subsection (9), and

(b) a corporation's post-1971 undistributed surplus under subsection (15),

the incomes and non-capital losses of the corporation shall be deemed to be the amount that they would have been if paragraph 20(1)(v.1) and subsection 65(1) had not been applicable.

(18) Idem — For the purpose of computing a corporation's post-1971 undistributed surplus under subsection (15) at the end of a particular taxation year, there shall be added the amount of any loss of the corporation, for a taxation year ending before or in that year, from a farming business to the extent that the amount of such loss was added by virtue of paragraph 53(1)(i) in computing the adjusted cost base to the corporation, immediately before the disposition by it of land used in the farming business, of the land so disposed of by it.

(19) Acquisition of assets, etc., of insurance corporation — Where all of the assets and liabilities of an insurance corporation incorporated under or pursuant to the laws of a province (in this subsection referred to as the "old corporation") have, at a time when the corporation had post-1971 undistributed surplus or 1971 undistributed income on hand, been acquired by an insurance corporation incorporated under or pursuant to an Act of the Parliament of Canada (in this subsection referred to as the "new corporation") under an arrangement whereby it is contemplated that the new corporation will carry on the business formerly carried on by the old corporation, and the paid-up capital of the new corporation was not, at the time of the acquisition of such assets and liabilities, less than the paid-up capital of the old corporation at that time, the post-1971 undistributed surplus or 1971 undistributed income on hand, as the case may be, of the new corporation immediately after that time as determined under this Act shall be deemed to be the amount otherwise determined thereunder plus the amount of the post-1971 undistributed surplus or 1971 undistributed income on hand, as the case may be, of the old corporation immediately prior to that time.

(20) Dividend received by exempt person — No tax is payable under this Part by a corporation in respect of a dividend received by it at a time when it was a person exempt from tax under section 149.

193. (1) Information returns — Every person liable to pay tax under this Part on any dividend received by him in a taxation year shall, on or before the day on or before which he is required to file his return of income under Part I for the year, file a return for the year under this Part in prescribed form.

(2) Interest — Where a person is liable to pay tax under this Part and has failed to pay all or any part thereof on the day on or before which he was required to pay the tax, he shall, on payment of the amount in default, pay interest at a prescribed rate per annum from the day on or before which he was required to make the payment to the day of payment.

(3) Provisions applicable to Part — Sections 151, 152 and 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

Subsec. 192(17) substituted by 1976-77, c. 4, s. 66, applicable to calculations of earnings for a control period or designated surplus in respect of dividends paid after May 6, 1974. Subsec. 192(17) formerly read:

(17) For the purpose of computing a corporation's post-1971 undistributed surplus under subsection (15), the income of the corporation for a year shall be deemed to be the amount that it would have been applicable.

Subsec. 192(16) substituted by 1974-75-76, c. 26, s. 111, applicable to 1974 *et seq.* Subsec. 192(16) formerly read:

(16) Where, in the case of a corporation referred to in subsection 66(6) as a "predecessor corporation", subsection (15) is being applied to determine the post-1971 undistributed surplus of the corporation at any particular time after such time after 1971 as all or substantially all of the property of the corporation described in subsection 66(6) has been acquired as described in that subsection, there shall not be included in the amount or amounts deductible under any paragraph of subsection (15) any amount in respect of expenses incurred by the corporation included in the aggregate determined under paragraph 66(6)(a).

PART VIII — REFUNDABLE TAX ON CORPORATIONS IN RESPECT OF SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT TAX CREDIT

194. (1) Corporation to pay tax — Every corporation shall pay a tax under this Part for a taxation year equal to 50% of the total of all amounts each of which is an amount designated under subsection (4) in respect of a share or debt obligation issued by it in the year or a right granted by it in the year.

Related Provisions: 227.1(1) — Liability of directors for unpaid Part VIII tax.

Selected Cases [subsec. 194(1)]: *Revelations Research Ltd. v. MNR*, [1992] 1 C.T.C. 2136 (TCC) (Development of "synthetic intelligence" hardware system not "scientific research and experimental development"); *Bechthold Resources Ltd. v. MNR*, [1986] 1 C.T.C. 195 (FCTD) (Assessment can be made before return required to be filed; liability does not depend on notice of assessment); *WTC Western Technologies Corp. v. MNR*, [1986] 1 C.T.C. 110 (FCTD) (Filing return is condition precedent before assessment under Part VIII could issue; assessment and requirement to pay quashed).

(2) Definition of "Part VIII refund" — In this Act, the "Part VIII refund" of a corporation for a taxation year means an amount equal to the lesser of

(a) the total of

(i) the amount, if any, by which the scientific research and experimental development tax credit of the corporation for the year exceeds the amount, if any, deducted by it under subsection 127.3(1) from its tax otherwise payable under Part I for the year, and

(ii) such amount as the corporation may claim, not exceeding 50% of the amount, if any, by which

(A) the total of all expenditures made by it after April 19, 1983 and in the year or the immediately preceding taxation year each of which is an expenditure (other than an expenditure prescribed for the purposes of the definition "qualified expenditure" in subsection 127(9)) claimed under paragraph 37(1)(a) or (b) to the extent

that the expenditure is specified by the corporation in its return of income under Part I for the year

exceeds the total of

(B) the total of all expenditures each of which is an expenditure made by it in the immediately preceding taxation year, to the extent that the expenditure was included in determining the total under clause (A) and resulted in

(I) a refund to it under this Part for the immediately preceding taxation year,

(II) a deduction by it under subsection 37(1) for the immediately preceding taxation year, or

(III) a deduction by it under subsection 127(5) for any taxation year, and

(C) twice the portion of the total of amounts each of which is an amount deducted by it in computing its income for the year or the immediately preceding taxation year under section 37.1 that can reasonably be considered to relate to expenditures that were included in determining the total under clause (A), and

(b) the refundable Part VIII tax on hand of the corporation at the end of the year.

Related Provisions: 37(1)(g) — Reduction of amount deductible; 87(2)(l) — Amalgamations — continuation; 248(1)"Part VIII refund" — Definition applies to entire Act.

Pre-RSC History: Cl. 194(2)(a)(ii)(A) amended to substitute "an expenditure (other than an expenditure prescribed for the purposes of the definition "qualified expenditure' in subsection 127(9)), claimed" for "an expenditure, other than an expenditure prescribed for the purposes of paragraph 127(10.1)(c), claimed", by 1985, c. 45, s. 105, applicable to 1985 *et seq.*

(3) Definitions — In this Part,

"debt obligation" has the meaning assigned by paragraph (d) of the description of A in the formula found in the definition "scientific research and experimental development tax credit" in subsection 127.3(2);

Origin of subsec. 194(3)"debt obligation": R.S.C. 1985, c. 1 (5th Supp.). Formerly included in subpara. 127.3(2)(a)(iv) (now para. 127.3(2)"scientific research and experimental development tax credit"A(d)).

"refundable Part VIII tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which

(a) the total of the taxes payable by it under this Part for the year and all preceding taxation years

exceeds

(b) the total of its Part VIII refunds for all preceding taxation years.

Related Provisions: 248(1)"refundable Part VIII tax on hand" — Definition applies to entire Act.

(4) Corporation may designate amount — Every taxable Canadian corporation may, by filing a prescribed form with the Minister at any time on or before the last day of the month immediately following a month in which it issued a share or debt obligation or granted a right under a scientific research and experimental development financing contract (other than a share or debt obligation issued or a right granted before October, 1983, or a share in respect of which the corporation has, on or before that day, designated an amount under subsection 192(4)) designate, for the purposes of this Part and Part I, an amount in respect of that share, debt obligation or right not exceeding the amount by which

(a) the amount of the consideration for which it was issued or granted, as the case may be,

exceeds

(b) in the case of a share, the amount of any assistance (other than an amount included in computing the scientific research and experimental development tax credit of a taxpayer in respect of that share) provided, or to be provided by a government, municipality or any other public authority in respect of, or for the acquisition of, that share.

Related Provisions: 127.3(9) — Election re first holder; 127.3(10) — Calculation of consideration; 195(2) — Corporation to make payment on account of tax; 195(3), (4) — Interest on amount in default; 195(7) — Avoidance of tax.

Selected Cases [subsec. 194(4)]: *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities); *Groupmark Canada Ltd. v. Canada*, [1993] 1 C.T.C. 234 (FCTD) (Amounts paid to related company before and after SRTC note issued were "consideration" for note); *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

Regulations: 226 (information return).

(4.1) Computing paid-up capital after designation — Where a corporation has designated an amount under subsection (4) in respect of shares issued at any time after May 23, 1985, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that includes those shares

(a) there shall be deducted the amount, if any, by which

(i) the increase as a result of the issue of those shares in the paid-up capital in respect of all shares of that class, determined without reference to this subsection as it applies to those shares,

exceeds

(ii) the amount, if any, by which the total amount of consideration for which those shares were issued exceeds 50% of the amount designated by the corporation under subsection (4) in respect of those shares; and

(b) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation after May 23, 1985 and before the particular time

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and

(ii) the total of all amounts each of which is an amount required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after May 23, 1985 and before the particular time.

Related Provisions: 127.3(6) — Deemed cost of designated share, debt obligation or right.

Pre-RSC History: Subsec. 194(4.1) added by 1986, c. 6, s. 103, applicable after May 23, 1985.

(4.2) Where amount may not be designated — Notwithstanding subsection (4), no amount may be designated by a corporation in respect of

(a) a share issued by the corporation after October 10, 1984, other than

(i) a qualifying share issued before May 23, 1985, or

(ii) a qualifying share issued after May 22, 1985 and before 1986

(A) under the terms of an agreement in writing entered into by the corporation before May 23, 1985, other than pursuant to an option to acquire the share if the option was not exercised before May 23, 1985, or

(B) as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority;

(b) a share or debt obligation issued or a right granted by the corporation after October 10, 1984, other than a share or debt obligation issued or a right granted before 1986

(i) under the terms of an agreement in writing entered into by the corporation before October 11, 1984, other than pursuant to an option to acquire the share, debt obligation or right if the option was not exercised before October 11, 1984, or

(ii) where arrangements, evidenced in writing, for the issue of the share or debt obligation or the granting of the right were substantially advanced before October 10, 1984; or

Selected Cases [subpara. 194(4.2)(b)(ii)]: *Mort (C.L.) v. Canada*, [1993] 1 C.T.C. 99 (FCTD) (Financing arrangements were "substantially advanced" when moratorium on SRTC program announced and qualified for grandfathering).

(c) a share or debt obligation issued, or a right granted, at any time after June 15, 1984, by a corporation that was an excluded corporation (within the meaning assigned by subsection 127.1(2)) at that time.

Pre-RSC History: Subsec. 194(4.2) added by 1986, c. 6, s. 103.

Selected Cases [subsec. 194(4.2)]: *First Fund Genesis Corporation v. Canada*, [1991] 2 C.T.C. 14 (FCTD) (Valid designation where purchase "substantially advanced" prior to statutory deadline).

(5) Presumption — For the purposes of this Act, the Part VIII refund of a corporation for a taxation year shall be deemed to be an amount paid on account of its tax under this Part for the year on the last day of the second month following the end of the year.

Selected Cases [subsec. 194(5)]: *Groupmark Canada Ltd. v. Canada*, [1993] 1 C.T.C. 234 (FCTD) (Amounts paid to related company before and after SRTC note issued were "consideration" for note).

(6) Definition of "scientific research and experimental development financing contract" — In this Part, "scientific research and experimental development financing contract" means a contract in writing pursuant to which an amount is paid by a person to a corporation as consideration for the granting by the corporation to that person of any right, either absolute or contingent, to receive income, other than interest or dividends.

(7) Late designation — Where a taxable Canadian corporation that issued a share or debt obligation or granted a right under a scientific research and experimental development financing contract does not designate an amount under subsection (4) in respect of the share, debt obligation or right on or before the day on or before which the designation was required by that subsection, the corporation shall be deemed to have made the designation on that day if

(a) the corporation has filed with the Minister a prescribed information return relating to the scientific research and experimental development tax credit in respect of the share, debt obligation or right within the time that it would have been so required to file the return had the designation been filed on that day, and

(b) within 3 years after that day, the corporation has

(i) designated an amount in respect of the share, debt obligation or right by filing a prescribed form with the Minister, and

(ii) paid to the Receiver General, at the time the prescribed form referred to in subparagraph (i) is filed, an amount that is a reasonable estimate of the penalty payable by the corporation for the late designation in respect of the share, debt obligation or right,

except that, where the Minister has mailed a notice to the corporation that a designation has not been made in respect of the share, debt obligation or right under subsection (4), the designation and payment described in paragraph (b) must be made by the corporation on or before the day that is 90 days after the day of the mailing.

Pre-RSC History: Subpara. 194(7)(b)(ii) substituted by 1984, c. 45, s. 82, to add "at the time the prescribed form referred to in subparagraph (i) is filed" and to substitute "estimate of the penalty" for "estimate of the amount of the penalty", applicable after September 1983.

Selected Cases [subsec. 194(7)]: *Spiegel v. Canada*, [1997] 1 C.T.C. 2587 (TCC) (Curative provisions to be given liberal construction); *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

Regulations: 226(2) (prescribed information return).

Forms: T661: Claim for scientific research and experimental development expenditures carried on in Canada; T665: Simplified claim for expenditures incurred in carrying on SR&ED in Canada.

(8) Penalty for late designation — Where, pursuant to subsection (7), a corporation made a late designation in respect of a share or debt obligation issued, or a right granted, in a month, the corporation shall pay, for each month or part of a month that elapsed during the period beginning on the last day on or before which an amount could have been designated by the corporation under subsection (4) in respect of the share, debt obligation or right and ending on the day that the late designation is made, a penalty for the late designation in respect of the share, debt obligation or right in an amount equal to 1% of the amount designated in respect of the share, debt obligation or right, except that the maximum penalty payable under this subsection by the corporation for a month shall not exceed $500.

Selected Cases [subsec. 194(8)]: *United Equities Ltd. v. MNR*, [1992] 2 C.T.C. 214 (FCTD) (Taxpayer eligible for scientific research tax credit despite late filing since requirements for remedying delay met).

(9) Restriction — Where at any time a corporation has designated an amount under subsection (4) in respect of a share, debt obligation or right, no amount may be designated by the corporation at any subsequent time in respect of that share, debt obligation or right.

Pre-RSC History [s. 194]: The expression "scientific research and experimental development" substituted for "scientific research" by 1986,

c. 6, subsec. 15(3), applicable with respect to taxation years ending after May 23, 1985. See also "History of Part VIII" at end of this Part.

Definitions [s. 194]: "amount" — 248(1); "Canada" — 255; "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "debt obligation" — 194(3); "dividend", "Minister" — 248(1); "paid-up capital" — 89(1), 248(1); "person" — 127.3(7), 248(1); "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying share" — 192(6), 248(1); "refundable Part VIII tax on hand" — 194(3); "scientific research and experimental development financing contract" — 194(6); "share" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 194]: IT-151R4: Scientific research and experimental development expenditures.

195. (1) Corporation to file return — Every corporation that is liable to pay tax under this Part for a taxation year shall, on or before the day on or before which it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form.

Selected Cases [subsec. 195(1)]: *WTC Western Technologies Corp. v. MNR*, [1986] 1 C.T.C. 110 (FCTD) (Filing return is condition precedent before assessment under Part VIII could issue; assessment and requirement to pay quashed).

Forms: T2115: Corporation Part VIII tax return.

(2) Corporation to make payment on account of tax — Where, in a particular month in a taxation year, a corporation issues a share or debt obligation, or grants a right, in respect of which it designates an amount under section 194, the corporation shall, on or before the last day of the month following the particular month, pay to the Receiver General on account of its tax payable under this Part for the year an amount equal to 50% of the total of all amounts so designated.

Selected Cases [subsec. 195(2)]: *Eta Performance Systems Corp. v. MNR*, [1993] 1 C.T.C. 2710 (TCC) (Scientific research does not include routine data collection or research in social sciences or humanities); *GR Block Research & Development (1981) Corp. v. MNR*, [1987] 1 C.T.C. 253 (FCTD) (Assessments must be appealed through statutory procedure; liability to pay tax arises before assessment has been made); *Optical Recording Corp. v. The Queen*, [1986] 2 C.T.C. 454 (FCTD) (Order quashing assessment and seizure conditional on result of Crown's appeal).

(3) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which the tax or instalment, as the case may be, was required to be paid, it shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the day of payment.

Related Provisions: 248(11) — Interest compounded daily.

Pre-RSC History: Subsec. 195(3) substituted by 1985, c. 45, subsec. 106(1). Subsec. 195(3) formerly read:

> (3) Interest on amount in default — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part or instalment thereof on or before the day on or before which it was required to pay the tax, it shall, on payment of the amount in default, pay interest thereon at the prescribed rate for the period beginning on the day following the day on or before which it was required to make the payment and ending on the day of payment.

Regulations: 4301(a) (prescribed rate of interest).

(4) Idem — For the purposes of computing interest payable by a corporation under subsection (3) for any month or months in the period commencing on the first day of a taxation year and ending two months after the last day of the year in which period the corporation has designated an amount under section 194 in respect of a share or debt obligation issued, or right granted, by it in a particular month in the year, the corporation shall be deemed to have been liable to pay, on or before the last day of the month immediately following the particular month, a part or an instalment of tax for the year equal to that proportion of the amount, if any, by which its tax payable under this Part for the year exceeds its Part VIII refund for the year that

> (a) the total of all amounts so designated by it under section 194 in respect of shares or debt obligations issued, or rights granted, by it in the particular month

is of

> (b) the total of all amounts so designated by it under section 194 in respect of shares or debt obligations issued, or rights granted, by it in the year.

Pre-RSC History: All that portion of subsec. 195(4) preceding para. (a) amended to substitute "period commencing on the first day of a taxation year and ending two months after the last day of the year" for "14 month period ending 2 months after the end of a taxation year" by 1985, c. 45, subsec. 106(2), applicable to 1986 *et seq.*

(5) Evasion of tax — Where a corporation that is liable to pay tax under this Part in respect of a share or debt obligation issued or a right granted by it wilfully, in any manner whatever, evades or attempts to evade payment of the tax and a purchaser of the share, debt obligation or right or, where the purchaser is a partnership, a member of the partnership knew or ought to have known, at the time the share, debt obligation or right was acquired, that the corporation would wilfully evade or attempt to evade the tax, for the purposes of section 127.3, the share, debt obligation or right shall be deemed not to have been acquired.

(6) Undue deferral — Where, in a transaction or as part of a series of transactions, a taxpayer acquires a share or debt obligation of a corporation or a right granted by a corporation and the corporation is controlled (within the meaning assigned by subsection 186(2)) by the taxpayer and it may reasonably be considered that one of the main purposes of the acquisition was to reduce for a period interest on the taxpayer's liability for tax under this Part, the share, debt obligation or right shall, for the purposes of this Part (other than this subsection) and section 127.3, be deemed not to have been acquired by the taxpayer and not to have been issued or granted, as the case may be, by the corporation until the end of that period.

(7) Avoidance of tax — Where, as part of a series of transactions or events one of the main purposes of which may reasonably be considered to be the avoidance of tax that might otherwise have been or become payable under Part II of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by any corporation, a particular corporation has issued a share or debt obligation or granted a right in a taxation year in respect of which it has designated an amount under subsection 194(4), the particular corporation shall, on or before the last day of the second month after the end of the year, pay a tax under this Part for the year equal to 125% of the amount of tax under Part II of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, that is or may be avoided by reason of the series of transactions or events.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(7.1) Tax on excess — Where a corporation has in a taxation year made an election under subsection 127.3(9) in respect of any share or debt obligation that was part of a distribution of shares or debt obligations referred to in

that subsection and, at the end of that year or any subsequent taxation year,

(a) the total of the amounts designated under subsection 194(4) in respect of those shares or debt obligations as evidenced by the prescribed information returns required by regulation to be filed with the Minister by a taxpayer other than the corporation

exceeds

(b) the total of the amounts designated under subsection 194(4) in respect of those shares or debt obligations acquired by the taxpayer and in respect of which another taxpayer was required by regulation to provide the taxpayer with a prescribed information return relating to the designation under that subsection,

the taxpayer is liable to pay a tax under this Part, for the taxation year at the end of which there is such an excess, equal to 50% of the excess, which tax is to be paid to the Receiver General within 60 days after the end of the taxation year, and the excess shall be included in determining the total under paragraph (b) for any taxation year of the taxpayer subsequent to that year.

Pre-RSC History: Subsec. 195(7.1) added by 1984, c. 45, s. 83, applicable after September 1983.

(8) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsection 161(11), sections 162 to 167 (except subsections 164(1.1) to (1.3)) and Division J of Part I are applicable to this Part with such modifications as the circumstances require and, for greater certainty, the Minister may assess, before the end of a taxation year, an amount payable under this Part for the year.

Pre-RSC History: Subsec. 195(8) substituted by 1986, c. 24, s. 1, applicable to amounts assessed after March 26, 1986. Subsec. 195(8) formerly read:

(8) Provisions applicable to Part — Sections 151, 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Subsec. 195(8) amended by 1986, c. 6, s. 104, to add reference to subsection 161(11). See also "History of Part VIII" below.

Definitions [s. 195]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1); "person" — 127.3(7), 248(1); "prescribed", "series of transactions or events", "share" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Pre-RSC History [Part VIII]: Part VIII (ss. 194, 195) enacted by 1984, c. 1, subsec. 95(1), applicable after September 1983, except that any designation under subsec. 192(4) made on or before the day that is 90 days after January 19, 1984 shall be deemed to have been made on or before the day referred to in subsec. 194(4).

Pre-RSC History [former Part VIII]: Part VIII (ss. 194, 195) repealed by 1977-78, c. 1, s. 88, applicable to dividends paid or received after March 31, 1977. Part VIII formerly read:

PART VIII — TAX ON CORPORATION PAYING DIVIDEND OUT OF DESIGNATED SURPLUS

194. (1) Tax on corporation where dividend paid out of designated surplus — Where a corporation, other than a non-resident-owned investment corporation, has at any time in a taxation year and after 1971 paid a taxable dividend to a shareholder that controlled the corporation and that was

(a) a non-resident corporation or a non-resident-owned investment corporation, or

(b) a person exempt from tax under section 149,

the whole or any part of which dividend would, if Part VII were applicable, be regarded as having been paid out of designated surplus of the corporation as determined under that Part, the corporation shall, on or before the day on or before which it is required to file a return of income under Part I for the taxation year in which the dividend was paid, pay a tax under this Part equal to

(c) in any case where paragraph (a) applies, 15%, and

(d) in any other case, 33⅓%,

of the amount of the dividend or, as the case may be, the part thereof that would, if Part VII were applicable, be regarded as having been so paid.

(2) Determination of payment of dividend — For the purpose of determining whether a dividend or any part thereof would, if Part VII were applicable, be regarded as having been paid out of designated surplus of a corporation as determined under that Part, where the corporation was controlled by a person described in paragraph (1)(b) that person shall, at all times relevant to the determination, be deemed to have been a corporation.

(3) Where corporation controlled — For the purposes of this section, a corporation is controlled by a person described in paragraph (1)(a) or (b) if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to that person, to persons with whom that person does not deal at arm's length, or to that person and persons with whom that person does not deal at arm's length.

(4) Idem — For the purposes of subsection (3), issued share capital of a corporation belonging to or held by a trustee or one or more other persons beneficially for owners or members of an organization, club, society or other unincorporated association that is a person exempt from tax under section 149 shall be deemed to be issued share capital of the corporation belonging to the organization, club, society or other association, as the case may be, as a person so exempt.

(5) Deemed to be dividend — Where section 15 or subsection 56(2) would, if Part I were applicable, require an amount to be included in computing a shareholder's income, that amount shall, for the purposes of this Part, be deemed to have been paid to the shareholder as a dividend.

(6) Exception where shares acquired by gift or bequest — No tax is payable under this Part where the payer corporation was, at the time a particular dividend was paid by it, controlled by a person exempt from tax under section 149, if all of the issued share capital of the corporation (having full voting rights under all circumstances) that, during the period defined in subsection 192(8) as the "control period", belonged to that person, to persons with whom that person did not deal at arm's length, or to that person and persons with whom that person did not deal at arm's length, were acquired by that person or those persons by way of unconditional gift or unconditional bequest.

195. (1) Interest — Where a corporation is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which it was required to pay the tax, it shall, on payment of the amount in default, pay interest at a prescribed rate per annum from the day on or before which it was required to make the payment to the day of payment.

(2) Information return — Every corporation that is liable to pay tax under this Part shall, on or before the day on or before which it is required to pay the tax, file a return of information in prescribed form relevant to the transaction or transactions giving rise to such tax.

(3) Provisions applicable to part — Sections 151, 152 and 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

PART IX — TAX ON DEDUCTION UNDER SECTION 66.5

196. (1) Tax in respect of cumulative offset account — Every corporation shall pay a tax under this Part for each taxation year equal to 30% of the amount deducted under subsection 66.5(1) in computing its income for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible.

(2) Return — Every corporation that is liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which it is re-

quired under section 150 to file a return of its income for the year under Part I, a return for the year under this Part in prescribed form containing an estimate of the amount of tax payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2099: Part IX tax return in respect of amounts deducted under subsection 66.5(1).

(3) Instalments — Where a corporation is liable to pay tax for a taxation year under this Part, the corporation shall pay in respect of the year, to the Receiver General

(a) on or before the last day of each month in the year, an amount equal to 1/12 of the amount of tax payable by it under this Part for the year; and

(b) the remainder, if any, of the tax payable by it under this Part for the year, on or before the end of the second month following the end of the year.

(4) Provisions applicable to Part — Sections 152, 158 and 159, subsections 161(1) and (2), sections 162 to 167 and Division J of Part I are applicable to this Part, with such modifications as the circumstances require.

Pre-RSC History [Part IX]: Part IX (s. 196) enacted by 1986, c. 2, s. 24, applicable to 1985 *et seq.*

Pre-RSC History [former Part IX]: Part IX (ss. 196, 197) repealed by 1977-78, c. 1, s. 88, applicable after December 31, 1978 except for the purpose of making a retroactive election pursuant to that Part in respect of a dividend payable before 1979 in respect of which an election was made under section 83. Part IX formerly read:

PART IX — TAX ON 1971 UNDISTRIBUTED INCOME ON HAND

196. (1) **Election by corporation resident in Canada** — A corporation resident in Canada may, at any time after 1971, elect, in prescribed manner and in prescribed form to be assessed and to pay a tax under this Part of 15% on

(a) such amount as the corporation claims in its election, not exceeding the amount, if any, of its 1971 undistributed income on hand immediately before that time; or

(b) the full amount of its 1971 undistributed income on hand immediately before that time.

(1.1) **Retroactive Part IX elections** — Where a corporation has made one or more elections under section 83 and has subsequently at any particular time made an election under this subsection, in prescribed manner and prescribed form, wherein it specifies one of the elections under section 83 (in this subsection referred to as the "specified election"), the following rules apply if, at the particular time, the corporation complies with the requirements (including the payment of any tax) of this Part in respect of the election it is deemed by paragraph (a) to make by virtue of its election under this subsection:

(a) the corporation shall be deemed to have made,

(i) immediately before the time immediately before the specified election was made, and

(ii) after any election under this Part that was, at any time before the particular time, made or deemed to have been made, at the time referred to in subparagraph (i),

an election under subsection (1) in respect of either

(iii) an amount referred to in paragraph (a) thereof, if the corporation so claims, or

(iv) in any other case, the amount referred to in paragraph (b) thereof;

(b) any tax paid at the particular time by the corporation as a consequence of its election under this subsection shall be deemed to have been paid by the corporation at the time at which the corporation is deemed by paragraph (a) to have made the election; and

(c) the corporation shall pay interest at a prescribed rate per annum on the amount of the tax described in paragraph (b) from the time the specified election was made to the particular time.

(2) **Payment to controlling corporation of portion of dividend payable out of controlled corporation's tax-paid undistributed surplus** — Where, at any particular time after 1971, a corporation controlled (within the meaning assigned by section 28 of this Act as it read in its application to the 1971 taxation year) by a Canadian corporation throughout the period commencing at the end of 1971 and ending immediately after the particular time, has paid a dividend on shares of its capital stock all or any part of which was payable out of the controlled corporation's tax-paid undistributed surplus on hand, the Minister shall, on application in writing made before 1979 and within 2 years from the end of the calendar year in which the dividend was paid, pay to the controlling corporation an amount in respect of the dividend equal to 15/85 of that proportion of the lesser of

(a) such part of the dividend so paid as was paid out of the controlled corporation's tax-paid undistributed surplus on hand, and

(b) the amount, if any, by which 85/100 of the aggregate of

(i) the amount of the controlled corporation's earnings for a control period that was available for the payment of dividends at the end of its 1971 taxation year (within the meaning assigned by subsection 28(5) of this Act as it read in its application to the 1971 taxation year), and

(ii) all amounts each of which is an amount required by paragraph (4)(c) to be included in computing the controlled corporation's 1971 undistributed income on hand at the particular time

exceeds the aggregate of

(iii) the aggregate of dividends paid or credited by the controlled corporation after 1971 and before the particular time, to the extent that they were payable out of the controlled corporation's tax-paid undistributed surplus on hand, and

(iv) the amount, if any, by which

(A) the aggregate of amounts determined under paragraphs 192(9)(e) to (i) of this Act as it read on March 31, 1977 for the purposes of computing the amount of the controlled corporation's earnings for a control period that was available for payment of dividends at the particular time,

exceeds

(B) the aggregate of amounts determined under paragraphs 192(9)(b) to (d) of this Act as it read on March 31, 1977 for the purpose of computing the amount of the earnings described in clause (A),

that the part of the dividend received by the controlling corporation is of the whole dividend paid at the particular time by the controlled corporation.

(3) **Limitation on payment** — Notwithstanding any other provision of this Part,

(a) in no case shall the Minister pay to a corporation under subsection (2) an amount in excess of 15/85 of the controlling corporation's tax-paid undistributed surplus on hand immediately before the time the Minister is required to make the payment; and

(b) the Minister shall not, at any particular time, pay to a controlling corporation under subsection (2) any amount in respect of a dividend paid to it before that time

(i) if a dividend has become payable by the controlling corporation before the particular time out of its 1971 capital surplus on hand and the amount of that surplus at that time was less than the amount, if any, of the aggregate of amounts included therein, before that time, by virtue of subparagraph 89(1)(l)(iv), or

(ii) if a capital dividend has become payable before the particular time by the controlling corporation and the amount of its capital dividend account (within the meaning assigned by section 89) at the particular time was less than the amount, if any, of the aggregate of amounts included therein, before that time, by virtue of subparagraph 89(1)(b)(ii).

(4) **"1971 undistributed income on hand" defined** — In this Part "1971 undistributed income on hand" of a corporation at any partic-

ular time after 1971 means the amount, if any, by which the aggregate of

(a) the amount that the corporation's undistributed income on hand (within the meaning of this Act as it read in its application to the 1971 taxation year) would be at the end of its 1971 taxation year if

(i) this Act as it so read were read without reference to subparagraph 82(1)(a)(iii) thereof, and

(ii) references in paragraph 82(1)(a) (except clause (vii)(A)) thereof to "1917" were read as references to "1950",

(b) all amounts received by the corporation (other than a specified personal corporation within the meaning assigned by subsection 57(11) of the *Income Tax Application Rules, 1971*) after its 1971 taxation year and before 1972 that would, within the meaning of this Act as it read in its application to the 1971 taxation year, be dividends received or deemed to have been received by it, and

(c) all amounts each of which is an amount in respect of a dividend

(i) received by the corporation after 1971 and before the particular time, and

(ii) in respect of which the Minister was, before the particular time, required by subsection (2) to pay an amount to the corporation,

equal to 100/15 of the amount so required to be paid to the corporation in respect of the dividend,

exceeds the aggregate of

(d) the amount that the corporation's tax-paid undistributed income (within the meaning of this Act as it read in its application to the 1971 taxation year) would be (if this Act as it so read were applicable to the period consisting of that part of the corporation's 1972 taxation year that is before 1972) as of the end of 1971,

(e) the amount that would, if this Act as it so read were applicable to the period consisting of that part of the corporation's 1972 taxation year that is before 1972, be the aggregate of

(i) dividends paid by the corporation after its 1971 taxation year and before 1972, and

(ii) dividends deemed to have been received in that period by its shareholders,

that would be required to be deducted in computing the corporation's undistributed income on hand at the end of 1971,

(f) all amounts on which the corporation has, before the particular time, elected to pay tax under subsection (1), and

(g) the aggregate of amounts each of which is a portion of the dividend paid by the corporation before the particular time that was, by virtue of paragraph 83(1)(c.1), deemed to be a taxable dividend.

(5) **Undistributed income on hand of life insurance corporation** — Notwithstanding subsection (4), a life insurance corporation's 1971 undistributed income on hand at any time after 1971 is the amount, if any, by which the aggregate of

(a) the amount at the credit of its shareholders' account at the end of its 1968 taxation year, and

(b) the amount, if any, by which

(i) the aggregate of its incomes for taxation years beginning with the 1969 taxation year and ending with the 1971 taxation year

exceeds the aggregate of

(ii) each business loss (within the meaning of this Act as it read in its application to the 1971 taxation year) sustained by the corporation in any such year,

(iii) each expense incurred or disbursement made by the corporation during any such year that was not allowed as a deduction in computing income for any of those years under Part I of this Act as it read in its application to the 1971 taxation year, except an expense incurred or disbursement made in respect of the acquisition of property or the repayment of loans or capital,

(iv) each dividend paid by the corporation in any such year on any share of its capital stock, and

(v) each amount on which tax under Part VIII of this Act, as it read in its application to the 1971 taxation year, was payable in respect of the redemption or acquisition by the corporation in any such year of any shares of its capital stock,

exceeds the aggregate of

(c) the amount determined under subsection (4)(d) in respect of the corporation, and

(d) all amounts on which the corporation has, before the particular time, elected to pay tax under this Part.

197. (1) **Payment of tax with election** — An election under this Part is null and void unless, when election was made,

(a) in the case of an election under subsection 196(1) in respect of an amount referred to in paragraph (a) thereof, there was paid to the Receiver General of Canada the amount of the tax that the corporation elected to pay; and

(b) in the case of an election under subsection 196(1) in respect of an amount referred to in paragraph (b) thereof, the corporation estimated the amount of its 1971 undistributed income on hand immediately before that time and there was paid to the Receiver General of Canada an amount, on account of the tax payable under this Part, equal to 15% of the amount so estimated.

(1.1) **Additional tax on assessment, plus interest** — Where a corporation has made an election under subsection 196(1) in respect of an amount referred to in paragraph (b) thereof and the Minister has assessed the tax payable by the corporation as a result of the election, the corporation shall pay forthwith to the Receiver General of Canada the amount, if any, by which that tax payable exceeds amounts previously paid on account of that tax and shall pay interest on that amount at a prescribed rate per annum from the day the election was made until the day of payment.

(1.2) **Penalty** — Subsections 163(2) and (3) are applicable *mutatis mutandis* with respect to an election in respect of an amount referred to in paragraph 196(1)(b) made by a corporation, on the assumptions, for the purposes of subsection 163(2), that the election was a statement made as required by this Act and that the tax payable under this Part with respect to that election was tax payable for a taxation year.

(2) **Assessment of tax** — The Minister shall, with all due dispatch, examine each election made under this Part, assess the tax payable and send a notice of assessment to the corporation.

(2.1) **Consideration of application and disposition** — Where an application has been made by or on behalf of a controlling corporation pursuant to subsection 196(2), the Minister shall

(a) consider the application;

(b) determine the amount, if any, payable to the corporation; and

(c) send to the corporation a notice of payment and any amount payable to it, or a notice that no amount is payable to it.

(3) **Provisions applicable to Part** — Paragraphs 56(1)(l) and 60(o), subsections 152(4) and (5), sections 165 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part and for greater certainty, those provisions as they relate to an assessment or reassessment and to assessing tax and reassessing tax, are applicable, *mutatis mutandis*, to a determination or redetermination and to determining and redetermining amounts under this Part.

Prior to the repeal of s. 196 (see above) subsec. 196(2) was substituted, para. 196(4)(g) added by 1977-78, c. 1, subsecs. 89(1), (2), applicable after March 31, 1977 and before 1979. Subsec. 196(2) formerly read:

(2) **Payment to controlling corporation of portion of dividend payable out of controlled corporation's tax-paid undistributed surplus** — Where, at any particular time after 1971, a corporation controlled (within the meaning assigned by section 28 of this Act as it read in its application to the 1971 taxation year) by a Canadian corporation throughout the period commencing at the end of 1971 and ending immediately after the particular time, has paid a dividend on shares of its capital stock all or any part of which was payable out of the controlled corporation's tax-paid undistributed surplus on hand, the Minister shall, upon application in writing made within 2 years from the end of the calendar year in which the dividend was

paid, pay to the controlling corporation an amount in respect of the dividend equal to 15/85 of that proportion of the lesser of

(a) such part of the dividend so paid as was paid out of the controlled corporation's tax-paid undistributed surplus on hand, and

(b) the amount, if any, by which 85/100 of the aggregate of

(i) the amount of the controlled corporation's earnings for a control period that was available for the payment of dividends at the end of its 1971 taxation year (within the meaning assigned by subsection 28(5) of this Act as it read in its application to the 1971 taxation year), and

(ii) all amounts each of which is an amount required by paragraph (4)(c) to be included in computing the controlled corporation's 1971 undistributed income on hand at the particular time

exceeds the aggregate of

(iii) the aggregate of dividends paid or credited by the controlled corporation after 1971 and before the particular time, to the extent that they were payable out of the controlled corporation's tax-paid undistributed surplus on hand, and

(iv) the amount, if any, by which

(A) the aggregate of amounts determined under paragraphs 192(9)(e) to (i) for the purposes of computing the amount of the controlled corporation's earnings for a control period that was available for payment of dividends at the particular time,

exceeds

(B) the aggregate of amounts determined under paragraphs 192(9)(b) to (d) for the purpose of computing the amount of the earnings described in clause (A),

that the part of the dividend received by the controlling corporation is of the whole dividend paid at the particular time by the controlled corporation.

Subsec. 197(2.1) added, subsec. 197(3) substituted by 1976-77, c. 4, applicable to assessments and reassessments made, to assessing tax and reassessing tax, to determinations and redeterminations made and to determining and redetermining amounts after February 24, 1977.

Subsec. 196(1.1) added applicable March 13, 1975; para. 196(4)(b) substituted to add "(other than a specified personal corporation within the meaning assigned by subsection 57(11) of the *Income Tax Application Rules, 1971*)" by 1974-75-76, c. 26, subsecs. 112(1), (2), applicable to the calculation of a corporation's 1971 undistributed income on hand after May 6, 1974.

Subsecs. 196(1), (3), 197(1), all that portion of subsec. 196(2) preceding para. (a) substituted; subsecs. 197(1.1), (1.2) added by 1973-74, c. 14, ss. 63, 64, applicable to 1972 *et seq.*

Election under subsection 196(1.1): 1977-78, c. 32, s. 43 provides:

43. For purposes of an election under subsection 196(1.1) of the said Act, as repealed by section 88 of chapter 1 of the Statutes of Canada, 1977-78 in respect of dividends paid or received after December 31, 1978 except as therein provided, where there has been an amalgamation of two or more corporations within the meaning of section 87, the new corporation shall be deemed to be the same corporation as, and a continuation of, each of its predecessor corporations.

Definitions [Part IX]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

Part X — Taxes on Deferred Profit Sharing Plans and Revoked Plans

198. (1) Tax on non-qualified investments and use of assets as security — Every trust governed by a deferred profit sharing plan or revoked plan that

(a) acquires a non-qualified investment, or

(b) uses or permits to be used any property of the trust as security for a loan,

shall pay a tax equal to the fair market value of

(c) the non-qualified investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used.

Related Provisions: 147(14) — DPSP — revocation of registration; 198(4), (5) — Refund of tax on disposition of investment or release of security; 199–204 — Taxes on deferred profit sharing plans; 207.1(2) — Tax payable while non-qualifying investment held by DPSP; 259(1) — Proportional holdings in trust property.

Pre-RSC History: All that portion of subsec. 198(1) following para. (b) substituted by 1979, c. 5, s. 57, applicable in respect of property acquired, or used as security, after November 16, 1978. That portion formerly read:

shall pay a tax equal to the cost to the trust of the non-qualified investment or the fair market value; at the time the property is used as security, of the property so used, as the case may be.

(2) Payment of tax — A trustee of a trust liable to pay tax under subsection (1) shall remit the amount of the tax to the Receiver General within 10 days of the day on which the non-qualified investment is acquired or the property is used as security for a loan, as the case may be.

(3) Trustee liable for tax — Where a trustee of a trust liable to pay tax under subsection (1) does not remit to the Receiver General the amount of the tax within the time specified in subsection (2), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

(4) Refund of tax on disposition of non-qualified investment — Where a trust disposes of a property that, when acquired, was a non-qualified investment, the trust is, on application in accordance with section 202, entitled to a refund of an amount equal to the lesser of

(a) the amount of the tax imposed under this section as a result of the acquisition of the property, and

(b) the proceeds of disposition of the property.

Related Provisions: 198(6) — Special rules re life insurance policies; 200 — Distribution deemed disposition; 202(4) — Application to certain provisions of Part I; 203 — Application to other taxes.

Pre-RSC History: Subsec. 198(4) substituted by 1977-78, c. 1, s. 90. Subsec. 198(4) formerly read:

(4) Where a trust disposes of a non-qualified investment the acquisition of which resulted in the imposition of tax under this section, the trust is, upon application in accordance with section 202, entitled to a refund of an amount equal to the lesser of

(a) the amount of the tax imposed under this section as a result of the acquisition, and

(b) the proceeds of disposition of the non-qualified investment.

(5) Refund of tax on recovery of property given as security — Where a loan, for which a trust has used or permitted to be used trust property as security, ceases to be extant, the trust is, on application in accordance with section 202, entitled to a refund of an amount equal to the amount remaining, if any, when

(a) the net loss (exclusive of payments by the trust as or on account of interest) sustained by the trust in consequence of its using or permitting to be used the property as security for the loan and not as a result of a change in the fair market value of the property

is deducted from

(b) the tax imposed under this section in consequence of the trust's using or permitting to be used the property as security for the loan.

Related Provisions: 202(4) — Application of certain provisions of Part I; 203 — Application to other taxes.

(6) Special rules relating to life insurance policies — For the purposes of this section,

(a) the acquisition of an interest in or the payment of an amount under a life insurance policy shall be deemed not to be the acquisition of a non-qualified investment, and

(b) the disposition of an interest in a life insurance policy shall be deemed not to be the disposition of a non-qualified investment,

except that where a trust governed by a deferred profit sharing plan or revoked plan makes a payment under or to acquire an interest in a life insurance policy, other than a life insurance policy under which

(c) the trust is, or by virtue of the payment about to become, the only person entitled to any rights or benefits under the policy (other than the rights or benefits of the insurer),

(d) the cash surrender value of the policy (exclusive of accumulated dividends) is or will be, at or before the end of the year in which the insured person attains 69 years of age, if all premiums under the policy are paid, not less than the maximum total amount (exclusive of accumulated dividends) payable by the insurer under the policy, and

(e) the total of the premiums payable in any year under the policy is not greater than the total of the amounts that, if the annual premiums had been payable in monthly instalments, would have been payable as such instalments in the 12 months commencing with the date the policy was issued,

the making of the payment shall be deemed to be the acquisition of a non-qualified investment at a cost equal to the amount of the payment.

Related Provisions: 139.1(13) — No application to conversion benefit on demutualization of insurer; 146(11) — RRSP — life insurance policies.

History: Para. 198(6)(d) amended by 1997, c. 25, s. 54, applicable after 1996, except that

(a) it does not apply to a policy held by a trust where the trust acquired the policy before 1997;

(b) it does not apply to a policy where the insured person attained 70 years of age before 1997; and

(c) in applying para. (d) to a policy where the insured person attained 69 years of age in 1996, the reference in that para. to "69 years of age" shall be read as "70 years of age".

Para. (d) formerly read:

(d) the cash surrender value of the policy (exclusive of accumulated dividends) is or will be, at a time before the 71st anniversary of the birth of the insured person, if all premiums under the policy are paid, not less than the maximum total amount (exclusive of accumulated dividends) payable by the insurer under the policy, and

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs.

(6.1) Idem — A life insurance policy giving an option to the policyholder to receive annuity payments that otherwise complies with paragraph (6)(d) shall be deemed,

(a) where the option has not been exercised, to comply with that paragraph; and

(b) where at a particular time the option is exercised, to have been disposed of at that time for an amount equal to the cash surrender value of the policy immediately before that time, and an annuity contract shall be deemed to have been acquired at that time at a cost equal to that amount.

Pre-RSC History: Subsec. 198(6.1) added by 1974-75-76, c. 26, s. 113, applicable to 1973 *et seq.*

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs.

(7) Idem — Notwithstanding subsection (6), where the total of all payments made in a year by a trust governed by a deferred profit sharing plan or revoked plan under or to acquire interests in life insurance policies in respect of which the trust is the only person entitled to any rights or benefits (other than the rights or benefits of the insurer) does not exceed an amount equal to 25% of the total of all amounts paid by employers to the trust in the year under the plan for the benefit of beneficiaries thereunder, the making of the payments under or to acquire interests in such policies shall be deemed, for the purposes of this section, not to be the acquisition of non-qualified investments.

Interpretation Bulletins: IT-408R: Life insurance policies as investments of RRSPs and DPSPs.

(8) Idem — Where a trust surrenders, cancels, assigns or otherwise disposes of its interest in a life insurance policy,

(a) the trust shall be deemed, for the purposes of subsection (4), to have disposed of each non-qualified investment that, by virtue of payments under the policy, it was deemed by subsection (6) to have acquired; and

(b) the proceeds of the disposition shall be deemed to be the amount, if any, by which

(i) the amount received by the trust in consequence of the surrender, cancellation, assignment or other disposition of its interest in the policy

exceeds the total of

(ii) each amount paid by the trust under or to acquire an interest in the policy, the payment of which is deemed by this section not to be the acquisition of a non-qualified investment, and

(iii) the cash surrender value on December 21, 1966 of the interest of the trust in the policy on that date.

Related Provisions: 146(11) — RRSP — life insurance policies; 202(5) — Interest; 204 — "Qualified investment".

Definitions [s. 198]: "amount", "annuity" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 198(6)(b), 200; "dividend", "employer", "insurer" — 248(1); "life insurance policy" — 138(12), 248(1); "non-qualified investment" — 204; "person", "property" — 248(1); "revoked plan" — 204; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 198]: 77-1R4: Deferred profit sharing plans.

199. (1) Tax on initial non-qualified investments not disposed of — Every trust governed by a deferred profit sharing plan or revoked plan shall pay a tax

(a) for 1967, equal to the amount, if any, by which 20% of the initial base of the trust exceeds the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1968;

(b) for 1968, equal to the amount, if any, by which 40% of the initial base of the trust exceeds the total of

(i) the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1969, and

(ii) the tax payable by the trust determined under paragraph (a);

(c) for 1969, equal to the amount, if any, by which 60% of the initial base of the trust exceeds the total of

(i) the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1970, and

(ii) the tax payable by the trust determined under paragraphs (a) and (b); and

(d) for 1970, equal to the amount, if any, by which 100% of the initial base of the trust exceeds the total of

(i) the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before 1971, and

(ii) the tax payable by the trust determined under paragraphs (a), (b) and (c).

Related Provisions: 201 — Tax on forfeitures.

(2) Refund — Where at the end of a year,

(a) the total of all taxes paid by a trust under subsection (1)

exceeds

(b) the total of

(i) all refunds made to the trust under this subsection, and

(ii) the amount, if any, by which the initial base of the trust exceeds the proceeds of disposition of its initial non-qualified investments disposed of after December 21, 1966 and before the end of the year,

the trust is, on application in accordance with section 202, entitled to a refund equal to the amount by which the total described in paragraph (a) exceeds the total described in paragraph (b).

Related Provisions: 201 — Tax on forfeitures; 202(2) — Returns and payment of estimated tax; 202(4) — Application of certain provisions of Part I; 203 — Application to other taxes.

Definitions [s. 199]: "amount" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "disposition" — 198(6)(b), 200; "initial base" — 204; "initial non-qualified investment" — 204; "revoked plan" — 204; "trust" — 104(1), 248(1), (3).

Information Circulars [s. 199]: 77-1R4: Deferred profit sharing plans.

200. Distribution deemed disposition — For the purposes of this Part, a distribution by a trust of a non-qualified investment to a beneficiary of the trust shall be deemed to be a disposition of that non-qualified investment and the proceeds of disposition of that non-qualified investment shall be deemed to be its fair market value at the time of the distribution.

Definitions [s. 200]: "non-qualified investment" — 204; "trust" — 104(1), 248(1), (3).

201. Tax where inadequate consideration on purchase or sale — Every trust governed by a deferred profit sharing plan or a revoked plan shall, for each calendar year after 1990, pay a tax equal to 50% of the total of all amounts each of which is, by reason of subsection 147(18), an amount taxable under this section for the year.

Pre-RSC History: S. 201 substituted by 1990, c. 35, s. 20, applicable with respect to tax payable for 1991 *et seq*. S. 201 formerly read:

201. (1) **Tax on forfeitures** — Every trust governed by a deferred profit sharing plan or revoked plan shall, for each year after 1965, pay a tax equal to 50% of the amount, if any, by which

(a) the amount forfeited in the trust in the year

exceeds the aggregate of

(b) the amount or value of funds or property of the trust appropriated to or for the benefit of the employer in the year and included in his income by virtue of subsection 147(13), and

(c) the aggregate of amounts determined under subsection (2) for the year in respect of each employee who was a beneficiary under the plan.

(2) **Idem** — The amount determined for the purposes of paragraph (1)(c) for a year in respect of an employee who was a beneficiary under a deferred profit sharing plan or revoked plan is the lesser of

(a) such portion of the amount forfeited in the trust in the year as was reallocated in the year or within 90 days after the end of the year to that employee, and

(b) the amount, if any, by which

(i) the product obtained when

(A) $2,000 is multiplied by the number of years before 1972, and

(B) $3,000 is multiplied by the number of years after 1971 and before 1976, and

(C) $4,000 is multiplied by the number of years after 1975

in which the employee was a beneficiary under the plan or under any antecedent deferred profit sharing plan that governed a trust to which payments were made under the antecedent plan for the benefit of beneficiaries thereunder by the employee's employer,

exceeds the aggregate of

(ii) amounts deducted under subsection 147(8) in respect of the employee in computing the income of the employee's employer for the taxation year ending in or coincidentally with the year or for a previous taxation year,

(iii) amounts determined in respect of the employee for the purposes of paragraph (1)(c) for years preceding the year, and

(iv) amounts forfeited in the trust before December 21, 1966 to the extent that they have been reallocated to the employee on or before the last day of the year for which the determination is made.

(3) **Amount forfeited in a trust** — In this section, "amount forfeited" in a trust governed by a deferred profit sharing plan or revoked plan in any period means the aggregate of each amount in respect of a person who ceased in the period to be a beneficiary under the plan,

(a) that at any time before the end of the period was allocated or reallocated contingently or otherwise, by the trust to that person, and

(b) that did not vest irrevocably in that person at or before the time at which he ceased to be a beneficiary under the plan.

(4) **Deemed allocation** — For the purposes of subsection (3), an amount paid whether before, on or after December 21, 1966, under a deferred profit sharing plan by an employer to a trustee under the plan in respect of an employee shall be deemed to have been allocated by the trustee to that employee at the time it was so paid.

Cl. 201(2)(b)(i)(B) substituted, (C) added by 1976-77, c. 4, s. 68.

Definitions [s. 201]: "amount" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "deferred profit sharing plan" — 147(1), 248(1); "revoked plan" — 204; "trust" — 104(1), 248(1), (3).

Information Circulars: 77-1R4: Deferred profit sharing plans.

202. (1) Returns and payment of estimated tax — Within 90 days from the end of each year after 1965, a trustee of every trust governed by a deferred profit sharing plan or revoked plan shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the trust under this Part for the year;

(c) estimate in the return the amount of any refund to which the trust is entitled under this Part for the year; and

(d) pay to the Receiver General the unpaid balance of the trust's tax for the year minus any refund to which it is entitled under this Part, or apply in the return for any amount owing to it.

Related Provisions: 150.1(5) — Electronic filing.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Forms: T3D: Income tax return for DPSP or revoked DPSP.

(2) Consideration of application for refund — Where a trustee of a trust has made application for an amount owing to it pursuant to subsection (1), the Minister shall

(a) consider the application;

(b) determine the amount of any refund; and

(c) send to the trustee a notice of refund and any amount owing to the trust, or a notice that no refund is payable.

Related Provisions: 198(4) — Refund of tax on disposition of non-qualified investment; 198(5) — Refund of tax on recovery of property given as security.

(3) Provisions applicable to Part — Subsection 150(2), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require and, for the purposes of the application of those provisions to this Part, a notice of refund under this section shall be deemed to be a notice of assessment.

Pre-RSC History: Subsec. 202(3) substituted by 1986, c. 6, s. 105. Subsec. 202(3) formerly read:

(3) Application of certain provisions of Part I — Subsection 150(2), section 152, section 158, subsection 161(1) and sections 162 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part and for the purposes of the application of those sections to this Part, a notice of refund under this section shall be deemed to be a notice of assessment.

(4) Provisions applicable to refunds — Subsections 164(3) to (4) are applicable, with such modifications as the circumstances require, to refunds of tax under subsection 198(4) or (5) or 199(2).

Related Provisions: 198 — Tax on non-qualified investments and use of assets as security; 199 — Tax on initial non-qualified investments not disposed of.

Pre-RSC History: Subsec. 202(4) substituted by 1984, c. 1, s. 96, applicable with respect to interest paid or applied after April 19, 1983. Subsec. 202(4) formerly read:

(4) Idem — Subsections 164(3) and (4) are applicable *mutatis mutandis* to refunds of tax under subsection 198(4) or (5) or under subsection 199(2).

(5) Interest — In addition to the interest payable under subsection 161(1), where a taxpayer is required by section 198 to pay a tax and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the amount was required to be paid to the day of payment or to the beginning of the period in respect of which the taxpayer is required by subsection 161(1) to pay interest thereon, whichever is earlier.

Related Provisions: 202(6) — Deemed payment of tax; 221.1 — Application of interest where legislation retroactive; 248(11) — Interest compounded daily.

Pre-RSC History: Subsec. 202(5) substituted by 1985, c. 45, s. 107. Subsec. 202(5) formerly read:

(5) In addition to the interest payable under subsection 161(1), where a taxpayer, being required by section 198 to pay a tax, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at a prescribed rate per annum from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he becomes liable to pay interest thereon under subsection 161(1), whichever is earlier.

Regulations: 4301(a) (prescribed rate of interest).

I.T. Application Rules: 62(2) (subsec. 202(5) applies to interest payable in respect of any period after December 23, 1971).

(6) Deemed payment of tax — For the purposes of subsections 161(1) and 202(5), where a trust is liable to pay tax under this Part on the acquisition by it of a non-qualified investment or on the use of its property as security for a loan, it shall, except to the extent that the tax has previously been paid, be deemed to have paid tax on the date on which the property is disposed of or on which the loan ceases to be extant, as the case may be, in an amount equal to the refund referred to in subsection 198(4) in respect of that property or subsection 198(5) in respect of the loan, as the case may be.

Related Provisions: 161(1) — Interest; 198(4) — Refund of tax on disposition of non-qualified investment; 198(5) — Refund of tax on recovery of property given as security.

Pre-RSC History: Subsec. 202(6) added by 1977-78, c. 32, s. 44, applicable to 1972 *et seq.*

Definitions [s. 202]: "amount", "assessment" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "Minister" — 248(1); "non-qualifying investment" — 204; "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "revoked plan" — 204; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

203. Application to other taxes — Instead of making a refund to which a trust is entitled under subsection 198(4) or (5) or 199(2), the Minister may, where the trust is liable or about to become liable to make another payment under this Act, apply the amount of the refund or any part thereof to that other liability and notify a trustee of the trust of that action.

Related Provisions: 164(2) — Set-off of Part I refund; 224.1 — Recovery by set-off.

Definitions [s. 203]: "amount", "Minister" — 248(1); "trust" — 104(1), 248(1), (3).

204. Definitions — In this Part,

"equity share" means

(a) a share, other than an excluded share or a non-participating share, the owner of which has, as owner thereof, a right

(i) to a dividend, and

(ii) to a part of the surplus of the corporation after repayment of capital and payment of dividend arrears on the redemption of the share, a reduction of the capital of the corporation or the winding-up of the corporation,

at least as great, in any event, as the right of the owner of any other share, other than a non-participating share, of the corporation, when the magnitude of the right in each case is expressed as a rate based on the paid-up capital value of the share to which the right relates, or

(b) a share, other than an excluded share or a non-participating share, the owner of which has, as owner thereof, a right

(i) to a dividend, after a dividend at a rate not in excess of 12% per annum of the paid-up capital value of each share has been paid to the owners of shares of a class other than the class to which that share belongs, and

(ii) to a part of the surplus of the corporation after repayment of capital and payment of dividend arrears on the redemption of the share, a reduction of the capital of the corporation or the winding-up of the corporation, after a payment of a part of the surplus at a rate not in excess of 10% of the paid-up capital value of each share has been made to the owners of shares of a class other than the class to which that share belongs,

at least as great, in any event, as the right of the owner of any other share, other than a non-participating share, of the corporation, when the magnitude of the right in each case is expressed as a rate based on the paid-up capital value of the share to which the right relates;

"excluded share" means each share of the capital stock of a private corporation where

(a) the paid-up capital of the corporation that is represented by all its issued and outstanding shares that would, but for this definition, be equity shares is less than 50% of the paid-up capital of the corporation that is represented by all its issued and outstanding shares other than non-participating shares, or

(b) a non-participating share of the corporation is issued and outstanding and the owner of which has, as owner thereof, a right to a dividend

(i) at a fixed annual rate in excess of 12%, or

(ii) at an annual rate not in excess of a fixed maximum annual rate, if the fixed maximum annual rate is in excess of 12%,

when the right to the dividend is expressed as a rate based on the paid-up capital value of the share to which the right relates;

"initial base" of a trust means the total of the values of all initial non-qualified investments held by the trust on December 21, 1966 when each such investment is valued at the lower of

(a) its cost to the trust, and

(b) its fair market value on December 21, 1966;

"initial non-qualified investment" of a trust means an investment held by the trust on December 21, 1966 that was, on that date, a non-qualified investment but does not include

(a) any interest in a life insurance policy, or

(b) an equity share that would be a qualified investment if the date of acquisition of the share were December 21, 1966;

"non-participating share" means

(a) in the case of a private corporation, a share the owner of which is not entitled to receive, as owner thereof, any dividend, other than a dividend, whether cumulative or not,

(i) at a fixed annual rate or amount, or

(ii) at an annual rate or amount not in excess of a fixed annual rate or amount, and

(b) in the case of a corporation other than a private corporation, any share other than a common share;

"non-qualified investment" means property that is not a qualified investment for a trust governed by a deferred profit sharing plan or revoked plan within the meaning of the definition "qualified investment" in this subsection;

Information Circulars: 77-1R4: Deferred profit sharing plans.

"paid-up capital value" of a share means the amount determined by the formula

$$\frac{A}{B}$$

where

A is the paid-up capital of the corporation that is represented by the shares of the class to which that share belongs, and

B is the number of shares of that class that are in fact issued and outstanding;

"qualified investment" for a trust governed by a deferred profit sharing plan or revoked plan means

(a) money that is legal tender in Canada, other than money the fair market value of which exceeds its stated value as legal tender, and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a bank) of such money standing to the credit of the trust,

(b) bonds, debentures, notes, mortgages, or similar obligations described in clause 212(1)(b)(ii)(C), whether issued before, on or after April 15, 1966,

(c) bonds, debentures, notes or similar obligations of a corporation the shares of which are listed on a prescribed stock exchange in Canada, other than those described in paragraph 147(2)(c),

(d) shares listed on a prescribed stock exchange in Canada,

(e) equity shares of a corporation by which, before the date of acquisition by the trust of the shares, payments have been made in trust to a trustee under the plan for the benefit of beneficiaries thereunder, if the shares are of a class in respect of which

(i) there is no restriction on their transferability, and

(ii) in each of 4 taxation years of the corporation in the period of the corporation's 5 consecutive taxation years that ended less than 12 months before the date of acquisition of the shares by the trust, and in the corporation's last taxation year in that period, the corporation

(A) paid a dividend on each share of the class of an amount not less than 4% of the cost per share of the shares to the trust, or

(B) had earnings attributable to the shares of the class of an amount not less than the amount obtained when 4% of the cost per share to the trust of the shares is multiplied by the total number of shares of the class that were outstanding immediately after the acquisition,

(f) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province,

(g) investment contracts described in subparagraph (b)(ii) of the definition "retirement savings plan" in subsection 146(1) and issued by a corporation approved by the Governor in Council for the purposes of that subparagraph,

(h) shares listed on a prescribed stock exchange in a country other than Canada, and

(i) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 132.2(1)(k) — Where share ceases to be qualified investment due to mutual fund reorganization; 146(1)"qualified investment"(a) — Certain investments in 204"qualified investment" are qualified investments for RRSPs; 146.3(1)"qualified investment"(a) — Certain investments in 204"qualified investment" are qualified investments for RRIFs; 248(1)"qualifying environmental trust"(e) — Trust must acquire only certain qualified investments.

Regulations: 221 (information return by issuer of qualified investment); 3200, 3201 (prescribed stock exchanges; but see also ITA 87(10)); 4900(1)–(3), (7), (11), 4901(2) (investments prescribed as qualified investments).

Interpretation Bulletins: IT-320R2: RRSPs — qualified investments.

Information Circulars: 77-1R4: Deferred profit sharing plans.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"revoked plan" means a deferred profit sharing plan the registration of which has been revoked by the Minister pursuant to subsection 147(14) or (14.1).

Pre-RSC History [s. 204]: *The definition "equity share" was para. 204(a); "excluded share", 204(a.1); "initial base", 204(b); "initial non-qualified investment", 204(c); "non-participating share", 204(a.2); "non-qualified investment, 204(d); "paid-up capital value", 204(a.3); "qualified investment", 204(e); "revoked plan", 204(f). The pre-R.S.C. version of the definition "paid-up capital value" read:*

(a.3) "paid-up capital value" — "paid-up capital value" of a share means an amount equal to the paid-up capital of the corporation that is represented by the shares of the class to which that share belongs divided by the number of shares of that class that are in fact issued and outstanding;

Subpara. 204(e)(i) amended by 1992, c. 1, Sch. V, s. 20, to substitute "a bank" for "a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies", applicable from February 28, 1992.

Paras. 204(a), (f) substituted, (a.1)–(a.3) added by 1980-81-82-83, c. 140, subsecs. 113(1), (2), paras. 204(a)–(a.3) applicable after November 12, 1981. Paras. 204(a), (f) formerly read:

(a) "equity share" means an equity share within the meaning of section 257;

. . . . .

(f) "revoked plan" means a deferred profit sharing plan the registration of which has been revoked by the Minister pursuant to subsection 147(14)

Subpara. 204(e)(i) substituted, subpara. 204(e)(v) repealed, by 1980-81-82-83, c. 48, subsecs. 93(1), (2), applicable as to subpara. (i) with respect to money acquired and deposits held after December 11, 1979 and as to subpara. (v) to 1981 *et seq.* Subparas. 204(e)(i), (v) formerly read:

(i) money, including balances standing to the trust's credit in the records of

(A) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies, or

(B) a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

. . . . .

(v) shares of an investment corporation,

Subpara. 204(e)(ix) substituted by 1974-75-76, c. 26, s. 114, applicable to 1972 *et seq.*

Definitions [s. 204]: "amount" — 248(1); "Canada" — 255; "common share" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "equity share", "excluded share", "initial non-qualified investment" — 204; "investment corporation" — 130(3), 248(1); "life insurance policy" — 138(12), 248(1); "listed" — 87(10) "Minister" — 248(1); "non-participating share", "non-qualified investment", "paid-up capital value" — 204; "prescribed" — 248(1); "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified investment" — 204; "regulation" — 248(1); "revoked plan" — 204; "share" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

PART X.1 — TAX IN RESPECT OF OVER-CONTRIBUTIONS TO DEFERRED INCOME PLANS

204.1 (1) Tax payable by individuals [before 1991] — Where, at the end of any month after May, 1976, an individual has an excess amount for a year in respect of registered retirement savings plans, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of that portion of the total of all those excess amounts that has not been paid by those plans to the individual before the end of that month.

Related Provisions: 18(1)(t) — Tax is non-deductible; 146(2)(c.1) — RRSP must permit payment to taxpayer to reduce overcontributions; 204.1(2.1) — Tax payable by individuals — contributions after 1990; 204.3 — Return and payment of tax.

Remission Orders: *Certain Taxpayers Remission Order, 1998-2*, P.C. 1998-2092, s. 2 (judges in Quebec who made contributions in 1989 or 1990).

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

(2) Amount deemed repaid — For the purposes of subsection (1), where an amount in respect of a plan has been included in computing an individual's income pursuant to paragraph 146(12)(b), that amount shall be deemed to have been paid to the individual by the plan at the time referred to in that paragraph.

(2.1) Tax payable by individuals — contributions after 1990 — Where, at the end of any month after December, 1990, an individual has a cumulative excess amount in respect of registered retirement savings plans, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of that cumulative excess amount.

Related Provisions: 18(1)(t) — Tax is non-deductible; 146(2)(c.1) — RRSP must permit payment to taxpayer to reduce overcontributions; 204.1(4) — Waiver of tax by CCRA; 204.3 — Return and payment of tax.

Pre-RSC History: Subsec. 204.1(2.1) added by 1990, c. 35, subsec. 21(1), applicable after 1990.

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

Forms: T4040: RRSPs and other registered plans for retirement [guide].

(3) Tax payable by deferred profit sharing plan — Where, at the end of any month after May, 1976, a trust governed by a deferred profit sharing plan has an excess amount, the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the excess amount.

Related Provisions: 204.2(4) — Definition of "excess amount" for a DPSP.

(4) Waiver of tax — Where an individual would, but for this subsection, be required to pay a tax under subsection (1) or (2.1) in respect of a month and the individual establishes to the satisfaction of the Minister that

(a) the excess amount or cumulative excess amount on which the tax is based arose as a consequence of reasonable error, and

(b) reasonable steps are being taken to eliminate the excess,

the Minister may waive the tax.

Pre-RSC History: Subsec. 204.1(4) added by 1990, c. 35, subsec. 21(2).

Definitions [s. 204.1]: "amount" — 248(1); "cumulative excess amount" — 204.2(1.1); "deferred profit sharing plan" — 147(1), 248(1); "excess amount" — 204.2(1), (4); "individual", "Minister" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "trust" — 104(1), 248(1), (3).

Interpretation Bulletins [s. 204.1]: IT-124R6: Contributions to registered retirement savings plans.

204.2 (1) Definition of "excess amount for a year in respect of registered retirement savings plans" — "Excess amount for a year in respect of registered retirement savings plans" of an individual at a particular time means,

(a) where the excess amount is for a year after 1990, nil; and

(b) where the excess amount is for a year before 1991, the amount, if any, by which the total of

(i) all amounts paid by the individual to such plans under which the individual or the individual's spouse is the annuitant, other than amounts

(A) to which paragraph 60(j), (j.01), (j.1), (j.2) or (l) applies or would, if the individual were resident in Canada throughout the year, apply, or

(B) transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7), and

(ii) all gifts made to such a plan under which the individual is the annuitant, other than gifts made thereto by the individual's spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

in the year and before the particular time, exceeds the total of

(iii) all amounts that may be deducted in computing the individual's income for the immediately preceding year in respect of those payments, and

(iv) the greater of $5,500 and the amount that may be deducted in computing the individual's income for the year in respect of those payments.

Related Provisions: 128(2)(d), (d.2) — Where individual bankrupt; 204.1(1) — Tax payable by individuals; 204.2(3) — When retirement savings plan deemed to be a registered plan; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 204.2(1) substituted by 1990, c. 35, subsec. 22(1), applicable with respect to payments made to RRSPs after 1987, except that in its application with respect to such payments made in 1988,

(a) cl. 204.2(1)(b)(i)(A) shall be read without reference to "(j.2)", and

(b) cl. 204.2(1)(b)(i)(B) shall be read as follows:

"(B) transferred to the plan in accordance with subsection 146(16), and"

Subsec. 204.2(1) formerly read:

204.2 (1) "Excess amount for a year in respect of registered retirement savings plans" defined — "Excess amount for a year in respect of registered retirement savings plans" of an individual at a particular time means the amount by which the aggregate of

(a) all amounts paid by him to such plans under which he or his spouse is the annuitant, other than amounts to which paragraph 60(j), (j.1), (l) or subsection 146(16) applies or would, if the individual were resident in Canada throughout the year, apply, and

(b) all gifts made to such a plan under which he is the annuitant, other than gifts made thereto by his spouse,

in the year and before the particular time, exceeds the aggregate of

(c) all amounts that the taxpayer is entitled to deduct in computing his income for the immediately preceding year in respect of those payments, and

(d) the greater of $5,500 and the amount the taxpayer is entitled to deduct in computing his income for the year in respect of those payments.

Para. 204.2(1)(d) substituted for paras. (d), (e) by 1986, c. 55, s. 71, applicable with respect to payments made to a registered retirement savings plan after 1985. Paras. 204.2(1)(d), (e) formerly read:

(d) $5,500, and

(e) the amount that the taxpayer would be entitled to deduct in computing his income for the year in respect of those payments by virtue of subsection 146(5.3) if section 146 were read without reference to subsection (5.5) thereof.

Para. 204.2(1)(e) added by 1984, c. 45, s. 84, applicable to 1984 *et seq.*

Paras. 204.2(1)(a), (4)(a) substituted by 1980-81-82-83, c. 140, subsecs. 114(1), (2), applicable, as to para. 204.2(1)(a), to 1981 *et seq.*, and, as to para. 204.2(4)(a), to months ending after May, 1976. Paras. 204.2(1)(a), (4)(a) formerly read:

(a) all amounts paid by him to such plans under which he or his spouse is the annuitant, other than amounts to which paragraph 60(j) or (l) or subsection 146(16) have application, and

. . . . .

(a) the aggregate of contributions made after May 25, 1976 by an employee who is or is about to become a member of the plan, to the extent that his contributions exceed $5,500 in a year, less any such contributions that have been returned to the employee before that particular time, and

All that portion of subsec. 204.2(1) following para. (b) substituted by 1979, c. 5, s. 58, applicable to 1977 *et seq.* That portion formerly read:

in the year, after May 25, 1976 and before the particular time, exceeds the greater of

(c) the aggregate of amounts that the taxpayer is entitled to deduct in computing his income for that year and the immediately preceding year in respect of those payments, and

(d) $5,500.

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

Forms: T1-OVP: Individual income tax return for RRSP excess contributions; T1-OVP Sched.: Calculating the amount of RRSP contributions made before 1991 that are subject to tax.

(1.1) Cumulative excess amount in respect of RRSPs — The cumulative excess amount of an individual in respect of registered retirement savings plans at any time in a taxation year is the amount, if any, by which

(a) the amount of the individual's undeducted RRSP premiums at that time

exceeds

(b) the amount determined by the formula

$$A + B + R + C + D + E$$

where

A is the individual's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which

(i) the lesser of the RRSP dollar limit for the year and 18% of the individual's earned income

(as defined in subsection 146(1)) for the preceding taxation year

exceeds the total of all amounts each of which is

(ii) the individual's pension adjustment for the preceding taxation year in respect of an employer, or

(iii) a prescribed amount in respect of the individual for the year,

C is, where the individual attained 18 years of age in a preceding taxation year, $2,000, and in any other case, nil,

D is the group RRSP amount in respect of the individual at that time,

E is, where the individual attained 18 years of age before 1995, the individual's transitional amount at that time, and in any other case, nil, and

R is the individual's total pension adjustment reversal for the year.

Related Provisions: 204.1(2.1) — Tax payable by individuals — Contributions after 1990; 204.2(1.2) — Undeducted RRSP premiums; 204.2(1.3) — Group RRSP amount; 204.2(1.5) — Transitional amount.

History: The formula in para. 204.2(1.1)(b) amended, the description of R added, by 1998, c. 19, subsecs. 49(1), (2), applicable to 1998 *et seq.* The formula in para. 204.2(1.1)(b) formerly read:

$$A + B + C + D + E$$

Para. 204.2(1.1)(b) amended by 1996, c. 21, subsec. 51(1), applicable to 1996 *et seq.* Para. (b) formerly read:

(b) the amount determined by the formula

$$A + B - C + M$$

where

A is the individual's unused RRSP deduction room at the end of the immediately preceding taxation year,

B is the amount, if any, by which the lesser of the RRSP dollar limit for the year and 18% of the individual's earned income (within the meaning assigned by subsection 146(1)) for the immediately preceding taxation year exceeds the total of all amounts each of which is the individual's pension adjustment for the immediately preceding taxation year in respect of an employer or a prescribed amount in respect of the taxpayer for the year,

C is the individual's net past service pension adjustment, at that time, for the year, and

M is, where the individual attained 18 years of age in a preceding taxation year, $8,000, and otherwise, nil.

Regulations: 8308(2), 8308.2, 8308.4(2), 8309 (prescribed amounts for "B").

Interpretation Bulletins: IT-307R3: Spousal registered retirement savings plans.

Advance Tax Rulings: ATR-24: RRSP damages suit against investment management companies.

(1.2) Undeducted RRSP premiums — For the purposes of subsection (1.1) and the description of K in paragraph (1.3)(a), the amount of undeducted RRSP premiums of an individual at any time in a taxation year is the amount determined by the formula

$$H + I - J$$

where

H is, for taxation years ending before 1992, nil, and for taxation years ending after 1991, the amount, if any, by which

(a) the amount of the individual's undeducted RRSP premiums at the end of the immediately preceding taxation year

exceeds

(b) the total of the amounts deducted under subsections 146(5) and (5.1) in computing the individual's income for the immediately preceding taxation year, to the extent that each amount was deducted in respect of premiums paid under registered retirement savings plans in or before that preceding year,

I is the total of all amounts each of which is

(a) a premium (within the meaning assigned by subsection 146(1)) paid by the individual in the year and before that time under a registered retirement savings plan under which the individual or the individual's spouse was the annuitant (within the meaning assigned by subsection 146(1)) at the time the premium was paid, other than

(i) an amount paid to the plan in the first 60 days of the year and deducted in computing the individual's income for the immediately preceding taxation year,

(ii) an amount paid to the plan in the year and deducted under paragraph 60(j), (j.1), (j.2) or (l) in computing the individual's income for the year or the immediately preceding taxation year,

(iii) an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7) or in circumstances to which subsection 146(21) applies,

(iv) an amount deductible under subsection 146(6.1) in computing the individual's income for the year or a preceding taxation year,

(v) where the individual is a non-resident person, an amount that would, if the individual were resident in Canada throughout the year and the immediately preceding taxation year, be deductible under paragraph 60(j), (j.1), (j.2) or (l) in computing the individual's income for the year or the immediately preceding taxation year, or

(vi) an amount paid to the plan in the year that is not deductible in computing the individual's income for the year because of subparagraph 146(5)(a)(iv.1) or (5.1)(a)(iv), or

(b) a gift made in the year and before that time to a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), other than a gift made thereto by the individual's spouse, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

J is the amount, if any, by which

(a) the total of all amounts each of which is an amount (other than the portion thereof that reduces the amount on which tax is payable by the individual under subsection 204.1(1)) received by the individual in the year and before that time out of or under a registered retirement savings plan or a reg-

istered retirement income fund and included in computing the individual's income for the year

exceeds

(b) the amount deducted under paragraph 60(l) in computing the individual's income for the year.

Related Provisions: 204.2(1.4) — Deemed receipt where RRSP or RRIF amended; 204.2(3) — When retirement savings plan deemed to be registered plan; 252(4) — Extended meaning of "spouse"; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 204.2(1.2) amended by 1996, c. 21, subsec. 51(2), applicable to 1996 *et seq.* Subsec. (1.2) formerly read:

(1.2) For the purposes of subsection (1.1), the amount of undeducted RRSP premiums of an individual at any time in a taxation year is the amount determined by the formula

Subpara. (a)(vi) added to the description of I in subsec. 204.2(1.2) by 1995, c. 3, s. 49, applicable to 1994 *et seq.*

Subpara. (a)(iii) of the description of I in subsec. 204.2(1.2) substituted by 1994, c. 21, s. 92, applicable to 1992 *et seq.* That subpara. formerly read:

(iii) an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7),

(1.3) Group RRSP amount — For the purposes of this section, the group RRSP amount in respect of an individual at any time in a taxation year is the lesser of

(a) the lesser of the value of F and the amount determined by the formula

$$F - (G - K)$$

where

F is the lesser of

(i) the total of all amounts each of which is a qualifying group RRSP premium paid by the individual, to the extent that the premium is included in determining the value of I in subsection (1.2) in respect of the individual at that time, and

(ii) the RRSP dollar limit for the following taxation year,

G is the amount that would be determined under paragraph (1.1)(b) in respect of the individual at that time if the values of C, D and E in that paragraph were nil, and

K is

(i) where the year is the 1996 taxation year, the amount, if any, by which the amount of the individual's undeducted RRSP premiums at the beginning of the year exceeds the individual's cumulative excess amount in respect of registered retirement savings plans at the end of the 1995 taxation year, and

(ii) in any other case, the group RRSP amount in respect of the individual at the end of the preceding taxation year, and

(b) the amount that would be the individual's cumulative excess amount in respect of registered retirement savings plans at that time if the value of D in paragraph (1.1)(b) were nil.

Related Provisions: 146(1) — Meaning of "net past service pension adjustment" for RRSP rules; 204.2(1.2) — Undeducted RRSP premiums; 204.2(1.31) — Qualifying group RRSP premium; 257 — Formula amounts cannot calculate to less than zero.

History: Subsec. 204.2(1.3) repealed and substituted by 1996, c. 21, subsec. 51(3), applicable to 1996 *et seq.* Subsec. (1.3) formerly read:

(1.3) Net past service pension adjustment — For the purposes of subsection (1.1), the net past service pension adjustment of an individual, at any time, for a taxation year is the positive or negative amount determined by the formula

$$P - G$$

where

P is the total of all amounts each of which is the accumulated PSPA of the individual for the year in respect of an employer, determined as of that time in accordance with prescribed rules; and

G is the amount of the individual's PSPA withdrawals for the year, determined as of that time in accordance with prescribed rules.

All that portion of subsec. 204.2(1.3) preceding the description of G amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 117, applicable after 1988. That portion formerly read:

(1.3) For the purposes of subsection (1.1), the net past service pension adjustment of an individual, at any time, for a taxation year is the amount determined by the formula

$$P - (F + G)$$

where

P is the total of all amounts each of which is the accumulated PSPA of the individual for the year in respect of an employer, determined as of that time in accordance with prescribed rules,

F is the amount of the individual's PSPA transfers for the year, determined as of that time in accordance with prescribed rules, and

Regulations: 8303(2) (accumulated PSPA before 1996); 8307(5) (individual's PSPA withdrawals before 1996).

(1.31) Qualifying group RRSP premium — For the purpose of the description of F in paragraph (1.3)(a), a qualifying group RRSP premium paid by an individual is a premium paid under a registered retirement savings plan where

(a) the plan is part of a qualifying arrangement,

(b) the premium is an amount to which the individual is entitled for services rendered by the individual (whether or not as an employee), and

(c) the premium was remitted to the plan on behalf of the individual by the person or body of persons that is required to remunerate the individual for the services, or by an agent for that person or body,

but does not include the part, if any, of a premium that, by making (or failing to make) an election or exercising (or failing to exercise) any other right under the arrangement after beginning to participate in the arrangement and within 12 months before the time the premium was paid, the individual could have prevented from being paid under the plan and that would not as a consequence have been required to be remitted on behalf of the individual to another registered retirement savings plan or to a registered pension plan in respect of a money purchase provision of the plan.

Related Provisions: 204.2(1.32) — Qualifying arrangement.

History: Subsec. 204.2(1.31) added by 1996, c. 21, subsec. 51(3), applicable to 1996 *et seq.*

(1.32) Qualifying arrangement — For the purpose of paragraph (1.31)(a), a qualifying arrangement is an arrangement under which premiums that satisfy the conditions in paragraphs (1.31)(b) and (c) are remitted to registered retirement savings plans on behalf of two or more individuals, but does not include an arrangement where it is reasonable to consider that one of the main purposes of the arrangement is to reduce tax payable under this Part.

History: Subsec. 204.2(1.32) added by 1996, c. 21, subsec. 51(3), applicable to 1996 *et seq.*

(1.4) Deemed receipt where RRSP or RRIF amended — For the purposes of subsection (1.2),

(a) where an amount in respect of a registered retirement savings plan has been included in computing an individual's income pursuant to paragraph 146(12)(b), that amount shall be deemed to have been received by the individual out of the plan at the time referred to in that paragraph; and

(b) where an amount in respect of a registered retirement income fund has been included in computing an individual's income pursuant to paragraph 146.3(11)(b), that amount shall be deemed to have been received by the individual out of the fund at the time referred to in that paragraph.

Pre-RSC History: Subsecs. 204.2(1.1) to (1.4) added by 1990, c. 35, subsec. 22(2), applicable after 1988.

(1.5) Transitional amount — For the purpose of the description of E in paragraph (1.1)(b), an individual's transitional amount at any time in a taxation year is the lesser of

(a) $6,000, and

(b) where the value of L is nil, nil, and in any other case, the amount determined by the formula

$$L - M$$

where

L is the amount, if any, by which

(i) the amount that would be determined under subsection (1.2) to be the amount of the individual's undeducted RRSP premiums at that time if

(A) the value of I in that subsection were determined for the 1995 taxation year without including premiums paid after February 26, 1995,

(B) the value of I in that subsection were nil for the 1996 and subsequent taxation years, and

(C) the value of J in that subsection were determined for the 1995 and subsequent taxation years without including the part, if any, of an amount received by the individual out of or under a registered retirement savings plan or registered retirement income fund that can reasonably be considered to be in respect of premiums paid after February 26, 1995 by the individual under a registered retirement savings plan

exceeds

(ii) the total of all amounts each of which is an amount deducted under subsection 146(5) or (5.1) in computing the individual's income for a preceding taxation year, to the extent that the amount was deducted in respect of premiums paid after that year (other than premiums paid before February 27, 1995), and

M is the amount that would be determined by the formula in paragraph (1.1)(b) in respect of the individual at that time if the values of D and E in that paragraph were nil and section 257 did not apply to that formula.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subsec. 204.2(1.5) added by 1996, c. 21, subsec. 51(4), applicable to 1996 *et seq.*

(2) Where terminated plan deemed to continue to exist — Notwithstanding paragraph 146(12)(a), for the purposes of this Part, where a registered retirement savings plan ceases to exist and a payment or transfer of funds out of that plan has been made to which subsection 146(16) applied, if an individual's excess amount for a year in respect of registered retirement savings plans would have been greater had that plan not ceased to exist, for the purpose of computing the excess amount for a year in respect of registered retirement savings plans for so long as the individual or the individual's spouse is the annuitant under any registered retirement savings plan under which an annuity has not commenced to be paid to the annuitant, the plan that ceased to exist shall be deemed to remain in existence and the individual or the individual's spouse, as the case may be, shall be deemed to continue to be the annuitant thereunder.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4) — Extended meaning of "spouse".

Forms: T3012: Application for refund of RRSP excess contributions.

(3) When retirement savings plan deemed to be a registered plan — Where a retirement savings plan under which an individual or the individual's spouse is the annuitant (within the meaning assigned by subsection 146(1)) is accepted by the Minister for registration, for the purpose of determining

(a) the amount of undeducted RRSP premiums of the individual at any time, and

(b) the excess amount for a year in respect of registered retirement savings plans of the individual at any time,

the retirement savings plan shall be deemed to have become a registered retirement savings plan on the later of the day on which the plan came into existence and May 25, 1976.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(4) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 204.2(3) substituted by 1990, c. 35, subsec. 22(3), applicable after 1988. Subsec. 204.2(3) formerly read:

(3) Where a retirement savings plan under which an individual or his spouse is the annuitant is accepted by the Minister for registration, for the purpose of determining the excess amount for a year in respect of registered retirement savings plans of the individual, that retirement savings plan shall be deemed to have been a registered retirement savings plan since the later of May 25, 1976 and the day the plan came into existence.

(4) Definition of "excess amount" for a DPSP — "Excess amount" at any time for a trust governed by a deferred profit sharing plan means the total of all amounts each of which is

(a) such portion of the total of all contributions made to the trust before that time and after May 25, 1976 by a beneficiary under the plan, other than

(i) contributions that have been deducted by the beneficiary under paragraph 60(k) of the *Income*

Tax Act, chapter 148 of the Revised Statutes of Canada, 1952,

(ii) amounts transferred to the plan on behalf of the beneficiary in accordance with subsection 147(19), or

(iii) the portion of the contributions (other than contributions referred to in subparagraphs (i) and (ii)) made by the beneficiary in each calendar year before 1991 not in excess of $5,500,

as has not been returned to the beneficiary before that time; or

(b) a gift received by the trust before that time and after May 25, 1976.

Related Provisions: 147(2)(a.1) — Acceptance of plan for registration.

Pre-RSC History: Subsec. 204.2(4) substituted by 1990, c. 35, subsec. 22(4), applicable after 1988. Subsec. 204.2(4) formerly read:

(4) "Excess amount" defined — "Excess amount" at a particular time for a trust governed by a deferred profit sharing plan or a revoked plan means the aggregate of

(a) the aggregate of contributions made to the trust before that time and after May 25, 1976 (other than contributions to which paragraph 60(k) applies) by an employee who is or is about to become a member of the plan, to the extent that such contributions exceed $5,500 in a year, less any such contributions that have been returned to the employee before that particular time, and

(b) the amounts of any gifts received by the trust after May 25, 1976.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Definitions [s. 204.2]: "amount", "annuity" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "common-law partner" — 248(1); "cumulative excess amount" — 204.2(1.1); "deferred profit sharing plan" — 147(1), 248(1); "employer" — 248(1); "group RRSP amount" — 204.2(1.3); "individual", "Minister" — 248(1); "net past service pension adjustment" — 204.2(1.3); "past service pension adjustment" — 248(1), Reg. 8303; "pension adjustment" — 248(1), Reg. 8301(1); "prescribed" — 248(1); "qualifying arrangement" — 204.2(1.31); "qualifying group RRSP premium" — 204.2(1.31); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "RRSP dollar limit" — 146(1), 248(1); "resident in Canada" — 250; "retirement savings plan" — 146(1), 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer" — 104(1), 248(1); "total pension adjustment reversal" — 248(1); "transitional amount" — 204.2(1.5); "trust" — 104(1), 248(1), (3); "undeducted RRSP premiums" — 204.2(1.2).

Interpretation Bulletins [s. 204.2]: IT-124R6: Contributions to registered retirement savings plans.

204.3 (1) Return and payment of tax — Within 90 days after the end of each year after 1975, a taxpayer to whom this Part applies shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Information Circulars: 78-14R2: Guidelines for trust companies and other persons responsible for filing.

Forms: T1-OVP: Individual income tax return for RRSP excess contributions; T1-OVP Sched.: Calculating the amount of RRSP contributions made before 1991 that are subject to tax; T3D: Income tax return for DPSP or revoked DPSP; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 204.3(2) substituted by 1986, c. 6, s. 106. Subsec. 204.3(2) formerly read:

(2) Provisions applicable to this Part — Subsections 150(2) and (3), sections 152 and 158, subsection 161(1) and sections 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

Definitions [s. 204.3]: "amount", "Minister", "prescribed", "taxpayer" — 248(1).

Interpretation Bulletins [s. 204.3]: IT-124R6: Contributions to registered retirement savings plans.

Pre-RSC History [Part X.1]: Part X.1 (ss. 204.1 to 204.3) added by 1976-77, c. 4, s. 69, applicable to months ending after May, 1976.

PART X.2 — TAX IN RESPECT OF REGISTERED INVESTMENTS

204.4 (1) Definition of "registered investment" — In this Part, "registered investment" means a trust or a corporation that has applied in prescribed form as of a particular date in the year of application and has been accepted by the Minister as of that date as a registered investment for one or more of the following:

(a) registered retirement savings plans,

(b) [Repealed under former Act]

(c) registered retirement income funds, and

(d) deferred profit sharing plans

and that has not been notified by the Minister that it is no longer registered under this Part.

Proposed Amendment — Segregated fund policies

Department of Finance news release, December 19, 1996: Issuers of segregated fund policies will be allowed to elect to have their segregated funds registered under Part X.2 of the Act. The result of this election would be to exclude interests in registered segregated funds from the "foreign property" definition. However, as a consequence of the election in respect of a segregated fund, the issuer of the segregated fund would be required to pay any penalty tax under Part XI of the Act in respect of foreign property holdings of the segregated fund. [For the rest of this proposal, see under 206(1)"foreign property" — ed.]

Department of Finance news release, October 23, 1997: *4. Registered Investments*

Under the proposed rules, Revenue Canada will be able to accept a segregated fund as a registered investment under subsection 204.4(1) of the *Income Tax Act*. If a segregated fund is accepted, an interest in the fund will not be a foreign property for the purposes of the Act. However, the insurer administering the segregated fund will be subject to tax under Part XI of the Act if the foreign property held by the segregated fund ever exceeds the 20 per cent foreign property limit.

The proposed amendments include a transitional provision. If a segregated fund that was created before 1997 is accepted by Revenue Canada as a registered investment under subsection 204.4(1) of the Act, the foreign property limit under Part XI in respect of the fund will be 60 per cent in 1999 and 40 per cent in 2000. [For the rest of this proposal, see under 206(1)"foreign property" — ed.]

Related Provisions: 248(1)"registered investment" — Definition applies to entire Act.

Interpretation Bulletins: IT-320R2: RRSPs — qualified investments.

(2) Acceptance of applicant for registration — The Minister may accept for registration for the purposes of this Part any applicant that is

(a) a trust that has as its sole trustee a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee if, on the particular date referred to in subsection (1),

(i) all the property of the applicant is held in trust for the benefit of not fewer than 20 beneficiaries and

(A) not fewer than 20 beneficiaries are taxpayers described in paragraph 205(a) or (c), or

(B) not fewer than 100 beneficiaries are taxpayers described in paragraph 205(b) or (e),

(ii) the total of

(A) the fair market value at the time of acquisition of its shares, bonds, mortgages, marketable securities and cash, and

(B) the amount by which the fair market value at the time of acquisition of its real property that may reasonably be regarded as being held for the purpose of producing income from property exceeds the total of all amounts each of which is owing by it on account of its acquisition of the real property

is not less than 80% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is owing by it on account of its acquisition of real property,

(iii) the fair market value at the time of acquisition of its shares, bonds, mortgages and other securities of any one corporation or debtor (other than bonds, mortgages and other securities of or guaranteed by Her Majesty in right of Canada or a province or Canadian municipality) is not more than 10% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is an amount owing by it on account of its acquisition of real property,

(iv) the amount by which

(A) the fair market value at the time of acquisition of any one of its real properties

exceeds

(B) the total of all amounts each of which is owing by it on account of its acquisition of the real property

is not more than 10% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is owing by it on account of its acquisition of real property,

(v) not less than 95% of the income of the applicant for its most recently completed fiscal period, or where no such period exists, that part of its current fiscal period before the particular date, was derived from investments described in subparagraph (ii),

(vi) the total value of all interests in the applicant owned by all trusts or corporations described in paragraph 205(a) or (c) to which any one employer, either alone or together with persons with whom the employer was not dealing at arm's length, has made contributions does not exceed 25% of the value of all its property,

(vii) the total value of all interests in the applicant owned by all trusts described in paragraph 205(b) or (e) to which any one taxpayer, either alone or together with persons with whom the taxpayer was not dealing at arm's length, has made contributions does not exceed 25% of the value of all its property, and

(viii) the applicant does not hold property acquired by it after May 26, 1975 that is

(A) a mortgage (other than a mortgage insured under the *National Housing Act*), or an interest therein, in respect of which the mortgagor is the annuitant under a registered retirement savings plan or a registered retirement income fund, or a person with whom the annuitant is not dealing at arm's length, if any of the funds of a trust governed by such a plan or fund have been used to acquire an interest in the applicant, or

(B) a bond, debenture, note or similar obligation issued by a cooperative corporation (within the meaning assigned by subsection 136(2)) or a credit union that has granted any benefit or privilege to any annuitant or beneficiary under a plan or fund referred to in subsection (1) that is dependent on or related to

(I) ownership by a trust governed by any such plan or fund of shares, bonds, debentures, notes or similar obligations of the cooperative corporation or credit union, or

(II) ownership by the applicant of shares, bonds, debentures, notes or similar obligations of the cooperative corporation or credit union if the trust governed by any such plan or fund has used any of its funds to acquire an interest in the applicant;

(b) a trust that

(i) would be a trust described in paragraph (a) if that paragraph were read without reference to subparagraphs (a)(i), (vi) and (vii), and

(ii) holds only prescribed investments for the type of plan or fund in respect of which it has applied for registration;

(c) a mutual fund trust;

(d) a trust that

(i) would be a mutual fund trust if paragraph 132(6)(c) were not applicable, and

(ii) holds only prescribed investments for the type of plan or fund in respect of which it has applied for registration;

(e) a mutual fund corporation or investment corporation; or

(f) a corporation that

(i) would be a mutual fund corporation or investment corporation if it could have elected to be a public corporation under paragraph (b) of the definition "public corporation" in subsection 89(1) had the conditions prescribed therefor required only that a class of shares of its capital stock be qualified for distribution to the public, and

(ii) holds only prescribed investments for the type of plan or fund in respect of which it has applied for registration.

Related Provisions: 204.6(1), (2), (3) — Tax payable.

Pre-RSC History: Para. 204.4(1)(b) repealed by 1986, c. 6, subsec. 107(1), applicable to 1986 *et seq.* Para. 204.4(1)(b) formerly read:

(b) registered home ownership savings plan,

Cl. 204.4(2)(a)(i)(B) and subpara. 204.4(2)(a)(vii) substituted by 1986, c. 6, subsecs. 107(2), (3), to delete a reference, in each, to paragraph 205(d), applicable to 1986 *et seq.*

Cl. 204.4(2)(a)(viii)(A) substituted by 1986, c. 6, subsec. 107(4), to delete "or beneficiary" from after "the annuitant" in two places, and to delete "a registered home ownership saving plan" from after "a registered retirement savings plan", applicable to 1986 *et seq.*

That portion of cl. 204.4(2)(a)(viii)(B) preceding subcl. (I) substituted by 1985, c. 45, s. 108. That portion formerly read:

(B) a bond, debenture, note or similar obligation issued by a cooperative corporation or a credit union (within the meanings assigned by sections 136 and 137) that has granted any benefit or privilege to any annuitant or beneficiary under a plan or fund referred to in subsection (1) that is dependent upon or related to

Regulations: 4900, 4901 (prescribed investments).

Forms: T3RI: Registered investment and income tax return; T2217: Application for registration as a registered investment.

(3) Revocation of registration — The Minister shall notify a registered investment that it is no longer registered

(a) on being satisfied that, at a date subsequent to its registration date, it no longer satisfies one or more of the conditions necessary for it to be acceptable for registration under this Part, other than a condition the failure of which to satisfy would make it liable for tax under section 204.6; or

(b) within 30 days after receipt of a request in prescribed form from the registered investment for termination of its registration.

(4) Suspension of revocation — Notwithstanding a notification to a taxpayer under subsection (3), for the purposes of sections 204.6 and 204.7 and Part XI, the taxpayer shall be deemed to be a registered investment for each month or part thereof after the notification during which an interest in, or a share of the capital stock of, the taxpayer continues, by virtue of having been a registered investment, to be a qualified investment for a plan or fund referred to in subsection (1).

Pre-RSC History: Subsec. 204.4(4) substituted by 1980-81-82-83, c. 140, s. 115, applicable to 1981 *et seq.*

(5) Cancellation of revocation — Where a registered investment has been notified pursuant to paragraph (3)(a) and within 3 months from the date of notification it satisfies the Minister that it is acceptable for registration under this Part, the Minister may declare the notification to be a nullity.

(6) Successor trust — Where at any time in a year a particular trust described in paragraph (2)(a) or (b) has substantially the same beneficiaries and can reasonably be regarded as being a continuation of another trust that was a registered investment in the year or the immediately preceding year, for the purposes of this Part, the particular trust shall be deemed to be the same trust as the other trust.

(7) Deemed registration of registered investment — Where at the end of any month a registered investment could qualify for acceptance at that time under subsection (2), it shall be deemed for the purposes of section 204.6 to have been registered under the first of the following paragraphs under which it is registrable regardless of the paragraph under which it was accepted for registration by the Minister:

(a) paragraph (2)(c) or (e), as the case may be;

(b) paragraph (2)(a);

(c) paragraph (2)(d) or (f), as the case may be; and

(d) paragraph (2)(b).

Definitions [s. 204.4]: "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "class of shares" — 248(6); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "deferred profit sharing plan" — 147(1), 248(1); "fiscal period" — 249(2)(b), 249.1; "investment corporation" — 130(3), 248(1); "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "registered investment" — 204.4(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

204.5 Publication of list in *Canada Gazette* — Each year the Minister shall cause to be published in the *Canada Gazette* a list of all registered investments as of December 31 of the preceding year.

Definitions [s. 204.5]: "Minister" — 248(1); "registered investment" — 204.4(1), 248(1).

204.6 (1) Tax payable — Where at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(b), (d) or (f) holds property that is not a prescribed investment for that taxpayer, it shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value at the time of its acquisition of each such property.

Related Provisions: 204.4(3) and (4) — Revocation of registration; 205 — Application of Part XI; 259 — Proportional holdings in trust property.

Regulations: 4901 (prescribed investment).

(2) Idem — Where at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(a) or (b) holds property that is a share, bond, mortgage or other security of a corporation or debtor (other than bonds, mortgages and other securities of or guaranteed by Her Majesty in right of Canada or a province or Canadian municipality), it shall, in respect of that month, pay a tax under this Part equal to 1% of the amount, if any, by which

(a) the total of all amounts each of which is the fair market value of such a property at the time of its acquisition

exceeds

(b) 10% of the amount by which

(i) the total of all amounts each of which is the fair market value, at the time of acquisition, of one of its properties

exceeds

(ii) the total of all amounts each of which is an amount owing by the trust at the end of the month in respect of the acquisition of real property.

Related Provisions: 205 — Application of Part XI; 259 — Proportional holdings in trust property.

Pre-RSC History: Subpara. 204.6(2)(b)(ii) substituted by 1980-81-82-83, c. 140, subsec. 116(1), applicable to 1981 *et seq.*

(3) Idem — Where at the end of any month a taxpayer that is a registered investment described in paragraph

204.4(2)(a) holds real property, it shall, in respect of that month, pay a tax under this Part equal to 1% of the total of all amounts each of which is the amount by which the excess of

(a) the fair market value at the time of its acquisition of any one real property of the taxpayer

over

(b) the total of all amounts each of which was an amount owing by it at the end of the month on account of its acquisition of the real property

was greater than 10% of the amount by which the total of all amounts each of which is the fair market value at the time of its acquisition of a property held by it at the end of the month exceeds the total of all amounts each of which was an amount owing by it at the end of the month on account of its acquisition of real property.

Related Provisions: 205 — Application of Part XI.

Pre-RSC History: All that portion of subsec. 204.6(3) following para. (a) substituted by 1980-81-82-83, c. 140, subsec. 116(2), applicable to 1981 *et seq.*

Definitions [s. 204.6]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "prescribed", "property" — 248(1); "registered investment" — 204.4(1), 248(1); "share", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

204.7 (1) Return and payment of tax — Within 90 days from the end of each taxation year commencing after 1980, a registered investment shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by it under this Part for the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T3RI: Registered investment and income tax return.

(2) Liability of trustee — Where the trustee of a registered investment that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection (1), the trustee is personally liable to pay on behalf of the registered investment the full amount of the tax and is entitled to recover from the registered investment any amount paid by the trustee as tax under this section.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 204.7(3) substituted by 1986, c. 6, s. 108. Subsec. 204.7(3) formerly read:

(3) Provisions applicable to this Part — Subsections 150(2) and (3), sections 152 and 158, subsection 161(1) and sections 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

Definitions [s. 204.7]: "amount", "Minister", "prescribed" — 248(1); "registered investment" — 204.4(1), 248(1); "taxation year" — 249.

Pre-RSC History [Part X.2]: Part X.2 (ss. 204.4–204.7) added by 1980-81-82-83, c. 48, s. 94, applicable to 1981 *et seq.*

PART X.3 — LABOUR-SPONSORED VENTURE CAPITAL CORPORATIONS

Proposed Amendment — Part X.3

Federal budget, supplementary information, February 16, 1999: *RRSP withdrawals under the Home Buyers' Plan (HBP) and the Lifelong Learning Plan (LLP)*

The HBP and the LLP allow a qualifying individual to withdraw RRSP funds on a tax-free basis to purchase a home or to pay for education. HBP withdrawals are repayable over a 15-year period, while LLP withdrawals are repayable over a 10-year period. To the extent that a scheduled repayment for a year is not made, it is added in computing the participant's income for the year.

The Quebec government has proposed to allow individuals to withdraw proceeds from the redemption of provincial LSVCC shares held within an RRSP, without the provincial LSVCC credit being recovered if the withdrawal is made under the HBP or the LLP. Under existing law, the federal credit will not be recovered in these circumstances. Individuals making such withdrawals are expected to acquire replacement shares in annual amounts determined under the existing HBP and LLP repayment schedules. These replacement purchases are not eligible for the Quebec LSVCC credit. Where an individual fails to acquire LSVCC replacement shares, a special Quebec tax of 15 per cent of the shortfall is imposed on the individual to recover the LSVCC credit that Quebec provided on the purchase of the redeemed shares.

The budget proposes that purchases of replacement shares in Quebec LSVCCs likewise not be eligible for the federal LSVCC credit. In addition, where an individual fails to acquire a replacement share, it is proposed to levy a federal penalty tax that matches the special 15 per cent Quebec tax. These proposals will apply from the date the corresponding Quebec proposals apply.

Similar changes are not contemplated for federally-registered LSVCCs or LSVCCs registered in other provinces. Because shares in Quebec LSVCCs are not normally redeemable until retirement, amounts on which an LSVCC credit was paid will be available for small business investment for a considerable period of time even if withdrawn under the HBP or the LLP for part of that time. In contrast, because shares in federally-registered LSVCCs or in LSVCCs registered in other provinces may generally be redeemed without a recovery of the federal credit after eight years, it would be inappropriate to allow the amounts invested in these shares not to be available for small business investment for any length of time in that period.

History: The heading "Labour-Sponsored Venture Capital Corporations" before s. 204.8 amended by 1998, c. 19, s. 50, applicable after February 18, 1997. It formerly read:

Registered Labour-Sponsored Venture Capital Corporations

204.8 (1) Definitions — In this Part,

"annuitant" has the meaning assigned by subsection 146(1);

"eligible business entity", at any time, means a particular entity that is

(a) a prescribed corporation, or

(b) a Canadian partnership or a taxable Canadian corporation, all or substantially all of the fair market value of the property of which is, at that time, attributable to

(i) property used in a specified active business carried on by the particular entity or by a corporation controlled by the particular entity,+

(ii) shares of the capital stock or debt obligations of one or more entities that, at that time, are eligible business entities related to the particular entity, or

(iii) any combination of properties described in subparagraph (i) or (ii);

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: The definition "eligible business entity" in subsec. 204.8(1) amended by 2000, c. 19, subsec. 54(2), applicable to 1999 *et seq.* The definition formerly read:

> "eligible business entity", at any time, means a particular entity that is a Canadian partnership or a taxable Canadian corporation, all or substantially all of the fair market value of the property of which is, at that time, attributable to
>
> (a) property used in a specified active business carried on by the particular entity or by a corporation controlled by the particular entity,
>
> (b) shares of the capital stock or debt obligations of one or more entities that, at that time, are eligible business entities related to the particular entity, or
>
> (c) any combination of properties described in paragraph (a) or (b);

"eligible investment" of a particular corporation means

(a) a share that was issued to the particular corporation and that is a share of the capital stock of a corporation that was an eligible business entity at the time the share was issued,

(b) a particular debt obligation that was issued to the particular corporation by an entity that was an eligible business entity at the time the particular debt obligation was issued where

(i) the entity is not restricted by the terms of the particular debt obligation or by the terms of any agreement related to that obligation from incurring other debts,

(ii) the particular debt obligation, if secured, is secured solely by a floating charge on the assets of the entity or by a guarantee referred to in paragraph (c), and

(iii) the particular debt obligation, by its terms or any agreement relating to that obligation, is subordinate to all other debt obligations of the entity, except that, where the entity is a corporation, the particular debt obligation need not be subordinate to

(A) a debt obligation issued by the entity that is prescribed to be a small business security for the purposes of paragraph (a) of the definition "small business property" in subsection 206(1), or

(B) a debt obligation owing to a shareholder of the entity or to a person related to any such shareholder,

(c) a guarantee provided by the particular corporation in respect of a debt obligation that would, if the debt obligation had been issued to the particular corporation at the time the guarantee was provided, have been at that time an eligible investment because of paragraph (b), or

(d) an option or a right granted by an eligible business entity that is a corporation, in conjunction with the issue of a share or debt obligation that is an eligible investment, to acquire a share of the capital stock of the eligible business entity that would be an eligible investment if that share were issued at the time that the option or right was granted,

if the following conditions are satisfied:

(e) immediately after the time the share or debt obligation was issued, the guarantee was provided or the option or right was granted, as the case may be, the total of the costs to the particular corporation of all shares, options, rights and debt obligations of the eligible business entity and all corporations related to it and 25% of the amount of all guarantees provided by the particular corporation in respect of debt obligations of the eligible business entity and the related corporations does not exceed the lesser of $15,000,000 and 10% of the shareholders' equity in the particular corporation, determined in accordance with generally accepted accounting principles, on a cost basis and without taking into account any unrealized gains or losses on the investments of the particular corporation, and

(f) immediately before the time the share or debt obligation was issued, the guarantee was provided or the option or right was granted, as the case may be,

(i) the carrying value of the total assets of the eligible business entity and all corporations (other than prescribed labour-sponsored venture capital corporations) related to it (determined in accordance with generally accepted accounting principles on a consolidated or combined basis, where applicable) did not exceed $50,000,000, and

(ii) the total of

(A) the number of employees of the eligible business entity and all corporations related to it who normally work at least 20 hours per week for the entity and the related corporations, and

(B) ½ of the number of other employees of the entity and the related corporations,

did not exceed 500;

Related Provisions: 204.81(4) — Determination of cost.

History: The portion of the definition "eligible investment" in s. 204.8 after para. (d) amended by 1998, c. 19, s. 51, applicable to property acquired after February 18, 1997. That portion of the definition formerly read:

> if, immediately after the time the share or debt obligation was issued, the guarantee was provided or the option or right was granted, as the case may be,
>
> (e) the total of the costs to the particular corporation of all shares, options, rights and debt obligations of the eligible business entity and all corporations related to it and 25% of the amount of all guarantees provided by the particular corporation in respect of debt obligations of such eligible business entity and any corporation related to it does not exceed the lesser of $10,000,000 and 10% of the shareholders' equity in the particular corporation at that time, determined in accordance with generally accepted accounting principles, on a cost basis and without taking into account any unrealized gains or losses on the investments of the particular corporation,
>
> (f) the carrying value of the total assets of the eligible business entity and all corporations related to it (determined in accordance with generally accepted accounting principles on a consolidated or combined basis, where applicable) does not exceed $50,000,000, and
>
> (g) the number of employees of the eligible business entity and all corporations related to it does not exceed 500;

Para. (a) of "eligible investment" in s. 204.8 amended by 1994, c. 8, subsec. 29(1), to delete "that is prescribed for the purposes of subsections 110.6(8) and (9)", applicable after December 2, 1992.

Para. (f) of "eligible investment" in s. 204.8 amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 118(1), to substitute "$50,000,000" for "$35,000,000", applicable to 1992 *et seq.*

Regulations: 6701 (prescribed labour-sponsored venture capital corporation, for subpara. (f)(i)).

"eligible labour body" means a trade union, as defined in the *Canada Labour Code*, that represents employees in more than one province, or an organization that is composed of 2 or more such unions;

History: "Eligible labour body" added to s. 204.8 by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 118(3), applicable to 1992 *et seq.*

"labour-sponsored funds tax credit" — [Repealed]

History: The definition "labour-sponsored funds tax credit" in s. 204.8 repealed by 1997, c. 25, subsec. 55(1), applicable after 1995. It formerly read:

> "labour-sponsored funds tax credit" has the meaning assigned by subsection 127.4(1);

"national central labour body" — [Repealed]

History: "National central labour body" in s. 204.8 repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 118(2), applicable to 1992 *et seq.* That definition formerly read:

> "national central labour body" means an organization that is composed of not fewer than 2 trade unions, as defined in the *Canada Labour Code*, each of which represents employees in more than one province;

"original acquisition" of a share has the meaning assigned by subsection 127.4(1);

History: The definition "original acquisition" added to s. 204.8 by 1997, c. 25, subsec. 55(4), applicable after 1995.

"original purchaser" — [Repealed]

History: The definition "original purchaser" in s. 204.8 repealed by 1997, c. 25, subsec. 55(2), applicable to corporations that are incorporated after March 5, 1996. It formerly read:

> "original purchaser", in relation to a share, means the individual to whom the share was issued;

"registered labour-sponsored venture capital corporation" — [Repealed]

History: The definition "registered labour-sponsored venture capital corporation" in s. 204.8 repealed by 1997, c. 25, subsec. 55(1), applicable after 1995. It formerly read:

> "registered labour-sponsored venture capital corporation" means a corporation registered under subsection 204.81(1);

"reserve" means property described in any of paragraphs (a), (b), (c), (f) and (g) of the definition "qualified investment" in section 204;

"revoked corporation" means a corporation the registration of which has been revoked under subsection 204.81(6);

Related Provisions: 211.7(1)"revoked corporation" — Definition for Part XII.5.

"specified active business", at any time, means an active business that is carried on in Canada where

(a) at least 50% of the full-time employees employed at that time in respect of the business are employed in Canada, and

(b) at least 50% of the salaries and wages paid to employees employed at that time in respect of the business are reasonably attributable to services rendered in Canada by the employees;

History: The definition "specified active business" in s. 204.8 amended by 1998, c. 19, s. 209, applicable after 1988. It formerly read:

> "specified active business", at any time, means an active business that is carried on in Canada where, at that time,
>
> (a) at least 50% of the full-time employees employed in respect of the business are employed in Canada, and
>
> (b) at least 50% of the salaries and wages paid to employees employed in respect of the business are reasonably attributable to services rendered in Canada by the employees.

"specified individual", in respect of a share, means an individual (other than a trust) whose labour-sponsored funds tax credit (as defined by subsection 127.4(6)) in respect of the original acquisition of the share is not nil or would not be nil if this Act were read without reference to paragraphs 127.4(6)(b) and (d).

History: The definition "specified individual" in s. 204.8 amended by 1997, c. 25, subsec. 55(3), applicable after 1995. It formerly read:

> "specified individual", in respect of a share, means an individual (other than a trust) whose labour-sponsored funds tax credit for a taxation year would take into account the amount of consideration paid to acquire, or to subscribe for, the share if the information return described in paragraph 204.81(6)(c) in respect of the share were filed as required under paragraph 127.4(3)(b).

The definition "specified individual" added to s. 204.8 by 1994, c. 8, subsec. 29(2), applicable after December 2, 1992.

"start-up period" of a corporation means

(a) subject to paragraph (c), in the case of a corporation that first issued Class A shares before February 17, 1999, the corporation's taxation year in which it first issued those shares and the four following taxation years,

(b) subject to paragraph (c), in the case of a corporation that first issues Class A shares after February 16, 1999, the corporation's taxation year in which it first issues those shares and the following taxation year, or

(c) where a corporation files an election with its return under this Part for a particular taxation year of the corporation that ends after 1998 and that is referred to in paragraph (a) or (b), the period, if any, consisting of the taxation years referred to in paragraph (a) or (b), as the case may be, other than the particular year and all taxation years following the particular year.

History [204.8(1)"start-up period"]: The definition "start-up period" added to subsec. 204.8(1) by 2000, c. 19, subsec. 54(3), applicable after 1997.

History [204.8(1)]: Section 204.8 renumbered as subsec. 204.8(1) by 2000, c. 19, subsec. 54(1), applicable to 1999 *et seq.*

(2) When venture capital business discontinued — For the purposes of section 127.4, this Part and Part XII.5, a corporation discontinues its venture capital business

(a) at the time its articles cease to comply with paragraph 204.81(1)(c) and would so cease to comply if it had been incorporated after December 5, 1996;

(b) at the time it begins to wind-up;

(c) immediately before the time it amalgamates or merges with one or more other corporations to form one corporate entity (other than an entity deemed by paragraph 204.85(3)(d) to have been registered under this Part);

(d) at the time it becomes a revoked corporation, if one of the grounds on which the Minister could revoke its registration for the purposes of this Part is set out in paragraph 204.81(6)(a.1); or

(e) at the first time after the revocation of its registration for the purposes of this Part that it fails to comply with any of the provisions of its articles governing its authorized capital, the management of its business and affairs, the reduction of paid-up capital or the redemption or transfer of its Class A shares.

Related Provisions: 127.4(1.1) — Application to labour-sponsored funds tax credit; 204.841 — Penalty tax on discontinuance of venture capital business; 211.8(1.1) — Rule applies to 211.8(1).

(3) Date of issue of Class A shares — For the purposes of this Part and subsection 211.8(1), in determining the time of the issue or the original acquisition of Class A shares, identical Class A shares held by a person are deemed to be disposed of by the person in the order in which the shares were issued.

Related Provisions: 211.8(1.1) — Rule applies to 211.8(1).

History: Subsecs. 204.8(2) and (3) added by 2000, c. 19, subsec. 54(4), applicable after February 16, 1999.

Definitions [s. 204.8]: "active business", "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "Canadian partnership" — 102, 248(1); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible business entity", "eligible investment" — 204.8(1); "employed", "employee", "individual", "Minister" — 248(1); "original acquisition" — 127.4(1), 204.8(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "related" — 251(2)–(6); "revoked corporation" — 204.8(1); "security" — *Interpretation Act* 35(1); "share", "shareholder" — 248(1); "specified active business" — 204.8(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

204.81 (1) Conditions for registration — The Minister may register a corporation for the purposes of this Part if, in the opinion of the Minister, it complies with the following conditions:

(a) the corporation has applied in prescribed form to the Minister for registration;

(b) the corporation was caused to be incorporated under the *Canada Business Corporations Act* by an eligible labour body; and

(c) the articles of the corporation provide that

(i) the business of the corporation is restricted to assisting the development of eligible business entities and to creating, maintaining and protecting jobs by providing financial and managerial advice to such entities and by investing funds of the corporation in eligible investments and reserves,

(ii) the authorized capital of the corporation shall consist only of

(A) Class A shares that are issuable only to individuals (other than trusts) and trusts governed by registered retirement savings plans, that entitle their holders

(I) to receive notice of and, subject to the *Canada Business Corporations Act*, to attend and vote at all meetings of the shareholders of the corporation,

(II) to receive dividends at the discretion of the board of directors of the corporation, and

(III) to receive, on dissolution of the corporation, all the assets of the corporation that remain after payment of all amounts payable to the holders of all other classes of shares of the corporation,

(B) Class B shares that are issuable only to and may be held only by eligible labour bodies, that entitle each of those shareholders

(I) to receive notice of and, subject to the *Canada Business Corporations Act*, to attend and vote at all meetings of the shareholders of the corporation, and

(II) to receive, on dissolution of the corporation, an amount equal to the amount of the consideration received by the corporation on the issue of the Class B shares,

but that do not entitle them to receive dividends, and

(C) any additional classes of shares that are authorized, if the rights, privileges, restrictions and conditions attached to the shares are approved by the Minister of Finance,

(iii) the business and affairs of the corporation shall be managed by a board of directors, at least ½ of whom are appointed by the Class B shareholders,

(iv) the corporation shall not reduce its paid-up capital in respect of a class of shares (other than Class B shares) otherwise than by way of a redemption of shares of the corporation or in such other manner as is prescribed,

(v) the corporation shall not redeem a Class A share in respect of which an information return described in paragraph (6)(c) has been issued unless

(A) where the share is held by the specified individual in respect of the share, a spouse or former spouse of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual or spouse is the annuitant,

Proposed Amendment — 204.81(1)(c)(v)(A) opening words

(A) where the share is held by the specified individual in respect of the share, a spouse or common-law partner or former spouse or common-law partner of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual, spouse or common-law partner is the annuitant,

Application: 2000, c. 12 (Bill C-23), s. 137, will amend the opening words of cl. 204.81(1)(c)(v)(A) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(I) a request in writing to redeem the share is made by the holder to the corporation and the information return referred to in paragraph (6)(c) has been returned to the corporation, or

(II) [Repealed]

(III) the corporation is notified in writing that the specified individual in respect of the share became disabled and permanently unfit for work or terminally ill after the share was issued,

(B) there is no specified individual in respect of the share,

(C) [Repealed]

(D) the corporation is notified in writing that the share is held by a person on whom the share has devolved as a consequence of the death of

(I) a holder of the share, or

(II) an annuitant under a trust governed by a registered retirement savings plan or registered retirement income fund that was a holder of the share,

(E) the redemption occurs more than 8 years after the day on which the share was issued, or

(F) the holder of the share has satisfied such other conditions as are prescribed,

(vi) [Repealed]

(vii) the corporation shall not register a transfer of a Class A share by the specified individual in respect of the share, a spouse of the specified individual or a trust governed by a registered retire-

ment savings plan or registered retirement income fund under which the specified individual or spouse is the annuitant, unless

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(A) no information return has been issued under paragraph (6)(c) in respect of the share,

(B) [Repealed]

(C) the transfer is to the specified individual, a spouse or former spouse of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or the spouse or former spouse of the specified individual is the annuitant,

(D) the corporation is notified in writing that the transfer occurs as a consequence of the death of the specified individual or a spouse of the specified individual,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(E) the corporation is notified in writing that the transfer occurs after the specified individual dies,

(F) [Repealed]

(G) the corporation is notified in writing that the specified individual became disabled and permanently unfit for work or terminally ill after the share was issued and before the transfer, or

(H) such other conditions as are prescribed are satisfied;

(viii) the corporation shall not pay any fee or remuneration to a shareholder, director or officer of the corporation unless the payment was approved by a resolution of the directors of the corporation, and

(ix) the corporation shall not make any investment in an eligible business entity with which the corporation or any of the directors of the corporation does not deal at arm's length unless

(A) the corporation would deal at arm's length with the eligible business entity but for the corporation's interest as the holder of eligible investments in such entity, or

(B) the investment was approved by special resolution of the shareholders of the corporation before the investment was made.

Proposed Amendment — Redemption Requirements

Department of Finance news release, February 7, 2000: *Finance Minister Announces Minor Changes To The Redemption Requirements For Federal LSVCCS*

Finance Minister Paul Martin today announced that he would propose a minor change affecting federally-registered labour-sponsored venture capital corporations (LSVCCs). The proposed change provides an exemption from the rules governing the recovery of the federal LSVCC tax credit.

Shares in federally-registered LSVCCs that qualify for the federal LSVCC tax credit must be held for a minimum period. Where a share is redeemed prior to the expiry of the minimum period, the federal LSVCC tax credit for the share is generally recovered. In the case of shares issued before March 6, 1996, there is no recovery of the tax credit for a share redeemed more than five years after the day on which the share was issued. For shares issued after March 5, 1996, the recovery applies where a share is redeemed less than eight years after the day on which it was issued.

The proposed change will, for the purpose of the recovery provisions, treat a share redeemed in February or on March 1st as having been redeemed 30 days later. For example, existing LSVCC shares issued on March 1, 1995 and redeemed on February 29, 2000 would be exempt from a recovery of the federal LSVCC tax credit that was associated with the original acquisition of the shares.

This measure is intended to accommodate taxpayers wishing to acquire new LSVCC shares in the first 60 days of a year with the proceeds from the redemption of LSVCC shares. In these circumstances, a taxpayer would generally be entitled to claim a tax credit for the preceding year in respect of an acquisition of the new shares and would not be subject to a tax penalty with respect to the redemption of the existing shares. In addition, any necessary changes will be made to ensure that an LSVCC's registration cannot be revoked as a result of having redeemed LSVCC shares in these circumstances. It is proposed that this change apply from the inception of the rules governing the recovery of the LSVCC tax credit.

For further information: Grant Nash, Tax Policy Branch, (613) 992-5287; Karl Littler, Senior Advisor, Tax Policy, Office of the Minister of Finance, (613) 9967861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080.

Related Provisions: 131(8) — Prescribed LSVCC deemed to be a mutual fund corporation; 131(11) — Rules respecting prescribed LSVCCs; 204.81(6)(a), (a.1) — Revocation of registration for failure to comply with conditions; 211.7 — Recovery of credit from provincial LSVCCs; 211.8(1) — Clawback of credit on disposition of approved share; 211.9(a)(ii) — Refund of clawback; 248(1)"registered labour-sponsored venture capital corporation" — Definition of RLSVCC for entire Act; 248(8) — Occurrences as a consequence of death; 252(4) — Extended meaning of "spouse".

History: Cl. 204.81(1)(c)(ii)(C) amended by 1998, c. 19, s. 52, applicable after 1996. Cl. 204.81(1)(c)(ii)(C) formerly read:

(C) such additional classes of shares without voting rights (except as may be required by law) as are authorized, where the rights, privileges, restrictions and conditions attached to the shares are determined by the board of directors of the corporation and approved by the Minister of Finance,

Cl. 204.81(1)(c)(ii)(B), subpara. (c)(iii), the opening words of subpara. (c)(v), subcl. (c)(v)(A)(I), cl. (c)(v)(E) amended, subcl. (c)(v)(A)(II), cl. (c)(v)(C), subpara. (c)(vi) and cl. (c)(vii)(B) repealed, by 1997, c. 25, subsecs. 56(1)-(8), applicable to corporations that are incorporated after March 5, 1996. Those provisions formerly read:

(B) Class B shares that are issuable only to and may be held only by the eligible labour body that caused the corporation to be incorporated and that entitle the eligible labour body

(I) to receive notice of and, subject to the *Canada Business Corporations Act*, to attend and vote at all meetings of the shareholders of the corporation, and

(II) to receive, on dissolution of the corporation, an amount equal to the amount of the consideration received by the corporation on the issue of the Class B shares,

but that do not entitle the eligible labour body to receive dividends, and

. . . . .

(iii) the business and affairs of the corporation shall be managed by a board of directors at least ½ of whom are appointed by the eligible labour body that caused the corporation to be incorporated,

. . . . .

(v) subject to the provision described in subparagraph (vi), the corporation may redeem a Class A share in respect of which an information return described in paragraph (6)(c) has been issued only if

. . . . .

(I) a request in writing to redeem the share is made by the holder to the corporation within 60 days after the day on which the share was issued to the original purchaser and the information return referred to in paragraph (6)(c) has been returned to the corporation,

(II) the corporation is notified in writing that the specified individual in respect of the share has retired from the workforce or ceased to be resident in Canada, or

. . . . .

(C) the time of redemption is on or after the day on which the specified individual in respect of the share attained, or would, but for death, have attained the age of 65 years,

. . . . .

(E) the redemption occurs more than 5 years after the day on which the share was issued, or

. . . . .

(vi) unless a Class A share has been issued and outstanding for at least 2 years, the corporation shall not be permitted to redeem the share solely because the specified individual in respect of the share attains 65 years of age or the corporation is notified that the specified individual

(A) has retired from the workforce, or

(B) has ceased to be resident in Canada,

. . . . .

(B) the transfer occurs more than 5 years after the day on which the share was issued,

Cl. 204.81(1)(c)(vii)(E) amended and cl. (F) repealed, by 1997, c. 25, subsec. 56(9), applicable to corporations that are incorporated after December 5, 1996. Those cls. formerly read:

(E) the corporation is notified in writing that the transfer occurs after the specified individual dies, retires from the workforce or ceases to be resident in Canada,

(F) the specified individual attains 65 years of age,

The opening words of para. 204.81(1)(c) amended by 1994, c. 8, subsec. 30(1), applicable after 1988. They formerly read:

(c) the articles of incorporation of the corporation provide that

The opening words of cl. 204.81(1)(c)(ii)(A), that portion of subpara. 204.81(1)(c)(ii) following subcl. (A)(III) repealed, and subparas. 204.81(c)(v) to (vii) amended, by 1994, c. 8, subsecs. 30(2) to (4), applicable after December 2, 1992 except that, where a corporation was registered under subsec. 204.81(1) before December 3, 1992, the amendment applies to the corporation on and after the earlier of

(a) November 30, 1994, and

(b) the first day after December 2, 1992 on which the articles of incorporation of the corporation are amended.

The substituted and repealed portions formerly read:

(A) Class A shares that are issuable only to individuals (other than trusts), that entitle the holders thereof

. . . . .

and that, where an information return described in paragraph (6)(c) was issued in respect thereof, are redeemable or transferable only in the circumstances described in subparagraph (v) or (vii), as the case may be,

. . . . .

(v) subject to the provision described in subparagraph (vi), the corporation may redeem a Class A share in respect of which an information return described in paragraph (6)(c) was issued only if the corporation is requested in writing by the holder of the share to redeem it and

(A) where the share is held by the original purchaser,

(I) the request is made within 60 days after the day on which the share was issued to the original purchaser, the information return referred to in paragraph (6)(c) was returned to the corporation and the share is not held as an investment of a registered retirement savings plan, or

(II) the corporation is notified in writing that the original purchaser has retired from the workforce, has attained 65 years of age, has ceased to be a resident of Canada or has, after acquiring the share, become disabled and permanently unfit for work or become terminally ill,

(B) where the holder of the share is not the original purchaser, the time of redemption is on or after the day on which the original purchaser attained, or would, but for death, have attained the age of 65 years,

(C) the share is held by an individual who notifies the corporation in writing that the share has devolved on the individual as a consequence of the death of a shareholder of the corporation,

(D) the share is held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser

(I) has retired from the workforce or has attained 65 years of age,

(II) has, after acquiring the share, become disabled and permanently unfit for work or become terminally ill, or

(III) has ceased to be a resident of Canada,

(E) the share is held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is not an annuitant and the time of redemption is on or after the day on which the original purchaser attained, or would, but for death, have attained the age of 65 years,

(F) the redemption occurs more than 5 years after the day on which the share was issued, or

(G) the holder of the share has satisfied such other conditions as are prescribed,

(vi) the corporation shall not, because of the original purchaser of a share described in subparagraph (v)

(i) having retired from the workforce,

(ii) having attained 65 years of age, or

(iii) having ceased to be a resident of Canada,

redeem the share until it has been issued and outstanding for at least 2 years,

(vii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which an information return described in paragraph (6)(c) was issued, except where the transfer occurs more than 5 years after the day on which the share was issued, or where the corporation is notified in writing that the share is being transferred

(A) to be held as an investment of a registered retirement savings plan under which the original purchaser or the original purchaser's spouse is the annuitant,

(B) as a consequence of the death of the original purchaser,

(C) at a time when the original purchaser

(I) has retired from the workforce or has attained 65 years of age,

(II) has, after acquiring the share, become disabled and permanently unfit for work or become terminally ill, or

(III) has ceased to be a resident of Canada, or

(D) in accordance with such other conditions as are prescribed,

"Eligible labour body" substituted for "national central labour body" in para. (b), cl. (c)(ii)(B) and subpara. (c)(iii) of subsec. 204.81(1) by 1994, c. 7, Sch. VIII (1993, c. 24), s. 119, applicable to 1992 *et seq.*

Regulations: 6706 (prescribed conditions for 204.81(1)(c)(v)(G)).

Forms: T5005: Application for registration — registered labour-sponsored venture capital corporation.

(2) Registration number — On registering a corporation under subsection (1), the Minister shall assign to it a registration number.

(3) Successive registrations — Where an eligible labour body causes more than one corporation to be regis-

tered under this Part, for the purposes of paragraph (6)(h) and section 204.82, each of those corporations shall be deemed

(a) to have issued a Class A share at the earliest time any such corporation issued a Class A share,

and, where the corporation did not exist at the time referred to in paragraph (a),

(b) to have been in existence during the particular period beginning immediately before that time and ending immediately after the corporation was incorporated, and

(c) to have had, throughout the particular period, fiscal periods ending on the same calendar day in each year in the particular period as the calendar day on which its first fiscal period after it was incorporated ended.

History: "Eligible labour body" substituted for "national central labour body" in subsec. 204.81(3) by 1994, c. 7, Sch. VIII (1993, c. 24), s. 119, applicable to 1992 *et seq.*

(4) Determination of cost — For the purposes of this Part, the cost at any time to a corporation of an eligible investment that is a guarantee shall be deemed to be 25% of the amount of the debt obligation subject to the guarantee at that time.

(5) Registration date — Where the Minister registers a corporation for the purposes of this Part, the corporation shall be deemed to have become so registered on the later of

(a) the day the application for registration of the plan is received by the Minister, and

(b) where in the application for registration a day is specified as the day on which the registration is to take effect, that day.

(6) Revocation of registration — The Minister may revoke the registration of a corporation for the purposes of this Part where

(a) the articles of the corporation do not comply with paragraph (1)(c) and would not comply with that paragraph if the corporation had been incorporated after December 5, 1996;

(a.1) the corporation does not comply with any of the provisions of its articles described in paragraph (1)(c), except where there would be no failure to comply if the provisions of its articles were consistent with the articles of a corporation that would be permitted to be registered under this Part if it had been incorporated after December 5, 1996;

(b) an individual acquires or irrevocably subscribes and pays for a Class A share of the capital stock of the corporation in the period beginning on the 61st day of a calendar year and ending on the 60th day of the following calendar year and the corporation fails to file with the Minister an information return in prescribed form containing prescribed information before April of that following calendar year;

(c) an individual acquires or irrevocably subscribes and pays for a Class A share of the capital stock of the corporation in the period beginning on the 61st day of a calendar year and ending on the 60th day of the following calendar year and the corporation fails to issue to the individual before April of that following calendar year an information return in prescribed form stating the amount of the consideration paid for the share in that period;

(d) the corporation issues more than one information return described in paragraph (c) in respect of the same acquisition of or subscription for a Class A share;

(e) the financial statements of the corporation presented to its shareholders are not prepared in accordance with generally accepted accounting principles;

(f) the corporation fails within 6 months after the end of any taxation year to have an independent valuation of its shares made as of the end of that year;

(g) [Repealed.]

(h) the corporation does not pay the tax or penalty payable under section 204.82 by it on or before the day on or before which that tax or penalty is required to be paid;

(i) tax was payable under subsection 204.82(3) by the corporation for 3 or more taxation years;

(j) the corporation provides a guarantee that is an eligible investment and fails to maintain, at any time during the term of the guarantee, a reserve equal to the cost to the corporation of the guarantee at that time;

(k) the corporation pays a fee or commission in excess of a reasonable amount in respect of the offering for sale, or the sale, of its shares; or

(l) the corporation has a monthly deficiency in 18 or more months in any 36-month period.

Related Provisions: 127.4(6)(b) — No labour-sponsored funds tax credit unless return under 204.81(6)(c) filed with tax return; 204.8(1)"revoked corporation", 211.7(1)"revoked corporation" — Corporations whose registration has been revoked; 204.81(4) — Determination of cost; 204.81(7), (8) — Notice of intent to revoke registration; 204.81(8.1) — Voluntary de-registration.

History: Para. 204.81(6)(g) repealed by 2000, c. 19, subsec. 55(1), applicable after February 16, 1999. Para. (g) formerly read:

(g) at any time in any of the first 5 taxation years of the corporation beginning with the taxation year in which the corporation first issues a Class A share, the corporation does not have eligible investments or reserves the cost to the corporation of which equals or is greater than 80% of the amount by which the total consideration received by it for Class A shares issued by it before that time exceeds the total of all amounts paid by it before that time to its shareholders as a return of capital on such shares;

Paras. 204.81(6)(a) and (a.1) amended by 1997, c. 25, subsec. 56(10), applicable after March 5, 1996. Paras. (a) and (a.1) formerly read:

(a) the articles of the corporation do not comply with paragraph (1)(c);

(a.1) the corporation does not comply with any of the provisions of its articles of incorporation described in paragraph (1)(c);

Paras. 204.81(6)(a), (a.1) substituted for para. (a) by 1994, c. 8, subsec. 30(5), applicable after 1988. Para. (a) formerly read:

(a) the corporation fails to comply with any of the provisions of its articles of incorporation described in paragraph (1)(c);

Forms: T2152: Part X.3 tax return for an LSVCC; T2152 SCH 1: Calculating tax under subsec. 204.82(2); T2152 SCH 2: Calculating tax under subsecs. 204.82(3) and (6) and s. 204.841; T2152A: Part X.3 tax return and request for a refund for an LSVCC; T5006 Summ: Return of Class A shares; T5006 Supp: Statement of registered labour-sponsored venture capital corporation Class A shares.

(7) Notice of intent to revoke registration — Where the Minister proposes to revoke the registration of a corporation under subsection (6), the Minister shall, by registered mail, give notice to the corporation of the proposal.

Related Provisions: 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed; 204.81(9) — Appeal of decision to revoke registration.

(8) Idem — Where the Minister gives notice under subsection (7) to a registered labour-sponsored venture capi-

tal corporation, the Minister may, after the expiration of 30 days after the day of mailing of the notice, or after the expiration of such extended period after the day of mailing as the Federal Court of Appeal or a judge thereof, on application made at any time before the determination of any appeal under subsection (9) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette* and, on the publication of a copy of the notice, the registration of the corporation is revoked.

(8.1) Voluntary de-registration — Where at any time the Minister receives a certified copy of a resolution of the directors of a corporation seeking the revocation of the corporation's registration under this Part,

(a) the registration is revoked at that time; and

(b) the Minister shall, with all due dispatch, give notice in the *Canada Gazette* of the revocation.

Related Provisions: 204.81(6) — Revocation of registration.

(8.2) Application of subsection 248(7) — Subsection 248(7) does not apply for the purpose of subsection (8.1).

History: Subsecs. 204.81(8.1) and (8.2) added by 2000, c. 19, subsec. 55(2), applicable to resolutions received by the Minister of National Revenue after June 29, 2000 (Royal Assent).

(9) Right of appeal — Where the Minister refuses to accept a corporation for registration under subsection (1) or gives notice of a proposal to revoke the registration of a corporation under subsection (7), the corporation may appeal to the Federal Court of Appeal from the decision or from the giving of the notice.

Definitions [s. 204.81]: "amount" — 248(1); "annuitant" — 146(1), 204.8(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "common-law partner" — 248(1); "consequence of the death" — 248(8); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "eligible business entity", "eligible investment", "eligible labour body" — 204.8(1); "Federal Court" — *Interpretation Act* 35(1); "fiscal period" — 249.1; "individual", "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "officer" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "registered labour-sponsored venture capital corporation" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "reserve" — 204.8(1); "share", "shareholder" — 248(1); "specified individual" — 204.8(1); "spouse" — 252(4); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

204.82 (1) Recovery of credit — Where, at any time that is both in a taxation year included in the start-up period of a corporation that was registered under this Part and before its venture capital business is first discontinued,

(a) 80% of the amount, if any, by which the total consideration received by it for Class A shares issued by it before that time exceeds the total of all amounts paid by it before that time to its shareholders as a return of capital on such shares

exceeds

(b) the total of all amounts each of which is the cost to the corporation of an eligible investment or reserve of the corporation at that time,

the corporation shall pay a tax under this Part for the year equal to the amount determined by the formula

$$(A \times 20\%) - B$$

where

A is the greatest amount by which the amount determined under paragraph (a) exceeds the amount determined under paragraph (b) for the year, and

B is the total of all taxes payable under this subsection by the corporation for preceding taxation years.

Related Provisions: 204.81(4) — Determination of cost; 257 — Formula cannot calculate to less than zero.

History: The opening words of subsec. 204.82(1) amended by 2000, c. 19, subsec. 56(1), applicable to 1999 *et seq.* The opening words formerly read:

> Where, at any time in a taxation year referred to in paragraph 204.81(6)(g) of a corporation that was registered under this Part,

(2) Liability for tax — Each corporation that has been registered under this Part shall, in respect of each month that ends before its venture capital business is first discontinued and in a particular taxation year of the corporation that begins after the end of the corporation's start-up period (or, where the corporation has no start-up period, that begins after the time the corporation first issues a Class A share), pay a tax under this Part equal to the amount obtained when the greatest investment shortfall at any time that is in the month and in the particular year (in this section and sections 204.81 and 204.83 referred to as the "monthly deficiency") is multiplied by 1/60 of the prescribed rate of interest in effect during the month.

Related Provisions: 204.82(2.1), (2.2) — Investment shortfall.

History: Subsec. 204.82(2) amended by 2000, c. 19, subsec. 56(2), applicable to 1999 *et seq.* Subsec. 204.82(2) formerly read:

> (2) Liability for tax — Each corporation that has been registered under this Part shall, in respect of each month that ends in a particular taxation year of the corporation that begins after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), pay a tax under this Part equal to the amount obtained when the greatest investment shortfall at any time that is in the month and in the particular year (in this section and sections 204.81 and 204.83 referred to as the "monthly deficiency") is multiplied by 1/60 of the prescribed rate of interest during the month.

Subsec. 204.82(2) amended by 1998, c. 19, subsec. 53(3), applicable to taxation years that end after February 1997. Subsec. 204.82(2) formerly read:

> (2) Where, at any time in a month in a particular taxation year of a corporation that was registered under this Part that began after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), 60% of the least of
>
> (a) the amount of the shareholders' equity in the corporation determined at the end of the taxation year immediately preceding the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation, and
>
> (a.1) the amount of the shareholders' equity in the corporation determined at the end of the second taxation year before the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation, and
>
> (b) the amount of the shareholders' equity in the corporation, determined at the end of the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation,
>
> exceeds
>
> (c) the total of all amounts, each of which is the cost to the corporation of an eligible investment of the corporation at that time,
>
> the corporation shall, in respect of that month, pay a tax under this Part equal to the amount obtained when the greatest such excess in the month (in this section and sections 204.81 and 204.83 referred to as the "monthly deficiency") is multiplied by a percentage equal to 1/60 of the prescribed rate of interest in effect for the month.

The opening words of subsec. 204.82(2) amended by the said c. 19, subsec. 53(1), applicable to taxation years that end after 1994 and before March 1997. The opening words formerly read:

> (2) Where, at any time in a month in a particular taxation year of a corporation that was registered under this Part beginning after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), 60% of the lesser of

Para. 204.82(2)(a.1) added by the said c. 19, subsec. 53(2), applicable to taxation years that end after 1994 and before March 1997.

Regulations: 4301 (prescribed rate of interest).

(2.1) Determination of investment shortfall — Subject to subsection (2.2), a corporation's investment shortfall at any time in a particular taxation year is the amount determined by the formula

$$A - B - C$$

where

A is 60% of the lesser of

(a) the amount, if any, by which the amount of the shareholders' equity in the corporation at the end of the preceding taxation year exceeds the specified adjustment in respect of the shareholders' equity in the corporation at the end of that year, and

(b) the amount, if any, by which the amount of the shareholders' equity in the corporation at the end of the particular taxation year exceeds the specified adjustment in respect of the shareholders' equity in the corporation at the end of the particular year;

B is the greater of

(a) the total of all amounts each of which is the adjusted cost to the corporation of an eligible investment of the corporation at that time, and

(b) 50% of the total of all amounts each of which is

(i) the adjusted cost to the corporation of an eligible investment of the corporation at the beginning of the particular year, or

(ii) the adjusted cost to the corporation of an eligible investment of the corporation at the end of the particular year; and

C is 60% of the amount, if any, by which

(a) the total of all amounts each of which is a tax or penalty under subsection (3) or (4), or a prescribed tax or penalty, paid before that time by the corporation (other than the portion, if any, of that tax or penalty the liability for which resulted in a reduction in the amount of the shareholders' equity at the end of any preceding taxation year)

exceeds

(b) the total of all amounts each of which is a refund before that time of any portion of the total described in paragraph (a).

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The formula, and paras. (a) and (b) of the description of A, in subsec. 204.82(2.1) amended, and the description of C added to subsec. 204.82(2.1), by 1999, c. 22, subsecs. 69(1) to (3), applicable to taxation years that begin after 1997. The formula and paras. (a) and (b) of the description of A formerly read:

$$A - B$$

. . . . .

(a) the amount of the shareholders' equity in the corporation at the end of the preceding taxation year, and

(b) the amount of the shareholders' equity in the corporation at the end of the particular year; and

Subsec. 204.82(2.1) added by 1998, c. 19, subsec. 53(3), applicable to taxation years that end after February 1997 except that, for taxation years that end before 1999, the amount determined under paragraph (b) of the description of B is deemed to be nil.

(2.2) Investment shortfall — For the purpose of this subsection and for the purpose of computing a corporation's investment shortfall under subsection (2.1) at any time in a taxation year (in this subsection referred to as the "relevant year"),

(a) unrealized gains and losses in respect of its eligible investments shall not be taken into account in computing the amount of the shareholders' equity in the corporation;

(b) where

(i) the relevant year ends after 1998, and

(ii) it is expected that a redemption of its Class A shares will occur after the end of a particular taxation year and, as a consequence, the amount of the shareholders' equity in the corporation at the end of the particular year would otherwise be reduced to take into account the expected redemption,

subject to paragraph (c), the amount (or, where the relevant year ends in 1999, 2000, 2001 or 2002, 20%, 40%, 60% or 80%, respectively of the amount) expected to be redeemed shall not be taken into account in determining the amount of the shareholders' equity in the corporation at the end of the particular year;

(c) paragraph (b) does not apply to a redemption expected to be made after the end of a taxation year where

(i) the redemption is made within 60 days after the end of the year, and

(ii) either

(A) tax under Part XII.5 became payable as a consequence of the redemption, or

(B) tax under Part XII.5 would not have become payable as a consequence of the redemption if the redemption had occurred at the end of the year; and

(c.1) the specified adjustment in respect of shareholders' equity in the corporation at the end of a taxation year is the amount determined by the formula

$$(A \times (B/C)) - D$$

where

A is the shareholders' equity at the end of the year,

B is the total of

(i) the fair market value at the end of the year of all Class A shares issued by it before March 6, 1996 and more than five years before the end of the year,

(ii) the fair market value at the end of the year of all Class A shares issued by it after March 5, 1996 and more than eight years before the end of the year,

(iii) the fair market value at the end of the year of all Class A shares issued by it in the last 60 days of the year, and

Proposed Amendment — Shares redeemed from Feb. 1 to March 1

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Shares in federally-registered LSVCCs that qualify for the federal LSVCC tax credit must be held for a minimum period.

Where a share is redeemed prior to the expiry of the minimum period, the federal LSVCC tax credit for the share is generally recovered. In the case of shares issued before March 6, 1996, there is no recovery of the tax credit for a share redeemed more than five years after the day on which the share was issued. For shares issued after March 5, 1996, the recovery applies where a share is redeemed less than eight years after the day on which it was issued.

The proposed change will, for the purpose of the recovery provisions, treat a share redeemed in February or on March 1st as having been redeemed 30 days later. For example, existing LSVCC shares issued on March 1, 1995 and redeemed on February 29, 2000 would be exempt from a recovery of the federal LSVCC tax credit that was associated with the original acquisition of the shares.

This measure is intended to accommodate taxpayers wishing to acquire new LSVCC shares in the first 60 days of a year with the proceeds from the redemption of LSVCC shares. In these circumstances, a taxpayer would generally be entitled to claim a tax credit for the preceding year in respect of an acquisition of the new shares and would not be subject to a tax penalty with respect to the redemption of the existing shares. In addition, any necessary changes will be made to ensure that an LSVCC's registration cannot be revoked as a result of having redeemed LSVCC shares in these circumstances. It is proposed that this change apply from the inception of the rules governing the recovery of the LSVCC tax credit.

For further information: Grant Nash, Tax Policy Branch, (613) 992-5287; Karl Littler, Senior Advisor, Tax Policy, Office of the Minister of Finance, (613) 996-7861; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080.

(iv) if the corporation so elects in writing filed with the Minister not more than six months after the end of the year and is not a revoked corporation at the end of the year, the fair market value at the end of the year of all shares of classes, of the capital stock of the corporation, to which clause 204.81(1)(c)(ii)(C) applies,

C is the fair market value at the end of the year of all shares issued by it, and

D is the amount by which the shareholders' equity in the corporation at the end of the year has been reduced to take into account the expected subsequent redemption of shares of the capital stock of the corporation; and

(d) the adjusted cost to the corporation of an eligible investment of the corporation at any time is

(i) 150% of the cost to the corporation of the eligible investment at that time where the eligible investment is

(A) a property acquired by the corporation after February 18, 1997 (other than a property to which subparagraph (i.1) applies) that would be an eligible investment of the corporation if the reference to "$50,000,000" in paragraph (f) of the definition "eligible investment" in subsection 204.8(1) were read as "$10,000,000", or

(B) a share of the capital stock of a prescribed corporation,

(i.1) 200% of the cost to the corporation of the eligible investment at that time where the eligible investment is a property acquired by the corporation after February 16, 1999 (other than a property described in clause (i)(B)) that would be an eligible investment of the corporation if the reference to "$50,000,000" in paragraph (f) of the definition "eligible investment" in subsection 204.8(1) were read as "$2,500,000", and

(ii) in any other case, the cost to the corporation of the eligible investment of the corporation at that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subpara. 204.82(2.2)(d)(i) amended, and subpara. (i.1) added, by 2000, c. 19, subsec. 56(3), applicable to 1999 *et seq*. Subpara. (i) formerly read:

(i) where the eligible investment is a property acquired by the corporation after February 18, 1997 that would be an eligible investment of the corporation if the reference to "$50,000,000" in paragraph (f) of the definition "eligible investment" in section 204.8 were read as "$10,000,000", 150% of the cost to the corporation of the eligible investment of the corporation at that time, and

The opening words of subsec. 204.82(2.2) amended, and para. 204.82(2.2)(c.1) added, by 1999, c. 22, subsecs. 69(4), (5), applicable to taxation years that begin after 1997. The opening words formerly read:

(2.2) For the purpose of computing a corporation's investment shortfall under subsection (2.1) at any time in a taxation year (in this subsection referred to as the "relevant year"),

Subsec. 204.82(2.2) added by 1998, c. 19, subsec. 53(3), applicable to taxation years that end after February 1997.

(3) Recovery of credit — Where a corporation is liable under subsection (2) to pay a tax in respect of 12 consecutive months (in this subsection referred to as the "particular period"), the corporation shall pay a tax under this Part for a taxation year in respect of each particular period that ends in the year equal to the total of the amounts determined by the formula

$$\left(\frac{A}{12} \times 20\%\right) - (B - C)$$

where

A is the total of the monthly deficiencies for each month in the particular period;

B is the total of all taxes payable by the corporation under subsection (1) for preceding taxation years and taxes payable by it under this subsection in respect of a period ending before the end of the particular period; and

C is the total of all amounts refunded under section 204.83 in respect of the tax paid under this subsection by the corporation for preceding taxation years.

Related Provisions: 204.82(4) — Penalty; 204.83(1) — Refund of amount paid; 257 — Formula cannot calculate to less than zero.

(4) Penalty — Where a corporation is liable under subsection (3) to pay a tax for a taxation year, the corporation shall pay, in addition to the tax payable under that subsection, a penalty for the year equal to that tax.

Related Provisions: 18(1)(t) — Penalty is non-deductible; 204.83(1) — Refund of 80% of penalty; 211.7 — Recovery of credit from shareholder where share redeemed or disposed of.

(5) Provincially registered LSVCCs — Where

(a) an amount (other than interest on an amount to which this subsection applies or an amount payable under or as a consequence of a prescribed provision of a law of a province) is payable to the government of a province by a corporation,

(b) the amount is payable as a consequence of a failure to acquire sufficient properties of a character described in the law of the province,

(c) the corporation has been prescribed for the purpose of the definition "approved share" in subsection 127.4(1), and

(d) the corporation is not a registered labour-sponsored venture capital corporation or a revoked corporation,

the corporation shall pay a tax under this Part for the taxation year in which the amount became payable equal to that amount.

Related Provisions: 204.83(2) — Refund; 204.86(2) — Return and payment of tax.

History: Subsec. 204.82(5) added by 1998, c. 19, subsec. 53(4), applicable to liabilities arising after February 18, 1997.

Regulations: 6707 (prescribed provision of a law of a province (Ontario)).

(6) Further matching of amounts payable to a province — Where

(a) a particular amount is payable (other than interest on an amount to which this subsection applies) by a registered labour-sponsored venture capital corporation or a revoked corporation to the government of a province as a consequence of a failure of a prescribed corporation to acquire sufficient properties of a character described in a law of the province, and

(b) the particular amount became payable before the corporation first discontinued its venture capital business,

the corporation shall pay a tax under this Part for the taxation year in which the particular amount became payable equal to that amount.

Related Provisions: 204.83(2) — Refund of tax paid under 204.82(6).

History: Subsec. 204.82(6) added by 2000, c. 19, subsec. 56(4), applicable to 1999 *et seq.*

Regulations: The Department of Finance Technical Notes indicate that prescribed corporations will be corporations registered under Part III.1 of the Ontario *Community Small Business Investment Funds Act*.

Definitions [s. 204.82]: "adjusted cost" — 204.82(2.2)(d); "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "eligible investment" — 204.8(1); "investment shortfall" — 204.82(2.1), (2.2); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "particular period" — 204.82(3); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — 248(1); "relevant year" — 204.82(2.2); "reserve", "revoked corporation" — 204.8(1); "share", "shareholder" — 248(1); "shareholders' equity" — 204.82(2.2)(a), (b); "specified adjustment" — 204.82(2.2)(c.1); "start-up period" — 204.8(1); "taxation year" — 249; "writing" — *Interpretation Act* 35(1).

204.83 (1) Refunds for federally registered LSVCCs — If a corporation is required, under subsections 204.82(3) and (4), to pay a tax and a penalty under this Part for a taxation year, it has no monthly deficiency throughout any period of 12 consecutive months (in this section referred to as the "second period") that begins after the 12-month period in respect of which the tax became payable (in this section referred to as the "first period") and it so requests in an application filed with the Minister in prescribed form, the Minister shall refund to it an amount equal to the total of the amount that was paid under subsection 204.82(3) and 80% of the amount that was paid under subsection 204.82(4) in respect of the first period on or before the later of

(a) the 30th day after receiving the application, and

(b) the 60th day after the end of the second period.

Forms: T2152A: Part X.3 tax return and request for a refund for an LSVCC.

(2) Refunds of amounts payable to provinces — Where

(a) the government of a province refunds, at any time, an amount to a corporation,

(b) the refund is of an amount that had been paid in satisfaction of a particular amount payable in a taxation year of the corporation, and

(c) tax was payable under subsection 204.82(5) or (6) by the corporation for a taxation year because the particular amount became payable,

the corporation is deemed to have paid at that time an amount equal to the refund on account of its tax payable under this Part for the year.

History: Subsec. 204.83(2) amended by 2000, c. 19, s. 57, applicable to 1999 *et seq.* Subsec. 204.83(2) formerly read:

(2) Refunds for other LSVCCs — Where

(a) the government of a province refunds, at any time, an amount to a corporation,

(b) the refund is of an amount that had been paid in satisfaction of a particular amount payable in a taxation year of the corporation, and

(c) tax was payable under subsection 204.82(5) by the corporation for a taxation year because the particular amount became payable,

the corporation is deemed to have paid at that time an amount equal to the refund on account of its tax payable under this Part for the year.

Subsec. 204.83(1) amended by 1999, c. 22, s. 70, applicable after June 16, 1999, except that for the purpose of the subsec., as amended, applications received by the Minister of National Revenue before June 17, 1999 are deemed to have been received on that day. Subsec. (1) formerly read:

(1) If a corporation is required, under subsections 204.82(3) and (4), to pay a tax and a penalty under this Part for a taxation year and, throughout any period of 12 consecutive months (in this section referred to as the "second period") that begins after the 12-month period in respect of which the tax became payable (in this section referred to as the "first period"), the corporation has no monthly deficiency and files with the Minister the return required under this Part for the taxation year in which the second period ends, the Minister shall refund to the corporation an amount equal to the total of the amount that was paid under subsection 204.82(3) and 80% of the amount that was paid under subsection 204.82(4) in respect of the first period.

S. 204.83 amended by 1998, c. 19, s. 54, applicable after February 18, 1997. S. 204.83 formerly read:

204.83 Refund of tax and penalty — Where a corporation is required, under subsections 204.82(3) and (4), to pay a tax and a penalty under this Part for a taxation year and, throughout any period of 12 consecutive months (in this section referred to as the "second period") beginning after the 12-month period in respect of which the tax became payable (in this section referred to as the "first period"), the corporation has no monthly deficiency and files with the Minister the return required under this Part for the taxation year in which the second period ends, the Minister shall refund to the corporation an amount equal to the total of the amount that was paid under subsection 204.82(3) and 80% of the amount that was paid under subsection 204.82(4) in respect of the first period.

Definitions [s. 204.83]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "first period" — 204.83(1); "Minister" — 248(1); "month", "province" — *Interpretation Act* 35(1); "second period" — 204.83(1); "taxation year" — 249.

204.84 Penalty — Every corporation that for a taxation year issues an information return described in paragraph 204.81(6)(c) in respect of

(a) the issuance of a share when the corporation was a revoked corporation, or

(b) a subscription in respect of a share if the share is not issued on or before the day that is 180 days after the day the information return was issued,

is liable to a penalty for the year equal to the amount of the consideration for which the share was or was to be issued.

Related Provisions: 18(1)(t) — Penalty is non-deductible.

Definitions [s. 204.84]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "revoked corporation" — 204.8(1); "share" — 248(1); "taxation year" — 249.

204.841 Penalty tax where venture capital business discontinued — Where, at a particular time in a taxation year, a particular corporation that is a registered labour-sponsored venture capital corporation or a revoked corporation first discontinues its venture capital business, the particular corporation shall pay a tax under this Part for the year equal to the total of all amounts each of which is the amount in respect of a Class A share of the capital stock of the particular corporation outstanding immediately before the particular time that is determined by the formula

$$A \times B$$

where

A is

(a) if the original acquisition of the share was before March 6, 1996 and less than five years before the particular time, 4% of the consideration received by the particular corporation for the issue of the share,

(b) if the original acquisition of the share was after March 5, 1996 and less than eight years before the particular time, 1.875% of the consideration received by the particular corporation for the issue of the share, and

(c) in any other case, nil; and

B is

(a) if the original acquisition of the share was before March 6, 1996, the number obtained when the number of whole years throughout which the share was outstanding before the particular time is subtracted from five, and

(b) in any other case, the number obtained when the number of whole years throughout which the share was outstanding is subtracted from eight.

Related Provisions: 204.8(2) — Determining when an RLSVCC discontinues its business.

History: S. 204.841 added by 2000, c. 19, s. 58, applicable to businesses discontinued after February 16, 1999.

Definitions [s. 204.841]: "amount", "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "discontinues" — 204.8(2); "original acquisition" — 127.4(1), 204.8(1); "registered labour-sponsored venture capital corporation" — 248(1); "revoked corporation" — 204.8(1); "share" — 248(1); "taxation year" — 249.

204.85 (1) Dissolution of federally registered LSVCCs — A registered labour-sponsored venture capital corporation or a revoked corporation that has issued any Class A shares shall send written notification of any proposed amalgamation, merger, liquidation or dissolution of the corporation to the Minister at least 30 days before the amalgamation, merger, liquidation or dissolution, as the case may be.

(2) Dissolution of other LSVCCs — Where

(a) an amount (other than interest on an amount to which this subsection applies or an amount payable under or as a consequence of a prescribed provision of a law of a province) is payable to the government of a province by a corporation,

(b) the amount is payable as a consequence of the amalgamation or merger of the corporation with another corporation, the winding-up or dissolution of the corporation or the corporation ceasing to be registered under a law of the province,

(c) the corporation has been prescribed for the purpose of the definition "approved share" in subsection 127.4(1), and

(d) the corporation is not a registered labour-sponsored venture capital corporation or a revoked corporation,

the corporation shall pay a tax under this Part for the taxation year in which the amount became payable equal to that amount.

(3) Amalgamations and mergers — For the purposes of section 127.4, this Part and Part XII.5, where two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") amalgamate or merge to form one corporate entity (in this subsection referred to as the "new corporation") and at least one of the predecessor corporations was, immediately before the amalgamation or merger, a registered labour-sponsored venture capital corporation or a revoked corporation,

(a) subject to paragraphs (d) and (e), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(b) where a predecessor corporation was authorized to issue a class of shares to which clause 204.81(1)(c)(ii)(C) applies, the new corporation is deemed to have received approval from the Minister of Finance to issue substantially similar shares at the time of the amalgamation or merger;

(c) where a share of a predecessor corporation (in this paragraph referred to as the "predecessor share") is replaced on the amalgamation or merger by a new share of the new corporation,

(i) the new share

(A) is deemed not to have been issued on the amalgamation or merger, and

(B) is deemed to have been issued by the new corporation at the time the predecessor corporation issued the predecessor share, and

(ii) if the new share was issued to a person who acquired the predecessor share as a consequence of a transfer the registration of which by the predecessor corporation was permitted under paragraph 204.81(1)(c), the issuance of the new share is deemed to be in compliance with the conditions described in paragraph 204.81(1)(c);

(d) the Minister is deemed to have registered the new corporation for the purposes of this Part unless

(i) the new corporation is not governed by the *Canada Business Corporations Act*,

(ii) one or more of the predecessor corporations was a registered labour-sponsored venture capital corporation the venture capital business of which was discontinued before the amalgamation or merger,

(iii) one or more of the predecessor corporations was, immediately before the amalgamation or merger, a revoked corporation,

(iv) immediately after the amalgamation or merger, the articles of the new corporation do not comply with paragraph 204.81(1)(c), or

(v) shares other than Class A shares of the capital stock of the new corporation were issued to any

shareholder of the new corporation in satisfaction of any share (other than a share to which clause 204.81(1)(c)(ii)(B) or (C) applied) of a predecessor corporation;

(e) where paragraph (d) does not apply, the new corporation is deemed to be a revoked corporation;

(f) subsection 204.82(1) does not apply to the new corporation; and

(g) subsection 204.82(2) shall, in its application to the new corporation, be read without reference to the words "that begins after the end of the corporation's start-up period (or, where the corporation has no start-up period, that begins after the time the corporation first issues a Class A share)".

Related Provisions: 87 — General rules for amalgamations; 127.4(1.1) — Application to labour-sponsored funds tax credit; 211.7(2) — Effect of amalgamation on Part XII.5 tax; 211.8(1.1) — Rule applies to 211.8(1).

History: Subsec. 204.85(1) amended by 2000, c. 19, subsec. 59(1), applicable to amalgamations, mergers, liquidations and dissolutions that occur later than July 29, 2000 (30 days after Royal Assent). Subsec. 204.85(1) formerly read:

204.85 (1) Dissolution [or amalgamation] of federally registered LSVCCs — If a registered labour-sponsored venture capital corporation or a revoked corporation has issued any Class A shares, it shall not be amalgamated or merged with another corporation, or be liquidated or dissolved, except with the written permission of the Minister of Finance and on any terms and conditions that are specified by that Minister.

Subsec. 204.85(3) added by the said c. 19, subsec. 59(2), applicable to amalgamations and mergers that occur after February 16, 1999.

S. 204.85 amended by 1998, c. 19, s. 55, subsec. (1) applicable after July 1997, and subsec. (2) applicable after February 18, 1997. S. 204.85 formerly read:

204.85 Prohibition against dissolution — A registered labour-sponsored venture capital corporation or a revoked corporation shall not, if it has issued any Class A shares, liquidate or dissolve except with the written permission of the Minister of Finance and on such terms and conditions as are specified by that Minister.

Definitions [s. 204.85]: "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — 248(1); "revoked corporation" — 204.8(1); "share", "shareholder" — 248(1); "start-up period" — 204.8(1); "taxation year" — 249; "written" — *Interpretation Act* 35(1)"writing".

204.86 (1) Return and payment of tax for federally-registered LSVCCs — Every registered labour-sponsored venture capital corporation and every revoked corporation shall

(a) on or before its filing-due date for a taxation year, file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax and penalties, if any, payable under this Part by it for the year; and

(c) within 90 days after the end of the year, pay to the Receiver General the amount of tax and penalties, if any, payable under this Part by it for the year.

(2) Return and payment of tax for other LSVCCs — Where tax is payable under this Part for a taxation year by a corporation because of subsection 204.82(5) or 204.85(2), the corporation shall

(a) on or before its filing-due date for the year, file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable under this Part by it for the year; and

(c) within 90 days after the end of the year, pay to the Receiver General the amount of tax payable under this Part by it for the year.

Related Provisions [s. 204.86]: 150.1(5) — Electronic filing.

History: S. 204.86 amended by 1998, c. 19, s. 56, applicable to taxation years that end after February 18, 1997. S. 204.86 formerly read:

204.86 Return and payment of tax — Every registered labour-sponsored venture capital corporation and every revoked corporation shall

(a) on or before the day on or before which it is required by section 150 to file its return of income under Part I for a taxation year, file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax and penalties, if any, payable under this Part by it for the year; and

(c) within 90 days after the end of each taxation year, pay to the Receiver General the amount of tax and penalties, if any, payable under this Part by it for the year.

Definitions [s. 204.86]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date", "Minister", "prescribed", "registered labour-sponsored venture capital corporation" — 248(1); "revoked corporation" — 204.8(1); "taxation year" — 249.

Forms [s. 204.86]: T2152: Part X.3 tax return for an LSVCC; T2152 SCH 1: Calculating tax under subsec. 204.82(2); T2152 SCH 2: Calculating tax under subsecs. 204.82(3) and (6) and s. 204.841; T2152A: Part X.3 tax return and request for a refund for an LSVCC.

204.87 Provisions applicable to Part — Subsection 150(3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 164 and 165 to 167, Division J of Part I and section 227.1 apply to this Part, with such modifications as the circumstances require.

History [Part X.3]: Part X.3 (ss. 204.8 to 204.87) added by 1994, c. 7, Sch. II (1991, c. 49), s. 164, applicable after 1988, except that subpara. 204.81(1)(c)(vi) does not apply to shares purchased before 1991.

PART X.4 — TAX IN RESPECT OF OVERPAYMENTS TO REGISTERED EDUCATION SAVINGS PLANS

204.9 (1) Definitions — The definitions in this subsection apply in this Part.

History: The opening words of subsec. 204.9(1) amended by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996. The opening words formerly read:

In this Part, subject to subsection (2),

"excess amount" for a year at any time in respect of an individual means the amount, if any, by which the total of all contributions made after February 20, 1990 in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the individual exceeds the lesser of

(a) the RESP annual limit for the year, and

(b) the amount, if any, by which the RESP lifetime limit for the year exceeds the total of all contributions made into registered education savings plans by or on behalf of all subscribers in respect of the individual in all preceding years.

Related Provisions: 146.1(2)(k) — Limit on annual RESP contributions; 204.9(2)(a) — Where agreement entered into before February 21, 1990.

History: Subsec. 204.9(1)"excess amount" amended by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996. The definition formerly read:

> "excess amount", for a year at any time in respect of a beneficiary, means the amount, if any, by which the total of all payments made after February 20, 1990 in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the beneficiary exceeds the lesser of
>
> (a) $2,000, and
>
> (b) the amount, if any, by which $42,000 exceeds the total of all payments made into registered education savings plans by or on behalf of all subscribers in respect of the beneficiary in all preceding years;

Paras. (a) and (b) of the definition "excess amount" in subsec. 204.9(1) amended by 1997, c. 25, s. 57, applicable to months that end after 1995, except that, for payments made after 1989 and before 1996,

> (a) the reference to "$2,000" in para. (a) of the definition shall be read as "$1,500" and
>
> (b) the reference to "$42,000" in para. (b) of the definition shall be read as "$31,500".

Paras. (a) and (b) formerly read:

> (a) $1,500, and
>
> (b) the amount, if any, by which $31,500 exceeds the total of all payments made into registered education savings plans by or on behalf of all subscribers in respect of the beneficiary in all preceding years;

"RESP lifetime limit" for a year means,

(a) for 1990 to 1995, $31,500; and

(b) for 1996 and subsequent years, $42,000.

History: Subsec. 204.9(1)"RESP lifetime limit" added by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996.

"subscriber's gross cumulative excess" at any time in respect of an individual means the total of all amounts each of which is the subscriber's share of the excess amount for a relevant year at that time in respect of the individual and, for the purpose of this definition, a relevant year at any time is a year that began before that time.

History: Subsec. 204.9(1)"subscriber's gross cumulative excess" added by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996.

"subscriber's share of the excess amount" for a year at any time in respect of an individual means the amount determined by the formula

$$(A/B) \times C$$

where

A is the total of all contributions made after February 20, 1990, in the year and before that time into all registered education savings plans by or on behalf of the subscriber in respect of the individual;

B is the total of all contributions made after February 20, 1990, in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the individual; and

C is the excess amount for the year at that time in respect of the individual.

Related Provisions: 204.9(2)(b) — Where agreement entered into before February 21, 1990.

History: Subsec. 204.9(1)"subscriber's share of the excess amount" amended by 1998, c. 19, subsec. 57(1), applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996. The definition formerly read:

> "subscriber's share of the excess amount", for a year at any time in respect of a beneficiary, means the amount determined by the formula
>
> $$\frac{A}{B} \times C$$
>
> where
>
> A is the total of all payments made in the year and before that time into all registered education savings plans by or on behalf of the subscriber in respect of the beneficiary,
>
> B is the total of all payments made in the year and before that time into all registered education savings plans by or on behalf of all subscribers in respect of the beneficiary, and
>
> C is the excess amount for the year at that time in respect of the beneficiary.

(1.1) Application of subsec. 146.1(1) — The definitions in subsection 146.1(1) apply to this Part.

(2) Agreements before February 21, 1990 — Where a subscriber is required, pursuant to an agreement in writing entered into before February 21, 1990, to make payments of specified amounts on a periodic basis into a registered education savings plan in respect of a beneficiary, and the subscriber makes at least one payment under the agreement before that day,

(a) the excess amount for a year in respect of the beneficiary shall be deemed not to exceed the excess amount for the year that would be determined under subsection (1) if the total of all such payments made in the year and, where the agreement so provides, amounts paid in the year in satisfaction of the requirement to make such payments under all such agreements by all such subscribers in respect of the beneficiary were equal to the lesser of the amounts described in paragraphs (a) and (b) of the definition "excess amount" in subsection (1); and

(b) in determining a subscriber's share of an excess amount for a year, any payment included in the total described in paragraph (a) in respect of the year shall be excluded in determining the values for A and B in the definition "subscriber's share of the excess amount" in subsection (1).

(3) Refunds from unregistered plans — For the purposes of subsection (1) and section 146.1, where an individual entered into an education savings plan before February 21, 1990, pursuant to a preliminary prospectus issued by a promoter, and the promoter refunds all payments made into the plan and all income accrued thereon to the individual, each payment made by the individual into a registered education savings plan before December 31, 1990 shall be deemed to be a payment made before February 21, 1990, to the extent that the total of all such payments does not exceed the amount so refunded to the individual.

(4) New beneficiary — For the purposes of this Part, if at any particular time an individual (in this subsection referred to as the "new beneficiary") becomes a beneficiary under a registered education savings plan in place of another individual (in this subsection referred to as the "former beneficiary") who ceased at or before the particular time to be a beneficiary under the plan,

(a) except as provided by paragraph (b), each contribution made at an earlier time by or on behalf of a subscriber into the plan in respect of the former bene-

ficiary is deemed also to have been made at that earlier time in respect of the new beneficiary;

(b) except for the purpose of applying this subsection to a replacement of a beneficiary after the particular time, applying subsection (5) to a distribution after the particular time and applying subsection 204.91(3) to events after the particular time, paragraph (a) does not apply as a consequence of the replacement at the particular time of the former beneficiary if

(i) the new beneficiary had not attained 21 years of age before the particular time and a parent of the new beneficiary was a parent of the former beneficiary, or

(ii) both beneficiaries were connected by blood relationship or adoption to an original subscriber under the plan and neither had attained 21 years of age before the particular time; and

(c) except where paragraph (b) applies, each contribution made by or on behalf of a subscriber under the plan in respect of the former beneficiary under the plan is, without affecting the determination of the amount withdrawn from the plan in respect of the new beneficiary, deemed to have been withdrawn at the particular time from the plan to the extent that it was not withdrawn before the particular time.

History: Para. 204.9(4)(b) amended by 1999, c. 22, s. 71, applicable to replacements of beneficiaries that occur after 1997. It formerly read:

(b) except for the purpose of applying this subsection to a replacement of a beneficiary after the particular time, applying subsection 204.9(5) to a distribution after the particular time and applying subsection 204.91(3) to events after the particular time, paragraph 204.9(4)(a) does not apply as a consequence of the replacement at the particular time of the former beneficiary where the new beneficiary had not attained 21 years of age at the particular time and a parent of the new beneficiary was a parent of the former beneficiary; and

Subsec. 204.9(4) amended by 1998, c. 19, subsec. 57(2), applicable to replacements of beneficiaries and distributions that occur after 1996. Subsec. 204.9(4) formerly read:

(4) For the purposes of this Part,

(a) where at any time an individual (in this paragraph referred to as the "new beneficiary") becomes a beneficiary under a registered education savings plan in place of another individual (in this paragraph referred to as the "former beneficiary") who ceases at that time to be a beneficiary under the plan, all payments made before that time into the plan in respect of the former beneficiary shall be deemed to have been made in respect of the new beneficiary; and

(b) where at any time property is transferred from a trust governed by a registered education savings plan (in this paragraph referred to as the "transferor plan") to a trust governed by another registered education savings plan (in this paragraph referred to as the "transferee plan"), unless a beneficiary under the transferee plan was, immediately before that time, a beneficiary under the transferor plan, all payments made before that time in respect of all beneficiaries under the transferor plan shall be deemed to have been made in respect of the beneficiaries under the transferee plan.

(5) Transfers between plans — For the purposes of this Part, if property held by a trust governed by a registered education savings plan (in this subsection referred to as the "transferor plan") is distributed at a particular time to a trust governed by another registered education savings plan (in this subsection referred to as the "transferee plan"),

(a) except as provided by paragraphs (b) and (c), the amount of the distribution is deemed not to have been contributed into the transferee plan;

(b) subject to paragraph (c), each contribution made at any earlier time by or on behalf of a subscriber into the transferor plan in respect of a beneficiary under the transferor plan is deemed also to have been made at that earlier time by the subscriber in respect of each beneficiary under the transferee plan;

(c) except for the purpose of applying this subsection to a distribution after the particular time, applying subsection (4) to a replacement of a beneficiary after the particular time and applying subsection 204.91(3) to events after the particular time, paragraph (b) does not apply as a consequence of the distribution where

(i) any beneficiary under the transferee plan was, immediately before the particular time, a beneficiary under the transferor plan, or

(ii) a beneficiary under the transferee plan had not attained 21 years of age at the particular time and a parent of the beneficiary was a parent of an individual who was, immediately before the particular time, a beneficiary under the transferor plan;

(d) where subparagraph (c)(i) or (ii) applies in respect of the distribution, the amount of the distribution is deemed not to have been withdrawn from the transferor plan; and

(e) each subscriber under the transferor plan is deemed to be a subscriber under the transferee plan.

Related Provisions: 146.1(2)(g.2), (i.2) — Restrictions on transfers between RESPs; 146.1(6.1) — Effect of transfers between RESPs.

History: Subsec. 204.9(5) added by 1998, c. 19, subsec. 57(2), applicable to replacements of beneficiaries and distributions that occur after 1996.

Definitions: See Definitions at end of s. 204.93.

204.91 (1) Tax payable by subscribers — Every subscriber under a registered education savings plan shall pay a tax under this Part in respect of each month equal to 1% of the amount, if any, by which

(a) the total of all amounts each of which is the subscriber's gross cumulative excess at the end of the month in respect of an individual

exceeds

(b) the total of all amounts each of which is the portion of such an excess that has been withdrawn from a registered education savings plan before the end of the month.

Regulations: 103(8) (withholding of tax at source).

(2) Waiver of tax — If a subscriber under a registered education savings plan would, but for this subsection, be required to pay a tax in respect of a month under subsection (1) in respect of an individual, the Minister may waive or cancel all or part of the tax where it is just and equitable to do so having regard to all the circumstances, including

(a) whether the tax arose as a consequence of reasonable error;

(b) whether, as a consequence of one or more transactions or events to which subsection 204.9(4) or (5) applies, the tax is excessive; and

(c) the extent to which further contributions could be made into registered education savings plans in respect of the individual before the end of the month without causing additional tax to be payable under this Part if this Part were read without reference to this subsection.

(3) Marriage breakdown — If at any time an individual (in this subsection referred to as the "former subscriber") ceases to be a subscriber under a registered education savings plan as a consequence of the settlement of rights arising out of, or on the breakdown of, the marriage of the former subscriber and another individual (in this subsection referred to as the "current subscriber") who is a subscriber under the plan immediately after that time, for the purpose of determining tax payable under this Part in respect of a month that ends after that time, each contribution made before that time into the plan by or on behalf of the former subscriber is deemed to have been made into the plan by the current subscriber and not by or on behalf of the former subscriber.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(4) Deceased subscribers — For the purpose of applying this section where a subscriber has died, the subscriber's estate is deemed to be the same person as, and a continuation of, the subscriber for each month that ends after the death.

Related Provisions [s. 204.91]: 18(1)(t) — Tax is non-deductible.

History: S. 204.91 amended by 1998, c. 19, s. 58, subsec. (1) applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1996, subsec. (2) applicable for the purpose of determining tax under Part X.4 of the Act for months that are after January 1990, and subsecs. (3) and (4) applicable for the purpose of determining tax under Part X.4 of the Act for months that are after 1997. S. 204.91 formerly read:

> 204.91 Tax payable by subscribers — Each subscriber under a registered education savings plan shall, in respect of each month, pay a tax under this Part equal to 1% of the subscriber's share of each excess amount for a year at the end of that month in respect of a beneficiary or former beneficiary under the plan, to the extent that the amount of the share is not withdrawn from the plan before the end of that month.

Definitions [s. 204.91]: See Definitions at end of s. 204.93.

204.92 Return and payment of tax — Every person who is liable to pay tax under this Part in respect of a month in a year shall, within 90 days after the end of the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable under this Part by the person in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the person under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing.

Definitions [s. 204.92]: See Definitions at end of s. 204.93.

Regulations: 103(8) (withholding of tax at source).

Forms: T1E-OVP: Individual income tax return for RESP overpayments.

204.93 Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part, with such modifications as the circumstances require.

History [Part X.4]: Part X.4 (ss. 204.9 to 204.93) added by 1994, c. 7, Sch. II (1991, c. 49), s. 165, applicable to months ending after January 1990, except that a return referred to in s. 204.92 that was filed before March 16, 1992 shall be deemed to have been filed in accordance with the requirements of that section and a payment referred to in that section that was paid before March 16, 1992 shall be deemed to have been paid in accordance with the requirements of that section.

Definitions [Part X.4]: "amount" — 248(1); "beneficiary" — 146.1(1), 204.9(1.1); "common-law partner" — 248(1); "connected" — 251(6); "education savings plan" — 146.1(1), 204.9(1.1); "estate" — 104(1), 248(1); "excess amount" — 204.9(1), (2); "individual" — 248(1); "marriage" — 252(4)(b); "Minister" — 248(1); "month" — *Interpretation Act* 35(1); "new beneficiary" — 204.9(4); "person" — 248(1); "RESP annual limit" — 146.1(1), 204.9(1.1); "RESP lifetime limit" — 204.9(1); "refund of payments" — 146.1(1), 204.9(1.1); "registered education savings plan" — 146.1(1), 248(1); "subscriber" — 146.1(1), 204.9(1.1); "subscriber's gross cumulative excess" — 204.9(1); "subscriber's share" — 204.9(1), (2); "transferee plan", "transferor plan" — 204.9(5); "trust" — 146.1(1), 204.9(1.1); "writing" — *Interpretation Act* 35(1).

PART X.5 — PAYMENTS UNDER REGISTERED EDUCATION SAVINGS PLANS

204.94 (1) Definitions — The definitions in subsection 146.1(1) apply for the purposes of this Part, except that the definition "subscriber" in that subsection shall be read without reference to paragraph (c).

(2) Charging provision — Every person shall pay a tax under this Part for each taxation year equal to the amount determined by the formula

$$(A + B - C) \times D$$

where

A is the total of all amounts each of which is an accumulated income payment made at any time that is

(a) either

(i) under a registered education savings plan under which the person is a subscriber at that time, or

(ii) under a registered education savings plan under which there is no subscriber at that time, where the person has been a spouse of an individual who was a subscriber under the plan, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) included in computing the person's income under Part I for the year;

B is the total of all amounts each of which is an accumulated income payment that is

(a) not included in the value of A in respect of the person for the year, and

(b) included in computing the person's income under Part I for the year;

C is the lesser of

(a) the lesser of the value of A in respect of the person for the year and the total of all amounts each of which is an amount deducted under subsection 146(5) or (5.1) in computing the person's income under Part I for the year, and

(b) the amount, if any, by which $50,000 exceeds the total of all amounts each of which is an amount determined under paragraph (a) in respect of the person for a preceding taxation year; and

D is

(a) where a tax, similar to the tax provided under this Part, is payable by the person for the year under a law of the province of Quebec, 12%, and

(b) in any other case, 20%.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: The formula in subsec. 204.94(2), and para. (b) of the description of C amended, and the description of D added, by 1999, c. 22, subsecs. 72(1)–(3), the formula and the description of D applicable to 1998 *et seq.*, and para. (b) applicable to 1999 *et seq.* The formula and para. (b) formerly read:

$$0.2 \times (A + B - C)$$

(b) the amount, if any, by which $40,000 exceeds the total of all amounts each of which is an amount determined under paragraph 204.94(2)C(a) in respect of the person for a preceding taxation year.

Subsec. 204.94(2) added by 1998, c. 19, s. 59, applicable to 1998 *et seq.*

Regulations: 103(8) (withholding of 20% at source).

(3) Return and payment of tax — Every person who is liable to pay tax under this Part for a taxation year shall, on or before the person's filing-due date for the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable under this Part by the person for the year; and

(c) pay to the Receiver General the amount of tax payable under this Part by the person for the year.

Related Provisions: 156.1(1)"net tax owing"(b)A — Part X.5 tax included in calculation of instalment threshold.

(4) Administrative rules — Subsections 150(2) and (3), sections 152, 155 to 156.1 and 158 to 167 and Division J of Part I apply with any modifications that the circumstances require.

Related Provisions: 156.1(1)"net tax owing"(b)A — Part X.5 tax included in calculation of instalment threshold.

Regulations: 103(8) (withholding of 20% at source).

History: Part X.5 (s. 204.94) added by 1998, c. 19, s. 59, applicable to 1998 *et seq.*

Definitions [s. 204.94]: "accumulated income payment" — 146.1(1), 204.94(1); "amount", "common-law partner", "filing-due date", "individual", "Minister", "person", "prescribed" — 248(1); "registered education savings plan" — 146.1(1), 204.94(1), 248(1); "spouse" — 252(4)(a); "subscriber" — 204.94; "tax payable" — 248(2); "taxation year" — 249.

PART XI — TAX IN RESPECT OF CERTAIN PROPERTY ACQUIRED BY TRUSTS, ETC., GOVERNED BY DEFERRED INCOME PLANS

205. Application of Part — This Part applies in respect of a taxpayer that is

(a) a corporation described in paragraph 149(1)(o.1) or (o.2) or a trust described in paragraph 149(1)(o) or (o.4), other than a trust described in paragraph 149(1)(o)

(i) established for the exclusive benefit of non-residents working outside Canada, or

(ii) the only beneficiaries of which are persons whose entitlement thereunder arises by virtue of employment outside Canada;

(b) a trust governed by a registered retirement savings plan;

(c) a trust governed by a deferred profit sharing plan;

(d) [Repealed under former Act]

(e) a trust governed by a registered retirement income fund;

(f) a registered investment; or

(g) any other person, other than a prescribed person, exempt from tax under Part I on its taxable income.

Related Provisions: 204.2(2) — Where terminated plan deemed to continue to exist; 206(2.1) — Exemption for master trust or pension fund corporation where proportional holdings election made; 207.1(1) — Tax payable by RRSP; 259(1), (2) — Proportional holdings in trust property.

Pre-RSC History: That portion of para. 205(a) preceding subpara. (i) amended by 1987, c. 46, s. 60, to substitute "a corporation described in paragraph 149(1)(o.1) or (o.2) or a trust described in paragraph 149(1)(o) or (o.4)" for "a trust or corporation described in paragraph 149(1)(o), (o.1) or (o.2)", applicable to months ending after 1986.

Para. 205(d) repealed by 1986, c. 6, s. 109, applicable to months ending after 1985. Para. 205(d) formerly read:

(d) a trust governed by a registered home ownership savings plan,

Para. 205(a) substituted by 1984, c. 45, s. 85, applicable for 1972 *et seq.* Para. 205(a) formerly read:

(a) a trust or corporation described in paragraph 149(1)(o), (o.1) or (o.2),

Para. 205(a) substituted, 205(f) and (g) added by 1980-81-82-83, c. 48, subsec. 95(1), (2), applicable, as to para. 205(f), to 1981 *et seq.*, and, as to para. 205(g), after 1979.

Para. 205(e) added by 1977-78, c. 32, s. 45.

Para. 205(d) added by 1974-75-76, c. 26, s. 115, applicable to 1974 *et seq.*

Definitions [s. 205]: "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "employment", "non-resident" — 248(1); "registered investment" — 204.4(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "taxable income" — 2(2), 248(1); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

I.T. Application Rules [s. 205]: 65(1), (1.1), (2), (5).

Interpretation Bulletins [s. 205]: IT-412R2: Foreign property of registered plans.

206. (1) Definitions — In this Part,

"affiliate" of a corporation (in this definition referred to as the "parent corporation") at any time is any other corporation where, at that time,

(a) the parent corporation controls the other corporation,

(b) the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the other corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of that other corporation, and

(ii) shares of the capital stock of the other corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of that other corporation, or

(c) the other corporation is controlled by a particular corporation and the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the particular corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the particular corporation, and

(ii) shares of the capital stock of the particular corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the particular corporation;

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

History: The definition "affiliate" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

"carrying value" of a property of a corporation or partnership at any time means

(a) where a balance sheet of the corporation or the partnership as of that time was presented to the shareholders of the corporation or the members of the partnership and the balance sheet was prepared using generally accepted accounting principles and was not prepared using the equity or consolidation method of accounting, the amount in respect of the property reflected in the balance sheet, and

(b) in any other case, the amount that would have been reflected in a balance sheet of the corporation or the partnership as of that time if the balance sheet had been prepared in accordance with generally acceptable accounting principles and neither the equity nor consolidation method of accounting were used;

History: The definition "carrying value" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

Proposed Addition — 206(1)"cost amount"

"cost amount" at any time of a taxpayer's capital interest in a trust that is foreign property is deemed to be the greater of

(a) the cost amount of the interest, determined without reference to this definition, and

(b) where that time is more than 60 days after the end of a taxation year of the trust, the amount that would be the cost amount of the interest if new units of the trust had been issued in satisfaction of each amount payable

(i) after 2000 and at or before the end of the taxation year, by the trust in respect of the interest,

(ii) to which subparagraph 53(2)(h)(i.1) applies (or would apply if that subparagraph were read without reference to clauses (A) and (B) of that subparagraph), and

(iii) that has not been satisfied at or before that time by the issue of new units of the trust or by a payment of an amount by the trust;

Related Provisions: 108(1)"cost amount" — Cost amount of capital interest in a trust.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 98(1), will add the definition "cost amount" to subsec. 206(1), applicable to months that end after February 2001.

Technical Notes: Part XI of the Act provides a foreign property limit for certain taxpayers, mainly tax-exempt taxpayers such as trusts governed by registered retirement savings plans and registered pension plans. In general, a penalty tax is applied under subsection 206(2) where the total cost amount of foreign property in such a trust or plan exceeds a specified percentage of the total cost amount of all property in the trust or plan.

Where such a taxpayer holds a capital interest in a trust, the income of the trust is usually made payable to the taxpayer so that the income is not taxed at the trust level. Arrangements have been made, however, to "capitalize" income and other amounts payable without the trust issuing new units or otherwise making a payment in satisfaction of the amounts. These arrangements are designed to maximize the indirect foreign property holdings for these unitholders by minimizing the cost amount with regard to these capital interests.

Subsection 206(1) is amended to add a special definition of 'cost amount" for the purposes of Part XI. The definition is designed to increase the cost amount of a taxpayer's interest in a trust to reflect capitalized amounts payable to the taxpayer. It is also intended to amend Part L of the Regulations to make it clear that the definition also applies for this purpose.

"designated value" of a property at any time means the greater of

(a) the fair market value at that time of the property, and

(b) the carrying value at that time of the property;

History: The definition "designated value" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

"excluded share" means

(a) a share that is of a class of shares listed on a prescribed stock exchange in Canada, where no share of that class has been issued after December 4, 1985 (otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985),

(b) a share last acquired after 1995 that is of a class of shares listed on a prescribed stock exchange in Canada, where

(i) no share of that class has been issued after July 20, 1995 (otherwise than pursuant to an agreement in writing made before July 21, 1995), and

(ii) the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)", and

(c) a share last acquired after 1995 as a consequence of the exercise of a right acquired before 1996 where the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)";

History: The definition "excluded share" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

Regulations: 3200 (prescribed stock exchange in Canada; will be amended to apply to this definition).

"foreign property" means

(a) tangible property situated outside Canada except automotive equipment registered in Canada,

(b) automotive equipment not registered in Canada pursuant to the laws of Canada or a province,

(c) intangible property (other than any property described in paragraphs (d) to (g)) situated outside Canada including, without restricting the generality of the foregoing, any patent under the laws of a country other than Canada and any licence in respect thereof,

(d) any share of the capital stock of a corporation other than a Canadian corporation,

(d.1) except as provided by subsection (1.1), any share (other than an excluded share) of the capital stock of, or any debt obligation issued by, a corporation (other than an investment corporation, mutual fund corporation or registered investment) that is a Canadian corporation, where shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property,

(e) except as prescribed, any share of the capital stock of a mutual fund corporation or investment corporation that is not a registered investment, other than a share of the capital stock of an investment corporation that was last acquired before October 14, 1971,

(f) any property that, under the terms or conditions thereof or any agreement relating thereto, is convertible into, is exchangeable for or confers a right to acquire, property that is foreign property, but not including property that is

(i) a share of the capital stock of a Canadian corporation listed on a prescribed stock exchange in Canada, or

(ii) a right issued before 1984 and listed on a prescribed stock exchange in Canada to acquire a share of the capital stock of a Canadian corporation,

(g) indebtedness of a non-resident person, other than indebtedness issued or guaranteed by

(i) the International Bank for Reconstruction and Development,

(i.1) the International Finance Corporation,

(ii) the Inter-American Development Bank,

(iii) the Asian Development Bank,

(iv) the Caribbean Development Bank,

(iv.1) the European Bank for Reconstruction and Development,

(iv.2) the African Development Bank, or

(v) a prescribed person,

(h) any interest in or right to any property that is foreign property by virtue of paragraphs (a) to (g), and

(i) except as prescribed by regulation, any interest in, or right to acquire an interest in, a trust (other than a registered investment) or a partnership;

Proposed Amendment — "foreign property" — segregated fund annuity contracts

Department of Finance news release, December 19, 1996: *(c) Foreign Property*

An interest in an annuity contract will be "foreign property" for the purposes of the Act if the annuity contract is a segregated fund policy and more than 20% of the segregated fund's assets are "foreign property". As a consequence, if an RRSP or RRIF trust or any other taxpayer described in paragraphs 204(1)(a) to (f) of the Act acquires such a foreign property, it will be included in the 20% foreign property limit set out in Part XI of the Act.

If an insurer issues interests in one or more registered annuity policies directly to an RRSP or RRIF annuitant or to a registered pension plan (RPP), the insurer will be likewise liable to pay a monthly foreign property penalty tax in respect of each RRSP annuitant, RRIF annuitant and RPP equal to the amount, if positive, determined by the formula:

$$1\% \times (A - (20\% \times B))$$

where

A is the total of all premiums and other amounts paid on account of the acquisition by the RRSP annuitant, RRIF annuitant or RPP, as the case may be, of such of those interests outstanding at the end of the month as constitute foreign property, and

B is the total of all premiums and other amounts paid on account of the acquisition by the RRSP annuitant, RRIF annuitant or RPP, as the case may be, of such of those interests as are outstanding at the end of the month.

Issuers of segregated fund policies will be allowed to elect to have their segregated funds registered under Part X.2 of the Act. The result of this election would be to exclude interests in registered segregated funds from the "foreign property" definition. However, as a consequence of the election in respect of a segregated fund, the issuer of the segregated fund would be required to pay any penalty tax under Part XI of the Act in respect of foreign property holdings of the segregated fund.

[For the full text of this news release, see under 12.2(1) — ed.]

Department of Finance news release, October 23, 1997: *Application of Foreign Property Limit to Segregated Funds*

1. Introduction

The new foreign property rules for segregated funds will apply in three situations.

First, they will apply where an interest in a segregated fund is held by a tax-exempt taxpayer described in paragraphs 205(a) to (f) of the *Income Tax Act*, such as a registered pension plan (RPP), a trust governed by a registered retirement savings plan (RRSP) or a trust governed by a registered retirement income fund (RRIF). Such taxpayers are subject to tax under Part XI of the Act if they invest too heavily in "foreign property". Under the proposed changes, an interest in a segregated fund will, in some circumstances, become a "foreign property" and the holding of such an interest can result in Part XI tax becoming payable.

A similar penalty tax may apply where an interest in a segregated fund policy is held directly as an RRSP or RRIF (i.e., outside of an RRSP or RRIF trust), or where such an interest is issued under an RPP that is not an RPP trust or corporation. The tax will generally be collected by the insurer that issued the segregated fund policy on behalf of the policyholder that is liable to pay it.

Third, the new rules can result in Part XI tax for an insurer where the Minister accepts a segregated fund administered by the insurer as a "registered investment" under proposed amendments to Part X.2 of the Act.

The application of the proposed rules to these three situations is described below.

2. Tax payable under Part XI of the Income Tax Act by trusts governed by RRSPs, RRIFs and RPPs

General

A trust governed by an RRSP, RRIF or RPP is generally liable to pay a penalty tax under subsection 206(2) of the Act in respect of a month where the cost amount to the trust of the "foreign property" (as defined in subsection 206(1)) held by the trust exceeds 20 per cent of the cost amount to the trust of all property held by it.

Under paragraph (i) of the definition "foreign property", an interest in a trust is a foreign property, except where the trust is a

"registered investment" or where the interest in the trust is prescribed not to be a foreign property under the *Income Tax Regulations*. Under the proposed amendments, after 1998, an interest in a segregated fund will be a treated as an interest in a trust for the purpose of Part XI. As a consequence, a trust governed by an RRSP, RRIF or RPP that holds a segregated fund policy in any month that ends after 1998 may be liable to pay the penalty tax under Part XI.

When is an Interest in a Segregated Fund Prescribed Not to be a Foreign Property?

The proposed amendments include a number of transitional provisions described below. However, section 5000 of the Regulations will prescribe an interest in a segregated fund held at a particular time not to be a foreign property in two cases:

- where the particular time is after 1999 and, throughout the last year that ended before the particular time (or at the end of the year that includes the particular time, if the fund was created in the year that includes the particular time), the total cost amount of all the foreign property held by the segregated fund does not exceed 20 per cent of the cost amount of all the property held by it; or

- where each policyholder holding an interest in the segregated fund at the particular time held an interest in the fund at the end of 1996 or acquired the interest from another policyholder who held an interest in the fund before 1997.

Transitional rules are proposed for 1999, 2000 and 2001 to give insurers an opportunity to shift the properties held by the segregated funds that they administer from foreign properties to non-foreign properties. To this end, an interest in a segregated fund will be prescribed not to be a foreign property in 1999 where:

- the segregated fund was created before 1997 and, at any time in the first 90 days of 1998, the fair market value (FMV) of all the foreign property held by the fund does not exceed 80 per cent of the FMV of all the property held by the fund;

- the segregated fund was created in 1997 or 1998 and, at any time in the first 90 days of its 1998 taxation year, the FMV of all the foreign property held by the fund does not exceed 20 per cent of the FMV of all of the property held by the fund; or

- the segregated fund was created in 1999 and, at the end of 1999, the cost amount of all of the foreign property held by the fund does not exceed 20 per cent of the cost amount of all of the property held by the fund.

In 2000, an interest in a segregated fund will be prescribed not to be a foreign property if the segregated fund was created before 1997 and, throughout 1999, the cost amount of all the foreign property held by the segregated fund does not exceed 60 per cent of the cost amount of all the property held by the fund.

In 2001, an interest in a segregated fund will be prescribed not to be a foreign property if the segregated fund was created before 1997 and, throughout 2000, the cost amount of all the foreign property held by the segregated fund does not exceed 40 per cent of the cost amount of all the property held by the segregated fund.

"Cost Amount" for the Purposes of Part XI of the Act

Under the proposed amendments, where an interest in a segregated fund is, after 1998, treated as "foreign property", the "cost amount" of the interest will be determined on a lagged basis.

Specifically, the "cost amount" of an interest in a segregated fund to an RRSP trust, RRIF trust or RPP will be its adjusted cost base (ACB), except that the ACB adjustments that would otherwise be required in a particular calendar year will not be made until after March of the following calendar year. An interest in a segregated fund will have a known constant ACB throughout each year as ACB adjustments in respect of the year will not be made until the following year, making it possible for taxpayers subject to the foreign property penalty tax to comply with the foreign property limit on an on-going basis.

3. New Foreign Property Limits with respect to Segregated Fund Policies Issued or Effected as RRSPs or RRIFs and Policies Issued under RPPs

Segregated Fund Policies Issued or Effected as RRSPs or RRIFs

The new rules will also apply where, after 1998, an individual holds an interest in a segregated fund directly as an RRSP or RRIF (i.e., outside a RRSP or RRIF trust). In general, the policyholder's liability for penalty tax will be determined on a policy-by-policy basis. Where the penalty tax is owing, the insurer that issued the segregated fund will be required to collect the penalty tax on behalf of the policyholder.

A policyholder will be liable to pay the penalty tax in respect of a segregated fund policy for any month where the total cost amount (determined on a lagged basis as described above) at the end of the month of all the interests in segregated funds under the policy that are foreign properties exceeds 20 per cent of the total of

- the cash surrender value of the policy at the end of the month (not including any amount in respect of an interest in a segregated fund), and

- the total cost amount (determined on a lagged basis) at the end of the month of all the interests in segregated funds under the policy.

For this purpose, whether an interest in a segregated fund is a foreign property is determined using the definition of "foreign property" described above.

Where an insurer has issued interests in more than one segregated fund policy, the insurer will be able to treat those policies as one policy for purposes of calculating how much penalty tax is payable. The election will allow policies that derive their value largely from foreign property to be offset by policies that derive their value largely from non-foreign property.

Segregated Fund Policies Issued under RPPs

The administrator of an RPP (other than an RPP trust or corporation) may also be liable to pay foreign property tax where the RPP is funded or partially funded by an interest in a segregated fund policy.

The administrator's liability will be determined on an insurer-by-insurer basis. As a consequence, all the segregated fund policies used to fund the RPP that were issued by a particular insurer will be grouped together for this purpose. The administrator will be liable to pay tax in a given month in respect of the policies issued by a particular insurer where the total cost amount (determined on a lagged basis as described above) at the end of the month of all the interests in segregated funds that arise under the policies and that are foreign properties exceeds 20 per cent of the total of

- the cash surrender values, at the end of the month, of all the policies (not including any amount in respect of an interest in a segregated fund), and

- the total cost amount (determined on a lagged basis) at the end of the month of all the interests in segregated funds that arise under the policies.

For this purpose, whether an interest in a segregated fund is a foreign property will be determined using the definition of "foreign property" described above.

Where an RPP is funded with segregated fund policies issued by more than one insurer, the administrator of the RPP will be able to elect to treat all such insurers as one insurer for purposes of determining its penalty tax liability. Where the policies issued by one insurer have a high foreign property content, the election will make it possible for an administrator to offset that high foreign property content with the non-foreign property content of policies issued by other insurers.

The responsibility for collecting and remitting an administrator's penalty tax falls on the insurer, unless the administrator makes the election to treat all insurers as one. Where this election is made, the responsibility for collecting and remitting the penalty tax falls on the administrator.

[For the full text of this news release, see under 12.2(1) — ed.]

Federal budget, supplementary information, February 28, 2000: *Extension of FPR Rules to Segregated Funds*

Although the FPR currently applies to mutual funds which issue units to deferred income plans, there is currently no legislation providing for its application to segregated funds. Segregated funds are insurance products offered by life insurers which are broadly analogous to mutual funds. As announced by the Minister of Finance by press release on October 27, 1998, proposed rules to extend the FPR to segregated funds were to be effective as of January 2001.

The FPR for segregated funds will contain the same one-year lag as is provided for mutual funds (i.e., an interest in a mutual fund is generally not treated as foreign property during a year, provided the mutual fund satisfied the FPR limit throughout the previous year). In order to provide a better opportunity for insurance companies to institute systems changes to allow foreign property levels to be monitored for segregated funds, the budget proposes that the FPR for segregated funds apply after 2001 (rather than after 2000).

Related Provisions: 206(1.1)(d) — Exception where substantial Canadian presence; 206(1.4) — Interpretation; 206(1.5) — Identical property.

History: Paras. (d.1) and (e) of the definition "foreign property" in subsec. 206(1) amended by 1998, c. 19, subsec. 210(1), para. (d.1) applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985) except that, with respect to shares and indebtedness last acquired before 1996, the reference to "primarily from foreign property" in that paragraph shall be read as a reference to "primarily from portfolio investments in property that is foreign property", and para. (e) applicable to months that end after June 1995. Paras. (d.1) and (e) formerly read:

> (d.1) any share of the capital stock of or any debt obligation issued by a Canadian corporation, if shares of the corporation may reasonably be considered to derive their value, directly or indirectly, primarily from portfolio investments in property that is foreign property, but not including a share of a corporation listed on a prescribed stock exchange in Canada that is of a class of the capital stock of the corporation no share of which has been issued after December 4, 1985 (otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985),
>
> (e) any share of the capital stock of a mutual fund corporation that is neither an investment corporation nor a registered investment, except as prescribed by regulation,

Subparas. (g)(iv.1) and (iv.2) added to the definition "foreign property" by the said c. 19, subsec. 210(2), (iv.1) applicable to months after March 1991, and (iv.2) applicable to months after 1996.

The opening words of para. (g) of "foreign property" in subsec. 206(1) substituted by 1994, c. 21, subsec. 93(1), applicable to months after 1992. The opening words of that para. formerly read:

> (g) any bond, debenture, mortgage, note or similar obligation of, or issued by, a person not resident in Canada, except any such bond, debenture, mortgage, note or similar obligation issued or guaranteed by

Subpara. (g)(i.1) added to "foreign property" by 1994, c. 7, Sch. II (1991, c. 49), subsec. 166(1), applicable after July 13, 1990.

Pre-RSC History: See at end of s. 206.1.

Regulations: 221(3) (information return by issuer of share or trust interest claimed not to be foreign property); 3200 (prescribed stock exchange); 5000 (property prescribed not to be foreign property).

I.T. Application Rules: 65(5) (amalgamation of mutual fund corporations).

Interpretation Bulletins: IT-320R2: RRSP — qualified investments; IT-412R2: Foreign property of registered plans.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

"investment activity" of a particular corporation means any business carried on by the corporation, or any holding of property by the corporation otherwise than as part of a business carried on by the corporation, the principal purpose of which is to derive income from, or to derive profits from the disposition of,

> (a) shares (other than shares of the capital stock of another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),
>
> (b) interests in trusts,
>
> (c) indebtedness (other than indebtedness owing by another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),
>
> (d) annuities,
>
> (e) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except commodities manufactured, produced, grown, extracted or processed by the corporation or another corporation with which the corporation does not deal at arm's length),
>
> (f) currencies (other than currencies in the form of numismatic coins),
>
> (g) interests in funds or entities other than corporations, partnerships and trusts,
>
> (h) interests or options in respect of property described in any of paragraphs (a) to (g), or
>
> (i) any combination of properties described in any of paragraphs (a) to (h);

Related Provisions: 206(4), 251(1) — Meaning of arm's length.

History: The definition "investment activity" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable after 1995.

"qualified property" of a corporation means a property (other than a debt obligation or share issued by an affiliate of the corporation or by any corporation related to the corporation) owned by the corporation and used by it or an affiliate of the corporation in a specified active business carried on by it or the affiliate;

History: The definition "qualified property" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

"significant interest" has the meaning that would be assigned by section 142.2 if that section were read without reference to paragraphs 142.2(3)(b) and (c);

History: The definition "significant interest" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable after 1995.

"small business investment amount" of a taxpayer for a month means the greater of

> (a) the total of the cost amounts of all small business properties to the taxpayer at the end of the month, and
>
> (b) the quotient obtained when the total of all amounts determined for each of the three preceding months, each of which is the total of the cost amounts of all small business properties to the taxpayer at the end of that preceding month, is divided by three;

History: The definition "small business investment amount" in subsec. 206(1) amended by 2000, c. 19, subsec. 60(1), applicable to months that end after 1997. The definition formerly read:

> "small business investment amount" of a taxpayer for a month means the quotient obtained when the total of all amounts determined for each of the three preceding months, each of which is the total of the cost amounts of all small business properties to the taxpayer at the end of that preceding month, is divided by three;

Pre-RSC History: See at end of s. 206.1.

"small business property" of a taxpayer at a particular time means property acquired by the taxpayer after October 31, 1985 that is at that particular time

(a) a property prescribed to be a small business security,

(b) a share of a class of the capital stock of a corporation prescribed to be a small business investment corporation,

(c) an interest of a limited partner in a partnership prescribed to be a small business investment limited partnership, or

(d) an interest in a trust prescribed to be a small business investment trust,

where

(e) the taxpayer is a prescribed person in respect of the property, or

(f) throughout the period that began at the time the property was first acquired (otherwise than by a broker or dealer in securities) and ends at the particular time, the property was not owned by any person other than

(i) the taxpayer,

(ii) a trust governed by a particular registered retirement income fund or registered retirement savings plan if

(A) the taxpayer is another trust governed by a registered retirement income fund or registered retirement savings plan, and

(B) the annuitant under the particular fund or plan (or the spouse or former spouse of that annuitant) is also the annuitant under the fund or plan referred to in clause (A), or

(iii) an annuitant under a registered retirement income fund or registered retirement savings plan that governs the taxpayer, or a spouse or former spouse of that annuitant;

Related Provisions: 252(3), (4) — Extended meaning of "spouse".

History: The portion of the definition "small business property" in subsec. 206(1) after para. (d) amended by 2000, c. 19, subsec. 60(2), applicable to months that end after 1997. The portion formerly read:

where the taxpayer is

(e) a prescribed person in respect of the property, or

(f) the first person (other than a broker or dealer in securities) to have acquired the property and the taxpayer has owned the property continuously since it was so acquired.

Pre-RSC History: See at end of s. 206.1.

Regulations: 5100–5104 (prescribed property).

"specified active business" carried on by a corporation, at any time, means a particular business that is carried on by the corporation in Canada where

(a) the corporation employs in the particular business at that time more than 5 full-time employees and at least

(i) 50% of the full-time employees employed by the corporation at that time in the particular business are employed in Canada, and

(ii) 50% of the salaries and wages paid to employees employed at that time in the particular business are reasonably attributable to services rendered in Canada by the employees, or

(b) one or more other corporations associated with the corporation provide, in the course of carrying on one or more other active businesses, managerial, administrative, financial, maintenance or other similar services to the corporation in respect of the particular business and

(i) the corporation could reasonably be expected to require more than 5 full-time employees at that time in respect of the particular business if those services had not been provided,

(ii) at least 50% of the full-time employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are employed in Canada, and

(iii) at least 50% of the salaries and wages paid to employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are reasonably attributable to services rendered in Canada by the employees,

but does not include a business carried on by the corporation the principal purpose of which is to derive income from, or from the disposition of, shares and debt obligations the value of which can reasonably be considered to derive, directly or indirectly, primarily from foreign property;

History: The definition "specified active business" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

"specified proportion" of a member of a partnership for a fiscal period of the partnership means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of $1,000,000.

History: The definition "specified proportion" added to subsec. 206(1) by 1998, c. 19, subsec. 210(3), applicable to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. E.S.T. on December 4, 1985).

(1.1) Exception where substantial Canadian presence — Property described in paragraph (d.1) of the definition "foreign property" in subsection (1) does not, at a particular time, include property of a taxpayer that is a share or debt obligation that was issued by a corporation that, at the particular time, is a Canadian corporation where

(a) either at any time in any of the last 15 months beginning before the time (in this subsection referred to as the "acquisition time") when the property was last acquired before the particular time by the taxpayer or at any time in the calendar year that includes the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or an affiliate of the corporation exceeded $50,000,000;

(b) the particular time is not later than the end of the 15th month ending after the acquisition time and, at any time in any of the last 15 months beginning before the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property;

(c) the particular time is after the acquisition time and, at any time in any of the first 15 months beginning after the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property;

(d) the particular time is after 1995 and, at the particular time,

(i) either

(A) the corporation was incorporated or otherwise formed under the laws of Canada or a province, or

(B) where the corporation was not required to maintain an office under the laws by or under which it was incorporated, the maintenance of an office in Canada is required under the constitutional documents of the corporation,

(ii) the corporation maintains an office in Canada, and

(iii) any of the following conditions applies, namely,

(A) the corporation employs more than 5 individuals in Canada full time and those individuals are not employed primarily in connection with

(I) an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length,

(II) a business carried on by the corporation through a partnership of which the corporation is not a majority interest partner, or

(III) a business carried on by another corporation with which the corporation does not deal at arm's length through a partnership of which that other corporation is not a majority interest partner,

(B) another corporation that is controlled by the corporation employs more than 5 individuals in Canada full time and those individuals are not employed primarily in connection with

(I) an investment activity of the other corporation or another corporation with which the other corporation does not deal at arm's length,

(II) a business carried on by the other corporation through a partnership of which the other corporation is not a majority interest partner, or

(III) a business carried on by another corporation with which the other corporation does not deal at arm's length through a partnership of which that other corporation is not a majority interest partner,

(C) the total amount incurred by the corporation for the services (other than services relating to an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length) of employees and other individuals rendered in Canada in any calendar year that ends in any of the last 15 months that end before the particular time exceeds $250,000,

(D) the total amount incurred by another corporation that is controlled by the corporation for the services (other than services relating to an investment activity of the other corporation or another corporation with which the other corporation does not deal at arm's length) of employees and other individuals rendered in Canada in any calendar year that ends in any of the last 15 months that end before the particular time exceeds $250,000, or

(E) in the calendar year that includes the particular time the corporation was continued from a jurisdiction outside Canada, or incorporated or otherwise formed and the total amount incurred in the year by the corporation for the services (other than services relating to an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length) of employees and other individuals rendered in Canada exceeds $250,000; or

(e) the particular time is after 1995 and, at the particular time, all or substantially all of the property of the corporation is not foreign property.

Related Provisions: 206(1.2) — Application to partnerships; 256(6), (6.1) — Meaning of "controlled".

History: Subsec. 206(1.1) added by 1998, c. 19, subsec. 210(4), applicable after December 4, 1985.

(1.2) Partnerships — For the purposes of paragraphs (1.1)(a) to (c) and this subsection,

(a) a member of a partnership

(i) is deemed not to own any interest in the partnership at any time, and

(ii) is deemed to own the member's specified proportion for the partnership's first fiscal period that ends at or after that time of each property that would, if the assumption in paragraph 96(1)(c) were made, be owned by the partnership at that time; and

(b) the carrying value at that time of that specified proportion of a partnership's property is deemed to be that specified proportion of the carrying value at that time to the partnership of that property.

History: Subsec. 206(1.2) added by 1998, c. 19, subsec. 210(4), applicable after December 4, 1985.

(1.3) Interpretation — For the purpose of paragraph (1.1)(d),

(a) an employee of a corporation is deemed to be employed in Canada where the corporation's permanent establishment (as defined by regulation) to which the employee principally reports is situated in Canada; and

(b) services are deemed to be rendered in Canada to a corporation where the permanent establishment (as defined by regulation) for which the services are rendered is situated in Canada.

History: Subsec. 206(1.3) added by 1998, c. 19, subsec. 210(4), applicable after December 4, 1985.

Regulations: 8201, 8201.1 (permanent establishment).

(1.4) Rights in respect of foreign property — For the purpose of determining whether a property owned by a taxpayer is foreign property at any time because of paragraph (f) or (h) of the definition "foreign property" in

subsection (1), it shall be assumed that each other property not owned at that time by the taxpayer was acquired immediately before that time by the taxpayer.

History: Subsec. 206(1.4) added by 1998, c. 19, subsec. 210(4), applicable after December 4, 1985.

(1.5) Identical property — Notwithstanding paragraphs (d.1), (f) and (h) of the definition "foreign property" in subsection (1), a property shall not be considered to be foreign property at a particular time of a taxpayer because of any of those paragraphs where

(a) the property is

(i) a share or debt obligation issued by a Canadian corporation, or

(ii) an interest in, a right to, a property that is convertible into or a property that is exchangeable for, a share or debt obligation issued by a Canadian corporation; and

(b) the property, or the share or obligation referred to in subparagraph (a)(ii), is identical to another property that is owned at the particular time by the taxpayer and that is not foreign property at the particular time of the taxpayer.

Related Provisions: 248(12) — Whether properties are identical.

History: Subsec. 206(1.5) added by 1998, c. 19, subsec. 210(4), applicable after December 4, 1985.

(2) Tax payable — Where, at the end of any month,

(a) the amount, if any, by which

(i) the total of all amounts each of which is the cost amount of a foreign property to a taxpayer described in any of paragraphs 205(a) to (f)

exceeds the total of

(ii) where the taxpayer is described in any of paragraphs 205(b), (c) and (e), all amounts each of which is the cost amount to the taxpayer of a foreign property that was not at the end of the month a qualified investment (within the meaning assigned by subsection 146(1) or 146.3(1) or section 204, as the case may be) of the taxpayer, and

(iii) all amounts (other than an amount included in respect of the taxpayer for the month under subparagraph (ii)) each of which is the cost amount to the taxpayer of foreign property that became foreign property of the taxpayer after its last acquisition by the taxpayer and at a time that is not more than 24 months before the end of the month,

exceeds the total of

(b) 30% of the total of all amounts each of which is the cost amount of a property to the taxpayer, and

(c) in the case of a taxpayer described in paragraph 205(a), (b), (c) or (e), other than a taxpayer described in paragraph 149(1)(o.2), the lesser of

(i) three times the small business investment amount of the taxpayer for the month, and

(ii) 20% of the total of all amounts each of which is the cost amount of a property to the taxpayer,

the taxpayer shall, in respect of that month, pay a tax under this Part equal to 1% of the lesser of the excess and the total of all amounts each of which is the cost amount to the taxpayer of each of its foreign properties that was acquired after June 18, 1971.

Related Provisions: 107.4(3)(c) — Cost of property after qualifying disposition to trust; 206(2.1) — Limitation — maximum tax payable by registered investment; 206(3.1) — Reorganizations, etc.; 259 — Proportional holdings in trust property.

History: Subsec. 206(2) amended by 2000, c. 14, s. 41 to substitute "30%" for "20%", applicable to months that end after 1999, except that for months in 2000 the reference to "30%" shall be read as "25%".

Para. 206(2)(a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 120(1), applicable to months ending after December 20, 1991. Para. (a) formerly read:

(a) the total of all amounts each of which is the cost amount of a foreign property to a taxpayer described in any of paragraphs 205(a) to (f) (other than, where the taxpayer is described in any of paragraphs (b), (c) and (e), a foreign property that was not at the end of the month a qualified investment, within the meaning assigned by subsection 146(1) or 146.3(1) or section 204, as the case may be, of the taxpayer.)

Para. 206(2)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 166(2), to substitute "20% " for "10% ", applicable to months ending after 1989 except that for months in 1990, 1991, 1992 and 1993 the reference in para. (b) to "20%" shall be read as "12%", "14%", "16%" and "18%" respectively.

Subpara. 206(2)(c)(ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 166(3), applicable to months ending after 1989. That subpara. formerly read:

(ii) two times the amount determined under paragraph (b),

Pre-RSC History: See at end of s. 206.1.

Regulations: 5000.

I.T. Application Rules: 65.

Interpretation Bulletins: IT-320R2: RRSPs — qualified investments; IT-412R2: Foreign property of registered plans.

Forms: T3P: Employees' pension plan income tax return.

(2.01) [Tax payable by] Registered investments — Notwithstanding subsection (2), the tax payable under this section by a registered investment in respect of a month is equal to the lesser of

(a) the tax that would, but for this subsection, be payable by the registered investment in respect of the month, and

(b) the greater of

(i) 20% of the amount determined under paragraph (a), and

(ii) the amount determined by the formula

$$\$5{,}000 + (A \times B/C)$$

where

A is equal to the amount determined under paragraph (a),

B is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership, and

C is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time.

History: Subsec. 206(2.01) added by 1998, c. 19, subsec. 210(5), applicable to months that end after 1992.

Regulations: 5002 (prescribed trust and prescribed partnership for 206(2.01)(b)(ii)B).

(2.1) Exemption — Notwithstanding section 205, subsection (2) does not apply to a trust described in paragraph 149(1)(o.4) or a corporation described in paragraph 149(1)(o.2) in respect of any month that falls within a period for which the trustee or the corporation, as the case may be, elects in accordance with subsections 259(1) and (3).

History: Subsec. 206(2.1) substituted by 1994, c. 21, subsec. 93(2), applicable to 1992 *et seq.* That subsec. formerly read:

(2.1) Exemption — Notwithstanding section 205, subsection (2) shall not apply in respect of a trust described in paragraph 149(1)(o.4) in respect of any month that falls within a period in respect of which the trustee has elected in accordance with subsection 259(2).

Pre-RSC History: See at end of s. 206.1.

Interpretation Bulletins: IT-412R2: Foreign property of registered plans.

(3) [Repealed]

History: Subsec. 206(3) repealed by 1998, c. 19, subsec. 210(6), applicable to months that end after June 1995. Subsec. 206(3) formerly read:

(3) Shares in investment corporation — Notwithstanding the definition "foreign property" in subsection (1), a share of the capital stock of an investment corporation (other than a registered investment) acquired after October 13, 1971 by a taxpayer to whom this Part applies and owned by the taxpayer at a particular time shall, except as prescribed by regulation, be deemed to be a foreign property of the taxpayer at that time.

Pre-RSC History: See at end of s. 206.1.

(3.1) Reorganizations, etc. — Where

(a) a security (in this subsection referred to as the "new security") is issued at a particular time by a corporation to a taxpayer

(i) in exchange for another security acquired before the particular time by the taxpayer, and

(ii) in the course of

(A) a corporate merger or reorganization of capital, or

(B) a transaction in which control of the corporation that issued the other security is acquired by a person or a group of persons, and

(b) the new security is foreign property at the particular time,

for the purposes of applying subparagraph (2)(a)(iii) to the taxpayer at or after the particular time,

(c) the new security shall be deemed to have been last acquired by the taxpayer at the time the other security was last acquired by the taxpayer,

(d) where the other security was not foreign property immediately before the particular time, the new security shall be deemed to have become foreign property at the particular time, and

(e) where the other security was foreign property immediately before the particular time, the new security shall be deemed to have become foreign property at the time the other security became foreign property.

Proposed Amendment — 206(3.1)

Letter from Department of Finance, November 17, 1998: Dear [xxx]

This is in reply to your letter of November 3, 1998 to Simon Thompson concerning subsection 206(3.1) of the *Income Tax Act*.

We understand that an arrangement of a Canadian corporation is proposed under section 182 of the *Ontario Business Corporations Act*. We understand that all shareholders of the Canadian corporation will be required, if specified levels of shareholder support are achieved in connection with an upcoming vote on the arrangement, to exchnage their shares for the capital stock of a corporation resident in the United States or, in the case of dissenting shareholders, for cash. We assume, for this purpose, that the shares of the capital stock of the Canadian corporation are not "foreign property" under Part XI of the *Incomce Tax Act*.

We agree that, in these circumstances, it would be appropriate to extend subection 206(3.1) of the *Income Tax Act* so that it applies in all cases to the shares of the U.S. corporation acquired on such an exchange by a taxpayer described in any of paragraphs 205(a) to (f). Such an extension would, in general terms, have the effect pursuant to subparagraph 206(2)(a)(iii) of treating these shares as not being foreign property under Part XI for up to 24 months. We will recommend that this amendment apply for months ending after 1997.

Thank you for writing.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Related Provisions: 256(6)–(9) — Whether control acquired.

History: Subsec. 206(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 120(2), applicable to months ending after December 20, 1991.

Interpretation Bulletins: IT-412R2: Foreign property of registered plans.

(4) Non-arm's length transactions — For the purposes of this Part, where a taxpayer has acquired property from a person with whom the taxpayer was not dealing at arm's length for no consideration or for consideration less than the fair market value thereof at the time of the acquisition, the taxpayer shall be deemed to have acquired the property at that fair market value, and for those purposes, a trust shall be deemed not to deal at arm's length with another trust if any person is beneficially interested in both trusts.

Proposed Amendment — 206(4)

(4) Non-arm's length transactions — For the purposes of this Part, where at any time a taxpayer acquires property, otherwise than pursuant to a transfer of property to which paragraph (f) or (g) of the definition "disposition" in subsection 248(1) applies, from a person with whom the taxpayer does not deal at arm's length for no consideration or for consideration less than the fair market value of the property at that time, the taxpayer is deemed to acquire the property at that fair market value, and for those purposes, a particular trust is deemed not to deal at arm's length with another trust if a person who is beneficially interested in the particular

trust is at that time also beneficially interested in the other trust.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 98(2), will amend subsec. 206(4) to read as above, applicable in respect of property acquired after December 17, 1999.

Technical Notes: Subsection 206(4) of the Act provides, for the purposes of Part XI, that property acquired by a taxpayer from a person with whom the taxpayer does not deal at arm's length and for less than fair market value consideration is treated as having been acquired at its fair market value at the time of its acquisition. For these purposes, trusts that have the same beneficiary are considered not to deal with each other at arm's length.

Subsection 206(4) is amended so that it does not apply to a transfer of property to which paragraph (f) or (g) of the definition "disposition" in subsection 248(1) applies. In conjunction with subsection 248(25.1), this amendment is intended to ensure that where a transfer of property is one to which either of those paragraphs applies and that involves a taxpayer to which subsection 206(4) would otherwise apply, the transfer will occur on a rollover basis.

This amendment applies in respect of property acquired after December 17, 1999.

This amendment is part of a set of amendments intended to clarify the tax treatment of transfers of property involving RRSPs and RRIFs. For further detail, see the commentary to paragraphs 107.4(2)(b) and (3)(c), paragraphs (f) and (g) of the new definition "disposition" in subsection 248(1), and subsection 248(25.1).

Related Provisions [subsec. 206(4)]: 107.4(3)(c) — Cost of property after qualifying disposition to trust.

Related Provisions [s. 206]: 248(25) — Meaning of "beneficially interested"; 251 — Arm's length.

Pre-RSC History: See at end of s. 206.1.

Definitions [s. 206]: "acquired" — 256(7)–(9); "active business" — 248(1); "affiliate" — 206(1); "amount" — 248(1); "annuitant" — 146(1), 146.3(1); "arm's length" — 206(4), 251(1); "beneficially interested" — 248(25); "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "capital interest" — 108(1), 248(1); "carrying value" — 206(1); "class of shares" — 248(6); "control" — 256(6)–(9); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 206(1), 248(1); "designated value" — 206(1.3); "employed" — 248(1); "employed in Canada" — 206(1.3); "excluded share" — 206(1); "foreign property" — 206(1); "identical" — 248(12); "individual" — 248(1); "investment activity" — 206(1); "investment corporation" — 130(3)(a), 248(1); "majority interest partner" — 248(1); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — 131(8), 248(1); "non-resident" — 248(1); "permanent establishment" — Reg. 8201, 8201.1; "person", "prescribed", "property" — 248(1); "qualified property" — 206(1); "province" — *Interpretation Act* 35(1); "registered investment" — 204.4(1), 204.5, 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "related" — 251(2); "share", "shareholder" — 248(1); "significant interest", "small business investment amount", "small business property" — 206(1); "specified active business" — 206(1); "spouse" — 252(3), (4)(a); "taxpayer" — 248(1); "taxation year" — 249; "trust" — 248(1), (3); "writing" — *Interpretation Act* 35(1).

Forms [s. 206]: T3F: Investments prescribed to be qualified or not to be foreign property information return; T3RI: Registered investment and income tax return.

206.1 Tax in respect of acquisition of shares — Where at any time a taxpayer to which this Part applies makes an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the total of all amounts each of which is the amount, if any, by which

(a) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

(b) the amount, if any, of the dividend that is received by the taxpayer.

History: S. 206.1 amended by 1998, c. 19, s. 211, applicable to agreements entered into after 1992 except that, in its application to agreements entered into after 1992 and before April 26, 1995, s. 206.1 shall be read as follows:

> 206.1 Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the lesser of
>
> (a) the total of all amounts each of which is the amount, if any, by which
>
> (i) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement
>
> exceeds
>
> (ii) the amount, if any, of the dividend that is received by the taxpayer, and
>
> (b) 1% of the fair market value of the share at the time the agreement is entered into.

The sec. formerly read:

> 206.1 Tax in respect of acquisition of shares — Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value thereof at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to 1% of the fair market value of the share at the time that the agreement is entered into.

S. 206.1 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 167, applicable to agreements entered into after July 13, 1990. S. 206.1 formerly read:

> 206.1 Tax in respect of acquisition of shares — Where at any time a taxpayer to which this Part applies has entered into an agreement (otherwise than pursuant to the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire shares of the capital stock of a corporation from a person other than the corporation at a price that may differ from the fair market value thereof at the time they may be acquired, the taxpayer shall, in respect of each month during which it is a party to the agreement, pay a tax under this Part equal to 1% of the maximum amount that the taxpayer is or may be required to pay for the shares under the agreement.

Pre-RSC History [ss. 206, 206.1]: The definition "small business investment amount" in subsec. 206(1) amended, to substitute "the cost amounts of all small business properties to the taxpayer" for "the fair market values, at the time of acquisition, of all small business properties of the taxpayer"; subsecs. 206(2), (4) substituted by 1987, c. 46, subsecs. 61(1), (2), (4), applicable in respect of months ending after January 1, 1988 or months ending after such earlier date after 1984 as the taxpayer elects in his return under Part XI of the Act for 1987. Subsecs. 206(2), (4) formerly read:

> (2) Tax payable — Where at the end of any month
>
> (a) the aggregate of all amounts each of which is the fair market value, at the time of its acquisition by a taxpayer described in any of paragraphs 205(a) to (f), of a foreign property of the taxpayer, other than, where the taxpayer is described in any of paragraphs 205(b) to (e), a foreign property that was not at the end of the month a qualified investment of the taxpayer (within the meaning assigned by paragraph 204(e), subsection 146(1), 146.2(1) or 146.3(1), as the case may be)

exceeds the aggregate of

(b) 10% of the aggregate of all amounts each of which is the fair market value, at the time of its acquisition, of a property of the taxpayer, and

(c) in the case of a taxpayer described in paragraph 205(a), (b), (c) or (e), other than a taxpayer described in paragraph 149(1)(o.2), the lesser of

(i) three times the small business investment amount of the taxpayer for the month, and

(ii) two times the amount determined under paragraph (b),

the taxpayer shall, in respect of that month, pay a tax under this Part equal to 1% of the lesser of such excess and the aggregate of all amounts each of which is the fair market value, at the time of its acquisition, of each of its foreign properties that was acquired by it after June 18, 1971.

. . . . .

(4) Fair market value of small business property — For the purposes of this section and subsection 207.1(5), the fair market value at the time of acquisition of a small business property of a taxpayer or partnership

(a) shall be reduced by the amount of any return or distribution of capital received by the taxpayer or partnership, as the case may be, in respect of the property; and

(b) shall be increased by the amount of any contribution of capital (otherwise than by way of loan) made by the taxpayer or partnership, as the case may be, in respect of the property, subsequent to the acquisition of the property.

Subsec. 206(2.1) added by 1987, c. 46, subsec. 61(3), applicable to months ending after 1986.

Para. (d.1) of the definition "foreign property" in subsec. 206(1) added by 1986, c. 55, subsec. 72(1), applicable in respect of shares and indebtedness acquired after December 4, 1985, otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985.

All that portion of the definition "small business property" following para. (d) in subsec. 206(1) substituted by 1986, c. 55, subsec. 72(2), applicable with respect to periods occurring after October 31, 1985. That portion formerly read:

where the taxpayer is the first person (other than a broker or dealer in securities) to have acquired the property and the taxpayer has owned the property continuously since it was so acquired.

Ss. 206, 206.1 substituted for former s. 206 by 1986, c. 6, s. 110, applicable with respect to periods occurring after October 31, 1985, except that in the application of subsec. 206(2) the amount determined under para. (c) thereof shall be deemed to be nil for the period that is before 1986. S. 206 formerly read:

206. (1) Tax payable — Where at the end of any month,

(a) the aggregate of all amounts each of which is the fair market value, at the time of its acquisition by a taxpayer described in any of paragraphs 205(a) to (f), of a foreign property of the taxpayer, other than, where the taxpayer is described in any of paragraphs 205(b) to (e), a foreign property that was not at the end of the month a qualified investment of the taxpayer (within the meaning assigned by paragraph 204(e), subsection 146(1), 146.2(1) or 146.3(1), as the case may be,)

exceeds

(b) 10% of the aggregate of all amounts each of which is the fair market value, at the time of its acquisition, of a property of the taxpayer,

the taxpayer shall, in respect of that month, pay a tax under this Part equal to 1% of the lesser of such excess and the aggregate of all amounts each of which is the fair market value, at the time of its acquisition, of each of its foreign properties that was acquired by it after June 18, 1971.

(1.1) Idem — Where at any time a taxpayer to which this Part applies has entered into an agreement (otherwise than pursuant to the acquisition by it of an option listed on a prescribed stock exchange) to acquire shares of the capital stock of a corporation from a person other than the corporation at a price that may differ from the fair market value thereof at the time they may be acquired, the taxpayer shall, in respect of each month after 1979 during which it is a party to the agreement, pay a tax under this Part equal to 1% of the maximum amount that the taxpayer is or may be required to pay for the shares under the agreement.

(2) "Foreign property" defined — In this section, "foreign property" means

(a) tangible property situated outside Canada except automotive equipment registered in Canada,

(b) automotive equipment not registered in Canada pursuant to the laws of Canada or a province,

(c) intangible property (other than property described in paragraph (d), (e) or (f)) situated outside Canada including, without restricting the generality of the foregoing, any patent under the laws of a country other than Canada and any licence in respect thereof,

(d) any share of the capital stock of a corporation other than a Canadian corporation,

(e) any share of the capital stock of a mutual fund corporation that is neither an investment corporation nor a registered investment, except as prescribed by regulation,

(e.1) any property that, under the terms or conditions thereof or any agreement relating thereto, is convertible into, is exchangeable for or confers a right to acquire, property that is foreign property, but not including property that is

(i) a share of the capital stock of a Canadian corporation listed on a prescribed stock exchange in Canada, or

(ii) a right issued before 1984 and listed on a prescribed stock exchange in Canada to acquire a share of the capital stock of a Canadian corporation,

(f) any bond, debenture, mortgage, hypothec, note or similar obligation of, or issued by, a person not resident in Canada, except any such bond, debenture, mortgage, hypothec, note or similar obligation issued or guaranteed by

(i) the International Bank for Reconstruction and Development,

(ii) the Inter-American Development Bank, or

(iii) the Asian Development Bank, or

(iv) the Caribbean Development Bank,

(g) any interest in or right to any property that is foreign property by virtue of paragraphs (a) to (f), and

(h) except as prescribed by regulation, any interest in, or right to acquire an interest in, a trust (other than a registered investment) or a partnership.

(3) Idem — Notwithstanding subsection (2), a share of the capital stock of an investment corporation that is not a registered investment acquired after October 13, 1971 by a taxpayer to whom this Part applies and held by him at a particular time shall, except as prescribed by regulation, be deemed to be a foreign property held by the taxpayer at that time.

Para. 206(2)(e.1) substituted by 1984, c. 45, s. 86, (as amended by 1986, c. 6, s. 130, deemed in force December 20, 1984), to delete "issued before 1984 and" from after "Canadian corporation" in subpara. (i) and to delete subpara. (iii), applicable after 1983 . Subpara. (iii) formerly read:

(iii) a share of the capital stock of a Canadian corporation listed on a prescribed stock exchange in Canada and acquired pursuant to the exercise of a right referred to in subparagraph (ii),

Para. 206(2)(e.1) substituted by 1984, c. 1, s. 97, applicable after November 12, 1981.

Subsec. 206(1) substituted by 1980-81-82-83, c. 140, subsec. 117(1), applicable after December 11, 1979.

Subsec. 206(1.1) substituted by 1980-81-82-83, c. 140, subsec. 117(2), applicable with respect to agreements entered into after December 11, 1979.

Para. 206(2)(e.1) added by 1980-81-82-83, c. 140, subsec. 117(3), applicable after November 12, 1981.

Subsec. 206(1) substituted by 1980-81-82-83, c. 48, subsec. 96(1), applicable with respect to the holding of property after December 11, 1979. Subsec. 206(1) formerly read:

206. (1) Where, at the end of any month after 1971,

(a) the cost to a taxpayer to whom this Part applies of all foreign property held by it at that time, other than

(i) in the case of a trust governed by a registered retirement savings plan, property that was at that time not a qualified

investment (within the meaning assigned by subsection 146(1)),

(ii) in the case of a trust governed by a deferred profit sharing plan, property that was at that time not a qualified investment (within the meaning assigned by section 204),

(iii) in the case of a trust governed by a registered home ownership savings plan, property that was at that time not a qualified investment (within the meaning assigned by subsection 146.2(1)), or

(iv) in the case of a trust governed by a registered retirement income fund, property that was at that time not a qualified investment (within the meaning assigned by subsection 146.3(1))

exceeds

(b) 10% of the cost to it of all property held by it at that time,

the taxpayer shall, in respect of that month, pay a tax under this Part equal to 1% of the lesser of such excess and the cost to it of all foreign property held by it at that time that was acquired by it after June 18, 1971.

Subsec. 206(1.1) added by 1980-81-82-83, c. 48, subsec. 96(2), applicable with respect to agreements entered into after December 11, 1979.

Paras. 206(2)(e), (h) and subsec. 206(3) substituted by 1980-81-82-83, c. 48, subsecs. 96(3), (4), applicable to 1981 *et seq.* Paras. 206(2)(e), (h) formerly read:

(e) any share of the capital stock of a mutual fund corporation that is not an investment corporation, except as prescribed by regulation,

. . . . .

(h) any interest in, or right to acquire an interest in, a trust or partnership, except as prescribed by regulation.

Subsec. 206(3) substituted by 1980-81-82-83, c. 48, subsec. 96(5), applicable to 1981 *et seq.* Subsec. 206(3) formerly read:

(3) Notwithstanding subsection (2), a share of the capital stock of an investment corporation acquired after October 13, 1971 by a taxpayer to whom this Part applies and held by him at a particular time shall, except as prescribed by regulation, be deemed to be a foreign property held by the taxpayer at that time.

Subpara. 206(1)(a)(iv) added by 1977-78, c. 32, s. 46.

Para. 206(1)(a) substituted by 1976-77, c. 4, s. 70, applicable to 1976 *et seq.* Para. 206(1)(a) formerly read:

(a) the cost to a taxpayer to whom this Part applies of all foreign property held by it at that time

Paras. 206(2)(f), (g) substituted by 1973-74, c. 14, s. 65, deemed to have come into force December 23, 1971.

Definitions [s. 206.1]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "person", "prescribed" — 248(1); "registered investment" — 204.4(1), 248(1); "share", "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

Regulations [s. 206.1]: 3200, 3201 (prescribed stock exchanges, both in Canada and outside Canada).

I.T. Application Rules [s. 206.1]: 65(1), (1.1) and (5) (property acquired before July 1972).

Information Circulars [s. 206.1]: 77-1R4: Deferred profit sharing plans.

Forms [s. 206.1]: T3ATH-IND: Amateur athlete trust income tax return; T3P: Employees' pension plan income tax return; T3RI: Registered investment and income tax return; T2000: Calculation of tax on agreements to acquire shares.

207. (1) Return and payment of tax — Within 90 days after the end of each year after 1971, a taxpayer to whom this Part applies shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing; 207.1(1) — Tax payable by RRSP.

Interpretation Bulletins: IT-320R2: RRSP — qualified investments.

Information Circulars: 78-14R2: Guidelines for trust companies and others.

Forms: T3D: Income tax return for DPSP or revoked DPSP; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP; T3P: Employees' pension plan income tax return.

(2) Liability of trustee — Where the trustee of a taxpayer that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection (1), the trustee is personally liable to pay on behalf of the taxpayer the full amount of the tax and is entitled to recover from the taxpayer any amount paid by the trustee as tax under this section.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History [s. 207]: Subsec. 207(3) substituted by 1986, c. 6, s. 111. Subsec. 207(3) formerly read:

(3) Subsections 150(2) and (3), subsection 161(1), sections 152, 158 and 162 to 167, and Division J of Part I are applicable *mutatis mutandis* to this Part.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Definitions [s. 207]: "amount", "Minister", "prescribed", "taxpayer" — 248(1).

Information Circulars [s. 207]: 77-1R4: Deferred profit sharing plans.

PART XI.1 — TAX IN RESPECT OF CERTAIN PROPERTY HELD BY TRUSTS GOVERNED BY DEFERRED INCOME PLANS

207.1 (1) Tax payable by trust under registered retirement savings plan [holding non-qualified investment] — Where, at the end of any month, a trust governed by a registered retirement savings plan holds property that is neither a qualified investment (within the meaning assigned by subsection 146(1)) nor a life insurance policy in respect of which, but for subsection 146(11), subsection 146(10) would have applied as a consequence of its acquisition, the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month, other than

(a) property, the fair market value of which was included, by virtue of subsection 146(10), in computing the income, for any year, of an annuitant (within the meaning assigned by subsection 146(1)) under the plan; and

(b) property acquired by the trust before August 25, 1972.

Related Provisions: 146(10) — Tax on beneficiary when RRSP acquires non-qualified investment; 146(10.1) — Tax on RRSP's income from non-qualified investment; 205 — Application of Part XI — deferred income plan trust property; 206 — Tax payable; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

Interpretation Bulletins: IT-320R2: RRSP — qualified investments.

(2) Tax payable by trust under deferred profit sharing plan [holding non-qualified investment] — Where, at the end of any month, a trust governed by a deferred profit sharing plan holds property that is neither a qualified investment (within the meaning assigned by section 204) nor a life insurance policy (referred to in paragraphs 198(6)(c) to (e) or subsection 198(6.1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month, other than

(a) property in respect of the acquisition of which the trust has paid or is liable to pay a tax under subsection 198(1); and

(b) property acquired by the trust before August 25, 1972.

Related Provisions: 198(1) — Tax on acquisition of non-qualified investment; 205 — Application of Part XI — deferred income plan trust property; 206 — Tax payable; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

(3) Tax payable by trust under registered education savings plan [holding non-qualified investment] — Every trust governed by a registered education savings plan shall, in respect of any month, pay a tax under this Part equal to 1% of the total of all amounts each of which is the fair market value of a property, at the time it was acquired by the trust, that

(a) is not a qualified investment (as defined in subsection 146.1(1)) for the trust; and

(b) is held by the trust at the end of the month.

History: Subsec. 207.1(3) added by 1999, c. 22, s. 73, applicable to 1999 *et seq.*

(4) Tax payable by trust under registered retirement income fund [holding non-qualified investment] — Where, at the end of any month after 1978, a trust governed by a registered retirement income fund holds property that is not a qualified investment (within the meaning assigned by subsection 146.3(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month other than property, the fair market value of which was included by virtue of subsection 146.3(7) in computing the income for any year of an annuitant (within the meaning assigned by subsection 146.3(1)) under the fund.

Related Provisions: 146.3(7) — Tax on beneficiary when RRIF acquires non-qualified investment; 146.3(9) — Tax on income from non-qualified investments; 205 — Application of Part XI — deferred income plan trust property; 206 — Tax payable; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

(5) [Repealed]

History: Subsec. 207.1(5) repealed by 1994, c. 8, s. 31, applicable to property held after October 1985. Subsec. (5) formerly read:

(5) Tax on excessive small business property holdings — Where at the end of any month a trust governed by a registered retirement savings plan or registered retirement income fund holds a prescribed property, the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the amount, if any, by which

(a) the total of the fair market values, at the time of acquisition, of all prescribed properties held by the trust at the end of the month

exceeds

(b) 50% of the total of the fair market values, at the time of acquisition, of all properties held by the trust at the end of the month.

Related Provisions [s. 207.1]: 205 — Application of Part XI — deferred income plan trust property; 206 — Tax payable; 207.2 — Return and payment of tax; 259(1) — Proportional holdings in trust property.

Pre-RSC History [s. 207.1]: Former subsec. 207.1(3) repealed by 1986, c. 6, subsec. 112(1), applicable to months ending after 1985. Subsec. 207.1(3) formerly read:

(3) Tax payable by registered home ownership savings plan — Where, at the end of any month, a trust governed by a registered home ownership savings plan holds property that is not a qualified investment (within the meaning assigned by subsection 146.2(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month other than property, the fair market value of which was included by virtue of subsection 146.2(12), in computing the income for any year of the beneficiary (within the meaning assigned by subsection 146.2(1)) under the plan.

Former subsec. 207.1(5) added by 1986, c. 6, subsec. 112(2), applicable with respect to property held after October 31, 1985.

All that portion of subsec. 207.1(1) preceding para. (b), all that portion of subsec. 207.1(2) preceding para. (a) substituted by 1979, c. 5, subsecs. 59(1), (2), applicable to 1973 *et seq.* except that in respect of the holding of property before November 17, 1978, any reference in subsec. 207.1(1) or (2), as amended by subsec. 59(1) or (2), to "fair market value" is to be read as a reference to "cost". Subsecs. 207.1(1), (2) formerly read:

207.1 (1) Where, at the end of any month after 1972, a trust governed by a registered retirement savings plan holds property that is not a qualified investment (within the meaning assigned by subsection 146(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the cost to it of all such property held by it at that time, other than

(a) property, the cost of acquisition of which was included, under subsection 146(10), in computing the income, for any year, of the taxpayer who is the annuitant under the plan; and

. . . . .

(2) Where, at the end of any month after 1972, a trust governed by a deferred profit sharing plan holds property that is not a qualified investment (within the meaning assigned by section 204) or a life insurance policy (referred to in paragraphs 198(6)(c) to (e) or subsection 198(6.1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the cost to it of all such property held by it at that time, other than

Subsecs. 207.1(3), (4) substituted by 1979, c. 5, subsec. 59(3), applicable in respect of the holding of property after November 16, 1978. Subsecs. 207.1(3), (4) formerly read:

(3) Where, at the end of any month after 1973, a trust governed by a registered home ownership savings plan holds property that is not a qualified investment (within the meaning assigned by subsection 146.2(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the cost to it of all such property held by it at that time other than property, the cost of acquisition of which was included by virtue of subsection 146.2(12), in computing the income for any year of the taxpayer who is the beneficiary under the plan.

(4) Where, at the end of any month after 1978, a trust governed by a registered retirement income fund holds property that is not a qualified investment (within the meaning assigned by subsection 146.3(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the cost to it of all such property held by it at that time other than property, the cost of acquisition of which was included by virtue of subsection 146.3(7) in computing the income for any year of a taxpayer who was the annuitant under the fund.

Subsec. 207.1(4) added by 1977-78, c. 32, s. 47.

All that portion of subsec. 207.1(2) preceding para. (a) substituted, subsec. 207.1(3) added by 1974-75-76, c. 26, subsecs. 116(1), (2), applicable, as to that portion of subsec. 207.1(2), to 1973 *et seq.*, and, as to subsec. 207.1(3), to 1974 *et seq.* That portion of subsec. 207.1(2) formerly read:

(2) Tax payable by DPSP — Where, at the end of any month after 1972, a trust governed by a deferred profit sharing plan holds property that is not a qualified investment (within the meaning assigned

by section 204), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the cost to it of all such property held by it at that time, other than

S. 207.1 added by 1973-74, c. 30, s. 23.

Definitions [s. 207.1]: "deferred profit sharing plan" — 147(1), 248(1); "life insurance policy" — 138(12), 248(1); "property" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "trust" — 104(1), 248(1), (3).

Regulations [s. 207.1]: 4901(1.1) (prescribed property).

Information Circulars [s. 207.1]: 77-1R4: Deferred profit sharing plans.

207.2 (1) Return and payment of tax — Within 90 days after the end of each year, a taxpayer to whom this Part applies shall

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by it under this Part in respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by it under this Part in respect of each month in the year.

Related Provisions: 150.1(5) — Electronic filing.

Interpretation Bulletins: IT-320R2: RRSP — qualified investments.

Information Circulars: 78-14R2: Guidelines for trust companies and others.

Forms: T3D: Income tax return for DPSP or revoked DPSP; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND income tax return for RRSP, RRIF, or RESP.

(2) Liability of trustee — Where the trustee of a trust that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection (1), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History [s. 207.2]: Subsec. 207.2(3) substituted by 1986, c. 6, s. 113. Subsec. 207.2(3) formerly read:

(3) Subsections 150(2) and (3), subsection 161(1), sections 152, 158 and 162 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

All that portion of subsec. 207.2(1) preceding para. (a) substituted by 1979, c. 5, s. 60, applicable to 1978 *et seq.* That portion formerly read:

207.2 (1) Within 90 days after the end of each year after 1972, a trust governed by a registered retirement savings plan, by a deferred profit sharing plan or by a registered home ownership savings plan shall

All that portion of subsec. 207.2(1) preceding para. (a) substituted by 1974-75-76, c. 26, subsec. 116(3), applicable to 1974 *et seq.* That portion formerly read:

207.2 (1) Within 90 days after the end of each year after 1972, a trust governed by a registered retirement savings plan or by a deferred profit sharing plan shall

S. 207.2 added by 1973-74, c. 30, s. 23.

Definitions [s. 207.2]: "amount", "Minister", "prescribed", "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

PART XI.2 — TAX IN RESPECT OF DISPOSITIONS OF CERTAIN PROPERTIES

207.3 Tax payable by institution or public authority — Every institution or public authority that, at any time in a year, disposes of an object within 10 years after the object became an object described in subparagraph 39(1)(a)(i.1) shall pay a tax under this Part, in respect of the year, equal to 30% of the object's fair market value at that time, unless the disposition was made to another institution or public authority that was, at that time, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object.

Related Provisions: 118.1(7.1) — No tax on deemed disposition upon gift of cultural property.

History: S. 207.3 amended by 1999, c. 22, s. 74, applicable to dispositions made after February 23, 1998. It formerly read:

207.3 Any institution or public authority that, at any time in a year, disposes of an object within 5 years after the object became an object described in subparagraph 39(1)(a)(i.1) shall, in respect of that year, pay a tax under this Part equal to 30% of the fair market value of the object at the time the object was so disposed of, unless the disposition was made to another institution or public authority that was, at the time of the disposition, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object.

S. 207.3 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 168, applicable to dispositions after December 11, 1988. S. 207.3 formerly read:

207.3 Tax payable by institution or public authority in Canada — Any institution or public authority that, at any time in a year, disposes of an object within five years of the object becoming an object described in subparagraph 39(1)(a)(i.1) shall, in respect of that year, pay a tax under this Part equal to thirty per cent of the fair market value of the object at the time the object was so disposed of, unless the disposition was made to another institution or public authority that was, at the time of the disposition, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a purpose related to that object.

Interpretation Bulletins: IT-407R4: Dispositions of cultural property to designated Canadian institutions.

207.31 Tax payable by recipient of an ecological gift — Any charity or municipality that, at any time in a taxation year, without the authorization of the Minister of the Environment, or a person designated by that Minister, disposes or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the charity or municipality after February 27, 1995 shall, in respect of the year pay a tax under this Part equal to 50% of the fair market value of the property at the time of the disposition or change.

Proposed Amendment — 207.31

207.31. Tax payable by recipient of an ecological gift — Any charity or municipality that at any time in a taxation year, without the authorization of the Minister of the Environment or a person designated by that Minister, disposes of or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the charity or municipality after February 27, 1995 shall, in respect of the year, pay a tax under this Part equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and

118.1(6), to be the fair market value of the property if the property were given to the charity or municipality immediately before the disposition or change.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 99, will amend s. 207.31 to read as above, applicable in respect of dispositions or changes that occur after November 1999.

Technical Notes: Section 207.31 of the Act imposes a tax on charities and Canadian municipalities where they dispose of or change the use of property donated to them as an ecological gift without the approval of the Minister of the Environment. The tax is equal to 50% of the fair market value of the property at the time of the disposition or change in use. The section is amended to clarify that the fair market value will be that amount that would be determined at that time for a donor for the purposes of section 110.1 or 118.1 of the Act, as the case may be.

Amended section 207.3 applies where a charity or municipality disposes of or changes the use of an ecological gift after November 30, 1999.

Related Provisions: 110.1(5), 118.1(12) — Fair market value of ecological servitude, covenant or easement; 207.4(1) — Return and payment of tax.

History: S. 207.31 added by 1996, c. 21, s. 53, applicable after February 27, 1995.

Definitions [s. 207.31]: "fair market value" — 110.1(5); "property" — 248(1); "taxation year" — 249.

207.4 (1) Return and payment of tax — Any institution, public authority, charity or municipality that is liable to pay a tax under subsection 207.3 or 207.31 in respect of a year shall, within 90 days after the end of the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information without notice or demand therefor;

(b) estimate in the return the amount of tax payable by it under this Part in respect of the year; and

(c) pay to the Receiver General the amount of tax payable by it under this Part in respect of the year.

Related Provisions: 150.1(5) — Electronic filing.

History: The opening words of subsec. 207.4(1) amended by 1996, c. 21, s. 54, applicable after February 27, 1995. The opening words formerly read:

(1) Any institution or public authority that is liable to pay a tax under section 207.3 in respect of a year shall, within 90 days after the end of that year,

Forms: T913: Part XI.2 tax return — tax for the disposition of certain properties.

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 207.4]: "Minister", "prescribed" — 248(1).

History: The heading of Part XI.2 amended by 1996, c. 21, s. 52, applicable after February 27, 1995. The heading formerly read "Tax in respect of Certain Property Disposed of by Certain Public Authorities or Institutions".

Pre-RSC History [Part XI.2]: Subsec. 207.4(2) substituted by 1986, c. 6, s. 114. Subsec. 207.4(2) formerly read:

(2) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsection 161(1) and sections 162 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part.

Part XI.2 (ss. 207.3, 207.4) added by 1974-75-76, c. 50, s. 51, in force from September 6, 1977.

PART XI.3 — TAX IN RESPECT OF RETIREMENT COMPENSATION ARRANGEMENTS

207.5 (1) Definitions — In this Part,

"RCA trust" under a retirement compensation arrangement means

(a) any trust deemed by subsection 207.6(1) to be created in respect of subject property of the arrangement, and

(b) any trust governed by the arrangement;

"refundable tax" of a retirement compensation arrangement at the end of a taxation year of an RCA trust under the arrangement means the amount, if any, by which the total of

(a) 50% of all contributions made under the arrangement while it was a retirement compensation arrangement and before the end of the year, and

(b) 50% of the amount, if any, by which

(i) the total of all amounts each of which is the income (determined as if this Act were read without reference to paragraph 82(1)(b)) of an RCA trust under the arrangement from a business or property for the year or a preceding taxation year or a capital gain of the trust for the year or a preceding taxation year,

exceeds

(ii) the total of all amounts each of which is a loss of an RCA trust under the arrangement from a business or property for the year or a preceding taxation year or a capital loss of the trust for the year or a preceding taxation year,

exceeds

(c) 50% of all amounts paid as distributions to one or more persons (including amounts that are required by paragraph 12(1)(n.3) to be included in computing the recipient's income) under the arrangement while it was a retirement compensation arrangement and before the end of the year, other than a distribution paid where it is established, by subsequent events or otherwise, that the distribution was paid as part of a series of payments and refunds of contributions under the arrangement;

Related Provisions: 207.5(2) — Deemed refundable tax on election; 207.6(7)(c) — Where amount transferred from one RCA to another. See additional Related Provisions and Definitions at end of Part XI.3.

"subject property of a retirement compensation arrangement" means property that is held in connection with the arrangement.

(2) Election — Notwithstanding the definition "refundable tax" in subsection (1), where the custodian of a retirement compensation arrangement so elects in the return under this Part for a taxation year of an RCA trust under the arrangement and all the subject property, if any, of the arrangement (other than a right to claim a refund under subsection 164(1) or 207.7(2)) at the end of the year consists only of cash, debt obligations, shares listed on a prescribed stock exchange, or any combination thereof, an amount equal to the total of

(a) the amount of that cash at the end of the year,

(b) the total of all amounts each of which is the greater of the principal amount of such a debt obligation outstanding at the end of the year and the fair market value of the obligation at the end of the year, and

(c) the fair market value of those shares at the end of the year

shall be deemed for the purposes of this Part to be the refundable tax of the arrangement at the end of the year.

Related Provisions [s. 207.5]: See Related Provisions at end of Part XI.3.

Definitions [s. 207.5]: "amount" — 248(1); "capital gain", "capital loss" — 39(1), 248(1); "person", "prescribed", "property" — 248(1); "RCA trust", "refundable tax" — 207.5(1); "retirement compensation arrangement" — 248(1); "series of transactions" — 248(10); "share" — 248(1); "subject property" — 207.5(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Regulations [s. 207.5]: 3200, 3201 (prescribed stock exchanges).

Forms [s. 207.5]: T735: Withholding tax remitter for retirement compensation arrangements.

207.6 (1) Creation of trust — In respect of the subject property of a retirement compensation arrangement, other than subject property of the arrangement held by a trust governed by a retirement compensation arrangement, for the purposes of this Part and Part I, the following rules apply:

(a) an *inter vivos* trust is deemed to be created on the day that the arrangement is established;

(b) the subject property of the arrangement is deemed to be property of the trust and not to be property of any other person; and

(c) the custodian of the arrangement is deemed to be the trustee having ownership or control of the trust property.

Related Provisions: 207.6(7) — Transfer from RCA to another RCA. See also Related Provisions and Definitions at end of Part XI.3.

Forms: T4041: Retirement compensation arrangements guide (guide).

(2) Life insurance policies — For the purposes of this Part and Part I, where by virtue of a plan or arrangement an employer is obliged to provide benefits that are to be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by a taxpayer, the retirement of a taxpayer or the loss of an office or employment of a taxpayer, and where the employer, former employer or a person or partnership with whom the employer or former employer does not deal at arm's length acquires an interest in a life insurance policy that may reasonably be considered to be acquired to fund, in whole or in part, those benefits, the following rules apply in respect of the plan or arrangement if it is not otherwise a retirement compensation arrangement and is not excluded from the definition "retirement compensation arrangement", in subsection 248(1), by any of paragraphs (a) to (l) and (n) thereof:

(a) the person or partnership that acquired the interest is deemed to be the custodian of a retirement compensation arrangement;

(b) the interest is deemed to be subject property of the retirement compensation arrangement;

(c) an amount equal to twice the amount of any premium paid in respect of the interest or any repayment of a policy loan thereunder is deemed to be a contribution under the retirement compensation arrangement; and

(d) any payment received in respect of the interest, including a policy loan, and any amount received as a refund of refundable tax is deemed to be an amount received out of or under the retirement compensation arrangement by the recipient and not to be a payment of any other amount.

(3) Incorporated employee — For the purpose of the provisions of this Act relating to retirement compensation arrangements, where

(a) a corporation that at any time carried on a personal services business, or an employee of the corporation, enters into a plan or arrangement with a person or partnership (referred to in this subsection as the "employer") to whom or which the corporation renders services, and

(b) the plan or arrangement provides for benefits to be received or enjoyed by any person on, after or in contemplation of the cessation of, or any substantial change in, the services rendered by the corporation, or an employee of the corporation, to the employer,

the following rules apply:

(c) the employer and the corporation are deemed to be an employer and employee, respectively, in relation to each other, and

(d) any benefits to be received or enjoyed by any person under the plan or arrangement are deemed to be benefits to be received or enjoyed by the person on, after or in contemplation of a substantial change in the services rendered by the corporation.

Related Provisions: 18(1)(p) — Limitation on deductions re incorporated employees. See additional Related Provisions and Definitions at end of Part XI.3.

(4) Deemed contribution — Where at any time an employee benefit plan becomes a retirement compensation arrangement as a consequence of a change of the custodian of the plan or as a consequence of the custodian ceasing either to carry on business through a fixed place of business in Canada or to be licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(a) for the purposes of this Part and Part I, the custodian of the plan is deemed to have made a contribution to the arrangement immediately after that time, in an amount equal to the fair market value at that time of all the properties of the plan; and

(b) for the purposes of section 32.1, that amount is deemed to be a payment made at that time out of or under the plan to or for the benefit of employees or former employees of the employers who contributed to the plan.

Related Provisions: See Related Provisions and Defintions at end of Part XI.3.

(5) Resident's arrangement — For the purposes of this Act, where a resident's contribution has been made under a plan or arrangement (in this subsection referred to as the "plan"),

(a) the plan is deemed, in respect of its application to all resident's contributions made under the plan and all property that can reasonably be considered to be derived from those contributions, to be a separate arrangement (in this subsection referred to as the "residents' arrangement") independent of the plan in respect of its application to all other contributions and property that can reasonably be considered to derive from those other contributions;

(b) the residents' arrangement is deemed to be a retirement compensation arrangement; and

(c) each person and partnership to whom a contribution is made under the residents' arrangement is

deemed to be a custodian of the residents' arrangement.

Related Provisions: 207.6(5.1) — Resident's contribution; 252.1 — Where union is employer. See additional Related Provisions and Definitions at end of Part XI.3.

History: Subsec. 207.6(5) substituted by 1994, c. 21, s. 94, applicable after October 8, 1986. That subsec. formerly read:

(5) For the purposes of the provisions of this Act relating to retirement compensation arrangements, where a contribution has been made under a plan or arrangement (in this subsection referred to as the "plan") that would, but for paragraph (l) of the definition "retirement compensation arrangement", in subsection 248(1), be a retirement compensation arrangement, to the extent that the contribution can reasonably be considered to have been made at any particular time in respect of services rendered by an employee who

(a) was resident in Canada at the time the services were rendered, and

(b) where the employee was a member of the plan before the employee became a resident of Canada, had been so resident for more than 60 of the 72 months preceding the time the services were rendered,

the following rules apply:

(c) another plan or arrangement (in this subsection referred to as the "resident's arrangement") is deemed to be established at the particular time,

(d) the resident's arrangement is deemed to be a separate arrangement independent of the plan,

(e) the resident's arrangement is deemed to be a retirement compensation arrangement the custodian of which is the recipient of the contribution,

(f) the contribution is deemed to have been made under the resident's arrangement and not under the plan, and

(g) all property that can reasonably be considered to derive from the contribution is deemed to be property held in connection with the resident's arrangement and not in connection with the plan.

Regulations: 6804(4)–(6) (prescribed contribution).

(5.1) Resident's contribution — For the purpose of subsection (5), "resident's contribution" means such part of a contribution made under a plan or arrangement (in this subsection referred to as the "plan") at a time when the plan would, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1), be a retirement compensation arrangement as

(a) is not a prescribed contribution; and

(b) can reasonably be considered to have been made in respect of services rendered by an individual to an employer in a period

(i) throughout which the individual was resident in Canada and rendered services to the employer that were primarily services rendered in Canada or services rendered in connection with a business carried on by the employer in Canada (or a combination of such services), and

(ii) at the beginning of which the individual had been resident in Canada throughout at least 60 of the 72 preceding calendar months, where the individual was non-resident at any time before the period and became a member of the plan before the end of the month after the month in which the individual became resident in Canada,

and, for the purpose of this paragraph, where benefits provided to an individual under a particular plan or arrangement are replaced by benefits under another plan or arrangement, the other plan or arrangement shall be deemed, in respect of the individual, to be the same plan or arrangement as the particular plan or arrangement.

Related Provisions: 252.1 — Where union is employer.

History: Subsec. 207.6(5.1) added by 1994, c. 21, s. 94, applicable after October 8, 1986.

Regulations: 6804(4)–(6) (prescribed contribution).

(6) Prescribed plan or arrangement — For the purposes of the provisions of this Act relating to retirement compensation arrangements, the following rules apply in respect of a prescribed plan or arrangement:

(a) the plan or arrangement shall be deemed to be a retirement compensation arrangement;

(b) an amount credited at any time to the account established in the accounts of Canada or a province in connection with the plan or arrangement shall be, except to the extent that it is in respect of a refund determined under subsection 207.7(2), deemed to be a contribution under the plan or arrangement at that time;

(c) the custodian of the plan or arrangement shall be deemed to be

(i) where the account is established in the accounts of Canada, Her Majesty in right of Canada, and

(ii) where the account is established in the accounts of a province, Her Majesty in right of that province; and

(d) the subject property of the plan or arrangement, at any time, shall be deemed to include an amount of cash equal to the balance at that time in the account.

Related Provisions: See Related Provisions and Definitions at end of Part XI.3.

History: Subsec. 207.6(6) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 121, applicable after 1991.

Regulations: 103(7)(a)(ii) (no withholding on transfer under 207.6(6)); 6802 (prescribed plan or arrangement).

(7) Transfers — Where an amount (other than an amount that is part of a series of periodic payments) is transferred directly to a retirement compensation arrangement (other than an arrangement the custodian of which is non-resident or which is deemed by subsection (5) to be a retirement compensation arrangement) from another retirement compensation arrangement,

(a) the amount shall not, solely because of the transfer, be included in computing a taxpayer's income under Part I;

(b) no deduction may be made in respect of the amount in computing a taxpayer's income under Part I; and

(c) the amount is considered, for the purpose of the definition "refundable tax" in subsection 207.5(1), to be paid as a distribution to one or more persons under the arrangement from which the amount is transferred and to be a contribution made under the arrangement to which the amount is transferred.

Related Provisions: 60(t)(ii)(A), (A.1), (E), 60(u)(ii)(A), (A.1), (E) — Whether amounts transferred under 207.6(7) deductible; 212(1)(j) — Transfer not subject to non-resident withholding tax.

History: Subsec. 207.6(7) added by 1998, c. 19, s. 212, applicable to amounts transferred after 1995.

Regulations: 103(7)(a)(iii) (no withholding on transfer under 207.6(7)); 6802.1(2) (prescribed plans and arrangements).

Definitions [s. 207.6]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "employee", "employee benefit plan", "employer", "employment", "individual" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "life insurance policy" — 138(12), 248(1); "non-resident", "office", "person", "prescribed" — 248(1); "prescribed plan or arrangement" — Reg. 6801, 6802, 6802.1, 6803; "property" — 248(1); "province" — *Interpretation Act* 35(1); "refundable tax" —

207.5(1); "resident in Canada" — 250; "residents' arrangement" — 207.6(5)(b); "resident's contribution" — 207.6(5.1); "retirement compensation arrangement" — 248(1); "subject property" — 207.5(1); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

Forms [s. 207.6]: T733: Application for an RCA identification account.

207.7 (1) Tax payable — Every custodian of a retirement compensation arrangement shall pay a tax under this Part for each taxation year of an RCA trust under the arrangement equal to the amount, if any, by which the refundable tax of the arrangement at the end of the year exceeds the refundable tax of the arrangement at the end of the immediately preceding taxation year, if any.

Related Provisions: See Related Provisions and Definitions at end of Part XI.3.

Forms: T4041: Retirement compensation arrangements guide (guide).

(2) Refund — Where the custodian of a retirement compensation arrangement has filed a return under this Part for a taxation year within three years after the end of the year, the Minister

(a) may, on mailing the notice of assessment for the year or a notification that no tax is payable for the year, refund without application therefor an amount equal to the amount, if any, by which the refundable tax of the arrangement at the end of the immediately preceding year exceeds the refundable tax of the arrangement at the end of the year; and

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the custodian within three years after the day of mailing of a notice of an original assessment for the year or of a notification that no tax is payable for the year.

Related Provisions: 207.6(6) — Prescribed plan or arrangement. See additional Related Provisions and Definitions at end of Part XI.3.

(3) Payment of tax — Every custodian of a retirement compensation arrangement shall, within 90 days after the end of each taxation year of an RCA trust under the arrangement,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by the custodian under this Part for the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by the custodian under this Part for the year.

Related Provisions: 147.1(3) — Postponement of filing deadline where RCA is registered as pension plan; 150.1(5) — Electronic filing; 248(7) — Return deemed received on day mailed. See additional Related Provisions at end of Part XI.3.

(4) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Definitions [s. 207.7]: "amount", "assessment", "Minister", "prescribed" — 248(1); "RCA trust", "refundable tax" — 207.5(1); "retirement compensation arrangement" — 248(1); "tax payable" — 248(2); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Forms [s. 207.7]: T3-RCA: Part XI.3 tax return; T4A-RCA Summ: Return of distributions from an RCA; T734: Remittance form for employer's tax deduction on contribution paid to RCA; T735: Withholding tax remitter for RCAs; T737-RCA Summ/Supp: Return and statement of contributions paid to a custodian of an RCA.

Related Provisions [Part XI.3]: 8(1)(m.2) — Deduction for employee RCA contributions; 87(2)(j.3) — Amalgamations — continuation of corporation; 107.2 — Distribution by RCA to beneficiary; 149(1)(q.1) — RCA trust exempt from Part I tax; 153(1)(p)–(r) — Withholding of tax at source on contribution to RCA, distribution out of RCA, and purchase of interest in RCA; 160.3 — Joint and several liability — RCA benefits; 227(8.2) — Liability for failure to withhold.

Pre-RSC History [Part XI.3]: Part XI.3 (ss. 207.5 to 207.7) added by 1987, c. 46, s. 62, applicable after October 8, 1986 except that

(a) any return otherwise required to be filed under Part XI.3 before March 16, 1988, shall be filed no later than that date;

(b) any tax otherwise payable under that Part before that date shall be paid no later than that date; and

(c) subsec. 207.6(2) does not apply in respect of an interest in a life insurance policy acquired before January 1, 1988 through a payment of premiums or a purchase pursuant to the terms of an arrangement established before October 9, 1986 and not materially altered after October 8, 1986.

PART XII — TAX IN RESPECT OF CERTAIN ROYALTIES, TAXES, LEASE RENTALS, ETC., PAID TO A GOVERNMENT BY A TAX EXEMPT PERSON

208. (1) Tax payable by exempt person — Where in a taxation year an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) was paid, payable, distributed or distributable in any manner whatever by a person (other than a prescribed person) who was exempt from tax under Part I on that person's taxable income to anyone in respect of any production from a Canadian resource property of the person of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that may reasonably be regarded as attributable to that production, the person shall, in respect of the year, pay a tax under this Part equal to 33⅓% of the lesser of

(a) the total of all amounts in respect of the property, each of which is

(i) an amount that became receivable in the year and that was required by paragraph 12(1)(o) to be included in computing the person's income for the year,

(ii) an amount that was paid or became payable by the person in the year and that by virtue of paragraph 18(1)(l.1) or (m) was not deductible in computing the person's income for the year,

(iii) an amount by which the person's proceeds of disposition were increased by virtue of subsection 69(6) in the year, or

(iv) an amount by which the person's cost of acquisition was decreased by virtue of subsection 69(7) in the year, and

(b) the proportion of the amount determined under paragraph (a) that

(i) the total of all amounts each of which is an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) that was paid, payable,

distributed or distributable by the person in the year in any manner whatever to

(A) another person (other than a person whose taxable income is exempt from tax under Part I), or

(B) another person whose taxable income is exempt from tax under Part I, where the amount was paid, payable, distributed or distributable as part of a transaction or event or series of transactions or events to which any person whose taxable income is not exempt from tax under Part I was a party

in respect of any production from the property of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that can reasonably be regarded as attributable to that production

is of

(ii) the amount, if any, by which the total of

(A) the income of the person from the property for the year from the production of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage, computed in accordance with Part I on the assumption that the property was the person's only source of income and that the person was allowed only those deductions in computing income from the property (other than a deduction under paragraph 20(1)(v.1) or section 65) that may reasonably be regarded as applicable to that income from the property, and

(B) the amount determined under subparagraph (i)

exceeds

(C) the amount determined under paragraph (a).

Related Provisions: 208(1.1) — Meaning of "specified stage"; 248(10) — Series of transactions.

History: Subpara. 208(1)(b)(i) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 169, applicable to 1988 *et seq.* That subpara. formerly read:

(i) the total of all amounts each of which is an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) that was paid, payable, distributed or distributable in the year in any manner whatever to anyone in respect of any production from the property of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that may reasonably be regarded as attributable to that production

Pre-RSC History: All that portion of subsec. 208(1) preceding para. (a) amended to substitute "the lesser of" for "the amount by which the lesser of", and all that portion of subsec. 208(1) following para. (b) repealed, by 1986, c. 2, s. 25, applicable to 1986 *et seq.* That repealed portion formerly read:

exceeds the amount determined under section 83.1 of the *Petroleum and Gas Revenue Tax Act* for the year computed without reference to paragraph (1)(c) thereof.

Subsec. 208(1) substituted by 1985, c. 45, subsec. 109(1), applicable to 1985 *et seq.* Subsec. 208(1) formerly read:

208. (1) Where in a taxation year an amount (other than an amount to which paragraph 18(1)(m) applies) was paid, payable, distributed or distributable in any manner whatever by a person (other than a prescribed person) who was exempt from tax under Part I on his taxable income to another person in respect of any revenue, production or income that may reasonably be regarded as attributable to the production from a Canadian resource property of the person or a property that would have been a Canadian resource property of the person if it had been acquired after 1971, of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the prime metal stage or its equivalent, the person shall, in respect of the taxation year, pay a tax under this Part equal to 331/3% of the amount by which the lesser of

(a) the aggregate of all amounts in respect of the property, each of which is

(i) an amount that became receivable in the year and that was required by paragraph 12(1)(o) to be included in computing his income for the year,

(ii) an amount that was paid or became payable by him in the year and that by virtue of paragraph 18(1)(m) was not deductible in computing his income for the year,

(iii) an amount by which his proceeds of disposition were increased by virtue of subsection 69(6) in the year, or

(iv) an amount by which his cost of acquisition was decreased by virtue of subsection 69(7) in the year; and

(b) the proportion of the amount determined under paragraph (a) that

(i) the aggregate of all amounts each of which was an amount (other than an amount to which paragraph 18(1)(m) applies) that was paid, payable, distributed or distributable in the year in any manner whatever to another person in respect of any revenue, production or income that may reasonably be regarded as attributable to the production from the property of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the prime metal stage or its equivalent,

is of

(ii) the amount, if any, by which the aggregate of

(A) the income of the person from the property for the year from the production of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the prime metal stage or its equivalent, computed in accordance with this Act on the assumption that the property was his only source of income and that he was allowed no deductions in computing the income from the property other than such deductions as may reasonably be regarded as applicable to the income from the property, other than an amount deducted under section 65 or paragraph 20(1)(v.1), and

(B) the amount determined under subparagraph (i)

exceeds

(C) the amount determined under paragraph (a)

exceeds the amount determined under section 83.1 of the *Petroleum and Gas Revenue Tax Act* for the year computed without reference to paragraph (1)(c) thereof.

All that portion of subsec. 208(1) preceding para. (a) substituted to add "the amount by which" and the words "exceeds the amount determined under section 83.1 of the *Petroleum and Gas Revenue Tax Act* for the year computed without reference to paragraph (1)(c) thereof" (after para. (b)) added, by 1980-81-82-83, c. 104, s. 32, applicable to 1982 *et seq.*

Regulations: 1216 (prescribed person).

(1.1) Definition of "specified stage" — For the purpose of subsection (1), "specified stage" means, in respect of the production from a Canadian resource property of a substance,

(a) where the substance is petroleum or related hydrocarbons (other than natural gas), the crude oil stage or its equivalent;

(b) where the substance is natural gas, the stage of natural gas that is acceptable to a common carrier of natural gas;

(c) where the substance is a metal or mineral (other than iron, sulphur or petroleum or related hydrocarbons), the prime metal stage or its equivalent;

(d) where the substance is iron, the pellet stage or its equivalent; and

(e) where the substance is sulphur, the marketable sulphur stage.

History: Subsec. 208(1.1) amended by 1997, c. 25, s. 58, applicable to taxation years that begin after 1996. Subsec. (1.1) formerly read:

(1.1) For the purpose of subsection (1), "specified stage" means, in respect of the production from a Canadian resource property

(a) where the production is petroleum, natural gas or related hydrocarbons from an oil or gas well or a mineral resource, the crude oil stage or its equivalent;

(b) where the production is metal or minerals (other than iron or petroleum or related hydrocarbons) from a mineral resource, the prime metal stage or its equivalent; and

(c) where the production is iron from a mineral resource, the pellet stage or its equivalent.

Pre-RSC History: Subsec. 208(1.1) added by 1985, c. 45, subsec. 109(1), applicable to 1985 *et seq.*

(2) Return and payment of tax — A person liable to pay a tax under this Part in respect of a year shall, within 3 months from the end of the year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the person under this Part in respect of the year; and

(c) pay to the Receiver General the tax payable by the person under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2026: Part XII tax return — tax on payments to the Crown by a tax exempt person.

(3) Liability of trustee — Where a trustee of a trust liable to pay tax under subsection (1) does not pay to the Receiver General the amount of the tax within the time specified in subsection (2), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(4) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 208(4) amended by 1986, c. 6, s. 115, to substitute "to Part" for "to this Part" in the heading and to add reference to subsection 161(11).

Subsec. 208(4) substituted by 1985, c. 45, subsec. 109(2), applicable to 1985 *et seq.* Subsec. 208(4) formerly read:

(4) Provisions applicable to this Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (2) and sections 162 to 167 and Division J of Part I are applicable *mutatis mutandis* to this Part.

Definitions [s. 208]: "amount" — 248(1); "Canadian resource property" — 66(15), 248(1); "mineral resource", "mineral", "Minister", "person", "prescribed", "property" — 248(1); "series of transactions" — 248(10); "specified stage" — 208(1.1); "tar sands" — 248(1); "taxable income" — 2(2), 248(1); "taxation year" — 249; "trust" — 248(1), (3).

Pre-RSC History [Part XII]: Part XII (s. 208) added by 1980-81-82-83, c. 48, s. 97, applicable by subsec. 97(2) of the said c. 48 as amended by 1984, c. 45, s. 99, (deemed in force December 31, 1983) to the 1979 and subsequent taxation years except that for the purposes of computing an amount with respect to a property acquired by a person before December 12, 1979 on which tax is payable under Part XII of the Act

(a) the reference in subsection 208(1) to "33⅓%" shall be read as a reference to "25%";

(b) the reference in subparagraphs 208(1)(a)(i) and (ii) to "in the year" shall be read as a reference to "after December 31, 1989 and in the year"; and

(c) the reference in subparagraphs 208(1)(a)(iii) and (iv) to "in the year" shall be read as a reference to "in the year in respect of appropriations, dispositions or acquisitions after December 31, 1989 of petroleum, natural gas or related hydrocarbons or metal or minerals".

Pre-RSC History [former Part XII]: Former Part XII (ss. 208 to 211) repealed by 1977-78, c. 1, s. 91, applicable to 1978 *et seq.* Part XII formerly read:

Part XII — Tax on Investment Income of Life Insurers

208. (1) **Investment income tax** — Every life insurer shall pay a tax for a taxation year equal to 15% of its taxable Canadian life investment income for the year.

(2) **Deductions from tax** — There may be deducted from the tax otherwise payable under this Part by an insurer for a taxation year

(a) the aggregate, for each province, of the lesser of

(i) 50% of any tax, the amount of which is calculated by reference to premiums collected by the insurer, payable by the insurer to that province in respect of premiums collected by it in the year under life insurance policies other than

(A) life insurance policies described in paragraph 209(3)(a),

(B) annuity contracts, or

(C) group term life insurance policies, and

(ii) 1% of the aggregate of amounts

(A) collected in the year by the insurer as or on account of premiums under life insurance policies other than those referred to in clauses (i)(A), (B) and (C), and

(B) in respect of which any tax described in subparagraph (i) was payable by the insurer to that province; and

(b) 28⅓% of that proportion of the aggregate of taxable dividends included in computing the insurer's income for the year from carrying on its life insurance business in Canada and received by the insurer in the year from taxable Canadian corporations in respect of shares that were non-segregated property of the insurer, that

(i) the insurer's taxable Canadian life investment income for the year plus the aggregate determined in respect of the insurer for the year under paragraph 209(3)(c)

is of

(ii) the insurer's net Canadian life investment income for the year.

209. (1) **Gross Canadian life investment income** — A life insurer's gross Canadian life investment income for a taxation year is the amount, if any, by which the aggregate of

(a) an amount equal to

(i) where subsection 138(9) applies but the insurer has not elected under that subsection in respect of the year, such part of its gross investment revenue for the year from its non-segregated property as is required by paragraph (b) of that subsection to be included in computing its income for the year from carrying on its life insurance business in Canada, and

(ii) in any other case, its gross investment revenue for the year from such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on its life insurance business in Canada, and

(b) the amounts required by subsection 138(4) to be included in computing the insurer's income for the year, other than amounts deducted under paragraph 138(3)(a) in computing its income for the immediately preceding taxation year,

exceeds the aggregate of the amounts deductible under paragraphs 138(3)(b), (c) and (d) in computing the insurer's income for the year.

(2) **Net Canadian life investment income** — A life insurer's net Canadian life investment income for a taxation year is its gross Canadian life investment income for the year minus the aggregate of

(a) its outlays or expenses that were deductible under Part I in computing its income for the year to the extent that such outlays or expenses were laid out or incurred by it for the purposes of managing its non-segregated property, the gross investment rev-

enue from which may reasonably be regarded as having been included in its gross Canadian life investment income for the year;

(b) interest payable by the insurer in respect of the year pursuant to a legal obligation incurred by it in the course of carrying on its life insurance business in Canada;

(c) amounts deductible under paragraph 20(1)(a) in computing the insurer's income for the year in respect of a depreciable property at least 80% of which was used regularly by it for the purpose of earning its gross Canadian life investment income for the year; and

(d) 50% of the aggregate of each amount deductible under Part I in computing the insurer's income for the year from carrying on its life insurance business in Canada, except to the extent that such amount

(i) is included in any of the amounts determined in respect of the insurer for the year under paragraph (a), (b) or (c),

(ii) is deductible under subsection 138(3) in computing its income for the year from carrying on its life insurance business in Canada,

(iii) was paid or payable by the insurer under a life insurance policy before the end of the year,

(iv) was an outlay or expense laid out or incurred by it for the purpose of earning income from its group life insurance business, or

(v) was payable by the insurer to a province as a tax in respect of premiums collected by it in the year under life insurance policies.

(3) Taxable Canadian life investment income — A life insurer's taxable Canadian life investment income for a taxation year is the amount, if any, by which its net Canadian life investment income for the year exceeds the aggregate of

(a) the interest element for the year for

(i) each class of the insurer's existing fixed-premium life insurance policies in Canada, and

(ii) each class of the insurer's life insurance policies in Canada that were issued or effected as registered retirement savings plans or pursuant to such plans or to deferred profit sharing plans or registered pension funds or plans;

(b) the amount, if any, by which the insurer's income for the year from carrying on its life insurance business in Canada, computed in accordance with Part I, exceeds any amount deducted by the insurer under paragraph 111(1)(a) in respect of non-capital losses in computing its taxable income for the year; and

(c) the aggregate of each amount (other than any portion thereof that is determined in prescribed manner to have been a return of capital) that a policyholder became entitled to receive in the year from the insurer under a life insurance policy in Canada other than a policy described in paragraph (a), to the extent that such amount is required by paragraph 56(1)(d) or paragraph 148(1)(a) to be included in computing the policyholder's income or is an amount referred to in paragraph 212(1)(o).

210. Provisions applicable to Part — Divisions I and J of Part I, except sections 153 to 156, 160 and 168, are applicable *mutatis mutandis* to this Part.

211. Definitions — In this Part,

(a) "existing fixed-premium life insurance policy" means a non-participating life insurance policy

(i) under which the amount of every premium payable and the amount of every adjustment to any premium was fixed and determined on or before October 22, 1968, and

(ii) none of the terms of which relating to premiums payable thereunder had after October 22, 1968 and before the end of the taxation year in respect of which the expression is relevant, been varied in any manner whatever other than to provide for payment of the premiums at time intervals more or less frequent than those fixed and determined immediately before the variation;

(b) "gross investment revenue", "life insurance policy", "life insurance policy in Canada", "maximum tax actuarial reserve", "non-segregated property" and "relevant authority" have the meanings assigned by subsection 138(12);

(c) "interest element" for a taxation year for a particular class of life insurance policy means, except as otherwise expressly prescribed, the product obtained when the rate of interest used by the insurer in computing its maximum tax actuarial reserves for the year for life insurance policies of that class is multiplied by its mean maximum tax actuarial reserve for the year for that class;

(d) "mean maximum tax actuarial reserve" for a particular class of life insurance policy for a taxation year means the quotient obtained when the aggregate of the maximum tax actuarial reserve for that class of policy for the year and the maximum tax actuarial reserve for the same class for the immediately preceding taxation year is divided by 2;

(e) "non-participating life insurance policy" means a life insurance policy other than a participating life insurance policy as defined in subsection 138(12);

(f) "property used in the year in, or held in the year in the course of" carrying on a life insurance business in Canada has, where applicable, the meaning assigned by subsection 138(12);

(g) "segregated fund" has the meaning assigned by subsection 148(1); and

(h) in construing the meaning of the expression "group term life insurance policy", the definition of that expression in section 248 does not apply.

Paras. 209(2)(c), (3)(c) substituted by 1974-75-76, c. 26, subsecs. 117(1), (2), applicable to 1974 *et seq.*, to substitute "depreciable property" for "building" in para. 209(2)(c) and to add "or is an amount referred to in paragraph 212(1)(o)" in para. 209(3)(c).

Para. 209(3)(b) substituted by 1973-74, c. 30, s. 24, applicable to 1973 *et seq.* Para. 209(3)(b) formerly read:

(b) the insurer's income for the year from carrying on its life insurance business in Canada, computed in accordance with Part I; and

All that portion of para. 208(2)(b) preceding subpara. (i), subpara. 209(3)(a)(ii), para. 209(3)(c) substituted by 1973-74, c. 14, ss. 66, 67(1), (2), applicable by 1974-75, c. 26, subsec. 142(2), as to subpara. 209(3)(a)(ii), to 1969 *et seq.*, and, as to paras. 208(2)(b), 209(3)(c), to 1972 *et seq.*

PART XII.1 — TAX ON CARVED-OUT INCOME

209. (1) Definitions — For the purposes of this Part,

"carved-out income" of a person for a taxation year from a carved-out property means the amount, if any, by which

(a) the person's income for the year attributable to the property computed under Part I on the assumption that in computing that income no deduction was allowed under section 20 (other than a deduction under paragraph 20(1)(v.1)), subdivision e of Division B of Part I or section 104,

exceeds the total of

(b) the amount deducted under subsection 66.4(2) in computing the person's income for the year to the extent that it may reasonably be considered to be attributable to the property, and

(c) to the extent that the property is an interest in a bituminous sands deposit or oil shale deposit, the amount deducted under subsection 66.2(2) in computing the person's income for the year to the extent that it can reasonably be considered to be attributable to the cost of that interest;

Related Provisions: 66(14.6) — Deduction of carved-out income; 209(6) — Partnerships.

History: Para. (c) of the definition "carved-out income" in subsec. 209(1) amended by 1997, c. 25, s. 59, applicable after March 6, 1996. Para. (c) formerly read:

(c) to the extent that the property is an interest in a bituminous sands deposit, oil sands deposit or oil shale deposit, the amount deducted under subsection 66.2(2) in computing the person's income for the year to the extent that it may reasonably be considered to be attributable to the cost of that interest;

"carved-out property" of a person means

(a) a Canadian resource property where

(i) all or substantially all of the amount that the person is or may become entitled to receive in respect of the property may reasonably be considered to be limited to a maximum amount or to an amount determinable by reference to a stated quantity of production from a mineral resource or an accumulation of petroleum, natural gas or related hydrocarbons,

(ii) the period of time during which the person's interest in the income attributable to the property may reasonably be expected to continue is

(A) where the property is a head lease or may reasonably be considered to derive from a head lease, less than the lesser of 10 years and the remainder of the term of the head lease, and

(B) in any other case, less than 10 years,

(iii) the person's interest in the income attributable to the property, expressed as a percentage of production for any period, may reasonably be expected to be reduced substantially,

(A) where the property is a head lease or may reasonably be considered to derive from a head lease, at any time before

(I) the expiration of a period of 10 years commencing when the property was acquired, or

(II) the expiration of the term of the head lease,

whichever occurs first, and

(B) in any other case, at any time before the expiration of a period of 10 years commencing when the property was acquired, or

(iv) another person has a right under an arrangement to acquire, at any time, the property or a portion thereof or a similar property from the person and it is reasonable to consider that one of the main reasons for the arrangement, or any series of transactions or events that includes the arrangement, was to reduce or postpone tax that would, but for this subparagraph, be payable under this Part, or

(b) an interest in a partnership or trust that holds a Canadian resource property where it is reasonable to consider that one of the main reasons for the existence of the interest is to reduce or postpone the tax that would, but for this paragraph, be payable under this Part,

but does not include

(c) an interest in respect of a property that was acquired by the person solely in consideration of the person's undertaking under an agreement to incur Canadian exploration expense or Canadian development expense in respect of the property and, where the agreement so provides, to acquire gas or oil well equipment (as defined in subsection 1104(2) of the *Income Tax Regulations*) in respect of the property,

(c.1) an interest in respect of a property that was retained by the person under an agreement under which another person obtained an absolute or conditional right to acquire another interest in respect of the property, if the other interest is not carved-out property of the other person because of paragraph (c),

(d) a particular property acquired by the person under an arrangement solely as consideration for the sale of a Canadian resource property (other than a property that, immediately before the sale was a carved-out property of the person) that relates to the particular property except where it is reasonable to consider that one of the main reasons for the arrangement, or any series of transactions or events that includes the arrangement, was to reduce or postpone tax that would, but for this paragraph, be payable under this Act,

(e) a property retained or reserved by the person out of a Canadian resource property (other than a property that, immediately before the transaction by which the retention or reservation is made, was a carved-out property of the person) that was disposed of by the person except where it is reasonable to consider that one of the main reasons for the retention or reservation, or any series of transactions or events in which the property or interest was retained or reserved, was to reduce or postpone tax that would, but for this paragraph, be payable under this Act,

(f) a property acquired by the person from a taxpayer with whom the person did not deal at arm's length at the time of the acquisition and the property was acquired by the taxpayer or a person with whom the taxpayer did not deal at arm's length

(i) pursuant to an agreement in writing to do so entered into before July 20, 1985, or

(ii) under the circumstances described in this paragraph or paragraph (d) or (e),

except where it is reasonable to consider that one of the main reasons for the acquisition of the property, or any series of transactions or events in which the property was acquired, was to reduce or postpone tax that would, but for this paragraph, be payable under this Act,

(f.1) where the taxable income of the person is exempt from tax under Part I, a property of the person that

(i) does not relate to property of a person whose taxable income is not exempt from tax under Part I, and

(ii) is not, and does not relate to, property that was at any time a carved-out property of any other person, or

(g) a prescribed property;

Related Provisions: 209(6) — Partnerships.

History: Para. (c) of "carved-out property" in subsec. 209(1) substituted, and (c.1) added, by 1994, c. 7, Sch. II (1991, c. 49), subsec. 170(1), applicable to property acquired after July 19, 1985. Para. (c) formerly read:

(c) an interest in respect of a property that was acquired by the person under an agreement solely in consideration of the person's undertaking to incur Canadian exploration expense or Canadian development expense in respect of the property,

Para. (f.1) of "carved-out property" in subsec. 209(1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 170(2), applicable to property acquired after 1987.

Regulations: 7600 (prescribed property).

"head lease" means a contract under which

(a) Her Majesty in right of Canada or a province grants, or

(b) an owner in fee simple, other than Her Majesty in right of Canada or a province, grants for a period of not less than 10 years

any right, licence or privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons in Canada or to prospect, explore, drill or mine for minerals in a mineral resource in Canada;

"term" of a head lease includes all renewal periods in respect of the head lease.

(2) Tax — Every person shall pay a tax under this Part for each taxation year equal to 45% of the total of the person's carved-out incomes for the year from carved-out properties.

Related Provisions: 18(1)(t) — Tax is non-deductible; 66(14.6) — Deduction of carved-out income.

History: Subsec. 209(2) substituted by 1994, c. 21, s. 95, applicable to 1992 *et seq.* That subsec. formerly read:

(2) Every person shall pay a tax under this Part for each taxation year equal to 50% of the total of the person's carved-out incomes for the year from carved-out properties.

(3) Return — Every person liable to pay tax under this Part for a taxation year shall file with the Minister, not later than the day on or before which the person is or would be, if the person were liable to pay tax under Part I for the year, required under section 150 to file a return of the person's income for the year under Part I, a return for the year under this Part in prescribed form containing an estimate of the amount of tax payable by the person under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T2096: Part XII.1 tax return — tax on carved-out income.

(4) Payment of tax — Where a person is liable to pay tax for a taxation year under this Part, the person shall pay in respect of the year, to the Receiver General

(a) on or before the last day of each month in the year, an amount equal to 1/12 of the amount of tax payable by the person under this Part for the year; and

(b) the remainder, if any, of the tax payable by the person under this Part for the year, on or before the end of the second month following the end of the year.

(5) Provisions applicable to Part — Subsections 150(2) and (3) and sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(6) Partnerships — For the purposes of subsection (1), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

Definitions [s. 209]: "amount" — 248(1); "arm's length" — 251(1); "bituminous sands" — 248(1); "Canada" — 255; "Canadian development expense" — 66.2(5), 248(1); "Canadian exploration expense" — 66.1(6), 248(1); "Canadian resource property" — 66(15), 248(1); "carved-out income", "carved-out property" — 209(1); "fiscal period" — 249(2)(b), 249.1; "head lease" — 209(1); "mineral resource", "mineral", "Minister" — 248(1); "person" — 209(6), 248(1); "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "series of transactions" — 248(10); "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 209(6), 249; "taxpayer" — 248(1); "term" — 209(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Pre-RSC History [Part XII.1]: Part XII.1 (s. 209) added by 1986, c. 55, s. 73, applicable with respect to property acquired after July 19, 1985, except property acquired before 1987 by a person from a taxpayer pursuant to the terms of an agreement in writing entered into by the taxpayer

(a) before July 20, 1985 for the sale of the property to that person, or

(b) after July 19, 1985 for the sale of the property to that person where the agreement is entered into in the same or substantially the same terms as, and is intended to replace an agreement in writing between the person and the taxpayer

(i) that was entered into before July 20, 1985 for the sale of the property to that person, and

(ii) that was cancelled, terminated or not proceeded with,

and for the purposes of this subsection, where an agreement entered into before July 20, 1985 pursuant to which a person acquired or holds a property is renewed or a material change is made in its terms and conditions, including any material change made

(c) in the interest of the person in the property or in the income attributable to the property,

(d) in the description of the property,

(e) that results in a change in the period during which the property is to exist or is to be held,

(f) in the parties to the agreement, or

(g) in the purchase price of the property,

the property shall be deemed to have been acquired pursuant to an agreement entered into on the date the agreement is renewed or the terms or conditions are changed, as the case may be.

Pre-RSC History [former s. 209]: See under the history of former Part XII (former sections 208 to 211).

PART XII.2 — TAX ON DESIGNATED INCOME OF CERTAIN TRUSTS

210. Designated beneficiary — In this Part, a "designated beneficiary" under a trust at any time means a beneficiary under the trust that was, at that time,

(a) a non-resident person;

(b) a non-resident-owned investment corporation;

(c) a person exempt from tax under Part I by reason of subsection 149(1), where that person acquired an interest in the trust after October 1, 1987 directly or indirectly from a beneficiary under the trust except

(i) where the interest was owned continuously since October 1, 1987 or the date on which the interest was created, whichever is later, by persons exempt from tax under Part I by reason of subsection 149(1), or

(ii) where the person was a trust governed by

(A) a registered retirement savings plan, or

(B) a registered retirement income fund,

and acquired the interest, directly or indirectly, from an individual or the spouse or former spouse of the individual who was, immediately after the interest was acquired, a beneficiary under the trust governed by the fund or plan;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 2, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(d) a trust resident in Canada (other than a testamentary trust, a mutual fund trust or a trust exempt, because of subsection 149(1), from tax under Part I on all or part of its taxable income), if

(i) a person described in paragraph (a), (b) or (c),

(ii) a partnership described in paragraph (e), or

(iii) a trust (other than a trust resident in Canada that is a testamentary trust)

is, at that time, a beneficiary thereunder; or

(e) a partnership, if a person described in paragraph (a), (b) or (d), a partnership or a person exempt from tax under Part I by reason of subsection 149(1) is, at that time, a member thereof.

Related Provisions: 104(31) — Credit to be included in income of beneficiary; 210.3(2) — Non-resident beneficiary taxed in Canada deemed not to be designated beneficiary; 252(3), (4)(a) — Extended meaning of "spouse" and "former spouse".

History: The opening words of para. 210(d) substituted by 1994, c. 21, s. 96, applicable to 1993 *et seq.* The opening words of that para. formerly read:

(d) a trust resident in Canada (other than a testamentary trust or a trust exempt from tax under Part I by reason of subsection 149(1)), if

Pre-RSC History: S. 210 added by 1988, c. 55, s. 160, applicable to 1988 *et seq.*

Definitions [s. 210]: "common-law partner" — 248(1); "designated income" — 210.2(2); "individual", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "spouse" — 252(3), (4)(a); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

210.1 Application of Part — This Part does not apply in a taxation year to a trust that was throughout the year

(a) a testamentary trust;

(b) a mutual fund trust;

Proposed Amendment — 210.1(b)

Letter from Department of Finance, May 12, 1999:

Dear [xxx]

This is in reply to your letter of May 3, 1999 to Simon Thompson.

We note that Part XII.2 tax does not apply to a trust for a taxation year if the trust has been a mutual fund trust throughout the year. In policy terms, we think that it is not appropriate that a trust's exemption from Part XII.2 tax for a taxation year is lost merely because the trust ceases in the year to be a mutual fund trust because of the application of paragraph 132(6)(c) of the *Income Tax Act*.

Consequently, we are prepared to recommend a relieving amendment in these circumstances that would apply to a trust for a taxation year if the trust was a mutual fund trust at the beginning of the year. The amendment would apply to the trust only if the trust would, but for that paragraph, have been a mutual fund trust throughout the portion of the year during which it is in existence. In these circumstances, the trust will be treated for the purposes of the Act as having been a mutual fund trust throughout the relevant taxation year. We are prepared to recommend that this amendment applies to the 1999 and subsequent taxation years.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

(c) a trust that was exempt from tax under Part I by reason of subsection 149(1);

(d) a trust described in paragraph (a) or (c) of the definition of that expression in subsection 108(1); or

Proposed Amendment — 210.1(d)

(d) a trust described in paragraph (a), (a.1) or (c) of the definition "trust" in subsection 108(1); or

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 100, will amend para. 210.1(d) to read as above, applicable to 1999 *et seq.*

Technical Notes: Section 210.1 of the Act provides a list of trusts to which Part XII.2 does not apply.

Paragraph 210.1(d) is amended to add to the list of exempt trusts a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1). This change is strictly consequential to the introduction of paragraph (a.1) of that definition. For further detail on the amended definition "trust" in subsection 108(1), see the commentary on that provision.

This amendment applies to the 1999 and subsequent taxation years.

(e) a non-resident trust.

Related Provisions: 253 — Extended meaning of carrying on business.

Pre-RSC History: S. 210.1 added by 1988, c. 55, s. 160, applicable to 1988 *et seq.*

Definitions [s. 210.1]: "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "non-resident" — 248(1); "taxation year" — 249; "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

210.2 (1) Tax on income of trust — Subject to section 210.3, where an amount in respect of the income of a trust for a taxation year is or would, if all beneficiaries under the trust were persons resident in Canada to whom Part I was applicable, be included in computing the income under Part I of a person by reason of subsection 104(13) or 105(2), the trust shall pay a tax under this Part in respect of the year equal to 36% of the least of

(a) the designated income of the trust for the year,

(b) the amount that, but for subsections 104(6) and (30), would be the income of the trust for the year, and

(c) 100/64 of the amount deducted under paragraph 104(6)(b) in computing the trust's income under Part I for the year.

Related Provisions: 18(1)(t) — Tax under Part XII.2 is deductible; 104(30) — Part XII.2 tax deductible in computing income of trust; 210.3 — Where no tax payable.

Information Circulars: 77-16R4: Non-resident income tax.

(1.1) Amateur athlete trusts — Notwithstanding section 210.1, where an amount described in subsection 143.1(2) in respect of an amateur athlete trust would, if Part I were applicable, be required to be included in computing the income for a taxation year of a designated beneficiary under the trust, the trust shall pay a tax under this Part in respect of the year equal to 36% of 100/64 of that amount.

History: Subsec. 210.2(1.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 122, applicable to 1992 *et seq.*

Forms: T3ATH-IND: Amateur athlete trust income tax return.

(2) Designated income — For the purposes of subsection (1), the **designated income** of a trust for a taxation year means the amount that, but for subsections 104(6), (12) and (30), would be the income of the trust for the year determined under section 3 if

(a) it had no income other than taxable capital gains from dispositions described in paragraph (b) and incomes from

(i) real properties in Canada (other than Canadian resource properties),

(ii) timber resource properties,

(iii) Canadian resource properties (other than properties acquired by the trust before 1972), and

(iv) businesses carried on in Canada;

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of property that would have been taxable Canadian property if, at no time in the year, the trust had been resident in Canada; and

Proposed Amendment — 210.2(2)(b)

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property; and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 101, will amend para. 210.2(2)(b) to read as above, applicable after October 1, 1996.

Technical Notes: The tax under Part XII.2 of the Act is calculated with reference to a trust's "designated income" (as determined under subsection 210.2(2)). "Designated income" is calculated with reference to taxable capital gains and allowable capital losses from dispositions of the trust's taxable Canadian property, determined on the assumption that the trust is non-resident.

Paragraph 210.2(2)(b) is amended to remove the assumption described above. The amendment merely simplifies paragraph 210.2(2)(b) and does not represent any policy change.

This amendment applies after October 1, 1996.

(c) the only losses referred to in paragraph 3(d) were losses from sources described in subparagraphs (a)(i) to (iv),

Related Provisions: 104(7.01)(b)(i) — No deduction under 104(6) for designated income of trust.

(3) Tax deemed paid by beneficiary — Where an amount (in this subsection and subsection 210.3(2) referred to as the "income amount") in respect of the income of a trust for a taxation year is, by reason of subsection 104(13) or 105(2), included in computing

(a) the income under Part I of a person who was not at any time in the year a designated beneficiary under the trust, or

(b) the income of a non-resident person (other than a person who, at any time in the year, would be a designated beneficiary under the trust if section 210 were read without reference to paragraph 210(a)) that is subject to tax under Part I by reason of subsection 2(3) and is not exempt from tax under Part I by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the tax paid under this Part by the trust for the year,

B is the income amount in respect of the person, and

C is the total of all amounts each of which is an amount that is or would be, if all beneficiaries under the trust were persons resident in Canada to whom Part I was applicable, included in computing the income under Part I of a beneficiary under the trust by reason of subsection 104(13) or 105(2) in respect of the year,

shall, if designated by the trust in respect of the person in its return for the year under this Part, be deemed to be an amount paid on account of the person's tax payable under Part I for the person's taxation year in which the taxation year of the trust ends, on the day that is 90 days after the end of the taxation year of the trust.

Related Provisions: 104(31) — Amount deemed payable by trust to beneficiary; 210.3(2) — Where non-resident beneficiary already taxed in Canada.

Interpretation Bulletins: IT-342R: Trusts — Income payable to beneficiaries.

(4) Designations in respect of partnerships — Where a taxpayer is a member of a partnership in respect of which an amount is designated by a trust for a taxation year of the trust (in this subsection referred to as the "particular year") under subsection (3),

(a) no amount shall be deemed to be paid on account of the partnership's tax payable under Part I by reason of subsection (3) except in the application of that subsection for the purposes of subsection 104(31), and

(b) an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount so designated,

B is the amount that may reasonably be regarded as the share of the taxpayer in the designated income of the trust received by the partnership in the fiscal period of the partnership in which the particular year ends (that fiscal period being referred to in this subsection as the "partnership's period"), and

C is the designated income received by the partnership from the trust in the partnership's period,

shall be deemed to be an amount paid on account of the taxpayer's tax payable under Part I for the person's taxation year in which the partnership's period ends, on the last day of that year.

(5) Returns — A trust shall, within 90 days after the end of each taxation year,

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax, if any, payable by it under this Part for the year; and

(c) pay to the Receiver General the tax, if any, payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Forms: T3 SCH 10: Calculation of Part XII.2 tax and Part XIII non-resident withholding tax.

(6) Liability of trustee — A trustee of a trust is personally liable to pay to the Receiver General on behalf of the trust the full amount of any tax payable by the trust under this Part to the extent that the amount is not paid to the Receiver General within the time specified in subsection (5), and the trustee is entitled to recover from the trust any such amount paid by the trustee.

(7) Provisions applicable to Part — Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: S. 210.2 added by 1988, c. 55, s. 160, applicable to 1988 *et seq.*

Definitions [s. 210.2]: "allowable capital loss" — 38(b), 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "carrying on business" — 253; "designated beneficiary" — 210; "fiscal period" — 249(2)(b), 249.1; "income amount" — 210.2(3); "Minister", "non-resident", "person", "prescribed", "property" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable Canadian property" —

248(1); "taxable capital gain" — 38(a), 248(2); "taxation year" — 249; "taxpayer" — 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3).

210.3 (1) Where no designated beneficiaries — No tax is payable under this Part by a trust for a taxation year in respect of which the trustee has certified in the trust's return under this Part for the year that no beneficiary under the trust was a designated beneficiary in the year.

(2) Where beneficiary deemed not designated — Where a trust would, if the trust paid tax under this Part for a taxation year, be entitled to designate an amount under subsection 210.2(3) in respect of a non-resident beneficiary and the income amount in respect of the beneficiary is included in computing the income of the beneficiary which is subject to tax under Part I by reason of subsection 2(3) and is not exempt from tax under Part I by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada, for the purposes of subsection (1), the beneficiary shall be deemed not to be a designated beneficiary of the trust at any time in the year.

Definitions [s. 210.3]: "amount" — 248(1); "designated beneficiary" — 210; "income amount" — 210.2(3); "non-resident" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Part XII.3 — Tax on Investment Income of Life Insurers

211. (1) Definitions — For the purposes of this Part,

"existing guaranteed life insurance policy", at any time, means a non-participating life insurance policy in Canada in respect of which

(a) the amount of every premium that became payable before that time and after December 31, 1989,

(b) the number of premium payments under the policy, and

(c) the amount of each benefit under the policy at that time

were fixed and determined on or before December 31, 1989;

"life insurance policy" includes a benefit under

(a) a group life insurance policy, and

(b) a group annuity contract

but does not include

(c) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust, or

(d) a reinsurance arrangement;

History: The definitions "life insurance policy" and "life insurance policy in Canada" in subsec. 211(1) amended by 1997, c. 25, s. 60, applicable to 1996 *et seq.* The definitions formerly read:

"life insurance policy" and "life insurance policy in Canada" do not include

(a) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust, or

(b) a reinsurance arrangement;

"life insurance policy in Canada" means a life insurance policy issued or effected by an insurer on the life of a person resident in Canada at the time the policy was issued or effected;

History: See under "life insurance policy" above.

"net interest rate", in respect of a liability, benefit, risk or guarantee under a life insurance policy of an insurer for a taxation year, is the positive amount, if any, determined by the formula

$$(A - B) \times C$$

where

A is the simple arithmetic average determined as of the first day of the year of the average yield (expressed as a percentage per year rounded to 2 decimal points) in each of the 60 immediately preceding months prevailing on all domestic Canadian-dollar Government of Canada bonds outstanding on the last Wednesday of that month that have a remaining term to maturity of more than 10 years,

B is

(a) in the case of a guaranteed benefit provided under the terms and conditions of the policy as they existed on March 2, 1988, other than a policy where, at any time after March 2, 1988, its terms and conditions relating to premiums and benefits were changed (otherwise than to give effect to the terms and conditions that were determined before March 3, 1988), the greater of

(i) the rate of interest (expressed as a percentage per year) used by the insurer in determining the amount of the guaranteed benefit, and

(ii) 4%, and

(b) in any other case, nil, and

C is

(a) in the case of a guaranteed benefit to which paragraph (a) of the description of B applies, 65%, and

(b) in any other case, 55%;

Related Provisions: 257 — Formula cannot calculate to less than zero.

"non-participating life insurance policy" means a life insurance policy that is not a participating life insurance policy;

"participating life insurance policy" has the meaning assigned by subsection 138(12);

"policy loan" has the meaning assigned by subsection 138(12);

Pre-RSC History: *"policy loan" was included under "participating life insurance policy" above.*

"registered life insurance policy" means a life insurance policy issued or effected

(a) as a registered retirement savings plan, or

(b) pursuant to a registered retirement savings plan, a deferred profit sharing plan or a registered pension plan;

"reinsurance arrangement" does not include an arrangement under which an insurer has assumed the obligations of the issuer of a life insurance policy to the policyholder;

"segregated fund" has the meaning given that expression in subsection 138.1(1);

Pre-RSC History: *"segregated fund" was included under "participating life insurance policy" above.*

"specified transaction or event", in respect of a life insurance policy, means

(a) a change in underwriting class,

(b) a change in premium because of a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year,

(c) an addition under the terms of the policy as they existed on

(i) in the case of an existing guaranteed life insurance policy, December 31, 1989,

(ii) in any other case, March 2, 1988,

of accidental death, dismemberment, disability or guaranteed purchase option benefits,

(d) the deletion of a rider,

(e) redating lapsed policies within the reinstatement period referred to in paragraph (g) of the definition "disposition" in subsection 148(9) or redating for policy loan indebtedness,

(f) a change in premium because of a correction of erroneous information,

(g) the payment of a premium after its due date, or no more than 30 days before its due date, as established on or before

(i) in the case of an existing guaranteed life insurance policy, December 31, 1989, and

(ii) in any other case, March 2, 1988, and

(h) the payment of an amount described in paragraph (a) of the definition "premium" in subsection 148(9);

"taxable life insurance policy" of an insurer at any time means a life insurance policy in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), other than a policy that is at that time

(a) an existing guaranteed life insurance policy,

(b) an annuity contract (including a settlement annuity),

(c) a registered life insurance policy,

(d) a registered pension plan, or

(e) a retirement compensation arrangement.

(2) Riders and changes in terms — For the purposes of this Part,

(a) any rider added at any time after March 2, 1988 to a life insurance policy shall be deemed to be a separate life insurance policy issued and effected at that time; and

(b) a change in the terms or conditions of a life insurance policy resulting from a specified transaction or event shall be deemed not to have occurred and not to be a change.

History: S. 211 substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 171(1), applicable to taxation years beginning after 1989 and, where an insurer has made an election under subsec. 172(3) of 1994, c. 7, Sch. II (1991, c. 49) (see under s. 211.1), to all taxation years of the insurer to which the election relates and, where such an election is made,

(a) in respect of each taxation year of the insurer to which the election relates, each reference to "December 31, 1989" in the definitions in subsec. 211(1), as the reference relates to a life insurance policy, shall be read as a reference to the later of

(i) the day the policy was issued, and

(ii) March 2, 1988; and

(b) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election to the extent it applies in respect of this section.

1994, c. 7, Sch. II (1991, c. 49), subsec. 171(2) provides that in its application to taxation years ending after 1987 and beginning before 1990 (except a taxation year of an insurer to which subsec. 172(1) of c. 49 applies because of an election made by the insurer under subsec. 172(3) of c. 49 — see under s. 211.1), s. 211 shall be read as though it included the following definition:

"benefits payable under a life insurance policy" includes

(a) a policy dividend, an experience rating refund and a refund of premiums under the policy,

(b) any amount payable under a reinsurance arrangement in respect of the policy, and

(c) any amount deemed by paragraph 138.1(1)(g) to be a payment under the terms and conditions of the policy,

but does not include a policy loan or interest on funds left on deposit with the insurer under the terms of the policy;

S. 211 formerly read:

211. Definitions — For the purposes of this Part, "Canada security" has the meaning assigned by subsection 138(12); "gross investment revenue" has the meaning assigned by subsection 138(12); "life insurance policy" and "life insurance policy in Canada" do not include any part of the policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust; "non-segregated property" has the meaning assigned by subsection 138(12); "policy loan" has the meaning assigned by subsection 138(12); "property used in the year in, or held in the year in the course of" carrying on a life insurance business in Canada, in the case of an insurer (other than a resident of Canada that does not carry on a life insurance business) that carried on an insurance business in Canada and in a country other than Canada, has the meaning assigned by subsection 138(12); "registered life insurance policy" means a life insurance policy (other than an annuity contract) issued or effected as a registered retirement savings plan or pursuant to such a plan, a fund or deferred profit sharing plan or a registered pension plan; "segregated fund" has the meaning assigned by subsection 138(12).

Definitions [s. 211]: "annuity", "business" — 248(1); "Canada" — 255; "carrying on business" — 253; "deferred profit sharing plan" — 147(1); "insurer", "life insurance business" — 248(1); "life insurance policy", "life insurance policy in Canada" — 138(12), 211(1), 248(1); "person" — 248(1); "property", "registered pension plan" — 248(1); "registered retirement savings plan" — 146(1), 248(1); "resident in Canada" — 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

211.1 (1) Tax payable — Every life insurer shall pay a tax under this Part for each taxation year equal to 15% of its taxable Canadian life investment income for the year.

Related Provisions: 18(1)(t) — Tax is non-deductible; 138(3)(g) — Part XII.3 tax deductible by insurer; 190.1(1.1) — Additional capital tax on life insurance corporations.

(2) Taxable Canadian life investment income — For the purposes of this Part, the taxable Canadian life investment income of a life insurer for a taxation year is the amount, if any, by which its Canadian life investment income for the year exceeds the total of its Canadian life investment losses for such of the 7 taxation years immediately preceding the year that begin after 1989, to the extent that those losses were not deducted in computing its taxable Canadian life investment income for any preceding taxation year.

Related Provisions: 87(2.2) — Amalgamation of insurance corporations; 138(11.5)(k) — Transfer of business by non-resident insurer.

History: Subsec. 211.1(2) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 172, applicable to taxation years beginning after 1989. Subsec. (2) formerly read:

(2) Taxable Canadian life investment income — For the purposes of this Part, the taxable Canadian life investment income of a

life insurer for a taxation year is the amount, if any, by which its Canadian life investment income for the year exceeds the total of its Canadian life investment losses for such of the 7 taxation years immediately preceding the year that commence after June 17, 1987 and end after 1987, to the extent that those losses have not been deducted in computing its taxable Canadian life investment income for any preceding taxation year.

(3) Canadian life investment income — For the purposes of this Part, the Canadian life investment income or loss of a life insurer for a taxation year is the positive or negative amount determined by the formula

$$A + B - C$$

where

A is, subject to subsection (4), the total of all amounts, each of which is in respect of a liability, benefit, risk or guarantee under a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by multiplying the net interest rate in respect of the liability, benefit, risk or guarantee for the year by ½ of the total of

(a) the maximum amount that would be determined under paragraph 1401(1)(a), (c) or (d) of the *Income Tax Regulations* (other than an amount that would be determined under subparagraph 1401(1)(d)(ii) of those Regulations in respect of a disabled life) in respect of the insurer for the year in respect of the liability, benefit, risk or guarantee if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would be determined under paragraph 1401(1)(a), (c) or (d) of the *Income Tax Regulations* (other than an amount that would be determined under subparagraph 1401(1)(d)(ii) of those Regulations in respect of a disabled life) in respect of the insurer for the preceding taxation year in respect of the liability, benefit, risk or guarantee if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement;

B is the total of all amounts, each of which is the positive or negative amount in respect of a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by the formula

$$D - E$$

where

D is, subject to subsection (4), the amount determined by multiplying the percentage determined in the description of A in the definition "net interest rate" in subsection 211(1) in respect of the year by ½ of the total of

(a) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for the year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for the preceding taxation year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement, and

E is the amount, if any, by which

(a) the total of all amounts determined in respect of the insurer under the description of D in respect of the policy for the year and any preceding taxation years ending after 1989

exceeds the total of

(b) all amounts determined in respect of the insurer under the description of E in respect of the policy for taxation years ending before the year, and

(c) the amount, if any, by which

(i) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for the year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement

exceeds

(ii) the maximum amount that would be determined under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in respect of the insurer for its last 1989 taxation year in respect of the policy if subsection 1401(1) of those Regulations applied to all life insurance policies and if that amount were determined without reference to any policy loan or reinsurance arrangement; and

C is the total of all amounts each of which is 100% of the amount required to be included in computing the income of a policyholder under section 12.2 or paragraph 56(1)(j) for which the insurer is required by regulation to prepare an information return in respect of the calendar year ending in the taxation year, in respect of a taxable life insurance policy of the insurer, except that the reference in this description to 100% shall be read as a reference to,

(a) where paragraph (a) of the description of B in the definition "net interest rate" in subsection 211(1) applies for any taxation year in respect of a guaranteed benefit under the policy,

0% for calendar years before 1991,
5% for 1991,
10% for 1992,
15% for 1993,
20% for 1994,
25% for 1995,
30% for 1996,
35% for 1997,
40% for 1998,
45% for 1999, and
50% for calendar years after 1999,

and

(b) where the policy was at any time after 1989 an existing guaranteed life insurance policy,

0% for the calendar year in which it became a taxable life insurance policy of the insurer,
0% for the first following calendar year,
0% for the second following calendar year,
5% for the third following calendar year,
10% for the fourth following calendar year,
15% for the fifth following calendar year,
20% for the sixth following calendar year,
25% for the seventh following calendar year,
30% for the eighth following calendar year,
35% for the ninth following calendar year,
40% for the tenth following calendar year,
45% for the eleventh following calendar year, and
50% for the twelfth following and subsequent calendar years.

Related Provisions: 257 — Formula amounts cannot calculate to less than zero.

History: The portion of the descriptions of A and D in subsec. 211.1(3) before para. (a) amended by 1998, c. 19, subsecs. 213(1), (2), applicable to 1992 *et seq.* Those portions formerly read:

A is the total of all amounts, each of which is in respect of a liability, benefit, risk or guarantee under a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by multiplying the net interest rate in respect of the liability, benefit, risk or guarantee for the year by the amount equal to ½ of the total of

. . . . .

D is the amount determined by multiplying the percentage determined in the description of A in the definition "net interest rate" in subsection 211(1) in respect of the year by the amount equal to ½ of the total of

Paras. (a) and (b) of the description of A, paras. (a) and (b) of the description of D in the description of B, and para. (c) of the description of E in the description of B, in subsec. 211.1(3), amended by 1997, c. 25, s. 61, applicable to 1996 *et seq.* The paras. formerly read:

(a) the maximum amount that would be deductible under paragraph 1401(1)(a), (c) or (d) of the *Income Tax Regulations* (other than an amount that the insurer can claim under subparagraph 1401(1)(d)(ii) of the Regulations in respect of a disabled life) in computing the insurer's income for the year in respect of the liability, benefit, risk or guarantee, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would have been deductible under paragraph 1401(1)(a), (c) or (d) of the Regulations (other than an amount that the insurer can claim under subparagraph 1401(1)(d)(ii) of the Regulations in respect of a disabled life) in computing the insurer's income for the immediately preceding taxation year in respect of the liability, benefit, risk or guarantee, if that amount were determined without reference to any policy loan or reinsurance arrangement;

. . . . .

(a) the maximum amount that would be deductible under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in computing the insurer's income for the year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) the maximum amount that would have been deductible under paragraph 1401(1)(c.1) of the Regulations in computing the insurer's income for the immediately preceding taxation year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

. . . . .

(c) the amount, if any, by which

(i) the maximum amount that would be deductible under paragraph 1401(1)(c.1) of the *Income Tax Regulations* in computing the insurer's income for the year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement

exceeds

(ii) the maximum amount that would be deductible under paragraph 1401(1)(c.1) of the Regulations in computing the insurer's income for the insurer's last 1989 taxation year in respect of the policy, if that amount were determined without reference to any policy loan or reinsurance arrangement; and

Subsec. 211.1(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 172(1), applicable (by subsec. 172(3)) to taxation years commencing after 1989 and, where an insurer so elected in respect of the insurer's taxation years beginning after 1987 or 1988 and before 1990 by notifying the Minister of National Revenue in writing before July 1991, to all taxation years of the insurer to which the election relates and, where such an election was made,

(a) in respect of each taxation year of the insurer to which the election relates, each reference to "1989" in subsec. 211.1(3) shall be read as a reference to the year immediately preceding the first taxation year to which the election relates; and

(b) notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to the election.

Also (by 1994, c. 7, Sch. II (1991, c. 49), subsec. 172(2)), in their application to taxation years commencing after June 17, 1987 and before 1990 that end after 1987 (except a taxation year of an insurer to which subsec. 172(1) of c. 49 applies because of an election made by the insurer as mentioned above),

(a) the description of C in subsec. 211.1(3) shall be read as follows:

C is the positive or negative amount that would be determined to be the insurer's income or loss, respectively, for the year under Part I from carrying on a life insurance business in Canada, if

(a) no amount were included in that determination in respect of segregated funds of the insurer,

(b) no amount were included in that determination under paragraph 12(1)(d) or (d.1), section 12.3, paragraph 20(1)(l) or (l.1) or subsection 20(26), under a prescribed provision of this Act or, in respect of the amount deducted under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years beginning before June 18, 1987, in computing its income for the immediately preceding taxation year, under paragraph 138(4)(a),

(c) the amount, if any, determined under paragraph (g) of the description of A in respect of the insurer for the year were included in that determination,

(d) the maximum amounts deductible in computing that income under subparagraphs 138(3)(a)(i), (ii) and (iv) were deducted in that determination,

(e) for the purposes of paragraph 138(4)(a), the maximum amounts deductible under subparagraphs 138(3)(a)(i), (ii) and (iv) were deducted in computing the insurer's income or loss, as the case may be, for the immediately preceding taxation year, and

(f) in respect of the insurer's first taxation year beginning after June 17, 1987 and ending after 1987,

(i) the amounts referred to in paragraph (e) in respect of the insurer's immediately preceding taxation year were the maximum amounts that would be deductible under subparagraphs 138(3)(a)(i), (ii) and (iv) for that preceding year if those subparagraphs applied to that year, and

(ii) the prescribed amount of the insurer's 1968 reserve adjustment were nil;

and

(b) the description of G in subsec. 211.1(3) shall be read as follows:

G is the total of all amounts each of which is the prescribed portion of an amount that would be included under section 12.2 or paragraph 56(1)(j) in computing the income of a policyholder for a taxation year ending in the year, if all taxation years were calendar years, in respect of life insur-

ance policies in Canada (other than annuity contracts and prescribed arrangements) of the insurer.

Subsec. 211.1(3) formerly read:

(3) Canadian life investment income — For the purposes of this Part, the Canadian life investment income or loss, as the case may be, of a life insurer for a taxation year is the positive or negative amount, respectively, determined by the formula

$$A - B - C - D + E - F - G$$

where

A is the positive or negative amount, as the case may be, determined by totalling the following amounts in respect of the insurer for the year:

(a) the total of all amounts included under subsection 138(9) in computing the insurer's income for the year from carrying on a life insurance business in Canada,

(b) where subsection 138(9) does not apply to the insurer, its gross investment revenue for the year from such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada,

(c) the amount included under paragraph 138(4)(b) in computing the insurer's income for the year,

(d) the amount included under paragraph 138(4)(c) in computing the insurer's income for the year,

(e) the total of all amounts that accrued to, or became receivable or were received by, the insurer in the year as, on account of or in lieu of payment of, interest in respect of policy loans made under the terms of its life insurance policies in Canada, to the extent not included in computing its Canadian life investment income for a preceding taxation year,

(f) the total of all gains made by the insurer in the year from dispositions of such of its non-segregated property (other than property that is a Canada security or capital property) as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada, and

(g) the amount, if any, by which

(i) the total of all taxable capital gains of the insurer for the year from dispositions of such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada

exceeds

(ii) the total of all allowable capital losses of the insurer for the year and all preceding taxation years commencing after June 17, 1987 and ending after 1987 from dispositions of such of its non-segregated property as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada to the extent that those losses have not reduced an amount determined under this paragraph in determining the Canadian life investment income for a preceding taxation year,

and deducting from that total the total of the following amounts in respect of the insurer for the year:

(h) the amount deductible under paragraph 138(3)(b) in computing the insurer's income for the year,

(i) the amount deductible under paragraph 138(3)(d) in computing the insurer's income for the year,

(j) the total of all losses sustained by the insurer in the year from dispositions of such of its non-segregated property (other than property that is a Canada security or capital property) as was property used in the year in, or held in the year in the course of, carrying on a life insurance business in Canada,

(k) the total of all expenses deducted in computing the insurer's income under Part I for the year to the extent that those expenses were incurred for the purposes of managing its non-segregated property and may reasonably be regarded as having been incurred for the purposes of earning any amount included under paragraphs (a) to (f) for the year,

(l) the total of all amounts that became payable by the insurer in respect of the year as, on account of or in lieu of payment of, interest on amounts on deposit with the insurer in accordance with the terms of its life insurance policies in Canada, and

(m) the total of amounts (other than amounts included under paragraph (k) or (l)) deducted in computing the insurer's income for the year under paragraphs 20(1)(a), (c), (d) and (p), to the extent that each such amount may reasonably be regarded as relating to any amount included under paragraphs (a) to (f) for the year;

B is the total of all amounts deducted in computing the insurer's income for the year under Part I from carrying on a life insurance business in Canada (net of expense allowances under reinsurance arrangements included in computing that income), except to the extent that any such amount

(a) is included in an amount determined in respect of the insurer for the year under any of paragraphs (j) to (m) of the description of A,

(b) was paid or payable by the insurer in respect of benefits payable under a life insurance policy,

(c) is deductible under paragraph 20(1)(l) or (l.1) or subsection 20(26) or 138(3) in computing its income from carrying on a life insurance business in Canada, or

(d) may reasonably be considered to relate to segregated funds of the insurer;

C is the positive or negative amount, as the case may be, that would be determined to be the insurer's income or loss, respectively, for the year under Part I from carrying on a life insurance business in Canada, if

(a) no amount were included in that determination in respect of segregated funds of the insurer,

(b) no amount were included in that determination under paragraph 12(1)(d) or (d.1), section 12.3, paragraph 20(1)(l) or (l.1), or subsection 20(26), under a prescribed provision of this Act, or under paragraph 138(4)(a) in respect of the amount deducted under paragraph 138(3)(c) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing its income for the immediately preceding taxation year,

(c) the amount, if any, determined under paragraph (g) of the description of A in respect of the insurer for the year were included in that determination, and

(d) the maximum amounts deductible under subparagraphs 138(3)(a)(i), (ii) and (iv) in computing the insurer's income for the year were deducted in that determination and on the assumption that the maximum amounts so deductible in computing its income for the immediately preceding year had been deducted;

D is the positive or negative amount, as the case may be, attributable to registered life insurance policies, registered pension plans, annuity contracts and prescribed arrangements, determined in accordance with prescribed rules, in respect of the insurer for the year;

E is the positive or negative amount, as the case may be, determined by totalling the term insurance component and the amortization adjustment amount, determined in accordance with prescribed rules, in respect of the insurer for the year;

F is the amount of guaranteed interest, determined in accordance with prescribed rules, in respect of the insurer for the year; and

G is the prescribed portion of amounts that would, but for subsection 12(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, be included in computing the income of policyholders under section 12.2, paragraph 56(1)(j) or subparagraph 115(1)(a)(vi), for taxation years ending in the year, if all taxation years were calendar years, in respect of life insurance policies in Canada (other than annuity contracts and prescribed arrangements) of the insurer.

The description of D in subsec. 211.1(3) amended by 1990, c. 35, s. 29, to substitute "registered pension plans" for "registered pension funds or plans", applicable after 1985.

Selected Cases [subsec. 211.1(3)]: *Excelsior Life Insurance Co. v. The Queen*, [1985] 1 C.T.C. 213 (FCTD) (Expenses deductible in computing income from life insurance business apply to segregated or non-segregated property when calculating its net Canadian life investment income).

Regulations [subsec. 211.1(3)]: 1900 (for taxation years that began after June 17, 1987 and before 1990 that end after 1987).

(4) Short taxation year — Where a taxation year of a life insurer is less than 51 weeks, the values of A and D in subsection (3) for the year are that proportion of those values otherwise so determined that the number of days in the year (other than February 29) is of 365.

History: Subsec. 211.1(4) added by 1998, c. 19, subsec. 213(3), applicable to 1992 *et seq.*

Definitions [s. 211.1]: "allowable capital loss" — 38(b), 248(1); "amount", "annuity", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "capital property" — 54, 248(1); "carrying on business" — 253; "insurer", "life insurance business" — 248(1); "life insurance policy" — 138(12), 211, 248(1); "life insurer", "prescribed", "property", "registered pension plan" — 248(1); "taxation year" — 249. See also 211(1).

211.2 Return — Every life insurer shall file with the Minister, not later than the day on or before which it is required by section 150 to file its return of income for a taxation year under Part I, a return of taxable Canadian life investment income for that year in prescribed form containing an estimate of the tax payable by it under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

Definitions [s. 211.2]: "life insurer", "Minister", "prescribed" — 248(1); "taxation year" — 249.

Forms: T2142: Part XII.3 tax return — tax on investment income of life insurers.

211.3 (1) Instalments — Every life insurer shall, in respect of each of its taxation years, pay to the Receiver General on or before the last day of each month in the year, an amount equal to 1/12 of the lesser of

(a) the amount estimated by the insurer to be the annualized tax payable under this Part by it for the year, and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year.

(2) Annualized tax payable — For the purposes of subsections (1) and 211.5(2), the annualized tax payable under this Part by a life insurer for a taxation year is the amount determined by the formula

$$(365/A) \times B$$

where

A is

(a) if the year is less than 357 days, the number of days in the year (other than February 29), and

(b) otherwise, 365; and

B is the tax payable under this Part by the insurer for the year.

History: S. 211.3 amended by 1998, c. 19, s. 214, applicable to taxation years that begin after 1995. S. 211.3 formerly read:

> 211.3 Instalments — Every life insurer shall pay to the Receiver General on or before the last day of each three month period, if any, in a taxation year an instalment determined by the formula
>
> $$\frac{A}{B} \times C$$
>
> where
>
> A is the number of months in the year within the three month period;
>
> B is the number of months in the year; and
>
> C is the lesser of
>
> (a) the tax payable under this Part by the insurer for the year, and
>
> (b) the tax payable under this Part by the insurer for the immediately preceding taxation year.

Definitions [s. 211.3]: "annualized tax payable" — 211.3(2); "life insurer" — 248(1); "tax payable" — 248(2); "taxation year" — 249.

211.4 Payment of remainder of tax — Every life insurer shall pay, on or before the last day of the second month ending after the end of a taxation year, the remainder, if any, of the tax payable under this Part by the insurer for the year.

Definitions [s. 211.4]: "insurer", "life insurer" — 248(1); "taxation year" — 249.

211.5 (1) Provisions applicable to Part — Section 152, subsection 157(2.1), sections 158 and 159, subsections 161(1), (2), (2.1), (2.2) and (11), sections 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

(2) Interest on instalments — For the purposes of subsection 161(2) and section 163.1 as they apply to this Part, a life insurer is, in respect of a taxation year, deemed to have been liable to pay, on or before the last day of each month in the year, an instalment equal to 1/12 of the lesser of

(a) the annualized tax payable under this Part by the insurer for the year, and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year.

Related Provisions: 211.3(2) — Annualized tax payable.

History [s. 211.5]: S. 211.5 renumbered as subsec. 211.5(1) and subsec. (2) added by 1998, c. 19, s. 215, applicable to taxation years that begin after 1995.

S. 211.5 repealed and s. 211.6 renumbered as 211.5, and amended, by 1994, c. 7, Sch. II (1991, c. 49), s. 173, applicable to 1990 *et seq.* Ss. 211.5, 211.6 formerly read:

> 211.5 Interest — Where a life insurer has failed to pay all or any instalment of tax under this Part on or before the day on or before which it was required to be paid, the insurer shall pay to the Receiver General interest at the prescribed rate on the amount that it failed to pay, computed from the day on or before which the amount was required to be paid to the day of payment.
>
> 211.6 Provisions applicable to Part — Sections 152, 158 and 159, subsection 161(1), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History [former s. 211.5]: Former s. 211.5 amended by 1990, c. 39, s. 52, to substitute "it" for "the tax or instalment, as the case may be," and "the insurer shall pay to the Receiver General interest at the prescribed rate" for "it shall pay to the Receiver General interest at the rate prescribed for the purposes of section 161", applicable with respect to interest to be calculated in respect of periods after September 1989.

Definitions [s. 211.5]: "annualized tax payable" — 211.3(2); "life insurer" — 248(1); "taxation year" — 249.

Pre-RSC History [Part XII.3]: Part XII.3 (ss. 211 to 211.6) added by 1988, c. 55, s. 160, applicable with respect to taxation years commencing after June 17, 1987 that end after 1987.

PART XII.4 — TAX ON QUALIFYING ENVIRONMENTAL TRUSTS

211.6 (1) Charging provision — Every trust that is a qualifying environmental trust at the end of a taxation

year shall pay a tax under this Part for the year equal to 28% of its income under Part I for the year.

Related Provisions: 127.41 — Part XII.4 tax credit to beneficiary; 149(1)(z) — No Part I tax on trust.

History: Subsec. 211.6(1) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(1) formerly read:

> (1) Every trust that is a mining reclamation trust at the end of a taxation year shall pay a tax under this Part for the year equal to 28% of its income under Part I for the year.

Subsec. 211.6(1) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

(2) Computation of income — For the purpose of subsection (1), the income under Part I of a qualifying environmental trust shall be computed as if this Act were read without reference to subsections 104(4) to (31) and sections 105 to 107.

History: Subsec. 211.6(2) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(2) formerly read:

> (2) For the purpose of subsection (1), the income under Part I of a mining reclamation trust shall be computed as if this Act were read without reference to subsections 104(4) to (31) and sections 105 to 107.

Subsec. 211.6(2) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

(3) Return — Every trust that is a qualifying environmental trust at the end of a taxation year shall file with the Minister on or before its filing-due date for the year a return for the year under this Part in prescribed form containing an estimate of the amount of its tax payable under this Part for the year.

Related Provisions: 150.1(5) — Electronic filing.

History: Subsec. 211.6(3) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(3) formerly read:

> (3) Every trust that is a mining reclamation trust at the end of a taxation year shall file with the Minister on or before the day that is 90 days after the end of the year a return for the year under this Part in prescribed form containing an estimate of the amount of tax payable under this Part for the year by the trust.

Subsec. 211.6(3) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

Forms: T3M: Environmental trust income tax return.

(4) Payment of tax — Every trust shall pay to the Receiver General its tax payable under this Part for each taxation year on or before its balance-due day for the year.

History: Subsec. 211.6(4) amended by 1998, c. 19, s. 61, applicable to 1997 *et seq.* Subsec. 211.6(4) formerly read:

> (4) Each trust shall pay in respect of each taxation year to the Receiver General its tax payable under this Part for the year on or before the day that is 90 days after the end of the year.

Subsec. 211.6(4) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

(5) Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

History [subsec. 211.6(5)]: Subsec. 211.6(5) added by 1995, c. 3, s. 50, applicable to 1994 *et seq.*

History [s. 211.6]: The heading before s. 211.6 amended by 1998, c. 19, s. 60, applicable to 1997 *et seq.* It formerly read:

Tax on Mining Reclamation Trusts

Definitions [s. 211.6]: "amount"; "balance-due day", "filing-due date" — 248(1); "mining reclamation trust", "Minister", "prescribed", "qualifying environmental trust" — 248(1); "taxation year" — 11(2), 249; "trust" — 104(1), 248(1); "trust's year" — 107.3(1).

PART XII.5 — RECOVERY OF LABOUR-SPONSORED FUNDS TAX CREDIT

211.7 (1) Definitions — The definitions in this section apply for the purposes of this Part.

"approved share" has the meaning assigned by subsection 127.4(1).

"labour-sponsored funds tax credit" in respect of a share is

> (a) where the original acquisition of the share occurred before 1996, 20% of the net cost of the share on that acquisition; and
>
> (b) in any other case, the amount that would be determined under subsection 127.4(6) in respect of the share if this Act were read without reference to paragraphs 127.4(6)(b) and (d).

"net cost" has the meaning assigned by subsection 127.4(1).

"original acquisition" has the meaning assigned by subsection 127.4(1).

"qualifying trust" has the meaning assigned by subsection 127.4(1).

"revoked corporation" means a corporation the registration of which has been revoked under subsection 204.81(6).

(2) Amalgamations and mergers — For the purposes of this Part, where two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") amalgamate or merge to form a corporate entity deemed by paragraph 204.85(3)(d) to have been registered under Part X.3, the shares of each predecessor corporation are deemed not to be redeemed, acquired or cancelled by the predecessor corporation on the amalgamation or merger.

History: S. 211.7 renumbered as subsec. 211.7(1) and subsec. 211.7(2) added by 2000, c. 19, s. 61, applicable after February 16, 1999.

S. 211.7 added by 1997, c. 25, s. 62, applicable to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995, except that s. 211.7 does not apply

> (a) to any redemption that occurs before 1998 of a share of the capital stock of a corporation that was registered under subsec. 204.81(1), where an amount determined under regulations made for the purpose of cl. 204.81(1)(c)(v)(F) is directed to be remitted to the Receiver General in order to permit the redemption; and
>
> (b) to any disposition that occurs before 1998, where an amount is required to be remitted to the government of a province as a consequence of the disposition and a portion of the amount is in respect of the recovery of a tax credit that is provided under subsection 127.4(2) in respect of the share.

Definitions [s. 211.7]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "net cost", "original acquisition" — 127.4(1), 211.7(1); "share" — 248(1).

211.8 (1) Disposition of approved share — Where an approved share of the capital stock of a registered labour-sponsored venture capital corporation or a revoked corporation is, before the first discontinuation of its venture capital business, redeemed, acquired or cancelled by the corporation less than eight years after the day on which the share was issued (other than in circumstances described in subclause 204.81(1)(c)(v)(A)(I) or (III) or clause 204.81(1)(c)(v)(B) or (D)) or any other share that was issued by any other labour-sponsored venture capital corporation is disposed of, the person who was the shareholder immediately before the redemption, acquisition, cancellation or disposition shall pay a tax under this Part equal to the lesser of

(a) the amount determined by the formula

$$A \times B$$

where

A is

(i) where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the labour-sponsored funds tax credit in respect of the share, and

(ii) where the share was issued by any other labour-sponsored venture capital corporation and was at any time an approved share, the amount, if any, required to be remitted to the government of a province as a consequence of the redemption, acquisition, cancellation or disposition (otherwise than as a consequence of an increase in the corporation's liability for a penalty under a law of the province), and

B is

(i) nil, where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the original acquisition of the share was before March 6, 1996 and the redemption, acquisition, cancellation or disposition is

(A) more than 2 years after the day on which it was issued, where the redemption, acquisition, cancellation or disposition is permitted under the articles of the corporation because an individual attains 65 years of age, retires from the workforce or ceases to be resident in Canada, or

(B) more than 5 years after the day on which it was issued,

(ii) one, in any other case where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, and

(iii) in any other case, the quotient obtained when the labour-sponsored fund tax credit in respect of the share is divided by the tax credit provided under a law of a province in respect of any previous acquisition of the share, and

(b) the amount that would, but for subsection (2), be payable to the shareholder because of the redemption, acquisition, cancellation or disposition (determined after taking into account the amount determined under subparagraph (ii) of the description of A in paragraph (a)).

Related Provisions: 204.8(2) — Determining when an RLSVCC discontinues its business; 204.8(3) — Order of disposition of shares; 211.8(1.1) — Rules of application; 211.8(2) — Withholding and remittance of tax; 211.9 — Refund of clawback; 227(10.01) — Assessment of amount payable by resident of Canada; 227(10.1)(c) — Assessment of amount payable by non-resident; Reg. 6706 — Repayment of credit by national LSVCCs.

(1.1) Rules of application — Subsections 204.8(2) and (3) and 204.85(3) apply for the purpose of subsection (1).

(2) Withholding and remittance of tax — Where a person or partnership (in this section referred to as the "transferee") redeems, acquires or cancels a share and, as a consequence, tax is payable under this Part by the person who was the shareholder immediately before the redemption, acquisition or cancellation, the transferee shall

(a) withhold from the amount otherwise payable on the redemption, acquisition or cancellation to the shareholder the amount of the tax;

(b) within 30 days after the redemption, acquisition or cancellation, remit the amount of the tax to the Receiver General on behalf of the shareholder; and

(c) submit with the remitted amount a statement in prescribed form.

Related Provisions: 211.8(3) — Liability for failure to withhold; 211.9 — Refund of clawback; 227 — Withholding taxes — administration and enforcement; 227(5)(a.1) — Person who has influence over payment may be liable for failure to withhold; 227(6) — Application of excess amount withheld; 227(8.3)(c) — Interest on amounts not withheld.

Forms: T1149: Remittance form for labour-sponsored funds tax credits withheld on redeemed shares.

(3) Liability for tax — Where a transferee has failed to withhold any amount as required by subsection (2) from an amount paid or credited to a shareholder, the transferee is liable to pay as tax under this Part on behalf of the shareholder the amount the transferee failed to withhold, and is entitled to recover that amount from the shareholder.

Related Provisions: 227(10.01) — Assessment of amount payable by resident of Canada; 227(10.1)(c) — Assessment of amount payable by non-resident.

History: The opening words of subsec. 211.8(1) amended and subsec. 211.8(1.1) added by 2000, c. 19, subsecs. 62(1), (2), applicable to redemptions, acquisitions, cancellations and dispositions that occur after February 16, 1999. The opening words of subsec. (1) formerly read:

(1) Where an approved share of the capital stock of a registered labour-sponsored venture capital corporation or a revoked corporation is redeemed, acquired or cancelled by the corporation less than 8 years after the day on which the share was issued (other than in circumstances described in subclause 204.81(1)(c)(v)(A)(I) or (III) or clause 204.81(1)(c)(v)(B) or (D)) or any other share that was issued by any other labour-sponsored venture capital corporation is disposed of, the person who was the shareholder immediately before the redemption, acquisition, cancellation or disposition shall pay a tax under this Part equal to the lesser of

S. 211.8 added by 1997, c. 25, s. 62; subsec. 211.8(1) applicable to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995, except that it does not apply

(a) to any redemption that occurs before 1998 of a share of the capital stock of a corporation that was registered under subsec. 204.81(1), where an amount determined under regulations made for the purpose of cl. 204.81(1)(c)(v)(F) is directed to be remitted to the Receiver General in order to permit the redemption; and

(b) to any disposition that occurs before 1998, where an amount is required to be remitted to the government of a province as a consequence of the disposition and a portion of the amount is in respect of the recovery of a tax credit that is provided under subsec. 127.4(2) in respect of the share;

subsecs. 211.8(2) and (3) applicable to redemptions, acquisitions and cancellations that occur after April 25, 1997.

Definitions [s. 211.8]: "approved share" — 127.4(1), 211.7(1); "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "discontinuation" — 204.8(2); "disposition", "individual" — 248(1); "labour-sponsored funds tax credit" — 211.7(1); "original acquisition" — 127.4(1), 211.7(1); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — 248(1); "resident in Canada" — 250; "revoked corporation" — 211.7(1); "share", "shareholder" — 248(1); "transferee" — 211.8(2).

211.9 Refund — The Minister may pay to an individual (other than a trust) in respect of the disposition of a share, if application for the payment has been made in writing by the individual and filed with the Minister no later than two years after the end of the calendar year in which the

disposition occurred, an amount not exceeding the lesser of

(a) the tax paid under this Part in respect of a disposition of the share, and

(b) 15% of the net cost of the share on the original acquisition by the individual (or by a qualifying trust for the individual in respect of the share).

Related Provisions: 127.4(6)(d) — Labour-sponsored funds credit is nil where amount has been refunded under 211.9.

History: S. 211.9 amended by 2000, c. 19, s. 63, applicable to dispositions that occur after 1998. S. 211.9 formerly read:

211.9 Refund of clawback — The Minister may pay to an individual (other than a trust) an amount not exceeding the lesser of

(a) either

(i) the tax paid under this Part in respect of a disposition of a share, or

(ii) the amount determined under regulations made for the purpose of clause 204.81(1)(c)(v)(F) that was remitted to the Receiver General in respect of a disposition of an approved share, and

(b) the amount, if any, by which

(i) 15% of the net cost of the share on the original acquisition by the individual (or by a qualifying trust for the individual in respect of the share)

exceeds

(ii) the amount deducted under subsection 127.4(2) in respect of the original acquisition of the share by the individual (or by a qualifying trust for the individual in respect of the share)

if application for the payment has been made in writing by the individual and filed with the Minister no later than 2 years after the end of the calendar year in which the disposition occurred.

S. 211.9 added by 1997, c. 25, s. 62, applicable after April 25, 1997, except that

(a) the reference to "15%" in subpara. 211.9(b)(i) shall be read as "20%" in respect of a disposition of a share the original acquisition of which was before March 6, 1996; and

(b) any application filed under that section before 1998 is deemed to be filed on a timely basis.

Definitions [s. 211.9]: "amount" — 248(1); "approved share" — 127.4(1), 211.7(1); "calendar year" — *Interpretation Act* 37(1)(a); "disposition", "individual", "Minister" — 248(1); "net cost", "original acquisition", "qualifying trust" — 127.4(1), 211.7(1); "regulation", "share" — 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Part XII.6 — Tax on Flow-Through Shares

211.91 (1) Tax imposed — Every corporation shall pay a tax under this Part in respect of each month (other than January) in a calendar year equal to the amount determined by the formula

$$\left(A + \frac{B}{2} - C - \frac{D}{2}\right) \times \left(\frac{E}{12} + \frac{F}{10}\right)$$

where

A is the total of all amounts each of which is an amount that the corporation purported to renounce in the year under subsection 66(12.6) or (12.601) because of the application of subsection 66(12.66) (other than an amount purported to be renounced in respect of expenses incurred or to be incurred in connection with production or potential production in a province where a tax, similar to the tax provided under this Part, is payable by the corporation under the laws of the province as a consequence of the failure to incur the expenses that were purported to be renounced);

B is the total of all amounts each of which is an amount that the corporation purported to renounce in the year under subsection 66(12.6) or (12.601) because of the application of subsection 66(12.66) and that is not included in the value of A;

C is the total of all expenses described in paragraph 66(12.66)(b) that are

(a) made or incurred by the end of the month by the corporation, and

(b) in respect of the purported renunciations in respect of which an amount is included in the value of A;

D is the total of all expenses described in paragraph 66(12.66)(b) that are

(a) made or incurred by the end of the month by the corporation, and

(b) in respect of the purported renunciations in respect of which an amount is included in the value of B;

E is the rate of interest prescribed for the purpose of subsection 164(3) for the month; and

F is

(a) one, where the month is December, and

(b) nil, in any other case.

Related Provisions: 18(1)(t), 20(1)(nn) — Tax under Part XII.6 is deductible; 66(18) — Members of partnerships; 87(4.4)(e)–(h) — Amalgamation of principal-business corporations; 211.91(2) — Return and payment of tax; 257 — Formula cannot calculate to less than zero.

Regulations: 4301(b) (prescribed rate of interest under 164(3), for 211.91(1)E).

(2) Return and payment of tax — A corporation liable to tax under this Part in respect of one or more months in a calendar year shall, before March of the following calendar year,

(a) file with the Minister a return for the year under this Part in prescribed form containing an estimate of the tax payable under this Part by it in respect of each month in the year; and

(b) pay to the Receiver General the amount of tax payable under this Part by it in respect of each month in the year.

(3) Provisions applicable to Part — Subsections 150(2) and (3), sections 152, 158 and 159, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I apply to this Part, with any modifications that the circumstances require.

History: Part XII.6 (s. 211.91) added by 1997, c. 25, s. 62, applicable to the 1997 and subsequent calendar years.

Definitions [s. 211.91]: "amount" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1).

Part XIII — Tax on Income from Canada of Non-Resident Persons

212. (1) Tax — Every non-resident person shall pay an income tax of 25% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or

credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of,

Related Provisions: 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 214(1) — No deductions from tax; 215(1) — Requirement to withhold and remit; 216 — Election to pay tax on net income from rents and timber royalties; 217 — Election to file return under Part I in respect of certain kinds of income; 227 — Withholding taxes — administration and enforcement; 246(1) — Benefit conferred on a person; Reg. 105 — Withholding on payments to non-residents for services; Reg. 805 — No tax where income attributable to permanent establishment or taxable under 115(1)(a)(iii.3).

I.T. Application Rules [subsec. 212(1)]: 10(4) (application to debts issued before 1976); 10(6) (reduction of 25% rate by treaty).

Interpretation Bulletins [subsec. 212(1)]: IT-77R: Securities in satisfaction of income debt; IT-360R2: Interest payable in a foreign currency. See also list at end of s. 212.

Information Circulars [subsec. 212(1)]: 76-12R4: Applicable rate of Part XIII tax on amounts paid or credited to persons in treaty countries; 77-16R4: Non-resident income tax.

I.T. Technical News [subsec. 212(1)]: No. 11 (paragraph 212(1)(b) — postamble — where interest varies according to the value of a foreign currency); (212(1) — reporting of amounts paid out of an employee benefit plan); No. 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms [subsec. 212(1)]: NR2-UK, NR2A-UK: Statements of amounts paid to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4-OAS: Statement of OAS pension paid or credited to non-residents of Canada; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; PD7AR-NR: Non-resident tax (Part XIII) remittance form; T1141: Information return in respect of transfers to non-resident trusts; T1142: Information return in respect of distributions from and indebtedness owed to a non-resident trust; T4061: Non-resident withholding tax guide.

(a) **management fee** — a management or administration fee or charge;

Related Provisions: 212(4) — Meaning of "management or administration fee or charge"; Reg. 105 — Withholding tax on payments to non-residents for services. See additional Related Provisions at beginning of subsec. 212(1).

Selected Cases [para. 212(1)(a)]: *Peter Cundill & Associates Ltd. v. Canada*, [1991] 2 C.T.C. 221 (FCA) (Fees paid by Canadian corporation to Bermuda subsidiary taxable, not at arm's length since both corporations controlled by same "mind"); *Alberta Gas Ethylene Co. v. Canada*, [1990] 2 C.T.C. 171 (FCA) (Interest on loan by non-resident subsidiary to resident parent subject to withholding tax; agency argument rejected).

Regulations: 202(1)(a) (information return); 805 (no tax where income attributable to permanent establishment).

Interpretation Bulletins: IT-468R: Management or administrative fees paid to non-residents. See also list at end of s. 212.

Information Circulars: 87-2R: International transfer pricing and other international transactions. See also at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(b) **interest** — interest except

(i) interest payable by a non-resident-owned investment corporation,

(ii) interest payable on

(A) bonds of or guaranteed by the Government of Canada issued on or before December 20, 1960,

(B) bonds of or guaranteed by the Government of Canada issued after December 20, 1960, and before April 16, 1966, the interest on which is payable to the government or central bank of a country other than Canada or to any international organization or agency prescribed by regulation, or

(C) bonds, debentures, notes, mortgages or similar obligations

(I) of or guaranteed by the Government of Canada,

(II) of the government of a province or an agent thereof,

(III) of a municipality in Canada or a municipal or public body performing a function of government in Canada,

(IV) of a corporation, commission or association not less than 90% of the shares or capital of which is owned by Her Majesty in right of a province or by a Canadian municipality, or of a subsidiary wholly-owned corporation that is subsidiary to such a corporation, commission or association, or

Proposed Amendment — 212(1)(b)(ii)(C)(IV)

(IV) of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6) applies, or

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 102(1), will amend subcl. 212(1)(b)(ii)(C)(IV) to read as above, applicable to amounts paid or credited after 1998.

Technical Notes: Clause 212(1)(b)(ii)(C) of the Act provides an exemption from non-resident withholding tax for interest paid on certain government and government-guaranteed debt obligations, as well as debt obligations issued by entities used to be described in paragraph 149(1)(d), before that paragraph was amended and paragraphs 149(1)(d.1) to (d.6) were added, effective for taxation years and fiscal periods that begin after 1998. Clause 212(1)(b)(ii)(C) is, therefore, amended to refer to paragraphs 149(1)(d) to (d.6) consequential on the 1998 amendment to subsection 149(1).

(V) of an educational institution or a hospital if repayment of the principal amount thereof and payment of the interest thereon is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province,

issued after April 15, 1966,

(iii) interest payable in a currency other than Canadian currency to a person with whom the payer is dealing at arm's length, on

(A) any obligation where the evidence of indebtedness was issued on or before December 20, 1960,

(B) any obligation where the evidence of indebtedness was issued after December 20, 1960, if the obligation was entered into under an agreement in writing made on or before that day, under which the obligee undertook to advance, on or before a specified day, a specified amount at a specified rate of interest or a rate of interest to be determined as provided in the agreement, to the extent that the interest payable on the obligation is payable

(I) in respect of a period ending not later than the earliest day on which, under the terms of the obligation determined as of the time it was entered into, the obligee would be entitled to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount thereof, as the case may be, if the

terms of the obligation determined as of that time provided for that payment on or after a specified day, or

(II) in respect of a period ending not later than one year after the time the obligation was entered into, in any other case,

(C) any bond, debenture or similar obligation issued after December 20, 1960, for the issue of which arrangements were made on or before that day with a dealer in securities, if the existence of the arrangements for the issue of the bond, debenture or similar obligation can be established by evidence in writing given or made on or before that day,

(D) an amount not repayable in Canadian currency deposited with an institution that was at the time the amount was deposited or at the time the interest was paid or credited a prescribed financial institution,

(E) any obligation entered into in the course of carrying on a business in a country other than Canada, to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business carried on by the payer in such a country, or that, but for subsection 18(2) or section 21, would have been so deductible, or

(F) any obligation entered into by the payer after December 20, 1960, on assuming an obligation referred to in clause (A) in consideration or partial consideration for the purchase by the payer of property of the vendor that constituted security for that obligation, if the payer on entering into the obligation undertook to pay the same amount of money on or before the same date and at the same rate of interest as the vendor of the property had undertaken in respect of the obligation under which the vendor was the obligor,

(for the purpose of this subparagraph, interest expressed to be computed by reference to Canadian currency shall be deemed to be payable in Canadian currency),

(iv) interest payable on any bond, debenture or similar obligation to a person with whom the payer is dealing at arm's length and to whom a certificate of exemption that is in force on the day the amount is paid or credited was issued under subsection (14),

(v) interest payable to a person with whom the payer is dealing at arm's length on any obligation entered into in the course of carrying on a life insurance business in a country other than Canada,

(vi) [Repealed under former Act]

(vii) interest payable by a corporation resident in Canada to a person with whom that corporation is dealing at arm's length on any obligation where the evidence of indebtedness was issued by that corporation after June 23, 1975 if under the terms of the obligation or any agreement relating thereto the corporation may not under any circumstances be obliged to pay more than 25% of

(A) where the obligation is one of a number of obligations that comprise a single debt issue of obligations that are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof, the total of the principal amount of those obligations, or

(B) in any other case, the principal amount of the obligation,

within 5 years from the date of issue of that single debt issue or that obligation, as the case may be, except

(C) in the event of a failure or default under the said terms or agreement,

(D) if the terms of the obligation or any agreement relating thereto become unlawful or are changed by virtue of legislation or by a court, statutory board or commission,

(E) if the person exercises a right under the terms of the obligation or any agreement relating thereto to convert the obligation into, or exchange the obligation for, a prescribed security, or

(F) in the event of the person's death;

Proposed Amendment — 212(1)(b)(vii)

Letter from Department of Finance, February 18, 1999:

Dear [xxx]

SUBJECT: *December 23, 1998 Draft Legislation Trust proposals*

This is in reply to your letter of February 15, 1999 regarding the applicability of the withholding tax exemption in subparagraph 212(1)(b)(vii) of the *Income Tax Act*.

Your concern relates to debt issued through a trust indenture, pursuant to which a non-resident financial institution acts as the trustee. The main function of the trustee is to administer and enforce the collective rights of a large group of lenders. Additionally, the trustee may act as paying agent for the disbursement of funds to lenders and is expected to receive funds from your client in this capacity, some of which in limited circumstances could be returned to your client. You are concerned about three of the proposed provisions in the December 23, 1998 draft legislation on trust: proposed subparagraph (e)(iii) of the definition "disposition" in subsection 248(1) and proposed paragraphs 248(25.1)(b) and 251(1)(b). You are of the view that these provisions could technically result in the loss of the Part XIII withholding tax exemption provided under subparagraph 212(1)(b)(vii), on the basis that your client could now be construed as making its interest payable to a non-arm's length trust.

We agree that modifications to the draft legislation should be made to address this concern. The draft amendments were not intended to result in a loss of this exemption from withholding tax in the circumstances described above.

Consequently, we will recommend changes to these provisions applying from the date of the release of the draft legislation [to] ensure that the intended policy result is achieved.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

(viii) interest payable on a mortgage or similar obligation secured by, or on an agreement for sale or similar obligation with respect to, real property situated outside Canada or an interest in any such real property except to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business

carried on by the payer in Canada or from property other than real property situated outside Canada,

(ix) interest payable in Canadian currency on account of an amount in Canadian currency deposited in a country other than Canada with a branch or office of a payer who

(A) is, or is eligible to become, a member of the Canadian Payments Association, or

(B) is a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*,

to a person with whom the payer is dealing at arm's length,

(x) interest payable to a prescribed international organization or agency,

(xi) interest payable on an amount deposited with a prescribed financial institution for the period during which the amount was an eligible deposit (within the meaning assigned by subsection 33.1(1)) of the institution, and

(xii) interest payable under a securities lending arrangement by a lender under the arrangement that is a financial institution prescribed for the purpose of clause (iii)(D), or a registered securities dealer resident in Canada, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

(A) the particular security is an obligation referred to in subparagraph (ii) or an obligation of the government of any country, province, state, municipality or other political subdivision,

(B) the amount of money so provided at any time during the term of the arrangement does not exceed 110% of the fair market value at that time of the particular security, and

(C) the arrangement was neither intended, nor made as a part of a series of securities lending arrangements, loans or other transactions that was intended, to be in effect for more than 270 days,

and for the purpose of this paragraph, where interest is payable on an obligation, other than a prescribed obligation, and all or any portion of the interest is contingent or dependent on the use of or production from property in Canada or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation, the interest shall be deemed not to be interest described in subparagraphs (ii) to (vii) and (ix);

Proposed Amendment — Authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (3) That, for the purposes of Part XIII of the Act, an authorized foreign bank be deemed, in respect of its business in Canada, to be a person resident in Canada.

(4) That an authorized foreign bank be subject to a tax equal to the product of

(a) 25% or such lesser rate as may apply, under an income tax treaty between Canada and the country in which the authorized foreign bank is resident, to interest payable by a person resident in Canada to a person resident in that country, and

(b) 15% of the amount described in subparagraph 2(b) [see under 20(1)(c) — ed.] in respect of the bank for the year.

Department of Finance news release, February 11, 1999: *Withholding Tax on Interest*

(a) Foreign banks deemed resident for purposes of Part XIII tax

Subject to certain exceptions and to tax treaties, Part XIII of the *Income Tax Act* imposes a withholding tax on, among other things, interest paid by residents of Canada to non-residents. To treat Canadian banks and the Canadian branches of foreign banks equally, it is proposed that Part XIII of the Act be amended to treat a Canadian branch of a foreign bank as resident in Canada for the purposes of applying that Part to interest and other payments made to or by the branch.

This change will also have the effect of ensuring that all banks operating in Canada have equal access to the securities lending market.

(b) Tax re: interest on allocated debt

Although it is proposed that Canadian branches of foreign banks be allowed a deduction on account of interest on "allocated debt" (see above [under 20(1)(c) — ed.]), the interest would not, under existing rules, be subject to withholding tax. As Canadian banks would, in some cases, be subject to withholding tax in respect of funds borrowed outside Canada, a new tax is proposed to apply to a portion of the interest deducted by the Canadian branch of a foreign bank in respect of its allocated debt.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

Related Provisions: 204 — Qualified investment defined; 212(3) — Replacement obligations issued by corporations in financial difficulty; 212(6)–(8) — Reduced tax on interest on pre-1961 provincial bonds; 212(9)(c) — Exemption for interest received by mutual fund trust and paid to non-resident; 212(15) — CD-insured obligations deemed not to be guaranteed by Government of Canada; 212(18) — Return by financial institutions; 212(19) — Tax on dealers re excess amount exempted under securities lending arrangement; 214(2) — Income and capital combined; 214(3)(e) — Deemed payments; 214(4) — Securities; 214(6) — Deemed interest; 214(7), (7.1) — Sale of obligation; 214(11) — Application to payments deemed made by NRO; 214(15) — Deemed interest; 218 — Loan to wholly-owned subsidiary; 240(2) — Interest coupon to be identified; 248(10) — Series of transactions; 248(12) — Identical properties; 260(8) — Securities lending arrangement — deemed payment of interest; Canada-U.S. tax treaty, Art. XI — Taxation of interest. See additional Related Provisions at beginning of 212(1).

History: The opening words of subpara. 212(1)(b)(xii) amended by 1995, c. 21, subsec. 73(1), applicable to securities lending arrangements entered into after May 28, 1993. The opening words formerly read:

(xii) interest payable under a securities lending arrangement by a lender under the arrangement that is a financial institution prescribed for the purpose of clause (iii)(D), or a person resident in Canada who is registered or licensed under the laws of a province to trade in securities, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

Subpara. 212(1)(b)(xii) added by 1994, c. 21, subsec. 97(1), applicable to securities lending arrangements entered into after May 28, 1993.

Subpara. 212(1)(b)(iv) amended, and cl. (vii)(F) added, by 1994, c. 7, Sch. VIII (1993, c. 24), subsecs. 123(1) and (2), applicable (by subsec. 123(5) as amended by 1994, c. 21, s. 137) to amounts paid or credited after 1991 except that in its application to amounts paid or credited to a person in respect of obligations acquired before 1992 by the person or by a person related to the person, subpara. (b)(iv) applies with respect to amounts paid or credited after 1994. That subpara. formerly read:

(iv) interest payable on any bond, debenture or similar obligation issued after June 13, 1963 to a person to whom a certificate of exemption that is in force on the day the amount is paid or credited has been issued under subsection (14),

Cl. 212(1)(b)(vii)(C) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 174(1), applicable to amounts paid or credited after 1986. That cl. formerly read:

> (C) in the event of a failure or default under the terms of the agreement relating to the obligation,

Pre-RSC History: That portion of cl. 212(1)(b)(ii)(C) following subcl. (V) amended to substitute "issued after April 15, 1966", for "issued after April 15, 1966 and before 1989", subpara. 212(1)(b)(vi) repealed, and that portion of subpara. 212(1)(b)(vii) preceding cl. (A) substituted by 1988, c. 55, subsecs. 161(1), (2), (3), applicable with respect to amounts paid or credited after February 10, 1988. Subpara. 212(1)(b)(vi) and that portion of 212(1)(b)(vii) preceding cl. (A) formerly read:

> (vi) interest payable on bonds, debentures, notes, mortgages, hypothecs or similar obligations referred to in subclauses (ii)(C)(I) to (V) issued after 1988, the interest on which is payable to a person who is resident in a prescribed country,
>
> (vii) interest payable by a corporation resident in Canada to a person with whom that corporation is dealing at arm's length on any obligation where the evidence of indebtedness was issued by that corporation after June 23, 1975 and before 1989 if, under the terms of the obligation or any agreement relating thereto, the corporation may not, under any circumstances, be obliged to pay more than 25% of,

Subpara. 212(1)(b)(xi) added by 1987, c. 46, subsec. 63(1), applicable with respect to interest payable in respect of taxation years commencing after December 17, 1987.

Cl. 212(1)(b)(iii)(D) substituted by 1986, c. 55, subsec. 74(1), applicable with respect to interest paid or credited after December 19, 1986, other than interest paid or credited on amounts deposited before 1988 with a bank to which the *Bank Act* applies. Cl. 212(1)(b)(iii)(D) formerly read:

> (D) any debt owing by a bank to which the *Bank Act* applies, as or on account of an amount deposited with that bank that is not repayable in Canadian currency,

Cl. 212(1)(b)(vii)(E) added by 1986, c. 55, subsec. 74(2), applicable with respect to interest paid or credited after December 19, 1986.

All that portion of para. 212(1)(b) following subpara. (x) substituted by 1986, c. 55, subsec. 74(3), applicable with respect to obligations issued or extended after February 25, 1986 otherwise than pursuant to an agreement in writing made on or before that date and, for the purposes of this subsection, where the terms and conditions relating to the computation of interest payable on an obligation are changed at any time pursuant to an agreement made after February 25, 1986, the obligation shall be deemed to have been issued after that date otherwise than pursuant to an agreement in writing made on or before that date. That portion formerly read:

> and for the purpose of this paragraph, where interest is payable on an obligation entered into after November 12, 1981 (otherwise than pursuant to a commitment in writing made on or before that date) and all or any portion of the interest is contingent or dependent upon the use of or production from property in Canada, the interest shall be deemed not to be interest described in subparagraphs (ii) to (vii) and (ix);

All that portion of cl. 212(1)(b)(ii)(C) following subcl. (V), subpara. 212(1)(b)(vi), and all that portion of subpara. 212(1)(b)(vii) preceding cl. (A) amended by 1986, c. 6, subsecs. 116(1) to (3), to substitute "1988" for "1985" and "1989" for "1986", applicable after May 23, 1985.

Subpara. 212(1)(b)(x) added by 1986, c. 6, subsec. 116(4), applicable with respect to interest paid or credited after May 23, 1985.

All that portion of cl. 212(1)(b)(ii)(C) following subcl. (V), subpara. 212(1)(b)(vi), all that portion of subpara. 212(1)(b)(vii) preceding cl. (A) substituted, subpara. 212(1)(b)(ix) added by 1980-81-82-83, c. 140, subsecs. 118(1)–(4), applicable, as to the provisions substituted, after June 28, 1982, and, as to subpara. 212(1)(b)(ix), with respect to interest paid or credited after November 12, 1981, to substitute "1986" for "1983" in those parts substituted and "1985" for "1982" in subpara. 212(1)(b)(vi).

All that portion of subpara. 212(1)(b)(vii) following cl. (B) substituted by 1980-81-82-83, c. 48, s. 98, applicable with respect to amounts paid or credited after 1977. That portion formerly read:

> within 5 years of the date of issue of that single debt issue or that obligation, as the case may be, except in the event of a failure or default under the said terms or agreement, and

All that portion of subpara. 212(1)(b)(ii) following subclause (C)(V), subpara. 212(1)(b)(vi), all that portion of subpara. 212(1)(b)(vii) preceding clause (A) substituted, subpara. 212(1)(b)(viii) added by 1977-78, c. 1, subsecs. 92(1)–(4), applicable, as to the provisions substituted, after March 31, 1977, and, as to subpara. 212(1)(b)(viii), to interest paid or credited after 1976, to substitute "1983" for "1979" in those portions of subparas. 212(1)(b)(ii), (vii) substituted, and "1982" for "1978" in subpara. 212(1)(b)(vi).

Cl. 212(1)(b)(iii)(E), subpara. 212(1)(b)(vii) substituted by 1976-77, c. 4, subsecs. 71(1), (2), applicable, as to cl. 212(1)(b)(iii)(E), in respect of amounts paid or credited after May 6, 1974, and, as to subpara. 212(1)(b)(vii), in respect of obligations issued after June 23, 1975. Cl. 212(1)(b)(iii)(E), subpara. 212(1)(b)(vii) formerly read:

> (E) any obligation entered into in the course of carrying on a business in a country other than Canada, to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business carried on by him in any such country, or
>
> . . . . .
>
> (vii) interest payable by a corporation resident in Canada to a person with whom that corporation is dealing at arm's length on any obligation where the evidence of indebtedness was issued by that corporation after June 23, 1975 and before 1979 if, under the terms of the obligation or any agreement relating thereto, the corporation may not, under any circumstances, be obliged to pay more than 25% of the principal amount thereof within 5 years of the date of its issue except in the event of a failure or default under the said terms or agreement.

Subpara. 212(1)(b)(vii) added by 1974-75-76, c. 71, s. 11, applicable in respect of any obligation issued after June 23, 1975.

All that portion of cl. 212(1)(b)(ii)(C) following subcl. (V) substituted, subparas. 212(1)(b)(v), (vi) added by 1974-75-76, c. 26, subsecs. 118(01), (1), applicable, as to subparas. 212(1)(b)(v), (vi), after 1971.

Selected Cases [para. 212(1)(b)]: *Munich Reinsurance Co. (Canada Branch) v. R.*, [2000] 2 C.T.C. 2785 (TCC) (Statutory obligation to refund interest not a debenture); *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Late payment "surcharge" on sale price of goods was "interest"); *Pullman v. The Queen*, [1983] C.T.C. 52 (FCTD) (Interest on loans funded by non-resident but made by resident broker subject to tax); *The Queen v. Melford Developments Inc.*, [1982] C.T.C. 330 (SCC) (Payments for bank guarantee under Canada-Germany Income Tax Agreement not payments of interest subject to tax); *Cutlers Guild Ltd. v. The Queen*, [1981] C.T.C. 115 (FCTD) (Interest payments made to non-resident lender subject to tax even when taxpayer carrying on business in Canada); *Associates Corporation of North America v. The Queen*, [1980] C.T.C. 215 (FCA) (Guarantee fees not considered interest); *The Queen v. Immobiliaire Canada Ltd.*, [1977] C.T.C. 481 (FCTD) (Payment to transferor does not represent payment of interest upon purchase of obligation with accrued interest owing); *Rodmon Construction Inc. v. The Queen*, [1975] C.T.C. 73 (FCTD) (Taxpayer not liable for tax on payments made to vendor where payments did not include interest); *Swiss Bank Corp. v. MNR*, [1972] C.T.C. 614 (SCC) (Exemption from withholding tax on interest paid in foreign currency disallowed upon failure to meet arm's length requirement of provision).

Regulations: 202(1)(b) (information return); 806, 806.1 (prescribed international organization or agency); 806.2 (prescribed obligation); 1600 (prescribed countries for ITAR 10(4)); 6208 (prescribed security); 7900 (prescribed financial institutions).

Remission Orders: *Churchill Falls (Labrador) Corporation Withholding Tax Remission Order*, P.C. 1968-832 (no withholding on interest on first mortgage bonds sold in the U.S. by Churchill Falls (Labrador) Corp.).

I.T. Application Rules: 10(5) (certificate of exemption in force since 1971).

Interpretation Bulletins: IT-155R3: Exemption from non-resident tax or interest payable on certain bonds, debentures, notes, hypothecs or similar obligations; IT-265R3: Payments of income and capital combined; IT-320R2: RRSP — qualified investments; IT-360R2: Interest payable in a foreign currency; IT-361R3: Exemption from Part XIII tax on interest payments to non-residents; IT-430R3: Life insurance proceeds received by a provate corporation or a partnership as a consequence. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

I.T. Technical News: No. 9 (exemption from withholding tax under 212(1)(b)(vii)(C)); No. 11 (paragraph 212(1)(b) — postamble); No. 16 (*Crown Forest* case).

Advance Tax Rulings: ATR-49: Long-term foreign debt; ATR-69: Withholding tax on interest paid to non-resident persons;.

Forms: See at beginning of subsec. 212(1).

(c) **estate or trust income** — income of or from an estate or a trust to the extent that the amount

(i) would, if the non-resident person were a person resident in Canada to whom Part I applied, be included in computing the income of the non-resident person under subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person, or

Proposed Amendment — 212(1)(c)(i)

(i) is included in computing the income of the non-resident person under subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person, or

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 102(2), will amend subpara. 212(1)(c)(i) to read as above, applicable to amounts paid or credited after December 17, 1999.

Technical Notes: Paragraph 212(1)(c) of the Act generally provides that a non-resident beneficiary is subject to Part XIII withholding tax on trust distributions in connection with the same types of amounts on which a beneficiary resident in Canada is subject to tax under Part I.

Paragraph 212(1)(c) is amended to clarify that the tax consequences of a beneficiary's residence outside Canada will be taken into account in determining the amount subject to tax under paragraph 212(1)(c). These tax consequences include the potential indirect tax consequences to a beneficiary of a trust under subsection 104(13) of the application of subsection 107(5) to the trust because the beneficiary is non-resident.

This amendment, which is linked with new section 250.1, applies to amounts paid or credited after December 17, 1999.

(ii) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the estate or trust arrangement) to be a distribution of, or derived from, an amount received by the estate or trust as, on account of, in lieu of payment of or in satisfaction of, a dividend on a share of the capital stock of a corporation resident in Canada, other than a taxable dividend;

Related Provisions: 104(11) — Dividend received from NRO; 212(2)(b) — Withholding tax on capital dividends; 212(9) — Exemptions; 212(10) — Trust established before 1949; 212(11) — Payment to a beneficiary as income of trust; 212(13) — Non-resident payor deemed resident in Canada; 212(17) — No withholding tax on payments from employee benefit plan or employee trust; 214(3)(f), (f.1) — Deemed payments; 250.1(b) — Calculation of income of non-resident person; Canada-U.S. tax treaty, Art. XXII:2 — Estate or trust income. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 174(2), applicable to amounts paid or credited (or deemed under the Act to have been paid or credited) by an estate or a trust after July 13, 1990. Para. 212(1)(c) formerly read:

(c) estate or trust income — income of or from an estate or trust to the extent that the amount would, if the non-resident person were a person resident in Canada to whom Part I was applicable, be included in computing the income of the non-resident person by reason of subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person;

Pre-RSC History: Para. 212(1)(c) substituted by 1988, c. 55, subsec. 161(4), applicable to distributions by a trust in its 1988 and subsequent taxation years. Para. 212(1)(c) formerly read:

(c) estate or trust income — income of or from an estate or trust, except to the extent that such income is deemed by subsection 104(21) to be a taxable capital gain of a non-resident person from the disposition of capital property;

Para. 212(1)(c) substituted by 1976-77, c. 4, subsec. 71(3), applicable to 1976 *et seq.* Para. 212(1)(c) formerly read:

(c) income of or from an estate or trust;

Para. 212(1)(c) substituted by 1974-75-76, subsec. 118(2), applicable in respect of amounts paid or credited after November 18, 1974. Para 212(1)(c) formerly read:

(c) income of or from an estate or trust, except to the extent that such income is deemed by subsection 104(21) to be a taxable capital gain of a non-resident person from the disposition of capital property;

Regulations: 202(1)(c) (information return).

Interpretation Bulletins: IT-342R: Trusts — income payable to beneficiaries; IT-465R: Non-resident beneficiaries of trusts; IT-500R: RRSPs — death of an annuitant; IT-531: Eligible funeral arrangements. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(d) **rents, royalties, etc.** — rent, royalty or similar payment, including, but not so as to restrict the generality of the foregoing, any payment

(i) for the use of or for the right to use in Canada any property, invention, trade-name, patent, trademark, design or model, plan, secret formula, process or other thing whatever,

(ii) for information concerning industrial, commercial or scientific experience where the total amount payable as consideration for that information is dependent in whole or in part on

(A) the use to be made of, or the benefit to be derived from, that information,

(B) production or sales of goods or services, or

(C) profits,

(iii) for services of an industrial, commercial or scientific character performed by a non-resident person where the total amount payable as consideration for those services is dependent in whole or in part on

(A) the use to be made of, or the benefit to be derived from, those services,

(B) production or sales of goods or services, or

(C) profits,

but not including a payment made for services performed in connection with the sale of property or the negotiation of a contract,

(iv) made pursuant to an agreement between a person resident in Canada and a non-resident person under which the non-resident person agrees not to use or not to permit any other person to use any thing referred to in subparagraph (i) or any information referred to in subparagraph (ii), or

(v) that was dependent on the use of or production from property in Canada whether or not it was an instalment on the sale price of the property, but not including an instalment on the sale price of agricultural land,

but not including

(vi) a royalty or similar payment on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work,

(vii) a payment in respect of the use by a railway company or by a person whose principal business is that of a common carrier of property that is rail-

way rolling stock as defined in the definition "rolling stock" in section 2 of the *Railway Act*

(A) if the payment is made for the use of that property for a period or periods not expected to exceed in the aggregate 90 days in any 12 month period, or

(B) in any other case, if the payment is made pursuant to an agreement in writing entered into before November 19, 1974;

(viii) a payment made under a *bona fide* cost-sharing arrangement under which the person making the payment shares on a reasonable basis with one or more non-resident persons research and development expenses in exchange for an interest in any or all property or other things of value that may result therefrom,

(ix) a rental payment for the use of or the right to use outside Canada any corporeal property,

(x) any payment made to a person with whom the payer is dealing at arm's length, to the extent that the amount thereof is deductible in computing the income of the payer under Part I from a business carried on by the payer in a country other than Canada, or

(xi) a payment made to a person with whom the payer is dealing at arm's length for the use of or the right to use property that is

(A) an aircraft,

(B) furniture, fittings or equipment attached to an aircraft, or

(C) a spare part for property described in clause (A) or (B);

Related Provisions: 212(5) — Motion picture films; 212(9)(b) — Exemption for royalty payment received by trust and paid to non-resident; 216 — Alternative re rents and timber royalties; Canada-U.S. tax treaty, Art. VI — Income from real property; Art. XII — Royalties. See additional Related Provisions at beginning of subsec. 212(1).

History: Subpara. 212(1)(d)(xi) added by 1994, c. 7, Sch. VI (1992, c. 29), s. 10, applicable to payments made after December 6, 1991 under agreements entered into after 1990.

Pre-RSC History: All that portion of para. 212(1)(d) preceding subpara. (i) substituted by 1986, c. 2, s. 26, applicable to 1986 *et seq.* That portion formerly read:

(d) rent, royalty or a similar payment (other than an incremental resource royalty or an incremental production royalty within the meaning of subsection 79(1) of the *Petroleum and Gas Revenue Tax Act*) including, but not so as to restrict the generality of the foregoing, any payment

All that portion of para. 212(1)(d) preceding subpara. (i) substituted by 1980-81-82-83, c. 104, s. 33, that portion formerly read:

(d) rent, royalty or a similar payment, including, but not so as to restrict the generality of the foregoing, any payment

All that portion of subpara. 212(1)(d)(vii) preceding cl. (A) substituted by 1977-78, c. 32, subsec. 48(1), applicable in respect of amounts paid or credited after May 15, 1978. That portion formerly read:

(vii) a payment in respect of the use by a railway company of a property that is railway rolling stock as defined in the definition "rolling stock" in section 2 of the *Railway Act*

Subpara. 212(1)(d)(vi) substituted by 1977-78, c. 1, subsec. 92(5), applicable with respect to amounts paid or credited after March 31, 1977. Subpara. (vi) formerly read:

(vi) a royalty or similar payment on or in respect of a copyright,

Subpara. 212(1)(d)(vii) substituted by 1974-75-76, c. 26, subsec. 118(3), applicable in respect of amounts paid or credited after November 18, 1974. Subpara. (vii) formerly read:

(vii) a payment in respect of the use by a railway company of railway rolling stock as defined in the definition "rolling stock" in section 2 of the *Railway Act*,

Selected Cases [para. 212(1)(d)]: *Angoss International Ltd. v. R.*, [1999] 2 C.T.C. 2259 (TCC) (Copyright payments for computer software exempt from withholding tax); *Hasbro Canada Inc. v. R.*, [1999] 1 C.T.C. 2512 (TCC) (Payments to non-resident purchasing agents were for services, not information); *Entre Computer Centers Inc. v. Canada*, [1997] 1 C.T.C. 2291 (TCC) (Commercial reality more important than nomenclature used to describe arrangements); *Crown Forest Industries Ltd. v. Canada*, [1992] 2 C.T.C. 1 (FCTD) (Corporation liable to, but exempt from, US tax was resident in US under treaty by virtue of place of management and business); *Jarlan v. The Queen*, [1984] C.T.C. 375 (FCTD) (Awards for invention paid to non-resident considered income from employment, not royalties); *The Queen v. Saint John Shipbuilding and Dry Dock Co. Ltd.*, [1980] C.T.C. 352 (FCA) (Payments for privilege of using property indefinitely to non-resident corporation not subject to tax when not rentals or royalties); *The Queen v. Farmparts Distributing Ltd.*, [1980] C.T.C. 205 (FCA) (Although payments for use of trade names and logos considered taxable, payment for right to buy and resell machine not subject to tax); *MNR v. Burland (C.I.) Properties Ltd.*, 68 D.T.C. 5220 (SCC) (Property tax payments paid for benefit of non-resident landowner subject to tax).

Regulations: 202(1)(d) (information return).

Interpretation Bulletins: IT-303: Know-how and similar payments to non-residents; IT-393R2: Elections re tax on rents and timber royalties — non-residents; IT-438R2: Crown charges — resource properties in Canada; IT-494: Hire of ships and aircraft from non-residents. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(e) **timber royalties** — a timber royalty in respect of a timber resource property or a timber limit in Canada (which, for the purposes of this Part, includes any consideration for a right under or pursuant to which a right to cut or take timber from a timber resource property or a timber limit in Canada is obtained or derived, to the extent that the consideration is dependent on, or computed by reference to, the amount of timber cut or taken);

Related Provisions: 13(21) — Timber resource property defined; 212(13) — Non-resident payor deemed resident in Canada; 216 — Alternative re rents and timber royalties. See additional Related Provisions at beginning of subsec. 212(1).

Pre-RSC History: Para. 212(1)(e) substituted by 1974-75-76, c. 26, subsec. 118(5), applicable in respect of amounts paid or credited after November 18, 1974. Para. 212(1)(e) formerly read:

(e) a timber royalty in respect of a timber limit in Canada (which, for the purposes of the Part, includes any consideration for a right under or pursuant to which a right to cut or take timber from a timber limit in Canada is obtained or derived, to the extent that such consideration is dependent upon, or computed by reference to, the amount of timber cut or taken);

Para. 212(1)(e) substituted by 1973-74, c. 30, subsec. 25(1), applicable with respect to amounts paid or credited after February 19, 1973. Para. 212(1)(e) formerly read:

(e) a timber royalty (which, for the purposes of this Part, includes any consideration for a right under or pursuant to which a right to cut or take timber from a timber limit in Canada is obtained or derived, to the extent that such consideration is dependent upon, or computed by reference to, the amount of timber cut or taken);

Regulations: 202(1)(e) (information return).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(f) [Repealed]

History: Para. 212(1)(f) repealed by 1997, c. 25, s. 63, applicable to amounts paid and credited after April 1997. Para. (f) formerly read:

> (f) alimony [or support] — alimony or other payment for the support of the non-resident person, children of the non-resident person or both the non-resident person and children of the non-resident person that would, under paragraph 56(1)(b), (c) or (c.1), be included in computing the non-resident person's income if the non-resident person were resident in Canada;

Pre-RSC History: Para. 212(1)(f) substituted by 1984, c. 1, subsec. 98(1). Para. (f) formerly read:

> (f) alimony or other payment for the support of a spouse or former spouse, children of the marriage, or both the spouse and children of the marriage;

(g) **patronage dividend** — a patronage dividend, that is, a payment made pursuant to an allocation in proportion to patronage as defined by section 135 or an amount that would, under subsection 135(7), be included in computing the non-resident person's income if that person were resident in Canada;

Related Provisions: See Related Provisions at beginning of subsec. 212(1).

Regulations: 202(1)(g) (information return).

Interpretation Bulletins: IT-362R: Patronage dividends. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(h) **pension benefits** — a payment of a superannuation or pension benefit, other than

(i), (ii) [Repealed]

(iii) an amount or payment referred to in subsection 81(1) to the extent that that amount or payment would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing that person's income,

(iii.1) the portion of the payment that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan, registered retirement savings plan or registered retirement income fund and that

(A) because of subsection 146(21) or 147.3(9) would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing the non-resident person's income, or

(B) by reason of paragraph 60(j) or (j.2) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the non-resident person's income for the year,

(iii.2) an amount referred to in paragraph 110(1)(f) to the extent that the amount would, if the non-resident person had been resident in Canada throughout the taxation year in which the amount was paid, be deductible in computing that person's taxable income or that of the spouse of that person,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(iv) in the case of a payment described in section 57, that portion of the payment that would, by virtue of that section, not be included in the recipient's income for the taxation year in which it was received, if the recipient were resident in Canada throughout that year, or

(iv.1) the portion of the payment that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to acquire an annuity contract in circumstances to which subsection 146(21) applies,

except such portion, if any, of the payment as may reasonably be regarded as attributable to services rendered by the person, to or in respect of whom the payment is made, in taxation years

(v) during which the person at no time was resident in Canada, and

(vi) throughout which the person was not employed, or was only occasionally employed, in Canada;

Related Provisions: 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(a)(viii), (g) — No deemed disposition of pension rights on emigration; 180.2(2)B — Reduction in OAS clawback to reflect non-resident withholding tax; 180.2(4)(b)(ii), 180.2(5)(a)(ii) — No OAS benefits paid to non-resident who has not filed return; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax; 252(4)(a) — Extended meaning of "spouse"; Canada-U.S. tax treaty, Art. XVIII — Pensions and annuities. See additional Related Provisions at beginning of subsec. 212(1).

History: Subparas. 212(1)(h)(i) and (ii) repealed by 1996, c. 21, s. 55, applicable to payments made after 1995. Subparas. (h)(i) and (ii) formerly read:

> (i) a pension or supplement under the *Old Age Security Act* or a similar payment under a law of a province,
>
> (ii) a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

Cl. 212(1)(h)(iii.1)(A) substituted by 1994, c. 21, subsec. 97(2), applicable to payments made after August 1992. That cl. formerly read:

> (A) by reason of subsection 147.3(9) would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing the non-resident person's income, or

Subpara. 212(1)(h)(iv.1) added by 1994, c. 21, subsec. 97(3), applicable to payments made after August 1992.

That portion of subpara. 212(1)(h)(iii.1) preceding cl. (A) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 123(3), applicable to payments made after August 29, 1990. Subpara. (iii.1) formerly read:

> (iii.1) that portion of the payment that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan or registered retirement savings plan and that

Pre-RSC History: Subpara. 212(1)(h)(iii.1) substituted by 1990, c. 35, subsec. 23(1), applicable with respect to payments made after June 27, 1990. Subpara. (iii.1) formerly read:

> (iii.1) the portion thereof that is transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form to a registered pension plan or to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by section 146),

Subpara. 212(1)(h)(iii.1) amended by 1990, c. 35, s. 29, to substitute "registered pension plan" for "registered pension fund or plan", applicable after 1985.

Subpara. 212(1)(h)(vi) amended to substitute "throughout" for "during" by 1985, c. 45, subsec. 110(1), applicable with respect to payments made after 1983.

Subparas. 212(1)(h)(iii.1), (iii.2) added by 1980-81-82-83, c. 140, subsec. 118(5), applicable with respect to payments made after 1980, except that in its application to payments made before the day that is 60 days after March 30, 1983, subpara. 212(1)(h)(iii.1) shall be read without reference to the expression "pursuant to an authorization in prescribed form".

All that portion of para. 212(1)(h) following subpara. (iv) substituted by 1980-81-82-83, c. 48, subsec. 98(2), applicable with respect to payments made after 1979. That portion formerly read:

except such portion, if any, of the payment as may reasonably be regarded as attributable to services rendered by the person, to or in respect of whom the payment is made, in taxation years at no time during which he was resident or employed in Canada;

Selected Cases [para. 212(1)(h)]: *Nanne v. R.*, [2000] 1 C.T.C. 2776, [2000] 1 C.T.C. 3002 (TCC) (Hockey players only ocasionally employed in Canada; frequency not affected by predictability or regularity; no withholding tax on pension payments); *The Queen v. Sun Life Assurance of Canada*, [1980] C.T.C. 418 (FCA) (Employee pension plan amounts transferred to trustee of U.S. subsidiary's plan in respect of relocated employees taxable); *The Queen v. Cruikshank*, [1977] C.T.C. 344 (FCTD) ("Pension" in Canada-France Tax Convention includes "superannuation or pension benefit" under *Income Tax Act*).

Regulations: 202(2)(a) (information return).

Interpretation Bulletins: IT-76R2: Exempt portion of pension when employee has been a non-resident; IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-397R: Amounts excluded from income — statutory exemptions and certain pensions, allowances and compensations; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity. See also at beginning of 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(i) [Repealed under former Act]

Pre-RSC History: Para. 212(1)(i) repealed by 1976-77, c. 4, subsec. 71(4), applicable in respect of all payments made after 1974. Para. 212(1)(i) formerly read:

(i) *Canada Pension Plan* benefits — a payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, except to the extent of the lesser of

(i) the amount of the payment, and

(ii) the amount, if any, by which $1,290 exceeds the aggregate of all such payments made to the non-resident person

(A) in the year in which the payment was made, and

(B) before the payment was made;

(j) **benefits** — any benefit described in any of subparagraphs 56(1)(a)(iii) to (vi), any amount described in paragraph 56(1)(x) or (z) (other than an amount transferred under circumstances in which subsection 207.6(7) applies) or the purchase price of an interest in a retirement compensation arrangement;

Related Provisions: 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(a)(ix), (h) — No deemed disposition of rights on emigration; 214(3)(b.1) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(j) amended by 1998, c. 19, subsec. 216(1), applicable to amounts paid or credited after 1995. Para. 212(1)(j) formerly read:

(j) benefits — any benefit described in any of subparagraphs 56(1)(a)(iii) to (vi), any amount described in paragraph 56(1)(x) or (z) or the purchase price of an interest in a retirement compensation arrangement;

Pre-RSC History: Para. 212(1)(j) substituted by 1987, c. 46, subsec. 63(2), applicable with respect to amounts paid or credited after March 27, 1987. Para. 212(1)(j) formerly read:

(j) benefits — a payment of any benefit described in any of subparagraphs 56(1)(a)(iii) to (vi);

Para. 212(1)(j) substituted by 1980-81-82-83, c. 140, subsec. 118(6) applicable with respect to amounts paid in respect of any termination of an office or employment after November 12, 1981, and, with respect to amounts received in respect of any termination of an office or employment before November 13, 1981, the reference therein to "benefit" shall be deemed to include a termination payment in respect of such a termination. Para. 212(1)(j) formerly read:

(j) retiring allowances, etc. — a payment of any allowance or benefit described in any of subparagraphs 56(1)(a)(ii) to (viii);

Para. 212(1)(j) substituted by 1979, c. 5, subsec. 61(1), applicable in respect of amounts paid or credited after February 28, 1979, to substitute "(viii)" for "(vii)".

Para. 212(1)(j) substituted by 1976-77, c. 4, subsec. 71(5), applicable in respect of amounts paid or credited after May 25, 1976, to substitute "(vii)" for "(vi)".

Regulations: 202(2)(b) (information return).

Interpretation Bulletins: IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(j.1) **retiring allowances** — a payment of any allowance described in subparagraph 56(1)(a)(ii), except

(i) such portion, if any, of the payment as may reasonably be regarded as attributable to services rendered by the person, to or in respect of whom the payment is made, in taxation years

(A) during which the person at no time was resident in Canada, and

(B) throughout which the person was not employed, or was only occasionally employed, in Canada, and

(ii) the portion of the payment transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form to a registered pension plan or to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by subsection 146(1)) that would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the income of the non-resident person by virtue of paragraph 60(j.1);

Related Provisions: 128.1(4)(b)(iii)) [to be repealed], 128.1(10)"excluded right or interest"(d) — No deemed disposition of right to retiring allowance on emigration; 215(5) — Regulations reducing deduction or withholding; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of subsec. 212(1).

Pre-RSC History: Para. 212(1)(j.1) substituted by 1985, c. 45, subsec. 110(2), applicable with respect to payments made after 1983. Para. 212(1)(j.1) formerly read:

(j.1) retiring allowances — a payment of any allowance described in subparagraph 56(1)(a)(ii) except the portion thereof transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form to a registered pension fund or plan or to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by section 146) that would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing his income by virtue of paragraph 60(j.1);

Para. 212(j.1) added by 1980-81-82-83, c. 140, subsec. 118(6), applicable with respect to payments made after 1980, except that

(a) in its application to payments made before 1982, the reference to "paragraph 60(j.1)" shall be read as a reference to "paragraph 60(j) or (j.1)"; and

(b) in its application to payments made before the day that is 60 days after March 30, 1983, it shall be read without reference to the expression "pursuant to an authorization in prescribed form".

Regulations: 202(2)(b) (information return).

Interpretation Bulletins: IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-337R3: Retiring allowances; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity. See also at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(k) **supplementary unemployment benefit plan payments** — a payment by a trustee under a registered supplementary unemployment benefit plan;

Related Provisions: 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(a)(xi) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of 212(1).

Regulations: 202(2)(c) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(l) **registered retirement savings plan payments** — a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146 to be included in computing the income of the non-resident person for the year, other than the portion thereof that

(i) has been transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form

(A) to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by subsection 146(1)),

(B) to acquire an annuity described in subparagraph 60(l)(ii) under which the non-resident person is the annuitant, or

(C) to a carrier (within the meaning assigned by subsection 146.3(1)) as consideration for a registered retirement income fund under which the non-resident person is the annuitant (within the meaning assigned by subsection 146.3(1)), and

(ii) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the income of the non-resident person for the year by virtue of paragraph 60(l);

Related Provisions: 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(a)(i) — No deemed disposition of rights on emigration; 146(16) — RRSP — deduction on transfer of funds; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(c) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax; Canada-U.S. tax treaty, Art. XXIX:5 — Election for income accruing in RRSP not to be taxed until paid out; *Income Tax Conventions Interpretation Act* 5.1 — Definition of "pension" for tax treaty purposes. See additional Related Provisions at beginning of subsec. 212(1).

Pre-RSC History: Cl. 212(1)(l)(i)(C) added by 1990, c. 35, subsec. 23(2), applicable with respect to payments made after June 27, 1990.

Para. 212(1)(l) substituted by 1980-81-82-83, c. 140, subsec. 118(7), applicable with respect to payments made after 1980, except that with respect to payments made before March 30, 1983 the para. shall be read without reference to the phrase "pursuant to an authorization in prescribed form". Para. 212(1)(l) formerly read:

(l) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146 to be included in computing his income for the year;

Para. 212(1)(l) substituted by 1974-75-76, c. 26, subsec. 118(6), applicable in respect of amounts paid or credited after November 18, 1974. Para. 212(1)(l) formerly read:

(l) a payment under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146 to be included in computing his income for the year;

Para. 212(1)(l) substituted by 1973-74, c. 30, subsec. 25(2), applicable with respect to amounts paid or credited after February 19, 1973. Para. (l) formerly read:

(l) a payment under a registered retirement savings plan that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146 to be included in computing his income for the year;

Regulations: 202(2)(d) (information return).

Interpretation Bulletins: IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-500R: RRSPs — death of an annuitant. See also list at end of s. 212.

Information Circulars: 72-22R9: Registered retirement savings plans; 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity. See also at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(m) **deferred profit sharing plan payments** — a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 147, if it were read without reference to subsections 147(10.1) and (20), to be included in computing the non-resident person's income for the year, other than the portion thereof that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan or registered retirement savings plan and that

(i) by reason of subsection 147(20) would not, if the non-resident person had been resident in Canada throughout the year, be included in computing the non-resident person's income, or

(ii) by reason of paragraph 60(j.2) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the non-resident person's income for the year;

Related Provisions: 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(a)(iv) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(d) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of subsec. 212(1).

Pre-RSC History: Para. 212(1)(m) substituted by 1990, c. 35, subsec. 23(3), applicable with respect to payments made after 1988, except that with respect to payments made before June 28, 1990 the reference in subpara. (m)(ii) to "paragraph 60(j.2)" shall be read as a reference to "paragraph 60(j)". Para. 212(1)(m) formerly read:

(m) a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 147, if it were read without reference to subsection (10.1) thereof, to be included in computing his income for the year (excluding the portion thereof that has been transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form to a registered pension plan or to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by section 146) and that would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing his income for the year by virtue of paragraph 60(j));

Para. 212(1)(m) substituted by 1980-81-82-83, c. 140, subsec. 118(7), applicable with respect to payments made after 1980, except that, with respect to payments made before March 30, 1983, the para. shall be read without reference to the phrase "pursuant to an authorization in prescribed form". Para. 212(1)(m) formerly read:

> (m) a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan" that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 147, if it were read without reference to subsection (10.1) thereof, to be included in computing his income for the year;

Para. 212(1)(m) substituted by 1973-74, c. 30, subsec. 25(2), applicable with respect to amounts paid or credited after February 19, 1973. Para. 212(1)(m) formerly read:

> (m) a payment under a deferred profit sharing plan that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 147 to be included in computing his income for the year;

Regulations: 202(2)(e) (information return).

Interpretation Bulletins: IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity. See also at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

> (n) **income-averaging annuity contract payments** — a payment under an income-averaging annuity contract, any proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract, or any amount deemed by subsection 61.1(1) to have been received by the non-resident person as proceeds of the disposition of an income-averaging annuity contract;

Related Provisions: 61 — IAACs; 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(f)(ii) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(b) — Deemed payments. See additional Related Provisions at beginning of 212(1).

Pre-RSC History: Para. 212(1)(n) substituted by 1976-77, c. 4, subsec. 76(6), applicable in respect of amounts paid or credited after May 25, 1976, to substitute "61.1(1)" for "61(3)".

Selected Cases [para. 212(1)(n)]: *Scott Estate v. The Queen*, [1988] 1 C.T.C. 45 (FCTD) ("Life annuity" in Canada-U.S. Tax Convention does not include amounts for termination of income-averaging annuity contract).

Regulations: 202(2)(f) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

> (o) **other annuity payments** — a payment under an annuity contract (other than a payment in respect of an annuity issued in the course of carrying on a life insurance business in a country other than Canada) to the extent of the amount in respect of the interest of the non-resident person in the contract that, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made,
>
> (i) would be required to be included in computing the income of the non-resident person for the year, and
>
> (ii) would not be deductible in computing that income;

Related Provisions: 56(1)(d) — Annuity payments required to be included in income of resident; 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(f)(i) — No deemed disposition of rights on emigration; 240(1) — Taxable and non-taxable obligations defined. See additional Related Provisions at beginning of 212(1).

Pre-RSC History: Para. 212(1)(o) substituted by 1980-81-82-83, c. 140, subsec. 118(8), applicable with respect to amounts paid or credited after November 12, 1981. Para. 212(1)(o) formerly read:

> (o) an annuity payment not described in any other paragraph of this subsection, to the extent of the portion thereof that, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made,
>
> (i) would be required to be included in computing his income for the year, and
>
> (ii) would not be deductible in computing that income;

Regulations: 202(2)(g) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

> (p) **payments from RHOSP** — a payment out of or under a fund, plan or trust that was at the end of 1985 a registered home ownership savings plan (within the meaning assigned by paragraph 146.2(1)(h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1985 taxation year), other than
>
> (i) the portion of the payment that is a refund of an excess described in paragraph 146.2(7)(a) of that Act (as it read in its application to the 1985 taxation year) made on or before April 30, 1986, and
>
> (ii) the portion of the payment that can reasonably be considered to be income of the fund, plan or trust after 1985;

Related Provisions: 128.1(4)(b)(iii) [to be repealed] — No deemed disposition of rights on emigration; 214(3)(g) — Deemed payments. See additional Related Provisions at beginning of 212(1).

Pre-RSC History: Para. 212(1)(p) substituted by 1986, c. 6, subsec. 116(5), applicable to amounts paid or credited after 1985. Para. 212(1)(p) formerly read:

> (p) registered home ownership savings plan — a payment out of or under a registered home ownership savings plan, other than that portion of a refund made within 120 days after the end of the taxation year to which the refund relates that is the excess described in paragraph 146.2(7)(a);

Para. 212(1)(p) substituted by 1980-81-82-83, c. 40, s. 99, in force December 1, 1980. Para. 212(1)(p) formerly read:

> (p) a payment from a trust governed by a registered home ownership savings plan other than that portion of a refund made within 120 days after the end of the taxation year to which the refund relates that is the excess described in paragraph 146.2(7)(a);

Para. 212(1)(p) substituted by 1977-78, c. 1, subsec. 92(6), applicable to 1977 *et seq.* Para. 212(1)(p) formerly read:

> (p) a payment from a trust governed by a registered home ownership savings plan.

Para. 212(1)(p) added by 1974-75-76, c. 26, subsec. 118(7), applicable to 1974 *et seq.*

Regulations: 202(2)(h) (information return).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

> (q) **registered retirement income fund payments** — a payment out of or under a registered retirement income fund that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be re-

quired by section 146.3 to be included in computing the non-resident person's income for the year, other than the portion thereof that

(i) has been transferred by the payer on behalf of the non-resident person pursuant to an authorization in prescribed form

(A) to a registered retirement savings plan under which the non-resident person is the annuitant (within the meaning assigned by subsection 146(1)),

(B) to acquire an annuity described in subparagraph 60(l)(ii) under which the non-resident person is the annuitant, or

(C) to a carrier (within the meaning assigned by subsection 146.3(1)) as consideration for a registered retirement income fund under which the non-resident person is the annuitant (within the meaning assigned by subsection 146.3(1)), and

(ii) would, if the non-resident person had been resident in Canada throughout the year, be deductible in computing the non-resident person's income for the year by reason of paragraph 60(l);

Related Provisions: 128.1(4)(b)(iii) [to be repealed], 128.1(10)"excluded right or interest"(a)(ii) — No deemed disposition of rights on emigration; 212(13)(e) — Payment by non-resident deemed made by resident of Canada; 214(3)(i) — Deemed payments; 215(5) — Regulations reducing amount to be deducted or withheld; 217 — Election to pay tax under Part I instead of withholding tax. See additional Related Provisions at beginning of 212(1).

Pre-RSC History: Para. 212(1)(q) substituted by 1990, c. 35, subsec. 23(4), applicable with respect to payments made after June 27, 1990. Para. 212(1)(q) formerly read:

(q) registered retirement income fund — a payment out of or under a registered retirement income fund that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146.3 to be included in computing his income for the year;

Para. 212(1)(q) added by 1977-78, c. 32, subsec. 48(2).

Regulations: 202(2)(i) (information return).

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada. See also list at end of s. 212.

Information Circulars: 79-8R3: Forms to use to directly transfer funds to or between plans, or to purchase an annuity. See also at beginning of subsec. 212(1).

Forms: NRTA1: Authorization for non-resident tax exemption. See also at beginning of subsec. 212(1).

(r) **registered education savings plan** — a payment that is

(i) required by paragraph 56(1)(q) to be included in computing the non-resident person's income under Part I for a taxation year, and

(ii) not required to be included in computing the non-resident person's taxable income or taxable income earned in Canada for the year;

Related Provisions: 214(3)(j) — Deemed payments. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(r) amended by 1998, c. 19, s. 62, applicable to amounts paid or credited after February 28, 1979. Para. 212(1)(r) formerly read:

(r) a payment in respect of a registered education savings plan that would, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be required by section 146.1 to be included in computing the person's income for the year;

Pre-RSC History: Para. 212(1)(r) added by 1979, c. 5, subsec. 61(2), applicable in respect of amounts paid or credited after February 28, 1979.

Regulations: 202(2)(j) (information return).

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(s) **home insulation or energy conversion grants** — a grant under a prescribed program of the Government of Canada relating to home insulation or energy conversion;

Related Provisions: See Related Provisions at beginning of subsec. 212(1).

Pre-RSC History: Para. 212(1)(s) added by 1980-81-82-83, c. 48, subsec. 98(3), applicable with respect to grants paid or credited after 1980.

Regulations: 202(2)(k) (information return).

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(t) **NISA Fund No. 2 payments** — a payment out of a NISA Fund No. 2 to the extent that that amount would, if Part I applied, be required by subsection 12(10.2) to be included in computing the person's income for a taxation year;

Related Provisions: 128.1(10)"excluded right or interest"(i) — No deemed disposition on emigration; 214(3)(l) — Deemed payments. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(t) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 123(4), applicable to payments made after 1990.

Regulations: 202(2.1) (information return).

Information Circulars: See at beginning of subsec. 212(1).

Forms: See at beginning of subsec. 212(1).

(u) **amateur athlete trust payments** — a payment in respect of an amateur athlete trust that would, if Part I applied, be required by section 143.1 to be included in computing the person's income for a taxation year; or

Related Provisions: 214(3)(k) — Deemed payments. See additional Related Provisions at beginning of subsec. 212(1).

History: Para. 212(1)(u) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 123(4), applicable to payments made after 1991.

Information Circulars: See at beginning of subsec. 212(1).

(v) **payments under an eligible funeral arrangement** — a payment made by a custodian (within the meaning assigned by subsection 148.1(1)) of an arrangement that was, at the time it was established, an eligible funeral arrangement, to the extent that such amount would, if the non-resident person were resident in Canada, be included because of subsection 148.1(3) in computing the person's income.

Related Provisions: 212(13)(e) — Payment by non-resident deemed made by resident of Canada.

History: Para. 212(1)(v) added by 1995, c. 21, subsec. 64(1), applicable to amounts paid or credited after October 21, 1994.

Regulations: 202(2)(m) (information return); 204(3)(d.1) (cemetery care trust need not file T3 return).

Information Circulars: IT-531: Eligible funeral arrangements. See at beginning of subsec. 212(1).

Related Provisions, I.T. Application Rules, Information Circulars, I.T Technical News, Forms — subsec. 212(1): See at beginning of subsec. 212(1), before para. (a).

(2) Tax on dividends — Every non-resident person shall pay an income tax of 25% on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I or Part XIV to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of,

(a) a taxable dividend (other than a capital gains dividend within the meaning assigned by subsection 130.1(4), 131(1) or 133(7.1)), or

(b) a capital dividend.

Related Provisions: 40(3.7) — Stop-loss rule where non-resident has received dividends; 84 — Deemed dividends; 128.1(1)(c.1) — Deemed dividend to non-resident corporation before it becomes resident in Canada; 139.1(4)(f)(ii) — Dividend deemed received on demutualization of insurance corporation; 212(1)(c)(ii) — Estate or trust income derived from capital dividend; 212.1, 212.2 — Deemed dividends on surplus strips by non-resident; 213(1) — Where tax not payable; 214(1) — No deductions; 214(3)(a) — Deemed payments; 214(12) — Application of subsec. 214(2); 215(1), (1.1) — Requirement to withhold and remit; 219 — Branch tax; 227(10), (10.1) — Assessment; 250(5) — Anti-avoidance rule re corporate residence; 257 — Formula cannot calculate to less than zero; Canada-U.S. tax treaty, Art. X — Taxation of dividends.

Pre-RSC History: Subsec. 212(2) amended by 1986, c. 6, subsec. 116(6), to repeal paras. (b.1), (c), applicable with respect to stock dividends paid after May 23, 1985 other than such dividends declared on or before that day and with respect to life insurance capital dividends paid after May 23, 1985. Paras. 212(2)(b.1), (c) formerly read:

> (b.1) a life insurance capital dividend, or
>
> (c) where the corporation is a public corporation, a stock dividend (other than a dividend referred to in paragraph (a)) paid by the corporation (other than any such stock dividend paid in shares of the same class of the capital stock of the corporation as that on which the stock dividend was paid).

Para. 212(2)(b.1) added by 1980-81-82-83, c. 140, subsec. 118(9), applicable with respect to dividends paid or credited after June 28, 1982.

All that portion of subsec. 212(2) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 98(4), to add reference to Part XIV, applicable after December 11, 1979.

Subsec. 212(2) substituted by 1979, c. 5, subsec. 61(3), applicable in respect of dividends paid after November 16,1978. Subsec. 212(2) formerly read:

> (2) Every non-resident person shall pay an income tax of 25% on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I to pay or credit, to him as, on account or in lieu of payment of, or in satisfaction of a taxable dividend (other than a capital gains dividend within the meaning assigned by subsection 130.1(4), 131(1) or 133(7.1)) or a capital dividend.

Subsec. 212(2) substituted by 1973-74, c. 49, subsec. 18(4), to add reference to subsec. 130.1(4).

Selected Cases [subsec. 212(2)]: *Placements Serco Ltée v. The Queen*, [1988] 1 C.T.C. 213 (FCA) ("Dividend" includes deemed dividend); *The Queen v. Canada Southern Railway Co.*, [1986] 1 C.T.C. 284 (FCA); leave to appeal to SCC refused (1986), 71 N.R. 402 (note), (sub nom. *Can. Southern Railway Co. v. Canada)* (Dividends reduced by agreement taxable to shareholder/lessee of rolling stock); *Hunter Douglas Ltd. v. The Queen*, [1979] C.T.C. 424 (FCTD) (By virtue of Canada-Netherlands Tax Convention, no withholding tax on dividends to non-residents); *Bendix Automotive of Canada Ltd. v. The Queen*, [1978] C.T.C. 194 (FCA) (Exchange value was basis of withholding tax on share dividend to non-resident); *Deltona Corporation v. MNR*, [1973] C.T.C. 215 (SCC) (Dividend paid to non-residents subject to withholding tax); *Zehnder & Co. v. MNR*, [1970] C.T.C. 85 (Exch.) (Dividends paid to non-resident shareholders subject to withholding tax where company resident under general tests of residency).

Regulations: 202(1)(g) (information return); 805 (where no withholding tax).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-96R6: Options granted by corporations to acquire shares, bonds, or debentures and by trusts to acquire trust units; IT-119R4: Debts of shareholders and certain persons connected with shareholders; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-430R3: Life insurance proceeds received by a private corporation or a partnership as a consequence of death; IT-465R: Non-resident beneficiaries of trusts; IT-468R: Management or administration fees paid to non-residents. See also list at end of s. 212.

Information Circulars: 77-16R4: Non-resident income tax; 88-2 Supplement, para. 7: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms: NR2-UK: Statement of amounts paid to non-residents of Canada; NR2A-UK: Statement of amounts paid to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4-OAS: Statement of OAS pension paid or credited to non-residents of Canada; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T4061: Non-resident withholding tax guide.

(3) Replacement obligations — For the purpose of subparagraph (1)(b)(vii), an obligation (in this subsection referred to as the "replacement obligation") issued by a corporation resident in Canada wholly or in substantial part and either directly or indirectly in exchange or substitution for an obligation or a part of an obligation (in this subsection referred to as the "former obligation") shall, where

(a) the replacement obligation was issued

(i) as part of a proposal to, or an arrangement with, its creditors that was approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, because of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on the former obligation,

(b) the proceeds from the issue of the replacement obligation can reasonably be regarded as having been used by the issuing corporation or another corporation with which it does not deal at arm's length in the financing of its active business carried on in Canada immediately before the time when the replacement obligation was issued, and

(c) all interest on the former obligation was (or would be, if the person to whom that interest was paid or credited were non-resident) exempt from tax under this Part because of subparagraph (1)(b)(vii),

be deemed to have been issued when the former obligation was issued.

History: Subsec. 212(3) added by 1994, c. 21, subsec. 97(4), applicable to replacement obligations issued after June 1993.

Pre-RSC History [former subsec. 212(3)]: Subsec. 212(3) repealed by 1980-81-82-83, c. 140, subsec. 118(10), applicable with respect to dividends paid after November 12, 1981, other than dividends declared and payable on or before that date and dividends declared on or before that date and payable after that date to persons who were shareholders of record on or before that date. Subsec. 212(3) formerly read:

> (3) Where degree of Canadian ownership — Notwithstanding subsection (2), where the corporation referred to in that subsection has a degree of Canadian ownership in the taxation year of the corporation during which the dividend is so paid or credited to the non-resident person referred to therein, the tax payable by the non-resident person on the amount referred to therein is the percentage of that amount that is equal to the percentage at which the non-resident person would otherwise be taxed on that amount by virtue of subsection (2) and any other law of Canada other than this Act, minus 5% of that amount.

Interpretation Bulletins: IT-361R3: Exemption from Part XIII tax on interest payments to non-residents.

(4) Interpretation of "management or administration fee or charge" — For the purpose of paragraph (1)(a), "management or administration fee or charge" does not include any amount paid or credited or deemed by Part I to have been paid or credited to a non-

resident person as, on account or in lieu of payment of, or in satisfaction of,

(a) a service performed by the non-resident person if, at the time the non-resident person performed the service

(i) the service was performed in the ordinary course of a business carried on by the non-resident person that included the performance of such a service for a fee, and

(ii) the non-resident person and the payer were dealing with each other at arm's length, or

(b) a specific expense incurred by the non-resident person for the performance of a service that was for the benefit of the payer,

to the extent that the amount so paid or credited was reasonable in the circumstances.

Selected Cases [subsec. 212(4)]: *Peter Cundill & Associates Ltd. v. Canada*, [1991] 2 C.T.C. 221 (FCA) (Fees paid by Canadian corporation to Bermuda subsidiary taxable, not at arm's length since both corporations controlled by same "mind"); *Windsor Plastic Products Ltd. v. The Queen*, [1986] 1 C.T.C. 331 (FCTD) (Withholding tax payable where management company not dealing at arm's length).

Interpretation Bulletins: IT-468R: Management or administration fees paid to non-residents. See also list at end of s. 212.

(5) Motion picture films — Every non-resident person shall pay an income tax of 25% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of, payment for a right in or to the use of

(a) a motion picture film, or

(b) a film, video tape or other means of reproduction for use in connection with television (other than solely in connection with and as part of a news program produced in Canada),

that has been or is to be used or reproduced in Canada.

Related Provisions: 212(1)(d) — Withholding tax — royalties; 214(1) — No deduction; 215(1) — Requirement to withhold and remit.

Pre-RSC History: Para. 212(5)(b) substituted by 1988, c. 55, subsec. 161(5), applicable with respect to amounts paid or credited after 1985, except that in its application with respect to amounts paid or credited after 1985 and before 1989, para. 212(5)(b) shall be read as follows:

(b) a film or video tape for use in connection with television (other than solely in connection with and as part of a news program produced in Canada),

Para. 212(5)(b) formerly read:

(b) a film or video tape for use in connection with television

Subsec. 212(5) substituted by 1973-74, c. 14, subsec. 68(1), applicable with respect to amounts paid or credited after 1971.

Selected Cases [subsec. 212(5)]: *CBS/Fox Co. v. Canada*, [1996] 1 C.T.C. 3 (FCTD) (Motion picture film includes video tape); *MCA Television Ltd. v. Canada*, [1994] 2 C.T.C. 148 (FCTD) (Motion picture films did not include films for television purposes under Canada-US Tax Convention); *Twentieth Century Fox Film Corp. v. The Queen*, [1985] 2 C.T.C. 328 (FCTD) (Payments by Canadian branch for right to use motion picture not subject to withholding tax where included in non-resident's income from business in Canada); *Vauban Productions v. The Queen*, [1979] C.T.C. 262 (FCA) (Payments for lease of rights to use motion picture subject to withholding tax).

Regulations: 202(1)(h) (information return).

Forms: NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4 Supp: Statement of amounts paid or credited to non-residents of Canada.

(6) Interest on provincial bonds from wholly-owned subsidiaries — Where an amount described by subsection (1) relates to interest on bonds or other obligations of or guaranteed by Her Majesty in right of a province or interest on bonds or other obligations provision for the payment of which was made by a statute of a provincial legislature, the tax payable under subsection (1) is 5% of that amount.

Related Provisions: 212(7) — Application of subsec. 212(6); 240(1) — Taxable and non-taxable obligations defined.

(7) Where subsec. (6) does not apply — Subsection (6) does not apply to interest on any bond or other obligation described therein that was issued after December 20, 1960, except any such bond or other obligation for the issue of which arrangements were made on or before that day with a dealer in securities, if the existence of the arrangements for the issue of the bond or other obligation can be established by evidence in writing given or made on or before that day.

Related Provisions: 212(8) — Bonds issued in exchange for earlier bonds.

(8) Bonds issued after December 20, 1960 in exchange for earlier bonds — For the purposes of this Part, where any bond, except a bond to which clause (1)(b)(ii)(C) applies, was issued after December 20, 1960 in exchange for a bond issued on or before that day, it shall, if the terms on which the bond for which it was exchanged was issued conferred on the holder thereof the right to make the exchange, be deemed to have been issued on or before December 20, 1960.

Interpretation Bulletins: IT-360R2: Interest payable in a foreign currency. See also list at end of s. 212.

(9) Exemptions — Where

(a) a dividend or interest is received by a trust from a non-resident-owned investment corporation,

(b) an amount (in this subsection referred to as the "royalty payment") is received by a trust as, on account of, in lieu of payment of or in satisfaction of, a royalty on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work, or

(c) interest is received by a mutual fund trust maintained primarily for the benefit of non-resident persons

and a particular amount is paid or credited to a non-resident person as income of or from the trust and can reasonably be regarded as having been derived from the dividend, interest or royalty payment, as the case may be, no tax is payable because of paragraph (1)(c) as a consequence of the payment or crediting of the particular amount if no tax would have been payable under this Part in respect of the dividend, interest or royalty payment, as the case may be, if it had been paid directly to the non-resident person instead of to the trust.

Related Provisions: 104(10) — Where property owned for non-residents; 104(11) — Dividend received from non-resident-owned investment corporation.

History: Subsec. 212(9) amended by 1998, c. 19, subsec. 216(2), applicable to amounts paid or credited after April 1995 to non-resident persons. Subsec. 212(9) formerly read:

(9) No tax is payable under paragraph (1)(c) on an amount paid or credited to a non-resident person as income of or from a trust if it may reasonably be regarded as having been derived from

(a) dividends or interest received by the trustee from a non-resident-owned investment corporation, or

(b) amounts received as, on account or in lieu of payment of, or in satisfaction of a royalty on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work,

on which no tax would have been payable under this Part if they had been paid by the non-resident-owned investment corporation or per-

son paying the amounts in respect of copyright to the non-resident person instead of to the trustee.

Pre-RSC History: Para. 212(9)(b) substituted by 1977-78, c. 1, subsec. 92(7), applicable with respect to amounts received after March 31, 1977. Para. 212(9)(b) formerly read:

(b) amounts received in respect of copyright in a book, music, an article in a periodical, a newspaper syndicated article, picture, comics or any other newspaper or periodical feature used or to be used in Canada.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts. See also list at end of s. 212.

(10) Trust beneficiaries residing outside of Canada — Where all the beneficiaries of a trust established before 1949 reside, during a taxation year, in one country other than Canada and all amounts included in computing the income of the trust for the taxation year were received from persons resident in that country, no tax is payable under paragraph (1)(c) on an amount paid or credited in the taxation year to a beneficiary as income of or from the trust.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts. See also list at end of s. 212.

(11) Payment to beneficiary as income of trust — An amount paid or credited by a trust or an estate to a beneficiary or other person beneficially interested therein shall be deemed, for the purpose of paragraph (1)(c) and without limiting the generality thereof, to have been paid or credited as income of the trust or estate, regardless of the source from which the trust or estate derived it.

Related Provisions: 107(5) — Distribution to non-resident; 248(25) — Meaning of "beneficially interested".

History: Subsec. 212(11) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 174(3), applicable to amounts paid or credited after July 13, 1990. Subsec. 212(11) formerly read:

(11) Where an amount has been paid or credited by a trust or estate to a beneficiary or other person beneficially interested therein (otherwise than on a distribution or payment of capital), it shall, regardless of the source from which the trust or estate derived it, be deemed, for the purpose of paragraph (1)(c) and without limiting the generality that paragraph, to have been paid or credited as income of the trust or estate.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts. See also list at end of s. 212.

(11.1) [Repealed under former Act]

Pre-RSC History: Subsec. 212(11.1) repealed by 1988, c. 55, subsec. 161(6), applicable to distributions by a trust in its 1988 and subsequent taxation years. Subsec. 212(11.1) formerly read:

(11.1) Idem — Such portion of,

(a) where subsection 104(8) is applicable with respect to a particular trust, the amount, if any, referred to in paragraph (e) thereof, or

(b) where subsection 104(8) is not applicable with respect to a particular trust, the amount, if any, by which the aggregate of all amounts each of which is an amount described in subsection 104(13) exceeds the amount deductible pursuant to subsection 104(6)

as

(c) may reasonably be considered to be part of the amount that was paid or credited to a particular beneficiary under the trust as income of or from the trust for a taxation year, and

(d) was not designated by the trust in respect of any other beneficiary of the trust

shall, if so designated by the trust in respect of the particular beneficiary in the trust's return of income for the year under Part I, be deemed, for the purposes of paragraph (1)(c), not to have been paid or credited in the year to the particular beneficiary.

Para. 212(11.1)(a) amended to substitute the reference to "paragraph (e)" for "paragraph (d)" by 1984, c.1, subsec. 98(2), applicable after November 12, 1981.

Subsec. 212(11.1) substituted by 1980-81-82-83, c. 140, subsec. 118(11), applicable after November 12, 1981. Subsec. 212(11.1) formerly read:

(11.1) Such portion of the amount, if any, by which

(a) the aggregate of all amounts each of which is

(i) such part of the amount that would be the income of a trust for the taxation year if no deduction were made under subsection 20(16), 104(6) or (12) or under regulations made under paragraph 20(1)(a) that is payable in the year to a beneficiary under the trust, or

(ii) an amount paid by the trust in the taxation year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

exceeds

(b) the amount deductible under subsection 104(6) by the trust in computing its income for the taxation year

as may reasonably be considered to be part of the amount that was paid or credited to a particular designated beneficiary under the trust as income of or from the trust for the year, and as was not designated by the trust in respect of any other designated beneficiary thereunder, shall, if so designated by the trust in respect of the particular designated beneficiary in the return of its income for the year under Part I, be deemed, for the purposes of paragraph (1)(c), not to have been paid or credited in the year to the designated beneficiary.

Subpara. 212(11.1)(a)(i) substituted by 1977-78, c. 1, subsec. 92(8), applicable to taxation years commencing after May 25, 1976 and ending after March 31, 1977, to add "20(16)".

Subsec. 212(11.1) substituted by 1976-77, c. 4, subsec. 71(7), applicable to 1976 *et seq.* Subsec. 212(11.1) formerly read:

(11.1) Notwithstanding subsection (11), in any case where

(a) the amount that would, but for subsection 104(8), be deductible by virtue of subsection 104(6) in computing the income for a taxation year of a trust

exceeds

(b) the amount deductible by virtue of subsection 104(6) in computing the trust's income for that year

(in this subsection referred to as the "excess amount"), for the purposes of paragraph (1)(c), an amount equal to that proportion of the excess amount that

(c) the amount that would, but for this subsection, be the amount paid or credited to a non-resident person as income of or from the trust for the year

is of

(d) the aggregate of all amounts each of which is

(i) such part of the amount that would be the income of the trust for the taxation year if no deduction were made under subsection (6) or (12) or under regulations made under paragraph 20(1)(a) that would, but for this subsection, be payable in the year to a beneficiary under the trust,

(ii) an amount in respect of the accumulating income of the trust for the year that was included in computing the income of a preferred beneficiary under the trust by virtue of subsection (14), or

(iii) an amount paid by the trust in the year to the extent it was included in computing the income of a beneficiary under the trust by virtue of subsection 105(2)

shall be deemed not to have been paid or credited to the person as income of or from the trust.

Subsec. 212(11.1) added by 1974-75-76, c. 26, subsec. 118(8), applicable with respect to amounts paid or credited after November 18, 1974.

(11.2) [Repealed under former Act]

Pre-RSC History: Subsec. 212(11.2) repealed by 1988, c. 55, subsec. 161(6), applicable to distributions by a trust in its 1988 and subsequent taxation years. Subsec. 212(11.2) formerly read:

(11.2) Idem — Such portion of the amount referred to in paragraph 104(8)(f)

(a) as may reasonably be considered to be part of the amount that was paid or credited to a particular designated beneficiary under the trust as income of or from the trust for a taxation year, and

(b) as was not designated by the trust in respect of any other designated beneficiary of the trust

shall, if so designated by the trust in respect of the particular designated beneficiary in the trust's return of income for the year under Part I, be deemed, for the purposes of paragraph (1)(c), not to have been paid or credited in the year to the particular designated beneficiary.

All that portion of subsec. 212(11.2) preceding para. (a) amended to substitute "paragraph 104(8)(f)" for "paragraph 104(8)(e)" by 1984, c. 1, subsec. 98(3), applicable after November 12, 1981.

Subsec. 212(11.2) added by 1980-81-82-83, c. 140, subsec. 118(11), applicable after November 12, 1981.

(12) Deemed payments to spouse, etc. — Where by reason of subsection 56(4) or (4.1) or any of sections 74.1 to 75 of this Act or section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, there is included in computing a taxpayer's income under Part I for a taxation year an amount paid or credited to a non-resident person in the year, no tax is payable under this section on that amount.

Pre-RSC History: Subsec. 212(12) amended to substitute "subsection 56(4) or (4.1)" for "subsection 56(4)", by 1988, c. 55, subsec. 161(7), applicable to 1989 *et seq.*

Subsec. 212(12) amended by 1986, c. 6, subsec. 116(7), to substitute "sections 74 to 75" for "section 74 or 75", applicable after May 21, 1985.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-369R: Attribution of trust income to settlor; IT-438R2: Crown charges — resource properties in Canada; IT-440R2: Transfer of rights to income. See also list at end of s. 212.

(13) Rent and other payments — For the purposes of this section, where a non-resident person pays or credits an amount as, on account or in lieu of payment of, or in satisfaction of,

(a) rent for the use in Canada of property (other than property that is rolling stock as defined in section 2 of the *Railway Act*),

(b) a timber royalty in respect of a timber resource property or a timber limit in Canada,

(c) a payment of a superannuation or pension benefit under a registered pension plan or of a distribution to one or more persons out of or under a retirement compensation arrangement,

(d) a payment of a retiring allowance or a death benefit to the extent that the payment is deductible in computing the payer's taxable income earned in Canada,

(e) a payment described in any of paragraphs (1)(k) to (n), (q) and (v), or

(f) interest on any mortgage or other indebtedness entered into or issued or modified after March 31, 1977 and secured by real property situated in Canada or an interest therein to the extent that the amount so paid or credited is deductible in computing the non-resident person's taxable income earned in Canada or the amount on which the non-resident person is liable to pay tax under Part I,

the non-resident person shall be deemed in respect of that payment to be a person resident in Canada.

Related Provisions: 13(21) — Timber resource property defined.

History: Para. 212(13)(e) amended by 1995, c. 21, subsec. 64(2), applicable to amounts paid or credited after October 21, 1994. Para. (e) formerly read:

(e) a payment described in any of paragraphs (1)(k) to (n) and (q), or

Pre-RSC History: Para. 212(13)(c) substituted by 1987, c. 46, subsec. 63(3), to add "or of a distribution to one or more persons out of or under a retirement compensation arrangement", applicable with respect to amounts paid or credited after March 27, 1987.

Para. 212(13)(d) substituted by 1980-81-82-83, c. 140, subsec. 118(12), applicable with respect to amounts received in respect of any termination of an office or employment after November 12, 1981. Para. 212(13)(d) formerly read:

(d) a payment of a retiring allowance, a death benefit or a termination payment to the extent that the payment is deductible in computing the payer's taxable income earned in Canada,

Para. 212(13)(d) substituted by 1979, c. 5, subsec. 61(4), applicable in respect of amounts paid or credited after February 28, 1979. Para. 212(13)(d) formerly read:

(d) a payment of a retiring allowance or a death benefit to the extent that the payment is deductible in computing the payer's taxable income earned in Canada,

Paras. 212(13)(a), (e) substituted by 1977-78, c. 32, subsecs. 48(3), (4), applicable, as to para. 212(13)(a), in respect of amounts paid or credited after 1977. Paras. 212(13)(a), (e) formerly read:

(a) rent for the use in Canada of property,

. . . . .

(e) a payment described in any of paragraphs (1)(k) to (n), or

Para. 212(13)(f) added by 1977-78, c. 1, subsec. 92(9), applicable with respect to amounts paid or credited after March 31, 1977.

Para. 212(13)(b) substituted by 1974-75-76, c. 26, subsec. 118(9), applicable in respect of amounts paid or credited after November 18, 1974. Para. 212(13)(b) formerly read:

(b) a timber royalty in respect of a timber limit in Canada,

Subsec. 212(13) substituted by 1973-74, c. 30, subsec. 25(3), applicable with respect to amounts paid or credited after February 19, 1973. Subsec. 212(13) formerly read:

(13) For the purposes of this section where a non-resident person pays or credits rent for the use in Canada of property, he shall be deemed in respect of that payment to be a person resident in Canada.

Regulations: 202(4) (information return).

(13.1) Application of Part XIII tax where payer or payee is a partnership — For the purposes of this Part, other than section 216,

(a) where a partnership pays or credits an amount to a non-resident person, the partnership shall, in respect of the portion of that amount that is deductible, or that would but for section 21 be deductible in computing the amount of the income or loss, as the case may be, referred to in paragraph 96(1)(f) or (g) if the references therein to "a particular place" and "that particular place" were read as references to "Canada", be deemed to be a person resident in Canada; and

(b) where a person resident in Canada pays or credits an amount to a partnership (other than a Canadian partnership within the meaning assigned by section 102), the partnership shall be deemed, in respect of that payment, to be a non-resident person.

Related Provisions: 227(15) — Partnership included in "person".

Selected Cases [subsec. 212(13.1)]: *Randall v. The Queen*, [1985] 1 C.T.C. 268 (FCTD) (Partner, not actively participating in operation of business but participating in profits, taxable as non-resident carrying on business in Canada).

Regulations: 202(5) (information return).

Interpretation Bulletins: IT-81R: Partnerships — income of non-resident partners. See also list at end of s. 212.

(13.2) Application of Part XIII tax where non-resident operates in Canada — For the purposes of this Part, where in a taxation year

(a) a non-resident person whose business was carried on principally in Canada, or

(b) a non-resident person who

(i) manufactures or processes goods in Canada,

(ii) operates an oil or gas well in Canada or extracts petroleum or natural gas from a natural accumulation thereof in Canada, or

(iii) extracts minerals from a mineral resource in Canada

pays or credits an amount (other than an amount to which subsection (13) applies) to another non-resident person, the first-mentioned non-resident person shall be deemed, in respect of the portion of that amount that was deductible in computing that person's taxable income earned in Canada for any taxation year, to be a person resident in Canada.

Pre-RSC History: Subpara. 212(13.2)(b)(ii) substituted by 1986, c. 6, subsec. 31(2), to add "or extracts petroleum or natural gas from a natural accumulation thereof in Canada", applicable to taxation years ending after March 1985.

Subsecs. 212(13.1), (13.2) added by 1974-75-76, c. 26, subsec. 118(10), applicable in respect of amounts paid or credited after November 18, 1974, other than an amount referred to in para. 212(13.1)(a) or subsec. 212(13.2) paid or credited to a person pursuant to an agreement in writing entered into before May 7, 1974.

Regulations: 202(6) (information return).

(14) Certificate of exemption — The Minister may, on application, issue a certificate of exemption to any non-resident person who establishes to the satisfaction of the Minister that

(a) an income tax is imposed under the laws of the country of which the non-resident person is a resident;

(b) the non-resident person is exempt under the laws referred to in paragraph (a) from the payment of income tax to the government of the country of which the non-resident person is a resident; and

(c) the non-resident person is

(i) a person who is or would be, if the non-resident person were resident in Canada, exempt from tax under section 149,

(ii) a trust or corporation that is operated exclusively to administer or provide superannuation, pension, retirement or employee benefits, or

(iii) a trust, corporation or other organization constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof.

Related Provisions: 172(3) — Appeal from refusal to issue certificate; 172(4) — Deemed refusal to register; 212(1)(b)(iv) — No withholding tax where certificate of exemption; Reg. 6804(1) — Definition of "qualifying entity" — same conditions; Canada-U.S. Tax Convention, Art. XXI:2 — Exemption from cross-border income tax.

History: Subpara. 212(14)(c)(ii) amended by 1999, c. 22, s. 75, applicable to certificates of exemption under the subsec. made after February 23, 1998 except that, with respect to applications submitted before 1999, the reference in the subpara. to "operated exclusively" shall be read as a reference to "operated primarily". The subpara. formerly read:

(ii) a trust or corporation established or incorporated principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits, or

Pre-RSC History: Para. 212(14)(c) substituted by 1976-77, c. 4, subsec. 71(7.1), applicable to 1977 *et seq.*, to add subpara. 212(14)(c)(iii).

Subpara. 212(14)(c)(ii) substituted for subparas. (ii) and (iii) by 1974-75-76, c. 26, subsec. 118(10.1), applicable after 1974. Subparas. 212(14)(c)(ii), (iii) formerly read as follows:

(ii) a trust or corporation established or incorporated solely in connection with, or for the administration of, one or more employees' superannuation or pension funds or plans, or

(iii) a trust or corporation established or incorporated for the principal purpose of administering or providing benefits under one or more employees' superannuation or pension funds or plans, if throughout the 3 consecutive taxation years of the trust or corporation immediately preceding its taxation year in which the application was made, the cost to it of,

(A) in the case of the trust, property held by it, and

(B) in the case of the corporation, property owned by it

for the purpose of providing such benefits was not less than 80% of the cost to it of all property held by it or owned by it, as the case may be.

Para. 212(14)(c) substituted by 1973-74, c. 14, subsec. 68(2), deemed to have come into force May 8, 1972. Para. 212(14)(c) formerly read as follows:

(c) he is

(i) a person who is or would be, if he were resident in Canada, exempt from tax under section 149, or

(ii) a trust or corporation established or incorporated solely in connection with, or for the administration of, an employees' superannuation or pension fund or plan.

I.T. Application Rules: 10(5).

Information Circulars: 77-16R4: Non-resident income tax.

Forms: NR6A: Application for certificate of exemption.

(15) Certain obligations — For the purposes of subparagraph (1)(b)(ii), after November 18, 1974 interest on a bond, debenture, note, mortgage or similar obligation that is insured by the Canada Deposit Insurance Corporation shall be deemed not to be interest with respect to an obligation guaranteed by the Government of Canada.

Interpretation Bulletins: IT-155R3: Exemption from non-resident tax on interest payable on certain bonds, debentures, notes, hypothecs or similar obligations. See also list at end of s. 212.

(16) Payments for temporary use of rolling stock — Clause (1)(d)(vii)(A) does not apply to a payment in a year for the temporary use of railway rolling stock by a railway company to a person resident in a country other than Canada unless that country grants substantially similar relief for the year to the company in respect of payments received by it for the temporary use by a person resident in that country of railway rolling stock.

Pre-RSC History: Subsecs. 212(15), (16) added by 1974-75-76, c. 26, subsec. 118(11), applicable in respect of amounts paid or credited after November 18, 1974.

(17) Exception — This section is not applicable to payments out of or under an employee benefit plan or employee trust.

Pre-RSC History: Subsec. 212(17) added by 1980-81-82-83, c. 48, subsec. 98(5), applicable with respect to amounts paid or credited after 1979.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts. See also list at end of s. 212.

(18) Return by financial institutions and registered securities dealers — Every person who in a taxation year is a prescribed financial institution for the purpose of clause (1)(b)(iii)(D) or a person resident in Canada who is a registered securities dealer shall

(a) within 6 months after the end of the year file with the Minister a return in prescribed form if in the year the person paid or credited an amount to a non-resident person in respect of which the non-resident person is, because of clause (1)(b)(iii)(D) or subparagraph (1)(b)(xii), not liable to pay tax under this Part; and

(b) on demand from the Minister, served personally or by registered letter, file within such reasonable time as may be stipulated in the demand, an undertaking in

prescribed form relating to the avoidance of payment of tax under this Part.

Related Provisions: 150.1(5) — Electronic filing; 212(19) — Tax on securities traders; 248(7)(a) — Mail deemed received on day mailed.

History: The opening words of subsec. 212(18) amended by 1995, c. 21, subsec. 73(2), applicable to taxation years that end after May 28, 1993. The opening words formerly read:

> (18) Return by financial institution or securities traders — Every person who in a taxation year is a prescribed financial institution for the purpose of clause (1)(b)(iii)(D) or a person resident in Canada who is registered or licensed under the laws of a province to trade in securities shall

All that portion of subsec. 212(18) preceding para. (b) substituted by 1994, c. 21, subsec. 97(5), applicable to taxation years that end after May 28, 1993. That portion of the subsec. formerly read:

> (18) Return by financial institutions — Every person who in a taxation year is a prescribed financial institution for the purposes of clause (1)(b)(iii)(D) shall
>
> (a) within 6 months from the end of the taxation year file with the Minister a return in prescribed form containing prescribed information if in the taxation year the person paid or credited an amount to a non-resident person in respect of which the non-resident person is by virtue of clause (1)(b)(iii)(D) not liable to pay tax under this Part; and

Pre-RSC History: Subsec. 212(18) added by 1986, c. 55, subsec. 74(4).

Forms: NR4B Summ: Return of amounts paid or credited to non-residents of Canada; NR4B Supp: Statement of amounts paid or credited to non-residents of Canada; NR67AR: Non-resident tax remittance; NR67BR: Non-resident tax remittance form; NR75: Non-resident tax remitter registration form; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T4061: Guide for payers of non-resident tax.

(19) Tax on registered securities dealers — Every taxpayer who is a registered securities dealer resident in Canada shall pay a tax under this Part equal to the amount determined by the formula

$$\frac{1}{365} \times .25 \times (A - B) \times C$$

where

A is the total of all amounts each of which is the amount of money provided before the end of a day to the taxpayer (and not returned or repaid before the end of the day) by or on behalf of a non-resident person as collateral or as consideration for a security that was lent or transferred under a securities lending arrangement described in subparagraph (1)(b)(xii),

B is the total of

(a) all amounts each of which is the amount of money provided before the end of the day by or on behalf of the taxpayer (and not returned or repaid before the end of the day) to a non-resident person as collateral or as consideration for a security described in clause (1)(b)(xii)(A) that was lent or transferred under a securities lending arrangement, and

(b) the greater of

(i) 10 times the greatest amount determined under those laws to be the capital employed by the taxpayer at the end of the day, and

(ii) 20 times the greatest amount of capital required under those laws to be maintained by the taxpayer as a margin in respect of securities described in clause (1)(b)(xii)(A) at the end of the day, and

C is the prescribed rate of interest in effect for the day,

and shall remit that amount to the Receiver General on or before the 15th day of the month after the month in which the day occurs.

Related Provisions: 212(18) — Return by securities traders; 227(9) — Penalty on tax not paid; 227(9.3) — Interest on tax not paid; 257 — Formula cannot calculate to less than zero.

History: The portion of subsec. 212(19) before the formula amended by 1995, c. 21, subsec. 73(3), applicable to securities lending arrangements entered into after May 28, 1993. That portion formerly read:

> (19) Tax on securities traders — Every taxpayer resident in Canada who is registered or licensed under the laws of one or more provinces to trade in securities shall pay a tax under this Part equal to the amount determined by the formula

Subsec. 212(19) added by 1994, c. 21, subsec. 97(6), applicable to securities lending arrangements entered into after May 28, 1993.

Definitions [s. 212]: "active business" — 248(1); "amateur athlete trust" — 143.1(1)(a), 248(1); "amount", "annuity" — 248(1); "arm's length" — 251(1); "bank" — *Interpretation Act* 35(1); "beneficially interested" — 248(25); "business" — 248(1); "Canada" — 255; "Canadian partnership" — 102, 248(1); "capital dividend" — 83(2), 248(1); "capital gain" — 39(1)(a), 248(1); "capital property" — 54, 248(1); "class of shares", "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "credit union" — 137(6), 248(1); "death benefit" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employed" — 248(1); "estate" — 104(1), 248(1); "identical" — 248(12); "income-averaging annuity contract" — 61(4), 248(1); "management or administration fee or charge" — 212(4); "mineral resource", "Minister", "NISA Fund No. 2", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "oil or gas well", "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "registered education savings plan" — 146.1(1), 248(1); "registered pension plan" — 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered securities dealer" — 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "regulation" — 248(1); "replacement obligation" — 212(3); "resident in Canada" — 250; "retirement compensation arrangement", "retiring allowance" — 248(1); "securities lending arrangement" — 248(1), 260(1); "series" — 248(10); "share", "shareholder" — 248(1); "spouse" — 252(4)(a); "subsidiary wholly-owned corporation", "superannuation or pension benefit" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxable dividend" — 89(1), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer", "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 212]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-221R2: Determination of an individual's residence status; IT-280R: Employees profit sharing plans — payments computed by reference to profits. See also list at beginning of 212(1).

212.1 (1) Non-arm's length sales of shares by non-residents — If a non-resident person, a designated partnership or a non-resident-owned investment corporation (in this section referred to as the "non-resident person") disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation resident in Canada (in this section referred to as the "purchaser corporation") with which the non-resident person does not (otherwise than because of a right referred to in paragraph 251(5)(b)) deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning that would be assigned by subsection 186(4) if the references in that subsection to "payer corporation" and "particular corporation" were read as "sub-

ject corporation" and "purchaser corporation", respectively) with the purchaser corporation,

(a) the amount, if any, by which the fair market value of any consideration (other than any share of the capital stock of the purchaser corporation) received by the non-resident person from the purchaser corporation for the subject shares exceeds the paid-up capital in respect of the subject shares immediately before the disposition shall, for the purposes of this Act, be deemed to be a dividend paid at the time of the disposition by the purchaser corporation to the non-resident person and received at that time by the non-resident person from the purchaser corporation; and

(b) in computing the paid-up capital at any particular time after March 31, 1977 of any particular class of shares of the capital stock of the purchaser corporation, there shall be deducted that proportion of the amount, if any, by which the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of all of the shares of the capital stock of the purchaser corporation exceeds the amount, if any, by which

(i) the paid-up capital in respect of the subject shares immediately before the disposition

exceeds

(ii) the fair market value of the consideration described in paragraph (a),

that the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of the particular class of shares is of the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of all of the issued shares of the capital stock of the purchaser corporation.

Related Provisions: 54"proceeds of disposition"(k) — Exclusion of deemed dividend from proceeds; 84(7) — When dividend payable; 84.1 — Similar rule for residents of Canada; 212.1 — Deemed dividend on surplus strip to non-resident; 212.2 — Deemed dividend on surplus strip to non-resident insurer.

History: The opening words of subsec. 212.1(1) amended by 1999, c. 22, subsec. 76(1), applicable after February 23, 1998. The opening words formerly read:

(1) Where a non-resident person or a non-resident-owned investment corporation (in this section referred to as the "non-resident person") disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a Canadian corporation (in this section referred to as the "subject corporation") to another Canadian corporation (in this section referred to as the "purchaser corporation") with which the non-resident person does not (otherwise than by reason of a right referred to in paragraph 251(5)(b)) deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning of subsection 186(4), on the assumption that the references therein to "payer corporation" and "particular corporation" were read as "subject corporation" and "purchaser corporation", respectively) with the purchaser corporation,

Pre-RSC History: That portion of subsec. 212.1(1) preceding para. (b) substituted by 1988, c. 55, subsec. 162(1), applicable with respect to dispositions occurring after February 9, 1988. That portion formerly read:

212.1 (1) Where, after April 10, 1978, a non-resident person disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a Canadian corporation (in this section referred to as the "subject corporation") to another Canadian corporation (in this section referred to as the "purchaser corporation") with which the non-resident person does not (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning of subsection 186(4), on the assumption that the references therein to "payer corporation" and to "particular corporation" were read as "subject corporation" and "purchaser corporation" respectively), with the purchaser corporation,

(a) the amount, if any, by which the fair market value of any consideration (other than any share of the capital stock of the purchaser corporation) received by the non-resident person from the purchaser corporation for the subject shares, exceeds the paid-up capital in respect of the subject shares immediately before the disposition shall, for the purposes of this Act, be deemed to be a dividend paid at the time of the disposition by the purchaser corporation to the non-resident person; and

All that portion of subsec. 212.1(1) preceding para. (a) substituted by 1984, c. 45, s. 87, to add "(otherwise than by virtue of a right referred to in paragraph 251(5)(b))" applicable with respect to dispositions occurring after April 10, 1978.

All that portion of subsec. 212.1(1) preceding para. (a) substituted by 1977-78, c. 32, subsec. 49(1), applicable in respect of dispositions after April 10, 1978. That portion formerly read:

212.1 (1) Where after March 31, 1977, a non-resident person disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a Canadian corporation (in this section referred to as the "subject corporation") to another Canadian corporation (in this section referred to as the "purchaser corporation") that, immediately after the disposition, does not deal at arm's length with the non-resident person, and immediately after the disposition the purchaser corporation controls (within the meaning of subsection 186(2)) the subject corporation,

Selected Cases [subsec. 212.1(1)]: *Placements Serco Ltée v. The Queen*, [1988] 1 C.T.C. 213 (FCA) ("Deemed dividend" includes transaction without actual transfer of funds).

Interpretation Bulletins: See at end of s. 212.1.

Information Circulars: 77-16R4: Non-resident income tax.

(2) Idem — In computing the paid-up capital at any particular time after March 31, 1977 of any particular class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the particular class paid after March 31, 1977 and before the particular time by the corporation and received by a non-resident-owned investment corporation or by a person who is not a corporation resident in Canada

exceeds

(ii) the total that would be determined under subparagraph (i) if this Act were read without reference to paragraph (1)(b), and

(b) the total of all amounts each of which is an amount required by paragraph (1)(b) to be deducted in computing the paid-up capital in respect of the particular class of shares after March 31, 1977 and before the particular time.

Pre-RSC History: Subpara. 212.1(2)(a)(i) amended to substitute "and received by a non-resident-owned investment corporation or by a person who is not a corporation resident in Canada" for "and received by a person other than a corporation resident in Canada," by 1988, c. 55, subsec. 162(2), applicable after February 9, 1988.

Subpara. 212.1(2)(a)(i) substituted by 1977-78, c. 32, subsec. 49(2), applicable after April 10, 1978, to add reference to (4.1).

(3) Idem — For the purposes of this section,

(a) in respect of any disposition described in subsection (1) by a non-resident person of shares of the capital stock of a subject corporation to a purchaser corporation, the non-resident person shall, for greater certainty, be deemed not to deal at arm's length with

the purchaser corporation if the non-resident person was,

(i) immediately before the disposition, one of a group of less than 6 persons that controlled the subject corporation, and

(ii) immediately after the disposition, one of a group of less than 6 persons that controlled the purchaser corporation, each member of which was a member of the group referred to in subparagraph (i);

(b) for the purposes of determining whether or not a particular non-resident person (in this paragraph referred to as the "taxpayer") referred to in paragraph (a) was a member of a group of less than 6 persons that controlled a corporation at any time, any shares of the capital stock of that corporation owned at that time by

(i) the taxpayer's child (within the meaning assigned by subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii) is a beneficiary,

(iii) a corporation controlled by the taxpayer, a person described in subparagraph (i), a trust described in subparagraph (ii) or any combination thereof, or

(iv) a partnership of which the taxpayer or a person described in one of paragraphs (i) to (iii) is a majority interest partner or a member of a majority interest group of partners (as defined in subsection 251.1(3))

shall be deemed to be owned at that time by the taxpayer and not by the person who actually owned the shares at that time;

(c) a trust and a beneficiary of the trust or a person related to a beneficiary of the trust shall be deemed not to deal with each other at arm's length;

(d) for the purpose of paragraph (a),

(i) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation,

(ii) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(iii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also controlled or deemed to be controlled by another person or group of persons;

(e) a "designated partnership" means a partnership of which either a majority interest partner or every member of a majority interest group of partners (as defined in subsection 251.1(3)) is a non-resident person or a non-resident-owned investment corporation; and

(f) in this subsection, a person includes a partnership.

Related Provisions: 252(4)(a) — Extended meaning of "spouse"; 256(6), (6.1) — Meaning of "controlled".

History: Subpara. 212.1(3)(b)(iv), paras. 212.1(3)(e) and (f) added by 1999, c. 22, subsecs. 76(2), (3), applicable after February 23, 1998.

Para. 212.1(3)(d) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 124, applicable to dispositions occurring after December 20, 1991.

Subparas. 212.1(3)(b)(i)–(iii) substituted and para. (c) added by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 175(1), (2), applicable to dispositions occurring after July 13, 1990. Those subparas. formerly read:

(i) the taxpayer's spouse,

(ii) an *inter vivos* trust of which the taxpayer, the spouse, a corporation described in subparagraph (iii) or any combination thereof is a beneficiary, or

(iii) a corporation controlled by the taxpayer, the spouse, a trust described in subparagraph (ii) or any combination thereof

Pre-RSC History: Para. 212.1(3)(b) substituted by 1979, c. 5, s. 62, applicable in respect of dispositions after April 10, 1978.

Subsec. 212.1(3) amended by 1977-78, c. 32, subsec. 49(3), applicable in respect of dispositions after April 10, 1978. Subsec. 212.1(3) formerly read:

(3) Where taxpayer not dealing at arm's length — For the purposes of this section, a taxpayer who is one of a group of less than ten persons who act in concert to control a corporation shall be deemed not to deal with the corporation at arm's length.

(4) Where section does not apply — Notwithstanding subsection (1), this section does not apply in respect of a disposition by a non-resident corporation of shares of a subject corporation to a purchaser corporation that immediately before the disposition controlled the non-resident corporation.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

Pre-RSC History: Subsec. 212.1(4) added by 1977-78, c. 32, subsec. 49(3), applicable to dispositions after April 10, 1978.

Pre-RSC History [s. 212.1]: S. 212.1 added by 1977-78, c. 1, s. 93, applicable in respect of dispositions after March 1977.

Definitions [s. 212.1]: "amount" — 248(1); "arm's length" — 212.1(3)(c), 251(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "child" — 70(10), 252(1); "class of shares" — 248(6); "common-law partner" — 248(1); "control" — 212.1(3)(d); "controlled" — 256(6), (6.1); "corporation" — 248(1), *Interpretation Act* 35(1); "designated partnership" — 212.1(3)(e); "dividend" — 248(1); "group" — 212.1(3)(d); "majority interest partner", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "paid-up capital" — 89(1), 248(1); "person" — 212.1(3)(f), 248(1); "received" — 248(7); "resident in Canada" — 250; "share" — 248(1); "spouse" — 252(4)(a); "taxpayer" — 248(1); "trust" — 104(1), 108(1), 248(1), (3).

Interpretation Bulletins [s. 212.1]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-489R: Non-arm's length sale of shares to a corporation.

212.2 (1) Application — This section applies where

(a) a taxpayer disposes at a particular time of a share of the capital stock of a corporation resident in Canada (or any property more than 10% of the fair market value of which can be attributed to shares of the capital stock of corporations resident in Canada) to

(i) a person resident in Canada,

(ii) a partnership in which any person resident in Canada has, directly or indirectly, an interest, or

(iii) a person or partnership that acquires the share or the property in the course of carrying on a business through a permanent establishment in Canada, as defined in the *Income Tax Regulations*;

(b) subsection 212.1(1) does not apply to the disposition;

(c) the taxpayer is non-resident at the particular time;

(d) it is reasonable to conclude that the disposition is part of an expected series of transactions or events that includes the issue after December 15, 1998 of a particular share of the capital stock of a particular insurance corporation resident in Canada on the demutualization

(within the meaning assigned by subsection 139.1(1)) of the particular corporation and

(i) after the particular time, the redemption, acquisition or cancellation of the particular share, or a share substituted for the particular share, by the particular corporation or the issuer of the substituted share, as the case may be,

(ii) after the particular time, an increase in the level of dividends declared or paid on the particular share or a share substituted for the particular share, or

(iii) the acquisition, at or after the particular time, of the particular share or a share substituted for the particular share by

(A) a person not dealing at arm's length with the particular corporation or with the issuer of the substituted share, as the case may be, or

(B) a partnership any direct or indirect interest in which is held by a person not dealing at arm's length with the particular corporation or with the issuer of the substituted share, as the case may be; and

(e) at the particular time, the person described in subparagraph (a)(i) or (iii) or any person who has, directly or indirectly, an interest in the partnership described in subparagraph (a)(ii) or (iii) knew, or ought reasonably to have known, of the expected series of transactions or events described in paragraph (d).

(2) Deemed dividend — For the purposes of this Part, where property is disposed of at any time by a taxpayer to a person or partnership in circumstances in which this section applies,

(a) a taxable dividend is deemed to be paid at that time by the person or partnership to the taxpayer and received at the time by the taxpayer;

(b) the amount of the dividend is deemed to be equal to the amount determined by the formula

$$A - ((A/B) \times C)$$

where

A is the portion of the proceeds of disposition of the property that can reasonably be attributed to the fair market value of shares of a class of the capital stock of a corporation resident in Canada,

B is the fair market value immediately before that time of shares of that class, and

C is the paid-up capital immediately before that time of that class of shares; and

(c) in respect of the dividend, the person or partnership is deemed to be a corporation resident in Canada.

Related Provisions [subsec. 212.2(2)]: 54"proceeds of disposition"(k) — Exclusion of deemed dividend from proceeds.

History: S. 212.2 added by 2000, c. 19, s. 64, applicable after December 15, 1998.

Definitions [s. 212.2]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "corporation" — 248(1), *Interpretation Act* 35(1); "demutualization" — 139.1(1); "disposition", "dividend", "insurance corporation", "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); ; "person", "property" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxable dividend" — 89(1), 248(1); "taxpayer" — 248(1).

213. (1) Tax non-payable by non-resident person — Tax is not payable by a non-resident person under subsection 212(2) on a dividend in respect of a share of the capital stock of a foreign business corporation if not less than 90% of the total of the amounts received or receivable by it that are required to be included in computing its income for the taxation year in which the dividend was paid was received or receivable in respect of the operation by it of public utilities or from mining, transporting and processing of ore in a country in which

(a) if the non-resident person is an individual, the non-resident person resides; or

(b) if the non-resident person is a corporation, individuals who own more than 50% of its share capital (having full voting rights under all circumstances) reside.

Forms: T4061: Non-resident withholding tax guide.

(2) Idem — For the purposes of this section, if 90% of the total of the amounts received or receivable by a corporation that are required to be included in computing its income for a taxation year was received or receivable in respect of the operation by it of public utilities or from the mining, transporting and processing of ore, an amount received or receivable in that year from that corporation by another corporation shall, if it is required to be included in computing the receiving corporation's income for the year, be deemed to have been received by the receiving corporation in respect of the operation by it of public utilities or from the mining, transporting and processing of ore by it in the country in which the public utilities were operated or the mining, transporting and processing of ore was carried out by the payer corporation.

(3) Corporation deemed to be foreign business corporation — For the purposes of this section, a corporation shall be deemed to be a foreign business corporation at a particular time if it would have been a foreign business corporation within the meaning of section 71 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as that section read in its application to the 1971 taxation year), for the taxation year of the corporation in which the particular time occurred, if that section had been applicable to that taxation year,

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Definitions [s. 213]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "foreign business corporation" — 213(3); "individual", "non-resident", "person" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 213]: IT-109R2: Unpaid amounts.

214. (1) No deductions — The tax payable under section 212 is payable on the amounts described therein without any deduction from those amounts whatever.

Related Provisions: 216 — Option to pay tax on the net rather than the gross.

I.T. Application Rules: 10(6) (tax limited to treaty rate).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-438R2: Crown charges — resource properties in Canada; IT-465R: Non-resident beneficiaries of trusts.

(2) Income and capital combined — Where paragraph 16(1)(b) would, if Part I were applicable, result in a part of an amount being included in computing the income of a non-resident person, that part of the amount shall, for the purposes of this Part, be deemed to have been paid or credited to the non-resident person in respect of property, services or otherwise, depending on the nature of that part of the amount.

Related Provisions: 214(12) — Application.

Pre-RSC History: Subsec. 214(2) substituted by 1988, c. 55, subsec. 163(1), applicable with respect to amounts paid or payable after June 1988. Subsec. 214(2) formerly read:

> (2) Where subsection 16(1) would, if Part I were applicable, require a part of a payment to be included in computing the recipient's income because it can reasonably be regarded as a payment of interest, that part of the payment shall, for the purpose of this Part, be deemed to have been a payment of interest.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-265R3: Payments of income and capital combined.

(3) Deemed payments — For the purposes of this Part,

(a) where section 15 or subsection 56(2) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a dividend from a corporation resident in Canada;

(b) where paragraph 56(1)(f) would, if Part I were applicable, require an amount to be included in computing an individual's income, that amount shall be deemed to have been paid to the individual under an income-averaging annuity contract;

(b.1) where paragraph 56(1)(y) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer to acquire an interest in a retirement compensation arrangement;

(c) where, because of subsection 146(8.1), (8.8), (8.91), (9), (10) or (12), an amount would, if Part I applied, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement savings plan or an amended plan (within the meaning assigned by subsection 146(12)), as the case may be;

(d) where, by virtue of subsection 147(10), (13) or (15), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan", as the case may be;

(e) where subsection 130.1(2) would, if Part I were applicable, deem an amount received by a shareholder of a mortgage investment corporation to have been received by the shareholder as interest, that amount shall be deemed to have been paid to the shareholder as interest on a bond issued after 1971;

(f) where subsection 104(13) would, if Part I were applicable, require any part of an amount payable by a trust in its taxation year to a beneficiary to be included in computing the income of the non-resident person who is a beneficiary of the trust, that part shall be deemed to be an amount paid or credited to that person as income of or from the trust on the earlier of

(i) the day on which the amount was paid or credited, and

(ii) the day that is 90 days after the end of the taxation year

and not at any subsequent time when the amount was actually paid or credited;

(f.1) where paragraph 132.1(1)(d) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income for a taxation year by reason of a designation by a mutual fund trust under subsection 132.1(1), that amount shall be deemed to be an amount paid or credited to that person as income of or from the trust on the day of the designation;

(g) where an individual who is a beneficiary under a fund, plan or trust that was a registered home ownership savings plan (within the meanings assigned by subparagraphs 146.2(1)(a) and (h) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as they read in their application to the 1985 taxation year) on December 31, 1985 dies, an amount equal to the fair market value of the property in the fund, plan or trust at the time of death shall be deemed, for the purposes of section 212, to have been paid to the individual at the time of death as a payment out of or under a fund, plan or trust that was at the end of 1985 a registered home ownership savings plan;

(h) [Repealed under former Act]

(i) where, because of subsection 146.3(4), (6), (6.1), (7) or (11), an amount would, if Part I applied, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement income fund;

(j) [Repealed]

(k) where, because of subsection 143.1(2), an amount distributed at any time by an amateur athlete trust would, if Part I were applicable, be required to be included in computing an individual's income, that amount shall be deemed to have been paid at that time to the individual as a payment in respect of an amateur athlete trust; and

(l) where, because of subsection 12(10.2), an amount would at any particular time, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid by Her Majesty in right of Canada at that time to the taxpayer out of the taxpayer's NISA Fund No. 2.

Related Provisions: 214(3.1) — Time of deemed payment; 227(6.1) — Repayment of non-resident shareholder loan.

History: Para. 214(3)(j) repealed by 1998, c. 19, s. 63, applicable after 1997. Para. 214(3)(j) formerly read:

> (j) where, by virtue of subsection 146.1(14), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment in respect of a registered education savings plan;

Para. 214(3)(c) substituted by 1994, c. 21, subsec. 98(1), applicable to payments made after 1992. That para. formerly read:

> (c) where, by virtue of subsection 146(8.1), (8.8), (8.91), (9), (10) or (12) or 146.3(6.1), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan", as the case may be;

Para. 214(3)(i) substituted by 1994, c. 21, subsec. 98(2), applicable to payments made after 1992. That para. formerly read:

> (i) where, by reason of subsection 146.3(4), (6), (7) or (11), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered retirement income fund;

Paras. 214(3)(k) and (l) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 125(1), para. (k) applicable to amounts distributed after 1991, and (l) applicable after 1990.

Pre-RSC History: Para. 214(3)(i) amended by 1990, c. 35, s. 24, to substitute "146.3(4), (6), (7) or (11)" for "146.3(4), (6), (7) or (12)", applicable with respect to payments made after 1988.

Para. 214(3)(f.1) added and para. 214(3)(h) repealed by 1988, c. 55, subsecs. 163(2), (3). Para. 214(3)(f.1) applicable after 1988; repeal of para.

214(3)(h) applicable with respect to transactions entered into on or after September 13, 1988 other than

(a) transactions that are part of a series of transactions, determined without reference to subsec. 248(10) commencing before September 13, 1988 and completed before 1989; or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

Para. (h) formerly read:

(h) where subsection 247(1) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income for a taxation year, that amount shall be deemed to have been paid at the end of that taxation year to the taxpayer as a dividend from a corporation resident in Canada;

Para. 214(3)(b.1) added by 1987, c. 46, s. 64, applicable with respect to amounts paid or credited after March 27, 1987.

Para. 214(3)(g) substituted by 1986, c. 6, s. 117, applicable after 1985. Para. (g) formerly read:

(g) where, by virtue of subsection 146.2(8), (8.1), (9), (10), (12) or (15), an amount would, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a payment under a registered home ownership savings plan;

Paras. 214(3)(c), (d), (g) and (i) substituted, 214(3)(j) added by 1980-81-82-83, c. 48, subsecs. 99(1)–(3), applicable with respect to amounts deemed to have been paid after December 11, 1979. Paras. (c), (d), (g) and (i) formerly read:

(c) where subsection 146(10) or (12) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to be an amount paid to the taxpayer as a payment under the registered retirement savings plan or the plan referred to in subsection 146(12) as an "amended plan", as the case may be;

(d) where subsection 147(10) or (15) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to be an amount paid to the taxpayer as a payment under the deferred profit sharing plan or the plan referred to in subsection 147(15) as a "revoked plan", as the case may be;

. . . . .

(g) where subsection 146.2(8), (8.1) or (9) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to be an amount paid to the taxpayer as a payment from a trust governed by a registered home ownership savings plan;

. . . . .

(i) where subsection 146.3(4), (6), (7) or (12) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to be an amount paid to the taxpayer as a payment out of or under a registered retirement income fund.

Para. 214(3)(i) added by 1977-78, c. 32, s. 50.

Paras. 214(3)(a), (g) substituted, 214(3)(h) added by 1977-78, c. 1, subsecs. 94(1), (2), applicable after March 31, 1977. Paras. (a), (g) formerly read:

(a) where section 15 or subsection 56(2) would, if Part I were applicable, require an amount to be included in computing a shareholder's income, that amount shall be deemed to have been paid to the shareholder as a dividend;

. . . . .

(g) where subsection 146.2(8) or (9) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to be an amount paid to the taxpayer as a payment from a trust governed by a registered home ownership savings plan.

Paras. 214(3)(e)–(g) added by 1974-75-76, c. 26, subsec. 119(1), applicable, as to para. 214(3)(e), to amounts deemed to be received by shareholders of mortgage investment corporations after 1973, as to para. 214(3)(f), to taxation years ending after November 18, 1974, and, as to para. 214(3)(g), to 1974 *et seq.*

Subsec. 214(3) substituted by 1973-74, c. 30, subsec. 26(1), deemed in force February 19, 1973. Subsec. (3) formerly read:

(3) Where section 15 or subsection 56(2) would, if Part I were applicable, require an amount to be included in computing a shareholder's income, that amount shall, for the purpose of this Part, be deemed to have been paid to the shareholder as a dividend.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-88R2: Stock dividends; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-109R2: Unpaid amounts; IT-119R4: Debts of shareholders, certain persons connected with shareholders, etc.; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders; IT-465R: Non-resident beneficiaries of trusts; IT-468R: Management or administration fees paid to non-residents; IT-500R: RRSPs — death of an annuitant.

Information Circulars: 77-16R4: Non-resident income tax; 72-22R9: Registered retirement savings plans.

(3.1) Time of deemed payment — Except as otherwise expressly provided, each amount deemed by subsection (3) to have been paid shall be deemed to have been paid at the time of the event or transaction as a consequence of which the amount would, if Part I were applicable, be required to be included in computing a taxpayer's income.

Pre-RSC History: Subsec. 214(3.1) added by 1980-81-82-83, c. 48, subsec. 99(4), applicable with respect to amounts deemed to have been paid after December 11, 1979.

(4) Securities — Where, if section 76 were applicable in computing a non-resident person's income, that section would require an amount to be included in computing the income, that amount shall, for the purpose of this Part, be deemed to have been, at the time the non-resident person received the security, right, certificate or other evidence of indebtedness, paid to the non-resident person on account of the debt in respect of which the non-resident person received it.

Related Provisions: 214(5) — Interpretation.

Interpretation Bulletins: IT-77R: Securities in satisfaction of an income debt; IT-88R2: Stock dividends; IT-109R2: Unpaid amounts.

(5) Interpretation — Subsection (4) is enacted for greater certainty and shall not be construed as limiting the generality of the other provisions of this Part defining amounts on which tax is payable.

(6) Deemed interest — Where, in respect of interest stipulated to be payable, on a bond, debenture, bill, note, mortgage or similar obligation that has been assigned or otherwise transferred by a non-resident person to a person resident in Canada, subsection 20(14) would, if Part I were applicable, require an amount to be included in computing the transferor's income, that amount shall, for the purposes of this Part, be deemed to be a payment of interest on that obligation made by the transferee to the transferor at the time of the assignment or other transfer of the obligation, if

(a) the obligation was issued by a person resident in Canada;

(b) the obligation was not an obligation described in paragraph (8)(a) or (b); and

(c) the assignment or other transfer is not an assignment or other transfer referred to in paragraph (7.1)(b).

Related Provisions: 214(7.1) — Sale of obligation; 214(9) — Deemed resident; 214(11) — Application to non-resident-owned investment corporation; 214(14) — Deemed assignment of obligation.

History: Para. 214(6)(b) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 176(1), to substitute "described in paragraph (8)(a) or (b)" for "re-

ferred to in paragraph (8)(a), (b) or (c)", applicable to obligations assigned or otherwise transferred after July 13, 1990.

Pre-RSC History: Subsec. 214(6) substituted by 1973-74, c. 30, subsec. 26(2), applicable with respect to bonds, debentures, bills, notes or similar obligations issued after July 27, 1973. Subsec. 214(6) formerly read:

> (6) Where, in respect of interest stipulated to be payable on an obligation that has been assigned or otherwise transferred by a non-resident person to a person resident in Canada, subsection 20(14) would, if Part I were applicable, require an amount to be included in computing the transferor's income, that amount shall, for the purposes of this Part, be deemed to be a payment of interest on that obligation made by the transferee to the transferor at the time of the assignment or other transfer of the obligation, if
>
> (a) the obligation was issued after June 18, 1971, and
>
> (b) the obligation was not an obligation referred to in subparagraph (8)(a)(i), (ii) or (iii),
>
> and where the transferee is a non-resident-owned investment corporation, paragraph 212(1)(b) shall be read and construed without reference to subparagraph (i) thereof.

Interpretation Bulletins: IT-410R: Debt obligations — accrued interest on transfer.

Information Circulars: 77-16R4: Non-resident income tax.

(7) Sale of obligation — Where

(a) a non-resident person has at any time assigned or otherwise transferred to a person resident in Canada a bond, debenture, bill, note, mortgage or similar obligation issued by a person resident in Canada,

(b) the obligation was not an excluded obligation, and

(c) the assignment or other transfer is not an assignment or other transfer referred to in paragraph (7.1)(b),

the amount, if any, by which

(d) the price for which the obligation was assigned or otherwise transferred at that time,

exceeds

(e) the price for which the obligation was issued,

shall, for the purposes of this Part, be deemed to be a payment of interest on that obligation made by the person resident in Canada to the non-resident person at that time.

Related Provisions: 16(6) — Indexed debt obligations; 214(7.1) — Sale of obligation; 214(8) — Meaning of "excluded obligation"; 214(9) — Deemed resident; 214(10) — Reduction of tax; 214(11) — Application to non-resident-owned investment corporation; 214(14) — Deemed assignment of obligation; 215(5) — Regulations reducing amount to be deducted or withheld.

Pre-RSC History: Subsec. 214(7) substituted by 1973-74, c. 30, subsec. 26(3), applicable with respect to bonds, debentures, bills, notes or similar obligations issued after July 27, 1973. Subsec. 214(7) formerly read:

> (7) Where a person resident in Canada has issued or sold to a non-resident person a bond, debenture, bill, note, mortgage, hypothec or similar obligation, other than an excluded obligation, issued after June 18, 1971 by a person resident in Canada, an amount equal to 4/3 of the amount, if any, by which
>
> (a) the principal amount of the obligation
>
> exceeds
>
> (b) the price for which the obligation was issued or sold to the non-resident person,
>
> shall, for the purposes of this Part, be deemed to be a payment of interest made by the person resident in Canada to the non-resident person at the time of the issue or sale of the obligation to the non-resident person, except that where it is established that, at any subsequent time before the maturity of the obligation, the non-resident person has sold the obligation to a person resident in Canada, the amount of the tax under this Part that the non-resident person is liable to pay in respect thereof shall be deemed, for the purpose of subsection 227(6), to be that proportion of the tax he would otherwise have been liable to pay in respect thereof that the number of days in the period commencing with the day the obligation was issued or sold to him and ending with the day the obligation was sold by him is of the number of days in the period commencing with the day the obligation was issued or sold to him and ending with the date of its maturity.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-360R2: Interest payable in a foreign currency.

Information Circulars: 77-16R4: Non-resident income tax.

(7.1) Idem — Where

(a) a person resident in Canada has at a particular time assigned or otherwise transferred an obligation to a non-resident person,

(b) the non-resident person has at a subsequent time assigned or otherwise transferred the obligation back to the person resident in Canada, and

(c) subsection (6) or (7) would apply with respect to the assignment or other transfer referred to in paragraph (b), if those subsections were read without reference to paragraphs (6)(c) and (7)(c),

the amount, if any, by which

(d) the price for which the obligation was assigned or otherwise transferred at the subsequent time,

exceeds

(e) the price for which the obligation was assigned or otherwise transferred at the particular time,

shall, for the purposes of this Part, be deemed to be a payment of interest on that obligation made by the person resident in Canada to the non-resident person at the subsequent time.

Related Provisions: 214(11) — Application to non-resident-owned investment corporation; 214(14) — Deemed assignment of obligation.

Pre-RSC History: Subsec. 214(7.1) added by 1973-74, c. 30, subsec. 26(3), applicable with respect to bonds, debentures, bills, notes or similar obligations issued after July 27, 1973.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-410R: Debt obligations — accrued interest on transfer.

Information Circulars: 77-16R4: Non-resident income tax.

(8) Meaning of "excluded obligation" — For the purposes of subsection (7), "excluded obligation" means any bond, debenture, bill, note, mortgage or similar obligation

(a) the interest on which is exempt from tax under this Part because of subparagraph 212(1)(b)(ii), (iii) or (vii);

(b) that is prescribed to be a public issue security; or

(c) that is not an indexed debt obligation and that was issued for an amount not less than 97% of the principal amount thereof, and the yield from which, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount thereof, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) does not exceed 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount thereof, if no amount is payable on account of the principal amount before the maturity of the obligation, and

(ii) the amount outstanding from time to time as or on account of the principal amount thereof, in any other case.

History: That portion of para. 214(8)(c) preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 125(2), to add "that is not an indexed debt obligation and", applicable to indexed debt obligations issued after October 16, 1991.

Subsec. 214(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 176(2), applicable to obligations assigned or otherwise transferred after July 13, 1990. Subsec. 214(8) formerly read:

(8) Definition of "excluded obligation" — In subsection (7), "excluded obligation" means any bond, debenture, bill, note, mortgage or similar obligation,

(a) referred to in subparagraph 212(1)(b)(ii) or (iii),

(b) if, under the terms of the obligation or any agreement relating thereto, the issuer thereof is not obliged to pay more than 25% of the principal amount thereof within 5 years of the date of its issue except in the event of a failure or default under the said terms or agreement,

(c) that is prescribed to be a public issue security, or

(d) that was issued for an amount not less than 97% of the principal amount thereof, and the yield from which, expressed in terms of an annual rate on the amount for which the obligation was issued (which annual rate shall, if the terms of the obligation or any agreement relating thereto conferred on the holder thereof a right to demand payment of the principal amount of the obligation or the amount outstanding as or on account of the principal amount thereof, as the case may be, before the maturity of the obligation, be calculated on the basis of the yield that produces the highest annual rate obtainable either on the maturity of the obligation or conditional on the exercise of any such right) does not exceed 4/3 of the interest stipulated to be payable on the obligation, expressed in terms of an annual rate on

(i) the principal amount of the obligation, if no amount is payable on account of the principal amount before the maturity of the obligation, or

(ii) the amount outstanding from time to time as or on account of the principal amount of the obligation, in any other case.

Pre-RSC History: *Subsec. 214(8) was para. 214(8)(a).*

Para. 214(8)(b) repealed by 1973-74, c. 30, subsec. 26(4), applicable with respect to bonds, debentures, bills, notes or similar obligations issued after July 27, 1973. Para. 214(8)(b) formerly read:

(b) "principal amount" — "principal amount" in relation to any obligation means the amount that, under the terms of the obligation or any agreement relating thereto, is the maximum amount or maximum aggregate amount, as the case may be, payable on account of the obligation by the issuer thereof otherwise than as or on account of interest or as or on account of any premium payable by the issuer conditional upon the exercise by the issuer of a right to redeem the obligation before the maturity thereof.

Regulations: No prescribed public issue security yet under 214(8)(b).

(9) Deemed resident — Where

(a) the assignment or other transfer of an obligation to a non-resident person carrying on business in Canada would be described in subsection (6) or (7) if those subsections were read without reference to paragraphs (6)(c) and (7)(c) and if that non-resident person were a person resident in Canada, and

(b) that non-resident person

(i) may deduct, under subsection 20(14), in computing the non-resident person's taxable income earned in Canada for a taxation year an amount in respect of interest on the obligation, or

(ii) may deduct, under Part I, in computing the non-resident person's taxable income earned in Canada for a taxation year an amount in respect of any amount paid on account of the principal amount of the obligation,

the non-resident person shall, with respect to the assignment or other transfer of the obligation, be deemed, for the purposes of this Part, to be a person resident in Canada.

Related Provisions: 214(14) — Assignment of obligation.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-410R: Debt obligations — accrued interest on transfer.

(10) Reduction of tax — Where a non-resident person has assigned or otherwise transferred to a person resident in Canada an obligation

(a) on which an amount of interest was deemed by subsection (6) or (7) to have been paid, and

(b) that the non-resident person had previously acquired from a person resident in Canada,

the amount of the tax under this Part that the non-resident person is liable to pay in respect thereof shall be deemed, for the purpose of subsection 227(6), to be that proportion of the tax the non-resident person would otherwise have been liable to pay in respect thereof that

(c) the number of days in the period commencing with the day the obligation was last acquired by the non-resident person from a person resident in Canada and ending with the day the obligation was last assigned or otherwise transferred by the non-resident person to a person resident in Canada

is of

(d) the number of days in the period commencing with the day the obligation was issued and ending with the day the obligation was last assigned or otherwise transferred by the non-resident person to a person resident in Canada.

Related Provisions: 214(14) — Deemed assignment of obligation.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-410R: Debt obligations — accrued interest on transfer.

(11) Application of para. 212(1)(b) — In respect of any payment of interest deemed by subsection (6), (7) or (7.1) to have been made by a non-resident-owned investment corporation on the assignment or other transfer of an obligation, paragraph 212(1)(b) shall be read and construed without reference to subparagraph 212(1)(b)(i).

(12) Where subsec. (2) does not apply — Subsection (2) does not apply in respect of a payment to a non-resident person under any obligation in respect of which that person is liable to pay tax under this Part by reason of subsection (7) or (7.1).

Pre-RSC History: Subsecs. 214(9)–(12) substituted by 1973-74, c. 30, subsec. 26(5), applicable with respect to bonds, debentures, bills, notes or similar obligations issued after July 27, 1973. Subsecs. 214(9)–(12) formerly read:

(9) Where, in respect of a transfer or other assignment of an obligation referred to in subsection (6), a non-resident person carrying on business in Canada may deduct, under subsection 20(14), in computing his income from the business for a taxation year an amount in respect of interest on the obligation, the non-resident person shall, with respect to the assignment or other transfer of the obligation, be deemed, for the purposes of this Part, to be a person resident in Canada.

(10) Where, in respect of an issue or sale of an obligation referred to in subsection (7), a non-resident person carrying on business in Canada is required, under Part I, to include the price for which the obligation was issued or sold in computing his income from the business for a taxation year, the non-resident person shall, with respect to the issue or sale of the obligation, be deemed, for the purposes of this Part, to be a person resident in Canada.

(11) In respect of any payment of interest deemed by subsection (7) to have been made by a non-resident-owned investment corporation

on the issue or sale of an obligation, paragraph 212(1)(b) shall be read and construed without reference to subparagraph (i) thereof.

(12) Subsection (2) does not apply in respect of a payment to a non-resident person under any obligation in respect of which that person is liable to pay tax under this Part by virtue of subsection (7).

(13) Regulations respecting residents — The Governor in Council may make general or special regulations, for the purposes of this Part, prescribing

(a) who is or has been at any time resident in Canada;

(b) where a person was resident in Canada as well as in some other place, what amounts are taxable under this Part; and

(c) where a non-resident person carried on business in Canada, what amounts are taxable under this Part or what portion of the tax under this Part is payable by that person.

Regulations: 802 (amounts taxable).

(14) Assignment of obligation — For the purposes of this section, any transaction or event by which an obligation held by a non-resident person is redeemed in whole or in part or is cancelled shall be deemed to be an assignment of the obligation by the non-resident person.

Pre-RSC History: Subsec. 214(14) added by 1973-74, c. 30, subsec. 26(6), applicable with respect to bonds, debentures, bills, notes or similar obligations issued after July 27, 1973.

Interpretation Bulletins: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-360R2: Interest payable in a foreign currency.

(15) Standby charges and guarantee fees — For the purposes of this Part,

(a) where a non-resident person has entered into an agreement under the terms of which the non-resident person agrees to guarantee the repayment, in whole or in part, of the principal amount of a bond, debenture, bill, note, mortgage or similar obligation of a person resident in Canada, any amount paid or credited as consideration for the guarantee shall be deemed to be a repayment of interest on that obligation; and

(b) where a non-resident person has entered into an agreement under the terms of which the non-resident person agrees to lend money, or to make money available, to a person resident in Canada, any amount paid or credited as consideration for so agreeing to lend money or to make money available shall, if the non-resident person would be liable to tax under this Part in respect of interest payable on any obligation issued under the terms of the agreement on the date it was entered into, be deemed to be a payment of interest.

Pre-RSC History: Para. 214(15)(b) substituted by 1979, c. 5, s. 63, applicable in respect of amounts paid or credited after 1977. Para. 214(15)(b) formerly read:

(b) where a non-resident person has entered into an agreement under the terms of which he agrees to lend money, or to make money available, to a person resident in Canada, any amount paid or credited as consideration for so agreeing to lend money or to make money available shall be deemed to be a payment of interest.

Subsec. 214(15) added by 1974-75-76, c. 26, subsec. 119(2), applicable in respect of amounts paid or credited after November 18, 1974.

Selected Cases [subsec. 214(15)]: *The Queen v. Melford Developments Inc.*, [1982] C.T.C. 330 (SCC) (Annual payments in consideration for loan guarantee not "interest" and not subject to withholding tax under terms of Canada-Germany Income Tax Agreement; but see now *Income Tax Conventions Interpretation Act*, s. 3).

Advance Tax Rulings: ATR-49: Long-term foreign debt.

Definitions [s. 214]: "amateur athlete trust" — 143.1(1)(a), 248(1); "amount" — 248(1); "assignment" — 214(14); "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — 147(1), 248(1); "dividend" — 248(1); "excluded obligation" — 214(8); "Governor in Council" — *Interpretation Act* 35(1); "income-averaging annuity contract" — 61(4), 248(1); "indexed debt obligation", "individual" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "NISA Fund No. 2", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "prescribed", "principal amount", "property" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement income fund" — 146.3(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "retirement compensation arrangement", "shareholder" — 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3).

215. (1) Deduction and payment of tax — When a person pays or credits or is deemed to have paid or credited an amount on which an income tax is payable under this Part, the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold therefrom the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit therewith a statement in prescribed form.

Related Provisions: 215(1.1) — Limitation on requirement to withhold tax on corporate immigration; 215(5) — Regulations reducing deduction or withholding; 215(6) — Liability for tax; 227 — Withholding taxes — administration and enforcement; 227.1 — Liability of directors; 248(7)(b)(i) — Remittance deemed made when received.

Selected Cases [subsec. 215(1)]: *Curragh Inc. v. Canada*, [1995] 1 C.T.C. 2163 (TCC) (Withholding required if payor knows that non-resident is beneficial owner of amount to be paid); *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Late payment "surcharge" on sale price of goods was "interest"); *Nestle Enterprises Ltd. v. MNR*, [1991] 2 C.T.C. 2627 (TCC) (Penalty and interest upheld on grounds taxpayer had failed to "forthwith remit" withholding tax); *Forest et al. v. The Queen*, 80 D.T.C. 6149 (FCTD) (Payments into non-residents' Canadian RRSPs not subject to withholding tax).

Regulations: 105 (withholding of 15% on fees for services); 202 (information return); 805 (where withholding not required); 809 (reduction in withholding).

Interpretation Bulletins: IT-88R2: Stock dividends; IT-465R: Non-resident beneficiaries of trusts.

Information Circulars: 77-16R4: Non-resident income tax.

Advance Tax Rulings: ATR-49: Long-term foreign debt; ATR-69: Withholding tax on interest paid to non-resident persons;.

I.T. Technical News: No. 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms: NR4B Summ: Return of amounts paid or credited to non-residents of Canada; NR7-R: Application for refund of non-resident tax withheld; NR67AR: Non-resident tax remittance; NR67BR: Non-resident tax remittance form; NR75: Non-resident tax remitter registration form; T3 SCH 10: Calculation of Part XII.2 tax and Part XIII non-resident withholding tax.

(1.1) Exception — corporate immigration — Subsection (1) does not apply in respect of a dividend deemed to be paid under paragraph 128.1(1)(c.1) by a corporation to a non-resident corporation with which the corporation was dealing at arm's length.

History: Subsec. 215(1.1) added by 1999, c. 22, s. 77, applicable after February 23, 1998.

(2) Idem — Where an amount on which an income tax is payable under this Part is paid or credited by an agent or other person on behalf of the debtor either by way of redemption of bearer coupons or warrants or otherwise, the agent or other person by whom the amount was paid or credited shall, notwithstanding any agreement or law to the contrary, deduct or withhold and remit the amount of the tax and shall submit therewith a statement in prescribed form as required by subsection (1) and shall thereupon, for purposes of accounting to or obtaining reimbursement from the debtor, be deemed to have paid or

credited the full amount to the person otherwise entitled to payment.

Related Provisions: 215(5) — Regulations reducing deduction or withholding; 215(6) — Liability for tax; 227(8)–(8.4) — Liabilities arising from failure to withhold or deduct amount; 227.1 — Liability of directors.

Regulations: 202(2) (information return); 805 (where withholding not required); 809 (reduction in withholding).

I.T. Technical News: No. 14 (meaning of "credited" for purposes of Part XIII withholding tax).

(3) Idem — Where an amount on which an income tax is payable under this Part was paid or credited to an agent or other person for or on behalf of the person entitled to payment without the tax having been deducted or withheld under subsection (1), the agent or other person shall, notwithstanding any agreement or law to the contrary, deduct or withhold therefrom the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the person entitled to payment in payment of the tax and shall submit therewith a statement in prescribed form, and the agent or other person shall thereupon, for purposes of accounting to the person entitled to payment, be deemed to have paid or credited that amount to that person.

Related Provisions: 215(5) — Regulations reducing deduction or withholding; 215(6) — Liability for tax; 216(4) — Optional method of payment; 227(8)–(8.4) — Liabilities arising from failure to withhold or deduct amount; 227.1 — Liability of directors.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Regulations: 202(3) (information return); 805 (where withholding not required); 809 (reduction in withholding).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents.

I.T. Technical News: No. 14 (meaning of "credited" for purposes of Part XIII withholding tax).

Forms: NR1: Return of income received from sources within the United States on behalf of non-residents of Canada; NR7-R: Application for refund of non-resident tax withheld; NR67AR: Non-resident tax remittance; NR67BR: Non-resident tax remittance form; NR75: Non-resident tax remitter registration form.

(4) Regulations creating exceptions — The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons who carries or carry on business in Canada, providing that subsections (1) to (3) are not applicable to amounts paid to or credited to that person or those persons and requiring the person or persons to file an annual return on a prescribed form and to pay the tax imposed by this Part within a time limited in the regulations.

Related Provisions: 162(7) — Penalty for failure to comply with regulation; 227(9) — Penalty on tax not paid; 227(9.3) — Interest on tax not paid; 227.1 — Liability of directors; 235 — Penalty for failure to make returns.

Regulations: 800, 801, 803, 805.

Forms: T2016: Part XIII tax return — tax on income from Canada of registered non-resident insurers.

(5) Regulations reducing deduction or withholding — The Governor in Council may make regulations in respect of any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account of, in lieu of payment of or in satisfaction of, any amount described in any of paragraphs 212(1)(f), (h), (j) to (m) and (q) reducing the amount otherwise required by any of subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Proposed Amendment — 215(5)

(5) Regulations reducing deduction or withholding — The Governor in Council may make regulations in respect of any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account of, in lieu of payment of or in satisfaction of, any amount described in any of paragraphs 212(1)(h), (j) to (m) and (q) reducing the amount otherwise required by any of subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 103, will amend subsec. 215(5) to read as above, applicable after April 1997.

Technical Notes: Subsection 215(5) of the Act provides that the Governor in Council may make regulations reducing the tax to be withheld from certain payments made to a non-resident. The amendment to that subsection deletes a reference to paragraph 212(1)(f), which has been previously repealed.

This amendment applies to amounts paid or credited after April 1997, which is the time at which the repeal of paragraph 212(1)(f) came into force.

Related Provisions: 190.15(6) — Related financial institution; 212(1) — Tax on Canadian income of non-residents; 212(2) — Tax on dividends; 227.1 — Liability of directors.

History: Subsec. 215(5) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 177, applicable to amounts paid or credited after July 13, 1990. Subsec. 215(5) formerly read:

> (5) Regulations reducing amount to be deducted or withheld — The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account or in lieu of payment of, or in satisfaction of, any amount described in paragraph 212(1)(f), (h), (j), (k), (l), (m) or (q) reducing the amount otherwise required by subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Pre-RSC History: Subsec. 215(5) substituted by 1980-81-82-83, c. 48, s. 100, applicable with respect to payments made after 1979. Subsec. 215(5) formerly read:

> (5) The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account or in lieu of payment of, or in satisfaction of, any amount described in paragraph 212(1)(f) or (h) or in any of paragraphs 212(1)(j) to (m) reducing the amount otherwise required by subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Subsec. 215(5) substituted by 1976-77, c. 4, s. 72, applicable to 1975 *et seq.* Subsec. 215(5) formerly read:

> (5) The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account or in lieu of payment of, or in satisfaction of, any amount described in paragraph 212(1)(f) or in any of paragraphs 212(1)(h) to (m) reducing the amount otherwise required by subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Subsec. 215(5) substituted by 1974-75-76, c. 26, s. 120, applicable to 1974 *et seq.* Subsec. 215(5) formerly read:

> (5) The Governor in Council may make regulations with reference to any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account or in lieu of payment of, or in satisfaction of, any amount described in any of paragraphs 212(1)(h) to (m) reducing the amount otherwise required by subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

Subsec. 215(5) substituted by 1973-74, c. 30, s. 27.

Regulations: 805 (where withholding not required); 809 (reduction in withholding).

Forms: NR5: Application by a non-resident of Canada for a reduction in the amount of non-resident tax required to be withheld; NR7-R: Application for refund of non-resident tax withheld; NR67AR: Non-resident tax remittance; NR67BR: Non-resident tax remittance form; NR75: Non-resident tax remitter registration form.

(6) Liability for tax — Where a person has failed to deduct or withhold any amount as required by this section from an amount paid or credited or deemed to have been paid or credited to a non-resident person, that person is liable to pay as tax under this Part on behalf of the non-resident person the whole of the amount that should have been deducted or withheld, and is entitled to deduct or withhold from any amount paid or credited by that person to the non-resident person or otherwise recover from the non-resident person any amount paid by that person as tax under this Part on behalf thereof.

Related Provisions: 227(8.4) — Parallel provision for other withholding taxes; 227.1 — Liability of directors where corporation fails to withhold.

Selected Cases [subsec. 215(6)]: *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Agent or instrumentality used to distribute deemed didvidend under section 215 or section 159); *Harrowston Corp. v. Canada*, [1997] 1 C.T.C. 101 (FCA) (Liability to pay tax did not result in deductible bad debt); *Crown Forest Industries Ltd. v. Canada*, [1992] 2 C.T.C. 1 (FCTD); aff'd (Nov. 8, 1993), Doc. A-1103-92, A-1104-92, A-1105-92 (FCA) (Corporation liable to, but exempt from, US tax was resident in US under treaty by virtue of place of management and business); *Alberta Gas Ethylene Co. Ltd. v. Canada*, [1990] 2 C.T.C. 171 (FCA) (Interest on loan by non-resident subsidiary to resident parent subject to withholding tax; agency argument rejected); *The Queen v. Saint John Shipbuilding and Dry Dock Co. Ltd.*, [1980] C.T.C. 352 (FCA) (Payments for use of data stored on computer tape not taxable); *The Queen v. Farmparts Distributing Ltd.*, [1980] C.T.C. 205 (FCA) (Payments for merchandising technique were taxable within scope of "plan", "process" or "property"; payments for right to buy and sell machine not "rent, royalties or similar payments").

Definitions [s. 215]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "Governor in Council" — *Interpretation Act* 35(1); "non-resident", "person", "prescribed", "regulation" — 248(1).

Interpretation Bulletins [s. 215]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-362R: Patronage dividends.

216. (1) Alternatives re rents and timber royalties — Where an amount has been paid during a taxation year to a non-resident person or to a partnership of which that person was a member as, on account of, in lieu of payment of or in satisfaction of, rent on real property in Canada or a timber royalty, that person may, within 2 years (or, where that person has filed an undertaking described in subsection (4) in respect of the year, within 6 months) after the end of the year, file a return of income under Part I in the form prescribed for a person resident in Canada for that year and the non-resident person shall, without affecting the liability of the non-resident person for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on that amount, to pay tax under Part I for the year as though

(a) the non-resident person were a person resident in Canada and not exempt from tax under section 149;

(b) the non-resident person's income from the non-resident person's interest in real property in Canada, timber resource properties and timber limits in Canada and the non-resident person's share of the income of a partnership of which the non-resident person was a member from its interest in real property in Canada, timber resource properties and timber limits in Canada were the non-resident person's only income;

(c) the non-resident person were entitled to no deductions from income for the purpose of computing the non-resident person's taxable income; and

(d) the non-resident person were entitled to no deductions under sections 118 to 118.9 in computing the non-resident person's tax payable under Part I for the year.

Related Provisions: 13(21) — "Timber resource property"; 96 — Partnerships and their members; 120(1) — Additional tax on income not earned in a province; 150.1(5) — Electronic filing; 216(8) — Restriction on deduction; 220(3) — Extension of time for making return; 248(4) — Interest in real property; 250.1(b) — Calculation of income of non-resident person.

History: That portion of subsec. 216(1) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 178, applicable to taxation years ending after July 13, 1990. That portion formerly read:

> 216. (1) Where an amount has been paid during a taxation year to a non-resident person, or to a partnership of which the non-resident person was a member, as, on account or in lieu of payment of, or in satisfaction of, rent on real property in Canada or a timber royalty, the non-resident person may, within 2 years from the end of the taxation year, file a return of income under Part I in the form prescribed for a person resident in Canada for that taxation year and shall, without affecting the non-resident person's liability for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on that amount, to pay tax under Part I for that taxation year as though

Pre-RSC History: Para. 216(1)(c) substituted and para. 216(1)(d) added by 1988, c. 55, subsec. 164(1), applicable to 1988 *et seq.* Para. 216(1)(c) formerly read:

> (c) he were not entitled to any deduction from income for the purpose of computing taxable income.

All that portion of subsec. 216(1) preceding para. (a), para. 216(1)(b) substituted by 1974-75-76, c. 26, subsecs. 121(1), (2), applicable to taxation years ending after May 6, 1974. That portion of subsec. 216(1), para. 216(1)(b) formerly read:

> 216. (1) Where an amount has been paid during a taxation year to a non-resident person as, on account or in lieu of payment of, or in satisfaction of, rent on real property in Canada or a timber royalty, he may, within 2 years from the end of the taxation year, file a return of income under Part I in the form prescribed for a person resident in Canada for that taxation year and he shall, without affecting his liability for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on that amount, to pay tax under Part I for that taxation year as though
>
> . . . . .
>
> (b) his interest in real property in Canada or timber limits in Canada were his only source of income, and

Selected Cases [subsec. 216(1)]: *The Queen v. Merali*, [1988] 1 C.T.C. 320 (FCA) (Non-capital losses not deductible to non-resident electing under provision carried forward to year in respect of which taxpayer became resident).

Interpretation Bulletins: IT-81R: Partnerships — income of non-resident partners; IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-121R3: Election to capitalize cost of borrowed money; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-434R: Rental of real property by individual.

Information Circulars: 77-16R4: Non-resident income tax.

Forms: T1 General: Individual income tax return; T2: Corporation income tax return; T2 Short: A simpler return for eligible corporations; T3: Trust income tax and information return; NR6: Undertaking to file an income tax return by a non-resident receiving rent from real property or receiving a timber royalty; T1159: Income tax return electing under s. 216; T4144: Income tax guide for electing under section 216 [guide].

(2) Idem — Where a non-resident person has filed a return of income under Part I as permitted by this section, the amount deducted under this Part from

(a) rent on real property or from timber royalties paid to the person, and

(b) the person's share of the rent on real property or from timber royalties paid to a partnership of which the person is a member

and remitted to the Receiver General shall be deemed to have been paid on account of tax under this section and any portion of the amount so remitted to the Receiver General in a taxation year on the person's behalf in excess

of the person's liability for tax under this Act for the year shall be refunded to the person.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Subsec. 216(2) substituted by 1974-75-76, c. 26, subsec. 121(3), applicable to taxation years ending after May 6, 1974. Subsec. 216(2) formerly read:

> (2) Where a non-resident person has filed a return of income under Part I as permitted by this section, the amount deducted under this Part from rent payments to him or from timber royalties paid to him and remitted to the Receiver General of Canada shall be deemed to have been paid on account of tax under this section and any portion of the amount so remitted to the Receiver General of Canada in a taxation year in excess of the tax under this section for the year shall be refunded to him.

(3) Idem — Part I is applicable, with such modifications as the circumstances require, to payment of tax under this section.

(4) Optional method of payment — Where a non-resident person or, in the case of a partnership, each non-resident person who is a member of the partnership files with the Minister an undertaking in prescribed form to file within 6 months after the end of a taxation year a return of income under Part I for the year as permitted by this section, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the non-resident person or the partnership, an amount to the Receiver General in payment of tax on rent on real property or on a timber royalty may elect under this section not to remit under that subsection, and if that election is made, the elector shall,

(a) when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part; and

(b) if the non-resident person or, in the case of a partnership, a non-resident person who is a member of the partnership

(i) does not file a return for the year in accordance with the undertaking, or

(ii) does not pay under this section the tax the non-resident person or member is liable to pay for the year within the time provided for payment,

pay to the Receiver General, on account of the non-resident person's or the partnership's tax under this Part, on the expiration of the time for filing or payment, as the case may be, the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty minus the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

Possible Future Amendment — Requirement for non-resident to post security

Letter from Department of Finance, June 17, 1996:

Mr. Donald H. Watkins, Chair, Taxation Section, The Canadian Bar Association

Mr. Robert Spindler, C.A., Chair, Taxation Committee, Canadian Institute of Chartered Accountants

Dear Messrs. Watkins and Spindler:

At our recent meeting we discussed the possibility of revising the Canadian income tax rules governing the taxation of rental income earned by non-resident owners of Canadian real estate. This letter outlines a proposal that would, if implemented, place the risk of a non-resident's non-compliance with the Canadian tax system on the non-resident rather than the non-resident's Canadian property agent.

In general, Part XIII of the *Income Tax Act* levies a withholding tax of 25% on rental payments made by Canadians to non-resident owners of Canadian real property. Where the non-resident collects the rent through a Canadian agent (who is typically a building or property manager), the agent is responsible for ensuring that 25% of the gross rental payments are remitted to Revenue Canada. An exception to this general rule exists where a non-resident elects, under section 216 of the Act, to file a Canadian income tax return in respect of the rental income and pay tax on the net property income.

To make the election the non-resident and the non-resident's Canadian agent are required to provide an undertaking to Revenue Canada to file an income tax return for the rental income within six months of the end of the relevant year. Where an election is made, the rule requiring the Canadian agent to remit 25% of the gross rental payments to Revenue Canada does not apply; instead, only 25% of the net amount of rent received by the agent need be remitted. However, if the non-resident fails to either file an income tax return or pay his tax liability within the time required under the election, the Canadian agent becomes liable for the amount that the agent would ordinarily have been required to withhold under Part XIII of the Act (ie., 25% of the gross rental payments) less the amount of tax actually remitted. The non-resident's tax liability is placed on the Canadian agent in an attempt to protect the government from the loss of any tax revenue arising from the non-resident's failure to pay the required tax. This mechanism is necessary because, in practice, it would be very difficult to enforce a tax liability on non-resident property owners.

We are considering alternatives to the current system which may reduce the liability of Canadian agents while at the same time protecting Canada's tax base. To achieve these objectives, we are prepared to consider a system which would require non-resident property owners to post security with Revenue Canada in order to take advantage of the election to file an income tax return and avoid having tax withheld on the gross amount of the rental payments. Where the non-resident fails to pay the required amount of tax within the specified time, the government would be able to look to the security; accordingly, the Canadian agent's exposure to tax could be reduced. In this context, acceptable security could be similar to that which is required under section 116 of the Act.

Finance is not, however, committed to this proposal; it remains our view that the current system works reasonably well from the government's viewpoint, and implementation of the alternative proposal would be considered only if it were thought to provide a better system from the taxpayer's perspective. This alternative has been outlined to a number of real estate organizations and other interested parties from whom we hope to gather comments over the course of the coming months.

I would also note that at our recent meeting you raised the possibility of considering changes to the existing time limits for filing a Part I income tax return under subsection 216(4). We would be pleased to receive written comments on your suggestion for modifying those time limits or on the alternative system outlined above.

Yours sincerely,
Len Farber, Director,
Tax Legislation Division,
Department of Finance

Related Provisions: 96 — Partnerships and their members; 216(1) — Alternative re rents and timber royalties.

History: Subsec. 216(4) amended by 1998, c. 19, s. 217, applicable to amounts paid or credited after November 1991. Subsec. 216(4) formerly read:

> (4) Where a non-resident person or each non-resident person who is a member of a partnership has filed with the Minister an undertaking in prescribed form to file a return of income under Part I for a taxation year as permitted by this section but within 6 months from the end of the taxation year, a person who is otherwise required by

subsection 215(3) to remit in the year an amount to the Receiver General in payment of tax on rent on real property or in payment of tax on a timber royalty may elect, by virtue of this section, not to remit under that subsection but if the [elector] does so elect

(a) the [elector] shall, when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct therefrom 25% thereof and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part, and

(b) the [elector] shall, if the non-resident person or each non-resident person who is a member of the partnership

(i) does not file a return for the taxation year in accordance with the undertaking filed by the non-resident person or member with the Minister, or

(ii) does not pay the tax the non-resident person or member is liable to pay for the taxation year under this section within the time limited for payment,

pay to the Receiver General, on the expiration of the time for filing or payment, as the case may be, the full amount that the [elector] would otherwise have been required to remit in the year minus the amounts that the [elector] has remitted in the year under paragraph (a).

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

All that portion of subsec. 216(4) preceding subpara. (b)(i) substituted by 1974-75-76, c. 26, subsec. 121(4), applicable to taxation years ending after May 6, 1974. That portion of subsec. 216(4) formerly read:

(4) Where a non-resident person has filed with the Minister an undertaking in prescribed form to file a return of income under Part I for a taxation year as permitted by this section but within 6 months from the end of the taxation year, a person who is otherwise required by subsection 215(3) to remit in the year an amount to the Receiver General of Canada in payment of tax on rent on real property or in payment of tax on a timber royalty may elect, by virtue of this section, not to remit under that subsection but if he does so elect

(a) he shall, when any amount is available out of the rent or royalty received for remittance to the non-resident person, deduct therefrom 25% thereof and remit the amount deducted to the Receiver General of Canada on behalf of the non-resident person on account of the tax under this Part, and

(b) he shall, if the non-resident person

Forms: NR6: Undertaking to file an income tax return by a non-resident receiving rent from real property or receiving a timber royalty; T1159: Income tax return electing under s. 216; T4144: Income tax guide for electing under section 216 [guide].

(5) Disposition by non-resident of interest in real property, timber resource property or timber limit — Where a person or a trust of which that person is a beneficiary has filed a return of income under Part I for a taxation year as permitted by this section or as required by section 150 and, in computing the amount of the person's income under Part I an amount has been deducted under paragraph 20(1)(a), or is deemed by subsection 107(2) to have been allowed under that paragraph, in respect of real property in Canada, a timber resource property or a timber limit in Canada, the person shall, within the time prescribed by section 150 for filing a return of income under Part I, file a return of income under Part I, in the form prescribed for a person resident in Canada, for any subsequent taxation year in which the person was a non-resident person and in which that real property, timber resource property or timber limit or any interest therein is disposed of, within the meaning of section 13, by the person or by a partnership of which the person is a member, and the person shall, without affecting the person's liability for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on any amount paid, or deemed by this Part to have been paid to the person or to a partnership of which the person is a member in that subsequent taxation year in respect of any interest in real property, timber resource property or timber limit in Canada, to pay tax under Part I for that subsequent taxation year as though

(a) the person were a person resident in Canada and not exempt from tax under section 149;

(b) the person's income from the person's interest in real property, timber resource property or timber limits in Canada and the person's share of the income of a partnership of which the person was a member from its interest in real property, timber resource property or timber limits in Canada were the person's only income;

(c) the person were entitled to no deductions from income for the purpose of computing the person's taxable income; and

(d) the person were entitled to no deductions under sections 118 to 118.9 in computing the person's tax payable under Part I for the year.

Related Provisions: 150.1(5) — Electronic filing; 216(6) — Saving provision; 216(7) — Election; 216(8) — Restriction on deduction; 248(4) — Interest in real property.

Pre-RSC History: Para. 216(5)(c) substituted and para. 216(5)(d) added by 1988, c. 55, subsec. 164(2), applicable to 1988 *et seq.* Para. 216(5)(c) formerly read:

(c) he were not entitled to any deduction from income for the purpose of computing his taxable income.

Subsec. 216(5) substituted by 1974-75-76, c. 26, subsec. 121(5), applicable to dispositions of property after May 6, 1974. Subsec. 216(5) formerly read:

(5) Where a non-resident person has filed a return of income under Part I for a taxation year as permitted by this section and has, in computing his income under Part I for that year, deducted an amount under paragraph 20(1)(a) in respect of real property in Canada or a timber limit in Canada, he shall, within the time prescribed by section 150 for filing a return of income under Part I, file a return of income under Part I, in the form prescribed for a person resident in Canada, for any subsequent taxation year in which that real property or timber limit or any interest therein is disposed of, within the meaning of section 13, by him, and he shall, without affecting his liability for tax otherwise payable under Part I, thereupon be liable, in lieu of paying tax under this Part on any amount paid to him or deemed by this Part to have been paid to him in that subsequent taxation year in respect of any interest of that person in real property in Canada or timber limits in Canada, to pay tax under Part I for that subsequent taxation year as though

(a) he were a person resident in Canada,

(b) his interest in real property in Canada or timber limits in Canada were his only source of income, and

(c) he were not entitled to any deduction from income in computing his taxable income.

Selected Cases [subsec. 216(5)]: *The Queen v. Arnos et al.*, [1982] 1 C.T.C. 186 (FCA) (Under *Canada-U.S. Tax Convention*, recapture not applicable to non-resident beneficiary after Canadian trustee transferred property on which capital cost allowance was deducted); *Deitcher v. The Queen*, [1979] C.T.C. 500 (FCTD) (Capital cost allowance deducted by non-resident electing to be taxed as resident recaptured on sale of property); *Bessemer Trust Co. v. MNR*, [1973] C.T.C. 12 (FCA) (Capital cost allowance deducted by non-resident trust electing to be taxed as resident recaptured on sale of property).

(6) Saving provision — Subsection (5) does not apply to require a non-resident person

(a) to file a return of income under Part I for a taxation year unless, by filing that return, there would be included in computing the non-resident person's income under Part I for that year an amount by virtue of section 13; or

(b) to include in computing the non-resident person's income for a taxation year any amount to the extent that that amount has been included in computing the

non-resident person's taxable income earned in Canada for that taxation year by virtue of any provision of this Act other than subsection (5).

Related Provisions: 13(1) — Recaptured depreciation.

Pre-RSC History: Para. 216(6)(a) substituted by 1977-78, c. 1, s. 95, applicable in respect of taxation years commencing after May 26, 1976, to substitute "section 13" for "subsection 13(1) or (1.1)".

Subsec. 216(6) substituted by 1974-75-76, c. 26, subsec. 121(5), applicable to dispositions of property after May 6, 1974. Subsec. 216(6) formerly read:

> (6) Subsection (5) does not apply to require a non-resident person to file a return of income under Part I for a taxation year unless, by filing that return, there would be included in computing his income under Part I for that year an amount by virtue of subsection 13(1).

(7) Election — Where, by virtue of subsection (5), a non-resident person is liable to pay tax under Part I for a taxation year, for greater certainty section 61 is not applicable in computing the non-resident person's income for the year.

(8) Restriction on deduction — For greater certainty, in determining the amount of tax payable by a non-resident person under Part I for a taxation year by reason of subsection (1) or (5), no deduction in computing the non-resident person's income or tax payable under Part I for the year shall be made to the extent that such a deduction by non-resident persons is not permitted under Part I.

Pre-RSC History: Subsec. 216(8) added by 1988, c. 55, subsec. 164(3).

Definitions [s. 216]: "amount" — 248(1); "Canada" — 255; "interest" — in real property 248(4); "Minister", "non-resident" — 248(1); "person", "prescribed", "property" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxation year" — 249; "timber resource property" — 13(21), 248(1).

Interpretation Bulletins [s. 216]: See under subsec. 216(1).

217. (1) Alternative re Canadian benefits — In this section, a non-resident person's "Canadian benefits" for a taxation year is the total of all amounts each of which is an amount paid or credited in the year and in respect of which tax under this Part would, but for this section, be payable by the person because of any of paragraphs 212(1)(h), (j) to (m) and (q).

(2) Part I return — No tax is payable under this Part in respect of a non-resident person's Canadian benefits for a taxation year if the person

(a) files with the Minister, within 6 months after the end of the year, a return of income under Part I for the year; and

(b) elects in the return to have this section apply for the year.

Related Provisions: 150.1(5) — Electronic filing; 217(3)–(6) — Part I tax payable when election made.

Forms: See at end of s. 217.

(3) Taxable income earned in Canada — Where a non-resident person elects under paragraph (2)(b) for a taxation year, for the purposes of Part I

(a) the person is deemed to have been employed in Canada in the year; and

(b) the person's taxable income earned in Canada for the year is deemed to be the greater of

(i) the amount that would, but for subparagraph (ii), be the person's taxable income earned in Canada for the year if

(A) paragraph 115(1)(a) included the following subparagraph after subparagraph (i):

"(i.1) the non-resident person's Canadian benefits for the year, within the meaning assigned by subsection 217(1),", and

(B) paragraph 115(1)(f) were read as follows:

"(f) such of the other deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable to the amounts described in subparagraphs (a)(i) to (vi).", and

(ii) the person's income (computed without reference to subsection 56(8)) for the year minus the total of such of the deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable to the amounts described in subparagraphs 115(1)(a)(i) to (vi).

Related Provisions: 2(3) — Tax payable under Part I as a result of being deemed employed in Canada.

(4) Tax credits — limitation — Sections 118 to 118.91 and 118.94 do not apply in computing the tax payable under Part I for a taxation year by a non-resident person who elects under paragraph (2)(b) for the year, unless

(a) where section 114 applies to the person for the year, all or substantially all of the person's income for the year is included in computing the person's taxable income for the year; or

(b) in any other case, all or substantially all of the person's income for the year is included in computing the amount determined under subparagraph (3)(b)(i) in respect of the person for the year.

(5) Tax credits allowed — In computing the tax payable under Part I for a taxation year by a non-resident person to whom neither paragraph (4)(a) nor paragraph (4)(b) applies for the year there may, notwithstanding section 118.94 and subsection (4), be deducted the lesser of

(a) the total of

(i) such of the amounts that would have been deductible under any of section 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 in computing the person's tax payable under Part I for the year if the person had been resident in Canada throughout the year, as can reasonably be considered wholly applicable, and

(ii) the amounts that would have been deductible under any of sections 118 and 118.1, subsection 118.3(1) and sections 118.5 and 118.7 in computing the person's tax payable under Part I for the year if the person had been resident in Canada throughout the year, and

(b) the appropriate percentage for the year of the person's Canadian benefits for the year.

(6) Special credit — In computing the tax payable under Part I for a taxation year by a non-resident who elects under paragraph (2)(b) for the year, there may be deducted the amount determined by the formula

$$A \times \left(\frac{(B - C)}{B} \right)$$

where

A is the amount of tax under Part I that would, but for this subsection, be payable by the person for the year;

B is the amount determined under subparagraph (3)(b)(ii) in respect of the person for the year; and

C is the amount determined under subparagraph (3)(b)(i) in respect of the person for the year.

Related Provisions: 257 — Formula cannot calculate to less than zero.

History: Subpara. 217(3)(b)(ii) amended by 1998, c. 19, s. 64, applicable to 1997 *et seq.* Subpara. 217(3)(b)(ii) formerly read:

> (ii) the person's income for the year, minus the total of such of the deductions permitted for the purpose of computing taxable income as can reasonably be considered wholly applicable to the amounts described in subparagraphs 115(1)(a)(i) to (vi).

S. 217 amended by 1997, c. 25, s. 64, applicable to 1997 *et seq.* S. 217 formerly read:

> 217. Election respecting certain payments — Where by virtue of any one or more of paragraphs 212(1)(f), (h), (j) to (m) and (q) a non-resident person would otherwise be liable to pay tax under this Part on one or more amounts paid or credited to the non-resident person in a taxation year and that person has, within 6 months after the end of the year, filed a return of income under Part I for the year and so elected therein, the following rules apply:
>
> (a) notwithstanding subsection 212(1), no tax under this Part is payable by the non-resident person on those amounts;
>
> (b) notwithstanding section 115, for the purposes of computing that person's taxable income earned in Canada for the year,
>
> (i) paragraph 115(1)(a) shall be read as though it included the following subparagraph:
>
> "(i.1) amounts paid or credited to the non-resident person in the year on which that person would, under any of paragraphs 212(1)(f), (h), (j) to (m) and (q) be liable to pay tax under Part XIII if no election were made under section 217,", and
>
> (ii) all that portion of subsection 115(1) following paragraph (c) shall be read as follows:
>
> "minus the total of such of the deductions from income permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable"; and
>
> (c) notwithstanding sections 118.91 and 118.94, where the non-resident person is an individual more than ½ of whose income for the year is included in the individual's taxable income or taxable income earned in Canada for the year, as the case may be, section 118.94 shall, where the individual so elects in the return, be applied in respect of the individual for the year as if it read as follows:
>
> "118.94 Sections 118 to 118.91 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who was non-resident at any time in the year, except that for the purpose of computing the tax payable under this Part for the year there may be deducted the total of
>
> (a) such of the amounts that would have been deductible under any of section 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year, as can reasonably be considered wholly applicable, and
>
> (b) the amounts that would have been deductible under sections 118 and 118.1, subsection 118.3(1) and sections 118.5 and 118.7 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year,
>
> not exceeding the appropriate percentage for the year of the total of all amounts each of which is an amount paid or credited to the individual in the year on which the individual would, under any of paragraphs 212(1)(f), (h), (j) to (m) and (q) be liable to pay tax under Part XIII if no election were made under section 217."

Subpara. 217(b)(i) and the closing words of the version of s. 118.94 quoted within para. 217(c) amended by 1996, c. 21, subsecs. 56(1), (2), applicable to 1996 *et seq.* Subpara. (b)(i) and the closing words of s. 118.94 quoted in 217(c) formerly read:

> (i) there shall be added to the total of the amounts determined under subparagraphs 115(1)(a)(i) to (v) in respect of that person the total of amounts each of which is an amount paid or credited to the non-resident person in the year on which that person would, by virtue of any one or more of paragraphs 212(1)(f), (h), (j) to (m) and (q), be liable to pay tax under this Part if paragraph 212(1)(h) were read without reference to subparagraphs 212(1)(h)(i) and (ii), and

and read the closing words of 118.94 as quoted in 217(c) as follows:

> not exceeding the appropriate percentage for the year of the total of all amounts each of which is an amount paid or credited to the individual in the year on which the individual would, under any of paragraphs 212(1)(f), (h), (j) to (m) and (q), be liable to pay tax under Part XIII if paragraph 212(1)(h) were read without reference to subparagraphs 212(1)(h)(i) and (ii), and no election were made under section 217.

Para. 217(c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 179(1), applicable to 1991 *et seq.*; and (by subsec. 179(3)), for the 1988 to 1990 taxation years, paras. 118.94(a) and (b), as those paras. apply for the purpose of para. 217(c), shall be read as follows:

> (a) such of the amounts that would have been deductible under any of section 118.2, subsections 118.3(2) and (3) and sections 118.6, 118.8 and 118.9 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year, as can reasonably be considered to be wholly applicable; and
>
> (b) the amounts that would have been deductible under sections 118 and 118.1, subsection 118.3(1) and sections 118.5 and 118.7 for the purpose of computing the individual's tax payable under this Part for the year if the individual had been resident in Canada throughout the year.

Para. 217(c) formerly read:

> (c) notwithstanding section 118.94, where the person is an individual, that section shall be read as follows:
>
> "118.94 Sections 118 to 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by a non-resident individual except that for the purpose of computing the individual's tax payable under this Part for the year there may be deducted
>
> (a) such of the amounts that would have been deductible under any of sections 118.1 and 118.2, subsections 118.3(2) and (3) and sections 118.5 to 118.9 for the purpose of computing the individual's tax payable under this Part for the year had the individual been resident in Canada throughout the year, as may reasonably be considered wholly applicable; and
>
> (b) the amounts that would have been deductible under section 118 and subsection 118.3(1) for the purpose of computing the individual's tax payable under this Part for the year had the individual been resident in Canada throughout the year."

Pre-RSC History: That portion of s. 217 following subpara. (b)(i) substituted by 1988, c. 55, s. 165, applicable to 1988 *et seq.* That portion formerly read:

> (ii) there may be deducted such of the amounts permitted by section 109 as would, if he had been resident in Canada throughout the year, have been deductible from his income for the year for the purpose of computing taxable income, and
>
> (iii) all that portion of subsection 115(1) following paragraph (c) thereof shall be read as follows:
>
> "minus the aggregate of such of the deductions from income (other than under section 109) permitted for the purpose of computing taxable income as may reasonably be considered wholly applicable and of such part of any other of those deductions as may reasonably be considered applicable"

Subpara. 217(b)(iii) substituted by 1980-81-82-83, c. 140, s. 119, applicable to 1982 *et seq.* Subpara. (b)(iii) formerly read:

> (iii) section 115 shall be read as if the reference therein to "the aggregate of such of the deductions from income permitted for the purpose of computing taxable income" were read as a reference to "the aggregate of such of the deductions from income (other than under section 109) permitted for the purpose of computing taxable income".

All that portion of s. 217 preceding subpara. (b)(ii) substituted by 1977-78, c. 32, s. 51 to add reference to para. 212(1)(q).

All that portion of s. 217 preceding para. (a), subpara. 217(b)(i) substituted by 1976-77, c. 4, subsecs. 73(1), (2), applicable to 1975 *et seq.* That portion and subpara. (b)(i) formerly read:

> 217. Where by virtue of paragraphs 212(1)(f) or (h) to (m) a non-resident person would otherwise be liable to pay tax under this Part on one or more amounts paid or credited to him in a taxation year and that person has, within 6 months after the end of the year, filed a return of income under Part I for the year and so elected therein, the following rules apply:
>
> .....
>
> (i) there shall be added to the aggregate of the amounts determined under subparagraphs 115(1)(a)(i) to (v) in respect of that person the aggregate of amounts each of which is an amount paid or credited to the non-resident person in the year on which he would, by virtue of paragraphs 212(1)(f) or (h) to (m), be liable to pay tax under this Part if
>
> (A) paragraph 212(1)(h) were read without reference to subparagraph (i) thereof, and
>
> (B) the reference in subparagraph 212(1)(i)(ii) to "$1,290" were read as a reference to "nil",

All that portion of s. 217 preceding para. (a), all that portion of subpara. 217(b)(i) preceding clause (A) substituted by 1974-75-76, c. 26, subsecs. 122(1), (2), applicable to 1974 *et seq.* Those portions of s. 217 and subpara. (b)(i) formerly read:

> 217. Where by virtue of paragraphs 212(1)(h) to (m) a non-resident person would otherwise be liable to pay tax under this Part on one of more amounts paid or credited to him in a taxation year and that person has, within 6 months after the end of the year, filed a return of income under Part I for the year and so elected therein, the following rules apply:
>
> .....
>
> (i) there shall be added to the aggregate of the amounts determined under subparagraphs 115(1)(a)(i) to (v) in respect of that person the aggregate of amounts each of which is an amount paid or credited to the non-resident person in the year on which he would, by virtue of paragraphs 212(1)(h) to (m), be liable to pay tax under this Part if

Selected Cases [s. 217]: *Yaremy v. Canada*, [1994] 2 C.T.C. 2402 (TCC) (Election under s. 217 could not later be reversed).

Definitions [s. 217]: "amount", "appropriate percentage" — 248(1); "Canada" — 255; "Canadian benefits" — 217(1); "individual", "Minister", "non-resident", "person" — 248(1); "resident in Canada" — 250; "tax payable" — 248(2); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 217]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts; IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-337R2: Retiring allowances.

Forms [s. 217]: NR5: Application by a non-resident of Canada for reduction in the amount of non-resident tax required to be withheld; NR7-R: Application for refund of non-resident tax withheld; T4145: Electing under section 217 of the *Income Tax Act* [guide].

218. (1) Loan to wholly-owned subsidiary — For the purposes of this Act, where

(a) a non-resident corporation (in this section referred to as the "parent corporation") is indebted to

(i) a person resident in Canada, or

(ii) a non-resident insurance corporation carrying on business in Canada,

(in this section referred to as the "creditor") under an arrangement whereby the parent corporation is required to pay interest in Canadian currency, and

(b) the parent corporation has lent the money in respect of which it is so indebted, or a part thereof, to a subsidiary wholly-owned corporation resident in Canada whose principal business is the making of loans (in this section referred to as the "subsidiary corporation") under an arrangement whereby the subsidiary corporation is required to repay the loan to the parent corporation with interest at the same rate as is payable by the parent corporation to the creditor,

the amount so lent by the parent corporation to the subsidiary corporation shall be deemed to have been borrowed by the parent corporation as agent of the subsidiary corporation and interest paid by the subsidiary corporation to the parent corporation that has been paid by the parent corporation to the creditor shall be deemed to have been paid by the subsidiary corporation to the creditor and not by the subsidiary corporation to the parent corporation or by the parent corporation to the creditor.

(2) Idem — Where a parent corporation has lent money to a subsidiary wholly-owned corporation resident in Canada whose principal business is not the making of loans and the money has been lent by that corporation to a subsidiary corporation wholly-owned by it and resident in Canada whose principal business is the making of loans, the loan by the parent corporation shall be deemed, for the purpose of subsection (1), to have been a loan to a subsidiary wholly-owned corporation whose principal business is the making of loans.

(3) Election — This section does not apply in respect of any payment of interest unless the parent corporation and the creditor have executed, and filed with the Minister, an election in prescribed form.

Forms: T2023: Election in respect of loans from non-residents.

(4) Application of election — An election filed under subsection (3) does not apply in respect of any payment of interest made more than 12 months before the date on which the election was filed with the Minister.

Related Provisions: 17 — Inclusion of deemed interest in income of corporation resident in Canada.

Definitions [s. 218]: "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "insurance corporation", "Minister", "non-resident" — 248(1); "parent corporation" — 218(1)(a); "person", "prescribed" — 248(1); "resident in Canada" — 250; "subsidiary corporation" — 218(1)(b); "subsidiary wholly-owned corporation" — 248(1).

Interpretation Bulletins [s. 218]: IT-88R2: Stock dividends; IT-109R2: Unpaid amounts.

218.1 Application of s. 138.1 — In respect of life insurance policies for which all or any part of an insurer's reserves vary in amount depending on the fair market value of a specified group of properties, the rules contained in section 138.1 apply for the purposes of this Part.

Origin of s. 218.1: R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in opening words of 138.1.)

Definitions [s. 218.1]: "amount", "insurer", "life insurance policy" — 248(1).

PART XIV — ADDITIONAL TAX ON NON-RESIDENT CORPORATIONS

History: The heading before s. 219 amended by 1998, c. 19, s. 218, in force on June 18, 1998. The heading formerly read:

Additional Tax on Corporations (other than Canadian Corporations) Carrying on Business in Canada

219. (1) Additional tax [branch tax] — Every corporation that is non-resident in a taxation year shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which the total of

(a) the corporation's taxable income earned in Canada for the year (in this subsection referred to as the corporation's "base amount"),

(b) the amount deducted because of section 112 and paragraph 115(1)(d.1) in computing the corporation's base amount,

(c) the amount deducted under paragraph 20(1)(v.1) in computing the corporation's base amount, other than any portion of the amount so deducted that was deductible because of the membership of the corporation in a partnership,

(d) 1/3 of the amount, if any, by which the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property exceeds the total of all amounts each of which is

(i) an allowable capital loss of the corporation for the year from a disposition of a taxable Canadian property, or

(ii) an amount deductible because of paragraphs 111(1)(b) and 115(1)(e) in computing the corporation's base amount,

(e) the total of all amounts each of which

(i) is an amount in respect of a grant or credit that can reasonably be considered to have been received by the corporation in the year as a reimbursement or repayment of, or as indemnification or compensation for, an amount deducted because of

(A) paragraph (j), as it read in its application to the 1995 taxation year, in computing the amount determined under this subsection for a preceding taxation year that began before 1996, or

(B) paragraph (k) in computing the amount determined under this subsection for the year or for a preceding taxation year that began after 1995, and

(ii) was not included in computing the corporation's base amount for any taxation year,

(f) where, at any time in the year, the corporation has made one or more dispositions described in paragraph (l) of qualified property, the total of all amounts each of which is an amount in respect of one of those dispositions equal to the amount, if any, by which the fair market value of the qualified property at the time of the disposition exceeds the corporation's proceeds of disposition of the property, and

(g) the amount, if any, claimed for the immediately preceding taxation year under paragraph (j) by the corporation,

exceeds the total of

(h) that proportion of the total of

(i) the total of the taxes payable under Parts I, I.3 and VI for the year by the corporation, determined without reference to subsection (1.1), and

(ii) the total of the income taxes payable to the government of a province for the year by the corporation, determined without reference to subsection (1.1),

that the corporation's base amount is of the amount that would, if this Act were read without reference to subsection (1.1), be the corporation's base amount,

(i) the total of all amounts each of which is the amount of interest or a penalty paid by the corporation in the year

(i) under this Act, or

(ii) on or in respect of an income tax payable by it to the government of a province under a law of the province relating to income tax,

to the extent that the interest or penalty was not deductible in computing its base amount for any taxation year,

(j) where the corporation was carrying on business in Canada at the end of the year, the amount claimed by the corporation for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada,

(k) the portion of the total of all amounts, each of which is an amount by which the corporation's base amount is increased because of paragraph 12(1)(o) or 18(1)(l.1) or (m) or subsection 69(6) or (7), that is not deductible under paragraph (h) or (j), and

(l) where the corporation has at any time in the year disposed of property (in this paragraph and paragraph (f) referred to as "qualified property") used by it immediately before that time for the purpose of gaining or producing income from a business carried on by it in Canada to a Canadian corporation (in this paragraph referred to as the "purchaser corporation") that was, immediately after the disposition, a qualified related corporation of the corporation for consideration that includes a share of the capital stock of the purchaser corporation, the total of all amounts each of which is an amount in respect of a disposition in the year of a qualified property equal to the amount, if any, by which

(i) the fair market value of the qualified property at the time of the disposition

exceeds the total of

(ii) the amount, if any, by which the paid-up capital in respect of the issued and outstanding shares of the capital stock of the purchaser corporation increased because of the disposition, and

(iii) the fair market value, at the time of receipt, of the consideration (other than shares) given by the purchaser corporation for the qualified property.

Proposed Amendment — Authorized foreign bank

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (6) That an authorized foreign bank be subject to tax under Part XIV of the Act.

Department of Finance news release, February 11, 1999: *Branch Tax*

Resident corporations must pay withholding tax on dividends remitted to a non-resident parent. The concept of a dividend is not relevant to a branch office, however, as the non-resident home office is not a separate legal entity from its branches. Part XIV of the *Income Tax Act* imposes a "branch tax" on the earnings of a non-resident corporation carrying on business in Canada through a branch office, to the extent that the earnings of the non-resident corporation are not retained in Canada to fund the Canadian operations. The branch tax is designed to replicate the tax treatment of dividends. For example, the branch tax is reduced in cases where a treaty provides for a reduced withholding rate on dividends.

It is proposed that the branch tax apply to foreign banks. The application of this tax is intended to ensure that Canadian branches of foreign banks are taxed in the same manner on their surplus as Canadian subsidiaries of foreign banks.

[For other proposals see under 248(1)"authorized foreign bank" — ed.]

Related Provisions: 18(1)(t) — Tax is non-deductible; 52(7) — Cost of shares of subsidiary; 115.2 — Non-resident investment or pension fund deemed not to be carrying on business in Canada; 134 — Status of non-resident-owned investment corporation for purposes of s. 219; 219(1.1) — Excluded gains; 219(2) — Exempt corporations; 219.1 — Corporate emigration — 25% tax; 219.2 — Limitation on rate of Part XIV tax to dividend rate under treaties; Canada-U.S. tax treaty, Art. X:6(d) — Exemption for first $500,000 of earnings.

History: Subsec. 219(1) amended by 1998, c. 19, subsec. 219(1), applicable to taxation years that begin after 1995 except that, in its application to taxation years that began in 1996, the reference in paragraph 219(1)(g) of the Act to "paragraph (j)" shall be read as a reference to "paragraph (h), as it read in its application to the 1995 taxation year, or paragraph (j)". Subsec. 219(1) formerly read:

> (1) Every corporation carrying on business in Canada at any time in a taxation year (other than a corporation that was, throughout the year, a Canadian corporation) shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for the year equal to 25% of the amount by which the total of
>
> (a) the corporation's amount taxable (within the meaning given that expression in section 123) for the taxation year,
>
> (a.1) the amount deducted by the corporation under section 112 in computing the amount referred to in paragraph (a),
>
> (a.2) the amount deducted by the corporation under subsection 115(1) in computing the amount referred to in paragraph (a) that was an amount the deduction of which was permitted under section 112,
>
> (a.3) the amount deducted under paragraph 20(1)(v.1) by the corporation in computing the amount referred to in paragraph (a), other than any portion of the amount so deducted that was deductible because of the membership of the corporation in a partnership,
>
> (a.4) where, at any time in the taxation year, the corporation has made one or more dispositions as described in paragraph (k) of qualified property, the total of all amounts each of which is an amount in respect of such a disposition equal to the amount, if any, by which the fair market value of the qualified property at the time of the disposition exceeds the amount of the corporation's proceeds of disposition of the property,
>
> (b) the amount claimed by the corporation under paragraph (h) for the immediately preceding taxation year, and
>
> (c) where the corporation was resident in Canada at any time in the year, the amount claimed under paragraph (i) for the immediately preceding taxation year,
>
> exceeds the total of,
>
> (d) where the corporation was, throughout the year, not resident in Canada, the lesser of
>
> (i) the amount, if any, by which the total of amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property that was not property used in the year in, or held in the year in the course of, carrying on business in Canada, exceeds the total of amounts each of which is an allowable capital loss of the corporation for the year from a disposition of any such property, and
>
> (ii) the amount that would be determined under subparagraph (i) for the year if it were read without reference to the expression "that was not property used in the year in, or held in the year in the course of, carrying on business in Canada",
>
> (e) the total of the taxes payable by it under Parts I, I.3 and VI for the year less, where the corporation was at no time in the year resident in Canada, that proportion of the tax payable by it under Part I for the year that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,
>
> (f) any income taxes payable by the corporation to the government of a province in respect of the year (to the extent that those taxes were not deductible under Part I in computing its income for the year from businesses carried on by it in Canada) less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,
>
> (f.1) the total of all amounts each of which is the amount of interest or a penalty paid by it in the year
>
> (i) under this Act, or
>
> (ii) on or in respect of income taxes payable by it to the government of a province under a law of the province relating to income tax,
>
> to the extent that the interest or penalty was not deductible in computing its income under Part I for any taxation year from a business carried on by it in Canada,
>
> (g) where the corporation was resident in Canada at any time in the year
>
> (i) the amount deducted under section 126 from the tax for the year otherwise payable by the corporation under Part I, and
>
> (ii) ½ of the lesser of the corporation's taxable income for the year and the amount, if any, by which
>
> (A) the total of such of its incomes for the year from businesses or properties and its taxable capital gains for the year from disposition of property as were from sources in countries other than Canada
>
> exceeds
>
> (B) the total of such of its losses for the year from businesses or properties and its allowable capital losses for the year from dispositions of property as were from sources in countries other than Canada,
>
> (h) where the corporation was, at the end of the year, carrying on business in Canada, such amount as the corporation may claim for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada,
>
> (i) where the corporation was resident in Canada at any time in the year, such amount as the corporation may claim for the year, not exceeding the amount, if any, by which
>
> (i) the total of dividends paid by it after it last became resident in Canada, while it was resident in Canada and before the end of the year
>
> exceeds
>
> (ii) the total of amounts determined under subparagraph (g)(ii) in respect of the corporation for taxation years ending after it last became resident in Canada and not later than the end of the year,
>
> (j) such portion of the total of all amounts, each of which is an amount by which the amount referred to in paragraph (a) is increased by virtue of paragraph 12(1)(o), 18(1)(l.1) or (m) or subsection 69(6) or (7), as is not deductible under paragraph (f) or (h), and
>
> (k) where, at any time after December 11, 1979, the corporation has, in the taxation year, disposed of property (in this paragraph and paragraph (a.4) referred to as "qualified property") used by it immediately before that time for the purpose of gaining or producing income from a business carried on by it in Canada to a Canadian corporation that was, immediately after the disposi-

tion, its subsidiary wholly-owned corporation (in this paragraph referred to as the "purchaser corporation") for consideration that includes shares of the capital stock of the purchaser corporation, the total of all amounts each of which is an amount in respect of a disposition in the year of a qualified property equal to the amount, if any, by which

(i) the fair market value of the qualified property at the time of its disposition

exceeds the total of

(ii) the amount, if any, by which the paid-up capital in respect of the issued and outstanding shares of the capital stock of the purchaser corporation increased by virtue of the disposition, and

(iii) the fair market value, at the time of receipt, of the consideration (other than shares) given by the purchaser corporation for the qualified property.

Para. 219(1)(a.3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 126(1), applicable after December 20, 1991. Para. (a.3) formerly read:

(a.3) the amount deducted by the corporation under paragraph 20(1)(v.1) in computing the amount referred to in paragraph (a),

Para. 219(1)(e) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 126(2), applicable to taxation years ending after June 1989. Para. (e) formerly read:

(e) the tax payable by it under Part I for the year less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,

Para. 219(1)(f.1) added by 1994, c. 7, Sch. II (1991, c. 49), s. 180, applicable to interest and penalties paid in 1988 *et seq.*

Pre-RSC History: Para. 219(1)(j) substituted by 1980-81-82-83, c. 68, s. 116, applicable to 1981 *et seq.*, to add reference to para. 18(1)(l.1).

Paras. 219(1)(a.4), (k) added by 1980-81-82-83, c. 48, subsecs. 101(1), (2), applicable after December 11, 1979.

Paras. 219(1)(a.2), (a.3), (j) added by 1976-77, c. 4, subsecs. 74(1), (2), applicable, as to paras. 219(1)(a.2), (a.3), to 1976 *et seq.* and, as to para. 219(1)(j), to taxation years ending after May 6, 1974.

Para. 219(1)(a.1) added by 1974-75-76, c. 26, s. 123, applicable to taxation years ending after May 6, 1974.

Regulations: 808 (allowance in respect of investment in property in Canada).

Interpretation Bulletins: See list at end of s. 219.

(1.1) Excluded gains — For the purposes of subsection (1), paragraph 115(1)(b) shall be read without reference to subparagraphs (i) and (iii) to (xii).

Proposed Amendment — 219(1.1)

(1.1) Excluded gains — For the purpose of subsection (1), the definition "taxable Canadian property" in subsection 248(1) shall be read without reference to paragraphs (a) and (c) to (k) of that definition and as if the only interests or options referred to in paragraph (l) of that definition were those in respect of property described in paragraph (b) of that definition.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 104, will amend subsec. 219(1.1) to read as above, applicable after October 1, 1996.

Technical Notes: Under subsection 219(1) of the Act, a non-resident corporation's taxable income earned in Canada for a taxation year is one of the elements of the corporation's tax base in respect of the "branch tax" imposed under Part XIV of the Act. Subsection 219(1.1) restricts the definition of taxable Canadian property for the purposes of computing a non-resident corporation's branch tax base under subsection 219(1). For those purposes, subsection 219(1.1) directs that the existing definition of taxable Canadian property in paragraph 115(1)(b) of the Act is to be read without reference to subparagraphs 115(1)(b)(i) and (iii) to (xii). As a consequence of the relocation of the definition "taxable Canadian property" to subsection 248(1) of the Act, it is now necessary to amend subsection 219(1.1) to reflect the new definition of taxable Canadian property.

History: Subsec. 219(1.1) added by 1998, c. 19, subsec. 219(1), applicable to taxation years that begin after 1995.

(2) Exempt corporations — No tax is payable under this Part for a taxation year by a corporation that was, throughout the year,

(a) a bank;

(b) a corporation whose principal business was

(i) the transportation of persons or goods,

(ii) communications, or

(iii) mining iron ore in Canada; or

(c) a corporation exempt from tax under section 149.

(3) Provisions applicable to Part — Sections 150 to 152, 154, 158, 159 and 161 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Pre-RSC History: Subsec. 219(3) substituted by 1985, c. 45, subsec. 111(1). Subsec. 219(3) formerly read:

(3) Sections 150 to 167, except sections 153, 155, 156, 157 and 160, are applicable *mutatis mutandis* to this Part.

Interpretation Bulletins: See list at end of s. 219.

(4) Non-resident insurers — No tax is payable under subsection (1) for a taxation year by a non-resident insurer, but where it elects, in prescribed manner and within the prescribed time, to deduct, in computing its Canadian investment fund as of the end of the immediately following taxation year, an amount not greater than the amount, if any, by which

(a) the amount, if any, by which the total of

(i) the insurer's surplus funds derived from operations as of the end of the year, and

(i.1) where, in any particular taxation year that began before the end of the year, the insurer transferred to a taxable Canadian corporation with which it did not deal at arm's length any designated insurance property of the insurer for the particular year, and

(A) the property was transferred before December 16, 1987 and subsection 138(11.5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applied in respect of the transfer, or

(B) the property was transferred before November 22, 1985 and subsection 85(1) of that Act applied in respect of the transfer,

the amount, if any, by which

(C) the total of the fair market value, at the time of the transfer, of all such property

exceeds

(D) the total of the insurer's proceeds of disposition of all such property,

exceeds the total of

(ii) each amount on which the insurer has paid tax under this Part for a previous taxation year,

(iii) the amount, if any, by which the insurer's accumulated 1968 deficit exceeds the amount of the insurer's maximum tax actuarial reserves for its 1968 taxation year for its life insurance policies in Canada,

(iv) the insurer's loss, if any, for each of its 5 consecutive taxation years ending with its 1968 taxation year, from all insurance businesses (other than its life insurance business) carried on by it in Canada (computed without reference to section 30 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to those years), except to the extent that any such loss was deductible in computing its taxable income for any of its taxation years ending before 1969, and

(v) the total of all amounts in respect of which the insurer has filed an election under subsection (5.2) for a previous taxation year in accordance with that subsection,

exceeds

(b) the amount of the insurer's attributed surplus for the year,

the insurer shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which the amount it has so elected to deduct exceeds the amount in respect of which it filed an election under subsection (5.2) for the year in accordance with that subsection.

Related Provisions: 181.3(3)(d)(i)(A), 190.13(c)(i)(A) — Effect on capital tax.

History: The opening words of subpara. 219(4)(a)(i.1) amended by 1997, c. 25, subsec. 65(1), applicable to 1997 *et seq.* The opening words formerly read:

(i.1) where, in any taxation year commencing before the end of the year, the insurer transferred to a taxable Canadian corporation with which it did not deal at arm's length any property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by subsection 138(12)), carrying on an insurance business in Canada, and

Pre-RSC History: Subpara. 219(4)(a)(i.1) substituted by 1988, c. 55, subsec. 166(1), applicable to taxation years commencing after June 17, 1987 that end after 1987, except that, where a business was transferred by a non-resident insurer after December 15, 1987 and before 1988, subpara. 219(4)(a)(i.1) is applicable to taxation years of the insurer that end after December 15, 1987. Subpara. (a)(i.1) formerly read:

(i.1) where in any taxation year commencing before the end of the year, the insurer transferred to its qualified related corporation or to a subsidiary wholly-owned corporation of such a corporation any property used by it in the year in, or held by it in the year in the course of (within the meaning assigned by paragraph 138(12)(l)), carrying on an insurance business in Canada, the aggregate of all amounts each of which is the amount, if any, by which

(A) the fair market value of the property at the time of the transfer exceeds

(B) the insurer's proceeds of disposition of the property,

Subsec. 219(4) substituted by 1980-81-82-83, c. 48, subsec. 101(3), applicable after December 31, 1979. Subsec. (4) formerly read:

(4) No tax is payable under subsection (1) for a taxation year by a non-resident insurer, but where it elects, in prescribed manner and within the prescribed time, to deduct, in computing its Canadian investment fund as of the end of the immediately following taxation year, an amount not greater than the amount, if any, by which

(a) the amount, if any, by which

(i) its surplus funds derived from operations as of the end of the year

exceeds the aggregate of

(ii) each amount on which the insurer has paid tax under this Part for a previous taxation year,

(iii) the amount, if any, by which the insurer's accumulated 1968 deficit exceeds the amount of the insurer's maximum tax actuarial reserves for its 1968 taxation year for its life insurance policies in Canada, and

(iv) the insurer's loss, if any, for each of its 5 consecutive taxation years ending with its 1968 taxation year, from all insurance businesses (other than its life insurance business) carried on by it in Canada (computed without reference to section 30 as it read in its application to those years), except to the extent that any such loss was deductible in computing its taxable income for any of its taxation years ending before 1969,

exceeds

(b) the amount of its attributed surplus for the year, it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount it has so elected to deduct.

Subsec. 219(4) substituted by 1977-78, c. 32, s. 52, applicable to 1978 *et seq.* Subsec. (4) formerly read:

(4) No tax is payable under subsection (1) for a taxation year by a non-resident insurer, but where it elects, in prescribed manner and within the prescribed time, to deduct, in computing its Canadian investment fund as of the end of the immediately following taxation year, an amount not greater than the amount, if any, by which

(a) the amount of its Canadian investment fund as of the end of the year

exceeds

(b) the amount, as determined for the purposes of the relevant authority, of such of the insurer's liabilities (other than liabilities in respect of amounts payable out of segregated funds) as of the end of the year as may reasonably be regarded to have been incurred by it in the course of carrying on its insurance businesses in Canada,

it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount it has so elected to deduct.

Regulations: 2403(1) (prescribed manner and time).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: See list at end of s. 219.

(5) [Repealed under former Act]

Pre-RSC History: Subsec. 219(5.1) substituted for subsecs. 219(5)–(6) by 1977-78, c. 32, s. 52. For details see Pre-RSC History following subsec. 219(6).

(5.1) Additional tax on insurer — Where a non-resident insurer ceases in a taxation year to carry on all or substantially all of an insurance business in Canada, it shall, on or before its filing-due date for the year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) that portion of the amount determined under paragraph (4)(a) for the year in respect of the insurer that can reasonably be attributed to the business, including the disposition by it of property that was its designated insurance property in respect of the business for the year in which the disposition occurred,

exceeds

(b) the amount the insurer and a qualified related corporation of the insurer jointly elect in accordance with subsection (5.2) for the year in respect of the business.

Related Provisions: 18(1)(t) — Tax is non-deductible.

History: Subsec. 219(5.1) amended by 1997, c. 25, subsec. 65(2), applicable to 1997 *et seq.* Subsec. (5.1) formerly read:

(5.1) Where, in a particular taxation year, a non-resident insurer has ceased to carry on all or substantially all of an insurance business in Canada, it shall, on or before the day on or before which it is required to file a return of income under Part I for the particular year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) that portion of the amount determined under paragraph (4)(a) for the particular year in respect of the non-resident insurer that can reasonably be attributed to the business including the disposition by it of property that was, at the time of the disposition, used by it in the year in, or held by it in the year in the

course of (within the meaning assigned by subsection 138(12)), carrying on the business

exceeds

(b) the amount in respect of which the non-resident insurer and a qualified related corporation of the insurer have jointly elected in accordance with subsection (5.2) for the particular year in respect of the business.

(5.2) Election by non-resident insurer — Where

(a) a non-resident insurer has ceased to carry on all or substantially all of an insurance business in Canada in a taxation year, and

(b) the insurer has transferred the business to a qualified related corporation of the insurer and the insurer and the corporation have elected to have subsection 138(11.5) apply in respect of the transfer,

the insurer and the corporation may elect, in prescribed manner and within prescribed time, to reduce the amount in respect of which the insurer would otherwise be liable to pay tax under subsection (5.1) by an amount not exceeding the lesser of

(c) the amount determined under paragraph (5.1)(a) in respect of the insurer in respect of the business, and

(d) the total of the paid-up capital of the shares of the capital stock of the corporation received by the insurer as consideration for the transfer of the business and any contributed surplus arising on the issue of those shares.

Related Provisions: 138(11.9) — Computation of contributed surplus; 181.3(3)(d)(i)(A), 190.13(c)(i)(A) — Effect on capital tax.

Regulations: 2403(2) (prescribed manner and time).

Interpretation Bulletins: See list at end of s. 219.

(5.3) Deemed payment of dividend — Where, at any time in a taxation year,

(a) a qualified related corporation of a non-resident insurer ceases to be a qualified related corporation of that insurer, or

(b) the tax deferred account of a qualified related corporation of a non-resident insurer exceeds the total of the paid-up capital in respect of all the shares of the capital stock of the corporation and its contributed surplus,

the corporation shall be deemed to have paid, immediately before that time, a dividend to the insurer in an amount equal to

(c) where paragraph (a) is applicable, the balance of the tax deferred account of the corporation at that time, or

(d) where paragraph (b) is applicable, the amount of the excess referred to in that paragraph at that time.

Related Provisions: 138(11.9) — Computation of contributed surplus.

Interpretation Bulletins: See list at end of s. 219.

(6) [Repealed under former Act]

Pre-RSC History: Subsecs. 219(5.1) to (5.3) substituted by 1988, c. 55, subsec. 166(2). Subsecs. 219(5.1) and (5.2) applicable to cessations of a business after December 15, 1987; subsec. 219(5.3) applicable after December 15, 1987. Subsecs. 219(5.1) to (5.3) formerly read:

(5.1) Additional tax on insurer — Where in a taxation year a non-resident insurer has ceased to carry on its insurance businesses in Canada, no tax is payable by it under subsection (4) for the year and it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) the amount determined under paragraph (4)(a) for the year

exceeds

(b) the amount in respect of which it filed an election under subsection (5.2) for the year in accordance with that subsection.

(5.2) Election by non-resident insurer — Where a non-resident insurer

(a) has ceased to carry on its insurance businesses in Canada in a taxation year, or

(b) is entitled to make an election in a taxation year under subsection (4),

a qualified related corporation of the non-resident insurer may make an election jointly with the non-resident insurer in prescribed manner and within prescribed time,

(c) where paragraph (a) is applicable, to reduce the amount in respect of which the non-resident insurer would otherwise be liable to pay tax under subsection (5.1), or

(d) where the non-resident insurer has made an election under subsection (4), to reduce the amount on which it would otherwise be liable to pay tax under that subsection,

by an amount not exceeding the amount, if any, by which

(e) where the qualified related corporation is one described in subparagraph (8)(a)(ii) or (8)(b)(ii), the paid-up capital of the corporation at the time of making the election, or

(f) in any other case, the aggregate of the paid-up capital and the contributed surplus of the corporation at the time of making the election

exceeds the aggregate of

(g) the aggregate of all amounts in respect of which the non-resident insurer and the corporation have, before the time of making the election, made an election jointly for the purposes of paragraph (d), and

(h) the amount, if any, by which the amount determined, at the time of making the election, in paragraph (e) or (f), as the case may be, exceeds the fair market value at that time of all of the issued and outstanding shares of the capital stock of the corporation.

(5.3) Presumption — Where, at any time in a taxation year,

(a) the tax deferred account of a qualified related corporation described in subparagraph (8)(a)(ii) or (8)(b)(ii) exceeds its paid-up capital at that time,

(b) the tax deferred account of a qualified related corporation described in subparagraph (8)(a)(i) or (8)(b)(i) exceeds the aggregate of its paid-up capital and contributed surplus at that time, or

(c) a qualified related corporation ceases to be such a corporation,

the corporation shall be deemed to have paid immediately before that time to the non-resident person who was a shareholder, immediately before that time, of the corporation a dividend equal to

(d) where paragraph (a) or (b) is applicable, the amount of the excess determined in paragraph (a) or (b), as the case may be, or

(e) where paragraph (c) is applicable, the balance of its tax deferred account at that time.

Para. 219(5.2)(d) substituted by 1980-81-82-83, c. 140, subsec. 120(1), applicable after December 11, 1979.

Subsec. 219(5.1) substituted, subsecs. 219(5.2), (5.3) added by 1980-81-82-83, c. 48, subsec. 101(3), applicable after December 11, 1979. Subsec. (5.1) formerly read:

(5.1) Where in a taxation year a non-resident insurer has ceased to carry on its insurance businesses in Canada, no tax is payable by it under subsection (4) for the year and it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount determined under paragraph (4)(a) for the year.

Subsec. 219(5.1) substituted for subsecs. 219(5)–(6) by 1977-78, c. 32, s. 52, applicable to 1978 *et seq.* Subsecs. 219(5)–(6) formerly read:

(5) Additional tax on insurer — In addition to any tax payable by it under subsection (4), a non-resident insurer (other than an insurer who, in the taxation year, has ceased to carry on its insurance businesses in Canada), shall, on or before the day on or before which it

is required to file a return under Part I for a taxation year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) the amount of its Canadian investment fund as of the end of the year

exceeds

(b) the greater of the value, as of the end of the year, of the Canadian assets owned by it at that time and the value, as of a time not later than the day on or before which the insurer is required to file a return under Part I for the year, of the Canadian assets owned by it at that time.

(5.1) **Idem** — Where in a taxation year a non-resident insurer has ceased to carry on its insurance businesses in Canada, it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) its surplus funds derived from operations (within the meaning given that expression in paragraph 138(12)(o)) as of the end of the year

exceeds the aggregate of

(b) each amount that the insurer has elected under subsection (4) to deduct in computing its Canadian investment fund for the taxation year (within the meaning given that expression in subsection 138(14)) or for any previous taxation year, or on which the insurer has paid tax under subsection (5) or (6) for any such previous year,

(c) the amount, if any, by which the insurer's accumulated 1968 deficit (within the meaning given that expression in paragraph 138(12)(a)) exceeds the amount of the insurer's maximum tax actuarial reserves (within the meaning given that expression in paragraph 138(12)(h)) for its 1968 taxation year for its life insurance policies in Canada, and

(d) the insurer's loss, if any, for each of its five consecutive taxation years ending with its 1968 taxation year, from all insurance businesses (other than its life insurance business) carried on by it in Canada, except to the extent that any such loss was deductible in computing its taxable income for any of its taxation years ending before 1969.

(6) **Where election under subsec. 138(9)** — Where a non-resident insurer (other than an insurer who, in the taxation year, has ceased to carry on its insurance businesses in Canada), has made an election under subsection 138(9) in respect of a taxation year, no tax is payable by it under subsection (4) or (5) for the year or the immediately preceding taxation year but the insurer shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which the amount that would, if the insurer had not so elected, be the insurer's Canadian investment fund as of the end of the year exceeds the value, as of the end of the year, of property of the insurer used by it in the year in, or held by it in the year in the course of carrying on its insurance businesses in Canada.

Subsecs. 219(5), (6) substituted, (5.1) added by 1976-77, c. 4, subsec. 74(3), applicable, as to subsec. 219(5.1), in respect of non-resident insurers who cease to carry on their insurance businesses in Canada after October 31, 1976 and, as to subsecs. 219(5), (6), to 1977 *et seq.* and to insurers who cease to carry on their insurance businesses in Canada during their 1976 taxation years and after October 31, 1976. Subsecs. 219(5), (6) formerly read:

(5) **Additional tax on non-resident insurer** — In addition to any tax payable by it under subsection (4), a non-resident insurer shall, on or before the day on or before which it is required to file a return under Part I for a taxation year, pay a tax for the year equal to 25% of the amount, if any, by which

(a) the amount of its Canadian investment fund as of the end of the year

exceeds

(b) the greater of the value, as of the end of the year, of the Canadian assets owned by it at that time and the value, as of a time not later than the day on or before which the insurer is required to file a return under Part I for the year, of the Canadian assets owned by it at that time.

(6) **Where election under subsec. 138(9)** — Where a non-resident insurer has made an election under subsection 138(9) in respect of a taxation year, no tax is payable by it under subsection (4) or (5) for the year or the immediately preceding taxation year but the insurer shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which the amount that would, if the insurer had not so elected, be the insurer's Canadian investment fund as of the end of the year exceeds the value, as of the end of the year, of property of the insurer used by it in the year in, or held by it in the year in the course of, carrying on its insurance businesses in Canada.

(7) Definitions — In this Part,

"accumulated 1968 deficit" of a life insurer means such amount as can be established by the insurer to be its deficit as of the end of its 1968 taxation year from carrying on its life insurance business in Canada on the assumption that the amounts of its assets and liabilities (including reserves of any kind)

(a) as of the end of any taxation year before its 1968 taxation year, were the amounts thereof determined for the purposes of the Superintendent of Insurance for Canada or other similar officer, and

(b) as of the end of its 1968 taxation year, were

(i) in respect of depreciable property, the capital cost thereof as of the first day of its 1969 taxation year,

(ii) in respect of policy reserves, the insurer's maximum tax actuarial reserves for its 1968 taxation year for life insurance policies issued by it in the course of carrying on its life insurance business in Canada, and

(iii) in respect of other assets and liabilities, the amounts thereof determined as of the end of that year for the purpose of computing its income for its 1969 taxation year;

History: The definition "accumulated 1968 deficit" in subsec. 219(7) amended by 1997, c. 25, subsec. 65(3), applicable to 1997 *et seq.* The definition formerly read:

"accumulated 1968 deficit" has the meaning assigned by subsection 138(12);

Pre-RSC History: *The definition "accumulated 1968 deficit" was para. 219(7)(b).*

Paras. 219(7)(b), (b.1), (b.2) substituted for 219(7)(b) by 1985, c. 45, subsec. 111(2). Para. 219(7)(b) formerly read:

(b) "accumulated 1968 deficit", "life insurance policy in Canada", "maximum tax actuarial reserves" and "surplus funds derived from operations" have the meanings given those expressions in subsection 138(12); and

"attributed surplus" of an insurer for a taxation year has the meaning assigned by regulation;

History: The definition "attributed surplus" in subsec. 219(7) amended by 1997, c. 25, subsec. 65(3), applicable to 1997 *et seq.* The definition formerly read:

"attributed surplus for the year" has the meaning prescribed for that expression;

Pre-RSC History: *The definition "attributed surplus for the year" was para. 219(7)(a).*

Regulations: 2405(3) (meaning of "attributed surplus for the year").

"Canadian investment fund" has the meaning prescribed for that expression;

Pre-RSC History: *The definition "Canadian investment fund" was para. 219(7)(a).*

Regulations: 2405(3) (meaning of "Canadian investment fund").

"maximum tax actuarial reserves" has the meaning assigned by subsection 138(12);

Pre-RSC History: *The definition "maximum tax actuarial reserves" was para. 219(7)(b.1).*

See also under "accumulated 1968 deficit" above.

"surplus funds derived from operations" has the meaning assigned by subsection 138(12);

Pre-RSC History: *The definition "surplus funds ..." was para. 219(7)(b.2).*

See also under "accumulated 1968 deficit" above.

"tax deferred account" of a qualified related corporation at any time means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is an amount in respect of which the qualified related corporation and a non-resident insurer have elected jointly before that time in accordance with subsection (5.2), and

B is the total of all amounts each of which is the amount of a dividend deemed by subsection (5.3) to have been paid by the qualified related corporation before that time.

Related Provisions: 257 — Formula cannot calculate to less than zero.

Pre-RSC History: *The definition "tax deferred account" was para. 219(7)(c). The pre-R.S.C. version read:*

(c) "tax deferred account" of a qualified related corporation at any time means the amount, if any, by which

(i) the aggregate of all amounts each of which is an amount in respect of which the qualified related corporation and a non-resident insurer have elected jointly before that time in accordance with subsection (5.2)

exceeds

(ii) the aggregate of all amounts each of which is the amount of a dividend deemed by subsection (5.3) to have been paid by the qualified related corporation before that time.

Pre-RSC History [subsec. 219(7)]: Para. 219(7)(c) added by 1980-81-82-83, c. 48, subsec. 104(4) applicable after December 11, 1979.

Subsec. 219(7) substituted by 1977-78, c. 32, s. 52, applicable to 1978 *et seq.* Subsec. 219(7) formerly read:

(7) Definitions — In this Part,

(a) "Canadian asset" and "Canadian investment fund" have the meanings prescribed for those expressions;

(b) "property used in the year in, or held in the year in the course of" carrying on business in Canada has, where applicable, the meaning assigned by subsection 138(12);

(c) "relevant authority" has the meaning given that expression in subsection 138(12);

(d) "segregated fund" has the meaning given that expression in subsection 148(1); and

(e) "value", in relation to a property, has the meaning prescribed.

Para. 219(7)(e) substituted by 1977-78, c. 1, s. 96, applicable to 1978 *et seq.* Para. (e) formerly read:

(e) "value",

(i) in relation to land other than depreciable property means the capital cost thereof to the owner,

(ii) in relation to depreciable property means the undepreciated capital cost, as defined in subsection 13(21), of such property to the owner,

(iii) in relation to any property not described in subparagraph (i) or (ii), means,

(A) where the owner is a life insurer resident in Canada, the maximum value thereof as determined for the purposes of the relevant authority, and

(B) in any other case, the maximum value thereof as it would have been determined for the purposes of the relevant authority if the owner had been a life insurer resident in Canada and registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada.

Cls. 219(7)(e)(iii)(A), (B) substituted by 1976-77, c. 4, subsec. 74(4), applicable to 1976 *et seq.*, to substitute "maximum value" for "value".

Interpretation Bulletins: See list at end of s. 219.

(8) Meaning of "qualified related corporation" — For the purposes of this Part, a corporation is a "qualified related corporation" of a particular corporation if it is resident in Canada and all of the issued and outstanding shares (other than directors' qualifying shares) of its capital stock (having full voting rights under all circumstances) are owned by

(a) the particular corporation,

(b) a subsidiary wholly-owned corporation of the particular corporation,

(c) a corporation of which the particular corporation is a subsidiary wholly-owned corporation,

(d) a subsidiary wholly-owned corporation of a corporation of which the particular corporation is also a subsidiary wholly-owned corporation, or

(e) any combination of corporations each of which is a corporation described in paragraph (a), (b), (c) or (d),

and, for the purpose of this subsection, a subsidiary wholly-owned corporation of a particular corporation includes any subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the particular corporation.

Related Provisions: 134 — Status of non-resident-owned investment corporation for purposes of s. 219.

History: Subsec. 219(8) amended by 1998, c. 19, subsec. 219(2), applicable to taxation years that begin after 1995. Subsec. 219(8) formerly read:

(8) For the purposes of this Part, a corporation is a "qualified related corporation" of a non-resident insurer if it is resident in Canada and all of the issued and outstanding shares (other than directors' qualifying shares) of the capital stock of the corporation (having full voting rights under all circumstances) are owned by

(a) the insurer,

(b) a subsidiary wholly-owned corporation of the insurer,

(c) a corporation of which the insurer is a subsidiary wholly-owned corporation,

(d) a subsidiary wholly-owned corporation of a corporation of which the insurer is also a subsidiary wholly-owned corporation, or

(e) any combination of corporations each of which is a corporation described in paragraph (a), (b), (c) or (d),

and, for the purpose of this subsection, a subsidiary wholly-owned corporation of a particular corporation includes any subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the particular corporation.

Pre-RSC History: Subsec. 219(8) substituted by 1988, c. 55, subsec. 166(3), applicable after December 15, 1987. Subsec. 219(8) formerly read:

(8) "qualified related corporation" — For the purposes of this Part, a corporation is a "qualified related corporation" of a non-resident insurer if

(a) it is a subsidiary wholly-owned corporation of the non-resident insurer, is resident in Canada and

(i) carries on an insurance business in Canada, or

(ii) owns all the issued and outstanding shares (except directors' qualifying shares) of another corporation that is resident in Canada and carries on an insurance business in Canada; or

(b) it is a subsidiary wholly-owned corporation of a non-resident corporation that is a subsidiary wholly-owned corporation of another non-resident corporation of which the non-resident insurer is a subsidiary wholly-owned corporation, is resident in Canada and

(i) carries on an insurance business in Canada, or

(ii) owns all the issued and outstanding shares (except directors' qualifying shares) of another corporation that is resident in Canada and carries on an insurance business in Canada.

Subparas. 219(8)(a)(ii), (b)(ii) substituted by 1980-81-82-83, c. 140, subsecs. 120(2), (3), applicable after December 11, 1979.

Subsec. 219(8) added by 1980-81-82-83, c. 48, subsec. 101(5), applicable after December 11, 1979.

Definitions [s. 219]: "accumulated 1968 deficit" — 138(12), 219(7); "allowable capital loss" — 38(b), 248(1); "amount" — 248(1); "arm's length" — 251(1); "attributed surplus" — 219(7), Reg. 2405(3); "base amount" — 219(1)(a); "business" — 248(1); "Canada" — 255; "Canadian corporation" — 89(1), 248(1); "Canadian investment fund" — 219(7), Reg. 2405(3); "carrying on business" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "depreciable property" — 13(21), 248(1); "designated insurance property" — 138(12), 248(1); "dividend" — 248(1); "filing-due date" — 248(1); "insurer" — 248(1); "life insurance policy" — 138(12), 248(1); "life insurer" — 248(1); "maximum tax actuarial reserve" — 138(12), 219(7); "non-resident" — 248(1); "paid-up capital" — 89(1), 248(1); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualified property" — 219(1)(l); "qualified related corporation" — 219(8); "qualifying share" — 192(6), 248(1) *[not intended to apply to s. 219]*; "regulation" — 248(1); "resident in Canada" — 250; "share" — 248(1); "subsidiary wholly-owned corporation" — 219(8), 248(1); "surplus funds derived from operations" — 138(12), 219(7); "tax deferred account" — 219(7); "taxable Canadian corporation" — 89(1), 248(1); "taxable Canadian property" — 219(1.1), 248(1); "taxable capital gain" — 38(a), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 248(1); "taxation year" — 249.

Interpretation Bulletins [s. 219]: IT-137R3: Additional tax on certain corporations carrying on business in Canada; IT-393R2: Election re tax on rents and timber royalties — non-residents.

219.1 Corporate emigration — Where a taxation year of a corporation is deemed by paragraph 128.1(4)(a) to have ended at any time, the corporation shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which

(a) the fair market value of all the property owned by the corporation immediately before that time

exceeds the total of

(b) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before that time,

(c) all amounts (other than amounts payable by the corporation in respect of dividends and amounts payable under this section) each of which is a debt owing by the corporation, or an obligation of the corporation to pay an amount, that is outstanding at that time, and

(d) where a tax was payable by the corporation under subsection 219(1) or this section for a preceding taxation year that began before 1996 and after the corporation last became resident in Canada, 4 times the total of all amounts that would, but for sections 219.2 and 219.3 and any agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada, have been so payable.

Related Provisions: 219.3 — Limitation of tax under 219.1 to rate under treaty; Canada-U.S. tax treaty, Art. IV:3 (Protocol) — Continuance in other jurisdiction.

History: S. 219.1 amended by 1998, c. 19, s. 220, applicable to 1996 *et seq.* S. 219.1 formerly read:

> 219.1 Where at any time a corporation ceases to be a Canadian corporation, it shall, on or before the day on or before which it is required to file a return of income under Part I for its last taxation year that began before that time, pay a tax under this Part for that year equal to 25% of the amount, if any, by which the fair market value at that time of all the property owned by the corporation exceeds the total of
>
> (a) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation at that time, and
>
> (b) all amounts, other than amounts payable by the corporation in respect of dividends and amounts payable under this section, each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at that time.

S. 219.1 substituted by 1994, c. 21, s. 99, applicable after 1992 except that, where a corporation elects in accordance with paragraph 111(4)(a) of 1994, c. 21 (see under 250(5.1)), s. 219.1 as amended applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in another jurisdiction. That section formerly read:

> 219.1 Where a taxation year of a corporation is deemed by section 88.1 to have ended, it shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for that year equal to 25% of the amount, if any, by which
>
> (a) the total of all amounts each of which is the proceeds of disposition deemed by virtue of paragraph 88.1(e) to have been received by the corporation
>
> exceeds the total of
>
> (b) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before the end of the year, and
>
> (c) all amounts, other than amounts payable by the corporation in respect of dividends, each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that was outstanding at the end of the year.

Pre-RSC History: S. 219.1 added by 1980-81-82-83, c. 48, s. 102, applicable to 1980 *et seq.*

Definitions [s. 219.1]: "amount" — 248(1); "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "paid-up capital" — 89(1), 248(1); "property" — 248(1); "share" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

219.2 Limitation on rate of branch tax — Notwithstanding any other provision of this Act, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada

(a) does not limit the rate of tax under this Part on corporations resident in that other country, and

(b) provides that, where a dividend is paid by a corporation resident in Canada to a corporation resident in that other country that owns all of the shares of the capital stock of the corporation resident in Canada, the rate of tax imposed on the dividend shall not exceed a specified rate,

any reference in section 219 to a rate of tax shall, in respect of a taxation year of a corporation to which that agreement or convention applies on the last day of that year, be read as a reference to the specified rate.

Related Provisions: Canada-U.S. tax treaty, Art. X:2 — Limit on withholding tax rate on dividends.

History: S. 219.2 substituted by 1994, c. 21, s. 100, applicable to 1985 *et seq.* That section formerly read:

> 219.2 Limitation on rate of Part XIV tax — Notwithstanding any other provision of this Act, where an agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada
>
> (a) does not limit the rate of tax under this Part on corporations resident in that other country, and
>
> (b) provides that where a dividend is paid by a corporation resident in Canada to a resident of that other country the rate of tax imposed thereon shall not exceed a specified rate,
>
> any reference in this Part to a rate of tax shall, in respect of a taxation year of a corporation to which that agreement or convention

applies on the last day of that year, be read as a reference to the specified rate.

Pre-RSC History: S. 219.2 added by 1985, c. 45, s. 112, applicable to 1985 *et seq.*

Definitions [s. 219.2]: "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "property" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

219.3 Effect of tax treaty — For the purpose of section 219.1, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada provides that the rate of tax imposed on a dividend paid by a corporation resident in Canada to a corporation resident in the other country that owns all of the shares of the capital stock of the corporation resident in Canada shall not exceed a specified rate, the reference in section 219.1 to "25%" shall, in respect of a corporation that ceased to be resident in Canada and to which the agreement or convention applies at the beginning of its first taxation year after its taxation year that is deemed by paragraph 128.1(4)(a) to have ended, be read as a reference to the specified rate unless it can reasonably be concluded that one of the main reasons that the corporation became resident in the other country was to reduce the amount of tax payable under this Part or Part XIII.

History: S. 219.3 amended by 1998, c. 19, s. 220.1, applicable to 1996 *et seq.* S. 219.3 formerly read:

> 219.3 Effect of tax agreement or convention — For the purpose of section 219.1, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada provides that, where a dividend is paid by a corporation resident in Canada to a corporation resident in that other country that owns all of the shares of the capital stock of the corporation resident in Canada, the rate of tax imposed on the dividend shall not exceed a specified rate, the reference in section 219.1 to a rate of tax shall, in respect of a corporation that ceased to be a Canadian corporation and to which the agreement or convention applies on the first day of the taxation year after the taxation year in which the corporation ceased to be a Canadian corporation, be read as a reference to the specified rate unless, having regard to all the circumstances, it can reasonably be concluded that one of the main reasons for the corporation becoming resident in that other country was to reduce the amount of tax payable under this Part or Part XIII.

S. 219.3 added by 1994, c. 21, s. 100, applicable to 1985 *et seq.* except that, in applying s. 219.3 to taxation years that end before July 1993, it shall be read without reference to the words "unless, having regard to all the circumstances, it can reasonably be concluded that one of the main reasons for the corporation becoming resident in that other country was to reduce the amount of tax payable under this Part or Part XIII".

Definitions [s. 219.3]: "Canadian corporation" — 89(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "dividend" — 248(1); "resident in Canada" — 250; "share" — 248(1); "taxation year" — 249.

PART XV — ADMINISTRATION AND ENFORCEMENT

Administration

220. (1) Minister's duty — The Minister shall administer and enforce this Act and the Commissioner of Customs and Revenue may exercise all the powers and perform the duties of the Minister under this Act.

Related Provisions: 166 — Assessment not to be vacated by reason of CCRA failure to follow proper procedures; 220(2.01) — Delegation of powers; *Canada Customs and Revenue Agency Act* — Establishment of CCRA; *Interpretation Act* 24(2) — Power of others to act for Minister; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

History: Subsec. 220(1) amended by 1999, c. 17, s. 164, proclaimed into force November 1, 1999. The subsec. formerly read:

> (1) The Minister shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act and the Deputy Minister of National Revenue may exercise all the powers and perform the duties of the Minister under this Act.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 220(1) by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

Selected Cases [subsec. 220(1)]: *Wenger's Ltd. v. MNR*, [1992] 2 C.T.C. 2479 (TCC) (Late payment "surcharge" on sale price of goods was "interest").

Regulations: 900 (delegation of powers and duties to other officials).

I.T. Technical News: No. 8 (publication of advance tax rulings); No. 9 (electronic publication of severed rulings); No. 14 (the Income Tax rulings and Interpretations Directorate — common deficiencies or omissions in requests for advance rulings); No. 18 (The advance income tax rulings process — practical problems and possible solutions).

(2) Officers, clerks and employees — Such officers, clerks and employees as are necessary to administer and enforce this Act shall be appointed or employed in the manner authorized by law.

Related Provisions: 220(2.01) — Delegation of powers; *Interpretation Act* 23(1) — Public officers hold office during pleasure; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

(2.01) Delegation — The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

Related Provisions: *Interpretation Act* 23(1) — Public officers hold office during pleasure; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

History: Subsec. 220(2.01) added by 1998, c. 19, subsec. 221(1), in force on June 18, 1998.

Subsec. 221(3) of the said c. 19 provides:

> Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under para. 221(1)(f) before [June 18, 1998] continues to be delegated to that officer or that class of officers until an authorization by that Minister made under subsec. 220(2.01) changes the delegation of that power or duty.

(2.1) Waiver of filing of documents — Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or information at the Minister's request.

History: Subsec. 220(2.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 127(1), applicable to 1992 *et seq.*

Interpretation Bulletins: IT-495R2: Child care expenses.

(3) Extensions for returns — The Minister may at any time extend the time for making a return under this Act.

Related Provisions: 127.4(5.1) — Authorization for late LSVCC investments; 146(22) — Authorization for late RRSP contributions; 220(3.2) — Late filing of elections.

(3.1) Waiver of penalty or interest — The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to (5), such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.

Related Provisions: 164(1.5) — Late refund of overpayment; 164(3.2) — Interest on refunds and repayments; 165(1.2) — Limitation of

right to object; 225.1(1) — No collection restrictions following assessment.

History: Subsec. 220(3.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 127(2), applicable to 1985 *et seq.* Subsec. (3.1) formerly read:

> (3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or a partnership.

Subsec. 220(3.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to penalties and interest in respect of 1985 *et seq.*

Selected Cases [subsec. 220(3.1)]: *Syal v. Canada (Attorney General)*, [1999] 3 C.T.C. 666 (FCTD) (Discretion under fairness package is Minister's, not Court's); *Bilida v. MNR*, [1997] 2 C.T.C. 143 (FCTD) (Court will review Minister's decision if all relevant factors not considered); *Taylor v. Canada*, [1995] 2 C.T.C. 2133 (TCC) (Provision applies only to penalties and interest payable after assessment); *Housser v. Canada*, [1994] 2 C.T.C. 2233 (TCC) (Court will not second-guess Minister on exercise of discretion); *Montgomery v. Canada*, [1994] 2 C.T.C. 57 (FCTD) (Minister's power to waive interest and penalties applies to 1985 and subsequent years); *Wasson (P.G.) v. Canada*, [1993] 2 C.T.C. 2338 (TCC) (Court had no jurisdiction to make declaratory judgment that Minister wrong not to waive interest and penalties).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties; 98-1: Collections policies.

(3.2) Late, amended or revoked elections — Where

(a) an election by a taxpayer or a partnership under a provision of this Act or a regulation that is a prescribed provision was not made on or before the day on or before which the election was otherwise required to be made, or

(b) a taxpayer or partnership has made an election under a provision of this Act or a regulation that is a prescribed provision,

the Minister may, on application by the taxpayer or the partnership, extend the time for making the election referred to in paragraph (a) or grant permission to amend or revoke the election referred to in paragraph (b).

Related Provisions: 60(l), 60(l)(iv) — Minister may accept late rollover of RRSP after death to spouse, child or grandchild; 127.4(5.1) — Authorization for late LSVCC investments; 146(22) — Authorization for late RRSP contributions; 220(3) — Late filing allowed by extending time for return; 220(3.21) — Certain designations deemed to be elections; 220(3.3) — Date of late election, amended election or revocation; 220(3.4) — Consequential assessment; 220(3.5) — Penalty for late filed, amended or revoked elections.

History: Subsec. 220(3.2) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

Selected Cases [subsec. 220(3.2)]: *McNabb Family Trust v. Canada*, [1996] 3 C.T.C. 126 (FCTD) (Test is whether Minister acted arbitrarily or unfairly, not what Court might have decided).

Regulations: 600 (prescribed provisions).

Interpretation Bulletins: IT-120R5: Principal residence.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(3.21) Designations and allocations — For the purpose of subsection (3.2),

(a) a designation in any form prescribed for the purpose of paragraph 80(2)(i) or any of subsections 80(5) to (11) or 80.03(7) is deemed to be an election under a prescribed provision of this Act; and

(b) a designation or allocation under subsection 132.11(6) is deemed to be an election under a prescribed provision of this Act.

History: Subsec. 220(3.21) amended by 1999, c. 22, s. 78, in force June 17, 1999. It formerly read:

> (3.21) Designations under section 80 and subsection 80.03(7) — For the purposes of subsection (3.2), a designation in any form prescribed for the purpose of paragraph 80(2)(i) or any of subsections 80(5) to (11) or 80.03(7) shall be deemed to be an election under a prescribed provision of this Act.

Subsec. 220(3.21) added by 1995, c. 21, s. 42, applicable June 22, 1995.

(3.3) Date of late election, amended election or revocation — Where, under subsection (3.2), the Minister has extended the time for making an election or granted permission to amend or revoke an election,

(a) the election or the amended election, as the case may be, shall be deemed to have been made on the day on or before which the election was otherwise required to be made and in the manner in which the election was otherwise required to be made, and, in the case of an amendment to an election, that election shall be deemed, otherwise than for the purposes of this section, never to have been made; and

(b) the election that was revoked shall be deemed, otherwise than for the purposes of this section, never to have been made.

Related Provisions: 220(3.4) — Assessment to take late filing into account.

History: Subsec. 220(3.3) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.4) Assessments — Notwithstanding subsections 152(4), (4.01), (4.1) and (5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year that began before the day an application is made under subsection (3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection (3.3).

Related Provisions: 164(1.5) — Refunds; 164(3.2) — Interest on refunds and repayments; 165(1.1) — Limitation of right to object to assessment or determination; 169(2)(a) — Limitation of right to appeal.

History: Subsec. 220(3.4) amended by 1998, c. 19, subsec. 221(2), applicable to elections in respect of 1985 *et seq.* Subsec. 220(3.4) formerly read:

> (3.4) Notwithstanding subsections 152(4), (4.1) and (5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year commencing before the day an application is made under subsection (3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection (3.3).

Subsec. 220(3.4) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.5) Penalty for late filed, amended or revoked elections — Where, on application by a taxpayer or a partnership, the Minister extends the time for making an election or grants permission to amend or revoke an election, the taxpayer or the partnership, as the case may be, is liable to a penalty equal to the lesser of

(a) $8,000, and

(b) the product obtained when $100 is multiplied by the number of complete months from the day on or before which the election was required to be made to the day the application was made in a form satisfactory to the Minister.

Related Provisions: 220(3.6) — Assessment of penalty.

History: Subsec. 220(3.5) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.6) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election, amended election and revoked election referred to in subsection (3.3), assess any penalty payable and send a notice of assessment to the taxpayer or the partnership, as the case may be, and the taxpayer or the partnership, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed

exceeds the total of all amounts previously paid on account of that penalty.

Related Provisions: 161(11)(c) — Interest on penalties.

History: Subsec. 220(3.6) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(3.7) Idem — The provisions of Divisions I and J of Part I apply, with such modifications as the circumstances require, to an assessment made under this section as though it had been made under section 152.

History: Subsec. 220(3.7) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(1), applicable to elections in respect of 1985 *et seq.*

(4) Security — The Minister may, if the Minister considers it advisable in a particular case, accept security for payment of any amount that is or may become payable under this Act.

Related Provisions: 159(2) — Certificate before distribution; 222.1 — Application to awards of court costs.

Pre-RSC History: Subsec. 220(4) substituted by 1984, c. 45, s. 88, applicable after February 15, 1984. Subsec. 220(4) formerly read:

> (4) Security — The Minister may, if he considers it advisable in a particular case, accept security for payment of taxes by way of mortgage or other charge of any kind whatever on property of the taxpayer or any other person or by way of guarantee from other persons.

Regulations: 2200 (Minister may discharge security).

(4.1) Idem — Where a taxpayer has objected to or appealed from an assessment under this Act, the Minister shall, while the objection or appeal is outstanding, accept adequate security furnished by or on behalf of the taxpayer for payment of the amount in controversy except to the extent that the Minister may collect the amount because of subsection 225.1(7).

History: Subsec. 220(4.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 127(3). Subsec. (4.1) formerly read:

> (4.1) Idem where objection or appeal — Where a taxpayer has objected to or appealed from an assessment under this Act, the Minister shall accept adequate security furnished by or on behalf of the taxpayer for payment of the amount in controversy while the objection [or] appeal is outstanding.

Pre-RSC History: Subsec. 220(4.1) added (and former (4.1) amended and renumbered as (4.2)) by 1985, c. 45, s. 113.

(4.2) Surrender of excess security — Where at any time a taxpayer requests in writing that the Minister surrender any security accepted by the Minister under subsection (4) or (4.1), the Minister shall surrender the security to the extent that the value of the security exceeds the total of amounts payable under this Act by the taxpayer at that time.

Related Provisions: 222.1 — Application to awards of court costs.

Pre-RSC History: Subsec. 220(4.2) substituted for former subsec. (4.1) and amended by 1985, c. 45, s. 113. Former subsec. 220(4.1) read:

> (4.1) Duty of Minister — Where at any time a taxpayer requests in writing that the Minister surrender any security accepted by the Minister under subsection (4), the Minister shall surrender the security to the extent that the amount thereof exceeds the amount for which the security was accepted that is payable at that time.

Subsec. 220(4.1) added by 1984, c. 45, s. 88, applicable after February 15, 1984.

(4.3) Security furnished by a member institution of a deposit insurance corporation — The Minister shall accept adequate security furnished by or on behalf of a taxpayer that is a member institution in relation to a deposit insurance corporation (within the meaning assigned by subsection 137.1(5)) for payment of

(a) the tax payable under this Act by the taxpayer for a taxation year, to the extent that the amount of that tax exceeds the amount that that tax would be if no amount that the taxpayer is obliged to repay to the corporation were included under paragraph 137.1(10)(a) or (b) in computing the taxpayer's income for the year or a preceding taxation year, and

(b) interest payable under this Act by the taxpayer on the amount determined under paragraph (a),

until the earlier of

(c) the day on which the taxpayer's obligation referred to in paragraph (a) to repay the amount to the corporation is settled or extinguished, and

(d) the day that is 10 years after the end of the year.

History: Para. 220(4.3)(a) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 181(2), to substitute "for the year or a preceding taxation year" for "for the year", applicable after July 13, 1990.

Pre-RSC History: Subsec. 220(4.3) added by 1987, c. 46, s. 65, applicable after February 17, 1987.

(4.4) Additional security — The adequacy of security furnished by or on behalf of a taxpayer under subsection (4.3) shall be determined by the Minister and the Minister may require additional security to be furnished from time to time by or on behalf of the taxpayer where the Minister determines that the security that has been furnished is no longer adequate.

History: Subsec. 220(4.4) added by 1987, c. 46, s. 65, applicable after February 17, 1987.

Proposed Addition — 220(4.5)–(4.71)

(4.5) Security for departure tax — If an individual who is deemed by subsection 128.1(4) to have disposed of a property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) at any particular time in a taxation year (in this section referred to as the individual's "emigration year") elects, in prescribed manner on or before the individual's balance-due day for the emigration year, that this subsection and subsections (4.51) to (4.54) apply in respect of the emigration year,

(a) the Minister shall, until the individual's balance-due day for a particular taxation year that begins after the particular time, accept adequate security furnished by or on behalf of the individual on or before the individual's balance-due day for the emigration year for the lesser of

(i) the total amount of taxes under Parts I and I.1

(A) that would be payable by the individual for the emigration year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a) were not taken into account, but

(B) that would not have been so payable if each property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) deemed by subsection 128.1(4) to have been disposed of at the particular time, and that has not been subsequently disposed of before the beginning of the particular year, were not deemed by subsection 128.1(4) to have been disposed of by the individual at the particular time, and

(ii) if the particular year does not immediately follow the emigration year, the amount determined under this paragraph in respect of the individual for the taxation year that immediately precedes the particular year; and

(b) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period that ends on the individual's balance-due day for the particular year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to an individual's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the individual on account of the particular amount.

Technical Notes: Section 220 of the Act sets out a number of rules relating to the administration and enforcement of the Act.

New subsections 220(4.5) to (4.54) of the Act permit an individual to elect, on giving security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property (other than an employee benefit plan right) in paragraph 128.1(4)(b) of the Act. If such an election is made, interest does not start to accrue on the amount secured until such time as the amount becomes unsecured, as described below. In addition, relief is provided from a penalty under the Act to the extent that it is computed with reference to the unpaid tax with respect to the amount secured.

New subsection 220(4.5) of the Act allows an individual to elect, in prescribed manner, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(b) of the Act. It is intended that this deferral also operate in respect of the corresponding provincial taxes for which the Government of Canada has assessment and collection responsibilities, with the settlement of accounts between the governments taking place as the tax is collected. To understand how the subsection works, several points should be noted.

- The security rule is in a mechanical sense applied annually. That is, the Minister of National Revenue's obligation to accept security applies for one year at a time. This does not mean that the emigrant must file a renewed election each year, but only that the Minister will determine on an annual basis whether, and in what amount, the security may remain in place.
- While the election to provide security must ordinarily be made — and the security itself must be provided — on or before the individual's balance-due day for the year of emigration, special accommodation is provided for those who cease to be resident before these amendments receive Royal Assent. Those individuals have until their filing-due date for the taxation year that includes Royal Assent to make the election and provide the security.
- The provision requires the Minister of National Revenue to accept "adequate security." The adequacy of any particular proposal for security is a matter of fact. It is understood, however, that in respect of tax on a gain from the deemed disposition of shares of a corporation, the Minister will not exclude the possibility of accepting some or all of the shares as security.

Where an individual has elected under subsection 220(4.5) and has provided adequate security, the Minister of National Revenue must, for a particular taxation year that begins after the individual ceases to be a resident of Canada, accept adequate security for the lesser of two amounts. The amounts are, in effect:

(i) the individual's taxes under Parts I and I.1 of the Act for the emigration year, to the extent those taxes are attributable to the deemed disposition under paragraph 128.1(4)(b) of the Act of properties that have not been disposed of before the particular year; and

(ii) if the particular year does not immediately follow the emigration year, the amount for which security was accepted for the preceding taxation year.

Where an individual who emigrated from Canada actually disposes, in a given year, of a property that was the subject of a deemed disposition on emigration, the Minister's obligation to accept security for the tax attributable to the deemed disposition of that property lasts only until the individual's balance-due day for the given year. The amount for which the Minister must accept security, in respect of a given departure from Canada, may thus decrease from year to year as the former emigrant disposes of properties. The amount cannot, however, increase.

An amount of tax may also become unsecured if the security furnished by the taxpayer for the tax has ceased to be adequate. For additional information in respect of inadequate security, see the commentary on subsection 220(4.53).

The effects of the acceptance of security by the Minister under subsection 220(4.5) are, first, that the Minister will not take any action to collect the tax so secured, and second, that for the purpose of computing interest and penalties owing by the taxpayer, the amount secured will be treated as an amount paid on account of the tax liability.

New subsection 220(4.5) generally applies to dispositions that occur after October 1, 1996. However, as noted above, elections made and security furnished under this subsection will be considered timely if effected before the taxpayer's filing-due date for the taxation year that includes the particular day on which these amendments receive Royal Assent.

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 220(4.5); 128.1(6) — Tax cancelled if emigrant returns to Canada; 152(10) — Posted security deemed not to be tax assessed for purposes of administration of provincial tax; 220(4.51) — Exemption for first $25,000 of security; 220(4.52) — Security effective only for departure tax; 220(4.53) — Where security proves inadequate; 220(4.54) — Extension of time for making election; 220(4.7) — Reduction in security for undue hardship.

(4.51) Deemed security — If an individual (other than a trust) elects under subsection (4.5) that that subsection apply in respect of a taxation year, for the purposes of subsections (4.5) to (4.54) the Minister is deemed to have accepted at any time after the election is made adequate security for a total amount of taxes payable under Parts I and I.1 by the individual for the emigration year equal to the lesser of

(a) the total amount of those taxes that would be payable for the year by an *inter vivos* trust resident in Canada (other than a trust described in subsection 122(2)) the taxable income for which for the year is $67,000, and

(b) the greatest amount for which the Minister is required to accept security furnished by or on behalf of the individual under subsection (4.5) at that time in respect of the emigration year,

and that security is deemed to have been furnished by the individual before the individual's balance-due day for the emigration year.

Technical Notes: New subsection 220(4.5) of the Act permits an individual to elect, on giving adequate security to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(b) of the Act. New subsection 220(4.51) treats an individual (other than a trust) as having furnished acceptable security to the Minister for the lesser of two amounts. The first amount is the total amount of taxes under Parts I and I.1 of the Act that would be payable, at the highest tax rate that applies to individuals, on a taxable capital gain of $67,000. (For administrative simplicity, this amount is described in the provision as the amount of those taxes that

an inter vivos trust would pay for a year if the trust's taxable income for the year were $67,000.)

The second amount is the greatest amount of tax for which the Minister is required to accept security under subsection 220(4.5) for any particular taxation year of the individual. The deemed security is treated as having been furnished by the individual before the individual's balance-due day for the year in which the individual ceased to be a resident of Canada.

The effect of this provision is to excuse individual emigrants (other than trusts) from the requirement to provide security for an amount at least equal to the taxes payable on their first $100,000 of capital gains ($67,000 of taxable capital gains) resulting from the deemed disposition on emigration.

New subsection 220(4.51) applies after October 1, 1996. To reflect the three-quarters inclusion rate for capital gains that applies before the 2000 federal budget, a transitional rule provides that the amount "$67,000" in new paragraph 220(4.52)(a) shall be read as "$75,000" in respect of emigration years that are before 2001.

(4.52) Limit — Notwithstanding subsections (4.5) and (4.51), the Minister is deemed at any time not to have accepted security under subsection (4.5) in respect of an individual's emigration year for any amount greater than the amount, if any, by which

(a) the total amount of taxes that would be payable by the individual under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a), in respect of which the day determined under paragraph 161(7)(b) is after that time, were not taken into account

exceeds

(b) the total amount of taxes that would be determined under paragraph (a) if this Act were read without reference to subsection 128.1(4).

Technical Notes: New subsections 220(4.5) and (4.51) of the Act set out rules respecting the posting of security for tax that is owing as a result of a deemed disposition of property under paragraph 128.1(4)(b) of the Act. New subsection 220(4.52) of the Act limits the amount of tax that may be so secured to the total tax payable under Parts I and I.1 of the Act in respect of the application of paragraph 128.1(4)(b) in the taxation year that the individual ceased to be a resident of Canada (calculated without reference to any of the deductions or exclusions listed in paragraph 161(7)(a) of the Act).

New subsection 220(4.52) applies after October 1, 1996.

(4.53) Inadequate security — Subject to subsection (4.7), if it is determined at any particular time that security accepted by the Minister under subsection (4.5) is not adequate to secure the particular amount for which it was furnished by or on behalf of an individual,

(a) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(b) the Minister shall notify the individual in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the individual within 90 days after the day of notification; and

(c) any security accepted in accordance with paragraph (b) is deemed to have been accepted by the Minister under subsection (4.5) on account of the particular amount at the particular time.

Technical Notes: New subsection 220(4.5) of the Act permits an individual to elect, on giving security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(b) of the Act. If such an election is made, interest and penalties do not accrue on the particular amount secured until such time as the amount becomes unsecured.

If the Minister determines, at any time, that the security accepted under subsection 220(4.5) is not adequate to secure the particular amount for which it was furnished by the individual, new subsection 220(4.53) of the Act provides that the security secures the part of the particular amount for which it is adequate security at that particular time; the balance of the particular amount is unsecured. The Minister is required to notify the individual in writing if part of the particular amount becomes unsecured in this manner, and the individual has the opportunity to furnish further security to the Minister within 90 days of being so notified. Where additional security is so furnished, the Minister is deemed to have accepted it in accordance with subsection 220(4.5).

New subsection 220(4.53) applies after October 1, 1996.

Related Provisions: 220(4.54)(c) — Extension of 90-day period under (4.53)(b).

(4.54) Extension of time — If in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(a) the time for making an election under subsection (4.5);

(b) the time for furnishing and accepting security under subsection (4.5); or

(c) the 90-day period for the acceptance of security under paragraph (4.53)(b).

Technical Notes: New subsection 220(4.5) of the Act permits an individual to elect, on giving security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(b) of the Act. This election must be made, and the security furnished, on or before the balance-due date for the taxation year that the individual ceased to be a resident of Canada. New subsection 220(4.53) of the Act permits an individual to furnish additional security to the Minister, where the Minister has notified the individual that security previously furnished is no longer adequate. The additional security must be so furnished within 90 days of the Minister's notification.

New subsection 220(4.54) of the Act permits the Minister to extend the time available to an individual to make an election or to furnish security under subsection 220(4.5), or to furnish additional security under subsection 220(4.53), where the Minister considers it just and equitable to do so.

New subsection 220(4.54) applies after October 1, 1996.

(4.6) Security for tax on distributions of taxable Canadian property to non-resident beneficiaries — Where

(a) solely because of the application of subsection 107(5), paragraphs 107(2)(a) to (c) do not apply to a distribution by a trust in a particular taxation year (in this section referred to as the trust's "distribution year") of taxable Canadian property, and

(b) the trust elects, in prescribed manner on or before the trust's balance-due day for the distribution year, that this subsection and subsections (4.61) to (4.63) apply in respect of the distribution year,

the following rules apply:

(c) the Minister shall, until the trust's balance-due day for a subsequent taxation year, accept adequate security furnished by or on behalf of the trust on or

before the trust's balance-due day for the distribution year for the lesser of

(i) the total amount of taxes under Parts I and I.1

(A) that would be payable by the trust for the distribution year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a) were not taken into account, but

(B) that would not have been so payable if the rules in subsection 107(2) (other than the election referred to in that subsection) had applied to each distribution by the trust in the distribution year of property (other than property subsequently disposed of before the beginning of the subsequent year) to which paragraph (a) applies, and

(ii) where the subsequent year does not immediately follow the distribution year, the amount determined under this paragraph in respect of the trust for the taxation year that immediately precedes the subsequent year, and

(d) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period ending on the trust's balance-due day for the subsequent year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to the trust's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the trust on account of the particular amount.

Technical Notes: New subsections 220(4.6) to (4.63) of the Act permit a trust to elect, on the giving of security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that it owes as a result of the distribution of a taxable Canadian property to a non-resident beneficiary. If such an election is made, interest does not start to accrue on the amount secured until such time as the amount becomes unsecured. In addition, relief is provided from a penalty under the Act to the extent that it is computed with reference to the unpaid tax with respect to the amount secured. These subsections are structured in a similar manner to new subsections 220(4.5) to (4.53), and are intended to operate similarly with respect to both federal and provincial taxes.

Subsection 220(4.6) applies where such a distribution is made and, only because of subsection 107(5) of the Act, the rollover under paragraphs 107(2)(a) to (c) of the Act does not apply to the distribution. Provided that the trust makes an election on or before the trust's balance-due day for the distribution year (or at a later time permitted under subsection 220(4.63)) and furnishes security before that balance-due day (or at a later time permitted under subsection 220(4.63)), the Minister is required to accept security in respect of each taxation year after the distribution year of an amount up to the amount specified under paragraph 220(4.6)(c) in respect of that subsequent year. The amount is required to be accepted until the balance-due day for that subsequent year.

The amount specified under paragraph 220(4.6)(c) for a particular taxation year of a trust is equal to the lesser of the following two amounts:

- the portion of the trust's total tax payable under Parts I and I.1 of the Act (determined without reference to loss carrybacks and other amounts specified under paragraph 161(7)(a)) for the distribution year that would not have been payable if each such distribution of taxable Canadian property (other than taxable Canadian property subsequently disposed of before the beginning of the particular year) had not occurred; and
- where the particular year does not immediately follow the distribution year, the amount so specified for the taxation year of the trust that immediately precedes the particular year.

The relief with regard to arrears interest and penalties is provided under new paragraph 220(4.6)(d). This provision provides that interest is generally payable as if the particular amount for which adequate security is accepted at any time under subsection 220(4.6) in a particular period ending on the balance-due day for a taxation year subsequent to the distribution year had actually been paid on account of the trust's taxes under Parts I and I.1 for the distribution year. The particular amount in respect of a period that ends on a trust's balance-due day for a subsequent taxation year cannot exceed the amount specified under paragraph 220(4.6)(c) for the year. In addition, the particular amount is constrained because of the limit under subsection 220(4.61). However, paragraph 220(4.6)(d) does not apply with respect to interest on unpaid tax instalments which is dealt with under new subsection 107(5.1) of the Act.

Subsection 220(4.61) limits the amount for which the Minister is considered to have accepted security under subsection 220(4.6), in order to take into account reductions as of any day, for the purpose of computing arrears interest, in the calculation of taxes under Parts I and I.1 arising from the carryback of losses and similar amounts. The effect of subsection 220(4.61) is to limit the amount of acceptable security as of any day in respect of a trust's tax payable for a distribution year to:

- the total taxes payable by the trust under those Parts for the distribution year, determined without reference to such reductions that occur after that day

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- the total taxes payable under those Parts, determined without reference to such reductions and as if the rollover rules in subsection 107(2) had applied to distributions in the distribution year not covered by those rules only because of subsection 107(5).

Subsection 220(4.62) provides rules which apply where security furnished by a trust under subsection 220(4.6) ceases to be adequate. These rules are essentially the same as the rules in subsection 220(4.53). As noted above, subsection 220(4.63) allows for the late filing of elections and the late furnishing of security. Subsection 220(4.63) is essentially the same as subsection 220(4.54).

These amendments apply to distributions that occur after October 1, 1996. However, transitional measures treat elections made, and security furnished, up to the taxpayer's filing-due date for the year in which these amendments receive Royal Assent as having been made at such time as to maximize the benefits under subsection 220(4.6).

Related Provisions: 128.3 — Shares acquired on rollover deemed to be same shares for 220(4.6); 152(10) — Posted security deemed not to be tax assessed for purposes of administration of provincial tax; 220(4.61) — Security effective only for tax caused by 107(5); 220(4.62) — Where security proves inadequate; 220(4.63) — Extension of time for making election; 220(4.7) — Reduction in security for undue hardship.

(4.61) Limit — Notwithstanding subsection (4.6), the Minister is deemed at any time not to have accepted security under that subsection in respect of a trust's distribution year for any amount greater than the amount, if any, by which

(a) the total amount of taxes that would be payable by the trust under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a), in respect of which the day determined under paragraph 161(7)(b) is after that time, were not taken into account

exceeds

(b) the total amount of taxes that would be determined under paragraph (a) if paragraphs 107(2)(a) to (c) had applied to each distribution by the trust in the year of property to which paragraph (1)(a) applies.

Technical Notes: See under 220(4.6).

(4.62) Inadequate security — Subject to subsection (4.7), where it is determined at any particular time that security accepted by the Minister under subsection (4.6) is not adequate to secure the particular amount for which it was furnished by or on behalf of a trust,

(a) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(b) the Minister shall notify the trust in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the trust within 90 days after the notification; and

(c) any security accepted in accordance with paragraph (b) is deemed to have been accepted by the Minister under subsection (4.6) on account of the particular amount at the particular time.

Technical Notes: See under 220(4.6).

(4.63) Extension of time — Where in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(a) the time for making an election under subsection (4.6);

(b) the time for furnishing and accepting security under subsection (4.6); or

(c) the 90-day period for the acceptance of the security under paragraph (4.62)(b).

Technical Notes: See under 220(4.6).

(4.7) Undue hardship — If, in respect of any period of time, the Minister determines that an individual who has made an election under either of subsection (4.5) or (4.6)

(a) cannot, without undue hardship, pay or reasonably arrange to have paid on the individual's behalf, an amount of taxes to which security under that subsection would relate, and

(b) cannot, without undue hardship, provide or reasonably arrange to have provided on the individual's behalf, adequate security under that subsection,

the Minister may, in respect of the election, accept for the period security different from, or of lesser value than, that which the Minister would otherwise accept under that subsection.

Technical Notes: In some circumstances, an individual who wishes to provide security under new subsection 220(4.5) or (4.6) of the Act may be unable to do so without undue hardship. In such a case, new subsection 220(4.7) of the Act authorizes the Minister of National Revenue to accept security different from, or of lesser value than, that which would otherwise be required. The Minister is under no obligation to exercise this discretion, and can in any event do so only if the individual can without undue hardship neither provide security, pay the tax owing, nor reasonably arrange to have the security provided or the tax paid on the individual's behalf.

Related Provisions: 220(4.71) — Transactions entered into to create hardship to be ignored.

(4.71) Limit — In making a determination under subsection (4.7), the Minister shall ignore any transaction that is a disposition, lease, encumbrance, mortgage, or other voluntary restriction by a person or partnership of the person's or partnership's rights in respect of a property, if the transaction can reasonably be considered to have been entered into for the purpose of influencing the determination.

Technical Notes: New subsection 220(4.71) of the Act provides that in making a determination under subsection 220(4.7), the Minister will ignore any transaction by which a person or partnership limits their rights in respect of a property, if the transaction can reasonably be considered to have been entered into in order to influence the Minister's determination.

These new subsections apply to dispositions and trust distributions that occur after October 1, 1996.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 105, will add subsecs. 220(4.5) to (4.71), applicable to dispositions and distributions that occur at any time after October 1, 1996 except that,

(a) the reference to "$67,000" in para. 220(4.51)(a) shall be read as a reference to "$75,000" in respect of emigration years that are before 2001; and

(b) if an individual ceased to be resident in Canada, or a distribution by a trust occurred to which para. 220(4.6)(a) applies in respect of the trust, before the particular day on which the amending legislation is assented to,

(i) an election by the individual under subsec. 220(4.5), or by the trust under subsec. 220(4.6), as the case may be in respect of the taxation year that includes that time is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the particular day; and

(ii) security furnished by or on behalf of the individual under subsec. 220(4.5), or by or on behalf of the trust under subsec. 220(4.6), as the case may be is deemed to have been furnished in a timely manner if it is furnished on or before the individual's filing-due date for the taxation year that includes the particular day.

Department of Finance news release, September 10, 1999: *Taxpayer Migration and Trusts: Technical Backgrounder*

Comments received on the December 1998 detailed proposals regarding taxpayer migration and trusts identified two major concerns: the need for flexibility in accepting security for the later payment of any tax arising from the deemed disposition on departure; and possible overlap between Canadian and foreign taxes. This backgrounder describes the government's proposed response to each of these two concerns. These changes, together with modifications to address more technical issues raised in connection with the December 1998 proposals, will be included in the proposals when they are put into bill form with the 1999 budget legislation.

1. Security for later payment

Several submissions raised concerns about the provision of security for later payment of any tax arising from the deemed disposition on departure. While this option is a significant relieving measure — it allows the deferral of tax, with no interest, until the property in question is eventually disposed of — a number of submissions have noted that some emigrating individuals may have serious difficulty providing acceptable security. This is not entirely a new issue: since 1972, an emigrant who owns, for example, foreign real property has had to either pay the tax on any gain on the property or provide acceptable security. But with the extension of the deemed disposition on departure to more types of property — notably shares of unlisted Canadian companies — difficulties of this kind may arise more frequently than they have in the past.

For example, an individual emigrant whose only significant property is shares of an unlisted Canadian company may be prohibited from pledging those shares as security because of prior restrictions under a shareholder agreement. Even if the shares can be pledged, their value may already be taken up by a

bank as security for a business loan, thus making them inadequate security for the tax arising at the time of emigration. If the individual has no means of paying the tax, and no other means of providing security, he or she may have to sell the shares, and thus give up ownership of the company in order to pay the tax.

Under the December proposals, the Minister of National Revenue would have considerable discretion in the administration of the security provisions. In response to the concern about cases such as the one described above, it is proposed that the Minister's discretion be even broader.

Specifically, in cases of undue hardship, the Minister of National Revenue would be able to accept a lesser value of security than, or security of a different kind from, that which the Minister would normally consider adequate. In an extreme case, this would give the Minister authority to accept very modest security. The individual's tax debt would remain owing, and would be collected when the individual eventually disposed of the property, but, in cases like the example described above, the individual would not necessarily be forced to sell the shares in order to satisfy a tax debt that arose because of emigration from Canada.

Two further points should be noted about this broader discretion. First, the statutory rule would not only require that the individual emigrant personally be unable, without undue hardship, to pay the tax or to provide fully acceptable security, it would also require that the individual be unable to reasonably arrange to have another person pay the tax or provide security. If, for example, the individual referred to above controls in any manner whatsoever a corporation that has sufficient assets, the corporation should provide security and the individual will not be able to rely on the undue hardship rule.

Second, to prevent abuse of this relief, the rule would direct the Minister to ignore any restriction that any person or partnership puts on its rights in respect of a property, if that was done for the purpose of influencing a determination under the rule.

[For the second proposal, "Interaction of Canadian and foreign taxes", see under 126(2.21) — ed.]

(5) Administration of oaths — Any officer or servant employed in connection with the administration or enforcement of this Act, if designated by the Minister for the purpose, may, in the course of that employment, administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act or regulations made thereunder, and every officer or servant so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

Related Provisions: *Interpretation Act* 19 — Administration of oaths.

(6) Assignment by corporation — Notwithstanding section 67 of the *Financial Administration Act* and any other provision of a law of Canada or a province, a corporation may assign any amount payable to it under this Act.

Related Provisions: 220(7) — Assignment not binding on federal government.

History: Subsec. 220(6) added by 1997, c. 25, s. 66, applicable to assignments made after March 5, 1996.

(7) Effect of assignment — An assignment referred to in subsection (6) is not binding on Her Majesty in right of Canada and, without limiting the generality of the foregoing,

(a) the Minister is not required to pay to the assignee the assigned amount;

(b) the assignment does not create any liability of Her Majesty in right of Canada to the assignee; and

(c) the rights of the assignee are subject to all equitable and statutory rights of set-off in favour of Her Majesty in right of Canada.

History: Subsec. 220(7) added by 1997, c. 25, s. 66, applicable to assignments made after March 5, 1996.

Definitions [s. 220]: "amount" — 248(1); "assessment" — 220; "balance-due day" — 248(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "corporation" — 248(1), *Interpretation Act* 35(1); "disposition" — 248(1); "distribution year" — 220(4.6)(a); "emigration year" — 220(4.5); "employed", "employee benefit plan", "employment", "individual", "insurance corporation" — 248(1); "*inter vivos* trust" — 108(1), 248(1); "Minister", "non-resident" — 248(1); "oath" — *Interpretation Act* 35(1); "officer" — 248(1)"office"; "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — 250; "security" — *Interpretation Act* 35(1); "servant" — 248(1)"employment"; "tax payable" — 248(2); "taxable Canadian property", "taxable income" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "undue hardship" — 220(4.71); "writing" — *Interpretation Act* 35(1).

221. (1) Regulations — The Governor in Council may make regulations

(a) prescribing anything that, by this Act, is to be prescribed or is to be determined or regulated by regulation;

(b) prescribing the evidence required to establish facts relevant to assessments under this Act;

(c) to facilitate the assessment of tax where deductions or exemptions of a taxpayer have changed in a taxation year;

(d) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;

(d.1) requiring any person or partnership to provide any information including their name, address, Social Insurance Number or business number to any class of persons required to make an information return containing that information;

(e) requiring a person who is, by a regulation made under paragraph (d), required to make an information return to supply a copy of the information return or of a prescribed part thereof to the person to whom the information return or part thereof relates;

(f) [Repealed]

Selected Cases [para. 221(1)(f)]: *Doyle v. MNR*, [1989] 2 C.T.C. 270 (FCTD) (Abeyance letter may be signed by taxpayer's designated agent and an officer of Appeals Division).

(g) providing for the retention by way of deduction or set-off of the amount of a taxpayer's income tax or other indebtedness under this Act out of any amount or amounts that may be or become payable by Her Majesty to the taxpayer in respect of salary or wages;

(h) defining the classes of persons who may be regarded as dependent for the purposes of this Act;

(i) defining the classes of non-resident persons who may be regarded for the purposes of this Act

(i) as a spouse supported by a taxpayer, or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(ii) as a person dependent or wholly dependent on a taxpayer for support,

and specifying the evidence required to establish that a person belongs to any such class; and

(j) generally to carry out the purposes and provisions of this Act.

Related Provisions: 65(2) — Regulations permitting resource allowances; 147.1(18) — Authority for regulations re registered pension plans; 214(13), 215(4), (5) — Regulations re non-resident withholding tax; 221(2) — Effect of regulations; 221(3) — Regulations binding Crown; 233 — Demands for information returns; 244(12) — Judicial notice to be taken of regulations; *Interpretation Act* 31(4) — Power to repeal, amend or vary regulations.

History: Para. 221(1)(d.1) amended and para. 221(1)(f) repealed by 1998, c. 19, subsecs. 222(1), (2), in force on June 18, 1998. Paras. 221(1)(d.1) and (f) formerly read:

> (d.1) requiring any person to provide any information including that person's name, address and Social Insurance Number to any class of persons required to make an information return containing that information;
>
> . . . . .
>
> (f) authorizing a designated officer or class of officers to exercise powers or perform duties of the Minister under this Act;

Subsec. 221(3) of the said c. 19 provides:

Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under para. 221(1)(f) before [June 18, 1998] continues to be delegated to that officer or that class of officers until an authorization by that Minister made under subsec. 220(2.01) changes the delegation of that power or duty.

Pre-RSC History: Paras. 221(1)(d.1) and (e) substituted by 1988, c. 55, s. 167. Paras. 221(1)(d.1) and (e) formerly read:

> (d.1) requiring any person who has acquired a debt obligation in bearer form to provide information respecting his name, address and Social Insurance Number to any other person who is required to make an information return in respect thereof,
>
> (e) requiring a person who is, by a regulation made under paragraph (d), required to make an information return to supply a copy of the information return or of a prescribed portion thereof to the person or persons in respect of whose income the information return or portion thereof relates,

Para. 221(1)(d.1) added by 1986, c. 55, subsec. 75(1), in force from November 1, 1987.

Selected Cases [subsec. 221(1)]: *Milley et al. v. Granby Const. & Equipment Ltd. et al.*, [1974] C.T.C. 701 (BC CA) (Minister may delegate power to seize records under subsection 231(4)).

Regulations: Part I – Part XCIII. For regulations under paras. 221(1)(d), (e), see Part II; under para. (g), see Part XXV.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(2) Effect — A regulation made under this Act shall have effect from the date it is published in the *Canada Gazette* or at such time thereafter as may be specified in the regulation unless the regulation provides otherwise and it

(a) has a relieving effect only;

(b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act or the *Income Tax Regulations*;

(c) is consequential on an amendment to this Act that is applicable before the date the regulation is published in the *Canada Gazette*; or

(d) gives effect to a budgetary or other public announcement, in which case the regulation shall not, except where paragraph (a), (b) or (c) applies, have effect

(i) before the date on which the announcement was made, in the case of a deduction or withholding from an amount paid or credited, and

(ii) before the taxation year in which the announcement is made, in any other case.

Pre-RSC History: Subsec. 221(2) substituted by 1986, c. 55, subsec. 75(2). Subsec. 221(2) formerly read:

> (2) Publication — No regulation made under this Act has effect until it has been published in the *Canada Gazette* but, when so published, a regulation shall, if it so provides, be effective with reference to a period before it was published.

Selected Cases: *Savard v. R.*, [1998] 1 C.T.C. 2430 (TCC) (White Paper constituted "budgetary or public announcement").

(3) Regulations binding Crown — Regulations made under paragraph (1)(d) or (e) are binding on Her Majesty in right of Canada or a province.

History: Subsec. 221(3) added by 1994, c. 7, Sch. II (1991, c. 49), s. 182, applicable after 1990.

(4) Incorporation by reference — A regulation made under this Act may incorporate by reference material as amended from time to time.

History: Subsec. 221(4) added by 1998, c. 19, subsec. 222(3), applicable to any regulation, regardless of whether it is made before or after Royal Assent to c. 19 (June 18, 1998).

Definitions [s. 221]: "amount", "assessment", "business number", "common-law partner" — 248(1); "Governor in Council" — *Interpretation Act* 35(1); "Minister", "non-resident" — 248(1); "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "regulation", "salary or wages" — 248(1); "spouse" — 252(4)(a); "taxation year" — 249; "taxpayer" — 248(1).

221.1 Application of interest — For greater certainty, where an amendment to this Act or an amendment or enactment that relates to this Act applies to or in respect of any transaction, event or time, or any taxation year, fiscal period or other period of time or part thereof (in this section referred to as the "application time") occurring, or that is, before the day on which the amendment or enactment is assented to or promulgated, for the purposes of the provisions of this Act that provide for payment of, or liability to, any interest, the amendment or enactment shall, unless a contrary intention is evident, be deemed to have come into force at the beginning of the last taxation year beginning before the application time.

History: S. 221.1 added by 1994, c. 7, Sch. II (1991, c. 49), s. 183, applicable to amendments and enactments assented to or promulgated after 1989 and shall be deemed to have come into force on January 1, 1990.

Definitions [s. 221.1]: "fiscal period" — 249(2)(b), 249.1; "taxation year" — 11(2), 249.

221.2 Re-appropriation of amounts — Where a particular amount was appropriated to an amount (in this section referred to as the "debt") that is or may become payable by a person under any enactment referred to in paragraphs 223(1)(a) to (d), the Minister may, on application by the person, appropriate the particular amount, or a part thereof, to another amount that is or may become payable under any such enactment and, for the purposes of any such enactment,

(a) the later appropriation shall be deemed to have been made at the time of the earlier appropriation;

(b) the earlier appropriation shall be deemed not to have been made to the extent of the later appropriation; and

(c) the particular amount shall be deemed not to have been paid on account of the debt to the extent of the later appropriation.

Related Provisions: 161.1 — Offsetting of refund interest and arrears interest of corporation.

History: S. 221.2 added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 128.

Definitions [s. 221.2]: "amount", "Minister", "person" — 248(1).

Collection

222. Debts to Her Majesty — All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court of Canada or any other court of competent jurisdiction or in any other manner provided by this Act.

Related Provisions: 225.1 — Collection restrictions.

Selected Cases [s. 222]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *MNR v. 2440-1986 Quebec Inc.*, [1990] 2 C.T.C. 149 (FCTD) (Valid seizure of goods sold to avoid tax liability); *Clarkson Co. Ltd. v. Canada*, [1989] 1 C.T.C. 142 (FCA) (Crown may set off debt to taxpayer against tax debt to Crown); *The Queen v. Sands Motor Hotel Ltd. et al.*, [1984] C.T.C. 612 (Sask QB) (Dividends paid out prior to assessment set aside and preferred shares redeemed to protect Crown as creditor under *Business Corporations Act* (Sask.)).

Definitions [s. 222]: "amount" — 248(1).

Information Circulars: 98-1: Collections policies.

222.1 Court costs — Where an amount is payable by a person to Her Majesty because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, subsections 220(4) and (4.2) and sections 223, 224 to 225 and 226 apply to the amount as if the amount were a debt owing by the person to Her Majesty on account of tax payable by the person under this Act.

History: S. 222.1 added by 1998, c. 19, s. 223, applicable to amounts that are payable after June 18, 1998, including amounts that became payable before June 18, 1998.

Definitions [s. 222.1]: "amount" — 248(1); "Her Majesty" — *Interpretation Act* 35(1); "person" — 248(1).

223. (1) Definition of "amount payable" — For the purposes of subsection (2), an "amount payable" by a person means any or all of

(a) an amount payable under this Act by the person;

(b) an amount payable under the *Employment Insurance Act* by the person;

(b.1) an amount payable under the *Unemployment Insurance Act* by the person;

(c) an amount payable under the *Canada Pension Plan* by the person; and

(d) an amount payable by the person under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act.

Related Provisions: 221.2 — Transfers of balances between accounts; 223.1(1) — Application.

History: Para. 223(1)(b.1) added by 1998, c. 19, subsec. 224(1), deemed to have come into force on June 30, 1996.

Para. 223(1)(b) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

(2) Certificates — An amount payable by a person (in this section referred to as a "debtor") that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.

Related Provisions: 222.1 — Application to awards of court costs; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

Selected Cases [subsec. 223(2)]: *Royal Bank of Canada v. Canada*, [1992] 2 C.T.C. 427 (BC CA) (Provision did not contravene section 8 of the *Charter* or paragraph 1(a) of the *Bill of Rights*); *Wright v. A.G. Can.*, [1988] 1 C.T.C. 107 (Ont. D.C.) (Crown priority over spouse claiming arrears in support payments not violation of *Charter*); *Bois de Construction du Nord (1971) Ltée v. The Queen*, [1987] 1 C.T.C. 333 (FCA) (Federal Court has jurisdiction to hear and order provisional seizure); *Lennox Industries (Canada) Ltd. v. The Queen*, [1987] 1 C.T.C. 171 (FCTD) (Equality provisions of *Charter* inapplicable to Crown's priority as creditor); *Morgan Trust Co. v. Dellelce et al.*, [1985] 2 C.T.C. 370 (Ont SC) (Shares in RRSP account subject to seizure but trustee of RRSP has no obligation under Crown's third-party demand where money not yet payable to taxpayer); *Stephens Estate v. The Queen*, [1985] 2 C.T.C. 149 (FCTD) (Re-filing of writs not new seizure after temporary lifting of same); *384238 Ontario Ltd. et al. v. The Queen*, [1984] C.T.C. 523 (FCA) (Suit against Crown for conversion of company's assets seized for individual's tax liabilities dismissed where Crown did not use assets as owner; trespass action estopped where individual treated assets as his own); *Charron Estate v. The Queen*, [1984] C.T.C. 237 (FCTD) (Certificate quashed where Minister's opinion not supported by facts); *Frankel v. The Queen*, [1984] C.T.C. 259 (FCTD) (Taxpayer and corporations entered into agreement with Minister re tax debts; Minister, failing to observe notations on cheques as to applicable debt, did not act improperly; taxpayer's personal debt remained unpaid); *The Queen v. Van de Wygerd*, [1983] C.T.C. 99 (FCTD) (Subsequent to filing certificate, seizure of property sold by taxpayer set aside where fraud not proven); *Chouinard et al. v. Saint-Martin et al.*, [1982] C.T.C. 177 (FCTD) (Seizure of property transferred pursuant to order valid where certificate filed before deed of transfer registered under *Civil Code*); *Athenian Construction Ltd. v. The Queen*, 81 D.T.C. 5352 (FCTD) (After filing certificate, Crown's application for attachment order dismissed where improper procedure employed); *Re Gero*, [1979] C.T.C. 309 (FCTD) (RRSP funds subject to seizure); *The Queen v. Restaurant and Bar La Seigneurie de Sept-Iles Inc.*, [1977] C.T.C. 96 (FCTD) (Seizure by Crown of assets used as security on bank loan was valid; rather than opposing seizure, bank permitted to recover amounts from proceeds of sale as creditor under article 604 of Quebec *Code of Civil Procedure*); *The Queen v. Williams*, [1975] C.T.C. 397 (FCTD) (No direction required for amount to be payable).

Information Circulars: 98-1: Collections policies.

(3) Registration in court — On production to the Federal Court, a certificate made under subsection (2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection (1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

Related Provisions: 161(1) — Interest; 161(11) — Interest on penalties; 222.1 — Application to awards of court costs; 223.1(1) — Application; 227.1(2)(a) — Liability of directors; 248(11) — Compound interest.

History: Subsec. 223(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 129. Subsec. (3) formerly read:

> (3) Registration in Court — On production to the Federal Court, a certificate made under subsection (2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by law and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty enforceable in the amount certified plus interest thereon to the day of payment as provided by law.

Selected Cases [subsec. 223(3)]: *Kune v. The Queen*, [1982] C.T.C. 300 (FCTD) (Stay of execution granted with respect to real property, but not personal, property where taxpayer provided evidence of fire insurance, mortgage and tax payment); *Re Van Gastel*, [1982] C.T.C. 61 (FCTD) (Federal Court exercised jurisdiction to indefinitely stay further execution of writ of *fieri facias* issued by it where Minister failed to deal with objection "with all due dispatch"); *The Queen v. Rumball*, [1981] C.T.C. 9 (FCTD) (Stay of execution only granted where seizure made and assessment under objection or appeal).

(4) Costs — All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate made under subsection (2) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(5) Charge on property — A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (3), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Related Provisions: 223(11.1) — Where charge registered under *Bankruptcy and Insolvency Act*; 223.1(1) — Application; 248(4) — Interest in real property.

History: Subsec. 223(5) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(5) formerly read:

(5) Charge on land — A document (in this section referred to as a "memorial") issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (3) may be filed, registered or otherwise recorded for the purpose of creating a charge or lien on or otherwise binding land in a province, or any interest therein, held by the debtor in the same manner as a document evidencing a judgment of the superior court of the province against a person for a debt owing by the person may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge or lien on or otherwise bind land, or any interest therein, held by the person.

(6) Creation of charge — If a memorial has been filed, registered or otherwise recorded under subsection (5),

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or

(b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

Related Provisions: 223(11.1) — Where charge registered under *Bankruptcy and Insolvency Act*; 223.1(1) — Application; 248(4) — Interest in real property.

History: Subsec. 223(6) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(6) formerly read:

(6) Idem — Where a memorial has been filed, registered or otherwise recorded under subsection (5), a charge or lien is created on land in the province, or any interest therein, held by the debtor, or such land or interest is otherwise bound, in the same manner and to the same extent as if the memorial were a document evidencing a judgment of the superior court of the province.

(7) Proceedings in respect of memorial — If a memorial is filed, registered or otherwise recorded in a province under subsection (5), proceedings may be taken in the province in respect of the memorial, including proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b), except that if in any such proceeding or as a condition precedent to any such proceeding any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or a judge or official of the court.

History: Subsec. 223(7) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(7) formerly read:

(7) Where a memorial of a certificate in respect of a debtor registered under subsection (3) is filed, registered or otherwise recorded as permitted under subsection (5), proceedings may be taken in respect thereof, including proceedings

(a) to enforce payment of the amount certified in the certificate, interest thereon and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect of one or more parcels of land or interests in land affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge or lien that has been or is intended to be filed, registered or otherwise recorded in respect of any land or interest in land affected by the memorial,

in the same manner and subject to the same restrictions and limitations as though the memorial were a document evidencing a judgment of the superior court of the province except that, where in any such proceeding or as a condition precedent to any such proceeding any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official thereof, a like order, consent or ruling may be

made or given by the Federal Court or a judge or official thereof and, when so made or given, has the same effect for the purposes of the proceeding as though made or given by the superior court of the province or a judge or official thereof.

(8) Presentation of documents — If

(a) a memorial is presented for filing, registration or other recording under subsection (5) or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (7) to any official in the land, personal property or other registry system of a province, it shall be accepted for filing, registration or other recording, or

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording, the access shall be granted

in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b) for the purpose of a like proceeding, as the case may be, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(8) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(8) formerly read:

(8) Where a memorial of a certificate registered under subsection (3) is presented for filing, registration or other recording as permitted under subsection (5), or any document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (7), to any officer of a superior court of a province or to any official in the land registry system of a province, it shall be accepted for filing, registration or other recording as though it were a like document issued from the superior court of the province or prepared in respect of a document evidencing a judgment of the superior court of the province for the purpose of a like proceeding, as the case may be, except that, where the memorial or document is issued by the Federal Court or signed or certified by a judge or official thereof, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in such proceedings shall be deemed to have been provided with or to have accompanied the memorial or document as so required.

(9) Sale, etc. — Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (2), interest on the amount and costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(9) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(9) formerly read:

(9) Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge or lien created in any proceeding to collect an amount certified in a certificate made under subsection (2), interest thereon and costs but any property that would have been affected by such a process, charge or lien had the Minister's consent been given at the time the process was issued or the charge or lien was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be had that consent been given at the time the process was issued or the charge or lien was created, as the case may be.

(10) Completion of notices, etc. — If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection (9), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when the consent of the Minister is given under that subsection, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person having complied with this subsection is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(10) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(10) formerly read:

(10) Where information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection (9), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when the consent of the Minister is given for the purpose of that subsection, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person having complied with this subsection shall be deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

(11) Application for an order — A sheriff or other person who is unable, by reason of subsection (9) or (10), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

Related Provisions: 223.1(1) — Application.

History: Subsec. 223(11) amended by 1998, c. 19, subsec. 224(2), in force June 18, 1998. Subsec. 224(11) formerly read:

(11) A sheriff or other person who is unable, by reason of subsection (9) or (10), to comply with any law or rule of court shall be bound by such order as may be made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge or lien.

(11.1) Deemed security — When a charge, lien, priority or binding interest created under subsection (6) by filing, registering or otherwise recording a memorial under subsection (5) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a security claim under that Act; and

Proposed Amendment — 223(11.1)(a)

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

Application: Bill C-24 (Second Reading in the Senate June 28, 2000) (GST technical bill), s. 175, will amend para. 223(11.1)(a) to read as above, deemed to have come into force on June 18, 1998.

Technical Notes: The amendment to the English version of paragraph 223(11.1)(a) of the *Income Tax Act* corrects an editorial error in that provision by replacing the incorrect term "security claim" with the correct term "secured claim".

This amendment applies on Royal Assent.

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

History: Subsec. 223(11.1) added by 1998, c. 19, subsec. 224(2), in force June 18, 1998.

(12) Details in certificates and memorials — Notwithstanding any law of Canada or of a province, in any certificate made under subsection (2) in respect of a debtor, in any memorial evidencing the certificate or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed under this Act applicable from time to time on amounts payable to the Receiver General without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any particular period of time.

Related Provisions [subsec. 223(12)]: 223.1(1) — Application; 225.1 — Collection restrictions.

Pre-RSC History [s. 223]: Para. 223(12)(b) amended by 1990, c. 39, s. 53, to add "on amounts payable to the Receiver General", applicable with respect to interest to be calculated in respect of periods after September 1989.

S. 223 substituted by 1988, c. 55, s. 168. (For application see s. 223.1.) S. 223 formerly read:

223. (1) Certificates — An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may be certified by the Minister.

(2) Judgments — On production to the Federal Court of Canada, a certificate made under this section shall be registered in the Court and when registered has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said Court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act.

(3) Costs — All reasonable costs and charges attendant upon the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section.

Subsec. 223(1) substituted by 1985, c. 45, s. 114. Subsec. 223(1) formerly read:

223. (1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may be certified by the Minister

(a) where there has been a direction by the Minister under subsection 158(2), forthwith after such direction, and

(b) otherwise, upon the expiration of 30 days after the default.

Selected Cases [s. 223]: *Prodor v. R.*, [1997] 3 C.T.C. 179 (FCTD) (Applicable interest rate is that prescribed in particular statute, not as provided in *Federal Court Act*); *Optical Recording Laboratories Inc. v. Canada*, [1990] 2 C.T.C. 524 (FCA) (Reassessment held not to nullify a certificate previously filed which includes tax payable under previous assessment; where reassessment adds nothing to assessment, it nullifies previous certificate); *Bougie v. Canada*, [1990] 2 C.T.C. 365 (FCTD) (Beneficiary under will liable for tax debts of deceased despite having received discharge issued in error).

Definitions [s. 223]: "amount" — 248(1); "interest" — in real property 248(4); "memorial" — 223(5); "Minister", "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "superior court" — *Interpretation Act* 35(1).

Regulations [s. 223]: 4301 (prescribed rate of interest).

223.1 (1) Application of subsecs. 223(1) to (8) and (12) — Subsections 223(1) to (8) and (12) are applicable with respect to certificates made under section 223 or section 223 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, after 1971 and documents evidencing such certificates that were issued by the Federal Court and that were filed, registered or otherwise recorded after 1977 under the laws of a province, except that, where any such certificate or document was the subject of an action pending in a court on February 10, 1988 or the subject of a court decision given on or before that date, section 223 shall be read, for the purposes of applying it with respect to that certificate or document, as section 223 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, read at the time the certificate was registered or the document was issued, as the case may be.

(2) Application of subsecs. 223(9) to (11) — Subsections 223(9) to (11) are applicable with respect to certificates made under section 223, or section 223 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, after September 13, 1988.

Origin of s. 223.1: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in rules of application in 1988, c. 55, s. 168).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Definitions [s. 223.1]: "province" — *Interpretation Act* 35(1).

224. (1) Garnishment — Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections (1.1) and (3) referred to as the "tax debtor"), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

Related Provisions: 222.1 — Application to awards of court costs; 224(5), (6) — Service of garnishee; 225.1 — Collection restrictions; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 224(1) substituted by 1994, c. 21, subsec. 101(1), applicable to requirements and notifications made after 1992, except that, in applying the subsec. to requirements and notifications made on or before June 15, 1994, the reference to "one year" shall be read as "90 days". That subsec. formerly read:

(1) Where the Minister has knowledge or suspects that a person is or will be, within 90 days, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections (1.1) and (3) referred to as the "tax debtor"), the Minister may, by registered letter or by a letter served personally, require that person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

Selected Cases [subsec. 224(1)]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *National Trust Co. v. R.*, [1998] 4 C.T.C. 26 (FCA); rev'g [1997] 1 C.T.C. 2549 (TCC) (Trustee of RRSP was person "liable to make a payment");

Maritime Life Assurance Co. v. R., [1997] 3 C.T.C. 2561 (TCC) (No amount "payable" by insurer where no request from policyholder and term of policy not matured); *Bank of Montreal v. MNR*, [1992] 1 C.T.C. 2292 (TCC) (Bank served with garnishment order not liable for honouring cheques drawn on trust account by wife of tax debtor); *Manufacturers Life Insurance Co. v. MNR*, [1991] 2 C.T.C. 2171 (TCC) (Provision inapplicable to force insurer to pay money under policy since no amount actually payable to taxpayer at time of attempted garnishment); *Chhabra v. Canada*, [1989] 2 C.T.C. 13 (FCTD) (Damages for unfair or malicious treatment of taxpayer awarded against Crown garnishing 75% of gross income and failing to attempt settlement of debt reasonably); *Ontario Development Corp. v. Canada*, [1989] 1 C.T.C. 319 (FCTD) (Book debts absolutely assigned before Crown's third-party demand not subject to garnishment); *De Coninck v. Royal Trust Corp.*, [1989] 1 C.T.C. 179 (NB CA) (Relationship between depositor and trust company administering RRSP is that of *cestui que* trust and trustee, not debtor and creditor, and trustee is not person "liable to make a payment" within scope of provision); *Lennox Industries (Canada) Ltd. v. The Queen*, [1987] 1 C.T.C. 171 (FCTD) (*Charter* inapplicable to Crown's priority over other creditors); *The Queen v. Royal Bank of Canada*, [1986] 2 C.T.C. 211 (FCA) (Actual notice to company's debtors not required to validly assign debts in manner opposable to Crown's third-party demand; constructive notice by registration sufficient); *Sorenson v. MNR*, 82 D.T.C. 6246 (FCA) (Garnishment may take place without prior filing of certificate); *Canadian Imperial Bank of Commerce v. The Queen*, [1981] C.T.C. 435 (FCTD) (Bank's section 88 (now section 178) security under *Bank Act* and general assignment of book debts have priority over Crown's third-party demand); *Qureshi et al. v. MNR*, [1979] C.T.C. 216 (FCTD) (Administrative decision of Minister whether or not to rely on garnishment not subject to judicial review); *Jamison v. Federal Business Development Bank et al.*, 78 D.T.C. 6482 (BC SC) (Service of demand does not transfer property in the debt).

Information Circulars: 98-1: Collections policies.

(1.1) Idem — Without limiting the generality of subsection (1), where the Minister has knowledge or suspects that within 90 days

(a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will lend or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or

(b) a person, other than an institution, will lend or advance moneys to, or make a payment on behalf of, a tax debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

(ii) where that person is a corporation, is not dealing at arm's length with that person,

the Minister may in writing require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so lent, advanced or paid and any moneys so paid to the Receiver General shall be deemed to have been lent, advanced or paid, as the case may be, to the tax debtor.

Related Provisions: 222.1 — Application to awards of court costs; 224(5), (6) — Service of garnishee; 225.1 — Collection restrictions; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: The closing words of subsec. 224(1.1) substituted by 1994, c. 21, subsec. 101(2), applicable to requirements and notifications made after 1992. The closing words of that subsec. formerly read:

the Minister may, by registered letter or by a letter served personally, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so lent, advanced or paid and any moneys so paid to the Receiver General shall be deemed to have been lent, advanced or paid, as the case may be, to the tax debtor.

Information Circulars: 98-1: Collections policies.

(1.2) Idem — Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.4 of the *Companies' Creditors Arrangement Act*, where the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

Related Provisions: 224(5), (6) — Service of garnishee; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 224(1.2) amended by 1997, c. 12, s. 128, to add "and section 11.4 of the *Companies' Creditors Arrangement Act*" following "*Bankruptcy and Insolvency Act*", in force September 30, 1997.

The opening words of subsec. 224(1.2) substituted by 1994, c. 21, subsec. 101(3), applicable to requirements and notifications made after June 15, 1994. The opening words formerly read:

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except paragraphs 69(1)(c) and 69.1(1)(c) of that Act), any other enactment of Canada, any enactment of a province or any law, but subject to paragraphs 69(1)(c) and 69.1(1)(c) of the *Bankruptcy and Insolvency Act*, where the Minister has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment

The closing words of subsec. 224(1.2) substituted by 1994, c. 21, subsec. 101(4), applicable to requirements and notifications made after 1992. The closing words formerly read:

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

That portion of subsec. 224(1.2) following para. (b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 130. That portion formerly read:

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the

moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty and shall be paid to the Receiver General in priority to any such security interest.

That portion of subsec. 224(1.2) preceding para. (a) substituted by 1994, c. 7, Sch. V (1992, c. 27), s. 91, deemed to have come into force November 30, 1992. That portion formerly read:

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy Act*, any other enactment of Canada, any enactment of a province or any law, where the Minister has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment

Pre-RSC History: Para. 224(1.2)(a) and that portion of subsec. (1.2) following para. (b) were substituted by 1990, c. 34, subsecs. (2) and (3), effective June 27, 1990. Those portions formerly read:

(a) to another person who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or to a legal representative of that other person (each of whom is in this subsection referred to as the "tax debtor"), or

. . . . .

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision.

Subsecs. 1(4), (5) of the said c. 34 read as follows:

(4) Any moneys received by the Receiver General pursuant to a letter issued after December 17, 1987 by the Minister of National Revenue under subsection 224(1.2) of the said Act shall be deemed to have been paid to the Receiver General as required under that subsection as if subsection (3) were applicable at the time the letter was issued.

(5) Subsection (4) does not apply in respect of moneys received by the Receiver General where legal proceedings have been commenced on or before November 6, 1989 with respect to the recovery of those moneys.

Subsec. 224(1.2) added by 1987, c. 46, s. 66, applicable to assessments in respect of amounts that are deducted or withheld after December 17, 1987.

Selected Cases [subsec. 224(1.2)]: *Nova Scotia Business Development Corp. v. Wandyn Inn Ltd.*, [2000] 2 C.T.C. 402 (NS SC) (Funds were owned by Minister, who could determine application); *Banque Royale du Canada v. Canada*, [1999] 2 C.T.C. 303 (FCA); aff'g [1998] 2 C.T.C. 183 (FCTD) (Managing accounts receiveable not same as assignment).

See also at end of s. 224

Information Circulars: 98-1: Collections policies.

I.T. Technical News: No. 6 (enhanced garnishment takes priority over builders' lien claimants).

(1.3) Definitions — In subsection (1.2),

"secured creditor" means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator, or any other person performing a similar function;

Related Provisions: 227(5.1)(h) — Secured creditor jointly liable for unremitted withholding tax.

"security interest" means any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture, mortgage, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

"similar provision" means a provision, similar to subsection 227(10.1), of any Act of a province that imposes a tax similar to the tax imposed under this Act, where the province has entered into an agreement with the Minister of Finance for the collection of the taxes payable to the province under that Act.

(1.4) Garnishment — Provisions of this Act that provide that a person who has been required to do so by the Minister must pay to the Receiver General an amount that would otherwise be lent, advanced or paid to a taxpayer who is liable to make a payment under this Act, or to that taxpayer's secured creditor, apply to Her Majesty in right of Canada or a province.

History: Subsec. 224(1.4) added by 1994, c. 21, subsec. 101(5), applicable June 15, 1994.

(2) Minister's receipt discharges original liability — The receipt of the Minister for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(3) Idem — Where the Minister has, under this section, required a person to pay to the Receiver General on account of a liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as is stipulated by the Minister in the requirement.

History: Subsec. 224(3) substituted by 1994, c. 21, subsec. 101(6), applicable to requirements and notifications made after 1992. That subsec. formerly read:

(3) Continuing garnishment until liability satisfied — Where the Minister has, under this section, required a person to pay to the Receiver General on account of the liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement is applicable to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as may be stipulated by the Minister in the registered letter or letter served personally.

(4) Failure to comply with subsec. (1), (1.2) or (3) requirement — Every person who fails to comply with a requirement under subsection (1), (1.2) or (3) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection (1), (1.2) or (3), as the case may be, to pay to the Receiver General.

Related Provisions: 227(10) — Assessment.

(4.1) Failure to comply with subsec. (1.1) requirement — Every institution or person that fails to comply with a requirement under subsection (1.1) with respect to moneys to be lent, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

(a) the total of moneys so lent, advanced or paid, and

(b) the amount that the institution or person was required under that subsection to pay to the Receiver General.

Related Provisions: 227(10) — Assessments.

(5) Service of garnishee — Where a person carries on business under a name or style other than the person's own name, notification to the person of a requirement under subsection (1), (1.1) or (1.2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, shall be deemed to be validly served if it is left with an adult person employed at the place of business of the addressee.

History: Subsec. 224(5) substituted by 1994, c. 21, subsec. 101(7), applicable to requirements and notifications made after 1992. That subsec. formerly read:

> (5) Service of garnishee — Where the person who is or is about to become indebted or liable under this section carries on business under a name or style other than the person's own name, the registered or other letter under subsections (1) and (1.2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(6) Idem — Where persons carry on business in partnership, notification to the persons of a requirement under subsection (1), (1.1) or (1.2) may be addressed to the partnership name and, in the case of personal service, shall be deemed to be validly served if it is served on one of the partners or left with an adult person employed at the place of business of the partnership.

Related Provisions: 244(20)(b) — Service of documents on partnerships.

History: Subsecs. 224(6) substituted by 1994, c. 21, subsec. 101(7), applicable to requirements and notifications made after 1992. That subsec. formerly read:

> (6) Service on partnership — Where the persons who are or are about to become indebted or liable under this section carry on business in partnership, the registered or other letter under subsections (1) and (1.2) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

Pre-RSC History [s. 224]: Subsec. 224(1) was substituted by 1990, c. 34, subsec. 1(1), effective June 27, 1990. That portion formerly read:

> 224. (1) Garnishment — Where the Minister has knowledge or suspects that a person is or will be, within 90 days, liable to make a payment to another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor"), he may, by registered letter or by a letter served personally, require that person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

Subsecs. 1(4), (5) of the said c. 34 read as follows:

> (4) Any moneys received by the Receiver General pursuant to a letter issued after December 17, 1987 by the Minister of National Revenue under subsection 224(1.2) of the said Act shall be deemed to have been paid to the Receiver General as required under that subsection as if subsection (3) were applicable at the time the letter was issued.
>
> (5) Subsection (4) does not apply in respect of moneys received by the Receiver General where legal proceedings have been commenced on or before November 6, 1989 with respect to the recovery of those moneys.

Subsecs. 224(1.2), (1.3) added and subsecs. 224(4), (5), (6) amended to add in subsecs. (4), (5), (6) reference to subsec. 224(1.2), and to substitute in subsecs. (5), (6) "liable under this section carries" for "liable carries", by 1987, c. 46, s. 66, applicable to assessments in respect of amounts that are deducted or withheld after December 17, 1987.

Subsecs. 224(1), (1.1), (4.1) substituted by 1980-81-82-83, c. 140, subsecs. 121(1), (2). Those subsecs. formerly read:

> 224. (1) Garnishment — Where the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor"), he may, by registered letter or by a letter served personally, require that person to pay the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.
>
> (1.1) Idem — Without limiting the generality of subsection (1), where the Minister has knowledge or suspects that a bank, credit union, trust company or other similar person (in this section referred to as the "institution") is about to advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security to the institution in respect of the indebtedness, he may, by registered letter or by a letter served personally, require the institution to pay to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so advanced or paid.
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> . . . . .
>
> (4.1) Idem — Every institution that fails to comply with a requirement under subsection (1.1) is liable to pay to Her Majesty an amount equal to the lesser of
>
> (a) the aggregate of the moneys advanced or paid, and
>
> (b) the amount that it was required under subsection (1.1) to pay to the Receiver General.

Subsecs. 224(1), (3), (4) substituted, 224(1.1), (4.1) added by 1980-81-82-83, c. 48, subsecs. 103(1), (2). The substituted subsecs. formerly read:

> 224. (1) Garnishment — When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment under this Act, he may, by registered letter or by a letter served personally, require him to pay the moneys otherwise payable to that person in whole or in part to the Receiver General of Canada on account of the liability under this Act.
>
> . . . . .
>
> (3) Idem — Where the Minister has, under this section, required an employer to pay to the Receiver General of Canada on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter.
>
> (4) Idem — Every person who has discharged any liability to a person liable to make a payment under this Act without complying with a requirement under this section is liable to pay to Her Majesty an amount equal to the liability discharged or the amount which he was required under this section to pay to the Receiver General of Canada, whichever is the lesser.

Selected Cases [s. 224]: *Pigott Project Management Ltd. v. Land-Rock Resources Ltd.*, [1996] 1 C.T.C. 395 (SCC) (Section applies in priority to general assignment of book debts); *Trans Gas Ltd. v. Mid-Plains Contractors Ltd.*, [1993] 1 C.T.C. 280 (Sask CA); leave to appeal to SCC granted [1993] 7 W.W.R. lxviii (note) (Provision neither *ultra vires* nor unreasonable seizure); *Canadian Asbestos Services Ltd. v. Bank of Montreal*, [1993] 1 C.T.C. 48 (Ont Gen Div) (Crown bound by order under *Companies' Creditors Arrangement Act*); *Re Gaston H. Poulin Contractor Ltd.*, [1992] 2 C.T.C. 373 (Ont Gen Div) (Crown not bound by order under *Companies' Creditors Arrangement Act*); *Toronto-Dominion Bank v. Canada*, [1990] 2 C.T.C. 542 (FCTD) (General assignment of book debts absolutely transfers all property therein to assignee; such debts cannot be subject to Crown's third-party demand); *Lloyds Bank Canada v. International Warranty Co.*, [1990] 2 C.T.C. 360 (Alta CA); leave to appeal to SCC refused (1989), 104 N.R. 320 (note) (Section 224 neither creates a trust nor effects a transfer of property in favour of the Crown, and has no effect on creditors' priorities); *Cameron v. Canada*, [1990] 2 C.T.C. 299 (FCTD) (Minister successfully garnished assigned book debts where not registered under the *Assignment of Book Debts Act* (Ontario)); *Royal Bank of Canada v. Canada*, [1990] 2 C.T.C. 285 (Sask QB); aff'd [1991] 1 C.T.C. 532 (Sask CA) (1987 amendments to section 224 substantially altered the rights of the Crown as established in earlier jurisprudence; Crown's third-party demand preferred to right of secured creditor).

Definitions [s. 224]: "amount", "annuity", "bank" — *Interpretation Act* 35(1); "business" — 248(1); "Canada" — 255; "carrying on business" — 253; "dividend", "employed", "employee", "employer", "Minister", "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "tax

debtor" — 224(1); "tax payable" — 248(2); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

224.1 Recovery by deduction or set-off — Where a person is indebted to Her Majesty under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that may be or become payable to the person by Her Majesty in right of Canada.

Related Provisions: 164(2) — Set-off of refund against other amount owing by the taxpayer to the Crown or a province; 203 — Set-off of Part X refunds; 222.1 — Application to awards of court costs; 225.1 — Collection restrictions; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

Pre-RSC History: S. 224.1 substituted by 1980-81-82-83, c. 48, s. 104.

S. 224.1 enacted by 1979, c. 5, s. 64.

Selected Cases [s. 224.1]: *Mintzer v. Canada*, [1996] 1 C.T.C. 249 (FCA) (Set-off at common law and "compensation" in civil law not the same; different result might have occurred in Quebec).

Definitions [s. 224.1]: "amount", "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1).

Information Circulars: 98-1: Collections policies.

224.2 Acquisition of debtor's property — For the purpose of collecting debts owed by a person to Her Majesty under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act, the Minister may purchase or otherwise acquire any interest in the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest so acquired in such manner as the Minister considers reasonable.

Related Provisions: 222.1 — Application to awards of court costs; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

Pre-RSC History: S. 224.2 enacted by 1980-81-82-83, c. 140, s. 122.

Definitions [s. 224.2]: "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1).

224.3 (1) Payment of moneys seized from tax debtor — Where the Minister has knowledge or suspects that a particular person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person (in this section referred to as the "tax debtor") who is liable to make a payment under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act and that are restorable to the tax debtor, the Minister may in writing require the particular person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act or under the Act of the province, as the case may be.

Related Provisions: 222.1 — Application to awards of court costs; 225.1 — Collection restrictions; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 224.3(1) substituted by 1994, c. 21, s. 102, applicable to requirements made after 1992. That subsec. formerly read:

> (1) Where the Minister has knowledge or suspects that a person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to make a payment under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act (in this section referred to as the "tax debtor") and that are restorable to the tax debtor, the Minister may, by registered letter or by a letter served personally, require that person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act or under the Act of the province, as the case may be.

Information Circulars: 98-1: Collections policies.

(2) Receipt of Minister — The receipt of the Minister for moneys turned over as required by this section is a good and sufficient discharge of the requirement to restore the moneys to the tax debtor to the extent of the amount so turned over.

Pre-RSC History [s. 224.3]: S. 224.3 enacted by 1980-81-82-83, c. 140, s. 122.

Definitions [s. 224.3]: "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1); "tax debtor" — 224.3(1); "writing" — *Interpretation Act* 35(1).

Forms [s. 224.3]: T1118; T1118A, B, C, PD-A, PD-B: Requirement to pay.

225. (1) Seizure of chattels — Where a person has failed to pay an amount as required by this Act, the Minister may give 30 days notice to the person by registered mail addressed to the person's latest known address of the Minister's intention to direct that the person's goods and chattels be seized and sold, and, if the person fails to make the payment before the expiration of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels be seized.

Related Provisions: 222.1 — Application to awards of court costs; 225.1 — Collection restrictions; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 244(5) — Proof of service by mail; 248(7) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 225(1) substituted by 1985, c. 45, s. 115. Subsec. 225(1) formerly read:

> (1) Where a person has failed to make a payment as required by this Act, the Minister, on giving 30 days' notice by registered mail addressed to his last known place of residence, may, whether or not there is an objection to or appeal in respect of the assessment not disposed of, issue a certificate of the failure and direct that the goods and chattels of the person in default be seized.

Selected Cases [subsec. 225(1)]: *The Queen v. Bourassa*, [1984] C.T.C. 331 (FCTD) (Unoccupied mobile home subject to seizure); *MNR v. Alliance Blindée Ltée*, [1982] C.T.C. 266 (FCTD) (Creditors failing to exercise rights cannot oppose seizure).

Information Circulars: 98-1: Collections policies.

(2) Sale of seized property — Property seized under this section shall be kept for 10 days at the cost and charges of the owner and, if the owner does not pay the amount owing together with the costs and charges within the 10 days, the property seized shall be sold by public auction.

(3) Notice of sale — Except in the case of perishable goods, notice of the sale setting out the time and place thereof, together with a general description of the property to be sold shall, a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation.

(4) Surplus returned to owner — Any surplus resulting from the sale after deduction of the amount owing and all costs and charges shall be paid or returned to the owner of the property seized.

(5) Exemptions from seizure — Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued out of a superior court of the province in which the seizure is made are exempt from seizure under this section.

Related Provisions: 226(2) — Taxpayer leaving Canada or defaulting.

Definitions [s. 225]: "assessment", "Minister", "person", "property" — 248(1); "province", "superior court" — *Interpretation Act* 35(1).

225.1 (1) Collection restrictions — Where a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, for the purpose of collecting the amount,

(a) commence legal proceedings in a court,

(b) certify the amount under section 223,

(c) require a person to make a payment under subsection 224(1),

(d) require an institution or a person to make a payment under subsection 224(1.1),

(e) require the retention of the amount by way of deduction or set-off under section 224.1,

(f) require a person to turn over moneys under subsection 224.3(1), or

(g) give a notice, issue a certificate or make a direction under subsection 225(1)

until after the day that is 90 days after the day of the mailing of the notice of assessment.

Related Provisions: 164(1.1) — Refund to taxpayer of amount under objection or appeal; 225.1(6), (7) — Limitations on collection restrictions.

History: The opening words of subsec. 225.1(1) amended by 1998, c. 19, s. 225, in force June 18, 1998.

(1) Where a taxpayer is liable for the payment of an amount assessed under this Act, the Minister shall not, for the purpose of collecting the amount,

That portion of subsec. 225.1(1) following para. (g) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(1). That portion formerly read:

before the day that is 90 days after the day of mailing of the notice of assessment.

Pre-RSC History: See at end of s. 225.1.

Information Circulars: 98-1: Collections policies.

(2) Idem — Where a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) until after the day that is 90 days after the day on which notice is mailed to the taxpayer that the Minister has confirmed or varied the assessment.

Related Provisions: 225.1(6), (7) — Limitations on collection restrictions.

History: Subsec. 225.1(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(2), to substitute "until after" for "before".

Pre-RSC History: See at end of s. 225.1.

(3) Idem — Where a taxpayer has appealed from an assessment of an amount payable under this Act to the Tax Court of Canada, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) before the day of mailing of a copy of the decision of the Court to the taxpayer or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

Related Provisions: 225.1(6), (7) — Limitations on collection restrictions.

Selected Cases [subsec. 225.1(3)]: *Cormier v. Canada (No. 2)*, [1991] 1 C.T.C. 410 (FCTD) (Provision not to be applied retroactively).

(4) Idem — Where a taxpayer has agreed under subsection 173(1) that a question should be determined by the Tax Court of Canada, or where a taxpayer is served with a copy of an application made under subsection 174(1) to that Court for the determination of a question, the Minister shall not take any of the actions described in paragraphs (1)(a) to (g) for the purpose of collecting that part of an amount assessed, the liability for payment of which will be affected by the determination of the question, before the day on which the question is determined by the Court.

Related Provisions: 225.1(6), (7) — Limitations on collection restrictions.

(5) Idem — Notwithstanding any other provision in this section, where a taxpayer has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the taxpayer, the Minister may take any of the actions described in paragraphs (1)(a) to (g) for the purpose of collecting the amount assessed, or a part thereof, determined in a manner consistent with the decision or judgment of the Court in the other action at any time after the Minister notifies the taxpayer in writing that

(a) the decision of the Tax Court of Canada in that action has been mailed to the Minister,

(b) judgment has been pronounced by the Federal Court of Appeal in that action, or

(c) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

History: Subsec. 225.1(5) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 184, to substitute "Tax Court of Canada from an assessment" for "Tax Court of Canada or Federal Court–Trial Division from the assessment" and "Federal Court of Appeal" for "Federal Court" (twice), deemed to have come into force on January 1, 1991.

Pre-RSC History: See at end of s. 225.1.

Selected Cases [subsec. 225.1(5)]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act); *Canada v. Satellite Earth Station Technology Inc.*, [1989] 2 C.T.C. 291 (FCTD) (Once taxpayer meets evidentiary burden to raise reasonable doubt about sufficiency of Crown's evidence, on balance of probabilities, Crown must prove collection would be jeopardized by delay (Note subsequent change in legislation)); *Doyle v. MNR*, [1989] 2 C.T.C. 270 (FCTD) (Abeyance letter under provision may be signed by taxpayer's designated agent and officer of Appeals Division).

(6) Where subsecs. (1) to (4) do not apply — Subsections (1) to (4) do not apply with respect to

(a) an amount payable under Part VIII;

(b) an amount deducted or withheld, and required to be remitted or paid, under this Act or a regulation made under this Act;

Proposed Amendment — 225.1(6)(b)

(b) an amount required to be deducted or withheld, or required to be remitted or paid, under this Act or the Regulations;

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 106, will amend para. 225.1(6)(b) to read as above, in force on Royal Assent.

Technical Notes: Section 225.1 of the Act imposes restrictions on the collection of tax where a taxpayer objects to or appeals from an assessment.

Subsection 225.1(6) provides for an exception to the collection restrictions in limited circumstances. Paragraph 225.1(6)(b) is amended to clarify that the collection restrictions, which do not apply in cases where source deductions were deducted from an employee's remuneration but not remitted to the Receiver General, also do not apply in cases where source deductions were required to be deducted or withheld but were not so deducted or withheld.

(c) an amount of tax required to be paid under section 116 or a regulation made under subsection 215(4) but not so paid;

(d) the amount of any penalty payable for failure to remit or pay an amount referred to in paragraph (b) or (c) as and when required by this Act or a regulation made under this Act; and

(e) any interest payable under a provision of this Act on an amount referred to in this paragraph or any of paragraphs (a) to (d).

Related Provisions: 225.2 — Collection in jeopardy.

Pre-RSC History: See at end of s. 225.1.

Information Circulars: 98-1: Collections policies.

(7) Idem — large corporations — Where an amount has been assessed under this Act in respect of a corporation for a taxation year in which it was a large corporation, subsections (1) to (4) do not apply to limit any action of the Minister to collect

(a) at any time on or before the particular day that is 90 days after the day of the mailing of the notice of assessment, ½ of the amount so assessed; and

(b) at any time after the particular day, the amount, if any, by which the amount so assessed exceeds the total of

(i) all amounts collected before that time with respect to the assessment, and

(ii) ½ of the amount in controversy at that time.

History: Subsec. 225.1(7) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(3), applicable after June 10, 1993 except that, where a taxpayer has served a notice of objection or has instituted an appeal under the Act with respect to a notice of assessment of tax, interest or penalties under the Act mailed before 1992,

(a) the reference in para. (a) to "½" shall, in its application before 1994 with respect to all proceedings concerning the subject-matter of the notice of objection or the appeal, be read as "¼"; and

(b) the reference in subpara. (b)(ii) to "½" shall, in its application before 1994 with respect to all proceedings concerning the subject-matter of the notice of objection or the appeal, be read as "¾".

Information Circulars: 98-1: Collections policies.

(8) Definition of "large corporation" — For the purposes of this section, a "large corporation" in a particular taxation year means

(a) a corporation by which tax under Part I.3 is payable,

(i) where the particular year ended before July 1989, for its first taxation year that ends after June 1989, or

(ii) where the particular year ended after June 1989, for the particular year,

or would, but for subsection 181.1(4), have been so payable, or

(b) a corporation that, at the end of the particular year, is related (for the purpose of section 181.5, as that section reads in its application to the 1992 taxation year) to a corporation that is a large corporation in its taxation year that includes the end of the particular year,

and, for the purpose of subparagraph (a)(i), a corporation formed as a result of the amalgamation or merger of 2 or more predecessor corporations shall be deemed to be the same corporation as, and a continuation of, each of the predecessor corporations.

Related Provisions: 164(1.1) — Repayment on objections and repeals; 165(1.11), (1.13), 169(2.1) — Limitations on objections and appeals by large corporations; 220(4.1) — Security; 225.1(8) — Definition of "large corporation".

History: Paras. 225.1(8)(a) and (b) substituted by 1994, c. 21, s. 103, applicable June 15, 1994. Those paras. formerly read:

(a) a corporation by which tax under Part I.3 is payable,

(i) where the particular year ended before July 1989, for its first taxation year ending after June 1989, or

(ii) where the particular year ended after June 1989, for the particular year,

or would, but for section 181.1, have been so payable, or

(b) a corporation that, at the end of the particular year, is related (for the purposes of section 181.5) to a corporation that is a large corporation in its taxation year that includes the end of the particular year,

Subsec. 225.1(8) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 131(3), applicable after June 10, 1993.

Pre-RSC History: Subsec. 225.1(1) amended to substitute "an amount assessed under this Act" for "an amount assessed under this Act (in this subsection referred to as the "unpaid amount"), other than an amount payable under Part VIII or subsection 227(9)" in that portion preceding para. (a), "the amount" for "the unpaid amount" in that same portion and paras. (b) and (e), and "a person" for "person" in para. (d), subsec. (2) amended to substitute "payable under this Act" for "payable under this Act, other than an amount payable under Part VIII or subsection 227(9)," subsecs. (3), (4) substituted and subsec. (6) added, by 1990, c. 34, subsecs. 2(1) and (2), effective June 27, 1990. Subsecs. 225.1(3), (4) formerly read:

(3) **Idem** — Where a taxpayer has appealed from an assessment of an amount payable under this Act, other than an amount payable under Part VIII or subsection 227(9), to the Tax Court of Canada or to the Federal Court–Trial Division (otherwise than pursuant to subsection 172(1)), the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g),

(a) where the appeal is to the Tax Court of Canada, before the day of mailing of a copy of the decision of the Court to the taxpayer; and

(b) where the appeal is to the Federal Court–Trial Division, before the day on which the judgment of the Court is pronounced or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

(4) **Idem** — Where a taxpayer has agreed under subsection 173(1) that a question should be determined by the Federal Court or where a taxpayer is served with a copy of an application made under subsection 174(1) to the Tax Court of Canada or to the Federal Court–Trial Division for the determination of a question, the Minister shall not take any of the actions described in paragraphs (1)(a) to (g) for the purpose of collecting that part of an amount assessed, other than an amount payable under Part VIII or subsection 227(9), the liability for payment of which will be affected by the determination of the question, before the day on which the question is determined by the Court.

Para. 225.1(1)(b) amended to substitute "section 223" for "subsection 223(1)" by 1988, c. 55, s. 169, applicable with respect to notices of assessment mailed after 1984.

All that portion of subsecs. 225.1(1) and (3) preceding para. (a) of each, and subsecs. 225.1(2) and (4) amended by 1986, c. 24, s. 2, to substitute

"under Part VIII or subsection 227(9)" for "under subsection 227(9)" in each provision and to substitute "or where a taxpayer is served" for "or where he is served" in subsec. 225.1(4), applicable to amounts assessed after March 26, 1986.

S. 225.1 added by 1985, c. 45, subsec. 116(1), applicable as to subsec. 225.1(1) with respect to notices of assessment mailed after 1984, as to subsec. 225.1(2) with respect to notices of objection served after 1984, as to subsec. 225.1(3) with respect to appeals from assessments objected to after 1984, as to subsec. 225.1(4) with respect to assessments made after 1984 and with respect to assessments objected to after 1984, and as to subsec. 225.1(5) with respect to notices of objection served after 1984 and appeals from assessments objected to after 1984.

Selected Cases [s. 225.1]: *Re Milne*, [1995] 1 C.T.C. 122 (FCTD) (Collection proceedings not stayed out of consideration for effect on market of disposition of assets).

Definitions [s. 225.1]: "amount", "assessment" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "large corporation" — 225.1(8); "Minister", "person" — 248(1); "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

225.2 (1) Definition of "judge" — In this section, "judge" means a judge or a local judge of a superior court of a province or a judge of the Federal Court.

(2) Authorization to proceed forthwith — Notwithstanding section 225.1, where, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(a) to (g) with respect to the amount.

Related Provisions: 164(1.2) — Delay of refund where collection of tax in jeopardy.

Selected Cases [subsec. 225.2(2)]: *MNR v. Services M.L. Marengère Inc.*, [2000] 1 C.T.C. 229 (FCTD) (Jeopardy order justified where passage of time affected ability to collect taxes); *Deputy Minister of National Revenue (Taxation) v. Kung*, [1999] 1 C.T.C. 48 (BC SC) (Cutting off ties with Canada and selling assets sufficient grounds for jeopardy order); *MNR v. 159890 Canada Inc.*, [1997] 3 C.T.C. 284 (FCTD) (Jeopardy orders not to be sought where other means available to Minister to secure tax).

Information Circulars: 98-1: Collections policies.

(3) Notice of assessment not sent — An authorization under subsection (2) in respect of an amount assessed in respect of a taxpayer may be granted by a judge notwithstanding that a notice of assessment in respect of that amount has not been sent to the taxpayer at or before the time the application is made where the judge is satisfied that the receipt of the notice of assessment by the taxpayer would likely further jeopardize the collection of the amount, and for the purposes of sections 222, 223, 224, 224.1, 224.3 and 225, the amount in respect of which an authorization is so granted shall be deemed to be an amount payable under this Act.

(4) Affidavits — Statements contained in an affidavit filed in the context of an application under this section may be based on belief with the grounds therefor.

(5) Service of authorization and of notice of assessment — An authorization granted under this section in respect of a taxpayer shall be served by the Minister on the taxpayer within 72 hours after it is granted, except where the judge orders the authorization to be served at some other time specified in the authorization, and, where a notice of assessment has not been sent to the taxpayer at or before the time of the application, the notice of assessment shall be served together with the authorization.

(6) How service effected — For the purposes of subsection (5), service on a taxpayer shall be effected by

(a) personal service on the taxpayer; or

(b) service in accordance with directions, if any, of a judge.

Related Provisions: 244(6) — Proof of personal service.

(7) Application to judge for direction — Where service on a taxpayer cannot reasonably otherwise be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

(8) Review of authorization — Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

Related Provisions: *Interpretation Act* 27(1) — Calculation of clear days.

(9) Limitation period for review application — An application under subsection (8) shall be made

(a) within 30 days from the day on which the authorization was served on the taxpayer in accordance with this section; or

(b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

(10) Hearing *in camera* — An application under subsection (8) may, on the application of the taxpayer, be heard *in camera*, if the taxpayer establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

(11) Disposition of application — On an application under subsection (8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make such other order as the judge considers appropriate.

Related Provisions: 225.2(13) — No appeal from judge's decision.

(12) Directions — Where any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect thereto, a judge may give such direction with regard thereto as, in the opinion of the judge, is appropriate.

(13) No appeal from review order — No appeal lies from an order of a judge made pursuant to subsection (11).

Pre-RSC History [s. 225.2]: S. 225.2 substituted by 1988, c. 55, s. 170. S. 225.2 formerly read:

> 225.2 (1) Collection in jeopardy — Notwithstanding section 225.1, where it may reasonably be considered that collection of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection thereof, and the Minister has, by notice served personally or by registered letter addressed to the taxpayer at his latest known address, so advised the taxpayer and directed the taxpayer to pay forthwith the amount assessed or any part thereof, the Minister may forthwith take any of the actions described in paragraphs 225.1(1)(a) to (g) with respect to that amount or that part thereof.

(2) **Application to vacate direction** — Where the Minister has under subsection (1) directed a taxpayer to pay an amount forthwith, the taxpayer may

(a) upon 3 days notice of motion to the Deputy Attorney General of Canada, apply to a judge of a superior court having jurisdiction in the province in which the taxpayer resides or to a judge of the Federal Court of Canada for an order fixing a day (not earlier than 14 days nor later than 28 days after the date of the order) and place for the determination of the question whether the direction was justified in the circumstances;

(b) serve a copy of the order on the Deputy Attorney General of Canada within 6 days after the day on which it was made; and

(c) if he has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question.

(3) **Time for application** — An application to a judge under paragraph (2)(a) shall be made

(a) within 30 days after the day on which the notice under subsection (1) was served or mailed; or

(b) within such further time as the judge, upon being satisfied that the application was made as soon as circumstances permitted, may allow.

(4) **Hearing *in camera*** — An application under paragraph (2)(c) may, on the application of the taxpayer, be heard *in camera*, if the taxpayer establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

(5) **Burden to justify direction** — On the hearing of an application under paragraph (2)(c) the burden of justifying the direction is on the Minister.

(6) **Disposition of application** — On an application under paragraph (2)(c), the judge shall determine the question summarily and may confirm, vacate or vary the direction and make such other order as he considers appropriate.

(7) **Continuation by another judge** — Where the judge to whom an application has been made under paragraph (2)(a) cannot for any reason act or continue to act in the application under paragraph (2)(c), the application under paragraph (2)(c) may be made to another judge.

(8) **Costs** — Costs shall not be awarded upon the disposition of an application under subsection (2).

S. 225.2 added by 1985, c. 45, subsec. 116(1).

Selected Cases [s. 225.2]: *Moss v. R.*, [1998] 1 C.T.C. 2999 (TCC) (Appeal against issuance of jeopardy order is only against reasonable apprehension of jeopardy, not against underlying assessment); *Steele v. Canada*, [1996] 2 C.T.C. 279 (Sask QB) (Jeopardy order set aside where collection possible from taxpayer's spouse); *Canada v. Landru (S.)*, [1993] 1 C.T.C. 93 (Sask QB) (Mere suspicion of jeopardized collection not sufficient to justify jeopardy order); *Dep. MNR v. Atchison*, [1989] 1 C.T.C. 342 (BC SC) ("Jeopardy" orders set aside where Minister failed to make full disclosure of facts; in applying *ex parte*, Minister must act in utmost good faith); *Chudina et al. v. Dep. A.G. Can.*, [1988] 1 C.T.C. 303 (BC SC) (Seizure set aside where debtor not given opportunity to appeal or make payment); *1853-9049 Quebec Inc. v. The Queen*, [1986] 2 C.T.C. 486 (FCTD) (Immediate payment not required where no evidence that delay will endanger collection; burden on Crown); *Danielson v. Dep. A.G. Can.*, [1986] 2 C.T.C. 380 (FCTD) (Crown must show that actual jeopardy in collection arose from delay, not merely that collection is in jeopardy *per se*); *Danielson v. Dep. A.G. Can.*, [1986] 2 C.T.C. 42 (FCTD) (Execution of writ of seizure obtained after payment forthwith demanded was enjoined until hearing of objection to applicability of subsection 225.2(1) where taxpayer gave express undertaking not to dispose of assets not seized or remove funds in excess of personal living requirements).

Definitions [s. 225.2]: "amount" — 248(1); "clear days" — *Interpretation Act* 27(1); "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "superior court" — *Interpretation Act* 35(1); "taxpayer" — 248(1).

Information Circulars [s. 225.2]: 73-10R3: Tax evasion.

226. (1) Taxpayer leaving Canada — Where the Minister suspects that a taxpayer has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer's latest known address, demand payment of the amount of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived, and that amount shall be paid forthwith by the taxpayer notwithstanding any other provision of this Act.

Related Provisions: 128.1(4) — Tax effects of ceasing to be resident in Canada; 222.1 — Application to awards of court costs; 225.2 — Immediate collection of amounts owing; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes; 248(7)(a) — Notice deemed received on day mailed.

Information Circulars: 98-1: Collections policies.

(2) Idem — Where a taxpayer has failed to pay, as required, any tax, interest or penalties demanded under this section, the Minister may direct that the goods and chattels of the taxpayer be seized and subsections 225(2) to (5) apply, with respect to the seizure, with such modifications as the circumstances require.

Related Provisions: 222.1 — Application to awards of court costs; 231.2(1) — requirement to provide information or documents for collection purposes; 231.6(1) — foreign-based documents sought for collection purposes.

History [s. 226]: S. 226 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 185. S. 226 formerly read:

226. (1) **Taxpayer leaving Canada or defaulting** — Where the Minister suspects that a taxpayer is about to leave Canada, the Minister may before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer, demand payment of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived, and the same shall be paid forthwith notwithstanding any other provision of this Act.

(2) **Seizure on failure to pay** — Where a person has failed to pay tax, interest or penalties demanded under this section as required, the Minister may direct that the goods and chattels of the taxpayer be seized and subsections 225(2) to (5) are, thereupon, applicable with such modifications as the circumstances require.

Selected Cases [s. 226]: *Carolus v. MNR*, [1976] C.T.C. 608 (FCTD) (Trailers held not to be principal residences not exempted from seizure under subsection 2(1) *Exemptions Act* (Alta.)).

Definitions [s. 226]: "Minister", "taxpayer" — 248(1).

227. (1) Withholding taxes — No action lies against any person for deducting or withholding any sum of money in compliance or intended compliance with this Act.

Selected Cases [subsec. 227(1)]: *Mollenhauer Ltd. v. Canada*, [1992] 2 C.T.C. 121 (FCTD) (Contractor paying salaries of employees of subcontractor required to withhold and remit source deductions); *Lomex Inc. v. MNR*, [1992] 2 C.T.C. 2678 (TCC) (Extension of time to file notice of objection granted in respect of purported simultaneous violation of several statutes in addition to *Income Tax Act*).

(2) Return filed with person withholding — Where a person (in this subsection referred to as the "payer") is required by regulations made under subsection 153(1) to deduct or withhold from a payment to another person an amount on account of that other person's tax for the year, that other person shall, from time to time as prescribed, file a return with the payer in prescribed form.

Related Provisions: 162(7) — Failure to comply with regulation.

Regulations: 107 (deadline for employee to file TD1 return).

Forms: TD1: Personal tax credits return; TD1A: Amendment to the personal tax credits return.

(3) Failure to file return — Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person's tax made as though the person were an unmarried person without dependants.

Proposed Amendment — 227(3)

(3) Failure to file return — Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person's tax made as though the person were a person who is neither married nor in a common-law partnership and is without dependants.

Application: 2000, c. 12 (Bill C-23), s. 138, will amend subsec. 227(3) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Pre-RSC History [subsecs. 227(2), (3)]: Subsecs. 227(2), (3) substituted by 1980-81-82-83, c. 48, s. 105, applicable with respect to payments made after 1979. Subsecs. 227(2), (3) formerly read:

> (2) Every person whose employer is required to deduct or withhold any amount from his remuneration under section 153 shall, from time to time as prescribed, file a return with his employer in prescribed form.
>
> (3) Every person failing to file a form as required by subsection (2) is liable to have the deduction or withholding from his salary or wages under section 153 made as though he were an unmarried person without dependants.

(4) Trust for moneys deducted — Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Related Provisions: 227(4.1) — Extension of trust; 227(4.2) — Meaning of security interest; 227(4.3) — Application to the Crown.

History: Subsec. 227(4) amended by 1998, c. 19, subsec. 226(1), deemed to have come into force on June 15, 1994. Subsec. 227(4) formerly read:

> (4) Money held in trust — Every person who deducts or withholds an amount under this Act shall be deemed to hold the amount so deducted or withheld in trust, separate and apart from the person's own moneys, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act, and Her Majesty has a lien and charge on the property and assets of the person whether or not the person has kept the amount separate and apart or is in receivership, bankruptcy or liquidation or has made an assignment.

Subsec. 227(4) substituted by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

> (4) Money held in trust for Her Majesty — Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty.

Selected Cases [subsec. 227(4)]: *Roynat Inc. v. Ja-Sha Trucking & Leasing Ltd. (No. 2)*, [1992] 2 C.T.C. 139 (Man. C.A.) (Statutory trusts under subsections 227(4) and (5) conflicted with and took priority over provisions of *Personal Property Security Act*).

Information Circulars: 98-1: Collections policies.

(4.1) Extension of trust — Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

> (a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and
>
> (b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Related Provisions: 227(4.2) — Meaning of security interest; 227(4.3) — Application to the Crown.

History: Subsec. 227(4.1) added by 1998, c. 19, subsec. 226(1), deemed to have come into force on June 15, 1994.

Selected Cases [subsec. 227(4.1)]: *Royal Bank v. Tuxedo Transport Ltd.*, [1999] 3 C.T.C. 393 (BC SC) (Receiver was not secured creditor and not person acting on behalf of secured creditor).

(4.2) Meaning of security interest — For the purposes of subsections (4) and (4.1), a security interest does not include a prescribed security interest.

Related Provisions: 227(4.3) — Application to the Crown.

History: Subsec. 227(4.2) added by 1998, c. 19, subsec. 226(1), deemed to have come into force on June 15, 1994.

Regulations: 2201 (prescribed security interest).

Proposed Addition — 227(4.3)

(4.3) Application to Crown — For greater certainty, subsections (4) to (4.2) apply to Her Majesty in right of Canada or a province where Her Majesty in right of Canada or a province is a secured creditor (within the meaning assigned by subsection 224(1.3)) or holds a security interest (within the meaning assigned by that subsection).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 107(1), will add subsec. 227(4.3), in force on Royal Assent.

Technical Notes: Section 227 of the Act provides special rules relating to source deductions and non-resident withholding tax under sections 153 and 215 respectively, and also deals with the application of certain Parts of the Act to particular persons and entities.

New subsection 227(4.3) of the Act clarifies that the deemed trusts in subsections 227(4) and (4.1) relating to unremitted source deductions are binding on Her Majesty in right of Canada or of a province. Accordingly, the deemed trusts will always take priority over any other security interest in favour of the Crown, subject to prescribed security interests as provided in the Regulations.

(5) Payments by trustees, etc. — Where a specified person in relation to a particular person (in this subsection referred to as the "payer") has any direct or indirect influence over the disbursements, property, business or estate of the payer and the specified person, alone or together with another person, authorizes or otherwise causes a payment referred to in subsection 135(3) or 153(1), or on or in respect of which tax is payable under Part XII.5 or

XIII, to be made by or on behalf of the payer, the specified person

(a) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the payment;

(a.1) is, for the purpose of subsection 211.8(2), deemed to be a person who redeemed, acquired or cancelled a share and made the payment as a consequence of the redemption, acquisition or cancellation;

(b) is jointly and severally liable with the payer to pay to the Receiver General

(i) all amounts payable by the payer because of any of subsections 135(3), 153(1) and 211.8(2) and section 215 in respect of the payment, and

(ii) all amounts payable under this Act by the payer because of any failure to comply with any of those provisions in respect of the payment; and

(c) is entitled to deduct or withhold from any amount paid or credited by the specified person to the payer or otherwise recover from the payer any amount paid under this subsection by the specified person in respect of the payment.

Related Provisions: 227(5.1) — Specified person; 227(5.2) — "Person" includes partnership.

History: The portion of subsec. 227(5) before subpara. (b)(ii) amended by 1997 c. 25, subsec. 67(1), applicable April 25, 1997. That portion formerly read:

(5) Where a specified person in relation to a particular person (in this subsection referred to as the "payer") has any direct or indirect influence over the disbursements, property, business or estate of the payer and the specified person, alone or together with another person, authorizes or otherwise causes a payment referred to in subsection 135(3) or 153(1), or on which tax is payable under Part XIII, to be made by or on behalf of the payer, the specified person

(a) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the payment;

(b) is jointly and severally liable with the payer to pay to the Receiver General

(i) all amounts payable by the payer because of any of subsections 135(3) and 153(1) and section 215 in respect of the payment, and

Subsec. 227(5) added by 1996, c. 21, s. 57, applicable June 20, 1996.

Former subsec. 227(5) repealed by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

(5) Amount in trust not part of estate — Notwithstanding any provision of the *Bankruptcy and Insolvency Act*, in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to any amount

(a) deemed by subsection (4) to be held in trust for Her Majesty, or

(b) deducted or withheld under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act that is deemed under that Act to be held in trust for Her Majesty in right of the province

shall be deemed to be separate from and form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate.

That portion of subsec. 227(5) preceding para. (a) amended to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", by 1992, c. 27, para. 90(1)(q), deemed to have come into force November 30, 1992.

Pre-RSC History [former subsec. 227(5)]: Subsec. 227(5) substituted by 1988, c. 55, subsec. 171(1). Subsec.(5) formerly read:

(5) Notwithstanding any provision of the *Bankruptcy Act*, in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to the amount deemed by subsection (4) to be held in trust for Her Majesty shall be deemed to be separate from and form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate.

Subsec. 227(5) substituted by 1986, c. 6, subsec. 118(1), applicable to amounts that were deducted or withheld after May 23, 1985. Subsec. (5) formerly read:

(5) Idem — All amounts deducted or withheld by a person under this Act shall be kept separate and apart from his own moneys and in the event of any liquidation, assignment or bankruptcy the said amounts shall remain apart and form no part of the estate in liquidation, assignment or bankruptcy.

(5.1) Definition of "specified person" — In subsection (5), a "specified person" in relation to a particular person means a person who is, in relation to the particular person or the disbursements, property, business or estate of the particular person,

(a) a trustee;

(b) a liquidator;

(c) a receiver;

(d) an interim receiver;

(e) a receiver-manager;

(f) a trustee in bankruptcy or other person appointed under the *Bankruptcy and Insolvency Act*;

(g) an assignee;

(h) a secured creditor (as defined in subsection 224(1.3));

(i) an executor or administrator;

(j) any person acting in a capacity similar to that of a person referred to in any of paragraphs (a) to (i);

(k) a person appointed (otherwise than as an employee of the creditor) at the request of, or on the advice of, a secured creditor in relation to the particular person to monitor, or provide advice in respect of, the disbursements, property, business or estate of the particular person under circumstances such that it is reasonable to conclude that the person is appointed to protect or advance the interests of the creditor; or

(l) an agent of a specified person referred to in any of paragraphs (a) to (k).

History: Subsec. 227(5.1) added by 1996, c. 21, s. 57, applicable June 20, 1996.

(5.2) "Person" includes partnership — For the purposes of this section, references in subsections (5) and (5.1) to persons include partnerships.

Related Provisions: 227(15) — "Person" includes certain partnerships for all purposes under s. 227.

History: Subsec. 227(5.2) added by 1996, c. 21, s. 57, applicable June 20, 1996.

Possible Future Amendment — 227(5.2)–(5.4)

(5.2) Interference with remittance — Where at any time

(a) an amount (in this subsection referred to as the "amount to be remitted") that is deducted or withheld from a payment (in this subsection referred to as the "gross payment") is required by a provision of this Act to be remitted by a particular person on account of the tax of another person,

(b) a secured creditor (as defined in subsection 224(1.3)) in relation to the particular person has influence over the issuance or clearance of the payment of the amount to be remitted, and

(c) the secured creditor, alone or together with another person, exercises that influence for the purpose of

(i) postponing the remittance of the amount to be remitted,

(ii) subordinating the remittance of the amount to be remitted, in favour of the payment of other amounts, or

(iii) causing the amount to be remitted not to be remitted,

and the remittance of the amount to be remitted is postponed or subordinated or the amount to be remitted is not remitted, as the case may be,

the secured creditor

(d) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the gross payment and is deemed to be a person who deducted or withheld the amount to be remitted from the gross payment,

(e) is, notwithstanding any other provision of this Act, jointly and severally liable with the particular person to pay to the Receiver General

(i) all amounts payable by the particular person because of any of subsections 135(3) and 153(1) and section 215 in respect of the gross payment, and

(ii) all amounts payable under this Act by the particular person because of any failure to comply with any of those provisions in respect of the gross payment, and

(f) is entitled to deduct or withhold from any amount paid or credited by the secured creditor to the particular person, or otherwise recover from the particular person, any amount paid under this subsection by the secured creditor in respect of the amount to be remitted.

Technical Notes: New subsection 227(5.2) provides a new rule for imposing joint and several liability on certain secured creditors who interfere with the remittance of source deductions. Under this new rule it need not be established that a secured creditor actually causes or authorizes a payment — which is subject to source deduction — before joint and several liability arises. It is sufficient to show that an amount is deducted at source from a payment (hereafter referred to as a "gross payment") that the secured creditor has influence over the issuance or clearance of that gross payment and that the secured creditor exercises that influence for the purpose of interfering with the remittance of source deductions. Interference may take place by way of postponing a remittance, subordinating a remittance in favour of another payment or simply causing a remittance not to be made.

A typical example is the situation of a financial institution that has influential control over a person and that, in the course of providing banking services to the person (usually in financial difficulty) who is liable to deduct certain amounts from the remuneration of its employees, interferes with the remittance of these deductions by preventing the issuance of, stopping or refusing to clear a remittance cheque made to the Receiver General while issuing, clearing, or honouring other cheques made to suppliers or other creditors. This might be done in order to enhance trade receivables and limit the secured creditor's own risks.

Generally, it is not intended that the refusal of a cheque or other means of payment for lack of sufficient funds or other legitimate banking reasons be regarded as influence that is exercised for the purpose of interfering with the payment of source deductions. However, it is intended that a secured creditor that refuses to extend credit in respect of a source deduction payment and that subsequently extends credit in respect of other similar payments made to another party, be considered as exercising influence for the purpose of interfering with source deductions.

Where the circumstances described in new subsection 227(5.2) exist, the secured creditor will be deemed to have made the payment and will become jointly and severally liable with the person making the gross payment to pay all amounts payable in respect of the gross payment and all amounts payable by that person for the failure to deduct and remit the amounts payable. This will include the amount of tax not remitted, interest, and penalties. However, exceptions to this rule are contained in new subsections 227(5.3) and (5.4). A specific right to recover amounts paid by the secured creditor on behalf of the person making the gross payment is provided in paragraph 227(5.2)(f).

(5.3) Exception where all cheques stopped — Where on a day a secured creditor in relation to a person stops or refuses a cheque or other means of payment or remittance drawn on the secured creditor by the person for an amount to be remitted by the person to the Receiver General, subsection (5.2) does not apply in respect of that stopping or refusal if, throughout the period that begins at the end of that day and ends when the amount is paid to the Receiver General, the creditor stops or refuses all cheques and all other means of payment or remittance drawn on the creditor by the person (other than cheques payable, or other means of payment or remittance, to the Receiver General and other than cheques certified on or before that day).

Technical Notes: New subsections 227(5.3) and (5.4) provide certain exceptions to the joint and several liability rules which apply to secured creditors. Subsection 227(5.3) deals with the case in which a cheque or other means of payment is stopped or refused by the secured creditor. Joint and several liability will not arise in this case if the secured creditor also stops or refuses all other cheques presented and payments made starting immediately after that day, except cheques or payments made to the Receiver General or cheques certified on or before that day. Using the example of the financial institution that stops a remittance cheque (referred to in the commentary on subsection 227(5.2)), no joint and several liability would arise if the financial institution were to stop or refuse (until payment in full of the amount to be paid or remitted) all other cheques made to any other creditor of the person and presented at any time after the day on which it stopped the cheque payable to the Receiver General.

(5.4) Other exceptions — Where subsection (5.2) would, but for this subsection, apply to a secured creditor in relation to a person because the creditor has exercised influence in respect of an amount to be remitted by the person to the Receiver General, that subsection does not apply where

(a) the person does not make any payment or disbursement (other than payments or disbursements to the Receiver General) at and after the time referred to in that subsection until the amount to be remitted is paid to the Receiver General;

(b) the exercise of the influence is only a refusal, or an expression of intention to refuse, to supply to the person any further property or services until a payment for property sold or leased or services rendered to the person is received by the creditor; or

(c) the exercise of the influence is pursuant to a decree, order or judgment of a competent tribunal in Canada.

Technical Notes: Similarly, new subsection 227(5.4) provides relief from joint and several liability where a person does

not make any other payment or disbursement at or after the time the secured creditor exercises influence in respect of an amount to be paid or remitted by the person to the Receiver General.

New paragraph 227(5.4)(b) provides, for greater certainty, that a refusal by a secured creditor to continue to supply property or services because of the non-payment for such property or services will not give rise to joint and several liability.

Under new paragraph 227(5.4)(c), court actions such as collection and conservation measures will not be regarded as exercising influence for the purpose of interfering with a remittance. In addition, where a court orders a secured creditor to make a payment in priority to a remittance, the secured creditor will not be regarded as having exercised influence for the purpose of interfering with a remittance.

Application: The December 12, 1995 Notice of Ways and Means Motion would have added subsecs. 227(5.2)–(5.4) as above (and would have numbered what is now 227(5.2) as 227(5.5)), to come into force on Royal Assent. However, these provisions (and the parallel rules in 323.1 of the *Excise Tax Act* for GST remittances) were dropped in the revised Notice of Ways and Means Motion of March 28, 1996 (Bill C-36 — 1995 Budget bill). Officials at the Department of Finance advise that implementation of these rules has been deferred following consultations with the banks and other financial institutions, which have promised voluntary compliance. Revenue Canada has been monitoring this compliance in order to make a determination as to whether to proceed with these rules. As of January 2000, no decision had yet been made, and the proposals are still "on hold".

(6) Excess withheld, returned or applied — Where a person on whose behalf an amount has been paid under Part XII.5 or XIII to the Receiver General was not liable to pay tax under that Part or where the amount so paid is in excess of the amount that the person was liable to pay, the Minister shall, on written application made no later than 2 years after the end of the calendar year in which the amount was paid, pay to the person the amount so paid or such part of it as the person was not liable to pay, unless the person is or is about to become liable to make a payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and notify the person of that action.

History: Subsec. 227(6) amended by 1997, c. 25, subsec. 67(2), applicable April 25, 1997. Subsec. (6) formerly read:

> (6) Where a person on whose behalf an amount has been paid under Part XIII to the Receiver General was not liable to pay tax under that Part or where the amount so paid is in excess of the amount that the person was liable to pay, the Minister shall, on written application made no later than 2 years after the end of the calendar year in which the amount was paid, pay to the person the amount so paid or such part of it as the person was not liable to pay, unless the person is or is about to become liable to make a payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and notify the person of that action.

Subsec. 227(6) substituted by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

> (6) Withheld money returned or applied otherwise — Where a person on whose behalf an amount has been paid to the Receiver General after having been deducted or withheld under Part XIII was not liable to pay any tax under that Part or where the amount so paid to the Receiver General on the person's behalf is in excess of the tax that the person was liable to pay, the Minister shall, on application in writing made within two years from the end of the calendar year in which the amount was paid, pay to the person the amount so paid or such part thereof as the person was not liable to pay, unless the person is otherwise liable or about to become liable to make a payment under this Act, in which case the Minister may apply the amount otherwise payable under this subsection to that payment and notify the person of that fact.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

Forms: NR7-R: Application for refund of non-resident tax withheld.

(6.1) Repayment of non-resident shareholder loan — Where, in respect of a loan from or indebtedness to a corporation or partnership, a person on whose behalf an amount was paid to the Receiver General under Part XIII because of subsection 15(2) and paragraph 214(3)(a) repays the loan or indebtedness or a portion of it and it is established by subsequent events or otherwise that the repayment was not made as part of a series of loans or other transactions and repayments, the Minister shall, on written application made no later than 2 years after the end of the calendar year in which the repayment is made, pay to the person an amount equal to the lesser of

(a) the amount so paid to the Receiver General in respect of the loan or indebtedness or portion of it, as the case may be, and

(b) the amount that would be payable to the Receiver General under Part XIII if a dividend described in paragraph 212(2)(a) equal in amount to the amount of the loan or indebtedness repaid were paid by the corporation or partnership to the person at the time of the repayment,

unless the person is or is about to become liable to make a payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and notify the person of that action.

Related Provisions: 227(7.1) — Determination of amount under subsec. (6.1).

History: Subsec. 227(6.1) added by 1994, c. 21, subsec. 104(1), applicable to repayments made after December 21, 1992.

Interpretation Bulletins: IT-119R4: Debts of shareholders and certain persons connected with shareholders.

(7) Application for assessment — Where, on application under subsection (6) by or on behalf of a person to the Minister in respect of an amount paid under Part XII.5 or XIII to the Receiver General, the Minister is not satisfied

(a) that the person was not liable to pay any tax under that Part, or

(b) that the amount paid was in excess of the tax that the person was liable to pay,

the Minister shall assess any amount payable under that Part by the person and send a notice of assessment to the person, and sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with any modifications that the circumstances require.

History: Subsec. 227(7) amended by 1997, c. 25, subsec. 67(3), applicable April 25, 1997. Subsec. (7) formerly read:

> (7) Where, on application under subsection (6) by or on behalf of a person to the Minister in respect of an amount paid under Part XIII to the Receiver General, the Minister is not satisfied
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> (a) that the person was not liable to pay any tax under that Part, or
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> (b) that the amount paid was in excess of the tax that the person was liable to pay,
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> the Minister shall assess the person for any amount payable under Part XIII by the person and send a notice of assessment to the person, and sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

Subsec. 227(7) substituted by 1994, c. 21, subsec. 104(1), applicable June 15, 1994. That subsec. formerly read:

> (7) Idem — Where, on application by or on behalf of a person to the Minister pursuant to subsection (6) in respect of an amount paid

to the Receiver General that was deducted or withheld under Part XIII, the Minister is not satisfied

(a) that the person was not liable to pay any tax under that Part, or

(b) that the amount paid to the Receiver General was in excess of the tax that the person was liable to pay,

the Minister shall assess the person for any amount payable by the person under Part XIII and send a notice of assessment to the person, whereupon sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I are applicable with such modifications as the circumstances require.

Pre-RSC History: All that portion of subsec. 227(7) following para. (b) substituted by 1985, c. 45, subsec. 117(1), applicable after 1984. That portion formerly read:

the Minister shall assess that person for any amount payable by him under Part XIII and send a notice of assessment to that person, whereupon Divisions I and J of Part I are applicable *mutatis mutandis*.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

(7.1) Application for determination — Where, on application under subsection (6.1) by or on behalf of a person to the Minister in respect of an amount paid under Part XIII to the Receiver General, the Minister is not satisfied that the person is entitled to the amount claimed, the Minister shall, at the person's request, determine, with all due dispatch, the amount, if any, payable under subsection (6.1) to the person and shall send a notice of determination to the person, and sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

History: Subsec. 227(7.1) added by 1994, c. 21, subsec. 104(1), applicable to repayments made after December 21, 1992.

(8) Penalty — Subject to subsection (8.5), every person who in a calendar year has failed to deduct or withhold any amount as required by subsection 153(1) or section 215 is liable to a penalty of

(a) 10% of the amount that should have been deducted or withheld; or

(b) where at the time of the failure a penalty under this subsection was payable by the person in respect of an amount that should have been deducted or withheld during the year and the failure was made knowingly or under circumstances amounting to gross negligence, 20% of that amount.

Related Provisions: 147.1(3) — Deemed registration; 161(11) — Interest on penalties; 227(8.3) — Interest on amounts not deducted or withheld; 227(8.4) — Non-resident employees and patronage dividends; 227(9) — Penalty; 227(9.5) — Each establishment considered a separate person; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 252.1 — Where union is employer.

History: Para. 227(8)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(1), applicable after 1992, except with respect to amounts required to be remitted before 1993. Para. (b) formerly read:

(b) where the person had at the time of the failure been assessed a penalty under this subsection in respect of an amount that should have been deducted or withheld during the year, 20% of the amount that should have been deducted or withheld.

Pre-RSC History: Subsec. 227(8) substituted by 1988, c. 55, subsec. 171(2). Subsec. 227(8) formerly read:

(8) Idem — Any person who has failed to deduct or withhold any amount as required by this Act or a regulation is liable to pay to Her Majesty

(a) if the amount should have been deducted or withheld under subsection 153(1) from an amount that has been paid to a person resident in Canada, or should have been deducted or withheld under section 215 from an amount that has been paid to a person not resident in Canada, 10% of the amount that should have been deducted or withheld, and

(b) in any other case, the whole amount that should have been deducted or withheld,

together with interest on the amount that should have been deducted or withheld, at the prescribed rate per annum, for the period commencing on the later of

(c) February 16, 1984, and

(d) the fifteenth day of the month immediately following the month in which such amount should have been so deducted or withheld or such earlier time as may be prescribed for the purposes of subsection 153(1).

Para. 227(8)(d) amended by 1987, c. 46, subsec. 67(1), to substitute "fifteenth" for "15th" and to add "or such earlier time as may be prescribed for the purposes of subsection 153(1)", applicable with respect to amounts required to be deducted or withheld after 1987.

That portion of subsec. 227(8) following para. (b) substituted by 1984, c. 45, subsec. 89(1), applicable after February 15, 1984. That portion formerly read:

together with interest thereon at a prescribed rate per annum.

Selected Cases [subsec. 227(8)]: *Mollenhauer Ltd. v. Canada*, [1992] 2 C.T.C. 121 (FCTD) (Contractor which undertook to pay subcontractor's employees' "salary or wages or other remuneration" liable for failing to make and remit source deductions despite not being "employer"); *Comanche Drilling Ltd. (Receiver of) v. MNR*, [1989] 1 C.T.C. 428 (FCTD) (Receiver with power to borrow money to operate business liable for unremitted source deductions and penalty); *The Queen v. Moulton Ltd.*, [1976] C.T.C. 416 (FCTD) (In action against garnishee, Crown required to prove taxpayer liable to make payment under Act).

I.T. Application Rules: 62(2) (subsec. 227(8) applies to interest payable in respect of any period after December 23, 1971).

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

Information Circulars: 77-16R4: Non-resident income tax; 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(8.1) Joint and several liability — Where a particular person has failed to deduct or withhold an amount as required under subsection 153(1) or section 215 in respect of an amount that has been paid to a non-resident person, the non-resident person is jointly and severally liable with the particular person to pay any interest payable by the particular person pursuant to subsection (8.3) in respect thereof.

Related Provisions: 227(10) — Assessment.

Pre-RSC History: Subsec. 227(8.1) substituted by 1988, c. 55, subsec. 171(2). Subsec. 227(8.1) formerly read:

(8.1) Idem — Where a taxpayer has failed to deduct or withhold any amount, as required under section 215, in respect of an amount that has been paid to a person not resident in Canada, that non-resident person is jointly and severally liable with the taxpayer to pay any interest payable by the taxpayer pursuant to subsection (8) in respect thereof.

Subsec. 227(8.1) added by 1984, c. 45, subsec. 89(2), applicable after February 15, 1984.

(8.2) Retirement compensation arrangement deductions — Where a person has failed to deduct or withhold any amount as required under subsection 153(1) in respect of a contribution under a retirement compensation arrangement, that person is liable to pay to Her Majesty an amount equal to the amount of the contribution, and each payment on account of that amount is deemed to be, in the year in which the payment is made,

(a) for the purposes of paragraph 20(1)(r), a contribution by the person to the arrangement; and

(b) an amount on account of tax payable by the custodian under Part XI.3.

Related Provisions: 147.1(3) — Deemed registration; 153(1)(p) — Withholding required; 227(10) — Assessment; 227(10.2) — Joint and

several liability re contributions to RCA; 252.1 — Where union is employer.

Pre-RSC History: Subsec. 227(8.2) added by 1987, c. 46, subsec. 67(2), applicable with respect to amounts paid after March 27, 1987.

(8.3) Interest on amounts not deducted or withheld — A person who fails to deduct or withhold any amount as required by subsection 135(3), 153(1) or 211.8(2) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

(a) in the case of an amount required by subsection 153(1) to be deducted or withheld from a payment to another person, from the fifteenth day of the month immediately following the month in which the amount was required to be deducted or withheld, or from such earlier day as may be prescribed for the purposes of subsection 153(1), to,

(i) where that other person is not resident in Canada, the day of payment of the amount to the Receiver General, and

(ii) where that other person is resident in Canada, the earlier of the day of payment of the amount to the Receiver General and April 30 of the year immediately following the year in which the amount was required to be deducted or withheld;

(b) in the case of an amount required by subsection 135(3) or section 215 to be deducted or withheld, from the day on which the amount was required to be deducted or withheld to the day of payment of the amount to the Receiver General; and

(c) in the case of an amount required by subsection 211.8(2) to be withheld, from the day on or before which the amount was required to be remitted to the Receiver General to the day of the payment of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(8.1) — Joint and several liability; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(11) — Compound interest; 252.1 — Where union is employer.

History: The opening words of subsec. 227(8.3) amended, and para. (c) added, by 1997, c. 25, subsecs. 67(4), (5), applicable April 25, 1997. The opening words formerly read:

(8.3) A person who fails to deduct or withhold any amount as required by subsection 135(3) or 153(1) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

That portion of subsec. 227(8.3) preceding para. (a) substituted, para (b) amended to add reference to subsec. 135(3), by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 186(1), (2), applicable after July 13, 1990. That portion formerly read:

(8.3) Where a person has failed to deduct or withhold any amount as required by subsection 153(1) or section 215, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed

Pre-RSC History: Subsec. 227(8.3) added by 1988, c. 55, subsec. 171(3).

Regulations: 4301(a) (prescribed rate of interest).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(8.4) Liability to pay amount not deducted or withheld — A person who fails to deduct or withhold any amount as required under

(a) subsection 135(3) in respect of a payment made to another person, or

(b) subsection 153(1) in respect of an amount paid to another person who is non-resident or who is resident in Canada solely because of paragraph 250(1)(a)

is liable to pay as tax under this Act on behalf of the other person the whole of the amount that should have been so deducted or withheld and is entitled to deduct or withhold from any amount paid or credited by the person to the other person or otherwise to recover from the other person any amount paid by the person as tax under this Part on behalf of the other person.

Related Provisions: 215(6) — Parallel provision for non-resident withholding tax; 227(10) — Assessment.

History: Subsec. 227(8.4) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 186(3), applicable after July 13, 1990. Subsec. 227(8.4) formerly read:

(8.4) A person who has failed to deduct or withhold any amount as required under subsection 153(1) in respect of an amount paid to another person who is not resident in Canada, or who is resident in Canada only by reason of paragraph 250(1)(a), is liable to pay as tax under this Act on behalf of the other person the whole of the amount that should have been deducted or withheld, and is entitled to deduct or withhold from any amount the person pays or credits to the other person or otherwise recover from the other person any amount paid by the person as tax under this Part on behalf of the other person.

Pre-RSC History: Subsec. 227(8.4) added by 1988, c. 55, subsec. 171(3).

(8.5) [Repealed]

History: Subsec. 227(8.5) repealed by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(2), applicable after 1992, except with respect to amounts required to be remitted before 1993. Subsec. (8.5) formerly read:

(8.5) Payments from same establishment — Where a person has failed to deduct or withhold any amount in respect of a payment described in paragraph 153(1)(a), subsection (8) shall be read as follows:

"(8) Every person who in a calendar year has failed to deduct or withhold a particular amount as required by paragraph 153(1)(a) in respect of a payment made by the person from an establishment of the person is liable to a penalty of

(a) 10% of the particular amount that should have been deducted or withheld; or

(b) where the person had at the time of the failure been assessed a penalty under this subsection for failing to deduct or withhold during the year another amount so required to be deducted or withheld in respect of a payment made by the person from the same establishment of the person, 20% of the particular amount that should have been deducted or withheld."

Pre-RSC History: Subsec. 227(8.5) added by 1988, c. 55, subsec. 171(3).

(9) Penalty — Subject to subsection (9.5), every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation or an amount of tax that the person is, by section 116 or by a regulation made under subsection 215(4), required to pay is liable to a penalty of

(a) 10% of that amount; or

(b) where at the time of the failure a penalty under this subsection was payable by the person in respect of an amount that should have been remitted or paid during the year and the failure was made knowingly or under circumstances amounting to gross negligence, 20% of that amount.

Related Provisions: 227(8) — Penalty; 227(9.1) — Penalty; 227(9.3) — Interest on certain tax not paid; 227(9.5) — Each establishment considered a separate person; 227(10.1) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(7) — Receipt of things mailed; 252.1 — Where union is employer.

History: Para. 227(9)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(3), applicable after 1992, except with respect to amounts required to be remitted before 1993. Para. (9)(b) formerly read:

> (b) 20% of that amount, where the person had at the time of the failure been assessed a penalty under this subsection in respect of a previous failure during the year.

Pre-RSC History: Subsec. 227(9) substituted by 1988, c. 55, subsec. 171(4). Subsec. 227(9) formerly read:

> (9) Penalty — Every person who has failed to remit or pay as and when required by this Act or a regulation made under this Act
>
> (a) an amount deducted or withheld as required by this Act (a) an amount deducted or withheld as required by this Act or a regulation made under this Act, or
>
> (b) an amount of tax that he is, by section 116 or by a regulation made under subsection 215(4), required to pay
>
> is liable to a penalty of 10% of that amount or $10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the prescribed rate per annum,
>
> (c) in the case of an amount deducted or withheld, for the period commencing on the fifteenth day of the month immediately following the month in which such amount was deducted or withheld or such earlier time as may be prescribed for the purposes of subsection 153(1), and
>
> (d) in any other case, for the period commencing on the date on or before which such amount was required to be paid.

Subsec. 227(9) substituted by 1987, c. 46, subsec. 67(3), applicable with respect to amounts required to be remitted or paid after 1987. Subsec. 227(9) formerly read:

> (9) Idem — Every person who has failed to remit or pay
>
> (a) an amount deducted or withheld as required by this Act or a regulation, or
>
> (b) an amount of tax that he is, by section 116 or by a regulation made under subsection 215(4), required to pay,
>
> is liable to a penalty of 10% of that amount or $10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the prescribed rate per annum, for the period commencing on the 15th day of the month immediately following the month in which such amount was deducted or withheld.

That portion of subsec. 227(9) following para. (b) substituted by 1984, c. 45, subsec. 89(3), applicable after February 15, 1984. That portion formerly read:

> is liable to a penalty of 10% of that amount or $10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the rate per annum prescribed for the purposes of subsection (8).

Para. 227(9)(b) substituted by 1980-81-82-83, c. 140, subsec. 123(1). Para. 227(9)(b) formerly read:

> (b) an amount of tax that he is, by subsection 116(5) or by a regulation made under subsection 215(4), required to pay,

Para. 227(9)(b) substituted by 1974-75-76, c. 26, subsec. 124(1). Para. 227(9)(b) formerly read:

> (b) an amount of tax that he is, by a regulation made under subsection 215(4), required to pay,

Selected Cases [subsec. 227(9)]: *Storrie v. Canada*, [1996] 2 C.T.C. 2596 (TCC) (Lack of clarity resolved in favour of taxpayer); *Cana Construction Co. v. Canada*, [1995] 1 C.T.C. 2122 (TCC) (Prime contractor maintained full control of funds to pay wages and required to withhold source deduction); *Electrocan Systems Ltd. v. Canada*, [1989] 1 C.T.C. 244 (FCA) (Late remittance resulted in penalty); *A.G. Can. v. Coopers and Lybrand Ltd.*, 86 D.T.C. 6243 (BC SC) (Penalty imposed after date of filing bankruptcy proposal not provable claim).

Regulations: Part I (amount required to be withheld).

I.T. Application Rules: 62(2) (subsec. 227(9) applies to interest payable in respect of any period after December 23, 1971).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(9.1) Penalty — Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan*, subsection 53(1) of the *Unemployment Insurance Act* and subsection 82(1) of the *Employment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds $500.

History: Subsec. 227(9.1) amended by 1998, c. 19, subsec. 226(2), deemed to have come into force on June 30, 1996. Subsec. 227(9.1) formerly read:

> (9.1) Idem — Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan* and subsection 82(1) of the *Employment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds $500.

Subsec. 227(9.1) amended by 1996, c. 23, s. 176, in force June 30, 1996. Subsec. (9.1) formerly read:

> (9.1) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan* and subsection 53(1) of the *Unemployment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds $500.

Subsec. 227(9.1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(4), applicable after 1992, except with respect to amounts required to be remitted before 1993. Subsec. (9.1) formerly read:

> (9.1) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan* and subsection 53(1) of the *Unemployment Insurance Act* shall, unless the person required to remit the amount has wilfully delayed in remitting the amount or wilfully remitted an amount less than the amount required, apply only to the amount by which the total of all amounts each of which is an amount so required to be remitted on or before that date exceeds $500.

Pre-RSC History: Subsec. 227(9.1) added by 1987, c. 46, subsec. 67(4), applicable to remittances in respect of amounts paid after 1987.

(9.2) Interest on amounts deducted or withheld but not remitted — Where a person has failed to remit as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on which the person was so required to remit the amount to the day of remittance of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(10.1) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(11) — Compound interest; 252.1 — Where union is employer.

Regulations: 4301(a) (prescribed rate of interest).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(9.3) Interest on certain tax not paid — Where a person fails to pay an amount of tax that, because of section 116, subsection 212(19) or a regulation made under subsection 215(4), the person is required to pay, as and when the person is required to pay it, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on or before which the amount was required to be paid to the day of payment of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(10.1) — Assessment; 248(11) — Compound interest.

History: Subsec. 227(9.3) substituted by 1994, c. 21, subsec. 104(2), applicable after May 28, 1993. That subsec. formerly read:

> (9.3) Where a person has failed to pay an amount of tax that the person is, by section 116 or a regulation made under subsection 215(4), required to pay, as and when the person was so required to pay it, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on or before which the amount was required to be paid to the day of payment of the amount to the Receiver General.

Regulations: 4301 (prescribed rate of interest).

(9.4) Liability to pay amount not remitted — A person who has failed to remit as and when required by this Act or a regulation an amount deducted or withheld from a payment to another person as required by this Act or a regulation is liable to pay as tax under this Act on behalf of the other person the amount so deducted or withheld.

Related Provisions: 227(10.1) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 252.1 — Where union is employer.

(9.5) Payment from same establishment — In applying paragraphs (8)(b) and (9)(b) in respect of an amount required by paragraph 153(1)(a) to be deducted or withheld, each establishment of a person shall be deemed to be a separate person.

History: Subsec. 227(9.5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 132(5), applicable after 1992, except with respect to amounts required to be remitted before 1993. Subsec. (9.5) formerly read:

> (9.5) Where a person has failed to remit or pay an amount deducted or withheld in respect of a payment described in paragraph 153(1)(a), subsection (9) shall be read as follows:
>
> "(9) Every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation a particular amount deducted or withheld as required by paragraph 153(1)(a) in respect of a payment made by the person from an establishment of the person is liable to a penalty of
>
> (a) 10% of the particular amount that should have been remitted or paid; or
>
> (b) where the person had at the time of the failure been assessed a penalty under this subsection for failure to remit or pay during the year another amount so required to be remitted or paid in respect of an amount so deducted or withheld by the person in respect of a payment made by the person from the same establishment of the person, 20% of the amount that should have been remitted or paid."

Pre-RSC History: Subsecs. 227(9.2) to (9.5) added by 1988, c. 55, subsec. 171(5).

Information Circulars: 92-2: Guidelines for the cancellation and waiver of interest and penalties.

(10) Assessment — The Minister may at any time assess any amount payable under

(a) subsection (8), (8.1), (8.2), (8.3) or (8.4) or 224(4) or (4.1) or section 227.1 or 235 by a person,

(b) subsection 237.1(7.4) by a person or partnership,

(c) subsection (10.2) by a person as a consequence of a failure of a non-resident person to deduct or withhold any amount, or

(d) Part XIII by a person resident in Canada,

and, where the Minister sends a notice of assessment to that person or partnership, Divisions I and J of Part I apply with any modifications that the circumstances require.

History: Subsec. 227(10) amended by 1998, c. 19, subsec. 226(3), applicable after December 1, 1994. Subsec. 227(10) formerly read:

> (10) The Minister may assess
>
> (a) any person for any amount payable by that person under subsection (8), (8.1), (8.2), (8.3) or (8.4) or 224(4) or (4.1) or section 227.1 or 235,
>
> (a.1) any person for any amount payable under subsection (10.2) by the person as a consequence of a failure by a non-resident person to deduct or withhold any amount, and
>
> (b) any person resident in Canada for any amount payable by that person under Part XIII,
>
> and, where the Minister sends a notice of assessment to that person, Divisions I and J of Part I are applicable with such modifications as the circumstances require.

Para. 227(10)(a.1) added by 1994, c. 21, subsec. 104(3), applicable June 15, 1994.

Para. 227(10)(a) amended to add reference to s. 235 by 1994, c. 7, Sch. II (1991, c. 49), subsec. 186(4).

Pre-RSC History: Para. 227(10)(a) substituted by 1988, c. 55, subsec. 171(6). Para. 227(10)(a) formerly read:

> (a) any person for any amount payable by that person under subsection (8) or 224(4) or (4.1) or section 227.1 or 235, and

Subsec. 227(10) substituted by 1985, c. 45, subsec. 117(2), applicable after 1984. Subsec. 227(10) formerly read:

> (10) The Minister may assess any person for any amount payable by that person under Part XIII, this section, section 227.1 or 235 and, upon his sending a notice of assessment to that person, Divisions I and J of Part I are applicable with such modifications as the circumstances require.

Subsec. 227(10) substituted by 1984, c. 1, s. 99, to delete the reference to s. 234.1, which deletion is applicable with respect to purchases of aviation turbine fuel made after April 30, 1983.

Subsec. 227(10) substituted by 1980-81-82-83, c. 140, subsec. 123(2), applicable after November 12, 1981. Subsec. 227(10) formerly read:

> (10) The Minister may assess any person for any amount payable by that person under Part XIII, this section or section 235 and, upon his sending a notice of assessment to that person, Divisions I and J of Part I are applicable *mutatis mutandis*.

Selected Cases [subsec. 227(10)]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act).

(10.01) Part XII.5 — The Minister may at any time assess any amount payable under Part XII.5 by a person resident in Canada and, where the Minister sends a notice of assessment to that person, Divisions I and J of Part I apply with any modifications that the circumstances require.

History: Subsec. 227(10.01) added by 1997, c. 25, subsec. 67(6), applicable April 25, 1997.

(10.1) Idem — The Minister may at any time assess

(a) any amount payable under section 116 or subsection (9), (9.2), (9.3) or (9.4) by any person,

(b) any amount payable under subsection (10.2) by any person as a consequence of a failure by a non-resident person to remit any amount, and

(c) any amount payable under Part XII.5 or XIII by any non-resident person,

and, where the Minister sends a notice of assessment to the person, sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

Related Provisions: 224(1.2) — Garnishment of payments redirected to secured creditors.

History: Paras. 227(10.1)(a) to (c) substituted for paras. (a) to (b) by 1997, c. 25, subsec. 67(7), applicable April 25, 1997. Paras. (a) to (b) formerly read:

> (a) any person for any amount payable under section 116 or subsection (9), (9.2), (9.3) or (9.4) by the person,
>
> (a.1) any person for any amount payable under subsection (10.2) by the person as a consequence of a failure by a non-resident person to remit any amount, and
>
> (b) any non-resident person for any amount payable under Part XIII by the person,

Subsec. 227(10.1) substituted by 1994, c. 21, subsec. 104(4), applicable to amounts that become payable after 1990 except that, in applying subsec. 227(10.1) to amounts that became payable before June 15, 1994, it shall be read without reference to para. (a.1) thereof. That subsec. formerly read:

> (10.1) Idem — The Minister may assess
>
> (a) any person for any amount payable by that person under subsection (9), (9.2), (9.3) or (9.4), and
>
> (b) any non-resident person for any amount payable by that person under Part XIII,
>
> and, where the Minister sends a notice of assessment to that person, sections 150 to 163, subsections 164(1) and (1.4) to (7), sections 164.1 to 167 and Division J of Part I are applicable with such modifications as the circumstances require.

Pre-RSC History: Para. 227(10.1)(a) amended to substitute "under subsection (9), (9.2), (9.3) or (9.4)" for "under subsection (9)" by 1988, c. 55, subsec. 171(7).

Subsec. 227(10.1) added by 1985, c. 45, subsec. 117(2), applicable after 1984.

Selected Cases [subsec. 227(10.1)]: *Spa Springs Parks Ltd. v. Mineral Water Company of Canada Ltd.*, [1992] 2 C.T.C. 154 (N.S. T.D.) (Crown priority extends to related interest and penalties).

(10.2) Joint and several liability re contributions to RCA — Where a non-resident person fails to deduct, withhold or remit an amount as required by subsection 153(1) in respect of a contribution under a retirement compensation arrangement that is paid on behalf of the employees or former employees of an employer with whom the non-resident person does not deal at arm's length, the employer is jointly and severally liable with the non-resident person to pay any amount payable under subsection (8), (8.2), (8.3), (9), (9.2) or (9.4) by the non-resident person in respect of the contribution.

Related Provisions: 227(10)(a.1) — Assessment for failure to deduct or withhold; 227(10.1)(c) — Assessment for failure to remit tax.

History: Subsec. 227(10.2) added by 1994, c. 21, subsec. 104(5), applicable June 15, 1994.

Former (10.2), (10.3)–(10.9) [Repealed]

History: Former subsec. 227(10.2), and subsec. (10.3) to (10.9), repealed by 1993, c. 24, s. 153. (Subsec. (10.9), which was added in the R.S.C. 1985 (5th Supp.) consolidation, taking the place of the application rule in 1986, c. 6, subsec. 118(4), provided that subsecs. (10.2) to (10.8) would come into force on a day to be proclaimed. That proclamation never occurred.)

Pre-RSC History: Subsecs. 227(10.2) to (10.8) added by 1986, c. 6, subsec. 118(2), applicable to assessments in respect of amounts deducted or withheld after a date to be fixed by proclamation.

(11) Withholding tax — Provisions of this Act requiring a person to deduct or withhold an amount in respect of taxes from amounts payable to a taxpayer are applicable to Her Majesty in right of Canada or a province.

(12) Agreement not to deduct void — Where this Act requires an amount to be deducted or withheld, an agreement by the person on whom that obligation is imposed not to deduct or withhold is void.

(13) Minister's receipt discharges debtor — The receipt of the Minister for an amount deducted or withheld by any person as required by or under this Act is a good and sufficient discharge of the liability of any debtor to the debtor's creditor with respect thereto to the extent of the amount referred to in the receipt.

(14) Application of other Parts — Parts IV, IV.1, VI and VI.1 do not apply to any corporation for any period throughout which it is exempt from tax because of section 149.

Related Provisions: 181.1(3)(c) — Exemption from Part I.3 tax; 186.1 — Part IV tax — exempt corporations; 219(2) — Part XIV tax — exempt corporations; 227(16) — Part IV tax — municipal or provincial corporation.

History: Subsec. 227(14) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 186(5), applicable to any period or part of a period referred to in the subsec. that is after 1989. Subsec. (14) formerly read:

> (14) Where Parts III, IV, IV.1, VI and VI.1 are not applicable — Parts III, IV, IV.1, VI and VI.1 are not applicable to any corporation for any period throughout which it is exempt from tax under section 149.

Pre-RSC History: Subsec. 227(14) substituted by 1988, c. 55, subsec. 171(8), applicable to 1988 *et seq.* Subsec. 227(14) formerly read:

> (14) Application of Parts III, IV and VI to certain public corporations — Parts III, IV and VI are not applicable to any corporation that was, at any time or for any period that is relevant for the purposes of any of those Parts, a corporation exempt from tax under section 149.

Subsec. 227(14) amended by 1977-78, c. 1, s. 97, as follows:

> (a) by deleting therefrom the reference to Parts V, VII and VIII, effective after March 31, 1977,
>
> (b) by deleting therefrom the reference to Part II, effective after December 31, 1977, and
>
> (c) by deleting therefrom the reference to Part IX, effective after December 1978.

Subsec. 227(14) formerly read:

> (14) Application of Parts II to IX to certain public corporations — Parts II to IX are not applicable to any corporation that was, at any time or for any period that is relevant for the purposes of any of those Parts, a corporation exempt from tax under section 149.

Interpretation Bulletins: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-347R2: Crown corporations.

(15) Partnership included in "person" — In this section, a reference to a "person" with respect to any amount deducted or withheld or required to be deducted or withheld is deemed to include a partnership.

Related Provisions: 96 — Partnerships and their members; 212(13.1) — Application of Part XIII tax to a partnership; 227(5.2) — "Person" includes any partnership for purposes of certain provisions.

History: Subsec. 227(15) amended by 1997, c. 25, subsec. 67(8), applicable April 25, 1997. Subsec. (15) formerly read:

> (15) In this section a reference to "person" with respect to any amount or any tax deducted or withheld from an amount under Part XIII shall be deemed to include a partnership that is with respect to that amount deemed for the purposes of that Part to be a person resident in Canada or a non-resident person.

(16) Municipal or provincial corporation excepted — A corporation that at any time during the taxation year would be a corporation described in paragraph 149(1)(d) but for a provision of an appropriation Act shall be deemed not to be a private corporation for the purposes of Part IV.

Proposed Amendment — 227(16)

(16) Municipal or provincial corporation excepted — A corporation that at any time in a taxation year would be a corporation described in any of

paragraphs 149(1)(d) to (d.6) but for a provision of an appropriation Act is deemed not to be a private corporation for the purposes of Part IV with respect to that year.

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 107(2), will amend subsec. 227(16) to read as above, applicable to taxation years that begin after 1998.

Technical Notes: Subsection 227(16) of the Act deems municipal and provincial corporations, which are exempt from tax because of paragraph 149(1)(d), not to be private corporations for the purposes of the Part IV tax. This amendment extends this treatment to corporations that are exempt from tax under any of paragraphs 149(1)(d) to (d.6) and is strictly consequential on the addition of paragraphs 149(1)(d.1) to (d.6) made applicable to taxation years and fiscal periods that begin after 1998.

Pre-RSC History: Subsecs. 227(15), (16) added by 1974-75-76, c. 26, subsec. 124(2), applicable, as to subsec. 227(15), in respect of tax deducted after November 18, 1974, and, as to subsec. 227(16), to 1972 *et seq.*

Interpretation Bulletins [subsec. 227(16)]: IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation; IT-347R2: Crown corporations.

Definitions [s. 227]: "amount", "assessment" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "common-law partner" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "employee", "employer" — 248(1); "estate" — 104(1), 248(1); "Minister", "non-resident" — 248(1); "person" — 227(5.2), (15), 248(1); "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "private corporation" — 89(1), 248(1); "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "regulation" — 248(1); "resident in Canada" — 250; "retirement compensation arrangement", "salary or wages" — 248(1); "secured creditor" — 224(1.3); "security interest" — 227(4.2); "specified person" — 227(5.1); "tax payable" — 248(2); "taxation year" — 249; "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "unmarried" — 252(4)(d); "writing" — *Interpretation Act* 35(1).

227.1 (1) Liability of directors for failure to deduct — Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest or penalties relating thereto.

Related Provisions: 159(2) — Requirement for clearance certificate before distributing property; 236 — Execution of documents by corporate directors; 242 — Directors guilty of offences of corporation.

Pre-RSC History: Subsec. 227.1(1) substituted by 1984, c. 1, s. 100, applicable to 1983 *et seq.* Subsec. 227.1(1) formerly read:

> 227.1 (1) Liability of directors — Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215 or has failed to remit such an amount, the directors of the corporation at the time the corporation was required to deduct or withhold the amount, or remit the amount, are jointly and severally liable, together with the corporation, to pay any amount that the corporation is liable to pay under this Act in respect of that amount, including any interest or penalties related thereto.

Selected Cases [subsec. 227.1(1)]: *Wheeliker v. R.* (April 20, 2000), File 27319 (SCC); leave to appeal refused from [1999] 2 C.T.C. 395 (FCA); rev'g [1998] 1 C.T.C. 2021 (TCC) (Provisions apply to volunteer directors as well as professionals); *Storrie v. Canada*, [1996] 2 C.T.C. 2596 (TCC) (Lack of clarity resolved in favour of taxpayer); *MacCormack v. MNR*, [1995] 2 C.T.C. 2410D (TCC) (Distinctions between directors who are liable and those who are not); *Roll v. MNR*, [1992] 2 C.T.C. 2060 (TCC); appealed to FCTD (July 14, 1992), File T-1736-92 (Director liable for failure to remit source deductions prior to date of resignation); *Robitaille v. Canada*, [1990] 1 C.T.C. 121 (FCTD) (Where decisions as to cheques issued from accounts of company in liquidation made by the bank appointed as controller, no liability of directors); *Danielson v. MNR*, [1986] 2 C.T.C. 341 (FCTD) (Assessment pursuant to provision cannot be quashed by way of application for *certiorari*); *Danielson v. Dep. A.G. Can.*, [1986] 2 C.T.C. 42 (FCTD) (Pending determination of ultimate liability, interim injunction against execution of seizure granted to director having no active role in company's affairs nor knowledge of its business).

Information Circulars: 89-2R: Directors' liability — section 227.1 of the *Income Tax Act* and section 323 of the *Excise Tax Act*; 98-1: Collections policies.

(2) Limitations on liability — A director is not liable under subsection (1), unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or

(c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or receiving order.

History: Para. 227.1(2)(c) amended by 1992, c. 27, para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", deemed to have come into force November 30, 1992.

Pre-RSC History: Para. 227.1(2)(a) amended to substitute "under section 223" for "under subsection 223(2)" by 1988, c. 55, s. 172, applicable with respect to certificates registered under s. 223 after November 12, 1981.

Selected Cases [subsec. 227.1(2)]: *Murray v. R.*, [1997] 3 C.T.C. 2971 (TCC) (Duty of director is to prevent failure to make source deductions, not fix the problem after the fact); *Kyte v. Canada*, [1997] 2 C.T.C. 15 (FCA) (Correct amount in certificate merely directory, not mandatory); *Kyte v. Canada*, [1996] 1 C.T.C. 151 (FCTD) (Error in directory provision of the Act does not invalidate assessment).

(3) Idem — A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Selected Cases [subsec. 227.1(3)]: *Cadrin v. R.*, [1999] 3 C.T.C. 366 (FCA) (Despite different standards for outside directors, they cannot be completely passive); *Sanford v. Canada*, [1996] 1 C.T.C. 2016 (TCC) ("Minimal" director exercised sufficient due diligence); *Edwards v. MNR*, [1995] 1 C.T.C. 2373 (TCC) (Due diligence required is to prevent failure to make remittances, not to cure default after the fact); *Hadad v. Canada*, [1994] 2 C.T.C. 2214 (TCC) (Failure to be prescient about fall in price of crude oil not equated to lack of care, diligence and skill).

(4) Limitation period — No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

Selected Cases [subsec. 227.1(4)]: *Markevich v. Canada*, [1999] 2 C.T.C. 104 (FCTD) (Provincial limitation statutes do not override Act).

(5) Amount recoverable — Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) Preference — Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of Canada would have been

entitled to had that amount not been so paid and, where a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(7) Contribution — A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Related Provisions [s. 227.1]: 227(10) — Assessment; 236 — Execution of documents by corporations; 242 — Officers and directors guilty of corporation's offences.

Pre-RSC History [s. 227.1]: S. 227.1 enacted by 1980-81-82-83, c. 140, s. 124, applicable with respect to amounts required to be deducted and remitted, or withheld and remitted, after November 12, 1981.

Selected Cases [s. 227.1]: *Cadrin v. R.*, [1999] 3 C.T.C. 366 (FCA) (Despite different standards for outside directors, they cannot be completely passive); *Wheeliker v. R.* (April 20, 2000), File 27319 (SCC); leave to appeal refused from [1999] 2 C.T.C. 395 (FCA); rev'g [1998] 1 C.T.C. 2021 (TCC) (Provisions apply to volunteer directors as well as professionals); *Soper v. R.*, [1997] 3 C.T.C. 242 (FCA) (Standard of care is "objective subjective" and directors not to be considered as homogeneous group of professionals with single, unchanging standard of conduct); *Temple v. R.*, [1997] 2 C.T.C. 2678 (TCC) ("Deemed" employer not liable for source deductions); *Giglio v. R.*, [1997] 2 C.T.C. 2608 (TCC) (Resignation as director not effective retroactively); *Kalef v. Canada*, [1996] 2 C.T.C. 1 (FCA) (Appointment of trustee does cause director to cease to hold office); *Page v. Canada*, [1996] 1 C.T.C. 2697 (TCC) (Minister ordered to produce records, but not tax returns, relating to decision not to assess other directors); *Wollitzer v. Canada*, [1995] 1 C.T.C. 2996 (TCC) (Minister failed to prove that proof of claim was filed in bankruptcy proceedings; claim against director dismissed); *Lindthaler (M.G.) v. MNR*, [1992] 2 C.T.C. 2570 (TCC) (Assessment setting out only one global amount of liability under four statutes invalid); *Corazza (F.) v. MNR*, [1992] 2 C.T.C. 2023 (TCC) (Assessment setting out only one global amount of liability under four statutes invalid); *Re Norris*, [1989] 2 C.T.C. 185 (Ont CA) (Notice of assessment sufficient documentation to file proof of claim under *Bankruptcy Act*); *MNR v. Reaume*, [1989] 1 C.T.C. 267 (FCA) (Assessment "in respect of liability under section 227.1 of the *Income Tax Act*" does not include liabilities under other statutes).

Definitions [s. 227.1]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "Minister" — 248(1).

Information Circulars [s. 227.1]: 89-2R: Director's liability — s. 227.1 of the *Income Tax Act* and subsection 323 of the *Excise Tax Act*.

228. Applying payments under collection agreements — Where a payment is made to the Minister on account of tax under this Act, an Act of a province that imposes a tax similar to the tax imposed under this Act, or any two or more such Acts, such part of that payment as is applied by the Minister in accordance with the provisions of a collection agreement entered into under Part III of the *Federal-Provincial Fiscal Arrangements Act* against the tax payable by a taxpayer for a taxation year under this Act discharges the liability of the taxpayer for that tax only to the extent of the part of the payment so applied, notwithstanding that the taxpayer directed that the payment be applied in a manner other than that provided in the collection agreement or made no direction as to its application.

Related Provisions: 154 — Tax transfer payments.

History: S. 228 amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Pre-RSC History: S. 228 amended by 1985, c. 45, s. 118, to substitute "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977*" for "*Federal-Provincial Fiscal Arrangements Act*".

Definitions [s. 228]: "Minister" — 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — 249; "taxpayer" — 248(1).

229. Receipt of taxes by banks — A chartered bank in Canada shall receive for deposit, without any charge for discount or commission, any cheque made payable to the Receiver General in payment of tax, interest or penalty imposed by this Act, whether drawn on the bank receiving the cheque or on any other chartered bank in Canada.

History: S. 229 repealed by R.S.C. 1985, c. 1 (5th Supp.), s. 229.1, applicable as of a day to be fixed by proclamation.

"Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

229.1 (1) Section 229 is repealed.

(2) Subsection (1) shall come into force on a day to be fixed by proclamation.

Origin of 229.1: S. 229.1 enacted by R.S.C. 1985, c. 1 (5th Supp.). (Formerly contained in S.C. 1986, c. 6, s. 119.)

General

230. (1) Records and books — Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

Related Provisions: 150.1(4) — Record of return filed electronically; 230(4.1) — Requirement to keep electronic records; 238(1) — Punishment for failing to comply.

Regulations: 1800 (prescribed manner of keeping inventory).

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates; 78-10R3: Books and records retention/destruction.

(1.1) [Repealed under former Act]

Pre-RSC History: Subsec. 230(1.1) repealed by 1986, c. 6, s. 120, applicable to the requirement to retain books and records for taxation years ending after 1986. Subsec. 230(1.1) formerly read:

> (1.1) Idem — Every person who administers an indexed security investment plan under which a taxpayer is a participant shall keep records and books of account at his place of business in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the Minister to verify the amount of any taxable capital gain or allowable capital loss of the taxpayer from the plan.

Subsec. 230(1.1) added by 1984, c. 1, s. 101, applicable after September 30, 1983.

(2) Idem — Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

(a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;

(b) a duplicate of each receipt containing prescribed information for a donation received by it; and

(c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

Related Provisions: 149.1(6.4) — Rules apply to registered national arts service organizations; 168(1)(e) — Notice of intention to revoke registration; 238(1) — Punishment for failing to comply.

History: Subsec. 230(2) substituted by 1994, c. 21, s. 105, applicable after December 21, 1992. That subsec. formerly read:

> (2) **Idem, charities, etc.** — Every registered charity and registered Canadian amateur athletic association shall keep records and books of account (including a duplicate of each receipt containing prescribed information for a donation received by it) at an address in Canada recorded with the Minister or designated by the Minister in such form and containing such information as will enable the donations to it that are deductible under this Act to be verified.

Pre-RSC History: "Registered charity" substituted for "registered Canadian charitable organization" by 1976-77, c. 4, s. 87 and Schedule II, applicable to 1977 *et seq.*

Regulations: 216 (information return); 3502 (prescribed information for receipts).

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: RC4108: Registered charities and the *Income Tax Act* [guide] .

(2.1) Idem, lawyers — For greater certainty, the records and books of account required by subsection (1) to be kept by a person carrying on business as a lawyer (within the meaning assigned by subsection 232(1)) whether by means of a partnership or otherwise, include all accounting records of the lawyer, including supporting vouchers and cheques.

Selected Cases [subsec. 230(2.1)]: *Heath v. Canada*, [1990] 2 C.T.C. 28 (BC SC) (Solicitor's trust account ledger was on "accounting record of a lawyer" subject to Crown's inspection).

(3) Minister's requirement to keep records, etc. — Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.

Related Provisions: 230.1(3) — Application to political party's or candidate's records; 238(1) — Punishment for failing to comply.

Selected Cases [subsec. 230(3)]: *Canada v. McKinlay Transport Ltd.*, [1990] 2 C.T.C. 103 (SCC) (Crown's demand under provision amounted to seizure within section 8 of the *Charter*, but not an unreasonable one; such demand can be contested on ground that Minister engaged in fishing expedition).

(4) Limitation period for keeping records, etc. — Every person required by this section to keep records and books of account shall retain

> (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
>
> (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

Related Provisions: 150.1(4) — Record of return filed electronically; 168(1)(e) — Notice of intention to revoke registration; 230(4.1) — Requirement to keep electronic records; 230.1(3) — Application to political party's or candidate's records; 238(1) — Punishment for failing to comply.

Pre-RSC History: Subsec. 230(4) substituted by 1980-81-82-83, c. 102, subsec. 5(1), in force September 20, 1982. Subsec. 230(4) formerly read:

> (4) Every person required by this section to keep records and books of account shall, until written permission for their disposal is obtained from the Minister, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or books of account.

Regulations: 5800 (required retention periods).

Information Circulars: 78-10R3: Books and records retention/destruction; 80-10R: Registered charities — operating a registered charity.

Forms: T137: Request for destruction of books and records; T2213: Receipt for borrowed books, records and documents.

(4.1) Electronic records — Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

Related Provisions: 230(4.2) — Exemption from requirement; 238(1) — Punishment for failing to comply.

History: Subsec. 230(4.1) added by 1998, c. 19, s. 227, in force June 18, 1998.

(4.2) Exemptions — The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (4.1).

History: Subsec. 230(4.2) added by 1998, c. 19, s. 227, in force June 18, 1998.

(5) Exception — Where, in respect of any taxation year, a person referred to in subsection (1) has not filed a return with the Minister as and when required by section 150, that person shall retain every record and book of account that is required by this section to be kept and that relates to that taxation year, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the day the return for that taxation year is filed.

Related Provisions: 238(1) — Punishment for failing to comply.

Pre-RSC History: Subsec. 230(5) added by 1980-81-82-83, c. 102, subsec. 5(1), applicable from September 20, 1982.

(6) Exception where objection or appeal — Where a person required by this section to keep records and books of account serves a notice of objection or where that person is a party to an appeal to the Tax Court of Canada under this Act, that person shall retain every record, book of account, account and voucher necessary for dealing with the objection or appeal until, in the case of the serving of a notice of objection, the time provided by section 169 to appeal has elapsed or, in the case of an appeal, until the appeal is disposed of and any further appeal in respect thereof is disposed of or the time for filing any such further appeal has expired.

Pre-RSC History: Subsec. 230(6) amended by 1988, c. 61, s. 24, to substitute "Tax Court of Canada" for "Tax Court of Canada or the Federal Court of Canada", "section 169" for "sections 169 and 172", and "further appeal in respect thereof" for "further appeal therefrom", in force January 1, 1991.

Subsec. 230(6) amended by 1985, c. 45, s. 119, applicable on and after July 18, 1983, to substitute "Tax Court of Canada" for "Tax Review Board".

Subsec. 230(6) added by 1980-81-82-83, c. 102, subsec. 5(1), applicable from September 20, 1982.

Information Circulars: 78-10R3: Books and records retention/destruction.

(7) Exception where demand by Minister — Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by registered letter or by a demand served personally, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained therein, for such period as is specified in the letter or demand.

Related Provisions: 244(5), (6) — Proof of service by mail or personal service; 248(7)(a) — Mail deemed received on day mailed.

Pre-RSC History: Subsec. 230(7) added by 1980-81-82-83, c. 102, subsec. 5(1), applicable from September 20, 1982.

Information Circulars: 78-10R3: Books and records retention/destruction.

(8) Permission for earlier disposal — A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, before the expiration of the period in respect of which those records and books of account are required to be kept if written permission for their disposal is given by the Minister

Related Provisions: 168(1)(e) — Notice of intention to revoke registration; 230.1(3) — Application to political party's or candidate's records; 238(1) — Offences.

Pre-RSC History: Subsec. 230(8) added by 1980-81-82-83, c. 102, subsec. 5(1), applicable from September 20, 1982.

Forms: T137: Request for destruction of books and records.

Definitions [s. 230]: "allowable capital loss" — 38(b), 248(1); "amount", "business" — 248(1); "Canada" — 255; "inventory", "Minister", "person", "prescribed" — 248(1); "record" — 150.1(4), 248(1); "registered Canadian amateur athletic association", "registered charity" — 248(1); "taxable capital gain" — 38(a), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

230.1 (1) Records and books re political contributions — Every registered agent of a registered party and the official agent of each candidate at an election of a member or members to serve in the House of Commons of Canada shall keep records and books of account sufficient to enable the amounts contributed that are received by the agent and expenditures that are made by the agent to be verified (including duplicates of all receipts for amounts contributed, containing prescribed information and signed by the agent) at

(a) in the case of a registered agent, the agent's address recorded in the registry maintained by the Chief Electoral Officer pursuant to subsection 33(1) of the *Canada Elections Act*; and

(b) in the case of an official agent, an address in Canada recorded with or designated by the Minister.

Related Provisions: 127(3)–(4.2) — Credit for political contributions; 168(1)(e) — Revocation of registration; 238(1) — Punishment for failing to comply.

History: That portion of subsec. 230.1(1) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 133(1), applicable to 1992 *et seq.* That portion formerly read:

> (1) Books and records relating to political contributions — Every registered agent of a registered party and the official agent of each candidate at an election of a member or members to serve in the House of Commons of Canada shall keep records and books of account sufficient to enable the amounts contributed received by the agent and expenditures made by the agent to be verified (including duplicates of all receipts for amounts contributed, signed by the registered agent or official agent, as the case may be, other than any such duplicate receipts filed by the agent under subsection (2)) at

Regulations: 2000, 2002 (contents of receipts).

Information Circulars: 75-2R4: Contributions to a registered political party or to a candidate at a federal election.

(2) Return of information — Each person to whom subsection (1) applies shall,

(a) in the case of a registered agent, at such times, not more frequently than annually, as are prescribed by the Minister, and

(b) in the case of an official agent, within the time within which a return is required to be submitted by the agent to a returning officer under section 228 of the *Canada Elections Act*,

file with the Minister a return of information in prescribed form and containing prescribed information.

Related Provisions: 168(1)(e) — Revocation of registration; 230.1(4) — Reports to chief electoral officer; 238(1) — Punishment for failing to comply.

History: That portion of subsec. 230.1(2) after para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 133(2), applicable to 1992 *et seq.* That portion formerly read:

> (b) in the case of an official agent, within the time within which a return is required to be submitted by the agent to a returning officer pursuant to section 228 of the *Canada Elections Act*,
>
> file with the Minister a return of information, in prescribed form and containing prescribed information, together with the duplicates of all receipts referred to in that subsection signed by that person since the later of the day any previous such information return was filed by that person and August 1, 1974.

Regulations: 2001 (time for filing return).

Information Circulars: 75-2R4: Contributions to a registered political party or to a candidate at a federal election.

Forms: T2092: Contributions to a registered party — information return; T2093: Contributions to a candidate at an election — information return.

(3) Application of subsecs. 230(3) to (8) — Subsections 230(3) to (8) apply, with such modifications as the circumstances require, in respect of the records and books of account required by subsection (1) to be kept and in respect of the persons thereby required to keep them.

Regulations: 5800(2) (retention period for records and books of account).

Information Circulars: 78-10R: Books and records retention/destruction.

(4) [Repealed]

History: Subsec. 230.1(4) repealed by 1994, c. 21, s. 106, applicable June 15, 1994. That subsec. formerly read:

> (4) Notwithstanding section 241, the Minister shall, as soon as is reasonably possible after each election and at such other time as is appropriate having regard to the time of receipt by the Minister of returns of information under subsection (2), forward to the Chief Electoral Officer a report that is based on all such returns of information as have been received by the Minister since the most recent such report and that sets out the total of amounts contributed to each registered party and the total of amounts contributed to each candidate at an election of a member or members to serve in the House of Commons of Canada since the most recent such report, and, on receipt thereof by the Chief Electoral Officer, the report is a public record and may be inspected by any person on request during normal business hours.

Subsec. 230.1(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 133(3), applicable to 1992 *et seq.* Subsec. (4) formerly read:

> (4) Reports to Chief Electoral Officer — The Minister shall, notwithstanding section 241, as soon as is reasonably possible after each election and at such other time as is appropriate having regard to the time of receipt by the Minister of returns of information under subsection (2), forward to the Chief Electoral Officer a report based on all such returns of information and duplicate receipts as have been received by the Minister since the most recent such report, setting out the total of amounts contributed to each registered party and the total of amounts contributed to each candidate at an election of a member or members to serve in the House of Commons of Canada since the most recent such report, and, on receipt thereof by the Chief Electoral Officer, the report is a public record and may be inspected by any person on request during normal business hours.

(5) [Repealed]

History: Subsec. 230.1(5) repealed by 1994, c. 21, s. 106, applicable June 15, 1994. That subsec. formerly read:

> (5) No report to enable identification of contributor — No report under subsection (4) shall contain information that would enable any person to identify a person by whom a contribution to a registered party or candidate was made.

(6) Definitions — In this section, the terms "candidate", "official agent", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act*.

(7) Definition of "amount contributed" — In this section, "amount contributed" by a taxpayer has the meaning assigned by subsection 127(4.1).

Origin of subsec. 230.1(7): R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the opening words of subsecs. 127(4.1)).

Pre-RSC History [s. 230.1]: Subsec. 230.1(3) substituted by 1980-81-82-83, c. 102, subsec. 5(2), in force 90 days after June 22, 1982. Subsec. 230.1(3) formerly read:

> (3) Application of subsections 230(3) and (4) — Subsections 230(3) and (4) apply in respect of the records and books of account required by subsection (1) to be kept and in respect of the persons thereby required to keep them.

Subsecs. 230.1(1), (4), (6) substituted by 1974-75-76, c. 71, s. 12, applicable after June 23, 1975, to add "amounts contributed" in subsec. 230.1(4) and "candidate" in subsec. 230.1(6). Subsec. 230.1(1) formerly read:

> 230.1 (1) Every registered agent of a registered party and the official agent of each candidate at an election of a member or members to serve in the House of Commons of Canada shall keep records and books of account (including duplicates of all receipts for contributions to the registered party or candidate, as the case may be, signed by him, other than any such duplicate receipts filed by him under subsection (2),) at
>
> (a) in the case of a registered agent, his address recorded in the registry maintained by the Chief Electoral Officer pursuant to subsection 13.1(1) of the *Canada Elections Act*; and
>
> (b) in the case of an official agent, an address in Canada recorded with or designated by the Minister,
>
> in such form and containing such information as will enable the contributions to the registered party or candidate made through him to be verified.

S. 230.1 added by 1973-74, c. 51, s. 20, in force August 1, 1974.

Canada Elections Act, s. 2: See note to subsec. 127(4).

Definitions [s. 230.1]: "amount contributed" — 127(4.1), 230.1(7); "candidate" — 230.1(6); "Minister" — 248(1); "official agent" — 230.1(6); "person", "prescribed", "record" — 248(1); "registered agent", "registered party" — 230.1(6).

231. Definitions — In sections 231.1 to 231.6,

Proposed Amendment — 231 opening words

231. Definitions — In sections 231.1 to 231.7,

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 108, will amend the portion of s. 231 before the definition of "authorized person" to read as above, in force on Royal Assent.

Technical Notes: Section 231 of the Act provides definitions for the purposes of sections 231.1 to 231.6, the provisions that set out the rules relating to the powers of the Canada Customs and Revenue Agency to audit and examine taxpayers' books and records.

Section 231 is amended to provide that the section also applies to new section 231.7, which deals with compliance orders. For commentary on the new compliance orders, see the commentary on new section 231.7.

This amendment applies on Royal Assent.

"authorized person" means a person authorized by the Minister for the purposes of sections 231.1 to 231.5;

"document" includes money, a security and a record;

"dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway, and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence;

"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court.

Related Provisions: 66(12.72) — Application of sections 231 to 231.3.

History: The definition "documents" in s. 231 amended by 1998, c. 19, s. 228, in force June 18, 1998. The definition formerly read:

> "documents" includes money, securities and any of the following, whether computerized or not: books, records, letters, telegrams, vouchers, invoices, accounts and statements (financial or otherwise);

Pre-RSC History [s. 231]: That portion of s. 231 preceding the definition "authorized person" amended to substitute "231.6" for "231.5" by 1988, c. 55, s. 173.

For earlier history, see after s. 231.5.

Selected Cases [s. 231]: *R. v. Kerntopf*, [1999] 3 C.T.C. 555 (Alta QB) (Re-seizure of documents previously seized under 231.3(3) by means of search warrant under *Criminal Code* upheld); *Stasiv, Mitton and Smith v. Canada*, [1984] 1 C.T.C. 171 (Ont SC) ("Judge" does not include a judge of the Ontario Supreme Court appointed pursuant to the *Courts of Justice Act* (Ontario)).

Definitions [s. 231]: "Minister", "person" — 248(1); "province" — *Interpretation Act* 35(1); "record" — 248(1); "superior court" — *Interpretation Act* 35(1).

231.1 (1) [Audits,] inspections — An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,

(a) inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and

(b) examine property in an inventory of a taxpayer and any property or process of, or matter relating to, the taxpayer or any other person, an examination of which may assist the authorized person in determining the accuracy of the inventory of the taxpayer or in ascertaining the information that is or should be in the books or records of the taxpayer or any amount payable by the taxpayer under this Act,

and for those purposes the authorized person may

(c) subject to subsection (2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and

(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

Related Provisions: 231.7 — Court order for compliance with audit.

Selected Cases [subsec. 231.1(1)]: *Jurchison v. R.*, [2000] 1 C.T.C. 2762 (TCC) (Assessment may not be quashed where some evidence not illegally obtained); *R. v. Xidos*, [2000] 1 C.T.C. 370 (NS SC) (Minister has right to demand information during audit phase); *R. v. Yip*, [2000] 2

C.T.C. 66 (Alta Prov Ct) (Taxpayers to be advised when audits not routine); *R. v. Jarvis*, [1998] 3 C.T.C. 252 (Alta QB) (Positive duty on part of Minister to advise taxpayer when audit changes from compliance to investigation leading to possible criminal charges); *Lipsey v. MNR*, [1984] C.T.C. 208 (FCTD) (Minister enjoined from authorizing investigation under provision subsequent to previous order on appeal quashing authorization to conduct search and seizure).

(2) Prior authorization — Where any premises or place referred to in paragraph (1)(c) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (3).

(3) Application — Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph (1)(c),

(b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused,

the judge may issue a warrant authorizing an authorized person to enter the dwelling-house subject to such conditions as are specified in the warrant but, where the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge may

(d) order the occupant of the dwelling-house to provide to an authorized person reasonable access to any document or property that is or should be kept in the dwelling-house, and

(e) make such other order as is appropriate in the circumstances to carry out the purposes of this Act,

to the extent that access was or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.

History: Subsec. 231.1(3) substituted by 1994, c. 21, s. 107, applicable June 15, 1994. That subsec. formerly read:

(3) Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath

(a) that there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph (1)(c),

(b) that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry thereto will be refused,

the judge shall issue a warrant authorizing an authorized person to enter that dwelling-house subject to such conditions as may be specified in the warrant but, where the judge is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge shall

(d) order the occupant of the dwelling-house to provide reasonable access to an authorized person to any document or property that is or should be kept therein, and

(e) make such other order as is appropriate in the circumstances to carry out the purposes of this Act

to the extent that access has been or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.

Related Provisions [s. 231.1]: 66(12.72) — Application of sections 231 to 231.3 to audits of flow-through shares; 168(1)(e) — Revocation of registration; 230 — Requirement to keep books and records; 231.2 — Requirements for information; 231.3 — Search warrants; 231.5(2) — No person shall hinder or molest auditor; 232(3.1) — Examination of documents where privilege claimed; 237.1(8) — Application to tax shelter disclosure rules; 238(1) — Punishment for failing to comply; *Interpretation Act* 31(2) — Ancillary powers granted to enable work to be done.

Pre-RSC History [s. 231.1]: See after s. 231.5.

Selected Cases [s. 231.1]: *Norwood v. R.*, [2000] 2 C.T.C. 2900 (TCC) (Document copied clandestinely by tax auditor was illegal search and seizure); *R. v. Melnychuk*, [1999] 3 C.T.C. 255 (Sask Prov Ct) (Search warrant quashed where taxpayer not informed that investigation was under way); *R. v. Warawa*, [1998] 1 C.T.C. 345 (Alta QB) (Where information demanded is not for audit, but for prosecution, rights of taxpayer protected and information may not be used in subsequent prosecution); *Baron v. Canada*, [1991] 1 C.T.C. 125 (FCA); aff'd [1993] 1 C.T.C. 111 (SCC) (Provision held to be of no force and effect because absence of judicial discretion in subsection 231.3(3) violated the *Charter*).

Definitions [s. 231.1]: "amount" — 248(1); "authorized person", "documents", "dwelling-house" — 231; "inventory" — 248(1); "judge" — 231; "Minister", "property", "record", "taxpayer" — 248(1).

Information Circulars [s. 231.1]: 71-14R3: The tax audit; 94-4: International transfer pricing — advance pricing agreements (APA).

Forms [s. 231.1]: T3024: Inspection, audit and examination provisions; RC4024: Enhancing service for large businesses: the audit protocol; real-time audit, concurrent audit, single-window focus (guide).

231.2 (1) Requirement to provide documents or information — Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

Proposed Amendment — 231.2(1) opening words

231.2 (1) Requirement to provide documents or information — Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

Application: The December 2, 1999 Notice of Ways and Means Motion, s. 176, will amend the opening words of subsec. 231.2(1) to read as above, in force on Royal Assent.

Technical Notes: Subsection 231.2(1) of the *Income Tax Act* provides that, notwithstanding any other provision of that Act, the Minister of National Revenue may by notice require that any person provide information or any document relating to the administration or enforcement of the Act. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 231.2(2) to (6) of that Act must be followed.

Similarly, under section 231.6 of that Act, the Minister may, by notice and subject to judicial review, require any person resident in Canada or a non-resident person who carries on business in Canada to provide any "foreign-based information or document". The term "foreign-based information or document" is defined in subsection 231.6(1) as any information or document available outside Canada that may be relevant to the administration or enforcement of the Act.

Subsections 231.2(1) and 231.6(1) are amended to clarify that the administrative and enforcement purposes for which those subsections apply include the collection of any amount payable by any person under the Act. Parallel amendments are made under clauses 85 and 87 to subsections 289(1) and 292(1) of the *Excise Tax Act*.

These amendments come into force on Royal Assent.

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

Related Provisions: 66(12.72) — Application re flow-through shares; 168(1)(e) — Revocation of charity's registration for failure to comply; 231.1(1)(b) — Examination of inventory; 231.5(1) — Copy of taxpayer's document may be used in court proceedings; 231.5(2) — No person shall hinder or molest auditor; 231.7 — Court order for compliance with requirement; 232(2) — Solicitor-client privilege defence; 232(3.1) — Examination of documents where privilege claimed; 237.1(8) — Application to tax shelter disclosure; 238(1) — Punishment for failure to comply; 244(5), (6) — Proof of service by mail or personal service; 244(9) — Copy of taxpayer's document may be used in court proceedings; 248(7)(a) — Mail deemed received on day mailed.

Selected Cases [subsec. 231.2(1)]: *R. v. Vinkle*, [1999] 2 C.T.C. 212 (BC SC) (Not necessary to show Canadian residency or tax liability as prerequisite to demand); *Burnett v. MNR*, [1999] 1 C.T.C. 31 (FCTD) (Instructions and description of services protected by privilege); *AGT Ltd. v. Canada (Attorney General)*, [1997] 2 C.T.C. 275 (FCA) (Once seizure ruled constitutional, statutory analysis all that remained where requirements issued by Minister); *Interprovincial Pipe Line Inc. v. MNR*, [1995] E.T.C. 2147, 95 D.T.C. 5642 (Provision of privileged documents to auditors for purposes of statutory audit was limited waiver and did not affect privilege of documents); *Aulakh v. Canada*, [1995] 2 C.T.C. 526 (Alta Prov Ct) (Crown has choice of proceeding under section 150 or by way of prosecution); *Montreal Aluminum Processing Inc. v. Canada*, [1992] 2 C.T.C. 358 (FCA) (Order to strike claim opposing legally suspect requirement upheld); *Morena v. MNR*, [1991] 1 C.T.C. 78 (FCTD); appealed to FCA (Nov. 12, 1990), File A-986-90 (Requirement to provide information that may disclose private transactions involving persons not under investigation held valid); *Tyler v. MNR*, [1991] 1 C.T.C. 13 (FCA) (Minister prohibited from communicating information obtained under provision to RCMP during period in which drug trafficking charges remained outstanding); *The Queen v. Gill*, [1990] 2 C.T.C. 318 (BC Co Ct) (Requirements to provide information issued after company dissolved and struck from Register of Companies had no effect even where company subsequently restored to Register under subsection 286(2) of the *Company Act* (B.C.)); *Skalbania N.M., Ltd. v. Canada*, [1989] 2 C.T.C. 183 (BC Co Ct) (Provision applies only to demands to facilitate ongoing investigation; appeal from conviction under provision for failure to file returns allowed where demand should have been made under another provision); *Tyler v. MNR*, [1989] 1 C.T.C. 153 (FCTD); rev'd [1991] 1 C.T.C. 13 (FCA) (Minister may require production of information under provision during criminal proceedings against taxpayer); *The Queen v. Rosenberg et al.*, [1987] 1 C.T.C. 385 (Ont SC) (Demand under provision required only where taxpayer withholds consent to inspect documents).

Forms: T375: Requirement to provide information and documents.

(2) Unnamed persons — The Minister shall not impose on any person (in this section referred to as a "third party") a requirement under subsection (1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

Selected Cases [subsec. 231.2(2)]: *Chilton Insurance Consultation Inc. v. Canada*, [1996] 2 C.T.C. 185 (Sask QB) (Company struck off provincial Register still liable to file tax returns; director personally liable to penalty).

(3) Judicial authorization — On *ex parte* application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") where the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

(c), (d) [Repealed]

Related Provisions: 66(12.72) — Application re flow-through shares; 168(1)(e) — Revocation of charity's registration for failure to comply; 232(2), (3.1) — Solicitor-client privilege defence; 237.1(8) — Application to tax shelter disclosure; 238(1) — Punishment for failure to comply.

History: Paras. 231.2(3)(c) and (d) repealed by 1996, c. 21, subsec. 58(1), applicable June 20, 1996. Paras. (c) and (d) formerly read:

(c) it is reasonable to expect, based on any grounds, including information (statistical or otherwise) or past experience relating to the group or any other persons, that the person or any person in the group may have failed or may be likely to fail to provide information that is sought pursuant to the requirement or to otherwise comply with this Act; and

(d) the information or document is not otherwise more readily available.

Selected Cases [subsec. 231.2(3)]: *Fédération des Caisses Populaires Desjardins de Québec v. MNR*, [1997] 2 C.T.C. 159 (Que SC) (Requirement voided where specific taxpayers not identified).

(4) Service of authorization — Where an authorization is granted under subsection (3), it shall be served together with the notice referred to in subsection (1).

(5) Review of authorization — Where an authorization is granted under subsection (3), a third party on whom a notice is served under subsection (1) may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, where the judge is unable to act, to another judge of the same court for a review of the authorization.

(6) Powers on review — On hearing an application under subsection (5), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) and (b) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.

History: Subsec. 231.2(6) amended by 1996, c. 21, subsec. 58(2), applicable June 20, 1996. Subsec. (6) formerly read:

(6) On hearing an application under subsection (5), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) to (d) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.

(7) [Repealed under former Act]

Pre-RSC History: Subsec. 231.2(7) repealed by 1988, c. 55, s. 174. Subsec. 231.2(7) formerly read:

(7) Additional remedy — Where a person is found guilty of an offence under subsection 238(2) for failing to comply with a requirement under subsection (1), the court may make such order as it deems proper in order to enforce compliance with the requirement.

For earlier history, see after s. 231.5.

Selected Cases [s. 231.2]: *R. v. Kloster*, [1999] 3 C.T.C. 242 (BC Prov Ct) (Use to which seized items is put governs admissibility, not what was in minds of government agents at time of search); *Vancouver Trade Mart Inc. (Trustee of) v. Canada (Attorney General)*, [1998] 1 C.T.C. 79 (FCTD) (Trustee's working papers required to be produced); *Canadian Forest Products Ltd. v. MNR*, [1996] 3 C.T.C. 240 (FCTD) (Requirement regarding unidentified taxpayers required judicial approval); *Radke v. MNR*, [1996] 3 C.T.C. 86 (BC SC) (Documents not privileged where *prima facie* case of fraud established); *Sand Exploration Ltd. et al No. 2 v. MNR*, [1995] 2 C.T.C. 140 (FCTD) (No fishing expedition when requirements of provision met where Minister seeking names of unnamed taxpayers from third party); *Sand Exploration Ltd. et al No. 1 v. MNR*, [1995] 2 C.T.C. 137 (FCTD) (Taxpayer must lead evidence of apprehended harm if orders to be suspended); *Andison v. MNR*, [1995] 1 C.T.C. 203 (FCTD) (Judicial authorization must be obtained before demand for information can be enforced with respect to unnamed persons).

Definitions [s. 231.2]: "documents", "judge" — 231; "Minister", "person" — 248(1); "third party" — 231.2(2).

Information Circulars [s. 231.2]: 73-10R3: Tax evasion.

231.3 (1) Search warrant — A judge may, on *ex parte* application by the Minister, issue a warrant in writing au-

thorizing any person named therein to enter and search any building, receptacle or place for any document or thing that may afford evidence as to the commission of an offence under this Act and to seize the document or thing and, as soon as practicable, bring it before, or make a report in respect of it to, the judge or, where the judge is unable to act, another judge of the same court to be dealt with by the judge in accordance with this section.

Related Provisions: See at end of 231.3.

Selected Cases [subsec. 231.3(1)]: *Solvent Petroleum Extraction Inc. v. MNR*, [1989] 2 C.T.C. 177 (FCA); leave to appeal to SCC refused (1989), 105 N.R. 159 (note); application for reconsideration refused (July 9, 1992), Doc. 21556 (Once conditions of provision met, judge must issue a warrant; in course of executing warrant, officer may seize anything officer considers evidence of commission of crime); *Clayton F. K., Group Ltd. et al. v. MNR et al.*, [1988] 1 C.T.C. 353 (FCA) (Factors in considering constitutional validity of seizure and enabling provision); *Hellenic Import-Export Co. Ltd. et al. v. MNR et al.*, [1987] 1 C.T.C. 281 (BC SC) (Warrants to search business premises and personal residence under provision quashed where Minister previously had documents in question with taxpayer's consent).

Information Circulars: 73-10R3: Tax evasion.

(2) Evidence in support of application — An application under subsection (1) shall be supported by information on oath establishing the facts on which the application is based.

Selected Cases [subsec. 231.3(2)]: *Donovan v. Canada*, [1994] 2 C.T.C. 426 (NB QB) (Misleading and incorrect statement in information led to quashing of search warrants).

(3) Evidence — A judge may issue the warrant referred to in subsection (1) where the judge is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act was committed;

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found; and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

Related Provisions: See at end of 231.3.

History: Subsec. 231.3(3) substituted by 1994, c. 21, s. 108, applicable June 15, 1994. That subsec. formerly read:

(3) A judge shall issue the warrant referred to in subsection (1) where the judge is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act has been committed;

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found; and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

Selected Cases [subsec. 231.3(3)]: *The Queen v. Precision Mechanics Ltd. et al.*, [1986] 2 C.T.C. 240 (Que SC) (Evidence in support of application obtained in manner infringing upon taxpayer's *Charter* rights inadmissible); *Thyssen Canada Ltd. v. The Queen*, [1984] C.T.C. 64 (FCTD) (Audit with taxpayer's consent did not constitute formal search and seizure within scope of *Charter*).

(4) Contents of warrant — A warrant issued under subsection (1) shall refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person alleged to have committed the offence and it shall be reasonably specific as to any document or thing to be searched for and seized.

(5) Seizure of document — Any person who executes a warrant under subsection (1) may seize, in addition to the document or thing referred to in that subsection, any other document or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and shall as soon as practicable bring the document or thing before, or make a report in respect thereof to, the judge who issued the warrant or, where the judge is unable to act, another judge of the same court to be dealt with by the judge in accordance with this section.

Related Provisions: 231.5(1) — Copy of document seized may be used in court proceedings; 231.5(2) — Compliance; 244(9) — Copy of document seized may be used in court proceedings.

Information Circulars: 73-10R3: Tax evasion.

(6) Retention of things seized — Subject to subsection (7), where any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect thereof is made to a judge, the judge shall, unless the Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

Selected Cases [subsec. 231.3(6)]: *Kohli v. Moase*, [1989] 1 C.T.C. 492 (NB CA) (Where documents seized under section 231.3, taxpayer's civil actions against individual tax officials and police dismissed; proper remedy was pursuant to subsections (6) and (7)).

(7) Return of things seized — Where any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect thereof is made to a judge, the judge may, of the judge's own motion or on summary application by a person with an interest in the document or thing on three clear days notice of application to the Deputy Attorney General of Canada, order that the document or thing be returned to the person from whom it was seized or the person who is otherwise legally entitled thereto if the judge is satisfied that the document or thing

(a) will not be required for an investigation or a criminal proceeding; or

(b) was not seized in accordance with the warrant or this section.

Related Provisions: *Interpretation Act* 27(1) — Meaning of "clear days". See additional Related Provisions and Definitions at end of s. 231.3.

Selected Cases [subsec. 231.3(7)]: *Kohli v. Moase*, [1989] 1 C.T.C. 492 (NB CA) (Where documents seized under section 231.3, taxpayer's civil actions against individual tax officials and police dismissed; proper remedy was pursuant to subsections (6) and (7)).

(8) Access and copies — The person from whom any document or thing is seized pursuant to this section is entitled, at all reasonable times and subject to such reasonable conditions as may be imposed by the Minister, to inspect the document or thing and to obtain one copy of the document at the expense of the Minister.

Information Circulars [subsec. 231.3(8)]: 73-10R3: Tax evasion.

Related Provisions [s. 231.3]: 66(12.72) — Application of sections 231 to 231.3; 168(1)(e) — Revocation of registration; 232(3) — Seizure of certain documents where privilege claimed; 237.1(8) — Application to tax shelter disclosure rules; 238(1) — Punishment for failing to comply.

Pre-RSC History [s. 231.3]: See after s. 231.5.

Selected Cases [s. 231.3]: *O'Neill Motors Ltd. v. R.*, [1998] 3 C.T.C. 385 (FCA); aff'd [1996] 1 C.T.C. 2714 (TCC) (Assessments vacated where documents improperly seized); *Canada (Attorney General) v. Sander*, [1996] 1 C.T.C. 74 (BC CA) (Taxpayer granted access to legal opinions of Department of Justice in criminal matter); *Del Zotto v. Canada*, [1995] 2 C.T.C. 298 (FCTD) (Court must be satisfied as to real purpose of inquiry before lifting stay of proceedings); *Kourtessis (C.) v. MNR*, [1993] 1 C.T.C. 301 (SCC) (Provision contravened section 8 of the *Charter*); *Baron (B.) v. Canada*, [1993] 1 C.T.C. 111 (SCC) (Provision contravened section 8 of the *Charter*; now reversed by amendment to

legislation); *Knox Contracting v. Canada*, [1990] 2 C.T.C. 262 (SCC) (Without provision for an appeal in federal legislation, decision to issue search warrant is without recourse because provision is criminal in nature and provincial rules of civil procedure inapplicable).

Definitions [s. 231.3]: "clear days" — *Interpretation Act* 27(1); "documents", "judge" — 231; "Minister", "person" — 248(1); "writing" — *Interpretation Act* 35(1).

231.4 (1) Inquiry — The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Customs and Revenue Agency, to make such inquiry as the person may deem necessary with reference to anything relating to the administration or enforcement of this Act.

Related Provisions: 231.5(2) — Compliance. See also Related Provisions and Definitions at end of 231.4.

History: Subsec. 231.4(1) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(c), proclaimed into force November 1, 1999.

(2) Appointment of hearing officer — Where the Minister, pursuant to subsection (1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

(3) Powers of hearing officer — For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation thereto has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 thereof.

Inquiries Act: Ss. 4, 5 of the *Inquiries Act*, R.S., c. I-13, provide:

> 4. The commissioners have the power of summoning before them any witnesses, and of requiring them to
>
> (a) give evidence, orally or in writing, and on oath or, if they are persons entitled to affirm in civil matters on solemn affirmation; and
>
> (b) produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.
>
> 5. The commissioners have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

Selected Cases [subsec. 231.4(3)]: *462657 Ontario Ltd. v. MNR*, [1989] 2 C.T.C. 218 (FCTD); appealed to FCA (Oct. 2, 1989), File A-452-89 (Hearing officer's subpoena did not constitute a search and seizure).

(4) When powers to be exercised — A hearing officer appointed under subsection (2) in relation to an inquiry shall exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof but the hearing officer shall not exercise the power to punish any person unless, on application by the hearing officer, a judge of a superior or county court certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the applicant proposes to exercise the power 24 hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

(5) Rights of witness at inquiry — Any person who gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of the evidence given by the person.

(6) Rights of person whose affairs are investigated — Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2) in relation to the inquiry, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

Related Provisions [s. 231.4]: 168(1)(e) — Revocation of registration; 238(1) — Punishment for failing to comply.

Pre-RSC History [s. 231.4]: See after s. 231.5.

Selected Cases [s. 231.4]: *Del Zotto v. Canada*, [1999] 1 C.T.C. 113 (SCC); rev'g [1997] 3 C.T.C. 199 (FCA) (Provision does not infringe on rights protected by sections 7 and 8 of the *Charter*); *Del Zotto v. Canada*, [1995] 2 C.T.C. 298 (FCTD) (Court must be satisfied as to real purpose of inquiry before lifting stay of proceedings).

Definitions [s. 231.4]: "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "judge" — 231; "Minister", "person" — 248(1).

Information Circulars [s. 231.4]: 73-10R3: Tax evasion.

231.5 (1) Copies — Where any document is seized, inspected, audited, examined or provided under any of sections 231.1 to 231.4, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any officer of the Canada Customs and Revenue Agency may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

Related Provisions: 244(9) — Copy of taxpayer's document may be used in court proceedings.

History: Subsec. 231.5(1) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(d), proclaimed into force November 1, 1999.

Subsec. 231.5(1) amended by 1998, c. 19, s. 229, applicable to copies and print-outs made after June 18, 1998. Subsec. 231.5(1) formerly read:

> (1) Where any document is seized, inspected, examined or provided under sections 231.1 to 231.4, the person by whom it is seized, inspected or examined or to whom it is provided or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof and any document purporting to be certified by the Minister or an authorized person to be a copy made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it had been proven in the ordinary way.

Selected Cases [subsec. 231.5(1)]: *Canada v. Betterest Vinyl Manufacturing Ltd.*, [1990] 2 C.T.C. 292 (BC CA) (Copies are admissible where there is evidence to support their accuracy; if so, Minister need not show that originals are unavailable).

(2) Compliance — No person shall hinder, molest or interfere with any person doing anything that the person is authorized by or pursuant to subsection (1) or sections 231.1 to 231.4 to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other Act or law, every person shall, unless the person is unable to do so, do everything the person is required to do by or pursuant to subsection (1) or sections 231.1 to 231.4.

Proposed Amendment — Penalty for interfering with collection action

Notice of Ways and Means Motion, federal budget, February 28, 2000: [See under 238(1) — ed.]

Related Provisions [subsec. 231.5(2)]: 168(1)(e) — Revocation of registration; 231.7 — Court order for compliance with audit or demand; 238(1) — Punishment for failing to comply.

Definitions [s. 231.5]: "authorized person", "documents" — 231; "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "Minister", "person" — 248(1).

Information Circulars [s. 231.5]: 73-10R3: Tax evasion.

Forms [s. 231.5]: T3024: Inspection, audit and examination provisions.

Pre-RSC History [ss. 231 to 231.5]: Ss. 231 to 231.5 substituted for former s. 231 by 1986, c. 6, s. 121, in force February 13, 1986. S. 231 formerly read:

> 231. (1) Investigations — Any person thereunto authorized by the Minister, for any purpose related to the administration or enforcement of this Act, may, at all reasonable times, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are or should be kept, and
>
> (a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act,
>
> (b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act,
>
> (c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, require the owner or manager to attend at the premises or place with him, and
>
> (d) if, during the course of an audit or examination, it appears to him that there has been a violation of this Act or a regulation, seize and take away any of the documents, books, records, papers or things that may be required as evidence as to the violation of any provision of this Act or a regulation.
>
> (2) Return of documents, books, etc. — The Minister shall,
>
> (a) within 120 days from the date of seizure of any documents, books, records, papers or things pursuant to paragraph (1)(d), or
>
> (b) if within that time an application is made under this subsection that is, after the expiration of that time, rejected, then forthwith upon the disposition of the application,
>
> return the documents, books, records, papers or things to the person from whom they were seized unless a judge of a superior court or county court, on application made by or on behalf of the Minister, supported by evidence on oath establishing that the Minister has reasonable and probable grounds to believe that there has been a violation of this Act or a regulation and that the seized documents, books, records, papers or things are or may be required as evidence in relation thereto, orders that they be retained by the Minister until they are produced in any court proceedings, which order the judge is hereby empowered to give on *ex parte* application.
>
> (3) Idem — The Minister may, for any purposes related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person
>
> (a) any information or additional information, including a return of income or a supplementary return, or
>
> (b) production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents,
>
> within such reasonable time as may be stipulated therein.
>
> (4) Search — Where the Minister has reasonable and probable grounds to believe that a violation of this Act or a regulation has been committed or is likely to be committed, he may, with the approval of a judge of a superior or county court, which approval the judge is hereby empowered to give on *ex parte* application, authorize in writing any officer of the Department of National Revenue, together with such members of the Royal Canadian Mounted Police or other peace officers as he calls on to assist him and such other persons as may be named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the violation of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.
>
> (5) Evidence in support of application — An application to a judge under subsection (4) shall be supported by evidence on oath establishing the facts upon which the application is based.
>
> (6) Access and copies — The person from whom any documents, books, records, papers or things are seized pursuant to paragraph (1)(d) or subsection (4) is, at all reasonable times and subject to such reasonable conditions as may be determined by the Minister, entitled to inspect the seized documents, books, records, papers or things and to obtain copies thereof at his own expense.
>
> (7) Inquiry — The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not he is an officer of the Department of National Revenue, to make such inquiry as he may deem necessary with reference to anything relating to the administration or enforcement of this Act.
>
> (8) Appointment of hearing officer — Where the Minister, pursuant to subsection (7), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.
>
> (9) Copies — Where any book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way.
>
> (10) Compliance — No person shall hinder or molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by or pursuant to this section to do.
>
> (11) Administration of oaths — Every person thereunto authorized by the Minister may administer or receive an oath, affirmation or statutory declaration required to be given by or pursuant to this section.
>
> (12) Powers of hearing officer — For the purposes of an inquiry authorized under subsection (7), a hearing officer appointed under subsection (8) in relation thereto has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 thereof.
>
> (13) When powers to be exercised — A hearing officer appointed under subsection (8) in relation to an inquiry shall exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof; but the hearing officer shall not exercise the power to punish any person unless, on application by the hearing officer, a judge of a superior or county court certifies that such power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom he proposes to exercise such power 24 hours' notice of the hearing of the application or such shorter notice as the judge deems reasonable.
>
> (14) Rights of witness at inquiry — Any person who gives evidence in an inquiry authorized under subsection (7) is entitled to be represented by counsel and, upon request made by him to the Minister, to receive a transcript of the evidence given by him.
>
> (15) Rights of person whose affairs are investigated — Any person whose affairs are investigated in the course of an inquiry authorized under subsection (7) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (8) in relation to the inquiry, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry on the

ground that the presence of the person and his counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

"Tax Court of Canada" substituted for "Tax Review Board" in subsec. 231(8) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

231.6 (1) Definition of "foreign-based information or document" — For the purposes of this section, "foreign-based information or document" means any information or document that is available or located outside Canada and may be relevant to the administration or enforcement of this Act.

Proposed Amendment — 231.6(1)

231.6 (1) Definition of "foreign-based information or document" — For the purposes of this section, "foreign-based information or document" means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person.

Application: The December 2, 1999 Notice of Ways and Means Motion, s. 177, will amend subsec. 231.6(1) to read as above, in force on Royal Assent.

Technical Notes: See under 231.2(1).

(2) Requirement to provide foreign-based information — Notwithstanding any other provision of this Act, the Minister may, by notice served personally or by registered or certified mail, require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.

Related Provisions: 233.1–233.7 — Requirement to file annual information returns with respect to non-resident dealings; 244(5) — Proof of service by mail; 248(7)(a) — Mail deemed received on day mailed.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(3) Notice — The notice referred to in subsection (2) shall set out

(a) a reasonable period of time of not less than 90 days for the production of the information or document;

(b) a description of the information or document being sought; and

(c) the consequences under subsection (8) to the person of the failure to provide the information or documents being sought within the period of time set out in the notice.

(4) Review of foreign information requirement — The person on whom a notice of a requirement is served under subsection (2) may, within 90 days after the service of the notice, apply to a judge for a review of the requirement.

(5) Powers on review — On hearing an application under subsection (4) in respect of a requirement, a judge may

(a) confirm the requirement;

(b) vary the requirement as the judge considers appropriate in the circumstances; or

(c) set aside the requirement if the judge is satisfied that the requirement is unreasonable.

(6) Idem — For the purposes of paragraph (5)(c), the requirement to provide the information or document shall not be considered to be unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person served with the notice of the requirement under subsection (2) if that person is related to the non-resident person.

Related Provisions: 256(6), (6.1) — Meaning of "controlled".

Selected Cases [subsec. 231.6(6)]: *Re Hertel et al.*, [1987] 1 C.T.C. 15 (BC SC) (So as not to interfere with independence of judiciary, "shall" interpreted as permissive); *Smith v. MNR*, 82 D.T.C. 6198 (NB CA) (Once judge decides that requirements of provision are satisfied, only an indefinite order may be granted).

(7) Time during consideration not to count — The period of time between the day on which an application for review of a requirement is made pursuant to subsection (4) and the day on which the review is decided shall not be counted in the computation of

(a) the period of time set out in the notice of the requirement; and

(b) the period of time within which an assessment may be made pursuant to subsection 152(4).

(8) Consequence of failure — If a person fails to comply substantially with a notice served under subsection (2) and if the notice is not set aside by a judge pursuant to subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice.

Related Provisions [subsec. 231.6(8)]: 143.2(13), (14) — Effect of information outside Canada on tax shelter investments.

Pre-RSC History [s. 231.6]: S. 231.6 enacted by 1988, c. 55, s. 175.

Definitions [s. 231.6]: "Canada" — 255; "carrying on business" — 253; "controlled" — 256(6), (6.1); "documents", "judge" — 231; "Minister", "non-resident", "person" — 248(1); "related" — 251(2); "resident in Canada" — 250.

Proposed Addition — 231.7

231.7 (1) Compliance order — On summary application by the Minister five clear days after the service of the notice of application to the person against whom the order is sought, a judge may, notwithstanding subsection 238(2) but subject to section 232 and such conditions as the judge considers appropriate, order that the person provide such access, assistance, information or document sought by the Minister under section 231.1 or 231.2 where the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document; and

(b) the person did not provide the access, assistance, information or document as required under section 231.1 or 231.2.

Related Provisions: 231.5(2) — Compliance with audit or demand required.

(2) Contempt of court — Where a person fails or refuses to comply with an order made under subsection (1), a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court that made the order.

(3) Appeal — An order under subsection (1) may be appealed to the court to which appeals from the court making the order normally lie. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 109, will add s. 231.7, in force on Royal Assent.

Technical Notes: Sections 237.1 to 237.6 of the Act set out the rules relating to the powers of the Canada Customs and Revenue Agency (CCRA) to audit and examine taxpayers' books and records. In particular, section 231.1 authorizes the inspection, audit and examination of books, records and property, and section 231.2 provides that the CCRA may by notice require that a person provide information or documents relating to the administration or enforcement of the Act. Where a person refuses to comply with section 231.1 or 231.2, the person is subject to criminal prosecution under section 238 of the Act.

New section 231.7 will allow the Minister of National Revenue to instead seek an order requiring a person to provide the access, assistance, information or document sought under section 231.1 or 231.2 by way of summary application in cases where the Minister has requested that access, assistance, information or document and the person did not comply. The judge hearing the application will have, under subsection 231.7(1), the discretion to allow the order, or to attach such conditions to the order as the judge considers appropriate. Subsection 231.7(2) provides that a person who refuses to comply with the judge's order may be found in contempt of court and will be subject to the processes and punishments of the court that made the order. Subsection 231.7(3) provides that an order made under this new provision may also be appealed to the court to which appeals from the court making the order normally lie, but that the execution of an order is not suspended unless it is so ordered by the court to which the appeal is made.

Definitions [s. 231.7]: "clear days" — *Interpretation Act* 27(1); "document", "judge" — 231; "Minister", "person" — 248(1).

232. (1) [Solicitor-client privilege] Definitions — In this section,

"custodian" means a person in whose custody a package is placed pursuant to subsection (3);

Related Provisions: 230(2.1) — Books and records.

Pre-RSC History: *The definition "custodian" was para. 232(1)(b).*

"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court;

Pre-RSC History: *The definition "judge" was para. 232(1)(a).*

Selected Cases [subsec. 232(1)"judge"]: *Stasiv Mitton & Smith v. Canada*, [1989] 1 C.T.C. 171 (Ont SC) ("Judge" does not include a judge of the Ontario Supreme Court appointed pursuant to the *Courts of Justice Act*); *Herman et al. v. Dep. A.G. Can.*, [1978] C.T.C. 728 (SCC) (Judge's order under provision made in capacity of judge, and not subject to review under section 28 of *Federal Court Act*).

"lawyer" means, in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor;

Related Provisions: 248(1)"lawyer" — Definition applies to entire Act.

Pre-RSC History: *The definition "lawyer" was para. 232(1)(c).*

"officer" means a person acting under the authority conferred by or under sections 231.1 to 231.5;

Pre-RSC History: *The definition "officer" was para. 232(1)(d).*

Para. 232(1)(d) amended by 1986, c. 6, subsec. 122(1), to substitute "under the authority" for "under authority" and "sections 231.1 to 231.5" for "section 231".

"solicitor-client privilege" means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication.

Pre-RSC History: *The definition "solicitor-client privilege" was para. 232(1)(e).*

Selected Cases [subsec. 232(1)"solicitor-client privilege"]: *Heath v. Canada*, [1990] 2 C.T.C. 28 (BC SC) (Solicitor's trust account ledger was "accounting record of a lawyer" and excluded from solicitor-client privilege); *MNR v. Lawrence*, [1989] 1 C.T.C. 289 (FCTD) (Solicitor-client privilege is lost where *prima facie* case of fraud established); *Visser and MNR*, [1989] 1 C.T.C. 192 (PEI SC) (Voluntary disclosure by taxpayer of material part of communication implicitly waives privilege); *Playfair Developments Ltd. v. Dep. MNR*, [1985] 1 C.T.C. 302 (Ont SC) (Provision does not give judge jurisdiction to determine whether or not communications sought are relevant to Minister's inquiry; "accounting record" interpreted); *Brunner and Lay (Canada) Ltd. v. Dep. A.G. Can.*, [1984] C.T.C. 534 (FCTD) (Interoffice memoranda between solicitors privileged); *Kent Steel Products Ltd. v. The Queen*, 76 D.T.C. 6253 (Ont SC) (Documents related to tax minimization, but not tax fraud, are privileged); *Re Goodman & Carr et al.*, [1968] C.T.C. 484 (Ont SC) (Documents privileged unless definite charge of fraud made; communications between solicitor and accountant of taxpayer not privileged); *Re Missiaen*, [1967] C.T.C. 579 (Alta. S.C.) (Communications between solicitor and accountant not privileged).

(2) Solicitor-client privilege defence — Where a lawyer is prosecuted for failure to comply with a requirement under section 231.2 with respect to information or a document, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the court

(a) that the lawyer, on reasonable grounds, believed that a client of the lawyer had a solicitor-client privilege in respect of the information or document; and

(b) that the lawyer communicated to the Minister, or some person duly authorized to act for the Minister, the lawyer's refusal to comply with the requirement together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or document.

Pre-RSC History: Subsec. 232(2) amended by 1986, c. 6, subsec. 122(2), to substitute, in that portion preceding para. (a), "under section 231.2 with respect to information or a document" for "under section 231 to give information or to produce a document", and "had a solicitor-client privilege" for "has a solicitor-client privilege" in paras. (a) and (b).

Selected Cases [subsec. 232(2)]: *Cineplex Odeon Corp. v. Canada*, [1994] 2 C.T.C. 293 (Ont Gen Div) (Inadvertent disclosure without consent of client does not operate to waive privilege); *Crown Zellerbach Canada Ltd. v. Dep. A.G. Can.*, [1982] C.T.C. 121 (BC SC) (Communications between taxpayer and its president/counsel were privileged to extent made in latter's capacity as counsel).

(3) Seizure of certain documents where privilege claimed — Where, pursuant to section 231.3, an officer is about to seize a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of that document, the officer shall, without inspecting, examining or making copies of the document,

(a) seize the document and place it, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package; and

(b) place the package in the custody of the sheriff of the district or county in which the seizure was made or, if the officer and the lawyer agree in writing on a person to act as custodian, in the custody of that person.

Pre-RSC History: Subsec. 232(3) amended by 1986, c. 6, subsec. 122(2), to substitute "seizure" for "examination or seizure" in the heading, "where, pursuant to section 231.3, an officer is about to seize" for "where an officer is about to examine or seize", and "without inspecting, examining, or" for "without examining or" in that portion preceding para. (a), and "on" for "upon" and "that person" for "such person" in para. (b).

Selected Cases [subsec. 232(3)]: *143471 Canada Inc., Quebec v.*, [1995] 1 C.T.C. 27 (SCC) (Impounded documents to be kept until constitutionality of impunged sections of legislation determined. Protection of individuals preferred to convenience of Minister); *Re Bowlen et al.*, [1971] C.T.C. 682 (BC SC) (No privilege where *prima facie* case of fraud established).

(3.1) Examination of certain documents where privilege claimed — Where, pursuant to section 231.1, an officer is about to inspect or examine a document in the possession of a lawyer or where, pursuant to section 231.2, the Minister has required provision of a document by a lawyer, and the lawyer claims that a named client or former client of the lawyer has a solicitor-client privilege in respect of the document, no officer shall inspect or examine the document and the lawyer shall

(a) place the document, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the officer and the lawyer agree, allow the pages of the document to be initialed and numbered or otherwise suitably identified; and

(b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.

History: The opening words of subsec. 232(3.1) amended by 1998, c. 19, s. 230, in force June 18, 1998. The opening words formerly read:

(3.1) Where, pursuant to sections 231.1 and 231.2, an officer is about to inspect or examine a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of that document, the officer shall not inspect or examine the document and the lawyer shall

Pre-RSC History: Subsec. 232(3.1) added by 1986, c. 6, subsec. 122(2), in force February 13, 1986.

(4) Application to judge — Where a document has been seized and placed in custody under subsection (3) or is being retained under subsection (3.1), the client, or the lawyer on behalf of the client, may

(a) within 14 days after the day the document was so placed in custody or commenced to be so retained apply, on three clear days notice of motion to the Deputy Attorney General of Canada, to a judge for an order

(i) fixing a day, not later than 21 days after the date of the order, and place for the determination of the question whether the client has a solicitor-client privilege in respect of the document, and

(ii) requiring the production of the document to the judge at that time and place;

(b) serve a copy of the order on the Deputy Attorney General of Canada and, where applicable, on the custodian within 6 days of the day on which it was made and, within the same time, pay to the custodian the estimated expenses of transporting the document to and from the place of hearing and of safeguarding it; and

(c) if the client or lawyer has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question.

Related Provisions: *Interpretation Act* 27(1), (2) — Calculation of days and clear days.

Pre-RSC History: Subsec. 232(4) substituted by 1986, c. 6, subsec. 122(2). Subsec. 232(4) formerly read:

(4) Where a document has been seized and placed in custody under subsection (3), the client, or the lawyer on behalf of the client, may

(a) within 14 days from the day the document was so placed in custody, apply, upon 3 days' notice of motion to the Deputy Attorney General of Canada, to a judge for an order

(i) fixing a day (not later than 21 days after the date of the order) and place for the determination of the question whether the client has a solicitor-client privilege in respect of the document, and

(ii) requiring the custodian to produce the document to the judge at that time and place;

(b) serve a copy of the order on the Deputy Attorney General of Canada and the custodian within 6 days of the day on which it was made, and, within the same time, pay to the custodian the estimated expenses of transporting the document to and from the place of hearing and of safeguarding it; and

(c) if he has proceeded as authorized by paragraph (b), apply, at the appointed time and place, for an order determining the question.

Selected Cases [subsec. 232(4)]: *Archean Energy Ltd v. MNR*, [1998] 1 C.T.C. 398 (Alta QB) (Claim for solicitor-client privilege by one taxpayer may preserve claim for others in same business transaction); *Radke v. MNR*, [1996] 3 C.T.C. 86 (BC SC) (Documents not privileged where *prima facie* case of fraud established); *Leo Gray v. Canada*, [1994] 2 C.T.C. 409 (Ont Gen Div) (Course of conduct by Department of Justice counsel operated as functional waiver of 14 day period); *Solvent Petroleum Extraction Inc. v. MNR*, [1990] 2 C.T.C. 291 (FCTD) (Order to deliver documents under subsection 232(6) denied where provisions of subsection 232(4) not observed; judge has no jurisdiction to extend 14 day period in paragraph 232(4)(a)); *Vespoli et al. v. The Queen*, [1982] C.T.C. 418 (FCTD); rev'd in part [1984] C.T.C. 519 (FCA) (Judge has no jurisdiction under provision to determine relevance of documents or reasonableness of seizure); *Vespoli et al. v. The Queen*, [1982] C.T.C. 365 (FCTD); rev'd on other grounds [1984] C.T.C. 519 (FCA) (Application made within delay where notice of motion filed within 14 days and returnable over one month after date of seizure, the earliest possible date after vacation); *Cotroneo v. Dep. A.G. Can.*, [1982] C.T.C. 131 (FCTD) (No privilege where *prima facie* case of fraud established); *Cotroneo v. Dep. A.G. Can.*, [1982] C.T.C. 67 (FCTD); aff'd on reconsideration [1982] C.T.C. 131 (FCTD) (*Prima facie* case of fraud requires affidavit evidence on knowledge, not information and belief); *Re Romeo's Place Victoria Ltd. et al.*, [1981] C.T.C. 380 (FCTD) (Crown not permitted to examine documents held to be irrelevant); *Edmonds v. Dep. A.G. Can.*, [1980] C.T.C. 192 (Que SC) (Crown's allegation of possible fraud was insufficient to dislodge privilege); *Herman et al. v. Dep. A.G. Can.*, [1978] C.T.C. 728 (SCC) (Federal Court of Appeal denied jurisdiction to hear an appeal from lower court determination of privilege); *Easton v. A.G. Can.*, [1976] C.T.C. 290 (FCA) (Application to set aside order for delivery of seized documents to officials of Revenue Canada dismissed where neither client nor solicitor applied, under provision, for order determining privilege).

(5) Disposition of application — An application under paragraph (4)(c) shall be heard *in camera*, and on the application

(a) the judge may, if the judge considers it necessary to determine the question, inspect the document and, if the judge does so, the judge shall ensure that it is repackaged and resealed; and

(b) the judge shall decide the matter summarily and,

(i) if the judge is of the opinion that the client has a solicitor-client privilege in respect of the document, shall order the release of the document to the lawyer, and

(ii) if the judge is of the opinion that the client does not have a solicitor-client privilege in respect of the document, shall order,

(A) that the custodian deliver the document to the officer or some other person designated by the Commissioner of Customs and Revenue, in

the case of a document that was seized and placed in custody under subsection (3), or

(B) that the lawyer make the document available for inspection or examination by the officer or other person designated by the Commissioner of Customs and Revenue, in the case of a document that was retained under subsection (3.1),

and the judge shall, at the same time, deliver concise reasons in which the judge shall identify the document without divulging the details thereof.

History: Subsec. 232(5) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(c), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 232(5), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

Pre-RSC History: Subsec. 232(5) substituted by 1986, c. 6, subsec. 122(2), to amend all that portion from subpara. (b)(i) to the end, which portion formerly read:

(i) if he is of opinion that the client has a solicitor-client privilege in respect of the document, shall order the custodian to deliver the document to the lawyer, and

(ii) if he is of opinion that the client does not have a solicitor-client privilege in respect of the document, shall order the custodian to deliver the document to the officer or some other person designated by the Deputy Minister of National Revenue for Taxation,

and he shall, at the same time, deliver concise reasons in which he shall describe the nature of the document without divulging the details thereof.

(6) Order to deliver or make available — Where a document has been seized and placed in custody under subsection (3) or where a document is being retained under subsection (3.1) and a judge, on the application of the Attorney General of Canada, is satisfied that neither the client nor the lawyer has made an application under paragraph (4)(a) or, having made that application, neither the client nor the lawyer has made an application under paragraph (4)(c), the judge shall order

(a) that the custodian deliver the document to the officer or some other person designated by the Commissioner of Customs and Revenue, in the case of a document that was seized and placed in custody under subsection (3); or

(b) that the lawyer make the document available for inspection or examination by the officer or other person designated by the Commissioner of Customs and Revenue, in the case of a document that was retained under subsection (3.1).

History: Subsec. 232(6) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(c), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 232(6), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

Pre-RSC History: Subsec. 232(6) substituted by 1986, c. 6, subsec. 122(2). Subsec. 232(6) formerly read:

(6) Order to custodian to deliver — Where a document has been seized and placed in custody under subsection (3) and a judge, on the application of the Attorney General of Canada, is satisfied that neither the client nor the lawyer has made an application under paragraph (4)(a), or, having made that application, neither the client nor the lawyer has made an application under paragraph (c) thereof, he shall order the custodian to deliver the document to the officer or some other person designated by the Deputy Minister of National Revenue for Taxation.

(7) Delivery by custodian — The custodian shall

(a) deliver the document to the lawyer

(i) in accordance with a consent executed by the officer or by or on behalf of the Deputy Attorney General of Canada or the Commissioner of Customs and Revenue, or

(ii) in accordance with an order of a judge under this section; or

(b) deliver the document to the officer or some other person designated by the Commissioner of Customs and Revenue

(i) in accordance with a consent executed by the lawyer or the client, or

(ii) in accordance with an order of a judge under this section.

History: Subsec. 232(7) amended by replacing the words "Deputy Minister of National Revenue" with "Commissioner of Customs and Revenue" by 1999, c. 17, para. 167(c), proclaimed into force November 1, 1999.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 232(7), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(8) Continuation by another judge — Where the judge to whom an application has been made under paragraph (4)(a) cannot for any reason act or continue to act in the application under paragraph (4)(c), the application under paragraph (4)(c) may be made to another judge.

Pre-RSC History: Subsec. 232(8) substituted by 1985, c. 45, s. 120. Subsec. 232(8) formerly read:

(8) Applications to another judge — Where the judge to whom an application has been made under this section for any reason cannot act or continue to act under this section, subsequent applications under this section may be made to another judge.

(9) Costs — No costs may be awarded on the disposition of any application under this section.

(10) Directions — Where any question arises as to the course to be followed in connection with anything done or being done under this section, other than subsection (2), (3) or (3.1), and there is no direction in this section with respect thereto, a judge may give such direction with regard thereto as, in the judge's opinion, is most likely to carry out the object of this section of allowing solicitor-client privilege for proper purposes.

Pre-RSC History: Subsec. 232(10) amended by 1986, c. 6, subsec. 122(3), to add reference to subsection (3.1).

(11) Prohibition — The custodian shall not deliver a document to any person except in accordance with an order of a judge or a consent under this section or except to any officer or servant of the custodian for the purposes of safeguarding the document.

(12) Idem — No officer shall inspect, examine or seize a document in the possession of a lawyer without giving the lawyer a reasonable opportunity of making a claim under this section.

Pre-RSC History: Subsec. 232(12) amended by 1986, c. 6, subsec. 122(4), to substitute "shall inspect, examine" for "shall examine" and "under this section" for "under subsection (3)".

(13) Authority to make copies — At any time while a document is in the custody of a custodian under this section, a judge may, on an *ex parte* application of the lawyer, authorize the lawyer to examine or make a copy of the document in the presence of the custodian or the judge by an order that shall contain such provisions as may be necessary to ensure that the document is repackaged and that the package is resealed without alteration or damage.

(14) Waiver of claim of privilege — Where a lawyer has, for the purpose of subsection (2), (3) or (3.1), made a claim that a named client of the lawyer has a solicitor-client privilege in respect of information or a document, the lawyer shall at the same time communicate to the Minister or some person duly authorized to act for the Minister the address of the client last known to the lawyer so that the Minister may endeavour to advise the client of the claim of privilege that has been made on the client's behalf and may thereby afford the client an opportunity, if it is practicable within the time limited by this section, of waiving the claim of privilege before the matter is to be decided by a judge or other tribunal.

Pre-RSC History: Subsec. 232(14) amended by 1986, c. 6, subsec. 122(5), to add reference to subsection (3.1) and to substitute "the matter is to be decided" for "the matter comes on to be decided".

(15) Compliance — No person shall hinder, molest or interfere with any person doing anything that that person is authorized to do by or pursuant to this section or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other Act or law, every person shall, unless the person is unable to do so, do everything the person is required to do by or pursuant to this section.

Related Provisions: 238(1) — Punishment for failing to comply.

Pre-RSC History: Subsec. 232(15) added by 1986, c. 6, subsec. 122(5).

Definitions [s. 232]: "clear days" — *Interpretation Act* 27(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "county" — *Interpretation Act* 35(1); "custodian", "judge", "lawyer" — 232(1); "Minister" — 248(1); "officer" — 232(1); "person" — 248(1); "province" — *Interpretation Act* 35(1); "record" — 248(1); "servant" — 248(1) (under "employment"); "solicitor-client privilege" — 232(1); "superior court", "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 232]: 73-10R3: Tax evasion.

233. (1) Information return — Every person shall, on written demand from the Minister served personally or otherwise, whether or not the person has filed an information return as required by this Act or the regulations, file with the Minister, within such reasonable time as is stipulated in the demand, the information return if it has not been filed or such information as is designated in the demand.

Related Provisions: 150(2) — Demands for returns; 162 — Penalties; 244(5) — Proof of service by mail; 244(6) — Proof of personal service; 248(7)(a) — Mail deemed received on day mailed.

(2) Partnerships — Every partnership shall, on written demand from the Minister served personally or otherwise on any member of the partnership, file with the Minister, within such reasonable time as is stipulated in the demand, an information return required under section 233.3, 233.4 or 233.6.

Related Provisions: 150(2) — Demands for returns; 162 — Penalties; 233(3) — Tiers of partnerships; 244(5) — Proof of service by mail; 244(6) — Proof of personal service; 244(20)(b) — Service of documents on partnerships; 248(7)(a) — Mail deemed received on day mailed.

(3) Application to members of partnerships — For the purposes of this subsection and subsection (2), a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

History: S. 233 amended by 1997, c. 25, s. 68, applicable to returns required to be filed on or before a day that is after April 29, 1998. S. 233 formerly read:

> 233. Information return — Every person shall, on written demand from the Minister served personally or otherwise, whether or not the person has filed an information return as required by this Act or a regulation, file with the Minister, within such reasonable time as is stipulated in the demand, such information as is designated therein.

S. 233 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 134. S. 233 formerly read:

> 233. Every person shall, on demand from the Minister, served personally or by registered mail, and whether or not the person has filed an information return as required by a regulation made under paragraph 221(1)(d), file with the Minister, within such reasonable time as may be stipulated in the demand, such information as is designated therein.

Pre-RSC History: S. 233 amended to substitute "such information" for "such prescribed information return" by 1988, c. 55, s. 176.

S. 233 substituted by 1979, c. 5, s. 65. S. 233 formerly read:

> 233. Whether or not he has filed an information return as required by a regulation made under paragraph 221(1)(d), every person shall, on demand by registered letter from the Minister, file within such reasonable time as may be stipulated in the registered letter, with the Minister such prescribed information return as is designated in the letter.

Definitions [s. 233]: "Minister" — 248(1); "person", "regulation" — 248(1).

Regulations [s. 233]: 200–233 (information returns).

Information Circulars [s. 233]: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

233.1 (1) Definitions — The definitions in this subsection apply in this section.

"reportable transaction" means

(a) in the case of

(i) a reporting person for a taxation year who is not resident in Canada at any time in the year, or

(ii) a reporting partnership for a fiscal period no member of which is resident in Canada in the period,

a transaction or series of transactions that relate in any manner whatever to a business carried on in Canada by the reporting person or partnership in the year or period or a preceding taxation year or period; and

(b) in any other case, a transaction or series of transactions that relate in any manner whatever to a business carried on by a reporting person (other than a business carried on by a reporting person as a member of a partnership) or partnership in a taxation year or fiscal period.

"reporting partnership" for a fiscal period means a partnership

(a) a member of which is resident in Canada in the period; or

(b) that carries on a business in Canada in the period.

"reporting person" for a taxation year means a person who, at any time in the year,

(a) is resident in Canada; or

(b) is non-resident and carries on a business (other than a business carried on as a member of a partnership) in Canada.

"transaction" includes an arrangement or event.

Related Provisions [233.1(1)"transaction"]: 245(1)"transaction" — Parallel definition under general anti-avoidance rule; 247(1) — Parallel definition re transfer pricing.

(2) Reporting person's information return — Subject to subsection (4), a reporting person for a taxation year shall, on or before the reporting person's filing-due date for the year, file with the Minister, in respect of each non-resident person with whom the reporting person does

not deal at arm's length in the year and each partnership of which such a non-resident person is a member, an information return for the year in prescribed form containing prescribed information in respect of the reportable transactions in which the reporting person and the non-resident person or the partnership, as the case may be, participated in the year.

Related Provisions: 152(4)(b)(iii) — Reassessment period extended by 3 years re non-arm's length transactions with non-residents; 162(7), (10), (10.1) — Penalty for failure to file; 163(2.4)(a) — Penalty of $24,000 for false statement or omission; 233.2–233.7 — Foreign reporting requirements; 247 — Transfer pricing rules; Canada-U.S. Tax Treaty, Art. IX — Adjustments on non-arm's length transactions.

Forms: T106: Information return of non-arm's length transactions with non-residents.

(3) Reporting partnership's information return — Subject to subsection (4), a reporting partnership for a fiscal period shall, on or before the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period or would be required to be so filed if that section applied to the reporting partnership, file with the Minister, in respect of each non-resident person with whom the reporting partnership, or a member of the reporting partnership, does not deal at arm's length in the period and each partnership of which such a non-resident person is a member, an information return for the period in prescribed form containing prescribed information in respect of the reportable transactions in which the reporting partnership and the non-resident person or the partnership, as the case may be, participated in the period.

Related Provisions: 152(4)(b)(iii) — Reassessment period extended by 3 years re non-arm's length transactions with non-residents; 162(7), (10), (10.1) — Penalty for failure to file; 163(2.4)(a) — Penalty of $24,000 for false statement or omission; 233.1(5) — Tiers of partnerships; 233.2–233.7 — Foreign reporting requirements; 247 — Transfer pricing rules; Canada-U.S. Tax Treaty, Art. IX — Adjustments on non-arm's length transactions.

(4) *De minimis* exception — A reporting person or partnership that, but for this subsection, would be required under subsection (2) or (3) to file an information return for a taxation year or fiscal period is not required to file the return unless the total of all amounts, each of which is the total fair market value of the property or services that relate to a reportable transaction in which the reporting person or partnership and any non-resident person with whom the reporting person or partnership, or a member of the reporting partnership, does not deal at arm's length in the year or period, or a partnership of which such a non-resident person is a member, as the case may be, participated in the year or period, exceeds $1,000,000.

(5) Deemed member of partnership — For the purposes of this section, a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

History [s. 233.1]: S. 233.1 amended by 1998, c. 19, s. 231, applicable to taxation years and fiscal periods that begin after 1997. S. 233.1 formerly read:

> 233.1 Information return with respect to certain non-resident persons — Every corporation that, at any time in a taxation year, was resident in Canada or carried on business in Canada shall, in respect of each non-resident person with whom it was not dealing at arm's length at any time in the year, file with the Minister, within 6 months from the end of the year, an annual information return for the year in prescribed form and containing prescribed information in respect of transactions with that person.

Pre-RSC History [s. 233.1]: S. 233.1 enacted by 1988, c. 55, s. 176, applicable to taxation years ending after September 13, 1988.

Definitions [s. 233.1]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "Canada" — 255; "carry on business in Canada" — 253; "filing-due date" — 248(1); "fiscal period" — 249.1; "Minister", "non-resident" — 248(1); "person", "prescribed", "property" — 248(1); "reportable transaction", "reporting partnership", "reporting person" — 233.1(1); "resident in Canada" — 250; "taxation year" — 249; "transaction" — 233.1(1).

Information Circulars [s. 233.1]: 87-2R: International transfer pricing and other international transactions; 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

233.2 (1) Definitions — The definitions in this subsection apply in this section.

"exempt trust" means

(a) a trust that is governed by a foreign retirement arrangement;

(b) a trust that

(i) is resident in a country under the laws of which an income tax is imposed,

(ii) is exempt under the laws referred to in subparagraph (i) from the payment of income tax to the government of that country,

(iii) is established principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits, and

(iv) is either

(A) maintained primarily for the benefit of non-resident individuals, or

(B) governed by an employees profit sharing plan; or

(c) a trust

(i) where the interest of each beneficiary under the trust is described by reference to units, and

(ii) that complies with prescribed conditions.

Related Provisions: 94(1)"exempt foreign trust"(n) — Trust in para. (c) excluded from non-resident trust rules; 233.6(2)(a) — No reporting required on distribution from certain exempt trusts.

Regulations: Reg. 4801.1 (prescribed conditions for subpara. (c)(ii)).

"specified beneficiary" at any time under a trust means

(a) any person beneficially interested in the trust who is not at that time

(i) a mutual fund corporation,

(ii) a non-resident-owned investment corporation,

(iii) a person (other than a trust) all of whose taxable income for the person's taxation year that includes that time is exempt from tax under Part I,

(iv) a trust all of the taxable income of which for its taxation year that includes that time is exempt from tax under Part I,

(v) a mutual fund trust,

(vi) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1),

(vii) a registered investment,

(viii) a trust in which all persons beneficially interested are persons described in subparagraphs (i) to (vii),

(ix) a particular person who is beneficially interested in the trust solely because the particular person is beneficially interested in an exempt trust or a trust described in this subparagraph or any of subparagraphs (iv) to (vi), nor

(x) a particular person who is beneficially interested in the trust only because of a right that is subject to a contingency, where at that time the identity of the particular person as a person beneficially interested in the trust is impossible to determine; or

(b) any person described at that time in any of subparagraphs (a)(i) to (x) who is beneficially interested in the trust, where it is reasonable to consider that the person became beneficially interested in the trust as part of a transaction or event or series of transactions or events one of the purposes of which is to limit the reporting in respect of the trust that would, but for this paragraph, be required under subsection (4).

Proposed Repeal — 233.2(1)"specified beneficiary"

Application: The June 22, 2000 draft legislation, subsec. 22(1), will repeal the definition "specified beneficiary" in subsec. 233.2(1), applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: Existing section 233.2 of the Act requires certain persons who have made transfers or loans to a "specified foreign trust", or to a non-resident corporation that is a controlled foreign affiliate of such a trust, to file annual information returns with respect to the trust. A "specified foreign trust", as defined in subsection 233.2, includes a trust with a "specified beneficiary" resident in Canada. As defined in subsection 233.2(1), a "specified beneficiary" is generally any beneficiary under the trust with the exception of persons listed in subparagraphs (a)(i) to (x) of the definition. For a return to be required to be filed as a consequence of a transfer or loan, it is necessary to have a "non-arm's length indicator", as set out in subsection 233.2(2), apply in respect of the transfer or loan. One of the cases where a "non-arm's length indicator" applies in respect of a transfer to a trust is where the transferor is a "specified beneficiary" under the trust. Subsection 233.2(3) provides a look-through rule so that where a partnership transfers property, it is considered to have been transferred by members of the partnership.

New section 94 sets out new rules governing the taxation of non-resident trusts. In order to be consistent with the new rules:

- the definitions "specified beneficiary" and "specified foreign trust" in section 233.2 are repealed,
- there is no longer a requirement for a "non-arm's length indicator", so the existing rule in subsection 233.2(2) is repealed,
- except as described below, the definitions and rules of application in section 94 apply because of amended subsection 233.2(2), and
- there is no longer a requirement for an explicit look-through rule for partnerships in section 233.2, given that the rule in paragraph 94(2)(m) applies because of amended subsection 233.2(2). Consequently, subsection 233.2(3) is repealed.

Related Provisions: 248(25) — Extended meaning of "beneficially interested".

"specified foreign trust" at any time means a trust (other than an exempt trust) that is non-resident at that time where either

(a) there is a specified beneficiary under the trust who at that time

(i) is resident in Canada,

(ii) is a corporation or trust with which a person resident in Canada does not deal at arm's length, or

(iii) is a controlled foreign affiliate of a person resident in Canada; or

(b) at that time the terms or conditions of the trust or any arrangement in respect of the trust

(i) permit persons (other than persons described in any of subparagraphs (a)(i) to (viii) of the definition "specified beneficiary") who are not beneficially interested in the trust at that time to become, because of the exercise of any discretion by any person or partnership, beneficially interested in the trust after that time, or

(ii) allow property to be distributed, directly or indirectly, to another trust that immediately after the receipt of the distribution can reasonably be expected to be a specified foreign trust.

Proposed Repeal — 233.2(1)"specified foreign trust"

Application: The June 22, 2000 draft legislation, subsec. 22(1), will repeal the definition "specified foreign trust" in subsec. 233.2(1), applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: See under 233.2(1)"specified beneficiary".

Related Provisions: 248(25) — Extended meaning of "beneficially interested".

(2) Non-arm's length indicators — For the purpose of this section,

(a) a non-arm's length indicator applies to a trust at a particular time with respect to a transfer of property made at an earlier time to the trust or a corporation where

(i) immediately after the earlier time the transferor was

(A) a specified beneficiary under the trust,

(B) a person related to a specified beneficiary under the trust,

(C) an uncle, aunt, nephew or niece of a specified beneficiary under the trust, or

(D) a trust or corporation that had, directly or indirectly in any manner whatever, previously acquired the transferred property from a person described in clause (A), (B) or (C),

(ii) the fair market value at the earlier time of the transferred property was greater than the amount, if any, by which

(A) the total fair market value at the earlier time of the consideration, if any, given to the transferor for the transfer of property at the earlier time

exceeds

(B) the portion of the total described in clause (A) that is attributable to the fair market value of an interest as a beneficiary in the trust or a share or debt issued by the corporation,

(iii) the consideration received by the transferor in respect of the transfer included indebtedness on which

(A) interest was not charged in respect of a period that began before the particular time,

(B) interest was charged in respect of a period that began before the particular time at a rate that was less than the lesser of

(I) the prescribed rate that was in effect at the earlier time, and

(II) the rate that would, having regard to all the circumstances, have been agreed on at

the earlier time between parties dealing with each other at arm's length,

(C) any interest that was payable at the end of any calendar year that ended at or before the particular time was unpaid on the day that is 180 days after the end of that calendar year, or

(D) the amount of interest that was payable at the end of any calendar year that ended at or before the particular time was paid on or before the day that is 180 days after the end of that calendar year and it is established, by subsequent events or otherwise, that the payment was made as part of a series of loans or other transactions and repayments,

(iv) the property transferred was a share of the capital stock of a corporation or an interest in another trust and a specified beneficiary under the trust is related to the corporation or the other trust or would be so related if paragraph 80(2)(j) applied for the purposes of this subparagraph, or

(v) the transfer was made as part of a series of transactions or events one of the purposes of which was to avoid the application of this paragraph; and

(b) a non-arm's length indicator applies to a trust at a particular time with respect to a loan made at an earlier time where

(i) interest was not charged on the loan in respect of a period that began before the particular time,

(ii) interest was charged on the loan in respect of a period that began before the particular time at a rate that was less than the lesser of

(A) the prescribed rate that was in effect at the earlier time, and

(B) the rate that would, having regard to all the circumstances, have been agreed on at the earlier time between parties dealing with each other at arm's length,

(iii) any interest on the loan that was payable at the end of any calendar year that ended at or before the particular time was unpaid on the day that is 180 days after the end of that calendar year,

(iv) the amount of interest on the loan that was payable at the end of any calendar year that ended at or before the particular time was paid on or before the day that is 180 days after the end of that calendar year and it is established, by subsequent events or otherwise, that the payment was made as part of a series of loans or other transactions and repayments, or

(v) the loan was made as part of a series of transactions or events one of the purposes of which was to avoid the application of this paragraph.

Related Provisions: 233.2(3) — Property transferred or lent by partnership; 248(10) — Series of transactions or events; 252(2) — Extended meaning of "uncle", "aunt", "nephew" and "niece".

Regulations: Reg. 4301(c) (prescribed rate of interest for 233.2(2)(a)(iii)(B)(I) and 233.2(2)(b)(ii)(A).

(3) Partnerships — For the purpose of this section, where property is transferred or lent at any time by a partnership, the property is deemed to have been transferred or lent at that time by each of the members of the partnership.

Proposed Amendment — 233.2(2), (3)

(2) Rule of application — Subsections 94(1) and (2) apply for the purposes of this section (other than paragraph (4.1)(b)) and paragraph 233.5(c.1), except that for these purposes the definition "arm's length transfer" in subsection 94(1) shall be read without reference to subparagraph (a)(v) of that definition.

Application: The June 22, 2000 draft legislation, subsec. 22(2), will amend subsec. 233.2(2) to read as above, and repeal subsec. (3), applicable to returns in respect of taxation years that begin after 2000.

Technical Notes: See under 233.2(1)"specified beneficiary".

(4) Filing information on specified foreign trusts — Where

(a) at any time (in this subsection referred to as the "transfer time") before the end of a trust's taxation year (in this subsection referred to as the "trust's year"), property was transferred or lent, either directly or indirectly in any manner whatever, by any person (in this subsection referred to as the "transferor") to

(i) the trust, or

(ii) a corporation that, at the transfer time, would have been a controlled foreign affiliate of the trust if the trust had been resident in Canada,

(b) the trust was a specified foreign trust at any time in the trust's year, and

(c) a non-arm's length indicator applied to the trust at the end of the trust's year in respect of the transfer or loan,

the following rules apply:

(d) where the transferor is resident in Canada at the end of the trust's year, the transferor shall make an information return in respect of the trust's year in prescribed form and file it with the Minister on or before the transferor's filing-due date for the transferor's taxation year that includes the end of the trust's year, and

(e) where

(i) the transferor was, at the transfer time, a corporation that would have been a controlled foreign affiliate of a particular person if the particular person had been resident in Canada, and

(ii) the particular person is resident in Canada at the end of the trust's year,

the particular person shall make an information return in respect of the trust's year in prescribed form and file it with the Minister on or before the filing-due date for the particular person's taxation year that includes the end of the trust's year.

Proposed Amendment — 233.2(4), (4.1)

(4) Filing information on foreign trusts — Where

(a) a contribution has been made by a person to a particular trust (other than an exempt trust or a trust described in any of paragraphs (c) to (i) of the definition "exempt foreign trust" in subsection 94(1)) at any time in a taxation year of the particular trust or in a preceding taxation year,

(b) the person is

(i) resident in Canada at the end of the particular trust's taxation year, and

(ii) not, at the end of the year,

(A) a mutual fund corporation,

(B) a non-resident-owned investment corporation,

(C) a person (other than a trust) all of whose taxable income for the person's taxation year that includes that time is exempt from tax under Part I,

(D) a trust all of the taxable income of which for its taxation year that includes that time is exempt from tax under Part I,

(E) a mutual fund trust,

(F) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1),

(G) a registered investment,

(H) a trust in which all persons beneficially interested are persons described in clauses (A) to (G), or

(I) a person who is a contributor to the particular trust only because of being a contributor to a trust described in any of clauses (D) to (H), and

(c) the particular trust is not resident in Canada at the end of its taxation year,

the person shall file an information return in prescribed form, in respect of the particular trust's taxation year, with the Minister on or before the person's filing-due date for the person's taxation year in which the particular trust's taxation year ends.

Technical Notes: Under amended subsection 233.2(4), reporting will generally be required for a taxation year whenever a "contribution" has been made by a person resident in Canada to a non-resident trust at or before the end of the year. Because of amended subsection 233.2(2), the expression "contribution" generally carries the same meaning as in new section 94 with most of the same exceptions for "arm's length transfers" contained in the definition of that expression in subsection 94(1). However, the exception contained in subparagraph (a)(v) of that definition (transfers or loans not undertaken to allow for the conferral of benefits on non-arm's length persons) does not give rise to an exception to the obligations for reporting under subsection 233.2(4). It should be noted that amended subsection 233.2(2) also applies for the purpose of new paragraph 233.5(c.1).

New subparagraph 233.2(4)(b)(ii) sets out a list of persons for whom reporting obligations are not imposed. This list is consistent with the list of beneficiaries who are not treated as "specified beneficiaries" under the existing rules in section 233.2.

Amended subsection 233.2(4) of the Act also exempts contributors from filing information returns with regard to trusts described in paragraphs (c) to (i) of the new definition "exempt foreign trust" in subsection 94(1). For more detail in this regard, see the commentary on that definition.

These amendments apply to returns in respect of taxation years that begin after 2000.

(4.1) Similar arrangements — Where

(a) property is at any time, directly or indirectly, transferred or loaned by a person to be held

(i) under an arrangement governed by laws that are not laws of Canada or a province, or

(ii) by a non-resident entity (within the meaning assigned by subsection 94.1(1)),

(b) the transfer or loan would not be an arm's length transfer (within the meaning assigned by the definition "arm's length transfer" in subsection 94(1) if that definition were read without reference to the words "in respect of a trust" and to subparagraph (a)(v)),

(c) the transfer or loan is not solely in exchange for property that would be described in paragraphs (a) to (i) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (j) to (q),

(d) the entity or arrangement is not a trust in respect of which the person would, but for this subsection, be required to file an information return for a taxation year that includes that time, and

(e) the entity or arrangement is not an exempt foreign trust (within the meaning assigned by subsection 94(1)) or an exempt trust,

for the purposes of this section and sections 162, 163 and 233.5, the person's obligations under subsection (4) (except to the extent that they are waived in writing by the Minister) shall be determined as if the transfer were a contribution to which paragraph (4)(a) applied, the entity or arrangement were a trust not resident in Canada throughout the calendar year that includes that time and the taxation year of the entity or arrangement were that calendar year.

Technical Notes: New subsection 94(3) of the Act provides that, where a non-resident trust has a resident contributor or resident beneficiary at the end of the trust's taxation year, the trust is generally taxed on its income in Canada for the year as if the trust were resident in Canada. However, subsection 94(3) applies only to arrangements that are considered to be trusts for Canadian income tax purposes. In some cases, there may be doubt as to whether a given arrangement is a trust for Canadian income tax purposes.

New subsection 233.2(4.1), in combination with new subsection 233.2(4), imposes a filing obligation on contributors to certain entities or arrangements in respect of which reporting is not otherwise required. One of the key objectives of subsection 233.2(4.1) is to ensure that claims that section 94 does not apply can be reviewed by the CCRA.

More specifically, new subsection 233.2(4.1) applies where property has, directly or indirectly, been transferred or loaned by a person to be held

- under an arrangement governed by laws that are not laws of Canada or a province, or
- by a non-resident entity (as defined in subsection 94.1(1)).

The person must, where certain additional conditions are satisfied, file the information return referred to in amended subsection 233.2(4).

New subsection 233.2(4.1) provides that, except as the Minister of National Revenue otherwise permits in writing, the person has obligations under amended subsection 233.2(4) if all of the following conditions are satisfied:

- the transfer or loan would not be an arm's length transfer (within the meaning assigned by the definition "arm's length transfer" in subsection 94(1) if that definition were read without reference to the words "in respect of a trust" and to subparagraph (a)(v) of that definition);
- the transfer or loan is not solely in exchange for property that would be described in paragraphs (a) to (i) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (j) to (q) of that definition;
- the entity or arrangement is not a trust in respect of which the person would, without reference to subsection 233.2(4.1) and the explicit exemptions for filing returns contained in subsection 233.2(4), be required to file an information return for a taxation year that includes that time; and

- the entity or arrangement is not an exempt foreign trust (as defined in subsection 94(1)) or an exempt trust (as defined in subsection 233.2(1)).

Where the above conditions are satisfied, the person's obligations under subsection 233.2(4) and related provisions are determined as if:

- the transfer were a contribution to which paragraph 233.2(4)(a) applied;
- the entity or arrangement were a trust not resident in Canada throughout the calendar year that includes the time of the transfer or loan; and
- the taxation year of the entity or arrangement were that calendar year.

These amendments apply to returns in respect of taxation years that begin after 2000.

Application: The June 22, 2000 draft legislation, subsec. 22(3), will amend subsec. 233.2(4) to read as above, and add subsec. (4.1), applicable to returns in respect of taxation years that begin after 2000.

Related Provisions: 162(10), (10.1) — Penalty for failure to file; 163(2.4)(b) — Minimum $24,000 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233.2(2) — Presence of non-arm's length indicators; 233.2(4.1) — Similar arrangements; 233.2(5) — Election to use other person's information return; 233.3(3) — Requirement to file return re foreign property; 233.5 — Due diligence exception; 233.6(2)(b) — No return required on distribution from trusts where return required under 233.2; 233.7 — No requirement to file in first year of immigration; 248(25.1) — Transfer to non-resident bare trust.

Forms: T1141: Information return re transfers or loans to a non-resident trust.

(5) Joint filing — Where information returns in respect of a trust's taxation year would, but for this subsection, be required to be filed under subsection (4) by a particular person and another person, and the particular person identifies the other person in an election filed in writing with the Minister, for the purposes of applying this Act to the particular person

(a) the information return filed by the other person shall be treated as if it had been filed by the particular person;

(b) the information required to be provided with the return by the particular person shall be deemed to be the information required to be provided by the other person with the return;

(c) the day on or before which the return is required to be filed by the particular person is deemed to be the later of the day on or before which

(i) the return would, but for this subsection, have been required to have been filed by the particular person, and

(ii) the return is required to have been filed by the other person; and

(d) each act and omission of the other person in respect of the return is deemed to be an act or omission of the particular person.

History [s. 233.2]: Subpara. (b)(iv) of the definition "exempt trust" in subsec. 233.2(1) amended by 1998, c. 19, subsec. 232(1), applicable to returns in respect of trusts' taxation years that begin after 1995. Subpara. (b)(iv) of the definition formerly read:

(iv) is maintained primarily for the benefit of non-resident individuals; or

The portion of para. (b) of the definition "specified foreign trust" in subsec. 233.2(1) before subpara. (ii) and para. 233.2(4)(c), amended by the said c. 19, subsecs. 232(2), (3), applicable after November 1997. The portion of para. (b) of the definition "specified foreign trust" before subpara. (ii) and para. 233.2(4)(c) formerly read:

(b) at that time the terms of the trust

(i) permit persons (other than persons described in any of subparagraphs (a)(i) to (viii) of the definition "specified beneficiary") to be added as beneficiaries under the trust after that time who are not beneficially interested in the trust at that time and who may be resident in Canada at the time of being so added, or

. . . . .

(c) unless paragraph (b) of the definition "specified foreign trust" in subsection (1) applies, a non-arm's length indicator applied to the trust at the end of the trust's year with respect to the transfer or loan,

S. 233.2 added by 1997, c. 25, s. 69, applicable to returns in respect of trusts' taxation years that begin after 1995, except that such a return in respect of a taxation year that ends in 1996, 1997 or 1998 is required to be filed on or before the later of

(a) April 30, 1998, and

(b) the day on or before which the return is otherwise required to be filed.

Definitions [s. 233.2]: "amount" — 248(1); "arm's length" — 251(1); "aunt" — 252(2)(e); "beneficially interested" — 248(25); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "exempt foreign trust" — 94(1); "exempt trust" — 233.2(1); "employee" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "filing-due date" — 248(1); "foreign retirement arrangement" — 248(1), Reg. 6803; "individual" — 248(1); "mutual fund corporation" — 131(8), (8.1), 248(1); "Minister" — 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "nephew", "niece" — 252(2)(g); "non-arm's length indicator" — 233.2(2); "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "person", "prescribed" — 248(1); "prescribed rate" — Reg. 4301; "property" — 248(1); "registered investment" — 204.4(1), 248(1); "related" — 251(2); "resident in Canada" — 250; "series of transactions" — 248(10); "specified beneficiary", "specified foreign trust" — 233.2(1); "taxation year" — 249; "transfer time", "transferor" — 233.2(4)(a); "trust" — 104(1), 248(1), (3); "trust's year" — 233.2(4)(a); "uncle" — 252(2)(f); "writing" — *Interpretation Act* 35(1).

233.3 (1) Definitions — The definitions in this subsection apply in this section.

"reporting entity" for a taxation year or fiscal period means a specified Canadian entity for the year or period where, at any time (other than a time when the entity is non-resident) in the year or period, the total of all amounts each of which is the cost amount to the entity of a specified foreign property of the entity exceeds $100,000.

Related Provisions: 233.6(2)(c) — No return required on distribution from certain trusts to reporting entity.

"specified Canadian entity" for a taxation year or fiscal period means

(a) a taxpayer resident in Canada in the year that is not

(i) a mutual fund corporation,

(ii) a non-resident-owned investment corporation,

(iii) a person (other than a trust) all of whose taxable income for the year is exempt from tax under Part I,

(iv) a trust all of the taxable income of which for the year is exempt from tax under Part I,

(v) a mutual fund trust,

(vi) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1),

(vii) a registered investment, nor

(viii) a trust in which all persons beneficially interested are persons described in subparagraphs (i) to (vii); and

(b) a partnership (other than a partnership all the members of which are taxpayers referred to in any of subparagraphs (a)(i) to (viii)) where the total of all amounts, each of which is a share of the partnership's income or loss for the period of a non-resident member, is less than 90% of the income or loss of the partnership for the period, and, where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a member's share of the partnership's income for the purpose of this paragraph.

Related Provisions: 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed] — Certain trusts deemed resident in Canada; 248(25) — Meaning of "beneficially interested".

"specified foreign property" of a person or partnership means any property of the person or the partnership that is

(a) funds or intangible property which are situated, deposited or held outside Canada,

(b) tangible property situated outside Canada,

(c) a share of the capital stock of a non-resident corporation,

(d) an interest in a non-resident trust or a trust that, but for section 94, would be a non-resident trust for the purpose of this section,

Proposed Amendment — 233.3(1)"specified foreign property"(d)

(d) an interest in a non-resident trust or in a trust that, but for subparagraph 94(3)(a)(ii), would be non-resident,

Application: The June 22, 2000 draft legislation, subsec. 23(1), will amend para. (d) of the definition "specified foreign property" in subsec. 233.3(1) to read as above, applicable to interests in a trust held at any time in taxation years of the trust that begin after 2000.

Technical Notes: Section 233.3 of the Act provides reporting requirements in respect of foreign property. In general terms, it provides that certain taxpayers resident in Canada and certain partnerships must file an information return with respect to their "specified foreign property" if the total cost amount of such property exceeds $100,000. For this purpose, "specified foreign property" (as defined in subsection 233.3(1)) includes an interest in a non-resident trust or a trust that would be non-resident were it not for section 94. It does not include an interest in a non-resident trust that was not acquired for consideration by the person or partnership.

Paragraph (d) of the definition "specified foreign property" is amended by changing a cross-reference to section 94 to a cross-reference to new subparagraph 94(3)(a)(ii). This amendment is strictly consequential on amendments to section 94. As a consequence, interests in trusts deemed to be resident of Canada because of section 94 are "specified foreign property" unless otherwise expressly excluded.

Proposed Addition — 233.3(1)"specified foreign property"(d.1)

(d.1) an interest in an insurance policy that is deemed by subsection 94.2(10) to be a participating interest in a non-resident entity,

Application: The June 22, 2000 draft legislation, subsec. 23(2), will add para. (d.1) to the definition "specified foreign property" in subsec. 233.3(1), applicable to returns for taxation years that begin after 2001.

Technical Notes: Paragraph (d.1) of the definition is introduced so that specified foreign property includes an interest in an insurance policy issued by a non-resident insurer, if the mark-to-market regime in section 94.2 applies in respect of the interest. For further detail in this regard, see the commentary on new subsection 94.2(10).

(e) an interest in a partnership that owns or holds specified foreign property,

(f) an interest in, or right with respect to, an entity that is non-resident,

(g) indebtedness owed by a non-resident person,

(h) an interest in or right, under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to any property (other than any property owned by a corporation or trust that is not the person) that is specified foreign property, and

(i) property that, under the terms or conditions thereof or any agreement relating thereto, is convertible into, is exchangeable for or confers a right to acquire, property that is specified foreign property,

but does not include

(j) property that is used or held exclusively in the course of carrying on an active business of the person or partnership (determined as if the person or partnership were a corporation resident in Canada),

(k) a share of the capital stock or indebtedness of a non-resident corporation that is a foreign affiliate of the person or partnership for the purpose of section 233.4,

(l) an interest in, or indebtedness of, a non-resident trust that is a foreign affiliate of the person or partnership for the purpose of section 233.4,

Proposed Repeal — 233.3(1)"specified foreign property"(l)

Application: The June 22, 2000 draft legislation, subsec. 23(3), will repeal para. (l) of the definition "specified foreign property" in subsec. 233.3(1), applicable to interests in a trust held at any time in taxation years of the trust that begin after 2000.

Technical Notes: Paragraph (l) of the definition is repealed to eliminate a reference to trusts that are treated as foreign affiliates. This reference is no longer necessary in light of new subsection 94(1), under which non-resident trusts are no longer treated as foreign affiliates.

(m) an interest in a non-resident trust that was not acquired for consideration by either the person or partnership or a person related to the person or partnership,

Proposed Amendment — 233.3(1)"specified foreign property"(m)

(m) an interest in a non-resident trust (or in a trust that, but for subparagraph 94(3)(a)(ii), would be non-resident) that was not acquired for consideration by the person or partnership or by a person related to the person or partnership,

Application: The June 22, 2000 draft legislation, subsec. 23(4), will amend para. (m) of the definition "specified foreign property" in subsec. 233.3(1) to read as above, applicable to interests in a trust held at any time in taxation years of the trust that begin after 2000.

Technical Notes: Paragraph (m) of the definition is amended so that the exclusion for non-resident trusts that applies with regard to interests not acquired for consideration also applies to trusts that are deemed to be resident in Canada by subsection 94(3). This amendment is made for consistency.

These amendments generally apply to interests in a trust held in taxation years of the trust that begin after 2000. However, new paragraph (d.1) applies in respect of returns required to be filed for taxation years that begin after 2001, in order to be consistent with new subsection 94.2(10).

(n) an interest in a trust described in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1),

(o) an interest in a partnership that is a specified Canadian entity,

(p) personal-use property of the person or partnership, and

(q) an interest in or right to acquire a property that is described in any of paragraphs (j) to (p).

Related Provisions: 94.2(10) — Treatment of foreign insurance policies.

(2) Application to members of partnerships — For the purpose of this section, a person who is a member of a partnership that is a member of another partnership

(a) is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

(3) Returns respecting foreign property — A reporting entity for a taxation year or fiscal period shall file with the Minister for the year or period a return in prescribed form on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

Related Provisions: 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed] — Application to trust deemed resident in Canada; 162(7), (10), (10.1) — Penalty for failure to file; 163(2.4)(c) — Minimum $24,000 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233(2) — Demand for return by partnership; 233.2(4) — Requirement to file return re transfers to foreign trusts; 233.7 — No requirement to file in first year of immigration.

Forms: T1135: Information return relating to foreign property.

History [s. 233.3]: S. 233.3 added by 1997, c. 25, s. 69, applicable (as amended by 1999, c. 22, s. 91, deemed to have come into force on April 25, 1997) to returns for taxation years and fiscal periods that begin after 1997, except that such a return for a taxation year or fiscal period that ends in 1998 is required to be filed on or before the later of

(a) April 30, 1999, and

(b) the day on or before which the return is otherwise required to be filed.

Definitions [s. 233.3]: "active business", "amount" — 248(1); "beneficially interested" — 248(25); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date", "Minister", "non-resident" — 248(1); "personal-use property" — 54, 248(1); "property" — 248(1); "registered investment" — 204.4(1), 248(1); "reporting entity" — 233.3(1); "resident in Canada" — 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed], 250; "share" — 248(1); "specified Canadian entity", "specified foreign property" — 233.3(1); "trust" — 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

233.4 (1) Reporting entity — For the purpose of this section, "reporting entity" for a taxation year or fiscal period means

(a) a taxpayer resident in Canada (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) of which a non-resident corporation is a foreign affiliate at any time in the year;

(b) a taxpayer resident in Canada (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) of which a non-resident trust is a foreign affiliate at any time in the year; and

Proposed Repeal — 233.4(1)(b)

Application: The June 22, 2000 draft legislation, subsec. 24(1), will repeal para. 233.4(1)(b), applicable to taxation years and fiscal periods that begin after 2000.

Technical Notes: Section 233.4 of the Act provides reporting requirements in respect of foreign affiliates. In general terms, it provides that taxpayers resident in Canada (or certain partnerships) of which a non-resident corporation or non-resident trust is a foreign affiliate must file an information return in respect of the affiliate.

Subsections 233.4(1) and (2) are amended to eliminate references to foreign affiliates that are non-resident trusts. These references are no longer necessary in light of new subsection 94(1), under which non-resident trusts are no longer treated as foreign affiliates.

These amendments apply to taxation years and fiscal periods that begin after 2000.

(c) a partnership

(i) where the total of all amounts, each of which is a share of the partnership's income or loss for the period of a non-resident member, is less than 90% of the income or loss of the partnership for the period, and, where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a member's share of the partnership's income for the purpose of this subparagraph, and

(ii) of which a non-resident corporation or trust is a foreign affiliate of which[12] at any time in the fiscal period.

Proposed Amendment — 233.4(1)(c)(ii)

(ii) of which a non-resident corporation is a foreign affiliate at any time in the fiscal period.

Application: The June 22, 2000 draft legislation, subsec. 24(2), will amend subpara. 233.4(1)(c)(ii) to read as above, applicable to taxation years and fiscal periods that begin after 2000.

Technical Notes: See under 233.4(1)(b).

Related Provisions: 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed] — Certain trusts deemed resident in Canada.

(2) Rules of application — For the purpose of this section, in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

Proposed Amendment — 233.4(2)

(2) Rules of application — For the purpose of this section, in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

Application: The June 22, 2000 draft legislation, subsec. 24(3), will amend the opening words of subsec. 233.4(2) to read as above, applicable to taxation years and fiscal periods that begin after 2000.

Technical Notes: See under 233.4(1)(b).

(a) paragraph (b) of the definition "equity percentage" in subsection 95(4) shall be read as if the reference to

[12] *Sic.*

"any corporation" were a reference to "any corporation other than a corporation resident in Canada";

(b) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(c) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

Related Provisions: 94(1)(d) — Trust deemed to be controlled foreign affiliate.

(3) Application to members of partnerships — For the purpose of this section, a person who is a member of a partnership that is a member of another partnership

(a) is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

Related Provisions: 162(7), (10), (10.1) — Penalty for failure to file.

(4) Returns respecting foreign affiliates — A reporting entity for a taxation year or fiscal period shall file with the Minister for the year or period a return in prescribed form in respect of each foreign affiliate of the entity in the year or period within 15 months after the end of the year or period.

Related Provisions: 162(10), (10.1) — Penalty for failure to file; 163(2.4)(d) — Minimum $24,000 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233(2) — Demand for return by partnership; 233.6(2)(d) — No return required on distribution from trust where return required under 233.4; 233.7 — No requirement to file in first year of immigration.

Forms: T1134: Information return relating to foreign affiliates; T1134-A: Information return re foreign affiliates that are not controlled foreign affiliates; T1134-B: Information return re controlled foreign affiliates.

History [s. 233.4]: S. 233.4 added by 1997, c. 25, s. 69, applicable to returns for taxation years and fiscal periods that begin after 1995, except that such a return for a taxation year or fiscal period that ends in 1996, 1997 or 1998 is required to be filed on or before the later of

(a) June 30, 1998, and

(b) the day on or before which the return is otherwise required to be filed.

Definitions [s. 233.4]: "amount" — 248(1); "Canada" — 255; "controlled foreign affiliate" — 95(1), 233.4(2), 248(1); "corporation" — 94(1)(d), 248(1), *Interpretation Act* 35(1); "filing-due date" — 248(1); "fiscal period" — 249.1; "foreign affiliate" — 95(1), 233.4(2), 248(1); "non-resident" — 248(1); "person" — 248(1); "reporting entity" — 233.4(1); "resident in Canada" — 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed], 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

233.5 Due diligence exception — The information required in a return filed under section 233.2 or 233.4 does not include information that is not available, on the day on which the return is filed, to the person or partnership required to file the return where

(a) there is a reasonable disclosure in the return of the unavailability of the information;

(b) before that day, the person or partnership exercised due diligence in attempting to obtain the information;

(c) if

(i) the return is required to be filed under section 233.2, or

(ii) the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate, for the purpose of that section, of the person or partnership,

it was reasonable to expect, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, that sufficient information would be available to the person or partnership to comply with that section; and

Proposed Amendment — 233.5(c), (c.1), (c.2)

(c) if the return is required to be filed under section 233.2 in respect of a trust, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 and before June 23, 2000 that gave rise to the requirement to file a return for a taxation year of the trust that began before 2001 or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2 in respect of each taxation year of the trust that began before 2001;

(c.1) if the return is required to be filed under section 233.2, at the time of each contribution (determined with reference to subsection 233.2(2)) made by the person or partnership after June 22, 2000 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2;

(c.2) if the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate, for the purpose of that section, of the person or partnership, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.4; and

Application: The June 22, 2000 draft legislation, s. 25, will amend para. 233.5(c) to read as above, and add paras. (c.1) and (c.2), applicable to returns required to be filed for taxation years that begin after 2000.

Technical Notes: Section 233.5 of the Act provides that, where specified conditions set out in paragraphs 233.5 (a) to (d) are met, information required in a return filed under section 233.2 or 233.4 does not include information that is not available to the person or partnership required to file the return. In the case of a return required to be filed by a person or partnership under section 233.2, paragraph 233.5(c) provides that it must be reasonable for the person or partnership to expect, at the time of each transaction entered into by the person or partnership after March 5, 1996 that either gives rise to the requirement to file the return or that affects the information to be reported in the return, that sufficient information would be available to the person or partnership to comply with section 233.2.

Paragraph 233.5(c) is amended so that it only applies in connection with transactions entered into before June 23, 2000. In connection with trust returns required to be filed for trust taxation years that begin after 2000, it must be reasonable for the person or partnership to expect that sufficient information would have been available to the person or partnership to comply with section 233.2 if the proposed amendments to section 94 were not taken into account.

Paragraph 223.5(c) is also amended so that it does not apply to returns required to be filed under section 233.4. It is replaced in this respect by new paragraph 233.5(c.2), without any change in the specified conditions for such returns.

Paragraph 233.5(c.1) is introduced in connection with returns required to be filed under section 233.2 by a person or partnership for a taxation year of the trust that begins after 2000. Where "contributions" (determined with reference to subsection 233.2(2), referred to in the commentary above) are made after June 22, 2000, relief under section 233.5 is available only if it was reasonable for the person or partnership to expect, at the time of each such contribution that either gives rise to the requirement to file the return or that affects the information to be reported in the return, that sufficient information would be available to the person or partnership to comply with section 233.2.

(d) if the information subsequently becomes available to the person or partnership, it is filed with the Minister not more than 90 days after it becomes so available.

History [s. 233.5]: S. 233.5 added by 1997, c. 25, s. 69, applicable to returns required to be filed on or before a day that is after April 29, 1998.

Definitions [s. 233.5]: "corporation" — 248(1), *Interpretation Act* 35(1); "controlled foreign affiliate" — 95(1), 248(1); "Minister" — 248(1); "person" — 248(1).

233.6 (1) Returns respecting distributions from non-resident trusts — Where a specified Canadian entity (as defined by subsection 233.3(1)) for a taxation year or fiscal period receives a distribution of property from, or is indebted to, a non-resident trust (other than a trust that was an excluded trust in respect of the year or period of the entity or an estate that arose on and as a consequence of the death of an individual) in the year or period and the entity is beneficially interested in the trust at any time in the year or period, the entity shall file with the Minister for the year or period a return in prescribed form on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

Related Provisions: 162(7) — Penalty for failure to file; 163(2.4)(e) — Minimum $2,500 penalty for false statement or omission; 220(2.1) — Waiver of filing requirement; 220(3) — Extension of time to file return; 233.5(2) — Meaning of "excluded trust"; 233.7 — No requirement to file in first year of immigration; 248(25) — Extended meaning of "beneficially interested".

Forms: T1142: Information return re distributions from and indebtedness to a non-resident trust.

(2) Excluded trust defined — For the purpose of subsection (1), an excluded trust in respect of the taxation year or fiscal period of an entity means

(a) a trust described in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1) throughout the portion of the year or period during which the trust was extant;

(b) a trust in respect of which the entity is required by section 233.2 to file a return in respect of each taxation year of the trust that ends in the entity's year;

(c) a trust an interest in which is at any time in the year or period specified foreign property (as defined by subsection 233.3(1)) of the entity, where the entity is a reporting entity (as defined by subsection 233.3(1)) for the year or period; and

(d) a trust in respect of which the entity is required by section 233.4 to file a return for the year or period.

Related Provisions [subsec. 233.6(2)]: 233(1) — Demand for return by partnership.

History [s. 233.6]: S. 233.6 added by 1997, c. 25, s. 69, applicable (as amended by 1999, c. 22, s. 91, deemed to have come into force on April 25, 1997) to returns for taxation years and fiscal periods that begin after 1995, except that

(a) such a return for a taxation year or fiscal period that ended in 1996, 1997 or 1998 is required to be filed on or before the later of

(i) April 30, 1998, and

(ii) the day on or before which the return is otherwise required to be filed;

(b) for taxation years and fiscal periods that began before 1998, subsec. 233.6(2) shall be read without reference to para. 233.6(2)(c); and

(c) for returns for taxation years and fiscal periods that began after 1995 and before 1998, the reference to "specified Canadian entity" in subsec. 233.6(1) shall have the meaning that would be assigned to that expression by subsec. 233.3(1) if it applied for those returns.

Definitions [s. 233.6]: "beneficially interested" — 248(25); "consequence of the death" — 248(8).

233.7 Exception for first-year residents — Notwithstanding sections 233.2, 233.3, 233.4 and 233.6, a person who, but for this section, would be required under any of those sections to file an information return for a taxation year, is not required to file the return if the person is an individual (other than a trust) who first became resident in Canada in the year.

History [s. 233.7]: S. 233.7 added by 1997, c. 25, s. 69, applicable to returns required to be filed on or before a day that is after April 29, 1998.

Definitions [s. 233.7]: "individual", "person" — 248(1); "resident in Canada" — 250; "taxation year" — 249; "trust" — 104(1), 248(1), (3).

234. (1) Ownership certificates — Before a bearer coupon or warrant representing either interest or dividends payable by any debtor or cheque representing dividends or interest payable by a non-resident debtor is negotiated by or on behalf of a resident of Canada, there shall be completed by or on behalf of the resident an ownership certificate in prescribed form.

Related Provisions: 162(4) — Failure to complete ownership certificate.

Forms: NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax; T600: Ownership certificate; T600B: Ownership certificate; T600C: Statement of cash bonus payment — Canada Savings Bonds.

(2) Idem — An ownership certificate completed pursuant to subsection (1) shall be delivered in such manner, at such time and at such place as may be prescribed.

Pre-RSC History: Subsec. 234(2) substituted by 1988, c. 55, subsec. 177(1). Subsec. 234(2) formerly read:

(2) Idem — An ownership certificate completed pursuant to subsection (1) shall be delivered in such manner, at such time and at such place as may be prescribed and a person who has failed to do so is liable on summary conviction to a fine of not less than $10 and not exceeding $100.

Regulations: 207 (prescribed time).

Forms: NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax.

(3) Idem — The operation of this section may be extended by regulation to bearer coupons or warrants negotiated by or on behalf of non-resident persons.

(4)–(6) [Repealed under former Act]

Pre-RSC History: Subsec. 234(4) repealed by 1988, c. 55, subsec. 177(2). Subsec. 234(4) formerly read:

> (4) Idem — A person who has failed to complete an ownership certificate as required by or under this Act and a debtor or other person who has cashed a coupon or warrant for which an ownership certificate has not been completed, is liable on summary conviction to a fine of not less than $10 and not exceeding $100.

Subsecs. 234(5), (6) repealed by 1980-81-82-83, c. 48, s. 106, applicable with respect to amounts paid or credited after December 11, 1979. Subsecs. 234(5), (6) formerly read:

> (5) Withholding — Where an amount is to be paid or credited to a resident of Canada who is an individual, other than a trust, in circumstances where an ownership certificate referred to in subsection (1) is required to be completed, and the ownership certificate does not contain a Social Insurance Number assigned to the individual by the Unemployment Insurance Commission, the debtor or other person paying or crediting the amount shall deduct or withhold therefrom an amount equal to 25% thereof and shall forthwith remit that amount to the Receiver General of Canada on account of the individual's tax for the year under Part I and shall submit therewith a statement in prescribed form.
>
> (6) Amount withheld deemed paid or credited — Where an amount has been deducted or withheld under subsection (5) from an amount paid or credited to an individual, it shall, for the purposes of this Act, be deemed to have been received by the individual at the time the amount was paid or credited to him.

Subsecs. 234(5), (6) added by 1976-77, c. 4, s. 75, applicable after December 31, 1976.

Definitions [s. 234]: "amount", "dividend", "individual", "non-resident", "person", "prescribed", "regulation" — 248(1); "trust" — 104(1), 248(1), (3).

234.1 [Repealed under former Act]

Pre-RSC History: S. 234.1 repealed by 1984, c. 1, s. 102, applicable with respect to purchases of aviation turbine fuel made after April 30, 1983. S. 234.1 formerly read:

> 234.1 (1) Purchase of aviation turbine fuel — Every air carrier resident in Canada who has purchased aviation turbine fuel in Canada and used the fuel on an international flight shall, with respect to each such purchase, complete a fuel certificate in prescribed form specifying the amount of such aviation turbine fuel used on an international flight.
>
> (2) Fuel certificate — A fuel certificate completed pursuant to subsection (1) shall be delivered in such manner and at such time and place as may be prescribed.
>
> (3) Penalty — Every air carrier resident in Canada who has purchased aviation turbine fuel in Canada is liable to a penalty of $100 for each cubic metre of such fuel that was used on an international flight and was not specified in a fuel certificate delivered as required by subsection (2).
>
> (4) Meaning of "international flight" — For the purposes of this section and subsections 69(7.1) and (11), an "international flight" does not include any flight of an aircraft having a maximum takeoff weight not exceeding 34,000 kilograms.

S. 234.1 added by 1980-81-82-83, c. 140, s. 125, applicable to purchases made after January 31, 1982.

235. Penalty for failing to file corporate returns

— Every corporation that fails to file a return for a taxation year as and when required by section 150, 181.6 or 190.2 is liable, in addition to any penalty otherwise provided, to a penalty for each such failure equal to the amount determined by the formula

$$.0025 \text{ A} \times \text{B}$$

where

A is the total of the taxes that would be payable under Parts I.3 and VI by the corporation for the year if this Act were read without reference to subsections 181.1(4) and 190.1(3); and

B is the number of complete months, not exceeding 40, from the later of

(a) the day on or before which the return was required to be filed, and

(b) December 17, 1991,

to the day on which the return is filed.

Related Provisions: 18(1)(t) — No deduction for penalties; 161(11) — Interest on unpaid penalties; 220(3.1) — Waiver of penalty by CCRA; 227(10)(a) — Assessment.

History: The description of A in s. 235 amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 135, applicable to 1991 *et seq.* That description formerly read:

> A is the total of the taxes payable under Parts I.3 and VI by the corporation for the year; and

S. 235 enacted by 1994, c. 7, Sch. II (1991, c. 49), s. 187, in force December 17, 1991.

Definitions [s. 235]: "amount" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "taxation year" — 249.

Pre-RSC History [former s. 235]: Former s. 235 repealed by 1988, c. 55, s. 178. S. 235 formerly read:

> 235. (1) Penalty for failure to make returns — Every person who has failed to make a return as and when required by regulation under subsection 215(4), by regulation under section 221 or by subsection 227(2) is liable to a penalty of $10 a day for each day of default but not exceeding in all $2,500.
>
> (2) Idem — Every person who fails to comply with a regulation made under paragraph 221(1)(e) is liable to a penalty of $10 a day for each day of default but not exceeding in all $2,500.

236. Execution of documents by corporations

— A return, certificate or other document made by a corporation pursuant to this Act or a regulation shall be signed on its behalf by the President, Secretary or Treasurer of the corporation or by any other officer or person thereunto duly authorized by the Board of Directors or other governing body of the corporation.

Related Provisions: 227.1 — Liability of directors; 242 — officers and directors of corporation guilty of corporate offences.

Definitions [s. 236]: "corporation" — 248(1), *Interpretation Act* 35(1); "officer", "person", "regulation" — 248(1).

237. (1) Social Insurance Number

— Every individual (other than a trust) who was resident or employed in Canada at any time in a taxation year and who files a return of income under Part I for the year, or in respect of whom an information return is to be made by a person pursuant to a regulation made under paragraph 221(1)(d), shall,

(a) on or before the first day of February of the year immediately following the year for which the return of income is filed, or

(b) within 15 days after the individual is requested by the person to provide his[38] Social Insurance Number,

apply to the Minister of Human Resources Development in prescribed form and manner for the assignment to the individual of a Social Insurance Number unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number.

Related Provisions: 162(6) — Penalty for failure to provide Social Insurance Number; 221(1)(d.1) — Regulations may require disclosure of Social Insurance Number; 237(1.1), (2) — Obligations re Social Insurance Number; 239(2.3) — Offence re Social Insurance Number.

[38] *Sic.* Should be "the individual's".

History: The closing words of subsec. 237(1) amended by 1998, c. 19, subsec. 233(1), in force June 18, 1998. The closing words formerly read:

> apply to the Minister of Human Resources Development in prescribed form and manner for the assignment to the individual of a Social Insurance Number unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number and shall provide that number in any return filed under this Act or, at the request of any person required to make an information return pursuant to this Act or the regulations requiring the individual's Social Insurance Number, to that person.

Subsec. 237(1) amended by 1996, c. 11, para. 95(h), to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Regulations: 3800 (how Social Insurance Number to be applied for).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

Forms: T600: Ownership certificate.

(1.1) Production of number — Every person and partnership shall provide

(a) in the case of an individual (other than a trust), the individual's Social Insurance Number, and

(b) in any other case, the person's or partnership's business number

in any return filed under this Act or, at the request of any person required to make an information return pursuant to this Act or the regulations requiring either number, to that person.

History: Subsec. 237(1.1) added by 1998, c. 19, subsec. 233(2), in force June 18, 1998.

(2) Number required in information returns — For the purposes of this Act and the regulations, a person required to make an information return requiring a Social Insurance Number or a business number of a person or partnership

(a) shall make a reasonable effort to obtain the number from the person or partnership; and

(b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required or authorized under this Act or a regulation, the number without the written consent of the person or partnership.

Related Provisions: 162(6) — Failure to provide Social Insurance Number; 237(3) — Communication to related person allowed; 237(4) — Communication allowed to agent during insurance demutualization; 239(2.3) — Offence re Social Insurance Number or business number.

History: Para. 237(2)(b) amended to add the words "or authorized" by 2000, c. 19, subsec. 65(1), in force June 29, 2000 (Royal Assent).

Subsec. 237(2) amended by 1998, c. 19, subsec. 233(2), in force June 18, 1998. Subsec. 237(2) formerly read:

> (2) Idem — For the purposes of this Act and the regulations, a person required to make an information return requiring an individual's Social Insurance Number
>
> (a) shall make a reasonable effort to obtain from the individual the individual's Social Insurance Number; and
>
> (b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required under this Act or a regulation, the individual's Social Insurance Number without the individual's written consent.

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(3) Authority to communicate number — A particular person may communicate, or allow to be communicated, a Social Insurance Number or business number to another person related to the particular person where the other person is required, by this Act or the Regulations, to make an information return that requires the Social Insurance Number or business number.

(4) Authority to communicate number [for demutualization] — An insurance corporation may communicate, or allow to be communicated, to another person the Social Insurance Number or business number of a particular person or partnership where

(a) the other person became the holder of a share of the capital stock of the insurance corporation, or of a holding corporation (in this subsection having the meaning assigned by subsection 139.1(1)) in respect of the insurance corporation, on the share's issuance in connection with the demutualization (as defined by subsection 139.1(1)) of the insurance corporation;

(b) the other person became the holder of the share in the other person's capacity as nominee or agent for the particular person or partnership pursuant to an arrangement established by the insurance corporation or a holding corporation in respect of the insurance corporation; and

(c) the other person is required, by this Act or the Regulations, to make an information return, in respect of the disposition of the share or income from the share, that requires the Social Insurance Number or business number.

History: Subsecs. 237(3) and (4) added by 2000, c. 19, subsec. 65(2), in force June 29, 2000 (Royal Assent).

Pre-RSC History [s. 237]: S. 237 substituted by 1988, c. 55, s. 179, subsec. 237(1), applicable to 1988 *et seq.*, and with respect to returns of income filed in conjunction with the prescribed form filed pursuant to s. 122.2 or 122.4 to the 1987 taxation year of an individual. S. 237 formerly read:

> 237. (1) Application for assignment of Social Insurance Number — Every individual who is required by paragraph 150(1)(d) to file a return of his income for a taxation year after 1966 shall, on or before the first day of February of the year after the year for which the return is required, unless he has previously been assigned or made application to be assigned a Social Insurance Number, apply to the Minister of National Health and Welfare in prescribed form and manner for the assignment to him of a Social Insurance Number.
>
> (2) Failure to show Social Insurance Number — Every person who has filed a return of his income for a taxation year after 1966 and has failed to show therein the Social Insurance Number that has been assigned to him or for which he is required by this section to apply shall be deemed to have failed to complete the information on a prescribed form as required by or pursuant to section 150.

Definitions [s. 237]: "business number" — 248(1); "Canada" — 255; "demutualization" — 139.1(1); "employed" — 248(1); "holding corporation" — 139.1(1); "individual" — 248(1); ; "person", "prescribed", "regulation" — 248(1); "related" — 251(1)–(6); "taxation year" — 249; "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

237.1 (1) Definitions — In this section,

"person" includes a partnership;

History: The definition "person" added to subsec. 237.1(1) by 1998, c. 19, subsec. 234(3), applicable after November 1994.

"promoter" in respect of a tax shelter means a person who in the course of a business

(a) sells or issues, or promotes the sale, issuance or acquisition of, the tax shelter,

(b) acts as an agent or adviser in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of the tax shelter, or

(c) accepts, whether as a principal or agent, consideration in respect of the tax shelter,

and more than one person may be a tax shelter promoter in respect of the same tax shelter;

Related Provisions: 163.2 — Penalty for false statement by tax shelter promoter.

History: Paras. (a) and (b) of the definition "promoter" in subsec. 237.1(1) amended, and para. (c) added, by 1998, c. 19, subsec. 234(2), applicable after December 1, 1994. Paras. (a) and (b) of the definition formerly read:

(a) sells, issues or promotes the sale, issuance or acquisition of an interest in the tax shelter, or

(b) acts as an agent or adviser in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of an interest in the tax shelter,

"tax shelter" means any property (including, for greater certainty, any right to income) in respect of which it can reasonably be considered, having regard to statements or representations made or proposed to be made in connection with the property, that, if a person were to acquire an interest in the property, at the end of a particular taxation year that ends within 4 years after the day on which the interest is acquired,

(a) the total of all amounts each of which is

(i) an amount, or a loss in the case of a partnership interest, represented to be deductible in computing income in respect of the interest in the property (including, where the property is a right to income, an amount or loss in respect of that right that is represented to be deductible) and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or

(ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i),

would equal or exceed

(b) the amount, if any, by which

(i) the cost to the person of the interest in the property at the end of the particular year, determined without reference to section 143.2,

would exceed

(ii) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed, directly or indirectly, in respect of the interest in the property by the person or another person with whom the person does not deal at arm's length,

but does not include property that is a flow-through share or a prescribed property.

Related Provisions: 18.1(1)"tax shelter" — Definition for purposes of matchable expenditure rules; 53(2)(c)(i.3) — Tax shelter excluded from certain ACB reductions; 127.52(1)(c.3) — Minimum tax on tax shelter deductions; 143.2(1)"tax shelter investment"(a) — Definition includes a tax shelter under 237.1(1); 143.2(6) — Limitation on cost of tax shelter; 163.2(1)"excluded activity"(a)(i) — No good-faith reliance defence for advisor assessed third-party penalty re tax shelter; 248(1)"tax shelter" — Definition applies to entire Act; 249.1(5) — Election for non-calendar year-end not permitted for tax shelters; Reg. 1100(20.1) — limitation on CCA claim for computer software tax shelter property.

History: The definition "tax shelter" in subsec. 237.1(1) amended by 1998, c. 19, subsec. 234(1), applicable after November 1994. The definition formerly read:

"tax shelter" means any property in respect of which it may reasonably be considered having regard to statements or representations made or proposed to be made in connection with the property that, if a person were to acquire an interest in the property, at the end of any particular taxation year ending within 4 years after the day on which the interest is acquired,

(a) the total of all amounts each of which is

(i) a loss represented to be deductible in computing income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or

(ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i),

would exceed

(b) the amount, if any, by which

(i) the cost to the person of the interest in the property at the end of the particular year,

would exceed

(ii) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed directly or indirectly in respect of the interest in the property, by the person or another person with whom the person does not deal at arm's length

but does not include property that is a flow-through share or a prescribed property.

Subpara. (a)(ii) of the definition "tax shelter" in subsec. 237.1(1) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 188(1), to substitute "the particular year or any preceding taxation year" for "the particular year", applicable to interests acquired after August 1989.

Regulations: 231(6), (6.1) (prescribed benefit for subpara. (b)(ii)); 231(7) (prescribed property).

(2) Application — A promoter in respect of a tax shelter shall apply to the Minister in prescribed form for an identification number for the tax shelter unless an identification number therefor has previously been applied for.

Related Provisions: 237.1(4) — Sale without identification number prohibited; 237.1(7.4) — Penalty for false information or selling shelter without number; 237.2 — Application of s. 237.1.

Information Circulars: 89-4: Tax shelter reporting.

Forms: T5001: Application for tax shelter identification number and undertaking to keep books and records.

(3) Identification — On receipt of an application under subsection (2) for an identification number for a tax shelter, together with prescribed information and an undertaking satisfactory to the Minister that books and records in respect of the tax shelter will be kept and retained at a place in Canada that is satisfactory to the Minister, the Minister shall issue an identification number for the tax shelter.

Information Circulars: 89-4: Tax shelter reporting.

(4) Sales prohibited — No person shall, whether as a principal or an agent, sell or issue, or accept consideration in respect of, a tax shelter before the Minister has issued an identification number for the tax shelter.

Related Provisions: 237.1(7.4) — Penalty for false information or selling shelter without number; 237.2 — Application of s. 237.1.

History: Subsec. 237.1(4) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994. Subsec. 237.1(4) formerly read:

(4) No person shall, whether as a principal or an agent, sell or issue, or accept a contribution towards the acquisition of, an interest in a tax shelter before the Minister has issued an identification number for the tax shelter.

Information Circulars: 89-4: Tax shelter reporting.

(5) Providing tax shelter number — Every promoter in respect of a tax shelter shall

(a) make reasonable efforts to ensure that all persons who acquire or otherwise invest in the tax shelter are

provided with the identification number issued by the Minister for the tax shelter;

(b) prominently display on the upper right-hand corner of any statement of earnings prepared by or on behalf of the promoter in respect of the tax shelter the identification number issued for the tax shelter; and

(c) on every written statement made after 1995 by the promoter that refers either directly or indirectly and either expressly or impliedly to the issuance by the Canada Customs and Revenue Agency of an identification number for the tax shelter, as well as on the copies of the portion of the information return to be forwarded pursuant to subsection (7.3), prominently display

(i) where the statement or return is wholly or partly in English, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter."

(ii) where the statement or return is wholly or partly in French, the following:

"Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

and

(iii) where the statement includes neither English nor French, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter.

Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

Related Provisions: 163.2 — Penalty for false statement by tax shelter promoter; 239(2.1) — Incorrect identification number.

History: Para. 237.1(5)(c) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(d), proclaimed into force November 1, 1999.

Subsec. 237.1(5) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994. Subsec. 237.1(5) formerly read:

(5) Providing identification number — Every promoter in respect of a tax shelter shall make reasonable efforts to ensure that all persons who acquire an interest in the tax shelter are provided with the identification number issued by the Minister for the tax shelter.

Regulations: 231(5) (disclosure requirements in providing identification number; now incorporated into ITA 237.1(5)).

Information Circulars: 89-4: Tax shelter reporting.

(6) Deductions and claims disallowed — No amount may be deducted or claimed by a person in respect of a tax shelter unless the person files with the Minister a prescribed form containing prescribed information, including the identification number for the tax shelter.

Related Provisions: 143.2 — Limitation on tax shelter expenditure; 237.2 — Application of s. 237.1.

History: Subsec. 237.1(6) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994. Subsec. 237.1(6) formerly read:

(6) Deduction disallowed — In computing the amount of income, taxable income or taxable income earned in Canada of, or tax or other amount payable by, or refundable to, a taxpayer under this Act for a taxation year, or any other amount that is relevant for the purposes of computing that amount, no amount may be deducted in respect of an interest in a tax shelter unless the taxpayer files with the Minister a prescribed form containing prescribed information, including the identification number for the shelter.

Subsec. 237.1(6) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 188(2), applicable to interests acquired after 1990. Subsec. 237.1(6) formerly read:

(6) In computing the amount of income, taxable income, taxable income earned in Canada, tax or other amount payable by, or refundable to a taxpayer under this Act for a taxation year, or any other amount that is relevant for the purposes of computing that amount, no amount may be claimed or deducted by the taxpayer in respect of an interest in a tax shelter unless the taxpayer provides the Minister with the identification number for the shelter.

Information Circulars: 89-4: Tax shelter reporting.

Forms: T5004: Statement of tax shelter loss or deduction. See also under subsec. 237.1(7).

(6.1) Deductions and claims disallowed — No amount may be deducted or claimed by any person for any taxation year in respect of a tax shelter of the person where any person is liable to a penalty under subsection (7.4) or 162(9) in respect of the tax shelter or interest on the penalty and

(a) the penalty or interest has not been paid; or

(b) the penalty and interest have been paid, but an amount on account of the penalty or interest has been repaid under subsection 164(1.1) or applied under subsection 164(2).

Related Provisions: 237.1(6.2) — No time limit on assessment; 237.1(7.4) — Penalty for false information or selling shelter without number.

History: Subsec. 237.1(6.1) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(6.2) Assessments — Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to subsection (6.1).

Related Provisions: 143.2(15) — Late assessment to implement tax shelter deduction rules.

History: Subsec. 237.1(6.2) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7) Information return — Every promoter in respect of a tax shelter who accepts consideration in respect of the tax shelter or who acts as a principal or agent in respect of the tax shelter in a calendar year shall, in prescribed form and manner, file an information return for the year containing

(a) the name, address and either the Social Insurance Number or business number of each person who so acquires or otherwise invests in the tax shelter in the year,

(b) the amount paid by each of those persons in respect of the tax shelter, and

(c) such other information as is required by the prescribed form

unless an information return in respect of the tax shelter has previously been filed.

Related Provisions: 237.1(7.1)–(7.3) — Administrative requirements for returns; 237.2 — Application of s. 237.1.

History: Subsec. 237.1(7) amended by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994 except that the reference in para. (a) to "business number" is applicable after June 17, 1998.

(7) Every promoter in respect of a tax shelter from whom an interest in the tax shelter was acquired, who accepted a contribution in respect of an acquisition of an interest in the tax shelter or who acted as an agent in respect of an acquisition of an interest in the tax shelter in a calendar year shall, in the prescribed form and manner, make an information return for that year containing

(a) the name, address and Social Insurance Number of each person who so acquired an interest in the tax shelter in the year,

(b) the amount paid by each such person for the interest, and

(c) such other information as may be required by the prescribed form,

unless an information return in respect of the acquisition has previously been made.

Regulations: 231(2)–(4) (prescribed manner).

Information Circulars: 89-4: Tax shelter reporting.

Forms: T5003: Tax shelter information returns; T5003 Supp: Statement of tax shelter information; T5004: Statement of tax shelter loss or deduction; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(7.1) Time for filing return — An information return required under subsection (7) to be filed in respect of the acquisition of an interest in a tax shelter in a calendar year shall be filed with the Minister on or before the last day of February of the following calendar year.

Related Provisions: 237.1(7.2) — Return required within 30 days of discontinuing business or activity.

History: Subsec. 237.1(7.1) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7.2) Time for filing — special case — Notwithstanding subsection (7.1), where a person is required under subsection (7) to file an information return in respect of a business or activity and the person discontinues that business or activity, the return shall be filed on or before the earlier of

(a) the day referred to in subsection (7.1); and

(b) the day that is 30 days after the day of the discontinuance.

History: Subsec. 237.1(7.2) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7.3) Copies to be provided — Every person required to file a return under subsection (7) shall, on or before the day on or before which the return is required to be filed with the Minister, forward to each person to whom the return relates 2 copies of the portion of the return relating to that person.

History: Subsec. 237.1(7.3) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(7.4) Penalty — Every person who files false or misleading information with the Minister in respect of an application under subsection (2) or, whether as a principal or as an agent, sells, issues or accepts consideration in respect of a tax shelter before the Minister has issued an identification number for the tax shelter is liable to a penalty equal to the greater of

(a) $500, and

(b) 25% of the total of all amounts each of which is the consideration received or receivable from a person in respect of the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be.

Related Provisions: 161(11)(b.1) — Interest on penalty; 163(2.9) — Where partnership is liable to penalty; 227(10)(b) — Assessment of penalty at any time; 237.1(6.1) — No deduction allowed while tax shelter penalty unpaid.

History: Subsec. 237.1(7.4) added by 1998, c. 19, subsec. 234(4), applicable after December 1, 1994.

(8) Application of sections 231 to 231.3 — Without restricting the generality of sections 231 to 231.3, where an application under subsection (2) with respect to a tax shelter has been made, notwithstanding that a return of income has not been filed by any taxpayer under section 150 for the taxation year of the taxpayer in which an amount is claimed as a deduction in respect of the tax shelter, sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain any information in respect of the tax shelter.

Information Circulars [subsec. 237.1(8)]: 89-4: Tax shelter reporting.

Pre-RSC History [s. 237.1]: S. 237.1 enacted by 1988, c. 55, s. 180, applicable with respect to interests acquired after August 1989.

Definitions [s. 237.1]: "arm's length" — 251(1); "business", "business number" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "flow-through share" — 66(15), 248(1); "business", "Minister" — 248(1); "person" — 237.1(1), 248(1); "prescribed" — 248(1); "promoter" — 237.1(1); "property", "record", "share" — 248(1); "tax shelter" — 237.1(1), 248(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249.

237.2 Application of section 237.1 — Section 237.1 is applicable with respect to interests acquired after August 31, 1989.

Origin of s. 237.2: R.S.C. 1985, c. 1 (5th Supp.) (formerly contained in the rule of application in 1988, c. 55, subsec. 180(2)).

Offences and Punishment

238. (1) Offences and punishment — Every person who has failed to file or make a return as and when required by or under this Act or a regulation or who has failed to comply with subsection 116(3), 127(3.1) or (3.2), 147.1(7) or 153(1), any of sections 230 to 232 or a regulation made under subsection 147.1(18) or with an order made under subsection (2) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine of not less than $1,000 and not more than $25,000; or

(b) both the fine described in paragraph (a) and imprisonment for a term not exceeding 12 months.

Proposed Amendment — Penalty for interfering with collection action

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Hindering a Federal Tax Official*

(43) That the penalty applying under section 238 of the Act to a person who fails to comply with subsection 231.5(2) of the Act be extended to persons who hinder, molest, interfere with or prevent an official in the performance of a collection function, and to persons who attempt to hinder, molest, interfere with or prevent an official in the performance of a collection function or any other duty to which that subsection currently applies.

Federal budget, supplementary information, February 28, 2000: *Administration and Enforcement of the Tax Law*

The *Income Tax Act* and the *Excise Tax Act* make it an offence to hinder, molest or interfere with an official who is performing certain administrative or enforcement functions. The applicable provisions do not apply in the context of an official who is performing a collection duty, nor do they apply to attempts to hinder. Increasingly, some individuals have taken exceptional measures in an attempt to hinder, harass or delay CCRA officials in the performance of their duties.

The budget proposes to amend the *Income Tax Act* to extend the penalty applying under subsection 231.5(2) of the Act to persons who hinder, molest or interfere with an official who is performing a collection function, and to persons who attempt to hinder, molest or interfere with an official in the performance of a collection function or any other duty to which that subsection currently applies. Similarly, the budget proposes changes to the *Customs Act* and the relevant provisions of the *Excise Tax Act* to parallel the penalty proposed for purposes of the *Income Tax Act*.

Related Provisions: 162, 163 — Penalties; 242 — Where corporation is guilty of offence; 243 — Minimum fine; *Interpretation Act* 34(1) — Indictable and summary conviction offences; *Interpretation Act* 34(2) — *Criminal Code* provisions apply.

Pre-RSC History: That portion of subsec. 238(1) preceding para. (a) amended by 1990, c. 35, s. 25, to substitute "147.1(7) or 153(1), any of sections 230 to 232 or a regulation made under subsection 147.1(18)" for "153(1) or 227(5), or any of sections 230 to 232", effective June 27, 1990.

Subsec. 238(1) substituted by 1988, c. 55, s. 181. Subsec. 238(1) formerly read:

> 238. (1) **Offences** — Every person who has failed to file a return as and when required by or under this Act or a regulation is guilty of an offence and, in addition to any penalty otherwise provided, liable on summary conviction to a fine of not less than $25 for each day of default.

Subsec. 238(1) substituted by 1986, c. 55, s. 76, to add "or to provide the information described in paragraph 21(1)(d.1)", to come into force on a day to be fixed by proclamation, but this amendment was repealed by 1988, c. 55, s. 203, deemed in force December 19, 1986.

Selected Cases [subsec. 238(1)]: *R. v. Euerby (V.J.)*, [1992] 2 C.T.C. 149 (BC SC) (Penalty for failure to comply with notice to file return not cruel and unusual punishment under *Charter*); *Canada v. J.P. Consultants*, [1990] 2 C.T.C. 514 (Man PC) (Taxpayer continuing to rely on advice of accountant whose actions had already resulted in charges against taxpayer had no defence of due diligence to charge of failing to file returns); *Licht v. Canada*, [1990] 2 C.T.C. 477 (FCTD) (Court extended 10-day delay to file information to 60 days where Crown could not show harm caused by extension); *The Queen v. Merkle*, [1979] C.T.C. 519 (Alta CA) (Taxpayer established defence of due diligence against charge of failing to file a return where he directed his accountant to do so within a "reasonable time"); *The Queen v. Subacious*, [1978] C.T.C. 610 (Ont CA) (Failure to file a return results in a separate offence for each successive day return not filed).

Information Circulars: 00-1: Voluntary disclosures program.

(2) Compliance orders — Where a person has been convicted by a court of an offence under subsection (1) for a failure to comply with a provision of this Act or a regulation, the court may make such order as it deems proper in order to enforce compliance with the provision.

Related Provisions: 231.7 — Compliance order for assistance with audit or demand.

Pre-RSC History: Subsec. 238(2) substituted by 1988, c. 55, s. 181. Subsec. 238(2) formerly read:

> (2) **Idem** — Every person who has failed to comply with or contravened subsection 116(3), 127(3.1) or (3.2), 153(1) or 227(5), or any of sections 230 to 232 is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to
>
> (a) a fine of not less than $200 and not exceeding $10,000, or
>
> (b) both the fine described in paragraph (a) and imprisonment for a term not exceeding 6 months.

All that portion of subsec. 238(2) preceding para. (a) amended by 1986, c. 6, s. 123, to substitute "153(1) or 227(5) or any of sections 230 to 232" for "153(1), 227(5), 230.1(1) or 230.1(2) or section 230 or 231".

All that portion of subsec. 238(2) preceding para. (a) substituted by 1974-75-76, c. 71, s. 13, applicable after June 23, 1975, to add references to subsecs. 127(3.1), (3.2).

All that portion of subsec. 238(2) preceding para. (a) substituted by 1973-74, c. 51, s. 21, in force August 1, 1974, to add reference to subsecs. 230.1(1), (2).

Selected Cases [subsec. 238(2)]: *The Queen v. Grimwood*, [1988] 1 C.T.C. 44 (SCC) (Failure to comply with a demand to provide information pursuant to subsection 231(3) results in a separate offence for each demand not complied with); *Hartmann v. The Queen*, [1971] C.T.C. 396 (Sask. D.C.) (Where company convicted under provision, sole officer also convicted for participating with company in offence); *The Queen v. Sakellis*, [1970] C.T.C. 342 (Ont CA) (Offence of failure to remit source deductions impossible to commit until expiry of time provided for such remittance).

Information Circulars: 73-10R3: Tax evasion.

(3) Saving — Where a person has been convicted under this section of failing to comply with a provision of this Act or a regulation, the person is not liable to pay a penalty imposed under section 162 or 227 for the same failure unless the person was assessed for that penalty or that penalty was demanded from the person before the information or complaint giving rise to the conviction was laid or made.

Pre-RSC History: Subsec. 238(3) substituted by 1988, c. 55, s. 181. Subsec. 238(3) formerly read:

> (3) Where a person has been convicted under this section of failing to comply with a provision of this Act or a regulation, he is not liable to pay a penalty imposed under section 162, 227 or 235 for the same failure unless he was assessed for that penalty or that penalty was demanded from him before the information or complaint giving rise to the conviction was laid or made.

Definitions [s. 238]: "person", "regulation" — 248(1).

239. (1) Other offences and punishment — Every person who has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,

(b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer,

(c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer,

(d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act, or

Selected Cases [para. 239(1)(d)]: *Canada v. Caseley*, [1991] 1 C.T.C. 211 (PEI SC) (Penalty may be levied under provision notwithstanding previous penalty under subsection 163(2) imposed for same acts); *The Queen v. Redpath Industries Ltd. et al.*, [1984] C.T.C. 483 (Que SC) (Crown must prove that tax is payable for purposes of establishing evasion charges); *The Queen v. Paveley*, [1976] C.T.C. 477 (Sask CA) (Express refusal to file return does not, in itself, imply intent to deceive, nor satisfy requirements of charge of wilful evasion); *The Queen v. Kidd*, 74 D.T.C. 6574 (Ont SC) (Failure to sign inaccurate return no defence to evasion charge); *The Queen v. Poynton*, [1972] C.T.C. 411 (Ont SC) (Failure to report fraudulently obtained amounts as income constituted evasion).

(e) conspired with any person to commit an offence described by paragraphs (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(f) a fine of not less than 50%, and not more than 200%, of the amount of the tax that was sought to be evaded, or

Selected Cases [para. 239(1)(f)]: *R. v. Lettroy*, [2000] 2 C.T.C. 478 (Ont SCJ) (Accused to be given time to pay fine).

(g) both the fine described in paragraph (f) and imprisonment for a term not exceeding 2 years.

Related Provisions: 163(2) — Penalty — false statements; 239(1.1) — Offences re refunds and credits; 239(2) — Prosecution on indictment; 242 — Where corporation is guilty of offence; 243 — Minimum fine; *Interpretation Act* 34(1) — Indictable and summary conviction offences; *Interpretation Act* 34(2) — *Criminal Code* provisions apply.

Pre-RSC History: Para. 239(1)(f) amended by 1988, c. 55, subsec. 182(1), to substitute "50%," for "25%" and "200%, of the amount" for "double the amount".

Selected Cases [subsec. 239(1)]: *R. v. Yip*, [2000] 2 C.T.C. 66 (Alta Prov Ct) (Taxpayers to be advised when audits not routine); *R. v. Michaud*, [2000] 1 C.T.C. 366 (NB QB) ("Every person" is broad enough to include preparer of tax return); *Jurchison v. R.*, [2000] 1 C.T.C. 2762 (TCC) (Assessment may not be quashed where some evidence not illegally obtained); *R. v. Anderson*, [2000] 1 C.T.C. 108 (Sask Prov Ct) (Evidence from improper search and seizure excluded); *R. v. Jarvis*, [1998] 3 C.T.C. 252 (Alta QB) (Positive duty on part of Minister to advise taxpayer when audit changes from compliance to investigation leading to possible criminal charges); *Neeb v. Canada*, [1997] 2 C.T.C. 2343 (TCC) (No identity of issues in criminal and civil proceedings since tax liability can only be determined by Tax Court); *Canada v. Cancor Software Corp.*, [1990] 2 C.T.C. 479 (Ont CA); leave to appeal to SCC refused (1991), 130 N.R. 394 (note) (Under sections 548 and 549 of *Criminal Code*, judge has authority to commit accused to trial for offences under *Income Tax Act*); *Canada v. Maplesden*, [1990] 2 C.T.C. 276 (Alta QB) (Crown must prove *actus reus* and *mens rea* beyond reasonable doubt); *Canada v. Hutton*, [1990] 2 C.T.C. 258 (Alta CA) (Where taxpayer and his defrauded principal agreed to treat funds diverted by taxpayer as loans, taxpayer had no *mens rea* for evasion in respect of return filed after agreement); *Cipriani v. The Queen*, [1988] 1 C.T.C. 394 (Ont CA) (Sections 7 and 24 of the *Charter* inapplicable to admissible statements voluntarily made to investigator); *Lucier v. The Queen*, [1988] 1 C.T.C. 230 (Ont CA) (Crown must establish *mens rea* for conviction of wilfully evading taxes); *The Queen v. Landes et al.*, [1988] 1 C.T.C. 124 (Que SC) (Taxpayer wrongly characterizing income as capital gain acquitted of evasion charge where error not so glaring as to lead to conclusion that deliberate evasion committed); *The Queen v. Sharma*, [1987] 2 C.T.C. 253 (Ont SC) (Prosecution under provision in addition to penalties under subsection 163(2) not violation of *Charter*); *Rans Construction (1966) Ltd. et al. v The Queen*, [1987] 2 C.T.C. 206 (FCTD) (Taxpayer permitted to appeal assessment in respect of years for which criminal charges successfully prosecuted); *Century 21 Ramos Realty Inc. v. The Queen*, [1987] 1 C.T.C. 340, (sub nom. *Ramos v. The Queen)* (Ont CA); leave to appeal to SCC refused (1987), 44 D.L.R. (4th) vii (note) (Taxpayer convicted of evasion after benefit of amount unreported attributed to taxpayer under subsection 56(2)); *Knox Contracting Ltd. et al. v. The Queen*, [1986] 2 C.T.C. 194 (NB QB) (Search warrants obtained under section 443 of *Criminal Code* held to be inapplicable to documents sought for purposes of *Income Tax Act*); *Spencer v. The Queen*, [1985] 2 C.T.C. 310 (SCC) (Resident's right to liberty and security of the person not violated when compelled to testify in Canada regarding information obtained as bank manager in Bahamas, where such disclosure constituted criminal offence); *Collins v. The Queen*, [1985] 1 C.T.C. 342 (Ont CA) (Having paid tax in U.S. after being charged with evasion in Canada not a defence); *Sturgess v. The Queen*, [1984] C.T.C. 1 (FCTD) (Taxpayer claiming to be too busy to file return convicted of evasion; "evasion" interpreted); *The Queen v. Lavoie*, [1970] C.T.C. 476 (Sask CA) (Taxpayer convicted of separate offences under paragraphs (a) and (b); both offences arose from same facts).

I.T. Application Rules: 65.1(b) (where offence committed before December 23, 1971).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Information Circulars: 73-10R3: Tax evasion.

(1.1) Offences re refunds and credits — Every person who obtains or claims a refund or credit under this Act to which the person or any other person is not entitled or obtains or claims a refund or credit under this Act in an amount that is greater than the amount to which the person or other person is entitled

(a) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under this Act or a regulation,

(b) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person,

(c) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person,

(d) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person,

(e) wilfully in any manner, or

(f) by conspiring with any person to commit any offence under this subsection,

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(g) a fine of not less than 50% and not more than 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled, or

(h) both the fine described in paragraph (g) and imprisonment for a term not exceeding 2 years.

Related Provisions: 239(2) — Prosecution on indictment.

History: Subsec. 239(1.1) added by 1998, c. 19, subsec. 235(1), in force June 18, 1998.

(2) Prosecution on indictment — Every person who is charged with an offence described in subsection (1) or (1.1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than 100% and not more than 200% of

(i) where the offence is described in subsection (1), the amount of the tax that was sought to be evaded, and

(ii) where the offence is described in subsection (1.1), the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled; and

(b) imprisonment for a term not exceeding 5 years.

Related Provisions: 243 — Minimum fine; *Interpretation Act* 34(1) — Indictable and summary conviction offences; *Interpretation Act* 34(2) — *Criminal Code* provisions apply.

History: Subsec. 239(2) amended by 1998, c. 19, subsec. 235(2), in force June 18, 1998. Subsec. 239(2) formerly read:

(2) Every person who is charged with an offence described in subsection (1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than 100%, and not more than 200%, of the amount of the tax that was sought to be evaded; and

(b) imprisonment for a term not exceeding 5 years.

Pre-RSC History: Subsec. 239(2) substituted by 1988, c. 55, subsec. 182(2). Subsec. 239(2) formerly read:

(2) Idem — Every person who is charged with an offence described by subsection (1) may, at the election of the Attorney General of

Canada, be prosecuted upon indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to imprisonment for a term not exceeding 5 years and not less than 2 months.

Selected Cases [subsec. 239(2)]: *R. v. Terracina*, [2000] 2 C.T.C. 486 (Ont SCJ) (Three-year concurrent sentences imposed on multiple offences).

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Information Circulars: 73-10R3: Tax evasion.

(2.1) Providing incorrect tax shelter identification number — Every person who wilfully provides another person with an incorrect identification number for a tax shelter is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine of not less than 100%, and not more than 200%, of the cost to the other person of that person's interest in the shelter;

(b) imprisonment for a term not exceeding 2 years; or

(c) both the fine described in paragraph (a) and the imprisonment described in paragraph (b).

Related Provisions: 237.1 — Tax shelters; 242 — Where corporation is guilty of offence; 243 — Minimum fine;.

Pre-RSC History: Subsec. 239(2.1) added by 1988, c. 55, subsec. 182(2), applicable after August 1989.

Information Circulars: 89-4: Tax shelter reporting.

(2.2) Offence with respect to confidential information — Every person who

(a) contravenes subsection 241(1), or

(b) knowingly contravenes an order made under subsection 241(4.1)

is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Related Provisions: 122.64(4) — Offence; 239(2.21) — Offence with respect to confidential information; 239(2.22) — Definitions; 242 — Where corporation is guilty of offence.

History: Subsec. 239(2.2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 136. Subsec. (2.2) formerly read:

(2.2) Every person

(a) who contravenes subsection 241(1), or

(b) to whom information has been provided pursuant to subsection 241(4) and who knowingly uses, communicates or allows to be communicated that information for any purpose other than that for which it was provided,

is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

Pre-RSC History: Subsec. 239(2.2) added by 1988, c. 55, subsec. 182(2).

(2.21) Idem — Every person

(a) to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(b), (c), (e), (h), (k) or (n), or

(b) who is an official to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(a), (d), (f), (i) or (j.1)

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

History: Para. 239(2.21)(a) amended by 1999, c. 26, s. 40, in force June 17, 1999. The para. formerly read:

(a) to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(b), (c), (e), (h) or (k), or

Para. 239(2.21)(b) amended by 1998, c. 21, s. 96, in force on June 18, 1998. The para. formerly read:

(b) who is an official to whom taxpayer information has been provided for a particular purpose under paragraph 241(4)(a), (d), (f) or (i).

(2.22) Definitions — In subsection (2.21), "official" and "taxpayer information" have the meanings assigned by subsection 241(10).

History: Subsecs. 239(2.21) and (2.22) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 136.

(2.3) Offence with respect to an identification number — Every person to whom the Social Insurance Number of an individual or to whom the business number of a taxpayer or partnership has been provided under this Act or a regulation, and every officer, employee and agent of such a person, who without written consent of the individual, taxpayer or partnership, as the case may be, knowingly uses, communicates or allows to be communicated the number (otherwise than as required or authorized by law, in the course of duties in connection with the administration or enforcement of this Act or for a purpose for which it was provided by the individual, taxpayer or partnership, as the case may be) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Related Provisions: 237(2)(b) — Social Insurance Number not to be used or communicated without individual's consent; 242 — Where corporation is guilty of offence.

History: Subsec. 239(2.3) amended by 1998, c. 19, subsec. 235(3), in force June 18, 1998. Subsec. 239(2.3) formerly read:

(2.3) Offence with respect to Social Insurance Number — Every person to whom the Social Insurance Number of an individual has been provided under this Act or a regulation, and every officer, employee and agent of such a person, who without the individual's written consent knowingly uses, communicates or allows to be communicated the Social Insurance Number (otherwise than as required or authorized by law, in the course of duties in connection with the administration or enforcement of this Act, or for a purpose for which it was provided by the individual) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Subsec. 239(2.3) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 189. Subsec. 239(2.3) formerly read:

(2.3) Offence with respect to Social Insurance Number — Every person to whom the Social Insurance Number of an individual has been provided pursuant to this Act or a regulation who knowingly uses or communicates, or allows to be communicated, the number for any purpose other than that for which it was so provided or for which the person has been authorized in writing by the individual is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

Pre-RSC History: Subsecs. 239(2.3) added by 1988, c. 55, subsec. 182(2).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

(3) Penalty on conviction — Where a person is convicted under this section, the person is not liable to pay a penalty imposed under section 162, 163 or 163.2 for the same contravention unless the penalty is assessed before the information or complaint giving rise to the conviction was laid or made.

History: Subsec. 239(3) amended by 2000, c. 19, s. 66, in force June 29, 2000 (Royal Assent). Subsec. 239(3) formerly read:

> (3) Where a person is convicted under this section, the person is not liable to pay a penalty imposed under section 162 or 163 for the same contravention unless the penalty was assessed before the information or complaint giving rise to the conviction was laid or made.

Subsec. 239(3) amended by 1998, c. 19, subsec. 235(4), in force June 18, 1998. Subsec. 239(3) formerly read:

> (3) Where a person has been convicted under this section of wilfully, in any manner, evading or attempting to evade payment of taxes imposed by Part I, the person is not liable to pay a penalty imposed under section 162 or 163 for the same evasion or attempt unless the person was assessed for that penalty before the information or complaint giving rise to the conviction was laid or made.

Pre-RSC History: Subsec. 239(3) amended by 1988, c. 55, subsec. 182(2), to substitute "under section 162 or 163" for "under section 163".

(4) Stay of appeal — Where, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and thereupon the proceedings before that Court are stayed pending final determination of the outcome of the prosecution.

Pre-RSC History: Subsec. 239(4) amended by 1988, c. 61, s. 25, to substitute "Tax Court of Canada", first for "Tax Court of Canada or the Federal Court, as the case may be" and then for "Tax Court of Canada or Federal Court", in force January 1, 1991.

"Tax Court of Canada" substituted for "Tax Review Board" in subsec. 239(4) by 1980-81-82-83, c. 158, s. 58, applicable from July 18, 1983.

Selected Cases [subsec. 239(4)]: *Deutsch v. The Queen*, [1983] C.T.C. 369 (FCA) (Proceeding commenced by statement of claim held to be appeal for purposes of the provision and stayed accordingly); *Popovich Equipment Co. v. The Queen*, [1979] C.T.C. 65 (FCA) (For appeal to be stayed prosecution must be in relation to same taxpayer).

Selected Cases [s. 239]: *R. v. Madraga*, [2000] 2 C.T.C. 230 (Sask Prov Ct) (Failure to pay fines may lead to imprisonment); *Lavers v. British Columbia (Minister of Finance)*, [1990] 1 C.T.C. 265 (BC CA) (Penalties imposed as consequence of assessment neither criminal nor quasi-criminal in nature and were beyond scope of "offence" under *Charter*).

Definitions [s. 239]: "business number" — 248(1); "contravene" — *Interpretation Act* 35(1); "individual", "Minister" — 248(1); "official" — 239(2.22), 241(10); "person", "record", "regulation", "taxpayer" — 248(1); "tax shelter" — 237.1(1), 248(1); "taxpayer information" — 239(2.22), 241(10).

240. (1) Definition of "taxable obligation" and "non-taxable obligation" — In this section, "taxable obligation" means any bond, debenture or similar obligation the interest on which would, if paid by the issuer to a non-resident person, be subject to the payment of tax under Part XIII by that non-resident person at the rate provided in subsection 212(1) (otherwise than by virtue of subsection 212(6)), and "non-taxable obligation" means any bond, debenture or similar obligation the interest on which would not, if paid by the issuer to a non-resident person, be subject to the payment of tax under Part XIII by that non-resident person.

(2) Interest coupon to be identified in prescribed manner — offence and punishment — Every person who, at any time after July 14, 1966, issues

(a) any taxable obligation, or

(b) any non-taxable obligation

the right to interest on which is evidenced by a coupon or other writing that does not form part of, or is capable of being detached from, the evidence of indebtedness under the obligation is, unless the coupon or other writing is marked or identified in prescribed manner by the letters "AX" in the case of a taxable obligation, and by the letter "F" in the case of a non-taxable obligation, on the face thereof, guilty of an offence and liable on summary conviction to a fine not exceeding $500.

Regulations [subsec. 240(2)]: 807 (prescribed manner of identification of obligation).

Definitions [s. 240]: "non-resident", "person" — 248(1); "writing" — *Interpretation Act* 35(1).

241. (1) Provision of information — Except as authorized by this section, no official shall

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

(b) knowingly allow any person to have access to any taxpayer information; or

(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or for the purpose for which it was provided under this section.

Related Provisions: 122.64(2) — Communication of Child Tax Benefit information to provinces; 122.64(3) — Communication of name and address for enforcement of family support orders; 149.1(15) — Charities — information can be communicated; 230.1(4) — Reports to chief electoral officer; 237(2)(b) — Communication of Social Insurance Number; 239(2.2) — Offence; 241(3) — Communication of information; 241(3.2) — Charities — additional information that may be communicated; 241(4) — Exceptions; 241(11) — Meaning of "this Act".

History: Para. 241(1)(c) amended by 1998, c. 19, subsec. 236(1), deemed to have come into force on June 30, 1996. Para. 241(1)(c) formerly read:

> (c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act* or for the purpose for which it was provided under this section.

Para. 241(1)(c) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subsec. 241(1) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (1) formerly read:

> (1) Prohibited communication of information — Except as authorized by this section, no official or authorized person shall
>
> (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*;
>
> (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*; or
>
> (c) knowingly use, other than in the course of the duties of the official or authorized person in connection with the administration or enforcement of this Act or the *Petroleum and Gas Revenue Tax Act*, any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*.

Pre-RSC History: Para. 241(1)(c) added by 1987, c. 46, subsec. 68(1), applicable after December 17, 1987.

Selected Cases [subsec. 241(1)]: *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] 3 C.T.C. 123 (FCTD) (Access to tax policy documents restricted); *Diversified Holdings Ltd. v. Canada*, [1989] 2 C.T.C. 10 (FCTD); aff'd [1991] 1 C.T.C. 118 (FCA) (In an action by taxpayer against the Crown, documents related to actions taken by Revenue Canada giving rise to the litigation not privileged under provision); *The Queen et al. v. Lau*, [1987] 2 C.T.C. 63 (FCA) (Revenue Canada permitted to use its employee's false return as cause for dismissal); *Wilder et al. v. The Queen et al.*, [1987] 1 C.T.C. 273 (FCTD) (U.S. tax authorities receiving information in unauthorized manner may be sued by taxpayer in tort); *AMP of Canada Ltd. v. The Queen*, [1987] 1 C.T.C. 256 (FCTD) (Taxpayer permitted to discover competitor's financial statements used by Crown to compare figures); *A.G. Can. v. Thibault*, [1987] 1 C.T.C. 156 (Que CA) (Police permitted to seize documents in Revenue Canada's possession for purposes of criminal investigation);

Glover v. MNR, [1982] C.T.C. 29 (SCC) (Divorce proceeding order that Revenue Canada disclose certain information quashed); *Tucar v. Tucar*, 81 D.T.C. 5166 (Ont UFC) (In divorce proceedings, although court lacks jurisdiction to order Minister to disclose information, it may order taxpayer to authorize Minister to make disclosure); *MNR v. Huron Steel Fabricators (London) Ltd.*, [1973] C.T.C. 422 (FCA) (Minister ordered to disclose returns of a taxpayer with whom another taxpayer alleged transactions disallowed by Minister).

Information Circulars: 94-4: International transfer pricing — advance pricing agreements (APA).

I.T. Technical News: No. 8 (publication of advance tax rulings); No. 9 (electronic publication of severed rulings).

Application Policies: SR&ED 95-04: Conflict of interest..

Forms: T1013: Consent form.

(2) Idem, in legal proceedings — Notwithstanding any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

Related Provisions: 149.1(15) — Charities — information may be communicated.

History: Subsec. 241(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (2) formerly read:

> (2) Notwithstanding any other Act or law, no official or authorized person shall be required, in connection with any legal proceedings,
>
> (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*; or
>
> (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*.

Selected Cases [subsec. 241(2)]: *Diversified Holdings Ltd. v. Canada*, [1989] 2 C.T.C. 10 (FCTD); aff'd [1991] 1 C.T.C. 118 (FCA) (In action by taxpayer against Crown, documents related to actions taken by Revenue Canada giving rise to the litigation not privileged).

(3) Communication where proceedings have been commenced — Subsections (1) and (2) do not apply in respect of

(a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or

(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Related Provisions: 241(11) — Meaning of "this Act".

History: Para. 241(3)(b) amended by 1998, c. 19, subsec. 236(2), deemed to have come into force on June 30, 1996. Para. 241(3)(b) formerly read:

> (b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Para. 241(3)(b) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Subsec. 241(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (3) formerly read:

> (3) Exception for criminal or tax proceedings — Subsections (1) and (2) do not apply in respect of criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information, under an Act of Parliament, or in respect of proceedings relating to the administration or enforcement of this Act or the *Petroleum and Gas Revenue Tax Act*.

Pre-RSC History: Subsec. 241(3) substituted by 1987, c. 46, subsec. 68(2), to add "that have been commenced by the laying of an information", applicable after February 18, 1987.

Selected Cases [subsec. 241(3)]: *Tyler v. MNR*, [1989] 1 C.T.C. 153 (FCTD) (Minister may obtain information before criminal proceedings have been completed).

Information Circulars: 87-2R: International transfer pricing and other international transactions.

(3.1) Circumstances involving danger — The Minister may provide to appropriate persons any taxpayer information relating to imminent danger of death or physical injury to any individual.

History: Subsec. 241(3.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1).

(3.2) Registered charities — An official may provide to any person the following taxpayer information relating to a charity that at any time was a registered charity:

Proposed Amendment — 241(3.2) opening words

(3.2) Registered charities — An official may provide to any person the following taxpayer information relating to another person that was at any time a registered charity (in this subsection referred to as the "charity"):

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 110, will amend the opening words of subsec. 241(3.2) to read as above, in force on Royal Assent.

Technical Notes: Subsection 241(3.2) of the Act permits the Canada Customs and Revenue Agency to release specified information relating to an organization that was at any time a registered charity under the Act. The amendment clarifies that specified information may be released at a time when the organization is no longer a registered charity, provided that the information to be released relates to a period during which the organization was so registered.

(a) a copy of the charity's governing documents, including its statement of purpose;

(b) any information provided in prescribed form to the Minister by the charity on applying for registration under this Act;

(c) the names of the persons who at any time were the charity's directors and the periods during which they were its directors;

(d) a copy of the notification of the charity's registration, including any conditions and warnings; and

(e) if the registration of the charity has been revoked, a copy of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation.

Related Provisions: 149.1(6.4) — Rule applies to registered national arts service organizations; 149.1(15) — Disclosure permitted of information in public information return.

History: Subsec. 241(3.2) added by 1998, c. 19, s. 65, in force June 18, 1998.

(4) Where taxpayer information may be disclosed — An official may

(a) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, solely for that purpose;

(b) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount that is or may become payable by the person, or any refund or tax credit to which the person is or

may become entitled, under this Act or any other amount that is relevant for the purposes of that determination;

(c) provide to the person who seeks a certification referred to in paragraph 147.1(10)(a) the certification or a refusal to make the certification, solely for the purposes of administering a registered pension plan;

(d) provide taxpayer information

(i) to an official of the Department of Finance solely for the purposes of the formulation or evaluation of fiscal policy,

(ii) to an official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of an Act of Parliament that provides for the imposition and collection of a tax or duty,

(iii) to an official solely for the purposes of the administration or enforcement of a law of a province that provides for the imposition or collection of a tax or duty,

(iv) to an official of the government of a province solely for the purposes of the formulation or evaluation of fiscal policy,

(v) to an official of the Department of Natural Resources or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,

(vi) to an official of the government of a province that has received or is entitled to receive a payment referred to in this subparagraph, or to an official of the Department of Natural Resources, solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to the province under the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, chapter 28 of the Statutes of Canada, 1988, the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987, or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources,

(vi.1) to an official of the Department of Natural Resources solely for the purpose of determining whether property is prescribed energy conservation property or whether an outlay or expense is a Canadian renewable and conservation expense,

(vii) to an official solely for the purposes of the administration or enforcement of the *Pension Benefits Standards Act, 1985* or a similar law of a province,

(vii.1) to an official of the Department of Human Resources Development or to a prescribed official solely for the purpose of the administration or enforcement of Part III.1 of the *Department of Human Resources Development Act*,

(viii) to an official of the Department of Veterans Affairs solely for the purposes of the administration of the *War Veterans Allowance Act* or Part XI of the *Civilian War-related Benefits Act*,

(ix) to an official of a department or agency of the Government of Canada or of a province as to the name, address, occupation, size or type of business of a taxpayer, solely for the purposes of enabling that department or agency to obtain statistical data for research and analysis,

(x) to an official of the Canada Employment Insurance Commission or the Department of Employment and Immigration solely for the purpose of the administration or enforcement of, or the evaluation or formation of policy for the purposes of, the *Unemployment Insurance Act*, the *Employment Insurance Act* or an employment program of the Government of Canada,

(xi) to an official of the Department of Agriculture and Agri-Food or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province established under an agreement entered into under the *Farm Income Protection Act*,

(xii) to an official of the Department of Canadian Heritage or a member of the Canadian Cultural Property Export Review Board solely for the purposes of administering sections 32 to 33.2 of the *Cultural Property Export and Import Act*,

(xiii) to an official solely for the purposes of setting off against any sum of money that may be due or payable by Her Majesty in right of Canada a debt due to

(A) Her Majesty in right of Canada, or

(B) Her Majesty in right of a province, or

(xiv) to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;

(e) provide taxpayer information, or allow the inspection of or access to taxpayer information, as the case may be, under, and solely for the purposes of,

(i) subsection 36(2) or section 46 of the *Access to Information Act*,

(ii) section 13 of the *Auditor General Act*,

(iii) section 92 of the *Canada Pension Plan*,

(iv) a warrant issued under subsection 21(3) of the *Canadian Security Intelligence Service Act*,

(v) an order made under subsection 462.48(3) of the *Criminal Code*,

(vi) section 26 of the *Cultural Property Export and Import Act*,

(vii) section 79 of the *Family Orders and Agreements Enforcement Assistance Act*,

(viii) paragraph 33.11(a) of the *Old Age Security Act*,

(ix) subsection 34(2) or section 45 of the *Privacy Act*,

(x) section 24 of the *Statistics Act*,

(xi) section 9 of the *Tax Rebate Discounting Act*, or

(xii) a provision contained in a tax convention or agreement between Canada and another country that has the force of law in Canada;

(f) provide taxpayer information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;

(g) use taxpayer information to compile information in a form that does not directly or indirectly reveal the

identity of the taxpayer to whom the information relates;

(h) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty in right of Canada to assist in the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, to the extent that the information is relevant for the purpose;

(i) provide access to records of taxpayer information to the National Archivist of Canada or a person acting on behalf of or under the direction of the National Archivist of Canada, solely for the purposes of section 5 of the *National Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 6 of that Act;

(j) use taxpayer information relating to a taxpayer to provide information to the taxpayer;

(j.1) provide taxpayer information to an official or a designated person solely for the purpose of permitting the making of an adjustment to

(i) a social assistance payment made on the basis of a means, needs or income test, or

(ii) a payment pursuant to a prescribed law of a province in respect of a child within the meaning of the prescribed law,

where the purpose of the adjustment is to take into account the amount determined for C in subsection 122.61(1) in respect of a person for a taxation year;

(k) provide, or allow inspection of or access to, taxpayer information to or by any person otherwise legally entitled to it under an Act of Parliament solely for the purposes for which that person is entitled to the information;

(l) provide the business number, name, address, telephone number and facsimile number of a holder of a business number to an official of a department or agency of the Government of Canada or of a province solely for the purpose of the administration or enforcement of an Act of Parliament or a law of a province, if the holder of the business number is required by that Act or that law to provide the information (other than the business number) to the department or agency;

(m) provide taxpayer information to an official of the government of a province solely for use in the management or administration by that government of a program relating to payments under subsection 164(1.8); or

(n) provide taxpayer information to any person, solely for the purposes of the administration or enforcement of a law of a province that provides for workers' compensation benefits.

Proposed Amendment — Communication of information for statistics and to police

Notice of Ways and Means Motion, federal budget, February 28, 2000: *Communication of Taxpayer Information*

(44) That the provisions of the Act relating to the communication of taxpayer information be amended to permit an official to provide

(a) taxpayer information, relating to the 1997 and subsequent taxation years, to any person solely for the purpose of enabling the Chief Statistician, as defined by section 2 of the *Statistics Act*, to provide to a statistical agency of a province statistical data that is pertinent to activities carried on in the province and that is to be used by the agency solely for research and analysis, if the information relates to

(i) a corporation, or

(ii) an individual, where the information is solely in respect of the computation of income from the individual's business,

and for the purpose of subsection 17(2) of the *Statistics Act*, where such information was collected before any measure giving effect to this paragraph is assented to, the information shall be deemed to have been collected at the time at which it is so provided to the provincial statistical agency, and

(b) taxpayer information to a police officer, within the meaning assigned by subsection 462.48(17) of the *Criminal Code*, where

(i) an official has performed or is performing an act which the *Income Tax Act* obliges or authorizes the official to perform,

(ii) such information can reasonably be regarded as necessary to ascertain the identity of a person and the circumstances in which an offence under the *Criminal Code* may have been committed by the person in respect of an official of the Canada Customs and Revenue Agency, or in respect of any person related to that official,

(iii) the offence can reasonably be considered to be related to the official's act, referred to in clause (i), and

(iv) the information is provided solely for the purpose of the investigation or prosecution of the offence.

Federal budget, supplementary information, February 28, 2000: *Provision of Information to Police*

Under current law, it is not clear whether taxpayer information can be provided to the police for the purpose of investigating whether the acts of a person against an official of the Canada Customs and Revenue Agency constitute the commission of an offence, unless charges have first been laid or the circumstances constitute imminent personal danger to the official. The Government proposes to amend the confidentiality provisions of the *Income Tax Act* and the *Excise Tax Act* to permit an official of the CCRA to provide relevant taxpayer information to the police for the purpose of investigating whether the acts of a person against an official of the CCRA, or against a member of the official's family, constitute an offence under the Criminal Code. In the case of sales tax, the proposed amendment would also apply in respect of a provincial official authorized to exercise duties and powers under Part IX of the *Excise Tax Act* pursuant to an administration agreement between the government of the province and the Government of Canada.

Sharing of Tax Information with Provincial Statistical Agencies

In the past, Statistics Canada has been striving to minimize the high degree of overlap between business survey data collected by Statistics Canada and taxpayer information on businesses collected by the Canada Customs and Revenue Agency. Businesses have expressed concern about the response burden placed on them and the resources required to comply with these requests for information. Since 1997, Statistics Canada has obtained from tax records much of the information previously collected through survey questionnaires. Authority for the release of taxpayer information to Statistics Canada is provided in the *Income Tax Act*.

When Statistics Canada relied on business surveys conducted jointly by Statistics Canada and the provinces, it applied an authority provided under the *Statistics Act* to share survey business financial information with provincial statistical agencies — which have the statutory authority to obtain this information by

means of their own surveys — for purposes of research and analysis. This data sharing helped to reduce the number of surveys and response costs incurred by businesses in completing these surveys. However, the rule which allows the sharing of taxpayer information with Statistics Canada does not allow Statistics Canada to share this information with provincial statistical agencies.

To address this issue and to provide continuity of business data for research and analysis by the provinces, the budget proposes to amend the *Income Tax Act* to allow Statistics Canada to provide taxpayer information in respect of incorporated and unincorporated businesses for the 1997 and subsequent taxation years to provincial statistical agencies solely for use in research and analysis. This amendment will allow provincial needs to be met while keeping the response burden for businesses as low as possible.

The sharing of taxpayer information between federal and provincial statistical agencies will only be permitted once the enabling legislation receives royal assent. Appropriate measures to safeguard the confidentiality of this information will continue to apply. Also, only business-related information can be shared; thus, for unincorporated businesses, information on the business owner which is unrelated to business activities cannot be shared.

Proposed Amendment — 241.4

Letter from Department of Finance, March 17, 1999:

Dear [xxx]

This is in reply to your letter of March 12, 1999 to Simon Thompson with respect to the transfer of Social Insurance Numbers and business numbers from [xxx] to a nominee.

We understand that [xxx] plans to put in place an arrangement under which legal ownership of shares will, in many cases, be with a nominee of the shareholders. The nominee will receive dividend payments on the shares for which it is the registered owner, and will then distribute each dividend to the beneficial owners of the shares. As a consequence, the nominee will have an independent tax-reporting obligation under subsection 201(2) of the Income Tax Regulations. Under the existing law and the proposed amendments to it that were released on December 15, 1998, we agree that it may not be technically possible for [xxx] to provide Social Insurance Numbers and business numbers of beneficial owners to the nominee.

Given the reasons for the creation of the nominee in these circumstances, and in the interests of ensuring timely and complete reporting with regard to Social Insurance Numbers and business numbers, we are prepared to recommend an amendment to the *Income Tax Act*. The amendment would, in the circumstance set out in your letter, allow the transfer of this information to the nominee for the purpose of allowing the nominee to comply with tax reporting requirements.

Thank you for writing.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

Related Provisions: 37(3) — Consultation with other government departments to determine R&D claims; 122.62(9) — Consultation with Health and Welfare for determining Child Tax Benefit; 122.64(2)(a) — Communication of Child Tax Benefit information to provinces; 122.64(3) — Communication of name and address for enforcement of family support orders; 149.1(15) — Registered charity's information return may be communicated to public; 230.1(4) — Reports to chief electoral officer; 239(2.21) — Offence with respect to confidential information; 241(5) — Disclosure to taxpayer or with taxpayer's consent; 241(11) — Meaning of "this Act"; Canada-U.S. Tax Treaty, Art. XXVII — Exchange of information with U.S. government (for 241(4)(e)(xii)).

History: Para. 241(4)(n) added by 1999, c. 26, s. 41, in force June 17, 1999.

Subpara. 241(4)(d)(viii) amended by 1999, c. 10, s. 45, to substitute "*Civilian War-related Benefits Act*" for "*Merchant Navy Veteran and Civilian War-related Benefits Act*", proclaimed into force on May 1, 1999.

Subpara. 241(4)(d)(vii.1), para. 241(4)(j.1) added and subpara. 241(4)(e)(viii) amended by 1998, c. 21 ss. 75, 97 and 120, in force on June 18, 1998. Subpara. 241(4)(e)(viii) formerly read:

> (viii) paragraph 33(3)(a) of the *Old Age Security Act*,

Para. 241(4)(a), subpara. 241(4)(d)(x), para. 241(4)(h) amended by 1998, c. 19, subsecs. 236(3), (4) and (7), deemed to have come into force on June 30, 1996. Those paras. and subpara. formerly read:

> (a) provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act*, solely for that purpose;
>
> . . . . .
>
> (x) to the Canada Employment Insurance Commission, or to an official, or a member of a class of officials, of the Department of Human Resources Development, solely for the purposes of the administration or enforcement of, or the evaluation or formulation of policy for the purposes of, the *Employment Insurance Act* or an employment program of the Government of Canada,
>
> . . . . .
>
> (h) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty in right of Canada to assist in the administration or enforcement of this Act, the *Canada Pension Plan* or the *Employment Insurance Act*, to the extent that the information is relevant for that purpose;

Cl. 241(4)(d)(xiii)(B) amended, para. 241(4)(m) added, by the said c. 19, subsecs. 236(5) and (8), in force June 18, 1998. Cl. 241(4)(d)(xiii)(B) formerly read:

> (B) Her Majesty in right of a province on account of taxes payable to the province where an agreement exists between Canada and the province under which Canada is authorized to collect the taxes on behalf of the province, or
>
> . . . . .

Subpara. 241(4)(e)(vii) amended by the said c. 19, subsec. 236(6), deemed to have come into force on May 1, 1997. Subpara. 241(4)(e)(vii) formerly read:

> (vii) section 62 of the *Family Orders and Agreements Enforcement Assistance Act*,

Subpara. 241(4)(d)(vi.1) amended by 1997, c. 25, s. 70, applicable April 25, 1997. Subpara. (d)(vi.1) formerly read:

> (vi.1) to an official of the Department of Natural Resources solely for the purpose of determining whether property is prescribed energy conservation property,

Subpara. 241(4)(d)(x) amended by 1996, c. 11, s. 63, in force July 12, 1996, to substitute "Canada Employment Insurance Commission or to an official, or a member of a class of officials, of the Department of Human Resources Development" for "Canada Employment and Immigration Commission or the Department of Employment and Immigration".

Subpara. 241(4)(d)(xii) amended by 1995, c. 38, s. 5, in force July 12, 1996, to substitute "sections 32 to 33.2" for "sections 32 and 33".

Subpara. 241(4)(d)(xii) amended by 1995, c. 11, para. 45(b), in force July 12, 1996, to substitute "Department of Canadian Heritage" for "Department of Communications".

Para. 241(4)(a), subpara. 241(4)(d)(x), and para. 241(4)(h) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for "*Unemployment Insurance Act*", in force June 30, 1996.

Para. 241(4)(l) added by 1996, c. 21, subsec. 59(1), applicable June 20, 1996.

Subpara. 241(4)(d)(xiv) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Subpara. 241(4)(d)(vi.1) added by 1995, c. 3, subsecs. 51(1) and (3), applicable after February 21, 1994.

Subparas. 241(4)(d)(v) and (vi) amended by 1994, c. 41, subsec. 38(1), in force January 12, 1995. Subparas. (v) and (vi) formerly read:

> (v) to an official of the Department of Energy, Mines and Resources or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of

Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,

(vi) to an official of the government of a province that has received or is entitled to receive a payment referred to in this subparagraph, or to an official of the Department of Energy, Mines and Resources, solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to the province under the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, chapter 28 of the Statutes of Canada, 1988, the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987, or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources,

Subpara. 241(4)(d)(xi) amended by 1994, c. 38, subsec. 26(1), to substitute "Department of Agriculture and Agri-Food" for "Department of Agriculture", in force January 12, 1995.

Subsec. 241(4) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1), applicable as of June 10, 1993. Subsec. (4) formerly read:

(4) Other exceptions — An official or authorized person may,

(a) in the course of the duties of the official or authorized person in connection with the administration or enforcement of this Act or the *Petroleum and Gas Revenue Tax Act*,

(i) communicate or allow to be communicated to an official or authorized person information obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, and

(ii) allow an official or authorized person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*;

(b) under prescribed conditions, communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act*, or allow inspection of or access to any written statement furnished under this Act or the *Petroleum and Gas Revenue Tax Act*, to the government of any province in respect of which information and written statements obtained by the government of the province, for the purpose of a law of the province that imposes a tax similar to the tax imposed under this Act or the *Petroleum and Gas Revenue Tax Act*, are communicated or furnished on a reciprocal basis to the Minister;

(c) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act*, or allow inspection of or access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, to or by any person otherwise legally entitled thereto;

(d) communicate or allow to be communicated to a taxpayer information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* that may reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount payable by the taxpayer or any refund or tax credit to which the taxpayer is entitled under this Act or the *Petroleum and Gas Revenue Tax Act*;

(e) communicate or allow to be communicated to a taxpayer information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* from a transferor of property to the taxpayer that relates to the cost, capital cost or adjusted cost base to the taxpayer of the property, if, under any provision of this Act or the *Petroleum and Gas Revenue Tax Act* or the *Income Tax Application Rules*, the cost, capital cost or adjusted cost base is an amount other than the consideration paid by the taxpayer for that property;

(e.1) communicate or allow to be communicated to the person who seeks a certification referred to in paragraph 147.1(10)(a) the certification or a refusal to make the certification, for the purposes of administering a registered pension plan;

(f) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act*

(i) to an official of the Department of Finance solely for the purposes of evaluating and formulating tax policy,

(ii) to an official of the Department of National Revenue, Customs and Excise, solely for the purposes of administering or enforcing the *Customs Act*, the *Customs Tariff*, the *Excise Tax Act* or the *Excise Act*,

(iii) to an official of the Department of Energy, Mines and Resources or to the government of a province solely for the purposes of administering or enforcing a prescribed program of the Government of Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,

(iv) to an official of the appropriate department or agency of the Government of Canada solely for the purpose of administering subsection 127(11.3) and the definitions "approved project" and "approved project property" in subsection 127(9),

(v) to the government of a province that has received or is entitled to receive a payment referred to in this subparagraph or to an official of the Department of Energy, Mines and Resources solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to the province under the *Canada–Nova Scotia Oil and Gas Agreement Act*, chapter 29 of the Statutes of Canada, 1984, the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987, or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources, and

(vi) to an official of the Office of the Superintendent of Financial Institutions solely for the purpose of providing the Minister with advice with respect to any matter relating to pension plans;

(f.1) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* to an official of the Department of Veterans Affairs solely for the purposes of administering the *War Veterans Allowance Act* or Part XI of the *Merchant Navy Veteran and Civilian War-related Benefits Act*;

(g) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* as to the name, address, occupation or size or type of business of a taxpayer to an official of a department or agency of the Government of Canada or of a province, solely for the purpose of enabling that department or agency to obtain statistical data for research and analysis;

(h) communicate or allow to be communicated information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* to an official of the Canada Employment Immigration Commission or the Department of Employment and Immigration solely for the purposes of administering, evaluating or enforcing the *Unemployment Insurance Act* or a prescribed employment program;

(h.1) communicate or allow to be communicated to a taxpayer information obtained under this Act, regarding expenses in respect of which a deduction is denied under subsection 18(2) or (3.1) to any other taxpayer, that is necessary for the purpose of determining the cost or adjusted cost base, as the case may be, to the taxpayer of any property;

(h.2) communicate or allow to be communicated to a taxpayer information obtained under this Act from a corporation that previously owned or had an interest in property of the taxpayer that relates to the control of the corporation or the question whether the corporation was exempt from tax under Part I on its taxable income if it is necessary for the purposes of determining under this Act whether a gain from a disposition of the property accrued while the property was a property of a corporation controlled directly or indirectly in any manner whatever by one or more non-resident persons or of a corporation exempt from tax under Part I on its taxable income;

(i) communicate or allow to be communicated, pursuant to an order made under subsection 462.48(3) of the *Criminal Code*, information obtained under this Act;

(j) communicate or allow to be communicated to an official, solely for the purposes of administering or enforcing the *Pen-*

sion Benefits Standards Act, 1985 or a similar law of a province,

(i) information obtained under this Act

(A) as to the identity of a pension plan in respect of which application for registration for the purposes of this Act has, at any time, been made,

(B) as to the names and addresses of the persons who are, have been or will be responsible for the administration of a pension plan referred to in clause (A),

(C) as to the names and addresses of the employers who participate, have participated or will participate in a pension plan referred to in clause (A),

(D) as to the terms of a pension plan referred to in clause (A), a trust deed, insurance contract or other document relating to the funding of benefits under such a plan or an amendment or proposed amendment to such a plan or document, or

(E) as to the date of termination or partial termination of a pension plan referred to in clause (A),

(ii) information as to whether a pension plan is or was a registered pension plan,

(iii) the date of registration of a pension plan that is or was a registered pension plan, or

(iv) in the case of a pension plan the registration of which under this Act has been refused or revoked, the date of the refusal or revocation and the reason therefor;

(k) communicate or allow to be communicated information obtained under this Act to an official of the Department of Agriculture or to an official of the government of a province solely for the purposes of administering or enforcing a program of the Government of Canada or of the province established under an agreement entered into pursuant to the *Farm Income Protection Act*;

(l) communicate or allow to be communicated information obtained under this Act to an official of the Department of Communications or a member of the Canadian Cultural Property Export Review Board, solely for the purpose of administering the provisions of sections 32 and 33 of the *Cultural Property Export and Import Act*; or

(m) communicate or allow to be communicated information obtained under this Act to an official or authorized person for the purpose of setting off against any sum of money that is due or payable by Her Majesty in right of Canada a debt due to

(i) Her Majesty in right of Canada, or

(ii) Her Majesty in right of a province on account of taxes payable to the province where an agreement exists between Canada and the province under which Canada is authorized to collect the taxes on behalf of the province.

Para. 241(4)(f.1) amended by 1994, c. 7, Sch. IV (1992, c. 24), s. 16, to substitute "Merchant Navy Veteran and Civilian War-related Benefits Act" for "Civilian War Pensions and Allowances Act", deemed to have come into force July 1, 1992.

Para. 241(4)(g) amended to substitute "size or type of business" for "type of business", and "for the purpose of" for "for the purposes of", and paras. (l), (m) added, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 190(1), (2).

Pre-RSC History: Para. 241(4)(k) added by 1991, c. 22, s. 26, deemed in force April 1, 1991.

Paras. 241(4)(e.1) and (j) and subpara. (f)(vi) added by 1990, c. 35, subsecs. 26(1) to (3), applicable after 1988.

Para. 241(4)(f)(iv) amended by 1990, c. 1, s. 30, to substitute "appropriate department or agency of the Government of Canada" for "Department of Regional Economic Expansion", in force February 23, 1990.

Para. 241(4)(d) substituted by 1988, c. 55, subsec. 183(1). Para. (d) formerly read:

(d) communicate or allow to be communicated to a taxpayer information obtained under this Act or the *Petroleum and Gas Revenue Tax Act* regarding the income of his spouse or of any other person that is necessary for the purposes of determining any tax, interest, penalty or other amount payable by the taxpayer or of any refund to which he is entitled under this Act or the *Petroleum and Gas Revenue Tax Act*;

Paras. 241(4)(h.1), (h.2) added by 1988, c. 55, subsec. 183(2). Para. 241(4)(h.1) applicable after 1987; para. 241(4)(h.2) applicable after 4 p.m. EDST, September 25, 1987.

Para. 241(4)(i) added by 1988, c. 51, s. 14, applicable from January 1, 1989.

Subparas. 241(4)(f)(iv), (v) added by 1987, c. 46, subsec. 68(3); subpara. (iv) applicable after June 5, 1987 and subpara. (v) applicable to 1982 *et seq.*

Para. 241(4)(e) amended by 1986, c. 55, s. 77, to substitute "cost, capital cost or adjusted cost base" for "cost or capital cost" (in two places), applicable after February 25, 1986.

Para. 241(4)(f.1) added by 1984, c. 19, s. 30, in force July 1, 1984.

Subpara. 241(4)(f)(iii), paras. 241(4)(g), (h) added by 1980-81-82-83, c. 140, subsecs. 126(1), (2).

Paras. 241(4)(d) substituted, 241(4)(e), (f) added by 1980-81-82-83, c. 48, subsec. 107(1).

Para. 241(4)(d) added by 1978-79, c. 5, s. 9.

Regulations: 3004 (prescribed law of a province for 241(4)(j.1)(ii)); 8200.1 (prescribed energy conservation property for 241(4)(d)(vi.1)).

Forms: T1013 — Consent form.

(4.1) Measures to prevent unauthorized use or disclosure — The person who presides at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order such measures as are necessary to ensure that taxpayer information is not used or provided to any person for any purpose not relating to that proceeding, including

(a) holding a hearing *in camera*;

(b) banning the publication of the information;

(c) concealing the identity of the taxpayer to whom the information relates; and

(d) sealing the records of the proceeding.

Related Provisions: 239(2.2) — Offence with respect to confidential information; 238(1) — Punishment for failing to comply.

History: Subsec. 241(4.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1).

(5) Disclosure to taxpayer or on consent — An official may provide taxpayer information relating to a taxpayer

(a) to the taxpayer; and

(b) with the consent of the taxpayer, to any other person.

Related Provisions: 238(1) — Punishment for failing to comply; 241(4)(j) — Disclosure to taxpayer permitted.

History: Subsec. 241(5) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(1). Subsec. (5) formerly read:

(5) Return of copy of books, etc. — Notwithstanding anything in this section, the Minister may permit a copy of any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act* to be given to the person from whom the book, record, writing, return or other document was obtained or the legal representative of that person, or to the agent of that person or of the legal representative authorized in writing in that behalf.

Forms: T1013 — Consent form.

(6) Appeal from order or direction — An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official or authorized person to give or produce evidence relating to any taxpayer information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(a) the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established

by or pursuant to the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

(b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established by or pursuant to the laws of Canada.

History: That portion of subsec. 241(6) preceding para. (a) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(2). That portion formerly read:

(6) An order or direction made in the course of or in connection with any legal proceedings requiring an official or authorized person to give evidence relating to any information or produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act or the *Petroleum and Gas Revenue Tax Act*, may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(7) Disposition of appeal — The court to which an appeal is taken pursuant to subsection (6) may allow the appeal and quash the order or direction appealed from or dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts shall apply, with such modifications as the circumstances require, to an appeal instituted pursuant to that subsection.

(8) Stay of order or direction — An appeal instituted pursuant to subsection (6) shall stay the operation of the order or direction appealed from until judgment is pronounced.

(9) [Repealed under former Act]

Pre-RSC History: Subsec. 241(9) repealed by 1988, c. 55, subsec. 183(3). Subsec. 241(9) formerly read:

(9) Offence — Every person

(a) who, being an official or authorized person, contravenes subsection (1), or

(b) to whom information has been provided pursuant to subsection (4) who uses, communicates or allows to be communicated such information for any purpose other than that for which it was provided,

is guilty of an offence and is liable on summary conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 2 months or to both such fine and imprisonment.

Subsec. 241(9) substituted by 1980-81-82-83, c. 48, subsec. 107(2).

(10) Definitions — In this section,

"authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*;

Related Provisions: 241(11) — Meaning of "this Act".

History: The definition "authorized person" in subsec. 241(10) amended by 1998, c. 19, subsec. 236(10), deemed to have come into force on June 30, 1996. The definition formerly read:

"authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act, the *Canada Pension Plan* or the *Employment Insurance Act*;

The definition of "authorized person" in subsec. 241(10) amended by 1996, c. 23, para. 187(d), to substitute "*Employment Insurance Act*" for the "*Unemployment Insurance Act*", in force June 30, 1996.

"Authorized person" in subsec. 241(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3). That definition formerly read:

"authorized person" means any person engaged or employed, or formerly engaged or employed, by or on behalf of Her Majesty in right of Canada or a province to assist in carrying out the purposes and provisions of this Act or the *Petroleum and Gas Revenue Tax Act*;

"business number" — [Repealed]

History: The definition "business number" in subsec. 241(10) repealed by 1998, c. 19, subsec. 236(9), in force June 18, 1998. The definition formerly read:

"business number" means the number (other than a Social Insurance Number) used by the Minister to identify

(a) a corporation or partnership, or

(b) any other association or taxpayer that carries on a business or is required by this Act to deduct or withhold an amount from an amount paid or credited or deemed to be paid or credited under this Act;

The definition "business number" added to subsec. 241(10) by 1996, c. 21, subsec. 59(2), applicable June 20, 1996.

"court of appeal" has the meaning assigned by the definition "court of appeal" in section 2 of the *Criminal Code*;

History: "Court of appeal" in subsec. 241(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3). That definition formerly read:

"court of appeal" has the meaning assigned by paragraphs (a) to (j) of the definition "court of appeal" in section 2 of the *Criminal Code*;

"designated person" means any person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of,

(a) a municipality in Canada, or

(b) a public body performing a function of government in Canada,

or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged;

History: The definition "designated person" added to subsec. 241(10) by 1998, c. 21, subsec. 97(3), in force on June 18, 1998.

"official" means any person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of,

(a) Her Majesty in right of Canada or a province, or

(b) an authority engaged in administering a law of a province similar to the *Pension Benefits Standards Act, 1985*,

or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged and, for the purposes of subsection 239(2.21), subsections (1) and (2), the portion of subsection (4) before paragraph (a), and subsections (5) and (6), includes a designated person;

History: The closing words of the definition "official" in subsec. 241(10) amended by 1998, c. 21, subsec. 97(2), in force on June 18, 1998. The closing words formerly read:

or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged;

"Official" in subsec. 241(10) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3). That definition formerly read:

"official" means any person employed in or occupying a position of responsibility

(a) in the service of Her Majesty in right of Canada or a province, or

(b) in the service of an authority engaged in administering a law of a province similar to the *Pension Benefits Standards Act, 1985*

or any person formerly so employed or formerly occupying a position therein.

Application Policies: SR&ED 95-04: Conflict of interest..

"taxpayer information" means information of any kind and in any form relating to one or more taxpayers that is

(a) obtained by or on behalf of the Minister for the purposes of this Act, or

(b) prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

Related Provisions: 122.64(1) — Confidentiality of information; 241(11) — Meaning of "this Act".

History: "Taxpayer information" added to subsec. 241(10) by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3).

Pre-RSC History: *The definition "authorized person" was para. 241(10)(b); "court of appeal", para. 241(10)(c); "official", para. 241(10)(a).*

Para. 241(10)(a) amended by 1990, c. 35, subsec. 26(4), to split off subpara. (i) and add subpara. (ii), applicable after 1988.

Paras. 241(10)(a), (b) amended by 1987, c. 46, subsec. 68(4), to substitute in paras. (a), (b), "Her Majesty in right of Canada or a province" for "Her Majesty", applicable after February 18, 1987.

Selected Cases [subsec. 241(10)]: *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] 3 C.T.C. 123 (FCTD) (Access to tax policy documents restricted).

(11) PGRT Act references — The references in subsections (1), (3), (4) and (10) to "this Act" shall be read as references to "this Act or the *Petroleum and Gas Revenue Tax Act*".

History: Subsec. 241(11) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 137(3).

Pre-RSC History [s. 241]: By 1980-81-82-83, c. 68, s. 117 wherever the expression "this Act" appears in s. 241 there shall in each case be substituted therefor the expression "this Act or the *Petroleum and Gas Revenue Tax Act*".

Selected Cases [s. 241]: *Page v. Canada*, [1996] 1 C.T.C. 2697 (TCC) (Minister ordered to produce records, but not tax returns, relating to decision not to assess other directors); *Crestbrook Forest Industries v. Canada*, [1991] 2 C.T.C. 195 (FCTD); aff'd [1992] 1 C.T.C. 100 (FCA) (Confidential documents used by Minister as basis for assessment to be disclosed to taxpayer, even where supplied by other taxpayers who object to production); *Diversified Holdings Ltd. v. Canada*, [1991] 1 C.T.C. 118 (FCA) (Docket notations made by collection investigation officers on internal self-generated documents not based on information given to Revenue Canada under the Act not confidential); *Tyler v. MNR*, [1991] 1 C.T.C. 13 (FCA) (Minister prohibited from communicating information obtained under provision to RCMP during period in which drug trafficking charges remained outstanding).

Definitions [s. 241]: "adjusted cost base" — 54, 248(1); "authorized person" — 241(10); "business" — 248(1); "business number" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "court of appeal" — 241(10); "designated person" — 241(10); "employed", "employer", "Minister", "Newfoundland offshore area", "non-resident" — 248(1); "official" — 241(10); "person", "prescribed", "property" — 248(1); "province" — *Interpretation Act* 35(1); "record", "registered charity", "registered pension plan" — 248(1); "taxable income" — 2(2), 248(1); "taxpayer" — 248(1); "taxpayer information" — 241(10); "this Act" — 241(11); "writing" — *Interpretation Act* 35(1).

242. Officers, etc., of corporations — Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Related Provisions: 227.1 — Liability of directors; 236 — Corporate directors and officers entitled to execute documents.

Selected Cases [s. 242]: *Chilton Insurance Consultation Inc. v. Canada*, [1996] 2 C.T.C. 185 (Sask QB) (Company struck off provincial Register still liable to file tax returns; director personally liable to penalty); *The Queen v. Swendson*, [1987] 2 C.T.C. 199 (Alta QB) (Although Crown need not prove *mens rea*, it must establish corporation's guilt and defendant's participation).

Definitions [s. 242]: "corporation" — 248(1), *Interpretation Act* 35(1); "officer" — 248(1)"office".

Information Circulars: 73-10R3: Tax evasion.

243. Power to decrease punishment — Notwithstanding the *Criminal Code* or any other statute or law in force on June 30, 1948, the court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act or to suspend sentence.

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244. (1) Information or complaint — An information or complaint under this Act may be laid or made by any officer of the Canada Customs and Revenue Agency, by a member of the Royal Canadian Mounted Police or by any person thereto authorized by the Minister and, where an information or complaint purports to have been laid or made under this Act, it shall be deemed to have been laid or made by a person thereto authorized by the Minister and shall not be called in question for lack of authority of the informant or complainant except by the Minister or by a person acting for the Minister or Her Majesty.

(2) Two or more offences — An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(3) Venue — An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court, judge or justice if the accused is resident, carrying on business, found or apprehended or is in custody within the territorial jurisdiction of the court, judge or justice, as the case may be, although the matter of the information or complaint did not arise within that jurisdiction.

(4) Limitation period — An information or complaint under the provisions of the *Criminal Code* relating to summary convictions, in respect of an offence under this Act, may be laid or made at any time but not later than 8 years after the day on which the matter of the information or complaint arose.

Pre-RSC History: Subsec. 244(4) substituted by 1988, c. 55, subsec. 184(1). Subsec. 244(4) formerly read:

> (4) Limitation of prosecutions — An information or complaint under the provisions of the *Criminal Code* relating to summary convictions, in respect of an offence under this Act, may be laid or made on or before a day 5 years from the time when the matter of the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, came to his knowledge, and the Minister's certificate as to the day on which such evidence came to his knowledge is conclusive evidence thereof.

Selected Cases [subsec. 244(4)]: *Giles v. Print Three et al.*, [1988] 1 C.T.C. 1 (Ont SC) (Subpoena issued against director of taxation upheld because his testimony relevant to interpretation of provision and application of *Charter*); *Smerchanski v. MNR*, [1976] C.T.C. 488 (SCC) (Taxpayer who settled with Crown to avoid prosecution not permitted to impugn settlement on grounds of duress subsequent to expiry of limitation period).

(5) Proof of service by mail — Where, by this Act or a regulation, provision is made for sending by mail a re-

quest for information, notice or demand, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed (indicating the address) and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall, in the absence of proof to the contrary, be received as evidence of the sending and of the request, notice or demand.

Related Provisions: 244(11) — Presumption that affidavit valid; 244(14) — Mailing date deemed to be date of notice; 248(7)(a) — Mail deemed received on day mailed; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(5) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

Pre-RSC History: Subsec. 244(5) substituted by 1977-78, c. 32, s. 53, applicable after December 31, 1978. Subsec. 244(5) formerly read:

> (5) Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Department of National Revenue sworn before a commissioner or other person authorized to take affidavits setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed (indicating such address) and that he identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand shall be received as *prima facie* evidence of the sending and of the request, notice or demand.

(6) Proof of personal service — Where, by this Act or a regulation, provision is made for personal service of a request for information, notice or demand, an affidavit of an officer of the Canada Customs and Revenue Agency sworn before a commissioner or other person authorized to take affidavits setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was served personally on a named day on the person to whom it was directed and that the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand, shall, in the absence of proof to the contrary, be received as evidence of the personal service and of the request, notice or demand.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(6) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

Pre-RSC History: Subsec. 244(6) substituted by 1977-78, c. 32, s. 53, applicable after December 31, 1978. Subsec. 244(6) formerly read:

> (6) Where, by this Act or a regulation, provision is made for personal service of a request for information, notice or demand, an affidavit of an officer of the Department of National Revenue sworn before a commissioner or other person authorized to take affidavits setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was served personally on a named day on the person to whom it was directed and that he identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand shall be received as *prima facie* evidence of the personal service and of the request, notice or demand.

(7) Proof of failure to comply — Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after a careful examination and search of those records the officer has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by that person, shall, in the absence of proof to the contrary, be received as evidence that in that case that person did not make the return, statement, answer or certificate, as the case may be.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(7) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

Selected Cases [subsec. 244(7)]: *R. v. Jacques*, [2000] 2 C.T.C. 475 (BC SC) (Taxpayer unable to establish returns filed); *Maritime Construction Ltd. v. Canada*, [1989] 1 C.T.C. 306 (NB QB) (Appeals from convictions for failing to file returns allowed where trial judge refused to allow cross-examination on affidavits taken under provision).

(8) Proof of time of compliance — Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after careful examination of those records the officer has found that the return, statement, answer or certificate was filed or made on a particular day, shall, in the absence of proof to the contrary, be received as evidence that it was filed or made on that day and not prior thereto.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(8) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

(9) Proof of documents — An affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising a power of the Minister or by or on behalf of a taxpayer, is evidence of the nature and contents of the document.

Related Provisions: 231.5(1) — Copy of document seized or examined may be used in court proceedings; 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(9) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(f), proclaimed into force November 1, 1999.

Subsec. 244(9) amended by 1998, c. 19, subsec. 237(1), in force June 18, 1998. Subsec. 244(9) formerly read:

> (9) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a taxpayer, shall, in the absence of proof to the contrary, be received as evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way.

(10) Proof of no appeal — An affidavit of an officer of the Canada Customs and Revenue Agency, sworn before

a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Agency and that an examination of those records shows that a notice of assessment for a particular taxation year or a notice of determination was mailed or otherwise communicated to a taxpayer on a particular day under this Act and that, after careful examination and search of those records, the officer has been unable to find that a notice of objection or of appeal from the assessment or determination or a request under subsection 245(6), as the case may be, was received within the time allowed, shall, in the absence of proof to the contrary, be received as evidence of the statements contained in it.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(10) amended by 1999, c. 17, subsec. 166(1), proclaimed into force November 1, 1999. The subsec. formerly read:

> (10) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year or a notice of determination was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of those records, the officer has been unable to find that a notice of objection or of appeal from the assessment or determination or a request under subsection 245(6), as the case may be, was received within the time allowed therefor, shall, in the absence of proof to the contrary, be received as evidence of the statements contained therein.

Pre-RSC History: Subsec. 244(10) substituted by 1988, c. 55, subsec. 184(1.1). Subsec. 244(10) formerly read:

> (10) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, shall be received as *prima facie* evidence of the statements contained therein.

(11) Presumption — Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Canada Customs and Revenue Agency, it is not necessary to prove the person's signature or that the person is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

History: Subsec. 244(11) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(g), proclaimed into force November 1, 1999.

(12) Judicial notice — Judicial notice shall be taken of all orders or regulations made under this Act without those orders or regulations being specially pleaded or proven.

(13) Proof of documents — Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue, the Commissioner of Customs and Revenue or an officer authorized to exercise a power or perform a duty of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister, the Commissioner or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

History: Subsec. 244(13) amended by 1999, c. 17, para. 169(f), proclaimed into force November 1, 1999. The subsec. formerly read:

> (13) Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue or an officer authorized to exercise a power or perform a duty of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

Subsec. 244(13) amended by 1998, c. 19, subsec. 237(2), in force June 18, 1998. The subsec. formerly read:

> (13) Every document purporting to be an order, direction, demand, notice, certificate, requirement, decision, assessment, discharge of mortgage or other document purporting to have been executed under, or in the course of administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue or any officer authorized by regulation to exercise powers or perform duties of the Minister under this Act shall be deemed to be a document signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

"Deputy Minister of National Revenue" substituted for "Deputy Minister of National Revenue for Taxation" in subsec. 244(13), by 1994, c. 13, subsec. 7(1), applicable May 12, 1994.

(13.1) [Repealed]

History: Subsec. 244(13.1) repealed by 1994, c. 13, s. 10, applicable May 12, 1994. Subsec. (13.1) formerly read:

> (13.1) **Revenue Canada, Taxation** — The words "Revenue Canada, Taxation" and the words "*Revenu Canada (Impôt)*" in any document issued or executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Deputy Minister of National Revenue for Taxation or any officer authorized by regulation to exercise powers or perform duties of the Minister under this Act are deemed to be a reference to the "Department of National Revenue" and "*ministère du Revenu national*".

Department of National Revenue Act (as amended by 1994, c. 13) s. 3.1:

> 3.1 Either or both of the expressions "Revenue Canada" and "Revenu Canada" may be used to refer to the Department of National Revenue.

Pre-RSC History: Subsec. 244(13.1) added by 1980-81-82-83, c. 140, s. 127, applicable after November 12, 1981.

(14) Mailing date — For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3) or 166.1(5) or any notice of assessment or determination is mailed, it shall be presumed to be mailed on the date of that notice or notification.

Related Provisions: 244(5) — Proof of service by mail; 244(15) — Assessment deemed made on date of mailing; 248(7)(a) — Mail deemed received on day mailed.

History: Subsec. 244(14) amended by 1998, c. 19, subsec. 237(2), in force June 18, 1998. Subsec. 244(14) formerly read:

> (14) For the purposes of this Act, the day of mailing of any notice or notification described in subsection 149.1(6.3), 152(4) or 166.1(5) or of any notice of assessment shall be presumed to be the date of that notice or notification.

Subsec. 244(14) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 191(1), to substitute "152(4) or 166.1(5)" for "152(4), 192(8) or 194(7)".

Pre-RSC History: Subsec. 244(14) amended by 1988, c. 55, subsec. 184(2), to substitute "described in subsection 149.1(6.3), 152(4), 192(8) or 194(7)" for "described in subsection 110(8.1) or (8.2), 152(4), 164(1.2), 192(8), 194(7) or 225.2(1)", applicable to 1988 *et seq.*, except that in applying subsec. 244(14) to that part of the 1988 taxation year that is before September 13, 1988 the reference therein to "subsection 149.1(6.3), 152(4), 192(8) or 194(7)" shall be read as a reference to "subsection 149.1(6.3), 152(4), 164(1.2), 192(8), 194(7) or 225.2(1)".

Subsec. 244(14) substituted by 1985, c. 45, subsec. 121(1). Subsec. 244(14) formerly read:

> (14) For the purposes of this Act, the day of mailing of any notice of assessment or notification described in subsection 110(8.1), (8.2), 152(4), 192(8) or 194(7) shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice or notification to be the date thereof unless called in question by the Minister or by some person acting for him or Her Majesty.

Subsec. 244(14) substituted by 1984, c. 45, s. 90, to add reference to subsecs. 110(8.1), (8.2), applicable to taxation years commencing after 1983.

Subsec. 244(14) substituted by 1984, c. 1, s. 103, applicable to 1983 *et seq.*, to add "192(8) or 194(7)".

(15) Date when assessment made — Where any notice of assessment or determination has been sent by the Minister as required by this Act, the assessment or determination is deemed to have been made on the day of mailing of the notice of the assessment or determination.

Related Provisions: 244(5) — Proof of service by mail; 244(14) — Date of mailing presumed to be date of notice.

History: Subsec. 244(15) amended by 1998, c. 19, subsec. 237(2), in force June 18, 1998. Subsec. 244(15) formerly read:

> (15) Where any notice of an assessment has been sent by the Minister as required by this Act, the assessment shall be deemed to have been made on the day of mailing of the notice of the assessment.

Selected Cases [subsecs. 244(14), (15)]: *Gaudreau v. R.*, [1998] 1 C.T.C. 2769 (TCC) (Minister entitled to use old address even when correspondence from taxpayer shows new address, if no formal request for change of address).

(16) Forms prescribed or authorized — Every form purporting to be a form prescribed or authorized by the Minister shall be deemed to be a form authorized under this Act by the Minister unless called in question by the Minister or by a person acting for the Minister or Her Majesty.

Related Provisions: *Interpretation Act* 32 — Deviations from a prescribed form.

History: Subsec. 244(16) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 191(2). Subsec. 244(16) formerly read:

> (16) Every form purporting to be a form prescribed or authorized by the Minister shall be deemed to be a form prescribed by order of the Minister under this Act unless called in question by the Minister or some person acting for him or Her Majesty.

Selected Cases [subsec. 244(16)]: *Cal Investments Ltd. v. Canada*, [1990] 2 C.T.C. 418 (FCTD) (Waiver on prescribed form was valid even though missing corporate seal).

(17) Proof of return in prosecution for offence — In any prosecution for an offence under this Act, the production of a return, certificate, statement or answer required by or under this Act or a regulation, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person shall, in the absence of proof to the contrary, be received as evidence that the return, certificate, statement or answer was filed or delivered, or was made or signed, by or on behalf of that person.

Related Provisions: *Interpretation Act* 25(1) — Evidence is rebuttable.

(18) Idem, in proceedings under Division J of Part I — In any proceedings under Division J of Part I, the production of a return, certificate, statement or answer required by or under this Act or a regulation, purporting to have been filed or delivered, or to have been made or signed, by or on behalf of the taxpayer shall in the absence of proof to the contrary be received as evidence that the return, certificate, statement or answer was filed or delivered, or was made or signed, by or on behalf of the taxpayer.

Related Provisions: *Interpretation Act* 25(1) — Evidence is rebuttable.

(19) Proof of statement of non-receipt — In any prosecution for an offence under this Act, an affidavit of an officer of the Canada Customs and Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be remitted to the Receiver General on account of tax for a year has not been received by the Receiver General, shall, in the absence of proof to the contrary, be received as evidence of the statements contained therein.

Related Provisions: 244(11) — Presumption that affidavit valid; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(19) amended by replacing the words "Department of National Revenue" with "Canada Customs and Revenue Agency" by 1999, c. 17, para. 168(g), proclaimed into force November 1, 1999.

Pre-RSC History: "Receiver General" substituted for "Receiver General of Canada" by 1980-81-82-83, c. 48, s. 115.

(20) Members of partnerships — For the purposes of this Act,

(a) a reference in any notice or other document to the firm name of a partnership shall be read as as a reference to all the members thereof; and

(b) any notice or other document shall be deemed to have been provided to each member of a partnership if the notice or other document is mailed to, served on or otherwise sent to the partnership

(i) at its latest known address or place of business, or

(ii) at the latest known address

(A) where it is a limited partnership, of any member thereof whose liability as a member is not limited, or

(B) in any other case, of any member thereof.

Related Provisions: 96(3) — Election by members; 224(6) — Service of garnishment notice on partnership.

History: Subsec. 244(20) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 191(3).

(21) Proof of return filed — For the purposes of this Act, a document presented by the Minister purporting to be a print-out of the information in respect of a taxpayer received under section 150.1 by the Minister from a person shall be received as evidence and, in the absence of evidence to the contrary, is proof of the return filed by the person under that section.

Related Provisions: *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(21) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 138, applicable to 1992 *et seq.*

(22) Filing of information returns — Where a person who is required by this Act or a regulation to file an information return in prescribed form with the Minister meets the criteria specified in writing by the Minister, the person may at any time file the information return with the Minister by way of electronic filing (within the meaning assigned by subsection 150.1(1)) and the person shall be deemed to have filed the information return with the Minister at that time, and a document presented by the Minister purporting to be a print-out of the information so received by the Minister shall be received as evidence and, in the absence of evidence to the contrary, is proof of the information return so deemed to have been filed.

Related Provisions: Reg. 205.1 — Electronic filing of information returns required if more than 500 returns being filed; *Interpretation Act* 25(1) — Evidence is rebuttable.

History: Subsec. 244(22) added by 1994, c. 7, Sch. VIII (1993, c. 24), s. 138, applicable after 1991.

Selected Cases [s. 244]: *Sykes v. R.*, [1998] 1 C.T.C. 2639 (TCC) (Computer-generated copies of assessments insufficient to establish date of mailing).

Definitions [s. 244]: "assessment", "business" — 248(1); "Canada Customs and Revenue Agency" — *Canada Customs and Revenue Agency Act* s. 4(1); "Commissioner of Customs and Revenue" — *Canada Customs and Revenue Agency Act* s. 25; "day of mailing" — 244(14); "Minister", "person", "prescribed", "record", "regulation" — 248(1); "taxation year" — 249; "taxpayer" — 248(1); "writing" — *Interpretation Act* 35(1).

PART XVI — TAX AVOIDANCE

245. [General Anti-Avoidance Rule] — (1) Definitions — In this section,

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act;

Advance Tax Rulings: ATR-41: Convertible preferred shares; ATR-44: Utilization of deductions and credits within a related corporate group.

"tax consequences" to a person means the amount of income, taxable income, or taxable income earned in Canada of, tax or other amount payable by or refundable to the person under this Act, or any other amount that is relevant for the purposes of computing that amount;

"transaction" includes an arrangement or event.

Related Provisions: 233.1(1)"transaction" — Parallel definition for reporting non-arm's length transactions with non-residents; 247(1) — Parallel definition re transfer pricing.

Selected Cases [subsec. 245(1)]: *Gibson Petroleum Co. v. R.*, [1997] 3 C.T.C. 2453 (TCC) (Fair market value of the assets had been used to determine capital cost and assets had been acquired for purpose of gaining or producing income; no application of provision); *Central Supply Co. (1972) Ltd. v. R.*, [1997] 3 C.T.C. 102 (FCA) (Deductions permitted under specific provisions of the Act may nevertheless unduly or artificially reduce income); *Foremanet et al. v MNR*, [1996] 1 C.T.C. 265 (FCTD) (Statutory language required where "series" of transactions attacked); *Fording Coal Ltd. v. Canada*, [1996] 1 C.T.C. 230 (FCA) (Successor rules construed from perspective of normal business practice and public purpose in determining artificiality. (Majority decision)).

(2) General anti-avoidance provision — Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

Related Provisions: 56(2) — Indirect payments; 246 — Benefit conferred on a person; 247(2)(b)(ii) — GAAR test in transfer-pricing rules; 248(10) — Series of transactions; Canada-U.S. Tax Convention, Art. XXIX A: Limitations on using treaty benefits.

Selected Cases [subsec. 245(2)]: *Nadeau v. R.*, [1999] 3 C.T.C. 2235 (TCC) (Scheme of statute is that surplus is to be withdrawn by dividends); *Husky Oil Ltd. v. Canada*, [1995] 1 C.T.C. 460 (FCA); affirming [1995] 1 C.T.C. 2184 (TCC) (Tax benefit was obtained, but not "conferred" by arm's length party; provision inapplicable. Appeal to FCA dismissed.).

Interpretation Bulletins: IT-489R: Non-arm's length sale of shares to a corporation.

Information Circulars: 88-2 and Supplement: General anti-avoidance rule — section 245 of the *Income Tax Act*.

I.T. Technical News: No. 3 (loss utilization within a corporate group); No. 9 (loss consolidation within a corporate group); No. 16 (*Neuman* case; *Duha Printers* case and GAAR statistics; *Continental Bank* case); No. 19 (Change in position in respect of GAAR — section 7).

Advance Tax Rulings: ATR-41: Convertible preferred shares; ATR-42: Transfer of shares; ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-47: Transfer of assets to Realtyco; ATR-50: Structured settlement; ATR-53: Purification of a small business corporation; ATR-54: Reduction of paid-up capital; ATR-55: Amalgamation followed by sale of shares; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization; ATR-60: Joint exploration corporations; ATR-66: Non-arm's length transfer of debt followed by a winding-up and a sale of shares.

(3) Avoidance transaction — An avoidance transaction means any transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

Related Provisions: 248(10) — Series of transactions.

Selected Cases [subsec. 245(3)]: *Owen Holdings Ltd. v. R.*, [1997] 3 C.T.C. 2286 (TCC) (Legislative drafting documents relating to section 245 not subject to production); *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103 (TCC) (Scheme would have been caught by GAAR if other rules had been insufficient); *McNichol v. Canada*, [1997] 2 C.T.C. 2088 (TCC) (Choice of one method of accomplishing transaction over another resulted in tax benefit).

Information Circulars: 88-2 and Supplement: General anti-avoidance rule — section 245 of the *Income Tax Act*.

Advance Tax Rulings: ATR-41: Convertible preferred shares; ATR-42: Transfer of shares; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-54: Reduction of paid-up capital; ATR-55: Amalgamation followed by sale of shares; ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(4) Where subsec. (2) does not apply — For greater certainty, subsection (2) does not apply to a transaction where it may reasonably be considered that the transaction would not result directly or indirectly in a misuse of the provisions of this Act or an abuse having regard to the provisions of this Act, other than this section, read as a whole.

I.T. Technical News: No. 19 (Change in position in respect of GAAR — section 7). Also see under 245(2).

Advance Tax Rulings: ATR-42: Transfer of shares; ATR-44: Utilization of deductions and credits within a related corporate group; ATR-54: Reduction of paid-up capital; ATR-55: Amalgamation followed by sale of shares; ATR-56: Purification of a family farm corporation; ATR-58: Divisive reorganization.

(5) Determination of tax consequences — Without restricting the generality of subsection (2),

(a) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof may be allowed or disallowed in whole or in part,

(b) any such deduction, any income, loss or other amount or part thereof may be allocated to any person,

(c) the nature of any payment or other amount may be recharacterized, and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

(6) Request for adjustments — Where with respect to a transaction

(a) a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, or

(b) a notice of determination pursuant to subsection 152(1.11) has been sent to a person with respect to the transaction,

any person (other than a person referred to in paragraph (a) or (b)) shall be entitled, within 180 days after the day of mailing of the notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection (2) or make a determination applying subsection 152(1.11) with respect to that transaction.

Related Provisions: 166.1 — Extension of time by Minister; 167(1) — Application to Tax Court of Canada for time extension; 244(10) — Proof that no notice of objection filed.

(7) Exception — Notwithstanding any other provision of this Act, the tax consequences to any person, following the application of this section, shall only be determined through a notice of assessment, reassessment, additional assessment or determination pursuant to subsection 152(1.11) involving the application of this section.

Forms: T1008: Notice of determination/redetermination.

(8) Duties of Minister — On receipt of a request by a person under subsection (6), the Minister shall, with all due dispatch, consider the request and, notwithstanding subsection 152(4), assess, reassess or make an additional assessment or determination pursuant to subsection 152(1.11) with respect to that person, except that an assessment, reassessment, additional assessment or determination may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6).

Related Provisions: 165(1.1) — Limitation of right to object to assessments or redetermination; 169(2)(a) — Limitation of right to appeal.

Pre-RSC History [s. 245]: S. 245 substituted by 1988, c. 55, s. 185, applicable with respect to transactions entered into on or after September 13, 1988 other than

(a) transactions that are part of a series of transactions, determined without reference to subsec. 248(10), commencing before September 13, 1988 and completed before 1989, or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

S. 245 formerly read:

245. (1) **Artificial transactions** — In computing income for the purposes of this Act, no deduction may be made in respect of a disbursement or expense made or incurred in respect of a transaction or operation that, if allowed, would unduly or artificially reduce the income.

(1.1) **Idem** — Where it may reasonably be considered that one of the purposes of a series of transactions or events is that an individual convert into a capital gain from the disposition of property an amount that would

(a) but for one or more of such transactions or events in the series, or

(b) on a disposition by him of property in respect of which the property is a substituted property

otherwise have been received by the individual and included in computing his income under paragraph 3(a), no amount shall be deducted by the individual under section 110.6 in respect of that capital gain.

(2) **Indirect payments or transfers** — Where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatever is that a person confers a benefit on a taxpayer, that person shall be deemed to have made a payment to the taxpayer equal to the amount of the benefit conferred notwithstanding the form or legal effect of the transactions or that one or more other persons were also parties thereto; and, whether or not there was an intention to avoid or evade taxes under this Act, the payment shall, depending upon the circumstances, be

(a) included in computing the taxpayer's income for the purpose of Part I,

(b) deemed to be a payment to a non-resident person to which Part XIII applies, or

(c) deemed to be a disposition by way of gift.

(3) **Arm's length** — Where it is established that a sale, exchange or other transaction was entered into by persons dealing at arm's length, *bona fide* and not pursuant to, or as part of, any other transaction and not to effect payment, in whole or in part, of an existing or future obligation, no party thereto shall be regarded, for the purpose of this section, as having conferred a benefit on a party with whom he was so dealing.

Subsec. 245(1.1) added by 1986, c. 6, subsec. 124(2), applicable to a series of transactions or events commencing after November 21, 1985.

Selected Cases [s. 245]: *Longley v. MNR*, [2000] 2 C.T.C. 382 (BC CA); aff'g [1999] 4 C.T.C. 108 (BC SC) (Additional award beyond punitive damages not warranted); *Husky Oil Ltd. v. R.*, [1999] 4 C.T.C. 2691 (TCC) (GAAR not applicable where proper business actions taken); *OSFC Holdings Ltd. v. R.*, [1999] 3 C.T.C. 2649 (TCC) (Incidental application of relieving provision insufficient to avoid application of rule); *Jabs Construction Ltd. v. R.*, [1999] 3 C.T.C. 2556 (TCC) (Where specific provision allows for mitigation of tax results, no abuse, but rather, use of Act).

Selected Cases [old (pre-GAAR) s. 245]: *Shell Canada Ltd. v. R.*, [1999] 4 C.T.C. 313 (SCC); rev'g *Shell Canada Ltd. v. R.*, [1998] 2 C.T.C. 207 (FCA); rev'g on other grounds [1997] 3 C.T.C. 2238 (TCC) (Object and spirit rule cannot be invoked in face of clear statutory provisions); *Bigras v. R.*, [1999] 1 C.T.C. 2374 (TCC) (Provision applicable only where income amount sought to be made a capital gain. Courts will not add transactions to a series); *Adams v. R.*, [1998] 2 C.T.C. 333 (FCA); rev'g [1996] 1 C.T.C. 2916 (TCC) (Tenant inducement payment by partners to themselves disallowed); *Schultz (T.M.G.) v. Canada*, [1993] 2 C.T.C. 2409 (TCC) (Provision [former 245(1)] not void for vagueness); *Mark Resources Inc. v. Canada*, [1993] 2 C.T.C. 2259 (TCC) (Structure intended to permit foreign affiliate to use foreign losses at cost to resident taxpayer of interest expense on money borrowed to contribute capital to affiliate did not result in artificial reduction of income); *W.F. Botkin Construction Ltd. v. Canada*, [1993] 1 C.T.C. 2765 (TCC) (Loss on loan guarantee nil where no commercial reality to transaction other than to benefit taxpayer's children); *Rosner Management Inc. v. MNR*, [1993] 1 C.T.C. 2153 (TCC) (Corporation had no substance; test under former subsec. 247(3) was whether corporation would have been incorporated but for tax advantage); *Nueman (M.) v. MNR*, [1992] 2 C.T.C. 2074 (TCC); aff'd (Dec. 14, 1993), Doc. T-2281-92 (FCTD) (Transaction solely for tax purposes not contrary to Act); *Moloney (M.) v. Canada*, [1992] 2 C.T.C. 227 (FCA); leave to appeal to SCC refused (1993), 154 N.R. 244 (note) (Sole purpose of "scheme" was to obtain tax refunds, not to earn income); *Kieboom (A.) v. MNR*, [1992] 2 C.T.C. 59 (FCA) (Taxpayer "transferred property" to related parties by reducing his equity in a corporation from 90 to 50 percent on the subscription for shares by the related parties); *Goulard v. MNR*, [1992] 1 C.T.C. 2396 (TCC) (Interest deductions allowed since reasonable and did not artificially reduce taxpayer's income); *Friedberg v. Canada*, [1992] 1 C.T.C. 1 (FCA); aff'd [1993] 2 C.T.C. 306 (SCC) (Little used but generally accepted accounting method did not artificially reduce taxpayer's income); *Canada v. Irving Oil Ltd.*, [1991] 1 C.T.C. 350 (FCA); leave to appeal to SCC refused (1991), 136 N.R. 320 (note), (sub nom. *Irving Oil Ltd. v. MNR*) (Oil sold to offshore company which resold to resident for higher price did not artificially reduce income); *Compagnie Idéal Body Inc. v. Canada*, [1989] 2 C.T.C. 187 (FCTD) (Bonus paid not avoidance transaction where there was history of such payments; amount unreasonable in the circumstances); *The Queen v. Lyall*, [1977] C.T.C. 267 (Ont Co Ct) (Specific provisions of *Income Tax Act* prevail over more general provision of *Canada Evidence Act*).

Definitions [s. 245]: "assessment", "Minister", "person" — 248(1); "series of transactions" — 248(10); "tax benefit", "tax consequences" — 245(1); "taxable income" — 2(2), 248(1); "taxable income earned in Canada" — 115(1), 248(1); "transaction" — 245(1); "writing" — *Interpretation Act* 35(1).

Information Circulars [s. 245]: 88-2 and Supplement: General anti-avoidance rule — section 245 of the *Income Tax Act*.

246. (1) Benefit conferred on a person — Where at any time a person confers a benefit, either directly or indirectly, by any means whatever, on a taxpayer, the amount of the benefit shall, to the extent that it is not otherwise included in the taxpayer's income or taxable income earned in Canada under Part I and would be included in the taxpayer's income if the amount of the benefit were a payment made directly by the person to the taxpayer and if the taxpayer were resident in Canada, be

(a) included in computing the taxpayer's income or taxable income earned in Canada under Part I for the taxation year that includes that time; or

(b) where the taxpayer is a non-resident person, deemed for the purposes of Part XIII to be a payment made at that time to the taxpayer in respect of property, services or otherwise, depending on the nature of the benefit.

Related Provisions: 56(2) — Inclusion in income of indirect payments.

Selected Cases [subsec. 246(1)]: *Vaillancourt v. Canada*, [1991] 2 C.T.C. 42 (FCA) (Condominium was residential and within Class 31); *Laxton v. Canada*, [1989] 2 C.T.C. 85 (FCA) (Interest-free loan in lieu of management fees was "benefit" within scope of provision); *Boardman et al. v. The Queen*, [1986] 1 C.T.C. 103 (FCTD); appealed to FCA (Dec. 20, 1985), File A-1015-85 (Transfer of real property to spouse pursuant to court order was benefit to transferor equal to amount of the property's fair market value); *The Queen v. Littler*, [1978] C.T.C. 235 (FCA) (Difference between price and fair market value in transaction between father and sons not gift); *Phaneuf Estate v. The Queen*, [1978] C.T.C. 21 (FCTD) (Difference between fair market value and price of shares purchased by employee pursuant to controlling shareholder's will was gift, not employee benefit); *The Queen v. Immobiliaire Canada Ltd.*, [1977] C.T.C. 481 (FCTD) (Canadian subsidiary purchased debt obligation from parent and also paid parent amount corresponding to accrued interest conferred benefit on parent to the extent it received full value of accumulated interest without deduction for withholding tax); *Levine Estate v. MNR*, [1973] C.T.C. 219 (FCTD) (Where father and a son both given right to subscribe to new shares but only the son did so, father benefitted son to extent son's equity interest increased).

Interpretation Bulletins: IT-432R2: Benefits conferred on shareholders.

(2) Arm's length — Where it is established that a transaction was entered into by persons dealing at arm's length, *bona fide* and not pursuant to, or as part of, any other transaction and not to effect payment, in whole or in part, of an existing or future obligation, no party thereto shall be regarded, for the purpose of this section, as having conferred a benefit on a party with whom the first-mentioned party was so dealing.

Interpretation Bulletins [subsec. 246(2)]: IT-432R2: Benefits conferred on shareholders.

Related Provisions [s. 246]: 56(2) — Indirect payments; 245(2) — General anti-avoidance rule.

Pre-RSC History [s. 246]: S. 246 enacted by 1988, c. 55, s. 186, applicable with respect to benefits conferred on or after September 13, 1988 other than benefits conferred through

(a) transactions that are part of a series of transactions, determined without reference to subsec. 248(10), commencing before September 13, 1988 and completed before 1989, or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

Definitions [s. 246]: "amount" — 248(1); "arm's length" — 251(1); "Canada" — 255; "non-resident", "person", "property" — 248(1); "resident in Canada" — 250; "taxable income earned in Canada" — 115(1), 248(1); "taxation year" — 249; "taxpayer" — 248(1).

Pre-RSC History [former s. 246]: S. 246 repealed by 1984, c. 45, s. 91, applicable after February 15, 1984. S. 246 formerly read:

246. (1) Tax avoidance — Where the Treasury Board has decided that one of the main purposes for a transaction or transactions effected before or after the coming into force of this Act was improper avoidance or reduction of taxes that might otherwise have become payable under this Act, the *Income War Tax Act*, or *The Excess Profits Tax Act, 1940*, the Treasury Board may give such directions as it considers appropriate to counteract the avoidance or reduction.

(2) Idem — A direction under this section may relate to taxes to be paid under one or more Parts of this Act, the *Income War Tax Act* or *The Excess Profits Tax Act, 1940*, by one or more persons for one or more taxation years.

(3) Idem — Where a direction has been given under this section, tax shall be collected, or assessed or reassessed and collected, notwithstanding any other provision of this or any other Act, in accordance therewith.

(4) Idem — The Federal Court of Canada has exclusive original jurisdiction in all actions in respect of claims for failure to pay or collect tax under Part XIII imposed pursuant to this section.

(5) Idem — On an appeal from an assessment made pursuant to a direction under this section or in an action for tax under Part XIII imposed pursuant to this section, the Federal Court may

(a) confirm the direction given under this section,

(b) vacate a direction given under this section, if it determines that none of the main purposes of the transaction or transactions was the improper avoidance or reduction of taxes, or

(c) vary the direction given by the Treasury Board and refer the matter back to the Minister for collection, or reassessment and collection.

(6) Idem — An avoidance or reduction of taxes may be regarded as improper for the purpose of this section although it is not illegal.

Pre-RSC History [former s. 247]: Subsec. 247(1) repealed by 1988, c. 55, subsec. 187(1), applicable with respect to transactions entered into on or after September 13, 1988 other than

(a) transactions that are part of a series of transactions, determined without reference to subsec. 248(10), commencing before September 13, 1988 and completed before 1989, or

(b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

Subsec. 247(1) formerly read:

247. (1) Where an amount is received or an amount becomes receivable by a taxpayer in a taxation year

(a) as a consequence of the disposition or exchange of any property,

(b) as a consequence of a corporation having

(i) redeemed, cancelled or acquired any shares of any class of its capital stock,

(ii) reduced the paid-up capital of shares of any class of its capital stock, or

(iii) converted any shares of any class of its capital stock into shares of another class of its capital stock or into an obligation of the corporation, or

(c) otherwise, as an amount that would, but for this section, be exempt income

as part of a transaction or event effected or to be effected after May 23, 1985 or as part of a series of transactions or events each of which is effected or to be effected after that day and it can reasonably be considered that one of the purposes thereof was to effect a significant reduction of, or disappearance of, assets of a corporation at any time in a manner such that the whole or any part of any tax that might otherwise have been or have become payable under this Act in consequence of any distribution of property of a corporation has been or will be avoided, such part of the amount so received or receivable by the taxpayer as is reasonable in the circumstances,

having regard to the amount of tax that, but for this section, would have been or would be avoided, shall

(d) in the case of a taxpayer who is an individual or a non-resident person, be included in computing his income for the year as a taxable dividend received by him in the year; and

(e) in the case of any other taxpayer, be included in computing his income for the year as income, other than a taxable dividend, from property.

Subsec. 247(1) substituted by 1986, c. 6, subsec. 125(1). Subsec. 247(1) formerly read:

247. (1) Dividend stripping — Where a taxpayer has received an amount in a taxation year,

(a) as consideration for the sale or other disposition of any shares of a corporation or of any interest in such shares,

(b) in consequence of a corporation having

(i) redeemed or acquired any of its shares or reduced its capital stock, or

(ii) converted any of its shares into shares of another class or into an obligation of the corporation, or

(c) otherwise, as a payment that would, but for this section, be exempt income,

which amount was received by the taxpayer as part of a transaction effected or to be effected after June 13, 1963 or as part of a series of transactions each of which was or is to be effected after that day, one of the purposes of which, in the opinion of the Minister, was or is to effect a substantial reduction of, or disappearance of, the assets of a corporation in such a manner that the whole or any part of any tax that might otherwise have been or become payable under this Act in consequence of any distribution of income of a corporation has been or will be avoided, the amount so received by the taxpayer or such part thereof as may be specified by the Minister shall, if the Minister so directs,

(d) be included in computing the income of the taxpayer for that taxation year, and

(e) in the case of a taxpayer who is an individual, be deemed to have been received by him as a taxable dividend.

Subsec. 247(2) repealed by 1988, c. 55, subsec. 187(2), applicable, for the purposes of determining whether two or more corporations are associated with each other,

(a) to 1989 *et seq.* where

(i) the taxation years of all such corporations commenced after 1988,

(ii) at least one of such corporations was incorporated, or was formed as a result of an amalgamation, after February 10, 1988,

(iii) at least one of such corporations acquired after February 10, 1988 from a person with whom it did not deal at arm's length all or substantially all of the assets used by it in its business, or

(iv) the 1989 taxation year of at least one of such corporations did not end on approximately the same calendar date in 1989 as the calendar date in 1987 on which a 1987 taxation year, if any, of the corporation ended; and

(b) in any other case, to 1990 *et seq.*

Subsec. 247(2) formerly read:

(2) Associated corporations — Where, in the case of two or more corporations, the Minister is satisfied

(a) that the separate existence of those corporations in a taxation year is not solely for the purpose of carrying out the business of those corporations in the most effective manner, and

(b) that one of the main reasons for such separate existence in the year is to reduce the amount of taxes that would otherwise be payable under this Act or to increase the refundable investment tax credit under section 127.1

the two or more corporations shall, if the Minister so directs, be deemed to be associated with each other in the year.

Para. 247(2)(b) amended by 1986, c. 6, subsec. 125(2), to add "or to increase the refundable investment tax credit under section 127.1", applicable with respect to property acquired and expenditures made after May 23, 1985.

Subsec. 247(3) repealed by 1988, c. 61, subsec. 45(3), in force January 1, 1991. Subsec. 247(3) formerly read:

(3) Appeal — On an appeal from an assessment made pursuant to a direction under subsection (2), the Tax Court of Canada or the Federal Court may

(a) confirm the direction;

(b) vacate the direction if it determines that none of the main reasons for the separate existence of the two or more corporations is to reduce the amount of tax that would otherwise be payable under this Act; or

(c) vary the direction and refer the matter back to the Minister for reassessment.

Subsec. 247(3) amended by 1986, c. 6, subsec. 125(3), to substitute "under subsection (2)" for "under this section" in that portion preceding para. (a), and to substitute para. (b), which formerly read:

(b) vacate the direction if

(i) in the case of a direction under subsection (1), it determines that none of the purposes of the transaction or series of transactions referred to in subsection (1) was or is to effect a substantial reduction of, or disappearance of, the assets of a corporation in such a manner that the whole or any part of any tax that might otherwise have been or become payable under this Act in consequence of any distribution of income of a corporation has been or will be avoided, or

(ii) in the case of a direction under subsection (2), it determines that none of the main reasons for the separate existence of the two or more corporations is to reduce the amount of tax that would otherwise be payable under this Act; or

"Tax Court of Canada" substituted for "Tax Review Board" in subsec. 247(3) by 1980-81-82-83, c. 158, s. 58, applicable after July 18, 1983.

Pre-RSC History [Part XVI]: "Tax avoidance" substituted for "Tax evasion" as the heading to Part XVI by 1986, c. 6, subsec. 124(1), applicable after May 23, 1985.

PART XVI.1 — TRANSFER PRICING

247. (1) Definitions — The definitions in this subsection apply in this section.

"arm's length allocation" means, in respect of a transaction, an allocation of profit or loss that would have occurred between the participants in the transaction if they had been dealing at arm's length with each other.

Related Provisions: 9(1) — Normal computation of profit.

History: The definition "arm's length allocation" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"arm's length transfer price" means, in respect of a transaction, an amount that would have been a transfer price in respect of the transaction if the participants in the transaction had been dealing at arm's length with each other.

History: The definition "arm's length allocation" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing and other international transactions.

"documentation-due date" for a taxation year or fiscal period of a person or partnership means

(a) in the case of a person, the person's filing-due date for the year; or

(b) in the case of a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period or would be required to be so filed if that section applied to the partnership.

History: The definition "documentation-due date" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"qualifying cost contribution arrangement" means an arrangement under which reasonable efforts are made by the participants in the arrangement to establish a basis for contributing to, and to contribute on that basis to, the cost of producing, developing or acquiring any property, or acquiring or performing any services, in proportion to the benefits which each participant is reasonably expected to derive from the property or services, as the case may be, as a result of the arrangement.

History: The definition "qualifying cost contribution arrangement" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

History: The definition "tax benefit" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transaction" includes an arrangement or event.

Related Provisions: 233.1(1)"transaction" — Parallel definition for reporting non-arm's length transactions with non-residents; 245(1) — Parallel definition for general anti-avoidance rule.

History: The definition "transaction" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transfer price" means, in respect of a transaction, an amount paid or payable or an amount received or receivable, as the case may be, by a participant in the transaction as a price, a rental, a royalty, a premium or other payment for, or for the use, production or reproduction of, property or as consideration for services (including services provided as an employee and the insurance or reinsurance of risks) as part of the transaction.

History: The definition "transfer price" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing and other international transactions.

"transfer pricing capital adjustment" of a taxpayer for a taxation year means the total of

(a) all amounts each of which is

(i) 3/4 of the amount, if any, by which the adjusted cost base to the taxpayer of a capital property (other than a depreciable property) or an eligible capital expenditure of the taxpayer in respect of a business is reduced in the year because of an adjustment made under subsection (2), or

Proposed Amendment — "transfer pricing capital adjustment"(a)(i)

Notice of Ways and Means Motion, federal budget, February 28, 2000: (9) That for the 2000 and subsequent taxation years,

. . . . .

(e) the rules for determining the capital gains deduction under section 110.6 of the Act and any other rules of determination under the Act take into account, where appropriate, the change in determination of a taxpayer's taxable capital gain and allowable capital loss from a disposition of a property.

[This is expected to affect subparas. (a)(i) and (b)(i) of this definition — ed.]

(ii) the amount, if any, by which the capital cost to the taxpayer of a depreciable property is reduced in the year because of an adjustment made under subsection (2); and

(b) all amounts each of which is that proportion of the total of

(i) 3/4 of the amount, if any, by which the adjusted cost base to a partnership of a capital property (other than a depreciable property) or an eligible capital expenditure of a partnership in respect of a business is reduced in a fiscal period that ends in the year because of an adjustment made under subsection (2), and

Proposed Amendment — "transfer pricing capital adjustment"(b)(i)

[See under (a)(i) above — ed.]

(ii) the amount, if any, by which the capital cost to a partnership of a depreciable property is reduced in the period because of an adjustment made under subsection (2),

that

(iii) the taxpayer's share of the income or loss of the partnership for the period

is of

(iv) the income or loss of the partnership for the period,

and where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be $1,000,000 for the purpose of determining a taxpayer's share of the partnership's income for the purpose of this definition.

History: The definition "transfer pricing capital adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing and other international transactions.

"transfer pricing capital setoff adjustment" of a taxpayer for a taxation year means the amount, if any, that would be the taxpayer's transfer pricing capital adjustment for the year if the references, in the definition "transfer pricing capital adjustment", to "reduced" were read as "increased".

History: The definition "transfer pricing capital setoff adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transfer pricing income adjustment" of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2) (other than an adjustment included in determining a transfer pricing capital adjustment of the taxpayer for a taxation year) would result in an increase in the taxpayer's income for the year or a decrease in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2).

History: The definition "transfer pricing income adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

"transfer pricing income setoff adjustment" of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2) (other than an adjustment included in determining a transfer pricing capital setoff adjustment of the taxpayer for a taxation year) would result in a decrease in the taxpayer's income for the year or an increase in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2).

History: The definition "transfer pricing income setoff adjustment" in subsec. 247(1) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(2) Transfer pricing adjustment — Where a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions and

(a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length, or

(b) the transaction or series

(i) would not have been entered into between persons dealing at arm's length, and

(ii) can reasonably be considered not to have been entered into primarily for *bona fide* purposes other than to obtain a tax benefit,

any amounts that, but for this section and section 245, would be determined for the purposes of this Act in respect of the taxpayer or the partnership for a taxation year or fiscal period shall be adjusted (in this section referred to as an "adjustment") to the quantum or nature of the amounts that would have been determined if,

(c) where only paragraph (a) applies, the terms and conditions made or imposed, in respect of the transaction or series, between the participants in the transaction or series had been those that would have been made between persons dealing at arm's length, or

(d) where paragraph (b) applies, the transaction or series entered into between the participants had been the transaction or series that would have been entered into between persons dealing at arm's length, under terms and conditions that would have been made between persons dealing at arm's length.

Related Provisions: 115.2(4) — Non-resident investment or pension fund deemed not to deal at arm's length with Canadian service provider; 247(3) — Penalty; 247(6) — Tiers of partnerships; 247(7) — Exclusion for loans to subsidiary; 247(10) — Adjustment only if appropriate; Canada-U.S. tax treaty, Art. IX — Adjustments on transactions between related persons.

History: Subsec. 247(2) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing and other international transactions; 94-4: International transfer pricing — advance pricing agreements (APA).

(3) Penalty — A taxpayer (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) is liable to a penalty for a taxation year equal to 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year, where

(a) the amount, if any, by which

(i) the total of

(A) the taxpayer's transfer pricing capital adjustment for the year, and

(B) the taxpayer's transfer pricing income adjustment for the year

exceeds the total of

(ii) the total of all amounts each of which is the portion of the taxpayer's transfer pricing capital adjustment or transfer pricing income adjustment for the year that can reasonably be considered to relate to a particular transaction, where

(A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act, and

(iii) the total of all amounts, each of which is the portion of the taxpayer's transfer pricing capital setoff adjustment or transfer pricing income setoff adjustment for the year that can reasonably be considered to relate to a particular transaction, where

(A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act,

is greater than

(b) the lesser of

(i) 10% of the amount that would be the taxpayer's gross revenue for the year if this Act were read without reference to subsection (2), subsections 69(1) and (1.2) and section 245, and

(ii) $5,000,000.

Related Provisions: 247(4) — Requirement for contemporaneous documentation; 247(3) — Determination of partner's gross revenue; 247(9) — Anti-avoidance rule re increases in gross revenue; 247(11) — Payment and assessment of penalty.

History: Subsec. 247(3) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that subsec. 247(3) does not apply to transactions completed before September 11, 1997.

Information Circulars: 87-2R: International transfer pricing and other international transactions; 94-4: International transfer pricing — advance pricing agreements (APA).

(4) Contemporaneous documentation — For the purposes of subsection (3) and the definition "qualifying cost contribution arrangement" in subsection (1), a taxpayer or a partnership is deemed not to have made reasonable efforts to determine and use arm's length transfer prices or arm's length allocations in respect of a transaction or not to have participated in a transaction that is a qualifying cost contribution arrangement, unless the taxpayer or the partnership, as the case may be,

(a) makes or obtains, on or before the taxpayer's or partnership's documentation-due date for the taxation year or fiscal period, as the case may be, in which the transaction is entered into, records or documents that provide a description that is complete and accurate in all material respects of

(i) the property or services to which the transaction relates,

(ii) the terms and conditions of the transaction and their relationship, if any, to the terms and condi-

tions of each other transaction entered into between the participants in the transaction,

(iii) the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into,

(iv) the functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction,

(v) the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction, and

(vi) the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction;

(b) for each subsequent taxation year or fiscal period, if any, in which the transaction continues, makes or obtains, on or before the taxpayer's or partnership's documentation-due date for that year or period, as the case may be, records or documents that completely and accurately describe each material change in the year or period to the matters referred to in any of subparagraphs (a)(i) to (vi) in respect of the transaction; and

(c) provides the records or documents described in paragraphs (a) and (b) to the Minister within 3 months after service, made personally or by registered or certified mail, of a written request therefor.

Related Provisions: 244(5) — Proof of service by mail or request under 247(4)(c); 248(7) — Mail sent under 247(4)(c) deemed received on day mailed.

History: Subsec. 247(4) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that

(a) subsec. 247(4) does not apply to transactions completed before September 11, 1997; and

(b) a record or document made or obtained or provided to the Minister of National Revenue by a taxpayer or a partnership on or before the taxpayer's or partnership's documentation-due date for the taxpayer's or partnership's first taxation year or fiscal period, as the case may be, that begins after 1998 is deemed for the purpose of subsec. 247(4) to have been so made, obtained or provided on a timely basis.

Information Circulars: 87-2R: International transfer pricing and other international transactions; 94-4: International transfer pricing — advance pricing agreements (APA).

(5) Partner's gross revenue — For the purpose of subparagraph (3)(b)(i), where a taxpayer is a member of a partnership in a taxation year, the taxpayer's gross revenue for the year as a member of the partnership from any activities carried on by means of the partnership is deemed to be that proportion of the amount that would be the partnership's gross revenue from the activities if it were a taxpayer (to the extent that amount does not include amounts received or receivable from other partnerships of which the taxpayer is a member in the year), for a fiscal period of the partnership that ends in the year, that

(a) the taxpayer's share of the income or loss of the partnership from its activities for the period

is of

(b) the income or loss of the partnership from its activities for the period,

and where the income and loss of the partnership from its activities are nil for the period, the income of the partnership from its activities for the period is deemed to be $1,000,000 for the purpose of determining a taxpayer's share of the partnership's income from its activities for the purpose of this subsection.

Related Provisions: 247(6) — Tiers of partnerships; 248(1) — Definition of "gross revenue".

History: Subsec. 247(5) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that subsec. 247(5) does not apply to transactions completed before September 11, 1997.

(6) Deemed member of partnership — For the purposes of this section, where a person is a member of a partnership that is a member of another partnership,

(a) the person is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

History: Subsec. 247(6) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(7) Exclusion for loans to certain controlled foreign affiliates — Where, in a taxation year of a corporation resident in Canada, a non-resident person owes an amount to the corporation, the non-resident person is a controlled foreign affiliate of the corporation for the purpose of section 17 throughout the period in the year during which the amount is owing and it is established that the amount owing is an amount owing described in paragraph 17(8)(a) or (b), subsection (2) does not apply to adjust the amount of interest paid, payable or accruing in the year on the amount owing.

History: Subsec. 247(7) amended by 1999, c. 22, s. 79, applicable to taxation years that begin after February 23, 1998. The subsec. formerly read:

(7) Exclusion for loans to subsidiary — Subsection (2) does not apply to a transaction that is a loan referred to in subsection 17(3).

Subsec. 247(7) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(8) Provisions not applicable — Where subsection (2) would, if this Act were read without reference to sections 67 and 68 and subsections 69(1) and (1.2), apply to adjust an amount under this Act, sections 67 and 68 and subsections 69(1) and (1.2) shall not apply to determine the amount if subsection (2) is applied to adjust the amount.

History: Subsec. 247(8) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

(9) Anti-avoidance — For the purposes of determining a taxpayer's gross revenue under subparagraph (3)(b)(i) and subsection (5), a transaction or series of transactions is deemed not to have occurred, if one of the purposes of the transaction or series was to increase the taxpayer's gross revenue for the purpose of subsection (3).

History: Subsec. 247(9) added by 1998, c. 19, s. 238, applicable with respect to adjustments made under subsec. 247(2) for taxation years and fiscal periods that begin after 1998, except that subsec. 247(9) does not apply to transactions completed before September 11, 1997.

(10) No adjustment unless appropriate — An adjustment (other than an adjustment that results in or increases a transfer pricing capital adjustment or a transfer pricing income adjustment of a taxpayer for a taxation year) shall not be made under subsection (2) unless, in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made.

History: Subsec. 247(10) added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Information Circulars: 87-2R: International transfer pricing and other international transactions.

(11) Provisions applicable to Part — Sections 152, 158, 159, 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

History [Part XVI.1]: Part XVI.1 added by 1998, c. 19, s. 238, applicable to taxation years and fiscal periods that begin after 1997.

Definitions [s. 247]: "adjusted cost base" — 54, 248(1); "adjustment" — 247(2); "amount" — 248(1); "arm's length" — 115.2(4), 251(1); "arm's length allocation", "arm's length transfer price" — 247(1); "business" — 248(1); "capital property" — 54, 248(1); depreciable property" — 13(21), 248(1); "documentation-due date" — 247(1); "eligible capital expenditure" — 14(5), 248(1); "employee", "filing-due date" — 248(1); "fiscal period" — 249.1; "gross revenue" — 247(5), (9), 248(1); "Minister", "non-resident" — 248(1); "property" — 248(1); "person" — 248(1); "qualifying cost contribution arrangement" — 247(1); "reasonable efforts" — 247(4); "record" — 248(1); "tax benefit" — 247(1); "taxation year" — 249; "taxpayer" — 248(1); "transaction", "transfer price", "transfer pricing capital adjustment", "transfer pricing capital setoff adjustment", "transfer pricing income adjustment", "transfer pricing income setoff adjustment" — 247(1); "written" — *Interpretation Act* 35(1) ["writing"].

PART XVII — INTERPRETATION

248. (1) Definitions — In this Act,

"active business", in relation to any business carried on by a taxpayer resident in Canada, means any business carried on by the taxpayer other than a specified investment business or a personal services business;

Related Provisions: 95(1) — Meaning of "active business" of a foreign affiliate for FAPI purposes; 125(1) — Small business deduction; 125(7)"active business" — Meaning of "active business" for purposes of the small business deduction; 248(1) — Small business corporation.

Pre-RSC History: "Active business" substituted by 1984, c. 45, subsec. 92(1), applicable to 1985 *et seq.* "Active business" formerly read:

> "active business", in relation to any business carried on by a corporation resident in Canada, has the meaning assigned by paragraph 125(6)(d);

"Active business" added by 1979, c. 5, subsec. 66(1), applicable to taxation years commencing after 1978.

Interpretation Bulletins: IT-73R5: The small business deduction; IT-406R2: Tax payable by an *inter vivos* trust.

"additional voluntary contribution" to a registered pension plan means a contribution that is made by a member to the plan, that is used to provide benefits under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of the plan and that is not required as a general condition of membership in the plan;

Related Provisions: 60.2 — Refund of undeducted past service AVCs; 147.2(4) — Amount of employee's pension contributions deductible.

Pre-RSC History: "Additional voluntary contribution" added by 1990, c. 35, subsec. 27(3), applicable after 1985.

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

"adjusted cost base" has the meaning assigned by section 54;

Related Provisions: 40(1) — Calculation of gain or loss for capital gain/loss purposes.

"adjustment time" has the meaning assigned by subsection 14(5);

Pre-RSC History: "Adjustment time" enacted by 1988, c. 55, subsec. 188(14), applicable after 1987.

"allowable business investment loss" has the meaning assigned by section 38;

Related Provisions: 3(d) — Income for taxation year — application of allowable business investment losses; 111(1)(a), 111(8)"non-capital loss" — Carryforward of allowable business investment losses.

Pre-RSC History: "Allowable business investment loss" added by 1977-78, c. 42, s. 9.

"allowable capital loss" has the meaning assigned by section 38;

Related Provisions: 3(b)(ii) — Income for taxation year — application of allowable capital losses.

Proposed Addition — 248(1)"*alter ego* trust"

"*alter ego* trust" means a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clauses 104(4)(a)(iv)(B) and (C);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(4), will add the definition "*alter ego* trust" to subsec. 248(1), applicable to trusts created after 1999.

Technical Notes: The new definition "*alter ego* trust" in subsection 248(1) of the Act refers to a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clause 104(4)(a)(iv)(B). Accordingly, for a trust to be an *alter ego* trust it must satisfy the following conditions:

1. at the time of the trust's creation, the taxpayer creating the trust was alive and had attained 65 years of age;
2. the trust was created after 1999;
3. the taxpayer was entitled to receive all of the income of the trust that arose before the taxpayer's death;
4. no person except the taxpayer could, before the taxpayer's death, receive or otherwise obtain the use of any of the income or capital of the trust; and
5. the trust did not make an election referred in subparagraph 104(4)(a)(ii.1).

The definitions "*alter ego* trust" and "joint partner trust" apply to trusts created after 1999. The definition "post-1971 partner trust" applies to trusts created after 1971. Other amendments related to the introduction of these definitions include amendments to section 73, subsections 104(5.8), (6) and (15) and subsection 107(4), and the amended definition of "trust" in subsection 108(1). For further detail, see the commentary on those provisions.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Related Provisions: 73(1.01)(c)(ii) — Rollover on transfer to alter ego trust; 104(5.8) — Transfers from alter ego trust to another trust; 104(6)(b)(ii.1), (iii) — Deduction from income of trust; 104(15)(a) — Preferred beneficiary election; 107(4)(a)(ii) — Distribution of property to person other than taxpayer; 248(1)"joint partner trust" — Parallel trust where spouse is also a beneficiary.

"amateur athlete trust" has the meaning assigned by subsection 143.1(1);

History: "Amateur athlete trust" enacted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to 1988 *et seq.*

"amortized cost" of a loan or lending asset at any time to a taxpayer means the amount, if any, by which the total of

(a) in the case of a loan made by the taxpayer, the total of all amounts advanced in respect of the loan at or before that time,

(b) in the case of a loan or lending asset acquired by the taxpayer, the cost of the loan or lending asset to the taxpayer,

(c) in the case of a loan or lending asset acquired by the taxpayer, the part of the amount, if any, by which

(i) the principal amount of the loan or lending asset at the time it was so acquired

exceeds

(ii) the cost to the taxpayer of the loan or lending asset

that was included in computing the taxpayer's income for any taxation year ending at or before that time,

(c.1) the total of all amounts each of which is an amount in respect of the loan or lending asset that was included in computing the taxpayer's income for a taxation year that ended at or before that time in respect of changes in the value of the loan or lending asset attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency,

(d) where the taxpayer is an insurer, any amount in respect of the loan or lending asset that was deemed by reason of paragraph 142(3)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a gain for any taxation year ending at or before that time, and

(e) the total of all amounts each of which is an amount in respect of the loan or lending asset that was included under paragraph 12(1)(i) in computing the taxpayer's income for any taxation year ending at or before that time

exceeds the total of

(f) the part of the amount, if any, by which

(i) the amount referred to in subparagraph (c)(ii)

exceeds

(ii) the amount referred to in subparagraph (c)(i)

that was deducted in computing the taxpayer's income for any taxation year ending at or before that time,

(f.1) the total of all amounts each of which is an amount in respect of the loan or lending asset that was deducted in computing the taxpayer's income for a taxation year that ended at or before that time in respect of changes in the value of the loan or lending asset attributable to the fluctuation in the value of a currency of a country other than Canada relative to Canadian currency,

(g) the total of all amounts that, at or before that time, the taxpayer had received as or on account or in lieu of payment of or in satisfaction of the principal amount of the loan or lending asset,

(h) where the taxpayer is an insurer, any amount in respect of the loan or lending asset that was deemed by reason of paragraph 142(3)(b) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1977 taxation year, to be a loss for any taxation year ending at or before that time, and

(i) the total of all amounts each of which is an amount in respect of the loan or lending asset deducted under paragraph 20(1)(p) in computing the taxpayer's income for any taxation year ending at or before that time;

Related Provisions: 138(13) — Variation in amortized of certain insurers.

History: Paras. (c.1) and (f.1) added to the definition "amortized cost" by 1995, c. 21, subsecs. 59(1), (2), applicable to taxation years that begin after June 17, 1987 and end after 1987.

Pre-RSC History: "Amortized cost" enacted by 1988, c. 55, subsec. 188(14), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

"amount" means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing, except that,

(a) notwithstanding paragraph (b), in any case where subsection 112(2.1), (2.2) or (2.4), or section 187.2 or 187.3 or subsection 258(3) or (5) applies to a stock dividend, the "amount" of the stock dividend is the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment,

(b) in any case where section 191.1 applies to a stock dividend, the "amount" of the stock dividend for the purposes of Part VI.1 is the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment,

and for any other purpose the amount referred to in subparagraph (i), and

(c) in any other case, the "amount" of any stock dividend is the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend;

Related Provisions: 95(7) — "Amount" of stock dividend paid by foreign affiliate.

Pre-RSC History: "Amount" substituted by 1988, c. 55, subsec. 188(1), applicable with respect to dividends paid after June 18, 1987. "Amount" formerly read:

"amount" means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing, except that the "amount" of any stock dividend paid by a corporation is

(a) in the case of a dividend described in subsection 112(2.1), (2.2) or (2.3), the greater of

(i) the amount of the increase in the paid-up capital of the corporation by virtue of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment, and

(b) in any other case, the amount of the increase in the paid-up capital of the corporation by virtue of the payment of the dividend;

All that portion of para. (a) preceding subpara. (i) substituted by 1980-81-82-83, c. 140, subsec. 128(1), applicable after November 12, 1981, to add "or (2.3)".

"Amount" substituted by 1979, c. 5, subsec. 66(2), applicable with respect to dividends paid after November 16, 1978, to add subpara. (a)(ii) and para. (b).

Selected Cases [subsec. 248(1)"amount"]: *King Rentals Ltd. v. Canada*, [1995] 2 C.T.C. 2612 (TCC) (Consideration for debt was amount of debt for which shares were issued and credit made to share capital, not fair market value of the debt); *Praxair Canada Inc. v. MNR*, [1993] 1 C.T.C. 130 (FCTD) (Creditor accepting shares of debtor in satisfaction of unpaid interest received "amount" equal to fair market value of shares, not amount of par value); *Laxton v. Canada*, [1989] 2 C.T.C. 85 (FCA)

("Amount" of benefit from interest-free loan should be reduced by taxpayer's share of costs of loan).

Interpretation Bulletins: IT-88R2: Stock dividends.

Information Circulars: 88-2, para. 26: General anti-avoidance rule — section 245 of the *Income Tax Act*.

"annuity" includes an amount payable on a periodic basis whether payable at intervals longer or shorter than a year and whether payable under a contract, will or trust or otherwise;

Related Provisions: 56(1)(d), 212(1)(o) — Annuity payments taxable; 128.1(10)"excluded right or interest"(f) — Emigration — no deemed disposition of right under annuity contract; Canada-U.S. tax treaty, Art. XVIII:4 — Meaning of "annuities" for treaty purposes; *Income Tax Conventions Interpretation Act* 5 — Meaning of "annuity" for treaty purposes.

Selected Cases [subsec. 248(1)"annuity"]: *Rumack v. MNR*, [1992] 1 C.T.C. 57 (FCA); leave to appeal to SCC refused (1992), 143 N.R. 393 (note) (Lottery prize of $1,000 per month for life sponsored by charitable association, which funded the prize by purchasing annuity from life insurance company was held to be an annuity).

"appropriate percentage" for a taxation year means the lowest percentage referred to in subsection 117(2) that is applicable in determining tax payable under Part I for the year;

Pre-RSC History: "Appropriate percentage" enacted by 1988, c. 55, subsec. 188(14), applicable to 1988 *et seq.*

"assessment" includes a reassessment;

Related Provisions: 152 — Assessments; 244(15) — Assessment deemed made on date of mailing.

Proposed Addition — "authorized foreign bank"

Notice of Ways and Means Motion (authorized foreign banks), February 11, 1999: (1) That, for the purposes of any enactment founded on paragraphs (2) to (11), "authorized foreign bank" be defined as having the meaning assigned by section 2 of the *Bank Act*.

. . . . .

(8) That, where a property ceases at any time to be held by an authorized foreign bank in the course of carrying on business in Canada, the bank be deemed

(a) to have disposed of the property, immediately before that time, for proceeds equal to the property's fair market value at that time and to have reacquired the property at that time at a cost equal to those proceeds, and

(b) to have received the proceeds in the course of carrying on the business in Canada.

(9) That, where a property ceases at any time to be held by an authorized foreign bank in the course of carrying on business outside of Canada and begins to be held in the course of a business carried on by the bank in Canada, the bank be deemed to have disposed of the property immediately before that time for proceeds equal to the property's fair market value at that time and to have reacquired the property at that time at a cost equal to those proceeds.

. . . . .

(12) That any enactment founded on paragraphs (1) to (11) be applicable on and after the day on which subsection 35(1) of *An Act to amend the Bank Act, the Winding-up and Restructuring Act and other Acts relating to financial institutions and to make consequential amendments to other Acts* comes into force.

[For other proposals, see under 18(5), 20(1)(c), 126(2), 153(1), 181.3(3), 190.13, 212(1)(b) and 219(1) — ed.]

Department of Finance news release, February 11, 1999: *Authorized Foreign Banks: Income Tax Rules*

Secretary of State (International Financial Institutions) Jim Peterson, on behalf of Finance Minister Paul Martin, today tabled in the House of Commons a Notice of Ways and Means Motion that proposes changes to the *Income Tax Act* as a result of the introduction of legislation that would permit foreign banks to establish specialized, commercially-focused branches in Canada.

"These proposed tax rules were developed in consultation with the industry," Mr. Peterson said. "They will ensure that Canadian branches of foreign banks, Canadian subsidiaries of foreign banks, and domestic banks are all taxed on a similar basis."

The proposed tax rules are described in the attached Notice of Ways and Means Motion and Backgrounder. Legislation to implement the rules will be included in a Bill and tabled in Parliament at an early opportunity. The measures described in the proposals will come into force at the same time as the foreign bank entry legislation introduced today.

For further information: Robin Maley, Tax Legislation Division, (613) 992-4859; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574; Patrick Dion, Special Assistant to the Secretary of State (International Financial Institutions), (613) 996-7861.

BACKGROUNDER

In February 1997, the Secretary of State for International Financial Institutions announced that a new foreign bank entry regime would be implemented to allow foreign banks to carry on business in Canada through branch offices. Currently, a non-resident bank must incorporate a Canadian subsidiary if it wishes to carry on business in Canada.

The proposed *Income Tax Act* changes announced today were developed in consultation with representatives of both domestic and foreign banks, and are intended to place these new Canadian branches of foreign banks in a comparable tax position to Canadian resident banks ("Canadian banks"). In other respects, it is anticipated that Canadian branches of foreign banks will generally be subject to the same provisions of that Act as Canadian banks.

The proposed changes are described in more detail below. Any references to the Bank Act include the proposed amendments included in the Bill introduced today to permit foreign banks to establish branches in Canada. In all cases, the changes will apply on and after the day that subsection 35(1) of that Bill comes into force.

Definition

It is proposed that the term "authorized foreign bank" used in the *Bank Act* be adopted in the *Income Tax Act* by reference to the definition in the *Bank Act*.

Transfer of Loans and Other Assets

Under the *Income Tax Act*, transfers of loans and other assets between non-arm's length corporations are generally treated as occurring at fair market value. Special rules may also apply to defer the recognition of losses until an asset is transferred to an arm's length party.

A foreign bank may have some discretion in deciding whether to hold specific assets in Canada or in its home jurisdiction. Moreover, the assets of the foreign bank may be transferred between the home jurisdiction and Canada. As the Canadian branch of a foreign bank and its home office are not separate legal entities, new rules are proposed to ensure that transfers of assets between the Canadian branch and its home office are taxed in the same manner as other non-arm's length transfers. The new rules deem such transfers to occur at fair market value, subject to the existing loss deferral rules that prevent the premature realization of losses.

[For other proposals, see under 18(5), 20(1)(c), 126(2), 153(1), 181.3(3), 190.13, 212(1)(b) and 219(1) — ed.]

Department of Finance news release, May 11, 1999: *Changes Proposed to Tax Rules relating to the Conversion of Foreign Bank Subsidiaries into Foreign Bank Branches*

Secretary of State (International Financial Institutions) Jim Peterson today announced proposals to change the Income Tax Act to allow special transitional tax rules for foreign banks that establish specialized, commercially focused branches in Canada.

"We are proposing these time-limited, special tax rules to make sure there are no unwarranted impediments to foreign banks that

choose to pursue the branching option now being considered by Parliament," Mr. Peterson said. "The foreign bank entry bill, Bill C-67, is intended to sustain and encourage healthy competition in the Canadian financial marketplace, and these tax changes will help that happen."

Foreign banks have historically been required to establish their Canadian operations in the form of Canadian subsidiaries. However, the government has now introduced Bill C-67 to allow foreign banks to operate in the form of branches that will be limited to specific, commercially focused activities.

Under current tax rules, a foreign bank subsidiary that opts to restructure itself as a branch office under Bill C-67 could face a number of significant potential tax liabilities. This could discourage foreign banks currently operating in Canada from pursuing the branching option.

The proposed *Income Tax Act* changes will allow a foreign bank to transfer existing assets and associated tax liabilities of its Canadian banking or trust subsidiary to a newly established branch. This transfer will be allowed to take place, for a limited time, without accelerating certain tax liabilities. Also, where the subsidiary is wound up, the changes will allow the foreign bank to use certain of its former Canadian subsidiary's tax losses.

These transition measures will be available only to foreign banks that carried on business in Canada through a bank or trust company subsidiary prior to the tabling of Bill C-67.

The proposed transitional rules are described in the attached backgrounder. Legislation to implement the rules will be included in a Bill and tabled in Parliament at an early opportunity. The transition measures are intended to come into force at the same time as the proposed foreign bank entry legislation.

For further information:

Robin Maley, Tax Legislation Division, (613) 992-4859

Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080

Patrick Dion, Special Assistant to the Secretary of State, (International Financial Institutions), (613) 996-7861

Backgrounder

In February 1997, the Honourable Jim Peterson, Secretary of State (International Financial Institutions), announced that a new foreign bank entry regime would be implemented to allow foreign banks to carry on business in Canada through branch offices. This change is expected to enhance competition in the Canadian financial services market. Currently, a non-resident bank must establish a Canadian bank subsidiary or trust company (referred to generally as "subsidiaries") if it wishes to carry on business in Canada.

On February 11, 1999, legislation to implement the new foreign bank entry regime was tabled in the House of Commons as Bill C-67. On the same day, a Notice of Ways and Means Motion was tabled describing the *Income Tax Act* changes to be implemented as a consequence of Bill C-67, to ensure that the new Canadian branches of foreign banks are in a comparable tax position to Canadian resident banks.

It is anticipated that a number of existing foreign banks will wish to convert their subsidiaries to Canadian branch offices. As foreign banks were not permitted to establish their Canadian banking businesses as branch offices in the past, special tax provisions, for a limited time, are being proposed to both enable subsidiaries to convert to branch offices and ensure they will not incur an undue tax liability. In the absence of these changes, the foreign banks could incur significant tax costs in converting their subsidiaries to branch offices, which in turn would act as an impediment to their utilizing the branch option that is being made available to them.

The proposed measures defer the recognition of a subsidiary's tax liability in respect of certain assets. However, they do not forgive any outstanding, or accruing, tax liability of the subsidiary. For example, any accrued gain on property transferred to a branch will be inherited by the branch, and will be subject to tax when the branch disposes of the property or ceases to use it in its Canadian banking business. These transition tax rules will be time-limited and will apply only to foreign banks that carried on a banking business in Canada through a subsidiary prior to the passage of Bill C-67.

The proposed changes are described in more detail below. Any references to the Bank Act include the amendments proposed in Bill C-67. In all cases, the changes will apply as of the day that Bill C-67 comes into force.

Proposed Relief

The proposed changes address three specific tax consequences of converting a subsidiary to a non-resident branch office under the current law.

a) — Gains on Property of Subsidiary

The first change relates to the taxation of accrued gains in respect of property owned by a subsidiary. Ordinarily, when a subsidiary transfers property to a branch office of its non- resident parent corporation, the property is treated as having been sold to the non-resident corporation at fair market value. This may give rise to income or a capital gain, and tax may be payable by the subsidiary.

It is proposed that a foreign bank be permitted to elect, on a property-by-property basis, to transfer property from its subsidiary to its new Canadian branch office on a tax- deferred basis. Properties eligible for this election will be those properties used in carrying on the subsidiary's banking business in Canada that would be eligible for transfer under section 85 of the Income Tax Act, if that section applied in respect of the transfer. As a consequence of making the election, the subsidiary's proceeds of disposition in respect of an elected property and the branch office's cost of the property will be equal to the amount that would be the subsidiary's proceeds of disposition in respect of the property had section 85 of the *Income Tax Act* applied. Where the elected property is depreciable property, any latent or future recapture will retain that character to the branch.

This approach will enable the subsidiary to defer any recapture or accrued gains in respect of elected properties or, where the subsidiary wishes to use accrued losses or loss carryovers, to realize only that portion of its gains that may be offset by the losses.

b) — Retained Earnings of Subsidiary

The second change relates to the taxation of the subsidiary's retained earnings. If a subsidiary distributes retained earnings to the branch office of a non-resident corporation, Part XIII withholding tax would generally be payable on the distribution. Moreover, if a subsidiary winds up into its non-resident parent, it is deemed under the Income Tax Act to have distributed a dividend to its shareholders equal to the difference between the value of property distributed on the winding-up and the paid-up capital of the subsidiary's redeemed shares. The deemed dividend is also subject to withholding tax under Part XIII of the Act. Consequently, a foreign bank that converts its subsidiary to a branch office could be subject to withholding tax on the subsidiary's retained earnings.

It is proposed that a subsidiary be permitted to transfer all or part of its retained earnings on a tax-deferred basis to a Canadian branch office of its foreign parent bank. For the purposes of the "branch tax" imposed under Part XIV of the *Income Tax Act*, the transferred amount would be treated as having been claimed by the foreign bank as its "investment allowance" for a notional year preceding the branch's first year of operation in Canada. The tax deferral in respect of the subsidiary's retained earnings would thereby be maintained only as long as the branch continues to employ those earnings in the Canadian business of the foreign bank.

Accumulated Losses of Subsidiary

The third change relates to the treatment of the subsidiary's accumulated tax losses. A corporation that incurs losses in a taxation year may generally deduct those losses in computing its taxable income in subsequent taxation years. However, losses may only be deducted by the taxpayer that incurs them and may not be transferred for use by other taxpayers, including related corpora-

tions. Thus, a subsidiary would not ordinarily be able to transfer its tax losses to a Canadian branch office.

It is proposed that a foreign bank be able to deduct the net capital and non-capital losses of its subsidiary in computing the taxable income of its Canadian branch office, in circumstances where the foreign bank has wound up the subsidiary as a consequence of transferring the subsidiary's business to the branch office. This would be accomplished by treating the Canadian branch office as having incurred losses equal to the losses of the wound-up subsidiary, in the year in which the subsidiary incurred them.

Who Qualifies for Relief?

The proposed new rules will apply to foreign banks that carried on a banking business in Canada through a federally regulated bank or trust company on the day that Bill C-67 was introduced in Parliament.

When is Relief Available?

The proposed relief will be available on a time-limited basis. To qualify for relief, a foreign bank must establish

a) that it complied, on or before December 31, 2000, with paragraphs 1.0(1.1)(b) and (c) of the draft "Guide to Foreign Bank Branching" issued by the Office of the Superintendent of Financial Institutions, in respect of establishing and operating a bank branch in Canada, and

b) that it completed the transaction in respect of which the relief is sought on or before the earlier of

i) the day that is 6 months after the day that the Superintendent of Financial Institutions makes an order in respect of the foreign bank under subsection 534(1) of the *Bank Act*, and

ii) December 31, 2002.

"automobile" means

(a) a motor vehicle that is designed or adapted primarily to carry individuals on highways and streets and that has a seating capacity for not more than the driver and 8 passengers,

but does not include

(b) an ambulance,

(c) a motor vehicle acquired primarily for use as a taxi, a bus used in a business of transporting passengers or a hearse used in the course of a business of arranging or managing funerals,

(d) except for the purposes of section 6, a motor vehicle acquired to be sold, rented or leased in the course of carrying on a business of selling, renting or leasing motor vehicles or a motor vehicle used for the purpose of transporting passengers in the course of carrying on a business of arranging or managing funerals, and

(e) a motor vehicle of a type commonly called a van or pick-up truck or a similar vehicle

(i) that has a seating capacity for not more than the driver and 2 passengers and that, in the taxation year in which it is acquired, is used primarily for the transportation of goods or equipment in the course of gaining or producing income, or

(ii) the use of which, in the taxation year in which it is acquired, is all or substantially all for the transportation of goods, equipment or passengers in the course of gaining or producing income;

Related Provisions: 248(1) — "motor vehicle", "passenger vehicle".

History: "Automobile" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable to taxation years and fiscal periods beginning after June 17, 1987 that end after 1987. That definition formerly read:

"automobile" means

(a) a motor vehicle that is designed or adapted primarily to carry individuals and their personal luggage and that has a seating capacity for not more than the driver and 8 passengers, and

(b) a motor vehicle that is

(i) of a type commonly called a station wagon or van or a similar vehicle if it is equipped in a reasonably permanent way to carry more than the driver and 2 passengers but not more than the driver and 8 passengers, or

(ii) of a type commonly called a van or pick-up truck or a similar vehicle unless it is designed or adapted to carry not more than the driver and 2 passengers and is used primarily for the transportation of goods or equipment in the course of a business or for the purpose of earning income,

but does not include

(c) an ambulance,

(d) a motor vehicle acquired primarily for use as a taxi or in connection with funerals, or

(e) except for the purposes of section 6, a motor vehicle acquired to be sold, rented or leased in the course of carrying on a business of selling, renting or leasing motor vehicles;

Pre-RSC History: "Automobile" enacted by 1988, c. 55, subsec. 188(14), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

"balance-due day" of a taxpayer for a taxation year means,

(a) where the taxpayer is a trust, the day that is 90 days after the end of the year,

(b) where the taxpayer is an individual who died after October in the year and before May in the following taxation year, the day that is 6 months after the day of death,

(c) in any other case where the taxpayer is an individual, April 30 in the following taxation year, and

(d) where the taxpayer is a corporation, the day on or before which the corporation is required under section 157 to pay the remainder of its tax payable under Part I for the year or would be so required if such a remainder were payable;

Related Provisions: 150(1) — Returns; 156.1(4) — Payment of balance — individuals who pay instalments; 157(1)(b) — Payment of balance by corporations; 158 — Payment of balance on assessment; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: The definition "balance-due day" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable to 1996 *et seq.* It formerly read:

"balance-due day" of an individual for a taxation year means

(a) where the individual is a trust, the day that is 90 days after the end of the year,

(b) where the individual died after October in the year and before May in the immediately following taxation year, the day that is 6 months after the day of death, and

(c) in any other case, April 30 in the immediately following taxation year;

"Balance-due day" added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable after 1989.

Information Circulars: 98-1: Collection policies (Draft).

"bankrupt" has the meaning assigned by the *Bankruptcy and Insolvency Act*;

Related Provisions: 80(1)"forgiven amount"B(i) — Debt forgiveness rules do not apply when debtor is bankrupt; 128 — Rules on bankruptcy.

History: The definition "bankrupt" added by 1995, c. 21, subsec. 43(2), applicable to taxation years that end after February 21, 1994.

"benefit under a deferred profit sharing plan" received by a taxpayer in a taxation year means the total of all amounts each of which is an amount received by the taxpayer in the year from a trustee under the plan, minus any amounts deductible under subsections 147(11) and (12) in computing the income of the taxpayer for the year;

Related Provisions: 56(1)(i), 147(10) — DPSP benefits taxable.

"bituminous sands" means sands or other rock materials containing naturally occurring hydrocarbons (other than coal) which hydrocarbons have

(a) a viscosity, determined in a prescribed manner, equal to or greater than 10,000 centipoise, or

(b) a density, determined in a prescribed manner, equal to or less than 12 degrees API;

History: The definition "bituminous sands" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after March 6, 1996.

Regulations: 1107 (prescribed manner for determining viscosity and density).

"borrowed money" includes the proceeds to a taxpayer from the sale of a post-dated bill drawn by the taxpayer on a bank;

Related Provisions: 15.1(4) — Money borrowed; 15.2(4) — Status of interest; 20(1)(c) — Interest on money borrowed for certain purposes is deductible; 20(2), (3) — Rules re borrowed money.

Pre-RSC History: "Borrowed money" amended by 1992, c. 1, Sch. V, subsec. 21(1), to substitute "a bank" for "a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies", applicable from February 28, 1992.

"Borrowed money" enacted by 1984, c. 45, subsec. 92(2), applicable in respect of bills drawn after 1982 that are payable more than 366 days from the date of their certification and in respect of all bills drawn after June 1984.

Interpretation Bulletins: IT-121R3: Election to capitalize cost of borrowed money.

"business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2, subsection 95(1) and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment;

Related Provisions: 253 — Extended meaning of "carrying on business" in Canada.

History: The definition "business" amended by 1995, c. 21, s. 47, applicable to taxation years that end after 1994. The definition formerly read:

> "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2 and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment;

Pre-RSC History: "Business" amended by 1988, c. 55, subsec. 188(1), to substitute "paragraph 18(2)(c), section 54.2 and paragraph 110.6(14)(f)," for "paragraph 18(2)(c)," applicable with respect to dispositions occurring after 1987.

"Business" substituted by 1979, c. 5, subsec. 66(3), applicable after November 16, 1978. "Business" formerly read:

> "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and includes an adventure or concern in the nature of trade but does not include an office or employment;

Selected Cases [subsec. 248(1)"business"]: *Timmins v. R.*, [1999] 2 C.T.C. 133 (FCA) (Not necessary for there to be predominant profit motive for business to be carried on); *Loewen (H.R.) v. MNR*, [1993] 1 C.T.C. 212 (FCTD) (Acquisition and disposition of SRTC debenture was adventure in nature of trade); *Moloney v. Canada*, [1992] 2 C.T.C. 227 (FCA); leave to appeal to SCC refused (May 6, 1993), Doc. 23336 [unreported] (Deduction of business expenses disallowed; no business actually carried on); *Pollock v. Canada*, [1990] 1 C.T.C. 196 (FCTD); appealed to FCA (Jan. 19, 1990), File A-75/76- 90 (Disposition of shares acquired pursuant to employee stock option plan was adventure in nature of trade); *London Life Insurance Co. v. Canada*, [1990] 1 C.T.C. 43 (FCA) (Taxpayer entering agency agreement with Bermuda firm "carried on an insurance business in a country other than Canada". Expenses related to excess computer capacity provided to taxpayer's subsidiary for latter to sell to public were beyond scope of insurance business and not deductible); *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Director/shareholder and president receiving shares pursuant to standby agreement not engaged in adventure in nature of trade).

Adventure in the nature of trade: *Walton v. The Queen*, [1982] C.T.C. 228 (FCTD) (Adventure in nature of trade where city planner, having knowledge of real estate opportunities, acquired and disposed of three leased dwelling houses); *The Queen v. Lague, Leopold, Inc.*, [1981] C.T.C. 348 (FCTD) (Assignment of contractual rights was disposition of eligible capital property, not adventure in nature of trade); *Bossin v. The Queen*, [1976] C.T.C. 358 (FCTD) (Irrespective of nature of commodity, where intention is to resell quickly, there is an adventure in nature of trade); *MNR v. Freud*, [1968] C.T.C. 438 (SCC) (Expenses of unsuccessfully promoting sports car prototype deductible expenses of adventure in nature of trade); *MNR v. Eldridge*, [1964] C.T.C. 545 (Exch.) (Income from illegal business taxable).

Interpretation Bulletins: IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-206R: Separate businesses; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-371: Rental property — meaning of "principal business"; IT-459: Adventure or concern in the nature of trade.

Forms: RC4100: Employee or Self-Employed?.

"business limit" of a corporation for a taxation year means the amount determined under section 125 to be its business limit for the year;

Related Provisions: 125(2)–(5.1) — Determination of business limit.

History: The definition "business limit" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after May 23, 1985.

"business number" means the number (other than a Social Insurance Number) used by the Minister to identify

(a) a corporation or partnership, or

(b) any other association or taxpayer that carries on a business or is required by this Act to deduct or withhold an amount from an amount paid or credited or deemed to be paid or credited under this Act

and of which the Minister has notified the corporation, partnership, association or taxpayer;

History: The definition "business number" amended by 1998, c. 19, subsec. 239(6), in force on June 18, 1998.

"Canadian-controlled private corporation" has the meaning assigned by subsection 125(7);

Related Provisions: 248(1) — "Small business corporation".

Pre-RSC History: "Canadian-controlled private corporation" amended by 1984, c. 45, subsec. 92(3), to substitute subsec. 125(7) for 125(6), applicable to 1985 *et seq.*

I.T. Application Rules: 50(1) (status for 1972 taxation year).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporations.

"Canadian corporation" has the meaning assigned by subsection 89(1);

"Canadian development expense" has the meaning assigned by subsection 66.2(5);

Pre-RSC History: "Canadian development expense" enacted by 1985, c. 45, subsec. 122(2), applicable to taxation years commencing after 1984.

"Canadian exploration and development expenses" has the meaning assigned by subsection 66(15);

Pre-RSC History: "Canadian exploration and development expenses" enacted by 1985, c. 45, subsec. 122(2), applicable to taxation years commencing after 1984.

"Canadian exploration expense" has the meaning assigned by subsection 66.1(6);

Pre-RSC History: "Canadian exploration expense" enacted by 1985, c. 45, subsec. 122(2), applicable to taxation years commencing after 1984.

"Canadian field processing" means, except as otherwise prescribed,

(a) the processing in Canada of raw natural gas at a field separation and dehydration facility,

(b) the processing in Canada of raw natural gas at a natural gas processing plant to any stage that is not beyond the stage of natural gas that is acceptable to a common carrier of natural gas,

(c) the processing in Canada of hydrogen sulphide derived from raw natural gas to any stage that is not beyond the marketable sulphur stage,

(d) the processing in Canada of natural gas liquids, at a natural gas processing plant where the input is raw natural gas derived from a natural accumulation of natural gas, to any stage that is not beyond the marketable liquefied petroleum stage or its equivalent,

(e) the processing in Canada of crude oil (other than heavy crude oil recovered from an oil or gas well or a tar sands deposit) recovered from a natural accumulation of petroleum to any stage that is not beyond the crude oil stage or its equivalent, and

(f) prescribed activities

and, for the purposes of paragraphs (b) to (d),

(g) gas is not considered to cease to be raw natural gas solely because of its processing at a field separation and dehydration facility until it is received by a common carrier of natural gas, and

(h) where all or part of a natural gas processing plant is devoted primarily to the recovery of ethane, the plant, or the part of the plant, as the case may be, is considered not to be a natural gas processing plant;

History: Para. (g) of the definition "Canadian field processing" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(2), applicable after 1996. Para. (g) formerly read:

(g) gas is not considered to cease to be raw natural gas solely because of its processing at a field separation and dehydration facility, and

The definition "Canadian field processing" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after 1996.

"Canadian oil and gas property expense" has the meaning assigned by subsection 66.4(5);

Pre-RSC History: "Canadian oil and gas property expense" enacted by 1980-81-82-83, c. 48, subsec. 108(1), applicable after December 11, 1979;

"Canadian partnership" has the meaning assigned by section 102;

Related Provisions: 80(1) — "Eligible Canadian partnership".

Pre-RSC History: "Canadian partnership" enacted by 1979, c. 5, subsec. 66(4).

Interpretation Bulletins: IT-123R6: Transactions involving eligible capital property.

"Canadian resource property" has the meaning assigned by subsection 66(15);

Pre-RSC History: "Canadian resource property" substituted by 1985, c. 45, subsec. 122(1). The definition formerly read:

"Canadian resource property" and "foreign resource property" have the meanings assigned by section 66;

"Canadian resource property" enacted by 1974-75-76, c. 26, subsec. 125(1), applicable to 1974 *et seq.*

"capital dividend" has the meaning assigned by section 83;

Pre-RSC History: "Capital dividend" amended by 1988, c. 55, subsec. 188(1), to substitute "section 83" for "subsection 83(2)", applicable with respect to dividends paid after 4 p.m. EDST, September 25, 1987.

"capital gain" for a taxation year from the disposition of any property has the meaning assigned by section 39;

"capital interest" of a taxpayer in a trust has the meaning assigned by subsection 108(1);

"capital loss" for a taxation year from the disposition of any property has the meaning assigned by section 39;

"capital property" has the meaning assigned by section 54;

"cash method" has the meaning assigned by subsection 28(1);

History: "Cash method" enacted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable after 1988.

Selected Cases [subsec. 248(1)"cash method"]: *Dansereau v. R.*, [2000] 1 C.T.C. 2582 (TCC) (Cash basis cannot be denied simply because business is complicated).

"cemetery care trust" has the meaning assigned by subsection 148.1(1);

Related Provisions: 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

History: The definition "cemetery care trust" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), applicable after 1992.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Proposed Addition — 248(1)"common-law partner", "common-law partnership"

"common-law partner", with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited with the taxpayer for a continuous period of at least one year, or

(b) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(c) and (e) and subparagraph 252(2)(a)(iii),

and, for the purposes of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

"common-law partnership" means the relationship between two persons who are common-law partners of each other;

Application: 2000, c. 12 (Bill C-23), subsec. 139(2), will add the definitions "common-law partner" and "common-law partnership" to subsec. 248(1), applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council.

Ss. 144 to 146 of Bill C-23 provide the following transitional rules:

144. Where a taxpayer and a person who would have been the taxpayer's common-law partner in the 1998, 1999 or 2000 taxation year, if sections 130 to 142 applied to the applicable year, jointly elect in respect of that year by notifying the Minister of National Revenue in prescribed manner on or before their filing due date for the year in which this Act receives royal assent, those

sections apply to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

145. Where, but for the application of sections 130 to 142, paragraphs 56(1)(b) and 60(b) of the *Income Tax Act* would not apply to amounts paid and received pursuant to an order or a written agreement made before the coming into force of this section, those paragraphs do not apply unless the payor and the recipient of the amounts jointly elect to have those paragraphs apply to those amounts for the 2001 and following taxation years by notifying the Minister of National Revenue in prescribed manner on or before their filing due date for the year in which this Act receives royal assent.

146. Despite subsections 152(4) to (5) of the *Income Tax Act*, the Minister of National Revenue may make any assessment or reassessment and additional assessment of tax, interest and penalties and may make any determinations and redeterminations that are necessary to give effect to section 144 for any taxation year.

"common share" means a share the holder of which is not precluded on the reduction or redemption of the capital stock from participating in the assets of the corporation beyond the amount paid up on that share plus a fixed premium and a defined rate of dividend;

Related Provisions: 248(1) — "Preferred share".

Interpretation Bulletins: IT-116R3: Rights to buy additional shares.

"controlled foreign affiliate" has the meaning assigned by subsection 95(1);

Related Provisions: 17(15)"controlled foreign affiliate" — Definition applicable to loan by corporation to non-resident.

History: The definition "controlled foreign affiliate" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after 1995.

"corporation" includes an incorporated company;

Related Provisions: 227.1 — Liability of directors; 236 — Execution of documents by corporations; 242 — Officers, directors and agents guilty of corporation's offences; *Interpretation Act* 21(1) — Powers vested in corporation; *Interpretation Act* 35(1) — Corporation does not include partnership that is separate legal entity.

Interpretation Act, R.S.C. 1985, c. I-21, subsec. 35(1):

"corporation" does not include a partnership that is considered to be a separate legal entity under provincial law;

Interpretation Bulletins: IT-343R: Meaning of the term "corporation" [for purposes of the definition of "foreign affiliate"]; IT-432R2: Benefits conferred on shareholders.

"corporation incorporated in Canada" includes a corporation incorporated in any part of Canada before or after it became part of Canada;

Related Provisions: 250(5.1) — Corporation continued outside Canada deemed incorporated in new jurisdiction.

Pre-RSC History: *The definition "corporation incorporated in Canada" was included under the heading for "corporation".*

"cost amount" to a taxpayer of any property at any time means, except as expressly otherwise provided in this Act,

(a) where the property was depreciable property of the taxpayer of a prescribed class, the amount that would be that proportion of the undepreciated capital cost to the taxpayer of property of that class at that time that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not been disposed of by the taxpayer before that time if subsection 13(7) were read without reference to paragraph 13(7)(e) and if

(i) paragraph 13(7)(b) were read as follows:

"(b) where a taxpayer, having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, the taxpayer shall be deemed to have acquired it at that later time at a capital cost to the taxpayer equal to the fair market value of the property at that later time;", and

(ii) subparagraph 13(7)(d)(i) were read as follows:

"(i) if the use regularly made by the taxpayer of the property for the purpose of gaining or producing income has increased, the taxpayer shall be deemed to have acquired at that time depreciable property of that class at a capital cost equal to the proportion of its fair market value at that time that the amount of the increase in the use regularly made by the taxpayer of the property for that purpose is of the whole of the use regularly made of the property, and"

(b) where the property was capital property (other than depreciable property) of the taxpayer, its adjusted cost base to the taxpayer at that time,

(c) where the property was property described in an inventory of the taxpayer, its value at that time as determined for the purpose of computing the taxpayer's income,

(c.1) where the taxpayer was a financial institution in its taxation year that includes that time and the property was a mark-to-market property for the year, the cost to the taxpayer of the property,

Proposed Addition — 248(1)"cost amount"(c.2)

(c.2) where the cost at that time to the taxpayer of the property is determined under subsection 94.2(12), the cost so determined,

Application: The June 22, 2000 draft legislation, subsec. 26(1), will add para. (c.1) to the definition "cost amount" in subsec. 248(1), applicable after 2000.

Technical Notes: Subsection 248(1) of the Act defines "cost amount", which is used throughout the Act, particularly in provisions relating to the transfer of properties to and from corporations, trusts and partnerships.

New paragraph (c.2) of the definition "cost amount" provides that, where a cost of property to a taxpayer is determined as of any time under new subsection 94.2(12), that cost is also the "cost amount", under subsection 248(1), of the property to the taxpayer at that time.

This amendment applies after 2000.

(d) where the property was eligible capital property of the taxpayer in respect of a business, 4/3 of the amount that would, but for subsection 14(3), be determined by the formula

$$A \times \frac{B}{C}$$

where

A is the cumulative eligible capital of the taxpayer in respect of the business at that time,

B is the fair market value at that time of the property, and

C is the fair market value at that time of all the eligible capital property of the taxpayer in respect of the business,

(d.1) where the property was a loan or lending asset (other than a net income stabilization account or a property in respect of which paragraph (b), (c), (c.1) or (d.2) applies), the amortized cost of the property to the taxpayer at that time,

(d.2) where the taxpayer was a financial institution in its taxation year that includes that time and the property was a specified debt obligation (other than a mark-to-market property for the year), the tax basis of the property to the taxpayer at that time,

(e) where the property was a right of the taxpayer to receive an amount, other than property that is

(i) a debt the amount of which was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year that ended before that time,

(ii) a net income stabilization account,

(iii) a right in respect of which paragraph (b), (c), (c.1), (d.1) or (d.2) applies, or

(iv) a right to receive production (as defined in subsection 18.1(1)) to which a matchable expenditure (as defined in subsection 18.1(1)) relates,

the amount the taxpayer has a right to receive,

(e.1) where the property was a policy loan (within the meaning assigned by subsection 138(12)) of an insurer, nil,

(e.2) where the property is an interest of a beneficiary under a qualifying environmental trust, nil, and

(f) in any other case, the cost to the taxpayer of the property as determined for the purpose of computing the taxpayer's income, except to the extent that that cost has been deducted in computing the taxpayer's income for any taxation year ending before that time;

and, for the purposes of this definition, "financial institution", "mark-to-market property" and "specified debt obligation" have the meanings assigned by subsection 142.2(1), and "tax basis" has the meaning assigned by subsection 142.4(1);

Related Provisions: 13(7) — Rule affecting capital cost of depreciable property; 13(33) — Consideration given for depreciable capital; 52(3) — Cost of stock dividend; 53 — Adjusted cost base — adjustments; 70(14) — Order of disposal of depreciable property on death; 108(1) — Meaning of "cost amount" of capital interest in a trust; 206(1)"cost amount" — Meaning of "cost amount" of capital interest in a trust; 248(25.3) — Deemed cost of trust units.

History: Subpara. (e)(iv) added to the definition "cost amount" by 1998, c. 19, subsec. 239(3), applicable after November 17, 1996.

Para. (e.2) of the definition "cost amount" in subsec. 248(1) amended by the said c. 19, subsec. 66(2), applicable after 1995. Para. (e.2) formerly read:

(e.2) where the property is an interest of a beneficiary under a mining reclamation trust, nil, and

Para. (c.1) added to the definition "cost amount" by 1995, c. 21, subsec. 59(3), applicable to taxation years that begin after October 1994.

Paras. (d.1) and (d.2) added to the definition "cost amount" and para. (e) amended by 1995, c. 21, subsec. 59(4), applicable to the determination of cost amount at a time after February 22, 1994. Para. (e) formerly read:

(e) where the property was a debt owing to the taxpayer (other than the amount in respect of such property that was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending before that time or of a net income stabilization account) or any other right of the taxpayer to receive an amount (other than a right to receive an amount in respect of a net income stabilization account), the amortized cost of the property to the taxpayer at that time or, where the property does not have an amortized cost to the taxpayer, the amount of the debt or right that was outstanding at that time,

The closing words added to the definition "cost amount" by 1995, c. 21, subsec. 59(5), applicable to the determination of cost amount at a time after February 22, 1994.

Para. (e.2) added to the definition "cost amount" by 1995, c. 3, subsec. 52(3), applicable after 1993.

Paras. (d) and (e) of "cost amount" amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(2), para. (d) applicable (by subsec. 139(11), as amended by 1994, c. 21, s. 138)

(a) in the case of a corporation, to taxation years of the corporation beginning after June 1988, and

(b) in any other case, to fiscal periods commencing after 1987,

except that, in its application before July 14, 1990, para. (d) shall be read as follows:

(d) where the property was eligible capital property in respect of a business, 4/3 of the amount that would, but for subsection 14(3), be the cumulative eligible capital of the taxpayer in respect of the business at that time,

and para. (e) applicable to 1991 *et seq.* Paras. (d) and (e) formerly read:

(d) where the property was eligible capital property of the taxpayer in respect of a business, the amount that would, but for subsection 14(3), be that proportion of the cumulative eligible capital of the taxpayer in respect of the business at that time that

(i) the fair market value at that time of the property

is of

(ii) the fair market value at that time of all of the eligible capital property of the taxpayer in respect of the business,

(e) where the property was a debt owing to the taxpayer (other than the amount in respect of that property that was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending before that time) or any other right of the taxpayer to receive an amount, the amortized cost of the property to the taxpayer at that time or, where the property does not have an amortized cost to the taxpayer, the amount of the debt or right that was outstanding at that time,

Paras. (a), (d) of "cost amount" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(2), (3), para. (a) applicable after May 22, 1985; para. (d) applicable after 1987 except that before July 14, 1990 the para. shall be read as follows:

(d) where the property was eligible capital property of the taxpayer in respect of a business, the amount that would, but for subsection 14(3), be the cumulative eligible capital of the taxpayer in respect of the business at that time,

Paras. (a), (d) formerly read:

(a) where the property was depreciable property of the taxpayer of a prescribed class, that proportion of the undepreciated capital cost to the taxpayer of property of that class at that time that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class,

. . . . .

(d) where the property was eligible capital property of the taxpayer in respect of a business, the cumulative eligible capital of the taxpayer in respect of the business at that time,

Pre-RSC History: Para. (e) of "cost amount" substituted, para. (e.1) added by 1988, c. 55, subsec. 188(2), applicable after 1986. Para. (e) formerly read:

(e) where the property was a debt owing to the taxpayer (other than a debt the amount of which was deducted under paragraph 20(1)(p) in computing the taxpayer's income for a taxation year ending before that time) or any other right of the taxpayer to receive an amount, the amount of the debt or other right that was outstanding at that time, and

Para. (e.1) of "cost amount" repealed by 1986, c. 6, subsec. 126(2), applicable to 1986 *et seq.* Para. (e.1) formerly read:

(e.1) where the property was an indexed security of the taxpayer, its fair market value (within the meaning assigned by paragraph 47.1(1)(d)) at that time, and

Para. (e.1) of "cost amount" added by 1984, c. 1, subsec. 104(1), applicable after September 30, 1983.

Selected Cases [subsec. 248(1)"cost amount"]: *Canada v. Dresden Farm Equipment Ltd.*, [1989] 1 C.T.C. 99 (FCA) (No inventory deduction for dealer/agent selling goods he did not own because there was no cost amount).

I.T. Application Rules: 18 (property acquired before 1972).

Interpretation Bulletins: IT-142R3: Settlement of debts on the winding-up of a corporation; IT-220R2: CCA — Proceeds of disposition of depreciable property; IT-457R: Election by professionals to exclude work in progress from income; IT-471R: Merger of partnerships; IT-488R2: Wind-

ing-up of 90%-owned taxable Canadian corporation; IT-528: Transfers of funds between registered plans.

"credit union" has the meaning assigned by subsection 137(6);

Pre-RSC History: "Credit union" enacted by 1974-75-76, c. 26, subsec. 125(2), applicable to 1972 *et seq.*

"cumulative eligible capital" has the meaning assigned by subsection 14(5);

"death benefit" means the total of all amounts received by a taxpayer in a taxation year on or after the death of an employee in recognition of the employee's service in an office or employment minus

(a) where the taxpayer is the only person who has received such an amount and who is a surviving spouse of the employee (which person is, in this definition, referred to as the "surviving spouse"), the lesser of

(i) the total of all amounts so received by the taxpayer in the year, and

(ii) the amount, if any, by which $10,000 exceeds the total of all amounts received by the taxpayer in preceding taxation years on or after the death of the employee in recognition of the employee's service in an office or employment, or

(b) where the taxpayer is not the surviving spouse of the employee, the lesser of

(i) the total of all amounts so received by the taxpayer in the year, and

(ii) that proportion of

(A) the amount, if any, by which $10,000 exceeds the total of all amounts received by the surviving spouse of the employee at any time on or after the death of the employee in recognition of the employee's service in an office or employment

that

(B) the amount described in subparagraph (i)

is of

(C) the total of all amounts received by all taxpayers other than the surviving spouse of the employee at any time on or after the death of the employee in recognition of the employee's service in an office or employment;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 56(1)(a)(iii) — Death benefit included in income; 104(28) — Death benefit flowed through trust; 128.1(10)"excluded right or interest"(h) — Emigration — no deemed disposition of right to death benefit; 252(4)(a) — Extended meaning of "spouse".

History: That portion of para. (a) of "death benefit" preceding subpara. (i) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(3), applicable to 1993 *et seq.* That portion formerly read:

(a) where the taxpayer is the surviving spouse of the employee, the lesser of

Pre-RSC History: "Death benefit" substituted by 1985, c. 45, subsec. 122(1), applicable to 1985 *et seq.* The definition formerly read:

"death benefit" for a taxation year means the amount or amounts received in the year by any person upon or after the death of an employee in recognition of his service in an office or employment minus

(a) where the amount or amounts were received by his widow, the lesser of

(i) the amount or amounts so received, and

(ii) an amount equal to the employee's salary, wages and other remuneration for the last year in that office or employment for which he received any such remuneration or $10,000, whichever is the lesser, minus amounts deductible in computing for previous years the death benefits received in respect of his service in that office or employment, or

(b) where the employee died without leaving a widow or where no amount is deductible in computing for any year the death benefits received by his widow in respect of his service in that or any other office or employment, the lesser of

(i) the amount or amounts so received, and

(ii) that proportion of any amount determined as provided in subparagraph (a)(ii) that the amount or amounts so received are of the aggregate of all amounts received in the year, by each of the persons who received any such amount or amounts, upon or after the death of the employee in recognition of his service in that office or employment,

except that where any death benefits were received in the year in respect of the services of an employee in more than one office or employment,

(c) this definition shall be read as requiring a separate determination of the death benefits received in respect of his service in each particular office or employment, and

(d) there shall be substituted for the amount determined under subparagraph (a)(ii) or (b)(ii), as the case may be, in respect of each particular office or employment an amount equal to that proportion of the amount otherwise determined thereunder that the employee's salary, wages and other remuneration for the last year in that particular office or employment for which he received any such remuneration is of the aggregate of his said remuneration for the last years in each of the said offices or employments from which he received any such remuneration;

Interpretation Bulletins: IT-508R: Death benefits.

"deferred amount" at the end of a taxation year under a salary deferral arrangement in respect of a taxpayer means

(a) in the case of a trust governed by the arrangement, any amount that a person has a right under the arrangement at the end of the year to receive after the end of the year where the amount has been received, is receivable or may at any time become receivable by the trust as, on account or in lieu of salary or wages of the taxpayer for services rendered in the year or a preceding taxation year, and

(b) in any other case, any amount that a person has a right under the arrangement at the end of the year to receive after the end of the year,

and, for the purposes of this definition, a right under the arrangement shall include a right that is subject to one or more conditions unless there is a substantial risk that any one of those conditions will not be satisfied;

Pre-RSC History: "Deferred amount" enacted by 1986, c. 55, subsec. 78(3), applicable after February 25, 1986 with respect to plans and arrangements otherwise than with respect to an amount that would be a deferred amount but for this exception under an agreement in writing made before February 26, 1986 by a taxpayer and his employer or former employer where the amount is in respect of

(a) services rendered by the taxpayer before July, 1986; or

(b) services rendered by the taxpayer after June, 1986, where the taxpayer is obliged to defer receipt of the amount and cannot cancel or otherwise avoid that obligation.

"deferred profit sharing plan" has the meaning assigned by subsection 147(1);

"depreciable property" has the meaning assigned by subsection 13(21);

Related Provisions: See under 13(21)"depreciable property".

Selected Cases [subsec. 248(1)"depreciable property"]: *Gordon v. Canada*, [1995] 2 C.T.C. 2185 (TCC) (Uncompleted film held to be "depreciable property". Terminal loss allowed).

I.T. Application Rules: 18, 20 (property acquired before 1972).

"designated insurance property" has the meaning assigned by subsection 138(12);

History: The definition "designated insurance property" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable to 1997 *et seq.*

"designated surplus" — [Repealed under former Act]

Pre-RSC History: "Designated surplus" repealed by 1977-78, c. 1, subsec. 98(1), applicable after March 31, 1977. "Designated surplus" formerly read:

"designated surplus" has the meaning assigned by Part VII;

Proposed Addition — 248(1)"disposition"

"disposition" of any property, except as expressly otherwise provided, includes

(a) any transaction or event entitling a taxpayer to proceeds of disposition of the property,

(b) any transaction or event by which,

(i) where the property is a share, bond, debenture, note, certificate, hypothec, mortgage, agreement of sale or similar property, or an interest in it, the property is redeemed in whole or in part or is cancelled,

(ii) where the property is a debt or any other right to receive an amount, the debt or other right is settled or cancelled,

(iii) where the property is a share, the share is converted because of an amalgamation or merger, and

(iv) where the property is an option to acquire or dispose of property, the option expires,

(c) any transfer of the property to a trust or, where the property is property of a trust, any transfer of the property to any beneficiary under the trust, except as provided by paragraph (f) or (g), and

(d) where the property is, or is part of, a taxpayer's capital interest in a trust, except as provided by paragraph (h) or (i), a payment made after 1999 to the taxpayer from the trust that can reasonably be considered to have been made because of the taxpayer's capital interest in the trust,

but does not include

(e) any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, except where the transfer is

(i) from a person or a partnership to a trust for the benefit of the person or the partnership,

(ii) from a trust to a beneficiary under the trust, or

(iii) from one trust maintained for the benefit of one or more beneficiaries under the trust to another trust maintained for the benefit of the same beneficiaries,

Letter from Department of Finance, April 21, 1999: Dear [xxx]

This is in reply to your letter of April 20, 1999 with regard to the proposed definition "disposition" in the draft taxation proposals on trusts released on December 23, 1998.

From a policy perspective we agree that where property is transferred from a trust to a bare trust acting an agent for the transferor and there is no change in beneficial ownership as a result of the transfer, there should not be a "disposition" for income tax purposes. Accordingly, we will recommend that paragraph (e) of the definition be amended in the manner suggested in your letter.

Thank you for raising this matter with us.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

(f) any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, where

(i) the transferor and the transferee are trusts,

(ii) the transfer is not by a trust resident in Canada to a non-resident trust,

(iii) the transferee does not receive the property in satisfaction of the transferee's right as a beneficiary under the transferor trust,

(iv) the transferee held no property immediately before the transfer (other than property the cost of which is not included, for the purposes of this Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee),

(v) the transferee does not file a written election with the Minister on or before the filing-due date for its taxation year in which the transfer is made (or on such later date as is acceptable to the Minister) that this paragraph not apply,

(vi) where the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the transferee is the same type of trust, and

(vii) the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist and, immediately before the time of the transfer or the beginning of that series, as the case may be, the transferee never held any property or held only property having a nominal value,

(g) any transfer of the property where

(i) the transferor is a trust governed by a registered retirement savings plan or a trust governed by a registered retirement income fund,

(ii) the transferee is a trust governed by a registered retirement savings plan or a trust governed by a registered retirement income fund,

(iii) the annuitant under the plan or fund that governs the transferor is also the annuitant under the plan or fund that governs the transferee,

(iv) the transferee held no property immediately before the transfer (other than property the cost of

which is not included, for the purposes of this Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee),

(v) the transferee does not file a written election with the Minister on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that this paragraph not apply, and

(vi) the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist and, immediately before the time of the transfer or the beginning of that series, as the case may be, the transferee never held any property or held only property having a nominal value,

(h) where the property is part of a capital interest of a taxpayer in a trust (other than a personal trust or a trust prescribed for the purpose of subsection 107(2)) that is described by reference to units issued by the trust, a payment after 1999 from the trust in respect of the capital interest, where the number of units in the trust that are owned by the taxpayer is not reduced because of the payment,

(i) where the property is a taxpayer's capital interest in a trust, a payment to the taxpayer after 1999 in respect of the capital interest to the extent that the payment

(i) is out of the income of the trust (determined without reference to subsection 104(6)) for a taxation year or out of the capital gains of the trust for the year, if the payment was made in the year or the right to the payment was acquired by the taxpayer in the year, or

(ii) is in respect of an amount designated in respect of the taxpayer by the trust under subsection 104(20),

(j) any transfer of the property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that had been used as security for a debt or a loan,

(k) any transfer of the property to a trust as a consequence of which there is no change in the beneficial ownership of the property, where the main purpose of the transfer is

(i) to effect payment under a debt or loan,

(ii) to provide assurance that an absolute or contingent obligation of the transferor will be satisfied, or

(iii) to facilitate either the provision of compensation or the enforcement of a penalty, in the event that an absolute or contingent obligation of the transferor is not satisfied,

(l) any issue of a bond, debenture, note, certificate, mortgage or hypothec, and

(m) any issue by a corporation of a share of its capital stock, or any other transaction that, but for this paragraph, would be a disposition by a corporation of a share of its capital stock;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(4), will add the definition "disposition" to subsec. 248(1), applicable to transactions and events that occur after December 23, 1998, except that paras. (f) and (g) shall not apply for the purposes of the Act (other than s. 107.4) to a transfer of property, that occurred before 2000, by a trust governed by a registered retirement savings plan to a trust governed by a registered retirement income fund (or to a transfer by a trust governed by a registered retirement income fund to a trust governed by a registered retirement savings plan) unless the transferee trust files a written election with the Minister of National Revenue on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that para. (f) or (g), as the case may be, of that definition apply.

Technical Notes: The new definition of "disposition" in subsection 248(1) of the Act replaces a definition of the same expression in section 54. The new definition applies for the purposes of the entire Act.

The table below briefly compares the new definition with the former definition, with further detail provided below with regard to the policy changes introduced by the new definition. The first column and second column indicate paragraph references in the new definition and the former definition, respectively. Except as indicated otherwise below, these amendments apply to transactions and events that occur after December 23, 1998.

New	Old	Description
(a)	(a)	Disposition of property by a taxpayer includes transaction or event entitling taxpayer to proceeds. No policy change.
(b)	(b)	Specified redemptions, cancellations, conversions and expirations of debt, equity and options treated as dispositions. No policy change.
(c)	(c)	Except as otherwise specified, dispositions include transfers to and from trusts. No policy change.
(d), (h) and (i)	N/A	Circumstances in which distribution by a trust constitutes disposition of a capital interest in a trust. See description below.
(e) and (f)	(e)	Circumstances in which a transfer not a "disposition" because no change in beneficial ownership. Under the new rules, these circumstances are narrower. See also amended subsection 104(1).
(g)	N/A	Circumstances in which transfers involving RRSPs and RRIFs of the same annuitant not a "disposition". See description below.
(j)	(d)	Transfer to secure debt not a disposition. No policy change.
(k)	N/A	Other transfers to secure obligations not a disposition. See description below.
(l)	(f)	Issue of debt not a disposition. No policy change, but minor technical change. See description below.
(m)	(g)	Issue of share not a disposition. No policy change.

Transactions involving capital interests in a trust

Paragraph (d) of the new definition applies with respect to capital interests in a trust. Paragraph (d) makes it clear that, except as specifically provided in paragraph (h) or (i), every payment (in kind or otherwise) by a trust to a taxpayer in respect of the taxpayer's capital interest (as defined in subsection 108(1)) in the trust will result in a disposition of all or part of the taxpayer's capital interest in the trust.

The exception under paragraph (h) applies to a payment made by a trust after 1999 where the following conditions are satisfied:

1. the capital interest in the trust is described by reference to units issued by the trust;
2. the payment does not result in a reduction of the number of units in the trust owned by the taxpayer; and
3. the trust is neither a personal trust nor a trust prescribed for the purpose of subsection 107(2).

The exception under paragraph (i) applies to a payment made by a trust after 1999 where the following conditions are satisfied:

1. the payment is made out of the trust's income (determined without reference to subsection 104(6)) or capital gains for a taxation year and the payment was made in the year or the right to the payment was acquired in the year; and
2. the payment is in respect of an amount designated by the trust under subsection 104(20).

Paragraphs (d), (h) and (i) are part of a set of amendments designed to clarify the tax consequences of distributions from trusts to their beneficiaries after 1999. Generally, results achieved under these rules are intended to accord with existing income tax practice. For further detail, see the notes on amendments to subsections 43(2) [now 43(3) — ed.], 52(6), 107(2) and (2.1) and the definition "capital interest" in subsection 108(1).

Transactions involving no change in beneficial ownership of property

Paragraph (e) of the new definition provides that there is no disposition where a transfer of property does not involve a trust and does not result in a change in the beneficial ownership of the property. Where any of the exceptions in subparagraphs (e)(i) to (iii) apply, paragraph (c) of the definition will ensure a disposition subject to the exceptions in paragraph (c). Paragraph (e) takes into account past interpretations of the definition "disposition" in section 54. For example, the CCRA has taken the position that there is no disposition where an individual's undivided joint ownership interest in real property is converted to a tenancy-in-common interest in the property.

Paragraph (f) of the new definition provides an exception to the general rule in paragraph (c) that a disposition results from any transfer of the property to a trust or, where the property is property of a trust, any transfer of the property to any beneficiary under the trust. Paragraph (f) avoids, unless an election is made to the contrary under subparagraph (f)(v), a disposition in the case of certain very simple trust-to-trust transfers involving no change in beneficial ownership. For this paragraph to apply, the following additional conditions must be satisfied:

1. the transfer is not from a trust resident in Canada to a non-resident trust;
2. the transferee does not receive the property in satisfaction of the transferee's right as a beneficiary under the transferor trust;
3. the transferee does not hold property immediately before the transfer other than property the cost of which is not included, for the purposes of the Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee (i.e., subject to subparagraph (f)(vii) described in item 6 below, the transferee would be permitted to hold non-depreciable capital property);
4. where the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, an inter vivos trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the transferee is the same type of trust;
5. the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist; and
6. at all times before the transfer or before the beginning of that series of transactions or events, as the case may be, the transferee held no property or held only property having a nominal value.

Paragraph (f) generally will not apply to a transfer of property that occurred before 2000 by an RRSP trust to a RRIF trust (or by a RRIF trust to an RRSP trust), unless the transferee trust files a written election with the Minister of National Revenue on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that paragraph (f) of that definition applies. For transfers of property involving RRSPs and RRIFs and that occur after 1999, where the conditions of paragraph (f) are satisfied, that paragraph will apply to avoid a disposition without need for an election. For further detail, see the commentary on paragraph (g) of the definition.

Where paragraph (f) does apply, new subsection 248(25.1) applies with tax consequences described in the commentary on that subsection. Where the paragraph does not apply because the six additional conditions described above are not satisfied (and paragraph (g) also does not apply), the transfer will generally be a qualifying disposition under new subsection 107.4(1).

Paragraph (k) of the new definition also applies to a transfer of property as a consequence of which there is no change in the beneficial ownership of the property. For paragraph (k) to apply with no resulting disposition resulting from the transfer of property, the main purpose of the transfer must be:

- to effect payment under a debt or loan;
- to provide comfort that an absolute or contingent obligation of the transferor will be satisfied; or
- to facilitate either the provision of compensation or the enforcement of a penalty, in the event that an absolute or contingent obligation of the transferor is not satisfied.

Where paragraph (k) applies, new subsection 248(25.2) applies with tax consequences described in the commentary on that subsection.

Transactions involving RRSPs and RRIFs

Paragraph (g) also provides an exception to the general rule in paragraph (c) that a disposition results upon the transfer of property to a trust or transfers of property from a trust to a beneficiary of the trust. Paragraph (g) of the new definition avoids, unless an election is made to the contrary under subparagraph (g)(v), a disposition in the case of certain trust-to-trust transfers involving RRSPs and RRIFs. A transfer under this paragraph is not subject to the restriction in paragraph (f) that there be no change in beneficial ownership. For paragraph (g) to apply, the following additional conditions must be satisfied:

1. the transferor is an RRSP trust or RRIF trust;
2. the transferee is an RRSP trust or RRIF trust;
3. the transferee does not hold property immediately before the transfer other than property the cost of which is not included, for the purposes of the Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee (i.e., subject to subparagraph (g)(vi) described in item 5 below, the transferee would be permitted to hold non-depreciable capital property);
4. the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist; and
5. at all times before the transfer or before the beginning of that series of transactions or events, as the case may be, the transferee held no property or held only property having a nominal value.

Paragraph (g) generally will not apply to a transfer of property that occurred before 2000 by an RRSP trust of an annuitant to a RRIF trust of the same annuitant (or by a RRIF trust of an annuitant to an RRSP trust of the same annuitant), unless the transferee trust files a written election with the Minister of National Revenue on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that paragraph (g) of that definition applies. For transfers of property involving RRSPs and RRIFs that occur after 1999 and that satisfy the requirements of paragraph (g), the paragraph will apply to avoid a disposition without need for an election.

Where paragraph (g) applies, new subsection 248(25.1) applies with tax consequences described in the commentary on that

subsection. Where neither paragraph (f) nor (g) applies, the transfer will generally be a qualifying disposition under new subsection 107.4(1) provided the conditions of that provision are met.

EXAMPLE 1

Imelda arranged the transfer of properties in November 1999 from the RRSP trust under which she was the annuitant to a RRIF trust under which she was the annuitant. Under the RRSP trust the only named beneficiary was Luc. However, under the RRIF trust, Imelda named Gilbert as a beneficiary.

Results:

1. Because the transfer occurred after December 23, 1998 but before 2000, it will constitute a disposition under paragraph (c) of the definition "disposition", unless the RRIF trust files an election that paragraph (g) of that definition applies (paragraph (f) of that definition is intended not to apply where there is a change in beneficial ownership upon the transfer). If the election is filed and the remaining conditions in paragraph (g) are met, the transfer will not be a disposition. However, because of subsection 206(4), the transfer would be expected to occur on a fair market value basis.

2. If the election referred to in item 1 above is not filed, the transfer will be a "qualifying disposition" if the conditions of subsection 107.4(1) are met. For this purpose, paragraph 107.4(2)(b) deems there to be no change in beneficial ownership if the annuitant under the transferor trust is the same individual as the annuitant under the transferee trust. If the transfer is a "qualifying disposition", under subparagraph 107.4(3)(c)(iii) the transfer will occur on a fair market value basis unless subparagraph 107.4(3)(c)(i) applies.

3. This result reflects the intent that transfers between RRSPs and RRIFs of the same annuitant that occur before 2000 generally occur on a fair market value basis.

EXAMPLE 2

Lucie arranged the transfer of properties in March 2000 from the RRSP trust under which she was the annuitant to a RRIF trust under which she was the annuitant. Under the RRSP trust the only named beneficiary was Paulette. However, under the RRIF trust, Lucie named Jamal as the beneficiary.

Results:

1. Because the transfer occurred after 1999, if the conditions of paragraph (g) of the definition "disposition" are met, the transfer will not be a disposition unless an election is filed by the transferee under subparagraph (g)(v). (Paragraph (f) of that definition is intended not to apply where there is a change in beneficial ownership upon the transfer). The combined effect of amended subsection 206(4), which expressly does not apply to a transfer described in paragraph (g) of the definition "disposition", and new subsection 248(25.1), which provides that the transferee trust is a continuation of the transferor trust, will ensure the intended result that the transfer occur on a rollover basis.

2. If the transferee trust elects out of paragraph (g) of the definition "disposition", the transfer will be a "qualifying disposition" if the conditions of subsection 107.4(1) are met. For this purpose, paragraph 107.4(2)(b) deems there to be no change in beneficial ownership if the annuitant under the transferor is the same individual as the annuitant under the transferee. If the transfer is a "qualifying disposition", then under subparagraph 107.4(3)(c)(iv) the transfer will occur on a rollover basis unless subparagraph 107.4(3)(c)(ii) applies.

3. This result reflects the intent that transfers between RRSP and RRIF trusts of the same annuitant that occur after 2000 generally occur on a rollover basis.

Paragraph (g) of the definition is part of a set of amendments intended to clarify the tax treatment of transfers of property involving RRSPs and RRIFs. For further detail, see the commentary to paragraphs 107.4(2)(b) and (3)(c), subsection 206(4), the new definition "disposition" in subsection 248(1) and subsection 248(25.1).

Other transactions

Paragraph (l) of the definition replaces paragraph (f) of the definition "disposition" in subsection 54(1), which is repealed. Paragraph (l) adds a reference to "hypothec". This amendment is made to ensure that the Act appropriatly reflects both the civil law of the province of Quebec and the law of other provinces.

Except as indicated otherwise above, these amendments apply to transactions and events that occur after December 23, 1998.

Related Provisions: 43(2) — No capital loss on capital interest of trust on payment out of trust's income or gains; 48.1(1) — Gain when small business corporation becomes public; 49(1) — Granting of option is a dispostion; 49(5) — Extension or renewal of option; 49.1 — Satisfaction of obligation is not a disposition of property; 51(1)(c) — Conversion of convertible property deemed not to be a disposition; 53(2)(h)(i.1), (i.2) — Reduction in ACB of capital interest of trust re amount payable before 2000; 69(1)(b)(iii) — Deemed proceeds on disposition to a trust where no change in beneficial ownership; 69(1)(c) — Deemed acquisition at fair market value where disposition with no change in beneficial interest; 70(5) — Deemed disposition on death; 80.03(2), (4) — Deemed capital gain on disposition of property following debt forgiveness; 87(4) — Shares of predecessor corporation; 104(5.3) — Election by trust to postpone deemed disposition; 104(5.8) — Transfer where para. (f) applies; 107(2), (2.1) — Effect of distribution of property by trust; 107.4 — Rollover on "qualifying disposition" to a trust; 128.1(1)(b) — Deemed disposition of property on becoming resident in Canada; 128.1(4) — Deemed disposition on emigration; 248(25.1) — Where para. (f) applies — continuation of trust; 248(25.2) — Where para. (j) applies — trust deemed to be agent.

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-96R6: Options to acquire shares, bonds or debentures and by trusts to acquire trust units; IT-102R2: Conversion of property, other than real property, from or to inventory; IT-124R6: Contributions to registered retirement savings plans; IT-125R4: Dispositions of resource properties; IT-126R2: Meaning of "winding-up"; IT-133: Stock exchange transactions — date of disposition of shares; IT-146R4: Shares entitling shareholders to choose taxable or capital dividends; IT-170R: Sale of property — when included in income computation; IT-182: Compensation for loss of business income or property used in a business; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-220R2: Capital cost allowance — proceeds of disposition of depreciable property; IT-334R2: Miscellaneous receipts; IT-436R: Reserves — promissory notes; IT-444R: Corporations — involuntary dissolutions; IT-448: Dispositions — changes in terms of securities; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations; IT-505: Mortgage foreclosures and conditional sales repossessions.

I.T. Technical News: No. 3 (loss utilization within a corporate group); No. 7 (revocable living trusts, protective trusts, bare trusts); No. 14 (changes in terms of debt obligations); No. 15 (tax consequences of the adoption of the "euro" currency).

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee corporation — mortgagee's requirements sole reason for transfer; ATR-54: Reduction of paid-up capital.

"dividend" includes a stock dividend (other than a stock dividend that is paid to a corporation or to a mutual fund trust by a non-resident corporation);

Related Provisions: 15(3), (4) — Interest or dividend on income bond or debenture; 52(3) — Cost of stock dividend; 55(2) — Capital gains stripping — Deemed dividend; 82(1) — Dividends included in income; 84 — Deemed dividend; 90 — Dividend from non-resident corporation; 93(1) — Election re disposition of share in foreign affiliate; 128.1(1)(c.1), (c.2) — Deemed dividends on corporation becoming resident in Canada; 137(4.2) — Credit unions — deemed interest deemed not to be a dividend; 139.1(4)(f) — Deemed dividend on demutualization of insurance corporation; 139.2 — Deemed dividend on distribution by mutual holding corporation; 212.2 — Deemed dividend on surplus strip to non-resident insurer; 258 — Certain amounts deemed to be or not to be dividends.

History: "Dividend" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable to stock dividends paid to a corporation or to a mutual fund trust

(a) after May 23, 1985 and before 1991, where the corporation or trust, as the case may be, so elected by notifying the Minister of National Revenue in writing before July 1991, and

(b) in any other case, after 1990,

and, notwithstanding subsecs. 152(4) to (5), such assessments of tax, interest and penalties shall be made as are necessary to give effect to an election by a taxpayer pursuant to paragraph (a) above. "Dividend" formerly read:

"dividend" includes a stock dividend;

Pre-RSC History: "Dividend" substituted by 1986, c. 6, subsec. 126(3), applicable with respect to dividends paid after May 23, 1985 other than dividends declared on or before that day. That definition formerly read:

"dividend" includes a stock dividend, but does not include a stock dividend that was

(a) paid before 1972,

(b) paid after March 31, 1977 by a public corporation (other than an investment corporation) to

(i) a person resident in Canada other than

(A) a non-resident-owned investment corporation that, either alone or together with other persons related to it, owns more than 10% of the shares of the class of the capital stock of the corporation on which the stock dividend was paid,

(B) a non-resident-owned investment corporation where the stock dividend is paid on shares of a class that is not the same as the class to which the share on which the stock dividend was paid belongs, or

(C) a corporation (other than a non-resident-owned investment corporation) to which a dividend paid on the share of the class of the capital stock of the corporation on which the stock dividend was paid would, if paid at the time the stock dividend was paid, not be deductible for the purpose of computing its taxable income, or

(ii) a person not resident in Canada other than a person who either alone or together with other persons related to him owns more than 10% of the shares of the class of the capital stock of the corporation on which the stock dividend was paid, or

(c) paid after 1976 by a corporation other than a corporation resident in Canada,

and "stock dividend" includes any dividend paid by a corporation to the extent that it is paid by the issuance of shares of any class of the capital stock of the payer corporation;

All that portion of para. (b) preceding subpara. (ii) substituted by 1980-81-82-83, c. 48, subsec. 108(2), applicable with respect to stock dividends paid to a non-resident-owned investment corporation after November 16, 1978, stock dividends paid by an investment corporation after December 11, 1979 and stock dividends paid to a life insurance corporation after April 21, 1979. That portion formerly read:

(b) paid after March 31, 1977 by a public corporation to

(i) a person resident in Canada other than

(A) a non-resident-owned investment corporation that, either alone or together with other persons related to it, owns more than 10% of the shares of the class of the capital stock of the corporation on which the stock dividend was paid, or

(B) a corporation to which a dividend paid on the share of the class of the capital stock of the corporation on which the stock dividend was paid would, if paid at the time the stock dividend was paid, not be deductible for the purpose of computing its taxable income by virtue of section 112, or

Subpara. (b)(i) substituted by 1979, c. 5, subsec. 66(5), applicable with respect to dividends paid after November 16, 1978. Subpara. (b)(i) formerly read:

(i) a person resident in Canada (other than a non-resident-owned investment corporation that, either alone or together with other persons related to it, owns more than 10% of the shares of the class of the capital stock of the corporation on which the stock dividend was paid), or

"Dividend" substituted by 1977-78, c. 1, subsec. 98(2), applicable after March 31, 1977. "Dividend" formerly read:

"dividend" includes a stock dividend, other than a stock dividend that was paid before 1972;

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-88R2: Stock dividends; IT-243R4: Dividend refund to private corporations.

"dividend rental arrangement" of a person means any arrangement entered into by the person where it may reasonably be considered that

(a) the main reason for the person entering into the arrangement was to enable the person to receive a dividend on a share of the capital stock of a corporation, other than a dividend on a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection or an amount deemed to be received as a dividend on a share of the capital stock of a corporation by reason of subsection 15(3), and

(b) under the arrangement someone other than that person bears the risk of loss or enjoys the opportunity for gain or profit with respect to the share in any material respect,

and for greater certainty includes any arrangement under which

(c) a corporation at any time receives on a particular share a taxable dividend that would, but for subsection 112(2.3), be deductible in computing its taxable income or taxable income earned in Canada for the taxation year that includes that time, and

(d) the corporation is obligated to pay to another person an amount as compensation for

(i) that dividend,

(ii) a dividend on a share that is identical to the particular share, or

(iii) a dividend on a share that, during the term of the arrangement, can reasonably be expected to provide to a holder of the share the same or substantially the same proportionate risk of loss or opportunity for gain as the particular share,

that, if paid, would be deemed by subsection 260(5) to have been received by that other person as a taxable dividend;

Related Provisions: 82(1)(a)(i) — Taxable dividends received; 112(2.3) — Intercorporate dividends — where no deduction permitted; 126(4.2) — No foreign tax credit on short-term securities acquisitions; 260(6.1) — Deductible amount under securities lending arrangement.

History: That portion of the definition "dividend rental arrangement" after para. (b) added by 1995, c. 21, subsec. 74(1), applicable to dividends received at any time by a corporation on shares acquired

(a) before that time and after April 1989, where the corporation so elects by notifying the Minister of National Revenue in writing before 1996; and

(b) before that time and after June 1994, in any other case.

Pre-RSC History: "Dividend rental arrangement" enacted by 1990, c. 39, subsec. 54(2), applicable after April 1989.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada.

"eligible capital amount" has the meaning assigned by subsection 14(1);

Pre-RSC History: "Eligible capital amount" enacted by 1988, c. 55, subsec. 188(14), applicable after 1987.

"eligible capital expenditure" has the meaning assigned by subsection 14(5);

"eligible capital property" has the meaning assigned by section 54;

"eligible funeral arrangement" has the meaning assigned by subsection 148.1(1);

Related Provisions: 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

History: The definition "eligible funeral arrangement" added by 1995, c. 21, s. 65, applicable after 1992.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

"eligible relocation" means a relocation of a taxpayer where

(a) the relocation occurs to enable the taxpayer

(i) to carry on a business or to be employed at a location in Canada (in section 62 and this subsection referred to as "the new work location"), or

(ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and in this subsection referred to as "the new work location"),

(b) both the residence at which the taxpayer ordinarily resided before the relocation (in section 62 and this subsection referred to as "the old residence") and the residence at which the taxpayer ordinarily resided after the relocation (in section 62 and this subsection referred to as "the new residence") are in Canada, and

(c) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location

except that, in applying subsections 6(19) to (23) and section 62 in respect of a relocation of a taxpayer who is absent from but resident in Canada, this definition shall be read without reference to the words "in Canada" in subparagraph (a)(i), and without reference to paragraph (b);

Related Provisions: 6(19)–(22) — Employer subsidy of housing loss; 6(23) — Employer-provided mortgage subsidy is taxable; 62 — Deduction for moving expenses.

History: The definition "eligible relocation" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to all taxation years.

"employed" means performing the duties of an office or employment;

Selected Cases [subsec. 248(1)"employed"]: *Boardman v. The Queen*, [1979] C.T.C. 159 (FCTD) (Taxpayer held to be an employee despite contract ascribing independent contractor status).

"employee" includes officer;

Related Provisions: 248(1)"employment" — Further meaning of "employee".

Selected Cases [subsec. 248(1)"employee"]: *Grohne v. Canada*, [1989] 1 C.T.C. 434 (FCTD) (Director/shareholder and president receiving shares below fair market value did not receive benefit in respect of office or employment).

Interpretation Bulletins: IT-525: Performing artists.

Forms: CPT-1: Request for a ruling as to the status of a worker under the Canada Pension Plan or Unemployment Insurance Act; RC4100: Employee or Self-Employed?.

"employee benefit plan" means an arrangement under which contributions are made by an employer or by any person with whom the employer does not deal at arm's length to another person (in this Act referred to as the "custodian" of an employee benefit plan) and under which one or more payments are to be made to or for the benefit of employees or former employees of the employer or persons who do not deal at arm's length with any such employee or former employee (other than a payment that, if section 6 were read without reference to subparagraph 6(1)(a)(ii) and paragraph 6(1)(g), would not be required to be included in computing the income of the recipient), but does not include

(a) a fund or plan referred to in subparagraph 6(1)(a)(i) or paragraph 6(1)(d) or (f),

(b) a trust described in paragraph 149(1)(y),

(c) an employee trust,

(c.1) a salary deferral arrangement, in respect of a taxpayer, under which deferred amounts are required to be included as benefits under paragraph 6(1)(a) in computing the taxpayer's income,

(c.2) a retirement compensation arrangement,

(d) an arrangement the sole purpose of which is to provide education or training for employees of the employer to improve their work or work-related skills and abilities, or

(e) a prescribed arrangement;

Related Provisions: 6(1)(g) — Amount received from employee benefit plan taxable; 12(11) — Definitions — "investment contract"; 32.1 — Deductions to employer re employee benefit plan; 104(6)(a.1) — Deduction in computing income of employee benefit plan; 104(13)(b) — Income inclusion to trust; 107.1 — Distribution by employee benefit plan; 128.1(10)"excluded right or interest"(a)(v) — No deemed disposition of rights on emigration; 212(17) — No non-resident withholding tax on payments from employee benefit plan.

History: Para. (e) of "employee benefit plan" substituted by 1994, c. 21, subsec. 109(2), applicable after 1979. That para. formerly read:

(e) a prescribed fund or plan;

Pre-RSC History: "Employee benefit plan" amended by 1987, c. 46, subsec. 69(1), to substitute in that portion preceding para. (a) "(in this Act referred to as the "custodian" of an employee benefit plan)" for "(in sections 18 and 32.1 referred to as the "custodian")", and to add para. (c.2), applicable after October 8, 1986.

Para. (c.1) of "employee benefit plan" added by 1986, c. 55, subsec. 78(2), applicable after February 25, 1986 with respect to plans and arrangements otherwise than with respect to an amount that would be a deferred amount but for this exception under an agreement in writing made before February 26, 1986 by a taxpayer and his employer or former employer where the amount is in respect of

(a) services rendered by the taxpayer before July, 1986; or

(b) services rendered by the taxpayer after June, 1986, where the taxpayer is obliged to defer receipt of the amount and cannot cancel or otherwise avoid that obligation.

"Employee benefit plan" enacted by 1980-81-82-83, c. 48, subsec. 108(3), applicable after 1979.

Selected Cases [subsec. 248(1)"employee benefit plan"]: *Canada v. Chrysler Canada Ltd. (No. 3)*, [1992] 2 C.T.C. 95 (FCTD) (Employee stock ownership plan was "stock option" under section 7, not "employee benefit plan").

Regulations: 6800 (prescribed plan, prescribed arrangement).

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

Advance Tax Rulings: ATR-17: Employee benefit plan — purchase of company shares; ATR-21: Pension benefit from an unregistered pension plan.

"employee trust" means an arrangement (other than an employees profit sharing plan, a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan") established after 1979

(a) under which payments are made by one or more employers to a trustee in trust solely to provide to employees or former employees of

(i) the employer, or

(ii) a person with whom the employer does not deal at arm's length,

benefits the right to which vests at the time of each such payment and the amount of which does not depend on the individual's position, performance or compensation as an employee,

(b) under which the trustee has, since the commencement of the arrangement, each year allocated to individuals who are beneficiaries thereunder, in such manner as is reasonable, the amount, if any, by which the total of all amounts each of which is

(i) an amount received under the arrangement by the trustee in the year from an employer or from a person with whom the employer does not deal at arm's length,

(ii) the amount that would, if this Act were read without reference to subsection 104(6), be the income of the trust for the year (other than a taxable capital gain from the disposition of property) from a property or other source other than a business, or

(iii) a capital gain of the trust for the year from the disposition of property

exceeds the total of all amounts each of which is

(iv) the loss of the trust for the year (other than an allowable capital loss from the disposition of property) from a property or other source other than a business, or

(v) a capital loss of the trust for the year from the disposition of property, and

(c) the trustee of which has elected to qualify the arrangement as an employee trust in its return of income filed within 90 days from the end of its first taxation year;

Related Provisions: 6(1)(h) — Amounts received from employee trust taxable; 104(6)(a) — Deduction in computing income of employee trust; 107.1 — Distribution by employee trust; 128.1(10)"excluded right or interest"(e)(i) — No deemed disposition on emigration; 212(17) — No non-resident withholding tax on payments from employee trust; 248(1)"disposition"(f)(vi) — Rollover from one trust to another.

Pre-RSC History: "Employee trust" enacted by 1980-81-82-83, c. 48, subsec. 108(4), applicable after 1979.

Interpretation Bulletins: IT-502: Employee benefit plans and employee trusts.

"employees profit sharing plan" has the meaning assigned by subsection 144(1);

"employer", in relation to an officer, means the person from whom the officer receives the officer's remuneration;

Related Provisions: 6(2) — Definition of "employer" for automobile standby charge; 6(17) — Extended definition for disability insurance top-up payments; 80.4(1)(b)(i) — Definition of "employer" for employee loans; 81(3)(c) — Definition of "employer" for municipal officer's expense allowance; 126.1(1) — Definition of "employer" for UI premium tax credit; 207.6(3)(a) — Definition of "employer" for incorporated employee/RCA rules; 252.1 — Application of pension rules where union is employer.

Forms: PD20: Employer registration.

"employment" means the position of an individual in the service of some other person (including Her Majesty or a foreign state or sovereign) and "servant" or "employee" means a person holding such a position;

Selected Cases [subsec. 248(1)"employment"]: *Scott v. Canada*, [1991] 1 C.T.C. 395 (FCTD) (Options received by director in recognition of services rendered received in respect of employment; director can be considered employee without receiving remuneration for services).

Interpretation Bulletins: IT-525: Performing artists (determining whether self-employed or employed).

Forms: CPT-1: Request for a ruling as to the status of a worker under the Canada Pension Plan or Unemployment Insurance Act.

"estate" has the meaning assigned by subsection 104(1);

Related Provisions: 128(1)(b) — Where corporation bankrupt; 128(2)(b) — Where individual bankrupt.

"estate of the bankrupt" has the same meaning as in the *Bankruptcy and Insolvency Act*;

History: The definition "estate of the bankrupt" added by 1995, c. 21, subsec. 43(2), applicable to taxation years that end after February 21, 1994.

"exempt income" means property received or acquired by a person in such circumstances that it is, because of any provision of Part I, not included in computing the person's income, but does not include a dividend on a share or a support amount (as defined in subsection 56.1(4));

Related Provisions: 81 — Amounts not included in income; 149 — Exempt taxpayers.

History: The definition "exempt income" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable after 1996. It formerly read:

> "exempt income" means money or property received or acquired by a person in such circumstances that it is, by reason of any provision in Part I, not included in computing the person's income, but for greater certainty does not include a dividend on a share;

Pre-RSC History: "Exempt income" substituted by 1988, c. 55, subsec. 188(1), applicable with respect to transactions entered into on or after September 13, 1988, other than

> (a) transactions that are part of a series of transactions, determined without reference to subsec. 248(10) commencing before September 13, 1988, and completed before 1989; or
>
> (b) any one or more transactions, one of which was entered into before April 13, 1988, that were entered into by a taxpayer in the course of an arrangement and in respect of which the taxpayer received from the Department of National Revenue, before April 13, 1988, a confirmation or opinion in writing with respect to the tax consequences thereof.

"Exempt income" formerly read:

> "exempt income" means money or property received or acquired by a person in such circumstances that it is, by reason of any provision in Part I, not included in computing his income, but for greater certainty does not include a dividend on a share, except that, for the purposes of paragraph 247(1)(c), "exempt income" includes a dividend received by him the amount of which may be deducted by him from his income by virtue of subsection 112(1);

"Exempt income" substituted by 1973-74, c. 14, subsec. 69(2), applicable to 1972 *et seq.*

"farming" includes tillage of the soil, livestock raising or exhibiting, maintaining of horses for racing, raising of poultry, fur farming, dairy farming, fruit growing and the keeping of bees, but does not include an office or employment under a person engaged in the business of farming;

Related Provisions: 28–31 — Rules for computing income from farming.

Selected Cases [subsec. 248(1)"farming"]: *Levy v. MNR*, [1990] 2 C.T.C. 83 (FCTD) (Member of syndicate that bred and raced horses held to be in farming business despite not actively participating); *Juster v. The Queen*, [1974] C.T.C. 681 (FCA) (Horse trader held to be engaged in farming); *Maber v. MNR*, [1971] C.T.C. 866 (FCTD) (After selling large part of ranch, taxpayer making improvements and constructions on remaining land in preparation for cattle ranching held engaged in continuation of original activity).

Interpretation Bulletins: IT-156R: Feedlot operators; IT-268R3: *Inter vivos* transfer of farm property to child; IT-433R: Farming or fishing — use of cash method.

"farm loss" has the meaning assigned by subsection 111(8);

Related Provisions: 31(1), (1.1), 248(1) — Definition of "restricted farm loss"; 111(9) — Farm loss where taxpayer not resident in Canada.

History: "Farm loss" added by 1984, c. 1, subsec. 104(2), applicable to 1983 *et seq.*

"filing-due date" for a taxation year of a taxpayer means the day on or before which the taxpayer's return of income under Part I for the year is required to be filed or would be required to be filed if tax under that Part were payable by the taxpayer for the year;

Related Provisions: 150(1) — Due dates for filing returns; *Interpretation Act* 26 — Deadline on Sunday or holiday extended to next business day.

History: The definition "filing-due date" added by 1996, c. 21, subsec. 60(2), applicable after 1993.

"fiscal period" — [Repealed]

History: The definition "fiscal period" repealed by 1996, c. 21, subsec. 60(1), applicable to fiscal periods that begin after 1994. It formerly read:

> "fiscal period" means the period for which the accounts of the business of the taxpayer have been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the fiscal period is that adopted by the taxpayer, but no fiscal period may exceed
>
> (a) in the case of a corporation, 53 weeks, and
>
> (b) in the case of any other taxpayer, 12 months,
>
> and no change in a usual and accepted fiscal period may be made for the purposes of this Act without the concurrence of the Minister;

Selected Cases [248(1)"fiscal period"]: *Bishay v. MNR*, [1996] 1 C.T.C. 2286 (FCTD) (Unilateral change of year-end by taxpayer prohibited).

Interpretation Bulletins: IT-179R: Change of fiscal period.

Information Circulars: 80-10R: Registered charities: operating a registered charity; 88-2 para. 21: General anti-avoidance rule — section 245 of the *Income Tax Act*.

"fishing" includes fishing for or catching shell fish, crustaceans and marine animals but does not include an office or employment under a person engaged in the business of fishing;

Interpretation Bulletins: IT-433R: Farming or fishing use of cash method.

"flow-through share" has the meaning assigned by subsection 66(15);

History: The definition "flow-through share" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), applicable after November 1994.

Proposed Addition — 248(1)"foreign accrual property income"

"foreign accrual property income" has the meaning assigned by section 95;

Application: The June 22, 2000 draft legislation, subsec. 26(3), will add the definition "foreign accrual property income" to subsec. 248(1), applicable after 2000.

Technical Notes: The definition "foreign accrual property income" is introduced so that the definition of this expression in section 95 of the Act applies for the purposes of the Act.

This amendment applies after 2000.

Related Provisions: 95(1)"foreign accrual property income", 95(2) — Definition.

"foreign affiliate" has the meaning assigned by subsection 95(1);

Interpretation Bulletins: IT-343R: Meaning of the term "corporation"; IT-119R4: Debts of shareholders and certain persons connected with shareholders.

"foreign exploration and development expenses" has the meaning assigned by subsection 66(15);

Pre-RSC History: "Foreign exploration and development expenses" enacted by 1985, c. 45, subsec. 122(2), applicable to taxation years commencing after 1984.

"foreign resource property" has the meaning assigned by subsection 66(15);

Pre-RSC History: "Foreign resource property" enacted by 1985, c. 45, subsec. 122(1). "Foreign resource property" was formerly defined under "Canadian resource property".

"foreign retirement arrangement" means a prescribed plan or arrangement;

Proposed Amendment — Income inclusion on conversion of U.S. IRA

Department of Finance news release, December 18, 1998: *Qualified RRSP Investments and IRAs*

Finance Minister Paul Martin today announced that he will propose changes to the *Income Tax Act* and the *Income Tax Regulations* to address two issues that have been recently raised with the Department of Finance, in the context of retirement savings decisions currently being made by individuals.

[For the first measure, see Proposed Amendment under Reg. 4900(1) — ed.]

The second issue deals with individual retirement accounts (IRAs) established under the United States Internal Revenue Code. The Minister announced that he will propose an amendment to the *Income Tax Act* in response to recent changes to the Code relating to IRAs.

The changes to the Code have established a new type of IRA, known as a Roth IRA. Under the Code, contributions to a Roth IRA are not deductible, but investment income accrues tax-free and distributions are generally not taxable. Under certain circumstances, an individual may convert an ordinary IRA into a Roth IRA, but is required to include in computing income for the year of conversion the value of the ordinary IRA at the time of conversion. If the conversion is made in 1998, the income inclusion may be spread out over a four-year period.

The proposed amendment to the Act would affect Canadian residents who convert ordinary IRAs into Roth IRAs. It would require that the individual include in income for Canadian tax purposes any amount that must be included in income for U.S. tax purposes. This would ensure that the conversion amount is taxed in Canada, even where the IRA is converted simply by amending its terms. It would also ensure that the amount and timing of the inclusion in Canada matches the amount and timing in the U.S., thus allowing individuals to maximize the use of U.S. taxes paid on conversion as foreign tax credits in computing Canadian income tax payable.

Mr. Martin noted that the deferral opportunities in the U.S. for Roth IRAs are far more generous than the deferral opportunities in the U.S. for ordinary IRAs and the deferral opportunities in Canada for tax-assisted retirement savings. In particular, contributions can be made to a Roth IRA at any age, and there is no requirement for payments under a Roth IRA to begin by a certain age. Accordingly, there are no plans to provide tax assistance by way of an exemption from or deferral of taxation in Canada on earnings within a Roth IRA.

For further information: Tax Legislation Division, (613) 992-1916; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574.

Related Provisions: 12(11) — Definitions — "investment contract"; 94(1)"exempt foreign trust"(f) — Arrangement excluded from non-resident trust rules; 128.1(10)"excluded right or interest"(a)(x) — No deemed disposition on emigration.

History: "Foreign retirement arrangement" enacted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable to 1990 *et seq.*

Regulations: 6803 (prescribed plan or arrangement is U.S. IRA).

"former business property" of a taxpayer means a capital property of the taxpayer that was used by the taxpayer or a person related to the taxpayer primarily for the purpose of gaining or producing income from a business, and

that was real property of the taxpayer or an interest of the taxpayer in real property, but does not include

(a) a rental property of the taxpayer,

(b) land subjacent to a rental property of the taxpayer,

(c) land contiguous to land referred to in paragraph (b) that is a parking area, driveway, yard or garden or that is otherwise necessary for the use of the rental property referred to therein, or

(d) a leasehold interest in any property described in paragraphs (a) to (c),

and, for the purpose of this definition, "rental property" of a taxpayer means real property owned by the taxpayer, whether jointly with another person or otherwise, and used by the taxpayer in the taxation year in respect of which the expression is being applied principally for the purpose of gaining or producing gross revenue that is rent (other than property leased by the taxpayer to a person related to the taxpayer and used by that related person principally for any other purpose), but, for greater certainty, does not include a property leased by the taxpayer or the related person to a lessee, in the ordinary course of a business of the taxpayer or the related person of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling or promoting the sale of the goods or services of the taxpayer or the related person;

Related Provisions: 13(4), 44(1)(b), 44(6) — Rollovers of former business property replaced by new property; 87(2)(l.3) — Amalgamations — replacement property; 248(4) — Interest in real property.

History: That portion of "former business property" preceding para. (a) and that portion following para. (d) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(4), (5), applicable to dispositions of property occurring after July 13, 1990. Those portions formerly read:

> "former business property" of a taxpayer means a capital property that was used by the taxpayer primarily for the purpose of gaining or producing income from a business, and that was real property or an interest therein of the taxpayer, but does not include
>
> . . . . .
>
> and, for the purposes of this definition, "rental property" of a taxpayer means real property owned by the taxpayer, whether jointly with another person or otherwise, if the property was used by the taxpayer in the taxation year in respect of which the expression is being applied principally for the purpose of gaining or producing gross revenue that is rent, but, for greater certainty, does not include a property leased by the taxpayer to a lessee, in the ordinary course of the taxpayer's business of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling or promoting the sale of the taxpayer's goods or services;

Pre-RSC History: "Former business property" enacted by 1977-78, c. 1, subsec. 98(3), applicable after March 31, 1977.

Selected Cases [subsec. 248(1)"former business property"]: *Glaxo Wellcome Inc. v. R.*, [1999] 4 C.T.C. 371 (FCA); aff'g [1996] 1 C.T.C. 2904 (TCC) (Property must have been "used" in the business, not merely held); *Buonincontri v. The Queen*, [1985] 1 C.T.C. 370 (FCTD) (Rental property held not to be business property).

Interpretation Bulletins: IT-491: Former business property.

"goods and services tax" means the tax payable under Part IX of the *Excise Tax Act*;

Related Provisions: 6(1)(e.1), 15(1.4) — Employee and shareholder benefits; 248(15)–(18) — Rules with respect to GST.

Pre-RSC History: "Goods and services tax" enacted by 1990, c. 45, subsec. 53(1), applicable after 1990.

"grandfathered share" means

(a) a share of the capital stock of a corporation issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 pursuant to an agreement in writing entered into before that time,

(b) a share of the capital stock of a corporation issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 with a public authority pursuant to and in accordance with the securities legislation of the jurisdiction in which the shares are distributed,

(c) a share (in this paragraph referred to as the "new share") of the capital stock of a corporation that is issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 in exchange for

(i) a share of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 or is a grandfathered share, or

(ii) a debt obligation of a corporation that was

(A) issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, or

(B) issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 under an agreement in writing entered into before that time, or after that time and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before that time with a public authority under and in accordance with the securities legislation of the jurisdiction in which the debt obligation is distributed,

where the right to the exchange and all or substantially all the terms and conditions of the new share were established in writing before that time, and

(d) a share of a class of the capital stock of a Canadian corporation listed on a prescribed stock exchange that is issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 on the exercise of a right that

(i) was issued before that time, that was issued after that time under an agreement in writing entered into before that time or that was issued after that time and before 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before that time with a public authority under and in accordance with the securities legislation of the jurisdiction in which the rights were distributed, and

(ii) was listed on a prescribed stock exchange,

where all or substantially all the terms and conditions of the right and the share were established in writing before that time,

except that a share that is deemed under the definition "short-term preferred share", "taxable preferred share" or "term preferred share" in this subsection or under subsection 112(2.2) to have been issued at any time shall be deemed after that time not to be a grandfathered share for the purposes of that provision;

Proposed Amendment — 248(1)"grandfathered share"

except that a share that is deemed under the definition "short-term preferred share", "taxable preferred share" or "term preferred share" in this subsection or under subsection 112(2.22) to have been issued at any time is

deemed after that time not to be a grandfathered share for the purposes of that provision;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(1), will amend the closing words of the definition "grandfathered share" in subsec. 248(1) to read as above, applicable in respect of dividends received after 1998.

Technical Notes: Subsection 248 of the Act defines a number of terms that apply for the purposes of the Act and sets out various rules relating to the interpretation and application of various provisions of the Act.

The definition "grandfathered share" in subsection 248(1) of the Act is amended to correct a cross-reference as a consequence of the movement of the deeming rule in paragraph 112(2.2)(f) of the Act to new paragraph 112(2.22)(a).

Related Provisions: 87(4.2), (4.3) — Amalgamation.

History: Subpara. (c)(ii) and para. (d) of "grandfathered share" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(6), (7), applicable to shares issued, or deemed by the Act to have been issued, after 8 p.m. EDST, June 18, 1987. Subpara. (c)(ii) and para. (d) formerly read:

> (ii) a debt obligation of a corporation that was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, or issued after that time pursuant to an agreement in writing entered into before that time
>
> . . . . .
>
> (d) a share of a class of the capital stock of a Canadian corporation listed on a prescribed stock exchange that is issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 on the exercise of a right
>
> (i) that was issued before that time and listed on a prescribed stock exchange in Canada, and
>
> (ii) the terms of which at that time included the right to acquire the share,
>
> where all or substantially all the terms and conditions of the share were established in writing before that time,

Pre-RSC History: "Grandfathered share" enacted by 1988, c. 55, subsec. 188(14), applicable with respect to shares issued after 8 p.m. EDST, June 18, 1987 and shares deemed by the Act (as amended) to have been issued after that date.

Regulations: 3200 (prescribed stock exchange in Canada).

"gross revenue" of a taxpayer for a taxation year means the total of

(a) all amounts received in the year or receivable in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) otherwise than as or on account of capital, and

(b) all amounts (other than amounts referred to in paragraph (a)) included in computing the taxpayer's income from a business or property for the year by virtue of paragraph 12(1)(o) or subsection 12(3) or (4) or section 12.2 of this Act or subsection 12(8) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

Related Provisions: 149(9) — Limitation re gross revenue of non-profit SR&ED corporation; 247(5), (9) — Determination of gross revenue for transfer pricing rules.

Pre-RSC History: Para. (b) of "gross revenue" substituted by 1980-81-82-83, c. 140, subsec. 128(2), applicable to 1983 *et seq.*, to add ", (4) or (8) or section 12.2".

Para. (b) "gross revenue" substituted for paras. (b), (c) by 1977-78, c. 1, subsec. 98(4), applicable to taxation years ending after May 25, 1976. Paras. (b), (c) formerly read:

> (b) all amounts included in computing the taxpayer's income from a business or property for the year by virtue of paragraph 12(1)(o), and
>
> (c) all amounts (other than amounts referred to in paragraph (a)) included in computing the taxpayer's income from a business for the year by virtue of subsection 12(3);

"Gross revenue" substituted by 1976-77, c. 4, subsec. 76(1), applicable to taxation years ending after May 25, 1976. "Gross revenue" formerly read:

> "gross revenue" means the aggregate of all amounts received in a taxation year (depending on the method regularly followed by the taxpayer in computing his profit) otherwise than as or an account of capital;

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

"group term life insurance policy" means a group life insurance policy under which the only amounts payable by the insurer are

(a) amounts payable on the death or disability of individuals whose lives are insured in respect of, in the course of or because of, their office or employment or former office or employment, and

(b) policy dividends or experience rating refunds;

Related Provisions: 6(1)(a)(i), 6(4) — $25,000 group term life insurance not a taxable benefit before July 1994; 18(9.01) — Limitation on deduction for premiums paid; 138(15) — Meaning of "group term insurance policy"; Reg. 1408(2) — Definition does not apply to regulations re policy reserves.

History: The definition "group term life insurance policy" amended by 1995, c. 3, subsec. 52(2), applicable to insurance provided in respect of periods that are after June 1994. The definition formerly read:

> "group term life insurance policy", with respect to a taxpayer, means, subject to subsection 138(15), a group life insurance policy under which no amount is payable to a person other than the group policyholder as a result of contributions made to or under the policy by the employer of the taxpayer before the death or disability of the taxpayer;

Pre-RSC History: *The definition "Group term life insurance policy" did not contain the phrase "subject to subsection 138(15)". See the History to that subsection.*

"Group term life insurance policy" substituted by 1988, c. 55, subsec. 188(1), applicable after 1987. That definition formerly read:

> "group term life insurance policy", with respect to a taxpayer, means a group life insurance policy under which no amount is payable as a result of the contributions made to or under the policy by the employer of the taxpayer except in the event of the death or disability of the taxpayer;

Interpretation Bulletins: IT-529: Flexible employee benefit programs.

"home relocation loan" means a loan received by an individual or the individual's spouse in circumstances where the individual has commenced employment at a location in Canada (in this definition referred to as the "new work location") and by reason thereof has moved from the residence in Canada at which, before the move, the individual ordinarily resided (in this definition referred to as the "old residence") to a residence in Canada at which, after the move, the individual ordinarily resided (in this definition referred to as the "new residence") if

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) the distance between the old residence and the new work location is at least 40 kilometres greater than the distance between the new residence and the new work location,

(b) the loan is used to acquire a dwelling, or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the habitation of the individual and is the individual's new residence,

(c) the loan is received in the circumstances described in subsection 80.4(1), or would have been so received if subsection 80.4(1.1) had applied to the loan at the time it was received, and

(d) the loan is designated by the individual to be a home relocation loan, but in no case shall more than one loan in respect of a particular move, or more than one loan at any particular time, be designated as a home relocation loan by the individual;

Related Provisions: 6(23) — Employer-provided mortgage subsidy is taxable; 15(2)(a)(ii) — Housing loan to shareholder; 80.4(4) — Home purchase or relocation loan to employee; 252(4)(a) — Extended meaning of "spouse".

History: Para. (c) of "home relocation loan" amended by 1999, c. 22, subsec. 80(1), applicable after February 23, 1998. Para. (c) formerly read:

(c) the loan is received in the circumstances described in subsection 80.4(1), and

Para. (b) of "home relocation loan" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(8), applicable to 1985 *et seq*. Para. (b) formerly read:

(b) the loan is used to acquire a dwelling for the habitation of the individual that is the new residence,

Pre-RSC History: "Home relocation loan" enacted by 1986, c. 6, subsec. 126(4), applicable to loans made in respect of a commencement of employment at a new work location after May 23, 1985.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

"income-averaging annuity contract" of an individual means, except for the purposes of section 61, a contract

(a) that is an income-averaging annuity contract within the meaning assigned by subsection 61(4), and

(b) in respect of which the individual has made a deduction under section 61 in computing the individual's income for a taxation year;

Related Provisions: 128.1(10)"excluded right or interest"(f)(ii) — Emigration — no deemed disposition of right under IAAC.

Pre-RSC History: "Income-averaging annuity contract" substituted by 1973-74, c. 14, subsec. 69(3), applicable to 1972 *et seq*.

"income bond" or **"income debenture"** of a corporation (in this definition referred to as the "issuing corporation") means a bond or debenture in respect of which interest or dividends are payable only to the extent that the issuing corporation has made a profit before taking into account the interest or dividend obligation and that was issued

(a) before November 17, 1978,

(b) after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"), or

(c) by an issuing corporation resident in Canada for a term that may not, in any circumstances, exceed 5 years,

(i) as part of a proposal to or an arrangement with its creditors that had been approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation or the other corporation was dealing at arm's length and the bond or debenture was issued either wholly or in substantial part and either directly or indirectly in exchange or substitution for that obligation or a part thereof,

and, in the case of a bond or debenture issued after November 12, 1981, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on in Canada immediately before the bond or debenture was issued,

and, for the purposes of this definition,

(d) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date, and

(e) where

(i) at any particular time the terms or conditions of a bond or debenture issued pursuant to an established agreement or of any agreement relating to such a bond or debenture have been changed,

(ii) under the terms or conditions of a bond or debenture acquired in the ordinary course of the business carried on by a specified financial institution or a partnership or trust (other than a testamentary trust) or under the terms or conditions of any agreement relating to any such bond or debenture (other than an agreement made before October 24, 1979 to which the issuing corporation or any person related thereto was not a party), the owner thereof could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the repayment, acquisition, cancellation or conversion of the bond or debenture otherwise than by reason of a failure or default under the terms or conditions of the bond or debenture or any agreement that related to, and was entered into at the time of, the issuance of the bond or debenture,

(iii) at any particular time after November 16, 1978, the maturity date of a bond or debenture was extended or the terms or conditions relating to the repayment of the principal amount thereof were changed,

(iv) at a particular time a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquires a bond or debenture that

(A) was issued before November 17, 1978 or under an established agreement,

(B) was issued to a person other than a corporation that was, at the time of issue,

(I) described in any of paragraphs (a) to (e) of the definition "specified financial institution", or

(II) a corporation that was controlled by one or more corporations described in subclause (I) and, for the purpose of this subclause, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the

other corporation and persons with whom the other corporation does not deal at arm's length,

(C) was acquired from a person that was, at the time the person last acquired the bond or debenture and at the particular time, a person other than a corporation described in any of paragraphs (a) to (f) of that definition, and

(D) was acquired otherwise than under an agreement in writing made before October 24, 1979, or

(v) at a particular time after November 12, 1981, a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquires a bond or debenture that

(A) was not a bond or debenture referred to in paragraph (c),

(B) was acquired from a person that was, at the particular time, a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution", and

(C) was acquired subject to or conditional on a guarantee agreement (within the meaning that would be assigned by subsection 112(2.2) if the reference in that subsection to a "share" were read as a reference to an "income bond" or "income debenture") that was entered into after November 12, 1981,

the bond or debenture shall, for the purposes of determining at any time after the particular time whether it is an income bond or income debenture, be deemed to have been issued at the particular time otherwise than pursuant to an established agreement;

Related Provisions: 15(3), (4) — Payment on income bond deemed to be a dividend; 15.1, 15.2 — Small business bonds and small business development bonds; 248(13) — Interests in trusts and partnerships; 256(6), (6.1) — Meaning of "controlled".

History: Subparas. (e)(iv) and (v) of the definition "income bond" or "income debenture" in subsec. 248(1) amended by 1999, c. 22, subsec. 80(2), applicable to taxation years that begin after 1998 except that, in the application of the amendment to a bond or debenture acquired from a corporation that last acquired the bond or debenture in a taxation year that began before 1999,

(a) the expression "at the time the person last acquired the bond or debenture and at the particular time, a person other than a corporation described in any of paragraphs (a) to (f) of that definition" in cl. (e)(iv)(C) of the definition, as amended, shall be read as "at the time the person last acquired the bond or debenture, a corporation described in subclause (B)(I) or (II), and at the particular time, a corporation described in any of paragraphs (a) to (f) of that definition"; and

(b) the expression "a corporation described in any of paragraphs (a) to (f) of the definition" in cl. (e)(v)(B) of the definition, as amended, shall be read as "a corporation described in subclause (iv)(B)(I) or (II) of the definition".

Subparas. (e)(iv) and (v) formerly read:

(iv) at any particular time after October 23, 1979, a bond or debenture issued before November 17, 1978 or a bond or debenture issued pursuant to an established agreement (other than a bond or debenture issued to a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection) is acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979) from a person (other than a corporation described in any of paragraphs (a) to (f) of that definition) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or beneficiary, or

(v) at any particular time after November 12, 1981, a bond or debenture (other than a bond or debenture referred to in paragraph (c)) is acquired by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or beneficiary from a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection and the acquisition is subject to or conditional on a guarantee agreement (within the meaning that would be assigned by subsection 112(2.2) if the reference therein to a "share" were read as a reference to an "income bond" or "income debenture") that was entered into after November 12, 1981,

Subpara. (c)(i) of "income bond" amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Pre-RSC History: Subparas. (c)(iii), (e)(iv) and (v) of "income bond" substituted by 1988, c. 55, subsecs. 188 (3) and (4), applicable after June 18, 1987. Subparas. (c)(iii), (e)(iv) and (v) formerly read:

(iii) at a time when, by reason of financial difficulty, the issuing corporation or a corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation was dealing at arm's length and the bond or debenture was issued, in whole or in part, directly or indirectly in exchange or substitution for that obligation,

. . . . .

(iv) at any particular time after October 23, 1979, a bond or debenture issued before November 17, 1978 or a bond or debenture issued pursuant to an established agreement (other than a bond or debenture issued to a corporation described in paragraph 112(2.1)(a) or (b)) is acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979) from a person (other than a corporation described in paragraph 112(2.1)(a) or (b)) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or beneficiary, or

(v) at any particular time after November 12, 1981, a bond or debenture (other than a bond or debenture referred to in paragraph (c)) is acquired by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or beneficiary from a corporation described in paragraph 112(2.1)(a) or (b) and the acquisition is subject to or conditional upon a guarantee agreement (within the meaning that would be assigned by subsection 112(2.2) if the reference therein to a "share" were read as a reference to an "income bond" or "income debenture") that was entered into after November 12, 1981,

Those portions of para. (c) preceding subpara. (i) and following subpara. (iii) substituted and subpara. (e)(v) added by 1980-81-82-83, c. 140, subsecs. 128(4)–(6), applicable as to that portion of para. (c) preceding subpara. (i), with respect to income bonds and income debentures issued after November 16, 1978 otherwise than pursuant to an established agreement, and, as to that portion of para. (c) following subpara. (iii) and subpara. (e)(v), after November 12, 1981. Those portions of para. (c) formerly read:

(c) for a term that may not, in any circumstances, exceed 5 years, in the case of an issuing corporation resident in Canada,

. . . . .

and, in the case of a bond or debenture issued after October 23, 1979, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on immediately before the bond or debenture was issued,

(c) and, in the case of a bond or debenture issued after October 23, 1979, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on immediately before the bond or debenture was issued,

"Income bond" or "income debenture" substituted by 1980-81-82-83, c. 48, subsec. 108(5), applicable after November 16, 1978 except that, in its application in the period commencing November 17, 1978 and ending October 23, 1979 to a bond or debenture issued before November 17, 1978 and in its application to a bond or debenture issued after November 16, 1978 and before October 24, 1979, subparagraph (e)(ii) of the definition shall be read as follows:

(ii) under the terms or conditions of a bond or debenture acquired in the ordinary course of the business carried on by a corporation described in paragraph 112(2.1)(a) or (b) or a partnership or trust

(other than a testamentary trust), the owner could at any particular time after November 16, 1978 require the payment of the principal amount thereof otherwise than by reason of failure or default under the terms or conditions of the bond or debenture, or

"Income bond" or "income debenture" formerly read:

"income bond" or "income debenture" of a corporation means a bond or debenture in respect of which interest or dividends are payable only to the extent that the corporation has made a profit before taking into account the interest or dividend obligation and that was issued by the corporation

(a) before November 17, 1978,

(b) after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"), or

(c) for a term that may not, in any circumstances, exceed 5 years, in the case of a corporation resident in Canada,

(i) as part of a proposal to or an arrangement with its creditors that had been approved by a court under the *Bankruptcy Act*,

(ii) while all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) while, by reason of financial difficulty, it or a corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the corporation was dealing at arm's length and the bond or debenture was issued, in whole or in part, directly or indirectly in exchange or substitution for that obligation,

and the proceeds from the issue may reasonably be regarded as having been used by the corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on immediately before the bond or debenture was issued,

and for the purposes of this definition,

(d) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date, and

(e) where

(i) at any particular time the terms or conditions of a bond or debenture issued pursuant to an established agreement or of any agreement related to such a bond or debenture have been changed,

(ii) under the terms or conditions of a bond or debenture acquired in the ordinary course of the business carried on by a corporation described in any of paragraphs 112(2.1)(a) to (c) or a partnership or trust (other than a testamentary trust) or under the terms or conditions of any agreement relating to any such bond or debenture (other than an agreement made before October 23, 1979 to which the issuer or any person related thereto was not a party), the owner could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the repayment, acquisition, cancellation or conversion of the bond or debenture otherwise than by reason of a failure or default under the terms or conditions of the bond or debenture,

(iii) at any particular time after November 16, 1978 the maturity date of a bond or debenture was extended or the terms or conditions relating to the repayment of the principal amount thereof were changed, or

(iv) at any particular time after October 23, 1979, a bond or debenture issued before November 17, 1978 or pursuant to an established agreement is acquired (other than pursuant to an agreement in writing made before October 23, 1979) from a person (other than a corporation described in any of paragraphs 112(2.1)(a) to (c)) by a corporation described in any of paragraphs 112(2.1)(a) to (c) or by a partnership or trust (other than a testamentary trust),

the bond or debenture shall, for the purposes of determining at any time after the particular time whether it is an income bond or income debenture, as the case may be, be deemed to have been issued after November 16, 1978 other than pursuant to an established agreement;

"Income bond" or "income debenture" substituted by 1979, c. 5, subsec. 66(6). "Income bond" or "income debenture" formerly read:

"income bond" or "income debenture" means a bond or debenture in respect of which interest or dividends are payable only when the debtor company has made a profit before taking into account the interest or dividend obligation;

Selected Cases [subsec. 248(1)"income bond"]: *The Queen v. RoyNat Ltd.*, [1981] C.T.C. 93 (FCTD) (Bonds guaranteed by third parties, not "income bonds").

Interpretation Bulletins: IT-52R4: Income bonds and income debentures; IT-527: Distress preferred shares.

"income debenture" — [See under "income bond".]

"income interest" of a taxpayer in a trust has the meaning assigned by subsection 108(1);

"indexed debt obligation" means a debt obligation the terms or conditions of which provide for an adjustment to an amount payable in respect of the obligation for a period during which the obligation was outstanding that is determined by reference to a change in the purchasing power of money;

Related Provisions: 16(6) — Indexed debt obligations; 142.3(2) — Indexed debt obligation not subject to rules re income from specified debt obligations; 142.4(5)(a)(i) — Disposition of indexed debt obligation.

History: "Indexed debt obligation" added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to indexed debt obligations issued after October 16, 1991.

"indexed security", "indexed security investment plan" — [Repealed under former Act]

Pre-RSC History: "Indexed security" and "indexed security investment plan" repealed by 1986, c. 6, subsec. 126(1), applicable to 1986 *et seq.* Those definitions formerly read:

"indexed security" has the meaning assigned by paragraph 47.1(1)(e);

"indexed security investment plan" has the meaning assigned by paragraph 47.1(1)(f);

"Indexed security" and "indexed security investment plan" added by 1984, c. 1, subsecs. 104(3), (4), applicable after September 30, 1983.

"individual" means a person other than a corporation;

Related Provisions: 104(2) — Trust deemed to be an individual.

Interpretation Bulletins: IT-123R6, para. 11: Transactions involving eligible capital property.

"insurance corporation" means a corporation that carries on an insurance business;

Related Provisions: 138(1) — Corporation deemed to carry on insurance business; 148(10)(a) — Issuer of annuity contracts deemed to be insurer for certain purposes; 186.1(b) — Insurance corporation not liable for Part IV tax.

"insurance policy" includes a life insurance policy;

History: The definition "insurance policy" added to subsec. 248(1) by 2000, c. 19, subsec. 67(1), applicable after December 15, 1998.

"insurer" has the meaning assigned by this subsection to the expression "insurance corporation";

Related Provisions: See under "insurance corporation" above.

Pre-RSC History: *The definition "insurer" was included under "insurance corporation".*

"*inter vivos* trust" has the meaning assigned by subsection 108(1);

Related Provisions: 149(5) — Exception re investment income of certain clubs; 207.6(1) — Definitions (re RCA tax).

"international traffic" means, in respect of a non-resident person carrying on the business of transporting passengers or goods, any voyage made in the course of that

business where the principal purpose of the voyage is to transport passengers or goods

(a) from Canada to a place outside Canada,

(b) from a place outside Canada to Canada, or

(c) from a place outside Canada to another place outside Canada;

Related Provisions: 250(6) — Residence of international shipping corporation; Canada-U.S. tax treaty, Art. III:1(h) — Meaning of "international traffic" for treaty purposes; Art. XV:3 — Exemption for U.S. resident employee; Art. XXIII:3 — Capital tax on ship or aircraft employed in international traffic.

Pre-RSC History: "International traffic" added by 1974-75-76, c. 26, subsec. 125(3), applicable to 1974 *et seq.*

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

"inventory" means a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year or would have been so relevant if the income from the business had not been computed in accordance with the cash method and, with respect to a farming business, includes all of the livestock held in the course of carrying on the business;

Proposed Amendment — 248(1)"inventory"

"inventory" means a description of property (other than property to which subsection 94.2(3) applies) the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year or would have been so relevant if the income from the business had not been computed in accordance with the cash method and, with respect to a farming business, includes all of the livestock held in the course of carrying on the business;

Application: The June 22, 2000 draft legislation, subsec. 26(2), will amend the definition "inventory" in subsec. 248(1) to read as above, applicable to fiscal periods that begin after 2000.

Technical Notes: A taxpayer's "inventory" is generally described in subsection 248(1) of the Act as a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year. Rules for "inventory" in section 10 and elsewhere in the Act affect the calculation of a taxpayer's income from business.

The definition "inventory" is amended to exclude descriptions of property to the disposition of which subsection 94.2(3) applies.

This amendment applies to fiscal periods that begin after 2000.

Related Provisions: 10(1), (1.01) — Valuation of inventory property; 10(5) — Certain property deemed to be inventory; 66.3(1)(a)(ii) — Certain exploration and development shares deemed to be inventory; 142.5 — Mark-to-market rules for securities held by financial institutions; 142.6(3), (4) — Certain property of financial institution deemed not to be inventory; 231.1(1)(b) — Examination of inventory.

History: "Inventory" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable to fiscal periods beginning after 1988. That definition formerly read:

> "inventory" means a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for a taxation year;

Selected Cases [subsec. 248(1)"inventory"]: *Ruland Realty Ltd. v. R.*, [1998] 4 C.T.C. 2313 (TCC) (Obligations to acquire land were choses in action, which qualified as property and as inventory); *Friesen (J.) v. Canada*, [1993] 2 C.T.C. 113 (FCA); reconsideration refused (Sept. 9, 1993), Doc. A-449-92 (FCA); rev'd [1995] 2 C.T.C. 369 (SCC) (Asset of adventure in nature of trade is inventory); *Canada v. Dresden Farm Equipment Ltd.*, [1989] 1 C.T.C. 99 (FCA) (No inventory deduction for dealer/agent selling goods he did not own).

Interpretation Bulletins: IT-51R2: Supplies on hand at the end of a fiscal year; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-427R: Livestock of farmers; IT-457R: Election by professionals to exclude work in progress from income; IT-473R: Inventory valuation.

"investment corporation" has the meaning assigned by subsection 130(3);

"investment tax credit" has the meaning assigned by subsection 127(9);

Pre-RSC History: "Investment tax credit" enacted by 1985, c. 45, subsec. 122(2).

Proposed Addition — 248(1)"joint partner trust"

"joint partner trust" means a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clause 104(4)(a)(iv)(A);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(4), will add the definition "joint partner trust" to subsec. 248(1), applicable to trusts created after 1999.

Technical Notes: The definition "joint partner trust" refers to a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clause 104(4)(a)(iv)(A). Accordingly, for a trust to be a joint partner trust it generally must satisfy the following conditions:

1. at the time of the trust's creation, the taxpayer creating the trust was alive and had attained 65 years of age;
2. the trust was created after 1999;
3. the taxpayer or the taxpayer's spouse was, in combination with the spouse or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the spouse; and
4. no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

The definitions "*alter ego* trust" and "joint partner trust" apply to trusts created after 1999. The definition "post-1971 partner trust" applies to trusts created after 1971. Other amendments related to the introduction of these definitions include amendments to section 73, subsections 104(5.8), (6) and (15) and subsection 107(4), and the amended definition of "trust" in subsection 108(1). For further detail, see the commentary on those provisions.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Related Provisions: 73(1.01)(c)(ii) — Rollover on transfer to joint partner trust; 104(5.8) — Transfers from joint partner trust to another trust; 104(6)(b)(ii.1), (iii) — Deduction from income of trust; 104(15)(a) — Preferred beneficiary election; 107(4)(a)(iii) — Distribution of property to person other than taxpayer or partner; 248(1)"*alter ego* trust" — Parallel trust where partner is not a beneficiary.

"lawyer" has the meaning assigned by subsection 232(1);

Pre-RSC History: "Lawyer" enacted by 1984, c. 1, subsec. 104(5), applicable to 1983 *et seq.*

"legal representative" of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate;

History: The definition "legal representative" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), in force June 18, 1998.

"lending asset" means a bond, debenture, mortgage, note, agreement of sale or any other indebtedness or a

prescribed share, but does not include a prescribed property;

Related Provisions: 95(1)"lending of money" closing words — Extended definition for FAPI purposes; 142.2(1) — Definition of "specified debt obligation".

History: The definition "lending asset" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(1), applicable

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with para. 81(11)(b) of c. 19 [see under 20(1)(l)].

The definition formerly read:

"lending asset" means a bond, debenture, mortgage, note, agreement of sale or any other indebtedness or a prescribed share, but does not include a prescribed security;

Pre-RSC History: "Lending asset" enacted by 1988, c. 55, subsec. 188(14), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Regulations: 6209 (prescribed share, prescribed security, prescribed property).

Interpretation Bulletins: IT-442R: Bad debts and reserves for doubtful debts.

"licensed annuities provider" has the meaning assigned by subsection 147(1);

History: The definition "licensed annuities provider" added to subsec. 248(1) by1998, c. 19, subsec. 239(6), applicable after 1996.

"life insurance business" includes

(a) an annuities business, and

(b) the business of issuing contracts all or any part of the issuer's reserves for which vary in amount depending on the fair market value of a specified group of assets,

carried on by a life insurance corporation or a life insurer;

Related Provisions: 138(1)(b) — Corporation deemed carrying on (life) insurance business.

"life insurance capital dividend" has the meaning assigned by subsection 83(2.1);

Pre-RSC History: "Life insurance capital dividend" enacted by 1980-81-82-83, c. 140, subsec. 128(7), applicable after June 28, 1982. [The subsection intended in the reference is not the current 83(2.1) but 83(2.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952".]

"life insurance corporation" means a corporation that carries on a life insurance business that is not a business described in paragraph (a) or (b) of the definition "life insurance business" in this subsection, whether or not the corporation also carries on a business described in either of those paragraphs;

Related Provisions: 148(10)(a) — Issuer of annuity contracts deemed to be life insurer for certain purposes.

"life insurance policy" has the meaning assigned by subsection 138(12);

Related Provisions: 211(1) — Definitions.

Pre-RSC History: "Life insurance policy" enacted by 1985, c. 45, subsec. 122(2).

"life insurance policy in Canada" has the meaning assigned by subsection 138(12);

Pre-RSC History: "Life insurance policy in Canada" enacted by 1985, c. 45, subsec. 122(2).

"life insurer" has the meaning assigned by this subsection to the expression "life insurance corporation";

Pre-RSC History: *The definition "life insurer" was included under "insurance corporation".*

"limited partnership loss" has the meaning assigned by subsection 96(2.1);

Related Provisions: 111(9) — Limited partnership loss where taxpayer not resident in Canada.

Pre-RSC History: "Limited partnership loss" enacted by 1986, c. 55, subsec. 78(3), applicable after February 25, 1986.

"listed personal property" has the meaning assigned by section 54;

"majority interest partner" of a particular partnership at any time means a person or partnership (in this definition referred to as the "taxpayer")

(a) whose share of the particular partnership's income from all sources for the last fiscal period of the particular partnership that ended before that time (or, if the particular partnership's first fiscal period includes that time, for that period) would have exceeded 1/2 of the particular partnership's income from all sources for that period if the taxpayer had held throughout that period each interest in the partnership that the taxpayer or a person affiliated with the taxpayer held at that time, or

(b) whose share, if any, together with the shares of every person with whom the taxpayer is affiliated, of the total amount that would be paid to all members of the particular partnership (otherwise than as a share of any income of the partnership) if it were wound up at that time exceeds 1/2 of that amount;

Related Provisions: 251.1 — Affiliated persons.

History: The definition "majority interest partner" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), applicable after April 26, 1995.

"mineral" includes ammonite gemstone, bituminous sands, calcium chloride, coal, kaolin, oil shale and silica, but does not include petroleum, natural gas or a related hydrocarbon not expressly referred to in this definition;

Related Provisions: *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: The definition "mineral" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(1), applicable to taxation years and fiscal periods that begin after 1996 except that,

(a) for greater certainty, that definition shall not result in a characterization of expenditures made or costs incurred in a taxation year or fiscal period that began before 1997 as a Canadian exploration expense, Canadian development expense, Canadian exploration and development expense or foreign exploration and development expense or an increase in any amount deductible under s. 65 as a consequence of an expenditure made or cost incurred before 1997; and

(b) where, as a consequence of the application of that definition, a person's property would, but for this paragraph, be recharacterized as Canadian resource property or foreign resource property at the beginning of the person's first taxation year or fiscal period that begins after 1996, for the purposes of the Act the property is deemed

(i) to have been disposed of by the person immediately before that time for proceeds equal to its cost amount to the person at that time, and

(ii) to have been reacquired at that time by the person for the same amount.

The definition formerly read:

"mineral" includes bituminous sands, calcium chloride, coal, kaolin, oil sands, oil shale and silica, but does not include petroleum, natural gas or a related hydrocarbon not expressly referred to in this definition;

The definition "mineral" added to subsec. 248(1) by 1994, c. 21, subsec. 109(5), applicable to taxation years commencing after 1984, except that the definition shall be read without reference to the word "kaolin" in respect of taxation years ending before 1988.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"mineral resource" means

(a) a base or precious metal deposit,

(b) a coal deposit,

(c) a bituminous sands deposit or oil shale deposit, or

(d) a mineral deposit in respect of which

(i) the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,

(ii) the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or

(iii) the principal mineral extracted is silica that is extracted from sandstone or quartzite;

Related Provisions: *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf.

History: Subpara. (d)(ii) of the definition "mineral resource" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(4), applicable to taxation years and fiscal periods that begin after 1996 except that,

(a) for greater certainty, the amendment shall not result in a characterization of expenditures made or costs incurred in a taxation year or fiscal period that began before 1997 as a Canadian exploration expense, Canadian development expense, Canadian exploration and development expense or foreign exploration and development expense or an increase in any amount deductible under s. 65 as a consequence of an expenditure made or cost incurred before 1997; and

(b) where, as a consequence of the application of this amendment, a person's property would, but for this paragraph, be recharacterized as Canadian resource property or foreign resource property at the beginning of the person's first taxation year or fiscal period that begins after 1996, for the purposes of the Act the property is deemed

(i) to have been disposed of by the person immediately before that time for proceeds equal to its cost amount to the person at that time, and

(ii) to have been reacquired at that time by the person for the same amount.

Subpara. (d)(ii) formerly read:

(ii) the principal mineral extracted is calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or

Para. (c) of the definition "mineral resource" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(2), applicable after March 6, 1996. Para. (c) formerly read:

(c) a bituminous sands deposit, oil sands deposit or oil shale deposit, or

Subpara. (d)(i) of "mineral resource" amended by 1994, c. 41, para. 37(1)(o), in force January 12, 1995. Subpara. (i) formerly read:

(i) the Minister of Energy, Mines and Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,

Subpara. (d)(ii) of the definition "mineral resource" substituted by 1994, c. 21, subsec. 109(3), applicable to taxation years commencing after 1984, except that the subpara. shall be read without reference to the word "kaolin" in respect of taxation years ending before 1988 and without reference to the word "diamond" in respect of taxation years ending before 1993. That subpara. formerly read:

(ii) the principal mineral extracted is sylvite, halite, gypsum or kaolin, or

Pre-RSC History: Subpara. (d)(ii) of "mineral resource" amended by 1988, c. 55, subsec. 188(5) to substitute "halite, gypsum or kaolin," for "halite, or gypsum," applicable to 1988 *et seq.*

"Mineral resource" substituted by 1973-74, c. 14, subsec. 69(5), applicable to 1972 *et seq.* but does not apply in respect of any acquisition or disposition, before May 9, 1972, of

(a) an oil sands deposit,

(b) an oil shale deposit, or

(c) a mineral deposit in respect of which the principal mineral extracted is halite that is extracted by operating a brine well.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"minerals" — [Repealed]

History: The definition "minerals" repealed by 1994, c. 21, subsec. 109(1), applicable to taxation years commencing after 1984 (but see the definition "mineral" above, which essentially replaces it). That definition formerly read:

"minerals" does not include petroleum, natural gas or related hydrocarbons (except coal, bituminous sands, oil sands or oil shale);

Pre-RSC History: "Minerals" substituted by 1973-74, c. 14, subsec. 69(4), applicable to 1972 *et seq.* but does not apply in respect of any acquisition or disposition, before May 9, 1972, of

(a) an oil sands deposit,

(b) an oil shale deposit, or

(c) a mineral deposit in respect of which the principal mineral extracted is halite that is extracted by operating a brine well.

"mining reclamation trust" — [Repealed]

History: The definition "mining reclamation trust" in subsec. 248(1) repealed by 1998, c. 19, subsec. 66(1), applicable after 1997 and, if an election is made by a trust in accordance with para. (i) of the definition "qualifying environmental trust" in subsec. 248(1),

(a) the trust is deemed to have never been a mining reclamation trust; and

(b) notwithstanding subsecs. 152(4) to (5), the Minister of National Revenue may before 2000 make any assessments and reassessments that are necessary to give effect to the election.

The definition formerly read:

"mining reclamation trust" at any time means a trust resident in a province and maintained at that time for the sole purpose of funding the reclamation of a mine in the province, where the first contribution to the trust was made after 1991, no amount was distributed before February 23, 1994 from the trust and the maintenance of the trust is or may become required under the terms of a contract entered into with Her Majesty in right of Canada or the province or is or may become required pursuant to a law of Canada or the province, but does not include a trust

(a) where that contract was not entered into or that law was not enacted, as the case may be, on or before the later of

(i) the day that is one year after the day the trust was created, and

(ii) January 1, 1996,

(b) that relates to the reclamation of a mine that at that time is a clay pit (other than a kaolin pit), a deposit of peat, a gravel pit, a peat bog, a sand pit, a shale pit or a stone quarry or that relates to the reclamation of a well,

(c) that is not maintained at that time to secure the mining reclamation obligations of one or more persons or partnerships that are beneficiaries under the trust,

(d) that at that time has a trustee other than

(i) Her Majesty in right of Canada or the province, or

(ii) a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(e) that borrows money at that time,

(f) that acquired at that time any property that is not described in any of paragraphs (a), (b) and (f) of the definition "qualified investment" in section 204,

(g) that did not comply with prescribed conditions at that time, or

(h) that was at any previous time not a mining reclamation trust;

The definition "mining reclamation trust" added by 1995, c. 3, subsec. 52(4), applicable after 1993 except with respect to a trust the first contribution to which was made before February 23, 1994 and that elects in writing filed with the Minister of National Revenue before 1996 that this definition not apply to the trust.

"Minister" means the Minister of National Revenue;

Related Provisions: 220 — Administration of the Act.

Regulations: 900 (delegation of authority by the Minister to specific officials).

"money purchase limit" for a calendar year has the meaning assigned by subsection 147.1(1);

Pre-RSC History: "Money purchase limit" enacted by 1990, c. 35, subsec. 27(3), applicable after 1988.

"mortgage investment corporation" has the meaning assigned by subsection 130.1(6);

Pre-RSC History: "Mortgage investment corporation" enacted by 1980-81-82-83, c. 48, subsec. 108(6), applicable to taxation years commencing after 1971.

"motor vehicle" means an automotive vehicle designed or adapted to be used on highways and streets but does not include

(a) a trolley bus, or

(b) a vehicle designed or adapted to be operated exclusively on rails;

Related Provisions: 248(1) — "automobile", "passenger vehicle".

Pre-RSC History: "Motor vehicle" enacted by 1988, c. 55, subsec. 188(14), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

"mutual fund corporation" has the meaning assigned by subsection 131(8);

Related Provisions: 131(8.1) — Meaning of "mutual fund corporation".

"mutual fund trust" has the meaning assigned by subsection 132(6);

Related Provisions: 132(6.1), (6.2), (7); 132.2(1)(q) — Extensions and limitations to definition of mutual fund trust.

"net capital loss" has the meaning assigned by subsection 111(8);

Related Provisions: 111(1)(b) — Application of net capital losses; 111(9) — Net capital loss of person not resident in Canada.

"net income stabilization account" means an account of a taxpayer under the net income stabilization account program under the *Farm Income Protection Act*;

Related Provisions: 248(1) — "NISA Fund No. 2".

History: "Net income stabilization account" enacted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to 1991 *et seq.*

Forms: RC4060: Farming income and NISA (guide); T1163: Statement A — NISA account information and statement of farming activities for individuals; T1164: Statement B — NISA account information and statement of farming activities for additional farming operations; T1165: Statement C — statement of farming activities for Ontario self directed risk management (SDRM); T1175 Sched. 1: NISA/Farming — calculation of CCA and business-use-of-home expenses.

"Newfoundland offshore area" has the meaning assigned to the expression "offshore area" by the *Canada-Newfoundland Atlantic Accord Implementation Act*, chapter 3 of the Statutes of Canada, 1987;

Pre-RSC History: "Newfoundland offshore area" enacted by 1987, c. 3, s. 235, applicable (by 1991, c. 49, s. 237) to taxation years commencing after April 4, 1987.

"NISA Fund No. 2" means the portion of a taxpayer's net income stabilization account described in paragraph 8(2)(b) of the *Farm Income Protection Act*;

Related Provisions: 248(1) — "net income stabilization account".

History: "NISA Fund No. 2" enacted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(7), applicable to 1991 *et seq.*

Forms: RC4060: Farming income and NISA (guide); T1163: Statement A — NISA account information and statement of farming activities for individuals; T1164: Statement B — NISA account information and statement of farming activities for additional farming operations; T1165: Statement C — statement of farming activities for Ontario self directed risk management (SDRM); T1175 Sched. 1: NISA/Farming — calculation of CCA and business-use-of-home expenses.

"non-capital loss" has the meaning assigned by subsection 111(8);

Related Provisions: 111(1)(a) — Application of non-capital losses; 111(9) — Non-capital loss of person not resident in Canada.

Proposed Addition — 248(1)"non-discretionary trust"

"non-discretionary trust" has the meaning assigned by subsection 17(15).

Application: The June 22, 2000 draft legislation, subsec. 26(3), will add the definitions "foreign accrual property income" and "non-discretionary trust" to subsec. 248(1), applicable after 2000.

Technical Notes: The definition "non-discretionary trust" is introduced so that the existing definition of the expression in subsection 17(15) applies for the purposes of the Act. The expression is used in the definition "foreign investment entity" in new subsection 94.1(1).

This amendment applies after 2000.

"non-resident" means not resident in Canada;

Related Provisions: 250 — Resident in Canada.

"non-resident-owned investment corporation" has the meaning assigned by subsection 133(8);

"Nova Scotia offshore area" has the meaning assigned to the expression "offshore area" by the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, chapter 28 of the Statutes of Canada, 1988;

Related Provisions: 124(4)"province" — Taxable income earned in offshore area deemed earned in a province.

Pre-RSC History: "Nova Scotia offshore area" enacted by 1988, c. 28, s. 252, applicable to taxation years commencing after December 22, 1989.

"office" means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and "officer" means a person holding such an office;

Selected Cases [subsec. 248(1)"office"]: *Alexander v. MNR*, [1969] C.T.C. 715 (Exch.) (Hospital radiologist and department head held to be independent contractor).

Interpretation Bulletins: IT-377R: Director's, executor's or juror's fees.

"officer" — [See the final words of "office" above.]

"oil or gas well" means any well (other than an exploratory probe or a well drilled from below the surface of the earth) drilled for the purpose of producing petroleum or natural gas or of determining the existence, location, extent or quality of a natural accumulation of petroleum or natural gas, but, for the purpose of applying sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) in respect of property acquired after March 6, 1996, does not include a well for the extraction of material from a deposit of bituminous sands or oil shales;

History: The definition "oil or gas well" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable after March 6, 1996. It formerly read:

> "oil or gas well" means any well (other than an exploratory probe or a well drilled from below the surface of the earth) drilled for the purpose of producing petroleum or natural gas or of determining the

existence, location, extent or quality of a natural accumulation of petroleum or natural gas;

Pre-RSC History: "Oil or gas well" enacted by 1986, c. 6, subsec. 126(4), applicable to taxation years ending after March 1985.

Interpretation Bulletins: IT-125R4: Dispositions of resource properties.

"overseas Canadian Forces school staff" means personnel employed outside Canada whose services are acquired by the Minister of National Defence under a prescribed order relating to the provision of educational facilities outside Canada;

Related Provisions: 250(1)(d.1) — Optional deemed residence in Canada.

Pre-RSC History: "Overseas Canadian Forces school staff" enacted by 1980-81-82-83, c. 48, subsec. 108(7), applicable to 1980 *et seq.*

Regulations: 6600 (prescribed order).

"paid-up capital" has the meaning assigned by subsection 89(1);

Pre-RSC History: "Paid-up capital" enacted by 1974-75-76, c. 26, subsec. 125(4), applicable at the end of a corporation's 1971 taxation year and at any time after May 6, 1974.

"paid-up capital deficiency" — [Repealed under former Act]

Pre-RSC History: "Paid-up capital deficiency" repealed by 1977-78, c. 1, subsec. 98(5), applicable after March 31, 1977. "Paid-up capital deficiency" formerly read:

> "paid-up capital deficiency" has the meaning assigned by subsection 89(1);

"Part VII refund" has the meaning assigned by subsection 192(2);

Origin of "Part VII refund": R.S.C. 1985, c. 1 (5th Supp.).

"Part VIII refund" has the meaning assigned by subsection 194(2);

Origin of "Part VIII refund": R.S.C. 1985, c. 1 (5th Supp.).

"participant" — [Repealed under former Act]

Pre-RSC History: "Participant" repealed by 1986, c. 6, subsec. 126(1), applicable to 1986 *et seq.* That definition formerly read:

> "participant" under an indexed security investment plan has the meaning assigned by paragraph 47.1(1)(h);

"Participant" enacted by 1984, c. 1, subsec. 104(6), applicable after September 30, 1983.

"passenger vehicle" means an automobile acquired after June 17, 1987 (other than an automobile acquired after that date pursuant to an obligation in writing entered into before June 18, 1987) and an automobile leased under a lease entered into, extended or renewed after June 17, 1987;

Pre-RSC History: "Passenger vehicle" enacted by 1988, c. 55, subsec. 188(14), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Regulations: Sch. II:Cl. 10, Sch. II:Cl. 10.1, Sch. II:Cl. 16.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

"past service pension adjustment" of a taxpayer for a calendar year in respect of an employer has the meaning assigned by regulation;

Pre-RSC History: "Past service pension adjustment" enacted by 1990, c. 35, subsec. 27(3), applicable after 1988.

Regulations: 8303(1).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Forms: T215 Segment: Breakdown of T215 Supplementaries; T215 Summ: Summary of past service pension adjustments exempt from certification; T215 Supp: Past service pension adjustment exempt from certification; T1004: Application for certification of a provisional past service pension adjustment; T1006: Designating an RRSP withdrawal as a qualifying withdrawal; T4104: Past service pension adjustment guide.

"pension adjustment" of a taxpayer for a calendar year in respect of an employer has the meaning assigned by regulation;

Related Provisions: 146(5.21) — Anti-avoidance.

Pre-RSC History: "Pension adjustment" enacted by 1990, c. 35, subsec. 27(3), applicable after 1988.

Regulations: 8301(1).

Forms: T4084: Pension Adjustment Guide.

"person", or any word or expression descriptive of a person, includes any corporation, and any entity exempt, because of subsection 149(1), from tax under Part I on all or part of the entity's taxable income and the heirs, executors, administrators or other legal representatives of such a person, according to the law of that part of Canada to which the context extends;

Related Provisions: 33.1(2)(a) — "Person" includes partnership for international banking centre rules; 66(16) — "Person" includes partnership for flow-through share rules; 79(1), 79.1(1) — "Person" includes partnership for rules re seizure of property by creditor; 80(1), 80.01(1) — "Person" includes partnership for debt forgiveness rules; 127.2(9), 127.3(7) — "Person" includes partnership for SPTC and SRTC rules; 139.1(1) — "Person" includes partnership for insurance demutualization; 187.4(c) — "Person" includes partnership for Part IV.1 tax; 209(6) — "Person" includes partnership for purposes of tax on carved-out income; 227(5.2), (15) — "Person" includes partnership for certain purposes re withholding tax; 237.1(1) — "Person" includes partnership for tax shelter identification rules; 251.1(4) — "Person" includes partnership for definition of affiliated persons; Canada-U.S. tax treaty, Art. III:1(e) — Meaning of "person" for treaty purposes.

History: "Person" substituted by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(1). "Person" formerly read:

> "person", or any word or expression descriptive of a person, includes any body corporate, and the heirs, executors, administrators or other legal representatives of the person, according to the law of that part of Canada to which the context extends;

Interpretation Bulletins: IT-216: Corporation holds property as agent for shareholder; IT-379R: Employees profit sharing plans — allocations to beneficiaries.

Advance Tax Rulings: ATR-1: Transfer of legal title in land to bare trustee.

"personal or living expenses" includes

(a) the expenses of properties maintained by any person for the use or benefit of the taxpayer or any person connected with the taxpayer by blood relationship, marriage or adoption, and not maintained in connection with a business carried on for profit or with a reasonable expectation of profit,

(b) the expenses, premiums or other costs of a policy of insurance, annuity contract or other like contract if the proceeds of the policy or contract are payable to or for the benefit of the taxpayer or a person connected with the taxpayer by blood relationship, marriage or adoption, and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) expenses of properties maintained by an estate or trust for the benefit of the taxpayer as one of the beneficiaries;

Related Provisions: 18(1)(h), 56(1)(o)(i) — No deduction for personal or living expenses.

Selected Cases [subsec. 248(1)"personal or living expenses"]: *McNeill v. Canada*, [1989] 2 C.T.C. 310 (FCTD) (MURB unit was acquired as source of income with a reasonable expectation of profit).

"personal services business" has the meaning assigned by subsection 125(7);

Pre-RSC History: "Personal services business" enacted by 1988, c. 55, subsec. 188(14), applicable to 1988 *et seq.*

"personal trust" means

(a) a testamentary trust, or

(b) an *inter vivos* trust, no beneficial interest in which was acquired for consideration payable directly or indirectly to

(i) the trust, or

(ii) any person who has made a contribution to the trust by way of transfer, assignment or other disposition of property,

and, for the purposes of this paragraph and paragraph 53(2)(h), where all the beneficial interests in a particular *inter vivos* trust acquired by way of the transfer, assignment or other disposition of property to the particular trust were acquired by

(iii) one person, or

(iv) 2 or more persons who would be related to each other if

(A) a trust and another person were related to each other, where the other person is a beneficiary under the trust or is related to a beneficiary under the trust, and

(B) a trust and another trust were related to each other, where a beneficiary under the trust is a beneficiary under the other trust or is related to a beneficiary under the other trust,

any beneficial interest in the particular trust acquired by such a person shall be deemed to have been acquired for no consideration;

Proposed Amendment — 248(1)"personal trust"

but, after 1999, does not include a unit trust;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(2), will amend the portion of the definition "personal trust" after subpara. (b)(ii) to read as above, applicable after December 23, 1998.

Technical Notes: A "personal trust" is defined in subsection 248(1) of the Act as a testamentary trust or an *inter vivos* trust in which no beneficial interest was acquired for consideration payable to the trust or to a contributor to the trust. A special rule within the definition generally ensures that one person (or two or more related persons) can make contributions to a trust and retain an interest under the trust without the prohibition on consideration being considered to apply. This special rule also applies for the purposes of paragraph 53(2)(h), which deals with the calculation of the adjusted cost bases of certain trust interests.

The definition is amended so that this special rule is removed from the definition. Instead, the special rule is now provided in new subsection 108(7) (as described in the commentary above).

The definition is also amended to expressly exclude, after 1999, unit trusts (as defined in subsection 108(2) of the Act). The reference to unit trusts is being made in this context because under the old definition "personal trust" it was arguable (but by no means certain) that an unusual type of personal trust might technically satisfy the definition "unit trust" in subsection 108(2).

Related Provisions: 107.4(3)(i) — Trust deemed not to be personal trust; 108(6) — Where terms of trust are varied; 108(7) — Meaning of "acquired for consideration"; 110.6(16) — Extension of definition for purposes of capital gains exemption; 128.1(10)"excluded right or interest"(j) — No deemed disposition on emigration of beneficiary; 251(1)(b) — Trust deemed not at arm's length with beneficiary.

History: All that portion of para. (b) of "personal trust" following subpara. (ii) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(4), applicable after 1987. That portion formerly read:

> and, for the purposes of this paragraph and paragraph 53(2)(h), where an *inter vivos* trust is created by way of the transfer, assignment or other disposition of property by an individual (or two or more individuals each of whom was, at the time the trust was created, related to each of the other individuals), any beneficial interest in the trust acquired by the individual, or individuals, at the time the trust was created shall be deemed to have been acquired for no consideration;

Pre-RSC History: "Personal trust" enacted by 1988, c. 55, subsec. 188(14), applicable after 1984.

Interpretation Bulletins: IT-342R: Trusts — Income payable to beneficiaries; IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-385R2: Disposition of an income interest in a trust.

"personal-use property" has the meaning assigned by section 54;

Proposed Addition — 248(1)"post-1971 partner trust"

"post-1971 partner trust" means a trust that would be described in paragraph 104(4)(a) if that paragraph were read without reference to subparagraph 104(4)(a)(iv);

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(4), will add the definition "post-1971 partner trust" to subsec. 248(1), applicable to trusts created after 1971.

Technical Notes: The new definition "post-1971 partner trust" refers to a trust that would be described in paragraph 104(4)(a) if that paragraph were read without reference to subparagraph 104(4)(a)(iv). Accordingly, a post-1971 partner trust must generally satisfy the following conditions:

1. it is a trust under which only the taxpayer's spouse is entitled to receive all of the income of the trust that arose before the spouse's death; and
2. no person except the spouse could, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust.

Unlike *alter ego* trusts and joint partner trusts (referred to in the commentary above), a post-1971 partner trust may also be created by a taxpayer's will.

The definitions "*alter ego* trust" and "joint partner trust" apply to trusts created after 1999. The definition "post-1971 partner trust" applies to trusts created after 1971. Other amendments related to the introduction of these definitions include amendments to section 73, subsections 104(5.8), (6) and (15) and subsection 107(4), and the amended definition of "trust" in subsection 108(1). For further detail, see the commentary on those provisions.

These amendments also reflect changes proposed under Bill C-23, the *Modernization of Benefits and Obligations Act*.

Related Provisions: 104(6)(b)(ii), (iii) — Deduction from income of trust; 104(15)(a) — Preferred beneficiary election; 107(4)(a)(i) — Distribution of property to person other than taxpayer or partner.

"preferred share" means a share other than a common share;

"prescribed" means

(a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister,

(a.1) in the case of the manner of making or filing an election, authorized by the Minister, and

(b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

Related Provisions: 147.1(18) — Regulation re pension plans; 220(3.21) — Certain designations in prescribed form deemed to be elections; 221 — Regulations generally; 244(16) — Forms prescribed or authorized; 248(1) — "Regulation"; *Interpretation Act* 32 — Deviations from prescribed form acceptable.

History: Para. (a) of "prescribed" substituted and para. (a.1) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(9). Para. (a) formerly read:

(a) in the case of a form or the information to be given on a form, prescribed by order of the Minister, and

Pre-RSC History: "Prescribed" amended by 1986, c. 55, subsec. 78(1), to substitute para. (b) for paras. (b) and (c), which formerly read:

(b) in the case of a rate of interest, a rate prescribed by regulation or a rate determined in accordance with rules prescribed by regulation, and

(c) in any other case, prescribed by regulation;

"Prescribed" substituted by 1980-81-82-83, c. 140, subsec. 128(8). "Prescribed" formerly read:

"prescribed", in the case of a form or the information to be given on a form, means prescribed by order of the Minister, and, in any other case, means prescribed by regulation;

Selected Cases [subsec. 248(1)"prescribed"]: *Cal Investments Ltd. v. Canada*, [1990] 2 C.T.C. 418 (FCTD) (Where a taxpayer and defrauded principal agreed to treat funds diverted as loans, taxpayer had no *mens rea* for evasion in respect of return filed after agreement. Waiver without corporate seal valid where signed by an officer of the company with implied authority; corporate seal discretionary provision for Minister's benefit).

Regulations: Part I–XCII.

"principal amount", in relation to any obligation, means the amount that, under the terms of the obligation or any agreement relating thereto, is the maximum amount or maximum total amount, as the case may be, payable on account of the obligation by the issuer thereof, otherwise than as or on account of interest or as or on account of any premium payable by the issuer conditional on the exercise by the issuer of a right to redeem the obligation before the maturity thereof;

Related Provisions: 80.02(2)(a) — Principal amount of distress preferred share.

I.T. Application Rules: 26(1.1) (where obligation was outstanding on January 1, 1972).

"private corporation" has the meaning assigned by subsection 89(1);

"private foundation" has the meaning assigned by section 149.1;

History: The definition "private foundation" added to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1996.

"private health services plan" means

(a) a contract of insurance in respect of hospital expenses, medical expenses or any combination of such expenses, or

(b) a medical care insurance plan or hospital care insurance plan or any combination of such plans,

except any such contract or plan established by or pursuant to

(c) a law of a province that establishes a health care insurance plan as defined in section 2 of the *Canada Health Act*, or

(d) an Act of Parliament or a regulation made thereunder that authorizes the provision of a medical care insurance plan or hospital care insurance plan for employees of Canada and their dependants and for dependants of members of the Royal Canadian Mounted Police and the regular force where such employees or members were appointed in Canada and are serving outside Canada;

Related Provisions: 6(1)(a)(i) — Employer's contribution to private health services plan not a taxable benefit; 20.01 — Deduction from business income for premiums paid to plan; 118.2(2)(q) — Medical expense credit for premiums paid to private health services plan.

History: Para. (c) of the definition "private health services plan" in subsec. 248(1) amended by 1999, c. 22, subsec. 80(3), deemed to have come into force on April 1, 1996. It formerly read:

(c) a law of a province that establishes a health care insurance plan in respect of which the province receives contributions from Canada for insured health services provided under the plan pursuant to the *Federal-Provincial Fiscal Arrangements Act*, or

Para. (c) of "private health services plan" amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Pre-RSC History: "Private health services plan" substituted by 1988, c. 55, subsec. 188(1), applicable to 1988 *et seq.* "Private health services plan" formerly read:

"private health services plan" has the meaning assigned by subsection 110(8);

Interpretation Bulletins: IT-339R2: Meaning of "private health services plan"; IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-8: Self-insured health and welfare trust fund; ATR-23: Private health services plan.

"professional corporation" means a corporation that carries on the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor;

Related Provisions: 249.1(1)(b) — Year-end of professional corporation.

History: The definition "professional corporation" added by 1996, c. 21, subsec. 60(2), applicable after 1994.

"profit sharing plan" has the meaning assigned by subsection 147(1);

Pre-RSC History: "Profit sharing plan" enacted by 1990, c. 35, subsec. 27(3), applicable after 1988.

"property" means property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

(a) a right of any kind whatever, a share or a chose in action,

(b) unless a contrary intention is evident, money,

(c) a timber resource property, and

(d) the work in progress of a business that is a profession;

Related Provisions: 9(1), 9(3) — Income from property; 79(1), 79.1(1) — Definition of property for purposes of rules re seizure of property by creditor; 248(5) — Meaning of substituted property.

Pre-RSC History: Para. (d) of "property" added by 1980-81-82-83, c. 140, subsec. 128(9), applicable to 1982 *et seq.*

Para. (c) added by 1974-75-76, c. 26, subsec. 125(5), applicable to 1974 *et seq.*

Selected Cases [subsec. 248(1)"property"]: *RSI Research Ltd. v. Canada*, [1993] 2 C.T.C. 2378 (TCC) (Right to portion of revenues was "property"); *Sani Sport Inc. v. Canada*, [1990] 2 C.T.C. 15 (FCA) (Amount paid for loss of business use of expropriated land was capital gain).

I.T. Application Rules: 26(6) (property disposed of and reacquired from June 19 to December 31, 1971).

Interpretation Bulletins: IT-334R2: Miscellaneous receipts; IT-432R2: Benefits conferred on shareholders; IT-457R: Election by professionals to exclude work in progress from income.

Advance Tax Rulings: ATR-60: Joint exploration corporations.

"province" — [Repealed under former Act]

Pre-RSC History: "Province" repealed by 1980-81-82-83, c. 48, subsec. 108(8). "Province" formerly read:

"province" means a province of Canada;

"public corporation" has the meaning assigned by subsection 89(1);

"public foundation" has the meaning assigned by section 149.1;

History: The definition "public foundation" added to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1996.

"qualifying environmental trust" at any time means a trust resident in a province and maintained at that time for the sole purpose of funding the reclamation of a site in the province that had been used primarily for, or for any combination of, the operation of a mine, the extraction of clay, peat, sand, shale or aggregates (including dimension stone and gravel) or the deposit of waste, where the maintenance of the trust is or may become required under the terms of a contract entered into with Her Majesty in right of Canada or the province or is or may become required under a law of Canada or the province and the contract was entered into or that law was enacted, as the case may be, on or before the later of January 1, 1996 and the day that is one year after the day on which the trust was created, but does not include a trust

(a) that relates at that time to the reclamation of a well,

(b) that is not maintained at that time to secure the reclamation obligations of one or more persons or partnerships that are beneficiaries under the trust,

(c) that at that time has a trustee other than

(i) Her Majesty in right of Canada or the province, or

(ii) a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(d) that borrows money at that time,

(e) that acquired at that time any property that is not described in any of paragraphs (a), (b) and (f) of the definition "qualified investment" in section 204,

(f) to which the first contribution was made before 1992,

(g) from which any amount was distributed before February 23, 1994,

(h) if that time is before 1998 and the trust is not a mining reclamation trust at that time,

(i) to which the first contribution was made before 1996,

(ii) from which any amount was distributed before February 19, 1997, or

(iii) any interest in which was disposed of before February 19, 1997,

(i) that elected in writing filed with the Minister, before 1998 or before April of the year following the year in which the first contribution to the trust was made, never to have been a qualifying environmental trust, or

(j) that was at any previous time during its existence not a qualifying environmental trust;

Related Provisions: 12(1)(z.1), (z.2) — Income from trust or from sale of interest; 20(1)(ss), (tt) — Deduction for contribution to trust or acquisition of interest; 75(3)(c.1) — Reversionary trust rules do not apply; 107.3(1), (2) — Rules applying to trust; 107.3(3) — Where trust ceases to be qualifying environmental trust; 127.41 — Tax credit to beneficiary of trust; 149(1)(z) — No Part I tax on trust; 211.6 — Part XII.4 tax on trust; 248(1)"cost amount"(e.2) — Cost amount of interest in trust is zero; 250(7) — Trust deemed resident in province where site is located.

History: The definition "qualifying environmental trust" addded to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1991.

"qualifying share" has the meaning assigned by subsection 192(6);

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form;

History: The definition "record" added to subsec. 248(1) by 1998, c. 19, subsec. 239(6), in force on June 18, 1998.

"refundable Part VII tax on hand" has the meaning assigned by subsection 192(3);

"refundable Part VIII tax on hand" has the meaning assigned by subsection 194(3);

"registered Canadian amateur athletic association" means an association that was created under any law in force in Canada, that is resident in Canada and that

(a) is a person described in paragraph 149(1)(l), and

(b) has, as its primary purpose and its primary function, the promotion of amateur athletics in Canada on a nation-wide basis,

that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked under subsection 168(2);

Related Provisions: 143.1 — Amateur athletes' reserve funds.

Pre-RSC History: "Registered Canadian amateur athletic association" substituted by 1988, c. 55, subsec. 188(1), applicable to 1988 *et seq.* "Registered Canadian amateur athletic association" formerly read:

"registered Canadian amateur athletic association" has the meaning assigned by subsection 110(8);

Selected Cases: *Maccabi Canada v. MNR*, [1998] 4 C.T.C. 21 (FCA) (No demographic element to be read into definition).

Interpretation Bulletins: IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-496: Non-profit organizations.

Forms: T1189: Application to register a Canadian amateur athletic association under the ITA.

"registered charity" at any time means

(a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

(b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,

that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation;

Related Provisions: 149(1)(f) — No tax on registered charity; 149.1(6.3) — Designation as public foundation, etc; 149.1(6.4) — Registered national arts service organization treated as registered charity; Canada-U.S. tax treaty, Art. XXI — Exempt organizations.

Pre-RSC History: "Registered charity" substituted by 1988, c. 55, subsec. 188(1), applicable to 1988 *et seq.* "Registered charity" formerly read:

"registered charity" has the meaning assigned by subsection 110(8);

"Registered charity" substituted for "registered Canadian charitable organization" by 1976-77, c. 4, subsec. 76(2), applicable to 1977 *et seq.*

Charities established before 1977: 1976-77, c. 4, subsecs. 60(3)–(5) provide:

> (3) An organization that, on December 31, 1976, was a registered Canadian charitable organization within the meaning of that expression for the purposes of the *Income Tax Act* as it read in its application to the 1976 taxation year, shall, after that day, be deemed to be a registered charity within the meaning of that expression for the purposes of the *Income Tax Act* as amended by this Act until such time, if any, as its registration is revoked.
>
> (4) For the purpose of applying the definition "disbursement quota" in paragraph 149.1(1)(e) of the *Income Tax Act*, as enacted by this section, in respect of the 1977 and 1978 taxation years of private foundations, there shall be substituted for the percentage appearing in clause (A) thereof the following percentages in respect of the following taxation years:
>
> (a) in respect of 1977 taxation years commencing in 1976, zero per cent;
>
> (b) in respect of 1977 and 1978 taxation years commencing in 1977, 3 per cent; and
>
> (c) in respect of all other 1978 taxation years, 4 per cent.
>
> (5) For the purpose of applying the provisions of subsection 149.1(18) of the *Income Tax Act*, as enacted by this section, in respect of the 1977 taxation year of a foundation, paragraphs (a) and (b) thereof shall be read and construed as follows:
>
> "(a) there may be deducted an amount not exceeding its income for the 1976 taxation year computed without including or deducting any amount under subsection 149(9) as it read in its application to that taxation year, and
>
> (b) there shall be included any amount that has been deducted for the 1976 taxation year under subsection 149(9) as it read in its application to that taxation year;"

Selected Cases: *Vancouver Society of Immigrant & Visible Minority Women v. MNR*, [1999] 2 C.T.C. 1 (SCC); aff'g [1996] 2 C.T.C. 88 (FCA) (Valid charitable organization must be constituted exclusively for charitable purposes); *Vancouver Regional FreeNet Association v. MNR*, [1996] 3 C.T.C. 102 (FCA) (Provision of access to information on Internet free of charge was charitable activity).

Interpretation Bulletins: IT-496: Non-profit organizations.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: T2050: Application to register a charity under the ITA; T2095: Canadian charities — application for re-designation; T4063: Registering a charity for income tax purposes [guide].

"registered education savings plan" has the meaning assigned by subsection 146.1(1);

Pre-RSC History: "Registered education savings plan" enacted by 1974-75-76, c. 26, subsec. 125(6), applicable to 1972 *et seq.*

"registered home ownership savings plan" — [Repealed under former Act]

Pre-RSC History: "Registered home ownership savings plan" repealed by 1986, c. 6, subsec. 126(1), applicable to 1986 *et seq.* That definition formerly read:

> "registered home ownership savings plan" has the meaning assigned by subsection 146.2(1);

"Registered home ownership savings plan" added by 1974-75-76, c. 26, subsec. 125(7), applicable to 1974 *et seq.*

"registered investment" has the meaning assigned by subsection 204.4(1);

Pre-RSC History: "Registered investment" enacted by 1980-81-82-83, c. 48, subsec. 108(9), applicable to 1981 *et seq.*

"registered labour-sponsored venture capital corporation" means a corporation that was registered under subsection 204.81(1), the registration of which has not been revoked;

History: The definition "registered labour-sponsored venture capital corporation" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable after 1995.

"registered national arts service organization", at any time, means a national arts service organization that has been registered by the Minister under subsection 149.1(6.4), which registration has not been revoked;

History: "Registered national arts organization" enacted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(14), applicable after July 13, 1990.

"registered pension fund or plan" — [Repealed under former Act]

Pre-RSC History: "Registered pension fund or plan" repealed by 1990, c. 35, subsec. 27(1), applicable after 1985. The definition had read:

> "registered pension fund or plan" means an employees' superannuation or pension fund or plan accepted by the Minister for registration for the purposes of this Act in respect of its constitution and operations for the taxation year under consideration;

"registered pension plan" means a pension plan that has been registered by the Minister for the purposes of this Act, which registration has not been revoked;

Related Provisions: 147.1(2) — Registration of plan; 147.1(3) — Deemed registration; 128.1(10)"excluded right or interest"(a)(viii) — No deemed disposition of pension rights on emigration.

Pre-RSC History: "Registered pension plan" enacted by 1990, c. 35, subsec. 27(2), applicable after 1985 except that before 1989 the definition shall be read as follows:

> "registered pension plan" means an employees' superannuation or pension fund or plan accepted by the Minister for registration for the purposes of this Act in respect of its constitution and operations for the taxation year under consideration;

Selected Cases [subsec. 248(1)"registered pension plan"]: *Kamil v. R.*, [1999] 1 C.T.C. 2447 (TCC) (U.S. 401K plan is not a "registered pension plan").

I.T. Application Rules: 17(8) (reference to RPP includes reference to approved plan before RPP amendment in 1990).

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions; IT-528: Transfers of funds between registered plans.

Forms: T510: Application for registration of employees' pension plan.

"registered retirement income fund" has the meaning assigned by subsection 146.3(1);

Pre-RSC History: "Registered retirement income fund" enacted by 1977-78, c. 32, subsec. 54(1).

"registered retirement savings plan" has the meaning assigned by subsection 146(1);

"registered securities dealer" means a person registered or licensed under the laws of a province to trade in securities, in the capacity of an agent or principal, without any restriction as to the types or kinds of securities in which that person may trade;

Related Provisions: 142.2(1)"investment dealer", 142.5 — Corporation subject to mark-to-market rules.

History: The definition "registered securities dealer" added by 1995, c. 21, subsec. 74(2), applicable after April 26, 1989.

"registered supplementary unemployment benefit plan" has the meaning assigned by subsection 145(1);

"regulation" means a regulation made by the Governor in Council under this Act;

Related Provisions: 65(2) — Regulations allowing resource allowances; 147.1(18) — Regulations re pension plans; 215(5) — Regulations reducing amount to be deducted or withheld; 221 — Regulations generally; 248(1) — "Prescribed".

"restricted farm loss" has the meaning assigned by subsection 31(1.1);

Related Provisions: 111(1)(c) — Application of restricted farm losses; 111(9) — Restricted farm loss where taxpayer not resident in Canada.

History: The definition "restricted farm loss" amended by 1995, c. 21, subsec. 43(1), applicable to taxation years that end after February 21, 1994. The definition formerly read:

"restricted farm loss" has the meaning assigned by subsection 31(1);

"restricted financial institution" means

(a) a bank,

(b) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(c) a credit union,

(d) an insurance corporation,

(e) a corporation whose principal business is the lending of money to persons with whom the corporation is dealing at arm's length or the purchasing of debt obligations issued by such persons or a combination thereof,

(e.1) a corporation described in paragraph (g) of the definition "financial institution" in subsection 181(1), or

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e.1);

Related Provisions: 131(10) — Mutual fund corporation or investment corporation — election not to be restricted financial institution; 142.2(1)"financial institution" — Definition for mark-to-market and related rules; 256(6), (6.1) — Meaning of "controlled".

History: Para. (f) of the definition "restricted financial institution" in subsec. 248(1) amended, and para. (e.1) added, by 1999, c. 22, subsec. 80(4), applicable to taxation years that begin after 1998. Para. (f) formerly read:

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e);

Pre-RSC History: Para. (a) of "restricted financial institution" substituted by 1992, c. 1, Sch. V, subsec. 21(2), applicable from February 28, 1992. That para. formerly read;

(a) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies.

"Restricted financial institution" enacted by 1988, c. 55, subsec. 188(14), applicable after June 18, 1987.

Regulations: 8604 (prescribed financial institutions).

"retirement compensation arrangement" means a plan or arrangement under which contributions (other than payments made to acquire an interest in a life insurance policy) are made by an employer or former employer of a taxpayer, or by a person with whom the employer or former employer does not deal at arm's length, to another person or partnership (in this definition and in Part XI.3 referred to as the "custodian") in connection with benefits that are to be or may be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by the taxpayer, the retirement of the taxpayer or the loss of an office or employment of the taxpayer, but does not include

(a) a registered pension plan,

(b) a disability or income maintenance insurance plan under a policy with an insurance corporation,

(c) a deferred profit sharing plan,

(d) an employees profit sharing plan,

(e) a registered retirement savings plan,

(f) an employee trust,

(g) a group sickness or accident insurance plan,

(h) a supplementary unemployment benefit plan,

(i) a vacation pay trust described in paragraph 149(1)(y),

(j) a plan or arrangement established for the purpose of deferring the salary or wages of a professional athlete for [the athlete's] services as such with a team that participates in a league having regularly scheduled games (in this definition referred to as an "athlete's plan"), where

(i) the plan or arrangement would, but for paragraph (j) of the definition "salary deferral arrangement" in this subsection, be a salary deferral arrangement, and

(ii) in the case of a Canadian team, the custodian of the plan or arrangement carries on business through a fixed place of business in Canada and is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(k) a salary deferral arrangement, whether or not deferred amounts thereunder are required to be included as benefits under paragraph 6(1)(a) in computing a taxpayer's income,

(l) a plan or arrangement (other than an athlete's plan) that is maintained primarily for the benefit of non-residents in respect of services rendered outside Canada,

(m) an insurance policy, or

(n) a prescribed plan or arrangement,

and, for the purposes of this definition, where a particular person holds property in trust under an arrangement that, if the property were held by another person, would be a retirement compensation arrangement, the arrangement shall be deemed to be a retirement compensation arrangement of which the particular person is the custodian;

Related Provisions: 8(1)(m.2) — Employee RCA contributions; 12(11) — Definitions — "investment contract"; 75(3)(a) — Reversionary trust rules do not apply to RCA ; 94(1)"exempt foreign trust"(e) — RCA excluded from non-resident trust rules; 128.1(10)"excluded right or interest"(a)(ix) — No deemed disposition of right to RCA on emigration; 207.6(2) — Life insurance policies; 207.6(4) — Deemed contribution; 207.6(5) — Resident's arrangement; 252.1(c), (d) — All branches of a union deemed to be a single employer.

Pre-RSC History: "Retirement compensation arrangement" enacted by 1987, c. 46, subsec. 69(2), applicable after October 8, 1986, except that with respect to a plan or arrangement (other than a pension fund or plan the registration of which has been revoked under the Act) established before October 9, 1986 or established after October 8, 1986 pursuant to an agreement between a taxpayer and an employer or former employer of the taxpayer entered into before October 9, 1986 (referred to herein as the "existing arrangement"), for the purposes of the Act,

(a) another plan or arrangement (referred to herein as the "statutory arrangement") is deemed to be established on the day that is the earlier of January 1, 1988, and the day after October 8, 1986 on which the terms of the existing arrangement have been materially altered;

(b) the statutory arrangement is deemed to be a separate arrangement independent of the existing arrangement;

(c) the existing arrangement is deemed not to be a retirement compensation arrangement; and

(d) all contributions made under the existing arrangement after the establishment of the statutory arrangement and all property that can reasonably be considered to derive from those contributions are deemed to be property held in connection with the statutory arrangement and not in connection with the existing arrangement.

Regulations: 6802 (prescribed plan or arrangement).

Interpretation Bulletins: IT-529: Flexible employee benefit programs.

Advance Tax Rulings: ATR-45: Share appreciation rights plan.

Forms: T733: Application for "A retirement compensation arrangement" (RCA) identification account; T4041: Retirement compensation arrangements guide (guide).

"retirement income fund" has the meaning assigned by subsection 146.3(1);

Pre-RSC History: "Retirement income fund" enacted by 1977-78, c. 32, subsec. 54(2).

"retirement savings plan" has the meaning assigned by subsection 146(1);

"retiring allowance" means an amount (other than a superannuation or pension benefit, an amount received as a consequence of the death of an employee or a benefit described in subparagraph 6(1)(a)(iv)) received

(a) on or after retirement of a taxpayer from an office or employment in recognition of the taxpayer's long service, or

(b) in respect of a loss of an office or employment of a taxpayer, whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment of a competent tribunal,

by the taxpayer or, after the taxpayer's death, by a dependant or a relation of the taxpayer or by the legal representative of the taxpayer;

Related Provisions: 56(1)(a)(ii) — Inclusion in income; 60(j.1) — Rollover of retiring allowance to RRSP; 128.1(10)"excluded right or interest"(d) — No deemed disposition of right to retiring allowance on emigration; 248(8) — Occurrences as a consequence of death.

Pre-RSC History: That portion of "retiring allowance" preceding para. (a) substituted by 1990, c. 39, subsec. 54(1), applicable to 1988 *et seq.* That portion formerly read:

> "retiring allowance" means an amount (other than a superannuation or pension benefit or an amount received as a consequence of the death of an employee) received

"Retiring allowance" substituted by 1980-81-82-83, c. 140, subsec. 128(10), applicable with respect to amounts received in respect of any termination of an office or employment after November 12, 1981. "Retiring allowance" formerly read:

> "retiring allowance" means an amount received upon or after retirement from an office or employment in recognition of long service or in respect of loss of office or employment (other than a superannuation or pension benefit), whether the recipient is the officer or employee or a dependant, relation or legal representative;

Selected Cases [subsec. 248(1)"retiring allowance"]: *Fostey v. R.*, [1999] 4 C.T.C. 2575 (TCC) (New employment so radically different from old that payment from old was regarded as retiring allowance); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Retiring allowance not related to employment which never started); *Merrins v. Canada*, [1995] 1 C.T.C. 111 (FCTD) (Amount received on settlement of grievance arising from lay-off was "retiring allowance"); *Doyle v. The Queen*, [1983] C.T.C. 339 (FCTD) (No genuine retirement from office of director of wound-up company where its business transferred to another company and managed by same individual as director of second company); *Lorenzen v. The Queen*, [1981] C.T.C. 377 (FCTD) (Retiring allowance disallowed where former president/director of wound-up company continued to manage transferred business as president/director of transferee company).

Interpretation Bulletins: IT-99R5: Legal and accounting fees; IT-337R3: Retiring allowances; IT-365R2: Damages, settlements and similar receipts; IT-508R: Death benefits.

I.T. Technical News: No. 7 (retiring allowances); No. 19 (Retiring allowances — clarification to Interpretation Bulletin IT-337R3).

Advance Tax Rulings: ATR-12: Retiring allowance.

"RRSP deduction limit" has the meaning assigned by subsection 146(1);

Pre-RSC History: "RRSP deduction limit" enacted by 1990, c. 35, subsec. 27(3), applicable after 1988.

"RRSP dollar limit" has the meaning assigned by subsection 146(1);

Pre-RSC History: "RRSP dollar limit" enacted by 1990, c. 35, subsec. 27(3), applicable after 1988.

"salary deferral arrangement", in respect of a taxpayer, means a plan or arrangement, whether funded or not, under which any person has a right in a taxation year to receive an amount after the year where it is reasonable to consider that one of the main purposes for the creation or existence of the right is to postpone tax payable under this Act by the taxpayer in respect of an amount that is, or is on account or in lieu of, salary or wages of the taxpayer for services rendered by the taxpayer in the year or a preceding taxation year (including such a right that is subject to one or more conditions unless there is a substantial risk that any one of those conditions will not be satisfied), but does not include

(a) a registered pension plan,

(b) a disability or income maintenance insurance plan under a policy with an insurance corporation,

(c) a deferred profit sharing plan,

(d) an employees profit sharing plan,

(e) an employee trust,

(f) a group sickness or accident insurance plan,

(g) a supplementary unemployment benefit plan,

(h) a vacation pay trust described in paragraph 149(1)(y),

(i) a plan or arrangement the sole purpose of which is to provide education or training for employees of an employer to improve their work or work-related skills and abilities,

(j) a plan or arrangement established for the purpose of deferring the salary or wages of a professional athlete for the services of the athlete as such with a team that participates in a league having regularly scheduled games,

(k) a plan or arrangement under which a taxpayer has a right to receive a bonus or similar payment in respect of services rendered by the taxpayer in a taxation year to be paid within 3 years following the end of the year, or

(l) a prescribed plan or arrangement;

Related Provisions: 12(11) — Definitions — "investment contract"; 128.1(10)"excluded right or interest"(a)(vii), (b) — No deemed disposition of right to SDA on emigration.

Pre-RSC History: Para. (a) of "salary deferral arrangement" amended by Sch. I of 1990, c. 35, applicable from June 27, 1990. Para. (a) formerly read:

> (a) a registered pension fund or plan,

"Salary deferral arrangement" enacted by 1986, c. 55, subsec. 78(3), applicable after February 25, 1986 with respect to plans and arrangements otherwise than with respect to an amount that would be a deferred amount but for this exception under an agreement in writing made before February 26, 1986 by a taxpayer and his employer or former employer where the amount is in respect of

(a) services rendered by the taxpayer before July 1986; or

(b) services rendered by the taxpayer after June 1986, where the taxpayer is obliged to defer receipt of the amount and cannot cancel or otherwise avoid that obligation.

For a detailed discussion of salary deferral arrangements, see Raymond Murrill, "Taxation of Short-to-Medium-Term Cash Incentives in Canada", *Taxation of Executive Compensation & Retirement* (Federated Press), Vol. 9 No. 7 (March 1998), pp. 103-115.

Regulations: 6801 (prescribed plan or arrangement).

Interpretation Bulletins: IT-109R2: Unpaid amounts; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-529: Flexible employee benefit programs.

I.T. Technical News: No. 7 (salary deferral arrangement — paragraph (k)).

Advance Tax Rulings: ATR-39: Self-funded leave of absence; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

"salary or wages", except in sections 5 and 63 and the definition "death benefit" in this subsection, means the income of a taxpayer from an office or employment as computed under subdivision a of Division B of Part I and includes all fees received for services not rendered in the course of the taxpayer's business but does not include superannuation or pension benefits or retiring allowances;

Interpretation Bulletins: IT-99R5: Legal and accounting fees.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages..

"scientific research and experimental development" means systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is

(a) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view,

(b) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, or

(c) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes, including incremental improvements thereto,

and, in applying this definition in respect of a taxpayer, includes

(d) work undertaken by or on behalf of the taxpayer with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing or psychological research, where the work is commensurate with the needs, and directly in support, of work described in paragraph (a), (b), or (c) that is undertaken in Canada by or on behalf of the taxpayer,

but does not include work with respect to

(e) market research or sales promotion,

(f) quality control or routine testing of materials, devices, products or processes,

(g) research in the social sciences or the humanities,

(h) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas,

(i) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process,

(j) style changes, or

(k) routine data collection;

Proposed Amendment — Administration of R&D credits

Revenue Canada news release, March 10, 1999 and federal budget, supplementary information, February 28, 2000: [See under 127(9)"SR&ED qualified expenditure pool" — ed.]

Related Provisions: 37(3) — CCRA may obtain advice from certain sources as to whether an activity is SR&ED; 37(8) — Amounts deemed not to be expenditures on SR&ED; 37(13) — Linked work deemed to be SR&ED.

History: The definition "scientific research and experimental development" amended by 1998, c. 19, subsec. 239(1), applicable to work performed by a taxpayer after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b), that definition does not apply to work performed pursuant to an agreement in writing made by the taxpayer before February 28, 1995. The definition formerly read:

> "scientific research and experimental development" has the meaning assigned by regulation;

For discussion of what qualifies as SR&ED, see *Northwest Hydraulic Consultants Ltd.*, [1998] 3 C.T.C. 2520 (TCC).

The definition "scientific research and experimental development" added by 1996, c. 21, subsec. 60(2), applicable to work performed after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b), that definition does not apply to work performed pursuant to an agreement in writing entered into before February 28, 1995.

Selected Cases [subsec. 248(1)"SR&ED"]: *Northwest Hydraulic Consultants Ltd. v. R.*, [1998] 3 C.T.C. 2520 (TCC) (Court approved criteria in IC 86-4R3 as indicative of SR&ED).

Regulations: 2900 (meaning of "scientific research and experimental development" (no longer applicable now that the full definition is in the Act).

Information Circulars: 86-4R3: Scientific research and experimental development; 86-4R3 Supplement 1: Automotive industry application paper; 86-4R3 Supplement 2: Aerospace industry application paper; 94-1: Plastics industry application paper; 94-2: Machinery and equipment industry application paper; 97-1: Administrative guidelines for software development.

Application Policies: SR&ED 94-03: Testing activities on new substances required by the Canadian Protection Act (CEPA); SR&ED 95-01R: Linked activities — Reg. 2900(1)(d); SR&ED 95-02: Science eligibility guidelines for the oil and gas mining industries; SR&ED 95-03: Claims for ISO 9000 registration; SR&ED 95-04R: Conflict of interest with regard to outside consultants; SR&ED 96-01: Reclassification of SR&ED expenditures per subsec. 127(11.4); SR&ED 96-02: Tests and studies required to meet requirements in regulated industries; SR&ED 96-08: Eligibility of the preparation of new drug submissions; SR&ED 96-09: Eligibility of clinical trials to meet regulatory requirements.

Forms: T2 SCH 301: Newfoundland scientific research and experimental development tax credit; T2 SCH 340: Nova Scotia research and development tax credit; T2 SCH 380: Manitoba research and development tax credit; T2 SCH 403: Saskatchewan research and development tax credit; T661 — Claim for SR&ED carried on in Canada; T4088: Claiming scientific research and experimental development expenditures — guide to form T661.

"scientific research and experimental development financing contract" has the meaning assigned by subsection 194(6);

Origin of "scientific research and experimental development financing contract": R.S.C. 1985, c. 1 (5th Supp.). (Formerly included in subsec. 194(6).)

"scientific research and experimental development tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.3(2);

Origin of "scientific research and experimental development tax credit": R.S.C. 1985, c. 1 (5th Supp.). (Formerly included in subsec. 127.3(2).)

"securities lending arrangement" has the meaning assigned by subsection 260(1);

History: The definition "securities lending arrangement" added to subsec. 248(1) by 1994, c. 21, subsec. 109(6), applicable to 1993 *et seq.*

"self-contained domestic establishment" means a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats;

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-352R2: Employee's expenses, including work space in home expenses; IT-513R: Personal tax credits.

"separation agreement" includes an agreement by which a person agrees to make payments on a periodic basis for the maintenance of a former spouse, children of the marriage or both the former spouse and children of the marriage, after the marriage has been dissolved whether

the agreement was made before or after the marriage was dissolved;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

"servant" — [See under "employment".]

"share" means a share or fraction of a share of the capital stock of a corporation and, for greater certainty, a share of the capital stock of a corporation includes a share of the capital of a cooperative corporation (within the meaning assigned by subsection 136(2)) and a share of the capital of a credit union;

Related Provisions: 132.2(2) — Definition of "share" for mutual fund rollover rules; 142.2(1)"mark-to-market property"(a), 142.5 — Mark-to-market rules for financial institutions.

History: "Share" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), applicable after 1988. "Share" formerly read:

> "share" means a share or fraction thereof of the capital stock of a corporation;

Pre-RSC History: "Share" substituted by 1974-75-76, c. 26, subsec. 125(8), applicable after 1971.

Interpretation Bulletins: IT-116R3: Rights to buy additional shares.

Advance Tax Rulings: ATR-26: Share exchange.

"shareholder" includes a member or other person entitled to receive payment of a dividend;

Interpretation Bulletins: IT-116R3: Rights to buy additional shares; IT-432R2: Benefits conferred on shareholders.

"share-purchase tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.2(6);

"short-term preferred share" of a corporation at any particular time means a share, other than a grandfathered share, of the capital stock of the corporation issued after December 15, 1987 that at that particular time

(a) is a share where, under the terms and conditions of the share, any agreement relating to the share or any modification of those terms and conditions or that agreement, the corporation or a specified person in relation to the corporation is or may, at any time within 5 years from the date of its issue, be required to redeem, acquire or cancel, in whole or in part, the share (unless the requirement to redeem, acquire or cancel the share arises only in the event of the death of the shareholder or by reason only of a right to convert or exchange the share) or to reduce the paid-up capital of the share, and for the purposes of this paragraph

(i) an agreement in respect of a share of the capital stock of a corporation shall be read without reference to that part of the agreement under which a person agrees to acquire the share for an amount

(A) in the case of a share (other than a share that would, but for that part of the agreement, be a taxable preferred share) the agreement in respect of which provides that the share is to be acquired within 60 days after the day on which the agreement was entered into, that does not exceed the greater of the fair market value of the share at the time the agreement was entered into, determined without reference to the agreement, and the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or

(B) that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or for an amount determined by reference to the assets or earnings of the corporation where that determination may reasonably be considered to be used to determine an amount that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, and

(ii) "shareholder" includes a shareholder of a shareholder, or

(b) is a share that is convertible or exchangeable at any time within 5 years from the date of its issue, unless

(i) it is convertible into or exchangeable for

(A) another share of the corporation or a corporation related to the corporation that, if issued, would not be a short-term preferred share,

(B) a right or warrant that, if exercised, would allow the person exercising it to acquire only a share of the corporation or a corporation related to the corporation that, if issued, would not be a short-term preferred share, or

(C) both a share described in clause (A) and a right or warrant described in clause (B), and

(ii) all the consideration receivable for the share on the conversion or exchange is the share described in clause (i)(A) or the right or warrant described in clause (i)(B) or both, as the case may be, and for the purposes of this subparagraph, where a taxpayer may become entitled on the conversion or exchange of a share to receive any particular consideration (other than consideration described in any of clauses (i)(A) to (C)) in lieu of a fraction of a share, the particular consideration shall be deemed not to be consideration unless it may reasonably be considered that the particular consideration was receivable as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1 or VI.1,

and, for the purposes of this definition,

(c) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the terms or conditions of a share of the capital stock of a corporation that are relevant to any matter referred to in any of paragraphs (a), (b), (f) and (h) are established or modified, or any agreement in respect of any such matter to which the corporation or a specified person in relation to the corporation is a party, is changed or entered into, the share shall be deemed after that particular time to have been issued at that particular time,

(d) where at any particular time after December 15, 1987 a particular share of the capital stock of a corporation has been issued or its terms or conditions have been modified or an agreement in respect of the share is modified or entered into, and it may reasonably be considered, having regard to all the circumstances, including the rate of interest on any debt obligation or

the dividend provided on any short-term preferred share, that

(i) but for the existence at any time of such a debt obligation or such a short-term preferred share, the particular share would not have been issued or its terms or conditions modified or the agreement in respect of the share would not have been modified or entered into, and

(ii) one of the main purposes for the issue of the particular share or the modification of its terms or conditions or the modification or entering into the agreement in respect of the share was to avoid or limit the tax payable under subsection 191.1(1),

the particular share shall be deemed after that particular time to have been issued at that particular time and to be a short-term preferred share of the corporation,

(e) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the terms or conditions of a share of the capital stock of a corporation are modified or established or any agreement in respect of the share has been changed or entered into, and as a consequence thereof the corporation or a specified person in relation to the corporation may reasonably be expected to redeem, acquire or cancel (otherwise than by reason of the death of the shareholder or by reason only of a right to convert or exchange the share that would not cause the share to be a short-term preferred share by reason of paragraph (b)), in whole or in part, the share, or to reduce its paid-up capital, within 5 years from the particular time, the share shall be deemed to have been issued at that particular time and to be a short-term preferred share of the corporation after the particular time until the time that such reasonable expectation ceases to exist and, for the purposes of this paragraph,

(i) an agreement in respect of a share of the capital stock of a corporation shall be read without reference to that part of the agreement under which a person agrees to acquire the share for an amount

(A) in the case of a share (other than a share that would, but for that part of the agreement, be a taxable preferred share) the agreement in respect of which provides that the share is to be acquired within 60 days after the day on which the agreement was entered into, that does not exceed the greater of the fair market value of the share at the time the agreement was entered into, determined without reference to the agreement, and the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or

(B) that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or for an amount determined by reference to the assets or earnings of the corporation where that determination may reasonably be considered to be used to determine an amount that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, and

(ii) "shareholder" includes a shareholder of a shareholder,

(f) where a share of the capital stock of a corporation was issued after December 15, 1987 and at the time the share was issued the existence of the corporation was, or there was an arrangement under which it could be, limited to a period that was within 5 years from the date of its issue, the share shall be deemed to be a short-term preferred share of the corporation unless the share is a grandfathered share and the arrangement is a written arrangement entered into before December 16, 1987,

(g) where a share of the capital stock of a corporation is acquired at any time after December 15, 1987 by the corporation or a specified person in relation to the corporation and the share is at any particular time after that time acquired by a person with whom the corporation or a specified person in relation to the corporation was dealing at arm's length if this Act were read without reference to paragraph 251(5)(b), from the corporation or a specified person in relation to the corporation, the share shall be deemed after that particular time to have been issued at that particular time,

(h) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, as a result of the terms or conditions of a share of the capital stock of a corporation or any agreement entered into by the corporation or a specified person in relation to the corporation, any person (other than the corporation or an individual other than a trust) was obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking within 5 years after the day on which the share was issued (in this paragraph referred to as a "guarantee agreement") including any guarantee, covenant or agreement to purchase or repurchase the share, and including the lending of funds or the placing of amounts on deposit with, or on behalf of the shareholder or a specified person in relation to the shareholder given

(i) to ensure that any loss that the shareholder or a specified person in relation to the shareholder may sustain, by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, and

(ii) as part of a transaction or event or series of transactions or events that included the issuance of the share,

the share shall be deemed after that particular time to have been issued at the particular time and to be at and immediately after the particular time a short-term preferred share, and for the purposes of this paragraph, where a guarantee agreement in respect of a share is given at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the share shall be deemed to have been issued at the particular time and the guarantee agreement shall be deemed to have been given as part of a series of transactions that included the issuance of the share,

(i) a share that is, at the time a dividend is paid thereon, a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph or a prescribed share shall, notwithstanding any other provision of this definition, be deemed not to be a short-term preferred share at that time, and

(j) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in this subsection;

Related Provisions: 87(4.2) — Amalgamation; 248(10) — Series of transactions.

Pre-RSC History: "Short-term preferred share" substituted by 1988, c. 55, subsec. 188(1), applicable with respect to shares issued after December 15, 1987 and shares deemed by the Act (as amended) to have been issued after that date. "Short-term preferred share" formerly read:

> "short-term preferred share" of a corporation (in this definition referred to as the "issuing corporation") means
>
> (a) a share of the capital stock of the issuing corporation issued after November 12, 1981 if
>
> (i) the issuing corporation, any person related to the issuing corporation or any partnership or trust of which the issuing corporation or a person related thereto is a member or beneficiary (each of which is referred to in this definition as "a member of the related issuing group") is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital at any time within 18 months from the date of its issue, and
>
> (ii) the share was issued in order to obtain funds for a member of the related issuing group and the share may reasonably be regarded as having been issued by a member of the related issuing group in lieu of commercial paper or a similar short-term debt instrument that would otherwise have been issued or sold on the money market by a member of the related issuing group had a member of the related issuing group borrowed the funds, or
>
> (b) a share described in subparagraph (a)(ii) that is convertible, directly or indirectly, within 18 months from the date of its issue into debt or into a share that, if issued, would be a share described in subparagraph (a)(i),
>
> but does not include a share of the capital stock of a corporation
>
> (c) that was issued after November 12, 1981 and before 1983 pursuant to an agreement in writing to do so made before November 13, 1981,
>
> (d) that is a share described in paragraph (e) of the definition "term preferred share" in this subsection, or
>
> (e) that is a prescribed share
>
> and for the purposes of this definition,
>
> (f) where, at any particular time after November 12, 1981, in the case of a share issued before November 13, 1981 or a share described in paragraph (c), its redemption date was changed or the terms or conditions relating to
>
> (i) its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital by the issuing corporation, or
>
> (ii) its acquisition by a member of the related issuing group
>
> were changed, the share shall, for the purpose of determining at a subsequent time whether it is a short-term preferred share, be deemed to have been issued at the particular time,
>
> (g) where a person has an interest in a trust, whether directly or indirectly, through an interest in any other trust or in any other manner whatever, the person shall be deemed to be a beneficiary of the trust,
>
> (h) where a particular share of the capital stock of a corporation has been issued or its terms or conditions have been modified and it may reasonably be considered, having regard to all circumstances (including the rate of interest on any debt or the dividend provided on any short-term preferred share), that
>
> (i) but for the existence at any time of the debt or the short-term preferred share, the particular share would not have been issued or its terms or conditions modified, and
>
> (ii) one of the main purposes for the issue of the particular share or the modification of its terms or conditions was to avoid or limit the application of subsection 112(2.3),
>
> the particular share shall, after December 31, 1982, be deemed to be a short-term preferred share of the corporation,
>
> (i) where a share is substituted or exchanged for a short-term preferred share, the share shall be deemed to be a short-term preferred share,
>
> (j) where the terms or conditions of a share of the capital stock of the issuing corporation are modified or established after June 28, 1982 and as a consequence thereof any member of the related issuing group may reasonably be expected to redeem, acquire or cancel, in whole or in part, the share, or to reduce its paid-up capital, within 18 months from the date of its issue, the share shall be deemed as from the date of the modification or as from the date of the establishment, as the case may be, to be a share described in subparagraph (a)(i),
>
> (k) where a share of the capital stock of the issuing corporation was issued after June 28, 1982 and at the time the share was issued the existence of the issuing corporation was, or there was an arrangement under which it could be, limited to a period that was within 18 months from the date of its issue, the share shall be deemed to be a share described in subparagraph (a)(i), and
>
> (l) where a share is issued after November 12, 1981 by a member of the related issuing group to another member of that related issuing group and the share is subsequently sold by any member of the related issuing group to a person with whom such member was, but for paragraph 251(5)(b), dealing at arm's length, the share shall be deemed to have been issued at the time the share was sold by such member;

"Short-term preferred share" enacted by 1980-81-82-83, c. 140, subsec. 128(11), applicable after November 12, 1981.

Regulations: 6201(8) (prescribed shares).

Advance Tax Rulings: ATR-46: Financial difficulty.

"small business bond" has the meaning assigned by section 15.2;

Pre-RSC History: "Small business bond" enacted by 1980-81-82-83, c. 140, subsec. 128(12), applicable after December 11, 1979.

"small business corporation", at any particular time, means, subject to subsection 110.6(15), a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets that are

(a) used principally in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it,

(b) shares of the capital stock or indebtedness of one or more small business corporations that are at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that the small business corporation is at that time a "payer corporation" within the meaning of that subsection), or

(c) assets described in paragraphs (a) and (b),

including, for the purpose of paragraph 39(1)(c), a corporation that was at any time in the 12 months preceding that time a small business corporation, and, for the purpose of this definition, the fair market value of a net income stabilization account shall be deemed to be nil;

Related Provisions: 110.6(2.1) — Capital gains deduction — qualified small business corporation shares; 110.6(14)(b) — Interpretation rule for capital gains exemption purposes; 110.6(15) — Value of assets of corporation; 136(1) — Whether cooperative corporation can be a small business corporation; 137(7) — Whether credit union can be a small business corporation.

History: That portion of "small business corporation" following para. (c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(5), applicable to 1991 *et seq.* That portion formerly read:

> and, for the purposes of paragraph 39(1)(c), includes a corporation that was at any time in the 12 months preceding that time a small business corporation;

All that portion of "small business corporation" preceding para. (c) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 192(10), (11), paras. (a), (b) applicable to 1988 *et seq.*, and that portion preceding para. (a) applicable after June 17, 1987, except before September 14, 1988 it shall be read as follows:

> "small business corporation" at any particular time means, subject to subsection 110.6(15), a particular corporation that is a Canadian-controlled private corporation all or substantially all of the assets of which were at that time

That portion of the definition formerly read:

"small business corporation" at any particular time means a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time was attributable to assets that were

(a) used in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it,

(b) shares of the capital stock of one or more small business corporations that were at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that the small business corporation was at that time a "payer corporation" within the meaning of that subsection) or a bond, debenture, bill, note, mortgage or similar obligation issued by such a connected corporation, or

Pre-RSC History: That portion of "small business corporation" preceding para. (a) substituted by 1988, c. 55, subsec. 188(6). That portion formerly read:

"small business corporation" at any particular time means a particular corporation that is a Canadian-controlled private corporation all or substantially all of the assets of which were at that time

"Small business corporation" amended by 1986, c. 55, subsec. 78(1), to substitute, in para. (a), "primarily in Canada" for "in Canada" and "related to it" for "controlled by it", and to add all that portion following para. (c), applicable after 1985.

"Small business corporation" enacted by 1986, c. 6, subsec. 126(4), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-268R3: *Inter vivos* transfer of farm property to child; IT-484R2: Business investment losses.

Advance Tax Rulings: ATR-53: Purification of a small business corporation; ATR-55: Amalgamation followed by sale of shares.

"small business development bond" has the meaning assigned by section 15.1;

Pre-RSC History: "Small business development bond" enacted by 1980-81-82-83, c. 140, subsec. 128(12), applicable after December 11, 1979.

"specified employee" of a person means an employee of the person who is a specified shareholder of the person or who does not deal at arm's length with the person;

Related Provisions: 15(2.7) — Meaning of specified employee of a partnership for purpose of shareholder appropriations and loans.

History: The definition "specified employee" added to subsec. 248(1) by 1994, c. 8, s. 32, applicable to taxation years ending after December 2, 1992.

"specified financial institution", at any time, means

(a) a bank,

(b) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee,

(c) a credit union,

(d) an insurance corporation,

(e) a corporation whose principal business is the lending of money to persons with whom the corporation is dealing at arm's length or the purchasing of debt obligations issued by such persons or a combination thereof,

(e.1) a corporation described in paragraph (g) of the definition "financial institution" in subsection 181(1),

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e.1) and, for the purpose of this paragraph, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length, or

(g) a corporation that is related to a particular corporation described in any of paragraphs (a) to (f), other than a particular corporation described in paragraph (e) or (e.1) the principal business of which is the factoring of trade accounts receivable that

(i) the particular corporation acquired from a related person,

(ii) arose in the course of an active business carried on by a person (in this paragraph referred to as the "business entity") related at that time to the particular corporation, and

(iii) at no particular time before that time were held by a person other than a person who was related to the business entity;

Related Provisions: 248(14) — Related corporations; 256(6), (6.1) — Meaning of "controlled".

History: The opening words of the definition "specified financial institution" in subsec. 248(1) and paras. (f) and (g) of the definition amended, and para. (e.1) added, by 1999, c. 22, subsecs. 80(5), (6), applicable for the purpose of determining the status of a particular corporation as a specified financial institution, for all purposes of the Act, for taxation years of the particular corporation that begin after 1998. The opening words and paras. (e) and (f) formerly read:

"specified financial institution" means

. . . . .

(f) a corporation that is controlled by one or more corporations described in any of paragraphs (a) to (e) and for the purposes of this paragraph, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length, or

(g) a corporation related to a corporation described in any of paragraphs (a) to (f);

Pre-RSC History: Para. (a) of "specified financial institution" substituted by 1992, c. 1, Sch. V, subsec. 21(3), applicable from February 28, 1992. That para. formerly read:

(a) a bank to which the *Bank Act* or the *Quebec Savings Banks Act* applies,

"Specified financial institution" enacted by 1988, c. 55, subsec. 188(14), applicable after June 18, 1987, except that in the application of the definition "specified financial institution" to paragraph 112(2.2)(f) as it read on May 22, 1985, paragraph (e) of the definition shall be read as follows:

(e) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof,

Regulations: 8604 (prescribed financial institutions).

"specified future tax consequence" for a taxation year means

(a) the consequence of the deduction or exclusion of an amount referred to in paragraph 161(7)(a),

(b) the consequence of a reduction under subsection 66(12.73) of a particular amount purported to be renounced by a corporation after the beginning of the year to a person or partnership under subsection 66(12.6) or (12.601) because of the application of subsection 66(12.66), determined as if the purported renunciation would, but for subsection 66(12.73), have been effective only where

(i) the purported renunciation occurred in January, February or March of a calendar year,

(ii) the effective date of the purported renunciation was the last day of the preceding calendar year,

(iii) the corporation agreed in that preceding calendar year to issue a flow-though share to the person or partnership,

(iv) the particular amount does not exceed the amount, if any, by which the consideration for which the share is to be issued exceeds the total of all other amounts purported by the corporation to have been renounced under subsection 66(12.6) or (12.601) in respect of that consideration,

(v) paragraphs 66(12.66)(c) and (d) are satisfied with respect to the purported renunciation, and

(vi) the form prescribed for the purpose of subsection 66(12.7) in respect of the purported renunciation is filed with the Minister before May of the calendar year; and

(c) the consequence of an adjustment or a reduction described in subsection 161(6.1);

Related Provisions: 127(10.2)A — Effect of specified future tax consequence (SFTC) on investment tax credits; 156.1(1.1), (1.2), 157(2)(c), (d), 157(2.1)(a), 161(4)(a), 161(4.01)(a), 161(4.1)(a) — Effect of SFTC on instalment obligations and instalment interest; 161(6.2) — Flow-through share renunciations and one-year look-back — effect of SFTC on interest; 162(11) — Effect of SFTC on penalties.

History: Para. (c) added to the definition "specified future tax consequence" in subsec. 248(1) by 1999, c. 22, subsec. 80(7), applicable to 1998 *et seq.*

The definition "specified future tax consequence" added to subsec. 248(1) by 1997, c. 25, subsec. 71(3), applicable to 1996 *et seq.*; and, for greater certainty, for taxation years that ended before 1996, there are deemed to be no specified future tax consequences.

"specified individual" has the meaning assigned by subsection 120.4(1);

History: The definition "specified individual" added to subsec. 248(1) by 2000, c. 19, subsec. 67(1), applicable to 2000 *et seq.*

"specified investment business" has the meaning assigned by subsection 125(7);

Pre-RSC History: "Specified investment business" enacted by 1988, c. 55, subsec. 188(14), applicable to 1988 *et seq.*

"specified member" of a partnership in a fiscal period or taxation year of the partnership, as the case may be, means

(a) any member of the partnership who is a limited partner (within the meaning assigned by subsection 96(2.4)) of the partnership at any time in the period or year, and

(b) any member of the partnership, other than a member who is

(i) actively engaged in those activities of the partnership business that are other than the financing of the partnership business, or

(ii) carrying on a similar business as that carried on by the partnership in its taxation year, otherwise than as a member of a partnership,

on a regular, continuous and substantial basis throughout that part of the period or year during which the business of the partnership is ordinarily carried on and during which the member is a member of the partnership;

Related Provisions: 40(3.131), 127.52(2.1) — Anti-avoidance.

Pre-RSC History: "Specified member" enacted by 1988, c. 55, subsec. 188(14), applicable after December 15, 1987.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

"specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and, for the purposes of this definition,

(a) a taxpayer shall be deemed to own each share of the capital stock of a corporation owned at that time by a person with whom the taxpayer does not deal at arm's length,

(b) each beneficiary of a trust shall be deemed to own that proportion of all such shares owned by the trust at that time that the fair market value at that time of the beneficial interest of the beneficiary in the trust is of the fair market value at that time of all beneficial interests in the trust,

(c) each member of a partnership shall be deemed to own that proportion of all the shares of any class of the capital stock of a corporation that are property of the partnership at that time that the fair market value at that time of the member's interest in the partnership is of the fair market value at that time of the interests of all members in the partnership,

(d) an individual who performs services on behalf of a corporation that would be carrying on a personal services business if the individual or any person related to the individual were at that time a specified shareholder of the corporation shall be deemed to be a specified shareholder of the corporation at that time if the individual, or any person or partnership with whom the individual does not deal at arm's length, is, or by virtue of any arrangement, may become, entitled, directly or indirectly, to not less than 10% of the assets or the shares of any class of the capital stock of the corporation or any corporation related thereto, and

(e) notwithstanding paragraph (b), where a beneficiary's share of the income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, the beneficiary shall be deemed to own each share of the capital stock of a corporation owned at that time by the trust;

Related Provisions: 18(5), (5.1) — Alternate definition for thin capitalization rules; 55(3.2)(a), 55(3.3) — Extended meanings for capital gains strip rules; 88(1)(c.2)(iii) — Restriction on definition for windups.

History: Para. (e) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(6), applicable after 1991.

Pre-RSC History: "Specified shareholder" enacted by 1984, c. 45, subsec. 92(4), applicable to 1985 *et seq.*

Interpretation Bulletins: IT-73R5: The small business deduction; IT-88R2: Stock dividends; IT-153R3: Land developers — subdivision and development costs and carrying charges on land; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-432R2: Benefits conferred on shareholders.

Advance Tax Rulings: ATR-36: Estate freeze.

"split income" has the meaning assigned by subsection 120.4(1);

History: The definition "split income" added to subsec. 248(1) by 2000, c. 19, subsec. 67(1), applicable to 2000 *et seq.*

"stock dividend" includes any dividend (determined without reference to the definition "dividend" in this subsection) paid by a corporation to the extent that it is paid by the issuance of shares of any class of the capital stock of the corporation;

Related Provisions: 15(1.1) — Where stock dividend designed to confers benefit on shareholder; 52(3) — Cost of stock dividend; 95(7) — Stock dividend received from foreign affiliate; 248(1) — "Amount" (of stock dividend); 248(5)(b) — Stock dividend is deemed to be substituted property.

History: "Stock dividend" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(1), to add the phrase in parentheses.

Pre-RSC History: "Stock dividend" enacted by 1986, c. 6, subsec. 126(4), applicable with respect to dividends paid after May 23, 1985, other than dividends declared on or before that day.

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada; IT-88R2: Stock dividends.

Information Circulars: 88-2 para. 26: General anti-avoidance rule — section 245 of the *Income Tax Act*.

"subsidiary controlled corporation" means a corporation more than 50% of the issued share capital of which (having full voting rights under all circumstances) belongs to the corporation to which it is subsidiary;

Pre-RSC History: *The definition "subsidiary controlled corporation" was formerly included under the definition "subsidiary wholly-owned corporation".*

"subsidiary wholly-owned corporation" means a corporation all the issued share capital of which (except directors' qualifying shares) belongs to the corporation to which it is subsidiary;

Related Provisions: 87(1.4) — Definition of "subsidiary wholly-owned corporation"; 87(2.11) — Losses, etc., on amalgamation with subsidiary wholly-owned corporation.

Interpretation Bulletins: IT-98R2: Investment corporations.

"superannuation or pension benefit" includes any amount received out of or under a superannuation or pension fund or plan and, without restricting the generality of the foregoing, includes any payment made to a beneficiary under the fund or plan or to an employer or former employer of the beneficiary thereunder

(a) in accordance with the terms of the fund or plan,

(b) resulting from an amendment to or modification of the fund or plan, or

(c) resulting from the termination of the fund or plan;

Related Provisions: 6(1)(g) — Employee benefit plan benefits; 56(1)(a)(i) — Superannuation or pension benefit included in income.

Interpretation Bulletins: IT-499R: Superannuation or pension benefits; IT-508R: Death benefits.

"supplementary unemployment benefit plan" has the meaning assigned by subsection 145(1);

"tar sands" means bituminous sands or oil shales extracted, otherwise than by a well, from a mineral resource, but, for the purpose of applying sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) in respect of property acquired after March 6, 1996, includes material extracted by a well from a deposit of bituminous sands or oil shales;

History: The definition "tar sands" in subsec. 248(1) amended by 1997, c. 25, subsec. 71(1), applicable after March 6, 1996. It formerly read:

> "tar sands" means bituminous sands, oil sands or oil shales extracted, otherwise than by a well, from a mineral resource;

Pre-RSC History: "Tar sands" enacted by 1985, c. 45, subsec. 122(2), applicable to 1983 *et seq.*

"tax shelter" has the meaning assigned by subsection 237.1(1);

Pre-RSC History: "Tax shelter" enacted by 1988, c. 55, subsec. 188(14).

"tax treaty" with a country at any time means a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of the country, which has the force of law in Canada at that time;

Related Provisions: 108(1)"exempt property" — Property exempted by tax treaty.

History: The definition "tax treaty" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to 1998 *et seq.*

"taxable Canadian corporation" has the meaning assigned by subsection 89(1);

"taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of sections 2, 128.1 and 150, the expression "taxable Canadian property" includes

(a) a Canadian resource property,

(b) a timber resource property,

(c) an income interest in a trust resident in Canada,

(d) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a), and

(e) a life insurance policy in Canada;

Proposed Amendment — 248(1)"taxable Canadian property"

"taxable Canadian property" of a taxpayer at any time in a taxation year means a property of the taxpayer that is

(a) real property situated in Canada,

(b) property used or held by the taxpayer in, eligible capital property in respect of, or property described in an inventory of, a business carried on in Canada, other than

(i) property used in carrying on an insurance business, and

(ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the taxpayer is resident does not impose tax on gains of persons resident in Canada from dispositions of such property,

(c) if the taxpayer is an insurer, its designated insurance property for the year,

(d) a share of the capital stock of a corporation resident in Canada (other than a non-resident-owned investment corporation if, on the first day of the year, the corporation owns neither taxable Canadian property nor property referred to in any of paragraphs (m) to (o), or a mutual fund corporation) that is not listed on a prescribed stock exchange,

(e) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the corporation each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not the property exists,

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the share was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

(B) Canadian resource properties, and

(C) timber resource properties,

(f) a share that is listed on a prescribed stock exchange and that would be described in paragraph (d) or (e) if those paragraphs were read without reference to the words "that is not listed on a prescribed stock exchange", or a share of the capital stock of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer, persons with whom the taxpayer did not deal at arm's length, or the taxpayer together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(g) an interest in a partnership if, at any particular time during the 60-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(i) a taxable Canadian property,

(ii) a Canadian resource property,

(iii) a timber resource property,

(iv) an income interest in a trust resident in Canada, or

(v) an interest in or option in respect of a property described in any of subparagraphs (ii) to (iv), whether or not that property exists,

was greater than 50% of the fair market value of all of its properties,

(h) a capital interest in a trust (other than a unit trust) resident in Canada,

(i) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(j) a unit of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the issued units of the trust belonged to the taxpayer, to persons with whom the taxpayer did not deal at arm's length, or to the taxpayer and persons with whom the taxpayer did not deal at arm's length,

(k) an interest in a non-resident trust if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the trust each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not that property exists

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the interest was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

(B) Canadian resource properties, and

(C) timber resource properties, or

(l) an interest in or option in respect of a property described in any of paragraphs (a) to (k), whether or not that property exists,

and, for the purposes of section 2, subsection 107(2.001) and sections 128.1 and 150, and for the purpose of applying paragraphs 85(1)(i) and 97(2)(c) to a disposition by a non-resident person, includes

(m) a Canadian resource property,

(n) a timber resource property,

(o) an income interest in a trust resident in Canada,

(p) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a), and

(q) a life insurance policy in Canada;

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(3), will amend the definition "taxable Canadian property" in subsec. 248(1) to read as above, applicable after October 1, 1996 except that, in its application before December 24, 1998, the portion of para. (b) before subpara. (i) shall be read as follows:

(b) capital property used by the taxpayer in carrying on a business in Canada, other than

Technical Notes: Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

One of the key concepts in the Act is the concept of "taxable Canadian property." The term is used for a variety of purposes, mostly but not exclusively to do with the taxation of non-residents and migrants. The scope and functions of the term are, however, less than fully clear, in part because the Act currently includes two definitions. The main definition, in subsection 115(1) of the Act, appears to apply for all purposes of the Act. A second definition, however, is provided in subsection 248(1) of the Act. This second definition both confirms the meaning assigned in subsection 115(1) and provides an extended meaning for certain limited purposes.

To clarify the meaning of "taxable Canadian property" and to simplify the Act, the definition in subsection 248(1) of the Act is made the only one, and the substance of the existing subsection 115(1) definition is incorporated into it. In addition, certain changes are made to the definition to reflect its policy basis and to harmonize its components.

Under this new single definition, taxable Canadian property of a taxpayer at any time in a taxation year includes property of the taxpayer that is:

(a) real property in Canada,

(b) property used or held by the taxpayer in carrying on a business in Canada (including eligible capital property), or inventory of such a business, other than

(i) property used in carrying on an insurance business, and

(ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and related personal property, if the country in which the taxpayer is resident does not tax the gains of persons resident in Canada from dispositions of such property,

(c) if the taxpayer is an insurer, its designated insurance property for the year,

(d) unlisted shares of Canadian-resident corporations (other than a non-resident-owned investment corporation, unless on the first day of the year the corporation owns taxable Canadian property, and other than a mutual fund corporation),

(e) unlisted shares of non-resident corporations if, at any time during the 60-month (currently 12-month) period that ends at that time, the value of the company's Canadian real and resource properties made up more than half the fair market value of all of its properties, and more than half of the fair market value of the share was derived directly or indirectly from such properties,

(f) listed shares that would be described in paragraph (d) or (e) if those paragraphs included listed shares, or shares of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer and non-arm's length per-

sons owned 25% or more of the issued shares of any class of the capital stock of the corporation,

(g) certain partnership interests, if at any time in the 60-month (currently 12-month) period that ends at the time, most of the partnership's value is attributable to Canadian property,

(h) capital interests in trusts (other than unit trusts) that are resident in Canada,

(i) units of unit trusts (other than mutual fund trusts) that are resident in Canada,

(j) units of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the units of the trust belonged to the taxpayer and non-arm's length persons,

(k) interests in a non-resident trust if, at any particular time during the 60-month (currently 12-month) period that ends at that time, the trust met a test comparable to the one described in respect of a non-resident corporation in (e) above, and

(l) interests in, and options in respect of, property described in any of paragraphs (a) to (k), whether or not the property exists.

Two additional points should be noted with respect to this new definition. First, in addition to listing the above types of property, the new definition preserves in its paragraphs (m) to (q) the extended meaning of "taxable Canadian property." That extended meaning now applies for the purposes of section 2, subsection 107(2.001), sections 128.1 and 150 of the Act, and for the purpose of applying paragraphs 85(1)(i) and 97(2)(c) of the Act to a disposition by a non-resident person. For these purposes, "taxable Canadian property" includes Canadian resource properties, timber resource properties, income interests in trusts resident in Canada, rights to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a) of the Act, and life insurance policies in Canada. Second, the new definition does not include, as the existing one does, property that is not otherwise defined to be taxable Canadian property but that rather is deemed by another provision of the Act to be so. That distinction remains relevant, but the rewording of the definition "excluded property" in subsection 116(6) of the Act makes it unnecessary here.

The amended definition of "taxable Canadian property" generally applies after October 1, 1996. Before December 24, 1998, however, the portion of paragraph (b) of the definition before subparagraph (b)(i) is to be read as though it were confined to capital property used in carrying on a business in Canada.

Notice of Ways and Means Motion (re taxpayer emigration), October 2, 1996:

Taxable Canadian property

(1) That it be clarified that property may be taxable Canadian property of any taxpayer, whether the taxpayer is a Canadian resident or a non-resident.

Classification of property

(2) That taxable Canadian property include at any time after October 1, 1996 a property that is

(a) a share of the capital stock of a non-resident corporation,

(b) an interest in a partnership, or

(c) an interest in a non-resident trust

that would be "taxable Canadian property" under paragraph 115(1)(b) of the Act if the Act were amended in accordance with the Notice of Ways and Means Motion to amend the *Income Tax Act* and other Acts tabled in the House of Commons on June 20, 1996, and if the references in subparagraphs 115(1)(b)(v), (vii) and (xi) of the Act, as proposed to be amended in that Motion, to "12-month period" were read as references to "5-year period".

Trust distributions

(6) That

(b) any property that was taxable Canadian property of a trust and that was distributed by the trust to a beneficiary on or before October 1, 1996 be deemed, for greater certainty, to be taxable Canadian property of the beneficiary after that date.

[For resolutions (3)–(6) in the same Notice of Ways and Means Motion, see under 128.1(4) — ed.]

Technical Background: [See under 128.1(4) — ed.]

Proposed Amendment — 248(1)"taxable Canadian property"

Letter from Department of Finance, February 12, 1998:

Dear [xxx]

This is in response to your letter of February 11, 1998 to Davine Roach of the Department regarding a proposed series of transactions under which a public corporation (Opco) in the course of a butterfly reorganization spins-off certain of its property to a new corporation (Newco).

Our understanding of the facts of the proposed transaction is that each common share currently held by an Opco shareholder will be exchanged for a new common share and a special share ("a reorganization share") of Opco. This exchange will be governed by section 86 of the Act. The reorganization shares will not be listed on a prescribed stock exchange. Newco will acquire all the reorganization shares of Opco from the Opco shareholders in exchange for common shares of Opco from the Opco shareholders in exchange for common shares of Newco (the Newco shares). This exchange will be governed by section 85.1 of the Act unless a shareholder elects under subsection 85(1) of the Act. The Newco shares will be listed on a prescribed stock exchange. The reorganization shares will be redeemed by Opco as part of the butterfly reorganization.

Because of the proposed amendment to subparagraph 115(1)(b)(iv) of the Act contained in Bill C-28, the reorganization shares held by a non-resident shareholder will be considered to be taxable Canadian property for the purposes of the Act. [See now 248(1)"taxable Canadian property"(d) — ed.] Under the provisions of sections 85 and 85.1 of the Act, the taxable Canadian property status of the reorganization shares will also cause the Newco shares acquired by the non-resident shareholder in exchange for the non-resident's reorganization shares to be taxable Canadian property, of the non-resident [see 85.1(1)(a) — ed.] even though the Newco shares will be listed on a prescribed stock exchange. In addition, the reorganization shares will not be considered to be excluded property for the purpose of subsection 116(3) of the Act because of proposed amendments to paragraph 116(6)(b) of the Act.

In these circumstances, we agree that the Newco shares held by a non-resident shareholder, which were acquired by the non-resident in exchange for the reorganization shares of Opco in the course of the butterfly reorganization, should not be considered to be taxable Canadian property of the non-resident for the purposes of the Act. Consequently, we are prepared to recommend to the Minister of Finance that the income tax provisions be amended to ensure that any such reorganization shares of Opco held by a non-resident shareholder will not be considered to be taxable Canadian property of the non-resident for the purposes of the Act. We would recommend that such an amendment be effective for such reorganization shares issued by a public corporation after April 26, 1995 where the shares were issued by the corporation as part of the series of transactions or events that included a distribution of property by the corporation in the course of a butterfly reorganization. If the recommendation is acted upon, I would anticipate that such an amendment would be included in a future technical bill.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Letter from Department of Finance, September 30, 1998:

Dear [xxx]

I am writing in reply to your letter of September 17, 1998, to Davine Roach regarding a proposed series of transactions by which your client ("DCo"), in the course of a butterfly reorgani-

zation, transfers certain of its businesses to a new corporation ("TCo").

Our understanding of the facts of the proposed transaction is that the common shares currently held by each DCo shareholder will be exchanged for new common shares and special preferred shares (the "Butterfly Shares") of DCo. The Butterfly Shares will not be listed on a stock exchange prescribed in the Income Tax Regulations (a "prescribed stock exchange"). TCo will acquire all the Butterfly Shares of DCo from the DCo shareholders in exchange for common shares of TCo (the TCo Shares). The TCo Shares will be listed on a prescribed stock exchange. The Butterfly Shares will be redeemed by DCo as part of the butterfly reorganization.

Because of subparagraph 115(1)(b)(iv) of the *Income Tax Act* (the "Act"), the Butterfly Shares will be considered to be taxable Canadian property for the purposes of the Act. Under the provisions of sections 85 and 85.1 of the Act, the taxable Canadian property status of the Butterfly Shares will also cause the TCo Shares acquired in exchange for a shareholder's Butterfly Shares to be taxable Canadian property of the shareholder even though the TCo Shares will be listed on a prescribed stock exchange. In addition, the Butterfly Shares will not be considered to be excluded property for the purpose of subsection 116(3) of the Act because of paragraph 116(6)(b) of the Act.

In these circumstances, we agree that the TCo Shares held by a shareholder, which were acquired by the shareholder in exchange for the Butterfly Shares of DCo in the course of the butterfly reorganization, should not be considered to be taxable Canadian property of the shareholder for the purposes of the Act. Consequently, we will recommend to the Minister of Finance that amendments to the Act be introduced to ensure that any such Butterfly Shares of DCo held by a shareholder will not be considered to be taxable Canadian property of the shareholder for the purposes of the Act. We will recommend that such an amendment be effective for such Butterfly Shares issued by a public corporation after April 26, 1995 where the shares were issued by the corporation as part of the series of transactions or events that included a distribution of property by the corporation in the course of a butterfly reorganization. If the recommendation is acted upon, I would anticipate that such an amendment would be included in the government's next income tax technical bill.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division

Related Provisions: 87(10) — New share issued on amalgamation of public corporation deemed to be listed on prescribed stock exchange; 107(2)(d.1) — TCP status retained on rollout of trust property to beneficiary; 219(1.1) — Restricted definition for branch tax purposes. See also Related Provisions annotation to 115(1).

History: The opening words of the definition "taxable Canadian property" in subsec. 248(1) amended by 1999, c. 22, subsec. 80(8), applicable to taxation years that begin after 1998. The opening words formerly read:

> "taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of sections 2 and 128.1, the expression "taxable Canadian property" includes

The opening words of the definition "taxable Canadian property" substituted by 1994, c. 21, subsec. 109(4), applicable after 1992 except that, where a corporation has elected in accordance with paragraph 111(4)(a) of 1994, c. 21 (see subsec. 250(5.1)), the amended definition applies to the corporation from the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction. The opening words of that definition formerly read:

> "taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of section 2, the expression "taxable Canadian property" includes

Para. (e) added to "taxable Canadian property" by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(12), applicable to dispositions occurring after July 13, 1990.

Pre-RSC History: Para. (a) of "taxable Canadian property" substituted by 1985, c. 45, subsec. 122(3), applicable to taxation years commencing after 1984. Para. (a) formerly read:

> (a) a Canadian resource property or any property that would have been a Canadian resource property if it had been acquired after 1971,

Para. (a) substituted by 1980-81-82-83, c. 48, subsec. 108(10).

"Taxable Canadian property" substituted by 1974-75-76, c. 26, subsec. 125(9), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-420R3: Non-residents — income earned in Canada.

Forms: T2 SCH 91: Information concerning claims for treaty-based exemptions.

"taxable capital gain" has the meaning assigned by section 38;

"taxable dividend" has the meaning assigned by subsection 89(1);

"taxable income" has the meaning assigned by subsection 2(2), except that in no case may a taxpayer's taxable income be less than nil;

Pre-RSC History: "Taxable income" substituted by 1987, c. 46, subsec. 69(1), to add "except that in no case may a taxpayer's taxable income be less than nil", applicable to 1985 *et seq.*

"taxable income earned in Canada" means a taxpayer's taxable income earned in Canada determined in accordance with Division D of Part I, except that in no case may a taxpayer's taxable income earned in Canada be less than nil;

Related Provisions: 2(3) — Tax on taxable income earned in Canada; 115(1) — Non-resident's taxable income earned in Canada.

Pre-RSC History: "Taxable income earned in Canada" substituted by 1987, c. 46, subsec. 69(1), to add "except that in no case may a taxpayer's taxable income earned in Canada be less than nil", applicable to 1985 *et seq.*

"taxable net gain" from dispositions of listed personal property has the meaning assigned by section 41;

"taxable preferred share" at any particular time means

(a) a share issued after December 15, 1987 that is a short-term preferred share at that particular time, or

(b) a share (other than a grandfathered share) of the capital stock of a corporation issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where, at that particular time by reason of the terms or conditions of the share or any agreement in respect of the share or its issue to which the corporation, or a specified person in relation to the corporation, is a party,

(i) it may reasonably be considered, having regard to all the circumstances, that the amount of the dividends that may be declared or paid on the share (in this definition referred to as the "dividend entitlement") is, by way of a formula or otherwise

(A) fixed,

(B) limited to a maximum, or

(C) established to be not less than a minimum (including any amount determined on a cumulative basis) and with respect to the dividend that may be declared or paid on the share there is a preference over any other dividend that may be declared or paid on any other share of the capital stock of the corporation,

(ii) it may reasonably be considered, having regard to all the circumstances, that the amount that the shareholder is entitled to receive in respect of the share on the dissolution, liquidation or winding-up

of the corporation or on the redemption, acquisition or cancellation of the share (unless the requirement to redeem, acquire or cancel the share arises only in the event of the death of the shareholder or by reason only of a right to convert or exchange the share) or on a reduction of the paid-up capital of the share by the corporation or by a specified person in relation to the corporation (in this definition referred to as the "liquidation entitlement") is, by way of a formula or otherwise

(A) fixed,

(B) limited to a maximum, or

(C) established to be not less than a minimum,

and, for the purposes of this subparagraph, "shareholder" includes a shareholder of a shareholder,

(iii) the share is convertible or exchangeable at any time, unless

(A) it is convertible into or exchangeable for

(I) another share of the corporation or a corporation related to the corporation that, if issued, would not be a taxable preferred share,

(II) a right or warrant that, if exercised, would allow the person exercising it to acquire only a share of the corporation or a corporation related to the corporation that, if issued, would not be a taxable preferred share, or

(III) both a share described in subclause (I) and a right or warrant described in subclause (II), and

(B) all the consideration receivable for the share on the conversion or exchange is the share described in subclause (A)(I) or the right or warrant described in subclause (A)(II) or both, as the case may be, and, for the purposes of this clause, where a taxpayer may become entitled on the conversion or exchange of a share to receive any particular consideration (other than consideration described in any of subclauses (A)(I) to (III)) in lieu of a fraction of a share, the particular consideration shall be deemed not to be consideration unless it may reasonably be considered that the particular consideration was receivable as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1 or VI.1, or

(iv) any person (other than the corporation) was, at or immediately before that particular time, obligated, either absolutely or contingently, and either immediately or in the future, to effect any undertaking (in this subparagraph referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share, and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the shareholder or any specified person in relation to the shareholder given

(A) to ensure that any loss that the shareholder or a specified person in relation to the shareholder may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(B) to ensure that the shareholder or a specified person in relation to the shareholder will derive earnings by reason of the ownership, holding or disposition of the share or any other property,

and the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share and, for the purposes of this paragraph, where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than pursuant to a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share shall be deemed to have been issued at the particular time and the guarantee agreement shall be deemed to have been given as part of a series of transactions that included the issuance of the share,

but does not include a share that is at the particular time a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph and, for the purposes of this definition,

(c) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to the dividend entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) this definition were read without reference to paragraph (f),

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection,

(d) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all the liquidation entitlement is determinable solely by reference to the liquidation entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) this definition were read without reference to paragraph (f),

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection,

(e) where at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than pursuant to a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the terms or conditions of a share of the capital stock of a corporation that are relevant to any matter referred to in any of subparagraphs (b)(i) to (iv) are established or modified or any agreement in respect of any such matter, to which the corporation or a specified person in relation to the corporation is a party, is changed or entered into, the share shall, for the pur-

pose of determining after the particular time whether it is a taxable preferred share, be deemed to have been issued at that particular time, unless

(i) the share is a share described in paragraph (b) of the definition "grandfathered share" in this subsection, and

(ii) the particular time is before December 16, 1987 and before the time at which the share is first issued,

(f) an agreement in respect of a share of the capital stock of a corporation shall be read without reference to that part of the agreement under which a person agrees to acquire the share for an amount

(i) in the case of a share the agreement in respect of which provides that the share is to be acquired within 60 days after the day on which the agreement was entered into, that does not exceed the greater of the fair market value of the share at the time the agreement was entered into, determined without reference to the agreement, and the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or

(ii) that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement, or for an amount determined by reference to the assets or earnings of the corporation where that determination may reasonably be considered to be used to determine an amount that does not exceed the fair market value of the share at the time of the acquisition, determined without reference to the agreement,

(g) where

(i) it may reasonably be considered that the dividends that may be declared or paid to a shareholder at any time on a share (other than a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph) of the capital stock of a corporation issued after December 15, 1987 or acquired after June 15, 1988 are derived primarily from dividends received on taxable preferred shares of the capital stock of another corporation, and

(ii) it may reasonably be considered that the share was issued or acquired as part of a transaction or event or series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1 or VI.1,

the share shall be deemed at that time to be a taxable preferred share, and

(h) "specified person", in relation to any particular person, means another person with whom the particular person does not deal at arm's length or any partnership or trust of which the particular person or the other person is a member or beneficiary, respectively;

Related Provisions: 87(4.2) — Amalgamation; 248(1) — "Grandfathered share"; 248(10) — Series of transactions; 248(13) — Interest in trust or partnerships.

Pre-RSC History: "Taxable preferred share" enacted by 1988, c. 55, subsec. 188(14), applicable with respect to shares issued after 8 p.m. EDST, June 18, 1987 and shares deemed by the Act (as amended) to have been issued after that date.

Regulations: 6201(7), (8) (prescribed shares).

I.T. Technical News: No. 7 (taxable preferred shares — stock dividend in lieu of cash dividend).

Advance Tax Rulings: ATR-46: Financial difficulty.

"taxable RFI share" at any particular time means a share of the capital stock of a corporation issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 or a grandfathered share of the capital stock of a corporation, where at the particular time under the terms or conditions of the share or any agreement in respect of the share,

(a) it may reasonably be considered, having regard to all the circumstances, that the amount of the dividends that may be declared or paid on the share (in this definition referred to as the "dividend entitlement") is, by way of a formula or otherwise

(i) fixed,

(ii) limited to a maximum, or

(iii) established to be not less than a minimum, or

(b) it may reasonably be considered, having regard to all the circumstances, that the amount that the shareholder is entitled to receive in respect of the share on the dissolution, liquidation or winding-up of the corporation (in this definition referred to as the "liquidation entitlement") is, by way of formula or otherwise

(i) fixed,

(ii) limited to a maximum, or

(iii) established to be not less than a minimum,

but does not include a share that is at the particular time a prescribed share, a term preferred share, a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph or a taxable preferred share and, for the purposes of this definition,

(c) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to the dividend entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) the definition "taxable preferred share" in this subsection were read without reference to paragraph (f) of that definition,

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection,

(d) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all the liquidation entitlement is determinable solely by reference to the liquidation entitlement of another share of the capital stock of the corporation or of another corporation that controls the corporation that would not be a taxable preferred share if

(i) the definition "taxable preferred share" in this subsection were read without reference to paragraph (f) of that definition,

(ii) the other share were issued after June 18, 1987, and

(iii) the other share were not a grandfathered share, a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection, and

(e) where

(i) it may reasonably be considered that the dividends that may be declared or paid to a shareholder at any time on a share (other than a prescribed share or a share described in paragraph (e) of the definition "term preferred share" in this subsection during the applicable time period referred to in that paragraph) of the capital stock of a corporation issued after December 15, 1987 or acquired after June 15, 1988 are derived primarily from dividends received on taxable RFI shares of the capital stock of another corporation, and

(ii) it may reasonably be considered that the share was issued or acquired as part of a transaction or event or series of transactions or events one of the main purposes of which was to avoid or limit the application of Part IV.1,

the share shall be deemed at that time to be a taxable RFI share;

Related Provisions: 87(4.2) — Amalgamation; 187.3(1) — Tax on dividends on taxable RFI share; 248(10) — Series of transactions.

Pre-RSC History: "Taxable RFI share" added by 1988, c. 55, subsec. 188(14), applicable after June 18, 1987.

Regulations: 6201(4), (5.1), (9)–(11) (prescribed shares).

Advance Tax Rulings: ATR-46: Financial difficulty.

"tax-paid undistributed surplus on hand" — [Repealed under former Act]

Pre-RSC History: "Tax-paid undistributed surplus on hand" repealed by 1977-78, c. 1, subsec. 98(6), applicable after December 31, 1978. "Tax-paid undistributed surplus on hand" formerly read;

"tax-paid undistributed surplus on hand" has the meaning assigned by subsection 89(1);

"taxpayer" includes any person whether or not liable to pay tax;

Related Provisions: 143.2(1) — "Taxpayer" includes partnership for tax shelter investment cost rules.

"term preferred share" of a corporation (in this definition referred to as the "issuing corporation") means a share of a class of the capital stock of the issuing corporation if the share was issued or acquired after June 28, 1982 and, at the time the share was issued or acquired, the existence of the issuing corporation was, or there was an arrangement under which it could be, limited or, in the case of a share issued after November 16, 1978 if

(a) under the terms or conditions of the share, any agreement relating to the share or any modification of those terms or conditions or that agreement,

(i) the owner thereof may cause the share to be redeemed, acquired or cancelled (unless the owner of the share may cause the share to be redeemed, acquired or cancelled by reason only of a right to convert or exchange the share) or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person or partnership is or may be required to redeem, acquire or cancel, in whole or in part, the share (unless the requirement to redeem, acquire or cancel the share arises by reason only of a right to convert or exchange the share) or to reduce its paid-up capital,

(iii) the issuing corporation or any other person or partnership provides or may be required to provide any form of guarantee, security or similar indemnity or covenant (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder thereof or any person related thereto) with respect to the share, or

(iv) the share is convertible or exchangeable unless

(A) it is convertible into or exchangeable for

(I) another share of the issuing corporation or a corporation related to the issuing corporation that, if issued, would not be a term preferred share,

(II) a right or warrant that, if exercised, would allow the person exercising it to acquire only a share of the issuing corporation or a corporation related to the issuing corporation that, if issued, would not be a term preferred share, or

(III) both a share described in subclause (I) and a right or warrant described in subclause (II), and

(B) all the consideration receivable for the share on the conversion or exchange is the share described in subclause (A)(I) or the right or warrant described in subclause (A)(II) or both, as the case may be, and, for the purposes of this clause, where a taxpayer may become entitled on the conversion or exchange of a share to receive any particular consideration (other than consideration described in any of subclauses (A)(I) to (III)) in lieu of a fraction of a share, the particular consideration shall be deemed not to be consideration unless it may reasonably be considered that the particular consideration was receivable as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of subsection 112(2.1) or 258(3), or

(b) the owner thereof acquired the share after October 23, 1979 and is

(i) a corporation described in any of paragraphs (a) to (e.1) of the definition "specified financial institution",

(ii) a corporation that is controlled by one or more corporations described in subparagraph (i),

(iii) a corporation that acquired the share after December 11, 1979 and is related to a corporation referred to in subparagraph (i) or (ii), or

(iv) a partnership or trust of which a corporation referred to in subparagraph (i) or (ii) or a person related thereto is a member or a beneficiary,

that (either alone or together with any of such corporations, partnerships or trusts) controls or has an absolute or contingent right to control or to acquire control of the issuing corporation,

but does not include a share of the capital stock of a corporation

(c) that was issued after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"),

(d) that was issued as a stock dividend

(i) before April 22, 1980 on a share of the capital stock of a public corporation that was not a term preferred share, or

(ii) after April 21, 1980 on a share that was, at the time the stock dividend was paid, a share prescribed for the purposes of paragraph (f),

(d.1) that is listed on a prescribed stock exchange in Canada and was issued before April 22, 1980 by

(i) a corporation referred to in any of paragraphs (a) to (d) of the definition "specified financial institution" in this subsection,

(ii) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

(iii) an issuing corporation associated with a corporation described in subparagraph (i) or (ii),

(e) for a period not exceeding ten years and, in the case of a share issued after November 12, 1981, for a period not exceeding five years, from the date of its issuance, which share was issued by a corporation resident in Canada,

(i) as part of a proposal to, or an arrangement with, its creditors that had been approved by a court under the *Bankruptcy and Insolvency Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation or the other corporation was dealing at arm's length and the share was issued either wholly or in substantial part and either directly or indirectly in exchange or substitution for that obligation or a part thereof,

and, in the case of a share issued after November 12, 1981, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on in Canada immediately before the share was issued,

(f) that is a prescribed share, or

(f.1) that is a taxable preferred share held by a specified financial institution that acquired the share

(i) before December 16, 1987, or

(ii) before 1989 pursuant to an agreement in writing entered into before December 16, 1987,

other than a share deemed by paragraph (c) of the definition "short-term preferred share" in this subsection or by paragraph (i.2) to have been issued after December 15, 1987 or a share that would be deemed by paragraph (e) of the definition "taxable preferred share" in this subsection to have been issued after December 15, 1987 if the references therein to "8:00 p.m. Eastern Daylight Saving Time, June 18, 1987" were read as references to "December 15, 1987",

and, for the purposes of this definition,

(g) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date,

(h) where

(i) at any particular time the terms or conditions of a share issued pursuant to an established agreement or of any agreement relating to such a share have been changed,

(ii) under the terms or conditions of

(A) a share of a class of the capital stock of the issuing corporation issued before November 17, 1978 (other than a share that was listed on November 16, 1978 on a prescribed stock exchange in Canada),

(B) a share issued pursuant to an established agreement,

(C) any agreement between the issuing corporation and the owner of a share described in clause (A) or (B), or

(D) any agreement relating to a share described in clause (A) or (B) made after October 23, 1979,

the owner thereof could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the redemption, acquisition, cancellation, conversion or reduction of the paid-up capital of the share otherwise than by reason of a failure or default under the terms or conditions of the share or any agreement that related to, and was entered into at the time of, the issuance of the share,

(iii) in respect of a share issued before November 17, 1978, at any particular time after November 16, 1978 the redemption date was extended or the terms or conditions relating to its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital were changed,

(iv) at a particular time after October 23, 1979 and before November 13, 1981, a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquired a share that

(A) was issued before November 17, 1978 or under an established agreement,

(B) was issued to a person other than a corporation that was, at the time of issue,

(I) described in any of paragraphs (a) to (e) of the definition "specified financial institution", or

(II) a corporation that was controlled by one or more corporations described in subclause (I) and, for the purpose of this subclause, one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation, to persons with whom the other corporation does not deal at arm's length, or to the other corporation and persons with whom the other corporation does not deal at arm's length,

(C) was acquired from a person that was, at the particular time, a person other than a corporation described in subclause (B)(I) or (II), and

(D) was acquired otherwise than under an agreement in writing made before October 24, 1979,

(v) at any particular time after November 12, 1981

(A) in respect of

(I) a share (other than a share referred to in paragraph (e) or a share listed on November 13, 1981 on a prescribed stock exchange in Canada) issued after November 16, 1978 and before November 13, 1981, or

(II) a share issued after November 12, 1981 and before 1983 pursuant to an agreement in writing to do so made before November 13, 1981 (in this definition referred to as a "specified agreement")

the owner thereof could require, either alone or together with one or more taxpayers, the redemption, acquisition, cancellation, conversion or reduction of the paid-up capital of the share otherwise than by reason of a failure or default under the terms or conditions of the share or any agreement that related to, and was entered into at the time of, the issuance of the share, or

(B) the redemption date of

(I) a share issued after November 16, 1978 and before November 13, 1981 or

(II) a share issued pursuant to a specified agreement

was extended or the terms or conditions relating to its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital were changed, or

(vi) at a particular time after November 12, 1981, a specified financial institution (or a partnership or trust of which a specified financial institution or a person related to the institution is a member or beneficiary) acquired a share (other than a share referred to in paragraph (e)) that

(A) was issued before November 13, 1981 or under a specified agreement,

(B) was acquired from a partnership or person, other than a person that was, at the particular time, a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection,

(C) was acquired in an acquisition that was not subject to nor conditional on a guarantee agreement, within the meaning assigned by subsection 112(2.2), entered into after November 12, 1981, and

(D) was acquired otherwise than under an agreement in writing made before October 24, 1979 or a specified agreement,

the share shall, for the purposes of determining at any time after the particular time whether it is a term preferred share, be deemed to have been issued at the particular time otherwise than pursuant to an established or specified agreement,

(i) where the terms or conditions of a share of the capital stock of the issuing corporation are modified or established after June 28, 1982 and as a consequence thereof the issuing corporation, any person related thereto or any partnership or trust of which the issuing corporation or a person related thereto is a member or a beneficiary may reasonably be expected at any time to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital, the share shall be deemed as from the date of the modification or as from the date of the establishment, as the case may be, to be a share described in paragraph (a),

(i.1) where

(i) it may reasonably be considered that the dividends that may be declared or paid at any time on a share (other than a prescribed share or a share described in paragraph (e) during the applicable time period referred to in that paragraph) of the capital stock of a corporation issued after December 15, 1987 or acquired after June 15, 1988 are derived primarily from dividends received on term preferred shares of the capital stock of another corporation, and

(ii) it may reasonably be considered that the share was issued or acquired as part of a transaction or event or series of transactions or events one of the main purposes of which was to avoid or limit the application of subsection 112(2.1) or 138(6),

the share shall be deemed at that time to be a term preferred share acquired in the ordinary course of business,

(i.2) where at any particular time after December 15, 1987, otherwise than pursuant to a written arrangement to do so entered into before December 16, 1987, the terms or conditions of a taxable preferred share of the capital stock of a corporation relating to any matter referred to in subparagraphs (a)(i) to (iv) have been modified or established, or any agreement in respect of the share relating to any such matter has been changed or entered into by the corporation or a specified person (within the meaning assigned by paragraph (h) of the definition "taxable preferred share" in this subsection) in relation to the corporation, the share shall be deemed after that particular time to have been issued at that particular time, and,

(j) where a particular share of the capital stock of a corporation has been issued or its terms and conditions have been modified and it may reasonably be considered, having regard to all circumstances (including the rate of interest on any debt or the dividend provided on any term preferred share), that

(i) but for the existence at any time of the debt or the term preferred share, the particular share would not have been issued or its terms or conditions modified, and

(ii) one of the main purposes for the issue of the particular share or for the modification of its terms or conditions was to avoid a limitation provided by subsection 112(2.1) or 138(6) in respect of a deduction,

the particular share shall be deemed after December 31, 1982 to be a term preferred share of the corporation;

Related Provisions: 80(1) — Definition of "distress preferred share"; 87(4.1) — Amalgamations — exchanged shares; 112(2.6)"exempt share"(c) — Distress preferred shares excluded from restrictions on collateralized preferred shares; 248(13) — Interests in trusts or partnerships; 256(1.6) — Fair market valuation; 256(6), (6.1) — Meaning of "controlled"; Canada-U.S. tax treaty, Art. XXIX A:5(c) — Meaning of "debt substitute share".

History: Subparas. (b)(i) and (h)(iv) of the definition "term preferred share" in subsec. 248(1) amended by 1999, c. 22, subsecs. 80(9) and (10),

applicable to taxation years that begin after 1998. Subparas. (b)(i) and (h)(iv) formerly read:

(i) a corporation described in any of paragraphs (a) to (e) of the definition "specified financial institution" in this subsection,

. . . . .

(iv) a share issued before November 17, 1978 or a share issued pursuant to an established agreement (other than a share issued to a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection), is, at any particular time after October 23, 1979 and before November 13, 1981 acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979) from a person (other than a corporation described in any of paragraphs (a) to (f) of that definition) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or a beneficiary,

Subpara. (h)(vi) of the definition "term preferred share" in subsec. 248(1) amended by the said c. 22, subsec. 80(11), applicable to taxation years that begin after 1998 except that, in its application to a share acquired from a corporation that last acquired the share in a taxation year that began before 1999, the expression "described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection," in cl. (h)(vi)(B), as amended, shall be read as "described in subclause (iv)(B)(I) or (II)". Subpara. (h)(vi) formerly read:

(vi) a share (other than a share referred to in paragraph (e)) issued before November 13, 1981 or a share issued pursuant to a specified agreement is, at any particular time after November 12, 1981, acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979 or otherwise than pursuant to a specified agreement) from a partnership or person (other than an acquisition from a corporation described in any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection where that acquisition is neither subject to nor conditional on a guarantee agreement, within the meaning assigned by subsection 112(2.2), entered into after November 12, 1981) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or a beneficiary,

Para. (d.1) of the definition "term preferred share" in subsec. 248(1) amended by 1998, c. 19, subsec. 239(5), applicable after February 22, 1994. Para. (d.1) formerly read:

(d.1) that was issued before April 22, 1980 by a corporation described in any of paragraphs 39(5)(b) to (f) or by an issuing corporation associated with any such corporation and is listed on a prescribed stock exchange in Canada,

"Term preferred share" amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(13), to add the word "or" at the end of para. (a), applicable after June 18, 1987.

Subpara. (e)(i) of "term preferred share" amended by 1994, c. 7, Sch. V (1992, c. 27), para. 90(1)(q), to substitute "*Bankruptcy and Insolvency Act*" for "*Bankruptcy Act*", in force November 30, 1992.

Pre-RSC History: Paras. (a), (b) and subpara. (e)(iii) of "term preferred share" substituted by 1988, c. 55, subsecs. 188(7), (8), (9), subpara. (e)(iii) applicable with respect to shares issued (or deemed by the Act, as amended, to have been issued) after 8 p.m. EDST, June 18, 1987; paras. (a), (b) applicable after June 18, 1987 except that (by 1991, c. 49, s. 246, deemed to have come into force September 13, 1988):

(a) in its application to shares issued after November 16, 1978 and before October 24, 1979, subparagraphs (a)(i) to (iv) of the definition shall be read as follows:

"(i) the owner thereof may, at any time within 10 years after the date of issue, cause the share to be redeemed, acquired or cancelled (unless the owner of the share may cause the share to be redeemed, acquired or cancelled by reason only of a right to convert or exchange the share) or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person with whom it does not deal at arm's length is or may be required to redeem, acquire or cancel, in whole or in part, or to reduce its paid-up capital (otherwise than pursuant to a requirement of the corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class, or unless the owner may cause the share to be redeemed, acquired or cancelled by reason only of a right to convert or exchange the share),

(iii) the issuing corporation or any other person is or may be required to provide any form of guarantee, security or similar covenant (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the owner thereof or any person related thereto) with respect to the share, or

(iv) the share is convertible, directly or indirectly, into debt or into a share that would, if issued, be a term preferred share"; and

(b) in its application to shares issued after October 23, 1979 and before November 13, 1981, or to shares issued pursuant to a specified agreement, subparagraphs (a)(i) to (iv) of the definition shall be read as follows:

"(i) the owner thereof may, at any time within 10 years after the date of issue, cause the share to be redeemed, acquired or cancelled (unless the owner of the share may cause the share to be redeemed, acquired or cancelled by reason only of a right to convert or exchange the share) or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital at any time within 10 years after its date of issue,

(A) otherwise than pursuant to a requirement of the issuing corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class and, where the requirement was agreed to after April 21, 1980, it provides that such redemption, acquisition or cancellation of the share be in proportion to the number of shares of the class or, where such shares are of a series of a class, of that series, registered in the name of each shareholder, or

(B) unless the requirement to redeem, acquire or cancel the share arises by reason only of a right to convert or exchange the share,

(iii) the issuing corporation or any other person is or may be required to provide any form of guarantee, security or similar indemnity or covenant (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder thereof or any person related thereto) with respect to the share, or

(iv) the share is convertible, directly or indirectly, into debt or into a share that would, if issued, be a term preferred share, or"

Paras. (a), (b) and subpara (e)(iii) formerly read:

(a) under the terms or conditions of the share, any agreement relating to the share or any modification of such terms, conditions or agreement,

(i) the owner thereof may cause the share to be redeemed, acquired or cancelled or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person or partnership is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital,

(iii) the issuing corporation or any other person or partnership provides or may be required to provide any form of guarantee, security or similar indemnity or covenant (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder thereof or any person related thereto) with respect to the share, or

(iv) the share is convertible, directly or indirectly, into debt or into a share that, if issued, would be a term preferred share, or

(b) the owner thereof acquired the share after October 23, 1979 and is

(i) a corporation described in paragraph 112(2.1)(a),

(ii) a corporation that is controlled directly or indirectly by one or more corporations described in paragraph 112(2.1)(a),

(iii) a corporation that acquired the share after December 11, 1979 and is associated with a corporation referred to in subparagraph (i) or (ii), or

(iv) a partnership or trust of which a corporation referred to in subparagraph (i) or (ii) or a person related thereto is a member or a beneficiary,

that (either alone or together with any of such corporations, partnerships or trusts) controls directly or indirectly or has an absolute or

contingent right to control directly or indirectly or to acquire direct or indirect control of the issuing corporation,

. . . . .

(iii) at a time when, by reason of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation or the other corporation was dealing at arm's length and the share was issued, in whole or in part, directly or indirectly in exchange or substitution for that obligation,

Para. (f.1) of "term preferred share" added by 1988, c. 55, subsec. 188(10), applicable after June 18, 1987.

Subparas. (h)(iv), (vi) of "term preferred share" amended by 1988, c. 55, subsec. 188(11) to substitute in each "any of paragraphs (a) to (f) of the definition "specified financial institution" in this subsection" for "paragraph 112(2.1)(a) or (b)", and in subpara. (vi) to substitute "neither subject to" for "not subject to", applicable after June 18, 1987.

Paras. (i.1), (i.2) of "term preferred share" added by 1988, c. 55, subsec. 188(12), applicable with respect to shares issued, or deemed by para. (i.2) to have been issued, after December 15, 1987.

All that portion of "term preferred share" following para. (j) repealed by 1988, c. 55, subsec. 188(13), applicable with respect to shares issued after 8 p.m. EDST, June 18, 1987 and shares deemed by the Act (as amended) to have been issued after that date. That portion formerly read:

and where after November 12, 1981 a person has an interest in a trust, whether directly or indirectly through an interest in any other trust or in any other manner whatever, the person shall, for the purposes of this definition, the definition "income bond" or "income debenture" in this subsection, subsection 112(2.2) and section 258, be deemed to be a beneficiary of the trust;

Subpara. (j)(ii) amended by 1985, c. 45, subsec. 122(4), to substitute "to avoid a limitation provided by subsection 112(2.1) or 138(6) in respect of a deduction" for "to avoid or limit the application of subsection 112(2.1)", applicable with respect to shares issued after May 9, 1985 and to shares the terms or conditions of which have been modified after that date.

"Term preferred share" substituted by 1980-81-82-83, c. 140, subsec. 128(14), applicable after November 16, 1978 except that

(a) in its application to shares issued after November 16, 1978 and before October 24, 1979, subparas. (a)(i), (ii) and (iii) of the definition shall be read as follows:

"(i) the owner thereof may, at any time within 10 years of the date of issue, cause the share to be redeemed, acquired or cancelled or cause its paid-up capital to be reduced,

(ii) the corporation or any other person with whom it does not deal at arm's length is or may be required to redeem, acquire or cancel, in whole or in part, the share or reduce its paid-up capital at any time within 10 years of the date of issue (other than pursuant to a requirement of the corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class),

(iii) the corporation or any other person is or may be required to provide any form of guarantee, security or similar covenant (including the lending of funds to or placing of amounts on deposit with, or on behalf of, the owner thereof or any person related thereto) with respect to the share, or";

(b) in its application to shares issued after October 23, 1979 and before November 13, 1981, or to shares issued pursuant to a specified agreement, subparas. (a)(i), (ii) and (iii) of the definition shall be read as follows:

"(i) the owner thereof may, at any time within 10 years of the date of issue, cause the share to be redeemed, acquired or cancelled or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital at any time within 10 years of the date of issue (otherwise than pursuant to a requirement of the issuing corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class and, where the requirement was agreed to after April 21, 1980, it provides that such redemption, acquisition or cancellation of the shares be in proportion to the number of shares of the class or, where such shares are of a series of a class, of that series, registered in the name of each shareholder),

(iii) the issuing corporation or any other person provides or may be required to provide any form of guarantee, security or similar indemnity or covenant (including the lending of funds to or placing of amounts on deposit with, or on behalf of, the owner thereof or any person related thereto) with respect to the share, or"; and

(c) in respect of shares issued after October 23, 1979 and before November 13, 1981 all that portion of para. (e) of the definition following subpara. (iii) shall be read as follows:

"and, in the case of a share issued after October 13, 1979 and before November 13, 1981, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on immediately before the share was issued, or".

"Term preferred share" formerly read:

"term preferred share" of a corporation (in this definition referred to as the "issuing corporation") means a share of a class of the capital stock of the issuing corporation issued after November 16, 1978 if

(a) under the terms or conditions of the share, any agreement relating to the share or any modification of such terms, conditions or agreement,

(i) the owner thereof may, at any time within 10 years of the date of issue, cause the share to be redeemed, acquired or cancelled or cause its paid-up capital to be reduced,

(ii) the issuing corporation or any other person is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital at any time within 10 years of the date of issue (otherwise than pursuant to a requirement of the issuing corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class and, where the requirement was agreed to after April 21, 1980, it provides that such redemption, acquisition or cancellation of the shares be in proportion to the number of shares of the class or, where such shares are of a series of a class, of that series, registered in the name of each shareholder),

(iii) the issuing corporation or any other person provides or may be required to provide any form of guarantee, security or similar indemnity or covenant (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder thereof or any person related thereto) with respect to the share, or

(iv) the share is convertible, directly or indirectly, into debt or into a share that, if issued, would be a term preferred share, or

(b) the owner thereof acquired the share after October 23, 1979 and is

(i) a corporation described in paragraph 112(2.1)(a),

(ii) a corporation that is controlled directly or indirectly by one or more corporations described in paragraph 112(2.1)(a),

(iii) a corporation associated with a corporation referred to in subparagraph (i) or (ii) that acquired the share after December 11, 1979, or

(iv) a partnership or trust of which a corporation referred to in subparagraph (i) or (ii) or a person related thereto is a member or a beneficiary,

that (either alone or together with any of such corporations, partnerships or trusts) controls directly or indirectly or has an absolute or contingent right to control directly or indirectly or to acquire direct or indirect control of the issuing corporation,

but does not include a share of the capital stock of a corporation

(c) that was issued after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"),

(d) that was issued as a stock dividend

(i) before April 22, 1980 on a share of the capital stock of a public corporation that was not a term preferred share, or

(ii) after April 21, 1980 on a share that was, at the time the stock dividend was paid, a share prescribed for the purposes of paragraph (f),

(d.1) that was issued before April 22, 1980 by a corporation described in any of paragraphs 39(5)(b) to (f) or by an issuing corporation associated with any such corporation and is listed on a prescribed stock exchange in Canada,

(e) for a period not exceeding ten years from the date of its issuance and that was issued by a corporation resident in Canada,

(i) as part of a proposal to, or an arrangement with its creditors that had been approved by a court under the *Bankruptcy Act*,

(ii) at a time when all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the issuing corporation or another corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the issuing corporation or the other corporation was dealing at arm's length and the share was issued, in whole or in part, directly or indirectly in exchange or substitution for that obligation,

and, in the case of a share issued after October 23, 1979, the proceeds from the issue may reasonably be regarded as having been used by the issuing corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on immediately before the share was issued, or

(f) that is a prescribed share,

and for the purposes of this definition,

(g) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date, and

(h) where

(i) at any particular time the terms or conditions of a share issued pursuant to an established agreement or of any agreement relating to such a share have been changed,

(ii) under the terms or conditions of

(A) a share of a class of the capital stock of the issuing corporation issued before November 17, 1978 (other than a share that was listed on November 16, 1978 on a prescribed stock exchange in Canada),

(B) a share issued pursuant to an established agreement,

(C) any agreement between the issuing corporation and the owner of a share described in clause (A) or (B), or

(D) any agreement relating to a share described in clause (A) or (B) made after October 23, 1979,

the owner thereof could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the redemption, acquisition, cancellation, conversion or reduction of the paid-up capital of the share otherwise than by reason of a failure or default under the terms or conditions of the share or any agreement that related to, and was entered into at the time of, the issuance of the share,

(iii) in respect of a share issued before November 17, 1978, at any particular time after November 16, 1978 the redemption date was extended or the terms or conditions relating to its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital were changed, or

(iv) a share issued before November 17, 1978 or a share issued pursuant to an established agreement (other than a share issued to a corporation described in paragraph 112(2.1)(a) or (b)) is, at any particular time after October 23, 1979, acquired (otherwise than pursuant to an agreement in writing made before October 24, 1979) from a person (other than a corporation described in paragraph 112(2.1)(a) or (b)) by a specified financial institution or by a partnership or trust of which a specified financial institution or a person related thereto is a member or a beneficiary,

the share shall, for the purposes of determining at any time after the particular time whether it is a term preferred share, be deemed to have been issued at the particular time otherwise than pursuant to an established agreement;

"Term preferred share" substituted by 1980-81-82-83, c. 48, subsec. 108(11), applicable after November 16, 1978 except that in its application to shares issued before October 24, 1979 subparagraphs (a)(ii) and (iii) of the definition shall be read as follows:

(ii) the corporation or any other person with whom it does not deal at arm's length is or may be required to redeem, acquire or cancel, in whole or in part, the share or reduce its paid-up capital at any time within 10 years of the date of issue (other than pursuant to a requirement of the corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class),

(iii) the corporation or any other person is or may be required to provide any form of guarantee, security or similar covenant (including the lending of funds to or placing of amounts on deposit with, or on behalf of, the owner thereof or any person related thereto) with respect to the share, or

"Term preferred share" formerly read:

"Term preferred share" of a corporation means a share of a class of the capital stock of the corporation issued after November 16, 1978 if

(a) under the terms of issue thereof, any agreement relating to the share or any modification to such terms or to any such agreement,

(i) the owner thereof may, at any time within 10 years of the date of issue, cause the share to be redeemed, acquired or cancelled or its paid-up capital to be reduced,

(ii) the corporation or any other person is or may be required to redeem, acquire or cancel, in whole or in part, the share or reduce its paid-up capital at any time within 10 years of the date of issue (other than pursuant to a requirement of the corporation to redeem, acquire or cancel annually not more than 5% of the issued and fully paid shares of that class),

(iii) the corporation or any other person provides or may be required to provide any form of guarantee, security (including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder thereof or any person related thereto) or covenant providing protection with respect to the share, or

(iv) the share is convertible, directly or indirectly, into debt or into a share that, if issued, would be a term preferred share, or

(b) the owner thereof is a corporation described in any of paragraphs 39(5)(b) to (f) or an insurance corporation, a corporation that is controlled directly or indirectly by one or more corporations described in those paragraphs or a partnership or trust, that (either alone or together with one or more such corporations or a partnership or trust) controls or has an absolute or contingent right to acquire control of the corporation,

but does not include a share of the capital stock of a corporation that

(c) was issued after November 16, 1978 and before 1980 pursuant to an agreement in writing to do so made before November 17, 1978 (in this definition referred to as an "established agreement"),

(d) was issued as a stock dividend in respect of a share of the capital stock of a public corporation that was not a term preferred share,

(e) was issued, in the case of a corporation resident in Canada, for a term that may not, in any circumstances, exceed ten years,

(i) as part of a proposal to or an arrangement with its creditors that had been approved by a court under the *Bankruptcy Act*,

(ii) while all or substantially all of its assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) while, by reason of financial difficulty, it or a corporation resident in Canada with which it does not deal at arm's length was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the corporation was dealing at arm's length and the share

was issued, in whole or in part, directly or indirectly in exchange or substitution for that obligation

and the proceeds from the issue may reasonably be regarded as having been used by the corporation or a corporation with which it was not dealing at arm's length in the financing of its business carried on immediately before the share was issued, or

(f) was at that time a prescribed share,

and for the purposes of this definition,

(g) where the terms or conditions of an established agreement were amended after November 16, 1978, the agreement shall be deemed to have been made after that date, and

(h) where

(i) at any particular time the terms or conditions of a share issued pursuant to an established agreement or of any agreement relating to such a share have been changed,

(ii) under the terms or conditions of a share of a class of the capital stock of a corporation issued before November 17, 1978 (other than a share that was listed on November 16, 1978 on a prescribed stock exchange in Canada), of a share issued pursuant to an established agreement or of any agreement relating to any such share (other than an agreement made before October 23, 1979 to which the issuer, or any person related thereto, was not a party), the owner thereof could at any particular time after November 16, 1978 require, either alone or together with one or more taxpayers, the redemption, acquisition, cancellation, conversion or reduction of the paid-up capital of the share otherwise than by reason of a failure or default under the terms or conditions of the share,

(iii) at any particular time after November 16, 1978, in respect of a share issued before November 17, 1978, the redemption date was extended or the terms or conditions relating to its redemption, acquisition, cancellation, conversion or reduction of its paid-up capital by the issuer of the share were changed, or

(iv) at any particular time after October 23, 1979, a share issued before November 17, 1978 or pursuant to an established agreement is acquired (other than pursuant to an agreement in writing made before October 23, 1979) from a person (other than a corporation described in any of paragraphs 112(2.1)(a) to (c)) by a corporation described in any of paragraphs 112(2.1)(a) to (c) or by a partnership or trust

the share shall, for the purposes of determining at any time after the particular time whether it is a term preferred share, be deemed to have been issued after November 16, 1978 other than pursuant to an established agreement;

"Term preferred share" enacted by 1979, c. 5, subsec. 66(7).

Regulations: 3200 (prescribed stock exchange in Canada); 6201 (prescribed shares).

Interpretation Bulletins: IT-64R3: Corporations: Association and control — after 1988; IT-527: Distress preferred shares.

Advance Tax Rulings: ATR-5: Preferred shares exchangeable for common shares; ATR-10: Issue of term preferred shares; ATR-18: Term preferred shares; ATR-46: Financial difficulty.

"termination payment" — [Repealed under former Act]

Pre-RSC History: "Termination payment" repealed by 1980-81-82-83, c. 140, subsec. 128(13), applicable with respect to amounts received in respect of any termination of an office or employment after November 12, 1981. (See "retiring allowance".) "Termination payment" formerly read:

"termination payment", for a taxation year, means an amount equal to the lesser of

(a) the aggregate of all amounts each of which is an amount received in the year in respect of a termination of an office or employment, whether or not received pursuant to an order or judgment of a competent tribunal, other than

(i) an amount required by any provision of this Act (other than subparagraph 56(1)(a)(viii)) to be included in computing the income of a taxpayer for a year,

(ii) an amount in respect of which an election has been made under subsection 40(1) of the *Income Tax Application Rules, 1971*, and

(iii) an amount received in the year as a consequence of the death of an employee, and

(b) the amount by which 50% of the aggregate of all amounts each of which is the amount that may reasonably be considered to be the employee's salary, wages and other remuneration from an office or employment for the 12 months preceding the date that is the earlier of

(i) the date on which the office or employment was terminated, and

(ii) the date on which an agreement, if any, in respect of the termination was entered into

exceeds the amount determined under paragraph (a) for each previous year in respect of that termination

whether the recipient is the officer or employee whose office or employment was terminated or a dependant, relation or legal representative of the officer or employee;

"Termination payment" added by 1979, c. 5, subsec. 66(8), applicable in respect of amounts received in respect of a termination after November 16, 1978 of an office or employment.

"testamentary trust" has the meaning assigned by subsection 108(1);

Related Provisions: 248(3) — Rules applicable in relation to the Province of Quebec.

"timber resource property" has the meaning assigned by subsection 13(21);

Pre-RSC History: "Timber resource property" enacted by 1974-75, c. 26, subsec. 125(10), applicable to 1974 *et seq.*

"total pension adjustment reversal" of a taxpayer for a calendar year has the meaning assigned by regulation;

Related Provisions: 147.1(18)(t) — Authorization for regulations determining TPAR.

History: The definition "total pension adjustment reversal" added to subsec. 248(1) by 1998, c. 19, subsec. 66(3), applicable after 1996.

Regulations: 8304.1 (pension adjustment reversal).

Forms: T4104: Past service pension adjustment guide; RC4137: Pension adjustment reversal guide.

"Treasury Board" means the Treasury Board established by section 5 of the *Financial Administration Act*;

"treaty-protected business" of a taxpayer at any time means a business in respect of which any income of the taxpayer for a period that includes that time would, because of a tax treaty with another country, be exempt from tax under Part I;

History: The definition "treaty-protected business" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to 1998 *et seq.*

"treaty-protected property" of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because of a tax treaty with another country, be exempt from tax under Part I;

Related Provisions: 13(4.1)(d) — Replacement of depreciable property that is not treaty-protected property; 44(5)(d) — Replacement of capital property that is not treaty-protected property.

History: The definition "treaty-protected property" added to subsec. 248(1) by 1999, c. 22, subsec. 80(12), applicable to 1998 *et seq.*

"trust" has the meaning assigned by subsection 104(1);

Related Provisions: 108(1) — Meaning of "trust"; 146.1(1) — RESPs — "Meaning of trust"; 149(5) — Exception re investment income of certain clubs; 207.6(1) — Definitions (re RCA tax); 233.2(4) — Reporting requirement re transfers to foreign trust; 233.6(1) — Reporting requirement re distributions from foreign trust; 248(3) — Deemed trusts in Quebec; 248(5.2) — Trust-to-trust transfers — deemed same trust.

"undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class has the meaning assigned by subsection 13(21);

Pre-RSC History: "Undepreciated capital cost" enacted by 1985, c. 45, subsec. 122(2).

"unit trust" has the meaning assigned by subsection 108(2);

Related Provisions: 248(1)"personal trust" — Unit trust deemed not to be a personal trust.

"unused RRSP deduction room" of a taxpayer at the end of a taxation year has the meaning assigned by subsection 146(1);

Pre-RSC History: "Unused RRSP deduction room" added by 1990, c. 35, subsec. 27(3), applicable after 1988.

"unused scientific research and experimental development tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.3(2);

"unused share-purchase tax credit" of a taxpayer for a taxation year has the meaning assigned by subsection 127.2(6);

"1971 capital surplus on hand", "1971 undistributed income on hand" — [Repealed under former Act]

Pre-RSC History: "1971 capital surplus on hand" and "1971 undistributed income on hand" repealed by 1977-78, c. 1, subsec. 98(7), applicable after December 31, 1978. "1971 capital surplus on hand" and "1971 undistributed income on hand" formerly read:

> "1971 capital surplus on hand" has the meaning assigned by subsection 89(1);
>
> "1971 undistributed income on hand" has the meaning assigned by subsection 196(4).

Selected Cases [subsec. 248(1)]: *Friesen (J.) v. Canada*, [1995] 2 C.T.C. 369 (SCC) (Plain meaning rule applies to interpretation of Act).

(2) Tax payable — In this Act, the tax payable by a taxpayer under any Part of this Act by or under which provision is made for the assessment of tax means the tax payable by the taxpayer as fixed by assessment or reassessment subject to variation on objection or on appeal, if any, in accordance with the provisions of that Part.

Related Provisions: 117(1) — Meaning of "tax payable" for purposes of sections 117–127.4.

(3) Rules applicable in relation to the Province of Quebec [deemed trusts] — For the purposes of the application of this Act in relation to the Province of Quebec,

(a) a usufruct shall be deemed to be a trust, created by will where the usufruct was so established, and property subject to a usufruct shall be deemed to have been transferred to the trust, on the death of the testator and as a consequence thereof where the usufruct arises on death, and to be held in trust and not otherwise;

(b) a right of use or habitation shall be deemed to be a trust, created by will where the right was so established, and property subject to such a right shall be deemed to have been transferred to the trust, on the death of the testator and as a consequence thereof where the right arises on death, and to be held in trust and not otherwise;

(c) a substitution shall be deemed to be a trust, created by will where the substitution was so established, and property subject to a substitution shall be deemed to have been transferred to the trust, on the death of the testator and as a consequence thereof where the substitution arises on death, and to be held in trust and not otherwise;

(d) property subject to rights and obligations under an arrangement (other than a trust) that

(i) is established by or under a written contract that

(A) is governed by the laws of the Province of Quebec, and

(B) provides that, for the purposes of this Act, the arrangement shall be considered to be a trust, and

(ii) creates rights and obligations that are substantially similar to the rights and obligations under a trust (determined without reference to this subsection),

shall be deemed to be held in trust and not otherwise, and such an arrangement shall be deemed to be a trust;

(e) a person who has a right (whether immediate or future and whether absolute or contingent) to receive all or any part of the income or capital in respect of property referred to in paragraph (a), (b), (c) or (d) shall be deemed to be beneficially interested in the trust referred to in that paragraph; and

(f) property in relation to which any person has, at any time,

(i) the right of ownership,

(ii) a right as a lessee in an emphyteutic lease, or

(iii) a right as a beneficiary in a trust

shall, notwithstanding that such property is subject to a servitude, be deemed to be beneficially owned by the person at that time.

Related Provisions: 248(5.2) — Turst-to-trust transfers — deemed same trust; 248(8) — Occurrences as a consequence of death; 248(9.1) — Trust created by taxpayer's will; 248(25) — Beneficially interested.

History: Subsec. 248(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(15), applicable

> (a) after 1990 with respect to property the ownership of which was acquired after 1990;
>
> (b) after 1990 with respect to property that became subject to a usufruct, a right of use or habitation, a substitution, an emphyteutic lease or a trust after 1990;
>
> (c) after 1989 with respect to property that became subject to a usufruct, a right of use or habitation or a substitution after 1989 and before 1991, where the persons who so acquire interests in the property elected jointly by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992]; and
>
> (d) to 1989 *et seq.* with respect to property that became subject to an arrangement referred to in para. 248(3)(d) in the 1989 or any subsequent taxation year.

Subsec. 248(3) formerly read:

> (3) References to property beneficially owned and to beneficial owner of property — In its application in relation to the Province of Quebec, a reference in this Act to any property that is or was beneficially owned by any person shall be read as including a reference to property in relation to which any person has or had the full ownership whether or not the property is or was subject to a servitude, or has or had a right as a usufructuary, a lessee in an emphyteutic lease, an institute in a substitution or a beneficiary in a trust; and a reference in this Act to the beneficial owner of any property shall be read as including a reference to a person who has or had, accordingly as the context requires, such ownership as a right in relation to that property.

Selected Cases [subsec. 248(3)]: *R. v. Construction Bérou Inc.*, [2000] 2 C.T.C. 174 (FCA) (Purposive interpretation of provision); *Larose v. MNR*, [1992] 2 C.T.C. 2339 (TCC); amended (Nov. 18, 1991), Doc. 87-294(IT) (TCC) [unreported] (Assessment in respect of sale of properties upheld even though court decision and other circumstances had denied taxpayer proceeds of sale; right to dispose of properties had been transferred to purchaser).

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-437R: Ownership of property (principal residence).

(4) Interest in real property — In this Act, an interest in real property includes a leasehold interest in real property but does not include an interest as security only derived by virtue of a mortgage, agreement for sale or similar obligation.

Related Provisions: 43.1(1) — Life estates in real property.

Pre-RSC History: Subsec. 248(4) added by 1977-78, c. 1, subsec. 98(8), applicable after March 31, 1977.

(5) Substituted property — For the purposes of this Act, other than paragraph 98(1)(a),

(a) where a person has disposed of or exchanged a particular property and acquired other property in substitution therefor and subsequently, by one or more further transactions, has effected one or more further substitutions, the property acquired by any such transaction shall be deemed to have been substituted for the particular property; and

(b) any share received as a stock dividend on another share of the capital stock of a corporation shall be deemed to be property substituted for that other share.

Pre-RSC History: Subsec. 248(5) substituted by 1986, c. 6, subsec. 126(5), applicable with respect to exchanges of property made after November 21, 1985 and shares received as stock dividends after November 21, 1985 other than shares received as payment of a stock dividend declared on or before that date. Subsec. 248(5) formerly read:

> (5) Substituted property — For the purposes of this Act, other than paragraph 98(1)(a), where a person has disposed of a particular property and acquired other property in substitution therefor and subsequently, by one or more further transactions, has effected one or more further substitutions, the property acquired by any such transaction shall be deemed to have been substituted for the particular property.

Subsec. 248(5) added by 1980-81-82-83, c. 48, subsec. 108(12), applicable after December 11, 1979.

Interpretation Bulletins: IT-244R3: Gifts by individuals of life insurance policies as charitable donations; IT-369R: Attribution of trust income to settlor; IT-489R: Non-arm's length sale of shares to a corporation; IT-511R: Interspousal and certain other transfers and loans of property.

(6) "Class" of shares issued in series — In its application in relation to a corporation that has issued shares of a class of its capital stock in one or more series, a reference in this Act to the "class" shall be read, with such modifications as the circumstances require, as a reference to a "series of the class".

Pre-RSC History: Subsec. 248(6) amended by 1988, c. 55, subsec. 188(15), to substitute "Series of Shares" for "Presumption" as the heading, and to substitute "one or more series" for "two or more series", applicable with respect to shares issued after 8 p.m. EDST, June 18, 1987 and shares deemed by the Act (as amended) to have been issued after that date.

Subsec. 248(6) added by 1980-81-82-83, c. 140, subsec. 128(15), applicable after November 12, 1981.

Interpretation Bulletins: IT-328R3: Losses on shares on which dividends have been received.

(7) Receipt of things mailed — For the purposes of this Act,

(a) anything (other than a remittance or payment described in paragraph (b)) sent by first class mail or its equivalent shall be deemed to have been received by the person to whom it was sent on the day it was mailed; and

(b) the remittance or payment of an amount

(i) deducted or withheld, or

(ii) payable by a corporation,

as required by this Act or a regulation shall be deemed to have been made on the day on which it is received by the Receiver General.

Related Provisions: 153(1) [closing words] — Certain remittances must be made directly to a financial institution; 204.81(8.2) — Rule in 248(7) does not apply to voluntary de-registration of LSVCC; 244(5) — Proof of service by mail; 244(14) — Mailing date presumed to be date of assessment or notice; Reg. 110 — Certain remittances must be made directly to a financial institution.

Pre-RSC History: Subsec. 248(7) substituted by 1990, c. 39, subsec. 54(3), applicable to amounts remitted or paid after 1989. Subsec. 248(7) formerly read:

> (7) For the purposes of this Act, anything sent by first class mail or its equivalent shall be deemed to have been received by the person to whom it was sent on the day it was mailed except that the remittance of an amount deducted or withheld as required by this Act or a regulation made under this Act, shall be deemed to have been remitted on the day it was received by the Receiver General.

Subsec. 248(7) substituted by 1987, c. 46, subsec. 69(3), applicable to anything sent after 1987, except with respect to remittances, applicable in respect of amounts deducted or withheld after 1987. Subsec. 248(7) formerly read:

> (7) Receipt of things mailed — For the purposes of this Act, anything sent by mail shall be deemed to have been received by the recipient on the day that it was mailed.

Subsec. 248(7) added by 1985, c. 45, subsec. 122(5), applicable with respect to anything sent by mail after 1984.

Interpretation Bulletins: IT-433R: Farming or fishing — use of cash method.

(8) Occurrences as a consequence of death — For the purpose of this Act,

(a) a transfer, distribution or acquisition of property under or as a consequence of the terms of the will or other testamentary instrument of a taxpayer or the taxpayer's spouse or as a consequence of the law governing the intestacy of a taxpayer or the taxpayer's spouse shall be considered to be a transfer, distribution or acquisition of the property as a consequence of the death of the taxpayer or the taxpayer's spouse, as the case may be;

(b) a transfer, distribution or acquisition of property as a consequence of a disclaimer, release or surrender by a person who was a beneficiary under the will or other testamentary instrument or on the intestacy of a taxpayer or the taxpayer's spouse shall be considered to be a transfer, distribution or acquisition of the property as a consequence of the death of the taxpayer or the taxpayer's spouse, as the case may be; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) a release or surrender by a beneficiary under the will or other testamentary instrument or on the intestacy of a taxpayer with respect to any property that was property of the taxpayer immediately before the taxpayer's death shall be considered not to be a disposition of the property by the beneficiary.

Related Provisions: 248(9) — Definitions; 248(9.1) — Whether trust created by taxpayer's will; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: Subsec. 248(8) added by 1985, c. 45, subsec. 122(5), applicable with respect to transfers, distributions and acquisitions occurring after 1981.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-349R3: Intergenerational transfers of

farm property on death; IT-385R2: Disposition of an income interest in a trust; IT-449R: Meaning of "vested indefeasibly"; IT-500R: RRSPs — death of an annuitant.

(9) Definitions — In subsection (8),

"disclaimer" includes a renunciation of a succession made under the laws of the Province of Quebec that is not made in favour of any person, but does not include any disclaimer made after the period ending 36 months after the death of the taxpayer unless written application therefor has been made to the Minister by the taxpayer's legal representative within that period and the disclaimer is made within such longer period as the Minister considers reasonable in the circumstances;

History: The definition "disclaimer" in subsec. 248(9) substituted by 1994, c. 21, subsec. 109(7), applicable June 15, 1994. That definition formerly read:

> "disclaimer" includes a renunciation of a succession made under the laws of the Province of Quebec that is not made in favour of any person;

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

"release or surrender" means

(a) a release or surrender made under the laws of a province (other than the Province of Quebec) that does not direct in any manner who is entitled to benefit therefrom, or

(b) a gift *inter vivos* made under the laws of the Province of Quebec of an interest in, or right to property of, a succession that is made to the person or persons who would have benefited if the donor had made a renunciation of the succession that was not made in favour of any person,

and that is made within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances.

Pre-RSC History: Subsec. 248(9) added by 1985, c. 45, subsec. 122(5), applicable with respect to transfers, distributions and acquisitions occurring after 1981 except that an application that is made under paragraph (b) of the definition "release or surrender" by the legal representative of a taxpayer within 90 days after October 29, 1985 shall be deemed to have been made within the period ending 36 months after the death of the taxpayer.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-349R3: Intergenerational transfers of farm property on death.

(9.1) How trust created — For the purposes of this Act, a trust shall be considered to be created by a taxpayer's will if the trust is created

(a) under the terms of the taxpayer's will; or

(b) by an order of a court in relation to the taxpayer's estate made under any law of a province that provides for the relief or support of dependants.

Related Provisions: 108(1)"testamentary trust" — Trust created by taxpayer's will is a testamentary trust; 248(3) — Whether usufruct, right of use or habitation or substitution in Quebec deemed to be trust created by taxpayer's will.

History: Subsec. 248(9.1) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(8), applicable to 1990 *et seq.*

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

(9.2) Vested indefeasibly — For the purposes of this Act, property shall be deemed not to have vested indefeasibly

(a) in a trust under which a taxpayer's spouse is a beneficiary, where the trust is created by the will of the taxpayer, unless the property vested indefeasibly in the trust before the death of the spouse; and

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) in an individual (other than a trust), unless the property vested indefeasibly in the individual before the death of the individual.

Related Provisions: 248(9.1) — Whether trust created by taxpayer's will; 252(4)(a) — Extended meaning of "spouse".

History: Subsec. 248(9.2) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(8), applicable in respect of deaths occurring after December 20, 1991.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-449R: Meaning of "vested indefeasibly".

(10) Series of transactions — For the purposes of this Act, where there is a reference to a series of transactions or events, the series shall be deemed to include any related transactions or events completed in contemplation of the series.

Pre-RSC History: Subsec. 248(10) added by 1986, c. 6, subsec. 126(6).

Selected Cases [subsec. 248(10)]: *Meager Creek Holdings Ltd. v. R.*, [1998] 4 C.T.C. 2090 (TCC) (Must be some connection between events for "series" of transactions to occur).

Advance Tax Rulings: ATR-56: Purification of a family farm corporation; ATR-57: Transfer of property for estate planning purposes; ATR-58: Divisive reorganization.

(11) Compound interest — Interest computed at a prescribed rate under any of subsections 129(2.1) and (2.2), 131(3.1) and (3.2), 132(2.1) and (2.2), 133(7.01) and (7.02), 159(7), 160.1(1), 161(1), (2) and (11), 161.1(5), 164(3) to (4), 181.8(1) and (2) (as those two subsections read in their application to the 1991 and earlier taxation years), 185(2), 187(2) and 189(7), section 190.23 (as it read in its application to the 1991 and earlier taxation years) and subsections 193(3), 195(3), 202(5) and 227(8.3), (9.2) and (9.3) of this Act and subsection 182(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952 (as that subsection read in its application to taxation years beginning before 1986) and subsection 191(2) of that Act (as that subsection read in its application to the 1984 and earlier taxation years) shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid or unapplied on the day it would, but for this subsection, have ceased to be computed under that provision, interest at the prescribed rate shall be computed and compounded daily on the unpaid or unapplied interest from that day to the day it is paid or applied and shall be paid or applied as would be the case if interest had continued to be computed under that provision after that day.

Related Provisions: 221.1 — Application of interest where legislation retroactive.

History: Subsec. 248(11) amended to add reference to subsec. 161.1(5) and substitute "(as those two subsections read in their application to the 1991 and earlier taxation years)" for "(as these two subsections read in their application to the 1991 and earlier taxation years)" by 2000, c. 19, subsec. 67(2), applicable after 1999.

Subsec. 248(11) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(9), applicable to refunds paid or applied with respect to taxation years beginning after 1991. Subsec. (11) formerly read:

> (11) Interest computed at a prescribed rate under any of subsections 159(7), 160.1(1), 161(1), (2) and (11), 164(3) to (4), 181.8(1) and (2), 185(2), 187(2) and 189(7), section 190.23, subsections 193(3), 195(3), 202(5) and 227(8.3), (9.2) and (9.3) of this Act, subsection 182(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it applied to taxation years beginning before 1987, and subsection 191(2) of that Act as it applied to the 1972 to 1984 taxation years shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid on the day it would, but for this subsection, have ceased to be computed under that provision, interest at the prescribed rate shall be computed and compounded daily on the unpaid interest from that day to the day it is paid and shall be paid or credited as would have been the case if interest had continued to be computed under that provision after that day.

Subsec 248(11) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(16), to substitute the list of sections, applicable to 1990 *et seq.* That list formerly read:

> subsections 159(7), 160.1(1), 161(1), (2) and (11), 164(3) to (4), 181.8(1) and (2), 185(2), 187(2) and 189(7), section 190.23, subsections 191(2), 193(3), 195(3) and 202(5), section 211.5 and subsections 227(8.3), (9.2) and (9.3) of this Act and subsection 182(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Pre-RSC History: Subsec. 248(11) amended by 1990, c. 39, subsec. 54(4), to add "181.8(1) or (2)," "211.5", and "and shall be paid or credited as would have been the case if interest had continued to be computed under that provision after that day", deemed to have come into force on January 1, 1987, and interest computed in respect of a period ending before that day shall be compounded on and after that day, except that in applying the subsec.

> (a) in respect of periods ending before September 13, 1988, the reference to "227(8.3), (9.2) or (9.3)" shall be read as a reference to "227(8) or (9)";
>
> (b) in respect of periods ending on or before June 17, 1987, it shall be read without reference to "211.5"; and
>
> (c) in respect of periods in taxation years ending before July 1989, it shall be read without reference to "181.8(1) or (2)".

Subsec. 248(11) amended by 1988, c. 55, subsec. 188(16), to substitute "202(5), or 227(8.3), (9.2) or (9.3)" for "202(5) or 227(8) or (9)".

Subsec. 248(11) added by 1986, c. 55, subsec. 78(4), in force January 1, 1987, and interest computed in respect of a period ending before that day shall be compounded on and after that day.

Regulations: 4301 (prescribed rate of interest).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(12) Identical properties — For the purposes of this Act, one bond, debenture, bill, note or similar obligation issued by a debtor is identical to another such obligation issued by that debtor if both are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof.

Related Provisions: 14(13), 18(16) — Deemed identical properties for superficial loss/pregnant loss rules; 18.1(12) — Identical properties for matchable-expenditure rules; 40(3.5) — Deemed identical properties for superficial loss/pregnant loss rules; 47 — Capital gains treatment of identical properties; 54"superficial loss" [closing words] — Deemed identical properties for superficial loss/pregnant loss rules; 138(11.1) — Identical properties of life insurance corporation; 206(1.5) — Identical property rule for determining foreign property.

I.T. Application Rules: 26(8)–(8.4) — Identical properties owned since before 1972.

Interpretation Bulletins: IT-387R2: Meaning of "identical properties".

(13) Interests in trusts and partnerships — Where after November 12, 1981 a person has an interest in a trust or partnership, whether directly or indirectly through an interest in any other trust or partnership or in any manner whatever, the person shall, for the purposes of the definitions "income bond", "income debenture" and "term preferred share" in subsection (1), paragraph (h) of the definition "taxable preferred share" in that subsection, subsections 84(4.2) and (4.3) and 112(2.6) and section 258, be deemed to be a beneficiary of the trust or a member of the partnership, as the case may be.

(14) Related corporations — For the purpose of paragraph (g) of the definition "specified financial institution" in subsection (1), where in the case of 2 or more corporations it can reasonably be considered, having regard to all the circumstances, that one of the main reasons for the separate existence of those corporations in a taxation year is to limit or avoid the application of subsection 112(2.1) or (2.2) or 138(6), the 2 or more corporations shall be deemed to be related to each other and to each other corporation to which any such corporation is related.

History: Subsec. 248(14) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(17), to substitute "For the purpose of" for "For the purposes of" and "can reasonably" for "may reasonably", and to add "and to each other corporation to which any such corporation is related", applicable after July 13, 1990.

Pre-RSC History: Subsecs. 248(12), (13) and (14) added by 1988, c. 55, subsec. 188(17). Subsec. 248(12) applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987, subsecs. (13) and (14) applicable after June 18, 1987.

(15) Goods and services tax — change of use — For the purposes of this Act, where a liability for the goods and services tax is incurred in respect of a change of use at any time of a property, the liability so incurred shall be deemed to have been incurred immediately after that time in respect of the acquisition of the property.

(16) Goods and services tax — input tax credit and rebate — For the purposes of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax credit or rebate with respect to the goods and services tax in respect of a property or service shall be deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

> (a) where the amount was claimed by the taxpayer as an input tax credit in a return under Part IX of the *Excise Tax Act* for a reporting period under that Act,
>
> (i) at the time the goods and services tax in respect of the input tax credit was paid or became payable, if the tax was paid or became payable in the reporting period, or
>
> (ii) if no such tax was paid or became payable in respect of the input tax credit in the reporting period, at the end of the reporting period; or
>
> (b) where the amount was claimed as a rebate with respect to the goods and services tax, at the time the amount was received or credited.

Related Provisions: 8(11) — GST rebate deemed not to be reimbursement for employment expense purposes; 12(1)(x) — Inclusion in income; 12(2.2) — Deemed outlay or expense; 13(7.1) — Deemed capital cost of certain property; 37(1)(d) — Scientific research and experimental development; 53(2)(k) — Reduction in adjusted cost base; 66.1(6)"cumulative Canadian exploration expense"J — Assistance reduces CCEE; 66.2(5)"cumulative Canadian development expense"M — Assistance reduces CCDE; 66.4(5)"cumulative Canadian oil and gas property expense"I — Assistance reduces CCOGPE; 248(17) — Application of 248(16) to passenger vehicles and aircraft; 248(18) — GST — repayment of input tax credit.

(17) Application of subsec. (16) to passenger vehicles and aircraft — Where the input tax credit of a taxpayer under Part IX of the *Excise Tax Act* in respect of a passenger vehicle or aircraft is determined with refer-

ence to subsection 202(4) of the *Excise Tax Act*, subparagraphs (16)(a)(i) and (ii) shall, as they apply in respect of such property, be read as follows:

"(i) at the beginning of the first taxation year or fiscal period of the taxpayer commencing after the end of the taxation year or fiscal period, as the case may be, in which the goods and services tax in respect of such property was considered for the purposes of determining the input tax credit to be payable, if the tax was considered for the purposes of determining the input tax credit to have become payable in the reporting period, or

(ii) if no such tax was considered for the purposes of determining the input tax credit to have become payable in the reporting period, at the end of the reporting period; or"

(18) Goods and services tax — repayment of input tax credit — For the purposes of this Act, where an amount is added at a particular time in determining the net tax of a taxpayer under Part IX of the *Excise Tax Act* in respect of an input tax credit relating to property or a service that had been previously deducted in determining the net tax of the taxpayer, that amount shall be deemed to be assistance repaid at the particular time in respect of the property or service pursuant to a legal obligation to repay all or part of that assistance.

Related Provisions: 20(1)(hh) — Deduction for repayment of assistance; 39(13) — Capital loss on repayment of assistance; 53(1)(e)(ix)(B) — Adjusted cost base of partnership interest; 127(10.7) — Investment tax credit — repayment of assistance.

Pre-RSC History [subsecs. 248(15)–(18)]: Subsecs. 248(15) to (18) added by 1990, c. 45, subsec. 53(2), applicable after 1990.

(19) When property available for use — Except as otherwise provided, property shall be considered to have become available for use for the purposes of this Act at the time at which it has, or would have if it were depreciable property, become available for use for the purpose of subsection 13(26).

Related Provisions: 13(27)–(31) — Meaning of "available for use"; 37(1.2) — R&D capital expenditures; 127(11.2) — Investment tax credit.

History: Subsec. 248(19) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after 1989.

(20) Partition of property — Subject to subsections (21) to (23), for the purposes of this Act, where at any time a property owned jointly by 2 or more persons is the subject of a partition, the following rules apply, notwithstanding any retroactive or declaratory effect of the partition:

(a) each such person who had an interest in the property immediately before that time shall be deemed not to have disposed at that time of that proportion, not exceeding 100%, of the interest that the fair market value of that person's interest in the property immediately after that time is of the fair market value of that person's interest in the property immediately before that time,

(b) each such person who has an interest in the property immediately after that time shall be deemed not to have acquired at that time that proportion of the interest that the fair market value of that person's interest in the property immediately before that time is of the fair market value of that person's interest in the property immediately after that time,

(c) each such person who had an interest in the property immediately before that time shall be deemed to have had until that time, and to have disposed at that time of, that proportion of the person's interest to which paragraph (a) does not apply,

(d) each such person who has an interest in the property immediately after that time shall be deemed not to have had before that time, and to have acquired at that time, that proportion of the person's interest to which paragraph (b) does not apply, and

(e) paragraphs (a) to (d) do not apply where the interest of the person is an interest in fungible tangible property described in that person's inventory,

and, for the purposes of this subsection, where an interest in the property is an undivided interest, the fair market value of the interest at any time shall be deemed to be equal to that proportion of the fair market value of the property at that time that the interest is of all the undivided interests in the property.

Related Provisions: 248(21) — Subdivision of property; 248(22) — Matrimonial regimes.

History: Subsec. 248(20) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990 except that the subsec. does not apply to a partition effected before 1992

(a) pursuant to the terms of an agreement in writing entered into on or before that day; or

(b) in accordance with a confirmation in writing from the Department of National Revenue or a provincial department of revenue as to the tax consequences of that partition, where the confirmation is in respect of a written request received by such department on or before that day.

(21) Subdivision of property — Where a property that was owned jointly by 2 or more persons is the subject of a partition among those persons and, as a consequence thereof, each such person has, in the property, a new interest the fair market value of which immediately after the partition, expressed as a percentage of the fair market value of all the new interests in the property immediately after the partition, is equal to the fair market value of that person's undivided interest immediately before the partition, expressed as a percentage of the fair market value of all the undivided interests in the property immediately before the partition,

(a) subsection (20) does not apply to the property, and

(b) the new interest of each such person shall be deemed to be a continuation of that person's undivided interest in the property immediately before the partition,

and, for the purposes of this subsection,

(c) subdivisions of a building or of a parcel of land that are established in the course of, or in contemplation of, a partition and that are jointly owned by the same persons who jointly owned the building or the parcel of land, or by their assignee, shall be regarded as one property, and

(d) where an interest in the property is or includes an undivided interest, the fair market value of the interest shall be determined without regard to any discount or premium that applies to a minority or majority interest in the property.

Related Provisions: 248(20) — Partition of property; 248(21) — Subdivision of property.

History: Subsec. 248(21) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990.

(22) Matrimonial regimes — Where at any time property could, as the consequence of the dissolution of a mat-

rimonial regime between 2 spouses, be the subject of a partition, for the purposes of this Act

(a) where that property was owned by one of the spouses immediately before it became subject to that regime and had not subsequently been disposed of before that time, it shall be deemed to be owned at that time by that spouse and not by the other spouse; and

(b) in any other case, the property shall be deemed to be owned by the spouse who has the administration of that property at that time and not by the other spouse.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" and "spouses" with "spouse or common-law partner" and "spouses and common-law partners" respectively, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 248(20) — Partition of property; 248(21) — Subdivision of property; 248(23) — Dissolution of a matrimonial regime; 252(3), (4)(a) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 248(22) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990.

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-437R: Ownership of property (principal residence); IT-511R: Interspousal and certain other transfers and loans of property.

(23) Dissolution of a matrimonial regime — Where, immediately after the dissolution of a matrimonial regime (other than a dissolution occurring as a consequence of death), the owner of a property that was subject to that regime is not the person, or the estate of the person, who is deemed by subsection (22) to have been the owner of the property immediately before the dissolution, the person shall be deemed for the purposes of this Act to have transferred the property to the person's spouse immediately before the dissolution.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 110.6(14)(g) — Related persons, etc.; 252(3), (4)(a) — Extended meaning of "spouse" and "former spouse".

History: Subsec. 248(23) substituted by 1994, c. 21, subsec. 109(8), applicable to dissolutions and deaths occurring after December 21, 1992. That subsec. formerly read:

> (23) Dissolution of a matrimonial regime — Where the owner, immediately after the dissolution of a matrimonial regime, of a property that was subject to that regime is not the person, or the estate of the person, who, because of subsection (22), was the owner of the property immediately before the dissolution, that person shall be deemed, for the purposes of this Act, to have transferred the property to that person's spouse immediately before the dissolution or, if the dissolution occurs as a consequence of the death of one of the spouses, immediately before the time that is immediately before the death.

Subsec. 248(23) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable after July 13, 1990.

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment; IT-437R: Ownership of property (principal residence); IT-511R: Interspousal and certain other transfers and loans of property.

(23.1) Transfers after death — Where, as a consequence of the laws of a province relating to spouses' interests in respect of property as a result of marriage, property is, after the death of a taxpayer,

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 7, will replace "spouses'" with "spouses' and common-law partners'", and by Sch. 2, s. 9, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(a) transferred or distributed to a person who was the taxpayer's spouse at the time of the death, or acquired by that person, the property shall be deemed to have been so transferred, distributed or acquired, as the case may be, as a consequence of the death; or

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) transferred or distributed to the taxpayer's estate, or acquired by the taxpayer's estate, the property shall be deemed to have been so transferred, distributed or acquired, as the case may be, immediately before the time that is immediately before the death.

History: Subsec. 248(23.1) added by 1994, c. 21, subsec. 109(8), applicable to dissolutions and deaths occurring after December 21, 1992.

Interpretation Bulletins: IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died.

(24) Accounting methods — For greater certainty, it is hereby declared that, unless specifically required, neither the equity nor the consolidation method of accounting shall be used to determine any amount for the purposes of this Act.

Related Provisions: 61.3(1)(b)C(i) — Repetition of rule for purposes of debt forgiveness reserve calculation.

History: Subsec. 248(24) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 192(18), applicable December 17, 1991.

(25) Beneficially interested — For the purposes of this Act,

(a) a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any person or partnership) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more trusts or partnerships;

(b) except for the purpose of this paragraph, a particular person or partnership is deemed to be beneficially interested in a particular trust at a particular time where

(i) the particular person or partnership is not beneficially interested in the particular trust at the particular time,

(ii) because of the terms or conditions of the particular trust or any arrangement in respect of the particular trust at the particular time, the particular person or partnership might, because of the exercise of any discretion by any person or partnership, become beneficially interested in the particular trust at the particular time or at a later time, and

(iii) at or before the particular time, either

(A) the particular trust has acquired property, directly or indirectly in any manner whatever, from

(I) the particular person or partnership,

(II) another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length,

(III) a person or partnership with whom the other person referred to in subclause (II) does not deal at arm's length,

(IV) a controlled foreign affiliate of the particular person or of another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length, or

(V) a non-resident corporation that would, if the particular partnership were a corporation resident in Canada, be a controlled foreign affiliate of the particular partnership, or

(B) a person or partnership described in any of subclauses (A)(I) to (V) has given a guarantee on behalf of the particular trust or provided any other financial assistance whatever to the particular trust; and

(c) a member of a partnership that is beneficially interested in a trust is deemed to be beneficially interested in the trust.

Related Provisions: 108(1) — "Beneficiary"; 248(3) — Certain persons in Quebec deemed to be beneficially interested in trust.

History: Subsec. 248(25) amended by 1998, c. 19, subsec. 239(7), applicable after 1997. Subsec. 248(25) formerly read:

(25) For the purposes of this Act, a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more other trusts.

Subsec. 248(25) amended by 1997, c. 25, subsec. 71(4), applicable after 1996. Subsec. (25) formerly read:

(25) For the purposes of this Act, a person or partnership is beneficially interested in a particular trust if the person or partnership has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more other trusts.

Subsec. 248(25) substituted by 1994, c. 21, subsec. 109(9), applicable after 1990. Subsec. (25) formerly read:

(25) For the purposes of this Act, a person or partnership is beneficially interested in a trust if the person or partnership has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

Subsec. 248(25) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 139(10), applicable after 1990.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election; IT-511R: Interspousal and certain other transfers and loans of property.

Proposed Addition — 248(25.1)–(25.4)

(25.1) Trust-to-trust transfers — Where there is a transfer at a particular time of a property from a trust (in this subsection referred to as the "transferor") to another trust (in this subsection referred to as the "transferee") in circumstances to which paragraph (f) or (g) of the definition "disposition" in subsection (1) applies, without affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(f), the transferee is deemed to be after the particular time the same trust as, and a continuation of, the transferor.

Technical Notes: New subsection 248(25.1) of the Act applies where there is a transfer of a property from a particular trust to another trust in circumstances to which paragraph (f) or (g) of the definition "disposition" in subsection 248(1) (explained in the notes above) applies. The result of the application of either of those paragraphs is that the transfer does not constitute a disposition. Where this is the case, subsection 248(25.1) deems the other trust after the particular time to be the same trust as, and a continuation of, the particular trust.

The application of subsection 248(25.1) does not affect the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) or paragraph 122(2)(f).

This amendment applies to transfers that occur after December 23, 1998.

Related Provisions: 104(5.8) — Transfers between trusts; 108(1) — Definition of "capital interest"; 233.2(4) — Disclosure of transfer to CCRA; 248(1)"disposition"(c) — Disposition incudes transfer to a trust.

(25.2) Trusts to ensure obligations fulfilled — Except for the purpose of this subsection, where at any time property is transferred to a trust in circumstances to which paragraph (k) of the definition "disposition" in subsection (1) applies, the trust is deemed to deal with the property as agent for the transferor throughout the period that begins at the time of the transfer and ends at the time of the first change after that time in the beneficial ownership of the property.

Technical Notes: Subsection 248(25.2) of the Act applies where at any time there is a transfer of property to a trust in circumstances to which paragraph (k) of the definition "disposition" in subsection 248(1) applies. Once the property has been transferred, the trust is deemed to deal with the property as agent for the transferor until there is a subsequent change in its beneficial ownership.

This amendment applies to transfers that occur after December 23, 1998.

(25.3) Cost of trust interest — The cost to a taxpayer of a particular unit of a trust is deemed to be equal to the amount described in paragraph (a) where

(a) the trust issues the particular unit to the taxpayer directly in satisfaction of a right to enforce payment of an amount by the trust in respect of the taxpayer's capital interest in the trust;

(b) at the time that the particular unit is issued, the trust is neither a personal trust nor a trust prescribed for the purpose of subsection 107(2); and

(c) either

(i) the particular unit is capital property and subparagraph 53(2)(h)(i.1) applies in respect of the amount described in paragraph (a), or would apply if that subparagraph were read without reference to clauses 53(2)(h)(i.1) (A) and (B), or

(ii) the particular unit is not capital property and subparagraph 53(2)(h)(i.1) does not apply in respect of the amount described in paragraph (a) but would so apply if that subparagraph were read without reference to clauses 53(2)(h)(i.1)(A) and (B).

Technical Notes: Subsection 248(25.3) of the Act applies where a trust (other than a personal trust or a trust prescribed for the purpose of subsection 107(2)) issues particular units of the trust to a taxpayer directly in satisfaction of a right to a qualifying amount payable from the trust in respect of the taxpayer's capital interest in the trust. Where this is the case, the cost to the taxpayer of the particular units is deemed to equal the amount so payable. In the case of particular units of a trust that are capital property, a qualifying amount payable is one that causes, or but for clauses 53(2)(h)(i.1)(A) and (B) would cause, a reduction under subparagraph 53(2)(h)(i.1) to the adjusted cost base of the taxpayer's capital interest. Where the particular units of a trust are not capital property, a qualifying amount payable is one in respect of which subparagraph 53(2)(h)(i.1) does not apply but to which that subparagraph would apply if it were read without reference to clauses 53(2)(h)(i.1)(A) and (B).

This amendment applies to the 1999 and subsequent taxation years.

(25.4) Where acquisition by another of right to enforce — If at a particular time a taxpayer's capital interest in a trust includes a right to enforce payment of an amount by the trust, the amount shall be added at the particular time to the cost otherwise determined to the taxpayer of the capital interest where

(a) immediately after the particular time there is a disposition by the taxpayer of the capital interest;

(b) as a consequence of the disposition, the right to enforce payment of the amount is acquired by another person or partnership; and

(c) if the right to enforce payment of the amount had been satisfied by a payment to the taxpayer by the trust, there would have been no disposition of that right for the purposes of this Act because of the application of paragraph (i) of the definition "disposition" in subsection (1).

Technical Note: Subsection 248(25.4) of the Act provides relief from possible double taxation where a taxpayer disposes to another person or a partnership a capital interest in a trust that includes a right to enforce payment of an amount by the trust. If, had the trust satisfied the right, there would have been no disposition of the right because of paragraph (i) of the definition "disposition" in subsection 248(1), the amount is added to the cost otherwise determined immediately before the disposition of the taxpayer's capital interest in the trust.

This amendment applies to transfers that occur after December 23, 1998.

EXAMPLE

Stephanie's capital interest in a unit trust initially consists of 1,000 units that Stephanie purchased on December 23, 2000 for $10,000. The trust has not made an election under subsection 132.11(1) to have a December 15 year end. It makes $400 of its income for its 2000 taxation year payable to Stephanie on December 31, 2000. However, prior to the satisfaction of Stephanie's assignable right to enforce payment of the $400 amount payable, Stephanie sells 1/2 of her capital interest in the trust (i.e., 500 units and 1/2 of the right to enforce payment) to a 3rd party for $5,700.

Results:

1. Under subsection 104(13), Stephanie is required to include $400 in computing her income for the 2000 taxation year.

2. The right to enforce payment of the $400 amount by the trust is treated as part of Stephanie's capital interest in the trust under subsection 108(1). Under paragraph (i) of the definition "disposition" in subsection 248(1), a payment by the trust in satisfaction of the right would not be a disposition. However, the sale of the 500 units in the trust is a disposition of part of Stephanie's capital interest that includes a part of her right to enforce payment from the trust.

3. As the ACB of the right disposed of is nil, Stephanie realizes a gain of $200 (i.e., 1/2 of the total amount to which the right to enforce relates) upon its sale to the 3rd party. Subsection 248(25.4) is intended to apply in these circumstances to provide a $200 "bump" in the ACB of her capital interest in the trust otherwise determined immediately before the disposition. Consequently, the total ACB of the 500 units sold is $5,200 (i.e., $5,000 + $200).

4. Consequently, the capital gain realized on the disposition of the 500 units is $500 ($5,700 - $5,200).

Application: The June 5, 2000 Notice of Ways and Means Motion, subsec. 112(5), will add subsecs. 248(25.1) to (25.4), subsecs. (25.1), (25.2) and (25.4) applicable to transfers that occur after December 23, 1998, and subsec. (25.3) applicable to 1999 *et seq.*

Related Provisions: 107(1.1) — Cost of capital interest in a trust.

(26) Debt obligations — For greater certainty, where at any time a person or partnership (in this subsection referred to as the "debtor") becomes liable to repay money borrowed by the debtor or becomes liable to pay an amount (other than interest)

(a) as consideration for any property acquired by the debtor or services rendered to the debtor, or

(b) that is deductible in computing the debtor's income,

for the purposes of applying the provisions of this Act relating to the treatment of the debtor in respect of the liability, the liability shall be considered to be an obligation, issued at that time by the debtor, that has a principal amount at that time equal to the amount of the liability at that time.

Related Provisions: 43 — Partial disposition of capital property; 142.4(9) — Partial disposition of specified debt obligation by financial institution.

History: Subsec. 248(26) added by 1995, c. 21, subsec. 43(3), applicable to taxation years that end after February 21, 1994.

(27) Parts of debt obligations — For greater certainty,

(a) unless the context requires otherwise, an obligation issued by a debtor includes any part of a larger obligation that was issued by the debtor;

(b) the principal amount of that part shall be considered to be the portion of the principal amount of that larger obligation that relates to that part; and

(c) the amount for which that part was issued shall be considered to be the portion of the amount for which that larger obligation was issued that relates to that part.

Related Provisions: 43 — Partial disposition of capital property; 142.4(9) — Partial disposition of specified debt obligation by financial institution.

History: Subsec. 248(27) added by 1995, c. 21, subsec. 43(3), applicable to taxation years that end after February 21, 1994.

(28) Limitation respecting inclusions, deductions and tax credits — Unless a contrary intention is evident, no provision of this Act shall be read or construed

(a) to require the inclusion or permit the deduction, either directly or indirectly, in computing a taxpayer's income, taxable income or taxable income earned in Canada, for a taxation year or in computing a taxpayer's income or loss for a taxation year from a particular source or from sources in a particular place, of any amount to the extent that the amount has already been directly or indirectly included or deducted, as the

case may be, in computing such income, taxable income, taxable income earned in Canada or loss, for the year or any preceding taxation year;

(b) to permit the deduction, either directly or indirectly, in computing a taxpayer's tax payable under any Part of this Act for a taxation year of any amount to the extent that the amount has already been directly or indirectly deducted in computing such tax payable for the year or any preceding taxation year; or

(c) to consider an amount to have been paid on account of a taxpayer's tax payable under any Part of this Act for a taxation year to the extent that the amount has already been considered to have been paid on account of such tax payable for the year or any preceding taxation year.

Related Provisions: 181(4), 190(2) — Similar rules for Part I.3 and Part VI taxes.

History: Subsec. 248(28) added by 1996, c. 21, subsec. 60(3), applicable to taxation years that end after July 19, 1995.

Definitions [s. 248]: "active business" — 248(1); "affiliated" — 251.1; "amateur athlete trust" — 143.1(1), 248(1); "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "bank" — *Interpretation Act* 35(1); "bituminous sands", "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255, *Interpretation Act* 35(1); "Canadian-controlled private corporation" — 125(7); "Canadian resource property" — 66(15), 248(1); "capital gain" — 39(1), 248(1); "capital interest" — 108(1), 248(1); "capital loss" — 39(1)(b), 248(1); "carrying on business" — 253; "cemetery care trust" — 148.1(1), 248(1); "child" — 252(1); "common-law partner", "common-law partnership", "common share" — 248(1); "consequence of the death" — 248(8); "consideration" — 108(7); "controlled" — 256(6), (6.1); "controlled foreign affiliate" — 95(1), 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "deferred amount" — 248(1); "deferred profit sharing plan" — 147(1), 248(1); "designated insurance property" — 138(12), 248(1); "disclaimer" — 248(9); "disposition" — 248(1); "eligible capital property" — 54, 248(1); "eligible funeral arrangement" — 148.1(1), 248(1); "employed", "employee trust" — 248(1); "employees profit sharing plan" — 144(1), 248(1); "filing-due date" — 248(1); "fiscal period" — 249(2)(b), 249.1; "goods and services tax", "grandfathered share", "gross revenue", "income interest", "insurance policy", "insurer" — 248(1); "interest in real property" — 248(4); "*inter vivos* trust" — 108(1), 248(1); "international traffic", "inventory", "lending asset" — 248(1); "life insurance policy", "life insurance policy in Canada" — 138(12), 248(1); "marriage" — 252(4)(b); "mineral resouce", "Minister" — 248(1); "mutual fund corporation" — 131(8), 248(1); "mutual fund trust" — 132(6)–(7), 132.2(1)(q), 248(1); "net income stabilization account", "non-resident" — 248(1); "non-resident-owned investment corporation" — 133(8), 248(1); "oil or gas well" — 248(1); "parent" — 252(2)(a); "passenger vehicle", "person" — 248(1); "personal services business" — 125(7), 248(1); "personal trust", "prescribed" — 248(1); "prescribed plan or arrangement" — Reg. 6801, 6802, 6802.1, 6803; "prescribed rate"Reg. 4301; "principal amount", "property" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "registered education savings plan" — 146.1(1), 248(1); "registered retirement savings plan" — 146(1), 248(1); "registered securities dealer" — 248(1); "registered supplementary unemployment benefit plan" — 145(1), 248(1); "related" — 248(14), 251; "release or surrender" — 248(9); "resident" — 250; "resident in a province" — 250(7); "resident in Canada" — 250; "restricted financial institution" — 248(1); "salary or wages" — 248(1); "security" — *Interpretation Act* 35(1); "series of transactions" — 248(10); "share", "specified financial institution" — 248(1); "specified investment business" — 125(7), 248(1); "specified person" — 248(1)"short-term preferred share"(j), 248(1)"taxable preferred share"(h); "share" — 248(1); "spouse" — 252(3), (4)(a); "supplementary unemployment benefit plan" — 145(1), 248(1); "tar sands", "tax treaty", "taxable Canadian property" — 248(1); "taxable income" — 2(2); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "timber resource property" — 13(21), 248(1); "trust" — 104(1), 248(1), (3); "unit trust" — 108(2), 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

249. (1) Definition of "taxation year" — For the purpose of this Act, a "taxation year" is

(a) in the case of a corporation, a fiscal period, and

(b) in the case of an individual, a calendar year,

and when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year.

Related Provisions: 11(2) — Reference to "taxation year" of individual who carries on a business; 14(4) — Taxation year of individual — eligible capital property rules; 20(16.2) — Taxation year of individual — terminal loss rules; 87(2)(a) — Deemed year-end and new taxation year on amalgamation; 95(1)"taxation year" — Taxation year of foreign affiliate; 96(1)(b) — Taxation year of partnership; 104(23) — Testamentary trusts; 128(2)(d) — Deemed year-end where individual bankrupt; 128.1(1)(a) — Deemed year-end and new taxation year on becoming resident in Canada; 128.1(4)(a) — Deemed year-end and new taxation year on ceasing to be resident in Canada; 132.11 — Election for mutual fund trust to have December 15 year-end; 132.2(1)(b) — Deemed year-end and new taxation year on transfer of property between mutual funds; 144(11) — Deemed year-end on EPSP becoming DPSP; 149(10)(a) — Taxation year of corporation becoming or ceasing to be exempt; 149.1(1) — Taxation year of registered charity; 249(2), (3) — References to "taxation year" and "fiscal period"; 249(4) — Deemed year-end on change of control; 250.1(a) — Taxation year of non-resident person.

Pre-RSC History: 1988, c. 55, s. 194 provides as follows:

194. Private corporation year-end election — Notwithstanding subsection 249(1) of the said Act,

(a) where a corporation that was, throughout the period commencing at the beginning of its last taxation year commencing before 1988 and ending at the end of 1987, a Canadian-controlled private corporation, so elects in its return of income under Part I of the said Act for its taxation year that commenced before 1988 and would, but for this paragraph, have ended after 1987, that taxation year shall be deemed to have ended on December 31, 1987 and a new taxation year of the corporation shall be deemed to have commenced immediately after that date;

(b) where a corporation that was, throughout the period commencing at the beginning of its last taxation year commencing before July, 1988 and ending at the end of June, 1988, a private corporation other than a Canadian-controlled private corporation, so elects in its return of income under Part I of the said Act for its taxation year that commenced before July, 1988 and would, but for this paragraph, have ended after June, 1988, that taxation year shall be deemed to have ended on June 30, 1988 and a new taxation year of the corporation shall be deemed to have commenced immediately after that date; and

(c) where paragraph (a) or (b) applies in respect of a corporation, it shall be deemed not to have established a fiscal period on or before the date referred to in paragraph (a) or (b), as the case may be, for the purposes of determining the corporation's fiscal period after that date.

Regulations: 1104(1) (taxation year of individual for capital cost allowance purposes).

Interpretation Bulletins: IT-172R: Capital cost allowance — Taxation year of individuals; IT-184R: Deferred cash purchase tickets issued by Canadian Wheat Board; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(2) References to certain taxation years and fiscal periods — For the purposes of this Act,

(a) a reference to a taxation year ending in another year includes a reference to a taxation year ending coincidentally with that other year; and

(b) a reference to a fiscal period ending in a taxation year includes a reference to a fiscal period ending coincidentally with that year.

Related Provisions: 249(1) — "Taxation year"; 250.1(a) — Taxation year of non-resident person.

History: Para. 249(2)(b) amended by 1995, c. 3, s. 53, applicable to fiscal periods that end after 1993. Para. (b) formerly read:

(b) a reference to a fiscal period of a partnership ending in a taxation year includes a reference to a fiscal period of the partnership ending coincidentally with that year.

Pre-RSC History: Subsec. 249(2) substituted by 1984, c. 45, s. 93, applicable to taxation years and fiscal periods ending in the 1985 and subsequent calendar years. Subsec. 249(2) formerly read:

> (2) Idem — For the purposes of this Act, a reference to a taxation year ending in another year includes a reference to a taxation year ending coincidentally with that other year.

(3) Deemed year end where fiscal period exceeds 365 days — Notwithstanding subsection (1), where the fiscal period of a corporation exceeds 365 days and by reason thereof the corporation does not have a taxation year that ends in a particular calendar year, for the purposes of this Act, the corporation's first taxation year ending in the immediately following calendar year shall be deemed to end on the last day of the particular calendar year.

Pre-RSC History: Subsec. 249(3) added by 1977-78, c. 32, s. 55, applicable to taxation years ending after 1978.

(4) Year end on change of control — Where at any time control of a corporation (other than a corporation that is a foreign affiliate of a taxpayer resident in Canada and that did not carry on a business in Canada at any time in its last taxation year beginning before that time) is acquired by a person or group of persons, for the purposes of this Act,

(a) subject to paragraph (c), the taxation year of the corporation that would, but for this paragraph, have included that time shall be deemed to have ended immediately before that time;

(b) a new taxation year of the corporation shall be deemed to have commenced at that time;

(c) subject to paragraph 128(1)(d), section 128.1, and paragraphs 142.6(1)(a) and 149(10)(a), and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year that ended before that time would, but for this paragraph, have ended within the 7-day period that ended immediately before that time, that taxation year shall, except where control of the corporation was acquired by a person or group of persons within that period, be deemed to end immediately before that time where the corporation so elects in its return of income under Part I for that taxation year; and

(d) for the purpose of determining the corporation's fiscal period after that time, the corporation shall be deemed not to have established a fiscal period before that time.

Related Provisions: 139.1(18)) — Holding corporation deemed not to acquire control of insurer on demutualization; 149(10) — Exempt corporations; 256(6)–(9) — Whether control acquired.

History: Para. 249(4)(c) amended by 1995, c. 21, s. 60, applicable after February 22, 1994. Para. (c) formerly read:

> (c) subject to paragraph 128(1)(d), section 128.1 and paragraph 149(10)(a), and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year that ended before that time would, but for this paragraph, have ended within the 7-day period that ended immediately before that time, that taxation year shall, except where control of the corporation was acquired by a person or group of persons within that period, be deemed to end immediately before that time where the corporation so elects in its return of income under Part I for that taxation year; and

Para. 249(4)(c) substituted by 1994, c. 21, s. 110, applicable after 1992 except that, where a corporation has elected in accordance with paragraph 111(4)(a) of 1994, c. 21 (see subsec. 250(5.1)), the amended para. applies to the time at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction. That para. formerly read:

> (c) subject to paragraphs 88.1(c), 128(1)(d) and 149(10)(a), and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year ending before that time and would, but for this paragraph, have ended within the seven day period ending immediately before that time, that taxation year shall, except where control of the corporation has been acquired by a person or group of persons within the seven day period ending immediately before that time, be deemed to end immediately before that time where the corporation so elects in its return of income under Part I for that taxation year; and

That portion of subsec. 249(4) preceding para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 193, applicable to acquisitions of control occurring after July 13, 1990. That portion formerly read:

> (4) Deemed year end where change of control occurs — Where, at any time, control of a corporation has been acquired by a person or group of persons, the following rules apply:

Pre-RSC History: Subsec. 249(4) added by 1987, c. 46, s. 70, applicable with respect to acquisitions of control occurring after January 15, 1987 other than acquisitions of control occurring before 1988 where the persons acquiring the control were obliged on that date to acquire the control pursuant to the terms of agreements in writing entered into on or before that date, except that a return of income required to be filed under the Act by a corporation for a taxation year that is deemed by subsection 249(4) to have ended or commenced, as the case may be, may be filed on or before the day that is 90 days after December 17, 1987.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

> 72. For the purpose of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement).

Definitions [s. 249]: "acquired" — 256(7)–(9); "business" — 248(1)"business"; "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carry on business in Canada" — 253; "control" — 256(6)–(9); "corporation" — 248(1);, "fiscal period" — 248(1), 249(2)(b), 249.1; "foreign affiliate" — 95(1), 248(1); "individual", "person" — 248(1); "taxation year" — 249.

249.1 (1) Definition of "fiscal period" — For the purposes of this Act, a "fiscal period" of a business or a property of a person or partnership means the period for which the person's or partnership's accounts in respect of the business or property are made up for purposes of assessment under this Act, but no fiscal period may end

(a) in the case of a corporation, more than 53 weeks after the period began,

(b) in the case of

(i) an individual (other than an individual to whom section 149 or 149.1 applies or a testamentary trust),

(i.1) a fiscal period of an inter vivos trust (other than a fiscal period to which paragraph 132.11(1)(c) applies),

(ii) a partnership of which

(A) an individual (other than a testamentary trust or an individual to whom section 149 or 149.1 applies),

(B) a professional corporation, or

(C) a partnership to which this subparagraph applies,

would, if the fiscal period ended at the end of the calendar year in which the period began, be a member of the partnership in the period, or

(iii) a professional corporation that would, if the fiscal period ended at the end of the calendar year in which the period began, be in the period a member of a partnership to which subparagraph (ii) applies,

after the end of the calendar year in which the period began unless, in the case of a business, the business is not carried on in Canada or is a prescribed business, and

Proposed Amendment — 249.1(1)(b)

after the end of the calendar year in which the period began unless, in the case of a business, the business is not carried on in Canada, is a prescribed business or is carried on by a prescribed person or partnership, and

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 113, will amend the closing words of para. 249.1(1)(b) to read as above, applicable to fiscal periods that begin after 1994.

Technical Notes: Subsection 249.1(1) of the Act provides the definition "fiscal period" for the purposes of the Act. Paragraph 249.1(1)(b) provides restrictions on the timing of fiscal periods of certain individuals, trusts, partnerships and professional corporations (other than the fiscal period of a business not carried on in Canada or of a prescribed business). For technical reasons related to the promulgation of Regulations, paragraph 249.1(1)(b) is amended so that the exception refers to a business that is "carried on by a prescribed person or partnership" as well as to a "prescribed business".

(c) in any other case, more than 12 months after the period began,

and, for the purpose of this subsection, the activities of a person to whom section 149 or 149.1 applies are deemed to be a business.

Proposed Amendment — 249.1(1)

Letter from Department of Finance, 1995:

Dear [xxx]

Thank you for your letter of April 4, 1995 concerning the business fiscal period measure announced in my budget of February 27, 1995. You have written on behalf of your client, [xxx].

I understand that [xxx] operates an [xxx] storage and transportation system in the province of [xxx]. Being a [xxx], [xxx] is regulated by the [xxx], which establishes [xxx]'s annual return on equity, its authorized equity capital level and the tariff it can charge consumers. You ask, on behalf of [xxx], that it be exempted from the above-mentioned fiscal period measure for reasons that include the administrative complexity the proposal would have on it, given that it is a regulated business, and that its units trade publicly.

I am sympathetic to your request in view of the unique circumstances that arise in the case of [xxx] and am, therefore, prepared to recommend that the Regulations be amended in due course to prescribe [xxx] [as exempt] from the application of the rules which would otherwise require a calendar year fiscal period.

I trust that this information addresses your client's concern.

Sincerely,

The Honourable Paul Martin, P.C., M.P.

Related Provisions: 25(1) — Optional continuation of year-end after disposing of business; 34.2 — Reserve in respect of 1995 stub period income; 96(1.1) — Allocation of share of income to retiring partner; 99(2) — Optional continuation of original year-end of partnership that ceases to exist; 128.1(4)(a.1) — Deemed end of fiscal period on emigration; 249.1(2), (3) — Interpretation; 249.1(4), (5) — Election for non-calendar year-end.

History: Subpara. 249.1(1)(b)(i) amended, and subpara. (i.1) added, by 1999, c. 22, s. 81, applicable to fiscal periods that begin after December 15, 1997. Subpara. (i) formerly read:

(i) an individual (other than a testamentary trust or an individual to whom section 149 or 149.1 applies),

Selected Cases [subsec. 249.1(1)]: *Cho v. R.*, [2000] 2 C.T.C. 2714 (TCC) (Provision applies to businesses started before end of 1994).

I.T. Technical News: No. 8 (bankrupt corporation — change of fiscal period).

(2) Not a member of a partnership — For the purpose of subparagraph (1)(b)(ii) and subsection (4), a person or partnership that would not have a share of any income or loss of a partnership for a fiscal period of the partnership, if the period ended at the end of the calendar year in which the period began, is deemed not to be a member of the partnership in that fiscal period.

(3) Subsequent fiscal periods — Where a fiscal period of a business or a property of a person or partnership ends at any time, the subsequent fiscal period, if any, of the business or property of the person or partnership is deemed to begin immediately after that time.

(4) Alternative method — Paragraph (1)(b) does not apply to a fiscal period of a business carried on, throughout the period of time that began at the beginning of the fiscal period and ended at the end of the calendar year in which the fiscal period began,

(a) by an individual (otherwise than as a member of a partnership), or

(b) by an individual as a member of a partnership, where throughout that period

(i) each member of the partnership is an individual, and

(ii) the partnership is not a member of another partnership,

where

(c) in the case of an individual

(i) who is referred to in paragraph (a), or

(ii) who is a member of a partnership no member of which is a testamentary trust,

an election in prescribed form to have paragraph (1)(b) not apply is filed with the Minister by the individual on or before the individual's filing-due date, and with the individual's return of income under Part I, for the taxation year that includes the first day of the first fiscal period of the business that begins after 1994, and

(d) in the case of an individual who is a member of a partnership a member of which is a testamentary trust, an election in prescribed form to have paragraph (1)(b) not apply is filed with the Minister by the individual on or before the earliest of the filing-due dates of the members of the partnership for a taxation year that includes the first day of the first fiscal period of the business that begins after 1994.

Related Provisions: 34.1(1) — Additional income adjustment where election made; 96(1.1) — Allocation of share of income to retiring partner; 96(3) — Election by members of partnership; 249.1(5) — Alternative method not applicable to tax shelter; 249.1(6) — Revocation of election; Reg. 600(b.1) — Late filing of election by January 31, 1998.

(5) Alternative method not applicable to tax shelter investments — Subsection (4) does not apply to a particular fiscal period of a business where, in a preceding fiscal period or throughout the period of time that

began at the beginning of the particular period and ended at the end of the calendar year in which the particular period began, the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)).

History: Subsec. 249.1(5) amended by 1998, c. 19, s. 240, applicable to fiscal periods that begin after 1994. Subsec. 249.1(5) formerly read:

(5) Alternative method not applicable to tax shelter — Subsection (4) does not apply to a particular fiscal period of a business where, in a preceding fiscal period or throughout the period of time that began at the beginning of the particular period and ended at the end of the calendar year in which the particular period began, the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelters (within the meaning assigned by subsection 237.1(1)).

(6) Revocation of election — Subsection (4) does not apply to fiscal periods of a business carried on by an individual that begin after the beginning of a particular taxation year of the individual where

(a) an election in prescribed form to revoke an election filed under subsection (4) in respect of the business is filed with the Minister; and

(b) the election to revoke is filed

(i) in the case of an individual

(A) who is not a member of a partnership, or

(B) who is a member of a partnership no member of which is a testamentary trust,

by the individual on or before the individual's filing-due date, and with the individual's return of income under Part I, for the particular taxation year, and

(ii) in [the] case of an individual who is a member of a partnership a member of which is a testamentary trust, by the individual on or before the earliest of the filing-due dates of the members of the partnership for a taxation year that includes the first day of the first fiscal period of the business that begins after the beginning of the particular year.

Related Provisions: 96(3) — Election by members of partnership.

(7) Change of fiscal period — No change in the time when a fiscal period ends may be made for the purposes of this Act without the concurrence of the Minister.

Related Provisions: 87(2)(j.91), (qq) — Change in fiscal period after amalgamation; 149(10)(a) — Change in fiscal period on becoming or ceasing to be exempt; 249(4)(d) — Change in fiscal period allowed after change in control of corporation.

Interpretation Bulletins: IT-179R: Change of fiscal period.

History: S. 249.1 added by 1996, c. 21, s. 61, applicable to fiscal periods that begin after 1994.

Definitions [s. 249.1]: "business" — 248(1); "calendar year" — *Interpretation Act* 37(1)(a); "Canada" — 255; "carried on in Canada" — 253; "corporation" — 248(1), *Interpretation Act* 35(1); "filing-due date" — 150(1), 248(1); "individual" — 248(1); "member" — of partnership 249.1(2); "Minister" — 248(1); "person", "prescribed", "professional corporation", "property" — 248(1); "testamentary trust" — 108(1), 248(1).

250. (1) Person deemed resident — For the purposes of this Act, a person shall, subject to subsection (2), be deemed to have been resident in Canada throughout a taxation year if the person

(a) sojourned in Canada in the year for a period of, or periods the total of which is, 183 days or more;

(b) was, at any time in the year, a member of the Canadian Forces;

(c) was, at any time in the year,

(i) an ambassador, minister, high commissioner, officer or servant of Canada, or

(ii) an agent-general, officer or servant of a province,

and was resident in Canada immediately prior to appointment or employment by Canada or the province or received representation allowances in respect of the year;

(d) performed services, at any time in the year, in a country other than Canada under a prescribed international development assistance program of the Government of Canada and was resident in Canada at any time in the 3 month period preceding the day on which those services commenced;

(d.1) was, at any time in the year, a member of the overseas Canadian Forces school staff who filed his or her return for the year on the basis that the person was resident in Canada throughout the period during which the person was such a member;

(e) [Repealed]

(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year;

(g) was at any time in the year, under an agreement or a convention with one or more other countries that has the force of law in Canada, entitled to an exemption from an income tax otherwise payable in any of those countries in respect of income from any source (unless all or substantially all of the person's income from all sources was not so exempt), because at that time the person was related to or a member of the family of an individual (other than a trust) who was resident in Canada.

Related Provisions: 6(1)(b)(ii), (iii) — No tax on certain allowances to deemed residents; 14(8) — Deemed residence in Canada for cumulative eligible capital recapture; 64.1 — Application to deemed resident; 94(1)(c)(i) [to be repealed], 94(3)(a) [proposed] — Offshore trust deemed resident in Canada; 110.6(5) — Deemed residence in Canada for capital gains exemption; 115(2) — Certain persons deemed employed in Canada; 118.5(2) — Tuition credit — application to deemed residents; 120(1) — Federal surtax on non-resident's income not earned in a province; 214(13)(a) — Regulations deeming person resident in Canada for purposes of Part XIII; 250(3) — "Resident" includes ordinarily resident; 250(6.1) — Deemed residence of trust that ceases to exist; 252(4) — Extended meaning of "spouse"; Canada-U.S. tax treaty, Art. IV:5 — Residence of government employee working in the other country.

History: Para. 250(1)(f) amended by 2000, c. 19, s. 68, applicable to 1999 *et seq.* except that, in its application to the 1999 taxation year, the reference to "the amount used under paragraph (c) of the description of B in subsection 118(1) for the year" shall be read as a reference to "$7,044". Para. 250(1)(f) formerly read:

(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the total of $500 and the amount used under paragraph (c) of the description of B in subsection 118(1) for the year; or

Para. 250(1)(e) repealed by 1999, c. 22, subsec. 82(1), applicable after February 23, 1998 except that, where

(a) any person would, but for para. 250(1)(e),

(i) have been non-resident at any time before February 24, 1998, and

(ii) not have become resident in Canada after that time and before February 24, 1998, and

(b) the person does not elect in writing filed with the Minister of National Revenue with the person's return of income under Part I of the Act for the 1998 taxation year to have the repeal of para. (e) apply after February 23, 1998,

the repeal of para. (e) does not apply in respect of the person before the first time after February 23, 1998 that the person would, but for para. 250(1)(e), cease to be resident in Canada. Para. 250(1)(e) formerly read:

(e) was resident in Canada in any previous year and was, at any time in the year, the spouse of a person described in paragraph (b), (c), (d) or (d.1) living with that person;

Para. 250(1)(f) amended by the said c. 22, subsec. 82(2), applicable to 1998 *et seq.* Para. (f) formerly read:

(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the amount used for the year under paragraph (c) of the description of B in subsection 118(1).

Para. 250(1)(g) added by the said c. 22, subsec. 82(3), applicable after February 23, 1998.

Para. 250(1)(f) substituted by 1994, c. 21, subsec. 111(1), applicable to 1993 *et seq.* That subsec. formerly read:

(f) was at any time in the year a child of an individual described in paragraph (b), (c), (d) or (d.1) and the person's income for the year did not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year.

Para. 250(1)(f) substituted by 1994, c. 7, Sch. VII (1992, c. 48), s. 22, applicable to 1993 *et seq.* Para. (f) formerly read:

(f) was at any time in the year a child of a person described in paragraph (b), (c), (d) or (d.1) and a dependant, as described in paragraph 118(1)(d), of that person.

Pre-RSC History: Para. 250(1)(f) substituted by 1988, c. 55, subsec. 189(1), applicable to 1988 *et seq.* Para. 250(1)(f) formerly read:

(f) he was, at any time in the year, a child described in paragraph 109(1)(d) of a person described in paragraph (b), (c), (d) or (d.1).

Para. 250(1)(d.1) added, paras. 250(1)(e), (f) substituted by 1980-81-82-83, c. 48, subsec. 109(1), to add "or (d.1)" in paras. 250(1)(e), (f), applicable to 1980 *et seq.*

Selected Cases [subsec. 250(1)]: *Naud v. MNR*, [1993] 1 C.T.C. 2008 (TCC) (Provision which deems foreign taxpayer resident in Canada under certain circumstances does not preclude such taxpayer being resident in a given province; Minister not required to reimburse source deductions under Quebec Act); *Griffiths v. The Queen*, [1978] C.T.C. 372 (FCTD) (Retaining investments and boat registration in Canada not incompatible with severing Canadian residential ties); *Strachan v. The Queen*, [1973] C.T.C. 416 (FCTD) (Crown employee resident between 1963 and 1971 remained resident after transfer to India).

Regulations: 3400 (prescribed international development assistance program, for 250(1)(d)).

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (remission to certain individuals linked with Quebec but not resident in a province on the last day of the year).

Interpretation Bulletins: IT-91R4: Employment at special work sites or remote work locations; IT-106R2: Crown corporation employees abroad; IT-178R3: Moving expenses; IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-221R2: Determination of an individual's residence status; IT-447: Residence of trust or estate; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit.

Forms: NR71: Determination of residency for spouses and dependent children; NR72: Determination of residency for employees posted abroad; NR73: Determination of residency status (leaving Canada); NR74: Determination of residency status (entering Canada).

(2) Idem — Where at any time in a taxation year a person described in paragraph (1)(b), (c) or (d) ceases to be a person so described, or a person described in paragraph (1)(d.1) ceases to be a member of the overseas Canadian Forces school staff, that person shall be deemed to have been resident in Canada throughout the part of the year preceding that time and the spouse and child of that person who by reason of paragraph (1)(e) or (f) would, but for this subsection, be deemed to have been resident in Canada throughout the year shall be deemed to have been resident in Canada throughout that part of the year.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Pre-RSC History: Subsec. 250(2) substituted by 1988, c. 55, subsec. 189(2), applicable to 1988 *et seq.* Subsec. 250(2) formerly read:

(2) Where, at any time in a taxation year, a person described in paragraph (1)(b), (c) or (d) ceases to be a person so described or a person described in paragraph (1)(d.1) ceases to be a member of the overseas Canadian Forces school staff, he shall be deemed to have been resident in Canada during the part of the year preceding that time and his spouse and child who by virtue of paragraph (1)(e) or (f) would, but for this subsection, be deemed to have been resident in Canada throughout the year, shall be deemed to have been resident in Canada during that part of the year.

Subsec. 250(2) substituted by 1980-81-82-83, c. 48, subsec. 109(2), applicable to 1980 et seq. Subsec. (2) formerly read:

(2) Where at any time in a taxation year a person described by paragraph (1)(b), (c) or (d) ceases to be a person so described, he shall be deemed to have been resident in Canada during the part of the year preceding that time and his spouse and child who by virtue of paragraph (1)(e) or (f) would, but for this subsection, be deemed to have been resident in Canada throughout the year, shall be deemed to have been resident in Canada during that part of the year.

Interpretation Bulletins: IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release).

(3) Ordinarily resident — In this Act, a reference to a person resident in Canada includes a person who was at the relevant time ordinarily resident in Canada.

Selected Cases [subsec. 250(3)]: *Erikson v. The Queen*, [1975] C.T.C. 624 (FCTD) (Resident between 1958 and 1969 broke residential ties in 1970 despite keeping assets in Canada and returning during summer to visit children living with ex-wife); *The Queen v. Reeder*, [1975] C.T.C. 256 (FCTD) (Resident and employee of Canadian subsidiary of foreign company abroad 246 days for training remained resident); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

Interpretation Bulletins: IT-193 SR: Taxable income of individuals resident in Canada during part of a year (Special Release); IT-221R2: Determination of a resident's status.

(4) Corporation deemed resident — For the purposes of this Act, a corporation shall be deemed to have been resident in Canada throughout a taxation year if

(a) in the case of a corporation incorporated after April 26, 1965, it was incorporated in Canada;

(b) in the case of a corporation that

(i) was incorporated before April 9, 1959,

(ii) was, on June 18, 1971, a foreign business corporation (within the meaning of section 71 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1971 taxation year) that was controlled by a corporation resident in Canada,

(iii) throughout the 10 year period ending on June 18, 1971, carried on business in any one particular country other than Canada, and

(iv) during the period referred to in subparagraph (iii), paid dividends to its shareholders resident in Canada on which its shareholders paid tax to the government of the country referred to in that subparagraph,

it was incorporated in Canada and, at any time in the taxation year or at any time in any preceding taxation

year commencing after 1971, it was resident in Canada or carried on business in Canada; and

(c) in the case of a corporation incorporated before April 27, 1965 (other than a corporation to which subparagraphs (b)(i) to (iv) apply), it was incorporated in Canada and, at any time in the taxation year or at any time in any preceding taxation year of the corporation ending after April 26, 1965, it was resident in Canada or carried on business in Canada.

Related Provisions: 128.2 — Predecessor corporations take on residence status of amalgamated corporation; 214(13)(a) — Regulations deeming person resident in Canada for purposes of Part XIII; 250(5) — Corporation deemed not resident; 250(5.1) — Continuance outside Canada; 256(6), (6.1) — Meaning of "controlled".

Selected Cases [subsec. 250(4)]: *The Queen v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA); leave to appeal to SCC refused (1985), 64 N.R. 156 (note), (sub nom. *Gurd's Products Co. v. MNR)* (Canadian subsidiary through which U.S. parent conducted business with Iraq held carrying on business in Canada and deemed resident); *Birmount Holdings Ltd. v. The Queen*, [1978] C.T.C. 358 (FCA) (Company carrying on business in Canada where acquisition and disposition of real estate held adventure in nature of trade).

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

(5) Deemed non-resident — Notwithstanding any other provision of this Act, a person is deemed not to be resident in Canada at a time if, at that time, the person would, but for this subsection and any tax treaty, be resident in Canada for the purposes of this Act but is, under a tax treaty with another country, resident in the other country and not resident in Canada.

Related Provisions: 128.1(4) — Corporation becoming non-resident; 219.1 — Tax payable when corporation becomes non-resident.

History: Subsec. 250(5) amended by 1999, c. 22, subsec. 82(4), applicable after February 24, 1998 except that, if on that day an individual was, under a tax treaty (as defined in subsec. 248(1)), resident in another country, the amendment does not apply to the individual until the first time after February 24, 1998 at which the individual becomes, under a tax treaty with a country other than Canada, resident in the other country. The subsec. formerly read:

(5) Corporation deemed not resident — Notwithstanding subsection (4), for the purposes of this Act, a corporation, other than a prescribed corporation, shall be deemed to be not resident in Canada at any time if, by virtue of an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada, it would at that time, if it had income from a source outside Canada, not be subject to tax on that income under Part I.

Pre-RSC History: Subsec. 250(5) added by 1985, c. 45, s. 123, applicable

(a) for the purposes of computing the income, taxable income earned in Canada and tax payable under Parts I and XIV by a corporation deemed to be not resident in Canada by virtue of subsection 250(5), for taxation years commencing after May 9, 1985;

(b) for the purposes of section 69, with respect to transactions or events occurring after May 9, 1985;

(c) for the purposes of Part XIII, with respect to amounts paid or credited to any such corporation after May 9, 1985; and

(d) for other purposes of the Act, after May 9, 1985.

Regulations: No prescribed corporations to date.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

Proposed Amendment — Application of S.C. 1999, c. 22 amendment to 250(5)

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 122, will amend the application of the amendment made to subsec. 250(5) by S.C. 1999, c. 22, s. 82 so that it is applicable after February 24, 1998 except that, if on that day an individual who would, but for a tax treaty (as defined in subsec. 248(1)), be resident in Canada for the purposes of the *Income Tax Act* is, under the tax treaty, resident in another country, the amendment does not apply to the individual until the first time after February 24, 1998 at which the individual becomes, under a tax treaty, resident in a country other than Canada.

The amendment to the application is deemed to have come into force on June 17, 1999.

Technical Notes: Prior to 1998, subsection 250(5) of the *Income Tax Act* contained a deeming rule applicable to corporations — where a corporation that would otherwise be resident in Canada was, under a tax treaty between Canada and another country, resident in the other country, the rule deemed the corporation not to be resident in Canada for the purposes of the *Income Tax Act*.

Subsections 82(4) and 82(8) of the *Income Tax Amendments Act, 1998* [1995-97 technical bill — ed.] extended this rule to both corporations and other persons — new subsection 250(5) deems a person not to be resident in Canada at a time if, at that time, the person, who would otherwise be resident in Canada under the *Income Tax Act*, "tie-breaks" under a tax treaty as a resident of a treaty country. This new rule was intended to be effective after February 24, 1998, except that an individual who was resident both in Canada and in a treaty country on that day was not to be subject to the new rule until the first time after February 24, 1998 at which that individual "tie-breaks" as a resident of a treaty country other than Canada.

Due to a possible ambiguity in the wording of the coming-into-force provision, subsection 82(8) of the *Income Tax Amendments Act, 1998* is now being clarified to ensure that amended subsection 250(5) applies as described above.

The new coming-into-force provision is deemed to have come into force on June 17, 1999, the day on which the *Income Tax Amendments Act, 1998* received Royal Assent.

(5.1) Continued corporation — Where a corporation is at any time (in this subsection referred to as the "time of continuation") granted articles of continuance (or similar constitutional documents) in a particular jurisdiction, the corporation shall

(a) for the purposes of applying this Act (other than subsection (4)) in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction and not to have been incorporated in any other jurisdiction; and

(b) for the purpose of applying subsection (4) in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction at the time of continuation and not to have been incorporated in any other jurisdiction.

Related Provisions: 54"superficial loss"(c) — Non-application of superficial loss rule where corporation has elected for 250(5.1) to apply before 1993; 88.1 — Repeal of 88.1 before 1993 where corporation so elects; Canada-U.S. tax treaty Art. IV:3 — Continuation in other jurisdictions.

History: Subsec. 250(5.1) added by 1994, c. 21, subsec. 111(2), applicable to

(a) a corporation that was at any time before 1993 granted articles of continuance or similar constitutional documents in a jurisdiction and that elects, by notifying Revenue Canada in writing before the end of December 1994, to have subsec. 250(5.1) apply to those articles or other documents, from the time at which the corporation was granted those articles or other documents, and

(b) a corporation with respect to articles of continuance or similar constitutional documents granted after 1992, except where

(i) the articles or other documents were granted before July 1994,

(ii) arrangements, evidenced in writing, for obtaining the articles or other documents were substantially advanced before December 21, 1992, and

(iii) the corporation elects, by notifying Revenue Canada in writing before the end of December 1994, to have subsec. 250(5.1) not apply,

and, notwithstanding subsections 152(4) to (5), such assessments and determinations in respect of any taxation year shall be made as are necessary to give effect to elections made under paragraph (a).

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

(6) Residence of international shipping corporation — For the purposes of this Act, a corporation that was incorporated or otherwise formed under the laws of a country other than Canada or of a state, province or other political subdivision of such a country shall be deemed to be resident in that country throughout a taxation year and not to be resident in Canada at any time in the year, where

(a) the corporation

(i) has as its principal business in the year the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada), or

(ii) holds throughout the year shares of one or more other corporations, each of which

(A) is a subsidiary wholly-owned corporation of the corporation as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout the year,

and at no time in the year is the total of the cost amounts to the corporation of all those shares less than 50% of the total of the cost amounts to it of all its property;

(b) all or substantially all of the corporation's gross revenue for the year consists of

(i) gross revenue from the operation of ships in transporting passengers or goods in that international traffic,

(ii) dividends from one or more other corporations each of which

(A) is a subsidiary wholly-owned corporation of the corporation, as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout each of its taxation years that began after February 1991 and before the last time at which it paid any of those dividends, or

(iii) a combination of amounts described in subparagraph (i) or (ii); and

(c) the corporation was not granted articles of continuance in Canada before the end of the year.

Related Provisions: 81(1)(c) — Amounts not included in income — ship or aircraft of non-residents; Canada-U.S. tax treaty, Art. VIII — International shipping.

History: Paras. 250(6)(a) and (b) amended by 1998, c. 19, s. 241, applicable to 1995 *et seq.* Paras. 250(6)(a) and (b) formerly read:

(a) the corporation's principal business in the year consists of the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada);

(b) all or substantially all of the corporation's gross revenue for the year is from the operation of ships in transporting passengers or goods in such international traffic; and

Subsec. 250(6) added by 1994, c. 7, Sch. II (1991, c. 49), s. 194, applicable to taxation years commencing after February 1991.

Proposed Addition — 250(6.1)

(6.1) Residence of *inter vivos* trusts — For the purposes of provisions of this Act that apply to a trust for a taxation year only where the trust has been resident in Canada throughout the year, where a particular trust ceases at any time to exist and the particular trust was resident in Canada immediately before that time, the particular trust is deemed to be resident in Canada throughout the period that begins at that time and ends at the end of the year.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 114, will add subsec. 250(6.1), applicable to 1990 *et seq.*

Technical Notes: New subsection 250(6.1) of the Act applies where a trust ceases to exist. The subsection provides that a trust that ceases to exist at any time in a calendar year, and that was resident in Canada immediately before it ceased to exist, is deemed to be resident in Canada during the remaining period in the year. The CCRA takes the position that a trust's taxation year is generally not affected by the termination of the trust. Subsection 250(6.1) is meant to avoid unintended consequences of the CCRA's position that arise under a number of provisions of the Act that require a trust to be resident in Canada throughout a taxation year (e.g. flow-through rules under section 104). Subsection 250(6.1) is similar to new subsection 132(6.2), described in the commentary above.

Related Provisions: 132(6.2) — Parallel rule for mutual fund trust that ceases to qualify as such.

Interpretation Bulletins: IT-447: Residence of trust or estate.

(7) Residence of a qualifying environmental trust — For the purposes of this Act, where a trust resident in Canada would be a qualifying environmental trust at any time if it were resident at that time in the province in which the site to which the trust relates is situated, the trust is deemed to be resident at that time in that province and in no other province.

History: Subsec. 250(7) amended by 1998, c. 19, s. 67, applicable after 1995. Subsec. 250(7) formerly read:

(7) Residence of a mining reclamation trust — For the purposes of this Act, where a trust resident in Canada would be a mining reclamation trust at any time if it were resident at that time in the province in which the mine to which the trust relates is situated, the trust shall be deemed to be resident at that time in that province and in no other province.

Subsec. 250(7) added by 1995, c. 3, s. 54, applicable after 1993.

Definitions [s. 250]: "amount", "business" — 248(1); "Canada" — 255, *Interpretation Act* 35(1); "child" — 252(1); "common-law partner" — 248(1); "controlled" — 256(6), (6.1); "corporation", "employment", "gross revenue" — 248(1); "incorporated in Canada" — 248(1)"corporation incorporated in Canada"; "individual", "international traffic", "non-resident", "overseas Canadian Forces school staff", "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualifying environmental trust" — 248(1); "related" — 251(2)–(6); "servant" — 248(1)"employment"; "spouse" — 252(4)(a); "subsidiary wholly-owned corporation" — 87(1.4), 248(1); "tax treaty" — 248(1); "taxation year" — 249; "trust" — 104(1), 248(1), (3).

Proposed Addition — 250.1

250.1 Non-resident person's taxation year and income — For greater certainty, unless the context requires otherwise

(a) a taxation year of a non-resident person shall be determined, except as permitted by the Minister, in the same manner as the taxation year of a person resident in Canada; and

(b) a person for whom income for a taxation year is determined in accordance with this Act includes a non-resident person.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 115, will add s. 250.1, applicable after December 17, 1999.

Technical Notes: New section 250.1 of the Act contains clarifying rules that apply for greater certainty, unless the context requires otherwise.

New paragraph 250.1(a) provides that, unless the Minister of National Revenue provides otherwise, the taxation year of a non-resident person is determined in the same manner as that of a person resident in Canada.

New paragraph 250.1(b) clarifies that a person for whom "income" for the year is determined in accordance with the Act includes a non-resident person. It is a non-resident person's "taxable income earned in Canada" that is relevant for the purposes of computing the person's tax liability under Part I. However, a non-resident person does, in some narrow cases, have "income" for purposes of the Act. For example, there are references to a non-resident's "income" (rather than "taxable income earned in Canada") in paragraphs 212(1)(c) and 216(1)(b) and subparagraph 217(3)(b)(ii). In addition, the "income" of a non-resident person may affect the tax liability of a person resident in Canada (e.g., subsection 104(13)).

New section 250.1 applies after December 17, 1999.

Related Provisions: 2(3) — Tax on taxable income earned in Canada of non-resident; 115(1) — Calculation of taxable income earned in Canada of non-resident.

Definitions [s. 250.1]: "Minister", "non-resident", "person" — 248(1); "resident in Canada" — 250; "taxation year" — 249.

251. (1) Arm's length — For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length; and

(b) it is a question of fact whether persons not related to each other were at a particular time dealing with each other at arm's length.

Proposed Amendment — 251(1)(b), (c)

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 116, will amend para. 251(1)(b) to read as above, and add para. (c), applicable after December 23, 1998, except that para. (b) shall, for the purpose of applying the definition "taxable Canadian property" in subsec. 248(1), not apply in respect of property acquired before December 24, 1998.

Technical Notes: Section 251 of the Act defines the circumstances in which persons are considered not to deal with each other at arm's length for the purposes of the Act.

Subsection 251(1) is amended to ensure that a taxpayer and a specified personal trust (i.e., a personal trust other than one described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, is beneficially interested in the trust. (In determining whether a person is "beneficially interested" in a trust for this purpose, subsection 248(25) is read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV), which provide an extended meaning of this expression.) The non-arm's length relationship is relevant, for example, in applying amended subsection 69(1).

This amendment applies after December 23, 1998, but for the purpose of applying the definition "taxable Canadian property" in subsection 248(1) of the Act it applies only in respect of property acquired after December 23, 1998.

Letter from Department of Finance, April 1, 1999:

Dear [xxx]

This is in reply to your letter of February 23, 1999 concerning a proposed amendment to section 251 of the *Income Tax Act* that was part of the Legislative Proposals on Trusts released by the Department of Finance on December 23, 1999.

We have examined the application of this amendment as it applies in the circumstances raised in your letter and in other circumstances. From a tax policy perspective, our view is that the amendment in its present form may be too broad. Consequently, we will recommend that the application of this amendment be limited to "personal trusts", as defined in subsection 248(1) of the Act.

Thank you for writing on this matter.

Yours sincerely,

Brian Ernewein
Director
Tax Legislation Division
Tax Policy Branch

Related Provisions: 7(1.11) — Whether mutual fund trust at arm's length with corporation for purposes of stock option rules; 55(4) — Arm's length dealings; 55(5)(e) — Siblings deemed to deal at arm's length for purposes of s. 55; 66(17) — Non-arm's length partnerships; 84.1(2)(b), (d) — Non-arm's length sale of shares; 88(1)(d.2) — Whether parties dealing at arm's length for bump of cost base of property on windup of corporation; 95(2.1) — Whether taxpayer dealing with foreign affiliate at arm's length for certain purposes; 107.4(4) — Certain dispositions by trust deemed not at arm's length; 143.2(14) — Parties deemed not dealing at arm's length for tax shelter cost calculation where information located outside Canada; 212.1(3)(c) — Non-arm's length sales of shares by non-residents; 247 — Calculation of profit on non-arm's length transactions with non-residents (transfer pricing); 248(25) — Meaning of "beneficially interested"; Reg. 1102(20) — Taxpayers deemed at arm's length for certain purposes relating to depreciable property; Reg. 1204(1.2) — Whether partners and partnerships deal at arm's length for purposes of resource allowance.

Selected Cases [subsec. 251(1)]: *Gosselin v. R.*, [1997] 2 C.T.C. 2830 (TCC) (50-50 shareholding meant factual non-arm's length); *Robson Leather Co. Ltd. v. MNR*, [1977] C.T.C. 132 (FCA) (Sale of patent rights not at arm's length where both companies indirectly controlled by same individual); *Swiss Bank Corp. v. MNR*, [1972] C.T.C. 614 (SCC) (Interposition of managing agent between payor and payee of interest did not create arm's length relation).

Interpretation Bulletins: IT-419R: Meaning of arm's length.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Advance Tax Rulings: ATR-58: Divisive reorganization.

(2) Definition of "related persons" — For the purpose of this Act, "related persons", or persons related to each other, are

(a) individuals connected by blood relationship, marriage or adoption;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 10, will replace "marriage" with "marriage or common-law partnership", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) a corporation and

(i) a person who controls the corporation, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the corporation, or

(iii) any person related to a person described in subparagraph (i) or (ii); and

(c) any two corporations

(i) if they are controlled by the same person or group of persons,

(ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,

(iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,

(iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,

(v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or

(vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Related Provisions: 55(5)(e) — Siblings deemed not related for purposes of s. 55; 80(2)(j) — Interpretation of "related" for debt forgiveness rules; 104(5.7)(b) — Designated contributor; 190.15(6) — Related financial institution; 248(14) — Corporations deemed related for certain purposes; 251(3) — Corporations related through a third corporation; 251(3.1), (3.2) — Amalgamated corporation deemed related to predecessors; 251(6) — Meaning of blood relationship, marriage and adoption; 252(4)(b) — Meaning of "marriage"; 256(6), (6.1) — Meaning of "controlled"; Canada-U.S. tax treaty, Art. IX:2 — Meaning of "related" for treaty purposes.

Selected Cases [subsec. 251(2)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Documents of constitutional or constating nature may be used to determine relationship and *de jure* control); *The Queen v. Mars Finance Inc. et al.*, [1980] C.T.C. 216 (FCTD) (Where *de jure* control established, issue of *de facto* control could not be considered).

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary; IT-419R: Meaning of arm's length; IT-495R2: Child care expenses; IT-513R: Personal tax credits.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

(3) Corporations related through a third corporation — Where two corporations are related to the same corporation within the meaning of subsection (2), they shall, for the purposes of subsections (1) and (2), be deemed to be related to each other.

(3.1) Relation where amalgamation or merger — Where there has been an amalgamation or merger of two or more corporations and the new corporation formed as a result of the amalgamation or merger and any predecessor corporation would have been related immediately before the amalgamation or merger if the new corporation were in existence at that time, and if the persons who were the shareholders of the new corporation immediately after the amalgamation or merger were the shareholders of the new corporation at that time, the new corporation and any such predecessor corporation shall be deemed to have been related persons.

Related Provisions: 251(3.2) — Further deeming on amalgamation of related corporations.

Pre-RSC History: Subsec. 251(3.1) added by 1980-81-82-83, c. 140, s. 129, applicable after November 12, 1981.

Interpretation Bulletins: IT-419R: Meaning of arm's length.

(3.2) Amalgamation of related corporations — Where there has been an amalgamation or merger of 2 or more corporations each of which was related (otherwise than because of a right referred to in paragraph (5)(b)) to each other immediately before the amalgamation or merger, the new corporation formed as a result of the amalgamation or merger and each of the predecessor corporations is[39] deemed to have been related to each other.

History: Subsec. 251(3.2) added by 1998, c. 19, subsec. 242(1), applicable to amalgamations and mergers that occur after 1996.

(4) Definitions concerning groups — In this Act,

"related group" means a group of persons each member of which is related to every other member of the group;

Pre-RSC History: *Definition "related group" was para. 251(4)(a).*

Interpretation Bulletins: IT-419R: Meaning of arm's length.

"unrelated group" means a group of persons that is not a related group.

Interpretation Bulletins: IT-419R: Meaning of arm's length.

Pre-RSC History: *Definition "unrelated group" was para. 251(4)(b).*

(5) Control by related groups, options, etc. — For the purposes of subsection (2) and the definition "Canadian-controlled private corporation" in subsection 125(7),

(a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by which the corporation is in fact controlled;

(b) where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(i) to, or to acquire, shares of the capital stock of a corporation or to control the voting rights of such shares, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time,

(ii) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent

[39] *Sic.* Should be "are" — ed.

on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the shares were so redeemed, acquired or cancelled by the corporation at that time,

(iii) to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the person could exercise the voting rights at that time, or

(iv) to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and

(c) where a person owns shares in two or more corporations, the person shall as shareholder of one of the corporations be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

Related Provisions: 17(11.1) — Limitation on 251(5)(b) re loans to non-residents; 110.6(14)(b) — Right under share purchase agreement does not trigger 251(5)(b) for purposes of capital gains exemption; 256(6), (6.1) — Meaning of "controlled"; 256(8) — Deemed acquisition of shares.

History: The opening words of para. 251(5)(b) amended, subparas. 251(5)(b)(iii) and (iv) added, by 1998, c. 19, subsecs. 242(2), (3), applicable after April 26, 1995. The opening words formerly read:

(b) where a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently

Subparas. 251(5)(b)(i), (ii) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 195, applicable after July 13, 1990. Subparas. 251(5)(b)(i), (ii) formerly read:

(i) to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, the person shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares, or

(ii) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if the shares were redeemed, acquired or cancelled by the corporation; and

Pre-RSC History: That portion of subsec. 251(5) preceding para. (c) substituted by 1988, c. 55, subsec. 190(1), applicable

(a) for taxation years commencing after 1988, and

(b) to the 1989 taxation year commencing in 1988 of a corporation

(i) that was incorporated, or formed as a result of an amalgamation, after February 10, 1988,

(ii) that acquired after February 10, 1988 from a person with whom the corporation did not deal at arm's length all or substantially all of the assets used by it in its business, or

(iii) where that taxation year did not end on approximately the same calendar date in 1989 as the calendar date in 1987 on which a 1987 taxation year, if any, of the corporation ended.

That portion of subsec. 251(5) preceding para. (c) formerly read:

(5) For the purposes of paragraph 125(7)(b), subsection (2) and section 256,

(a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by whom the corporation is in fact controlled;

(b) a person who had a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, shall, except where the contract provided that the right is not exercisable until the death of an individual designated therein, be deemed to have had the same position in relation to the control of the corporation as if he owned the shares; and

That portion of subsec. 251(5) preceding para. (a) substituted by 1984, c. 45, s. 94, to add reference to para. 125(7)(b), applicable to 1986 *et seq.*

Selected Cases [subsec. 251(5)]: *H.T. Hoy Holdings Ltd. v. R.*, [1997] 2 C.T.C. 2874 (TCC) (Right to redeem shares under certain circumstances not contemplated under former provision); *The Queen v. Lusita Holdings Ltd.*, [1984] C.T.C. 335 (FCA) (Power to force resignation of other trustee did not give co-trustee the "right to control the voting rights of the shares" owned by trust); *Rostal Sales Agency Ltd. v. The Queen*, [1983] C.T.C. 5 (FCTD) (Trust settlor without power to remove trustee had no control over shares owned by trust); *Toric Optical Ltd. v. The Queen*, [1978] C.T.C. 436 (FCTD) (For purposes of former paragraph 139(5d)(b) [now paragraph 251(5)(b)], right to acquire "shareholder equity" is same as right to acquire shares).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988; IT-151R4: Scientific research and experimental development expenditures; IT-243R4: Dividend refund to private corporations; IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-400: Exploration and development expenses — meaning of principal-business corporation; IT-419R: Meaning of arm's length; IT-458R2: Canadian-controlled private corporation.

Advance Tax Rulings: ATR-13: Corporations not associated;.

(6) Blood relationship, etc. — For the purposes of this Act, persons are connected by

(a) blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;

(b) marriage if one is married to the other or to a person who is so connected by blood relationship to the other; and

Proposed Addition — 251(6)(b.1)

(b.1) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; and

Application: 2000, c. 12 (Bill C-23), s. 140, will add para. 251(6)(b.1), applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.

Pre-RSC History: That portion of subsec. 251(6) preceding para. (a) substituted by 1988, c. 55, subsec. 190(2), applicable to 1988 *et seq.* That portion formerly read:

(6) Persons related by blood relationship, etc. — For the purposes of this Act, other than clause 109(1)(b)(ii)(C),

All that portion of subsec. 251(6) preceding para. (a) amended by 1984, c. 1, s. 105, to substitute "clause 109(1)(b)(ii)(C)" for "clause 109(1)(b)(ii)(B)".

All that portion of subsec. 251(6) preceding para. (a) substituted by 1974-75-76, c. 26, s. 126, to add "other than clause 109(1)(b)(ii)(B)", applicable to 1972 *et seq.*

Interpretation Bulletins: IT-419R: Meaning of arm's length; IT-495R2: Child care expenses; IT-513R: Personal tax credits.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Selected Cases [s. 251]: *Longley v. MNR*, [2000] 2 C.T.C. 382 (BC CA); aff'g [1999] 4 C.T.C. 108 (BC SC) (Minister held liable for damages and punitive damages where acting in bad faith against legal advice received); *Alteco Inc. v. Canada*, [1993] 2 C.T.C. 2087 (TCC) (Holder of 51 percent of shares not in control of or related to corporation where composition of board of directors determined under unanimous shareholder agreement).

Definitions [s. 251]: "beneficially interested" — 248(25); "brother" — 252(2); "child" — 252(1); "common-law partnership" — 248(1); "control", "controlled" — 256(6), (6.1); "corporation", "individual" — 248(1); "marriage" — 252(4)(b); "married" — 252(4)(c); "person" — 248(1); "personal trust" — 251.1; "related group" — 251(4); "share", "shareholder" — 248(1); "sister" — 252(2); "unrelated group" — 251(4).

251.1 (1) Definition of "affiliated persons" — For the purposes of this Act, "affiliated persons", or persons affiliated with each other, are

(a) an individual and a spouse of the individual;

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(b) a corporation and

(i) a person by whom the corporation is controlled,

(ii) each member of an affiliated group of persons by which the corporation is controlled, and

(iii) a spouse of a person described in subparagraph (i) or (ii);

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(c) two corporations, if

(i) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,

(ii) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or

(iii) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;

(d) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;

(e) a partnership and a majority interest partner of the partnership; and

(f) two partnerships, if

(i) the same person is a majority-interest partner of both partnerships,

(ii) a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or

(iii) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership.

Related Provisions: 251.1(3), (4) — Definitions and interpretation; 256(6), (6.1) — Meaning of "controlled".

History: Subsec. 251.1(1) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

I.T. Technical News: No. 9 (loss consolidation within a corporate group — "affiliated" test to apply).

(2) Affiliation where amalgamation or merger — Where at any time 2 or more corporations (in this subsection referred to as the "predecessors") amalgamate or merge to form a new corporation, the new corporation and any predecessor are deemed to have been affiliated with each other where they would have been affiliated with each other immediately before that time if

(a) the new corporation had existed immediately before that time; and

(b) the persons who were the shareholders of the new corporation immediately after that time had been the shareholders of the new corporation immediately before that time.

History: Subsec. 251.1(2) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

(3) Definitions — The definitions in this subsection apply in this section.

"affiliated group of persons" means a group of persons each member of which is affiliated with every other member.

"controlled" means controlled, directly or indirectly in any manner whatever.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly — control in fact.

"majority-interest group of partners" of a partnership means a group of persons each of whom has an interest in the partnership such that

(a) if one person held the interests of all members of the group, that person would be a majority interest partner of the partnership; and

(b) if any member of the group were not a member, the test described in paragraph (a) would not be met.

History: Subsec. 251.1(3) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

(4) Interpretation — For the purposes of this section,

(a) persons are affiliated with themselves; and

(b) a person includes a partnership.

History: Subsec. 251.1(4) added by 1998, c. 19, s. 243, applicable after April 26, 1995.

Definitions [s. 251.1]: "affiliated" — 251.1(1), (4)(a); "affiliated group" — 251.1(3); "common-law partner" — 248(1); "control", "controlled" — 256(6), (6.1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation" — 248(1), *Interpretation Act* 35(1); "individual" — 248(1); "majority-interest group of partners" — 251.1(3); "majority interest partner" — 248(1); "person" — 248(1), 251.1(4)(b); "spouse" — 252(4)(a).

252. (1) Extended meaning of "child" — In this Act, words referring to a child of a taxpayer include

(a) a person of whom the taxpayer is the natural parent whether the person was born within or outside marriage;

(b) a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;

(c) a child of the taxpayer's spouse;

(d) an adopted child of the taxpayer; and

(e) a spouse of a child of the taxpayer.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 70(10) — Extended meaning of "child" for certain purposes; 75.1(2) — Extended meaning of "child"; 110.6(1) — Extended meaning of "child" for purposes of capital gains exemption; 252(4)(a) — Extended meaning of "spouse".

Pre-RSC History: Para. 252(1)(b) amended to substitute "before the person attained the age of 19 years had," for "before the person attained the age of 21 years did have," by 1988, c. 55, subsec. 191(1), applicable to 1988 *et seq.*

Subsec. 252(1) substituted by 1985, c. 45, s. 124, applicable to 1985 *et seq.* Subsec. 252(1) formerly read:

> 252. (1) In this Act, words referring to a child of a taxpayer include
>
> (a) an illegitimate child of the taxpayer,
>
> (b) a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before such person attained the age of 21 years did have, in law or in fact, the custody and control,
>
> (c) a daughter-in-law or son-in-law of the taxpayer, and
>
> (d) a child of the taxpayer's spouse and, for greater certainty, an adopted child of the taxpayer.

Para. 252(1)(d) added by 1980-82-83, c. 48, s. 110, applicable to 1979 *et seq.*

I.T. Application Rules: 20(1.11) (extended meaning of "child" re disposition of depreciable property owned since before 1972); 26(20) (extended meaning of "child" re transfer of farmland owned since before 1972).

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-349R3: Intergenerational transfers of farm property on death; IT-394R2: Preferred beneficiary election; IT-495R2: Child care expenses; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit.

(2) Relationships — In this Act, words referring to

(a) a parent of a taxpayer include a person

(i) whose child the taxpayer is,

(ii) whose child the taxpayer had previously been within the meaning of paragraph (1)(b), or

(iii) who is a parent of the taxpayer's spouse;

(b) a brother of a taxpayer include a person who is

(i) the brother of the taxpayer's spouse, or

(ii) the spouse of the taxpayer's sister;

(c) a sister of a taxpayer include a person who is

(i) the sister of the taxpayer's spouse, or

(ii) the spouse of the taxpayer's brother;

(d) a grandparent of a taxpayer include a person who is

(i) the grandfather or grandmother of the taxpayer's spouse, or

(ii) the spouse of the taxpayer's grandfather or grandmother;

(e) an aunt or great-aunt of a taxpayer include the spouse of the taxpayer's uncle or great-uncle, as the case may be;

(f) an uncle or great-uncle of a taxpayer include the spouse of the taxpayer's aunt or great-aunt, as the case may be; and

Proposed Amendment — 252(2)(e), (f)

(e) an aunt or uncle of a taxpayer include the spouse or common-law partner of the taxpayer's aunt or uncle, as the case may be;

(f) a great-aunt or great-uncle of a taxpayer include the spouse or common-law partner of the taxpayer's great-aunt or great-uncle, as the case may be; and

Application: 2000, c. 12 (Bill C-23), subsec. 141(1), will amend paras. 252(e) and (f) to read as above, applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

(g) a niece or nephew of a taxpayer include the niece or nephew, as the case may be, of the taxpayer's spouse.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), Sch. 2, s. 1, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(1) — Extended meaning of "child"; 252(4)(a) — Extended meaning of "spouse".

History: Subsec. 252(2) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 140(1), applicable after 1992. Subsec. (2) formerly read:

> (2) Definitions concerning parents and other relatives — In this Act, words referring to a parent of a taxpayer include a person whose child the taxpayer is, in the taxation year in respect of which the expression is being employed, within the meaning of subsection (1) or whose child the taxpayer had previously been within the meaning of paragraph (1)(b), and
>
> (a) "brother" includes brother-in-law;
>
> (b) "grandparent" includes grandmother-in-law and grandfather-in-law;
>
> (c) "parent" includes mother-in-law and father-in-law; and
>
> (d) "sister" includes sister-in-law.

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit.

(3) Extended meaning of "spouse" and "former spouse" — For the purposes of paragraphs 56(1)(b) and (c), section 56.1, paragraphs 60(b), (c) and (j), section 60.1, subsections 70(6) and (6.1), 73(1) and (5) and 104(4), (5.1) and (5.4), the definition "pre-1972 spousal trust" in subsection 108(1), subsection 146(16), subparagraph 146.3(2)(f)(iv), paragraph 146.3(14)(b), subsections 147.3(5) and (7) and 148(8.1) and (8.2), the definition "small business property" in subsection 206(1), subparagraph 210(c)(ii) and subsections 248(22) and (23), "spouse" and "former spouse" of a particular individual include another individual of the opposite sex who is a party to a voidable or void marriage with the particular individual.

Related Provisions: 147.1(1) — RPP — Definition of spouse; 252(4) — Extended meaning of "spouse"; Reg. 8500(5) — Rule in 252(3) applies to Regs. 8500–8520.

History: Subsec. 252(3) amended to add the words "the definition "small business property" in subsection 206(1)" by 2000, c. 19, s. 69, applicable to 1998 *et seq.*

Subsec. 252(3) amended by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 140(2), applicable to 1991 *et seq.* Subsec. (3) formerly read:

> (3) For the purposes of paragraphs 56(1)(b) and (c), section 56.1, paragraphs 60(b), (c) and (j), section 60.1, subsections 73(1) and 146(16), subparagraph 146.3(2)(f)(iv), paragraph 146.3(14)(b), subsections 147.3(5) and (7) and 148(8.1) and (8.2), subparagraph 210(c)(ii) and subsections 248(22) and (23), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

Subsec. 252(3) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 196, applicable after 1989. Subsec. 252(3) formerly read:

> (3) For the purposes of paragraphs 56(1)(b) and (c), section 56.1, paragraphs 60(b), (c) and (j), section 60.1, subsections 73(1) and 146(16), subparagraph 146.3(2)(f)(iv), paragraph 146.3(14)(b), subsections 147.3(5) and (7) and 148(8) and subparagraph 210(c)(ii), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

Pre-RSC History: Subsec. 252(3) substituted by 1990, c. 35, s. 28, applicable after 1987 except that before 1989 the subsec. shall be read without reference to subsec. 147.3(5). Subsec. 252(3) formerly read:

> (3) For the purposes of paragraphs 56(1)(b) and (c), 60(b) and (c) and 146(16)(a), sections 56.1 and 60.1, subsections 73(1) and 148(8), and subparagraph 210(c)(ii), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

Subsec. 252(3) substituted by 1988, c. 55, subsec. 191(2), applicable after 1987. Subsec. 252(3) formerly read:

> (3) For the purposes of paragraphs 56(1)(b) and (c), 60(b) and (c) and 146(16)(a), sections 56.1 and 60.1 and subsections 73(1) and 148(8), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

Subsec. 252(3) substituted by 1984, c. 45, s. 95, to add reference to subsec. 148(8), applicable to taxation years commencing after 1982.

Subsec. 252(3) added by 1980-81-82-83, c. 140, s. 130, applicable after 1981.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts; IT-307R3: Spousal registered retirement savings plans; IT-325R2: Property transfers after separation, divorce and annulment.

(4) Idem — In this Act,

(a) words referring to a spouse at any time of a taxpayer include the person of the opposite sex who cohabits at that time with the taxpayer in a conjugal relationship and

(i) has so cohabited with the taxpayer throughout a 12-month period ending before that time, or

(ii) would be a parent of a child of whom the taxpayer would be a parent, if this Act were read without reference to paragraph (1)(e) and subparagraph (2)(a)(iii)

and, for the purposes of this paragraph, where at any time the taxpayer and the person cohabit in a conjugal relationship, they shall, at any particular time after that time, be deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

(b) references to marriage shall be read as if a conjugal relationship between 2 individuals who are, because of paragraph (a), spouses of each other were a marriage;

(c) provisions that apply to a person who is married apply to a person who is, because of paragraph (a), a spouse of a taxpayer; and

(d) provisions that apply to a person who is unmarried do not apply to a person who is, because of paragraph (a), a spouse of a taxpayer.

Proposed Repeal — 252(4)

Application: 2000, c. 12 (Bill C-23), s. 141(2), will repeal subsec. 252(4), applicable to 2001 *et seq.*, to come into force on a day to be fixed by order of the Governor in Council. See also the transitional rules reproduced under 248(1)"common-law partner".

Related Provisions: 252(3) — Extended meaning of "spouse" and "former spouse" for limited purposes.

History: Subpara. 252(4)(a)(ii) amended by 1998, c. 19, s. 244, applicable after 1992. Subpara. 252(4)(a)(ii) formerly read:.

> (ii) is a parent of a child of whom the taxpayer is a parent (otherwise than because of the application of subparagraph (2)(a)(iii))

Subpara. 252(4)(a)(ii) substituted by 1994, c. 21, s. 112, applicable after 1992. That subpara. formerly read:

> (ii) is a parent of a child of whom the taxpayer is a parent

Subsec. 252(4) added by 1994, c. 7, Sch. VIII (1993, c. 24), subsec. 140(3), applicable after 1992.

Selected Cases [subsec. 252(4)]: *Rosenberg v. Canada (Attorney General)*, [2000] 2 C.T.C. 83 (Ont CA); rev'g [2000] 2 C.T.C. 78 (Ont Gen Div) ("Spouse" includes same sex).

Interpretation Bulletins: IT-209R: *Inter-vivos* gifts of capital property to individuals directly or through trusts; IT-305R4: Testamentary spouse trusts; IT-307R3: Spousal registered retirement savings plans; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-325R2: Property transfers after separation, divorce and annulment; IT-349R3: Intergenerational transfers of farm property on death; IT-394R2: Preferred beneficiary election; IT-415R2: Deregistration of RRSPs; IT-489R: Non-arm's length sale of shares to a corporation; IT-495R2: Child care expenses; IT-500R: RRSPs — death of an annuitant; IT-508R: Death benefits; IT-511R: Interspousal and certain other transfers and loans of property; IT-513R: Personal tax credits; IT-516R2: Tuition tax credit; IT-517R: Pension tax credit; IT-528: Transfers of funds between registered plans.

I.T. Technical News: No. 2 (meaning of "spouse" for income tax purposes).

Definitions [s. 252]: "common-law partner" — 248(1); "former spouse" — 252(3); "marriage" — 252(4)(b); "person" — 248(1); "spouse" — 252(4)(a); "taxpayer" — 248(1).

Interpretation Bulletins [s. 252]: IT-419R: Meaning of "arm's length".

Information Circulars [s. 252]: 80-10R: Registered charities: operating a registered charity.

252.1 Union [as] employer — All the structural units of a trade union, including each local, branch, national and international unit, shall be deemed to be a single employer and a single entity for the purposes of the provisions of this Act and the regulations relating to

(a) pension adjustments and past service pension adjustments for years after 1994;

(b) the determination of whether a pension plan is, in a year after 1994, a multi-employer plan or a specified multi-employer plan (within the meanings assigned by subsection 147.1(1));

(c) the determination of whether a contribution made under a plan or arrangement is a resident's contribution (within the meaning assigned by subsection 207.6(5.1)); and

(d) the deduction or withholding and the remittance of any amount as required by subsection 153(1) in respect of a contribution made after 1991 under a retirement compensation arrangement.

Related Provisions: Reg. 6804(3) — Election by union re foreign pension plan.

History: S. 252.1 added by 1994, c. 21, s. 113, applicable after October 8, 1986.

Definitions [s. 252.1]: "amount" — 248(1); "multi-employer plan" — 147.1(1), Reg. 8500(1), 8510(1); "past service pension adjustment" — 248(1), Reg. 8303(1); "pension adjustment" — 248(1), Reg. 8301(1); "retirement compensation arrangement" — 248(1); "specified multi-employer plan" — 147.1(1), Reg. 8510(2), (3).

253. Extended meaning of "carrying on business" [in Canada] — For the purposes of this Act, where in a taxation year a person who is a non-resident person or a trust to which Part XII.2 applies

(a) produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything in Canada whether or not the person exports that thing without selling it before exportation,

(b) solicits orders or offers anything for sale in Canada through an agent or servant, whether the contract or transaction is to be completed inside or outside Canada or partly in and partly outside Canada, or

(c) disposes of

(i) Canadian resource property, except where an amount in respect of the disposition is included under paragraph 66.2(1)(a) or 66.4(1)(a),

(ii) property (other than depreciable property) that is a timber resource property or an interest therein or option in respect thereof, or

(iii) property (other than capital property) that is real property situated in Canada, including an interest therein or option in respect thereof, whether or not the property is in existence,

the person shall be deemed, in respect of the activity or disposition, to have been carrying on business in Canada in the year.

Related Provisions: 115.2 — Non-resident investment or pension fund deemed not to be carrying on business in Canada for certain purposes; 248(4) — Meaning of "interest in real property".

History: S. 253 substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 197, applicable to 1990 *et seq.* except that, with respect to dispositions occurring before February 21, 1990 and dispositions occurring after February 20, 1990 pursuant to agreements in writing entered into before February 21, 1990, s. 253 shall be read without reference to para. (c) and the expression "in respect of the activity or disposition". S. 253 formerly read:

> 253. Extended meaning of carrying on business — Where, in a taxation year, a non-resident person
>
> (a) produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed, in whole or in part, anything in Canada whether or not the person exported that thing without selling it prior to exportation, or
>
> (b) solicited orders or offered anything for sale in Canada through an agent or servant whether the contract or transaction was to be completed inside or outside Canada or partly in and partly outside Canada,
>
> the person shall be deemed, for the purposes of this Act, to have been carrying on business in Canada in the year.

Selected Cases [s. 253]: *The Queen v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA); leave to appeal to SCC refused (1985), 64 N.R. 156 (note), (sub nom. *Gurd's Products Co. v. MNR)* (Canadian subsidiary through which U.S. parent conducted business with Iraq was carrying on business in Canada and deemed resident); *Sudden Valley Inc. v. The Queen*, [1976] C.T.C. 775 (FCA) (Canadian advertising of U.S. real estate was an invitation to treat, not an offer; no business carried on in Canada).

Definitions [s. 253]: "amount", "business" — 248(1); "Canada" — 255; "Canadian resource property" — 66(15), 248(1); "capital property" — 54, 248(1); "depreciable property" — 13(21), 248(1); "interest" — in real property 248(4); "non-resident", "person", "property" — 248(1); "servant" — 248(1)"employment"; "taxation year" — 249; "timber resource property" — 13(21), 248(1).

Interpretation Bulletins [s. 253]: IT-420R3: Non-residents — income earned in Canada.

Proposed Addition — 253.1

253.1 Investments in limited partnerships — For the purposes of subparagraph 108(2)(b)(ii), the definition "non-resident investment fund" in subsection 115.2(1), paragraphs 130.1(6)(b), 131(8)(b) and 132(6)(b), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), where a trust, corporation or partnership is a member of a particular partnership and, by operation of any law governing the arrangement in respect of the particular partnership, the liability of the member as a member of the particular partnership is limited, the member is deemed

(a) to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the particular partnership; and

(b) not to carry on any business or other activity of the particular partnership.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 117, will add s. 253.1, applicable after 1992.

Technical Notes: New section 253.1 of the Act applies for the purposes of subparagraph 108(2)(b)(ii) (definition of "unit trust"), the definition "non-resident investment fund" in subsection 115.2(1), paragraphs 130.1(6)(b) (definition of "mortgage investment corporation"), 131(8)(b) (definition of "mutual fund corporation") and 132(6)(b) (definition of "mutual fund trust") and the definition "private holding corporation" in subsection 191(1), where a trust or corporation holds an interest as a limited partner in a limited partnership. Section 253.1 also applies for the purposes of regulations made for the purpose of paragraph 149(1)(o.3) (i.e., section 5101 of the Regulations and paragraph 149(o.4) (i.e., section 5001 of the Regulations). These regulations define the expressions "small business investment corporation "and "master trust".

For the purposes of applying the above-noted provisions and definitions where a trust, corporation or partnership is a member of a particular limited partnership, the member is deemed

- to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the particular partnership, and
- not to carry on any business or other activity of the particular partnership.

This amendment ensures that the holding of a limited partnership interest by a trust or corporation will not jeopardize the classification of the trust or corporation under specified definitions of the Act and the Regulations. It responds, in part, to the reasoning of the Federal Court of Appeal in *Robinson (Trustee of) v. R.*, [1998] 1 CTC 272, 98 DTC 6065, which, in another context, clarified that limited partners carry on the business of a partnership. As a consequence of this amendment, the meanings of the specified definitions will be determined with reference to new section 253.1 wherever the definitions are used in the Act or Regulations.

This amendment is not, however, intended to suggest that ownership of a unit as a limited partner in a limited partnership is not otherwise an investment for the purposes of the Act. For example, in applying paragraph 149(1)(o.2), it is intended that an interest held by a corporation as a limited partner in a limited partnership be treated as an investment of the corporation.

This amendment applies after 1992.

Definitions [s. 253.1]: "business" — 248(1); "corporation" — 248(1), *Interpretation Act* 35(1); "regulation" — 248(1); "trust" — 104(1), 248(1), (3).

254. Contract under pension plan — Where a document has been issued or a contract has been entered into before July 31, 1997 purporting to create, to establish, to extinguish or to be in substitution for, a taxpayer's right to an amount or amounts, immediately or in the future, out of or under a superannuation or pension fund or plan,

(a) if the rights provided for in the document or contract are rights provided for by the superannuation or

pension plan or are rights to a payment or payments out of the superannuation or pension fund, and the taxpayer acquired an interest under the document or in the contract before that day, any payment under the document or contract is deemed to be a payment out of or under the superannuation or pension fund or plan and the taxpayer is deemed not to have received, by the issuance of the document or entering into the contract, an amount out of or under the superannuation or pension fund or plan; and

(b) if the rights created or established by the document or contract are not rights provided for by the superannuation or pension plan or a right to payments out of the superannuation or pension fund, an amount equal to the value of the rights created or established by the document or contract shall be deemed to have been received by the taxpayer out of or under the superannuation or pension fund or plan when the document was issued or the contract was entered into.

Related Provisions: 60(j.2) — Transfer to spousal RRSP; 147.3(10) — Taxation of amount transferred; 147.4(2) — Amendment to RPP annuity contract; 147.4(3) — Substitution of new RPP annuity contract; 147.4(4) — Conversion of pension rights before 1997 to annuity contract commencing after age 69.

History: The portion of s. 254 before para. (b) amended by 1998, c. 19, s. 245, applicable after July 30, 1997. The portion formerly read:

254. For greater certainty it is hereby declared that, where a document has been issued or a contract entered into (either before, on or after September 15, 1953) purporting to create, to establish, to extinguish or to be in substitution for, a taxpayer's right to an amount or amounts, immediately or in the future, out of or under a superannuation or pension fund or plan,

(a) if the rights provided for in the document or contract are rights provided for by the superannuation or pension plan or are rights to a payment or payments out of the superannuation or pension fund, any payment under the document or contract is a payment out of or under the superannuation or pension fund or plan and the taxpayer shall be deemed not to have received, by the issuance of the document or entering into the contract, an amount out of or under the superannuation or pension fund or plan; and

Definitions [s. 254]: "amount", "taxpayer" — 248(1).

Interpretation Bulletins: IT-499R: Superannuation or pension benefits.

Information Circulars: 72-13R8: Employees' pension plans; 74-1R5: Form T2037 — Notice of purchase of annuity with "plan" funds.

Forms: T2037: Notice of purchase of annuity with "plan" funds.

255. "Canada" — For the purposes of this Act, "Canada" is hereby declared to include and to have always included

(a) the sea bed and subsoil of the submarine areas adjacent to the coasts of Canada in respect of which the Government of Canada or of a province grants a right, licence or privilege to explore for, drill for or take any minerals, petroleum, natural gas or any related hydrocarbons; and

(b) the seas and airspace above the submarine areas referred to in paragraph (a) in respect of any activities carried on in connection with the exploration for or exploitation of the minerals, petroleum, natural gas or hydrocarbons referred to in that paragraph.

Related Provisions: 127(9)"qualified property" closing words — "Canada" includes prescribed offshore region for certain investment tax credit purposes; 248(1)"corporation incorporated in Canada" — "Canada" includes areas before they were part of Canada; 250 — Extended meaning of "resident in Canada"; 253 — Extended meaning of "carrying on business in Canada"; *Income Tax Conventions Interpretation Act* s. 5 — Meaning of "Canada" for treaty purposes; *Interpretation Act* 8(2.1), (2.2) — Application to exclusive economic zone and continental shelf; *Interpretation Act* 35(1) — "Canada" includes internal waters and territorial seas; Canada-U.S. tax treaty, Art. III:1(a) — Meaning of "Canada" for treaty purposes.

Pre-RSC History: S. 255 substituted by 1980-81-82-83, c. 48, s. 111.

Definitions [s. 255]: "mineral" — 248(1); "province" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-494: Hire of ships and aircraft from non-residents.

256. (1) Associated corporations — For the purposes of this Act, one corporation is associated with another in a taxation year if, at any time in the year,

(a) one of the corporations controlled, directly or indirectly in any manner whatever, the other;

(b) both of the corporations were controlled, directly or indirectly in any manner whatever, by the same person or group of persons;

(c) each of the corporations was controlled, directly or indirectly in any manner whatever, by a person and the person who so controlled one of the corporations was related to the person who so controlled the other, and either of those persons owned, in respect of each corporation, not less than 25% of the issued shares of any class, other than a specified class, of the capital stock thereof;

(d) one of the corporations was controlled, directly or indirectly in any manner whatever, by a person and that person was related to each member of a group of persons that so controlled the other corporation, and that person owned, in respect of the other corporation, not less than 25% of the issued shares of any class, other than a specified class, of the capital stock thereof; or

(e) each of the corporations was controlled, directly or indirectly in any manner whatever, by a related group and each of the members of one of the related groups was related to all of the members of the other related group, and one or more persons who were members of both related groups, either alone or together, owned, in respect of each corporation, not less than 25% of the issued shares of any class, other than a specified class of the capital stock thereof.

Related Provisions: 13(9.5) — Extended meaning of "associated" for SR&ED specified-employee payment limitation; 18(2.2)–(2.4) — Associated corps share $1,000,000 base level deduction; 125(2)–(4) — Associated corps share $200,000 income limit for small business deduction; 126.1(8)–(11) — Associated employers share $30,000 UI premium tax credit; 127(10.2)–(10.4) — Associated corps share $2,000,000 expenditure limit for investment tax credit; 127.1(2) — Associated corps share $200,000 taxable income limit to be qualifying corps for refundable investment tax credit; 128(1)(f) — Bankrupt corporation deemed not associated; 129(6) — Investment income from associated corporation deemed active business income; 157(1)(b)(i)(B) — Later final payment of tax where associated corps' taxable incomes do not exceed $200,000; 191.1(2)–(4) — Associated corps share dividend allowance for Part VI.1 tax; 256(1.1) — "Specified class" defined; 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(5.1), (6.2) — Control in fact; 256(6.1) — Simultaneous control by different persons.

Pre-RSC History: Subsec. 256(1) substituted by 1988, c. 55, subsec. 192(1), applicable, for the purposes of determining whether two or more corporations are associated with each other,

(a) to 1989 *et seq.* where

(i) the taxation years of all such corporations commenced after 1988,

(ii) at least one of such corporations was incorporated, or was formed as a result of an amalgamation, after February 10, 1988,

(iii) at least one of such corporations acquired after February 10, 1988 from a person with whom it did not deal at arm's length all or substantially all of the assets used by it in its business, or

(iv) the 1989 taxation year of at least one of such corporations did not end on approximately the same calendar date in 1989 as the calendar date in 1987 on which a 1987 taxation year, if any, of that corporation ended, and

(b) in any other case, to 1990 *et seq.*

Subsec. (1) formerly read:

256. (1) For the purposes of this Act one corporation is associated with another in a taxation year if at any time in the year,

(a) one of the corporations controlled the other,

(b) both of the corporations were controlled by the same person or group of persons,

(c) each of the corporations was controlled by one person and the person who controlled one of the corporations was related to the person who controlled the other, and one of those persons owned directly or indirectly, in respect of each corporation, not less than 10% of the issued shares of any class of the capital stock thereof,

(d) one of the corporations was controlled by one person and that person was related to each member of a group of persons that controlled the other corporation, and that person or that group of persons owned directly or indirectly, in respect of each corporation, not less than 10% of the issued shares of any class of the capital stock thereof, or

(e) each of the corporations was controlled by a related group and each of the members of one of the related groups was related to all of the members of the other related group, and either of the related groups owned directly or indirectly, in respect of each corporation, not less than 10% of the issued shares of any class of the capital stock thereof.

Selected Cases [subsec. 256(1)]: *Société Foncière D'Investissement*, [1996] 3 C.T.C. 2537 (TCC) (Notion of *de facto* control implicit in statutory language); *Holiday Luggage Mfg. Co. Inc. et al. v. The Queen*, [1987] 1 C.T.C. 23 (FCTD) (Non-resident not a "corporation" for purposes of provision); *The Queen v. Fast, B.B., & Sons Distributors Ltd.*,, [1986] 1 C.T.C. 299 (FCA) (Where only one member of related group owned shares of two corporations, related group, *qua* group, did not own shares of the corporations); *Special Risks Holdings Inc. v. The Queen*, [1986] 1 C.T.C. 201 (FCA) (Corporation not dealing at arm's length with another corporation was in *de facto* control of the latter); *The Queen v. Imperial General Properties Ltd.*, [1985] 2 C.T.C. 299 (SCC) (Shareholder with only 50% of voting rights had power to wind up company; held to control company); *Rostal Sales Agency Ltd. v. The Queen*, [1983] C.T.C. 5 (FCTD) (Trust settlor without power to remove trustee had no control over shares owned by trust); *Southside Car Market Ltd. et al. v. The Queen*, [1982] C.T.C. 214 (FCTD) (Corporation cannot be controlled by both "the same person" and by a "group of persons"); *Entrepôt Métropolitain de Meubles Ltée v. MNR*, [1981] C.T.C. 425 (FCTD) (Where a group of shareholders holds enough shares to have right to control company, actual control need not be exercised for provision to apply); *Imperial General Properties Ltd. v. The Queen*, [1981] C.T.C. 331 (FCTD); aff'd [1983] C.T.C. 27, (sub nom. *The Queen v. Imperial General Properties Ltd.)* (FCA); rev'd [1985] 2 C.T.C. 299, (sub nom. *The Queen v. Imperial General Properties Ltd.)* (SCC) (Two companies not associated where one held 50% of voting shares of the other while remaining shares held by group of other shareholders); *Fawcett, H.A., & Son Ltd. v. The Queen*, [1980] C.T.C. 293 (FCA) (Where father's shares inherited two days before father's fiscal year-end, companies controlled by son associated with those controlled by father in taxation year of father's death); *Regal Wholesale Ltd. v. The Queen*, [1977] C.T.C. 202 (FCA) (Beneficial ownership of shares transferred without registration of change); *The Queen v. Alroy Industries Ltd.*, [1976] C.T.C. 388 (FCTD) (Companies associated where one held irrevocable option to buy all shares of other); *Danalan Investments Ltd. v. MNR*, [1973] C.T.C. 251 (FCTD) (Three companies associated where majority of shares of each held by individual and his nominees); *Allied Farm Equipment Ltd. v. MNR*, [1972] C.T.C. 619 (FCA) (Non-resident company not a "corporation" for purposes of provision); *MNR v. Werner, Fritz, Ltd.*, [1972] C.T.C. 274 (FCTD) (Shares deemed owned by a third party by virtue of an option to purchase shares continue to belong to potential vendor for purposes of associated corporations provisions until option exercised); *International Iron & Metal Co. Ltd. v. MNR*, [1972] C.T.C. 242 (SCC) (*De jure* control sufficient for purposes of associated companies); *Madill, S., Ltd. v. MNR*, [1972] C.T.C. 47 (FCTD) (*De jure* control by group of persons where shares held indirectly); *MNR v. Consolidated Holding Co. Ltd.*, [1972] C.T.C. 18 (SCC) (Companies associated where controlling shareholders held controlling shares of other *qua* executors and trustees); *Oakfield Developments (Toronto) Ltd. v. MNR*, [1971] C.T.C. 283 (SCC) (Forty-three companies associated where group owned 50% of shares of each corporation, resulting in group's capacity to, *inter alia*, wind up companies; factors to consider); *Angelo-B.C. Distributors Ltd. v. MNR*, [1970] C.T.C. 138 (Exch.) (Absent direct evidence to contrary, shares presumed held for benefit of nominal owners); *Donald Applicators Ltd. et al. v. MNR*, [1969] C.T.C. 98 (Exch.); aff'd [1971] C.T.C. 402 (note) (SCC) (Company controlled by and associated with another which held all Class B shares of former; although the Class B shares carried no vote for directors, they entitled holder to change powers of directors); *Vina-Rug (Canada) Ltd. v. MNR*, [1968] C.T.C. 1 (SCC) (Companies associated once any group of shareholders owns majority of shares of each).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

Advance Tax Rulings: ATR-13: Corporations not associated.

(1.1) Definition of "specified class" — For the purposes of subsection (1), "specified class" means a class of shares of the capital stock of a corporation where, under the terms or conditions of the shares or any agreement in respect thereof,

(a) the shares are not convertible or exchangeable;

(b) the shares are non-voting;

(c) the amount of each dividend payable on the shares is calculated as a fixed amount or by reference to a fixed percentage of an amount equal to the fair market value of the consideration for which the shares were issued;

(d) the annual rate of the dividend on the shares, expressed as a percentage of an amount equal to the fair market value of the consideration for which the shares were issued, cannot in any event exceed,

(i) where the shares were issued before 1984, the rate of interest prescribed for the purposes of subsection 161(1) at the time the shares were issued, and

(ii) where the shares were issued after 1983, the prescribed rate of interest at the time the shares were issued; and

(e) the amount that any holder of the shares is entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length cannot exceed the total of an amount equal to the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends thereon.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self.

History: Para. 256(1.1)(d) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 198(1), to substitute subparas. (i) and (ii) for "the prescribed rate of interest at the time the shares were issued", applicable to 1989 *et seq.*

Regulations: 4301(c) (prescribed rate of interest).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(1.2) Control, etc. — For the purposes of this subsection and subsections (1), (1.1) and (1.3) to (5),

(a) a group of persons in respect of a corporation means any two or more persons each of whom owns shares of the capital stock of the corporation;

(b) for greater certainty,

(i) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(ii) a corporation may be controlled by a person or a particular group of persons notwithstanding that

the corporation is also controlled or deemed to be controlled by another person or group of persons;

(c) a corporation shall be deemed to be controlled by another corporation, a person or a group of persons at any time where

(i) shares of the capital stock of the corporation having a fair market value of more than 50% of the fair market value of all the issued and outstanding shares of the capital stock of the corporation, or

(ii) common shares of the capital stock of the corporation having a fair market value of more than 50% of the fair market value of all the issued and outstanding common shares of the capital stock of the corporation

are owned at that time by the other corporation, the person or the group of persons, as the case may be;

(d) where shares of the capital stock of a corporation are owned, or deemed by this subsection to be owned, at any time by another corporation (in this paragraph referred to as the "holding corporation"), those shares shall be deemed to be owned at that time by any shareholder of the holding corporation in a proportion equal to the proportion of all those shares that

(i) the fair market value of the shares of the capital stock of the holding corporation owned at that time by the shareholder

is of

(ii) the fair market value of all the issued shares of the capital stock of the holding corporation outstanding at that time;

(e) where, at any time, shares of the capital stock of a corporation are property of a partnership, or are deemed by this subsection to be owned by the partnership, those shares shall be deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all those shares that

(i) the member's share of the income or loss of the partnership for its fiscal period that includes that time

is of

(ii) the income or loss of the partnership for its fiscal period that includes that time

and for this purpose, where the income and loss of the partnership for its fiscal period that includes that time are nil, that proportion shall be computed as if the partnership had had income for that period in the amount of $1,000,000;

(f) where shares of the capital stock of a corporation are owned, or deemed by this subsection to be owned, at any time by a trust,

(i) in the case of a testamentary trust under which one or more beneficiaries were entitled to receive all of the income of the trust that arose before the date of death of one or the last surviving of those beneficiaries (in this paragraph referred to as the "distribution date") and no other person could, before the distribution date, receive or otherwise obtain the use of any of the income or capital of the trust,

(A) where any such beneficiary's share of the income or capital therefrom depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, those shares shall be deemed to be owned at any time before the distribution date by the beneficiary, and

(B) where clause (A) does not apply, those shares shall be deemed to be owned at any time before the distribution date by any such beneficiary in a proportion equal to the proportion of all those shares that the fair market value of the beneficial interest in the trust of the beneficiary is of the fair market value of the beneficial interests in the trust of all those beneficiaries,

(ii) where a beneficiary's share of the accumulating income or capital therefrom depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, those shares shall be deemed to be owned at that time by the beneficiary, except where subparagraph (i) applies and that time is before the distribution date,

(iii) in any case where subparagraph (ii) does not apply, a beneficiary shall be deemed at that time to own the proportion of those shares that the fair market value of the beneficial interest in the trust of the beneficiary is of the fair market value of all beneficial interests in the trust, except where subparagraph (i) applies and that time is before the distribution date, and,

(iv) in the case of a trust referred to in subsection 75(2), the person referred to in that subsection from whom property of the trust or property for which it was substituted was directly or indirectly received shall be deemed to own those shares at that time; and

(g) in determining the fair market value of a share of the capital stock of a corporation, all issued and outstanding shares of the capital stock of the corporation shall be deemed to be non-voting.

Related Provisions: 248(5) — Substituted property; 256(1.5) — Person deemed related to self; 256(1.6) — Exception; 256(6.1) — Simultaneous control by different persons.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(1.3) Parent deemed to own shares — Where at any time shares of the capital stock of a corporation are owned by a child who is under 18 years of age, for the purpose of determining whether the corporation is associated at that time with any other corporation that is controlled, directly or indirectly in any manner whatever, by a parent of the child or by a group of persons of which the parent is a member, the shares shall be deemed to be owned at that time by the parent unless, having regard to all the circumstances, it can reasonably be considered that the child manages the business and affairs of the corporation and does so without a significant degree of influence by the parent.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(5.1), (6.2) — Control in fact.

History: Subsec. 256(1.3) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 198(2), applicable retroactively to its introduction (see History note to subsec. (1.6)). Subsec. (1.3) formerly read:

(1.3) Where, at any time, shares of the capital stock of a corporation are owned by a child who is under 18 years of age, for the purposes of determining if the corporation is associated at that time with any other corporation that is controlled, directly or indirectly in any manner whatever, by a parent of the child or by a group of persons of which the parent is a member, those shares shall be deemed to be owned at that time by the parent or the group, as the case may be, unless, having regard to all the circumstances, it may reasonably be considered that the child manages the business and affairs of the

corporation and does so without a significant degree of influence by the parent.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(1.4) Options and rights — For the purpose of determining whether a corporation is associated with another corporation with which it is not otherwise associated, where a person or any partnership in which the person has an interest has a right at any time under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(a) to, or to acquire, shares of the capital stock of a corporation, or to control the voting rights of shares of the capital stock of a corporation, the person or partnership shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to own the shares at that time, and the shares shall be deemed to be issued and outstanding at that time; or

(b) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of a corporation, the person or partnership shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed at that time to have the same position in relation to control of the corporation and ownership of shares of its capital stock as if the shares were redeemed, acquired or cancelled by the corporation.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(1.6) — Exception; 256(5.1) — Control in fact.

History: Subsec. 256(1.4) amended by 1994, c. 7, Sch. II (1991, c. 49), subsec. 198(2), applicable retroactively to its introduction (see History note to subsec. (1.6)). Subsec. (1.4) formerly read:

(1.4) For the purposes of determining if a corporation is associated at any time with any other corporation that is controlled, directly or indirectly in any manner whatever, by a person, or by a group of persons of which the person is a member, where the person, or any partnership in which the person has an interest, has a right at any time under contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(a) to, or to acquire, shares of the capital stock of the corporation, or to control the voting rights of shares of the capital stock of the corporation, the person or partnership shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed to own the shares at that time and the shares shall be deemed to be issued and outstanding at that time; or

(b) to cause the corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person or partnership shall, except where the contract provides that the right is not exercisable until the death, bankruptcy or permanent disability of an individual designated therein, be deemed at that time to have had the same position in relation to control of the corporation and ownership of shares of its capital stock as if the shares were redeemed, acquired or cancelled by the corporation.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(1.5) Person related to himself, herself or itself — For the purposes of subsections (1) to (1.4) and (1.6) to (5), where a person owns shares in two or more corporations, the person shall as shareholder of one of the corporations be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

Related Provisions: 256(1.2) — Control, etc.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(1.6) Exception — For the purposes of subsection (1.2) and notwithstanding subsection (1.4), any share that is

(a) described in paragraph (e) of the definition "term preferred share" in subsection 248(1) during the applicable time referred to in that paragraph, or

(b) a share of a specified class within the meaning of subsection (1.1)

shall be deemed not to have been issued and outstanding and not to be owned by any shareholder and an amount equal to the greater of the paid-up capital of the share and the amount, if any, that any holder of the share is entitled to receive on the redemption, cancellation or acquisition of the share by the corporation shall be deemed to be a liability of the corporation.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self.

Pre-RSC History: Subsec. 256(1.1) to (1.6) added by 1988, c. 55, subsec. 192(1), applicable, for the purposes of determining whether two or more corporations are associated with each other,

(a) to 1989 *et seq.* where

(i) the taxation years of all such corporations commenced after 1988,

(ii) at least one of such corporations was incorporated, or was formed as a result of an amalgamation, after February 10, 1988,

(iii) at least one of such corporations acquired after February 10, 1988 from a person with whom it did not deal at arm's length all or substantially all of the assets used by it in its business, or

(iv) the 1989 taxation year of at least one of such corporations did not end on approximately the same calendar date in 1989 as the calendar date in 1987 on which a 1987 taxation year, if any, of that corporation ended, and

(b) in any other case, to 1990 *et seq.*

(2) Corporations associated through a third corporation — Where two corporations

(a) would, but for this subsection, not be associated with each other at any time, and

(b) are associated, or are deemed by this subsection to be associated, with the same corporation (in this subsection referred to as the "third corporation") at that time,

they shall, for the purposes of this Act, be deemed to be associated with each other at that time, except that, for the purposes of section 125, where the third corporation is not a Canadian-controlled private corporation at that time or elects, in prescribed form, for its taxation year that includes that time not to be associated with either of the other two corporations, the third corporation shall be deemed not to be associated with either of the other two corporations in that taxation year and its business limit for that taxation year shall be deemed to be nil.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self.

Selected Cases [subsec. 256(2)]: *Allied Farm Equipment Ltd. v. MNR*, [1972] C.T.C. 619 (FCA) (Corporation not taxable under Part I not a "corporation" for purposes of provision).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988; IT-243R4: Dividend refund to private corporations.

Advance Tax Rulings: ATR-13: Corporations not associated.

Forms: T2 SCH 28: Election not to be an associated corporation.

(2.1) Anti-avoidance — For the purposes of this Act, where, in the case of two or more corporations, it may reasonably be considered that one of the main reasons for the separate existence of those corporations in a taxation

year is to reduce the amount of taxes that would otherwise be payable under this Act or to increase the amount of refundable investment tax credit under section 127.1, the two or more corporations shall be deemed to be associated with each other in the year.

Pre-RSC History: Subsec. 256(2) substituted and 256(2.1) added by 1988, c. 55, subsec. 192(1), applicable, for the purposes of determining whether two or more corporations are associated with each other,

(a) to 1989 *et seq.* where

(i) the taxation years of all such corporations commenced after 1988,

(ii) at least one of such corporations was incorporated, or was formed as a result of an amalgamation, after February 10, 1988,

(iii) at least one of such corporations acquired after February 10, 1988 from a person with whom it did not deal at arm's length all or substantially all of the assets used by it in its business, or

(iv) the 1989 taxation year of at least one of such corporations did not end on approximately the same calendar date in 1989 as the calendar date in 1987 on which a 1987 taxation year, if any, of that corporation ended, and

(b) in any other case, to 1990 *et seq.*

Subsec. 256(2) formerly read:

(2) Idem — When two corporations are associated, or are deemed by this subsection to be associated, with the same corporation at the same time, they shall, for the purpose of this Act, be deemed to be associated with each other.

Selected Cases [subsec. 256(2.1)]: *Hughes Homes Inc. v. R.*, [1998] 1 C.T.C. 2367 (TCC) (Asset protection and wife's separate business interests were main reasons for separate existence; no deemed association).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

Advance Tax Rulings: ATR-13: Corporations not associated.

(3) Saving provision — Where one corporation (in this subsection referred to as the "controlled corporation") would, but for this subsection, be associated with another corporation in a taxation year by reason of being controlled, directly or indirectly in any manner whatever, by the other corporation or by reason of both of the corporations being controlled, directly or indirectly in any manner whatever, by the same person at a particular time in the year (which corporation or person so controlling the controlled corporation is in this subsection referred to as the "controller") and it is established to the satisfaction of the Minister that

(a) there was in effect at the particular time an agreement or arrangement enforceable according to the terms thereof, under which, on the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or happen, the controlled corporation will

(i) cease to be controlled, directly or indirectly in any manner whatever, by the controller, and

(ii) be or become controlled, directly or indirectly in any manner whatever, by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller was at the particular time dealing at arm's length, and

(b) the purpose for which the controlled corporation was at the particular time so controlled was the safeguarding of rights or interests of the controller in respect of

(i) any indebtedness owing to the controller the whole or any part of the principal amount of which was outstanding at the particular time, or

(ii) any shares of the capital stock of the controlled corporation that were owned by the controller at the particular time and that were, under the agreement or arrangement, to be redeemed by the controlled corporation or purchased by the person or group of persons referred to in subparagraph (a)(ii),

the controlled corporation and the other corporation with which it would otherwise be so associated in the year shall be deemed, for the purpose of this Act, not to be associated with each other in the year.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(5.1), (6.2) — Controlled directly or indirectly; 256(6.1) — Simultaneous control by different persons.

Pre-RSC History: That portion of subsec. 256(3) preceding subpara. (b)(ii) substituted by 1988, c. 55, subsec. 192(2), applicable to taxation years commencing after 1988. That portion of subsec. 256(3) formerly read:

(3) Saving provision — Where one corporation (hereinafter in this subsection referred to as the "controlled corporation") would, but for this subsection, be associated with another corporation in a taxation year by reason of being controlled by the other corporation or by reason of both of the corporations being controlled by the same person at a particular time in the year (which corporation or person so controlling the controlled corporation is hereinafter in this subsection referred to as the "controller"), and it is established to the satisfaction of the Minister that

(a) there was in effect at the particular time an agreement or arrangement enforceable according to the terms thereof, under which, upon the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or happen, the controlled corporation will

(i) cease to be controlled by the controller, and

(ii) become controlled by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller was at the particular time dealing at arm's length, and

(b) the chief purpose for which the controlled corporation was at the particular time so controlled was the safeguarding of rights or interests of the controller in respect of

(i) any loan made by the controller the whole or any part of the principal amount of which was outstanding at the particular time, or

Selected Cases [subsec. 256(3)]: *MNR v. Werner, Fritz, Ltd.*, [1972] C.T.C. 274 (FCTD) (Shares deemed owned by third party by virtue of option to purchase shares continue to belong to potential vendor for purposes of associated corporations provisions until option exercised).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(4) Idem — Where one corporation would, but for this subsection, be associated with another corporation in a taxation year by reason of both of the corporations being controlled by the same trustee or executor and it is established to the satisfaction of the Minister

(a) that the trustee or executor did not acquire control of the corporations as a result of one or more trusts or estates created by the same individual or two or more individuals not dealing with each other at arm's length, and

(b) that the trust or estate under which the trustee or executor acquired control of each of the corporations arose only on the death of the individual creating the trust or estate,

the two corporations shall be deemed, for the purposes of this Act, not to be associated with each other in the year.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(6.1) — Simultaneous control by different persons.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(5) Idem — Where one corporation would, but for this subsection, be associated with another corporation in a

taxation year, by reason only that the other corporation is a trustee under a trust pursuant to which the corporation is controlled, the two corporations shall be deemed, for the purposes of this Act, not to be associated with each other in the year unless, at any time in the year, a settlor of the trust controlled or is a member of a related group that controlled the other corporation that is the trustee under the trust.

Related Provisions: 256(1.2) — Control, etc.; 256(1.5) — Person deemed related to self; 256(6.1) — Simultaneous control by different persons.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(5.1) Control in fact — For the purposes of this Act, where the expression "controlled, directly or indirectly in any manner whatever," is used, a corporation shall be considered to be so controlled by another corporation, person or group of persons (in this subsection referred to as the "controller") at any time where, at that time, the controller has any direct or indirect influence that, if exercised, would result in control in fact of the corporation, except that, where the corporation and the controller are dealing with each other at arm's length and the influence is derived from a franchise, licence, lease, distribution, supply or management agreement or other similar agreement or arrangement, the main purpose of which is to govern the relationship between the corporation and the controller regarding the manner in which a business carried on by the corporation is to be conducted, the corporation shall not be considered to be controlled, directly or indirectly in any manner whatever, by the controller by reason only of that agreement or arrangement.

Related Provisions: 256(6) — Idem.

Pre-RSC History: Subsec. 256(5.1) added by 1988, c. 55, subsec. 192(3), applicable to taxation years commencing after 1988.

Selected Cases [subsec. 256(5.1)]: *HSC Research Development Corp. v. Canada*, [1995] 1 C.T.C. 2283 (TCC) (1988 amendments changed law to include concept of *de facto* control).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988; IT-236R4: Reserves — disposition of capital property; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-291R2: Transfer of property to a corporation under subsection 85(1); IT-458R2: Canadian-controlled private corporation.

(6) Idem — For the purposes of this Act, where a corporation (in this subsection referred to as the "controlled corporation") would, but for this subsection, be regarded as having been controlled or controlled, directly or indirectly in any manner whatever, by a person or partnership (in this subsection referred to as the "controller") at a particular time and it is established that

(a) there was in effect at the particular time an agreement or arrangement enforceable according to the terms thereof, under which, on the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or happen, the controlled corporation will

(i) cease to be controlled, or controlled, directly or indirectly in any manner whatever, as the case may be, by the controller, and

(ii) be or become controlled, or controlled, directly or indirectly in any manner whatever, as the case may be, by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller was at the particular time dealing at arm's length, and

(b) the purpose for which the controlled corporation was at the particular time so controlled, or controlled, directly or indirectly in any manner whatever, as the case may be, was the safeguarding of rights or interests of the controller in respect of

(i) any indebtedness owing to the controller the whole or any part of the principal amount of which was outstanding at the particular time, or

(ii) any shares of the capital stock of the controlled corporation that were owned by the controller at the particular time and that were, under the agreement or arrangement, to be redeemed by the controlled corporation or purchased by the person or group of persons referred to in subparagraph (a)(ii),

the controlled corporation is deemed not to have been controlled by the controller at the particular time.

Related Provisions: 256(5.1), (6.2) — Controlled directly or indirectly; 256(6.1) — Simultaneous control by different persons.

History: The closing words of subsec. 256(6) amended by 1998, c. 19, subsec. 246(1), applicable to taxation years that begin after 1988. The closing words formerly read:

the controlled corporation shall be deemed, for the purposes of that provision, not to have been controlled by the controller at the particular time.

Pre-RSC History: That portion of subsec. 256(6) preceding subpara. (b)(ii) substituted by 1988, c. 55, subsec. 192(4), applicable to taxation years commencing after 1988. That portion formerly read:

(6) Controlled corporation — saving provision — For the purposes of any provision of this Act, where a corporation (in this subsection referred to as the "controlled corporation") would, but for this subsection, be regarded as having been controlled by a person or partnership (in this subsection referred to as the "controller") at a particular time and it is established that

(a) there was in effect at the particular time an agreement or arrangement enforceable according to the terms thereof, under which, upon the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or happen, the controlled corporation will

(i) cease to be controlled by the controller, and

(ii) become controlled by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller was at the particular time dealing at arm's length, and

(b) the purpose for which the controlled corporation was at the particular time so controlled was the safeguarding of rights or interests of the controller in respect of

(i) any indebtedness of the controller the whole or any part of the principal amount of which was outstanding at the particular time, or

Subsec. 256(6) amended by 1986, c. 6, subsec. 127(1), applicable to 1985 *et seq.*, to substitute that portion preceding para. (a) and to substitute, in para. (b), "the purpose" for "the chief purpose" and, in (b)(i), "any indebtedness of" for "any loan made by". The portion preceding para. (a) formerly read:

(6) Controlled corporations: saving provision — Where, for the purposes of any provision of this Act, one corporation resident in Canada (in this subsection referred to as the "controlled corporation") would, but for this subsection, be regarded as having been controlled by another corporation resident in Canada (in this subsection referred to as the "controller") at a particular time and it is established to the satisfaction of the Minister that

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988; IT-458R2: Canadian-controlled private corporation.

Proposed Addition — 256(6.1), (6.2)

(6.1) Simultaneous control — For the purposes of this Act and for greater certainty,

(a) where a corporation (in this paragraph referred to as the "subsidiary") would be controlled by another corporation (in this paragraph referred to as the "par-

ent") if the parent were not controlled by any person or group of persons, the subsidiary is controlled by

(i) the parent, and

(ii) any person or group of persons by whom the parent is controlled; and

(b) where a corporation (in this paragraph referred to as the "subject corporation") would be controlled by a group of persons (in this paragraph referred to as the "first-tier group") if no corporation that is a member of the first-tier group were controlled by any person or group of persons, the subject corporation is controlled by

(i) the first-tier group, and

(ii) any group of one or more persons comprised of, in respect of every member of the first-tier group, either the member, or a person or group of persons by whom the member is controlled.

(6.2) Application to control in fact — In its application to subsection (5.1), subsection (6.1) shall be read as if the references in subsection (6.1) to "controlled" were references to "controlled, directly or indirectly in any manner whatever,".

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 118, will add subsecs. 256(6.1) and (6.2), applicable after November 1999.

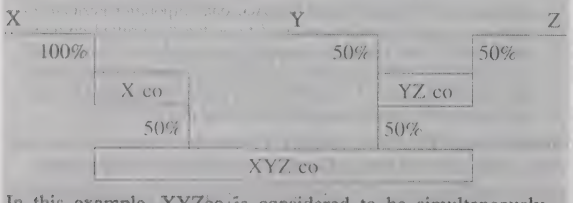
Technical Notes: Section 256 of the Act provides rules relevant to the determination, for the purposes of the Act, of whether corporations are associated, whether a corporation is controlled by a person or group of persons, and whether control of a corporation has been acquired.

New subsection 256(6.1) of the Act specifies, for greater certainty, that a corporation may be controlled simultaneously by persons or groups at more than one level above it in a corporate chain.

Paragraph 256(6.1)(a) specifies that, where a subsidiary would be controlled by its parent if the parent were not itself controlled by any other person or group, the subsidiary is considered to be controlled both by the parent and by the person or group that controls the parent.

Paragraph 256(6.1)(b) is a rule of similar effect that applies where the subject corporation would be controlled by a group (the "first-tier group") if no member of the first-tier group were itself controlled by a third party. In that case, the subject corporation is considered to be controlled both by the first-tier group, and by any higher-tier group which includes, in respect of each member of the first-tier group, either the member or a person or group by whom the member is controlled. If one person controls all members of the first-tier group, that person would constitute a higher-tier group.

The operation of paragraph (b) is illustrated by the following example, in which the percentages represent ownership of voting shares, and the various groups identified are assumed to act in concert in voting their shares.



In this example, XYZco is considered to be simultaneously controlled by:

(i) the first-tier group comprised of Xco and YZco,

(ii) the higher-tier group comprised of X, Y and Z,

(iii)the higher-tier comprised of Xco, Y and Z, and

(iv)the higher-tier group comprised of X and YZco.

While the concepts set out in subsection 256(6.1) deal directly only with a corporation and persons in the two levels of ownership immediately above it, application of the provision sequentially from the top of a chain makes it applicable to corporate chains with three or more levels.

New subsection 256(6.2) of the Act specifies that the rule regarding simultaneous control in new subsection 256(6.1) also applies to the concept of *de facto* control, which is set out in subsection 256(5.1) of the Act.

(7) Acquiring control — For the purposes of subsections 10(10), 13(21.2) and (24), 14(12) and 18(15), sections 18.1 and 37, subsection 40(3.4), the definition "superficial loss" in section 54, section 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2) and 88(1.1) and (1.2), sections 111 and 127, subsection 249(4) and this subsection,

(a) control of a particular corporation shall be deemed not to have been acquired solely because of

(i) the acquisition at any time of shares of any corporation by

(A) a particular person who acquired the shares from a person to whom the particular person was related (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before that time,

(B) a particular person who was related to the particular corporation (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before that time,

(C) an estate that acquired the shares because of the death of a person, or

(D) a particular person who acquired the shares from an estate that arose on the death of another person to whom the particular person was related, or

(ii) the redemption or cancellation at any particular time of, or a change at any particular time in the rights, privileges, restrictions or conditions attaching to, shares of the particular corporation or of a corporation controlling the particular corporation, where each person and each member of each group of persons that controls the particular corporation immediately after the particular time was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the corporation

(A) immediately before the particular time, or

(B) immediately before the death of a person, where the shares were held immediately before the particular time by an estate that acquired the shares because of the person's death;

(b) where at any time 2 or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") have amalgamated to form one corporate entity (in this paragraph referred to as the "new corporation"),

(i) control of a corporation is deemed not to have been acquired by any person or group of persons solely because of the amalgamation unless it is deemed by subparagraph (ii) or (iii) to have been so acquired,

(ii) a person or group of persons that controls the new corporation immediately after the amalgamation and did not control a predecessor corporation immediately before the amalgamation is deemed to

have acquired immediately before the amalgamation control of the predecessor corporation and of each corporation it controlled immediately before the amalgamation (unless the person or group of persons would not have acquired control of the predecessor corporation if the person or group of persons had acquired all the shares of the predecessor corporation immediately before the amalgamation), and

(iii) control of a predecessor corporation and of each corporation it controlled immediately before the amalgamation is deemed to have been acquired immediately before the amalgamation by a person or group of persons

(A) unless the predecessor corporation was related (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before the amalgamation to each other predecessor corporation,

(B) unless, if one person had immediately after the amalgamation acquired all the shares of the new corporation's capital stock that the shareholders of the predecessor corporation, or of another predecessor corporation that controlled the predecessor corporation, acquired on the amalgamation in consideration for their shares of the predecessor corporation or of the other predecessor corporation, as the case may be, the person would have acquired control of the new corporation as a result of the acquisition of those shares, or

(C) unless this subparagraph would, but for this clause, deem control of each predecessor corporation to have been acquired on the amalgamation where the amalgamation is an amalgamation of

(I) two corporations, or

(II) two corporations (in this subclause referred to as the "parents") and one or more other corporations (each of which is in this subclause referred to as a "subsidiary") that would, if all the shares of each subsidiary's capital stock that were held immediately before the amalgamation by the parents had been held by one person, have been controlled by that person;

(c) subject to paragraph (a), where 2 or more persons (in this paragraph referred to as the "transferors") dispose of shares of the capital stock of a particular corporation in exchange for shares of the capital stock of another corporation (in this paragraph referred to as the "acquiring corporation"), control of the acquiring corporation and of each corporation controlled by it immediately before the exchange is deemed to have been acquired at the time of the exchange by a person or group of persons unless

(i) the particular corporation and the acquiring corporation were related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the exchange, or

(ii) if all the shares of the acquiring corporation's capital stock that were acquired by the transferors on the exchange were acquired at the time of the exchange by one person, the person would not control the acquiring corporation;

(d) where at any time shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that includes shares of the acquiring corporation's capital stock and, immediately after that time, the acquiring corporation and the particular corporation are controlled by a person or group of persons who

(i) controlled the particular corporation immediately before that time, and

(ii) did not, as part of the series of transactions or events that includes the disposition, cease to control the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition; and

(e) where at any time all the shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that consists solely of shares of the acquiring corporation's capital stock and, immediately after that time,

(i) the acquiring corporation is not controlled by any person or group of persons, and

(ii) the fair market value of the shares of the capital stock of the particular corporation is not less than 95% of the fair market value of all the assets of the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition.

Related Provisions: 139.1(18) — Control deemed not acquired on demutualization of insurer; 256(8.1) — Corporations without share capital.

History: The opening words of subsec. 256(7) amended by 1998, c. 19, subsec. 246(2), applicable after April 26, 1995 except that the reference to section 18.1 is applicable after November 17, 1996. The opening words formerly read:

(7) For the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),

Subpara. 256(7)(a)(ii) amended by the said c. 19, subsec. 246(3), applicable to 1994 *et seq.* Subpara. 256(7)(a)(ii) formerly read:

(ii) the redemption or cancellation at any time of shares of the particular corporation or of a corporation controlling the particular corporation, where the person or each member of the group of persons that controls the corporation immediately after that time was related to the corporation (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before that time; and

Para. 256(7)(b) amended, paras. (c), (d) and (e) added, by the said c. 19, subsec. 246(4), para. 256(7)(b) applicable

(a) to mergers that occur after April 26, 1995, other than a merger that occurs pursuant to a written agreement made before that day where the corporate entity formed by the merger so elects before January 1999; and

(b) to a merger that occurred after 1992 and before April 26, 1995 where the corporate entity formed by the merger so elects before January 1999;

para. 256(7)(c) applicable to exchanges that occur after April 26, 1995, other than an exchange that occurs pursuant to a written agreement made before that day; and paras. 256(7)(d) and (e) applicable after April 26, 1995 except that, with respect to acquisitions of shares that occur before

June 20, 1996 or pursuant to a written agreement made before June 20, 1996, subpara. 256(7)(e)(ii) shall be read as follows:

> (ii) all or substantially all of the fair market value of the shares of the acquiring corporation's capital stock is attributable to the shares acquired by it at that time,

Para. 256(7)(b) formerly read:

> (b) where there has been an amalgamation (within the meaning assigned by section 87) of two or more corporations after November 12, 1981, and a person or group of persons controlled the new corporation immediately after the amalgamation and did not control a particular predecessor corporation immediately before the amalgamation, that person or group of persons shall be deemed to have acquired control of the particular predecessor corporation immediately before the amalgamation unless control would not have been acquired if the person or group of persons that controlled the new corporation immediately after the amalgamation had acquired all of the shares of the particular predecessor corporation immediately before the amalgamation.

The opening words of subsec. 256(7) amended by 1995, c. 21, subsec. 44(1), applicable to amalgamations, acquisitions, redemptions and cancellations that occur after February 21, 1994. The opening words formerly read:

> (7) For the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),

The opening words of subsec. 256(7) amended by 1995, c. 3, subsec. 55(1), applicable to amalgamations, acquisitions, redemptions and cancellations that occur after February 21, 1994. The opening words formerly read:

> (7) For the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),

All that portion of subsec. 256(7) preceding para. (b) substituted by 1994, c. 21, s. 114, applicable to acquisitions, redemptions and cancellations occurring after 1992. That portion of the subsec. formerly read:

> (7) Control deemed not to be acquired — For the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4),
>
> (a) a person shall be deemed not to have acquired control of a particular corporation, or of any corporation controlled by it, because of the redemption, acquisition or cancellation of shares of the particular corporation if that person
>
> (i) was, immediately before the share redemption, acquisition or cancellation, related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation,
>
> (ii) was an executor, administrator or trustee of an estate who acquired the shares by virtue of the death of any other person,
>
> (iii) acquired the shares by way of a distribution from an estate arising on the death of another person with whom the first-mentioned person was related, or
>
> (iv) was a corporation formed by an amalgamation (within the meaning of section 87) of two or more predecessor corporations each of which was related (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) to the particular corporation immediately before the amalgamation; and

All that portion of subsec. 256(7) preceding subpara. (a)(ii) amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 198(3), (4), to add reference to subsec. 85(1.2), applicable to dispositions occurring after 1984, and to substitute all that portion of para. (a) preceding subsec. (ii), applicable with respect to redemptions, acquisitions and cancellations of shares occurring after 1989, except that, in applying the para. to a person who so elected by notifying the Minister of National Revenue in writing before 1992 [1994, c. 7, Sch. VIII (1993, c. 24), s. 159 provides that such an election made before December 11, 1993 shall be deemed to have been made before 1992], the references therein to "redemption" and "cancellation" shall be read as references to "redemption after July 13, 1990" and "cancellation after July 13, 1990", respectively. The substitution portion of para. (a) formerly read:

> (a) where shares of a particular corporation have been acquired by a person after March 31, 1977, that person shall be deemed not to have acquired control of the particular corporation by virtue of that share acquisition if that person
>
> (i) was, immediately before the share acquisition, related (otherwise than by virtue of a right referred to in paragraph 251(5)(b)) to the particular corporation,

Pre-RSC History: That portion of subsec. 256(7) preceding para. (a) amended by 1988, c. 55, subsec. 192(5) to add reference to subsec. 89(1.1), applicable after 4 p.m. EDST, September 25, 1987.

That portion of subsec. 256(7) preceding para. (a) substituted by 1987, c. 46, subsec. 71(1), applicable after January 15, 1987, except that

> (a) the deletion of the reference to subsection 66(11.1) and the addition of the reference to subsections 66.7(10) and (11) are applicable to taxation years ending after February 17, 1987; and
>
> (b) the addition of the reference to subsection 66.5(3) is applicable after June 5, 1987.

That portion of subsec. (7) formerly read:

> (7) For the purposes of subsections 66(11) and (11.1), 87(2.1), 88(1.1) and (1.2) and sections 111 and 127

The heading, and all that portion of subsec. 256(7) preceding para. (a), amended by 1986, c. 6, subsec. 127(2), to substitute "Control deemed not to be" for "Where control deemed not to have been" in the heading, and to add reference to section 127, applicable after May 23, 1985.

All that portion of subsec. 256(7) preceding para. (a) and para. 256(7)(b) substituted by 1980-81-82-83, c. 140, subsecs. 131(1), (2), applicable after November 12, 1981. That portion of subsec. (7) and para. (b) formerly read:

> (7) For the purposes of subsections 66(11), 87(2.1), 88(1.1) and (1.2) and 111(4) and (5)
>
> . . . . .
>
> (b) where there has been an amalgamation (within the meaning of section 87) of two or more corporations after March 31, 1977, and a person or a group of persons controlled the new corporation immediately after the amalgamation and did not control a particular predecessor corporation immediately before the amalgamation, that person or group of persons shall be deemed to have acquired control of the particular predecessor corporation immediately before the amalgamation.

Subparas. 256(7)(a)(i), (iv), para. 256(7)(b) substituted by 1980-81-82-83, c. 48, subsecs. 112(1)–(3), applicable, as to subparas. 256(7)(a)(i), (iv), with respect to any acquisition of a right referred to in para. 251(5)(b) occurring after December 11, 1979. Subparas. (a)(i), (iv) and para. (b) formerly read:

> (i) was, immediately before such share acquisition, related to the particular corporation,
>
> . . . . .
>
> (iv) was a corporation formed by an amalgamation (within the meaning of section 87) of two or more predecessor corporations each of which was related to the particular corporation immediately before the amalgamation; and
>
> (b) where there has been an amalgamation (within the meaning of section 87) of two or more corporations after March 31, 1977, and a person or a group of related persons controlled the new corporation immediately after the amalgamation and did not control a particular predecessor corporation immediately before the amalgamation, that person or group of related persons shall be deemed to have acquired control of the particular predecessor corporation immediately before the amalgamation.

Subparas. 256(7)(a)(ii), (iii) substituted, (iv) added by 1977-78, c. 32, s. 56, applicable to taxation years ending after March 31, 1977.

Subsec. 256(7) added by 1977-78, c. 1, s. 99, applicable to taxation years ending after March 31, 1977.

Selected Cases [subsec. 256(7)]: *Duha Printers (Western) Ltd. v. R.*, [1998] 3 C.T.C. 303 (SCC); Reversed [1996] 3 C.T.C. 19 (FCA) (Documents of constitutional or constating nature may be used to determine relationship and *de jure* control).

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988; IT-302R3: Losses of a corporation — the effect that ac-

quisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987.

I.T. Technical News: No. 7 (control by a group — 50/50 arrangement); No. 16 (*Duha Printers* case).

Advance Tax Rulings: ATR-7: Amalgamation involving losses and control.

(8) Deemed exercise of right — Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of a share and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 10(10) or 13(24), paragraph 37(1)(h) or subsection 55(2) or 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3), 181.1(7) or 190.1(6),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

(d) to avoid the application of section 251.1, or

(e) to affect the application of section 80,

the taxpayer is deemed to be in the same position in relation to the control of the corporation as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time for the purpose of determining whether control of a corporation has been acquired for the purposes of subsections 10(10) and 13(24), section 37, subsections 55(2), 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsections 181.1(7), 190.1(6) and 249(4), and in determining for the purpose of section 251.1 whether a corporation is controlled by any person or group of persons.

Related Provisions: 256(8.1) — Corporations without share capital.

History: Subsec. 256(8) amended by 1998, c. 19, subsec. 246(5), applicable after February 21, 1994 except that,

(a) in its application after February 21, 1994 and before June 24, 1994, subsec. 256(8) shall be read as follows:

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h), subsection 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

the taxpayer is deemed to have acquired the shares at that time for the purpose of determining whether control of the corporation has been acquired for the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsection 249(4).

and

(b) in its application after June 23, 1994 and before April 27, 1995, subsec. 256(8) shall be read as follows:

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h), subsection 55(2), 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

the taxpayer is deemed to have acquired the shares at that time for the purpose of determining whether control of the corporation has been acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h) subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsection 249(4).

Subsec. 256(8) formerly read:

(8) Deemed acquisition of shares — Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss, expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h) or subsection 55(2), 66(11.4) or (11.5) or 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

in determining whether control of the corporation is acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), sections 111 and 127 and subsection 249(4), the taxpayer shall be deemed to have acquired the shares at that time.

Subsec. 256(8) amended by 1995, c. 21, subsec. 44(2), applicable to acquisitions that occur after February 21, 1994, except that, with respect to acquisitions that occur before June 24, 1993,

(a) paragraph 256(8)(b) shall be read without reference to subsec. 55(2); and

(b) the concluding portion of subsection 256(8) shall be read without reference to s. 55.

Subsec. (8) formerly read:

(8) Deemed acquisition of shares — Where at any time a taxpayer has acquired a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be concluded that one of the main purposes of the acquisition was to avoid

(a) any limitation on the deductibility of any non-capital loss, net capital loss, farm loss, expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) the application of subsection 13(24), paragraph 37(1)(h), or subsection 55(2), 66(11.4) or (11.5), 111(4), (5.1), (5.2) or (5.3), or

(c) the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

in determining whether control of a corporation has been acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), sections 111 and 127 and subsection 249(4), the taxpayer shall be deemed to have acquired the shares at that time.

That portion of subsec. 256(8) after para. (a) amended by 1995, c. 3, subsec. 55(2), applicable to acquisitions that occur after June 23, 1994. That portion formerly read:

(b) the application of subsection 13(24), paragraph 37(1)(h) or subsection 66(11.4) or (11.5), 111(4), (5.1), (5.2) or (5.3), or

(c) the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

in determining whether control of the corporation has been acquired for the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), sections 111 and 127 and subsection 249(4), the taxpayer shall be deemed to have acquired the shares at that time.

Pre-RSC History: Subsec. 256(8) substituted by 1987, c. 46, subsec. 71(2), applicable with respect to acquisitions of rights occurring after January 15, 1987, except that

(a) the deletion of references to subsection 66(11.1) and the addition of references to subsections 66.7(10) and (11) are applicable with respect to acquisition of rights occurring in taxation years ending after February 17, 1987; and

(b) the addition of references to subsection 66.5(3) is applicable with respect to acquisitions of rights occurring after June 5, 1987.

Subsec. 256(8) formerly read:

(8) Deemed acquisition of shares — Where at any time a taxpayer has acquired a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be concluded that one of the main purposes of the acquisition was to avoid

(a) any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense referred to in subsection 66(11) or (11.1),

(b) the application of subsection 111(5.1) or (5.2), or

(c) the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

in determining whether control of the corporation has been acquired for the purposes of subsections 66(11) and (11.1) and sections 111 and 127, he shall be deemed to have acquired the shares at that time.

Subsec. 256(8) amended by 1986, c. 6, subsec. 127(3), to substitute heading "Deemed acquisition of shares" for "Where share deemed to have been acquired", to add para. (c), and to add reference to section 127 in that portion following para. (c), applicable with respect to the acquisition of rights occurring after May 23, 1985.

Para. 256(8)(a) substituted by 1984, c. 1, s. 106, applicable to 1983 *et seq.* Para. 256(8)(a) formerly read:

(a) any limitation on the deductibility of any net capital loss, non-capital loss or any expense referred to in subsection 66(11) or (11.1), or

Subsec. 256(8) substituted by 1980-81-82-83, c. 140, subsec. 131(3), applicable with respect to taxation years ending after November 12, 1981. Subsec. 256(8) formerly read:

(8) Where at any time a taxpayer has acquired any right referred to in paragraph 251(5)(b) and it can reasonably be concluded that one of the main purposes of the acquisition was to avoid any limitation on the deductibility of any net capital loss, non-capital loss or any expense referred to in any of paragraphs 66(11)(a) to (e), in determining whether control of the corporation has been acquired for the purposes of subsections 111(4) and (5) and 66(11), he shall be deemed to have acquired the shares at that time.

Subsec. 256(8) added by 1980-81-82-83, c. 48, subsec. 112(4), applicable with respect to any acquisition of a right referred to in para. 251(5)(b) occurring after December 11, 1979.

Interpretation Bulletins: IT-64R3: Corporations: association and control — after 1988.

(8.1) Corporations without share capital — For the purposes of subsections (7) and (8),

(a) a corporation incorporated without share capital is deemed to have a capital stock of a single class;

(b) each member, policyholder and other participant in the corporation is deemed to be a shareholder of the corporation; and

(c) the membership, policy or other interest in the corporation of each of those participants is deemed to be the number of shares of the corporation's capital stock that the Minister considers reasonable in the circumstances, having regard to the total number of participants in the corporation and the nature of their participation.

History: Subsec. 256(8.1) added by 1998, c. 19, subsec. 246(5), applicable after April 26, 1995.

(9) Date of acquisition of control — For the purposes of this Act, where control of a corporation is acquired by a person or group of persons at a particular time on a day, control of the corporation shall be deemed to have been acquired by the person or group of persons, as the case may be, at the commencement of that day and not at the particular time unless the corporation elects in its return of income under Part I filed for its taxation year ending immediately before the acquisition of control not to have this subsection apply.

Related Provisions: 249(4) — Deemed year end where change of control occurs; Reg. 6204(4) — Subsec. 256(9) ignored for purposes of "specified person" in determining prescribed shares under 110(1)(d).

Pre-RSC History: Subsec. 256(9) added by 1987, c. 46, subsec. 71(3), applicable after January 15, 1987.

Definitions [s. 256]: "amount" — 248(1); "arm's length" — 251(1); "associated" — 256; "business" — 248(1); "Canada" — 255; "Canadian-controlled private corporation" — 125(7), 248(1); "child" — 252(1); "class of shares" — 248(6); "common share" — 248(1); "controlled directly or indirectly" — 256(5.1), (6.2); "corporation", "dividend" — 248(1); "estate" — 104(1), 248(1); "farm loss" — 111(8), 248(1); "fiscal period" — 249(2)(b), 249.1; "group" — 256(1.2)(a); "individual" — 248(1); "investment tax credit" — 127(9), 248(1); "Minister" — 248(1); "net capital loss", "non-capital loss" — 111(8), 248(1); "paid-up capital" — 89(1), 248(1); "parent" — 252(2); "person", "prescribed" — 248(1); "prescribed rate"Reg. 4301; "principal amount", "property" — 248(1); "related group" — 251(4); "share", "shareholder" — 248(1); "specified class" — 256(1.1); "substituted property" — 248(5); "taxation year" — 249; "taxpayer" — 248(1); "testamentary trust" — 108(1), 248(1); "trust" — 104(1), 248(1), (3).

257. Negative amounts — Except as specifically otherwise provided, where an amount or a number is required under this Act to be determined or calculated by or in accordance with an algebraic formula, if the amount or number when so determined or calculated would, but for this section, be a negative amount or number, it shall be deemed to be nil.

Related Provisions: 248(1)"taxable income" — Taxable income cannot be less than nil.

Pre-RSC History: S. 257 enacted by 1986, c. 6, s. 128, applicable to 1985 *et seq.*

Definitions [s. 257]: "amount" — 248(1).

Pre-RSC History [former s. 257]: Former 257 repealed by 1980-81-82-83, c. 140, s. 132. S. 257 formerly read:

257. (1) Where corporation has degree of Canadian ownership — For the purposes of this Act, a corporation has a degree of Canadian ownership in a taxation year if throughout any 60-day period included in the 120-day period commencing 60 days before the first day of the year,

(a) the corporation complied with the following conditions:

(i) the corporation was resident in Canada,

(ii) either

(A) not less than 25% of the issued and outstanding shares of the corporation having full voting rights under all circumstances were owned by one or more individuals resident in Canada, one or more corporations controlled in Canada or a combination thereof, and equity shares representing in the aggregate not less than 25% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation were owned by one or more individuals resident in Canada, one or more corporations controlled in Canada, or a combination thereof, or

(B) a class or classes of shares of the corporation having full voting rights under all circumstances were listed on a prescribed stock exchange in Canada, and it is established in prescribed manner that no one non-

resident person and no one corporation that did not comply with clause (A) owned more than 75% of the issued and outstanding shares of the corporation having full voting rights under all circumstances, alone or in combination with any other person related to such non-resident person or such corporation at any time within the period, and a class or classes of equity shares of the corporation representing in the aggregate not less than 50% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation were listed on a prescribed stock exchange in Canada, and it is established in prescribed manner that no one non-resident person and no one corporation that did not comply with clause (A) owned equity shares representing in the aggregate more than 75% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation, alone or in combination with any other person related to such non-resident person or such corporation at any time within the period, and

(iii) where the year commenced after 1964, the number of directors who were resident in Canada was not less than 25% of the total number of directors of the corporation;

(b) the corporation complied with the conditions specified in subparagraphs (a)(i) and (iii) and was a subsidiary wholly-owned corporation subsidiary to a corporation that throughout the 60-day period complied with the conditions specified in paragraph (a) or (c); or

(c) the corporation complied with the conditions specified in subparagraphs (a)(i) and (iii) and was a subsidiary controlled corporation

(i) of which equity shares representing at least 75% of that part of the paid-up capital of the corporation that is represented by all the issued and outstanding equity shares were owned by

(A) the corporation to which it was subsidiary,

(B) a corporation controlled in Canada,

(C) an individual resident in Canada, or

(D) any combination of persons described in clause (A), (B) or (C), and

(ii) subsidiary to a corporation that throughout the 60-day period complied with the conditions specified in paragraph (a) or (b).

(2) Idem — For the purposes of this section,

(a) a corporation that has share capital is not controlled in Canada at a particular time unless at that time the corporation is resident in Canada, and

(i) more than 50% of its issued and outstanding shares having full voting rights under all circumstances,

(ii) shares representing in the aggregate more than 50% of its paid-up capital, and

(iii) equity shares representing in the aggregate more than 50% of that part of the paid-up capital of the corporation that is represented by all the issued and outstanding equity shares

are owned by

(iv) individuals resident in Canada,

(v) corporations resident in Canada with respect to each of which

(A) more than 50% of the issued shares having full voting rights under all circumstances,

(B) shares representing in the aggregate more than 50% of the paid-up capital, and

(C) equity shares representing in the aggregate more than 50% of that part of the paid-up capital of the corporation that is represented by all the issued and outstanding equity shares

are owned by individuals resident in Canada, or

(vi) any combination of individuals or corporations described in subparagraph (iv) or (v);

(b) where

(i) a non-resident person,

(ii) a corporation that does not have a degree of Canadian ownership, or

(iii) a corporation that is related to a non-resident person

has a right, either as an incident of ownership of a share of a corporation or otherwise under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, equity shares in a corporation, those shares shall

(iv) unless the right is contingent upon an event that it is not reasonable to expect to occur within a reasonable time, or

(v) unless the right is such that a reasonable man concerned only with the value of the shares would not exercise it,

be deemed

(vi) to be owned by the person who has the right,

(vii) to be owned by a non-resident person, where the person who has the right is a corporation described in subparagraph (ii) or (iii), and

(viii) where the shares are unissued,

(A) to be issued and outstanding, and

(B) to have a paid-up capital value, with respect to each share, equal to

(I) the par value, where the shares have a par value

(II) the amount that would be paid with respect to each share to exercise the right under the terms of the contract, where the shares have no par value and an amount is specified in the contract, or

(III) the market value at the end of the relevant 60-day period of a share of the class of shares of that corporation that is most closely similar to that share, where the shares have no par value and no amount is specified in the contract,

and any other person who actually owns the shares in respect of which that right exists shall be deemed not to own those shares;

(c) where shares are owned by a trustee resident in Canada, other than a trustee

(i) who is a trustee under

(A) a registered pension fund or plan,

(B) a deferred profit sharing plan,

(C) an employees profit sharing plan, or

(D) a supplementary unemployment benefit plan in relation to which at least 75% of the employees covered by the plan are resident in Canada, and

(ii) who owns, as trustee, if he is a trustee under a registered pension fund or plan, less than 10% of the issued and outstanding equity shares of a corporation that is an employer of employees covered by the registered pension fund or plan, or a corporation related thereto,

the shares shall be deemed not to be owned by a person resident in Canada unless it is established that each beneficiary under the trust is an individual resident in Canada;

(d) where, during any relevant 60-day period referred to in subsection (1), a director of a corporation who is resident in Canada dies and within 60 days thereafter another person who is resident in Canada is appointed or elected to be a director of the corporation, such other person shall be deemed to have become such a director immediately upon the death of the deceased director;

(e) "equity share" — "equity share" means

(i) a share, other than a non-participating share, the owner of which has, as owner thereof, a right

(A) to a dividend, and

(B) to a part of the surplus of the corporation after repayment of capital and payment of arrears of dividend, upon the redemption of the share, a reduction of the capital of the corporation or the winding up of the corporation,

at least as great, in any event, as the right of the owner of any other share, other than a non-participating share, of the corporation, when the magnitude of the right in each case is expressed as a rate based on the paid-up capital value of the share to which the right relates, or

(ii) a share, other than a non-participating share, the owner of which has, as owner thereof, a right

(A) to a dividend, after a dividend at a rate not in excess of 12% per annum of the paid-up capital value of each share has been paid to the owners of shares of a class other than the class to which that share belongs, and

(B) to a part of the surplus of the corporation after repayment of capital and payment of arrears of dividend, upon the redemption of the share, a reduction of the capital of the corporation or the winding up of the corporation, after a payment of a part of the surplus at a rate not in excess of 10% of the paid-up capital value of each share has been made to the owners of shares of a class other than the class to which that share belongs,

at least as great, in any event, as the right of the owner of any other share, other than a non-participating share, of the corporation, when the magnitude of the right in each case is expressed as a rate based on the paid-up capital value of the share to which the right relates;

(f) **"non-participating share"** — "non-participating share" means

(i) in the case of a private corporation, a share the owner of which is not entitled to receive, as owner thereof, any dividend other than a dividend, whether cumulative or not,

(A) at a fixed annual rate or amount, or

(B) at an annual rate or amount not in excess of a fixed annual rate or amount, and

(ii) in the case of a corporation other than a private corporation, any share other than a common share;

(g) **"paid-up capital value"** — "paid-up capital value", with reference to a share, means

(i) in the case of an unissued share that is deemed by paragraph (b) to be issued and outstanding, the amount determined under clause (viii)(B) of that paragraph, and

(ii) in any other case, an amount equal to the paid-up capital of the corporation that is represented by the shares of the class to which that share belongs divided by the number of shares of that class that are in fact issued and outstanding; and

(h) where in the case of a private corporation

(i) the paid-up capital of a corporation that is represented by all the issued and outstanding equity shares of the corporation is less than 50% of the paid-up capital of the corporation that is represented by all the issued and outstanding shares of the corporation other than non-participating shares, or

(ii) a non-participating share of the corporation, the owner of which has, as owner, a right to a dividend

(A) at a fixed annual rate in excess of 12%, or

(B) at an annual rate not in excess of a fixed maximum annual rate, if the fixed maximum annual rate is in excess of 12%,

when the right to the dividend is expressed as a rate based on the paid-up capital value of the share to which the right relates, is issued and outstanding,

the issued and outstanding equity shares of the corporation shall be deemed not to be equity shares.

Cls. 257(2)(e)(ii)(A), (h)(ii)(A), (B), para. 257(2)(f), all that portion of para. 257(2)(h) preceding subpara. (i) substituted by 1977-78, c. 1, subsecs. 100(1)–(4), applicable to 1972 *et seq.*

258. (1) [Repealed under former Act]

Pre-RSC History: Subsec. 258(1) repealed by 1988, c. 55, subsec. 193(1), applicable with respect to reductions of paid-up capital occurring after 1987. Subsec. 258(1) formerly read:

258. (1) **Deemed dividend on term preferred share** — For the purposes of this Act, where at any time after November 16, 1978 the paid-up capital of a term preferred share owned by

(a) a specified financial institution, or

(b) a partnership or trust of which a specified financial institution or a person related thereto was a member or a beneficiary,

was reduced otherwise than by way of redemption, acquisition or cancellation of the share or of a transaction described in subsection 84(2) or 84(4.1), a dividend shall be deemed to have been received by the shareholder at that time equal to the amount received by him on the reduction of the paid-up capital of the share, unless the share was not acquired in the ordinary course of the business carried on by the shareholder.

Subsec. 258(1) substituted by 1980-81-82-83, c. 48, s. 113, applicable after November 16, 1978. Subsec. 258(1) formerly read:

(1) For the purposes of this Act, where at any time after November 16, 1978, a corporation has reduced the paid-up capital in respect of a term preferred share otherwise than by way of a redemption, acquisition or cancellation of the share or a transaction described in subsection 84(2) or (4.1), a dividend shall be deemed to have been received on the share at that time by the shareholder equal to the amount received by him on the reduction of the paid-up capital.

(2) Deemed dividend on term preferred share — Notwithstanding subsection 15(3), an amount paid or payable after 1978 as interest on or as an amount in lieu of interest in respect of

(a) any interest or dividend payable after November 16, 1978 on an income bond or an income debenture issued before November 17, 1978 or pursuant to an agreement in writing made before that date, or

(b) a dividend that became payable or in arrears after November 16, 1978 on a share of the capital stock of a corporation that is not a term preferred share by reason of having been issued before November 17, 1978 or pursuant to an agreement in writing made before that date,

shall, for the purposes of subsections 112(2.1) and 138(6), be deemed to be a dividend received on a term preferred share.

Related Provisions: 248(13) — Interests in trusts and partnerships.

Pre-RSC History: Para. 258(2)(a) amended by 1985, c. 45, s. 125, applicable after November 16, 1978, to add "issued before November 17, 1978 or pursuant to an agreement in writing made before that date".

Interpretation Bulletins: IT-52R4: Income bonds and income debentures.

(3) Deemed interest on preferred shares — Subject to subsection (4), for the purposes of paragraphs 12(1)(c) and (k) and sections 113 and 126, each amount that is a dividend received in a taxation year on

(a) a term preferred share by a specified financial institution resident in Canada from a corporation not resident in Canada, or

(b) any other share that

(i) is a grandfathered share, or

(ii) was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and was not deemed by paragraph 112(2.2)(f) to have been issued after that time

Proposed Amendment — 258(3)(b)(ii)

(ii) was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and is not deemed by paragraph 112(2.22) to have been issued after that time

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 119, will amend subpara. 258(3)(b)(ii) to read as above, applicable in respect of dividends received after 1998.

Technical Notes: Section 258 of the Act contains deeming provisions that complement the rules set out in section 112 of the Act, which disallow the intercorporate dividend deduction in respect of dividends paid on certain preferred shares and so-called guaranteed shares.

Subsection 258(3) of the Act provides that certain dividends received by a corporation from a corporation not resident in Canada are to be treated for certain purposes as having been received in the form of interest. This subsection is amended to correct a cross-reference as a consequence of the movement of the deeming rule in paragraph 112(2.2)(f) of the Act to new paragraph 112(2.22)(a).

by a corporation from a corporation not resident in Canada, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) because of subsection 112(2.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on June 17, 1987, if the corporation that paid the dividend were a taxable Canadian corporation

shall be deemed to be interest received in the year and not a dividend received on a share of the capital stock of a corporation.

Related Provisions: 248(1) — "amount" — stock dividend; 248(13) — Interests in trusts and partnerships.

History: Para. 258(3)(b) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 141, applicable to dividends received or deemed to be received on shares acquired after 8:00 p.m. EDST, June 18, 1987. Para. (3)(b) formerly read:

(b) any other share by a corporation from a corporation not resident in Canada, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) by reason of subsection 112(2.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on June 17, 1987 if the corporation that paid the dividend were a taxable Canadian corporation

Pre-RSC History: Subsec. 258(3) substituted by 1988, c. 55, subsec. 193(2), applicable with respect to dividends received or deemed to be received on shares acquired after 8:00 p.m. EDST, June 18, 1987. Subsec. 258(3) formerly read:

(3) **Deemed interest on term preferred share** — For the purposes of paragraphs 12(1)(c) and (k) and sections 113 and 126 and subject to subsection (4), each amount that is

(a) a dividend received on a term preferred share by a specified financial institution from a corporation not resident in Canada, or

(b) a dividend received on a share of the capital stock of a corporation not resident in Canada by any corporation (in this subsection referred to as the "recipient corporation"), if at the time the dividend was paid, a specified financial institution or a person related thereto or a partnership or trust of which any such institution or person related thereto is a member or a beneficiary was obligated pursuant to any agreement made after October 23, 1979, either absolutely or contingently and either at or after the time the dividend was paid, to effect any undertaking with respect to the share on which the dividend was paid including any guarantee, covenant or agreement to purchase or repurchase the share, given to ensure that

(i) any loss that the recipient corporation or any partnership or trust of which the recipient corporation is a member or a beneficiary may sustain by virtue of the ownership, holding or disposition of the share is limited in any respect, or

(ii) the recipient corporation or any partnership or trust of which it is a member or beneficiary will derive earnings by virtue of the ownership, holding or disposition of the share,

shall be deemed to be interest received and not a dividend on a share of the capital stock of the corporation.

Subsec. 258(3) substituted by 1980-81-82-83, c. 48, s. 113, applicable after November 16, 1978, except that, in its application to dividends on shares acquired before April 22, 1980, the references in subsec. 258(3) to "a specified financial institution" shall be read as references to "a corporation described in paragraph 112(2.1)(a) or (b)". Subsec. 258(3) formerly read:

(3) A dividend on a term preferred share received by a particular corporation described in any of paragraphs 112(2.1)(a) to (c) from a corporation not resident in Canada other than a dividend paid on a share of the capital stock of a corporation that was not acquired in the ordinary course of the business carried on by the particular corporation, or a dividend on a term preferred share received by a particular corporation referred to in subsection 112(2.2) from a corporation not resident in Canada, shall, for the purposes of paragraphs 12(1)(c) and (k) and section 113, be deemed to be received as interest and not as a dividend on a share of the capital stock of a foreign affiliate of the corporation.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Interpretation Bulletins: IT-88R2: Stock dividends.

(4) Exception — Subsection (3) is not applicable to a dividend described in paragraph (3)(a) if the share on which the dividend was paid was not acquired in the ordinary course of the business carried on by the corporation.

Pre-RSC History: Subsec. 258(4) added by 1980-81-82-83, c. 48, s. 113, applicable after November 16, 1978.

(5) Deemed interest on certain shares — For the purposes of paragraphs 12(1)(c) and (k) and sections 113 and 126, a dividend received after June 18, 1987 and in a taxation year from a corporation not resident in Canada, other than a corporation in which the recipient had or would have, if the corporation were a taxable Canadian corporation, a substantial interest (within the meaning assigned by section 191), on a share, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) by reason of subsection 112(2.2) or (2.4) if the corporation that paid the dividend were a taxable Canadian corporation, shall be deemed to be interest received in the year and not a dividend received on a share of the capital stock of the payer corporation.

Related Provisions: 248(1)"amount" — stock dividend; 248(13) — Interests in trusts and partnerships.

Pre-RSC History: Subsec. 258(5) added by 1988, c. 55, subsec. 193(3), applicable after June 18, 1987.

Pre-RSC History [s. 258]: S. 258 added by 1979, c. 5, s. 67.

Definitions [s. 258]: "amount" — 248(1); "Canada" — 255; "corporation", "dividend", "income bond", "grandfathered share", "person" — 248(1); "resident in Canada" — 250; "share" — 248(1); "specified financial institution" — 248(1); "taxable Canadian corporation" — 89(1), 248(1); "taxation year" — 249; "term preferred share" — 248(1); "trust" — 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [s. 258]: IT-88R2: Stock dividends.

259. (1) Proportional holdings in trust property — For the purposes of subsections 146(6), (10) and (10.1) and 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, where at any time a taxpayer described in section 205 acquires, holds or disposes of a particular unit in a qualified trust and the trust elects for any period that includes that time to have the provisions of this subsection apply,

(a) the taxpayer shall be deemed not to acquire, hold or dispose of at that time, as the case may be, the particular unit;

(b) where the taxpayer holds the particular unit at that time, the taxpayer shall be deemed to hold at that time that proportion (referred to in this subsection as the "specified portion") of each property (in this subsection referred to as a "relevant property") held by the trust at that time that one (or, where the particular unit

is a fraction of a whole unit, that fraction) is of the number of units of the trust outstanding at that time;

(c) the cost amount to the taxpayer at that time of the specified portion of a relevant property shall be deemed to be equal to the specified portion of the cost amount at that time to the trust of the relevant property;

(d) where that time is the later of

(i) the time the trust acquires the relevant property, and

(ii) the time the taxpayer acquires the particular unit,

the taxpayer shall be deemed to acquire the specified portion of a relevant property at that time;

(e) where that time is the time the specified portion of a relevant property is deemed by paragraph (d) to have been acquired, the fair market value of the specified portion of the relevant property at that time shall be deemed to be the specified portion of the fair market value of the relevant property at the time of its acquisition by the trust;

(f) where that time is the time immediately before the time the trust disposes of a particular relevant property, the taxpayer shall be deemed to dispose of, immediately after that time, the specified portion of the particular relevant property for proceeds equal to the specified portion of the proceeds of disposition to the trust of the particular relevant property;

(g) where that time is the time immediately before the time the taxpayer disposes of the particular unit, the taxpayer shall be deemed to dispose of, immediately after that time, the specified portion of each relevant property for proceeds equal to the specified portion of the fair market value of that relevant property at that time; and

(h) where the taxpayer is deemed because of this subsection

(i) to have acquired a portion of a relevant property as a consequence of the acquisition of the particular unit by the taxpayer and the acquisition of the relevant property by the trust, and

(ii) subsequently to have disposed of the specified portion of the relevant property,

the specified portion of the relevant property shall, for the purposes of determining the consequences under this Act of the disposition and without affecting the proceeds of disposition of the specified portion of the relevant property, be deemed to be the portion of the relevant property referred to in subparagraph (i).

Related Provisions: 206(2.1) — Exemption from Part XI tax when election made.

(2) Proportional holdings in corporate property — Subsection (1) applies to an election by a qualified corporation as if

(a) the reference to "a qualified trust" were read as "the capital stock of a qualified corporation";

(b) the references to "unit" were read as "share"; and

(c) the references to "the trust" were read as "the corporation".

(3) Election — The election by a trust or a corporation (in this subsection referred to as the "elector") under subsection (1) shall be made by the elector filing a prescribed form with the Minister and shall apply for the period beginning 15 months before the day of filing thereof (or such later time as the elector designates in its election) and ending at such time as the election is revoked by the elector filing with the Minister a notice of revocation (or at such earlier time within the 15-month period before the day on which the notice of revocation is filed with the Minister as the elector designates in its notice of revocation).

Related Provisions: 206(2.1) — Exemption from Part XI tax when election made.

Interpretation Bulletins: IT-412R2: Foreign property of registered plans.

Forms: T1024: Election to deem a proportional holding in qualified trust/corporate property.

(4) Requirement to provide information — Where a trust or a corporation elects under subsection (1),

(a) it shall, not more than 30 days after making the election, notify each person who, before the election is made and during the period for which the election is made, held a unit in the trust or a share in the capital stock of the corporation, as the case may be, of the election; and

(b) where any person who holds such a unit or share during the period for which the election is made makes a written request to the trust or the corporation for information that is necessary for the purpose of determining the consequences under this Act of the election for that person, the trust or the corporation, as the case may be, shall provide the person with that information not more than 30 days after the receipt of the request.

(5) Definitions — In this section,

"qualified corporation" at any time means a corporation described in paragraph 149(1)(o.2) where, at that time,

(a) all the issued and outstanding shares of the capital stock of the corporation are identical to each other, or

(b) all the issued and outstanding shares of the capital stock of the corporation are held by one person;

Related Provisions: 248(12) — Identical properties.

"qualified trust" at any time means a trust (other than a registered investment or a trust that is prescribed to be a small business investment trust) where

(a) each trustee of the trust at that time is a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee or a person who is a trustee of a trust governed by a registered pension plan,

(b) all the interests of the beneficiaries under the trust at that time are described by reference to units of the trust all of which are at that time identical to each other,

(c) it has never before that time borrowed money except where the borrowing was for a term not exceeding 90 days and the borrowing was not part of a series of loans or other transactions and repayments, and

(d) it has never before that time accepted deposits.

Related Provisions: 149(1)(o.4) — No tax payable by master trust; 248(12) — Identical properties.

Regulations: 5103 (prescribed small business investment trust; needs to be amended to apply for 259(5) rather than 259(3)).

History [s. 259]: S. 259 substituted by 1994, c. 21, s. 115, subsecs. (1), (3) and (5) applicable to periods occurring after 1985, subsec. (2) applica-

ble to periods occurring after 1991, and subsec. (4) applicable to elections made after December 21, 1992. That section formerly read:

259. (1) **Proportional holdings in trust property** — For the purposes of subsections 146(6), (10) and (10.1) and 146.3(7) to (9) and Parts X, X.2, XI and XI.1 of this Act and subsections 146.2(12), (13) and (14) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, where at any time a taxpayer described in section 205 acquires, holds or disposes of an interest in a qualified trust and the trust elects for any period that includes that time to have the provisions of this subsection apply, the taxpayer shall be deemed

(a) not to acquire, hold or dispose of at that time, as the case may be, that interest in the trust;

(b) to hold at that time that proportion (in this subsection referred to as the taxpayer's "specified portion") of each property of the trust that the number of units of the trust held by the taxpayer at that time is of the number of units of the trust outstanding at that time, and the cost amount to the trust of the taxpayer's specified portion of each such property shall be deemed to be the cost amount to the taxpayer of the taxpayer's specified portion of the property;

(c) to acquire the taxpayer's specified portion of each property of the trust at the later of

(i) the date the trust acquires the property, and

(ii) the date the taxpayer acquires the interest in the trust,

and the fair market value, at the time of acquisition by the taxpayer, of the taxpayer's specified portion of the property shall be deemed to be the fair market value of that specified portion of the property at the time of its acquisition by the trust; and

(d) to dispose of the taxpayer's specified portion of each property of the trust at the earlier of

(i) the date the trust disposes of the property, and

(ii) the date the taxpayer disposes of the interest in the trust

for proceeds equal to,

(iii) where subparagraph (i) applies, the proceeds of disposition to the trust of the taxpayer's specified portion of the property, and

(iv) where subparagraph (ii) applies, the fair market value, immediately before the disposition of the interest, of the taxpayer's specified portion of the property.

(2) **Election** — The election by a trust under subsection (1) shall be made by the trust filing a prescribed form with the Minister and shall be applicable in respect of the period commencing 15 months before the date of filing thereof (or such later time as the trust may designate in its election) and ending at such time as the election is revoked by the trust filing with the Minister a notice of revocation (or at such earlier time within the 15 month period immediately preceding the date on which the notice of revocation is filed with the Minister as the trust may designate in its notice of revocation).

(3) **Definition of "qualified trust"** — In this section, "qualified trust" means a trust, other than a registered investment or a trust that is prescribed to be a small business investment trust, where

(a) each trustee of the trust is a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee or a person who is a trustee of a trust governed by a registered pension fund or plan;

(b) the interests of the beneficiaries under the trust are described by reference to units of the trust that are identical in all respects and any difference between the interest in the trust of each beneficiary and the interest in the trust of each other beneficiary is dependent solely on the difference in the number of units held by those beneficiaries;

(c) it has never borrowed money except where the borrowing was for a term not exceeding 90 days and was not part of a series of loans or other transactions and repayments;

(d) it has never accepted deposits; and

(e) it complies with prescribed conditions.

Para. 259(3)(c) amended by 1994, c. 7, Sch. VIII (1993, c. 24), s. 142, applicable to borrowings occurring after 1990. Para. (3)(c) formerly read:

(c) it has never borrowed money;

Pre-RSC History [s. 259]: Para. 259(1)(b) amended by 1987, c. 46, s. 71.1, to add "and the cost amount to the trust of the taxpayer's specified portion of each such property shall be deemed to be the cost amount to the taxpayer of his specified portion of the property", applicable with respect to periods occurring after 1985.

S. 259 substituted by 1986, c. 6, s. 129, applicable with respect to periods occurring after 1985. S. 259 formerly read:

259. (1) **Presumption** — For the purposes of subsections 146(6) and (10), 146.2(12), (13) and (14) and 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, where at any time in a taxation year a taxpayer described in any of paragraphs 205(b) to (f) acquires, holds or disposes of an interest in a qualified trust that was not a qualified investment for the taxpayer in 1980 and the trust and each beneficiary of the trust during the year jointly elect to have the provisions of this subsection apply, the taxpayer shall be deemed

(a) to acquire, hold or dispose of at that time, as the case may be, that portion of each property of the trust that his interest, at that time, in any income of the trust, computed as if no amounts were paid or payable to its beneficiaries, is of all such interests;

(b) to acquire the portion referred to in paragraph (a) of each property of the trust at the later of

(i) the date the trust acquires the property, and

(ii) the date the taxpayer acquires that interest in the trust; and

(c) to dispose of the portion referred to in paragraph (a) of each property of the trust at the earlier of

(i) the date the trust disposes of the property, and

(ii) the date the taxpayer disposes of that interest in the trust; and

(d) not to acquire, hold or dispose of at that time, as the case may be, that interest in the trust.

(2) **Idem** — For the purposes of Part XI, where at any time in a taxation year a taxpayer described in paragraph 205(a) acquires or holds an interest in a foreign trust and the trust and each beneficiary of the trust during the year jointly elect to have the provisions of this subsection apply, the taxpayer shall be deemed

(a) to hold at that time that portion of each property of the trust that his interest, at that time, in any income of the trust, computed as if no amounts were paid or payable to its beneficiaries, is of all such interests;

(b) to acquire the portion referred to in paragraph (a) of each property of the trust at the later of

(i) the date the trust acquires the property, and

(ii) the date the taxpayer acquires that interest in the trust, and

(c) not to acquire or hold at that time, as the case may be, that interest in the trust.

(3) **Definitions** — In this section,

(a) "qualified trust" means a trust that

(i) is not a registered investment,

(ii) under which the proportion that a beneficiary's share of the income of the trust from any property of the trust bears to his share of the income of the trust is the same as the proportion so determined in respect of every other beneficiary of the trust in respect of that property, and for the purposes of this subparagraph, the income of the trust from a property of the trust and the income of the trust shall be computed as if no amounts were paid or payable by the trust to its beneficiaries,

(iii) that has as its sole trustee a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, and

(iv) that complies with prescribed conditions; and

(b) "foreign trust" means a trust

(i) any interest in which is foreign property (within the meaning assigned by subsection 206(2)),

(ii) under which the proportion that a beneficiary's share of the income of the trust from any property of the trust bears to his share of the income of the trust is the same as the proportion so determined in respect of every other benefici-

ary of the trust in respect of that property, and for the purposes of this subparagraph, the income of the trust from a property of the trust and the income of the trust shall be computed as if no amounts were paid or payable by the trust to its beneficiaries, and

(iii) that has as its sole trustee a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee.

S. 259 added by 1980-81-82-83, c. 48, s. 114, applicable, as to subsec. 259(1), to 1980 *et seq.*, and, as to subsec. 259(2), to 1979 *et seq.*

Definitions [s. 259]: "business" — 248(1); "Canada" — 255; "corporation" — 248(1), *Interpretation Act* 35(1); "cost amount" — 248(1); "identical" — 248(12); "Minister", "person", "prescribed" — 248(1); "province" — *Interpretation Act* 35(1); "qualified corporation", "qualified trust" — 259(5); "registered investment" — 204.4(1), 248(1); "registered pension plan" — 248(1); "relevant property" — 259(1)(b); "share" — 248(1); "small business investment trust" — Reg. 5103; "series of transactions" — 248(10); "specified portion" — 259(1)(b); "taxpayer" — 248(1); "trust" — 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1) ["writing"].

Regulations [s. 259]: 5103 (small business investment trust).

Interpretation Bulletins [s. 259]: IT-320R2: RRSPs — qualified investments.

260. (1) Definitions — In this section,

"qualified security" means

(a) a share of a class of the capital stock of a corporation that is listed on a prescribed stock exchange or of a class of the capital stock of a corporation that is a public corporation by reason of the designation of the class by the corporation in an election made under subparagraph (b)(i) of the definition "public corporation" in subsection 89(1) or by the Minister in a notice to the corporation under subparagraph (b)(ii) of that definition,

(b) a bond, debenture, note or similar obligation of a corporation described in paragraph (a) or of a corporation that is controlled by such a corporation,

(c) a bond, debenture, note or similar obligation of or guaranteed by the government of any country, province, state, municipality or other political subdivision, or a corporation, commission, agency or association controlled by any such person, or

(d) a warrant, right, option or similar instrument with respect to a share described in paragraph (a);

Regulations: 3200, 3201 (prescribed stock exchanges).

"securities lending arrangement" means an arrangement under which

(a) a person (in this section referred to as the "lender") transfers or lends at any particular time a qualified security to another person (in this section referred to as the "borrower") with whom the lender deals at arm's length,

(b) it may reasonably be expected, at the particular time, that the borrower will transfer or return after the particular time to the lender a security (in this section referred to as an "identical security") that is identical to the security so transferred or lent,

(c) where the qualified security is a share of the capital stock of a corporation, the borrower is obligated to pay to the lender amounts equal to and as compensation for all dividends, if any, paid on the security that would have been received by the borrower if the borrower had held the security throughout the period beginning after the particular time and ending at the time an identical security is transferred or returned to the lender, and

(d) the lender's risk of loss or opportunity for gain or profit with respect to the security is not changed in any material respect,

but does not include an arrangement one of the main purposes of which may reasonably be considered to be to avoid or defer the inclusion in income of any gain or profit with respect to the security.

Related Provisions: 112(2.3) — Dividend rental arrangements; 248(1)"securities lending arrangement" — Definition applies to entire Act; 248(12) — Identical properties; 256(6), (6.1) — Meaning of "controlled".

History: Para. (c) of "securities lending arrangement" substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 199(1), applicable to transfers, loans and payments made after April 26, 1989. Para. (c) formerly read:

(c) the borrower is obligated to pay to the lender amounts equal to and as compensation for all dividends, if any, paid on the security after the particular time and before an identical security is transferred or returned to the lender, and

(2) Non-disposition — Subject to subsections (3) and (4), for the purposes of this Act, any transfer or loan by a lender of a security under a securities lending arrangement shall be deemed not to be a disposition of the security and the security shall be deemed to continue to be property of the lender and, for the purposes of this subsection, a security shall be deemed to include an identical security that has been transferred or returned to the lender under the arrangement.

(3) Disposition of right — Where, at any time, a lender receives property (other than an identical security or an amount deemed by subsection (4) to have been received as proceeds of disposition) in satisfaction of or in exchange for the lender's right under a securities lending arrangement to receive the transfer or return of an identical security, for the purposes of this Act the lender shall be deemed to have disposed at that time of the security that was transferred or lent for proceeds of disposition equal to the fair market value of the property received for the disposition of the right (other than any portion thereof that is deemed to have been received by the lender as a taxable dividend), except that section 51, 85.1, 86 or 87, as the case may be, shall apply in computing the income of the lender with respect to any such disposition as if the security transferred or lent had continued to be the lender's property and the lender had received the property directly.

(4) Idem — Where, at any time, it may reasonably be considered that a lender would have received proceeds of disposition for a security that was transferred or lent under a securities lending arrangement, if the security had not been transferred or lent, the lender shall be deemed to have disposed of the security at that time for those proceeds of disposition.

(5) Deemed dividend — For the purposes of this Act, any amount received (other than an amount received as proceeds of disposition or an amount received by a corporation under an arrangement where it may reasonably be considered that one of the main reasons for the corporation entering into the arrangement was to enable it to receive an amount that would otherwise have been deemed by this subsection to be a dividend)

(a) under a securities lending arrangement from a person resident in Canada, or a person not resident in Canada where the amount was paid in the course of

carrying on business in Canada through a permanent establishment as defined by regulation, or

(b) by or from a person who is a registered securities dealer resident in Canada, where the amount is received or paid, as the case may be, in the ordinary course of the business of trading in securities carried on by the dealer,

as compensation for a taxable dividend paid on a share of the capital stock of a public corporation that is a qualified security shall, to the extent of the amount of that dividend, be deemed to have been received as a taxable dividend on the share from the corporation.

Related Provisions: 82(1)(a)(ii)(B) — Amount deemed received by another person excluded from taxable dividends of individual; 248(1)"dividend rental arrangement"(d) — Dividend rental arrangement where 260(5) applies.

History: Para. 260(5)(b) amended by 1995, c. 21, subsec. 75(1), applicable to transfers, loans and payments made after April 26, 1989. Para. (b) formerly read:

(b) by or from a person resident in Canada who is registered or licensed under the laws of a province to trade in securities where the amount is received or paid, as the case may be, in the ordinary course of the business of trading or dealing in securities carried on by that person,

Regulations: 8201 (permanent establishment).

Interpretation Bulletins: IT-67R3: Taxable dividends from corporations resident in Canada.

(6) Non-deductibility — In computing a taxpayer's income under Part I from a business or property

(a) where the taxpayer is not a registered securities dealer, no deduction shall be made in respect of an amount that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend; and

(b) where the taxpayer is a registered securities dealer, no deduction shall be made in respect of more than 2/3 of that amount.

Related Provisions: 260(6.1) — Deductible amount.

History: Subsec. 260(6) amended by 1995, c. 21, subsec. 75(2), applicable to payments made after June 1989. Subsec. (6) formerly read:

(6) In computing the income of a taxpayer under Part I from a business or property, no deduction shall be made in respect of an amount that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend.

(6.1) Deductible amount — Notwithstanding subsection (6), there may be deducted in computing a corporation's income under Part I from a business or property for a taxation year an amount equal to the lesser of

(a) the amount that the corporation is obligated to pay to another person under an arrangement described in paragraphs (c) and (d) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend, and

(b) the amount of the dividends received by the corporation under the arrangement that were identified in its return of income under Part I for the year as an amount in respect of which no amount was deductible because of subsection 112(2.3) in computing the taxpayer's taxable income or taxable income earned in Canada.

Related Provisions: 260(7)(b) — No dividend refund on amount deductible under 260(6.1).

History: Subsec. 260(6.1) added by 1995, c. 21, subsec. 75(2), applicable to payments made

(a) after April 1989, where the corporation has elected under subsec. 74(3) (of 1995, c. 21 — see under 248(1)"dividend rental arrangement"), except that, for the purposes of para. 260(6.1)(b), a dividend received after April 1989 and before July 1994 that was identified in the corporation's return of income under Part I of the Act for its first taxation year that ends after June 22, 1995 shall be deemed to have been identified in its return of income under that Part for its taxation year in which the dividend was received; and

(b) after June 1994, in any other case.

(7) Dividend refund — For the purposes of section 129,

(a) any amount paid by a corporation that is not a registered securities dealer (other than an amount for which a deduction in computing income may be claimed under subsection (6.1)), and

(b) 1/3 of any amount paid by a corporation that is a registered securities dealer (other than an amount for which a deduction in computing income may be claimed under subsection (6.1))

that is deemed by subsection (5) to have been received by another person as a taxable dividend shall be deemed to have been paid by the corporation as a taxable dividend.

History: Subsec. 260(7) amended by 1995, c. 21, subsec. 75(2), applicable to payments made after June 1989, except that in its application to payments made after June 1989 and before July 1994 with respect to a corporation that has not elected under subsec. 74(3) (of 1995, c. 21 — see under 248(1)"dividend rental arrangement"), subsec. 260(7) shall be read without reference to the expression "(other than an amount for which a deduction in computing income may be claimed under subsection (6.1))". Subsec. (7) formerly read:

(7) For the purposes of section 129, any amount paid by a corporation that is deemed by subsection (5) to have been received by another person as a taxable dividend shall be deemed to have been paid by the corporation as a taxable dividend.

Interpretation Bulletins: IT-243R4: Dividend refund to private corporations.

(8) Non-resident withholding tax — For the purposes of Part XIII,

(a) any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment made by the borrower to the lender of interest, except that where, throughout the term of the securities lending arrangement, the borrower has provided the lender under the arrangement with money in an amount of, or securities described in paragraph (c) of the definition "qualified security" in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the security and the borrower is entitled to enjoy, directly or indirectly, the benefits of all or substantially all income derived from, and opportunity for gain with respect of, the money or securities,

(i) the amount paid or credited shall, to the extent of the amount of the interest or dividend paid in respect of the security, be deemed to be a payment made by the borrower to the lender of interest or a dividend, as the case may be, payable on the security,

(ii) the amount paid or credited shall, to the extent of the amount of the interest, if any, paid in respect of the security, be deemed for the purpose of subparagraph 212(1)(b)(vii) to have been payable by the issuer of the security, and

(iii) the security shall be deemed to be a security described in subparagraph 212(1)(b)(ii) if it is a security described in paragraph (c) of the definition "qualified security" in subsection (1), and

(b) any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security shall be deemed to be a payment made by the borrower to the lender of interest and, for the purposes of this paragraph, where the borrower has at any time provided the lender with money, either as collateral or consideration for the security, and the borrower does not under the arrangement pay or credit a reasonable amount to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security, the amount, if any, by which

(i) interest on the money computed at the prescribed rates in effect during the term of the arrangement

exceeds

(ii) the amount, if any, by which any amount that the lender pays or credits to the borrower under the arrangement exceeds the amount of the money

shall be deemed to be an amount paid under the arrangement by the borrower to the lender as a fee for the use of the security, at the time that an identical security is or can reasonably be expected to be transferred or returned to the lender,

and, for the purposes of Part XIII and any agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada, any amount deemed by this subsection (other than subparagraph (a)(i) or (ii)) to be a payment of interest shall be deemed not to be payable on or in respect of the security.

Related Provisions: 212(1)(b)(xii) — Exemption from withholding tax; 212(19) — Special tax on securities dealers re non-resident withholding tax exemption.

History: Subpara. 260(8)(a)(iii) added by 1994, c. 21, s. 116, applicable to securities lending arrangements entered into after May 28, 1993.

Subsec. 260(8) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 199(2), applicable to transfers, loans and payments made after April 26, 1989, except that, in its application to transfers, loans and payments made before May 27, 1989, para. 260(8)(a) shall be read as follows:

(a) any payment made by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment by the borrower to the lender of interest or a dividend, as the case may be, on the security; and

Subsec. 260(8) formerly read:

(8) For the purposes of Part XIII,

(a) any payment made under a securities lending arrangement by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment made by the borrower to the lender of interest, except that where, throughout the term of the securities lending arrangement the borrower has provided to the lender under the arrangement cash in an amount of, or securities described in paragraph (c) of the definition "qualified security" in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the security and the borrower is entitled to enjoy, directly or indirectly, the benefits of substantially all income derived from and opportunity for gain with respect to the cash or securities, the payment shall be deemed to be a payment by the borrower to the lender of interest or a dividend, as the case may be, payable on the security; and

(b) any payment made under a securities lending arrangement by or on behalf of a borrower of a security to the lender for the use of the security shall be deemed to be a payment made by the borrower to the lender of interest and, for the purposes of this paragraph, any profit earned by the lender that may reasonably be considered to have resulted from the securities lending arrangement, other than any payment made by or on behalf of the borrower to the lender as compensation for any interest or dividend paid on the security, shall be deemed to be a payment made under the securities lending arrangement by the borrower of the security to the lender for the use of the security.

(9) Restricted financial institution — For the purposes of subsection 187.3(1), where at any time a dividend is received by a restricted financial institution on a share that was last acquired before that time pursuant to an obligation of a borrower to return or transfer a share under a securities lending arrangement, an acquisition of the share under the arrangement shall be deemed at and after that time not to be an acquisition of the share.

Pre-RSC History [s. 260]: S. 260 enacted by 1990, c. 39, s. 55, subsecs. 260(1) to (5), (8) and (9) applicable with respect to transfers, loans and payments made after April 26, 1989, except that

(a) in applying para. (a) of the definition "securities lending arrangement" in subsec. 260(1) to transfers, loans and payments made before May 27, 1989, that para. shall be read without reference to the words "with whom the person was dealing at arm's length";

(b) in applying subsec. 260(5) to transfers, loans and payments made before May 27, 1989, it shall be read without reference to the words "from a person resident in Canada, or a person not resident in Canada where the amount was paid in the course of carrying on business in Canada through a permanent establishment as defined by regulation"; and

(c) in applying subsec. 260(8) to transfers, loans and payments made before May 27, 1989, para. (a) thereof shall be read as follows:

"(a) any payment made by or on behalf of the borrower to the lender as compensation for any interest or dividend paid in respect of the security shall be deemed to be a payment by the borrower to the lender of interest or a dividend, as the case may be, on the security; and";

subsecs. 260(6) and (7) applicable (by subsec. 55(3), as amended by 1994, c. 7, Sch. II (1991, c. 49), s. 258 and 1994, c. 21, s. 133 (both deemed to have come into force October 23, 1990)) with respect to payments made after June 1989 except that in their application to such payments made before July 1994 by a person who is registered or licensed under the laws of a province to trade in securities, they shall be read as follows:

(6) In computing the income of a taxpayer under Part I from a business or property, no deduction shall be made in respect of more than ⅔ of an amount that, if paid, would be deemed by subsection (5) to have been received by another person as a taxable dividend.

(7) For the purposes of section 129, ⅓ of any amount paid by a corporation that is deemed by subsection (5) to have been received by another person as a taxable dividend shall be deemed to have been paid by the corporation as a taxable dividend.

Definitions [s. 260]: "amount" — 248(1); "arm's length" — 251(1); "business" — 248(1); "carrying on business in Canada" — 253; "class" — 248(6); "class of shares " — 248(6); "controlled" — 256(6), (6.1); "corporation" — 248(1); "disposition" — 54; "dividend" — 248(1); "identical" — 248(12); "permanent establishment" — Reg. 8201; "person", "property" — 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — 89(1), 248(1); "qualified security" — 260(1); "registered securities dealer" — 248(1); "resident in Canada" — 250; "securities lending arrangement" — 248(1), 260(1); "share" — 248(1); "taxable dividend" — 89(1), 248(1).

Grandfathering of Various Amendments Announced on April 26, 1995: 1998, c. 19, s. 247 reads as follows:

247. (1) **Exception to coming-into-force** — Subsections 73(4), 74(5), subsection 18(13) of the Act, as enacted by subsection 79(2) and subsections 89(1), (2) and (6), 94(1) and (2), 95(1), 116(3) to (5), 120(1) and 124(1) and (2) do not apply to the disposition of property by a person or partnership (in this subsection and subsection (2) referred to as the "transferor") that occurred before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before April 27, 1995, other than a transaction or series a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the Act, or

(ii) any balance of undeducted outlays, expenses or other amounts.

(2) **Election** — Notwithstanding subsection (1), subsection 18(13) of the Act, as enacted by subsection 79(2), and the other subsections of this Act referred to in subsection (1) apply to a disposition in respect of which the transferor has filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to [i.e., before October 1998 — ed.] an election in writing to have those subsections apply.

(3) **Interpretation** — For the purpose of subsection (1),

(a) a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act;

(b) an "unrelated person" means any person who was not, or a partnership any member of which was not, related (otherwise than because of paragraph 251(5)(b) of the Act) to the transferor at the time of the disposition; and

(c) a person is deemed to be related to a partnership of which that person is a majority interest partner.

The following are the provisions of the Act affected by the indicated provisions of 1998, c. 19:

Amending Bill	*ITA Provision*
73(4)	13(21.1), (21.2) [new]
74(5)	14(12), (13) [new]
79(2)	18(13) [amended]
89(1)	40(2)(e) [repeal]
89(2)	40(2)(h)(i) [amended]
89(6)	40(3.3)–(3.6) [new]
94(1)	53(1)(f.1), (f.11) [amended]
94(2)	53(1)(f.2) [amended]
95(1)	54"superficial loss" [amended]
116(3)	85(4) [repeal]
116(4)	85(5) [amended]
116(5)	85(5.1) [repeal]
120(1)	93(4) [amended]
124(1)	97(2) [amended]
124(2)	97(3)[repeal], (3.1) [repeal]

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PART II — TRANSITIONAL CONCERNING THE 1985 STATUTE REVISION

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INCOME TAX APPLICATION RULES

REVISED STATUTES OF CANADA 1985, CHAPTER 2 (5TH SUPPLEMENT), AS AMENDED BY 1994, cc. 7, 21; 1995, cc. 3, 21; 1997, c. 25; 1998, c. 19.

7. Short title — This Act may be cited as the *Income Tax Application Rules*.

PART I — INCOME TAX APPLICATION RULES, 1971

Interpretation

8. Definitions — In this Act,

"amended Act" means, according to the context in which that expression appears,

(a) the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as amended by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, and by any subsequent Act, and

(b) the *Income Tax Act*, as amended from time to time;

"former Act" means the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it was before being amended by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72.

Pre-RSC History: *The definition "amended Act" was para. 8(a); "former Act", 8(b).*

Definitions [ITAR 8]: "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

Application of 1970-71-72, c. 63, s. 1

9. Application of 1970-71-72, c. 63, s. 1 — Subject to the amended Act and this Act, section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, applies to the 1972 and subsequent taxation years.

Related Provisions: ITAR 65.1 — Part XV of amended Act.

Definitions [ITAR 9]: "amended Act" — ITAR 8; "taxation year" — ITA 249.

9.1 [Repealed under former Act]

Pre-RSC History: S. 9.1 repealed by 1977-78, c. 1, s. 102, applicable with respect to dividends paid after March 31, 1977. S. 9.1 formerly read:

> 9.1 Application of Part VIII of amended Act — Part VIII of the amended Act is applicable to dividends paid by a corporation (in this section referred to as the "payer corporation") where the control of the payer corporation was acquired after 1954, except where the control was acquired after 1954 by a non-resident corporation from another non-resident person that acquired control of the payer corporation before 1955.

Application of Part XIII of Amended Act

10. (1)–(3) [Repealed under former Act]

Pre-RSC History: Subsecs. 10(1)–(3) repealed by 1985, c. 45, s. 127. Subsecs. 10(1)–(3) formerly read:

> 10. (1) Application of Part XIII of amended Act — Part XIII of the amended Act is applicable to amounts paid or credited after 1971.
>
> (2) Idem — Where before 1976 an amount is paid or credited or is deemed by Part I of the amended Act to be paid or credited to a non-resident person, for the purposes of computing the tax under Part XIII thereof payable by the non-resident person on the amount,
>
> (a) the references in subsections 212(1) and (2) thereof to "25%" shall be read as references to "15%"; and
>
> (b) the references in subsection 212(5) thereof to "25%" shall be read as a reference to "10%".
>
> (3) Idem — Where before 1976 an amount as described in subsection 216(4) of the amended Act becomes available for remittance to a non-resident person, the reference in that subsection to "25%" shall be read as a reference to "15%".

Paras. 10(2)(a), (b) substituted for paras. 10(2)(a)–(c) by 1973-74, c. 14, subsec. 70(1).

(4) Application of Part XIII of amended Act — Where an amount is paid or credited by a person resident in Canada to a non-resident person

(a) who is resident in a prescribed country, and

(b) with whom the person resident in Canada was dealing at arm's length,

as, on account or in lieu of payment of or in satisfaction of, interest payable on any bond, debenture, mortgage, note or similar obligation issued before 1976 by the person resident in Canada to the non-resident person, for the purposes of computing the tax under Part XIII of the amended Act payable by the non-resident person on the amount, the reference in subsection 212(1) of that Act to "25%" shall be read as a reference to "15%".

Regulations: 1600 (prescribed country).

(5) Certificates of exemption — Any certificate of exemption issued by the Minister under subsection 106(9) of the former Act that was in force on December 31, 1971 shall, for the purposes of subparagraph 212(1)(b)(iv) of the amended Act,

(a) be deemed to have been issued under subsection 212(14) of the amended Act; and

(b) be deemed

(i) in respect of interest payable on any bond, debenture or similar obligation acquired on or before December 31, 1971 by the person to whom the certificate was issued, to have been in force on January 1, 1972 and thereafter without interruption,

except that if the person to whom the certificate was issued has ceased at any time after 1971 to be exempt, under the laws of the country of which the person is a resident, from the payment of income tax to the government of that country, the certificate ceases to be in force

(iii) in respect of interest described in subparagraph (i), on the day on which the person first so ceased to be exempt.

Pre-RSC History: Para. 10(5)(b) substituted by 1973-74, c. 14, subsec. 70(2).

Information Circulars: 77-16R4: Non-resident income tax.

(6) Limitation on non-resident's tax rate — Notwithstanding any provision of the amended Act, where an agreement or convention between the Government of Canada and the government of any other country that has

the force of law in Canada provides that where an amount is paid or credited, or deemed to be paid or credited, to a resident of that other country the rate of tax imposed thereon shall not exceed a specified rate,

(a) any reference in Part XIII of the amended Act to a rate in excess of the specified rate shall, in respect of such an amount, be read as a reference to the specified rate; and

(b) except where the amount can reasonably be attributed to a business carried on by that person in Canada, that person shall, for the purpose of the agreement or convention in respect of the amount, be deemed not to have a permanent establishment in Canada.

Pre-RSC History: Subsec. 10(6) added by 1974-75-76, c. 26, s. 127, applicable in respect of amounts paid or credited to non-resident persons after 1975.

Definitions [ITAR 10]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "former Act" — ITAR 8; "Minister", "non-resident", "person", "prescribed" — ITA 248(1); "resident", "resident in Canada" — ITA 250.

11. (1)–(3) [Repealed under former Act]

Pre-RSC History: Subsec. 11(1)–(3) repealed by 1985, c. 45, subsec. 128(1). Subsecs. 11(1)–(3) formerly read:

11. (1) Application of Part XIV of amended Act — Part XIV of the amended Act is applicable to the 1972 and subsequent taxation years except that, in its application to the 1972 to 1975 taxation years, the references therein to "25%" shall be read as references to "15%".

(2) Idem — Where a corporation, other than a non-resident corporation, has a taxation year part of which is before and part of which is after the commencement of 1972, the tax payable by it under Part XIV of the amended Act for that taxation year is that proportion of the tax under that Part otherwise payable by it for the year that the number of days in that portion of the taxation year that is in 1972 is of the number of days in the whole taxation year.

(3) Idem — Where a corporation has a taxation year part of which is after the commencement of 1976, the tax payable by it under Part XIV of the amended Act for that taxation year is the aggregate of

(a) 15% of that proportion of the amount on which tax under that Part is payable by it for the taxation year that the number of days in that portion of the taxation year that is in 1975 is of the number of days in the whole taxation year, and

(b) 25% of that proportion of the amount on which tax under that Part is payable by it for the taxation year that the number of days in that portion of the taxation year that is in 1976 is of the number of days in the whole taxation year.

(4) [Repealed under former Act]

Pre-RSC History: Subsec. 11(4) repealed by 1985, c. 45, subsec. 128(2), applicable to 1985 *et seq.* Subsec. 11(4) formerly read:

(4) Idem — Notwithstanding any provision of the amended Act, where an agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada

(a) does not limit the rate of any additional tax on corporations carrying on business in Canada other than Canadian corporations, and

(b) provides that where a dividend is paid by a corporation resident in Canada to a resident of that other country the rate of tax imposed thereon shall not exceed a specified rate,

any references in Part XIV of the amended Act and in paragraph (3)(b) to a rate in excess of the specified rate shall, in respect of a taxation year of a corporation to which that agreement or convention applies on the last day of that taxation year, be read as a reference to the specified rate.

Subsec. 11(4) added by 1976-77, c. 4, s. 78, applicable to 1976 *et seq.*

References and Continuation of Provisions

12. Definitions — In this section and sections 13 to 18,

"enactment" has the meaning assigned by section 2 of the *Interpretation Act*;

"new law" — [Not included in R.S.C. 1985]

"old law" means the *Income War Tax Act, The 1948 Income Tax Act*, and the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as amended from time to time otherwise than by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, or any subsequent Act;

"The 1948 Income Tax Act"; means *The Income Tax Act*, chapter 52 of the Statutes of Canada, 1948, together with all Acts passed in amendment thereof.

Pre-RSC History: *The definition "enactment" was para. 12(a); "old law", para. 12(c);* "The 1948 Income Tax Act", *para. 12(d).*

Definitions [ITAR 12]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

13. (1) References relating to same subject-matter — Subject to this Act and unless the context otherwise requires, a reference in any enactment to a particular Part or provision of the amended Act shall be construed, as regards any transaction, matter or thing to which the old law applied, to include a reference to the Part or provision, if any, of the old law relating to, or that may reasonably be regarded as relating to, the same subject-matter.

Interpretation Bulletins: IT-474R: Amalgamations of Canadian corporations.

Definitions [ITAR 13]: "amended Act" — ITAR 8; "enactment", "old law" — ITAR 12.

14. Part IV of former Act — Part IV of the former Act is continued in force but does not apply in respect of gifts made after 1971.

Definitions [ITAR 14]: "former Act" — ITAR 8.

15. Part VIII of former Act — Part VIII of the former Act is continued in force but as though the references in that Part that, according to the context in which they appear, are references to or to provisions of the *Income Tax Act* were read as references to or to provisions of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as amended from time to time otherwise than by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, or any subsequent Act.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

Definitions [ITAR 15]: "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

16. Construction of certain references — In any enactment, a reference by number to any provision of the *Income Tax Act* that, according to the context in which the reference appears, is a reference to

(a) a provision of Part IV of the former Act,

(b) a provision of Part VIII of the former Act, or

(c) a provision of the amended Act having the same number as a provision described in paragraph (a) or (b),

shall, for greater certainty, be read as a reference to the provision described in paragraph (a), (b) or (c), as the case may be, and not to any other provision of the *Income Tax Act* or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, having the same number.

Definitions [ITAR 16]: "amended Act" — ITAR 8; "enactment" — ITAR 12; "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

17. (1) *Income War Tax Act*, s. 8 — A taxpayer may deduct from the tax otherwise payable under Part I of the amended Act for a taxation year such amount as would, if the *Income War Tax Act* applied to the taxation year, be deductible from tax because of subsections 8(6), (7) and (7A) of the *Income War Tax Act*.

(2) S.C. 1947, c. 63, s. 16 — There may be deducted in computing income for a taxation year under Part I of the amended Act an amount that would be deductible under section 16 of chapter 63 of the Statutes of Canada, 1947, from income as defined by the *Income War Tax Act* if that Act applied to the taxation year.

(3) Idem — There may be deducted from the tax for a taxation year otherwise payable under Part I of the amended Act an amount that would be deductible under section 16 of chapter 63 of the Statutes of Canada, 1947, from the total of taxes payable under the *Income War Tax Act* and *The Excess Profits Tax Act, 1940*, if those Acts applied to the taxation year.

(4) Retrospection — Where there is a reference in the amended Act to any act, matter or thing done or existing before a taxation year, it shall be deemed to include a reference to the act, matter or thing, even though it was done or existing before the commencement of that Act.

(5) Amount not previously included as income — Where, on the application of a method adopted by a taxpayer for computing income from a business, other than a business that is a profession, or farm or property for a taxation year to which the amended Act applies, an amount received in the year would not be included in computing the taxpayer's income for the year because on the application of that method it would have been included in computing the taxpayer's income for the purposes of the *Income Tax Act* or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, for a preceding taxation year in respect of which it was receivable, if the amount was not included in computing the income for the preceding year, it shall be included in computing the income for the year in which it was received.

I.T. Application Rules: 69 (meaning of "*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952").

(6) S.C. 1949 (2nd S.), c. 25, s. 53 — There may be deducted in computing income for a taxation year under Part I of the amended Act an amount that would be deductible under section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session), in computing income under *The 1948 Income Tax Act* if that Act applied to the taxation year.

(7) Idem — There may be deducted from the tax for a taxation year otherwise payable under Part I of the amended Act an amount that would be deductible under section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session) from the tax payable under Part I of *The 1948 Income Tax Act* if that Act applied to the taxation year.

(8) Registered pension plan — A reference in the amended Act to a registered pension plan shall, in respect of a period while the plan was an approved superannuation or pension fund or plan, be construed as a reference to that approved superannuation or pension fund or plan.

Pre-RSC History: Subsec. 17(8) amended by 1990, c. 35, s. 31, to substitute (in two places plus the heading) "registered pension plan" for "registered pension fund or plan", applicable after 1985.

Definitions [ITAR 17]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "property", "registered pension plan" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "The 1948 Income Tax Act" — ITAR 12.

18. (1) General depreciation provisions — Where the capital cost to a taxpayer of any depreciable property that was acquired by him before 1972 was required by any provision of the old law to be determined for the purpose of computing the amount of any deduction under any such provision in respect of that property, or would have been required by any provision of the old law to be determined for that purpose if any deduction under any such provision had been claimed by the taxpayer in respect of that property, the amount of the capital cost so required to be determined or that would have been so required to be determined, as the case may be, shall be deemed, for all purposes of the amended Act, to be the capital cost to the taxpayer of that property.

(2) Idem — Where a taxpayer has acquired depreciable property before the beginning of the 1949 taxation year, for the purposes of section 13 of the amended Act and any regulations made under paragraph 20(1)(a) of that Act an amount equal to the total of

(a) all deductions allowed in computing the taxpayer's income for the purpose of the *Income War Tax Act* as "special depreciation", "extra depreciation" or allowances in lieu of depreciation for property the taxpayer had at the beginning of the 1949 taxation year (except deductions allowed under subparagraph 6(1)(n)(ii) of that Act), and

(b) ½ of all amounts allowed to the taxpayer under subparagraph 6(1)(n)(ii) of that Act for property that the taxpayer had at the beginning of the 1949 taxation year,

shall be deemed to have been allowed to the taxpayer under regulations made under paragraph 20(1)(a) of the amended Act in computing income for a taxation year before the 1949 taxation year.

(3) Provisoes not applicable — The second and third provisoes to paragraph 6(1)(n) of the *Income War Tax Act* do not apply to sales made after the beginning of the 1949 taxation year.

(4) Reference to depreciation — Reference in this section to depreciation shall be deemed to include a reference to allowances in respect of depreciable property of a taxpayer made under paragraph 5(1)(a) of the *Income War Tax Act*.

(5) Deduction deemed depreciation — An amount deducted under paragraph 5(1)(u) of the *Income War Tax Act* in respect of amounts of a capital nature shall, for the purpose of this section, be deemed to be depreciation taken into account in ascertaining the taxpayer's income

for the purpose of that Act or in ascertaining the taxpayer's loss for the taxation year for which it was deducted.

Definitions [ITAR 18]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "depreciable property" — ITA 13(21), 248(1); "depreciation" — ITAR 18(4), (5); "old law" — ITAR 12; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Special Transitional Rules

19. (1) Income maintenance payments — Notwithstanding section 9, paragraph 6(1)(f) of the amended Act does not apply in respect of amounts received by a taxpayer in a taxation year that were payable to the taxpayer in respect of the loss, in consequence of an event occurring before 1974, of all or any part of the taxpayer's income from an office or employment, under a plan, described in that paragraph, that was established before June 19, 1971.

(2) Effect of certain changes made in plan established before June 19, 1971 — For the purposes of this section, a plan described in paragraph 6(1)(f) of the amended Act that was in existence before June 19, 1971 does not cease to be a plan established before that date solely because of changes made therein on or after that date for the purpose of ensuring that the plan qualifies as one entitling the employer of persons covered under the plan to a reduction, as provided for by subsection 50(2) of the *Unemployment Insurance Act*, in the amount of the employer's premium payable under that Act in respect of insured persons covered under the plan.

Interpretation Bulletins: IT-54: Wage loss replacement plans; IT-85R2: Health and welfare trusts for employees; IT-428: Wage loss replacement plans.

Definitions [ITAR 19]: "amended Act" — ITAR 8; "amount", "employer", "employment", "office", "person" — ITA 248(1); "plan" — ITA 6(1)(f), ITAR 19(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

20. (1) Depreciable property — Where the capital cost to a taxpayer of any depreciable property acquired by the taxpayer before 1972 and owned by the taxpayer without interruption from December 31, 1971 until such time after 1971 as the taxpayer disposed of it is less than the fair market value of the property on valuation day and less than the proceeds of disposition thereof otherwise determined,

(a) for the purposes of section 13 of the amended Act, subdivision c of Division B of Part I of that Act and any regulations made under paragraph 20(1)(a) of that Act, the taxpayer's proceeds of disposition of the property shall be deemed to be an amount equal to the total of its capital cost to the taxpayer and the amount, if any, by which the proceeds of disposition thereof otherwise determined exceed the fair market value of the property on valuation day;

(b) where the property has, by one or more transactions or events (other than the death of a taxpayer to which subsection 70(5) of the amended Act applies) between persons not dealing at arm's length, become vested in another taxpayer

(i) for the purposes of the amended Act (other than, where paragraph 13(7)(e) of that Act applies in determining the capital cost to that other taxpayer of the property, for the purposes of paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), that other taxpayer shall be deemed to have acquired the property at a capital cost equal to the proceeds deemed to have been received for the property by the person from whom that other taxpayer acquired the property, and

(ii) for the purposes of this subsection, that other taxpayer shall be deemed to have acquired the property before 1972 at a capital cost equal to the capital cost of the property to the taxpayer who actually owned the property at the end of 1971, and to have owned it without interruption from December 31, 1971 until such time after 1971 as that other taxpayer disposed of it; and

(c) where the disposition occurred because of an election under subsection 110.6(19) of the amended Act,

(i) for the purposes of that Act (other than paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), the taxpayer is deemed to have reacquired the property at a capital cost equal to

(A) where the amount designated in respect of the property in the election did not exceed 110% of the fair market value of the property at the end of February 22, 1994, the taxpayer's proceeds of disposition determined under paragraph (a) in respect of the disposition of the property that immediately preceded the reacquisition minus the amount, if any, by which the amount designated in respect of the property in the election exceeded that fair market value, and

(B) in any other case, the amount otherwise determined under subsection 110.6(19) of that Act to be the cost to the taxpayer of the property immediately after the reacquisition referred to in that subsection minus the amount by which the fair market value of the property on valuation day exceeded the capital cost of the property at the time it was last acquired before 1972, and

(ii) for the purposes of this subsection, the taxpayer's capital cost of the property after the reacquisition shall be deemed to be equal to the taxpayer's capital cost of the property before the reacquisition and the taxpayer shall be considered to have owned the property without interruption from December 31, 1971 until such time after February 22, 1994 as the taxpayer disposes of it.

Related Provisions: ITAR 20(1.1) — Rollover to spouse, spouse trust or child; ITAR 20(1.2) — Other rollovers; ITA 257 — Formulas cannot calculate to less than zero [rule does not apply explicitly to the ITARs].

History: The portion of para. 20(1)(c) before subpara. (ii) amended by 1998, c. 19, s. 248, applicable to 1994 *et seq.* The portion formerly read:

(c) where the taxpayer is deemed by subsection 110.6(19) of the amended Act to have reacquired the property,

(i) for the purposes of that Act (other than, where paragraph 13(7)(e) of that Act applies in determining the capital cost to the taxpayer of the property, for the purposes of paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), the taxpayer shall be deemed to have reacquired the property at a capital cost equal to the taxpayer's proceeds of disposition of the property determined under paragraph (a) in respect of the disposition that immediately preceded the reacquisition, and

Subpara. 20(1)(b)(i) amended by 1995, c. 3, subsec. 56(1), applicable to acquisitions of property that occur after May 22, 1985. Subpara. (i) formerly read:

(i) for the purposes of section 13 of the amended Act, subdivision c of Division B of Part I of that Act and any regulations made under paragraph 20(1)(a) of that Act, that other taxpayer shall be deemed to have acquired the property at a capital cost equal to the proceeds

deemed to have been received for the property by the person from whom that other taxpayer acquired the property, and

Para. 20(1)(c) added by 1995, c. 3, subsec. 56(2), applicable to 1994 *et seq.*

Pre-RSC History: All that portion of para. 20(1)(b) preceding subpara. (i) substituted by 1974-75-76, c. 26, s. 128, applicable in respect of transactions or events occurring after May 6, 1974. That portion of para. 20(1)(b) formerly read:

(b) where the property has, by one or more transactions between persons not dealing at arm's length, become vested in another taxpayer

All that portion of subsec. 20(1) preceding para. (a) substituted by 1973-74, c. 14, subsec. 71(1).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971; IT-220R2: CCA — proceeds of disposition of depreciable property; IT-268R4: *Inter vivos* transfer of farm property to child; IT-432R2: Benefits conferred on shareholders; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

(1.1) Where depreciable property disposed of to spouse, trust or child — Subsection (1) does not apply in any case where

(a) subsection 70(6) or 73(1) of the amended Act applies in respect of the disposition by a taxpayer of any depreciable property of a prescribed class to the spouse, trust or transferee, as the case may be, referred to therein, and

(b) subsection 70(9) of the amended Act applies in respect of the disposition by a taxpayer of any depreciable property of a prescribed class to a child referred to therein,

except that where the spouse, trust, transferee or child, as the case may be, subsequently disposes of the property at any time, subsection (1) applies as if the spouse, trust, transferee or child, as the case may be, had acquired the property before 1972 and owned it without interruption from December 31, 1971 until that time.

Proposed Amendment — Common-law partners

Application: 2000, c. 12 (Bill C-23), s. 147, will replace "spouse" with "spouse or common-law partner", applicable to 2001 *et seq.* (in force on a day to be fixed by order of the Governor in Council) subject to subsec. 147(3) of Bill C-23.

Subsec. 147(3) of Bill C-23 provides:

(3) Where a taxpayer and a person have jointly elected pursuant to section 144 of this Act [reproduced under 248(1)"common-law partner" — ed.] in respect of the 1998, 1999 or 2000 taxation years, [this amendment] applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971.

(1.11) Extended meaning of "child" — For the purposes of subsection (1.1), "child" of a taxpayer includes

(a) a child of the taxpayer's child;

(b) a child of the taxpayer's child's child; and

(c) a person who, at any time before attaining the age of 21 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control.

Related Provisions: ITA 70(10) — Extended meaning of "child".

Pre-RSC History: Subsec. 20(1.11) substituted by 1984, c. 45, s. 96, applicable with respect to dispositions of property occurring after 1983. Subsec. 20(1.11) formerly read:

(1.11) Extended meaning of "child" — For the purposes of subsection (1.1), "child" of a taxpayer includes a child of his child and a child of his child's child.

Subsec. 20(1.1) substituted by 1977-78, c. 32, s. 57, applicable in respect of dispositions of property by a taxpayer after 1977, to add references to "transferee".

Subsecs. 20(1.1) substituted, 20(1.11) added by 1973-74, c. 14, subsec. 71(2).

(1.2) Other transfers of depreciable property — Where, because of a transaction or an event in respect of which any of subsections 70(5), 85(1), (2) and (3), 87(2), section 88, subsections 97(2), 98(3) and (5) and 107(2) of the amended Act applies, a taxpayer has at any particular time after 1971 acquired any depreciable property of a prescribed class from a person who acquired the property before 1972 and owned it without interruption from December 31, 1971 until the particular time, for the purposes of subsection (1) the taxpayer shall be deemed to have acquired the property before 1972 and to have owned it without interruption from December 31, 1971 until such time after 1971 as the taxpayer disposed of it.

Pre-RSC History: Subsec. 20(1.2) substituted by 1977-78, c. 1, s. 103, applicable with respect to dispositions of property occurring after 1971, to add reference to subsec. 70(5).

Interpretation Bulletins: IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-217R: Depreciable property owned on December 31, 1971; IT-488R2: Winding-up of 90%-owned taxable Canadian corporation.

(1.3) Transfers before 1972 not at arm's length — Without restricting the generality of section 18, where any depreciable property has been transferred before 1972 in circumstances such that subsection 20(4) of the former Act would, if that provision applied to transfers of property made in the 1972 taxation year, apply, paragraph 69(1)(b) of the amended Act does not apply to the transfer and subsection 20(4) of the former Act applies thereto.

(1.4) Depreciable property received as dividend in kind — The capital cost to a taxpayer, as of any particular time after 1971, of any depreciable property (other than depreciable property referred to in subsection (1.3) or deemed by subparagraph (1)(b)(ii) to have been acquired by the taxpayer before 1972) acquired by the taxpayer before 1972 as, on account of, in lieu of payment of or in satisfaction of, a dividend payable in kind (other than a stock dividend) in respect of a share owned by the taxpayer of the capital stock of a corporation, shall be deemed to be the fair market value of that property at the time the property was so received.

Pre-RSC History: Subsec. 20(1.4) added by 1973-74, c. 14, subsec. 71(3).

(2) Recapture of capital cost allowances — In determining a taxpayer's income for a taxation year from farming or fishing, subsection 13(1) of the amended Act does not apply in respect of the disposition by the taxpayer of property acquired by the taxpayer before 1972 unless the taxpayer has elected to make a deduction for that or a preceding taxation year, in respect of the capital cost of property acquired by the taxpayer before 1972, under regulations made under paragraph 20(1)(a) of that Act other than a regulation providing solely for an allowance for computing income from farming or fishing.

(3) Depreciable property of partnership of prescribed class — For the purposes of the amended Act, where a partnership had, on December 31, 1971,

partnership property that was depreciable property of a prescribed class,

(a) the capital cost to the partnership of each property of that class shall be deemed to be an amount determined as follows:

(i) determine, for each person who, by reason of having been a member of the partnership on the later of June 18, 1971 and the day the partnership was created, and thereafter without interruption until December 31, 1971, can reasonably be regarded as having had an interest in the property of that class on December 31, 1971, the person's acquisition cost in respect of property of that class,

(ii) determine, for each such person, the amount that is that proportion of the person's acquisition cost in respect of property of that class that 100% is of the person's percentage in respect of property of that class,

(iii) select the amount determined under subparagraph (ii) for a person described therein that is not greater than any amount so determined for any other such person,

(iv) determine that proportion of the amount selected under subparagraph (iii) (in this subsection referred to as the "capital cost of that class") that the fair market value on December 31, 1971 of that property is of the fair market value on that day of all property of that class,

and the amount determined under subparagraph (iv) is the capital cost to the partnership of that property;

(b) for the purposes of sections 13 and 20 of the amended Act and any regulations made under paragraph 20(1)(a) of that Act, the undepreciated capital cost to the partnership of property of that class as of any time after 1971 shall be computed as though the amount, if any, by which the capital cost of that class to the partnership exceeds the undepreciated cost to the partnership of that class had been allowed to the partnership in respect of property of that class under regulations made under paragraph 20(1)(a) of the amended Act in computing income for taxation years before that time;

(c) in computing the income for the 1972 and subsequent taxation years of each person who was a member of the partnership on June 18, 1971 and thereafter without interruption until December 31, 1971, there may be deducted such amount as the person claims for the year, not exceeding the amount, if any, by which the total of

(i) the lesser of

(A) the amount, if any, by which the amount that was the capital cost to the person of all property of that class exceeds the percentage, equal to the person's percentage in respect of property of that class, of the capital cost of that class to the partnership, and

(B) the amount that was the undepreciated capital cost to the person of property of that class as of December 31, 1971, and

(ii) the amount, if any, by which

(A) the undepreciated capital cost to the person of property of that class as of December 31, 1971, less the amount, if any, determined under subparagraph (i) in respect of property of that class,

exceeds

(B) the percentage, equal to the person's percentage in respect of property of that class, of the undepreciated cost to the partnership of that class,

exceeds the total of all amounts deducted under this paragraph in computing the person's income for preceding taxation years; and, for the purposes of section 3 of the amended Act, the amount so claimed shall be deemed to be a deduction permitted by subdivision e of Division B of Part I of that Act; and

(d) notwithstanding paragraph (c), a person who became a member of the partnership after June 18, 1971 and who was a member of the partnership thereafter without interruption until December 31, 1971 shall be deemed to be a person described in paragraph (c) and the amount that may be claimed thereunder as a deduction in computing the person's income for any taxation year shall not exceed 10% of the total of the amounts determined under subparagraphs (c)(i) and (ii).

(4) Definitions — In subsection (3),

"acquisition cost" of a person who was a member of a partnership on December 31, 1971 in respect of depreciable property of a prescribed class that was partnership property of the partnership on December 31, 1971 means the total of the undepreciated capital cost to that person of property of that class as of December 31, 1971 and the total depreciation allowed to the person before 1972 in respect of property of that class;

"percentage" of a member of a partnership in respect of any depreciable property of a prescribed class that was partnership property of the partnership on December 31, 1971 means the interest of the member of the partnership in property of that class, expressed as a percentage of the total of the interests of all members of the partnership in property of that class on that day;

"undepreciated cost to the partnership" of any class of depreciable property means an amount determined as follows:

(a) determine, for each person who, because of having been a member of the partnership on the later of June 18, 1971 and the day the partnership was created, and thereafter without interruption until December 31, 1971, can reasonably be regarded as having had an interest in property of that class on December 31, 1971, the amount, if any, by which the undepreciated capital cost to the person of property of that class as of December 31, 1971 exceeds the amount, if any, determined under subparagraph (3)(c)(i) for the person in respect of property of that class,

(b) determine, for each such person, the amount that is that proportion of the amount determined under paragraph (a) that 100% is of the person's percentage in respect of property of that class, and

(c) select the amount determined under paragraph (b) for a person described therein that is not greater than any amount so determined for any other such person,

and the amount selected under paragraph (c) is the undepreciated cost to the partnership of that class.

Pre-RSC History: *The definition "acquisition cost" was para. 20(4)(a); "percentage", para. 20(4)(b); "undepreciated cost to the partnership", para. 20(4)(c).*

(5) Other depreciable property of partnership — For the purposes of the amended Act, where a partnership had, on December 31, 1971, any particular partnership property that was depreciable property other than depreciable property of a prescribed class,

(a) the cost to the partnership of the particular property shall be deemed to be the amount that would be determined under paragraph (3)(a) to be the capital cost thereof if

(i) the particular property constituted a prescribed class of property, and

(ii) the acquisition cost of each person described therein in respect of the particular property were its actual cost to the person or the amount at which the person was deemed by subsection 20(6) of the former Act to have acquired it, as the case may be;

(b) for the purposes of sections 13 and 20 of the amended Act and any regulations made under paragraph 20(1)(a) of that Act, the undepreciated capital cost of property of any class as of any particular time after 1971 shall be computed as if the amount, if any, by which

(i) the amount determined under paragraph (a) to have been the cost to the partnership of the particular property,

exceeds

(ii) the amount that would be determined under the definition "undepreciated cost to the partnership" in subsection (4) to be the undepreciated cost to the partnership of any class of depreciable property comprising the particular property if

(A) paragraph (a) of that definition were read without reference to the words "the later of June 18, 1971 and the day the partnership was created, and thereafter without interruption until",

(B) the amount determined under subparagraph (3)(c)(i) for any person in respect of that class were nil, and

(C) the undepreciated capital cost to each person described in the definition "acquisition cost" in subsection (4) of the particular property as of December 31, 1971 were the amount, if any, by which the amount assumed by subparagraph (a)(ii) to have been the acquisition cost of the person in respect of the property exceeds the total of all amounts allowed to the person in respect of the property under regulations made under paragraph 11(1)(a) of the former Act in computing income for taxation years ending before 1972,

had been allowed to the partnership in respect of the particular property under regulations made under paragraph 20(1)(a) of the amended Act in computing income for taxation years ending before the particular time; and

(c) in computing the income for the 1972 and subsequent taxation years of each person who was, on December 31, 1971, a member of the partnership, there may be deducted such amount as the person claims for the year, not exceeding the amount, if any, by which

(i) the amount by which

(A) the amount assumed by clause (b)(ii)(C) to have been the undepreciated capital cost to the person of the particular property as of December 31, 1971

exceeds

(B) a percentage of the amount determined under subparagraph (b)(ii) in respect of the particular property, equal to the percentage that would be the person's percentage (within the meaning assigned by subsection (4)) in respect of the particular property if that property constituted a prescribed class,

exceeds

(ii) the total of all amounts deducted under this paragraph in computing the person's income for preceding taxation years;

and for the purposes of section 3 of the amended Act the amount so claimed shall be deemed to be a deduction permitted by subdivision e of Division B of Part I of that Act.

Related Provisions: Reg. 1701(2) — Maximum CCA deduction from farming or fishing business where ITAR 20(5) applies.

Definitions [ITAR 20]: "acquired" — ITAR 20(1)(b)(ii), 20(1.2); "acquisition cost" — ITAR 20(4); "amended Act" — ITAR 8; "amount" — ITA 248(1); "arm's length" — ITA 251(1); "capital cost" — ITAR 20(1)(c)(ii), 20(1.4); "capital cost of that class" — ITAR 20(3)(a)(iv); "child" — ITAR 20(1.11); "common-law partner" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "dividend", "farming", "fishing" — ITA 248(1); "former Act" — ITAR 8; "owned" — ITAR 20(1)(b)(ii), 20(1.2); "percentage" — ITAR 20(4); "person", "prescribed", "property", "share" — ITA 248(1); "spouse" — ITA 252(4); "stock dividend" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "undepreciated capital cost" — ITA 13(21), 248(1); "undepreciated cost to the partnership" — ITAR 20(4); "valuation day" — ITAR 24.

21. (1) Goodwill and other nothings — Where as a result of a disposition occurring after 1971 a taxpayer has or may become entitled to receive an amount (in this section referred to as the "actual amount") in respect of a business carried on by the taxpayer throughout the period beginning January 1, 1972 and ending immediately after the disposition occurred, for the purposes of section 14 of the amended Act the amount that the taxpayer has or may become entitled to receive shall be deemed to be the total of

(a) an amount equal to a percentage, equal to 40% plus the percentage (not exceeding 60%) obtained when 5% is multiplied by the number of full calendar years ending in the period and before the transaction occurred, of the amount, if any, by which the actual amount exceeds the portion thereof referred to in subparagraph (b)(i), and

(b) an amount equal to the lesser of

(i) the percentage, described in paragraph (a), of such portion, if any, of the actual amount as may reasonably be considered as being the consideration received by him for the disposition of, or for allowing the expiration of, a government right, and

(ii) the amount, if any, by which the portion described in subparagraph (i) exceeds the greater of

(A) the total of all amounts each of which is an outlay or expenditure made or incurred by the taxpayer as a result of a transaction that occurred before 1972 for the purpose of acquiring the government right, or the taxpayer's original right in respect of the government right, to the extent that the outlay or expenditure was not

otherwise deducted in computing the income of the taxpayer for any taxation year and would, if made or incurred by the taxpayer as a result of a transaction that occurred after 1971, be an eligible capital expenditure of the taxpayer, and

(B) the fair market value to the taxpayer as at December 31, 1971 of the taxpayer's specified right in respect of the government right, if no outlay or expenditure was made or incurred by the taxpayer for the purpose of acquiring the right or, if an outlay or expenditure was made or incurred, if that outlay or expenditure would have been an eligible capital expenditure of the taxpayer if it had been made or incurred as a result of a transaction that occurred after 1971.

Pre-RSC History: That portion of subsec. 21(1) preceding para. (a) substituted by 1988, c. 55, s. 196, applicable with respect to dispositions of property occurring after June 17, 1987 otherwise than pursuant to the terms of an obligation entered into in writing before June 18, 1987. That portion formerly read:

> 21. (1) Goodwill and other "nothings" — Where as a result of a transaction occurring after 1971 an amount (in this section referred to as the "actual amount") has become payable to a taxpayer in respect of a business carried on by him throughout the period commencing January 1, 1972 and ending immediately after the transaction occurred, for the purposes of section 14 of the amended Act the amount that has become so payable to him shall be deemed to be the aggregate of

Cl. 21(1)(b)(ii)(B) substituted by 1974-75-76, c. 26, subsec. 129(1).

Subpara. 21(1)(b)(ii) substituted by 1973-74, c. 30, s. 27.1.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of ITAR 21.

(2) Idem — Where the taxpayer and the person by whom the actual amount has become payable to the taxpayer were not dealing with each other at arm's length, for the purposes of computing the income of that person the portion of the actual amount in excess of the amount deemed by subsection (1) to be the amount that has become payable to the taxpayer shall be deemed not to have been an outlay, expense or cost, as the case may be, of that person.

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child. See also list at end of ITAR 21.

(2.1) Idem — Where after 1971 a taxpayer has acquired a particular government right referred to in subsection (1)

(a) from a person with whom the taxpayer was not dealing at arm's length, or

(b) under an agreement with a person with whom the taxpayer was not dealing at arm's length, if under the terms of the agreement that person allowed the right to expire so that the taxpayer could acquire a substantially similar right from the authority that had issued the right to that person,

and an actual amount subsequently becomes payable to the taxpayer as consideration for the disposition by the taxpayer of, or for the taxpayer allowing the expiration of, the particular government right or any other government right acquired by the taxpayer for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under the particular government right, for the purpose of section 14 of the amended Act, the amount that has so become payable to the taxpayer shall be deemed to be the amount that would, if that person and the taxpayer had at all times been the same person, be determined under subsection (1) to be the amount that would have become so payable to the taxpayer.

Interpretation Bulletins: See list at end of ITAR 21.

(2.2) Amalgamations — For the purposes of this section, an amalgamation (within the meaning of section 87 of the amended Act) of two or more Canadian corporations shall be deemed to be a transaction between persons not dealing at arm's length.

Pre-RSC History: Subsecs. 21(2.1), (2.2) added by 1977-78, c. 1, s. 104, applicable to acquisitions after 1971.

(3) Definitions — In this section,

"government right" of a taxpayer means a right or licence

(a) that enables the taxpayer to carry on a business activity in accordance with a law of Canada or of a province or Canadian municipality, to an extent to which the taxpayer would otherwise be unable to carry it on in accordance therewith,

(b) that was granted or issued by Her Majesty in right of Canada or a province or a Canadian municipality, or by a department, board, agency or any other body authorized by or under a law of Canada, a province or a Canadian municipality to grant or issue such a right or licence, and

(c) that was acquired by the taxpayer

(i) as a result of a transaction that occurred before 1972, or

(ii) at a particular time for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under a government right held by the taxpayer before the particular time;

"original right" of a taxpayer in respect of a government right means a right or licence

(a) described in the definition "government right" in this subsection, and

(b) acquired by the taxpayer as a result of a transaction that occurred before 1972 for a purpose other than the purpose described in subparagraph (c)(ii) of that definition,

if the government right was acquired by the taxpayer for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under the right or licence;

"specified right" of a taxpayer in respect of a government right means a right owned by a taxpayer on December 31, 1971 that was

(a) an original right, or

(b) a government right that was acquired by the taxpayer in substitution for the original right or that was one of a series of government rights acquired by the taxpayer for the purpose of effecting the continuation, without interruption, of rights that are substantially similar to the rights that the taxpayer had under the original right.

Pre-RSC History: *The definition "government right" was para. 21(3)(a); "original right", para. 21(3)(b); "specified right", para. 21(3)(c).*

Para. 21(3)(c) added by 1974-75-76, c. 26, subsec. 129(2).

S. 21 substituted by 1973-74, c. 14, s. 72.

Definitions [ITAR 21]: "actual amount" — ITAR 21(1); "amended Act" — ITAR 8; "amount" — ITA 248(1); "arm's length" — ITAR 21(2.2); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation*

Act 35(1); "Canadian corporation" — ITA 89(1), 248(1); "eligible capital expenditure" — ITA 14(5), 248(1); "government right" — ITAR 21(3); "Her Majesty" — *Interpretation Act* 35(1); "original right" — ITAR 21(3); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "specified right" — ITAR 21(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [ITAR 21]: IT-123R6: Transactions involving eligible capital property; IT-313R2: Eligible capital property — rules where a taxpayer has ceased carrying on a business or has died; IT-474R: Amalgamations of Canadian corporations.

22. [Repealed under former Act]

Pre-RSC History: S. 22 repealed by 1985, c. 45, s. 129.3. S. 22 formerly read:

22. (1) Deduction of interest by certain corporations — Notwithstanding section 9, subsections 18(4) to (7) of the amended Act are applicable to taxation years commencing after 1971.

(2) Idem — In its application to the first taxation year of a corporation commencing after 1971 and to the immediately following taxation year, subsection 18(4) of the amended Act shall be read as if

(a) subparagraph (a)(i) thereof were read as follows:

(i) the greatest amount that the corporation's outstanding debts to specified non-residents was at any time in the year, less the amount, if any, by which

(A) the least amount that the corporation's outstanding debts to specified non-residents was at any time after June 18 in the last taxation year of the corporation commencing before June 19, 1971 (in this subparagraph referred to as the corporation's "base year")

exceeds 3 times the aggregate of

(B) the lesser of

(I) the paid-up capital of the corporation at the end of its taxation year immediately preceding its base year in respect of all of the shares of its capital stock, and

(II) the corporation's paid-up capital limit (within the meaning of subsection 89(1)) at the commencement of the first taxation year of the corporation commencing after 1971, and

(C) the corporation's undistributed income on hand (within the meaning assigned by this Act as it read in its application to the 1971 taxation year) at the end of its taxation year immediately preceding its base year, and

(b) paragraph (b) thereof were read as follows:

(b) the greatest amount that the corporation's outstanding debts to specified non-residents was at any time in the year.

Para. 22(2)(a) substituted by 1973-74, c. 14, s. 73.

23. (1), (2) [Repealed under former Act]

Pre-RSC History: Subsecs. 23(1), (2) repealed by 1985, c. 45, s. 130. Subsecs. 23(1), (2) formerly read:

23. (1) Income from professional business — There may be deducted in computing a taxpayer's income for the 1972 taxation year from a business that is a profession the aggregate of amounts payable by him in respect of the business at the end of the 1971 fiscal period of the business, to the extent that they were not deductible in computing his income from the business for that period but would have been so deductible if he had paid them in that period.

(2) Valuation of work in progress — Where a taxpayer has not elected under paragraph 34(1)(d) of the amended Act in respect of his income from a business that is a profession for his 1972 taxation year, work in progress in respect of the business at the commencement of the 1972 fiscal period of the business shall be valued at the same amount at which it was valued at the end of the 1971 fiscal period of the business for the purpose of computing his income from that business for the 1971 taxation year.

Subsec. 23(1) substituted by 1973-74, c. 14, subsec. 74(1).

(3) Rules applicable [to professional business] — For the purposes of computing the income of a taxpayer for a taxation year ending after 1971 from a business that is a profession,

(a) there may be deducted such amount as the taxpayer claims, not exceeding the lesser of

(i) the amount deducted under this paragraph in computing the taxpayer's income from the business for the preceding taxation year, and

(ii) the taxpayer's investment interest in the business at the end of the year;

(b) where the taxation year is the taxpayer's 1972 taxation year, the amount deducted under paragraph (a) in computing the taxpayer's income for the preceding taxation year from the business shall be deemed to be an amount equal to the taxpayer's 1971 receivables in respect of the business;

(c) there shall be included the amount deducted under paragraph (a) in computing the taxpayer's income for the preceding taxation year from the business; and

(d) there shall be included amounts received by the taxpayer in the year on account of debts in respect of the business that were established by the taxpayer to have become bad debts before the end of the 1971 fiscal period of the business.

Related Provisions: ITA 34 — Income from a professional business.

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner. See also list at end of ITAR 23.

Forms: T2032: Statement of professional activities.

(4) Application of para. (3)(a) — Paragraph (3)(a) does not apply to allow a deduction in computing the income of a taxpayer from a business that is a profession

(a) for the taxation year in which the taxpayer died; or

(b) for any taxation year, if,

(i) in the case of a taxpayer who at no time in that year was resident in Canada, the taxpayer ceased to carry on the business, or

(ii) in the case of any other taxpayer, the taxpayer ceased to be resident in Canada and ceased to carry on the business

at any time in that year or the following year.

Pre-RSC History: Subpara. 23(4)(b)(ii) substituted by 1976-77, c. 4, s. 79, applicable to 1972 *et seq.*

Interpretation Bulletins: IT-242R: Retired partners; IT-278R2: Death of a partner or of a retired partner. See also list at end of ITAR 23.

(4.1) Certain persons deemed to be carrying on business by means of partnership — For the purposes of paragraph (a) of the definition "investment interest" in subsection (5),

(a) where subsection 98(1) of the amended Act applies, the persons who are deemed not to have ceased to be members of a partnership because of that subsection shall be deemed to be carrying on business in Canada by means of that partnership; and

(b) a taxpayer who has a residual interest in a partnership (within the meaning assigned by section 98.1 of the amended Act) shall be deemed to be carrying on business in Canada by means of that partnership.

Pre-RSC History: Subsec. 23(4.1) added by 1974-75-76, c. 26, s. 130.

(5) Definitions — In this section,

"investment interest" in a business at the end of a taxation year means

(a) in the case of a taxpayer other than a corporation, the total of all amounts each of which is an amount in respect of a proprietorship or partnership by means of which the taxpayer carried on that business in Canada in the year, equal to,

(i) in respect of each such proprietorship, the amount, if any, by which

(A) the total of such of the amounts that were included in computing the taxpayer's income for that or a preceding taxation year as were receivable by the taxpayer at the end of the fiscal period of the proprietorship ending in the taxation year,

exceeds

(B) the amount claimed under paragraph 20(1)(l) of the amended Act as a reserve for doubtful debts in computing the taxpayer's income from the business for the fiscal period of the proprietorship ending in the year, and

(ii) in respect of each such partnership, the adjusted cost base to the taxpayer of the taxpayer's interest in the partnership immediately after the end of the fiscal period of the partnership ending in the year,

(b) in the case of a taxpayer that is a corporation, the lesser of

(i) the amount thereof that would be determined under paragraph (a) in respect of the corporation if that paragraph applied to a taxpayer that is a corporation, and

(ii) that proportion of its 1971 receivables in respect of the business that

(A) the amount, if any, by which 10 exceeds the number of its taxation years ending after 1971 and either before or coincidentally with the taxation year,

is of

(B) 10;

Interpretation Bulletins: See list at end of ITAR 23.

"1971 receivables" in respect of a business of a taxpayer means the total of

(a) all amounts that became receivable by the taxpayer in respect of property sold or services rendered in the course of the business (within the meaning given that expression in section 34 of the amended Act) in taxation years ending before 1972 and that were not included in computing the taxpayer's income for any such taxation year, other than debts that were established by the taxpayer to have become bad debts before the end of the 1971 fiscal period of the business, and

(b) the total of all amounts each of which is an amount, in respect of each partnership by means of which the taxpayer carried on that business before 1972, equal to such portion of the total that would be determined under paragraph (a) in respect of the partnership, if the references in that paragraph to "the taxpayer" were read as references to "the partnership", as is designated by the taxpayer in the taxpayer's return of income under Part I of the amended Act for the year to be attributable to the taxpayer, except that where the total of the portions so designated by all members of the partnership is less than the total that would be so determined under paragraph (a) in respect of the partnership, the Minister may designate the portion of that total that is attributable to the taxpayer, in which case the portion so designated by the Minister in respect of the taxpayer shall be deemed to be the portion so designated by the taxpayer.

Pre-RSC History: *The definition "investment interest" was paras. 23(5)(a), (b); "1971 receivables", para. 23(5)(c).*

Definitions [ITAR 23]: "1971 receivables" — ITAR 23(5); "adjusted cost base" — ITA 54, 248(1); "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carried on that business in Canada" — ITA 253, ITAR 23(4.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "investment interest" — ITAR 23(5); "Minister" — ITA 248(1); "person", "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [ITAR 23]: IT-188R: Sale of accounts receivable; IT-189R: Corporations used by practising members of professions; IT-212R3: Income of deceased persons — rights or things.

24. Definition of "valuation day" for capital gains and losses — In this Act, "valuation day" means

(a) December 22, 1971, in relation to any property prescribed to be a publicly-traded share or security; and

(b) December 31, 1971, in relation to any other property.

Regulations: 4400 (prescribed property).

Definitions [ITAR 24]: "prescribed", "property", "share" — ITA 248(1).

25. [Not included in R.S.C. 1985]

Pre-RSC History: S. 25 formerly read:

25. Proclamation — At any time after the coming into force of this Act, the Governor in Council may by proclamation fix a day in relation to any property referred to in paragraph 24(a) and a day in relation to any property referred to in paragraph 24(b) (each of which days shall be after June 18, 1971 and either or both of which days may be either before or after the coming into force of this Act) for the purposes of subdivision c of Division B of Part I of the amended Act.

Proclamation: For para. 24(a), December 22, 1971; for para. 24(b), December 31, 1971.

26. (1) Capital gains subject to tax — The provisions of subdivision c of Division B of Part I of the amended Act apply to dispositions of property made after 1971 and to transactions or events occurring after 1971 because of which any disposition of property was made or deemed to have been made in accordance with the provisions of that subdivision.

Interpretation Bulletins: IT-330R: Dispositions of capital property subject to warranty, covenant, etc. See also list at end of ITAR 26.

(1.1) Principal amount of certain obligations — For the purposes of subsection 39(3) and section 80 of the amended Act, the principal amount of any debt or other obligation of a taxpayer to pay an amount that was outstanding on January 1, 1972 (in this subsection referred to as an "obligation") shall be deemed to be the lesser of

(a) the principal amount, otherwise determined for the purposes of the amended Act, of the obligation, and

(b) the fair market value, on valuation day, of the obligation,

and in applying paragraph 39(3)(a) of the amended Act to an obligation, the reference in that paragraph to "the amount for which the obligation was issued" shall be read as a reference to "the lesser of the principal amount of the

obligation and the amount for which the obligation was issued".

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

Interpretation Bulletins: IT-293R: Debtor's gain on settlement of debt. See also list at end of ITAR 26.

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 26(2) repealed by 1985, c. 45, subsec. 131(1). Subsec. 26(2) formerly read:

> (2) Listed personal property — In section 41 of the amended Act, a reference to the 5 taxation years immediately preceding a taxation year does not include any taxation year ending before 1972, and where a taxpayer has a taxation year part of which is before and part of which is after the commencement of 1972, for the purposes of that section his gains for that taxation year from dispositions of property and his losses for that year from dispositions of property do not include any gain or loss from any disposition of property made before 1972.

(3) Cost of acquisition of capital property owned on Dec. 31, 1971 — For the purpose of computing the adjusted cost base to a taxpayer of any capital property (other than depreciable property or an interest in a partnership) that was owned by the taxpayer on December 31, 1971 and thereafter without interruption until such time as the taxpayer disposed of it, its cost to the taxpayer shall be deemed to be the amount that is neither the greatest nor the least of the following three amounts, namely:

(a) its actual cost to the taxpayer or, if the property was an obligation, its amortized cost to the taxpayer on January 1, 1972,

(b) its fair market value on valuation day, and

(c) the amount, if any, by which the total of

(i) the taxpayer's proceeds of disposition of the property, determined without reference to subsection 13(21.1) of the amended Act,

(ii) all amounts required by subsection 53(2) of the amended Act to be deducted in computing its adjusted cost base to the taxpayer immediately before the disposition, and

(iii) all amounts described in clause (5)(c)(ii)(B) that are relevant in computing its adjusted cost base to the taxpayer immediately before the disposition,

exceeds the total of

(iv) all amounts required by subsection 53(1) of the amended Act (other than paragraphs 53(1)(f.1) to (f.2)) to be added in computing its adjusted cost base to the taxpayer immediately before the disposition, and

(v) all amounts described in clause (5)(c)(i)(B) that are relevant in computing its adjusted cost base to the taxpayer immediately before the disposition,

except that where two or more of the amounts determined under paragraphs (a) to (c) in respect of any property are the same amount, that amount shall be deemed to be its cost to the taxpayer.

Related Provisions: ITAR 26(7) — Election for cost to be V-day value; ITAR 26(29) — No tax-free zone following election to trigger capital gains exemption; ITAR 26(30) — Disposition by non-resident of taxable Canadian property; ITAR 35(1) — No application to disposition by foreign affiliate for purposes of FAPI.

History: Subpara. 26(3)(c)(iv) amended by 1995, c. 21, subsec. 79(1), applicable to taxation years that end after February 21, 1994. Subpara. (iv) formerly read:

> (iv) all amounts required by subsection 53(1) of the amended Act (other than paragraphs 53(1)(f.1) and (f.2)) to be added in computing its adjusted cost base to the taxpayer immediately before the disposition, and

Pre-RSC History: Subpara. 26(3)(c)(i) amended by 1985, c. 45, subsec. 131(2), applicable with respect to dispositions occurring after November 12, 1981, other than dispositions occurring pursuant to the terms of an agreement in writing entered into on or before that date, to add the words "determined without reference to subsection 13(21.1) of the amended Act".

Subpara. 26(3)(c)(iv) substituted by 1980-81-82-83, c.140, subsec. 133(1), applicable with respect to dispositions occurring after November 12, 1981. Subpara. 26(3)(c)(iv) formerly read:

> (v) all amounts required by subsection 53(1) of the amended Act to be added in computing its adjusted cost base to him immediately before the disposition, and

Para. 26(3)(c) substituted by 1973-74, c. 14, subsec. 75(1).

Regulations: 4400, Sch. VII (V-day values for publicly-traded shares).

Interpretation Bulletins: IT-65: Stock splits and consolidations; IT-78: Capital property owned on December 31, 1971 — identical properties; IT-84: Capital property owned on December 31, 1971 — median rule (tax-free zone); IT-93: Capital property owned on December 31, 1971 — meaning of actual cost and amortized cost; IT-107: Costs of disposition of capital property affected by the median rule; IT-130: Capital property owned on December 31, 1971 — actual cost of property owned by a testamentary trust; IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-268R4: *Inter vivos* transfer of farm property to child; IT-319: Cost of obligations owned on December 31, 1971. See also list at end of ITAR 26.

Information Circulars: 72-25R4: Business equity valuations.

Advance Tax Rulings: ATR-35: Partitioning of assets to get specific ownership — "butterfly".

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972; T2080–T2085, T2090: Capital dispositions supplementary schedules.

(4) Determination of cost where property not disposed of — For the purpose of computing the adjusted cost base to a taxpayer of any capital property (other than depreciable property or an interest in a partnership) at any particular time before the taxpayer disposed of it, where the property was owned by the taxpayer on December 31, 1971 and thereafter without interruption until the particular time, its cost to the taxpayer shall be deemed to be the amount that would be determined under subsection (3) to be its cost to the taxpayer if the taxpayer had disposed of it at the particular time and the taxpayer's proceeds of disposition had been its fair market value at that time.

Related Provisions: ITAR 26(7) — Election for cost to be V-day value.

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972.

(5) Where property disposed of in transaction not at arm's length — Where any capital property (other than depreciable property or an interest in a partnership) that was owned by a taxpayer (in this subsection referred to as the "original owner") on June 18, 1971 has, by one or more transactions or events between persons not dealing at arm's length, become vested in another taxpayer (in this subsection referred to as the "subsequent owner") and the original owner has not elected under subsection (7) in respect of the property, notwithstanding the provisions of the amended Act, for the purposes of computing, at any particular time after 1971, the adjusted cost base of the property to the subsequent owner,

(a) the subsequent owner shall be deemed to have owned the property on June 18, 1971 and thereafter without interruption until the particular time;

(b) for the purposes of this section, the actual cost of the property to the subsequent owner or, if the property was an obligation, its amortized cost to him on January 1, 1972 shall be deemed to be the amount that

was its actual cost or its amortized cost on January 1, 1972, as the case may be, to the original owner; and

(c) where the property became vested in the subsequent owner after 1971, there shall be added to the cost to the subsequent owner of the property (as determined under subsection (3)) the amount, if any, by which

(i) the total of all amounts each of which is

(A) a capital gain (other than any amount deemed by subsection 40(3) of the amended Act to be a capital gain) from the disposition after 1971 of the property by a person who owned the property before it so became vested in the subsequent owner,

(B) an amount required by subsection 53(1) of the amended Act to be added in computing the adjusted cost base of the property to a person (other than the subsequent owner) described in clause (A),

(C) an amount determined under paragraph 88(1)(d) of the amended Act in computing the cost of the property to the subsequent owner or a person who owned the property before it became vested in the subsequent owner, or

(D) an amount by which a gain otherwise determined of a person who owned the property before it became so vested in the subsequent owner was reduced because of paragraph 40(2)(b) or (c) of the amended Act,

exceeds

(ii) the total of amounts each of which is

(A) a capital loss or an amount that would, but for paragraph 40(2)(e) and subsection 85(4) of the amended Act (as that Act read in its application to property disposed of on or before April 26, 1995) and paragraphs 40(2)(e.1) and (e.2) and subsection 40(3.3) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it became vested in the subsequent owner, or

(B) an amount required by subsection 53(2) of the amended Act to be deducted in computing the adjusted cost base of the property to a person (other than the subsequent owner) described in clause (A),

and there shall be deducted from the cost to the subsequent owner of the property the amount, if any, by which the total determined under subparagraph (ii) exceeds the total determined under subparagraph (i).

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

History: Cl. 26(5)(c)(ii)(A) amended by 1998, c. 19, subsec. 249(1), applicable to dispositions that occur after April 26, 1995. Cl. (A) formerly read:

(A) a capital loss or an amount that would, but for paragraph 40(2)(e), (e.1) or (e.2) or subsection 85(4) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it so vested in the subsequent owner, or

Cl. 26(5)(c)(ii)(A) amended by 1995, c. 21, subsec. 79(2), applicable to taxation years that end after February 21, 1994. Cl. (A) formerly read:

(A) a capital loss or an amount that would, but for paragraph 40(2)(e) or subsection 85(4) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it so became vested in the subsequent owner, or

Pre-RSC History: Cl. 26(5)(c)(ii)(A) substituted by 1980-81-82-83, c. 140, subsec. 133(2), applicable with respect to dispositions occurring after November 12, 1981. Cl. 26(5)(c)(ii)(A) formerly read:

(A) a capital loss or an amount that would but for subsection 85(4) of the amended Act be a capital loss from the disposition after 1971 of the property by a person who owned the property before it so became vested in the subsequent owner, or

Cl. 26(5)(c)(i)(D) added by 1977-78, c. 1, subsec. 105(1), applicable to 1972 *et seq.*

All that portion of subsec. 26(5) preceding para. (a), all that portion of para. 26(5)(c) preceding subpara. (i), cl. 26(5)(c)(ii)(A) substituted, cl. 26(5)(c)(i)(C) added by 1974-75-76, c. 26, subsecs. 131(1)–(4), applicable in respect of transactions or events occurring after May 6, 1974, to add "or events" in that portion of subsec. 26(5) preceding para. (a), to add "(as determined under subsection (3))" in that portion of para. 26(5)(c) preceding subpara. (i). Cl. 26(5)(c)(ii)(A) formerly read:

(A) a capital loss from the disposition after 1971 of the property by a person who owned the property before it so became vested in the subsequent owner, or

Para. 26(5)(c) substituted by 1973-74, c. 14, subsec. 75(2).

Interpretation Bulletins: IT-132R2: Capital property owned on December 31, 1971 — non-arm's length transactions; IT-199: Identical properties: acquired in non-arm's length transactions; IT-209R: *Inter vivos* gifts of capital property to individuals directly or through trusts; IT-268R4: *Inter vivos* transfer of farm property to child; IT-370: Trusts — capital property owned on December 31, 1971; IT-432R2: Benefits conferred on shareholders; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations. See also list at end of ITAR 26.

Advance Tax Rulings: ATR-35: Partitioning of assets to get specific ownership — "butterfly".

(5.1) Idem — For the purposes of subsection (5), an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more Canadian corporations shall be deemed to be a transaction between persons not dealing at arm's length.

(5.2) Transfer of capital property to a corporation — For the purposes of subsection (5), where a taxpayer has disposed of capital property after May 6, 1974 to a corporation in respect of which an election under section 85 of the amended Act was made, the disposition shall be deemed to be a transaction between persons not dealing at arm's length.

Pre-RSC History: Subsec. 26(5.2) added by 1974-75, c. 26, subsec. 131(5).

(6) Reacquired property — Where a taxpayer has, at any time after June 18, 1971 and before 1972, disposed of any property owned by the taxpayer on that day and has, within 30 days after that time, reacquired the same property or acquired a substantially identical property, for the purposes of this section

(a) the taxpayer shall be deemed to have owned the property so reacquired or the substantially identical property so acquired, as the case may be, on June 18, 1971 and thereafter without interruption until the time when the taxpayer so reacquired or acquired it, as the case may be;

(b) where the property was property so reacquired, its actual cost or its amortized cost on January 1, 1972, as the case may be, to the taxpayer shall be determined as if the taxpayer had not so disposed of and so reacquired it; and

(c) where the property was substantially identical property so acquired, its actual cost or its amortized cost on January 1, 1972, as the case may be, to the taxpayer shall be deemed to be the amount that was the actual cost or the amortized cost on January 1,

1972, as the case may be, to the taxpayer of the property so disposed of by the taxpayer.

(7) Election re cost — Where, but for this subsection, the cost to an individual of any property actually owned by the individual on December 31, 1971 would be determined under subsection (3) or (4) otherwise than because of subsection (5) and the individual has so elected, in prescribed manner and not later than the day on or before which the individual is required by Part I of the amended Act to file a return of income for the first taxation year in which the individual disposes of all or any part of the property, other than

(a) personal-use property of the individual that was not listed personal property or real property,

(b) listed personal property, if the individual's gain or loss, as the case may be, from the disposition thereof was, because of subsection 46(1) or (2) of the amended Act, nil,

(c) the individual's principal residence, if the individual's gain from the disposition thereof was, because of paragraph 40(2)(b) of the amended Act, nil,

(d) personal-use property of the individual that was real property (other than the individual's principal residence), if the individual's gain from the disposition thereof was, because of subsection 46(1) or (2) of the amended Act, nil, or

(e) any other property, the proceeds of disposition of which are equal to its fair market value on valuation day,

the cost to the individual of each capital property (other than depreciable property, an interest in a partnership or any property described in any of paragraphs (a) to (e) that was disposed of by the individual before that taxation year) actually owned by the individual on December 31, 1971 shall be deemed to be its fair market value on valuation day.

Pre-RSC History: All that portion of subsec. 26(7) following para. (b) substituted by 1974-75-76, c. 26, subsec. 131(6).

Subsec. 26(7) substituted by 1973-74, c. 14, subsec. 75(3).

Selected Cases [subsec. 26(7)]: *R. v. Adelman*, [1998] 1 C.T.C. 133 (FCA) (Requirement to elect is mandatory, not directory).

Regulations: 4700 (prescribed manner).

Interpretation Bulletins: IT-139R: Capital property owned on December 31, 1971 — fair market value. See also list at end of ITAR 26.

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972; T2076: Valuation Day value election for capital properties owned on December 31, 1971.

(8) Identical properties — For the purposes of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of any capital property (other than depreciable property or an interest in a partnership) that was owned by the taxpayer on December 31, 1971 and thereafter without interruption until the particular time, if the property was one of a group of identical properties owned by the taxpayer on December 31, 1971,

(a) section 47 of the amended Act does not apply;

(b) where the property was an obligation,

(i) for the purpose of paragraph (3)(a), its amortized cost to the taxpayer on January 1, 1972 shall be deemed to be that proportion of the total of the amortized costs to the taxpayer on January 1, 1972 of all obligations of that group that the principal amount of the obligation is of the total of the principal amounts of all obligations of that group, and

(ii) for the purpose of paragraph (3)(b), its fair market value on valuation day shall be deemed to be that proportion of the fair market value on that day of all obligations of that group that the principal amount of the obligation is of the total of the principal amounts of all obligations of that group;

(c) where the property was not an obligation,

(i) for the purpose of paragraph (3)(a), its actual cost to the taxpayer shall be deemed to be the quotient obtained when the total of the actual costs to the taxpayer of all properties of that group is divided by the number of properties of that group, and

(ii) for the purpose of paragraph (3)(b), its fair market value on valuation day shall be deemed to be the quotient obtained when the fair market value on that day of all properties of that group is divided by the number of properties of that group;

(d) for the purpose of distinguishing any such property from an otherwise identical property acquired and disposed of by the taxpayer before 1972, properties acquired by the taxpayer at any time shall be deemed to have been disposed of by the taxpayer before properties acquired by the taxpayer after that time; and

(e) for the purposes of distinguishing any such property from an otherwise identical property acquired by the taxpayer after 1971, properties owned by the taxpayer on December 31, 1971 shall be deemed to have been disposed of by the taxpayer before properties acquired by the taxpayer at a later time.

Pre-RSC History: Para. 26(8)(e) amended to add "(other than an indexed security)" by 1985, c. 45, subsec. 131(3), applicable after September 1983.

Interpretation Bulletins: IT-78: Capital property owned on December 31, 1971 — identical properties; IT-115R2: Fractional interest in shares; IT-199: Identical properties acquired in non-arm's length transactions; IT-387R2: Meaning of "identical properties". See also list at end of ITAR 26.

(8.1) Idem — For the purposes of subsection (8), any property of a life insurance corporation that would, but for this subsection, be identical to any other property of the corporation shall be deemed not to be identical to that other property unless both properties are

(a) included in the same segregated fund of the corporation;

(b) non-segregated property used in the year in, or held in the course of, carrying on a life insurance business in Canada; or

(c) non-segregated property used in the year in, or held in the course of, carrying on an insurance business in Canada, other than a life insurance business.

Interpretation Bulletins: IT-387R2: Meaning of "identical properties". See also list at end of ITAR 26.

(8.2) Idem — For the purposes of subsection (8), any bond, debenture, bill, note or other similar obligation issued by a debtor is identical to any other such obligation issued by that debtor if both are identical in respect of all rights (in equity or otherwise, either immediately or in the future and either absolutely or contingently) attaching thereto, except as regards the principal amount thereof.

Pre-RSC History: Subsecs. 26(8.1), (8.2) added by 1974-75-76, c. 26, subsec. 131(7).

Interpretation Bulletins: IT-387R2: Meaning of "identical properties". See also list at end of ITAR 26.

(8.3) Idem — Where a corporation resident in Canada has, after 1971, received a stock dividend in respect of a

share owned on June 18, 1971 and December 31, 1971 by it or by a corporation with which it did not deal at arm's length of the capital stock of a foreign affiliate of that corporation and the share or shares received as the stock dividend are identical to the share in respect of which the stock dividend was received, the share or shares received as the stock dividend may, at the option of the corporation, be deemed for the purposes of subsection (5) to be capital property owned by it on June 18, 1971 and for the purposes of this subsection, paragraph (3)(c) and subsection (8) to be capital property owned by it on June 18, 1971 and December 31, 1971 and not to be property acquired by the corporation after 1971 for the purposes of paragraph (8)(e).

(8.4) Idem — Where a corporation resident in Canada has, after 1971, received a stock dividend in respect of a share acquired by it after June 18, 1971 from a person with whom it was dealing at arm's length and owned by it on December 31, 1971 of the capital stock of a foreign affiliate of that corporation and the share or shares received as the stock dividend are identical to the share in respect of which the stock dividend was received, the share or shares received as the stock dividend may, at the option of the corporation, be deemed for the purposes of this subsection, paragraph (3)(c) and subsection (8) to be capital property owned by it on December 31, 1971 and not to be property acquired by the corporation after 1971 for the purposes of paragraph (8)(e).

(8.5) Amalgamation — For the purposes of subsections (8.3) and (8.4), where there has been an amalgamation (within the meaning of section 87 of the amended Act), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Pre-RSC History: Subsec. 26(8.3) substituted, subsecs. (8.4), (8.5) added by 1979, c. 5, s. 68, applicable to 1972 *et seq.*

Subsec. 26(8.3) added by 1976-77, c. 4, subsec. 80(1), applicable to 1972 *et seq.*

(9) Cost of interest in partnership — For the purpose of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of an interest in a partnership of which he was a member on December 31, 1971 and thereafter without interruption until the particular time, the cost to the taxpayer of the interest shall be deemed to be the amount that is neither the greatest nor the least of the following three amounts, namely:

(a) its actual cost to the taxpayer as of the particular time,

(b) the amount determined under subsection (9.1) in respect of the interest as of the particular time, and

(c) the amount, if any, by which the total of the fair market value of the interest at the particular time and all amounts required by subsection 53(2) of the amended Act to be deducted in computing its adjusted cost base to the taxpayer immediately before the particular time exceeds the total of all amounts required by subsection 53(1) of the amended Act to be added in computing its adjusted cost base to the taxpayer immediately before the particular time,

except that where two or more of the amounts determined under paragraphs (a) to (c) in respect of the interest are the same amount, that amount shall be deemed to be its cost to the taxpayer.

Forms: T4A-RCA Supp: Statement of amounts paid from an RCA; T2065: Determination of adjusted cost base of a partnership interest.

(9.1) Determination of amount for purposes of subsec. (9) — For the purposes of subsection (9), the amount determined under this subsection in respect of a taxpayer's interest in a partnership as of a particular time is the amount, if any, by which the total of

(a) the taxpayer's share, determined at the beginning of the first fiscal period of the partnership ending after 1971, of the tax equity of the partnership at the particular time,

(b) such part of any contribution of capital made by the taxpayer to the partnership (otherwise than by way of loan) before 1972 and after the beginning of the partnership's first fiscal period ending after 1971, as cannot reasonably be regarded as a gift made to, or for the benefit of, any other member of the partnership who was related to the taxpayer, and

(c) the amount of any consideration that became payable by the taxpayer after 1971 to any other person to acquire, after 1971, any right in respect of the partnership, the sole purpose of the acquisition of which was to increase the taxpayer's interest in the partnership,

exceeds the total of

(d) all amounts received by the taxpayer before 1972 and after the beginning of the partnership's first fiscal period ending after 1971 as, on account of, in lieu of payment of or in satisfaction of, a distribution of the taxpayer's share of the partnership profits or partnership capital, and

(e) all amounts each of which is an amount in respect of the disposition by the taxpayer after 1971 and before the particular time of a part of the taxpayer's interest in the partnership, equal to such portion of the adjusted cost base to the taxpayer of the interest immediately before the disposition as may reasonably be regarded as attributable to the part so disposed of.

(9.2) Where interest acquired before 1972 and after beginning of 1st fiscal period ending after 1971 — Where a taxpayer has, before 1972 and after the beginning of the first fiscal period of a partnership ending after 1971, acquired an interest in the partnership from another person, subsection (9.1) applies as if, for the purposes of paragraphs (a), (b) and (d) thereof, the taxpayer had had in respect of the interest, throughout the period beginning at the beginning of that fiscal period and ending at the time the taxpayer acquired the interest, the same position in relation to the partnership as the taxpayer would have had in relation thereto if, throughout that period, the taxpayer had been the owner of the interest.

(9.3) Amounts deemed to be required to be deducted in respect of interest in partnership — For the purpose of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of an interest in a partnership of which the taxpayer was a member on December 31, 1971 and thereafter without interruption until the particular time, the lesser of

(a) the amount, if any, by which

(i) the total of all amounts in respect of the interest determined under paragraph (9.1)(d)

exceeds

(ii) the total of

(A) the taxpayer's share, determined at the beginning of the first fiscal period of the partnership ending after 1971, of the tax equity of the partnership at the particular time, and

(B) the amount in respect of the interest determined under paragraph (9.1)(b), and

(b) the amount, if any, by which

(i) the total of all amounts in respect of the interest determined as of the particular time under paragraphs (14)(e) to (g)

exceeds

(ii) the total of all amounts in respect of the interest determined as of the particular time under paragraphs (14)(a) to (d),

shall be deemed to be required by subsection 53(2) of the amended Act to be deducted.

(9.4) Application of section 53 of amended Act in respect of interest in partnership — For the purpose of computing, at any particular time after 1971, the adjusted cost base to a taxpayer of an interest in a partnership of which the taxpayer was a member on December 31, 1971 and thereafter without interruption until the particular time,

(a) the reference in clause 53(1)(e)(i)(B) of the amended Act to "relating to" shall be read as a reference to "relating to section 14 or to"; and

(b) clause 53(2)(c)(i)(B) of the amended Act shall be read as follows:

"(B) paragraphs 12(1)(o) and (z.5), 18(1)(m) and 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act, paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to section 14, and"

History: Para. 26(9.4)(b) amended by 1997, c. 25, s. 72, applicable for the purpose of computing the adjusted cost base of property after 1996. Para. (b) formerly read:

(b) clause 53(2)(c)(i)(B) of the amended Act shall be read as follows:

"(B) paragraphs 12(1)(o), 18(1)(m) and 20(1)(v.1), section 31, subsection 40(2), section 55 and subsections 69(6) and (7) of this Act, paragraphs 20(1)(gg) and 81(1)(r) and (s) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and the provisions of the *Income Tax Application Rules* relating to section 14, and"

Pre-RSC History: Para. 26(9.4)(b) substituted by 1984, c. 1, s. 107, to substitute "paragraph 69(7.1)(b)" for "paragraphs 81(1)(r) and (s)", applicable to 1982 *et seq.* except that for the period before January 19, 1984, the reference to "paragraph 81(1)(r)" in para. 26(9.4)(b), as substituted, shall be read as "paragraphs 69(7.1)(b), 81(1)(r)".

Para. 26(9.4)(b) substituted by 1980-81-82-83, c. 140, subsec. 133(3), applicable in determining the adjusted cost base of a partnership interest after October 28, 1980 and, where a person has elected before 1982 under subsec. 22(13) of 1980-81-82-83, c. 48, subsec. (3) is applicable in determining the adjusted cost base of a partnership interest disposed of by him after 1976 and before October 29, 1980. Para. 26(9.4)(b) formerly read:

(b) clause 53(2)(c)(i)(B) of the amended Act shall be read as follows:

"(B) section 31, subsection 40(2), section 55 and the provisions of the *Income Tax Application Rules, 1971* relating to section 14".

(10) Where paragraph 128.1(1)(b) applies — Where subsection 48(3) of the amended Act, as it read in its application before 1993, or paragraph 128.1(1)(b) of the amended Act applies for the purpose of determining the cost to a taxpayer of any property, this section does not apply for that purpose.

History: ITAR 26(10) amended by 1994, c. 21, s. 118, applicable after 1992 except that, where a corporation elects in accordance with para. 111(4)(a) of 1994, c. 21 (see subsec. 250(5.1)), the amended subsec. applies to the corporation from the time the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction. That subsec. formerly read:

(10) Where subsec. 48(3) applies — Where subsection 48(3) of the amended Act applies for the purpose of determining the cost to a taxpayer of any property, this section does not apply for that purpose.

(11) Fair market value of publicly-traded securities — For the purposes of this section, the fair market value on valuation day of any property prescribed to be a publicly-traded share or security shall be deemed to be the greater of the amount, if any, prescribed in respect of that property and the fair market value of that property, otherwise determined, on valuation day.

Regulations: 4400 (prescribed property); Sch. VII (list of fair market values of publicly-traded securities).

Interpretation Bulletins: IT-84: Capital property owned on December 31, 1971 — Median rule (Tax-free zone). See also list at end of ITAR 26.

Information Circulars: 72-25R4: Business equity valuations.

(11.1) Fair market value of share of foreign affiliate — For the purposes of computing the fair market value

(a) on December 31, 1971, or

(b) at any subsequent time for the purposes of subsection (4),

of any shares owned by a taxpayer resident in Canada of the capital stock of a foreign affiliate of the taxpayer, the fair market value at that time of any asset owned by the foreign affiliate at that time

(c) that was subsequently acquired by the taxpayer from the foreign affiliate

(i) as a dividend payable in kind,

(ii) as a benefit the amount of which was deemed by paragraph 80.1(4)(b) of the amended Act to have been received by the taxpayer as a dividend from the foreign affiliate, or

(iii) as consideration for the settlement or extinguishment of an obligation described in subsection 80.1(5) of the amended Act, and

(d) in respect of which subsection 80.1(4) or (5), as the case may be, of the amended Act applies because of an election described in that subsection made by the taxpayer,

shall be deemed to be the principal amount of that asset.

(11.2) Idem — For the purposes of computing the fair market value on December 31, 1971 of any shares owned by a taxpayer resident in Canada of the capital stock of a foreign affiliate of the taxpayer, the fair market value on that day of any asset owned by the foreign affiliate on that day

(a) that was subsequently acquired by the taxpayer from the foreign affiliate as described in paragraph 80.1(6)(a) or (b) of the amended Act, and

(b) in respect of which subsection 80.1(1) of the amended Act applies because of an election described in subsection 80.1(6) of that Act made by the taxpayer,

shall be deemed to be the principal amount of that asset.

Pre-RSC History: Subsecs. 26(11.1), (11.2) added by 1973-74, c. 14, subsec. 75(4).

(12) Definitions — In this section,

"amortized cost" to a taxpayer of any obligation on January 1, 1972 means

(a) the principal amount of the obligation, if its actual cost to the taxpayer was less than 100% but not less than 95% of that principal amount and the obligation was issued before November 8, 1969,

(b) the actual cost to the taxpayer of the obligation, if the actual cost to the taxpayer thereof was less than 105% but not less than 100% of the principal amount thereof, and

(c) in any other case, the actual cost to the taxpayer of the obligation, plus that proportion of the discount or minus that proportion of the premium, as the case may be, in respect thereof that

(i) the number of full months in the period commencing with the day the taxpayer last acquired the obligation and ending with valuation day,

is of

(ii) the number of full months in the period commencing with the day the taxpayer last acquired the obligation and ending with the date of its maturity;

Pre-RSC History: *The definition "amortized cost" was para. 26(12)(a).*

Interpretation Bulletins: IT-319: Cost of obligations owned on December 31, 1971. See also list at end of ITAR 26.

"capital property" of a taxpayer means any depreciable property of the taxpayer, and any property (other than depreciable property) any gain or loss from the disposition of which would, if the property were disposed of after 1971, be a capital gain or a capital loss, as the case may be, of the taxpayer;

Pre-RSC History: *The definition "capital property" was para. 26(12)(b).*

"discount" in respect of any obligation owned by a taxpayer means the amount, if any, by which the principal amount thereof exceeds its actual cost to the taxpayer determined without reference to subsection (3);

Pre-RSC History: *The definition "discount" was para. 26(12)(c).*

"eligible capital property" of a taxpayer means any property, ½ of any amount payable to the taxpayer as consideration for the disposition of which would, if the property were disposed of after 1971, be an eligible capital amount in respect of a business within the meaning assigned by subsection 14(1) of the amended Act;

Pre-RSC History: *The definition "eligible-capital property" was para. 26(12)(d).*

"obligation" means a bond, debenture, bill, note, mortgage or agreement of sale;

Pre-RSC History: *The definition "obligation" was para. 26(12)(e).*

"premium" in respect of any obligation owned by a taxpayer means the amount, if any, by which its actual cost to the taxpayer determined without reference to subsection (3) exceeds the principal amount thereof;

Pre-RSC History: *The definition "premium" was para. 26(12)(f).*

"tax equity" of a partnership at any particular time means the amount, if any, by which the total of amounts each of which is

(a) the amount of any money of the partnership on hand at the beginning of its first fiscal period ending after 1971,

(b) the cost amount to the partnership, at the beginning of that fiscal period, of any partnership property other than capital property or eligible capital property,

(c) an amount in respect of any property (other than depreciable property) that was, at the beginning of that fiscal period, capital property of the partnership, equal to,

(i) where the property was disposed of before 1972, the proceeds of disposition thereof,

(ii) where the property was disposed of after 1971 and before the particular time, the amount determined under this section to be its cost to the partnership for the purposes of computing its adjusted cost base to the partnership immediately before it was disposed of, and

(iii) in any other case, the amount determined under this section to be its cost to the partnership for the purposes of computing its adjusted cost base to the partnership immediately before the particular time,

(d) an amount in respect of any prescribed class of depreciable property of the partnership, equal to the amount, if any, by which the total of the undepreciated capital cost to the partnership of property of that class as of January 1, 1972 exceeds the capital cost to the partnership of property of that class acquired by it after the beginning of that fiscal period and before 1972,

(e) an amount in respect of any other depreciable property of the partnership at the beginning of that fiscal period, equal to the amount by which

(i) the actual cost of the property to the partnership, or the amount at which the partnership was deemed to have acquired the property under subsection 20(6) of the Act as it read in its application to the 1971 taxation year, as the case may be,

exceeds

(ii) the total of all amounts in respect of the cost of the property that were allowed under paragraph 11(1)(a) of the Act as it read in computing the income from the partnership of the members thereof for taxation years ending before 1972,

(f) an amount in respect of any property that was, at the beginning of that fiscal period, partnership property that was depreciable property, equal to

(i) where the property was disposed of before 1972, the proceeds of disposition thereof minus the amount, if any, by which the lesser of

(A) the proceeds of disposition thereof, and

(B) the capital cost of the property,

exceeds

(C) in respect of depreciable property of a prescribed class, the undepreciated capital cost of all of the property of that class at the time of the disposition, or

(D) in respect of any other depreciable property, the amount that would be determined under paragraph (e) if the words "at the beginning of that fiscal period" were read as "at the time of the disposition",

(ii) where the property was disposed of after 1971 and before the particular time, the amount, if any, by which the lesser of

(A) the proceeds of disposition thereof, and

(B) the fair market value of the property on valuation day,

exceeds the capital cost to the partnership of the property, and

(iii) in any other case, the amount, if any, by which

(A) the lesser of the fair market value of the property on valuation day and its fair market value at the particular time

exceeds

(B) the capital cost to the partnership of the property, or

(g) an amount in respect of any business carried on by the partnership in its 1971 fiscal period and thereafter without interruption until the particular time, equal to the amount, if any, by which

(i) 2 times the eligible capital amounts (within the meaning assigned by section 14 of the amended Act) in respect of the business (computed without reference to section 21 of this Act) that would have become payable to the partnership

would exceed

(ii) the amount that would be deemed by subsection 21(1) to be the amount that had become payable to the partnership

if the partnership had disposed of the business at the particular time for an amount equal to its fair market value at that time,

exceeds the total of all amounts each of which is the amount of any debt owing by the partnership, or any other obligation of the partnership to pay an amount, that was outstanding at the beginning of the partnership's first fiscal period ending after 1971, minus such part, if any, thereof as would, if the amount had been paid by the partnership in that fiscal period, have been deductible in computing its income for that fiscal period.

Pre-RSC History: *The definition "tax equity" was para. 26(12)(g).*

Subpara. 26(12)(g)(iv.1) added, all that portion of subpara. 26(12)(g)(v) preceding clause (B) substituted by 1974-75-76, c. 26, subsecs. 131(8), (9).

Subpara. 26(12)(g)(vi) substituted by 1973-74, c. 14, subsec. 75(5).

(13) Meaning of "actual cost" — For the purposes of this section, the "actual cost" to a person of any property means, except as expressly otherwise provided in this section, the amount, if any, by which

(a) its cost to the person computed without regard to the provisions of this section

exceeds

(b) such part of that cost as was deductible in computing the person's income for any taxation year ending before 1972.

Pre-RSC History: Subsec. 26(13) substituted by 1973-74, c. 14, subsec. 75(6).

Interpretation Bulletins: IT-93: Capital property owned on December 31, 1971 — meaning of actual cost and amortized cost. See also list at end of ITAR 26.

(14) Idem — For the purposes of this section, the "actual cost" to a taxpayer, as of any particular time after 1971, of an interest in a partnership of which the taxpayer was a member on December 31, 1971 and thereafter without interruption until the particular time means the amount, if any, by which the total of

(a) the cost to the taxpayer of the interest, computed as of the particular time without regard to the provisions of this section,

(b) the total of all amounts each of which is an amount in respect of a fiscal period of the partnership that ended before 1972, equal to the total of

(i) the amount that the taxpayer's income from the partnership for the taxation year of the taxpayer in which the period ended would have been, if the former Act had been read without reference to subsection 83(5) of that Act, and

(ii) the taxpayer's share, determined at the end of the period, of all profits made from dispositions in the period of capital assets that were partnership property of the partnership, to the extent that those profits were not included in computing the income or loss, as the case may be, from the partnership, of any member thereof,

(c) where the taxpayer had, before 1972, made a contribution of capital to the partnership otherwise than by way of loan, such part of the contribution as cannot reasonably be regarded as a gift made to, or for the benefit of, any other member of the partnership who was related to the taxpayer, and

(d) where, by means of the partnership, the taxpayer carried on before 1972 a business that was a profession, the amount that the taxpayer's 1971 receivables (within the meaning assigned by subsection 23(5)) in respect of the business would have been if, before 1972, the taxpayer had carried on no businesses except by means of the partnership,

exceeds the total of

(e) all amounts each of which is an amount in respect of the disposition by the taxpayer before the particular time of a part of the taxpayer's interest in the partnership, equal to such portion of,

(i) where the disposition was made before 1972, the actual cost to the taxpayer of the interest, and

(ii) in any other case, the adjusted cost base to the taxpayer of the interest immediately before the disposition,

as can reasonably be regarded as attributable to the part so disposed of,

(f) all amounts each of which is an amount in respect of a fiscal period of the partnership that ended before 1972, equal to the total of

(i) the amount that would have been the taxpayer's loss from the partnership for the taxation year of the taxpayer in which the period ended if the former Act had been read without reference to subsection 83(5) of that Act,

(ii) the taxpayers' share, determined at the end of the period, of all losses sustained from dispositions in the period of capital assets that were partnership property of the partnership, to the extent that those losses were not included in computing the loss or income, as the case may be, from the partnership, of any member thereof, and

(iii) the taxpayer's share, determined at the end of the period, of such of the drilling and exploration expenses, including all general geological and geophysical expenses incurred by the partnership while the taxpayer was a member thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred in the period and after 1948, to the extent that those expenses were not deducted in computing the taxpayer's income from the partnership for the

taxpayer's 1971 or any preceding taxation year, and

(g) all amounts received by the taxpayer before 1972 as, on account of, in lieu of payment of or in satisfaction of, a distribution of the taxpayer's share of the partnership profits or partnership capital.

(15) Idem — For the purposes of this section and subsection 88(2.1) of the amended Act, the "actual cost" to a taxpayer, as of any particular time after 1971, of any shares (in this subsection referred to as "new shares") of any class of the capital stock of a new corporation formed as a result of an amalgamation of two or more corporations (within the meaning of section 85I of the former Act as it read in its application to the 1971 taxation year) that were

(a) owned by the taxpayer on December 31, 1971, and thereafter without interruption until the particular time, and

(b) acquired by the taxpayer by the conversion, because of the amalgamation, of shares of the capital stock of a predecessor corporation into shares of the capital stock of the new corporation,

means that proportion of the actual cost to the taxpayer of any shares owned by the taxpayer that were so converted because of the amalgamation that the fair market value, immediately after the amalgamation, of the new shares of that class so acquired by the taxpayer is of the fair market value, immediately after the amalgamation, of all of the shares of the capital stock of the new corporation so acquired by the taxpayer.

Pre-RSC History: All that portion of subsec. 26(15) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(2), applicable after December 31, 1978, to add "and subsection 88(2.1) of the amended Act".

(16) Idem — For the purposes of this section, the "actual cost" to an individual, as of any particular time after 1971, of any share of the capital stock of a corporation that was

(a) owned by the individual on December 31, 1971 and thereafter without interruption until the particular time, and

(b) acquired by the individual in a taxation year before 1972 under an agreement referred to in subsection 85A(1) of the former Act as it read in its application to that taxation year,

means an amount equal to the greater of

(c) the actual cost to the individual of the share computed without regard to this subsection, and

(d) the fair market value of the share at the time the individual so acquired it.

(17) Idem — For the purposes of this section and subsection 88(2.1) of the amended Act, the "actual cost" to a taxpayer, as of any particular time after 1971, of any capital property received by the taxpayer before 1972 and owned by the taxpayer thereafter without interruption until the particular time means,

(a) where the property was so received as, on account of, in lieu of payment of or in satisfaction of, a dividend payable in kind (other than a stock dividend) in respect of a share owned by the taxpayer of the capital stock of a corporation, the fair market value of that property at the time the property was so received;

(b) where the property so received was a share of the capital stock of a corporation received by the taxpayer as a stock dividend, the amount that, because of the receipt of the share, was deemed by subsection 81(3) of the former Act to have been received by the taxpayer as a dividend; and

(c) where the property was so received from a pension fund or plan, an employees profit sharing plan, a retirement savings plan, a deferred profit sharing plan or a supplementary unemployment benefit plan, the fair market value of that property at the time the property was so received.

Pre-RSC History: All that portion of subsec. 26(17) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(3), applicable after December 31, 1978, to add "and subsection 88(2.1) of the amended Act".

Para. 26(17)(c) added by 1974-75-76, c. 26, subsec. 131(10).

(17.1) Application — Where a taxpayer is deemed to have acquired a property because of subsection 138(11.3) of the amended Act, this section does not apply in respect of any subsequent disposition or deemed disposition of the property.

Pre-RSC History: Subsec. 26(17.1) added by 1980-81-82-83, c. 140, subsec. 133(4), applicable to taxation years commencing after November 12, 1981.

Interpretation Bulletins: IT-88R2: Stock dividends. See also list at end of ITAR 26.

(18) Transfer of farm land by a farmer to [the farmer's] child at death — Where

(a) a taxpayer owned, on December 31, 1971 and thereafter without interruption until the taxpayer's death, any land referred to in subsection 70(9) of the amended Act,

(b) the land has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death of the taxpayer, and

(c) it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the legal representative of the taxpayer within that period, within such longer period as the Minister considers reasonable in the circumstances, that the land has become vested indefeasibly in the child,

the following rules apply:

(d) paragraph 70(9)(b) of the amended Act does not apply for the purpose of determining the cost to the child of the land or part thereof, as the case may be, and

(e) subsection (5) applies in respect of the transfer or distribution of the land to the child as if the references in that subsection to "June 18, 1971" were references to "December 31, 1971".

Related Provisions: ITAR 26(20) — Extended meaning of "child".

Pre-RSC History: Para. 26(18)(c) substituted by 1985, c. 45, subsec. 131(4), applicable

(a) with respect to deaths occurring after 1984; and

(b) with respect to any property of a taxpayer who died after 1981 and before 1985 if the taxpayer's legal representative and each person to whom any interest in the property is transferred or distributed as a consequence of the death of the taxpayer jointly elect to have this paragraph apply by notifying the Minister of National Revenue in writing on or before the day that is 90 days after October 29, 1985.

Para. 26(18)(c) formerly read:

(c) the land can, within 15 months after the death of the taxpayer or such longer period as is reasonable in the circumstances, be established to have become vested indefeasibly in the child not later than 15 months after the death of the taxpayer,

Para. 26(18)(c) substituted by 1976-77, c. 4, subsec. 80(3), applicable to 1972 *et seq.*

Interpretation Bulletins: IT-349R3: Intergenerational transfers of farm property on death; IT-449R: Meaning of "vested indefeasibly". See also list at end of ITAR 26.

(19) *Inter vivos* transfer of farm land by a farmer to child — Where a taxpayer owned, on December 31, 1971, and thereafter without interruption until a transfer thereof by the taxpayer to the taxpayer's child, in circumstances to which subsection 73(3) of the amended Act applies, land referred to in that subsection,

(a) paragraph 73(3)(d) of the amended Act does not apply for the purpose of determining the cost to the child of the land; and

(b) subsection (5) shall apply in respect of the transfer of the land to the child as if the references in that subsection to "June 18, 1971" were references to "December 31, 1971".

Related Provisions: ITAR 26(20) — Extended meaning of "child".

Interpretation Bulletins: IT-268R4: *Inter vivos* transfer of farm property to child. See also list at end of ITAR 26.

(20) Extended meaning of "child" — For the purposes of subsections (18) and (19), "child" of a taxpayer includes

(a) a child of the taxpayer's child;

(b) a child of the taxpayer's child's child; and

(c) a person who, at any time before attaining the age of 21 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control.

Related Provisions: ITA 70(10) — Extended meaning of "child".

Pre-RSC History: Subsec. 26(20) substituted by 1984, c. 45, s. 97, applicable with respect to transfers or distributions of property occurring after 1983. Subsec. 26(20) formerly read:

(20) Extended meaning of "child" — For the purposes of subsections (18) and (19), "child" of a taxpayer includes a child of his child and a child of his child's child.

Subsecs. 26(15)–(20) added by 1973-74, c. 14, subsec. 75(7).

(21) Shares received on amalgamation — Where, after May 6, 1974, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation"), and

(a) any shareholder (except any predecessor corporation) owned shares of the capital stock of a predecessor corporation on December 31, 1971 and thereafter without interruption until immediately before the amalgamation,

(b) any shares referred to in paragraph (a) were shares of one class of the capital stock of a predecessor corporation (in this subsection referred to as the "old shares"),

(c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation other than shares of one class of the capital stock of the new corporation (in this subsection referred to as the "new shares"), and

(c.1) the cost of the new shares received by the shareholder because of the amalgamation was determined otherwise than because of paragraph 87(4)(e) of the amended Act,

notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(d) the property that was the old shares shall be deemed not to have been disposed of by the shareholder because of the amalgamation but to have been altered, in form only, because of the amalgamation and to have continued in existence in the form of the new shares, and

(e) the property that is the new shares shall be deemed not to have been acquired by the shareholder because of the amalgamation but to have been in existence prior thereto in the form of the old shares that were altered, in form only, because of the amalgamation.

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

Pre-RSC History: Para. 26(21)(c) substituted, para. 26(21)(c.1) added by 1980-81-82-83, c. 48, subsec. 116(1), applicable with respect to transactions occurring after December 11, 1979. Para. 26(21)(c) formerly read:

(c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation other than shares of one class of the capital stock of the new corporation (in this paragraph referred to as the "new shares"),

All that portion of subsec. 26(21) following para. (c) and preceding para. (d) substituted by 1977-78, c. 1, subsec. 105(4), to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)", applicable after December 31, 1978.

Subsec. 26(21) substituted by 1974-75-76, c. 26, subsec. 131(11). Subsec. 26(21), as it read before March 13, 1975, is repealed in respect of amalgamations occurring after May 6, 1974 and subsec. 26(21), as enacted by subsec. 131(11), is applicable in respect of amalgamations occurring after that date. Subsec. 26(21) formerly read:

(21) Where, after January 31, 1973, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which corporations is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation"), notwithstanding any other provision of these Rules or of the amended Act, the following rules apply in respect of each shareholder (except any predecessor corporation) who owned shares of the capital stock of a predecessor corporation on December 31, 1971 and thereafter without interruption until immediately before the amalgamation:

(a) where any such shares were preferred shares of one class of the capital stock of a predecessor corporation (in this paragraph referred to as the "old preferred shares") and no consideration was received by the shareholder for the disposition of the old preferred shares on the amalgamation other than preferred shares of one class of the capital stock of the new corporation (in this paragraph referred to as the "new preferred shares") having substantially the same rights and conditions attaching thereto (determined without regard to any voting rights attaching to any shares) as attached to the old preferred shares so disposed of by him, for the purposes of subparagraphs 89(1)(l)(ii) and (vii) of the amended Act and of determining the cost to the shareholder and the adjusted cost base to the shareholder of the new preferred shares,

(i) the property that was the old preferred shares shall be deemed not to have been disposed of by the shareholder by virtue of the amalgamation but to have been altered, in form only, by virtue thereof and to have continued in existence in the form of the new preferred shares, and

(ii) the property that is the new preferred shares shall be deemed not to have been acquired by the shareholder by virtue of the amalgamation, but to have been in existence prior thereto in the form of the old preferred shares that were altered, in form only, by virtue of the amalgamation; and

(b) where any such shares were common shares of one class of the capital stock of a predecessor corporation (in this paragraph referred to as the "old common shares") and no consideration

was received by the shareholder for the disposition of the old common shares on the amalgamation other than common shares of one class of the new corporation (in this paragraph referred to as the "new common shares"), and the cost to him of the new common shares would, but for this paragraph, be determined under subparagraph 87(4)(b)(v) of the amended Act, for the purposes of subparagraphs 89(1)(l)(ii) and (vii) of the amended Act and of determining the cost to the shareholder and the adjusted cost base to the shareholder of the new common shares,

(i) the property that was the old common shares shall be deemed not to have been disposed of by the shareholder by virtue of the amalgamation but to have been altered, in form only, by virtue thereof and to have continued in existence in the form of the new common shares, and

(ii) the property that is the new common shares shall be deemed not to have been acquired by the shareholder by virtue of the amalgamation, but to have been in existence prior thereto in the form of the old common shares that were altered, in form only, by virtue of the amalgamation.

Subsec. 26(21) added by 1973-74, c. 30, s. 28.

(22) Options received on amalgamations — Where, after May 6, 1974, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation") and a taxpayer has acquired an option to acquire capital property that was shares of the capital stock of the new corporation (in this subsection referred to as the "new option") as sole consideration for the disposition on the amalgamation of an option to acquire shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old option") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the amalgamation, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new option,

(a) the property that was the old option shall be deemed not to have been disposed of by the taxpayer because of the amalgamation but to have been altered, in form only, because of the amalgamation and to have continued in existence in the form of the new option; and

(b) the property that is the new option shall be deemed not to have been acquired by the taxpayer because of the amalgamation but to have been in existence prior thereto in the form of the old option that was altered, in form only, because of the amalgamation.

Pre-RSC History: All that portion of subsec. 26(22) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(5), to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)", applicable after December 31, 1978.

Subsec. 26(22) added by 1974-75-76, c. 26, subsec. 131(11).

(23) Obligations received on amalgamations — Where, after May 6, 1974, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more corporations (each of which is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation") and a taxpayer has acquired a capital property that was a bond, debenture, note, mortgage or other similar obligation of the new corporation (in this subsection referred to as the "new obligation") as sole consideration for the disposition on the amalgamation of a bond, debenture, note, mortgage or other similar obligation respectively of a predecessor corporation (in this subsection referred to as the "old obligation") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the amalgamation, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new obligation,

(a) the property that was the old obligation shall be deemed not to have been disposed of by the taxpayer because of the amalgamation but to have been altered, in form only, because of the amalgamation and to have continued in existence in the form of the new obligation; and

(b) the property that is the new obligation shall be deemed not to have been acquired by the taxpayer because of the amalgamation but to have been in existence prior thereto in the form of the old obligation that was altered, in form only, because of the amalgamation.

Pre-RSC History: All that portion of subsec. 26(23) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(6), to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)", applicable after December 31, 1978.

Subsec. 26(23) added by 1974-75-76, c. 26, subsec. 131(11).

(24) Convertible properties — Where there has been an exchange to which subsection 51(1) of the amended Act applies on which a taxpayer has acquired shares of one class of the capital stock of a corporation (in this subsection referred to as the "new shares") in exchange for a share, bond, debenture or note of the corporation (in this subsection referred to as the "old property") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the time of the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and, where the exchange occurred after May 6, 1974, for the purposes of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(a) the property that was the old property shall be deemed not to have been disposed of by the taxpayer because of the exchange but to have been altered, in form only, because of the exchange and to have continued in existence in the form of the new shares; and

(b) the property that is the new shares shall be deemed not to have been acquired by the taxpayer because of the exchange but to have been in existence prior thereto in the form of the old property that was altered, in form only, because of the exchange.

Pre-RSC History: All that portion of subsec. 26(24) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 116(2), applicable with respect to transactions occurring after December 11, 1979, to substitute "subsection 51(1)" for "section 51" and "whereby" for "on which".

All that portion of subsec. 26(24) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(7), to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)", applicable after December 31, 1978.

Subsec. 26(24) added by 1974-75-76, c. 26, subsec. 131(11).

Interpretation Bulletins: IT-146R3: Shares entitling shareholders to choose taxable or other kinds of dividends; IT-474R: Amalgamations of Canadian corporations. See also list at end of ITAR 26.

(25) Bond conversion — Where, after May 6, 1974, there has been an exchange to which section 51.1 of the amended Act applies on which a taxpayer has acquired a bond of a debtor (in this subsection referred to as the "new bond") in exchange for another bond of the same debtor (in this subsection referred to as the "old bond")

owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new bond,

(a) the property that was the old bond shall be deemed not to have been disposed of by the taxpayer because of the exchange but to have been altered, in form only, because of the exchange and to have continued in existence in the form of the new bond; and

(b) the property that is the new bond shall be deemed not to have been acquired by the taxpayer because of the exchange but to have been in existence prior thereto in the form of the old bond that was altered, in form only, because of the exchange.

Pre-RSC History: The opening words of subsec. 26(25) amended by 1998, c. 19, subsec. 249(2), applicable to exchanges that occur after October 1994. The opening words formerly read:

(25) Bond conversion — Where, after May 6, 1974, there has been an exchange to which section 77 of the amended Act applies on which a taxpayer has acquired a bond of a debtor (in this subsection referred to as the "new bond") in exchange for another bond of the same debtor (in this subsection referred to as the "old bond") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new bond,

All that portion of subsec. 26(25) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(8), to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)", applicable after December 31, 1978.

Subsec. 26(25) added by 1974-75-76, c. 26, subsec. 131(11).

(26) Share for share exchange — Where, after May 6, 1974, there has been an exchange to which subsection 85.1(1) of the amended Act applies on which a taxpayer has acquired shares of any particular class of the capital stock of a corporation (in this subsection referred to as the "new shares") in exchange for shares of any particular class of the capital stock of another corporation (in this subsection referred to as the "old shares") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(a) the property that was the old shares shall be deemed not to have been disposed of by the taxpayer because of the exchange but to have been altered, in form only, because of the exchange and to have continued in existence in the form of the new shares; and

(b) the property that is the new shares shall be deemed not to have been acquired by the taxpayer because of the exchange but to have been in existence prior thereto in the form of the old shares that were altered, in form only, because of the exchange.

Pre-RSC History: All that portion of subsec. 26(26) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(9), to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)", applicable after December 31, 1978.

Subsec. 26(26) added by 1974-75-76, c. 26, subsec. 131(11).

Interpretation Bulletins: IT-450R: Share for share exchange.

(27) Reorganization of capital — Where, after May 6, 1974, there has been a reorganization of the capital of a corporation to which section 86 of the amended Act applies on which a taxpayer has acquired shares of a particular class of the capital stock of the corporation (in this subsection referred to as the "new shares") as the sole consideration for the disposition on the reorganization of shares of another class of the capital stock of the corporation (in this subsection referred to as the "old shares") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the reorganization and the cost to the taxpayer of the new shares was determined otherwise than because of subsection 86(2) of the amended Act, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

(a) the property that was the old shares shall be deemed not to have been disposed of by the taxpayer because of the reorganization but to have been altered, in form only, because of the reorganization and to have continued in existence in the form of the new shares; and

(b) the property that is the new shares shall be deemed not to have been acquired by the taxpayer by virtue of the reorganization but to have been in existence prior thereto in the form of the old shares that were altered, in form only, because of the reorganization.

Pre-RSC History: All that portion of subsec. 26(27) preceding para. (a) substituted by 1980-81-82-83, c. 48, subsec. 116(3), applicable with respect to transactions occurring after December 11, 1979. That portion formerly read:

(27) Where, after May 6, 1974, there has been a reorganization of the capital of a corporation to which section 86 of the amended Act applies on which a taxpayer has acquired shares of a particular class of the capital stock of the corporation (in this subsection referred to as the "new shares") as the sole consideration for the disposition on the reorganization of shares of another class of the capital stock of the corporation (in this subsection referred to as the "old shares") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the reorganization, notwithstanding any other provision of these Rules or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new shares,

All that portion of subsec. 26(27) preceding para. (a) substituted by 1977-78, c. 1, subsec. 105(10), applicable after December 31, 1978, to substitute "subsection 88(2.1)" for "subparagraphs 89(1)(l)(ii) and (xiv)".

Subsec. 26(27) added by 1974-75-76, c. 26, subsec. 131(11).

Advance Tax Rulings: ATR-22R: Estate freeze using share exchange.

(28) Idem — Where a taxpayer acquired a property (in this subsection referred to as the "first property") in circumstances to which any of subsections (5) and (21) to (27) applied and subsequently acquires, in exchange for or in consideration for the disposition of the first property, another property in circumstances to which any of subsections (21) to (27) would apply if the taxpayer had owned the first property on December 31, 1971 and thereafter without interruption until the time of the subsequent acquisition, for the purposes of applying subsections (21) to (27) in respect of that subsequent acquisition, the taxpayer shall be deemed to have owned the first property on December 31, 1971 and thereafter without interruption until the time of the subsequent acquisition.

History: Subsec. 26(28) added by 1994, c. 7, Sch. II (1991, c. 49), s. 200, applicable to acquisitions of property occurring after July 13, 1990, except that, where the taxpayer so elected by notifying the Minister of National Revenue in writing either before 1993 or in the taxpayer's return of in-

come under Part I of the Act for the taxation year in which the taxpayer disposed of the property, the subsec. applies to acquisitions occurring after May 6, 1974 and before July 14, 1990 with respect to property that was owned by the taxpayer on July 13, 1990.

Interpretation Bulletins: IT-450R: Share for share exchange.

(29) Effect of election under subsection 110.6(19) — Where subsection 110.6(19) of the amended Act applies to a particular property, for the purposes of determining the cost and the adjusted cost base to a taxpayer of any property at any time after February 22, 1994, the particular property shall be deemed not to have been owned by any taxpayer on December 31, 1971.

Related Provisions: ITAR 26(30) — Disposition by non-resident of taxable Canadian property.

History: Subsec. 26(29) added by 1995, c. 3, s. 57, in force March 26, 1995.

(30) Additions to taxable Canadian property — Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a taxable Canadian property that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995.

Proposed Amendment — ITAR 26(30)

(30) Additions to taxable Canadian property — Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a property

(a) that the person last acquired before April 27, 1995;

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995; and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on January 1, 1996.

Related Provisions: ITA 40(9) — Gains limited to those accruing after April 1995.

Application: The June 5, 2000 Notice of Ways and Means Motion, s. 120, will amend subsec. 26(30) to read as above, applicable to dispositions that occur after October 1, 1996.

Technical Notes: Section 26 of the *Income Tax Application Rules* sets out the method for computing the adjusted cost base to a taxpayer of certain capital property owned by the taxpayer at the end of 1971. The general purpose of section 26 is to prevent gains that accrued before 1972 from being subject to tax.

Subsection 26(30) of the Rules provides that dispositions by non-residents persons of certain types of property are not within the application of subsections 26(1.1) to (29) of the rules. Essentially, these are properties that became taxable Canadian properties because of changes to the definition "taxable Canadian property" that took effect in April, 1995. The relief provided by section 26 is not needed for such properties, as subsection 40(9) of the *Income Tax Act* ensures that a non-resident person's gains or losses on the disposition of such properties are limited to those that accrued after April 1995.

This amendment to subsection 26(30) of the rules ensures that the provision does not apply to property that becomes taxable Canadian property as a result of these proposals. The amendment applies to dispositions that occur after October 1, 1996.

History: Subsec. 26(30) added by 1998, c. 19, subsec. 249(3), applicable to dispositions that occur after April 26, 1995.

Definitions [ITAR 26]: "actual cost" — ITAR 26(5)(b), (6)(b), (c), (8)(c)(i), 26(13)–(17); "adjusted cost base" — ITA 54, 248(1); "amended Act" — ITAR 8; "amortized cost" — ITAR 26(5)(b), (6)(b), (c), 26(12); "amount" — ITA 248(1); "arm's length" — ITAR 26(5.1), (5.2); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "capital property" — ITA 54, ITAR 26(8.3), (8.4), (12); "child" — ITAR 26(20); "consequence" — 248(8); "corporation" — ITA 248(1), ITAR 26(8.5); "cost amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "depreciable property" — ITA 13(21), 248(1); "discount" — ITAR 26(12); "dividend" — ITA 248(1); "eligible capital amount" — ITA 14(1), 248(1); "eligible capital property" — ITAR 26(12); "employees profit sharing plan" — ITA 144(1), 248(1); "fair market value on valuation day" — ITAR 26(8)(b)(ii), (c)(ii), 26(11); "first property" — ITAR 26(28); "fiscal period" — ITA 249.1; "foreign affiliate" — ITA 95(1), 248(1); "former Act" — ITAR 8; "identical" — ITA 248(12), ITAR 26(8.1), (8.2); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "individual", "legal representative", "life insurance business", "life insurance corporation" — ITA 248(1); "listed personal property" — ITA 54, 248(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "new bond" — ITAR 26(25); "new corporation" — ITAR 26(21)–(23); "new obligation" — ITAR 26(23); "new option" — ITAR 26(22); "new shares" — ITAR 26(21)(c), 26(24), (26), (27); "non-resident" — ITA 248(1); "obligation" — ITAR 26(1.1), (12); "old bond" — ITAR 26(25); "old obligation", "old option" — ITAR 26(22); "old property" — ITAR 26(24); "old shares" — ITAR 26(21)(b), 26(26), (27); "original owner" — ITAR 26(5); "owned" — ITAR 26(6)(a), 26(28); "person" — ITA 248(1); "personal-use property" — ITA 54, 248(1); "predecessor corporation" — ITAR 26(21)–(23); "premium" — ITAR 26(12); "prescribed", "principal amount", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "retirement savings plan" — ITA 146(1), 248(1); "share", "shareholder", "stock dividend" — ITA 248(1); "subsequent owner" — ITAR 26(5); "supplementary unemployment benefit plan" — ITA 145(1), 248(1); "tax equity" — ITAR 26(12); "taxable Canadian property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1); "valuation day" — ITAR 24; "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

26.1 (1) Change of use of property before 1972 — For the purposes of paragraph 40(2)(b) and the definition "principal residence" in section 54 of the amended Act, where a taxpayer owned, on December 31, 1971, a property that is a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a cooperative housing corporation, if the housing unit was, or if the share was acquired for the sole purpose of acquiring the right to inhabit, a housing unit owned by the corporation that was ordinarily inhabited by the taxpayer, and the taxpayer began at any time thereafter but before 1972 to use the property for the purpose of gaining or producing income therefrom, or for the purpose of gaining or producing income from a business, and the taxpayer elected in the taxpayer's return of income for the 1974 or 1975 taxation year as if the taxpayer had begun to use the property for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business on January 1, 1972, the taxpayer shall be deemed to have made an election under subsection 45(2) of the amended Act in the taxpayer's return of income for the 1972 taxation year and to have so begun to use the property.

(2) No capital cost allowance while election in force — Where the taxpayer has made the election described in subsection (1), no amount may be deducted under paragraph 20(1)(a) of the amended Act for the 1974 and subsequent taxation years in respect of property referred to in that subsection while the election remains in force.

Pre-RSC History: S. 26.1 added by 1974-75-76, c. 26, s. 132, deemed to have come into force on May 6, 1974.

Definitions [ITAR 26.1]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "property", "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

27, 28. [Repealed under former Act]

Pre-RSC History: Ss. 27, 28 repealed by 1985, c. 45, s. 132. Ss. 27, 28 formerly read:

27. Moving expenses — For greater certainty, section 62 of the amended Act does not apply to permit the deduction, in computing a taxpayer's income for a taxation year, of any amounts paid by him as or on account of moving expenses incurred in the course of moving, before 1972, from one residence to another residence.

28. (1) Income derived from operation of mine — Subject to prescribed conditions, there shall not be included in computing the income of a corporation, income derived from the operation of a mine that came into production before 1974 to the extent that such income is gained or produced during the period commencing with the day on which the mine came into production and ending with the earlier of December 31, 1973 and the day 36 months after the day the mine came into production, except that this subsection does not apply in respect of any mine that came into production after November 7, 1969 unless the corporation so elects in respect thereof in prescribed manner and within prescribed time.

(1.1) Income derived from the operation of a mine defined — The expression "income derived from the operation of a mine" is, for the purposes of this section and section 83 of the former Act as it read in its application to the 1971 and preceding taxation years, hereby declared to include and always to have included the income of a corporation from the processing, to the prime metal stage or its equivalent, of ore from a mineral resource owned by the corporation.

(2) Definitions — In this section,

(a) income derived from the operation of a mine — "income derived from the operation of a mine" means the income derived from the operation of the mine before any deduction is made under section 65 or 66 of the amended Act;

(b) mine — "mine" does not include an oil well, gas well, brine well, sand pit, gravel pit, clay pit, shale pit or stone quarry (other than a deposit of oil shale or bituminous sand) but does include a well for the extraction of material from a sylvite deposit and all such wells, the materials produced from which are sent to a single plant for processing, shall be deemed to be one mine; and

(c) production — "production" means production in reasonable commercial quantities.

Subsec. 28(1.1) added by 1974-75-76, c. 26, s. 133.

29. (1) Deduction from income of petroleum or natural gas corporation — A corporation whose principal business is production, refining or marketing of petroleum, petroleum products or natural gas or exploring or drilling for petroleum or natural gas may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred during the calendar years 1949 to 1952, to the extent that they were not deductible in computing income for a previous taxation year, and

(b) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (9), (10) and (25) of this section and sections 112 and 113 of the amended Act.

Related Provisions: ITA 87(1.2) — New corporation deemed continuation of predecessor; ITAR 29(31) — Multiple deductions.

History: Para. 29(1)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(1), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(b) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9), (10) and (25) of this section, sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Pre-RSC History: Para. 29(1)(b) substituted by 1977-78, c. 1, subsec. 106(1), applicable to taxation years ending after May 6, 1974. Para. 29(1)(b) formerly read:

(b) of that aggregate, an amount equal to its income for the taxation year

(i) if no deduction were allowed under section 65 of the amended Act, and

(ii) if no deduction were allowed under this section or section 66 of the amended Act,

minus the deductions allowed for the year by subsections (25) and (29) of this section, subsections 66(6) and (7) of the amended Act and sections 112 and 113 of the amended Act.

(2) Deduction from income of mining corporation — A corporation whose principal business is mining or exploring for minerals may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada as were incurred during 1952, to the extent that they were not deductible in computing income for a preceding taxation year, and

(b) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (9), (10) and (25) of this section and sections 112 and 113 of the amended Act,

if the corporation has filed certified statements of those expenses and has satisfied the Minister that it has been actively engaged in prospecting and exploring for minerals in Canada by means of qualified persons and has incurred the expenses for those purposes.

History: Para. 29(2)(b) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(2), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(b) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9), (10) and (25) of this section, sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Pre-RSC History: Para. 29(2)(b) substituted by 1977-78, c. 1, subsec. 106(2), applicable to taxation years ending after May 6, 1974. Para. 29(2)(b) formerly read:

(b) of that aggregate, an amount equal to its income for the taxation year

(i) if no deduction were allowed under section 65 of the amended Act, and

(ii) if no deduction were allowed under this section or section 66 of the amended Act,

minus the deductions allowed for the year by subsections (25) and (29) of this section, subsections 66(6) and (7) of the amended Act and sections 112 and 113 of the amended Act,

(3) Deduction from income of petroleum or natural gas corporation or mining corporation — A corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

may deduct, in computing its income for a taxation year, the lesser of

(c) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after 1952 and before April 11, 1962, to the extent that they were not deductible in computing income for a previous taxation year, and

(d) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (1), (2), (9), (10) and (25) of this section and sections 112 and 113 of the amended Act.

Related Provisions: ITAR 29(31) — Multiple deductions.

History: Para. 29(3)(d) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(3), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(d) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (1), (2), (9), (10) and (25) of this section, sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Pre-RSC History: Para. 29(3)(d) substituted by 1977-78, c. 1, subsec. 106(3), applicable to taxation years ending after May 6, 1974. Para. 29(3)(d) formerly read:

(d) of that aggregate, an amount equal to its income for the taxation year

(i) if no deduction were allowed under section 65 of the amended Act, and

(ii) if no deduction were allowed under this section or section 66 of the amended Act,

minus the deductions allowed for the year by subsections (1), (2), (25) and (29) of this section, subsections 66(6) and (7) of the amended Act and sections 112 and 113 of the amended Act.

(4) Deduction from income of petroleum corporation, etc. — A corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) processing mineral ores for the purpose of recovering metals therefrom,

(d) a combination of

(i) processing mineral ores for the purpose of recovering metals therefrom, and

(ii) processing metals recovered from the ores so processed,

(e) fabricating metals, or

(f) operating a pipeline for the transmission of oil or natural gas,

may deduct, in computing its income for a taxation year, the lesser of

(g) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it on searching for minerals in Canada,

as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing income for a previous taxation year, and

(h) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act.

Related Provisions: ITAR 29(31) — Multiple deductions.

History: Para. 29(4)(h) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(4), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(h) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this subsection or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, Revised Statutes of Canada, 1952.

Pre-RSC History: Para. 29(4)(h) substituted by 1977-78, c. 1, subsec. 106(4), applicable to taxation years ending after May 6, 1974. Para. 29(4)(h) formerly read:

(h) of that aggregate, an amount equal to its income for the taxation year

(i) if no deduction were allowed under section 65 of the amended Act, and

(ii) if no deduction were allowed under this section or section 66 of the amended Act,

minus the deductions allowed for the year by subsections (1), (2), (3), (9), (10), (24), (25) and (29) of this section, subsections 66(2), (6) and (7) of the amended Act and sections 112 and 113 of the amended Act.

(5) Application of para. (4)(g) — In applying paragraph 4(g) to a corporation described in paragraph (4)(f), the reference in paragraph (4)(g) to "April 10, 1962" shall be read as a reference to "June 13, 1963".

(6), (7), (8) [Repealed effective 2007]

History: Subsecs. 29(6) to (8) repealed by 1997, c. 25, s. 73, applicable to renunciations made

(a) after 2006, in respect of a payment or loan received by a joint exploration corporation before March 6, 1996;

(b) after 2006, in respect of a payment or loan received by a joint exploration corporation after March 5, 1996 under an agreement in writing made

(i) by the corporation before March 6, 1996, or

(ii) by another corporation before March 6, 1996, where

(A) the other corporation controlled the corporation at the time the agreement was made, or

(B) the other corporation undertook, at the time the agreement was made, to form the corporation; and

(c) after March 5, 1996, in any other case.

Subsecs. (6) to (8) formerly read:

(6) Joint exploration corporation may renounce expenses — A joint exploration corporation may, in any particular taxation year or within 6 months after the end of that year, elect in prescribed form to renounce in favour of another corporation described in subsection (4) an agreed portion of the total of such of

(a) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the joint exploration corporation on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(b) the prospecting, exploration and development expenses incurred by the joint exploration corporation in searching for minerals in Canada,

as were incurred by the joint exploration corporation during a period after 1956 and before April 11, 1962 throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds any amount deductible under subsection (3) in respect thereof by the joint exploration corporation in computing its income for any taxation year preceding the particular year, and on the election the agreed portion

(c) shall be deemed, for the purposes of subsection (4) of this section and sections 66, 66.1 and 66.2 of the amended Act, to be expenses described in paragraphs (a) and (b) of this subsection incurred by the other corporation during its taxation year in which the particular taxation year ends, and

(d) shall be subtracted from the total described in paragraph (3)(c) in determining the amount deductible by the joint exploration corporation under subsection (3) in computing its income.

(7) **Idem** — A joint exploration corporation may, in any particular taxation year or within 6 months from the end of that year, elect in prescribed form to renounce in favour of another corporation described in subsection (4) an agreed portion of the total of such of

(a) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the joint exploration corporation on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(b) the prospecting, exploration and development expenses incurred by the joint exploration corporation in searching for minerals in Canada,

as were incurred by the joint exploration corporation during a period after April 10, 1962 and before 1972 throughout which the other corporation was a shareholder corporation, to the extent that the total of those expenses exceeds any amount deductible under subsection (4) in respect thereof by the joint exploration corporation in computing its income for any taxation year preceding the particular year, and on the election the agreed portion

(c) shall be deemed, for the purposes of subsection (4) of this section and sections 66, 66.1 and 66.2 of the amended Act, to be expenses described in paragraphs (a) and (b) of this subsection incurred by the other corporation during its taxation year in which the particular taxation year ends, and

(d) shall be subtracted from the total described in paragraph (4)(g) in determining the amount deductible by the joint exploration corporation under subsection (4) in computing its income.

(8) **Definitions** — For the purposes of subsections (6) and (7),

"agreed portion" in respect of a corporation that was a shareholder corporation of a joint exploration corporation means such amount as is agreed on between the joint exploration corporation and the other corporation not exceeding

(a) the payments referred to in paragraph (c) of the definition "shareholder corporation" in this subsection made by the other corporation to the joint exploration corporation during the period it was a shareholder corporation in respect of the expenses incurred by the joint exploration corporation referred to in paragraphs (6)(a) and (b) or (7)(a) and (b), as the case may be,

minus

(b) the total of the amounts, if any, previously renounced by the joint exploration corporation under subsection (6) or (7), as the case may be, in favour of the other corporation;

"joint exploration corporation" means a corporation

(a) whose principal business is of a class described in paragraph (3)(a) or (b), and

(b) that has not at any time since its incorporation had more than 10 shareholders (not including any individual holding a share for the sole purpose of qualifying as a director);

a "shareholder corporation" of a joint exploration corporation means a corporation that for the period in respect of which the expression is being applied

(a) was a shareholder of the joint exploration corporation,

(b) was a corporation whose principal business was of a class described in subsection (4), and

(c) made payments to the joint exploration corporation in respect of the expenses incurred by the joint exploration corporation referred to in paragraphs (6)(a) and (b) or (7)(a) and (b), as the case may be.

Pre-RSC History: *The definition "agreed portion" was para. 29(9)(c); "joint exploration corporation", para. 29(9)(a); "shareholder corporation", para. 29(9)(b).*

All those portions of subsec. 29(6) preceding para. (a) and following para. (b) and all those portions of subsec. 29(7) preceding para. (a) and following para. (b) substituted by 1977-78, c. 1, subsecs. 106(5) to (8), applicable with respect to elections made for a joint exploration corporation's 1977 *et seq.* Those portions formerly read:

(6) A joint exploration corporation may in a taxation year elect in prescribed form to renounce in favour of another corporation described in subsection (4) an agreed portion of the aggregate of such of

. . . . .

as were incurred by the joint exploration corporation, during a period, after the calendar year 1956 and before April 11, 1962, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deductible under subsection (3) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the year in which the election was made, and upon the election the said agreed portion

(c) shall be deemed, for the purpose of subsection (4) of this section and section 66 of the amended Act, to be expenses described in paragraphs (a) and (b) of this subsection incurred by the other corporation in the taxation year of the corporation in which the election was made, and

(d) shall be subtracted from the aggregate described in paragraph (3)(c) in determining the amount deductible by the joint exploration corporation under subsection (3) in computing its income.

. . . . .

(7) A joint exploration corporation may in a taxation year elect in prescribed form to renounce in favour of another corporation described in subsection (4) an agreed portion of the aggregate of such of

. . . . .

as were incurred by the joint exploration corporation, during a period, after April 10, 1962 and before 1972, throughout which the other corporation was a shareholder corporation, to the extent that the aggregate of such expenses exceeds any amount deductible under subsection (4) in respect thereof by the joint exploration corporation in computing its income for any taxation year previous to the year in which the election was made, and upon the election the said agreed portion

. . . . .

(c) shall be deemed, for the purpose of subsection (4) of this section and section 66 of the amended Act, to be expenses described in paragraphs (a) and (b) of this subsection incurred by the other corporation in the taxation year of the corporation in which the election was made, and

(d) shall be subtracted from the aggregate described in paragraph (4)(g) in determining the amount deductible by the joint exploration corporation under subsection (4) in computing its income.

(9) Deduction from income from businesses of associations, etc. — There may be deducted in computing the income of a taxpayer for a taxation year from the businesses of all associations, partnerships or syndicates formed for the purpose of exploring or drilling for petroleum or natural gas and of which the taxpayer was a member or partner, the lesser of

(a) the total of the taxpayer's share of such of the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by all those associations, partnerships or syndicates while the taxpayer was a member or partner thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred after 1948 and before April 11, 1962, to the extent that they were not

deductible in computing the taxpayer's income for a preceding taxation year, and

(b) of that total, an amount equal to the taxpayer's income from the businesses of all those associations, partnerships or syndicates for the taxation year, computed before making any deduction under this section or section 65, 66, or 66.1 of the amended Act.

Pre-RSC History: Para. 29(9)(b) substituted by 1977-78, c. 1, subsec. 106(9), applicable to taxation years ending after May 6, 1974. Para. (b) formerly read:

(b) of that aggregate, an amount equal to his income from the businesses of all such associations, partnerships or syndicates for the taxation year computed before making any deduction under this subsection, subsection (10) of this section or section 66 of the amended Act.

(10) Idem — There may be deducted in computing the income of a taxpayer for the taxation year from the businesses of all associations, partnerships or syndicates formed for the purpose of exploring or drilling for petroleum or natural gas and of which the taxpayer was a member or partner, the lesser of

(a) the total of the taxpayer's share of such of the drilling and exploration expenses, including all general geological and geophysical expenses incurred by all those associations, partnerships or syndicates while the taxpayer was a member or partner thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing the taxpayer's income for a previous taxation year, and

(b) of that total, an amount equal to the taxpayer's income from the businesses of all those associations, partnerships or syndicates for the taxation year computed before making any deduction under this section or section 65, 66, or 66.1 of the amended Act, minus the deduction allowed for the year under subsection (9) of this section.

Related Provisions: 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

Pre-RSC History: Para. 29(10)(b) substituted by 1977-78, c. 1, subsec. 106(10), applicable to taxation years ending after May 6, 1974. Para. (b) formerly read:

(b) of that aggregate, an amount equal to his income from the businesses of all such associations, partnerships or syndicates for the taxation year computed before making any deduction under this subsection or section 66 of the amended Act.

(11) Deduction from income of corporation — A corporation, other than a corporation described in subsection (4), may deduct, in computing its income for a taxation year, the lesser of

(a) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing income for a preceding taxation year, and

(b) of that total, an amount that would be equal to the total of

(i) its income for the taxation year from operating an oil or gas well in Canada in which the corporation has an interest,

(ii) its income for the taxation year from royalties in respect of an oil or gas well in Canada,

(iii) any amount included in computing its income for the taxation year because of subsection (17), and

(iv) the amount, if any, included under paragraph 59(3.2)(b) or (c) of the amended Act in computing its income for the year,

if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsections (9) and (10) of this section and subsection 66(2) of the amended Act.

History: Subpara. 29(11)(b)(iv) substituted applicable to 1985 *et seq.*, and that portion of 29(11)(b) following subpara. (iv) substituted applicable to taxation years ending after February 17, 1987, by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 201(5), (6). Those portions formerly read:

(iv) the total described in clause 66(3)(b)(ii)(C) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1984 and preceding taxation years in respect of the corporation for the year,

if no deduction were allowed under this section, section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9) and (10) of this section, subsection 66(2) of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

Pre-RSC History: All that portion of para. 29(11)(b) following subpara. (iv) substituted by 1977-78, c. 1, subsec. 106(11), applicable to taxation years ending after May 6, 1974. That portion formerly read:

if no deductions were allowed under section 65 or 66 of the amended Act, minus the deductions allowed for the year by subsections (9) and (10) of this section.

(12) Deduction by individual of exploration expenses — There may be deducted, in computing an individual's income for a taxation year, the lesser of

(a) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the individual on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the individual's share of the drilling and exploration expenses, including all general geological and geophysical expenses incurred by all associations, partnerships or syndicates described in subsection (9), while the individual was a member or partner thereof, on or in respect of exploring or drilling for petroleum or natural gas in Canada,

as were incurred after April 10, 1962 and before 1972, to the extent that they were not deductible in computing the individual's income for a preceding taxation year, and

(b) of that total, an amount that would be equal to the total of

(i) the individual's income for the taxation year from a business that consisted of the operation of an oil or gas well in Canada in which the individual had an interest,

(ii) the individual's income for the taxation year from royalties in respect of an oil or gas well in Canada,

(iii) any amount included in computing the individual's income for the taxation year because of subsection (17), and

(iv) the amount, if any, included under paragraph 59(3.2)(b) or (c) of the amended Act in computing the individual's income for the year,

if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, minus the deductions allowed for the year under subsections (9) and (10) of this section.

Related Provisions: 127.52(1)(e) — Limitation on deduction for minimum tax purposes.

History: Subpara. 29(12)(b)(iv) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(7), applicable to 1985 *et seq.* That subpara. formerly read:

(iv) the total described in clause 66(3)(b)(ii)(C) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1984 and preceding taxation years in respect of an individual for the year,

Pre-RSC History: All that portion of para. 29(12)(b) following subpara. (iv) substituted by 1977-78, c. 1, subsec. 106(12), applicable to taxation years ending after May 6, 1974. That portion formerly read:

if no deduction were allowed under this section or section 65 or 66 of the amended Act, minus the deductions allowed for the year under subsections (9) and (10) of this section.

(13) Limitation re payments for exploration and drilling rights — In computing a deduction under subsection (1), (3) or (9), no amount shall be included in respect of a payment for or in respect of a right, licence or privilege to explore for, drill for or take petroleum or natural gas, acquired before April 11, 1962, other than an annual payment not exceeding $1 per acre.

(14) Exploration and drilling rights; payments deductible — Where an association, partnership or syndicate described in subsection (9) or a corporation or individual has, after April 10, 1962 and before 1972, acquired under an agreement or other contract or arrangement a right, licence or privilege to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal) under which agreement, contract or arrangement there was not acquired any other right to, over or in respect of the land in respect of which such right, licence or privilege was so acquired except the right

(a) to explore for, drill for or take materials and substances (whether liquid or solid and whether hydrocarbons or not) produced in association with the petroleum, natural gas or other related hydrocarbons (except coal) or found in any water contained in an oil or gas reservoir, or

(b) to enter on, use and occupy as much of the land as is necessary for the purpose of exploiting the right, licence or privilege,

an amount paid in respect of the acquisition thereof that was paid

(c) before 1972, shall, for the purposes of subsections (4), (7), (10), (11) and (12), be deemed to be a drilling or exploration expense on or in respect of exploring or drilling for petroleum or natural gas in Canada incurred at the time of its payment,

(d) after 1971 and before May 7, 1974, shall, for the purposes of the amended Act, be deemed to be Canadian exploration and development expenses (within the meaning assigned by subsection 66(15) of the amended Act) incurred at the time of its payment, and

(e) after May 6, 1974, shall, for the purposes of the amended Act, be deemed to be a Canadian development expense (within the meaning assigned by paragraph 66.2(5)(a) of the amended Act) incurred at the time of its payment.

Pre-RSC History: All that portion of subsec. 29(14) following para. (b) substituted by 1977-78, c. 1, subsec. 106(13), applicable to taxation years ending after May 6, 1974. That portion formerly read:

an amount paid before 1972 in respect of the acquisition thereof shall, for the purposes of subsections (4), (7), (10), (11) and (12), be deemed to be a drilling or exploration expense on or in respect of exploring or drilling for petroleum or natural gas in Canada incurred at the time of such payment and an amount paid after 1971 in respect of the acquisition thereof shall, for the purposes of the amended Act, be deemed to be Canadian exploration and development expenses (within the meaning assigned by subsection 66(15) of the amended Act) incurred at the time of such payment.

Subsec. 29(14) substituted by 1973-74, c. 14, s. 76.

(15) Idem — In applying subsection (14) for the purposes of subsection (7), the expression "after April 10, 1962 and before 1972" in subsection (14) shall be read as "after April 10, 1962 and before April 27, 1965".

Pre-RSC History: Subsec. 29(15) substituted by 1973-74, c. 14, s. 76.

(16) Receipts for exploration or drilling rights included in income — Where a right, licence or privilege to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal) was disposed of after April 10, 1962 and before October 23, 1968

(a) by a corporation described in subsection (4),

(b) by a corporation, other than a corporation described in subsection (4), that was at the time of acquisition of the right, licence or privilege a corporation described in subsection (4), or

(c) by an association, partnership or syndicate described in subsection (9),

any amount received by the corporation, association, partnership or syndicate as consideration for the disposition thereof shall be included in computing its income for its fiscal period in which the amount was received, unless the corporation, association, partnership or syndicate

(d) acquired the right, licence or privilege by inheritance or bequest, or

(e) acquired the right, licence or privilege before April 11, 1962 and disposed of it before November 9, 1962.

(17) Idem — Where a right, licence or privilege to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal) that was acquired after April 10, 1962 and before 1972 by an individual or a corporation other than a corporation described in subsection (4), was subsequently disposed of before October 23, 1968, any amount received by the taxpayer as consideration for the disposition thereof shall be included in computing the taxpayer's income for the taxation year in which the amount was received, unless the right, licence or privilege was acquired by the taxpayer by inheritance or bequest.

(18) Idem — Subsections (16) and (17) do not apply to any disposition by an association, partnership or syndicate described in subsection (9) or a corporation or an individual of any right, licence or privilege described in subsection (14) or (16) unless the right, licence or privilege was acquired by the association, partnership, syndicate or cor-

poration or individual, as the case may be, under an agreement, contract or arrangement described in subsection (14).

(19) Idem — For the purposes of subsections (16) and (17),

(a) where an association, partnership or syndicate described in subsection (9) or a corporation or an individual has disposed of any interest in land that includes a right, licence or privilege described in subsection (14) that was acquired under an agreement, contract or arrangement described in that subsection, the proceeds of disposition of the interest shall be deemed to be proceeds of disposition of the right, licence or privilege; and

(b) where an association, partnership or syndicate described in subsection (9) or a corporation or an individual has acquired a right, licence or privilege described in subsection (14) under an agreement, contract or arrangement described in that subsection and subsequently disposes of any interest

(i) in such right, licence or privilege, or

(ii) in the production of wells situated on the land to which the right, licence or privilege relates,

the proceeds of disposition of the interest shall be deemed to be proceeds of disposition of the right, licence or privilege.

(20) Idem — Subsections (11), (12) and (17) do not apply in computing the income for a taxation year of a taxpayer whose business includes trading or dealing in rights, licences or privileges to explore for, drill for or take in Canada petroleum, natural gas or other related hydrocarbons (except coal).

(21) Bonus payments — Notwithstanding subsection (13), where a corporation whose principal business is of the class described in paragraph (3)(a) or (b) or an association, partnership or syndicate formed for the purpose of exploring or drilling for petroleum or natural gas has after 1952 paid an amount (other than a rental or royalty) to the government of Canada or a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which right is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

and before April 11, 1962 acquired the rights in respect of which the amount was so paid and, before any well came into production on the land in reasonable commercial quantities, the corporation, association, partnership or syndicate surrendered all the rights so acquired (including, in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or repayment of any part of the amount so paid, the amount so paid shall, for the purposes of subsections (3), (4), (7), (9) and (10) of this section, and for the purposes of subsections 66(1),(10) and (10.1) and the definitions "Canadian exploration and development expenses" in subsection 66(15) and "Canadian exploration expense" in subsection 66.1(6) of the amended Act, be deemed to have been a drilling or exploration expense on or in respect of exploring or drilling for petroleum or natural gas in Canada or a Canadian exploration expense described in paragraph (a) of the definition "Canadian exploration expense" in subsection 66.1(6) of the amended Act, as the case may be, incurred by the corporation, association, partnership or syndicate during the taxation year in which the rights were so surrendered.

Pre-RSC History: All that portion of subsec. 29(21) following para. (b) substituted by 1977-78, c. 1, subsec. 106(14), applicable to taxation years ending after May 6, 1974. That portion formerly read:

> and acquired the rights, before April 11, 1962, in respect of which the amount was so paid and the corporation, association, partnership or syndicate has, before any well came into production on the land in reasonable commercial quantities, surrendered all the rights so acquired (including, in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or repayment of any part of the amount so paid, the amount so paid shall, for the purpose of subsections (3), (4), (7), (9) and (10) of this section, subsections 66(1) and (10) of the amended Act and paragraph 66(15)(b) of the amended Act, be deemed to have been an expense incurred by the corporation, association, partnership or syndicate as a drilling or exploration expense on or in respect of exploring or drilling for petroleum or natural gas in Canada during the taxation year in which its rights were so surrendered.

(22) Idem — In applying the provisions of subsection (25) to determine the amount that may be deducted by a successor corporation in computing its income for a taxation year, where the predecessor corporation has paid an amount (other than a rental or royalty) to the government of Canada or a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

if, before the predecessor corporation was entitled, by virtue of subsection (21), to any deduction in computing its income for a taxation year in respect of the amount so paid, the property of the predecessor corporation was acquired by the successor corporation before April 11, 1962 in the manner set out in subsection (25), and the successor corporation did, before any well came into production in reasonable commercial quantities on the land referred to in paragraph (a) or (b), surrender all the rights so acquired by the predecessor corporation (including in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or payment of any part of the amount so paid by the predecessor corporation, the amount so paid by the predecessor corporation shall be added to the amount determined under paragraph 25(c).

(23) Expenses incurred for specified considerations not deductible — For the purposes of this section and section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session), it is declared that expenses incurred before 1972 by a corporation, association, partnership or syndicate on or in respect of exploring or drilling for petroleum or natural gas in Canada or in searching for minerals in Canada do not and never did include expenses so incurred by that corporation, association, partnership or syndicate under an agreement under

which it undertook to incur those expenses in consideration for

(a) shares of the capital stock of a corporation that owned or controlled the mineral rights;

(b) an option to purchase shares of the capital stock of a corporation that owned or controlled the mineral rights; or

(c) a right to purchase shares of the capital stock of a corporation that was to be formed for the purpose of acquiring or controlling the mineral rights.

(24) Exception — Notwithstanding subsection (23), a corporation whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

may deduct, in computing its income for a taxation year, the lesser of

(c) the total of such of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by it on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after 1953 and before 1972,

(iii) under an agreement under which it undertook to incur those expenses for a consideration mentioned in paragraph (23)(a), (b) or (c), and

(iv) to the extent that they were not deductible in computing income for a preceding taxation year, and

(d) of that total, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or subsection (4) or under section 65, 66 or 66.1 of the amended Act minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act,

but where a corporation has incurred expenses in respect of which this subsection authorizes a deduction from income for a taxation year, no deduction in respect of those expenses may be made in computing the income of any other corporation or from the business of an association, partnership or syndicate for any taxation year.

Related Provisions: ITAR 29(25) — Successor rule.

History: Para. 29(24)(d) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(8), applicable to taxation years ending after February 17, 1987. That para. formerly read:

(d) of that total, an amount that would be equal to its income for the taxation year if no deduction were allowed under this subsection or subsection (4) or section 65, 66, or 66.1 of the amended Act, minus the deductions allowed for the year under subsection 66(2) and sections 112 and 113 of the amended Act and subsections 66(6) and (7) and 66.1(4) and (5) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

Pre-RSC History: Para. 29(24)(d) substituted by 1977-78, c. 1, subsec. 106(15), applicable to taxation years ending after May 6, 1974. Para. (d) formerly read:

(d) of that aggregate, an amount equal to its income for the taxation year

(i) if no deduction were allowed under section 65 or 66 of the amended Act, and

(ii) if no deduction were allowed under subsection (4) of this section or under this subsection,

minus any deduction allowed for the year by subsections 66(2), (6) and (7) of the amended Act and sections 112 and 113 of the amended Act;

(25) Successor rule — Notwithstanding subsection (24) and subject to subsections 66.7(6) and (7) of the amended Act, where a corporation (in this subsection referred to as the "successor") whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

has, at any time after 1954, acquired a particular Canadian resource property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise) from another person whose principal business was a business described in paragraph (a) or (b), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the total of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(c) the total of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred before 1972 by the original owner on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred before 1972 by the original owner in searching for minerals in Canada,

to the extent that those expenses

(iii) were not otherwise deducted in computing the income of the successor for the year, were not deducted in computing the income of the successor for any preceding taxation year and were not deductible by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and

(iv) would, but for the provisions of any of this subsection and paragraphs (1)(b), (2)(b), (3)(d), (4)(h) and (24)(d), have been deductible in computing the income of the original owner or any predecessor owner of the particular property for the taxation year preceding the taxation year in which the particular property was acquired by the successor, and

(d) the amount, if any, by which

(i) the part of its income for the year that may reasonably be regarded as being attributable to

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) of the amended Act that can reasonably be regarded as being attributable to the disposition by it in the year or a preceding taxation year of any Canadian resource properties owned by the original owner and each predecessor owner of the particular property before the acquisition of the particular property by the successor to the extent that the proceeds of the disposition have not been included in determining an amount under this clause or clause 66.7(1)(b)(i)(A) or (3)(b)(i)(A) or paragraph 66.7(10)(g) of the amended Act for a preceding taxation year, or

(B) production from the particular property,

computed as if no deduction were allowed under this section or subdivision e of Division B of Part I of the amended Act,

exceeds

(ii) the total of all other amounts deducted under this subsection and subdivision e of Division B of Part I of the amended Act for the year that can reasonably be regarded as attributable to the part of its income for the year described in subparagraph (i) in respect of the particular property.

Related Provisions: ITA 66(15) — "predecessor owner"; ITA 66.6(1) — Application; ITA 66.7 — Successor rules.

History: Subpara. 29(25)(c)(iii) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 201(9), applicable to taxation years ending after February 17, 1987. That subpara. formerly read:

(iii) were not deducted by the successor in computing its income for a preceding taxation year, and were not deductible by the original owner or deducted by any predecessor owner of the particular property in computing income for any taxation year, and

Pre-RSC History: Subsec. 29(25) substituted by 1987, c. 46, subsec. 73(1), applicable to taxation years ending after February 17, 1987 except that with respect to property acquired before January 15, 1987, or before 1988 where the person acquiring the property was obliged on that date to acquire the property (see "Interpretation" below) pursuant to the terms of an agreement in writing entered into on or before that date, cl. (d)(i)(B) shall be read:

(B) where the particular property was an interest in or a right to take or remove petroleum or natural gas or a right to take or remove minerals from a property, the production from that property,

Subsec. 29(25) formerly read:

(25) Property acquired by successor corporation — Notwithstanding subsection (24), where a corporation (in this subsection referred to as the "successor corporation") whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

has at any time after 1954 acquired, by purchase, amalgamation, merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) of the amended Act or a winding-up to which the rules in subsection 88(1) of the amended Act apply), from another person (in this subsection referred to as the "predecessor") whose principal business was production, refining or marketing of petroleum, petroleum products or natural gas, exploring or drilling for petroleum or natural gas, or mining or exploration for minerals, all or substantially all of the Canadian resource properties of the predecessor and (except in the case of an amalgamation or a winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 of the amended Act for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation in computing its income for a taxation year, the lesser of

(c) the aggregate of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred before 1972 by the predecessor on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploration and development expenses incurred before 1972 by the predecessor in searching for minerals in Canada,

to the extent that such expenses

(iii) were not deductible by the successor corporation in computing its income for a preceding taxation year, and were not deductible by the predecessor in computing his income for the taxation year in which the property so acquired was acquired by the successor corporation or his income for a preceding taxation year, and

(iv) would, but for the provisions of paragraphs (1)(b), (2)(b), (3)(d), (4)(h) and (24)(d) or any of those paragraphs or this subsection, have been deductible by the predecessor in computing his income for the taxation year in which the property so acquired was acquired by the successor corporation, and

(d) of that aggregate, an amount equal to such part of its income for the year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, (minus the deductions allowed for the year by subsection (29) of this section and subsections 66(2) and (7) and 66.1(5) and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to

(i) the disposition of any Canadian resource property owned by the predecessor immediately before the acquisition by the successor corporation of the property so acquired, or

(ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor had, immediately before the acquisition by the successor corporation of the property so acquired, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any such expenses included in the aggregate determined under paragraph (c), no deduction may be made under this section by the predecessor in computing his income for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

All that portion of subsec. 29(25) preceding para. (c) substituted, subpara. 29(25)(d)(i) amended to substitute "Canadian resource property" for "property described in any of subparagraphs 66(15)(c)(i) to (vii) of the amended Act" by 1985, c. 45, subsecs. 133(1), (2), applicable as to subpara. 29(25)(d)(i) with respect to acquisitions occurring in taxation years commencing after 1984 and as to the portion of subsec. 29(25) preceding para. (c), with respect to acquisitions after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by him in carrying on that business in Canada". The portion of subsec. 29(25) preceding para. (c) formerly read:

(25) Property acquired by successor corporation — Notwithstanding subsection (24), where a corporation (hereinafter in this subsection referred to as the "successor corporation") whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

has, at any time after 1954, acquired from a person (hereinafter in this subsection referred to as the "predecessor") whose principal business was production, refining or marketing of petroleum, petroleum products or natural gas, exploring or drilling for petroleum or natural gas, or mining or exploration for minerals, all or substantially all of the property of the predecessor used by him in carrying on that business in Canada and (except in the case of winding-up) the predecessor and the successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 of the amended Act for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the successor corporation, in computing its income for a taxation year, the lesser of

All that portion of subsec. 29(25) following para. (b) and preceding para. (d), subparas. 29(25)(d)(i), (ii), all that portion of subsec. 29(25) following para. (d) substituted by 1984, c. 1, subsecs. 108(1), (2), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983; to substitute "has, at any time after 1954, acquired from a person" for "has, at any time after 1954, acquired from a corporation" and to substitute "predecessor" for "predecessor corporation" and "preceding taxation year" for "previous taxation year" wherever those expressions appeared.

Subpara. 29(25)(d)(i) substituted by 1980-81-82-83, c. 48, subsec. 117(1), applicable to taxation years ending after December 11, 1979, to substitute "(vii)" for "(vi)".

All that portion of subsec. 29(25) preceding para. (c) substituted by 1979, c. 5, subsec. 69(1), applicable with respect to acquisitions of property after November 16, 1978. That portion formerly read:

(25) Notwithstanding subsection (24), where a corporation (hereinafter in this subsection referred to as the "successor corporation") whose principal business is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas, or

(b) mining or exploring for minerals,

has, at any time after 1954, acquired from a corporation (hereinafter in this subsection referred to as the "predecessor corporation") whose principal business was production, refining or marketing of petroleum, petroleum products or natural gas, exploring or drilling for petroleum or natural gas, or mining or exploring for minerals, all or substantially all of the property of the predecessor corporation used by it in carrying on that business in Canada, there may be deducted by the successor corporation, in computing its income for a taxation year, the lesser of

Para. 29(25)(d) substituted by 1977-78, c. 1, subsec. 106(16), applicable to 1977 *et seq.* In its application to taxation years ending after May 6, 1974 and before 1977, para. (d) shall be deemed to have read as follows:

(d) of that aggregate, an amount equal to such part of its income for the year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, (minus the deductions allowed for the year by subsection (29) of this section and subsections 66(2) and (7) and 66.1(5) and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

Para. (d) formerly read:

(d) of that aggregate, an amount equal to such part of its income for the year

(i) if no deduction were allowed under section 65 of the amended Act, and

(ii) if no deduction were allowed under this section or section 66 of the amended Act,

(minus any deductions allowed for the year by subsection (29) of this section, subsections 66(2) and (7) of the amended Act and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the acquisition by the successor corporation of the property so acquired, a right to take or remove petroleum or natural gas or a right to take or remove minerals.

Interpretation — "obliged to acquire or dispose of property or to acquire control of a corporation": 1987, c. 46, s. 72 reads as follows:

72. For the purposes of this Act, a person shall be considered not to be obliged either to acquire or dispose of property or to acquire control of a corporation, as the case may be, if the person may be excused from performing the obligation as a result of changes to the [*Income Tax Act*] affecting acquisitions or dispositions of property or acquisitions of control of corporations.

Forms: T2010: Election to deduct resource expenses upon acquisition of resource property by a corporation.

(25.1) Definitions — For the purposes of subsection (25), the terms "Canadian resource property", "original owner", "predecessor owner" and "production" have the same meanings assigned by subsection 66(15) of the amended Act.

Pre-RSC History: Subsec. 29(25.1) added by 1987, c. 46, subsec. 73(1), applicable to taxation years ending after February 17, 1987.

(26) Processing or fabricating corporation — A reference in subsection (3), (21), (24) or (25) to a corporation whose principal business is mining or exploring for minerals shall, for the purposes of this section, be deemed to include a reference to a corporation whose principal business is

(a) processing mineral ores for the purpose of recovering metals therefrom,

(b) a combination of

(i) processing mineral ores for the purpose of recovering metals therefrom, and

(ii) processing metals recovered from the ores so processed, or

(c) fabricating metals,

but in applying the provisions of this section to any such corporation the references, respectively, in subsections (3), (21), (24) and (25) to the years 1952, 1953 and 1954 shall be read as a reference in each case to the year 1956.

(27) Meaning of "drilling and exploration expenses" — For the purposes of this section, "drilling and exploration expenses" incurred on or in respect of exploring or drilling for petroleum or natural gas in Canada include expenses incurred on or in respect of

(a) drilling or converting a well for the disposal of waste liquids from a petroleum or natural gas well in Canada;

(b) drilling for water or gas for injection into a petroleum or natural gas formation in Canada; and

(c) drilling or converting a well for the injection of water or gas to assist in the recovery of petroleum or natural gas from another well in Canada.

Pre-RSC History: All that portion of subsec. 29(27) preceding para. (a) amended to substitute the heading "Meaning of "drilling and exploration expenses" " for "Extended meaning of "drilling and exploration expenses" " and to substitute "For the purposes of this section" for "For the purposes of this section and subsection 34(3)", by 1985, c. 45, subsec. 133(3), applicable with respect to acquisitions after 1982.

(28) Deduction from expenses — For the purposes of this section, there shall be deducted in computing

(a) drilling and exploration expenses incurred by a taxpayer on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(b) prospecting, exploration and development expenses incurred by a taxpayer in searching for minerals in Canada,

any amount paid to the taxpayer before 1972 under the *Northern Mineral Exploration Assistance Regulations* made under an appropriation Act that provides for payments in respect of the Northern Mineral Grants Program, and there shall be included in computing such expenses any amount, except an amount in respect of interest, paid by the taxpayer before 1972 under those Regulations to Her Majesty in right of Canada.

Pre-RSC History: All that portion of subsec. 29(28) preceding para. (a) substituted by 1985, c. 45, subsec. 133(4), applicable with respect to acquisitions after 1982. That portion formerly read:

(28) Extended meaning of drilling and exploration expenses and prospecting, exploration and development expenses — For the purposes of this section and subsection 34(3), there shall be deducted in computing

(29) [Repealed under former Act]

Pre-RSC History: Subsec. 29(29) repealed by 1987, c. 46, subsec. 73(2), applicable to taxation years ending after February 17, 1987. Subsec. (29) formerly read:

(29) Property acquired by second successor corporation — Notwithstanding subsection (24), where a corporation (in this subsection referred to as the "second successor corporation") whose principal business is of the class described in subsection (4) has at any time after April 10, 1962 acquired, by purchase, amalgamation,

merger, winding-up or otherwise (other than pursuant to an amalgamation that is described in subsection 87(1.2) of the amended Act or a winding-up to which the rules in subsection 88(1) of the amended Act apply) from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation, within the meaning of subsection (25), all or substantially all of the Canadian resource properties of the first successor corporation and (except in the case of an amalgamation or a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 of the amended Act for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation in computing its income for a taxation year the lesser of

(a) the aggregate determined by adding the expenses referred to in subparagraphs (25)(c)(i) and (ii) for the purpose of determining the deduction allowable to the first successor corporation under subsection (25) in computing its income for a previous taxation year, to the extent that such expenses

(i) were not deductible by the second successor corporation in computing its, or by any other person in computing his income for a previous taxation year, and were not deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(ii) would, but for the provisions of paragraph (25)(d), have been deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired was acquired by the second successor corporation, and

(b) of that aggregate, an amount equal to such part of its income for the year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, (minus the deductions allowed for the year by subsection 66(2) and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to

(i) the disposition of any Canadian resource property owned by the predecessor of the first successor corporation within the meaning of subsection (25), immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, and

(ii) the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada in respect of which the predecessor of the first successor corporation, within the meaning of subsection (25), had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, an interest or a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any expense included in the aggregate referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

All that portion of subsec. 29(29) preceding para. (a) substituted and subpara. 29(29)(b)(i) amended to substitute "Canadian resource property" for "property described in any of subparagraphs 66(15)(c)(i) to (vii) of the amended Act", by 1985, c. 45, subsecs. 133(5), (6) applicable as to subpara. 29(29)(b)(i) with respect to acquisitions occurring in taxation years commencing after 1984 and as to that portion of subsec. 29(29) preceding para. (a) with respect to acquisitions after 1982 except that with respect to acquisitions occurring after 1982 and in a taxation year commencing before 1985 the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada its principal business". That portion of subsec. 29(29) preceding para. (a) formerly read:

(29) Property acquired by second successor corporation — Notwithstanding subsection (24), where a corporation (hereinafter in this subsection referred to as the "second successor corporation") whose principal business is of the class described in subsection (4) has, at any time after April 10, 1962, acquired from a corporation (hereinafter in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (25) all or substantially all of the property of the first successor corporation used by it in carrying on in Canada its principal business, and (except in the case of a winding-up) the first successor corporation and the second successor corporation have jointly elected in prescribed form on or before the day that is the earlier of the days on or before which either taxpayer making the election is required to file a return of income pursuant to section 150 of the amended Act for the taxation year in which the transaction to which the election relates occurred, there may be deducted by the second successor corporation, in computing its income for a taxation year, the lesser of

Subpara. 29(29)(a)(i) substituted by 1984, c. 1, subsec. 108(3), applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983. Subpara. (a)(i) formerly read:

(i) were not deductible by the second successor corporation or any other corporation in computing its income for a previous taxation year, and were not deductible by the first successor corporation in computing its income for the taxation year in which the property so acquired by the second successor corporation, and

Subpara. 29(29)(b)(i) substituted by 1980-81-82-83, c. 48, subsec. 117(2), applicable to taxation years ending after December 11, 1979, to substitute "(vii)" for "(vi)".

All that portion of subsec. 29(29) preceding para. (a) substituted by 1979, c. 5, subsec. 69(2), applicable with respect to acquisitions of property after November 16, 1978. That portion formerly read:

(29) Notwithstanding subsection (24), where a corporation (hereinafter in this subsection referred to as the "second successor corporation") whose principal business is of the class described in subsection (4) has, at any time after April 10, 1962, acquired from a corporation (hereinafter in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (25) all or substantially all of the property of the first successor corporation used by it in carrying on in Canada its principal business, there may be deducted by the second successor corporation, in computing its income for a taxation year, the lesser of

All that portion of subsec. 29(29) following para. (a) substituted by 1977-78, c. 1, subsec. 106(17), applicable to 1977 *et seq.* In its application to taxation years ending after May 6, 1974 and before 1977, all that portion of subsec. 29(29) following para. (a) shall be deemed to have read as follows:

(b) of that aggregate, an amount equal to such part of its income for the year if no deduction were allowed under this section or section 65, 66 or 66.1 of the amended Act, (minus the deductions allowed for the year by subsection 66(2) and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor of the first successor corporation, within the meaning of subsection (25), had, immediately before the acquisition by the first successor corporation of the property so acquired by the second successor corporation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any expense included in the aggregate referred to in paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

That portion formerly read:

(b) of that aggregate, an amount equal to such part of its income for the year

(i) if no deduction were allowed under section 65 or 66 of the amended Act, and

(ii) if no deduction were allowed under this section or section 66 of the amended Act,

(minus any deductions allowed for the year by subsection 66(2) of the amended Act and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor of the first successor corporation, within the meaning of subsection (25), had, immediately before the acquisition by the first

successor corporation of the property so acquired by the second successor corporation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and, in respect of any such expenses included in the aggregate determined under paragraph (a), no deduction may be made under this section by the first successor corporation in computing its income for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

(30) Inclusion in "drilling and exploration expenses" — For the purposes of this section, "drilling and exploration expenses" incurred on or in respect of exploring or drilling for petroleum or natural gas in Canada include an annual payment made for the preservation of a right, licence or privilege described in subsection (14).

Pre-RSC History: Subsec. 29(30) amended to substitute "For the purposes of this section" for "For the purposes of this section and subsection 34(3)" by 1985, c. 45, subsec. 133(7), applicable with respect to acquisitions after 1982.

(31) General limitation — Where a corporation, association, partnership or syndicate has incurred expenses the deduction of which from income is authorized under more than one provision of this section, it is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction.

(32) Deduction for provincial tax — Where a corporation whose principal business is production, refining or marketing of petroleum, petroleum products or natural gas or exploring or drilling for petroleum or natural gas could have deducted an amount in respect of expenditures of the corporation in connection with exploration or drilling for petroleum or natural gas incurred in a preceding taxation year from the tax payable under a provincial statute for the 1952 or a subsequent taxation year if the provincial statute were applicable to that year, the corporation may deduct from the tax otherwise payable by it under Part I of the amended Act for the year an amount not exceeding the amount that would have been so deductible.

(33) Definition of "provincial statute" — For the purposes of subsection (32), "provincial statute" means a statute imposing a tax on the incomes of corporations enacted by the legislature of a province in 1949 and, for the purpose of that subsection, an amount deductible thereunder for one year shall, for the purpose of computing the deduction for a subsequent year, be deemed to have been deductible under the provincial statute.

(34) Expenses deductible under certain enactments deemed not otherwise deductible — Where expenses are or have been, under this section, section 8 of the *Income War Tax Act*, section 16 of chapter 63 of the Statutes of Canada, 1947, section 16 of chapter 53 of the Statutes of Canada, 1948, section 53 of chapter 25 of the Statutes of Canada, 1949 (Second Session) or section 83A of the former Act, deductible from or in computing a taxpayer's income, or where any amount is or has been deductible in respect of expenses under any of those provisions from taxes otherwise payable, it is declared that no amount in respect of the same expenses is or has been deductible under any other authority in computing the income or from the income of that taxpayer or any other taxpayer for any taxation year.

Related Provisions [ITAR 29]: ITA 87(1.2) — New corporation deemed continuation of predecessor.

Definitions [ITAR 29]: "amended Act" — ITAR 8; "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource property" — ITA 66(15), ITAR 29(25.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deductible" — ITAR 29(33); "drilling or exploration expense" — ITAR 29(14)(c), 29(27), (30); "expenses incurred before 1972" — ITAR 29(23); "fiscal period" — ITA 249.1; "former Act" — ITAR 8; "Her Majesty" — *Interpretation Act* 35(1); "individual", "mineral", "Minister", "oil or gas well" — ITA 248(1); "original owner" — ITA 66(15), ITAR 29(25.1); "person" — ITA 248(1); "predecessor owner" — ITA 66(15), ITAR 29(25.1); "prescribed" — ITA 248(1); "production" — ITA 66(15), ITAR 29(25.1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "provincial statute" — ITAR 29(33); "related" — ITA 251(2)-(6); "share", "shareholder" — ITA 248(1); "successor" — ITAR 29(25); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

30. (1), (2) [Repealed under former Act]

(3) Reference to this Act in amended Act — In subsection 66(14) of the amended Act, "any amount deductible under the *Income Tax Application Rules*" in respect of that subsection means any amount deductible under section 29 of this Act.

Pre-RSC History: Subsec. 30(1) repealed by 1987, c. 46, s. 74, applicable to taxation years ending after February 17, 1987. Subsec. (1) formerly read:

> 30. (1) References in amended Act to *Income Tax Application Rules, 1971* — In subsections 66(6) and (7), 66.1(4) and (5), 66.2(3) and (4), 66.4(3) and (4) and 96(1) of the amended Act,
>
> (a) "the *Income Tax Application Rules, 1971* in respect of this paragraph" means the provisions of section 29 of this Act;
>
> (b) "the provisions of the *Income Tax Application Rules, 1971* allowing a deduction" for the purposes of paragraphs 66(6)(b) and 66.1(4)(b) thereof means the provisions of subsections 29(25) and (29) of this Act; and
>
> (c) "the provisions of the *Income Tax Application Rules, 1971* allowing a deduction" for the purposes of paragraphs 66(7)(b) and 66.1(5)(b) thereof means the provisions of subsection 29(29) of this Act.

All that portion of subsec. 30(1) preceding para. (b) substituted by 1980-81-82-83, c. 48, s. 118, applicable to taxation years ending after December 11, 1979. That portion formerly read:

> 30. (1) References in amended Act to *Income Tax Application Rules, 1971* relating to exploration and development expenses — In subsections 66(6) and (7), 66.1(4) and (5) and 66.2(3) and (4) of the amended Act,
>
> (a) "the *Income Tax Application Rules, 1971*" in respect of paragraphs 66(6)(b) and (7)(b), 66.1(4)(b) and (5)(b) and 66.2(3)(b) and (4)(b) of the amended Act means the provisions of section 29 of this Act;

Subsec. 30(1) substituted, subsec. (2) repealed by 1977-78, c. 1, s. 107, applicable to taxation years ending after May 6, 1974. Subsecs. (1), (2) formerly read:

> 30. (1) In subsection 66(3) of the amended Act, "the amount of any deduction allowed by the *Income Tax Application Rules, 1971*" in respect of subparagraph (b)(iii) thereof in computing the income for a taxation year of a taxpayer who is an individual or a corporation other than a principal business corporation, means the amount deductible in computing the income of the taxpayer for the year under section 29 of this Act
>
> (2) Idem — In subsections 66(6) and (7) of the amended Act,
>
> (a) "the *Income Tax Application Rules, 1971*" in respect of paragraphs 66(6)(b) and 66(7)(b) of the amended Act means the provisions of section 29 of this Act;
>
> (b) "the provisions of the *Income Tax Application Rules, 1971* allowing a deduction" for the purposes of paragraph 66(6)(b) thereof means the provisions of subsections 29(25) and (29) of this Act; and
>
> (c) "the provisions of the *Income Tax Application Rules, 1971* allowing a deduction" for the purposes of paragraph 66(7)(b) thereof means the provisions of subsection 29(29) of this Act.

Definitions [ITAR 30]: "amended Act" — ITAR 8; "amount" — ITA 248(1).

31. Application of section 67 of amended Act — In respect of any outlay or expense made or incurred by a taxpayer before 1972, section 67 of the amended Act shall be read without reference to the words "in respect of which any amount is".

Definitions [ITAR 31]: "amended Act" — ITAR 8; "amount", "taxpayer" — ITA 248(1).

32. (1) Application of para. 69(1)(a) of amended Act — Paragraph 69(1)(a) of the amended Act does not apply to deem a taxpayer by whom anything was acquired at any time before 1972 to have acquired it at its fair market value at that time, unless, if subsection 17(1) of the former Act had continued to apply, that fair market value would have been deemed to have been paid or to be payable therefor for the purpose of computing the taxpayer's income from a business.

(2) Application of para. 69(1)(b) of amended Act — Paragraph 69(1)(b) of the amended Act does not apply to deem a taxpayer by whom anything was disposed of at any time before the 1972 taxation year to have received proceeds of disposition therefor equal to its fair market value at that time.

(3) Application of para. 69(1)(c) of amended Act — For greater certainty, paragraph 69(1)(c) of the amended Act applies to property acquired by a taxpayer before, at or after the end of 1971.

Definitions [ITAR 32]: "amended Act" — ITAR 8; "business" — ITA 248(1); "former Act" — ITAR 8; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

32.1 (1)–(3.2) [Repealed under former Act]

(4) Capital dividend account — Where a dividend became payable, or was paid if that time was earlier, by a corporation in a taxation year at a particular time that was before May 7, 1974, for the purpose of computing the corporation's capital dividend account immediately before the particular time, all amounts each of which is an amount in respect of a capital loss from the disposition of property in the taxation year and before the particular time shall be deemed to be nil.

(5), (6) [Repealed under former Act]

Pre-RSC History [ITAR 32.1]: Subsecs. 32.1(3)–(3.2), (5), (6) repealed by 1985, c. 45, s. 134. Subsecs. (3)–(3.2), (5), (6) formerly read:

> (3) Late filed elections — Where at any particular time before 1975 a dividend has become payable by a corporation to shareholders of any class of shares of its capital stock, and subsection 83(1) or (2) of the amended Act would have applied to the dividend except that the election referred to therein was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if
>
> (a) the election is made in prescribed manner and prescribed form; and
>
> (b) an estimate of the penalty, if any, in respect of that election is paid by the corporation when that election is made.
>
> (3.1) Request for election — The Minister may at any time, by written request served personally or by registered mail, request that an election referred to in subsection (3) be made by a taxpayer, and where the taxpayer on whom such a request is served does not comply therewith within 90 days of service thereof on him, subsection (3) does not apply to such an election made by him.
>
> (3.2) Penalty — For the purposes of subsection (3), the penalty in respect of an election referred to in that subsection is an amount equal to the lesser of
>
> (a) 1% per annum of the amount of the dividend referred to in the election for the period commencing on July 1, 1975 and ending with the day on which that election was made, and
>
> (b) the product obtained when $500 is multiplied by the proportion that the number of months or parts of months during the period referred to in paragraph (a) bears to 12.
>
> . . . . .
>
> (5) Late-filed section 85 elections — Where an election referred to in subsection 85(6) of the amended Act was not made on or before the day on or before which the election was required by that subsection to be made and that day is before May 7, 1974, the election shall be deemed to have been made on that day if it is made in prescribed manner and prescribed form on or before June 30, 1975.
>
> (6) Late-filed subsection 97(2) and 98(3) elections — Where an election referred to in subsection 96(4) of the amended Act was not made on or before the day on or before which the election was required by that subsection to be made and that day is before May 7, 1974, the election shall be deemed to have been made on that day if it is made in prescribed manner and prescribed form on or before June 30, 1975.

Subsecs. 32.1(1), (2) repealed by 1977-78, c. 1, s. 108, applicable in respect of dividends that became payable after April 1973. Subsecs. (1), (2) formerly read:

> 32.1 (1) Election respecting surplus — For the purposes of applying subsection 83(1) or 131(1) of the amended Act to a dividend that became payable by a corporation in 1972, where the directors or other person or persons legally entitled to administer the affairs of the corporation have, before the dividend became payable, authorized the making of an election under subsection 83(1) or 131(1), as the case may be, in respect of the full amount of the dividend, the words "at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time" in subsection 83(1) or 131(1), as the case may be, shall be read as "at any time before May 1, 1973".
>
> (2) Idem — For the purposes of section 64.3 of this Act, the election referred to in subsection (1) shall, if made before May 1, 1973, be deemed to have been made at the time the dividend, in respect of which that election was made, became payable or on the first day on which any part of that dividend was paid if that day was earlier.

Subsec. 32.1 (3) substituted, subsecs. 32.1(3.1), (3.2) added by 1976-77, c. 4, s. 81, applicable in respect of dividends that became payable before 1975. Subsec. (3) formerly read:

> (3) Where at any particular time before 1975 a dividend has become payable by a corporation to shareholders of any class of shares of its capital stock, and subsection 83(1) or (2) of the amended Act would have applied to the dividend except that the election referred to therein was not made on or before the day on or before which the election was required by that subsection to be made, the election shall be deemed to have been made at the particular time or on the first day on which any part of the dividend was paid, whichever is the earlier, if the election is made in prescribed manner and prescribed form on or before June 30, 1975.

Subsecs. 32.1(3)–(6) added by 1974-75-76, c. 26, s. 134.

S. 32.1 added by 1973-74, c. 14, s. 77.

Definitions [ITAR 32.1]: "amount" — ITA 248(1); "capital dividend" — ITA 83(2)–(2.4), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "property" — ITA 248(1); "taxation year" — ITA 249.

33. [Repealed under former Act]

Pre-RSC History: S. 33 repealed by 1985, c. 45, s. 135. S. 33 formerly read:

> 33. (1) Deemed dividends — For the purpose of determining whether or not, as a result of a transaction done or effected before 1972 by a corporation resident in Canada part of whose 1972 taxation year is before and part of which is after the commencement of 1972, a taxpayer is deemed to have received a dividend from the corporation,
>
> (a) except as otherwise provided in paragraph (c), the provisions of the amended Act are not applicable,

(b) the provisions of the former Act are applicable, and

(c) where the transaction was done or effected in the corporation's 1972 taxation year, for the purposes of paragraph (b) the corporation's undistributed income on hand at the time of the transaction shall be deemed to be an amount equal to the amount that its 1971 undistributed income on hand, within the meaning assigned by section 196 of the amended Act, would be immediately before the transaction if subsection 196(4) thereof were read

(i) without reference to the words "after 1971",

(ii) without reference to paragraph (c) thereof,

(iii) as if the reference in paragraph (d) thereof to "as of the end of 1971" were read as a reference to "immediately before the particular time", and

(iv) as if subparagraphs (e)(i) and (ii) thereof read as follows:

"(i) dividends paid by the corporation after its 1971 taxation year and before the particular time, and

(ii) dividends deemed to have been received by its shareholders in that period and before the particular time,".

(2) Idem — Where a corporation (other than a corporation that was, by virtue of an amalgamation within the meaning assigned by section 85I of the former Act, a new corporation) was incorporated in 1971 and its 1972 taxation year was its first taxation year, for the purposes of computing its paid-up capital deficiency (within the meaning assigned by paragraph 89(1)(d) of the amended Act) at any time,

(a) the references in subparagraphs 89(1)(d)(v) and 89(1)(l)(v) of the amended Act to "1971" shall be read as references to "1972", and

(b) paragraph 89(1)(h) of the amended Act is applicable *mutatis mutandis* for the purpose of computing its tax equity at the end of its 1972 taxation year.

34. (1) Amalgamations — Notwithstanding section 9, subsections 85I(1) and (2) of the former Act continue to apply with such modifications as, in the circumstances, are necessary by virtue of this Act, in respect of any amalgamation of two or more corporations before 1972.

(2), (3) [Repealed under former Act]

Pre-RSC History: Subsecs. 34(2), (3) repealed by 1985, c. 45, subsec. 136(1). Subsecs. (2), (3) formerly read:

(2) Idem — Where there has been an amalgamation of two or more corporations before 1972 and the first taxation year of the new corporation is its 1972 taxation year, the following rules apply:

(a) for the purposes of paragraph 196(4)(a) of the amended Act the amount determined thereunder in respect of the new corporation shall be deemed to be the aggregate of amounts each of which is the amount determined thereunder in respect of each predecessor corporation;

(b) for the purposes of computing the 1971 capital surplus on hand of the new corporation at any time, there shall be added to the aggregate of the amounts determined under subparagraphs 89(1)(l)(ii) to (iv) of the amended Act the amount, if any, by which

(i) the aggregate of amounts each of which is the 1971 capital surplus on hand, if any, of a predecessor corporation immediately before the amalgamation

exceeds

(ii) the aggregate of amounts each of which is the paid-up capital deficiency, if any, of a predecessor corporation immediately before the amalgamation; and

(c) for the purposes of computing the paid-up capital deficiency of the new corporation at any time, there shall be added to the aggregate of the amounts determined under subparagraphs 89(1)(d)(i) to (iv) of the amended Act the amount, if any, by which

(i) the aggregate of amounts each of which is the paid-up capital deficiency, if any, of a predecessor corporation immediately before the amalgamation

exceeds

(ii) the aggregate of amounts each of which is the 1971 capital surplus on hand, if any, of a predecessor corporation immediately before the amalgamation.

(3) Idem — Where there has been an amalgamation of two or more corporations after 1957 and the principal business of the new corporation is

(a) production, refining or marketing of petroleum, petroleum products or natural gas, or exploring or drilling for petroleum or natural gas,

(b) mining or exploring for minerals,

(c) processing mineral ores for the purpose of recovering metals therefrom,

(d) a combination of processing mineral ores for the purpose of recovering metals therefrom and processing metals recovered from the ores so processed, or

(e) fabricating metals,

there may be deducted by the new corporation in computing its income for a taxation year the aggregate of the following amounts in respect of expenses incurred by predecessor corporations, namely, in respect of each individual predecessor corporation, the amount that is the lesser of

(f) the aggregate of

(i) the drilling and exploration expenses, including all general geological and geophysical expenses, incurred by the predecessor corporation before 1972 on or in respect of exploring or drilling for petroleum or natural gas in Canada, and

(ii) the prospecting, exploring and development expenses incurred by the predecessor corporation before 1972 in searching for minerals in Canada,

to the extent that such expenses

(iii) were not deductible by the new corporation in computing its income for a previous taxation year, and were not deductible by the predecessor corporation in computing its income for its last taxation year or its income for a previous taxation year, and

(iv) would, but for any of paragraphs 29(1)(b), (2)(b), (3)(d) and (4)(h) of this Act or paragraph 66(1)(b) of the amended Act, have been deductible by the predecessor corporation in computing its income for its last taxation year, and

(g) of the aggregate determined under paragraph (f), an amount equal to such part of the income of the new corporation for the year

(i) if no deduction were allowed under section 29 of this Act or section 65, 66 or 66.1 of the amended Act, and

(ii) if no deduction were allowed under this section or subsection 87(6) of the amended Act in its application to amalgamations occurring after 1971 and before May 7, 1974,

(minus the deductions allowed for the year by subsection 66(2) and sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the amalgamation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

and no amount in respect of expenses of the predecessor corporation included in the aggregate determined under paragraph (f) shall, where subsection 192(15) of the amended Act is being applied to determine, for the purposes of paragraph 87(2)(gg) of the amended Act, the designated surplus of the predecessor corporation immediately before the amalgamation, be included in the amount or amounts deductible under any paragraph of subsection 192(15) thereof.

Para. 34(3)(g) substituted by 1977-78, c. 1, s. 109, applicable to taxation years ending after May 6, 1974. Para. (g) formerly read:

(g) of the aggregate determined under paragraph (f), an amount equal to such part of the income of the new corporation for the year

(i) if no deduction were allowed under section 29 of this Act or under section 65 or 66 of the amended Act, and

(ii) if no deduction were allowed under this section or subsection 87(6) of the amended Act,

(minus any deductions allowed for the year by sections 112 and 113 of the amended Act), as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells, or the production of minerals from mines, situated on property in Canada from which the predecessor corporation had, immediately before the amalgamation, a right to take or remove petroleum or natural gas or a right to take or remove minerals;

(4) Idem — In applying the provisions of subsection 29(25) to determine the amount that may be deducted by the successor or second successor corporation, as the case may be, in computing its income under Part I of the amended Act for a taxation year, where a predecessor corporation has paid an amount (other than a rental or royalty) to the government of Canada or a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which right is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

and before April 11, 1962 acquired the rights in respect of which the amount was so paid, if, before the predecessor corporation was entitled because of subsection 29(21) to any deduction in computing its income for a taxation year in respect of the amount so paid, the property of the predecessor corporation was acquired by the successor or second successor corporation, as the case may be, and at any time, before any well came into production in reasonable commercial quantities on the land referred to in paragraph (a) or (b), the successor or second successor corporation, as the case may be, surrendered all the rights so acquired by the predecessor corporation (including, in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or payment of any part of the amount so paid by the predecessor corporation, the amount so paid by the predecessor corporation shall be added at that time to the amount determined under subparagraph 29(25)(c)(i).

Pre-RSC History: Subsec. 34(4) substituted by 1985, c. 45, subsec. 136(2), applicable with respect to acquisitions after 1982. Subsec. (4) formerly read:

(4) Application of ss. (3) — In applying the provisions of subsection (3) to determine the amount that may be deducted by the new corporation in computing its income under Part I of the amended Act for a taxation year, where a predecessor corporation has paid an amount (other than a rental or royalty) to the government of Canada or of a province for

(a) the right to explore for petroleum or natural gas on a specified parcel of land in Canada (which right is, for greater certainty, declared to include a right of the type commonly referred to as a "licence", "permit" or "reservation"), or

(b) a legal lease of the right to take or remove petroleum or natural gas from a specified parcel of land in Canada,

and acquired the rights, before April 11, 1962, in respect of which the amount was so paid, if, before the predecessor corporation was entitled, by virtue of subsection 29(21), to any deduction in computing its income for a taxation year in respect of the amount so paid, the property of the predecessor corporation was acquired by the new corporation and the new corporation did, before any well came into production in reasonable commercial quantities on the land referred to in paragraph(a) or (b), surrender all the rights so acquired by the predecessor corporation (including, in respect of a right of the kind described in paragraph (a), all rights thereunder to any lease and all rights under any lease made thereunder) without receiving any consideration therefor or payment of any part of the amount so paid by the predecessor corporation, the amount so paid by the predecessor corporation shall be added to the amount determined under paragraph (3)(f).

(5), (6) [Repealed under former Act]

Pre-RSC History: Subsecs. 34(5), (6) repealed by 1985, c. 45, subsec. 136(2), applicable with respect to acquisitions after 1982. Subsecs. (5), (6) formerly read:

(5) Tax payable — Where there has been an amalgamation of two or more corporations before 1972 and the first taxation year of the new corporation is its 1972 taxation year, if any amount is required by paragraph 85I(2)(k) of the former Act to be added to the amount determined under paragraph 82(1)(a) of the former Act from which the aggregate of the amounts referred to in subparagraphs (i) to (vii) thereof was required to be subtracted, the new corporation shall, on or before the day on or before which it is required to file a return of its income under Part I of the amended Act for its 1972 taxation year, pay a tax equal to 20% of the amount, if any, by which

(a) the aggregate of all amounts so required to be added,

exceeds

(b) the value of the assets of the new corporation (other than goodwill) less the liabilities of the new corporation (other than any liability for tax under this subsection), immediately after the amalgamation.

(6) Paid-up capital deemed liability — For the purpose of paragraph (5)(b), the amount of the paid-up capital of a corporation at a particular time with respect to any class of shares other than common shares shall be deemed to be a liability of the corporation at that time.

(7) Definition of "amalgamation" — In this section, "amalgamation" has the meaning assigned by section 85I of the former Act.

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 34(8) repealed by 1985, c. 45, subsec. 136(3). Subsec. (8) formerly read:

(8) Provisions applicable to ss. (5) — Sections 151, 152 and 162 to 167 and Division J of Part I of the amended Act are applicable *mutatis mutandis* to subsection (5).

Interpretation Bulletins [ITAR 34]: IT-60R2: 1971 undistributed income on hand.

Definitions [ITAR 34]: "amalgamation" — ITAR 34(7); "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "former Act" — ITAR 8; "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249.

35. (1) Foreign affiliates — Section 26 does not apply in determining for the purposes of section 91 of the amended Act the amount of any taxable capital gain or allowable capital loss of a foreign affiliate of a taxpayer.

(2) Idem — Any corporation that was a foreign affiliate of a taxpayer on January 1, 1972 shall be deemed, for the purposes of subdivision i of Division B of Part I of the amended Act, to have become a foreign affiliate of the taxpayer on that day.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 35(3) repealed by 1985, c. 45, s. 137. Subsec. (3) formerly read:

(3) Idem — Subsection 91(1) of the amended Act shall be read as if the reference therein to "each taxation year of the affiliate" were read as a reference to "the 1976 and each subsequent taxation year of the affiliate".

Subsec. 35(3) substituted, subsec. 35(4) added by 1973-74, c. 14, s. 78.

Subsec. 35(3) substituted for subsecs. 35(3), (4) by 1974-75-76, c. 26, s. 135.

(4) Idem — Any corporation that was deemed to be a foreign affiliate of a taxpayer at any time prior to May 7, 1974 because of an election made by the taxpayer in accordance with subparagraph 95(1)(b)(iv) of the amended

Act, as it read before being amended by chapter 26 of the Statutes of Canada, 1974-75-76, shall be deemed to have been a foreign affiliate of the taxpayer at that time.

Pre-RSC History: Subsec. 35(4) added by 1976-77, c. 4, s. 82.

Definitions [ITAR 35]: "allowable capital loss" — ITA 38(b), 248(1); "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign affiliate" — ITA 95(1), 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxpayer" — ITA 248(1).

35.1 [Repealed under former Act]

Pre-RSC History: S. 35.1 repealed by 1985, c. 45, s. 138. Subsec. 35.1 formerly read:

35.1 **Trusts not resident in Canada** — Subparagraphs 94(1)(c)(i) and (ii) of the amended Act shall be applicable only for the 1976 and subsequent taxation years of a trust therein referred to.

S. 35.1 added by 1976-77, c. 4, s. 83, applicable to 1972 *et seq.*

36. Application of paras. 107(2)(b) to (d) of amended Act

— In computing the income of a taxpayer for the taxpayer's 1972 or any subsequent taxation year, paragraphs 107(2)(b) to (d) of the amended Act do not apply in respect of any property of a trust distributed by the trust to the taxpayer at any time before the commencement of the taxpayer's 1972 taxation year.

Definitions [ITAR 36]: "amended Act" — ITAR 8; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

37. [Repealed under former Act]

Pre-RSC History: S. 37 repealed by 1985, c. 45, s. 139. S. 37 formerly read:

37. (1) **Loss carry-overs** — For the purposes of section 111 of the amended Act, in computing a taxpayer's taxable income for any taxation year ending after 1971, a business loss (within the meaning assigned by the former Act) sustained in any particular previous taxation year ending before 1972 shall, to the extent that it would have been deductible in computing the taxpayer's taxable income for the 1972 taxation year on the assumption that

(a) paragraph 27(1)(e) and subsections 27(5) and 27(5a) of the former Act were applicable to the 1972 taxation year and section 111 of the amended Act were not so applicable,

(b) paragraph 27(1)(e) of the former Act were read without reference to subparagraph (iii) thereof, and

(c) his taxable income for the 1972 taxation year were an amount greater than the aggregate of those business losses sustained by the taxpayer in the 5 consecutive taxation years ending with his 1971 taxation year,

be deemed to have been a non-capital loss of the taxpayer for the particular previous taxation year.

(2) **Idem** — In subsection (1) "business loss" does not include such part (in subsection (3) referred to as a "partial farming loss") of a taxpayer's loss from farming, within the meaning of the former Act, as was not, by virtue of section 13 of the former Act, deductible in computing his income for the year in which the loss was sustained.

(3) **Idem** — For the purposes of section 111 of the amended Act, in computing a taxpayer's taxable income for any taxation year ending after 1971, a partial farming loss sustained in any particular previous taxation year ending before 1972 shall, to the extent that it would have been deductible in computing the taxpayer's taxable income for the 1972 taxation year on the assumptions set out in paragraphs (1)(a) to (c), be deemed to have been a restricted farm loss of the taxpayer for the particular preceding taxation year.

(4) **Reference to preceding taxation year** — A reference in section 111 of the amended Act to a taxation year preceding the taxation year in respect of which a deduction thereunder is being made shall, in no case other than the case of a loss that is deemed by subsection (1) or (3) to have been a non-capital loss or a restricted farm loss, be read or construed so as to include a reference to a taxation year ending before 1972.

(5) **Non-capital losses** — For the purposes of paragraph 27(1)(e) of the former Act, in computing a taxpayer's taxable income for his 1971 taxation year, the taxpayer's non-capital loss, if any, for his 1972 taxation year shall be deemed to have been a business loss sustained by him in his 1972 taxation year.

(6) **Restricted farm loss** — For the purposes of paragraph 27(1)(e) and subsection 27(6) of the former Act, in computing a taxpayer's taxable income for his 1971 taxation year, the taxpayer's restricted farm loss, if any, for his 1972 taxation year shall be deemed to have been a loss from farming sustained by him in his 1972 taxation year.

(7) **Non-capital loss and restricted farm loss** — To the extent that an amount in respect of a taxpayer's non-capital loss or restricted farm loss for his 1972 taxation year is, by virtue of subsection (5) or (6), as the case may be, deductible from his income for his 1971 taxation year, that amount shall for the purposes of paragraph 111(3)(a) of the amended Act, in computing the taxpayer's taxable income for his 1973 or any subsequent taxation year, be deemed to have been previously deductible under Part I of the amended Act in respect of that non-capital loss or restricted farm loss, as the case may be.

All that portion of subsec. 37(1) preceding para. (a), subsec. 37(3) substituted by 1974-75-76, c. 26, subsecs. 136(1), (2).

Subsec. 37(6) substituted, subsec. 37(7) added by 1973-74, c. 14, s. 79.

38. [Repealed under former Act]

Pre-RSC History: S. 38 repealed by 1985, c. 45, s. 139. S. 38 formerly read:

38. (1) **Averaging provisions** — Notwithstanding section 9, section 118 of the amended Act is not applicable for the purposes of computing the tax under Part I thereof payable by any taxpayer for the 1972 taxation year, and the references in subparagraphs 118(1)(a)(i) and 118(2)(c)(i) thereof to "4" shall, for each of the following taxation years that is a year of averaging, be read as follows:

(a) for 1973, "1",

(b) for 1974, "2", and

(c) for 1975, "3".

(2) **Idem** — Notwithstanding section 61 of the amended Act,

(a) an amount in respect of which an election has been made by a taxpayer under any of sections 40, 42, 44 to 46 and 48 shall not be included in computing the aggregate of amounts described in subsection 61(2) of the amended Act in respect of the taxpayer; and

(b) an amount in respect of which an election has been made by a taxpayer under section 43 shall, for the purposes of subparagraph 61(1)(b)(iii) of the amended Act, not be included in computing the taxpayer's income described therein.

Subsec. 38(2) substituted by 1973-74, c. 14, s. 80.

39. [Repealed under former Act]

Pre-RSC History: S. 39 repealed by 1985, c. 45, s. 139. S. 39 formerly read:

39. (1) **Specific averaging provisions: part payments** — Where a part of a payment is required by subsection 16(1) of the amended Act to be included in computing the income of an individual resident in Canada, other than a trust or estate, for a taxation year ending after 1971 and before 1974 and that part may reasonably be regarded as a payment of interest in respect of a period of not less than 3 years, the amount thereof may, at the option of the taxpayer, be deemed not to be income of the taxpayer for the purposes of Part I of that Act, in which case the taxpayer shall pay, in addition to any other tax payable for the year, a tax on the amount thereof equal to that proportion thereof that

(a) the aggregate of the taxes otherwise payable by the taxpayer under that Part for the taxation year and the 2 years immediately preceding the taxation year (before making any deduction under sections 120, 121 or 126 of the amended Act),

is of

(b) the aggregate of the taxpayer's incomes for those 3 years.

(2) **Idem** — Any amount required by paragraph 148(1)(a) of the amended Act to be included in computing the income of a policy-

holder for a taxation year shall, for the purposes of subsection (1), be deemed to be a part of a payment that

(a) is required by subsection 16(1) of the amended Act to be included in computing the income for the year of the policyholder, and

(b) may reasonably be regarded as a payment of interest.

(3) **Idem** — Where a taxpayer who has elected under subsection (1) that an amount shall be deemed not to be income for the purpose of Part I of the amended Act was not resident in Canada throughout the whole of the taxation year and the 2 immediately preceding taxation years, the tax payable under this section is that proportion of the amount on which the tax is payable that

(a) the aggregate of the taxes that would have been payable by the taxpayer under that Part for the taxation year and the 2 immediately preceding taxation years (before making any deduction under section 120, 121 or 126 of the amended Act) if he had been resident in Canada throughout those years and his incomes for those years had been from sources in Canada,

is of

(b) the aggregate of the taxpayer's incomes for those 3 years;

and, in such a case, the election is not valid unless the taxpayer has filed with his election, a return of his incomes for the 2 immediately preceding taxation years in the same form and containing the same information as the returns that he would have been required to file under that Part if he had been resident in Canada in those years.

40. (1) Payments out of pension funds, etc. — In the case of

(a) a single payment

(i) out of or under a superannuation or pension fund or plan

(A) on the death, withdrawal or retirement from employment of an employee or former employee,

(B) on the winding-up of the fund or plan in full satisfaction of all rights of the payee in or under the fund or plan, or

(C) to which the payee is entitled because of an amendment to the plan although the payee continues to be an employee to whom the plan applies,

(ii) upon retirement of an employee in recognition of long service and not made out of or under a superannuation fund or plan,

(iii) under an employees profit sharing plan in full satisfaction of all rights of the payee in or under the plan, to the extent that the amount thereof would otherwise be included in computing the payee's income for the year in which the payment was received, or

(iv) under a deferred profit sharing plan on the death, withdrawal or retirement from employment of an employee or former employee, to the extent that the amount thereof would otherwise be included in computing the payee's income for the year in which the payment was received,

(b) a payment or payments made by an employer to an employee or former employee on or after retirement in respect of loss of office or employment, if made in the year of retirement or within one year after that year, or

(c) a payment or payments made as a death benefit, if made in the year of death or within one year after that year,

the payment or payments made in a taxation year ending after 1971 and before 1974 may, at the option of the taxpayer by whom it is or they are received, be deemed not to be income of the taxpayer for the purpose of Part I of the amended Act, in which case the taxpayer shall pay, in addition to any other tax payable for the year, a tax on the payment or total of the payments equal to the proportion thereof that

(d) the total of the taxes otherwise payable by the employee under that Part for the 3 years immediately preceding the taxation year (before making any deduction under section 120, 121 or 126 or subsection 127(3) of the amended Act),

is of

(e) the total of the employee's incomes for those 3 years.

Pre-RSC History: Para. 40(1)(d) substituted by 1974-75-76, c. 26, subsec. 137(1), applicable on and after August 1, 1974, to add "or subsection 127(3)".

(2) Employee not resident in Canada — Where a taxpayer has elected that a payment or payments of one of the classes described in paragraphs (1)(a) to (c) in respect of an employee or former employee who was not resident in Canada throughout the whole of the 3 years referred to in paragraph (1)(e) shall be deemed not to be income of the taxpayer for the purpose of Part I of the amended Act, the tax payable under this section is that proportion of the amount on which the tax is payable that

(a) the total of the taxes that would have been payable by the employee under that Part for the 3 years referred to in paragraph (1)(e) (before making any deduction under section 120, 121 or 126 or subsection 127(3) of the amended Act) if the employee had been resident in Canada throughout those years and the employee's incomes for those years had been from sources in Canada,

is of

(b) the total of the employee's incomes for those 3 years,

and, in such a case, the election is not valid unless the taxpayer has filed with the election, a return of the employee's incomes for each of the 3 years in the same form and containing the same information as the return that the employee, or the employee's legal representative, would have been required to file under that Part if the employee had been resident in Canada in those years.

Pre-RSC History: Para. 40(2)(a) substituted by 1974-75-76, c. 26, subsec. 137(2), applicable on and after August 1, 1974, to add "or subsection 127(3)".

(3) Determination of amount of payment — In determining the amount of any payment or payments made in a taxation year out of or under a superannuation or pension fund or plan, under a deferred profit sharing plan or as a retiring allowance that is deemed, for the purposes of this section, not to be income of the taxpayer by whom it is or they are received, there shall be subtracted from the amount of the payment or payments so made

(a) the total of all amounts deductible under paragraph 60(j) of the amended Act in computing the taxpayer's income for that year; and

(b) any amount deductible under paragraph 60(m) of the amended Act because of that payment or those payments in computing the taxpayer's income for that year.

(4) Idem — In determining the amount of any payment or payments made in a taxation year as a death benefit that is deemed, for the purpose of this section, not to be income of the taxpayer by whom it is or they are received,

there shall be subtracted from the amount of the payment or payments so made any amount deductible under paragraph 60(m) of the amended Act because of that payment or those payments in computing the taxpayer's income for that year.

(5) Maximum amount for election — For the purpose of determining the amount of any payment or payments of one or more of the classes described in subsection (1) made in a taxation year that may be deemed, for the purposes of this section, not to be income of the taxpayer by whom it is or they are received, the maximum amount in respect of which an election may be made by the taxpayer under subsection (1) for the taxation year in respect of such payment or payments is,

(a) in the case of a payment or payments of a class described in subsection (1) made to the taxpayer on the death of an employee or former employee in respect of whom the payment or payments are made, the amount of the payment or the total amount of the payments, as the case may be, minus any amount subtracted therefrom under subsection (3) or (4);

(b) in the case of one or more single payments of a class described in subparagraph (1)(a)(i), (iii) or (iv), other than a payment described in paragraph (a) of this subsection, the lesser of

(i) the amount of the payment or the total amount of the payments, as the case may be, minus any amount subtracted therefrom under subsection (3), and

(ii) the amount by which

(A) the product obtained by multiplying $1,500 by the number of consecutive 12 month periods included in the period throughout which the taxpayer was a member of any plan or plans described in subparagraph (1)(a)(i), (iii) or (iv) (in this subsection referred to as a "retirement plan"),

(I) out of or under which a payment was made to the taxpayer in the taxation year or a preceding taxation year ending after April 26, 1965, and

(II) to which an employer of the taxpayer has made a contribution on behalf of the taxpayer,

exceeds

(B) the total of all amounts each of which is an amount that, because of a payment to the taxpayer after April 26, 1965,

(I) out of or under a retirement plan to which the employer referred to in subclause (A)(II) made a contribution on behalf of the taxpayer, or

(II) by the employer referred to in subclause (A)(II),

was deemed not to be income of the taxpayer for the purpose of Part I of the amended Act for a preceding taxation year because of an election made by the taxpayer under subsection (1); and

(c) in the case of a payment or payments of the class described in subparagraph (1)(a)(ii) or paragraph (1)(b), other than a payment described in paragraph (a) or (b) of this subsection, the lesser of

(i) the amount of the payment or the total amount of the payments, as the case may be, minus any amount subtracted therefrom pursuant to subsection (3), and

(ii) the amount by which

(A) the product obtained by multiplying $1,000 by the number of years during which the taxpayer was an employee of the employer who made the payment

exceeds

(B) the total of

(I) the total of all amounts each of which is an amount that, because of a payment to the taxpayer after April 26, 1965 by an employer referred to in clause (A) or a payment to the taxpayer after that date out of or under a retirement plan to which such an employer made a contribution on behalf of the taxpayer, was deemed not to be income of the taxpayer for the purpose of Part I of the amended Act for a preceding taxation year by reason of an election made by the taxpayer under subsection (1), and

(II) the total of all amounts each of which is an amount that, because of a payment to the taxpayer after April 26, 1965 out of or under a retirement plan to which an employer referred to in clause (A) made a contribution on behalf of the taxpayer, may be deemed, by subsection (1), not to be income of the taxpayer for the purpose of that Part for the taxation year.

(6) Idem — For the purpose of subsection (5),

(a) where all or substantially all of the property used in carrying on the business of a person who was an employer of an employee (in this subsection referred to as the "former employer")

(i) has been purchased by a person who, because of the purchase, or

(ii) has been acquired by bequest or inheritance, or because of an amalgamation (within the meaning assigned by section 85I of the former Act), by a person who, by reason of the acquisition,

became an employer of the employee, and who subsequently made a payment of a class described in paragraph (5)(c) in respect of the employee or former employee, the employee or former employee shall be deemed to have been an employee of that employer throughout the period he or she was an employee of the former employer; and

(b) a taxpayer may, in computing the number of years during which the taxpayer was a member of a superannuation or pension fund or plan (in this subsection referred to as the "subsequent plan"), include the number of years during which the taxpayer was a member of another plan (in this subsection referred to as the "former plan") if the taxpayer had received an amount out of or under the former plan all or part of which amount was deductible under paragraph 60(j) of the amended Act in computing the taxpayer's income for the taxation year in which the amount was received, because of the fact that all or part of the amount, as the case may be, was paid by the taxpayer to or under the subsequent plan as described in clause 60(j)(i)(A) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1978 and preceding taxation years.

(7) Limitation — This section applies in respect of any payment or payments described in subparagraph (1)(a)(i) or (iv) made in a taxation year ending after 1973, except that the amount of the payment or the total amount of the payments, as the case may be, shall be deemed to be the lesser of the amount thereof otherwise determined and the total of the amounts that the taxpayer would have received out of or under the plan described in subparagraph (1)(a)(i) or (iv), as the case may be, if

(a) the taxpayer had withdrawn from the plan on January 1, 1972;

(b) there had been no change in the terms and conditions of the plan after June 18, 1971 and before January 2, 1972; and

(c) any term or condition of the plan that would, in the event that the taxpayer had withdrawn from the plan on January 1, 1972, have reduced the amount of any payment or payments that would, if the taxpayer remained a member of the plan for a specified period of time after December 31, 1971, have been made to the taxpayer in respect of years ending before 1972 were not a term or condition of the plan.

Pre-RSC History: Subsec. 40(7) substituted by 1973-74, c. 30, s. 29.

(8) Application rule — For the purposes of paragraphs (1)(d) and (2)(a), there may be deducted from the total referred to in those paragraphs 9% of the portion of that total that is attributable to the 1974, 1975 or 1976 taxation year.

Pre-RSC History: Subsec. 40(8) substituted by 1977-78, c. 32, s. 58, applicable to 1977 *et seq.*

Subsec. 40(8) added by 1977-78, c. 10, s. 110, applicable to 1977 *et seq.*

Related Provisions [ITAR 40]: ITA 127.52(1)(j) — ITAR 40 ignored for minimum tax purposes.

Definitions [ITAR 40]: "amended Act" — ITAR 8; "amount", "business", "death benefit" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employee" — ITA 248(1), ITAR 40(6); "employees profit sharing plan" — ITA 144(1), 248(1); "employer", "employment" — ITA 248(1); "former Act" — ITAR 8; "former employer" — ITAR 40(6)(a); "former plan" — ITAR 40(6)(b); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "legal representative" — ITA 248(1); "month" — *Interpretation Act* 35(1); "office", "person", "property" — ITA 248(1); "resident in Canada" — ITA 250; "retiring allowance" — ITA 248(1); "subsequent plan" — ITAR 40(6)(b); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [ITAR 40]: IT-163R2: Election by non-resident individuals on certain Canadian source income; IT-281R2: Elections on single payments from a deferred profit-sharing plan.

Information Circulars [ITAR 40]: 74-21R: Payments out of pension and deferred profit sharing plans.

41. [Repealed under former Act]

Pre-RSC History: S. 41 repealed by 1985, c. 45, s. 140. S. 41 formerly read:

41. (1) Fiscal periods ending in same year — Where, by reason of a change made with the concurrence of the Minister in the fiscal period of a taxpayer who is an individual or the fiscal period of a partnership of which a taxpayer who is an individual is a member, there would otherwise be included in computing his income for any taxation year ending after 1971 and before 1974

(a) income from a business of which he is a proprietor for each of two or more fiscal periods, or

(b) income from the partnership for each of two or more fiscal periods,

and the number of days in the fiscal periods is greater than the number of days in the taxation year, the following rules are, if the taxpayer so elects, applicable:

(c) the taxpayer's income from the business or partnership for the taxation year shall be deemed for the purpose of Part I of the amended Act to be that proportion of the aggregate of the incomes therefrom for the fiscal periods that the number of days in the taxation year is of the number of days in the fiscal periods; and

(d) the taxpayer shall pay, in addition to any other tax payable for the year, a tax on the amount by which the aggregate of the incomes from the business or partnership for the fiscal periods exceeds his income from the business or partnership for the year as determined under paragraph (c), equal to that proportion thereof that the tax computed under section 117 or 118, as the case may be, of the amended Act for the year on the assumption that his income from the business or partnership for the year is the amount determined under paragraph (c), is of his taxable income for the year computed on the same assumption,

but where a taxpayer elects to have those rules applicable for a taxation year, no amount is deductible under section 111 of the amended Act in computing his taxable income for the year.

(2) "Earnings period" defined — In this section, "earnings period" means

(a) a fiscal period of a business of which a taxpayer was the proprietor during which he did not carry on and was not a partner in any other business and was not an employee,

(b) a fiscal period of a partnership of which the taxpayer was a member during which he was not a member of any other partnership, did not carry on any business of which he was the sole proprietor and was not an employee, and

(c) a period of employment of the taxpayer during which he did not carry on and was not a partner in any business,

except any such period in respect of which a separate return of the taxpayer's income may be filed under subsection 150(4) of the amended Act.

(3) Earnings periods ending in same year — Where, in the case of a taxpayer who is an individual, there would otherwise be included in computing the income of the taxpayer for any taxation year ending after 1971 and before 1974 from one or more businesses, partnerships or employments referred to in subsection (2), income therefrom for each of two or more earnings periods ending in the year, and the aggregate of the number of days in the earnings periods is greater than the number of days in the taxation year, the following rules are, if the taxpayer so elects, applicable:

(a) the taxpayer's income from such one or more businesses, partnerships or employments for the taxation year shall be deemed, for the purposes of Part I of the amended Act, to be that proportion of the aggregate of the incomes therefrom that the number of days in the taxation year is of the aggregate of the number of days in the earnings periods, and

(b) the taxpayer shall pay, in addition to any other tax payable for the year, a tax on the amount by which the aggregate of the incomes from such one or more businesses, partnerships or employments for the taxation year exceeds his income therefrom determined under paragraph (a), equal to that proportion thereof that the tax under section 117 or 118, as the case may be, of that Act for the year, computed on the assumption that his income from such one or more businesses, partnerships or employments for the year is the amount determined under paragraph (a), is of his taxable income for the year computed on the same assumption;

but where a taxpayer elects to have those rules applicable for a taxation year, no amount is deductible under section 111 of that Act in computing his taxable income for the year.

(4) Election — An election by a taxpayer to have the rules referred to in subsection (1) applicable for a taxation year is not valid if the taxpayer may elect to have the rules referred to in subsection (3) applicable for the year.

(5) Idem — An election by a taxpayer to have the rules referred to in subsection (3) applicable for a taxation year is not valid if the taxpayer has made an election under subsection 25(1) of the amended Act under which the fiscal period of a business that would have otherwise ended in the immediately preceding year is deemed to have ended in the year.

Paras. 41(1)(d), (3)(b) substituted by 1973-74, c. 14, s. 81.

42–45. [Repealed under former Act]

Pre-RSC History: Ss. 42–45 repealed by 1985, c. 45, s. 140. Ss. 42–45 formerly read:

42. (1) Election — Where, by virtue of section 13 of the amended Act, an amount is included in computing the income of a taxpayer who is an individual for any taxation year ending after 1971 and before 1976, the taxpayer may elect to pay, as tax for the year under Part I of the amended Act, in lieu of the amount that would otherwise be payable, an amount equal to the aggregate of

(a) the tax that would be payable by the taxpayer for the year under that Part (before making any deduction under section 120, 121, 126 or 127 of the amended Act) if no amount were included in computing the taxpayer's income for the year by virtue of section 13 of the amended Act, and

(b) the aggregate of the amounts by which the taxpayer's taxes under that Part (before making any deduction under section 120, 121, 126 or 127 of the amended Act) would have been increased if the portion determined under subsection (2) of the amount so included by virtue of section 13 of the amended Act had been included in computing the taxpayer's income for each of the taxation years in the period determined under subsection (2),

minus any amount deductible for the year under section 120, 121, 126 or 127 of the amended Act.

(2) Idem — Where the period during which a taxpayer was resident in Canada and was not exempt from tax under Part I of the amended Act immediately before the taxation year for which an amount is included in computing his income by virtue of section 13 of the amended Act is only one taxation year or less, subsection (1) does not apply; and where that period

(a) is more than one taxation year and not more than 2 taxation years, the portion referred to in paragraph (1)(b) is ½ and the period referred to therein is the 2 immediately preceding taxation years,

(b) is more than 2 taxation years and not more than 3 taxation years, the portion referred to in paragraph (1)(b) is ⅓ and the period referred to therein is the 3 immediately preceding taxation years,

(c) is more than 3 taxation years and not more than 4 taxation years, the portion referred to in paragraph (1)(b) is ¼ and the period referred to therein is the 4 immediately preceding taxation years, and

(d) is more than 4 taxation years, the portion referred to in paragraph (1)(b) is ⅕ and the period referred to therein is the 5 immediately preceding taxation years.

(3) Non-residents — Where, by virtue of subsection 216(5) of the amended Act, a non-resident person is liable to pay tax under Part I of the amended Act for any taxation year ending after 1971 and before 1976, subsection (1) is not applicable unless that person has, within the time prescribed by subsection 216(1) thereof for filing a return of his income under that Part, filed a return of income under that Part, in the form prescribed for a person resident in Canada, for each of the 5 taxation years immediately preceding the taxation year, in which latter case he shall be deemed for the purposes of subsection (1) to have been resident in Canada or to have carried on business in Canada, as the case may be, during those 5 years immediately preceding the taxation year.

43. Authors — Where a taxpayer who is the author or joint author of a literary, dramatic, musical or artistic work, having been engaged for a period of more than 12 months in the production thereof, assigns the copyright therein wholly or partially and receives within 12 months of the assignment, in consideration or part consideration therefor, an amount that, but for this section, would be included in computing his income for the taxation year in which it was received, if that year is a taxation year ending after 1971 and before 1974 and the taxpayer files with the Minister an election in prescribed form before the expiration of the time fixed by the amended Act for filing a return of his income for that year, the following rules apply:

(a) if the period in which he was engaged in the production of the work did not exceed 2 years,

(i) ½ only of the amount shall be included in computing his income for the year in which it was received, and

(ii) ½ of the amount shall be included in computing his income for the year immediately preceding that year, and

(b) if the period in which he was engaged in the production of the work exceeded 2 years,

(i) ⅓ only of the amount shall be included in computing his income for the year in which it was received, and

(ii) ⅓ of the amount shall be included in computing his income for each of the 2 years immediately preceding that year.

44. (1) Benefits to employees — Where a benefit is deemed by subsection 7(1) of the amended Act to have been received by an employee by virtue of his employment in any taxation year ending after 1971 and before 1974, the employee shall, if he so elects, pay as tax for the year under Part I of the amended Act, in lieu of the amount that would otherwise be payable, an amount equal to the aggregate of

(a) the tax that would be payable by the employee for the year under that Part if no benefit were so deemed to have been received by him in the year, and

(b) the amount, if any, by which

(i) that proportion of the benefit so deemed to have been received that the aggregate of the taxes that would have been payable by the employee under that Part for the 3 years immediately preceding the taxation year (before making any deduction under section 120, 121 or 126 of the amended Act) if no benefit were deemed by subsection 7(1) thereof to have been received by him in those years, is of the aggregate of the employee's incomes for those years minus the benefit deemed by subsection 7(1) thereof to have been received by him in those years,

exceeds the lesser of

(ii) 20% of the amount of the benefit so deemed to have been received, and

(iii) $200.

(2) Idem — Where an employee who has elected under subsection (1) to pay, as tax for any taxation year ending after 1971 and before 1974 under Part I of the amended Act, an amount determined under that subsection, was not resident in Canada throughout the whole of the 3 years referred to therein, the tax payable under subsection (1) is an amount equal to the aggregate of

(a) the tax that would be payable by the employee for the year under that Part if no benefit were deemed by subsection 7(1) of the amended Act to have been received by him in the year, and

(b) the amount, if any, by which

(i) that proportion of the benefit so deemed to have been received that the aggregate of the taxes that would have been payable by the employee under that Part for the 3 years immediately preceding the taxation year (before making any deduction under section 120, 121 or 126 of the amended Act) if he had been resident in Canada throughout those years and his incomes for those years had been from sources in Canada, and if no benefit were deemed by subsection 7(1) of the amended Act to have been received by him in those years, is of the aggregate of the employee's incomes for those years minus the benefit deemed by subsection 7(1) thereof to have been received by him in those years,

exceeds the lesser of

(ii) 20% of the amount of the benefit so deemed to have been received, and

(iii) $200,

and, in such a case, the election is not valid unless the employee has filed with his election a return of his income for each of those 3 years in the same form and containing the same information as the return that he would have been required to file under Part I of the amended Act if he had been resident in Canada in those years.

45. Sale of inventory — Where any amount is included in computing the income of a taxpayer who is an individual for any taxation year ending after 1971 and before 1974 by virtue of section 23 of the amended Act, the taxpayer may elect to pay, as tax for the year under this Part, in lieu of the amount that would otherwise be payable, an amount equal to the aggregate of

(a) the tax that would be payable by him for the year under Part I of the amended Act (before making any deduction under section 120, 121, 126 or 127 thereof) if no amount were included

in computing his income for the year by virtue of this section, and

(b) the aggregate of the amounts by which his taxes under Part I of the amended Act (before making any deduction under section 120, 121, 126 or 127 thereof) would have been increased if 1/5 of the amount so included by virtue of section 23 of the amended Act had been included in computing his income for each of the 3 taxation years ending with the last taxation year in which he carried on the business or the part of the business referred to in section 23 thereof,

minus any amount deductible for the year under section 120, 121, 126 or 127 thereof; and, in any such case, the election is not valid unless the taxpayer was, during each of those 3 years, carrying on that business.

45.1 [Repealed under former Act]

Pre-RSC History: S. 45.1 repealed by 1974-75-76, c. 26, s. 138.

S. 45.1 added by 1973-74, c. 51, s. 22, in force August 1, 1974.

46–48. [Repealed under former Act]

Pre-RSC History: Ss. 46–48 repealed by 1985, c. 45, s. 140. Ss. 46-48 formerly read:

46. Accounts receivable — Section 45 is applicable *mutatis mutandis* where any amount is, by virtue of subsection 28(5) of the amended Act, included in computing the income of a taxpayer who is an individual for a taxation year ending after 1971 and before 1974.

47. Death of a taxpayer: amounts receivable — In the application of section 70 of the amended Act to any taxation year ending after 1971 and before 1976,

(a) subsection (2) thereof shall be read as if the words therein immediately following the word "elected" were read as follows, namely,

"that one of the following rules be applicable thereto:

(a) 1/5 of the value shall be included in computing the taxpayer's income for each of his last 5 taxation years including the year in which he died, in which case the resulting addition to the amount of tax payable for any such year other than the year in which he died is payable on or before the 30th day after the day of mailing of the notice of assessment for the year in which he died; or

(b) a separate return of the value shall be filed and tax thereon shall be paid under this Part for the taxation year in which the taxpayer died as if he had been another person entitled to the deductions to which he was entitled under section 109 for that year,

in which event the rule so elected is applicable"; and

(b) where the legal representative of a taxpayer who was not taxable under Part I of the amended Act because he was not resident in Canada for one or more of the 4 taxation years immediately preceding the taxation year in which he died elects that the rule set forth in paragraph 70(2)(a) of the amended Act as it reads by virtue of paragraph (a) be applicable in respect of rights or things that the taxpayer had at the time of his death,

(i) the election is not valid unless the legal representative has filed with the election a return of the taxpayer's income for each of those years for which he was not so taxable, in the same form and containing the same information as the return that the taxpayer or his legal representative would have been required to file under that Part if the taxpayer had been resident in Canada during each of those years, and

(ii) the amount payable in respect of the rights or things by virtue of the election for each of those years for which he was not so taxable is the amount by which

(A) the tax for the year that would have been payable under that Part if the taxpayer had been resident in Canada, his income had been from sources in Canada and he had received the amount included in computing his income by virtue of paragraph 70(2)(a) of the amended Act as it reads by virtue of paragraph (a), exceeds

(B) the tax for the year that would have been payable under that Part if the taxpayer had been resident in Canada, his income had been from sources in Canada and no amount had been included in computing his income by virtue of paragraph 70(2)(a) of that Act as it reads by virtue of paragraph (a).

48. Incorrect valuation of inventory: election — Where the property described in the inventory of a business at the commencement of a taxation year ending after 1971 and before 1976 has, according to the method adopted by a taxpayer who is an individual for computing income from the business for that year, not been valued as required by subsection 10(1) of the amended Act, the property described therein at the commencement of that year shall, if the Minister so directs, be deemed to have been valued as required by that subsection, and, in any such case, the provisions of section 42 apply *mutatis mutandis* as though any amount by which the taxpayer's income for the year is increased by virtue of this section were an amount included in computing his income for the year by virtue of section 13 of the amended Act.

49. (1) Tax deemed payable under amended Act — Where, because of section 40, any tax is payable in addition to or in lieu of any amount of tax payable under Part I of the amended Act for a taxation year, that tax shall be deemed to be payable under Part I of the amended Act for that taxation year.

(2) Application of section 13 — In applying section 13 to section 40, subsection 13(1) shall be read without reference to the words "subject to this Act and unless the context otherwise requires".

(3) Computation of tax deemed payable under amended Act — In computing, under section 40 of this Act or any of section 39 and sections 41 to 48 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, any tax that is payable in addition to or in lieu of any amount of tax payable under Part I of the amended Act by an individual for a taxation year,

(a) a reference to section 120 of the amended Act does not include a reference to paragraph 33(1)(a) of the former Act; and

(b) for the purposes of paragraph 33(1)(a) of the former Act and subsection 120(1) of the amended Act, all of the income of the individual for that or any preceding taxation year shall be deemed to have been income earned in the year in a province.

Definitions [ITAR 49]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "individual" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249.

50. (1) Status of certain corporations — For the purposes of the amended Act, a corporation that was, throughout that portion of its 1972 taxation year that is in 1972, a private corporation, a Canadian-controlled private corporation or a public corporation shall be deemed to have been throughout that taxation year a private corporation, a Canadian-controlled private corporation or a public corporation, as the case may be.

(2) Election to be public corporation — For the purposes of the definition "public corporation" in subsection 89(1) of the amended Act, where at any particular time before 1973 a corporation elected in the manner referred to in subparagraph (b)(i) of that definition to be a public corporation and at any time after 1971 and before the time of the election the corporation complied with the condi-

tions referred to in that subparagraph, the corporation shall,

(a) at such time after 1971 and before the particular time as is specified in the election to be the effective date thereof, or

(b) where no time described in paragraph (a) is specified in the election to be the effective date thereof, at the particular time,

be deemed to have elected in the manner referred to in that subparagraph to be a public corporation and to have complied with the conditions referred to therein.

Pre-RSC History: All that portion of subsec. 50(2) preceding para. (a) substituted by 1973-74, c. 14, s. 82.

(3) Designation by Minister — For the purposes of the definition "public corporation" in subsection 89(1) of the amended Act, where at any particular time before March 22, 1972 the Minister, by notice in writing to a corporation, designated the corporation to be a public corporation or not to be a public corporation, as the case may be, and at the time of the designation the corporation complied with the conditions referred to in subparagraph (b)(i) or (c)(i) of that definition, as the case may be, the corporation shall, at such time as is specified by the Minister in the notice, be deemed

(a) to have been designated by the Minister, by notice in writing to the corporation, to be a public corporation or not to be a public corporation, as the case may be; and

(b) to have complied with the conditions referred to in subparagraph (b)(i) or (c)(i) of that definition, as the case may be.

Definitions [ITAR 50]: "amended Act" — ITAR 8; "Canadian-controlled private corporation" — ITA 125(7), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "private corporation", "public corporation" — ITA 89(1), 248(1); "taxation year" — ITA 249; "writing" — *Interpretation Act* 35(1).

51, 52. [Repealed under former Act]

Pre-RSC History: Ss. 51, 52 repealed by 1985, c. 45, s. 141. Ss. 51, 52 formerly read:

51. (1) Tax payable by corporation with fiscal period other than calendar year 1972 — Where a corporation has a taxation year part of which is before and part of which is after the commencement of 1972, and its amount taxable for its 1972 taxation year is greater than its net capital gains for the year, the tax payable by it under Part I of the amended Act for the year shall be determined by the following rules:

(a) determine the tax under Part I of the amended Act that, but for this subsection, would be payable by it for its 1972 taxation year on the assumption that

(i) its amount taxable for the year were an amount equal to its net capital gains for the year, and

(ii) it had no income for the year other than taxable capital gains for the year from dispositions of property and it had no losses for the year other than allowable capital losses for the year from dispositions of property;

(b) determine the tax under Part I of the amended Act that, but for this subsection, would be payable by it for its 1972 taxation year on the assumption that

(i) its amount taxable for the year were an amount equal to the amount, if any, by which its amount taxable for the year, determined without regard to the provisions of this subsection, exceeds its net capital gains for the year, and

(ii) except for the purpose of computing the corporation's net capital gains for the year for the purposes of subparagraph (i), it had no taxable capital gains for the year from dispositions of property and no allowable capital losses for the year from dispositions of property;

(c) determine that proportion of the amount determined under paragraph (b) that the number of days in that portion of its 1972 taxation year that is in 1972 is of the number of days in the whole taxation year;

(d) determine the aggregate of the taxes that, but for this subsection, would be payable by the corporation for its 1972 taxation year

(i) under Part I of the former Act, and

(ii) under subsection 24(5) of the *Old Age Security Act* as it read before being amended by section 3,

on the assumptions set forth in subparagraphs (b)(i) and (ii), on the assumption that Division E of Part I of the former Act and subsections 24(5) and (6) of the *Old Age Security Act* as it read before being amended by section 3 were applicable to the 1972 taxation year, and on the assumption that subsection 40(3) of the former Act were applicable to the 1972 taxation year but as though the proportion referred to in that subsection were the proportion that the number of days in that portion of the taxation year that is after June, 1971 and before 1972 is of the number of days in that portion of the taxation year that is before 1972;

(e) determine that proportion of the aggregate determined under paragraph (d) that the number of days in that portion of its 1972 taxation year that is in 1971 is of the number of days in the whole taxation year;

(f) determine the aggregate of the amounts determined under paragraphs (a), (c) and (e) in respect of the corporation;

and the aggregate determined under paragraph (f) is the tax under Part I of the amended Act payable by the corporation for its 1972 taxation year.

(2) Determination of amount taxable — Where a corporation has a taxation year part of which is before and part of which is after the commencement of 1972, for the purpose of determining its amount taxable for that taxation year the provisions of Part I of the amended Act shall be read subject to the following rules:

(a) for the purpose of determining whether

(i) any amount paid or payable (depending upon the method regularly followed by the corporation in computing its income) before 1972 by the corporation pursuant to a legal obligation to pay interest, or

(ii) any expense incurred or disbursement made before 1972 by the corporation for the purpose of gaining or producing income from a business or property

is deductible in computing the corporation's income for the year, any income that would, under the provisions of the former Act, have been exempt income of the corporation, shall be deemed to be exempt income of the corporation;

(b) in respect of any share received by the corporation before 1972 as consideration for the disposition by it of an interest in a mining property,

(i) section 35 of the amended Act is not applicable, and

(ii) subsections 83(3) and (4) of the former Act are applicable;

(c) in respect of any dividend received by the corporation in the year and before 1972,

(i) sections 112 and 113 and Parts VII and VIII of the amended Act are not applicable, and

(ii) section 28 and Part IIB of the former Act are applicable; and

(d) for the purposes of sections 130 and 143 of the amended Act, any amount in respect of a dividend received by the corporation in the year and before 1972 that would, under the provisions of the former Act, have been exempt income of the corporation, shall be deemed to be exempt income of the corporation.

(3) Definitions — In this section,

(a) "amount taxable" — "amount taxable" of a corporation for its 1972 taxation year has, subject to subsection (2), the meaning assigned by Division E of Part I of the amended Act; and

(b) "net capital gains" — "net capital gains" of a corporation for its 1972 taxation year means the amount, if any, by which

(i) the aggregate of its taxable capital gains for the year from dispositions of property

exceeds the aggregate of

(ii) its allowable capital losses for the year from dispositions of property, and

(iii) the amount, if any, deductible under paragraph 111(1)(b) of the amended Act from the corporation's income for the year.

52. Tax payable by corporations for particular years — For the purposes of section 123 of the amended Act, where a corporation has a taxation year (in this section referred to as the "particular taxation year") part of which is before and part of which is after, the commencement of any of the calendar years 1973, 1974, 1975 and 1976 (in this section referred to as the "particular calendar year"), the percentage referred to in section 123 of the amended Act for the particular taxation year is the percentage equal to the aggregate of

(a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year, is of the number of days in the whole of the particular taxation year, and

(b) that proportion of the percentage so referred to for the taxation year immediately preceding the particular taxation year that the number of days in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year, is of the number of days in the whole of the particular taxation year.

All that portion of para. 51(1)(d) following subpara. (ii) substituted by 1972, c. 9, s. 5.

53. [Repealed under former Act]

Pre-RSC History: S. 53 repealed by 1974-75-76, c. 26, s. 139.

54–56.1 [Repealed under former Act]

Pre-RSC History: Ss. 54–56.1 repealed by 1985, c. 45, s. 141. Ss. 54-56.1 formerly read:

54. Small business deduction for particular years — For the purposes of section 125 of the amended Act, where a corporation has a taxation year (in this section referred to as the "particular taxation year") part of which is before and part of which is after the commencement of any of the calendar years 1973, 1974, 1975 and 1976 (in this section referred to as the "particular calendar year"), the percentage referred to in subsection 125(1) of the amended Act for the particular taxation year is the percentage equal to the aggregate of

(a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year, is of the number of days in the whole of the particular taxation year, and

(b) that proportion of the percentage so referred to for the taxation year immediately preceding the particular taxation year that the number of days in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year, is of the number of days in the particular taxation year.

55. (1) Foreign tax carryover — For the purposes of computing a taxpayer's foreign-tax carryover (within the meaning assigned by paragraph 126(7)(b) of the amended Act), for any taxation year commencing after 1971, a reference in subparagraph 126(7)(b)(i) or (ii) to the "immediately preceding taxation year" shall, for greater certainty, not include any taxation year ending before 1972.

(2) Idem — Where a corporation has a taxation year part of which is before and part of which is after the commencement of 1972, for the purposes of computing its foreign-tax carryover (within the meaning assigned by paragraph 126(7)(b) of the amended Act) for any subsequent taxation year, the amount deducted in its first taxation year ending after 1971 (in this subsection referred to as the "relevant year") in respect of a particular country under subsection 126(2) of the amended Act by the corporation from the tax for the relevant year otherwise payable under Part I of the amended Act shall be deemed to be that proportion of

(a) the amount determined to be the least of the amounts described in paragraphs 126(2)(a) to (c) of the amended Act with respect to the corporation for the relevant year

that

(b) the number of days in that portion of the relevant year that is in 1972

is of

(c) the number of days in the relevant year.

56. Refundable dividend tax on hand — Where a corporation has a taxation year part of which is before and part of which is after the commencement of 1972, for the purposes of computing its Canadian investment income and its foreign investment income (within the meanings assigned by paragraphs 129(4)(a) and (b) of the amended Act) for that taxation year the following rules apply:

(a) each amount otherwise determined under subparagraph 129(4)(a)(ii) or (iii) thereof and each loss of the corporation for the year from a business or property shall be deemed to be that proportion of the amount thereof otherwise determined that the number of days in that portion of the taxation year that is in 1972 is of the number of days in the whole taxation year; and

(b) each amount in respect of a dividend received by the corporation in the year and before 1972 that would, under the provisions of the former Act, have been exempt income of the corporation, shall be deemed to be exempt income of the corporation.

56.01 (1) Capital gains dividend of a mutual fund corporation — Where a dividend has become payable by a mutual fund corporation within the period of 60 days immediately following the taxation year that includes the day on which this section came into force, for the purposes of determining whether or not that dividend is a capital gains dividend, paragraph 131(6)(b) of the amended Act shall be read as follows:

"(b) "capital gains dividend account" of a mutual fund corporation at any time means the amount, if any, by which

(i) its capital gains for all taxation years commencing more than 60 days before that time from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

exceeds,

(ii) the aggregate of

(A) its capital losses for all taxation years commencing more than 60 days before that time from dispositions of property after 1971 and before that time while it was a mutual fund corporation,

(B) all capital gains dividends that became payable by the corporation before that time and after the end of the last taxation year ending more than 60 days before that time, and

(C) all amounts each of which is an amount in respect of any taxation year of the corporation ending more than 60 days before that time throughout which it was a mutual fund corporation, equal to 5 times its capital gains refund for that year;"

(2) Idem — For the purpose of computing any refund under subsection 131(2) of the amended Act in respect of the taxation year that includes the day on which this section came into force, clause 131(2)(a)(i)(A) thereof shall be read as follows:

"(A) all capital gains dividends paid by the corporation in the year or within 60 days after the end of the year, and".

56.1 Mutual fund trusts — For the purpose of subsection 132(6) of the amended Act, where at any particular time before 1973 a trust has complied with the conditions referred to in paragraph (c) thereof, it shall be deemed to have complied with those conditions during the whole of the period

(a) commencing with such day after 1971 and before the particular time as the trust may designate in the return of income required by section 150 of the amended Act to be filed by it for its 1972 taxation year, and

(b) ending with the particular time.

S. 56.01 added by 1973-74, c. 30, s. 30.

S. 55 substituted, s. 56.1 added by 1973-74, c. 14, ss. 83, 84.

57. (1)–(7) [Repealed under former Act]

Pre-RSC History: Subsecs. 57(1)–(7) repealed by 1985, c. 45, subsec. 142(1). Subsecs. 57(1)–(7) formerly read:

57. (1) Specified personal corporations — No tax is payable under Part I of the amended Act on the taxable income for the 1972 taxation year of a specified personal corporation.

(2) Dividends received — No tax is payable under Part IV of the amended Act in respect of dividends received by a specified personal corporation in its 1972 taxation year.

(3) Amount included in income of shareholder — In the case of a taxpayer who was a shareholder of a specified personal corporation at the end of the corporation's 1972 taxation year, there shall be included in computing the income of the taxpayer for his taxation year in which the corporation's 1972 taxation year ended, that proportion of the income of the corporation for its 1972 taxation year that the value of all property transferred or loaned to the corporation by the taxpayer or by any person by whom his share was previously owned is of the value of all property so acquired by the corporation from all of its shareholders.

(4) Valuation of transferred property — The value of any property transferred or loaned to a specified personal corporation shall be deemed, for the purposes of this section, to be its fair market value at the time when the property was transferred or loaned to the corporation.

(5) Transfers — For the purposes of this section, where the property of a specified personal corporation is transferred to or otherwise acquired by another specified personal corporation, the shareholders of the first corporation shall be deemed to have transferred to the second corporation the property that they or persons who previously owned their shares transferred to the first corporation.

(6) Taxable dividends — Where a part of the income for the 1972 taxation year of a specified personal corporation is required by subsection (3) to be included in computing the income of a taxpayer for a taxation year, the taxpayer shall be deemed to have received at the end of the corporation's 1972 taxation year, as a taxable dividend from a taxable Canadian corporation, that proportion of the part so required to be included that

(a) the amount, if any, by which the aggregate of all taxable dividends received by the specified personal corporation in its 1972 taxation year from taxable Canadian corporations exceeds the aggregate of all outlays and expenses deductible in computing the specified personal corporation's income for the 1972 taxation year, to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning those dividends,

is of

(b) the income of the specified personal corporation for its 1972 taxation year.

(7) Foreign taxes — Where a part of the income for the 1972 taxation year of a specified personal corporation is required by subsection (3) to be included in computing the income of a taxpayer for a taxation year, the taxpayer shall, for the purposes of section 126 of the amended Act and section 41 of the former Act, be deemed to have income for the year, other than income from a business, from sources in a foreign country, equal to that proportion of the part so required to be included that

(a) the income of the specified personal corporation for its 1972 taxation year from sources in that country,

is of

(b) the income of the specified personal corporation for its 1972 taxation year,

and the taxpayer shall be deemed, for the purposes of section 126 of the amended Act and section 41 of the former Act, to have paid as income tax thereon, other than as business-income tax, to the government of that country for the year an amount equal to that proportion of the income or profits tax paid or deemed to have been paid to that government by the specified personal corporation for its 1972 taxation year that

(c) the part so required to be included in computing the taxpayer's income for the year

is of

(d) the income of the specified personal corporation for its 1972 taxation year.

(8) [Repealed under former Act]

Pre-RSC History: Subsec. 57(8) repealed by 1977-78, c. 1, s. 111, applicable in computing tax-paid undistributed surplus on hand after December 31, 1978. Subsec. 57(8) formerly read:

(8) Tax-paid undistributed income — In computing a specified personal corporation's tax-paid undistributed surplus on hand at any time after the end of its 1972 taxation year, there shall be added to the aggregate of amounts described in subparagraphs 89(1)(k)(i) to (iii) of the amended Act, an amount equal to the aggregate of

(a) all dividends received by it in its 1972 taxation year and before 1972 from other corporations, to the extent that such dividends were, under the provisions of subsection 67(6), (7) or (8) of the former Act that are applicable by virtue of subsection (12) of this section, not required to be included in computing the income of the specified personal corporation for its 1972 taxation year, and

(b) that proportion of the aggregate of its incomes for its 1972 taxation year, other than amounts described in paragraph (9)(a) or (b), that the number of days in that portion of the taxation year that is in 1971 is of the number of days in the whole taxation year.

(9) Capital dividend account — In computing a specified personal corporation's capital dividend account at any time after the end of its 1972 taxation year, there shall be added to the total of the amounts described in paragraphs (a) and (b) of the definition "capital dividend account" in subsection 89(1) of the amended Act the total of its net capital gains (within the meaning assigned by subsection 51(3) of the *Income Tax Application Rules, 1971*, Part III of Chapter 63 of the Statutes of Canada, 1970-71-72, as it read before October 29, 1985) for its 1972 taxation year and that proportion of the total of its incomes for that year, other than

(a) any taxable capital gains of the corporation for the year from dispositions of property, and

(b) any amounts that were, because of subsection 57(3) of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, as it read before October 29, 1985 or under the provisions of subsection 67(1) of the former Act that applied because of subsection 57(12) of those Rules as it read before that date, required to be included in computing the income of the specified personal corporation for its 1972 taxation year,

that the number of days in that portion of the 1972 taxation year that is in 1972 is of the number of days in the whole year.

Related Provisions: ITAR 69 (meaning of "*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72").

(10) [Repealed under former Act]

Pre-RSC History: Subsec. 57(10) repealed by 1985, c. 45, subsec. 142(2). Subsec. 57(10) formerly read:

(10) Statement to be filed — The shareholder by whom a specified personal corporation is controlled shall file with the return of his income for his taxation year in which the 1972 taxation year of the specified corporation ends, a statement of the assets, liabilities and income of the specified personal corporation for the year and if he fails so to file such a statement for the year there may be included in his income for that year double the amount of the part of the income of the corporation for the year required by subsection (3) to be included in computing his income for the year.

(11) Meaning of "specified personal corporation" — For the purposes of this section, a corporation is a specified personal corporation if

(a) part of its 1972 taxation year was before and part thereof after the beginning of 1972; and

(b) during the whole of the period beginning on the earlier of June 18, 1971 and the beginning of its 1972

taxation year and ending at the end of its 1972 taxation year, it was a personal corporation within the meaning assigned by section 68 of the former Act.

(12) [Repealed under former Act]

Pre-RSC History: Subsec. 57(12) repealed by 1985, c. 45, subsec. 142(3). Subsec. 57(12) formerly read:

(12) Rule where corporation's 1971 taxation year ends in shareholder's 1972 taxation year — Where the 1971 taxation year of a corporation that was a personal corporation, within the meaning assigned by section 68 of the former Act, throughout its 1971 taxation year, ends in the 1972 taxation year of a taxpayer who was, at the end of the corporation's 1971 taxation year, a shareholder of the corporation, for the purposes of computing the taxpayer's income for his 1972 taxation year, the provisions of section 67 of the former Act are applicable but as though

(a) subsections 67(6), (7) and (8) of the former Act were not applicable to dividends actually paid by the corporation after 1971, and

(b) the references in subsection 67(11) of the former Act to "section 41" were read so as to include a reference to section 126 of the amended Act.

Definitions [ITAR 57]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital dividend" — ITA 83(2)–(2.4), 248(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "former Act" — ITAR 8; "Income Tax Application Rules, 1971" — ITAR 69; "property" — ITA 248(1); "specified personal corporation" — ITAR 57(11); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249.

57.1 [Repealed under former Act]

Pre-RSC History: S. 57.1 repealed by 1985, c. 45, s. 143. S. 57.1 formerly read:

57.1 (1) Cooperative corporations — Where a cooperative corporation (within the meaning assigned by section 136 of the amended Act) has a taxation year part of which is before and part of which is after the commencement of 1972, the tax payable by it under Part I of the amended Act for the year shall be determined by the following rules:

(a) determine the tax under Part I of the amended Act that, but for this subsection would be payable by it for its 1972 taxation year on its amount taxable for its 1972 taxation year;

(b) determine that proportion of the amount determined under paragraph (a) that the number of days in that portion of its 1972 taxation year that is in 1972 is of the number of days in the whole taxation year;

(c) determine the aggregate of the taxes that, but for this subsection, would be payable by the corporation for its 1972 taxation year

(i) under Part I of the former Act, and

(ii) under subsection 24(5) of the *Old Age Security Act* as it read before being amended by section 3

on the assumptions that

(iii) its amount taxable for its 1972 taxation year were computed as if

(A) subsections 75(3) and (5a) and paragraph 75(4)(b) of the former Act were applicable, and

(B) the references in subsection 75(3) and paragraph 75(4)(b) of the former Act to section 27 of that Act and to paragraph (k) of subsection (1) of section 62 of that Act were references to section 111 and to paragraph 137(6)(b), respectively, of the amended Act,

(iv) Division E of Part I of the former Act and subsections 24(5) and (6) of the *Old Age Security Act* as it read before being amended by section 3 were applicable to its 1972 taxation year, and

(v) subsection 40(3) of the former Act were applicable to the 1972 taxation year but as though the proportion referred to in that subsection were the proportion that the number of days in that portion of the taxation year that is after June, 1971 and before 1972 is of the number of days in that portion of the taxation year that is before 1972;

(d) determine that proportion of the aggregate determined under paragraph (c) that the number of days in that portion of its 1972 taxation year that is in 1971 is of the number of days in the whole taxation year;

(e) determine the aggregate of the amounts determined under paragraphs (b) and (d) in respect of the corporation;

and the aggregate determined under paragraph (e) is the tax under Part I of the amended Act payable by the corporation for its 1972 taxation year.

(2) Ss. 51(1) not applicable — Subsection 51(1) does not apply for the purpose of determining the tax payable by a cooperative corporation (within the meaning assigned by section 136 of the amended Act) for its 1972 taxation year.

(3) "Amount taxable" defined — In this section, "amount taxable" of a corporation for its 1972 taxation year has, subject to subsection 51(2), the meaning assigned by Division E of Part I of the amended Act.

Subpara. 57.1(1)(c)(v) added by 1972, c. 9, s. 6.

58. (1) Credit unions — For the purpose of computing the income of a credit union for the 1972 and subsequent taxation years,

(a) property of the credit union that is a bond, debenture, mortgage or agreement of sale owned by it at the beginning of its 1972 taxation year shall be valued at its actual cost to the credit union,

(i) plus a reasonable amount in respect of the amortization of the amount by which the principal amount of the property at the time it was acquired by the credit union exceeds its actual cost to the credit union, or

(ii) minus a reasonable amount in respect of the amortization of the amount by which its actual cost to the credit union exceeds the principal amount of the property at the time it was acquired by the credit union;

(b) property of the credit union that is a debt owing to the credit union (other than property described in paragraph (a) or a debt that became a bad debt before its 1972 taxation year) acquired by it before the beginning of its 1972 taxation year shall be valued at any time at the amount thereof outstanding at that time;

(c) any depreciable property acquired by the credit union in a taxation year ending before 1972 shall be deemed to have been acquired by it on the last day of its 1971 taxation year at a capital cost equal to

(i) in the case of any building or automotive equipment owned by it on the last day of its 1971 taxation year, the amount, if any, by which the depreciable cost to the credit union of the building or equipment, as the case may be, exceeds the product obtained when the number of full taxation years in the period beginning on the first day of the taxation year following the taxation year in which the building or equipment, as the case may be, was acquired by it and ending with the last day of its 1971 taxation year is multiplied by, in the case of a building, 2½%, and in the case of equipment, 15%, of its depreciable cost (and for the purposes of this subparagraph, a capital improvement or capital addition to a building owned by a credit union shall be deemed not to be part of the building but to be a separate and distinct building acquired by it, if the cost to the credit union of the improvement or addition, as the case may be, exceeded $10,000),

(ii) in the case of any leasehold interest, the proportion of the capital cost thereof to the credit union

(determined without regard to this subparagraph) that

(A) the number of months in the period commencing with the first day of the credit union's 1972 taxation year and ending with the day on which the leasehold interest expires

is of

(B) the number of months in the period beginning with the day on which the credit union acquired the leasehold interest and ending with the day on which the leasehold interest expires, and

(iii) in the case of any property (other than a building, automotive equipment or leasehold interest) acquired by the credit union after 1961, the amount, if any, by which the depreciable cost to the credit union of such property exceeds the product obtained when the number of full taxation years beginning with the first day of the taxation year following the taxation year in which the property was acquired by it and ending with the last day of its 1971 taxation year is multiplied by ½ the relevant percentage of the depreciable cost to the credit union of the property; and

(d) the undepreciated capital cost to the credit union as of the first day of its 1972 taxation year of depreciable property of a prescribed class acquired by it before that taxation year is the total of the amounts determined under paragraph (c) to be the capital costs to it as of that day of all property of that class.

Pre-RSC History: All that portion of para. 58(1)(c) preceding subpara. (ii), subpara. 58(1)(c)(iii) substituted by 1974-75-76, c. 26, subsecs. 140(1), (2).

(1.1) Exception — For the purpose of computing a capital gain from the disposition of depreciable property acquired by a credit union in a taxation year ending before 1972, the capital cost of the property shall be its capital cost determined without reference to paragraph (1)(c).

Pre-RSC History: Subsec. 58(1.1) added by 1974-75-76, c. 26, subsec. 140(3).

(2)–(3.1) [Repealed under former Act]

Pre-RSC History: Subsecs. 58(2)–(3.1) repealed by 1985, c. 45, subsec. 144(1). Subsecs. 58(2)–(3.1) formerly read:

(2) Deemed deductions — For the purposes of paragraph 137(1)(c) of the amended Act, a credit union shall be deemed to have deducted, in computing its income for its 1971 taxation year

(a) under paragraph 137(1)(a) thereof, the maximum amount determined in prescribed manner that would have been claimable by the credit union under that paragraph as a reserve in respect of property described therein in computing its income for its 1971 taxation year if section 137 of the amended Act had been applicable to that year, and

(b) under paragraph 137(1)(b) thereof, the maximum amount determined in prescribed manner that would have been claimable by the credit union under that paragraph as a reserve in respect of debts described therein in computing its income for its 1971 taxation year if section 137 of the amended Act had been applicable to that year,

except that where the amount of the credit union's 1971 reserve is less than the aggregate of the amounts described in paragraphs (a) and (b), it shall be deemed to have deducted in computing its income for its 1971 taxation year,

(c) under paragraph 137(1)(a) of the amended Act, such portion of its 1971 reserve as it may claim, not exceeding the amount described in paragraph (a), and

(d) under paragraph 137(1)(b) of the amended Act, such portion of the amount, if any, by which its 1971 reserve exceeds the amount determined under paragraph (c), as does not exceed the amount described in paragraph (b).

(3) Special rule applicable to 1972 taxation year — Where a credit union has a taxation year part of which is before and part of which is after the commencement of 1972, the tax payable by it under Part I of the amended Act for that taxation year is that proportion of the tax otherwise payable by it under that Part for the taxation year that the number of days in that portion of the taxation year that is in 1972 is of the number of days in the whole taxation year, and subsection 51(1) does not apply for the purpose of determining the tax payable by it for that taxation year.

(3.1) Additional deduction for 1973 to 1976 taxation years — For the purposes of subsection 137(3) of the amended Act, where a credit union has a taxation year (in this section referred to as the "particular taxation year") part of which is before and part of which is after the commencement of any of the calendar years 1973, 1974, 1975 and 1976 (in this section referred to as the "particular calendar year"), the percentage referred to in subsection 137(3) of the amended Act for the particular taxation year is the percentage equal to the aggregate of

(a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year, is of the number of days in the whole of the particular taxation year, and

(b) that proportion of the percentage so referred to for the taxation year immediately preceding the particular taxation year that the number of days in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year, is of the number of days in the particular taxation year.

(3.2) Determination of maximum cumulative reserve at end of taxation year — Notwithstanding the definition "maximum cumulative reserve" in subsection 137(6) of the amended Act, for the purposes of section 137 of the amended Act a credit union's maximum cumulative reserve at the end of any particular year is the amount, if any, by which its maximum cumulative reserve at that time, determined under that definition without regard to this subsection, exceeds the lesser of

(a) its maximum cumulative reserve, determined under that definition without regard to this subsection, at the end of its 1971 taxation year, and

(b) the amount, if any, by which its 1971 reserve exceeds the total of the amounts deemed by subsection 58(2) of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, to have been deducted by it in computing its income for its 1971 taxation year.

Related Provisions: ITAR 69 (meaning of "*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72").

(3.3) Idem — Notwithstanding subsection (3.2), where at any time after May 6, 1974 there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more credit unions to form a new credit union, the maximum cumulative reserve of the new credit union shall be deemed to be the amount by which its maximum cumulative reserve, determined under the definition of that term in subsection 137(6) of the amended Act, exceeds the total of all amounts, if any, each of which is the lesser of the amounts referred to in paragraphs (3.2)(a) and (b) in respect of each of the predecessor corporations.

(3.4) Idem — Notwithstanding subsection (3.2), where a credit union (in this subsection referred to as the acquirer) has, at any time after May 6, 1974, acquired otherwise than by way of amalgamation all or substantially all of the assets of another credit union, the maximum cumulative

reserve of the acquirer shall be the amount by which the acquirer's maximum cumulative reserve, determined under the definition of that term in subsection 137(6) of the amended Act, exceeds the total of

(a) the lesser of the amounts determined under paragraphs (3.2)(a) and (b) in respect of the acquirer, and

(b) the lesser of the amounts determined under paragraphs (3.2)(a) and (b) in respect of the other credit union.

Pre-RSC History: Subsecs. 58(3.3), (3.4) added by 1974-75-76, c. 26, subsec. 140(4).

(4), (4.1) [Repealed under former Act]

Pre-RSC History: Subsecs. 58(4), (4.1) repealed by 1985, c. 45, subsec. 144(2). Subsecs. 58(4), (4.1) formerly read:

(4) Amounts not to be deducted — Notwithstanding the provisions of the amended Act, in computing a credit union's income for the 1972 or any subsequent taxation year, there shall not be deducted

(a) any payment made by it pursuant to an allocation in proportion to borrowing that is an amount credited to a member of the credit union in respect of interest that became payable by the member to the credit union before the commencement of the credit union's 1972 taxation year, or

(b) any amount payable in the year by the credit union to any member of the credit union as, on account or in lieu of payment of, or in satisfaction of interest, to the extent that that amount may reasonably be considered to be payable in respect of any period before the credit union's 1972 taxation year or to be computed by reference to any business carried on by the credit union before that year.

(4.1) Amount of non-capital loss — The amount, if any, by which

(a) the aggregate of amounts each of which is the amount, as of the commencement of the credit union's 1972 taxation year, of any share in the credit union of any member thereof,

exceeds

(b) the amount that would be the credit union's 1971 reserve if paragraph (5)(c) were read without reference to subparagraph (vi) thereof

shall, for the purposes of section 111 of the amended Act, be deemed to have been the credit union's non-capital loss for its 1971 taxation year, and, for greater certainty, section 37 does not apply for the purpose of computing a credit union's taxable income for any taxation year.

(5) Definitions — In this section,

"depreciable cost" to a credit union of any property means the actual cost to it of the property or the amount at which it is deemed by subsection 13(7) of the amended Act to have acquired the property, as the case may be;

"relevant percentage" in relation to a prescribed class of property is the percentage prescribed in respect of that class by any regulations made under paragraph 11(1)(a) of the former Act;

"1971 reserve" of a credit union means the amount, if any, by which the total of all amounts each of which is

(a) the amount of any money of the credit union on hand at the beginning of its 1972 taxation year,

(b) an amount in respect of any property described in paragraph (1)(a) or (b), equal to the amount at which it is required by those paragraphs to be valued at the beginning of its 1972 taxation year,

(c) an amount in respect of depreciable property of a prescribed class owned by the credit union on the first day of its 1972 taxation year, equal to the amount determined under paragraph (1)(d) to be the undepreciated capital cost thereof to the credit union as of that day, or

(d) an amount in respect of any capital property (other than depreciable property) owned by the credit union at the beginning of its 1972 taxation year, equal to its cost to the credit union computed without reference to the provisions of section 26,

exceeds the total of all amounts each of which is

(e) the amount of any debt owing by the credit union or of any other obligation of the credit union to pay an amount, that was outstanding at the beginning of its 1972 taxation year, excluding, for greater certainty, any share in the credit union of any member thereof, or

(f) the amount, as of the beginning of the credit union's 1972 taxation year, of any share in the credit union of any member thereof.

Pre-RSC History: *The definition "depreciable cost" was para. 58(5)(a); "relevant percentage", para. 58(5)(b); "1971 reserve", para. 58(5)(c).*

Definitions [ITAR 58]: "1971 reserve" — ITAR 58(5); "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital gain" — ITA 39(1), 248(1); "capital property" — ITA 54, 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "depreciable cost" — ITAR 58(5); "depreciable property" — ITA 13(21), 248(1); "former Act" — ITAR 8; "Income Tax Application Rules, 1971" — ITAR 69; "month" — *Interpretation Act* 35(1); "prescribed", "principal amount", "property" — ITA 248(1); "relevant percentage" — ITAR 58(5); "share" — ITA 248(1); "taxation year" — ITA 249; "undepreciated capital cost" — ITA 13(21), 248(1).

Interpretation Bulletins [ITAR 58]: IT-483: Credit unions.

59. (1) [Repealed under former Act]

Pre-RSC History: Subsec. 59(1) repealed by 1985, c. 45, s. 145. Subsec. 59(1) formerly read:

59. (1) Non-resident-owned investment corporation — In its application to the 1972 to 1975 taxation years of a corporation, section 133 of the amended Act shall be read as if

(a) subsection (3) thereof were read as follows:

"(3) The tax payable under this Part by a corporation for a taxation year when it was a non-resident-owned investment corporation is the aggregate of

(a) 25% of the lesser of

(i) the corporation's taxable income for the year, and

(ii) the amount determined under subparagraph (9)(b)(iii) in respect of the corporation for the year, and

(b) 15% of the amount, if any, by which the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii).", and

(b) the references in subsection (9) thereof to "1/3" and "4/3" were read as references to "15/85" and "100/85" respectively.

(2) Non-resident-owned investment corporation — In its application to the 1972 and subsequent taxation years of a corporation, section 133 of the amended Act shall be read as if, in respect of such portion of any period described in the definition "non-resident-owned investment corporation" in subsection 133(8) of that Act as ended before the beginning of the corporation's 1976 tax-

ation year, paragraph (a) of that definition were read as follows:

"(a) at least 95% of the total value of its issued shares, and all of its bonds, debentures and other funded indebtedness, were

(i) beneficially owned by non-resident persons (other than any foreign affiliate of a taxpayer resident in Canada),

(ii) owned by trustees for the benefit of non-resident persons or their unborn issue, or

(iii) owned by a corporation, whether incorporated in Canada or elsewhere, at least 95% of the total value of the issued shares of which and all of the bonds, debentures and other funded indebtedness of which were beneficially owned by non-resident persons or owned by trustees for the benefit of non-resident persons or their unborn issue, or by two or more such corporations;".

Definitions [ITAR 59]: "amended Act" — ITAR 8; "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign affiliate" — ITA 95(1), 248(1); "non-resident", "person" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

60. [Repealed under former Act]

Pre-RSC History: S. 60 repealed by 1985, c. 45, s. 146. S. 60 formerly read:

60. (1) **Foreign business corporations** — Notwithstanding section 9, section 71 of the former Act is applicable to any taxation year of a corporation commencing before 1972.

(2) **Tax** — Notwithstanding any other provisions of this Act, where a corporation was, by virtue of section 71 of the former Act or under the provisions of that section that are applicable by virtue of subsection (1) of this section, exempt from tax under Part I of the former Act for its last taxation year commencing before 1972, for the purpose of computing the tax payable by it under the amended Act for each of the 4 immediately following taxation years the following rules apply:

(a) for the purpose of computing its taxable income for the year, there may be deducted from its income for the year an amount equal to the relevant percentage for that year of the lesser of

(i) the corporation's taxable income for the year otherwise determined, and

(ii) the amount, if any, by which

(A) the aggregate of amounts each of which is the corporation's income for the year (other than from dividends received by it from a foreign affiliate of the corporation) from a source in a country other than Canada,

exceeds

(B) the aggregate of amounts each of which is the corporation's loss for the year from a source in a country other than Canada;

(b) for the purposes of section 126 of the amended Act,

(i) the business-income tax paid by the corporation for the year in respect of businesses carried on by it in a country other than Canada shall be deemed to be the percentage, equal to 100% minus the relevant percentage for that year, of the amount otherwise determined to be the business-income tax paid by the corporation for the year in respect of businesses carried on by it in that country, and

(ii) the non-business-income tax paid by the corporation for the year to the government of a country other than Canada shall be deemed to be the percentage, equal to 100% minus the relevant percentage for that year, of the amount otherwise determined to be the non-business-income tax paid by the corporation for the year to the government of that country; and

(c) where the corporation was, at any time in the year, a private corporation, there may be deducted from the tax under Part IV of the amended Act otherwise payable by it for the year, the relevant percentage for that year of such tax, and for the purposes of subsection 129(3) of the amended Act the tax under that Part payable by it for the year shall be deemed to be an amount equal to the remainder.

(3) **"Relevant percentage" defined** — For the purposes of subsection (2), "relevant percentage" for a taxation year commencing after 1971 of a corporation means,

(a) for the first taxation year of the corporation commencing after 1971, 80%,

(b) for the second taxation year of the corporation commencing after 1971, 60%,

(c) for the third taxation year of the corporation commencing after 1971, 40%, and

(d) for the fourth taxation year of the corporation commencing after 1971, 20%.

Subsec. 60(2) substituted by 1973-74, c. 14, s. 85.

60.1 Taxes payable by insurer under Part IA of former Act — For the purposes of the description of F in the definition "surplus funds derived from operations" in subsection 138(12) of the amended Act, the reference in that description to "this Part" shall be deemed to be a reference to "this Part and Part IA of the former Act".

Pre-RSC History: S. 60.1 added by 1973-74, c. 14, s. 86.

Definitions [ITAR 60.1]: "amended Act" — ITAR 8.

61. (1) Registered retirement savings plans — For the purposes of the definition "non-qualified investment" in subsection 146(1) of the amended Act, property acquired after June 18, 1971 and before 1972 by a trust governed by a registered retirement savings plan shall, if owned or held by the trust on January 1, 1972, be deemed to have been acquired by the trust on January 1, 1972.

(2) [Not included in R.S.C. 1985]

Pre-RSC History: Subsec. 61(2) formerly read:

(2) **Refunds of premiums where death before 1972** — Where

(a) an annuitant under a registered retirement savings plan died before 1972,

(b) a taxpayer received, after 1971, an amount as a refund of premiums (within the meaning assigned by section 146 of the amended Act) under that plan, and

(c) the taxpayer has, within a prescribed time,

(i) filed with the Minister a statement indicating that the taxpayer has elected to have this subsection apply with respect to that amount, and

(ii) paid to the Receiver General, as tax payable by him under Part I of the amended Act in addition to any other tax payable by him under that Part, an amount equal to 15% of the amount so received,

the amount of the refund of premiums shall not be included by virtue of subsection 146(8) of the amended Act in computing the taxpayer's income for the year in which he received that amount.

Subpara. 61(2)(c)(ii) substituted by 1980-81-82-83, c. 48, s. 119.

Subsec. 61(2) added by 1973-74, c. 14, s. 87.

Definitions [ITAR 61]: "amended Act" — ITAR 8; "property" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "trust" — ITA 104(1), 248(1), (3).

62. (1) Assessments — Subsections 152(4) and (5) of the amended Act apply in respect of any assessment made after December 23, 1971, except that subsection 152(5) of that Act does not apply in respect of any such assessment made in consequence of a waiver filed with the Minister before December 23, 1971 in the form and within the time referred to in subsection 152(4) of that Act.

(2) Interest — Subsections 161(1) and (2), 164(3) and (4), 202(5) and 227(8) and (9) of the amended Act, sub-

section 183(2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, and subsection 195(1) of that Act as it read in its application in respect of dividends paid or received before April 1, 1977, in so far as those subsections relate to the rate of interest payable thereunder, apply in respect of interest payable in respect of any period after December 23, 1971.

(3) [Repealed under former Act]

Pre-RSC History: Subsec. 62(3) repealed by 1988, c. 55, s. 197. Subsec. 62(3) formerly read:

> (3) **Penalties** — Subsection 163(1) of the amended Act is applicable in respect of any return of income required to be filed after 1971 and subsection 163(3) thereof is applicable in respect of any appeal instituted after the coming into force of this Act.

(4) Objections to assessment — Subsection 165(3) of the amended Act applies in respect of any notice of objection served on the Minister after December 23, 1971.

(5) Appeals — Division J of Part I of the amended Act applies in respect of any appeal or application instituted or made, as the case may be, after December 23, 1971.

(6) Appeals to Federal Court — Any appeal to the Federal Court instituted, within 2 years after December 23, 1971 and in accordance with Division J of Part I of the former Act and any rules made thereunder (as those rules read immediately before December 23, 1971), shall be deemed to have been instituted in the manner provided by the amended Act, and any document served on the Minister or a taxpayer in connection with an appeal so instituted in the manner provided in that Division and those rules shall be deemed to have been served in the manner provided by the amended Act.

Definitions [ITAR 62]: "amended Act" — ITAR 8; "assessment", "dividend" — ITA 248(1); "Federal Court" — *Interpretation Act* 35(1); "former Act" — ITAR 8; "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "Minister", "taxpayer" — ITA 248(1).

63. [Repealed under former Act]

Pre-RSC History: S. 63 repealed by 1977-78, c. 1, s. 112, applicable in computing tax-paid undistributed surplus on hand after December 31, 1978. S. 63 formerly read:

> 63. **Part II of amended Act** — Where a corporation that has a taxation year part of which is before and part of which is after the commencement of 1972, has in the year and before June 19, 1971 redeemed or acquired any of its shares, other than common shares, it may, on or before the day on or before which it is required to pay tax under Part II of the amended Act for the year on the amount of the premium on the share, elect in prescribed manner and in prescribed form to deduct an amount, not exceeding the amount of its tax-paid undistributed surplus on hand at the time of the election, from the amount of the premium on which it is liable to pay tax under that Part and to pay tax under that Part on the remainder, if any; in which case its tax-paid undistributed surplus on hand at any subsequent time shall be deemed to be the amount thereof otherwise determined at that time minus the amount that the corporation has so elected to deduct.

64. [Repealed under former Act]

Pre-RSC History: S. 64 repealed by 1984, c. 45, s. 98, applicable to 1985 *et seq.* S. 64 formerly read:

> 64. **Preferred-rate amount** — Where a corporation has a taxation year part of which is before and part of which is after the commencement of 1972, for the purpose of computing its preferred-rate amount (within the meaning assigned by subsection 190(2) of the amended Act) at the end of its 1972 taxation year the amount deductible under section 125 of the amended Act from the tax otherwise payable by the corporation under Part I thereof for the year shall be deemed to be that proportion of the amount thereof otherwise deductible thereunder that
>
> (a) the number of days in that portion of the taxation year that is in 1972
>
> is of
>
> (b) the number of days in the whole taxation year.

All that portion of s. 64 preceding para. (a) substituted by 1973-74, c. 14, s. 88.

64.1 [Repealed under former Act]

Pre-RSC History: S. 64.1 repealed by 1977-78, c. 1, s. 113, applicable in respect of dividends paid after March 31, 1977. S. 64.1 formerly read:

> 64.1 **Life insurance corporation's control period earnings** — Notwithstanding anything contained in subsection 192(10.1) of the amended Act, the amount of a life insurance corporation's earnings for a control period that was available for payment of dividends at a particular time is the aggregate of the amount thereof determined under that subsection and all income or profits taxes paid or payable by the corporation, for taxation years ending after 1968 and before 1972 that are in the control period, to a government of a country other than Canada or to a state, province or other political subdivision of a country other than Canada.

S. 64.1 substituted by 1973-74, c. 14, s. 89.

64.2 [Repealed under former Act]

Pre-RSC History: S. 64.2 repealed by 1977-78, c. 1, s. 113, applicable in respect of dividends paid after March 31, 1977. S. 64.2 formerly read:

> 64.2 **Parts VII and VIII of amended Act** — For the purposes of Parts VII and VIII of the amended Act,
>
> (a) control of a corporation shall be deemed not to have been acquired by another person at any particular time before 1972 unless at that time that other person had acquired control, within the meaning assigned by subsection 28(3) of the former Act, of the corporation; and
>
> (b) where, at the commencement of 1972, one corporation was
>
> (i) controlled, within the meaning assigned by subsection 192(4) of the amended Act, by another corporation, and
>
> (ii) not controlled, within the meaning assigned by subsection 28(3) of the former Act, by that other corporation,
>
> control of the corporation shall be deemed to have been acquired by that corporation at that time.

64.3 [Repealed under former Act]

Pre-RSC History: S. 64.3 repealed by 1974-75-76, c. 26, s. 141, applicable in respect of elections made under s. 64.3 after the day on which 1974-75-76, c. 26, is assented to. S. 64.3 formerly read:

> 64.3 **Retroactive Part IX election** — Where a corporation has, before the coming into force of this section, made one or more elections under subsection 83(1) of the amended Act and has, subsequently at any particular time before 1976, made an election under this section, in prescribed manner and prescribed form, wherein it has specified one of those elections made before the coming into force of this section (in this section referred to as the "specified election"), the following rules apply if, at the particular time, the corporation complied with the requirements (including the payment of any tax) of Part IX of the amended Act in respect of the election it is deemed by paragraph (a) to have made under that Part by virtue of its election under this section:
>
> (a) the corporation shall be deemed to have made,
>
> (i) immediately before the time immediately before the specified election was made, and
>
> (ii) after the last election, if any, under Part IX of the amended Act (other than an election deemed by this paragraph to have been made) by it before the specified election was made,
>
> an election under subsection 196(1) of the amended Act in respect of an amount referred to in paragraph (b) thereof,
>
> (b) any tax paid at the particular time by the corporation under Part IX of the amended Act as a consequence of its election under this section shall be deemed to have been paid by the

corporation at the time at which the corporation is deemed by paragraph (a) to have made the election under subsection 196(1) of the amended Act in respect of an amount referred to in paragraph (b) thereof, and

(c) the corporation shall pay interest at a prescribed rate per annum on the amount of the tax described in paragraph (b) from the time the specified election was made to the particular time.

S. 64.3 added by 1973-74, c. 14, s. 90.

65. (1) Part XI of amended Act — Where, at any particular time after June 18, 1971 and before July 1, 1972, a taxpayer described in section 205 of the amended Act has acquired a foreign property that was

(a) a share of the capital stock of a corporation that would be a mutual fund corporation if paragraph 131(8)(a) of the amended Act were read without reference to the words "that was a public corporation",

(b) a unit of a trust that would be a mutual fund trust if subsection 132(6) of the amended Act were read without reference to paragraph 132(6)(c), or

(c) an interest, as a beneficiary under a trust, in property held subject to the trust by a trust company incorporated under the laws of Canada or a province, if

(i) throughout the 1971 taxation year of the trust,

(A) all the property of the trust was held in trust for the benefit of not less than 20 beneficiaries, and

(I) not less than 20 of the beneficiaries were taxpayers described in paragraph 205(a) or (c) of the amended Act, or

(II) not less than 100 of the beneficiaries were taxpayers described in paragraph 205(b) of the amended Act,

(B) not less than 80% of all the property of the trust consisted of shares, bonds, mortgages, marketable securities or cash, and

(C) not more than 10% of all the property of the trust consisted of shares, bonds, mortgages or other securities of any one corporation or debtor other than Her Majesty in right of Canada or of a province or a Canadian municipality,

(ii) not less than 95% of the income of the trust for its 1971 taxation year was derived from investments described in clause (i)(B),

(iii) the total value of all such interests owned by all beneficiaries mentioned in clause (i)(A) to which any one employer has made or may make contributions did not exceed, at any time in the 1971 taxation year of the trust, 25% of the value of all the property of the trust at that time, and

(iv) the total value of all such interests owned by all beneficiaries mentioned in subclause (i)(A)(II) to which any one taxpayer has paid or may pay premiums does not exceed, at any time in the 1971 taxation year of the trust, 25% of the value of all the property of the trust at that time,

the property shall, to the extent that the cost to the taxpayer thereof does not exceed the amount, if any, by which the taxpayer's foreign investment limit exceeds the total of the costs to it of all foreign properties described in paragraphs (a) to (c) acquired by the taxpayer after June 18, 1971 and before the particular time, be deemed

(d) for the purposes of Part XI of the amended Act, to have been acquired before June 19, 1971 and not to have been acquired after June 18, 1971, and

(e) where the taxpayer was a trust governed by a registered retirement savings plan, notwithstanding the definition "qualified investment" in subsection 146(1) of the amended Act, to have been a qualified investment for the purposes of section 146 of that Act.

Pre-RSC History: All that portion of subsec. 65(1) preceding para. (a) substituted by 1973-74, c. 14, subsec. 91(1).

Regulations: 221(1)(g) (reporting requirements for trust described under ITAR 65(1)(c)).

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

(1.1) Idem — Where, at any particular time after October 13, 1971 and before July 1, 1972, a taxpayer to whom Part XI of the amended Act applies has acquired a foreign property that was a share of the capital stock of a corporation that would be an investment corporation if subparagraph 130(3)(a)(i) of the amended Act were read without reference to the words "that was a public corporation", for the purposes of subsection (1) the share so acquired shall be deemed to be a share described in paragraph (1)(a).

Pre-RSC History: Subsec. 65(1.1) substituted by 1973-74, c. 14, subsec. 91(2).

(2) Definition of "foreign investment limit" — In subsection (1), "foreign investment limit" of a taxpayer means the total of

(a) the taxpayer's income from property for its 1971 taxation year,

(b) where the taxpayer was, throughout its 1971 taxation year, a taxpayer described in paragraph 205(a) of the amended Act, all amounts each of which is such portion of any amount paid or contributed by any person to or under the plan in 1971 as was deductible in computing that person's income for the 1971 taxation year under paragraph 11(1)(g) or (h) of the former Act, or as would have been deductible in computing that income under paragraph 11(1)(i) of the former Act if that paragraph were read (except for the purposes of subparagraph 11(1)(i)(iii) of that Act) without reference to subparagraph 11(1)(i)(ii) of that Act,

(c) where the taxpayer was, throughout its 1971 taxation year, a trust governed by a registered retirement savings plan, all amounts each of which is such portion of any premium paid in 1971 by the annuitant under the plan as was deductible under subsection 79B(5) of the former Act in computing the annuitant's income for the 1971 taxation year, and

(d) where the taxpayer was, throughout its 1971 taxation year, a trust governed by a deferred profit sharing plan, all amounts each of which is such portion of any amount paid by an employer to a trustee under the plan as was deductible under subsection 79C(7) of the former Act in computing the employer's income for the 1971 taxation year.

(3) Foreign property acquired by registered retirement savings plan — Where, at any particular time after 1971 and before July 1, 1974, a trust governed by a registered retirement savings plan acquired a foreign property described in paragraph (1)(a) or (b) or a foreign property that would be described in paragraph (1)(c) if the references in that paragraph to the "1971 taxation year" of the trust were read as references to the "1972 and 1973 taxation years" of the trust, the property shall, to the extent that the cost to the trust thereof did not exceed the amount, if any, by which the trust's foreign reinvestment limit exceeded the total of the cost to it of all such foreign

properties so acquired by it after 1971 and before the particular time, be deemed

(a) for the purposes of Part XI of the amended Act, to have been acquired before June 19, 1971 and not to have been acquired after June 18, 1971; and

(b) notwithstanding the definition "qualified investment" in subsection 146(1) of the amended Act, to have been a qualified investment for the purposes of section 146 of that Act.

Pre-RSC History: All that portion of subsec. 65(3) preceding para. (a) substituted by 1973-74, c. 14, subsec. 91(3).

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

(4) Definition of "foreign reinvestment limit" — In subsection (3), "foreign reinvestment limit" of a trust governed by a registered retirement savings plan means such portion of the total of

(a) the trust's income from property for its 1972 and 1973 taxation years,

(b) all amounts each of which is such portion of any premium paid by the annuitant under the plan as was deductible under subsection 146(5) of the amended Act in computing the annuitant's income for the 1972 or 1973 taxation year,

(c) all amounts each of which is a capital gains dividend (within the meaning assigned by subsection 131(1) of the amended Act) received by the trust in its 1972 or 1973 taxation year, and

(d) 2 times the total of all amounts each of which is, because of subsection 104(21) of the amended Act, deemed to be a taxable capital gain of the trust for its 1972 or 1973 taxation year,

as was, under the terms and conditions of the plan as fixed on or before June 18, 1971, required to be invested by the trust in foreign property described in paragraph (1)(a) or (b) or foreign property that would be described in paragraph (1)(c) if the references in that paragraph to the "1971 taxation year" of the trust were read as references to the "1971 and 1972 taxation years" of the trust.

(5) Shares of a mutual fund corporation received on amalgamation — Where, after May 25, 1976, there has been an amalgamation (within the meaning assigned by section 87 of the amended Act) of two or more mutual fund corporations (each of which corporations is in this subsection referred to as a "predecessor corporation") to form one corporate entity (in this subsection referred to as the "new corporation"), and

(a) any shareholder that is a taxpayer described in any of paragraphs 205(a), (b) or (c) of the amended Act owned shares of the capital stock of a predecessor corporation (in this subsection referred to as the "old shares") on June 18, 1971 and thereafter without interruption until immediately before the amalgamation,

(b) any shares referred to in paragraph (a) were foreign property (within the meaning assigned by subsection 206(1) of the amended Act) immediately before the amalgamation, and

(c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation, other than shares of the capital stock of the new corporation (in this subsection referred to as the "new shares"),

notwithstanding any other provision of this Act or of the amended Act, for the purpose of subsection 206(2) of the amended Act, the taxpayer shall be deemed not to have acquired the new shares after June 18, 1971.

History: All that portion of subsec. 65(5) following para. (a) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 202, applicable to periods occurring after October 1985. That portion formerly read:

(b) any shares referred to in paragraph (a) were foreign property (within the meaning assigned by subsection 206(2) of the amended Act) immediately before the amalgamation, and

(c) no consideration was received by the shareholder for the disposition of the old shares on the amalgamation other than shares of the capital stock of the new corporation (in this subsection referred to as the "new shares"),

notwithstanding any other provision of this Act or the amended Act, for the purposes of subsection 206(1) of the amended Act, the taxpayer is deemed to have acquired the new shares prior to June 18, 1971.

Pre-RSC History: Subsec. 65(5) added by 1976-77, c. 4, s. 84, applicable after May 25, 1976.

Paras. 65(4)(c), (d) added by 1973-74, c. 14, subsec. 91(4).

Definitions [ITAR 65]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "dividend", "employer" — ITA 248(1); "foreign investment limit" — ITAR 65(2); "foreign reinvestment limit" — ITAR 65(4); "former Act" — ITAR 8; "Her Majesty" — *Interpretation Act* 35(1); "investment corporation" — ITA 130(3), 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q), 248(1); "new corporation" — ITAR 65(5); "new shares" — ITAR 65(5)(c); "old shares" — ITAR 65(5)(a); "person" — ITA 248(1); "predecessor corporation" — ITAR 65(5); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered retirement savings plan" — ITA 146(1), 248(1); "share", "shareholder" — ITA 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins [ITAR 65]: IT-412R2: Foreign property of registered plans.

65.1 Part XV of amended Act — For greater certainty,

(a) section 9 does not apply in respect of the repeal, by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, of Part V of the former Act and the substitution therefor, by that section, of Part XV of the amended Act, and

(b) in its application in respect of any offence described in subsection 239(1) of the amended Act that was committed before December 23, 1971, paragraph 239(1)(f) of the amended Act shall be read as follows:

"(f) a fine of not less than $25 and not more than $10,000 plus, in an appropriate case, an amount not exceeding double the amount of the tax that should have been shown to be payable or that was sought to be evaded, or".

Definitions [ITAR 65.1]: "amended Act" — ITAR 8; "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "former Act" — ITAR 8.

66. (1) Part II of former Act — For greater certainty, Part II of the former Act applies only in respect of elections made thereunder before 1972.

(2) [Repealed under former Act]

Pre-RSC History: Subsec. 66(2) repealed by 1977-78, c. 1, s. 114, applicable in computing 1971 undistributed income on hand after December 31, 1978. Subsec. 66(2) formerly read:

(2) **Idem** — Where, by virtue of an election made by a corporation under Part II of the former Act at any time after the end of its 1971 taxation year and before 1972, the corporation has paid tax under that Part, for the purpose of computing the corporation's 1971 undistributed income on hand at any subsequent time the amount of

such tax shall be added to the aggregate of the amounts determined under paragraphs 196(4)(d) to (f) of the amended Act.

Definitions [ITAR 66]: "former Act" — ITAR 8.

67. (1)–(4) [Not included in R.S.C. 1985]

Pre-RSC History: Subsecs. 67(1)–(4) formerly read:

(1) **Refund of tax under Part IID of the former Act** — Tax paid under Part IID of the former Act shall be refunded by the Minister, with interest at the rate of 5% per annum calculated on each payment of tax from the end of the month in which such payment was received, at such time or times as the Governor in Council may by regulation prescribe, but in any case not less than 18 months or more than 36 months after the later of

(a) the day on which the payment of tax to be so refunded was due, and

(b) the day on which such payment of tax was made.

(2) **Refund in event of bankruptcy** — Notwithstanding subsection (1), where a corporation that has paid an amount on account of tax under Part IID of the former Act has become bankrupt, the amount so paid shall forthwith be refunded to the trustee in bankruptcy of that corporation together with interest to the date of payment calculated at the rate and in the manner provided in subsection (1).

(3) **Application to other taxes** — Instead of making a refund that might otherwise be made under this section, the Minister may, where the taxpayer is liable or about to become liable to make any payment under the amended Act, apply the amount of the refund and the interest thereon, or any part thereof to that other liability and notify the taxpayer or the trustee in bankruptcy of the taxpayer of that action.

(4) **Interest** — Where by any regulation a repayment date that is not earlier than the day of publication of such regulation in the *Canada Gazette* is prescribed with respect to any instalment of tax paid under Part IID of the former Act, interest shall cease to accrue on such instalment on the day so prescribed.

(5) Prescription of unpaid amounts — Her Majesty in right of Canada is not liable, and no action shall be taken, for or in respect of any unrefunded instalment of tax paid under Part IID of the former Act or any interest thereon where

(a) a repayment date with respect to the instalment was prescribed by regulation and reasonable efforts were made thereafter to locate the corporation or trust entitled to the refund;

(b) at least 5 years have elapsed since publication in the *Canada Gazette* of the regulation referred to in paragraph (a); and

(c) no claim whatever has been received by or on behalf of Her Majesty from the corporation or trust entitled to the refund.

Definitions [ITAR 67]: "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "former Act" — ITAR 8; "Her Majesty" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

68. [Not included in R.S.C. 1985]

Pre-RSC History: S. 68 formerly read:

68. **References in S.C. 1968-69, c. 44, ss. 24(3)** — Subsection 24(3) of chapter 44 of the Statutes of Canada, 1968-69 shall be read as if

(a) the reference therein to "paragraph (a) of section 85G of the said Act" were read so as to include a reference to subsection 33(1) of the amended Act,

(b) each reference therein to "paragraph (a) of section 85G" were read so as to include a reference to subsection 33(1) of the amended Act,

(c) each reference therein to "paragraph (b) of section 85G" were read so as to include a reference to subsection 33(2) of the amended Act, and

(d) the reference therein to "subparagraph (i) of paragraph (a) of section 85G" were read so as to include a reference to paragraph 33(1)(a) of the amended Act.

PART II — TRANSITIONAL CONCERNING THE 1985 STATUTE REVISION

69. Definitions — In this Act and the *Income Tax Act*, unless the context otherwise requires,

"*Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952" means that Act as amended by section 1 of chapter 63 of the Statutes of Canada, 1970-71-72, and by any subsequent Act that received royal assent before December, 1991;

"*Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72" means that Act as amended by any subsequent Act that received royal assent before December, 1991.

Definitions [ITAR 69]: "Canada" — ITA 255, *Interpretation Act* 35(1).

Application of the 1971 Acts and the Revised Acts

70. Application of *Income Tax Application Rules, 1971*, 1970-71-72, c. 63 — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires,

(a) sections 7 to 9 and 12 to 68 of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, apply with respect to taxation years that ended before December, 1991; and

(b) section 10 of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, applies with respect to amounts paid or credited before December, 1991.

Definitions [ITAR 70]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Application Rules, 1971" — ITAR 69; "taxation year" — ITA 249.

71. Application of this Act — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires,

(a) sections 7 to 9 and 12 to 78 of this Act apply with respect to taxation years that end after November, 1991; and

(b) section 10 of this Act applies with respect to amounts paid or credited after November, 1991.

Definitions [ITAR 71]: "amount" — ITA 248(1); "taxation year" — ITA 249.

72. Application of *Income Tax Act*, R.S.C., 1952, c. 148 — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires, the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies as follows:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.1, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that ended before December 1991;

(b) Part III of that Act applies with respect to dividends that became payable before December, 1991;

(c) Parts X, X.1, X.2, XI, XI.1 and XI.2 of that Act apply with respect to calendar years that ended before December, 1991;

(d) Part XIII of that Act applies with respect to amounts paid or credited before December, 1991; and

(e) Parts XV, XVI and XVII of that Act apply before December, 1991.

History: ITAR 72(a) amended by 1994, c. 21, s. 119, deemed to have come into force on March 1, 1994. That para. formerly read:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that ended before December, 1991;

Definitions [ITAR 72]: "amount", "dividend" — ITA 248(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952" — ITAR 69; "taxation year" — ITA 249.

73. Application of *Income Tax Act* — Subject to this Act and the *Income Tax Act* and unless the context otherwise requires, the *Income Tax Act* applies as follows:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.1, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that end after November 1991;

(b) Part III of that Act applies with respect to dividends that become payable after November, 1991;

(c) Parts X, X.1, X.2, XI, XI.1 and XI.2 of that Act apply with respect to calendar years that end after November, 1991;

(d) Part XIII of that Act applies with respect to amounts paid or credited after November, 1991; and

(e) Parts XV, XVI and XVII of that Act apply after November, 1991.

History: ITAR 73(a) amended by 1994, c. 21, s. 120, deemed to have come into force on March 1, 1994. That para. formerly read:

(a) Parts I, I.1, I.2, I.3, II.1, IV, IV.1, V, VI, VI.1, VII, VIII, IX, XI.3, XII, XII.2, XII.3 and XIV of that Act apply with respect to taxation years that end after November, 1991;

Definitions [ITAR 73]: "amount", "dividend" — ITA 248(1); "taxation year" — ITA 249.

Application of Certain Provisions

74. Definition of "provision" — In sections 75 to 78, "provision" means the whole or part of a provision.

75. Continued effect of amending and application provisions — For greater certainty, where an enactment passed after 1971 in amendment of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, or of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, contains an amending, repeal, application or other provision that, immediately before the coming into force of the fifth supplement to the Revised Statutes of Canada, 1985, has any effect on, or in connection with, the application of either or both of those Acts, that provision has, on the coming into force of that supplement, the same effect on, or in connection with, the application of either this Act or the *Income Tax Act* or both.

Definitions [ITAR 75]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "provision" — ITAR 74.

76. Application of section 75 — Section 75 is applicable whether or not this Act or the *Income Tax Act*, as the case may be, contains, or contains the tenor of or any reference to,

(a) the amending, repeal, application or other provision referred to in that section; or

(b) any provision of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, expressed or intended to be the subject of or otherwise affected by that amending, repeal, application or other provision.

Definitions [ITAR 76]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "provision" — ITAR 74.

77. Continued effect of repealed provisions — For greater certainty, where a provision of the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, or the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, was repealed at any time after 1971 but, immediately before the coming into force of the fifth supplement to the Revised Statutes of Canada, 1985, continues to be applied to any extent or otherwise to have any effect on, or in connection with, the application of either or both of those Acts, the repealed provision, on the coming into force of that supplement, continues to be so applied or to have that effect on, or in connection with, the application of either this Act or the *Income Tax Act* or both.

Definitions [ITAR 77]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69; "provision" — ITAR 74.

78. Application of section 77 — Section 77 is applicable whether or not this Act or the *Income Tax Act*, as the case may be, contains any reference to the repealed provision referred to in that section or to the subject-matter of that provision.

Definitions [ITAR 78]: "provision" — ITAR 74.

79. (1) Effect of amendments on former ITA — Where a provision of an enactment amends the *Income Tax Act* or affects the application of the *Income Tax Act* and the provision applies to or with respect to a period, transaction or event to which the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies, the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, shall be read as if it had been amended or its application had been affected by the provision, with such modifications as the circumstances require, to the extent of the provision's application to or with respect to that period, transaction or event.

(2) Effect of amendments on former ITAR — Where a provision of an enactment amends this Act or affects the application of this Act and the provision applies to or with respect to a period, transaction or event to which the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, apply, the *Income Tax Application Rules, 1971*, Part III of chapter 63 of the Statutes of Canada, 1970-71-72, shall be read as if they had been amended or their application had been affected by the provision, with such modifications as the circumstances require, to the extent of the provision's application to or with respect to that period, transaction or event.

History: ITAR 79 added by 1994, c. 21, s. 121, deemed to have come into force on March 2, 1994.

Definitions [ITAR 79]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952", "Income Tax Application Rules, 1971" — ITAR 69.

Origin of Part II: R.S.C. 1985, c. 1 (5th Supp.) (ss. 69–78).

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SCHEDULE I — (SECS. 100, 102 AND 106) RANGES OF REMUNERATION AND OF TOTAL REMUNERATION

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INCOME TAX REGULATIONS

CONSOLIDATED REGULATIONS OF CANADA, CHAPTER 945

(CONSOLIDATED AS OF DECEMBER 31, 1977)

PROCLAIMED IN FORCE AUGUST 15, 1979, AS AMENDED TO JULY 1, 2000

Note: Editorial annotations have been added in square brackets to update references to the ITA where the numbering of the provision has changed as a result of the R.S.C. 1985, c. 1 (5th Supp.) consolidation. (See Reg. 4900(1) as an example.)

1. Short title — These Regulations may be cited as the *Income Tax Regulations*.

2. Interpretation — In these Regulations, "Act" means the *Income Tax Act*.

PART I — TAX DEDUCTIONS

History: Part I was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

100. Interpretation — (1) In this Part and in Schedule I,

"employee" means any person receiving remuneration;

"employer" means any person paying remuneration;

"estimated deductions" means, in respect of a taxation year, the total of the amounts estimated to be deductible by an employee for the year under any of paragraphs 8(1)(f), (h), (h.1), (i) and (j) of the Act and determined by the employee for the purpose of completing the form referred to in subsection 107(2);

History: "Estimated deductions" amended by P.C. 1994-372, subsec. 1(1), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

"Estimated deductions" amended by P.C. 1989-2105, subsec. 1(2), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

"Estimated deductions" substituted by P.C. 1983-1137, subsec. 1(1), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

"Estimated deductions" added by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

"exemptions" — [Revoked]

History: "Exemptions" revoked by P.C. 1989-2105, subsec. 1(1), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Cl. (a)(ii)(E) of "exemptions" in subsec. 100(1) added by P.C. 1988-1105, s. 1, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

Cl. (a)(ii)(B) of "exemptions" in subsec. 100(1) substituted by P.C. 1987-1478, s. 1, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective from January 1, 1986.

Para. (b) of "exemptions" in subsec. 100(1) substituted by P.C. 1983-2717, subsec. 1(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Cls. 100(1)(a)(ii)(B), (C) of "exemptions" substituted by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978, effective January 1, 1978.

"pay period" includes

(a) a day,

(b) a week,

(c) a two week period,

(d) a semi-monthly period,

(e) a month,

(f) a four week period,

(g) one tenth of a calendar year, or

(h) one twenty-second of a calendar year;

History: "Pay period" added by P.C. 1981-1557, subsec. 1(1), June 11, 1981, *Canada Gazette*, Part II, June 24, 1981 effective commencing January 1, 1981.

"personal credits" means, in respect of a particular taxation year, the aggregate of

(a) the greater of

(i) the amount referred to in paragraph 118(1)(c) of the Act, and

(ii) the aggregate of the credits which the employee would be entitled to claim for the year under

(A) subsections 118(1), (2) and (3) of the Act if the description of A in those subsections were read as "is equal to one",

(B) subsections 118.3(1) and (2) of the Act if the description of A in subsection 118.3(1) of the Act were read as "is equal to one" and if subsection 118.3(1) of the Act were read without reference to paragraph (c) thereof,

(C) subsections 118.5(1) and 118.6(2) of the Act if subsection 118.5(1) of the Act were read without reference to "the product obtained when the appropriate percentage for the year is multiplied by" and the description of A in subsection 118.6(2) of the Act were read as "is equal to one", and after deducting from the aggregate of the amounts determined under those subsections the excess over $500 of the aggregate of amounts that the employee claims to expect to receive in the year on account of a scholarship, fellowship or bursary,

(D) section 118.8 of the Act if the formula A + B – C in that section were read as

$$\frac{A + B}{D}$$

where D is the appropriate percentage for the year, and

(E) subsection 118.9(1) of the Act if the formula A – B in that subsection were read as

$$\frac{A}{C}$$

where C is the appropriate percentage for the year, and

(b) where the remuneration paid by the employer is pension income or qualified pension income of the

employee in respect of which subsection 118(3) of the Act would apply if that subsection were read without reference to subparagraphs (b)(ii) and (iii) thereof, a credit equal to the lesser of

(i) $1,000, and

(ii) the employee's pension income or qualified pension income for the year;

History: "Personal credits" substituted by P.C. 1994-372, subsec. 1(2), March 10, 1994, *Canada Gazette*, March 23, 1994, effective January 1, 1993.

"Personal credits" added by P.C. 1989-2105, subsec. 1(3), October 19, 1989, *Canada Gazette*, November 8, 1989, effective July 1, 1988.

"remuneration" includes any payment that is

(a) in respect of

(i) salary or wages, or

(ii) commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated (referred to as "commissions" in this Part),

paid to an officer or employee or former officer or employee,

(a.1) in respect of an employee's gratuities required under provincial legislation to be declared to the employee's employer,

(b) a superannuation or pension benefit (including an annuity payment made pursuant to or under a superannuation or pension fund or plan),

(b.1) an amount of a distribution out of or under a retirement compensation arrangement,

(c) a retiring allowance,

(d) a death benefit,

(e) a benefit under a supplementary unemployment benefit plan,

(f) a payment under a deferred profit sharing plan or a plan referred to in section 147 of the Act as a "revoked plan", reduced, if applicable, by amounts determined under subsections 147(10.1), (11) and (12) of the Act,

(g) a benefit under the *Employment Insurance Act*,

(h) an amount that is required by paragraph 56(1)(r) of the Act to be included in computing a taxpayer's income, except the portion of the amount that relates to child care expenses and tuition costs,

(i) a payment made during the lifetime of an annuitant referred to in subparagraph 146(1)(a)(i) [146(1)"annuitant"(a)] of the Act out of or under a registered retirement savings plan of that annuitant, other than

(i) a periodic annuity payment, or

(ii) a payment made by a person who has reasonable grounds to believe that the payment may be deducted under subsection 146(8.2) of the Act in computing the income of any taxpayer,

(j) a payment out of or under a plan referred to in subsection 146(12) of the Act as an "amended plan" other than

(i) a periodic annuity payment, or

(ii) where paragraph 146(12)(a) of the Act applied to the plan after May 25, 1976, a payment made in a year subsequent to the year in which that paragraph applied to the plan, or

(j.1) a payment made during the lifetime of an annuitant referred to in the definition "annuitant" in subsection 146.3(1) of the Act under a registered retirement income fund of that annuitant, other than a particular payment to the extent that

(i) the particular payment is in respect of the minimum amount (in this paragraph having the meaning assigned by subsection 146.3(1) of the Act) under the fund for a year, or

(ii) where the fund governs a trust, the particular payment would be in respect of the minimum amount under the fund for a year if each amount that, at the beginning of the year, is scheduled to be paid after the time of the particular payment and in the year to the trust under an annuity contract that is held by the trust both at the beginning of the year and at the time of the particular payment, is paid to the trust in the year,

(k) a benefit described in section 5502,

(l) an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,

(m) in respect of an amount that can reasonably be regarded as having been received, in whole or in part, as consideration or partial consideration for entering into a contract of service, where the service is to be performed in Canada, or for an undertaking not to enter into such a contract with another party, or

(n) a payment out of a registered education savings plan other than

(i) a refund of payments,

(ii) an educational assistance payment, or

(iii) an amount, up to $50,000, of an accumulated income payment that is made to a subscriber, as defined in subsection 204.94(1) of the Act, or if there is no subscriber at that time, that is made to a person that has been a spouse of an individual who was a subscriber, if

(A) that amount is transferred to an RRSP in which the annuitant is either the recipient of the payment or the recipient's spouse, and

(B) it is reasonable for the person making the payment to believe that that amount is deductible for the year by the recipient of the payment within the limits provided for in subsection 146(5) or (5.1) of the Act;

History: Para. (j.1) of "remuneration" amended by P.C. 2000-184, s. 1, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1998 *et seq.* It formerly read:

(j.1) a payment made during the lifetime of an annuitant referred to in paragraph 146.3(1)(a) [146.3(1)"annuitant"] of the Act under a registered retirement income fund of that annuitant, other than a payment to the extent that it is in respect of the minimum amount (within the meaning assigned by paragraph 146.3(1)(b.1) [146.3(1)"minimum amount"] of the Act) under the fund for a year,

Para. (n) of "remuneration" added by P.C. 1998-2275, s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Paras. (g) and (h) of "remuneration" amended by P.C. 1998-2270, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. (a.1) of "remuneration" added by P.C. 1998-654, subsec. 1(2), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable after 1997.

Para. (k) of "remuneration" amended by P.C. 1995-1023, s. 1, June 23, 1995, *Canada Gazette*, Part II, July 12, 1995, applicable to benefits paid after October 1991.

Para. (i) of "remuneration" substituted by P.C. 1991-2540, s. 1, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of payments made after 1990.

Para. (b.1) of "remuneration" added by P.C. 1989-379, s. 1, March 9, 1989, *Canada Gazette*, Part II, March 29, 1989, applicable in respect of amounts paid after March 27, 1987.

Subparas. (i)(i) and (j)(i) of "remuneration" substituted and para. (j.1) added by P.C. 1987-2250, s. 1, November 6, 1987, *Canada Gazette*, Part II, November 25, 1987.

Para. (m) of "remuneration" added by P.C. 1986-1345, s. 1, June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to payments made after June 30, 1986.

Paras. (a), (h) and (k) of "remuneration" substituted by P.C. 1983-1137, subsecs. 1(2) to (4), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983; para. (a) effective from March 30, 1983; para. (h) effective from August 2, 1982; para. (k) applicable with respect to benefits paid after 1981, except that in its application to payments made after November 12, 1981 in respect of a termination of an office or employment that occurred on or before that date para. (k) shall be read as follows:

"(k) a termination payment, or"

Para. (a) of "remuneration" substituted by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Paras. (i), (j) of "remuneration" substituted by P.C. 1980-3209, s. 1, November 27, 1980, *Canada Gazette*, Part II, December 10, 1980.

Para. (i) of "remuneration" added, para. (j) (formerly (i)) substituted, and para. (j) renumbered (l) (as amended by P.C. 1980-2226, s. 1, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980) by P.C. 1980-1735, s. 1, June 26, 1980, *Canada Gazette*, Part II, July 9, 1980, effective commencing June 30, 1978.

Para. (k) of "remuneration" added by P.C. 1980-1366, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980.

Para. 100(1)(i) of "remuneration" substituted by P.C. 1978-1038, s. 1, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

Para. (f) of "remuneration" substituted, paras. (h) to (j) of "remuneration" added by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978, effective January 1, 1978, para. (h) effective March 1, 1978.

"total remuneration" means, in respect of a taxation year, the total of all amounts each of which is an amount referred to in paragraph (a) or (a.1) of the definition "remuneration".

History: "Total remuneration" amended by P.C. 1998-654, subsec. 1(1), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable after 1997.

"Total remuneration" added by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

(2) Where the amount of any credit referred to in subparagraph (a)(i) or (ii) of the definition "personal credits" in subsection (1) is subject to an annual adjustment under section 117.1 of the Act, such amount shall, in a particular taxation year, be subject to that annual adjustment.

History: Subsec. 100(2) amended by P.C. 1989-2105, subsec. 1(4), October 19, 1989, *Canada Gazette*, November 8, 1989, effective July 1, 1988.

Subsec. 100(2) substituted by P.C. 1983-2717, subsec. 1(2), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subsec. 100(2) substituted by P.C. 1981-1557, subsec. 1(2), June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective commencing January 1, 1981.

(3) For the purposes of this Part, where an employer deducts or withholds from a payment of remuneration to an employee one or more amounts each of which is

(a) a contribution to or under a registered pension fund or plan,

(b) dues described in subparagraph 8(1)(i)(iv), (v) or (vi) of the Act paid on account of the employee,

(b.1) a contribution by the employee under subparagraph 8(1)(m.2) of the Act,

(c) a premium under a registered retirement savings plan, or

(d) a payment to which paragraph 60(b) of the Act applies, where the payment was made as a result of a garnishee or similar order of a court or competent tribunal received by the employer and dated before May 1997,

the balance remaining after deducting or withholding this amount, as the case may be, shall be deemed to be the amount of that payment of remuneration.

Related Provisions: Reg. 100(3.1) — Northern Canada residents; Reg. 100(3.2) — Exceptions to rule in 100(3).

History: Para. 100(3)(b.1) added and (d) amended by P.C. 1997-1471, subsecs. 1(1) and (2), October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, applicable beginning on May 1, 1997.

Paras. 100(3)(c) and (d) added by P.C. 1994-372, subsec. 1(3), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subsec. 100(3) substituted by P.C. 1989-2105, subsec. 1(5), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

I.T. Technical News: No. 19 (Retiring allowances — clarification to Interpretation Bulletin IT-337R3 — (d): Deductions at source.

Forms: TD2: Tax deduction waiver in respect of funds to be transferred.

(3.1) For the purposes of this Part, where an employee has claimed a deduction for a taxation year under paragraph 110.7(1)(b) of the Act as shown on the return most recently filed by the employee with the employee's employer pursuant to subsection 227(2) of the Act, the amount of remuneration otherwise determined, including the amount deemed by subsection (3) to be the amount of that payment of remuneration, paid to the employee for a pay period shall be reduced by an amount equal to the amount of the deduction divided by the maximum number of pay periods in the year in respect of the appropriate pay period.

History: Subsec. 100(3.1) substituted by P.C. 1994-372, subsec. 1(4), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subsec. 100(3.1) added, by P.C. 1989-2105, subsec. 1(5), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

(3.2) Subsection (3) does not apply to a payment of remuneration that is

(a) a retiring allowance, to the extent that it exceeds the total determined under subparagraph 60(j.1)(ii) of the Act in respect of the retiring allowance; or

(b) a lump sum payment (other than a retiring allowance), within the meaning assigned by subsection 103(6), or a bonus or retroactive payment, if the amount of the payment of remuneration exceeds $10,000.

History: Subsec. 100(3.2) added by P.C. 1997-1471, subsec. 1(3), October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, applicable beginning on May 1, 1997.

(4) For the purposes of this Part, where an employee is not required to report for work at any establishment of the employer, he shall be deemed to report for work

(a) in respect of remuneration that is salary, wages or commissions, at the establishment of the employer from which the remuneration is paid; or

(b) in respect of remuneration other than salary, wages or commissions, at the establishment of the employer in the province where the employee resides at the time the remuneration is paid but, if the employer does not have an establishment in that province at that time, he shall, for the purposes of this paragraph, be deemed to have an establishment in that province.

History: Subsec. 100(4) substituted by P.C. 1980-3375, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

(5) For the purposes of this Part, where an employer deducts or withholds from a payment of remuneration to an employee an amount in respect of the acquisition by the employee of an approved share, as defined in subsection 127.4(1) of the Act, there shall be deducted from the amount determined under paragraph 102(1)(e) or (2)(f), as the case may be, in respect of that payment the lesser of

(a) $750, and

(b) 15% of the amount deducted or withheld in respect of the acquisition of an approved share.

History: Subsec. 100(5) amended by P.C. 1998-2270, subsec. 1(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Subsec. 100(5) added by P.C. 1994-372, subsec. 1(5), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Definitions [Reg. 100]: "accumulated income payment" — ITA 146.1(1); "amount", "annuity" — ITA 248(1); "appropriate percentage" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commissions" — Reg. 100(1)"remuneration"(a)(ii); "death benefit" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "educational assistance payment" — ITA 146.1(1); "employee", "employer" — Reg. 100(1); "income-averaging annuity contract" — ITA 248(1); "month" — *Interpretation Act* 35(1); "officer" — ITA 248(1); "pay period" — Reg. 100(1); "person" — ITA 248(1); "personal credits" — Reg. 100(1); "personal or living expenses" — ITA 248(1); "province" — *Interpretation Act* 35(1); "refund of payments" — ITA 146.1(1); "registered education savings plan" — ITA 146.1(1), 248(1); "registered pension fund or plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "remuneration" — Reg. 100(1); "retirement compensation arrangement", "retiring allowance", "salary or wages", "share" — ITA 248(1); "subscriber" — ITA 146.1(1); "supplementary unemployment benefit plan" — ITA 145(1), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

101. Deductions and remittances — Every person who makes a payment described in subsection 153(1) of the Act in a taxation year shall deduct or withhold therefrom, and remit to the Receiver General, such amount, if any, as is determined in accordance with rules prescribed in this Part.

Related Provisions: ITA 227 — Obligations with respect to amounts withheld.

History: S. 101 substituted by P.C. 1981-1557, s. 2, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective commencing January 1, 1981.

Definitions [Reg. 101]: "amount", "person", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

102. Periodic payments — (1) Except as otherwise provided in this Part, the amount to be deducted or withheld by an employer

(a) from any payment of remuneration (in this subsection referred to as the "payment") made to an employee in his taxation year where he reports for work at an establishment of the employer in a province, in Canada beyond the limits of any province or outside Canada, and

(b) for any pay period in which the payment is made by the employer

shall be determined for each payment in accordance with the following rules:

(c) an amount that is a notional remuneration for the year in respect of

(i) a payment to the employee, and

(ii) the amount, if any, of gratuities referred to in paragraph (a.1) of the definition "remuneration" in subsection 100(1)

is deemed to be the amount determined by the formula

$$A \times B$$

where

A is the amount that is deemed for the purpose of this paragraph to be the mid-point of the applicable range of remuneration for the pay period, as provided in Schedule I, in which falls the total of

(A) the payment referred to in subparagraph (i) made in the pay period, and

(B) the amount of gratuities referred to in subparagraph (ii) declared by the employee for the pay period, and

B is the maximum number of such pay periods in that year;

(d) if the employee is not resident in Canada at the time of the payment, no personal credits will be allowed for the purposes of this subsection and if the employee is resident in Canada at the time of the payment, the employee's personal credits for the year shall be established as, where they fall within a range of amounts recorded on the return for the year referred to in subsection 107(1) that is in respect of

(i) one of claim codes 2 to 10 on that return, the midpoint of the applicable range, or

(ii) claim code 1 on that return, the amount determined for the year under paragraph (a) of the definition "personal credits" in subsection 100(1);

(e) an amount (in this subsection referred to as the "notional tax for the year") shall be computed in respect of that employee by

(i) calculating the amount of tax payable for the year, as if that amount were calculated under subsection 117(2) of the Act and adjusted annually pursuant to section 117.1 of the Act, on the amount determined in accordance with paragraph (c) as if that amount represented the employee's amount taxable for that year,

and deducting the aggregate of

(ii) the amount determined in accordance with paragraph (d) multiplied by the appropriate percentage for the year,

(iii) an amount equal to

(A) the amount determined in accordance with paragraph (c) multiplied by the employee's premium rate for the year under the *Employment Insurance Act*, not exceeding the maximum amount of the premiums payable by the employee for the year under that Act,

multiplied by

(B) the appropriate percentage for the year, and

(iv) an amount equal to

(A) the product obtained when the difference between the amount determined in accordance with paragraph (c) and the amount determined under section 20 of the *Canada Pension Plan* for the year is multiplied by the employee's contribution rate for the year under the *Canada Pension Plan* or under a provincial pension plan as defined in subsection 3(1) of that Act, not ex-

ceeding the maximum amount of such contributions payable by the employee for the year under the plan,

multiplied by

(B) the appropriate percentage for the year;

(f) the amount determined in accordance with paragraph (e) shall be increased by

(i) where applicable, an additional tax of 52 per cent of that amount as provided for in subsection 120(1) of the Act, and

(ii) an amount equal to the amount that would be determined under subsection 180.1(1) of the Act for the year in respect of the employee if the amount determined in accordance with paragraph (e) were that employee's tax payable under Part I of the Act for that year;

(g) where the amount of notional remuneration for the year is income earned in the Province of Quebec, the amount determined in accordance with paragraph (e) shall be reduced by an amount that is the aggregate of

(i) the amount that is deemed to be paid under subsection 120(2) of the Act as if there were no other source of income or loss for the year, and

(ii) the amount by which the amount referred to in subparagraph (i) is increased by virtue of section 27 of the *Federal-Provincial Fiscal Arrangements Act*; and

(h) [Revoked]

(i) the amount to be deducted or withheld shall be computed by

(i) dividing the amount of the notional tax for the year by the maximum number of pay periods for the year in respect of the appropriate pay period, and

(ii) rounding the amount determined under subparagraph (i) to the nearest multiple of five cents or, if such amount is equidistant from two such multiples, to the higher multiple.

History: Cl. 102(1)(e)(iii)(A) amended by P.C. 1998-2270, subsec. 2(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 102(1)(c) amended by P.C. 1998-654, s. 2, April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable after 1997.

Subpara. 102(1)(g)(ii) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Paras. 102(1)(d) and (e) substituted by P.C. 1994-372, subsecs. 2(1) and (2), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Cls. 102(1)(e)(iii)(A), (iv)(A) amended, para. (h) revoked by P.C. 1992-2347, subsecs. 1(1) to (3), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Cl. 102(1)(e)(iii)(A) amended by P.C. 1992-291, subsec. 1(1), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective as of July 1, 1991.

Cl. 102(1)(e)(iv)(A) amended by P.C. 1991-1643, subsec. 1(1), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

Cl. 102(1)(e)(iv)(A) amended by P.C. 1991-732, subsec. 1(1), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Para. 102(1)(c), subpara. (1)(f)(i), and that portion of para. (1)(g) preceding subpara. (i) amended by P.C. 1991-230, subsecs. 1(1) to (3), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Subpara. 102(1)(e)(iv) amended by P.C. 1990-432, subsec. 1(1), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Paras. 102(1)(d) to (i) substituted for 102(1)(d) to (g) by P.C. 1989-2105, subsec. 2(1), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(1)(f)(iii) substituted by P.C. 1988-1041, subsec. 1(1), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1987.

Subpara. 102(1)(g)(iii) substituted by P.C. 1988-1041, subsec. 1(2), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1988.

Subpara. 102(1)(g)(iii) substituted by P.C. 1987-1478, subsec. 2(1), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective from January 1, 1987.

Subpara. 102(1)(f)(iii) substituted by P.C. 1986-1345, subsec. 2(1), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to the 1986 taxation year.

Cl. 102(1)(f)(iv)(A) substituted by P.C. 1986-1345, subsec. 2(2), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective commencing January 1, 1981.

Subpara. 102(1)(g)(iii) substituted by P.C. 1986-1345, subsec. 2(3), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective commencing January 1, 1986.

Cl. 102(1)(f)(iv)(B) amended by P.C. 1985-1645, s. 1, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective from April 1, 1983.

Subpara. 102(1)(g)(iii) substituted by P.C. 1985-1645, May 16, 1985, subsec. 2(1), *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1984 except that, in its application to the period from January 1, 1984 to December 31, 1984, references to "$12,470" shall be read as references to "$11,920".

Para. 102(1)(d) substituted by P.C. 1984-3916, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984.

Para. 102(1)(d) substituted by P.C. 1984-3684, subsec. 1(1), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(1)(f)(iii) substituted, subpara. 102(1)(f)(v) added by P.C. 1984-3684, subsecs. 1(2) and (3), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(1)(f)(i) substituted by P.C. 1983-2717, subsec. 2(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

All that portion of subpara. 102(1)(g)(iii) preceding clause (A) substituted by P.C. 1983-2717, subsec. 2(2), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subparas. 102(1)(f)(i) to (iii) substituted by P.C. 1983-1137, s. 2, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

All that portion of subpara. 102(1)(g)(iii) preceding clause (A) substituted by P.C. 1983-1137, subsec. 2(2), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subsecs. 102(1) substituted by P.C. 1981-1557, s. 3, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

Forms: T4001: Employers' Guide to Payroll Deductions — Basic Information (guide).

(2) Where an employee has elected pursuant to subsection 107(2) and has not revoked such election, the amount to be deducted or withheld by the employer from any payment of remuneration (in this subsection referred to as the "payment") that is

(a) a payment in respect of commissions or is a combined payment of commissions and salary or wages, or

(b) a payment in respect of salary or wages where that employee receives a combined payment of commissions and salary or wages,

made to that employee in his taxation year where he reports for work at an establishment of the employer in a province, in Canada beyond the limits of any province or

outside Canada, shall be determined for each payment in accordance with the following rules:

(c) the amount of that employee's total remuneration in respect of the year as recorded by him on the form referred to in subsection 107(2) (in this subsection referred to as "the form") shall be determined;

(d) the amount of that employee's personal credits and expenses in respect of the year as recorded by that employee on the form shall be determined as the aggregate of

(i) the amount that is either

(A) the employee's estimated deductions for that year, or

(B) the employee's total actual deductions under any of paragraphs 8(1)(f), (h), (h.1), (i) and (j) of the Act for the immediately preceding year, and

(ii) the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the amount determined under paragraph (a) of the definition "personal credits" in subsection 100(1),

B is the amount referred to in paragraph 118(1)(c) of the Act,

C is the appropriate percentage for the year, and

D is

(A) 17 per cent, where the amount of the employee's total remuneration for the year, less the employee's expenses for the year as determined under subparagraph (i), does not exceed the amount taxable referred to in paragraph 117(2)(a) of the Act, as adjusted annually pursuant to section 117.1 of the Act,

(B) 26 per cent, where the amount of the employee's total remuneration for the year, less the employee's expenses for the year as determined under subparagraph (i), exceeds the amount referred to in clause (A) but does not exceed the amount taxable referred to in paragraph 117(2)(c) of the Act, as adjusted annually pursuant to section 117.1 of the Act, and

(C) 29 per cent, where the amount of the employee's total remuneration for the year, less the employee's expenses for the year as determined under subparagraph (i), exceeds the amount taxable referred to in paragraph 117(2)(c) of the Act, as adjusted annually pursuant to section 117.1 of the Act,

and the resulting amount shall be rounded to two places after the decimal, such that if the third digit is five or greater, the second digit will be increased by one, and if the third digit is less than five, the third digit will be dropped;

History: The description of B in subpara. 102(2)(d)(ii) amended by P.C. 1994-1370, subsec. 1(1), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994.

Cl. 102(2)(d)(i)(B) amended by P.C. 1994-372, subsec. 2(3), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subpara. 102(2)(d)(ii) amended by P.C. 1992-2347, subsec. 1(4), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

The description of B in subpara. 102(2)(d)(ii) amended by P.C. 1992-291, subsec. 1(2), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective as of July 1, 1991.

That portion of subpara. 102(2)(d)(ii) preceding the description of A, and the descriptions of C and E, amended by P.C. 1991-1643, subsecs. 1(2) to (4), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

That portion of subpara. 102(2)(d)(ii) preceding the description of A, and the descriptions of C and E, amended by P.C. 1991-732, subsecs. 1(2) to (4), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Subpara. 102(2)(d)(ii) amended by P.C. 1990-432, subsecs. 1(2) to (4), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, to substitute the formula and the descriptions of C and E, effective January 1, 1989.

Para. 102(2)(d) substituted by P.C. 1989-2105, subsec. 2(2), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(2)(d)(ii) substituted and subpara. 102(2)(d)(iii) revoked by P.C. 1984-3684, subsec. 1(4), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Cl. 102(2)(d)(i)(B) substituted by P.C. 1983-1137, subsec. 2(3), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

(e) where the amount determined under paragraph (c) in respect of that employee for the year falls within a range of remuneration provided for in section 2 of Schedule I, an amount (in this subsection referred to as the "notional net remuneration for the year") shall be calculated in respect of that employee by deducting from the mid-point of that range the greater of

(i) where the amount of that employee's personal credits and expenses for the year determined under paragraph (d) falls within a range of personal credits and expenses provided for in section 3 of Schedule I, the mid-point of that range, and

(ii) where the amount of that employee's personal credits and expenses for the year determined under paragraph (d) is less than $1,500, $1,500;

(f) an amount (in this subsection referred to as the "notional tax for the year") shall be calculated in respect of that employee by using the formula

$$A - [(B + C + D) \times E] + (F + G) - H$$

where

A is the amount of tax payable for the year, calculated as if that amount of tax were computed under subsection 117(2) of the Act and adjusted annually pursuant to section 117.1 of the Act, on the amount that would be determined in accordance with paragraph (e) if paragraph (d) were read without reference to subparagraph (ii) thereof, as if that amount represented the employee's amount taxable for that year,

B is the amount referred to in paragraph 118(1)(c) of the Act,

C is the mid-point of the range of remuneration referred to in paragraph (e) multiplied by the employee's premium rate for the year under the *Employment Insurance Act*, not exceeding the maximum amount of the premiums payable by the employee for the year under that Act,

D is the mid-point of the range of remuneration referred to in paragraph (e) less the amount for the year determined under section 20 of the *Canada Pension Plan* multiplied by the employee's contribution rate for the year under that Act or under a provincial plan as defined in section 3 of that Act, not exceeding the maximum amount of such con-

tributions payable by the employee for the year under the plan,

E is the appropriate percentage for the year,

F is, where applicable, an additional tax of 52 per cent of that amount as provided for in subsection 120(1) of the Act,

G is an amount equal to the amount that would be determined under subsection 180.1(1) of the Act with respect to the employee if the amount that would be the notional tax for the year for the employee were determined without reference to the elements F, G and H in this formula and that tax were that employee's tax payable under Part I of the Act for that year, and

H is, where the amount of notional net remuneration for the year is income earned in the Province of Quebec, an amount equal to the aggregate of

(i) the amount that would be deemed to have been paid under subsection 120(2) of the Act with respect to the employee if the notional tax for the year for the employee were determined without reference to the elements F, G and H in this formula and if that tax were that employee's tax payable under Part I of the Act for that year, as if there were no other source of income or loss for the year, and

(ii) the amount by which the amount referred to in subparagraph (i) is increased by virtue of section 27 of the *Federal-Provincial Fiscal Arrangements Act*;

History: The description of C in para. 102(2)(f) amended by P.C. 1998-2270, subsec. 2(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Subpara. 102(2)(f)(ii) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

The description of B in para. 102(2)(f) amended by P.C. 1994-1370, subsec. 1(2), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994.

Paras. 102(2)(e), (f) amended by P.C. 1992-2347, subsec. 1(5), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Cl. 102(2)(f)(ii)(A) amended by P.C. 1991-230, subsec. 1(4), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Subparas. 102(2)(f)(i) to (iv) substituted for (i) to (iv) by P.C. 1982-2105, subsec. 2(3), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(2)(f)(iii) substituted by P.C. 1988-1041, subsec. 1(3), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1987.

Subpara. 102(2)(f)(iii) substituted by P.C. 1986-1345, subsec. 2(4), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to the 1986 taxation year.

Cl. 102(2)(f)(iv)(B) amended by P.C. 1985-1645, s. 1, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective from April 1, 1983.

Subpara. 102(2)(f)(iii) substituted and subpara. 102(2)(f)(v) added by P.C. 1984-3684, subsecs. 1(5), (6), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(2)(f)(i) substituted by P.C. 1983-2717, s. 3, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subparas. 102(2)(f)(i) to (iii) substituted by P.C. 1983-1137, subsec. 2(4), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

(g) that employee's notional rate of tax for a year shall be expressed as a decimal fraction and calculated by dividing the amount of the notional tax for the year by the mid-point of the range of remuneration referred to in paragraph (e) in respect of that employee and where the quotient results in more than two digits after the decimal in the decimal fraction

(i) the second digit shall be rounded to the nearest multiple of one hundredth, and

(ii) where the third digit is equidistant from two such multiples, the second digit shall be rounded to the higher thereof; and

History: That portion of para. 102(2)(g) preceding subpara. (i) amended by P.C. 1992-2347, subsec. 1(6), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective commencing January 1, 1992.

(h) the amount to be deducted or withheld in respect of any payment made to that employee shall be determined by multiplying the payment by the appropriate decimal fraction determined pursuant to paragraph (g).

Related Provisions: ITA 257 — Negative amounts in formulas.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

(3) [Revoked]

History: Subsec. 102(3) revoked by P.C. 1989-2105, subsec. 2(4), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subpara. 102(3)(f)(iii) substituted by P.C. 1988-1041, subsec. 1(4), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective commencing January 1, 1987.

Subpara. 102(3)(a)(ii) substituted by P.C. 1987-1478, subsec. 2(2), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective from January 1, 1986.

Subpara. 102(3)(f)(iii) substituted by P.C. 1986-1345, subsec. 2(5), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, applicable to the 1986 taxation year.

Para. 102(3)(a) substituted by P.C. 1985-1645, May 16, 1985, subsec. 2(2), *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Para. 102(3)(d) substituted by P.C. 1985-1645, May 16, 1985, subsec. 2(3), *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Cl. 102(3)(f)(iv)(B) amended by P.C. 1985-1645, s. 1, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective from April 1, 1983.

Subpara. 102(3)(d)(ii) substituted by P.C. 1984-3684, s. 1, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Subpara. 102(3)(f)(iii) substituted and subpara. 102(3)(f)(v) added by P.C. 1984-3684, s. 1, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Para. 102(3)(a) substituted by P.C. 1983-2717, subsec. 4(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Subpara. 102(3)(f)(i) substituted by P.C. 1983-2717, subsec. 4(2), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Para. 102(3)(a) substituted by P.C. 1983-1137, subsec. 2(5), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subparas. 102(3)(f)(i) to (iii) substituted by P.C. 1983-1137, subsec. 2(6), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subsecs. 102(2), (3) substituted by P.C. 1981-1557, s. 3, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

(4) [Revoked]

History: Subsec. 102(4) revoked by P.C. 1981-1557, s. 3, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

(5) Notwithstanding subsections (1) and (2), no amount shall be deducted or withheld in the year by an employer from a payment of remuneration to an employee in respect of commissions earned by the employee in the immediately preceding year where those commissions were previously reported by the employer as remuneration of

the employee in respect of that year on an information return.

History: Subsec. 102(5) substituted by P.C. 1989-2105, subsec. 2(5), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subsec. 102(5) added by P.C. 1980-3375, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

(6) [Revoked]

History: Subsec. 102(6) revoked by P.C. 1983-1137, subsec. 2(7), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Subsec. 102(6) added by P.C. 1980-3375, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Definitions [Reg. 102]: "amount", "appropriate percentage" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commissions", "remuneration"(a)(ii); "employee", "employer" — Reg. 100(1); "estimated deductions" — Reg. 100(1); "form" — Reg. 102(2)(c); "notional net remuneration for the year" — Reg. 102(2)(e); "notional tax for the year" — Reg. 102(1)(e), 102(2)(f); "pay period" — Reg. 100(1); "payment" — Reg. 102(1)(a), 102(2); "personal credits" — Reg. 100(1); "province" — *Interpretation Act* 35(1); "remuneration" — Reg. 100(1); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "taxation year" — ITA 249; "total remuneration" — Reg. 100(1).

103. Non-periodic payments — **(1)** Where a payment in respect of a bonus or retroactive increase in remuneration is made by an employer to an employee whose total remuneration from the employer (including the bonus or retroactive increase) may reasonably be expected not to exceed $5,000 in the taxation year of the employee in which the payment is made, the employer shall deduct or withhold, in the case of an employee who reports for work at an establishment of the employer

(a) in Newfoundland, 100/169 of 15 per cent,

(b) in Prince Edward Island, 200/315 of 15 per cent for the payments made during the period beginning on July 1, 1999 and ending on December 31, 1999, and, after that period, 200/317 of 15 per cent,

(c) in Nova Scotia, 200/315 of 15 per cent,

(d) in New Brunswick, 100/160 of 15 per cent,

(e) in Quebec, 10 per cent,

(f) in Ontario, 200/277 of 15 per cent,

(g) in Manitoba, 100/160 of 15 per cent,

(h) in Saskatchewan, 100/167 of 15 per cent,

(i) in Alberta, 100/146 of 15 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/295 of 15 per cent,

(j) in British Columbia, 100/150 of 15 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/299 of 15 per cent,

(k) in the Yukon Territory, 100/150 of 15 per cent,

(l) in the Northwest Territories, 100/145 of 15 per cent,

(m) in Nunavut, 100/145 of 15 per cent, or

(n) in Canada beyond the limits of any province or outside Canada, 15 per cent,

of such payment in lieu of the amount determined under section 102.

History: Paras. 103(1)(b), (f) and (g) amended by P.C. 1999-2205, subsecs. 1(1), (3), December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective from July 1, 1999.

Para. 103(1)(d) amended by the said P.C. 1999-2205, subsec. 1(2), effective from January 1, 1999.

Para. 103(1)(m) added, and (n) renumbered from (m), by the said P.C. 1999-2205, subsec. 1(4), effective from April 1, 1999.

Para. 103(1)(j) amended by P.C. 1998-2271, subsec. 1(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, effective from January 1, 1998.

Paras. 103(1)(a) to (d), (f) to (l) ((j) as amended by subsec. 1(2)) amended by the said P.C. 1998-2271, subsecs. 1(1), (3), effective from July 1, 1998.

Paras. 103(1)(c), (d) and (f) amended by P.C. 1997-1744, subsecs. 1(1), (2), November 27, 1997, *Canada Gazette*, Part II, December 10, 1997, effective from July 1, 1997.

Paras. 103(1)(f) and (j) amended by P.C. 1997-290, subsecs. 1(1), (2), March 4, 1997, *Canada Gazette*, Part II, March 19, 1997, effective from January 1, 1997.

Paras. 103(1)(f) and (i) amended by P.C. 1996-1557, subsecs. 1(1), (2), October 8, 1996, *Canada Gazette*, Part II, October 30, 1996, effective from July 1, 1996.

Para. 103(1)(h) amended by P.C. 1996-500, subsec. 1(1), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, effective commincing July 1, 1995.

Paras. 103(1)(d), (f) and (k) amended by P.C. 1994-1370, subsecs. 2(1) to (3), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994, effective from July 1, 1993.

Paras. 103(1)(a) to (d) and (f) to (l) amended by P.C. 1994-372, subsecs. 3(1), (2), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective from January 1, 1993.

Paras. 103(1)(a) to (d) and (f) to (l) amended by P.C. 1993-1552, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, effective from July 1, 1992.

Para. 103(1)(b) amended by P.C. 1992-2347, subsec. 2(1), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Para. 103(1)(b) amended by P.C. 1992-291, subsec. 2(1), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective as of July 1, 1991.

Paras. 103(1)(c), (l) amended by P.C. 1991-1643, subsec. 2(1), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective commencing January 1, 1991.

Paras. 103(1)(a), (f) (g) amended effective January 1, 1990, (c), (l) amended effective July 1, 1990, by P.C. 1991-732, subsecs. 2(1) to (4), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Paras. 103(1)(a) to (d) and (f) to (l) substituted by P.C. 1991-230, subsecs. 2(1) and (2), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Paras. 103(1)(b), (f) and (i) substituted by P.C. 1990-432, subsecs. 2(1) to (3), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Paras. 103(1)(b), (d), (f), (i) substituted by P.C. 1989-2105, subsecs. 3(1) to (4), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Paras. 103(1)(i) and (j) substituted by P.C. 1988-1041, subsec. 2(1), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective January 1, 1988.

Paras. 103(1)(g) to (j) substituted by P.C. 1988-309, subsec. 1(1), February 25, 1988, *Canada Gazette*, Part II, March 16, 1988, effective July 1, 1987.

Para. 103(1)(b) substituted by P.C. 1987-1478, subsec. 3(1), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective January 1, 1987.

Paras. 103(1)(a) to (d) and (f) to (l) substituted by P.C. 1987-827, subsecs. 1(1) and (2), April 30, 1987, *Canada Gazette*, Part II, May 13, 1987, effective July 1, 1986.

Paras. 103(1)(f) and (j) substituted by P.C. 1986-1345, subsecs. 3(1) and 3(2), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective January 1, 1986.

Para. 103(1)(h) substituted by P.C. 1985-2956, subsec. 1(1), October 3, 1985, *Canada Gazette*, Part II, October 16, 1985, effective July 1, 1985.

Paras. 103(1)(d), (i), (k) substituted by P.C. 1984-3684, subsecs. 2(1) to (3), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective January 1, 1984.

Paras. 103(1)(d) and (k) substituted by P.C. 1984-775, subsecs. 1(1) and (2), March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, effective July 1, 1983.

Paras. 103(1)(c) and (d) substituted by P.C. 1983-2717, subsec. 5(1), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

Paras. 103(1)(a), (c) and (d) substituted by P.C. 1983-1195, subsecs. 1(1) and 1(2), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

Paras. 103(1)(a) to (d), (f) to (l) substituted by P.C. 1983-1137, subsecs. 3(1) and 3(2), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

Paras. 103(1)(f), (h), (k)–(m) substituted by P.C. 1981-1557, subsecs. 4(1)–(3), June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, paras. 103(1)(f), (h) in force July 1, 1981, paras. 103(1)(k)–(m) effective January 1, 1981.

Paras. 103(1)(b), (k) substituted by P.C. 1980-3375, s. 3, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Para. 103(1)(b) substituted by P.C. 1980-2226, s. 3, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective July 1, 1980.

Para. 103(1)(j) substituted by P.C. 1979-2622, September 27, 1979, *Canada Gazette*, Part II, October 10, 1979, effective July 1, 1979.

Paras. 103(1)(d), (h) substituted by P.C. 1979-1258, April 11, 1979, *Canada Gazette*, Part II, May 9, 1979, effective January 1, 1979.

Para. 103(1)(h) substituted by P.C. 1978-2461, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978, effective July 1, 1978.

Para. 103(1)(g) substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978, effective March 1, 1978.

Paras. 103(1)(d), (h), (k) substituted, para. 103(1)(l) added, by P.C. 1978-1038, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

(2) [Bonus] — Where a payment in respect of a bonus is made by an employer to an employee whose total remuneration from the employer (including the bonus) may reasonably be expected to exceed $5,000 in the taxation year of the employee in which the payment is made, the amount to be deducted or withheld therefrom by the employer is

(a) the amount determined under section 102 in respect of an assumed remuneration equal to the aggregate of

(i) the amount of regular remuneration paid by the employer to the employee in the pay period in which the remuneration is paid, and

(ii) an amount equal to the bonus payment divided by the number of pay periods in the taxation year of the employee in which the payment is made

minus

(b) the amount determined under section 102 in respect of the amount of regular remuneration paid by the employer to the employee in the pay period

multiplied by

(c) the number of pay periods in the taxation year of the employee in which the payment is made.

(3) [Retroactive pay increase] — Where a payment in respect of a retroactive increase in remuneration is made by an employer to an employee whose total remuneration from the employer (including the retroactive increase) may reasonably be expected to exceed $5,000 in the taxation year of the employee in which the payment is made, the amount to be deducted or withheld therefrom by the employer is

(a) the amount determined under section 102 in respect of the new rate of remuneration

minus

(b) the amount determined under section 102 in respect of the previous rate of remuneration

multiplied by

(c) the number of pay periods in respect of which the increase in remuneration is retroactive.

(4) [Lump sum payment] — Subject to subsection (5), where a lump sum payment is made by an employer to an employee who is a resident of Canada,

(a) if the payment does not exceed $5,000, the employer shall deduct or withhold therefrom, in the case of an employee who reports for work at an establishment of the employer

(i) in Newfoundland, 100/169 of 10 per cent,

(ii) in Prince Edward Island, 200/315 of 10 per cent for the payments made during the period beginning on July 1, 1999 and ending on December 31, 1999, and, after that period, 200/317 of 10 per cent,

(iii) in Nova Scotia, 200/315 of 10 per cent,

(iv) in New Brunswick, 100/160 of 10 per cent,

(v) in Quebec, 5 per cent,

(vi) in Ontario, 200/277 of 10 per cent,

(vii) in Manitoba, 100/160 of 10 per cent,

(viii) in Saskatchewan, 100/167 of 10 per cent,

(ix) in Alberta, 100/146 of 10 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/295 of 10 per cent,

(x) in British Columbia, 100/150 of 10 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/299 of 10 per cent,

(xi) in the Yukon Territory, 100/150 of 10 per cent,

(xii) in the Northwest Territories, 100/145 of 10 per cent,

(xiii) in Nunavut, 100/145 of 10 per cent, or

(xiv) in Canada beyond the limits of any province or outside Canada, 10 per cent,

of such payment in lieu of the amount determined under section 102;

(b) if the payment exceeds $5,000 but does not exceed $15,000, the employer shall deduct or withhold therefrom, in the case of an employee who reports for work at an establishment of the employer

(i) in Newfoundland, 100/169 of 20 per cent,

(ii) in Prince Edward Island, 200/315 of 20 per cent for the payments made during the period beginning on July 1, 1999 and ending on December 31, 1999, and, after that period, 200/317 of 20 per cent,

(iii) in Nova Scotia, 200/315 of 20 per cent,

(iv) in New Brunswick, 100/160 of 20 per cent,

(v) in Quebec, 10 per cent,

(vi) in Ontario, 200/277 of 20 per cent,

(vii) in Manitoba, 100/160 of 20 per cent,

(viii) in Saskatchewan, 100/167 of 20 per cent,

(ix) in Alberta, 100/146 of 20 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/299 of 20 per cent,

(x) in British Columbia, 100/150 of 20 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/299 of 20 per cent,

(xi) in the Yukon Territory, 100/150 of 20 per cent,

(xii) in the Northwest Territories, 100/145 of 20 per cent,

(xiii) in Nunavut, 100/145 of 20 per cent, or

(xiv) in Canada beyond the limits of any province or outside Canada, 20 per cent,

of such payment in lieu of the amount determined under section 102; and

(c) if the payment exceeds $15,000, the employer shall deduct or withhold therefrom, in the case of an employee who reports for work at an establishment of the employer

(i) in Newfoundland, 100/169 of 30 per cent,

(ii) in Prince Edward Island, 200/315 of 30 per cent for the payments made during the period beginning on July 1, 1999 and ending on December 31, 1999, and, after that period, 200/317 of 30 per cent,

(iii) in Nova Scotia, 200/315 of 30 per cent,

(iv) in New Brunswick, 100/160 of 30 per cent,

(v) in Quebec, 15 per cent,

(vi) in Ontario, 200/277 of 30 per cent,

(vii) in Manitoba, 100/160 of 30 per cent,

(viii) in Saskatchewan, 100/167 of 30 per cent,

(ix) in Alberta, 100/146 of 30 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/295 of 30 per cent,

(x) in British Columbia, 100/150 of 30 per cent for the payments made during the period beginning on July 1, 1998 and ending on December 31, 1998, and, after that period, 200/299 of 30 per cent,

(xi) in the Yukon Territory, 100/150 of 30 per cent,

(xii) in the Northwest Territories, 100/145 of 30 per cent,

(xiii) in Nunavut, 100/145 of 30 per cent, or

(xiv) in Canada beyond the limits of any province or outside Canada, 30 per cent,

of such payment in lieu of the amount determined under section 102.

History: Paras. 103(4)(a)(ii), (vi) and (vii), (b)(ii), (vi) and (vii), (c)(ii), (vi) and (vii), amended by P.C. 1999-2205, subsecs. 1(5), (7), (9), (11), (13) and (15), December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective from July 1, 1999.

Paras. 103(4)(a)(iv), (b)(iv) and (c)(iv) amended by the said P.C. 1999-2205, subsecs. 1(6), (10) and (14), effective from January 1, 1999.

Paras. 103(4)(a)(xiii), (b)(xiii) and (c)(xiii) added, and (a)(xiv), (b)(xiv) and (c)(xiv) renumbered from (a)(xiii), (b)(xiii), and (c)(xiii), respectively, by the said P.C. 1999-2205, subsecs. 1(8), (12) and (16), effective from April 1, 1999.

Subparas. 103(4)(a)(x), (b)(x) and (c)(x) amended by P.C. 1998-2271, subsecs. 1(5), (8) and (11), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, effective from January 1, 1998.

Subparas. 103(4)(a)(i) to (iv) and (vi) to (xii), 103(4)(b)(i) to (iv) and (vi) to (xii), and 103(4)(c)(i) to (iv) and (vi) to (xii) amended by the said P.C. 1998-2271, subsecs. 1(4), (6), (7), (9), (10) and (12), effective from July 1, 1998.

Subparas. 103(4)(a)(iii), (iv) and (vi), 103(4)(b)(iii), (iv) and (vi), and 103(4)(c)(iii), (iv) and (vi) amended by P.C. 1997-1744, subsecs. 1(3) to (8), November 27, 1997, *Canada Gazette*, Part II, December 10, 1997, effective from July 1, 1997.

Subparas. 103(4)(a)(vi), (a)(x), 103(4)(b)(vi), (b)(x), and subpara. 103(4)(c)(vi), (c)(x) amended by P.C. 1997-290, subsecs. 1(3) to (8), March 4, 1997, *Canada Gazette*, Part II, March 19, 1997, effective commencing January 1, 1997.

Subparas. 103(4)(a)(vi), (a)(x), 103(4)(b)(vi), (b)(x), and subpara. 103(4)(c)(vi), (c)(x) amended by P.C. 1996-1557, subsecs. 1(3) to (8), October 8, 1996, *Canada Gazette*, Part II, October 30, 1996, effective commencing July 1, 1996.

Subpara. 103(4)(a)(viii), subpara. 103(4)(b)(viii), and subpara. 103(4)(c)(viii), amended by P.C. 1996-500, subsecs. 1(2) to (4), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, effective commencing July 1, 1995.

Subparas. 103(4)(a)(iv), (vi) and (xi), subparas. 103(4)(b)(iv), (vi) and (xi), subparas. 103(4)(c)(iv), (vi) and (xi), amended by P.C. 1994-1370, subsecs. 2(4) to (12), August 16, 1994, *Canada Gazette*, Part II, September 7, 1994, effective from July 1, 1993.

Subparas. (i) to (iv) and (vi) to (xii) of paras. 103(4)(a), (b) and (c) amended by P.C. 1994-372, subsecs. 3(3) to (8), March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective from January 1, 1993.

Subparas. (i) to (iv) and (vi) to (xii) of paras. 103(4)(a), (b) and (c) amended by P.C. 1993-1552, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, effective from July 1, 1992.

Subparas. 103(4)(a)(ii), (b)(ii), (c)(ii) amended by P.C. 1992-2347, subsecs. 2(2) to (4), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Subpara. (ii) of paras. 103(4)(a), (b), (c) amended by P.C. 1992-291, s. 2, February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective July 1, 1991.

Subparas. (iii) and (xii) of paras. 103(4)(a), (b), (c) amended by P.C. 1991-1643, subsecs. 2(3) to (8), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

Subparas. (i), (vi), (vii) of paras. 103(4)(a), (b) and (c) amended effective January 1, 1990, subparas. (iii), (xii) of those paras. amended effective July 1, 1990, by P.C. 1991-732, subsec. 2(5) to (16), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Subparas. 103(4)(a)(i) to (iv) and (vi) to (xii), (4)(b)(i) to (iv) and (vi) to (xii), and (4)(c)(i) to (iv) and (vi) to (xii) substituted by P.C. 1991-230, subsecs. 2(3) to (8), February 14, 1991, *Canada Gazette*, Part II, February 27, 1991, effective July 1, 1989.

Subparas. 103(4)(a)(ii), (vi), (ix), (b)(ii), (vi), (ix), (c)(ii), (vi), (ix) substituted by P.C. 1990-432, subsecs. 2(4) to (12), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Subparas. 103(4)(a)(ii), (iv), (vi), (ix), (b)(ii), (iv), (vi), (ix), (c)(ii), (iv), (vi), (ix) substituted by P.C. 1989-2105, subsecs. 3(5) to (16), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subparas. 103(4)(a)(ix) and (x), (b)(ix) and (x), (c)(ix) and (x) substituted by P.C. 1988-1041, subsecs. 2(2) to (4), June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective January 1, 1988.

Subparas. 103(4)(a)(vii) to (x), (b)(vii) to (x), (c)(vii) to (x) substituted by P.C. 1988-309, subsecs. 1(2) to (4), February 25, 1988, *Canada Gazette*, Part II, March 16, 1988, effective July 1, 1987.

Subparas. 103(4)(a)(ii), (b)(ii), (c)(ii) substituted by P.C. 1987-1478, subsecs. 3(2) to (4), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective January 1, 1987.

Subparas. 103(4)(a)(i) to (iv) and (vi) to (xii), (b)(i) to (iv) and (vi) to (xii), and (c)(i) to (iv) and (vi) to (xii) substituted by P.C. 1987-827, subsecs. 1(3) to (8), April 30, 1987, *Canada Gazette*, Part II, May 13, 1987, effective July 1, 1986.

Subparas. 103(4)(a)(vi), (x), (4)(b)(vi), (x), (4)(c)(vi), (x) substituted by P.C. 1986-1345, subsecs. 3(3) to 3(8), June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective January 1, 1986.

Subparas. 103(4)(a)(viii), (b)(viii), (c)(viii) substituted by P.C. 1985-2956, subsecs. 1(2)–(4), October 3, 1985, *Canada Gazette*, Part II, October 16, 1985, effective July 1, 1985.

Subparas. 103(4)(a)(iv), (ix), (xi), 103(4)(b)(iv), (ix), (xi), 103(4)(c)(iv), (ix), (xi) substituted by P.C. 1984-3684, subsecs. 2(4) to (12), November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective January 1, 1984.

Subparas. 103(4)(a)(iv) and (xi), 103(4)(b)(iv) and (xi), 103(4)(c)(iv) and (xi) substituted by P.C. 1984-775, subsecs. 1(3) to 1(8), March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, effective July 1, 1983.

Subparas. 103(4)(a)(iii) and (iv), 103(4)(b)(iii) and (iv), 103(4)(c)(iii) and (iv) substituted by P.C. 1983-2717, subsecs. 5(2) to (4), September 1,

1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

Subparas. 103(4)(a)(i), (iii), (iv), 103(4)(b)(i), (iii), (iv), 103(4)(c)(i), (iii), (iv) substituted by P.C. 1983-1195, subsecs. 1(3) to 1(8), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

Subparas. 103(4)(a)(i) to (iv), (vi) to (xii), 103(4)(b)(i) to (iv), (vi) to (xii), 103(4)(c)(i) to (iv), (vi) to (xii) substituted by P.C. 1983-1137, subsecs. 3(3) to 3(8), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective January 1, 1982.

Subparas. 103(4)(a)(vi), (viii), (xi)–(xiii), (b)(vi), (viii), (xi)–(xiii), (c)(vi), (viii), (xi)–(xiii) substituted by P.C. 1981-1557, subsecs. 4(4)–(12), June 11, 1981, subparas. 103(4)(a)(vi), (viii), (b)(vi), (viii), (c)(vi), (viii) in force July 1, 1981, subparas. 103(4)(a)(xi)–(xiii), (b)(xi)–(xiii), (c)(xi)–(xiii) effective January 1, 1981.

Subparas. 103(4)(a)(ii), (xi); (b)(ii), (xi); (c)(ii), (xi) substituted by P.C. 1980-3375, s. 3(3)–(8), December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Subparas. 103(4)(a)(ii), (b)(ii), (c)(ii) substituted by P.C. 1980-2226, s. 3, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective July 1, 1980.

Subparas. 103(4)(a)(x), (b)(x), (c)(x), substituted by P.C. 1979-2622, September 27, 1979, *Canada Gazette*, Part II, October 10, 1979, effective July 1, 1979.

Subparas. 103(4)(a)(iv), (viii), (b)(iv), (viii), (c)(iv), (viii), substituted by P.C. 1979-1258, April 11, 1979, *Canada Gazette*, Part II, May 9, 1979, effective January 1, 1979.

Subparas. 103(4)(a)(viii), (b)(viii), (c)(viii), substituted by P.C. 1978-2461, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978, effective July 1, 1978.

Subparas. 103(4)(a)(vii), (b)(vii), (c)(vii), substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978, effective March 1, 1978.

Subparas. 103(4)(a)(iv), (viii), (xi), (b)(iv), (viii), (xi), (c)(iv), (viii), (xi) substituted, subparas. 103(4)(a)(xii), (b)(xii), (c)(xii) added, by P.C. 1978-1038, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

All that portion of subsection 103(4) preceding para. (a) substituted by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978, effective January 1, 1978.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204 (reduction in withholdings for certain income related to Quebec).

Forms: T1036: Home buyers' plan — request to withdraw funds from an RRSP.

(5) [Lump sum pension payment] — Where the payment referred to in subsection (4) would be pension income or qualified pension income of the employee in respect of which subsection 118(3) of the Act would apply if the definition "pension income" in subsection 118(7) of the Act were read without reference to subparagraphs (a)(ii) and (iii) thereof, the payment shall be deemed to be the amount of the payment minus

(a) where the payment does not exceed the amount taxable referred to in paragraph 117(2)(a) of the Act, as adjusted annually pursuant to section 117.1 of the Act, the lesser of $1,000 and the amount of the payment;

(b) where the payment exceeds the amount referred to in paragraph (a) but does not exceed the amount taxable referred to in paragraph 117(2)(c) of the Act, as adjusted annually pursuant to section 117.1 of the Act, $654; and

(c) where the payment exceeds the amount taxable referred to in paragraph 117(2)(c) of the Act, as adjusted annually pursuant to section 117.1 of the Act, $586.

History: Paras. 103(5)(a) to (c) amended by P.C. 1992-2347, subsec. 2(5), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Paras. 103(5)(a) to (c) amended by P.C. 1991-1634, subsec. 2(9), September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective commencing January 1, 1991.

Paras. 103(5)(a) to (c) amended by P.C. 1991-732, subsec. 2(17), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Paras. 103(5)(a), (b), (c) substituted by P.C. 1990-432, subsec. 2(13), March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Subsec. 103(5) substituted by P.C. 1989-2105, subsec. 3(17), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

That portion of subsec. 103(5) preceding para. (a) substituted by P.C. 1987-2250, subsec. 2(1), November 6, 1987, *Canada Gazette*, Part II, November 25, 1987.

That portion of subsec. 103(5) preceding paragraph (a) substituted by P.C. 1983-2717, subsec. 5(5), September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

(6) For the purposes of subsection (4), a **"lump sum payment"** means a payment that is

(a) a payment described in subparagraph 40(1)(a)(i) or (iii) or paragraph 40(1)(c) of the *Income Tax Application Rules*,

(b) a payment under a deferred profit sharing plan or a plan referred to in section 147 of the Act as a "revoked plan", except a payment referred to in subparagraph 147(2)(k)(v) of the Act,

(c) a payment made during the lifetime of an annuitant referred to in subparagraph 146(1)(a)(i) [146(1)"annuitant"(a)] of the Act out of or under a registered retirement savings plan of that annuitant, other than

(i) a periodic annuity payment, or

(ii) a payment made by a person who has reasonable grounds to believe that the payment may be deducted under subsection 146(8.2) of the Act in computing the income of any taxpayer,

(d) a payment out of or under a plan referred to in subsection 146(12) of the Act as an "amended plan" other than

(i) a periodic annuity payment, or

(ii) where paragraph 146(12)(a) of the Act applied to the plan after May 25, 1976, a payment made in a year subsequent to the year in which that paragraph applied to the plan,

(d.1) a payment made during the lifetime of an annuitant referred to in paragraph 146.3(1)(a) [146.3(1)"annuitant"] of the Act under a registered retirement income fund of that annuitant, other than a payment to the extent that it is in respect of the minimum amount (within the meaning assigned by paragraph 146.3(1)(b.1) [146.3(1)"minimum amount"] of the Act) under the fund for a year,

(e) a retiring allowance,

(f) a payment of an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract, or

(g) a payment described in paragraph (n) of the definition "remuneration" in subsection 100(1).

Related Provisions: Reg. 100(3)(c) — No source withholding required where amount paid directly to employee's RRSP by employer.

History: Para. 103(6)(g) added by P.C. 1998-2275, subsec. 2(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 103(6)(a) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 103(6)(c) substituted by P.C. 1991-2540, s. 2, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of payments made after 1990.

Subparas. 103(6)(c)(i) and 103(6)(d)(i) substituted and para. 103(6)(d.1) added by P.C. 1987-2250, subsecs. 2(2)–(4), November 6, 1987, *Canada Gazette*, Part II, November 25, 1987.

Paras. 103(6)(a) and (e) substituted by P.C. 1983-1137, subsecs. 3(9) and 3(10), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable with respect to amounts received in respect of any termination of an office or employment after November 12, 1981, except that in its application to payments made after November 12, 1981 in respect of a termination of an office or employment that occurred on or before that date paragraph 103(6)(a) shall be read as follows:

"(a) a payment described in subparagraphs 40(1)(a)(i) to (iii) or paragraph 40(1)(b) or (c) of the *Income Tax Application Rules, 1971*,"

and paragraph 103(6)(e) shall be read as follows:

"(e) a termination payment paid in a single payment, or"

Paras. 103(6)(c), (d) substituted by P.C. 1980-3209, s. 2, November 27, 1980, *Canada Gazette*, Part II, December 10, 1980.

Para. 103(6)(c) added, para. (d) (formerly (c)) substituted and para. (d) renumbered (f) (as amended by P.C. 1980-2226, s. 3, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980) by P.C. 1980-1735, s. 2, June 26, 1980, *Canada Gazette*, Part II, July 9, 1980, effective June 30, 1978.

Para. 103(6)(e) added by P.C. 1980-1366, s. 2, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980.

Para. 103(6)(c) substituted by P.C. 1978-1038, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

Subsec. 103(6) substituted by P.C. 1977-3520, December 15, 1977, *Canada Gazette*, Part II, January 11, 1978.

(7) [Retirement compensation arrangement] — For the purposes of subsection 153(1) of the Act, the amount to be deducted or withheld by a person shall be 50 per cent

(a) of the contribution made by the person under a retirement compensation arrangement, other than

(i) a contribution made by the person as an employee,

(ii) a contribution made to a plan or arrangement that is a prescribed plan or arrangement for the purposes of subsection 207.6(6) of the Act, or

(iii) a contribution made by way of a transfer from another retirement compensation arrangement under circumstances in which subsection 207.6(7) of the Act applies; or

(b) of the payment by the person to a resident of Canada of an amount on account of the purchase price of an interest in a retirement compensation arrangement.

History: Para. 103(7)(a) amended by P.C. 1999-2211, s. 1, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable after 1991 except that in its application to contributions made before 1996, para. (a) shall be read without reference to subpara. 103(7)(a)(iii).

Para. 103(7)(a) amended by P.C. 1998-2270, s. 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts transferred after 1995.

Subsec. 103(7) added by P.C. 1989-379, s. 2, March 9, 1989, *Canada Gazette*, Part II, March 29, 1989, applicable in respect of amounts paid after March 27, 1987.

Forms: T4041: Retirement Compensation Arrangements Guide (guide).

(8) [RESP payment] — Every employer making a payment described in paragraph (n) of the definition "remuneration" in subsection 100(1) shall withhold — in addition to any other amount required to be withheld under Part I of these Regulations — on account of the tax payable under Part X.5 of the Act, an amount equal to

(a) where the amount is paid in the province of Quebec, 12 per cent of the payment, and

(b) in any other case, 20 per cent of the payment.

History: Subsec. 103(8) amended by P.C. 1999-2205, subsec. 1(17), December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective from June 17, 1999.

Subsec. 103(8) added by P.C. 1998-2275, subsec. 2(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Definitions [Reg. 103]: "amount", "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employee", "employer" — Reg. 100(1); "income-averaging annuity contract" — ITA 248(1); "lump sum payment" — Reg. 103(6); "pay period" — Reg. 100(1); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "remuneration" — Reg. 100(1); "resident" — ITA 250; "retirement compensation arrangement", "retiring allowance" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total remuneration" — Reg. 100(1).

104. Deductions not required — (1) [Sufficient credits on TD1] — No amount shall be deducted or withheld from a payment in accordance with section 102 or 103 with respect to an employee who has filed with the employee's employer a return referred to in subsection 107(1) for a year claiming that the employee's income from employment for the year will be less than the claim amount for the year as reported on that return for the year.

History: Subsec. 104(1) substituted by P.C. 1994-372, s. 4, March 10, 1994, *Canada Gazette*, Part II, March 23, 1994, effective January 1, 1993.

Subsec. 104(1) amended by P.C. 1992-2347, s. 3, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Subsec. 104(1) substituted by P.C. 1989-2105, s. 4, October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Forms: TD1: Personal tax credits return; TD1A: Amendment to the personal tax credits return.

(2) [Employee not in Canada] — No amount shall be deducted or withheld from a payment in accordance with section 102 or 103 in respect of an employee who was neither employed nor resident in Canada at the time of payment except in respect of

(a) remuneration described in subparagraph 115(2)(e)(i) of the Act that is paid to a non-resident person who has in the year, or had in any previous year, ceased to be resident in Canada; or

(b) remuneration reasonably attributable to the duties of any office or employment performed or to be performed in Canada by the non-resident person.

History: Para. 104(2)(b) amended by P.C. 1997-1471, s. 2, October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, applicable beginning on May 1, 1997.

Subsec. 104(2) substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978, effective March 1, 1978.

Interpretation Bulletins: IT-161R3: Non-residents — Exemption from tax deductions at source on employment income.

(3) [Home Buyers' Plan] — No amount shall be deducted or withheld from a payment made by a person during the lifetime of an annuitant referred to in paragraph (a) of the definition "annuitant" in subsection 146(1) of the Act out of or under a registered retirement savings plan of the annuitant where, at the time of the payment, the annuitant has certified in prescribed form to the person that

(a) a written agreement has been entered into to acquire a home by either

(i) the annuitant, or

(ii) a disabled person who is related to the annuitant and who is entitled to the credit for mental or physical impairment under subsection 118.3 (1) of the Act;

(b) the annuitant intends that the home be used as a principal place of residence in Canada for the annuitant or the disabled person, as the case may be, within one year after its acquisition;

(c) the home has not been previously owned by the annuitant, the annuitant's spouse, the disabled person or the spouse of that person;

(d) the annuitant was resident in Canada;

(e) the total amount of the payment and all other such payments received by the annuitant in respect of the home at or before the time of payment does not exceed $20,000;

(f) except where the annuitant certifies that he or she is a disabled person entitled to the credit for mental or physical impairment under subsection 118.3(1) of the Act or certifies that the payment is being withdrawn for the benefit of such a disabled person, the annuitant is a qualifying homebuyer at the time of the certification; and

(g) where the annuitant has withdrawn an eligible amount, within the meaning assigned by subsection 146.01(1) of the Act, before the calendar year of the certification, the total of all eligible amounts received by the annuitant before that calendar year does not exceed the total of all amounts previously designated under subsection 146.01(3) of the Act or included in computing the annuitant's income under subsection 146.01(4) or (5) of the Act.

Related Provisions: Reg. 104(3.01), (3.1), (4) — Interpretation.

History: Subsec. 104(3) amended by P.C. 1998-2272, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

Also see history at end of s. 104.

(3.01) ["Qualifying home buyer"] — For the purpose of subsection (3), the annuitant is a qualifying homebuyer at a particular time unless

(a) the annuitant had an owner-occupied home in the period beginning on January 1 of the fourth calendar year preceding the particular time, and ending on the thirty-first day before the particular time; or

(b) the annuitant's spouse, in the period referred to in paragraph (a), had an owner-occupied home that was inhabited by the annuitant at any time during the marriage of the spouse and the annuitant.

History: Subsec. 104(3.01) added by P.C. 1998-2272, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

(3.1) ["Owner-occupied home"] — For the purpose of subsection (3.01), an individual shall be considered to have had an owner-occupied home at any time where the home was owned, whether jointly with another person or otherwise, by the individual at that time and inhabited by the individual as the individual's principal place of residence at that time.

History: Subsec. 104(3.1) amended by P.C. 1998-2272, subsec. 1(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

Also see history at end of s. 104.

(4) ["Home"] — For the purposes of subsections (3), (3.01) and (3.1), "home" means

(a) a housing unit;

(b) a share of the capital stock of a cooperative housing corporation, where the holder of the share is entitled to possession of a housing unit; and

(c) where the context so requires, the housing unit to which a share described in paragraph (b) relates.

History [Reg. 104]: Subsec. 104(4) amended by P.C. 1998-2272, subsec. 1(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

That portion of subsec. 104(3) before para. (a), and 104(4) before para. (a) substituted, paras. (3)(b.1) and (b.2), and subsec. (3.1) added, by P.C. 1994-438, March 17, 1994, *Canada Gazette*, Part II, April 5, 1994, applicable to payments made after March 1, 1994.

Subsec. 104(3) amended by P.C. 1993-271, February 11, 1993, *Canada Gazette*, Part II, February 24, 1993.

Subsecs. 104(3), (4) added by P.C. 1992-480, March 19, 1992, *Canada Gazette*, Part II, April 8, 1992, applicable in respect of payments made after February 25, 1992 and before March 2, 1993.

Definitions [Reg. 104]: "amount" — ITA 248(1); "annuitant" — ITA 146.1(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "eligible amount" — ITA 146.01(1); "employed", "employee", "employer" — Reg. 100(1); "employment" — ITA 248(1); "home" — Reg. 104(4); "individual" — ITA 248(1); "marriage" — ITA 252(4)(b); "non-resident", "office" — ITA 248(1); "owner-occupied home" — Reg. 104(3.1); "person", "prescribed" — ITA 248(1); "qualifying homebuyer" — Reg. 104(3.01); "registered retirement savings plan" — ITA 146(1), 248(1); "remuneration" — Reg. 100(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "spouse" — ITA 252(4); "written" — *Interpretation Act* 35(1)"writing".

104.1 Lifelong learning plan — **(1)** No amount shall be deducted or withheld from a payment made by a person during the lifetime of an annuitant referred to in paragraph (a) of the definition "annuitant" in subsection 146(1) of the Act out of or under a registered retirement savings plan of the annuitant where, at the time of the payment, the annuitant has certified in prescribed form to the person that

(a) at the time of certification, the annuitant or the annuitant's spouse

(i) is a full-time student in a qualifying educational program,

(ii) is a part-time student in a qualifying educational program and is entitled to the credit for mental or physical impairment under subsection 118.3(1) of the Act, or

(iii) has received notification in writing of his or her entitlement, either absolutely or conditionally, to enrol before March of the year that follows the year of certification as

(A) a full-time student in a qualifying educational program, or

(B) a part-time student in a qualifying educational program where the annuitant or the annuitant's spouse is entitled to the credit for mental or physical impairment under subsection 118.3(1) of the Act;

(b) the annuitant is resident in Canada;

(c) the total amount of the payment and all other such payments received by the annuitant for a year at or before that time does not exceed $10,000; and

(d) the total payments received by the annuitant do not exceed $20,000 throughout the period in which the annuitant participates in the Lifelong Learning Plan.

Related Provisions: Reg. 104.1(2) — Interpretation.

Forms: LLP — request to withdraw funds from an RRSP.

(2) ["Qualifying educational program"] — For the purpose of subsection (1), a "qualifying educational program" means a qualifying educational program at a designated educational institution (as those expressions are defined in subsection 118.6(1) of the Act), except that a

reference to a "qualifying educational program" shall be read

(a) without reference to paragraphs (a) and (b) of that definition; and

(b) as if the reference to"3 consecutive weeks" in that definition were a reference to "3 consecutive months".

History: S. 104.1 added by P.C. 1998-2256, s. 2, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to payments made after 1998.

Definitions [Reg. 104.1]: "amount" — ITA 248(1); "annuitant — ITA 146(1); "prescribed" — ITA 248(1); "qualifying educational program" — Reg. 104.1(2); "registered retirement savings plan" — ITA 146(1), 248(1); "resident in Canada" — ITA 250; "spouse" — ITA 252(4).

105. Non-residents — **(1)** Every person paying to a non-resident person a fee, commission or other amount in respect of services rendered in Canada, of any nature whatever, shall deduct or withhold 15 per cent of such payment.

(2) Subsection (1) does not apply to a payment described in the definition "remuneration" in subsection 100(1).

Related Provisions [Reg. 105]: ITA 212(1)(a) — Withholding tax on fees for management services; Canada-U.S. tax treaty Art. XIV — Independent personal services; Canada-U.S. tax treaty Art. XVII — Limitation on withholding re U.S. residents.

Information Circulars [Reg. 105]: 75-6R: Required withholding from amounts paid to non-resident persons performing services in Canada.

Forms [Reg. 105]: T4A-NR Summ: Summary of fees (etc.) paid to non-residents for services rendered in Canada; T4A-NR Supp: Statement of fees, etc., paid to non-residents to which subsection 105(1) of the Regulations applies.

Definitions [Reg. 105]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commission" — Reg. 100(1)"remuneration"(a)(ii); "non-resident", "person" — ITA 248(1); "remuneration" — Reg. 100(1).

105.1 Fishermen's election — **(1)** Notwithstanding section 100, in this section,

"amount of remuneration" paid to a fisherman means

(a) where a boat crewed by one or more fishermen engaged in making a catch is owned, together with the gear, by a person, other than a member of the crew, to whom the catch is to be delivered for subsequent sale or other disposition, such portion of the proceeds from the disposition of the catch that is payable to the fisherman in accordance with an arrangement under which the proceeds of disposition of the catch are to be distributed (in this section referred to as a "share arrangement");

(b) where the boat or gear used in making a catch is owned or leased by a fisherman who alone or with another individual engaged under a contract of service makes the catch, such portion of the proceeds from the disposition of the catch that remains after deducting therefrom

(i) the amount in respect of any portion of the catch not caught by the fisherman or the other individual,

(ii) the amount payable to the other individual under the contract of service, and

(iii) the amount of such proportionate share of the catch as is attributable to the expenses of the operation of the boat or its gear pursuant to their share arrangement;

(c) where a crew includes the owner of the boat or gear (in this paragraph referred to as the "owner") and any other fisherman engaged in making a catch, such portion of the proceeds from the disposition of the catch that remains after deducting therefrom

(i) in the case of an owner,

(A) the amount in respect of that portion of the catch not caught by the crew or an owner,

(B) the aggregate of all amounts each of which is an amount payable to a crew member (other than the owner) pursuant to their share arrangement or to an individual engaged under a contract of service, and

(C) the amount of such proportionate share of the catch as is attributable to the expenses of the owner's operation of the boat or its gear pursuant to their share arrangement, or

(ii) in the case of any other crew member, such proceeds from the disposition of the catch as is payable to him in accordance with their share arrangement; or

(d) in any other case, the proceeds of disposition of the catch payable to the fisherman;

"catch" means a catch of shell fish, crustaceans, aquatic animals or marine plants caught or taken from any body of water;

"crew" means one or more fishermen engaged in making a catch;

"fisherman" means an individual engaged in making a catch other than under a contract of service.

(2) Every person paying at any time in a taxation year an amount of remuneration to a fisherman who, pursuant to paragraph 153(1)(n) of the Act, has elected for the year in prescribed form in respect of all such amounts shall deduct or withhold 20% of each such amount paid to the fisherman while the election is in force.

History: S. 105.1 added by P.C. 1983-2717, s. 6, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from March 30, 1983.

Definitions [Reg. 105.1]: "amount" — ITA 248(1); "amount of remuneration" — Reg. 105.1(1); "catch", "crew" — Reg. 105.1(1)(d); "disposition" — ITA 248(1); "fisherman" — Reg. 105.1(1)(d); "individual" — ITA 248(1); "owner" — Reg. 105.1(1)(c); "person", "prescribed" — ITA 248(1); "remuneration" — Reg. 100(1); "share" — ITA 248(1); "share arrangement" — Reg. 105.1(1)(a); "taxation year" — ITA 249.

106. Variations in deductions — **(1)** Where an employer makes a payment of remuneration to an employee in his taxation year

(a) for a period for which no provision is made in Schedule I,

(b) for a pay period referred to in Schedule I in an amount that is greater than any amount provided for therein,

(c) whose total remuneration in respect of the year is greater than any amount of total remuneration provided for in Schedule I, or

(d) whose personal credits and estimated deductions in respect of the year are greater than $58,999.99,

the amount to be deducted or withheld by the employer from any such payment is that proportion of the payment that the tax that may reasonably be expected to be payable under the Act by the employee with respect to the aggregate of all remuneration that may reasonably be expected to be paid by the employer to the employee in respect of that taxation year is of such aggregate.

(2), (3) [Revoked]

History [Reg. 106]: Para. 106(1)(d) substituted by P.C. 1989-2105, s. 5, October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Para. 106(1)(d) substituted by P.C. 1985-1645, May 16, 1985, s. 3, *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Para. 106(1)(d) substituted, subsecs. 106(2) and (3) revoked by P.C. 1984-3684, s. 3, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective from January 1, 1984.

Para. 106(1)(d) substituted by P.C. 1983-2717, s. 7, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective from January 1, 1983.

Para. 106(1)(d) substituted by P.C. 1983-1137, s. 4, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective from January 1, 1982.

S. 106 substituted by P.C. 1981-1557, s. 5, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective commencing January 1, 1981.

Definitions [Reg. 106]: "amount", "employee", "employer", "estimated deductions", "pay period", "personal credits", "remuneration" — Reg. 100(1); "taxation year" — ITA 249; "total remuneration" — Reg. 100(1).

107. Employee's returns — **(1)** The return required to be filed by an employee under subsection 227(2) of the Act shall be filed by the employee with the employer when the employee commences employment with that employer and a new return shall be filed thereunder within 7 days of the date on which a change occurs that may reasonably be expected to result in a change in the employee's personal credits for the year.

Related Provisions: Reg. 104 — No deduction required where employee claims no tax payable.

History: Subsec. 107(1) amended by P.C. 1989-2105, subsec. 6(1), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Forms: TD1: Personal tax credits return; TD1A: Amendment to the personal tax credits return.

(2) Notwithstanding subsection (1), where, in a year, an employee receives payments in respect of commissions or in respect of commissions and salary or wages, and he elects to file a prescribed form for a year in addition to the return referred to in that subsection, that form shall be filed with his continuing employer on or before January 31 of the year and, where applicable, within one month after he commences his employment with a new employer or within one month of the date on which a change occurs that may reasonably be expected to result in

(a) a change in the employee's personal credits for the year, or

(b) a substantial change in his estimated total remuneration for the year or estimated deductions for the year.

History: Para. 107(2)(a) amended by P.C. 1989-2105, subsec. 6(2), October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

Subsec. 107(2) substituted by P.C. 1981-1557, s. 6, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective January 1, 1981.

Forms: TD1X: Statement of remuneration and expenses (for use by commission remunerated employees).

(3) Where, in a taxation year, an employee has elected to file the prescribed form referred to in subsection (2) and has filed such form with his employer, the employee may at any time thereafter in the year revoke that election and such revocation is effective from the date that he notifies his employer in writing of his intention.

History: S. 107 substituted by P.C. 1980-3375, s. 5, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1981.

Definitions [Reg. 107]: "commissions" — Reg. 100(1)"remuneration"(a)(ii); "employee", "employer" — Reg. 100(1); "employment" — ITA 248(1); "estimated deductions" — Reg. 100(1); "month" — *Interpretation Act* 35(1); "personal credits" — Reg. 100(1); "prescribed", "salary or wages" — ITA 248(1); "taxation year" — ITA 249; "total remuneration" — Reg. 100(1); "writing" — *Interpretation Act* 35(1).

108. Remittances to Receiver General — **(1)** Subject to subsections (1.1), (1.11) and (1.12), amounts deducted or withheld in a month under subsection 153(1) of the Act shall be remitted to the Receiver General on or before the 15th day of the following month.

Forms: RC4163: Employers' guide-remitting payroll deductions; T4001: Employers' guide to payroll deductions — basic information (guide). See also under ITA 153(1).

(1.1) [Large employers] — Subject to subsection (1.11), where the average monthly withholding amount of an employer for the second calendar year preceding a particular calendar year is

(a) equal to or greater than $15,000 and less than $50,000, all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made in a month in the particular calendar year by the employer shall be remitted to the Receiver General

(i) in respect of payments made before the 16th day of the month, on or before the 25th day of the month, and

(ii) in respect of payments made after the 15th day of the month, on or before the 10th day of the following month; or

(b) equal to or greater than $50,000, all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made in a month in the particular calendar year by the employer shall be remitted to the Receiver General on or before the third day, not including a Saturday or holiday, after the end of the following periods in which the payments were made,

(i) the period beginning on the first day and ending on the 7th day of the month,

(ii) the period beginning on the 8th day and ending on the 14th day of the month,

(iii) the period beginning on the 15th day and ending on the 21st day of the month, and

(iv) the period beginning on the 22nd day and ending on the last day of the month.

(1.11) [Option to use preceding year as base] — Where an employer referred to in paragraph (1.1)(a) or (b) would otherwise be required to remit in accordance with that paragraph the amounts withheld or deducted under subsection 153(1) of the Act in respect of a particular calendar year, the employer may elect to remit those amounts

(a) in accordance with subsection (1), if the average monthly withholding amount of the employer for the calendar year preceding the particular calendar year is less than $15,000 and the employer has advised the Minister that the employer has so elected; or

(b) if the average monthly withholding amount of the employer for the calendar year preceding the particular calendar year is equal to or greater than $15,000 and less than $50,000 and the employer has advised the Minister that the employer has so elected,

(i) in respect of payments made before the 16th day of a month in the particular calendar year, on or before the 25th day of the month, and

(ii) in respect of payments made after the 15th day of a month in [the] particular calendar year, on or before the 10th day of the following month.

(1.12) [Quarterly remittance] — If at any time

(a) the average monthly withholding amount in respect of an employer for either the first or the second calendar year before the particular calendar year that includes that time is less than $1,000,

(b) throughout the 12-month period before that time, the employer has remitted, on or before the day on or before which the amounts were required to be remitted, all amounts each of which was required to be

(i) deducted or withheld under subsection 153(1) of the Act, or

(ii) remitted under Part IX of the *Excise Tax Act*, and

(c) throughout the 12-month period before that time, the employer has filed all returns each of which was required to be filed under this Act or Part IX of the *Excise Tax Act* on or before the day on or before which those returns were required to be filed under those Acts,

all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made by the employer in a month that ends after that time and that is in the particular calendar year may be remitted to the Receiver General

(d) in respect of such payments made in January, February and March of the particular calendar year, on or before the 15th day of April of the particular year,

(e) in respect of such payments made in April, May and June of the particular calendar year, on or before the 15th day of July of the particular year,

(f) in respect of such payments made in July, August and September of the particular calendar year, on or before the 15th day of October of the particular year, and

(g) in respect of such payments made in October, November and December of the particular calendar year, on or before the 15th day of January of the year following the particular year.

History: Subsec. 108(1) amended and (1.12) added by P.C. 1997-1473, October 9, 1997, s. 3, *Canada Gazette*, Part II, October 29, 1997, applicable to amounts and contributions required to be remitted to the Receiver General after October 1997.

Subsecs. 108(1) and (1.1) amended, and (1.11) added, by P.C. 1993-321, February 23, 1993, *Canada Gazette*, Part II, March 10, 1993, applicable in respect of amounts deducted or withheld from payments made after March 10, 1993.

Subsec. 108(1.1) substituted by P.C. 1989-2390, December 7, 1989, *Canada Gazette*, Part II, December 20, 1989, applicable in respect of amounts deducted or withheld from payments made after 1989.

Subsec. 108(1.1) added by P.C. 1987-2476, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable in respect of amounts deducted or withheld from payments made after 1987.

Forms: RC4163: Employers' guide-remitting payroll deductions. See also under ITA 153(1).

(1.2) ["Average monthly withholding amount"] — For the purposes of this section, average monthly withholding amount, in respect of an employer for a particular calendar year, is the quotient obtained when

(a) the aggregate of all amounts each of which is an amount required to be remitted with respect to the particular year under

(i) subsection 153(1) of the Act and a similar provision of a law of a province which imposes a tax upon the income of individuals, where the province has entered into an agreement with the Minister of Finance for the collection of taxes payable to the province, in respect of payments described in the definition "remuneration" in subsection 100(1),

(ii) subsection 21(1) of the *Canada Pension Plan*, or

(iii) subsection 82(1) of the *Employment Insurance Act* or subsection 53(1) of the *Unemployment Insurance Act*,

by the employer or, where the employer is a corporation, by each corporation associated with the corporation in a taxation year of the employer ending in the second calendar year following the particular year

is divided by

(b) the number of months in the particular year, not exceeding twelve, for which such amounts were required to be remitted by the employer and, where the employer is a corporation, by each corporation associated with it in a taxation year of the employer ending in the second calendar year following the particular year.

Related Provisions: Reg. 108(1.3) — Where business transferred.

History: Subpara. 108(1.2)(a)(iii) amended by P.C. 1998-2270, s. 4, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Subparas 108(1.2)(a)(ii), (iii) amended by P.C. 1991-1643, s. 3, September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective as of December 13, 1988.

Subsec. 108(1.2) added by P.C. 1987-2476, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable in respect of amounts deducted or withheld from payments made after 1987.

(1.3) [Where business transferred] — For the purposes of subsection (1.2), where a particular employer that is a corporation has acquired in a taxation year of the corporation ending in a particular calendar year all or substantially all of the property of another employer used by the other employer in a business

(a) in a transaction in respect of which an election was made under subsection 85(1) or (2) of the Act,

(b) by virtue of an amalgamation within the meaning assigned to that term by section 87 of the Act, or

(c) as the result of a winding-up in respect of which subsection 88(1) of the Act is applicable,

the other employer shall be deemed to be a corporation associated with the particular employer in the taxation year and each taxation year ending at any time in the next two following calendar years.

History: Subsec. 108(1.3) added by P.C. 1987-2476, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable in respect of amounts deducted or withheld from payments made after 1987.

(2) [Ceasing to carry on business] — Where an employer has ceased to carry on business, any amount deducted or withheld under subsection 153(1) of the Act that has not been remitted to the Receiver General shall be paid within 7 days of the day when the employer ceased to carry on business.

(3) [Return] — Remittances made to the Receiver General under subsection 153(1) of the Act shall be accompanied by a return in prescribed form.

(4) [Unclaimed dividends, interest on proceeds] — Amounts deducted or withheld under subsection 153(4) of the Act shall be remitted to the Receiver General within 60 days after the end of the taxation year subsequent to the 12-month period referred to in that subsection.

Definitions [Reg. 108]: "amount" — ITA 248(1); "associated" — ITA 256, Reg. 108(1.3); "average monthly withholding amount" — Reg. 108(1.2); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employer" — Reg. 100(1); "holiday" — *Interpretation Act* 35(1); "individual", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "remuneration" — Reg. 100(1); "taxation year" — ITA 249.

109. Elections to increase deductions — **(1)** Any election under subsection 153(1.2) of the Act shall be made by filing with the person making the payment or class of payments referred to therein (in this section referred to as the "payer") the form prescribed by the Minister for that purpose.

(2) A taxpayer who has made an election in the manner prescribed by subsection (1) may require that the amount deducted or withheld pursuant to that election be varied by filing with the payer the form prescribed by the Minister for that purpose.

(3) An election made in the manner prescribed by subsection (1) or a variation made pursuant to subsection (2) need not be taken into account by the payer in respect of the first payment to be made to the taxpayer after the election or variation, as the case may be, unless the election or variation, as the case may be, is made within such time, in advance of the payment, as may reasonably be required by the payer.

Definitions [Reg. 109]: "amount", "Minister" — ITA 248(1); "payer" — Reg. 109(1); "person", "prescribed", "taxpayer" — ITA 248(1).

110. Prescribed persons — **(1)** The following are prescribed persons for the purposes of subsection 153(1) of the Act:

(a) an employer who is required, under subsection 153(1) of the Act and in accordance with paragraph 108(1.1)(b), to remit amounts deducted or withheld; and

(b) a person or partnership who, acting on behalf of one or more employers, remits the following amounts in a particular calendar year and whose average monthly remittance, in respect of those amounts, for the second calendar year preceding the particular calendar year, is equal to or greater than $50,000,

(i) amounts required to be remitted under subsection 153(1) of the Act and a similar provision of a law of a province that imposes a tax on the income of individuals, where the province has entered into an agreement with the Minister of Finance for the collection of taxes payable to the province, in respect of payments described in the definition "remuneration" in subsection 100(1),

(ii) amounts required to be remitted under subsection 21(1) of the *Canada Pension Plan*, and

(iii) amounts required to be remitted under subsection 82(1) of the *Employment Insurance Act* or subsection 53(1) of the *Unemployment Insurance Act*.

(2) For the purposes of paragraph (1)(b), the average monthly remittance made by a person or partnership on behalf of all the employers for whom that person or partnership is acting, for the second calendar year preceding the particular calendar year, is the quotient obtained when the aggregate, for that preceding year, of all amounts referred to in subparagraphs (1)(b)(i) to (iii) remitted by the person or partnership on behalf of those employers is divided by the number of months, in that preceding year, for which the person or partnership remitted those amounts.

History: Subpara. 110(1)(b)(iii) amended by P.C. 1998-2270, s. 5, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

S. 110 added by P.C. 1993-1947, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993.

Definitions [Reg. 110]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employer" — Reg. 100(1); "individual" — ITA 248(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "remuneration" — Reg. 100(1).

PART II — INFORMATION RETURNS

History: Part II was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Information Circulars: 82-2R2: Social insurance number legislation that relates to the preparation of information slips.

200. Remuneration and benefits — **(1)** Every person who makes a payment described in subsection 153(1) of the Act (other than an annuity payment in respect of an interest in an annuity contract to which subsection 201(5) applies) shall make an information return in prescribed form in respect of such payment unless an information return in respect of such payment has been made under section 202 or 214.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 200(1) substituted by P.C. 1983-3586, s. 1, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

I.T. Technical News: No. 11 (reporting of amounts paid out of an employee benefit plan).

Forms: See at end of Reg. 200.

(2) Every person who makes a payment as or on account of, or who confers a benefit or allocates an amount that is,

(a) a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the recipient thereof (other than a prize prescribed by section 7700),

(b) a grant to enable the recipient thereof to carry on research or any similar work,

(c) an amount that is required by paragraph 56(1)(r) of the Act to be included in computing a taxpayer's income,

(d) a benefit under regulations made under an *Appropriation Act* providing for a scheme of transitional assistance benefits to persons employed in the production of products to which the *Canada-United States Agreement on Automotive Products*, signed on January 16, 1965, applies,

(e) a benefit described in section 5502,

(f) an amount payable to a taxpayer on a periodic basis in respect of the loss of all or any part of his income from an office or employment, pursuant to

(i) a sickness or accident insurance plan,

(ii) a disability insurance plan, or

(iii) an income maintenance insurance plan,

to or under which his employer has made a contribution,

(g) an amount or benefit the value of which is required by paragraph 6(1)(a), (e) or (h) or subsection 6(9) of the Act to be included in computing a taxpayer's income from an office or employment, other than a payment referred to in subsection (1),

(h) a benefit the amount of which is required by virtue of subsection 15(5) of the Act to be included in computing a shareholder's income,

(i) a benefit deemed by subsection 15(9) of the Act to be a benefit conferred on a shareholder by a corporation, or

(j) a payment out of a registered education savings plan, other than a refund of payments,

shall make an information return in prescribed form in respect of such payment or benefit except where subsection (3) or (4) applies with respect to the payment or benefit.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Para. 200(2)(j) added by P.C. 1998-2275, s. 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 200(2)(c) amended by P.C. 1998-2270, s. 6, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 200(2)(e) amended by P.C. 1995-1023, s. 2, June 23, 1995, *Canada Gazette*, Part II, July 12, 1995, applicable to benefits paid after October 1991.

Para. 200(2)(a) amended by P.C. 1989-1923, s. 1, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1983 *et seq.*

Paras. 200(2)(c), (e), (g) and (h) and all that portion of subsec. 200(2) following para. (i) substituted by P.C. 1983-3585, subsecs. 1(1) to (4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

All that portion of subsec. 200(2) preceding para. (a) and para. 200(2)(g) substituted by P.C. 1981-3209, s. 1, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective with respect to amounts allocated in respect of 1980 *et seq.*

All those portions of subsec. 200(2) preceding para. (a) and following para. (i) substituted, and para. (i) added by P.C. 1979-3327, s. 1, December 6, 1979, *Canada Gazette*, Part II, December 26, 1979, effective in respect of 1979 *et seq.*

Para. 200(2)(g) substituted by P.C. 1978-3629, s. 1, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, applicable to 1979 *et seq.*

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

I.T. Technical News: No. 11 (reporting of amounts paid out of an employee benefit plan).

Forms: See at end of Reg. 200.

(3) Where a benefit is included in computing a taxpayer's income from an office or employment pursuant to paragraph 6(1)(a) or (e) of the Act in respect of an automobile made available to the taxpayer or to a person related to the taxpayer by a person related to the taxpayer's employer, the employer shall make an information return in prescribed form in respect of the benefit.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 200(3) added by P.C. 1983-3585, subsec. 1(5), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(4) Where a benefit is included in computing the income of a shareholder of a corporation by virtue of subsection 15(5) of the Act in respect of an automobile made available to the shareholder or to a person related to the shareholder by a person related to the corporation, the corporation shall make an information return in prescribed form in respect of the benefit.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 200(4) added by P.C. 1983-3585, subsec. 1(5), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Definitions [Reg. 200]: "amount", "annuity", "automobile" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed", "employer", "employment", "office", "person", "personal or living expenses", "prescribed" — ITA 248(1); "refund of payments" — ITA 146.1(1); "registered education savings plan" — ITA 146.1(1), 248(1); "related" — ITA 251(2)–(6); "shareholder", "taxpayer" — ITA 248(1).

Forms [Reg. 200]: RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form; T4: Segment; T4 Summ: Summary of remuneration paid; T4 Supp: Statement of remuneration paid; T4A Summ: Summary of remuneration paid (pension, retirement, annuity, and other income); T4A Supp: Statement of pension, retirement, annuity and other income; T4A-NR Summ: Summary of fees (etc.) paid to non-residents for services rendered in Canada; T4A-NR Supp: Statement of fees, etc., paid to non-residents of Canada to which s. 105(1) of the Regulations applies; T4A-RCA Summ: Return of distributions from an RCA; T4A-RCA Supp: Statement of amounts paid from an RCA; T475: Magnetic media filing transmittal — service bureau customer; T695: T4A/T4A-NR data tape transmittal; T709: Magnetic media filing program — filing tips for service bureau customers; T730: Preparation of T4-T4A summaries and supplementaries; T737-RCA Summ: Return of contributions paid to a custodian of an RCA; T737-RCA Supp: Statement of contributions paid to a custodian of an RCA; T4001: Employers' Guide to Payroll Deductions — Basic Information (guide); T5021: T5 filing transmittal.

201. Investment income — (1) Every person who makes a payment to a resident of Canada as or on account of

(a) a dividend or an amount deemed by the Act to be a dividend (other than a dividend deemed to have been paid to a person under any of subsections 84(1) to (4) of the Act where, pursuant to subsection 84(8) of the Act, those subsections do not apply to deem the dividend to have been received by the person),

(b) interest (other than the portion of the interest to which any of subsections (4) to (4.2) applies)

(i) on a fully registered bond or debenture,

(ii) in respect of

(A) money on loan to,

(B) money on deposit with, or

(C) property of any kind deposited or placed with,

a corporation, association, organization or institution,

(iii) in respect of an account with an investment dealer or broker,

(iv) paid by an insurer in connection with an insurance policy or an annuity contract, or

(v) on an amount owing in respect of compensation for property expropriated,

(c) a royalty payment in respect of the use of a work or invention or a right to take natural resources,

(d) a payment referred to in subsection 16(1) of the Act that can reasonably be regarded as being in part a

payment of interest or other payment of an income nature and in part a payment of a capital nature, where the payment is made by a corporation, association, organization or institution,

(e) an amount paid from a person's NISA Fund No. 2, or

(f) an amount that is required by subsection 148.1(3) of the Act to be added in computing a person's income for a taxation year

shall make an information return in prescribed form in respect of the portion of such payment for which an information return has not previously been made under this section.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: The opening words of para. 201(1)(b) amended by P.C. 1996-1419, subsec. 1(1), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Para. 201(1)(f) added by P.C. 1996-765, s. 1, May 28, 1996, *Canada Gazette*, Part II, June 12, 1996, applicable to payments made after 1995.

Para. 201(1)(e) added by P.C. 1993-1939, s. 1, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

All that portion of para. 201(1)(b) preceding subparagraph (i) and all that portion of subsec. 201(1) following para. (d) substituted by P.C. 1983-3586, subsecs. 2(1) and (2), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Para. 201(1)(a) substituted by P.C. 1983-3585, s. 2, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Subpara. 201(1)(b)(v) added by P.C. 1979-3327, s. 2, December 6, 1979, *Canada Gazette*, Part II, December 26, 1979, effective in respect of 1980 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Forms: RC4157(E): Employers' Guide: Filing the T4A Slip and Summary Form; T1 Sched. 4: Statement of investment income; T3 Sched. 8: Statement of investment income and calculation of gross-up amount of dividends retained by trust; T4A Supp: Statement of pension, retirement, annuity and other income; T5 Segment; T5 Summ: Return of investment income; T5 Supp: Statement of investment income; T619: Magnetic media transmittal; T4015: T5 Guide — return of investment income (guide); T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4126: How to file the T5 return of investment income (guide).

(2) Every person who receives as nominee or agent for a person resident in Canada a payment to which subsection (1) applies shall make an information return in prescribed form in respect of such payment.

Proposed Amendment — Reg. 201(2)

Letter from Department of Finance, March 17, 1999: See under ITA 241(4).

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 201(2) substituted by P.C. 1983-3586, subsec. 2(3), *Canada Gazette*, Part II, November 24, 1983.

Forms: T5 Supp: Statement of investment income;.

I.T. Technical News: No. 11 (U.S. spin-offs (divestitures) — dividends in kind).

(3) Where a person negotiates a bearer coupon, warrant or cheque representing interest or dividends referred to in subsection 234(1) of the Act for another person resident in Canada and the name of the beneficial owner of the interest or dividends is not disclosed on an ownership certificate completed pursuant to that subsection, the person negotiating the coupon, warrant or cheque, as the case may be, shall make an information return in prescribed form in respect of the payment received.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(4) A person or partnership that is indebted in a calendar year under a debt obligation in respect of which subsection 12(4) of the Act and paragraph (1)(b) apply with respect to a taxpayer shall make an information return in prescribed form in respect of the amount that would, if the year were a taxation year of the taxpayer, be included as interest in respect of the debt obligation in computing the taxpayer's income for the year.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 201(4) amended by P.C. 1996-1419, subsec. 1(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Subsec. 201(4) substituted by P.C. 1991-172, s. 1, January 31, 1991, *Canada Gazette*, Part II, February 13, 1991, applicable with respect to investment contracts acquired or materially altered after 1989.

Subsec. 201(4) substituted by P.C. 1986-842, s. 1, April 10, 1986, *Canada Gazette*, Part II, April 30, 1986, applicable to 1985 *et seq.*

Subsec. 201(4) added by P.C. 1983-3586, subsec. 2(4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(4.1) A person or partnership that is indebted in a calendar year under an indexed debt obligation in respect of which paragraph (1)(b) applies shall, for each taxpayer who holds an interest in the debt obligation at any time in the year, make an information return in prescribed form in respect of the amount that would, if the year were a taxation year of the taxpayer, be included as interest in respect of the debt obligation in computing the taxpayer's income for the year.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 201(4.1) added by P.C. 1996-1419, subsec. 1(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

(4.2) Where, at any time in a calendar year, a person or partnership holds, as nominee or agent for a taxpayer resident in Canada, an interest in a debt obligation referred to in paragraph (1)(b) that is

(a) an obligation in respect of which subsection 12(4) of the Act applies with respect to the taxpayer, or

(b) an indexed debt obligation,

that person or partnership shall make an information return in prescribed form in respect of the amount that would, if the year were a taxation year of the taxpayer, be included as interest in respect of the debt obligation in computing the taxpayer's income for the year.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 201(4.2) added by P.C. 1996-1419, subsec. 1(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

(5) Every insurer (within the meaning assigned by paragraph 148(10)(a) of the Act) who is a party to a life insurance policy (within the meaning assigned by paragraph 138(12)(f) [138(12)"life insurance policy"] of the Act) in respect of which an amount is to be included in computing a taxpayer's income pursuant to subsection 12.2(1), (3) or (5) or paragraph 56(1)(d.1) of the Act shall make an information return in prescribed form in respect of that amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 201(5) substituted by P.C. 1991-172, s. 1, January 31, 1991, *Canada Gazette*, Part II, February 13, 1991, applicable with respect to life insurance policies acquired or materially altered after 1989.

Subsec. 201(5) added by P.C. 1983-3586, subsec. 2(4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(6) Every person who makes a payment to, or acts as a nominee or agent for, an individual resident in Canada in respect of the disposition or redemption of a debt obligation in bearer form shall make an information return in prescribed form in respect of the transaction indicating the proceeds of disposition or the redemption amount and such other information as may be required by the prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: T-BD(1) Supp: Statement of disposition — debt obligation in bearer form (single transaction); T-BD(2) Supp: Statement of disposition — debt obligations in bearer form (multiple transactions); T-BD(3) Summ and T-BD(4) Int Summ: Return of investment income debt obligations; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4091: Return of securities transactions [guide]; T5008 and T5008S Segment; T5008 Summ: Return of securities transactions; T5008 and T5008S Supp: Statement of securities transactions.

(7) For the purposes of subsection (6), "debt obligation in bearer form" means any debt obligation in bearer form other than

(a) a debt obligation that is redeemed for the amount for which the debt obligation was issued;

(b) a debt obligation described in paragraph 7000(1)(b); and

(c) a coupon, warrant or cheque referred to in subsection 207(1).

History: Subsecs. 201(6) and (7) added by P.C. 1988-2452, October 31, 1988, *Canada Gazette*, Part II, November 9, 1988, applicable after 1988.

Definitions [Reg. 201]: "amount", "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "debt obligation in bearer form" — Reg. 201(7); "disposition", "dividend", "indexed debt obligation", "individual", "insurance policy", "insurer" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1); "person", "prescribed", "property" — ITA 248(1); "resident", "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

202. Payments to non-residents — **(1)** Every person resident in Canada who pays or credits, or is deemed by Part I or Part XIII of the Act to pay or credit, to a non-resident person an amount as, on account or in lieu of payment of, or in satisfaction of,

(a) a management or administration fee or charge,

(b) interest,

(c) income of or from an estate or trust,

(d) rent, royalty or a similar payment referred to in paragraph 212(1)(d) of the Act, including any payment described in any of subparagraphs 212(1)(d)(i) to (viii) of the Act,

(e) a timber royalty as described in paragraph 212(1)(e) of the Act,

(f) alimony or other payment referred to in paragraph 212(1)(f) of the Act,

(g) a dividend, including a patronage dividend as described in paragraph 212(1)(g) of the Act, or

(h) a payment for a right in or to the use of

(i) a motion picture film, or

(ii) a film or video tape for use in connection with television,

shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of such amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Para. 202(1)(i) revoked by P.C. 1988-390, s. 1, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable with respect to dividends paid after May 23, 1985, other than dividends declared on or before that date.

Para. 202(1)(i) added by P.C. 1980-1366, s. 3, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980, effective November 17, 1978.

Forms: NR2-UK, NR2A-UK: Statement of amounts paid to non-residents of Canada; NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4-OAS: Statement of OAS pension paid or credited to non-residents of Canada; NR14: Formal demand for non-resident tax information return; NR67AR: Non-resident tax remittance; NR67BR: Non-resident tax remittance form; NR75: Non-resident tax remitter registration forms; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3.

(2) Every person resident in Canada who pays or credits, or is deemed by Part I or Part XIII of the Act to pay or credit, to a non-resident person an amount as, on account or in lieu of payment of, or in satisfaction of,

(a) a payment of a superannuation or pension benefit,

(b) a payment of any allowance or benefit described in any of subparagraphs 56(1)(a)(ii) to (vi) of the Act,

(c) a payment by a trustee under a registered supplementary unemployment benefit plan,

(d) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) of the Act as an amended plan,

(e) a payment under a deferred profit sharing plan or a plan referred to in subsection 147(15) of the Act as a revoked plan,

(f) a payment under an income-averaging annuity contract, any proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract, or any amount deemed by subsection 61.1(1) of the Act to have been received by the non-resident person as proceeds of the disposition of an income-averaging annuity contract,

(g) an annuity payment not described in any other paragraph of this subsection or subsection (1),

(h) a payment or a portion thereof, to which paragraph 212(1)(p) of the Act applies, out of or under a fund, plan, or trust that was on December 31, 1985 a registered home ownership savings plan (within the meaning assigned by paragraph 146.2(1)(h) of the Act as it read in its application to the 1985 taxation year),

(i) a payment out of or under a registered retirement income fund,

(j) a payment that is or that would be, if paragraph 212(1)(r) of the Act were read without reference to subparagraph 212(1)(r)(ii), a payment described in that paragraph in respect of a registered education savings plan,

(k) a grant under a program prescribed for the purposes of paragraph 212(1)(s) of the Act,

(l) a payment described in paragraph 212(1)(j) of the Act in respect of a retirement compensation arrangement, or

(m) a payment described in paragraph 212(1)(v) of the Act,

shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of such amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Para. 202(2)(m) added by P.C. 1999-2212, s. 1, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable to payments made or credited after 1999.

Para. 202(2)(j) amended by P.C. 1998-2275, s. 4, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

Para. 202(2)(l) added by P.C. 1988-1476, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable with respect to amounts paid or credited after March 27, 1987.

Para. 202(2)(h) substituted by P.C. 1986-1103, s. 1, May 8, 1986, *Canada Gazette*, Part II, May 28, 1986, applicable to amounts paid after 1985.

Paras. 202(2)(b) and (h) substituted by P.C. 1983-3585, s. 3, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Para. 202(2)(k) added by P.C. 1981-3209, s. 2, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective in respect of grants paid or credited after 1980.

Para. 202(2)(b) amended, para. 202(2)(j) added by P.C. 1980-1366, s. 4, May 22, 1980, *Canada Gazette*, Part II, June 11, 1980, effective March 1, 1979.

Para. 202(2)(i) added by P.C. 1979-1725, June 21, 1979, *Canada Gazette*, Part II, July 11, 1979, effective for the period commencing June 30, 1978.

Forms: NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada; NR4A-RCA: Statement of amounts paid to non-residents of Canada to which para. 212(1)(j) applies; NR14: Formal demand for non-resident tax information return.

(2.1) Every person resident in Canada who pays an amount to a non-resident person from a NISA Fund No. 2 shall, in addition to any other return required by the Act or these Regulations, make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 202(2.1) added by P.C. 1993-1939, subsec. 2(1), December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

(3) Every person who is paid or credited with an amount referred to in subsection (1), (2) or (2.1) for or on behalf of a non-resident person shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 202(7), (8) — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 202(3) amended by P.C. 1993-1939, subsec. 2(2), December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

(4) A non-resident person who is deemed, under subsection 212(13) of the Act, to be a person resident in Canada for the purposes of section 212 of the Act shall be deemed, in the same circumstances, to be a person resident in Canada for the purposes of subsections (1) and (2).

(5) A partnership that is deemed, under paragraph 212(13.1)(a) of the Act, to be a person resident in Canada for the purposes of Part XIII of the Act shall be deemed, in the same circumstances, to be a person resident in Canada for the purposes of subsections (1) and (2).

(6) A non-resident person who is deemed, under subsection 212(13.2) of the Act, to be a person resident in Canada for the purposes of Part XIII of the Act shall be deemed, in the same circumstances, to be a person resident in Canada for the purposes of subsections (1) and (2).

(7) Subject to subsection (8), an information return required under this section shall be filed on or before March 31 and shall be in respect of the preceding calendar year.

(8) Where an amount referred to in subsection (1) or (2) is income of or from an estate or trust, the information return required under this section in respect thereof shall be filed within 90 days from the end of the taxation year of the estate or trust in which the amount was paid or credited and shall be in respect of that taxation year.

Definitions [Reg. 202]: "amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "disposition", "dividend" — ITA 248(1); "estate" — ITA 104(1), 248(1); "income-averaging annuity contract", "non-resident", "person", "prescribed" — ITA 248(1); "registered education savings plan" — ITA 146.1(1), 248(1); "registered home ownership savings plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "registered supplementary unemployment benefit plan" — ITA 145(1), 248(1); "resident" — ITA 250, Reg. 202(4), (5), (6); "resident in Canada" — ITA 250; "retirement compensation arrangement", "superannuation or pension benefit" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 202]: NR4 Supp: Statement of amounts paid or credited to non-residents of Canada; NR4 Summ: Return of amounts paid or credited to non-residents of Canada.

203. Certain income in respect of non-residents — **(1)** Every person in Canada who, as a nominee, agent, or custodian receives income derived from a source within the United States on behalf of a person whose address is outside Canada shall make an information return in prescribed form in respect of such income.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

Forms: NR1: Return of income received from sources within the United States on behalf of non-residents of Canada.

(2) The return required under this section shall be filed on or before March 15, and shall be in respect of the preceding calendar year.

Definitions [Reg. 203]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "United States" — *Interpretation Act* 35(1).

204. Estates and trusts — **(1)** Every person having the control of, or receiving income, gains or profits in a fiduciary capacity, or in a capacity analogous to a fiduciary capacity, shall make a return in prescribed form in respect thereof.

Related Provisions: ITA 150(1)(c) — Trust tax return; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Information Circulars: 78-5R3: Communal organizations; 78-14R2: Guidelines for trust companies, etc.

Forms: T3: Trust income tax and information return; T3 Summ: Summary of trust income allocations and designations; T3 Supp: Statement of trust income allocations; also in certain cases; T3ATH-IND: Amateur athlete trust income tax return; T3D: Deferred profit sharing plan or revoked plan information return and income tax return; T3F: Mutual fund, pooled fund and investment corporation information return; T3G: Certification of no tax liability by a group of RRSPs, RRIFs, or RESPs; T3IND: T3IND

income tax return for RRSP, RRIF, or RESP; T3P: Employee's pension plan income tax return; T3S: Supplementary unemployment benefit plan — income tax return; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3.

(2) The return required under this section shall be filed within 90 days from the end of the taxation year and shall be in respect of the taxation year.

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

(3) Subsection (1) does not require a trust to make a return for a taxation year at the end of which it is

(a) governed by a deferred profit sharing plan or by a plan referred to in subsection 147(15) of the Act as a revoked plan;

(b) governed by an employees profit sharing plan;

(c) a registered charity;

(d) governed by an eligible funeral arrangement;

(d.1) a cemetery care trust; or

(e) governed by a registered education savings plan.

Related Provisions: ITA 148.1 — Eligible funeral arrangements; ITA 149.1(14) — Charity information return; Reg. 201(1)(f) — Eligible funeral arrangement information return; Reg. 212 — EPSP information return.

History: Para. 204(3)(d.1) added by P.C. 1999-2212, s. 2, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable to 1998 *et seq.*

Para. 204(3)(e) added by P.C. 1998-2275, s. 5, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to 1998 *et seq.*

The opening words of subsec. 204(3) amended, and para. 204(3)(d) added, by P.C. 1996-765, s. 2, May 28, 1996, *Canada Gazette*, Part II, June 12, 1996, applicable to 1993 *et seq.*

Interpretation Bulletins: IT-531: Eligible funeral arrangements.

Definitions [Reg. 204]: "deferred profit sharing plan" — ITA 147(1), 248(1); "employees profit sharing plan" — ITA 144(1), 248(1); "person", "prescribed", "registered charity" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

205. Date returns to be filed — **(1)** All returns required under this Part shall be filed with the Minister without notice or demand and, unless otherwise specifically provided, on or before the last day of February in each year and shall be in respect of the preceding calendar year.

Related Provisions: Reg. 202(7), (8), 203(2), 204(2), 205(2) — Exceptions.

(2) Where a person who is required to make a return under this Part discontinues his business or activity, the return shall be filed within 30 days of the day of the discontinuance of the business or activity and shall be in respect of any calendar year or a portion thereof prior to the discontinuance of the business or activity for which a return has not previously been filed.

Definitions [Reg. 205]: "business", "Minister", "person" — ITA 248(1).

205.1 Electronic filing — A person who is required to make an information return under this Part, or who files an information return on behalf of a person who is required to make an information return under this Part, shall file the information return with the Minister in an electronic format if more than 500 such returns are to be filed for the calendar year.

Related Provisions: ITA 244(22) — Electronic filing permitted.

History: S. 205.1 added by P.C. 1998-2273 s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable in respect of returns required to be filed for the 1999 and subsequent calendar years.

Definitions [Reg. 205.1]: "Minister", "person" — ITA 248(1).

206. Legal representatives and others — **(1)** Where a person, who is required to make a return under this Part, has died, such return shall be filed by his legal representative within 90 days of the date of death and shall be in respect of any calendar year or a portion thereof prior to the date of death for which a return has not previously been filed.

(2) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return as required by this Part shall file such return.

Definitions [Reg. 206]: "legal representative", "person", "property" — ITA 248(1).

207. Ownership certificates — **(1)** An ownership certificate completed pursuant to section 234 of the Act shall be delivered to the debtor or encashing agent at the time the coupon, warrant or cheque referred to in that section is negotiated.

(2) The debtor or encashing agent to whom an ownership certificate has been delivered pursuant to subsection (1) shall forward it to the Minister on or before the 15th day of the month following the month the coupon, warrant or cheque, as the case may be, was negotiated.

(3) The operation of section 234 of the Act is extended to a bearer coupon or warrant negotiated by or on behalf of a non-resident person who is subject to tax under Part XIII of the Act in respect of such a coupon or warrant.

Forms: T600, T600B: Ownership certificate; NR601: Non-resident ownership certificate — withholding tax; NR602: Non-resident ownership certificate — no withholding tax.

Definitions [Reg. 207]: "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "person" — ITA 248(1).

208. Dispositions of income-averaging annuity contracts — Every person who carries on a business referred to in paragraph 61(4)(b) [61(4)"income-averaging annuity contract"] of the Act shall make an information return in prescribed form in respect of

(a) any amount paid by that person to a resident of Canada as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation, redemption, sale or other disposition of an income-averaging annuity contract; or

(b) any amount deemed by subsection 61.1(1) of the Act to have been received by an individual resident in Canada as proceeds of the disposition of an income-averaging annuity contract that was made with that person.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: All that portion of s. 208 preceding para. (a) substituted by P.C. 1983-3585, s. 4, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective from November 13, 1981.

Definitions [Reg. 208]: "amount", "annuity", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "disposition", "income-averaging annuity contract", "individual", "person", "prescribed" — ITA 248(1); "resident", "resident in Canada" — ITA 250.

Forms: T4A: Statement of pension, retirement, annuity and other income.

209. Distribution of taxpayers' portions of returns — **(1)** Every person who is required by section 200, 201, 202, 204, 208, 212, 214, 215, 217, 218, 223,

226, 227, 228, 229, 230, 232, 233 or 234 to make an information return shall forward to each taxpayer to whom the return relates two copies of the portion of the return that relates to that taxpayer.

History: Subsec. 209(1) amended by P.C. 1993-1939, s. 3, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Subsec. 209(1) amended by P.C. 1992-1567, s. 1, July 16, 1992, *Canada Gazette*, Part II, August 12, 1992, applicable to 1991 *et seq.*

Subsec. 209(1) amended by P.C. 1989-2156, s. 1, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989.

Subsec. 209(1) substituted by P.C. 1987-1681, s. 1, August 14, 1987, *Canada Gazette*, Part II, September 2, 1987, effective after December 18, 1986.

Subsec. 209(1) substituted by P.C. 1985-374, s. 1, February 7, 1985, *Canada Gazette*, Part II, February 20, 1985.

(2) The copies referred to in subsection (1) shall be sent to the taxpayer at his last known address or delivered to him in person, on or before the date the return is required to be filed with the Minister.

Definitions [Reg. 209]: "Minister", "person", "taxpayer" — ITA 248(1).

210. Tax deduction information — Every person who makes or has at any time made a payment described in section 153 of the Act and every person who pays or credits or has at any time paid or credited, or is deemed by Part I or Part XIII of the Act to pay or credit or to have at any time paid or credited, an amount described in Part XIII of the Act shall, on demand by registered letter from the Minister make an information return in prescribed form containing the information required therein and shall file the return with the Minister within such reasonable time as may be stipulated in the registered letter.

Definitions [Reg. 210]: "amount", "Minister", "person", "prescribed" — ITA 248(1).

Forms: T4-T4A: Summary of remuneration paid; T730: Preparation of T4-T4A summaries and supplementaries.

211. Accrued bond interest — **(1)** Every financial company making a payment in respect of accrued interest by virtue of redemption, assignment or other transfer of a bond, debenture or similar security (other than an income bond, an income debenture or an investment contract in respect of which subsection 201(4) applies), shall make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

History: Subsec. 211(1) substituted by P.C. 1991-172, s. 2, January 31, 1991, *Canada Gazette*, Part II, February 13, 1991, applicable with respect to investment contracts acquired or materially altered after 1989.

(2) The return referred to in subsection (1) shall be forwarded to the Minister on or before the 15th day of the month following the month in which the payment referred to in subsection (1) is made.

(3) For the purposes of this section, a financial company includes a bank, an investment dealer, a stockbroker, a trust company and an insurance company.

(4) The provisions of subsection (1) do not apply to a payment made by one financial company to another financial company.

Definitions [Reg. 211]: "bank" — *Interpretation Act* 35(1); "financial company" — Reg. 211(3); "income bond", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Forms: T600 or T600B: Ownership certificate.

212. Employees profit sharing plans — **(1)** Every trustee of an employees profit sharing plan shall make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(2) Notwithstanding subsection (1), the return required under this section may be filed by the employer instead of by the trustee.

Related Provisions: Reg. 205 — Date return due.

Definitions [Reg. 212]: "employees profit sharing plan" — ITA 144(1), 248(1); "employer", "prescribed" — ITA 248(1).

Forms: T4PS Segment; T4PS Summ: Return of allocations and payments under employees profit sharing plan; T4PS Supp: Statement of employees' profit sharing plan allocations and payments.

213. Electric, gas or steam corporations — **(1)** Every corporation engaged in the distribution or generation of electrical energy, gas or steam shall make an information return in prescribed form in respect of each taxation year of the corporation.

(2) The return required under this section shall be filed within 6 months from the end of the taxation year in respect of which the return is made.

Definitions [Reg. 213]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Forms: T2025: Return of information — Electric, gas or steam corporations.

214. Registered retirement savings plans — **(1)** Every person who pays an amount that is required by subsection 146(8) of the Act to be included in computing the income of a taxpayer for a taxation year shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: See at end of Reg. 214.

(2) Where, in a taxation year, subsection 146(6), (7), (9), or (10) of the Act is applicable in respect of a trust governed by a registered retirement savings plan, the trustee of such a plan shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: See at end of Reg. 214.

(3) Where, in respect of an amended plan referred to in subsection 146(12) of the Act, an amount is required to be included in computing the income of a taxpayer for a taxation year, the issuer of the plan shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 214(3) substituted by P.C. 1983-3835, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Forms: See at end of Reg. 214.

(4) Where subsection 146(8.8) of the Act deems an amount to be received by an annuitant as a benefit out of or under a registered retirement savings plan and such amount is required by subsection 146(8) of the Act to be included in computing the income of that annuitant for a taxation year, the issuer of the plan shall make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 214(4) substituted by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Subsec. 214(4) added by P.C. 1980-1735, s. 3, June 26, 1980, *Canada Gazette*, Part II, July 9, 1980, effective June 30, 1978.

Forms: See at end of Reg. 214.

(5) Where in a taxation year a transfer or payment of funds is made from a registered retirement savings plan under which the taxpayer is the annuitant to another registered retirement savings plan under which the taxpayer's spouse or former spouse or an individual who is party to a void or voidable marriage is the annuitant and subsection 146(16) of the Act applies in respect of the payment or transfer, the issuer of each such plan and each annuitant shall jointly make an information return in prescribed form.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: Subsec. 214(5) substituted by P.C. 1991-2540, s. 3, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of transfers and payments made after 1987.

Subsec. 214(5) added by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable with respect to transfers and payments made on and after November 24, 1983.

Forms: See at end of Reg. 214.

(6) The return referred to in subsection (5) in respect of a particular payment or transfer described therein shall, within 30 days of the payment or transfer, be filed by the issuer of the registered retirement savings plan from which the payment or transfer was made.

History: Subsec. 214(6) added by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(7) In this section,

"annuitant" has the meaning assigned by paragraph 146(1)(a) [146(1)"annuitant"] of the Act;

"issuer" has the meaning assigned by paragraph 146(1)(c.1) [146(1)"issuer"] of the Act;

"spouse" has the meaning assigned by subsection 146(1.1) of the Act.

History: Subsec. 214(7) substituted by P.C. 1991-2540, s. 3, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable in respect of transfers and payments made after 1987.

Subsec. 214(7) added by P.C. 1983-3585, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Definitions [Reg. 214]: "amount" — ITA 248(1); "annuitant" — ITA 146(1), Reg. 214(7); "individual" — ITA 248(1); "issuer" — ITA 146(1), Reg. 214(7); "person", "prescribed" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "spouse" — ITA 146(1.1), Reg. 214(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 214]: T4RSP Segment; T4RSP Summ: Return of registered retirement savings plan income; T4RSP Supp: Statement of registered retirement savings plan income; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

215. Registered retirement income funds — (1) In this section,

"annuitant" has the meaning assigned by paragraph 146.3(1)(a) [146.3(1)"annuitant"] of the Act;

"carrier" has the meaning assigned by paragraph 146.3(1)(b) [146.3(1)"carrier"] of the Act.

(2) Every carrier of a registered retirement income fund who pays out of or under it an amount any portion of which is required under subsection 146.3(5) of the Act to be included in computing the income of a taxpayer shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: T4RIF Summ: Return of income out of a registered retirement income fund; T4RIF Supp: Statement of income out of a registered retirement income fund; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

(3) Where subsection 146.3(4), (7), (8) or (10) of the Act applies in respect of any transaction or event with respect to property of a registered retirement income fund, the carrier of the fund shall make an information return in prescribed form in respect of the transaction or event.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: T4RIF Summ: Return of income out of a registered retirement income fund; T4RIF Supp: Statement of income out of a registered retirement income fund; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

(4) Where an amount is deemed under subsection 146.3(6) or (12) of the Act to be received by an annuitant out of or under a registered retirement income fund, the carrier of the fund shall make an information return in prescribed form in respect of the amount.

Related Provisions [Reg. 215(4)]: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms [Reg. 215(4)]: T4RIF Summ: Return of income out of a registered retirement income fund; T4RIF Supp: Statement of income out of a registered retirement income fund; T4031: Computer specifications for data filed on Magnetic Media — T5, T5008, T4RSP, T4RIF, NR4, and T3; T4079: T4RSP and T4RIF guide.

History [Reg. 215]: S. 215 added by P.C. 1984-3917, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984.

Former s. 215 repealed by P.C. 1984-3789, s. 1, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

Definitions [Reg. 215]: "amount" — ITA 248(1); "annuitant" — ITA 146.3(1), Reg. 215(1); "carrier" — ITA 146.3(1), Reg. 215(1); "prescribed", "property" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "taxpayer" — ITA 248(1).

216. Registered Canadian amateur athletic associations — (1) Every registered Canadian amateur athletic association shall make an information return in prescribed form for each fiscal period of the association within six months after the end of the fiscal period.

History: Subsec. 216(1) substituted by P.C. 1986-2590, s. 2, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable to 1984 *et seq.*

(2) For the purposes of this section, "fiscal period" means the period for which the accounts of the registered Canadian amateur athletic association have been ordinarily made up and, in the absence of an established practice, the fiscal period is that adopted by the association but no such fiscal period shall exceed 12 months.

Definitions [Reg. 216]: "fiscal period" — Reg. 216(2); "month" — *Interpretation Act* 35(1); "prescribed", "registered Canadian amateur athletic association" — ITA 248(1).

Forms [Reg. 216]: T2052: Registered charities and registered Canadian amateur athletic associations — Return of information.

217. Disposition of interest in annuities and life insurance policies — (1) In this section,

"disposition" has the meaning assigned by paragraph 148(9)(c) [148(9)"disposition"] of the Act and includes anything deemed to be a disposition of a life insurance policy under subsection 148(2) of the Act;

"insurer" has the meaning assigned by paragraph 148(10)(a) of the Act;

"life insurance policy" has the meaning assigned by paragraph 138(12)(f) [138(12)"life insurance policy"] of the Act.

(2) Where by reason of a disposition of an interest in a life insurance policy an amount is required, pursuant to paragraph 56(1)(j) of the Act, to be included in computing the income of a taxpayer and the insurer that is the issuer of the policy is a party to, or is notified in writing of, the disposition, the insurer shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

History: S. 217 and the heading preceding it substituted by P.C. 1984-3917, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984.

S. 217 substituted by P.C. 1978-1585, May 11, 1978, *Canada Gazette*, Part II, May 24, 1978.

Definitions [Reg. 217]: "amount" — ITA 248(1); "disposition" — ITA 248(1), Reg. 217(1); "insurer" — ITA 148(10)(a), Reg. 217(1); "life insurance policy" — ITA 138(12), Reg. 217(1); "prescribed", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Forms: T5 Segment; T5 Summ: Return of investment income; T5 Supp: Statement of investment income.

218. Patronage payments — (1) Every person who, within the meaning of section 135 of the Act, makes payments to residents of Canada pursuant to an allocation in proportion to patronage shall make an information return in prescribed form in respect of payments so made.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(2) Every person who receives a payment referred to in subsection (1) as nominee or agent for another person resident in Canada shall make an information return in prescribed form in respect of the payment so received.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Definitions [Reg. 218]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "resident", "resident in Canada" — ITA 250.

Forms [Reg. 218]: RC4157(E); Employers' Guide: Filing the T4A Slip and Summary Form; T4A: Statement of pension, retirement, annuity and other income.

219. Family allowances and similar payments — Where an allowance referred to in paragraph 56(5)(a) or (b) of the Act has been paid to a person and, in respect of that allowance, an amount is required to be included in computing the income of any taxpayer for a taxation year, the payer of the allowance shall

(a) make an information return in prescribed form in respect of such payment; and

(b) forward to the person at his latest known address, on or before the date the return is required to be filed with the Minister, three copies of the portion of the return relating to that person.

Related Provisions: Reg. 205 — Date return due; Reg. 209 — Two copies to be sent to taxpayer.

Definitions [Reg. 219]: "amount", "Minister", "person", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

220. Cash bonus payments on Canada Savings Bonds — (1) Every person authorized to redeem Canada Savings Bonds (in this section referred to as the "redemption agent") who pays an amount in respect of a Canada Savings Bond as a cash bonus that the Government of Canada has undertaken to pay (other than any amount of interest, bonus or principal agreed to be paid at the time of the issue of the bond under the terms of the bond) shall make an information return in prescribed form in respect of such payment.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

(2) Every redemption agent required by subsection (1) to make an information return shall

(a) issue to the payee, at the time the cash bonus is paid, two copies of the portion of the return relating to him; and

(b) file the return with the Minister on or before the 15th day of the month following the month in which the cash bonus was paid.

Forms: T1-CSB: Annual accrual form for compound interest Canada Savings Bonds; T600C: Statement of cash bonus payment Canada Savings Bonds.

Definitions [Reg. 220]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "redemption agent" — Reg. 220(1).

221. Qualified investments and foreign property — (1) In this section, "reporting person" means

(a) a mutual fund corporation;

(b) an investment corporation;

(c) a mutual fund trust;

(d) a pooled fund trust (within the meaning assigned by subsection 5000(7));

(e) a resource property trust (within the meaning assigned by subsection 5000(7));

(f) a trust that would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(b);

(g) a trust described in paragraph 65(1)(c) of the *Income Tax Application Rules*;

(h) a small business investment trust (within the meaning assigned by subsection 5103(1)); or

(i) a trust described in paragraph 149(1)(o.4) of the Act.

(2) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or an interest of a beneficiary under it, is a qualified investment under section 146, 146.3 or 204 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

(3) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or that an interest of a benefici-

ary under it, is not foreign property for the purpose of section 206 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

Proposed Amendment — Reg. 221(2)

(2) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or an interest as a beneficiary under it, is a qualified investment under section 146, 146.1, 146.3 or 204 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

Application: The October 27, 1998 draft regulations, s. 1, will amend subsec. 221(2) to read as above, applicable to 1999 *et seq.*

Technical Notes: [These] proposed regulations reflect the introduction of new rules in section 146.1 of the *Income Tax Act*, which limit the types of investments that registered education savings plans (RESPs) are permitted to hold.

Subsection 221(2) of the *Income Tax Regulations* requires certain types of corporations and trusts to file an information return in respect of a taxation year, where the corporation or the trust claims that a share of its capital stock, or an interest of a beneficiary under it, is a qualified investment for an registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or deferred profit sharing plan (DPSP). The requirement for the information return is limited to the types of corporations and trusts described in subsection 221(1) of the Regulations that are not registered investments.

Subsection 221(2) is amended to extend the requirement for filing an information return to a corporation or a trust that claims that a share of its capital stock, or an interest of a beneficiary under it, is a qualified investment for an RESP [section 146.1 — ed.]. This amendment is consequential on the introduction of qualified investment rules for RESPs.

History: S. 221 amended by P.C. 2000-183, s. 1, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to taxation years beginning after 1995.

Paras. 221(a) and (b) substituted by P.C. 1985-374, February 7, 1985, s. 2, *Canada Gazette*, Part II, February 20, 1985, applicable to taxation years commencing after 1983.

Definitions [Reg. 221]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "investment corporation" — ITA 130(3), 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q), 248(1); "person", "prescribed", "property" — ITA 248(1); "registered investment" — ITA 204.4(1), 248(1); "reporting person" — Reg. 221(1); "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Information Circulars: 78-14R2: Guidelines for trust companies and other persons responsible for filing T3R-IND, T3R-G, T3RIF-IND, T3RIF-G, T3H-IND, T3H-G, T3D, T3P, T3S, T3RI and T3F returns.

Forms: T3F: Investments prescribed to be qualified or not to be foreign property information return.

222. [Repealed]

History: S. 222 repealed by P.C. 2000-183, s. 1, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to taxation years beginning after 1995.

223. Registered home ownership savings plans — (1) Every person who, before May 23, 1985, pays an amount out of or under a registered home ownership savings plan to a resident of Canada as a beneficiary under the plan shall make an information return in prescribed form.

History: Subsec. 223(1) substituted by P.C. 1986-1103, subsec. 2(1), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

Subsec. 223(1) substituted by P.C. 1983-3585, subsec. 6(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(2) Every trustee or depositary that is party to a registered home ownership savings plan the registration of which is revoked during a taxation year pursuant to subsection 146.2(7) or (7.1) of the Act shall make an information return in prescribed form with respect to any amount that is deemed by subsection 146.2(8) of the Act to have been received by the beneficiary of that plan.

History: Subsec. 223(2) substituted by P.C. 1983-3585, subsec. 6(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(3) Every trustee or depositary that is party to a registered home ownership savings plan, the beneficiary of which is a resident of Canada and has been deemed by subsection 146.2(9) of the Act to have received an amount during a taxation year and before May 23, 1985, shall make an information return in prescribed form.

History: Subsec. 223(3) substituted by P.C. 1986-1103, subsec. 2(2), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

Subsec. 223(3) substituted by P.C. 1983-3585, subsec. 6(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

(3.1) Every trustee or depositary that, after May 22, 1985 and before 1986, was a party to a registered home ownership savings plan, any of the income of which is required by subsection 146.2(22) of the Act to be included in computing the income of a taxpayer for the 1985 taxation year, shall make an information return in prescribed form.

History: Subsec. 223(3.1) added by P.C. 1986-1103, subsec. 2(2), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

(4) Every trustee of a trust governed by a registered home ownership savings plan shall make an information return in prescribed form, where in a taxation year a taxpayer who is a beneficiary under the plan

(a) is required pursuant to subsection 146.2(12) or (15) of the Act to include an amount in computing his income; or

(b) is allowed pursuant to subsection 146.2(13) or (16) of the Act to deduct an amount in computing his income.

(5) In this section

"beneficiary" has the meaning assigned by paragraph 146.2(1)(a) of the Act as it read in its application to the 1985 taxation year;

"depositary" has the meaning assigned by subparagraph 146.2(1)(d)(ii) of the Act as it read in its application to the 1985 taxation year;

"registered home ownership savings plan" has the meaning assigned by paragraph 146.2(1)(h) of the Act as it read in its application to the 1985 taxation year.

History: The definitions "beneficiary" and "depositary" substituted and "registered home ownership savings plan" added by P.C. 1986-1103, subsec. 2(3), May 8, 1986, *Canada Gazette*, Part II, May 28, 1986.

Subsec. 223(5) added by P.C. 1983-3585, subsec. 6(2), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Definitions [Reg. 223]: "amount" — ITA 248(1); "beneficiary" — Reg. 223(5); "Canada" — ITA 255, *Interpretation Act* 35(1); "depositary" — Reg. 223(5); "person", "prescribed" — ITA 248(1); "registered home ownership savings plan" — Reg. 223(5); "resident" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

224. Canadian home insulation program and Canada oil substitution program — Where an amount has been paid to a person pursuant to a program prescribed for the purposes of paragraph 12(1)(u), 56(1)(s) and 212(1)(s) of the Act, the payor shall

(a) make an information return in prescribed form in respect of such payment; and

(b) forward to the person at his latest known address on or before the date the return is required to be filed with the Minister two copies of the portion of the return relating to that person.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns.

History: The heading preceding s. 224 and all that portion of s. 224 preceding para. (a) substituted by P.C. 1981-3209, s. 4, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective in respect of 1981 *et seq.* except that with respect to the references to para. 212(1)(s) of the Act effective in respect of grants paid or credited after 1980.

S. 224 added by P.C. 1978-1139, s. 1, April 13, 1978, *Canada Gazette*, Part II, April 26, 1978, applicable to the 1977 and subsequent taxation years, except that any information return that is required to be filed pursuant to this section before the coming into force of this Order, may be filed at any time before or within one month after the coming into force of this Order.

Definitions [Reg. 224]: "amount", "Minister", "person", "prescribed" — ITA 248(1).

225. Certified films and video tapes — **(1)** Where principal photography or taping of a film or tape (within the meanings assigned by subsection 1100(21)) has occurred during a year or has been completed within 60 days after the end of the year, the producer of the film or tape or production company that produced the film or tape, or an agent of the producer or production company, shall

(a) make an information return in prescribed form in respect of any person who owns an interest in the film or tape at the end of the year; and

(b) forward to the person referred to in paragraph (a) at his latest known address on or before the date the return is required to be filed with the Minister two copies of the portion of the return relating to that person.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

(2) The return required under this section shall be filed on or before March 31 and shall be in respect of the preceding calendar year.

History: S. 225 added by P.C. 1982-279, January 28, 1982, *Canada Gazette*, Part II, February 10, 1982, effective in respect of 1981 *et seq.*

Definitions [Reg. 225]: "Minister", "person", "prescribed" — ITA 248(1).

Forms: T1-CP Summ: Return in respect of certified productions.

226. Scientific research tax credits — **(1)** In this section,

"administrator" has the meaning assigned by paragraph 47.1(1)(a) of the Act;

"designated security" means a security issued or granted by a corporation in respect of which the corporation has designated an amount pursuant to subsection 194(4) of the Act;

"first purchaser" in relation to a designated security, means the first person (other than a trader or dealer in securities) to be the registered holder of the designated security;

"security" means

(a) a share of the capital stock of a corporation,

(b) a debt obligation issued by a corporation, or

(c) a right granted by a corporation under a scientific research financing contract;

"trader or dealer in securities" has the meaning assigned by paragraph 47.1(1)(l) of the Act.

(2) Each corporation that has designated an amount under subsection 194(4) of the Act in respect of a security issued or granted by it shall make an information return in prescribed form in respect of each such security.

(3) Each trader or dealer in securities who has acquired and disposed of a designated security during the course of the primary distribution thereof pursuant to a public offering shall make an information return in prescribed form in respect of each such designated security.

(4) Each bank, credit union and trust company that, as agent, acquired a designated security for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated security.

(5) Each trader or dealer in securities who, as administrator of an indexed security investment plan, acquired a designated security for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated security.

(6) Notwithstanding subsection 205(1), any return required to be made

(a) under subsection (2), in respect of a security issued by a corporation before March 1, 1984,

(b) under subsection (3), in respect of a designated security disposed of as described in subsection (3) before March 1, 1984, or

(c) under subsection (4) or (5), in respect of a designated security acquired as described in subsection (4) or (5), as the case may be, before March 1, 1984,

shall be filed on or before March 31, 1984.

Definitions [Reg. 226]: "administrator" — ITA 47.1(1)(a), Reg. 226(1); "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated security" — Reg. 226(1); "disposed" — ITA 248(1)"disposition"; "first purchaser" — Reg. 226(1); "prescribed" — ITA 248(1); "security", "trader or dealer in securities" — Reg. 226(1); "trust" — ITA 104(1), 248(1), (3).

227. Share purchase tax credits — **(1)** In this section,

"administrator" has the meaning assigned by paragraph 47.1(1)(a) of the Act;

"designated share" means a share of the capital stock of a corporation in respect of which the corporation has designated an amount pursuant to subsection 192(4) of the Act;

"first purchaser", in relation to a designated share, means the first person (other than a trader or dealer in securities) to be the registered holder of the share;

"trader or dealer in securities" has the meaning assigned by paragraph 47.1(1)(l) of the Act.

(2) Each corporation that has designated an amount under subsection 192(4) of the Act in respect of a share issued by it shall make an information return in prescribed form in respect of each such share.

(3) Each trader or dealer in securities who has acquired and disposed of a designated share during the course of the primary distribution thereof pursuant to a public offering shall make an information return in prescribed form in respect of each such designated share.

(4) Each bank, credit union and trust company that, as agent, acquired a designated share for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated share.

(5) Each trader or dealer in securities who, as administrator of an indexed security investment plan, acquired a designated share for the first purchaser thereof shall make an information return in prescribed form in respect of each such designated share.

History: Ss. 226 and 227 added by P.C. 1985-374, February 7, 1985, s. 3, *Canada Gazette*, Part II, February 20, 1985, applicable to shares and debts issued, rights granted and acquisitions and dispositions occurring after 1982.

Definitions [Reg. 227]: "administrator" — ITA 47.1(1)(a), Reg. 227(1); "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated share" — Reg. 227(1); "disposed" — ITA 248(1)"disposition"; "first purchaser" — Reg. 227(1); "indexed security investment plan" — ITA 47.1 [repealed]; "prescribed" — ITA 248(1); "share" — ITA 248(1); "trader or dealer in securities" — Reg. 227(1); "trust" — ITA 104(1), 248(1), (3).

228. Resource flow-through shares — **(1)** Each corporation that has renounced an amount under subsection 66(12.6), (12.601), (12.62) or (12.64) of the Act to a person shall make an information return in prescribed form in respect of the amount renounced.

(2) The return required under subsection (1) shall be filed with the Minister together with the prescribed form required to be filed under subsection 66(12.7) of the Act in respect of the amount renounced.

History: Subsec. 228(1) amended by P.C. 1996-494, s. 1, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable after December 2, 1992.

S. 228 added by P.C. 1987-1681, s. 2, August 14, 1987, *Canada Gazette*, Part II, September 2, 1987, effective after December 18, 1986.

Definitions [Reg. 228]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister", "person", "prescribed" — ITA 248(1).

Forms: T101: Flow-through share — Summary of renunciation, reduction of amount previously renounced, allocation of assistance and calculation of Part XII.6 tax; T101 Supp: Statement — Renunciation of resource expense, reduction of amount previously renounced and allocation of assistance; T102 Summ: Summary — Allocation to members of a partnership of renounced resource expenses, reduction of amounts previously renounced and amount of assistance; T102 Supp: Statement of renounced resource expenses/assistance attributable to members of partnership.

229. Partnership return — **(1)** Every member of a partnership that carries on a business in Canada, or that is a Canadian partnership, at any time in a fiscal period of the partnership shall make for that period an information return in prescribed form containing the following information:

(a) the income or loss of the partnership for the fiscal period;

(b) the name, address and, in the case of an individual, the social insurance number of each member of the partnership who is entitled to a share referred to in paragraph (c) or (d) for the fiscal period;

(c) the share of each member of the income or loss of the partnership for the fiscal period;

(d) the share of each member for the fiscal period of each deduction, credit or other amount in respect of the partnership that is relevant in determining the member's income, taxable income, tax payable or other amount under the Act;

(e) the prescribed information contained in the form prescribed for the purposes of subsection 37(1) of the Act, where the partnership has made an expenditure in respect of scientific research and experimental development in the fiscal period; and

(f) such other information as may be required by the prescribed form.

Related Provisions: ITA 96(1) — Taxation of partnership income; ITA 152(1.4) — Determination by CCRA of income or loss of partnership; ITA 233.1(3) — Information return for partnership re non-arm's length transactions with non-residents; ITA 233.3 — Requirement to file information return re foreign property; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer; Reg. 236 — Partners to provide information.

Forms: T4068: Guide for the partnership information return; T5011: Application for filer identification number; T5013 Summ: Partnership information return; T5013 Supp: Statement of partnership income; T5014: Partnership capital cost allowance schedule; T5015: Reconciliation of partner's capital account; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members; T5017: Calculation of deduction for cumulative eligible capital of a partnership.

(2) For the purposes of subsection (1), an information return made by any member of a partnership shall be deemed to have been made by each member of the partnership.

(3) Every person who holds an interest in a partnership as nominee or agent for another person shall make an information return in prescribed form in respect of that interest.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(4) [Revoked]

(5) Subject to subsection (6), a return required by this section shall be filed with the Minister without notice or demand

(a) in the case of a fiscal period of a partnership all the members of which are corporations throughout the fiscal period, within five months after the end of the fiscal period;

(b) in the case of a fiscal period of a partnership all the members of which are individuals throughout the fiscal period, on or before the last day of March in the calendar year immediately following the calendar year in which the fiscal period ended or with which the fiscal period ended coincidentally; and

(c) in the case of any other fiscal period of a partnership, on or before the earlier of

(i) the day that is five months after the end of the fiscal period, and

(ii) the last day of March in the calendar year immediately following the calendar year in which the fiscal period ended or with which the fiscal period ended coincidentally.

Forms: See under Reg. 229(1).

(6) Where a partnership discontinues its business or activity, the return required under this section shall be filed, in respect of any fiscal period or portion thereof prior to the discontinuance of the business or activity for which a re-

turn has not previously been filed under this section, on or before the earlier of

(a) the day that is 90 days after the discontinuance of the business or activity, and

(b) the day the return is required to be filed under subsection (5).

History: Subsec. 229(4) revoked by P.C. 1993-1691, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993.

S. 229 added by P.C. 1989-2156, s. 2, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989, subsecs. (1) to (5) applicable

(a) in the case of a fiscal period of a partnership all the members of which are corporations throughout the fiscal period, in respect of fiscal periods ending after August 31, 1989, and

(b) in any other case, in respect of fiscal periods ending after December 31, 1988,

except that a return that is required by subsection 229(5) to be filed at any time before March 31, 1990 may be filed on or before that date.

Subsec. (6) is applicable in respect of the discontinuance of the business or activity of a partnership occurring after December 31, 1989.

Definitions [Reg. 229]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "individual", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person", "prescribed", "scientific research and experimental development", "share", "taxable income" — ITA 248(1).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips; 89-5R: Partnership information return.

230. Security transactions — **(1)** In this section,

"publicly traded" means, with respect to any security,

(a) a security that is listed or posted for trading on a stock exchange, commodity exchange, futures exchange or any other exchange, or

(b) a security in respect of the sale and distribution of which a prospectus, registration statement or similar document has been filed with a public authority;

"sale" includes the granting of an option and a short sale;

"security" means

(a) a publicly traded share of the capital stock of a corporation,

(b) a publicly traded debt obligation,

(c) a debt obligation of or guaranteed by

(i) the Government of Canada,

(ii) the government of a province or an agent thereof,

(iii) a municipality in Canada,

(iv) a municipal or public body performing a function of government in Canada, or

(v) the government of a foreign country or of a political subdivision of a foreign country or a local authority of such a government,

(d) a publicly traded interest in a trust,

(e) a publicly traded interest in a partnership,

(f) an option or contract in respect of any property described in any of paragraphs (a) to (e), or

(g) a publicly traded option or contract in respect of any property including any commodity, financial futures, foreign currency or precious metal or in respect of any index relating to any property;

"trader or dealer in securities" means

(a) a person who is registered or licensed under the laws of a province to trade in securities, or

(b) a person who in the ordinary course of business makes sales of securities as agent on behalf of others.

(2) Every trader or dealer in securities who, in a calendar year, purchases a security as principal or sells a security as agent for any vendor shall make an information return for the year in prescribed form in respect of the purchase or sale.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: T5008 Summ: Return of securities transactions; T5008 Supp: Statement of securities transactions.

(3) Every person (other than an individual who is not a trust) who in a calendar year redeems, acquires or cancels in any manner whatever any securities issued by that person shall make an information return for the year in prescribed form in respect of each such transaction, other than a transaction to which section 51, 86 (where there is no consideration receivable other than new shares) or 87 or subsection 98(3) or (6) of the Act applies.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(4) Subsection (3) applies to

(a) Her Majesty in right of Canada or a province;

(b) a municipal or public body performing a function of government in Canada; and

(c) an agent of a person referred to in paragraph (a) or (b).

(5) Every person who, in the ordinary course of a business of buying and selling precious metals in the form of certificates, bullion or coins, makes a payment in a calendar year to another person in respect of a sale by that other person of any such property shall make an information return for that year in prescribed form in respect of each such sale.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(6) Every person who, while acting as nominee or agent for another person in respect of a sale or other transaction to which subsection (2), (3) or (5) applies, receives the proceeds of the sale or other transaction shall, where the transaction is carried out in the name of the nominee or agent, make an information return in prescribed form in respect of the sale or other transaction.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(7) This section does not apply in respect of

(a) a purchase of a security by a trader or dealer in securities from another trader or dealer in securities other than a non-resident trader or dealer in securities;

(b) a sale of currencies or precious metals in the form of jewellery, works of art or numismatic coins;

(c) a sale of precious metals by a person who, in the ordinary course of business, produces or sells precious metals in bulk or in commercial quantities;

(d) a sale of securities by a trader or dealer in securities on behalf of a person who is exempt from tax under Part I of the Act; or

(e) a redemption by the issuer or an agent of the issuer of a debt obligation where

(i) the debt obligation was issued for its principal amount,

(ii) the redemption satisfies all of the issuer's obligations in respect of the debt obligation,

(iii) each person with an interest in the debt obligation is entitled in respect thereof to a proportion of all payments of principal equal to the proportion to which the person is entitled of all payments other than principal, and

(iv) an information return is required under another section of this Part to be made as a result of the redemption in respect of each person with an interest in the debt obligation.

Related Provisions: Reg. 205 — Date return due.

History: S. 230 added by P.C. 1989-2156, s. 2, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989, applicable in respect of purchases, sales, redemptions, acquisitions or cancellations of securities occurring after December 31, 1990.

Definitions [Reg. 230]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "non-resident", "person", "prescribed", "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "publicly traded", "sale", "security" — Reg. 230(1); "share" — ITA 248(1); "trader or dealer in securities" — Reg. 230(1); "trust" — ITA 104(1), 248(1), (3).

231. Information respecting tax shelters — (1) In this section, "promoter" in respect of a tax shelter and "tax shelter" have the meanings assigned by subsection 237.1(1) of the Act.

(2) An information return made under subsection 237.1(7) of the Act in respect of the acquisition of an interest in a tax shelter in a calendar year shall be filed with the Minister on or before the last day of February of the immediately following calendar year.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns.

Forms: T5003: Tax shelter information return; T5004: Statement of tax shelter loss or deduction; T5016: Summary information for tax shelters that are partnerships or for partnerships that allocated renounced resource expenses to their members.

(3) Where a person who is required to make an information return under subsection 237.1(7) of the Act discontinues the business or activity by reason of which the person is required to make the return, the return shall be filed within 30 days after the day of the discontinuance of the business or activity in respect of any calendar year or portion thereof prior to the discontinuance for which such a return has not previously been filed.

(4) [Repealed]

(5) [Repealed]

(6) For the purposes of paragraph (b) of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed benefit" in respect of an interest in a property means any amount that may reasonably be expected, having regard to statements or representations made in respect of the interest, to be received or enjoyed by a person (in this subsection referred to as "the purchaser") who acquires the interest, or a person with whom the purchaser does not deal at arm's length, which receipt or enjoyment would have the effect of reducing the impact of any loss that the purchaser may sustain in respect of the interest, and includes such an amount

(a) that is, either immediately or in the future, owed to any other person by the purchaser or a person with whom the purchaser does not deal at arm's length, to the extent that

(i) liability to pay that amount is contingent,

(ii) payment of that amount is or will be guaranteed by, security is or will be provided by, or an agreement to indemnify the other person to whom the amount is owed is or will be entered into by

(A) a promoter in respect of the interest,

(B) a person with whom the promoter does not deal at arm's length, or

(C) a person who is to receive a payment (other than a payment made by the purchaser) in respect of the guarantee, security or agreement to indemnify,

(iii) the rights of that other person against the purchaser, or against a person with whom the purchaser does not deal at arm's length, in respect of the collection of all or part of the purchase price are limited to a maximum amount, are enforceable only against certain property, or are otherwise limited by agreement, or

(iv) payment of that amount is to be made in a foreign currency or is to be determined by reference to its value in a foreign currency and it may reasonably be considered, having regard to the history of the exchange rate between the foreign currency and Canadian currency, that the aggregate of all such payments, when converted to Canadian currency at the exchange rate expected to prevail at the date on which each such payment would be required to be made, will be substantially less than that aggregate would be if each such payment was converted to Canadian currency at the time that each such payment became owing,

(b) that the purchaser or a person with whom the purchaser does not deal at arm's length is entitled at any time to receive, directly or indirectly, or to have available

(i) as a form of assistance from a government, municipality or other public authority, whether as a grant, subsidy, forgiveable loan, deduction from tax or investment allowance, or as any other form of assistance, or

(ii) by reason of a revenue guarantee or other agreement in respect of which revenue may be earned by the purchaser or a person with whom the purchaser does not deal at arm's length, to the extent that the revenue guarantee or other agreement may reasonably be considered to ensure that the purchaser or person will receive a return of all or a portion of the purchaser's outlays in respect of the interest,

(c) that is the proceeds of disposition to which the purchaser may be entitled by way of an agreement or other arrangement under which the purchaser has a right, either absolutely or contingently, to dispose of the interest (otherwise than as a consequence of the purchaser's death), including the fair market value of any property that the agreement or arrangement provides for the acquisition of in exchange for all or any part of the interest, and

(d) that is owed to a promoter, or a person with whom the promoter does not deal at arm's length, by the purchaser or a person with whom the purchaser does not deal at arm's length in respect of the interest,

but, except as otherwise provided in subparagraph (b)(ii), does not include profits earned in respect of the interest.

(6.1) For the purpose of paragraph (b) of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed benefit" in respect of an interest in a property includes an amount that is a limited-recourse amount because of subsection 143.2(1), (7) or (13) of the Act, but does not include an amount of indebtedness that is a limited-recourse amount

(a) solely because it is not required to be repaid within 10 years from the time the indebtedness arose where the debtor would, if the interest were acquired by the debtor immediately after that time, be

(i) a partnership

(A) at least 90% of the fair market value of the property of which is attributable to the partnership's tangible capital property located in Canada, and

(B) at least 90% of the value of all interests in which are held by limited partners (within the meaning assigned by subsection 96(2.4) of the Act) of the partnership,

except where it is reasonable to conclude that one of the main reasons for the acquisition of one or more properties by the partnership, or for the acquisition of one or more interests in the partnership by limited partners, is to avoid the application of this subsection, or

(ii) a member of a partnership having fewer than six members, except where

(A) the partnership is a member of another partnership,

(B) there is a limited partner (within the meaning assigned by subsection 96(2.4) of the Act) of the partnership,

(C) less than 90% of the fair market value of the partnership's property is attributable to the partnership's tangible capital property located in Canada, or

(D) it is reasonable to conclude that one of the main reasons for the existence of one of two or more partnerships, one of which is the partnership, or the acquisition of one or more properties by the partnership, is to avoid the application of this section to the member's indebtedness,

(b) of a partnership

(i) where

(A) the indebtedness is secured by and used to acquire the partnership's tangible capital property located in Canada (other than rental property, within the meaning assigned by subsection 1100(14), leasing property, within the meaning assigned by subsection 1100(17), or specified energy property, within the meaning assigned by subsection 1100(25)), and

(B) the person to whom the indebtedness is repayable is a member of the Canadian Payments Association, and

(ii) throughout the period during which any amount is outstanding in respect of the indebtedness,

(A) at least 90% of the fair market value of the property of which is attributable to tangible capital property located in Canada of the partnership,

(B) at least 90% of the value of all interests in which are held by limited partners (within the meaning assigned by subsection 96(2.4) of the Act) that are corporations, and

(C) the principal business of each such limited partner is related to the principal business of the partnership,

except where it is reasonable to conclude that one of the main reasons for the acquisition of one or more properties by the partnership, or for the acquisition of one or more interests in the partnership by limited partners, is to avoid the application of this subsection, or

(c) of a corporation where the amount is a *bona fide* business loan made to the corporation for the purpose of financing a business that the corporation operates and the loan is made pursuant to a loan program of the Government of Canada or of a province the purpose of which is to extend financing to small- and medium-sized businesses.

(7) For the purposes of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed property" in relation to a tax shelter means property that is a registered pension plan, a registered retirement savings plan, a deferred profit sharing plan, a registered retirement income fund, a registered education savings plan or a property in respect of which paragraph 40(2)(i) of the Act is applicable.

History [Reg. 231]: Subsec. 231(6.1) added by P.C. 2000-1000, subsec. 1(4), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable after November 1994.

The portion of subsec. 231(6) before cl. (a)(ii)(B) and the portion after subpara. (b)(i) amended by the said P.C. 2000-1000, subsecs. 1(2), (3), applicable to taxation years ending after July 5, 2000.

Subsecs. 231(4) and (5) repealed by the said P.C. 2000-1000, subsec. 1(1), applicable after 1995.

Subsec. 231(7) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

S. 231 added by P.C. 1989-2156, s. 2, October 26, 1989, *Canada Gazette*, Part II, November 8, 1989, applicable in respect of interests acquired after August 31, 1989.

Definitions [Reg. 231]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "associated" — ITA 256; "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital property" — ITA 54, 248(1); "consequence of the purchaser's death" — ITA 248(8); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "Minister", "person" — ITA 248(1); "promoter" — ITA 237.1(1), Reg. 231(1); "property" — ITA 248(1); "registered education savings plan" — ITA 146.1(1), 248(1); "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6); "security" — *Interpretation Act* 35(1); "tax shelter" — ITA 237.1(1), Reg. 231(1); "written" — *Interpretation Act* 35(1)"writing".

232. Workers' compensation — (1) Every person who pays an amount in respect of compensation described in subparagraph 110(1)(f)(ii) of the Act shall make an information return in prescribed form in respect of that payment.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: T4115: T5007 guide — return of benefits (guide); T5007 Summ: Return of benefit payments — summary; T5007 Supp: Statement of benefits.

(2) Where a workers' compensation board, or a similar body, adjudicates a claim for compensation described in

subparagraph 110(1)(f)(ii) of the Act and stipulates the amount of the award, that board or body shall make an information return in prescribed form in respect of the amount of the award.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(3) A return required under this section must be filed on or before the last day of February of each year and shall be in respect of

(a) the preceding calendar year, if the return is required under subsection (1); and

(b) the amount of the award that pertains to the preceding calendar year, if the return is required under subsection (2).

(4) Subsections (1) and (2) are not applicable in respect of a payment or an award in respect of

(a) medical expenses incurred by or on behalf of the employee;

(b) funeral expenses in respect of the employee;

(c) legal expenses in respect of the employee;

(d) job training or counselling of the employee; or

(e) the death of the employee, other than periodic payments made after the death of the employee.

Definitions [Reg. 232]: "amount", "employee", "person", "prescribed" — ITA 248(1).

233. Social assistance — **(1)** Every person who makes a payment described in paragraph 56(1)(u) of the Act shall make an information return in prescribed form in respect of the payment.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: T4115: T5007 guide — return of benefits (guide); T5007 Summ: Return of benefit payments — summary; T5007 Supp: Statement of benefits.

(2) Subsection (1) is not applicable in respect of a payment that

(a) is in respect of medical expenses incurred by or on behalf of the payee;

(b) is in respect of child care expenses, within the meaning assigned by paragraph 63(3)(a) [63(3)"child care expense"] of the Act, incurred by or on behalf of the payee or a person related to the payee;

(c) is in respect of funeral expenses in respect of a person related to the payee;

(d) is in respect of legal expenses incurred by or on behalf of the payee or a person related to the payee;

(e) is in respect of job training or counselling of the payee or a person related to the payee;

(f) is paid in a particular year as a part of a series of payments, the total of which in the particular year does not exceed $500; or

(g) is not a part of a series of payments.

Related Provisions: Reg. 205 — Date return due.

History: Ss. 232, 233 added by P.C. 1992-1567, s. 2, July 16, 1992, *Canada Gazette*, Part II, August 12, 1992, applicable to 1991 *et seq.*

Definitions [Reg. 233]: "child" — ITA 252(1); "person", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6).

234. Farm support payments — **(1)** Every government, municipality or municipal or other public body (in sections 235 and 236 referred to as the "government payer") or producer organization or association that makes a payment of an amount that is a farm support payment (other than an amount paid out of a net income stabilization account) to a person or partnership shall make an information return in prescribed form in respect of the amount.

Related Provisions: Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

Forms: AGR-1: Return of farm support payments.

(2) For the purposes of subsection (1) "farm support payment" includes

(a) a payment that is computed with respect to an area of farm land;

(b) a payment that is made in respect of a unit of farm commodity grown or disposed of or a farm animal raised or disposed of; and

(c) a rebate of, or compensation for, all or a portion of

(i) a cost or capital cost incurred in respect of farming, or

(ii) unsowed or unplanted land or crops, or destroyed crops, farm animals or other farm output.

Related Provisions: Reg. 205 — Date return due; Reg. 235, 236 — Identification of recipients.

History: S. 234 added by P.C. 1993-1939, s. 4, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Definitions [Reg. 234]: "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "farm support payment" — Reg. 234(2); "farming", "net income stabilization account", "prescribed" — ITA 248(1).

235. Identifier information — Every corporation or trust for which an information return is required to be made under these Regulations by a government payer or by a producer organization or association shall provide its legal name, address and income tax identification number to the government payer or the producer organization or association, as the case may be.

History: S. 235 added by P.C. 1993-1939, s. 4, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Definitions [Reg. 235]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "government payer" — Reg. 234(1); "trust" — ITA 104(1), 248(1), (3).

236. [Members of partnership] — Every person who is a member of a partnership for which an information return is required to be made under these Regulations by a government payer or by a producer organization or association shall provide the government payer or the producer organization or association, as the case may be, with the following information:

(a) the person's legal name, address and Social Insurance Number, or, where the person is a trust or is not an individual, the person's income tax identification number; and

(b) the partnership's name and business address.

Related Provisions: Reg. 229 — Partnership information return.

History: S. 236 added by P.C. 1993-1939, s. 4, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993, applicable after 1993 in respect of amounts paid after 1992.

Definitions [Reg. 236]: "business" — ITA 248(1); "government payer" — Reg. 234(1); "individual""person" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

237. Contract for goods and services [for federal government] — **(1)** The definitions in this subsection apply in this section.

"federal body" means a department or a Crown corporation, within the meaning of section 2 of the *Financial Administration Act*.

History: S. 237 added by P.C. 1998-2274, s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, the definition "federal body" applicable to amounts paid or credited after 1998 except that for amounts paid or credited in 1998, the definition shall be read without the words "or Crown corporation".

"payee" means a person or partnership to whom an amount is paid or credited in respect of goods for sale or lease, or services rendered, by or on behalf of the person or the partnership.

(2) A federal body that pays or credits an amount to a payee shall file an information return in prescribed form in respect of the amount on or before March 31 in each year in respect of the preceding calendar year.

Related Provisions: Reg. 205 — Date return due; Reg. 205.1 — Electronic filing required if more than 500 returns; Reg. 209 — Two copies to be sent to taxpayer.

(3) Subsection (2) does not apply in respect of an amount

(a) all or substantially all of which is paid or credited in the year in respect of goods for sale or lease by the payee;

(b) to which section 153 or 212 of the Act applies;

(c) that is not required to be included in computing the income of the payee, if the payee is an employee of the federal body;

(d) that is paid or credited in respect of services rendered outside Canada by a payee who was not resident in Canada during the period in which the services were rendered; or

(e) that is paid or credited in respect of a program administered under the *Witness Protection Program Act* or any other similar program.

History [Reg. 237]: S. 237 added by P.C. 1998-2274, s.1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts paid or credited after 1997.

Definitions [Reg. 237]: "calendar year" — *Interpretation Act* 35(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee" — ITA 248(1); "federal body" — Reg. 237(1); "payee" — Reg. 237(1); "person" — ITA 248(1); "prescribed" — ITA 248(1).

238. Reporting of payments in respect of construction activities — **(1)** In this section, "construction activities" includes the erection, excavation, installation, alteration, modification, repair, improvement, demolition, destruction, dismantling or removal of all or any part of a building, structure, surface or sub-surface construction, or any similar property.

Forms: T5018 Summ: Summary of contract payments; T5018 Supp: Statement of contract payments.

(2) Every person or partnership that pays or credits, in a reporting period, an amount in respect of goods or services rendered on their behalf in the course of construction activities shall make an information return in the prescribed form in respect of that amount, if the person's or partnership's business income for that reporting period is derived primarily from those activities.

Forms: T5018 Summ: Summary of contract payments; T5018 Supp: Statement of contract payments.

(3) The reporting period may be either on a calendar year basis or a fiscal period basis. Once a period is chosen, it cannot be changed for subsequent years, unless the Minister authorizes it.

(4) The return shall be filed within six months after the end of the reporting period to which it pertains.

(5) Subsection (2) does not apply in respect of an amount

(a) all of which is paid or credited in the reporting period in respect of goods for sale or lease by the person or partnership;

(b) to which section 153 or 212 of the Act applies; or

(c) that is paid or credited in respect of services rendered outside Canada by a person or partnership who was not resident in Canada during the period in which the services were rendered.

History: S. 238 added by P.C. 1999-2204, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable to reporting periods that begin after 1998, except that the information return to be filed for the first reporting period is not required to be filed until June 30, 2000.

Definitions [Reg. 238]: "business" — ITA 248(1); "Canada" — ITA 255; "construction activities" — Reg. 238(1); "month" — *Interpretation Act* 35(1); "partnership" — See Notes to 96(1); "person", "prescribed", "property" — ITA 248(1); "reporting period" — Reg. 238(3).

PART III — ANNUITIES AND LIFE INSURANCE POLICIES

History: Heading substituted by P.C. 1983-3530, subsec. 1(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983.

Heading substituted by P.C. 1982-1421, subsec. 1(1), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982.

Part III was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Heading substituted by P.C. 1968-33, subsec. 1(1), January 4, 1968, *Canada Gazette*, Part II, January 24, 1968.

300. Capital element of annuity payments — **(1)** For the purposes of paragraphs 32.1(3)(b) and 60(a) of the Act, where an annuity is paid under a contract (other than an income-averaging annuity contract or an annuity contract purchased pursuant to a deferred profit sharing plan or pursuant to a plan referred to in subsection 147(15) of the Act as a "revoked plan") at a particular time, that part of the annuity payment determined in prescribed manner to be a return of capital is that proportion of a taxpayer's interest in the annuity payment that the adjusted purchase price of the taxpayer's interest in the contract at that particular time is of his interest, immediately before the commencement under the contract of payments to which paragraph 56(1)(d) of the Act applies, in the total of the payments

(a) to be made under the contract, in the case of a contract for a term of years certain; or

(b) expected to be made under the contract, in the case of a contract under which the continuation of the payments depends in whole or in part on the survival of an individual.

History: Subsec. 300(1) substituted by P.C. 1983-3530, subsec. 1(1), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Subsec. 300(1) substituted by P.C. 1982-1421, subsec. 1(1), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective with respect to annuity contracts under which annuity payments commence after 1979 ex-

cept that in its application to annuity contracts under which payments commence before 1982 it shall be read as follows:

> 300. (1) For the purposes of paragraphs 32.1(3)(b) and 60(a) of the Act, if an annuity is paid under a contract, the amount deemed to be a return of capital is that proportion of each annuity payment that the consideration for, or purchase price of, the contract is of the total of the payments
>
> (a) to be made under the contract, in the case of a contract for a term of years certain; or
>
> (b) expected to be made, in the case of a contract under which the continuation of the payments depends in whole or in part on the survival of an individual.

(1.1) For the purposes of subsections (1) and (2), "annuity payment" does not include any portion of a payment under a contract the amount of which cannot be reasonably determined immediately before the commencement of payments under the contract except where the payment of such portion cannot be so determined because the continuation of the annuity payments under the contract depends in whole or in part on the survival of an individual.

History: Subsec. 300(1.1) added by P.C. 1982-1421, subsec. 1(1), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

(2) For the purposes of this section and section 305,

(a) where the continuance of the annuity payments under any contract depends in whole or in part on the survival of an individual, the total of the payments expected to be made under the contract

(i) shall, in the case of a contract that provides for equal payments and does not provide for a guaranteed period of payment, be equal to the product obtained by multiplying the aggregate of the annuity payments expected to be received throughout a year under the contract by the complete expectations of life using the table of mortality known as the *1971 Individual Annuity Mortality Table*, as published in Volume XXIII of the *Transactions of the Society of Actuaries*, or

(ii) shall, in any other case, be calculated in accordance with subparagraph (i) with such modifications as the circumstances may require;

(b) except as provided in subsections (3) and (4), "adjusted purchase price" of a taxpayer's interest in an annuity contract at a particular time means the amount that would be determined at that time in respect of that interest under paragraph 148(9)(a) [148(9)"adjusted cost basis"] of the Act if that paragraph were read without reference to subparagraph (viii) [k] thereof;

(c) where the continuance of the annual payments under any contract depends on the survival of a person, the age of that person on any date as of which a calculation is being made shall be determined by subtracting the calendar year of his birth from the calendar year in which such date occurs; and

(d) where the continuance of the annual payments under any contract depends on the survival of a person, and where, in the event of the death of that person before the annual payments aggregate a stated sum, the contract provides that the unpaid balance of the stated sum shall be paid, either in a lump sum or instalments, then, for the purpose of determining the expected term of the contract, the contract shall be deemed to provide for the continuance of the payments thereunder for a minimum term certain equal to the nearest integral number of years required to complete the payment of the stated sum;

(e) [Revoked]

History: All that portion of subsec. 300(2) preceding para. (a), para. 300(2)(b) substituted by P.C. 1983-3530, subsecs. 1(2), 1(3), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983. All that portion of subsec. 300(2) preceding para. (a), as substituted, applicable to taxation years commencing after 1982; paragraph 300(2)(b), as substituted, effective November 12, 1981. Para. 300(2)(e) revoked by P.C. 1983-3530, subsec. 1(4), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Subpara. 300(2)(a)(i) substituted by P.C. 1982-2862, September 22, 1982, *Canada Gazette*, Part II, October 13, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

Paras. 300(2)(a), (b) substituted by P.C. 1982-1421, subsec. 1(2), May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

(3) Where

(a) an annuity contract is a life annuity contract entered into before November 17, 1978 under which the annuity payments commence on the death of an individual,

(a.1) [Revoked]

(b) an annuity contract (other than an annuity contract described in paragraph (a)) is

(i) a life annuity contract entered into before October 23, 1968, or

(ii) any other annuity contract entered into before January 4, 1968,

under which the annuity payments commence

(iii) on the expiration of a term of years, and

(iv) before the later of January 1, 1970 or the tax anniversary date of the annuity contract,

the adjusted purchase price of a taxpayer's interest in the annuity contract shall be

(c) the lump sum, if any, that the person entitled to the annuity payments might have accepted in lieu thereof, at the date the annuity payments commence;

(d) if no lump sum described in paragraph (c) is provided for in the contract, the sum ascertainable from the contract as the present value of the annuity at the date the annuity payments commence; and

(e) if no lump sum described in paragraph (c) is provided for in the contract and no sum is ascertainable under paragraph (d),

(i) in the case of a contract issued under the *Government Annuities Act*, the premiums paid, accumulated with interest at the rate of four per cent per annum to the date the annuity payments commence, and

(ii) in the case of any other contract, the present value of the annuity payments at the date on which payments under the contract commence, computed by applying

(A) a rate of interest of four per cent per annum where the payments commence before 1972 and 5½ per cent per annum where the payments commence after 1971, and

(B) the provisions of subsection (2) where the payments depend on the survival of a person.

History: Para. 300(3)(a.1) revoked and para. 300(3)(b) substituted by P.C. 1983-3530, subsecs. 1(5) and 1(6), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

All that portion of subsec. 300(3) preceding para. (c) substituted by P.C. 1982-1421, subsec. 1(3), May 13, 1982, *Canada Gazette*, Part II, May 25, 1982, effective January 1, 1982.

(4) Where an annuity contract would be described in paragraph (3)(b) if the reference in subparagraph (iv) thereof to "before the later of" were read as a reference to "on or after the later of", the adjusted purchase price of a taxpayer's interest in the annuity contract at a particular time shall be the greater of

(a) the aggregate of

(i) the amount that would be determined in respect of that interest under paragraph (3)(c), (d) or (e), as the case may be, if the date referred to therein was the tax anniversary date of the contract and not the date the annuity payments commence, and

(ii) the adjusted purchase price that would be determined in respect of that interest if the words "and after the tax anniversary date" were inserted in each of subparagraphs 148(9)(a)(i) to (iii.1) and (vi) [148(9)"adjusted cost basis"A to D and H] of the Act immediately following the words "before that time" in each of those subparagraphs; and

(b) the amount determined under paragraph (2)(b) in respect of that interest.

History: Subpara. 300(4)(a)(ii) substituted by P.C. 1983-3530, subsec. 1(7), November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Subsec. 300(4) substituted by P.C. 1982-1421, subsec. 1(4), May 13, 1982, *Canada Gazette*, Part II, May 25, 1982, effective with respect to annuity contracts under which annuity payments commence after 1981.

Definitions [Reg. 300]: "adjusted purchase price" — Reg. 300(2)(b), 300(3), (4); "amount", "annuity" — ITA 248(1); "annuity payment" — Reg. 300(1.1); "commencement" — *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "income-averaging annuity contract", "individual" — ITA 248(1); "life annuity contract" — Reg. 301(1), (2); "person", "prescribed" — ITA 248(1); "tax anniversary date" — Reg. 310; "taxpayer" — ITA 248(1); "total of the payments" — Reg. 300(2)(a).

301. Life annuity contracts — **(1)** For the purposes of this Part and section 148 of the Act, "life annuity contract" means any contract under which a person authorized under the laws of Canada or a province to carry on in Canada an annuities business agrees to make annuity payments to an individual (in this section referred to as "the annuitant") or jointly to two or more individuals (each of whom is referred to as "the annuitant" in this section), which payments are, by the terms of the contract,

(a) to be paid annually or at more frequent periodic intervals;

(b) to commence on a specified day; and

(c) to continue throughout the lifetime of the annuitant or one or more of the annuitants.

History: All that portion of subsec. 301(1) preceding para. (a) substituted by P.C. 1983-3530, s. 2, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective November 12, 1981.

(2) For the purposes of subsection (1), a contract shall not fail to be a life annuity contract by reason that

(a) the contract provides that the annuity payments may be assigned by the annuitant or owner;

(b) the contract provides for annuity payments to be made for a period ending upon the death of the annuitant or for a specified period of not less than 10 years, whichever is the lesser;

(c) the contract provides for annuity payments to be made for a specified period or throughout the lifetime of the annuitant, whichever is longer, to the annuitant and thereafter, if the specified period is the longer, to a specified person;

(d) the contract provides, in addition to the annuity payments to be made throughout the lifetime of the annuitant, for a payment to be made upon the annuitant's death;

(e) the contract provides that the date

(i) on which the annuity payments commence, or

(ii) on which the contract holder becomes entitled to proceeds of the disposition,

may be changed with respect to the whole contract or any portion thereof at the option of the annuitant or owner; or

(f) the contract provides that all or a portion of the proceeds payable at any particular time under the contract may be received in the form of an annuity contract other than a life annuity contract.

History: Paras. 301(1)(a)–(d) revoked and substituted by 301(1)(a)–(c), (2)(a), (e) substituted, (f) added by P.C. 1982-1421, s. 2, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, effective January 1, 1982.

Subsec. 301(1) amended by P.C. 1980-1241, May 8, 1980, *Canada Gazette*, Part II, May 28, 1980, effective in respect of 1978 *et seq.*

Definitions [Reg. 301]: "annuitant" — Reg. 301(1); "annuity", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "individual" — ITA 248(1); "life annuity contract" — Reg. 301(1), (2); "person" — ITA 248(1); "proceeds of the disposition" — ITA 148(9), Reg. 310; "province" — *Interpretation Act* 35(1).

302. [Revoked]

History: Heading preceding s. 302 and s. 302 revoked by P.C. 1983-3530, s. 3, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

S. 302 added by P.C. 1982-1421, s. 3, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982, applicable to taxation years commencing after October 28, 1980.

303. (1) Where in a taxation year the rights of a holder under an annuity contract cease upon termination or cancellation of the contract and

(a) the aggregate of all amounts, each of which is an amount in respect of the contract that was included in computing the income of the holder for the year or any previous taxation year by virtue of subsection 12(3) of the Act

exceeds the aggregate of

(b) such proportion of the amount determined under paragraph (a) that the annuity payments made under the contract before the rights of the holder have ceased is of the total of the payments expected to be made under the contract, and

(c) the aggregate of all amounts, each of which is an amount in respect of the contract that was deductible in computing the income of the holder for the year or any previous year by virtue of subsection (2),

the amount of such excess may be deducted by the holder under subsection 20(19) of the Act in computing his income for the year.

History: Para. 303(1)(b) substituted by P.C. 1983-3530, s. 4, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective commencing November 12, 1981.

(2) For the purposes of subsection 20(19) of the Act, where an annuity contract was acquired after December 19, 1980 and annuity payments under the contract commenced before 1982, the amount that may be deducted by

a holder under that subsection in respect of an annuity contract for a taxation year is that proportion of

(a) the aggregate of all amounts, each of which is an amount that was included in computing the income of the holder for any previous taxation year by virtue of subsection 12(3) of the Act in respect of the contract

that

(b) the aggregate of all annuity payments received by the holder in the year in respect of the contract

is of

(c) the total of the payments determined under paragraph 300(1)(a) or (b) in respect of the holder's interest in the contract.

History: S. 303 added by P.C. 1982-1421, s. 3, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982; subsec. 303(1) applicable to taxation years commencing after October 28, 1980; subsec. 303(2) effective from December 1980.

Definitions [Reg. 303]: "amount", "annuity" — ITA 248(1); "taxation year" — ITA 249.

304. Prescribed annuity contracts — (1) For the purposes of this Part and subsections 12.2(1), (3) and (4) and paragraph 148(2)(b) of the Act, prescribed annuity contract for a taxation year means

(a) an annuity contract purchased pursuant to a registered pension plan, a registered retirement savings plan, a deferred profit sharing plan or a plan referred to in subsection 147(15) of the Act as a revoked plan;

(b) an annuity contract described in paragraph 148(1)(c) or (e) of the Act; and

(c) an annuity contract

(i) under which annuity payments have commenced in the taxation year or a preceding taxation year,

(ii) issued by a corporation described in any of paragraphs 39(5)(b) to (d) or clause 146(1)(j)(ii)(B) [146(1)"retirement savings plan"(b)(ii)] of the Act, a life insurance corporation, a registered charity or a corporation (other than a mutual fund corporation or a mortgage investment corporation) the principal business of which is the making of loans (which corporation or charity is in this section referred to as an "issuer"),

Proposed Amendment — Reg. 304(1)(c)(ii)

(ii) issued by a life insurance corporation, a registered charity, a corporation referred to in any of paragraphs (a) to (c) of the definition "specified financial institution" in subsection 248(1) of the Act or subparagraph (b)(ii) of the definition "retirement savings plan" in subsection 146(1) of the Act or a corporation (other than a mutual fund corporation or a mortgage investment corporation) the principal business of which is the making of loans (which corporation or charity is referred to in this section as the "issuer"),

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 1, will amend subpara. 304(1)(c)(ii) to read as above, applicable after February 22, 1994.

Technical Notes: Section 304 prescribes certain annuity contracts for exclusion from the rules in the *Income Tax Act* that require income from insurance policies to be reported on an accrual basis. Paragraph 304(1)(c) provides an exclusion for an annuity under which payments have commenced if a number of other conditions are also satisfied. Subparagraph 304(1)(c)(ii) requires that the annuity have been issued by a person specified in that provision. Acceptable issuers include corporations described in any of paragraphs 39(5)(b) to (d) of the Act — banks, trust companies and credit unions.

Subsection 39(5) of the Act is being amended to replace several of its paragraphs by a reference to "financial institutions" (as defined in subsection 142.2(1) of the Act). Consequently, subparagraph 304(1)(c)(ii) is amended to refer to corporations referred to in any of paragraphs (a) to (c) of the definition of "specified financial institution" in subsection 248(1) of the Act, which are the same corporations as were referred to in paragraphs 39(5)(b) to (d).

(iii) each holder of which

(A) is an individual, other than a trust that is neither a testamentary trust nor a trust described in paragraph 104(4)(a) of the Act (in this paragraph referred to as a "spouse trust"),

(B) is an annuitant under the contract, and

(C) throughout the taxation year, dealt at arm's length with the issuer,

(iv) the terms and conditions of which require that, from the time the contract meets the requirements of this paragraph,

(A) all payments made out of the contract be equal annuity payments made at regular intervals but not less frequently than annually, subject to the holder's right to vary the frequency and quantum of payments to be made out of the contract in any taxation year without altering the present value at the beginning of the year of the total payments to be made in that year out of the contract,

(B) the annuity payments thereunder continue for a fixed term or

(I) where the holder is an individual (other than a trust), for the life of the first holder or until the later of the death of the first holder and the death of any one of the spouse, brothers and sisters (in this subparagraph referred to as "the survivor") of the first holder, or

(II) where the holder is a spouse trust, for the life of the spouse who is entitled to receive the income of the trust;

(C) where the annuity payments are to be made over a term that is guaranteed or fixed, the guaranteed or fixed term not [to] extend beyond the time at which

(I) in the case of a joint and last survivor annuity, the younger of the first holder and the survivor,

(II) where the holder is a spouse trust, the spouse who is entitled to receive the income of the trust,

(III) where the holder is a testamentary trust other than a spouse trust, the youngest beneficiary under the trust,

(IV) where the contract is held jointly, the younger of the first holders, or

(V) in any other case, the first holder,

would, if he survived, attain the age of 91 years,

(D) no loans exist under the contract and the holder's rights under the contract not be disposed of otherwise than on the holder's death

or, where the holder is a spouse trust, on the death of the spouse who is entitled to receive the income of the trust, and

(E) no payments be made out of the contract other than as permitted by this section,

(v) none of the terms and conditions of which provide for any recourse against the issuer for failure to make any payment under the contract, and

(vi) where annuity payments under the contract have commenced

(A) before 1987, in respect of which a holder thereof has notified the issuer in writing, before the end of the taxation year, that the contract is to be treated as a prescribed annuity contract,

(B) after 1986, in respect of which a holder thereof has not notified the issuer in writing, before the end of the taxation year in which the annuity payments under the contract commenced, that the contract is not to be treated as a prescribed annuity contract, or

(C) after 1986, in respect of which a holder thereof has notified the issuer in writing, before the end of the taxation year in which the annuity payments under the contract commenced, that the contract is not to be treated as a prescribed annuity contract and a holder thereof has rescinded the notification by so notifying the issuer in writing before the end of the taxation year.

Proposed Amendment — Reg. 304(1)

Department of Finance news release, December 19, 1996: An annuity contract issued as a RRIF will not be subject to the accrual rules under section 12.2 of the Act.

This amendment will be implemented by way of an amendment to subsection 304(1) of the Regulations. It is contemplated that it will apply to taxation years that begin after 1986, given that the original amendments to the Act that gave rise to the need for this amendment applied after 1986.

[For the full text of this news release, see under 12.2(1) — ed.]

Department of Finance news release, October 23, 1997: [See under ITA 12.2(1) — ed.]

(2) Notwithstanding subsection (1), an annuity contract shall not fail to be a prescribed annuity contract by reason that

(a) where the contract provides for a joint and last survivor annuity or is held jointly, the terms and conditions thereof provide that there will be a decrease in the amount of the annuity payments to be made under the contract from the time of death of one of the annuitants thereunder;

(b) the terms and conditions thereof provide that where the holder thereof dies at or before the time he attains the age of 91 years, the contract will terminate and an amount will be paid out of the contract not exceeding the amount, if any, by which the total premiums paid under the contract exceeds the total annuity payments made under the contract;

(c) where the annuity payments are to be made over a term that is guaranteed or fixed, the terms and conditions thereof provide that as a consequence of the death of the holder thereof during the guaranteed or fixed term any payments that, but for the death of the holder, would be made during the term may be commuted into a single payment; or

(d) the terms and conditions thereof, as they read on December 1, 1982 and at all subsequent times, provide that the holder participates in the investment earnings of the issuer and that the amount of such participation is to be paid within 60 days after the end of the year in respect of which it is determined.

(3) For the purposes of this section, the annuitant under an annuity contract is deemed to be the holder of the contract where

(a) the contract is held by another person in trust for the annuitant; or

(b) the contract was acquired by the annuitant under a group term life insurance policy under which life insurance was effected on the life of another person in respect of, in the course of, or by virtue of the office or employment or former office or employment of that other person.

(4) In this section,

"annuitant" under an annuity contract, at any time, means a person who, at that time, is entitled to receive annuity payments under the contract;

"spouse" of a particular person means

(a) a person of the opposite sex who is married to the particular person or who is a party to a void or voidable marriage with the particular person, or

(b) a person of the opposite sex who is cohabiting with the particular person in a conjugal relationship and has so cohabited for a period of at least one year.

History: That portion of subsec. 304(1) preceding para. (a) replaced by P.C. 1994-940, s. 1, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable after 1989.

Subsec. 304(1), paras. 304(2)(a) and (c) substituted, subsecs. 304(3) and (4) added, by P.C. 1988-1115, s. 1, June 9, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to taxation years commencing after 1986.

That portion of subsec. 304(1) preceding para. (a) substituted by P.C. 1988-390, s. 2, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1983.

That portion of subsec. 304(1) preceding para. (a) substituted by P.C. 1986-1048, s. 1, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to taxation years commencing after 1982.

S. 304 substituted by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

S. 304 added by P.C. 1982-1421, s. 3, May 13, 1982, *Canada Gazette*, Part II, May 26, 1982; subsecs. 304(1)–(4) effective with respect to annuity contracts under which annuity payments commence after 1981; subsec. 304(5) applicable to taxation years commencing after October 28, 1980.

Definitions [Reg. 304]: "amount" — ITA 248(1); "annuitant" — Reg. 304(4); "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "consequence of the death" — ITA 248(8); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "disposed" — ITA 248(1)"disposition"; "employment", "group term life insurance policy" — ITA 248(1); "holder" — Reg. 304(3); "individual" — ITA 248(1); "issuer" — Reg. 304(1)(c)(ii); "life insurance corporation" — ITA 248(1); "mortgage investment corporation" — ITA 130.1(6), 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "office", "person", "prescribed" — ITA 248(1); "prescribed annuity contract" — Reg. 304(1), (2); "registered pension plan" — ITA 248(1); "spouse" — Reg. 304(4); "spouse trust" — Reg. 304(1)(c)(iii)(A); "survivor" — Reg. 304(1)(c)(iv)(B)(I); "taxation year" — ITA 249; "testamentary trust" — ITA 108(1), 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

305. Unallocated income accrued before 1982 — **(1)** For the purposes of section 12.2 and paragraph 56(1)(d.1) of the Act, the amount at any time of "unallo-

cated income accrued in respect of the interest before 1982, as determined in prescribed manner", in respect of a taxpayer's interest in an annuity contract (other than an interest last acquired after December 1, 1982) or in a life insurance policy referred to in subsection (3), means the amount, if any, by which

(a) the accumulating fund at December 31, 1981 in respect of the interest

exceeds the aggregate of

(b) his adjusted cost basis (within the meaning assigned by paragraph 148(9)(a) [148(9)"adjusted cost basis"] of the Act) at December 31, 1981 in respect of the interest; and

(c) that proportion of the amount, if any, by which the amount determined under paragraph (a) exceeds the amount determined under paragraph (b) that

(i) the aggregate of all amounts each of which is the amount of an annuity payment received before that time in respect of the interest

is of

(ii) the taxpayer's interest, immediately before the commencement of payments under the contract, in the total of the annuity payments

(A) to be made under the contract, in the case of a contract for a term of years certain, or

(B) expected to be made under the contract, in the case of a contract under which the continuation of the payments depends in whole or in part on the survival of an individual.

(2) For the purposes of paragraph (1)(c), "annuity payment" does not include any portion of a payment under a contract the amount of which cannot be reasonably determined immediately before the commencement of payments under the contract except where such portion cannot be so determined because the continuation of the annuity payments under the contract depends in whole or in part on the survival of an individual.

(3) For the purposes of this section, an interest in an annuity contract to which subsection 12.2(9) of the Act applies shall be deemed to be a continuation of the interest in the life insurance policy in respect of which it was issued.

History: S. 305 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 305]: "amount", "annuity" — ITA 248(1); "annuity payment" — Reg. 305(2); "commencement" — *Interpretation Act* 35(1); "continuation" — Reg. 305(3); "individual" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310; "prescribed", "taxpayer" — ITA 248(1); "total of the payments" — Reg. 300(2)(a).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

306. Exempt policies — (1) For the purposes of this Part and subsection 12.2(11) of the Act, "exempt policy" at any time means a life insurance policy (other than an annuity contract or a deposit administration fund policy) in respect of which the following conditions are met at that time:

(a) if that time is a policy anniversary of the policy, the accumulating fund of the policy at that time (determined without regard to any policy loan) does not exceed the total of the accumulating funds at that time of the exemption test policies issued at or before that time in respect of the policy;

(b) assuming that the terms and conditions of the policy do not change from those in effect on the last policy anniversary of the policy at or before that time and, where necessary, making reasonable assumptions about all other factors (including, in the case of a participating life insurance policy within the meaning assigned by subsection 138(12) of the Act, the assumption that the amounts of dividends paid will be as shown in the dividend scale), it is reasonable to expect that the condition in paragraph (a) will be met on each policy anniversary of the policy on which the policy could remain in force after that time and before the date determined under subparagraph (3)(d)(ii) with respect to the exemption test policies issued in respect of the policy;

(c) the condition in paragraph (a) was met on all policy anniversaries of the policy before that time; and

(d) the condition in paragraph (b) was met at all times on and after the first policy anniversary of the policy and before that time.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

(2) For the purposes of subsection (1), a life insurance policy that is an exempt policy on its first policy anniversary shall be deemed to have been an exempt policy from the time of its issue until that anniversary.

(3) For the purposes of this section and section 307, a separate exemption test policy shall be deemed to have been issued to a policyholder in respect of a life insurance policy

(a) on the date of issue of the life insurance policy, and

(b) on each policy anniversary of the life insurance policy where the amount of the benefit on death thereunder exceeds 108 per cent of the amount of the benefit on death thereunder on the later of the date of its issue and the date of its preceding anniversary, if any,

and, for the purpose of determining whether the accumulating fund of the life insurance policy on any particular policy anniversary meets the condition in paragraph (1)(a), each such exemption test policy shall be deemed

(c) to have a benefit on death that is uniform throughout the term of the exemption test policy and equal to

(i) where the exemption test policy is the first such policy issued in respect of the life insurance policy, the amount on that policy anniversary of the benefit on death of the life insurance policy less the total of all amounts each of which is the amount on that policy anniversary of the benefit on death of another exemption test policy issued on or before that policy anniversary in respect of the life insurance policy, and

(ii) in any other case, the amount by which the benefit on death of the life insurance policy on the date the exemption test policy was issued exceeds 108 per cent of the amount of the benefit on death of the life insurance policy on the later of the date of issue of the life insurance policy and the date of its preceding policy anniversary, if any;

(d) to pay the amount of its benefit on death on the earlier of

(i) the date of death of the person whose life is insured under the life insurance policy, and

(ii) the later of

(A) ten years after the date of issue of the life insurance policy, and

(B) the date that the person whose life is insured would, if he survived, attain the age of 85 years; and

(e) to be a life insurance policy in Canada issued by a life insurer that carried on its life insurance business in Canada.

(4) Notwithstanding subsections (1) to (3),

(a) where at any particular time the amount of the benefit on death of a life insurance policy is reduced, an amount equal to such reduction (such amount is in this paragraph referred to as "the reduction") shall be applied at that time to reduce the amount of the benefit on death of exemption test policies issued before that time in respect of the life insurance policy (other than the exemption test policy issued in respect thereof pursuant to paragraph (3)(a)), in the order in which the dates of their issuance are proximate to the particular time, by an amount equal to the lesser of

(i) the portion, if any, of the reduction not applied to reduce the benefit on death of one or more other such exemption test policies, and

(ii) the amount, immediately before that time, of the benefit on death of the relevant exemption test policy;

(b) where on the tenth or on any subsequent policy anniversary of a life insurance policy, the accumulating fund thereof (computed without regard to any policy loan then outstanding in respect of the policy) exceeds 250 per cent of the accumulating fund thereof on its third preceding policy anniversary (computed without regard to any policy loan then outstanding in respect of the policy), each exemption test policy deemed by subsection (3) to have been issued before that time in respect of the life insurance policy shall be deemed to have been issued on the later of the date of that third preceding policy anniversary and the date on which it was deemed by subsection (3) to have been issued; and

(c) where at one or more times after December 1, 1982

(i) a prescribed premium has been paid by a taxpayer in respect of an interest in a life insurance policy (other than an annuity contract or a deposit administration fund policy) last acquired on or before that date, or

(ii) an interest in a life insurance policy (other than an annuity contract or a deposit administration fund policy) issued on or before that date has been acquired by a taxpayer from the person who held the interest continuously since that date,

the policy shall be deemed to have been an exempt policy from the date of its issue until the earliest of those times that occurred after December 1, 1982; and

(d) a life insurance policy that ceases to be an exempt policy (other than by reason of its conversion into an annuity contract) on a policy anniversary shall be deemed to be an exempt policy on that anniversary

(i) if, had that anniversary occurred 60 days after the date on which it did in fact occur, the policy would have been an exempt policy on that later date, or

(ii) if the person whose life is insured under the policy dies on that anniversary or within 60 days thereafter.

History: Subsecs. 306(1), (2) and (3) replaced by P.C. 1994-940, s. 2, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable

(a) with respect to a life insurance policy issued after March 26, 1992, other than a policy for which written application was made on or before March 26, 1992; and

(b) with respect to a life insurance policy amended at any time after March 26, 1992 to increase the amount of the benefit on death.

S. 306 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 306]: "accumulating fund" — Reg. 307(1); "amount", "annuity" — ITA 248(1); "benefit on death" — Reg. 310; "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend" — ITA 248(1); "exempt policy" — Reg. 306(1), (2), 306(4)(d); "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310; "life insurance policy in Canada" — ITA 138(12), 248(1); "life insurer", "person" — ITA 248(1); "policy anniversary" — Reg. 310; "policy loan" — ITA 148(9), Reg. 310; "prescribed" — ITA 248(1); "prescribed premium" — Reg. 309(1); "reduction" — Reg. 306(4)(a); "taxpayer" — ITA 248(1).

307. Accumulating funds — **(1)** For the purposes of this Part and section 12.2, paragraph 56(1)(d.1) and section 148 of the Act, "accumulating fund" at any particular time means,

(a) in respect of a taxpayer's interest in an annuity contract (other than a contract issued by a life insurer), the amount that is the greater of

(i) the amount, if any, by which the cash surrender value of his interest at that time exceeds the amount payable, if any, in respect of a loan outstanding at that time made under the contract in respect of the interest, and

(ii) the amount, if any, by which

(A) the present value at that time of future payments to be made out of the contract in respect of his interest

exceeds the aggregate of

(B) the present value at that time of future premiums to be paid under the contract in respect of his interest, and

(C) the amount payable, if any, in respect of a loan outstanding at that time, made under the contract in respect of his interest;

(b) in respect of a taxpayer's interest in a life insurance policy (other than an exemption test policy or an annuity contract to which paragraph (1)(a) applies), the product obtained when,

(i) where the policy is not a deposit administration fund policy and the particular time is immediately after the death of any person on whose life the life insurance policy is issued or effected, the aggregate of the maximum amounts that could be determined by the life insurer immediately before the death in respect of the policy under paragraph 1401(1)(c) and subparagraph 1401(1)(d)(i) if the mortality rates used were adjusted to reflect the assumption that the death would occur at the time and in the manner that it did occur, and

(ii) in any other case, the maximum amount that could be determined at that particular time by the life insurer under paragraph 1401(1)(a), computed as though there were only one deposit administration fund policy, or under paragraph 1401(1)(c), as the case may be, in respect of the policy

is multiplied by

(iii) the taxpayer's proportionate interest in the policy,

assuming for the purposes of this paragraph that the life insurer carried on its life insurance business in Canada, its taxation year ended at the particular time and the policy was a life insurance policy in Canada; and

(c) in respect of an exemption test policy,

(i) where the policy was issued at least 20 years before the particular time, the amount that would be determined at that particular time by the life insurer under clause 1401(1)(c)(ii)(A) in respect of the policy if the insurer's taxation year ended at that particular time, and

(ii) in any other case, the product obtained when the amount that would be determined under subparagraph (i) in respect of the policy on its twentieth policy anniversary is multiplied by the quotient obtained when the number of years since the policy was issued is divided by 20.

(2) For the purposes of subsection (1), when computing the accumulating fund of an interest described in

(a) paragraph (1)(a), the amounts determined under clauses (1)(a)(ii)(A) and (B) shall be computed using,

(i) where an interest rate for a period used by the issuer when the contract was issued in determining the terms of the contract was less than any rate so used for a subsequent period, the single rate that would, if it applied for each period, have produced the same terms, and

(ii) in any other case, the rates used by the issuer when the contract was issued in determining the terms of the contract;

(b) paragraph (1)(b), where an interest rate used for a period by a life insurer in computing the relevant amounts in paragraph 1403(1)(a) or (b) is determined under paragraph 1403(1)(c), (d) or (e), as the case may be, and that rate is less than an interest rate so determined for a subsequent period, the single rate that could, if it applied for each period, have been used in determining the premiums for the policy shall be used; and

(c) paragraph (1)(c)

(i) the rates of interest and mortality used and the age of the person whose life is insured shall be the same as those used in computing the amounts described in paragraph 1403(1)(a) or (b) in respect of the life insurance policy in respect of which the exemption test policy was issued except that

(A) where the life insurance policy is one to which paragraph 1403(1)(e) applies and the amount determined under subparagraph 1401(1)(c)(i) in respect of that policy is greater than the amount determined under subparagraph 1401(1)(c)(ii) in respect thereof, the rates of interest and mortality used may be those used in computing the cash surrender values of that policy, and

(B) where an interest rate for a period otherwise determined under this subparagraph in respect of that interest is less than an interest rate so determined for a subsequent period, the single rate that could, if it applied for each period, have been used in determining the premiums for the life insurance policy shall be used, and

(ii) notwithstanding subparagraph (i),

(A) where the rates referred to in subparagraph (i) do not exist, the minimum guaranteed rates of interest used under the life insurance policy to determine cash surrender values and the rates of mortality under the *Commissioners 1958 Standard Ordinary Mortality Table*, as published in Volume X of the *Transactions of the Society of Actuaries*, relevant to the person whose life is insured under the life insurance policy shall be used, or

(B) where, in respect of the life insurance policy in respect of which the exemption test policy was issued, the period over which the amount determined under clause 1401(1)(c)(ii)(A) does not extend to the date determined under subparagraph 306(3)(d)(ii), the weighted arithmetic mean of the interest rates used to determine such amount shall be used for the period that is after that period and before that date.

(3) Notwithstanding paragraph (2)(c),

(a) in the case of a life insurance policy issued after April 30, 1985, no rate of interest used for the purpose of determining the accumulating fund in respect of an exemption test policy issued in respect thereof shall be less than 4 per cent per annum; and

(b) in the case of a life insurance policy issued before May 1, 1985, no rate of interest used for the purpose of determining the accumulating fund in respect of an exemption test policy issued in respect thereof shall be less than 3 per cent per annum.

(4) For the purposes of paragraph (1)(c),

(a) where on the date of issue of an exemption test policy the person whose life is insured has attained the age of 75 years, the references in paragraph (1)(c) to "20" and "twentieth" shall be read as references to "10" and "tenth" respectively; and

(b) where on the date of issue of an exemption test policy the person whose life is insured has attained the age of 66 years but not the age of 75 years, the references in paragraph (1)(c) to "20" and "twentieth" shall be read as references to

(i) the number obtained when the number of years by which the age of the person whose life is insured exceeds 65 years is subtracted from 20, and

(ii) the adjectival form of the number obtained by performing the computation described in subparagraph (i),

respectively.

(5) In this section, any amount determined by reference to section 1401 shall be determined

(a) without regard to section 1402;

(b) as if each reference therein to the term "policy loan" were read as if that term had the meaning assigned by paragraph 148(9)(e) [148(9)"policy loan"] of the Act; and

(c) as if clauses 1401(1)(c)(i)(B) and 1401(1)(c)(ii)(C) were read without reference to the expression "or the interest thereon that has accrued to the insurer at the end of the year".

History: Cl. 307(2)(c)(ii)(B) amended (to correct an incorrect reference) by P.C. 1991-769, s. 1, April 25, 1991, *Canada Gazette*, Part II, May 8, 1991, applicable to taxation years commencing after 1982.

Para. 307(5)(c) added by P.C. 1984-3789, s. 2, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after 1982.

S. 307 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 307]: "accumulating fund" — Reg. 307(1); "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 310; "annuity" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "cash surrender value" — ITA 148(9), Reg. 310; "insurer", "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — ITA 138(12), Reg. 310; "life insurer", "person" — ITA 248(1); "policy anniversary" — Reg. 310; "policy loan" — ITA 148(9), Reg. 310; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

308. Net cost of pure insurance and mortality gains and losses — (1) For the purposes of subparagraph 20(1)(e.2)(ii) and paragraph (a) of the description of L in the definition "adjusted cost basis" in subsection 148(9) of the Act, the net cost of pure insurance for a year in respect of a taxpayer's interest in a life insurance policy is the product obtained when the probability, computed on the basis of the rates of mortality under the 1969-75 mortality tables of the Canadian Institute of Actuaries published in Volume XVI of the Proceedings of the Canadian Institute of Actuaries or on the basis described in subsection (1.1), that a person who has the same relevant characteristics as the person whose life is insured will die in the year is multiplied by the amount by which

(a) the benefit on death in respect of the taxpayer's interest at the end of the year

exceeds

(b) the accumulating fund (determined without regard to any policy loan outstanding) in respect of the taxpayer's interest in the policy at the end of the year or the cash surrender value of such interest at the end of the year, depending on the method regularly followed by the life insurer in computing net cost of pure insurance.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies; IT-309R2: Premiums on life insurance used as collateral.

(1.1) Where premiums for a particular class of life insurance policy offered by a life insurer do not depend directly on smoking or sex classification, the probability referred to in subsection (1) may be determined using rates of mortality otherwise determined provided that for each age for such class of life insurance policy, the expected value of the aggregate net cost of pure insurance, calculated using such rates of mortality, is equal to the expected value of the aggregate net cost of pure insurance, calculated using the rates of mortality under the 1969-75 mortality tables of the Canadian Institute of Actuaries published in Volume XVI of the Proceedings of the Canadian Institute of Actuaries.

(2) Subject to subsection (4), for the purposes of this section and subparagraph 148(9)(a)(v.1) [148(9)"adjusted cost basis"G] of the Act, a "mortality gain" immediately before the end of any calendar year after 1982 in respect of a taxpayer's interest in a life annuity contract means such reasonable amount in respect of his interest therein at that time that the life insurer determines to be the increase to the accumulating fund in respect of the interest that occurred during that year as a consequence of the survival to the end of the year of one or more of the annuitants thereunder.

(3) Subject to subsection (4), for the purposes of this section and subparagraph 148(9)(a)(xi) [148(9)"adjusted cost basis"(c)] of the Act, a "mortality loss" immediately before a particular time after 1982 in respect of an interest in a life annuity contract disposed of immediately after that particular time as a consequence of the death of an annuitant thereunder means such reasonable amount that the life insurer determines to be the decrease, as a consequence of the death, in the accumulating fund in respect of the interest assuming that, in determining such decrease, the accumulating fund immediately after the death is determined in the manner described in subparagraph 307(1)(b)(i).

(4) In determining an amount for a year in respect of an interest in a life annuity contract under subsection (2) or (3), the expected value of the mortality gains in respect of the interest for the year shall be equal to the expected value of the mortality losses in respect of the interest for the year and the mortality rates for the year used in computing those expected values shall be those that would be relevant to the interest and that are specified under such of paragraphs 1403(1)(c), (d) and (e) as are applicable.

History: That portion of subsec. 308(1) before para. (a) replaced by P.C. 1994-940, s. 3, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable to years ending after 1989, except that for taxation years that ended before December 1991, the reference in subsec. 308(1) to "subparagraph 20(1)(e.2)(ii) and paragraph (a) of the description of L in the definition "adjusted cost basis" in subsection 148(9)" shall be read as "subparagraphs 20(1)(e.2)(ii) and 148(9)(a)(ix)".

That portion of subsec. 308(1) preceding para. (a) substituted and subsec. (1.1) added by P.C. 1991-769, subsecs. 2(1), (2), April 25, 1991, *Canada Gazette*, Part II, May 8, 1991, applicable to 1986 *et seq.*

S. 308 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing May 31, 1985. S.C. 1984, c. 1, subsec. 82(4) provides that s. 308 is deemed to have been validly made on November 17, 1983, with effect as indicated above as if para. 148(9)(a) of the *Income Tax Act* as amended by 1984, c. 1, had been in force on that date.

Definitions [Reg. 308]: "accumulating fund" — Reg. 307(1); "amount", "annuity" — ITA 248(1); "benefit on death" — Reg. 310; "cash surrender value" — ITA 148(9), Reg. 310; "consequence of the death" — ITA 248(8); "disposed" — ITA 248(1)"disposition"; "life annuity contract" — Reg. 301(1), (2); "life insurance policy" — ITA 138(12), Reg. 310; "life insurer" — ITA 248(1); "mortality gain" — Reg. 308(2); "mortality loss" — Reg. 308(3); "person" — ITA 248(1); "policy loan" — ITA 148(9), Reg. 310; "probability" — Reg. 308(1.1); "taxpayer" — ITA 248(1).

309. Prescribed premiums and prescribed increases — (1) For the purposes of subsections 12.2(9) and 89(2) of the Act, section 306 and this section, a premium at any time under a life insurance policy is a "prescribed premium" if the total amount of one or more premiums paid at that time under the policy exceeds the amount of premium that, under the policy, was scheduled to be paid at that time and that was fixed and determined on or before December 1, 1982, adjusted for such of the following transactions and events that have occurred after that date in respect of the policy:

(a) a change in underwriting class;

(b) a change in premium due to a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year;

(c) an addition or deletion of accidental death or guaranteed purchase option benefits or disability benefits that provide for annuity payments or waiver of premiums;

(d) a premium adjustment as a result of interest, mortality or expense considerations, or of a change in the benefit on death under the policy relating to an increase in the Consumer Price Index (as published by Statistics Canada under the authority of the *Statistics Act*) where such adjustment

(i) is made by the life insurer on a class basis pursuant to the policy's terms as they read on December 1, 1982, and

(ii) is not made as a result of the exercise of a conversion privilege under the policy;

(e) a change arising from the provision of an additional benefit on death under a participating life insurance policy (within the meaning assigned by paragraph 138(12)(k) [138(12)"participating life insurance policy"] of the Act) as, on account or in lieu of payment of, or in satisfaction of

(i) policy dividends or other distributions of the life insurer's income from its participating life insurance business as determined under section 2402, or

(ii) interest earned on policy dividends that are held on deposit by the life insurer;

(f) redating lapsed policies within the reinstatement period referred to in subparagraph 148(9)(c)(vi) [148(9)"disposition"(g)] of the Act or redating for policy loan indebtedness;

(g) a change in premium due to a correction of erroneous information contained in the application for the policy;

(h) payment of a premium after its due date, or payment of a premium no more than 30 days before its due date, as established on or before December 1, 1982; and

(i) the payment of an amount described in subparagraph 148(9)(e.1)(i) [148(9)"premium"(a)] of the Act.

(2) For the purposes of subsections 12.2(9) and 89(2) of the Act, a "prescribed increase" in a benefit on death under a life insurance policy has occurred at any time where the amount of the benefit on death under the policy at that time exceeds the amount of the benefit on death at that time under the policy that was fixed and determined on or before December 1, 1982, adjusted for such of the following transactions and events that have occurred after that date in respect of the policy:

(a) an increase resulting from a change described in paragraph (1)(e);

(b) a change as a result of interest, mortality or expense considerations, or an increase in the Consumer Price Index (as published by Statistics Canada under the authority of the *Statistics Act*) where such change is made by the life insurer on a class basis pursuant to the policy's terms as they read on December 1, 1982;

(c) an increase in consequence of the prepayment of premiums (other than prescribed premiums) under the policy where such increase does not exceed the aggregate of the premiums that would otherwise have been paid;

(d) an increase in respect of a policy for which

(i) the benefit on death was, at December 1, 1982, a specific mathematical function of the policy's cash surrender value or factors including the policy's cash surrender value, and

(ii) that function has not changed since that date,

unless any part of such increase is attributable to a prescribed premium paid in respect of a policy or to income earned on such a premium; and

(e) an increase that is granted by the life insurer on a class basis without consideration and not pursuant to any term of the contract.

(3) For the purposes of subsections (1) and (2), a life insurance policy that is issued as a result of the exercise of a renewal privilege provided under the terms of another policy as they read on December 1, 1982 shall be deemed to be a continuation of that other policy.

(4) For the purposes of subsection (2), a life insurance policy that is issued as a result of the exercise of a conversion privilege provided under the terms of another policy as they read on December 1, 1982 shall be deemed to be a continuation of that other policy except that any portion of the policy relating to the portion of the benefit on death, immediately before the conversion, that arose as a consequence of an event occurring after December 1, 1982 and described in paragraph (1)(e) shall be deemed to be a separate life insurance policy issued at the time of the conversion.

History: S. 309 added by P.C. 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 309]: "amount", "annuity" — ITA 248(1); "benefit on death" — Reg. 310; "Canada" — ITA 255, *Interpretation Act* 35(1); "cash surrender value" — ITA 148(9), Reg. 310; "continuation" — Reg. 309(3), (4); "dividend", "insurer", "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310; "life insurer" — ITA 248(1); "policy loan" — ITA 148(9), Reg. 310; "prescribed" — ITA 248(1); "prescribed premium" — Reg. 309(1).

Interpretation Bulletins: IT-66R6: Capital dividends; IT-87R2: Policyholders' income from life insurance policies.

310. Interpretation — For the purposes of sections 300, 301 and 304 to 309 and this section,

"amount payable" has the meaning assigned by paragraph 138(12)(b.1) [138(12)"amount payable"] of the Act;

"benefit on death" does not include policy dividends or any interest thereon held on deposit by an insurer or any additional amount payable as a result of accidental death;

"cash surrender value" has the meaning assigned by paragraph 148(9)(b) [148(9)"cash surrender value"] of the Act;

"life insurance policy" has the meaning assigned by paragraph 138(12)(f) [138(12)"life insurance policy"] of the Act;

"life insurance policy in Canada" has the meaning assigned by paragraph 138(12)(g) [138(12)"life insurance policy in Canada"] of the Act;

"policy anniversary" includes, where a life insurance policy was in existence throughout a calendar year and there would not otherwise be a policy anniversary in the year in respect of the policy, the end of the calendar year;

"policy loan" has the meaning assigned by paragraph 148(9)(e) [148(9)"policy loan"] of the Act;

"proceeds of the disposition" has the meaning assigned by paragraph 148(9)(e.2) [148(9)"proceeds of the disposition"] of the Act;

"tax anniversary date" in relation to an annuity contract means the second anniversary date of the contract to occur after October 22, 1968.

History: S. 310 added by 1983-3530, s. 5, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 310]: "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 310; "annuity", "dividend", "insurer" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 310.

PART IV — TAXABLE INCOME EARNED IN A PROVINCE BY A CORPORATION

History: Part IV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

400. Interpretation — **(1)** For the purposes of paragraph 124(4)(a) [124(4)"taxable income earned in the year in a province"] of the Act, a corporation's "taxable income earned in the year in a province" means the aggregate of the taxable incomes of the corporation earned in the year in each of the provinces.

History: Subsec. 400(1) substituted by P.C. 1981-808, s. 1, March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable to the 1980 and subsequent taxation years.

Subsec. 400(1) substituted by P.C. 1978-3101, s. 1, October 12, 1978, *Canada Gazette*, Part II, October 25, 1978, applicable to the 1978 and subsequent taxation years.

(2) For the purposes of this Part, "permanent establishment" in respect of a corporation means a fixed place of business of the corporation, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, and

(a) where the corporation does not have any fixed place of business it means the principal place in which the corporation's business is conducted;

(b) where a corporation carries on business through an employee or agent, established in a particular place, who has general authority to contract for his employer or principal or who has a stock of merchandise owned by his employer or principal from which he regularly fills orders which he receives, the corporation shall be deemed to have a permanent establishment in that place;

(c) an insurance corporation is deemed to have a permanent establishment in each province and country in which the corporation is registered or licensed to do business;

(d) where a corporation, otherwise having a permanent establishment in Canada, owns land in a province, such land shall be deemed to be a permanent establishment;

(e) where a corporation uses substantial machinery or equipment in a particular place at any time in a taxation year it shall be deemed to have a permanent establishment in that place;

(f) the fact that a corporation has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to mean that the corporation has a permanent establishment; and

(g) the fact that a corporation has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in trade or business in a place shall not of itself be held to mean that the corporation is operating a permanent establishment in that place.

Related Provisions: Reg. 5906 — Carrying on business in a country.

History: All that portion of subsec. 400(2) preceding para. (a) amended by P.C. 1994-139, subsec. 1(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 10:00 p.m. EDST, April 26, 1989.

All that portion of subsec. 400(2) preceding para. (a) substituted by P.C. 1986-772, s. 1, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

Interpretation Bulletins: IT-177R2: Permanent establishment of a corporation in a province and of a foreign enterprise in Canada; IT-393R2: Election re tax on rents and timber royalties — non-residents.

I.T. Technical News: No. 2 (permanent establishment in province through an agent).

Definitions [Reg. 400]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "employer", "insurance corporation", "office" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "subsidiary controlled corporation" — ITA 248(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

401. Computation of taxable income — The amount of taxable income of a corporation earned in a year in a particular province shall be determined in accordance with the provisions of this Part.

Definitions [Reg. 401]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1).

402. General rules — **(1)** Where, in a taxation year, a corporation had a permanent establishment in a particular province and had no permanent establishment outside that province, the whole of its taxable income for the year shall be deemed to have been earned therein.

(2) Where, in a taxation year, a corporation had no permanent establishment in a particular province, no part of its taxable income for the year shall be deemed to have been earned therein.

(3) Except as otherwise provided, where, in a taxation year, a corporation had a permanent establishment in a province and a permanent establishment outside that province, the amount of its taxable income that shall be deemed to have been earned in the year in the province is

(a) in any case other than a case specified in paragraph (b) or (c), ½ the aggregate of

(i) that proportion of its taxable income for the year that the gross revenue for the year reasonably attributable to the permanent establishment in the province is of its total gross revenue for the year, and

(ii) that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the corporation to employees of the permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation;

(b) in any case where the gross revenue for the year of the corporation is nil, that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the corporation to employees of the permanent establishment in the province is

of the aggregate of all salaries and wages paid in the year by the corporation; and

(c) in any case where the aggregate of the salaries and wages paid in the year by the corporation is nil, that proportion of its taxable income for the year that the gross revenue for the year reasonably attributable to the permanent establishment in the province is of its total gross revenue for the year.

Forms: T2S-TC: Tax calculation supplementary — corporations.

(4) For the purpose of determining the gross revenue for the year reasonably attributable to a permanent establishment in a province or country other than Canada, within the meaning of subsection (3), the following rules shall apply:

(a) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(b) except as provided in paragraph (c), where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(c) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(d) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(e) except as provided in paragraph (f), where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(f) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured, or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(g) where gross revenue is derived from services rendered in the particular province or country, the gross revenue shall be attributable to the permanent establishment in the province or country;

(h) where gross revenue is derived from services rendered in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the contract may reasonably be regarded as being attached to the permanent establishment of the taxpayer in the particular province or country, the gross revenue shall be attributable to that permanent establishment;

(i) where standing timber or the right to cut standing timber is sold and the timber limit on which the timber is standing is in the particular province or country, the gross revenue from such sale shall be attributable to the permanent establishment of the taxpayer in the province or country; and

(j) gross revenue which arises from leasing land owned by the taxpayer in a province and which is included in computing its income under Part I of the Act shall be attributable to the permanent establishment, if any, of the taxpayer in the province where the land is situated.

(4.1) For the purposes of subsections (3) and (4), where, in a taxation year,

(a) the destination of a shipment of merchandise to a customer to whom the merchandise is sold by a corporation is in a country other than Canada or the customer to whom merchandise is sold by a corporation instructs that the shipment of merchandise be made by the corporation to another person and the customer's office with which the sale was negotiated is located in a country other than Canada,

(b) the corporation has a permanent establishment in the other country, and

(c) the corporation is not subject to taxation on its income under the laws of the other country, or its gross revenue derived from the sale is not included in computing the income or profit or other base for income or profits taxation by the other country, because of

(i) the provisions of any taxing statute of the other country, or

(ii) the operation of any tax treaty or convention between Canada and the other country,

the following rules apply:

(d) with respect to the gross revenue derived from the sale,

(i) paragraphs 4(a) and (d) do not apply,

(ii) that portion of paragraph 4(c) preceding subparagraph (i) thereof shall be read as follows:

"(c) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a country other than Canada," and

(iii) that portion of paragraph 4(f) preceding subparagraph (i) thereof shall be read as follows:

"(f) where a customer to whom the merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a country other than Canada,"; and

(e) for the purposes of subparagraph (3)(a)(ii), paragraph (3)(b) and subparagraphs (4)(c)(ii) and (f)(ii), salaries and wages paid in the year to employees of any permanent establishment of the corporation located in that other country shall be deemed to be nil.

History: Subsec. 402(4.1) added by P.C. 1994-662, s. 1, April 28, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to taxation years commencing after 1992, and where the corporation so elects by notifying the Minister of National Revenue in writing by November 30, 1994, to taxation years ending after 1991.

(5) For the purposes of subsection (3), "gross revenue" does not include interest on bonds, debentures or mortgages, dividends on shares of capital stock, or rentals or royalties from property that is not used in connection with the principal business operations of the corporation.

(6) For the purposes of subsection (3), where part of the corporation's operations were conducted in partnership with one or more other persons

(a) the corporation's gross revenue for the year, and

(b) the salaries and wages paid in the year by the corporation,

shall include, in respect of those operations, only that proportion of

(c) the total gross revenue of the partnership for its fiscal period ending in or coinciding with the year, and

(d) the total salaries and wages paid by the partnership in its fiscal period ending in or coinciding with the year,

respectively, that

(e) the corporation's share of the income or loss of the partnership for the fiscal period ending in or coinciding with the year,

is of

(f) the total income or loss of the partnership for the fiscal period ending in or coinciding with the year.

(7) Where a corporation pays a fee to another person under an agreement pursuant to which that other person or employees of that other person perform services for the corporation that would normally be performed by employees of the corporation, the fee so paid shall be deemed to be salary paid in the year by the corporation and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a particular permanent establishment of the corporation shall be deemed to be salary paid to an employee of that permanent establishment.

(8) For the purposes of subsection (7), a fee does not include a commission paid to a person who is not an employee of the corporation.

History: Subsec. 402(3), all that portion of subsec. 402(4) preceding para. (a), subsec. 402(b) substituted by P.C. 1980-3346, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 402]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "employee" — ITA 248(1); "fee" — Reg. 402(8); "fiscal period" — ITA 249.1; "gross revenue" — Reg. 402(4), (5), (6); "office" — ITA 248(1); "permanent establishment" — Reg. 400(2); "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 413(1); "share" — ITA 248(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total gross revenue for the year" — Reg. 413(2).

Interpretation Bulletins: IT-177R2: Permanent establishment of corporation in province and of foreign enterprise in Canada.

402.1 Transitional — Taxable income earned in the 1978 taxation year in the Northwest Territories — Where in its 1978 taxation year a corporation had a permanent establishment in the Northwest Territories, its taxable income earned in the year in the Northwest Territories is that proportion of the amount thereof otherwise determined in accordance with this Part that the number of days in that portion of the 1978 taxation year of the corporation that is in 1978 is of the number of days in the whole of that taxation year.

History: S. 402.1 added by P.C. 1978-3101, s. 2, October 12, 1978, *Canada Gazette*, Part II, October 25, 1978.

402.2 Transitional — Taxable income earned in the 1980 taxation year in the Yukon Territory — Where in its 1980 taxation year a corporation had a permanent establishment in the Yukon Territory, its taxable income earned in the year in the Yukon Territory is that proportion of the amount thereof otherwise determined in accordance with this Part that the number of days in that portion of the 1980 taxation year of the corporation that is in 1980 is of the number of days in the whole of that taxation year.

History: S. 402.2 added by P.C. 1981-808, s. 2, March 26, 1981, *Canada Gazette*, Part II, April 8, 1981.

403. Insurance corporations — (1) Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned in a taxation year in a particular province by an insurance corporation is that proportion of its taxable income for the year that the aggregate of

(a) its net premiums for the year in respect of insurance on property situated in the province, and

(b) its net premiums for the year in respect of insurance, other than on property, from contracts with persons resident in the province,

is of the total of such of its net premiums for the year as are included in computing its income for the purposes of Part I of the Act.

(2) In this section, "net premiums" of a corporation for a taxation year means the aggregate of the gross premiums received by the corporation in the year (other than consideration received for annuities), minus the aggregate for the year of

(a) premiums paid for reinsurance,

(b) dividends or rebates paid or credited to policyholders, and

(c) rebates or returned premiums paid in respect of the cancellation of policies,

by the corporation.

(3) For the purposes of subsection (1), where an insurance corporation had no permanent establishment in a taxation year in a particular province,

(a) each net premium for that year in respect of insurance on property situated in the particular province shall be deemed to be a net premium in respect of insurance on property situated in the province in which the permanent establishment of the corporation to which the net premium is reasonably attributable is situated; and

(b) each net premium for that year in respect of insurance, other than on property, from contracts with persons resident in the particular province shall be deemed to be a net premium in respect of insurance, other than on property, from contracts with persons resident in the province in which the permanent establishment of the corporation to which the net premium is reasonably attributable is situated.

Definitions [Reg. 403]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "insurance corporation" — ITA 248(1); "net premiums" — Reg. 403(2), (3); "permanent establishment" — Reg. 400(2); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

404. Chartered banks — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned by a chartered bank in a taxation year in a province in which it had a permanent establishment is 1/3 of the aggregate of

(a) that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the bank to employees of its permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the bank, and

(b) twice that proportion of its taxable income for the year that the aggregate amount of loans and deposits of its permanent establishment in the province for the year is of the aggregate amount of all loans and deposits of the bank for the year.

(2) For the purposes of subsection (1), the amount of loans for a taxation year is 1/12 of the aggregate of the amounts outstanding, on the loans made by the bank, at the close of business on the last day of each month in the year.

(3) For the purposes of subsection (1), the amount of deposits for a taxation year is 1/12 of the aggregate of the amounts on deposit with the bank at the close of business on the last day of each month in the year.

(4) For the purposes of subsections (2) and (3), loans and deposits do not include bonds, stocks, debentures, items in transit and deposits in favour of Her Majesty in right of Canada.

History: Subsec. 404(1) substituted by P.C. 1980-3346, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 404]: "amount" — ITA 248(1); "bank" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "deposits" — Reg. 404(3), (4); "employee" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "loans" — Reg. 404(2), (4); "month" — *Interpretation Act* 35(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 413(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

405. Trust and loan corporations — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned in a taxation year by a trust and loan corporation, trust corporation or loan corporation in a province in which it had a permanent establishment is that proportion of its taxable income for the year that the gross revenue for the year of its permanent establishment in the province is of the total gross revenue for the year of the corporation.

(2) In subsection (1), "gross revenue for the year of its permanent establishment in the province" means the aggregate of the gross revenue of the corporation for the year arising from

(a) loans secured by lands situated in the province;

(b) loans, not secured by land, to persons residing in the province;

(c) loans

(i) to persons residing in a province or country other than Canada in which the corporation has no permanent establishment, and

(ii) administered by a permanent establishment in the province,

except loans secured by land situated in a province or country other than Canada in which the corporation has a permanent establishment; and

(d) business conducted at the permanent establishment in the province, other than revenue in respect of loans.

History: S. 405 substituted by P.C. 1980-3346, s. 3, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 405]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "gross revenue" — ITA 248(1); "gross revenue for the year of its permanent establishment in the province" — Reg. 405(2); "permanent establishment" — Reg. 400(2); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

406. Railway corporations — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned by a railway corporation in a taxation year in a province in which it had a permanent establishment is, unless subsection (2) applies, 1/2 the aggregate of

(a) that proportion of the taxable income of the corporation for the year that the equated track miles of the corporation in the province is of the equated track miles of the corporation in Canada; and

(b) that proportion of the taxable income of the corporation for the year that the gross ton miles of the cor-

poration for the year in the province is of the gross ton miles of the corporation for the year in Canada.

(2) Where a corporation to which subsection (1) would apply, if this subsection did not apply thereto, operates an airline service, ships or hotels or receives substantial revenues that are petroleum or natural gas royalties, or does a combination of two or more of those things, the amount of its taxable income that shall be deemed to have been earned in a taxation year in a province in which it had a permanent establishment is the aggregate of the amounts computed

(a) by applying the provisions of section 407 to that part of its taxable income for the year that may reasonably be considered to have arisen from the operation of the airline service;

(b) by applying the provisions of section 410 to that part of its taxable income for the year that may reasonably be considered to have arisen from the operation of the ships;

(c) by applying the provisions of section 402 to that part of its taxable income for the year that may reasonably be considered to have arisen from the operation of the hotels;

(d) by applying the provisions of section 402 to that part of its taxable income for the year that may reasonably be considered to have arisen from the ownership by the taxpayer of petroleum or natural gas rights or any interest therein; and

(e) by applying the provisions of subsection (1) to the remaining portion of its taxable income for the year.

(3) In this section, "equated track miles" in a specified place means the aggregate of

(a) the number of miles of first main track,

(b) 80 per cent of the number of miles of other main tracks, and

(c) 50 per cent of the number of miles of yard tracks and sidings,

in that place.

(4) For the purpose of making an allocation under paragraph (2)(b), a reference in section 410 to "salaries and wages paid in the year by the corporation to employees" shall be read as a reference to salaries and wages paid by the corporation to employees employed in the operation of permanent establishments (other than ships) maintained for the shipping business.

(5) For the purpose of making an allocation under paragraph (2)(c),

(a) a reference in section 402 to "gross revenue for the year reasonably attributable to the permanent establishment in the province" shall be read as a reference to the gross revenue of the taxpayer from operating hotels therein;

(b) a reference in section 402 to "total gross revenue for the year" shall be read as a reference to the total gross revenue of the taxpayer for the year from operating hotels; and

(c) a reference in section 402 to "salaries and wages paid in the year by the corporation to employees" shall be read as a reference to salaries and wages paid to employees engaged in the operations of its hotels.

(6) Notwithstanding subsection 402(5), for the purpose of making an allocation under paragraph (2)(d),

(a) a reference in section 402 to "gross revenue for the year reasonably attributable to the permanent establishment in the province" shall be read as a reference to the gross revenue of the taxpayer from the ownership by the taxpayer of petroleum and natural gas rights in lands in the province and any interest therein;

(b) a reference in section 402 to "total gross revenue for the year" shall be read as a reference to the total gross revenue of the taxpayer from ownership by the taxpayer of petroleum and natural gas rights and any interest therein; and

(c) a reference in section 402 to "salaries and wages paid in the year by the corporation to employees" shall be read as a reference to salaries and wages paid to employees employed in connection with the corporation's petroleum and natural gas rights and interests therein.

History: All that portion of subsec. 406(1) preceding para. (a), and subsec. 406(2) substituted by P.C. 1980-3346, s. 4, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 406]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed", "employee" — ITA 248(1); "equated track miles" — Reg. 406(3); "gross revenue" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

407. Airline corporations — **(1)** Notwithstanding subsections 402(3) and (4), the amount of taxable income that shall be deemed to have been earned in a taxation year by an airline corporation in a province in which it had a permanent establishment is the amount that is equal to ¼ of the aggregate of

(a) that proportion of its taxable income for the year that the capital cost of all the corporation's fixed assets, except aircraft, in the province at the end of the year is of the capital cost of all its fixed assets, except aircraft, in Canada at the end of the year; and

(b) that proportion of its taxable income for the year that three times the number of revenue plane miles flown by its aircraft in the province during the year is of the total number of revenue plane miles flown by its aircraft in Canada during the year other than miles flown in a province in which the corporation had no permanent establishment.

(2) For the purposes of this section, "revenue plane miles flown" shall be weighted according to take-off weight of the aircraft operated.

(3) For the purposes of this section, "take-off weight" of an aircraft means

(a) for an aircraft in respect of which an application form for a Certificate of Airworthiness has been submitted to and accepted by the Department of Transport, the maximum permissible take-off weight, in pounds, shown on the form; and

(b) for any other aircraft, the weight, in pounds, that may reasonably be considered to be the equivalent of the weight referred to in paragraph (a).

History: Para. 407(1)(b) substituted by P.C. 1994-662, s. 2, April 28, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to taxation years commencing after 1992.

Subsec. 407(1) substituted by P.C. 1980-3346, s. 5, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Subsecs. 407(2), (3) substituted by P.C. 1978-1004, s. 1, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978, applicable to taxation years commencing on and after January 1, 1978.

Definitions [Reg. 407]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "revenue plane miles flown" — Reg. 407(2); "take-off weight" — Reg. 407(3); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

408. Grain elevator operators — Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the operation of grain elevators that shall be deemed to have been earned by that corporation in a taxation year in a province in which it had a permanent establishment is ½ of the aggregate of

(a) that proportion of its taxable income for the year that the number of bushels of grain received in the year in the elevators operated by the corporation in the province is of the total number of bushels of grain received in the year in all the elevators operated by the corporation; and

(b) that proportion of its taxable income for the year that the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation.

History: S. 408 substituted by P.C. 1980-3346, s. 6, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 408]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year", "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

409. Bus and truck operators — Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the transportation of goods or passengers (other than by the operation of a railway, ship or airline service) that shall be deemed to have been earned by that corporation in a taxation year in a province in which it had a permanent establishment is ½ of the aggregate of

(a) that proportion of its taxable income for the year that the number of kilometres driven by the corporation's vehicles, whether owned or leased, on roads in the province in the year is of the total number of kilometres driven by those vehicles in the year on roads other than roads in provinces or countries in which the corporation had no permanent establishment; and

(b) that proportion of its taxable income for the year that the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishment in the province is of the aggregate of all salaries and wages paid in the year by the corporation.

History: Para. 409(a) substituted by P.C. 1986-1251, s. 1, May 29, 1986, *Canada Gazette*, Part II, June 11, 1986, applicable to 1985 *et seq.*

S. 409 substituted by P.C. 1980-3346, s. 7, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 409]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year", "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

410. Ship operators — (1) Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the operation of ships that shall be deemed to have been earned by the corporation in a taxation year in a province in which it had a permanent establishment is the aggregate of,

(a) that portion of its allocable income for the year that its port-call-tonnage in the province is of its total port-call-tonnage in all the provinces in which it had a permanent establishment; and

(b) if its taxable income for the year exceeds its allocable income for the year, that proportion of the excess that the aggregate of the salaries and wages paid in the year by the corporation to employees of the permanent establishment (other than a ship) in the province is of the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishments (other than ships) in Canada.

(2) In this section,

(a) "allocable income for the year" means that proportion of the taxable income of the corporation for the year that its total port-call-tonnage in Canada is of its total port-call-tonnage in all countries; and

(b) "port-call-tonnage" in a province or country means the aggregate of the products obtained by multiplying, for each ship operated by the corporation, the number of calls made in the year by that ship at ports in that province or country by the number of tons of the registered net tonnage of that ship.

History: S. 410 substituted by P.C. 1980-3346, s. 7, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 410]: "allocable income for the year" — Reg. 410(2)(a); "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "port-call tonnage" — Reg. 410(2)(b); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year by the corporation to employees" — Reg. 406(4); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

411. Pipeline operators — Notwithstanding subsections 402(3) and (4), the amount of taxable income of a corporation whose chief business is the operation of a pipeline that shall be deemed to have been earned by that corporation in a taxation year in a province in which it had a permanent establishment is ½ of the aggregate of

(a) that proportion of its taxable income for the year that the number of miles of pipeline of the corporation in the province is of the number of miles of pipeline of the corporation in all the provinces in which it had a permanent establishment; and

(b) that proportion of its taxable income for the year that the aggregate of the salaries and wages paid in the year by the corporation to employees of its permanent establishment in the province is of the aggregate of salaries and wages paid in the year by the corporation to employees of its permanent establishments in Canada.

History: S. 411 substituted by P.C. 1980-3346, s. 7, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of taxation years of corporations commencing after 1980.

Definitions [Reg. 411]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1),

Interpretation Act 35(1); "employee" — ITA 248(1); "permanent establishment" — Reg. 400(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year", "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

412. Divided businesses — Where part of the business of a corporation for a taxation year, other than a corporation described in section 403, 404, 405, 406, 407, 408, 409, 410 or 411, consisted of operations normally conducted by a corporation described in one of those sections, the corporation and the Minister may agree to determine the amount of taxable income deemed to have been earned in the year in a particular province to be the aggregate of the amounts computed

(a) by applying the provisions of such of those sections as would have been applicable if it had been a corporation described therein to the portion of its taxable income for the year that might reasonably be considered to have arisen from that part of the business; and

(b) by applying the provisions of section 402 to the remaining portion of its taxable income for the year.

Definitions [Reg. 412]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — Reg. 413(1); "taxation year" — ITA 249.

413. Non-resident corporations — **(1)** For the purposes of this Part, where a corporation is not resident in Canada, "salaries and wages paid in the year" by the corporation does not include salaries and wages paid to employees of a permanent establishment outside Canada and "taxable income" shall be deemed to refer to taxable income earned in Canada as determined under section 115 of the Act.

(2) For the purposes of paragraph 402(3)(a), where a corporation is not resident in Canada, "total gross revenue for the year" of the corporation does not include gross revenue reasonably attributable to a permanent establishment outside Canada.

Definitions [Reg. 413]: "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "gross revenue" — ITA 248(1); "permanent establishment" — Reg. 400(2); "resident in Canada" — ITA 250; "taxable income" — Reg. 413(1); "taxable income earned in Canada" — ITA 248(1).

414. Nova Scotia offshore area — For the purpose of subsection 123(2) of the Act, the "amount taxable earned by the corporation in the year in the Nova Scotia offshore area", in respect of a corporation for a taxation year, means the amount of taxable income of the corporation earned in the year that would be allocated under this Part to the Nova Scotia offshore area if the reference to the word "province" in this Part were read as "Nova Scotia offshore area".

Definitions [Reg. 414]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Nova Scotia offshore area" — Reg. 415; "taxation year" — ITA 249.

415. For the purposes of this Part and subsection 123(2) of the Act, "Nova Scotia offshore area" has the meaning assigned to the expression "offshore area" by subsection 63(1) of the *Canada-Nova Scotia Oil and Gas Agreement Act*.

History: Ss. 414 and 415 added by P.C. 1985-2433, August 7, 1985, *Canada Gazette*, Part II, August 21, 1985, applicable to taxation years commencing after June 22, 1984.

PART V — NON-RESIDENT-OWNED INVESTMENT CORPORATIONS

History: Part V was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

500. Elections — Any election by a corporation to be taxed under section 133 of the Act shall be made by forwarding by registered mail to the Director–Taxation at the District Office of the Department of National Revenue, Taxation that serves the area in which the head office of the corporation is located the following documents:

(a) a letter stating that the corporation elects to be taxed under the said section 133;

(b) a certified copy of the resolution of the directors of the corporation authorizing the election to be made; and

(c) a certified list showing

(i) the names and addresses of the registered shareholders and the number of shares of each class held by each,

(ii) the names and addresses of the holders of the corporation's bonds, debentures, or other funded indebtedness, if any, and

(iii) the names and addresses of the beneficial owners of shares, bonds, debentures, or other funded indebtedness in cases where the registered shareholders or holders, as the case may be, are not the beneficial owners.

History: S. 500 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to substitute "Director–Taxation at the District Office of the Department of National Revenue, Taxation that serves the area in which the head office of the corporation is located" for "Deputy Minister of National Revenue for Taxation at Ottawa", and to remove the requirement to file duplicate copies of the documents listed.

Definitions [Reg. 500]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "office", "share", "shareholder" — ITA 248(1).

501. Elections revoked — Any election to be taxed under section 133 of the Act shall be revoked by a corporation by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents in duplicate:

(a) a letter stating that the corporation revokes its election; and

(b) a certified copy of the resolution of the directors of the corporation authorizing the election to be revoked.

Definitions [Reg. 501]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1).

502. Certificates of changes of ownership — A corporation which is taxable under section 133 of the Act shall attach to its return of income required under subsection 150(1) of the Act, a certified statement showing any changes during the taxation year in the information referred to in paragraph 500(c).

Definitions [Reg. 502]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "taxation year" — ITA 249.

503. [Revoked]

History: S. 503 revoked by P.C. 1980-502, s. 1, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective January 1, 1979.

PART VI — ELECTIONS

600. [Prescribed provisions for late elections] — For the purposes of paragraphs 220(3.2)(a) and (b) of the Act, the following are prescribed provisions:

(a) section 21 of the Act;

(b) subsections 13(4) and (7.4), 14(6), 44(1) and (6), 45(2) and (3), 50(1), 53(2.1), 70(6.2), (9), (9.1), (9.2) and (9.3), 72(2), 73(1), 80(3), 80.1(4), 82(3), 83(2), 104(5.3) and (14), 110.4(2), 146.01(7), 164(6) and 184(3) of the Act;

(b.1) [Repealed]

(c) paragraphs 48(1)(a) and (c), 66.7(7)(c), (d) and (e) and (8)(c), (d) and (e), 80.01(4)(c) and 128.1(4)(d) of the Act;

Proposed Amendment — Reg. 600(c)

(c) paragraphs 48(1)(a) and (c), 66.7(7)(c), (d) and (e) and (8)(c), (d) and (e), 80.01(4)(c) and 128.1(4)(d), (6)(a) and (c) and (7)(c) of the Act;

Application: The December 17, 1999 draft regulations (taxpayer migration), s. 1, will amend Reg. 600(c) to read as above, applicable after October 1, 1996.

Technical Notes: Subsection 220(3.2) of the Act allows the Minister of National Revenue to extend the time for the filing of, or allow the amendment or revocation of, certain elections under the Act and Regulations. The list of those elections, in Part VI of the Regulations, is amended to include the elections contemplated by new paragraphs 128.1(6)(a) and (c) and (7)(c) of the Act. This amendment applies after October 1, 1996.

(c.1) subparagraph 128.1(4)(b)(iv) of the Act; and

(d) subsections 1103(1), (2) and (2d) and 5907(2.1) of these Regulations.

History: Para 600(b.1) repealed by P.C. 1998-2270, s. 7, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, deemed to have come into force on February 1, 1998.

Paras. 600(b) and (c) amended and (b.1) added by P.C. 1997-1472, s. 1, October 9, 1997, *Canada Gazette*, Part II, October 29, 1997, effective October 29, 1997.

Paras. 600(b), (c) and (d) amended by P.C. 1996-214, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, effective March 6, 1996.

Paras. 600(b), (c) and (d) amended and para. (c.1) added, by P.C. 1995-1210, July 26, 1995, *Canada Gazette*, Part II, August 9, 1995.

Paras. 600(b) and (c) amended by P.C. 1993-1942, December 2, 1993, *Canada Gazette*, Part II, December 15, 1993.

Part VI (s. 600) added by P.C. 1992-914, May 7, 1992, *Canada Gazette*, Part II, May 20, 1992 effective commencing December 17, 1991.

Former Part VI "Credit Union Reserves", revoked by P.C. 1990-2779, s. 1, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after June 17, 1987 that end after 1987.

Definitions [Reg. 600]: "Canada" — ITA 255, *Interpretation Act* 35(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

PART VII — LOGGING TAXES ON INCOME

History: Part VII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Heading preceding s. 700 substituted by P.C. 1978-1315, s. 1, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

700. Logging — **(1)** Except as provided in subsection (2), for the purposes of paragraph 127(2)(a) [127(2)"income for the year from logging operations in the province"] of the Act "income for the year from logging operations in the province" means the aggregate of

(a) where standing timber is cut in the province by the taxpayer or logs cut from standing timber in the province are acquired by the taxpayer and the logs so obtained are sold by the taxpayer in the province before or on delivery to a sawmill, pulp or paper plant or other place for processing logs, the taxpayer's income for the year from the sale, other than any portion thereof that was included in computing the taxpayer's income from logging operations in the province for a previous year;

(b) where standing timber in the province or the right to cut standing timber in the province is sold by the taxpayer, the taxpayer's income for the year from the sale, other than any portion thereof that was included in computing the taxpayer's income from logging operations in the province for a previous year;

(c) where standing timber is cut in the province by the taxpayer or logs cut from standing timber in the province are acquired by the taxpayer, if the logs so obtained are

(i) exported from the province and are sold by him prior to or on delivery to a sawmill, pulp or paper plant or other place for processing logs, or

(ii) exported from Canada,

the amount computed by deducting from the value, as determined by the province, of the logs so exported in the year, the aggregate of the costs of acquiring, cutting, transporting and selling the logs; and

(d) where standing timber is cut in the province by the taxpayer or logs cut from standing timber in the province are acquired by the taxpayer, if the logs are processed by the taxpayer or by a person on his behalf in a sawmill, pulp or paper plant or other place for processing logs in Canada, the income of the taxpayer for the year from all sources minus the aggregate of

(i) his income from sources other than logging operations carried on in Canada and other than the processing in Canada by him or on his behalf and sale by him of logs, timber and products produced therefrom,

(ii) each amount included in the aggregate determined under this subsection by virtue of paragraph (a), (b) or (c), and

(iii) an amount equal to eight per cent of the original cost to him of properties described in Schedule II used by him in the year in the processing of logs or products derived therefrom or, if the amount so determined is greater than 65 per cent of the income remaining after making the deductions under subparagraphs (i) and (ii), 65 per cent of the income so remaining or, if the amount so determined is less than 35 per cent of the income so remaining, 35 per cent of the income so remaining.

History: Paras. 700(1)(a), (b) substituted by P.C. 1992-1862, August 27, 1992, *Canada Gazette*, Part II, September 9, 1992, applicable in respect of taxation years beginning after 1990.

All that portion of para. 700(1)(d) preceding subpara. (ii) and all that portion of para. 700(2)(b) preceding subpara. (ii) substituted by P.C. 1987-2355, November 26, 1987, *Canada Gazette*, Part II, December 9, 1987, applicable to taxation years ending after December 9, 1987.

(2) Where the taxpayer cuts standing timber or acquires logs cut from standing timber in more than one province,

for the purposes of paragraph 127(2)(a) [127(2)"income for the year from logging operations in the province"] of the Act "income for the year from logging operations in the province" means the aggregate of

(a) the amounts determined in respect of that province in accordance with paragraphs (1)(a), (b) and (c); and

(b) where the logs are processed by the taxpayer or by a person on his behalf in a sawmill, pulp or paper plant or other place for processing logs in Canada, an amount equal to the proportion of the income of the taxpayer for the year from all sources minus the aggregate of

(i) his income from sources other than logging operations carried on in Canada and other than the processing in Canada by him or on his behalf and sale by him of logs, timber and products produced therefrom,

(ii) the aggregate of amounts determined in respect of each province in accordance with paragraphs (1)(a), (b) and (c), and

(iii) an amount equal to eight per cent of the original cost to him of properties described in Schedule II used by him in the year in the processing of logs or products derived therefrom or, if the amount so determined is greater than 65 per cent of the income remaining after making the deductions under subparagraphs (i) and (ii), 65 per cent of the income so remaining or, if the amount so determined is less than 35 per cent of the income so remaining, 35 per cent of the income so remaining,

that

(iv) the quantity of standing timber cut in the province in the year by the taxpayer and logs cut from standing timber in the province acquired by the taxpayer in the year,

is of

(v) the total quantity of standing timber cut and logs acquired in the year by the taxpayer.

Forms: T2 SCH 21: Federal foreign income tax credits and federal logging tax credit.

(3) For the purposes of paragraph 127(2)(b) [127(2)"logging tax"] of the Act, the tax imposed by the legislature of

(a) the Province of British Columbia under the *Logging Tax Act* of that province, and

(b) [Revoked]

(c) the Province of Quebec under Part VII of the *Taxation Act* of that province,

are each declared to be a tax of general application on income from logging operations.

History: Para. 700(3)(b) revoked, (c) substituted by P.C. 1982-3879, December 16, 1982, *Canada Gazette*, Part II, January 12, 1983, applicable, as to para. 700(3)(b), in respect of taxation years ending after March 30, 1972, and, as to para. 700(3)(c), in respect of 1972 *et seq.*

Definitions [Reg. 700]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxpayer" — ITA 248(1).

701. [Revoked]

History: S. 701 revoked by P.C. 1978-1315, s. 2, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

PART VIII — NON-RESIDENT TAXES

History: Part VIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

800. Registered non-resident insurers — For the purposes of subsection 215(4) of the Act, subsections 215(1), (2) and (3) of the Act do not apply to amounts paid or credited to a registered non-resident insurer.

Definitions [Reg. 800]: "amount", "insurer", "non-resident" — ITA 248(1); "registered non-resident insurer" — Reg. 804.

801. Filing of returns by non-resident insurers — For the purposes of subsection 215(4) of the Act, where a taxpayer is a registered non-resident insurer in a taxation year, the taxpayer shall file a return in respect thereof in prescribed form with the Minister within the six month period immediately following the end of the year.

History: S. 801 substituted by P.C. 1990-2002, s. 1, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 801]: "insurer", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "prescribed" — ITA 248(1); "registered non-resident insurer" — Reg. 804; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms: T2016: Part XIII tax return — tax on income from Canada of registered non-resident insurers.

802. Amounts taxable — For the purposes of paragraph 214(13)(c) of the Act, the amounts taxable under Part XIII of the Act in a relevant taxation year of a taxpayer are amounts paid or credited to the taxpayer in the relevant taxation year other than amounts included pursuant to Part I of the Act in computing the taxpayer's income from a business carried on by it in Canada.

Definitions [Reg. 802]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

803. Payment of tax by non-resident insurers — For the purposes of subsection 215(4) of the Act, a taxpayer shall pay to the Receiver General, on or before the last day on which the return in respect of a relevant taxation year is required to be filed pursuant to section 801, the tax payable by the taxpayer under Part XIII of the Act on amounts referred to in section 802 in respect of the relevant taxation year.

Definitions [Reg. 803]: "amount" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

804. Interpretation — In this part, "registered non-resident insurer" means a non-resident corporation registered to carry on business in Canada under Part VIII of the *Canadian and British Insurance Companies Act* or under the *Foreign Insurance Companies Act*.

Proposed Amendment — Reg. 804

804. Interpretation — In this Part, "registered non-resident insurer" means a non-resident corporation approved to carry on business in Canada under the *Insurance Companies Act*.

Application: The September 19, 1997 draft regulations (insurance companies), s. 1, will amend s. 804 to read as above, applicable after December 12, 1991.

Technical Notes: Section 804 defines the term "registered non-resident insurer" as a non-resident corporation registered to carry on business in Canada under Part VIII of the *Canadian and British Insurance Companies Act* or under the *Foreign Insurance*

Companies Act. Those Acts have been replaced by the *Insurance Companies Act*. The reference to those Acts is replaced with a reference to the *Insurance Companies Act*, and the terminology has been changed to refer to a company "approved", rather than "registered", under the new Act.

This amendment applies after December 12, 1991 to coincide with the coming-into-force of the *Insurance Companies Act*.

History: The heading preceding s. 800, and ss. 800 to 804, were substituted by P.C. 1979-1485, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective for 1978 *et seq.*

Definitions [Reg. 804]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "non-resident" — ITA 248(1).

805. Other non-resident persons — **(1)** Every non-resident person who carries on business in Canada shall be taxable under Part XIII of the Act on all amounts otherwise taxable under that Part except those amounts that

(a) may reasonably be attributed to the business carried on by him through a permanent establishment (within the meaning assigned by subsection 400(2) or that would be assigned by that subsection if he were a corporation) in Canada; or

(b) are required by subparagraph 115(1)(a)(iii.3) of the Act to be included in computing his taxable income earned in the year in Canada.

(2) Where the Minister is satisfied that under subsection (1) an amount is not taxable under Part XIII of the Act, he may permit payment to be made to the non-resident person without any deduction being made under section 215 of the Act.

(3) Subsections (1) and (2) do not apply in respect of amounts upon which tax under Part XIII of the Act is payable in a relevant taxation year by a taxpayer required by section 801 to file the return described in that section in respect of that year.

History: Para 805(1)(a) substituted by P.C. 1988-390, s. 3, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988.

Para. 805(1)(b) substituted by P.C. 1984-3789, s. 3, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

Subsec. 805(1) substituted by P.C. 1981-2208, s. 1, August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable to taxation years ending after December 11, 1979.

Definitions [Reg. 805]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "carries on business in Canada" — ITA 253; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "non-resident", "person", "taxable income" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins [Reg. 805]: IT-420R3: Non-residents — income earned in Canada; IT-438R2: Crown charges — resource properties in Canada.

806. International organizations and agencies — For the purposes of clause 212(1)(b)(ii)(B) of the Act, the following international organizations and agencies are hereby prescribed:

(a) Bank for International Settlements;

(b) European Fund;

(c) International Bank for Reconstruction and Development;

(d) International Development Association;

(e) International Finance Corporation; and

(f) International Monetary Fund.

806.1 For the purposes of subparagraph 212(1)(b)(x) of the Act, the Bank for International Settlements and the European Bank for Reconstruction and Development are prescribed international agencies.

History: S. 806.1 substituted by P.C. 1994-270, February 16, 1994, *Canada Gazette*, Part II, March 9, 1994, applicable after 1990.

S. 806.1 added by P.C. 1988-390, s. 4, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective May 24, 1985.

806.2 Prescribed obligation — For the purpose of paragraph 212(1)(b) of the Act, an obligation is a prescribed obligation if it is an indexed debt obligation and no amount payable in respect of it is

(a) contingent or dependent upon the use of, or production from, property in Canada; or

(b) computed by reference to

(i) revenue, profit, cash flow, commodity price or any other similar criterion, other than a change in the purchasing power of money, or

(ii) dividends paid or payable to shareholders of any class of shares.

History: S. 806.2 amended by P.C. 1996-1419, s. 2, September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

S. 806.2 added by P.C. 1993-1331, June 16, 1993, *Canada Gazette*, Part II, June 30, 1993, applicable in respect of debt obligations issued after October 16, 1991.

Definitions [Reg. 806.2]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend", "indexed debt obligation", "prescribed", "property", "share", "shareholder" — ITA 248(1).

Interpretation Bulletins: IT-361R3: Exemption from Part XIII tax on interest payments to non-residents.

807. Identification of obligations — For the purposes of subsection 240(2) of the Act, the letters "AX" or the letter "F" as the case may be, shall be clearly and indelibly printed in gothic or similar style capital letters of seven point or larger size either as a prefix to the coupon number or on the lower right hand corner of each coupon or other writing issued in evidence of a right to interest on an obligation referred to in that subsection.

Definitions [Reg. 807]: "writing" — *Interpretation Act* 35(1).

808. Allowances in respect of investment in property in Canada — **(1)** For the purposes of paragraph 219(1)(h) of the Act, a corporation's allowance for a taxation year in respect of its investment in property in Canada is hereby prescribed to be the amount, if any, by which

(a) the corporation's qualified investment in property in Canada at the end of the year,

exceeds

(b) the aggregate of

(i) all allowances computed under this section as it read in its application to each of the taxation years of the corporation that ended before 1972 to the extent that for those taxation years such allowances reduced the amount on which the corporation was taxable under subsection 110B(1) of the Act as it read in its application to those taxation years, and

(ii) the capital investment of the corporation in property in Canada at the end of the corporation's 1960 taxation year, determined under this section as it read in its application to the 1961 taxation year.

Interpretation Bulletins: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

Proposed Addition — Reg. 808(1.1)

(1.1) Notwithstanding subsection (1), if a corporation becomes resident in Canada at a particular time, the corporation's allowance in respect of its investment in property in Canada for its last taxation year that ended before the particular time is prescribed to be nil.

Application: The October 27, 1998 draft regulations, s. 1, will add 808(1.1), applicable to corporations that become resident in Canada after February 23, 1998.

Technical Notes: Subsection 808(1) of the Regulations specifies the amount of a corporation's allowance in respect of investment in property in Canada for the purposes of the "branch tax" imposed under Part XIV of the Act.

New subsection 808(1.1) provides that where a corporation becomes resident in Canada, the corporation's investment allowance for the taxation year that is deemed to end immediately before immigration is nil. Since the corporation will be unable to claim an investment allowance, it will be liable to pay branch tax on any unremitted profits of a Canadian branch arising in the year or deferred in respect of previous years. Effectively, for an immigrating corporation, unremitted profits of a Canadian branch are treated similarly to the undistributed surplus of a Canadian corporation in which the immigrating corporation holds shares, which is deemed to be distributed as a dividend by paragraph 128.1(1)(c.1) of the Act.

New subsection 808(1.1) applies to corporations that become resident in Canada after February 23, 1998.

(2) For the purposes of subsection (1), where, at the end of a taxation year, a corporation is not a member of a partnership that was carrying on business in Canada at any time in the year, the corporation's "qualified investment in property in Canada at the end of the year" is the amount, if any, by which the aggregate of

(a) the cost amount to the corporation, at the end of the year, of land in Canada owned by it at that time for the purpose of gaining or producing income from a business carried on by it in Canada, other than land that is

(i) described in the corporation's inventory,

(ii) depreciable property,

(iii) a Canadian resource property, or

(iv) land the cost of which is or was deductible in computing the corporation's income,

(b) an amount equal to the aggregate of the cost amount to the corporation, immediately after the end of the year, of each depreciable property in Canada owned by it for the purpose of gaining or producing income from a business carried on by it in Canada,

(c) an amount equal to 4/3 of the cumulative eligible capital of the corporation immediately after the end of the year in respect of each business carried on by it in Canada,

(d) where the corporation is not a principal-business corporation, within the meaning assigned by paragraph 66(15)(h) [66(15)"principal-business corporation"] of the Act, an amount equal to the aggregate of the corporation's

(i) Canadian exploration and development expenses, within the meaning assigned by paragraph 66(15)(b) [66(15)"Canadian exploration and development expenses"] of the Act, incurred by the corporation before the end of the year except to the extent that such expenses were deducted by the corporation in computing its income for the year or for a previous taxation year, and

(ii) cumulative Canadian exploration expense, within the meaning assigned by paragraph 66.1(6)(b) [66.1(6)"cumulative Canadian exploration expense"] of the Act, at the end of the year minus any deduction under subsection 66.1(3) of the Act in computing the corporation's income for the year,

(d.1) an amount equal to the corporation's cumulative Canadian development expense, within the meaning assigned by paragraph 66.2(5)(b) [66.2(5)"cumulative Canadian development expense"] of the Act, at the end of the year minus any deduction under subsection 66.2(2) of the Act in computing the corporation's income for the year,

(d.2) an amount equal to the corporation's cumulative Canadian oil and gas property expense, within the meaning assigned by paragraph 66.4(5)(b) [66.4(5)"cumulative Canadian oil and gas property expense"] of the Act, at the end of the year minus any deduction under subsection 66.4(2) of the Act in computing the corporation's income for the year,

(e) an amount equal to the aggregate of the cost amount to the corporation at the end of the year of each debt owing to it, or any other right of the corporation to receive an amount, that was outstanding as a result of the disposition by it of property in respect of which an amount would be included, by virtue of paragraph (a), (b), (c) or (h), in its qualified investment in property in Canada at the end of the year if the property had not been disposed of by it before the end of that year,

(f) an amount equal to the aggregate of the cost amount to the corporation at the end of the year of each property, other than a Canadian resource property, that was described in the corporation's inventory in respect of a business carried on by it in Canada,

(g) an amount equal to the aggregate of the cost amount to the corporation at the end of the year of each debt (other than a debt referred to in paragraph (e) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the corporation's income for the year) owing to it

(i) in respect of any transaction by virtue of which an amount has been included in computing its income for the year or for a previous year from a business carried on by it in Canada, or

(ii) where any part of its ordinary business carried on in Canada was the lending of money, in respect of a loan made by the corporation in the ordinary course of that part of its business,

(h) where the corporation was resident in Canada at any time in the year, an amount equal to the aggregate of the cost amount to the corporation at the end of the year of any property in Canada owned by it

(i) the cost amount of which is not included in its qualified investment in property in Canada at the end of the year by virtue of paragraph (a) or (b) or subparagraph (g)(i), but would be so included if those provisions were read without the phrase "from a business carried on by it in Canada",

(ii) that is a share of the capital stock of a corporation that was not described in the corporation's inventory in respect of a business carried on by it in Canada, or

(iii) that is a bond, debenture, bill, note, mortgage or similar obligation that was not described in the corporation's inventory in respect of a business carried on by it in Canada (other than an obligation referred to in subparagraph (3)(a)(iii), a debt referred to in paragraph (e) or (g) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the corporation's income for the year), and

(i) an amount equal to the allowable liquid assets of the corporation at the end of the year,

exceeds the aggregate of

(j) an amount equal to the aggregate of each amount deducted by the corporation under paragraph 20(1)(l), (l.1) or (n) or subsection 64(1), (1.1) or (1.2) of the Act in computing its income for the year from a business carried on by it in Canada;

(k) an amount equal to the aggregate of all amounts each of which is an amount deducted by the corporation in the year under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) of the Act in respect of a debt referred to in paragraph (e);

(l) an amount equal to the aggregate of each amount owing by the corporation at the end of the year on account of

(i) the purchase price of property that is referred to in paragraph (a), (b), (f) or (h) or that would be so referred to but for the fact that it has been disposed of before the end of the year,

(ii) Canadian exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense, within the meanings assigned by paragraphs 66(15)(b) [66(15)"Canadian exploration and development expenses"], 66.1(6)(a) [66.1(6)"Canadian exploration expense"], 66.2(5)(a) [66.2(5)"Canadian development expense"] and 66.4(5)(a) [66.4(5)"Canadian oil and gas property expense"] of the Act, respectively,

(iii) an eligible capital expenditure made or incurred by the corporation before the end of the year in respect of a business carried on by it in Canada, or

(iv) any other outlay or expense made or incurred by the corporation to the extent that it was deducted in computing its income for the year or for a previous taxation year from a business carried on by it in Canada;

(m) an amount equal to the aggregate of all amounts each of which is an amount equal to that proportion of the amount owing (other than an amount owing on account of an outlay or expense referred to in paragraph (l)) by the corporation at the end of the year on account of an obligation outstanding at any time in the year in respect of which interest is stipulated to be payable by it that

(i) the interest paid or payable on the obligation by the corporation in respect of the year that is deductible, or would be deductible but for subsection 18(2), (3.1) or (4) or section 21 of the Act, in computing its income for the year from a business carried on by it in Canada,

is of

(ii) the interest paid or payable on the obligation by the corporation in respect of the year;

(n) the amount, if any, by which

(i) the amount (referred to in this paragraph as "Part I liability"), if any, by which the tax payable for the year by the corporation under Part I of the Act exceeds the amount, if any, paid by the corporation before the end of the year on account thereof,

exceeds

(ii) where the corporation was, throughout the year, not resident in Canada, that proportion of the Part I liability that the amount, if any, determined under paragraph 219(1)(d) of the Act in respect of the corporation for the year is of the corporation's amount taxable (within the meaning given to that expression in section 123 of the Act) for the year, or

(iii) in any other case, nil;

(o) the amount, if any, by which

(i) the amount (referred to in this paragraph as "provincial tax liability"), if any, by which any income taxes payable for the year by the corporation to the government of a province (to the extent that such taxes were not deductible under Part I of the Act in computing the corporation's income for the year from a business carried on by it in Canada) exceeds the amount, if any, paid by the corporation before the end of the year on account thereof,

exceeds

(ii) where the corporation was, throughout the year, not resident in Canada, that proportion of the provincial tax liability that the amount, if any, determined under paragraph 219(1)(d) of the Act in respect of the corporation for the year is of the corporation's amount taxable (within the meaning given to that expression in section 123 of the Act) for the year, or

(iii) in any other case, nil; and,

(p) where the corporation was resident in Canada at any time in the year, an amount equal to the aggregate of

(i) an amount equal to the aggregate of each amount deducted by the corporation in the year under paragraph 20(1)(l) or (l.1) or subsection 64(1), (1.1) or (1.2) of the Act in computing its income for the year from a source other than

(A) a business carried on by it in Canada, or

(B) a property situated outside Canada,

(ii) an amount equal to the aggregate of each amount owing by the corporation at the end of the year on account of any outlay or expense made or incurred by the corporation to the extent that it was deducted in computing its income for the year or for a previous taxation year from a source other than

(A) a business carried on by it in Canada, or

(B) a property situated outside Canada, and

(iii) an amount equal to the aggregate of all amounts each of which is an amount equal to that proportion of the amount owing (other than an amount owing on account of an outlay or expense referred to in subparagraph (ii) or paragraph (l)) by the corporation at the end of the year on account of an obligation outstanding at any time in the year in

respect of which interest is stipulated to be payable by it that

(A) the interest paid or payable on the obligation by the corporation in respect of the year that is deductible, or would be deductible but for subsection 18(2), (3.1) or (4) or section 21 of the Act, in computing its income for the year from a source other than

(I) a business carried on by it in Canada, or

(II) a property situated outside Canada,

is of

(B) the interest paid or payable on the obligation by the corporation in respect of the year.

History: Subpara. 808(2)(h)(iii) amended by P.C. 1994-1817, para. 62(a), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Paras. 808(2)(j), (p) substituted by P.C. 1990-2779, subsecs. 2(1), (2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after June 17, 1987 that end after 1987.

Para. 808(2)(c) amended by P.C. 1990-754, subsec. 1(1), April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of taxation years commencing after June 1988.

Para. 808(2)(k), subpara. (m)(i) and cl. (p)(iii)(A) preceding subcl. (I) substituted by P.C. 1984-3789, subsecs. 4(1)–(3), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective as to subpara. (m)(i) and cl. (p)(iii)(A) commencing January 1, 1982.

Paras. 808(2)(d.2) added, (j) substituted, subpara. 808(2)(l)(ii), all that portion of subpara. 808(2)(p)(i) preceding cl. (A) substituted by P.C. 1981-2208, subsecs. 2(1)–(4), August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable to taxation years ending after December 11, 1979.

(3) For the purposes of paragraph (2)(i), the "allowable liquid assets of the corporation at the end of the year" is an amount equal to the lesser of

(a) the aggregate of

(i) the amount of Canadian currency owned by the corporation at the end of that year,

(ii) the balance standing to the credit of the corporation at the end of that year as or on account of amounts deposited with a branch or other office in Canada of

(A) a bank,

(B) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(C) a credit union, and

(iii) an amount equal to the aggregate of the cost amount to the corporation at the end of that year of each bond, debenture, bill, note, mortgage or similar obligation that was not described in the corporation's inventory in respect of a business carried on by it in Canada (other than a debt referred to in paragraph (2)(e) or (g) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the corporation's income for the year), that was issued by a person resident in Canada with whom the corporation was dealing at arm's length and that matures within one year after the date on which it was acquired by the corporation,

to the extent that such amounts are attributable to the profits of the corporation from carrying on a business in Canada, or are used or held by the corporation in the year in the course of carrying on a business in Canada; and

(b) an amount equal to 4/3 of the quotient obtained by dividing

(i) the aggregate of all amounts that would otherwise be determined under subparagraphs (a)(i), (ii) and (iii) if the references therein to "at the end of that year" were read as references to "at the end of each month in that year",

by

(ii) the number of months in that year.

History: Cl. 808(3)(a)(ii)(A) amended by P.C. 1994-1817, para. 47(a), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 808(3)(a)(iii) amended, and that portion of para. (a) following subpara. (iii) added, by P.C. 1993-1548, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, applicable to taxation years ending after August 11, 1993.

(4) For the purposes of subsection (1), where, at the end of a taxation year, a corporation is a member of a partnership that was carrying on business in Canada at any time in that year, the corporation's qualified investment in property in Canada at the end of the year is an amount equal to the aggregate of

(a) the amount, if any, that would be determined under subsection (2) if the corporation were not, at the end of the year, a member of a partnership that was carrying on business in Canada at any time in the year; and

(b) an amount equal to the portion of the amount of the partnership's qualified investment in property in Canada at the end of the last fiscal period of the partnership ending in the taxation year of the corporation that may reasonably be attributed to the corporation, having regard to all the circumstances including the rights the corporation would have, if the partnership ceased to exist, to share in the distribution of the property owned by the partnership for the purpose of gaining or producing income from a business carried on by it in Canada.

(5) For the purposes of subsection (4), a partnership's "qualified investment in property in Canada" at the end of a fiscal period is the amount, if any, by which the aggregate of

(a) the cost amount to the partnership, at the end of the fiscal period, of land in Canada owned by it at that time for the purpose of gaining or producing income from a business carried on by it in Canada, other than land that is

(i) described in the inventory of the partnership,

(ii) depreciable property,

(iii) a Canadian resource property, or

(iv) land the cost of which is or was deductible in computing the income of the partnership or the income of a member of the partnership,

(b) an amount equal to the aggregate of the cost amount to the partnership immediately after the end of the fiscal period, of each depreciable property in Canada owned by it for the purpose of gaining or producing income from a business carried on by it in Canada,

(c) an amount equal to 4/3 of the cumulative eligible capital of the partnership immediately after the end of the fiscal period in respect of each business carried on by it in Canada,

(d) an amount equal to the aggregate of the cost amount to the partnership at the end of the fiscal period of each debt owing to it, or any other right of the partnership to receive an amount, that was outstanding

as a result of the disposition by it of property in respect of which an amount would be included, by virtue of paragraph (a), (b) or (c), in its qualified investment in property in Canada at the end of the fiscal period if the property had not been disposed of by it before the end of that fiscal period,

(e) an amount equal to the aggregate of the cost amount to the partnership at the end of the fiscal period of each property, other than a Canadian resource property, that was described in the partnership's inventory in respect of a business carried on by it in Canada,

(f) an amount equal to the aggregate of the cost amount to the partnership at the end of the fiscal period of each debt (other than a debt referred to in paragraph (d) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the partnership's income for the fiscal period) owing to it

(i) in respect of any transaction by virtue of which an amount has been included in computing its income for the fiscal period or for a previous fiscal period or in computing the income of a member of the partnership for a previous taxation year from a business carried on in Canada by the partnership, or

(ii) where any part of its ordinary business carried on in Canada was the lending of money, in respect of a loan made by the partnership in the ordinary course of that part of its business, and

(g) an amount equal to the allowable liquid assets of the partnership at the end of the fiscal period,

exceeds the aggregate of

(h) an amount equal to the aggregate of each amount deducted by the partnership under paragraph 20(1)(l), (l.1) or (n) or subsection 64(1), (1.1) or (1.2) of the Act in computing its income for the fiscal period from a business carried on by it in Canada;

(i) an amount equal to the aggregate of all amounts each of which is an amount deducted by the partnership in the fiscal period under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) of the Act in respect of a debt referred to in paragraph (d);

(j) an amount equal to the aggregate of each amount owing by the partnership at the end of the fiscal period on account of

(i) the purchase price of property that is referred to in paragraph (a), (b) or (e) or that would be so referred to but for the fact that it has been disposed of before the end of the fiscal period,

(ii) Canadian exploration and development expenses, Canadian exploration expense, Canadian development expense or Canadian oil and gas property expense, within the meanings assigned by paragraphs 66(15)(b) [66(15)"Canadian exploration and development expenses"], 66.1(6)(a) [66.1(6)"Canadian exploration expense"] and 66.2(5)(a) [66.2(5)"Canadian development expense"] and 66.4(5)(a) [66.4(5)"Canadian oil and gas property expense"] of the Act, respectively,

(iii) an eligible capital expenditure made or incurred by the partnership before the end of the fiscal period in respect of a business carried on by it in Canada, or

(iv) any other outlay or expense made or incurred by the partnership to the extent that it was deducted in computing its income for the fiscal period or for a previous fiscal period, or in computing the income of a member of the partnership for a previous taxation year, from a business carried on in Canada by the partnership; and

(k) an amount equal to the aggregate of all amounts each of which is an amount equal to that proportion of the amount owing (other than an amount owing on account of an outlay or expense referred to in paragraph (j)) by the partnership at the end of the fiscal period on account of an obligation outstanding at any time in the period in respect of which interest is stipulated to be payable by it that

(i) the interest paid or payable on the obligation by the partnership in respect of the fiscal period that is deductible, or would be deductible but for subsection 18(2) or (3.1) or section 21 of the Act, in computing its income for the fiscal period from a business carried on by it in Canada,

is of

(ii) the interest paid or payable on the obligation by the partnership in respect of the fiscal period.

History: Para. 808(5)(h) substituted by P.C. 1990-2779, subsec. 2(3), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after June 17, 1987 that end after 1987.

Para. 808(5)(c) amended by P.C. 1990-754, subsec. 1(2), April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of fiscal periods commencing after 1987.

Para. 808(5)(i) and subpara. 808(5)(k)(i), substituted by P.C. 1984-3789, subsecs. 4(4), (5), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective as to subpara. (k)(i) commencing January 1, 1982.

Para. 808(5)(h), subpara. 808(5)(j)(ii) substituted by P.C. 1981-2208, subsecs. 2(5), (6), August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable to taxation years ending after December 11, 1979.

(6) For the purposes of paragraph (5)(g), the "allowable liquid assets of the partnership at the end of the fiscal period" is an amount equal to the lesser of

(a) the aggregate of

(i) the amount of Canadian currency owned by the partnership at the end of that fiscal period,

(ii) the balance standing to the credit of the partnership at the end of that fiscal period as or on account of amounts deposited with a branch or other office in Canada of

(A) a bank,

(B) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, or

(C) a credit union, and

(iii) an amount equal to the aggregate of the cost amount to the partnership at the end of that fiscal period of each bond, debenture, bill, note, mortgage, hypothec or similar obligation that was not described in the partnership's inventory in respect of a business carried on by it in Canada (other than a debt referred to in paragraph (5)(d) or (f) or a debt the amount of which was deducted under paragraph 20(1)(p) of the Act in computing the partnership's income for the fiscal period), that was issued by a person resident in Canada with whom all the members of the partnership were dealing at arm's length and that matures within one year after the date on which it was acquired by the partnership; and

(b) an amount equal to 4/3 of the quotient obtained by dividing

(i) the aggregate of all amounts that would otherwise be determined under subparagraphs (a)(i), (ii) and (iii) if the references therein to "at the end of that fiscal period" were read as references to "at the end of each month in that fiscal period",

by

(ii) the number of months in that fiscal period.

History: Cl. 808(6)(a)(ii)(A) amended by P.C. 1994-1817, para. 47(b), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

(7) Subsections (4) to (6) shall be read and construed as if each of the assumptions in paragraphs 96(1)(a) to (g) of the Act were made.

Definitions [Reg. 808]: "allowable liquid assets of the corporation at the end o the year" — Reg. 808(3); "allowable liquid assets of the partnership at the end of the fiscal period" — Reg. 808(6); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bank" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian oil and gas property expense" — ITA 66.4(5), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — ITA 248(1); "cumulative eligible capital" — ITA 14(5), 248(1); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "eligible capital expenditure" — ITA 14(5), 248(1); "fiscal period" — ITA 249.1; "inventory" — ITA 248(1); "month" — *Interpretation Act* 35(1); "office" — ITA 248(1); "Part I liability" — Reg. 808(2)(n)(i); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "provincial tax liability" — Reg. 808(2)(o)(i); "qualified investment in property in Canada at the end of the fiscal period" — Reg. 808(5); "qualified investment in property in Canada at the end of the year" — Reg. 808(2), (4); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins [Reg. 808]: IT-137R3: Additional tax on certain corporations carrying on business in Canada.

809. Reduction of certain amounts to be deducted or withheld — (1) Subject to subsection (2), where a non-resident person (in this section referred to as the "payee") has filed with the Minister the payee's required statement for the year, the amount otherwise required by subsections 215(1) to (3) of the Act to be deducted or withheld from any qualifying payment paid or credited by a person resident in Canada (in this section referred to as the "payer") to the payee in the year and after the required statement for the year was so filed is hereby reduced by the amount determined in accordance with the following rules:

(a) determine the amount by which

(i) the amount that would, if the payee does not make an election in respect of the year under section 217 of the Act, be the tax payable by the payee under Part XIII of the Act on the aggregate of the amounts estimated by him in his required statement for the year pursuant to paragraph (a) of the definition "required statement" in subsection (4),

exceeds

(ii) the amount that would, if the payee makes the election referred to in subparagraph (i), be the tax payable (on the assumption that no portion of the payee's income for the year was income earned in the year in a province) by the payee under Part I of the Act on his estimated taxable income calculated by him in his required statement for the year pursuant to paragraph (b) of the definition "required statement" in subsection (4),

(b) determine the percentage that the amount determined under paragraph (a) is of the aggregate of the amounts estimated by him in his required statement for the year pursuant to paragraph (a) of the definition "required statement" in subsection (4),

(c) where the determination of a percentage under paragraph (b) results in a fraction, disregard the fraction for the purposes of paragraph (d),

(d) multiply the percentage determined under paragraph (b) by the amount of the qualifying payment,

and the product obtained under paragraph (d) is the amount by which the amount required to be deducted or withheld is reduced.

Forms: NR5: Application by a non-resident of Canada for a reduction in the amount of non-resident tax required to be withheld; NR7-R: Application for refund of non-resident tax withheld.

(2) Subsection (1) does not apply to reduce the amount to be deducted or withheld from a qualifying payment if, after the qualifying payment has been paid or credited by the payer, the aggregate of all qualifying payments that the payer has paid or credited to the payee in the year would exceed the amount estimated, in respect of that payer, by the payee in his required statement for the year pursuant to paragraph (a) of the definition "required statement" in subsection (4).

(3) Where a payee has filed with the Minister a written notice indicating that certain information or estimates in the payee's required statement for the year are incorrect and setting out the correct information or estimates that should be substituted therefor or where the Minister is satisfied that certain information or estimates in a payee's required statement for the year are incorrect and that the Minister has the correct information or estimates that should be substituted therefor, for the purposes of making the calculations in subsection (1) with respect to any qualifying payment paid or credited to the payee after the time when he has filed that notice or after the time when the Minister is so satisfied, as the case may be, the incorrect information or estimates shall be disregarded and the required statement for the year shall be deemed to contain only the correct information or estimates.

(4) In this section,

"qualifying payment" in relation to a non-resident person means any amount

(a) paid or credited, or to be paid or credited, to him as, on account or in lieu of payment of, or in satisfaction of, any amount described in paragraph 212(1)(f) or (h) or in any of paragraphs 212(1)(j), (k), (l), (m) or (q) of the Act, and

(b) on which tax under Part XIII of the Act is, or would be, but for an election by him under section 217 of the Act, payable by him;

"required statement" of a payee for a taxation year means a written statement signed by him that contains, in respect of the payee,

(a) the name and address of each payer of a qualifying payment in the year and, in respect of each such payer, an estimate by the payee of the aggregate of such qualifying payments, and

(b) a calculation by him of his estimated taxable income earned in Canada for the year, on the assumption that he makes the election in respect of the year under section 217 of the Act, and such information as may

be necessary for the purpose of estimating such income.

History: Para. (a) of "qualifying payment" substituted by P.C. 1981-2208, s. 3, August 19, 1981, *Canada Gazette*, Part II, September 9, 1981, applicable with respect to payments made after 1979.

Definitions [Reg. 809]: "amount", "Minister", "non-resident" — ITA 248(1); "payee", "payer" — Reg. 809(1); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualified insurance corporation" — Reg. 810(2); "qualifying payment", "required statement" — Reg. 809(4); "resident in Canada" — ITA 250; "taxable income" — ITA 248(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249; "written" — *Interpretation Act* 35(1)"writing".

810. Excluded property of non-resident persons — **(1)** For the purposes of paragraph 116(6)(e) of the Act, any property that is

(a) property of a non-resident insurer that is a qualified insurance corporation,

(b) an option in respect of property referred to in any of paragraphs 116(6)(a) to (d) of the Act and paragraph (a) whether or not such property is in existence, or

(c) an interest in property referred to in paragraph 116(6)(a), (c) or (d) of the Act or paragraph (a) or (b),

is prescribed to be excluded property.

(2) For the purposes of this section, a non-resident insurer is a "qualified insurance corporation" throughout the period during which it

(a) was licensed or otherwise authorized under the laws of Canada or a province to carry on an insurance business in Canada; and

(b) carried on an insurance business, within the meaning of subsection 138(1) of the Act, in Canada.

Definitions [Reg. 810]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "insurance corporation", "insurer", "non-resident", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1).

PART IX — DELEGATION OF THE POWERS AND DUTIES OF THE MINISTER

Proposed Repeal — Part IX

Application: Reg. 900 is to be repealed. ITA 220(2.01) now permits delegation by the Minister without a requirement for regulations.

Delegation by the Minister was permitted even where no specific official is authorized by Reg. 900: *Doyle*, [1989] 2 C.T.C. 270 (FCTD).

In December 1999, the CCRA released a 95-page list of delegations, signed by the Minister under ITA 220.01. The Schedule is dated September 27, 1999.

History: Part IX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

900. (1) An official holding a position of Assistant Deputy Minister of National Revenue for Taxation may exercise all the powers and perform all the duties of the Minister under the Act.

(2) An official holding a position of Director — Taxation in a District Office of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 48, 221.2, 224, 224.1, 224.3 and 233 of the Act;

(b) subsections 10(2.1), (3) and (7), 13(6), 15.1(5), the definition "small business bond" in subsection 15.2(3), subsections 15.2(5), 18(2.4), 28(3), 45(3), 58(5), 65(3), 66(12.72), (12.73), (12.74) and (14.4), 70(6), (6.1), (9), (9.2) and (9.4), 74(5), 83(3.1), 85(7.1), 91(2), 93(5.1), 96(5.1), 104(2), 116(2), (4) and (5.2), 118.3(3) and (4), 125(4), 126(5.1), 127(10), (10.4) and (10.5), 127.53(3), 131(1.2), 146.01(3), 149.1(15), 150(2), 153(1.1), 159(2), (4), (5) and (6.1), 162(5) and (6), 164(1.2), (1.3), (2) and (3.2), 181.5(3), 190.15(3), 191.1(5), 204.1(4), 204.81(1), (2), (6) and (7), 220(2.1) and (3) to (5), 223(2), (9) and (11), 224(1.2), 225.2(2), (5) and (7), 226(1), 227(10.5), 230(1), (1.1), (3), (7) and (8), 230.1(3) (with respect to the application of subsections 230(3), (7) and (8) of the Act), 231.1(3), 231.2(1) and (3), 231.3(1) and (6), 231.6(2) and (8), 241(3.1), 244(21) and (22), 247(2) and 248(9) of the Act;

(c) the definition "fiscal period" in subsection 248(1) of the Act;

(d) paragraphs 15.2(8)(b), 34(b), 70(5.2)(d) and (f) and (9.5)(f), 73(5)(c), 85(1)(e.1) and (5.1)(f), 89(1)(g) [89(1)"public corporation"] and (3)(b), 104(23)(a), 118(4)(e), 118.1(6)(b), 118.4(1)(b), 133(7.2)(b), 149(1)(l), 150(1)(e) and 184(3.1)(e) and (3.2)(c) of the Act;

(d.1) the definition "small business development bond" in subsection 15.1(3), subparagraph 15.1(10)(b)(i) as it read on June 9, 1993 and subparagraphs 39(1)(a)(i.1), 110.6(15)(b)(ii) and 184(3.1)(c)(iii) and (d)(ii) and (3.2)(a)(ii) of the Act;

(e) subsection 39(3a) of the Act as it read in its application to the 1971 and previous taxation years;

(f) paragraphs 23(5)(c) and 26(18)(c) of the *Income Tax Application Rules*;

(g) sections 106, 210, 412 and 2200 of these Regulations;

(h) subsections 805(2), 809(3), 1403(2), (5) and (6) and 1802(2) of these Regulations;

(i) paragraphs 1802(3)(b) and 2400(1)(f) of these Regulations;

(i.1) paragraphs 2400(1)(e) of these Regulations as it applies to taxation years other than taxation years beginning after June 17, 1987 and ending after December 31, 1987; and

(j) subparagraphs 102(1)(f)(v), (2)(f)(v) and (3)(f)(v) and 1401(1)(d)(viii) of these Regulations.

History: Para. 900(2)(f) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Paras. 900(2)(a), (b) and (d.1) amended by P.C. 1994-1132, subsecs. 1(1), (2), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Paras. 900(2)(b) and (i) amended, (i.1) added, by P.C. 1993-1043, subsecs. 1(1), (2), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Paras. 900(2)(b), (d), (d.1) amended by P.C. 1992-290, subsecs. 1(1), (2), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(2)(b) amended by P.C. 1991-731, subsec. 1(1), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Para. 900(2)(b) substituted by P.C. 1991-50, subsec. 1(1), January 17, 1991, *Canada Gazette*, Part II, January 30, 1991.

Paras. 900(2)(b), (d) substituted by P.C. 1989-1257, subsecs. 1(1), (2), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Paras. 900(2)(b), (d), (d.1) substituted by P.C. 1988-590, subsecs. 1(1) and (2), March 30, 1988, *Canada Gazette*, Part II, April 27, 1988.

Paras. 900(2)(b), (d), (d.1), (f) to (h) substituted, (i), (j) added, by P.C. 1987-1477, subsecs. 1(1) to (3), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Para. 900(2)(b) substituted by P.C. 1986-924, subsec. 1(1), April 17, 1986, *Canada Gazette*, Part II, April 30, 1986.

Paras. 900(2)(b), (d) substituted by P.C. 1985-3529, December 5, 1985, *Canada Gazette*, Part II, December 25, 1985.

Para. 900(2)(b) substituted by P.C. 1984-1980, June 7, 1984, *Canada Gazette*, Part II, June 27, 1984.

Para. 900(2)(a) substituted by P.C. 1983-3188, subsec. 1(1), October 13, 1983, *Canada Gazette*, Part II, October 26, 1983.

Para. 900(2)(b) substituted by P.C. 1982-2895, s. 1, September 22, 1982, *Canada Gazette*, Part II, October 13, 1982, effective commencing September 20, 1982.

Paras. 900(2)(b), (d) substituted, (d.1) added by P.C. 1981-1680, subsecs. 1(1), (2), June 18, 1981, *Canada Gazette*, Part II, July 8, 1981.

Paras. 900(2)(a), (h) substituted by P.C. 1980-541, s. 1, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980.

Para. 900(2)(b) substituted by P.C. 1978-2532, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978.

(3) The Director, Appeals and Referrals Division, or the Director, Policy and Programs Division, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 174 and 179.1 of the Act; and

(b) subsections 164(4.1), 165(3), (3.1), (3.2) and (6), 166.1(5), 220(3.1) and (3.2) and 239(4) of the Act.

History: Para. 900(3)(b) amended by P.C. 1993-1043, subsec. 1(3), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Para. 900(3)(b) amended by P.C. 1992-290, subsec. 1(3), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

That portion of subsec. 900(3) preceding para. (a) substituted by P.C. 1989-1257, subsec. 1(3), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Subsec. 900(3) substituted by P.C. 1987-1477, subsec. 1(4), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(4) An official holding a position of Chief of Appeals in a District Office or in a Taxation Centre of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) subsections 165(3), (3.1) and (3.2); and

(b) subsections 165(6), 166.1(5), 220(3.1) and (3.2) and 239(4) of the Act.

History: Para. 900(4)(a) amended by P.C. 1993-1043, subsec. 1(4), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Para. 900(4)(b) amended by P.C. 1992-290, subsec. 1(4), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

All that portion of subsec. 900(4) preceding para. (a) substituted by P.C. 1982-2138, July 15, 1982, *Canada Gazette*, Part II, July 28, 1982.

All that portion of subsec. 900(4) preceding para. (a) substituted by P.C. 1979-2971, November 1, 1979, *Canada Gazette*, Part II, November 14, 1979, effective January 1, 1980.

(5) The Director, Audit Technical Support Division, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) subsections 150(2), 152(1.11), 220(3.1) and (3.2), 230(1) and (3), 231.1(3), 231.2(1) and (3), 231.3(1) and (6), 237.1(3) and 241(3.1) of the Act;

(b) subsections 1403(2), (5) and (6) of these Regulations;

(c) paragraph 2400(1)(e) of these Regulations as it applies to taxation years other than taxation years commencing after June 17, 1987 and ending after 1987; and

(d) subparagraph 1401(1)(d)(viii) of these Regulations.

History: Para. 900(5)(a) amended by P.C. 1994-1132, subsec. 1(3), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Subsec. 900(5) amended by P.C. 1992-290, subsec. 1(5), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Subsec. 900(5) substituted by P.C. 1989-1257, subsec. 1(4), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Subsec. 900(5) substituted by P.C. 1986-924, subsec. 1(2), April 17, 1986, *Canada Gazette*, Part II, April 30, 1986.

Subsec. 900(5) substituted by P.C. 1984-1980, June 7, 1984, *Canada Gazette*, Part II, June 27, 1984.

Subsec. 900(5) substituted by P.C. 1983-3015, s. 1, September 29, 1983, *Canada Gazette*, Part II, October 12, 1983.

Subsec. 900(5) substituted by P.C. 1980-2949, s. 1, October 30, 1980, *Canada Gazette*, Part II, November 12, 1980.

Subsec. 900(5) substituted by P.C. 1978-2532, August 9, 1978, *Canada Gazette*, Part II, August 23, 1978.

(6) The Director General, Revenue Collection Programs Directorate, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 221.2, 223 and 224.2 of the Act;

(b) subsections 164(2), 220(2.1), (3.1), (3.2), (4), (4.1) and (4.2), 225(1), 226(1) and (2), 227(10.5), 227.1(6), 231.2(1), 241(3.1) and 244(22) of the Act;

(c) section 2200 of these Regulations; and

(d) subsection 809(3) of these Regulations.

History: Paras. 900(6)(a) and (b) amended by P.C. 1994-1132, subsec. 1(4), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Para. 900(6)(b) amended by P.C. 1993-1043, subsec. 1(5), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

That portion of subsec. 900(6) preceding para. (a), and para (b), amended by P.C. 1992-290, subsecs. 1(6), (7), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(6)(b) substituted and (d) added by P.C. 1987-1477, subsecs. 1(5), (6), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Subsec. 900(6) substituted by P.C. 1986-924, subsec. 1(3), April 17, 1986, *Canada Gazette*, Part II, April 30, 1986.

Paras. 900(6)(a) and (b) substituted by P.C. 1983-3188, subsec. 1(2), October 13, 1983, *Canada Gazette*, Part II, October 26, 1983.

All that portion of subsec. 900(6) preceding para. (a) substituted by P.C. 1978-3628, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective February 1, 1979.

(7) The Director General, Audit Directorate, of the Department of National Revenue may exercise the powers and perform the duties of the Minister under

(a) section 115.1 of the Act;

(b) subsections 150(2), 152(1.11), 220(3.1) and (3.2), 230(1) and (3), 231.1(3), 231.2(1) and (3), 231.3(1) and (6), 237.1(3) and 241(3.1) of the Act;

(c) subsections 1403(2), (5) and (6) of these Regulations;

(d) paragraph 2400(1)(e) of these Regulations as it applies to taxation years other than taxation years beginning after June 17, 1987 and ending after December 31, 1987; and

(e) paragraph 1401(1)(d) of these Regulations.

History: Subsec. 900(7) enacted by P.C. 1994-1132, subsec. 1(5), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Former subsec. 900(7) revoked by P.C. 1993-1043, subsec. 1(6), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Paras. 900(7)(a), (e) amended by P.C. 1992-290, subsecs. 1(8), (9), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(7)(c) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Para. 900(7)(b) substituted by P.C. 1989-1257, subsec. 1(5), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

All that portion of subsec. 900(7) preceding para. (c) substituted, (c.1) and (e) added, by P.C. 1987-1477, subsecs. 1(7) to (9), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Para. 900(7)(a) substituted by P.C. 1981-1680, subsec. 1(3), June 18, 1981, *Canada Gazette*, Part II, July 8, 1981.

(8) The Director, Charities Division of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) subsections 149.1(1.2), (2), (3), (4), (4.1), (5), (6.3), (6.4), (7), (8), (13) and (15), 168(1) and (2) and 230(2) and (3), paragraph 230.1(1)(b) and subsection 231.2(1) of the Act;

(b) the definition "fiscal period" (with respect to registered charities only) in subsection 248(1) of the Act;

(c) paragraphs 110(8)(b) and (c) and 149(1)(l) of the Act; and

(d) Part XXXVII of these Regulations.

History: Para. 900(8)(a) amended by P.C. 1994-1132, subsec. 1(6), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Para. 900(8)(a) amended by P.C. 1993-1043, subsec. 1(7), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Para. 900(8)(a) amended by P.C. 1992-290, subsec. 1(10), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(8)(a) substituted by P.C. 1989-1257, subsec. 1(6), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Subsec. 900(8) substituted by P.C. 1987-1477, subsec. 1(10), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(9) The Director, Registered Plans Division, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 145, 146, 146.1, 146.3, 147, 147.1, 147.2, 147.3, 204.4 and 204.5 of the Act;

(b) the definition "registered pension plan" in subsection 248(1) of the Act;

(c) paragraph 20(1)(s) of the Act; and

(d) Parts LXXXIII, LXXXIV and LXXXV of these Regulations.

History: That portion of subsec. 900(9) preceding para. (b) amended and para. (d) added by P.C. 1992-290, subsecs. 1(11), (12), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(9)(b) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

All that portion of subsec. 900(9) preceding para. (b) substituted by P.C. 1987-1477, subsec. 1(11), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Para. 900(9)(a) substituted by P.C. 1981-1680, subsec. 1(4), June 18, 1981, *Canada Gazette*, Part II, July 8, 1981.

(10) An official holding the position of Director in a Taxation Centre of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 221.2, 224 and 233 of the Act;

(b) subsections 18(2.4), 58(5), 66(12.68), (12.74) and (14.4), 118.3(3), 125(4), 126(5.1), 127(10.4) and (10.5), 127.53(3), 146.01(3), 150(2), 159(2) and (6.1), 162(5) and (6), 164(2) and (3.2), 181.5(3), 190.15(3), 191.1(5), 192(8), 194(7), 204.1(4), 204.81(1) and (2), 220(2.1), (3), (3.1), (3.2) and (5), 230(1.1), 231.2(1), 237.1(3) 241(3.1) and 244(21) and (22) of the Act;

(c) paragraphs 118.4(1)(b), 147.1(10)(a) and 150(1)(e) of the Act;

(d) section 210 of these Regulations; and

(e) subparagraphs 102(1)(f)(v), (2)(f)(v) and (3)(f)(v) of these Regulations.

History: Paras. 900(10)(a), (b) amended by P.C. 1994-1132, subsec. 1(7), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Para. 900(10)(b) amended by P.C. 1993-1043, subsec. 1(8), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

Paras. 900(10)(b), (c) amended by P.C. 1992-290, subsec. 1(13), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(10)(b) amended by P.C. 1991-731, subsec. 1(2), April 18, 1991, *Canada Gazette*, Part II, May 8, 1991.

Para. 900(10)(b) substituted by P.C. 1991-50, subsec. 1(2), January 17, 1991, *Canada Gazette*, Part II, January 30, 1991.

Paras. 900(10)(b), (c) substituted by P.C. 1989-1257, subsec. 1(7), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Para. 900(10)(b) substituted by P.C. 1988-590, subsec. 1(3), March 30, 1988, *Canada Gazette*, Part II, April 27, 1988.

Para. 900(10)(b) substituted, (e) added, by P.C. 1987-1477, subsecs. 1(12), (13), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Para. 900(10)(b) substituted by P.C. 1986-924, subsec. 1(4), April 17, 1986, *Canada Gazette*, Part II, April 30, 1986.

Para. 900(10)(b) substituted by P.C. 1984-1980, June 7, 1984, *Canada Gazette*, Part II, June 27, 1984.

Para. 900(10)(e) revoked by P.C. 1980-541, s. 1, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980.

Subsec. 900(10) added by P.C. 1978-3118, October 12, 1978, *Canada Gazette*, Part II, October 25, 1978.

(11) The Director General, International Tax Programs Directorate of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 115.1 and 233 of the Act;

(b) subsections 152(1.11), 153(1.1), 220(3.1), (3.2) and (5), 231.2(1) and (3), 231.6(2) and (8) and 241(3.1) of the Act; and

(c) section 210 of these Regulations.

History: Paras. 900(11)(a) to (c) substituted for paras. (a) to (d) by P.C. 1994-1132, subsec. 1(8), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Subsec. 900(11) amended by P.C. 1992-290, subsec. 1(14), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Paras. 900(11)(a), (a.1) transposed, and (a) amended, by P.C. 1991-50, subsec. 1(3), January 17, 1991, *Canada Gazette*, Part II, January 30, 1991.

Para. 900(11)(a) substituted, (a.1) added, by P.C. 1989-1257, subsec. 1(8), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Subsec. 900(11) substituted by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

Subsec. 900(11) added by P.C. 1986-924, subsec. 1(5), April 17, 1986, *Canada Gazette*, Part II, April 30, 1986.

Subsec. 900(11) revoked by P.C. 1980-2080, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980.

Subsec. 900(11) added by P.C. 1979-2971, November 1, 1979, *Canada Gazette*, Part II, November 14, 1979, effective January 1, 1980.

(12) The Director General, Assessment of Returns Directorate, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) subsections 118.3(4), 150(2), 150.1(2), 164(2) and (3.2), 204.1(4), 220(2.1), (3.1) and (3.2), 231.2(1), 241(3.1) and 244(22) of the Act;

(a.1) paragraph 118.4(1)(b) of the Act;

(b) section 412 of these Regulations.

History: Para. 900(12)(a) amended by P.C. 1994-1132, subsec. 1(9), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

That portion of subsec. 900(12) preceding para. (b) amended by P.C. 1992-290, subsec. 1(15), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Para. 900(12)(a) substituted, (a.1) added, by P.C. 1989-1257, subsec. 1(9), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Para. 900(12)(a) substituted by P.C. 1988-590, subsec. 1(4), March 30, 1988, *Canada Gazette*, Part II, April 27, 1988.

Subsec. 900(12) added by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(13) The Director, Accounts Receivable Division, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under

(a) sections 221.2 and 224.2 of the Act;

(b) subsections 164(2), 220(2.1), (3.1), (3.2), (4), (4.1) and (4.2), 223(2), 225(1), 226(1) and (2), 227(10.5), 227.1(6) and 241(3.1) of the Act; and

(c) section 2200 of these Regulations.

History: Paras. 900(13)(a), (b) amended by P.C. 1994-1132, subsec. 1(10), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Para. 900(13)(b) amended by P.C. 1993-1043, subsec. 1(9), May 25, 1993, *Canada Gazette*, Part II, June 16, 1993.

That portion of subsec. 900(13) preceding para. (a) amended by P.C. 1992-290, subsec. 1(16), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Subsec. 900(13) added by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(14) The Director, Source Deductions Division, of the Department of National Revenue, Taxation, may exercise the powers and perform the duties of the Minister under subsections 153(1.1), 220(3) and (3.1) and 241(3.1) of the Act and subsection 809(3) of these Regulations.

History: Subsec. 900(14) amended by P.C. 1994-1132, subsec. 1(11), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Subsec. 900(14) substituted for subsecs. (14) to (16) by P.C. 1992-290, subsec. 1(17), February 20, 1992, *Canada Gazette*, Part II, March 11, 1992.

Subsec. 900(14) substituted by P.C. 1989-1257, subsec. 1(10), June 29, 1989, *Canada Gazette*, Part II, July 19, 1989.

Subsec. 900(14) substituted by P.C. 1988-590, subsec. 1(5), March 30, 1988, *Canada Gazette*, Part II, April 27, 1988.

Subsec. 900(14) added by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(15) The Director, International Taxation Office, of the Department of National Revenue, may exercise the powers and perform the duties of the Minister under

(a) sections 48, 115.1, 221.2, 224, 224.1 and 233 of the Act;

(b) subsections 10(2.1), (3) and (7), 13(6) and 15.2(5), 18(2.4), 28(3), 45(3), 58(5), 65(3), 66(12.68), (12.72), (12.73), (12.74) and (14.4), 70(6), (9) and (9.2), 83(3.1), 85(7.1), 91(2), 96(5.1), 104(2), 116(2), (4) and (5.2), 118.3(3) and (4), 126(5.1), 127(10), 127.53(3), 146.01(3), 149.1(15), 150(2), 153(1.1), 159(2), (4), (5) and (6.1), 164(1.2), (1.3), (2) and (3.2), 181.5(3), 190.15(3), 204.1(4), 220(2.1) and (3) to (5), 223(2), (9) and (11), 226(1), 230(1), (3), (7) and (8), 230.1(3) (with respect to the application of subsections 230(3), (7) and (8) of the Act), 231.2(1), 231.6(2) and (8), 237.1(3), 241(3.1) and 244(21) and (22) of the Act;

(c) the definition

(i) "small business bond" in subsection 15.2(3) of the Act,

(ii) "fiscal period" in subsection 248(1) of the Act,

(iii) "release or surrender" in subsection 248(9) of the Act;

(d) paragraphs 15.2(8)(b), 34(1)(b), 70(5.2)(d) and (f), 73(5)(c), 85(1)(e.1) and (5.1)(f), 104(23)(a), 118(4)(e), 118.1(6)(b), 118.4(1)(b), 147.1(10)(a), 149(1)(l), 150(1)(e) and 164(3.1)(c) of the Act;

(e) subparagraph 15.1(10)(b)(i) as it read on June 9, 1993 and subparagraphs 39(1)(a)(i.1), 110.6(15)(b)(ii) and 184(3.1)(c)(iii) of the Act;

(f) paragraphs 23(5)(c) and 26(18)(c) of the *Income Tax Application Rules*;

(g) sections 210 and 412 of these Regulations;

(h) subsections 805(2), 809(3) and 1802(2) of these Regulations;

(i) paragraphs 1802(3)(b) and 2400(1)(f) of these Regulations; and

(j) paragraph 2400(1)(e) of these Regulations as it applies to taxation years other than taxation years beginning after June 17, 1987 and ending after December 31, 1987.

History: Para. 900(15)(f) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subsec. 900(15) enacted by P.C. 1994-1132, subsec. 1(12), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Former subsec. 900(15) added by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(16) The Director General, Client Assistance Directorate, of the Department of National Revenue, may exercise the powers and perform the duties of the Minister under

(a) section 221.2 of the Act;

(b) subsections 150(2), 204.1(4), 220(2.1), (3), (3.1) and (3.2), 231.2(1) and 241(3.1) of the Act; and

(c) paragraph 118.4(1)(b) of the Act.

History: Subsec. 900(16) enacted by P.C. 1994-1132, subsec. 1(12), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Former subsec. 900(16) added by P.C. 1987-1477, subsec. 1(14), July 30, 1987, *Canada Gazette*, Part II, August 19, 1987.

(17) The powers and the duties of the Minister under subsections 204.1(4), 220(3), (3.1) and (3.2) of the Act may be exercised and performed by an official of the Department of National Revenue in a District Taxation Office who holds the position of

(a) Assistant Director, Revenue Collections;

(b) Assistant Director, Client Assistance; or

(c) Assistant Director, Audit.

History: Subsec. 900(17) enacted by P.C. 1994-1132, subsec. 1(12), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

(18) The powers and the duties of the Minister under subsections 204.1(4), 220(3), (3.1) and (3.2) of the Act may be exercised and performed by an official of the Department of National Revenue in a Taxation Centre who holds the position of

(a) Assistant Director, Finance and Administration;

(b) Assistant Director, Individual and Estates;

(c) Assistant Director, Enquiries and Adjustments;

(d) Assistant Director, Corporation Services; or

(e) Assistant Director, Employer Services.

History: Subsec. 900(18) enacted by P.C. 1994-1132, subsec. 1(12), July 4, 1994, *Canada Gazette*, Part II, July 27, 1994.

Definitions [Reg. 900]: "business", "Minister" — ITA 248(1); "taxation year" — ITA 249.

PART X — ELECTION IN RESPECT OF DECEASED TAXPAYERS

History: Part X was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 14, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1000. Property dispositions — (1) Any election under subsection 164(6) of the Act shall be made by the legal representative of a deceased taxpayer by filing with the Minister the following documents:

(a) a letter from the legal representative specifying

(i) the part of the one or more capital losses from the disposition of properties, if any, under paragraph 164(6)(c) of the Act, and

(ii) the part of the amount, if any, under paragraph 164(6)(d) of the Act

in respect of which the election is made;

(b) where an amount is specified under subparagraph (a)(i), a schedule of the capital losses and capital gains referred to in paragraph 164(6)(a) of the Act;

(c) where an amount is specified under subparagraph (a)(ii),

(i) a schedule of the amounts of undepreciated capital cost described in paragraph 164(6)(b) of the Act,

(ii) a statement of the amount that, but for subsection 164(6) of the Act, would be the non-capital loss of the estate for its first taxation year, and

(iii) a statement of the amount that, but for subsection 164(6) of the Act, would be the farm loss of the estate for its first taxation year.

History: That portion of subsec. 1000(1) preceding para. (b) substituted, and paras. (d), (e) revoked, by P.C. 1988-390, s. 5, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable with respect to deaths occurring after December 31, 1984, except that the documents referred to in subsec. 1000(1) may be filed before September 14, 1988.

Subpara. 1000(1)(c)(iii) added by P.C. 1985-2277, s. 1, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to 1983 *et seq.* except that, for the purposes of subsec. 1000(2), the statement referred to in subpara. 1000(1)(c)(iii) may be filed at any time before November 6, 1985.

(2) The documents referred to in subsection (1) shall be filed not later than the day that is the later of

(a) the last day provided by the Act for the filing of a return that the legal representative of a deceased taxpayer is required or has elected to file under the Act in respect of the income of that deceased taxpayer for the taxation year in which he died; and

(b) the day the return of the income for the first taxation year of the deceased taxpayer's estate is required to be filed under paragraph 150(1)(c) of the Act.

Definitions [Reg. 1000]: "amount" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "disposition" — ITA 248(1); "estate" — ITA 104(1), 248(1); "farm loss" — ITA 111(8), 248(1); "legal representative", "Minister" — ITA 248(1); "non-capital loss" — ITA 111(8), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

1001. Annual instalments — Any election by a deceased taxpayer's legal representative under subsection 159(5) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which payment of the first of the "equal consecutive annual instalments" referred to in that subsection is required to be made.

Definitions [Reg. 1001]: "legal representative", "Minister", "prescribed", "taxpayer" — ITA 248(1).

Forms: T2075: Election under subsection 159(5) by a deceased taxpayer's legal representative to defer payment of income tax.

PART XI — CAPITAL COST ALLOWANCES

Proposed Amendment — Capital cost allowance

Federal budget, supplementary information, February 28, 2000: *Adjustments to the Capital Cost Allowance System*

A portion of the capital cost of depreciable property is deductible as capital cost allowance (CCA) each year. The maximum CCA rate for each type of property is set out in the *Income Tax Regulations*. The Government attempts to ensure that these CCA rates reflect, as closely as possible, the useful lives of the assets.

Various factors affect the useful lives of capital assets, including technological obsolescence and changing market conditions. The CCA regime is reviewed on an ongoing basis to ensure that the CCA rates are appropriate and do not impede the ability of Canadian firms to invest and compete.

As a result of this review, the budget proposes several adjustments to improve the CCA system. Proposed changes include

- an increase in the CCA rate for certain rail assets [see under Class 35 — ed.];
- an extension of the separate class election to include manufacturing and processing equipment; and [see under Reg. 1101(5p) — ed.]
- an increase in the CCA rates for certain electrical generating equipment, and for production and distribution equipment of a distributor of water or heat [see under Class 1 — ed.].

Related Provisions [Part XI]: ITA 20(1.1) — Definitions in ITA 13(21) apply to regulations.

History [Part XI]: Part XI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins [Part XI]: IT-285R2: Capital cost allowance — general comments.

Forms [Part XI]: T776: Statement of real estate rentals; T777: Statement of employment expenses; T2041: Capital cost allowance schedule for self-employed persons; T2132: Capital cost allowance schedule (depreciation); T5014: Partnership capital cost allowance schedule.

DIVISION I — DEDUCTIONS ALLOWED

1100. (1) For the purposes of paragraphs 8(1)(j) and (p) and 20(1)(a) of the Act, the following deductions are allowed in computing a taxpayer's income for each taxation year:

History: That portion of subsec. 1100(1) preceding para. (a) substituted by P.C. 1991-2272, subsec. 1(1), November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to 1988 *et seq.*

(a) **rates** — subject to subsection (2), such amount as he may claim in respect of property of each of the following classes in Schedule II not exceeding in respect of property

(i) of Class 1, 4 per cent,

Related Provisions: Reg. 1100(1)(zc).

(ii) of Class 2, 6 per cent,

Related Provisions: Reg. 1101(5i) — Separate class.

(iii) of Class 3, 5 per cent,

Related Provisions: Reg. 1100(1)(sb), (zc).

(iv) of Class 4, 6 per cent,

(v) of Class 5, 10 per cent,

(vi) of Class 6, 10 per cent,

Related Provisions: Reg. 1100(1)(sb), (zc).

(vii) of Class 7, 15 per cent,

(viii) of Class 8, 20 per cent,

Related Provisions: Reg. 1100(1)(sb), (zc).

(ix) of Class 9, 25 per cent,

(x) of Class 10, 30 per cent,

Related Provisions: Reg. 1100(1)(m) — Additional allowance — Canadian film or video production; Reg. 1100(1)(zc) — Additional allowance — railway expansion and modernization property; Reg. 1100(21) — Certified films and video tapes — limitation on CCA; Reg. 1100(21.1) — Non-certified films and video tapes — limitation on CCA; Reg. 1101(5a), (5k), (5k.1) — Separate classes for telecommunications spacecraft, certified productions and Canadian film or video productions.

(x.1) of Class 10.1, 30 per cent,

Related Provisions: Reg. 1101(1af) — Separate class.

(xi) of Class 11, 35 per cent,

(xii) of Class 12, 100 per cent,

Related Provisions: Reg. 1100(1)(l), 1100(21), (21.1), (22).

(xiii) of Class 16, 40 per cent,

(xiv) of Class 17, 8 per cent,

(xv) of Class 18, 60 per cent,

(xvi) of Class 22, 50 per cent,

(xvii) of Class 23, 100 per cent,

(xviii) of Class 25, 100 per cent,

(xix) of Class 26, 5 per cent,

(xx) of Class 28, 30 per cent,

Related Provisions: Reg. 1100(1)(w), 1100(1)(zc)(i)(H).

(xxi) of Class 30, 40 per cent,

Related Provisions: Reg. 1101(5a) — Separate class.

(xxii) of Class 31, 5 per cent,

Related Provisions: Reg. 1101(5b) — Separate class.

(xxiii) of Class 32, 10 per cent,

Related Provisions: Reg. 1101(5b) — Separate class.

(xxiv) of Class 33, 15 per cent,

(xxv) of Class 35, 7 per cent,

Related Provisions: Reg. 1100(1)(zc).

(xxvi) of Class 37, 15 per cent,

(xxvii) of Class 41, 25 per cent,

Related Provisions: Reg. 1100(1)(y), (ya).

(xxviii) of Class 42, 12 per cent,

(xxix) of Class 43, 30 per cent,

(xxix.1) of Class 43.1, 30 per cent, and

(xxx) of Class 44, 25 per cent,

of the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Related Provisions [Reg. 1100(1)(a)]: Reg. 1100(2) — Half-year rule; 1100(3) — Short taxation year; Reg. 1700 — CCA rates for farming or fishing property acquired before 1972. See also list at end of Reg. 1100(1).

History: Subpara. 1100(1)(a)(xxix.1) added by P.C. 1997-1033, subsec. 1(1), July 25, 1997, Canada Gazette, Part II, August 20, 1997, applicable after February 21, 1994.

Subpara. 1100(1)(a)(xxx) added by P.C. 1994-231, subsec. 1(1), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Subpara. 1100(1)(a)(xxix) added by P.C. 1994-230, s. 1, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Subpara. 1100(1)(a)(xxviii) added by P.C. 1994-139, subsec. 2(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired by a taxpayer after December 23, 1991, other than property acquired pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, except that where the taxpayer so elects in a letter filed with the Minister of National Revenue before August 9, 1994, or in a letter that is attached to the taxpayer's return of income for the taxpayer's first taxation year ending after December 23, 1991, then subpara. 1100(1)(a)(xxviii) applies to property acquired by the taxpayer after the beginning of that year.

Subpara. 1100(1)(a)(x.1) added by the said P.C. 1991-2272, subsec. 1(2), applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Subpara. 1100(1)(a)(xxvii) added by P.C. 1989-2464, subsec. 1(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

That portion of para. 1100(1)(a) preceding subpara. (i) substituted by P.C. 1983-1083, subsec. 1(1), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Subpara. 1100(1)(a)(xxvi) added by P.C. 1982-599, subsec. 1(1), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Subpara. 1100(1)(a)(xix) substituted by P.C. 1979-1488, subsec. 1(1), May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

That portion of para. 1100(1)(a) following subpara. (xxv) substituted by P.C. 1978-1315, subsec. 3(1), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Interpretation Bulletins [Reg. 1100(1)(a)]: IT-285R2: CCA — General comments; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

Information Circulars [Reg. 1100(1)(a)]: 84-1: Revision of capital cost allowance claims and other permissive deductions.

(b) **Class 13** — such amount as the taxpayer may claim in respect of the capital cost to the taxpayer of property of Class 13 in Schedule II, not exceeding

(i) where the capital cost of the property, other than property described in subparagraph (2)(a)(v), (vi) or (vii), was incurred in the taxation year and after November 12, 1981, 50 per cent of the amount for the year calculated in accordance with Schedule III, and

(ii) in any other case, the amount for the year calculated in accordance with Schedule III,

and, for the purposes of this paragraph and Schedule III, the capital cost to a taxpayer of a property shall be deemed to have been incurred at the time at which the property became available for use by the taxpayer;

Related Provisions: Reg. 1102(4), (5) — Improvements or alterations to leased properties; Reg. 1700(4) — Property of a farmer owned since before 1972.

History: Para. 1100(1)(b) substituted by P.C. 1994-139, subsec. 2(2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1989.

Subpara. 1100(1)(b)(i) amended by P.C. 1991-465, subsec. 1(1), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

Para. 1100(1)(b) substituted by P.C. 1983-1083, subsec. 1(2), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Interpretation Bulletins: IT-324: CCA — Emphyteutic lease; IT-464R: CCA — Leasehold interests.

(c) **Class 14** — such amount as he may claim in respect of property of Class 14 in Schedule II not exceeding the lesser of

(i) the aggregate of the amounts for the year obtained by apportioning the capital cost to him of each property over the life of the property remaining at the time the cost was incurred, and

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Related Provisions: Reg. 1100(1)(a)(xxx) — 25% CCA rate for certain patents; Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(c); Reg. 1100(9) — Patents.

Interpretation Bulletins: IT-143R2: Meaning of "eligible capital expenditure"; IT-477: CCA — Patents, franchises, concessions and licences.

(d) **in lieu of double depreciation** — such additional amount as he may claim not exceeding in the case of property described in each of the classes in Schedule II, the lesser of

(i) one-half the amount that would have been allowed to him in respect of property of that class under subparagraph 6(n)(ii) of the *Income War Tax Act* if that Act were applicable to the taxation year, and

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class;

(e) **timber limits and cutting rights** — such amount as he may claim not exceeding the amount calculated in accordance with Schedule VI in respect of the capital cost to him of a property, other than a timber resource property, that is a timber limit or a right to cut timber from a limit;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(e); Reg. 1101(3) — Separate class; Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

Interpretation Bulletins: IT-481: Timber resource property and timber limits.

(f) **Class 15** — such amount as he may claim not exceeding the amount calculated in accordance with Schedule IV, in respect of the capital cost to him of property of Class 15 in Schedule II;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(f); Reg. 1102(7) — River improvements; Reg. 1102(17) — Recreational property; Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

(g) **industrial mineral mines** — such amount as he may claim not exceeding the amount calculated in accordance with Schedule V in respect of the capital cost to him of a property that is an industrial mineral mine or a right to remove industrial minerals from an industrial mineral mine;

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(g); Reg. 1101(4) — Separate class; Reg. 1104(3) — "Industrial mineral mine"; Reg. 3900(2)"income derived from mining operations" — Deduction for mining taxes on income; Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

Interpretation Bulletins: IT-423: Sale of sand, gravel or top soil; IT-492: Industrial mineral mines.

(h) [Revoked]

History: Para. 1100(1)(h) and heading revoked by P.C. 1978-1315, subsec. 3(2), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(i) **additional allowances — fishing vessels** — such additional amount as he may claim in the case of property of a separate class prescribed by subsection 1101(2) not exceeding the lesser of

(i) the amount by which the depreciation that could have been taken on the property, if the Orders in Council referred to in that subsection were applicable to the taxation year, exceeds the amount allowed under paragraph (a) in respect of the property, and

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class;

Interpretation Bulletins: IT-267R2: CCA — vessels.

(j), (k) [Repealed]

History [Reg. 1100(1)(j), (k)]: Paras. 1100(1)(j), (k) repealed by P.C. 1995-775, subsec. 1(1), May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired on or after May 31, 1995.

(l) **additional allowances — certified productions** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(5k) not exceeding the lesser of

(i) the aggregate of his income for the year from that property and from property described in paragraph (n) of Class 12 in Schedule II, determined before making any deduction under this paragraph, and

(ii) the undepreciated capital cost to him of property of that separate class as of the end of the year before making any deduction under this paragraph for the year;

Proposed Amendment — Reg. 1100(1)(l)

Federal budget, Supplementary Information, February 27, 1995: The elements of the existing film tax incentive to be eliminated for films acquired after 1995 (and films acquired in 1995 in respect of which the new credit is claimed) include the following:

. . . . .

- eligibility of Canadian certified productions for an additional CCA (up to income from Canadian certified productions) in Income Tax Regulation 1100(1)(l); ...

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(l).

History: Para. 1100(1)(l) added by P.C. 1988-2795, subsec. 1(1), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Former para. 1100(1)(l) and heading revoked by P.C. 1978-1315, subsec. 3(3), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(m) [Revoked]

History: Para. 1100(1)(m) and heading revoked by P.C. 1978-1315, subsec. 3(3), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Proposed Addition — Reg. 1100(1)(m)

(m) **additional allowance — Canadian film or video production** — such additional amount as the taxpayer claims in respect of property for which a separate class is prescribed by subsection 1101(5k.1) not exceeding the lesser of

(i) the taxpayer's income for the year from the property, determined before making any deduction under this paragraph, and

(ii) the undepreciated capital cost to the taxpayer of the property of that separate class at the end of the year (before making any deduction under this paragraph for the year);

Application: The December 12, 1995 draft regulations (Canadian film tax credit), subsec. 1(1), will add para. 1100(1)(m), applicable to 1995 *et seq.*

Federal budget, Supplementary Information, February 27, 1995: The elements of the existing film tax incentive to be eliminated for films acquired after 1995 (and films acquired in 1995 in respect of which the new credit is claimed) include the following:

. . . .

• eligibility of Canadian certified productions for an additional CCA (up to income from Canadian certified productions) in Income Tax Regulation 1100(1)(l); ...

(n) **Class 19** — where the taxpayer is a corporation that had a degree of Canadian ownership in the taxation year, or is an individual who was resident in Canada in the taxation year for not less than 183 days, such amount as he may claim in respect of property of Class 19 in Schedule II that was acquired in a particular taxation year not exceeding the lesser of

(i) 50 per cent of the capital cost thereof to him, and

(ii) the amount by which the capital cost thereof to him exceeds the aggregate of the amounts deducted in respect thereof in computing his income for previous taxation years,

but the aggregate of amounts deductible for a taxation year in respect of property acquired in each of the particular taxation years, under this paragraph, shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Related Provisions: Reg. 1100(1)(o).

(o) **[Class 19]** — where the taxpayer is not entitled to make a deduction under paragraph (n) in computing his income for a taxation year, such amount as he may claim in respect of property of Class 19 in Schedule II not exceeding 20 per cent of the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(p) **Class 20** — such amount as he may claim in respect of property of Class 20 in Schedule II that was acquired in a particular taxation year not exceeding the lesser of

(i) 20 per cent of the capital cost thereof to him, and

(ii) the amount by which the capital cost thereof to him exceeds the aggregate of the amounts deducted in respect thereof in computing his income for previous taxation years,

but the aggregate of amounts deductible for a taxation year in respect of property acquired in each of the particular taxation years, under this paragraph, shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(q) **Class 21** — such amount as he may claim in respect of property of Class 21 in Schedule II that was acquired in a particular taxation year not exceeding the lesser of

(i) 50 per cent of the capital cost thereof to him, and

(ii) the amount by which the capital cost thereof to him exceeds the aggregate of the amounts deducted in respect thereof in computing his income for previous taxation years,

but the aggregate of amounts deductible for a taxation year in respect of property acquired in each of the particular taxation years, under this paragraph, shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(r), (s), (sa) [Revoked]

History: Paras. 1100(1)(r), (s), (sa) revoked by P.C. 1978-1315, subsec. 3(4), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(sb) **additional allowances — grain storage facilities** — such additional amount as he may claim in respect of property included in Class 3, 6 or 8 in Schedule II

(i) that is

(A) a grain elevator situated in that part of Canada that is defined in section 2 of the *Canada Grain Act* as the "Eastern Division" the principal use of which

(I) is the receiving of grain directly from producers for storage or forwarding or both,

(II) is the receiving and storing of grain for direct manufacture or processing into other products, or

(III) has been certified by the Minister of Agriculture to be the receiving of grain that has not been officially inspected or weighed,

(B) an addition to a grain elevator described in clause (A),

(C) fixed machinery installed in a grain elevator in respect of which, or in respect of an addition to which, an additional amount has been or may be claimed under this paragraph,

(D) fixed machinery, designed for the purpose of drying grain, installed in a grain elevator described in clause (A),

(E) machinery designed for the purpose of drying grain on a farm, or

(F) a building or other structure designed for the purpose of storing grain on a farm,

(ii) that was acquired by the taxpayer in the taxation year or in one of the three immediately preceding taxation years, at a time that was after April 1, 1972 but before August 1, 1974, and

(iii) that was not used for any purpose whatever before it was acquired by the taxpayer,

not exceeding the lesser of

(iv) where the property is included in Class 3, 22 per cent of the capital cost thereof, where the property is included in Class 6, 20 per cent of the capital cost thereof or where the property is included in Class 8,

(A) 14 per cent of the capital cost thereof in the case of property referred to in clause (i)(C), (D) or (F), and

(B) 14 per cent of the lesser of $15,000 and the capital cost thereof in the case of property described in clause (i)(E), and

(v) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class;

(t) **Classes 24, 27, 29 and 34** — for the taxation year that includes November 12, 1981, such amount as he may claim in respect of property of each of Classes 24, 27, 29 and 34 in Schedule II not exceeding the aggregate of

(i) 50 per cent of the lesser of

(A) the capital cost to him of all designated property of the class acquired by him in the year, and

(B) the undepreciated capital cost to him of property of the class as of the end of the year (computed as if no amount were included in respect of property, other than designated property of the class, acquired after November 12, 1981 and before making any deduction under this paragraph for the year),

(ii) the amount, if any, by which the amount determined under clause (i)(B) in respect of the class exceeds the amount determined under clause (i)(A) in respect of the class, and

(iii) the lesser of

(A) 25 per cent of the capital cost to him of all property, other than designated property, of the class acquired by him in the year, and

(B) the undepreciated capital cost to him of property of the class as of the end of the year (before making any deduction under this paragraph for the year);

Related Provisions: Reg. 1100(24) — Specified energy property.

(ta) **[Classes 24, 27, 29 and 34]** — for taxation years commencing after November 12, 1981, such amount as he may claim in respect of property of each of Classes 24, 27, 29 and 34 in Schedule II not exceeding the aggregate of

(i) the aggregate of

(A) the lesser of

(I) 50 per cent of the capital cost to him of all designated property of the class acquired by him in the year, and

(II) the undepreciated capital cost to him of property of the class as of the end of the year (before making any deduction under this paragraph for the year and, where any of the property referred to in subclause (I) was acquired by virtue of a specified transaction, computed as if no amount were included in respect of property, other than designated property of the class acquired by him in the year), and

(B) 25 per cent of the lesser of

(I) the undepreciated capital cost to him of property of the class as of the end of the year (computed as if no amount were included in respect of designated property of the class acquired by him in the year and before making any deduction under this paragraph for the year), and

(II) the capital cost to him of all property, other than designated property, of the class acquired by him in the year, and

(ii) the lesser of

(A) the amount, if any, by which

(I) the undepreciated capital cost to him of property of the class as of the end of the year (before making any deduction under this paragraph for the year)

exceeds

(II) the capital cost to him of all property of the class acquired by him in the year, and

(B) an amount equal to the aggregate of

(I) 50 per cent of the capital cost to him of all property of the class acquired by him in the immediately preceding taxation year, other than designated property of the class acquired in a specified transaction, and

(II) the amount, if any, by which the amount determined under clause (A) for the year with respect to the class exceeds the aggregate of 75 per cent of the capital cost to him of all property, other than designated property, of the class acquired by him in the immediately preceding taxation year and 50 per cent of the capital cost to him of designated property of the class acquired by him in the immediately preceding taxation year, other than designated property of the class acquired in a specified transaction,

and for the purposes of this paragraph and paragraph (t), "designated property" of a class means

(iii) property of the class acquired by him before November 13, 1981,

(iv) property deemed to be designated property of the class by virtue of paragraph (2.1)(g) or (2.2)(j), and

(v) property described in subparagraph (2)(a)(v), (vi) or (vii),

and, for the purposes of this paragraph,

(vi) "specified transaction" means a transaction to which subsection 85(5), 87(1), 88(1), 97(4) or 98(3) or (5) of the Act applies, and

(vii) subject to paragraph (2.2)(j), a property shall be deemed to have been acquired by a taxpayer at the time at which the property became available for use by the taxpayer;

Related Provisions: Reg. 1100(2.2)(j); Reg. 1100(24) — Specified energy property.

History: That portion of para. 1100(1)(ta) following subpara. (iv) substituted by P.C. 1994-139, subsec. 2(3), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1989.

Subpara. 1100(1)(ta)(v) added by P.C. 1991-465, subsec. 1(2), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

The heading preceding para. 1100(1)(t) and para. 1100(1)(t) substituted and para. 1100(1)(ta) added by P.C. 1983-1083, subsec. 1(3), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of taxation years ending after November 12, 1981.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-336R: CCA — Pollution control property.

(u) [Revoked]

History: Para. 1100(1)(u) revoked by P.C. 1978-1315, subsec. 3(5), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(v) **Canadian vessels** — such amount as the taxpayer may claim in respect of property that is

(i) a vessel described in subsection 1101(2a),

(ii) included in a separate prescribed class because of subsection 13(14) of the Act, or

(iii) a property that has been constituted a prescribed class by subsection 24(2) of Chapter 91 of the Statutes of Canada, 1966-67,

not exceeding the lesser of

(iv) where the property, other than property described in subparagraph (2)(a)(v), (vi) or (vii), was acquired in the taxation year and after November 12, 1981, 16 ⅔ per cent of the capital cost thereof to the taxpayer and, in any other case, 33 ⅓ per cent of the capital cost thereof to the taxpayer, and

(v) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under this paragraph for the taxation year) of property of the class,

and, for the purposes of subparagraph (iv), a property shall be deemed to have been acquired by a taxpayer at the time at which the property became available for use by the taxpayer for the purposes of the Act;

History: Para. 1100(1)(v) and its heading were amended by subsec. 2(4) of P.C. 1994-139, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, the heading and subpara. (i) applicable with respect to property acquired after July 13, 1990, the rest applicable with respect to property acquired after 1989.

Subpara. 1100(1)(v)(iv) amended by P.C. 1991-465, subsec. 1(3), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

All that portion of para. 1100(1)(v) preceding subpara. (v) substituted by P.C. 1983-1083, subsec. 1(4), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Interpretation Bulletins: IT-267R2: CCA — Vessels.

Advance Tax Rulings: ATR-52: Accelerated rate of CCA for vessels.

(va) **additional allowances — offshore drilling vessels** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(2b) not exceeding 15 per cent of the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

Interpretation Bulletins: IT-267R2: CCA — vessels.

(w) **additional allowances — Class 28** — subject to section 1100A, such additional amount as he may claim in respect of property described in Class 28 acquired for the purpose of gaining or producing income from a mine or in respect of property acquired for the purpose of gaining or producing income from a mine and for which a separate class is prescribed by subsection 1101(4a), not exceeding the lesser of

(i) the taxpayer's income for the year from the mine, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph (x), (y) or (ya), paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

(ii) the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(w); Reg. 1104(5), (6.1) — Income from a mine.

History: Subpara. 1100(1)(w)(i) amended by P.C. 1999-629, subsec. 1(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(w)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1100(1)(w)(i) substituted by P.C. 1989-2464, subsec. 1(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

That portion of para. 1100(1)(w) preceding subpara. (i) thereof substituted by P.C. 1985-465, s. 1, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

(x) subject to section 1100A, such additional amount as he may claim in respect of property acquired for the purpose of gaining or producing income from more than one mine and for which a separate class is prescribed by subsection 1101(4b), not exceeding the lesser of

(i) the taxpayer's income for the year from the mines, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph (ya), paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

(ii) the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(x); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: Subpara. 1100(1)(x)(i) amended by P.C. 1999-629, subsec. 1(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(x)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1100(1)(x)(i) substituted by P.C. 1989-2464, subsec. 1(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

(y) **additional allowances — Class 41** — such additional amount as the taxpayer may claim in respect of property acquired for the purpose of gaining or producing income from a mine and for which a separate class is prescribed by subsection 1101(4c), not exceeding the lesser of

(i) the taxpayer's income for the year from the mine, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph (x) or (ya), paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

(ii) the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (computed without reference to subsection (2) and before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(y); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: Subpara. 1100(1)(y)(i) amended by P.C. 1999-629, subsec. 1(3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(y)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1100(1)(y)(ii) amended by P.C. 1992-2335, Sch. II, subsec. 1(1), November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to 1988 *et seq*.

Para. 1100(1)(y) added by P.C. 1989-2464, subsec. 1(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq*.

The heading preceding para. 1100(1)(y) and para. 1100(1)(y) revoked by P.C. 1983-1083, subsec. 1(5), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of taxation years ending after November 12, 1981.

(ya) **[property for more than one mine]** — such additional amount as the taxpayer may claim in respect of property acquired for the purpose of gaining or producing income from more than one mine and for which a separate class is prescribed by subsection 1101(4d), not exceeding the lesser of

(i) the taxpayer's income for the year from the mines, determined without reference to paragraph 12(1)(z.5) of the Act and before making any deduction under this paragraph, paragraph 20(1)(v.1) of the Act, section 65, 66, 66.1, 66.2 or 66.7 of the Act or section 29 of the *Income Tax Application Rules*, and

(ii) the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (computed without reference to subsection (2) and before making any deduction under this paragraph for the taxation year);

Related Provisions: Reg. 1100(3) — Short taxation year rule does not apply to Reg. 1100(1)(ya); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: Subpara. 1100(1)(ya)(i) amended by P.C. 1999-629, subsec. 1(4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Subpara. 1100(1)(ya)(i) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 1100(1)(ya) added by P.C. 1989-2464, subsec. 1(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq*.

(z) **additional allowances — railway cars** — such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by paragraph 1101(5d)(c) not exceeding eight per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

History: Para. 1100(1)(z) amended by P.C. 1991-465, subsec. 1(4), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after April 26, 1989.

(z.1a) such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by paragraph 1101(5d)(d), (e) or (f), not exceeding six per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

History: Para. 1100(1)(z.1a) added by P.C. 1991-465, subsec. 1(5), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable

(a) in respect of property acquired by a taxpayer after April 26, 1989 for rent or lease to another person;

(b) to the 1990 and subsequent taxation years in respect of property acquired by a taxpayer before April 27, 1989 for rent or lease to another person, except that the reference to "six" in para. 1100(1)(z.1a) shall be read as a reference to "7 in respect of the 1990 taxation year, to "7 ⅓" in respect of the 1991 taxation year, to "7" in respect of the 1992 taxation year, to "6 ⅔" in respect of the 1993 taxation year, and to "6⅓" in respect of the 1994 taxation year; and

(c) in respect of property acquired by a taxpayer after February 2, 1990, other than

(i) property acquired for rent or lease to another person,

(ii) property acquired pursuant to an agreement in writing entered into before February 3, 1990, or

(iii) property under construction by or on behalf of the taxpayer before February 3, 1990.

(z.1b) **[railway property]** — where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by subsection 1101(5d.1), not exceeding three per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

History: Para. 1100(1)(z.1b) added by P.C. 1994-139, subsec. 2(5), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(za) **additional allowances — railway track and related property** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(5e) not exceeding four per cent of the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

(za.1) where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by subsection 1101(5e.1), not exceeding six per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

History: Para. 1100(1)(za.1) added by P.C. 1994-139, subsec. 2(6), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(za.2) **[trestles]** — where throughout the taxation year the taxpayer was a common carrier that owned and operated a railway, such additional amount as the taxpayer may claim in respect of property for which a separate class is prescribed by subsection 1101(5e.2), not exceeding five per cent of the undepreciated capital cost to the taxpayer of property of that class as of the end of the year (before making any deduction under this subsection for the year);

History: Para. 1100(1)(za.2) added by P.C. 1994-139, subsec. 2(6), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(zb) **[trestles]** — such additional amount as he may claim in respect of property for which a separate class is prescribed by subsection 1101(5f) not exceeding three per cent of the undepreciated capital cost to him of property of that class as of the end of the taxation year (before making any deduction under this subsection for the taxation year);

History: Paras. 1100(1)(za), (zb) added by P.C. 1978-344, s. 1, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(zc) **additional allowances — railway expansion and modernization property** — where the taxpayer owns and operates a railway as a common carrier, such additional amount as he may claim in respect of property of a class in Schedule II (in this paragraph referred to as "designated property" of the class)

(i) that is

(A) included in Class 1 in Schedule II by virtue of paragraph (h) or (i) of that Class,

(B) a bridge, culvert, subway or tunnel included in Class 1 in Schedule II that is ancillary to railway track and grading,

(C) a trestle included in Class 3 in Schedule II that is ancillary to railway track and grading,

(D) included in Class 6 in Schedule II by virtue of paragraph (j) of that Class,

(E) machinery or equipment included in Class 8 in Schedule II that is ancillary to

(I) railway track and grading, or

(II) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor,

(F) machinery or equipment included in Class 8 in Schedule II that

(I) was acquired principally for the purpose of maintaining or servicing, or

(II) is ancillary to and used as part of,

a railway locomotive or railway car,

(G) included in Class 10 in Schedule II by virtue of subparagraph (m)(i), (ii) or (iii) of that Class,

(H) included in Class 28 in Schedule II by virtue of subparagraph (d)(ii) of that Class (other than property referred to in subparagraph (m)(iv) of Class 10), or

(I) included in Class 35 in Schedule II,

(ii) that was acquired by him principally for use in or is situated in Canada,

(iii) that was acquired by him in respect of the railway in the taxation year or in one of the four immediately preceding taxation years, at a time that was after April 10, 1978 but before 1988, and

(iv) that was not used for any purpose whatever before it was acquired by him,

not exceeding the lesser of

(v) six per cent of the aggregate of the capital cost to him of the designated property of the class, and

(vi) the undepreciated capital cost to him as of the end of the taxation year (after making all deductions claimed by him under other provisions of this subsection for the taxation year but before making any deduction under this paragraph for the taxation year) of property of the class;

History: Subpara. 1100(1)(zc)(iii) substituted by P.C. 1984-2044, s. 1, June 14, 1984, *Canada Gazette*, Part II, June 27, 1984.

Para. 1100(1)(zc) added by P.C. 1979-1488, subsec. 1(2), May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective from April 11, 1978.

(zd) **Class 38** — such amount as the taxpayer may claim in respect of property of Class 38 in Schedule II not exceeding that percentage which is the aggregate of

(i) that proportion of 40 per cent that the number of days in the taxation year that are in 1988 is of the number of days in the taxation year that are after 1987,

(ii) that proportion of 35 per cent that the number of days in the taxation year that are in 1989 is of the number of days in the taxation year, and

(iii) that proportion of 30 per cent that the number of days in the taxation year that are after 1989 is of the number of days in the taxation year

of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

(ze) **Class 39** — such amount as the taxpayer may claim in respect of property of Class 39 in Schedule II not exceeding that percentage which is the aggregate of

(i) that proportion of 40 per cent that the number of days in the taxation year that are in 1988 is of the number of days in the taxation year that are after 1987,

(ii) that proportion of 35 per cent that the number of days in the taxation year that are in 1989 is of the number of days in the taxation year,

(iii) that proportion of 30 per cent that the number of days in the taxation year that are in 1990 is of the number of days in the taxation year, and

(iv) that proportion of 25 per cent that the number of days in the taxation year that are after 1990 is of the number of days in the taxation year

of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment.

(zf) **Class 40** — such amount as the taxpayer may claim in respect of property of Class 40 in Schedule II not exceeding that percentage which is the aggregate of

(i) that proportion of 40 per cent that the number of days in the taxation year that are in 1988 is of the number of days in the taxation year that are after 1987,

(ii) that proportion of 35 per cent that the number of days in the taxation year that are in 1989 is of the number of days in the taxation year, and

(iii) that proportion of 30 per cent that the number of days in the taxation year that are in 1990 is of the number of days in the taxation year

of the undepreciated capital cost to the taxpayer of property of that class as of the end of the taxation year (before making any deduction under this paragraph for the taxation year);

History [Reg. 1100(1)(zd)–(zf)]: Paras. 1100(1)(zd) to (zf) added by P.C. 1989-2464, subsec. 1(5), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Interpretation Bulletins [Reg. 1100(1)(zf)]: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment.

(zg) **additional allowance — year 2000 computer hardware and systems software** — where the taxpayer

(i) has elected for the year in prescribed manner,

(ii) was not in the year a large corporation, as defined in subsection 225.1(8) of the Act, or a partnership any member of which was such a corporation in a taxation year that included any time that is in the partnership's year, and

(iii) acquired property included in paragraph (f) of Class 10 in Schedule II

(A) in the year,

(B) after 1997 and before November 1999, and

(C) for the purpose of replacing property that was acquired before 1998 that has a material risk of malfunctioning because of the change of the calendar year to 2000 and that is described in paragraph (f) of Class 10, or paragraph (o) of Class 12, in Schedule II,

such additional amount as the taxpayer claims in respect of all property described in subparagraph (iii) not exceeding the least of

(iv) the amount, if any, by which $50,000 exceeds the total of

(A) the total of all amounts each of which is an amount claimed by the taxpayer under this paragraph for a preceding taxation year,

(B) the total of all amounts each of which is an amount claimed by the taxpayer for the year or a preceding taxation year under paragraph (zh), and

(C) the total of all amounts each of which is an amount claimed under this paragraph or paragraph (zh) by a corporation for a taxation year in which it was associated with the taxpayer,

(v) 85% of the capital cost to the taxpayer of all property described in subparagraph (iii), and

(vi) the undepreciated capital cost to the taxpayer as of the end of the year (computed without reference to subsection (2) and after making all deductions claimed under other provisions of this subsection for the year but before making any deduction under this paragraph for the year) of property included in Class 10 in Schedule II; and

I.T. Technical News: No. 14 (millennium bug expenditures).

(zh) **additional allowance — year 2000 computer software** — where the taxpayer

(i) has elected for the year in prescribed manner,

(ii) was not in the year a large corporation, as defined in subsection 225.1(8) of the Act, or a partnership any member of which was such a corporation in a taxation year that included any time that is in the partnership's year, and

(iii) acquired property included in paragraph (o) of Class 12 in Schedule II

(A) in the year,

(B) after 1997 and before November 1999, and

(C) for the purpose of replacing property that was acquired before 1998 that has a material risk of malfunctioning because of the change of the calendar year to 2000 and that is described in paragraph (f) of Class 10, or paragraph (o) of Class 12, in Schedule II,

such additional amount as the taxpayer claims in respect of all property described in subparagraph (iii) not exceeding the least of

(iv) the amount, if any, by which $50,000 exceeds the total of

(A) the total of all amounts each of which is an amount claimed by the taxpayer under this paragraph for a preceding taxation year,

(B) the total of all amounts each of which is an amount claimed by the taxpayer for the year or a preceding taxation year under paragraph (zg), and

(C) the total of all amounts each of which is an amount claimed under this paragraph or paragraph (zg) by a corporation for a taxation year in which it was associated with the taxpayer,

(v) 50% of the capital cost to the taxpayer of all property described in subparagraph (iii), and

(vi) the undepreciated capital cost to the taxpayer as of the end of the year (computed without reference to subsection (2) and after making all deductions claimed under other provisions of this subsection for the year but before making any deduction under this paragraph for the year) of property included in Class 12 in Schedule II.

History [Reg. 1100(1)(zg), (zh)]: Paras. 1100(1)(zg) and (zh) added by P.C. 2000-1000, subsec. 2(1), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable to 1998 *et seq.*

I.T. Technical News: No. 14 (millennium bug expenditures).

Related Provisions [Reg. 1100(1)]: Reg. 1100(1.1) — Specified leasing property; Reg. 1100(3) — Taxation year less than 12 months; Reg. 1100(11) — Rental properties; Reg. 1100(15) — Leasing properties; ITA 20(1.1) — Definitions in ITA 13(21) apply to regulations.

Interpretation Bulletins [Reg. 1100(1)]: See also at beginning of Reg. Part XI.

Forms [Reg. 1100(1)]: See at beginning of Reg. Part XI.

(1.1) [Specified leasing property] — Notwithstanding subsections (1) and (3), the amount deductible by a taxpayer for a taxation year in respect of a property that is a specified leasing property at the end of the year is the lesser of

(a) the amount, if any, by which the aggregate of

(i) all amounts that would be considered to be repayments in the year or a preceding year on account of the principal amount of a loan made by the taxpayer if

(A) the taxpayer had made the loan at the time that the property last became a specified leasing property and in a principal amount equal to the fair market value of the property at that time,

(B) interest had been charged on the principal amount of the loan outstanding from time to time at the rate, determined in accordance with section 4302, in effect at the earlier of

(I) the time, if any, before the time referred to in subclause (II), at which the taxpayer last entered into an agreement to lease the property, and

(II) the time that the property last became a specified leasing property

(or, where a particular lease provides that the amount paid or payable by the lessee of the property for the use of, or the right to use, the property varies according to prevailing interest rates in effect from time to time, and the taxpayer so elects, in respect of all of the property that is the subject of the particular lease, in the taxpayer's return of income under Part I of the Act for the taxation year of the taxpayer in which the particular lease was entered into, the rate determined in accordance with section 4302 that is in effect at the beginning of the period for which the interest is being calculated), compounded semi-annually not in advance, and

(C) the amounts that were received or receivable by the taxpayer before the end of the year for the use of, or the right to use, the property before the end of the year and after the time it last became a specified leasing property were blended payments of principal and interest, calculated in accordance with clause (B), on the loan applied firstly on account of interest on principal, secondly on account of interest on unpaid interest, and thirdly on account of principal, and

(ii) the amount that would have been deductible under this section for the taxation year (in this subparagraph referred to as the "particular year") that includes the time (in this subparagraph referred to as the "particular time") at which the property last became a specified leasing property of the taxpayer, if

(A) the property had been transferred to a separate prescribed class at the later of

(I) the beginning of the particular year, and

(II) the time at which the property was acquired by the taxpayer,

(B) the particular year had ended immediately before the particular time, and

(C) where the property was not a specified leasing property immediately before the particular time, subsection (3) had applied,

exceeds

(iii) the aggregate of all amounts deducted by the taxpayer in respect of the property by reason of this subsection before the commencement of the year and after the time at which it last became a specified leasing property; and

(b) the amount, if any, by which,

(i) the aggregate of all amounts that would have been deducted by the taxpayer under this Part in respect of the property under paragraph 20(1)(a) of the Act in computing the income of the taxpayer for the year and all preceding taxation years had this subsection and subsections (11) and (15) not applied, and had the taxpayer, in each such year deducted under paragraph 20(1)(a) of the Act the maximum amount allowed under this Part, read without reference to this subsection and subsection (11) and (15), in respect of the property,

exceeds

(ii) the total depreciation allowed to the taxpayer before the commencement of the year in respect of the property.

Related Provisions: ITA 16.1 — Election to treat lease as a sale; Reg. 1100(1.11) — Meaning of "specified leasing property"; Reg. 1100(1.12); Reg. 4302 — Prescribed rate of interest.

(1.11) ["Specified leasing property"] — In this section and subsection 1101(5n), "specified leasing property" of a taxpayer at any time means depreciable property (other than exempt property) that is

(a) used at that time by the taxpayer or a person with whom the taxpayer does not deal at arm's length principally for the purpose of gaining or producing gross revenue that is rent or leasing revenue,

(b) the subject of a lease at that time to a person with whom the taxpayer deals at arm's length and that, at the time the lease was entered into, was a lease for a term of more than one year, and

(c) the subject of a lease of property where the tangible property, other than exempt property, that was the subject of the lease had, at the time the lease was entered into, an aggregate fair market value in excess of $25,000,

but, for greater certainty, does not include intangible property (including systems software and property referred to in paragraph (w) of Class 10 or paragraph (n) or (o) of Class 12 in Schedule II).

Related Provisions: Reg. 1100(1.12)–(1.3), (17.2) — Interpretation; Reg. 1101(5n) — Separate class.

(1.12) Notwithstanding subsections (1) and (1.1), where, in a taxation year, a taxpayer has acquired a property that was not used by the taxpayer for any purpose in that year and the first use of the property by the taxpayer is a lease of the property in respect of which subsection (1.1) applies, the amount allowed to the taxpayer under subsection (1) in respect of the property for the year shall be deemed to be nil.

(1.13) For the purposes of this section,

(a) **"exempt property"** means

(i) general purpose office furniture or office equipment included in Class 8 in Schedule II (including, for greater certainty, mobile office equipment such as cellular telephones and pagers) or general purpose electronic data processing equipment and ancillary data processing equipment, included in paragraph (f) of Class 10 in Schedule II, other than any individual piece thereof having a capital cost to the taxpayer in excess of $1,000,000,

(ii) furniture, appliances, television receivers, radio receivers, telephones, furnaces, hot-water heaters and other similar properties, designed for residential use,

(iii) a property that is a motor vehicle that is designed or adapted primarily to carry individuals on highways and streets and that has a seating capacity for not more than the driver and eight passengers, or a motor vehicle of a type commonly called a van or pick-up truck, or a similar vehicle,

(iv) a truck or tractor that is designed for hauling freight on highways,

(v) a trailer that is designed for hauling freight and to be hauled under normal operating conditions by a truck or tractor described in subparagraph (iv),

(vi) a building or part thereof included in Class 1, 3, 6, 20, 31 or 32 in Schedule II (including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating

equipment, lighting fixtures, elevators and escalators) other than a building or part thereof leased primarily to a lessee that is

(A) a person who is exempt from tax by reason of section 149 of the Act,

(B) a person who uses the building in the course of carrying on a business the income from which is exempt from tax under Part I of the Act by reason of any provision of the Act, or

(C) a Canadian government, municipality or other Canadian public authority,

who owned the building or part thereof at any time before the commencement of the lease (other than at any time during a period ending not later than one year after the later of the date the construction of the building or part thereof was completed and the date the building or part thereof was acquired by the lessee),

(vii) vessel mooring space, and

(viii) property that is included in Class 35 in Schedule II,

and for the purposes of subparagraph (i), where a property is owned by two or more persons or partnerships, or any combination thereof, the capital cost of the property to each such person or partnership shall be deemed to be the total of all amounts each of which is the capital cost of the property to such a person or partnership;

(b) property shall be deemed to be the subject of a lease for a term of more than one year at any time where, at that time

(i) the property had been leased by the lessee thereunder, a person with whom the lessee does not deal at arm's length, or any combination thereof, for a period of more than one year ending at that time, or

(ii) it is reasonable, having regard to all the circumstances, to conclude that the lessor thereunder knew or ought to have known that the lessee thereunder, a person with whom the lessee does not deal at arm's length, or any combination thereof, would lease the property for more than one year; and

(c) for the purposes of paragraph (1.11)(c), where it is reasonable, having regard to all the circumstances, to conclude that one of the main reasons for the existence of two or more leases was to avoid the application of subsection (1.1) by reason of each such lease being a lease of property where the tangible property, other than exempt property, that was the subject of the lease had an aggregate fair market value, at the time the lease was entered into, not in excess of $25,000, each such lease shall be deemed to be a lease of tangible property that had, at the time the lease was entered into, an aggregate fair market value in excess of $25,000.

Related Provisions: Reg. 1100(1.14); Reg. 8200 — Prescribed property for leasing rules.

History: Subpara. 1100(1.13)(a)(iii) amended by P.C. 1994-139, subsec. 2(7), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to taxation years and fiscal periods commencing after June 17, 1987 and ending after December 31, 1987.

Subpara. 1100(1.13)(a)(viii) amended by the said P.C. 1994-139, subsec. 2(8), applicable to property acquired after December 23, 1991, other than property acquired by the taxpayer before 1993

(a) pursuant to an agreement in writing entered into before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

(1.14) For the purposes of subsection (1.11) and notwithstanding subsection (1.13), where a taxpayer referred to in subsection (16) so elects in the taxpayer's return of income under Part I of the Act for a taxation year in respect of the year and all subsequent taxation years, all of the property of the taxpayer that is the subject of leases entered into in those years shall be deemed not to be exempt property for those years and the aggregate fair market value of all of the tangible property that is the subject of each such lease shall be deemed to have been, at the time the lease was entered into, in excess of $25,000.

(1.15) Subject to subsection (1.16) and for the purposes of subsection (1.11), where at any time a taxpayer acquires property that is the subject of a lease with a remaining term at that time of more than one year from a person with whom the taxpayer was dealing at arm's length, the taxpayer shall be deemed to have entered into a lease of the property at that time for a term of more than one year.

(1.16) Where, at any time, a taxpayer acquires from a person with whom the taxpayer is not dealing at arm's length, or by virtue of an amalgamation (within the meaning assigned by subsection 87(1) of the Act), property that was specified leasing property of the person from whom the taxpayer acquired it, the taxpayer shall, for the purposes of paragraph (1.1)(a) and for the purpose of computing the income of the taxpayer in respect of the lease for any period after the particular time, be deemed to be the same person as, and a continuation of, that person.

(1.17) For the purposes of subsections (1.1) and (1.11), where at any particular time a property (in this subsection referred to as a "replacement property") is provided by a taxpayer to a lessee for the remaining term of a lease as a replacement for a similar property of the taxpayer (in this subsection referred to as the "original property") that was leased by the taxpayer to the lessee, and the amount payable by the lessee for the use of, or the right to use, the replacement property is the same as the amount that was so payable in respect of the original property, the following rules apply:

(a) the replacement property shall be deemed to have been leased by the taxpayer to the lessee at the same time and for the same term as the original property;

(b) the amount of the loan referred to in clause (1.1)(a)(i)(A) shall be deemed to be equal to the amount of that loan determined in respect of the original property;

(c) the amount determined under subparagraph (1.1)(a)(ii) in respect of the replacement property shall be deemed to be equal to the amount so determined in respect of the original property;

(d) all amounts received or receivable by the taxpayer for the use of, or the right to use, the original property before the particular time shall be deemed to have been received or receivable, as the case may be, by the taxpayer for the use of, or the right to use, the replacement property; and

(e) the original property shall be deemed to have ceased to be subject to the lease at the particular time.

(1.18) For the purposes of subsection (1.1), where for any period of time any amount that would have been received or receivable by a taxpayer during that period in respect of the use of, or the right to use, a property of the tax-

payer during that period is not received or receivable by the taxpayer as a consequence of a breakdown of the property during that period and before the lease of that property is terminated, that amount shall be deemed to have been received or receivable, as the case may be, by the taxpayer.

(1.19) For the purposes of subsections (1.1) and (1.11), where at any particular time

(a) an addition or alteration (in this subsection referred to as "additional property") is made by a taxpayer to a property (in this subsection referred to as the "original property") of the taxpayer that is a specified leasing property at the particular time, and

(b) as a consequence of the addition or alteration, the aggregate amount receivable by the taxpayer after the particular time for the use of, or the right to use, the original property and the additional property exceeds the amount so receivable in respect of the original property,

the following rules apply:

(c) the taxpayer shall be deemed to have leased the additional property to the lessee at the particular time,

(d) the term of the lease of the additional property shall be deemed to be greater than one year,

(e) the prescribed rate in effect at the particular time in respect of the additional property shall be deemed to be equal to the prescribed rate in effect in respect of the lease of the original property at the particular time,

(f) subsection (1.11) shall be read without reference to paragraph (c) thereof in respect of the additional property, and

(g) the excess described in paragraph (b) shall be deemed to be an amount receivable by the taxpayer for the use of, or the right to use, the additional property.

(1.2) For the purposes of subsections (1.1) and (1.11), where at any time

(a) a lease (in this subsection referred to as the "original lease") of property is in the course of a *bona fide* renegotiation, and

(b) as a result of the renegotiation, the amount paid or payable by the lessee of the property for the use of, or the right to use, the property is altered in respect of a period after that time (otherwise than by reason of an addition or alteration to which subsection (1.19) applies),

the following rules apply:

(c) the original lease shall be deemed to have expired and the renegotiated lease shall be deemed to be a new lease of the property entered into at that time, and

(d) paragraph (1.13)(b) shall not apply in respect of any period before that time during which the property was leased by the lessee or a person with whom the lessee did not deal at arm's length.

(1.3) For the purposes of subsections (1.1) and (1.11), where a taxpayer leases to another person a building or part thereof that is not exempt property, the references to "one year" in paragraphs (1.11)(b) and (1.13)(b), subsection (1.15) and paragraph (1.19)(d) shall in respect of that building or part thereof be read as references to "three years".

Related Provisions: Reg. 1100(1.13) — Meaning of "exempt property".

History: Para. 1100(1.17)(b) amended by P.C. 1992-2335, Sch. II, subsec. 1(3), November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable *ab initio*.

Subsec. 1100(1.1) to (1.3) added by P.C. 1991-465, subsec. 1(6), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. EDST, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. EDST, April 26, 1989 shall be deemed to have been entered into at that particular time), except that

(a) subsec. 1100(1.12) is applicable in respect of property acquired after April 26, 1989;

(b) in its application to leases entered into before February 3, 1990 or after February 2, 1990 pursuant to an agreement in writing entered into before February 3, 1990 under which the lessee thereunder has the right to require the lease of the property,

(i) subsec. 1100(1.3) shall not apply,

(ii) subpara. 1100(1.13)(a)(vi) shall be read as follows:

"(vi) a building or part thereof (including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators),", and

(iii) cl. 1100(1.1)(a)(i)(B) shall be read without reference to subcl. (I) and to the words "the earlier of";

(c) in their application to leases entered into on or before March 14, 1991 or after that day pursuant to an agreement in writing entered into on or before that day under which the lessee thereunder has the right to require the lease of the property, subpara. 1100(1.13)(a)(iv) and (v), shall be read as follows:

"(iv) a truck or tractor that is designed for use on highways,

(v) a trailer that is designed to be hauled under normal operating conditions by a truck or tractor described in subparagraph (iv),"; and

(d) any election made under cl. 1100(1.1)(a)(i)(B) or subsec. 1100(1.14) that is made on or before September 24, 1991 shall be deemed to be a valid election under that clause or subsec. 1100(1.14), as the case may be.

(2) Property acquired in the year [Half-year rule] — Where at the end of a taxation year of a taxpayer

(a) the aggregate of all amounts, each of which is an amount added

(i) by reason of subparagraph 13(21)(f)(i) [13(21)"undepreciated capital cost"A] of the Act in respect of a property acquired in the year or that became available for use by the taxpayer in the year, or

(ii) by reason of subparagraph 13(21)(f)(ii.1) [13(21)"undepreciated capital cost"C] or (ii.2) [D] of the Act in respect of an amount repaid in the year

to the undepreciated capital cost to the taxpayer of property of a class in Schedule II, other than

(iii) property included in paragraph (1)(v), paragraph (w) of Class 10 or any of paragraphs (a) to (c), (e) to (i), (k), (l), (p), (q) and (s) of Class 12,

Proposed Amendment — Reg. 1100(2)(a)(iii)

(iii) property included in paragraph (1)(v), paragraph (w) of Class 10 or any of paragraphs (a) to (c), (e) to (i), (k), (l) and (p) to (s) of Class 12,

Application: The December 12, 1995 draft regulations (Canadian film tax credit), subsec. 1(2), will amend subpara. 1100(2)(a)(iii) to read as above, applicable to property acquired after December 12, 1995.

Letter from Department of Finance, August 4, 1995:

Dear [xxx]

Thank you for your letter of December 13, 1994 concerning the application of the half-year capital cost allowance rule to rental video-cassettes.

I understand that [xxx], Director of your [xxx] met with my officials to discuss this issue. I am sympathetic to your concerns and am prepared to recommend an amendment of the tax regulations in this regard at the next available opportunity. [This was done by changing "(p), (q) and (s)" to "(p) to (s)" in Reg. 1100(2)(a)(iii), thus covering para. (r) — ed.]

Thank you for bringing this matter to my attention.

Sincerely,

The Honourable Paul Martin, P.C., M.P.

(iv) property included in any of Classes 13, 14, 15, 23, 24, 27, 29 and 34,

(v) where the taxpayer was a corporation described in subsection (16) throughout the year, property that was specified leasing property of the taxpayer at that time,

(vi) property that was deemed to have been acquired by the taxpayer in a preceding taxation year by reason of the application of paragraph 16.1(1)(b) of the Act in respect of a lease to which the property was subject immediately before the time at which the taxpayer last acquired the property, and

(vii) property considered to have become available for use by the taxpayer in the year by reason of paragraph 13(27)(b) or (28)(c) of the Act

exceeds

(b) the aggregate of all amounts, each of which is an amount deducted

(i) by virtue of subparagraph 13(21)(f)(iv) [13(21)"undepreciated capital cost"F] or (v) [G] of the Act in respect of property disposed of in the year, or

(ii) by virtue of subparagraph 13(21)(f)(viii) [13(21)"undepreciated capital cost"J] of the Act in respect of an amount the taxpayer received or was entitled to receive in the year

from the undepreciated capital cost to him of property of the class,

the amount that the taxpayer may deduct for the year under subsection (1) in respect of property of the class shall be determined as if the undepreeiated capital cost to him as of the end of the year (before making any deduction under subsection (1) for the year) of property of the class were reduced by an amount equal to 50 per cent of the amount by which the aggregate determined under paragraph (a) exceeds the aggregate determined under paragraph (b).

Proposed Amendment — Reg. 1100(2)

Federal budget, Supplementary Information, February 27, 1995: The elements of the existing film tax incentive to be eliminated for films acquired after 1995 (and films acquired in 1995 in respect of which the new credit is claimed) include the following:

. . . . .

- exemption of Canadian certified productions from the half-year CCA rule that generally applies to property in the year of its acquisition pursuant to Regulation 1100(2); ...

Related Provisions: Reg. 1100(1)(ta)(v), Reg. 1100(2.1) — Grandfathering for property acquired before 1983; Reg. 1100(2.2), (2.3) — Half-year rule does not apply to acquisition on butterfly or from related person who owned it for a year; Reg. 1100(2.21) — Effect of deemed disposition and reacquisition; Reg. 1100(2.4) — Rental automobiles.

History: Subpara. 1100(2)(a)(i) amended and subpara. (a)(vii) added by P.C. 1994-139, subsecs. 2(9) and (10), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1989.

Para. 1100(2)(a) substituted by P.C. 1991-465, subsec. 1(7), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989, except that subpara. 1100(2)(a)(ii) is applicable to 1985 *et seq.*

That portion of para. 1100(2)(a) following subpara. (ii) amended by P.C. 1990-2067, s. 1, September 27, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of property acquired after August 8, 1989.

That portion of para. 1100(2)(a) following subpara. (ii) substituted by P.C. 1989-2464, subsec. 1(6), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after 1987 other than property acquired by the taxpayer before 1990

(a) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(b) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(c) that is a fixed and integral part of property under construction by or on behalf of the taxpayer on June 18, 1987.

That portion of para. 1100(2)(a) following subpara. (ii) substituted by P.C. 1988-2795, subsec. 1(2), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media; IT-469R: CCA — Earth-moving equipment; IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees; IT-525R: Performing artists.

Advance Tax Rulings: ATR-11: "50% rule" on non-arm's length transactions.

Forms: T2 SCH 8: Capital cost allowance.

(2.1) Where a taxpayer has, after November 12, 1981 and before 1983, acquired or incurred a capital cost in respect of a property of a class in Schedule II and

(a) he was obligated to acquire the property under the terms of an agreement in writing entered into before November 13, 1981 (or, where the property is a property described in Class 31 in Schedule II, before 1982),

(b) he or a person with whom he was not dealing at arm's length commenced the construction, manufacture or production of the property before November 13, 1981 (or, where the property is a property described in Class 31 in Schedule II, before 1982),

(c) he or a person with whom he was not dealing at arm's length had made arrangements, evidenced in writing for the construction, manufacture or production of the property that were substantially advanced before November 13, 1981 and the construction, manufacture or production commenced before June 1, 1982, or

(d) he was obligated to acquire the property under the terms of an agreement in writing entered into before June 1, 1982 where arrangements, evidenced in writing, for the acquisition or leasing of the property were substantially advanced before November 13, 1981,

the following rules apply:

(e) no amount shall be included under paragraph (2)(a) in respect of the property;

(f) where the property is a property to which paragraph (1)(b) applies, that paragraph shall be read, in respect of the property, as "such amount, not exceeding the amount for the year calculated in accordance with Schedule III, as he may claim in respect of the

capital cost to him of property of Class 13 in Schedule II";

(g) where the property is a property of a class to which paragraph (1)(t) or (ta) applies, the property shall be deemed to be designated property of the class; and

(h) where the property is a property described in paragraph (1)(v), subparagraph (iv) thereof shall be read, in respect of the property, as "33⅓ per cent of the capital cost thereof to him, and".

(2.2) Where a property of a class in Schedule II is acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b), (c), (d) [Revoked]

(e) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired,

and where

(f) the property was depreciable property of the person from whom it was acquired and was owned continuously by that person for the period from

(i) a day that was at least 364 days before the end of the taxation year of the taxpayer during which he acquired the property, or

(ii) November 12, 1981

to the day it was acquired by the taxpayer, or

(g) the rules provided in subsection (2.1) or this subsection applied in respect of the property for the purpose of determining the allowance under subsection (1) to which the person from whom the taxpayer acquired the property was entitled,

the following rules apply:

(h) no amount shall be included under paragraph (2)(a) in respect of the property;

(i) where the property is a property to which paragraph (1)(b) applies, that paragraph shall be read, in respect of the property, as "such amount, not exceeding the amount for the year calculated in accordance with Schedule III, as he may claim in respect of the capital cost to him of property of Class 13 in Schedule II";

(j) where the property is a property of a class to which paragraph (1)(ta) applies,

(i) the property shall be deemed to be designated property of the class,

(ii) for the purposes of computing the amount determined under paragraph (1)(ta) for any taxation year of the taxpayer ending after the time the property was actually acquired by the taxpayer, the property shall be deemed, other than for the purposes of paragraph (f), to have been acquired by the taxpayer immediately after the commencement of the taxpayer's first taxation year that commenced after the time that is the earlier of

(A) the time the property was last acquired by the transferor of the property, and

(B) where the property was transferred in a series of transfers to which this subsection applies, the time the property was last acquired by the first transferor in that series,

unless

(C) where clause (A) applies, the property was acquired by the taxpayer before the end of the taxation year of the transferor of the property that includes the time at which that transferor acquired the property, or

(D) where clause (B) applies, the property was acquired by the taxpayer before the end of the taxation year of the first transferor that includes the time at which that transferor acquired the property;

(iii) where the taxpayer is a corporation that was incorporated or otherwise formed after the end of the transferor's, or where applicable, the first transferor's, taxation year in which the transferor last acquired the property, the taxpayer shall be deemed, for the purposes of subparagraph (ii),

(A) to have been in existence throughout the period commencing immediately before the end of that year and ending immediately after the taxpayer was incorporated or otherwise formed, and

(B) to have had, throughout the period referred to in clause (A), fiscal periods ending on the day of the year on which the taxpayer's first fiscal period ended; and

(iv) the property shall be deemed to have become available for use by the taxpayer at the earlier of

(A) the time it became available for use by the taxpayer, and

(B) if applicable,

(I) the time it became available for use by the person from whom the taxpayer acquired the property, determined without reference to paragraphs 13(27)(c) and (28)(d) of the Act, or

(II) the time it became available for use by the first transferor in a series of transfers of the same property to which this subsection applies, determined without reference to paragraphs 13(27)(c) and (28)(d) of the Act; and

(k) where the property is a property described in paragraph (1)(v), subparagraph (iv) thereof shall be read, in respect of the property, as "33 ⅓ per cent of the capital cost thereof to him, and".

Related Provisions: Reg. 1100(2.21) — Effect of deemed disposition and reacquisition; Reg. 1100(2.3) — No inclusion under Reg. 1100(2)(b); Reg. 1102(20) — Non-arm's length exception.

Interpretation Bulletins [Reg. 1100(2.1), (2.2)]: IT-302R3: Losses of a corporation — the effect that acquisitions of control, amalgamations, and windings-up have on their deductibility — after January 15, 1987; IT-464R: CCA — Leasehold interests.

Advance Tax Rulings: ATR-11: "50% rule" on non-arm's length transactions.

(2.21) Where a taxpayer is deemed by a provision of the Act to have disposed of and acquired or reacquired a property,

(a) for the purposes of paragraph (2.2)(e) and subsections (19), 1101(1ad) and 1102(14) and (14.1), the acquisition or reacquisition shall be deemed to have been from a person with whom the taxpayer was not deal-

ing at arm's length at the time of the acquisition or reacquisition; and

(b) for the purposes of paragraphs (2.2)(f) and (g), the taxpayer shall be deemed to be the person from whom the taxpayer acquired or reacquired the property.

(2.3) Where a taxpayer has disposed of a property and, by virtue of paragraph (2.2)(h), no amount is required to be included under paragraph (2)(a) in respect of the property by the person that acquired the property, no amount shall be included by the taxpayer under paragraph (2)(b) in respect of the disposition of the property.

Advance Tax Rulings: ATR-11: "50% rule" on non-arm's length transactions.

(2.4) For the purposes of subsection (2), where a taxpayer has disposed of property described in Class 10 of Schedule II that would qualify as property described in paragraph (e) of Class 16 of Schedule II if the property had been acquired by the taxpayer after November 12, 1981, the proceeds of disposition of the property shall be deemed to be proceeds of disposition of property described in Class 16 of Schedule II and not of property described in Class 10 of Schedule II.

History: Subpara. 1100(2.2)(j)(iv) added by P.C. 1995-775, subsec. 1(2), May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired after 1989.

Para. 1100(2.2)(j) substituted by P.C. 1994-139, subsec. 2(11), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after 1987.

Para. 1100(2.2)(a) substituted for (a) to (d) by P.C. 1989-2464, subsec. 1(7), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Subsec. 1100(2.21) added by subsec. 1(8) of the said P.C. 1989-2464, applicable in respect of property acquired after November 12, 1981.

Para. 1100(2.2)(a) substituted by P.C. 1988-1473, subsec. 1(1), July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

All that portion of para. 1100(2)(a) following subpara. (ii) substituted by P.C. 1984-3995, December 13, 1984, s. 1, *Canada Gazette*, Part II, January 9, 1985, applicable in respect of property acquired after 1983.

Subsec. 1100(2.3) substituted by P.C. 1983-1413, s. 1, May 12, 1983, *Canada Gazette*, Part II, May 25, 1983, applicable in respect of property disposed of after November 12, 1981.

Subsecs. 1100(2), (2.1), (2.2), (2.3) and (2.4) added by P.C. 1983-1083, subsec. 1(6), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Subsec. 1100(2) and heading "Terminal losses", subsecs. (2a), (2b) revoked by P.C. 1978-1315, s. 4, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, applicable to taxation years commencing on and after May 26, 1976 and ending on and after April 1, 1977.

(2.5) Where in a particular taxation year a taxpayer disposes of a property included in Class 10.1 in Schedule II that was owned by the taxpayer at the end of the immediately preceding taxation year,

(a) the deduction allowed under subsection (1) in respect of the property in computing the taxpayer's income for the year shall be determined as if the property had not been disposed of in the particular year and the number of days in the particular year were one-half of the number of days in the particular year otherwise determined; and

(b) no amount shall be deducted under subsection (1) in respect of the property in computing the taxpayer's income for any subsequent taxation year.

History: Subsec. 1100(2.5) added by P.C. 1994-103, s. 1, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to taxation years and fiscal periods commencing after June 17, 1987 and ending after 1987.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

(3) [Taxation years less than 12 months] — Where a taxation year is less than 12 months, the amount allowed as a deduction under this section, other than under paragraph (1)(c), (e), (f), (g), (l), (w), (x), (y), (ya), (zg) or (zh), shall not exceed that proportion of the maximum amount otherwise allowable that the number of days in the taxation year is of 365.

Related Provisions: Reg. 1100(1.1) — Specified leasing property; Reg. 1104(1) — "taxation year".

History: Subsec. 1100(3) amended to add reference to paras. "(zg) or (zh)" by P.C. 2000-1000, subsec. 2(2), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable to 1995 *et seq.* except that, in its application to the 1995, 1996 and 1997 taxation years, it shall be read without said reference.

Subsec. 1100(3) substituted by P.C. 1994-139, subsec. 2(12), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Subsec. 1100(3) substituted by P.C. 1983-1083, subsec. 1(7), April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of taxation years commencing after 1981.

Subsec. 1100(3) substituted for subsecs. 1100(3), (3a), (3b) by P.C. 1978-1315, s. 5, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-172R: CCA — Taxation year of individuals; IT-434R: Rental of real property by individual; IT-441: Certified feature productions and certified short productions.

(4) [Reserved]

(5) [Revoked]

History: Subsec. 1100(5) and heading revoked by P.C. 1978-1315, s. 6, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(6) [Revoked]

History: Subsec. 1100(6) revoked by P.C. 1991-2272, subsec. 1(3), November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to 1988 *et seq.*

Subsec. 1100(6) substituted by P.C. 1982-599, subsec. 1(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, applicable to 1980 *et seq.*

(7) [Reserved]

(8) Railway sidings — Where a taxpayer, other than an operator of a railway system, has made a capital expenditure pursuant to a contract or arrangement with an operator of a railway system under which a railway siding that does not become the taxpayer's property is constructed to provide service to the taxpayer's place of business or to a property acquired by the taxpayer for the purpose of gaining or producing income, there is hereby allowed to the taxpayer, in computing income for the taxation year from the business or property, as the case may be, a deduction equal to such amount as he may claim not exceeding four per cent of the amount remaining, if any, after deducting from the capital expenditure the aggregate of all amounts previously allowed as deductions in respect of the expenditure.

(9) Patents — Where a part or all of the cost of a patent is determined by reference to the use of the patent, in lieu of the deduction allowed under paragraph (1)(c), a tax-

payer, in computing his income for a taxation year from a business or property, as the case may be, may deduct such amount as he may claim in respect of property of Class 14 in Schedule II not exceeding the lesser of

(a) the aggregate of

(i) that part of the capital cost determined by reference to the use of the patent in the year, and

(ii) the amount that would be computed under subparagraph (1)(c)(i) if the capital cost of the patent did not include the amounts determined by reference to the use of the patent in that year and previous years; and

(b) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class.

Interpretation Bulletins: IT-477: CCA — Patents, franchises, concessions and licences.

(9.1) [Class 44] — Where a part or all of the capital cost to a taxpayer of property that is a patent, or a right to use patented information, is determined by reference to the use of the property and that property is included in Class 44 in Schedule II, in lieu of the deduction allowed under paragraph (1)(a), there may be deducted in computing the taxpayer's income for a taxation year from a business or property such amount as the taxpayer may claim in respect of property of the class not exceeding the lesser of

(a) the total of

(i) that part of the capital cost that is determined by reference to the use of the property in the year, and

(ii) the amount that would be deductible for the year by reason of paragraph (1)(a) in respect of property of the class if the capital cost of the property of the class did not include the amounts determined under subparagraph (i) for the year and preceding taxation years; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class.

Related Provisions: Reg. 1100(1)(a)(xxx) — Alternative 25% write-off for patents.

History: Subsec. 1100(9.1) added by P.C. 1994-231, subsec. 1(2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

(10) [Reserved]

(11) Rental properties — Notwithstanding subsection (1), in no case shall the aggregate of deductions, each of which is a deduction in respect of property of a prescribed class owned by a taxpayer that includes rental property owned by him, otherwise allowed to the taxpayer by virtue of subsection (1) in computing his income for a taxation year, exceed the amount, if any, by which

(a) the aggregate of amounts each of which is

(i) his income for the year from renting or leasing a rental property owned by him, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the income of a partnership for the year from renting or leasing a rental property of the partnership, to the extent of the taxpayer's share of such income,

exceeds

(b) the aggregate of amounts each of which is

(i) his loss for the year from renting or leasing a rental property owned by him, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the loss of a partnership for the year from renting or leasing a rental property of the partnership, to the extent of the taxpayer's share of such loss.

Related Provisions: ITA 127.52(3)"rental or leasing property" — Minimum tax; Reg. 1100(12) — Exceptions; Reg. 1100(14) — Meaning of "rental property".

Selected Cases [Reg. 1100(11)]: *Stephens v. R.*, [2000] 1 C.T.C. 2360 (TCC) (Recreational vehicles subject to leasing property rules); *Phillips v. R.*, [2000] 1 C.T.C. 2314 (TCC) (Recreational vehicles subject to leasing property rules); *Satin Finish Hardwood Flooring (Ontario) Ltd. v. R.*, [1997] 2 C.T.C. 2915 (TCC) (Amount of capital employed and cash flow from real estate more important than number of employees in other sector of business for purposes of qualifying as "principal business"); *Roopchan v. Canada*, [1995] 2 C.T.C. 2423 (TCC) (Reasonable expectation of profit to be determined without reference to CCA for rental purposes).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-274R: Rental properties — Capital cost of $50,000 or more; IT-304R2: Condominiums; IT-367R3: Capital cost allowance — multiple-unit residential buildings; IT-434R: Rental of real property by individual.

Forms: T776: Statement of real estate rentals.

(12) Subject to subsection (13), subsection (11) does not apply in respect of a taxation year of a taxpayer that was, throughout the year,

(a) a life insurance corporation, or a corporation whose principal business was the leasing, rental, development or sale, or any combination thereof, of real property owned by it; or

(b) a partnership each member of which was a corporation described in paragraph (a).

History: All that portion of subsec. 1100(12) preceding para. (a) substituted by P.C. 1982-599, subsec. 1(3), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Selected Cases [Reg. 1100(12)]: *Satin Finish Hardwood Flooring (Ontario) Ltd. v. R.*, [1997] 2 C.T.C. 2915 (TCC) (Amount of capital employed and cash flow from real estate more important than number of employees in other sector of business for purposes of qualifying as "principal business").

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-371: Meaning of "principal business".

(13) For the purposes of subsection (11), where a taxpayer or partnership has a leasehold interest in a property that is property of Class 1, 3 or 6 in Schedule II by virtue of subsection 1102(5) and the property is leased by the taxpayer or partnership to a person who owns the land, an interest therein or an option in respect thereof, on which the property is situated, this section shall be read without reference to subsection (12) with respect to that property.

Related Provisions: Reg. 1101(5h) — Separate classes.

History: Subsec. 1100(13) substituted by P.C. 1989-2464, subsec. 1(9), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Subsec. 1100(13) added by P.C. 1982-599, subsec. 1(4), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, applicable in respect of lease-leaseback agreements entered into after March 10, 1982.

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions.

(14) In this section and section 1101, **"rental property"** of a taxpayer or a partnership means

(a) a building owned by the taxpayer or the partnership, whether owned jointly with another person or otherwise, or

(b) a leasehold interest in real property, if the leasehold interest is property of Class 1, 3, 6 or 13 in Schedule II and is owned by the taxpayer or the partnership,

if, in the taxation year in respect of which the expression is being applied, the property was used by the taxpayer or the partnership principally for the purpose of gaining or producing gross revenue that is rent, but, for greater certainty, does not include a property leased by the taxpayer or the partnership to a lessee, in the ordinary course of the taxpayer's or partnership's business of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling, or promoting the sale of, the taxpayer's or partnership's goods or services.

Related Provisions: ITA 127.52(3)"rental or leasing property" — Minimum tax; Reg. 1100(14.1) — Interpretation; Reg. 1101(1ac), (1ae) — Separate classes; Reg. 2411(4)B(e) — Insurers.

History: Para. 1100(14)(a) substituted by P.C. 1989-2464, subsec. 1(10), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1994 *et seq.*

Para. 1100(14)(b) substituted by subsec. 1(11) of the said P.C. 1989-2464, applicable to 1988 *et seq.*

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-274R: Rental properties — Capital cost of $50,000 or more; IT-304R2: Condominiums; IT-367R3: Capital cost allowance — multiple-unit residential buildings.

(14.1) ["Gross revenue"] — For the purposes of subsection (14), gross revenue derived in a taxation year from

(a) the right of a person or partnership, other than the owner of a property, to use or occupy the property or a part thereof, and

(b) services offered to a person or partnership that are ancillary to the use or occupation by the person or partnership of the property or the part thereof

shall be considered to be rent derived in that year from the property.

Related Provisions: Reg. 1100(14.2) — Exception.

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions.

(14.2) Subsection (14.1) does not apply in any particular taxation year to property owned by

(a) a corporation, where the property is used in a business carried on in the year by the corporation;

(b) an individual, where the property is used in a business carried on in the year by the individual in which he is personally active on a continuous basis throughout that portion of the year during which the business is ordinarily carried on; or

(c) a partnership, where the property is used in a business carried on in the year by the partnership if at least 2/3 of the income or loss, as the case may be, of the partnership for the year is included in the determination of the income of

(i) members of the partnership who are individuals that are personally active in the business of the partnership on a continuous basis throughout that portion of the year during which the business is ordinarily carried on, and

(ii) members of the partnership that are corporations.

History [Reg. 1100(14.1), (14.2)]: Subsecs. 1100(14.1), (14.2) added by P.C. 1986-2770, subsec. 1(1), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable by subsec. 14(1) to 1986 *et seq.* in respect of property acquired by a taxpayer or a partnership, other than property acquired by the taxpayer or partnership that is

(a) property acquired by the taxpayer or partnership before May 23, 1985;

(b) new and unused property, other than a building, acquired by the taxpayer or partnership before 1986;

(c) property, other than a building, acquired by the taxpayer or partnership before 1986 pursuant to an agreement in writing to acquire the property entered into before May 23, 1985 by or on behalf of the taxpayer or partnership or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority;

(d) a building in existence on May 22, 1985, or an interest in that building, acquired by the taxpayer or partnership before 1987 pursuant to an agreement in writing to acquire the property entered into before May 23, 1985 by or on behalf of the taxpayer or partnership or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority;

(e) a building, the construction, renovation or alteration of which was not completed, within the meaning of subsection 18(3.3) of the Act, on May 22, 1985, or an interest in that building, acquired by the taxpayer or partnership, pursuant to an agreement in writing to acquire the property entered into before May 23, 1985 by or on behalf of the taxpayer or partnership or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before May 24, 1985 with a public authority in Canada pursuant to and in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority, if the construction, renovation or alteration of the building, as the case may be, proceeds without undue delay after May 22;

(f) acquired by the taxpayer or partnership before 1986 and that is a building in existence in Canada on May 23, 1985, or an interest in that building, where arrangements in writing for a sale or syndication of the building were substantially advanced on May 22, 1985;

(g) a building in Canada the construction, renovation or alteration of which was not completed, within the meaning of subsection 18(3.3) of the Act, on May 22, 1985, or an interest in that building, where arrangements made by or on behalf of the taxpayer or partnership for the construction, renovation or alteration thereof were substantially advanced on May 22, 1985, and where the construction, renovation or alteration thereof commenced before 1986 and proceeds thereafter without undue delay; or

(h) property that is ancillary to the use of a property described in any of paragraphs (a) to (g).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions.

(15) Leasing properties — Notwithstanding subsection (1), in no case shall the aggregate of deductions, each of which is a deduction in respect of property of a prescribed class that is leasing property owned by a taxpayer, otherwise allowed to the taxpayer under subsection (1) in computing his income for a taxation year, exceed the amount, if any, by which

(a) the aggregate of amounts each of which is

(i) his income for the year from renting, leasing, or earning royalties from, a leasing property or a property that would be a leasing property but for subsection (18), (19) or (20) where such property is owned by him, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the income of a partnership for the year from renting, leasing or earning royalties from, a leasing property or a property that would be a leasing property but for subsection (18), (19) or (20) where

such property is owned by the partnership, to the extent of the taxpayer's share of such income,

exceeds

(b) the aggregate of amounts each of which is

(i) his loss for the year from renting, leasing or earning royalties from, a property referred to in subparagraph (a)(i), computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the loss of a partnership for the year from renting, leasing or earning royalties from, a property referred to in subparagraph (a)(ii), to the extent of the taxpayer's share of such loss.

Related Provisions: Reg. 1100(16) — Exception; Reg. 1100(17), (18) — Meaning of "leasing property".

Selected Cases [Reg. 1100(15)]: *Burstow v. R.*, [1997] 3 C.T.C. 2540 (TCC) (Leasing property rules not applicable to yacht where taxpayer personally active in the business).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-195R4: Rental property — CCA restrictions; IT-283R2: CCA — Video tapes, videotape cassettes, films, computer software and master recording media; IT-434R: Rental of real property by individual; IT-443: Leasing property — CCA restrictions.

(16) Subsection (15) does not apply in respect of a taxation year of a taxpayer that was, throughout the year,

(a) a corporation whose principal business was

(i) renting or leasing of leasing property or property that would be leasing property but for subsection (18), (19) or (20), or

(ii) renting or leasing of property referred to in subparagraph (i) combined with selling and servicing of property of the same general type and description,

if the gross revenue of the corporation for the year from such principal business was not less than 90 per cent of the gross revenue of the corporation for the year from all sources; or

(b) a partnership each member of which was a corporation described in paragraph (a).

Related Provisions: Reg. 1100(1.14) — Election; Reg. 1100(2)(a)(v) — Half-year rule inapplicable to specified leasing property.

Interpretation Bulletins: IT-267R2: CCA — vessels.

(17) Subject to subsection (18), in this section and section 1101, "leasing property" of a taxpayer or a partnership means depreciable property other than

(a) rental property,

(b) computer software tax shelter property, or

(c) property referred to in paragraph (w) of Class 10 or in paragraph (n) of Class 12 in Schedule II,

where such property is owned by the taxpayer or the partnership, whether jointly with another person or otherwise, if, in the taxation year in respect of which the expression is being applied, the property was used by the taxpayer or the partnership principally for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue, but for greater certainty, does not include a property leased by the taxpayer or the partnership to a lessee, in the ordinary course of the taxpayer's or partnership's business of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling, or promoting the sale of, the taxpayer's or partnership's goods or services.

Proposed Amendment — Reg. 1100(17)(c)

Federal budget, Supplementary Information, February 27, 1995: The elements of the existing film tax incentive to be eliminated for films acquired after 1995 (and films acquired in 1995 in respect of which the new credit is claimed) include the following:

• exemption of Canadian certified productions from the leasing-property rules in Income Tax Regulation 1100(15); ...

Related Provisions: Reg. 1100(14) — Meaning of "rental property"; Reg. 1100(17.1), (17.2), (18), (19), (20) — Interpretation; Reg. 1100(20.1) — limitation on CCA claims for computer software tax shelter property; Reg. 1101(5c) — Separate class; Reg. 2411(4)B(e) — Insurers.

History: Para. 1100(17)(b) added by P.C. 2000-1000, subsec. 2(3), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable generally to fiscal periods and taxation years of a taxpayer or partnership that end after August 5, 1997, but see the full application reproduced in the History to subsecs. 1100(20.1) and (20.2).

Para. 1100(17)(b) revoked by P.C. 1989-2464, subsec. 1(12), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1994 *et seq.*

Para. 1100(17)(c) substituted by P.C. 1988-2795, subsec. 1(3), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media.

(17.1) For the purposes of subsection (17), where, in a taxation year, a taxpayer or a partnership has acquired a property

(a) that was not used for any purpose in that year, and

(b) the first use of the property by the taxpayer or the partnership was principally for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue,

the property shall be deemed to have been used in the taxation year in which it was acquired principally for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue.

History: Subsec. 1100(17.1) added by P.C. 1982-599, subsec. 1(5), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

(17.2) For the purposes of subsections (1.11) and (17), gross revenue derived in a taxation year from

(a) the right of a person or partnership, other than the owner of a property, to use or occupy the property or a part thereof, and

(b) services offered to a person or partnership that are ancillary to the use or occupation by the person or partnership of the property or the part thereof

shall be considered to be rent derived in the year from the property.

Related Provisions: Reg. 1100(17.3) — Exception.

Selected Cases [Reg. 1100(17.2)]: *Burstow v. R.*, [1997] 3 C.T.C. 2540 (TCC) (Leasing property rules not applicable to yacht where taxpayer personally active in the business).

(17.3) Subsection (17.2) does not apply in any particular taxation year to property owned by

(a) a corporation, where the property is used in a business carried on in the year by the corporation;

(b) an individual, where the property is used in a business carried on in the year by the individual in which he is personally active on a continuous basis throughout that portion of the year during which the business is ordinarily carried on;

(c) a partnership, where the property is used in a business carried on in the year by the partnership if at least 2/3 of the income or loss, as the case may be, of the partnership for the year is included in the determination of the income of

(i) members of the partnership who are individuals that are personally active in the business of the partnership on a continuous basis throughout that portion of the year during which the business is ordinarily carried on, and

(ii) members of the partnership that are corporations.

History: Subsec. 1100(17.2) amended by P.C. 1991-465, subsec. 1(8), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989 shall be deemed to have been entered into at that particular time).

Subsecs. 1100(17.2), (17.3) added by P.C. 1986-2770, subsec. 1(2), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986. For application provided by subsec. 14(1) of P.C. 1986-2770, see History to subsecs. 1100(14.1) and (14.2).

(18) Leasing property of a taxpayer or a partnership referred to in subsection (17) does not include

(a) property that the taxpayer or the partnership acquired before May 26, 1976 or was obligated to acquire under the terms of an agreement in writing entered into before May 26, 1976;

(b) property the construction, manufacture or production of which was commenced by the taxpayer or the partnership before May 26, 1976 or was commenced under an agreement in writing entered into by the taxpayer or the partnership before May 26, 1976; or

(c) property that the taxpayer or the partnership acquired on or before December 31, 1976 or was obligated to acquire under the terms of an agreement in writing entered into on or before December 31, 1976, if

(i) arrangements, evidenced by writing, respecting the acquisition, construction, manufacture or production of the property had been substantially advanced before May 26, 1976, and

(ii) the taxpayer or the partnership had before May 26, 1976 demonstrated a *bona fide* intention to acquire the property for the purpose of gaining or producing gross revenue that is rent, royalty or leasing revenue.

(19) Notwithstanding subsection (17), a property acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired,

that would otherwise be leasing property of the taxpayer, shall be deemed not to be leasing property of the taxpayer if immediately before it was so acquired by the taxpayer, it was, by virtue of subsection (18) or (20) or this subsection, not a leasing property of the person from whom the property was so acquired.

Related Provisions: Reg. 1100(2.21)(a); Reg. 1100(17), (18) — Meaning of "leasing property"; Reg. 1102(20) — Non-arm's length exception.

History: Paras. 1100(19)(a), (b) substituted for (a) to (c) by P.C. 1989-2464, subsec. 1(13), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Para. 1100(19)(a) substituted by P.C. 1988-1473, subsec. 1(2), July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

Para. 1100(19)(a.1) added by P.C. 1984-3789, s. 5, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable with respect to property acquired after November 12, 1981.

All that portion of subsec. 1100(19) following para. (c) substituted by P.C. 1982-599, subsec. 1(6), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Interpretation Bulletins: IT-443: Leasing property — CCA restrictions.

(20) Notwithstanding subsection (17), a property acquired by a taxpayer or partnership that is a replacement property (within the meaning assigned by subsection 13(4) of the Act), that would otherwise be a leasing property of the taxpayer or partnership, shall be deemed not to be a leasing property of the taxpayer or partnership if the property replaced, referred to in paragraph 13(4)(a) or (b) of the Act, was, by reason of subsection (18) or (19) or this subsection, not a leasing property of the taxpayer or partnership immediately before it was disposed of by the taxpayer or partnership.

Related Provisions: Reg. 1100(17), (18) — Meaning of "leasing property".

History: Subsec. 1100(20) substituted by P.C. 1994-139, subsec. 2(13), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Subsec. 1100(20) substituted by P.C. 1981-1556, s. 1, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, applicable in respect of a property acquired to replace a property disposed of after March 31, 1977.

(20.1) Computer software tax shelter property — The total of all amounts each of which is a deduction in respect of computer software tax shelter property allowed to the taxpayer under subsection (1) in computing a taxpayer's income for a taxation year shall not exceed the amount, if any, by which

(a) the total of all amounts each of which is

(i) the taxpayer's income for the year from a business in which computer software tax shelter property owned by the taxpayer is used, computed without reference to any deduction under subsection (1) in respect of such property, or

(ii) the income of a partnership from a business in which computer software tax shelter property owned by the partnership is used, to the extent of the taxpayer's share of such income that is included in computing the taxpayer's income for the year,

exceeds

(b) the total of all amounts each of which is

(i) a loss of the taxpayer from a business in which computer software tax shelter property is used, computed without reference to any deduction under subsection (1) in respect of such property, or

(ii) a loss of a partnership from a business in which computer software tax shelter property is used, to the extent of the taxpayer's share of such loss that is included in computing the taxpayer's income for the year.

Related Provisions: Reg. 1100(20.2) — Definition of "computer software tax shelter property"; Reg. 1101(5r) — Separate class for all computer software tax shelter property.

(20.2) For the purpose of this Part, computer software tax shelter property is computer software that is depreciable property of a prescribed class of a person or partnership where

(a) the person's or partnership's interest in the property is a tax shelter investment (as defined by subsection 143.2(1) of the Act) determined without reference to subsection (20.1); or

(b) an interest in the person or partnership is a tax shelter investment (as defined by subsection 143.2(1) of the Act) determined without reference to subsection (20.1).

Related Provisions: Reg. 1100(20.1) — Limitation on CCA claim; Reg. 1101(5r) — Separate class for all computer software tax shelter property; Reg. 1104(2) — Definition of "computer software".

History: Subsecs. 1100(20.1) and (20.2) added by P.C. 2000-1000, subsec. 2(4), June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable to taxation years and fiscal periods that end after August 5, 1997, except that those subsecs. do not apply in respect of computer software for taxation years and fiscal periods of a taxpayer or partnership that end in 1997 or 1998 where

(a) the taxpayer's or partnership's interest in the computer software

(i) is acquired before August 6, 1997,

(ii) is acquired before 1998 pursuant to an agreement in writing made by the taxpayer or partnership before August 6, 1997, or

(iii) is, or is associated with, a tax shelter investment (as defined by subsec. 143.2(1) of the Act) that is acquired by a taxpayer or partnership before 1998 pursuant to

(A) the terms of a document that is a prospectus, preliminary prospectus or registration statement where

(I) the document was filed before August 6, 1997 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority before August 6, 1997,

(II) the particular computer software is

1. identified in the document, or

2. acquired before November 29, 1997 from a person that is resident in Canada and that developed the software, and

(III) all the funds raised pursuant to the document are raised before 1998 and all or substantially all of the tax shelter investments that can reasonably be considered to be associated with the computer software are acquired before 1998 by a person who is not

1. a promoter, or an agent of a promoter, of the securities,

2. a vendor of the property,

3. a broker or dealer in securities, or

4. a person who does not deal at arm's length with a person referred to in sub-subclause 1 or 2, or

(B) the terms of an offering memorandum distributed as part of an offering of securities where

(I) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(II) the memorandum was distributed before August 6, 1997,

(III) solicitations in respect of the sale of the securities contemplated by the memorandum were made before August 6, 1997,

(IV) the sale of the securities was substantially in accordance with the memorandum,

(V) the particular computer software is

1. identified in the memorandum, or

2. acquired before November 29, 1997 from a person that is resident in Canada and that developed the software, and

(VI) all the funds raised pursuant to the memorandum were raised before 1998 and all or substantially all of the tax shelter investments that can reasonably be considered to be associated with the computer software are acquired before 1998 by a person who is not

1. a promoter, or an agent of a promoter of the securities,

2. a vendor of the property,

3. a broker or dealer in securities, or

4. a person who does not deal at arm's length with a person referred to in sub-subclause 1 or 2;

(b) there is no agreement or other arrangement under which any of the following obligations can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act:

(i) the obligation of the taxpayer or the partnership, with respect to the computer software, or

(ii) the obligation of another taxpayer or partnership that acquires a tax shelter investment (as defined by subsec. 143.2(1) of the Act) that is associated with computer software, with respect to the tax shelter investment;

(c) the computer software is, or is associated with, one or more tax shelters sold or offered for sale at a time and in circumstances in which s. 237.1 of the Act requires an identification number to have been obtained and the identification number was obtained before that time; and

(d) the computer software (including computer software to which subparagraph (a)(i) or (ii) applies) is, or is associated with, a tax shelter investment (as defined by subsec. 143.2(1) of the Act) sold or offered for sale pursuant to a document or offering memorandum described in subparagraph (a)(iii) and either

(i) the total amount of securities sold in 1997 pursuant to the document or offering memorandum does not exceed $100,000,000, or

(ii) at least 10% of the securities authorized to be sold in 1997 pursuant to the document or offering memorandum were in 1997 and before August 6, 1997 sold to, or subscribed for by, a person who is not

(A) a promoter, or an agent of a promoter, of the securities,

(B) a vendor of the computer software,

(C) a broker or dealer in securities, or

(D) a person who does not deal at arm's length with any person referred to in clause (A) or (B).

For the purpose of this application, computer software is deemed to be acquired by a taxpayer or partnership no earlier than the time and only to the extent that its cost is considered to be an expenditure made or incurred by the taxpayer or partnership for the purposes of the *Income Tax Act*, determined without reference to subsec. 1100(20.1) of the Regulations.

(21) Certified films and video tapes — Notwithstanding subsection (1), where a taxpayer (in this subsection and subsection (22) referred to as the "investor") has acquired property of Class 10 or 12 in Schedule II that is a certified feature film or certified production (in this subsection and subsection (22) referred to as the "film or tape"), in no case shall the deduction in respect of property of that class otherwise allowed to the investor by virtue of subsection (1) in computing the investor's income for a particular taxation year exceed the amount that it would be if the capital cost to the investor of the film or

tape were reduced by the aggregate of amounts, each of which is

(a) where the principal photography or taping of the film or tape is not completed before the end of the particular taxation year, the amount, if any, by which

(i) the capital cost to the investor of the film or tape as of the end of the year

exceeds the aggregate of

(ii) where the principal photography or taping of the film or tape is completed within 60 days after the end of the year, the amount that may reasonably be considered to be the investor's proportionate share of the production costs incurred in respect of the film or tape before the end of the year,

(iii) where the principal photography or taping of the film or tape is not completed within 60 days after the end of the year, the amount that may reasonably be considered to be the investor's proportionate share of the lesser of

(A) the production costs incurred in respect of the film or tape before the end of the year, and

(B) the proportion of the production costs incurred to the date the principal photography or taping is completed that the percentage of the principal photography or taping completed as of the end of the year, as certified by the Minister of Communications, is of 100 per cent, and

(iv) the aggregate of amounts determined under paragraphs (b), (c) and (d) in respect of the film or tape as of the end of the year;

(b) where, at any time before the later of

(i) the date the principal photography or taping of the film or tape is completed, and

(ii) the date the investor acquired the film or tape,

a revenue guarantee (other than a revenue guarantee that is certified by the Minister of Communications to be a guarantee under which the person who agrees to provide the revenue is a licensed broadcaster or *bona fide* film or tape distributor) is entered into in respect of the film or tape whereby it may reasonably be considered certain, having regard to all the circumstances, that the investor will receive revenue under the terms of the revenue guarantee, the amount, if any, that may reasonably be considered to be the portion of the revenue that has not been included in the investor's income in the particular taxation year or a previous taxation year;

(c) where, at any time, a revenue guarantee, other than

(i) a revenue guarantee in respect of which paragraph (b) applies, or

(ii) a revenue guarantee under which the person (in this subsection referred to as the "guarantor") who agrees to provide the revenue under the terms of the guarantee is a person who does not deal at arm's length with either the investor or the person from whom the investor acquired the film or tape (in this subsection referred to as the "vendor") and in respect of which the Minister of Communications certifies that

(A) the guarantor is a licensed broadcaster or *bona fide* film or tape distributor, and

(B) the cost of the film or tape does not include any amount for or in respect of the guarantee,

is entered into in respect of the film or tape, the amount, if any, that may reasonably be considered to be the portion of the revenue that is to be received by the investor under the terms of the revenue guarantee that has not been included in the investor's income in the particular taxation year or a preceding taxation year, if

(iii) the guarantor and the investor are not dealing at arm's length,

(iv) the vendor and the guarantor are not dealing at arm's length, or

(v) the vendor or a person not dealing at arm's length with the vendor undertakes in any way, directly or indirectly, to fulfil all or any part of the guarantor's obligations under the terms of the revenue guarantee; and

(d) where, at any time, a revenue guarantee, other than a revenue guarantee in respect of which paragraph (b) or (c) applies, is entered into in respect of the film or tape, the amount, if any, that may reasonably be considered to be the portion of the revenue that is to be received by the investor under the terms of the revenue guarantee that

(i) is not due to the investor until a time that is more than four years after the first day on which the guarantor has the right to the use of the film or tape, and

(ii) has not been included in the investor's income in the particular taxation year or a previous taxation year.

Proposed Addition — Reg. 1100(21)(e)

(e) the portion of any debt obligation of the investor outstanding at the end of the particular year that is convertible into an interest in the film or tape or in the investor.

Application: The September 27, 1994 draft legislation (tax shelters and CCA — films and video tape) will add para. 1100(21)(e), applicable to property acquired by a taxpayer or partnership after February 21, 1994, other than property so acquired before 1995

(a) by a taxpayer or a partnership pursuant to the terms of a written agreement entered into by the taxpayer or partnership before February 22, 1994,

(b) by a partnership pursuant to the terms of a prospectus, preliminary prospectus or registration statement filed before February 22, 1994 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province, and, where required by law, accepted for filing by such public authority, or

(c) by a partnership pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before February 22, 1994,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before February 22, 1994,

(iv) the sale of the securities was substantially in accordance with the memorandum, and

(v) the funds raised pursuant to the terms of the memorandum are so raised before 1995.

Notwithstanding the above,

(a) para. 1100(21)(e) applies after 1994 in respect of property acquired at any time by a partnership where [draft] ITA subsec. 40(3.1) does not apply to a member of the partnership before the end of the partnership's fifth fiscal period ending after 1994 by rea-

son only of the application of Bill C-59, subsec. 12(6) (the coming-into-force of subsec. 40(3.1)), and

(b) para. 1100(21)(e) applies after 1994 in respect of property acquired after February 21, 1994 and before 1995 by a partnership pursuant to an agreement in writing entered into by the partnership after February 21, 1994 and before 1995, where

(i) paras. 1100(21)(1)(a) to (c) do not otherwise apply,

(ii) the partnership interests are acquired before 1995,

(iii) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production,

(iv) the principal photography of the production (or in the case of a production that is a television series, an episode of the series) commences before 1995,

(v) the funds used to produce the film production are raised before 1995 and the principal photography of the production is completed, and the funds are expended, before 1995 (or, in the case of a film production prescribed for the purpose of ITA subpara. 96(2.2)(d)(ii), the principal photography of the production is completed, and the funds are expended, before March 2, 1995),

and either

(vi) the producer of the production has, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production (or has entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production),

(vii) the producer of the production receives before 1995 a commitment for funding or other government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

(viii) the production is a continuation of a television series an episode of which satisfies the requirements of subpara. (vi).

Technical Notes: Subsection 1100(21) requires that the depreciable cost of a taxpayer's interest in a certified feature film or certified production be reduced by certain amounts, including certain revenue guarantees provided in respect of the investment.

Subsection 1100(21) is amended to require that the depreciable cost of such an interest be reduced by the portion of any debt obligation of the investor outstanding at the end of a particular year that is convertible into an interest in the film or tape or the taxpayer.

Federal budget, Supplementary Information, February 22, 1994: The federal government is committed to the continued viability of the Canadian film industry. Currently, assistance is provided to the industry through direct expenditure programs as well as income tax incentives for certified Canadian films. The government is concerned, however, that film financing mechanisms have been developed to provide tax benefits to investors in excess of those contemplated when the incentives were introduced and in a manner inconsistent with the limited partnership at-risk rules. Generally, these financings depend on an overallocation of benefits to investors through the use of convertible debt.

In particular, some film limited partnerships have raised debt that is convertible into interests in the partnership. After the tax benefits and cash distributions have been allocated to the original limited partners, the lender converts its loan into a partnership interest. In effect, proceeds from convertible loans are used to acquire films or video tapes at a capital cost which is, when allocated to the original limited partners in the form of capital cost allowance (CCA), in excess of the amount that would otherwise be allocated to such limited partners if the lender were considered to be a partner from the time the loan was made. The combination of this excess allocation of CCA to the original limited partners and the distribution of revenue to those partners ensures that the original limited partners have little or no investment risk.

Accordingly, this budget proposes to amend the *Income Tax Regulations* to reduce the capital cost of a film or video tape acquired after February 22, 1994 by the amount of any loan that is convertible into an interest in the film or a partnership that holds the film or video tape until such time as the convertible loan is exchanged for a partnership interest or repaid. Transitional relief will be provided for property acquired pursuant to an agreement in writing entered into before February 22, 1994 or pursuant to a prospectus, preliminary prospectus, registration statement or offering memorandum filed before February 22, 1994 and where required by law, accepted for filing by a public authority in Canada pursuant to and in accordance with securities legislation of Canada or of any province.

Proposed Amendment — Reg. 1100(21)

Federal budget, Supplementary Information, February 27, 1995: The elements of the existing film tax incentive to be eliminated for films acquired after 1995 (and films acquired in 1995 in respect of which the new credit is claimed) include the following:

. . . . .

- exemption from the reduction of CCA in respect of certain revenue guarantees under Income Tax Regulation 1100(21).

Related Provisions: ITA 125.4(4) — No Canadian film/video production credit to corporation if investor can claim deduction; Reg. 225(1) — Information return; Reg. 1100(21.1) — Depreciable cost reduced by outstanding debt obligation; Reg. 1100(23); Reg. 1104(2) — "certified feature film", "certified production"; Reg. 1104(10) — Interpretation.

History: That portion of subsec. 1100(21) preceding para. (a), and para. (c), substituted by P.C. 1988-2795, subsecs. 1(4) and (5), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

That portion of subsec. 1100(21) preceding para. (a) substituted by P.C. 1986-477, subsec. 1(1), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Para. 1100(21)(b) substituted by P.C. 1986-477, subsec. 1(2), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1984.

Cl. 1100(21)(a)(iii)(B) substituted by P.C. 1980-3374, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

Subsec. 1100(21) added by P.C. 1978-3731, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Forms: T1-CP Summ: Return in respect of certified productions.

Proposed Addition — Reg. 1100(21.1)

(21.1) Notwithstanding subsection (1), where a taxpayer has acquired property described in paragraph (s) of Class 10, in Schedule II, or in paragraph (m) of Class 12, in Schedule II, in no case shall the deduction in respect of the property otherwise allowed to the taxpayer under subsection (1) in computing the taxpayer's income for a taxation year exceed the amount that it would be if the capital cost to the taxpayer of the property were reduced by the portion of any debt obligation of the taxpayer outstanding at the end of the year that is

convertible into an interest in the property or the taxpayer.

Application: The September 27, 1994 draft legislation (tax shelters and CCA) will add subsec. 1100(21.1), applicable to property acquired by a taxpayer or partnership after February 21, 1994, other than property so acquired before 1995

(a) by a taxpayer or a partnership pursuant to the terms of a written agreement entered into by the taxpayer or partnership before February 22, 1994,

(b) by a partnership pursuant to the terms of a prospectus, preliminary prospectus or registration statement filed before February 22, 1994 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province, and, where required by law, accepted for filing by such public authority, or

(c) by a partnership pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before February 22, 1994,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before February 22, 1994,

(iv) the sale of the securities was substantially in accordance with the memorandum, and

(v) the funds raised pursuant to the terms of the memorandum are so raised before 1995.

Notwithstanding the above,

(a) subsec. 1100(21.1) applies after 1994 in respect of property acquired at any time by a partnership where [draft] ITA subsec. 40(3.1) does not apply to a member of the partnership before the end of the partnership's fifth fiscal period ending after 1994 by reason only of the application of Bill C-59, subsection 12(6) (the coming-into-force of subsec. 40(3.1)), and

(b) subsec. 1100(21.1) applies after 1994 in respect of property acquired after February 21, 1994 and before 1995 by a partnership pursuant to an agreement in writing entered into by the partnership after February 21, 1994 and before 1995, where

(i) paras. 1100(21)(1)(a) to (c) do not otherwise apply,

(ii) the partnership interests are acquired before 1995,

(iii) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production,

(iv) the principal photography of the production (or in the case of a production that is a television series, an episode of the series) commences before 1995,

(v) the funds used to produce the film production are raised before 1995 and the principal photography of the production is completed, and the funds are expended, before 1995 (or, in the case of a film production prescribed for the purpose of ITA subpara. 96(2.2)(d)(ii), the principal photography of the production is completed, and the funds are expended, before March 2, 1995),

and either

(vi) the producer of the production has, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production (or has entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production),

(vii) the producer of the production receives before 1995 a commitment for funding or other government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

(viii) the production is a continuation of a television series an episode of which satisfies the requirements of subpara. (vi).

Technical Notes: New subsection 1100(21.1) requires that the depreciable cost of a taxpayer's interest in a non-certified motion picture film or video tape, or motion picture film or video tape that is a television commercial message, be reduced by the portion of any debt obligation of the taxpayer outstanding at the end of a particular year that is convertible into an interest in the film or tape or the taxpayer.

(22) Notwithstanding subsection (1), where an investor has acquired a film or tape after his 1977 taxation year and before 1979 and the principal photography or taping in respect of the film or tape is completed after a particular taxation year and not later than March 1, 1979, in no case shall the deduction in respect of property of Class 12 in Schedule II otherwise allowed to the investor by virtue of subsection (1) in computing his income for the particular taxation year exceed the amount, otherwise determined, if the capital cost to the investor of the film or tape were reduced by the amount, if any, by which

(a) the capital cost to the investor of the film or tape as of the end of the year

exceeds

(b) the amount that may reasonably be considered to be the investor's proportionate share of the production costs incurred in respect of the film or tape to March 1, 1979.

Related Provisions: Reg. 1100(21) — Meaning of "investor" and "film or tape".

History: Subsec. 1100(22) added by P.C. 1978-3731, s. 1, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978.

Interpretation Bulletins: IT-441: CCA — Certified feature film productions and certified short productions.

Forms: T1-CP Summ: Return in respect of certified productions.

(23) For the purposes of paragraph (21)(a),

(a) in respect of a film or tape acquired in 1987, other than a film or tape in respect of which paragraph (b) applies, the references in paragraph (21)(a) to "within 60 days after the end of the year" shall be read as references to "before July, 1988"; and

(b) in respect of a film or tape acquired in 1987 or 1988 that is included in paragraph (n) of Class 12 in Schedule II and that is part of a series of films or tapes that includes another property included in that paragraph, the references in paragraph (21)(a) to "within 60 days after the end of the year" shall be read as references to "before 1989".

History: Subsec. 1100(23) added by P.C. 1988-2795, subsec. 1(6), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable after 1986.

(24) Specified energy property — Notwithstanding subsection (1), in no case shall the total of deductions, each of which is a deduction in respect of property of Class 34 or Class 43.1 in Schedule II that is specified energy property owned by a taxpayer, otherwise allowed to the taxpayer under subsection (1) in computing the taxpayer's income for a taxation year, exceed the amount, if any, by which

(a) the total of all amounts each of which is

(i) the total of

(A) the amount that would be the income of the taxpayer for the year from property described in Class 34 or 43.1 in Schedule II (other than specified energy property), or from the business of selling the product of that property, if that income were calculated after deducting the maximum amount allowable in respect of the prop-

erty for the year under paragraph 20(1)(a) of the Act, and

(B) the taxpayer's income for the year from specified energy property or from the business of selling the product of that property, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the total of

(A) the taxpayer's share of the amount that would be the income of a partnership for the year from property described in Class 34 or 43.1 in Schedule II (other than specified energy property), or from the business of selling the product of that property, if that income were calculated after deducting the maximum amount allowable in respect of the property for the year under paragraph 20(1)(a) of the Act, and

(B) the income of a partnership for the year from specified energy property or from the business of selling the product of that property of the partnership, to the extent of the taxpayer's share of that income,

exceeds

(b) the total of all amounts each of which is

(i) the taxpayer's loss for the year from specified energy property or from the business of selling the product of that property, computed without regard to paragraph 20(1)(a) of the Act, or

(ii) the loss of a partnership for the year from specified energy property or from the business of selling the product of that property of the partnership, to the extent of the taxpayer's share of that loss.

Related Provisions: Reg. 1100(25) — Meaning of "specified energy property"; Reg. 1100(26) — Exception.

History: Subsec. 1100(24) amended by P.C. 1997-1033, subsec. 1(2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(25) Subject to subsections (27) to (29), in this section and section 1101, "specified energy property" of a taxpayer or partnership (in this subsection referred to as "the owner") for a taxation year means property of Class 34 or Class 43.1 in Schedule II that was acquired by the owner after February 9, 1988 other than a particular property

(a) acquired to be used by the owner primarily for the purpose of gaining or producing income from a business carried on in Canada (other than the business of selling the product of the particular property) or from another property situated in Canada, or

(b) leased in the year, in the ordinary course of carrying on a business of the owner in Canada, to

(i) a person who can reasonably be expected to use the property primarily for the purpose of gaining or producing income from a business carried on in Canada (other than the business of selling the product of the particular property) or from another property situated in Canada, or

(ii) a corporation or partnership described in subsection (26),

where the owner was

(iii) a corporation whose principal business was, throughout the year,

(A) the renting or leasing of leasing property or property that would be leasing property but for subsection (18), (19) or (20),

(B) the renting or leasing of property referred to in clause (A) combined with the selling and servicing of property of the same general type and description, or

(C) the manufacturing of property described in Class 34 or Class 43.1 in Schedule II that it sells or leases,

and the gross revenue of the corporation for the year from that principal business was not less than 90 per cent of the gross revenue of the corporation for the year from all sources, or

(iv) a partnership each member of which was a corporation described in subparagraph (iii) or paragraph (26)(a).

Related Provisions: Reg. 1101(5m) — Separate class.

History: The opening words of subsec. 1100(25) and cl. 1100(25)(b)(iii)(C) amended by P.C. 1997-1033, subsecs. 1(3) and (4), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(26) Subsection (24) does not apply to a taxation year of a taxpayer that was, throughout the year,

(a) a corporation whose principal business throughout the year was

(i) manufacturing or processing,

(ii) mining operations, or

(iii) the sale, distribution or production of electricity, natural gas, oil, steam, heat or any other form of energy or potential energy; or

(b) a partnership each member of which was a corporation described in paragraph (a).

Related Provisions: Reg. 1104(9) — Meaning of "manufacturing and processing".

History: Para. 1100(26)(a) amended by P.C. 1997-1033, subsec. 1(5), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to taxation years ending after March 6, 1996.

(27) Specified energy property of a person or partnership does not include property acquired by the person or partnership after February 9, 1988 and before 1990

(a) pursuant to an obligation in writing entered into by the person or partnership before February 10, 1988;

(b) pursuant to the terms of a prospectus, preliminary prospectus, registration statement or offering memorandum filed before February 10, 1988 with a public authority in Canada pursuant to and in accordance with the securities legislation of any province;

(c) pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the offering memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering of the securities,

(ii) the offering memorandum was distributed before February 10, 1988,

(iii) solicitations in respect of the sale of the securities contemplated by the offering memorandum were made before February 10, 1988, and,

(iv) the sale of the securities was substantially in accordance with the offering memorandum; or

(d) as part of a project where, before February 10, 1988,

(i) some of the machinery or equipment to be used in the project had been acquired, or agreements in writing for the acquisition of that machinery or equipment had been entered into, by or on behalf of the person or partnership, and

(ii) an approval had been received by or on behalf of the person or partnership from a government environmental authority in respect of the location of the project.

Related Provisions: Reg. 1100(17) — Meaning of "leasing property".

(28) A property acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired

that would otherwise be specified energy property of the taxpayer shall be deemed not to be specified energy property of the taxpayer if, immediately before it was so acquired by the taxpayer, it was not, by virtue of subsection (27), this subsection or subsection (29), specified energy property of the person from whom the property was so acquired.

(29) A property acquired by a taxpayer or partnership that is a replacement property (within the meaning assigned by subsection 13(4) of the Act), that would otherwise be specified energy property of the taxpayer or partnership, shall be deemed not to be specified energy property of the taxpayer or partnership if the property replaced, referred to in paragraph 13(4)(a) or (b) of the Act, was, by virtue of subsection (27), (28) or this subsection, not specified energy property of the taxpayer or partnership immediately before it was disposed of by the taxpayer or partnership.

History [Reg. 1100(24)–(29)]: Subsecs. 1100(24) to (29) added by P.C. 1990-753, April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of taxation years ending after February 9, 1988.

Selected Cases [Reg. 1100]: *Brydges v. Canada*, [1996] 1 C.T.C. 2851 (TCC) (Certification cannot be subsequently revoked).

Definitions [Reg. 1100]: "additional property" — Reg. 1100(1.19)(a); "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1102(20); "associated" — ITA 256; "broadcasting" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian" — Reg. 1104(10)(a), (c.2); "capital cost" — Reg. 1100(1)(b), 1100(1.13), 1102(4), (7); "certified feature film", "certified production" — Reg. 1104(2); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "commencement" — *Interpretation Act* 35(1); "computer software" — Reg. 1104(2); "computer software tax shelter property" — Reg. 1100(20.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated property" — Reg. 1100(1)(ta), (zc); "disposed" — ITA 248(1)"disposition"; "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "end of the taxation year" — Reg. 1104(1); "exempt property" — Reg. 1100(1.13)(a); "film or tape" — Reg. 1100(21); "fiscal period" — ITA 249.1; "gross revenue" — ITA 248(1); "guarantor" — Reg. 1100(21)(c)(ii); "income from a mine" — Reg. 1104(5), (6.1)(a); "individual" — ITA 248(1); "industrial mineral mine" — Reg. 1104(3); "investor" — Reg. 1100(21); "leasing property" — Reg. 1100(17)–(20); "life insurance corporation" — ITA 248(1); "manufacturing or processing" — Reg. 1104(9); "mine" — Reg. 1104(7); "mineral", "mining" — Reg. 1104(3); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "motor vehicle", "office" — ITA 248(1); "original lease" — Reg. 1100(1.2)(a); "original property" — Reg. 1100(1.17), (1.19)(a); "owner" — Reg. 1100(25); "Parliament" — *Interpretation Act* 35(1); "particular time", "particular year" — Reg. 1100(1.1)(a)(ii); "person" — ITA 248(1), Reg. 1100(1.16); "prescribed" — ITA 248(1); "prescribed rate" — Reg. 4301, 4302; "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "radio" — *Interpretation Act* 35(1); "railway system" — Reg. 1104(2); "received or receivable" — Reg. 1100(1.18); "related" — ITA 251(2)–(6); "remuneration" — Reg. 1104(10)(c); "rent" — Reg. 1100(14.1), (17.2); "rental property" — Reg. 1100(14); "replacement property" — Reg. 1100(1.17); "resident in Canada" — ITA 250; "revenue guarantee" — Reg. 1104(10)(c.1); "share" — ITA 248(1); "specified energy property" — Reg. 1100(25), (27)–(29); "specified leasing property" — Reg. 1100(1.11); "systems software" — Reg. 1104(2); "tax shelter" — ITA 237.1(1), 248(1); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1); "unit of production" — Reg. 1104(10)(d); "vendor" — Reg. 1100(21)(c)(ii); "within 60 days after the end of the year" — Reg. 1100(23)(a), (b); "writing", "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [Reg. 1100]: IT-474R: Amalgamations of Canadian corporations.

1100A. Exempt mining income — (1) [Revoked]

(2) Any election under subparagraph 13(21)(f)(vi) [13(21)"undepreciated capital cost"H] of the Act in respect of property of a prescribed class acquired by a corporation for the purpose of gaining or producing income from a mine shall be made by filing with the Minister, not later than the day on or before which the corporation is required to file a return of income pursuant to section 150 of the Act for its taxation year in which the exempt period in respect of the mine ended, one of the following documents in duplicate:

(a) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made in respect of that class; and

(b) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election in respect of that class by the person or persons legally entitled to administer the affairs of the corporation.

Related Provisions: Reg. 1100(1)(w), (x).

History: Subsec. 1100A(1) revoked by P.C. 1988-390, s. 6, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective October 29, 1985.

Subsec. 1100A(1) substituted by P.C. 1979-1487, s. 1, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Subsec. 1100A(1) and that portion of subsec. 1100A(2) preceding para. (a) substituted by P.C. 1978-1315, subsecs. 7(1), (2), April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, effective on and after May 26, 1978.

Definitions [Reg. 1100A]: "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister", "person", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249, Reg. 1104(1).

DIVISION II — SEPARATE CLASSES

1101. (1) Businesses and properties — Where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties was acquired for the purpose of gaining or producing income from a business, and

(b) one of the properties was acquired for the purpose of gaining or producing income from another business or from the property,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from each business, and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1101(1a) — Insurance businesses.

History: Paras. 1101(1)(c), (d) renumbered by P.C. 1980-2081, s. 1, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980.

Interpretation Bulletins: IT-206R: Separate businesses; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa.

(1a) For the purposes of subsection (1),

(a) a life insurance business, and

(b) an insurance business other than a life insurance business,

shall each be regarded as a separate business.

(1ab) Where, at the end of 1971, more than one property of a taxpayer who was a member of a partnership at that time is described in the same class in Schedule II and where

(a) one of the properties can reasonably be regarded to be the interest of the taxpayer in a depreciable property that is partnership property of the partnership, and

(b) one of the properties is property other than property referred to in paragraph (a),

a separate class is hereby prescribed for all properties each of which

(c) is a property referred to in paragraph (a); and

(d) would otherwise be included in the class.

(1ac) Subject to subsection (5h), where more than one property of a taxpayer is described in the same class in Schedule II, and one or more of the properties is a rental property of the taxpayer the capital cost of which to the taxpayer was not less than $50,000, a separate class is hereby prescribed for each such rental property of the taxpayer that would otherwise be included in the same class, other than a rental property that was acquired by the taxpayer before 1972 or that is

(a) a building or an interest therein, or

(b) a leasehold interest acquired by the taxpayer by reason of the fact that the taxpayer erected a building on leased land,

erection of which building was commenced by the taxpayer before 1972 or pursuant to an agreement in writing entered into by the taxpayer before 1972.

Related Provisions: Reg. 1100(14) — Meaning of "rental property"; Reg. 1101(1ad) — Exceptions.

History: All that portion of subsec. 1101(1ac) preceding para. (a) substituted by P.C. 1982-599, subsec. 2(1), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Interpretation Bulletins: IT-274R: Rental property — Capital cost of $50,000 or more; IT-304R2: Condominiums.

(1ad) Notwithstanding subsection (1ac), a rental property acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired,

that would otherwise be rental property of the taxpayer of a separate class prescribed under subsection (1ac), shall be deemed not to be property of a separate class prescribed under that subsection if, immediately before it was so acquired by the taxpayer, it was a rental property of the person from whom the property was so acquired of a prescribed class other than a separate class prescribed under that subsection.

Related Provisions: Reg. 1100(2.21)(a); Reg. 1100(14) — Meaning of "rental property"; Reg. 1102(20) — Non-arm's length exception.

History: Paras. 1101(1ad)(a), (b) substituted for (a) to (c) by P.C. 1989-2464, subsec. 2(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Para. 1101(1ad)(a.1) added by P.C. 1984-3789, s. 6, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable with respect to property acquired after November 12, 1981.

Interpretation Bulletins: IT-274R: Rental properties — Capital cost of $50,000 or more.

(1ae) Except in the case of a corporation or partnership described in subsection 1100(12), where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties is a rental property other than a property of a separate class prescribed under subsection (1ac), and

(b) one of the properties is a property other than rental property,

a separate class is hereby prescribed for properties that

(c) are described in paragraph (a); and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(14) — Meaning of "rental property".

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-304R2: Condominiums.

(1af) A separate class is hereby prescribed for each property included in Class 10.1 in Schedule II.

History: Subsec. 1101(1af) added by P.C. 1991-2272, s. 2, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Subsecs. 1101(1b), (1c) revoked by P.C. 1979-2483, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979, effective in respect of 1978 *et seq.*

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

(2) Fishing vessels — Where a property of a taxpayer that would otherwise be included in Class 7 in Schedule II is a property in respect of which a depreciation allowance could have been taken under Order in Council

(a) P.C. 2798 of April 10, 1942,

(b) P.C. 7580 of August 26, 1942, as amended by P.C. 3297 of April 22, 1943, or

(c) P.C. 3979 of June 1, 1944,

if those Orders in Council were applicable to the taxation year, a separate class is hereby prescribed for each property, including the furniture, fittings and equipment attached thereto.

Related Provisions: Reg. 1100(1)(i).

(2a) Canadian vessels — A separate class is hereby prescribed for each vessel of a taxpayer, including the furniture, fittings, radiocommunication equipment and other equipment attached thereto, that

(a) was constructed in Canada;

(b) is registered in Canada; and

(c) had not been used for any purpose whatever before it was acquired by the taxpayer.

Related Provisions: Reg. 1100(1)(v) — additional allowance; Reg. 4601(e)(iii) — Investment tax credit — qualified transportation equipment.

History: Subsec. 1101(2a) substituted by P.C. 1994-139, subsecs. 3(1) and (2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after July 13, 1990.

Interpretation Bulletins: IT-267R2: CCA — vessels.

Advance Tax Rulings: ATR-52: Accelerated rate of CCA for vessels.

(2b) Offshore drilling vessels — A separate class is hereby prescribed for all vessels described in Class 7 in Schedule II, including the furniture, fittings, radiocommunication equipment and other equipment attached thereto, acquired by a taxpayer

(a) after May 25, 1976 and designed principally for the purpose of

(i) determining the existence, location, extent or quality of accumulations of petroleum or natural gas (other than mineral resources); or

(ii) drilling oil or gas wells; or

(b) after May 22, 1979 and designed principally for the purpose of determining the existence, location, extent or quality of mineral resources.

Related Provisions: Reg. 1100(1)(va).

History: Subsec. 1101(2b) substituted by P.C. 1979-1487, s. 52, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Interpretation Bulletins: IT-267R2: CCA — Vessels; IT-317R: Radio and television equipment.

(3) Timber limits and cutting rights — For the purposes of this Part and Schedules IV and VI, each property of a taxpayer that is

(a) a timber limit other than a timber resource property, or

(b) a right to cut timber from a limit other than a right that is a timber resource property,

is hereby prescribed to be a separate class of property.

Related Provisions: Reg. 1100(1)(e) — Capital cost allowance.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment; IT-481: Timber resource property and timber limits.

(4) Industrial mineral mines — For the purposes of this Part and Schedule V, where a taxpayer has

(a) more than one industrial mineral mine in respect of which he may claim an allowance under paragraph 1100(1)(g),

(b) more than one right to remove industrial minerals from an industrial mineral mine in respect of which he may claim an allowance under that paragraph, or

(c) both such a mine and a right,

each such industrial mineral mine and each such right to remove industrial minerals from an industrial mineral mine is hereby prescribed to be a separate class of property.

Related Provisions: Reg. 1104(3) — Meaning of "industrial mineral mine".

(4a) New or expanded mines properties — Where more than one property of a taxpayer is described in Class 28 in Schedule II and

(a) one of the properties was acquired for the purpose of gaining or producing income from only one mine, and

(b) one of the properties was acquired for the purpose of gaining or producing income from another mine,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from each mine;

(d) would otherwise be included in the class; and

(e) are not included in a separate class by virtue of subsection (4b).

Related Provisions: Reg. 1100(1)(w), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

(4b) Where more than one property of a taxpayer is described in Class 28 in Schedule II and

(a) one of the properties was acquired for the purpose of gaining or producing income from particular mines, and

(b) one of the properties was acquired for the purpose of gaining or producing income from only one mine or more than one mine other than any of the particular mines,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from the particular mines; and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(1)(x), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

(4c) Where one or more properties of a taxpayer are described in paragraph (a), (a.1), or (a.2) of Class 41 of Schedule II and

(a) where all of the properties were acquired for the purposes of gaining or producing income from only one mine, or

(b) where

(i) one or more of the properties were acquired for the purpose of gaining or producing income from a particular mine, and

(ii) one or more of the properties were acquired for the purpose of gaining or producing income from another mine,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from each mine,

(d) would otherwise be included in the class, and

(e) are not included in a separate class by reason of subsection (4d).

Related Provisions: Reg. 1100(1)(y), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

(4d) Where more than one property of a taxpayer is described in paragraph (a), (a.1), or (a.2) of Class 41 of Schedule II and

(a) one of the properties was acquired for the purpose of gaining or producing income from particular mines, and

(b) one of the properties was acquired for the purpose of gaining or producing income from only one mine or more than one mine other than any of the particular mines,

a separate class is hereby prescribed for the properties that

(c) were acquired for the purpose of gaining or producing income from the particular mines, and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(1)(ya), 1104(5), 1104(7); Reg. 1104(5), (6.1) — Income from a mine; Reg. 1104(7) — Interpretation.

History: The opening words of subsecs. 1101(4c), (4d) amended by P.C. 1998-49, s. 8, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Subsecs. 1101(4c), (4d) added by P.C. 1989-2464, subsec. 2(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(5) Lease option agreements — Where, by virtue of an agreement, contract or arrangement entered into on or after May 31, 1954, a taxpayer is deemed by section 18 of the *Income Tax Act*, as enacted by the Statutes of Canada, 1958, Chapter 32, subsection 8(1), to have acquired a property, a separate class is hereby prescribed for each such property and if the taxpayer subsequently actually acquires the property it shall be included in the same class.

(5a) Telecommunication spacecraft — For the purposes of this Part, each property of a taxpayer that is an unmanned telecommunication spacecraft described in paragraph (f.2) of Class 10 or in Class 30 in Schedule II is hereby prescribed to be a separate class of property.

History: Subsec. 1101(5a) substituted by P.C. 1989-2464, subsec. 2(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(5b) Multiple-unit residential buildings — For the purposes of this Part, when any property of a taxpayer is a property of Class 31 or 32 in Schedule II and the capital cost of that property to the taxpayer was not less than $50,000, a separate class is hereby prescribed for each such property of the taxpayer that would otherwise be included in the same class.

Interpretation Bulletins: IT-274R: Rental properties — Capital cost of $50,000 or more; IT-367R3: Capital cost allowance — multiple-unit residential buildings.

Forms: TX87: Application for a copy of a MURB certificate.

(5c) Leasing properties — For the purposes of this Part, except in the case of a corporation or partnership described in subsection 1100(16), where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties is a leasing property, and

(b) one of the properties is a property other than a leasing property,

a separate class is hereby prescribed for properties that

(c) are described in paragraph (a); and

(d) would otherwise be included in the class.

Related Provisions: Reg. 1100(17), (18) — Meaning of "leasing property".

Interpretation Bulletins: IT-443: Leasing property — CCA restrictions.

(5d) Railway cars — Where more than one property of a taxpayer is a railway car included in Class 35 in Schedule II that was rented, leased or used by the taxpayer in Canada in the taxation year, other than a railway car owned by a corporation, or a partnership any member of which is a corporation, that

(a) was at any time in that taxation year a common carrier that owned or operated a railway, or

(b) rented or leased the railway cars at any time in that taxation year, by one or more transactions between persons not dealing at arm's length, to an associated corporation that was, at that time, a common carrier that owned or operated a railway,

a separate class is prescribed

(c) for all such properties acquired by the taxpayer before February 3, 1990 (other than such properties acquired for rent or lease to another person),

(d) for all such properties acquired by the taxpayer after February 2, 1990 (other than such properties acquired for rent or lease to another person),

(e) for all such properties acquired by the taxpayer before April 27, 1989 for rent or lease to another person, and

(f) for all such properties acquired by the taxpayer after April 26, 1989 for rent or lease to another person.

Related Provisions: Reg. 1100(1)(z), (z.1a).

History: Subsec. 1101(5d) substituted by P.C. 1991-465, subsec. 2(1), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after April 26, 1989 except that in respect of property of a taxpayer

(a) acquired by the taxpayer after April 26, 1989 and before February 3, 1990,

(b) acquired by the taxpayer after February 2, 1990 pursuant to an agreement in writing entered into by the taxpayer before February 3, 1990, or

(c) under construction by or on behalf of the taxpayer before February 3, 1990,

the subsec. shall be read without reference to para. (d) thereof and to the words "before February 3, 1990" in para. (c) thereof.

(5d.1) [Railway property] — A separate class is hereby prescribed for all property included in Class 35 in Schedule II acquired at a time after December 6, 1991 by a taxpayer that was at that time a common carrier that owned and operated a railway.

Related Provisions: Reg. 1100(1)(z.1b) — Additional allowance.

History: Subsec. 1101(5d.1) added by P.C. 1994-139, subsec. 3(3), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(5e) Railway track and related property — A separate class is hereby prescribed for all property included in Class 1 in Schedule II acquired by a taxpayer after March 31, 1977 and before 1988 that is

(a) railway track and grading, including components such as rails, ballast, ties and other track material;

(b) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor; or

(c) a bridge, culvert, subway or tunnel that is ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(za), (za.1) — Additional allowance.

(5e.1) [Railway property] — A separate class is hereby prescribed for all property included in Class 1 in Schedule II acquired at a time after December 6, 1991 by a tax-

payer that was at that time a common carrier that owned and operated a railway, where the property is

(a) railway track and grading, including components such as rails, ballast, ties and other track material;

(b) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor; or

(c) a bridge, culvert, subway or tunnel that is ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(za.1) — Additional allowance.

History: Subsec. 1101(5e.1) added by P.C. 1994-139, subsec. 3(5), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(5e.2) [Trestles] — A separate class is hereby prescribed for all trestles included in Class 3 in Schedule II acquired at a time after December 6, 1991 by a taxpayer that was at that time a common carrier that owned and operated a railway, where the trestles are ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(za.2) — Additional allowance.

History: Subsec. 1101(5e.2) added by P.C. 1994-139, subsec. 3(5), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 6, 1991.

(5f) [Trestles] — A separate class is hereby prescribed for all trestles included in Class 3 in Schedule II acquired by a taxpayer after March 31, 1977 and before 1988 that are ancillary to railway track and grading.

Related Provisions: Reg. 1100(1)(zb).

History: All that portion of subsec. 1101(5e) preceding para. (a) and subsec. 1101(5f) substituted by P.C. 1984-2044, subsecs. 2(1), (2), June 14, 1984, *Canada Gazette*, Part II, June 27, 1984.

All that portion of subsec. 1101(5e) preceding para. (a) and subsec. (5f) substituted by P.C. 1981-733, s. 1, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981, effective April 1, 1980.

Subsecs. 1101(5e), (5f) added by P.C. 1978-344, s. 2, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(5g) Deemed depreciable property — A separate class is hereby prescribed for each property of a taxpayer described in Class 36 in Schedule II.

(5h) Leasehold interest in real properties — For the purposes of this Part, where more than one property of a taxpayer is described in the same class in Schedule II and where

(a) one of the properties is a leasehold interest in real property described in subsection 1100(13), and

(b) one of the properties is a property other than a leasehold interest in real property described in subsection 1100(13),

a separate class is hereby prescribed for properties that

(c) are described in paragraph (a); and

(d) would otherwise be included in the class.

History: Subsecs. 1101(5g), (5h) added by P.C. 1982-599, subsec. 2(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, subsec. 1101(5g) applicable in respect of property acquired after December 11, 1979.

(5i) Pipelines — A separate class is hereby prescribed for each property of a taxpayer described in Class 2 in Schedule II that is

(a) a pipeline the construction of which was commenced after 1984 and completed after September 1, 1985 and the capital cost of which to the taxpayer is not less than $10,000,000,

(b) a pipeline that has been extended or converted where the extension or conversion was completed after September 1, 1985 and the capital cost to the taxpayer of the extension or the cost to him of the conversion, as the case may be, is not less than $10,000,000, or

(c) a pipeline that has been extended and converted as part of a single program of extension and conversion of the pipeline where the program was completed after September 1, 1985 and the aggregate of the capital cost to the taxpayer of the extension and the cost to him of the conversion is not less than $10,000,000,

and in respect of which the taxpayer has, by letter attached to the return of his income filed with the Minister in accordance with section 150 of the Act for the taxation year in which the construction, extension, conversion or program, as the case may be, was completed, elected that this subsection apply.

Related Provisions: Reg. 1101(5j) — Effect of election.

(5j) [Election effective forever] — An election under subsection (5i), (5l) or (5o) shall be effective from the first day of the taxation year in respect of which the election is made and shall continue to be effective for all subsequent taxation years.

History: Subsec. 1101(5j) amended by P.C. 1991-465, subsec. 2(2), March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of taxation years ending after April 26, 1989.

Subsec. 1101(5j) substituted by P.C. 1989-2464, subsec. 2(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subsecs. 1101(5i), (5j) added by P.C. 1986-193, January 23, 1986, *Canada Gazette*, Part II, February 5, 1986.

(5k) Certified productions — A separate class is hereby prescribed for all property of a taxpayer included in Class 10 in Schedule II by reason of paragraph (w) thereof.

Related Provisions: Reg. 1100(1)(l).

History: Subsec. 1101(5k) added by P.C. 1988-2795, s. 2, December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable in respect of property acquired after 1987.

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media.

Proposed Addition — Reg. 1101(5k.1)

(5k.1) Canadian film or video production — A separate class is hereby prescribed for all property of a corporation included in Class 10 in Schedule II because of paragraph (x) thereof that is property

(a) in respect of which the corporation is deemed under subsection 125.4(3) of the Act to have paid an amount, or

(b) acquired by the corporation from another corporation where

(i) the other corporation acquired the property in circumstances to which paragraph (a) applied, and

(ii) the corporations were related to each other throughout the period that began when the other corporation acquired the property and ended when the other corporation disposed of the property to the corporation.

Application: The December 12, 1995 draft regulations (Canadian film tax credit), s. 2, will add subsec. 1101(5k.1), applicable to 1995 *et seq.*

Related Provisions: 1100(1)(m) — Additional allowance.

(5l) Class 38 property and outdoor advertising signs — A separate class is hereby prescribed for each property of a taxpayer described in Class 38 in Schedule II or in paragraph (l) of Class 8 in Schedule II in respect of which the taxpayer has, by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property was acquired, elected that this subsection apply.

Related Provisions: Reg. 1101(5j) — Effect of election.

History: Subsec. 1101(5l) added by P.C. 1989-2464, subsec. 2(5), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987, except that any election under the subsec. made before July 3, 1990 shall be deemed to be a valid election.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment.

(5m) Specified energy property — Where, for any taxation year, a property of a taxpayer or partnership is a specified energy property, a separate class is prescribed in respect of that property for that and subsequent taxation years.

Related Provisions: Reg. 1100(25) — Meaning of "specified energy property".

History: Subsec. 1101(5m) added by P.C. 1990-753, April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of taxation years ending after February 9, 1988.

(5n) [Specified leasing property] — Notwithstanding subsection (5c), where at the end of any taxation year a property of a taxpayer is specified leasing property, a separate class is prescribed in respect of that property (including any additions or alterations to that property included in the same class in Schedule II) for that year and all subsequent taxation years.

Related Provisions: Reg. 1100(1.1), (1.11) — Specified leasing property.

(5o) [Exempt properties] — A separate class is prescribed for one or more properties of a class in Schedule II that are exempt properties, as defined in paragraph 1100(1.13)(a), of a taxpayer referred to in subsection 1100(16) in respect of which the taxpayer has, by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property or properties were acquired, elected that this subsection apply.

Related Provisions: Reg. 1101(5j) — Effect of election.

History: Subsecs. 1101(5n), (5o) added by P.C. 1991-465, subsec. 2(3), (5n) applicable in respect of taxation years ending after April 26, 1989; and (5o) in respect of property acquired after that date, and any election made under that subsec. before September 24, 1991 shall be deemed to be a valid election.

(5p) Rapidly depreciating electronic equipment — Subject to subsection (5q), a separate class is prescribed for one or more properties of a taxpayer acquired in a taxation year and included in the year in Class 8 in Schedule II, or for one or more properties of a taxpayer acquired in a taxation year and included in the year in Class 10 in Schedule II, where each of the properties has a capital cost to the taxpayer of at least $1,000 and is

(a) general-purpose electronic data processing equipment and systems software therefor, including ancillary data processing equipment, included in paragraph (f) of Class 10 in Schedule II;

(b) computer software;

(c) a photocopier; or

(d) office equipment that is electronic communications equipment, such as a facsimile transmission device or telephone equipment,

Related Provisions: Reg. 1101(5q) — Election for Reg. 1101(5p) to apply; Reg. 1103(2g) — Property transferred back to pool if still owned after 5 years.

History: Subsec. 1101(5p) added by P.C. 1994-231, s. 2, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Proposed Amendment — Separate class for manufacturing and processing equipment

Federal budget, supplementary information, February 28, 2000: *Separate Class Election for Manufacturing and Processing Equipment*

In general, the CCA system groups properties into a limited number of broad classes with specified depreciation rates that apply on a diminishing balance basis. In most cases, this system works well and is simple to administer. The use of a class system provides, on average, deductions for tax purposes that reflect the useful life of the property. However, the rate at which any particular piece of equipment depreciates can vary significantly depending on how it is used and the progress of technological change. In some circumstances, the CCA system does not adequately reflect variations in depreciation experience resulting from technological change. In response to this, the 1993 budget introduced a separate class election for computer equipment and certain types of office communication and electronic equipment.

The separate class election allows taxpayers to place eligible property in a separate class for CCA purposes. Although the separate class election does not change the specified CCA rate, it ensures that, upon the disposition of all the property in the class, any remaining undepreciated balance can be fully deducted as a terminal loss.

The useful life of manufacturing equipment can vary widely. To address situations where certain types of equipment have an unusually short economic life, the budget proposes that the separate class election be extended to include manufacturing and processing property included in Class 43 of Schedule II to the *Income Tax Regulations* costing more than $1,000. This measure will apply to property acquired after February 27, 2000. The proposed election must be filed with the income tax return for the taxation year in which the property is acquired.

As with the 1993 provision, the undepreciated capital cost (UCC) in each separate class created pursuant to this measure, that is remaining after five years, must be transferred into the general Class 43 UCC pool.

(5q) [Election required] — Subsection (5p) applies only in respect of a property or properties of a taxpayer in respect of which the taxpayer has (by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property or properties were acquired) elected that the subsection apply.

History: Subsec. 1101(5q) added by P.C. 1994-231, s. 2, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993; an election referred to in subsec. 1101(5q) shall be deemed to have been made in accordance with if it is made by notifying the Minister of National Revenue in writing before the end of August 1994.

(5r) Computer software tax shelter property — For the purpose of this Part, where

(a) more than one property of a taxpayer is described in the same class in Schedule II,

(b) one of the properties is computer software tax shelter property, and

(c) one of the properties is a property other than computer software tax shelter property,

for properties that are described in paragraph (b) and that would otherwise be included in the class, a separate class is prescribed.

Related Provisions: Reg. 1100(20.1) — Limitation on CCA claim for computer software tax shelter property; Reg. 1100(20.2) — Definition of "computer software tax shelter property".

History: Subsec. 1101(5r) added by P.C. 2000-1000, s. 3, June 21, 2000, *Canada Gazette*, Part II, July 5, 2000, applicable generally to fiscal periods and taxation years of a taxpayer or partnership that end after August 5, 1997, but see the full application reproduced in the History to new subsecs. 1100(20.1) and (20.2).

(6) Reference — A reference in this Part to a class in Schedule II includes a reference to the corresponding separate classes prescribed by this section.

Interpretation Bulletins: IT-474R: Amalgamations of Canadian corporations.

Definitions [Reg. 1101]: "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1102(20); "business" — Reg. 1101(1a); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "computer software" — Reg. 1104(2); "computer software tax shelter property" — Reg. 1100(20.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "dividend" — ITA 248(1); "general-purpose electronic data processing equipment" — Reg. 1104(2); "income from a mine" — Reg. 1104(5), (6.1)(a); "industrial mineral mine" — Reg. 1104(3); "leasing property" — Reg. 1100(17-20); "life insurance business" — ITA 248(1); "mine" — Reg. 1104(7); "mineral" — Reg. 1104(3); "mineral resource", "Minister", "office", "person" — ITA 248(1); "pipeline" — Reg. 1104(2); "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "rental property" — Reg. 1100(14); "specified energy property" — Reg. 1100(25), (27)–(29); "specified leasing property" — Reg. 1100(1.11); "systems software" — Reg. 1104(2); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "timber resource property" — ITA 13(21), 248(1); "writing" — *Interpretation Act* 35(1).

DIVISION III — PROPERTY RULES

1102. (1) Property not included — The classes of property described in this Part and in Schedule II shall be deemed not to include property

(a) **[otherwise deductible]** — the cost of which would be deductible in computing the taxpayer's income if the Act were read without reference to sections 66 to 66.4 of the Act;

Proposed Amendment — Reg. 1102(1)(a)

(a) the cost of which would be deductible in computing the taxpayer's income if the Act were read without reference to sections 66 to 66.4 of the Act;

Application: The July 23, 1999 draft regulations, s. 1, will amend para. 1102(1)(a) to read as above, applicable to 1998 *et seq.*

Technical Notes: Subsection 1102(1) provides that certain properties are excluded as depreciable properties under Schedule II to the Regulations. Paragraph 1102(1)(a) excludes a taxpayer's property for this purpose if its cost would, ignoring sections 66 to 66.4 of the Act, be deductible in computing the taxpayer's income. This version of paragraph 1102(1)(a) applies to taxation years that end after December 5, 1996.

Paragraph 1102(1)(a) is amended so that this version of paragraph 1102(1)(a) applies to the 1988 and subsequent taxation years. The amendment is consequential to proposed paragraph (k.1) of the CEE definition in subsection 66.1(6) of the Act and proposed paragraph (i.1) of the CDE definition in subsection 66.2(5) of the Act, which are explained in the commentary above.

History: Para. 1102(1)(a) amended by P.C. 1999-629, subsec. 2(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that end after December 5, 1996.

Proposed Addition — Reg. 1102(1)(a.1)

(a.1) **[CRCE]** — the cost of which is included in the taxpayer's Canadian renewable and conservation expense (within the meaning assigned by section 1219);

Application: The September 16, 1997 draft regulations, s. 1, will add para. 1102(1)(a.1), applicable to expenses incurred after December 5, 1996.

Technical Notes: [The following Technical Notes were released with the December 5, 1996 draft regulations.]

The 1996 budget proposed the introduction of a new category of expenditures, Canadian renewable and conservation expenses (CRCE), which would include intangible costs for projects the equipment for which is included in Capital Cost Allowance Class 43.1. The budget proposed that the tax treatment of these expenses would be analogous to that of Canadian Exploration Expenses. In particular, the budget proposed that CRCE would be fully deductible and capable of being renounced to shareholders who have entered into a flow-through share agreement. The budget also stated that CRCE would take effect only after the definition of eligible costs had been developed in consultation with Natural Resources Canada and industry representatives. The proposed regulations contained in this Appendix, in conjunction with certain amendments to sections 66 and 66.1 of the Act, give effect to this budget announcement.

Part XI sets out rules for the deduction of capital cost allowance. Subsection 1102(1) provides that certain properties are excluded from the classes of depreciable property in Schedule II to the Regulations.

Subsection 1102(1) is amended to add proposed paragraph (a.1), consequential on the introduction of the definition CRCE in subsection 66.1(6) of the Act, in order to ensure that an expenditure which is deductible as CRCE is not also included as the capital cost of depreciable property.

(b) **[inventory]** — that is described in the taxpayer's inventory;

(c) **[no income purpose]** — that was not acquired by the taxpayer for the purpose of gaining or producing income;

Selected Cases: *Hickman Motors Ltd. v. Canada*, [1995] 2 C.T.C. 320 (FCA) (Depreciable property in subsidiary not necessarily depreciable in hands of parent upon winding-up).

I.T. Technical News: No. 3 (loss utilization within a corporate group; use of a partner's assets by a partnership.

(d) **[R&D expense]** — that was acquired by an expenditure in respect of which the taxpayer is allowed a deduction in computing income under section 37 of the Act;

Related Provisions: Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures. See also list at end of Reg. 1102(1).

(e) **[non-Canadian art]** — that was acquired by the taxpayer after November 12, 1981, other than property acquired from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired if the property was acquired in the circumstances where subsection (14) applies, and is

(i) a print, etching, drawing, painting, sculpture, or other similar work of art, the cost of which to the taxpayer was not less than $200,

(ii) a hand-woven tapestry or carpet or a handmade appliqué, the cost of which to the taxpayer was not less than $215 per square metre,

(iii) an engraving, etching, lithograph, woodcut, map or chart, made before 1900, or

(iv) antique furniture, or any other antique object, produced more than 100 years before the date it was acquired, the cost of which to the taxpayer was not less than $1,000,

other than any property described in subparagraph (i) or (ii) where the individual who created the property was a Canadian (within the meaning assigned by paragraph 1104(10)(a)) at the time the property was created;

History: Para. 1102(1)(e) added by P.C. 1983-1083, s. 2, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Para. 1102(1)(e) revoked by P.C. 1978-1315, s. 8, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

(f) that is property referred to in paragraph 18(1)(l) of the Act acquired after December 31, 1974, an outlay or expense for the use or maintenance of which is not deductible by virtue of that paragraph;

Related Provisions: Reg. 1102(17) — Grandfathering to November 13, 1974.

(g) **[pre-1972 farming/fishing property]** — in respect of which an allowance is claimed and permitted under Part XVII;

Related Provisions: Reg. 5202"cost of capital"(a), 5204"cost of capital"(a) — Manufacturing and processing credit.

(h) **[pre-1966 automobile]** — that is a passenger automobile acquired after June 13, 1963 and before January 1, 1966, the cost to the taxpayer of which, minus the initial transportation charges and retail sales tax in respect thereof, exceeded $5,000, unless the automobile was acquired by a person before June 14, 1963 and has by one or more transactions between persons not dealing at arm's length become vested in the taxpayer;

Related Provisions: Reg. 1102(11)–(13) — Interpretation.

(i) **[pre-1963 property]** — that was deemed by section 18 of the *Income Tax Act*, as enacted by the Statutes of Canada, 1958, Chapter 32, subsection 8(1), to have been acquired by the taxpayer and that did not vest in the taxpayer before the 1963 taxation year;

(j) **[life insurer]** — of a life insurer, that is property used by it in, or held by it in the course of, carrying on an insurance business outside Canada; or

History: Para. 1102(1)(j) substituted by P.C. 1979-2483, s. 2, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979, applicable to 1978 *et seq.*

(k) **[linefill]** — that is linefill in a pipeline.

Related Provisions: Reg. 1104(2) — "Pipeline".

History: Para. 1102(1)(k) added by P.C. 1994-139, subsec. 4(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Interpretation Bulletins [Reg. 1102(1)]: IT-128R: CCA — Depreciable property; IT-148R3: Recreational properties and club dues; IT-218R: Profit, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa; IT-220R2: CCA — Proceeds of disposition of depreciable property; IT-350R: Investigation of site.

(1a) Partnership property — Where the taxpayer is a member of a partnership, the classes of property described in this Part and in Schedule II shall be deemed not to include any property that is an interest of the taxpayer in depreciable property that is partnership property of the partnership.

(2) Land — The classes of property described in Schedule II shall be deemed not to include the land upon which a property described therein was constructed or is situated.

(3) Non-residents — Where the taxpayer is a non-resident person, the classes of property described in this Part and in Schedule II shall, except for the purpose of determining the foreign accrual property income of the taxpayer for the purposes of subdivision i of Division B of Part I of the Act, be deemed not to include property that is situated outside Canada.

(4) Improvements or alterations to leased properties — Subject to subsection (5), "capital cost" for the purposes of paragraph 1100(1)(b) includes any amount expended by a taxpayer for or in respect of an improvement or alteration to a leased property.

Selected Cases [Reg. 1102(4)]: *Hickman Motors Ltd. v. R.*, [1998] 1 C.T.C. 213 (SCC) (Property retains depreciable character in hands of transferee on winding-up, if not used for other purposes).

(5) Buildings on leased properties — Where the taxpayer has a leasehold interest in a property, a reference in Schedule II to a property that is a building or other structure shall include a reference to that leasehold interest to the extent that that interest

(a) was acquired by reason of the fact that the taxpayer

(i) erected a building or structure on leased land,

(ii) made an addition to a leased building or structure, or

(iii) made alterations to a leased building or structure that substantially changed the nature of the property; or

(b) was acquired after 1975 or, in the case of any property of Class 31 or 32, after November 18, 1974, from a former lessee who had acquired it by reason of the fact that he or a lessee before him

(i) erected a building or structure on leased land,

(ii) made an addition to a leased building or structure, or

(iii) made alterations to a leased building or structure that substantially changed the nature of the property.

Related Provisions: Reg. 1102(4) — Improvements or alterations to leased property; Reg. 1102(5.1) — References to "building".

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-324: CCA — Emphyteutic lease; IT-367R3: Capital cost allowance — multiple-unit residential buildings; IT-464R: Leasehold interests.

(5.1) [Buildings on leased properties] — Where a taxpayer has acquired a property that would, if the property had been acquired by a person with whom the taxpayer was not dealing at arm's length at the time the property was acquired by the taxpayer, be described in paragraph (5)(a) or (b) in respect of that person, a reference in Schedule II to a property that is a building or

other structure shall, in respect of the taxpayer, include a reference to that property.

History: Subsec. 1102(5.1) added by P.C. 1994-139, subsec. 4(2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

(6) Leasehold interests acquired before 1949 — For the purposes of paragraphs 2(a) and (b) of Schedule III, where an item of capital cost has been incurred before the commencement of the taxpayer's 1949 taxation year, there shall be added to the capital cost of each item the amount that has been allowed in respect thereof as depreciation under the *Income War Tax Act* and has been deducted from the original cost to arrive at the capital cost of the item.

(7) River improvements — For the purposes of paragraph 1100(1)(f), capital cost includes an amount expended on river improvements by the taxpayer for the purpose of facilitating the removal of timber from a timber limit.

(8) Electrical plant used for mining — Where the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy were acquired for the purpose of providing power to a consumer for use by the consumer in the operation in Canada of a mine, ore mill, smelter, metal refinery or any combination thereof and at least 80 per cent of the producer's or distributor's output of electrical energy

(a) for his 1948 and 1949 taxation years, or

(b) for his first two taxation years in which he sold power,

whichever period is later, was sold to the consumer for that purpose, the property shall be included in

(c) Class 10 in Schedule II if it is property acquired

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of the building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(d) Class 41 in Schedule II in any other case, except where the property would otherwise be included in Class 43.1 in Schedule II and the taxpayer has, by letter filed with the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property was acquired, elected to include the property in Class 43.1.

Related Provisions: Reg. 1102(9.1) — Acquisition before November 8, 1969; Reg. 1102(9.2) — Acquisition not at arm's length; Reg. 1103(4) — When election under para. (d) effective; Reg. 1104(7) — Interpretation.

History: That portion of subsec. 1102(8) following para. (b) and para. (d) amended by P.C. 1997-1033, subsecs. 2(1) and (2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 21, 1994 except that, where a taxpayer acquires the property after February 21, 1994 and before August 21, 1997, the taxpayer may file the election referred to in para. (d) by notifying the Minister of National Revenue in writing as required in those paragraphs or before February 1998.

That portion of subsec. 1102(8) following para. (b) substituted by P.C. 1989-2464, subsec. 3(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(9) [Generating or distributing equipment] — Where a taxpayer has acquired generating or distributing equipment and plant (including structures) for the purpose of providing power for his own consumption in operating a mine, ore mill, smelter, metal refinery or any combination thereof and at least 80 per cent of the output of electrical energy was so used

(a) in his 1948 and 1949 taxation years, or

(b) in the first two taxation years in which he so produced power,

whichever period is the later, the property shall be included in

(c) Class 10 in Schedule II if it is property acquired

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(d) Class 41 in Schedule II in any other case, except where the property would otherwise be included in Class 43.1 in Schedule II and the taxpayer has, by a letter filed with the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act for the taxation year in which the property was acquired, elected to include the property in Class 43.1.

Related Provisions: Reg. 1102(9.1) — Acquisition before November 8, 1969; Reg. 1102(9.2) — Acquisition not at arm's length; Reg. 1103(4) — When election under para. (d) effective; Reg. 1104(7) — Interpretation.

History: Para. 1102(9)(d) amended by P.C. 1997-1033, subsec. 2(3), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 21, 1994 except that, where a taxpayer acquires the property after February 21, 1994 and before August 21, 1997, the taxpayer may file the election referred to in para. (d) by notifying the Minister of National Revenue in writing as required in those paragraphs or before February 1998.

That portion of subsec. 1102(9) following para. (b) substituted by P.C. 1989, subsec. 3(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

(9.1) [pre-1970 acquisition] — In their application to generating or distributing equipment and plant (including structures) that were acquired by the taxpayer before November 8, 1969, subsections (8) and (9) shall be read without reference to a "metal refinery".

(9.2) Where a taxpayer acquires property after November 7, 1969 from a person with whom he was not dealing at arm's length that is property referred to in subsection (8) or (9), notwithstanding those subsections, that property shall not be included in Class 10 in Schedule II by the taxpayer unless the property had been included in that class by the person from whom it was acquired, by virtue of subsection (8) or (9) as it read in its application before November 8, 1969.

(10) Railway companies — For the purposes of section 36 of the Act, where a taxpayer is deemed to have acquired depreciable property of a prescribed class at the time a repair, replacement, alteration or renovation expenditure described therein was incurred,

(a) if the expenditure was incurred by the taxpayer before May 26, 1976, the class hereby prescribed is Class 4 in Schedule II; and

(b) if the expenditure was incurred by the taxpayer after May 25, 1976, the class hereby prescribed is the class in Schedule II in which the depreciable property that was repaired, replaced, altered or renovated would be included if such property had been acquired at the time the expenditure was incurred.

(11) Passenger automobiles — In paragraph (1)(h),

"cost to the taxpayer" of an automobile means, except as provided in subsections (12) and (13),

(a) except in any case coming under paragraph (b) or (c), the capital cost to the taxpayer of the automobile,

(b) except in any case coming under paragraph (c), where the automobile was acquired by a person (in this section referred to as the "original owner") after June 13, 1963, and has, by one or more transactions between persons not dealing at arm's length, become vested in the taxpayer, the greater of

(i) the actual cost to the taxpayer, and

(ii) the actual cost to the original owner, and

(c) where the automobile was acquired by the taxpayer outside Canada for use in connection with a permanent establishment, as defined for the purposes of Part IV or Part XXVI, outside Canada, the lesser of

(i) the actual cost to the taxpayer, and

(ii) the amount that such an automobile would ordinarily cost the taxpayer if he purchased it from a dealer in automobiles in Canada for use in Canada;

"initial transportation charges" in respect of an automobile means the costs incurred by a dealer in automobiles for transporting the automobile (before it had been used for any purpose whatever) from,

(a) in the case of an automobile manufactured in Canada, the manufacturer's plant, and

(b) in any other case, to the place in Canada, if any, at which the automobile was received or stored by a wholesale distributor,

to the dealer's place of business;

"passenger automobile" means a vehicle, other than an ambulance or hearse, that was designed to carry not more than nine persons, and that is

(a) an automobile designed primarily for carrying persons on highways and streets except an automobile that

(i) is designed to accommodate and is equipped with auxiliary folding seats installed between the front and the rear seats,

(ii) was acquired by a person carrying on the business of operating a taxi or automobile rental service, or arranging and managing funerals, for use in such business, and

(iii) is not a vehicle described in paragraph (b), or

(b) a station wagon or substantially similar vehicle;

"retail sales tax" in respect of an automobile means the aggregate of municipal and provincial retail sales taxes payable in respect of the purchase of the automobile by the taxpayer.

(12) [Pre-1966 automobile] — For the purposes of paragraph (1)(h), where an automobile is owned by two or more persons or by partners, a reference to "cost to the taxpayer" shall be deemed to be a reference to the aggregate of the cost, as defined in subsection (11), to each such person or partner.

(13) [Pre-1966 automobile] — In determining cost to a taxpayer for the purposes of paragraph (1)(h), subsection 13(7) of the Act shall not apply unless the automobile was acquired by gift.

(14) Property acquired by transfer, amalgamation or winding-up — For the purposes of this Part and Schedule II, where a property is acquired by a taxpayer

(a) in the course of a reorganization in respect of which, if a dividend were received by a corporation in the course of the reorganization, subsection 55(2) of the Act would not be applicable to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b), (c) [Revoked]

(d) from a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired, and

(e) [Revoked]

the property, immediately before it was so acquired by the taxpayer, was property of a prescribed class or a separate prescribed class of the person from whom it was so acquired, the property shall be deemed to be property of that same prescribed class or separate prescribed class, as the case may be, of the taxpayer.

Related Provisions: Reg. 1100(2.21)(a); Reg. 1102(20) — Non-arm's length exception.

History: Para. 1102(14)(a) substituted for paras. (a) to (c) by P.C. 1989-2464, subsec. 3(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after June 17, 1987 other than property acquired after that date and before 1990 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987.

Para. 1102(14)(d) substituted by subsec. 3(4) of the said P.C. 1989-2464, applicable in respect of property acquired by a taxpayer after December 15, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before December 16, 1987.

Para. 1102(14)(e) revoked by subsec. 3(5) of the said P.C. 1989-2464, applicable in respect of property acquired by a taxpayer after August 31, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before September 1, 1987.

Para. 1102(14)(a) substituted by P.C. 1988-1473, s. 3, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

Para. 1102(14)(a.1) added by P.C. 1984-3789, s. 7, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable with respect to property acquired after November 12, 1981.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-267R2: CCA — vessels; IT-481: Timber resource property and timber limits; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

(14.1) [Change in class] — For the purposes of this Part and Schedule II, where a taxpayer has acquired, after May 25, 1976, property of a class in Schedule II (in this subsection referred to as the "present class") that had

been previously owned before May 26, 1976 by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length (otherwise than by virtue of a right referred to in paragraph 251(5)(b) of the Act) at the time the property was acquired, and at the time the property was previously so owned it was a property of a different class in Schedule II (in this subsection referred to as the "former class"), the property shall be deemed to be property of the former class and not property of the present class.

Related Provisions: Reg. 1100(2.21)(a).

History: Subsec. 1102(14.1) substituted by P.C. 1989-2464, subsec. 3(6), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after December 15, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before December 16, 1987.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-267R2: CCA — vessels.

(14.2) Townsite costs — For the purpose of paragraph 13(7.5)(a) of the Act, a property is prescribed in respect of a taxpayer where the property would, if it had been acquired by the taxpayer, be property included in Class 10 in Schedule II because of paragraph (l) of that Class.

History: Subsec. 1102(14.2) added by P.C. 1999-629, subsec. 2(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

(14.3) Surface construction and bridges — For the purpose of paragraph 13(7.5)(b) of the Act, prescribed property is any of

(a) a road (other than a specified temporary access road), sidewalk, airplane runway, parking area, storage area or similar surface construction;

(b) a bridge; and

(c) a property that is ancillary to any property described in paragraph (a) or (b).

Related Provisions: Reg. 1104(2) — Definition of "specified temporary access road".

History: Subsec. 1102(14.3) added by P.C. 1999-629, subsec. 2(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

(15) Manufacturing and processing enterprises — For the purposes of subsection 13(10) of the Act,

(a) property is hereby prescribed that is

(i) a building included in Class 3 or 6 in Schedule II, or

(ii) machinery or equipment included in Class 8 in Schedule II,

except

(iii) property that may reasonably be regarded as having been acquired for the purpose of producing coal from a coal mine or oil, gas, metals or industrial minerals from a resource referred to in section 1201 as it read immediately before it was repealed by section 2 of Order in Council P.C. 1975-1323 of June 12, 1975, or

(iv) property acquired for use outside Canada; and

(b) a business carried on by the taxpayer is hereby prescribed as a manufacturing or processing business if,

(i) for the fiscal period in which the property was acquired, or

(ii) for the fiscal period in which a reasonable volume of business was first carried on,

whichever was later, the revenue received by the taxpayer, in the course of carrying on the business from

(iii) the sale of goods processed or manufactured by the taxpayer in Canada,

(iv) the leasing or renting of goods that were processed or manufactured by the taxpayer in Canada,

(v) advertisements in a newspaper or magazine that was produced by the taxpayer in Canada, and

(vi) construction carried on by the taxpayer in Canada,

was not less than 2/3 of the revenue of the business for the period.

Related Provisions: Reg. 1102(16) — Meaning of "revenue".

(16) For the purposes of paragraph (15)(b), "revenue" means gross revenue minus the aggregate of

(a) amounts that were paid or credited in the period, to customers of the business, in relation to such revenue as a bonus, rebate or discount or for returned or damaged goods; and

(b) amounts included therein by virtue of section 13 or subsection 23(1) of the Act.

(17) Recreational property — Property referred to in paragraph (1)(f) does not include

(a) any property that the taxpayer was obligated to acquire under the terms of an agreement in writing entered into before November 13, 1974; or

(b) any property the construction of which was

(i) commenced by the taxpayer before November 13, 1974 or commenced under an agreement in writing entered into by the taxpayer before November 13, 1974, and

(ii) completed substantially according to plans and specifications agreed to by the taxpayer before November 13, 1974.

Interpretation Bulletins: IT-148R3: Recreational properties and club dues.

(18) [Repealed]

History: Subsec. 1102(18) repealed by P.C. 1999-629, subsec. 2(3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to payments required to be made under the terms of contracts made after March 6, 1996.

Subsec. 1102(18) added by P.C. 1978-1849, s. 1, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable in respect of amounts paid after 1976 to Her Majesty in right of Canada, to a province or to a Canadian municipality.

(19) Additions and alterations — For the purposes of this Part and Schedule II, where

(a) a taxpayer acquired a property that is included in a class in Schedule II (in this subsection referred to as the "actual class"),

(b) the taxpayer acquires property that is an addition or alteration to the property referred to in paragraph (a),

(c) the property that is the addition or alteration referred to in paragraph (b) would have been property of the actual class if it had been acquired by the taxpayer at the time he acquired the property referred to in paragraph (a), and

(d) the property referred to in paragraph (a) would have been property of a class in Schedule II (in this subsection referred to as the "present class") that is

different from the actual class if it had been acquired by the taxpayer at the time he acquired the addition or alteration referred to in paragraph (b),

the addition or alteration referred to in paragraph (b) shall, except as otherwise provided in this Part or in Schedule II, be deemed to be an acquisition by the taxpayer of property of the present class.

History: Subsec. 1102(19) added by P.C. 1978-3768, s. 1, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978.

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures.

(20) Non-arm's length exception — For the purposes of subsections 1100(2.2) and (19), 1101(1ad) and 1102(14) (in this subsection referred to as the "relevant subsections"), where, but for this subsection, a taxpayer would be considered to be dealing not at arm's length with another person as a result of a transaction or series of transactions the principal purpose of which may reasonably be considered to have been to cause one or more of the relevant subsections to apply in respect of the acquisition of a property, the taxpayer shall be considered to be dealing at arm's length with the other person in respect of the acquisition of that property.

History: Subsec. 1102(20) added by P.C. 1989-2464, subsec. 3(7), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired by a taxpayer after December 15, 1987 other than property acquired after that date and before 1990 pursuant to an obligation in writing entered into by the taxpayer before December 16, 1987.

Interpretation Bulletins: IT-267R2: CCA — vessels; IT-474R: Amalgamations of Canadian corporations; IT-488R2: Winding-up of 90%-owned taxable Canadian corporations.

Proposed Addition — Reg. 1102(21)

(21) Where a taxpayer has acquired a property described in Class 43.1 of Schedule II in circumstances in which clauses (b)(iii)(A) and (B) or (e)(iii)(A) and (B) of that class apply, the portion of the property, determined by reference to capital cost, that is equal to or less than the capital cost of the property to the person from whom the property was acquired, is included in that class, and the portion of the property, if any, determined by reference to capital cost, that is in excess of the capital cost of the property to the person from whom it was acquired, shall not be included in that class.

Application: The September 16, 1997 draft regulations, s. 5, will add subsec. 1102(21), applicable to property acquired after June 26, 1996.

Definitions [Reg. 1102]: "actual class" — Reg. 1102(19)(a); "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1102(20); "automobile", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost to the taxpayer" — Reg. 1102(11), (12); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "dividend" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign accrual property income" — ITA 95(1), (2), 248(1); "former class" — Reg. 1102(14.1); "gross revenue" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "initial transportation charges" — Reg. 1102(11); "inventory" — ITA 248(1); "mine" — Reg. 1104(7); "mineral" — Reg. 1104(3); "Minister", "non-resident" — ITA 248(1); "ore" — Reg. 1104(2); "original owner" — Reg. 1102(11)(c); "passenger automobile" — Reg. 1102(11); "person" — ITA 248(1); "pipeline" — Reg. 1104(2); "prescribed" — ITA 248(1); "present class" — Reg. 1102(14.1), (19)(d); "property" — ITA 248(1); "relevant subsections" — Reg. 1102(20); "retail sales tax" — Reg. 1102(11); "revenue" — Reg. 1102(16); "specified temporary access road" — Reg. 1104(2); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Division IV — Inclusions In and Transfers Between Classes

1103. (1) Elections to include properties in Class 1 — In respect of properties otherwise included in Classes 2 to 10, 11 and 12 in Schedule II, a taxpayer may elect to include in Class 1 in Schedule II all such properties acquired for the purpose of gaining or producing income from the same business.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing of election or revocation; Reg. 1103(3)–(5) — How election made and when effective.

History: Subsec. 1103(1) amended by P.C. 1991-2272, s. 3, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Interpretation Bulletins: IT-274R: Rental properties — capital cost of $50,000 or more.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(2) Elections to include properties in Class 2, 4 or 17 — Where the chief depreciable properties of a taxpayer are included in Class 2, 4 or 17 in Schedule II, the taxpayer may elect to include in Class 2, 4 or 17 in Schedule II, as the case may be, a property that would otherwise be included in another class in Schedule II and that was acquired by him before May 26, 1976 for the purpose of gaining or producing income from the same business as that for which those properties otherwise included in the said Class 2, 4 or 17 were acquired.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing of election or revocation; Reg. 1103(3)–(5) — How election made and when effective.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(2a) Elections to include properties in Class 8 — In respect of properties otherwise included in Class 19 or 21 in Schedule II, a taxpayer may, by letter attached to the return of his income for a taxation year filed with the Minister in accordance with section 150 of the Act, elect to include in Class 8 in Schedule II all properties of the said Class 19 or all properties of the said Class 21, as the case may be, owned by him at the commencement of the year.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

(2b) Elections to include properties in Class 37 — In respect of properties that would have been included in Class 37 in Schedule II had they been acquired after the date on which Class 37 became effective, a taxpayer may, by letter attached to the return of his income for a taxation year filed with the Minister in accordance with section 150 of the Act, elect to include in Class 37 all such properties acquired by the taxpayer before that date.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

History: Subsec. 1103(2b) added by P.C. 1982-599, s. 3, February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

(2c) Elections to make certain transfers — Where a taxpayer has acquired, after May 25, 1976, all or any part of a property of a class in Schedule II (in this subsection referred to as the "present class") and the property or part thereof, if it had been acquired before May 26, 1976,

would have been property of a different class in Schedule II (in this subsection referred to as the "former class") and

(a) he was obligated to acquire the property under the terms of an agreement in writing entered into before May 26, 1976,

(b) he commenced the construction, manufacture or production of the property before May 26, 1976 or the construction, manufacture or production of the property was commenced under an agreement in writing entered into by him before May 26, 1976, or

(c) he acquired the property on or before December 31, 1976 or he was obligated to acquire the property under the terms of an agreement in writing entered into on or before December 31, 1976, if

(i) arrangements, evidenced by writing, respecting the acquisition, construction, manufacture or production of the property had been substantially advanced before May 26, 1976, and

(ii) he had, before May 26, 1976, demonstrated a *bona fide* intention to acquire the property,

the taxpayer may, by letter attached to the return of his income filed with the Minister in accordance with section 150 of the Act, for the taxation year in which the property was acquired or for the immediately following taxation year, elect to transfer in the year of acquisition

(d) the property or the part thereof, acquired after May 25, 1976, from the present class to the former class; or

(e) the part of the property acquired before May 26, 1976, from the former class to the present class.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

(2d) Where a taxpayer has

(a) disposed of a property (in this subsection referred to as the "former property") of a class in Schedule II (in this subsection referred to as the "former class"), and

(b) before the end of the taxation year in which the former property was disposed of, acquired property (in this subsection referred to as the "new property") of a class in Schedule II (in this subsection referred to as the "present class") and the present class is neither

(i) the former class, nor

(ii) a separate class described in section 1101, other than subsection 1101(5d),

such that

(c) if the former property had been acquired at the time that the new property was acquired and from the person from whom the new property was acquired, the former property would have been included in the present class, and

(d) if the new property had been acquired at the time that the former property was acquired and from the person from whom the former property was acquired, the new property would have been included in the former class,

the taxpayer may, by letter attached to the return of income of the taxpayer filed with the Minister in accordance with section 150 of the Act in respect of the taxation year in which the former property was disposed of, elect to transfer the former property from the former class to the present class in the year of its disposition and, for greater certainty, the transfer shall be considered to have been made before the disposition of the property.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing of election or revocation; Reg. 1103(3)–(5) — How election made and when effective.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-469R: CCA — Earth-moving equipment.

Information Circulars: 92-1: Guidelines for accepting late, amended or revoked elections.

(2e) Transfers from Class 40 to Class 10 — For the purposes of this Part and Schedule II, where property of a taxpayer would otherwise be included in Class 40 in Schedule II, all such properties owned by the taxpayer shall be transferred from Class 40 to Class 10 immediately after the commencement of the first taxation year of the taxpayer commencing after 1989.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media.

(2f) Elections to include properties in Class 1, 3 or 6 — In respect of properties otherwise included in Class 20 in Schedule II, a taxpayer may, by letter attached to the return of income of the taxpayer for a taxation year filed with the Minister in accordance with section 150 of the Act, elect to include in Class 1, 3 or 6 in Schedule II, as specified in the letter, all properties of Class 20 in Schedule II owned by the taxpayer at the commencement of the year.

Related Provisions: ITA 220(3.2) — Late, amended or revoked elections; Reg. 1103(3)–(5) — How election made and when effective.

(2g) Transfers to Class 8 or Class 10 — For the purposes of this Part and Schedule II, where one or more properties of a taxpayer are included in a separate class pursuant to an election filed by the taxpayer in accordance with subsection 1101(5q), all the properties included in that class immediately after the beginning of the taxpayer's fifth taxation year beginning after the end of the first taxation year in which a property of the class became available for use by the taxpayer for the purposes of subsection 13(26) of the Act shall be transferred immediately after the beginning of that fifth taxation year from the separate class to the class in which the property would, but for the election, have been included.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

(2h) Elections not to include properties in Class 44 — A taxpayer may, by letter attached to the taxpayer's return of income filed with the Minister in accordance with section 150 of the Act for the taxation year in which a property was acquired, elect not to include the property in Class 44 in Schedule II.

Related Provisions: Reg. 1103(3)–(5) — How election made and when effective.

History: Subsecs. 1103(2g), (2h) added by P.C. 1994-231, s. 3, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993; an election referred to in subsec. 1103(2h) is deemed to have been made in accordance with the subsec. if it is made by notifying the Minister of National Revenue in writing before the end of August 1994.

Subpara. 1103(2d)(b)(ii) amended by P.C. 1991-465, s. 3, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after April 26, 1989.

Subsec. 1103(2d) substituted, (2e), (2f) added, by P.C. 1989-2464, s. 4, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, (2d) applicable in respect of dispositions of property occurring after 1987, except that any election under the subsec. made before July 3, 1990, shall be

deemed to be a valid election; (2e) applicable to 1990 *et seq.*; (2f) applicable to 1988 *et seq.*

Paras. 1103(2d)(b), (c) and (d) substituted by P.C. 1983-1083, s. 3, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

(3) Election rules — To be effective in respect of a taxation year, an election under this section must be made not later than the last day on which the taxpayer may file a return of his income for the taxation year in accordance with section 150 of the Act.

(4) An election under paragraph 1102(8)(d) or (9)(d) or this section shall be effective from the first day of the taxation year in respect of which the election is made and shall continue to be effective for all subsequent taxation years.

History: Subsec. 1103(4) amended by P.C. 1997-1033, s. 3, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(5) An election under subsection (1) or (2) shall be made by registered letter addressed to the District Office at which the taxpayer customarily files the returns required by section 150 of the Act.

Definitions [Reg. 1103]: "business" — ITA 248(1); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "commencement" — *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "end of the taxation year" — Reg. 1104(1); "former class" — Reg. 1103(2c), (2d)(a); "former property" — Reg. 1103(2d)(a); "Minister" — ITA 248(1); "new property" — Reg. 1103(2d)(b); "person" — ITA 248(1); "present class" — Reg. 1103(2c), (2d)(b); "property" — ITA 248(1); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [Reg. 1103]: IT-190R2: CCA — transferred and misclassified property; IT-327: Elections under Regulation 1103; IT-478R2: CCA — Recapture and terminal loss.

DIVISION V — INTERPRETATION

1104. (1) Definitions — Where the taxpayer is an individual and his income for the taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, in respect of the depreciable properties acquired for the purpose of gaining or producing income from the business, a reference in this Part to

"end of the taxation year" shall be deemed to be a reference to the end of the fiscal period of the business; and

"taxation year" shall be deemed to be a reference to the fiscal period of the business.

Interpretation Bulletins: IT-172R: CCA — Taxation year of individuals.

(2) In this Part and Schedule II,

"certified feature film" means a motion picture film certified by the Minister of Communications to be a film of not less than 75 minutes running time in respect of which all photography or art work specifically required for the production thereof and all film editing therefor were commenced after November 18, 1974, and either the film was completed before May 26, 1976, or the photography or art work was commenced before May 26, 1976, and certified by him to be

(a) a film the production of which is contemplated in a coproduction agreement entered into between Canada and another country, or

(b) a film in respect of which

(i) the person who performed the duties of producer was a Canadian,

(ii) no fewer than ⅔ in number of all the persons each of whom

(A) was a person who performed the duties of director, screenwriter, music composer, art director, picture editor or director of photography, or

(B) was the individual in respect of whose services as an actor or actress in respect of the film the highest remuneration or the second highest remuneration was paid or payable,

were Canadians,

(iii) not less than 75 per cent of the aggregate of the remuneration paid or payable to persons for services provided in respect of the film (other than remuneration paid or payable to or in respect of the persons referred to in subparagraphs (i) and (ii) or remuneration paid or payable for processing and final preparation of the film) was paid or payable to Canadians,

(iv) not less than 75 per cent of the aggregate of costs incurred for processing and final preparation of the film including laboratory work, sound recording, sound editing and picture editing (other than remuneration paid or payable to or in respect of persons referred to in subparagraphs (i), (ii) and (iii)), was incurred in respect of services rendered in Canada, and

(v) the copyright protecting its use in Canada is beneficially owned

(A) by a person who is either a Canadian or a corporation incorporated under the laws of Canada or a province, or

(B) jointly or otherwise by two or more persons described in clause (A),

other than a film

(c) acquired after the day that is the earlier of

(i) the day of its first commercial use, and

(ii) 12 months after the day the principal photography thereof is completed, or

(d) in respect of which certification under this definition has been revoked by the Minister of Communications as provided in paragraph (10)(b);

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; Reg. 1104(10) — Interpretation.

History: All that portion of the definition of "certified feature film" in subsec. 1104(2) preceding para. (a), and para. (d) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

All that portion of the definition of "certified feature film" in subsec. 1104(2) following cl. (v)(B) substituted by P.C. 1978-3731, subsec. 2(1), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

"46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship

and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

"certified production", in respect of a particular taxation year, means a motion picture film or video tape certified by the Minister of Communications to be a film or tape in respect of which all photography, taping or art work required specifically for the production thereof and all film or tape editing therefor were commenced after May 25, 1976, certified by him to be a film or tape in respect of which the principal photography or taping thereof was commenced before the end of the particular taxation year or was completed no later than 60 days after the end of that year and certified by him to be

(a) a film or tape the production of which is contemplated in a coproduction agreement entered into between Canada and another country, or

(b) a film or tape in respect of which

(i) the individual who performed the duties of producer was a Canadian,

(ii) the Minister of Communications has allotted not less than an aggregate of six units of production, not less than two of which were allotted by virtue of clause (A) or (B) and not less than one of which was allotted by virtue of clause (C) or (D), for individuals who provided services in respect of the film or tape, in the following manner:

(A) for the director, two units of production,

(B) for the screenwriter, two units of production,

(C) for the actor or actress in respect of whose services for the film or tape the highest remuneration was paid or payable (unless in the opinion of the Minister of Communications the individual did not perform a major role in the film or tape), one unit of production,

(D) for the actor or actress in respect of whose services for the film or tape the second highest remuneration was paid or payable (unless in the opinion of the Minister of Communications the individual did not perform a major role in the film or tape), one unit of production,

(E) for the art director, one unit of production,

(F) for the director of photography, one unit of production,

(G) for the music composer, one unit of production, and

(H) for the picture editor, one unit of production,

shall be allotted, provided the individual in respect of such allotment was a Canadian,

(iii) not less than 75 per cent of the aggregate of all costs (other than costs determined by reference to the amount of income from the film or tape) paid or payable to persons for services provided in respect of producing the film or tape (other than remuneration paid or payable to, or in respect of, individuals referred to in subparagraph (i) or (ii), costs referred to in subparagraph (iv) incurred for processing and final preparation of the film or tape, and amounts paid or payable in respect of insurance, financing, brokerage, legal and accounting fees and similar amounts) was paid or payable to, or in respect of services provided by, Canadians, and

(iv) not less than 75 per cent of the aggregate of all costs (other than costs determined by reference to the amount of income from the film or tape) incurred for processing and final preparation of the film or tape, including laboratory work, sound re-recording, sound editing and picture editing (other than remuneration paid or payable to, or in respect of, individuals referred to in subparagraph (i) or (ii)) was incurred in respect of services provided in Canada,

other than a film or tape

(c) acquired after the day that is the earlier of

(i) the day of its first commercial use, and

(ii) 12 months after the day the principal photography or taping thereof is completed,

(d) acquired by a taxpayer who has not paid in cash, as of the end of the particular taxation year, to the person from whom he acquired the film or tape, at least 5 per cent of the capital cost to the taxpayer of the film or tape as of the end of the year,

(e) acquired by a taxpayer who has issued in payment or part payment thereof, a bond, debenture, bill, note, mortgage or similar obligation in respect of which an amount is not due until a time that is more than four years after the end of the taxation year in which the taxpayer acquired the film or tape,

(f) acquired from a non-resident, or

(g) in respect of which certification under this definition has been revoked by the Minister of Communications as provided in paragraph (10)(b),

and, for the purposes of the application of this definition,

(h) in respect of a film or tape acquired in 1987, other than a film or tape in respect of which paragraph (i) applies, the reference in this definition to "commenced before the end of the particular taxation year or was completed no later than 60 days after the end of that year" shall be read as a reference to "commenced before the end of 1987 or was completed before July, 1988", and

(i) in respect of a film or tape acquired in 1987 or 1988 that is included in paragraph (n) of Class 12 in Schedule II and that is part of a series of films or tapes that includes another property included in that paragraph, the reference in this definition to "commenced before the end of the particular taxation year or was completed no later than 60 days after the end of that year" shall be read as a reference to "completed before 1989";

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; Reg. 1104(10) — Interpretation; Reg. 7500 — "prescribed film production".

History: Para. (e) of "certified production" in subsec. 1104(2) amended by P.C. 1994-1817, para. 62(b), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

That portion between paras. (g) and (h), and paras. (h) and (i), of "certified production" added by P.C. 1988-2795, s. 3, December 22, 1988, *Canada Gazette*, Part II, January 18, 1989, applicable after 1986.

Cls. (b)(ii)(C) and (D) of the definition "certified production", and subparas. (b)(iii) and (iv) substituted by P.C. 1986-477, subsecs. 2(3), (4), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

That portion of the definition "certified feature production" preceding para. (a) substituted by P.C. 1986-477, subsec. 2(2), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, to *inter alia* change the definition from "certified feature production" to "certified production", applicable in respect of a motion picture film or video tape, the principal photography of which commenced after 1985.

Para. (d) of the definition "certified feature production" substituted by P.C. 1984-1062, subsec. 1(1), March 29, 1984, *Canada Gazette*, Part II, April 18, 1984, applicable in respect of property acquired after 1982.

All that portion of subpara. (b)(ii) of the definition "certified feature production" preceding cl. (A) substituted by P.C. 1981-3478, December 10, 1981, *Canada Gazette*, Part II, December 23, 1981, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1981.

All that portion of the definition "certified feature production" preceding para. (a), subpara. (b)(ii) preceding cl. (A), and para. (g) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

All those portions of the definition "certified feature production" preceding para. (a) and following subpara. (b)(iv) substituted by P.C. 1978-3731, subsecs. 2(2), (3), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, subsec. 2(2) effective in respect of 1978 *et seq.*, subsec. 2(3) applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Interpretation Bulletins: IT-441: CCA — Certified feature productions and certified short productions.

"certified short production" — [Revoked]

History: Definition "certified short production" revoked by P.C. 1986-477, subsec. 2(1), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Para. (d) of the definition "certified short production" in subsec. 1104(2) substituted by P.C. 1984-1062, subsec. 1(2), March 29, 1984, *Canada Gazette*, Part II, April 18, 1984, applicable in respect of property acquired after 1982.

All that portion of the definition "certified short production" in subsec. 1104(2) preceding para. (a), and para. (g) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

All those portions of the definition "certified short production" preceding para. (a) and following subpara. (b)(ii) substituted by P.C. 1978-3731, subsecs. 2(4), (5), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, subsec. 2(4) effective in respect of 1978 *et seq.*, subsec. 2(5) applicable in respect of property acquired after 1978.

"computer software" includes systems software and a right or licence to use computer software;

History: "Computer software" added by P.C. 1983-3411, subsec. 1(1), November 3, 1983, *Canada Gazette*, Part II, November 23, 1983, effective May 26, 1976.

Interpretation Bulletins: IT-283R2: CCA — Videotapes, videotape cassettes, films, computer software and master recording media.

"designated overburden removal cost" of a taxpayer means any cost incurred by him in respect of clearing or removing overburden from a mine in Canada owned or operated by him where the cost

(a) was incurred after November 16, 1978 and before 1988,

(b) was incurred after the mine came into production in reasonable commercial quantities,

(c) as of the end of the taxation year in which the cost was incurred, has not been deducted by the taxpayer in computing his income, and

(d) is not deductible, in whole or in part, by the taxpayer in computing his income for a taxation year subsequent to the taxation year in which the cost was incurred, other than by virtue of paragraph 20(1)(a) of the Act;

History: Para. (a) substituted by P.C. 1990-2780, subsec. 1(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

"Designated overburden removal cost" added by P.C. 1979-1487, s. 3, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective commencing November 17, 1978.

"designated underground storage cost" of a taxpayer means any cost incurred by him after December 11, 1979 in respect of developing a well, mine or other similar underground property for the storage in Canada of petroleum, natural gas or other related hydrocarbons;

History: "Designated underground storage cost" added by P.C. 1980-3279, s. 1, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980.

"gas or oil well equipment" includes

(a) equipment, structures and pipelines, other than a well casing, acquired to be used in a gas or oil field in the production therefrom of natural gas or crude oil, and

(b) a pipeline acquired to be used solely for transmitting gas to a natural gas processing plant,

but does not include

(c) equipment or structures acquired for the refining of oil or the processing of natural gas including the separation therefrom of liquid hydrocarbons, sulphur or other joint products or by-products, or

(d) a pipeline for removal or for collection for immediate removal of natural gas or crude oil from a gas or oil field except a pipeline referred to in paragraph (b);

Interpretation Bulletins: IT-476: CCA — Gas and oil exploration and production equipment.

"general-purpose electronic data processing equipment" means electronic equipment that, in its operation, requires an internally stored computer program that

(a) is executed by the equipment,

(b) can be altered by the user of the equipment,

(c) instructs the equipment to read and select, alter or store data from an external medium such as a card, disk or tape, and

(d) depends upon the characteristics of the data being processed to determine the sequence of its execution;

"ore" includes ore from a mineral resource that has been processed to any stage that is prior to the prime metal stage or its equivalent;

"railway system" includes a railway owned or operated by a common carrier, together with all buildings, rolling stock, equipment and other properties pertaining thereto, but does not include a tramway;

"specified temporary access road" means

(a) a temporary access road to an oil or gas well in Canada, and

(b) a temporary access road the cost of which would, if the definition "Canadian exploration expense" in subsection 66.1(6) of the Act were read without reference to paragraph (l) of that definition, be a Canadian exploration expense because of paragraph (f) or (g) of that definition;

Related Provisions: Reg. 1102(14.3)(a) — Exclusion from prescribed property; Reg. Sch. II:Cl. 8(i)(vi), 17(c) — Specified temporary access road excluded from other classes.

History: The definition "specified temporary access road" added to subsec. 1104(2) by P.C. 1999-629, subsec. 3(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

"systems software" means a combination of computer programs and associated procedures, related technical documentation and data that

(a) performs compilation, assembly, mapping, management or processing of other programs,

(b) facilitates the functioning of a computer system by other programs,

(c) provides service or utility functions such as media conversion, sorting, merging, system accounting, performance measurement, system diagnostics or programming aids,

(d) provides general support functions such as data management, report generation or security control, or

(e) provides general capability to meet wide-spread categories of problem solving or processing requirements where the specific attributes of the work to be performed are introduced mainly in the form of parameters, constants or descriptors rather than in program logic,

and includes a right or licence to use such a combination of computer programs and associated procedures, related technical documentation and data;

History: All that portion of the definition "systems software" in subsec. 1104(2) following para. (d) substituted by P.C. 1983-3411, subsec. 1(2), November 3, 1983, *Canada Gazette*, Part II, November 23, 1983, effective May 26, 1976.

"tar sands ore" means ore extracted from a deposit of bituminous sands or oil shales;

History: "Tar sands ore" amended by P.C. 1998-49, subsec. 2(1), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

"Tar sands ore" added by P.C. 1985-465, February 14, 1985, subsec. 2(1), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, the definition is not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

"telegraph system" includes the buildings, structures, general plant and communication and other equipment pertaining thereto;

"telephone system" includes the buildings, structures, general plant and communication and other equipment pertaining thereto;

"television commercial message" means a commercial message as defined in the *Television Broadcasting Regulations, 1987* made under the *Broadcasting Act*;

History: The definition "television commercial message" amended by P.C. 1995-775, subsec. 2(2), May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable after January 8, 1987.

"tramway or trolley bus system" includes the buildings, structures, rolling stock, general plant and equipment pertaining thereto and where buses other than trolley buses are operated in connection therewith includes the properties pertaining to those bus operations.

Related Provisions: Reg. 1100(20.1), (20.2) — Limitation on CCA claim for computer software tax shelter property.

(3) Except as otherwise provided in subsection (6), in this Part and Schedules II and V,

"industrial mineral mine" includes a peat bog or deposit of peat but does not include a mineral resource;

"mineral" includes peat;

"mining" includes the harvesting of peat.

(4) [Revoked]

History: Subsec. 1104(4) revoked by P.C. 1979-2483, s. 3, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979, applicable to 1978 *et seq.*

(5) Mining — For the purposes of paragraphs 1100(1)(w) to (ya), subsections 1101(4a) to (4d) and Classes 10, 28 and 41 of Schedule II, a taxpayer's "income from a mine", or any expression referring to a taxpayer's income from a mine, includes income reasonably attributable to

(a) the processing by the taxpayer of

(i) ore (other than iron ore or tar sands ore) all or substantially all of which is from a mineral resource owned by the taxpayer to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore all or substantially all of which is from a mineral resource owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent,

(iii) tar sands ore all or substantially all of which is from a mineral resource owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent, or

(iv) material extracted by a well, all or substantially all of which is from a deposit of bituminous sands or oil shales owned by the taxpayer, to any stage that is not beyond the crude oil stage or its equivalent;

(b) the production by the taxpayer of material from a deposit of bituminous sands or oil shales; and

(c) the transportation by the taxpayer of

(i) output, other than iron ore or tar sands ore, from a mineral resource owned by the taxpayer that has been processed by him to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource owned by the taxpayer that has been processed by him to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource owned by the taxpayer that has been processed by him to any stage that is not beyond the crude oil stage or its equivalent,

to the extent that such transportation is effected through the use of property of the taxpayer that is included in Class 10 in Schedule II because of paragraph (m) thereof or that would be so included if that paragraph were read without reference to subparagraph (v) thereof and if Class 41 in Schedule II were read without the reference therein to that paragraph.

Related Provisions: Reg. 1104(2) — "Ore"; Reg. 1104(3) — "Mineral", "mining"; Reg. 1104(6.1) — Income from a mine excludes income from services.

History: That portion of subsec. 1104(5) preceding subpara. (c)(i) amended by P.C. 1998-49, subsec. 2(2), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

That portion of subsec. 1104(5) preceding para. (a) and that portion of para. 1104(5)(c) following subpara. (iii) substituted by P.C. 1994-230,

subsecs. 2(1) and (2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994; that portion preceding para. (a) applicable to property acquired after February 25, 1992, and that portion of para. (c) following subpara. (iii) applicable to 1988 *et seq.*

That portion of subsec. 1104(5) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(1), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Paras. 1104(5)(a) and (c) substituted by P.C. 1985-465, February 14, 1985, subsecs. 2(2) and (3), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, paras. 1104(5)(a) and (c) are not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

Para. 1104(5)(b) substituted by P.C. 1980-1483, subsec. 1(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

Para. 1104(5)(c) added by P.C. 1978-344, s. 3, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment; IT-492: CCA — Industrial mineral mines.

(5.1) ["Gross revenue from a mine"] — For the purpose of Class 41 of Schedule II, a taxpayer's "gross revenue from a mine" includes

(a) revenue reasonably attributable to the processing by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource owned by the taxpayer to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent,

(iii) tar sands ore from a mineral resource owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent, and

(iv) material extracted by a well from a mineral resource owned by the taxpayer that is a deposit of bituminous sands or oil shales to any stage that is not beyond the crude oil stage or its equivalent;

(b) the amount, if any, by which any revenue reasonably attributable to the processing by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource not owned by the taxpayer, to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent,

(iii) tar sands ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent, and

(iv) material extracted by a well from a mineral resource not owned by the taxpayer that is a deposit of bituminous sands or oil shales to any stage that is not beyond the crude oil stage or its equivalent

exceeds the cost to the taxpayer of the ore or material processed; and

(c) revenue reasonably attributable to the production by the taxpayer of material from a deposit of bituminous sands or oil shales.

Related Provisions: Reg. 1104(5.2) — Interpretation.

History: Subsec. 1104(5.1) added by P.C. 1998-49, subsec. 2(3), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

(5.2) ["Gross revenue from a mine"] — For the purpose of subsection (5.1), "gross revenue from a mine" does not include revenue reasonably attributable to the addition of diluent, for the purpose of transportation, to material extracted from a deposit of bituminous sands or oil shales.

History: Subsec. 1104(5.2) added by P.C. 1998-49, subsec. 2(3), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

(6) For the purposes of Class 10 in Schedule II,

(a) **["income from a mine"]** — "income from a mine" includes income reasonably attributable to the processing of

(i) ore, other than iron ore or tar sands ore, from a mineral resource not owned by the taxpayer to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource not owned by the taxpayer to any stage that is not beyond the crude oil stage or its equivalent; and

(iv) material extracted by a well from a mineral resource not owned by the taxpayer that is a deposit of bituminous sands or oil shales to any stage that is not beyond the crude oil stage or its equivalent; and

(b) **["mine"]** — "mine" includes a well for the extraction of material from a deposit of bituminous sands or oil shales or from a deposit of calcium chloride, halite or sylvite.

Related Provisions: Reg. 1104(6.1) — Income from a mine excludes income from services.

History: Subpara. 1104(6)(iv) added, para. (6)(b) amended by P.C. 1998-49, subsecs. 2(4), (5), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Para. 1104(6)(b) amended by P.C. 1996-495, subsec. 1(1), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to property acquired in taxation years that begin after 1984.

That portion of subsec. 1104(6) preceding para. (a) substituted by P.C. 1994-230, subsec. 2(3), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

That portion of subsec. 1104(6) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(2), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Para. 1104(6)(a) substituted by P.C. 1985-465, February 14, 1985, subsec. 2(4), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, para. 1104(6)(a) is not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

Para. 1104(6)(b) substituted by P.C. 1980-1483, subsec. 1(2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

Interpretation Bulletins: IT-469R: CCA — Earth-moving equipment.

(6.1) [Repealed]

History: Subsec. 1104(6.1) repealed by P.C. 1999-629, subsec. 3(2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after March 6, 1996.

Subsec. 1104(6.1) added by P.C. 1996-1488, s. 1, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after March 6, 1996.

(7) [Mine] — For the purposes of paragraphs 1100(1)(w) to (ya), subsections 1101(4a) to (4d) and 1102(8) and (9), section 1107 and Classes 12, 28 and 41 of Schedule II,

(a) "mine" includes

(i) a well for the extraction of material from a deposit of bituminous sands or oil shales or from a deposit of calcium chloride, halite or sylvite, and

(ii) a pit for the extraction of kaolin or tar sands ore,

but does not include

(iii) an oil or gas well, or

(iv) a sand pit, gravel pit, clay pit, shale pit, peat bog, deposit of peat or a stone quarry (other than a kaolin pit or a deposit of bituminous sands or oil shales);

(b) all wells of a taxpayer for the extraction of material from one or more deposits of calcium chloride, halite or sylvite, the material produced from which is sent to the same plant for processing, are deemed to be one mine of the taxpayer; and

(c) all wells of a taxpayer for the extraction of material from a deposit of bituminous sands or oil shales that the Minister, in consultation with the Minister of Natural Resources, determines constitute one project, are deemed to be one mine of the taxpayer.

Related Provisions: Reg. 1104(8) — "Stone quarry".

History: Subsec. 1104(7) amended by P.C. 1998-49, subsec. 2(6), January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Paras. 1104(7)(a) and (b) amended by P.C. 1996-494, subsec. 1(2), April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to property acquired in taxation years that begin after 1984 except that para. 1104(7)(a) shall be read without reference to the expression "or a kaolin pit" in respect of taxation years that end before 1988.

That portion of subsec. 1104(7) preceding para. (a) substituted by P.C. 1994-230, subsec. 2(4), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1988 *et seq.*

Para. 1104(7)(a) substituted by P.C. 1990-2780, subsec. 1(2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

That portion of subsec. 1104(7) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Paras. 1104(7)(a), (b) substituted by P.C. 1980-1483, subsec. 1(3), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

(8) ["Stone quarry"] — For the purposes of subsection (7), "stone quarry" includes a mine producing dimension stone or crushed rock for use as aggregates or for other construction purposes.

(9) Manufacturing or processing — For the purposes of subsection 1100(26) and Class 29 in Schedule II, "manufacturing or processing" does not include

(a) farming or fishing;

(b) logging;

(c) construction;

(d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation thereof;

(e) extracting minerals from a mineral resource;

(f) processing of

(i) ore, other than iron ore or tar sands ore, from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent;

(g) producing industrial minerals;

(h) producing or processing electrical energy or steam, for sale;

(i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility;

(j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent; or

(k) Canadian field processing.

Related Provisions: ITA 125.1(2)(a) — Credit for generating electrical energy for sale; ITA 125.1(3) — Definition of "manufacturing or processing" for M&P credit purposes.

History: Paras. 1104(9)(g), (i) and (j) amended and para. (k) added by P.C. 1999-629, subsecs. 3(3) and (4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The opening words of subsec. 1104(9) amended by P.C. 1997-1033, subsec. 4(1), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to taxation years ending after March 6, 1996.

That portion of subsec. 1104(9) preceding para. (a) substituted by P.C. 1994-230, subsec. 2(5), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Para. 1104(9)(d) substituted by P.C. 1990-2780, subsec. 1(3), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after March 1985.

That portion of subsec. 1104(9) preceding para. (a) substituted by P.C. 1989-2464, subsec. 5(4), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable to 1988 *et seq.*

Para. 1104(9)(f) substituted by P.C. 1985-465, February 14, 1985, subsec. 2(5), *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981, except that for the purpose of that part of para. 1100(1)(w) preceding subpara. (i) thereof and that part of para. 1100(1)(x) preceding subpara. (i) thereof and for the purposes of determining the prescribed class in which depreciable property is to be included, para. 1104(9)(f) is not applicable with respect to depreciable property acquired in taxation years commencing before November 13, 1981.

Para. 1104(9)(j) added by P.C. 1981-3329, s. 1, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

Para. 1104(9)(g) substituted by P.C. 1978-1849, s. 2, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable after March 31, 1977 with respect to property acquired by a taxpayer after that date or property completed by a taxpayer after that date, where the property was manufactured by the taxpayer.

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-411R: Meaning of "construction".

(10) Certified films and video tapes — For the purposes of subsection 1100(21) and the definitions "certified feature film" and "certified production" in subsection (2),

(a) "Canadian" means an individual who was, at all relevant times,

(i) a Canadian citizen as defined in the *Citizenship Act*, or

(ii) a permanent resident within the meaning of the *Immigration Act, 1976*;

(b) a motion picture film or video tape that has been certified by

(i) the Secretary of State, or

(ii) the Minister of Communications

as a certified feature film or certified production, as the case may be, may have its certification revoked by the Minister of Communications where an incorrect statement was made in the furnishing of information for the purpose of obtaining that certification and a certification that has been so revoked is void from the time of its issue;

(c) "remuneration" does not include an amount determined by reference to the amount of income from a motion picture film or video tape;

(c.1) "revenue guarantee" means a contract or other arrangement under the terms of which a taxpayer has a right to receive a minimum rental revenue or other fixed revenue in respect of a right to the use, in any manner whatever, of a certified feature film or certified production;

(c.2) a screenwriter shall be deemed to be an individual who is a Canadian where

(i) each individual involved in the preparation of the screenplay is a Canadian, or

(ii) the principal screenwriter is an individual who is a Canadian and

(A) the screenplay for the motion picture film or video tape is based upon a work authored by a Canadian,

(B) copyright in the work subsists in Canada, and

(C) the work is published in Canada;

(d) "unit of production" means a measure used by the Minister of Communications in determining the weight to be given for each individual Canadian referred to in subparagraph (b)(ii) of the definition "certified production" in subsection (2) who provides services in respect of a motion picture film or video tape; and

(e) where each individual who performed a service in respect of a motion picture film or video tape as the

(i) director,

(ii) screenwriter,

(iii) actor or actress in respect of whose services for the film or tape the highest remuneration was paid or payable,

(iv) actor or actress in respect of whose services for the film or tape the second highest remuneration was paid or payable,

(v) art director,

(vi) director of photography,

(vii) music composer, or

(viii) picture editor

was a Canadian, the Minister of Communications shall be deemed to have allotted six units of production in respect of the film or tape for the purposes of the definition "certified production" in subsection (2).

History: Subpara. 1104(10)(a)(ii) substituted by P.C. 1986-477, subsec. 2(6), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable to 1982 *et seq.*

Subsec. 1104(10) amended by P.C. 1986-477, subsec. 2(5), February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, to substitute "certified production" for "certified feature production" and to delete "certified short production", with such grammatical modifications as the circumstances required, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Paras. 1104(10)(a) substituted, (c.2), (e) added by P.C. 1981-3478, December 10, 1981, *Canada Gazette*, December 23, 1981, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1981.

Paras. 1104(10)(b) and (d) substituted by P.C. 1980-3374, s. 2, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980.

That portion of subsec. 1104(10) preceding para. (a) substituted, para. (c.1) added by P.C. 1978-3731, s. 3, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of property acquired after 1978.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

(11) Certified Class 34 properties — For the purposes of paragraph (h) of Class 34 in Schedule II, a certificate issued under

(a) subparagraph (d)(i) of that class may be revoked by the Minister of Industry, Trade and Commerce, or

(b) subparagraph (d)(ii) or paragraph (g) of that class, as the case may be, may be revoked by the Minister of Energy, Mines and Resources

where

(c) an incorrect statement was made in the furnishing of information for the purpose of obtaining the certificate, or

(d) the taxpayer does not conform to the plan described in subparagraph (d)(i) or (d)(ii) of that class, as the case may be,

and a certificate that has been so revoked shall be void from the time of its issue.

History: Subsec. 1104(11) substituted by P.C. 1980-3323, s. 1, December 9, 1980, *Canada Gazette*, Part II, December 24, 1980, effective December 11, 1979.

(12) Amusement parks — For the purposes of Class 37 in Schedule II, "amusement park" means a park open to the public where amusements, rides and audio-visual attractions are permanently situated.

History: Subsec. 1104(12) added by P.C. 1982-599, s. 4, February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

(13) Class 43.1 — Energy conservation property — The definitions in this subsection apply for the purposes of this subsection and subsection (14) and Class 43.1 in Schedule II.

"digester gas" means a mixture of gases that are produced from the decomposition of organic waste in a digester and that are extracted from an eligible sewage treatment facility for that organic waste.

"distribution equipment" means equipment (other than transmission equipment) used to distribute electrical energy generated by electrical generating equipment.

"eligible landfill site" means a landfill site that is situated in Canada, or a former landfill site that is situated in Canada, and, if a permit or license in respect of the site is or was required under any law of Canada or of a province, for which the permit or license has been issued.

"eligible sewage treatment facility" means a sewage treatment facility that is situated in Canada and for which a permit or license is issued under any law of Canada or of a province.

"eligible waste management facility" means a waste management facility that is situated in Canada and for which a permit or license is issued under any law of Canada or of a province.

"enhanced combined cycle system" means an electrical generating system in which thermal waste from one or more natural gas compressor systems is recovered and used to contribute at least 20 per cent of the energy input of a combined cycle process in order to enhance the generation of electricity, but does not include the natural gas compressor systems.

"fossil fuel" means a fuel that is petroleum, natural gas or related hydrocarbons, coal, coal gas, coke, lignite or peat.

"landfill gas" means a mixture of gases that are produced from the decomposition of organic waste and that are extracted from an eligible landfill site.

"municipal waste" means the combustible portion of waste material (other than waste material that is considered to be toxic or hazardous waste pursuant to any law of Canada or of a province) that is generated in Canada and that is accepted at an eligible landfill site or an eligible waste management facility and that, when burned to generate energy, emits only those fluids or other emissions that are in compliance with the law of Canada or of a province.

"thermal waste" means heat energy extracted from a distinct point of rejection in an industrial process.

"transmission equipment" means equipment used to transmit more than 75 per cent of the annual electrical energy generated by electrical generating equipment, but does not include a building.

"wood waste" includes scrap wood, sawdust, wood chips, bark, limbs, saw-ends and hog fuel, but does not include residuals (known as "black liquor") from wood pulp operations and any waste that no longer has the physical or chemical properties of wood.

History: Subsec. 1104(13) added by P.C. 1997-1033, subsec. 4(2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

(14) [Class 43.1(c) compliance] — Where property of a taxpayer is not operating in the manner required by paragraph (c) of Class 43.1 in Schedule II solely because of a deficiency, failing or shutdown — that is beyond the control of the taxpayer — of the system of which it is part and that previously operated in the manner required by that paragraph, that property is deemed, for the purpose of that paragraph, to be operating in the manner required under that paragraph during the period of the deficiency, failing or shutdown, if the taxpayer makes all reasonable efforts to rectify the circumstances within a reasonable time.

History: Subsec. 1104(14) added by P.C. 1997-1033, subsec. 4(2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

Related Provisions [Reg. 1104]: ITA 20(1.1) — Definitions in ITA 13(21) apply to regulations.

Selected Cases [Reg. 1104]: *Brydges v. Canada*, [1996] 1 C.T.C. 2851 (TCC) (Certification cannot be subsequently revoked).

Definitions [Reg. 1104]: "amount" — ITA 248(1); "associated" — ITA 256; "bituminous sands", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian" — Reg. 1104(10)(a), (c.2); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian field processing" — ITA 248(1); "certified feature film", "certified production" — Reg. 1104(2); "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "coal mine operator", "computer software" — Reg. 1104(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "digester gas", "distribution equipment", "eligible landfill site", "eligible sewage treatment facility", "eligible waste management facility" — Reg. 1104(13); "end of the taxation year" — Reg. 1104(1); "enhanced combined cycle system" — Reg. 1104(13); "farming" — ITA 248(1); "fiscal period" — ITA 249.1; "fishing" — ITA 248(1); "fossil fuel" — Reg. 1104(13); "individual" — ITA 248(1); "landfill gas" — Reg. 1104(13); "mineral" — Reg. 1104(3); "mineral resource", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "municipal waste" — Reg. 1104(13); "non-resident", "oil or gas well" — ITA 248(1); "ore" — Reg. 1104(2); "Parliament" — *Interpretation Act* 35(1); "person" — ITA 248(1); "pipeline" — Reg. 1104(2); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "remuneration" — Reg. 1104(10)(c); "resident" — ITA 250; "revenue guarantee" — Reg. 1104(10)(c.1); "security" — *Interpretation Act* 35(1); "stone quarry" — Reg. 1104(8); "systems software", "tar sands ore" — Reg. 1104(2); "taxation year" — ITA 249, Reg. 1104(1); "taxpayer" — ITA 248(1); "thermal waste", "transmission equipment" — Reg. 1104(13); "unit of production" — Reg. 1104(10)(d); "wood waste" — Reg. 1104(13).

DIVISION VI — CLASSES PRESCRIBED

1105. The classes of property provided in this Part and in Schedule II are hereby prescribed for the purposes of the Act.

History: S. 1105 amended by P.C. 1996-571, s. 1, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to taxation years that end after February 21, 1994.

S. 1105 substituted by P.C. 1982-599, s. 5, February 25, 1982, *Canada Gazette*, Part II, applicable to taxation years ending after December 11, 1979.

Definitions [Reg. 1105]: "class" — Reg. 1101(6), 1102(1)–(3), (14), (14.1); "prescribed", "property" — ITA 248(1).

DIVISION VII — CERTIFICATES ISSUED BY MINISTER OF SUPPLY AND SERVICES [REPEALED]

Part XI:Div. VII [H] — History: Division VII (s. 1106) repealed by P.C. 1995-775, s. 3, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired on or after May 31, 1995.

Proposed Addition — Reg. 1106

DIVISION VII — CERTIFICATES ISSUED BY MINISTER OF CANADIAN HERITAGE

1106. (1) Definitions — For the purposes of this section and paragraph (x) of Class 10 in Schedule II,

"Canadian" means a person that is

(a) a Canadian citizen as defined in the *Citizenship Act*,

(b) a permanent resident within the meaning assigned by the *Immigration Act*, or

(c) a corporation that is Canadian-controlled, as determined for the purposes of sections 26 to 28 of the *Investment Canada Act*;

Related Provisions: Reg. 1106(5)(c) — Principal screenwriter deemed not Canadian.

"Canadian government film agency" means a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada;

"excluded production" means a film or video production of a prescribed taxable Canadian corporation

(a) in respect of which

(i) the Minister of Canadian Heritage has not issued a certificate of completion, within 30

months after the end of the corporation's taxation year in which the production's principal photography began, certifying that the production was completed within two years after the end of the year,

(ii) where the production is not a treaty co-production, neither the corporation nor another prescribed taxable Canadian corporation related to the corporation

(A) is, except to the extent of an interest in the production held by a prescribed taxable Canadian corporation as a co-producer of the production or by a prescribed person (within the meaning assigned by subsection 1106(7)), the exclusive worldwide copyright owner in the production for all commercial exploitation purposes for the 25-year period that begins at the first time the production had been completed and is commercially exploitable,

(B) controls the initial licensing of commercial exploitation, and

(C) retains a share of revenues, that is acceptable to the Minister of Canadian Heritage, from the exploitation of the production in non-Canadian markets,

(iii) there is not an agreement in writing for consideration at the fair market value with

(A) a corporation that is a Canadian and is a distributor of film or video productions, or

(B) a corporation that holds a broadcasting license issued by the Canadian Radio-television and Telecommunications Commission for television markets,

to have the production shown in Canada within the two-year period that begins at the first time the production has been completed and is commercially exploitable, or

(iv) a distribution is made in Canada within that two-year period by a person who is not a Canadian, or

(b) that is

(i) news, current events or public affairs programming, or a programme that includes weather or market reports,

(ii) a talk show,

(iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),

(iv) a sports event or activity,

(v) a gala presentation or an awards show,

(vi) a production that solicits funds,

(vii) reality television,

(viii) pornography,

(ix) advertising,

(x) a production produced primarily for industrial, corporate or institutional purposes,

(xi) a production, other than a documentary, all or substantially all of which consists of stock footage, or

(xii) a production for which public financial support would, in the opinion of the Minister of Canadian Heritage, be contrary to public policy;

Technical Notes: June 20, 1996: Proposed Regulation 1106(1) provides the definition of "excluded production", which is a film or video production that is not considered to be an eligible production for the purposes of the Canadian film or video production tax credit regime. Generally, propose clause (a)(ii)(A) of that definition provides that a prescribed taxable Canadian corporation's film or video production will be an excluded production if the corporation (or a related prescribed taxable Canadian corporation) is not the exclusive worldwide copyright owner of the production for 5 years. This amendment would lengthen the required ownership period to 25 years. However, an exception from the exclusive worldwide copyright rule in respect of a production is made for copyright in the production held by a co-producer of the production that is a prescribed taxable Canadian corporation or by a prescribed person (see the commentary to proposed Regulation 1106(7)).

This amendment applies to the 1995 and subsequent taxation years except that the reference to the "25-year period" in that clause shall be read as a "5-year period" in the case of a film or video production for which a Canadian film or video production certificate is obtained before 1997. The change to a 25-year ownership requirement has been made upon recommendation of the Department of Canadian Heritage.

Related Provisions: Reg. 1106(2) — Prescribed taxable Canadian corporation; Reg. 1106(7) — Prescribed person.

"producer" of a film or video production does not include a person unless the person is the individual

(a) who controls and is the central decision maker in respect of the production,

(b) who is directly responsible for the acquisition of the production story or screenplay and the development, creative and financial control and exploitation of the production, and

(c) who is identified in the production as being the producer of the production;

"remuneration" does not include an amount determined by reference to profits or revenues;

"treaty co-production" means a film or video production the production of which is contemplated in a co-production treaty entered into between Canada and another country.

(2) Prescribed taxable Canadian corporation — For the purposes of section 125.4 of the Act and this section, "prescribed taxable Canadian corporation" means a taxable Canadian corporation that is a Canadian, other than a corporation that is

(a) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under Part I of the Act; or

(b) a prescribed labour-sponsored venture capital corporation.

Related Provisions: ITA 256(5.1), (6.2) — Meaning of "controlled directly or indirectly"; Reg. 6701 — Prescribed labour-sponsored venture capital corporation.

(3) Canadian film or video production — For the purposes of section 125.4 of the Act, this Part and Schedule II, "Canadian film or video production" means a film or video production, other than an excluded production, of a prescribed taxable Canadian corporation and that is

(a) a treaty co-production, or

(b) a film or video production

(i) at all times during the production of which the producer of which is a Canadian,

(ii) in respect of which the Minister of Canadian Heritage has allotted not less than six points in accordance with subsection (4),

(iii) in respect of which not less than 75% of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable to, and in respect of services provided by individuals who are, Canadians, and for the purpose of this subparagraph, excluded costs are

(A) costs determined by reference to the amount of income from the production,

(B) remuneration payable to, or in respect of, the producer or individuals described in any of clauses (4)(a)(i)(A) to (H) and (ii)(A) to (F) and subparagraph 4(a)(iii),

(C) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts, and

(D) costs described in subparagraph (iv), and

(iv) in respect of which not less than 75% of the total of all costs incurred for the post-production of the production, including laboratory work, sound re-recording, sound editing and picture editing (other than costs determined by reference to the amount of income from the production and remuneration payable to, or in respect of, the producer or individuals described in any of clauses (4)(a)(i)(A) to (H) and (ii)(A) to (F) and subparagraph 4(a)(iii)) was incurred in respect of services provided in Canada,

other than a production the certification of which has been revoked under subsection 125.4(6) of the Act by the Minister of Canadian Heritage.

Related Provisions: Reg. 1101(5k.1) — Separate class for certain property under Class 10(x); Reg. 1106(1) — Definitions; Reg. 1106(4) — Points for creative services; Reg. Sch. II:Cl. 10(x) — CCA class for Canadian film or video production.

(4) Creative services — For the purposes of subsection (3) and this subsection,

(a) there shall be allotted in the case of a film or video production

(i) that is not an animation production,

(A) for the director, two points,

(B) for the principal screenwriter, two points,

(C) for the lead performer for whose services the highest remuneration was payable, one point,

(D) for the lead performer for whose services the second highest remuneration was payable, one point,

(E) for the art director, one point,

(F) for the director of photography, one point,

(G) for the music composer, one point, and

(H) for the picture editor, one point,

if that person is an individual who is a Canadian,

(ii) that is an animation production,

(A) for the director, one point,

(B) for the lead voice for which the highest or second highest remuneration was payable, one point,

(C) for the design supervisor, one point,

(D) for the camera operator where the camera operation is done in Canada, one point,

(E) for the music composer, one point, and

(F) for the picture editor, one point,

if that person is an individual who is a Canadian, and

(iii) that is an animation production, one point where both the principal screenwriter and storyboard supervisor are individuals who are Canadians; and

(iv) that is an animation production

(A) for the place where the layout and background work is done, one point,

(B) for the place where the key animation is done, one point,

(C) for the place where the assistant animation and in-betweening is done, one point,

if the place is in Canada;

(b) a production that is not an animation production is deemed not to be a Canadian film or video production unless there are allotted in respect of the production two points under clause (a)(i)(A) or (B) and one point under clause (a)(i)(C) or (D); and

(c) an animation production is deemed not to be a Canadian film or video production unless there are allotted in respect of the production

(i) one point under clause (a)(ii)(A) or subparagraph (a)(iii),

(ii) one point under clause (a)(ii)(B), and

(iii) one point under clause (a)(iv)(B).

Related Provisions: Reg. 1106(1) — Definitions; Reg. 1106(5) — Lead performer/screenwriter; Reg. 1106(6) — Documentary production.

(5) Lead performer/screenwriter — For the purposes of subsections (4) and (6),

(a) a lead performer in respect of a production is an actor or actress who has a leading role in the production having regard to the performer's remuneration, billing and time on screen;

(b) a lead voice in respect of an animation production is the voice of the individual who has a leading role in the production having regard to the length of time that the individual's voice is heard in the production and the individual's remuneration;

(c) the principal screenwriter of a production is not a Canadian unless

(i) each individual involved in the preparation of the screenplay for the production is otherwise a Canadian, or

(ii) the principal screenwriter is an individual who otherwise is a Canadian and

(A) the screenplay for the production is based upon a work authored by a Canadian, and

(B) the work is published in Canada.

(6) Documentary production — Notwithstanding subsection (4), a documentary production that is not an excluded production is deemed to be a Canadian film or video production if all creative positions in respect of the production are occupied by individuals who are Canadians.

(7) Prescribed person — For the purpose of section 125.4 of the Act, "prescribed person" means

(a) a corporation that holds a television broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission,

(b) a person to whom paragraph 149(1)(l) of the Act applies where the person has a fund which is used to finance Canadian film or video productions,

(c) a Canadian government film agency, or

(d) in respect of a film or video production, a non-resident person who does not carry on a business in Canada where the person's interest in the production is acquired to comply with the certificate requirements of a treaty co-production twinning arrangement.

Technical Notes: June 20, 1996: Draft Regulation 1106(7), which defines "prescribed person" for the purposes of the proposed Canadian film or video production tax credit ("CFVPTC"), is relevant for two purposes. First, a prescribed person is not considered to be an "investor" under subsection 125.4(1). A qualifying corporation will, therefore, not be precluded by subsection 125.4(4) from claiming a CFVPTC in respect of a film or video production solely because a "prescribed person" has an interest in the production.

Second, the definition "prescribed person" is relevant for the purpose of determining whether a production is an "excluded production" under proposed Regulation 1106(1). Subsection 1106(7) of the Regulations applies to the 1995 and subsequent taxation years.

Related Provisions: ITA 253 — Extended meaning of "carry on business in Canada".

(8) Prescribed amount — For the purpose of the definition "assistance" in subsection 125.4(1) of the Act, "prescribed amount" means an amount paid or payable to a taxpayer under the License Fee Program of the Canada Television and Cable Production Fund or the Canada Television Fund/Fonds canadien de télévision.

Application: The October 27, 1998 draft regulations, s. 1, will add subsec. 1106(8), applicable to amounts received after February 23, 1998.

Technical Notes: Section 1106 of the *Income Tax Regulations* provides rules related to the Canadian Film or Video Production Tax Credit.

New subsection 1106(8) prescribes amounts paid or payable under the License Fee Program of the Canada Television and Cable Production Fund for the purpose of the definition "assistance" in subsection 125.4(1) of the *Income Tax Act*. As a result, such payments will not be considered assistance for the purposes of the Canadian Film or Video Production Tax Credit provided under section 125.4 of the Act.

New subsection 1106(8) applies to amounts received after February 23, 1998.

Letter from Department of Finance, July 14, 1998:

Dear [xxx]

Thank you for your letter dated June 25, 1998 requesting further transitional relief for payments received from the Canada Television and Cable Production fund (CCTCPF) from the 1998 Budget proposal regarding indirect assistance.

I have been informed that the CTCPF has been unable to reorganize itself in such a way as to ensure that its funding is not considered indirect assistance for income tax purposes. I also understand that the positions taken by both the representatives of the CTCPF and Revenue Canada are reasonable in the circumstances.

Therefore, in light of this government's intention that the 1998 Budget proposal not apply to treat funding of CTCPF as assistance for income tax purposes, I have instructed my officials to draft the legislation implementing this Budget measure in a manner which will ensure that payments made to film producers from the CTCPF as licence fee top-ups are excluded from categorization as assistance for the purposes of the Canadian Film or Video Production Tax Credit.

Based on the foregoing, it would appear that no further transitional relief will be necessary to achieve the CTCPF's goal. Should you require additional information, please contact Mr. Len Farber at (613) 992-3024.

Sincerely,

The Honourable Paul Martin, P.C., M.P.

Application: The December 12, 1995 draft regulations (Canadian film tax credit), s. 3, will add s. 1106 (Div. VII), applicable to 1995 *et seq.* The June 20, 1996 Notice of Ways and Means Motion will amend cl. (a)(ii)(A) of the definition "excluded production" in subsec. 1106(1) and add subsec. 1106(7), applicable to 1995 *et seq.*, except that the reference to the "25-year period" in cl. (a)(ii)(A) shall be read as a "5-year period" in the case of a film or video production for which a Canadian film or video production certificate is obtained before 1997. For subsec. 1106(8), see Application note above.

Definitions [Reg. 1106]: "amount" — ITA 248(1); "broadcasting" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian" — Reg. 1106(1), (5)(c); "Canadian film or video production" — Reg. 1106(3), (4)(b), (c), 1106(6); "Canadian government film agency" — Reg. 1106(1); "controlled directly or indirectly" — ITA 256(5.1), (6.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "excluded production" — Reg. 1106(1); "individual" — ITA 248(1); "lead performer" — Reg. 1106(5)(a); "lead voice" — Reg. 1106(5)(b); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-resident", "person", "prescribed" — ITA 248(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed taxable Canadian corporation" — Reg. 1106(2); "producer" — Reg. 1106(1); "related" — ITA 251(2)–(6); "remuneration" — Reg. 1106(1); "resident" — ITA 250; "share" — ITA 248(1); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249, Reg. 1104(1); "treaty co-production" — Reg. 1106(1); "writing" — *Interpretation Act* 35(1).

Proposed Amendment — Reg. 1106(7)

Letter from Department of Finance, April 29, 1998:

Dear [xxx]

I am writing in response to your facsimile letter of March 31, 1998, in which you suggested that any registered charity that has a fund to finance Canadian film or video productions be included in the list of investors prescribed by draft paragraph 1106(7)(b) of the *Income Tax Regulations*.

It is my understanding, however, that your submission relates to the Independent Production Fund ("the Fund") in particular. You have indicated that the Fund is a charity which makes equity investments in film and television productions which amount to no more than 5-10% of any given production budget. Your concern is that the presence of such an investment could disqualify a film from qualifying for a Canadian Film or Video Production Tax Credit ("CFVPTC") by reason of subsection 125.4(4) of the *Income Tax Act*.

Leaving aside the issue of whether the "charity" is engaging in an ineligible activity, your particular example poses little difficulty from a CFVPTC policy perspective. However, your proposed solution is not constrained to similar fact situations. In particular, it is constrained neither to nominal interests, nor ownership interests, nor funding that could be traced to persons that might otherwise be considered to be prescribed investors in their own right. From a tax policy perspective, the intent of the CFVPTC legislation, as it stands, is to allow the CFVPTC to a producer only where no other person is able to claim a deduction in respect of the production. This is because the deduction itself is considered to already provide a tax benefit in respect of the production. It is not intended that a tax credit be given in addition to this benefit.

As you may know, however, we have discussed with the industry the possibility of excluding from the definition "investor" a person where, in respect of the investment, the person is subject to the matchable expenditure rules in section 18.1 of the *Income*

Tax Act, on condition that the "investment" be considered assistance to the producer or otherwise excluded from the producer's eligible cost. If I understand your issue correctly, however, the fund could not claim that the investment was a matchable expenditure because it, in fact, takes an actual percentage ownership in the film (rather than a right to production).

You have also noted that an exemption has been provided in respect of non-profit funds that have been established to fund Canadian film or video productions. As you know, the only such fund in existence receives amounts only from the Government of Canada and persons who would otherwise be prescribed persons. Further, while registered charities are similar to non-profit organizations such as the Canadian Television and Cable Production Fund, charities have one materially distinct characteristic: they can offer tax credits or deductions to their donors. In the absence of any constraint on eligible donors, therefore, it would be difficult to recommit a blanket exemption for funds operated by any charity.

In view of the above, we could recommend a modified version of your proposal under which eligible charities would be constrained to those charities that

- are constated to provide funding for film or video productions, all or substantially all of which funding is provided by way of a direct ownership interest in the production, and
- have not received donations after 1996, other than from persons who are otherwise prescribed persons.

In this regard, you should be aware that we have already proposed to recommend that the list of prescribed persons be expanded to include corporations that hold a specialty or pay-television broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission ("CRTC"), or that hold a broadcast undertaking licence and provide production funding as a result of "significant benefits" commitment given to the CRTC.

Please advise us if these proposals would resolve your concerns. Thank you for bringing your concerns to my attention.

Sincerely,

Len Farber
Director General
Tax Legislation Division

Division VIII — Determination of Viscosity and Density

1107. (1) For the purpose of the definition "bituminous sands" in section 248(1) of the Act, viscosity or density of hydrocarbons shall be determined using a number of individual samples (constituting a representative sampling of that deposit or those deposits, as the case may be, from which the taxpayer is committed to produce by means of one mine) tested

(a) at atmospheric pressure;

(b) at a temperature of 15.6 degrees Celsius; and

(c) free of solution gas.

History: S. 1107 added by P.C. 1998-49, s. 3, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable after March 6, 1996.

Definitions [Reg. 1107]: "individual", "taxpayer" — ITA 248(1).

Part XII — Resource and Processing Allowances

History: Part XII amended by P.C. 1985-2277, s. 2, July 24, 1985, *Canada Gazette*, Part II, to substitute "predecessor" wherever "predecessor corporation" appeared, applicable to taxation years ending after April 19, 1983.

Part XII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1200. For the purposes of section 65 of the Act, there may be deducted in computing the income of a taxpayer for a taxation year such of the amounts determined in accordance with sections 1201 to 1209 and 1212 as are applicable.

History: S. 1200 substituted by P.C. 1979-649, s. 1, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for taxation years ending after April 10, 1978.

Definitions [Reg. 1200]: "amount" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1201. Earned depletion allowances — In computing a taxpayer's income for a taxation year there may be deducted such amount as he may claim not exceeding the lesser of

(a) the aggregate of

(i) 25 per cent of the amount, if any, by which the taxpayer's resource profits for the year exceed four times the total of amounts, if any, deducted under subsection 1202(2) in computing the taxpayer's income for the year, and

(ii) the amount, if any, by which the aggregate of amounts included in computing the taxpayer's income for the year under paragraphs 59(3.3)(a) and (b) of the Act exceeds the aggregate of amounts, if any, that may reasonably be considered to have been deducted under subsection 1202(2) by reason of subparagraph (b)(ii) thereof in computing the taxpayer's income for the year; and

(b) the aggregate of

(i) the taxpayer's earned depletion base as of the end of the year, and

(ii) the amount, if any, by which

(A) the aggregate determined under paragraph 1202(4)(a) in respect of the taxpayer for the year

exceeds

(B) the amount, if any, by which

(I) the aggregate of all amounts that would be determined under paragraphs 1205(1)(e) to (k)

exceeds

(II) 33 1/3 per cent of the aggregate of all amounts that would be determined under paragraphs 1205(1)(a) to (d.2)

in computing the taxpayer's earned depletion base as of the end of the year.

History: Subpara. 1201(a)(i) amended by P.C. 1999-629, s. 4, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to 1999 *et seq.*

Paras. 1201(a), (b) substituted by P.C. 1990-2780, s. 2, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Para. 1201(a) substituted by P.C. 1981-3329, s. 2, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979.

All that portion of s. 1201 preceding para. (b) substituted by P.C. 1978-1849, s. 3, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

Definitions [Reg. 1201]: "amount" — ITA 248(1); "earned depletion base" — Reg. 1202(1), 1205(1); "resource profits" — Reg. 1204(1.1); "successor" — Reg. 1202(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1202. (1) For the purposes of computing the earned depletion base of a corporation, control of which has been ac-

quired under circumstances described in subsection 66(11) of the Act, the amount by which the earned depletion base of the corporation at the time referred to in that subsection exceeds the aggregate of amounts otherwise deducted under section 1201 in computing its income for taxation years ending after that time and before control was so acquired shall be deemed to have been deducted under section 1201 by the corporation in computing its income for taxation years ending before such acquisition of control.

(2) Subject to subsections (5) and (6), where after November 7, 1969 a corporation (in this subsection referred to as the "successor") acquired a particular property (whether by way of a purchase, amalgamation, merger, winding-up or otherwise), there may be deducted by the successor in computing its income for a taxation year an amount not exceeding the aggregate of all amounts each of which is an amount determined in respect of an original owner of the particular property that is the lesser of

(a) the earned depletion base of the original owner immediately after the original owner disposed of the particular property (determined as if, in the case of a disposition after April 28, 1978 as a result of an amalgamation described in section 87 of the Act, the original owner existed after the time of disposition and no property was acquired or disposed of in the course of the amalgamation) to the extent of the amount thereof that was not

(i) deducted by the original owner or any predecessor owner of the particular property in computing income for any taxation year,

(ii) deducted by the successor in computing income for a preceding taxation year, or

(iii) otherwise deducted by the successor in computing income for the taxation year, and

(b) 25 per cent of the amount, if any, by which

(i) the part of the successor's income for the year that can reasonably be regarded as attributable to

(A) the part of any amount included under paragraph 59(3.2)(c) of the Act in computing its income for the year that can reasonably be regarded as attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to the particular property, to the extent that the proceeds of the disposition have not been included in determining an amount under this clause, paragraph (7)(g), clause 29(25)(d)(i)(A) of the *Income Tax Application Rules* or clause 66.7(1)(b)(i)(A) or (3)(b)(i)(A) or paragraph 66.7(10)(g) of the Act for a preceding taxation year,

(B) its reserve amount for the year in respect of the original owner and each predecessor owner, if any, of the particular property,

(C) production from the particular property, or

(D) processing described in subparagraph 1204(1)(b)(iii), (iv) or (v) with the particular property

computed as if no deduction were allowed under section 29 of the *Income Tax Application Rules* or under any of sections 65 to 66.7 of the Act and as if that income did not include any amount designated under clause 66.7(2)(b)(ii)(A) of the Act,

exceeds

(ii) the total of

(A) four times the total of all other amounts deducted under this subsection for the year that can reasonably be regarded as attributable to the part of the successor's income for the year described in subparagraph (i), and

(B) the total of all amounts each of which is an amount deducted under subsection 66.7(1), (3), (4) or (5) of the Act or subsection 29(25) of the *Income Tax Application Rules* for the year that can reasonably be regarded as attributable to the part of the successor's income for the year described in subparagraph (i).

(3) Where in a taxation year ending after February 17, 1987 an original owner of a property disposes of the property in circumstances in which subsection (2) applies,

(a) the amount of the earned depletion base of the original owner determined immediately after the time of that disposition shall be deducted in determining the earned depletion base of the original owner at any time after the time that is immediately after the disposition;

(b) for the purposes of paragraph (2)(a), the earned depletion base of the original owner determined immediately after the original owner disposed of the property that was deducted in computing the original owner's income for the year shall be deemed to be equal to the lesser of

(i) the amount deducted in respect of the disposition under paragraph (a), and

(ii) the amount, if any, by which

(A) the specified amount determined under subsection (4) in respect of the original owner for the year

exceeds

(B) the aggregate of all amounts each of which is an amount determined under this paragraph in respect of any disposition made by the original owner before the disposition and in the year; and

(c) for greater certainty, any amount (other than the amount determined under paragraph (b)) that was deducted under section 1201 by the original owner for the year or a subsequent taxation year shall, for the purposes of paragraph (2)(a), be deemed not to be in respect of the earned depletion base of the original owner determined immediately after the original owner disposed of the particular property.

(4) Where in a taxation year ending after February 17, 1987 an original owner of a property disposes of the property in circumstances in which subsection (2) applies, the lesser of

(a) the total of all amounts each of which is the amount, if any, by which

(i) an amount deducted under paragraph (3)(a) in respect of such a disposition in the year by the original owner

exceeds

(ii) the amount, if any, designated by the original owner in a prescribed form filed with the Minister within six months after the end of the year in re-

spect of the amount determined under subparagraph (i), and

(b) the amount, if any, deducted under section 1201 in computing the income of the original owner for the taxation year

is the specified amount in respect of the original owner for the year for the purposes of paragraphs (3)(b) and 1205(1)(d.2).

Advance Tax Rulings: ATR-19: Earned depletion base and cumulative Canadian development expense.

(5) Subsections (2), 1203(3), 1207(7) and 1212(4) do not apply

(a) in respect of a property acquired by way of an amalgamation or winding-up to which section 1214 applies;

(b) to permit, in respect of the acquisition by a corporation before February 18, 1987 of a property, a deduction by the corporation of an amount that the corporation would not have been entitled to deduct under this Part, if this Part, as it read in its application to taxation years ending before February 18, 1987, applied to taxation years ending after February 17, 1987; or

(c) in respect of a property acquired at any time after July 19, 1985, by purchase, amalgamation, merger, winding-up or otherwise, from a person who is exempt from tax under Part I of the Act on that person's taxable income (other than a corporation that is referred to in paragraph 149(1)(d) of the Act and that is a principal-business corporation), except where the property was acquired before 1987 pursuant to an agreement in writing made before July 20, 1985.

Proposed Amendment — Reg. 1202(5)(c)

(c) in respect of a property acquired at any time by purchase, amalgamation, merger, winding-up or otherwise, from a person who is exempt from tax under Part I of the Act on that person's taxable income.

Application: The June 20, 1996 Notice of Ways and Means Motion will amend para. 1202(5)(c) to read as above, applicable to acquisitions that take place after April 26, 1995, other than an acquisition that takes place before 1996 and that was required by an agreement in writing entered into before April 26, 1995.

Technical Notes: Part XII of the *Income Tax Regulations* sets out a number of rules with respect to resource and processing allowances. These rules include provision for the inheritance by a corporation (the "successor") of another taxpayer's earned depletion allowances, mining exploration base, frontier exploration base and supplementary depletion allowances. Subsection 1202(5) provides that this successoring is not available in certain circumstances, including (in paragraph 1202(5)(c)) the acquisition of property from a person that is exempt from tax under Part I of the Act. The paragraph includes an exception, however: where the exempt person from whom the property is acquired is a corporation described in paragraph 149(1)(d) — broadly, a Crown or municipal corporation — that is also a principal-business corporation, the successor rules will apply. Paragraph 1202(5)(c) is amended to remove this exception.

(6) Subsections (2), 1203(3), 1207(7) and 1212(4) apply only to a corporation that has acquired a particular property

(a) where it acquired the particular property in a taxation year commencing before 1985 and, at the time it acquired the particular property, the corporation acquired the specified property of the person from whom it acquired the particular property;

(b) where it acquired the particular property from a person in a taxation year commencing after 1984 and, at the time it acquired the particular property, the corporation acquired

(i) all or substantially all of the Canadian resource properties of that person, or

(ii) where subparagraph (i) does not apply, the specified property of the person;

(c) where it acquired (other than in circumstances in which subparagraph (b)(ii) applies) the particular property after November 16, 1978 and in a taxation year ending before February 18, 1987 by any means other than by way of an amalgamation or winding-up and it and the person from whom it acquired the particular property have filed with the Minister a joint election under and in accordance with any of subsections 66(6), 66.1(4), 66.1(5), 66.2(3), 66.2(4), 66.4(3), and 66.4(4) of the Act as those subsections read in their application to that year;

(d) where it acquired the particular property after June 5, 1987 by way of an amalgamation or winding-up (other than in circumstances in which subparagraph (b)(ii) applies) and it has filed an election in the form prescribed for the purposes of paragraph 66.7(7)(c) of the Act with the Minister on or before the day on or before which the corporation is required to file a return of income pursuant to section 150 of the Act for its taxation year in which it acquired the particular property;

(e) where it acquired the particular property (other than by means of an amalgamation or winding-up or in circumstances in which subparagraph (b)(ii) applies) in a taxation year ending after February 17, 1987 and it and the person from whom it acquired the particular property have filed a joint election in the form prescribed for the purposes of paragraph 66.7(7)(e) of the Act with the Minister on or before the earlier of the days on or before which either of them is required to file a return of income pursuant to section 150 of the Act in respect of their respective taxation years that include the time of acquisition of the particular property; and

(f) where it acquired (other than by way of an amalgamation or winding-up) the particular property in circumstances in which subparagraph (b)(ii) applies and it and the person from whom it acquired the particular property agree to have subsection (2), 1203(3), 1207(7) or 1212(4), as the case may be, apply to them and notify the Minister in writing of the agreement in their returns of income under Part I of the Act for their respective taxation years that include the time of acquisition of the particular property.

(7) Where at any time after November 12, 1981

(a) control of a corporation is considered for the purposes of subsection 66.7(10) of the Act to have been acquired by a person or group of persons, or

(b) a corporation ceases to be exempt from tax under Part I of the Act on its taxable income,

for the purposes of section 1201, this section and section 1205,

(c) the corporation shall be deemed after that time to be a successor (within the meaning assigned by subsection (2)) that had, at that time, acquired all the properties owned by the corporation immediately before that time from an original owner thereof;

(d) a joint election shall be deemed to have been filed in accordance with subsection (6) in respect of the acquisition;

(e) the earned depletion base of the corporation immediately before that time shall be deemed not to be the earned depletion base of the corporation immediately after that time but to be the earned depletion base of the original owner immediately after that time;

(f) [Revoked]

(g) where the corporation (in this paragraph referred to as the "transferee") was, immediately before and at that time,

(i) a parent corporation (within the meaning assigned by subsection 87(1.4) of the Act), or

(ii) a subsidiary wholly-owned corporation (within the meaning assigned by subsection 87(1.4) of the Act)

of a particular corporation (in this paragraph referred to as the "transferor"), if both corporations agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under Part I of the Act of the transferor for that year, the transferor may, if throughout that year the transferee was such a parent corporation or subsidiary wholly-owned corporation of the transferor, designate in favour of the transferee, in respect of that year, for the purpose of making a deduction under subsection (2) in respect of expenditures incurred by the transferee before that time and when it was such a parent corporation or subsidiary wholly-owned corporation of the transferor, an amount not exceeding such portion of the amount that would be its income for the year, if no deductions were allowed under any of section 29 of the *Income Tax Application Rules* and sections 65 to 66.7 of the Act, [as] may reasonably be regarded as being attributable to

(iii) the production from Canadian resource properties owned by the transferor immediately before that time,

(iv) the disposition in the year of any Canadian resource properties owned by the transferor immediately before that time, and

(v) such processing as is described in subparagraph 1204(1)(b)(iii), (iv), or (v) with property owned by the transferor immediately before that time

to the extent that such portion of the amount so designated is not designated under this paragraph in favour of any other taxpayer or under paragraph 66.7(10)(g) of the Act in favour of any taxpayer, and the amount so designated shall be deemed, for the purposes of determining the amount under subsection (2),

(vi) to be income from the sources described in subparagraph (iii), (iv) or (v), as the case may be, of the transferee for its taxation year in which that taxation year of the transferor ends, and

(vii) not to be income from the sources described in subparagraph (iii), (iv) or (v), as the case may be, of the transferor for that year;

(h) where, immediately before and at that time, the corporation (in this paragraph referred to as the "transferee") and another corporation (in this paragraph referred to as the "transferor") were both subsidiary wholly-owned corporations (within the meaning assigned by subsection 87(1.4) of the Act) of a particular parent corporation (within the meaning assigned by subsection 87(1.4) of the Act), if the transferee and the transferor agree to have this paragraph apply to them in respect of a taxation year of the transferor ending after that time and notify the Minister in writing of the agreement in the return of income under Part I of the Act of the transferor for that year, paragraph (g) shall apply for that year to the transferee and transferor as though one were the parent corporation (within the meaning assigned by subsection 87(1.4) of the Act) of the other; and

(i) where that time is after January 15, 1987 and at that time the corporation was a member of a partnership that owned a property at that time,

(i) for the purposes of paragraph (c), the corporation shall be deemed to have owned immediately before that time that portion of the property owned by the partnership at that time that is equal to its percentage share of the aggregate of amounts that would be paid to all members of the partnership if it were wound up at that time, and

(ii) for the purposes of clauses (2)(b)(i)(C) and (D) for a taxation year ending after that time, the lesser of

(A) its share of the part of the income of the partnership for the fiscal period of the partnership ending in the year that may reasonably be regarded as being attributable to the production from the property or to such processing as is described in subparagraph 1204(1)(b)(iii), (iv) or (v) with the property, and

(B) an amount that would be determined under clause (A) for the year if its share of the income of the partnership for the fiscal year of the partnership were determined on the basis of the percentage share referred to in subparagraph (i)

shall be deemed to be income of the corporation for the year that may reasonably be attributable to production from the property or to such processing as is described in subparagraph 1204(1)(b)(iii), (iv) or (v) with the property.

(8) For the purposes of subsections (1) and (7), where a corporation acquired control of another corporation after November 12, 1981 and before 1983 by reason of the acquisition of shares of the other corporation pursuant to an agreement in writing concluded on or before November 12, 1981, the corporation shall be deemed to have acquired such control on or before November 12, 1981.

(9) Where, at any time,

(a) control of a taxpayer that is a corporation has been acquired by a person or group of persons,

(b) a taxpayer has disposed of all or substantially all of the taxpayer's Canadian resource properties, or

(c) a taxpayer has disposed of the specified property of the taxpayer,

and, before that time, the taxpayer or a partnership of which the taxpayer was a member acquired a property and it may reasonably be considered that one of the main purposes of the acquisition was to avoid any limitation provided in subsection (2) on the deduction in respect of the earned depletion base of the taxpayer or of a corporation referred to as a transferee in paragraph (7)(g) or (h), the taxpayer or the partnership, as the case may be, shall be deemed, for the purposes of applying subsection (2) to

or in respect of the taxpayer, not to have acquired the property.

Related Provisions: ITA 256(6)–(9) — Whether control acquired.

(10) Where in a particular taxation year a predecessor owner of a property disposes of it to a corporation in circumstances in which subsection (2) applies, for the purposes of applying subsection (2) to the predecessor owner for a taxation year ending after February 17, 1987 in respect of its acquisition of the property, the predecessor owner shall be deemed, after the disposition, never to have acquired the property except for the purposes of making a deduction under subsection (2) for the particular year.

(11) Where at any time a property is acquired by a person in circumstances in which subsection (2) does not apply, every person who was an original owner or predecessor owner of the property by reason of having disposed of the property before that time shall, for the purposes of applying this Part to or in respect of the person or any other person who after that time acquires the property, be deemed after that time not to be an original owner or predecessor owner of the property by reason of having disposed of the property before that time.

History: Para. 1202(2)(b) amended by P.C. 1999-629, s. 5, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to 1999 *et seq.*

Cl. 1202(2)(b)(i)(A) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

That portion of subpara. 1202(2)(b)(i) following cl. (D) substituted, and para. 1202(7)(f) revoked, by P.C. 1993-415, subsecs. 1(1) and (3) March 9, 1993, *Canada Gazette*, Part II, March 24, 1993, applicable to taxation years ending after February 17, 1987.

Para. 1202(4)(a) substituted by subsec. 1(2) of the said P.C. 1993-415, applicable with respect to dispositions occurring in taxation years commencing after March 23, 1993; and with respect to a disposition of a property made by a taxpayer in a taxation year commencing before March 24, 1993 and ending after February 17, 1987 where

(a) the taxpayer, and

(b) each corporation that, before the end of the taxpayer's taxation year that includes the date of publication, acquired the property or any other property that was disposed of by the taxpayer in a taxation year ending after February 17, 1987 as part of a transaction or an event as a consequence of which that corporation was or, but for that subsection, would be entitled to deduct an amount under subsec. 1202(2) in respect of an expenditure of the taxpayer,

so elect by notice in writing filed with the Minister of National Revenue on or before the day that is 180 days after the end of the taxpayer's taxation year that included March 24, 1993, and file waivers in the form and within the time referred to in subpara. 152(4)(a)(ii) of the Act in respect of taxation years commencing before March 24, 1993 with respect to the consequences of the election. And where a taxpayer has so elected in respect of a disposition, a form containing a designation under subpara. 1202(4)(a)(ii) shall be deemed to have been filed within the time required in that subparagraph if it is filed with the Minister of National Revenue on or before the day that is 180 days after the end of the taxpayer's taxation year that includes March 24, 1993.

Subsecs. 1202(2) to (11) substituted for subsecs. (2) to (6) by P.C. 1990-2780, s. 3, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable (except for cl. (2)(b)(i)(C) and subsec. (9)) to taxation years ending after February 17, 1987 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition in para. 1202(7)(g)or (h) if the Minister is notified in writing of the agreement referred to therein before July 16, 1991.

Cl. 1202(2)(b)(i)(C) and subsec. 1202(9) are applicable to taxation years ending after February 17, 1987 except that with respect to property acquired before January 15, 1987, or acquired before 1988, where the person acquiring the property is considered for the purposes of section 66.7 of the Act to have been obliged on that date to acquire the property pursuant to the terms of an agreement in writing entered into on or before that date,

(a) cl. (2)(b)(i)(C) shall be read as follows:

"(C) where the particular property was an interest in or a right to take or remove petroleum or natural gas or a right to take or remove minerals from a property, the production from that property,"; and

(b) subsec. (9) is not applicable.

That portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1990-2256, subsec. 1(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984.

Subsec. 1202(2.1) added by the said P.C. 1990-2256, subsec. 1(2), applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein before May 7, 1991.

That portion of subsec. 1202(3) preceding para. (a) substituted by the said P.C. 1990-2256, subsec. 1(3), applicable in respect of taxation years commencing after 1984.

Subsec. 1202(3.1) added by the said P.C. 1990-2256, subsec. 1(4), applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein before May 7, 1991.

Subsec. 1202(3.2) added by P.C. 1990-2256, subsec. 1(4), applicable to taxation years ending after July 19, 1985.

Para. 1202(4)(e.1) added by the said P.C. 1990-2256, subsec. 1(5), applicable to 1985 *et seq.* except that where the Minister of National Revenue is notified in writing of the agreement referred to in the para. before May 7, 1991 the requirement in the para. with regard to notifying the Minister shall be deemed to have been satisfied.

That portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1990-162, subsec. 1(1), February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

That portion of subsec. 1202(3) preceding para. (a) substituted by the said P.C. 1990-162, subsec. 1(2), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the first successor corporation" shall be read as a reference to "property of the first successor corporation used by it in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by it".

Para. 1202(4)(d) was substituted by the said P.C. 1990-162, subsec. 1(3), applicable with respect to transactions occurring in taxation years commencing after 1984.

Para. 1202(4)(f) substituted by subsec. 1(4) of the said P.C. 1990-162, applicable to taxation years ending after March 1985.

That portion of subsec. 1202(5) preceding para. (a) substituted by the said P.C. 1990-162, subsec. 1(5), applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada any of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

Cl. 1202(2)(a)(i)(A) substituted by P.C. 1986-2590, subsec. 7(1), November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after April 19, 1983.

Subpara. 1202(3)(a)(i) substituted by the said P.C. 1986-2590, subsec. 7(2), applicable after April 19, 1983.

That portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1985-2277, subsec. 3(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

Para. 1202(4)(d) substituted by the said P.C. 1985-2277, subsec. 3(2), applicable with respect to acquisitions of property occurring after April 19, 1983.

That portion of subsec. 1202(5) preceding para. (a) substituted by the said P.C. 1985-2277, subsec. 3(3), applicable with respect to acquisitions of property occurring after April 19, 1983.

Subsec. 1202(1) substituted by P.C. 1985-465, subsec. 3(1), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years ending after November 12, 1981.

That portion of cl. 1202(2)(a)(i)(D) preceding subcl. (I) substituted, applicable with respect to amounts that, after March 6, 1985, become receivable; and subcls. 1202(2)(a)(i)(D)(I) and (II) substituted, applicable after January 1, 1981, by P.C. 1985-465, subsecs. 3(2) and (3), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

That portion of subpara. 1202(3)(a)(iv) preceding cl. (A) substituted, applicable with respect to amounts that, after March 6, 1985, become receivable; cls. 1202(3)(a)(iv)(A) and (B) substituted, effective from January 1, 1981, by the said P.C. 1985-465, subsecs. 3(4), (5).

Subsec. 1202(4) added by the said P.C. 1985-465, subsec. 3(6), applicable to taxation years ending after November 12, 1981.

Subsecs. 1202(5), (6) added by the said P.C. 1985-465, subsec. 3(6), applicable to taxation years ending after November 12, 1981.

That portion of subsec. 1202(2) preceding para. (a) and that portion of subpara. 1202(2)(a)(i) following cl. (B) substituted by P.C. 1981-3329, subsecs. 3(1), (2), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979 except that cls. 1202(1)(a)(C), (D) effective in respect of 1981 *et seq.*

All that portion of subsec. 1202(3) preceding para. (b) substituted by the said P.C. 1981-3329, subsec. 3(3), applicable in respect of taxation years ending after December 11, 1979 except that subparas. 1202(3)(a)(iii), (iv) effective in respect of 1981 *et seq.*

That portion of subsec. 1202(2) preceding para. (a) substituted, cl. 1202(2)(a)(i)(B) added, and former cl. 1202(2)(a)(i)(B) renumbered as (C), by P.C. 1980-1483, subsecs. 2(1), (2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective November 17, 1978.

All that portion of subsec. 1202(3), preceding subpara. (a)(ii) substituted by the said P.C. 1980-1483, subsec. 2(3), effective November 17, 1978.

All that portion of subsec. 1202(2) preceding para. (a) substituted by P.C. 1979-649, subsec. 2(1), March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective commencing April 29, 1978.

Para. 1202(2)(b) substituted by the said P.C. 1979-649, subsec. 2(2), effective commencing April 29, 1978.

All that portion of subsec. 1202(3) preceding para. (b) substituted by the said P.C. 1979-649, subsec. 2(3), applicable to 1977 *et seq.*

Subsec. 1202(1) substituted by subsec. 4(1) of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable on and after April 1, 1977.

All that portion of subsec. 1202(2) preceding subpara. (a)(ii) substituted by subsec. 4(2) of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to 1977 *et seq.*

Subpara. 1202(2)(a)(ii) substituted by subsec. 4(3) of the said P.C. 1978-1849, applicable to taxation years ending after May 6, 1974.

Subpara. 1202(2)(b)(ii) substituted by subsec. 4(4) of the said P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

All that portion of subsec. 1202(3) preceding para. (b) substituted by subsec. 4(5) of the said P.C. 1978-1849, applicable to 1977 *et seq.*

Para. 1202(3)(b) substituted by subsec. 4(6) of the said P.C. 1978-1849, applicable to taxation years ending after May 6, 1974.

Definitions [Reg. 1202]: "acquired" — Reg. 1202(8), (9); "amount" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian oil and gas exploration expense" — Reg. 1206(1); "control" — ITA 256(6)–(9); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed", "disposes" — ITA 248(1)"disposition", "disposition" — ITA 248(1); "earned depletion base" — Reg. 1202(1), 1205(1); "fiscal period" — ITA 249.1; "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "original owner" — Reg. 1206(1); "parent" — Reg. 1214(3); "person" — ITA 248(1); "predecessor owner" — Reg. 1206(1); "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "share" — ITA 248(1), "specified percentage", "specified property", "stated percentage" — Reg. 1206(1); "subsidiary wholly-owned corporation" — ITA 248(1); "successor" — Reg. 1202(2), 1202(7); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "transferee", "transferor" — Reg. 1202(7)(g), (h); "writing" — *Interpretation Act* 35(1).

1203. Mining exploration depletion — (1) In computing a taxpayer's income for a taxation year there may be deducted such amount as he may claim not exceeding the lesser of

(a) the amount if any, by which

(i) the aggregate of

(A) 25 per cent of his income for the year, computed in accordance with Part I of the Act without reference to paragraph 59(3.3)(f) thereof and on the assumption that no deduction were allowed under section 65 thereof, and

(B) the amount, if any, included in computing his income for the year by virtue of paragraph 59(3.3)(f) of the Act

exceeds

(ii) the aggregate of amounts deducted under sections 1201, 1202, 1207 and 1212 in computing his income for the year; and

(b) his mining exploration depletion base as of the end of the year (before making any deduction under this subsection for the year).

(2) For the purposes of this section, "mining exploration depletion base" of a taxpayer as of a particular time means the amount by which the aggregate of

(a) 33⅓ per cent of the amount by which

(i) the aggregate of all amounts each of which was the stated percentage of an expenditure that is, or but for paragraph 66(12.61)(b) of the Act would be, incurred by the taxpayer after April 19, 1983 and before the particular time and each of which was a Canadian exploration expense

(A) described in subparagraph 66.1(6)(a) (iii) of the Act, or

(B) that would have been described in subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] or (v) [subpara. (i)] of the Act if the references in those subparagraphs to "any of subparagraphs (i) to (iii.1)" were read as "subparagraph (iii)",

other than an expense described in clause (A) or (B) that was

(C) an expense renounced by the taxpayer under subsection 66(10.1) or (12.6) of the Act,

(D) an amount that was a Canadian exploration and development overhead expense of the taxpayer,

(E) an amount that was in respect of financing, including any cost incurred prior to the commencement of carrying on a business, or

(F) an eligible expense within the meaning of the *Canadian Exploration Incentive Program Act* in respect of which the taxpayer, a partnership of which the taxpayer was a member or a principal-business corporation of which the taxpayer was a shareholder, has received, is deemed to have received, is entitled to receive or may reasonably be expected to receive at any time an incentive under that Act,

exceeds

(ii) the aggregate of all amounts each of which is the stated percentage of an amount of assistance (within the meaning assigned by paragraph 66(15)(a.1) [66(15)"assistance"] of the Act) that any person has received, is entitled to receive or, at any time, becomes entitled to receive in respect of

an expense that would be described in subparagraph (i) if that subparagraph were read without reference to clause (C) thereof, other than such an amount in respect of an expense renounced under subsection 66(10.1) or (12.6) of the Act

(A) by a corporation in favour of the taxpayer, where the amount of that assistance is excluded from the aggregate in respect of which the expense is so renounced, or

(B) by the taxpayer, where the amount of that assistance is not excluded from the aggregate in respect of which the expense is so renounced, and

(b) where the taxpayer is a successor corporation, any amount required by paragraph (3)(a) to be added before the particular time in computing the taxpayer's mining exploration depletion base

exceeds the aggregate of

(c) all amounts each of which is an amount deducted by the taxpayer under subsection (1) in computing his income for a taxation year ending before the particular time; and

(d) where the taxpayer is a predecessor, all amounts required by paragraph (3)(b) to be deducted before the particular time in computing the taxpayer's mining exploration depletion base.

(3) Subject to subsections 1202(5) and (6), where a corporation (in this section referred to as the "successor corporation") has at any time (in this subsection referred to as the "time of acquisition") after April 19, 1983 and in a taxation year (in this subsection referred to as the "transaction year") acquired a property from another person (in this subsection referred to as the "predecessor") the following rules apply:

(a) for the purpose of computing the mining exploration depletion base of the successor corporation as of any time after the time of acquisition, there shall be added an amount equal to the amount required by paragraph (b) to be deducted in computing the mining exploration depletion base of the predecessor; and

(b) for the purpose of computing the mining exploration depletion base of the predecessor as of any time after the transaction year of the predecessor, there shall be deducted the amount, if any, by which

(i) the mining exploration depletion base of the predecessor immediately after the time of acquisition (assuming for this purpose that, in the case of an acquisition as a result of an amalgamation described in section 87 of the Act, the predecessor existed after the time of acquisition and no property was acquired or disposed of in the course of the amalgamation)

exceeds

(ii) the amount, if any, deducted under subsection (1) in computing the income of the predecessor for the transaction year of the predecessor.

(3.1) [Revoked]

(4) For greater certainty, where an expense incurred before a particular time is included in the aggregate calculated under subparagraph (2)(a)(i) in respect of a taxpayer and subsequent to the particular time any person becomes entitled to receive an amount of assistance (within the meaning assigned by paragraph 66(15)(a.1) [66(15)"assistance"] of the Act) that is included in the aggregate calculated under subparagraph (2)(a)(ii), the stated percentage of the amount of assistance shall be included in the amounts referred to in subparagraph (2)(a)(ii) in respect of the taxpayer at the time the expense was incurred.

History: That portion of subparas. 1203(2)(a)(i) and (ii) preceding cl. (A), and subsec. (4) substituted, cl. (2)(a)(i)(F) added, by P.C. 1990-2780, subsecs. 4(1), (2), (3), (6), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

That portion of subsec. 1203(3) preceding para. (a) substituted, (3.1) revoked, by subsecs. 4(4), (5) of the said P.C. 1990-2780, applicable to taxation years ending after February 17, 1987.

That portion of subpara. 1203(2)(a)(i) preceding cl. (A), cl. (2)(a)(i)(C), subpara. (2)(a)(ii) and subsec. (4) were substituted by P.C. 1990-2256, subsecs. 2(1) to (3) and (6), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

That portion of subsec. 1203(3) preceding para. (a) was substituted by subsec. 2(4) of the said P.C. 1990-2256, applicable in respect of taxation years commencing after 1984.

Subsec. 1203(3.1) was added by subsec. 2(5) of the said P.C. 1990-2256, applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein within 180 days after November 7, 1990.

That portion of subsec. 1203(3) preceding para. (a) substituted by P.C. 1990-162, s. 2, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

Subpara. 1203(1)(a)(i) substituted, applicable to taxation years ending after April 19, 1983, all that portion of subsec. 1203(3) preceding para. (a) substituted, applicable with respect to acquisitions of property occurring after April 19, 1983, by P.C. 1985-2277, subsecs. 4(1) and (2), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

S. 1203 added by P.C. 1985-465, s. 4, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to expenses incurred after April 19, 1983.

Former s. 1203 revoked by P.C. 1981-3329, s. 4, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979.

Definitions [Reg. 1203]: "amount", "business" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(a); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(a); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(a); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "mining exploration depletion base" — Reg. 1203(2), (3); "person" — ITA 248(1); "predecessor" — Reg. 1203(3); "property", "shareholder" — ITA 248(1); "stated percentage" — Reg. 1206(1); "successor corporation" — Reg. 1203(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "time of acquisition", "transaction year" — Reg. 1203(3).

1204. Resource profits — **(1)** For the purposes of this Part, "gross resource profits" of a taxpayer for a taxation year means the amount, if any, by which the total of

(a) the amount, if any, by which the aggregate of

(i) the aggregate of amounts, if any, that would be included in computing the taxpayer's income for the year by virtue of subsection 59(2) and paragraphs 59(3.2)(b) and 59.1(b) of the Act if subsection 59(2) were read without reference to subsection 64(1) therein, and

(i.1) the amount, if any, by which the amount included in computing his income for the year by virtue of paragraph 59(3.2)(c) of the Act exceeds the proceeds of disposition of property described in

clause 66(15)(c)(ii)(A) [66(15)"Canadian resource property"(b)(i)] of the Act that became receivable in the year or a preceding taxation year and after December 31, 1982 to the extent that such proceeds have not been deducted in determining the amount under this subparagraph for a preceding taxation year

exceeds

(ii) the aggregate of amounts, if any, deducted in computing his income for the year by virtue of paragraph 59.1(a) and subsections 64(1.1) and (1.2) of the Act,

(b) the amount, if any, of the aggregate of his incomes for the year from

(i) the production of petroleum, natural gas, related hydrocarbons or sulphur from

(A) oil or gas wells in Canada operated by the taxpayer, or

(B) natural accumulations (other than mineral resources) of petroleum or natural gas in Canada operated by the taxpayer,

(ii) the production and processing in Canada of

(A) ore, other than iron ore or tar sands ore, from mineral resources in Canada operated by him to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from mineral resources in Canada operated by him to any stage that is not beyond the pellet stage or its equivalent, and

(C) tar sands ore from mineral resources in Canada operated by him to any stage that is not beyond the crude oil stage or its equivalent,

(iii) the processing in Canada of

(A) ore, other than iron ore or tar sands ore, from mineral resources in Canada not operated by him to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from mineral resources in Canada not operated by him to any stage that is not beyond the pellet stage or its equivalent, and

(C) tar sands ore from mineral resources in Canada not operated by him to any stage that is not beyond the crude oil stage or its equivalent,

(iv) the processing in Canada of

(A) ore, other than iron ore or tar sands ore, from mineral resources outside Canada to any stage that is not beyond the prime metal stage or its equivalent,

(B) iron ore from mineral resources outside Canada to any stage that is not beyond the pellet stage or its equivalent, and

(C) tar sands ore from mineral resources outside Canada to any stage that is not beyond the crude oil stage or its equivalent,

(v) the processing in Canada of heavy crude oil recovered from an oil or gas well in Canada to any stage that is not beyond the crude oil stage or its equivalent, and

(vi) Canadian field processing,

(b.1) the total of all amounts (other than an amount included because of paragraph (b) in computing the taxpayer's gross resource profits for the year) each of which is an amount included in computing the taxpayer's income for the year as a rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada, and

(c) if the taxpayer owns all the issued and outstanding shares of the capital stock of a railway company throughout the year, the amount that may reasonably be considered to be the railway company's income for its taxation year ending in the year from the transportation of such of the taxpayer's ore as is described in clause (b)(ii)(A), (B) or (C),

exceeds the aggregate of the taxpayer's losses for the year from the sources described in paragraph (b), where the taxpayer's incomes and losses are computed in accordance with the Act on the assumption that the taxpayer had during the year no incomes or losses except from those sources and was allowed no deductions in computing the taxpayer's income for the year other than

(d) amounts deductible under section 66 of the Act (other than amounts in respect of foreign exploration and development expenses) or subsection 17(2) or (6) or section 29 of the *Income Tax Application Rules*, for the year;

(e) the amounts deductible or deducted, as the case may be, under section 66.1, 66.2 (other than an amount that is in respect of a property described in clause 66(15)(c)(ii)(A) [66(15)"Canadian resource property"(b)(i)] of the Act), 66.4, 66.5 or 66.7 (other than subsection (2) thereof) of the Act for the year; and

(f) any other deductions for the year that can reasonably be regarded as applicable to the sources of income described in paragraph (b) or (b.1), other than a deduction under paragraph 20(1)(ss) or (tt) of the Act or section 1201 or subsection 1202(2), 1203(1), 1207(1) or 1212(1).

History: The opening words of subpara. 1204(1)(b)(i) amended, and subpara. 1204(1)(b)(vi) added, by P.C. 1999-629, subsecs. 6(1) and (2), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The opening words of subsec. 1204(1), cl. 1204(1)(b)(i)(B), and paras. 1204(1)(b.1) and (f) amended by P.C. 1996-1488, subsecs. 2(1) to (4), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; the opening words to subsec. (1) applicable to taxation years that begin after December 20, 1991; cl. (b)(i)(B) applicable to taxation years that end after March 1985; para. (b.1) applicable to taxation years that begin after 1990; para. (f) applicable to taxation years that end after February 22, 1994.

Para. 1204(1)(d) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subpara. 1204(1)(b)(i) substituted by P.C. 1990-2780, subsec. 5(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after March 1985.

All that portion of subsec. 1204(1) between paras. (b.1) and (d) substituted by subsec. 5(2) of the said P.C. 1990-2780, applicable to taxation years commencing after 1987.

Paras. 1204(1)(e), (f) substituted by subsec. 5(3) of the said P.C. 1990-2780, applicable to taxation years ending after February 17, 1987.

Subpara. 1204(1)(a)(i) substituted by P.C. 1990-162, subsec. 3(1), February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable to taxation years commencing after 1984.

Subpara. 1204(1)(b)(i) and para. (b.1) substituted by subsecs. 3(2) and (3) of the said P.C. 1990-162, applicable to taxation years ending after March 1985.

Para. 1204(1)(e) substituted by subsec. 3(4) of the said P.C. 1990-162, applicable to 1985 *et seq.*

All that portion of para. 1204(1)(a) preceding subpara. (ii) and para. 1204(1)(e) substituted, applicable to taxation years commencing after 1982; subparas. 1204(1)(b)(ii) to (v) substituted, applicable to taxation years commencing after November 12, 1981; para. 1204(1)(f) substituted, applicable to taxation years ending after April 19, 1983; all that portion of subsec. 1204(1) following para. (b.1) and preceding para. (c), and para. (c) substituted, para. 1204(1)(c.1) added by P.C. 1985-465, subsecs. 5(1)–(5), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

Paras. 1204(1)(a), (b.1), (e), (f) substituted, subpara. 1204(1)(b)(v) added by P.C. 1981-3329, subsecs. 5(1)–(4), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable, as to paras. 1204(1)(a), (e), in respect of taxation years ending after December 11, 1979, as to subpara. 1204(1)(b)(v), in respect of 1981 *et seq.*

Subpara. 1204(1)(b)(v) revoked, para. 1204(1)(b.1) added by P.C. 1981-411, February 19, 1981, *Canada Gazette*, Part II, March 11, 1981, effective December 12, 1979.

Para. 1204(1)(f) substituted by P.C. 1979-649, s. 3, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for taxation years ending after April 10, 1978.

Para. 1204(1)(a) substituted by P.C. 1978-1849, s. 5, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to 1977 *et seq.*

Selected Cases [Reg. 1204(1)]: *Gulf Canada Resources v. Canada*, [1995] 1 C.T.C. 334 (FCA) (Production as "business" must include disposition of material by sale or otherwise).

(1.1) For the purposes of this Part, "resource profits" of a taxpayer for a taxation year means the amount, if any, by which the taxpayer's gross resource profits for the year exceeds the total of

(a) all amounts deducted in computing the taxpayer's income for the year other than

(i) an amount deducted in computing the taxpayer's gross resource profits for the year,

(ii) an amount deducted under any of section 8, paragraphs 20(1)(ss) and (tt), sections 60 to 64 and subsections 66(4), 66.7(2) and 104(6) and (12) of the Act and section 1201 and subsections 1202(2), 1203(1), 1207(1) and 1212(1) in computing the taxpayer's income for the year,

(iii) an amount deducted under section 66.2 of the Act in computing the taxpayer's income for the year, to the extent that it is attributable to any right, licence or privilege to store underground petroleum, natural gas or related hydrocarbons in Canada,

(iv) an amount deducted in computing the taxpayer's income for the year from a business, or other source, that does not include any resource activity of the taxpayer, and

(v) an amount deducted in computing the taxpayer's income for the year, to the extent that the amount

(A) relates to an activity

(I) that is not a resource activity of the taxpayer, and

(II) that is

1. the production, processing, manufacturing, distribution, marketing, transportation or sale of any property,

2. carried out for the purpose of earning income from property, or

3. the rendering of a service by the taxpayer to another person for the purpose of earning income of the taxpayer, and

(B) does not relate to a resource activity of the taxpayer,

(b) all amounts each of which is the amount, if any, by which

(i) the amount that would have been charged to the taxpayer by a person or partnership with whom the taxpayer was not dealing at arm's length if the taxpayer and that person or partnership had been dealing at arm's length

(A) for the use after March 6, 1996 and in the year of a property (other than money) owned by that person or partnership, or

(B) for the provision after March 6, 1996 and in the year by that person or partnership of a service to the taxpayer

exceeds the total of

(ii) the amount charged to the taxpayer for the use of that property or the provision of that service in that period, and

(iii) the portion of the amount described in subparagraph (i) that, if it had been charged, would not have been deductible in computing the taxpayer's resource profits, and

(c) where the year ends after February 21, 1994, all amounts added under subsection 80(13) of the Act in computing the taxpayer's gross resource profits for the year.

History: Subsec. 1204(1.1) added by P.C. 1996-1488, subsec. 2(5), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991 except that, for each taxation year that began before July 24, 1992, the amount determined under para. 1204(1.1)(a) is deemed to be equal to the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total that would otherwise be determined under that paragraph;

B is the number of days in the year that are after July 23, 1992; and

C is the number of days in the year.

(1.2) For the purposes of paragraph (1.1)(b) and this subsection,

(a) a taxpayer is considered not to deal at arm's length with a partnership where the taxpayer does not deal at arm's length with any member of the partnership;

(b) a partnership is considered not to deal at arm's length with another partnership where any member of the first partnership does not deal at arm's length with any member of the second partnership;

(c) where a taxpayer is a member, or is deemed by this paragraph to be a member, of a partnership that is a member of another partnership, the taxpayer is deemed to be a member of the other partnership; and

(d) the provision of a service to a taxpayer does not include the provision of a service by an individual in the individual's capacity as an employee of the taxpayer.

History: Subsec. 1204(1.2) added by P.C. 1996-1488, subsec. 2(5), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after March 6, 1996.

(2) For greater certainty, for the purposes of this section, in computing the income or loss of a trust for a taxation year from the sources described in paragraphs (1)(b) and (b.1), no deduction shall be made in respect of amounts deductible by the trust pursuant to subsection 104(6) or (12) of the Act.

History: Subsec. 1204(2) substituted by P.C. 1985-465, subsec. 5(6), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

(3) A taxpayer's income or loss from a source described in paragraph (1)(b) does not include

(a) any income or loss derived from transporting, transmitting or processing (other than processing described in clause (1)(b)(ii)(C), (iii)(C) or (iv)(C) or subparagraph (1)(b)(v) or (vi)) petroleum, natural gas or related hydrocarbons or sulphur from a natural accumulation of petroleum or natural gas;

(b) any income or loss arising because of the application of paragraph 12(1)(z.1) or (z.2) or (z.5) or section 107.3 of the Act; and

(c) any income or loss that can reasonably be attributable to a service rendered by the taxpayer (other than processing described in subparagraph (1)(b)(iii), (iv), (v) or (vi) or activities carried out by the taxpayer as a coal mine operator).

History: Paras. 1204(3)(a), (b) and (c) amended by P.C. 1999-629, subsecs. 6(3) and (4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, paras. (a) and (b) applicable to taxation years that begin after 1996 and para. (c) applicable to taxation years that begin after March 6, 1996.

Subsec. 1204(3) amended by P.C. 1996-1488, subsec. 2(6), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after February 22, 1994, except that para. 1204(3)(c) does not apply to taxation years that began before March 7, 1996.

Subsec. 1204(3) substituted by P.C. 1985-465, subsec. 5(7), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981.

Subsec. 1204(3) substituted by P.C. 1981-3329, subsec. 5(5), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

(4) Notwithstanding any other provision in this Part, for the purposes of this Part, the income or loss of a taxpayer for a taxation year shall be computed on the assumption that paragraphs 12(1)(o) and 18(1)(m) and subsections 69(6) to (10) of the Act were not applicable to

(a) amounts receivable and the fair market value of any property receivable by the Crown as a royalty, tax, rental or levy with respect to the Syncrude Project, or as an amount however described, that may reasonably be regarded as being in lieu of any of the preceding amounts,

(b) dispositions of leased substances to the Crown by the participant, and

(c) acquisitions of leased substances from the Crown by the participant,

where the taxpayer has been granted a remission of tax for the year pursuant to subsection 3(1) of the *Syncrude Remission Order*.

(5) For the purposes of subsection (4), "Crown", "leased substances", "participant" and "Syncrude Project" have the meanings assigned by section 2 of the *Syncrude Remission Order*.

History: Subsecs. 1204(4), (5) added by P.C. 1980-425, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1979 *et seq.*

(6) [Repealed]

History: Subsec. 1204(6) repealed by P.C. 1996-1488, subsec. 2(7), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after 1990.

That portion of subsec. 1204(6) preceding para. (a) substituted by P.C. 1990-162, subsec. 3(5), *Canada Gazette*, applicable to taxation years ending after March 1985.

Subsec. 1204(6) added by P.C. 1981-411, February 19, 1981, *Canada Gazette*, Part II, March 11, 1981, effective in respect of the period before these Regulations are published in the *Canada Gazette* commencing December 12, 1979.

Selected Cases [s. 1204]: *Gulf Canada Resources Ltd. v. Canada*, [1996] 1 C.T.C. 55 (TCC) (Bitumen and bituminous sands were "petroleum. . .or related hydrocarbons").

Definitions [Reg. 1204]: "amount" — ITA 248(1); "arm's length" — ITA 251(1), Reg. 1204(1.2)(a), (b); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "Canadian field processing" — ITA 248(1); "coal mine operator" — Reg. 1206(1); "crown leased substances" — Reg. 1204(5); "disposition", "employee" — ITA 248(1); "foreign exploration and development expenses" — ITA 66(15), 248(1); "gross resource profits" — Reg. 1204(1); "individual" — ITA 248(1); "member" — Reg. 1204(1.2)(c); "mineral resource", "oil or gas well" — ITA 248(1); "ore" — Reg. 1206(1); "participant" — Reg. 1204(5); "person" — ITA 248(1); "proceeds of disposition" — Reg. 1206(1); "property" — ITA 248(1); "provision of a service" — Reg. 1204(1.2)(d); "related" — ITA 251(2)–(6); "resource", "resource activity" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "share" — ITA 248(1); "Syncrude Project" — Reg. 1204(5); "tar sands ore" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

1205. Earned depletion base — **(1)** For the purposes of this Part "earned depletion base" of a taxpayer as of a particular time means the amount by which 33⅓ per cent of the aggregate of

(a) all amounts, in respect of expenditures (other than expenditures to acquire property under circumstances that entitled the taxpayer to a deduction under section 1202 or would so entitle the taxpayer if the amounts referred to in paragraphs 1202(2)(a) and (b) were sufficient for the purpose) incurred by the taxpayer after November 7, 1969 and before the particular time, each of which was

(i) a Canadian exploration and development expense or would have been such an expense if it had been incurred after 1971 and was actually incurred before May 7, 1974, other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian exploration expense or an exploration, prospecting and development expense, as the case may be, of the taxpayer,

(B) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer,

(C) a Canadian exploration and development expense that was incurred after a mine had come into production in reasonable commercial quantities and may reasonably be considered to be related to the mine or to a potential or actual extension thereof,

(D) an expense that would have been described in clause (C) if it had been incurred after 1971,

(E) an expense renounced by the taxpayer under subsection 66(10) of the Act or subsection 29(7) of the *Income Tax Application Rules*,

(F) an amount that, by virtue of subparagraph 66(15)(b)(iv) [66(15)"Canadian exploration and development expenses"(d)] of the Act, was a Canadian exploration and development expense or would have been such an expense if it had been incurred after 1971, if such amount was a cost or expense referred to in clause (A), (B), (C), (D) or (E) that was incurred by an associa-

tion, partnership or syndicate referred to in that subparagraph, or

(G) an amount that, by virtue of subparagraph 66(15)(b)(v) [66(15)"Canadian exploration and development expenses"(e)] of the Act, was a Canadian exploration and development expense or would have been such an expense if it had been incurred after 1971, if such amount was a cost or expense referred to in clause (A), (B), (C), (D) or (E) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

(ii) the stated percentage of a Canadian exploration expense other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian exploration expense of the taxpayer,

(B) an expense renounced by the taxpayer under subsection 66(10.1) of the Act,

(C) an amount that, by virtue of subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A), (B), (E), (F), (G) or (H) that was incurred by a partnership referred to in that subparagraph,

(D) an amount that, by virtue of subparagraph 66.1(6)(a)(v) [66.1(6)"Canadian exploration expense"(i)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A), (B), (E), (F), (G) or (H) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

(E) an amount described in clause 66.1(6)(a)(ii)(B) [66.1(6)"Canadian exploration expense"(c)(ii)] or (ii.1)(B) [subpara. (d)(ii)] of the Act,

(F) an amount that was a Canadian exploration and development overhead expense of the taxpayer,

(G) an amount that was a Canadian oil and gas exploration expense of the taxpayer, or

(H) an expense described in subparagraph 66.1(6)(a)(iii) [66.1(6)"Canadian exploration expense"(f)] of the Act incurred after April 19, 1983,

(iii) a Canadian development expense incurred before 1981 other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian development expense of the taxpayer,

(B) an expense renounced by the taxpayer under subsection 66(10.2) of the Act,

(C) an amount referred to in subparagraph 66.2(5)(a)(iii) [66.2(5)"Canadian development expense"(e)] of the Act,

(D) an amount that, by virtue of subparagraph 66.2(5)(a)(iv) [66.2(5)"Canadian development expense"(f)] of the Act, was a Canadian development expense, if such amount was an expense referred to in clause (A), (B) or (C) that was incurred by a partnership referred to in that subparagraph, or

(E) an amount that, by virtue of subparagraph 66.2(5)(a)(v) [66.2(5)"Canadian development expense"(g)] of the Act, was a Canadian development expense, if such amount was an expense referred to in clause (A), (B) or (C) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

(iv) the stated percentage of the capital cost to the taxpayer of any processing property acquired by the taxpayer principally for the purpose of

(A) processing in Canada

(I) ore, other than iron ore or tar sands ore, from a qualified resource to any stage that is not beyond the prime metal stage or its equivalent,

(II) iron ore from a qualified resource to any stage that is not beyond the pellet stage or its equivalent, or

(III) tar sands ore from a qualified resource to any stage that is not beyond the crude oil stage or its equivalent, or

(B) processing in Canada

(I) ore, other than iron ore or tar sands ore, from an exporting resource beyond the furthest stage to which such ore or similar ore from that resource was ordinarily processed in Canada before such acquisition but not beyond the prime metal stage or its equivalent,

(II) iron ore from an exporting resource beyond the furthest stage to which such ore or similar ore from that resource was ordinarily processed in Canada before such acquisition but not beyond the pellet stage or its equivalent, or

(III) tar sands ore from an exporting resource beyond the furthest stage to which such ore or similar ore from that resource was ordinarily processed in Canada before such acquisition but not beyond the crude oil stage or its equivalent,

(v) where the taxpayer is a corporation that incurred a Canadian oil and gas exploration expense in respect of conventional lands in a calendar year after 1980 and before 1984, the specified percentage for that year of such expense to the extent that it is not an amount or expense referred to in clause (ii)(A), (B) or (F) or an expense that would be referred to in clause (ii)(C) or (D) if the references in those clauses to "clause (A), (B), (E), (F), (G) or (H)" were read as "clause (A), (B) or (F)", or

(vi) where the taxpayer is a corporation,

(A) the specified percentage in respect of a Canadian oil and gas exploration expense in respect of non-conventional lands incurred in a calendar year after 1980 and before 1985 to the extent that it is not an amount or expense referred to in clause (ii)(A), (B) or (F) or an expense that would be referred to in clause (ii)(C) or (E) if the references in those clauses to "clause (A), (B), (E), (F), (G) or (H)" were read as "clause (A), (B) or (F)",

(B) the stated percentage of a Canadian development expense incurred after 1980 in respect of a qualified tertiary oil recovery project of the taxpayer to the extent that such expense is not

(I) an amount or expense described in any of clauses (iii)(A) to (E),

(II) an amount that was a Canadian exploration and development overhead expense of the taxpayer, or

(III) an eligible expense within the meaning of the *Canadian Exploration and Development Incentive Program Act* in respect of which the taxpayer, a partnership of which the taxpayer was a member, a principal-business corporation of which the taxpayer was a shareholder or a joint exploration corporation of which the taxpayer was a shareholder corporation has received, is entitled to receive or may reasonably be expected to receive at any time an incentive under that Act,

(B.1) the stated percentage of a Canadian exploration expense incurred after 1981 in respect of a qualified tertiary oil recovery project of the taxpayer that

(I) would be referred to in subparagraph 66.1(6)(a)(ii) [66.1(6)"Canadian exploration expense"(c)] or (ii.1) [para. (d)] of the Act if subparagraph 66.1(6)(a)(ii) [66.1(6)"Canadian exploration expense"(c)] were read without reference to clause (B) [subpara. (ii)] thereof, or

(II) would be referred to in subparagraph 66.1(6)(a)(iv) or (v) [66.1(6)"Canadian exploration expense"(h) or (i)] of the Act if the Act were read without reference to clause 66.1(6)(a)(ii)(B) [66.1(6)"Canadian exploration expense"(c)(ii)] and subparagraphs 66.1(6)(a)(i), (i.1), (ii.2), (iii) and (iii.1) [66.1(6)"Canadian exploration expense"(a), (b), (e), (f) and (g)],

other than the portion of such expense referred to in subclause (I) or (II) that is

(III) described in any of clauses (ii)(A) to (D) and (F),

(IV) included in the amount determined under subparagraph (v) or clause (vi)(A),

(V) described in subclause (B)(III), or

(VI) an eligible expense within the meaning of the *Canadian Exploration Incentive Program Act* in respect of which the taxpayer, a partnership of which the taxpayer was a member or a principal-business corporation of which the taxpayer was a shareholder corporation, has received, is entitled to receive or may reasonably be expected to receive at any time an incentive under that Act,

(C) the stated percentage of the capital cost to it of property that is tertiary recovery equipment, and

(D) the stated percentage of the capital cost to it of property that is, or but for Class 41 of Schedule II would be, included in Class 10 in Schedule II by virtue of paragraph (u) of the description of that Class, other than the capital cost to it of property that had, before the property was acquired by it, been used for any purpose whatever by any person with whom it was not dealing at arm's length,

History: Cl. 1205(1)(a)(i)(E) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Those portions of para. 1205(1)(a) preceding subpara, (i), subparas. (1)(a)(ii) and (1)(a)(iv) preceding cl. (A) of each, and cls. (1)(a)(vi)(B) and (B.1) preceding subcl. (I) of each, substituted by P.C. 1990-2780, subsecs. 6(1), (2), (3), (4), (6), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subcl. 1205(1)(a)(vi)(B)(III) added by subsec. 6(5) of the said P.C. 1990-2780, applicable in respect of expenditures incurred after March 1987.

That portion of cl. 1205(1)(a)(vi)(B.1) following subcl. (II) substituted by subsec. 6(7) of the said P.C. 1990-2780, applicable in respect of expenditures incurred after September 1988.

Cls. 1205(1)(a)(vi)(C), (D) substituted by subsec. 6(8) of the said P.C. 1990-2780, applicable to 1988 *et seq*.

Subcls. 1205(1)(a)(vi)(B.1)(I), (II) substituted by P.C. 1990-2256, s. 3, October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenses incurred after March 1987.

Cl. 1205(1)(a)(i)(B) substituted by P.C. 1990-162, s. 4, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable to taxation years commencing after 1984.

Subpara. 1205(1)(a)(v) substituted; cls. 1205(1)(a)(ii)(C), (D), (E), 1205(1)(a)(iv)(A) and (B), 1205(1)(a)(vi)(A) substituted; cl. 1205(1)(a)(ii)(H), 1205(1)(a)(vi)(B.1) added; that portion of cl. 1205(1)(a)(vi)(B) preceding subcl. (I) substituted by P.C. 1985-465, subsecs. 6(1)–(9), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable, as to cls. 1205(1)(a)(ii)(C), (D), (H) and subpara. 1205(1)(a)(v) with respect to expenses incurred after April 19, 1983; as to cls. 1205(1)(a)(iv)(A) and (B) with respect to property acquired or expenditures made, as the case may be, in taxation years commencing after November 12, 1981; as to cl. 1205(1)(a)(vi)(A), the renumbering of s. 1205, and the substituted portion of cl. 1205(1)(a)(vi)(B), commencing January 1, 1981 except that for the period before April 20, 1983, the reference to "in clause (ii)(A), (B) or (F)" or an expense that would be referred to in clause (ii)(C) or (D) if the references in those clauses to "clause (A), (B), (E), (F), (G) or (H)" were read as "clause (A), (B) or (F)" in 1205(1)(a)(vi)(A) shall be read as "in any of clauses (ii)(A) to (D) and (F)"; as to cl. 1205(1)(a)(ii)(E), to 1984 *et seq.*; as to cl. 1205(1)(a)(vi)(B.1), from January 1, 1982.

All that portion of para. 1205(a) preceding subpara. (i), cls. 1205(a)(i)(A), (ii)(A), all that portion of subpara. 1205(a)(iii) preceding cl. (B) substituted, cls. 1205(a)(ii)(F), (G), subparas. 1205(a)(v), (vi) added by P.C. 1981-3329, subsecs. 6(1)–(6), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable as to that portion of para. 1205(a) preceding subpara. (i), in respect of taxation years ending after December 11, 1979, as to cls. 1205(a)(ii)(F), (G) and that portion of subpara. 1205(a)(iii) preceding cl. (A) and subparas. 1205(a)(v), (vi), effective January 1, 1981.

Cls. 1205(a)(ii)(C), (iii)(D) substituted, effective December 6, 1979, cl. 1205(a)(ii)(E) added, effective May 6, 1974, subpara. 1205(a)(iv) substituted, by P.C. 1980-1483, s. 3, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

(b) all amounts, in respect of expenditures (other than expenditures referred to in paragraph (a) or expenditures to acquire property under circumstances that entitled the taxpayer to a deduction under section 1202 or would so entitle the taxpayer if the amounts referred to in paragraphs 1202(2)(a) and (b) were sufficient for the purpose) incurred by the taxpayer after May 8, 1972 and before the particular time, each of which was the stated percentage of the capital cost to the taxpayer of property that is or, but for Class 41, would be included in Class 10 in Schedule II because of paragraph (k) of the description of that Class and that was acquired for the purpose of processing in Canada

(i) ore (other than iron ore or tar sands ore), after its extraction from a mineral resource, to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore, after its extraction from a mineral resource, to any stage that is not beyond the pellet stage or its equivalent, or

(iii) tar sands ore, after its extraction from a mineral resource, to any stage that is not beyond the crude oil stage or its equivalent,

other than the capital cost to him of property that had, before the property was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length,

History: The opening words of para. 1205(1)(b) before subpara. (i) amended by P.C. 1996-1488, subsec. 3(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to 1988 *et seq.*

That portion of para. 1205(1)(b) preceding subpara. (i) substituted by P.C. 1990-2780, subsec. 6(9), December 20, 1990, *Canada Gazette*, Part II, applicable to taxation years ending after February 17, 1987.

Para. 1205(1)(b) substituted by P.C. 1985-465, subsec. 6(10), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to property acquired or expenditures made, as the case may be, in taxation years commencing after November 12, 1981.

Para. 1205(b) substituted by P.C. 1981-3329, subsec. 6(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing December 12, 1979.

(c) all amounts, in respect of expenditures (other than expenditures referred to in paragraph (a) or (b) or expenditures to acquire property under circumstances that entitled the taxpayer to a deduction under section 1202 or would so entitle the taxpayer if the amounts referred to in paragraphs 1202(2)(a) and (b) were sufficient for the purpose) incurred by the taxpayer before the particular time, each of which was the stated percentage of the capital cost to the taxpayer of property (other than property that had, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length) that is included in Class 28 or paragraph (a) of Class 41, in Schedule II, other than property so included

(i) by virtue of the first reference in Class 28 to paragraph (l) of Class 10 in Schedule II, where the property was acquired by the taxpayer before November 17, 1978,

(ii) by virtue of the reference in Class 28 to paragraph (m) of Class 10 in Schedule II,

(iii) that is bituminous sands equipment acquired by an individual, or

(iv) that is bituminous sands equipment acquired by a corporation before 1981,

History: Para. 1205(1)(c) substituted by P.C. 1990-2780, subsec. 6(10), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987 except that in its application to a taxation year ending before 1988, the para. shall be read without reference to the words "or paragraph (a) of Class 41".

Para. 1205(c) substituted by P.C. 1981-3329, subsec. 6(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective, as to that portion of para. 1205(c) preceding subpara. (i), commencing December 12, 1979, and, as to subparas. 1205(c)(iii), (iv), commencing January 1, 1981.

Para. 1205(c) preceding (i) substituted by P.C. 1980-1483, subsecs. 3(4), (5), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

Para. 1205(c) substituted by P.C. 1979-649, s. 4, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

Para. 1205(c) substituted by P.C. 1978-344, s. 4, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

(d) all expenditures (other than expenditures referred to in paragraph (a), (b) or (c)) each of which was incurred by him before November 8, 1969 relating to a mine that came into production in reasonable commercial quantities before that date and that were incurred for the purpose of

(i) exploration in respect of, or

(ii) development of the mine for the purpose of gaining or producing income from the extraction of material from,

a bituminous sands deposit, an oil sands deposit or an oil shale deposit,

(d.1) three times the total of all amounts each of which is an amount equal to the lesser of

(i) the amount that would be determined under subsection 1210(1) in computing the taxpayer's income for a taxation year that ends before the particular time, if the amount determined for C under that subsection were nil, and

(ii) the amount determined for C under subsection 1210(1) in respect of the taxpayer for that year, and

History: Para. 1205(1)(d.1) amended by P.C. 1996-1488, subsec. 3(2), September 24, 1996, *Canada Gazette* Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

Para. 1205(1)(d.1) added by P.C. 1985-465, subsec. 6(11), February 14, 1985, *Canada Gazette* Part II, March 6, 1985, applicable to 1984 *et seq.*

(d.2) three times the aggregate of all amounts each of which is the specified amount determined under subsection 1202(4) in respect of the taxpayer for a taxation year ending after February 17, 1987 and before the particular time,

History: Para. 1205(1)(d.2) added by P.C. 1990-2780, subsec. 6(11), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after February 17, 1987.

exceeds the aggregate of

(e) all amounts deducted by the taxpayer under section 1201 in computing his income for all taxation years ending after May 6, 1974 and before the particular time;

History: Para. 1205(e) substituted by s. 6 of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

(f) 33⅓ per cent of the aggregate of all amounts, each of which is the stated percentage of a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was

(i) included in the capital cost to him of depreciable property described in subparagraph (a)(iv), clause (a)(vi)(C) or (D) or paragraph (b) or (c), or

(ii) an expenditure described in paragraph (d);

History: That portion of para. 1205(1)(f) preceding subpara. (i) substituted by P.C. 1990-2780, subsec. 6(12), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Para. 1205(f) substituted by P.C. 1981-3329, subsec. 6(8), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981.

(g) 33⅓ per cent of the aggregate of all amounts, each of which is an amount

(i) that became receivable by the taxpayer after April 28, 1978 and before the earlier of December 12, 1979 and the particular time, and

(ii) in respect of which the consideration given by the taxpayer therefor was a property (other than a share, or a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given) or services, the cost of which may reasona-

bly be regarded as having been primarily an expenditure that was added in computing

(A) the taxpayer's earned depletion base by reason of subparagraph (a)(i), (ii) or (iii) or paragraph (d), or

(B) the earned depletion base of an original owner of a property by reason of subparagraph (a)(i), (ii) or (iii) or paragraph (d) as it applied to the original owner, where the taxpayer acquired the property in circumstances in which subsection 1202(2) applies,

(h) 33⅓ per cent of the aggregate of all amounts, each of which is

(i) an amount in respect of a disposition of property (other than a disposition of property that had been used by the taxpayer to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer after April 28, 1978 and before the earlier of December 12, 1979 and the particular time, the capital cost of which was added in computing

(A) the taxpayer's earned depletion base by reason of subparagraph (a)(iv) or paragraph (b) or (c), or

(B) the earned depletion base of an original owner of a property by reason of subparagraph (a)(iv) or paragraph (b) or (c) as it applied to the original owner, where the taxpayer acquired the property in circumstances in which subsection 1202(2) applies, and

(ii) equal to the lesser of

(A) the proceeds of disposition of the property, and

(B) the capital cost of the property to the taxpayer, where clause (i)(A) applies, or the original owner, where clause (i)(B) applies, computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business,

(i) any amount required by paragraph 1202(2)(b) (as it read in its application to taxation years ending before February 18, 1987) or paragraph 1202(3)(a) to be deducted at or before the particular time in computing the taxpayer's earned depletion base,

History [Reg. 1205(1)(g)–(i)]: Paras. 1205(1)(g) to (i) substituted by P.C. 1990-2780, subsec. 6(13), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Paras. 1205(g), (h) substituted by P.C. 1981-3329, subsec. 6(8), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective, as to para. 1205(g) and that portion of para. 1205(h) preceding subpara. (i), commencing December 12, 1979.

All that portion of para. 1205(h) preceding subpara. (i) substituted by P.C. 1980-1483, s. 3, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

Paras. 1205(g) to (i) added by P.C. 1979-649, s. 4, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 29, 1978.

(j) 33⅓ per cent of the aggregate of all amounts, each of which is in respect of an amount of assistance or benefit in respect of Canadian exploration expenses or Canadian development expenses or that may reasonably be related to Canadian exploration activities or Canadian development activities, whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit that

(i) the taxpayer before the particular time has received or was entitled to receive, or that the taxpayer at or after the particular time becomes entitled to receive, or

(ii) an original owner or predecessor owner of a property before the particular time has received or was entitled to receive, or at or after the particular time becomes entitled to receive, where the original owner or the predecessor owner received, became entitled to receive or becomes entitled to receive that amount

(A) at or after the time at which the property was acquired by the taxpayer in circumstances in which subsection 1202(2) applies, and

(B) before the time at which the taxpayer becomes a predecessor owner of the property,

and that is equal to

(iii) where the assistance or benefit was in respect of an amount added by reason of subparagraph (a)(ii) or clause (a)(vi)(B) or (B.1) in computing

(A) the earned depletion base of the taxpayer (other than such portion thereof included in determining an amount described in paragraph 1202(2)(a) before the particular time), or

(B) the portion of the earned depletion base of the original owner included in determining an amount described in paragraph 1202(2)(a) before the particular time,

the stated percentage of the amount of the assistance or benefit, and

(iv) where the assistance or benefit was in respect of an amount of Canadian oil and gas exploration expense added by reason of subparagraph (a)(v) or clause (a)(vi)(A) in computing

(A) the earned depletion base of the taxpayer (other than such portion thereof included in determining an amount described in paragraph 1202(2)(a) before the particular time), or

(B) the portion of the earned depletion base of the original owner included in determining an amount described in paragraph 1202(2)(a) before the particular time,

the amount equal to the product obtained when the amount of the assistance or benefit is multiplied by the specified percentage in respect of the expense for the calendar year in which the taxpayer or the original owner, as the case may be, incurred the expense, and

History: Para. 1205(1)(j) substituted by P.C. 1990-2780, subsec. 6(13), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Para. 1205(1)(j) substituted by P.C. 1985-465, subsec. 6(12), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable commencing January 1, 1981 except that in respect of amounts that on or before March 6, 1985 become receivable, that part of para. 1205(1)(j) preceding subpara. (iii) shall be read as:

(j) 33⅓ per cent of the aggregate of all amounts, each of which is an amount of assistance or benefit described in subparagraph 66.1(6)(b)(ix) or 66.2(5)(b)(xi) of the Act that

(i) the taxpayer before the particular time has received or was entitled to receive, or

(ii) a predecessor before the particular time has received or was entitled to receive where the taxpayer is a successor corporation or second successor corporation, as the case may be, to the

predecessor at the time the predecessor received or became entitled to receive that amount equal to.

Para. 1205(j) added by P.C. 1981-3329, subsec. 6(9), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

(k) the amount, if any, by which

(i) the aggregate of all amounts that would be determined under paragraphs 1212(3)(d) to (i)

exceeds

(ii) the aggregate of all amounts that would be determined under paragraphs 1212(3)(a) to (c)

in computing his supplementary depletion base at the particular time.

History: Para. 1205(1)(k) added by P.C. 1985-465, subsec. 6(13), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1984 *et seq.* except that the reference to "the amount" shall, for the 1984 taxation year, be read as "25 per cent of the amount", for the 1985 taxation year, be read as "50 per cent of the amount", and for the 1986 taxation year, be read as "75 per cent of the amount".

History [Reg. 1205(1)]: S. 1205 renumbered as subsec. 1205(1) by P.C. 1985-465, subsec. 6(1), February 14, 1985, *Canada Gazette* Part II, March 6, 1985, applicable from January 1, 1981.

(2) Where an expense is incurred before the particular time referred to in subsection (1) and a person at or after the particular time becomes entitled to receive an amount of assistance or benefit in respect of the expense, the amount of such assistance or benefit shall be included in "the amount of the assistance or benefit" referred to in subparagraphs (1)(j)(iii) and (iv) as of the particular time.

History: Subsec. 1205(2) added by P.C. 1985-465, subsec. 6(14), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to amounts that, after March 6, 1985, become receivable.

Selected Cases [Reg. 1205]: *Alcan Aluminum v. R.*, [1998] 2 C.T.C. 1 (FCA) (Calculation of earned depletion base to be made at end of year).

Definitions [Reg. 1205]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bituminous sands" — ITA 248(1); "bituminous sands equipment" — Reg. 1206(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(a); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(a); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(a); "Canadian oil and gas exploration expense" — Reg. 1206(1); "Canadian resource property" — ITA 66(15), 248(1); "commencement" — *Interpretation Act* 35(1); "conventional lands" — Reg. 1206(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "disposition" — ITA 248(1); "disposition of property" — Reg. 1206(1); "earned depletion base" — Reg. 1202(1), 1205(1); "exporting resource" — Reg. 1206(1); "individual" — ITA 248(1); "mine" — Reg. 1206(1); "mineral resource" — ITA 248(1); "non-conventional lands", "ore", "original owner" — Reg. 1206(1); "person" — ITA 248(1); "predecessor owner", "proceeds of disposition", "processing property" — Reg. 1206(1); "property" — ITA 248(1); "qualified resource", "qualified tertiary oil recovery project" — Reg. 1206(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "share", "shareholder" — ITA 248(1); "specified percentage", "stated percentage" — Reg. 1206(1); "successor" — Reg. 1202(7); "tar sands ore" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "tertiary recovery equipment" — Reg. 1206(1).

1206. Interpretation — (1) In this Part,

"bituminous sands equipment" means property of a taxpayer that

(a) is included in Class 28 or in paragraph (a) of Class 41 in Schedule II, other than property so included

(i) by virtue of the first reference in Class 28 to paragraph (l) of Class 10 in Schedule II, where the property was acquired by the taxpayer before November 17, 1978, or

(ii) by virtue of the reference in Class 28 to paragraph (m) of Class 10 in Schedule II, and

(b) was acquired by the taxpayer after April 10, 1978 principally for the purpose of gaining or producing income from one or more mines, each of which is a location in a bituminous sands deposit, oil sands deposit or oil shale deposit from which material is extracted;

History: Para. (a) of "bituminous sands equipment" in subsec. 1206(1) substituted by P.C. 1990-2780, subsec. 7(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

Definition of "bituminous sands equipment" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"Canadian exploration and development overhead expense" of a taxpayer means a Canadian exploration expense or a Canadian development expense of the taxpayer made or incurred after 1980

Proposed Amendment — Reg. 1206(1)"Canadian exploration and development overhead expense" opening words

"Canadian exploration and development overhead expense" of a taxpayer means a Canadian exploration expense or a Canadian development expense of the taxpayer made or incurred after 1980 that is not a Canadian renewable and conservation expense (in this definition having the meaning assigned by section 1219) nor a taxpayer's share of a Canadian renewable and conservation expense incurred by a partnership and

Application: The September 16, 1997 draft regulations, s. 2, will amend the opening words of the definition "Canadian exploration and development overhead expense" in subsec. 1206(1) to read as above, applicable to expenses incurred after December 5, 1996.

Technical Notes: [The following Technical Notes were released with the December 5, 1996 draft legislation.]

Part XII sets out a number of rules which affect the resource sector.

Subsection 1206(1) sets out definitions that are relevant for the purposes of Part XII.

The definition "Canadian exploration and development overhead expense" (CEDOE) generally applies for the purpose of the flow-through share rules prohibiting renunciation of such an overhead expense. This definition is amended, consequential on the introduction of the CRCE definition in subsection 66.1(6) of the Act, to exclude CRCE from CEDOE. Overhead expenses are, however, generally excluded from CRCE by proposed subsection 1219(2).

(a) that was in respect of the administration, management or financing of the taxpayer,

(b) that was in respect of the salary, wages or other remuneration or related benefits paid in respect of a person employed by the taxpayer whose duties were not all or substantially all directed towards exploration or development activities,

(c) that was in respect of the upkeep or maintenance of, taxes or insurance in respect of, or rental or leasing of, property other than property all or substantially all of the use of which by the taxpayer was for the purposes of exploration or development activities, or

(d) that may reasonably be regarded as having been in respect of

(i) the use of or the right to use any property in which any person who was connected with the taxpayer had an interest,

(ii) compensation for the performance of a service for the benefit of the taxpayer by any person who was connected with the taxpayer, or

(iii) the acquisition of any materials, parts or supplies from any person who was connected with the taxpayer

to the extent that the expense exceeds the least of amounts, each of which was the aggregate of the costs incurred by a person who was connected with the taxpayer

(iv) in respect of the property,

(v) in respect of the performance of the service, or

(vi) in respect of the materials, parts or supplies;

History: Paras. (b) and (c) of "Canadian exploration and development overhead expense" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981

"Canadian exploration and development overhead expense" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"Canadian oil and gas exploration expense" of a taxpayer means an outlay or expense made or incurred after 1980 that would be a Canadian exploration expense of the taxpayer within the meaning assigned by paragraph 66.1(6)(a) [66.1(6)"Canadian exploration expense"] of the Act if that paragraph were read without reference to subparagraphs (iii) and (iii.1) [paras. (f) and (g)] thereof and if the reference in subparagraphs (iv) and (v) [paras. (h) and (i)] thereof to "any of subparagraphs (i) to (iii.1) [paras. (a) to (g)]" were read as a reference to "any of subparagraphs (i) to (ii.2) [paras. (a) to (e)]", other than an outlay or expense that was a Canadian exploration expense by virtue of clause 66.1(6)(a)(ii)(B) or (ii.1)(B) [66.1(6)"Canadian exploration expense"(c)(ii) or (d)(ii)] of the Act that was in respect of a qualified tertiary oil recovery project;

History: Paras. (b) and (c) of "Canadian oil and gas exploration expense" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

"Canadian oil and gas exploration expense" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"coal mine operator" means a person who undertakes all or substantially all of the activities involved in the production of coal from a resource;

Related Provisions: Reg. 1104(2)"coal mine operator" — Same definition for capital cost allowance.

History: The definition "coal mine operator" added to subsec. 1206(1) by P.C. 1999-629, subsec. 7(5), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996.

"conventional lands" means lands situated in Canada other than non-conventional lands;

"disposition of property" has the meaning assigned by paragraph 13(21)(c) [13(21)"disposition of property"] of the Act;

History: Definition of "disposition of property" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"enhanced recovery equipment" means property of a taxpayer that

(a) is included in Class 10 in Schedule II by virtue of paragraph (j) of the description of that Class, and

(b) was acquired by the taxpayer after April 10, 1978 and before 1981 for use in the production of oil, from a reservoir or a deposit of bituminous sand, oil sand or oil shale in Canada operated by the taxpayer, that is incremental to oil that would be recovered using primary recovery techniques alone,

other than property

(c) used by the taxpayer as part of a primary recovery process prior to the use described in paragraph (b),

(d) that had, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length, or

(e) that has been used by any person before April 11, 1978 in the production of oil, from a reservoir in Canada, that is incremental to oil that would be recovered using primary recovery techniques alone;

History: "Enhanced recovery equipment" substituted by P.C. 1990-2780, subsec. 7(2), deemed in force as of April 11, 1978.

Para. (b) of "enhanced recovery equipment" substituted by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

Para. (c) of "enhanced recovery equipment" substituted by P.C. 1980-1483, s. 4, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

Definition of "enhanced recovery equipment" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"exempt partnership" in respect of a taxpayer at a particular time means a partnership of which the taxpayer was a member throughout the period beginning on December 20, 1991 and ending at the particular time, where all or substantially all of the fair market value of the property of the partnership at the particular time is attributable to property held in connection with one or more working interests that were held by the partnership on December 20, 1991 for the production of minerals, petroleum, natural gas or related hydrocarbons, unless

(a) any of the depreciable property acquired after December 20, 1991 and before the particular time by the partnership in connection with one of the working interests had, before the time of the acquisition, been owned by the taxpayer (or any other person with whom the taxpayer did not deal at arm's length) and been used by the taxpayer (or that other person) in connection with that working interest, or

(b) it is reasonable to consider that, before the particular time, amounts were charged to the partnership that would not have been so charged if section 1210 were read without reference to subsection (4) of that section;

History: The definition "exempt partnership" added to subsec. 1206(1) by P.C. 1996-1488, subsec. 4(3), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to fiscal periods of partnerships that begin after December 20, 1991.

"exporting resource" means, in relation to a particular processing property of a taxpayer, a resource the ore or any portion thereof produced from which during the year immediately preceding the day on which the property was acquired by the taxpayer was ordinarily processed outside Canada to any stage that is not beyond the prime metal stage or its equivalent;

"mine" means any location where material is extracted from a resource but does not include a well for the extraction of material from a deposit of bituminous sand, oil sand or oil shale;

History: "Mine" substituted by P.C. 1980-1483, s. 4, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective April 11, 1978.

"non-conventional lands" means lands that belong to Her Majesty in right of Canada, or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources, situated in

(a) the Yukon Territory, the Northwest Territories, or Sable Island, or

(b) those submarine areas, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater;

History: Paras. (b) and (c) of "non-conventional lands" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

"Non-conventional lands" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"ore" includes ore from a mineral resource that has been processed to any stage that is prior to the prime metal stage or its equivalent;

"original owner" of a property means a person

(a) who owned the property and disposed of it to a corporation that acquired it in circumstances in which subsection 1202(2) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property, and

(b) who would, but for paragraph 1202(2)(b) (as it read in its application to taxation years ending before February 18, 1987) or paragraph 1202(3)(a), as the case may be, be entitled in computing the person's income for a taxation year ending after the person disposed of the property to a deduction under section 1201 in respect of expenditures that were incurred by the person before the person disposed of the property;

History: "Original owner" added by P.C. 1990-2780, subsec. 7(5), applicable to taxation years ending after February 17, 1987.

"predecessor owner" of a property means a corporation

(a) that acquired the property in circumstances in which subsection 1202(2) applies, or would apply if the corporation had continued to own the property, to the corporation in respect of the property,

(b) that disposed of the property to another corporation that acquired it in circumstances in which subsection 1202(2) applies, or would apply if the other corporation had continued to own the property, to the other corporation in respect of the property, and

(c) that would, but for subsection 1202(10), be entitled in computing its income for a taxation year after it disposed of the property to a deduction under subsection 1202(2) in respect of expenditures incurred by an original owner of the property;

History: "Predecessor owner" added by P.C. 1990-2780, subsec. 7(5), applicable to taxation years ending after February 17, 1987.

"primary recovery" means the recovery of oil from a reservoir as a result of utilizing the natural energy of the reservoir to move the oil toward a producing well;

History: Definition of "primary recovery" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"proceeds of disposition" of property has the meaning assigned by paragraph 13(21)(d) [13(21)"proceeds of disposition"] of the Act;

History: Definition of "proceeds of disposition" added to subsec. 1206(1) by P.C. 1979-649, s. 5, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

"processing property" means property

(a) that is included in Class 10 of Schedule II because of paragraph (g) of the description of that Class or would be so included if that paragraph were read without reference to subparagraph (ii) of that paragraph and Schedule II were read without reference to Class 41, or

(b) that is included in Class 10 in Schedule II because of paragraph (k) of the description of that Class or would be so included if that paragraph were read without reference to the words following subparagraph (ii) of that paragraph and Schedule II were read without reference to Class 41,

other than property that had, before it was acquired by a taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length;

History: Paras. (a) and (b) of the definition "processing property" in subsec. 1206(1) amended by P.C. 1996-1488, subsec. 4(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to 1988 *et seq.*

"production royalty" means an amount in respect of a particular Canadian resource property included in computing the income of a taxpayer as a rental or royalty computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after 1981 from a natural accumulation of petroleum or natural gas in Canada (other than a resource) or from an oil or gas well in Canada or produced after June, 1988 from a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit, if

(a) the taxpayer has a Crown royalty in respect of

(i) such production, or

(ii) the ownership of property to which such production relates where the Crown royalty is computed by reference to an amount of production from the accumulation, oil or gas well or resource,

and it is reasonable to consider that the taxpayer would have had the Crown royalty if the taxpayer's only source of income had been the rental or royalty in respect of the particular property, or

(b) the taxpayer would, but for an exemption or allowance (other than a rate of nil) that is provided, pursuant to a statute, by a person referred to in subparagraph 18(1) (m) (i), (ii) or (iii) of the Act, have a Crown royalty in respect of which paragraph (a) is applicable;

History: Subpara. (a)(ii) of the definition "production royalty" in subsec. 1206(1) amended by P.C. 1996-1488, subsec. 4(2), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable in respect of rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after June 30, 1988.

Para. (b) of "production royalty" in subsec. 1206(1) amended by P.C. 1992-2335, Sch. II, s. 2, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective December 2, 1992.

"Production royalty" substituted by P.C. 1990-2780, subsec. 7(3), applicable (by subsec. 15(13), as amended by P.C. 1992-2335, Sch. I, s. 3, November 19, 1992, *Canada Gazette* Part II, December 2, 1992) in respect of rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after June 30, 1988, except that in its application to rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocar-

bons produced before November 16, 1989 the definition shall be read as follows:

> "production royalty" means an amount included in computing the income of a taxpayer as a rental or royalty computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after 1981 from a natural accumulation of petroleum or natural gas in Canada (other than a resource) or from an oil or gas well in Canada, or produced after June, 1988 from a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit, if
>
> (a) the taxpayer has a Crown royalty in respect of
>
> (i) such production, or
>
> (ii) the ownership of property to which such production relates where the Crown royalty is computed by reference to an amount of production from the property, or
>
> (b) the taxpayer would, but for an exemption or allowance (other than a rate of nil) that is provided, pursuant to a statute, by a person referred to in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act, have a Crown royalty referred to in paragraph (a);

That portion of "production royalty" preceding para. (a) substituted by P.C. 1990-162, subsec. 5(1), applicable to taxation years ending after March 1985.

The definition "production royalty" added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1982.

"qualified resource" means, in relation to a particular processing property of a taxpayer, a resource that, within a reasonable time after the property was acquired by him,

(a) came into production in reasonable commercial quantities, or

(b) was the subject of a major expansion whereby the greatest designed capacity, measured in tons of input of ore, of the mill that processed ore from the resource was not less than 25 per cent greater in the year immediately following the expansion than it was in the year immediately preceding the expansion;

"qualified tertiary oil recovery project" in respect of an expense incurred in a taxation year means a project that uses a method (including a method that uses carbon dioxide miscible, hydrocarbon miscible, thermal or chemical processes but not including a secondary recovery method) that is designed to recover oil from an oil well in Canada that is incremental to oil that would be recovered therefrom by primary recovery and a secondary recovery method, if

(a) a specified royalty provision applies in the year or in the immediately following taxation year in respect of the production, if any, or any portion thereof from the project or in respect of the ownership of property to which such production relates,

(b) the project is on a reserve within the meaning of the *Indian Act*, or

(c) the project is located in the Province of Ontario;

History: "Qualified tertiary oil recovery project" was added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985. The definition "qualified tertiary oil recovery project" (corrected by *Canada Gazette*, Part II, June 26, 1985, p. 2797) is applicable with respect to expenses incurred after 1980, except that for expenses incurred before 1982 the definition shall be read as follows:

> "qualified tertiary oil recovery project" in respect of an expense incurred in a taxation year means a project that uses a method (including a method that uses carbon dioxide miscible, hydrocarbon miscible, thermal or chemical processes but not including a secondary recovery method) that is designed to recover oil from an oil well in Canada that is incremental to oil that would be recovered therefrom by primary recovery and a secondary recovery method;

"resource" means any mineral resource in Canada;

"resource activity" of a taxpayer means

(a) the production by the taxpayer of petroleum, natural gas or related hydrocarbons or sulphur from

(i) an oil or gas well in Canada, or

(ii) a natural accumulation (other than a mineral resource) of petroleum or natural gas in Canada,

(b) the production and processing in Canada by the taxpayer or the processing in Canada by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource in Canada to any stage that is not beyond the pellet stage or its equivalent, and

(iii) tar sands ore from a mineral resource in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(c) the processing in Canada by the taxpayer of heavy crude oil recovered from an oil or gas well in Canada to any stage that is not beyond the crude oil stage or its equivalent,

(c.1) Canadian field processing carried on by the taxpayer,

(d) the processing in Canada by the taxpayer of

(i) ore (other than iron ore or tar sands ore) from a mineral resource outside Canada to any stage that is not beyond the prime metal stage or its equivalent,

(ii) iron ore from a mineral resource outside Canada to any stage that is not beyond the pellet stage or its equivalent, and

(iii) tar sands ore from a mineral resource outside Canada to any stage that is not beyond the crude oil stage or its equivalent, or

(e) the ownership by the taxpayer of a right to a rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada,

and, for the purposes of this definition,

(f) the production of a substance by a taxpayer includes exploration and development activities of the taxpayer with respect to the substance, whether or not extraction of the substance has begun or will ever begin,

(g) the production or the processing, or the production and processing, of a substance by a taxpayer includes activities performed by the taxpayer that are ancillary to, or in support of, the production or the processing, or the production and processing, of that substance by the taxpayer,

(h) the production or processing of a substance by a taxpayer includes an activity (including the ownership of property) that is undertaken before the extraction of the substance and that is undertaken for the purpose of extracting or processing the substance,

(i) the production or the processing, or the production and processing, of a substance by a taxpayer includes activities that the taxpayer undertakes as a consequence of the production or the processing, or the production and processing, of that substance, whether or

not the production, the processing or the production and processing of the substance has ceased, and

(j) notwithstanding paragraphs (a) to (i), the production, the processing or the production and processing of a substance does not include any activity of a taxpayer that is part of a source described in paragraph 1204(1)(b), where

(i) the activity

(A) is the transporting, transmitting or processing (other than processing described in subparagraph 1206(1)"resource activity"(b) (iii), paragraph 1206(1)"resource activity"(c) or (c.1) or subparagraph 1206(1)"resource activity"(d) (iii)) of petroleum, natural gas or related hydrocarbons or of sulphur, or

(B) can reasonably be attributed to a service rendered by the taxpayer, and

(ii) revenues derived from the activity are not taken into account in computing the taxpayer's gross resource profits;

History: The opening words of para. (a) and cl. (j)(i)(A) amended, and para. (c.1) added to the definition "resource activity" in subsec. 1206(1) by P.C. 1999-629, subsecs. 7(1) to (3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The definition "resource activity" added to subsec. 1206(1) by P.C. 1996-1488, subsec. 4(3), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

"secondary recovery method" means a method to recover from a reservoir oil that is incremental to oil that would be recovered therefrom by primary recovery, by supplying energy to supplement or replace the natural energy of the reservoir through the use of technically proven methods, including waterflooding;

History: "secondary recovery method" added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1981.

"specified development well" — [Revoked]

History: The definition "specified development well" revoked by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1981.

"Specified development well" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"specified percentage" for a calendar year

(a) in respect of a Canadian oil and gas exploration expense of a taxpayer for that year incurred in respect of conventional lands means,

(i) for the 1981 calendar year, 100 per cent,

(ii) for the 1982 calendar year, 60 per cent, and

(iii) for the 1983 calendar year, 30 per cent, and

(b) in respect of a Canadian oil and gas exploration expense of a taxpayer for that year incurred in respect of non-conventional lands means,

(i) for the 1981 and 1982 calendar years, 100 per cent,

(ii) for the 1983 calendar year, 60 per cent, and

(iii) for the 1984 calendar year, 30 per cent;

History: Paras. (b) and (c) of "specified percentage" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective January 1, 1981.

"Specified percentage" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

"specified property" of a person means all or substantially all of the property used by the person in carrying on in Canada such of the businesses described in subparagraphs 66(15)(h)(i) to (vii) [66(15)"principal-business corporation"(a) to (g)] of the Act as were carried on by the person;

History: "Specified property" added by P.C. 1990-2256, subsec. 4(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable after 1984.

"specified royalty" means a royalty created after December 5, 1996 (otherwise than pursuant to an agreement in writing made before on or before that date) where

(a) the cost of the royalty was a Canadian development expense, and

(b) the royalty was created as part of a transaction or event or series of transactions or events as a consequence of which depreciable property was acquired at a capital cost that was less than its fair market value (determined without regard to the royalty);

History: The definition "specified royalty" added to subsec. 1206(1) by P.C. 1999-629, subsec. 7(5), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable after March 6, 1996 except that, with respect to a royalty created after March 6, 1996 and before December 6, 1996 (or after March 6, 1996 and before 1998 pursuant to an agreement in writing made on or before December 5, 1996) if any of the parties to the royalty so elect in writing filed with the Minister of National Revenue before July 1, 1999, the definition "specified royalty" shall be read as follows in respect of the royalty:

"specified royalty" means a royalty (other than a production royalty) created after March 6, 1996 (otherwise than pursuant to an agreement in writing made before March 7, 1996) where

(a) any amount paid or payable to the holder of the royalty because of the holder's interest in the royalty is calculated with reference to any expense, or

(b) an arrangement involving the reimbursement of, contribution to or allowance for, any expense has been made after March 6, 1996 and it is reasonable to consider that one of the reasons for the arrangement is to avoid the application of paragraph (a) in respect of the royalty;

"stated percentage" means

(a) where the taxpayer is an individual other than a trust, in respect of subparagraph 1203(2)(a)(i),

(i) 100 per cent in respect of an expenditure incurred before 1989,

(ii) 50 per cent in respect of an expenditure incurred after 1988 and before 1990, and

(iii) 0 per cent in respect of an expenditure incurred after 1989,

(b) in respect of subparagraph 1203(2)(a)(i) (where paragraph (a) is not applicable) and paragraphs 1205(1)(a), (b), (c) and (f)

(i) 100 per cent in respect of an expenditure incurred or a cost incurred in borrowing capital before July 1, 1988,

(ii) 50 per cent in respect of an expenditure incurred or a cost incurred in borrowing capital after June 30, 1988 and before 1990, and

(iii) 0 per cent in respect of an expenditure incurred or a cost incurred in borrowing capital after 1989,

(c) where the taxpayer is an individual other than a trust, in respect of subparagraph 1203(2)(a)(ii) and subsection 1203(4),

(i) 100 per cent in respect of any assistance that relates to expenditures incurred before 1989,

(ii) 50 per cent in respect of any assistance that relates to expenditures incurred after 1988 and before 1990, and

(iii) 0 per cent in respect of any assistance that relates to expenditures incurred after 1989, and

(d) in respect of subparagraph 1203(2)(a)(ii) (if paragraph (c) is not applicable), subsection 1203(4) (if paragraph (c) is not applicable) and subparagraph 1205(1)(j)(iii),

(i) 100 per cent in respect of any assistance or benefit that relates to expenditures incurred before July 1, 1988,

(ii) 50 per cent in respect of any assistance or benefit that relates to expenditures incurred after June 30, 1988 and before 1990, and

(iii) 0 per cent in respect of any assistance or benefit that relates to expenditures incurred after 1989;

History: The opening words of para. (d) amended by P.C. 1999-629, subsec. 7(4), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to 1999 *et seq.*

"Stated percentage" added by P.C. 1990-2780, subsec. 7(5), applicable to taxation years ending after February 17, 1987.

"tar sands ore" means ore extracted, other than through a well, from a mineral resource that is a deposit of bituminous sand, oil sand or oil shale;

History: "Tar sands ore" added by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to taxation years commencing after November 12, 1981.

"tertiary recovery equipment" means property of a taxpayer that

(a) is, or but for Class 41 in Schedule II would be, included in Class 10 in Schedule II by virtue of paragraph (j) of the description of that Class,

(b) was acquired by the taxpayer after 1980 for use in a qualified tertiary oil recovery project,

other than property

(c) used by the taxpayer for another use prior to the use described in paragraph (b), or

(d) that had, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length.

History: "Tertiary recovery equipment" substituted by P.C. 1990-2780, subsec. 7(4), deemed in force as of January 1, 1981 except that para. (a) shall before 1988 be read without reference to the words "or but for Class 41 in Schedule II would be".

Para. (c) of "tertiary recovery equipment" substituted by P.C. 1985-465, s. 7, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

"Tertiary recovery equipment" added by P.C. 1981-3329, s. 7, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

(2) In this Part, "joint exploration corporation", "principal-business corporation", "production" from a Canadian resource property, "reserve amount" and "shareholder corporation" have the meanings assigned by subsection 66(15) of the Act.

History: Subsec. 1206(2) substituted by P.C. 1990-2780, subsec. 7(6), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subsec. 1206(2) substituted by P.C. 1986-2590, s. 8, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after April 19, 1983.

Subsec. 1206(2) substituted by P.C. 1985-465, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

(3) For the purposes of sections 1201 to 1209 and 1212, where at the end of a fiscal period of a partnership, a taxpayer was a member thereof

(a) the resource profits of the partnership for the fiscal period, to the extent of the taxpayer's share thereof, shall be included in computing his resource profits for his taxation year in which the fiscal period ended;

(b) any property acquired or disposed of by the partnership shall be deemed to have been acquired or disposed of by the taxpayer to the extent of his share thereof;

(c) any property deemed by paragraph (b) to have been acquired or disposed of by the taxpayer shall be deemed to have been acquired or disposed of by him on the day the property was acquired or disposed of by the partnership;

(d) any amount that has become receivable by the partnership and in respect of which the consideration given by the partnership therefor was property (other than property referred to in paragraph 59(2)(a), (c) or (d) of the Act or a share or interest therein or right thereto) or services, all or part of the original cost of which to the partnership may reasonably be regarded primarily as an exploration or development expense of the taxpayer, shall be deemed to be an amount receivable by the taxpayer to the extent of his share thereof, and the consideration so given by the partnership shall, to the extent of the taxpayer's share thereof, be deemed to have been given by the taxpayer for the amount deemed to be receivable by him;

(e) any expenditure incurred or deemed to have been incurred by the partnership shall be deemed to have been incurred by the taxpayer to the extent of the taxpayer's share thereof; and

(f) any amount or expenditure deemed by paragraph (d) or (e) to have been receivable or incurred, as the case may be, by the taxpayer shall be deemed to have become receivable or been incurred, as the case may be, by the taxpayer on the day the amount became receivable or the expenditure was incurred or deemed to have been incurred by the partnership.

History: Paras. 1206(3)(e), (f) substituted by P.C. 1990-2256, subsec. 4(2), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

Paras. 1206(3)(b), (d) and (e) substituted, para. 1206(3)(f) added, by P.C. 1985-465, subsecs. 7(12) and (13), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to fiscal periods ending after March 6, 1985.

Paras. 1206(3)(b), (c) substituted, paras. (d), (e) added by P.C. 1980-1483, subsec. 4(4), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

All that portion of subsec. 1206(3) preceding para. (a) substituted, para. 1206(3)(c) added, by subsecs. 5(3), (4) of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for the period commencing April 11, 1978.

(3.1) For the purposes of sections 1201 to 1203, 1205, 1217 and 1218, where a taxpayer was a member of a partnership at the end of a fiscal period of the partnership, the taxpayer shall be deemed to receive or to become entitled to receive any amount of assistance or benefit, whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit, that the partnership at any time receives or becomes entitled to receive in respect of expenses in-

curred in that fiscal period of the partnership, to the extent of,

(a) where the partnership in the fiscal period receives or becomes entitled to receive the amount, the taxpayer's share thereof, or

(b) where the partnership after the fiscal period becomes entitled to receive the amount, what would have been the taxpayer's share thereof if the partnership had in the fiscal period received or become entitled to receive the amount,

and the time at which the taxpayer is deemed to receive or become entitled to receive such share of the amount shall be the time that the partnership receives or becomes entitled to receive the amount.

History: That portion of subsec. 1206(3.1) preceding para. (a) substituted by P.C. 1988-1608, subsec. 1(1), August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Subsec. 1206(3.1) added by P.C. 1985-465, subsec. 7(14), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to fiscal periods ending after March 6, 1985.

(4) Where an expense incurred after November 7, 1969 that was a Canadian exploration and development expense or that would have been such an expense if it had been incurred after 1971 (other than an amount included therein that is in respect of financing or the cost of any Canadian resource property acquired by a joint exploration corporation or any property acquired by a joint exploration corporation that would have been a Canadian resource property if it had been acquired after 1971), a Canadian exploration expense (other than an amount included therein that is in respect of financing) or a Canadian development expense (other than an amount included therein that is in respect of financing or an amount referred to in subparagraph 66.2(5)(a)(iii) [66.2(5)"Canadian development expense"(e)] of the Act) has been renounced in favour of a taxpayer and was deemed to be an expense of the taxpayer for the purposes of subsection 66(10), (10.1) or (10.2) of the Act or subsection 29(7) of the *Income Tax Application Rules*, the expense shall,

(a) for the purposes of sections 1203 and 1205, be deemed to have been such an expense incurred by the taxpayer at the time the expense was incurred by the joint exploration corporation; and

(b) for the purposes of sections 1204 and 1210 and paragraphs 1217(2)(e) and 1218(2)(e), be deemed to have been such an expense incurred by the taxpayer at the time it was deemed to have been incurred by the taxpayer for the purposes of subsection 66(10), (10.1) or (10.2) of the Act or subsection 29(7) of the *Income Tax Application Rules*, as the case may be.

History: Subsec. 1206(4) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 1206(4)(b) substituted by P.C. 1988-1608, subsec. 1(2), August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Subsec. 1206(4) substituted by P.C. 1985-465, subsec. 7(15), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to expenses renounced after 1981.

(4.1) An expense that is a Canadian exploration and development overhead expense of the joint exploration corporation referred to in subsection (4), or would be such an expense if the references to "connected with the taxpayer" in paragraph (d) of the definition "Canadian exploration and development overhead expense" in subsection (1) were read as "connected with the shareholder corporation in favour of whom the expense was renounced for the purposes of subsection 66(10.1) or (10.2) of the Act", that may reasonably be considered to be included in a Canadian exploration expense or Canadian development expense that is deemed by subsection (4) to be a Canadian exploration expense or Canadian development expense of the shareholder corporation, shall be deemed to be a Canadian exploration and development overhead expense of the shareholder corporation incurred by it at the time the expense was deemed by subsection (4) to have been incurred by it and shall be deemed at and after that time not to be a Canadian exploration and development overhead expense incurred by the joint exploration corporation.

History: Subsec. 1206(4.1) added by P.C. 1985-465, subsec. 7(16), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to expenses renounced after March 6, 1985.

(4.2) For the purposes of paragraphs 66(12.6)(b), (12.601)(d) and (12.62)(b) of the Act, a prescribed Canadian exploration and development overhead expense of a corporation is

(a) a Canadian exploration and development overhead expense of the corporation;

(b) an expense that would be a Canadian exploration and development overhead expense of the corporation if the references to "connected with the taxpayer" in paragraph (d) of the definition "Canadian exploration and development overhead expense" in subsection (1) were read as "connected with the person to whom the expense is renounced under subsection 66(12.6), (12.601) or (12.62) of the Act"; and

(c) an expense that would be a Canadian exploration and development overhead expense of the corporation if the references to "person who was connected with the taxpayer" in paragraph (d) of the definition "Canadian exploration and development overhead expense" in subsection (1) were read as "person to whom the expense is renounced under subsection 66(12.6), (12.601) or (12.62) of the Act".

History: Subsec. 1206(4.2) amended by P.C. 1996-494, s. 2, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable in respect of expenses incurred after December 2, 1992.

Subsecs. 1206(4.2) added by P.C. 1990-2256, subsec. 4(3), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

(4.3) For the purposes of subsections (4.2) and (5), a partnership shall be deemed to be a person and its taxation year shall be deemed to be its fiscal period.

History: Subsecs. 1206(4.3) added by P.C. 1990-2256, subsec. 4(3), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

(5) For the purposes of subsection (6) and the definition "Canadian exploration and development overhead expense" in subsection (1),

(a) a person and a particular corporation are connected with each other if

(i) the person and the particular corporation are not dealing at arm's length,

(ii) the person has an equity percentage in the particular corporation that is not less than 10 per cent, or

(iii) the person is a corporation in which another person has an equity percentage that is not less than 10 per cent and the other person has an equity percentage in the particular corporation that is not less than 10 per cent;

(a.1) a person and another person that is not a corporation are connected with each other if they are not dealing at arm's length; and

(b) "costs incurred by a person" shall not include

(i) an outlay or expense described in any of paragraphs (a) to (c) of that definition made or incurred by the person if the references in those paragraphs to "taxpayer" were read as references to "person",

(ii) an outlay or expense made or incurred by the person to the extent that it is not reasonably attributable to the use of a property by, the performance of a service for, or any materials, parts, or supplies acquired by, the taxpayer referred to in that definition, and

(iii) an amount in respect of the capital cost to the person of a property, other than, where the property is a depreciable property of the person, that proportion of the capital allowance of the person for his taxation year in respect of the property that may reasonably be considered attributable to the use of the property by, or in the performance of a service for, the taxpayer referred to in that definition.

History: Para. 1206(5)(a.1) added by P.C. 1990-2256, subsec. 4(4), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of expenditures or expenses incurred after February 1986.

Subpara. 1206(5)(b)(iii) substituted by P.C. 1985-465, subsec. 7(17), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

Subsec. 1206(5) added by P.C. 1981-3329, subsec. 7(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

(6) For the purpose of subparagraph (5)(b)(iii), the "capital allowance" of a person (in this subsection referred to as the "owner") for his taxation year in respect of a property owned by him means that proportion of an amount not exceeding 20 per cent of the amount that is

(a) in the case of a property owned by the owner on December 31, 1980, the lesser of

(i) the capital cost of the property to the owner computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, and

(ii) the fair market value of the property on December 31, 1980,

(b) in the case of a property acquired by the owner after December 31, 1980 that was previously owned by a person connected with the owner, the lesser of

(i) the capital cost of the property, computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, to the person, who was connected with the owner, who was the first person to acquire the property from a person with whom the owner was not connected, and

(ii) the fair market value of the property at the time it was acquired by the owner, and

(c) in any other case, the capital cost of the property to the owner computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business,

that the number of days in the taxation year during which the property was owned by the owner is of 365.

(7) For the purposes of paragraph (5)(a), "equity percentage" has the meaning assigned by paragraph 95(4)(b) [95(4)"equity percentage"] of the Act.

History: Subsecs. 1206(6), (7) added by P.C. 1981-3329, subsec. 7(7), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing January 1, 1981.

(8) For the purposes of the definition "qualified tertiary oil recovery project" in subsection (1), a "specified royalty provision" means:

(a) the *Experimental Project Petroleum Royalty Regulation* of Alberta (Alta. Reg. 36/79);

(b) *The Experimental Oil Sands Royalty Regulations* of Alberta (Alta. Reg. 287/77);

(c) section 4.2 of the *Petroleum Royalty Regulations* of Alberta (Alta. Reg. 93/74);

(d) section 58A of the *Petroleum and Natural Gas Regulations, 1969* of Saskatchewan (Saskatchewan Regulation 8/69);

(e) section 204 of *The Freehold Oil and Gas Production Tax Regulations, 1983* of Saskatchewan (Saskatchewan Regulation 11/83);

(f) item 9 of section 2 of the *Petroleum and Natural Gas Royalty Regulations* of British Columbia (B.C. Reg. 549/78);

(g) the *Freehold Mineral Taxation Act* of Alberta;

(h) the *Freehold Mineral Rights Tax Act* of Alberta;

(i) Order in Council 427/84 pursuant to section 9(a) of the *Mines and Minerals Act* of Alberta;

(j) Order in Council 966/84 pursuant to section 9 of the *Mines and Minerals Act* of Alberta; or

(k) Order in Council 870/84 pursuant to section 9 of the *Mines and Minerals Act* of Alberta.

History: Para. 1206(8)(k) added by P.C. 1990-162, subsec. 5(2), applicable to 1982 *et seq.*

Subsec. 1206(8) added by P.C. 1985-465, subsec. 7(18), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

(8.1) For the purposes of paragraph (a) of the definition of "qualified tertiary oil recovery project" in subsection (1), where at a particular time unconditional approval is given by a person referred to in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act for a specified royalty provision to apply at a time after the particular time, the specified royalty provision shall be deemed to apply as of the particular time.

History: Subsec. 1206(8.1) added by P.C. 1990-2780, subsec. 7(7), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable after 1980.

(9) For the purposes of the definition "production royalty" in subsection (1), a "Crown royalty" of a taxpayer in respect of the production of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada, a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit or in respect of the ownership of a natural reservoir of gas or petroleum in Canada means an amount

(a) that would be included in computing his income for a taxation year by virtue of paragraph 12(1)(o) of the Act in respect of such production or ownership if that paragraph were read without reference to the words "or a prescribed amount",

(b) that would not be deductible in computing his income for a taxation year by virtue of paragraph 18(1)(m) of the Act in respect of such production or ownership if that paragraph were read without reference to the words "other than a prescribed amount",

(c) by which his proceeds of disposition of such production are increased by virtue of subsection 69(6) of the Act, or

(d) by which his cost of acquisition of such production is reduced by virtue of subsection 69(7) of the Act,

less, in respect of an amount described in paragraph (a) or (b), the amount of any reimbursement, contribution or allowance referred to in section 80.2 of the Act received or receivable by the taxpayer in respect of that amount.

History: The closing words of subsec. 1206(9) amended by P.C. 1996-1488, subsec. 4(4), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable after January 1990.

That portion of subsec. 1206(9) preceding para. (a) substituted by P.C. 1990-2780, subsec. 7(8), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable after June 30, 1988.

That portion of subsec. 1206(9) preceding para. (a) substituted by P.C. 1990-162, subsec. 5(3), applicable to taxation years ending after March 1985.

Subsec. 1206(9) added by P.C. 1985-465, subsec. 7(19), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1982.

Definitions [Reg. 1206]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bituminous sands", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian field processing" — ITA 248(1); "Canadian oil and gas exploration expense" — Reg. 1206(1); "Canadian resource property" — ITA 66(15), 248(1); "capital allowance" — Reg. 1206(6); "commencement" — *Interpretation Act* 35(1); "connected" — Reg. 1206(5); "conventional lands" — Reg. 1206(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost incurred by a person" — Reg. 1206(5)(b); "Crown royalty" — Reg. 1206(9); "depreciable property" — ITA 13(21), 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition", "employed" — ITA 248(1); "equity percentage" — Reg. 1206(7); "fiscal period" — ITA 249.1; "gross resource profits" — Reg. 1204(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "mine" — Reg. 1206(1); "mineral", "mineral resource" — ITA 248(1); "non-conventional lands" — Reg. 1206(1); "oil or gas well" — ITA 248(1); "ore", "original owner" — Reg. 1206(1); "owner" — Reg. 1206(5); "person" — ITA 248(1), Reg. 1206(4.3); "prescribed" — ITA 248(1); "primary recovery", "proceeds of disposition" — Reg. 1206(1); "processing property" — Reg. 1206(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualified tertiary oil recovery project" — Reg. 1206(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "secondary recovery method" — Reg. 1206(1); "share", "shareholder" — ITA 248(1); "specified royalty" — Reg. 1206(1); "specified royalty provision" — Reg. 1206(8), (8.1); "tar sands ore" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "territorial sea", "territory" — *Interpretation Act* 35(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

1207. Frontier exploration allowances — (1) A taxpayer may deduct in computing his income for a taxation year such amount as he may claim not exceeding the lesser of

(a) his income for the year, computed in accordance with Part I of the Act, if no deduction were allowed under this subsection; and

(b) his frontier exploration base as of the end of the year (before making any deduction under this subsection for the year).

(2) For the purposes of this section, the "frontier exploration base" of a taxpayer as of a particular time means the amount by which the aggregate of

(a) the aggregate of all amounts, each of which is an amount in respect of a particular oil or gas well in Canada equal to 66⅔ per cent of the amount by which

(i) expenses incurred after March, 1977 and before April, 1980 and before the particular time in respect of the well (other than expenses that may reasonably be regarded as having been incurred as consideration for services rendered to the taxpayer after March, 1980) if those expenses would be included in the Canadian exploration expense of the taxpayer within the meaning of paragraph 66.1(6)(a) [66.1(6)"Canadian exploration expense"] of the Act (if that paragraph were read without reference to subparagraphs (iii) and (iii.1) [paras. (f) and (g)] thereof and without reference to the words "within six months after the end of the year, the drilling of the well is completed and" in subparagraph (ii) [para. (c)] thereof, and if the reference in subparagraphs (iv) and (v) [paras. (h) and (i)] thereof to "any of subparagraphs (i) to (iii.1) [paras. (a) to (g)]" were read as a reference to "subparagraph (i) or (ii) [para. (a) or (c)]") other than

(A) a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, that was a Canadian exploration expense of the taxpayer,

(B) an expense renounced by the taxpayer under subsection 66(10.1) of the Act,

(C) an amount that, by virtue of subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A) or (B) that was incurred by a partnership referred to in that subparagraph, or

(D) an amount that, by virtue of subparagraph 66.1(6)(a)(v) [66.1(6)"Canadian exploration expense"(i)] of the Act, was a Canadian exploration expense, if such amount was an expense referred to in clause (A) or (B) that the taxpayer incurred pursuant to an agreement referred to in that subparagraph,

exceeds

(ii) the taxpayer's threshold amount in respect of the well, minus the amount that would be determined under subparagraph (i) in respect of the taxpayer for the well if the reference therein to "after March, 1977 and before April, 1980" were read as "after June, 1976 and before April, 1977", and

(a.1) where the taxpayer is a successor corporation, any amount required by paragraph (7)(a) to be added before the particular time in computing the taxpayer's frontier exploration base,

exceeds the aggregate of

(b) all amounts deducted by the taxpayer under subsection (1) in computing his income for taxation years ending before the particular time,

(c) 66⅔ per cent of the aggregate of all amounts, each of which is an amount that became receivable by the taxpayer after March 28, 1979 and before the earlier of December 12, 1979 and the particular time, and in respect of which the consideration given by the taxpayer

therefor was a property (other than a share, or a property that would have been a Canadian resource property if it had been acquired by the taxpayer at the time the consideration was given) or services the cost of which may reasonably be regarded as having been primarily an expenditure in respect of an oil or gas well for which an amount was added in computing the taxpayer's frontier exploration base by virtue of paragraph (a) or in computing the frontier exploration base of a predecessor by virtue of paragraph (a) as it applied to the predecessor where the taxpayer is a successor corporation to the predecessor, as the case may be; and

(d) where the taxpayer is a predecessor, any amount required by paragraph (7)(b) to be deducted before the particular time in computing the taxpayer's frontier exploration base.

History: Cl. 1207(2)(a)(i)(A), para. 1207(2)(c) substituted by P.C. 1981-3329, s. 8, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, para. 1207(2)(c) effective commencing December 12, 1979.

All that portion of subpara. 1207(2)(a)(i) preceding cl. (A) substituted by P.C. 1980-3311, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980.

All that portion of subpara. 1207(2)(a)(i) preceding cl. (A), and cl. 1207(2)(a)(i)(C) substituted by P.C. 1980-1483, subsec. 5(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective December 6, 1979.

That portion of subsec. 1207(2) preceding para. (a) and that portion following para. (a) substituted by subsecs. 6(1), (2) of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979.

(3) For the purposes of subparagraph (2)(a)(ii), a taxpayer's "threshold amount" in respect of an oil or gas well means

(a) where the taxpayer and one or more other persons have filed an agreement with the Minister in prescribed form in respect of the well and

(i) the amount allocated to each such person in the agreement does not exceed the amount that would be determined, at the time the agreement is filed, under subparagraph (2)(a)(i) in respect of that person for the well, if the reference in that subparagraph to "March, 1977" were read as "June, 1976", and

(ii) the aggregate of the amounts allocated by the agreement is $5 million,

the amount allocated to the taxpayer in the agreement, but if no amount is allocated to the taxpayer in the agreement, nil;

(b) where such an agreement has been filed in respect of the well by one or more persons other than the taxpayer, nil; or

(c) where no such agreement has been filed in respect of the well, $5 million.

Forms: T3015: Allocation agreement to determine a taxpayer's threshold amount in respect of an oil or gas well.

(4) Where as a result of mechanical or geological difficulties the drilling of a particular oil or gas well does not achieve its stated geological objectives under the drilling authority issued by the relevant government body and a further well, including a relief well, is drilled on the same geological formation and may reasonably be regarded as a continuation of or a substitution for the particular oil or gas well, the expenses in respect of the drilling of the further well shall, for the purposes of this section, be deemed to be expenses in respect of the drilling of the particular oil or gas well.

(5) For the purposes of this section,

(a) when a shareholder corporation is deemed to have incurred a Canadian exploration expense by virtue of an election made by a joint exploration corporation pursuant to subsection 66(10.1) of the Act, that expense shall be deemed to have been incurred by the shareholder corporation at the time when it was incurred by the joint exploration corporation; and

(b) when a member of a partnership is deemed to have incurred a Canadian exploration expense by virtue of subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, that expense shall be deemed to have been incurred by the member at the time when it was incurred by the partnership.

History: Para. 1207(5)(b) substituted by P.C. 1980-1483, subsec. 5(2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective December 6, 1979.

(6) For the purposes of this section, "oil or gas well" means any well drilled for the purpose of producing petroleum or natural gas or of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas, other than a mineral resource.

History: Subsec. 1207(6) substituted by P.C. 1990-2780, subsec. 8(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after March 1985.

Subsec. 1207(6) substituted by P.C. 1985-465, s. 8, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing January 1, 1981.

(7) Subject to subsections 1202(5) and (6), where a corporation (in this section referred to as the "successor corporation") has at any time (in this subsection referred to as the "time of acquisition") after April 19, 1983 and in a taxation year (in this subsection referred to as the "transaction year") acquired a property from another person (in this subsection referred to as the "predecessor"), the following rules apply:

(a) for the purpose of computing the frontier exploration base of the successor corporation as of any time after the time of acquisition, there shall be added an amount equal to the amount required by paragraph (b) to be deducted in computing the frontier exploration base of the predecessor; and

(b) for the purpose of computing the frontier exploration base of the predecessor as of any time after the transaction year of the predecessor, there shall be deducted the amount, if any, by which

(i) the frontier exploration base of the predecessor immediately before the time of acquisition (assuming for this purpose that, in the case of an acquisition as a result of an amalgamation described in section 87 of the Act, the predecessor existed after the time of acquisition and no property was acquired or disposed of in the course of the amalgamation)

exceeds

(ii) the amount, if any, deducted under subsection (1) in computing the income of the predecessor for the transaction year of the predecessor.

History: That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1990-2780, subsec. 8(2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1990-2256, subsec. 5(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984.

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1990-162, s. 6, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985 the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1985-2277, s. 5, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

That portion of subsec. 1207(7) preceding para. (a) substituted by P.C. 1980-1483, subsec. 5(3), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective November 17, 1978.

Subsec. 1207(7) substituted by subsec. 6(3) of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979.

Subsec. 1207(7) added by s. 7 of P.C. 1978-1849, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after March 1977.

(8) [Revoked]

History: Subsec. 1207(8) revoked by P.C. 1990-2780, subsec. 8(3), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subsec. 1207(8) added by P.C. 1990-2256, subsec. 5(2), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein within 180 days after November 7, 1990.

Definitions [Reg. 1207]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian exploration expense" — Reg. 1207(5); "Canadian resource property" — ITA 66(15), 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "expenses" — Reg. 1207(4); "frontier exploration base" — Reg. 1207(2); "mineral resource", "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "oil or gas well" — Reg. 1207(6); "person" — ITA 248(1); "predecessor" — Reg. 1203(3); "prescribed", "property", "share", "shareholder" — ITA 248(1); "successor corporation" — Reg. 1203(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "threshold amount" — Reg. 1207(3); "time of acquisition", "transaction year" — Reg. 1203(3).

1208. Additional allowances in respect of certain oil or gas wells — **(1)** Subject to subsections (3) and (4) where a taxpayer has income for a taxation year from an oil or gas well that is outside Canada, or where an individual has income for a taxation year from an oil or gas well in Canada, in computing his income for the year he may deduct the lesser of

(a) the aggregate of drilling costs incurred by him in that year and previous taxation years in respect of the well (not including the cost of land, leases or other rights and not including indirect expenses such as general exploration, geological and geophysical expenses) minus the aggregate of all amounts deductible in respect thereof in computing his income for previous years; and

(b) that part of his income for the year that may reasonably be regarded as income from the well.

(2) Where a taxpayer has more than one oil or gas well to which subsection (1) applies, the allowance in respect of the drilling costs of each well shall be computed separately.

(3) Where an individual has income for a taxation year from an oil or gas well in Canada, no deduction may be made under this section in computing such income in respect of drilling costs of that well incurred after April 10, 1962.

(4) Where a taxpayer has income for a taxation year from an oil or gas well that is outside Canada, no deduction may be made under this section in computing such income in respect of drilling costs of that well incurred after 1971.

Definitions [Reg. 1208]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "individual", "oil or gas well" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1209. Additional allowances in respect of certain mines — **(1)** Subject to subsection (3), where a taxpayer operates in Canada a mine for the production of materials from a resource he may deduct, in computing his income for a taxation year, such amount as he may claim not exceeding 25 per cent of the amount computed under subsection (2).

(2) The amount referred to in subsection (1) is the aggregate of all expenditures made or incurred by the taxpayer before 1972 that are reasonably attributable to the prospecting and exploration for and the development of the mine prior to the coming into production of the mine in reasonable commercial quantities, except to the extent that the expenditures were

(a) expenditures in respect of which a deduction from, or in computing, a taxpayer's income tax or excess profits tax was provided by section 8 of the *Income War Tax Act*;

(b) expenditures in respect of which an amount was deducted in computing a taxpayer's income under section 16 of chapter 63, S.C., 1947 or section 16 of chapter 53, S.C., 1947-48 or, if the expenditure was incurred prior to 1953, under section 53 of chapter 25, S.C., 1949 (Second Session);

(c) expenditures incurred after 1952 in respect of which a deduction was or is provided by section 53 of chapter 25, S.C., 1949, (Second Session), section 83A of the Act as it read in its application to the 1971 taxation year or section 29 of the *Income Tax Application Rules*;

(d) expenditures deducted in computing the income of the taxpayer in the year they were incurred;

(e) the cost to the taxpayer of property in respect of which an allowance is provided under paragraph 20(1)(a) of the Act; or

(f) the cost to the taxpayer of a leasehold interest.

(3) The amount deductible under subsection (1) shall not exceed the amount computed under subsection (2) minus the aggregate of

(a) amounts deducted under subsection (1) in computing the income of the taxpayer for previous taxation years; and

(b) similar amounts deducted in computing the income of the taxpayer for the purposes of the *Income War Tax Act* and *The 1948 Income Tax Act* (as defined in paragraph 12(d) of the *Income Tax Application Rules*).

History: Para. 1209(2)(c) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1209]: "amount" — Reg. 1209(2); "Canada" — ITA 255, *Interpretation Act* 35(1); "mine" — Reg. 1206(1); "property" — ITA 248(1); "resource" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1210. Resource allowance — **(1)** For the purpose of paragraph 20(1)(v.1) of the Act, there may be deducted in computing the income of a taxpayer for a taxation year the amount determined by the formula

$$.25 (A - B) - C$$

where

A is the taxpayer's adjusted resource profits for the year;

B is the total of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than an amount included therein because of subsection 21(2) or (4) of the Act; and

C is the amount, if any, by which

(a) the total of all amounts determined under paragraphs 1205(1)(e) to (k) in computing the taxpayer's earned depletion base at the end of the year, other than any portion of that total determined under paragraph 1205(1)(i) as a consequence of a disposition in the year of property in circumstances to which subsection 1202(2) applies

exceeds

(b) 33 1/3 per cent of the total of all amounts determined under paragraphs 1205(1)(a) to (d.2) in computing the taxpayer's earned depletion base at the end of the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (1) applicable to taxation years that begin after December 20, 1991 except that, where the year ended before March 19, 1993, the description of B shall be read as follows:

B is the total of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than each amount included therein in respect of financing, deducted in computing the taxpayer's income for the year,

That portion of subpara. 1210(1)(a)(i) preceding cl. (A) substituted by P.C. 1993-415, s. 2, March 9, 1993, *Canada Gazette*, Part II, March 24, 1993, applicable to taxation years commencing after 1987.

That portion of subpara. 1210(1)(a)(i) preceding cl. (A) substituted by P.C. 1990-2780, subsec. 9(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years commencing after 1987.

Cl. 1210(1)(a)(i)(A) and subpara. (1)(a)(iii) substituted by subsecs. 9(2), (3) of the said P.C. 1990-2780, applicable in respect of rentals and royalties computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after June 30, 1988.

Para. 1210(1)(b) substituted by subsec. 9(4) of the said P.C. 1990-2780, applicable to taxation years ending after February 17, 1987.

Cl. 1210(1)(a)(i)(A) and subpara. (1)(a)(iii) substituted by P.C. 1990-162, s. 7, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable to taxation years ending after March 1985.

Subsec. 1210(1) substituted by P.C. 1985-465, s. 9, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to 1981 *et seq.* except that with respect to taxation years that end before 1984 subsec. 1210(1) shall be read as follows:

1210. (1) For the purposes of paragraph 20(1)(v.1) of the Act, there may be deducted in computing the income of a taxpayer, for a taxation year an amount equal to 25 per cent of the amount, if any, by which

(a) his resource profits for the year (within the meaning assigned by subsection 1204(1) if that subsection were read without reference to paragraph (a) or subparagraph (b)(iv) thereof) computed as if no amounts were deducted in computing those resource profits

(i) in respect of a rental or royalty paid or payable by the taxpayer (other than an incremental resource royalty, within the meaning assigned by the *Petroleum and Gas Revenue Tax Act*, an amount prescribed in section 1211 or an amount that is a production royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after December 31, 1981 from a property that is an oil or gas well in Canada,

(ii) in respect of financing, or

(iii) under paragraph 20(1)(v.1) of the Act or paragraph 1204(1)(d) or (e)

exceeds the aggregate of

(b) the aggregate of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than an amount included therein

(i) that is in respect of financing, or

(ii) in respect of which a person has received, is entitled to receive or, at any time, becomes entitled to receive

(A) an incentive under the *Petroleum Incentives Program Act*, or

(B) a payment from the Alberta Petroleum Incentives Program Fund under the *Petroleum Incentives Program Act* of the Province of Alberta, and

(c) the aggregate of all amounts each of which is an amount included in his resource profits for the year that was a rental or royalty (other than a production royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced after December 31, 1981 from an oil or gas well in Canada.

Subsec. 1210(1) substituted by P.C. 1981-3329, s. 9, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of 1981 *et seq.*

(2) For the purposes of this section, "adjusted resource profits" of a taxpayer for a taxation year is the amount, which may be positive or negative, determined by the formula

$$A + B - C$$

where

A is the amount that would be the taxpayer's resource profits for the year if the following assumptions were made:

(a) the amount determined under paragraph 1204(1)(a) were nil,

(b) subsection 1204(1) were read without reference to subparagraph 1204(1)(b)(iv) and the definition "resource activity" in subsection 1206(1) were read without reference to paragraph (d) of that definition,

(c) the following amounts were not deducted in computing the taxpayer's gross resource profits for the year and were not deducted in computing the taxpayer's resource profits for the year:

(i) each amount deducted in computing the taxpayer's income for the year in respect of a rental or royalty paid or payable by the taxpayer (other than an amount prescribed by section 1211, an amount that is a production royalty or an amount paid or payable in respect of a specified royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons

(A) produced from a natural accumulation (other than a resource) of petroleum or natural gas in Canada or an oil or gas well in Canada, or

(B) produced from a resource that is a bituminous sands deposit, oil sands deposit or oil shale deposit,

(ii) each amount deducted in computing the taxpayer's income for the year

(A) under any of paragraphs 20(1)(e), (e.1), (e.2) and (f) of the Act, or

(B) as, on account of or in lieu of, interest in respect of a debt owed by the taxpayer, and

(iii) each amount deducted under any of paragraph 20(1)(v.1) and sections 65 to 66.7 of the Act and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules*,

(d) each amount that is the taxpayer's share of the income or loss of a partnership from any source were not taken into account, and

(e) subsections 1204(1) and (1.1) provided for the computation of negative amounts where the amounts subtracted in computing gross resource profits and resource profits exceed the amounts added in computing those amounts;

B is the total of all amounts each of which is the taxpayer's share of the adjusted resource profits of a partnership for the year, as determined under subsection (3) or (4); and

C is the amount, if any, by which the total of

(a) the total of all amounts each of which is an amount included in the taxpayer's gross resource profits for the year as a rental or royalty (other than a production royalty or a specified royalty) computed by reference to the amount or value of petroleum, natural gas or related hydrocarbons produced from

(i) a natural accumulation (other than a resource) of petroleum or natural gas in Canada or an oil or gas well in Canada, or

(ii) a resource that is a bituminous sands deposit or oil shale deposit, and

(b) 50 per cent of all amounts included in computing the taxpayer's gross resource profits for the year in respect of specified royalties

exceeds

(c) if the year ends after March 6, 1996, the total of all outlays and expenses that were made or incurred in respect of the total described in paragraph (a) to the extent that the outlays and expenses were deducted in computing the taxpayer's gross resource profits for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of subpara. (c)(i) in the description of A, and the description of C in subsec. 1210(2) amended by P.C. 1999-629, s. 8, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that end after March 6, 1996.

S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (2) applicable to taxation years that begin after December 20, 1991 except that, where the year began before March 19, 1993, subparagraph (c)(ii) of the description of A shall be read as follows:

(ii) each amount in respect of financing deducted in computing the taxpayer's income for the year,

(3) Where a taxpayer is a member of a partnership in a fiscal period of the partnership that ends in a taxation year of the taxpayer, the taxpayer's share of the partnership's adjusted resource profits for the year is

(a) nil, where the fiscal period began before December 21, 1991; and

(b) in any other case, the amount, which may be positive or negative, that could, if this subsection did not apply, reasonably be considered to represent the taxpayer's share of the partnership's adjusted resource profits for the fiscal period, determined on the assumption that each partnership is a taxpayer the fiscal period of which is a taxation year.

History: S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (3) applicable to taxation years that begin after December 20, 1991.

(4) Notwithstanding subsection (3), where a taxpayer is a member of an exempt partnership in a fiscal period of the partnership that begins before 2000 and ends in a taxation year of the taxpayer and the taxpayer's share of the partnership's adjusted resource profits for the year would, if this subsection did not apply, be a negative amount, the taxpayer's share of the partnership's adjusted resource profits for the year is the amount, which may be positive or negative, determined by the formula

$$A \times B$$

where

A is the amount that would, if this subsection did not apply, be the taxpayer's share of the partnership's adjusted resource profits for the year; and

B is

(a) nil, where

(i) the partnership is an exempt partnership in respect of the taxpayer at the end of the fiscal period, and

(ii) at the end of the fiscal period, all or substantially all of the assets of the partnership were held in connection with one or more working interests

(A) the production from which began in reasonable commercial quantities before December 21, 1991, or

(B) the production from which was to begin in reasonable commercial quantities after December 20, 1991 in accordance with an agreement in writing made before December 21, 1991, and

(b) in any other case, the lesser of one and the amount determined by the formula

$$\frac{C}{D}$$

where

C is the amount that would be the partnership's adjusted resource profits for the fiscal period if the partnership did not have any working interest described in subparagraph (a)(ii), and

D is the partnership's adjusted resource profits for the fiscal period.

History: S. 1210 substituted by P.C. 1996-1488, s. 5, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996; subsec. (4) applicable to taxation years that begin after December 20, 1991.

Definitions [Reg. 1210]: "adjusted resource profits" — Reg. 1210(2); "amount", "bituminous sands" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "disposition" — ITA 248(1); "earned depletion base" — Reg. 1202(1), 1205(1); "exempt partnership" — Reg. 1206(1); "fiscal period" — ITA 249.1;

"gross resource profits" — Reg. 1204(1); "oil or gas well", "prescribed" — ITA 248(1); "production royalty" — Reg. 1206(1); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "share" — ITA 248(1); "specified royalty" — Reg. 1206(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

1210.1 [Prescribed resource loss] — For the purpose of paragraph 12(1)(z.5) of the Act, a taxpayer's prescribed resource loss for a taxation year is the amount determined by the formula

A – B

where

A is the total of all amounts each of which is a Canadian exploration and development overhead expense made or incurred by the taxpayer in the year, other than an amount included therein because of subsection 21(2) or (4) of the Act, and

B is the taxpayer's adjusted resource profits for the year (as defined by subsection 1210(2)).

Related Provisions: ITA 257 — Negative amounts in formulas.

History: S. 1210.1 added by P.C. 1999-629, s. 9, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Definitions [Reg. 1210.1]: "amount" — ITA 248(1); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "prescribed" — ITA 248(1); "resource" — Reg. 1206(1); "resource profits" — Reg. 1204(1.1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

1211. Prescribed amounts — The following amounts are hereby prescribed for the purposes of paragraphs 12(1)(o) and 18(1)(m) of the Act:

(a) an amount paid to, an amount that became payable to, or an amount that became receivable by

(i) Her Majesty in right of Canada for the use and benefit of a band or bands as defined in the *Indian Act*, or

(ii) Petro-Canada;

(b) an amount paid to, an amount that became payable to, or an amount that became receivable by any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) of the Act

(i) that is an amount that may reasonably be regarded as being in respect of a rental for any property described in clause 66(15)(c)(ii)(B) [66(15)"Canadian resource property"(b)(ii)] or subparagraph 66(15)(c)(vi) [66(15)"Canadian resource property"(f)] of the Act,

(ii) that was paid, became payable, or became receivable prior to the commencement of production of minerals from the property referred to in subparagraph (i) in reasonable commercial quantities, and

(iii) that was paid, became payable, or became receivable, after December 11, 1979, in respect of a period commencing after that date;

(c) an amount paid to, an amount that became payable to, or an amount that became receivable by any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) of the Act

(i) that may reasonably be regarded as being in respect of a rental for a right, licence or privilege to store underground petroleum, natural gas or other related hydrocarbons in Canada, and

(ii) that was paid, became payable, or became receivable, after December 11, 1979, in respect of a period commencing after that date;

(d) an amount equal to the lesser of

(i) an amount that

(A) became payable to or receivable by any of the persons referred to in any of subparagraphs 18(1)(m)(i) to (iii) of the Act as a rental for property described in subparagraph 66(15)(c)(i) [66(15)"Canadian resource property"(a)] of the Act or for a portion of such property, and

(B) became payable or receivable

(I) in a taxation year in which there was no taking of petroleum, natural gas or related hydrocarbons in relation to the property or portion thereof, as the case may be, to which the rental relates, if the amount became payable or receivable after 1984, or

(II) prior to the taking of petroleum, natural gas or related hydrocarbons in relation to the property or portion thereof, as the case may be, to which the rental relates, if the amount became payable or receivable after October 31, 1982 and before 1985, and

(ii) an amount equal to $2.50 per year per hectare times the number of hectares to which the amount referred to in subparagraph (i) relates; and

(e) an amount paid under section 49 of the *Canada Oil and Gas Act*.

History: Paras. 1211(d) and (e) added by P.C. 1985-465, s. 10, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable, as to para. 1211(d), with respect to amounts that after October 31, 1982 become payable or receivable, and as to para. 1211(e), to amounts paid after October 31, 1982.

Subpara. 1211(b)(i) substituted by P.C. 1981-3329, s. 10, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981.

Paras. 1211(b), (c) added by P.C. 1980-3279, s. 2, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980. S. 1211 added by P.C. 1978-1849, s. 8, June 8, 1978, *Canada Gazette*, Part II, June 28, 1978, applicable to taxation years ending after May 6, 1974.

Definitions [Reg. 1211]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement", "Her Majesty" — *Interpretation Act* 35(1); "mineral", "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resource" — Reg. 1206(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-438R2: Crown charges — resource properties in Canada.

1212. Supplementary depletion allowances — **(1)** In computing a taxpayer's income for a taxation year there may be deducted

(a) where the taxpayer is a corporation, such amount as it may claim not exceeding the lesser of

(i) the aggregate of

(A) 50 per cent of its income for the year, computed in accordance with Part I of the Act without reference to paragraphs 59(3.3)(c) and (d) thereof, if no deduction were allowed under this subsection or subsection 1207(1), and

(B) the amount, if any, included in its income for the year by virtue of paragraphs 59(3.3)(c) and (d) of the Act, and

(ii) its supplementary depletion base as of the end of the year (before making any deduction under this subsection for the year); and

(b) where the taxpayer is not a corporation, such amount as he may claim not exceeding the lesser of

(i) the aggregate of

(A) 25 per cent of the amount, if any, by which his resource profits for the year exceed four times the amount, if any, deducted by virtue of subparagraph 1201(a)(i) in computing his income for the year, and

(B) the amount, if any, included in his income for the year by virtue of paragraphs 59(3.3)(c) and (d) of the Act, and

(ii) his supplementary depletion base as of the end of the year (before making any deduction under this subsection for the year).

History: Subparas. 1212(1)(a)(i), (b)(i) substituted by P.C. 1981-3329, subsecs. 11(1), (2), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981.

(2) For the purpose of computing the supplementary depletion base of a corporation, where, after the corporation last ceased to carry on active business, control of the corporation is considered, for the purposes of subsection 66(11) of the Act, to have been acquired by a person or persons who did not control the corporation at the time when it so ceased to carry on active business, the amount by which the supplementary depletion base of the corporation at the time it last ceased to carry on active business exceeds the aggregate of amounts otherwise deducted under subsection (1) in computing its income for taxation years ending after that time and before control was so acquired, shall be deemed to have been deducted under subsection (1) by the corporation in computing its income for taxation years ending before control was so acquired.

(3) For the purposes of this section, "supplementary depletion base" of a taxpayer as of a particular time means the amount by which the aggregate of

(a) 50 per cent of the aggregate of all expenditures each of which was incurred by him before the particular time and each of which was the capital cost to him of property that is enhanced recovery equipment,

(b) 33⅓ per cent of the aggregate of all expenditures each of which was incurred by him before the particular time and each of which was the capital cost to him of property (other than property that had, before it was acquired by him, been used for any purpose whatever by any person with whom he was not dealing at arm's length) that is bituminous sands equipment acquired by him before 1981, and

(c) where the taxpayer is a successor corporation, any amount required by paragraph (4)(a) to be added before the particular time in computing the taxpayer's supplementary depletion base,

exceeds the aggregate of

(d) all amounts deducted by the taxpayer under subsection (1) in computing his income for taxation years ending before the particular time;

(e) 50 per cent of the aggregate of all amounts, each of which is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, included in the capital cost to him of depreciable property described in paragraph (a);

(f) 33⅓ per cent of the aggregate of all amounts, each of which is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business, included in the capital cost to him of depreciable property described in paragraph (b);

(g) 50 per cent of the aggregate of all amounts, each of which is an amount in respect of a disposition of property (other than a disposition of property, that had been used by the taxpayer, to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer before the earlier of December 12, 1979 and the particular time, the capital cost of which was added in computing the taxpayer's supplementary depletion base by virtue of paragraph (a) or in computing the supplementary depletion base of a predecessor by virtue of paragraph (a) as it applied to the predecessor where the taxpayer is a successor corporation to the predecessor, as the case may be, and each of which is the amount that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer or the predecessor, as the case may be, computed as if no amount had been included therein that is a cost of borrowing capital, including a cost incurred prior to the commencement of carrying on a business;

(h) 33⅓ per cent of the aggregate of all amounts, each of which is an amount in respect of a disposition of property (other than a disposition of property, that had been used by the taxpayer, to any person with whom the taxpayer was not dealing at arm's length) of the taxpayer before the earlier of December 12, 1979 and the particular time, the capital cost of which was added in computing the taxpayer's supplementary depletion base by virtue of paragraph (b) or in computing the supplementary depletion base of a predecessor by virtue of paragraph (b) as it applied to the predecessor where the taxpayer is a successor corporation to the predecessor, as the case may be, and each of which is the amount that is equal to the lesser of

(i) the proceeds of disposition of the property, and

(ii) the capital cost of the property to the taxpayer or the predecessor, as the case may be, computed as if no amount had been included therein that is a cost of borrowing capital, including any cost incurred prior to the commencement of carrying on a business; and

(i) where the taxpayer is a predecessor, any amount required by paragraph (4)(b) to be deducted before the particular time in computing the taxpayer's supplementary depletion base.

History: Para. 1212(3)(b) substituted by P.C. 1985-465, s. 11, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1984 *et seq.*

Paras. 1212(3)(b), (e)–(h) substituted by P.C. 1981-3329, subsecs. 11(3), (4), November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective, as to para. 1212(3)(b), commencing January 1, 1981, and, as to those portions of paras. 1212(3)(g) and (h) preceding subpara. (i) thereof, commencing December 12, 1979.

Paras. 1212(3)(a), (b), (g), (h) substituted by P.C. 1980-1483, s. 6, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980.

(4) Subject to subsections 1202(5) and (6), where a corporation (in this section referred to as the "successor corporation") has at any time (in this subsection referred to as the "time of acquisition") after April 19, 1983 and in a taxation year (in this subsection referred to as the "transaction year") acquired a property from another person (in

this subsection referred to as the "predecessor"), the following rules apply:

(a) for the purpose of computing the supplementary depletion base of the successor corporation as of any time after the time of acquisition, there shall be added an amount equal to the amount required by paragraph (b) to be deducted in computing the supplementary depletion base of the predecessor; and

(b) for the purpose of computing the supplementary depletion base of the predecessor as of any time after the transaction year of the predecessor, there shall be deducted the amount, if any, by which

(i) the supplementary depletion base of the predecessor immediately after the time of acquisition (assuming for this purpose that, in the case of an acquisition as a result of an amalgamation described in section 87 of the Act, the predecessor existed after the time of acquisition and no property was acquired or disposed of in the course of the amalgamation)

exceeds

(ii) the amount, if any, deducted under subsection (1) in computing the income of the predecessor for the transaction year of the predecessor.

History: That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1990-2780, subsec. 10(1), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1990-2256, subsec. 6(1), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984.

That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1990-162, s. 8, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to acquisitions occurring after 1982 except that with respect to acquisitions occurring after 1982 and in taxation years commencing before 1985, the reference to "Canadian resource properties of the predecessor" shall be read as a reference to "property of the predecessor used by the predecessor in carrying on in Canada such of the businesses described in any of subparagraphs 66(15)(h)(i) to (vii) of the Act as were carried on by the predecessor".

That portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1985-2277, s. 6, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

All that portion of subsec. 1212(4) preceding para. (a) substituted by P.C. 1980-1483, s. 6, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective November 17, 1978.

(5) [Revoked]

History: Subsec. 1212(5) revoked by P.C. 1990-2780, subsec. 10(2), December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

Subsec. 1212(5) added by P.C. 1990-2256, subsec. 6(2), October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable in respect of taxation years commencing after 1984 except that the Minister of National Revenue shall be deemed to have been notified in circumstances satisfying the condition set out in para. (c) if the Minister is notified in writing of the agreement referred to therein within 180 days after November 7, 1990.

History [Reg. 1212]: S. 1212 added by s. 7 of P.C. 1979-649, March 8, 1979, *Canada Gazette*, Part II, March 28, 1979, effective for taxation years ending after April 10, 1978.

Definitions [Reg. 1212]: "active business", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "business" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deducted" — Reg. 1212(2); "depreciable property" — ITA 13(21), 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "disposition of property", "enhanced recovery equipment" — Reg. 1206(1); "person" — ITA 248(1); "predecessor" — Reg. 1203(3); "proceeds of disposition" — Reg. 1206(1); "property" — ITA 248(1); "successor corporation" — Reg. 1203(3); "supplementary depletion base" — Reg. 1212(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "time of acquisition", "transaction year" — Reg. 1203(3).

1213. Prescribed deductions — For the purposes of subparagraph 66.1(2)(a)(ii) of the Act, "prescribed deduction" in respect of a corporation for a taxation year means an amount deducted under subsection 1202(2) by the corporation in computing its income for the year.

History: S. 1213 substituted by P.C. 1990-2780, s. 11, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years ending after February 17, 1987.

S. 1213 added by P.C. 1981-3329, s. 12, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, applicable in respect of taxation years ending after December 11, 1979.

Definitions [Reg. 1213]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "taxation year" — ITA 249.

1214. Amalgamations and windings-up — **(1)** Where a particular corporation amalgamates with another corporation to form a new corporation, or the assets of a subsidiary are transferred to its parent corporation on the winding-up of the subsidiary, and subsection 87(1.2) or 88(1.5) of the Act is applicable to the new corporation or the parent corporation, as the case may be, the new corporation or the parent corporation, as the case may be, shall be deemed to be the same corporation as, and a continuation of, the particular corporation or the subsidiary, as the case may be, for the purposes of

(a) computing the mining exploration depletion base (within the meaning assigned by subsection 1203(2)), the earned depletion base, the frontier exploration base (within the meaning assigned by subsection 1207(2)) and the supplementary depletion base (within the meaning assigned by subsection 1212(3)) of the new corporation or the parent corporation, as the case may be; and

(b) determining the amounts, if any, that may be deducted under subsection 1202(2) in computing the income of the new corporation or the parent corporation, as the case may be, for a particular taxation year.

(2) Where there has been an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of two or more particular corporations to form one corporate entity, that entity shall be deemed to be the same corporation as, and a continuation of, each of the particular corporations for the purposes of subsection 1202(9).

(3) Where a taxable Canadian corporation (in this subsection referred to as the "subsidiary") has been wound up in circumstances in which subsection 88(1) of the Act applies in respect of the subsidiary and another taxable Canadian corporation (in this subsection referred to as the "parent"), the parent shall be deemed to be the same corporation as, and a continuation of, the subsidiary for the purposes of subsection 1202(9).

History: The heading to s. 1214 substituted by P.C. 1990-2780, subsec. 12(1), December 20, 1990. *Canada Gazette*, Part II, January 16, 1991, applicable in respect of amalgamations or windings-up commencing after 1982.

Subsec. 1214(1) substituted for s. 1214, and subsecs. (2), (3) added, by subsec. 12(2) of the said P.C. 1990-2780, applicable in respect of amalgamations and windings-up occurring after January 15, 1987 except that, in respect of amalgamations and windings-up in taxation years ending before February 18, 1987, para. 1214(1)(b) shall be read as if the reference to "subsection 1202(2)" were a reference to "subsections 1202(2) and (3)".

S. 1214 substituted by P.C. 1990-162, s. 9, February 1, 1990, *Canada Gazette*, Part II, February 14, 1990, applicable with respect to amalgamations occurring or windings-up commencing after 1982.

All that portion of s. 1214 preceding para. (b) substituted by P.C. 1985-465, s. 12, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to amalgamations occurring after December 14, 1975.

S. 1214 added by P.C. 1981-3329, s. 12, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective commencing December 15, 1975.

Definitions [Reg. 1214]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "earned depletion base" — Reg. 1202(1), 1205(1); "parent", "subsidiary" — Reg. 1214(3); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxation year" — ITA 249.

1215. [Revoked]

History: S. 1215 revoked by P.C. 1990-2256, s. 7, October 18, 1990, *Canada Gazette*, Part II, November 7, 1990, applicable after 1985.

S. 1215 added by P.C. 1985-465, s. 13, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1984 *et seq.*

1216. Prescribed persons — For the purposes of subsection 208(1) of the Act, "prescribed person" means a person described in paragraph 149(1)(d) of the Act.

History: S. 1216 added by P.C. 1985-465, s. 14, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1979 *et seq.*

Definitions [Reg. 1216]: "person" — ITA 248(1).

1217. Prescribed Canadian exploration expense — **(1)** For the purposes of subsection 66(14.1) of the Act, the prescribed Canadian exploration expense of a corporation for a taxation year is the amount, if any, by which its total specified exploration expenses for the year exceed its total exploration assistance for the year.

(2) For the purposes of subsection (1), the total specified exploration expenses of a particular corporation for a particular taxation year are the aggregate of

(a) all expenses (other than expenses referred to in paragraph (b) or (c)) that are described in any of subparagraphs 66.1(6)(a)(i) to (ii) of the Act and that were incurred by the particular corporation in the particular year and after March 1985 and before October 1986,

(b) where the particular corporation is a shareholder corporation of a joint exploration corporation, all expenses described in any of subparagraphs 66.1(6)(a)(i) to (ii) of the Act that were incurred by the joint exploration corporation after March 1985 and before October 1986 and in the taxation year of the joint exploration corporation ending in the particular year and that were deemed under paragraph 66(10.1)(c) of the Act to be Canadian exploration expenses incurred by the particular corporation in the particular year, and

(c) all expenses that would be described in subparagraph 66.1(6)(a)(iv) or (v) of the Act if the references in those subparagraphs to "any of subparagraphs (i) to (iii.1) incurred" were read as "any of subparagraphs (i) to (ii) incurred after March 1985 and before October 1986" and that were incurred by the particular corporation in the particular year or by a partnership in a fiscal period of the partnership that ended in the particular year if, at the end of that fiscal period, the particular corporation was a member of the partnership

other than

(d) expenses renounced by the corporation at any time under subsection 66(10.1) or (12.6) of the Act,

(e) Canadian exploration and development overhead expenses of the corporation or of a partnership of which the corporation was a member, or

(f) expenses incurred or deemed to have been incurred by the corporation in a period during which it was exempt from tax on its taxable income under Part I of the Act.

(3) For the purposes of subsection (1), the total exploration assistance of a corporation for a taxation year is the aggregate of all amounts each of which is an amount of assistance or benefit that the corporation has received or is entitled to receive in the year from a government, municipality or other public authority in respect of an expense that is included in its total specified exploration expenses for the year by virtue of paragraph (2)(a) or (c), whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit.

History: S. 1217 added by P.C. 1988-1608, s. 2, August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 1217]: "amount" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "prescribed", "shareholder", "taxable income" — ITA 248(1); "taxation year" — ITA 249; "total development assistance" — Reg. 1218(3); "total exploration assistance" — Reg. 1217(3); "total specified development expenses" — Reg. 1218(2); "total specified exploration expenses" — Reg. 1217(2).

1218. Prescribed Canadian development expense — **(1)** For the purposes of subsection 66(14.2) of the Act, prescribed Canadian development expense of a corporation for a taxation year is the amount, if any, by which its total specified development expenses for the year exceed its total development assistance for the year.

(2) For the purposes of subsection (1), the total specified development expenses of a particular corporation for a particular taxation year is the aggregate of

(a) all expenses (other than expenses referred to in paragraph (b) or (c)) that are described in subparagraph 66.2(5)(a)(i) or (i.1) [66.2(5)"Canadian development expense"(a) or (b)] of the Act and that were incurred by the corporation in the particular year and after March 1985 and before October 1986,

(b) where the particular corporation is a shareholder corporation of a joint exploration corporation, all expenses that are described in subparagraph 66.2(5)(a)(i) or (i.1) [66.2(5)"Canadian development expense"(a) or (b)] of the Act, that were incurred by the joint exploration corporation after March 1985 and before October 1986 and in the taxation year of the joint exploration corporation ending in the particular year and that were deemed under paragraph 66(10.2)(c) of the Act to be Canadian development expenses incurred by the particular corporation in the particular year, and

(c) all expenses that would be described in subparagraph 66.2(5)(a)(iv) or (v) [66.2(5)"Canadian development expense"(f) or (g)] of the Act if the references in those subparagraphs to "any of subparagraphs (i) to (iii) incurred" were read as "subparagraph (i) or (i.1) incurred after March 1985 and before October 1986" and that were incurred by the particular corporation in the particular year or by a partnership in a fiscal period of the partnership that ended in the particular year if, at the end of that fiscal period, the particular corporation was a member of the partnership,

other than

(d) expenses renounced by the corporation at any time under subsection 66(10.2), (12.601) or (12.62) of the Act,

(e) Canadian exploration and development overhead expenses of the corporation or of a partnership of which the corporation was a member, or

(f) expenses incurred or deemed to have been incurred by the corporation in a period during which it was exempt from tax on its taxable income under Part I of the Act.

(3) For the purposes of subsection (1), the total development assistance of a corporation for a taxation year is the aggregate of all amounts each of which is an amount of assistance or benefit that the corporation has received or is entitled to receive in the year from a government, municipality or other public authority in respect of an expense that is included in its total specified development expenses for the year by virtue of paragraph (2)(a) or (c), whether such amount is by way of a grant, subsidy, rebate, forgivable loan, deduction from royalty or tax, rebate of royalty or tax, investment allowance or any other form of assistance or benefit.

History: Para. 1218(2)(d) amended by P.C. 1996-494, s. 3, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable after December 2, 1992.

S. 1218 added by P.C. 1988-1608, s. 2, August 11, 1988, *Canada Gazette*, Part II, August 31, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 1218]: "amount" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1), Reg. 1206(4)(b); "Canadian exploration and development expenses" — ITA 66(15), 248(1), Reg. 1206(4)(b); "Canadian exploration and development overhead expense" — Reg. 1206(1), (4.1); "Canadian exploration expense" — ITA 66.1(6), 248(1), Reg. 1206(4)(b); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "prescribed", "shareholder", "taxable income" — ITA 248(1); "taxation year" — ITA 249.

Proposed Addition — Reg. 1219

1219. Canadian renewable and conservation expense — **(1)** Subject to subsection (2), for the purpose of the definition "Canadian renewable and conservation expense" in subsection 66.1(6) of the Act, "Canadian renewable and conservation expense" means an expense incurred by a taxpayer, and payable to a person or partnership with whom the taxpayer is dealing at arm's length, in respect of the development of a project for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in the project would be the capital cost of property described in Class 43.1 of Schedule II, and includes such an expense incurred by the taxpayer

(a) for the purpose of making a service connection to the project for the transmission of electricity to a purchaser of the electricity, to the extent that the expense so incurred was not incurred to acquire property of the taxpayer;

(b) for the construction of a temporary access road to the project site;

(c) for a right of access to the project site in respect of the period ending at the earliest time at which a property described in Class 43.1 of Schedule II is used in the project for the purpose of earning income;

(d) for clearing land to the extent necessary to complete the project;

(e) for process engineering for the project, including

(i) collection and analysis of site data,

(ii) calculation of energy, mass, water, or air balances,

(iii) simulation and analysis of the performance and cost of process design options, and

(iv) selection of the optimum process design;

(f) for the drilling or completion of a well for the project; or

(g) for the acquisition and installation of the taxpayer's test wind turbine for the project.

(2) A Canadian renewable and conservation expense does not include any expense incurred by a taxpayer that is directly or indirectly

(a) for the acquisition of, or the use of or the right to use, land, except as provided by paragraph (1)(b), (c) or (d);

(b) for grading or levelling land or for landscaping, except as provided by paragraph (1)(b);

(c) payable to a non-resident person or a partnership other than a Canadian partnership (other than an expense described in paragraph (1)(g));

(d) included in the capital cost of property that, but for this section, would be depreciable property, except as provided by paragraph (1)(b), (d), (e), (f) or (g);

(e) an expenditure that, but for this section, would be an eligible capital expenditure, except as provided by any of paragraphs (1)(a) to (e);

(f) included in the cost of inventory of the taxpayer;

(g) an expenditure on or in respect of scientific research and experimental development;

(h) a Canadian development expense or a Canadian oil and gas property expense;

(i) incurred, for a project, in or in respect of the period that begins at the earliest time at which a property described in Class 43.1 of Schedule II is used in the project for the purpose of earning income;

(j) incurred in respect of the administration or management of a business of the taxpayer;

(k) described in paragraphs 20(1)(c), (d), (e) or (e.1) of the Act; or

(l) a cost attributable to the period of the construction, renovation or alteration of depreciable property, other than property described in Class 43.1 of Schedule II, that relates to

(i) the construction, renovation or alteration of the property (except as provided by paragraph (1)(b), (f), or (g)), or

(ii) the ownership of land during the period (except as provided by paragraph (1)(b), (c) or (d)).

(3) For the purpose of subsection (1), "test wind turbine" means a fixed location device that is a wind energy conversion system that would, but for this section, be property included in Class 43.1 of Schedule II because of subparagraph (d)(v) thereof, and in respect of which the Minister, in consultation with the Minister of Natural Resources, is satisfied that

(a) the device will be the first such device installed at the taxpayer's site for a proposed wind energy generation facility, and

(b) the primary purpose of the device is to test the level of energy production at the site.

Related Provisions: Reg. 1102(1)(a.1) — CRCE ineligible for capital cost allowance.

Application: The September 16, 1997 draft regulations, s. 3, will add s. 1219, applicable to expenses incurred after December 5, 1996.

Technical Notes: [The following Technical Notes were released with the December 5, 1996 draft legislation.]

Proposed amendments to subsection 66.1(6) of the Act define "Canadian renewable and conservation expense" (CRCE) as having the meaning assigned by regulation. For this purpose, the Technical Guide on this topic published by the Department of Natural Resources is to apply conclusively with respect to engineering and scientific matters in the determination of whether an expense meets the criteria set out in the Regulations.

New section 1219 assigns the meaning of the term "Canadian renewable and conservation expense" for the purpose of the definition of that term in subsection 66.1(6) of the Act.

Subsection 1219(1) states, generally, that CRCE means an expense incurred in respect of the development of projects for which it is expected that at least half the depreciable property to be used in the project will be described in Class 43.1 of Schedule II to the Regulations. The determination of the proportion of depreciable property that is described in Class 43.1 is to be made by reference to capital cost.

Subsection 1219(1) goes on to list six types of expenditure which are specifically included in CRCE and which, because of the exclusions listed in subsection 1219(2), might otherwise have been ineligible for treatment as CRCE.

Subsection 1219(2) lists expenses which are specifically excluded from the CRCE definition.

Federal budget, Supplementary Information, February 18, 1997: *Canadian renewable and conservation expenses (CRCEs)*

Regulations detailing the expenses that are eligible for inclusion in the CRCE category were released on December 5, 1996. This budget proposes one additional modification to the definition of a CRCE.

Canadian renewable and conservation expense (CRCE) category

Canadian renewable and conservation expenses include certain intangible development costs associated with projects primarily using equipment eligible for Class 43.1.

The CRCE category is similar in concept to the definition of expenses used in the non-renewable energy sector. These expenses generally include all intangible expenses incurred to determine the existence, location, extent or quality of certain non-renewable resources such as crude oil and natural gas.

CRCE was introduced to encourage investment in the pre-production development phases of energy conservation and renewable energy projects. CRCE deductions can be accumulated from December 5, 1996, when the legislation implementing the 1996 budget changes was tabled in Parliament.

Expenditures eligible for CRCE treatment are fully deductible and can be carried forward indefinitely. These expenditures can also be renounced to shareholders who have entered into a flow-through share agreement. The CRCE definition also provides taxpayers investing in renewable energy and energy conservation projects with more rapid deductions for certain other types of expenses which would normally be treated as capital in nature.

Test wind turbines

Following upon recent consultations with industry associations, this budget proposes to modify the CRCE definition released on December 5, 1996 to include the costs of acquiring and installing test wind turbines. Favourable prior opinions must be issued by the Minister of Natural Resources for each test wind turbine installation.

Letter from Department of Finance, August 6, 1997:

Dear [xxx]

Further to the conference call of June 4, 1997, this is in response to [xxx] comments, contained in a memorandum dated June 2, 1997, and [xxx] letter of June 16, 1997, on the draft CRCE Regulations. We would ask that you make this response available to your colleagues in the wind energy industry.

As you know, the restrictions in the CRCE regulations were a trade off in order to enable us to recommend these provisions to our Minister as a reasonable approach to protecting the tax base while furthering the policy objective of encouraging the renewable energy sector. We had understood that the industry had come to accept these restrictions as a necessary framework for avoiding abuse and ensuring the viability of the CRCE initiative. It is only because we were, as you know, still in the process of finalizing the test wind turbine provisions that this schedule of regulations has not been forwarded to the Department of Justice for processing and promulgation.

Before addressing the specific concerns outlined in the memorandum, we have two further comments. First, we would emphasize that we consider the potential for abuse to be a threat, not from renewable energy proponents like you and your industry colleagues, but rather from the tax shelter promotion industry. It is not enough for us to be satisfied that ordinary taxpayers have clear rules to follow in order to comply with a particular tax measure; we must also ensure that sophisticated tax planners cannot take undue advantage of any oversights in these or other provisions, and that Revenue Canada auditors are able to apply the provisions in a manner which facilitates the identification of tax evasion and abusive tax avoidance.

Second, we would point out that exclusion of a cost from CRCE eligibility simply means that the particular cost will receive its ordinary tax treatment. At a very general level, current expenses are normally deductible in computing income. We recognize that many renewable energy businesses will initially be in a loss position, however, the carryforward period for business losses is normally seven years. While these excluded expenses may not be financed using flow-through shares, the treatment they are accorded is not less advantageous than that available for other taxpayers.

Notwithstanding the foregoing, and keeping in mind that changes to the provisions will further delay the completion of the CRCE Regulations, we have discussed [xxx] concerns (and the comments received during the conference call) internally with a view to identifying any aspects of the regulations which could be modified to address your concerns while recognizing the potential for abuse which is inherent in tax incentive programs of this nature. In this regard, our response to the outlined points from the memorandum is as follows:

1. We recognize that the arm's length payment requirement is a significant limitation on the scope of CRCE, but we believe it to be a necessary one, given the clear potential for inflated expenditures being used in the CRCE context. There are at least two aspects to the abuse potential. One is that a particular expense may be overvalued such that the deduction made available to flow-through shareholders is artificially enhanced. A simple case would just involve charging relatively more for a CRCE-eligible expense, and charging relatively less for a non-CRCE eligible expense or outlay. The non-arm's length payee or payees would generally not be concerned with this type of manipulation. The second aspect is that, in the non-arm's length context, the payment need not occur at all except on paper, because there is no arm's length payee to complain about an outstanding debt. This would permit significantly greater inflation of the expenses. We would expect that this type of transaction, even if detected, would pose significant evidentiary challenges for Revenue Canada.

I understand that during the telephone conference call it was suggested that we should consider whether similar restrictions should apply in determining whether non-CRCE amounts qual-

ify as Canadian exploration expenses. We have undertaken to review that suggestion.

2. With respect to the 50% requirement, this is an aspect of the CRCE Regulations that the renewable energy industry has been aware of over the past number of months, and we understand it to be acceptable from our consultations with industry representatives and Natural Resources Canada. From a policy perspective, [xxx] suggestion would, in our view, open CRCE eligibility to projects of questionable environmental benefit, given that up to half the electrical generating equipment could be Class 9 conventional electrical generating equipment.

3, 4 and 5. As discussed during the conference call, these provisions generally operate as intended and we do not plan to recommend changes, except as noted.

3. Regulation 1219(1)(a) is intended to apply to fees demanded by utilities for interconnection. At the time the original draft was prepared we were satisfied that the phrase "public utility" included those utilities that, while privately owned, provided electricity to the public. Given the emerging marketing trends following deregulation, we recognize that it may be desirable to accommodate the possibility of interconnection for the transmission of electricity to other entities. We are considering using "purchaser of the electricity" as a replacement for "public utility" in 1219(1)(a).

4. Costs associated with the acquisition of an interest in land for a test wind turbine or a well are not intended to be eligible for CRCE.

5. With respect to the various distinctions between grading, clearing, landscaping etc., we understand that Revenue Canada interprets these terms in a specific manner and the provisions were drafted in accordance with this convention. Clearing land is distinct from any of grading, levelling, or landscaping. An additional exception to Regulations 1219(2)(b) is therefore unnecessary.

6. The restriction in respect of payments to non-residents was discussed at some length in the July, 1996 meeting when the parameters of CRCE were being developed, and was agreed to by the industry representatives. [xxx] is correct that the Act does not normally deny deductibility of payments to non-residents. Current expenses that are payments to non-residents will retain their deductibility under general tax principles in the CRCE context. However, the Act generally tailors tax incentive programs in a manner that encourages Canadian investment and limits the scope for funds to travel offshore free of Canadian taxation at any stage. Nevertheless, we recognize that test wind turbines are not readily available in Canada, and we are prepared to recommend the exclusion of test wind turbines from the requirement that the amounts be paid or payable to a Canadian resident.

7. The CRCE initiative is intended to apply in respect of intangible start-up costs related to a project. The purpose of Regulation 1219(2)(i) is to ensure that non-start-up costs are not eligible. We would note, however, that Revenue Canada may interpret a large, independent phase to constitute a new project for the purposes of applying the CRCE provisions (although the first wind turbine in a later phase would be unlikely to qualify as a test wind turbine). The parameters of a given project are a question of fact.

8. We are confident that Revenue Canada will be able to distinguish between engineering expenses and overhead or management expenses; Revenue Canada auditors have considerable experience in this regard.

9. The exclusion contained in Regulation 1219(2)(k) stems from our goal of preventing the inclusion in CRCE of overhead and management expenses. However, on reflection we have concluded that the exclusion of administration and management costs is sufficiently broad to encompass expenses such as office furniture leasing or computer rental, to the extent that the computer is used in administration and management. We cannot identify an abuse potential in allowing, for example, rental expenses for testing equipment to be eligible for inclusion in CRCE. We are therefore recommending that this provision be deleted from the draft CRCE provisions.

10. We understood from the conference call that you were concerned that "financing for the project" may be applied more broadly than is intended. Although we do not consider this a significant risk, we are prepared to recommend replacing Regulation 1219(2)(l) with the phrase "described in paragraph 20(1)(c), (d), (e) or (e.1) of the Act".

11. Regulation 1219(2)(m) ensures that soft costs associated with construction etc. of property other than Class 43.1 property are not eligible for CRCE. This was touched on briefly during the conference call and our impression was that there were no serious concerns with this paragraph.

Thank you for your comments on this initiative. You will appreciate that we hope to finalize the wording of the regulations as soon as possible.

Yours sincerely,

Paul Berg-Dick
Director
Business Income Tax Division

Definitions [Reg. 1219]: "arm's length" — ITA 251(1); "business" — ITA 248(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian oil and gas property expense" — ITA 66.4(5), 248(1); "Canadian partnership" — ITA 102, 248(1); "depreciable property" — ITA 13(21), 248(1); "eligible capital expenditure" — ITA 14(5), 248(1); "inventory", "Minister", "non-resident", "person", "property", "scientific research and experimental development", "taxpayer" — ITA 248(1); "test wind turbine" — Reg. 1219(3).

PART XIII — ELECTIONS IN RESPECT OF TAXPAYERS CEASING TO BE RESIDENT IN CANADA

History: Part XIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1300. Elections to defer capital gains — **(1)** Any election by an individual under paragraph 48(1)(c) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which the return of income for the year in which the taxpayer ceased to be resident in Canada is required to be filed under section 150 of the Act.

(2) Any election by a Canadian corporation under paragraph 48(1)(c) of the Act shall be made by filing with the Minister, on or before the day on or before which the return of income for the year in which the corporation ceased to be resident in Canada is required to be filed under section 150 of the Act, the following documents in duplicate:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made; and

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation.

Definitions [Reg. 1300]: "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "individual", "Minister", "person", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-434R: Rental of real property by individual; IT-451R: Deemed disposition and acquisition on ceasing to be or becoming resident in Canada.

Forms: T2061: Election by an emigrant to defer deemed disposition of property and capital gains thereon.

1301. Elections to defer payment of taxes — (1) Any election by an individual under subsection 159(4) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which the return of income for the year in which the taxpayer ceased to be resident in Canada is required to be filed under section 150 of the Act.

Forms: T2074: Election under subsection 159(4) to defer payment of income tax on the deemed disposition of property.

(2) Any election by a Canadian corporation under subsection 159(4) of the Act shall be made by filing with the Minister, on or before the day on or before which the return of income for the year in which the corporation ceased to be resident in Canada is required to be filed under section 150 of the Act, the following documents in duplicate:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made; and

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation.

Forms [Reg. 1301(2)]: T2074: Election under subsection 159(4) to defer payment of income tax on the deemed disposition of property.

Definitions [Reg. 1301]: "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "individual", "Minister", "person", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "taxpayer" — ITA 248(1).

1302. Elections to realize capital gains — Any election by an individual under paragraph 48(1)(a) of the Act shall be made by filing with the Minister the prescribed form on or before the day on or before which the return of income for the year in which the taxpayer ceased to be resident in Canada is required to be filed under section 150 of the Act.

History: S. 1302 added by P.C. 1988-390, s. 7, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq*, except that for the 1985, 1986 and 1987 taxation years, the prescribed form referred to may be filed on or before the day that is 180 days after March 16, 1988.

Definitions [Reg. 1302]: "individual", "Minister", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "taxpayer" — ITA 248(1).

PART XIV — INSURANCE BUSINESS POLICY RESERVES

DIVISION 1 — POLICY RESERVES

History: The heading to Part XIV amended by P.C. 1999-1154, subsec. 2(1), June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Part XIV was substituted by P.C. 1979-1486, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, applicable, as to ss. 1400–1404 to 1978 *et seq.*

1400. Non-life insurance business — (1) [Policy reserve] — For the purpose of paragraph 20(7)(c) of the Act, the amount prescribed in respect of an insurer for a taxation year is

(a) the amount determined under subsection (3) in respect of the insurer for the year, where that amount is greater than nil, and

(b) nil, in any other case.

(2) [Negative reserves] — For the purpose of paragraph 12(1)(e.1) of the Act, the amount prescribed in respect of an insurer for a taxation year is

(a) the absolute value of the amount determined under subsection (3) in respect of the insurer for the year, where that amount is less than nil, and

(b) nil, in any other case.

Related Provisions: Reg. 1402.1 — Negative amounts.

(3) [Amount of reserve] — For the purposes of paragraphs (1)(a) and (2)(a), the amount determined under this subsection in respect of an insurer for a taxation year is the amount, which may be positive or negative, determined by the formula

$$A + B + C + D + E + F + G + H + I + J + K + L$$

where

A is the total of all amounts each of which is the unearned portion at the end of the year of the net premium for a policy, (other than a policy that insures a risk in respect of

(a) a financial loss of a lender on a loan made on the security of real property,

(b) a home warranty,

(c) a lease guarantee, or

(d) an extended motor vehicle warranty),

which is determined by apportioning the net premium equally over the period to which that premium relates;

Proposed Amendment — Reg. 1400(3)A

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(1)(a), will amend the description of A in subsec. 1400(3) by replacing "net premium" with "premium paid by the policyholder", applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: Part XIV of the *Income Tax Regulations* provides rules in respect of insurance business policy reserves.

Part XIV is amended to replace the term "net premium" wherever it appears with the term "premium paid by the policyholder". The change is consequential on newly added subsection 18(9.02) of the Act which denies a deduction on a current basis of acquisition costs of insurance policies (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy, or a life insurance policy that is not a group term life insurance policy that provides coverage for a period of 12 months or less). This amendment ensures that deductions in respect of policy reserves remain consistent with the tax treatment of policy acquisition costs.

This amendment applies to the 2000 and subsequent taxation years and, if a taxpayer files an election in respect of amended subparagraph 18(9)(a)(ii) and new subsection 18(9.02) of the Act, the amendment also applies to the taxpayer's 1998 and 1999 taxation years.

B is the total of all amounts each of which is an amount determined in respect of a policy referred to in para-

graph (a), (b), (c) or (d) of the description of A equal to the lesser of

(a) the amount of the reported reserve of the insurer at the end of the year in respect of the unearned portion at the end of the year of the net premium for the policy, and

(b) a reasonable amount as a reserve determined as at the end of the year in respect of the unearned portion at the end of the year of the net premium for the policy;

Proposed Amendment — Reg. 1400(3)B(a), (b)

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(1)(b), will amend paras. (a) and (b) of the description of B in subsec. 1400(3) by replacing "net premium" with "premium paid by the policyholder", applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: See under Reg. 1400(3)A.

C is the total of all amounts each of which is the amount in respect of a policy, where all or a portion of a risk under the policy was reinsured, equal to the unearned portion at the end of the year of a reinsurance commission in respect of the policy determined by apportioning the reinsurance commission equally over the period to which it relates;

D is the amount, in respect of policies (other than policies in respect of which an amount can be determined under the description of E) under which

(a) a claim that was incurred before the end of the year has been reported to the insurer before the end of the year and in respect of which the insurer is, or may be, required to make a payment or incur an expense after the year, or

(b) there may be a claim incurred before the end of the year that has not been reported to the insurer before the end of the year,

equal to 95% of the lesser of

(c) the total of the reported reserves of the insurer at the end of the year in respect of such claims or possible claims, and

(d) the total of the claim liabilities of the insurer at the end of the year in respect of such claims or possible claims;

E is the amount, in respect of policies under which

(a) a claim that was incurred before the end of the year has been reported to the insurer before the end of the year,

(b) the claim is in respect of damages for personal injury or death, and

(c) the insurer has agreed to a structured settlement of the claim,

equal to the lesser of

(d) the total of the reported reserves of the insurer at the end of the year in respect of such claims, and

(e) the total of the claim liabilities of the insurer at the end of the year in respect of such claims;

F is an additional amount, in respect of policies that insure a fidelity risk, a surety risk, a nuclear risk, or a risk related to a financial loss of a lender on a loan made on the security of real property, equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, G, H, I, J, K or L), and

(b) a reasonable amount as a reserve determined as at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, G, H, I, J, K or L);

G is the amount of a guarantee fund at the end of the year provided for under an agreement in writing between the insurer and Her Majesty in right of Canada under which Her Majesty has agreed to guarantee the obligations of the insurer under a policy that insures a risk related to a financial loss of a lender on a loan made on the security of real property;

H is the amount in respect of risks under pre-1996 non-cancellable or guaranteed renewable accident and sickness policies equal to

(a) where the amounts determined under subparagraphs (i) and (ii) are greater than nil, the lesser of

(i) the total of the reported reserves of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, I, J, K or L), and

(ii) a reasonable amount as a reserve determined as at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, I, J, K or L), and

(b) nil, in any other case;

I is the amount in respect of risks under post-1995 non-cancellable or guaranteed renewable accident and sickness policies equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, J, K or L), and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of such risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, J, K or L);

J is the total of all amounts (other than an amount deductible under subsection 140(1) of the Act) each of which is the amount, which is the least of P, Q and R, in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of a group accident and sickness insurance policy that will be

(a) used by the insurer to reduce or eliminate a future adverse claims experience under the policy,

(b) paid or unconditionally credited to the policyholder by the insurer, or

(c) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer under the policy,

where

P is a reasonable amount as a reserve determined as at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits,

Q is 25% of the amount of the premium payable under the terms of the policy for the 12-month period ending

(i) if the policy is terminated in the year, on the day the policy is terminated, and

(ii) in any other case, at the end of the year, and

R is the reported reserve of the insurer at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits; and

K is the total of all amounts each of which is the amount, in respect of a policy under which a portion of the particular amount paid or payable by the policyholder for the policy before the end of the year is deducted under paragraph 1408(4)(b), equal to the portion of that particular amount that the insurer has determined will, after the end of the year, be returned to, or credited to the account of the policyholder on the termination of the policy; and

L is an amount in respect of policies that insure earthquake risks in Canada equal to the lesser of

(a) the portion of the reported reserve of the insurer at the end of the year in respect of those risks that is attributable to accumulations from premiums in respect of those risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, I, J, or K), and

(b) a reasonable amount as a reserve determined as at the end of the year in respect of those risks (other than an amount included in determining the value of A, B, C, D, E, F, G, H, I, J, or K).

Related Provisions: Reg. 1400(4) — Where actuarial principles not required for element D or E; Reg. 1400(5) — Transitional — before 2001; Reg. 1402 — All amounts to be net of reinsurance ceded; Reg. 1402.1 — Amounts in Reg. 1400 may be less than zero.

(4) [Elements D and E] — Where the relevant authority does not require an insurer (other than an insurer that is required by law to report to the Superintendent of Financial Institutions) to determine its liabilities in respect of claims referred to in the description of D or E in subsection (3) in accordance with actuarial principles,

(a) the value of D is deemed to be 95% of the amount determined under paragraph (c) of the description of D; and

(b) the value of E is deemed to be the amount determined under paragraph (d) of the description of E.

(5) [Transitional — Before 2001] — Nothwithstanding subsection (3), the amount determined under that subsection in respect of an insurer (other than a life insurer) for a taxation year that ends before 2001 is deemed to be the amount determined by the formula

$$A + (B \times (C - D))$$

where

A is the amount that would, but for this subsection, be the amount determined under subsection (3) in respect of the insurer for the year;

B is, where the year ends in

(a) 1996, 100%

(b) 1997, 80%

(c) 1998, 60%

(d) 1999, 40%, and

(e) 2000, 20%;

C is the total of all amounts each of which is the absolute value of any amount that is less than nil and that is used in computing the amount that is the lesser of the totals determined for the year under the description of I in subsection (3), in respect of a risk under a post-1995 non-cancellable or guaranteed renewable accident and sickness policy; and

D is the lesser of

(a) 5% of the total of all amounts each of which is a premium received by the insurer in the year or any preceding taxation year ending after 1995 in respect of a non-cancellable or guaranteed renewable accident and sickness policy, and

(b) the value of C.

Related Provisions: Reg. 1402.1 — Negative amounts.

History [Reg. 1400]: S. 1400 substituted by P.C. 1999-1154, subsec. 2(1), June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

The description of L in 1400(3) amended by the said P.C. 1999-1154, subsec. 2(2), applicable to 1998 *et seq.*

History [former Reg. 1400]: Paras. 1400(e) and (e.1) amended by P.C. 1999-1154, s. 1, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to taxation years that end after February 22, 1994. For 1994 and 1995 taxation years that end after February 22, 1994, paras. (e) and (e.1) read as follows:

(e) policies (other than a policy in respect of which an amount can be determined under paragraph (e.1) under which

(i) a claim that was incurred before the end of the year has been reported to the corporation before the end of the year and in respect of which the corpporation is, or may be, required to make a payment or incur an expense after the year, or

(ii) there may be a claim incurred before the end of the year that has not been reported to the corporation before the end of the year,

such amount as the corporation may claim not exceeding 95% of the lesser of

(iii) the total of all amounts each of which is the corporation's actuarial liability at the end of the year in respect of such claims or possible claims, and

(iv) the total of all amounts each of which is the corporation's reported reserve at the end of the year in respect of such claims or possible claims;

(e.1) policies under which

(i) a claim that was incurred before the end of the year has been reported to the corporation before the end of the year,

(ii) the claim is in respect of damages for personal injury or death, and

(iii) the corporation has agreed to a structured settlement of the claim,

such amount as the corporation may claim not exceeding the lesser of

(iv) the total of all amounts each of which is the corporation's actuarial liability at the end of the year in respect of such claims, and

(v) the total of all amounts each of which is the corporation's reported reserve at the end of the year in respect of such claims;

Para. 1400(e) amended, para. 1400(e.1) added, by P.C. 1996-1452, s. 1, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Subpara. 1400(g.1)(ii) amended by P.C. 1994-940, s. 4, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable to taxation years ending after June 15, 1994.

Para. 1400(f.1) added by P.C. 1994-555, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to taxation years ending after 1990.

That portion of s. 1400 preceding para. (a) substituted by P.C. 1990-2002, subsec. 2(1), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990.

Subpara. 1400(b)(i), subpara. 1400(f)(v), subpara. 1400(g)(ii), substituted by the said P.C. 1990-2002, s. 2, applicable in respect of 1987 *et seq.*

Para. 1400(e) substituted by the said P.C. 1990-2002, subsec. 2(5), applicable in respect of 1987 *et seq.*, except that, for taxation years ending before the first taxation year that begins after June 17, 1987 and ends after 1987, para. (e) shall be read as follows:

> (e) a policy where an event has occurred before the end of the year that has given or is likely to give rise to a claim under the policy (in this paragraph referred to as "the liability"), such amount as the corporation may claim, not exceeding the lesser of
>
> (i) a reasonable amount in respect of the liability as at the end of the year, and
>
> (ii) the amount of the reserve in respect of the liability reported by the corporation to the relevant authority in its annual report for the year or, where the corporation was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

Para. 1400(g.1) added by the said P.C. 1990-2002, subsec. 2(6), applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Para. 1400(i) added by P.C. 1988-390, s. 8, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1978.

Subpara. 1400(b)(ii) substituted by P.C. 1980-1484, subsec. 1(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

Definitions [Reg. 1400]: "amount" — ITA 248(1), Reg. 1402.1; "claim liability" — Reg. 1408(1); "dividend" — ITA 248(1); "extended motor vehicle warranty" — Reg. 1408(1); "Her Majesty" — *Interpretation Act* 35(1); "insurance policy", "insurer", "life insurer" — ITA 248(1); "month" — *Interpretation Act* 35(1); "net premium" — Reg. 1408(1); "non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (6); "policy liability", "post-1995 non-cancellable or guaranteed renewable" — Reg. 1408(1); "pre-1996 non-cancellable or guaranteed renewable" — Reg. 1408(1), (7); "premium paid by the policyholder" — Reg. 1408(4); "prescribed" — ITA 248(1); "reinsurance commission", "relevant authority", "reported reserve" — Reg. 1408(1); "security" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "writing" — *Interpretation Act* 35(1).

DIVISION 2 — POLICY RESERVES FOR PRE-1996 POLICIES

1401. Life insurance businesses — (1) [Policy reserves] — For the purpose of subparagraph 138(3)(a)(i) of the Act, in computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there may be deducted in respect of

> (a) deposit administration fund policies, such amount as the insurer may claim that is a reasonable amount in respect of the aggregate of the insurer's liabilities under the policies as at the end of the year and does not exceed the aggregate of the insurer's liabilities under those policies calculated in the manner required for the purposes of the insurer's annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;
>
> (b) a group term life insurance policy that provides coverage for a period not exceeding 12 months, such amount as the insurer may claim not exceeding the unearned portion of the net premium for the policy at the end of the year determined by apportioning the net premium equally over the period to which that premium pertains;

Proposed Amendment — Reg. 1401(1)(b)

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(1)(c), will amend para. 1401(1)(b) by replacing "net premium" with "premium paid by the policyholder", applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: See under Reg. 1400(3)A.

> (c) a life insurance policy, other than a policy referred to in paragraph (a) or (b), such amount as the insurer may claim not exceeding the greater of
>
> (i) the amount, if any, by which
>
> (A) the cash surrender value of the policy at the end of the year
>
> exceeds
>
> (B) the aggregate of all amounts each of which is an amount payable in respect of a policy loan outstanding at the end of the year in respect of the policy or the interest thereon that has accrued to the insurer at the end of the year, and
>
> (ii) the amount, if any, by which
>
> (A) the present value at the end of the year of the future benefits provided by the policy
>
> exceeds the aggregate of
>
> (B) the present value at the end of the year of any future modified net premiums in respect of the policy, and
>
> (C) the aggregate of all amounts each of which is an amount payable in respect of a policy loan outstanding at the end of the year in respect of the policy or the interest thereon that has accrued to the insurer at the end of the year;
>
> (c.1) a group life insurance policy, such amount as the insurer may claim as an amount (other than an amount in respect of which a deduction may be claimed by the insurer pursuant to subsection 140(1) of the Act by reason of subparagraph 138(3)(a)(v) of the Act in computing its income for the year) in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy that will be used by the insurer to reduce or eliminate a future adverse claims experience under the policy or that will be paid or unconditionally credited to the policyholder by the insurer or applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer, not exceeding the least of
>
> (i) a reasonable amount in respect of such a dividend, refund of premiums or refund of premium deposits,
>
> (ii) 25 per cent of the amount of the premium payable under the terms of the policy for the 12-month period ending
>
> (A) if the policy is terminated in the year, on the day the policy is terminated, and
>
> (B) in any other case, at the end of the year, and
>
> (iii) the amount of the reserve or liability in respect of such a dividend, refund of premiums or refund of premium deposits reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority for the year but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(d) a policy, other than a policy referred to in paragraph (a), such amount as the insurer may claim, in respect of a benefit, risk or guarantee that is

(i) an accidental death benefit,

(ii) a disability benefit,

(iii) an additional risk as a result of insuring a substandard life,

(iv) an additional risk in respect of the conversion of a term policy or the conversion of the benefits under a group policy into another policy after the end of the year,

(v) an additional risk under a settlement option,

(vi) an additional risk under a guaranteed insurability benefit,

(vii) a guarantee in respect of a segregated fund policy, or

(viii) any other benefit that is ancillary to the policy, subject to the prior approval of the Minister on the advice of the Superintendent of Insurance for Canada,

but is not

(ix) a benefit, risk or guarantee in respect of which an amount has been claimed under any other paragraph of this subsection, other than paragraphs (d.1) and (d.2), by the insurer as a deduction in computing its income for the year,

not exceeding the lesser of

(x) a reasonable amount in respect of the benefit, risk or guarantee, and

(xi) the reserve in respect of the benefit, risk or guarantee, reported by the insurer in its annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(d.1) a policy referred to in paragraph (b) where, after the end of the year, a claim under the policy is made in respect of a death that occurred before the end of the year, such amount as the insurer may claim, not exceeding the lesser of

(i) the present value, at the end of the year, of the payments to be made in respect of the claim made under the policy or such estimate of such payments to be made in respect of the claim as is reasonable in the circumstances, and

(ii) 95 per cent of the amount of the reserve in respect of the claim reported by the insurer in its annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority for the year but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(d.2) a policy referred to in paragraph (c) where, after the end of the year, a claim under the policy is made in respect of a death that occurred before the end of the year, such amount as the insurer may claim, not exceeding the lesser of

(i) the amount, if any, by which

(A) the present value, at the end of the year, of the payments to be made in respect of the claim made under the policy or such estimate of such payments to be made in respect of the claim as is reasonable in the circumstances

exceeds

(B) the maximum amounts that may be claimed by the insurer for the year in respect of the policy under paragraph (c) or (d), and

(ii) 95 per cent of the amount of the reserve in respect of the claim reported by the insurer in its annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year; and

(e) a qualified annuity, such amount as the insurer may claim not exceeding the amount, if any, by which

(i) the amount that would have been determined pursuant to paragraph (c) for the year if the rate of interest used (or deemed by section 1403 to have been used) by the insurer in determining the premium for the annuity were reduced by one-half of one percentage point,

exceeds

(ii) the maximum amount that may be claimed by the insurer in respect of the annuity under paragraph (c).

Related Provisions: Reg. 211.1(3) — Effect of Reg. 1401(1) on Part XII.3 tax; Reg. 1401(1.1) — Reg. 1401 applies to pre-1996 policies only; Reg. 1402 — All amounts to be net of reinsurance ceded; Reg. 1403(1) — Rules for computation; Reg. 1408 — Definitions.

(1.1) [Pre-1996 policies only] — An amount may be deducted under subsection (1) only in respect of a life insurance policy in Canada that is a pre-1996 life insurance policy.

Related Provisions: Reg. 1404 — Policy reserves for post-1995 policies.

(2) [Segregated funds] — For the purposes of subsection (1), (except in respect of subparagraph (d)(vii) thereof), any amount claimed by an insurer for the year shall not include an amount in respect of a liability of a segregated fund (within the meaning assigned "segregated fund" by section 138.1 of the Act).

(3) [Group life insurance policies] — In computing the amount that a life insurer may deduct under subparagraph 138(3)(a)(i) of the Act in computing its taxable income for a taxation year, there shall be deducted from the aggregate of the amounts determined under subsection (1), the aggregate of all amounts each of which is the lesser of the following amounts determined in respect of a life insurance policy referred to in paragraph (1)(c):

(a) the amount, if any, by which

(i) the amount that would be determined under subclause (1)(c)(i)(B) in respect of the policy

exceeds

(ii) the amount that would be determined under subclause (1)(c)(i)(A) in respect of the policy, and

(b) the amount, if any, by which

(i) the aggregate of the amounts that would be determined under subclauses (1)(c)(ii)(B) and (C) in respect of the policy

exceeds

(ii) the amount that would be determined under subclause (1)(c)(ii)(A) in respect of the policy.

(4) [Unpaid claims reserve] — For the purpose of subparagraph 138(3)(a)(ii) of the Act, there may be deducted, in computing a life insurer's income for a taxation year, the amount it claims as a reserve in respect of unpaid claims received by it before the end of the year under life insurance policies in Canada that are pre-1996 life insurance policies, not exceeding the present value at the end of the year, computed using a rate of interest that is reasonable in the circumstances, of a reasonable amount in respect of those unpaid claims.

Related Provisions: ITA 20(26) — Deduction for unpaid claims reserve adjustment; Reg. 1401(4) — Unpaid claims reserve re post-1995 policies; Reg. 1402 — All amounts to be net of reinsurance ceded; Reg. 8100, 8101 — Unpaid claims reserve adjustment.

History [Reg. 1401]: Subsec. 1401(1.1) added, the opening words to s. 1401, cl. 1401(1)(c)(ii)(B), and subsec. 1401(4) amended, by P.C. 1999-1154, ss. 3 and 4, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Subpara. 1401(1)(c.1)(ii) amended by P.C. 1994-940, s. 5, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable to taxation years ending after June 15, 1994.

Para. 1401(1)(a) and subpara. (1)(d)(xi) substituted by P.C. 1990-2002, subsecs. 3(1), (3), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of 1987 *et seq.*

Para. 1401(1)(c.1) added, (d.1) and (d.2) substituted, and subsecs. (3), (4) added, by subsecs. 3(2), (4), (5) of the said P.C. 1990-2002, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Para. 1401(1)(d)(ix) substituted and paras. 1401(1)(d.1), (d.2) added by P.C. 1986-2770, s. 2, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to 1985 *et seq.*

Cls. 1401(1)(c)(i)(B) and (c)(ii)(C) substituted by P.C. 1984-3789, s. 8, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Para. 1401(1)(a) substituted by P.C. 1980-2081, s. 3, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective in respect of 1978 *et seq.*

Definitions [Reg. 1401]: "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 1408(1); "benefit" — Reg. 1408(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "cash surrender value" — ITA 148(9), Reg. 1408(1); "dividend" — ITA 248(1); "group term life insurance policy" — Reg. 1408(2); "insurer" — ITA 248(1); "interest" — ITA 138(12), Reg. 1408(1); "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurance policy in Canada" — Reg. 1408(1); "life insurer", "Minister" — ITA 248(1); "modified net premium" — Reg. 1408(1), (3); "month" — *Interpretation Act* 35(1); "net premium" — Reg. 1408(1); "policy loan" — ITA 138(12), Reg. 1408(1); "pre-1996 life insurance policy" — Reg. 1408(1), (7); "premium paid by the policyholder" — Reg. 1408(4); "qualified annuity", "relevant authority" — Reg. 1408(1); "segregated fund", "segregated fund policy" — ITA 138.1(1), Reg. 1408(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-87R2: Policyholders' income from life insurance policies.

DIVISION 3 — SPECIAL RULES

1402. Non-life and life insurance businesses — Any amount determined under section 1400 or 1401 shall be determined on a net of reinsurance ceded basis.

History: S. 1402 amended by P.C. 1999-1154, s. 5, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

S. 1402 amended by P.C. 1997-1670, s. 1, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsecs. apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Definitions [Reg. 1402]: "amount" — ITA 248(1).

1402.1 [Negative amounts] — For greater certainty, any amount referred to or determined under section 1400 may be equal to, or less than, nil.

History: S. 1402.1 added by P.C. 1999-1154, s. 5, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1402.1]: "amount" — ITA 248(1).

1403. (1) For the purposes of paragraph 1401(1)(c) and subject to subsections (2) and (3), a modified net premium and an amount claimed by an insurer for a taxation year shall be computed

(a) in the case of a lapse-supported policy effected after 1990, based on rates of interest, mortality and policy lapse only, and

(b) in any other case, based on rates of interest and mortality only,

using

(c) in respect of the modified net premiums and benefits (other than a benefit described in paragraph (d)) of a participating life insurance policy (other than an annuity contract) under the terms of which the policyholder is entitled to receive a specified amount in respect of the policy's cash surrender value, the rates used by the insurer when the policy was issued in computing the cash surrender values of the policy;

(d) in respect of any benefit provided

(i) in lieu of a cash settlement on the termination or maturity of a policy, or

(ii) in satisfaction of a dividend on a policy,

the rates used by the insurer in determining the amount of such benefit; and

(e) in respect of all or part of any other policy, the rates used by the insurer in determining the premiums for the policy.

History: That portion of subsec. 1403(1) before para. (c) replaced by P.C. 1994-940, s. 6, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable

(a) to taxation years beginning after 1990; and

(b) where an insurer so elected by notifying the Minister of National Revenue in writing before July, 1991, to the insurer's taxation years beginning after 1987, 1988 or 1989 (as specified in the election) and before 1991, and where such an election has been made

(i) if the insurer so indicated in the election, para. 1403(1)(a) shall be read without reference to the words "effected after 1990", and

(ii) in any other case, the reference in para. 1403(1)(a) to "1990" shall be read as a reference to the calendar year immediately preceding the first taxation year to which the election relates.

Para. 1403(1)(b) substituted by P.C. 1980-2089, s. 4, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective in respect of 1978 *et seq.*

Paras. 1403(1)(c), (d) substituted, (e) added, by P.C. 1980-1484, subsec. 2(1), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

(2) For the purposes of subsection (1), where a rate of mortality or other probability used by an insurer in deter-

mining the premium for a policy is not reasonable in the circumstances, the Minister on the advice of the Superintendent of Insurance for Canada may make such revision to the rate as is reasonable in the circumstances and the revised rate shall be deemed to have been used by the insurer in determining the premium.

(3) For the purposes of subsection (1), where the present value of the premiums for a policy as at the date of issue of the policy is less than the aggregate of

(a) the present value, at that date, of the benefits provided for by the policy, and

(b) the present value, at that date, of all outlays and expenses made or incurred by the insurer or outlays and expenses that the insurer reasonably estimates it will make or incur in respect of the policy (except outlays and expenses to maintain the policy after all premiums under the policy have been paid and for which explicit provision has not been made in calculating the premiums) and such part of any other outlays and expenses made or incurred by the insurer that may reasonably be regarded as applicable thereto,

an increased rate of interest shall be determined by multiplying the rate of interest used in determining the premiums by a constant factor so that when the increased rate of interest is used,

(c) the present value of the premiums at the date of issue of the policy

shall equal

(d) the aggregate of the present values of the benefits, outlays and expenses referred to in paragraphs (a) and (b),

and the increased rate of interest shall be deemed to have been used by the insurer in determining the premiums for the policy.

Related Provisions: Reg. 1403(4) — Computation of present value.

(4) For the purposes of subsection (3), a "present value" referred to in that subsection shall be computed by using the rates of mortality and other probabilities used by the insurer in determining its premiums, after making any revision required by subsection (2).

(5) For the purposes of subsection (1), where a record of the rate of interest or mortality used by an insurer in determining the premiums for a policy is not available,

(a) the insurer may, if the policy was issued before 1978, make a reasonable estimate of the rate; and

(b) the Minister, on the advice of the Superintendent of Insurance for Canada, may

(i) if the policy was issued before 1978 and the insurer has not made the estimate referred to in paragraph (a), or

(ii) if the policy was issued after 1977,

make a reasonable estimate of the rate.

(6) Notwithstanding paragraph 1401(1)(c), a life insurer in computing its income for a taxation year may, in respect of any class of life insurance policies issued before its 1988 taxation year, other than policies referred to in paragraph 1401(1)(a) or (b), use a method of approximation to convert the reserve in respect of such policies reported by the insurer in its annual report to the relevant authority for the year to an amount that is a reasonable estimate of the amount that would otherwise be determined for such policies under paragraph 1401(1)(c), provided that that method of approximation is acceptable to the Minister on the advice of the relevant authority.

(7) For the purposes of subsection (1) and notwithstanding any other provision of this section, where

(a) an individual annuity contract was issued prior to 1969 by a life insurer, or

(b) a benefit was purchased prior to 1969 under a group annuity contract issued by a life insurer, and

the contract

(c) is a policy in respect of which the provisions of paragraph 1401(1)(c) as it read in its application to the insurer's 1977 taxation year applied,

the rates of interest and mortality used by the insurer in computing its reserve for the policy under that paragraph for its 1977 taxation year shall be used by the insurer in respect of that policy.

(8) For the purposes of subsection (1), where

(a) in a taxation year of an insurer, there has been a disposition to the insurer by another person with whom the insurer was dealing at arm's length in respect of which subsection 138(11.92) of the Act applied,

(b) as a result of the disposition, the insurer assumed obligations under life insurance policies (in this subsection referred to as the "transferred policies") in respect of which an amount may be claimed by the insurer as a reserve under paragraph 1401(1)(c) for the taxation year,

(c) the amount, if any, by which

(i) the aggregate of all amounts received or receivable by the insurer from the other person in respect of the transferred policies referred to in paragraph (b)

exceeds

(ii) the aggregate of all amounts paid or payable by the insurer to the other person in respect of commissions in respect of the amounts referred to in subparagraph (i)

exceeds the total of the maximum amounts that may be claimed by the insurer as a reserve under paragraph 1401(1)(c) (determined without reference to this subsection) in respect of the transferred policies for the taxation year, and

(d) the amount determined under paragraph (c) (in this subsection referred to as "reserve deficiency") can reasonably be attributed to the fact that the rates of interest or mortality used by the issuer of the transferred policies in determining the cash surrender values or premiums under such policies are no longer reasonable in the circumstances,

the Minister, on the request of the insurer and with the advice of the relevant authority, may make such revision to the rates of interest or mortality to eliminate all or any part of that reserve deficiency, and those revised rates shall be deemed to have been used by the issuer of the transferred policies in determining the cash surrender value or premiums under the policies.

History: Subsec. 1403(6) substituted by P.C. 1990-2002, subsec. 4(1), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Subsec. 1403(8) added by subsec. 4(2) of the said P.C. 1990-2002, applicable in respect of dispositions of an insurance business or a line of business of an insurance business occurring after December 15, 1987.

Para. 1403(7)(a) corrected by *Canada Gazette*, Part II, July 23, 1980, *errata*.

Paras. 1403(7)(a), (b) substituted by P.C. 1980-1484, subsec. 2(2), June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

Definitions [Reg. 1403]: "amount", "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "benefit" — Reg. 1408(1); "cash surrender value" — ITA 148(9), Reg. 1408(1); "disposition", "dividend", "insurer" — ITA 248(1); "lapse-supported policy" — Reg. 1408(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurer", "Minister" — ITA 248(1); "modified net premium" — Reg. 1408(1), (3); "participating life insurance policy" — ITA 138(12), Reg. 1404(1); "person" — ITA 248(1); "present value" — Reg. 1403(4); "record" — ITA 248(1); "relevant authority" — Reg. 1408(1); "reserve deficiency" — Reg. 1403(8)(d); "taxation year" — ITA 249.

DIVISION 4 — POLICY RESERVES FOR POST-1995 POLICIES

1404. Life insurance business — **(1)** For the purpose of subparagraph 138(3)(a)(i) of the Act, there may be deducted, in computing a life insurer's income from carrying on its life insurance business in Canada for a taxation year in respect of its life insurance policies in Canada that are post-1995 life insurance policies, the amount the insurer claims, not exceeding

(a) the amount determined under subsection (3) in respect of the insurer for the year, where that amount is greater than nil, and

(b) nil, in any other case.

(2) For the purpose of paragraph 138(4)(b) of the Act, the amount prescribed in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada that are post-1995 life insurance policies, is

(a) the absolute value of the amount determined under subsection (3) in respect of the insurer for the year, where that amount is less than nil, and

(b) nil, in any other case.

(3) For the purposes of paragraphs (1)(a) and (2)(a), the amount determined under this subsection in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada that are post-1995 life insurance policies, is the amount, which may be positive or negative, determined by the formula

$$A + B + C + D - M$$

where

A is the amount (except to the extent the amount is determined in respect of a claim, premium, dividend or refund in respect of which an amount is included in determining the value of B, C or D), in respect of the insurer's life insurance policies in Canada that are post-1995 life insurance policies, equal to the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of those policies, and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of those policies;

B is the amount, in respect of the insurer's life insurance policies in Canada that are post-1995 life insurance policies under which there may be claims incurred before the end of the year that have not been reported to the insurer before the end of the year, equal to 95% of the lesser of

(a) the total of the reported reserves of the insurer at the end of the year in respect of the possibility that there are such claims, and

(b) the total of the policy liabilities of the insurer at the end of the year in respect of the possibility that there are such claims;

C is the total of all amounts each of which is the unearned portion at the end of the year of the net premium for the policy where the policy is a group term life insurance policy that

(a) provides coverage for a period that does not exceed 12 months,

(b) is a life insurance policy in Canada, and

(c) is a post-1995 life insurance policy,

determined by apportioning the net premium equally over the period to which that premium relates;

Proposed Amendment — Reg. 1404(3)C

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(1)(d), will amend the description of C in subsec. 1404(3) by replacing "net premium" with "premium paid by the policyholder", applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: See under Reg. 1400(3)A.

D is the total of all amounts (other than an amount deductible under subparagraph 138(3)(a)(v) of the Act) each of which is the amount, which is the least of P, Q and R, in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of a group life insurance policy that is a life insurance policy in Canada that is a post-1995 life insurance policy that will be

(a) used by the insurer to reduce or eliminate a future adverse claims experience under the policy,

(b) paid or unconditionally credited to the policyholder by the insurer, or

(c) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer under the policy,

where

P is a reasonable amount as a reserve eetermined as at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy,

Q is 25% of the amount of the premium under the terms of the policy for the 12-month period ending

(i) on the day the policy is terminated, if the policy is terminated in the year, and

(ii) at the end of the year, in any other case, and

R is the amount of the reported reserve of the insurer at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy; and

M is the total of all amounts determined in respect of a life insurance policy in Canada that is a post-1995 life insurance policy each of which is

(a) an amount payable in respect of a policy loan under the policy, or

(b) interest that has accrued to the insurer to the end of the year in respect of a policy loan under the policy.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 1406 — All amounts to be net of reinsurance ceded and ignoring seg funds; Reg. 1407 — Amounts in Reg. 1404 may be less than zero.

(4) Notwithstanding subsection (3), the amount determined under that subsection in respect of an insurer for a taxation year that ends before 2001 is deemed to be the amount determined by the formula

$$A + (B \times (C - D))$$

where

A is the amount that would, but for this subsection, be the amount determined under subsection (3) in respect of the insurer for the year;

B is, where the year ends in

(a) 1996, 100%,

(b) 1997, 80%,

(c) 1998, 60%,

(d) 1999, 40%, and

(e) 2000, 20%;

C is the total of all amounts each of which is the absolute value of any amount that is less than nil and that is used in computing

(a) the amount that is the lesser of the totals determined for the year under the description of I in subsection 1400(3), in respect of a risk under a post-1995 non-cancellable or guaranteed renewable accident and sickness policy, or

(b) the amount that is the lesser of the totals determined for the year under the description of A in subsection (3), in respect of a liability or risk under a life insurance policy in Canada of the insurer that is a post-1995 life insurance policy; and

D is the lesser of

(a) 5% of the total of all amounts each of which is a premium received by the insurer in the year or any preceding taxation year ending after 1995 in respect of

(i) a non-cancellable or guaranteed renewable accident and sickness policy, or

(ii) a life insurance policy in Canada, and

(b) the value of C.

History [Reg. 1404]: S. 1404 substituted by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

History [former Reg. 1404]: "Reported reserve" and "actuarial liability" added to subsec. 1404(2) by P.C. 1996-1452, s. 2, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

"Lapse-supported policy" added by P.C. 1994-940, s. 7, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable

(a) to taxation years beginning after 1990; and

(b) where an insurer so elected by notifying the Minister of National Revenue in writing before July, 1991, to the insurer's taxation years beginning after 1987, 1988 or 1989 (as specified in the election) and before 1991.

"Acquisition costs" and "relevant authority" amended by P.C. 1993-2025, s. 1, December 9, 1993, *Canada Gazette*, Part II, December 29, 1993, applicable to 1991 *et seq.*

"Qualified annuity" amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

"Modified net premium" and para. (a) of "relevant authority" substituted by P.C. 1990-2002, subsecs. 5(1), (2), September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Subsec. 1404(5) substituted by P.C. 1988-390, s. 9, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1978.

All that portion of the definition "qualified annuity" preceding para. (a) substituted by P.C. 1984-3789, s. 9, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

All that portion of the definition "modified net premium" in subsec. 1404(2) preceding para. (a) substituted by P.C. 1983-3530, s. 6, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

"Acquisition costs", "net premium for the policy", para. (c) of "qualified annuity" in 1404(2), and subsec. 1404(5) substituted, and subsec. 1404(6) added, by P.C. 1980-1484, s. 3, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

Definitions [Reg. 1404]: "amount" — ITA 248(1), Reg. 1406, 1407; "amount payable" — ITA 138(12), Reg. 1408(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend" — ITA 248(1); "group term life insurance policy" — Reg. 1408(2); "insurer" — ITA 248(1); "interest" — ITA 138(12), Reg. 1408(1); "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurance policy in Canada" — ITA 138(12), Reg. 1408(1); "life insurer" — ITA 248(1); "month" — *Interpretation Act* 35(1); "net premium for the policy" — Reg. 1408(1); "non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (6); "policy liability" — Reg. 1408(1); "policy loan" — ITA 138(12), Reg. 1408(1); "post-1995 non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1); "premium paid by the policyholder" — Reg. 1408(4); "prescribed" — ITA 248(1); "reported reserve" — Reg. 1408(1); "taxation year" — ITA 249.

1405. [Unpaid claims reserve] — For the purpose of subparagraph 138(3)(a)(ii) of the Act, there may be deducted in computing a life insurer's income for a taxation year the amount it claims as a reserve in respect of an unpaid claim received by the insurer before the end of the year under a life insurance policy in Canada that is a post-1995 life insurance policy, not exceeding the lesser of

(a) the reported reserve of the insurer at the end of the year in respect of the claim, and

(b) the policy liability of the insurer at the end of the year in respect of the claim.

Related Provisions [Reg. 1405]: ITA 20(26) — Deduction for unpaid claims reserve adjustment; Reg. 1401(4) — Unpaid claims reserve re pre-1996 policies; Reg. 1406 — All amounts to be net of reinsurance ceded and ignoring seg funds; Reg. 1407 — Amounts in Reg. 1405 may be less than zero; Reg. 8100, 8101 — Unpaid claims reserve adjustment.

History: S. 1405 substituted by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1405]: "amount" — ITA 248(1), Reg. 1406, 1407; "insurer" — ITA 248(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "life insurance policy in Canada" — ITA 138(12), Reg. 1408(1); "life insurer" — ITA 248(1); "policy liability", "post-1995 life insurance policy", "reported reserve" — Reg. 1408(1); "taxation year" — ITA 249.

1406. [Interpretation] — Any amount determined under section 1404 or 1405 shall be determined

(a) on a net of reinsurance ceded basis; and

(b) without reference to any liability in respect of a segregated fund (other than a liability in respect of a guarantee in respect of a segregated fund policy).

History: S. 1406 substituted by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1406]: "amount" — ITA 248(1); "segregated fund", "segregated fund policy" — ITA 138.1(1), Reg. 1408(1).

1407. [Negative amounts] — For greater certainty, any amount referred to in or determined under section 1404 or 1405 may be equal to, or less than, nil.

History: S. 1407 added by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1407]: "amount" — ITA 248(1).

DIVISION 5 — INTERPRETATION

1408. Insurance businesses — (1) The definitions in this subsection apply in this Part.

"acquisition costs" in respect of a policy of an insurer, consistency [*sic*] means

(a) 5% of the premium paid by a policyholder for the policy where the policy is

(i) a group policy,

(ii) a policy that insures a risk in respect of a financial loss of a lender on a loan made on the security of real property,

(iii) a policy issued under an arrangement with a person (other than an insurer or an insurance agent or broker) with whom the insurer does not deal at arm's length whereby a customer of the person is referred to the insurer,

(iv) a policy issued to a member of a credit union as a consequence of an arrangement with a credit union, where

(A) the insurer was established primarily to provide insurance to members of credit unions,

(B) the policyholder was referred to the insurer, and

(C) the principal business of the insurer is the provision of insurance to members of credit unions, or

(v) a policy issued to a policyholder that is a corporation with which the insurer does not deal at arm's length; and

(b) in any other case, 20% of the premium paid by the policyholder for the policy.

Proposed Repeal — Reg. 1408(1)"acquisition costs"

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(2), will repeal the definition "acquisition costs" in subsec. 1408(1), applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: Subsection 1408(1) of the Regulations defines the term "acquisition costs" to mean a percentage of the premium paid for the policy. The percentages (either 20% or 5%) were based on assumptions relating to the average industry costs for selling, or otherwise distributing, insurance policies. The definition "acquisition costs" is repealed. The change addresses the insurance industry's concern that amounts deemed incurred as acquisition costs (generally 20% of premiums) under the old definition no longer reflect the real acquisition costs being incurred by insurers.

This amendment applies to the 2000 and subsequent taxation years and, if a taxpayer files an election in respect of amended subparagraph 18(9)(a)(ii) and new subsection 18(9.02) of the Act, the amendment also applies to the taxpayer's 1998 and 1999 taxation years.

Related Provisions: Reg. 1408(4) — Determination of premium paid by the policyholder.

"amount payable", in respect of a policy loan at a particular time, means the amount of the policy loan and the interest that is outstanding on the policy loan at that time.

"benefit", in respect of a policy, includes

(a) a policy dividend (other than a policy dividend in respect of a policy described in paragraph 1403(1)(c)) in respect of the policy to the extent that the dividend was specifically treated as a benefit by the insurer in determining a premium for the policy, and

(b) an expense of maintaining the policy after all premiums in respect of the policy have been paid to the extent that the expense was specifically provided for by the insurer in determining a premium for the policy,

but does not include

(c) a policy loan,

(d) interest on funds left on deposit with the insurer under the terms of the policy, and

(e) any other amount under the policy that was not specifically provided for by the insurer in determining a premium for the policy.

"capital tax" means a tax imposed under Part I.3 or VI of the Act or a similar tax imposed under an Act of the legislature of a province.

"cash surrender value" has the meaning assigned by subsection 148(9) of the Act.

"claim liability" of an insurer at the end of a taxation year means

(a) in respect of a claim reported to the insurer before that time under an insurance policy, the amount, if any, by which

(i) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the insurer's future payments and claim adjustment expenses in respect of the claim

exceeds

(ii) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the amounts that the insurer will recover after that time in respect of the claim because of salvage, subrogation or any other reason; and

(b) in respect of the possibility that there are claims under an insurance policy incurred before that time that have not been reported to the insurer before that time, the amount, if any, by which

(i) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the insurer's payments and claim adjustment expenses in respect of those claims

exceeds

(ii) the present value at that time, computed using a rate of interest that is reasonable in the circumstances, of a reasonable estimate, determined in accordance with accepted actuarial practice, of the amounts that the insurer will recover in respect of those claims because of salvage, subrogation or any other reason.

"extended motor vehicle warranty" means an agreement under which a person agrees to provide goods or render services in respect of the repair or maintenance of

a motor vehicle manufactured by the person or a corporation related to the person where

(a) the agreement is in addition to a basic or limited warranty in respect of the vehicle;

(b) the basic or limited warranty has a term of 3 or more years, although it may expire before the end of such term on the vehicle's odometer registering a specified number of kilometres or miles;

(c) more than 50% of the expenses to be incurred under the agreement are reasonably expected to be incurred after the expiry of the basic or limited warranty; and

(d) the person's risk under the agreement is insured by an insurer that is subject to the supervision of a relevant authority.

"general amending provision", of an insurance policy, means a provision of the policy that allows it to be amended with the consent of the policyholder.

"interest", in relation to a policy loan, has the meaning assigned by subsection 138(12) of the Act.

"lapse-supported policy" means a life insurance policy that would require materially higher premiums if premiums were determined using policy lapse rates that are zero after the fifth policy year.

"life insurance policy in Canada" means a life insurance policy issued or effected by an insurer on the life of a person resident in Canada at the time the policy was issued or effected.

"modified net premium", in respect of a premium under a policy (other than a prepaid premium under a policy that cannot be refunded except on termination of the policy), means

(a) where all benefits (other than policy dividends) and premiums (other than the frequency of payment of premiums) in respect of the policy are determined at the date of issue of the policy, the amount determined by the formula

$$A \times [(B + C)/(D + E)]$$

where

A is the amount of the premium,

B is the present value, at the date of the issue of the policy, of the benefits to be provided under the terms of the policy after the day that is one year after the date of the issue of the policy,

C is the present value, at the date of the issue of the policy, of the benefits to be provided under the terms of the policy after the day that is two years after the date of the issue of the policy,

D is the present value, at the date of the issue of the policy, of the premiums payable under the terms of the policy on or after the day that is one year after the date of the issue of the policy, and

E is the present value, at the date of the issue of the policy, of the premiums payable under the terms of the policy on or after the day that is two years after the date of the issue of the policy,

except that the amount determined by the formula in respect of the premium for the second year of a policy is deemed to be the amount that is 50% of the total of

(i) the amount that would otherwise be determined under the formula, and

(ii) the amount of a one-year term insurance premium (determined without regard to the frequency of payment of the premium) that would be payable under the policy; and

(b) in any other case, the amount that would be determined under paragraph (a) if that paragraph applied and the amount were adjusted in a manner that is reasonable in the circumstances.

Related Provisions: Reg. 1408(3) — Interpretation.

"net premium for the policy" means the amount by which the premium paid by a policyholder for the policy exceeds the acquisition costs of the policy.

Proposed Repeal — Reg. 1408(1)"net premium for the policy"

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(2), will repeal the definition "net premium for the policy" in subsec. 1408(1), applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: The definition "net premium for the policy" in subsection 1408(1) is also repealed. The definition is repealed because Part XIV no longer determines any amount on the basis of the unearned portion of a net premium for a policy.

This amendment applies to the 2000 and subsequent taxation years and, if a taxpayer files an election in respect of amended subparagraph 18(9)(a)(ii) and new subsection 18(9.02) of the Act, the amendment also applies to the taxpayer's 1998 and 1999 taxation years.

Related Provisions: Reg. 1408(4) — Determination of premium paid by the policyholder.

"non-cancellable or guaranteed renewable accident and sickness policy" includes a non-cancellable or guaranteed renewable accident and sickness benefit under a group policy.

Related Provisions: Reg. 1408(6) — Riders.

"participating life insurance policy" has the meaning assigned by subsection 138(12) of the Act.

"policy liability" of an insurer at the end of the taxation year in respect of an insurance policy or a claim, possible claim or risk under an insurance policy means the positive or negative amount of the insurer's reserve in respect of its potential liability in respect of the policy, claim, possible claim or risk at the end of the year determined in accordance with accepted actuarial practice, but without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act).

"policy loan" has the meaning assigned by subsection 138(12) of the Act.

"post-1995 life insurance policy" means a life insurance policy that is not a pre-1996 life insurance policy.

"post-1995 non-cancellable or guaranteed renewable accident and sickness policy" means a non-cancellable or guaranteed renewable accident and sickness policy that is not a pre-1996 non-cancellable or guaranteed renewable accident and sickness policy.

"pre-1996 life insurance policy", at any time, means a life insurance policy where

(a) the policy was issued before 1996; and

(b) before that time and after 1995 there has been no change, except in accordance with the provisions

(other than a general amending provision) of the policy as they existed on December 31, 1995, to

(i) the amount of any benefit under the policy,

(ii) the amount of any premium or other amount payable under the policy, or

(iii) the number of premium or other payments under the policy.

Related Provisions: Reg. 1408(7) — Interpretation.

"pre-1996 non-cancellable or guaranteed renewable accident and sickness policy", at any time, means a non-cancellable or guaranteed renewable accident and sickness policy where

(a) the policy was issued before 1996; and

(b) before that time and after 1995 there has been no change, except in accordance with the provisions (other than a general amending provision) of the policy as they existed on December 31, 1995, to

(i) the amount of any benefit under the policy,

(ii) the amount of any premium or other amount payable under the policy, or

(iii) the number of premium or other payments under the policy.

Related Provisions: Reg. 1408(7) — Interpretation.

"qualified annuity" means an annuity contract issued before 1982, other than a deposit administration fund policy or a policy referred to in paragraph 1403(7)(c),

(a) in respect of which regular periodic annuity payments have commenced;

(b) in respect of which a contract or certificate has been issued that provides for regular periodic annuity payments to commence within one year after the date of issue of the contract or certificate;

(c) that is not issued as or under a registered retirement savings plan, registered pension plan or deferred profit sharing plan and that

(i) does not provide for a guaranteed cash surrender value at any time, and

(ii) provides for regular periodic annuity payments to commence not later than the attainment of age 71 by the annuitant; or

(d) that is issued as or under a registered retirement savings plan, registered pension plan or deferred profit sharing plan, if the interest rate is guaranteed for at least 10 years and the plan does not provide for any participation in profits, directly or indirectly.

"reinsurance commission", in respect of a policy, means

(a) where the risk under the policy is fully reinsured, the amount, if any, by which

(i) the net premium for the policy

exceeds

(ii) the consideration payable by the insurer in respect of the reinsurance of the risk; and

(b) where the risk under the policy is not fully reinsured, the amount, if any, by which

(i) the portion of the net premium for the policy that may reasonably be considered to be in respect of the portion of the risk that is reinsured with a particular reinsurer

exceeds

(ii) the consideration payable by the insurer to the particular reinsurer in respect of the risk assumed by the reinsurer.

Proposed Amendment — Reg. 1408(1)"reinsurance commission"

Application: The November 30, 1999 draft regulations (insurance business policy reserves), subsec. 1(1)(e), will amend the definition "reinsurance commission" in subsec. 1408(1) by replacing "net premium" with "premium paid by the policyholder", applicable to 2000 *et seq.* and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on November 30, 1999, to the taxpayer's 1998 and 1999 taxation years.

Technical Notes: See under Reg. 1400(3)A.

"relevant authority" of an insurer means

(a) the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions; and

(b) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated.

"reported reserve" of an insurer at the end of a taxation year in respect of an insurance policy or a claim, possible claim, risk, dividend, refund of premiums or refund of premium deposits under an insurance policy means the amount equal to

(a) where the insurer is required to file an annual report with its relevant authority for a period ending coincidentally with the year, the positive or negative amount of the reserve that would be reported in that report in respect of the insurer's potential liability under the policy if the reserve were determined without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act);

(b) where the insurer is, throughout the year, subject to the supervision of its relevant authority and paragraph (a) does not apply, the positive or negative amount of the reserve that would be reported in its financial statements for the year in respect of the insurer's potential liability under the policy if

(i) those statements were prepared in accordance with generally accepted accounting principles, and

(ii) the reserve were determined without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act);

(c) where the insurer is the Canada Mortgage and Housing Corporation or a foreign affiliate of a taxpayer resident in Canada, the positive or negative amount of the reserve that would be reported in its financial statements for the year in respect of the insurer's potential liability under the policy if

(i) those statements were prepared in accordance with generally accepted accounting principles, and

(ii) the reserve were determined without reference to projected income and capital taxes (other than the tax payable under Part XII.3 of the Act); and

(d) in any other case, nil.

"segregated fund" has the meaning assigned by subsection 138.1(1).

"segregated fund policy" has the meaning assigned by subsection 138.1(1).

(2) ["Group term life insurance policy"] — The definition "group term life insurance policy" in subsection 248(1) of the Act does not apply to this Part.

(3) [Interpretation — modified net premium] — For the purpose of the formula referred to in the definition "modified net premium" in subsection (1), it may be assumed that premiums are payable annually in advance.

(4) ["Premium paid by the policyholder"] — For the purposes of this Part,

(a) a reference to a "premium paid by the policyholder" shall, depending on the method regularly followed by the insurer in computing its income, be read as a reference to a "premium paid or payable by the policyholder"; and

(b) in determining the premium paid by a policyholder for a policy, there may be deducted by the insurer the portion, if any, of the premium that

(i) can reasonably be considered, at the time the policy is issued, to be a deposit that, pursuant to the terms of the policy or the by-laws of the insurer, will be returned to the policyholder, or credited to the account of the policyholder, by the insurer on the termination of the policy, and

(ii) was not otherwise deducted under section 140 of the Act.

(5) [Riders] — For the purposes of this Part, any rider that is attached to a life insurance policy and that provides for additional life insurance or for an annuity is a separate life insurance policy.

(6) [Riders] — For the purposes of this Part, any rider that is attached to a policy and that provides for additional non-cancellable or guaranteed renewable accident and sickness insurance, as the case may be, is a separate non-cancellable or guaranteed renewable accident and sickness policy.

(7) [No change in amount] — For the purposes of the definitions "pre-1996 life insurance policy" and "pre-1996 non-cancellable or guaranteed renewable accident and sickness policy" in subsection (1), a change in the amount of any benefit or in the amount or number of any premiums or other amounts payable under a policy is deemed not to have occurred where the change results from

(a) a change in underwriting class;

(b) a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year;

(c) the deletion of a rider;

(d) the correction of erroneous information;

(e) the reinstatement of the policy after its lapse, if the reinstatement occurs not later than 60 days after the end of the calendar year in which the lapse occurred;

(f) the redating of the policy for policy loan indebtedness; or

(g) a change in the amount of a benefit under the policy that is granted by the insurer on a class basis, where

(i) no consideration was payable by the policyholder or any other person for the change, and

(ii) the change was not made because of the terms or conditions of the policy or any other policy or contract to which the insurer is a party.

History: S. 1408 added by P.C. 1999-1154, s. 6, June 23, 1999, *Canada Gazette*, Part II, July 7, 1999, applicable to 1996 *et seq.*

Definitions [Reg. 1408]: "acquisition costs" — Reg. 1408(1); "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 1408(1); "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "benefit" — Reg. 1408(1); "business" — ITA 248(1); "capital tax" — Reg. 1408(1); "cash surrender value" — ITA 148(9), Reg. 1408(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "dividend" — ITA 248(1); "foreign affiliate" — ITA 95(1), 248(1); "general amending provision" — Reg. 1408(1); "insurance policy", "insurer" — ITA 248(1); "interest" — ITA 138(12), Reg. 1408(1); "life insurance policy" — ITA 138(12), 248(1), Reg. 1408(5); "motor vehicle" — ITA 248(1); "net premium for the policy" — Reg. 1408(1); "non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (6); "officer", "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 1408(1); "pre-1996 life insurance policy", "pre-1996 non-cancellable or guaranteed renewable accident and sickness policy" — Reg. 1408(1), (7); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "premium paid by the policyholder" — Reg. 1408(4); "registered pension plan" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "relevant authority" — Reg. 1408(1); "resident in Canada" — ITA 250; "security" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XV — PROFIT SHARING PLANS

History: Part XV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

DIVISION I — EMPLOYEES PROFIT SHARING PLANS

1500. (1) An election under subsection 144(4.1) of the Act by the trustee of a trust governed by an employees profit sharing plan shall be made by filing with the Minister the prescribed form in duplicate.

(2) An election under subsection 144(4.2) of the Act by the trustee of a trust governed by an employees profit sharing plan shall be made by filing with the Minister the prescribed form in duplicate on or before the last day of a taxation year of the trust in respect of any capital property deemed to have been disposed of in that taxation year by virtue of the election.

(3) An election under subsection 144(10) of the Act shall be made by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents:

(a) a letter from the employer stating that he elects to have the arrangement qualify as an employees profit sharing plan;

(b) if the employer is a corporation,

(i) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made, and

(ii) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation; and

(c) a copy of the agreement and any supplementary agreement setting out the plan.

Definitions [Reg. 1500]: "capital property" — ITA 54, 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "employees profit sharing plan" — ITA 144(1), 248(1); "employer", "Minister", "person", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins: IT-280R: Employees profit sharing plans — payments computed by reference to profits.

Forms: T3009: Election for deemed disposition and reacquisition of capital property of a trust governed by an employees profit sharing plan under subsection 144(4.2).

Division II — Deferred Profit Sharing Plans

1501. Registration of plans — For the purposes of the definition "deferred profit sharing plan" in subsection 147(1) of the Act, an application for registration of a plan shall be made by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents:

(a) a letter from the trustee and the employer whereby the trustee and the employer apply for the registration of the plan as a deferred profit sharing plan;

(b) if the employer is a corporation, a certified copy of a resolution of the directors authorizing the application to be made; and

(c) a copy of the agreement and any supplementary agreement setting out the plan.

History: S. 1501 substituted by P.C. 1991-2540, s. 4, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1990.

Definitions [Reg. 1501]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "employer", "Minister" — ITA 248(1).

Information Circulars: 77-1R4: Deferred profit sharing plans.

Forms: T2214: Application for registration as a deferred profit sharing plan.

1502. [Revoked]

History: S. 1502 (Qualified Investments) revoked by P.C. 1981-2518, s. 1, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

Division III — Elections in Respect of Certain Single Payments

1503. Any election by a beneficiary under subsection 147(10.1) of the Act shall be made by filing the prescribed form in duplicate as follows:

(a) one form shall be filed by the beneficiary with the trustee of the deferred profit sharing plan not later than 60 days after the end of the taxation year in which the beneficiary received the payment referred to in subsection 147(10.1) of the Act; and

(b) the other form shall be filed by the beneficiary with the Minister on or before the day on which the beneficiary is required to file a return of income pursuant to section 150 of the Act for the taxation year in which the beneficiary received the payment referred to in subsection 147(10.1) of the Act.

Definitions [Reg. 1503]: "deferred profit sharing plan" — ITA 147(1), 248(1); "Minister", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-281R2: Elections on single payments from a deferred profit sharing plan.

Forms: Election under subsec. 147(10.1) re a single payment received from a deferred profit sharing plan.

Part XVI — Prescribed Countries

History: Part XVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Part XVI was substituted by P.C. 1973-107, January 16, 1973, *Canada Gazette*, Part II, February 14, 1973.

1600. For the purposes of subsection 10(4) of the *Income Tax Application Rules*, the following countries are hereby prescribed:

(a) Commonwealth of Australia;

(b) Kingdom of Denmark;

(c) Republic of Finland;

(d) French Republic;

(e) Federal Republic of Germany;

(f) Ireland;

(g) Jamaica;

(h) Japan;

(i) Kingdom of the Netherlands;

(j) New Zealand;

(k) Kingdom of Norway;

(l) Republic of South Africa;

(m) Kingdom of Sweden;

(n) Trinidad and Tobago;

(o) United Kingdom of Great Britain and Northern Ireland; and

(p) United States of America.

History: The opening words of s. 1600 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1600]: "prescribed" — ITA 248(1); "United Kingdom", "United States" — *Interpretation Act* 35(1).

Part XVII — Capital Cost Allowances, Farming and Fishing

History: Part XVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins [Part XVII]: IT-268R4: *Inter vivos* transfer of farm property to child; IT-349R3: Intergenerational transfers of farm property on death.

Forms [Part XVII]: T2041: CCA schedule for self-employed persons.

Division I — Deductions Allowed

1700. (1) Rates — For the purposes of paragraph 20(1)(a) of the Act, there is hereby allowed to a taxpayer, in computing his income from farming or fishing, as the case may be, a deduction for each taxation year in respect of each property that was used for the purpose of gaining or producing income from farming or fishing equal to such amount as he may claim, not exceeding in the case of

(a) a building or other structure, not described elsewhere in this subsection, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, 2½%

(b) a building or other structure of

(i) frame,

(ii) log,

(iii) stucco on frame,

(iv) galvanized iron, or

(v) corrugated iron

construction, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, 5%

(c) a fence, 5%

(d) a scow or a vessel, including furniture, fittings or equipment attached thereto, but not including radio communication equipment, 7½%

(e) nonautomotive equipment and machinery, 10%

(f) automotive equipment, a sleigh or a wagon, 15%

(g) radiocommunication equipment, 15%

(h) tile drainage acquired before the 1965 taxation year, 10%

(i) a water storage tank, 5%

(j) a gas well that is part of the equipment of a farm and from which the gas produced is not sold, 10%

(k) a tool costing less than $100, 100%

of the depreciable cost to the taxpayer of the property.

(2) Taxation years less than 12 months — Where the taxation year is less than 12 months, the amount allowed as a deduction under subsection (1) shall not exceed that proportion of the maximum amount otherwise allowable that the number of days in the taxation year is of 365.

(3) Property disposed of during year — Where a taxpayer has disposed of a property before the end of a taxation year, the amount allowed as a deduction under subsection (1) in respect of that property for the year shall not exceed that proportion of the maximum amount otherwise allowable that the number of months in the taxation year during which the property was owned by the taxpayer is of 12.

(4) Leasehold interests — Where a taxpayer has property that was used for the purpose of gaining or producing income from farming or fishing and that would be included in Class 13 in Schedule II if he had claimed an allowance under Part XI, he may deduct, in computing his income from farming or fishing for a taxation year, an amount not exceeding the amount he could have deducted in respect of that property for the year under paragraph 1100(1)(b).

History: Subsecs. 1700(3), (4) and (5) and headings substituted by subsecs. (3) and (4) of P.C. 1978-1315, s. 11, April 12, 1978, *Canada Gazette*, Part II, May 10, 1978.

Definitions [Reg. 1700]: "amount" — ITA 248(1); "depreciable cost" — Reg. 1703(2)–(8); "disposed" — ITA 248(1)"disposition"; "end of a taxation year" — Reg. 1703(1)(b); "farming", "fishing" — ITA 248(1); "month" — *Interpretation Act* 35(1); "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "taxation year" — Reg. 1703(1)(a); "taxpayer" — ITA 248(1).

DIVISION II — MAXIMUM DEDUCTIONS

1701. (1) The amount allowed as a deduction under section 1700 in respect of a property shall not exceed the amount by which the capital cost of the property to the taxpayer exceeds the aggregate of the deductions from income allowed under this Part in respect of the property for previous taxation years.

(2) In respect of the 1972 and subsequent taxation years, where subsection 20(5) of the *Income Tax Application Rules* applies to a particular property, notwithstanding subsection (1), the amount allowed as a deduction under section 1700 in respect of the property shall not exceed the amount by which

(a) the amount determined to be the undepreciated capital cost of the property, under paragraph 20(5)(b) of the *Income Tax Application Rules*

exceeds

(b) the aggregate of the deductions from income allowed under this Part in respect of the property for previous taxation years ending after 1971.

History: The opening words of subsec. 1701(2) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1701]: "amount", "property" — ITA 248(1); "taxation year" — ITA 249; "taxation years" — Reg. 1703(1)(a); "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

DIVISION III — PROPERTY NOT INCLUDED

1702. (1) Nothing in this Part shall be construed as allowing a deduction in respect of a property

(a) the cost of which is deductible in computing the taxpayer's income;

(b) that is described in the taxpayer's inventory;

(c) that was acquired by an expenditure in respect of which the taxpayer is allowed a deduction from income under section 37 of the Act;

(d) that has been constituted a prescribed class by subsection 24(2) of chapter 91, S.C. 1966-67;

(e) that is included in a separate prescribed class established under subsection 13(14) of the Act;

(f) that was not used in the business during the year;

(g) that is

(i) an animal, or

(ii) a tree, shrub, herb or similar growing thing;

(h) that was not acquired by the taxpayer for the purpose of gaining or producing income from farming or fishing;

(i) that has been included at any time by the taxpayer in a class prescribed under Part XI;

(j) that is a passenger automobile acquired after June 13, 1963, and before January 1, 1966, the cost to the taxpayer of which, minus the initial transportation charges and retail sales tax in respect thereof, exceeded $5,000, unless the automobile was acquired by a person before June 14, 1963 and has, by one or more transactions between persons not dealing at arm's length, become vested in the taxpayer; or

(k) that was acquired by the taxpayer after 1971.

(2) Where a taxpayer is a member of a partnership, the properties referred to in this Part shall be deemed not to include any property that is an interest of the taxpayer in depreciable property that is partnership property of the partnership.

(3) The properties referred to in section 1700 shall be deemed not to include the land upon which a property described therein was constructed or is situated.

(4) Where the taxpayer is a non-resident person, the properties referred to in section 1700 shall be deemed not to include property that is situated outside Canada.

(5) The provisions of subsections 1102(11), (12) and (13) are applicable *mutatis mutandis* to paragraph (1)(j).

Definitions [Reg. 1702]: "arm's length" — ITA 251(1); "automobile", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "farming", "fishing", "inventory", "non-resident" — ITA 248(1); "person", "prescribed", "property", "taxpayer" — ITA 248(1).

DIVISION IV — INTERPRETATION

1703. (1) Taxation years for individuals in business — Where a taxpayer is an individual and his income for the taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, in respect of depreciable properties acquired for the purpose of gaining or producing income from the business, a reference in this Part to

(a) "the taxation year" shall be deemed to be a reference to the fiscal period of the business; and

(b) "the end of the taxation year" shall be deemed to be a reference to the end of the fiscal period of the business.

(2) Depreciable cost — In this Part, "depreciable cost" to a taxpayer of property means, except as otherwise provided, the actual cost of the property to the taxpayer or the amount at which he is deemed under subsection 13(7) of the Act to have acquired the property, as the case may be.

(3) Notwithstanding the other provisions of this section, in the case of property the cost of which to a partnership has been determined under paragraph 20(5)(a) of the *Income Tax Application Rules*, the depreciable cost to the taxpayer of the property for the purposes of this Part shall be deemed to be an amount equal to the cost to the partnership of the particular property as determined under that paragraph.

(4) Personal use of property — Where a taxpayer has, in a taxation year, regularly used a property in part for the purpose of gaining or producing income from farming or fishing and in part for a purpose other than gaining or producing income, the depreciable cost to the taxpayer of the property for the purposes of this Part is the proportion of the amount that would otherwise be the depreciable cost that the use regularly made of the property for the purpose of gaining or producing income from farming or fishing is of the whole use regularly made of the property.

(5) Grants, subsidies or other government assistance — Where a taxpayer has received or is entitled to receive a grant, subsidy or other assistance from a government, municipality or other public authority in respect of or for the acquisition of property, the depreciable cost to the taxpayer of the property for the purposes of this Part is the amount that would otherwise be the depreciable cost minus the amount of the grant, subsidy or other assistance.

(6) Transactions not at arm's length — Where property did belong to a person (in this subsection referred to as the "original owner") and has, by one or more transactions between persons not dealing at arm's length, become vested in a taxpayer, the depreciable cost to the taxpayer of the property for the purposes of this Part is the lesser of

(a) the actual capital cost of the property to the taxpayer; and

(b) the amount by which the actual capital cost of the property to the original owner exceeds the aggregate of

(i) the total amount of depreciation for the property that, since the commencement of 1917, has been or should have been taken into account in accordance with the practice of the Department of National Revenue in ascertaining the income of the original owner and all intervening owners for the purposes of the *Income War Tax Act* or in ascertaining a loss for a year where there was no income under that Act,

(ii) any accumulated depreciation reserves that the original owner or an intervening owner had for the property at the commencement of 1917 and that were recognized by the Minister for the purposes of the *Income War Tax Act*, and

(iii) the aggregate of the deductions, if any, allowed under this Part in respect of the property to the original owner and all intervening owners.

(7) Property acquired from a parent — Notwithstanding subsection (6), where depreciable property has been acquired by a taxpayer under such circumstances that the provisions of section 85H of the Act as it read in its application to the 1971 and prior taxation years are applicable for the determination of the capital cost of the property, the depreciable cost to the taxpayer of the property for the purposes of this Part is the capital cost as determined under that section.

(8) Property acquired by gift — Subsection (6) does not apply in respect of property which a taxpayer has acquired by gift.

History: Subsec. 1703(3) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 1703]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "business" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "depreciable cost" — Reg. 1703(2)–(8); "depreciable property" — ITA 13(21), 248(1); "farming" — ITA 248(1); "fiscal period" — ITA 249.1; "fishing", "individual", "Minister" — ITA 248(1); "original owner" — Reg. 1703(6); "person", "property" — ITA 248(1); "taxation year" — Reg. 1703(1)(a); "taxpayer" — ITA 248(1).

DIVISION V — APPLICATION OF THIS PART

1704. This Part shall apply only to a taxpayer who, in computing his income, has never claimed an allowance under Part XI in respect of a property at a time when an allowance could have been claimed under this Part in respect of that property, other than an allowance claimed by the taxpayer under Part XI that may be claimed in respect of a property described in

(a) paragraph 1100(1)(r) as enacted by Order in Council P.C. 1965-1118 of June 18, 1965 and as amended by Order in Council P.C. 1965-2320 of December 29, 1965;

(b) paragraph 1100(1)(sa) as enacted by Order in Council P.C. 1968-2261 of December 10, 1968;

(c) paragraph 1100(1)(v); or

(d) Class 20 in Schedule II.

History: S. 1704 substituted by P.C. 1978-1315, s. 12, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

Definitions [Reg. 1704]: "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: See at beginning of Part XVII.

Forms: See at beginning of Part XVII.

PART XVIII — INVENTORIES

History: Part XVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1800. Manner of keeping inventories — For the purposes of section 230 of the Act, an inventory shall show quantities and nature of the properties that should be included therein in such a manner and in sufficient detail that the property may be valued in accordance with this Part or section 10 of the Act.

Definitions [Reg. 1800]: "inventory", "property" — ITA 248(1).

1801. Valuation — Except as provided by section 1802, for the purpose of computing the income of a taxpayer from a business, all the property described in all the inventories of the business may be valued at its fair market value.

Related Provisions: ITA 10(1), (1.01) — Rules for valuing inventory.

History: S. 1801 substituted by P.C. 1989-1589, August 24, 1989, *Canada Gazette*, Part II, September 13, 1989, applicable after January 15, 1987.

Definitions [Reg. 1801]: "business", "inventory", "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-98R2: Investment corporations; IT-473R: Inventory valuation; IT-504R2: Visual artists and writers.

1802. Valuation of animals — **(1)** Except as provided in subsection (2), a taxpayer who is carrying on a business that includes the breeding and raising of animals may elect in prescribed form for a taxation year and subsequent taxation years to value each animal of a particular species (except a registered animal, an animal purchased for feedlot or similar operations, or an animal purchased by a drover or like person for resale) included in his inventory in respect of the business at a unit price determined in accordance with this section.

Forms: T2034: Election to establish inventory unit prices for animals.

(2) An election made in accordance with subsection (1) may be revoked in writing by the taxpayer, but where a taxpayer has made a revocation in accordance with this subsection a further election may not be made under subsection (1) except with the concurrence of the Minister.

(3) The unit price with respect to an animal of a particular class of animal shall be determined in accordance with the following rules:

(a) where animals of a particular class of animal were included in the inventory of a taxpayer at the end of the taxation year immediately preceding the first year in respect of which the taxpayer elected under subsection (1), the unit price of an animal of that class shall be computed by dividing the total value of all animals of the class in the inventory of the preceding year by the number of animals of the class described in that inventory, and

(b) in any other case, the unit price of an animal of a class shall be determined by the Minister, having regard, among other things, to the unit prices of animals of a comparable class of animal used in valuing the inventories of other taxpayers in the district.

(4) Notwithstanding subsection (1), where the aggregate value of the animals of a particular class determined in accordance with that subsection exceeds the market value of those animals, the animals of that class may be valued at fair market value.

(5) In this section

"class of animal" means a group of animals of a particular species segregated on the basis of age, breed or other recognized division, as determined by the taxpayer at the time of election under this section;

"district" means the territory served by a District Office of the Taxation Division of the Department of National Revenue;

"registered animal" means an animal for which a certificate of registration has been issued by the registrar of the breed to which the animal belongs or by the registrar of the Canadian National Livestock Records;

a reference to **"taxation year"** shall be deemed to be a reference to the fiscal period of a business.

Definitions [Reg. 1802]: "business" — ITA 248(1); "class of animal", "district" — Reg. 1802(5); "fiscal period" — ITA 249.1; "inventory", "Minister", "person", "prescribed" — ITA 248(1); "registered animal", "taxation year" — Reg. 1802(5); "taxpayer" — ITA 248(1); "territory" — *Interpretation Act* 35(1); "unit price" — Reg. 1802(3); "writing" — *Interpretation Act* 35(1).

PART XIX — INVESTMENT INCOME TAX

History: Part XIX (s. 1900) enacted by P.C. 1994-619, April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to taxation years commencing after June 17, 1987 and before 1990 that end after 1987.

History [former Part XIX]: Part XIX revoked by P.C. 1988-390, s. 10, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective October 29, 1985.

Part XIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1900. (1) Interpretation — In this Part,

"benefit" under a policy includes a policy dividend, an experience rating refund, a refund of premiums and any amount deemed by paragraph 138.1(1)(g) of the Act for the purposes of Part I of the Act to be a payment under the terms and conditions of the policy, but does not include a policy loan or interest on funds left on deposit with the insurer under the terms of the policy;

"excluded arrangement" of an insurer at any time means

(a) a life insurance policy in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), which is at that time a registered life insurance policy, an annuity contract (including a settlement annuity), a group term life insurance policy or an existing guaranteed life insurance policy,

(b) a registered pension fund or plan in respect of which the insurer is at that time a plan sponsor, or a retirement compensation arrangement in respect of which the insurer is the custodian,

(c) a life insurance policy (other than a life insurance policy in Canada) issued by the insurer before that time (or in respect of which the insurer has before that time assumed the obligations of the issuer of the policy to the policyholder), and

(d) a reinsurance arrangement under which the insurer has before that time assumed, directly or indirectly, risks under life insurance policies (other than policies issued by the insurer or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), to the extent that the arrangement relates to those risks;

"existing guaranteed life insurance policy" at any time means a non-participating life insurance policy in Canada in respect of which the amount of every premium that became payable before that time and after March 2, 1988 was fixed and determined on or before March 2, 1988, adjusted for any specified transaction or event that occurs after March 2, 1988 in respect of the policy;

"group term life insurance policy" is a group life insurance policy under which

(a) no amount (other than a policy dividend, an experience rating refund or a refund of premiums) may become payable to any person, except in the event of the death or disability of a person whose life was insured under the policy, and

(b) no amount may become payable to a person (other than the group policyholder) in respect of a policy dividend, an experience rating refund or a refund of premiums that has been funded by contributions made to or under the policy by another person;

"guaranteed interest" in respect of a life insurance policy for a taxation year means

(a) in respect of a life insurance policy (other than a pre-funded group life insurance policy), the total of all amounts each of which is the amount in respect of a guaranteed benefit in respect of which an amount is determined under paragraph 1401(1)(a), (c) or (d) for the year, where that benefit is provided under the terms and conditions of the policy as they existed on March 2, 1988, determined by multiplying the greater of

(i) the rate of interest used by the issuer of the policy in respect of the year in determining the amount of the benefit, and

(ii) 4%

by ½ of the total of

(iii) the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the benefit in computing the insurer's income for the year, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(iv) the maximum amount that would have been deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the benefit in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(b) in respect of a pre-funded group life insurance policy, 80 per cent of the amount that would be determined under paragraph (a) in respect of the policy for the year, if that paragraph were read without reference to the words "(other than a pre-funded group life insurance policy)";

"life insurance policy" does not include

(a) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) of the Act to have an interest in a segregated fund trust, or

(b) a reinsurance arrangement;

"life insurance policy in Canada" does not include

(a) that part of a policy in respect of which the policyholder is deemed by paragraph 138.1(1)(e) of the Act to have an interest in a segregated fund trust, or

(b) a reinsurance arrangement;

"maximum tax actuarial reserve" has the meaning assigned by subsection 138(12) of the Act;

"mortality experience" of an insurer for a taxation year means the positive or negative amount, as the case may be, determined by the formula

$$1.2 (A - B - C)$$

where

A is the total of all amounts each of which is the amount that became payable in the year by the insurer under a taxable life insurance policy of the insurer as a consequence of the receipt of a claim in respect of the death of a person whose life was insured under the policy, determined without reference to any policy loan,

B is the total of all amounts each of which is the amount of a reserve that would be determined in accordance with paragraph 1401(1)(a), (c) or (d), if that amount were determined without reference to any policy loan or reinsurance arrangement, in respect of a taxable life insurance policy of the insurer that would have been released in the year as a consequence of the receipt of a claim in respect of the death of a person whose life was insured under the policy, and

C is 90 per cent of the total of all amounts, each of which is the net cost of pure insurance determined in accordance with section 308 for the year in respect of an interest in a taxable life insurance policy of the insurer;

Related Provisions: ITA 257 — Negative amounts in formulas.

"mortality loss adjustment account" of an insurer at the end of a taxation year is the positive amount, if any, determined by the formula

$$A + B - C$$

where

A is the mortality loss adjustment account of the insurer for the immediately preceding taxation year,

B is

(a) where the mortality experience of the insurer for the year is a negative amount, the amount of the mortality experience of the insurer for the year, and

(b) in any other case, the amount, if any, by which the amount claimed by the insurer under the description of F in computing the amount determined under subsection (6) for the year exceeds the amount of the mortality loss adjustment account of the insurer for the immediately preceding taxation year, and

C is 1.2 times the amount, if any, by which

(a) the net cost of insurance of the insurer for the year

exceeds

(b) the total of all amounts each of which is the net cost of pure insurance determined in accordance with section 308 for the year in respect of an interest in a taxable life insurance policy of the insurer;

Related Provisions: ITA 257 — Negative amounts in formulas.

"net cost of insurance" of an insurer for a taxation year means the amount, if any, by which

(a) the amount determined in the description of A in the definition "mortality experience" in respect of the insurer for the year

exceeds

(b) the amount determined in the description of B in the definition "mortality experience" in respect of the insurer for the year;

"net level premium" in respect of a particular premium under a policy (other than a prepaid premium that cannot be refunded except on termination or cancellation of the policy) means

(a) where benefits (other than policy dividends) and premiums (other than the frequency of payment thereof) in respect of the policy have been determined at the date of issue of the policy, the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount of the particular premium,

B is the present value, at the date of issue of the policy, of the amount of the benefits (other than policy dividends) to be provided under the terms of the policy after the issue of the policy, and

C is the present value, at the date of issue of the policy, of the amount of the premiums payable under the terms of the policy on or after the issue of the policy, and

(b) where the amounts of the benefits or premiums in respect of the policy are not determined at the date of issue of the policy, the amount that would be determined under paragraph (a) in respect of the particular premium if the amount were adjusted in a manner that is reasonable in the circumstances and consistent with the manner of the adjustment referred to in the definition "modified net premium" in subsection 1404(2) in respect of the particular premium;

"net level premium reserve" in respect of a life insurance policy for a taxation year means the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in respect of the policy in computing the insurer's income for the year, if any reference to "modified net premium" in sections 1401, 1403 and 1404 were a reference to "net level premium";

"non-participating life insurance policy" means a life insurance policy other than a participating life insurance policy within the meaning assigned by subsection 138(12) of the Act;

"policy loan" has the meaning assigned by subsection 138(12) of the Act;

"pre-funded group life insurance policy" means a group term life insurance policy, other than a policy under which each premium payable is in respect of coverage for a period, including the day on which the premium becomes payable, that does not exceed twelve months;

"premium" includes

(a) consideration received for settlement annuities,

(b) amounts received by an insurer in respect of employee contributions under registered pension funds or plans in respect of which the insurer is a plan sponsor or a retirement compensation arrangement in respect of which the insurer is the custodian, and

(c) any amount deemed by paragraph 138.1(1)(h) of the Act for the purposes of Part I of the Act to be a premium received by an insurer,

but does not include amounts received in respect of the repayment of a policy loan or in respect of interest on a policy loan and, for greater certainty, the amount of a premium is not reduced by the amount of a refund of premiums;

"registered life insurance policy" has the meaning assigned by section 211 of the Act;

"reinsurance arrangement" does not include an arrangement under which an insurer has assumed the obligations of the issuer of a life insurance policy to the policyholder;

"segregated fund" has the meaning assigned by subsection 138(12) of the Act;

"specified transaction or event" in respect of a life insurance policy means

(a) a change in underwriting class,

(b) a change in premium due to a change in frequency of premium payments within a year that does not alter the present value, at the beginning of the year, of the total premiums to be paid under the policy in the year,

(c) an addition under the terms of the policy as they existed on March 2, 1988, of accidental death, dismemberment, disability or guaranteed purchase option benefits,

(d) a deletion of a rider,

(e) redating lapsed policies within 60 days after the end of the calendar year in which the lapse occurred, or redating for policy loan indebtedness,

(f) a change in premium due to a correction of erroneous information,

(g) the payment of a premium after its due date, or no more than 30 days before its due date, as established on or before March 2, 1988, or

(h) the payment of an amount of interest described in subparagraph 148(9)(e.1)(i) of the Act; [and]

"taxable life insurance policy" of an insurer at any time means a life insurance policy in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder), other than a policy that is at that time an excluded arrangement.

(2) For the purposes of this Part,

(a) any rider added, at any time after March 2, 1988, to a life insurance policy shall be deemed to be a separate life insurance policy issued at that time; and

(b) in respect of an insurer's first taxation year that commences after June 17, 1987 and ends after 1987, the maximum amount that would have been deductible

under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act, as the case may be, in computing the insurer's income for the immediately preceding year shall be determined as though the provisions that apply in determining that maximum amount for that first taxation year were applicable in respect of that immediately preceding year.

(3) Prescribed provisions — For the purposes of paragraph (b) of the description of C in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, the provisions of the Act that are prescribed are paragraphs 12(1)(i), (i.1), (n), (n.1), (n.2), (n.3), (o), (t), and (v), and subsections 13(1), 59(3.2) and (3.3), 138(4.4) and 140(2).

(4) Prescribed arrangements — For the purposes of the description of D in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, prescribed arrangements in respect of an insurer are

(a) life insurance policies in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder) that are group term life insurance policies or existing guaranteed life insurance policies;

(b) life insurance policies (other than life insurance policies in Canada) issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder);

(c) retirement compensation arrangements in respect of which the insurer is the custodian; and

(d) reinsurance arrangements under which the insurer has assumed or ceded risks insured under life insurance policies (other than policies issued by the insurer or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder).

(5) Prescribed rules for determining amounts — The amount in the description of D in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is determined by the formula

$$A - B + C - D - E - F$$

where

A is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of an excluded arrangement of the insurer in computing the insurer's income for the year, if that amount were determined without reference to any policy loan;

B is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of an excluded arrangement of the insurer in computing the insurer's income for the immediately preceding year, if that amount were determined without reference to any policy loan;

C is the total of all amounts each of which is the amount of a benefit, determined on a net of reinsurance ceded basis, that has become payable by the insurer in the year in respect of an excluded arrangement of the insurer, to the extent that the benefit is deducted in computing the insurer's income for the year under Part I of the Act from carrying on a life insurance business in Canada;

D is the total of all amounts each of which is the amount of a premium, determined on a net of reinsurance ceded basis, that has become receivable by the insurer in the year in respect of an excluded arrangement of the insurer, to the extent that the premium is included in computing the insurer's income for the year under Part I of the Act from carrying on a life insurance business in Canada;

E is the positive or negative amount, as the case may be, in respect of the insurer for the year determined by the formula

$$(G - H) - (I - J) + (K - L) - (M - N)$$

where

G is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the year, if that amount were determined without reference to any policy loan or reinsurance arrangement,

H is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the year, if that amount were determined without reference to any policy loan,

I is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any policy loan or reinsurance arrangement,

J is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i), (ii) or (iv) of the Act in respect of a taxable life insurance policy of the insurer in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any policy loan,

K is the total of all amounts each of which is the amount of a benefit that has become payable in the year by the insurer under a taxable life insurance policy of the insurer,

L is the total of all amounts each of which is the amount of a benefit, determined on a net of reinsurance ceded basis, that has become payable by the insurer under a taxable life insurance policy of the insurer, to the extent that it is deducted in computing the insurer's income from carrying on a life insurance business in Canada for the year,

M is the total of all amounts each of which is the amount of a premium that has become receivable by the insurer in the year under a taxable life insurance policy of the insurer, and

N is the total of all amounts each of which is the amount of a premium determined on [a] net of reinsurance ceded basis, that has become receivable by the insurer in the year under a taxable life insurance policy of the insurer, to the extent that the premium is included in computing the insurer's in-

come from carrying on a life insurance business in Canada for the year; and

F is the positive or negative amount, as the case may be, determined by the formula

$$O + P - Q - R$$

where

O is the total of all amounts each of which is an amount in respect of a group term life insurance policy equal to the lesser of

(a) the amount of interest credited by the insurer in the year on account of the policy (other than interest payable in respect of the period ending on its first anniversary date after March 2, 1988), and

(b) the amount, if any, by which the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c.1) in respect of the policy in computing the insurer's income for the year, if that amount were determined without reference to any reinsurance arrangement, exceeds the maximum amount that would have been so deductible in computing the insurer's income for the immediately preceding year,

P is 80 per cent of the total of all amounts each of which is the amount in respect of a liability of the insurer, a benefit, a risk or a guarantee, in respect of which an amount is determined under paragraph 1401(1)(a), (c) or (d) for the year, in respect of a pre-funded group life insurance policy of the insurer, determined by multiplying

(a) the rate of interest used in determining the amount under paragraph 1401(1)(a), (c) or (d), as the case may be, for the year in respect of the liability, benefit, risk or guarantee, as the case may be,

by ½ of the total of

(b) the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the liability, benefit, risk or guarantee, as the case may be, in computing the insurer's income for the year if that amount were determined without reference to any policy loan or reinsurance arrangement, and

(c) the maximum amount that would have been deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(a), (c) or (d), as the case may be, in respect of the liability, benefit, risk or guarantee, as the case may be, in computing the insurer's income for the immediately preceding taxation year if that amount were determined without reference to any policy loan or reinsurance arrangement,

Q is the total of all amounts each of which is the amount determined for the year in respect of a taxable life insurance policy of the insurer by multiplying

(a) the rate of interest used in determining the maximum amount deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in respect of the policy in computing the insurer's income for the year,

by ½ of the total of

(b) the maximum amount that would be deductible under subparagraph 138(3)(a)(ii) of the Act in respect of the policy in computing the insurer's income for the year, if that amount were determined without reference to any reinsurance arrangement, and

(c) the maximum amount that would have been deductible under subparagraph 138(3)(a)(ii) of the Act in respect of the policy in computing the insurer's income for the immediately preceding taxation year, if that amount were determined without reference to any reinsurance arrangement, and

R is the total of all amounts each of which is an amount in respect of a group term life insurance policy equal to the amount, if any, by which

(a) the total of all amounts determined in respect of the insurer under the description of O in respect of the policy for taxation years ending before the year

exceeds the total of

(b) the total of all amounts determined in respect of the insurer under the description of R in respect of the policy for taxation years ending before the year, and

(c) the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c.1) in respect of the policy in computing the insurer's income for the year, if that amount were determined without reference to any reinsurance arrangement.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) The amount of the term insurance component in the description of E in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is determined by the formula

$$A + B + C - D + E - F + G + H$$

where

A is the amount determined by multiplying 0.0035 by the total of all amounts each of which is the amount of new insurance effected in the year (other than amounts rescinded in the year) under a taxable life insurance policy of the insurer;

B is the amount determined by multiplying 0.0002 by ½ of the total of

(a) all amounts of insurance in force at the end of the year under taxable life insurance policies of the insurer (other than paid-up policies), and

(b) all amounts of insurance in force at the end of the immediately preceding taxation year under taxable life insurance policies of the insurer (other than paid-up policies);

C is the amount determined by multiplying 0.20 by the net cost of insurance in respect of the insurer for the year;

D is the greater of

(a) the lesser of $2,500,000 and the amount, if any, by which

(i) the total of the amounts determined under the descriptions of A, B, C and E in respect of the insurer for the year

exceeds

(ii) 50 per cent of the amount that would be determined under the description of N in subsection (5) in respect of the insurer for the year, if that amount were determined without reference to any reinsurance arrangement, and

(b) the amount, if any, by which

(i) the total of the amounts determined under the descriptions of A, B, C and E in respect of the insurer for the year

exceeds

(ii) 75 per cent of the amount that would be determined under the description of N in subsection (5) in respect of the insurer for the year, if that amount were determined without reference to any reinsurance arrangement;

E is the amount determined under the description of D in respect of the insurer for the immediately preceding taxation year;

F is such amount as the insurer may claim, not exceeding the positive amount, if any, determined by adding

(a) the mortality experience of the insurer for the year, and

(b) the amount determined under the description of G in respect of the insurer for the year;

G is the mortality loss adjustment account of the insurer for the immediately preceding year; and

H is 1 per cent of the total of all amounts each of which is the amount of a premium that has become receivable by the insurer in the year under a taxable life insurance policy of the insurer in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8).

Related Provisions: ITA 257 — Negative amounts in formulas.

(7) The amount of the amortization adjustment amount in the description of E in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is determined by the formula

$$(A - B) - (C - D)$$

where

A is the total of all amounts each of which is the amount that would be the net level premium reserve for the year in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance agreement;

B is the total of all amounts each of which is the amount that would be the net level premium reserve for the immediately preceding taxation year in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance arrangement;

C is the total of all amounts each of which is the maximum amount that would be deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in computing the insurer's income for the year, in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance arrangement; and

D is the total of all amounts each of which is the maximum amount that would have been deductible under subparagraph 138(3)(a)(i) of the Act pursuant to paragraph 1401(1)(c) in computing the insurer's income for the immediately preceding taxation year, in respect of a taxable life insurance policy of the insurer (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), if that amount were determined without reference to any policy loan or reinsurance arrangement.

Related Provisions: ITA 257 — Negative amounts in formulas.

(8) The amount of guaranteed interest in the description of F in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, in respect of a life insurer for a taxation year is the total of all amounts each of which is the guaranteed interest for the year in respect of

(a) a life insurance policy in Canada (other than a policy that was at any time an excluded arrangement), or

(b) a pre-funded group life insurance policy,

where the policy was issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder) and the terms and conditions of the policy relating to premiums and benefits were determined on or before March 2, 1988, except that where, at any time after March 2, 1988, the terms and conditions of the policy relating to premiums and benefits have been changed (other than to give effect to terms and conditions which were determined prior to March 3, 1988 or pursuant to a specified transaction or event), the amount of guaranteed interest in respect of the policy for the year in which the change is made and any subsequent taxation year is deemed to be nil.

(9) Prescribed portion — The prescribed portion of an amount referred to in the description of G in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, for a taxation year is

(a) where the amount is in respect of a life insurance policy (other than a policy in respect of which a positive amount of guaranteed interest is determined for the year under subsection (8)), 100 per cent of the amount; and

(b) in any other case, nil.

(10) Prescribed arrangements — For the purposes of the description of G in subsection 211.1(3) of the Act, as it read in its application to taxation years beginning before 1990, prescribed arrangements of an insurer are life insurance policies in Canada issued by the insurer (or in respect of which the insurer has assumed the obligations of the issuer of the policy to the policyholder) that

are group term life insurance policies or policies that, at any time, were existing guaranteed life insurance policies.

Definitions [Reg. 1900]: "amount", "annuity" — ITA 248(1); "benefit" — Reg. 1900; "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend", "employee" — ITA 248(1); "excluded arrangement", "existing guaranteed life insurance policy", "group term life insurance policy", "guaranteed interest" — Reg. 1900; "insurer", "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — Reg. 1900; "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 1900; "month" — *Interpretation Act* 35(1); "mortality experience", "mortality loss adjustment account", "net cost of insurance", "net level premium", "net level premium reserve" — Reg. 1900; "non-participating life insurance policy" — ITA 138(12), Reg. 1900; "person" — ITA 248(1); "policy dividend" — ITA 139.1(8)(a); "policy loan" — ITA 138(12), Reg. 1900; "pre-funded group life insurance policy", "premium" — Reg. 1900; "prescribed" — ITA 248(1); "registered life insurance policy" — ITA 211, Reg. 1900; "registered pension fund or plan" — ITA 248(1); "reinsurance arrangement" — Reg. 1900; "retirement compensation arrangement" — ITA 248(1); "segregated fund" — ITA 138(12), Reg. 1900; "separate life insurance policy" — Reg. 1900(2); "specified transaction or event", "taxable life insurance policy" — Reg. 1900; "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

PART XX — POLITICAL CONTRIBUTIONS

History: Part XX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2000. Contents of receipts — **(1)** Every official receipt issued by a registered agent of a registered party shall contain a statement that it is an official receipt for income tax purposes and shall, in a manner that cannot readily be altered, show clearly

(a) the full name of the registered party;

(b) the serial number of the receipt;

(c) the name of the registered agent as recorded in the registry maintained by the Chief Electoral Officer pursuant to subsection 13.1(1) of the *Canada Elections Act*;

(d) the day on which the receipt was issued;

(e) where the person making the contribution is

(i) a person other than an individual, the day on which the contribution was received where that day differs from the day referred to in paragraph (d), or

(ii) an individual, the calendar year during which the contribution was received;

(f) the place or locality where the receipt was issued;

(g) the name and address of the person making the contribution including, in the case of an individual, his first name or initial;

(h) the amount of the contribution; and

(i) the signature of the registered agent.

(2) Subject to subsection (3), every official receipt issued by an official agent of an officially nominated candidate shall contain a statement that it is an official receipt for income tax purposes and shall, in a manner that cannot readily be altered, show clearly

(a) the name of the officially nominated candidate;

(b) the serial number of the receipt;

(c) the name of the official agent as recorded with the Minister;

(d) the day on which the receipt was issued;

(e) the day on which the contribution was received where that day differs from the day referred to in paragraph (d);

(f) the polling day;

(g) the name and address of the person making the contribution including, in the case of an individual, his first name or initial;

(h) the amount of the contribution; and

(i) the signature of the official agent.

(3) The information required by paragraph (2)(f) may be shown by use of a code on an official receipt form issued by the Chief Electoral Officer, provided that the Minister is advised of the meaning of the code used.

(4) For the purposes of subsections (1) and (2), an official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.

(5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be filed by the registered agent or the official agent, as the case may be, together with the duplicates of receipts required to be filed with the Minister pursuant to subsection 230.1(2) of the Act.

(6) Every official receipt form on which

(a) the day on which the contribution was received,

(b) the year during which the contribution was received, or

(c) the amount of the contribution

was incorrectly or illegibly entered shall be regarded as spoiled.

Definitions [Reg. 2000]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "contribution" — ITA 127(4.1), Reg. 2002(1); "individual", "Minister" — ITA 248(1); "official receipt" — Reg. 2000(4), 2002; "official receipt form" — Reg. 2002(1); "officially nominated candidate" — Reg. 2002(2); "person" — ITA 248(1); "polling day" — Reg. 2002(2); "registered agent", "registered party" — Reg. 2002(1).

2001. Information returns — The return of information referred to in subsection 230.1(2) of the Act shall be filed by a registered agent on or before the last day of March in each year and shall be in respect of the preceding calendar year.

Definitions [Reg. 2001]: "registered agent" — Reg. 2002(1).

Forms: T2092: Contributions to a registered party — information return; T2093: Contributions to a candidate at an election — information return.

2002. Interpretation — **(1)** In this Part,

"contribution" means an amount contributed within the meaning assigned by subsection 127(4.1) of the Act;

"official receipt" means a receipt for the purposes of subsection 127(3) of the Act containing information as provided in subsection 2000(1) or (2), as the case may be;

"official receipt form" means any printed form that a registered agent or an official agent, as the case may be, has that is capable of being completed, or that originally was intended to be completed, as an official receipt of the registered agent or official agent, as the case may be.

(2) In this Part, "official agent", "polling day", "registered agent" and "registered party" have the meanings assigned to them by section 2 of the *Canada Elections Act* and "of-

ficially nominated candidate" means a person in respect of whom a nomination paper and deposit have been filed as referred to in the definition "official nomination" in that section of that Act.

Definitions [Reg. 2002]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "official agent" — Reg. 2002(2); "official receipt" — Reg. 2002(1); "person" — ITA 248(1); "registered agent" — Reg. 2002(1).

PART XXI — ELECTIONS IN RESPECT OF SURPLUSES

History: Part XXI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2100. Reduction of tax-paid undistributed surplus on hand or 1971 capital surplus on hand — Any election under subsection 83(1) of the Act in respect of a dividend payable before 1979 by a Canadian corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where paragraph (e) is not applicable, schedules showing the computation of the amount, immediately before the election, of the corporation's

(i) tax-paid undistributed surplus on hand, if any,

(ii) 1971 capital surplus on hand, if any, and

(iii) 1971 undistributed income on hand, if any; and

(e) where subsection 83(3) of the Act is applicable, schedules showing the computation of the amount, immediately before the dividend became payable, of the corporation's

(i) tax-paid undistributed surplus on hand, if any,

(ii) 1971 capital surplus on hand, if any, and

(iii) 1971 undistributed income on hand, if any.

History: That portion of para. 2100(e) preceding subpara. (i) substituted by P.C. 1988-390, s. 11, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective October 29, 1985.

S. 2100 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

All that portion of s. 2100 preceding para. (a) substituted by P.C. 1980-502, s. 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective January 1, 1980.

Definitions [Reg. 2100]: "1971 capital surplus on hand", "amount" — ITA 248(1); "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed", "tax-paid undistributed surplus on hand" — ITA 248(1).

2101. Capital dividends and life insurance capital dividends payable by private corporations — Any election under subsection 83(2) of the Act in respect of a dividend payable by a private corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where the election has been made under subsection 83(2) of the Act and paragraph (e) is not applicable, schedules showing the computation of the amount, immediately before the election, of the corporation's

(i) capital dividend account, and

(ii) 1971 undistributed income on hand, if any, if the dividend was payable on or prior to March 31, 1977; and

(e) where the election has been made under subsection 83(2) of the Act and subsection 83(3) of the Act is applicable, schedules showing the computation of the amount, immediately before the dividend became payable, of the corporation's

(i) capital dividend account, and

(ii) 1971 undistributed income on hand, if any, if the dividend was payable on or prior to March 31, 1977.

History: That portion of s. 2101 preceding para. (a) substituted, and paras. (f) and (g) revoked, applicable with respect to dividends paid after May 23, 1985; that portion of para. 2101(e) preceding subpara. (i) substituted effective October 29, 1985, by P.C. 1988-390, s. 12, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988.

That portion of s. 2101 preceding para. (a), that portion of para. (d) preceding subpara. (i), and para (e) substituted and paras. (f) and (g) added by P.C. 1984-3789, s. 10, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective June 29, 1982.

S. 2101 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

Subparas. 2101(d)(ii), (e)(ii) substituted by P.C. 1978-2394, s. 1, July 26, 1978, *Canada Gazette*, Part II, August 9, 1978, effective for the period commencing April 1, 1977.

Definitions [Reg. 2101]: "amount" — ITA 248(1); "capital dividend" — ITA 83(2)–(2.4), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed" — ITA 248(1); "private corporation" — ITA 89(1), 248(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

Forms: T2054: Election in respect of a capital dividend under subsection 83(2).

2102. Tax on 1971 undistributed income on hand — (1) [Revoked]

History: Subsec. 2102(1) revoked by P.C. 1980-502, subsec. 3(1), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980.

(2) Any retroactive election by a corporation under subsection 196(1.1) of the Act, in respect of a dividend payable before 1979 in respect of which an election was made under section 83 of the Act, shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation; and

(d) a schedule showing the computation of the amount, immediately before the time immediately before the specified election referred to in subsection 196(1.1) of the Act was made, of the corporation's 1971 undistributed income on hand.

History: Subsec. 2102(2) amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April 13, 1983, to remove the requirement to file duplicate copies of the documents listed.

All that portion of subsec. 2102(2) preceding para. (a) substituted by P.C. 1980-502, subsec. 3(2), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980.

Definitions [Reg. 2102]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed" — ITA 248(1).

2103. [Revoked]

History: S. 2103 revoked by P.C. 1978-2394, s. 2, July 26, 1978, *Canada Gazette*, Part II, August 9, 1978, effective for the period commencing January 1, 1978.

2104. Capital gains dividends payable by mutual fund corporations and investment corporations — Any election under subsection 131(1) of the Act in respect of a dividend payable by a mutual fund corporation or an investment corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where paragraph (f) is not applicable, a schedule showing the computation of the amount, immediately before the election, of the corporation's capital gains dividend account; and

(e) [Revoked]

(f) where subsection 131(1.1) of the Act is applicable, a schedule showing the computation of the amount, immediately before the earlier of

(i) the date the dividend became payable, and

(ii) the first day on which any part of the dividend was paid,

of the corporation's capital gains dividend account.

History: That portion of s. 2104 preceding para. (a) substituted applicable to 1985 *et seq.*; para. (d) substituted and para (e) revoked effective October 29, 1985, by P.C. 1988-390, s. 13, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988.

S. 2104 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

Paras. 2104(d) substituted, (f) added by P.C. 1981-2409, s. 1, September 3, 1981, *Canada Gazette*, Part II, September 23, 1981, applicable to elections made in respect of dividends that became payable after 1974.

Definitions [Reg. 2104]: "amount" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "investment corporation" — ITA 130(3), 248(1); "Minister" — ITA 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "person", "prescribed" — ITA 248(1).

Forms: T2055: Election in respect of a capital gains dividend under subsection 131(1).

2104.1 [Capital gains dividends payable by mortgage investment corporations] — Any election under subsection 130.1(4) of the Act in respect of a dividend payable by a mortgage investment corporation shall be made by filing with the Minister the following documents:

(a) the documents referred to in paragraphs 2104(a) to (c); and

(b) a schedule showing the computation of the capital gains dividend in accordance with paragraph 130.1(4)(a) of the Act.

History: S. 2104.1 added by P.C. 1988-390, s. 14, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 2104.1]: "capital gain" — ITA 39(1), 248(1); "dividend", "Minister" — ITA 248(1); "mortgage investment corporation" — ITA 130.1(6), 248(1).

Forms: T2012: Election in respect of a capital gains dividend under subsection 130.1(4); T2143: Election not to be a restricted financial institution.

2105. Capital gains dividends payable by non-resident-owned investment corporations — Any election under subsection 133(7.1) of the Act in respect of a dividend payable by a non-resident-owned investment corporation shall be made by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation;

(d) where paragraph (e) is not applicable, a schedule showing the computation of the amount, immediately before the election, of the corporation's capital gains dividend account; and

(e) where subsection 133(7.3) of the Act is applicable, a schedule showing the computation of the amount, immediately before the earlier of

(i) the date the dividend became payable, and

(ii) the first day on which any part of the dividend was paid,

of the corporation's capital gains dividend account.

History: S. 2105 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983, to remove the requirement to file duplicate copies of the documents listed.

Paras. 2105(d) substituted, (e) added by P.C. 1981-2409, s. 2, September 3, 1981, *Canada Gazette*, Part II, September 23, 1981, applicable to elections made in respect of dividends that became payable after 1974 except that in its application to dividends that became payable after 1974 and before 1979 paras. 2105(d) and (e) shall be read as follows:

(d) Where paragraph (e) is not applicable, schedules showing the computation of the amount, immediately before the election, of the corporation's

(i) capital gains dividend account, and

(ii) 1971 undistributed income on hand; and

(e) where subsection 133(7.3) of the Act is applicable, schedules showing the computation of the amount, immediately before the earlier of

(i) the date the dividend became payable, and

(ii) the first day on which any part of the dividend was paid,

of the corporation's

(iii) capital gains dividend account, and

(iv) 1971 undistributed income on hand.

Definitions [Reg. 2105]: "amount" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister" — ITA 248(1); "non-resident-owned investment corporation" — ITA 133(8), 248(1); "person", "prescribed" — ITA 248(1).

Forms: T2053: Election by a Canadian corporation in respect of a dividend out of tax-paid undistributed surplus on hand, and/or 1971 capital surplus on hand; T2054: Election by a private corporation in respect of a dividend out of capital dividend account; T2055: Election to pay a capital gains dividend under subsection 131(1); T2056: Election to pay tax on 1971 undistributed income on hand; T2063: Election in respect of a capital gains dividend under subsection 133(7.1).

2106. Alternative to additional tax on excessive elections [for capital dividends] — Any election under subsection 184(3) of the Act in respect of a dividend that was paid or payable by a corporation shall be made by

(a) filing with the Minister the following documents:

(i) a letter stating that the corporation elects under subsection 184(3) of the Act in respect of the said dividend,

(ii) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of

(A) their resolution authorizing the election to be made, and

(B) their declaration that the election is made with the concurrence of all shareholders who received or were entitled to receive all or any portion of the said dividend and whose addresses were known to the corporation,

(iii) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of

(A) the authorization of the making of the election, and

(B) the declaration that the election is made with the concurrence of all shareholders who received or were entitled to receive all or any portion of the said dividend and whose addresses were known to the corporation,

by the person or persons legally entitled to administer the affairs of the corporation,

(iv) a schedule showing the following information:

(A) the date of the notice of assessment of the tax that would, but for the election, have been payable under Part III of the Act,

(B) the full amount of the said dividend,

(C) the date the said dividend became payable, or the first day on which any part of the said dividend was paid if that day is earlier,

(D) the portion, if any, of the said dividend described in paragraph 184(3)(a) of the Act,

(E) the portion, if any, of the said dividend that the corporation is claiming for the purposes of an election in respect thereof under subsection 83(1) or (2), 130.1(4) or 131(1) of the Act pursuant to paragraph 184(3)(b) of the Act, and

(F) the portion, if any, of the said dividend that is deemed by paragraph 184(3)(c) of the Act to be a separate dividend that is a taxable dividend; and

(b) making an election in prescribed manner and prescribed form in respect of any amount claimed under paragraph 184(3)(b) of the Act.

History: S. 2106 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April 13, 1983, to remove the requirement to file duplicate copies of the documents listed.

S. 2106 added by P.C. 1978-1138, April 13, 1978, *Canada Gazette*, Part II, April 26, 1978, effective on and after January 1, 1972.

Definitions [Reg. 2106]: "amount", "assessment" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "Minister", "person", "prescribed", "shareholder" — ITA 248(1); "taxable dividend" — ITA 89(1), 248(1).

Interpretation Bulletins: IT-66R6: Capital dividends.

2107. Tax-deferred preferred series — The following series of classes of capital stock are hereby prescribed for the purposes of subsection 83(6) of the Act to be tax-deferred preferred series:

(a) The Algoma Steel Corporation, Limited, 8% Tax Deferred Preference Shares Series A;

(b) Aluminum Company of Canada, Limited, $2.00 Tax Deferred Retractable Preferred Shares;

(c) Brascan Limited, 8½% Tax Deferred Preferred Shares Series A;

(d) Canada Permanent Mortgage Corporation, 6¾% Tax Deferred Convertible Preference Shares Series A; and

(e) Cominco Ltd., $2.00 Tax Deferred Exchangeable Preferred Shares Series A.

History: S. 2107 added by P.C. 1978-2394, s. 3, July 26, 1978, *Canada Gazette*, Part II, August 9, 1978, effective for the period commencing January 1, 1979.

Definitions [Reg. 2107]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

PART XXII — SECURITY INTERESTS

History: The heading before s. 2200 amended by P.C. 1999-1341, s. 1, July 28, 1999, *Canada Gazette*, Part II, August 18, 1999, deemed to have come into force on June 15, 1994.

Part XXII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2200. Where under subsection 220(4) of the Act the Minister has accepted, as security for payment of taxes, a mortgage or other security or guarantee, he may, by a document in writing, discharge such mortgage or other security or guarantee.

History: S. 2200 amended by P.C. 1994-1817, para. 62(c), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 2200]: "Minister" — ITA 248(1); "security", "writing" — *Interpretation Act* 35(1).

2201. (1) For the purpose of subsection 227(4.2) of the Act, **"prescribed security interest"**, in relation to an amount deemed by subsection 227(4) of the Act to be held in trust by a person, means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration

system before the time the amount is deemed to be held in trust by the person.

(2) For the purpose of subsection (1), where, at any time after 1999, the person referred to in subsection (1) fails to pay an amount deemed by subsection 227(4) of the Act to be held in trust by the person, as required under the Act, the amount of the prescribed security interest referred to in subsection (1) is deemed not to exceed the amount by which the amount, at that time, of the obligation outstanding secured by the mortgage exceeds the total of

(a) all amounts each of which is the value determined at the time of the failure, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 227(4) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off but not including the mortgage referred to in subsection (1), and

(b) all amounts applied after the time of the failure on account of the obligation,

so long as any amount deemed under any enactment administered by the Minister, other than the *Excise Tax Act*, to be held in trust by the person, remains unpaid.

(3) For greater certainty, a prescribed security interest includes the amount of insurance or expropriation proceeds relating to land or a building that is the subject of a registered mortgage interest, adjusted after 1999 in accordance with subsection (2), but does not include a lien, a priority or any other security interest created by statute, an assignment or hypothec of rents or leases, or a mortgage interest in any equipment or fixtures that a mortgagee or any other person has the right absolutely or conditionally to remove or dispose of separately from the land or building.

History: S. 2201 added by P.C. 1999-1341, s. 2, July 28, 1999, *Canada Gazette*, Part II, August 18, 1999, deemed to have come into force on June 15, 1994.

PART XXIII — PRINCIPAL RESIDENCES

History: Part XXIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2300. Any election by a taxpayer under subparagraph 40(2)(c)(ii) of the Act shall be made by attaching to the return of income required by section 150 of the Act to be filed by him for his taxation year in which the disposition of the land, including the property that was his principal residence, occurred, a letter signed by the taxpayer

(a) stating that he is electing under that subparagraph;

(b) stating the number of taxation years ending after the acquisition date (within the meaning assigned by paragraph 40(2)(b) of the Act) for which the property was his principal residence and during which he was resident in Canada; and

(c) giving a description of the property sufficient to identify it with the property designated as his principal residence.

History: Para. 2300(b) substituted by P.C. 1980-2224, s. 1, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective in respect of dispositions after March 31, 1977.

Definitions [Reg. 2300]: "disposition" — ITA 248(1); "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

2301. Any designation by a taxpayer under subparagraph 54(g)(iii) [54"principal residence"(c)] of the Act shall be made in the return of income required by section 150 of the Act to be filed by him for any taxation year of the taxpayer in which

(a) he has disposed of a property that is to be designated as his principal residence; or

(b) he has granted an option to acquire such property.

Definitions [Reg. 2301]: "disposed" — ITA 248(1)"disposition"; "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-120R5: Principal residence.

Forms: T1079: Designation of a property as a principal residence by a personal trust; T1079-WS: Principal residence worksheet; T2091: Designation of a property as a principal residence by an individual; T2091(IND)WS: Principal residence worksheet.

PART XXIV — INSURERS

History: Part XXIV (ss. 2400–2409) was substituted by P.C. 1979-2483, September 13, 1979, *Canada Gazette*, Part II, September 26, 1979.

2400. Property used in insurance businesses in Canada — **(1)** For the purposes of paragraph 138(12)(l) [138(12)"property used by it in the year in, or held by it in the year in the course of"] of the Act, "property used by it in the year in, or held by it in the year in the course of" carrying on an insurance business in Canada (in this Part referred to as the "particular insurance business") means the property (in this Part referred to as "insurance property") of an insurer that is designated or required to be designated by the insurer in respect of a taxation year, and for that purpose the following rules apply:

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[See after 2401.]

(a) such investment property owned by the insurer at the beginning of the year that was insurance property in respect of another insurance business in Canada in the immediately preceding taxation year and that was used by the insurer in the year in, or held by it in the year in the course of (determined without reference to this subsection), carrying on the particular insurance business shall be designated by the insurer in respect of the particular insurance business for the year;

(b) where the amount of the insurer's mean Canadian reserve liabilities for the year in respect of the particular insurance business exceeds the total of

(i) the aggregate value for the year of all investment property of the insurer required to be designated by the insurer under paragraph (a) in respect of the particular insurance business for the year,

(ii) where the particular insurance business is a life insurance business in Canada, the aggregate of the mean policy loans of the insurer for the year and ½ of the aggregate of outstanding premiums of the insurer in respect of that insurance business in Canada as determined for the purposes of the relevant authority at the end of the year and the immediately preceding taxation year,

(iii) where the particular insurance business is an accident and sickness insurance business in Canada, ½ of the aggregate of outstanding premiums of the insurer in respect of that insurance business in Canada as determined for the purposes of the relevant authority at the end of the year and the immediately preceding taxation year, and

(iv) where the particular insurance business is an insurance business in Canada, other than a life insurance business in Canada or an accident and sickness insurance business in Canada, ½ of the total of

(A) the aggregate of all amounts each of which is an amount of a deferred acquisition expense or a premium receivable (to the extent included in the insurer's Canadian reserve liabilities) of the insurer in respect of that insurance business in Canada as determined for the purposes of the relevant authority at the end of the immediately preceding taxation year, and

(B) the aggregate of all amounts each of which is an amount of a deferred acquisition expense or a premium receivable (to the extent included in the insurer's Canadian reserve liabilities) of the insurer in respect of that insurance business in Canada as determined for the purposes of the relevant authority at the end of the year,

such investment property (other than investment property required to be designated by the insurer pursuant to paragraph (a) in respect of another insurance business in Canada of the insurer for the year, when that paragraph is applied in respect of that other business) owned by the insurer at the beginning of the year that was insurance property in respect of the particular insurance business in the immediately preceding taxation year, the value for the year of which is not less than the amount of that excess, shall be designated by the insurer in respect of the particular insurance business for the year;

(c) where

(i) the amount of the excess determined under paragraph (b) in respect of the particular insurance business for the year

exceeds

(ii) the aggregate value for the year of insurance property in the immediately preceding taxation year in respect of the particular insurance business required to be designated by the insurer pursuant to paragraph (b) in respect of the particular insurance business for the year,

such investment property (other than investment property designated or required to be designated by the insurer under paragraph (a) or (b) for the year) owned by the insurer at any time in the year, the value for the year of which is not less than the amount of that excess, shall be designated by the insurer in respect of the particular insurance business for the year;

(d) where

(i) the amount of the insurer's Canadian investment fund for the year

exceeds

(ii) the aggregate value for the year of all investment property designated or required to be designated by the insurer under paragraphs (a), (b) and (c) in respect of all insurance businesses in Canada for the year,

such investment property (other than investment property designated or required to be designated by the insurer under paragraph (a), (b) or (c) for the year) owned by the insurer at any time in the year, the value for the year of which is not less than the amount of that excess, shall be designated by the insurer in respect of a particular insurance business for the year;

(e) such non-segregated property or portion thereof (other than investment property) owned by the insurer at any time in the year and used by it in the year in, or held by it in the year in the course of (determined without reference to this subsection), carrying on an insurance business in Canada shall be deemed to have been designated by the insurer for the year; and

(f) where the insurer has failed to designate property required to be designated for the year under any of paragraphs (a) to (d), such property owned by the insurer at any time in the year may, notwithstanding subsection (5), be designated by the Minister on behalf of the insurer for the purposes of those paragraphs, and the designated property by the Minister shall be deemed to have been designated by the insurer for the year, except that the aggregate value for the year of the designated property shall not exceed that required to be designated by the insurer under those paragraphs.

History: Subsec. 2400(1) substituted by P.C. 1990-2002, s. 6, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Paras. 2400(1)(c), (d) corrected by *Canada Gazette*, Part II, October 24, 1979, *errata*.

(2) For the purposes of this section, where in a taxation year an insurer carries on a life insurance business in Canada and an insurance business in Canada other than a life insurance business (in this Part referred to as the "other than life insurance business"), the following rules apply:

(a) paragraphs (1)(a), (b) and (c) shall be applied in designating the insurance property of the insurer in respect of its other than life insurance business before they are applied in designating the insurance property of the insurer in respect of its life insurance business;

(b) property that is designated under subsection (1) in respect of an insurance business of the insurer for a taxation year shall not be designated in respect of another insurance business of the insurer for the year; and

(c) investment property that is designated in respect of an insurance business of the insurer for a taxation year pursuant to paragraph (1)(d) or (f) shall,

(i) where paragraph (1)(d) is applicable, be designated in respect of the insurance business in Canada of the insurer as specified by the insurer for the year, and

(ii) where paragraph (1)(f) is applicable, be designated in respect of the insurance business in Canada of the insurer as specified by the Minister for the year.

(3) For the purposes of subsection (1), property acquired by an insurer in a taxation year by reason of

(a) a transaction described in section 51, 77, 85.1 or 86 of the Act,

(b) a transaction in respect of which an election was made under subsection 85(1) or (2) of the Act,

(c) an amalgamation of two or more corporations (within the meaning assigned by subsection 87(1) of the Act), or

(d) a winding-up of a corporation (in respect of which subsection 88(1) of the Act applied),

as consideration for or in exchange for property of the insurer that was, in respect of the year, insurance property in respect of a particular insurance business in the immediately preceding taxation year shall be deemed to be insurance property in respect of that particular insurance business in that immediately preceding taxation year.

History: Subsec. 2400(2), (3) substituted by P.C. 1990-2002, s. 6, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Para. 2400(3)(b) substituted by P.C. 1988-1473, s. 4, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

(4) Notwithstanding subsection (1) or (6), the aggregate value for the year of Canadian equity property that may be designated in respect of all the insurer's insurance businesses in Canada for a taxation year shall not exceed the insurer's equity limit for the year.

(5) Where investment property owned by the insurer at any time in the year was not insurance property in respect of an insurance business in Canada of the insurer at the end of the immediately preceding taxation year, and was used by the insurer in, or held by the insurer in the course of carrying on an insurance business outside Canada in the year, the property may not be designated by the insurer under subsection (1) for any period in the year, in respect of an insurance business in Canada of the insurer.

(6) For the purposes of subsection (1), investment property of the insurer shall be designated by the insurer in respect of a taxation year in respect of its insurance businesses in Canada in the following order to the extent thereof and to the extent required:

(a) investment property owned by the insurer at any time in the year that was insurance property in respect of an insurance business in Canada of the insurer at the end of the immediately preceding taxation year;

(b) subject to subsection (5), investment property (other than an investment property referred to in paragraph (a)) owned by the insurer at any time in the year that was Canadian investment property except that such investment property shall be designated in the following order:

(i) land and depreciable property situated in Canada,

(ii) mortgages, agreements of sale and other forms of indebtedness in respect of property referred to in subparagraph (i), and

(iii) other property; and

(c) subject to subsection (5), other investment property owned by the insurer at any time in the year.

(7) The insurer or the Minister may designate for a taxation year a portion of a particular investment property pursuant to paragraph (1)(b), (c), (d) or (f) where the designation of the entire investment property would result in a designation of investment property with an aggregate value for the year exceeding that required to be designated by the insurer pursuant to subsection (1).

History: Subpara. 2400(6)(b)(ii) amended by P.C. 1994-1817, para. 62(d), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Subsecs. 2400(4) to (7) substituted for (4) and (5) by P.C. 1990-2002, s. 6, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987 except that in applying subsecs. (5) and (6) to a taxpayer's first taxation year that begins after June 17, 1987 and that ends after 1987, they shall, where the taxpayer elects in the taxpayer's return of income under Part I of the Act for that year, be read as follows:

(5) Where a property was owned by the insurer throughout any period in a taxation year and throughout that period the property was used by the insurer in, or held by the insurer in the course of, carrying on an insurance business outside Canada, the property may not be designated by the insurer under subsection (1) for the period in respect of an insurance business in Canada of the insurer.

(6) For the purposes of subsection (1), investment property of the insurer shall, subject to subsection (5), be designated by the insurer in respect of a taxation year in respect of its insurance businesses in Canada in the following order, to the extent thereof and to the extent required:

(a) investment property owned by the insurer at any time in the year that was designated in respect of an insurance business in Canada of the insurer in the immediately preceding taxation year;

(b) investment property (other than an investment property referred to in paragraph (a)) owned by the insurer at any time in the year that was Canadian investment property, except that that investment property shall be designated in the following order, namely,

(i) land and depreciable property situated in Canada,

(ii) mortgages, hypothecs, agreements of sale and other forms of indebtedness in respect of property referred to in subparagraph (i), and

(iii) other property; and

(c) other investment property owned by the insurer at any time in the year.

Definitions [Reg. 2400]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian investment property", "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated" — Reg. 2400(e), (f); "disposes" — ITA 248(1)"disposition"; "equity limit for the year" — Reg. 2405(3); "immediately preceding taxation year" — Reg. 2409(1), (4); "insurance policy" — ITA 248(1); "insurance property" — Reg. 2400(3); "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurance business" — ITA 248(1); "mean Canadian reserve liabilities", "mean policy loans" — Reg. 2400(1), 2405(3); "Minister" — ITA 248(1); "non-segregated property" — ITA 138(12), Reg. 2405(1); "other than life insurance business" — Reg. 2400(2); "outstanding premiums", "owner", "particular insurance business" — Reg. 2400(1); "property" — ITA 248(1); "relevant authority" — Reg. 2405(3); "taxation year" — ITA 249; "taxpayer" — Reg. 2400(1); "value for the year" — Reg. 2405(3).

2401. Non-resident life insurers — (1) An election referred to in paragraph (a) of the definition "life surplus factor" in subsection 2405(3) shall be made by a non-resident life insurer in respect of a taxation year by filing, with its return of income required by subsection 150(1) of the Act to be filed for the year, the following documents in duplicate:

(a) a letter stating that the insurer elects under paragraph (a) of the definition "life surplus factor" in subsection 2405(3); and

(b) a schedule providing the following information:

(i) the amount determined under subparagraph (a)(i) of the definition "life surplus factor" in subsection 2405(3) in respect of the year,

(ii) the amount that is the aggregate value for the year of all the insurer's equity property,

(iii) information adequate to enable the Minister to verify the amounts referred to in subparagraphs (i) and (ii), and

(iv) where subsection (3) applies, the position and jurisdiction of the insurance officer or authority referred to therein.

(2) Where an insurer has made an election referred to in subsection (1) and the information that is required to be provided pursuant to subparagraph (1)(b)(iii) is not adequate, in the opinion of the Minister on the advice of the Superintendent of Insurance for Canada, to enable the Minister to verify an amount referred to in that subparagraph, the insurer's life surplus factor shall be determined pursuant to paragraph (c) of the definition "life surplus factor" in subsection 2405(3).

(3) Notwithstanding the definition "relevant authority" in subsection 2405(3), where an insurer has made an election referred to in subsection (1), it may, if it so provides in its election, determine the amount referred to in subparagraph (1)(b)(i) as if "relevant authority" were read as "insurance officer or authority of the country or the political subdivision thereof to whom the insurer is required to report its reserves in respect of its insurance businesses carried on in all countries and territories".

Definitions [Reg. 2401]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "designated" — Reg. 2401(2)(g)(ii); "designated insurance property" — Reg. 2401(5); "equity property" — Reg. 2400(1), 2405(3); "insurer", "life insurer" — ITA 248(1); "life surplus factor" — Reg. 2405(3); "Minister", "non-resident", "officer" — ITA 248(1); "taxation year" — ITA 249; "value for the year" — Reg. 2405(3).

Proposed Amendment — Reg. 2400, 2401

Technical Notes: Part XXIV of the Income Tax Regulations sets out special rules for the computation of an insurer's income. The amendments to Part XXIV apply to the 1997 and subsequent taxation years.

Existing section 2400 of the Regulations provides rules for determining the investment property of multinational resident life insurers and non-resident insurers that is considered to be used or held in support of the insurer's Canadian insurance business. The rules in section 2400 have been extensively modified and moved to new section 2401.

In essence, amended section 2400 replaces the definitions and rules which are set out in existing section 2405. Amended subsections 2400(1) and (4) contain definitions for terms and expressions used in Part XXIV of the Regulations. Many of these terms and expressions were previously set out in subsections 2405(1), (2) and (3). Amended subsection 2400(2) sets out rules for determining the carrying value of a property or any other amount under Part XXIV of the Regulations. Amended subsection 2400(3) provides a rule for determining the liabilities of a taxpayer.

2400. (1) Definitions — The definitions in this subsection apply in this Part and in subsection 219(7) of the Act.

"attributed surplus" of a non-resident insurer for a taxation year is the total of

(a) the insurer's property and casualty surplus for the year;

(b) where the insurer elects for the year in prescribed form and manner, 1/2 of the total of

(i) the amount that would have been determined at the end of the year in respect of the insurer under subparagraph (a)(iii) of the definition "Canadian investment fund", and

(ii) the amount that would have been determined at the end of the preceding taxation year in respect of the insurer under subparagraph (a)(iii) of the definition "Canadian investment fund"

if, throughout the year and the preceding taxation year, the insurer had been a life insurer resident in Canada and had not carried on any insurance business other than a life insurance business or an accident and sickness insurance business; and

(c) where the insurer does not elect under paragraph (b) for the year, 120 per cent of the total of all amounts each of which is 1/2 of the amount determined by regulations or guidelines made under Part XIII of the Insurance Companies Act to be the margin of assets in Canada over liabilities in Canada required to be maintained by the insurer as at the end of the year or as at the end of the preceding taxation year in respect of an insurance business carried on in Canada (other than a property and casualty insurance business).

Technical Notes: In general terms, the attributed surplus for the year of a non-resident insurer is a notional calculation of its surplus in respect of its Canadian property and casualty insurance business and Canadian life insurance and accident and sickness insurance businesses.

Under the existing definition, a non-resident insurer's "attributed surplus for the year" is made up of the following two components:

1. surplus in respect of its Canadian property and casualty insurance business, and
2. surplus in respect of its other Canadian insurance businesses. An insurer's other insurance businesses are usually its life insurance and accident and sickness insurance businesses (in this note an insurer's other insurance businesses will be simply referred to as the insurer's life insurance business).

The amount in 1. above is determined by the rules in the definition of "property and casualty surplus" found in subsection 2405(3) of the existing Regulations (now found in subsection 2400(1); for further details see the commentary to that definition, below).

The amount in 2. above is equal to the insurer's *life surplus factor* (which is a percentage) multiplied by the total amount of its reserves and liabilities in respect of its Canadian life insurance business. An insurer's *life surplus factor* is determined under the definition of *"life surplus factor"* (in subsection 2405(3) of the existing Regulations) as one of the following expressed as a percentage:

(a) where the insurer makes an election under section 2401, the surplus the insurer would have been considered to have it if had been a life insurer resident in Canada;

(b) where the insurer made an election under section 2401 in one of the four preceding years, its surplus and liabilities) for the most recent year in which an election was made; or

(c) 10%.

Section 2401 of the existing Regulations sets out the administrative requirements for making an election to determine its surplus as if the non-resident where a life insurer resident in Canada. In essence, an election under section 2401 allowed a non-resident insurer to calculate its surplus as if it were life insurer resident in Canada. Accordingly, where an election is made, the non-resident's Canadian investment fund may be similar to the Canadian investment fund that it would have had if it were a Canadian resident (because attributed surplus is a component of the Canadian investment fund).

The definition of *"attributed surplus for the year"* is renamed simply *"attributed surplus"* and is amended with respect to the computation of an insurer's surplus in respect of its Canadian life insurance and accident and sickness insurance businesses. Paragraph (a) of the amended definition retains the property and casualty surplus component of attributed surplus, while the existing *"life surplus factor"* calculation is replaced by new rules in paragraphs (b) and (c) of the amended definition.

New paragraph (c) of the amended definition of *"attributed surplus"* contains the general rule for determining surplus is Canada in respect of an insurer's life insurance and accident

and sickness insurance businesses in Canada. Under this paragraph an insurer's attributed surplus is 120% of the average of the current year's and the immediately preceding year's margin of assets over liabilities which are required to be maintained by the insurer under the *Insurance Companies Act* in respect of its Canadian life insurance and accident and sickness insurance businesses.

New paragraph (b) is applicable only where the insurer elects in prescribed form and manner to calculate its surplus using the rules which apply to resident life insurers. As explained in more detail in the commentary to that definition of *"Canadian investment fund"*, subparagraph (a)(iii) of that definition sets out the Canadian portion of a resident life insurer's surplus in respect of its life and accident and sickness insurance businesses carried on in Canada. Under that subparagraph an insurer prorates its policyholders' and shareholders' equity (as reported to the Office of the Superintendent of Financial Institutions) using the ratio of the insurer's Canadian liabilities to its world-wide liabilities. To make use of this election, the non-resident insurer must compute its policyholders' and shareholders' equity, and its world-wide liabilities as if it were a life insurer resident in Canada. Once the equity and world-wide liability amounts are determined, the non-resident insurer can use the proration formula in subparagraph (a)(iii) of the amended definition of *"Canadian investment fund"* to compute its Canadian surplus.

The form and manner of making the election under new paragraph (b) of the definition of *"attributed surplus"* will be prescribed by the Department of National Revenue; accordingly, the existing rules in section 2401 for making an election are repealed.

"Canadian business property" of an insurer for a taxation year in respect of an insurance business means

(a) where the insurer was resident in Canada throughout the year and did not carry on an insurance business outside Canada in the year, the property used or held by it in the year in the course of carrying on the business in Canada; and

(b) in any other case, the designated insurance property of the insurer for the year in respect of the business.

Technical Notes: The expression "Canadian business property" is used in the definition of "gross Canadian life investment income" which is also contained in amended subsection 2400(1). These definitions are relevant only for the purpose of computing a life insurer's income from its participating life insurance business under section 2402.

The definition of "Canadian business property is amended in three respects. First, paragraph (a) is amended by removing the reference to a insurer that *did not* carry on a life insurance business in Canada in the year: as noted above, these definitions are redundant for insurers that do not carry on a life insurance business. Second, the phrase *"property used by it in the year in, or held by it in the year in the course of"* (which means property that is factually used in an insurance business) is simplified to *"property used or held by it in the year"*. This latter change is not intended to effect any substantive change to the definition.

Third, paragraph (b), which applies to multinational resident life insurers, is amended by replacing the reference to "property used by it in the year in, or held by it in the year in the course of" with the new expression "designated insurance property".

"Canadian equity property" of a person or partnership (in this definition referred to as the "taxpayer") at any time means property of the taxpayer that is

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or small business bond issued by, a person (other than a corporation affiliated with the taxpayer) resident in Canada or a Canadian partnership; or

(b) that proportion of shares owned by the taxpayer of the capital stock of a corporation affiliated with the taxpayer, or of the taxpayer's interest in a partnership or trust, that

(i) the total value for the year that includes that time of Canadian equity property owned by the corporation, partnership or trust, as the case may be,

is of

(ii) the total value for the year that includes that time of all property owned by the corporation, partnership or trust, as the case may be.

Technical Notes: The definition of "Canadian equity property" is relevant for the purposes of the equity limit in subsection 2400(4), the transitional rule in section 2409 and the minimum net revenue test in section 2411 of the Regulations.

Under the existing definition of the term (found in subsection 2405(3)), Canadian equity property means

- a share, an income bond or debenture, or small business development or small business bond issued by a person or partnership resident in Canada, or
- a share of a designated corporation or an interest in a partnership or trust, based on the amount of equity property owned by such corporation, partnership or trust.

Currently, where an insurer owns shares of a "designated corporation" (formerly defined in subsection 2405(3) as a corporation in respect of which the insurer or non-arm's length persons held shares that represented 30% or more of the common shares of the corporation) only that proportion of the shares that the designated corporation's Canadian equity property is of all its property is considered to be Canadian investment property.

The definition is amended as a consequence of the replacement of the designated corporation definition with the affiliated person concept (as set out in section 251.1 of the Act). The definition is also amended so that paragraph (a) applies only where the partnership is a Canadian partnership. The amended definition continues to be relevant for the equity limit in amended subsection 2400(4), the rules in section 2409 and amended section 2411.

"Canadian investment fund" of an insurer at the end of a taxation year means

(a) in the case of a life insurer resident in Canada, the total of

(i) the amount, if any, by which the insurer's Canadian reserve liabilities as at the end of the year exceeds the insurer's Canadian outstanding premiums and policy loans as at the end of the year (to the extent the policy loans were not otherwise deducted in computing the insurer's Canadian reserve liabilities as at the end of the year),

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer in Canada that is reported as a liability of the insurer as at the end of the year other than

(I) a liability to the extent that it is included in subparagraph (i),

(II) a liability in respect of an amount payable out of a segregated fund, or

(III) a debt that was incurred or assumed by the insurer to acquire a property

exceeds the total of

(B) the total value for the year of the insurer's non-segregated property (other than investment property, or a share of the capital stock of, or a debt owing by, a financial institution to the extent that its value for the year is included in the insurer's financial institution allowance for the year) used or held by it in the year in the course of carrying on its insurance business in Canada,

(C) the insurer's deferred tax debit balance as at the end of the year in respect of its insurance business carried on in Canada, and

(D) an amount equal to that proportion of

(I) the insurer's financial institution allowance for the year

that

(II) the amount that would be determined under this subparagraph if it were read without this clause

is of

(III) the total of the amount determined under subclause (II) and the amount determined under subclause (iii)(B)(II), and

(iii) the amount, if any, by which

(A) the amount equal to that proportion of

(I) the amount of the insurer's total policyholders' and shareholders' equity as at the end of the year (to the extent that that amount is not included as a liability under subparagraph (ii))

that

(II) the insurer's weighted Canadian liabilities as at the end of the year

is of

(III) the insurer's weighted total liabilities as at the end of the year

exceeds

(B) an amount equal to that proportion of

(I) the insurer's financial institution allowance for the year

that

(II) the amount determined under clause (A)

is of

(III) the total of the amount determined under subclause (II) and the amount determined under subclause (ii)(D)(II); and

(b) in the case of a non-resident insurer, the total of

(i) the amount, if any, by which

(A) the insurer's Canadian reserve liabilities as at the end of the year

exceeds the total of

(B) the insurer's Canadian outstanding premiums and policy loans as at the end of the year (to the extent the policy loans were not otherwise deducted in computing the insurer's Canadian reserve liabilities as at the end of the year), and

(C) the insurer's deferred acquisition expenses as at the end of the year in respect of its property and casualty insurance business carried on in Canada,

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer in Canada that is reported as a liability of the insurer as at the end of the year other than

(I) a liability to the extent that it is included in subparagraph (i),

(II) a liability in respect of an amount payable out of a segregated fund, or

(III) a debt that was incurred or assumed by the insurer to acquire a property

exceeds the total of

(B) the total value for the year of the insurer's non-segregated property (other than investment property) used or held by it in the year in the course of carrying on an insurance business in Canada, and

(C) the insurer's deferred tax debit balance as at the end of the year in respect of its insurance business carried on in Canada, and

(iii) the greater of

(A) the amount, if any, by which the total of

(I) the insurer's surplus funds derived from operations as at the end of its preceding taxation year, and

(II) the total of all amounts in respect of which the insurer made an election under subsection 219(4) or (5.2) of the Act, each of which is an amount included in the total determined in respect of the insurer under subparagraph 219(4)(a)(i.1) of the Act as at the end of its preceding taxation year

exceeds

(III) the total of amounts determined in respect of the insurer under subparagraphs 219(4)(a)(ii), (iii), (iv) and (v) of the Act, as at the end of the taxation year, and

(B) the insurer's attributed surplus for the year.

Technical Notes: *Current rules:*

An insurer's Canadian investment fund ("CIF") at the end of a taxation year represents the quantum of investment property considered to be used in the insurer's Canadian insurance business as of the end of the year. For a resident life insurer, its CIF at the end of a year is currently determined by pro-rating the value of the insurer's world-wide investment property using the ratio of its Canadian reserve liabilities to its total reserve liabilities at year-end. The amount of investment property pro-rated is adjusted by the insurer's policy loans and general indebtedness.

A non-resident insurer's CIF at the end of a year is equal to the total of

- its maximum tax actuarial reserves,
- its policy dividend reserves on a tax basis,
- its reserves in respect of its property and casualty insurance business in Canada (as reported to the Office of the Superintendent of Financial Institutions ("OSFI")), and
- the greater of:

  (a) its "surplus funds from operations" computed at the end of the preceding year, and

  (b) its "attributed surplus" for the year

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- the value of all its non-investment property which is factually used in carrying on its insurance businesses in Canada, and
- its deferred acquisition expenses in respect of its property and casualty insurance business in Canada.

In general terms, a non-resident insurer's surplus funds from operations is its post-1968 income and gains from the disposition of property considered to have been used in an insurance business in Canada, less its post-1968 business losses and losses from property considered to have been used in an insurance business in Canada. A non-resident insurer's attributed surplus is the total of the insurer's surplus in respect of its insurance businesses in Canada less the amount of non-investment property that is considered to be used in respect of those business. (For further details see the commentary, above, on the definition of "attributed surplus".)

Proposed changes:

Under paragraph (a) of the amended CIF definition, a resident insurer's CIF at the end of a year is equal to the total of:

- its Canadian reserve liabilities (less policy loans and outstanding premiums in respect of Canadian policies)
- its other liabilities in respect of its Canadian insurance businesses to the extent that those liabilities exceed: (a) the value of the insurer's non-investment property (other than shares and debt of affiliated financial institutions) which is factually used in its Canadian insurance businesses; (b) the part of the insurer's financial institution allowance that, based on the relationship between the amount of its general Canadian liabilities and Canadian equity, may be considered to have been funded from those liabilities; and (c) its deferred tax debit balance
- its policyholders' and shareholders' equity, less the value of its shares or debt of affiliated financial institutions multiplied by the ratio of weighted Canadian liabilities to weighted total liabilities (For further details, see the commentary on the definitions of "weighted total liabilities" and "total weighted liabilities" below.) This equity amount is eligible to be reduced by the part of the insurer's financial institution allowance that, based on the relationship between the amount of its Canadian general liabilities and Canadian equity, may be considered to have been funded from that equity.

Conceptually, the new CIF for a resident insurer is determining by dividing the right hand side of the insurer's regulatory balance sheet into Canadian and foreign components. The liabilities which relate to the Canadian insurance business will be included in the insurer's CIF. The remaining part of the right hand side of the balance and, correspondingly, the rest of the insurer's CIF, will be composed of the insurer's capital and surplus accounts. A factual allocation of these accounts to Canada is not practical because most multinational life insurers' capital and surplus is considered to be held in support of its world-wide operations — not only those in Canada. The new resident CIF uses the ratio of weighted Canadian liabilities to weighted total liabilities to establish the Canadian portion of an insurer's capital and surplus accounts.

The amended non-resident CIF is similar to the resident life insurer's CIF with respect to the computation of its liability accounts. However, because non-resident insurers are not, generally, required to compute their total liabilities in accordance with a Canadian regulatory authority it would generally be impractical to use the weighted CL/weighted TL ratio for apportioning capital. The non-resident's capital and surplus components are equal to the greater of its surplus funds from operations and attributed surplus.

More specifically, under paragraph (b) of the amended definition of CIF, a non-resident insurer's CIF is equal to:

- its Canadian reserve liabilities as at the end of the year less policy loans and outstanding premiums in respect of Canadian policies, and deferred acquisition expenses, at the end of the year; and
- its other liabilities in respect of an insurance business carried on in Canada that is reported to OSFI as a liability (excluding Canadian reserve liabilities, liabilities in respect of a segregated fund or debts in respect of the acquisition of a specific property of the insurer)

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  - the total of the insurer's non-investment property that is factually used in the course of carrying on an insurance business in Canada and its deferred tax debit balance at year-end; and
- the greater of:

  (A) the insurer's surplus funds from operations computed at the end of the preceding year (adjusted for the amount of Part XIV branch tax paid), and

  (B) the insurer's attributed surplus for the year. (For further details see the commentary on the amended definition of "attributed surplus" above.)

"Canadian investment property" of an insurer for a taxation year means an investment property owned by the insurer (other than, where the insurer is non-resident, property established by the insurer as not being effectively connected with its Canadian insurance businesses) that is

(a) real property situated in Canada;

(b) depreciable property situated in Canada or leased to a person resident in Canada for use inside and outside of Canada;

(c) a mortgage, a hypothec, an agreement of sale or any other form of indebtedness in respect of property described in paragraph (a) or (b);

(d) a Canadian equity property;

(e) a Canadian resource property;

(f) a deposit balance of the insurer that is in Canadian currency;

(g) a bond, debenture or other form of indebtedness, in Canadian currency, issued by

(i) a person resident in Canada or a Canadian partnership, or

(ii) the government of Canada, a province or any political subdivision thereof; or

(h) a property that is

(i) a share of the capital stock of a corporation resident in Canada that is affiliated with the insurer, or

(ii) an interest in a Canadian partnership, or a trust resident in Canada

where not less than 75 per cent of the total value for the year of all property of the corporation, partnership or trust, as the case may be, is attributable to property that would be Canadian investment property if it were owned by an insurer.

Technical Notes: Canadian investment property is defined in subsection 2405(3) of the existing Regulations as investment property of an insurer that is

(a) land or depreciable property in Canada;

(b) Canadian equity property;

(c) Canadian resource property;

(d) mortgage or other forms of indebtedness in respect of land or depreciable property;

(e) Canadian currency deposits with Canadian financial institutions;

(f) Canadian currency government debt of a Canadian government; and

(g) shares of a designated corporation in Canada, interest in a partnership or trust where not less than 75% of the value of the corporation's, partnership's or trust's assets is Canadian investment property.

The definition of "Canadian investment property" is used in the ordering rule for the designation of property (currently found in subsection 2400(6) and to be replaced with new subsection 2401(3)), and the minimum net revenue test for investment property in section 2411.

An insurer must designate its investment property in the following order:

1. property which was designated in the preceding year;
2. Canadian investment property in the following order:
   - land and depreciable property in Canada,
   - mortgages, agreements of sale and other forms of indebtedness in respect of land and depreciable property in Canada, and
   - other Canadian investment property; and
3. other investment property.

Section 2411 sets out the basis for determining the prescribed amount for the purpose of paragraph 138(9)(b) of the Act. This amount ensures that the insurer's net investment revenue from its designated property is not less than the net investment revenue that would be determined if the average rate of return on its designated assets were equal to the average rate of return on all its investment property. Under this net investment revenue test, the average rate of return is determined in respect of three classes of property: Canadian investment property, Canadian equity property and foreign investment property. This rule is intended to prevent an insurer from understating its Canadian investment income by only designating assets with low investment returns.

The definition of "Canadian investment property" is amended in several ways. First, the definition is reworded to make it easier to read. Second, the new definition of "deposit balance" is used to replace the wording in paragraph (e). Third, the look-through rule for shares of corporations is amended to change the reference from *designated* corporation to corporation *affiliated* with the insurer who owns the shares. The affiliation rules are set out in section 251.1 of the Act.

The definition continues to be relevant for the designation of property ordering rule in amended subsection 2401(3) and the minimum revenue test in amended section 2411.

"Canadian outstanding premiums" of an insurer at any time means the total of all amounts each of which is the amount of an outstanding premium of the insurer with respect to an insurance policy at that time, to the extent of the amount of the premium included in the insurer's Canadian reserve liabilities as at that time.

Technical Notes: The "Canadian outstanding premiums" of an insurer at any time means the total of all amounts each of which is the amount of an outstanding premium of the insurer in respect of an insurance policy at that time, to the extent that the amount of the premium is included in the insurer's Canadian reserve liabilities at that time.

"Canadian reserve liabilities" of an insurer as at the end of a taxation year means the total of all amounts as at that time each of which is the amount of a liability (other than a liability in respect of a segregated fund) of the insurer in respect of

(a) a life insurance policy in Canada;

(b) a fire insurance policy issued or effected upon property situated in Canada; or

(c) an insurance policy of any other class covering risks ordinarily within Canada at the time the policy was issued or effected.

Technical Notes: An insurer's "Canadian reserve liabilities" is defined as an insurer's liabilities and reserves (excluding those in respect of segregated funds) in respect of its insurance policies in Canada as determined for the purposes of the relevant authority. An insurance policy in Canada is defined in subsection 2405(3) of the existing Regulations as a life insurance policy in Canada, a fire insurance policy issued or effected upon property in Canada, and a policy where the risks covered by the policy were ordinarily in Canada. The relevant authority is defined in subsection 2405(3) as the Superintendent of Financial Institutions or the Superintendent of Insurance or other similar officer or authority of the province in which the insurer is incorporated.

The definition of "Canadian reserve liabilities" is amended as a consequence of the repeal of the definitions of "insurance policy in Canada" and "relevant authority". The definition of "insurance policy in Canada" is incorporated into the amended definition of "Canadian reserve liabilities". The reference to "relevant authority" is removed because amended subsection 2400(2) provides rules for determining any amount in the amended rules. (For further details see the commentary to amended subsection 2400(2) below.)

"deposit balance" of an insurer means an amount standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee.

Technical Notes: A "deposit balance" is an amount standing to an insurer's credit on account of amounts deposited with a deposit-taking institution or a trust company.

The definition replaces the existing references to "a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee." The definition is used in subsection 2410(1) and the amended definitions of "Canadian investment property" and "value" in amended subsection 2400(1).

"equity limit" of an insurer for a taxation year means

(a) in respect of a life insurer resident in Canada, that proportion of the total of all amounts each of which is the value for the year of an equity property of the insurer that

(A) the insurer's weighted Canadian liabilities as at the end of the year

is of

(B) the insurer's weighted total liabilities as at the end of the year;

(b) in respect of a non-resident insurer (other than a life insurer), 1/4 of the total of

(i) the amount, if any, by which

(A) the insurer's mean Canadian reserve liabilities for the year

exceeds

(B) 1/2 of the total of its deferred acquisition expenses and premiums receivable as at the end of the year and its deferred acquisition expenses and premiums receivable as at the end of its preceding taxation year to the extent that those amounts were included in the insurer's Canadian reserve liabilities for the year or the preceding year, as the case may be, in respect of the insurer's business in Canada, and

(ii) the insurer's property and casualty surplus for the year; and

(c) in respect of a non-resident life insurer, the total of

(i) where the insurer makes an election referred to in paragraph (b) of the definition "attributed surplus" for the year, the greater of

(A) that proportion of the total of all amounts each of which is the value for the year of an equity property of the insurer that

(I) the insurer's weighted Canadian liabilities as at the end of the year

is of

(II) the insurer's weighted total liabilities as at the end of year, and

(B) 8 per cent of the insurer's mean Canadian investment fund for the year,

(ii) where the insurer does not make an election referred to in paragraph (b) of the definition "attributed surplus" for the year, 8 per cent of the insurer's mean Canadian investment fund for the year,

(iii) 1/4 of the amount, if any, by which

(A) the insurer's mean Canadian reserve liabilities for the year (determined on the assumption that the only insurance business carried on in Canada by the insurer was a property and casualty insurance business)

exceeds

(B) 1/2 of the total of its deferred acquisition expenses and premiums receivable as at the end of the year and its deferred acquisition expenses and premiums receivable as at the end of its preceding taxation year to the extent that those amounts were included in the insurer's Canadian reserve liabilities for the year or the preceding year, as the case may be, (determined on the assumption that the only insurance business carried on in Canada by the insurer was a property and casualty insurance business), and

(iv) 1/4 of the insurer's property and casualty surplus for the year.

Technical Notes: Subsection 2400(4) of the existing Regulations provides that an insurer cannot designate for a taxation year Canadian equity property in excess of its equity limit for the year. The limit is necessary to ensure that an insurer cannot fill its Canadian investment fund with Canadian equity property on which it receives tax-free dividend income. The existing definition of *"equity limit for the year"*, found in subsection 2405(3) of the Regulations, provides a different limit for resident life insurers, non-resident non-life insurers and non-resident life insurers.

Paragraph (a) of the definition provides that the equity limit for resident life insurers is the greater of

- the total value for the year of all the insurer's equity property multiplied by the ratio of the insurer's mean Canadian reserve liabilities (less policy loans and outstanding premiums in respect of Canadian policies) to the insurer's mean total reserve liabilities (less all policy loans and outstanding premiums), and
- 8% of the insurer's Canadian investment fund for the year.

Paragraph (a) is amended by removing the 8% limit and replacing the ratio of mean Canadian reserve liabilities to mean total reserve liabilities with the ratio of weighted Canadian liabilities to weighted total liabilities (For further details see the new definitions of "weighted Canadian liabilities" and "weighted total liabilities" below.)

Paragraph (b) of the definition currently provides that a non-resident, non-life insurer's equity limit is 1/4 of the total of

- the amount by which its mean Canadian reserve liabilities for the year exceeds its average deferred acquisition expenses and premiums receivable for the year as determined for the purposes of the relevant authority, and
- its *property and casualty surplus for the year*.

The definition of *"property and casualty surplus"* is currently set out in subsection 2405(3) and is reproduced in amended subsection 2400(1).

Paragraph (b) is amended by reorganizing subparagraph (b)(i) into 2 separate clauses and removing the reference to *"relevant authority"*, which is to be repealed.

Paragraph (c) of the definition currently provides that a non-resident life insurer's *equity limit* is the total of

- its *life equity limit* for the year, and
- the amount that would be determined under paragraph (b) if the insurer carried on only a property and casualty business in Canada.

An insurer's *"life equity limit"* for a year is defined in subsection 2405(3) as one of the following:

- where the insurer elects under the definition *"life surplus factor"* for the year, the amount that would have been its equity limit if the insurer were a life insurer resident in Canada,
- where the insurer does not make an election but had made one in one of the four preceding taxation years, the amount determined under that preceding election, or
- in any other case, 8% of the insurer's *Canadian investment fund* for the year.

Paragraph (c) is amended as a consequence of the repeal of the definitions *"life equity limit"* and *"life surplus factor"*, and the addition of the new definitions *"mean Canadian investment fund"*, *"weighted Canadian liabilities"* and *"weighted total liabilities"*. Amended paragraph (c) provides that a non-resident life insurer's equity limit is the total of

- where the insurer elects under paragraph (b) of the amended definition *"attributed surplus"*, the greater of (a) 8% of the insurer's mean Canadian investment fund for the year; and (b) the total *value for the year* of all the insurer's *equity property* multiplied by the ratio *weighted Canadian liabilities* to *weighted total liabilities*;
- where the insurer does not make the above election, 8% of the insurer's *mean Canadian investment fund* for the year;
- 1/4 of the insurer's *property and casualty surplus* for the year; and
- 1/4 of the insurer's *mean Canadian reserve liabilities* in respect of its property and casualty insurance business (less its deferred acquisition expenses and premiums receivable in respect of that business for the current and preceding year).

"equity property" of a person or partnership (in this definition referred to as the "taxpayer") for a taxation year or fiscal period means property of the taxpayer that is

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or small business bond issued by, a person (other than a corporation affiliated with the taxpayer) or partnership; or

(b) that proportion of shares owned by the taxpayer of the capital stock of a corporation affiliated with

the taxpayer or of the taxpayer's interest in a partnership or trust that

(i) the total value for the year or period of equity property owned by the corporation, partnership or trust, as the case may be,

is of

(ii) the total value for the year or period of all property owned by the corporation, partnership or trust, as the case may be.

Technical Notes: The *"equity property"* of an insurer is currently defined in subsection 2405(3) of the Regulations as

- a share, income bond or debenture, small business development bond or small business bond issued by a person (other than a designated corporation) or partnership; or
- the shares of a designated corporation or an interest in a partnership or trust multiplied by the ratio of the value of the equity property owned by the designated corporation, partnership or trust to the value of all the property owned by the designated corporation, partnership or trust.

The definition of *"equity property"* is amended (and relocated to subsection 2400(1)) to ensure that it operates properly where the equities are held through multiple tiers of corporations, partnerships or trusts. The definition is also amended by replacing the reference to the designated corporation, which has been repealed, with a reference to *affiliated corporation* (as defined in section 251.1 of the Act).

"financial institution" means a corporation that is

(a) a corporation described in any of paragraphs (a) to (e) of the definition "restricted financial institution" in subsection 248(1) of the Act; or

(b) a corporation all or substantially all of the value for a taxation year of the assets of which is attributable to shares or indebtedness of one or more financial institutions.

Technical Notes: The new definition of "financial institution" provides that a corporation is a financial institution if it is a corporation described in any of paragraphs (a) to (e) of the definition of *"restricted financial institution"* (as defined in subsection 248(1) of the Act) or a corporation all or substantially all of the value of which is attributable to assets that are shares or debt of one or more financial institutions.

"financial institution allowance" of an insurer for a taxation year means the amount equal to that proportion of

(a) the total of all amounts each of which is the amount that would be the value for the year of a property of the insurer that is a share of the capital stock of, or a debt owing to the insurer by, a corporation if the insurer owned the property only during those days in the year during which the insurer owned the property and the corporation was a financial institution affiliated with the insurer

that

(b) the insurer's weighted Canadian liabilities as at the end of the year

is of

(c) the insurer's weighted total liabilities as at the end of the year.

Technical Notes: The amount of an insurer's "financial institution allowance" is deducted, on a proportionate basis, from its Canadian reserve liabilities and its general liabilities in computing its Canadian investment fund. In general terms, an insurer's financial institution allowance is equal to the total value for the year of shares of, or debts owing to the insurer by, financial institutions affiliated with the insurer.

"foreign policy loan" means an amount advanced by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy, other than a life insurance policy in Canada.

Technical Notes: The definition of *"foreign policy loan"* means an amount advanced to a policy holder under a life insurance policy that is not a life insurance policy in Canada. The expression *life insurance policy in Canada"* is defined in subsection 138(12) of the Act.

"gross Canadian life investment income" of a life insurer for a taxation year means the amount, if any, by which the total of all amounts each of which is

(a) the insurer's gross investment revenue for the year, to the extent that the revenue is from Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(b) the amount included in computing the insurer's income for the year under paragraph 138(9)(b) of the Act,

(c) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for its preceding taxation year that was in respect of Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(d) the amount included under section 142.4 of the Act in computing the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(e) the insurer's gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of which section 142.4 of the Act applies, or

(f) the insurer's taxable capital gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business

exceeds the total of all amounts each of which is

(g) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the year that is in respect of debt obligations that are Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(h) the amount deductible under section 142.4 of the Act in computing the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(i) the insurer's loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of which section 142.4 of the Act applies, or

(j) the insurer's allowable capital loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business.

Technical Notes: The expression "gross Canadian life investment income" is defined for the purpose of section 2402,

which contains the rules for determining an insurer's income for a year from carrying on its participating life insurance business in Canada. The changes to this definition merely update some of the wording.

"investment property" of an insurer for a taxation year means non-segregated property that is

(a) property acquired by the insurer for the purpose of earning gross investment revenue in the year, other than property that is

(i) property, a portion of which is investment property because of paragraph (b),

(ii) a share of the capital stock of, or a debt owing to the insurer by, a corporation affiliated with the insurer, or

(iii) an interest in a partnership or trust;

(b) the portion, if any, of property of the insurer that is land, depreciable property or property that would have been depreciable property if it had been situated in Canada and used or held by it in the year in the course of carrying on an insurance business in Canada, that

(i) the use made of the property in the year for the purpose of earning gross investment revenue therefrom

is of

(ii) the whole use made of the property in the year;

(c) where the insurer is a life insurer, property described in any of paragraphs 138(4.4)(a) to (d) of the Act; or

(d) property of the insurer that is

(i) a share of the capital stock of, or a debt owing to the insurer by, a corporation (other than a financial institution) affiliated with the insurer, or

(ii) an interest in a partnership or trust

if the total value for the year of all investment property of the corporation, partnership or trust, as the case may be, is not less than 75 per cent of the total value for the year of all its property, and for the purpose of this paragraph (other than for the purpose of determining whether it is a financial institution) every corporation, partnership and trust is deemed to be an insurer.

Technical Notes: Resident life insurers and non-resident insurers are required to include in their income from carrying on an insurance business in Canada the *gross investment revenue* from *investment property* that the insurer designates as being used in that business. An insurer must designate investment property equal to its *mean Canadian investment fund* for the taxation year. (For further information on the *Canadian investment fund* see the commentary to the amended definition of *Canadian investment fund* and amended subsection 2401 and amended section 2412.)

Only non-segregated property can be considered *investment property*. Non-segregated property is defined under subsection 138(12) of the Act as property not held in respect of a segregated fund. Such funds are taxed as trusts which are separate from the other activities of the insurer that administers the fund.

Paragraphs (a) to (d) of the definition of *"investment property"* set out the types of property that are considered to be investment property. Paragraph (a) currently refers to property acquired by the insurer for the purpose of earning *gross investment revenue* except property that is a portion of property which is treated as investment property by reason of paragraph (b), a share or debt of a *designated corporation*, or an interest in a partnership or trust. The structure of paragraph (a) is reorganized and the reference to *designated corporation* is replaced with a reference to a *corporation affiliated* (within the meaning assigned by section 251.1 of the Act) with an insurer.

Paragraph (b) currently includes as investment the portion of land or depreciable property of an insurer that is factually used or held by the insurer in the course of carrying on an insurance business in Canada. Only the portion of the property which is used in the year in for the purpose of earning *gross investment revenue* is considered to be investment property. The amendment to the paragraph attempts to simplify the wording and the structure of paragraph (b).

Existing paragraph (c) captures as investment property land or depreciable property that is vacant, held for resale or development in a year and is not used for the purpose of earning gross investment revenue in the year. New paragraph (c) provides that where an insurer is a life insurer, property described in paragraphs 138(4.4)(a) to (d) of the Act will be treated as investment property. Amended subsection 138(4.4) of the Act includes a prescribed amount in computing a life insurer's income in respect of vacant real property or real property under development. The amendment to paragraph (c) of the definition of *"investment property"* is intended to ensure that non-income producing real property will only be considered investment property when a prescribed amount of income is considered to have been earned on the property.

Paragraph (d) of the current definition of *"investment property"* provides that a share or debt of a *designated corporation*, an interest in a partnership or trust is investment property if

- 75% or more of the corporation's, partnership's or trust's property is investment property; and
- 90% or more of the gross revenue of the corporation, partnership or trust is derived from investment property.

Paragraph (d) is amended in three ways. First, the term *designated corporation*, which is repealed, is replaced with the expression corporation (other than a financial institution) *affiliated* with the insurer. For the purpose of determining whether a corporation is *affiliated* section 251.1 of the Act will apply. Second, the 90% gross revenue test in subparagraph (d)(v) has been deleted. Finally, the post-amble to paragraph (d) is amended so that every corporation, partnership and trust is deemed to be an insurer for the purpose of applying the paragraph. This last change is intended to ensure that the definitions in Regulation 2400 will apply to the corporation, partnership or trust which owns the investment property and that paragraph (d) will work even if the property is held in a multi-tier corporate, partnership or trust structure.

"mean Canadian investment fund" of an insurer has the meaning assigned by section 2412.

Technical Notes: The new definition *"mean Canadian investment fund"* is relevant for the purpose of determining what amount of investment property an insurer must designate in respect of its Canadian insurance businesses. The expression has the meaning assigned by section 2412. (For further details see the commentary on amended section 2412, below.)

"mean Canadian outstanding premiums" of an insurer for a taxation year means 1/2 of the total of

(a) its Canadian outstanding premiums as at the end of the year; and

(b) its Canadian outstanding premiums as at the end of its preceding taxation year.

Technical Notes: The "mean Canadian outstanding premiums" of an insurer for a taxation year means the average of the insurer's Canadian outstanding premiums as at the end of the current taxation year and the immediately preceding taxation year.

"mean Canadian reserve liabilities" of an insurer for a taxation year means 1/2 of the total of

(a) its Canadian reserve liabilities as at the end of the year; and

(b) its Canadian reserve liabilities as at the end of its preceding taxation year.

Technical Notes: The expression *"mean Canadian reserve liabilities"* for a taxation year means the average of an insurer's Canadian reserve liabilities at the end of the year and at the end of it preceding taxation year. The definition is not amended in substance, but the wording is up-dated. The definition is used in determining a non-resident's *equity limit* for the year and in the new designation of property rules in amended section 2401.

"mean maximum tax actuarial reserve" in respect of a particular class of life insurance policies of an insurer for a taxation year means 1/2 of the total of

(a) its maximum tax actuarial reserve for that class of policies for the year; and

(b) its maximum tax actuarial reserve for that class of policies for its preceding taxation year.

Technical Notes: The definition of *"mean maximum tax actuarial reserve"* for a taxation year means the average of an insurer's maximum tax actuarial reserve for the year and for the preceding year. The definition is not substantively amended, but the wording is up-dated. The definition is relevant in calculating an insurer's income from a participating life insurance business under section 2402.

"mean policy loans" of an insurer for a taxation year means 1/2 of the total of

(a) its policy loans as at the end of the year; and

(b) its policy loans as at the end of its preceding taxation year.

Technical Notes: The definition of *"mean policy loans"* of an insurer for a taxation year means the average of an insurer's policy loans at the end of the year and at the end of the preceding year. The definition is not substantively amended, but the wording is up-dated. The definition is used in determining an insurer's *attributed surplus*, *Canadian investment fund* and its *equity limit*.

"outstanding premiums" of an insurer with respect to an insurance policy at any time means premiums due to the insurer under the policy at that time but unpaid.

Technical Notes: The "outstanding premiums" of an insurer with respect to an insurance policy at a particular time means the premiums due to the insurer under the policy at that time but unpaid.

"property and casualty surplus" of an insurer for a taxation year means the total of

(a) 7 1/2 per cent of the total of

(i) its unearned premium reserve as at the end of the year,

(ii) its unearned premium reserve as at the end of its preceding taxation year,

(iii) its provision for unpaid claims and adjustment expenses as at the end of the year, and

(iv) its provision for unpaid claims and adjustment expenses as at the end of its preceding taxation year,

in respect of its property and casualty insurance business; and

(b) 1/2 of the total of

(i) its investment valuation reserve as at the end of the year, and

(ii) its investment valuation reserve as at the end of its preceding taxation year,

in respect of its property and casualty insurance business.

Technical Notes: An insurer's *"property and casualty surplus"* is equal to the total of 7 1/2% of the average of the insurer's unearned premium reserve at the end of the year and at the end of its preceding year; 7 1/2% of its average provision for unpaid claims and adjustment expenses at the end of the year and the end of its preceding year; and its average investment valuation reserve at the end of the year and its preceding year. The definition of *"property and casualty surplus"* is relevant only in respect of a non-resident's property and casualty insurance business and is used in determining a non-resident's *Canadian investment fund* and *equity limit* for the year. The definition is not substantively amended, but the structure and wording are up-dated.

"segregated fund" has the meaning assigned by subsection 138.1(1) of the Act.

"segregated fund policies" has the meaning assigned by subsection 138.1(1) of the Act.

Technical Notes: The expressions *segregated fund* and *segregated fund policies* have the meaning assigned by subsection 138.1(1) of the Act. The existing definition defines both expressions. Under the amended Regulations, each expression is defined separately. The definition of *"segregated fund policies"* is relevant only for the 1977 Carryforward Deduction set out in section 2408.

"value" for a taxation year of a property of a person or partnership (in this definition referred to as the "owner") means

(a) in the case of a property that is a mortgage, hypothec or an agreement of sale or an investment property that is a deposit balance, the amount, if any, by which

(i) the amount obtained when the gross investment revenue for the year from the property is divided by the average rate of interest earned by the owner (expressed as an annual rate) on the amortized cost of the property during the year

exceeds

(ii) the amount obtained when the interest payable for the year on debt incurred for the purpose of acquiring the property is divided by the average rate of interest payable by the owner (expressed as an annual rate) on the debt for the year;

(b) in the case of a property (other than a property referred to in paragraph (a)) that was not owned by the owner throughout the year, the amount, if any, by which

(i) that proportion of

(A) the carrying value of the property as at the end of the preceding taxation year, where the property was owned by the owner at that time,

(B) the carrying value of the property as at the end of the year, where the property was owned by the owner at that time and not at the end of the preceding taxation year, and

(C) in any other case, the cost of the property to the owner when it was acquired

that

(D) the number of days, at the end of which the owner owned the property, that are in the year

is of

(E) the number of days in the year

exceeds

(ii) the amount obtained when the interest payable for the year on debt assumed or incurred for the purpose of acquiring the property is divided by the average rate of interest payable by the owner (expressed as an annual rate) on the debt for the year; and

(c) in the case of any other property, the amount, if any, by which

(i) 1/2 of the total of

(A) the carrying value of the property as at the end of the year, and

(B) the carrying value of the property as at the end of the preceding taxation year

exceeds

(ii) the amount obtained when the interest payable for the year on debt assumed or incurred for the purpose of acquiring the property is divided by the average rate of interest payable by the owner (expressed as an annual rate) on the debt for the year.

Technical Notes: The definition *"value for the year"* is replaced by the definition of *"value"*.

Paragraph (a) of the definition of *"value"* currently provides that the value for a taxation year of a mortgage, hypothec, agreement of sale or an investment property that is a bank deposit is the gross investment revenue for the year earned on the property divided by the average interest rate earned on the property during the year. Paragraph (a) is amended by adding a reference to the new definition *"deposit balance"* and simplifying the wording by removing the references to interest expressed as a fraction.

Paragraph (b) of the existing definition applies to property, other than property described in paragraph (a), that is not owned throughout a taxation year. Where the property was owned at the end of the preceding taxation year, subparagraph (b)(i) provides that its value is its *valuation* at the end of the preceding taxation year prorated by the number of days the property was owned in the current taxation year. A similar rule in subparagraph (b)(ii) applies where the property is acquired during the taxation year. Depending on the type of property in question, its *valuation* under the existing Regulations may be based on its cost, undepreciated capital cost, or book value for purposes of the insurer's regulatory authority. Paragraph (b) is amended consequential on the repeal of the definition *"valuation"*, and as amended provides that the value of property is

- where the property is owned at the end of the preceding taxation year, its carrying value at that year-end;
- where the property is owned at the end of the current taxation year, its value, its carrying value at that year-end; and
- in any case where the property was acquired during the year and was not owned at the end of the year, its cost when it was acquired.

To determine the value of a property to an insurer, its carrying value or cost is pro-rated for the number of days that the property is owned by the insurer in the year, and reduced by the average amount of debt incurred by the insurer to acquire the property. Under amended subsection 2400(2) the carrying value of a property is its value as accepted on the insurer's balance sheet by the Superintendent of Financial Institutions or a province's superintendent of insurance if the insurer is provincially incorporated. In general, where the property is not owned by someone other than an insurer, its carrying value is equal to the value that is reflected in the owner's year-end balance sheet. (For more details see the commentary to amended subsection 2400(2).)

Paragraph (c) of the existing definition *"value for the year"* provides that the value for a taxation year of a property owned throughout the year is equal to the average of its valuation at the end of the taxation year and its valuation at the end of its preceding taxation year. As a consequence of the repeal of the definition of *"valuation"*, paragraph (c) of the definition *"value"* refers to the carrying value of a property. Amended paragraph (c) also requires that in computing a property's value that the property's average carrying value is reduced by the average amount of debt incurred to acquire the property.

"weighted Canadian liabilities" of an insurer as at the end of a taxation year means the total of

(a) 3 times the amount, if any, by which the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer in Canada that is reported as a liability (other than a liability in respect of an amount payable out of a segregated fund) of the insurer in respect of a life insurance policy in Canada (other than an annuity) or an accident and sickness insurance policy as at the end of the year exceeds its policy loans as at the end of the year, and

(b) the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer in Canada that is reported as a liability of the insurer as at the end of the year other than

(i) an amount to the extent that it is reported as a liability in respect of an insurance policy (other than an annuity) included in paragraph (a),

(ii) a liability in respect of an amount payable out of a segregated fund, or

(iii) a debt incurred or assumed to acquire a property of the insurer.

Technical Notes: The new definition *"weighted Canadian liabilities"* is relevant for the purposes of the amended definitions *"Canadian investment fund"* and *"equity limit"*. The definition of *"weighted Canadian liabilities"* is also important for determining an insurer's daily cash-flow adjustment under amended subsection 2412(4).

An insurer's *weighted Canadian liabilities* is the total of its weighted Canadian life insurance and accident and sickness insurance policy liabilities (to the extent they exceed its policy loans) and its other non-weighted Canadian insurance liabilities (excluding those in respect of a segregated fund or a debt incurred or assumed to acquire a particular property). Weighting life and accident and sickness insurance policy liabilities by a factor of 3 recognizes the fact that an insurer must maintain more reserves in respect of such policies than in respect of other types of insurance products.

"weighted total liabilities" of an insurer as at the end of a taxation year means the total of

(a) 3 times the amount, if any, by which the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer that is reported as a liability (other than a liability in respect of an amount payable out of a segregated fund) of the insurer in respect of a life insurance policy (other than an annuity) or an accident and sickness insurance policy exceeds the total of its policy loans and foreign policy loans as at the end of the year; and

(b) the total of all amounts each of which is an amount in respect of an insurance business carried on by the insurer that is reported as a liability of the insurer as at the end of the year other than

(i) an amount to the extent it is reported as a liability of the insurer in respect of an insurance policy (other than an annuity) included in paragraph (a),

(ii) a liability in respect of an amount payable out of a segregated fund, or

(iii) a debt incurred or assumed to acquire a property of the insurer.

Technical Notes: The new definition *"weighted Canadian liabilities"* is relevant for the purposes of the amended definitions *"Canadian investment fund"* and *"equity limit"*. The definition of *"weighted Canadian liabilities"* is also important for determining an insurer's daily cash-flow adjustment under amended subsection 2412(4).

An insurers *weighted total liabilities* is similar to its *weighted Canadian liabilities* except that the former includes an insurer's world-wide insurance liabilities rather than only its Canadian insurance liabilities. (For further details see the above commentary to the definition of *"weighted Canadian liabilities"*.)

(2) Determining values and amounts — For the purposes of determining the carrying value of a taxpayer's property or any other amount under this Part in respect of a taxation year of the taxpayer, except as otherwise provided in this Part,

(a) where the taxpayer is an insurer, the amounts reflected in the taxpayer's non-consolidated balance sheet as at the end of the year accepted (or, if that non-consolidated balance sheet was not prepared, the taxpayer's balance sheet as at the end of the year that would have been accepted) by the Superintendent of Financial Institutions, in the case of an insurer that is required under the *Insurance Companies Act* to report to the Superintendent, or by the superintendent of insurance or other similar officer or authority of the province under the laws of which the corporation is incorporated or otherwise formed, in the case of an insurer that is required by law to report to that officer or authority, and

(b) in any other case, the amounts that would be reflected in the taxpayer's balance sheet as at the end of the year if that balance sheet were prepared in accordance with generally accepted accounting principles

shall be used.

Technical Notes: Existing subsection 2400(2) provides rules relating to the designation of property. These rules are modified and moved to amended section 2401.

For the purposes of Part XXIV of the Regulations, amended subsection 2400(2) provides rules for determining the carrying value of any property owned by a taxpayer and any other amount in respect of a taxpayer. Where the taxpayer is an insurer, paragraph 2400(2)(a) provides that the carrying value or other amount is the amount reflected on the insurer's year-end balance sheet as accepted by the Superintendent of Financial Institutions or, where the insurer is incorporated under province's law, the balance sheet accepted by that province's superintendent of insurance. Where the taxpayer is not an insurer, paragraph 2400(2)(b) provides that the carrying value or other amount is the amount that would be reflected in the taxpayer's year-end balance sheet if the balance sheet was prepared in accordance with generally accepted accounting principles.

(3) Liabilities — A reference in this Part to an amount reported as a liability of a taxpayer as at the end of a taxation year means an amount that is reported as a liability in the taxpayer's non-consolidated balance sheet as at the end of the year accepted (or, if that non-consolidated balance sheet was not prepared, the taxpayer's balance sheet as at the end of the year that would have been accepted) by the Superintendent of Financial Institutions, in the case of an insurer that is required under the *Insurance Companies Act* to report to the Superintendent, or by the superintendent of insurance or other similar officer or authority of the province under the laws of which the corporation is incorporated or otherwise formed, in the case of an insurer that is required by law to report to that officer or authority.

Technical Notes: Existing subsection 2400(3) provides rules that apply when designated property is exchanged for other property under various rollover transactions. An amended version of this rule is contained in amended subsection 2401(5).

Amended subsection 2400(3) provides that any reference in Part XXIV of the Regulations to an amount reported as a liability of an insurer is to be construed as a reference to the amount that is reported as a liability in the taxpayer's year-end balance sheet accepted by the Superintendent of Financial Institutions or, where the taxpayer is incorporated under a province's law, the amount reported as a liability on the year-end balance sheet accepted by that province's superintendent of insurance or similar officer.

(4) Definitions — For the purposes of subsection 138(14) of the Act, the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed therefor by subsection 2404(1) as it read in its application to the 1977 taxation year.

Technical Notes: Existing subsection 2400(4) sets out the restriction on the ability of insurers to designate Canadian equity property up to the insurer's equity limit. This equity limit rule has been moved as part of these changes to subsection 2401(4).

Amended subsection 2400(4) reproduces existing subsection 2405(2) which applies for the purposes of subsection 138(14) of the Act. Subsection 138(14) is a transitional rule which applies for the purposes of determining an insurer's tax basis or amortized cost of a debt obligation under subsection 138(13) of the Act. For the purposes of subsection 138(14) the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings set out in subsection 2404(1) of the Regulations as it read in its application to the 1977 taxation year.

Definitions [Reg. 2400]: "affiliated" — ITA 251.1; "allowable capital loss" — ITA 38(b), 248(1); "amortized cost", "amount" — ITA 248(1); "amount payable" — ITA 138(12), Reg. 2405(1); "annuity" — ITA 248(1); "attributed surplus for the year" — Reg. 2405(3); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian business property", "Canadian equity property", "Canadian investment property" — Reg. 2400(1), 2405(3); "Canadian outstanding premiums" — Reg. 2400(1); "Canadian partnership" — ITA 102, 248(1); "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "Canadian resource property" — ITA 66(15), 248(1); "capital property" — ITA 54, 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deposit balance" — Reg. 2400(1); "depreciable property" — ITA 13(21), 248(1); "designated insurance property" — ITA 138(12), 248(1); "equity property" — Reg. 2400(1), 2405(3); "financial institution", "financial institution allowance" — Reg. 2400(1); "fiscal period" — ITA 249.1; "foreign policy loan" — Reg. 2400(1), 2405(3); "gross investment revenue" — ITA 138(12), Reg. 2405(1); "income bond", "income debenture", "insurance policy" — ITA 248(1); "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "liability" — Reg. 2400(3); "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA

138(12), Reg. 2405(1); "mean Canadian investment fund" — Reg. 2400(1); "mean Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "non-resident" — ITA 248(1); "non-segregated property" — ITA 138(12), Reg. 2405(1); "officer" — ITA 248(1); "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "property and casualty surplus" — Reg. 2400(1), 2405(3); "province" — *Interpretation Act* 35(1); "resident", "resident in Canada" — ITA 250; "segregated fund" — ITA 138.1(1), Reg. 2400(1), 2405(1); "share" — ITA 248(1); "small business bond" — ITA 15.2(3), 248(1); "small business development bond" — ITA 15.1(3), 248(1); "surplus funds derived from operations" — ITA 138(12), Reg. 2405(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "valuation" — Reg. 2405(3); "value" — Reg. 2400(1); "value for the year" — Reg. 2405(3); "weighted Canadian liabilities", "weighted total liabilities" — Reg. 2400(1).

2401. (1) Designated insurance property — For the purposes of section 138 of the Act, "designated insurance property" of an insurer for a taxation year means property that is designated by the insurer under this section for the year, in its return of income under Part I of the Act for the year, in respect of an insurance business carried on in Canada.

Technical Notes: Existing section 2401 sets out the rules for a non-resident to file an election to calculate its *life surplus factor* in accordance with the rules applicable to resident life insurers. The rules in existing section 2401 are deleted as a consequence of the repeal of the definition of *"life surplus factor"* and the amendments to the definition of *"attributed surplus"*. In effect, the amended definition of *"attributed surplus"* states that an election to use the resident life insurer rules must be made in the form and manner prescribed by the Department of National Revenue.

Amended section 2401 replaces existing section 2400 which sets out the rules that apply for the type, amount, and nature of investment property that must be designated by an insurer in respect of a taxation year.

Amended subsection 2401(1) provides that for the purposes of section 138 of the Act, designated insurance property of an insurer is property that is designated by the insurer in its Part I income tax return and in accordance with section 2401.

(2) Designation rules — For the purposes of subsection (1),

(a) the insurer shall designate investment property owned by it at any time in the year with a total value for the year equal to the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year in respect of its life insurance business in Canada exceeds the insurer's mean Canadian outstanding premiums and mean policy loans for the year (to the extent that the amount of the mean policy loans was not otherwise deducted in computing the insurer's Canadian reserve liabilities for the year);

(b) the insurer shall designate investment property owned by it at any time in the year with a total value for the year equal to the insurer's mean Canadian reserve liabilities for the year in respect of its accident and sickness insurance business in Canada;

(c) the insurer shall designate in respect of its insurance business in Canada (other than a life insurance business or an accident and sickness insurance business) investment property owned by it at any time in the year with a total value for the year equal to the amount, if any, by which

(i) the insurer's mean Canadian reserve liabilities for the year in respect of the business

exceeds

(ii) 1/2 of the total of all amounts each of which is the amount, at the end of the year or at the end of its preceding taxation year, of a deferred acquisition expense or a premium receivable (to the extent included in the insurer's Canadian reserve liabilities) of the insurer in respect of the business;

(d) where

(i) the insurer's mean Canadian investment fund for the year

exceeds

(ii) the total value for the year of all property required to be designated by the insurer under paragraph (a), (b) or (c)

the insurer shall designate in respect of a particular insurance business it carries on in Canada investment property owned by it at any time in the year with a total value for the year equal to that excess;

(e) a particular property can only be designated once for the year;

(f) the insurer may designate for a taxation year a portion of a particular property where the designation of the entire property would result in a designation of property with a total value for the year exceeding that required to be designated by the insurer under paragraphs (a) to (d); and

(g) where in the opinion of the Minister the insurer has failed to designate property for the year in accordance with this section,

(i) subject to subparagraph (ii), any designation of property by the insurer for the year that is selected by the Minister is deemed not to have been made, and

(ii) property owned by the insurer at any time in the year may be designated by the Minister in accordance with this subsection and subsections (3) and (4), and the property so designated is deemed to have been designated by the insurer for the year.

Technical Notes: Amended subsection 2401(2) replaces the designation rules in existing subsection 2400(1). Amended subsection 2401(2) sets out rules that an insurer is required to follow in designating investment property for a taxation year in respect of its insurance businesses carried on in Canada in the year.

Paragraph 2401(2)(a) provides that an insurer shall designate in respect of its Canadian life insurance business, investment property with a total *value* (as defined in amended subsection 2400(1)) equal to the amount by which the insurer's *mean Canadian reserve liabilities* (as defined in amended subsection 2400(1)) exceeds its *mean policy loans* and mean Canadian outstanding premiums (as defined in amended subsection 2400(1)) in respect of that business. Paragraph 2401(2)(b) provides a similar rule for an insurer's accident and sickness insurance business carried on in Canada.

Paragraph 2401(2)(c) provides that an insurer shall designate in respect of its non-life and non-accident and sickness insurance business, investment property with a total *value* equal to the amount by which the insurer's *mean Canadian reserve liabilities* in respect of that business exceeds the insurer's average deferred acquisition expenses or premiums receivable in respect of that business.

Where the insurer's *mean Canadian investment fund* for a year exceeds the value of the property that is designated in accordance with paragraphs 2401(2)(a) to (c), the insurer is required

to designate additional investment property so that the total value of the designated property equals that *mean Canadian investment fund*. The insurer must designate the additional investment property in respect of a particular Canadian insurance business.

Paragraph 2401(2)(c) is similar to existing paragraph 2400(2)(b) and prohibits an insurer from designating the same property twice.

Paragraph 2401(2)(f) is similar to existing subsection 2400(7) and provides that an insurer may designate a portion of a particular property where a designation of the entire property would result in exceeding the value of the property required to be designated under amended paragraphs 2401(2)(a) to (d).

Paragraph 2401(2)(g) permits the Minister of National Revenue to determine whether an insurer has made appropriate designations and to designate property where the insurer has not followed the designation rules. Where the Minister designates property, the property is considered to have been designated by the insurer. The amended paragraph refines the powers which the Minister currently has under existing paragraph 2400(1)(f).

(3) Order of property — For the purpose of subsection (2), investment property of an insurer shall be designated for a taxation year in respect of the insurer's insurance businesses in Canada in the following order:

(a) Canadian investment property owned by the insurer at the beginning of the year that was designated insurance property of the insurer for its preceding taxation year except that such property shall be designated in the following order:

(i) real and depreciable property,

(ii) mortgages, hypothecs, agreements of sale and other forms of indebtedness in respect of real property situated in Canada or depreciable property situated in Canada or depreciable property leased to a person resident in Canada for use inside and outside of Canada, and

(iii) other property;

(b) property (other than Canadian investment property) owned by the insurer at the beginning of the year that was designated insurance property of the insurer for its preceding taxation year;

(c) Canadian investment property (other than property included in paragraph (a)) in the order set out in subparagraphs (a)(i) to (iii); and

(d) other property.

Technical Notes: Amended subsection 2401(3) replaces the existing rule in subsection 2400(6). Amended subsection 2401(3) mandates that property be designated by an insurer in a particular order. Before designating any other property, amended paragraph 2401(3)(a) requires an insurer to designate *Canadian investment property* that was *designated insurance property* in the preceding taxation year in the following order:

- real and depreciable property;
- mortgages, hypothecs, agreements of sale or other debts in respect of real or depreciable property; and
- other *Canadian investment property*.

Next, an insurer must designate previously *designated insurance property* that is not *Canadian investment property*. After that, the insurer must designate *Canadian investment property* that was not designated in the preceding taxation year in the order set out in amended paragraph 2401(3)(a). Finally, an insurer may designate its other (non-Canadian) investment property.

Canadian investment property is designated before other investment property on the basis that *Canadian investment property* can reasonably be expected to have a closer relationship to an insurer's Canadian insurance businesses than its foreign insurance businesses.

(4) Equity limit for the year — Notwithstanding subsections (2) and (3),

(a) the total value for the year of Canadian equity property that may be designated in respect of an insurer's insurance businesses for a taxation year shall not exceed the insurer's equity limit for the year; and

(b) the insurer may designate for a taxation year a portion of a particular Canadian equity property where the designation of the entire property would result in a designation of Canadian equity property with a total value for the year exceeding that allowed to be designated under paragraph (a).

Technical Notes: Amended subsection 2401(4) replaces the existing equity limit rule in existing subsection 2400(4). Amended paragraph 2401(4)(a) provides that an insurer cannot designate *Canadian equity property* with a total value for the year which exceeds the insurer's *equity limit* for the year. The amended definitions of *"Canadian equity property"* and *"equity limit"* are contained in amended subsection 2400(1).

Amended paragraph 2401(4)(b) adds a rule which provides that an insurer may designate a portion of a *Canadian equity property* where a designation of the entire property would result in exceeding the insurer's *equity limit* for the year.

(5) Exchanged property — For the purposes of subsection (3) and this subsection, property acquired by an insurer in a particular taxation year by reason of

(a) a transaction described in section 51, 51.1, 85.1 or 86 of the Act,

(b) a transaction in respect of which an election was made under subsection 85(1) or (2) of the Act,

(c) an amalgamation of two or more corporations (within the meaning assigned by subsection 87(1) of the Act), or

(d) a winding-up of a corporation to which subsection 88(1) of the Act applied,

as consideration for or in exchange for property of the insurer that was designated insurance property of the insurer in respect of a particular insurance business for its preceding taxation year is deemed to be designated insurance property in respect of the particular business of the insurer for that preceding year and to have been owned by the insurer at the beginning of the particular year.

Technical Notes: Amended subsection 2401(5) is very similar to the exchanged property rule in existing subsection 2400(3). Both subsections provide that property acquired in exchange for *designated insurance property* under certain rollover transactions is considered to be *designated insurance property*. Amended subsection 2401(5) merely updates the wording that is used in existing subsection 2400(3).

(6) Non-investment property — Non-segregated property (other than investment property) owned by an insurer at any time in a taxation year that is used or held by the insurer in the year in the course of carrying on an insurance business in Canada is deemed to be designated insurance property of the insurer for the year in respect of the business.

Technical Notes: Amended subsection 2401(6) replaces existing paragraph 2400(1)(e), which stated that an insurer's non-investment property which was factually used or held in carrying on an insurance business in Canada is deemed to have been designated by the insurer. This designation rule is relevant for the definition of "outstanding debts to specified non-residents" in subsection 18(5), the definition of "eligible property" in sub-

section 85(1.1), subparagraph 115(1)(b)(ii.1), section 138, paragraph 219(4)(i.1), and subsection 219(5.1) of the Act. The property designated under this rule is not, however, relevant for determining an insurer's gross investment revenue because such property is not investment property.

Amended paragraph 2401(6) uses the new term *designated insurance property* and simplifies the wording of existing paragraph 2400(1)(e) by replacing the phrase "used by it in the year in, or held by it in the year in the course of carrying on an insurance business" with "property used or held by the insurer".

Definitions [Reg. 2401]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian equity property", "Canadian investment property", "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated insurance property" — ITA 138(12), 248(1); "equity limit for the year" — Reg. 2405(3); "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurance business" — ITA 248(1); "mean Canadian investment fund", "mean Canadian outstanding premiums" — Reg. 2400(1); "mean Canadian reserve liabilities", "mean policy loans" — Reg. 2400(1), 2405(3); "Minister" — ITA 248(1); "particular insurance business" — Reg. 2400(1); "person", "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "value for the year" — Reg. 2405(3).

Application: The September 19, 1997 draft regulations (insurance companies), s. 2, will amend ss. 2400 and 2401 to read as above, applicable to 1997 [to be changed to 1999; see below] *et seq.*

Dept. of Finance news release, July 29, 1999: *Update on income tax regulations for multinational insurance corporations*

Secretary of State (International Financial Institutions) Jim Peterson today announced that proposed regulations dealing with the taxation of resident multinational Canadian life insurers and non-resident insurers that carry on an insurance business in Canada will take effect starting with the 1999 tax year.

Draft regulations were originally released in September 1997, based on extensive consultations with the industry. Subsequent discussions have been held with industry representatives to finalize these regulations.

As a result of these discussions, it has been determined that the regulations and related amendments to the *Income Tax Act*, which originally were to apply starting in 1997, will apply to the 1999 and subsequent taxation years. Also, the additional capital tax on life insurers [ITA 190.1(1.1) — ed.], introduced in 1992, will be extended for two further years, to the 2000 taxation year.

"These regulations will ensure that multinational life insurance firms pay their fair share of income tax," Mr. Peterson said. "And on behalf of the government and the Department of Finance, I would like to thank those who participated in the consultation process for their efforts in the development of the new regulations."

For further information: Chantal Pelletier, Business Income Tax Division, (613) 996-9540; Karl Littler, Executive Assistant to the Secretary of State, (613) 996-7861; Alain Godin, Tax Legislation Division, (613) 995-2980; Jean-Michel Catta, Public Affairs and, Operations Division, (613) 996-8080.

2402. Income from participating life insurance businesses — For the purposes of clause 138(3)(a)(iii)(B) of the Act and subparagraph 309(1)(e)(i), in computing a life insurer's income for a taxation year from its participating life insurance business carried on in Canada,

(a) there shall be included that proportion of the insurer's gross Canadian life investment income for the year that

(i) the aggregate of the insurer's mean maximum tax actuarial reserve for the year in respect of participating life insurance policies in Canada and the mean amount on deposit with the insurer for the year in respect of those policies

is of

(ii) the aggregate of amounts, each of which is

(A) the insurer's mean maximum tax actuarial reserve for the year in respect of a class of life insurance policies in Canada, or

(B) the mean amount on deposit with the insurer for the year in respect of a class of policies described in clause (A);

Proposed Addition — Reg. 2402(a.1)

(a.1) there shall be included the amount determined by the formula

$$(A + B) \times \frac{C}{D}$$

where

A is the amount required by subsection 142.5(5) of the Act to be included in computing the insurer's income for the year,

B is the amount deemed by subsection 142.5(7) of the Act to be a taxable capital gain of the insurer for the year from the disposition of property,

C is the amount determined under subparagraph (a)(i) for the taxation year of the insurer that includes October 31, 1994, and

D is the amount determined under subparagraph (a)(ii) for the taxation year of the insurer that includes October 31, 1994;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(1), will add para. 2402(a.1), applicable to taxation years that end after October 30, 1994.

Technical Notes: Section 2402 contains rules for determining a life insurer's income for a year from carrying on its participating life insurance business in Canada. This income is relevant for subparagraph 138(3)(a)(iii) of the Act, which permits an insurer to deduct policy dividends to the extent that the total amount of dividends paid after its 1968 taxation year does not exceed the total amount of its participating business income after that year. Section 2402 is amended to reflect the new rules in the Act for the tax treatment of securities held by financial institutions, and to delete provisions which are no longer applicable.

New paragraph 2402(a.1) includes in an insurer's income from its participating business for a taxation year an amount in respect of the transition adjustments for the mark-to-market requirement for shares. The amount included is equal to a proportion of the transition amount for non-capital gains included in the insurer's income for the year by subsection 142.5(5) of the Act, plus the same proportion of the insurer's deemed taxable capital gain for the year under subsection 142.5(7). The ratio used for this purpose is equal to the ratio used under paragraph 2402(a) in determining the proportion of the insurer's gross Canadian life investment income for its taxation year that includes October 31, 1994 that is included in its income from its participating business. Paragraph 2402(a.1) applies to taxation years ending after October 30, 1994.

(b) there shall be included

(i) the amount deducted by the insurer under subparagraph 138(3)(a)(iv) of the Act in computing its income for the immediately preceding taxation year,

(ii) the insurer's maximum tax actuarial reserve for the immediately preceding taxation year in respect of participating life insurance policies in Canada,

(iii) the maximum amount deductible by the insurer under subparagraph 138(3)(a)(ii) of the Act in computing its income for the immediately preceding taxation year in respect of participating life insurance policies in Canada, and

(iv) that proportion of the amount included in income by the insurer for the year under section 12.3 that

(A) the amount determined under clause (f)(iii)(A) for its first taxation year that commences after June 17, 1987 and ends after 1987

is of

(B) the amount determined under clause (f)(iii)(B) for its first taxation year that commences after June 17, 1987 and ends after 1987;

Proposed Repeal — Reg. 2402(b)(iv)

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(2), will repeal subpara. 2402(b)(iv), applicable to taxation years that begin after 1992.

Technical Notes: Subparagraph 2402(b)(iv) relates to a transitional provision introduced in conjunction with the 1987 tax reform measures. The transitional provision, and subparagraph 2402(b)(iv), last applied to taxation years that began in 1992. The subparagraph is repealed since it is no longer applicable.

(c) there shall not be included any amount in respect of the insurer's participating life insurance policies in Canada that was deducted under subparagraphs 138(3)(a)(i) or (ii) of the Act in computing its income for the immediately preceding taxation year;

(d) except as otherwise provided in paragraph (a), there shall not be included any amount as a reserve that was deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the immediately preceding taxation year;

(e) except as otherwise provided in paragraph (a), there shall not be included

(i) any amount that was included in income for the year by the insurer pursuant to 138(4)(b) or (c) of the Act, or

(ii) any amount that was included in computing the insurer's gains or taxable capital gains for the year from the disposition of property;

Proposed Amendment — Reg. 2402(e)

(e) except as provided in paragraph (a), there shall not be included any amount that was included in determining the insurer's gross Canadian life investment income for the year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(3), will amend para. 2402(e) to read as above, applicable to taxation years that end after February 22, 1994.

Technical Notes: Paragraph 2402(e) provides that certain amounts are not included in computing an insurer's income from its participating life insurance business, except as provided by paragraph 2402(a). Paragraph 2402(e) is amended so that it applies with respect to all amounts included in determining an insurer's gross Canadian life investment income. This amendment is made for purposes of clarification, and because of the introduction of the new rules for the taxation of securities held by financial institutions. In this latter regard, subparagraph 2402(e)(i) refers to paragraphs 138(4)(b) and (c) of the Act, which are being repealed.

Proposed Addition — Reg. 2402(e.1), (e.2)

(e.1) except as provided in paragraph (a.1), there shall not be included the amounts referred to in the descriptions of A and B in that paragraph;

(e.2) where the year includes October 31, 1994, there shall be deducted the amount determined by the formula

$$(A + B) \times \frac{C}{D}$$

where

A is the amount deducted under subsection 142.5(4) of the Act in computing the insurer's income for the year,

B is the amount deemed by subsection 142.5(6) of the Act to be an allowable capital loss of the insurer for the year from the disposition of property,

C is the amount determined under subparagraph (a)(i) for the year, and

D is the amount determined under subparagraph (a)(ii) for the year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(4), will add paras. 2402(e.1) and (e.2), applicable to taxation years that end after October 30, 1994.

Technical Notes: New paragraph 2402(e.1) provides that the transition amounts associated with the introduction of the mark-to-market requirement for shares are not to be included in an insurer's income from its participating life insurance business, except as provided by new paragraph 2402(a.1).

New paragraph 2402(e.2) provides for a deduction in computing an insurer's income from its participating business in respect of the transition deductions associated with the introduction of the mark-to-market requirement for shares. This deduction applies for the insurer's taxation year that includes October 31, 1994. The deducted amount is equal to a proportion of the transition deduction for non-capital gains claimed by the insurer under subsection 142.5(4) of the Act, plus the same proportion of the allowable capital loss claimed by the insurer under subsection 142.5(6). The ratio used for this purpose is equal to the ratio used under paragraph 2402(a) in determining the proportion of the insurer's gross Canadian life investment income for its taxation year that includes October 31, 1994 that is included in its income from its participating business.

(f) there shall be deducted

(i) the insurer's maximum tax actuarial reserve for the year in respect of participating life insurance policies in Canada,

(ii) the maximum amount deductible by the insurer under subparagraph 138(3)(a)(ii) of the Act in computing its income for the year in respect of participating life insurance policies in Canada, and

(iii) that proportion of the amount deducted from income by the insurer for the year under subsection 20(26) that

(A) the amount determined in respect of the insurer for the year under subparagraph (a)(i),

is of

(B) the amount determined in respect of the insurer for the year under subparagraph (a)(ii);

Proposed Repeal — Reg. 2402(f)(iii)

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(5), will repeal subpara. 2402(f)(iii), applicable to taxation years that begin after 1992.

Technical Notes: Subparagraph 2402(f)(iii) relates to a transitional deduction provided in conjunction with the 1987 tax reform measures. The transitional deduction, and subparagraph 2402(f)(iii), applied to an insurer's first taxation year that began after June 17, 1987 and ended after 1987. The subparagraph is repealed since it is no longer applicable.

(g) no deduction shall be made in respect of any amount deductible under subparagraph 138(3) (a)(iii) or (iv) of the Act in computing the insurer's income for the year;

(h) except as as otherwise provided in paragraph (a), no deduction shall be made in respect of

(i) any amount deductible under paragraph 138(3)(b) or (d) of the Act in computing the insurer's income for the year,

(ii) any amount deductible as a reserve under paragraph 20(1)(l) of the Act in computing the insurer's income for the year, or

(iii) any amount included in computing the insurer's losses or allowable capital losses for the year from the disposition of property;

Proposed Amendment — Reg. 2402(h)

(h) except as provided in paragraph (a), no deduction shall be made in respect of

(i) any amount taken into account in determining the insurer's gross Canadian life investment income for the year, or

(ii) any amount deductible under paragraph 20(1)(l) of the Act in computing the insurer's income for the year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(6), will amend para. 2402(h) to read as above, applicable to taxation years that end after February 22, 1994.

Technical Notes: Paragraph 2402(h) provides that certain amounts are not deducted in computing an insurer's income from its participating life insurance business, except as provided by paragraph 2402(a). Paragraph 2402(h) is amended so that it applies with respect to all amounts that are included in determining an insurer's gross Canadian life investment income. This amendment is made for purposes of clarification and because of the introduction of the new rules for the taxation of securities held by financial institutions. In this latter regard, subparagraph 2402(h)(i) refers to paragraphs 138(3)(b) and (d) of the Act, which are being repealed.

Proposed Addition — Reg. 2402(h.1)

(h.1) except as provided in paragraph (e.2), no deduction shall be made in respect of the amounts referred to in the descriptions of A and B in paragraph (e.2);

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 2(7), will add para. 2402(h.1), applicable to taxation years that end after October 30, 1994.

Technical Notes: New paragraph 2402(h.1) provides that the transition amounts deducted by an insurer in connection with the introduction of the mark-to-market requirement for shares are not to be deducted in computing the insurer's income from its participating life insurance business, except as provided by new paragraph 2402(e.2).

(i) except as otherwise provided in paragraph (f), no deduction shall be made in respect of a reserve deductible under subparagraph 138(3)(a)(i) or (ii) of the Act in computing the insurer's income for the year; and

(j) except as otherwise provided in this section, the provisions of the Act relating to the computation of income from a source shall apply.

History: Subpara. 2402(b)(iii) added, and paras. (c) to (f), (h) and (i) substituted, by P.C. 1990-2002, s. 7, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987 except that in its application in respect of [an insurer's] first such taxation year,

(a) subpara. (b)(iii) shall be read as follows:

"(iii) the maximum amount of a reserve deductible by the insurer in computing its income for the immediately preceding taxation year in respect of unpaid claims under participating life insurance policies in Canada received by the insurer before the end of that year, and";

(b) para. (c) shall be read as follows:

"(c) there shall not be included any amount in respect of the insurer's participating life insurance policies in Canada that was deducted in computing its income for the immediately preceding taxation year under subparagraph 138(3)(a)(i) of the Act or as a reserve in respect of unpaid claims received before the end of that year;" and

(c) para. (d) shall read as it read for [the insurer's] last taxation year ending before 1988.

All that portion of s. 2402 preceding para. (a) substituted by P.C. 1983-3530, s. 7, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, applicable to taxation years commencing after 1982.

Definitions [Reg. 2402]: "allowable capital loss" — ITA 38(b), 248(1); "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "gross Canadian life investment income" — Reg. 2400(1), 2405(3); "immediately preceding taxation year" — Reg. 2409(1), (4); "insurer", "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "mean amount on deposit" — Reg. 2405(3); "mean maximum tax actuarial reserve" — Reg. 2400(1), 2405(3); "participating life insurance policy" — ITA 138(12), Reg. 2405(1); "property" — ITA 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249.

2403. Branch tax elections — **(1)** An election referred to in subsection 219(4) of the Act shall be made by a non-resident insurer in respect of a taxation year by filing, with its return of income required by subsection 150(1) of the Act to be filed for the year, a letter in duplicate stating

(a) the insurer elects under subsection 219(4) of the Act; and

(b) the amount the insurer elects to deduct under subsection 219(4) of the Act.

(2) Where a joint election referred to in subsection 219(5.2) of the Act is made by a non-resident insurer and a qualified related corporation (within the meaning assigned by subsection 219(8) of the Act) of the non-resident insurer in respect of a taxation year of the non-resident insurer, it shall be made by filing, with the non-resident insurer's return of income required by subsection 150(1) of the Act to be filed for the year in which the event to which the election relates occurred, a letter in duplicate signed by an authorized officer of the non-resident insurer and an authorized officer of the qualified related corporation stating

(a) whether paragraph 219(5.2)(a) or (b) of the Act is applicable; and

Proposed Amendment — Reg. 2403(2)(a)

(a) whether paragraphs 219(5.2)(a) and (b) of the Act apply; and

Application: The September 19, 1997 draft regulations (insurance companies), s. 3, will amend para. 2403(2)(a) to read as above, applicable to 1997 [to be changed to 1999; see July 29/99 news release in Proposed Amendment under Reg. 2400-2401] *et seq.*

Technical Notes: Subsection 2403(2) sets out the mechanism for making an election under subsection 219(5.2) of the Act. Subsection 219(5.2) permits a non-resident insurer to elect to defer the branch tax arising under subsection 219(5.1) of the Act

when the insurer transfers a Canadian insurance business to a qualified related corporation. Paragraph 2403(2)(a) requires the insurer and the qualified related corporation to jointly sign a letter seeking the election and include the letter in its Part I income tax return. That paragraph states that the letter must indicate whether paragraph 219(5.2)(a) *or* (b) of the Act is applicable to the transfer. Amended paragraph 2403(2)(a) requires that the letter state whether paragraph 219(5.2)(a) *and* (b) of the Act apply.

(b) the amount elected under subsection 219(5.2) of the Act.

History: Subsec. 2403(2) added by P.C. 1981-2121, s. 1, July 29, 1981, *Canada Gazette*, Part II, August 12, 1981, effective December 12, 1979.

Definitions [Reg. 2403]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "insurer", "non-resident", "officer" — ITA 248(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249.

2404. Currency conversions — For the purposes of this Part, where any amount is determined in a currency other than Canadian currency, that amount shall be converted to Canadian currency using the current rate of exchange, as required for the purposes of the relevant authority, on the date in respect of which the amount is determined.

Proposed Amendment — Reg. 2404

[See after 2406.]

Definitions [Reg. 2404]: "amount" — ITA 248(1); "relevant authority" — Reg. 2405(3).

2405. Interpretation —

Proposed Amendment — Reg. 2405

[See proposed Reg. 2400 and after 2406.]

(1) In this Part,

(a) "total depreciation" has the meaning assigned by paragraph 13(21)(e) [13(21)"total depreciation"] of the Act;

(b) "accumulated 1968 deficit", "amount payable", "gross investment revenue", "life insurance policy", "life insurance policy in Canada", "maximum tax actuarial reserve", "non-segregated property", "participating life insurance policy", "policy loan" and "surplus funds derived from operations" have the meanings assigned by subsection 138(12) of the Act; and

(c) "segregated fund" and "segregated fund policies" have the meaning assigned by subsection 138.1(1) of the Act.

(2) For the purposes of subsection 138(14) of the Act, the expressions "Canadian investment fund for a taxation year", "specified Canadian assets" and "value for the taxation year" have the meanings prescribed therefor by subsection 2404(1) as it read in its application to the 1977 taxation year.

(3) In this Part and for the purposes of paragraph 219(7)(a) [219(7)"attributed surplus for the year"] of the Act,

"attributed surplus for the year", for a taxation year in respect of a non-resident insurer, means the aggregate of

(a) its property and casualty surplus for the year, and

(b) an amount equal to the percentage (that is the life surplus factor for the year) of the amount for the year determined under clause (a)(i)(B) of the definition "life surplus factor" in this subsection;

Proposed Addition — Reg. 2405(3)"Canadian business property" [temporary]

"Canadian business property" of an insurer for a taxation year in respect of an insurance business means

(a) where the insurer was resident in Canada throughout the year and either did not carry on a life insurance business in the year or did not carry on an insurance business outside Canada in the year, the property used by it in the year in, or held by it in the year in the course of, carrying on the business in Canada, and

(b) in any other case, the property designated under subsection 2400(1) for the year by the insurer in respect of the business;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 3(10), will add the definition "Canadian business property" to subsec. 2405(3), applicable to taxation years that end after February 22, 1994.

Technical Notes: A definition of "Canadian business property" is added to subsection 2405(3). This expression is used in the definition of "gross Canadian life investment income", which is also in subsection 2405(3).

In the case of an insurer that is required to designate property under subsection 2400(1), the "Canadian business property" of the insurer for a taxation year in respect of an insurance business is the property designated for the year in respect of the business. (The designation rules apply to non-resident insurers, and to multinational resident life insurers.)

The "Canadian business property" of any other insurer for a taxation year in respect of an insurance business is the property that is factually determined to have been used by the insurer in the year in, or held by it in the year in the course of, carrying on the business in Canada.

"Canadian equity property" means

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or a small business bond issued by, a person (other than a designated corporation) or partnership, as the case may be, resident in Canada, or

(b) that proportion of shares of the capital stock of a designated corporation or an interest in a partnership or trust that

(i) the aggregate value for the year of Canadian equity property owned by the designated corporation or the partnership or trust, as the case may be,

is of

(ii) the aggregate value for the year of all property owned by the designated corporation, or partnership or trust, as the case may be;

"Canadian investment fund", as at the end of a taxation year, in respect of

(a) a life insurer resident in Canada, means the positive amount determined by the formula

$$\left[\frac{A}{B} \times (C - D)\right] - E$$

where

A is the amount of the insurer's Canadian reserve liabilities as at the end of the year,

B is the amount of the insurer's total reserve liabilities as at the end of the year,

C is the total of

(i) the aggregate amount of policy loans and foreign policy loans of the insurer as at the end of the year, and

(ii) the valuation of all property of the insurer as at the end of the year each of which is

(A) an investment property,

(B) money, or

(C) a balance (other than a property included under (A) or (B)) standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee,

D is the total of

(i) the aggregate of all amounts each of which is an amount outstanding as at the end of the year in respect of a debt (other than a debt referred to in paragraph (h) of the definition "valuation" in this subsection or an amount referred to in subparagraph (ii)) owing by the insurer in respect of money borrowed by the insurer (other than money used by the insurer for the purpose of earning income from a source that is not an insurance business), and

(ii) the aggregate of all amounts each of which is the amount of a cheque outstanding at the end of the year drawn on an account of the insurer maintained with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, and

E is the aggregate amount of the policy loans of the insurer as at the end of the year, and

(b) a non-resident insurer, means the amount, if any, by which the aggregate of amounts each of which is

(i) a maximum tax actuarial reserve of the insurer for the year,

(i.1) the maximum amount that the insurer is entitled to claim under subparagraph 138(3)(a)(ii) of the Act for the year,

(ii) the maximum amount that the insurer is entitled to deduct under paragraph 20(7)(c) of the Act in computing its income for the year determined on the assumption that it carried on no other than life insurance business other than an accident and sickness insurance business,

(iii) the amount of policy dividends, to the extent that such dividends were not included under subparagraph (i) or (ii), that will, according to the annual report of the insurer filed with the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, according to its financial statements for the year, as at the end of the year, become payable by the insurer in the immediately following year under its participating life insurance policies,

(iv) a liability (other than a debt referred to in paragraph (h) of the definition "valuation" in this subsection) or a reserve (other than the insurer's investment valuation reserve) as reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year, that was incurred or provided for in the course of carrying on the insurer's property and casualty insurance business in Canada except to the extent those amounts are already included under subparagraph (ii),

(v) a debt (other than a debt referred to in paragraph (h) of the definition "valuation" in this subsection) owing by the insurer at that time that was incurred in the course of carrying on an insurance business (other than a property and casualty insurance business) in Canada, except to the extent those amounts are already included under subparagraph (i), (i.1) or (iii), or

(vi) the amount that is the greater of

(A) the amount, if any, by which the aggregate of

(I) the insurer's surplus funds derived from operations computed as at the end of the immediately preceding taxation year, and

(II) the aggregate of amounts in respect of which the insurer has made an election under subsection 219(4) or (5.2) of the Act, each of which is an amount included in the aggregate determined in respect of the insurer under subparagraph 219(4)(a)(i.1) of the Act at the end of the immediately preceding taxation year

exceeds

(III) the aggregate of amounts determined in respect of the insurer under subparagraphs 219(4)(a)(ii), (iii), (iv) and (v) of the Act, as at the end of the taxation year, and

(B) the insurer's attributed surplus for the year,

exceeds the aggregate of

(vii) the aggregate valuation of all non-segregated property referred to in paragraph 2400(1)(e) at the end of the year in respect of all the insurer's insurance businesses carried on in Canada other than property that is

(A) money, or

(B) a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, and

(viii) the aggregate amount of the insurer's deferred acquisition expenses in respect of its property and casualty insurance business in Canada reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 2405(5) — Mark-to-market rule to be ignored.

"Canadian investment fund for the year", for a taxation year in respect of a life insurer resident in Canada and a non-resident insurer, means the amount determined under section 2412;

"Canadian investment property" of an insurer for a taxation year means an investment property (unless the insurer is a non-resident insurer and it is established by the insurer that the investment property is not effectively connected with its Canadian insurance businesses) that is

(a) land or depreciable property situated in Canada and, for that purpose, depreciable property of an insurer leased by a person resident in Canada for use inside and outside of Canada shall be deemed to be depreciable property situated in Canada,

(b) a Canadian equity property,

(c) a Canadian resource property,

(d) a mortgage, an agreement of sale or any other form of indebtedness in respect of property referred to in paragraph (a),

(e) an amount in Canadian currency standing to the insurer's credit as or on account of amounts deposited with a corporation resident in Canada authorized to accept deposits or to carry on the business of offering to the public its services as a trustee,

(f) a bond, debenture or other form of indebtedness (other than a property described in paragraph (d) or (e)) in Canadian currency issued by

(i) a person resident in Canada, a Canadian partnership or a partnership an interest in which is an investment property described in paragraph (g),

(ii) the Government of Canada,

(iii) the government of a province of Canada, or

(iv) any other political subdivision of Canada or of any province of Canada, or

(g) a property (to the extent it is not a property described in paragraph (b)) that is

(i) a share of a designated corporation resident in Canada,

(ii) an interest in a partnership, or

(iii) an interest in a trust resident in Canada,

where not less than 75 per cent of the aggregate value for the year of all property of the corporation, partnership or trust, as the case may be, is in respect of property each of which is property described in paragraphs (a) to (f);

"Canadian reserve liabilities" of an insurer, as at the end of a taxation year, means the aggregate amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of amounts payable out of segregated funds) in respect of its insurance policies in Canada, as determined for the purposes of the relevant authority at the end of the year or as would be determined at that time if the relevant authority required such a determination;

"designated corporation", in respect of an insurer, at any time in a taxation year, means a corporation in respect of which the insurer or the insurer and persons or partnerships that do not deal at arm's length with the insurer held, at any time in the year, shares that represented 30 per cent or more of the common shares of the corporation outstanding at that time;

"equity limit for the year", for a taxation year, means

(a) in respect of a life insurer resident in Canada, the greater of

(i) that proportion of the aggregate value for the year of all the insurer's equity property that

(A) the amount, if any, by which the insurer's mean Canadian reserve liabilities exceed the aggregate of the insurer's mean policy loans for the year and ½ of the aggregate of outstanding premiums of the insurer in respect of its insurance businesses in Canada as determined for the purposes of the relevant authority at the end of the year and the immediately preceding taxation year,

is of

(B) the amount, if any, by which the insurer's mean total reserve liabilities exceed the aggregate of the insurer's mean policy loans and foreign policy loans for the year and ½ of the aggregate of outstanding premiums of the insurer in respect of its insurance businesses as determined for the purposes of the relevant authority at the end of the year and the immediately preceding taxation year, and

(ii) 8 per cent of the insurer's Canadian investment fund for the year,

(b) in respect of a non-resident insurer (other than a life insurer), ¼ of the aggregate of

(i) the amount, if any, by which the insurer's mean Canadian reserve liabilities exceed ½ of the aggregate of the amounts of the insurer's deferred acquisition expenses and premiums receivable at the end of the year and the immediately preceding year to the extent that those amounts were included in the insurer's Canadian reserve liabilities for those years in respect of the insurer's business in Canada as determined for the purposes of the relevant authority, and

(ii) the insurer's property and casualty surplus for the year, and

(c) in respect of a non-resident life insurer, the aggregate of

(i) the insurer's life equity limit for the year, and

(ii) ¼ of the aggregate of

(A) the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year exceed ½ of the aggregate of the amounts of the insurer's deferred acquisition expenses and premiums receivable at the end of the year and the immediately preceding year in respect of the insurer's business in Canada as determined for the purposes of the relevant authority to the extent that those amounts were included in the insurer's Canadian reserve liabilities for those years (determined on the assumption that the only insurance business carried on in Canada by the insurer was a property and casualty insurance business), and

(B) the insurer's property and casualty surplus for the year;

"equity property" means

(a) a share of the capital stock of, or an income bond, income debenture, small business development bond or small business bond issued by, a person (other than

a designated corporation) or partnership, as the case may be, or

(b) that proportion of shares of the capital stock of a designated corporation or an interest in a partnership or trust that

(i) the aggregate value for the year of equity property owned by the designated corporation or the partnership or trust, as the case may be,

is of

(ii) the aggregate value for the year of all property owned by the designated corporation or the partnership or trust, as the case may be;

"foreign policy loan" means an amount advanced at a particular time by an insurer to a policyholder in accordance with the terms and conditions of a life insurance policy, other than a life insurance policy in Canada;

"gross Canadian life investment income" of a life insurer for a taxation year means the amount, if any, by which the aggregate of

(a) the insurer's gross investment revenue for the year to the extent that that revenue is from non-segregated property of the insurer used by it in the year in, or held by it in the year in the course of, carrying on its life insurance business in Canada,

(b) the amount included in computing the insurer's income for the year under paragraph 138(9)(b) of the Act,

(c) the amounts included in computing the insurer's income for the year under paragraphs 138(4)(b) and (c) of the Act,

(d) that portion of the amount included in computing the insurer's income for the year under paragraph 12(1)(d) of the Act in respect of amounts deducted in computing the insurer's income under paragraph 20(1)(l) of the Act in the immediately preceding taxation year in respect of a Canada security (within the meaning assigned by paragraph 138(12)(c) [138(12)"Canada security"] of the Act) owned by the insurer,

(e) the amount included in computing the insurer's gains for the year from the disposition of property (other than a Canada security or capital property),

(f) the amount included in computing the insurer's taxable capital gains for the year from the disposition of property, and

(g) the amount deducted in computing the insurer's income for the immediately preceding taxation year under paragraph 138(3)(c) of the Act (as it read in its application to taxation years commencing before June 17, 1987 or ending before 1988),

exceeds the aggregate of

(h) the amounts deducted in computing the insurer's income for the year under paragraphs 138(3)(b) and (d) of the Act,

(i) the amount deducted in computing the insurer's income for the year under paragraph 20(1)(l) of the Act in respect of a Canada security (within the meaning assigned by paragraph 138(12)(c) [138(12)"Canada security"] of the Act) owned by the insurer,

(j) the amount included in computing the insurer's losses for the year from the disposition of property (other than a Canada security or capital property), and

(k) the amount included in computing the insurer's allowable capital losses for the year from the disposition of property;

Proposed Amendment — Reg. 2405(3)"gross Canadian life investment income" [temporary]

"gross Canadian life investment income" of a life insurer for a taxation year means the amount, if any, by which the aggregate of

(a) the insurer's gross investment revenue for the year, to the extent that the revenue is from Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(b) the amount included in computing the insurer's income for the year under paragraph 138(9)(b) of the Act,

(c) [Proposed repeal]

(d) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the preceding taxation year that was in respect of Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(d.1) the total of all amounts each of which is an amount included under section 142.4 of the Act in the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(e) the total of all amounts each of which is the insurer's gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of which section 142.4 of the Act applies, and

(f) the total of all amounts each of which is the insurer's taxable capital gain for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(g) [Proposed repeal]

exceeds the aggregate of

(h) [Proposed repeal]

(i) the portion of the amount deducted under paragraph 20(1)(l) of the Act in computing the insurer's income for the year that is in respect of debt obligations that are Canadian business property of the insurer for the year in respect of the insurer's life insurance business,

(i.1) the total of all amounts each of which is an amount deductible under section 142.4 of the Act in computing the insurer's income for the year in respect of a property disposed of by the insurer that was, in the taxation year of disposition, a Canadian business property of the insurer for that year in respect of the insurer's life insurance business,

(j) the total of all amounts each of which is the insurer's loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business, other than a capital property or a property in respect of which section 142.4 of the Act applies, and

(k) the total of all amounts each of which is the insurer's allowable capital loss for the year from the disposition of a Canadian business property of the insurer for the year in respect of the insurer's life insurance business;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsecs. 3(1) to (9), will amend paras. (a), (d), (e), (f), (i), (j) and (k) of the definition "gross Canadian life investment income" in subsec. 2405(3) to read as above, will add paras. (d.1) and (i.1), and will repeal paras. (c), (g) and (h); para. (a) applicable to taxation years that end after June 1, 1995, paras. (c), (d), (g), (h) and (i) applicable to taxation years that begin after February 22, 1994, paras. (d.1) and (e) applicable to dispositions of property that occur after February 22, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (e) shall be read as follows:

(e) the amount included in computing the insurer's gains for the year from the disposition of property (other than capital property or property in respect of which section 142.4 of the Act applies),

para. (f) applicable to taxation years that end after October 30, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (f) shall be read as follows:

(f) the amount included in computing the insurer's taxable capital gains for the year from the disposition of property (other than an amount included because of subsection 142.5(7)) of the Act),

paras. (i.1) and (j) applicable to dispositions of property that occur after February 22, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (j) shall be read as follows:

(j) the amount included in computing the insurer's losses for the year from the disposition of property (other than capital property or property in respect of which section 142.4 of the Act applies),

para. (k) applicable to taxation years that end after October 30, 1994 except that in its application to property disposed of in a taxation year that ends on or before June 1, 1995, para. (k) shall be read as follows:

(k) the amount included in computing the insurer's allowable capital losses for the year from the disposition of property (other than an amount included because of subsection 142.5(6)) of the Act);

Technical Notes: Subsection 2405(3) defines a number of expressions used in Part XXIV.

The expression "gross Canadian life investment income" is defined for the purpose of section 2402, which contains rules for determining an insurer's income for a year from carrying on its participating life insurance business in Canada. Several amendments are made to this definition:

- Paragraph (a) is amended to use the newly-defined term "Canadian business property", which is defined in subsection 2405(3). Gross investment revenue from such property held in respect of an insurer's life insurance business is included by paragraph (a) in determining the insurer's gross Canadian life investment income. This amendment applies to taxation years that end after June 1, 1995.
- Paragraph (c) is repealed. This paragraph includes, in determining an insurer's gross Canadian life investment income, the amounts included in the insurer's income by paragraphs 138(4)(b) and (c) of the Act (profit on disposition of a Canada security, and amortization of discount on such a security). This amendment is consequential on the repeal of paragraphs 138(4)(b) and (c).
- Paragraphs (d) and (i), which deal with doubtful debt reserves, are amended as a consequence of the repeal of the definition of "Canada security" in subsection 138(12) of the Act. The amended paragraphs refer to debt obligations that are "Canadian business property" of the insurer in respect of the insurer's life insurance business.
- New paragraph (d.1) includes in an insurer's gross Canadian life investment income the amounts that are included in the insurer's income by section 142.4 of the Act in respect of property disposed of by the insurer that was "Canadian business property" of the insurer in respect of its life insurance business. New paragraph (i.1) is a corresponding rule for deductions. New section 142.4 of the Act contains rules for the measurement and the timing of recognition of gains and losses from the disposition of specified debt obligations.
- Paragraph (e), which includes certain non-capital gains in an insurer's gross Canadian life investment income, is amended to exclude from its scope property in respect of which section 142.4 of the Act applies. Gains from the disposition of this property are taken into account by new paragraph (d.1). Paragraph (e) is also amended, for dispositions of property in taxation years ending after June 1, 1995, to clarify that it applies only to the property of an insurer's Canadian life insurance business. Similar changes are made to the rule in paragraph (j) for certain non-capital losses.
- Paragraph (f), which includes an insurer's taxable capital gains in its gross Canadian life investment income, is amended so that it does not include amounts deemed by subsection 142.5(7) of the Act to be taxable capital gains of the insurer. That subsection contains a transition rule relating to the introduction of the mark-to-market requirement. Paragraph (f) is also amended, for dispositions of property in taxation years ending after June 1, 1995, to clarify that it applies only to the property of an insurer's Canadian life insurance business. Similar changes are made to the rule in paragraph (k) for allowable capital losses.
- Paragraph (g) is repealed since the provision to which it refers — paragraph 138(3)(c) of the Act (investment reserve) — was repealed in the tax reform of 1987.
- Paragraph (h) is repealed. This paragraph deducts in determining an insurer's gross Canadian life investment income the amounts deducted under paragraphs 138(3)(b) and (d) of the Act (loss on disposition of a Canada security, and amortization of premium on such a security) in computing an insurer's income. This amendment is consequential on the repeal of paragraphs 138(3)(b) and (d).

"insurance policy in Canada", in respect of an insurer, means, in the case of

(a) a life insurance policy, a life insurance policy in Canada,

(b) a fire insurance policy, a policy issued or effected upon property situated in Canada, and

(c) any other class of insurance policy, a policy where the risks covered by the policy were ordinarily within Canada at the time the policy was issued or effected;

"investment property" of an insurer for a taxation year means non-segregated property that is

(a) property acquired by the insurer for the purpose of earning gross investment revenue, other than property that is

(i) property, a portion of which is investment property pursuant to paragraph (b) or (c),

(ii) a share of a designated corporation,

(iii) a debt owing to the insurer by a designated corporation,

(iv) an interest in a partnership, or

(v) an interest in a trust,

(b) the portion, if any, of property of the insurer (other than property a portion of which is investment property pursuant to paragraph (c)) that is

(i) land,

(ii) depreciable property, or

(iii) property that would have been depreciable property if it had been situated in Canada and used in the year in, or held in the year in the course of, carrying on an insurance business in Canada,

that

(iv) the use made of the property in the year for the purpose of earning gross investment revenue therefrom

is of

(v) the whole use made of the property in the year,

(c) the portion, if any, of property of the insurer that is not used in the year for the purpose of earning gross investment revenue that is

(i) land,

(ii) depreciable property, or

(iii) property that would be depreciable property if it had been situated in Canada and used in the year in, or held in the year in the course of, carrying on an insurance business in Canada,

to the extent that the property is held for resale or development or is expected to be used in a subsequent taxation year for the purpose of earning gross investment revenue, or

(d) property of the insurer that is

(i) a share of, or a debt owing to the insurer by a designated corporation other than a corporation that carries on a business of insurance, banking or offering its services to the public as a trustee or whose principal business is the making of loans,

(ii) an interest in a partnership, or

(iii) an interest in a trust,

if

(iv) the aggregate value for the year of all investment property of the corporation, partnership or trust, as the case may be, is not less than 75 per cent of the aggregate value for the year of all its property, and

(v) the gross investment revenue for the year from the investment property referred to in subparagraph (iv) (other than gross investment revenue from persons with whom the corporation, partnership or trust, as the case may be, did not deal at arm's length) is not less than 90 per cent of the gross revenue for the year of the corporation, partnership or trust, as the case may be,

assuming for the purposes of subparagraphs (iv) and (v) that the definition "gross investment revenue" in paragraph 138(12)(e) [138(12)"gross investment revenue"] of the Act and this definition apply to a corporation, partnership or trust, referred to in those subparagraphs, as though the corporation, partnership or trust, as the case may be, were an insurer;

"life equity limit" of a non-resident life insurer for a taxation year means

(a) where the insurer makes an election in respect of its life surplus factor for the year in the manner described in subsection 2401(1), the amount that would have been the insurer's equity limit for the year if the insurer had been a life insurer resident in Canada registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada and it had carried on no other than life insurance business other than an accident and sickness insurance business,

(b) where the insurer does not make an election referred to in paragraph (a) in respect of the year, but

(i) has made such an election in respect of one of the four immediately preceding taxation years, and

(ii) the insurer's life surplus factor for the year is not determined pursuant to paragraph (c) of the definition "life surplus factor" in this subsection,

the amount that would have been the insurer's equity limit for the year if the insurer had been a life insurer resident in Canada registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada and it had carried on no other than life insurance business other than an accident and sickness insurance business, using the amount, in respect of the most recent taxation year for which such an election was made, determined under subparagraph (a)(i) of the definition, in this subsection, "equity limit for the year",

(c) in any other case, 8 per cent of the amount of the insurer's Canadian investment fund for the year;

"life surplus factor" of a non-resident life insurer for a taxation year means

(a) subject to subsection 2401(2), where the insurer elects in respect of the year in the manner described in subsection 2401(1), the proportion (expressed as a percentage) that

(i) the amount, if any, by which

(A) the amount that would have been the insurer's Canadian investment fund for the year if the insurer had been a life insurer resident in Canada registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada and it had carried on no other than life insurance business other than an accident and sickness insurance business

exceeds

(B) the amount, if any, by which ½ of the aggregate of

(I) the aggregate of the amounts described in subparagraphs (b)(i), (i.1), (ii), (iii) and (v) of the definition "Canadian investment fund" in this subsection in respect of a non-resident insurer, as at the end of the year, and

(II) the aggregate of those amounts as at the end of the immediately preceding taxation year,

exceeds the aggregate value for the year of all the insurer's non-segregated property referred to in paragraph 2400(1)(e) in respect of all the insurer's insurance businesses (other than its property and casualty insurance business) carried on in Canada, other than property that is

(III) money, or

(IV) a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee

is of

(ii) the amount determined under clause (i)(B),

(b) where the insurer does not make an election referred to in paragraph (a) in respect of the year, but

(i) has made such an election in respect of one of the four immediately preceding taxation years, and

(ii) has not, since making the most recent election referred to in subparagraph (i), selected pursuant to this paragraph the percentage referred to in paragraph (c) as its life surplus factor for a year prior to the taxation year,

the percentage, as shall be selected by the insurer, that is the percentage

(iii) determined under paragraph (a) in respect of the most recent taxation year for which the insurer made an election, or

(iv) referred to in paragraph (c), and

(c) in any other case, 10 per cent;

"mean amount on deposit" with an insurer for a taxation year in respect of life insurance policies means ½ of the aggregate of

(a) all amounts on deposit with the insurer as at the end of the year in respect of those policies, and

(b) all amounts on deposit with the insurer as at the end of the immediately preceding taxation year in respect of those policies;

"mean Canadian reserve liabilities" of an insurer for a taxation year means ½ of the aggregate of

(a) the insurer's Canadian reserve liabilities as at the end of the year, and

(b) the insurer's Canadian reserve liabilities as at the end of the immediately preceding taxation year;

"mean maximum tax actuarial reserve", in respect of a particular class of life insurance policies of an insurer for a taxation year, means ½ of the aggregate of

(a) the insurer's maximum tax actuarial reserve for that class of policies for the year, and

(b) the insurer's maximum tax actuarial reserve for that class of policies for the immediately preceding taxation year;

"mean policy loans", of an insurer for a taxation year, means ½ of the aggregate of

(a) the insurer's policy loans as at the end of the year, and

(b) the insurer's policy loans as at the end of the immediately preceding taxation year;

"mean policy loans and foreign policy loans", of an insurer for a taxation year, means ½ of the aggregate of

(a) the insurer's policy loans and foreign policy loans as at the end of the year, and

(b) the insurer's policy loans and foreign policy loans as at the end of the immediately preceding taxation year;

"mean total reserve liabilities" of an insurer for a taxation year means ½ of the aggregate of

(a) the insurer's total reserve liabilities as at the end of the year, and

(b) the insurer's total reserve liabilities as at the end of the immediately preceding taxation year;

"property and casualty surplus" of an insurer for a taxation year means the aggregate of

(a) 15 per cent of ½ of the aggregate of

(i) the insurer's unearned premium reserve as at the end of the year, and

(ii) the insurer's unearned premium reserve as at the end of the immediately preceding taxation year,

as reported to the relevant authority in respect of its property and casualty insurance business,

(b) 15 per cent of ½ of the aggregate of

(i) the insurer's provision for unpaid claims and adjustment expenses as at the end of the year, and

(ii) the insurer's provision for unpaid claims and adjustment expenses as at the end of the immediately preceding taxation year,

as reported to the relevant authority in respect of its property and casualty insurance business, and

(c) ½ of the aggregate of

(i) the insurer's investment valuation reserve as at the end of the year, and

(ii) the insurer's investment valuation reserve as at the end of the immediately preceding taxation year,

as reported to the relevant authority in respect of its property and casualty insurance business;

"property of the insurer in the course of development" — [Revoked]

"relevant authority" means

(a) the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or

(b) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated;

"total reserve liabilities" of an insurer, as at the end of a taxation year, means the aggregate amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of amounts payable out of segregated funds) in respect of all its insurance policies, as determined for the purposes of the relevant authority at the end of the year;

"valuation", in respect of a property of an insurer, designated corporation, partnership or trust (in this definition referred to as an "owner") at a particular time, means, in the case of

(a) land, the cost thereof to the owner,

(b) depreciable property of a prescribed class (other than a property referred to in paragraph (f)), the proportion of the owner's undepreciated capital cost at that time of property of the class that

(i) the owner's capital cost of the property

is of

(ii) the owner's capital cost of all property of the class,

(c) property that would have been depreciable property of a prescribed class if it had been situated in Canada and used in the year in, or held in the year in the course of, carrying on an insurance business in Canada, the amount, if any, by which

(i) the owner's capital cost of the property

exceeds

(ii) the amount that would have been the total depreciation allowed to the owner before the particular time in respect of the property if it had been the owner's only depreciable property of the class and the owner had claimed the maximum amount allowable under paragraph 20(1)(a) of the Act in respect of property of that class for each year in which the owner owned the property,

(d) a share of a corporation (other than a designated corporation), the cost thereof to the owner,

(e) a bond, debenture, mortgage, hypothec or agreement of sale (other than a property referred to in paragraph (f)), the book value thereof in the accounts of the owner as determined for the purposes of the relevant authority or that would have been so determined if the owner had been a life insurer resident in Canada and registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada,

(e.1) a balance standing to the owner's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, the amount thereof,

(f) a property acquired and disposed of in a taxation year, the cost thereof to the owner, and

(g) a property (other than a property referred to in any of paragraphs (a) to (f)), the maximum value of the property as determined for the purposes of the relevant authority or that would have been so determined if the owner had been a life insurer resident in Canada and registered under the *Canadian and British Insurance Companies Act* to carry on an insurance business in Canada,

minus

(h) in respect of a particular property referred to in any of paragraphs (a) to (g), the amount of any debt that was incurred or assumed by the owner to acquire that particular property and that was owing by the owner at that time;

"value for the year", in respect of a property of an insurer, designated corporation, partnership or trust (in this definition referred to as an "owner") for a taxation year, means, in the case of

(a) a property that is a mortgage, a hypothec, an agreement of sale or an investment property that is a balance standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, the amount, if any, by which

(i) the amount obtained when the gross investment revenue for the year from the property is divided by the average rate of interest earned by the owner (expressed as an annual rate) on the amortized cost of the property during the year if that rate of interest were expressed as a fraction

exceeds

(ii) the amount obtained when the interest paid or payable for the year on a debt incurred for the purposes of acquiring the property is divided by the average rate of interest paid or payable by the owner (expressed as an annual rate) on the debt for the year if that rate of interest were expressed as a fraction,

(b) a property (other than a property referred to in paragraph (a)) that was not owned by the owner throughout the year, the proportion of

(i) the valuation of the property as at the end of the immediately preceding taxation year, where the property was owned by the owner at that time, and

(ii) the valuation of the property, where it was acquired by the owner during the year,

that

(iii) the number of days that the property may reasonably be considered to have been owned by the owner during the taxation year

is of

(iv) the number of days in the taxation year, and

(c) a property (other than a property referred to in paragraph (a) or (b)), ½ of the aggregate of

(i) the valuation of the property as at the end of the year, and

(ii) the valuation of the property as at the end of the immediately preceding taxation year.

Related Provisions: Reg. 2405(5) — Mark-to-market rule to be ignored.

History: Para. (d) of the definition "Canadian investment property" in subsec. 2405(3) amended by P.C. 1994-1817, para. 62(e), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. (g) of "gross Canadian life investment income" amended by P.C. 1992-2335, Sch. II, s. 5, November 19, 1992, *Canada Gazette*, Part II, December 16, 1992, applicable to taxation years beginning after June 17, 1987 and ending after 1987.

"Canadian equity property", "Canadian investment fund", "Canadian investment fund for the year", "Canadian reserve liabilities", "designated corporation", "equity limit for the year", "equity property", "gross Canadian life investment income", "investment property", "life equity limit", "life surplus factor", "relevant authority", "valuation", "value for the year" amended; "Canadian investment property", "foreign policy loan", "mean policy loans", "mean policy loans and foreign policy loans" added; and "property of the insurer in the course of development" revoked, by P.C. 1990-2002, s. 8, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987, except that

(a) the amendments to "Canadian reserve liabilities" and to subparas. (b)(iii), (iv) and (viii) of "Canadian investment fund" are applicable in respect of 1987 *et seq.*

"Canadian investment fund" in respect of a life insurer resident in Canada and "Canadian investment fund" in respect of a non-resident insurer substituted by P.C. 1981-2121, s. 2, July 29, 1981, *Canada Gazette*, Part II, August 12, 1981, effective December 12, 1979.

That portion of "life equity limit" preceding para. (c) and following subpara. (b)(ii) substituted by P.C. 1980-2081, s. 6, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective in respect of 1978 *et seq.*

"Equity limit for the year", subpara. (a)(ii) corrected by *Canada Gazette*, Part II, July 23, 1980, *errata*.

"Equity limit for the year" substituted, "mean total reserve liabilities" added by P.C. 1980-1484, s. 4, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978 *et seq.*

"Gross Canadian life investment income", preceding para. (a) and "investment property", para. (d) and "valuation" corrected by *Canada Gazette*, Part II, October 24, 1979, *errata*.

(4) For the purposes of the definition in subsection (3), "Canadian investment fund" in respect of a life insurer resident in Canada, notwithstanding the definitions "Canadian reserve liabilities" and "total reserve liabilities" in that subsection, the insurer shall determine its liabilities and reserves in respect of its insurance policies outside Canada in a manner consistent with that used in determin-

ing its liabilities and reserves in respect of its insurance policies in Canada.

Proposed Addition — Reg. 2405(5) [temporary]

(5) For the purposes of subsection (3), the cost of a property shall be determined without regard to subsection 142.5(2) of the Act.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 3(11), will add subsec. 2405(5), applicable to taxation years that end after October 30, 1994.

Technical Notes: New subsection 2405(5) contains a rule for the purposes of the definitions in subsection 2405(3). It provides that the cost of property is to be determined without regard to the mark-to-market requirement in subsection 142.5(2) of the Act. Thus, the cost of mark-to-market property will not change each year for the purpose of the definitions in subsection 2405(3). This rule is relevant for determining the "valuation" of shares, and hence the "value for the year" of shares. As a consequence of this rule, the original cost of shares to an insurer will generally be used in measuring the Canadian investment fund, designating property, and determining any additional investment revenue prescribed by section 2411.

Definitions [Reg. 2405]: "allowable capital loss" — ITA 38(b), 248(1); "amortized cost", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "attributed surplus for the year" — Reg. 2405(3); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canada security" — ITA 138(12); "Canadian business property", "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund for the year" — Reg. 2405(3); "Canadian partnership" — ITA 102, 248(1); "Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "Canadian resource property" — ITA 66(15), 248(1); "capital property" — ITA 54, 248(1); "common share" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "designated corporation" — Reg. 2405(3); "dividend" — ITA 248(1); "equity limit for the year" — Reg. 2405(3); "equity property", "foreign policy loan" — Reg. 2400(1), 2405(3); "gross investment revenue" — ITA 138(12), Reg. 2405(1); "gross revenue" — ITA 248(1); "immediately preceding taxation year" — Reg. 2409(1), (4); "income bond", "income debenture", "insurance policy", "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life equity limit" — Reg. 2405(3); "life insurance business" — ITA 248(1); "life insurance policy", "life insurance policy in Canada" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "life surplus factor" — Reg. 2405(3); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "mean Canadian reserve liabilities", "mean policy loans" — Reg. 2400(1), 2405(3); "mean policy loans and foreign policy loans", "mean total reserve liabilities" — Reg. 2405(3); "non-resident" — ITA 248(1); "non-segregated property" — ITA 138(12), Reg. 2405(1); "officer" — ITA 248(1); "other than life insurance business" — Reg. 2400(2); "outstanding premiums" — Reg. 2400(1); "owner" — Reg. 2405(3); "participating life insurance policy" — ITA 138(12), Reg. 2405(1); "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "property and casualty surplus" — Reg. 2400(1), 2405(3); "province" — *Interpretation Act* 35(1); "relevant authority" — Reg. 2405(3); "resident in Canada" — ITA 250; "segregated fund" — ITA 138.1(1), Reg. 2400(1), 2405(1); "share" — ITA 248(1); "small business bond" — ITA 15.2(3), 248(1); "small business development bond" — ITA 15.1(3), 248(1); "surplus funds derived from operations" — ITA 138(12), Reg. 2405(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249; "total depreciation" — ITA 13(21), Reg. 2405(1); "total reserve liabilities" — Reg. 2405(3); "trust" — ITA 104(1), 248(1), (3); "undepreciated capital cost" — ITA 13(21), 248(1); "valuation" — Reg. 2405(3); "value" — Reg. 2400(1); "value for the year" — Reg. 2405(3).

2406. Notwithstanding any other provision in this Part, an insurance property or an investment property, in respect of an insurer, does not include a policy loan payable to the insurer.

Definitions [Reg. 2406]: "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "policy loan" — ITA 138(12), Reg. 2405(1).

Proposed Amendment — Reg. 2404–2406

2404. Prescribed amount — For the purpose of subparagraph 138(5)(b)(iv) of the Act, the prescribed amount in respect of an insurer for a taxation year is that proportion of the total of all amounts each of which is an amount of interest described in paragraph 20(1)(c) of the Act that is payable by the insurer in respect of the year on borrowed money (other than borrowed money used to acquire property or used or held by a segregated fund) used by the insurer for the purpose of earning income from an insurance business carried on by it in Canada or an amount otherwise deductible under paragraph 20(1)(d) of the Act for the year that is paid in the year on such interest, that

> (a) the total of the amount described in subparagraph (a)(ii) or (b)(ii), as the case may be, of the definition "Canadian investment fund" in subsection 2400(1) in respect of the insurer as at the end of the year and the amount so described as at the end of its preceding taxation year

is of

> (b) the total of the amount described in clause (a)(ii)(A) or clause (b)(ii)(A), as the case may be, of the definition "Canadian investment fund" in subsection 2400(1) in respect of the insurer as at the end of the year and the amount so described as at the end of its preceding taxation year.

Definitions [Reg. 2404]: "amount", "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "insurer", "prescribed", "property" — ITA 248(1); "segregated fund" — ITA 138.1(1), Reg. 2400(1), 2405(1); "taxation year" — ITA 249.

2405. Policy loans — Notwithstanding any other provision in this Part, a designated insurance property or an investment property of an insurer does not include a policy loan payable to the insurer.

Application: The September 19, 1997 draft regulations (insurance companies), s. 4, will amend s. 2404 to read as above, repeal s. 2405 (but see proposed Reg. 2400) and amend and renumber s. 2406 as s. 2405, applicable to 1997 [to be changed to 1999; see July 29/99 news release in Proposed Amendment under Reg. 2400-2401] *et seq.* (The definition will be moved to Reg. 2400.)

Technical Notes: Existing section 2404 provides that where an amount is determined in foreign currency, the amount must be converted to Canadian currency on the date on which is amount is determined. This rule is considered unnecessary because under the Income Tax Act amounts in foreign currency must (in the absence of any specific rule to the contrary) be converted into Canadian currency.

Amended section 2404, which is unrelated to existing section 2404, sets out the amount of interest which an insurer is permitted to deduct under amended subparagraph 138(5)(b)(iv) of the Act. Subsection 138(5) of the Act prohibits resident multinational life insurers and non-resident insurers from deducting any interest expense in computing their income from carrying on a Canadian insurance business except in limited circumstances. Interest deductibility is currently permitted under subparagraph 138(5)(b)(i) where the interest is payable on borrowed money used to acquire designated insurance property and under subparagraph 138(5)(b)(ii) on amounts payable for designated insurance property. New subparagraph 138(5)(b)(iv) allows insurers to deduct interest not in excess of a prescribed amount: amended section 2404 sets out that amount.

More specifically, the prescribed amount is equal to the amount of interest which would otherwise be deductible (but for the restrictions in subsection 138(5) of the Act) by the insurer

under paragraph 20(1)(c) or 20(1)(d) of the Act multiplied by the ratio A/B where

A is the amount of the insurer's balance sheet liabilities, in respect of its Canadian insurance business, which do not relate to insurance policies, a segregated fund or a debt incurred to acquire a property (the amount being referred to in these notes as its a "general liabilities"), less

- the value for the year of the insurer's non-investment property that is factually used in carrying on an insurance business in Canada,
- where the insurer is a Canadian resident, the amount deductible from its general liabilities in computing its Canadian investment fund on account of its financial institution allowance, and
- the insurer's year-end balance sheet deferred tax debit balance in respect of an insurance business carried on in Canada; and

B is the insurer's general liabilities.

In general terms, amended section 2404 is intended to determine the amount of an insurer's interest expense which is attributable to its general borrowing and other non-specific liabilities to the extent that the borrowing or liability is used in carrying on a Canadian insurance business and is not held in respect of a segregated fund. As noted above, the only interest expense which can be included in the amount prescribed by regulation 2404 is interest which meets the criteria for deductibility under paragraph 20(1)(c) or (d) of the Act.

Amended section 2405 (which is, essentially, existing section 2406) provides that a policy loan payable to an insurer cannot be investment property or *"property used by it in the year in, or held by it in the year in the course of"* (as defined in subsection 138(12) of the Act) carrying on an insurance business. As a consequence of the repeal of the definition of *"property used by it in the year in, or held by it in the year in the course of"*, the reference to that definition is replaced with a reference to the new definition "designated insurance property".

Definitions [Reg. 2405]: "designated insurance property" — ITA 138(12), 248(1); "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "policy loan" — ITA 138(12), Reg. 2405(1).

2407. 1977 excess policy dividend deduction — For the purposes of paragraph 138(3.1)(b) of the Act, a life insurer's 1977 excess policy dividend is hereby prescribed to be the amount that is the lesser of

(a) the amount, if any, by which

(i) the amount determined under clause 138(3)(a)(iii)(A) of the Act for the insurer's 1977 taxation year (determined without reference to paragraph 138(3.1)(b) of the Act),

exceeds

(ii) the amount determined under clause 138(3)(a)(iii)(B) of the Act for the insurer's 1977 taxation year; and

(b) the amount, if any, by which

(i) the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1977 taxation year,

exceeds the aggregate of

(ii) the amount that would have been the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1977 taxation year if that reserve had been determined on the basis of the rules applicable to its 1978 taxation year,

(iii) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1977 taxation year in respect of participating life insurance policies in Canada, and

(iv) the amount, if any, by which

(A) the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1968 taxation year,

exceeds the aggregate of

(B) the amount that would have been the insurer's maximum tax actuarial reserve for its participating life insurance policies in Canada for its 1968 taxation year if that reserve had been determined on the basis of the rules applicable to its 1978 taxation year, and

(C) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1968 taxation year in respect of participating life insurance policies in Canada.

Definitions [Reg. 2407]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "dividend", "insurer", "life insurer" — ITA 248(1); "maximum tax actuarial reserve", "participating life insurance policy", "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed" — ITA 248(1); "taxation year" — ITA 249.

2408. 1977 carryforward deduction — For the purposes of subparagraph 138(4.2)(a)(iv) of the Act, a life insurer's 1977 carryforward deduction is hereby prescribed to be the amount, if any, by which

(a) the aggregate of

(i) the aggregate of amounts, each of which is an amount determined under paragraph 13(23)(b) of the Act in respect of property of a prescribed class of the insurer,

(ii) the aggregate of amounts each of which is a non-capital loss of the insurer for a taxation year ending after 1972 and before 1978 that would have been deductible by the insurer in computing its taxable income for a taxation year ending after 1977 if the Act were read without reference to subsection 111(7.2) thereof,

(iii) the amount prescribed by section 2407 to be the insurer's 1977 excess policy dividend deduction,

(iv) the amount determined under subparagraph 138(4.2)(b)(ii) of the Act in respect of the insurer,

(v) the amount determined under subparagraph 138(4.2)(c)(ii) of the Act in respect of the insurer,

(vi) the amount, if any, by which

(A) the aggregate of the insurer's maximum tax actuarial reserves for its 1977 taxation year,

exceeds

(B) the aggregate of the amounts deducted by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(i) of the Act, and

(vii) the amount, if any, by which

(A) the maximum amount deductible by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(ii) of the Act,

exceeds

(B) the amount deducted by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(ii) of the Act,

exceeds

(b) the amount, if any, by which the aggregate of

(i) the lesser of

(A) the insurer's accumulated 1968 deficit, and

(B) the amount, if any, determined under subparagraph (vi),

(ii) the aggregate of the insurer's maximum tax actuarial reserves for its 1977 taxation year, other than reserves or any portions thereof in respect of segregated fund policies, and

(iii) the maximum amount deductible by the insurer for its 1977 taxation year under subparagraph 138(3)(a)(ii) of the Act,

exceeds the aggregate of

(iv) the aggregate of the amounts that would have been the insurer's maximum tax actuarial reserves for its 1977 taxation year if those reserves had been determined on the basis of the rules applicable to its 1978 taxation year,

(v) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1977 taxation year, and

(vi) the amount, if any, by which

(A) the aggregate of the insurer's maximum tax actuarial reserves for its 1968 taxation year, other than reserves or any portions thereof in respect of segregated fund policies,

exceeds the aggregate of

(B) the aggregate of the amounts that would have been the insurer's maximum tax actuarial reserves for its 1968 taxation year if those reserves had been determined on the basis of the rules applicable to its 1978 taxation year, and

(C) the aggregate of all amounts payable to the insurer in respect of policy loans outstanding at the end of its 1968 taxation year.

History: All that portion of s. 2408 preceding para. (a) substituted by P.C. 1980-540, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980, effective in respect of 1978 *et seq.*

Definitions [Reg. 2408]: "accumulated 1968 deficit" — ITA 138(12), Reg. 2405(1); "amount", "dividend", "insurer", "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "non-capital loss" — ITA 111(8), 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "segregated fund policies" — ITA 138.1(1), Reg. 2400(1), 2405(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

2409. Transitional — (1) For the purposes of this Part, except as expressly otherwise provided therein, where the expression "immediately preceding taxation year" refers to an insurer's 1977 taxation year, this Part shall be read as though the definitions therein applied to the insurer's 1977 taxation year.

(2) For the purposes of applying the provisions of paragraph 2400(1)(c) in respect of the 1978 taxation year of an insurer that was subject to the provisions of subsection 138(9) of the Act in respect of its 1977 taxation year, the following rules apply:

(a) this Part shall be read as though the definitions therein applied to the insurer's 1977 taxation year;

(b) such portion of the insurer's Canadian equity property owned by it at the end of its 1977 taxation year as is designated by the insurer in respect of a particular insurance business, in its return of income required by subsection 150(1) of the Act to be filed for the 1978 taxation year, shall be deemed to be investment property of the prior year in respect of the particular insurance business, but the aggregate valuation as at the end of the insurer's 1977 taxation year of the Canadian equity property so designated in respect of all its insurance businesses carried on in Canada shall not exceed

(i) in the case of a life insurer resident in Canada, or a non-resident life insurer that has made the election referred to in subsection 2401(1) in respect of its 1978 taxation year, that proportion of

(A) the insurer's Canadian investment fund as at the end of its 1977 taxation year (determined on the basis of the rules applicable to its 1978 taxation year),

that

(B) the aggregate valuation of the insurer's equity property as at the end of the insurer's 1977 taxation year

is of

(C) the aggregate valuation of the insurer's investment property as at the end of the insurer's 1977 taxation year,

(ii) in the case of a non-resident life insurer, other than an insurer referred to in subparagraph (i), eight per cent of its Canadian investment fund as at the end of its 1977 taxation year (determined on the basis of the rules applicable to its 1978 taxation year), and

(iii) in any other case, 25 per cent of the insurer's Canadian investment fund as at the end of its 1977 taxation year (determined on the basis of the rules applicable to its 1978 taxation year);

(c) where the insurer made an election under subsection 138(9) of the Act in respect of its 1977 taxation year, investment property (other than a Canadian equity property) owned by the insurer at the end of its 1977 taxation year that was designated in respect of a particular insurance business by the insurer in its return of income for the 1977 taxation year pursuant to paragraph 138(12)(l) of the Act as it read in its application to that year shall be deemed to be insurance property of the particular insurance business in the 1977 taxation year;

(d) where the insurer did not make the election referred to in paragraph (c) and carried on only one insurance business in Canada in its 1977 taxation year, investment property (other than a Canadian equity property) owned by the insurer at the end of its 1977 taxation year that is a specified Canadian asset of the insurer within the meaning of subsection 2405(1) as it read in its application to the 1977 taxation year shall be deemed to be insurance property of that insurance business in the 1977 taxation year; and

(e) where the insurer did not make the election referred to in paragraph (c) and carried on an other than life insurance business in Canada and a life insurance business in Canada in its 1977 taxation year, investment property (other than a Canadian equity property) owned by the insurer at the end of its 1977 taxation year each of which is a specified Canadian asset of the insurer, within the meaning of subsection 2405(1) as it read in its application to the 1977 taxation year, in re-

spect of which the aggregate value for the year in respect of the insurer's 1978 taxation year is equal to the amount, if any, by which

(i) the insurer's mean Canadian reserve liabilities for its 1978 taxation year in respect of its other than life insurance business

exceeds

(ii) the aggregate value for the year in respect of the insurer's 1978 taxation year of its insurance property of its other than life insurance business as determined for the purposes of clause 2400(1)(c)(ii)(C),

shall be deemed to be insurance property of the other than life insurance business in the 1977 taxation year and any other such investment property that is a specified Canadian asset of the insurer shall be deemed to be insurance property of the life insurance business in the 1977 taxation year.

History: Paras. 2409(2)(c) substituted, (d), (e) added, by P.C. 1980-1484, s. 5, June 5, 1980, *Canada Gazette*, Part II, June 25, 1980, effective for 1978.

(3) For the purposes of applying the provisions of section 2402 in respect of the 1978 taxation year of a life insurer, the following rules apply:

(a) for the purposes of subparagraphs 2402(a)(i) and (b)(ii), the insurer's maximum tax actuarial reserve for its 1977 taxation year in respect of participating life insurance policies in Canada shall be deemed to be the amount referred to in subparagraph 2407(b)(ii);

(b) for the purposes of clause 2402(a)(ii)(A), the insurer's maximum tax actuarial reserve for its 1977 taxation year in respect of a class of life insurance policies in Canada shall be deemed to have been determined on the basis of the rules applicable to its 1978 taxation year; and

(c) for the purposes of subparagraph 2402(b)(i), the amount deducted by the insurer under subparagraph 138(3)(a)(iv) of the Act in computing its income for the 1977 taxation year shall be deemed to be the amount that is the aggregate determined under paragraph 138(4.2)(b) of the Act in respect of the insurer.

(4) Except as expressly otherwise provided in this Part, where the expression "immediately preceding taxation year" occurs in a provision of this Part (other than section 2402) and refers to the insurer's 1987 taxation year, the provision shall be read as though the definitions in this Part applied to the insurer's 1987 taxation year.

History: Subsec. 2409(4) added by P.C. 1990-2002, s. 9, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 2409]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian reserve liabilities", "equity property" — Reg. 2400(1), 2405(3); "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurance business" — ITA 248(1); "life insurance policy" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "maximum tax actuarial reserve" — ITA 138(12), Reg. 2405(1); "mean Canadian reserve liabilities" — Reg. 2400(1), 2405(3); "non-resident" — ITA 248(1); "other than life insurance business" — Reg. 2400(2); "participating life insurance policy" — ITA 138(12), Reg. 2405(1); "particular insurance business" — Reg. 2400(1); "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "valuation", "value for the year" — Reg. 2405(3).

2410. Prescribed amount — (1) The amount prescribed for the purposes of subsection 138(4.4) of the Act shall be computed for a taxation year as the aggregate of all amounts each of which is the specified percentage for the year of the amount determined, in respect of a property for a period in the year referred to in that subsection by the formula

$$\left[(A \times B) \times \frac{C}{D} \times \frac{E}{365}\right] - F$$

where

Proposed Amendment — Reg. 2410(1)

2410. Prescribed amount — For the purpose of subsection 138(4.4) of the Act, the amount prescribed in respect of a property for a period in a taxation year is the amount determined by the formula

$$[(A \times B) \times C/365] - D$$

where

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 5(1), will amend the portion of subsec. 2410(1) before the description of A to read as above, applicable to 1997 *et seq.*

Technical Notes: Section 2410 sets out the rules for determining the prescribed amount for the purposes of subsection 138(4.4) of the Act. Subsection 138(4.4) of the Act applies where a life insurer owns vacant real property or real property under development and the property is designated by the insurer as property used or held by it in the year in the course of carrying on an insurance business in Canada or is factually used or held in such a business.

Subsection 138(4.4) has been amended by replacing the reference to property *"used by it in the year, or held by it in the year in the course of"* with a reference to the new definition *"designated insurance property"*, and to clarify that an amount is prescribed in respect of each property which is subject to the rule. The amount prescribed for this purpose continues to be determined under amended section 2410.

Existing subsection 2410(1) provides that the prescribed amount is the specified percentage (as set out in subsection 2410(2)) of the amount determined by the formula

$$[(A \times B) \times C/D \times E/365] - F$$

where

A is the average annual interest rate (as set out in Regulation 4301) for the period while the property was vacant or undeveloped

B is the average cost or capital cost of the property (net of the average amount of debt on the property)

C is the insurer's Canadian reserve liabilities less policy loans and premiums receivable

D is either:

(i) the value of the insurer's investment property less the insurer's indebtedness where the life insurer is resident in Canada but does not carry any insurance business outside Canada, or

(ii) the insurer's Canadian investment fund where the life insurer carries on an insurance business outside Canada

E is the number of days in the period

F is the insurer's net income earned on the property

Consistent with the amendments to subsection 138(4.4) of the Act, subsection 2410(1) is amended so that a prescribed amount is determined in respect of each property which is subject to subsection 138(4.4). Subsection 2410(1) is also simplified by deleting the portion of the formula which prorates the imputed interest. Accordingly, the formula is simplified to

$$[(A \times B) \times C/365] - D$$

where

A is existing A

B is existing B

C (which is existing E) is the number of days in the relevant period, and

D (which is existing F) is the net income actually earned on the property in the period

A is the average annual rate of interest determined by reference to rates of interest prescribed in section 4301 for the months or portion thereof in the period;

B is the amount, if any, by which, the average cost or average capital cost, as the case may be, of the property for the period exceeds the average amount of debt relating to the acquisition of the property outstanding during the period that bears a fair market interest rate and, for this purpose,

(a) the average cost or average capital cost, as the case may be, of a property is the total of

(i) the aggregate of all amounts each of which is the cost or capital cost, as the case may be, if any, immediately before the beginning of the period in respect of the property, and

(ii) the aggregate of all amounts each of which is the proportion of any expenditure incurred on any day in the period in respect of the cost or capital cost, as the case may be, of the property that

(A) the number of days from that day to the end of the period

is of

(B) the number of days in the period, and

(b) the average amount of debt relating to the acquisition of a property is the amount, if any, by which the total of

(i) the aggregate of all amounts each of which is an indebtedness relating to the acquisition that was outstanding at the beginning of the period, and

(ii) the aggregate of all amounts each of which is the proportion of an indebtedness relating to the acquisition that was incurred on any day in the period that

(A) the number of days from that day to the end of the period

is of

(B) the number of days in the period,

exceeds

(iii) the aggregate of all amounts each of which is the proportion of an amount that was paid in respect of any indebtedness referred to in subparagraph (i) or (ii) on any day in the period (other than a payment of interest in respect thereof) that

(A) the number of days from that day to the end of the period

is of

(B) the number of days in the period;

C is the amount, if any, by which the Canadian reserve liabilities of the life insurer at the end of a taxation year that includes the period exceed the aggregate of the policy loans and the outstanding premiums under insurance policies in Canada of the insurer at the end of the year, as determined for the purposes of the relevant authority;

D is

(a) where the insurer is a life insurer that does not carry on an insurance business outside Canada, the amount, if any, by which

(i) the valuation of all property that is owned by the insurer at the end of the taxation year that includes the period and that is

(A) an investment property,

(B) money, or

(C) a balance (other than a property included under (A) or (B)) standing to the insurer's credit as or on account of amounts deposited with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee,

exceeds the total of

(ii) the aggregate of all amounts each of which is an amount outstanding at the end of the year in respect of a debt (other than a debt referred to in paragraph (h) of the definition "valuation" in subsection 2405(3) or an amount referred to in subparagraph (iii)) owing by the insurer in respect of money borrowed by the insurer (other than money used by the insurer for the purpose of earning income from a source that is not an insurance business), and

(iii) the aggregate of all amounts each of which is the amount of a cheque outstanding at the end of the year drawn on an account of the insurer maintained with a corporation authorized to accept deposits or to carry on the business of offering to the public its services as a trustee, or

(b) where the insurer is a life insurer not referred to in paragraph (a), the amount of the insurer's Canadian investment fund as at the end of the taxation year that includes the period;

E is the aggregate of the number of days in the period; and

F is the amount, if any, of the income of the person or partnership that owned the property in the period that was derived from the property for the taxation year that includes the period.

Proposed Amendment — Reg. 2410(1)C–F

C is the number of days in the period; and

D is the income derived from the property in the period by the person or partnership that owned the property.

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 5(2), will amend the descriptions of C and D and repeal the descriptions of E and F, applicable to 1997 *et seq.*

Technical Notes: See under Reg. 2410(1).

Related Provisions: ITA 257 — Negative amounts in formulas.

(2) The specified percentage for a taxation year in respect of an amount determined in respect of property under subsection (1) for a taxation year is the aggregate of

(a) that proportion of 20 per cent that the number of days in the taxation year that are after 1987 and before 1989 is of the number of days in the taxation year;

(b) that proportion of 40 per cent that the number of days in the taxation year that are after 1988 and before 1990 is of the number of days in the taxation year;

(c) that proportion of 60 per cent that the number of days in the taxation year that are after 1989 and before 1991 is of the number of days in the taxation year;

(d) that proportion of 80 per cent that the number of days in the taxation year that are after 1990 and before 1992 is of the number of days in the taxation year; and

(e) that proportion of 100 per cent that the number of days in the taxation year that are after 1991 is of the number of days in the taxation year.

Proposed Repeal — Reg. 2410(2)

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 5(3), will repeal subsec. 2410(2), applicable to 1997 *et seq.*

Technical Notes: Subsection 2410(2) was intended to phase-in the effect of subsection 138(4.4) of the Act and subsection 2410(1) when they were introduced in 1987. Subsection 2410(2) provides that an amount determined under subsection 2410(1) is included only on the basis of 20%, 40%, 60%, 80% and 100% of the amount for the 1988, 1989, 1990, 1991 and 1992 years. Subsection 2410(2) is now redundant and is being repealed. The repeal of subsection 2410(2) means that subsection 2410(1) becomes simply section 2410.

Definitions [Reg. 2410]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian reserve liabilities" — Reg. 2400(1); 2405(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "insurance policy", "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "life insurer" — ITA 248(1); "month" — *Interpretation Act* 35(1); "outstanding premiums" — Reg. 2400(1); "person" — ITA 248(1); "policy loan" — ITA 138(12), Reg. 2405(1); "prescribed", "property" — ITA 248(1); "relevant authority" — Reg. 2405(3); "taxation year" — ITA 249; "valuation" — Reg. 2405(3).

2411. (1) Subject to subsection (2), the amount prescribed in respect of an insurer for a taxation year for the purposes of paragraph 138(9)(b) of the Act shall be the amount determined by the formula

$$A - (B + C)$$

Proposed Amendment — Reg. 2411(1)

$$A - (B + B.1 + C)$$

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(1), will amend the formula in subsec. 2411(1) to read as above, applicable to 1995 *et seq.*

Technical Notes: See under Reg. 2411(1)B.1 below.

where

A is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (3);

B is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of investment property designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada; and

Proposed Amendment — Reg. 2411(1)B

B is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of the insurer's investment property that is designated insurance property for the year;

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(1), will amend the description of B in subsec. 2411(1) to read as above, applicable to 1997 *et seq.*

Technical Notes: Section 2411 sets out the rules for determining the prescribed amount which is required to be included in an insurer's income under paragraph 138(9)(b) of the Act.

Paragraph 138(9)(a) of the Act requires multinational life insurers and non-resident insurers to include in computing income for a year from a Canadian insurance business the gross investment revenue that is derived from property which is considered, under a set of prescribed rules, to be used in that insurance business. Paragraph 138(9)(b) requires such insurers to also include in their income from carrying on an insurance business in Canada the amount prescribed in section 2411 of the Regulations.

Section 2411 is intended to restrict the ability of a multinational insurer to reduce its taxable income by having only the revenue from its low-yielding assets included in computing its Canadian income. Under Part XXIV of the Regulations, an insurer is required to choose (a process referred to as the designation of property), from among all of its investment assets, those assets which can be considered to be used in carrying on the Canadian portion of its insurance businesses. The value of its assets which must be designated in respect of a taxation year cannot be less than its Canadian investment fund for the year (for further details see the commentary on amended subsection 2401, above). Absent paragraph 138(9)(b) of the Act and section 2411, an insurer could fill its Canadian investment fund with its lowest-yielding assets thereby failing to provide a reasonable representation of its income from its Canadian insurance operations.

Subsection 2411(1) prescribes the amount for the purposes of paragraph 138(9)(b). The amount is the difference between the insurer's average net investment revenue for the year (as determined under subsection 2411(3)) and the insurer's net investment revenue earned on its designated property (as determined under subsection 2411(4)). The amount may be reduced if the insurer has a carryover amount from its cumulative excess account. The cumulative excess account is made up of amounts in the seven preceding taxation years where the insurer's actual revenue in a preceding taxation year exceeded the minimum revenue, as determined under section 2411, for that preceding year.

Proposed Addition — Reg. 2411(1)B.1 [temporary]

B.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of property disposed of by the insurer that was, in the taxation year of disposition, investment property designated by the insurer under subsection 2400(1) as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(2), will add the description of B.1 to subsec. 2411(1), applicable to 1995 *et seq.*

Technical Notes: Subsection 138(9) of the Act requires a resident multinational life insurer or a non-resident insurer to include the following amounts in income:

(i) its gross investment revenue from property designated as property used or held by it in carrying on its insurance businesses in Canada; and

(ii) any additional amount that is prescribed.

Section 2411 prescribes an amount for this purpose that ensures that the insurer's net investment revenue from its designated property is not less than the net investment revenue that would be determined if the average rate of return on its designated assets of each class were equal to the average rate of return on all its investment property of that class. This prevents an insurer from understating its Canadian business income by designating assets with lower investment returns.

Subsection 2411(1) prescribes the additional amount, if any, that an insurer is required by paragraph 138(9)(b) of the Act to include in computing its income for a taxation year. This amount is equal to the difference between the insurer's minimum amount of net investment revenue for the year deter-

mined under subsection 2411(3) and the insurer's actual net investment revenue for the year from its designated property determined under subsection 2411(4). If, in preceding taxation years, the insurer's actual revenue has exceeded the required minimum, the insurer may have a carryforward amount that can be used to reduce the prescribed amount.

Subsection 2411(1) is amended as a consequence of the introduction of rules in subsection 142.4(4) of the Act that apply to the disposition of certain specified debt obligations (as defined in subsection 142.2(1) of the Act). The amendment includes in the determination of the insurer's actual net investment revenue for a particular taxation year the amount determined under new subsection 2411(4.1) in respect of specified debt obligations disposed of by the insurer at any time that were designated as property of an insurance business carried on by the insurer in Canada. The amount determined under subsection 2411(4.1) for a taxation year is equal to the net amount required by subsection 142.4(4) of the Act to be included in respect of the obligations in computing the income of the insurer for the year (or the net amount that is deductible in respect of the obligations, expressed as a negative amount).

Proposed Amendment — Reg. 2411(1)B.1

B.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of property disposed of by the insurer in a taxation year for which it was designated insurance property of the insurer; and

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(2), will amend the description of B.1 in subsec. 2411(1) to read as above, applicable to 1997 *et seq.*

Technical Notes: See under 2411(1)B.

C is the amount claimed by the insurer for the year in respect of any balance of its cumulative excess account at the end of the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(2) Where an amount computed under subsection (1) in respect of an insurer is a negative amount, that amount shall be deemed to be nil.

(3) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year shall be the amount determined by the formula

$$\left(\frac{A}{B}\times C\right)+\left(\frac{D}{E}\times F\right)+\left(\frac{G}{H}\times J\right)$$

Proposed Amendment — Reg. 2411(3) first formula [temporary]

$$\left(\frac{(A+A.1)}{B}\times C\right)+\left(\frac{D}{E}\times F\right)+\left(\frac{(G+G.1)}{H}\times J\right)$$

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(3), will amend the first formula in subsec. 2411(3) to read as above, applicable to 1995 *et seq.*

Technical Notes: Subsection 2411(3) provides for the computation of the minimum amount of net investment revenue that must be reported by an insurer for a taxation year. This revenue is calculated by determining average yield rates for either two or three classes of assets, and applying each rate to the amount of assets of the class that have been designated for the year as property of an insurance business carried on by the insurer in Canada. The amounts that are taken into account in determining average yield rates are specified by subsection 2411(4), and include gains and losses from the disposition of property. In the case of property that has not been designated as property of an insurance business carried on by the insurer in Canada, the amounts are determined as if the property had been so designated.

Subsection 2411(3) is amended as a consequence of the introduction of rules in subsection 142.4(4) of the Act that apply to the disposition of certain specified debt obligations. The amendment includes, in determining the average yield rate for a class of assets, the amount determined under new subsection 2411(4.1) in respect of those assets. The amount determined under subsection 2411(4.1) for a taxation year is equal to the net amount required by subsection 142.4(4) of the Act to be included in respect of the assets in computing the income of the insurer for the year (or the net amount that is deductible in respect of the assets, expressed as a negative amount).

The amendments to subsection 2411(3) apply to 1995 and subsequent taxation years.

or, where the value for the year of foreign investment property designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada is not greater than 5 per cent of the amount of the Canadian investment fund for the year of the insurer and the insurer so elects, the amount determined by the formula

$$\left[\frac{A}{B}\times(C+J)\right]+\left(\frac{D}{E}\times F\right)$$

Proposed Amendment — Reg. 2411(3) second formula [temporary]

$$\left[\frac{(A+A.1)}{B}\times(C+J)\right]+\left(\frac{D}{E}\times F\right)$$

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(4), will amend the second formula in subsec. 2411(3) to read as above, applicable to 1995 *et seq.*

Technical Notes: See under Reg. 2411(3) above.

where

Proposed Amendment — Reg. 2411(3)

(3) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year shall be the amount determined by the formula

$$\left[\frac{(A+A.1)}{B}\times C\right]+\left(\frac{D\times F}{E}\right)+\left(\frac{(G+G.1)}{H}\times J\right)$$

or, where the value for the year of the insurer's foreign investment property that is designated insurance property for the year is not greater than 5 per cent of the amount of the insurer's mean Canadian investment fund for the year and the insurer so elects in its return of income under Part I for the year, the amount determined by the formula

$$\left[\frac{(A+A.1)}{B}\times(C+J)\right]+\frac{(D\times F)}{E}$$

[where]

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(3), will amend the portion of subsec. 2411(3) before the description of A to read as above, applicable to 1997 *et seq.*

Technical Notes: Subsection 2411(3) sets out the computation of the minimum amount of net investment revenue that must be reported by an insurer for a taxation year. In general terms, the minimum net investment revenue is determined by multiplying the net investment revenue earned on the insurer's designated property by the ratio that the insurer's net investment revenue on all its investment property is to the value for the year of all its investment property. That ratio represents the average yield on the insurer's investment property. Multiplying the ratio by the value of the designated insurance property produces the average yield which should be earned on the insurer's investment prop-

erty. The actual computation in subsection 2411(3) measures the average yield for assets in each of the following groups of property:

- Canadian equity property,
- other Canadian investment property, and
- foreign investment property.

A is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of Canadian investment property (other than Canadian equity property) owned by the insurer at any time in the year;

Proposed Addition — Reg. 2411(3)A.1

A.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of Canadian investment property (other than Canadian equity property) disposed of by the insurer in the year or a preceding taxation year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(5), will add the description of A.1 to subsec. 2411(3), applicable to 1995 *et seq.*

Technical Notes: See under Reg. 2411(3) above.

B is the total value for the year of Canadian investment property (other than Canadian equity property) owned by the insurer at any time in the year;

C is the total value for the year of Canadian investment property (other than Canadian equity property) designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

Proposed Amendment — Reg. 2411(3)C

C is the total value for the year of the insurer's Canadian investment property (other than Canadian equity property) that is designated insurance property of the insurer for the year;

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(4), will amend the description of C in subsec. 2411(3) to read as above, applicable to 1997 *et seq.*

Technical Notes: See under 2411(3).

D is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of Canadian investment property that is Canadian equity property owned by the insurer at any time in the year;

E is the total value for the year of Canadian investment property that is Canadian equity property owned by the insurer at any time in the year;

F is the total value for the year of Canadian investment property that is Canadian equity property designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

Proposed Amendment — Reg. 2411(3)F

F is the total value for the year of the insurer's Canadian investment property that is Canadian equity property that is designated insurance property of the insurer for the year;

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(5), will amend the description of F in subsec. 2411(3) to read as above, applicable to 1997 *et seq.*

Technical Notes: See under 2411(3).

G is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4) in respect of foreign investment property owned by the insurer at any time in the year;

Proposed Addition — Reg. 2411(3)G.1

G.1 is the positive or negative amount, as the case may be, determined in respect of the insurer for the year under subsection (4.1) in respect of foreign investment property disposed of by the insurer in the year or a preceding taxation year;

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(6), will add the description of G.1 to subsec. 2411(3), applicable to 1995 *et seq.*

Technical Notes: See under Reg. 2411(3) above.

H is the total value for the year of foreign investment property owned by the insurer at any time in the year; and

J is the total value for the year of foreign investment property designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada.

Proposed Amendment — Reg. 2411(3)J

J is the total value for the year of the insurer's foreign investment property that is designated insurance property of the insurer for the year.

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(6), will amend the description of J in subsec. 2411(3) to read as above, applicable to 1997 *et seq.*

Technical Notes: See under 2411(3).

(4) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year in respect of property shall be the amount determined by the formula

$$A - B$$

where

A is the aggregate of the following amounts determined in respect of the property for the year or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada:

(a) the insurer's gross investment revenue for the year (other than taxable dividends that were or would be deductible in computing the insurer's taxable income for the year under subsection 138(6) of the Act) derived from the property,

(b) all amounts that were or would be included in computing the insurer's income for the year under paragraph 138(4)(b) and (c) of the Act in respect of the property,

(c) all amounts that were or would be included in computing the insurer's taxable capital gains for the year from the disposition of the property,

(d) all amounts that were or would be included in computing the insurer's gains for the year from the disposition of the property (other than a Canada security or capital property),

(e) all amounts that were or would be included in computing the insurer's income for the year under subsection 13(1) of the Act in respect of the property,

(f) all amounts that were or would be included in computing the insurer's income for the year under paragraph 12(1)(d), (d.1) or (i) of the Act in respect of the property,

(g) all amounts that were or would be included in computing the insurer's income for the year under subsection 59(3.2) or (3.3) of the Act in respect of the property,

(h) all amounts that were or would be included in computing the insurer's income for the year under subsection 14(1) of the Act in respect of the property, and

(i) all other amounts that were or would be included in computing the insurer's income for the year in respect of the property; and

B is the aggregate of the following amounts determined in respect of the property for the year or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada:

(a) all amounts that were or would be included in computing the insurer's allowable capital losses for the year from the disposition of the property,

(b) all amounts that were or would be included in computing the insurer's losses for the year from the disposition of the property (other than a Canada security or capital property),

(c) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 138(3)(b) and (d) of the Act in respect of the property,

(d) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(a) of the Act in respect of the capital cost of the property or under paragraphs 20(1)(c) and (d) of the Act in respect of interest paid or payable on borrowed money used to acquire the property,

(e) where any such property is rental property or leasing property (within the meaning assigned by subsections 1100(14) and (17), respectively), all amounts that were or would be deductible in computing the insurer's income for the year in respect of expenses directly related to the earning of rental income derived from the property,

(f) all amounts that were or would be deductible by the insurer in computing the insurer's income for the year under paragraph 20(1)(l), (l.1) or (p) of the Act as reserve or bad debt in respect of the property,

(g) all amounts that were deducted or would be deductible in computing the insurer's income for the year under section 66, 66.1, 66.2 or 66.4 of the Act in respect of the property,

(h) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(b) of the Act in respect of the property, and

(i) all amounts that were or would be deductible in computing the insurer's income for the year in respect of other expenses directly related to the earning of gross investment revenue derived from the property.

Proposed Amendment — Reg. 2411(4)

(4) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year in respect of property shall be the amount determined by the formula

$$A - B$$

where

A is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada and if it had been insurance property of the insurer in respect of an insurance business in Canada for each preceding taxation year in which it was held by the insurer:

(a) the insurer's gross investment revenue for the year (other than taxable dividends that were or would be deductible in computing the insurer's taxable income for the year under subsection 138(6) of the Act) derived from the property,

(b) [Proposed repeal]

(c) all amounts that were or would be included in computing the insurer's taxable capital gains for the year from the disposition of the property,

(c.1) all amounts that were or would be included under paragraph 142.4(5)(e) of the Act in respect of the property in computing the insurer's income for the year,

(d) all amounts that were or would be included in computing the insurer's income for the year as gains from the disposition of such of the property as is not capital property or a specified debt obligation (as defined in subsection 142.2(1) of the Act),

(e) all amounts that were or would be included in computing the insurer's income for the year under subsection 13(1) of the Act in respect of the property,

(f) all amounts that were or would be included in computing the insurer's income for the year under paragraph 12(1)(d), (d.1) or (i) of the Act in respect of the property,

(g) all amounts that were or would be included in computing the insurer's income for the year under subsection 59(3.2) or (3.3) of the Act in respect of the property,

(h) all amounts that were or would be included in computing the insurer's income for the year under subsection 14(1) of the Act in respect of the property, and

(i) all other amounts that were or would be included in computing the insurer's income for the year in respect of the property otherwise than because of subsection 142.4(4) of the Act; and

B is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if it were insurance property of the insurer for the year in respect of an insurance business in Canada and if it had been insurance property of the insurer in respect of an insurance

business in Canada for each preceding taxation year in which it was held by the insurer:

(a) all amounts that were or would be included in computing the insurer's allowable capital losses for the year from the disposition of the property,

(a.1) all amounts that were or would be deductible under paragraph 142.4(5)(f) of the Act in respect of the property in computing the insurer's income for the year,

(b) all amounts that were or would be deductible in computing the insurer's income for the year as losses from the disposition of such of the property as is not capital property or a specified debt obligation (as defined in subsection 142.2(1) of the Act),

(c) [Proposed repeal]

(d) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(a) of the Act in respect of the capital cost of the property or under paragraphs 20(1)(c) and (d) of the Act in respect of interest paid or payable on borrowed money used to acquire the property,

(e) where any such property is rental property or leasing property (within the meaning assigned by subsections 1100(14) and (17), respectively), all amounts that were or would be deductible in computing the insurer's income for the year in respect of expenses directly related to the earning of rental income derived from the property,

(f) all amounts that were or would be deductible by the insurer in computing the insurer's income for the year under paragraph 20(1)(l), (l.1) or (p) of the Act as reserve or bad debt in respect of the property,

(g) all amounts that were deducted or would be deductible in computing the insurer's income for the year under section 66, 66.1, 66.2 or 66.4 of the Act in respect of the property,

(h) all amounts that were or would be deductible in computing the insurer's income for the year under paragraph 20(1)(b) of the Act in respect of the property, and

(i) all amounts that were or would be deductible in computing the insurer's income for the year in respect of other expenses directly related to the earning of gross investment revenue derived from the property.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsecs. 4(7) to (13), will amend the opening words of the descriptions of A and B in subsec. 2411(4), will amend paras. (d) and (i) of the description of A and (b) of the description of B, will add paras. (c.1) to the description of A and (a.1) to the description of B, and will repeal paras. (b) of the description of A and (c) of the description of B; the opening words of the descriptions of A and B applicable to taxation years that end after June 1, 1995, paras. (b) and (i) of the description of A and para. (c) of the description of B applicable to taxation years that begin after February 22, 1994, paras. (d) and (c.1) to the description of A and paras. (a.1) and (b) to the description of B, applicable to dispositions of property that occur after February 22, 1994.

Technical Notes: Subsection 2411(4) provides that an insurer's net investment revenue from property of a particular class is determined by the formula "A - B", where A is the total of the gross investment revenue from the property, gains from the disposition of the property and other income inclusions in respect of the property, and B is losses from the property and other deductions in respect of the property. The amounts included in A and B in respect of property that has not been designated as property of an insurance business carried on by the insurer in Canada are determined as if the property had been so designated. Several changes are made to the determination of amounts A and B.

The descriptions of both A and B are amended to clarify that, in determining the amounts to be taken into account in respect of property that has not been designated, the property is to be treated as if it had been designated for each year from the time it was acquired.

The other changes to A are as follows:

- Paragraph (b) is repealed. This paragraph includes in A the amounts included in the insurer's income under paragraphs 138(4)(b) and (c) of the Act (profit on disposition of a Canada security, and amortization of discount on such a security). This amendment is consequential on the repeal of paragraphs 138(4)(b) and (c).
- New paragraph (c.1) includes in A the amounts that are included in the insurer's income by subsection 142.4(5) of the Act. That subsection includes in income the gain from the disposition of specified debt obligations after February 22, 1994 where the gain is not required to be amortized.
- Paragraph (d), which includes certain non-capital gains in A, is amended to replace the exclusion for gains from Canada securities by an exclusion for gains from specified debt obligations. Those gains are dealt with, in some cases, by new paragraph (c.1) and in other cases by new subsection 2411(4.1).
- Paragraph (i), which includes in A all amounts that are included in the insurer's income in respect of the property, but that are not specifically referred to in the preceding paragraphs, is amended so that it does not apply to amounts that are included in income by subsection 142.4(4) of the Act. New subsection 2411(4.1), in conjunction with amendments to subsections 2411(1) and (3), provides for subsection 142.4(4) amounts to be taken into account.

The changes to B, in addition to the change described [to A] above, are as follows:

- New paragraph (a.1) includes in B the amounts that are deductible under subsection 142.4(5) of the Act in computing the insurer's income. That subsection provides a deduction for the loss from the disposition of specified debt obligations after February 22, 1994 where the loss is not required to be amortized.
- Paragraph (b), which includes certain non-capital losses in B, is amended to replace the exclusion for losses from Canada securities by an exclusion for losses from specified debt obligations. Those losses are dealt with, in some cases, by new paragraph (a.1) and in other cases by new subsection 2411(4.1).
- Paragraph (c) is repealed. This paragraph includes in B the amounts that are deductible under paragraphs 138(3)(b) and (d) of the Act (loss on disposition of a Canada security, and amortization of premium on such a security). This amendment is consequential on the repeal of paragraphs 138(3)(b) and (d).

Proposed Amendment — Reg. 2411(4)A

A is the total of the following amounts determined in respect of the property for the year, or that would be determined in respect of the property for the year if the property were designated insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer:

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(7), will amend the opening words of the description of A in subsec. 2411(4) to read as above, applicable to 1997 *et seq.*

Technical Notes: Subsection 2411(4) sets out the rules for determining an insurer's net investment revenue for the purposes of computing the insurer's minimum net revenue in subsection 2411(1) and (3). Subsection 2411(4.1) serves the same function as subsection 2411(4), but in respect of certain specified debt obligations which are disposed of by an insurer.

Subsections 2411(1), (3), (4) and (4.1) are amended strictly as a consequence of the replacement of the definition *"property used by it in the year in, or held by it in the year in the course of"* in subsection 138(12) of the Act with the definition *"designated insurance property"*.

Related Provisions: ITA 257 — Negative amounts in formulas.

Proposed Addition — Reg. 2411(4.1)

(4.1) The positive or negative amount, as the case may be, determined under this subsection in respect of an insurer for a taxation year in respect of property disposed of by the insurer in the year or a preceding taxation year is the amount determined by the formula

$$A - B$$

where

A is the total of the amounts included under paragraphs 142.4(4)(a) and (c) of the Act in the insurer's income for the year in respect of the property, or that would be so included if the property had been insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer; and

B is the total of the amounts deductible under paragraphs 142.4(4)(b) and (d) of the Act in respect of the property in computing the insurer's income for the year, or that would be so deductible if the property had been insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer.

Related Provisions: ITA 257 — Negative amounts in formulas.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(14), will add subsec. 2411(4.1), applicable to 1995 *et seq.*

Technical Notes: New subsection 142.4(4) of the Act contains rules that apply with respect to the disposition of certain specified debt obligations. (The term "specified debt obligation" is defined in subsection 142.2(1) of the Act.) In particular, subsection 142.4(4) provides in general for the amortization of all or part of a gain or loss. New subsection 2411(4.1), in conjunction with amendments to subsections 2411(1) and (3), provides for the subsection 142.4(4) amounts to be taken into account in determining the amount, if any, prescribed by subsection 2411(1). A related amendment to subsection 2411(4) ensures that subsection 142.4(4) amounts are not taken into account twice.

New subsection 2411(4.1) determines an amount with respect to a group of specified debt obligations disposed of by an insurer before the end of a taxation year. (This includes obligations disposed of in preceding taxation years.) The amount for a year (which may be positive or negative) is equal to:

- the total of all amounts included by subsection 142.4(4) in the insurer's income for the year in respect of the obligations (or that would be so included if the property had been property of a Canadian insurance business)

minus

- the total of all amounts deductible under subsection 142.4(4) in respect of the obligations in computing the insurer's income for the year (or that would be so deductible if the property had been property of a Canadian insurance business).

Subsection 2411(4.1) is invoked by subsections 2411(1) and (3). For the purpose of subsection 2411(1), the subsection 2411(4.1) amount is determined in respect of specified debt obligations that were designated as property of an insurance business carried on by the insurer in Canada. Subsection 2411(3) provides for the subsection 2411(4.1) amount to be determined in respect of all specified debt obligations that are Canadian investment property, whether or not they have been designated by the insurer. It also provides for a similar determination in respect of specified debt obligations that are foreign investment property.

Proposed Amendment — Reg. 2411(4.1)A, B

A is the total of the amounts included under paragraphs 142.4(4)(a) and (c) of the Act in the insurer's income for the year in respect of the property, or that would be so included if the property were designated insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer; and

B is the total of the amounts deductible under paragraphs 142.4(4)(b) and (d) of the Act in respect of the property in computing the insurer's income for the year, or that would be so deductible if the property were designated insurance property of the insurer in respect of an insurance business in Canada for each taxation year in which it was held by the insurer.

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(8), will amend the descriptions of A and B in subsec. 2411(4.1) to read as above, applicable to 1997 *et seq.*

Technical Notes: See under 2411(4)A.

(5) For the purposes of subsection (4), a property that has not been designated by the insurer for the year pursuant to subsection 2400(1) as investment property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada shall be deemed to be a property used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in respect of which the property has been reported by the insurer in its annual report for the year to the relevant authority or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, that insurance business in respect of which the property would have been reported by the insurer in an annual report for the year if it had been so required by the relevant authority.

Proposed Repeal — Reg. 2411(5)

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 4(15), will repeal subsec. 2411(5), applicable to taxation years that begin after February 22, 1994.

Technical Notes: Where property has not been designated as property used or held in a Canadian insurance business, subsection 2411(4) applies on the assumption that the property had been so designated. Subsection 2411(5) contains an additional rule for this purpose. It provides that the property is to be considered property of the business in respect of which it is reported in the insurer's annual report. This rule was required because of the special rules for the tax treatment of debt obligations (referred to as Canada securities) that are property of a life insurance business. Subsection 2411(5) is repealed, for taxation years beginning after February 22, 1994, as a consequence of the repeal of the special rules for Canada securities.

(6) For the purposes of subsection (1), the balance of an insurer's cumulative excess account at the end of a taxa-

tion year shall be determined as the amount, if any, by which

(a) the aggregate of all amounts each of which is a positive amount, if any, determined in respect of each of such of its seven immediately preceding taxation years that began after June 17, 1987 and ended after 1987 by the formula

$$B - A$$

where A and B are the amounts determined under subsection (1) in respect of the insurer for such immediately preceding taxation year,

exceeds

(b) the aggregate of all amounts each of which is an amount claimed by the insurer under subsection (1) in respect of its cumulative excess account for a preceding taxation year that can be attributed to a positive amount determined under paragraph (a) for that year and, for the purpose of this paragraph, a positive amount determined in respect of a taxation year shall be deemed to have been claimed before a positive amount determined in respect of any subsequent taxation year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(7) For the purposes of subsection (3),

(a) where the aggregate value for the year of property designated by the insurer for the year pursuant to paragraphs 2400(1)(a) to (d) exceeds the minimum value for the year of property required to be designated by the insurer for the year pursuant to those paragraphs, the aggregate value for the year of the property determined for the year under each of C, F and J of the formula set out in subsection (3) shall not exceed that minimum value for the year of such property that is required to be designated by the insurer for the year pursuant to paragraphs 2400(1)(a) to (d); and

(b) for the purposes of paragraph (a), the value for the year of property required to be designated by the insurer for the year under F in the formula set out in subsection (3) shall be deemed to be the value for the year of such property designated by the insurer for the year.

Proposed Repeal — Reg. 2411(7)

Application: The September 19, 1997 draft regulations (insurance companies), subsec. 6(9), will repeal subsec. 2411(7), applicable to 1997 *et seq.*

Technical Notes: Subsection 2411(7) provides that subsection 2411(3) applies only to the extent that investment property must be designated by an insurer in accordance with the rules in paragraphs 2400(1)(a) to (d). Those paragraphs permitted an insurer to designate investment property with a total value in excess of that required to be designated for the year. The amended designation rules (for further details see the commentary on amended section 2401, above) do not allow such excess designations and, therefore, subsection 2411(7) is to be repealed.

(8) For the purposes of this section, "foreign investment property" of an insurer means investment property of the insurer (unless the insurer is a non-resident insurer and it is established by the insurer that the investment property is not effectively connected with its Canadian insurance businesses) that is not Canadian investment property of the insurer.

Definitions [Reg. 2411]: "allowable capital loss" — ITA 38(b), 248(1); "balance" — Reg. 2411(6); "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canada security" — ITA 138(12); "Canadian equity property" — Reg. 2400(1), 2405(3); "Canadian investment fund for the year" — Reg. 2405(3); "Canadian investment property" — Reg. 2400(1), 2405(3); "capital property" — ITA 54, 248(1); "designated insurance property" — ITA 138(12), 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "foreign investment property" — Reg. 2411(8); "gross investment revenue" — ITA 138(12), Reg. 2405(1); "immediately preceding taxation year" — Reg. 2409(1), (4); "insurance property" — Reg. 2400(1), 2406; "insurer" — ITA 248(1); "investment property" — Reg. 2400(1), 2405(3), 2406; "mean Canadian investment fund" — Reg. 2400(1); "non-resident", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "relevant authority" — Reg. 2405(3); "taxable capital gain" — ITA 38(a), 248(1); "taxable dividend" — ITA 89(1), 248(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "value for the year" — Reg. 2405(3), 2411(7)(b)"amount" — ITA 248(1); "mean Canadian investment fund" — Reg. 2400(1), 2411(5).

2412. (1) The amount of the Canadian investment fund for the year for a taxation year in respect of an insurer shall be determined by the formula

$$A + B$$

where

A is the mean Canadian investment fund for the year for the taxation year in respect of the insurer; and

B is the amount determined under subsection (2) in respect of the insurer for the taxation year.

(2) Subject to subsection (3), the amount determined under this subsection in respect of an insurer for the taxation year shall be determined by the formula

$$\frac{1}{2}\left[A - \frac{(B + 3C + 5D + 7E)}{F}\right]$$

where

A is the aggregate of B, C, D and E;

B is the positive or negative amount, as the case may be, determined under subsection (4) in respect of the insurer for the first three month period in the taxation year of the insurer;

C is the positive or negative amount, as the case may be, determined under subsection (4) in respect of the insurer for the second three month period in the taxation year of the insurer;

D is the positive or negative amount, as the case may be, determined under subsection (4) in respect of the insurer for the third three month period in the taxation year of the insurer;

E is the positive or negative amount, as the case may be, determined under subsection (4) in respect of the insurer for the fourth three month period in the taxation year of the insurer; and

F is the result obtained when the number of calendar months in the taxation year is divided by 3 and, where that result is not a whole number, it shall be rounded down to the next lower whole number.

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Where the taxation year of an insurer does not contain any three month period, the amount determined under subsection (2) in respect of the insurer shall be deemed to be nil.

(4) The positive or negative amount, as the case may be, determined in respect of an insurer for a particular three month period in a taxation year of the insurer shall be determined by the formula

$$A - B$$

where

A is the aggregate of all amounts each of which is

(a) an amount of a premium or consideration received by the insurer in the period in respect of a contract of insurance or an annuity (including a settlement annuity) entered into in the course of carrying on its insurance businesses in Canada,

(b) an amount received by the insurer in the period in respect of interest on or a repayment in respect of a policy loan made under a life insurance policy in Canada, or

(c) an amount received by the insurer in the period in respect of reinsurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) arising in the course of carrying on its insurance businesses in Canada and not otherwise included in paragraph (a) or (b); and

B is the aggregate of all amounts each of which is

(a) an amount of a claim or benefit (including a payment under an annuity or settlement annuity, a payment of a policy dividend and an amount paid on a lapsed or terminated policy) or a refund of premiums paid by the insurer in the period under a contract of insurance or an annuity in the course of carrying on its insurance businesses in Canada,

(b) an amount of a policy loan made by the insurer in the period under a life insurance policy in Canada,

(c) a premium or commission paid by the insurer in the period in respect of a contract of insurance or an annuity in the course of carrying on its insurance businesses in Canada, or

(d) an amount paid by the insurer in the period in respect of reinsurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) in the course of carrying on its insurance businesses in Canada and not otherwise included in paragraph (a), (b) or (c).

Related Provisions: ITA 257 — Negative amounts in formulas.

(5) For the purposes of this section, "mean Canadian investment fund for the year", means

(a) for a taxation year in respect of a life insurer resident in Canada, ½ of the aggregate of

(i) its Canadian investment fund as at the end of the year, and

(ii) its Canadian investment fund as at the end of the immediately preceding taxation year; and

(b) for a taxation year in respect of a non-resident insurer, ½ of the aggregate of

(i) its Canadian investment fund as at the end of the year, and

(ii) the amount that would be its Canadian investment fund as at the end of the immediately preceding taxation year if the insurer's attributed surplus for the year for that preceding year were its attributed surplus for the year for that taxation year.

Proposed Amendment — Reg. 2412

2412. (1) Mean Canadian investment fund — The mean Canadian investment fund of an insurer for a particular taxation year is the total of

(a) 1/2 of the total of

(i) its Canadian investment fund at the end of the particular year,

(ii) where the insurer is resident in Canada, its Canadian investment fund at the end of its preceding taxation year, and

(iii) where the insurer is non-resident, its Canadian investment fund at the end of its preceding taxation year determined as if its attributed surplus for that preceding year were its attributed surplus for the particular year; and

(b) the insurer's cash-flow adjustment for the particular year.

(2) Cash-flow adjustment — An insurer's cash-flow adjustment for a taxation year is the total of

(a) where the year ended 6 months or more after it began, the positive or negative amount determined by the formula

$$1/2 \left[A - \frac{(B + 3C + 5D + 7E)}{F} \right]$$

where

A is the total of B, C, D and E;

B is the amount determined under subsection (3) in respect of the insurer for the first 3-month period in the year;

C is the amount determined under subsection (3) in respect of the insurer for the second 3-month period in the year;

D is the amount determined under subsection (3) in respect of the insurer for the third 3-month period in the year;

E is the amount determined under subsection (3) in respect of the insurer for the fourth 3-month period in the year; and

F is the number of consecutive 3-month periods in the year; and

(b) the amount determined under subsection (4) in respect of the insurer for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Amounts paid and received — The amount determined in respect of an insurer for a particular 3-month period in a taxation year is the positive or negative amount determined by the formula

$$G - H$$

where

G is the total of all amounts (other than an amount included in subsection (4)) each of which is

(a) the amount of a premium or consideration received by the insurer in the period in respect of a contract of insurance (including a settlement annuity) entered into in the course of carrying on its insurance businesses in Canada,

(b) an amount received by the insurer in the period in respect of interest on or a repayment in respect of a policy loan made under a life insurance policy in Canada, or

(c) an amount received by the insurer in the period in respect of reinsurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) arising in the course of carrying on its insurance businesses in Canada; and

H is the total of all amounts (other than an amount included in subsection (4)) each of which is

(a) the amount of a claim or benefit (including a payment under an annuity or settlement annuity, a payment of a policy dividend and an amount paid on a lapsed or terminated policy), a refund of premiums, a premium or a commission paid by the insurer in the period under a contract of insurance in the course of carrying on its insurance businesses in Canada,

(b) the amount of a policy loan made by the insurer in the period under a life insurance policy in Canada, or

(c) an amount paid by the insurer in the period in respect of reinsurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) in the course of carrying on its insurance businesses in Canada.

Related Provisions: ITA 257 — Negative amounts in formulas.

(4) Daily adjustment — The amount determined under this subsection in respect of an insurer for a taxation year is the positive or negative amount determined by the formula

$$\frac{(I - J)}{2} - (K - L)$$

where

I is the total of all amounts each of which is an amount described in any of paragraphs (a) to (c) of the description of K;

J is the total of all amounts each of which is an amount described in any of paragraphs (a) to (c) of the description of L;

K is the total of all amounts each of which is the amount determined in respect of a day in the year equal to that proportion of the total of all amounts each of which is

(a) where the total of all amounts each of which is an amount received by the insurer in the year from a particular person or partnership or from a person affiliated with the particular person or partnership in respect of one or more contracts of insurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) entered into in the course of carrying on an insurance business in Canada exceeds $1,000,000, any such amount received by the insurer on the day,

(b) an amount received by the insurer on the day in respect of any indebtedness incurred or assumed for the purpose of carrying on an insurance business in Canada (other than indebtedness incurred or assumed to acquire a particular property) represented by bonds, debentures, notes, mortgages, bankers' acceptances, or similar obligations issued or assumed by the insurer or by any loan or advance made to the insurer, or

(c) where the insurer is resident in Canada in the year, that proportion of the total of all amounts each of which is the amount received by the insurer on the day in respect of the issuance of a share of the capital stock of the insurer that

(i) the total of the insurer's weighted Canadian liabilities as at the end of the year and its weighted Canadian liabilities as at the end of its preceding taxation year

is of

(ii) the total of the insurer's weighted total liabilities as at the end of the year and its weighted total liabilities as at the end of its preceding taxation year

that

(d) the number of days in the year before that day

is of

(e) the number of days in the year; and

L is the total of all amounts each of which is the amount determined in respect of a day in the year equal to that proportion of the total of all amounts each of which is

(a) where the total of all amounts each of which is an amount paid by the insurer in the year to a particular person or partnership or to a person affiliated with the particular person or partnership in respect of one or more contracts of insurance (other than reinsurance undertaken to effect a transfer of a business in respect of which subsection 138(11.5), (11.92) or (11.94) of the Act applies) entered into in the course of carrying on an insurance business in Canada exceeds $1,000,000 and an amount in respect of the contract was included in paragraph (a) of the description of K in any taxation year, any such amount paid by the insurer on the day,

(b) an amount paid (other than interest) by the insurer on the day in respect of any indebtedness incurred or assumed for the purpose of carrying on an insurance business in Canada (other than indebtedness incurred or assumed to acquire a particular property) represented by bonds, debentures, notes, mortgages, bankers' acceptances, or similar obligation issued or assumed by the insurer or by any loan or advance made to the insurer, or

(c) where the insurer is resident in Canada in the year, that proportion of the total of all amounts each of which is an amount paid on the day by the insurer to a shareholder of the insurer in respect of the redemption or cancellation of a share of the insurer's capital stock that

(i) the total of the insurer's weighted Canadian liabilities as at the end of the year and its weighted Canadian liabilities as at the end of its preceding taxation year

is of

(ii) the total of the insurer's weighted total liabilities as at the end of the year and its weighted total liabilities as at the end of its preceding taxation year

that

(d) the number of days in the year before that day is of

(e) the number of days in the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

Application: The September 19, 1997 draft regulations (insurance companies), s. 7, will amend s. 2412 to read as above, applicable to 1997 *et seq.*

Technical Notes: The cash flow adjustment (the "CFA") is designed to take account of the actual receipts and payments of an insurer throughout a taxation year in order to achieve a more accurate determination of the year-end Canadian investment fund (CIF) when the insurer's business does not grow or shrink uniformly during the year. This adjustment is necessary because the CIF for the year is simply the mean of the insurer's opening and closing CIFs for the year, but the value attributed to the property that is designated to fill this mean CIF is based on the number days in the year that the property was owned. Without the CFA, investment income earned on an investment property will be understated when the property is acquired in the first half of the year and overstated where the property is acquired in the second half of the year.

Example

Assume the following:

- opening CIF $100
- closing CIF $200
- mean CIF for the year 1/2($100 + $200) = $150
- The increase in the CIF over the year corresponded to the receipt of premium revenue, an increase in the insurer's reserve liabilities in respect of the premium, and acquisition of an investment property, with a carrying value equal to $100, at the very beginning of the year.

For designation purposes, the value for the year of the property is $100. Because the increase in the mean CIF for the year is only $50, however, only 1/2 of the value of the investment property need be designated to fill the increase in the mean CIF. Accordingly, only the investment revenue generated from $50 worth of the investment property will be included in the insurer's income.

In these circumstances the cash flow adjustment is designed to increase the insurer's CIF for the year by $50 to reflect the acquisition of the investment property at the beginning of the year.

The existing CFA increases or decreases the mean CIF based on the insurer's quarterly cash flows of the following items:

- premiums or consideration in respect of insurance contracts or annuities
- amounts in respect of interest on policy loans or repayments in respect of policy loans
- amounts in respect of reinsurance
- amounts in respect of claims, benefits, and refunds of premiums.

Because the cash flow is only measured quarterly, amounts in respect of contracts (such as cash annuities) which are outstanding for less than 90 days may not be included in the CFA (subject to the application of the anti-avoidance rule in section 245 of the Act, where the timing of the obligations is deliberately manipulated to over-weight redemptions prior to the end of a quarter) although the insurer could have earned investment income for 89 days on the amount received on the contract.

To address the above problems, a new daily CFA will apply a daily-weighting to amounts received or paid by an insurer in the following transactions:

- certain large life insurance, reinsurance and annuity contracts;
- an insurer's borrowing and debt instrument financing; and
- an insurer's equity financing.

The existing quarterly CFA will continue to apply except in respect of amounts which are included in the daily CFA.

History: Ss. 2410 to 2412 added by P.C. 1990-2002, s. 10, September 20, 1990, *Canada Gazette*, Part II, October 10, 1990, applicable in respect of taxation years beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 2412]: "affiliated" — ITA 251.1; "amount", "annuity" — ITA 248(1); "attributed surplus" — Reg. 2400(1); "attributed surplus for the year" — Reg. 2405(3); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian investment fund" — Reg. 2400(1), 2405(3), (4); "Canadian investment fund for the year" — Reg. 2405(3); "dividend" — ITA 248(1); "immediately preceding taxation year" — Reg. 2409(1), (4); "insurer" — ITA 248(1); "life insurance policy in Canada" — ITA 138(12), Reg. 2405(1); "life insurer" — ITA 248(1); "mean Canadian investment fund" — Reg. 2400(1); "month" — *Interpretation Act* 35(1); "non-resident" — ITA 248(1); "person" — ITA 248(1); "policy dividend" — ITA 139.1(8)(a); "policy loan" — ITA 138(12), Reg. 2405(1); "property" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "weighted Canadian liabilities", "weighted total liabilities" — Reg. 2400(1).

PART XXV — SPECIAL T1 TAX TABLE FOR INDIVIDUALS

History: Part XXV (ss. 2500, 2501) was added by P.C. 1981-1501, June 4, 1981, *Canada Gazette*, Part II, June 24, 1981, applicable to 1979 *et seq.* except that in its application to the 1979 taxation year all that portion of subsection 2500(2) following subparagraph (b)(ii) thereof does not apply and shall be read as follows:

minus the aggregate of

(iii) where applicable, an amount that is the aggregate of

(A) the deduction calculated under subsection 120(2) of the Act, and

(B) the amount by which the amount referred to in clause (A) is increased by virtue of section 30 of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*, and

(iv) a deduction from the tax under subparagraph (i), or that tax plus the additional tax under subparagraph (ii), as the case may be, as computed under subsection 120(3.1) of the Act,

calculated as if the amount taxable is equal to the average of the highest and lowest amounts taxable in the range and, where the resulting tax payable is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof.

2500. (1) For the purposes of subsection 117(6) of the Act,

(a) $55,605, adjusted for each taxation year after 1989 in the manner set out in subsection 117.1(1) of the Act, is the prescribed amount; and

(b) an "individual of a prescribed class" for a taxation year is

(i) an estate or trust,

(ii) an individual who was a non-resident person throughout the year, other than an individual

(A) whose amount taxable for the year was from

(I) the duties of an office or employment performed in one province,

(II) the carrying on of a business in one province, or

(III) any combination of sources described in subclauses (I) and (II) if all of those sources are located in one province, and

(B) who was not subject to any other provision of this subsection,

(iii) an individual who, on the last day of the year, resided in a province and had income for the year from a business with a permanent establishment, as defined in subsection 2600(2), outside the province,

(iv) an individual whose tax otherwise payable for the year under Part I of the Act is reduced by virtue of any of the following provisions of the Act:

(A) subsection 117(7),

(B) section 121,

(C) section 122.3, or

(D) section 126,

(v) an individual who makes an election in respect of the year under subsection 119(1) of the Act,

(vi) an individual eligible to pay tax at a reduced rate pursuant to subsection 40(7) of the *Income Tax Application Rules* on a payment made to him in the year, or

(vii) an individual who makes an election in respect of the year under subsection 110.4(2) of the Act.

History: Subpara. 2500(1)(b)(vi) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Para. 2500(1)(a) amended by P.C. 1990-760, April 26, 1990, *Canada Gazette*, Part II, May 9, 1990, applicable in respect of the 1989 and subsequent taxation years.

Para. 2500(1)(a) and subpara. (1)(b)(vii) amended by P.C. 1989-1926, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1988 *et seq.*

Para. 2500(1)(a) substituted by P.C. 1987-1817, subsec. 1(1), August 27, 1987, *Canada Gazette*, Part II, September 16, 1987, applicable to 1986 *et seq.*

Subpara. 2500(1)(b)(vii) added by P.C. 1986-207, January 23, 1986, *Canada Gazette*, Part II, February 5, 1986, applicable to 1985 *et seq.*

Subsec. 2500(1) substituted by P.C. 1985-908, subsec. 1(1), March 21, 1985, *Canada Gazette*, Part II, April 3, 1985, applicable to 1984 *et seq.*

All that portion of subsec. 2500(1) preceding para. (a) substituted by P.C. 1983-3016, subsec. 1, September 29, 1983, *Canada Gazette*, Part II, October 12, 1983, applicable to 1982 *et seq.*

(2) For the purposes of subsection 117(6) of the Act, a table of the tax payable for a taxation year shall be prepared in accordance with the following rules:

(a) the table shall be divided into ranges of amounts taxable not exceeding $10 each and shall specify the tax payable in respect of each range;

(b) the tax payable on an amount taxable within any range referred to in paragraph (a) shall be equal to the tax payable thereon for the year computed under subsection 117(2) of the Act and, where applicable, adjusted annually pursuant to section 117.1 of the Act; and

(c) the tax payable referred to in paragraph (b) shall be calculated as if the amount taxable is equal to the average of the highest and lowest amounts taxable in the range and, where the resulting tax payable is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof.

(3) For the purposes of subsection 117(6) of the Act, a table of the additional tax for income not earned in a province, the individual surtax and the refundable Quebec abatement for a taxation year shall be prepared in accordance with the following rules:

(a) the table shall be divided into ranges of tax payable not exceeding $2 each and shall specify, in respect of each range,

(i) the individual surtax payable,

(ii) where applicable, the additional tax for income not earned in a province, and

(iii) where applicable, the refundable Quebec abatement,

on every amount taxable within each such range;

(b) the tax payable referred to in paragraph (a) is the tax payable determined by the table prepared pursuant to subsection (2) less the allowable non-refundable credits under sections 118 to 118.9 of the Act;

(c) the individual surtax in respect of an amount of tax payable within any range referred to in paragraph (a) shall be the amount that is equal to the surtax thereon computed under subsection 180.1(1) of the Act;

(d) the additional tax for income not earned in a province in respect of an amount of tax payable within any range referred to in paragraph (a) shall be the amount that is equal to the tax determined thereon under subsection 120(1) of the Act;

(e) the refundable Quebec abatement in respect of an amount of tax payable within any range referred to in paragraph (a) shall be the amount that is equal to the abatement determined under subsection 120(2) of the Act and in accordance with section 27 of the *Federal-Provincial Fiscal Arrangements Act*;

(f) the amount referred to in paragraph (c) or (d) shall be calculated as if the tax payable is equal to the average of the highest and lowest amounts in the range and, where the resulting amount is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from two such multiples, to the higher thereof; and

(g) the amount referred to in paragraph (e) shall be calculated as if the tax payable is equal to the average of the highest and lowest amounts in the range and, where the resulting amount is not a multiple of one tenth of one dollar, it shall be rounded to the nearest multiple of one tenth of one dollar or, if it is equidistant from two such multiples, to the higher thereof.

History: Para. 2500(3)(e) amended by 1995, c. 17, subsec. 45(2), to substitute "*Federal-Provincial Fiscal Arrangements Act*" for "*Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*", in force April 1, 1996.

Subsec. 2500(2) was substituted, subsec. 2500(3) added by P.C. 1989-1926, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1988 *et seq.*

All that portion of para. 2500(2)(b) following subpara. (ii) revoked by P.C. 1987-1817, subsec. 1(2), August 27, 1987, *Canada Gazette*, Part II, September 16, 1987, applicable to 1986 *et seq.*

All that portion of para. 2500(2)(b) following subpara. (ii), subpara. 2500(2)(c)(ii) substituted by P.C. 1985-908, s. 1, March 21, 1985, *Canada Gazette*, Part II, April 3, 1985, applicable, as to para. 2500(2)(b) to 1984 *et seq.*, and as to subpara. 2500(2)(c)(ii), after March 31, 1983.

Para. 2500(2)(b) substituted by P.C. 1983-3016, subsec. 1(2), September 29, 1983, *Canada Gazette*, Part II, October 12, 1983, applicable to 1982 *et seq.*

Definitions [Reg. 2500]: "amount" — ITA 248(1); "amount taxable" — ITA 117(2), Reg. 2501; "business", "employment" — ITA 248(1); "estate" — ITA 104(1), 248(1); "individual", "non-resident", "office", "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 2500]: Table A and Table B, 1994 T1 General Tax Guide. Effective with the 1995 return, these tables are no longer used, in order to save Revenue Canada printing costs. (Revenue Canada news release and Fact Sheet, November 22, 1995.).

2501. In this Part, "amount taxable" has the meaning assigned by subsection 117(2) of the Act.

History: S. 2501 amended by P.C. 1989-1926, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1988 *et seq.*

S. 2501 substituted by P.C. 1983-3016, s. 2, September 29, 1983, *Canada Gazette*, Part II, October 12, 1983, applicable to 1982 *et seq.*

History [former Part XXV]: Former Part XXV (Indebtedness of Public Employees) was revoked by P.C. 1980-541, s. 2, February 20, 1980, *Canada Gazette*, Part II, March 12, 1980.

Former Part XXV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

PART XXVI — INCOME EARNED IN PROVINCE BY AN INDIVIDUAL

History: Part XXVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2600. Interpretation — (1) For the purposes of paragraph 120(4)(a) [120(4)"income earned in the year in a province"] of the Act, "income earned in the year in a province" by an individual means the aggregate of his incomes earned in the taxation year in each province, as determined in accordance with this Part.

History: Subsec. 2600(1) substituted by P.C. 1981-808, subsec. 3(1), March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable to 1980 *et seq.*

Subsec. 2600(1) substituted by P.C. 1978-3101, subsec. 3(1), October 12, 1978, *Canada Gazette*, Part II, October 25, 1978, applicable to 1978 *et seq.*

(2) In this Part, "permanent establishment" means a fixed place of business of the individual including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, and

(a) where an individual carries on business through an employee or agent, established in a particular place, who has general authority to contract for his employer or principal or who has a stock of merchandise owned by his employer or principal from which he regularly fills orders which he receives, the individual shall be deemed to have a permanent establishment in that place;

(b) where an individual uses substantial machinery or equipment in a particular place at any time in a taxation year he shall be deemed to have a permanent establishment in that place; and

(c) the fact that an individual has business dealings through a commission agent, broker, or other independent agent or maintains an office solely for the purchase of merchandise, shall not of itself be held to mean that the individual has a permanent establishment.

Interpretation Bulletins: IT-242R: Retired partners.

(3) [Revoked]

History: Subsec. 2600(3) revoked by P.C. 1981-808, subsec. 3(2), March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable to 1980 *et seq.*

Subsec. 2600(3) substituted by P.C. 1978-3101, subsec. 3(2), October 12, 1978, *Canada Gazette*, Part II, October 25, 1978, applicable to 1978 *et seq.*

Definitions [Reg. 2600]: "business", "employee", "employer", "individual", "office" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249.

2601. Residents of Canada — (1) Where an individual resided in a particular province on the last day of a taxation year and had no income for the year from a business with a permanent establishment outside the province, his income earned in the taxation year in the province is his income for the year.

(2) Where an individual resided in a particular province on the last day of a taxation year and had income for the year from a business with a permanent establishment outside the province, his income earned in the taxation year in the province is the amount, if any, by which

(a) his income for the year

exceeds

(b) the aggregate of his income for the year from carrying on business earned in each other province and each country other than Canada determined as hereinafter set forth in this Part.

(3) Where an individual, who resided in Canada on the last day of a taxation year and who carried on business in a particular province at any time in the year, did not reside in the province on the last day of the year, his income earned in the taxation year in the province is his income for the year from carrying on business earned in the province, determined as hereinafter set forth in this Part.

(4) Where an individual resided in Canada on the last day of a taxation year and carried on business in another country at any time in the year, his income earned in the taxation year in that other country is his income for the year from carrying on business earned in the other country, determined as hereinafter set forth in this Part.

(5) In this section, a reference to the "last day of a taxation year" shall

(a) in the case of an individual who resided in Canada at any time in the year but ceased to reside in Canada before the end of the year, be deemed to be a reference to the "last day in the year on which he resided in Canada"; and

(b) in the case of an individual described in paragraph 250(1)(d.1) of the Act or his spouse or child who

(i) resided in Canada at any time in the year,

(ii) would, but for paragraph 250(1)(d.1), (e) or (f) of the Act, have ceased to reside in Canada before the end of the year, and

(iii) is, by virtue of paragraph 250(1)(d.1), (e) or (f) of the Act, deemed to have been resident in Canada throughout the year,

be deemed to be a reference to the "day in the year on which he would have so ceased to reside in Canada".

History: Subsec. 2601(5) substituted by P.C. 1981-2730, October 8, 1981, *Canada Gazette*, Part II, October 28, 1981, applicable to 1980 *et seq.*

Definitions [Reg. 2601]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "child" — ITA 252(1); "individual" — ITA 248(1); "last day of a taxation year" — Reg. 2601(5); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "resident in Canada" — ITA 250; "spouse" — ITA 252(4); "taxation year" — ITA 249.

Remission Orders [Reg. 2601]: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204, as amended by P.C. 1991-1661

and P.C. 1992-2593 (special interpretation of Reg. 2601(1) and (2) for residents of Quebec).

Forms [Reg. 2601]: T691A: Minimum tax supplement — multiple jurisdictions; T2203: Calculation of tax in respect of multiple jurisdictions.

2602. Non-residents — **(1)** Except as provided in subsection (2), where an individual did not reside in Canada at any time in a taxation year, his income earned in the taxation year in a particular province is the aggregate of

(a) that part of the amount of his income from an office or employment, that is included in computing his taxable income earned in Canada for the year by virtue of subparagraph 115(1)(a)(i) of the Act, that is reasonably attributable to the duties performed by him in the province; and

(b) his income for the year from carrying on business earned in the province, determined as hereinafter set forth in this Part.

Remission Orders: *Income Earned in Quebec Income Tax Remission Order*, P.C. 1989-1204, as amended by P.C. 1991-1661 and P.C. 1992-2593 (special interpretation of Reg. 2602(1) for Quebec).

Interpretation Bulletins: IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-434R: Rental of real property by individual.

(2) Where the aggregate of the amounts of an individual's income as determined under subsection (1) for all provinces for a taxation year exceeds the aggregate of the amounts of his income described in subparagraphs 115(1)(a)(i) and (ii) of the Act, the amount of his income earned in the taxation year in a particular province shall be that proportion of his income so described that the amount of his income earned in the taxation year in the province as determined under subsection (1) is of the aggregate of all such amounts.

Definitions [Reg. 2602]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employment", "individual", "office" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249.

2603. Income from business — **(1)** Where, in a taxation year, an individual had a permanent establishment in a particular province or a country other than Canada and had no permanent establishment outside that province or country, the whole of his income from carrying on business for the year shall be deemed to have been earned therein.

(2) Where, in a taxation year, an individual had no permanent establishment in a particular province or country other than Canada, no part of his income for the year from carrying on business shall be deemed to have been earned therein.

(3) Except as otherwise provided, where, in a taxation year, an individual had a permanent establishment in a particular province or country other than Canada and a permanent establishment outside that province or country, the amount of his income for the year from carrying on business that shall be deemed to have been earned in the province or country is ½ the aggregate of

(a) that proportion of his income for the year from carrying on business that the gross revenue for the fiscal period ending in the year reasonably attributable to the permanent establishment in the province or country is of his total gross revenue for that period from the business; and

(b) that proportion of his income for the year from carrying on business that the aggregate of the salaries and wages paid in the fiscal period ending in the year to employees of the permanent establishment in the province or country is of the aggregate of all salaries and wages paid in that period to employees of the business.

(4) For the purpose of determining the gross revenue for the year reasonably attributable to the permanent establishment in a particular province or country other than Canada within the meaning of paragraph (3)(a), the following rules shall apply:

(a) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(b) except as provided in paragraph (c), where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(c) where the destination of a shipment of merchandise to a customer to whom the merchandise is sold is in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured, or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(d) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in the particular province or country, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province or country;

(e) except as provided in paragraph (f), where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the sale may reasonably be regarded as being attached to the permanent establishment in the particular province or country, the gross revenue derived therefrom shall be attributable to that permanent establishment;

(f) where a customer to whom merchandise is sold instructs that shipment be made to some other person and the customer's office with which the sale was negotiated is located in a country other than Canada in which the taxpayer has no permanent establishment,

(i) if the merchandise was produced or manufactured, or produced and manufactured, entirely in the particular province by the taxpayer, the gross revenue derived therefrom shall be attributable to the permanent establishment in the province, or

(ii) if the merchandise was produced or manufactured, or produced and manufactured, partly in the particular province and partly in another place by the taxpayer, the gross revenue derived therefrom attributable to the permanent establishment in the province shall be that proportion thereof that the salaries and wages paid in the year to employees of the permanent establishment in the province where the merchandise was partly produced or manufactured (or partly produced and manufactured) is of the aggregate of the salaries and wages paid in the year to employees of the permanent establishments where the merchandise was produced or manufactured (or produced and manufactured);

(g) where gross revenue is derived from services rendered in the particular province or country, the gross revenue shall be attributable to the permanent establishment in the province or country;

(h) where gross revenue is derived from services rendered in a province or country other than Canada in which the taxpayer has no permanent establishment, if the person negotiating the contract may reasonably be regarded as being attached to the permanent establishment of the taxpayer in the particular province or country, the gross revenue shall be attributable to that permanent establishment;

(i) where standing timber or the right to cut standing timber is sold and the timber limit on which the timber is standing is in the particular province or country, the gross revenue from such sale shall be attributable to the permanent establishment of the taxpayer in the province or country; and

(j) where land is a permanent establishment of the taxpayer in the particular province, the gross revenue which arises from leasing the land shall be attributable to that permanent establishment.

(5) Where an individual pays a fee to another person under an agreement pursuant to which that other person or employees of that other person perform services for the individual that would normally be performed by employees of the individual, the fee so paid shall be deemed to be salary paid by the individual and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a particular permanent establishment of the individual shall be deemed to be salary paid to an employee of that permanent establishment.

(6) For the purposes of subsection (5), a fee does not include a commission paid to a person who is not an employee of the individual.

Definitions [Reg. 2603]: "amount" — ITA 248(1); "business" — Reg. 2606(3)(a); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee" — ITA 248(1); "fee" — Reg. 2603(6); "fiscal period" — ITA 249.1; "gross revenue" — ITA 248(1); "income for the year from carrying on business" — Reg. 2606(1), 2606(3)(b); "individual", "office" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 2606(3)(c); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total gross revenue for the year" — Reg. 2606(3)(d).

2604. Bus and truck operators — Notwithstanding subsections 2603(3) and (4), the amount of income that shall be deemed to have been earned in a particular province or country other than Canada by an individual from carrying on the business of transportation of goods or passengers (other than by the operation of a railway, ships or an airline service) is ½ of the aggregate of

(a) that proportion of his income therefrom for the year that the number of miles travelled by his vehicles in the province or country in the fiscal period ending in the year is of the total number of miles travelled by his vehicles in that period; and

(b) that proportion of his income therefrom for the year that the aggregate of salaries and wages paid in the fiscal period ending in the year to employees of the permanent establishment in the province or country is of the aggregate of all salaries and wages paid in that period to employees of the business.

Definitions [Reg. 2604]: "amount" — ITA 248(1); "business" — Reg. 2606(3)(a); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee" — ITA 248(1); "fiscal period" — ITA 249.1; "income for the year from carrying on business" — Reg. 2606(1), 2606(3)(b); "individual" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 2606(3)(c); "total gross revenue for the year" — Reg. 2606(3)(d).

2605. More than one business — Where an individual operates more than one business, the provisions of sections 2603 and 2604 shall be applied in respect of each business and the amount of income for the year from carrying on business earned in a particular province or country in the year is the aggregate of the amounts so determined.

Definitions [Reg. 2605]: "amount" — ITA 248(1); "business" — Reg. 2606(3)(a); "income for the year from carrying on business" — Reg. 2606(1), 2606(3)(b); "individual" — ITA 248(1); "province" — *Interpretation Act* 35(1); "salaries and wages paid in the year" — Reg. 2606(3)(c); "total gross revenue for the year" — Reg. 2606(3)(d).

Interpretation Bulletins: IT-206R: Separate businesses.

2606. Limitations of business income — **(1)** Where, in the case of an individual to whom section 2601 applies, the aggregate of the amounts otherwise determined as his income for the taxation year from carrying on business earned in all provinces and countries other than Canada is greater than his income for the year, his income for the year from carrying on business earned in a particular province or country shall be deemed to be that proportion of his income for the year that

(a) his income for the year from carrying on business in the province or country as otherwise determined,

is of

(b) that aggregate.

(2) Where section 114 of the Act is applicable for the purpose of determining the taxable income of an individual for the taxation year, a reference in subsection (1) to "his income for the taxation year" shall be construed as a reference to the amount of his income as determined for the purposes of section 114 of the Act and, for the purpose of this Part, his income for the taxation year from carrying on a business in any place shall be computed by reference only to a business the income from which is included in

computing his taxable income for the purposes of section 114 of the Act.

Proposed Amendment — Reg. 2606(1), (2)

(1) Limitations of business income — If, in the case of an individual to whom section 2601, applies, the total of the amounts otherwise determined as the individual's income for a taxation year from carrying on business earned in all provinces and countries other than Canada is greater that the individual's income for the year, the individual's income for the year from carrying on business earned in a particular province or country is deemed to be that proportion of the individual's income for the year that

(a) the individual's income for the year from carrying on business in the province or country as otherwise determined,

is of

(b) that total.

(2) If section 114 of the Act applies in respect of an individual for a taxation year, the reference in subsection (1) to "the individual's income for a taxation year" shall be read as a reference to the amount of the individual's taxable income for the year and, for the purpose of this Part, the individual's income for the year from carrying on a business in any place shall be computed by reference only to a business the income from which is included in computing the individual's taxable income for the year.

Application: The December 17, 1999 draft regulations (taxpayer migration), s. 2, will amend the portion of Reg. 2606 before subsec. (3) to read as above, applicable to 1998 *et seq.*

Technical Notes: Part XXVI of the Income Tax Regulations sets out rules for computing an individual's income earned in a taxation year in a particular province.

Subsection 2606(1) of the Regulations provides for an adjustment to an individual's income earned in a particular province where the sum of the individual's incomes earned in each province and in countries other than Canada exceeds the individual's income for the year. Subsection 2606(2) of the Regulations provides a further adjustment for the purposes of subsection (1) where the individual is non-resident for part of a taxation year only.

Subsection 2606(2) of the Regulations is amended, with application to the 1998 and subsequent taxation years, to reflect amendments to section 114 of the Act (see the commentary on section 114 for further details). In addition, subsections 2606(1) and (2) are amended to update their language.

(3) For the purposes of sections 2603 to 2605, where an individual's taxable income for the taxation year is computed in accordance with section 115 of the Act

(a) a reference to a "business" shall be deemed to refer only to a business that was wholly or partly carried on in Canada;

(b) a reference to "income for the year from carrying on business" shall be deemed to refer only to income for the year from carrying on a business in Canada as determined for the purposes of section 115 of the Act;

(c) a reference to "salaries and wages paid in the year" shall be deemed to be a reference to salaries and wages paid to employees of his permanent establishments in Canada; and

(d) a reference to "total gross revenue for the year" from the business shall be deemed to be a reference to total gross revenue reasonably attributable to his permanent establishments in Canada.

Definitions [Reg. 2606]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employee", "gross revenue" — ITA 248(1); "his income for the taxation year" — Reg. 2606(2); "individual" — ITA 248(1); "permanent establishment" — Reg. 2600(2); "province" — *Interpretation Act* 35(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

2607. Dual residence — Where an individual was resident in more than one province on the last day of the taxation year, for the purposes of this Part, he shall be deemed to have resided on that day only in that province which may reasonably be regarded as his principal place of residence.

Definitions [Reg. 2607]: "individual" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident" — ITA 250; "taxation year" — ITA 249.

PART XXVII — GROUP TERM LIFE INSURANCE BENEFITS

History: Part XXVII added by P.C. 1997-1623, s. 1, November 6, 1997, *Canada Gazette*, Part II, November 26, 1997, s. 2700 applicable to 1994 *et seq.* Ss. 2701 to 2704 applicable with respect to insurance provided in respect of periods that are after June 1994 except that, in their application with respect to insurance provided in respect of periods that are in 1994 and after June 1994,

(a) the opening words of para. 2701(1)(c) shall be read as follows:

(c) the total of all sales and excise taxes payable in respect of premiums paid under the policy in 1994 and after June 1994 for insurance on the life of the taxpayer, other than

(b) the part of subpara. 2702(1)(b)(i) before the formula shall be read as follows:

(i) the total of all amounts each of which is, for a day in the year 1994 that is after June 1994 on which term insurance is in effect under the policy on the taxpayer's life, the amount determined by the formula

and

(c) subpara. 2702(1)(b)(ii) shall be read as follows:

(ii) the total amount paid by the taxpayer in respect of term insurance under the policy on the taxpayer's life in respect of the period in the year 1994 that is after June 1994.

and s. 2705 applicable with respect to insurance that is provided in respect of periods that are in 1994 and before July 1994.

Former Part XXVII revoked by P.C. 1991-2540, s. 5, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable to taxation years commencing after 1990.

The heading to former Part XXVII amended by the said P.C. 1991-2540, s. 8, applicable after 1985.

Former Part XXVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2700. Interpretation — (1) Definitions — The definitions in this subsection apply in this Part.

"lump-sum premium" in relation to a group term life insurance policy means a premium for insurance under the policy on the life of an individual where all or part of the premium is for insurance that is (or would be if the individual survived) in respect of a period that ends more than 13 months after the earlier of the day on which the premium becomes payable and the day on which it is paid.

"paid-up premium" in relation to a group term life insurance policy means a premium for insurance under the policy on the life of an individual where the insurance is for the remainder of the lifetime of the individual and no further premiums will be payable for the insurance.

"premium category" in relation to term insurance provided under a group term life insurance policy means,

(a) where the premium rate applicable in respect of term insurance on the life of an individual depends on the group to which the individual belongs, any of the groups for which a premium rate is established, and

(b) in any other case, all individuals on whose lives term insurance is in effect under the policy,

and, for the purpose of this definition, a single premium rate is deemed to apply for all term insurance under a policy in respect of periods in 1994, and where individuals are divided into separate groups solely on the basis of their age, sex, or both, the groups are deemed to be a single group for which a premium rate is established.

"term insurance" in relation to an individual and a group term life insurance policy means insurance under the policy on the life of the individual, other than insurance in respect of which a lump-sum premium has become payable or been paid.

(2) Accidental death insurance — For greater certainty, a premium for insurance on the life of an individual does not include an amount for accidental death insurance.

Definitions [Reg. 2700]: "amount", "group term life insurance policy", "individual" — ITA 248(1); "lump-sum premium" — Reg. 2700(1); "month" — *Interpretation Act* 35(1); "term insurance" — Reg. 2700(1).

2701. Prescribed benefit — (1) Subject to subsection (2), for the purpose of subsection 6(4) of the Act, the amount prescribed for a taxation year in respect of insurance under a group term life insurance policy on the life of a taxpayer is the total of

(a) the taxpayer's term insurance benefit under the policy for the calendar year in which the taxation year ends,

(b) the taxpayer's prepaid insurance benefit under the policy for that calendar year, and

(c) the total of all sales and excise taxes payable in respect of premiums paid under the policy in that calendar year for insurance on the life of the taxpayer, other than

(i) taxes paid, directly or by way of reimbursement, by the taxpayer, and

(ii) taxes in respect of premiums for term insurance that, if the taxpayer were to die, would be paid otherwise than

(A) to the taxpayer,

(B) for the benefit of the taxpayer,

(C) as a benefit that the taxpayer desired to have conferred on any person.

Related Provisions: ITA 139.1(15) — Effect of demutualization of insurance corporation.

(2) Bankrupt individual — Where a taxpayer who has become a bankrupt has two taxation years ending in a calendar year, for the purpose of subsection 6(4) of the Act, the amount prescribed for the first taxation year in respect of insurance under a group term life insurance policy on the life of the taxpayer is nil.

Definitions [Reg. 2701]: "amount", "bankrupt", "group term life insurance policy", "person" — ITA 248(1); "prepaid insurance benefit" — Reg. 2703(1); "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "term insurance" — Reg. 2700(1); "term insurance benefit" — Reg. 2702(1).

2702. Term insurance benefit — **(1) Amount of benefit** — Subject to section 2704, for the purpose of paragraph 2701(1)(a), a taxpayer's term insurance benefit under a group term life insurance policy for a calendar year is

(a) where

(i) the policyholder elects to determine, under this paragraph, the term insurance benefit for the year of each individual whose life is insured under the policy,

(ii) no premium rate that applies for term insurance provided under the policy on the life of an individual in respect of the year depends on the age or sex of the individual,

(iii) no amounts are payable under the policy for term insurance on the lives of individuals in respect of the year other than premiums payable on a regular basis that are based on the amount of term insurance in force in the year for each individual, and

(iv) the year is after 1995,

the amount determined by the formula

$$A - B$$

where

A is the total of the premiums payable for term insurance provided under the policy on the taxpayer's life in respect of periods in the year, to the extent that each such premium is in respect of term insurance that, if the taxpayer died in the year, would be paid to or for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on any person, and

B is the total amount paid by the taxpayer in respect of term insurance under the policy on the taxpayer's life in respect of the year; and

(b) in any other case, the amount, if any, by which

(i) the total of all amounts each of which is, for a day in the year on which term insurance is in effect under the policy on the taxpayer's life, the amount determined by the formula

$$A \times B$$

where

A is the amount of term insurance in effect on that day under the policy on the taxpayer's life, except the portion, if any, of the amount that, if the taxpayer were to die on that day, would be paid otherwise than

(A) to the taxpayer,

(B) to benefit of the taxpayer, or

(C) as a benefit that the taxpayer desired to have conferred on any person, and

B is the average daily cost of insurance for the year for the premium category in which the taxpayer is included on that day

exceeds

(ii) the total amount paid by the taxpayer in respect of term insurance under the policy on the taxpayer's life in respect of the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(2) Average daily cost of insurance — The average daily cost of insurance under a group term life insurance policy for a calendar year for a premium category is

(a) subject to paragraph (b), the amount determined by the formula

$$\frac{(A + B - C)}{D}$$

where

A is the total of the premiums payable for term insurance provided under the policy on the lives of individuals in respect of periods in the year while they are in the premium category,

B is the total of the amounts paid in the year under the policy for term insurance in respect of periods in preceding years (other than amounts that have otherwise been taken into account for the purpose of subsection 6(4) of the Act), to the extent that the total can reasonably be considered to relate to term insurance provided on the lives of individuals in the premium category,

C is the total amount of policy dividends and experience rating refunds paid in the year under the policy and not distributed to individuals whose lives are insured under the policy, to the extent that the total can reasonably be considered to relate to term insurance provided on the lives of individuals in the premium category, and

D is the total of all amounts each of which is the amount of term insurance in force on a day in the year on the lives of individuals in the premium category on that day; or

(b) the amount that the policyholder determines using a reasonable method that is substantially similar to the method set out in paragraph (a).

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Survivor income benefits — For the purposes of this section, where the proceeds of term insurance on the life of an individual are payable in the form of periodic payments, and the periodic payments are not an optional form of settlement of a lump-sum amount, the amount of term insurance in effect on the individual's life on any day is the present value, on that day, of the periodic payments that would be made if the individual were to die on that day.

(4) Determination of present value — For the purpose of subsection (3), the present value on a day in a calendar year

(a) shall be determined using assumptions that are reasonable at some time in the year; and

(b) may be determined assuming that an individual on whose life the present value depends is the same age on that day as on another day in the year.

Definitions [Reg. 2702]: "amount" — ITA 248(1); "amount of term insurance" — Reg. 2702(3); "dividend", "group term life insurance policy", "individual", "person" — ITA 248(1); "premium category" — Reg. 2700(1); "present value" — Reg. 2702(4); "taxpayer" — ITA 248(1); "term insurance" — Reg. 2700(1).

2703. Prepaid insurance benefit — (1) Amount of benefit — Subject to section 2704, for the purpose of paragraph 2701(1)(b), a taxpayer's prepaid insurance benefit under a group term life insurance policy for a calendar year is

(a) where the taxpayer is alive at the end of the year, the total of all amounts each of which is

(i) a lump-sum premium (other than the taxpayer portion) paid in the year and after February 1994 in respect of insurance under the policy on the life of the taxpayer, other than a paid-up premium paid before 1997, or

(ii) 1/3 of a paid-up premium (other than the taxpayer portion) in respect of insurance under the policy on the life of the taxpayer that was paid

(A) after February 1994 and before 1997, and

(B) in the year or one of the two preceding years; and

(b) where the taxpayer died after June 1994 and in the year, the amount, if any, by which

(i) the total of all amounts each of which is a lump-sum premium (other than the taxpayer portion) paid under the policy after February 1994 in respect of insurance on the life of the taxpayer

exceeds

(ii) the portion of that total that was included in computing the taxpayer's prepaid insurance benefit under the policy for preceding years.

Related Provisions: ITA 18(9.01) — Matching deduction for employer.

(2) Taxpayer portion of premiums — For the purpose of subsection (1), the taxpayer portion of a premium is the portion, if any, of the premium that the taxpayer paid, either directly or by way of reimbursement.

Definitions [Reg. 2703]: "amount", "group term life insurance policy" — ITA 248(1); "lump-sum premium", "paid-up premium" — Reg. 2700(1); "portion" — Reg. 2703(2); "taxpayer" — ITA 248(1).

2704. Employee-paid insurance — **(1)** For the purpose of subsection 2701(1), where the full cost of insurance under a group term life insurance policy in a calendar year is borne by the individuals whose lives are insured under the policy, each individual's term insurance benefit and prepaid insurance benefit under the policy for the year is deemed to be nil.

(2) Where the premiums for part of the life insurance (in this subsection referred to as the "additional insurance") under a group term life insurance policy are determined separately from the premiums for the rest of the life insurance under the policy, and it is reasonable to consider that the individuals on whose lives the additional insurance is provided bear the full cost of the additional insurance, the additional insurance, the premiums, policy dividends and experience rating refunds in respect of that insurance, and the amounts paid in respect of that insurance by the individuals whose lives are insured, shall not be taken into account for the purposes of this Part.

Definitions [Reg. 2704]: "additional insurance" — Reg. 2704(2); "amount", "dividend", "group term life insurance policy", "individual" — ITA 248(1); "term insurance" — Reg. 2700(1).

2705. Prescribed premium and insurance — For the purpose of subsection 6(4) of the Act, as it applies to insurance provided in respect of periods that are in 1994 and before July 1994,

(a) a lump-sum premium paid under a group term life insurance policy after February 1994 in respect of an

individual who is alive at the end of June 1994 is a prescribed premium; and

(b) insurance in respect of which a premium referred to in paragraph (a) is paid is prescribed insurance.

Definitions [Reg. 2705]: "group term life insurance policy", "individual" — ITA 248(1); "lump-sum premium" — Reg. 2700(1); "prescribed" — ITA 248(1).

PART XXVIII — ELECTION IN RESPECT OF ACCUMULATING INCOME OF TRUSTS

History: Part XXVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2800. [Preferred beneficiary election] — (1) Any election under subsection 104(14) of the Act in respect of a taxation year shall be made by filing with the Minister the following documents:

(a) a statement

(i) making the election in respect of the year,

(ii) designating the part of the accumulating income in respect of which the election is being made, and

(iii) signed by the preferred beneficiary and a trustee having the authority to make the election; and

(b) a statement signed by the trustee showing the computation of the amount of the preferred beneficiary's share in the accumulating income of the trust for the year in accordance with paragraph 104(15)(a), (b) or (c) of the Act, as the case may be, together with such information concerning the provisions of the trust and its administration as is necessary for this purpose.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

(2) The documents referred to in subsection (1) shall be filed within 90 days from the end of the trust's taxation year in respect of which the election referred to in subsection (1) is made.

Proposed Amendment — Application of Reg. 2800(2)

Application: The August 8, 1994 draft regulations (capital gains exemption), s. 1, will amend the application of subsec. 2800(2), such that in applying the *Income Tax Act* to the taxation year of a trust that includes February 22, 1994, subsec. 2800(2) shall be read as follows:

(2) The documents referred to in subsection (1) shall be filed

(a) where the trust elects under subsection 110.6(19) of the Act, on or before the day on or before which the election under that subsection is required to be filed with the Minister, and

(b) in any other case, within 90 days after the end of the trust's taxation year in respect of which the election referred to in subsection (1) is made.

Technical Notes: Section 2800 of the *Income Tax Regulations* sets out rules relating to preferred beneficiary elections made under subsection 104(14) of the *Income Tax Act*. Subsection 2800(2) establishes the time limit for the filing of such elections. In applying this subsection to a trust's taxation year that includes February 22, 1994, where the trust elects under subsection 110.6(19) of the Act, the normal filing deadline for the documents relating to the preferred beneficiary election is extended to coincide with the filing deadline for the capital gains election under subsection 110.6(19).

Related Provisions: ITA 104(14.01) — Extension of filing deadline where capital gains election filed.

(3) For the purposes of paragraph 104(15)(c) of the Act, the discretionary share of a particular preferred beneficiary under a trust of the trust's accumulating income for a taxation year shall be an amount determined as follows:

(a) where the settlor of the trust is an individual and his spouse, both of whom are alive at the end of the year and both of whom may be entitled to share in the accumulating income of the trust, the discretionary share

(i) of the individual is that proportion of the accumulating income of the trust for the year that the fair market value of the property contributed by the individual is of the aggregate of the fair market value of the property contributed by the individual and the fair market value of the property contributed by his spouse (such fair market values being determined in respect of each contribution at the time of the making of that contribution),

(ii) of the spouse is that proportion of the accumulating income of the trust for the year that the fair market value of the property contributed by the spouse is of the aggregate of the fair market value of the property contributed by the individual and the fair market value of the property contributed by his spouse (such fair market values being determined in respect of each contribution at the time of the making of that contribution), and

(iii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(b) where the settlor of the trust is an individual and his spouse, both of whom are alive at the end of the year but only one of whom may be entitled to share in the accumulating income of the trust, the discretionary share

(i) of the individual or his spouse, as the case may be, who may be entitled to share in the accumulating income of the trust is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(c) where the settlor of the trust is an individual and his spouse, only one of whom is alive at the end of the year, and the one who is alive may be entitled to share in the accumulating income of the trust, the discretionary share

(i) of the individual or his spouse, as the case may be, who is alive at the end of the year is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(d) where, in any case not described in paragraph (a), (b) or (c), the settlor of the trust may be entitled to share in the accumulating income of the trust and is alive at the end of the year, the discretionary share

(i) of the settlor is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil;

(e) where, in any case not described in paragraph (a), (b) or (c), the spouse of the settlor of the trust may be entitled to share in the accumulating income of the

trust, but the settlor may not, and the spouse is alive at the end of the year, the discretionary share

(i) of the spouse is the accumulating income of the trust for the year, and

(ii) of any other beneficiary who is a preferred beneficiary under the trust is nil; and

(f) in any other case, the discretionary share of a preferred beneficiary alive at the end of the year is the amount obtained by dividing the accumulating income of the trust for the year by the number of preferred beneficiaries under the trust alive at the end of the year who may be entitled to share in the accumulating income of the trust.

Interpretation Bulletins: IT-394R2: Preferred beneficiary election.

Advance Tax Rulings: ATR-30: Preferred beneficiary election on accumulating income of estate; ATR-34: Preferred beneficiary's election.

(4) In paragraphs (3)(a) to (e), the phrase "entitled to share in the accumulating income of the trust" does not include any entitlement that arises by reason of the death of any individual who would otherwise be entitled to share in the accumulating income of the trust.

Definitions [Reg. 2800]: "amount" — ITA 248(1); "entitled to share in the accumulating income of the trust" — Reg. 2800(4); "individual", "Minister", "property", "share" — ITA 248(1); "spouse" — ITA 252(4); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

PART XXIX — SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT

History: The heading to Part XXIX amended by P.C. 1986-2770, para. 3(a), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Part XXIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

2900. (1) For the purposes of this Part and sections 37 and 37.1 of the Act, "scientific research and experimental development" means systematic investigation or search carried out in a field of science or technology by means of experiment or analysis, that is to say,

(a) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view,

(b) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view,

(c) experimental development, namely, work undertaken for the purposes of achieving technological advancement for the purposes of creating new, or improving existing, materials, devices, products or processes, including incremental improvements thereto, or

(d) work with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing and psychological research where that work is commensurate with the needs, and directly in support, of the work described in paragraph (a), (b) or (c),

but does not include work with respect to

(e) market research or sales promotion,

(f) quality control or routine testing of materials, devices, products or processes,

(g) research in the social sciences or the humanities,

(h) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas,

(i) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process,

(j) style changes, or

(k) routine data collection.

Proposed Repeal — Reg. 2900(1)

Application: The October 27, 1998 draft regulations, subsec. 1(1), will repeal subsec. 2900(1), applicable to work performed after February 27, 1995 except that, for the purposes of paras. 149(1)(j) and (8)(b) of the Act, the repeal does not apply to work performed pursuant to an agreement in writing made by the taxpayer before February 28, 1995. (See now ITA 248(1)"scientific research and experimental development".)

Technical Notes: Subsection 2900(1) of the *Income Tax Regulations* defines "scientific research and experimental development" ("SR&ED").

This definition is repealed, consequential on the introduction of the definition "scientific research and experimental development" in subsection 248(1) of the Act. The introduction of this definition in the Act will give it application to the Regulations as well, thus making the definition in subsection 2900(1) of the Regulations unnecessary.

Related Provisions: ITA 37(13) — Linked work under non-arm's length contract deemed to be SR&ED.

History: Subsec. 2900(1) amended by P.C. 1995-16, subsec. 1(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

That portion of s. 2900 preceding para. (a) amended and s. 2900 renumbered as subsec. 2900(1), by P.C. 1986-2770, para. 3(a), December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

All that portion of s. 2900 preceding para. (a) substituted by P.C. 1978-2917, s. 1, September 27, 1978, *Canada Gazette*, Part II, October 11, 1978, effective for the period commencing with a taxation year ending after 1977.

Selected Cases [Reg. 2900(1)]: *Développements de Systèmes Spécialisés M.T.P.C. Inc. v. R.*, [2000] 2 C.T.C. 2031 (TCC) (Working on computer programs not scientific research); *Hun-Medipharma Research Inc. v. R.*, [1999] 1 C.T.C. 2800 (TCC) (Not necessary for SR&ED that there be both analysis and experimentation).

Interpretation Bulletins: See at end of Reg. 2900.

Information Circulars: See at end of Reg. 2900.

Application Policies: SR&ED 95-01R: Linked activities — Reg. 2900(1)(d); SR&ED 95-02: Science eligibility guidelines for the oil and gas and mining industries; SR&ED 96-02: Tests and studies required to meet requirements in regulated industries; SR&ED 96-07: Prototypes, custom products, commercial assets, pilot plants and experimental production; SR&ED 96-08: Eligibility of the preparation of new drug submissions; SR&ED 96-09: Eligibility of clinical trials to meet regulatory requirements.

(2) For the purposes of clause 37(8)(a)(i)(B) and subclause 37(8)(a)(ii)(A)(II) of the Act, the following expenditures are directly attributable to the prosecution of scientific research and experimental development:

(a) the cost of materials consumed in such prosecution;

Proposed Amendment — Reg. 2900(2)(a)

(a) the cost of materials consumed or transformed in the prosecution;

Application: The October 27, 1998 draft regulations, subsec. 1(2), will amend para. 2900(2)(a) to read as above, applicable to costs incurred after February 23, 1998.

Technical Notes: Subsection 2900(2) of the Regulations provides a description of expenditures that are considered directly attributable to the prosecution of scientific research and experi-

mental development. These expenditures are eligible for deduction under section 37 of the Act and may earn investment tax credits under section 127 of the Act.

Paragraph 2900(2)(a) is amended, pursuant to the announcement in the 1998 Budget, to add to the list of such expenditures the cost of materials transformed in the prosecution of SR&ED. [On a subsequent disposition of the materials, there may be recapture under ITA 127(27) — ed.]

(b) where an employee directly undertakes, supervises or supports such prosecution, the portion of the amount incurred for salary or wages of the employee that can reasonably be considered to be in respect of such prosecution; and

(c) other expenditures, or those portions of other expenditures, that are directly related to such prosecution and that would not have been incurred if such prosecution had not occurred.

Related Provisions: ITA 127(27) — ITC recapture.

History: The opening words of subsec. 2900(2) and paras. 2900(2)(b) and (c) amended by P.C. 1995-16, subsecs. 1(2) and (3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. The amendment to the opening words is applicable to taxation years ending after December 2, 1992; paras. 2900(2)(b) and (c) applicable to 1990 *et seq.*

Subsec. 2900(2) added by P.C. 1986-2770, s. 4, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Selected Cases [Reg. 2900(2)]: *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846 (TCC) (Cost of yarn used for scientific research fell within provision).

Application Policies: SR&ED 96-01: Reclassification of SR&ED expenditures per subsec. 127(11.4); SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages; SR&ED 96-07: Prototypes, custom products/commercial assets, pilot plants and experimental production; SR&ED 2000-01: Cost of materials.

Information Circulars: See at end of Reg. 2900.

(3) For the purposes of subclause 37(8)(a)(ii)(A)(II) of the Act, the following expenditures are directly attributable to the provision of premises, facilities or equipment for the prosecution of scientific research and experimental development:

(a) the cost of the maintenance and upkeep of such premises, facilities or equipment; and

(b) other expenditures, or those portions of other expenditures, that are directly related to that provision and that would not have been incurred if those premises or facilities or that equipment had not existed.

History: The opening words of subsec. 2900(3) and para. 2900(3)(b) amended by P.C. 1995-16, subsecs. 1(4) and (5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. The amendment to the opening words is applicable to taxation years ending after December 2, 1992; para. 2900(3)(b) applicable to 1990 *et seq.*

Subsec. 2900(3) added by P.C. 1986-2770, s. 4, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

(4) For the purposes of the definition "qualified expenditure" in subsection 127(9) of the Act, the prescribed proxy amount of a taxpayer for a taxation year, in respect of a business, in respect of which the taxpayer elects under clause 37(8)(a)(ii)(B) of the Act is 65% of the total of all amounts each of which is that portion of the amount incurred in the year by the taxpayer in respect of salary or wages of an employee of the taxpayer who is directly engaged in scientific research and experimental development carried on in Canada that can reasonably be considered to relate to the scientific research and experimental development having regard to the time spent by the employee on the scientific research and experimental development.

Related Provisions: Reg. 2900(5)–(7) — Additional rules re prescribed proxy amount.

History: Subsec. 2900(4) amended by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

Subsec. 2900(4) added by P.C. 1986-2770, s. 4, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages.

(5) Subject to subsections (6) to (8), where in subsection (4) the portion of an expenditure is all or substantially all of the expenditure, that portion shall be replaced by the amount of the expenditure.

History: Subsec. 2900(5) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages.

(6) The amount determined under subsection (4) as the prescribed proxy amount of a taxpayer for a taxation year in respect of a business shall not exceed the amount, if any, by which

(a) the total of all amounts deducted in computing the taxpayer's income for the year from the business,

exceeds the total of all amounts each of which is

(b) an amount deducted in computing the income of the taxpayer for the year from the business under any of sections 20, 24, 26, 30, 32, 37, 66 to 66.8 and 104 of the Act, or

(c) an amount incurred by the taxpayer in the year in respect of any outlay or expense made or incurred for the use of, or the right to use, a building other than a special-purpose building.

History: Subsec. 2900(6) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(7) In determining the prescribed proxy amount of a taxpayer for a taxation year, the portion of the amount incurred in the year by the taxpayer in respect of salary or wages of a specified employee of the taxpayer that is included in computing the total described in subsection (4) shall not exceed the lesser of

(a) 75% of the amount incurred by the taxpayer in the year in respect of salary or wages of the employee, and

(b) the amount determined by the formula

$$2.5 \times A \times \frac{B}{365}$$

where

A is the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year in which the taxation year ends, and

B is the number of days in the taxation year in which the employee is an employee of the taxpayer.

History: Subsec. 2900(7) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(8) Where

(a) a taxpayer is a corporation,

(b) the taxpayer employs in a taxation year ending in a calendar year an individual who is a specified employee of the taxpayer,

(c) the taxpayer is associated with another corporation (referred to as the "associated corporation") in a taxation year of the associated corporation ending in the calendar year, and

(d) the individual is an employee of the associated corporation in the taxation year of the associated corporation ending in the calendar year,

the total of all amounts that may be included in computing the total described in subsection (4) in respect of salaries or wages of the individual by the taxpayer in its taxation year ending in the calendar year and by all associated corporations in their taxation years ending in the calendar year shall not exceed the amount that is 2.5 times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year.

History: Subsec. 2900(8) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(9) For the purposes of subsections (4) and (7), an amount incurred in respect of salary or wages of an employee in a taxation year does not include

(a) an amount described in section 6 or 7 of the Act;

(b) an amount deemed under subsection 78(4) of the Act to have been incurred;

(c) bonuses; or

(d) remuneration based on profits.

History: Subsec. 2900(9) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

Application Policies: SR&ED 96-06: Directly undertaking, supervising or supporting v. "directly engaged" SR&ED salary and wages.

(10) For the purpose of subsection (8),

(a) an individual related to a particular corporation, and

(b) a partnership any member of which is an individual related to a particular corporation or is a corporation associated with a particular corporation,

shall be deemed to be a corporation associated with the particular corporation.

History: Subsec. 2900(10) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

(11) The depreciable property of a taxpayer that is prescribed for the purposes of the definition "first term shared-use-equipment" in subsection 127(9) of the Act is

(a) a building of the taxpayer;

(b) a leasehold interest of the taxpayer in a building;

(c) a property of the taxpayer if, at the time it was acquired by the taxpayer, the taxpayer or a person related to the taxpayer intended that it would be used in the prosecution of scientific research and experimental development during the assembly, construction or commissioning of a facility, plant or line for commercial manufacturing, commercial processing or other commercial purposes (other than scientific research and experimental development) and intended

(i) that it would be used during its operating time in its expected useful life primarily for purposes other than scientific research and experimental development, or

(ii) that its value would be consumed primarily in activities other than scientific research and experimental development; and

(d) part of a property of the taxpayer if, at the time the part was acquired by the taxpayer, the taxpayer or a person related to the taxpayer intended that the part would be used in the prosecution of scientific research and experimental development during the assembly, construction or commissioning of a facility, plant or line for commercial manufacturing, commercial processing or other commercial purposes (other than scientific research and experimental development), and intended

(i) that it would be used during its operating time in its expected useful life primarily for purposes other than scientific research and experimental development, or

(ii) that its value would be consumed primarily in activities other than scientific research and experimental development.

History [Reg. 2900(11)]: Subsec. 2900(11) added by P.C. 1995-16, subsec. 1(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to property acquired after December 2, 1992.

Application Policies: SR&ED 96-07: Prototypes, custom products/commercial assets, pilot plants and experimental production.

Selected Cases [Reg. 2900]: *RIS-Christie v. R.*, [1999] 1 C.T.C. 132 (FCA); rev'g [1996] 3 C.T.C. 2827 (TCC) (Failure to adduce documentary evidence of research not necessarily fatal); *Northwest Hydraulic Consultants Ltd. v. R.*, [1998] 3 C.T.C. 2520 (TCC) (Court approved criteria in IC 86-4R3 as indicative of SR&ED).

Definitions [Reg. 2900]: "amount" — ITA 248(1); "amount incurred" — Reg. 2900(9); "associated" — Reg. 2900(10)(b); "associated corporation" — Reg. 2900(8)(c); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "employee", "individual", "mineral" — ITA 248(1); "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)-(6); "salary or wages" — ITA 248(1); "scientific research and experimental development" — Reg. 2900(1); "specified employee" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total of all amounts" — Reg. 2900(8).

Interpretation Bulletins [Reg. 2900]: IT-151R4: Scientific research and experimental development expenditures.

Information Circulars [Reg. 2900]: 86-4R3: Scientific research and experimental development; 94-2: Machinery and equipment industry application paper; 97-1: SR&ED — Administrative guidelines for software development.

2901. Prescribed expenditures — For the purposes of paragraph 37.1(5)(c) [37.1(5)"qualified expenditure"] of the Act, a prescribed expenditure is

(a) an expenditure of a current nature incurred by a corporation in respect of

(i) the general administration or management of a business, including

(A) administrative salary or wages and related benefits in respect of a person whose duties are not all or substantially all directed to the prosecution of scientific research and experimental development, except to the extent that such expenditure is described in subsection 2900(2) or (3),

(B) a legal or accounting fee,

(C) an amount described in any of paragraphs 20(1)(c) to (g) of the Act,

(D) an entertainment expense,

(E) an advertising or selling expense,

(F) a convention expense,

(G) a due or fee in respect of membership in a scientific or technical society or organization, and

(H) a fine or penalty, or

(ii) the maintenance and upkeep of premises, facilities or equipment to the extent that such expenditure is not attributable to the prosecution of scientific research and experimental development,

except any such expenditure incurred by a corporation that derives all or substantially all of its revenue from the prosecution of scientific research and experimental development or the sale of rights in or arising out of scientific research and experimental development carried on by it;

(b) an expenditure of a capital nature incurred by a corporation in respect of

(i) the acquisition of property, except any such expenditure that was incurred for and was all or substantially all attributable to the prosecution, or to the provision of premises, facilities or equipment for the prosecution, of scientific research and experimental development, or

(ii) the acquisition of property that is qualified property within the meaning assigned by subsection 127(9) of the Act;

(c) an expenditure made to acquire rights in, or arising out of, scientific research and experimental development; or

(d) an expenditure on scientific research and experimental development in respect of which an amount is deductible under section 110 of the Act.

History: That portion of para. 2901(a) following cl. (i)(H) and paras. 2901(b), (c), (d) amended, and cl. 2901(a)(i)(A) and subparas. 2901(b)(i), (ii) substituted, by P.C. 1986-2770, paras. 3(c), (d) and s. 5, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Cl. 2901(a)(i)(C) substituted by P.C. 1986-1048, s. 2, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to bills drawn after June 1984.

S. 2901 added by P.C. 1978-2917, s. 2, September 27, 1978, *Canada Gazette*, Part II, October 11, 1978, effective for the period commencing with a taxation year ending after 1977.

Definitions [Reg. 2901]: "amount", "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "salary or wages" — ITA 248(1); "scientific research and experimental development" — Reg. 2900(1).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

2902. For the purposes of the definition "qualified expenditure" in subsection 127(9) of the Act, a prescribed expenditure is

(a) an expenditure of a current nature incurred by a taxpayer in respect of

(i) the general administration or management of a business, including

(A) administrative salary or wages and related benefits in respect of a person whose duties are not all or substantially all directed to the prosecution of scientific research and experimental development, except to the extent that such expenditure is described in subsection 2900(2) or (3),

(B) a legal or accounting fee,

(C) an amount described in any of paragraphs 20(1)(c) to (g) of the Act,

(D) an entertainment expense,

(E) an advertising or selling expense,

(F) a conference or convention expense,

(G) a due or fee in respect of membership in a scientific or technical society or organization, and

(H) a fine or penalty, or

(ii) the maintenance and upkeep of premises, facilities or equipment to the extent that such expenditure is not attributable to the prosecution of scientific research and experimental development;

(b) an expenditure of a capital nature incurred by a taxpayer in respect of

(i) the acquisition of property, except any such expenditure that at the time it was incurred

(A) was for first term shared-use-equipment or second term shared-use-equipment, or

(B) was for the provision of premises, facilities or equipment if, at the time of the acquisition of the premises, facilities or equipment, it was intended

(I) that the premises, facilities or equipment would be used during all or substantially all of the operating time of the premises, facilities or equipment in the expected useful life of the premises, facilities or equipment for the prosecution of scientific research and experimental development in Canada, or

(II) that all or substantially all of the value of the premises, facilities or equipment would be consumed in the prosecution of scientific research and experimental development in Canada,

(ii) the acquisition of property that is qualified property within the meaning assigned by subsection 127(9) of the Act, or

(iii) the acquisition of property that has been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer;

(c) an expenditure made to acquire rights in, or arising out of, scientific research and experimental development; or

(d) an expenditure on scientific research and experimental development in respect of which an amount is deductible under section 110.1 or section 118.1 of the Act; or

(e) an expenditure of a current or capital nature, to the extent that the taxpayer has received or is entitled to receive a reimbursement in respect thereof from

Proposed Amendment — Reg. 2902(e)

(e) for the purpose of sections 194 and 195 of the Act, an expenditure of a current or capital nature, to the extent that the taxpayer has received or is entitled to receive a reimbursement in respect of the expenditure from

Application: The October 27, 1998 draft regulations, s. 2, will amend the opening words of para. 2902(e) to read as above, applicable to amounts that become receivable after December 20, 1991.

Technical Notes: Section 2902 defines a prescribed expenditure for the purposes of subsection 127(9) of the *Income Tax Act*. Prescribed expenditures are not eligible for investment tax credits.

Paragraph 2902(e) of the *Income Tax Regulations* is amended consequential on the amendments to the definition "contract payment" in subsection 127(9) of the Act. Those amendments provided that a contract payment included certain payments for scientific research and experimental development that is performed for or on behalf of a person entitled to a deduction in respect of the amount because of subparagraph 37(1)(a)(i) or (i.1) of the Act. Contract payments received reduce the base upon which a taxpayer's ITC in respect of SR&ED is calculated. Those amendments were effective for amounts that became payable after December 20, 1991. In view of the amended definition of "contract payment" applicable to ITCs in respect of SR&ED, the provisions of paragraph 2902(e) became redundant for ITC purposes. However, paragraph 2902(e) of the Regulations is still relevant in respect of claims for refunds of Part VIII Refundable Tax on Corporations in Respect of the Scientific Research and Experimental Development Tax Credit. Regulation 2902(e) is, therefore, amended to apply only for the purposes of the Part VIII Refundable Tax.

(i) a person resident in Canada, other than

(A) Her Majesty in right of Canada or a province,

(B) an agent of Her Majesty in right of Canada or a province,

(C) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province, or

(D) a municipality in Canada or a municipal or public body performing a function of government in Canada, or

(ii) a person not resident in Canada to the extent that the said reimbursement is deductible by the person in computing his taxable income earned in Canada for any taxation year.

Related Provisions: ITA 256(5.1), (6.2) — Meaning of "controlled directly or indirectly".

History: Cl. 2902(a)(i)(F) amended by P.C. 1995-16, subsec. 2(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to expenses incurred after January 25, 1995.

That portion of para. 2902(a) after subpara. (ii) repealed by P.C. 1995-16, subsec. 2(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years beginning after February 22, 1994.

Subpara. 2902(b)(i) amended by P.C. 1995-16, subsec. 2(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to property acquired after December 2, 1992.

Para. 2902(d) substituted by P.C. 1994-139, s. 5, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.*

Subpara. 2902(b)(iii) substituted by P.C. 1988-390, s. 15, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable in respect of property acquired after March 16, 1988, other than property acquired after that date pursuant to the terms of an agreement in writing to acquire the property entered into by the taxpayer on or before that date.

That portion of para. 2902(a) following cl. (i)(H) and paras. 2902(b), (c), (d) amended, and that portion of s. 2902 preceding cl. (a)(i)(B) and subparas. 2902(b)(i), (ii) substituted, by P.C. 1986-2770, paras 3(e), (f) and s. 6, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to expenditures made in taxation years ending after May 23, 1985.

Cl. 2902(a)(i)(C) substituted by P.C. 1986-1048, s. 3, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to bills drawn after June 1984.

S. 2902 added by P.C. 1978-2917, s. 3, September 27, 1978, *Canada Gazette*, Part II, October 11, 1978, effective for the period commencing with the 1977 taxation year.

Definitions [Reg. 2902]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "controlled directly or indirectly" — ITA 256(5.1), (6.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "scientific research and experimental development" — Reg. 2900(1); "taxable income earned in Canada" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-104R2: Deductibility of fines or penalties; IT-151R4: Scientific research and experimental development expenditures.

Application Policies: SR&ED 94-02: Expenditures of sole-purpose SR&ED performers — para. 37(8)(a) of the Act and 2902(a) of the Regulations.

2903. Special-purpose buildings — For the purposes of this Part and paragraph 37(8)(d) of the Act, a special-purpose building is a building the working areas of which are designed and constructed to have a displacement in any direction of not more than .02 micrometre and to have, per .028 cubic metre of interior airspace,

(a) not more than 350 airborne particles of a size less than or equal to .1 micrometre in diameter and no airborne particles of a size greater than .1 micrometre in diameter,

(b) not more than 75 airborne particles of a size less than or equal to .2 micrometre in diameter and no airborne particles of a size greater than .2 micrometre in diameter,

(c) not more than 30 airborne particles of a size less than or equal to .3 micrometre in diameter and no airborne particles of a size greater than .3 micrometre in diameter, or

(d) not more than 10 airborne particles of a size less than or equal to .5 micrometre in diameter and no airborne particles of a size greater than .5 micrometre in diameter.

History: The opening words of s. 2903 amended by P.C. 1995-16, s. 3, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable to taxation years ending after December 2, 1992.

S. 2903 added by P.C. 1991-2028, October 24, 1991, *Canada Gazette*, Part II, November 6, 1991, applicable in respect of buildings that were acquired or in respect of which rental expenses were incurred after 1987.

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

PART XXX — COMMUNICATION OF INFORMATION

History: The heading preceding s. 3000 of Part XXX substituted by P.C. 1985-465, subsec. 15(1), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing March 30, 1983.

Part XXX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3000. [Revoked]

History: S. 3000 revoked by P.C. 1993-1943, December 2, 1993, *Canada Gazette* Part II, December 15, 1993.

Para. 3000(b) substituted by P.C. 1991-1740, September 19, 1991, *Canada Gazette* Part II, October 9, 1991.

3001. [Revoked]

History: S. 3001 revoked by P.C. 1993-1943, December 2, 1993, *Canada Gazette* Part II, December 15, 1993.

Para. 3001(a) substituted by P.C. 1990-2780, s. 13, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable after March 1987.

S. 3001 added by P.C. 1985-465, subsec. 15(2), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing March 30, 1983.

3002. [Revoked]

History: S. 3002 revoked by P.C. 1993-1943, December 2, 1993, *Canada Gazette* Part II, December 15, 1993.

S. 3002 added by P.C. 1989-1780, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989.

3003. Prescribed laws of a province — For the purposes of paragraph 122.64(2)(a) of the Act, the following are prescribed laws of a province:

(a) in respect of the Province of Quebec,

(i) *An Act Respecting Family Benefits*, S.Q. 1997, c. 57,

(ii) *An Act Respecting the Québec Pension Plan*, R.S.Q. 1977, c. R-9; and

(iii) *An Act Respecting Income Security*, R.S.Q. 1977, c. S-3.1.1, as it relates to the additional amounts for dependent children;

(b) in respect of the Province of Manitoba,

(i) *The Social Services Administration Act*, C.C.S.M., c. S165, as it relates to the Child Related Income Support Program,

(ii) *The Social Allowances Act*, C.C.S.M., c. S160, as it relates to

(A) the Social Allowances Program, and

(B) the Municipal Assistance Program, and

(iii) *The Community Child Day Care Standards Act*, C.C.S.M., c. S158, as it relates to the Child Day Care Program;

(c) in respect of the Province of Saskatchewan,

(i) *The Child Care Act*, S.S. 1989-90, c. C-7.3,

(ii) *The Saskatchewan Assistance Act*, R.S.S. 1978, c. S-8, as it relates to

(A) the Family Income Plan, and

(B) the Saskatchewan Assistance Plan, and

(iii) *The Saskatchewan Income Plan Act*, S.S. 1986, c. S-25.1;

(d) in respect of the Province of British Columbia, the *Guaranteed Available Income for Need Act*, R.S.B.C. 1979, c. 158; and

(e) in respect of the Province of Alberta, the *Social Development Act*, R.S.A. 1980, c. S-16.

History: Subpara. 3003(a)(i) amended, and subpara. (iii) added by P.C. 1997-1688, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to information provided after June 19, 1997.

Paras. 3003(d) and (e) added by P.C. 1994-1658, October 6, 1994, *Canada Gazette*, Part II, October 19, 1994.

Subparas. 3003(b)(ii) and (iii) added by P.C. 1994-560, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994.

Subpara. 3003(a)(ii) added by P.C. 1993-538, March 23, 1993, *Canada Gazette*, Part II, April 7, 1993.

S. 3003 added by P.C. 1992-2653, December 17, 1992, *Canada Gazette*, Part II, January 13, 1993, effective commencing December 21, 1992.

Definitions [Reg. 3003]: "amount", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

3004. For the purposes of subparagraph 241(4)(j.1)(ii) of the Act, *An Act Respecting Family Benefits*, S.Q. 1997, c. 57, is, in respect of the Province of Quebec, a prescribed law of a province.

History: S. 3004 added by P.C. 1998-1121, June 18, 1998, *Canada Gazette*, Part II, July 8, 1998, in force July 1, 1998.

Definitions [Reg. 3004]: "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

PART XXXI — [REVOKED]

History: Part XXXI revoked by P.C. 1984-3789, s. 11, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

Part XXXI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

PART XXXII — PRESCRIBED STOCK EXCHANGES AND CONTINGENCY FUNDS

History: The heading for Part XXXII amended by P.C. 1985-2277, s. 7, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, effective November 13, 1981.

Part XXXII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3200. Stock exchanges in Canada — The following stock exchanges in Canada are hereby prescribed for the purposes of paragraph 13(27)(f), clause 19(5)(b)(v)(C) [19(5)"Canadian newspaper or periodical"(e)(iii)], paragraph 47.1(28)(c), subparagraph 48.1(1)(a)(ii), sections 87 and 89, subsection 112(2.2), sections 146, 146.3, 149.1, 187.3 and 204, subsection 206(1) and sections 206.1 and 207.5 of the Act, and of the definitions "grandfathered share" and "term preferred share" in subsection 248(1) of the Act and the definition "qualified security" in subsection 260(1) of the Act and paragraphs 4900(1)(b) and (e):

(a) Alberta Stock Exchange;

(b) Montreal Stock Exchange;

(c) Toronto Stock Exchange;

(d) Vancouver Stock Exchange; and

(e) Winnipeg Stock Exchange.

Proposed Addition — Canadian Venture Exchange

Department of Finance news release, December 16, 1999: *Addition of the Canadian Venture Exchange to the List of Prescribed Stock Exchanges in Canada*

Secretary of State (International Financial Institutions) Jim Peterson today announced that he intends to recommend an amendment to Part XXXII of the *Income Tax Regulations* to include on the list of prescribed stock exchanges in Canada, The Canadian Venture Exchange, which was created by the merger of the Vancouver and Alberta stock exchanges.

"Both the Vancouver and Alberta exchanges were prescribed for income tax purposes," Mr. Peterson observed. "This amendment will simply reflect the evolution of Canada's capital markets."

Part XXXII of the *Income Tax Regulations* prescribes stock exchanges in Canada and outside Canada for various provisions in the *Income Tax Act*. In particular, shares listed on a prescribed stock exchange are eligible investments for registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and deferred profit-sharing plans (DPSPs). Such shares are also qualified securities for rules pertaining to securities lending arrangements and are excluded from the application of withholding requirements under section 116 of the Act.

The prescription will apply as of the date the new exchange started operations, which was November 29, 1999, and will have effect for taxation years ending after that date.

For further information: Lisa Zannese, Tax Legislation Division, (613) 996-5155; Jean-Michel Catta, Public Affairs and Operations Division, (613) 996-8080; Karl Littler, Executive Assistant to the Secretary of State (International Financial Institutions), (613) 996-7861.

Proposed Amendment — Reg. 3200

Letter from Department of Finance, October 9, 1998: This is in response to your telephone call respecting new paragraph 38(a.1) of the *Income Tax Act*, which was introduced as part of the 1997 federal budget.

New paragraph 38(a.1), which provides a preferential inclusion rate in respect of taxable capital gains realized by taxpayers who make charitable gifts of certain properties, including shares or debt listed on a prescribed stock exchange, applies after February 18, 1997. However, you have noted that neither Income Tax Regulation 3200, which lists the prescribed Canadian stock exchanges, nor Regulation 3201, which lists the prescribed foreign stock exchange, currently applies for the purposes of this new paragraph.

I can confirm that we intend to recommend that Regulations 3200 and 3201 be amended to apply for the purposes of new paragraph 38(a.1) of the Act. We will recommend that the amendments apply after February 18, 1997.

If you would like to discuss this matter in more detail, please feel free to contact Robin Maley (613-992-4859) of the Tax Legislation Division directly.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

Related Provisions: ITA 87(10) — Share deemed listed on prescribed stock exchange following amalgamation; Canada-U.S. tax treaty, Art. XXIX A:5(a)(ii) — Meaning of "recognized stock exchange".

History: That portion of s. 3200 preceding para. (a) substituted by P.C. 1994-139, s. 6, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 1985, except that the section shall be read:

(a) before 1990, without reference to para. 13(27)(f) of the Act;

(b) before 1989, without reference to cl. 19(5)(b)(v)(C) of the Act;

(c) before the 1991 taxation year, without reference to subpara. 48.1(1)(a)(ii) of the Act;

(d) before the 1986 taxation year, as if the reference to ss. 87 and 89 were a reference to ss. 70, 87 and 89 of the Act;

(e) before October 9, 1986, without reference to s. 207.5 of the Act;

(f) before April 27, 1989, without reference to the definition "qualified security" in subsec. 260(1) of the Act.

That portion of s. 3200 preceding para. (a) substituted by P.C. 1989-1565, s. 1, August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable after June 18, 1987.

That portion of s. 3200 preceding para. (a) substituted by P.C. 1988-390, s. 16, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1986, except that the reference to subsec. 206(1) and s. 206.1 is applicable to periods occurring after October 31, 1985.

All that portion of s. 3200 preceding para. (a) substituted by P.C. 1985-2277, s. 8, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, effective November 13, 1981.

All that portion of s. 3200 preceding para. (a) substituted by P.C. 1984-3789, s. 12, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984.

All that portion of s. 3200 preceding para. (a) substituted by P.C. 1981-2518, s. 1, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

S. 3200 substituted by P.C. 1980-2225, s. 1, August 27, 1980, *Canada Gazette*, Part II, September 10, 1980, effective for 1977 *et seq.*

S. 3200 substituted by P.C. 1980-422, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective December 6, 1979.

Definitions [Reg. 3200]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporation.

3201. Stock exchanges outside Canada — The following stock exchanges in countries other than Canada are hereby prescribed for the purposes of paragraph 13(27)(f) and sections 149.1, 204, 206.1 and 207.5 of the Act, and of the definition "grandfathered share" in subsection 248(1) of the Act and the definition "qualified security" in subsection 260(1) of the Act:

(a) in Australia, the Australian Stock Exchange;

(b) in Belgium, the Brussels Stock Exchange;

(c) in France, the Paris Stock Exchange;

(d) in Germany, the Frankfurt Stock Exchange;

(e) in Hong Kong, the Hong Kong Stock Exchange;

(f) in Italy, the Milan Stock Exchange;

(g) in Japan, the Tokyo Stock Exchange;

(h) in Mexico, the Mexico City Stock Exchange;

(i) in the Netherlands, the Amsterdam Stock Exchange;

(j) in New Zealand, the New Zealand Stock Exchange;

(k) in Singapore, the Singapore Stock Exchange;

(l) in Spain, the Madrid Stock Exchange;

(m) in Switzerland, the Zurich Stock Exchange;

(n) in the United Kingdom, the London Stock Exchange;

(o) in the United States,

(i) the American Stock Exchange,

(ii) the Boston Stock Exchange,

(iii) the Chicago Board of Options,

(iv) the Chicago Board of Trade,

(v) the Cincinnati Stock Exchange,

(vi) the Intermountain Stock Exchange,

(vii) the Midwest Stock Exchange,

(viii) the National Association of Securities Dealers Automated Quotation System,

(ix) the New York Stock Exchange,

(x) the Pacific Stock Exchange,

(xi) the Philadelphia Stock Exchange, and

(xii) the Spokane Stock Exchange; and

(p) in Ireland, the Irish Stock Exchange.

Proposed Addition — Reg. 3201

Department of finance news release, July 22, 1998: *Proposed Additions to the List of Prescribed Stock Exchanges Outside Canada*

Secretary of State Jim Peterson today announced that he intends to recommend amendments to Part XXXII of the *Income Tax Regulations*.

Part XXXII of the *Income Tax Regulations* prescribes various stock exchanges for the purposes of a number of provisions in the *Income Tax Act*. In particular, shares listed on a prescribed stock exchange automatically constitute eligible investments for registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and deferred profit savings plans (DPSPs), are qualified securities for rules pertaining to securities lending arrangements and are excluded from the application of withholding requirements under section 116 of the Act. The Sec-

retary of State indicated that the following stock exchanges would be added to those already prescribed in Part XXXII:

- in Denmark, the Copenhagen Stock Exchange;
- in Finland, the Helsinki Stock Exchange;
- in South Africa, the Johannesburg Stock Exchange;
- in Norway, the Oslo Stock Exchange;
- in Sweden, the Stockholm Stock Exchange;
- in Israel, the Tel Aviv Stock Exchange; and
- in Austria, the Vienna Stock Exchange.

For most purposes, the prescriptions will apply after today's date. For purposes of the withholding requirements imposed under section 116 of the Act, however, the prescriptions will apply to share sales after April 1998 that were exempt from tax payable under the Act because a tax treaty applied. This retroactive relief, which will apply unless the vendor of the shares elects otherwise, recognizes that in such cases, the section 116 obligation serves an administrative function only.

For further information: Robin Maley, Tax Legislation Division, (613) 992-4859

Letter from Department of Finance, October 9, 1998: See under Reg. 3200.

Related Provisions: ITA 87(10) — Share deemed listed on prescribed stock exchange following amalgamation; Canada-U.S. tax treaty, Art. XXIX A:5(a)(ii) — Meaning of "recognized stock exchange".

History: Para. 3201(p) added by P.C. 1997-1145, s. 1, August 28, 1997, *Canada Gazette*, Part II, September 17, 1997, applicable to 1995 *et seq.*

That portion of s. 3201 preceding para. (a) substituted by P.C. 1994-139, s. 7, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after October 8, 1986, except the section shall be read:

(a) before 1990, without reference to para. 13(27)(f) of the Act, and

(b) before April 27, 1989, without reference to the definition "qualified security" in subsec. 260(1) of the Act.

S. 3201 substituted by P.C. 1994-101, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1991 *et seq.*

Para. 3201(a.1) added by P.C. 1992-2334, s. 1, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to 1991 *et seq.*

That portion of s. 3201 preceding para. (a) substituted by P.C. 1989-1565, s. 2, August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable after June 18, 1987.

Subpara. 3201(c)(vi.1) added by P.C. 1989-150, February 9, 1989, *Canada Gazette*, Part II, March 1, 1989, applicable after 1988.

That portion of s. 3201 preceding para. (a) substituted by P.C. 1988-390, s. 17, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, effective January 1, 1986, except that the reference to s. 206.1 is applicable to periods occurring after October 31, 1985.

That portion of s. 3201 preceding para. (a) substituted by P.C. 1986-1048, s. 4, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to taxation years commencing after 1983.

All that portion of s. 3201 preceding para. (a) substituted by P.C. 1981-2518, s. 3, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

Definitions [Reg. 3201]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "United Kingdom", "United States" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporation.

3202. Contingency funds — For the purposes of subparagraph 47.1(1)(l)(i) of the Act [repealed], the National Contingency Fund is a prescribed contingency fund.

History: S. 3202 added by P.C. 1985-2277, s. 9, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, effective November 13, 1981.

Definitions [Reg. 3202]: "prescribed" — ITA 248(1).

PART XXXIII — TAX TRANSFER PAYMENTS

History: Part XXXIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3300. For the purposes of subsection 154(2) of the Act, a rate of 40 per cent is hereby prescribed.

Definitions [Reg. 3300]: "prescribed" — ITA 248(1).

PART XXXIV — INTERNATIONAL DEVELOPMENT ASSISTANCE PROGRAMS

History: Part XXXIV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3400. For the purposes of paragraphs 122.3(1)(a) and 250(1)(d) of the Act, each international development assistance program of the Canadian International Development Agency that is financed with funds (other than loan assistance funds) provided under External Affairs Vote 30a, *Appropriation Act No. 3, 1977-78*, or another vote providing for such financing, is hereby prescribed as an international development assistance program of the Government of Canada.

History: S. 3400 substituted by 1985-2277, s. 10, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to 1984 *et seq.*

Selected Cases [s. 3400]: *Bell v. Canada*, [1996] 2 C.T.C. 2191 (TCC) (Shifting onus of proving program qualified to Minister).

Definitions [Reg. 3400]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-497R3: Overseas employment tax credit.

PART XXXV — RECEIPTS FOR DONATIONS AND GIFTS

History: Part XXXV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins: IT-110R3: Gifts and official donation receipts; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits; IT-226R: Gift to a charity of a residual interest in real property or an equitable interest in a trust; IT-288R2: Gifts of tangible capital properties to a charity and others; IT-504R2: Visual artists and writers.

3500. Interpretation — In this Part,

"employees' charity trust" means a registered charity that is organized for the purpose of remitting, to other registered charities, donations that are collected from employees by an employer;

History: "Employees' charity trust" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

"official receipt" means a receipt for the purposes of subsection 110.1(2) or (3) or 118.1(2), (6) or (7) of the Act, containing information as required by section 3501 or 3502;

History: "Official receipt" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.*

"official receipt form" means any printed form that a registered organization or other recipient of a gift has that is capable of being completed, or that originally was intended to be completed, as an official receipt by it; and

"other recipient of a gift" means a person, to whom a gift is made by a taxpayer, referred to in any of subparagraphs 110.1(1)(a)(iii) to (vii), paragraphs 110.1(1)(b) and (c), subparagraph 110.1(3)(a)(ii), paragraphs (c) to (g) of the definition "total charitable gifts" in subsection 118.1(1), the definition "total Crown gifts" in subsection 118.1(1), paragraph (b) of the definition "total cultural gifts" in subsection 118.1(1) and paragraph 118.1(6)(b) of the Act;

History: "Other recipient of a gift" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.* except that in its application before December 12, 1988 the reference to "paragraph (b) of the definition "total cultural gifts" " shall be read as "paragraph (c) of the definition "total cultural gifts" ".

"registered organization" means a registered charity, a registered Canadian amateur athletic association or a registered national arts service organization.

History: "Registered organization" substituted by P.C. 1994-139, s. 8, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq* except that before July 14, 1990, it shall be read as follows:

> "registered organization" means a registered charity or a registered Canadian amateur athletic association.

"Official receipt" substituted by P.C. 1988-390, s. 18, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable with respect to gifts made after 1984.

"Official receipt" and "other recipient of a gift" substituted by P.C. 1986-1048, s. 5, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to gifts made after February 15, 1984.

Heading to Part XXXV, "official receipt", "official receipt form", substituted, and "other recipient of a gift" added by P.C. 1981-841, s. 1, subsecs. 2(1)-(3), March 26, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable with respect to gifts made after 1980.

Definitions [Reg. 3500]: "employee", "employer" — ITA 248(1); "official receipt", "other recipient of a gift" — Reg. 3500; "person", "registered Canadian amateur athletic association", "registered charity", "registered national arts service organization" — ITA 248(1); "registered organization" — Reg. 3500; "taxpayer" — ITA 248(1).

3501. Contents of receipts — (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes, and shall show clearly, in such a manner that it cannot readily be altered,

(a) the name and address in Canada of the organization as recorded with the Minister;

(b) the registration number assigned by the Minister to the organization;

(c) the serial number of the receipt;

(d) the place or locality where the receipt was issued;

(e) where the donation is a cash donation, the day on which or the year during which the donation was received;

(e.1) where the donation is a gift of property other than cash

(i) the day on which the donation was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

(ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made; and

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

Forms: RC4108: Registered charities and the Income Tax Act [guide].

(1.1) Every official receipt issued by another recipient of a gift shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

(a) the name and address of the other recipient of the gift;

(b) the serial number of the receipt;

(c) the place or locality where the receipt was issued;

(d) where the donation is a cash donation, the day on which or the year during which the donation was received;

(e) where the donation is a gift of property other than cash,

(i) the day on which the donation was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (d) or (e);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

(ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made; and

(i) the signature, as provided in subsection (2) or (3.1), of a responsible individual who has been authorized by the other recipient of the gift to acknowledge donations.

Information Circulars: 84-3R5: Gifts to certain charitable organizations outside Canada.

(2) Except as provided in subsection (3) or (3.1), every official receipt shall be signed personally by an individual referred to in paragraph (1)(i) or (1.1)(i).

(3) Where all official receipt forms of a registered organization are

(a) distinctively imprinted with the name, address in Canada and registration number of the organization,

(b) serially numbered by a printing press or numbering machine, and

(c) kept at the place referred to in subsection 230(2) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

(3.1) Where all official receipt forms of another recipient of the gift are

(a) distinctively imprinted with the name and address of the other recipient of the gift,

(b) serially numbered by a printing press or numbering machine,

(c) if applicable, kept at a place referred to in subsection 230(1) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

(4) An official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.

(5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records.

(6) Every official receipt form on which

(a) the day on which the donation was received,

(b) the year during which the donation was received, or

(c) the amount of the donation,

was incorrectly or illegibly entered shall be regarded as spoiled.

History: Paras. 3501(1)(e), (f), (h), subsecs. 3501(2), (5) substituted, subsecs. 3501(1.1), (3.1) added by P.C. 1981-841, s. 3, March 27, 1981, *Canada Gazette*, Part II, April 8, 1981, applicable with respect to gifts after 1980.

Definitions [Reg. 3501]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "individual", "Minister" — ITA 248(1); "official receipt", "official receipt form", "other recipient of a gift" — Reg. 3500; "property", "record" — ITA 248(1); "registered organization" — Reg. 3500.

Information Circulars: 80-10R: Registered charities: operating a registered charity.

3502. Employees' charity trusts — Where

(a) a registered organization

(i) is an employees' charity trust, or

(ii) has appointed an employer as agent for the purpose of remitting, to that registered organization, donations that are collected by the employer from the employer's employees, and

(b) each copy of the return required by section 200 to be filed for a year by an employer of employees who donated to the registered organization in that year shows

(i) the amount of each employee's donations to the registered organization for the year collected by the employer, and

(ii) the registration number assigned by the Minister to the registered organization,

section 3501 shall not apply and the copy of the portion of the return, relating to each employee who made a donation to the registered organization in that year, that is required by section 209 to be distributed to the employee for filing with the employee's income tax return shall be an official receipt.

History: S. 3502 substituted by P.C. 1994-139, s. 10, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions [Reg. 3502]: "amount", "employee" — ITA 248(1); "employees' charity trust" — Reg. 3500; "employer", "Minister" — ITA 248(1); "official receipt", "registered organization" — Reg. 3500.

3503. Universities outside Canada — For the purposes of subparagraph 110.1(1)(a)(vi) and paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1) of the Act, the universities outside Canada named in Schedule VIII are hereby prescribed to be universities the student body of which ordinarily includes students from Canada.

Related Provisions: Canada-U.S. tax treaty, Art. XXI:6 — Gifts to U.S. universities.

History: S. 3503 amended by P.C. 1990-1332, s. 1, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990, applicable to 1988 *et seq.*

Definitions [Reg. 3503]: "Canada" — ITA 255, *Interpretation Act* 35(1); "classification society", "estimate of the expenses of survey", "inspector" — Reg. 3600(2); "prescribed" — ITA 248(1); "quadrennial survey", "survey", "surveyor" — Reg. 3600(2).

3504. Prescribed donees — For the purposes of subparagraph 110.1(3)(a)(ii) and paragraph 118.1(6)(b) of the Act, The Nature Conservancy, a charity established in the United States, is a prescribed donee.

History: S. 3504 substituted by P.C. 1994-139, s. 11, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1988 *et seq.*

S. 3504 added by P.C. 1986-1048, s. 6, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to gifts made after February 15, 1984.

Definitions [Reg. 3504]: "prescribed" — ITA 248(1); "United States" — *Interpretation Act* 35(1).

Interpretation Bulletins: Regs. 3500–3504 — See at beginning of Part XXXV.

PART XXXVI — RESERVES FOR SURVEYS

History: Part XXXVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3600. (1) For the purpose of paragraph 20(1)(o) of the Act, the amount hereby prescribed is

(a) for the third taxation year preceding the taxation year during which a survey is scheduled to occur, the amount that is ¼ of the estimate of the expenses of the survey;

(b) for the second taxation year preceding the taxation year during which a survey is scheduled to occur, the amount that is ½ of the estimate of the expenses of the survey;

(c) for the first taxation year preceding the taxation year during which a survey is scheduled to occur, the amount that is ¾of the estimate of the expenses of the survey; and

(d) for the taxation year during which a survey is scheduled to occur, if the quadrennial or other special surveys have not, at the end of the year, been completed to the extent that the vessel is permitted to proceed on a voyage, the amount remaining after deducting from the estimate of the expenses of the survey the amount of expenses actually incurred in the year in carrying out the survey.

(2) In this section,

"classification society" means a society or association for the classification and registry of shipping approved by the Minister of Transport under the *Canada Shipping Act*.

"estimate of the expenses of survey" means a fair and reasonable estimate, made by a taxpayer at the time of filing his return of income for the third taxation year preceding the taxation year in which a quadrennial survey is scheduled to occur, of the costs, charges and expenses which might be expected to be necessarily incurred by

him by reason of that survey and in respect of which he does not have or possess nor is he likely to have or possess any right of reimbursement, recoupment, recovery or indemnification from any other person or source;

"inspector" means a steamship inspector appointed under Part VIII of the *Canada Shipping Act*.

"quadrennial survey" means a periodical survey, not being an annual survey nor a survey coinciding as to time with the construction of a vessel, in accordance with the rules of a classification society or, an extended inspection, not being an annual inspection nor an inspection coinciding as to time with the construction of a vessel, pursuant to the provisions of the *Canada Shipping Act*, and the regulations thereunder;

"survey" means the drydocking of a vessel, the examination and inspection of its hull, boilers, machinery, engines and equipment by an inspector or a surveyor and everything done to such vessel, its hull, boilers, machinery, engines and equipment pursuant to an order, requirement or recommendation given or made by the inspector or surveyor as the result of the examination and inspection so that a safety and inspection certificate might be issued in respect of the vessel pursuant to the provisions of the *Canada Shipping Act*, and the regulations thereunder or, as the case may be, so that the vessel might be entitled to retain the character assigned to it in the registry book of a classification society;

"surveyor" means a surveyor to a classification society.

Definitions [Reg. 3600]: "Canada" — ITA 255, *Interpretation Act* 35(1); "classification society", "estimate of the expenses of survey", "inspector" — Reg. 3600(2); "Minister", "person", "prescribed" — ITA 248(1); "quadrennial survey", "survey" — Reg. 3600(2); "surveyor" — Reg. 3600(2)"amount" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XXXVII — CHARITABLE FOUNDATIONS

History: Part XXXVII (ss. 3700–3702) added by P.C. 1987-2236, s. 1, October 29, 1987, *Canada Gazette*, Part II, November 11, 1987, applicable with respect to taxation years commencing after 1983.

History [former Part XXXVII]: Former Part XXXVII (Social Assistance Payments) was revoked by P.C. 1984-3789, s. 13, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to 1982 *et seq.*

Former Part XXXVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3700. Interpretation — In this Part,

"charitable foundation" has the meaning assigned by paragraph 149.1(1)(a) [149.1(1)"charitable foundation"] of the Act;

"limited-dividend housing company" means a limited-dividend housing company described in paragraph 149(1)(n) of the Act;

"non-qualified investment" has the meaning assigned by paragraph 149.1(1)(e.1) [149.1(1)"non-qualified investment"] of the Act;

"prescribed stock exchange" means a stock exchange referred to in Part XXXII;

"taxation year" has the meaning assigned by paragraph 149.1(1)(l) [149.1(1)"taxation year"] of the Act.

3701. Disbursement quota — **(1)** For the purposes of clause 149.1(1)(e)(iv)(A) [149.1(1)"disbursement quota"D] of the Act, the prescribed amount referred to therein for a taxation year of a charitable foundation shall be determined in accordance with the following rules:

(a) choose a number, not less than two and not more than eight, of equal and consecutive periods that total twenty-four months and that end immediately before the beginning of the year;

(b) aggregate for each period chosen under paragraph (a) all amounts, each of which is the value, determined in accordance with section 3702, of property or a portion thereof owned by the foundation, and not used directly in charitable activities or administration, on the last day of the period;

(c) aggregate all amounts, each of which is the aggregate of values determined for each period under paragraph (b); and

(d) divide the aggregate amount determined under paragraph (c) by the number of periods chosen under paragraph (a).

(2) For the purposes of subsection (1) and subject to subsection (3),

(a) the number of periods chosen by a charitable foundation under paragraph (1)(a) shall, unless otherwise authorized by the Minister, be used for the taxation year and for all subsequent taxation years; and

(b) a charitable foundation shall be deemed to have existed on the last day of each of the periods chosen by it.

(3) The number of periods chosen under paragraph (1)(a) may be changed by the foundation for its first taxation year commencing after 1986 and the new number shall, unless otherwise authorized by the Minister, be used for that taxation year and all subsequent taxation years.

Definitions [Reg. 3701]: "amount" — ITA 248(1); "charitable foundation" — ITA 149.1(1), Reg. 3700; "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed", "property" — ITA 248(1); "taxation year" — ITA 149.1(1), Reg. 3700.

3702. Determination of value — **(1)** For the purposes of subsection 3701(1), the value of property or a portion thereof owned by a charitable foundation, and not used directly in charitable activities or administration, on the last day of a period shall be determined as of that day and shall be

(a) in the case of a non-qualified investment, the greater of its fair market value on that day and its cost amount to the foundation;

(b) subject to paragraph (c), in the case of property other than a non-qualified investment that is

(i) a share of a corporation that is listed on a prescribed stock exchange, the closing price or the average of the bid and asked prices of that share on that day or, if there is no closing price or bid and asked prices on that day, on the last preceding day for which there was a closing price or bid and asked prices,

(ii) a share of a corporation that is not listed on a prescribed stock exchange, the fair market value of that share on that day,

(iii) an interest in real property, the fair market value on that day of the interest less the amount of any debt of the foundation incurred in respect of

the acquisition of the interest and secured by the real property or the interest therein, where the debt bears a reasonable rate of interest,

(iv) a contribution that is the subject of a pledge, nil,

(v) an interest in property where the foundation does not have the present use or enjoyment of the interest, nil,

(vi) a life insurance policy, other than an annuity contract, that has not matured, nil, and

(vii) a property not described in any of subparagraphs (i) to (vi), the fair market value of the property on that day; and

(c) in the case of any property described in paragraph (b)

(i) that is owned in connection with the charitable activities of the foundation and is a share of a limited-dividend housing company or a loan,

(ii) that has ceased to be used for charitable purposes and is being held pending disposition or for use in charitable activities, or

(iii) that has been acquired for use in charitable activities,

the lesser of the fair market value of the property on that day and an amount determined by the formula

$$\frac{A}{.045} \times \frac{12}{B}$$

where

A is the income earned on the property in the period, and

B is the number of months in the period.

(2) For the purposes of subsection (1), a method that the Minister may accept for the determination of the fair market value of property or a portion thereof on the last day of a period is an independent appraisal made

(a) in the case of property described in subparagraph (1)(b)(ii) or (iii), not more than three years before that day; and

(b) in the case of property described in paragraph (1)(a), subparagraph (1)(b)(vii) or paragraph (1)(c), not more than one year before that day.

Definitions [Reg. 3702]: "amount", "annuity" — ITA 248(1); "charitable foundation" — ITA 149.1(1), Reg. 3700; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "disposition" — ITA 248(1); "interest in real property" — ITA 248(4); "life insurance policy" — ITA 138(12), 248(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "non-qualified investment" — ITA 149.1(1), Reg. 3700; "prescribed stock exchange" — Reg. 3700; "property", "share" — ITA 248(1).

PART XXXVIII — SOCIAL INSURANCE NUMBER APPLICATIONS

History: Part XXXVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

3800. Every individual who is required by subsection 237(1) of the Act to apply to the Minister of Human Resources Development for assignment to him of a Social Insurance Number shall do so by delivering or mailing to the local office of the Canada Employment Insurance Commission nearest to the individual's residence, a completed application in the form prescribed by the Minister for that purpose.

History: S. 3800 amended by 1996, c. 11, ss. 96 and 100, to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", and substitute "Canada Employment Insurance Commission" for "Canada Employment and Immigration Commission", in force July 12, 1996.

Definitions [Reg. 3800]: "Canada" — ITA 255, *Interpretation Act* 35(1); "individual", "Minister", "office", "prescribed" — ITA 248(1).

Information Circulars: 82-2R2: SIN legislation that relates to the preparation of information slips.

PART XXXIX — MINING TAXES ON INCOME

History: Part XXXIX (s. 3900) added by P.C. 1978-1315, s. 13, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978.

3900. (1) In computing his income for a taxation year, a taxpayer may deduct, under paragraph 20(1)(v) of the Act, an amount equal to the lesser of

(a) the aggregate of the taxes paid, in respect of his income derived from mining operations in a province for the year,

(i) to the province, and

(ii) to a municipality in the province in lieu of taxes on property or any interest in property (other than his residential property or any interest therein); and

(b) that proportion of such taxes that his income derived from mining operations in the province for the year is of his income in respect of which the taxes were so paid.

(2) In this section,

"income derived from mining operations" in a province for a taxation year by a taxpayer means,

(a) where the taxpayer has no source of income other than mining operations, the amount that would otherwise be his income for the year if no amount had been deducted in computing his income under paragraph 20(1)(v) of the Act or paragraph 1100(1)(g) of these Regulations, and

(b) in any other case, the amount that would otherwise be his income for the year if no amount had been deducted in computing his income under paragraph 20(1)(v) of the Act or paragraph 1100(1)(g) of these Regulations, minus the aggregate of

(i) his income for the year from all sources other than mining, processing and sale of mineral ores, minerals and products produced therefrom, and

(ii) an amount equal to eight per cent of the original cost to him of properties described in Schedule II used by him in the year in the processing of mineral ores, minerals or products derived therefrom or, if the amount so determined is greater than 65 per cent of the income remaining after deducting the amount determined under subparagraph (i), 65 per cent of the income so remaining or, if the amount so determined is less than 15 per cent of the income so remaining, 15 per cent of the income so remaining;

"mine" includes any work or undertaking in which mineral ore is extracted or produced, including a quarry;

"mineral ores" includes all unprocessed minerals or mineral bearing substances;

"minerals" means minerals other than minerals obtained from a mineral resource but does not include petroleum, natural gas or related hydrocarbons;

"mining operations" means the extraction or production of mineral ore from or in any mine or its transportation to or over any part of the distance to the point of egress from the mine, including processing thereof prior to or in the course of such transportation but not including any processing thereof after removal from the mine;

"processing" as applied to mineral ores includes all forms of beneficiation, smelting and refining, transportation and distributing but does not include any of these operations that are performed with respect to mineral ore before it is removed from the mine.

(3) Nothing in this section shall be construed as allowing a taxpayer to deduct an amount in respect of taxes imposed under a statute or bylaw that is not restricted to the taxation of persons engaged in mining operations.

Definitions [Reg. 3900]: "amount", "mineral", "mineral resource", "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XL — BORROWED MONEY COSTS

History: Part XL was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4000. [Revoked]

History: S. 4000 and heading revoked by P.C. 1981-744, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981, effective in respect of taxation years ending after December 11, 1979.

Heading to s. 4000 added by P.C. 1979-236, s. 1, February 1, 1979, *Canada Gazette*, Part II, February 28, 1979.

4001. Interest on insurance policy loans — For the purposes of subsection 20(2.1) of the Act, the amount of interest to be verified by the insurer in respect of a taxpayer shall be verified in prescribed form no later than the last day on which the taxpayer is required to file his return of income under section 150 of the Act for the taxation year in respect of which the interest was paid.

History: S. 4001 substituted by P.C. 1984-776, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, applicable to taxation years ending after 1983.

S. 4001 substituted by P.C. 1979-1726, June 21, 1979, *Canada Gazette*, Part II, July 11, 1979, effective in respect of 1978 *et seq.*

S. 4001 added by P.C. 1979-236, February 1, 1979, *Canada Gazette*, Part II, February 28, 1979, substituted by P.C. 1979-1726, June 21, 1979, *Canada Gazette*, Part II, July 11, 1979, effective in respect of 1978 *et seq.*

Definitions [Reg. 4001]: "amount", "insurer", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms: T2210: Verification of policy loan interest by the insurer.

PART XLI — REPRESENTATION EXPENSES

History: Part XLI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4100. For the purposes of subsection 20(9) of the Act, an election shall be made by filing with the Minister the following documents in duplicate:

(a) a letter from the taxpayer specifying the amount in respect of which the election is being made; and

(b) where the taxpayer is a corporation, a certified copy of the resolution of the directors authorizing the election to be made.

Definitions [Reg. 4100]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister", "taxpayer" — ITA 248(1).

PART XLII — VALUATION OF ANNUITIES AND OTHER INTERESTS

History: Part XLII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4200. For the purposes of subparagraph 115E(f)(i) of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*), the value of any income right, annuity, term of years, life or other similar estate or interest in expectancy shall be determined in accordance with the rules and standards, including standards as to mortality and interest, as are prescribed by the *Estate Tax Regulations* pursuant to the provisions of subparagraph 58(1)(s)(i) of the *Estate Tax Act*.

History: S. 4200 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 4200]: "annuity" — ITA 248(1); "estate" — ITA 104(1), 248(1); "prescribed" — ITA 248(1).

PART XLIII — INTEREST RATES

History: Part XLIII (ss. 4300, 4301) substituted by P.C. 1987-2251, s. 1, November 6, 1987, *Canada Gazette*, Part II, November 25, 1987, applicable with respect to any interest to be calculated in respect of a period after 1983.

Part XLIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4300. Interpretation — For the purposes of this Part, "quarter" means any of the following periods in a calendar year:

(a) the period beginning on January 1 and ending on March 31;

(b) the period beginning on April 1 and ending on June 30;

(c) the period beginning on July 1 and ending on September 30; and

(d) the period beginning on October 1 and ending on December 31.

Interpretation Bulletins: IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

4301. Prescribed rate of interest — Subject to section 4302, for the purposes of

(a) every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General, the prescribed rate in effect during any particular quarter is the total of

(i) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage where the mean is not a whole percentage, of all amounts each of

which is the average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at auctions of Government of Canada Treasury Bills during the first month of the quarter preceding the particular quarter, and

(ii) 4 per cent;

(b) every provision of the Act that requires interest at a prescribed rate to be paid or applied on an amount payable by the Minister to a taxpayer, the prescribed rate in effect during any particular quarter is the total of

(i) the rate determined under subparagraph (a)(i) in respect of the particular quarter, and

(ii) 2 per cent; and

(c) every other provision of the Act in which reference is made to a prescribed rate of interest or to interest at a prescribed rate, the prescribed rate in effect during any particular quarter is the rate determined under subparagraph (a)(i) in respect of the particular quarter.

History: Subpara. 4301(a)(i) amended by P.C. 1997-1819, December 9, 1997, s. 4, *Canada Gazette*, Part II, December 24, 1997, in force on December 31, 1997.

S. 4301 substituted by P.C. 1995-926, June 13, 1995, s. 1, *Canada Gazette*, Part II, June 28, 1995, applicable to interest that is calculated in respect of periods after June 1995. For periods before July 1995, s. 4301 should be read as follows:

4301. **Prescribed rate of interest** — For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General or to be paid or applied on an amount payable by the Minister to a taxpayer, the prescribed rate in effect during any particular quarter is the aggregate of

(a) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next highest whole percentage where the mean is not a whole percentage, of all amounts each of which is the weekly average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at a weekly auction of Government of Canada Treasury Bills during the first month of the quarter immediately preceding the particular quarter, and

(b) 2 per cent,

and for the purposes of every other provision of the Act in which reference is made to a prescribed rate of interest or to interest at a prescribed rate, the prescribed rate in effect during any quarter is the rate determined under paragraph (a) in respect of that quarter.

S. 4301 substituted by P.C. 1989-1792, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable in respect of interest that is calculated in respect of periods after September 1989.

Prescribed Interest Rates Per Annum

Year	Quarter	Reg. 4301(c) Benefits	Reg. 4301(b) Refunds	Reg. 4301(a) Late Tax
		%	%	%
1984	1st, 2nd	10	10	10
	3rd	11	11	11
	4th	13	13	13
1985	1st	12	12	12
	2nd, 3rd, 4th	10	10	10
1986	1st	9	9	9
	2nd	11	11	11
	3rd	10	10	10
	4th	9	9	9
[Compounding under 248(11) applies effective Jan. 1/87]				
1987	1st	9	9	9
	2nd, 3rd	8	8	8
	4th	9	9	9
1988	1st, 2nd, 3rd	9	9	9
	4th	10	10	10
1989	1st	11	11	11
	2nd	12	12	12
	3rd	13	13	13
	4th	13	15	15
1990	1st, 2nd	13	15	15
	3rd, 4th	14	16	16
1991	1st	13	15	15
	2nd	11	13	13
	3rd	10	12	12
	4th	9	11	11
1992	1st	9	11	11
	2nd	8	10	10
	3rd	7	9	9
	4th	6	8	8
1993	1st	8	10	10
	2nd	7	9	9
	3rd	6	8	8
	4th	5	7	7
1994	1st	5	7	7
	2nd	4	6	6
	3rd	6	8	8
	4th	7	9	9
1995	1st	6	8	8
	2nd	8	10	10
	3rd	9	11	13
	4th	7	9	11
1996	1st	7	9	11
	2nd	6	8	10
	3rd, 4th	5	7	9
1997	1st	4	6	8
	2nd	3	5	7
	3rd, 4th	4	6	8
1998	1st	4	6	8
	2nd, 3rd, 4th	5	7	9
1999	1st–4th	5	7	9
2000	1st	5	7	9
	2nd, 3rd	6	8	10

Interpretation Bulletins: IT-153R3: Land developers — Subdivision and development costs and carrying charges on land; IT-243R4: Dividend refund to private corporations; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt.

Definitions [Reg. 4301]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "quarter" — Reg. 4300; "taxpayer" — ITA 248(1).

4302. Notwithstanding section 4301, for the purposes of paragraph 16.1(1)(d) of the Act and subsection 1100(1.1), the interest rate in effect during any month is the rate that is one percentage point greater than the rate that was, during the month before the immediately preceding month, the average yield, expressed as a percentage per year rounded to two decimal points, prevailing on all outstanding domestic Canadian-dollar Government of Canada bonds on the last Wednesday of that month with a remaining term to maturity of over 10 years, as first published by the Bank of Canada.

History: S. 4302 added by P.C. 1991-465, s. 4, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into

before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. EDST, April 26, 1989 shall be deemed to have been entered into at that particular time).

Prescribed Interest Rates for Leasing Rules

For leases entered into before July 1989, the prescribed rate is 11.2%. The rates applicable for leases entered into after that date are as follows:

	1989	1990	1991	1992	1993	1994
Jan.	—	10.80	11.70	10.18	9.66	8.45
Feb.	—	10.69	11.51	9.97	9.54	8.12
March	—	11.04	11.22	9.92	9.67	7.86
April	11.20	11.64	10.89	9.97	9.19	8.33
May	11.20	11.91	10.88	10.28	9.27	9.25
June	11.20	12.54	10.91	10.51	9.27	9.18
July	10.85	11.86	10.91	10.17	9.12	9.55
Aug.	10.60	11.72	11.36	9.87	8.96	10.29
Sept.	10.62	11.78	11.17	9.21	8.79	10.50
Oct.	10.62	11.83	10.97	9.19	8.40	9.89
Nov.	10.91	12.54	10.59	9.53	8.55	10.04
Dec.	10.54	12.15	10.12	9.33	8.35	10.29
	1995	1996	1997	1998	1999	2000
Jan.	10.24	8.44	7.42	6.78	6.35	7.12
Feb.	10.16	8.43	7.77	6.84	6.08	7.25
March	10.41	8.35	8.07	6.63	6.08	7.36
April	9.86	8.84	7.78	6.64	6.37	6.98
May	9.70	8.94	7.97	6.54	6.23	6.96
June	9.44	9.07	7.97	6.64	6.34	7.03
July	9.11	8.92	7.95	6.49	6.54	6.94
Aug.	9.02	8.98	7.49	6.45	6.63	
Sept.	9.50	8.86	7.11	6.56	6.74	
Oct.	9.24	8.60	7.38	6.78	6.69	
Nov.	9.11	8.48	6.99	6.15	6.92	
Dec.	9.11	7.81	6.80	6.27	7.38	

For prescribed rates for leasing rules that are not listed above, contact Rick Owen, (613) 954-2504. The rates are also posted on Revenue Canada's website: http://www.rc.gc.ca.

Definitions [Reg. 4302]: "Canada" — ITA 255, *Interpretation Act* 35(1); "month" — *Interpretation Act* 35(1).

PART XLIV — PUBLICLY-TRADED SHARES OR SECURITIES

History: Part XLIV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4400. (1) For the purpose of section 24 and subsection 26(11) of the *Income Tax Application Rules*,

(a) a share or security named in Schedule VII is hereby prescribed to be a publicly-traded share or security; and

(b) for each such share or security, the amount set out in Column II of Schedule VII opposite that share or security is hereby prescribed as the amount, if any, prescribed in respect of that property.

(2) In Schedule VII, the abbreviation

(a) "Cl" means "Class";

(b) "Com" means "Common";

(c) "Cv" means "Convertible";

(d) "Cu" means "Cumulative";

(e) "Pc" means "Per Cent";

(f) "Pr" means "Preferred" or "Preference" as the case may be;

(g) "Pt" means "Participating";

(h) "Rt" means "Right"; and

(i) "Wt" means "Warrant".

History: The opening words of subsec. 4400(2) amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 4400]: "amount", "prescribed", "property" — ITA 248(1); "share" — ITA 248(1).

PART XLV — ELECTIONS IN RESPECT OF EXPROPRIATION ASSETS

History: Part XLV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4500. Any election by a taxpayer under subsection 80.1(1), (2), (4), (5), (6) or (9) of the Act shall be made on or before the day on or before which the return of income is required to be filed pursuant to section 150 of the Act for the taxation year in which the assets referred to in the particular election were acquired by him.

Definitions [Reg. 4500]: "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Forms: T2079: Elections re expropriation assets.

PART XLVI — INVESTMENT TAX CREDIT

History: Part XLVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Forms: T2038 (Ind.): Investment tax credit (Individuals); T2038 (Corp): Investment tax credit (Corporations).

4600. Qualified property — (1) Property is a prescribed building for the purposes of the definition "qualified property" in subsection 127(9) of the Act if it is depreciable property of the taxpayer that is a building or grain elevator and it is erected on land owned or leased by the taxpayer,

(a) that is included in Class 1, 3, 6, 20, 24 or 27 or paragraph (c), (d) or (e) of Class 8 in Schedule II; or

(b) that is included or would, but for Class 28 or 41 in Schedule II, be included in paragraph (g) of Class 10 in Schedule II.

(2) Property is prescribed machinery and equipment for the purposes of the definition "qualified property" in subsection 127(9) of the Act if it is depreciable property of the taxpayer (other than property referred to in subsection (1)) that is

(a) a property included in paragraph (k) of Class 1 or paragraph (a) of Class 2 in Schedule II;

(b) an oil or water storage tank;

(c) a property included in Class 8 in Schedule II (other than railway rolling stock);

(d) a vessel, including the furniture, fittings and equipment attached thereto;

(e) a property included in paragraph (a) of Class 10 or Class 22 or 38 in Schedule II (other than a car or truck designed for use on highways or streets);

(f) notwithstanding paragraph (e), a logging truck acquired after March 31, 1977 to be used in the activity of logging and having a weight, including the weight

of property the capital cost of which is included in the capital cost of the truck at the time of its acquisition (but for greater certainty not including the weight of fuel), in excess of 16,000 pounds;

(g) a property included in any of paragraphs (b) to (f), (h), (j), (k), (o), (r), (t) or (u) of Class 10 in Schedule II, or property included in paragraph (b) of Class 41 in Schedule II and that would otherwise be included in paragraph (j), (k), (r), (t) or (u) of Class 10 in Schedule II;

(h) a property included in paragraph (n) of Class 10, or Class 15, in Schedule II (other than a roadway);

Selected Cases [Reg. 4600(2)(h)]: *Donohue St-Félicien Inc. v. R.*, [1998] 4 C.T.C. 2704 (TCC) (Roadway was not qualified equipment).

(i) a property included in any of paragraphs (a) to (f) of Class 9 in Schedule II;

(j) a property included in Class 28 or paragraph (a), (a.1), (a.2) or (a.3) of Class 41 in Schedule II that would, but for Class 28 or 41, as the case may be, be included in paragraph (k) or (r) of Class 10 of Schedule II;

(k) a property included in any of Classes 21, 24, 27, 29, 34, 39, 40 and 43 in Schedule II; or

(l) a property included in paragraph (c) or (d) of Class 41 in Schedule II.

History: Para. 4600(2)(l) added by P.C. 1999-629, s. 10, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Para. 4600(2)(j) amended by P.C. 1998-49, s. 4, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable in respect of property acquired after March 6, 1996.

Para. 4600(2)(k) substituted by P.C. 1994-230, s. 3, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Paras. 4600(1)(a), (b), (2)(a), (e), (g), (j), (k) substituted by P.C. 1989-2464, s. 6, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

That portion of subsec. 4600(1) and of 4600(2) preceding para. (a) of each substituted by P.C. 1988-390, s. 19, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Para. 4600(2)(g) substituted by P.C. 1981-3329, s. 13, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective from January 1, 1981.

Para. 4600(1)(b) substituted by P.C. 1980-2081, s. 7, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980, effective August 15, 1979.

Heading to Part XLVI, para. 4600(2)(f) substituted by P.C. 1980-424, ss. 1, 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective November 17, 1978.

Para. 4600(2)(g) substituted by P.C. 1980-168, January 11, 1980, *Canada Gazette*, Part II, January 23, 1980, effective commencing June 13, 1979.

Para. 4600(2)(f) added by P.C. 1978-344, s. 5, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Interpretation Bulletins: IT-411R: Meaning of "construction".

Definitions [Reg. 4600]: "depreciable property" — ITA 13(21), 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

4601. Qualified transportation equipment — For the purposes of the definition "qualified transportation equipment" in subsection 127(9) of the Act, the following depreciable property of a taxpayer (other than qualified property as defined by subsection 127(9) of the Act) is prescribed equipment:

(a) property that is

(i) included in Class 1 in Schedule II by virtue of paragraph (h) or (i) of that Class,

(ii) a bridge, culvert, subway or tunnel included in Class 1 in Schedule II that is ancillary to railway track and grading,

(iii) a trestle included in Class 3 in Schedule II that is ancillary to railway track and grading,

(iv) machinery or equipment included in Class 8 in Schedule II that is ancillary to

(A) railway track and grading, or

(B) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor,

(v) included in Class 10 in Schedule II by virtue of subparagraph (m)(i), (ii) or (iii) of that Class, or

(vi) property described in paragraph (m) of Class 10 in Schedule II (other than property described in subparagraph (iv) thereof) that is included in Class 28 or 41 in Schedule II;

(b) property that is

(i) included in Class 6 in Schedule II by virtue of paragraph (j) of that Class,

(ii) machinery or equipment included in Class 8 in Schedule II that

(A) was acquired principally for the purpose of maintaining or servicing, or

(B) is ancillary to and used as part of,

a railway locomotive or railway car, or

(iii) included in Class 35 in Schedule II;

(c) property that is

(i) a truck, tractor or trailer that

(A) is included in Class 10 in Schedule II because of paragraph (e) of that Class or in Class 16 in Schedule II because of paragraph (g) of that Class,

(B) is designed for the purpose of carrying freight, or hauling a trailer that carries freight, on highways, and

(C) [Revoked]

(D) in the case of a truck or tractor, has a "gross vehicle weight rating" (within the meaning assigned that expression by the *Motor Vehicle Safety Regulations*) of 26,001 pounds or more, and in the case of a trailer, is of a type designed to be hauled under normal operating conditions by a truck or tractor described in this subparagraph,

but for greater certainty,

(E) was not acquired principally for the purpose of carrying or hauling freight locally or making local pickups or deliveries, or

(ii) machinery or equipment included in Class 8 or 10 in Schedule II that is ancillary to and used as part of any property described in subparagraph (i) that is qualified transportation equipment within the meaning of subsection 127(9) of the Act;

(d) property included in Class 10 in Schedule II by virtue of paragraph (a) of that Class that is a bus designed

for the purpose of seating 20 or more passengers and carrying their luggage, but not including

(i) a bus acquired principally for the purpose of transportation within any metropolitan area, city, town, village, municipality or other similar community or area, or

(ii) a school bus;

(e) property that is

(i) a vessel included in Class 7 in Schedule II (other than a vessel under construction),

(ii) machinery or equipment included in Class 7 or 8 in Schedule II that is ancillary to and used as part of any property described in subparagraph (i) that is qualified transportation equipment within the meaning of subsection 127(9) of the Act, or

(iii) a vessel included in a separate class prescribed by subsection 1101(2a);

(f) property that is

(i) included in Class 9 in Schedule II by virtue of paragraph (g) of that Class, or

(ii) machinery or equipment included in Class 9 in Schedule II by virtue of paragraph (h) or (i) of that Class that is ancillary to and used as part of any property described in subparagraph (i) that is qualified transportation equipment within the meaning of subsection 127(9) of the Act; and

(g) property included in Class 8 in Schedule II that is a reusable cargo container designed with external fittings for the purpose of handling, securing or stacking and having a carrying capacity of 500 cubic feet or more.

History: Cl. 4601(c)(i)(A) amended by P.C. 1995-775, s. 4, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable to property acquired after December 2, 1992.

Subpara. 4601(a)(vi) substituted by P.C. 1989-2464, s. 7, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

That portion of s. 4601 preceding para. (a), and subparas. (c)(ii), (e)(ii), (f)(ii) substituted by P.C. 1988-390, s. 20, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

All that portion of s. 4601 preceding para. (a) substituted and cl. 4601(c)(i)(C) revoked by P.C. 1985-2277, s. 12, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

S. 4601 added by P.C. 1980-424, s. 3, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective November 17, 1978.

Definitions [Reg. 4601]: "depreciable property" — ITA 13(21), 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

4602. Certified property — (1) For the purposes of the definition "certified property" in subsection 127(9) of the Act, each of the following areas is a prescribed area:

(a) that portion of the Province of Newfoundland comprising the census divisions 2 to 4 and 7 to 10;

(b) that portion of the Province of Prince Edward Island comprising the Kings census division;

(c) that portion of the Province of Nova Scotia comprising the census divisions of

(i) Cape Breton,

(ii) Guysborough,

(iii) Inverness,

(iv) Richmond, and

(v) Victoria;

(d) that portion of the Province of New Brunswick comprising the census divisions of

(i) Gloucester,

(ii) Kent,

(iii) Madawaska,

(iv) Northumberland, and

(v) Restigouche;

(e) that portion of the Province of Quebec comprising

(i) all of the area north of the 50th parallel of latitude, other than the area within the limits of the city of Sept-Iles,

(ii) the Magdalen Islands, and

(iii) the census divisions of

(A) Bonaventure,

(B) Gaspé-Est,

(C) Gaspé-Ouest,

(D) Matane,

(E) Matapédia,

(F) Rimouski, other than the area within the limits of the city of Rimouski,

(G) Rivière-du-Loup, and

(H) Témiscouata;

(f) that portion of the Province of Ontario that is north of the 50th parallel of latitude;

(g) that portion of the Province of Manitoba comprising the census divisions 19 and 21 to 23, other than the area within the limits of the city of Thompson;

(h) that portion of the Province of Saskatchewan comprising the census division of Northern Saskatchewan;

(i) that portion of the Province of Alberta comprising the census division of Peace River, other than the area within the limits of the city of Grande Prairie;

(j) that portion of the Province of British Columbia comprising the Peace River-Liard census division; and

(k) all of the Yukon Territory and the Northwest Territories.

(2) For the purposes of subsection (1), the expression "census divisions" has the same meaning as in the *Dictionary of 1971 Census Terms*, Statistics Canada Catalogue Number 12-540, and the *Census Divisions and Subdivisions*, Statistics Canada Catalogues Numbered 92-704, 92-705, 92-706 and 92-707.

History: That portion of subsec. 4602(1) preceding para. (a) substituted by P.C. 1988-390, s. 21, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

S. 4602 added by P.C. 1981-3029, October 29, 1981, *Canada Gazette*, Part II, November 11, 1981, effective in respect of certified property acquired after October 28, 1980.

Definitions [Reg. 4602]: "Canada" — ITA 255, *Interpretation Act* 35(1); "census divisions" — Reg. 4602(2); "prescribed" — ITA 248(1).

4603. Qualified construction equipment — For the purposes of the definition "qualified construction equipment" in subsection 127(9) of the Act, "prescribed equipment" means depreciable property of a taxpayer, other than qualified property as defined by subsection 127(9) of the Act or qualified transportation equipment as defined by subsection 127(9) of the Act, that is

(a) a property included in Class 22 or 38 in Schedule II;

(b) a crane;

(c) a pile driver; or

(d) a dredge.

History: Para. 4603(a) substituted by P.C. 1989-2464, s. 8, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

That portion of s. 4603 preceding para. (a) substituted by P.C. 1988-390, s. 22, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

S. 4603 added by P.C. 1985-2277, s. 13, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to acquisitions of property occurring after April 19, 1983.

Definitions [Reg. 4603]: "depreciable property" — ITA 13(21), 248(1); "property", "taxpayer" — ITA 248(1).

4604. Approved project property — **(1)** For the purposes of paragraphs (a) and (c) of the definition "approved project property" in subsection 127(9) of the Act, property is a prescribed building if it is depreciable property of the taxpayer that is a building or grain elevator, erected on land owned or leased by the taxpayer,

(a) that is included in Class 1, 3, 6, 24, 27 or 37 or paragraph (c), (d) or (e) of Class 8 in Schedule II; or

(b) that is included or would, but for Class 28 or Class 41 in Schedule II, be included in paragraph (g) of Class 10 in Schedule II.

(2) For the purposes of paragraphs (b) and (d) of the definition "approved project property" in subsection 127(9) of the Act, property is prescribed machinery and equipment if it is depreciable property of the taxpayer (other than property referred to in subsection (1)) that is

(a) a property included in paragraph (k) of Class 1 or paragraph (a) of Class 2 in Schedule II;

(b) an oil or water storage tank;

(c) a property included in Class 8 in Schedule II (other than railway rolling stock);

(d) subject to paragraph (e), a property included in paragraph (a) of Class 10 or Class 22 or 38 in Schedule II (other than a car or truck designed for use on highways or streets);

(e) a logging truck acquired to be used in the activity of logging and having a weight, including the weight of property the capital cost of which is included in the capital cost of the truck at the time of its acquisition (but for greater certainty not including the weight of fuel), in excess of 16,000 pounds;

(f) a property included in any of paragraphs (b) to (f), (h) to (k), (o), (q), (r), (t) or (u) of Class 10 in Schedule II;

(g) a property included in paragraph (n) of Class 10, or Class 15, in Schedule II (other than a roadway);

(h) a property included in any of paragraphs (a) to (f) of Class 9 in Schedule II;

(i) a property included in Class 28 or 41 in Schedule II that would, but for those classes, be included in paragraph (k) or (r) of Class 10 in Schedule II;

(j) a property included in any of Classes 21, 24, 27, 29, 34, 39, 40 and 43 in Schedule II;

(k) a property included in Class 37 in Schedule II; or

(l) a vessel (other than a supply boat, workboat, drilling rig, workover rig or shuttle tanker), including the furniture, fittings and equipment attached thereto, that is used primarily for

(i) heavy-lifting or pipe-laying in the construction of, or

(ii) the provision of lodging services in the servicing of,

an installation, structure, apparatus or artificial island that is used for offshore hydrocarbon exploration or exploitation.

History: Para. 4604(2)(j) substituted by P.C. 1994-230, s. 4, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Paras. 4604(1)(a), (b), (2)(a), (d), (i), (j) substituted by P.C. 1989-2464, s. 9, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

S. 4604 added by P.C. 1986-2770, s. 7, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable from May 24, 1985.

Definitions [Reg. 4604]: "depreciable property" — ITA 13(21), 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

4605. Prescribed activities — For the purposes of the definition "for an approved purpose" in paragraph (e) of the definition "approved project property" in subsection 127(9) of the Act, a prescribed activity of a taxpayer is

(a) operating a hotel, motel, camping ground, travel trailer park or any similar lodging facility;

(b) providing facilities that are ancillary to a lodging facility referred to in paragraph (a) that is owned by the taxpayer and that are intended for the use and enjoyment of the occupants of the lodging facility;

(c) providing facilities that are primarily for the receiving, storage and distribution of goods owned by persons with whom the taxpayer deals at arm's length;

(d) providing to a business owned by a person with whom the taxpayer deals at arm's length

(i) engineering or architectural services,

(ii) computer services, or

(iii) other technical or scientific services,

but not including financial, legal, accounting, medical or dental services;

(e) providing to a business owned by a person with whom the taxpayer deals at arm's length

(i) the services of an employment agency, or

(ii) advertising services, other than advertising services in a medium owned by the taxpayer; or

(f) operating a vessel described in paragraph 4604(2)(l).

History: S. 4605 added by P.C. 1986-2770, s. 7, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable from May 24, 1985.

Definitions [Reg. 4605]: "arm's length" — ITA 251(1); "business", "employment", "person", "prescribed", "taxpayer" — ITA 248(1).

4606. Prescribed amount — For the purposes of paragraph (b) of the definition "contract payment" in subsection 127(9) of the Act, a prescribed amount is an amount received from the Canadian Commercial Corporation in respect of an amount received by that Corporation from a government, municipality or other public authority other than the government of Canada or of a province, a Canadian municipality or other Canadian public authority.

History: S. 4606 added by P.C. 1986-2770, s. 7, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective November 22, 1985.

Definitions [Reg. 4606]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-151R4: Scientific research and experimental development expenditures.

4607. Prescribed designated regions — For the purposes of the definition "specified percentage" in subsection 127(9) of the Act, "prescribed designated region" means a region of Canada, other than the Gaspé peninsula and the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, including Labrador, that was a designated region on December 31, 1984, under the *Regional Development Incentives Designated Region Order, 1974*.

History: S. 4607 added by P.C. 1988-390, s. 23, March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Definitions [Reg. 4607]: "Canada" — ITA 255, *Interpretation Act* 35(1); "province" — *Interpretation Act* 35(1).

4608. Prescribed expenditure for qualified Canadian exploration expenditure — **(1)** In this section,

"joint exploration corporation" has the meaning assigned by paragraph 66(15)(g) [66(15)"joint exploration corporation"] of the Act;

"principal-business corporation" has the meaning assigned by paragraph 66(15)(h) [66(15)"principal-business corporation"] of the Act;

"shareholder corporation" has the meaning assigned by paragraph 66(15)(i) [66(15)"shareholder corporation"] of the Act;

"well" means an exploratory probe or an oil or gas well.

(2) For the purposes of the definition "qualified Canadian exploration expenditure" in subsection 127(9) of the Act, the prescribed expenditure of a taxpayer for a taxation year is the aggregate of all amounts each of which is the amount, if any, by which

(a) the specified expenses of the taxpayer for the year in respect of the well

exceed

(b) the base amount of the taxpayer at the end of the year in respect of the well.

(3) For the purposes of this section, the specified expenses of a taxpayer for a taxation year in respect of a well that is an exploratory probe is the aggregate of all expenses that

(a) would be Canadian exploration expenses of the taxpayer by reason of any of subparagraphs 66.1(6)(a)(i), (iv) and (v) [66.1(6)"Canadian exploration expense"(a), (h) and (i)] of the Act if the references in subparagraphs 66.1(6)(a) (iv) and (v) [66.1(6)"Canadian exploration expense"(h) and (i)] of the Act (as those subparagraphs read on November 30, 1985) to "any of subparagraphs (i) to (iii.1)" were read as references to "subparagraph (i)";

(b) were incurred

(i) in the year, and

(ii) after November 1985 and before 1991;

(c) were incurred in the drilling or completing of the exploratory probe or in building a temporary access road to, or preparing the site in respect of, the probe; and

(d) are not non-qualifying expenses of the taxpayer.

(4) For the purposes of this section, the specified expenses of a taxpayer for a taxation year in respect of a well that is an oil or gas well is the aggregate of all expenses that

(a) would be Canadian exploration expenses of the taxpayer by virtue of any of subparagraphs 66.1(6)(a)(ii) to (ii.2), (iv) and (v) [66.1(6)"Canadian exploration expense"(c) to (e), (h) and (i)] of the Act if the references in subparagraphs 66.1(6)(iv) and (v) [66.1(6)"Canadian exploration expense"(h) and (i)] of the Act (as those subparagraphs read on November 30, 1985) to "subparagraphs (i) to (iii.1)" were read as references to "subparagraphs (ii) to (ii.2)";

(b) were incurred in respect of the well

(i) in the year, and

(ii) after November 1985 and before 1991; and

(c) are not non-qualifying expenses of the taxpayer.

(5) For the purposes of subsections (3) and (4), a non-qualifying expense of a taxpayer is an expense that

(a) may reasonably be regarded as having been incurred as consideration for services to be rendered after 1990 or for property that cannot reasonably be considered to be for use by the taxpayer before 1991;

(b) was or is to be renounced by the taxpayer at any time under subsection 66(10.1) or (12.6) of the Act;

(c) is or was a Canadian exploration and development overhead expense, within the meaning of section 1206, of the taxpayer, of a partnership of which the taxpayer was a member or of a joint exploration corporation of which the taxpayer was a shareholder corporation;

(d) is an eligible cost or expense within the meaning of the *Petroleum Incentives Program Act* or the *Petroleum Incentives Program Act*, Chapter P-4.1 of the Statutes of Alberta, 1981, in respect of which, or in respect of part of which, the taxpayer, a partnership of which the taxpayer was a member, a joint exploration corporation of which the taxpayer was a shareholder corporation or a principal-business corporation of which the taxpayer was a shareholder, has received, is deemed to have received, is entitled to receive or may reasonably be expected to receive an incentive under either of those Acts; or

(e) was included in determining the specified expenses of any other taxpayer for a taxation year.

(6) For the purposes of this section, the base amount of a taxpayer at the end of a particular taxation year in respect of a well is the amount, if any, by which the taxpayer's threshold amount in respect of the well exceeds the aggregate of

(a) all amounts that would have been the taxpayer's specified expenses for any taxation year in respect of the well if

(i) the references in subparagraphs (3)(b)(ii) and (4)(b)(ii) to "after November 1985 and before 1991" were read as "after March 1985 and before December 1985", and

(ii) subsection (5) were read without reference to paragraph (d) thereof;

(b) all amounts referred to in paragraph (5)(d) for the particular taxation year or a preceding taxation year in respect of the well that would have been included in determining the taxpayer's specified expenses for the particular taxation year or the preceding taxation year but for that paragraph; and

(c) all amounts that are the taxpayer's specified expenses for any preceding taxation year in respect of the well.

(7) For the purposes of this section, the threshold amount of a taxpayer in respect of a well is

(a) where no agreement has been filed with the Minister under subsection (8) in respect of the well, $5,000,000; and

(b) where an agreement has been filed with the Minister under subsection (8) in respect of the well, the amount, if any, allocated to the taxpayer under the agreement.

(8) For the purposes of this section, where the aggregate of all expenses in respect of a well, each of which

(a) would be included in determining the specified expenses of a taxpayer for a taxation year in respect of the well if subsection (5) were read without reference to paragraph (d) thereof, or

(b) would be included in determining the specified expenses of a taxpayer for a taxation year in respect of the well if

(i) the references in subparagraphs (3)(b)(ii) and (4)(b)(ii) to "after November 1985 and before 1991" were read as "after March 1985 and before December 1985", and

(ii) subsection (5) were read without reference to paragraph (d) thereof

exceeds $5,000,000, all taxpayers who have incurred those expenses or in whose favour or to whom any of those expenses have been renounced under subsection 66(10.1) or (12.6) of the Act may file with the Minister an agreement in writing in the prescribed form in respect of the well allocating amounts to some or all of those taxpayers if

(c) the amount allocated to each taxpayer does not exceed the total of such expenses that were incurred by the taxpayer in respect of the well, and that are not to be renounced by the taxpayer under subsection 66(10.1) or (12.6) of the Act in favour of or to any other person, and

(d) the aggregate of all amounts so allocated is not less than $5,000,000.

(9) For the purposes of this section, where

(a) the drilling of a well (in this subsection referred to as the "abandoned well") is abandoned not because of the results obtained but because of geological or mechanical difficulties and the drilling of a new well (in this subsection referred to as the "new well") is commenced, and

(b) having regard to all the circumstances, including the lapse of time between the abandonment of the abandoned well and the commencement of the new well and the proximity of the sites of the wells, it is reasonable to regard the new well as a replacement for the abandoned well,

the abandoned well and the new well shall be deemed to be one well.

(10) For the purposes of this section, where an expense of a joint exploration corporation is deemed by subsection 66(10.1) or (10.2) of the Act to be an expense of a shareholder corporation of the joint exploration corporation, the shareholder corporation shall be deemed to have incurred the expense at the time it was incurred by the joint exploration corporation.

(11) For the purpose of this section, where an expense of a principal-business corporation is deemed by subsection 66(12.61) or (12.63) of the Act to be an expense of a shareholder of the corporation, the shareholder shall be deemed to have incurred the expense at the time it was incurred by the principal-business corporation.

(12) For the purposes of this section, where an expense incurred by a partnership is, under subparagraph 66.1(6)(a)(iv) [66.1(6)"Canadian exploration expense"(h)] of the Act, a Canadian exploration expense of a taxpayer who was a member of the partnership, the taxpayer shall be deemed to have incurred the Canadian exploration expense at the time the expense was incurred by the partnership.

(13) For the purposes of this section, where an expense is a Canadian development expense of a taxpayer that is, under subsection 66.1(9) of the Act, deemed to be a Canadian exploration expense of the taxpayer, the taxpayer shall be deemed to have incurred the Canadian exploration expense at the time the Canadian development expense was incurred.

History: Paras. 4608(3)(a), (4)(a) amended by P.C. 1992-2335, Sch. II, s. 8, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable after November 30, 1985.

S. 4608 added by P.C. 1989-1793, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, effective after November 30, 1985.

Definitions [Reg. 4608]: "abandoned well" — Reg. 4608(9)(a); "amount" — ITA 248(1); "base amount" — Reg. 4608(6); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "joint exploration corporation" — ITA 66(15), Reg. 4608(1); "Minister" — ITA 248(1); "new well" — Reg. 4608(9)(a); "non-qualifying expenses" — Reg. 4608(5); "oil or gas well" — ITA 248(1); "person", "prescribed" — ITA 248(1); "principal-business corporation" — ITA 66(15), Reg. 4608(1); "property", "shareholder" — ITA 248(1); "shareholder corporation" — ITA 66(15), Reg. 4608(1); "specified expenses" — Reg. 4608(4); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "threshold amount" — Reg. 4608(7); "well" — Reg. 4608(1), (9); "writing" — *Interpretation Act* 35(1).

4609. Prescribed offshore region — For the purposes of the definition "specified percentage" in subsection 127(9) of the Act, the following region is a prescribed offshore region:

(a) that submarine area, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of that portion of the land territory of Canada comprising the Gaspé Peninsula and the provinces of Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the territorial sea of Canada is measured, whichever is the greater; and

(b) the waters above the submarine area referred to in paragraph (a).

History: S. 4609 added by P.C. 1989-1793, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, and s. 4609 after November 16, 1978.

Definitions [Reg. 4609]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "province", "territorial sea", "territory" — *Interpretation Act* 35(1).

4610. Prescribed area — For the purpose of paragraph (c.1) of the definition "qualified property" in subsection 127(9) of the Act, the area prescribed is the area compris-

ing the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and the Gaspé Peninsula.

History: S. 4610 added by P.C. 1995-775, May 16, 1995, *Canada Gazette*, Part II, s. 5, May 31, 1995, applicable to property acquired after 1991.

Definitions [Reg. 4610]: "prescribed" — ITA 248(1).

PART XLVII — ELECTION IN RESPECT OF CERTAIN PROPERTY OWNED ON DECEMBER 31, 1971

History: Part XLVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4700. Any election by an individual under subsection 26(7) of the *Income Tax Application Rules* shall be made by filing with the Minister the form prescribed.

History: S. 4700 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Selected Cases [Reg. 4700]: *R. v. Adelman*, [1998] 1 C.T.C. 133 (FCA) (Requirement to elect is mandatory, not directory).

Definitions [Reg. 4700]: "individual", "Minister", "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-139R: Capital property owned on December 31, 1971 — Fair market value.

Forms: T1105: Supplementary schedule for dispositions of capital property acquired before 1972; T2076: Valuation day value election for capital properties owned on December 31, 1971.

PART XLVIII — STATUS OF CORPORATIONS AND TRUSTS

History: Part XLVIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4800. **(1)** For the purposes of subparagraph 89(1)(g)(ii) [89(1)"public corporation"(b)] of the Act, the following conditions are hereby prescribed in respect of a corporation other than a cooperative corporation (within the meaning assigned by section 136 of the Act) or a credit union:

(a) a class of shares of the capital stock of the corporation designated by the corporation in its election or by the Minister in his notice to the corporation, as the case may be, shall be qualified for distribution to the public;

(b) there shall be no fewer than

(i) where the shares of that class are equity shares, 150, and

(ii) in any other case, 300

persons, other than insiders of the corporation, each of whom holds

(iii) not less than one block of shares of that class, and

(iv) shares of that class having an aggregate fair market value of not less than $500; and

(c) insiders of the corporation shall not hold more than 80 per cent of the issued and outstanding shares of that class.

Forms: T2073: Election to be a public corporation.

(2) For the purposes of subparagraph 89(1)(g)(iii) [89(1)"public corporation"(c)] of the Act, the following conditions are hereby prescribed in respect of a corporation:

(a) insiders of the corporation shall hold more than 90 per cent of the issued and outstanding shares of each class of shares of the capital stock of the corporation that

(i) was, at any time after the corporation last became a public corporation, listed on a stock exchange in Canada prescribed for the purposes of section 89 of the Act, or

(ii) was a class, designated as described in paragraph (1)(a), by virtue of which the corporation last became a public corporation;

(b) in respect of each class of shares described in subparagraph (a)(i) or (ii), there shall be fewer than

(i) where the shares of that class are equity shares, 50, and

(ii) in any other case, 100

persons, other than insiders of the corporation, each of whom holds

(iii) not less than one block of shares of that class, and

(iv) shares of that class having an aggregate fair market value of not less than $500; and

(c) there shall be no class of shares of the capital stock of the corporation that is qualified for distribution to the public and complies with the conditions described in paragraphs (1)(b) and (c).

Forms: T2067: Election not to be a public corporation.

(3) Where, by virtue of an amalgamation (within the meaning assigned by section 87 of the Act) of predecessor corporations any one or more of which was, immediately before the amalgamation, a public corporation, shares of any class of the capital stock of any such public corporation that was

(a) at any time after the corporation last became a public corporation, listed on a stock exchange in Canada prescribed for the purposes of section 89 of the Act, or

(b) the class, designated as described in paragraph (1)(a), by virtue of which the corporation last became a public corporation,

are converted into shares of any class (in this subsection referred to as the "new class") of the capital stock of the new corporation, the new class shall, for the purposes of subsection (2), be deemed to be a class, designated as described in paragraph (1)(a), by virtue of which the new corporation last became a public corporation.

(4) Any election under clause 89(1)(g)(ii)(A) or (iii)(A) [89(1)"public corporation"(b)(i) or (c)(i)] of the Act shall be made by a corporation by filing with the Minister the following documents:

(a) the form prescribed by the Minister;

(b) where the directors of the corporation are legally entitled to administer the affairs of the corporation, a certified copy of their resolution authorizing the election to be made;

(c) where the directors of the corporation are not legally entitled to administer the affairs of the corporation, a certified copy of the authorization of the making of the election by the person or persons legally entitled to administer the affairs of the corporation; and

(d) a statutory declaration made by a director of the corporation stating that, after reasonable inquiry for the purpose of informing himself in that regard, to the best of his knowledge the corporation complies with all the prescribed conditions that must be complied with at the time the election is made.

History: S. 4800 amended by P.C. 1983-867, March 25, 1983, *Canada Gazette*, Part II, April, 1983.

Definitions [Reg. 4800]: "block of shares" — Reg. 4803(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class of shares" — Reg. 4803(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "equity share" — ITA 204, Reg. 4803(1); "Minister" — ITA 248(1); "new class" — Reg. 4800(3); "person" — Reg. 4803(3); "prescribed" — ITA 248(1); "public corporation" — ITA 89(1), 248(1); "share" — ITA 248(1); "statutory declaration" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-320R2: RRSP — qualified investments; IT-391R: Status of corporations.

Forms: T2067: Election not to be a public corporation; T2073: Election to be a public corporation.

4800.1 For the purposes of paragraph 107(1)(a), subsections 107(2) and (4.1) and paragraph 108(1)(c) [108(1)"capital interest"] of the Act, the following are prescribed trusts;

(a) a trust maintained primarily for the benefit of employees of a corporation or two or more corporations which do not deal at arm's length with each other, where one of the main purposes of the trust is to hold interests in shares of the capital stock of the corporation or corporations, as the case may be, or any corporation not dealing at arm's length therewith;

(b) a trust established exclusively for the benefit of one or more persons each of whom was, at the time the trust was created, either a person from whom the trust received property or a creditor of that person, where one of the main purposes of the trust is to secure the payments required to be made by or on behalf of that person to such creditor; and

(c) a trust all or substantially all of the properties of which consist of shares of the capital stock of a corporation, where the trust was established pursuant to an agreement between two or more shareholders of the corporation and one of the main purposes of the trust is to provide for the exercise of voting rights in respect of those shares pursuant to that agreement.

Related Provisions: ITA 107.4(3)(i) — Trust deemed not to be prescribed trust.

History: That portion of s. 4800.1 preceding para. (a) amended by P.C. 1992-2338, s.1, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable after 1987.

S. 4800.1 added by P.C. 1990-853, May 10, 1990, *Canada Gazette*, Part II, May 23, 1990, applicable after 1987.

Definitions [Reg. 4800.1]: "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "person", "prescribed", "property", "share", "shareholder" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

4801. For the purposes of paragraph 132(6)(c) of the Act, the following conditions are hereby prescribed in respect of a trust:

(a) a class of the units of the trust shall be qualified for distribution to the public; and

(b) in respect of any one class of units described in paragraph (a), there shall be no fewer than 150 beneficiaries of the trust, each of whom holds

(i) not less than one block of units of the class, and

(ii) units of the class having an aggregate fair market value of not less than $500.

Related Provisions: Reg. 221(1)(f) — Reporting requirements.

Definitions [Reg. 4801]: "block of units" — Reg. 4803(1); "class of units" — Reg. 4803(2); "person" — Reg. 4803(3); "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

4801.1 For the purpose of paragraph (c) of the definition "exempt trust" in subsection 233.2(1) of the Act, the following conditions are hereby prescribed in respect of a trust:

(a) at least 150 beneficiaries of the trust are beneficiaries in respect of the same class of units of the trust; and

(b) at least 150 of the beneficiaries in respect of that class each hold

(i) at least one block of units of that class, and

(ii) units of that class having a total fair market value of at least $500.

History: S. 4801.1 added by P.C. 1998-1573, s. 1, September 15, 1998, *Canada Gazette*, Part II, September 30, 1998, applicable to returns in respect of taxation years that begin after 1995.

4802. (1) For the purposes of clause 149(1)(o.2)(iv)(D) of the Act, the following are prescribed persons:

(a) a trust all the beneficiaries of which are trusts described in clause 149(1)(o.2)(iv)(B) of the Act;

(b) a corporation incorporated before November 17, 1978 solely in connection with, or for the administration of, a registered pension plan;

(c) a trust or corporation established by or arising by virtue of an act of a province the principal activities of which are to administer, manage or invest the monies of a pension fund or plan that is established pursuant to an act of the province or an order or regulation made thereunder;

(d) a trust or corporation established by or arising by virtue of an act of a province in connection with a scheme or program for the compensation of workers injured in an accident arising out of or in the course of their employment;

(e) Her Majesty in right of a province;

(f) a trust all of the beneficiaries of which are any combination of

(i) registered pension plans,

(ii) trusts described in clause 149(1)(o.2)(iv)(B) or (C) of the Act, and

(iii) persons described in this subsection; and

(g) a corporation all of the shares of the capital stock of which are owned by one or more of the following:

(i) registered pension plans,

(ii) trusts described in clause 149(1)(o.2)(iv)(B) or (C) of the Act, and

(iii) persons described in this subsection.

History: Subpara. 4802(1)(f)(iii) amended and para. 4802(1)(g) added by P.C. 1996-569, s. 1, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1994 *et seq.*

S. 4802 renumbered as subsec. 4802(1) by P.C. 1994-785, May 12, 1994, *Canada Gazette*, Part II, June 1, 1994, applicable to 1989 *et seq.*

Para. 4802(e) amended, (f) added, by P.C. 1992-2338, s. 2, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable to taxation years commencing after 1991.

Para. 4802(b) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Para. 4802(c) substituted and para. (e) added by P.C. 1987-1881, s. 1, September 10, 1987, *Canada Gazette*, Part II, September 30, 1987, applicable with respect to taxation years commencing after 1978.

New s. 4802 added and former s. 4802 renumbered s. 4803 by P.C. 1985-2277, s. 14, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

(2) For the purposes of paragraph 149(1)(t) of the Act, the following are prescribed insurers:

(a) Union Québécoise, compagnie d'assurances générales inc.;

(b) Les Clairvoyants Compagnie d'Assurance Générale Inc.; and

(c) Laurentian Farm Insurance Company Inc.

History: Subsec. 4802(2) added by P.C. 1994-785, May 12, 1994, *Canada Gazette*, Part II, June 1, 1994, applicable to 1989 *et seq.*

Definitions [Reg. 4802]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employment" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "insurer", "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan", "share" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

4803. (1) In this Part,

"block of shares" means, with respect to any class of the capital stock of a corporation,

(a) 100 shares, if the fair market value of one share of the class is less than $25,

(b) 25 shares, if the fair market value of one share of the class is $25 or more but less than $100, and

(c) 10 shares, if the fair market value of one share of the class is $100 or more;

"block of units" means, with respect to any class of units of a trust,

(a) 100 units, if the fair market value of one unit of the class is less than $25,

(b) 25 units, if the fair market value of one unit of the class is $25 or more but less than $100, and

(c) 10 units, if the fair market value of one unit of the class is $100 or more;

"equity share" has the meaning assigned by section 204 of the Act;

"insider of a corporation" has the meaning that would be assigned by section 100 of the *Canada Corporations Act* if the references therein to "public company" and to "equity shares" were read as references to "corporation" and "shares" respectively, except that a person who is an employee of the corporation, or of a person who does not deal at arm's length with the corporation, and whose right to sell or transfer any share of the capital stock of the corporation, or to exercise the voting rights, if any, attaching to the share, is restricted by

(a) the terms and conditions attaching to the share, or

(b) any obligation of the person, under a contract, in equity or otherwise, to the corporation or to any person with whom the corporation does not deal at arm's length,

shall be deemed to hold the share as an insider of the corporation.

History: Subsec. 4803(1) is the former subsec. 4802(1) renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

The definition of "equity share" in former subsec. 4802(1) substituted by P.C. 1984-339, s. 1, February 2, 1984, *Canada Gazette*, Part II, February 22, 1984, effective November 13, 1981.

(2) For the purposes of this Part, a class of shares of the capital stock of a corporation or a class of units of a trust is qualified for distribution to the public only if

(a) a prospectus, registration statement or similar document has been filed with, and, where required by law, accepted for filing by, a public authority in Canada pursuant to and in accordance with the law of Canada or of any province and there has been a lawful distribution to the public of shares or units of that class in accordance with that document;

(b) the class is a class of shares, any of which were issued by the corporation at any time after 1971 while it was a public corporation in exchange for shares of any other class of the capital stock of the corporation that was, immediately before the exchange, qualified for distribution to the public;

(c) in the case of any class of shares, any of which were issued and outstanding on January 1, 1972, the class complied on that date with the conditions described in paragraphs 4800(1)(b) and (c); or

(d) in the case of any class of units, any of which were issued and outstanding on January 1, 1972, the class complied on that date with the condition described in paragraph 4801(b).

History: Subsec. 4803(2) is the former subsec. 4802(2), renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

(3) For the purposes of paragraphs 4800(1)(b), 4800(2)(b) and 4801(b), where a group of persons holds

(a) not less than one block of shares of any class of shares of the capital stock of a corporation or one block of units of any class of a trust, as the case may be, and

(b) shares or units, as the case may be, of that class having an aggregate fair market value of not less than $500,

that group shall, subject to subsection (4), be deemed to be one person for the purposes of determining the number of persons who hold shares or units, as the case may be, of that class.

History: Subsec. 4803(3) is the former subsec. 4802(3), renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

(4) In determining under subsection (3) the persons who belong to a group for the purposes of determining the number of persons who hold shares or units, as the case may be, of a particular class, the following rules apply:

(a) no person shall be included in more than one group;

(b) no person shall be included in a group if he holds

(i) not less than one block of shares or one block of units, as the case may be, of that class, and

(ii) shares or units, as the case may be, of that class having an aggregate fair market value of not less than $500; and

(c) the membership of each group shall be determined in the manner that results in the greatest possible number of groups.

History: Subsec. 4803(4) is the former subsec. 4802(4), renumbered by P.C. 1985-2277, subsec. 14(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1978.

Subparas. 4802(4)(b)(i), (ii) substituted by P.C. 1981-1556, s. 2, June 11, 1981, *Canada Gazette*, Part II, June 24, 1981, effective 1972 *et seq.*

Interpretation Bulletins: IT-391R: Status of corporations.

Definitions [Reg. 4803]: "arm's length" — ITA 251(1); "block of shares", "block of units" — Reg. 4803(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class of shares", "class of units" — Reg. 4803(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee" — ITA 248(1); "group" — Reg. 4803(4); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — ITA 89(1), 248(1); "share" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

PART XLIX — DEFERRED INCOME PLANS, QUALIFIED INVESTMENTS

History: Part XLIX (ss. 4900, 4901) substituted by P.C. 1981-2578, s. 4, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective commencing January 1, 1981.

Part XLIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

4900. (1) For the purposes of subparagraphs 146(1)(g)(iv) [146(1)"qualified investment"(d)], 146.2(1)(g)(iv) [repealed], 146.3(1)(d)(iii) [146.3(1)"qualified investment"(c)] and 204(e)(x) [204"qualified investment"(i)] of the Act, subject to subsection (2), each of the following investments is hereby prescribed to be a qualified investment for a plan trust at a particular time if at that time it is

Proposed Amendment — Reg. 4900(1) opening words

4900. (1) Subject to subsection (2), for the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act, paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act and paragraph (i) of the definition "qualified investment" in section 204 of the Act, each of the following investments is prescribed to be a qualified investment for a plan trust at a particular time if at that time it is

Application: The October 27, 1998 draft regulations, subsec. 2(1), will amend the opening words of subsec. 4900(1) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Part XLIX of the Regulations lists a number of qualified investments for RRSPs, RRIFs and DPSPs. Part XLIX is amended to reflect the introduction of qualified investment rules for RESPs. Generally, the types of property that will qualify for an RESP are those that qualify for an RRSP.

All of the amendments described below to Part XLIX of the Regulations apply to property acquired after the date on which the changes are released to the public [October 27, 1998].

Subsection 4900(1) of the Regulations lists a number of types of property that are qualified investments for a trust governed by an RRSP, RRIF or DPSP.

The preamble to subsection 4900(1) is amended so that the listed types of property are also qualified investments for a trust governed by an RESP [section 146.1 — ed.]. It is also amended to delete an obsolete reference to section 146.2 of the Act, which dealt with registered home ownership savings plans.

(a) **[registered investment]** — an interest in a trust or a share of the capital stock of a corporation that was a registered investment for the plan trust during the calendar year in which the particular time occurs or the immediately preceding year;

(b) **[share of public corporation]** — a share of the capital stock of a public corporation other than a mortgage investment corporation;

History: Para. 4900(1)(b) amended by P.C. 1994-1074, subsec. 1(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

(c) **[share of mortgage investment corporation]** — a share of the capital stock of a mortgage investment corporation that does not hold as part of its property at any time during the calendar year in which the particular time occurs any indebtedness, whether by way of mortgage or otherwise, of a person who is an annuitant, a beneficiary or an employer, as the case may be, under the governing plan of the plan trust or of any other person who does not deal at arm's length with that person;

Proposed Amendment — Reg. 4900(1)(c)

(c) **[share of mortgage investment corporation]** — a share of the capital stock of a mortgage investment corporation that does not hold as part of its property at any time during the calendar year in which the particular time occurs any indebtedness, whether by way of mortgage or otherwise, of a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust or of any other person who does not deal at arm's length with that person;

Application: The October 27, 1998 draft regulations, subsec. 2(2), will amend para. 4900(1)(c) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Paragraph 4900(1)(c) allows a share of a mortgage investment corporation (as defined in subsection 130.1(6) of the Act) to be a qualified investment, provided the RRSP or RRIF annuitant or any beneficiary or employer under the DPSP is not indebted to the corporation. Paragraph 4900(1)(c) is amended so that the restriction on indebtedness also applies to RESP subscribers and beneficiaries.

(c.1) **[bond of public corporation]** — a bond, debenture, note or similar obligation of a public corporation other than a mortgage investment corporation;

History: Para. 4900(1)(c.1) added by P.C. 1994-1074, subsec. 1(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

(d) **[unit of mutual fund trust]** — a unit of a mutual fund trust;

Proposed Amendment — Reg. 4900(1)(d)

Letter from Department of Finance, December 10, 1998:

Dear [xxx]

This is in reply to your memorandum to me dated November 5, 1998.

You have drawn our attention to a case where units of trusts are issued to institutional investors and high net worth individuals, without any requirement for a prospectus, registration statement or similar document to be filed with provincial securities regulators. You have advised us that these trusts would, if a prospectus or similar document had been filed, have been mutual fund trusts for the purposes of the *Income Tax Act*.

We agree that, in these circumstances, it would be appropriate to treat units in these trusts in the same manner as mutual fund trusts for the purpose of the qualified investment rules for trusts governed by registered retirement savings plans, registered retirement income funds and deferred profit sharing plans. Consequently, I am prepared to recommend to the Minister of Finance an amendment to the Income Tax Regulations to effect the above noted treatment. If this recommendation is supported, we would propose its application be for acquisitions after 1993.

Thank you for raising this issue with us.

Yours sincerely,

Len Farber
Director General
Tax Legislation Division

(d.1) **[bond of mutual fund trust]** — a bond, debenture, note or similar obligation issued by a mutual fund trust the units of which are listed on a stock exchange referred to in section 3200;

History: Para. 4900(1)(d.1) added by P.C. 1998-629, subsec. 1(1), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable to property acquired after 1996.

(e) **[warrant or option]** — a warrant or right giving the owner thereof the right to acquire either immediately or in the future property all of which is a qualified investment for the plan trust;

History: Para. 4900(1)(e) amended by P.C. 1994-1074, subsec. 1(3), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

Para. 4900(1)(e) substituted by P.C. 1985-587, February 28, 1985, *Canada Gazette*, Part II, March 20, 1985, effective after February 25, 1985.

(e.1) **[société d'entraide économique]** — a share of, or deposit with, a société d'entraide économique;

History: Para. 4900(1)(e.1) added by P.C. 1983-3319, s. 1, October 20, 1983, *Canada Gazette*, Part II, November 9, 1983, applicable to 1982 *et seq.*

(f) **[share of credit union]** — a share of, or similar interest in a credit union;

(g) **[bond of credit union]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") issued by, or a deposit with, a credit union that has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is an annuitant, a beneficiary or an employer, as the case may be, under the governing plan of the plan trust, or to any other person who does not deal at arm's length with that person, as a result of the ownership by

Proposed Amendment — Reg. 4900(1)(g)

(g) **[bond of credit union]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") issued by, or a deposit with, a credit union that has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust, or to any other person who does not deal at arm's length with that person, as a result of the ownership by

Application: The October 27, 1998 draft regulations, subsec. 2(3), will amend the opening words of para. 4900(1)(g) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Paragraph 4900(1)(g) prescribes, as a qualified investment, a bond, debenture, note or similar obligation issued by, or a deposit with, a credit union that has not at any time in the year granted a benefit, resulting from the investment, to the RRSP or RRIF annuitant or any beneficiary or employer under the DPSP. Paragraph 4900(1)(g) is amended so that the restriction on granting a benefit also applies to RESP subscribers and beneficiaries.

(i) the plan trust of a share or obligation of, or a deposit with, the credit union, or

(ii) a registered investment of a share or obligation of, or a deposit with, the credit union if the plan trust has invested in that registered investment,

and a credit union shall be deemed to have granted a benefit or privilege to a person in a year if at any time in that year that person continues to enjoy a benefit or privilege that was granted in a prior year;

(h) **[bond of cooperative corporation]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") issued by a cooperative corporation (within the meaning assigned by subsection 136(2) of the Act)

(i) that throughout the taxation year of the cooperative corporation immediately preceding the year in which the obligation was acquired by the plan trust had not less than 100 shareholders or, if all its shareholders were corporations, not less than 50 shareholders,

(ii) whose obligations were, at the end of each month of

(A) the last taxation year, if any, of the cooperative corporation prior to the date of acquisition of the obligation by the plan trust, or

(B) the period commencing three months after the date an obligation was first acquired by any plan trust and ending on the last day of the taxation year of the cooperative corporation in which that period commenced,

whichever of the periods referred to in clause (A) or (B) commences later, held by plan trusts the average number of which is not less than 100 computed on the basis that no two plan trusts shall have the same individual as an annuitant or a beneficiary, as the case may be, and

(iii) that has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is an annuitant, a beneficiary or an employer, as the case may be, under the governing plan of the plan trust, or to any other person who does not deal at arm's length with that person, as a result of the ownership by

Proposed Amendment — Reg. 4900(1)(h)(iii)

(iii) that has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust, or to any other person who does not deal at arm's length with that person, as a result of the ownership by

Application: The October 27, 1998 draft regulations, subsec. 2(4), will amend the opening words of subpara. 4900(1)(h)(iii) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Paragraph 4900(1)(h) prescribes, as a qualified investment, a bond, debenture, note or similar obligation issued by a cooperative corporation (as defined in subsection 136(2) of the Act) provided certain conditions are met. One of the conditions is that the cooperative corporation has not at any time in the year granted a benefit, resulting from the investment, to the RRSP or RRIF annuitant or any beneficiary or employer under the DPSP. Paragraph 4900(1)(h) is amended so that the restriction on granting a benefit also applies to RESP subscribers and beneficiaries.

(A) the plan trust of a share or obligation of the cooperative corporation, or

(B) a registered investment of a share or obligation of the cooperative corporation if the plan trust has invested in that registered investment,

and a cooperative corporation shall be deemed to have granted a benefit or privilege to a person in a year if at any time in that year that person continues to enjoy a benefit or privilege that was granted in a prior year;

(i) **[bonds of certain corporations]** — a bond, debenture, note or similar obligation (in this paragraph referred to as the "obligation") of a Canadian corporation

(i) if payment of the principal amount of the obligation and the interest thereon is guaranteed by a corporation or a mutual fund trust whose shares or units, as the case may be, are listed on a prescribed stock exchange in Canada,

(ii) if the corporation is controlled directly or indirectly by

(A) one or more corporations,

(B) one or more mutual fund trusts, or

(C) one or more corporations and mutual fund trusts

whose shares or units, as the case may be, are listed on a prescribed stock exchange in Canada, or

(iii) if, at the time the obligation is acquired by the plan trust, the corporation that issued the obligation is

(A) a corporation that, in respect of its capital stock, has issued and outstanding share capital carried in its books at not less than $25 million, or

(B) a corporation that is controlled by a corporation described in clause (A),

and has issued and outstanding bonds, debentures, notes or similar obligations having in the aggregate a principal amount of at least $10 million that are held by at least 300 different persons and were issued by the corporation by means of one or more offerings, provided that in respect of each such offering a prospectus, registration statement or similar document was filed with and, where required by law, accepted for filing by a public authority in Canada pursuant to and in accordance with the laws of Canada or a province and there was a lawful distribution to the public of those bonds, debentures, notes or similar obligations in accordance with that document;

(i.1) **[community bond guaranteed by province]** — a security of a Canadian corporation

(i) that was issued pursuant to *The Community Bonds Act*, chapter C-16.1 of the Statutes of Saskatchewan, 1990, *The Rural Development Bonds Act*, chapter 47 of the Statutes of Manitoba, 1991-92, the *Community Economic Development Act, 1993*, chapter 26 of the Statutes of Ontario, 1993, or the New Brunswick Community Development Bond Program through which financial assistance is provided under the *Economic Development Act*, chapter E-1.11 of the Acts of New Brunswick, 1975, and

(ii) the payment of the principal amount of which is guaranteed by Her Majesty in right of a province;

History: Para. 4900(1)(i.1) amended by P.C. 1994-1075, subsec. 1(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to property acquired after August 1993.

Para. 4900(1)(i.1) added by P.C. 1992-2334, s. 2, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable in respect of property acquired after June 30, 1991.

(i.11) **[Nova Scotia *Equity Tax Credit Act*]** — a share of the capital stock of a Canadian corporation that is registered under section 11 of the *Equity Tax Credit Act*, chapter 3 of the Statutes of Nova Scotia, 1993, the registration of which has not been revoked under that Act;

History: Para. 4900(1)(i.11) added by P.C. 1996-1487, subsec. 1(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to property acquired after 1995.

(i.12) **[NWT risk capital investment]** — a share of the capital stock of a Canadian corporation that is registered under section 39 of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998, the registration of which has not been revoked under that Act;

History: Para. 4900(1)(i.12) added by P.C. 1999-249, subsec. 1(1), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to property acquired after August 1998.

(i.2) **[banker's acceptance]** — indebtedness of a Canadian corporation (other than a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary or an employer under the governing plan of the plan trust) represented by a bankers' acceptance;

Proposed Amendment — Reg. 4900(1)(i.2)

(i.2) **[banker's acceptance]** — indebtedness of a Canadian corporation (other than a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust) represented by a bankers' acceptance;

Application: The October 27, 1998 draft regulations, subsec. 2(5), will amend para. 4900(1)(i.2) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Paragraph 4900(1)(i.2) allows the indebtedness of a Canadian corporation represented by a bankers' acceptance to be a qualified investment, provided the corporation deals at arm's length with the RRSP or RRIF annuitant or each person who is a beneficiary or an employer under the DPSP. Paragraph 4900(1)(i.2) is amended so that the restriction on non-arm's length dealings also applies to RESP subscribers and beneficiaries.

History: Para. 4900(1)(i.2) added by P.C. 1994-1074, subsec. 1(4), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

(j) **[mortgage]** — a mortgage in respect of real property situated in Canada insured

(i) under the *National Housing Act*, or

(ii) by a corporation offering its services to the public in Canada as an insurer of mortgages

and administered by an approved lender under the *National Housing Act*;

(k) **[pre-1981 qualified investment]** — an investment, other than a qualified investment described in paragraphs (a) to (j), that

(i) was, at the end of 1980, a qualified investment for a trust pursuant to subparagraph 204(e)(v) of the Act or section 1502, this Part or section 5800, as the case may be, as those provisions read at that time,

(ii) was held on December 31, 1980 and continuously thereafter by the trust until the particular time,

(iii) would have continued to be a qualified investment of the trust from December 31, 1980 until the particular time had the provisions referred to in subparagraph (i) been in force throughout that period of time, and

(iv) was not, at any time before the particular time, an interest in a registered investment;

(l) **[bond of international organization]** — a bond, debenture, note or similar obligation issued or guaranteed by

(i) the International Bank for Reconstruction and Development,

(i.1) the International Finance Corporation,

(ii) the Inter-American Development Bank,

(iii) the Asian Development Bank,

(iv) the Caribbean Development Bank,

(v) the European Bank for Reconstruction and Development, or

(vi) the African Development Bank;

History: Subpara. 4900(1)(l)(vi) added by P.C. 1999-133, subsec. 1(1), February 4, 1999, *Canada Gazette*, Part II, February 17, 1999, applicable after 1996.

Subpara. 4900(1)(l)(v) added by P.C. 1994-1075, subsec. 1(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to months beginning after March 1991.

Subpara. 4900(1)(l)(i.1) added by P.C. 1994-1074, subsec. 1(5), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after July 13, 1990.

Para. 4900(1)(l) added by P.C. 1986-772, subsec. 2(1), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(m) **[listed royalty unit]** — a royalty unit that is listed on a prescribed stock exchange in Canada and the value of which is derived solely from Canadian resource properties;

History: Para. 4900(1)(m) added by P.C. 1992-2334, s. 2, November 19, 1992, *Canada Gazette* Part II, December 2, 1992, applicable in respect of property acquired after July 16, 1992 respectively.

(n) **[listed limited partnership unit]** — a limited partnership unit listed on a stock exchange referred to in section 3200;

History: Para. 4900(1)(n) added by P.C. 1994-1074, subsec. 1(6), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1992.

(o) **[bond of foreign government]** — a bond, a debenture, note or similar obligation issued by the government of a country other than Canada and that had, at the time of purchase, an investment grade rating with a bond rating agency that in the ordinary course of its business rates the debt obligations issued by that government;

History: Para. 4900(1)(o) added by P.C. 1994-1075, subsec. 1(3), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to property acquired after June 21, 1993.

(p) **[bond of corporation listed outside Canada]** — a bond, debenture, note or similar obligation of a corporation the shares of which are listed on a stock exchange referred to in section 3201;

History: Para. 4900(1)(p) added by P.C. 1994-1075, subsec. 1(3), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable to property acquired after June 21, 1993.

(p.1) **[listed depository receipt]** — a right to a share of the capital stock of a corporation where the right is evidenced by a depository receipt that is listed on a stock exchange referred to in section 3200 or 3201;

History: Para. 4900(1)(p.1) added by P.C. 1998-629, subsec. 1(2), April 23, 1998, *Canada Gazette*, Part II, May 13, 1998, applicable to 1997 *et seq.*

(q) **[debt of privatized Crown corporation]** — a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary or an employer under the governing plan of the plan trust) where

Proposed Amendment — Reg. 4900(1)(q)

(q) **[debt of privatized Crown corporation]** — a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust) where

Application: The October 27, 1998 draft regulations, subsec. 2(6), will amend the opening words of para. 4900(1)(q) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Paragraph 4900(1)(q) allows a debt issued by certain Canadian corporations without share capital that are exempt from Part I tax under the Act to be a qualified investment, provided the corporation deals at arm's length with the RRSP or RRIF annuitant or each person who is a beneficiary or employer under the DPSP. Paragraph 4900(1)(q) is amended so that the restriction on non-arm's length dealings also applies to RESP subscribers and beneficiaries.

(i) the taxable income of the corporation is exempt from tax under Part I of the Act because of paragraph 149(1)(l) of the Act, and

(ii) either

(A) before the particular time and after 1995, the corporation

(I) acquired, for a total consideration of not less than $25 million, property from Her Majesty in right of Canada or a province, and

(II) put that property to a use that is the same as or similar to the use to which the property was put before the acquisition described in subclause (I), or

(B) at the time of the acquisition of the debt by the plan trust, it was reasonable to expect that clause (A) would apply in respect of the debt no later than one year after the time of the acquisition; or

History: Para. 4900(1)(q) added by P.C. 1996-1487, subsec. 1(2), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to property acquired after 1995.

(r) **[debt of large non-profit organization]** — a debt issued by a Canadian corporation (other than a corporation with share capital or a corporation that does not deal at arm's length with a person who is an annuitant, a beneficiary or an employer under the governing plan of the plan trust) if

(i) the taxable income of the corporation is exempt from tax under Part I of the Act because of paragraph 149(1)(l) of the Act, and

(ii) either

(A) the debt is issued by the corporation as part of an issue of debt by the corporation for an amount of at least $25 million,

or

(B) at the time of the acquisition of the debt by the plan trust, the corporation had issued debt as part of a single issue for an amount of at least $25 million.

History: Para. 4900(1)(r) added by P.C. 1999-133, subsec. 1(2), February 4, *Canada Gazette*, Part II, February 17, 1999, applicable after February 1998.

Proposed Amendment — Foreign Stock Exchange Index Units

Department of Finance news release, December 18, 1998: *Qualified RRSP Investments and IRAs*

Finance Minister Paul Martin today announced that he will propose changes to the *Income Tax Act* and the *Income Tax Regulations* to address two issues that have been recently raised with the Department of Finance, in the context of retirement savings decisions currently being made by individuals.

The first issue relates to foreign stock exchange index units. The Minister announced that he would propose changes to the *Income Tax Regulations* to ensure that these units are qualified investments for trusts governed by registered retirement savings plans, registered retirement income funds and deferred profit sharing plans. Qualifying units will include Standard & Poor 500 Depositary Receipts (SPDRs), units valued on the basis of the Dow Jones Industrial Average (known as DIAMONDs) and units for a particular country (known as WEBs) valued on the basis of the Morgan Stanley Capital Investment Index.

It is understood that industry practice for a number of years has been to treat these units as qualified investments. The proposed amendments would accommodate industry practice and recognize that index units can be part of a balanced portfolio of retirement assets for many individuals.

It is proposed that these amendments to the Regulations would apply to property acquired after 1993. This ensures that the regulatory framework conforms to the long-standing industry practice.

[For the second measure, dealing with Roth IRAs, see Proposed Amendment under ITA 248(1)"foreign retirement arrangement" — ed.]

For further information: Tax Legislation Division, (613) 992-1916; Jean-Michel Catta, Public Affairs and Operations Division, (613) 992-1574.

Related Provisions: Reg. 221 — Information return where entity claims that its shares or units are qualified investments.

Interpretation Bulletins: IT-320R2: RRSP — qualified investments.

(2) Notes, bonds, debentures, bankers' acceptances or similar obligations of

(a) an employer by whom payments are made in trust to a trustee under a deferred profit sharing plan or a revoked plan for the benefit of beneficiaries under the plan, or

(b) a corporation with whom that employer does not deal at arm's length

are not qualified investments for the trust.

History: Subsec. 4900(2) amended by P.C. 1994-1074, subsec. 1(7), June 23, 1994, *Canada Gazette* Part II, July 13, 1994, applicable after 1992.

(3) [Annuity contract] — For the purpose of paragraph (i) of the definition "qualified investment" in section 204 of the Act, a contract with a licensed annuities provider for an annuity payable to an employee who is a beneficiary under a deferred profit sharing plan beginning not later than the end of the year in which the employee attains 69 years of age, the guaranteed term of which, if any, does not exceed 15 years, is prescribed as a qualified investment for a trust governed by such a plan or revoked plan.

History: Subsec. 4900(3) amended by P.C. 1998-2256, s. 1, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to annuity contracts acquired after 1996, except that

(a) the amendment does not apply to a contract where the annuitant attained 70 years of age before 1997; and

(b) in applying the subsec. to a contract where the annuitant attained 69 years of age in 1996, the reference to "69 years of age" shall be read as a reference to "70 years of age".

(4) [Mortgage] — For the purposes of subparagraphs 146(1)(g)(iv) [146(1)"qualified investment"(d)] and 146.3(1)(d)(iii) [146.3(1)"qualified investment"(c)] of the Act, a mortgage secured by real property situated in Canada, or an interest therein, is a qualified investment for a registered retirement savings plan or a registered retirement income fund unless the mortgagor is the annuitant under the plan or fund, as the case may be, or is a person with whom the annuitant does not deal at arm's length.

Proposed Amendment — Reg. 4900(4)

(4) [Mortgage] — For the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act, a mortgage secured by real property situated in Canada, or an interest therein, is a qualified investment for a registered retirement savings plan, a registered education savings plan and a registered retirement income fund unless the mortgagor is a person who is an annuitant, a beneficiary or a subscriber under the plan or fund or any other person who does not deal at arm's length with that person.

Application: The October 27, 1998 draft regulations, subsec. 2(7), will amend subsec. 4900(4) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Subsection 4900(4) of the Regulations allows a mortgage secured by real property situated in Canada, or an interest therein, to be a qualified investment for RRSPs and RRIFs, if the mortgagor deals at arm's length with the RRSP or RRIF annuitant.

Subsection 4900(4) is amended so that such a mortgage is also a qualified investment for an RESP, provided the mortgagor deals at arm's length with each person who is a subscriber or beneficiary under the RESP.

Related Provisions: Reg. 4900(1)(j) — Mortgage as qualified investment.

(5) For the purposes of subparagraph 146.2(1)(g)(iv) of the Act, a contract between a trust governed by a registered home ownership savings plan and a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business is a qualified investment for that trust if the trust is entitled to receive from the person, on demand, an amount in settlement of the contract that is not less than the amount by which the aggregate of

(a) all the amounts paid as consideration by the trust under the contract, and

(b) interest on the amounts described in paragraph (a) at a rate that is not less than that guaranteed under the contract

exceeds

(c) such amount as may be specified in the contract.

Proposed Amendment — Reg. 4900(5)

(5) [Registered investment] — For the purposes of paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act, a property is a qualified investment for a trust governed by a registered education savings plan at any time if at that time the property is an interest in a trust or a share of the capital stock of a corporation that was a registered investment for a trust governed by a registered retirement savings plan during the calendar year in which the time occurs or the preceding year.

Application: The October 27, 1998 draft regulations, subsec. 2(8), will amend subsec. 4900(5) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Subsection 4900(5) of the Regulations prescribes certain annuity contracts to be qualified investments for registered home ownership savings plans (RHOSPs). Since the provisions relating to RHOSPs were repealed, effective after 1985, existing subsection 4900(5) is obsolete. It is being replaced by a provision relating to RESPs.

Amended subsection 4900(5) prescribes, as a qualified investment for an RESP, an interest in a trust or a share of a corporation that was a registered investment (as defined in subsection 204.4(1) of the Act) for an RRSP during the calendar year or the immediately preceding year.

(6) [Small business investment] — For the purposes of subparagraphs 146(1)(g)(iv) [146(1)"qualified investment"(d)] and 146.3(1)(d)(iii) [146.3(1)"qualified investment"(c)] of the Act, except as provided in subsections (8) and (9), a property is a qualified investment for a trust governed by a registered retirement savings plan or a registered retirement income fund at any time if at that time the property is

(a) a share of the capital stock of an eligible corporation (within the meaning assigned by subsection 5100(1)), unless the annuitant under the plan or fund is a designated shareholder of the corporation;

Proposed Amendment — Reg. 4900(6)

(6) [Small business investment] — For the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act, except as provided in subsections (8) and (9), a property is a qualified investment for a trust governed by a registered retirement savings plan, a registered education savings plan and a registered retirement income fund at any time if at that time the property is

(a) a share of the capital stock of an eligible corporation (within the meaning assigned by subsection 5100(1)), unless a person who is an annuitant, a beneficiary or a subscriber under the plan or fund is a designated shareholder of the corporation;

Application: The October 27, 1998 draft regulations, subsec. 2(9), will amend the portion of subsec. 4900(6) before para. (b) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Subsection 4900(6) of the Regulations prescribes the following types of property to be qualified investments for RRSPs and RRIFs:

- a share in the capital stock of an "eligible corporation", provided the annuitant under the RRSP or RRIF is not a "designated shareholder" of the corporation;
- an interest of a limited partner in an small business investment limited partnership; and
- an interest in an small business investment trust

The expressions "designated shareholder", "eligible corporation", "small business investment limited partnership" and "small business investment trust" are defined in subsections 4901(2), 5100(1), 5102(1) and 5103(1) of the Regulations, respectively.

Subsection 4900(6) is amended so that the types of investments described therein also qualify for an RESP. In the case of a share of an eligible corporation, each person who is a subscriber or beneficiary under the RESP must not be a "designated shareholder" of the corporation.

Subsection 4900(6) is subject to the rules in subsections 4900(8) and (9). These rules provide that an investment that would otherwise qualify under subsection 4900(6) will not be a qualified investment in certain circumstances. Subsection 4900(10) provides a special interpretative rule that applies for the purposes of subsection 4900(9).

Subsections 4900(8) to (10) are amended to reflect the extension of subsection 4900(6) to RESPs.

(b) an interest of a limited partner in a small business investment limited partnership; or

(c) an interest in a small business investment trust.

Related Provisions: Reg. 4900(12) — Alternative definition of qualified investment; Reg. 4901(2) — Meaning of "designated shareholder", "small business investment limited partnership"; "small business investment trust".

Interpretation Bulletins: IT-320R2: RRSP — qualified investments.

(7) For the purposes of subparagraph 204(e)(x) [204"qualified investment"(i)] of the Act, except as provided in subsection (11), a property is a qualified investment for a trust governed by a deferred profit sharing plan or revoked plan at any time if at that time the property is an interest

(a) of a limited partner in a small business investment limited partnership; or

(b) in a small business investment trust.

(8) For the purposes of subsection (6), where

(a) a trust governed by a registered retirement savings plan or a registered retirement income fund holds

Proposed Amendment — Reg. 4900(8)(a)

(a) a trust governed by a registered retirement savings plan, a registered education savings plan or a registered retirement income fund holds

Application: The October 27, 1998 draft regulations, subsec. 2(10), will amend the opening words of para. 4900(8)(a) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: See under 4900(6).

(i) a share of the capital stock of an eligible corporation (within the meaning assigned by subsection 5100(1)),

(ii) an interest in a small business investment limited partnership that holds a small business security, or

(iii) an interest in a small business investment trust that holds a small business security, and

(b) the annuitant under the plan or fund provides services to or for the issuer of the share or small business security, as the case may be, or a person related to that issuer and it may reasonably be considered, having regard to all the circumstances, including the terms and conditions of the share or small business security, as the case may be, or any agreement relating thereto and the rate of interest or the dividend provided on the share or small business security, as the case may be, that any amount received in respect of the share or small business security, as the case may be, is on account, in lieu or in satisfaction of payment for the services,

Proposed Amendment — Reg. 4900(8)(b)

(b) a person who is an annuitant, a beneficiary or a subscriber under the plan or fund provides services to or for the issuer of the share or small business security, or to or for a person related to that issuer, and it can reasonably be considered, having regard to all the circumstances (including the terms and conditions of the share or small business security or of any related agreement, and the rate of interest or the divi-

dend provided on the share or small business security), that any amount received in respect of the share or small business security is on account, in lieu or in satisfaction of payment for the services,

Application: The October 27, 1998 draft regulations, subsec. 2(11), will amend para. 4900(8)(b) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: See under 4900(6).

the property referred to in subparagraph (a)(i), (ii) or (iii) held by the plan or fund shall, immediately before that amount is received, cease to be and shall not thereafter be a qualified investment for the trust governed by the plan or fund.

(9) For the purposes of subsection (6), where

(a) a trust governed by a registered retirement savings plan or a registered retirement income fund holds

Proposed Amendment — Reg. 4900(9)(a)

(a) a trust governed by a registered retirement savings plan, a registered education savings plan or a registered retirement income fund holds

Application: The October 27, 1998 draft regulations, subsec. 2(12), will amend the opening words of para. 4900(9)(a) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: See under 4900(6).

(i) an interest in a small business investment limited partnership, or

(ii) an interest in a small business investment trust

that holds a small business security (referred to in this subsection as the "designated security") of a corporation, and

(b) the annuitant under the plan or fund is a designated shareholder of the corporation,

Proposed Amendment — Reg. 4900(9)(b)

(b) a person who is an annuitant, a beneficiary or a subscriber under the plan or fund is a designated shareholder of the corporation,

Application: The October 27, 1998 draft regulations, subsec. 2(13), will amend para. 4900(9)(b) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: See under 4900(6).

the interest shall not be a qualified investment for the trust governed by the plan or fund unless

(c) the designated security is a share of the capital stock of an eligible corporation,

(d) the partnership or trust, as the case may be, has no right to set off, assign or otherwise apply, directly or indirectly, the designated security against the interest,

(e) no person is obligated in any way, either absolutely or contingently, under any undertaking the intent or effect of which is

(i) to limit any loss that the plan or fund may sustain by virtue of the ownership, holding or disposition of the interest, or

(ii) to ensure that the plan or fund will derive earnings by virtue of the ownership, holding or disposition of the interest,

(f) in the case of the partnership, there are more than 10 limited partners and no limited partner or group of limited partners who do not deal with each other at arm's length holds more than 10 per cent of the units of the partnership, and

(g) in the case of the trust, there are more than 10 beneficiaries and no beneficiary or group of beneficiaries who do not deal with each other at arm's length holds more than 10 per cent of the units of the trust.

(10) For the purposes of paragraphs (9)(f) and (g), a trust governed by a plan or fund shall be deemed not to deal at arm's length with a trust governed by another plan or fund if the annuitant of the plan or fund is the same person as, or does not deal at arm's length with, the annuitant of the other plan or fund.

Proposed Amendment — Reg. 4900(10)

(10) For the purposes of paragraphs (9)(f) and (g), a trust governed by a plan or fund shall be deemed not to deal at arm's length with a trust governed by another plan or fund if a person who is an annuitant or a subscriber under the plan or fund is the same person as, or does not deal at arm's length with, the annuitant or subscriber under the other plan or fund.

Application: The October 27, 1998 draft regulations, subsec. 2(14), will amend subsec. 4900(10) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: See under 4900(6).

(11) For the purposes of subsection (7), where

(a) a trust governed by a deferred profit sharing plan or revoked plan holds

(i) an interest in a small business investment limited partnership, or

(ii) an interest in a small business investment trust

that holds a small business security of a corporation,

(b) payments have been made in trust to a trustee under the deferred profit sharing plan or revoked plan for the benefit of beneficiaries thereunder by the corporation or a corporation related thereto, and

(c) the small business security is not an equity share described in paragraph 204(e)(vi) [204"qualified investment"(e)] of the Act,

the interest referred to in subparagraphs (a)(i) and (ii) shall not be a qualified investment for the trust referred to in paragraph (a).

(12) [Small business corporation] — For the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act, a property is a qualified investment for a trust governed by a registered retirement savings plan or a registered retirement income fund at any time if, at the time the property was acquired by the trust,

Proposed Amendment — Reg. 4900(12) opening words

(12) [Small business corporation] — For the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act, a property is a qualified investment for a trust governed by a registered retirement savings plan, a registered education savings plan or a registered retirement income fund at any time if, at the time the property was acquired by the trust,

Application: The October 27, 1998 draft regulations, subsec. 2(15), will amend the opening words of subsec. 4900(12) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Subsection 4900(12) of the Regulations allows certain shares of small business corporations, venture capital corporations and cooperative corporations to be qualified investments for RRSPs and RRIFs, provided the RRSP or RRIF annuitant is not a "connected shareholder" of the corporation. The expression "connected shareholder" is defined in subsection 4901(2).

Subsection 4900(12) is amended so that such shares also qualify for an RESP, if each person who is a subscriber or beneficiary under the RESP is not a "connected shareholder" of the corporation.

(a) the property was a share of the capital stock of a corporation (other than a cooperative corporation) that would, at that time or at the end of the last taxation year of the corporation ending before that time, be a small business corporation if the expression "Canadian-controlled private corporation" in the definition "small business corporation" in subsection 248(1) of the Act were read as "Canadian corporation (other than a corporation controlled at that time, directly or indirectly in any manner whatever, by one or more non-resident persons)",

(b) the property was a share of the capital stock of a prescribed venture capital corporation described in any of sections 6700, 6700.1 or 6700.2, or

(c) the property was a qualifying share in respect of a specified cooperative corporation and the plan or fund

and, immediately after the time the property was acquired by the trust, the annuitant under the plan or fund at that time was not a connected shareholder of the corporation.

Proposed Amendment — Reg. 4900(12) closing words

and, immediately after the time the property was acquired by the trust, each person who is an annuitant, a beneficiary or a subscriber under the plan or fund at that time was not a connected shareholder of the corporation.

Application: The October 27, 1998 draft regulations, subsec. 2(16), will amend the closing words of subsec. 4900(12) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: See under 4900(12).

Related Provisions: ITA 256(5.1), (6.2) — Meaning of "controlled directly or indirectly"; Reg. 4900(6) — Alternative definition of qualified investment; Reg. 4901(2) — Meaning of "connected shareholder", "qualifying share" and "specified cooperative corporation".

I.T. Technical News: No. 9 (qualified investments — whether shareholders deal at arm's length).

(13) Notwithstanding subsection (12), where

(a) a share that is otherwise a qualified investment for the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act or paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act solely because of subsection (12) is held by a trust governed by a registered retirement savings plan or registered retirement income fund,

Proposed Amendment — Reg. 4900(13)(a)

(a) a share that is otherwise a qualified investment for the purposes of paragraph (d) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (e) of the definition "qualified investment" in subsection 146.1(1) of the Act and paragraph (c) of the definition "qualified investment" in subsection 146.3(1) of the Act solely because of subsection (12) is held by a trust governed by a registered retirement savings plan, registered education savings plan or registered retirement income fund,

Application: The October 27, 1998 draft regulations, subsec. 2(17), will amend para. 4900(13)(a) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Subsection 4900(13) of the Regulations is an anti-avoidance rule intended to ensure that amounts received in respect of any shares described in subsection 4900(12) by an RRSP or RRIF trust must be in the nature of a return from an investment.

Subsection 4900(13) is amended so that it also applies for the purposes of an RESP trust.

(b) an individual

(i) provides services to or for,

(ii) acquires goods from, or

(iii) is provided services by

the issuer of the share or a person related to that issuer,

(c) an amount is received in respect of the share by the trust, and

(d) the amount can reasonably be considered, having regard to all the circumstances, including the terms and conditions of the share, or any agreement relating thereto and any dividend provided on the share to be

(i) on account of, or in lieu or in satisfaction of, payment for the services to or for the issuer or the person related to the issuer, or

(ii) in respect of the acquisition of the goods from, or the services provided by, the issuer or the person related to the issuer,

the share shall, immediately before the amount is received, cease to be and shall not thereafter be a qualified investment for the trust.

History: Para. 4900(12)(b) amended by P.C. 1999-249, subsec. 1(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to property acquired after August 1998.

Para. 4900(12)(c) amended by P.C. 1995-1820, subsec. 1(3), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable after December 2, 1992.

Subsecs. 4900(12) and (13) added by P.C. 1994-1074, subsec. 1(8), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after December 2, 1992.

Subsecs. 4900(6), (7), (8), (9), (10) and (11) added by P.C. 1986-772, subsec. 2(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

Definitions [Reg. 4900]: "amount", "annuity" — ITA 248(1); "arm's length" — Reg. 4900(10); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "Canadian resource property" — ITA 66(15), 248(1); "connected shareholder" — Reg. 4901(2), (2.1), (2.2); "controlled" — ITA 256(6), (6.1); "controlled directly or indirectly" — ITA 256(5.1), (6.2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "designated shareholder" — Reg. 4901(2), (2.3); "disposition", "dividend", "employee", "employer" — ITA 248(1); "governing plan" — Reg. 4901(2); "Her Majesty" — *Interpretation Act* 35(1); "individual", "insurer" — ITA 248(1); "licensed annuities provider" — ITA 147(1), 248(1); "month" — *Interpretation Act* 35(1); "mortgage" — Reg. 4901(3)(a); "mortgage investment corporation" — ITA 130.1(6), 248(1); "mortgagor" — Reg. 4901(3)(b); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q), 248(1); "non-resident" — ITA 248(1); "obligation" — Reg. 4900(1)(g), (h), (i); "person" — ITA 248(1); "plan trust" — Reg. 4901(2); "prescribed" — ITA 248(1); "prescribed stock exchange" — Reg. 3200; "prescribed venture capital corporation" — Reg. 6700; "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "public corporation" — ITA 89(1), 248(1); "qualifying share" — Reg. 4901(2); "registered home ownership savings plan" — ITA 248(1); "registered invest-

ment" — ITA 204.4(1), 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "revoked plan" — ITA 204, Reg. 4901(2); "share", "shareholder", "small business corporation" — ITA 248(1); "small business investment limited partnership" — Reg. 4901(2), 5102(1); "small business investment trust" — Reg. 4901(2), 5103(1); "small business security" — Reg. 4901(2), 5100(2); "specified cooperative corporation" — ITA 136(2), Reg. 4901(2); "taxable income" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins [Reg. 4900]: IT-320R2: RRSP — qualified investments.

4901. Interpretation — (1) For the purposes of paragraphs 204.4(2)(b), (d) and (f) and subsection 204.6(1) of the Act, a "prescribed investment" for a corporation or trust, as the case may be, means a property that is a qualified investment for the plan or fund described in paragraphs 204.4(1)(a) to (d) of the Act in respect of which the corporation or trust is seeking registration or has been registered, as the case may be.

(1.1) [Revoked]

History: Subsec. 4901(1.1) revoked by P.C. 1994-1074, subsec. 2(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after October 31, 1985.

Para. 4901(1.1)(b) substituted by P.C. 1986-2590, s. 13, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after October 31, 1985.

Subsec. 4901(1.1) added by P.C. 1986-772, subsec. 3(1), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(2) In this Part,

"allocation in proportion to patronage" has the meaning assigned by subsection 135(4) of the Act;

"connected shareholder" of a corporation at any time is a person (other than an exempt person in respect of the corporation) who owns, directly or indirectly, at that time, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and, for the purposes of this definition,

(a) paragraphs (a) to (e) of the definition "specified shareholder" in subsection 248(1) of the Act apply, and

(b) an exempt person in respect of a corporation is a person who deals at arm's length with the corporation where the total of all amounts, each of which is the cost amount of any share of the capital stock of the corporation, or of any other corporation that is related to it, that the person owns or is deemed to own for the purposes of the definition "specified shareholder" in subsection 248(1) of the Act, is less than $25,000;

Related Provisions: Reg. 4901(2.1), (2.2) — Additional rules.

"consumer goods or services" has the meaning assigned by subsection 135(4) of the Act;

"designated shareholder" of a corporation at any time means a taxpayer who at that time

(a) is, or is related to, a person (other than an exempt person) who owns, directly or indirectly, not less than 10% of the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation and, for the purposes of this definition,

(i) paragraphs (a) to (e) of the definition "specified shareholder" in subsection 248(1) of the Act apply, and

(ii) an exempt person in respect of a corporation is a person who deals at arm's length with the corporation where the total of all amounts, each of which is the cost amount of any share of the capital stock of the corporation, or of any other corporation that is related to it, that the person owns or is deemed to own for the purposes of the definition "specified shareholder" in subsection 248(1) of the Act, is less than $25,000;

(b) is or is related to a member of a partnership that controls the corporation,

(c) is or is related to a beneficiary under a trust that controls the corporation,

(d) is or is related to an employee of the corporation or a corporation related thereto, where any group of employees of the corporation or of the corporation related thereto, as the case may be, controls the corporation, except where the group of employees includes a person or a related group that controls the corporation, or

(e) does not deal at arm's length with the corporation;

Related Provisions: Reg. 4901(2.3) — Deemed designated shareholder.

"governing plan" means a registered retirement savings plan, a registered home ownership savings plan, a registered retirement income fund, a deferred profit sharing plan or a revoked plan;

Proposed Amendment — Reg. 4901(2)"governing plan"

"governing plan" means a registered retirement savings plan, a registered education savings plan, a registered retirement income fund, a deferred profit sharing plan or a revoked plan;

Application: The October 27, 1998 draft regulations, subsec. 3(1), will amend the definition "governing plan" in subsec. 4901(2) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: Subsection 4901(2) defines a number of terms that apply for the purposes of Part XLIX.

A "governing plan" is defined as an RRSP, RRIF, RHOSP, DPSP or revoked plan. The expression is used in describing conditions that apply to various types of investments that qualify for these plans under subsection 4900(1) of the Regulations.

The definition is amended to add a reference to "registered education savings plan" and to remove an obsolete reference to "registered home ownership savings plan".

"plan trust" means a trust governed by a governing plan;

"qualifying share", in respect of a specified cooperative corporation and a registered retirement savings plan or registered retirement income fund, means a share of the capital or capital stock of the corporation where

(a) ownership of the share or a share identical to the share is not a condition of membership in the corporation, or

(b) the annuitant under the plan or fund (or any person related to the annuitant)

Proposed Amendment — Reg. 4901(2)"qualifying share"

"qualifying share", in respect of a specified cooperative corporation and a registered retirement savings plan, registered education savings plan or registered

retirement income fund, means a share of the capital or capital stock of the corporation where

(a) ownership of the share or a share identical to the share is not a condition of membership in the corporation, or

(b) a person who is an annuitant, a beneficiary or a subscriber under the plan or fund (or any other person related to that person)

Application: The October 27, 1998 draft regulations, subsec. 3(2), will amend the portion of the definition "qualifying share" in subsec. 4901(2) before subpara. (b)(i) to read as above, applicable to property acquired after October 27, 1998.

Technical Notes: The definition "qualifying share" is relevant for the purposes of determining whether a share of a cooperative corporation is a qualified investment under paragraph 4900(12)(c) of the Regulations for an RRSP or RRIF.

The definition is amended to reflect the extension of subsection 4900(12) to RESPs.

(i) has not received a payment from the corporation after November 29, 1994 pursuant to an allocation in proportion to patronage in respect of consumer goods or services, and

(ii) can reasonably be expected not to receive a payment, after the acquisition of the share by the trust governed by the plan or fund, from the corporation pursuant to an allocation in proportion to patronage in respect of consumer goods or services;

"revoked plan" has the meaning assigned by paragraph 204(f) [204"revoked plan"] of the Act;

"small business investment limited partnership" has the meaning assigned by subsection 5102(1);

"small business investment trust" has the meaning assigned by subsection 5103(1); and

"small business security" has the meaning assigned by subsection 5100(2).

"specified cooperative corporation" means

(a) a cooperative corporation within the meaning assigned by subsection 136(2) of the Act, or

(b) a corporation that would be a cooperative corporation within the meaning assigned by subsection 136(2) of the Act if the purpose described in that subsection were the purpose of providing employment to the corporation's members or customers.

History: The definitions "allocation in proportion to patronage", "consumer goods or services", and "qualifying share" added, the definition "connected shareholder" and para. (a) of "designated shareholder" amended, by P.C. 1995-1820, subsecs. 2(3), (4), (6), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995; "connected shareholder" amendment and "allocation in proportion to patronage", "consumer goods or services", and "qualifying share" additions applicable after December 2, 1992,

- except that where a property was acquired by a trust governed by an RRSP or RRIF before November 30, 1994 and the annuitant under the fund or plan would, if the amended definition of "connected shareholder" applied, be a connected shareholder of the corporation immediately after that time, the amended definition of "connected shareholder" would not apply in respect of that acquisition; and
- with respect to property acquired before November 30, 1994, para. (a) of "qualifying share" shall be read as follows:

(a) the share is not required to be purchased as a condition of membership in the corporation, or;

para. (a) of "designated shareholder" applicable to property acquired after November 29, 1994.

The definitions "connected shareholder", "specified cooperative corporation" added by P.C. 1994-1074, subsec. 2(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after December 2, 1992.

Paras. (b) to (d) of the definition "designated shareholder" substituted by P.C. 1990-1837, s. 1, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after 1988.

"Designated shareholder", "small business investment limited partnership", "small business investment trust" and "small business security" added by P.C. 1986-772, subsec. 3(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(2.1) For the purposes of the definition "connected shareholder" in subsection (2) and of subsection (2.2), each share of the capital of a specified cooperative corporation and all other shares of the capital of the corporation that have attributes identical to the attributes of that share shall be deemed to be shares of a class of the capital stock of the corporation.

History: Subsec. 4901(2.1) added by P.C. 1995-1820, subsec. 2(8), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable after December 2, 1992, except that it does not apply where a property was acquired by a trust governed by an RRSP or RRIF before November 30, 1994 and the annuitant under the fund or plan would, if Reg. 4901(2.1)–(2.3) and the amended version of 4901(2)"connected shareholder" applied, be a connected shareholder of the corporation immediately after that time.

(2.2) For the purpose of this Part, a person is deemed to be a connected shareholder of a corporation at any time where the person would be a connected shareholder of the corporation at that time if, at that time,

(a) the person had each right that the person would be deemed to own at that time for the purposes of the definition "specified shareholder" in subsection 248(1) of the Act if that right were a share of the capital stock of a corporation;

(b) the person owned each share of a class of the capital stock of a corporation that the person had a right at that time under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to acquire; and

(c) the cost amount to the person of a share referred to in paragraph (b) were the cost amount to the person of the right to which the share relates.

History: Subsec. 4901(2.2) added by P.C. 1995-1820, subsec. 2(8), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable after December 2, 1992, except that it does not apply where a property was acquired by a trust governed by an RRSP or RRIF before November 30, 1994 and the annuitant under the fund or plan would, if Reg. 4901(2.1)–(2.3) and the amended version of 4901(2)"connected shareholder" applied, be a connected shareholder of the corporation immediately after that time.

(2.3) For the purpose of this Part, a person is deemed to be a designated shareholder of a corporation at any time if the person would be a designated shareholder of the corporation at that time if, at that time, paragraphs (2.2)(a) to (c) applied in respect of that person.

History: Subsec. 4901(2.3) added by P.C. 1995-1820, subsec. 2(8), October 31, 1995, *Canada Gazette*, Part II, November 15, 1995, applicable to property acquired after November 29, 1994.

(3) For greater certainty, a reference in this Part to

(a) a mortgage includes a reference to a charge, hypothec or similar instrument pertaining to real property, or to an interest therein; and

(b) a mortgagor includes a reference to a hypothecator or a debtor under any instrument referred to in paragraph (a).

Definitions [Reg. 4901]: "allocation in proportion to patronage" — ITA 135(4), Reg. 4901(2); "amount" — ITA 248(1); "arm's length" — ITA

251(1); "connected shareholder" — Reg. 4901(2), (2.1), (2.2); "consumer goods or services" — ITA 135(4), Reg. 4901(2); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "designated shareholder" — Reg. 4901(2), (2.3); "employee", "employment" — ITA 248(1); "governing plan" — Reg. 4901(2); "mortgage" — Reg. 4901(3)(a); "mortgagor" — Reg. 4901(3)(b); "person", "property", "registered home ownership savings plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "revoked plan" — ITA 204, Reg. 4901(2); "share" — Reg. 4901(2.1); "specified cooperative corporation" — ITA 136(2), Reg. 4901(2); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

PART L — DEFERRED INCOME PLANS, FOREIGN PROPERTY

History: Part L was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins: IT-320R2: RRSP — qualified investments; IT-412R: Foreign property of registered plans.

5000. (1) Where a taxpayer holds a share of the capital stock of a mutual fund corporation (other than an investment corporation) or an interest in, or a right to acquire an interest in,

(a) a mutual fund trust,

(b) a pooled fund trust,

(c) a trust that would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(b) thereof, or

(c.1) a resource property trust,

that share, interest or right, as the case may be, shall not be foreign property for the purpose of computing the tax payable by the taxpayer under Part XI of the Act in respect of any particular month, if

(d) the corporation or trust, as the case may be, has not acquired any foreign property after June 30, 1971; or

(e) at no time during the relevant period for the particular month did the cost amount to the corporation or to the trust, as the case may be, of all foreign property held by it exceed 20 per cent of the cost amount to it of all property held by it.

Proposed Addition — Segregated funds

Department of Finance news releases, December 19, 1996 and October 23, 1997: [See under ITA 12.2(1).]

History: Para. 5000(1)(e) substituted by P.C. 1992-258, subsec. 1(1), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to months ending after 1989 except that for months in 1990, 1991, 1992 and 1993 the reference to "20 per cent" shall be read as "12 per cent", "14 per cent", "16 per cent" and "18 per cent" respectively.

Para. 5000(1)(e) substituted by P.C. 1990-1837, subsec. 2(1), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990.

Para. 5000(1)(c.1) added by P.C. 1985-2351, subsec. 1(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to trusts created after November 12, 1981.

(1.1) For the purposes of paragraph (i) of the definition "foreign property" in subsection 206(1) of the Act, the following interests are hereby prescribed not to be foreign property;

(a) an interest of a limited partner in a small business investment limited partnership (within the meaning assigned by subsection 5102(1));

(b) an interest in a small business investment trust (within the meaning assigned by subsection 5103(1));

(c) an interest of a limited partner in a qualified limited partnership;

(d) an interest in a specified international finance trust; and

(e) an interest of a limited partner in a designated limited partnership.

Related Provisions: Reg. 5000(7) — Definitions of "specified international finance trust" and "designated limited partnership".

History: Paras. 5000(1.1)(d) and (e) added by P.C. 2000-275, subsec. 1(1), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, para. (d) applicable to months that end after 1998, and para. (e) applicable to months that end after 1997.

Subsec. 5000(1.1) added by P.C. 1986-772, subsec. 4(1), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

(1.2) For the purposes of paragraph (i) of the definition "foreign property" in subsection 206(1) of the Act, a property of a beneficiary that is an interest under a trust described in paragraph 149(1)(o.4) of the Act is prescribed not to be foreign property of the beneficiary at a time where

(a) no other property of the beneficiary is foreign property at that time; or

(b) the trust does not own any foreign property at that time.

History: Subsec. 5000(1.2) added by P.C. 1990-1837, subsec. 2(2), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable to 1987 *et seq.*

(2) Where

(a) a share of the capital stock of a corporation referred to in subsection (1) or an interest in, or a right to acquire an interest in, a trust referred to in that subsection would, but for this subsection, be foreign property for the purpose of computing the tax payable by a taxpayer under Part XI of the Act in respect of a particular month,

(b) the relevant period for the particular month in relation to property held by the trust or corporation is its taxation year that includes the end of the particular month, and

(c) at the end of the relevant period for the particular month, the cost amount to the corporation or to the trust, as the case may be, of all foreign property held by it did not exceed 20 per cent of the cost amount to it of all property held by it,

that share, interest or right shall not be foreign property for the purpose of computing the tax payable by the taxpayer under Part XI of the Act in respect of the particular month.

History: Subsec. 5000(2) substituted by P.C. 1992-258, subsec. 1(2), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to months ending after 1989 except that for months in 1990, 1991, 1992 and 1993 the reference in para. (2)(c) to "20 per cent" shall be read as "12 per cent", "14 per cent", "16 per cent" and "18 per cent" respectively.

Paras. 5000(2)(a), (b) substituted by P.C. 1990-1837, subsec. 2(3), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990.

(3) Where a taxpayer holds a share of the capital stock of an investment corporation, subsections (1), (2) and (7) apply in respect of that share as if

(a) the reference in subsection (1) to "mutual fund corporation (other than an investment corporation)" were read as a reference to an "investment corporation"; and

(b) the reference in subsection (1) to "June 30, 1971" were read as a reference to "October 13, 1971".

(4) Where a taxpayer holds a share of the capital stock of an investment corporation, that share shall not be foreign property for the purpose of computing the tax payable by the taxpayer under Part XI of the Act in respect of a particular month if the share would otherwise be foreign property solely by reason of the acquisition by the corporation of foreign property before October 16, 1971.

(5) Where a mutual fund corporation or a mutual fund trust holds a share of the capital stock of a mutual fund corporation (other than an investment corporation) or an interest in, or a right to acquire an interest in, a mutual fund trust, the share or the interest, as the case may be, shall not be foreign property for the purpose of computing the tax payable by a taxpayer under Part XI of the Act in respect of a particular month if the last-mentioned corporation or trust, as the case may be, complies with

(a) paragraph (1)(d);

(b) paragraph (1)(e) in respect of the particular month; or

(c) paragraphs (2)(b) and (c) in respect of the particular month.

(6) Where a mutual fund corporation or a mutual fund trust holds a share of the capital stock of an investment corporation, the share shall not be foreign property for the purpose of computing the tax payable by a taxpayer under Part XI of the Act in respect of a particular month if the investment corporation

(a) would comply with paragraph (1)(d) if the reference therein to "June 30, 1971" were read as a reference to "October 16, 1971";

(b) complies with paragraph (1)(e) in respect of the particular month; or

(c) complies with paragraphs (2)(b) and (c) in respect of the particular month.

History: Subsecs. 5000(3) to (6) substituted by P.C. 1992-258, subsec. 1(2), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to months ending after 1989.

(7) In this Part,

History: The portion of subsec. 5000(7) before "foreign property" amended by P.C. 2000-183, subsec. 2(1), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable after 1992.

"designated limited partnership" means a limited partnership that complies with the following conditions:

(a) the interests of the limited partners are described by reference to a single class of units of the partnership listed on a stock exchange prescribed under section 3200,

(b) that class was listed before 1999 on a stock exchange prescribed under section 3200,

(c) at least 80% of the full-time employees employed by the partnership are employed in Canada,

(d) the total of all amounts each of which is the cost amount to the partnership of a property used in its activities carried on in Canada is not less that 80% of the total of all amounts each of which is the cost amount to the partnership of a property of the partnership,

(e) the principal activity of the partnership is

(i) the production of goods in Canada,

(ii) the sale of goods in Canada,

(iii) the provision of services in Canada, or

(iv) any combination of the activities described in subparagraphs (i) to (iii), and

(f) the revenue from that principal activity is regulated by a public authority governed by the laws of Canada or a province;

Related Provisions: Reg. 5000(8)–(11) — Interpretation rules.

History: "Designated limited partnership" added by P.C. 2000-725, subsec. 1(2), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable to months that end after 1997.

"foreign property" has the meaning assigned by section 206 of the Act;

"pooled fund trust" means, with respect to a particular taxpayer who owns an interest in the trust, a trust the trustee of which is a trust company incorporated under the laws of Canada or a province and that complies with the following conditions:

(a) throughout the taxation year of the trust (in this subsection referred to as the "first relevant year") in which the taxpayer acquired the interest or the first taxation year of the trust (in this subsection referred to as the "second relevant year") commencing more than one year after the taxpayer acquired the interest, the total, at any time, of

(i) the cost amount to the trust of

(A) shares,

(B) any property that, under its terms or conditions or any agreement relating to it, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) bonds, debentures, mortgages, notes and other similar obligations,

(D) marketable securities,

(E) cash,

(F) life insurance policies in Canada (other than annuity contracts), and

(G) annuity contracts issued by persons licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, and

(ii) the amount by which the cost amount to the trust of real property that can reasonably be regarded as being held for the purpose of producing income from property exceeds the total of amounts each of which was owing by the trust at that time on account of its acquisition of the real property and was included at that time in the cost amount to the trust of the real property,

was not less than 80 per cent of the amount by which the cost amount to the trust of all property at that time exceeds the total of amounts each of which was owing by it at that time on account of its acquisition of real property and was included at that time in the cost amount to it of real property,

(b) throughout the first relevant year or the second relevant year, the cost amount to the trust at any time of shares, bonds, mortgages and other securities of any one corporation or debtor, other than bonds, mortgages and other securities of or guaranteed by Her Majesty in right of Canada, a province or a Canadian municipality, was not more than 10 per cent of the amount by which the cost amount to the trust of all property at that time exceeds the total of all amounts each of which was owing by the trust at that time on account of the trust's acquisition of real property and was included at that time in the cost amount to the trust of real property,

(c) throughout the first relevant year or the second relevant year, the amount by which

(i) the cost amount to the trust of any one real property at any time

exceeds

(ii) the total of amounts each of which was owing by the trust at that time on account of its acquisition of the real property and was included at that time in the cost amount to it of the real property

was not more than 10 per cent of the amount by which the cost amount to the trust of all property at that time exceeds the total of amounts each of which was owing by the trust at that time on account of its acquisition of real property and was included at that time in the cost amount to the trust of real property, and

(d) not less than 95 per cent of the income of the trust (determined without reference to subsections 49(2.1) and 104(6) of the Act) for the first relevant year or the second relevant year was derived from, or from the dispositions of, investments described in paragraph (a);

History: Cl. (C) substituted for cls. (a)(i)(C) and (D) of "pooled fund trust", and cls. (a)(i)(E) to (H) renumbered as cls. (a)(i)(D) to (G), respectively, by P.C. 2000-183, subsecs. 2(2), (3), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable after 1995.

Subpara. (a)(i) of "pooled fund trust" in subsec. 5000(7) substituted by P.C. 1997-100, s. 1, January 28, 1997, *Canada Gazette*, Part II, February 5, 1997, applicable after 1995.

Definition of "pooled fund trust" in subsec. 5000(7) amended by P.C. 1994-1074, s. 3, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1989.

Cl. (a)(i)(A) of "pooled fund trust" in subsec. 5000(7) substituted by P.C. 1990-1837, subsec. 2(4), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Cl. (a)(i)(A) and subpara. (a)(ii) of definition "pooled fund trust" substituted by P.C. 1981-2518, s. 5, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981, effective January 1, 1981.

"qualified limited partnership", at a particular time after 1985, means a limited partnership that at all times after it was formed and before the particular time complied with the following conditions:

(a) it had only one general partner,

(b) the share of the general partner, as general partner, in any income of the partnership from any source in any place, for any period, was the same as his share, as general partner, in

(i) the income of the partnership from that source in any other place,

(ii) the income of the partnership from any other source,

(iii) the loss of the partnership from any source,

(iv) any capital gain of the partnership, and

(v) any capital loss of the partnership

for that period, except that the share of the general partner, as general partner, in the income or loss of the partnership from specified properties (within the meaning assigned by subsection 5100(1)) may differ from his share, as general partner, in the income or loss of the partnership from other sources,

(c) the share of the general partner, as general partner, in any income or loss of the partnership for any period was not less than his share, as general partner, in the income or loss of the partnership for any preceding period,

(d) the interests of the limited partners were described by reference to units of the partnership that were identical in all respects,

(e) no limited partner or group of limited partners who did not deal with each other at arm's length held more than 30 per cent of the units of the partnership and, for the purposes of this paragraph,

(i) the general partner shall be deemed not to hold any unit of the partnership as a limited partner, and

(ii) where a limited partner of a partnership is a qualified trust (within the meaning assigned by subsection 259(3) of the Act) for any period in respect of which subsection 259(1) of the Act is applicable, the qualified trust shall be deemed not to hold any unit of the partnership for that period,

(f) its only undertaking was the investing of its funds and its investments consisted solely of

(i) shares of the capital stock of corporations (other than shares that were issued to the partnership and that are shares described in section 66.3 of the Act or shares in respect of which amounts have been designated under subsection 192(4) of the Act),

(ii) rights, or warrants that grant the owner thereof rights, to acquire shares of the capital stock of corporations,

(iii) put or call options in respect of shares of the capital stock of corporations,

(iv) debt obligations of corporations,

(v) specified properties (within the meaning assigned by subsection 5100(1)), or

(vi) any combination of the properties described in subparagraphs (i) to (v),

(g) no election has been made under subsection 97(2) of the Act on the acquisition of any property by it,

(h) it has not borrowed money except for the purpose of earning income from its investments and the amount of any such borrowings at any time did not exceed 20 per cent of the partnership capital at that time, and

(i) the cost amount to it of all foreign property held by it

(i) before 1990 and the particular time did not exceed 10 per cent,

(ii) before 1991 and the particular time did not exceed 12 per cent,

(iii) before 1992 and the particular time did not exceed 14 per cent,

(iv) before 1993 and the particular time did not exceed 16 per cent,

(v) before 1994 and the particular time did not exceed 18 per cent, and

(vi) before the particular time did not exceed 20 per cent

of the cost amount to it of all property held by it.

History: That portion of "qualified limited partnership" preceding para. (a), and para. (i) thereof, substituted by P.C. 1992-258, subsecs. 1(4), (5), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable after 1989.

Para. (e) of "qualified limited partnership" substituted by P.C. 1990-1837, subsec. 2(5), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

"Qualified limited partnership" added by P.C. 1986-772, subsec. 4(2), March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

"relevant period for the particular month" means, in relation to property held by a particular corporation or particular trust,

(a) its most recent taxation year ending before the end of the particular month, and

(b) its taxation year that includes the end of the particular month, where paragraph (a) does not apply.

"resource property trust" means a trust the trustee of which is a trust company that is incorporated under the laws of Canada or a province and that complies with the following conditions:

(a) the trust, at all times after the later of November 12, 1981 and the time at which it was created,

(i) has limited its activities to

(A) acquiring Canadian resource properties by purchase or by incurring Canadian exploration expense or Canadian development expense, or

(B) holding, exploring, developing, maintaining, improving, managing, operating or disposing of its Canadian resource properties,

(ii) has made no investments other than

(A) in Canadian resource properties,

(B) in property to be used in connection with Canadian resource properties described in clause (i)(A),

(C) in loans secured by Canadian resource properties for the purpose of carrying out any activity described in subparagraph (i) with respect to Canadian resource properties,

(D) in corporations described in subparagraph 149(1)(o.2)(ii.1) of the Act, or

(E) investments that a pension fund or plan is permitted to make under the *Pension Benefits Standards Act* or a similar law of a province, and

(iii) has not borrowed money except for the purpose of earning income from Canadian resource properties, and

(b) the beneficiaries of the trust, at all times after the later of November 12, 1981 and the time at which it was created, were

(i) registered pension plans, or

(ii) trusts all the beneficiaries of which were registered pension plans.

History: "Resource property trust" amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Definition of "resource property trust" added by P.C. 1985-2351, subsec. 1(2), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to trusts created after November 12, 1981.

"specified international finance trust" at a particular time means a trust that complies with the following conditions:

(a) the trust was created principally for the purpose of investing in property described in subparagraph (c)(i),

(b) throughout the period that began at the time the trust was created and ends at the particular time, the trust was resident in Canada, and

(c) throughout the period that began 30 days after the time the trust was created and ends at the particular time, the total of all amounts each of which is the cost amount to the trust of the following property was not less that 90% of the total of all amounts each of which is the cost amount to the trust of a property of the trust:

(i) debt issued to and acquired from

(A) the African Development Bank,

(B) the Asian Development Bank,

(C) the Caribbean Development Bank,

(D) the European Bank for Reconstruction and Development,

(E) the Export Development Corporation,

(F) the Inter-American Development Bank,

(G) the International Bank for Reconstruction and Development, or

(H) the International Finance Corporation, and

(ii) shares and debt that are not foreign property of the trust.

History: "Specified international finance trust" added by P.C. 2000-725, subsec. 1(2), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable to months that end after 1998.

(8) For the purposes of the definition "designated limited partnership" in subsection (7) and for the purposes of this subsection, if a particular partnership is a member of another partnership at the end of a fiscal period of the other partnership (in this subsection referred to as the "relevant time"), throughout the period that begins at the relevant time and ends at the earlier of the time that is immediately before the end of the following fiscal period of the other partnership and the time that the other partnership ceases to exist

(a) the particular partnership is deemed to employ an additional number of full-time employees, or full-time employees employed in Canada, as the case may be, equal to the product of

(i) the specified fraction of the particular partnership at the relevant time in respect of the other partnership, and

(ii) the number of full-time employees employed, or employed in Canada, as the case may be, at the relevant time by the other partnership,

(b) each property used, or used in activities carried on in Canada, as the case may be, at the relevant time by the other partnership is deemed to be used, or to be used in activities carried on in Canada, as the case may be, by the particular partnership and is deemed to have a cost amount to the particular partnership equal to the product of

(i) the specified fraction of the particular partnership at the relevant time in respect of the other partnership, and

(ii) the cost amount of the property at the relevant time to the other partnership, and

(c) the particular partnership is, to the degree that can reasonably be considered to reflect the specified fraction of the particular partnership at the relevant time in respect of the other partnership, deemed to carry on each of the activities carried on by the other partnership.

Related Provisions: Reg. 5000(9) — Meaning of "specified fraction"; Reg. 5000(11) — Application of ITA 96(1)(a)–(g).

(9) For the purposes of subsection (8), the specified fraction of the particular partnership in respect of the other partnership at the end of a fiscal period of the other partnership is the quotient obtained by dividing the particular partnership's share of the income or loss of the other partnership for the fiscal period by the income or loss of the other partnership for the fiscal period.

Related Provisions: Reg. 5000(10) — Where income and loss are nil; Reg. 5000(11) — Application of ITA 96(1)(a)–(g).

(10) For the purposes of subsection (9), if the income and loss of the other partnership for the fiscal period are nil, the quotient referred to in that subsection shall be calculated as if the other partnership had income for the fiscal period in the amount of $1,000,000.

Related Provisions: Reg. 5000(11) — Application of ITA 96(1)(a)–(g).

(11) The definition "designated limited partnership" in subsection (7) and subsections (8) to (10) shall be read and construed as if each of the assumptions set out in paragraphs 96(1)(a) to (g) of the Act were made.

History [Reg. 5000(8)–(11)]: Subsecs. 5000(8) to (11) added by P.C. 2000-725, subsec. 1(3), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable to months that end after 1997.

Definitions [Reg. 5000]: "amount", "annuity" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource property" — ITA 66(15), 248(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "designated limited partnership" — Reg. 5000(7), (8)–(11); "disposition" — ITA 248(1); "employed", "employee" — ITA 248(1); "first relevant year" — Reg. 5000(7)(a); "fiscal period" — ITA 249.1; "foreign property" — ITA 206, Reg. 5000(7); "Her Majesty" — *Interpretation Act* 35(1); "investment corporation" — ITA 130(3), 248(1); "life insurance policy" — ITA 138(12), 248(1); "month" — *Interpretation Act* 35(1); "mutual fund corporation" — ITA 131(8), 248(1); "mutual fund trust" — ITA 132(6)–(7), 132.2(1)(q), 248(1); "person" — ITA 248(1); "pooled fund trust" — Reg. 5000(7); "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualified limited partnership" — Reg. 5000(7); "registered pension plan" — ITA 248(1); "relevant period for the particular month" — Reg. 5000(7); "resident in Canada" — ITA 250; "resource property trust" — Reg. 5000(7); "second relevant year" — Reg. 5000(7)(a); "share" — ITA 248(1); "specified fraction" — Reg. 5000(9); "specified international finance trust" — Reg. 5000(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins: IT-412R2: Foreign property of registered plans.

5001. [Master trust] — For the purposes of paragraph 149(1)(o.4) of the Act, a trust is a master trust at any time if, at all times after it was created and before that time,

(a) it was resident in Canada;

(b) its only undertaking was the investing of its funds;

(c) it never borrowed money except where the borrowing was for a term not exceeding 90 days and it is established that the borrowing was not part of a series of loans or other transactions and repayments;

(d) it never accepted deposits; and

(e) each of the beneficiaries of the trust was a trust governed by a registered pension fund or plan or a deferred profit sharing plan.

Related Provisions: ITA 253.1 — Deeming rule re investments in limited partnerships.

History: S. 5001 added by P.C. 1990-1837, s. 3, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable to 1987 *et seq.*

Definitions [Reg. 5001]: "borrowed money" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "registered pension fund or plan" — ITA 248(1); "resident in Canada" — ITA 250; "trust" — ITA 104(1), 248(1), (3); "undertaking" — ITA 253.1(a).

5002. For the purpose of subparagraph 206(2.01)(b)(ii) of the Act,

(a) a prescribed trust is,

(i) a pooled fund trust,

(ii) a trust that would be a mutual fund trust if Part XLVIII were read without reference to paragraph 4801(b),

(iii) a resource property trust, or

(iv) a master trust, as described in section 5001; and

(b) a prescribed partnership is a qualified limited partnership.

History: S. 5002 added by P.C. 2000-183, s. 3, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to months that end after 1992.

Definitions [Reg. 5002]: "master trust" — Reg. 5001; "mutual fund trust" — ITA 132(6), 248(1); "partnership" — see Notes to ITA 96(1); "pooled fund trust" — Reg. 5000(7); "prescribed", "property" — ITA 248(1); "qualified limited partnership", "resource property trust" — Reg. 5000(7); "trust" — ITA 104(1), 248(1), (3).

PART LI — DEFERRED INCOME PLANS, INVESTMENTS IN SMALL BUSINESS

History: Part LI (ss. 5100–5104) substituted by P.C. 1986-772, s. 5, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective after October 31, 1985.

Former Part LI, which defined "permanent establishment", was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins [Part LI]: IT-320R2: RRSP — qualified investments.

5100. (1) In this Part,

"designated rate", at any time, means 150 per cent of the highest of the prime rates generally quoted at that time by the banks to which Schedule A to the *Bank Act* applies;

"eligible corporation", at any time, means

(a) a particular corporation that is a taxable Canadian corporation all or substantially all of the property of which is at that time

(i) used in a qualifying active business carried on by the particular corporation or by a corporation controlled by it,

(ii) shares of the capital stock of one or more eligible corporations that are related to the particular corporation, or debt obligations issued by those eligible corporations,

(iii) any combination of the properties described in subparagraph (i) and (ii),

(a.1) a specified holding corporation, or

(b) a prescribed venture capital corporation described in section 6700,

but does not include

(c) a corporation (other than a mutual fund corporation) that is

(i) a trader or dealer in securities,

(ii) a bank,

(iii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

(iv) a credit union,

(v) an insurance corporation, or

(vi) a corporation the principal business of which is the lending of money or the purchasing of debt obligations or a combination of them,

(d) a corporation controlled by one or more non-resident persons, or

(e) a venture capital corporation, other than a prescribed venture capital corporation described in section 6700;

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

History: Para. (c) of "eligible corporation" amended by P.C. 1999-249, subsec. 2(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years that end after February 22, 1994. Para. (c) also was amended by P.C. 1999-249, subsec. 2(1), applicable to 1991 *et seq.* to read as follows:

(c) a corporation (other than a mutual fund corporation) that is a taxpayer described in subsection 39(5) of the Act,

Subpara. (a)(ii) of "eligible corporation" substituted, and para. (a.1) added, by P.C. 1990-1837, subsecs. 4(1), (2), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Para. (d) of "eligible corporation" substituted by subsec. 4(3) of the said P.C. 1990-1837, applicable after 1988.

"qualifying active business", at any time, means any business carried on primarily in Canada by a corporation, but does not include

(a) a business (other than a business of leasing property other than real property) the principal purpose of which is to derive income from property (including interest, dividends, rent and royalties), or

(b) a business of deriving gains from the disposition of property (other than property in the inventory of the business),

and, for the purposes of this definition, a business carried on primarily in Canada by a corporation, at any time, includes a business carried on by the corporation if, at that time,

(c) at least 50 per cent of the full time employees of the corporation and all corporations related thereto employed in respect of the business are employed in Canada, or

(d) at least 50 per cent of the salaries and wages paid to employees of the corporation and all corporations related thereto employed in respect of the business are reasonably attributable to services rendered in Canada;

"qualifying obligation", at any time, means a bond, debenture, mortgage, note or other similar obligation of a corporation described in paragraph 149(1)(o.2) or (o.3) of the Act, if

(a) the obligation was issued by the corporation after October 31, 1985,

(b) the corporation used all or substantially all of the proceeds of the issue of the obligation within 90 days after the receipt thereof to acquire

(i) small business securities,

(ii) interests of a limited partner in small business investment limited partnerships,

(iii) interests in small business investment trusts, or

(iv) any combination of the properties described in subparagraphs (i) to (iii)

and, except as provided in subsection 5104(1), the corporation was the first person (other than a broker or dealer in securities) to have acquired the properties and the corporation has owned the properties continuously since they were so acquired,

(c) the corporation does not hold, and no group of persons who do not deal with each other at arm's length and of which it is a member holds, more than 30 per cent of the outstanding shares of any class of voting stock of another corporation, except where all or any part of those shares were acquired in specified circumstances, within the meaning of subsection 5104(2),

(d) the recourse of the holder of the obligation against the corporation with respect to the obligation is limited to the properties acquired with the proceeds of the issue of the obligation and any properties substituted therefor, and

(e) the properties acquired with the proceeds of the issue of the obligation have not been disposed of, unless the disposition occurred within the 90 day period immediately preceding that time;

History: The opening words of the definition "qualifying obligation" in subsec. 5100(1) amended by P.C. 1994-1817, para. 62(f), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

"specified holding corporation", at any time, means a taxable Canadian corporation where

(a) all or substantially all of the collective property of the corporation and of all other corporations controlled by it (each of which other corporations is referred to in this definition as a "controlled corporation"), other than shares in the capital stock of the corporation or of a corporation related to it and debt obligations issued by it or by a corporation related to it, is at that time used in a qualifying active business carried on by the corporation, and

(b) all or substantially all of the property of the corporation is at that time

(i) property used in a qualifying active business carried on by the corporation or a controlled corporation,

(ii) shares of the capital stock of one or more controlled corporations or eligible corporations related to the corporation,

(iii) debt obligations issued by one or more controlled corporations or eligible corporations related to the corporation, or

(iv) any combination of the properties described in subparagraphs (i), (ii) and (iii),

and in a determination of whether property is used in a qualifying active business for the purposes of paragraph (a),

(c) where a business is carried on by a controlled corporation,

(i) the business shall be deemed to be a business carried on only by the corporation, and

(ii) the controlled corporation shall be deemed to be the corporation in the application of paragraphs (c) and (d) of the definition "qualifying active business", and

(d) if a business of the corporation is substantially similar to one or more other businesses of the corpora-

tion, all those businesses shall be deemed collectively to be one business of the corporation.

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

History: "Specified holding corporation" added by P.C. 1990-1837, subsec. 4(4), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

"specified property" means property described in any of subparagraphs 204(e)(i), (ii), (iii), (vii) and (viii) [204"qualified investment"(a), (b), (c), (f) and (g)] of the Act.

(2) [Small business security] — For the purposes of this Part and paragraph (a) of the definition "small business property" in subsection 206(1) of the Act, a small business security of a person, at any time, is the property of that person that is, at that time,

(a) a share of the capital stock of an eligible corporation,

(b) a debt obligation of an eligible corporation (other than a prescribed venture capital corporation described in section 6700) that does not by its terms or any agreement related to the obligation restrict the corporation from incurring other debts and that is

(i) secured solely by a floating charge on the assets of the corporation and that by its terms or any agreement related thereto is subordinate to all other debt obligations of the corporation (other than a small business security issued by the corporation, or a debt obligation that is owing by the corporation to a shareholder of the corporation or a person related to a shareholder of the corporation and that is not secured in any manner whatever), or

(ii) not secured in any manner whatever,

other than a debt obligation that

(iii) where the debt obligation specifies an invariant rate of interest, has an effective annual rate of return that exceeds the designated rate for the day on which the obligation was issued, and

(iv) in any other case, may have an effective annual rate of return at a particular time that exceeds the designated rate at the particular time,

(c) an option or right granted by an eligible corporation in conjunction with the issue of a share or debt obligation that qualifies as a small business security to acquire a share of the capital stock of the corporation, or

(d) an option or right granted for no consideration by an eligible corporation to a holder of a share that qualifies as a small business securities to acquire a share of the capital stock of the corporation

if, immediately after the time of acquisition thereof,

(e) the aggregate of the cost amounts to the person of all shares, options, rights and debt obligations of the eligible corporation and all corporations associated therewith held by the person does not exceed $10,000,000, and

(f) the total assets (determined in accordance with generally accepted accounting principles, on a consolidated or combined basis, where applicable) of the eligible corporation and all corporations associated with it do not exceed $50,000,000

and includes

(g) property of the person that is, at that time,

(i) a qualifying obligation,

(ii) the proportion of the interest of the person as a limited partner in a qualified limited partnership (within the meaning assigned by subsection 5000(7)) at that time that

(A) the aggregate of the cost amounts to the partnership of all properties held by the partnership at that time that would be small business properties (within the meaning assigned by subsection 206(1) of the Act) if the partnership were a person,

is of

(B) the aggregate of the cost amounts to the partnership of all properties held by the partnership at that time, or

(iii) a security (in this subparagraph referred to as the "new security") described in any of paragraphs (a) to (d), where the new security was issued at a particular time

(A) in exchange for, on the conversion of, or in respect of rights pertaining to a security (in this paragraph referred to as the "former security") that would, if this subsection were read without reference to this subparagraph and paragraph (h), be a small business security of the person immediately before the particular time, and

(B) pursuant to an agreement entered into before the particular time and at or before the time that the former security was last acquired by the person, or

(h) where the person is a small business investment corporation, small business investment limited partnership or small business investment trust, property of the person that is, at that time, a security (in this paragraph referred to as the "new security") described in any of paragraphs (a) to (d), where the new security was issued at a particular time not more than 5 years before that time in exchange for, on the conversion of, or in respect of rights pertaining to a security that would, if this subsection were read without reference to this paragraph, be a small business security of the person immediately before the particular time.

Related Provisions: ITA 204.8(1)"eligible investment"(f).

History: The portion of para. 5100(2)(b) before subpara. (i) amended by P.C. 1998-782, s. 1, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable to debt obligations issued after December 5, 1996, other than debt obligations that were required to be issued pursuant to agreements in writing made on or before that date.

The opening words of para. 5100(2)(f) substituted by P.C. 1994-1074, subsec. 4(1), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1991.

All that portion of subsec. 5100(2) following para. (f) substituted by P.C. 1992-258, subsec. 2(1), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to property acquired after 1989.

That portion of para. 5100(2)(b) preceding subpara. (ii) substituted by P.C. 1990-1837, subsec. 4(5), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable in respect of debt obligations issued after September 12, 1990 other than debt obligations that were required to be issued pursuant to agreements in writing entered into on or before that date.

That portion of subsec. 5100(2) following para. (f) substituted by P.C. 1987-371, subsec. 1(1), March 5, 1987, *Canada Gazette*, Part II, March 18, 1987, effective after October 31, 1985.

(2.1) [Prescribed venture capital corporation] — Where all or part of the property of a person consists of the shares of the capital stock of a prescribed venture capital corporation within the meaning assigned by section

6700, options or rights granted by the corporation, or debt obligations of the corporation,

(a) the aggregate of the cost amounts to the person of all such property shall be deemed for the purposes of paragraph (2)(e) not to exceed $10,000,000; and

(b) the total assets (determined in accordance with generally accepted accounting principles, on a consolidated or combined basis, where applicable) of the corporation and all corporations associated with it shall be deemed for the purposes of paragraph (2)(f) not to exceed $50,000,000.

History: Para. 5100(2.1)(b) amended by P.C. 1994-1074, subsec. 4(2), June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1991.

Subsec. 5100(2.1) added by P.C. 1990-1837, subsec. 4(6), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

(3) For the purposes of subsection (2),

(a) in determining the effective annual rate of return in respect of a debt obligation of an eligible corporation, the value of any right to convert the debt obligation or any part thereof into, or to exchange the debt obligation or any part thereof for, shares of the capital stock of the corporation or an option or right to acquire such shares shall not be considered; and

(b) a corporation shall be deemed not to be associated with another at any time where the corporation would not be associated with the other if

(i) the references to "controlled, directly or indirectly, in any manner whatever" in section 256 of the Act (other than subsection (5.1) thereof) were read as references to "controlled", and

(ii) such rights described in subsection 256(1.4) of the Act and shares, as were held at that time by a small business investment corporation, small business investment limited partnership or small business investment trust, were disregarded.

History: Subsec. 5100(3) substituted by P.C. 1990-1837, subsec. 4(7), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after 1988.

(4) [Prescribed person] — For the purposes of paragraph (e) of the definition "small business property" in subsection 206(1) of the Act, a taxpayer is a prescribed person in respect of a property at any time where

(a) the following conditions are met:

(i) the taxpayer is a beneficiary of a trust that has elected pursuant to subsection 259(1) of the Act for a period that includes that time,

(ii) the property is deemed to be held by the taxpayer at that time by virtue of subsection 259(1) of the Act, and

(iii) the trust referred to in subparagraph (i) is the first person (other than a broker or dealer in securities) to have acquired the property and has owned the property continuously since it was so acquired, except where the property is a small business security acquired in cases described in subsection 5104(1);

(b) the taxpayer is a limited partner in a qualified limited partnership (within the meaning assigned by subsection 5000(7)) and the property is that proportion of the taxpayer's interest in the partnership that, pursuant to subparagraph (2)(g)(ii), is a small business security of the taxpayer at that time;

(c) the taxpayer is a holder of property that at that time is a small business security acquired in cases described in subsection 5104(1);

(d) the taxpayer is a limited partner in a small business investment limited partnership the units of which are listed on a stock exchange prescribed under section 3200 and the property consists of the taxpayer's units in that partnership; or

(e) the taxpayer is a beneficiary under a small business investment trust the units of which are listed on a stock exchange prescribed under section 3200 and the property consists of the taxpayer's units in that trust.

History: Para. 5100(4)(b) substituted by P.C. 1992-258, subsec. 2(2), February 13, 1992, *Canada Gazette*, Part II, February 26, 1992, applicable to property acquired after 1989.

Paras. 5100(4)(d), (e) added by P.C. 1990-1837, subsec. 4(8), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after 1989.

Subsec. 5100(4) added by P.C. 1987-371, subsec. 1(2), March 5, 1987, *Canada Gazette*, Part II, March 18, 1987, effective after October 31, 1985.

Definitions [Reg. 5100]: "arm's length" — ITA 251(1); "associated" — Reg. 5100(3)(b); "bank" — *Interpretation Act* 35(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "credit union" — ITA 248(1); "designated rate" — Reg. 5100(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "eligible corporation" — Reg. 5100(1); "employed", "employee" — ITA 248(1); "former security" — Reg. 5100(2)(g)(iii)(A); "insurance corporation", "inventory" — ITA 248(1); "new security" — Reg. 5100(2)(g)(iii), 5100(2)(h); "non-resident" — ITA 248(1); "person" — ITA 248(1), Reg. 5104(6); "prescribed" — ITA 248(1); "prescribed venture capital corporation" — Reg. 6700; "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "qualifying active business" — Reg. 5100(1); "qualifying obligation" — ITA 149(1)(o.2), (o.3), Reg. 5100(1); "related" — ITA 251(2)–(6); "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified circumstances" — Reg. 5104(2); "specified holding corporation" — Reg. 5100(1); "substituted" — ITA 248(5); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

5101. [Small business investment corporation] — **(1)** Subject to subsection (4), for the purposes of this Part and paragraph 149(1)(o.3) and paragraph (b) of the definition "small business property" in subsection 206(1) of the Act, a corporation is a small business investment corporation at any time if it is a Canadian corporation incorporated after May 22, 1985 and at all times after it was incorporated and before that time

(a) all of the shares, and rights to acquire shares, of the capital stock of the corporation were owned by

(i) one or more registered pension plans,

(ii) one or more trusts all the beneficiaries of which were registered pension plans,

(iii) one or more related segregated fund trusts (within the meaning assigned by paragraph 138.1(1)(a) of the Act) all the beneficiaries of which were registered pension plans, or

(iv) one or more persons prescribed by section 4802 for the purposes of clause 149(1)(o.2)(iv)(D) of the Act;

(b) its only undertaking was the investing of its funds and its investments consisted solely of

(i) small business securities,

(ii) interests of a limited partner in small business investment limited partnerships,

(iii) interests in small business investment trusts,

(iv) property (other than small business securities) described in any of subparagraphs (f)(i) to (iv) of the definition "qualified limited partnership" in subsection 5000(7),

(v) specified properties, or

(vi) any combination of properties described in any of subparagraphs (i) to (v)

and, except as provided in subsection 5104(1), with respect to properties referred to in any of subparagraphs (i) to (iii), the corporation was the first person (other than a broker or dealer in securities) to have acquired the properties and the corporation has owned the properties continuously since they were so acquired;

(c) it has complied with subsection (2);

(d) it did not hold, and no group of persons who did not deal with each other at arm's length and of which it was a member held, more than 30 per cent of the outstanding shares of any class of voting stock of a corporation, except where

(i) all or any part of those shares were acquired in specified circumstances within the meaning of subsection 5104(2), or

(ii) those shares were of any class of voting stock of a prescribed venture capital corporation within the meaning assigned by section 6700;

(e) it has not borrowed money except from its shareholders; and

(f) it has not accepted deposits.

Related Provisions: ITA 253.1 — Deeming rule re investments in limited partnerships.

History: Para. 5101(1)(b)(iv) added, paras. (iv), (v) renumbered as (v) and (vi), by P.C. 1994-1074, s. 5, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1990.

Para. 5101(1)(a) amended by P.C. 1991-2540, s. 8, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1985.

Para. 5101(1)(d) substituted by P.C. 1990-1837, s. 5, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

(2) Every small business investment corporation shall at all times hold properties referred to in subparagraphs (1)(b)(i) to (iii), the aggregate of the cost amounts of which is not less than 75 per cent of the amount, if any, by which

(a) the aggregate of all amounts each of which is the amount of consideration for the issue of shares of its capital stock or debt to its shareholders or the amount of a contribution of capital by its shareholders received by it more than 90 days before that time

exceeds

(b) the aggregate of

(i) all amounts paid by it before that time to its shareholders as a return of capital or a repayment of debt, and

(ii) the amount, if any, by which the aggregate of its losses from the disposition of properties disposed of before that time exceeds the aggregate of its gains from the disposition of properties disposed of before that time.

(3) For the purposes of subsection (2), where a small business investment corporation disposes of a property referred to in subparagraphs (1)(b)(i) to (iii), it shall be deemed to continue to hold the investment for a period of 90 days following the date of the disposition.

(4) For the purposes of paragraph 149(1)(o.3) of the Act, where a small business investment corporation holds an interest in a partnership or trust that qualified as a small business investment limited partnership or small business investment trust, as the case may be, when the interest was acquired and that, but for this subsection, would cease at a subsequent time to so qualify, the interest in the partnership or trust shall be deemed to be an interest in a small business investment limited partnership or small business investment trust, as the case may be, for the 24 months immediately following the subsequent time.

Definitions [Reg. 5101]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition", "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person" — ITA 248(1), Reg. 5104(6); "prescribed" — ITA 248(1); "prescribed venture capital corporation" — Reg. 6700; "property", "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6); "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified circumstances" — Reg. 5104(2); "specified property" — ITA 204(a), (b), (c), (f), (g), Reg. 5100(1); "trust" — ITA 104(1), 248(1), (3); "undertaking" — ITA 253.1(a).

5102. [Small business investment limited partnership] — (1) For the purposes of this Part and paragraph (c) of the definition "small business property" in subsection 206(1) of the Act, a partnership is a small business investment limited partnership at any time if at all times after it was formed and before that time

(a) it had only one general partner,

(b) the share of the general partner, as general partner, in any income of the partnership from any source in any place, for any period, was the same as his share, as general partner, in

(i) the income of the partnership from that source in any other place,

(ii) the income of the partnership from any other source,

(iii) the loss of the partnership from any source,

(iv) any capital gain of the partnership, and

(v) any capital loss of the partnership

for that period, except that the share of the general partner, as general partner, in the income or loss of the partnership from specified properties may differ from his share, as general partner, in the income or loss of the partnership from other sources,

(c) the share of the general partner, as general partner, in any income or loss of the partnership for any period was not less than his share, as general partner, in the income or loss of the partnership for any preceding period;

(d) the interests of the limited partners were described by reference to units of the partnership that were identical in all respects,

(e) no limited partner or group of limited partners who did not deal with each other at arm's length held more than 30 per cent of the units of the partnership and, for the purposes of this paragraph,

(i) a small business investment corporation that has not borrowed money and in which no shareholder or group of shareholders who did not deal with each other at arm's length held more than 30 per cent of the outstanding shares of any class of vot-

ing stock shall be deemed not to be a limited partner, and

(ii) the general partner shall be deemed not to hold any unit of the partnership as a limited partner, and

(f) its only undertaking was the investing of its funds and its investments consisted solely of

(i) small business securities where, except as provided in subsection 5104(1), the partnership was the first person (other than a broker or dealer in securities) to have acquired the securities and it has owned the securities continuously since they were so acquired,

(ii) property (other than small business securities) described in any of subparagraphs (f)(i) to (iv) of the definition "qualified limited partnership" in subsection 5000(7),

(iii) specified properties, or

(iv) any combination of properties described in any of subparagraphs (i) to (iii),

(g) it has complied with subsection (2),

(h) it has not borrowed money except for the purpose of earning income from its investments and the amount of any such borrowings at any time did not exceed 20 per cent of the partnership capital at that time, and

(i) it has not accepted deposits.

History: Para. 5102(1)(f)(ii) added, paras. 5102(1)(f)(ii) and (iii) renumbered as (iii) and (iv), by P.C. 1994-1074, s. 6, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1990.

Para. 5102(1)(e) substituted by P.C. 1990-1837, s. 6, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

(2) The aggregate of the cost amounts to a small business investment limited partnership of small business securities held by it at any time shall not be less than the amount, if any, by which the aggregate of

(a) 25 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 12 months before that time and not more than 24 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its members and designated by the partnership as a return of the consideration referred to in subparagraph (i),

(b) 50 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 24 months before that time and not more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its members and designated by the partnership as a return of the consideration referred to in subparagraph (i), and

(c) 75 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its members and designated by the partnership as a return of the consideration referred to in subparagraph (i),

exceeds 75 per cent of the amount, if any, by which the aggregate of its losses from the disposition of properties disposed of before that time exceeds the aggregate of its gains from the disposition of properties disposed of before that time.

(3) For the purposes of subsection (2), where a small business investment limited partnership disposes of a small business security it shall be deemed to continue to hold the investment for a period of 90 days following the date of the disposition.

Definitions [Reg. 5102]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "cost amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person" — ITA 248(1), Reg. 5104(6); "property" — ITA 248(1); "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified property" — ITA 204(a), (b), (c), (f), (g), Reg. 5100(1).

5103. [Small business investment trust] — (1) For the purposes of this Part, paragraph (d) of the definition "small business property" in subsection 206(1) of the Act and subsection 259(3) of the Act, a trust is a small business investment trust at any time if at all times after it was created and before that time

(a) it was resident in Canada;

(b) the interests of the beneficiaries under the trust were described by reference to units of the trust that were identical in all respects; and

(c) no beneficiary or group of beneficiaries who did not deal with each other at arm's length held more than 30% of the units of the trust and, for the purposes of this paragraph, a small business investment corporation that has not borrowed money and in which no shareholder or group of shareholders who did not deal with each other at arm's length held more than 30 per cent of the outstanding shares of any class of voting stock shall be deemed not to be a beneficiary;

(d) its only undertaking was the investing of its funds and its investments consisted solely of

(i) small business securities where, except as provided in subsection 5104(1), the trust was the first person (other than a broker or dealer in securities) to have acquired the securities and it has owned the securities continuously since they were so acquired,

(ii) property (other than small business securities) described in any of subparagraphs (f)(i) to (iv) of the definition "qualified limited partnership" in subsection 5000(7),

(iii) specified properties, or

(iv) any combination of properties described in subparagraphs (i) to (iii);

(e) it has complied with subsection (2);

(f) it has not borrowed money except for the purpose of earning income from its investments and the amount of any such borrowings at any time did not exceed 20 per cent of the trust capital at that time; and

(g) it has not accepted deposits.

History: Para. 5103(1)(d)(ii) added, paras. 5103(1)(d)(ii) and (iii) renumbered as (iii) and (iv), by P.C. 1994-1074, s. 7, June 23, 1994, *Canada Gazette*, Part II, July 13, 1994, applicable after 1990.

(2) The aggregate of the cost amounts to a small business investment trust of small business securities held by it at any time shall not be less than the amount, if any, by which the aggregate of

(a) 25 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 12 months before that time and not more than 24 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its beneficiaries and designated by the trust as a return of the consideration referred to in subparagraph (i),

(b) 50 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 24 months before that time and not more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its beneficiaries and designated by the trust as a return of the consideration referred to in subparagraph (i), and

(c) 75 per cent of the amount, if any, by which

(i) the aggregate of all amounts received by it more than 36 months before that time as consideration for the issue of its units or in respect of its units

exceeds

(ii) the aggregate of all amounts paid by it before that time to its beneficiaries and designated by the trust as a return of the consideration referred to in subparagraph (i)

exceeds 75 per cent of the amount, if any, by which the aggregate of its losses from the disposition of properties disposed of before that time exceeds the aggregate of its gains from the disposition of properties disposed of before that time.

(3) For the purposes of subsection (2), where a small business investment trust disposes of a small business security it shall be deemed to continue to hold the investment for a period of 90 days following the date of disposition.

Definitions [Reg. 5103]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "borrowed money", "business", "cost amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "person" — ITA 248(1), Reg. 5104(6); "property" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified property" — ITA 204(a), (b), (c), (f), (g), Reg. 5100(1); "trust" — ITA 104(1), 248(1), (3).

5104. (1) Notwithstanding paragraph (b) of the definition "qualifying obligation" in subsection 5100(1) and paragraphs 5101(1)(b), 5102(1)(f) and 5103(1)(d), the corporation, partnership or trust, as the case may be, may acquire a small business security that another person (other than a broker or dealer in securities) had previously acquired if

(a) the small business security is a share of the capital stock of an eligible corporation having full voting rights under all circumstances; and

(b) except where the share was acquired in specified circumstances within the meaning of subsection (2), the share was acquired from an officer or employee of the eligible corporation or a person related to the officer or employee.

(2) For the purposes of this Part,

(a) where a person acquires a share of a corporation

(i) as part of a proposal to, or an arrangement with, the corporation's creditors that has been approved by a court under the *Bankruptcy [and Insolvency] Act* or the *Companies' Creditors Arrangement Act*,

(ii) at a time when all or substantially all of the corporation's assets were under the control of a receiver, receiver-manager, sequestrator or trustee in bankruptcy, or

(iii) at a time when, by reason of financial difficulty, the corporation was in default, or could reasonably be expected to default, on a debt obligation held by a person with whom the corporation was dealing at arm's length,

the person shall be deemed, at any time within 36 months after he acquired the share, to have acquired it in specified circumstances;

(b) where a person acquires a share of a corporation for the purposes of facilitating the disposition of the entire investment of the person in the corporation, the person shall be deemed, at any time within 12 months after he acquired the share, to have acquired it in specified circumstances; and

(c) a qualified trust (within the meaning assigned by subsection 259(3) of the Act) is deemed not to hold any property for any period in respect of which subsection 259(1) of the Act is applicable.

History: Para. 5104(2)(c) added by P.C. 1990-1837, s. 7, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after October 31, 1985.

Paras. 5104(2)(a) and (b) substituted by P.C. 1986-2590, s. 14, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable after October 31, 1985.

(3) Where the purchaser of a property that, but for this subsection, would at the time of its acquisition be a small business security (or, where the purchaser is a partnership, a member thereof) knew at the time of acquisition that the issuer of the security would, within the immediately following 12 months, cease to qualify as an eligible corporation, the property shall be deemed never to have been a small business security of the purchaser.

(4) Where a person who holds a share of or an interest in a corporation, partnership or trust that, but for this subsection, would be a small business investment corporation, small business investment limited partnership or small business investment trust knew at the time of issue of the share or interest, as the case may be, or at the time of making any contribution in respect of the share or interest, that

(a) a substantial portion of

(i) the consideration for the issue of the share or interest, or

(ii) the contribution in respect of the share or interest

would not be invested by the corporation, partnership or trust, as the case may be, directly or indirectly in small business securities, and

(b) all or substantially all of

(i) the consideration for the issue of the share or interest, or

(ii) the contribution in respect of the share or interest

would be returned to the purchaser within the immediately following 24 months,

the corporation, partnership or trust shall be deemed to have ceased at that time to be a small business investment corporation, small business investment limited partnership or small business investment trust.

(5) Where, but for this subsection, a property that qualified as a small business security when it was acquired would cease at a subsequent time to so qualify, the property shall be deemed to be a small business security for the 24 months immediately following the subsequent time.

(6) For the purposes of this Part, a partnership shall be deemed to be a person.

Definitions [Reg. 5104]: "arm's length" — ITA 251(1); "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "eligible corporation" — Reg. 5100(1); "employee" — ITA 248(1); "month" — *Interpretation Act* 35(1); "officer" — ITA 248(1); "person" — ITA 248(1), Reg. 5104(6); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "share" — ITA 248(1); "small business investment corporation" — Reg. 5101(1); "small business investment limited partnership" — Reg. 5102(1); "small business security" — Reg. 5100(2), 5104(3), (5); "specified circumstances" — Reg. 5104(2), (2)(b); "trust" — ITA 104(1), 248(1), (3).

PART LII — CANADIAN MANUFACTURING AND PROCESSING PROFITS

History: Part LII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5200. Basic formula — Subject to section 5201, for the purposes of paragraph 125.1(3)(a) [125.1(3)"Canadian manufacturing and processing profits"] of the Act, "Canadian manufacturing and processing profits" of a corporation for a taxation year are hereby prescribed to be that proportion of the corporation's adjusted business income for the year that

(a) the aggregate of its cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year,

is of

(b) the aggregate of its cost of capital for the year and its cost of labour for the year.

Definitions [Reg. 5200]: "adjusted business income" — Reg. 5202, 5203(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "cost of manufacturing and processing capital", "cost of manufacturing and processing labour" — Reg. 5202, 5204; "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-145R: Canadian manufacturing and processing profits — reduced rate of corporate tax.

5201. Small manufacturers' rule — For the purposes of paragraph 125.1(3)(a) [125.1(3)"Canadian manufacturing and processing profits"] of the Act, "Canadian manufacturing and processing profits" of a corporation for a taxation year are hereby prescribed to be equal to the corporation's adjusted business income for the year where

(a) the activities of the corporation during the year were primarily manufacturing or processing in Canada of goods for sale or lease;

(b) the aggregate of

(i) the aggregate of all amounts each of which is the income of the corporation for the year from an active business minus the aggregate of all amounts each of which is the loss of the corporation for the year from an active business, and

(ii) if the corporation is associated in the year with a Canadian corporation, the aggregate of all amounts each of which is the income of the latter corporation from an active business for its taxation year coinciding with or ending in the year,

did not exceed $200,000;

(c) the corporation was not engaged in any of the activities listed in subparagraphs 125.1(3)(b)(i) to (ix) [125.1(3)"manufacturing or processing"(a) to (k)] of the Act at any time during the year;

(c.1) the corporation was not engaged in the processing of ore (other than iron ore or tar sands) from a mineral resource located outside Canada to any stage that is not beyond the prime metal stage or its equivalent;

(c.2) the corporation was not engaged in the processing of iron ore from a mineral resource located outside Canada to any stage that is not beyond the pellet stage or its equivalent;

(c.3) the corporation was not engaged in the processing of tar sands located outside Canada to any stage that is not beyond the crude oil stage or its equivalent; and

(d) the corporation did not carry on any active business outside Canada at any time during the year.

History: Paras. 5201(c.1) to (c.3) added by P.C. 1994-230, s. 5, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

All that portion of para. 5201(b) following subpara. (ii) substituted by P.C. 1982-3198, October 21, 1982, *Canada Gazette*, Part II, November 10, 1982, applicable to 1982 *et seq.*

Definitions [Reg. 5201]: "active business" — ITA 248(1); "adjusted business income" — Reg. 5202, 5203(1); "amount" — ITA 248(1); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian corporation" — ITA 89(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "mineral resource", "prescribed", "tar sands" — ITA 248(1); "taxation year" — ITA 249.

5202. Interpretation — In this Part, except as otherwise provided in section 5203 or 5204,

"adjusted business income" of a corporation for a taxation year means the amount, if any, by which

(a) the aggregate of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada

exceeds

(b) the aggregate of all amounts each of which is the loss of the corporation for the year from an active business carried on in Canada;

"Canadian resource profits" has the meaning that would be assigned to the expression "resource profits" by section 1204 if

(a) section 1204 were read without reference to subparagraph 1204(1)(b)(iv), and

(b) the definition "resource activity" in subsection 1206(1) were read without reference to paragraph (d) of that definition;

History: The definition "Canadian resource profits" in s. 5202 amended by P.C. 1996-1488, s. 6, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

"Canadian resource profits" added by P.C. 1994-230, s. 6, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

"cost of capital" of a corporation for a taxation year means an amount equal to the aggregate of

(a) 10 per cent of the aggregate of all amounts each of which is the gross cost to the corporation of a property referred to in paragraph 1100(1)(e), (f), (g) or (h), paragraph 1102(1)(d) or (g) or Schedule II that

(i) was owned by the corporation at the end of the year, and

(ii) was used by the corporation at any time during the year, and

(b) the aggregate of all amounts each of which is the rental cost incurred by the corporation during the year for the use of any property a portion of the gross cost of which would be included by virtue of paragraph (a) if the property were owned by the corporation at the end of the year,

but for the purposes of this definition, the gross cost of a property or rental cost for the use of any property does not include that portion of those costs that reflects the extent to which the property was used by the corporation during the year

(c) in an active business carried on outside Canada, or

(d) to earn Canadian investment income or foreign investment income as defined in subsection 129(4) of the Act;

"cost of labour" of a corporation for a taxation year means an amount equal to the aggregate of

(a) the salaries and wages paid or payable during the year to all employees of the corporation for services performed during the year, and

(b) all other amounts each of which is an amount paid or payable during the year for the performance during the year, by any person other than an employee of the corporation, of functions relating to

(i) the management or administration of the corporation,

(ii) scientific research as defined in section 2900, or

Proposed Amendment — Reg. 5202"cost of labour"(b)(ii)

(ii) scientific research and experimental development, or

Application: The October 27, 1998 draft regulations, s. 3, will amend subpara. (b)(ii) of the definition "cost of labour" in s. 5202 to read as above, applicable to costs incurred after February 27, 1995.

Technical Notes: Section 5202 of the Regulations sets out a number of definitions relevant to the calculation of the manufacturing and processing tax credit.

The definition "cost of labour" in section 5202 is amended as a consequence of the introduction of the definition "scientific research and experimental development" in subsection 248(1) of the Act.

(iii) a service or function that would normally be performed by an employee of the corporation,

but for the purposes of this definition, the salaries and wages referred to in paragraph (a) or other amounts referred to in paragraph (b) do not include that portion of those amounts that

(c) was included in the gross cost to the corporation of a property (other than a property that was manufactured by the corporation and leased during the year by the corporation to another person) that was included in computing the cost of capital of the corporation for the year, or

(d) was related to an active business carried on outside Canada by the corporation;

"cost of manufacturing and processing capital" of a corporation for a taxation year means 100/85 of that portion of the cost of capital of the corporation for that year that reflects the extent to which each property included in the calculation thereof was used directly in qualified activities of the corporation during the year, but the amount so calculated shall not exceed the cost of capital of the corporation for the year;

"cost of manufacturing and processing labour" of a corporation for a taxation year means 100/75 of that portion of the cost of labour of the corporation for that year that reflects the extent to which

(a) the salaries and wages included in the calculation thereof were paid or payable to persons for the portion of their time that they were directly engaged in qualified activities of the corporation during the year, and

(b) the other amounts included in the calculation thereof were paid or payable to persons for the performance of functions that would be directly related to qualified activities of the corporation during the year if those persons were employees of the corporation,

but the amount so calculated shall not exceed the cost of labour of the corporation for the year;

"gross cost" to a particular person of a property at any time means, in respect of property that has become available for use by the particular person for the purposes of subsection 13(26) of the Act, the capital cost to the particular person of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act and, in respect of any other property, nil, and where the particular person acquired the property

(a) in the course of a reorganization in respect of which, if a dividend were received by the particular person in the course of the reorganization, subsection 55(2) of the Act would not apply to the dividend by reason of the application of paragraph 55(3)(b) of the Act, or

(b) from another person with whom the particular person was not dealing at arm's length (otherwise than by reason of a right referred to in paragraph 251(5)(b) of the Act) immediately after the property was acquired,

the capital cost to the particular person of the property for the purposes of this definition shall be computed as if the property had been acquired at a capital cost equal to the

gross cost of the property to the person from whom the property was acquired by the particular person;

History: "Gross cost" amended by P.C. 1994-139, subsec. 12(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1985 *et seq.*, except that

(a) where the taxpayer so elects by notifying the Minister of National Revenue in writing on or before the day on or before which the taxpayer is, or would be if a tax under Part I of the *Income Tax Act* were payable by the taxpayer, required by s. 150 to file a return of income for the taxpayer's first taxation year ending after February 9, 1994,

(i) for taxation years ending before January 16, 1987, "gross cost" shall be read without reference to the words "and paragraph 111(4)(e)", and

(ii) for taxation years ending before February 9, 1994, all that portion of "gross cost" preceding para. (a) shall be read as follows:

"gross cost" to a particular person of a property at any time means the capital cost to the particular person of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act and, where the particular person acquired the property

(b) for taxation years ending before January 16, 1987, where the taxpayer has not elected under paragraph (a), the definition shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act;

(c) for taxation years ending after January 15, 1987 and before February 9, 1994, where the taxpayer has not elected under paragraph (a), the definition shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act;

"qualified activities" means

(a) any of the following activities, when they are performed in Canada in connection with manufacturing or processing (not including the activities listed in subparagraphs 125.1(3)(b)(i) to (ix) [125.1(3)"manufacturing or processing"(a) to (k)] of the Act) in Canada of goods for sale or lease:

(i) engineering design of products and production facilities,

(ii) receiving and storing of raw materials,

(iii) producing, assembling and handling of goods in process,

(iv) inspecting and packaging of finished goods,

(v) line supervision,

(vi) production support activities including security, cleaning, heating and factory maintenance,

(vii) quality and production control,

(viii) repair of production facilities, and

(ix) pollution control,

(b) all other activities that are performed in Canada directly in connection with manufacturing or processing (not including the activities listed in subparagraphs 125.1(3)(b)(i) to (ix) [125.1(3)"manufacturing or processing"(a) to (k)] of the Act) in Canada of goods for sale or lease, and

(c) scientific research and experimental development, as defined in section 2900, carried on in Canada,

but does not include any of

(d) storing, shipping, selling and leasing of finished goods,

(e) purchasing of raw materials,

(f) administration, including clerical and personnel activities,

(g) purchase and resale operations,

(h) data processing, and

(i) providing facilities for employees, including cafeterias, clinics and recreational facilities;

History: "Qualified activities" amended by P.C. 1994-139, subsec. 12(2), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to scientific research and experimental development done or carried on after December 23, 1991, other than scientific research and experimental development done or carried on by or on behalf of a taxpayer pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991.

"rental cost" of a property means the rents incurred for the use of that property;

"resource profits" has the meaning assigned by section 1204;

History: The definition "resource profits" amended by P.C. 1996-1488, s. 6, September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that begin after December 20, 1991.

"Resource profits" added by P.C. 1994-230, s. 6, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

"salaries and wages" means salaries, wages and commissions, but does not include any other type of remuneration, any superannuation or pension benefits, any retiring allowances or any amount referred to in section 6 or 7 of the Act;

"specified percentage" for a taxation year means

(a) where the year commences after 1998, 100%, and

(b) in any other case, the total of

(i) that proportion of 10% that the number of days in the year that are in 1990 is of the number of days in the year,

(ii) that proportion of 20% that the number of days in the year that are in 1991 is of the number of days in the year,

(iii) that proportion of 30% that the number of days in the year that are in 1992 is of the number of days in the year,

(iv) that proportion of 50% that the number of days in the year that are in 1993 is of the number of days in the year,

(v) that proportion of 64.3% that the number of days in the year that are in 1994 is of the number of days in the year,

(vi) that proportion of 71.4% that the number of days in the year that are in 1995 is of the number of days in the year,

(vii) that proportion of 78.6% that the number of days in the year that are in 1996 is of the number of days in the year,

(viii) that proportion of 85.7% that the number of days in the year that are in 1997 is of the number of days in the year,

(ix) that proportion of 92.9% that the number of days in the year that are in 1998 is of the number of days in the year, and

(x) that proportion of 100% that the number of days in the year that are in 1999 is of the number of days in the year.

History: "Specified percentage" added by P.C. 1994-230, s. 6, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

Selected Cases [Reg. 5202]: *Range Grain Co. v. R.*, [1997] 2 C.T.C. 227 (FCTD) (Maintaining grain in condition not "processing" but incidental to transportation).

Definitions [Reg. 5202]: "active business", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "dividend", "employee" — ITA 248(1); "gross cost" — Reg. 5202, 5204; "person", "property" — ITA 248(1); "qualified activities" — Reg. 5202; "related" — ITA 251(2)–(6); "rental cost" — Reg. 5202; "retiring allowance" — ITA 248(1); "salaries and wages" — ITA 248(1), Reg. 5202; "scientific research and experimental development" — ITA 248(1); "superannuation or pension benefit" — ITA 248(1); "taxation year" — ITA 249.

5203. Resource income — (1) Where a corporation has resource activities for a taxation year the following rules apply, except as otherwise provided in section 5204

"adjusted business income" of the corporation for the year means the amount, if any, by which

(a) the amount otherwise determined under section 5202 to be the adjusted business income of the corporation for the year

exceeds the total of

(b) the amount, if any, by which the corporation's net resource income for the year exceeds the corporation's net resource adjustment for the year,

(c) all amounts each of which is an amount in respect of refund interest included in computing the taxpayer's income for the year, to the extent that the amount is included in the amount otherwise determined to be the adjusted business income, within the meaning of section 5202, of the corporation for the year, and

(d) all amounts each of which is included under paragraph 12(1)(z.5) in computing the taxpayer's income for the year;

Related Provisions: Reg. 5203(3.1) — Net resource adjustment.

History: Para. (b) of the definition "adjusted business income" in subsec. 5203(1) amended by P.C. 1999-629, subsec. 11(1), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after December 20, 1991.

Para. (d) added to the definition "adjusted business income" in subsec. 5203(1) by the said P.C. 1999-629, subsec. 11(2), applicable to taxation years that begin after 1996.

That portion of the definition of "adjusted business income" in subsec. 5203(1) after para. (a) amended, and para. (c) added, by P.C. 1996-1488, subsec. 7(1), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after March 6, 1996.

"cost of capital" of the corporation for the year means the amount, if any, by which

(a) the amount otherwise determined under section 5202 to be the cost of capital of the corporation for the year

exceeds

(b) that portion of the gross cost of property or rental cost for the use of property included in computing the cost of capital of the corporation for the year that reflects the extent to which the property was used by the corporation during the year,

(i) in activities engaged in for the purpose of earning Canadian resource profits of the corporation, or

(ii) in activities referred to in subparagraph 66(15)(b)(i), (ii) or (v) [66(15)"Canadian exploration and development expenses"(a), (b) or (e)], subparagraph 66(15)(e)(i) or (ii) [66(15)"foreign exploration and development expenses"(a) or (b)], subparagraph 66.1(6)(a)(i), (ii), (iii) or (v) [66.1(6)"Canadian exploration expense"(a), (c), (f) or (i)] or subparagraph 66.2(5)(a)(i), (ii) or (v) [66.2(5)"Canadian development expense"(a), (c) or (g)] of the Act;

History: Subpara. (b)(i) of "cost of capital" amended by P.C. 1994-230, subsec. 7(1), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

Subpara. (b)(ii) of the definition "cost of capital" substituted by P.C. 1978-1315, s. 14, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, effective on and after May 7, 1974.

"cost of labour" of the corporation for the year means the amount, if any, by which

(a) the amount otherwise determined under section 5202 to be the cost of labour of the corporation for the year

exceeds

(b) that portion of the salaries and wages and other amounts included in computing the cost of labour of the corporation for the year that,

(i) was related to the activities engaged in for the purpose of earning Canadian resource profits of the corporation, or

(ii) was included in the Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense or Canadian development expense, within the meanings assigned by paragraphs 66(15)(b) and (e) [66(15)"Canadian exploration and development expenses" and "foreign exploration and development expenses"], paragraph 66.1(6)(a) [66.1(6)"Canadian exploration expense"] and 66.2(5)(a) [66.2(5)"Canadian development expense"] of the Act respectively, of the corporation.

History: Subpara. (b)(i) of "cost of labour" amended by P.C. 1994-230, subsec. 7(2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(2) For the purposes of subsection (1), a corporation has "resource activities" for a taxation year if

(a) in computing its income for the year, an amount is deductible pursuant to paragraph 20(1)(v.1) or section 65, 66, 66.1 or 66.2 of the Act;

(b) the corporation was at any time during the year engaged in activities for the purpose of earning resource profits of the corporation; or

(c) in computing the corporation's income for the year, an amount was included pursuant to section 59 of the Act.

History: Para. 5203(2)(b) amended by P.C. 1994-230, subsec. 7(3), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(3) In subsection (1), "net resource income" of a corporation for a taxation year means the amount, if any, by which the total of

(a) the resource profits of the corporation for the year, and

(b) the amount, if any, by which

(i) the total of amounts included in computing the income of the corporation for the year, from an active business carried on in Canada, pursuant to section 59 of the Act (other than amounts that may reasonably be regarded as having been included in computing the resource profits of the corporation for the year),

exceeds

(ii) the total of amounts deducted in computing the income of the corporation for the year under section 64 of the Act, as that section applies with respect to dispositions occurring before November 13, 1981 and to dispositions occurring after November 12, 1981 pursuant to the terms in existence on that date of an offer or agreement in writing made or entered into on or before that date, except those amounts that may reasonably be regarded as having been deducted in computing the resource profits of the corporation for the year,

exceeds the total of

(c) the total of amounts deducted in computing the income of the corporation for the year under section 65 of the Act (other than amounts that may reasonably be regarded as having been deducted in computing the resource profits of the corporation for the year), and

(d) the specified percentage for the year of the amount, if any, by which

(i) the corporation's resource profits for the year

exceeds the total of

(ii) the corporation's Canadian resource profits for the year, and

(iii) the earned depletion base (within the meaning assigned by subsection 1205(1)) of the corporation at the beginning of its immediately following taxation year.

History: Subsec. 5203(3) substituted by P.C. 1994-230, subsec. 7(4), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(3.1) In subsection (1), the net resource adjustment of a corporation for a taxation year is the amount determined by the formula

$$A - B$$

where

A is the amount of Canadian resource profits of the corporation for the year, and

B is the amount that would be the Canadian resource profits of the corporation for the year if

(a) subsections 1204(1) and (1.1) provided for the computation of negative amounts where the amounts subtracted in computing gross resource profits (as defined by subsection 1204(1)) and resource profits exceed the amounts added in computing those amounts, and

(b) paragraph 1206(3)(a) applied so that a negative amount of resource profits of a partnership for a fiscal period that ended in the year were, to the extent of the corporation's share thereof, deducted in computing the corporation's resource profits for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subsec. 5203(3.1) added by P.C. 1999-629, subsec. 11(3), April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after December 20, 1991.

(4) For the purpose of subsection (1), "refund interest" means an amount that is received, or that becomes receivable, after March 6, 1996

(a) from an authority (including a government or municipality) situated in Canada as a consequence of the overpayment of a tax that was not deductible under the Act in computing any taxpayer's income and that was imposed by an Act of Canada or a province or a bylaw of a municipality;

(b) from a person described in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act as a consequence of the overpayment of an amount that, because of paragraph 18(1)(m) of the Act, was not deductible under the Act in computing any taxpayer's income; or

(c) from a person described in subparagraph 18(1)(m)(i), (ii) or (iii) of the Act as a consequence of the receipt of an amount that was in excess of the amount to which the person was entitled and in respect of an amount that was required to be included in computing any taxpayer's income because of paragraph 12(1)(o) of the Act.

History: Subsec. 5203(4) added by P.C. 1996-1488, subsec. 7(2), September 24, 1996, *Canada Gazette*, Part II, October 16, 1996, applicable to taxation years that end after March 6, 1996.

Definitions [Reg. 5203]: "active business" — ITA 248(1); "adjusted business income" — Reg. 5202, 5203(1); "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource profits" — Reg. 5202; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "disposition" — ITA 248(1); "foreign exploration and development expenses" — ITA 66(15), 248(1); "gross cost" — Reg. 5202, 5204; "net resource adjustment" — Reg. 5203(3.1); "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "rental cost", "resource profits" — Reg. 5202; "salaries and wages" — ITA 248(1), Reg. 5202; "specified percentage" — Reg. 5202; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

5204. Partnerships — Where a corporation is a member of a partnership at any time in a taxation year of the corporation, the following rules apply:

"cost of capital" of the corporation for the year means an amount equal to the aggregate of

(a) 10 per cent of the aggregate of all amounts each of which is the gross cost to the corporation of a property referred to in paragraph 1100(1)(e), (f), (g) or (h), paragraph 1102(1)(d) or (g) or Schedule II that

(i) was owned by the corporation at the end of the year, and

(ii) was used by the corporation at any time during the year,

(b) the aggregate of all amounts each of which is the rental cost incurred by the corporation during the year for the use of any property a portion of the gross cost of which would be included by virtue of paragraph (a) if the property were owned by the corporation at the end of the year, and

(c) that proportion of the aggregate of the amounts that would be determined under paragraphs (a) and (b) in respect of the partnership for its fiscal period coinciding with or ending in the taxation year of the corporation if the references in those paragraphs to "the corporation" were read as references to "the partnership" and the references in those paragraphs to "the year" were read as references to "the fiscal period of the partnership coinciding with or ending in the year", that

(i) the corporation's share of the income or loss of the partnership for that fiscal period

is of

(ii) the income or loss of the partnership for that fiscal period, as the case may be,

but for the purposes of this definition, the gross cost of a property or rental cost for the use of any property does not include that portion of those costs that reflects the extent to which the property was used by the corporation during the year or by the partnership during its fiscal period coinciding with or ending in the year

(d) in an active business carried on outside Canada,

(e) to earn Canadian investment income or foreign investment income as defined in subsection 129(4) of the Act on the assumption that subsection 129(4) of the Act applied to a partnership as well as to a corporation,

(f) in activities engaged in for the purpose of earning Canadian resource profits of the corporation or the partnership, as the case may be, or

(g) in activities referred to in subparagraph 66(15)(b)(i), (ii) or (v) [66(15)"Canadian exploration and development expenses"(a), (b) or (e)], subparagraph 66(15)(e)(i) or (ii) [66(15)"foreign exploration and development expenses"(a) or (b)], subparagraph 66.1(6)(a)(i), (ii), (iii) or (v) [66.1(6)"Canadian exploration expense"(a), (c), (f) or (i)] or subparagraph 66.2(5)(a)(i), (ii) or (v) [66.2(5)"Canadian development expense"(a), (c) or (g)] of the Act;

History: Para. (f) of "cost of capital" substituted by P.C. 1994-230, subsec. 8(1), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

Para. (g) of the definition "cost of capital" substituted by P.C. 1978-1315, s. 14, April 20, 1978, *Canada Gazette*, Part II, May 10, 1978, effective on and after May 7, 1974.

"cost of labour" of the corporation for the year means an amount equal to the aggregate of

(a) the salaries and wages paid or payable during the year to all employees of the corporation for services performed during the year,

(b) all other amounts each of which is an amount paid or payable during the year for the performance during the year, by any person other than an employee of the corporation, of functions relating to

(i) the management or administration of the corporation,

(ii) scientific research as defined in section 2900, or

(iii) a service or function that would normally be performed by an employee of the corporation, and

(c) that proportion of the aggregate of the amounts that would be determined under paragraphs (a) and (b) in respect of the partnership for its fiscal period coinciding with or ending in the taxation year of the corporation if the references in those paragraphs to the "corporation" were read as references to "the partnership" and the references in those paragraphs to "the year" were read as references to "the fiscal period of the partnership coinciding with or ending in the year", that

(i) the corporation's share of the income or loss of the partnership for that fiscal period

is of

(ii) the income or loss of the partnership for that fiscal period, as the case may be,

but for the purposes of this definition, the salaries and wages referred to in paragraph (a) or other amounts referred to in paragraph (b), of the corporation or the partnership, as the case may be, do not include that portion of those amounts that

(d) was included in the gross cost to the corporation or partnership of a property (other than a property that was manufactured by the corporation or partnership and leased during the year by the corporation or the partnership to another person) that was included in computing the cost of capital of the corporation for the year,

(e) was related to an active business carried on outside Canada by the corporation or the partnership,

(f) was related to the activities engaged in for the purpose of earning Canadian resource profits of the corporation or the partnership, as the case may be, or

History: Para. (f) of "cost of labour" substituted by P.C. 1994-230, subsec. 8(2), February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to 1990 *et seq.*

(g) was included in the Canadian exploration and development expenses, foreign exploration and development expenses, Canadian exploration expense or Canadian development expense, within the meanings assigned by paragraphs 66(15)(b) and (e) [66(15)"Canadian exploration and development expenses" and "foreign exploration and development expenses"], 66.1(6)(a) [66.1(6)"Canadian exploration expense"] and 66.2(5)(a) [66.2(5)"Canadian development expense"] of the Act respectively, of the corporation;

"cost of manufacturing and processing capital" of the corporation for the year means 100/85 of that portion of the cost of capital of the corporation for that year that reflects the extent to which each property included in the calculation thereof was used directly in qualified activities

(a) of the corporation during the year, or

(b) of the partnership during its fiscal period coinciding with or ending in the year, as the case may be,

but the amount so calculated shall not exceed the cost of capital of the corporation for the year;

"cost of manufacturing and processing labour" of the corporation for the year means 100/75 of that portion of the cost of labour of the corporation for that year that reflects the extent to which

(a) the salaries and wages included in the calculation thereof were paid or payable to persons for the portion of their time that they were directly engaged in qualified activities

(i) of the corporation during the year, or

(ii) of the partnership during its fiscal period coinciding with or ending in the year, and

(b) the other amounts included in the calculation thereof were paid or payable to persons for the performance of functions that would be directly related to qualified activities

(i) of the corporation during the year, or

(ii) of the partnership during its fiscal period coinciding with or ending in the year,

if those persons were employees of the corporation or the partnership, as the case may be,

but the amount so calculated shall not exceed the cost of labour of the corporation for the year;

"gross cost" of a property at any time means

(a) in respect of a property that has become available for use by the partnership for the purposes of subsection 13(26) of the Act, the capital cost to the partnership of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act, and

(b) in respect of any other property of the partnership, nil

and, for the purposes of paragraph (a), where the partnership acquired the property from a person who was a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1) of the Act) immediately after the property was acquired, the capital cost to the partnership of the property shall be computed as if the property had been acquired at a capital cost equal to the gross cost to the person of the property, except that where the property was partnership property on December 31, 1971, its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules*.

History: "Gross cost" amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

"Gross cost" substituted by P.C. 1994-139, s. 13, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1985 *et seq.*, except that

(a) where the taxpayer so elects by notifying the Minister of National Revenue in writing on or before the day on or before which the taxpayer is, or would be if a tax under Part I of the *Income Tax Act* were payable by the taxpayer, required by s. 150 to file a return of income for the taxpayer's first taxation year ending after February 9, 1994, it shall be read as follows for taxation years ending before February 9, 1994:

"gross cost" of a property at any time means in respect of a property of the partnership, the capital cost to the partnership of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act, and, where the partnership acquired the property from a person who was a majority interest partner of the partnership (within the meaning assigned by subsection 97(3.1) of the Act) immediately after the property was acquired, the capital cost to the partnership of the property shall be computed as if the property had been acquired at a capital cost equal to the gross cost to the person of the property, except that where the property was partnership property on December 31, 1971 its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules,1971*.

(b) for taxation years ending before January 16, 1987 where the taxpayer has not elected under para. (a), it shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10) and sections 21 and 80 of the Act, except that where a property was partnership property on December 31, 1971, its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules, 1971*;

(c) for taxation years ending after January 15, 1987 and before February 9, 1994, where the taxpayer has not elected under para. (a), it shall be read as follows:

"gross cost" of a property means the capital cost of the property computed without reference to subsections 13(7.1), (7.4) and (10), sections 21 and 80 and paragraph 111(4)(e) of the Act, except that where a property was partnership property on December 31, 1971, its gross cost shall be its capital cost to the partnership as determined under subsection 20(3) or (5) of the *Income Tax Application Rules, 1971*.

Definitions [Reg. 5204]: "active business", "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian development expense" — ITA 66.2(5), 248(1); "Canadian exploration and development expenses" — ITA 66(15), 248(1); "Canadian exploration expense" — ITA 66.1(6), 248(1); "Canadian resource profits" — Reg. 5202; "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost of capital", "cost of labour" — Reg. 5202, 5203(1), 5204; "employee" — ITA 248(1); "fiscal period" — ITA 249.1; "foreign exploration and development expenses" — ITA 66(15), 248(1); "gross cost" — Reg. 5202, 5204; "majority interest partner" — ITA 248(1); "person", "property" — ITA 248(1); "qualified activities" — Reg. 5202; "related" — ITA 251(2)–(6); "rental cost" — Reg. 5202; "salaries and wages" — ITA 248(1), Reg. 5202; "share" — ITA 248(1); "taxation year" — ITA 249.

PART LIII — INSTALMENT BASE

History: Part LIII (ss. 5300, 5301) substituted by P.C. 1981-2931, s. 1, October 22, 1981, *Canada Gazette*, Part II, November 11, 1981, applicable by s. 2 as follows:

(1) Para. 5300(1)(d) applicable to 1980 *et seq.*

(2) Subsecs. 5301(1)–(5) effective in respect of instalments of tax required to be paid for taxation years commencing after October 28, 1980.

(3) Subsecs. 5301(6)–(9) effective in respect of taxation years commencing after February 26, 1981 in respect of instalments of tax required to be paid after the particular time referred to in those subsections where such particular time was after November 11, 1981.

Part LIII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5300. [Individuals] — For the purposes of subsections 155(2), 156(3) and 161(9) of the Act, the instalment base of an individual for a taxation year is the amount by which

(a) the individual's tax payable under Part I of the Act for the year, determined before taking into consideration the specified future tax consequences for the year

exceeds

(b) the amount deemed by subsection 120(2) of the Act to have been paid on account of the individual's tax under Part I of the Act for the year, determined before taking into consideration the specified future tax consequences for the year.

Related Provisions: ITA 248(1) — Definition of "specified future tax consequence".

History: S. 5300 substituted for subsecs. 5300(1), (2) by P.C. 1999-196, s. 1, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable for the purpose of computing instalments of tax payable for 1997 *et seq.*

Subsec. 5300(2) substituted by P.C. 1986-2590, s. 15, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986.

Para. 5300(1)(a) substituted by P.C. 1985-2277, s. 15, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to amounts deducted under ss. 127.2 and 127.3 of the Act in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984; and with respect to amounts referred to in subparas. 161(7)(a)(i) to (vii) of the Act for subsequent taxation years ending after August 7, 1985.

Definitions [Reg. 5300]: "amount", "individual", "prescribed", "specified future tax consequence" — ITA 248(1); "taxation year" — ITA 249.

5301. Corporations under Part I of the Act — **(1)** Subject to subsections (6) and (8), for the purposes of subsections 157(4) and 161(9) of the Act, the first instalment base of a corporation for a particular taxation year means the product obtained when the aggregate of

(a) the tax payable under Part I of the Act by the corporation for its taxation year preceding the particular year, and

(b) the total of the taxes payable by the corporation under Parts I.3, VI and VI.1 of the Act for its taxation year preceding the particular year

is multiplied by the ratio that 365 is of the number of days in that preceding year.

Related Provisions: Reg. 5301(10) — Tax payable under Part I.

History: Para. 5301(1)(a) amended by P.C. 1999-196, subsec. 2(1), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1996 *et seq.*

Paras. 5301(1)(a) and (b) substituted by P.C. 1994-556, subsec. 1(1), April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable in computing the "first instalment base" and "second instalment base", within the meanings assigned by Part LIII, for taxation years ending after June 1989, except that in its application to any of those taxation years ending before 1992, the reference to "Parts I.3, VI and VI.1" in para. 5301(1)(b) shall be read as a reference to "Part VI.1".

Subsec. 5301(1) substituted by P.C. 1989-1565, subsec. 3(1), August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable in respect of 1988 *et seq.*

Subsec. 5301(1) substituted by P.C. 1988-390, subsec. 27(1), March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Subsec. 5301(1) substituted by P.C. 1985-2277, subsec. 16(1), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to amounts deducted under ss. 127.2 and 127.3 of the Act in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984; and with respect to amounts referred to in subparas. 161(7)(a)(i) to (vii) of the Act for subsequent taxation years ending after August 7, 1985.

Subsec. 5301(1) substituted by P.C. 1984-3789, subsec. 14(1), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to 1982 *et seq.*

(2) Subject to subsections (6) and (8), for the purposes of subsections 157(4) and 161(9) of the Act, the "second instalment base" of a corporation for a particular taxation year means the amount of the first instalment base of the corporation for the taxation year immediately preceding the particular year.

(3) For the purposes of subsection (1), where the number of days in the taxation year of a corporation immediately preceding the particular taxation year referred to therein is less than 183, the amount determined for the corporation under that subsection shall be the greater of

(a) the amount otherwise determined for it under subsection (1); and

(b) the amount that would be determined for it under subsection (1) if the reference in that subsection to "its taxation year preceding the particular year" were read as a reference to "its last taxation year, preceding the particular year, in which the number of days exceeds 182".

History: Para. 5301(3)(b) amended by P.C. 1999-196, subsec. 2(2), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years ending after June 30, 1989.

(4) Notwithstanding subsections (1) and (2), for the purposes of subsections 157(4) and 161(9) of the Act,

(a) where a particular taxation year of a new corporation that was formed as a result of an amalgamation (within the meaning assigned by section 87 of the Act) is its first taxation year,

(i) its "first instalment base" for the particular year means the total of all amounts each of which is equal to the product obtained when the total of

(A) the tax payable under Part I of the Act, and

(B) the total of the taxes payable under Parts I.3, VI and VI.1 of the Act

by a predecessor corporation (as defined in section 87 of the Act) for its last taxation year is multiplied by the ratio that 365 is of the number of days in that year, and

(ii) its "second instalment base" for the particular year means the aggregate of all amounts each of which is an amount equal to the amount of the first instalment base of a predecessor corporation for its last taxation year; and

(b) where a particular taxation year of a new corporation referred to in paragraph (a) is its second taxation year,

(i) its "first instalment base" for the particular year means

(A) where the number of days in its first taxation year is greater than 182, the amount that would, but for this subsection, be determined under subsection (1) for the year, and

(B) in any other case, the greater of the amount that would, but for this subsection, be determined under subsection (1) for the year and its first instalment base for its first taxation year, and

(ii) its "second instalment base" for the particular year means the amount of the first instalment base of the new corporation for its first taxation year.

History: Cl. 5301(4)(a)(i)(A) amended by P.C. 1999-196, subsec. 2(3), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1996 *et seq.*

Subpara. 5301(4)(a)(i) substituted by P.C. 1994-556, subsec. 1(2), April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable in computing the "first instalment base" and "second instalment base", within the meanings assigned by Part LIII, for taxation years ending after June 1989, except that in its application to any of those taxation years ending before 1992, the reference to "Parts I.3, VI and VI.1" in cl. 5301(4)(a)(i)(B) shall be read as a reference to "Part VI.1".

Subpara. 5301(4)(a)(i) substituted by P.C. 1989-1565, subsec. 3(2), August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable in respect of 1988 *et seq.*

Subpara. 5301(4)(a)(i) substituted by P.C. 1988-390, subsec. 27(3), March 3, 1988, *Canada Gazette*, Part II, March 16, 1988, applicable to 1985 *et seq.*

Subpara. 5301(4)(a)(i) substituted by P.C. 1985-2277, subsec. 16(2), July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to amounts deducted under ss. 127.2 and 127.3 of the Act in respect of shares, debt obligations and rights acquired after February 15, 1984, other than shares, debt obligations or rights acquired before March 1, 1984 where arrangements, evidenced in writing, for the issue of the shares or debt obligations or granting of the rights were substantially advanced before February 16, 1984; and with respect to amounts referred to in subparas. 161(7)(a)(i) to (vii) of the Act for subsequent taxation years ending after August 7, 1985.

Subpara. 5301(4)(a)(i) substituted by P.C. 1984-3789, subsec. 14(2), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to 1982 *et seq.*

(5) For the purposes of subsection (4), where the number of days in the last taxation year of a predecessor corporation is less than 183, the amount determined under subparagraph (4)(a)(i) in respect of the predecessor corporation shall be the greater of

(a) the amount otherwise determined under subparagraph (4)(a)(i) in respect of the predecessor corporation; and

(b) the amount of the first instalment base of the predecessor corporation for its last taxation year.

(6) Subject to subsection (7), where a subsidiary within the meaning of subsection 88(1) of the Act is winding up, and, at a particular time in the course of the winding up, all or substantially all of the property of the subsidiary has

been distributed to a parent within the meaning of subsection 88(1) of the Act, the following rules apply:

(a) there shall be added to the amount of the parent's first instalment base for its taxation year that includes the particular time the amount of the subsidiary's first instalment base for its taxation year that includes the particular time;

(b) there shall be added to the amount of the parent's second instalment base for its taxation year that includes the particular time the amount of the subsidiary's second instalment base for its taxation year that includes the particular time;

(c) there shall be added to the amount of the parent's first instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount that is the proportion of the subsidiary's first instalment base for its taxation year referred to in paragraph (a) that

(i) the number of complete months that ended at or before the particular time in the taxation year of the parent that includes the particular time

is of

(ii) 12; and

(d) there shall be added to the amount of the parent's second instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount of the subsidiary's first instalment base for its taxation year that includes the particular time.

(7) The amount of an instalment of tax for the taxation year referred to in paragraphs (6)(a) and (b) that a parent is deemed under subsection 161(4.1) of the Act to have been liable to pay before the particular time referred to in subsection (6) shall be determined as if subsection (6) were not applicable in respect of a distribution of property described in that subsection occurring after the day on or before which the instalment was required to be paid.

(8) Subject to subsection (9), where at a particular time a corporation (in this subsection referred to as the "transferor") has disposed of all or substantially all of its property to another corporation with which it was not dealing at arm's length (in this subsection and subsection (9) referred to as the "transferee") and subsection 85(1) or (2) of the Act applied in respect of the disposition of any of the property, the following rules apply:

(a) there shall be added to the amount of the transferee's first instalment base for its taxation year that includes the particular time the amount of the transferor's first instalment base for its taxation year that includes the particular time;

(b) there shall be added to the amount of the transferee's second instalment base for its taxation year that includes the particular time the amount of the transferor's second instalment base for its taxation year that includes the particular time;

(c) there shall be added to the amount of the transferee's first instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount that is the proportion of the transferor's first instalment base for its taxation year referred to in paragraph (a) that

(i) the number of complete months that ended at or before the particular time in the taxation year of the transferee that includes the particular time

is of

(ii) 12; and

(d) there shall be added to the amount of the transferee's second instalment base for its taxation year immediately following its taxation year referred to in paragraph (a) the amount of the transferor's first instalment base for its taxation year that includes the particular time.

(9) The amount of an instalment of tax for the taxation year referred to in paragraphs (8)(a) and (b) that a transferee is deemed under subsection 161(4.1) of the Act to have been liable to pay before the particular time referred to in subsection (8) shall be determined as if subsection (8) were not applicable in respect of a disposition of property described in that subsection occurring after the day on or before which the instalment was required to be paid.

(10) For the purpose of this section, tax payable under Part I, I.3 or VI of the Act by a corporation for a taxation year means the corporation's tax payable for the year under the relevant Part, determined before taking into consideration the specified future tax consequences for the year.

Related Provisions: ITA 248(1) — Definition of "specified future tax consequence".

History: Subsec. 5301(10) amended by P.C. 1999-196, subsec. 2(4), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1996 *et seq.*

Subsec. 5301(10) added by P.C. 1994-556, subsec. 1(3), April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable in computing the "first instalment base" and "second instalment base", within the meanings assigned by Part LIII, for taxation years ending after June 1989 except that, in making such computations in respect of such taxation years commencing before March 1992, subsec. 5301(10) shall be read as follows:

(10) For the purposes of this section, "tax payable under Part I of the Act" by a corporation for a taxation year means the amount, if any, by which the tax payable under Part I of the Act by the corporation for the year, computed without reference to sections 123.1, 127.2 and 127.3 of the Act (and, where the year commenced before July 1, 1989, without reference to section 125.3 of the Act) and before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (vii) of the Act that is excluded or deducted, as the case may be, for the year, exceeds

(a) where the year commenced before July 1, 1989, the lesser of

(i) where the year ended

(A) before July 1, 1989, the amount that would be the corporation's tax payable under Part I.3 of the Act for the year if that Part (as it read in its application to the corporation's first taxation year commencing after June 30, 1989) applied in respect of the year and its capital deduction under that Part for the year were its capital deduction under that Part for its first taxation year ending after June 30, 1989, or

(B) after June 30, 1989, the product obtained when the corporation's tax payable under Part I.3 of the Act for the year is multiplied by the ratio that the number of days in the year is of the number of days in the year after June 30, 1989, and

(ii) the amount that would be the corporation's Canadian surtax payable for the year, as defined in subsection 125.3(4) of the Act if that subsection and any regulations made under that subsection (as they read in their application to the corporation's first taxation year commencing after June 30, 1989) were applicable to the year;

(b) where the year commenced before February 21, 1990 and the corporation is a corporation described in paragraph (d) or (e) of the definition "financial institution" in subsection 190(1) of the Act (or that would be so described if those paragraphs applied with respect to the year),

(i) where the year ended before February 21, 1990, the amount that would be the corporation's tax payable under

Part VI of the Act for the year if that Part (as it read in its application to the corporation's first taxation year commencing after February 20, 1990) applied in respect of the year and its capital deduction under that Part for the year were its capital deduction under that Part for its first taxation year ending after February 20, 1990, and

(ii) where the year ended after February 20, 1990, the amount, if any, by which

(A) the product obtained when the corporation's tax payable under Part VI of the Act for the year is multiplied by the ratio that the number of days in the year is to the number of days in the year after February 20, 1990

exceeds

(B) the amount deducted under subsection 125.2(1) of the Act in computing the corporation's tax payable under Part I of the Act for the year in respect of its tax payable under Part VI of the Act for the year; and

(c) in any other case, nil.

In making those computations in respect of any of those taxation years ending before 1991, the reference in subsec. 5301(10) to "subparagraphs 161(7)(a)(ii) to (x)" shall be read as a reference to "subparagraphs 161(7)(a)(ii) to (vii)"; and in making those computations in respect of any of those taxation years ending in 1991, the reference in subsec. 5301(10) to "subparagraphs 161(7)(a)(ii) to (x)" shall be read as a reference to "subparagraphs 161(7)(a)(ii) to (vii) and (x)".

Definitions [Reg. 5301]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "month" — *Interpretation Act* 35(1); "property"; "specified future tax consequence" — ITA 248(1); "taxation year" — ITA 249.

PART LIV — DEBTOR'S GAINS ON SETTLEMENT OF DEBTS

Proposed Repeal — Part LIV

Technical Notes to ITA 80–80.04, 1994 tax amendment bill (Bill C-70), February 16, 1995: The new rules for debt forgiveness are entirely contained in the Act [in subsecs. 80(5) and (6) — ed.]. As a consequence, Part LIV of the Regulations is no longer relevant, except in the cases where grandfathering applies.

History: Part LIV was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5400. (1) Subject to section 5401, the excess referred to in paragraph 80(1)(b) of the Act, after deducting the portion thereof required to be applied as provided in paragraph 80(1)(a) of the Act, shall be applied at the time the debt or obligation is settled or extinguished, in the following order to reduce to the maximum extent possible

(a) the capital cost of depreciable property of a prescribed class or prescribed classes, as the case may be;

(b) the capital cost of depreciable property other than depreciable property of a prescribed class;

(c) the adjusted cost base at that time of capital property, other than depreciable property and personal-use property;

(d) the adjusted cost base at that time of capital property that is listed personal property; and

(e) the adjusted cost base at that time of capital property that is personal-use property, other than listed personal property.

History: All that portion of subsec. 5400(1) preceding para. (a) substituted by P.C. 1984-3789, s. 15, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, effective commencing November 13, 1981.

(2) Where an amount is to be applied pursuant to subsection (1), the taxpayer may choose any particular property to make the reduction in the order specified therein.

Definitions [Reg. 5400]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1); "capital property" — ITA 54, 248(1); "depreciable property" — ITA 13(21), 248(1); "listed personal property", "personal-use property" — ITA 54, 248(1); "prescribed", "property", "taxpayer" — ITA 248(1).

5401. (1) For the purposes of paragraph 5400(1)(a), the amount to be applied to reduce the capital cost of a property shall not exceed the lesser of

(a) the amount by which

(i) the capital cost of the property

exceeds

(ii) all amounts that would have been allowed to the taxpayer in respect of the property, if it had been the only property that was included in a prescribed class, at the rate that was allowed to him in respect of property of the class in which it was included under regulations made under paragraph 20(1)(a) of the Act for the taxation years prior to the year in which the debt or obligation was settled or extinguished; and

(b) the amount by which

(i) the undepreciated capital cost of the class at the time the debt or obligation was settled or extinguished

exceeds

(ii) the amount or the aggregate of amounts, if any, that has already been determined under this subsection in respect of another property of the class at the time referred to in subparagraph (i).

(2) For the purposes of paragraph 5400(1)(b), the amount to be applied to reduce the capital cost of a property shall not exceed

(a) the amount by which the capital cost of the property

exceeds

(b) the amount that was allowed to the taxpayer by virtue of Part XVII in respect of the property before the debt or the obligation was settled or extinguished.

(3) For the purposes of paragraphs 5400(1)(c), (d) and (e), the amount to be applied to reduce the adjusted cost base of a property shall not exceed the amount by which

(a) the aggregate of the cost to the taxpayer of the property and all amounts required by subsection 53(1) of the Act to be included in computing the adjusted cost base to him of that property

exceeds

(b) the aggregate of all amounts required by subsection 53(2) of the Act (except paragraph (c) thereof) to be deducted in computing the adjusted cost base to him of that property,

at the time the debt or obligation was settled or extinguished.

Definitions [Reg. 5401]: "adjusted cost base" — ITA 54, 248(1); "amount", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

PART LV — PRESCRIBED PROGRAMS AND BENEFITS

History: Part LV (ss. 5500, 5501) substituted by P.C. 1981-3209, s. 5, November 12, 1981, *Canada Gazette*, Part II, November 25, 1981, effective in respect of 1981 *et seq.* except that with respect to the references to para. 212(1)(s) of the Act s. 5 is effective in respect of grants paid or credited after 1980.

Part LV added by P.C. 1978-1139, s. 2, April 13, 1978, *Canada Gazette*, Part II, April 26, 1978, applicable to 1977 *et seq.*

5500. Canadian Home Insulation Program — For the purposes of paragraphs 12(1)(u), 56(1)(s) and 212(1)(s) of the Act, the Canadian Home Insulation Program, as authorized and described in Vote 11a of *Appropriation Act No. 3, 1977–78*, as amended, Energy, Mines and Resources Vote 35, Main Estimates, 1981-82 as authorized by *Appropriation Act No. 1, 1981–82*, as amended, or the *Canadian Home Insulation Program Act*, is hereby prescribed to be a program of the Government of Canada relating to home insulation.

Definitions [Reg. 5500]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

5501. Canada Oil Substitution Program — For the purposes of paragraphs 12(1)(u), 56(1)(s) and 212(1)(s) of the Act, the Canada Oil Substitution Program, as authorized and described in paragraph (a) or (b) of Energy, Mines and Resources Vote 45, Main Estimates, 1981–82 as authorized by *Appropriation Act No. 1, 1981–82*, as amended, or the *Oil Substitution and Conservation Act* is hereby prescribed to be a program of the Government of Canada relating to energy conversion.

Definitions [Reg. 5501]: "Canada" — ITA 255, *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

5502. Benefits under government assistance programs — For the purposes of subparagraph 56(1)(a)(vi) and paragraph 153(1)(m) of the Act, the following benefits are prescribed:

(a) benefits under the *Labour Adjustment Benefits Act*;

(b) benefits under programs to provide income assistance payments, established pursuant to agreements under section 5 of the *Department of Labour Act*; and

(c) benefits under programs to provide income assistance payments, administered pursuant to agreements under section 5 of the *Department of Fisheries and Oceans Act*.

History: S. 5502 added by P.C. 1995-1023, s. 4, June 23, 1995, *Canada Gazette*, Part II, July 12, 1995, applicable

(a) for the purposes of subpara. 56(1)(a)(vi) of the Act, to benefits received after October 1991; and

(b) for the purposes of para. 153(1)(m) of the Act, to benefits paid after October 1991.

Definitions [Reg. 5502]: "prescribed" — ITA 248(1).

PART LVI — REGISTERED RETIREMENT SAVINGS PLANS, PREMIUM REFUNDS

History: Part LVI was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5600. Any election under subsection 61(2) of the *Income Tax Application Rules* in respect of a refund of premiums referred to in that subsection shall be made by the taxpayer on or before the day on or before which he is required to file a return of income pursuant to section 150 of the Act for the taxation year in which the refund was received.

History: S. 5600 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 5600]: "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART LVII — MEDICAL DEVICES AND EQUIPMENT

History: Part LVII was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5700. For the purposes of paragraph 118.2(2)(m) of the Act, a device or equipment is prescribed if it is a

(a) wig made to order for individuals who have suffered abnormal hair loss owing to disease, medical treatment or accident;

(b) needle or syringe designed to be used for the purpose of giving an injection;

(c) device or equipment, including a replacement part, designed exclusively for use by an individual suffering from a severe chronic respiratory ailment or a severe chronic immune system disregulation, but not including an air conditioner, humidifier, dehumidifier, heat pump or heat or air exchanger;

(c.1) air or water filter or purifier for use by an individual who is suffering from a severe chronic respiratory ailment or a severe chronic immune system disregulation to cope with or overcome that ailment or disregulation;

(c.2) electric or sealed combustion furnace acquired to replace a furnace that is neither an electric furnace nor a sealed combustion furnace, where the replacement is necessary solely because of a severe chronic respiratory ailment or a severe chronic immune system disregulation;

(c.3) air conditioner acquired for use by an individual to cope with the individual's severe chronic ailment, disease or disorder, to the extent of the lesser of $1,000 and 50% of the amount paid for the air conditioner;

(d) device or equipment designed to pace or monitor the heart of an individual who suffers from heart disease;

(e) orthopaedic shoe or boot and an insert for a shoe or boot made to order for an individual in accordance with a prescription to overcome a physical disability of the individual;

(f) power-operated guided chair installation, for an individual, that is designed to be used solely in a stairway;

(g) mechanical device or equipment designed to be used to assist an individual to enter or leave a bathtub or shower or to get on or off a toilet;

(h) hospital bed including such attachments thereto as may have been included in a prescription therefor;

(i) device that is designed to assist an individual in walking where the individual has a mobility impairment;

Selected Cases [para. 5700(i)]: *Brown v. Canada*, [1995] 1 C.T.C. 208 (FCTD) ("Designed" can be read as meaning "intended". Air conditioner deductible as medical expense).

(j) external breast prosthesis that is required because of a mastectomy;

(k) teletypewriter or similar device, including a telephone ringing indicator, that enables a deaf or mute individual to make and receive telephone calls;

(l) optical scanner or similar device designed to be used by a blind individual to enable him to read print;

(m) power-operated lift or transportation equipment designed exclusively for use by, or for, a disabled individual to allow the individual access to different areas of a building or to assist the individual to gain access to a vehicle or to place the individual's wheelchair in or on a vehicle;

(n) device designed exclusively to enable an individual with a mobility impairment to operate a vehicle;

(o) device or equipment, including a synthetic speech system, braille printer and large print-on-screen device, designed exclusively to be used by a blind individual in the operation of a computer;

(p) electronic speech synthesizer that enables a mute individual to communicate by use of a portable keyboard;

(q) device to decode special television signals to permit the script of a program to be visually displayed;

(q.1) a visual or vibratory signalling device, including a visual fire alarm indicator, for an individual with a hearing impairment;

(r) device designed to be attached to infants diagnosed as being prone to sudden infant death syndrome in order to sound an alarm if the infant ceases to breathe;

(s) infusion pump, including disposable peripherals, used in the treatment of diabetes or a device designed to enable a diabetic to measure the diabetic's blood sugar level;

(t) electronic or computerized environmental control system designed exclusively for the use of an individual with a severe and prolonged mobility restriction;

(u) extremity pump or elastic support hose designed exclusively to relieve swelling caused by chronic lymphedema; and

(v) inductive coupling osteogenesis stimulator for treating non-union of fractures or aiding in bone fusion.

History: Para. 5700(c.3) added by P.C. 1999-1767, s. 1, October 6, 1999, *Canada Gazette*, Part II, October 27, 1999, applicable to 1997 *et seq.*

Paras. 5700(c.1), (c.2) and (q.1) added by P.C. 1994-271, s. 1, February 16, 1994, *Canada Gazette*, Part II, March 9, 1994; paras. (c.1), (c.2) applicable after December 16, 1991, para. (q.1) applicable to 1992 *et seq.*

That portion of s. 5700 preceding para. (a), and paras. (c), (i), (m) and (s) substituted, and (t) to (v) added, by P.C. 1990-2491, subsecs. 1(1) to (4) and (6), November 22, 1990, *Canada Gazette*, Part II, December 5, 1990, applicable to 1988 *et seq.*; and para. (q) substituted by subsec. 1(5), applicable to 1987 *et seq.*

Paras. 5700(n) to (s) added by P.C. 1987-2474, December 10, 1987, *Canada Gazette*, Part II, December 23, 1987, applicable to 1987 *et seq.*

Para. 5700(m) substituted by P.C. 1985-2277, s. 17, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to 1984 *et seq.*

Paras. 5700(l), (m) added by P.C. 1980-3345, s. 1, December 11, 1980, *Canada Gazette*, Part II, December 24, 1980, in force January 1, 1980.

Definitions [Reg. 5700]: "individual", "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-519R2: Medical expense and disability tax credits.

PART LVIII — RETENTION OF BOOKS AND RECORDS

History: Part LVIII (s. 5800) added by P.C. 1982-2895, s. 2, September 22, 1982, *Canada Gazette*, Part II, October 13, 1982, effective commencing September 20, 1982.

5800. (1) For the purposes of paragraph 230(4)(a) of the Act, the required retention periods for records and books of account of a person are prescribed as follows:

(a) in respect of

(i) any record of the minutes of meetings of the directors of a corporation,

(ii) any record of the minutes of meetings of the shareholders of a corporation,

(iii) any record of a corporation containing details with respect to the ownership of the shares of the capital stock of the corporation and any transfers thereof,

(iv) the general ledger or other book of final entry containing the summaries of the year-to-year transactions of a corporation, and

(v) any special contracts or agreements necessary to an understanding of the entries in the general ledger or other book of final entry referred to in subparagraph (iv),

the period ending on the day that is two years after the day that the corporation is dissolved;

(b) in respect of all records and books of account that are not described in paragraph (a) of a corporation that is dissolved and in respect of the vouchers and accounts necessary to verify the information in such records and books of account, the period ending on the day that is two years after the day that the corporation is dissolved;

(c) in respect of

(i) the general ledger or other book of final entry containing the summaries of the year-to-year transactions of a business of a person (other than a corporation), and

(ii) any special contracts or agreements necessary to an understanding of the entries in the general ledger or other book of final entry referred to in subparagraph (i),

the period ending on the day that is six years after the last day of the taxation year of the person in which the business ceased;

(d) in respect of

(i) any record of the minutes of meetings of the executive of a registered charity or registered Canadian amateur athletic association,

(ii) any record of the minutes of meetings of the members of a registered charity or registered Canadian amateur athletic association,

(iii) all documents and by-laws governing a registered charity or registered Canadian amateur athletic association, and

(iv) all records of any donations received by a registered charity that were subject to a direction by the donor that the property given be held by the charity for a period of not less than 10 years,

the period ending on the day that is two years after the date on which the registration of the registered charity or the registered Canadian amateur athletic association under the Act is revoked;

(e) in respect of all records and books of account that are not described in paragraph (d) and that relate to a registered charity or registered Canadian amateur athletic association whose registration under the Act is revoked, and in respect of the vouchers and accounts necessary to verify the information in such records and books of account, the period ending on the day that is two years after the date on which the registration of the registered charity or the registered Canadian amateur athletic association under the Act is revoked;

(f) in respect of duplicates of receipts for donations (other than donations referred to in subparagraph (d)(iv)) that are received by a registered charity or registered Canadian amateur athletic association and are required to be kept by that charity or association pursuant to subsection 230(2) of the Act, the period ending on the day that is two years from the end of the last calendar year to which the receipts relate; and

(g) notwithstanding paragraphs (c) to (f), in respect of all records, books of account, vouchers and accounts of a deceased taxpayer or a trust in respect of which a clearance certificate is issued pursuant to subsection 159(2) of the Act with respect to the distribution of all the property of such deceased taxpayer or trust, the period ending on the day that the clearance certificate is issued.

(2) For the purposes of subsection 230.1(3) of the Act, with respect to the application of paragraph 230(4)(a) of the Act, the required retention period for records and books of account that are required to be kept pursuant to section 230.1 of the Act is prescribed to be the period ending on the day that is two years after the end of the last calendar year to which the records or books of account relate.

Definitions [Reg. 5800]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "person", "prescribed", "property", "record", "registered Canadian amateur athletic association", "registered charity", "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Information Circulars [Reg. 5800]: 78-10R3: Books and records retention/destruction.

PART LIX — FOREIGN AFFILIATES

History: Part LIX was consolidated by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

5900. Dividends out of exempt, taxable and pre-acquisition surplus — **(1)** Where at any time a corporation resident in Canada or a foreign affiliate of the corporation receives a dividend on a share of any class of the capital stock of a foreign affiliate of the corporation,

(a) for the purposes of this Part and paragraph 113(1)(a) of the Act, the portion of the dividend paid out of the exempt surplus of the affiliate is prescribed to be that proportion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's exempt surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time;

(b) for the purposes of this Part and subsection 91(5) and paragraphs 113(1)(b) and (c) of the Act, the portion of the dividend paid out of the taxable surplus of the affiliate is prescribed to be that portion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's taxable surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time;

(c) for the purposes of this Part and paragraph 113(1)(d) of the Act, the portion of the dividend paid out of the pre-acquisition surplus of the affiliate is prescribed to be that proportion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time; and

(d) for the purposes of this Part and paragraph 113(1)(b) of the Act, the foreign tax applicable to the portion of the dividend prescribed to have been paid out of the taxable surplus of the affiliate is prescribed to be that proportion of the underlying foreign tax applicable, in respect of the corporation, to the whole dividend paid by the affiliate on the shares of that class at that time that

(i) the amount of the dividend received by the corporation or the affiliate, as the case may be, on that share at that time

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time.

(2) Notwithstanding paragraphs (1)(a) and (b), where at any time a foreign affiliate of a corporation resident in Canada pays a dividend on a share of a class of its capital stock (other than a share in respect of which an election is made under subsection 93(1) of the Act) to the corporation, the corporation may, in its return of income under Part I of the Act for its taxation year in which the dividend was received by it, designate an amount not exceeding the portion of the dividend received that would, but for this subsection, be prescribed to have been paid out of the affiliate's exempt surplus in respect of the corporation and that amount

Proposed Amendment — Reg. 5900(2) opening words

(2) Notwithstanding paragraphs (1)(a) and (b), where at any time a foreign affiliate of a corporation resident in Canada pays a dividend on a share of a class of its capital stock (other than a dividend referred to in subsection 93(1) or (1.2) of the Act) to the corporation, the corporation may, in its return of income under Part I of the Act for its taxation year in which the dividend was received by it, designate an amount not exceeding the portion of the dividend received that would, but for this subsection, be prescribed to have been paid out of the

affiliate's exempt surplus in respect of the corporation and that amount

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 1(1), will amend the opening words of subsec. 5900(2) to read as above, applicable to dividends received after November 30, 1999.

Technical Notes: Subsection 5900(2) allows a corporation resident in Canada to elect to have a dividend paid by a foreign affiliate of the corporation to be treated as having been paid out of the taxable surplus rather than out of the exempt surplus of the affiliate. This election is not available where the corporation has elected under subsection 93(1) of the Act to treat proceeds of disposition of a share of a foreign affiliate as a dividend. The amendment ensures that the election in subsection 5900(2) will not apply where the corporation has elected under new subsection 93(1.2) of the Act to treat all or a portion of its gain from a partnership arising on the disposition of a share of a foreign affiliate by the partnership as a dividend.

(a) is prescribed to have been paid out of the affiliate's taxable surplus in respect of the corporation and not to have been paid out of that exempt surplus; and

(b) for the purposes of paragraph (1)(d) and the definitions "underlying foreign tax" and "underlying foreign tax applicable" in subsection 5907(1) is deemed to have been paid by the affiliate to the corporation as a separate whole dividend on the shares of that class of the capital stock immediately after that time, and that whole dividend is deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation.

History: Paras. 5900(2)(a), (b) amended by P.C. 1997-1670, s. 2, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(3) For the purposes of subsection 91(5) of the Act, where at any time an individual resident in Canada receives a dividend on a share of any class of the capital stock of a foreign affiliate of that individual, the affiliate shall be deemed to have an amount of taxable surplus in respect of the individual and the portion of the dividend paid out of the taxable surplus of the affiliate in respect of the individual is prescribed to be an amount equal to the dividend received.

Proposed Amendment — Reg. 5900(3)

(3) For the purpose of subsection 91(5) of the Act, where at any time a person (other than a corporation) resident in Canada receives a dividend on a share of any class of the capital stock of a foreign affiliate of that person, the affiliate is deemed to have an amount of taxable surplus in respect of the person and the portion of the dividend paid out of the taxable surplus of the affiliate in respect of the person is prescribed to be an amount equal to the dividend received.

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 1(2), will amend subsec. 5900(3) to read as above, applicable to dividends received after November 30, 1999.

Technical Notes: Subsection 5900(3) applies where an individual resident in Canada receives a dividend from a foreign affiliate. For the purpose of subsection 91(5) of the Act, subsection 5900(3) deems the individual to have received all dividends out of the taxable surplus of the affiliate. Subsection 91(5) of the Act permits deductions in respect of dividends paid out of the taxable surplus of an affiliate to the extent that that surplus is represented by foreign accrual property income of the affiliate that has been taxed in the hands of the dividend recipient.

The amendment to subsection 5900(3) replaces the word "individual" with the phrase "person (other than a corporation)". This amendment clarifies that, for the purpose of subsection 91(5), where a partnership is deemed to be a person under section 96 of the Act the partnership is deemed to have received all dividends out of taxable surplus.

Definitions [Reg. 5900]: "amount" — ITA 248(1), Reg. 5907(7); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "exempt surplus" — Reg. 5902(1)–(3), 5907(1); "foreign affiliate" — Reg. 5907(3); "foreign tax applicable" — Reg. 5900(1)(d); "individual", "prescribed" — ITA 248(1); "pre-acquisition surplus" — Reg. 5900(1)(c); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxable surplus" — Reg. 5902(1)–(3), 5907(1); "taxation year" — ITA 249; "underlying foreign tax applicable", "whole dividend" — Reg. 5907(1).

Interpretation Bulletins: IT-392: Meaning of term "share".

5901. Order of surplus distributions — (1) Where at any time in its taxation year a foreign affiliate of a corporation resident in Canada has paid a whole dividend on the shares of any class of its capital stock, for the purposes of this Part

(a) the portion of the whole dividend deemed to have been paid out of the affiliate's exempt surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount of the whole dividend, and

(ii) the amount by which that exempt surplus exceeds the affiliate's taxable deficit in respect of the corporation at that time;

(b) the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount, if any, by which the amount of the whole dividend exceeds the portion determined under paragraph (a), and

(ii) the amount by which that taxable surplus exceeds the affiliate's exempt deficit in respect of the corporation at that time; and

(c) the portion of the whole dividend deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation at that time is the amount by which the whole dividend exceeds the aggregate of the portions determined under paragraphs (a) and (b).

(2) Notwithstanding subsection (1), where a foreign affiliate of a corporation resident in Canada pays a whole dividend (other than a whole dividend referred to in subsection 5902(1)) at any particular time in its taxation year that is more than 90 days after the commencement of that year or at any particular time in its 1972 taxation year that is before January 1, 1972, the portion of the whole dividend that would, but for this subsection, be deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation is deemed to have been paid out of the exempt surplus and taxable surplus of the affiliate in respect of the corporation to the extent that it would have been deemed to have been so paid if, immedi-

ately after the end of that year, that portion were paid as a separate whole dividend before any whole dividend paid after the particular time and after any whole dividend paid before the particular time by the affiliate, and for the purposes of determining the exempt deficit, exempt surplus, taxable deficit, taxable surplus and underlying foreign tax of the affiliate in respect of the corporation at any time, that portion is deemed to have been paid as a separate whole dividend immediately following the end of the year and not to have been paid at the particular time.

History: Subsec. 5901(2) amended by P.C. 1997-1670, s. 3, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(3) Notwithstanding subsections (1) and (2), for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit" and "taxable surplus" in subsection 5907(1), any amount designated pursuant to subsection 5900(2) in respect of a dividend paid by a foreign affiliate of a corporation resident in Canada increases the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation and decrease the portion of the whole dividend deemed to have been paid out of the affiliate's exempt surplus in respect of the corporation.

History: Subsec. 5901(3) amended by P.C. 1997-1670, s. 3, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Definitions [Reg. 5901]: "amount" — ITA 248(1), Reg. 5907(7); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "exempt deficit", "exempt surplus" — Reg. 5902(1)–(3), 5907(1); "foreign affiliate" — Reg. 5907(3); "pre-acquisition surplus" — Reg. 5900(1)(c); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxable deficit", "taxable surplus" — Reg. 5902(1)–(3), 5907(1); "taxation year" — ITA 249; "underlying foreign tax" — Reg. 5902(1)–(3), 5907(1); "whole dividend" — Reg. 5907(1).

5902. Election in respect of capital gains — (1) Where at any time a dividend is, by virtue of an election made under subsection 93(1) of the Act in respect of a disposition, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of a corporation resident in Canada, the following rules apply:

Proposed Amendment — Reg. 5902(1) opening words

(1) Election in respect of capital gains — Where at any time a dividend is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of a disposition, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of a corporation resident in Canada, the following rules apply:

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 2(1), will amend the opening words of subsec. 5902(1) to read as above, applicable to dispositions that occur after November 30, 1999.

Technical Notes: Section 5902 applies where a corporation elects to treat proceeds of disposition of a share of a foreign affiliate as a dividend under subsection 93(1) of the Act. Subsection 5902(1) computes a foreign affiliate's surplus accounts and the amount of a whole dividend used in applying subsection 5901(1) for the purposes of subsection 5900(1) of the Regulations. The amendment to subsection 5902(1) ensures that the subsection will also apply where the corporation resident in Canada has elected under new subsection 93(1.2) of the Act to treat a gain from a partnership arising on the disposition of a share of a foreign affiliate of the corporation by the partnership as a dividend.

(a) determine the amounts that would be the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus in respect of the corporation at that time if

(i) each other foreign affiliate of the corporation in which the affiliate had an equity percentage had immediately before that time paid a dividend equal to its net surplus in respect of the corporation immediately before the dividend was paid, and

(ii) any dividend referred to in subparagraph (i) that any other foreign affiliate would have received had been received by it immediately before any such dividend that it would have paid;

(b) determine the amount that would have been received on the shares (of that class) in respect of which an election is made, if the particular affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount of its net surplus referred to in paragraph (a); and

(c) for the purposes only of subsection 5900(1), in applying the provisions of subsection 5901(1)

(i) the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax in respect of the corporation shall be deemed to be the respective amounts thereof referred to in paragraph (a), and

(ii) the particular affiliate shall be deemed to have paid a whole dividend at that time on the shares of that class of its capital stock in an amount equal to the product obtained when the aggregate of amounts so deemed by subsection 93(1) of the Act to have been received as dividends on shares of that class is multiplied by the greater of

Proposed Amendment — Reg. 5902(1)(c)(ii)

(ii) the particular affiliate is deemed to have paid a whole dividend at that time on the shares of that class of its capital stock in an amount equal to the product obtained when the total of amounts so deemed by subsection 93(1) or (1.2) of the Act to

have been received as dividends on shares of that class is multiplied by the greater of

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 2(2), will amend the opening words of subpara. 5902(1)(c)(ii) to read as above, applicable to dispositions that occur after November 30, 1999.

Technical Notes: See under Reg. 5902(1) opening words.

(A) one, and

(B) the proportion that the amount of the particular affiliate's net surplus determined under paragraph (a) is of the amount determined under paragraph (b), except that where the amount determined under paragraph (b) is less than one, the amount determined under paragraph (b) is deemed for the purpose of this clause to be one.

(2) For the purposes of paragraphs (1)(a) and (b),

(a) in determining the exempt surplus or exempt deficit, the taxable surplus or taxable deficit, the underlying foreign tax and the net surplus of a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has an equity percentage, no amount shall be included in respect of any distribution that would be received by the particular affiliate from such other affiliate; and

(b) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is such portion of its exempt surplus or exempt deficit and its taxable surplus (including underlying foreign tax applicable) or taxable deficit (and thus net surplus) as, in the circumstances, it might reasonably be expected to have paid on all the shares of that class.

(3) Where an election under subsection 93(1) of the Act is made by a corporation resident in Canada in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment shall be made to the affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8).

Proposed Amendment — Reg. 5902(3)

(3) Where an election under subsection 93(1) or (1.2) of the Act is made by a corporation resident in Canada in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment shall be made to the affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8).

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 2(3), will amend subsec. 5902(3) to read as above, applicable to dispositions that occur after November 30, 1999.

Technical Notes: Subsection 5902(3) indicates that where an election is made under subsection 93(1) of the Act, no adjustment shall be made to the affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8). The amendment to subsection 5902(3) extends the application of the provision to elections made under new subsection 93(1.2) of the Act.

(4) [Revoked]

(5) Any election under subsection 93(1) of the Act by a corporation resident in Canada in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it or by another foreign affiliate of the corporation shall be made by filing the prescribed form with the Minister on or before the day that is the later of

(a) December 31, 1989; and

(b) where the election is made

(i) in respect of a share disposed of by the corporation, the day on or before which the corporation's return of income for its taxation year in which the disposition was made is required to be filed pursuant to subsection 150(1) of the Act, or

(ii) in respect of a share disposed of by another foreign affiliate of the corporation, the day on or before which the corporation's return of income for its taxation year, in which the taxation year of the foreign affiliate in which the disposition was made ends, is required to be filed pursuant to subsection 150(1) of the Act,

as the case may be.

Proposed Amendment — Reg. 5902(5)

(5) Any election under subsection 93(1) or (1.2) of the Act by a corporation resident in Canada in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it, by a foreign affiliate of the corporation or by a partnership shall be made by filing the prescribed form with the Minister on or before the day that is,

(a) where the election is made in respect of a share disposed of by the corporation, the corporation's filing-due date for its taxation year in which the disposition was made;

(b) where the election is made in respect of a share disposed of by a foreign affiliate of the corporation, the corporation's filing-due date for its taxation year in which the taxation year of the foreign affiliate in which the disposition was made ends; and

(c) where the election is made in respect of a share disposed of by a partnership, and

(i) the disposing corporation referred to in subsection 93(1.2) of the Act is the corporation, the corporation's filing-due date for its taxation year in which the fiscal period of the partnership in which the disposition was made ends, or

(ii) the disposing corporation referred to in subsection 93(1.2) of the Act is a foreign affiliate of the corporation, the corporation's filing-due date for its taxation year in which the taxation year of the foreign affiliate which includes the last day of the fiscal period of the partnership in which the disposition was made ends.

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 2(4), will amend subsec. 5902(5) to read as above, applicable to dispositions that occur after November 30, 1999.

Technical Notes: Subsection 5902(5) provides that any election under subsection 93(1) of the Act must be made by filing the prescribed form by the corporation's filing-due date for the relevant year. Where the disposition is made by the corporation, the relevant year is the taxation year of the corporation in which the disposition was made. Where the disposition is made by a foreign affiliate of the corporation, the relevant year is the taxation year of the corporation in which the taxation year of the foreign affiliate in which the disposition was made ends.

The amendments to subsection 5902(5) extend its application to include elections made under new subsection 93(1.2) of the Act. Where the disposition is made by a partnership, the relevant year depends on whether the "disposing corporation" in subsection 93(1.2) of the Act is the corporation or a foreign affiliate of the corporation. Where the disposing corporation is the corporation, the relevant year is the taxation year of the corporation in which the fiscal period of the partnership in which the disposition was made ends. Where the disposing corporation is a foreign affiliate of the corporation, the relevant year is the taxation year of the corporation in which the taxation year of the affiliate which includes the last day of the fiscal period of the partnership in which the disposition was made ends.

(6) Where at any time a corporation resident in Canada is deemed by virtue of subsection 93(1.1) of the Act to have made an election under subsection 93(1) of the Act in respect of a share of the capital stock of a particular foreign affiliate of the corporation disposed of by another foreign affiliate of the corporation, the amount deemed to have been designated in the election is hereby prescribed to be the lesser of

(a) the capital gain, if any, otherwise determined in respect of the disposition of the share; and

(b) the amount that could reasonably be expected to have been received in respect of the share if the particular affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount determined under paragraph (1)(a) to be its net surplus in respect of the corporation for the purposes of the election.

Proposed Amendment — Reg. 5902(6)

(6) Where at any time a corporation resident in Canada is deemed by of subsection 93(1.1) or (1.3) of the Act to have made an election under subsection 93(1) or (1.2) of the Act in respect of a share of the capital stock of a particular foreign affiliate of the corporation disposed of by a foreign affiliate of the corporation or by a partnership, the amount deemed to have been designated in the election is prescribed to be the lesser of

(a) the capital gain (or where subsection 93(1.2) of the Act applies, the taxable capital gain), if any, otherwise determined in respect of the disposition of the share; and

(b) the amount (or where subsection 93(1.2) of the Act applies, 3/4 of the amount) that could reasonably be expected to have been received in respect of the share if the particular affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount determined under paragraph 1(a) to be its net surplus in respect of the corporation for the purposes of the election.

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 2(5), will amend subsec. 5902(6) to read as above, applicable to dispositions that occur after November 30, 1999.

Technical Notes: Subsection 5902(6) applies where subsection 93(1.1) of the Act deems a corporation to have made an election under subsection 93(1) to treat proceeds of disposition of a share of a foreign affiliate as a dividend. Subsection 5902(6) deems the amount designated in the deemed election to be the lesser of the capital gain otherwise determined in respect of the disposition of the share and the amount that could reasonably be expected to have been received on the share if the affiliate had paid its net surplus in respect of the corporation as a dividend.

Subsection 5902(6) is amended to ensure that the subsection will apply where new subsection 93(1.3) of the Act deems a corporation resident in Canada to have made an election under proposed subsection 93(1.2) of the Act in respect of a taxable capital gain from a deemed disposition of a share of a foreign affiliate of the corporation disposed of by a partnership of which another foreign affiliate of the corporation is a member.

History: Cl. 5902(1)(c)(ii)(B) substituted by P.C. 1997-1670, s. 4, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to 1996 *et seq.*

Para. 5902(5)(a) substituted by P.C. 1989-321, s. 1, March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable in respect of 1972 *et seq.*

Subsec. 5902(3) substituted, subsec. 5902(4) revoked, subsec. 5902(6) added by P.C. 1985-467, s. 1, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of dispositions of shares made after November 12, 1981.

Para. 5902(5)(a) substituted by P.C. 1982-3084, October 7, 1982, *Canada Gazette*, Part II, October 27, 1982, applicable to 1972 *et seq.*

Subsec. 5902(5) substituted by P.C. 1980-503, s. 1, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1972 *et seq.*

Definitions [Reg. 5902]: "amount" — ITA 248(1), Reg. 5907(7); "capital gain" — ITA 39(1), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "exempt deficit", "exempt surplus" — Reg. 5902(1)–(3), 5907(1); "foreign affiliate" — Reg. 5907(3); "Minister" — ITA 248(1); "net surplus" — Reg. 5902(1)–(3), 5907(1); "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "taxable deficit", "taxable surplus" — Reg. 5902(1)–(3), 5907(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "underlying foreign tax" — Reg. 5902(1)–(3), 5907(1); "underlying foreign tax applicable", "whole dividend" — Reg. 5907(1).

Forms: T2107: Election for a share disposition in a foreign affiliate.

5903. Deductible loss — (1) For the purpose of the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount prescribed to be the deductible loss of a particular foreign affiliate of a taxpayer for a taxation year and the five immediately preceding taxation years (each of which preceding taxation years is referred to in this subsection as a "preceding year") is the amount, if any, by which

(a) the total of all amounts each of which is the amount, if any, determined in respect of the particular affiliate in respect of a preceding year during which it was a controlled foreign affiliate of the taxpayer or of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, by which

(i) the total of the amounts determined for D and E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for the preceding year

exceeds

(ii) the total of the amounts determined for A, B and C in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for the preceding year

exceeds the total of

(b) the total of all amounts each of which is an amount determined in respect of the particular affiliate in respect of a preceding year during which it was a controlled foreign affiliate of the taxpayer or of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act and equal to the lesser of

(i) the amount that would be determined for F in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for the preceding year if that amount did not take into account any amount determined for any of A, B, C, D or E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the particular affiliate for any taxation year that is not a preceding taxation year, and

(ii) the amount that would be the foreign accrual property income of the particular affiliate for the preceding year if the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act were read without reference to the variable F; and

(c) where a payment has been received by the particular foreign affiliate and the payment can reasonably be considered to relate to a payment described in subsection 5907(1.3) made by another foreign affiliate of the taxpayer in respect of a loss, or any portion of a loss, of the particular affiliate described in the description of D or E of the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of any preceding year of the particular affiliate, the amount of that loss or portion.

Proposed Amendment — Reg. 5903(1)

See at end of Reg. 5903.

Related Provisions: ITA 152(6.1) — Reassessment to apply FAPI loss carryback.

(2) For the purpose of subsection (1), each amount referred to in paragraph (1)(c) in respect of a controlled foreign affiliate of a taxpayer resident in Canada that is not otherwise determined in Canadian currency shall be converted to Canadian currency at the rate of exchange prevailing on the last day of the affiliate's taxation year in respect of which the amount determined under subsection (1) is being used to determine the foreign affiliate's foreign accrual property income as defined in subsection 95(1) of the Act.

Proposed Amendment — Reg. 5903(2)

See at end of Reg. 5903.

Interpretation Bulletins: IT-95R: Foreign exchange gains and losses.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(3) Where

(a) there has been a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more foreign affiliates of a taxpayer resident in Canada in respect of each of which the taxpayer's surplus entitlement percentage was not less than 90 per cent immediately before the merger (in this subsection referred to as "predecessor affiliates") to form a new foreign affiliate in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90 per cent (in this subsection referred to as the "successor affiliate"), or

(b) there has been a dissolution of a foreign affiliate (in this subsection referred to as the "predecessor affiliate") of a taxpayer resident in Canada and on the dissolution property of the predecessor affiliate, the fair market value of which was not less than 90 per cent of the fair market value of all property of the predecessor affiliate immediately before the dissolution, was distributed to another foreign affiliate (in this subsection referred to as the "successor affiliate") of the taxpayer,

the successor affiliate shall, in respect of such part of the amount determined under subsection (1) to be the deductible loss of a predecessor affiliate at the time of the foreign merger or dissolution as may reasonably be considered to have arisen while the taxpayer, a person or persons referred to in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, or the taxpayer together with such a person or persons, had a surplus entitlement percentage in respect of such predecessor affiliate that was not less than 90 per cent, be considered to be the same corporation as, and a continuation of, such predecessor affiliate.

Proposed Amendment — Reg. 5903

5903. (1) For the purpose of the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act, the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year of the affiliate is the amount claimed by the taxpayer not exceeding the foreign accrual property loss of the affiliate for the seven taxation years of the affiliate preceding and the three taxation years of the affiliate following the particular year.

(2) In determining the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year of the affiliate

(a) the amount claimed under subsection (1) in respect of a foreign accrual property loss of the affiliate for a taxation year of the affiliate shall not exceed the amount by which that loss exceeds the total of all amounts each of which was an amount claimed by any taxpayer in respect of that loss in computing the deductible loss of the affiliate for taxation years of the affiliate before the particular year; and

(b) no amount may be claimed in respect of a foreign accrual property loss of a foreign affiliate for a taxation year of the affiliate until the foreign accrual property losses of the affiliate for preceding taxation years have been fully claimed.

(3) For the purpose of this section, and subject to subsection (4), "foreign accrual property loss" of a foreign affiliate of a taxpayer for a taxation year means

(a) where at the end of the year the foreign affiliate was a controlled foreign affiliate of the taxpayer, the amount, if any, by which

(i) the total of the amounts determined for D and E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year

exceeds

(ii) the total of the amounts determined for A, B, and C in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year, or

(b) where, at the end of the year, the foreign affiliate was not a controlled foreign affiliate of the taxpayer but was a controlled foreign affiliate of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, the amount determined under paragraph (a) for the year.

(4) In computing the foreign accrual property loss of a particular foreign affiliate of a taxpayer for a taxation year of the affiliate, where the particular affiliate or another corporation has received a payment described in subsection 5907(1.3) from another foreign affiliate of the taxpayer which payment can reasonably be considered to relate to a loss or portion of a loss of the particular affiliate for the year described in the description of D or E of the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss for the year is deemed to be nil.

(5) For the purpose of this section, where there has been a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more foreign affiliates of a taxpayer resident in Canada in respect of each of which the taxpayer's surplus entitlement percentage immediately before the merger was not less than 90 percent (each of which is in this subsection referred to as a "predecessor affiliate") to form a new foreign affiliate in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90 percent (in this section referred to as the "successor affiliate"), the successor is deemed to be the same corporation as, and a continuation of, each predecessor affiliate.

(6) For the purpose of this section, where there has been a winding-up of one or more foreign affiliates of a taxpayer resident in Canada in respect of which the taxpayer's surplus entitlement percentage immediately before the winding-up was not less than 90 percent (each of which is in this subsection referred to as a "predecessor affiliate") into another foreign affiliate of the taxpayer in respect of which the taxpayer's surplus entitlement percentage immediately before and after the winding-up was not less than 90 percent (in this subsection referred to as the "successor affiliate"), the successor affiliate is deemed to be the same corporation as, and a continuation of, each predecessor affiliate.

Application: The November 30, 1999 draft regulations (FAPI), subsec. 1(1), will amend s. 5903 to read as above, applicable to taxation years of foreign affiliates that begin after 1998, except that para. 5903(2)(b) applies to foreign affiliate taxation years that begin after 2000.

Technical Notes: The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act allows foreign accrual property income of an affiliate for a year to be reduced by the amount prescribed by section 5903 of the *Income Tax Regulations* to be the deductible loss of the affiliate for the year and the five immediately preceding taxation years. The amendments to section 5903 and the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act provide that deductible losses may include foreign accrual property losses for the three taxation years following and the seven taxation years preceding the year.

Amended subsection 5903(1) allows a taxpayer to include in the deductible loss of a foreign affiliate an amount not exceeding the foreign accrual property loss of the affiliate for the seven taxation years immediately preceding and the three taxation years immediately following the particular year. Losses for other taxation years will not be included in the deductible loss of the foreign affiliate.

Amended subsection 5903(2) of the Regulations provides that, in determining the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year, the amount claimed under subsection 5903(1) in respect of a foreign accrual property loss of the affiliate for a taxation year of the affiliate cannot exceed the total of amounts previously claimed by any taxpayer in respect of that loss. Also, no amount may be claimed in respect of a foreign accrual property loss until the foreign accrual property loss for preceding taxation years has been fully claimed.

Amended subsection 5903(3) of the Regulations defines foreign accrual property loss of a foreign affiliate of a taxpayer for a taxation year. Where, at the end of a taxation year, a foreign affiliate is a controlled foreign affiliate of the taxpayer or a person related to the taxpayer, the foreign accrual property loss of the affiliate is the amount, if any, by which (D + E) exceeds (A + B + C) in the definition "foreign accrual property income" in subsection 95(1) of the Act.

New subsection 5903(4) of the Regulations provides that, where a foreign affiliate of a taxpayer received a payment described in subsection 5907(1.3) of the Regulations from another affiliate or another corporation, which payment was related to a loss or portion of a loss of the affiliate, the amount of the loss or portion of the loss for the year shall be deemed to be nil.

New subsections 5903(5) and (6) of the Regulations provides that a predecessor affiliate's deductible loss may flow through to a successor affiliate following a foreign merger or a winding-up of one or more affiliates of a taxpayer provided the taxpayer's surplus entitlement percentage exceeds 90 percent in each predecessor affiliate and in the successor affiliate.

History: Subsecs. 5903(1), (3) amended by P.C. 1997-1670, s. 5, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsecs. as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

That portion of subsec. 5903(3) following para. (b) amended by P.C. 1989-321, s. 2, March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable in respect of amalgamations and mergers occurring after November 12, 1981.

Subsecs. 5903(1) and (2) substituted, subsec. 5903(3) added, by P.C. 1985-467, s. 2, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, subsecs. 5903(1) and (2) applicable in computing the foreign accrual property income of a foreign affiliate for taxation years of the affiliate ending after November 12, 1981, and subsec. 5903(3) applicable in respect of mergers and dissolutions occurring after November 12, 1981.

Para. 5903(1)(b) substituted by P.C. 1980-503, s. 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

Definitions [Reg. 5903]: "amount" — ITA 248(1), Reg. 5907(7); "controlled foreign affiliate" — ITA 95(1), Reg. 5907(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign accrual property income" — ITA 95(1), (2), 248(1); "foreign affiliate" — Reg. 5907(3); "loss" — Reg. 5907(1); "person", "prescribed", "property" — ITA 248(1); "resident in Canada" — ITA 250; "surplus entitlement percentage" — Reg. 5905(13); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5904. Participating percentage — (1) For the purpose of subparagraph (b)(ii) of the definition "participating percentage" in subsection 95(1) of the Act, the participating percentage of a particular share owned by a taxpayer of the capital stock of a corporation in respect of any foreign affiliate of the taxpayer that was, at the end of its taxation year, a controlled foreign affiliate of the taxpayer is prescribed to be the percentage that would be the taxpayer's equity percentage in the affiliate at that time on the assumption that

(a) the taxpayer owned no shares other than the particular share;

(b) the direct equity percentage of a person in any foreign affiliate of the taxpayer, for which the total of the distribution entitlements of all the shares of all classes of the capital stock of the affiliate was greater than nil, was determined by the following rules and not by the rules contained in the definition "direct equity percentage" in subsection 95(4) of the Act:

(i) for each class of the capital stock of the affiliate, determine that amount that is the proportion of the distribution entitlement of all the shares of that class that the number of shares of that class owned by that person is of all the issued shares of that class, and

(ii) determine the proportion that

(A) the aggregate of the amounts determined under subparagraph (i) for each class of the capital stock of the affiliate

is of

(B) the aggregate of the distribution entitlements of all the issued shares of all classes of the capital stock of the affiliate

and the proportion determined under subparagraph (ii) when expressed as a percentage is that person's direct equity percentage in the affiliate; and

(c) the direct equity percentage of a person in any foreign affiliate of the taxpayer, for which the total of the distribution entitlements of all the shares of all classes of the capital stock of the affiliate was not greater than nil, was determined by the rules contained in the definition "direct equity percentage" in subsection 95(1) of the Act.

History: That portion of subsec. 5904(1) before subpara (b)(i), and para. (c), amended by P.C. 1997-1670, subsecs. 6(1), (2) November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amended portions apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

All that portion of para. 5904(1)(b) preceding subpara. (i), and para. 5904(1)(c) substituted by P.C. 1980-503, s. 3, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(2) For the purposes of this section, the distribution entitlement of all the shares of a class of the capital stock of a foreign affiliate of the taxpayer at the end of its taxation year is the aggregate of

(a) the distributions made during the year by the affiliate to holders of shares of that class; and

(b) the amount that the affiliate might reasonably be expected to distribute to holders of shares of that class immediately after the end of the year if at that time it had distributed to its shareholders an amount equal to the aggregate of

(i) the amount, if any, by which the net surplus of the affiliate in respect of the taxpayer at the end of the year, computed as though any adjustments resulting from the provisions of sections 5902 and 5905 and subsections 5907(2.1) and (2.2) and any references thereto during the year were ignored, exceeds the net surplus of the affiliate in respect of the taxpayer at the end of its immediately preceding taxation year, and

(ii) the amount that the affiliate would receive if at that time each controlled foreign affiliate of the taxpayer in which the affiliate had an equity percentage had distributed to its shareholders an amount equal to the aggregate of

(A) the amount that would be determined under subparagraph (i) for the controlled foreign affiliate if the controlled foreign affiliate were the foreign affiliate referred to in subparagraph (i), for each of the taxation years of the controlled foreign affiliate ending in the taxation year of the affiliate, and

(B) each such amount that the controlled foreign affiliate would receive from any other controlled foreign affiliate of the taxpayer in which it had an equity percentage.

History: Subpara. 5904(2)(b)(i) substituted by P.C. 1978-3599, s. 1, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

(3) For the purposes of subsection (2),

(a) the net surplus of a foreign affiliate of a taxpayer who is an individual, in respect of that individual, shall be computed as if that individual were a corporation resident in Canada;

(b) in computing the net surplus of a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has an equity percentage, no amount shall be included in respect of any distribution that would be received by the particular affiliate from such other affiliate;

(c) if any controlled foreign affiliate of a taxpayer resident in Canada has issued shares of more than one class of its capital stock, the amount that would be distributed to the holders of shares of any class is such portion of the amount determined under subparagraph (2)(b)(ii) as, in the circumstances, it might reasonably be expected to distribute to the holders of those shares; and

(d) in determining the distribution entitlement

(i) of a class of shares of the capital stock of a foreign affiliate that is entitled to cumulative dividends, the amount of any distribution referred to in paragraph (2)(a) shall be deemed not to include any distribution in respect of such class that is, or would, if it were made, be referable to profits of a preceding taxation year, and

(ii) of any other class of shares of the capital stock of the affiliate, the net surplus of the affiliate at the end of the year referred to in subparagraph (2)(b)(i) shall be deemed not to have been reduced by any distribution described in subparagraph (i) with respect to a class of shares that is entitled to cumulative dividends to the extent that the distribution was referable to profits of a preceding taxation year.

Definitions [Reg. 5904]: "amount" — ITA 248(1), Reg. 5907(7); "controlled foreign affiliate" — ITA 95(1), Reg. 5907(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend" — ITA 248(1); "foreign affiliate" — Reg. 5907(3); "individual" — ITA 248(1); "net surplus" — Reg. 5902(1)–(3), 5907(1); "person", "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5905. Special rules — (1) Where at any time, other than in the course of a transaction to which subsection (2) or (5) applies, a corporation resident in Canada or a foreign affiliate of such a corporation acquires in any manner whatever shares of the capital stock of another corporation that was a foreign affiliate of the corporation immediately before that time (in this subsection referred to as the "acquired affiliate") and as a result thereof the surplus entitlement percentage of the corporation in respect of the acquired affiliate increases, for the purposes of this Part, the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign

tax, in respect of the corporation, of the acquired affiliate and of each other foreign affiliate of the corporation in which the acquired affiliate has an equity percentage (in this subsection referred to as the "other affiliate"), other than an acquired affiliate or other affiliate in respect of which subsection (8) applies, shall at that time be reduced to the proportion of the amount thereof otherwise determined that

(a) the surplus entitlement percentage immediately before that time of the corporation in respect of the acquired affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the acquired affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(b) the surplus entitlement percentage immediately after that time of the corporation in respect of the acquired affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the acquired affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time,

and, for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), those reduced amounts are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of each of those affiliates in respect of the corporation.

History: The closing words of subsec. 5905(1) amended by P.C. 1997-1670, subsec. 7(1), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendment applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(2) Where at any time a foreign affiliate of a corporation resident in Canada redeems, acquires or cancels in any manner whatever (otherwise than by way of a winding-up) any of the shares of any class of its capital stock (other than shares redeemed or cancelled that the affiliate had previously purchased or acquired and that were held by it until that time and in respect of which an adjustment has previously been made under this subsection or subsection (1) as it read prior to November 13, 1981), the following rules apply:

(a) where, by virtue of an election made by the corporation under subsection 93(1) of the Act, a dividend is deemed to have been received on one or more of the shares of the foreign affiliate that were disposed of by the corporation or another foreign affiliate of the corporation (in this paragraph referred to as the "transferor") by virtue of the redemption, acquisition or cancellation of such share or shares by the foreign affiliate, for the purposes of the adjustment required by paragraph (b),

Proposed Amendment — Reg. 5905(2)(a) opening words

(a) where, because of an election made by the corporation under subsection 93(1) or (1.2) of the Act, a dividend is deemed to have been received on one or more of the shares of the foreign affiliate that were disposed of by the corporation or by another foreign affiliate of the corporation (in this paragraph referred to as the "transferor") because of the redemption, acquisition or cancellation of such share or shares by the foreign affiliate, for the purposes of the adjustment required by paragraph

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 3(1), will amend the opening words of para. 5905(2)(a) to read as above, applicable after November 30, 1999.

Technical Notes: Subsection 5905(2) applies where shares of a foreign affiliate of a corporation resident in Canada are redeemed or cancelled (otherwise than by way of a winding-up). If the corporation has made an election under subsection 93(1) of the Act or if the corporation's surplus entitlement percentage in the affiliate changes, then the affiliate's surplus balances are adjusted to offset the change in the surplus entitlement percentage. The amendments to subsection 5905(2) ensure that the subsection will also apply where an election is made under subsection 93(1.2) of the Act.

(i) immediately before that time there is included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing the affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the affiliate,

(ii) immediately before that time there is included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the affiliate, and

(iii) immediately before that time there shall be deducted from the amount, if any, otherwise determined to be the underlying foreign tax of the affiliate in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the aggregate of all amounts each of which is the amount prescribed by paragraph 5900(1)(d) to be the foreign tax applicable to such portion of any such dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the affiliate,

and, for the purposes of subparagraphs (i) to (iii), the specified adjustment factor in respect of the disposition is the amount equal to the quotient obtained when,

(iv) where the transferor is the corporation, 100 per cent, and

(v) where the transferor is another foreign affiliate of the corporation, the surplus entitlement percentage of the corporation in respect of the transferor immediately before the disposition,

is divided by

(vi) the surplus entitlement percentage of the corporation in respect of the foreign affiliate immediately before the disposition;

(b) the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation, of the affiliate and of each other foreign affiliate of the corporation in which the affiliate has an equity percentage (in this subsection referred to as the "other affiliate") shall at that time be adjusted to the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before that time of the corporation in respect of the affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after that time of the corporation in respect of the affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time; and

(c) for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the amounts determined under paragraph (b) are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the affiliate and each other affiliate in respect of the corporation resident in Canada.

History: Subparas. 5905(2)(a)(i), (ii) and para. (2)(c) amended by P.C. 1997-1670, subsecs. 7(2), (3), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(3) Where at any time a foreign affiliate of a corporation resident in Canada has been formed as a result of a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more corporations (each of which in this subsection and subsection (4) is referred to as a "predecessor corporation"), for the purposes of this Part, the following rules apply:

(a) in respect of the foreign affiliate,

(i) its opening exempt surplus in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the exempt surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the exempt deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger,

(ii) its opening exempt deficit in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the exempt deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the exempt surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger,

(iii) its opening taxable surplus in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the taxable surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the taxable deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger,

(iv) its opening taxable deficit in respect of the corporation shall be the amount, if any, by which the aggregate of all amounts each of which is the taxable deficit of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger exceeds the aggregate of all amounts each of which is the taxable surplus of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger, and

(v) its opening underlying foreign tax in respect of the corporation shall be the aggregate of all amounts each of which is the underlying foreign tax of a predecessor corporation that was a foreign affiliate of the corporation immediately before the merger; and

(b) in respect of any other foreign affiliate of the corporation, other than a predecessor corporation, in which a predecessor corporation had an equity percentage immediately before the merger, the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax of the other affiliate in respect of the corporation shall at that time be adjusted to the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before that time of the corporation in respect of the other affiliate, determined on the assumption that the taxation year of the other affiliate that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after that time of the corporation in respect of the

other affiliate, determined on the assumption that the taxation year of the other affiliate that otherwise would have included that time had ended immediately after that time,

and, for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the adjusted amounts are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the other affiliate in respect of the corporation resident in Canada.

History: The closing words of para. 5905(3)(b) amended by P.C. 1997-1670, subsecs. 7(2), (3), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(4) For the purposes of paragraph (3)(a), the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of each predecessor corporation immediately before the foreign merger shall be deemed to be the proportion of the amount thereof otherwise determined that

(a) the surplus entitlement percentage of the corporation resident in Canada immediately before the merger in respect of the predecessor corporation, determined on the assumption that the taxation year of the predecessor corporation that otherwise would have included the time of the merger had ended immediately before that time,

is of

(b) the percentage that would be the surplus entitlement percentage of the corporation resident in Canada immediately after the merger in respect of the foreign affiliate of the corporation formed as a result of the merger if the net surplus of such foreign affiliate were the aggregate of all amounts, each of which is the net surplus of a predecessor corporation immediately before the merger.

(5) Where at any time

(a) there is a disposition by a corporation resident in Canada (in this subsection referred to as the "predecessor corporation") of any of the shares owned by it of the capital stock of a particular foreign affiliate of it to a taxable Canadian corporation with which the predecessor corporation was not dealing at arm's length (in this subsection referred to as the "acquiring corporation"),

(b) there is an amalgamation, to which section 87 of the Act applies, of two or more corporations (each of which in this subsection is referred to as a "predecessor corporation") to form a new corporation (in this subsection referred to as the "acquiring corporation") as a result of which shares of the capital stock of a particular foreign affiliate of a predecessor corporation become the property of the acquiring corporation, or

(c) there is a winding-up, to which subsection 88(1) of the Act applies, of a corporation (in this subsection referred to as the "predecessor corporation") into another corporation (in this subsection referred to as the "acquiring corporation") as a result of which shares of the capital stock of a particular foreign affiliate of the predecessor corporation become the property of the acquiring corporation,

the following rules apply for the purposes of this Part in respect of the particular affiliate and each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage:

(d) its opening exempt surplus in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its exempt surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its exempt deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c);

(e) its opening exempt deficit in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its exempt deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its exempt surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c);

(f) its opening taxable surplus in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its taxable surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its taxable deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c);

(g) its opening taxable deficit in respect of the acquiring corporation shall be the amount, if any, by which the aggregate of its taxable deficit in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c) exceeds the aggregate of its taxable surplus in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c); and

(h) its opening underlying foreign tax in respect of the acquiring corporation shall be the aggregate of its underlying foreign tax in respect of each predecessor corporation and in respect of the acquiring corporation immediately before any of the transactions referred to in paragraph (a), (b) or (c).

(6) For the purposes of subsection (5), the following rules apply:

(a) where paragraph (5)(a) is applicable and the predecessor corporation is, by virtue of an election made

under subsection 93(1) of the Act, deemed to have received a dividend on one or more of the shares of the particular affiliate disposed of in the transaction, for the purposes of the adjustment required by paragraph (b),

Proposed Amendment — Reg. 5905(6)(a) opening words

(a) where paragraph (5)(a) applies and the predecessor corporation is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend on one or more of the shares of the particular affiliate disposed of in the transaction, for the purposes of the adjustment required by paragraph (b),

Application: The November 30, 1999 draft regulations, subsec. 3(2) (foreign affiliates — partnerships), will amend the opening words of para. 5905(6)(a) to read as above, applicable after November 30, 1999.

Technical Notes: Paragraph 5905(6)(a) of the Regulations applies for the purpose of paragraph 5905(5)(a) to adjust the surplus balances of a particular foreign affiliate of a corporation resident in Canada where the corporation has made an election under subsection 93(1) of the Act. The amendment to paragraph 5905(6)(a) ensures that the paragraph will also apply where the corporation has made an election under new subsection 93(1.2) of the Act.

(i) immediately before the time of the transaction there shall be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing the particular affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the predecessor corporation an amount equal to the quotient obtained when

(A) such portion of the dividend as is prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the particular affiliate

is divided by

(B) the surplus entitlement percentage of the predecessor corporation in respect of the particular affiliate immediately before the disposition, determined on the assumption that the shares disposed of by the predecessor corporation were the only shares owned by it immediately before the time of the transaction,

(ii) immediately before the time of the transaction there shall be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the particular affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the predecessor corporation an amount equal to the quotient obtained when

(A) such portion of the dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate

is divided by

(B) the surplus entitlement percentage referred to in clause (i)(B), and

(iii) immediately before the time of the transaction there shall be deducted from the amount, if any, otherwise determined to be the underlying foreign tax of the particular affiliate in respect of the predecessor corporation an amount equal to the quotient obtained when

(A) the amount prescribed by paragraph 5900(1)(d) to be the foreign tax applicable to such portion of the dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate

is divided by

(B) the surplus entitlement percentage referred to in clause (i)(B); and

(b) the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of an affiliate in respect of a predecessor corporation (within the meaning assigned by subsection (5)) and the acquiring corporation (within the meaning assigned by subsection (5)) shall be deemed to be the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before the time of the latest of the transactions referred to in paragraph (5)(a), (b) or (c) of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the affiliate, determined on the assumption

(A) that the taxation year of the affiliate that otherwise would have included that time had ended immediately before that time, and

(B) where the transaction is one referred to in paragraph (5)(a), that the shares referred to therein were the only shares owned by the predecessor corporation immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after the time of the latest of the transactions referred to in paragraph (5)(a), (b) or (c) of the acquiring corporation in respect of the affiliate, determined on the assumption that the taxation year of the affiliate that otherwise would have included that time had ended immediately after that time.

History: The opening words of subparas. 5905(6)(a)(i), (ii) amended by P.C. 1997-1670, subsecs. 7(5), (6), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subparas. as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(7) Where at any time there has been a dissolution of a foreign affiliate (in this subsection referred to as the "dissolved affiliate") of a corporation resident in Canada and paragraph 95(2)(e.1) of the Act is applicable in respect of the dissolution, each other foreign affiliate of the corporation that had a direct equity percentage in the dissolved affiliate immediately before that time shall, for the purposes of computing its exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax in respect of the corporation, be deemed to have re-

ceived dividends immediately before that time the aggregate of which is equal to the amount it might reasonably have expected to receive if the dissolved affiliate had, immediately before that time, paid dividends the aggregate of which on all shares of its capital stock was equal to the amount of its net surplus in respect of the corporation immediately before that time, determined on the assumption that the taxation year of the dissolved affiliate that otherwise would have included that time had ended immediately before that time.

(8) Where at any time a dividend is, by virtue of an election made by a corporation under subsection 93(1) of the Act, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of the corporation disposed of to the corporation or another foreign affiliate of the corporation, the following rules apply:

Proposed Amendment — Reg. 5905(8) opening words

(8) Where at any time a dividend is, because of an election made by a corporation under subsection 93(1) or (1.2) of the Act, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of the corporation disposed of to the corporation or to another corporation that was a foreign affiliate of the corporation immediately after the disposition, the following rules apply:

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 3(3), will amend the opening words of subsec. 5905(8) to read as above, applicable after November 30, 1999.

Technical Notes: Subsection 5905(8) reduces the surplus accounts of a particular foreign affiliate of a corporation resident in Canada where a dividend is deemed to have been received from the particular affiliate following an election under subsection 93(1) of the Act. The amendment to subsection 5905(8) ensures that the subsection will also apply where a dividend is deemed to have been received from the particular affiliate following an election under new subsection 93(1.2) of the Act.

(a) for the purposes of the adjustment required by paragraph (b),

(i) immediately before that time there shall be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1 in computing the particular affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(a) to have been paid out of the exempt surplus of the particular affiliate,

(ii) immediately before that time there shall be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the particular affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any such dividend that is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate, and

(iii) immediately before that time there shall be deducted from the amount, if any, otherwise determined to be the underlying foreign tax of the particular affiliate in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the aggregate of all amounts each of which is the amount prescribed by paragraph 5900(1)(d) to be the foreign tax applicable to such portion of any such dividend as is prescribed by paragraph 5900(1)(b) to have been paid out of the taxable surplus of the particular affiliate,

and, for the purposes of subparagraphs (i) to (iii), the specified adjustment factor in respect of the disposition is the amount equal to the quotient obtained when

(iv) where the person disposing of the shares is the corporation, 100 per cent, and

(v) where the person disposing of the shares is another foreign affiliate of the corporation, the surplus entitlement percentage of the corporation in respect of that affiliate immediately before the disposition,

is divided by

(vi) the surplus entitlement percentage of the corporation in respect of the particular foreign affiliate immediately before that disposition;

(b) the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax in respect of the corporation of the particular affiliate and of each other foreign affiliate of the corporation in which the particular affiliate has an equity percentage (in this subsection referred to as the "other affiliate") shall at that time be adjusted to the proportion of the amount thereof otherwise determined that

(i) the surplus entitlement percentage immediately before that time of the corporation in respect of the particular affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the particular affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage immediately after that time of the corporation in respect of the particular affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the particular affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time; and

(c) for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the amounts determined under paragraph (b) are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular affiliate and each other affiliate in respect of the corporation resident in Canada.

History: Subparas. 5905(8)(a)(i), (ii) and para. (8)(c), amended by P.C. 1997-1670, subsecs. 7(7), (8), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subparas. and para. as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been

a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(9) Where at any time a foreign affiliate of a corporation resident in Canada (in this subsection referred to as the "issuing affiliate") issues shares of a class of its capital stock to a person other than the corporation or another foreign affiliate of the corporation and as a result thereof the surplus entitlement percentage of the corporation in respect of the issuing affiliate decreases, for the purposes of this Part, the exempt surplus or exempt deficit, the taxable surplus or taxable deficit and the underlying foreign tax, in respect of the corporation, of the issuing affiliate and of each other foreign affiliate of the corporation in which the issuing affiliate has an equity percentage (in this subsection referred to as the "other affiliate") shall at that time be increased to the proportion of the amount thereof otherwise determined that

(a) the surplus entitlement percentage immediately before that time of the corporation in respect of the issuing affiliate or the other affiliate, as the case may be, determined on the assumption that the taxation year of the issuing affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately before that time,

is of

(b) the surplus entitlement percentage immediately after that time of the corporation in respect of the issuing affiliate or other affiliate, as the case may be, determined on the assumption that the taxation year of the issuing affiliate or the other affiliate, as the case may be, that otherwise would have included that time had ended immediately after that time,

and, for the purposes of the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), those increased amounts are referred to as the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of each of those affiliates in respect of the corporation resident in Canada.

History: The closing words of 5905(9) amended by P.C. 1997-1670, subsec. 7(9), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the portion as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

For earlier history, see at end of s. 5905.

(10) For the purposes of this section, the surplus entitlement at any time of a share owned by a corporation resident in Canada of the capital stock of a foreign affiliate of the corporation in respect of a particular foreign affiliate of the corporation is the portion of

(a) the amount that would have been received on the share if the foreign affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount that would be its net surplus in respect of the corporation at that time assuming that

(i) each other foreign affiliate of the corporation in which the foreign affiliate had an equity percentage had immediately before that time paid a dividend equal to its net surplus in respect of the corporation immediately before the dividend was paid, and

(ii) any dividend referred to in subparagraph (i) that would be received by another foreign affiliate was received by such other foreign affiliate immediately before any such dividend that it would have paid,

that may reasonably be considered to relate to

(b) the amount that would be the net surplus of the particular affiliate in respect of the corporation at that time assuming that

(i) each other foreign affiliate of the corporation in which the particular affiliate had an equity percentage had immediately before that time paid a dividend equal to its net surplus in respect of the corporation immediately before the dividend was paid, and

(ii) any dividend referred to in subparagraph (i) that would be received by another foreign affiliate was received by such other foreign affiliate immediately before any such dividend that it would have paid.

(11) For the purposes of subsection (10),

(a) in determining the net surplus of, or the amount of a dividend received by, a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has an equity percentage, no amount shall be included in respect of any distribution that would be received by the particular affiliate from such other affiliate; and

(b) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is such portion of its net surplus as, in the circumstances, it might reasonably be expected to have paid on all the shares of that class.

(12) Notwithstanding any other provision of this Part, for the purposes of determining under subsection (10) the net surplus of a foreign affiliate of a corporation resident in Canada in respect of the corporation at any time in a taxation year of the affiliate that would otherwise have included that time (in this subsection referred to as the "normal year"), the exempt earnings or loss and the taxable earnings or loss required to be included in computing the net surplus in respect of any taxation year of the affiliate that is assumed for the purposes of a provision of this section to have ended at that time shall be deemed to be that proportion of such amounts determined for the normal year that the number of days in the taxation year assumed to have ended at that time is of the number of days in the normal year.

(13) For the purposes of the definition "surplus entitlement percentage" in subsection 95(1) of the Act and of this Part, the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation is,

(a) where the particular affiliate and each corporation that is relevant to the determination of the corporation's equity percentage in the particular affiliate have only one class of issued shares at that time, the percentage that is the corporation's equity percentage in the particular affiliate at that time, and

(b) in any other case, the proportion of 100 that

(i) the aggregate of all amounts, each of which is the surplus entitlement at that time of a share owned by the corporation of the capital stock of a foreign affiliate of the corporation in respect of the particular foreign affiliate of the corporation

is of

(ii) the amount determined under paragraph (10)(b) to be the net surplus of the particular affiliate in respect of the corporation at that time,

except that where the amount determined under subparagraph (ii) is nil, the percentage determined under this paragraph shall be the corporation's equity percentage in the particular affiliate at that time,

and, for the purposes of this subsection, "equity percentage" has the meaning that would be assigned by subsection 95(4) of the Act if the reference in paragraph (b) of the definition "equity percentage" in that subsection to any corporation" were read as a reference to "any corporation other than a corporation resident in Canada".

History: The opening and closing words of 5905(13) amended by P.C. 1997-1670, subsecs. 7(10), (11), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the portions as amended apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Proposed Addition — Reg. 5905(14), (15)

(14) For the purpose of this section, where the number of shares of a class of the capital of the capital stock of a foreign affiliate of a corporation resident in Canada deemed by subsection 93.1(1) of the Act to be owned by a person at a particular time is different from the number so deemed immediately before the particular time

(a) if the number of shares of that class deemed to be owned by the person has decreased, the person is deemed to have disposed of, at the particular time, the number of shares of that class equal to the amount of the decrease;

(b) if the number of shares of that class deemed to be owned by the person has increased, the person is deemed to have acquired, at the particular time, the number of shares of that class equal to the amount of the increase;

(c) a person (in this paragraph referred to as the "seller") that is deemed by paragraph (a) to have disposed of, at a particular time, shares of a class is deemed to have disposed of those shares to the persons (in this paragraph referred to as the "acquirers") deemed in paragraph (b) to have acquired shares of that class at that time and the number of shares of that class deemed to have been acquired at that time by a particular acquirer from the seller shall be determined by the formula

A(B/C)

where

A is the number of shares of that class acquired by the particular acquirer at that time,

B is the number of shares of that class disposed of by the seller at that time, and

C is the number of shares of that class acquired by all acquirers at that time; and

(d) persons (in this paragraph referred to as the "acquirers") that are deemed by paragraph (b) to have acquired, at a particular time, shares of a class are deemed to have acquired those shares from a person (in this paragraph referred to as the " seller") deemed in paragraph (a) to have disposed of shares of that class at that time and the number of shares of that class deemed to have been disposed of by the seller to a particular acquirer at that time shall be determined by the formula

A(B/C)

where

A is the number of shares of that class disposed of by the seller,

B is the number of shares of that class acquired by the particular acquirer at that time, and

C is the number of shares of that class time disposed of by all sellers at that time.

Technical Notes: New subsection 93.1(1) of the Act deems, for certain purposes, a member of a partnership to own its proportionate number of shares of a non-resident corporation held by a partnership. New subsection 5905(14) of the Regulations applies where the number of shares of a foreign affiliate of a corporation resident in Canada deemed to be owned by a person under subsection 93.1(1) increases or decreases.

Where the number of shares deemed to be held by the person has decreased, the person is deemed to have disposed of shares to the extent of the decrease. Where the number of shares deemed to be held by the person has increased, the person is deemed to have acquired shares to the extent of the increase. Persons that are treated as having acquired shares of class are treated as having acquired those shares proportionately from persons that are treated as having disposed of shares of that class and vice versa.

(15) In determining,

(a) for the purpose of this Part (other than section 5904), the equity percentage at any time of a person in a corporation,

(b) for the purpose of this section, the surplus entitlement at any time of a share owned by a corporation resident in Canada of the capital stock of a foreign affiliate of the corporation in respect of a particular foreign affiliate of the corporation, and

(c) for the purposes of this Part and of the definition "surplus entitlement percentage" in subsection 95(1) of the Act, the surplus entitlement percentage at any

time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation,

where at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, those shares are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all such shares that

(d) the fair market value of the member's interests in the partnership at that time

is of

(e) the fair market value of all members' interest in the partnership at that time.

Technical Notes: New subsection 5905(15) of the Regulations applies to determine the equity percentage (other than for section 5904), surplus entitlement of a share and the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation where the shares of the foreign affiliate are property of a partnership. Each member of the partnership is deemed to own that proportion of the number of the shares held by the partnership that the fair market value of the member's interest in the partnership is of the fair market value of all the members' interests in the partnership.

Application: The November 30, 1999 draft regulations (foreign affiliates — partnerships), subsec. 3(4), will add subsecs. 5905(14) and (15), applicable after November 30, 1999.

History [S. 5905]: S. 5905 substituted by P.C. 1985-467, February 14, 1985, s. 3, *Canada Gazette*, Part II, March 6, 1985 as corrected by *Canada Gazette*, Part II, June 26, 1985, applicable as to subsec. 5905(1), in respect of acquisitions of shares made after November 12, 1981; as to subsec. 5905(2), in respect of redemptions, acquisitions or cancellations of shares occurring after November 12, 1981; as to subsecs. 5905(3) and (4), in respect of mergers occurring after November 12, 1981; as to subsecs. 5905(5) and (6), in respect of dispositions of shares made after November 12, 1981 and amalgamations and windings-up occurring after November 12, 1981; as to subsec. 5905(7), in respect of dissolutions occurring after November 12, 1981; as to subsec. 5905(8), in respect of dispositions of shares made after November 12, 1981; as to subsec. 5905(9), in respect of issuances of shares occurring after November 12, 1981; and as to subsecs. 5905(10) to (13), for the purposes of computations required to be made under any of subsecs. 5905(1) to (9), in respect of transactions occurring after November 12, 1981.

All that portion of subsec. 5905(1) following para. (d) and all that portion of subsec. 5905(2) preceding para. (a) substituted; subsec. 5905(7.1) added by P.C. 1980-503, s. 4, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, as corrected by *Canada Gazette*, Part II, March 12, 1980, effective in respect of 1976 *et seq.*

Definitions [Reg. 5905]: "amount" — ITA 248(1), Reg. 5907(7); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "exempt deficit" — Reg. 5902(1)–(3), 5907(1); "exempt earnings" — Reg. 5907(1), (10); "exempt surplus" — Reg. 5902(1)–(3), 5907(1); "foreign affiliate" — Reg. 5907(3); "foreign tax applicable" — Reg. 5900(1)(d); "loss" — Reg. 5907(1); "net surplus" — Reg. 5902(1)–(3), 5907(1); "opening exempt deficit" — Reg. 5905(5)(e); "opening exempt surplus" — Reg. 5905(5)(d); "opening taxable deficit" — Reg. 5905(5)(g); "opening taxable surplus" — Reg. 5905(5)(f); "opening underlying foreign tax" — Reg. 5905(5)(h); "partnership" — see Notes to ITA 96(1); "person", "prescribed", "property" — ITA 248(1); "resident", "resident in Canada" — ITA 250; "share" — ITA 248(1); "surplus entitlement percentage" — Reg. 5905(13); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxable deficit" — Reg. 5902(1)–(3), 5907(1); "taxable earnings" — Reg. 5907(1), (10); "taxable surplus" — Reg. 5902(1)–(3), 5907(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "underlying foreign tax" — Reg. 5902(1)–(3), 5907(1).

5906. Carrying on business in a country — (1) For the purposes of this Part, where a foreign affiliate of a corporation resident in Canada carries on an active business, it shall be deemed to carry on that business

(a) in a country other than Canada only to the extent that such business is carried on through a permanent establishment situated therein; and

(b) in Canada only to the extent that its income therefrom is subject to tax under Part I of the Act.

(2) Where the Government of Canada has concluded an agreement or convention with the government of another country for the avoidance of double taxation that has the force of law in Canada and in which the expression "permanent establishment" is given a particular meaning, for the purposes of subsection (1), that expression has that meaning with respect to a business carried on in that country and, in any other case, has the meaning assigned by subsection 400(2).

Definitions [Reg. 5906]: "active business" — ITA 95(1), Reg. 5907(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign affiliate" — Reg. 5907(3); "resident in Canada" — ITA 250.

5907. Interpretation — (1) For the purposes of this Part,

"active business" has the meaning assigned by subsection 95(1) of the Act;

"controlled foreign affiliate" has the meaning assigned by subsection 95(1) of the Act;

"earnings" of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business means

(a) in the case of an active business carried on by it in a country,

(i) the income or profit from the active business for the year computed in accordance with the income tax law of the country in which the affiliate is resident, in any case where the affiliate is required by that law to compute that income or profit,

(ii) the income or profit from the active business for the year computed in accordance with the income tax law of the country in which the business is carried on, in any case not described in subparagraph (i) where the affiliate is required by that law to compute that income or profit, and

(iii) in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

adjusted in each case in accordance with subsections (2), (2.1), (2.2) and (2.9) and, for the purposes of this Part, to the extent that the earnings of an affiliate from an active business carried on by it cannot be attributed to a permanent establishment in any particular country, they shall be attributed to the permanent establishment in the country in which the affiliate is resident and, if the affiliate is resident in more than one country, to the permanent establishment in the country that may reasonably be regarded as the affiliate's principal place of residence, and

(b) in any other case, the total of the amounts by which the income for the year from an active business

of an affiliate is increased because of paragraph 95(2)(a) of the Act;

"exempt deficit" of a foreign affiliate of a corporation in respect of the corporation at any time means the amount, if any, by which

(a) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vi) of the description of B in the definition "exempt surplus" in this subsection

exceeds

(b) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vii) of the description of A in that definition;

"exempt earnings" of a particular foreign affiliate of a particular corporation for a taxation year of the particular affiliate is the total of all amounts each of which is

(a) the amount by which the capital gains of the particular affiliate for the year exceed the total of

(i) the amount of the taxable capital gains for the year referred to in the description of B in the definition "foreign accrual property income" in subsection 95(1) of the Act,

(ii) the amount of the taxable capital gains for the year referred to in subparagraphs (c)(i) and (d)(iii) of the definition "net earnings" in this subsection, and

(iii) the portion of any income or profits tax paid to the government of a country for the year by the particular affiliate that can reasonably be regarded as tax in respect of the amount by which the capital gains of the particular affiliate for the year exceed the total of the amounts referred to in subparagraphs (i) and (ii),

and for the purpose of this paragraph, where the particular affiliate has disposed of capital property that was shares of the capital stock of another foreign affiliate of the particular corporation to any corporation that was, immediately after the disposition, a foreign affiliate of the particular corporation, the capital gains of the particular affiliate for the year shall not include the portion of those gains that is the total of all amounts each of which is an amount equal to the excess of the fair market value at the end of the particular affiliate's 1975 taxation year of one of those shares disposed of over the adjusted cost base of that share,

(b) where the year is the 1975 or any preceding taxation year of the particular affiliate, the total of all amounts each of which is the particular affiliate's net earnings for the year,

(c) where the year is the 1975 or any preceding taxation year of the particular affiliate, the earnings as determined in paragraph (b) of the definition "earnings" in this subsection to the extent that those earnings have not been included because of paragraph (b) or deducted in determining an amount included in subparagraph (b)(i) of the definition "exempt loss" in this subsection,

(d) where the year is the 1976 or any subsequent taxation year of the particular affiliate and the particular affiliate is resident in a designated treaty country, each amount that is

(i) the particular affiliate's net earnings for the year from an active business carried on by it in Canada or a designated treaty country, or

(ii) the earnings of the particular affiliate for the year from an active business to the extent that they derive from

(A) amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that could reasonably be considered to be directly related to business activities carried on by a non-resident corporation, to which the particular affiliate and the particular corporation are related throughout the year, in the course of an active business carried on by the non-resident corporation the income from which would, if the non-resident corporation were a foreign affiliate of a corporation, be included in computing the non-resident corporation's exempt earnings or exempt loss,

(B) where the particular corporation is a life insurance corporation resident in Canada throughout the year and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(i) of the Act that are derived by the particular affiliate from activities that could reasonably be considered to be directly related to business activities carried on by the particular corporation in the course of an active business carried on by the particular corporation in a country other than Canada, the income from which would, if the particular corporation were a foreign affiliate of another corporation and were resident in the country other than Canada in which that active business of the particular corporation is carried on, be included in computing the particular corporation's exempt earnings or exempt loss,

(C) amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that, if the non-resident corporation were a foreign affiliate of a corporation, the amounts paid or payable by the non-resident corporation would be deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(D) where a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a member of a particular partnership (other than where the non-resident corporation is a specified member of the particular partnership at any time in a fiscal period of the particular partnership ending in the year), amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(A) of the Act that are de-

rived from amounts paid or payable, directly or indirectly, to it or another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(E) amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, to the extent that the amounts paid or payable by the other foreign affiliate are deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(F) where another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a member of a particular partnership (other than where the other foreign affiliate is a specified member of the particular partnership at any time in a fiscal period of the particular partnership ending in the year), amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in the year or a subsequent taxation year in computing its exempt earnings or exempt loss,

(G) where the particular affiliate is a member of a particular partnership (other than where the particular affiliate is a specified member of the particular partnership at any time in a fiscal period of the particular partnership ending in the year), amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in the year or a subsequent taxation year in computing its exempt loss,

(H) amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(D) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by another foreign affiliate (in this clause referred to as the "second affiliate") of the particular corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the amounts paid or payable

(I) are on account of interest on borrowed money used for the purpose of earning income from property or interest on an amount payable for property, where

1. the property is shares of a foreign affiliate (in this clause referred to as the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year and that are excluded property, and

2. the second affiliate, the third affiliate and each other affiliate relevant for the purpose of determining whether the shares of the third affiliate are excluded property are resident and subject to income taxation in a designated treaty country, and

(II) are relevant in computing the liability for income taxes, in the designated treaty country in which the second and third affiliates are resident, of the members of a group of corporations composed of the second affiliate and one or more other foreign affiliates (the shares of which are excluded property) of the particular corporation that are resident in that country and in respect of which the particular corporation has a qualifying interest throughout the year,

and, for the purposes of this clause, "excluded property" has the meaning assigned by subsection 95(1) of the Act, except that for that purpose,

(III) the definition "excluded property" in subsection 95(1) of the Act shall be read without reference to amounts receivable referred to in paragraph (c) of that definition where the interest on the amounts is not, or would not if interest were payable on the amounts, be deductible in computing the debtor's exempt earnings or exempt loss, and

(IV) the shares of a foreign affiliate (in this subclause referred to as the "non-qualifying affiliate") that is not resident and subject to income taxation in a designated treaty country are not considered relevant for the purpose of determining whether shares of the third affiliate are excluded property unless the shares of the third affiliate would not have been excluded property if the shares of all such non-qualifying affiliates were not excluded property,

(I) where the particular corporation is a life insurance corporation resident in Canada and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts by which the income of the particular affiliate from an active business for the year is increased because of clause 95(2)(a)(ii)(E) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or a partnership of which it is a member by the particular corporation in the course of the particular corporation carrying on its life insurance business outside Canada, to the extent that, if the particular corporation were a foreign affiliate of another corporation and were resident in the country in which the particular corporation carried on its life insurance business outside Canada, the amounts paid or payable by the particular corporation would be deductible in the year or in a subsequent taxation year in computing its exempt earnings or exempt loss,

(J) amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(iii) of the Act that are derived from the factoring of trade accounts receivable acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the trade accounts receivable arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation, or

(K) amounts by which the income of the particular affiliate from an active business for the year is increased because of subparagraph 95(2)(a)(iv) of the Act that are derived from loans or lending assets acquired by the particular affiliate, or a partnership of which the particular affiliate was a member from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the loans or lending assets arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation, or

(e) where the year is the 1976 or any subsequent taxation year of the particular affiliate, each amount that is included in the particular affiliate's exempt earnings for the year because of subsection (10),

minus the portion of any income or profits tax paid to the government of a country for the year by the particular affiliate that can reasonably be regarded as tax in respect of the earnings referred to in paragraph (c) or in subparagraph (d)(ii);

"exempt loss" of a foreign affiliate of a corporation for a taxation year of the affiliate is the total of all amounts each of which is

(a) the amount by which the capital losses of the affiliate for the year exceed the total of

(i) the amount of the allowable capital losses for the year referred to in the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act,

(ii) the amount of the allowable capital losses for the year referred to in subparagraphs (c)(i) and (d)(iii) of the definition "net loss" in this subsection, and

(iii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount by which the capital losses of the affiliate for the year exceed the total of the amounts referred to in subparagraphs (i) and (ii),

(b) where the year is the 1975 or any preceding taxation year of the affiliate, the total of all amounts each of which is

(i) the affiliate's net loss for the year from an active business carried on by it in a country, or

(ii) the amount, if any, for the year by which

(A) the amount determined under the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year

exceeds

(B) the amount determined under the description of A in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year,

(c) where the year is the 1976 or any subsequent taxation year of the affiliate and the affiliate is resident in a designated treaty country, each amount that is the affiliate's net loss for the year from an active business carried on by it in Canada or in a designated treaty country, or

(d) where the year is the 1976 or any subsequent taxation year of the affiliate, each amount that is included in the affiliate's exempt loss for the year because of subsection (10);

"exempt surplus" of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation is, at any particular time, the amount determined by the formula

$$A - B$$

in respect of the period beginning with the time that is the latest of

(a) the first day of the taxation year of the subject affiliate in which it last became a foreign affiliate of the corporation,

(b) where the corporation is an acquiring corporation referred to in subsection 5905(5) and the subject affiliate is a particular affiliate referred to in that subsection or another foreign affiliate in which such a particular affiliate had an equity percentage at the time referred to in that subsection, the last time at which that subsection was applicable in respect of the affiliate, and

(c) where the subject affiliate is a foreign affiliate referred to in subsection 5905(1), (2), (8) or (9) or paragraph 5905(3)(b), the last time at which any of those subsections or that paragraph was applicable in respect of the subject affiliate

and ending with the particular time, where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening exempt surplus of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the exempt earnings of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that was prescribed by paragraph 5900(1)(a) to have been paid out of the payer affiliate's exempt surplus in respect of the corporation,

(iv) the portion of any income or profits tax refunded by or the amount of a tax credit paid by the government of a country to the subject affiliate that can reasonably be regarded as having been refunded or paid in respect of any amount referred to in subparagraph (iii) and that was not deducted in determining any amount referred to in subparagraph (iii) of the description of B,

(v) the portion of any taxable dividend received in the period and before the particular time by the subject affiliate that would, if the dividend were received by the corporation, be deductible by it under section 112 of the Act,

(vi) an amount added to the exempt surplus of the subject affiliate or deducted from its exempt deficit in the period and before the particular time under any provision of subsection (1.1) or (1.2), or

(vii) an amount added, in the period and before the particular time, to the exempt surplus of the subject affiliate under paragraph (7.1)(d), and

B is the total of those of the following amounts that apply in respect of the period:

(i) the opening exempt deficit of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the exempt loss of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that may reasonably be regarded as having been paid in respect of any amount referred to in subparagraph (iii), (iv) or (vi) of the description of A,

(iv) the portion of any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(a) to have been paid out of the subject affiliate's exempt surplus in respect of the corporation,

(v) each amount that is determined under paragraph 5902(4)(a) or subparagraph 5905(2)(a)(i), (6)(a)(i) or (8)(a)(i) in the period and before the particular time, or

(vi) an amount, in the period and before the particular time, deducted from the exempt surplus of the subject affiliate or added to its exempt deficit under any provision of subsection (1.1) or (1.2);

Related Provisions: ITA 257 — Negative amounts in formulas.

"loss" of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business carried on by it in a country is the amount of its loss for the year from that active business carried on in that country computed by applying the provisions of paragraph (a) of the definition "earnings" in this subsection respecting the computation of earnings from that active business carried on in that country, with any modifications that the cricumstances require;

"net earnings" of a foreign affiliate of a corporation for a taxation year of the affiliate

(a) from an active business carried on by it in a country is the amount of its earnings for the year from that active business carried on in that country minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of those earnings,

(b) in respect of foreign accrual property income is the amount that would be its foreign accrual property income for the year, if the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act were read without reference to the variable F in that formula, minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of that income,

(c) from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada) is the amount, if any, by which

(i) the portion of the affiliate's taxable capital gains for the year from those dispositions that can reasonably be considered to have accrued after November 12, 1981

exceeds

(ii) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of the amount determined under subparagraph (i), and

(d) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable), or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's taxable capital gains for the year from such dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of the amount determined under subparagraph (iii);

"net loss" of a foreign affiliate of a corporation for a taxation year of the affiliate

(a) from an active business carried on by it in a country is the amount of its loss for the year from that active business carried on in that country minus the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of that loss,

(b) in respect of foreign accrual property income is the amount, if any, by which

(i) the amount, if any, by which

(A) the total of the amounts determined under the descriptions of D, E and G in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year

exceeds

(B) the total of the amounts determined under the descriptions of A, A.1, A.2, B and C in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year

exceeds

(ii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (i),

(c) from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada) is the amount, if any, by which

(i) the portion of the affiliate's allowable capital losses for the year from those dispositions that can reasonably be considered to have accrued after November 12, 1981

exceeds

(ii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (i), and

(d) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable), or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's allowable capital losses for the year from those dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (iii);

"net surplus" of a foreign affiliate of a corporation resident in Canada in respect of the corporation is, at any particular time,

(a) if the affiliate has no exempt deficit and no taxable deficit, the amount that is the total of its exempt surplus and taxable surplus in respect of the corporation,

(b) if the affiliate has no taxable surplus, the amount, if any, by which its exempt surplus exceeds its taxable deficit in respect of the corporation, or

(c) if the affiliate has no exempt surplus, the amount, if any, by which its taxable surplus exceeds its exempt deficit in respect of the corporation,

as the case may be, at that time;

"taxable deficit" of a foreign affiliate of a corporation in respect of the corporation at any time is the amount, if any, by which

(a) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vi) of the description of B in the definition "taxable surplus" in this subsection

exceeds

(b) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (v) of the description of A in that definition;

"taxable earnings" of a foreign affiliate of a corporation for a taxation year of the affiliate is

(a) where the year is the 1975 or any preceding taxation year of the affiliate, nil, and

(b) in any other case, the total of all amounts each of which is

(i) the affiliate's net earnings for the year from an active business carried on by it in a country,

(ii) the affiliate's net earnings for the year in respect of its foreign accrual property income,

(iii) to the extent that they have not been included under subparagraph (i) or deducted in determining an amount included under subparagraph (b)(i) of the definition "taxable loss" in this subsection, the earnings for the year as determined under paragraph (b) of the definition "earnings" in this subsection minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of those earnings,

(iv) the affiliate's net earnings for the year from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada), or

(v) the affiliate's net earnings for the year from dispositions of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable) or dispositions of partnership

interests that were excluded property of the affiliate,

but does not include any amount included in the affiliate's exempt earnings for the year;

"taxable loss" of a foreign affiliate of a corporation for a taxation year of the affiliate is

(a) where the year is the 1975 or any preceding taxation year of the affiliate, nil, and

(b) in any other case, the total of all amounts each of which is

(i) the affiliate's net loss for the year from an active business carried on by it in a country,

(ii) the affiliate's net loss for the year in respect of foreign accrual property income,

(iii) the affiliate's net loss for the year from dispositions of property used or held by it principally for the purpose of gaining or producing income from an active business carried on by it in a country that is not a designated treaty country (other than Canada), or

(iv) the affiliate's net loss for the year from dispositions of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(c), (d) or (e) of the Act was applicable) or dispositions of partnership interests that were excluded property of the affiliate,

but does not include any amount included in the affiliate's exempt loss for the year;

"taxable surplus" of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation is, at any particular time, the amount determined by the formula

A – B

in respect of the period beginning with the time that is the latest of

(a) the first day of the taxation year of the affiliate in which it last became a foreign affiliate of the corporation,

(b) where the corporation is an acquiring corporation referred to in subsection 5905(5) and the subject affiliate is a particular affiliate referred to in that subsection or another foreign affiliate in which such a particular affiliate had an equity percentage at the time referred to in that subsection, the last time at which that subsection was applicable in respect of the subject affiliate, and

(c) where the subject affiliate is a foreign affiliate referred to in subsection 5905(1), (2), (8) or (9) or paragraph 5905(3)(b), the last time at which any of those subsections or that paragraph was applicable in respect of the subject affiliate

and ending with the particular time, where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening taxable surplus of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9) at the time established in paragraph (a), (b) or (c),

(ii) the taxable earnings of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that was prescribed by paragraph 5900(1)(b) to have been paid out of the payer affiliate's taxable surplus in respect of the corporation,

(iv) an amount added to the taxable surplus of the subject affiliate or deducted from its taxable deficit in the period and before the particular time under any provision of subsection (1.1) or (1.2),

(v) an amount added, in the period and before the particular time, to the subject affiliate's taxable surplus under paragraph (7.1)(e), and

B is the total of those of the following amounts that apply in respect of the period:

(i) the opening taxable deficit of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the taxable loss of the subject affiliate for any of its taxation years ending in the period,

(iii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of that portion of a dividend referred to in subparagraph (ii) of the description of A,

(iv) the portion of any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(b) to have been paid out of the subject affiliate's taxable surplus in respect of the corporation,

(v) each amount that is determined under paragraph 5902(4)(b) or subparagraph 5905(2)(a)(ii), (6)(a)(ii) or (8)(a)(ii) in the period and before the particular time, or

(vi) an amount, in the period and before the particular time, deducted from the taxable surplus of the subject affiliate or added to its taxable deficit under any provision of subsection (1.1) or (1.2);

Related Provisions: ITA 257 — Negative amounts in formulas.

"underlying foreign tax" of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation is, at any particular time, the amount, determined by the formula

A – B

in respect of the period beginning with the time that is the latest of

(a) the first day of the taxation year of the subject affiliate in which it last became a foreign affiliate of the corporation,

(b) where the corporation is an acquiring corporation referred to in subsection 5905(5) and the subject affiliate is a particular affiliate referred to in that subsection or another foreign affiliate in which such a particular affiliate had an equity percentage at the time referred to in that subsection, the last time at which that subsection was applicable in respect of the subject affiliate, and

(c) where the subject affiliate is a foreign affiliate referred to in subsection 5905(1), (2), (8) or (9) or paragraph 5905(3)(b), the last time at which any of those subsections or that paragraph was applicable in respect of the subject affiliate

and ending with the particular time, where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening underlying foreign tax of the subject affiliate as determined under subsection 5905(1), (2), (3), (5), (8) or (9), at the time established in paragraph (a), (b) or (c),

(ii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of the taxable earnings of the affiliate for a taxation year ending in the period,

(iii) the portion of any income or profits tax referred to in subparagraph (iii) of the description of B in the definition "taxable surplus" in this subsection paid by the subject affiliate in respect of a dividend received from any other foreign affiliate of the corporation,

(iv) each amount that was prescribed by paragraph 5900(1)(d) to have been the foreign tax applicable to the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that was prescribed by paragraph 5900(1)(b) to have been paid out of the payer affiliate's taxable surplus in respect of the corporation, or

(v) the amount by which the subject affiliate's underlying foreign tax is required to be increased by any provision of subsection (1.1) or (1.2),

B is the total of those of the following amounts that apply in respect of the period:

(i) the portion of any income or profits tax refunded by the government of a country to the affiliate that can reasonably be regarded as having been refunded in respect of the taxable loss of the subject affiliate for a taxation year ending in the period,

(ii) the underlying foreign tax applicable to any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(b) to have been paid out of the subject affiliate's taxable surplus in respect of the corporation before that time,

(iii) each amount that is required by paragraph 5902(4)(c) or subparagraph 5905(2)(a)(iii), (6)(a)(iii) or (8)(a)(iii) to be deducted in the period and before the particular time in computing the subject affiliate's underlying foreign tax, or

(iv) the amount by which the subject affiliate's underlying foreign tax is required to be decreased in the period and before the particular time by any provision of subsection (1.1) or (1.2);

Related Provisions: ITA 257 — Negative amounts in formulas.

"underlying foreign tax applicable" in respect of a corporation to a whole dividend paid at any time on the shares of any class of the capital stock of a foreign affiliate of the corporation by the affiliate is the total of

(a) the proportion of the underlying foreign tax of the affiliate at that time in respect of the corporation that

(i) the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation

is of

(ii) the affiliate's taxable surplus at that time in respect of the corporation, and

(b) except with respect to any whole dividend referred to in section 5902, in any case where throughout the taxation year of the affiliate in which the whole dividend was paid

(i) there is no more than one class of shares of the capital stock of the affiliate issued and outstanding,

(ii) the surplus entitlement percentage of the corporation in respect of the affiliate is 100 per cent, or

(iii) there is not more than one shareholder who owns shares of the capital stock of the affiliate,

any additional amount in respect of the whole dividend that the corporation claims in its return of income under Part I of the Act in respect of the whole dividend, not exceeding the amount that is the lesser of

(iv) the amount by which the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation exceeds the amount determined under paragraph (a), and

(v) the amount by which the underlying foreign tax of the affiliate in respect of the corporation immediately before the whole dividend was paid exceeds the amount determined under paragraph (a);

"whole dividend" paid at any time on the shares of a class of the capital stock of a foreign affiliate of a taxpayer resident in Canada is the total of all amounts each of which is the dividend paid at that time on a share of that class except that

(a) where a dividend is paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of section 5900, the whole dividend referred to in section 5901 paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is the dividend paid at that time on a share of the capital stock of the affiliate,

(b) where a whole dividend is deemed by paragraph 5902(1)(c) to have been paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of that paragraph, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate, and

(c) where more than one whole dividend is deemed by paragraph 5900(2)(b) to have been paid at the same time on shares of a class of the capital stock of an affiliate, for the purposes only of paragraph 5900(1)(d) and the definitions "underlying foreign tax" and "underlying foreign tax applicable" in this subsection, the whole dividend deemed to have been paid at that time

on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate and all of that whole dividend shall be deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation.

History: Subsec. 5907(1) definitions amended and rearranged by P.C. 1997-1670, subsec. 8(1), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the definitions apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate; and

(b) in applying the definitions for taxation years of a foreign affiliate of a taxpayer that begin before 1996 and in respect of which subsecs. 5907(11)–(11.2) (as amended) do not apply, the references to "designated treaty country" shall be read as "country listed in subsection (11)".

Cl. 5907(1)(a)(i)(C) amended by P.C. 1996-571, s. 2, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to taxation years that end after February 21, 1994.

Subpara. 5907(1)(d)(vi.1) substituted, applicable in respect of 1976 *et seq.*; subparas. (1)(d)(vii.2) and (1)(k)(vi.2) added and (1)(d)(xiv) and (1)(k)(xiii) substituted, applicable for purposes of making computations under Part LIX after March 15, 1989; subparas. (1)(d)(xii.1) and (1)(k)(xi.1) substituted, effective from November 13, 1981; that portion of subpara. (1)(m)(ii) preceding cl. (A) substituted, applicable (by subsec. 5(6) as amended by P.C. 1994-1129, July 4, 1994, *Canada Gazette*, Part II, July 27, 1994, applicable after March 15, 1989) in respect of whole dividends paid after 1987; by P.C. 1989-321, subsecs. 3(1) to (8), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989.

Cl. 5907(1)(b)(i)(B) substituted, cl. 5907(1)(b)(i)(C) added, applicable in respect of capital gains from dispositions of property made after November 12, 1981; cl. 5907(1)(c)(i)(B) substituted, cl. 5907(1)(c)(i)(C) added, applicable in respect of capital losses from dispositions of property made after November 12, 1981; subparas. 5907(1)(d)(ii), (iii), (iv), (vi), (viii), para. 5907(1)(g), all that portion of para. 5907(1)(d) following subpara. (xi) substituted and subparas. 5907(1)(d)(vii.1), (f)(iii), (f)(iv) added, applicable commencing November 13, 1981; cls. 5907(1)(i)(ii)(D), (E), and (j)(ii)(C), (D) added, applicable in respect of dispositions made after November 12, 1981; cl. 5907(1)(j)(ii)(B), subparas. 5907(1)(k)(ii), (iii), (iv), (vi), (vii), 5907(1)(l)(ii), (iii), (iv), (vii), (x), all that portion of para. 5907(1)(k) following subpara. (x), all that portion of subpara. 5907(1)(m)(ii) preceding cl. (A) substituted and subparas. 5907(1)(i)(vi.1), 5907(1)(l)(vii.1), (xi) added applicable commencing November 13, 1981 by P.C. 1985-467, subsecs. 4(1)–(22), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

Subparas. 5907(1)(d)(vi.1) added, 5907(1)(d)(x), (xiv) substituted by P.C. 1980-503, subsecs. 5(1)–(3), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(1.01) For the purpose of section 113 of the Act, "exempt surplus" and "taxable surplus" have the meanings assigned by subsection (1).

History: Subsec. 5907(1.01) added by P.C. 1997-1670, subsec. 8(1), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(1.02) In paragraph (d) of the definition "exempt earnings" in subsection (1), the determination of whether a corporation

(a) has a "qualifying interest" in respect of a foreign affiliate throughout a taxation year, or

(b) is related to another corporation throughout a taxation year

shall be made as it would for the purpose of paragraph 95(2)(a) of the Act.

History: Subsec. 5907(1.02) added by P.C. 1997-1670, subsec. 8(2), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(1.1) For the purposes of this Part, where, pursuant to the income tax law of a country other than Canada, a group of two or more foreign affiliates (in this subsection referred to as the "consolidated group") of a corporation resident in Canada that are resident in that country determine their liabilities for income or profits tax payable to the government of that country for a taxation year on a consolidated or combined basis and one of the affiliates (in this subsection referred to as the "primary affiliate") is responsible for paying, or claiming a refund of, such tax on behalf of itself and the other members of the consolidated group (hereinafter referred to as the "secondary affiliates"), the following rules apply:

(a) in respect of the primary affiliate,

(i) any such income or profits tax paid by the primary affiliate for the year shall be deemed not to have been paid and any refund to the primary affiliate of income or profits tax otherwise payable by it for the year shall be deemed not to have been made,

(ii) any such income or profits tax that would have been payable by the primary affiliate for the year if the primary affiliate had no other taxation year and had not been a member of the consolidated group shall be deemed to have been paid for the year,

(iii) to the extent that

(A) the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group is reduced by virtue of any loss of the primary affiliate for the year or any previous taxation year, or

(B) the primary affiliate receives, in respect of a loss of the primary affiliate for the year or a subsequent taxation year, a refund of income or

profits tax otherwise payable for the year by the primary affiliate on behalf of the consolidated group,

the amount of such reduction or refund, as the case may be, shall be deemed to have been received by the primary affiliate as a refund for the year of the loss of income or profits tax in respect of the loss,

(iv) any such income or profits tax that would have been payable by a secondary affiliate for the year if the secondary affiliate had no other taxation year and had not been a member of the consolidated group shall at the end of the year,

(A) to the extent that such income or profits tax would otherwise have reduced the net earnings included in the exempt earnings of the secondary affiliate, be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(B) to the extent that such income or profits tax would otherwise have reduced the net earnings included in the taxable earnings of the secondary affiliate,

(I) be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate, and

(II) be added to the underlying foreign tax of the primary affiliate,

(v) to the extent that

(A) the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group is reduced by virtue of a loss of a secondary affiliate for the year or a previous taxation year, or

(B) the primary affiliate receives, in respect of a loss of a secondary affiliate for the year or a subsequent taxation year, a refund of income or profits tax otherwise payable for the year by the primary affiliate on behalf of the consolidated group,

the amount of such reduction or refund, as the case may be, shall at the end of the year of the loss,

(C) where such loss reduces the exempt surplus or increases the exempt deficit, as the case may be, of the secondary affiliate, be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the primary affiliate, and

(D) where such loss reduces the taxable surplus or increases the taxable deficit, as the case may be, of the secondary affiliate,

(I) be added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the primary affiliate, and

(II) be deducted from the underlying foreign tax of the primary affiliate; and

(b) where by virtue of the primary affiliate being responsible for paying, or claiming a refund of, income or profits tax for the year on behalf of the consolidated group,

(i) an amount is paid to the primary affiliate by a secondary affiliate in respect of the income or profits tax that would have been payable by the secondary affiliate for the year had it not been a member of the group,

(A) in respect of the secondary affiliate, the amount so paid shall be deemed to be a payment of such income or profits tax for the year, and

(B) in respect of the primary affiliate,

(I) such portion of the amount so paid as may reasonably be regarded as relating to an amount included in the exempt surplus or deducted from the exempt deficit, as the case may be, of the secondary affiliate shall at the end of the year be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the primary affiliate, and

(II) such portion of the amount so paid as may reasonably be regarded as relating to an amount included in the taxable surplus or deducted from the taxable deficit, as the case may be, of the secondary affiliate shall at the end of the year be added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the primary affiliate and be deducted from the underlying foreign tax of the primary affiliate, or

(ii) an amount is paid by the primary affiliate to a secondary affiliate in respect of a reduction or refund by virtue of a loss of the secondary affiliate for a taxation year of the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group,

(A) in respect of the primary affiliate,

(I) such portion of the amount so paid as may reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as the case may be, of the secondary affiliate shall at the end of the year of the loss be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(II) such portion of the amount so paid as may reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the secondary affiliate shall at the end of the year of the loss be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate and be added to the underlying foreign tax of the primary affiliate, and

(B) in respect of the secondary affiliate, the amount shall be deemed to be a refund to the secondary affiliate for the year of the loss of income or profits tax in respect of the loss,

and, for the purposes of this paragraph, any amount paid by a particular secondary affiliate to another secondary affiliate in respect of any income or profits tax that would have been payable by the particular secondary affiliate for the year had it not been a member of the consolidated group shall be deemed to have been paid in respect of such tax by the particular secondary affiliate to the primary affiliate and to have been paid

in respect of such tax by the primary affiliate to the other secondary affiliate.

History: Subsec. 5907(1.1) added by P.C. 1985-467, subsec. 4(23), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to the 1982 and subsequent taxation years of foreign affiliates.

(1.2) For the purposes of this Part, where, pursuant to the income tax law of a country other than Canada, a corporation resident in that country that is a foreign affiliate of a corporation resident in Canada (in this subsection referred to as the "taxpaying affiliate") deducts, in computing its income or profits tax payable for a taxation year to a government of that country, a loss of another corporation resident in that country that is a foreign affiliate of the corporation resident in Canada (in this subsection referred to as the "loss affiliate"), the following rules apply:

(a) any such income or profits tax paid by the taxpaying affiliate for the year shall be deemed not to have been paid;

(b) any such income or profits tax that would have been payable by the taxpaying affiliate for the year if the taxpaying affiliate had not been allowed to deduct such loss shall be deemed to have been paid for the year;

(c) to the extent that the income or profits tax that would otherwise have been payable by the taxpaying affiliate for the year is reduced by virtue of such loss, the amount of such reduction shall at the end of the year,

(i) where such loss reduces the exempt surplus or increases the exempt deficit, as the case may be, of the loss affiliate, be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the taxpaying affiliate, and

(ii) where such loss reduces the taxable surplus or increases the taxable deficit, as the case may be, of the loss affiliate,

(A) be added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the taxpaying affiliate, and

(B) be deducted from the underlying foreign tax of the taxpaying affiliate; and

(d) where an amount is paid by the taxpaying affiliate to the loss affiliate in respect of the reduction, by virtue of such loss, of the income or profits tax that would otherwise have been payable by the taxpaying affiliate for the year,

(i) in respect of the taxpaying affiliate,

(A) such portion of the amount as may reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as the case may be, of the loss affiliate shall at the end of the year be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the taxpaying affiliate, and

(B) such portion of the amount as may reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the loss affiliate shall at the end of the year be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the taxpaying affiliate and be added to the underlying foreign tax of the taxpaying affiliate, and

(ii) in respect of the loss affiliate, the amount shall be deemed to be a refund to the loss affiliate of income or profits tax in respect of the loss for the taxation year of the loss.

History: Subsec. 5907(1.2) added by P.C. 1985-467, subsec. 4(23), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to the 1982 and subsequent taxation years of foreign affiliates.

(1.3) For the purposes of paragraph (b) of the definition "foreign accrual tax" in subsection 95(1) of the Act,

Proposed Amendment — Reg. 5907(1.3) opening words

(1.3) For the purpose of paragraph (b) of the definition "foreign accrual tax" in subsection 95(1) of the Act and subject to subsection (1.4),

Application: The November 30, 1999 draft regulations (FAPI), subsec. 2(1), will amend the opening words of subsec. 5907(1.3) to read as above, applicable to taxation years that begin after November 30, 1999.

Technical Notes: Subsection 91(4) of the Act provides for a deduction in the computation of a taxpayer's income in respect of foreign accrual tax that is attributable to an amount of foreign accrual property income included in the computation of the taxpayer's income. Subsection 95(1) of the Act defines foreign accrual tax to include amounts prescribed to be foreign accrual tax.

In circumstances where the loss of another corporation in a particular group of foreign affiliates of a taxpayer is relevant in the computation of the tax liability of the group to a foreign government, paragraphs 5907(1.3)(a) and (b) of the Regulations provides that an amount paid by the particular corporation to the other corporation in the group in respect of the use of a loss of any other corporation in the computation of the group's tax liability to the foreign government is foreign accrual tax. These provisions apply where the loss of the other corporation is an active business loss or a capital loss resulting from the disposition of excluded property as well as where the loss is a foreign accrual loss as defined in subsection 5903(3) of the Regulations. Subsection 5907(1.3), which applies to taxation years that begin after November 30, 1999, is amended as a consequence of the introduction of subsection 5907(1.4) of the Regulations.

(a) where, pursuant to the income tax law of the country in which a particular foreign affiliate is resident, the particular affiliate and one or more other corporations, each of which is resident in that country, determine their liabilities for income or profits tax payable to the government of that country for a taxation year on a consolidated or combined basis, any amount paid by the particular affiliate to any of the other corporations to the extent that it may reasonably be regarded as being in respect of income or profits tax that would otherwise have been payable by the particular affiliate in respect of a particular amount included in computing the taxpayer's income by virtue of subsection 91(1) of the Act for a taxation year in respect of the particular affiliate, had the tax liability of the particular affiliate and the other corporations not been determined on a consolidated or combined basis, is hereby prescribed to be foreign accrual tax applicable to the particular amount; and

(b) where, pursuant to the income tax law of the country in which a particular foreign affiliate of a taxpayer is resident, the particular affiliate, in computing its income or profits subject to tax in that country for a taxation year, deducts an amount in respect of a loss of another corporation resident in that country, any amount paid by the particular affiliate to the other corporation to the extent that it may reasonably be regarded as being in respect of income or profits tax that would otherwise have been payable by the particular

affiliate in respect of a particular amount included in computing the taxpayer's income by virtue of subsection 91(1) of the Act for a taxation year in respect of the particular affiliate, had the tax liability of the particular affiliate been determined without deducting the loss of the other corporation, is hereby prescribed to be foreign accrual tax applicable to the particular amount.

History: Subsec. 5907(1.3) amended by P.C. 1997-1670, subsec. 8(3), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. as amended applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Subsec. 5907(1.3) added by P.C. 1985-467, subsec. 4(23), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to the 1982 and subsequent taxation years of foreign affiliates.

Proposed Addition — Reg. 5907(1.4)

(1.4) Any amount paid by a particular affiliate described in paragraph (1.3)(a) or (b) does not include any amount paid by the particular affiliate to any other corporation where the amount paid can reasonably be considered to be in respect of a loss of any other corporation and such loss would not be a foreign accrual property loss of the other corporation (as defined in subsection 5903(3)) without taking into account the particular payment.

Application: The November 30, 1999 draft regulations (FAPI), subsec. 2(2), will add subsec. 5907(1.4), applicable to taxation years that begin after November 30, 1999.

Technical Notes: New subsection 5907(1.4) ensures that in such circumstances the amount paid by the particular affiliate to the other corporation will only be foreign accrual tax to the extent that the amount paid is in respect of a foreign accrual property loss of any other corporation. This is consistent with the fact that, under section 5903 of the Regulations, active business losses and capital losses resulting from the disposition of excluded property of a foreign affiliate of a taxpayer are not included in the computation of a deductible loss which may be used to reduce foreign accrual property income of that affiliate in a particular taxation year.

(2) In computing the earnings of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business carried on by it in a country, there shall be added to the amount thereof determined under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1) (in this subsection referred to as the "earnings amount") such portion of the following amounts as was deducted or was not included, as the case may be, in computing the earnings amount,

(a) any income or profits tax paid to the government of a country by the affiliate so deducted,

(b) if established by the taxpayer, the amount by which any amount so deducted in respect of an expenditure made by the affiliate exceeds the amount, if any, by which

(i) the amount of the expenditure

exceeds

(ii) the aggregate of all other deductions in respect of that expenditure made by the affiliate in computing the earnings amounts for preceding taxation years,

(c) any loss of the affiliate referred to in the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act so deducted,

(d) any capital loss of the affiliate in respect of the disposition of capital property so deducted (for greater certainty, capital property of the affiliate for the purposes of this paragraph includes all the property of the affiliate other than property referred to in subparagraph 39(1)(b)(i) or (ii) of the Act on the assumption for this purpose that the affiliate is a corporation resident in Canada),

(e) any loss of the affiliate for a preceding or a subsequent taxation year so deducted,

(f) any revenue, income or profit (other than an amount referred to in paragraph (f.1), (h) or (i)) of the affiliate derived in the year from such business carried on in that country to the extent that such revenue, income or profit

(i) is not otherwise required to be included in computing the earnings amount of the affiliate for any taxation year by the income tax law that is relevant in computing that amount, and

(ii) does not arise with respect to a disposition (other than a disposition to which subsection (9) applies) by the affiliate of property to another foreign affiliate of the taxpayer or to a person with whom the taxpayer does not deal at arm's length, to which a tax deferral, rollover or similar tax postponement provision of the income tax law that is relevant in computing the earnings amount of the affiliate applied, and

(f.1) any assistance from a government, municipality or other public authority (other than any such assistance that reduced the amount of an expenditure for purposes of computing the earnings amount for any taxation year) that the affiliate received or became entitled to receive in the year in connection with such business carried on in that country that is not otherwise required to be included in computing the earnings amount for the year or for any other taxation year,

and there shall be deducted such portion of the following amounts as were included or were not deducted, as the case may be, in computing the earnings amount,

(g) any income or profits tax refunded by the government of a country to the affiliate so included;

(h) any capital gain of the affiliate in respect of the disposition of capital property so included (for greater certainty, capital property of the affiliate for the purposes of this paragraph includes all the property of the affiliate other than property referred to in any of subparagraphs 39(1)(a)(i) to (iv) of the Act on the assumption for this purpose that the affiliate is a corporation resident in Canada);

(i) any amount that is included in the foreign accrual property income of the affiliate so included;

(j) any loss, outlay or expense made or incurred in the year by the affiliate for the purpose of gaining or producing such earnings amount to the extent that

(i) such loss, outlay or expense is not otherwise permitted to be deducted in computing the earnings amount of the affiliate for any taxation year by the income tax law that is relevant in computing that amount, or

(ii) such outlay or expense can reasonably be regarded as applicable to any revenue added to the earnings amount of the affiliate under paragraph (f),

where such loss, outlay or expense

(iii) does not arise with respect to a disposition (other than a disposition to which subsection (9) applies) by the affiliate of property to another foreign affiliate of the taxpayer or to a person with whom the taxpayer does not deal at arm's length, to which a loss deferral or similar loss postponement provision of the income tax law that is relevant in computing the earnings amount of the affiliate applied, and

(iv) is not

(A) a loss referred to in paragraph (c) or (d),

(B) a capital expenditure other than interest, or

(C) income or profits tax paid to the government of a country;

(k) any outlay made in the year in repayment of an amount referred to in paragraph (f.1); and

(l) where any property of the affiliate acquired from another foreign affiliate of the taxpayer or from any foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length has been disposed of, such amount in respect of that property as may reasonably be considered as having been included by virtue of paragraph (f) in computing the earnings amount of any foreign affiliate of the taxpayer or of a person resident in Canada with whom the taxpayer does not deal at arm's length.

History: Subsec. 5907(2) amended by P.C. 1997-1670, subsecs. 8(4), (5), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Para. 5907(2)(h) substituted by P.C. 1989-321, subsec. 3(9), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable in respect of taxation years commencing after 1984.

Paras. 5907(2)(f) and (j) substituted, para. 5907(2)(l) added by P.C. 1985-467, subsecs. 4(24)–(26), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1976 *et seq.*

Paras. 5907(2)(f.1), (k) added, 5907(2)(f), (j) substituted by P.C. 1980-503, subsecs. 5(4), (5), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(2.1) In computing the earnings of a foreign affiliate of a corporation resident in Canada for a taxation year of the affiliate from an active business carried on by it in Canada or in a designated treaty country, where the affiliate is resident in a designated treaty country and the corporation, together with all other corporations resident in Canada with which the corporation does not deal at arm's length and in respect of which the affiliate is a foreign affiliate, have so elected in respect of the business for the taxation year or any preceding taxation year of the affiliate, the following rules apply:

(a) there shall be added to the amount determined under subparagraph (a)(i) of the definition "earnings" in subsection (1) after adjustment in accordance with the provisions of subsection (2) (in this subsection and in subsection (2.2) referred to as the "adjusted earnings amount") the total of all amounts each of which is the amount, if any, by which

(i) the amount that can reasonably be regarded as having been deducted in respect of the cost of a capital property or foreign resource property of the affiliate in computing the adjusted earnings amount

exceeds

(ii) the amount that may reasonably be regarded as having been deducted in respect of the cost of that capital property or foreign resource property in computing income or profit of the affiliate for the year from that business in its financial statements prepared in accordance with the laws of the country in which the affiliate is resident;

(b) there shall be deducted from the adjusted earnings amount the aggregate of all amounts each of which is the amount, if any, by which

(i) the amount determined under subparagraph (a)(ii) in respect of that capital property or foreign resource property

exceeds

(ii) the amount determined under subparagraph (a)(i) in respect of that capital property or foreign resource property;

(c) where any capital property or foreign resource property of the affiliate has been disposed of in the taxation year,

(i) there shall be added to the adjusted earnings amount the aggregate of the amounts deducted pursuant to paragraphs (b) and (2.2)(b) for preceding taxation years of the affiliate in respect of that capital property or foreign resource property, and

(ii) there shall be deducted from the adjusted earnings amount the aggregate of the amounts added pursuant to paragraphs (a) and (2.2)(a) for the preceding taxation years of the affiliate in respect of that capital property or foreign resource property; and

(d) for the purposes of paragraph (c), where the affiliate has merged with one or more corporations to form a new corporation, any capital property or foreign resource property of the affiliate that becomes a property of the new corporation shall be deemed to have been disposed of by the affiliate in its last taxation year before the merger.

Related Provisions: ITA 220(3.2), Reg. 600(d) — Late filing of election or revocation.

History: The opening words of subsec. 5907(2.1) amended by P.C. 1997-1670, subsec. 8(6), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a corporation that begin after 1995, except that, where the corporation notifies the

Minister of National Revenue in its return of income for its first taxation year that begins after 1994 or for a taxation year in which a dividend was paid by the foreign affiliate of its election to have subsections 5907(11) (as amended), (11.1) and (11.2) apply to a taxation year of the foreign affiliate of the corporation that begins before 1996,

(a) subsection 8(6) of the amending Regulations applies to that taxation year and each subsequent taxation year of the foreign affiliate of the corporation; and

(b) any reference in s. 5907 to "country listed in subsection (11)" shall be read as "designated treaty country" and any reference to "country not listed in subsection (11)" shall be read as "country that is not a designated treaty country" for that taxation year and those subsequent taxation years of the foreign affiliate of the corporation.

The portion of para. 5907(2.1)(a) before subpara. (ii), paras. (c), (d), amended by P.C. 1997-1670, subsecs. 8(7) to (9), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) those provisions apply to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Paras. 5907(2.1)(a) to (d) substituted by P.C. 1985-467, subsec. 4(27), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of elections made after 1983.

Subsec. 5907(2.1) added by P.C. 1978-3599, s. 2, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(2.2) Where the taxation year of a foreign affiliate of a particular corporation resident in Canada for which the particular corporation has made an election under subsection (2.1) in respect of an active business carried on by the affiliate is not the first taxation year of the affiliate in which it carried on the business and in which it was a foreign affiliate of the particular corporation or of another corporation resident in Canada with which the particular corporation was not dealing at arm's length at any time (hereinafter referred to as the "non-arm's length corporation"), in computing the earnings of the affiliate from the business for the taxation year for which the election is made, the following rules, in addition to those set out in subsection (2.1), apply:

(a) there shall be added to the adjusted earnings amount the aggregate of all amounts each of which is an amount that would have been determined under paragraph (2.1)(a) or subparagraph (2.1)(c)(i)

(i) for any preceding taxation year of the affiliate in which it was a foreign affiliate of the particular corporation if the particular corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the particular corporation and carried on the business, and

(ii) for any preceding taxation year of the affiliate (other than a taxation year referred to in subparagraph (i)) in which it was a foreign affiliate of the non-arm's length corporation if the non-arm's length corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the non-arm's length corporation and carried on the business; and

(b) there shall be deducted from the adjusted earnings amount the aggregate of all amounts each of which is an amount that would have been determined under paragraph (2.1)(b) or subparagraph (2.1)(c)(ii)

(i) for any preceding taxation year of the affiliate in which it was a foreign affiliate of the particular corporation if the particular corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the particular corporation and carried on the business, and

(ii) for any preceding taxation year of the affiliate (other than a taxation year referred to in subparagraph (i)) in which it was a foreign affiliate of the non-arm's length corporation if the non-arm's length corporation had made an election under subsection (2.1) for the first taxation year of the affiliate in which it was a foreign affiliate of the non-arm's length corporation and carried on the business.

History: Subsec. 5907(2.2) substituted by P.C. 1985-467, subsec. 4(28), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of elections made after November 4, 1982.

Subsec. 5907(2.2) added by P.C. 1978-3599, s. 2, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

(2.3) For the purposes of this subsection and subsections (2.1) and (2.2), where an election under subsection (2.1) has been made by a corporation resident in Canada (in this subsection and in subsection (2.4) referred to as the "electing corporation") in respect of an active business of a foreign affiliate of the electing corporation and the affiliate subsequently becomes a foreign affiliate of another corporation resident in Canada (in this subsection and in subsection (2.4) referred to as the "subsequent corporation") that does not deal at arm's length with the electing corporation, in computing the earnings of the affiliate from such business in respect of the subsequent corporation for any taxation year of the affiliate ending after the affiliate so became a foreign affiliate of the subsequent corporation, the subsequent corporation shall be deemed to have made an election under subsection (2.1) in respect of the business of the affiliate for the first such taxation year and for the purposes of paragraph (2.1)(d), the earnings of the affiliate for all of the preceding taxation years shall be deemed to have been adjusted in accordance with subsections (2.1) and (2.2) in the same manner as if the subsequent corporation had been the electing corporation.

History: Subsec. 5907(2.3) amended by P.C. 1997-1670, subsec. 8(10), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the amendment applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Subsecs. 5907(2.3)–(2.6) added by P.C. 1978-3599, s. 2, November 30, 1978, *Canada Gazette*, Part II, December 13, 1978, effective for 1978 *et seq.*

(2.4) For the purposes of subsection (2.3)

(a) a corporation formed as a result of a merger, to which section 87 of the Act applies, of the electing corporation and one or more other corporations, or

(b) a corporation that has acquired shares of the capital stock of a foreign affiliate, in respect of which an election under subsection (2.1) has been made, from the electing corporation in a transaction in respect of which an election under section 85 of the Act was made

shall be deemed to be a subsequent corporation that does not deal at arm's length with the electing corporation.

(2.5) [Repealed]

History: Subsec. 5907(2.5) repealed by P.C. 1997-1670, subsec. 8(11), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the repeal applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(2.6) A corporation resident in Canada, and all other corporations resident in Canada with which the corporation does not deal at arm's length, shall each be considered to have elected under subsection (2.1) in respect of an active business carried on by a non-resident corporation that is a foreign affiliate of each such corporation for a taxation year if there is filed with the Minister on or before the day that is the later of

(a) June 30, 1986, and

(b) the earliest of the days on or before which any one of the said corporations is required to file a return of income pursuant to section 150 of the Act for its taxation year following the taxation year in which the taxation year of the affiliate in respect of which the election is made ends,

the following information:

(c) a description of the active business sufficient to identify the business, and

(d) a statement on behalf of each such corporation, signed by an authorized official of the corporation on behalf of which the statement is made, that the corporation is electing under subsection (2.1) in respect of the business.

History: Subsec. 5907(2.6) substituted by P.C. 1989-321, subsec. 3(10), applicable in respect of elections made under subsec. 5907(2.1) for 1982 *et seq.*

(2.7) Notwithstanding any other provision of this Part, where

(a) an amount is included in computing the income or loss from an active business of a particular foreign affiliate of a taxpayer for a particular taxation year under subparagraph 95(2)(a)(i) or (ii) of the Act, and

(b) the amount included is in respect of an amount paid or payable (other than an amount paid or payable that is described in clause 95(2)(a)(ii)(D) of the Act) by another non-resident corporation described in subparagraph 95(2)(a)(i) or (ii) of the Act or by a partnership of which such a corporation is a member,

the amount (in respect of which an amount was included in the income or loss from an active business of the particular affiliate for the paticular year) paid or payable by the non-resident corporation or the partnership shall, except where it has been deducted under paragraph (2)(j) in computing the non-resident corporation's earnings or loss from an active business, be deducted in computing the earnings or loss of the non-resident corporation or the partnership, as the case may be, from the active business for its earliest taxation year in which the amount was paid or paybable and shall not be deducted in computing its earnings or loss from the active business for any other taxation year.

History: Subsec. 5907(2.7) added by P.C. 1997-1670, subsec. 8(12), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(2.8) Notwithstanding any other provision of this Part, where

(a) an amount is included in computing the income from an active business of a particular foreign affiliate of a taxpayer or a person related to the taxpayer for a particular taxation year under clause 95(2)(a)(ii)(D) of the Act, and

(b) the amount included is in respect of an amount of interest paid or payable by another non-resident corporation (in this subsection referred to as the "second affiliate") to which the particular affiliate and the taxpayer are related

the following rules apply:

(c) that amount of interest shall be deducted in computing the second affiliate's income or loss, from an active business carried on by it in a country in which it is resident and subject to income taxation, for its earliest taxation year in which the amount was paid or payable,

(d) the second affiliate is deemed to have carried on an active business in a country in which it was resident and subject to income taxation for each taxation year referred to in paragraph (c) in which such an active business was not otherwise carried on by it, and

(e) in computing the second affiliate's income for a taxation year from any source, no amount shall be deducted in respect of an amount paid or payable by it that is referred to in paragraph (c) except as is required under that paragraph.

History: Subsec. 5907(2.8) added by P.C. 1997-1670, subsec. 8(12), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxa-

tion year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(2.9) In computing the earnings from an active business of a foreign affiliate of a corporation resident in Canada for the affiliate's taxation year immediately before the particular taxation year of the affiliate referred to in paragraph 95(2)(k) of the Act,

(a) there shall be added to the amount determined under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1) after adjustment in accordance with subsections (2), (2.1) and (2.2) the total of

(i) the amount, if any, by which the total determined in respect of the affiliate in clause (b)(i)(B) for the year exceeds the total determined in respect of the affiliate in clause (b)(i)(A) for the year,

(ii) where, at the end of the year, the affiliate was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have disposed of property owned by it that was used or held by it in the course of a carrying on the active business in the year, the amount that is the total of all amounts each of which is the amount, if any, by which

(A) the lesser of the fair market value and the cost to the affiliate at the end of the year of a capital property (referred to in this subparagraph and subparagraph (b)(ii) as a particular "depreciable asset") owned by it that

(I) was used or held by it in the course of carrying on the active business in the year,

(II) was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have been disposed of at the end of the year, and

(III) was property in respect of the cost of which amounts were, at any time, deductible in computing the earnings from the active business under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1)

exceeds

(B) the amount, if any, by which the cost to the affiliate of the particular depreciable asset exceeds the total of all amounts each of which is an amount that can reasonably be regarded as having been deducted in respect of the cost of the particular depreciable asset in computing the earnings (as would be defined in subsection (1) if that definition were read as if the reference in that definition to this subsection did not exist) of the affiliate from the active business in the year or in any preceding taxation year of the affiliate in which it was a foreign affiliate of the corporation or of another corporation resident in Canada which the corporation was not dealing with at arm's length at any time, and

(iii) where, at the end of the year, the affiliate was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have disposed of property (other than capital property) owned by it that was used or held by it in the course of carrying on the active business in the year, the amount that is the total of all amounts each of which is an amount, if any, by which the fair market value of such a property exceeds the cost to the affiliate of the property at the time that is immediately before the end of the year; and

(b) there shall be deducted from the amount determined under subparagraph (a)(i) or (ii) of the definition "earnings" in subsection (1) after adjustment in accordance with subsections (2), (2.1) and (2.2) the total of

(i) the amount, if any, by which

(A) the total of all amounts each of which is a maximum amount deemed because of paragraphs 95(2)(k) and 138(11.91)(d) of the Act to have been claimed under subparagraphs 138(3)(a)(i), (ii) and (iv) and paragraphs 20(1)(l) and (l.1) and 20(7)(c) of the Act (each of which provisions is referred to in this subparagraph as a "reserve provision") in the year

exceeds

(B) the total of all amounts each of which is an amount actually claimed by the affiliate as a reserve in the year that can reasonably be considered to be in respect of amounts in respect of which a reserve could have been claimed under a reserve provision on the assumption that the affiliate could have claimed amounts in respect of the reserve provisions in the year,

(ii) the amount that is the total of all amounts each of which is the amount, if any, by which the amount determined under clause (a)(ii)(B) in respect of a particular depreciable asset described in clause (a)(ii)(A) exceeds the fair market value of the particular depreciable asset at the end of the year, and

(iii) where, at the end of the year, the affiliate was deemed because of paragraphs 95(2)(k) and 138(11.91)(e) of the Act to have disposed of propety (other than capital property) owned by it that was used or held by it in the course of carrying on the active business in the year, the amount that is the total of all amounts each of which is an amount, if any, by which the cost to the affiliate of such a property at the time that is immediately before the end of the year exceeds the fair market value of the property at the end of the year.

History: Subsec. 5907(2.9) added by P.C. 1997-1670, subsec. 8(12), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

(3) For the purposes of this Part, any corporation that was, on January 1, 1972, a foreign affiliate of a taxpayer shall

be deemed to have become a foreign affiliate of the taxpayer on that day.

(4) For the purposes of this Part, "government of a country" includes the government of a state, province or other political subdivision of that country.

(5) For the purposes of this section, each capital gain and each capital loss of a foreign affiliate of a taxpayer from the disposition of property shall be computed in accordance with the rules set out in subsection 95(2) of the Act and, for the purposes of subsection (6), where any such gain or loss is required to be computed in Canadian currency, the amount of such gain or loss shall be converted from Canadian currency into the currency referred to in subsection (6) at the rate of exchange prevailing on the date of disposition of the property.

History: Subsec. 5907(5) substituted by P.C. 1985-467, subsec. 4(29), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable in respect of dispositions made after November 12, 1981.

(5.1) Notwithstanding subsection (5) and except as provided in subsection (9), where, under the income tax law of a country other than Canada that is relevant in computing the earnings of a foreign affiliate of a taxpayer resident in Canada from an active business carried on by it in a country, no gain or loss is recognized in respect of a disposition by the affiliate of a capital property used or held principally for the purpose of gaining or producing income from an active business to a person (in this subsection referred to as the "transferee") that is another foreign affiliate of the taxpayer or that is a foreign affiliate of another person with whom the taxpayer does not deal at arm's length, for the purposes of this section,

(a) the affiliate's proceeds of disposition of the property shall be deemed to be an amount equal to the aggregate of the adjusted cost base to the affiliate of the property immediately before the disposition and any outlays and expenses to the extent they were made or incurred by the affiliate for the purpose of making the disposition;

(b) the cost to the transferee of the property acquired from the affiliate shall be deemed to be an amount equal to the affiliate's proceeds of disposition, as determined under paragraph (a); and

(c) the transferee shall be deemed to have acquired the property on the date that it was acquired by the affiliate.

History: Subsec. 5907(5.1) substituted by P.C. 1985-467, subsec. 4(30), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1976 *et seq.*

Subsec. 5907(5.1) added by P.C. 1980-503, subsec. 5(6), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(6) All amounts referred to in subsections (1) and (2) shall be maintained on a consistent basis from year to year in the currency of the country in which the foreign affiliate of the corporation resident in Canada is itself resident or such currency, other than Canadian currency, as is reasonable in the circumstances.

Information Circulars: 77-9R: Books, records and other requirements for taxpayers having foreign affiliates.

(7) For the purposes of this Part, the amount of any stock dividend paid by a foreign affiliate of a corporation resident in Canada on a share of a class of its capital stock shall be deemed to be nil.

(7.1) Where, at any time in a taxation year of a corporation resident in Canada, a foreign affiliate of the corporation (in this subsection referred to as the "payor affiliate") pays a dividend on the shares of any class of its capital stock to the corporation (in this subsection referred to as the "particular dividend") and as a result of the payment the corporation is entitled to a tax credit from the government of the country in which the payor affiliate is resident,

(a) if the particular dividend was paid on or after the day on which this subsection comes into force, or

(b) if the particular dividend was paid before the day on which this subsection comes into force and in a taxation year commencing after 1978 and the corporation elects in respect of the tax credit in its return of income for the 1985, 1986, 1987, 1988 or 1989 taxation year required to be filed pursuant to subsection 150(1) of the Act,

for the purpose of this Part, the following rules apply:

(c) the tax credit shall be deemed to be a dividend paid at that time by the payor affiliate on the shares of that class of its capital stock to the corporation,

(d) immediately before that time there shall be added to the exempt surplus of the payor affiliate an amount equal to the proportion of the tax credit that

(i) the portion of the particular dividend that would, were the corporation not entitled to the tax credit, be deemed by subsection 5900(1) to have been paid out of the payor affiliate's exempt surplus in respect of the corporation

is of

(ii) the particular dividend,

(e) immediately before that time, there shall be added to the taxable surplus of the payor affiliate an amount equal to the proportion of the tax credit that

(i) the portion of the particular dividend that would, were the corporation not entitled to the tax credit, be deemed by subsection 5900(1) to have been paid out of the payor affiliate's taxable surplus in respect of the corporation

is of

(ii) the particular dividend, and

(f) the foreign tax applicable to the aggregate of

(i) the portion of the particular dividend determined under subparagraph (e)(i), and

(ii) the portion of any amount deemed to be a dividend by virtue of paragraph (c) that is deemed by subsection 5900(1) to have been paid out of the payor affiliate's taxable surplus in respect of the corporation

shall, notwithstanding paragraph 5900(1)(d), be equal to the amount determined under paragraph 5900(1)(d) in respect of the amount referred to in subparagraph (i), less the amount determined under paragraph (e).

History: Subsec. 5907(7.1) added by P.C. 1989-321, subsec. 3(11), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable for purposes of making computations under Part LIX after March 15, 1989 and, where the taxpayer so elects in accordance with para. 5907(7.1)(b), with respect to computations under Part LIX at any time commencing after the time immediately prior to the receipt of the tax credit specified in the election.

(8) For the purposes of computing the various amounts referred to in this section, the first taxation year of a foreign affiliate formed as a result of a merger in the manner

described in subsection 5905(3) shall be deemed to have commenced at the time of the merger, and a taxation year of a predecessor corporation (within the meaning assigned by subsection 5905(3)) that would otherwise have ended after the merger shall be deemed to have ended immediately before the merger.

(9) Where a foreign affiliate of a taxpayer resident in Canada has been dissolved and paragraph 95(2)(e.1) of the Act does not apply, for the purpose of computing the various amounts referred to in this section, the following rules apply:

(a) where, at a particular time in the course of the dissolution, all or substantially all of the property owned by the affiliate immediately before that time was distributed to the shareholders of the affiliate, the taxation year of the affiliate that otherwise would have included the particular time shall be deemed to have ended immediately before the particular time;

(b) except as provided in paragraph 88(3)(a) and subparagraph 95(2)(e)(i) of the Act,

(i) each property of the affiliate that was distributed to the shareholders in the course of the dissolution shall be deemed to have been disposed of immediately before the end of the affiliate's taxation year deemed to have ended by paragraph (a) for proceeds of disposition equal to the fair market value thereof immediately before the particular time, and

(ii) each property of the affiliate that was otherwise disposed of in the course of the dissolution shall be deemed to have been disposed of by the affiliate for proceeds of disposition equal to the fair market value thereof at the time of disposition; and

(c) except as provided in subparagraph 95(2)(e)(i) of the Act, each property of the dissolved affiliate that was disposed of or distributed in the course of the dissolution to another foreign affiliate of the taxpayer resident in Canada shall be deemed to have been acquired by that other foreign affiliate at a cost equal to the proceeds of disposition of that property to the dissolved affiliate, as determined in paragraph (b).

History: Subsec. 5907(9) substituted by P.C. 1985-467, subsec. 4(31), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable to 1976 *et seq.*

Subsec. 5907(9) substituted by P.C. 1980-503, subsec. 5(7), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective in respect of 1976 *et seq.*

(10) Where

(a) the net earnings or net loss for a taxation year of a foreign affiliate of a corporation resident in Canada from an active business carried on in a country other than Canada would otherwise be included in the affiliate's taxable earnings or taxable loss, as the case may be, for the year,

(b) the rate of the income or profits tax to which any earnings of that active business of the affiliate are subjected by the government of that country is, by virtue of a special exemption from or reduction of tax (other than an export incentive) that is provided under a law of such country to promote investments or projects in pursuance of a program of economic development, less than the rate of such tax that would, but for such exemption or reduction, be paid by the affiliate, and

(c) the affiliate qualified for such exemption from or reduction of tax in respect of an investment made by it in that country before January 1, 1976 or in respect of an investment made by it or a project undertaken by it in that country pursuant to an agreement in writing entered into before January 1, 1976,

for the purposes of this Part, such net earnings or net loss shall be included in the affiliate's exempt earnings or exempt loss, as the case may be, for the year and not in the affiliate's taxable earnings or taxable loss, as the case may be, for the year.

(11) For the purposes of this Part, a country is a "designated treaty country" for a taxation year of a foreign affiliate of a corporation where Canada and that country have entered into a comprehensive agreement or convention for the elimination of double taxation on income that has entered into force and has effect for that taxation year of the affiliate but, any territory, possession, department, dependency or area of that country to which that agreement or convention does not apply is not included in that designated treaty country.

(11.1) For the purpose of subsection (11), where a comprehensive agreement or convention between Canada and another country for the elimination of double taxation on income has entered into force, that convention or agreement is deemed to have entered into force and have effect in respect of a taxation year of a foreign affiliate of a corporation any day of which is in the period that begins on the day on which the agreement or convention was signed and that ends on the last day of the last taxation year of the affiliate for which the agreement or convention is effective.

(11.2) For the purposes of this Part, a foreign affiliate of a corporation is, at any time, deemed not to be resident in a country with which Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income unless

(a) the affiliate is, at that time, a resident of that country for the purpose of the agreement or convention;

(b) the affiliate would, at that time, be a resident of that country for the purpose of the agreement or convention if the affiliate were treated, for the purpose of income taxation in that country, as a body corporate;

(c) where the agreement or convention entered into force before 1995, the affiliate would, at that time, be a resident of that country for the purpose of the agreement or convention but for a provision in the agreement or convention that has not been amended after 1994 and that provides that the agreement or convention does not apply to the affiliate; or

(d) the affiliate would, at that time, be a resident of that country, as provided by paragraph (a), (b) or (c) if the agreement or convention had entered into force.

History: Subsec. 5907(11) amended, subsecs. (11.1) and (11.2) added, by P.C. 1997-1670, subsec. 8(13), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a corporation that begin after 1995, except that, where the corporation notifies the Minister of National Revenue in its return of income for its first taxation year that begins after 1994 or for a taxation year in which a dividend was paid by the foreign affiliate of its election to have subsections 5907(11) (as amended), (11.1) and (11.2) apply to a taxation year of the foreign affiliate of the corporation that begins before 1996,

(a) the amendment applies to that taxation year and each subsequent taxation year of the foreign affiliate of the corporation; and

(b) any reference in s. 5907 to "country listed in subsection (11)" shall be read as "designated treaty country" and any reference to "country not listed in subsection (11)" shall be read as "country that is not a designated treaty country" for that taxation year and those subsequent taxation years of the foreign affiliate of the corporation.

Subsec. 5907(11) substituted by P.C. 1989-321, subsec. 3(12), March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable to 1982 *et seq.*, except as otherwise noted in the above list. Those exceptions comprise additions and deletions made by subsecs. 3(13) to (18) of the said P.C. 1989-321.

Subsec. 5907(11) amended by P.C. 1980-503, subsecs. 5(8)–(10), February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective as to paras. (a.1) and (d.1), in respect of 1978 *et seq.*, and as to paras. (v) and (w), in respect of 1980 *et seq.*

Subsec. 5907(11) amended by P.C. 1978-589, March 2, 1978, *Canada Gazette*, Part II, March 22, 1978, applicable, as to paras. (a), (b.1), (b.2), (c.1), (e.1), (f.1), (h), (s.1), (aa.1), (aa.2), (aa.3) and (ee.1), to 1976 *et seq.*, and as to paras. (u) and (kk), to taxation years commencing on or after January 1, 1978.

I.T. Technical News: No. 16 (U.S. S-Corps and LLCs).

(12) For the purposes of paragraph 95(2)(j) of the Act, the adjusted cost base to a foreign affiliate of a taxpayer of an interest in a partnership at any time is prescribed to be the cost thereof otherwise determined at that time except that

(a) there shall be added to that cost such of the following amounts as are applicable, namely,

(i) any amount included in the earnings of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to profits of the partnership,

(ii) the affiliate's incomes as described by the description of "A" in the definition "foreign accrual property income" in subsection 95(1) of the Act for a taxation year ending after 1971 and before that time that can reasonably be considered to relate to profits of the partnership,

(iii) any amount included in computing the exempt earnings or taxable earnings, as the case may be, of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to a capital gain of the partnership,

(iv) where the affiliate has, at any time before that time and in a taxation year ending after 1971, made a contribution of capital to the partnership otherwise than by way of a loan, such part of the amount of the contribution as cannot reasonably be regarded as a gift made to or for the benefit of any other member of the partnership who was related to the affiliate, and

(v) such portion of any income or profits tax refunded before that time by the government of a country to the partnership as may reasonably be regarded as tax refunded in respect of an amount described in any of subparagraphs (b)(i) to (iii), and

(b) there shall be deducted from that cost such of the following amounts as are applicable, namely,

(i) any amount included in the loss of the affiliate for a taxation year ending after 1971 that may reasonably be considered to relate to a loss of the partnership,

(ii) the affiliate's losses as described by the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act for a taxation year ending after 1971 and before that time that can reasonably be considered to relate to the losses of the partnership,

(iii) any amount included in computing the exempt loss or taxable loss, as the case may be, of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to a capital loss of the partnership,

(iv) any amount received by the affiliate before that time and in a taxation year ending after 1971 as, on account or in lieu of payment of, or in satisfaction of, a distribution of his share of the partnership profits or partnership capital, and

(v) such portion of any income or profits tax paid before that time to the government of a country by the partnership as may reasonably be regarded as tax paid in respect of an amount described in any of subparagraphs (a)(i) to (iii),

and, for greater certainty, where any interest of a foreign affiliate in a partnership was reacquired by the affiliate after having been previously disposed of, no adjustment that was required to be made under this subsection before such reacquisition shall be made under this subsection to the cost to the affiliate of the interest as reacquired property of the affiliate.

History: Subparas. 5907(12)(a)(ii), (b)(ii) amended by P.C. 1997-1670, subsecs. 8(14), (16), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the subsec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

The opening words of subpara. (b) amended by P.C. 1997-1670, subsec. 8(15), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable after November 12, 1981.

Subsec. 5907(12) added by P.C. 1985-467, subsec. 4(32), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing November 13, 1981.

(13) For the purpose of subparagraph 128.1(1)(d)(ii) of the Act, the amount prescribed to be included in the foreign accrual property income of a foreign affiliate of a taxpayer for a taxation year is the amount, if any, by which

(a) the taxable surplus of the affiliate in respect of the taxpayer at the end of the year other than the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income

exceeds the total of

(b) the amount determined by the formula

$$(A - B) \times (C - 1)$$

where

A is the total of the underlying foreign tax of the affiliate in respect of the taxpayer at the end of the year and the amount, to the extent that it is not otherwise included in that underlying foreign tax, that would have been added to that underlying foreign tax if each disposition deemed by paragraph 128.1(1)(b) of the Act had been an actual disposition,

B is the part of the value of A that can reasonably be considered to relate to the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income, and

C is the relevant tax factor, as defined in subsection 95(1) of the Act, and

(c) the amount, if any, by which

(i) the total of all amounts required by paragraph 92(1)(a) of the Act to be added at any time in a preceding taxation year in computing the adjusted cost base to the taxpayer of the shares of the affiliate owned by the taxpayer at the end of the year

exceeds

(ii) the total of all amounts required by paragraph 92(1)(b) of the Act to be deducted at any time in a preceding taxation year in computing the adjusted cost base to the taxpayer of the shares of the affiliate owned by the taxpayer at the end of the year.

History: Subsec. 5907(13) amended by P.C. 1997-1670, subsec. 8(17), November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable after 1992, except that where a corporation elects in accordance with paragraph 111(4)(a) of Statutes of Canada, 1994, chapter 21, the amendment applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph).

Subsec. 5907(13) added by P.C. 1985-467, subsec. 4(32), February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing November 13, 1981.

Interpretation Bulletins: IT-451R: Deemed disposition and acquisition on ceasing to be or become a registrant in Canada.

Definitions [Reg. 5907]: "active business" — ITA 95(1), Reg. 5907(1); "adjusted cost base" — ITA 54, 248(1); "allowable capital loss" — ITA 38(b), 248(1); "amount" — ITA 248(1), Reg. 5907(7); "arm's length" — ITA 251(1); "borrowed money", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "capital gain" — ITA 39(1), 248(1); "capital loss" — ITA 39(1)(b), 248(1); "capital property" — ITA 54, 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated treaty country" — Reg. 5907(11); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend" — ITA 248(1); "earnings" — Reg. 5907(1); "exempt deficit" — Reg. 5902(1)–(3), 5907(1); "exempt earnings", "exempt loss" — Reg. 5907(1), (10); "exempt surplus" — Reg. 5902(1)–(3), 5907(1); "fiscal period" — ITA 249.1; "foreign accrual property income" — ITA 95(1), (2), 248(1); "foreign affiliate" — Reg. 5907(3); "foreign resource property" — ITA 66(15), 248(1); "foreign tax applicable" — Reg. 5900(1)(d); "government of a country" — Reg. 5907(4); "lending asset", "life insurance business", "life insurance corporation" — ITA 248(1); "loss" — Reg. 5907(1); "Minister" — ITA 248(1); "net earnings", "net loss" — Reg. 5907(1); "non-resident" — ITA 248(1); "opening exempt deficit" — Reg. 5905(5)(e); "opening exempt surplus" — Reg. 5905(5)(d); "opening taxable deficit" — Reg. 5905(5)(g); "opening taxable surplus" — Reg. 5905(5)(f); "opening underlying foreign tax" — Reg. 5905(5)(h); "particular dividend" — Reg. 5907(7.1); "payor affiliate" — Reg. 5907(7.1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "relevant tax factor" — ITA 95(1); "resident", "resident in Canada" — ITA 250; "share", "shareholder", "specified member", "stock dividend" — ITA 248(1); "surplus entitlement percentage" — Reg. 5905(13); "taxable capital gain" — ITA 38(a), 248(1); "taxable deficit" — Reg. 5902(1)–(3), 5907(1); "taxable dividend" — ITA 89(1), 248(1); "taxable earnings", "taxable loss" — Reg. 5907(1), (10); "taxable surplus" — Reg. 5902(1)–(3), 5907(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "territory" — *Interpretation Act* 35(1); "underlying foreign tax" — Reg. 5902(1)–(3), 5907(1); "underlying foreign tax applicable", "whole dividend" — Reg. 5907(1); "writing" — *Interpretation Act* 35(1).

5908. (1), (2) [Repealed]

History: S. 5908 repealed by P.C. 1997-1670, s. 9, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable December 10, 1997.

S. 5908 added by P.C. 1985-467, s. 5, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985.

5909. Prescribed circumstances — For the purposes of subparagraph 94(1)(b)(i) of the Act, property shall be considered to have been acquired in prescribed circumstances where it is acquired by virtue of the repayment of a loan.

History: S. 5909 added by P.C. 1989-321, s. 4, March 2, 1989, *Canada Gazette*, Part II, March 15, 1989, applicable after October 29, 1985.

Definitions [Reg. 5909]: "prescribed", "property" — ITA 248(1).

PART LX — PRESCRIBED ACTIVITIES

History: Part LX (s. 6000) replaced by P.C. 1995-1723, s. 1, October 17, 1995, *Canada Gazette*, Part II, November 1, 1995, applicable to 1994 *et seq.*

Part LX (s. 6000) added by P.C. 1978-1003, s. 5, April 6, 1978, *Canada Gazette*, Part II, April 26, 1978.

6000. For the purpose of clause 122.3(1)(b)(i)(C) of the Act, a prescribed activity is an activity performed under contract with the United Nations.

Definitions [Reg. 6000]: "prescribed" — ITA 248(1).

PART LXI — RELATED SEGREGATED FUND TRUSTS

History: Part LXI (s. 6100) added by P.C. 1978-2671, August 23, 1978, *Canada Gazette*, Part II, September 13, 1978.

6100. An election under subsection 138.1(4) of the Act by the trustee of a related segregated fund trust shall be made by filing with the Minister the prescribed form within 90 days from the end of the taxation year of the trust in respect of any capital property deemed to have been disposed of in that taxation year by virtue of the election.

Definitions [Reg. 6100]: "capital property" — ITA 54, 248(1); "disposed" — ITA 248(1)"disposition"; "Minister", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms: T3018: Election for deemed disposition and reacquisition of capital property of a life insurance segregated fund under subsection 138.1(4).

PART LXII — PRESCRIBED SECURITIES AND SHARES

History: Heading to Part LXII amended by P.C. 1980-423, s. 1, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective December 6, 1979.

Part LXII (s. 6200) added by P.C. 1978-3729, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, applicable in respect of dispositions of property in the 1977 and subsequent taxation years.

6200. Prescribed securities — For the purposes of subsection 39(6) of the Act, a prescribed security is, with respect to the taxpayer referred to in subsection 39(4) of the Act,

(a) a share of the capital stock of a corporation, other than a public corporation, the value of which is, at the time it is disposed of by that taxpayer, a value that is or may reasonably be considered to be wholly or primarily attributable to

(i) real property, an interest therein or an option in respect thereof,

(ii) Canadian resource property or a property that would have been a Canadian resource property if it had been acquired after 1971,

(iii) foreign resource property or a property that would have been a foreign resource property if it had been acquired after 1971, or

(iv) any combination of properties described in subparagraphs (i) to (iii)

owned by

(v) the corporation,

(vi) a person other than the corporation, or

(vii) a partnership;

(b) a bond, debenture, bill, note, mortgage or similar obligation, issued by a corporation, other than a public corporation, if at any time before that taxpayer disposes of the security he does not deal at arm's length with the corporation;

(c) a security that is

(i) a share, or

(ii) a bond, debenture, bill, note, mortgage or similar obligation

that was acquired by the taxpayer from a person with whom the taxpayer does not deal at arm's length (other than from a person subject to subsection 39(4) of the Act for the person's taxation year that includes the time of the acquisition);

(c.1) a security described in subparagraph (c)(i) or (ii) that was acquired by the taxpayer from a person (other than from a person subject to subsection 39(4) of the Act for the person's taxation year that includes the time of the acquisition) in circumstances to which subsection 85(1) or (2) of the Act applied;

(d) a share acquired by that taxpayer under circumstances referred to in section 66.3 of the Act; or

(e) a security described in subparagraph (c)(i) or (ii) that was acquired by the taxpayer

(i) as proceeds of disposition for a security of the taxpayer to which paragraph (a), (b), (c) or (d) applied in respect of the taxpayer, or

(ii) as a result of one or more transactions that can reasonably be considered to have been an exchange or substitution of a security of the taxpayer to which paragraph (a), (b), (c) or (d) applied in respect of the taxpayer.

History: Paras. 6200(c) and (e) amended and (c.1) added by P.C. 1998-1449, s. 1, August 26, 1998, *Canada Gazette*, Part II, September 16, 1998, applicable to 1993 *et seq.*

Para. 6200(b), subpara. 6200(c)(ii), subpara. 6200(e)(ii), amended by P.C. 1994-1817, paras. 62(g) to (i), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

That portion of s. 6200 preceding para. (b) substituted by P.C. 1981-2517, September 16, 1981, *Canada Gazette*, Part II, October 14, 1981.

Definitions [Reg. 6200]: "arm's length" — ITA 251(1); "Canadian resource property" — ITA 66(15), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed", "disposes" — ITA 248(1)"disposition"; "foreign resource property" — ITA 66(15), 248(1); "person", "prescribed", "property" — ITA 248(1); "public corporation" — ITA 89(1), 248(1); "share" — ITA 248(1); "substitution" — ITA 248(5); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-479R: Transactions in securities.

6201. Prescribed shares — **(1)** For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share last acquired before June 29, 1982 and of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share unless more than 10 per cent of the issued and outstanding shares of that class are owned by

(a) the owner of that share; or

(b) the owner of that share and persons related to him.

(2) For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share acquired after June 28, 1982 and of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that receives a dividend at the particular time in respect of the share unless

(a) where the other corporation is a restricted financial institution,

(i) the share is not a taxable preferred share,

(ii) dividends (other than dividends received on shares prescribed under subsection (5)) are received at the particular time by the other corporation or by the other corporation and restricted financial institutions with which the other corporation does not deal at arm's length, in respect of more than 5 per cent of the issued and outstanding shares of that class, and

(iii) a dividend is received at the particular time by the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length, in respect of a share (other than a share prescribed under subsection (5)) of that class acquired after December 15, 1987 and before the particular time;

(b) where the other corporation is a restricted financial institution, the share

(i) is not a taxable preferred share,

(ii) was acquired after December 15, 1987 and before the particular time, and

(iii) was, by reason of subparagraph (h)(i), (ii), (iii) or (v) of the definition "term preferred share" in subsection 248(1) of the Act, deemed to have been issued after December 15, 1987 and before the particular time; or

(c) in any case, dividends (other than dividends received on shares prescribed under subsection (5)) are received at the particular time by the other corporation or by the other corporation and persons with whom the other corporation does not deal at arm's length in respect of more than 10 per cent of the issued and outstanding shares of that class.

(3) For the purposes of paragraph 112(2.2)(g) of the Act and paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of any of the following series of preferred shares of the capital stock of Massey-Ferguson Limited issued after July 15, 1981 and before March 23, 1982 is a prescribed share:

(a) $25 Cumulative Redeemable Retractable Convertible Preferred Shares, Series C;

(b) $25 Cumulative Redeemable Retractable Preferred Shares, Series D; or

(c) $25 Cumulative Redeemable Retractable Convertible Preferred Shares, Series E.

(4) For the purposes of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is a restricted financial institution that receives a dividend at the particular time in respect of the share unless dividends (other than dividends received on shares prescribed under subsection (5.1)) are received at that time by the other corporation, or by the other corporation and restricted financial institutions with which the other cor-

poration does not deal at arm's length, in respect of more than

(a) 10 per cent of the shares of that class that were issued and outstanding at the last time, before the particular time, at which the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length acquired a share of that class, where no dividend is received at the particular time by any such corporation in respect of a share (other than a share prescribed under subsection (5.1)) of that class acquired after December 15, 1987 and before the particular time; or

(b) 5 per cent of the shares of that class that were issued and outstanding at the last time, before the particular time, at which the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length acquired a share of that class, where a dividend is received at the particular time by any such corporation in respect of a share (other than a share prescribed under subsection (5.1)) of that class acquired after December 15, 1987 and before the particular time.

(5) For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share as inventory of the business ordinarily carried on by it unless

Proposed Amendment — Reg. 6201(5) opening words

(5) For the purpose of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share for the purpose of sale in the course of the business ordinarily carried on by it unless

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 6(1), will amend the opening words of subsec. 6201(5) to read as above, applicable to dividends received in taxation years that begin after October 1994.

Technical Notes: Subsections 6201(5) and (5.1) prescribe certain shares held by securities dealers as shares that are excluded from being "term preferred shares" and "taxable RFI shares". One of the requirements for the exclusion to apply to a share is that it be held as inventory of the business ordinarily carried on by the securities dealer. This requirement is replaced by a requirement that the share be held for the purpose of sale in the course of the business ordinarily carried on by the securities dealer. This amendment is made as a consequence of the introduction of subsection 142.6(3) of the Act, which provides that certain property held by a financial institution is considered not to be inventory. The new requirement is intended to be the same, in substance, as the former requirement.

The amendments to subsections 6201(5) and (5.1) apply to dividends received in taxation years that begin after October 1994.

(a) it may reasonably be considered that the share was acquired as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of subsection 112(2.1) of the Act; or

(b) the share was not acquired by the other corporation in the course of an underwriting of shares of that class to be distributed to the public and

(i) dividends are received at the particular time by the other corporation or by the other corporation and corporations controlled by the other corporation in respect of more than 10 per cent of the issued and outstanding shares of that class,

(ii) the other corporation is a restricted financial institution and

(A) the share is not a taxable preferred share,

(B) dividends are received at the particular time by the other corporation or by the other corporation and corporations controlled by the other corporation in respect of more than 5 per cent of the issued and outstanding shares of that class, and

(C) a dividend is received at the particular time by the other corporation or a corporation controlled by the other corporation in respect of a share of that class acquired after December 15, 1987 and before the particular time, or

(iii) the other corporation is a restricted financial institution and the share

(A) is not a taxable preferred share,

(B) was acquired after December 15, 1987 and before the particular time, and

(C) was, by reason of subparagraph (h)(i), (ii), (iii) or (v) of the definition "term preferred share" in subsection 248(1) of the Act, deemed to have been issued after December 15, 1987 and before the particular time.

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

(5.1) For the purposes of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share as inventory of the business ordinarily carried on by it unless

Proposed Amendment — Reg. 6201(5.1)

(5.1) For the purpose of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a stock exchange referred to in section 3200 is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share for the purpose of sale in the course of the business ordinarily carried on by it unless

Application: The June 1, 1995 draft regulations (securities held by financial institutions), subsec. 6(2), will amend the opening words of subsec. 6201(5.1) to read as above, applicable to dividends received in taxation years that begin after October 1994.

Technical Notes: See under Reg. 6201(5).

(a) it may reasonably be considered that the share was acquired as part of a series of transactions or events one of the main purposes of which was to avoid or limit the application of section 187.3 of the Act; or

(b) the share was not acquired by the other corporation in the course of an underwriting of shares of that class to be distributed to the public and

(i) dividends are received at the particular time by the other corporation, or by the other corporation and corporations controlled by the other corporation, in respect of more than 10 per cent of the shares of that class issued and outstanding at the last time before the particular time at which any such corporation acquired a share of that class,

(ii) the other corporation is a restricted financial institution and

(A) dividends are received at the particular time by the other corporation, or by the other corporation and corporations controlled by the other corporation, in respect of more than 5 per cent of the shares of that class issued and outstanding at the last time before the particular time at which any such corporation acquired a share of that class, and

(B) a dividend is received at the particular time by the other corporation, or a corporation controlled by the other corporation, in respect of a share of that class acquired after December 15, 1987 and before the particular time, or

(iii) the other corporation is a restricted financial institution and the share

(A) was acquired after December 15, 1987 and before the particular time, and

(B) was, because of subparagraph (h)(i), (ii), (iii) or (v) of the definition "term preferred share" in subsection 248(1) of the Act, deemed to have been issued after December 15, 1987 and before the particular time.

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

(6) For the purposes of paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, a share of the capital stock of a corporation that is a member institution of a deposit insurance corporation, within the meaning assigned by section 137.1 of the Act, is a prescribed share with respect to the deposit insurance corporation and any subsidiary wholly-owned corporation of the deposit insurance corporation deemed by subsection 137.1(5.1) of the Act to be a deposit insurance corporation.

(7) For the purposes of the definition "taxable preferred share" in subsection 248(1) of the Act, the following shares are prescribed shares at any particular time:

(a) the 8.5 per cent Cumulative Redeemable Convertible Class A Preferred Shares of St. Marys Paper Inc. issued on July 7, 1987, where such shares are not deemed, by reason of paragraph (e) of the definition "taxable preferred share" in subsection 248(1) of the Act, to have been issued after that date and before the particular time; and

(b) the Cumulative Redeemable Preferred Shares of CanUtilities Holdings Ltd. issued before July 1, 1991, unless the amount of the consideration for which all such shares were issued exceeds $300,000,000 or the particular time is after July 1, 2001.

(8) For the purposes of paragraph 112(2.2)(d) of the Act, paragraph (i) of the definition "short-term preferred share", the definition "taxable preferred share" and paragraph (f) of the definition "term preferred share" in subsection 248(1) of the Act, the Exchangeable Preference Shares of Canada Cement Lafarge Ltd. (in this subsection referred to as the "subject shares"), the Exchangeable Preference Shares of Lafarge Canada Inc. and the shares of any corporation formed as a result of an amalgamation or merger of Lafarge Canada Inc. with one or more other corporations are prescribed shares at any particular time where the terms and conditions of such shares at the particular time are the same as, or substantially the same as, the terms and conditions of the subject shares as of June 18, 1987 and, for the purposes of this subsection, the amalgamation or merger of one or more corporations with another corporation formed as a result of an amalgamation or merger of Lafarge Canada Inc. with one or more other corporations shall be deemed to be an amalgamation of Lafarge Canada Inc. with another corporation.

(9) For the purposes of determining under subsections (2), (4), (5) and (5.1) the time at which a share of a class of the capital stock of a corporation was acquired by a taxpayer, shares of that class acquired by the taxpayer at any particular time before a disposition by the taxpayer of shares of that class shall be deemed to have been disposed of before shares of that class acquired by the taxpayer before that particular time.

(10) For the purposes of subsections (2), (4), (5) and (5.1) and this subsection,

(a) where a taxpayer is a beneficiary of a trust and an amount in respect of the beneficiary has been designated by the trust in a taxation year pursuant to subsection 104(19) of the Act, the taxpayer shall be deemed to have received the amount so designated at the time it was received by the trust; and

(b) where a taxpayer is a member of a partnership and a dividend has been received by the partnership, the taxpayer's share of the dividend shall be deemed to have been received by the taxpayer at the time the dividend was received by the partnership.

(11) For the purposes of subsections (2), (4), (5) and (5.1),

(a) a share of the capital stock of a corporation acquired by a person after December 15, 1987 pursuant to an agreement in writing entered into before December 16, 1987 shall be deemed to have been acquired by that person before December 16, 1987;

(b) a share of the capital stock of a corporation acquired by a person after December 15, 1987 and before July, 1988 as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice filed before December 16, 1987 with a public authority pursuant to and in accordance with the securities legislation of the jurisdiction in which the shares were distributed shall be deemed to have been acquired by that person before December 16, 1987;

(c) where a share that was owned by a particular restricted financial institution on December 15, 1987 has, by one or more transactions between related restricted financial institutions, been transferred to another restricted financial institution, the share shall be deemed to have been acquired by the other restricted financial institution before that date and after June 28, 1982 unless at any particular time after December 15, 1987 and before the share was transferred to the other restricted financial institution the share was owned by

a shareholder who, at that particular time, was a person other than a restricted financial institution related to the other restricted financial institution; and

(d) where at any particular time there has been an amalgamation (within the meaning assigned by section 87 of the Act) and

(i) each of the predecessor corporations (within the meaning assigned by section 87 of the Act) was a restricted financial institution throughout the period beginning December 16, 1987 and ending at the particular time and the predecessor corporations were related to each other throughout that period, or

(ii) each of the predecessor corporations and the new corporation (within the meaning assigned by section 87 of the Act) is a corporation described in any of paragraphs (a) to (d) of the definition "restricted financial institution" in subsection 248(1) of the Act,

a share acquired by the new corporation from a predecessor corporation on the amalgamation shall be deemed to have been acquired by the new corporation at the time it was acquired by the predecessor corporation.

History: Subsec. 6201(4), the portion of subsec. 6201(5) before para. (b), subsec. 6201(9), the opening words of subsecs. 6201(10) and (11) amended, subsec. 6201(5.1) added, by P.C. 1995-1198, s. 1, July 26, 1995, *Canada Gazette*, Part II, August 9, 1995, applicable to dividends received after December 20, 1991.

Subsec. 6201(2) was substituted, and subsecs. 6201(4) to (11) substituted for former subsec. (4), by P.C. 1989-1565, s. 4, August 14, 1989, *Canada Gazette*, Part II, August 30, 1989, applicable after June 18, 1987.

That portion of subsec. 6201(2) following para. (b) substituted by 1986-2590, s. 16, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, effective June 29, 1982.

That portion of subsec. 6201(3) preceding para. (a) substituted by P.C. 1985-2860, s. 1, September 26, 1985, *Canada Gazette*, Part II, October 16, 1985, effective July 16, 1981.

S. 6201 substituted by P.C. 1984-3789, s. 16, November 29, 1984, *Canada Gazette*, December 12, 1984, applicable as follows: subsecs. (1) and (2) effective commencing June 29, 1982; subsec. (3) effective commencing July 16, 1981; subsec. (4) effective commencing November 13, 1981.

S. 6201 added by P.C. 1980-423, s. 2, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980, effective December 6, 1979.

Definitions [Reg. 6201]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "dividend", "insurance corporation", "inventory" — ITA 248(1); "person", "preferred share", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)-(6); "restricted financial institution" — ITA 248(1); "share", "shareholder", "subsidiary wholly-owned corporation", "taxable preferred share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

6202. (1) For the purposes of paragraph 66(15)(d.1) [66(15)"flow-through share"] and subparagraphs 66.1(6)(a)(v) [66.1(6)"Canadian exploration expense"(i)], 66.2(5)(a)(v) [66.2(5)"Canadian development expense"(g)] and 66.4(5)(a)(iii) [66.4(5)"Canadian oil and gas property expense"(c)] of the Act, a share of a class of the capital stock of a corporation (in this section referred to as the "issuing corporation") is a prescribed share if it was issued after December 31, 1982 and

(a) the issuing corporation, any person related to the issuing corporation or of whom the issuing corporation has effective management or control or any partnership or trust of which the issuing corporation or a person related thereto is a member or beneficiary (each of which is referred to in this section as a "member of the related issuing group") is or may be required to redeem, acquire or cancel, in whole or in part, the share or to reduce its paid-up capital at any time within five years from the date of its issue,

(b) a member of the related issuing group provides or may be required to provide any form of guarantee, security or similar indemnity with respect to the share (other than a guarantee, security or similar indemnity with respect to any amount of assistance or benefit from a government, municipality or other public authority in Canada or with respect to eligibility for such assistance or benefit) that could take effect within five years from the date of its issue,

(c) the share (referred to in this section as the "convertible share") is convertible under its terms or conditions at any time within five years from the date of its issue directly or indirectly into debt, or into a share (referred to in this section as the "acquired share") that is, or if issued would be, a prescribed share,

(d) immediately after the share was issued, the person to whom the share was issued or a person related to the person to whom the share was issued (either alone or together with a related person, a related group of persons of which he is a member or a partnership or trust of which he is a member or beneficiary) controls directly or indirectly, or has an absolute or contingent right to control directly or indirectly or to acquire direct or indirect control of, the issuing corporation and the issuing corporation has the right under the terms and conditions in respect of which the share was issued to redeem, purchase or otherwise acquire the share within five years from the date of its issue,

(e) at the time the share was issued, the existence of the issuing corporation was, or there was an arrangement (other than an amalgamation within the meaning assigned by subsection 87(1) of the Act) under which the existence of the issuing corporation could be, limited to a period that ends within five years from the date of its issue, or

(f) the terms or conditions of the share (referred to in this paragraph as the "first share") or of an agreement in existence at the time of its issue provide that a share (referred to in this section as the "substituted share") that is, or if issued would be, a prescribed share may be substituted or exchanged for the first share within five years from the date of issue of the first share,

but does not include a share of the capital stock of a corporation

(g) that was issued after December 31, 1982 pursuant to an agreement or offering in writing made on or before December 31, 1982 or in accordance with a prospectus, registration statement or similar document that was filed with and, where required by law, accepted for filing by, a public authority in Canada pursuant to and in accordance with the laws of Canada or of any province on or before December 31, 1982,

(h) that would be a prescribed share solely by virtue of one or more of the terms or conditions of an agreement if such terms or conditions are not effective or exercisable until the death, disability or bankruptcy of the person to whom the share is issued,

(i) that is

(i) convertible under its terms into one or more shares of a class of the capital stock of the corporation for no consideration other than the share or shares,

(ii) described in paragraph (a) solely because

(A) it is to be cancelled on the conversion within five years from the date of its issue,

(B) its paid-up capital is to be reduced on the conversion within five years from the date of its issue, or

(C) both clauses (A) and (B) apply, and

(iii) not described in paragraph (c), or

(j) that

(i) may have a share substituted or exchanged for it pursuant to its terms or the terms or conditions of an agreement in existence at the time of its issue and no consideration is to be received or receivable for it in respect of the substitution or exchange other than the share substituted or exchanged for it,

(ii) is described in paragraph (a) solely because it is to be redeemed, acquired or cancelled on the substitution or exchange within five years from the date of its issue, and

(iii) is not a share to which paragraph (f) applies,

and for the purposes of this section,

(k) where a person has an interest in a trust, whether directly or indirectly, through an interest in any other trust or in any other manner whatever, the person shall be deemed to be a beneficiary of the trust;

(l) in determining whether an acquired share would be a prescribed share if issued,

(i) the references in paragraphs (a), (b), (d) and (e) to "date of its issue" shall be read as "date of the issue of the convertible share",

(ii) the reference in paragraph (f) to "issue of the first share" shall be read as "issue of the convertible share", and

(iii) this section shall be read without reference to paragraph (g) and to the words "after December 31, 1982";

(m) in determining whether a substituted share would be a prescribed share if issued,

(i) the references in paragraphs (a) to (e) to "date of its issue" shall be read as "date of the issue of the first share", and

(ii) this section shall be read without reference to paragraph (g) and to the words "after December 31, 1982";

(m.1) an excluded obligation in relation to a share of a class of the capital stock of the issuing corporation and an obligation that would be an excluded obligation in relation to the share if the share had been issued after June 17, 1987, shall be deemed not to be a guarantee, security or similar indemnity with respect to the share for the purposes of paragraph (b);

(n) a guarantee, security or similar indemnity referred to in paragraph (b) shall, for greater certainty, not be considered to take effect within five years from the date of issue of a share if the effect of the guarantee, security or indemnity is to provide that a member of the related issuing group will be able to redeem, acquire or cancel the share at a time that is not within five years from the date of issue of the share; and

(o) where an expense is incurred partly in consideration for shares (referred to in this section as "first corporation shares") of the capital stock of one corporation and partly in consideration for an interest in, or right to, shares (referred to in this paragraph as "second corporation shares") of the capital stock of another corporation, in determining whether the second corporation shares are prescribed shares, the references in paragraphs (a), (d) and (e) to "date of its issue" shall be read as "date of the issue of the first corporation shares".

(2) For the purposes of paragraph 66(15)(d.1) [66(15)"flow-through share"] of the Act, subsection (1) does not apply in respect of a share of the capital stock of an issuing corporation that is a new share.

History: That portion of subsec. 6202(1) preceding para. (a) amended by P.C. 1990-51, subsec. 1(1), January 18, 1990, *Canada Gazette*, Part II, January 31, 1990, applicable in respect of shares issued after February 1986.

Para. 6202(1)(m.1) added by subsec. 1(2) of the said P.C. 1990-51, applicable in respect of shares issued after December 31, 1982.

Subsec. 6202(2) added by subsec. 1(3) of the said P.C. 1990-51, applicable in respect of shares issued after June 17, 1987.

S. 6202 added by P.C. 1985-465, s. 16, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, applicable with respect to shares issued after December 31, 1982.

Definitions [Reg. 6202]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "security" — *Interpretation Act* 35(1); "share" — ITA 248(1); "substituted", "substitution" — ITA 248(5); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

6202.1 (1) For the purposes of paragraph 66(15)(d.1) [66(15)"flow-through share"] of the Act, a new share of the capital stock of a corporation is a prescribed share if, at the time it is issued,

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends that may be declared or paid on the share (in this section referred to as the "dividend entitlement") may reasonably be considered to be, by way of a formula or otherwise,

(A) fixed,

(B) limited to a maximum, or

(C) established to be not less than a minimum (including any amount determined on a cumulative basis), where with respect to the dividends that may be declared or paid on the share there is a preference over any other dividends that may be declared or paid on any other share of the capital stock of the corporation,

(ii) the amount that the holder of the share is entitled to receive in respect of the share on the dissolution, liquidation or winding-up of the corporation, on a reduction of the paid-up capital of the share or on the redemption, acquisition or cancellation of the share by the corporation or by specified persons in relation to the corporation (in this section referred to as the "liquidation entitlement") may reasonably be considered to be, by way of a formula or otherwise, fixed, limited to a maximum or established to be not less than a minimum,

(iii) the share is convertible or exchangeable into another security issued by the corporation unless

(A) it is convertible or exchangeable only into

(I) another share of the corporation that, if issued, would not be a prescribed share,

(II) a right, including a right conferred by a warrant that, if exercised, would allow the person exercising it to acquire only a share of the corporation that, if issued, would not be a prescribed share, or

(III) both a share described in subclause (I) and a right or warrant described in subclause (II), and

(B) all the consideration receivable by the holder on the conversion or exchange of the share is the share described in subclause (A)(I) or the right or warrant described in subclause (A)(II), or both, as the case may be, or

(iv) the corporation has, either absolutely or contingently, an obligation to reduce, or any person or partnership has, either absolutely or contingently, an obligation to cause the corporation to reduce, the paid-up capital in respect of the share (other than pursuant to a conversion or exchange of the share, where the right to so convert or exchange does not cause the share to be a prescribed share under subparagraph (iii));

(b) any person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share)

(i) to provide assistance,

(ii) to make a loan or payment,

(iii) to transfer property, or

(iv) otherwise to confer a benefit by any means whatever, including the payment of a dividend,

either immediately or in the future, that may reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the share was issued or for which a partnership interest was issued in a partnership that acquires the share;

(c) any person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share) to effect any undertaking, either immediately or in the future, with respect to the share or the agreement under which the share is issued (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the share or, where the holder is a partnership, the members thereof or specified persons in relation to the holder or the members of the partnership, as the case may be) that may reasonably be considered to have been given to ensure, directly or indirectly, that

(i) any loss that the holder of the share and, where the holder is a partnership, the members thereof or specified persons in relation to the holder or the members of the partnership, as the case may be, may sustain by reason of the holding, ownership or disposition of the share or any other property is limited in any respect, or

(ii) the holder of the share and, where the holder is a partnership, the members thereof or specified persons in relation to the holder or the members of the partnership, as the case may be, will derive earnings, by reason of the holding, ownership or disposition of the share or any other property;

(d) the corporation or a specified person in relation to the corporation may reasonably be expected

(i) to acquire or cancel the share in whole or in part otherwise than on a conversion or exchange of the share that meets the conditions set out in clauses (a)(iii)(A) and (B),

(ii) to reduce the paid-up capital of the corporation in respect of the share otherwise than on a conversion or exchange of the share that meets the conditions set out in clauses (a)(iii)(A) and (B), or

(iii) to make a payment, transfer or other provision (otherwise than pursuant to an excluded obligation in relation to the share), directly or indirectly, by way of a dividend, loan, purchase of shares, financial assistance to any purchaser of the share or, where the purchaser is a partnership, the members thereof or in any other manner whatever, that may reasonably be considered to be a repayment or return of all or part of the consideration for which the share was issued or for which a partnership interest was issued in a partnership that acquires the share,

within 5 years after the date the share is issued, otherwise than as a consequence of an amalgamation of a subsidiary wholly-owned corporation, a winding-up of a subsidiary wholly-owned corporation to which subsection 88(1) of the Act applies or the payment of a dividend by a subsidiary wholly-owned corporation to its parent;

(e) any person or partnership can reasonably be expected to effect, within 5 years after the date the share is issued, any undertaking which, if it were in effect at the time the share was issued, would result in the share being a prescribed share by reason of paragraph (c); or

(f) it may reasonably be expected that, within 5 years after the date the share is issued,

(i) any of the terms or conditions of the share or any existing agreement relating to the share or its issue will thereafter be modified, or

(ii) any new agreement relating to the share or its issue will be entered into,

in such a manner that the share would be a prescribed share if it had been issued at the time of the modification or at the time when the new agreement is entered into.

Selected Cases [Reg. 6202.1(1)]: *Furukawa v. R.*, [1999] 2 C.T.C. 2095 (TCC) (For share to be prescribed, must be obligation to repay directly or indirectly consideration for share).

(2) For the purposes of paragraph 66(15)(d.1) [66(15)"flow-through share"] of the Act, a new share of the capital stock of a corporation is a prescribed share if

(a) the consideration for which the share is to be issued is to be determined more than 60 days after entering into the agreement pursuant to which the share is to be issued;

(b) the corporation or a specified person in relation to the corporation, directly or indirectly,

(i) provided assistance,

(ii) made or arranged for a loan or payment,

(iii) transferred property, or

(iv) otherwise conferred a benefit by any means whatever, including the payment of a dividend,

for the purpose of assisting any person or partnership in acquiring the share or any person or partnership in acquiring an interest in a partnership acquiring the share (otherwise than by reason of an excluded obligation in relation to the share); or

(c) the holder of the share or, where the holder is a partnership, a member thereof, has a right under any agreement or arrangement entered into under circumstances where it is reasonable to consider that the agreement or arrangement was contemplated at or before the time when the agreement to issue the share was entered into,

(i) to dispose of the share, and

(ii) through a transaction or event or a series of transactions or events contemplated by the agreement or arrangement, to acquire a share (referred to in this paragraph as the "acquired share") of the capital stock of another corporation that would be a prescribed share under subsection (1) if the acquired share were issued at the time the share was issued, other than a share that would not be a prescribed share if subsection (1) were read without reference to subparagraphs (a)(iv) and (d)(i) and (ii) thereof where the acquired share is a share

(A) of a mutual fund corporation, or

(B) of a corporation that becomes a mutual fund corporation within 90 days after the acquisition of the acquired share.

(3) For the purposes of subsection (1),

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all dividends on the share are determined solely by reference to a multiple or fraction of the dividend entitlement of another share of the capital stock of the corporation, or of another corporation that controls the corporation, where the dividend entitlement of that other share is not described in subparagraph (1)(a)(i); and

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be fixed, limited to a maximum or established to be not less than a minimum where all the liquidation entitlement is determinable solely by reference to the liquidation entitlement of another share of the capital stock of the corporation, or of another corporation that controls the corporation, where the liquidation entitlement of that other share is not described in subparagraph (1)(a)(ii).

(4) For the purposes of paragraphs (1)(c) and (e), an agreement entered into between the first holder of a share and another person or partnership for the sale of the share to that other person or partnership for its fair market value at the time the share is acquired by the other person or partnership (determined without regard to the agreement) shall be deemed not to be an undertaking with respect to the share.

(5) For the purposes of section 6202 and this section,

"excluded obligation", in relation to a share issued by a corporation, means

(a) an obligation of the corporation

(i) with respect to eligibility for, or the amount of, any assistance under the *Canadian Exploration and Development Incentive Program Act*, the *Canadian Exploration Incentive Program Act*, the *Ontario Mineral Exploration Program Act, 1989*, Statutes of Ontario 1989, c. 40, or the *Mineral Exploration Incentive Program Act (Manitoba)*, Statutes of Manitoba 1990-91, c. 45, or

(ii) with respect to the making of an election respecting such assistance and the flowing out of such assistance to the holder of the share in accordance with any of those Acts, and

(b) an obligation of any person or partnership to effect an undertaking to indemnify a holder of the share or, where the holder is a partnership, a member thereof, for an amount not exceeding the amount of any tax payable under the Act or the laws of a province by the holder or the member of the partnership, as the case may be, as a consequence of

(i) the failure of the corporation to renounce an amount to the holder in respect of the share, or

(ii) a reduction, under subsection 66(12.73) of the Act, of an amount purported to be renounced to the holder in respect of the share;

"new share" means a share of the capital stock of a corporation issued after June 17, 1987, other than a share issued at a particular time before 1989

(a) pursuant to an agreement in writing entered into before June 18, 1987,

(b) as part of a distribution of shares to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the shares begins, filed before June 18, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the shares were distributed, or

(c) to a partnership in which interests were issued as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the interests begins, filed before June 18, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the interests were distributed, where all interests in the partnership issued at or before the particular time were issued as part of the distribution or prior to the beginning of the distribution;

"specified person", in relation to any particular person, means another person with whom the particular person does not deal at arm's length or any partnership or trust of which the particular person or the other person is a member or beneficiary, respectively.

Related Provisions: ITA 96(2.2)(d)(vii) — Exclusion from limited partnership at-risk rules; ITA 143.2(3)(b)(iv) — Exclusion from tax shelter at-risk adjustments.

History: Subpara. (b)(ii) of the definition "excluded obligation" amended by P.C. 1999-196, s. 3, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to renunciations purported to be made after 1996.

Subpara. (a)(i) of "excluded obligation" substituted by P.C. 1994-618, s. 1, April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to shares issued after February 1992.

Subparas. (a)(i), (ii) of "excluded obligation" amended by P.C. 1991-2475, s. 1, December 12, 1991, *Canada Gazette*, Part II, January 1, 1992, applicable in respect of shares issued after May 3, 1990.

S. 6202.1 added by P.C. 1990-51, s. 2, January 18, 1990, *Canada Gazette*, Part II, January 31, 1990. Paras. 6202.1(2)(a) and (b) are applicable in respect of shares issued after December 15, 1987, other than a share issued at a particular time

(a) pursuant to an agreement in writing entered into before December 16, 1987;

(b) as part of a distribution of shares to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the shares begins, filed before December 16, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the shares were distributed; or

(c) to a partnership in which interests were issued as part of a distribution to the public made in accordance with the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice, required by law to be filed before distribution of the interests begins, filed before December 16, 1987 with a public authority in Canada in accordance with the securities legislation of the province in which the interests were distributed, where all interests in the partnership issued at or before the particular time were issued as part of the distribution or prior to the beginning of the distribution.

The remainder of s. 6202.1 is applicable in respect of shares issued after June 17, 1987.

Definitions [Reg. 6202.1]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "dividend" — ITA 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "province", "security" — *Interpretation Act* 35(1); "share", "subsidiary wholly-owned corporation" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-503: Exploration and development shares.

6203. (1) For the purposes of subsection 192(6) of the Act, a prescribed share of the capital stock of a taxable Canadian corporation is a share (other than a share acquired by a taxpayer under circumstances referred to in section 66.3 of the Act, a share acquired as consideration for a disposition of property in respect of which an election was made under subsection 85(1) or (2) of the Act and a share that can be considered to have been issued, directly or indirectly, for consideration that includes other shares of the capital stock of the corporation) where, at the time it is issued,

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or any time thereafter by way of a formula or otherwise,

(ii) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(iii) the share cannot be converted into any other security, other than into another security of the corporation that would, if it were issued for consideration that does not include other shares of the capital stock of the corporation, be a prescribed share,

(iv) the holder of the share cannot at that time or at any time thereafter cause the share to be redeemed, acquired or cancelled by the corporation or any specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(v) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, except where the reduction is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(vi) no person or partnership has, either absolutely or contingently, an obligation at that time or at any time thereafter to

(A) provide assistance to acquire the share,

(B) make a loan or payment,

(C) transfer property, or

(D) otherwise confer a benefit by any means whatever, including the payment of a dividend,

that may reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the share was issued,

(vii) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or at any time thereafter, the share in whole or in part other than for an amount that approximates the fair market value of the share (determined without reference to any such right or obligation), and

(viii) no person or partnership has, either absolutely or contingently, an obligation to provide, at that time or at any time thereafter, any form of undertaking with respect to the share (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the share or any specified person in relation to holder) that may reasonably be considered to have been given to ensure that

(A) any loss that the holder of the share may sustain by virtue of the holding, ownership or disposition of the share is limited in any respect, or

(B) the holder of the share will derive earnings by virtue of the holding, ownership or disposition of the share;

(b) the corporation or a specified person in relation to the corporation cannot reasonably be expected to, within two years after the time the share is issued,

(i) acquire or cancel the share in whole or in part,

(ii) reduce the paid-up capital of the corporation in respect of the share, or

(iii) make a payment, transfer or other provision, directly or indirectly, by way of a dividend, loan, purchase of shares, financial assistance to any purchaser of the share or in any other manner

whatever, that may reasonably be considered to be a repayment or return of all or part of the consideration for which the share was issued

otherwise than as a consequence of the payment of a dividend paid by a subsidiary wholly-owned corporation to its parent, of an amalgamation of a subsidiary wholly-owned corporation or of a winding-up to which subsection 88(1) of the Act applies;

(c) no person or partnership can reasonably be expected to provide, within two years after the time the share is issued, any form of undertaking with respect to the share (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to, or the placing of amounts on deposit with, or on behalf of, the holder of the share or any specified person in relation to the holder); and

(d) it cannot reasonably be expected that any of the terms or conditions of the share or any existing agreement in respect of the share or its issue will thereafter be modified or amended, or that any new agreement in respect of the share or its issue will be entered into, within two years after the time the share is issued, in such a manner that the share would not be a prescribed share if it had been issued at the time of such modification or amendment or at the time the new agreement is entered into.

(2) For the purposes of subsection (1),

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(i);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(ii);

(c) where a corporation has merged or amalgamated with one or more other corporations, the corporation formed as a result of the merger or amalgamation shall be deemed to be the same corporation as, and a continuation of, each of its predecessor corporations and a share issued on the merger or amalgamation as consideration for another share shall be deemed to be the same share as the share for which it was issued but this paragraph does not apply if the share issued on the merger or amalgamation is not a prescribed share at the time of its issue; and

(d) an agreement entered into between the first purchaser of a share and another person or partnership, other than a specified person in relation to the corporation issuing the share, for the sale of the share to that other person or partnership shall be deemed not to be an undertaking with respect to the share.

(3) For the purposes of subsections (1) and (2), "specified person", in relation to a corporation or a holder of a share, as the case may be (in this subsection referred to as the "taxpayer"), means any person or partnership with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer (or a person or partnership with whom the taxpayer does not deal at arm's length) is a member or beneficiary, respectively.

History: S. 6203 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

Definitions [Reg. 6203]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "dividend" — ITA 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "security" — *Interpretation Act* 35(1); "share", "subsidiary wholly-owned corporation" — ITA 248(1); "taxable Canadian corporation" — ITA 89(1), 248(1); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

6204. **(1)** For the purposes of paragraph 110(1)(d) of the Act, a share is a prescribed share of the capital stock of a corporation at the time of its sale or issue, as the case may be, where, at that time,

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or at any time thereafter by way of a formula or otherwise,

(ii) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(iii) the share cannot be converted into any other security, other than into another security of the corporation or of another corporation with which it does not deal at arm's length that is, or would be at the date of conversion, a prescribed share,

(iv) the holder of the share cannot at that time or at any time thereafter cause the share to be redeemed, acquired or cancelled by the corporation or any specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(v) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, except where the reduction is required pursuant to a conversion that is not prohibited by subparagraph (iii), and

(vi) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or any later time, the share in whole or in part other than for an amount that approximates the fair market value of the share (determined without reference to any such right or obligation) or a lesser amount;

(b) the corporation or a specified person in relation to the corporation cannot reasonably be expected to, within two years after the time the share is sold or issued, as the case may be,

(i) redeem, acquire or cancel the share in whole or in part, or

(ii) reduce the paid-up capital of the corporation in respect of the share;

otherwise than as a consequence of an amalgamation of a subsidiary wholly-owned corporation or of a winding-up to which subsection 88(1) of the Act applies; and

(c) it cannot reasonably be expected that any of the terms or conditions of the share or any existing agreement in respect of the share or its sale or issue will be modified or amended, or that any new agreement in respect of the share, its sale or issue will be entered into, within two years after the time the share is sold or issued, in such a manner that the share would not be a prescribed share if it had been sold or issued at the time of such modification or amendment or at the time the new agreement is entered into.

(2) For the purposes of subsection (1),

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(i);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(ii); and

(c) the determination of whether a share of the capital stock of a corporation is a prescribed share shall be made without reference to a right or obligation to redeem, acquire or cancel the share or to cause the share to be redeemed, acquired or cancelled where

(i) the share was issued or sold pursuant to an employee share purchase agreement (in this paragraph referred to as "the agreement") to an employee (in this paragraph referred to as "the holder") of the corporation or of another corporation with which the corporation was not dealing at arm's length,

(ii) the holder was dealing at arm's length with each corporation referred to in subparagraph (i) at the time the share was issued or sold, and

(iii) having regard to all the circumstances, including the terms of the agreement, it can reasonably be considered that

(A) the amount payable on the redemption, acquisition or cancellation (in this clause and in clause (B) referred to as the "acquisition") of the share will not exceed

(I) the adjusted cost base to the holder of the share immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to protect the holder against any loss in respect of the share, or

(II) the fair market value of the share immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to provide the holder with a market for the share, and

(B) no portion of the amount payable on the acquisition of the share is directly determinable by reference to the profits of the corporation, or of another corporation with which the corporation does not deal at arm's length, for all or any part of the period during which the holder owned the share or had a right to acquire the share, unless the reference to the profits of the corporation or the other corporation is only for the purpose of determining the fair market value of the share pursuant to a formula set out in the agreement.

(3) For the purposes of subsection (1), "specified person", in relation to a corporation, means

(a) any person or partnership with whom the corporation does not deal at arm's length otherwise than because of a right referred to in paragraph 251(5)(b) of the Act that arises as a result of an offer by the person or partnership to acquire all or substantially all of the shares of the capital stock of the corporation, or

(b) any partnership or trust of which the corporation (or a person or partnership with whom the corporation does not deal at arm's length) is a member or beneficiary, respectively.

(4) For the purposes of subsection (3), the Act shall be read without reference to subsection 256(9) of the Act.

History: Subparas. 6204(1)(a)(vi), (2)(c)(i) and (ii), para. 6204(1)(b), subsec. 6204(3) amended, subsec. 6204(4) added, by P.C. 1997-1146, subsecs. 1(1), (3), (2), and (4) respectively, August 28, 1997, *Canada Gazette*, Part II, September 17, 1997. Subpara. 6204(1)(a)(vi) applicable to shares isssued or sold after 1994; para. 6204(1)(b), subsecs. (3) and (4) applicable to 1996 *et seq.*, and subparas. 6204(2)(c)(i) and (ii) applicable to 1985 *et seq.*

Subpara. 6204(1)(b)(i), subsec. 6204(3) amended, para. 6204(2)(c) added, by P.C. 1994-618, subsecs. 2(1), (3), and (2) respectively, April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1985 *et seq.*

S. 6204 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

Definitions [Reg. 6204]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "employee" — ITA 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "share", "subsidiary wholly-owned corporation" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Interpretation Bulletins: IT-113R4: Benefits to employees — stock options; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits.

6205. (1) For the purposes of subsections 110.6(8) and (9) of the Act and subject to subsection (3), a prescribed share is a share of the capital stock of a corporation where

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) at the time the share is issued,

(A) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or at any time thereafter by way of a formula or otherwise,

(B) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum

amount or fixed at a minimum amount by way of a formula or otherwise,

(C) the share cannot be converted into any other security, other than into another security of the corporation that is, or would be at the date of conversion, a prescribed share,

(D) the holder of the share does not, at that time or at any time thereafter, have the right or obligation to cause the share to be redeemed, acquired or cancelled by the corporation or a specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by clause (C),

(E) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, otherwise than by way of a redemption, acquisition or cancellation of the share that is not prohibited by this section,

(F) no person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share, as defined in subsection 6202.1(5)) at that time or any time thereafter to

(I) provide assistance to acquire the share,

(II) make a loan or payment,

(III) transfer property, or

(IV) otherwise confer a benefit by any means whatever, including the payment of a dividend,

that may reasonably be considered to be, directly or indirectly, a repayment or return by the corporation or a specified person in relation to the corporation of all or part of the consideration for which the share was issued, and

(G) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or at any time thereafter, the share in whole or in part, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by clause (C),

(ii) no person or partnership has, either absolutely or contingently, an obligation (other than an excluded obligation in relation to the share, as defined in subsection 6202.1(5)) to provide, at any time, any form of undertaking with respect to the share (including any guarantee, security, indemnity, covenant or agreement and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the holder of the share or any specified person in relation to that holder) that may reasonably be considered to have been given to ensure that

(A) any loss that the holder of the share may sustain by virtue of the holding, ownership or disposition of the share is limited in any respect, or

(B) the holder of the share will derive earnings by virtue of the holding, ownership or disposition of the share; and

(b) at the time the share is issued, it cannot reasonably be expected, having regard to all the circumstances, that any of the terms or conditions of the share or any existing agreement in respect of the share or its issue will thereafter be modified or amended or that any new agreement in respect of the share or its issue will be entered into, in such a manner that the share would not be a prescribed share if it had been issued at the time of such modification or amendment or at the time the new agreement is entered into.

(2) For the purposes of subsections 110.6(8) and (9) of the Act and subject to subsection (3), a prescribed share is a share of the capital stock of a particular corporation where

(a) it is a particular share that is owned by a person and that was issued by the particular corporation as part of an arrangement to that person, to a spouse or parent of that person or, where the person is a trust described in paragraph 104(4)(a) of the Act, to the person who created the trust or by whose will the trust was created or, where the person is a corporation, to another person owning all of the issued and outstanding shares of the capital stock of the corporation or to a spouse or parent of that other person, and

(i) the main purpose of the arrangement was to permit any increase in the value of the property of the particular corporation to accrue to other shares that would, at the time of their issue, be prescribed shares if this section were read without reference to this subsection, and

(ii) at the time of the issue of the particular share or at the end of the arrangement,

(A) the other shares were owned by

(I) the person to whom the particular share was issued (in this paragraph referred to as the "original holder"),

(II) a person who did not deal at arm's length with the original holder,

(III) a trust none of the beneficiaries of which were persons other than the original holder or a person who did not deal at arm's length with the original holder, or

(IV) any combination of persons described in subclause (I), (II) or (III),

(B) the other shares were owned by employees of the particular corporation or of a corporation controlled by the particular corporation, or

(C) the other shares were owned by any combination of persons each of whom is described in clause (A) or (B); or

(b) it is a share that was issued by a mutual fund corporation.

Related Provisions: ITA 256(6), (6.1) — Meaning of "controlled".

(3) For the purposes of subsections 110.6(8) and (9) of the Act, a prescribed share does not include a share of the capital stock issued by a mutual fund corporation (other than an investment corporation) the value of which can reasonably be considered to be, directly or indirectly, derived primarily from investments made by the mutual fund corporation in one or more corporations (in this subsection referred to as an "investee corporation") connected with it (within the meaning of subsection 186(4) of the Act on the assumption that the references in that subsection to "payer corporation" and "particular corpora-

tion" were read as references to "investee corporation" and "mutual fund corporation", respectively).

(4) For the purposes of this section,

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that

(i) all or substantially all of the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of clause (1)(a)(i)(A), or

(ii) the dividend entitlement cannot be such as to impair the ability of the corporation to redeem another share of the capital stock of the corporation that meets the requirements of paragraph (2)(a);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of clause (1)(a)(i)(B);

(c) where two or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") have merged or amalgamated, the corporation formed as a result of the merger or amalgamation (in this paragraph referred to as the "new corporation") shall be deemed to be the same corporation as, and a continuation of, each of the predecessor corporations and a share of the capital stock of the new corporation issued on the merger or amalgamation as consideration for a share of the capital stock of a predecessor corporation shall be deemed to be the same share as the share of the predecessor corporation for which it was issued, but this paragraph does not apply if the share issued on the merger or amalgamation is not a prescribed share at the time of its issue and either

(i) the terms and conditions of that share are not identical to those of the share of the predecessor corporation for which it was issued, or

(ii) at the time of its issue the fair market value of that share is not the same as that of the share of the predecessor corporation for which it was issued;

(d) a reference in clauses (1)(a)(i)(D) and (G) and subparagraph (1)(a)(ii) to a right or obligation of the corporation or a person or partnership does not include a right or obligation provided in a written agreement among shareholders of a private corporation owning more than 50% of its issued and outstanding share capital having full voting rights under all circumstances to which the corporation, person or partnership is a party unless it may reasonably be considered, having regard to all the circumstances, including the terms of the agreement and the number and relationship of the shareholders, that one of the main reasons for the existence of the agreement is to avoid or limit the application of subsection 110.6(8) or (9) of the Act;

(e) where at any particular time after November 21, 1985, the terms or conditions of a share are changed or any existing agreement in respect thereof is changed or a new agreement in respect of the share is entered into, the share shall, for the purpose of determining whether it is a prescribed share, be deemed to have been issued at that particular time; and

(f) the determination of whether a share of the capital stock of a corporation is a prescribed share for the purposes of subsection (1) shall be made without reference to a right or obligation to redeem, acquire or cancel the share or to cause the share to be redeemed, acquired or cancelled where

(i) the share was issued pursuant to an employee share purchase agreement (in this paragraph referred to as "the agreement") to an employee (in this paragraph referred to as "the holder") of the corporation or of a corporation with which it did not deal at arm's length,

(ii) the holder was dealing at arm's length with each corporation referred to in subparagraph (i) at the time the share was issued, and

(iii) having regard to all the circumstances including the terms of the agreement, it may reasonably be considered that

(A) the amount payable on the redemption, acquisition or cancellation (in this clause and in clause (B) referred to as the "acquisition") of the share will not exceed

(I) the adjusted cost base of the share to the holder immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to protect the holder against any loss in respect of the share, or

(II) the fair market value of the share immediately before the acquisition, where the acquisition was provided for in the agreement and the principal purpose for its provision was to provide the holder with a market for the share, and

(B) no portion of the amount payable on the acquisition of the share is directly determinable by reference to the profits of the corporation, or of another corporation with which it does not deal at arm's length, for all or any part of the period during which the holder owned the share or had a right to acquire the share, unless the reference to the profits of the corporation or the other corporation is only for the purpose of determining the fair market value of the share pursuant to a formula set out in the agreement.

(5) For the purposes of this section, "specified person", in relation to a corporation or a holder of a share, as the case may be (in this subsection referred to as the "taxpayer"), means any person or partnership with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer (or a person or partnership with whom the taxpayer does not deal at arm's length) is a member or beneficiary, respectively.

History: All that portion of subsec. 6205(2) preceding subpara. (a)(ii) amended by P.C. 1994-618, subsec. 3(1), April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1985 *et seq.*, except that for taxation years ending before May 5, 1994, the reference in subpara. 6205(2)(a)(i) to "without reference to this subsection" shall be read as "without reference to this paragraph".

Cl. 6205(2)(a)(ii)(B) amended, and cl. (C) added, by P.C. 1994-618, subsec. 3(3), April 21, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1985 *et seq.*

Para. 6205(4)(c) amended by the said P.C. 1994-618, subsec. 3(4), applicable to mergers and amalgamations occurring after 1984.

Cl. 6205(1)(a)(i)(F) and subpara. (1)(a)(ii) amended by P.C. 1991-2475, s. 2, December 12, 1991, *Canada Gazette*, Part II, January 1, 1992, applicable after June 17, 1987.

Paras. 6205(2)(a), (b) substituted for (a) to (c), and subpara. 6205(4)(a)(ii) amended, by P.C. 1990-1838, subsecs. 1(1), (2), August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable to 1985 *et seq.*

Para. 6205(4)(f) added by subsec. 1(3) of the said P.C. 1990-1838, applicable after November 27, 1986.

S. 6205 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, applicable to 1985 *et seq.*

Definitions [Reg. 6205]: "adjusted cost base" — ITA 54, 248(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "dividend", "employee" — ITA 248(1); "investment corporation" — ITA 130(3), 248(1); "mutual fund corporation" — ITA 131(8), 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "private corporation" — ITA 89(1), 248(1); "property" — ITA 248(1); "security" — *Interpretation Act* 35(1); "share", "shareholder" — ITA 248(1); "spouse" — ITA 252(4); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

6206. The Class I Special Shares of Reed Stenhouse Companies Limited, issued before January 1, 1986, are prescribed for the purposes of subsection 84(8) of the Act.

History: S. 6206 added by P.C. 1986-2770, s. 8, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

6207. (1) For the purposes of paragraph 183.1(4)(c) of the Act (as it read in its application to transactions entered into before September 13, 1988), a share is a prescribed share of the capital stock of an acquiring corporation where, at the time the share is issued

(a) under the terms or conditions of the share or any agreement in respect of the share or its issue,

(i) the amount of the dividends (in this section referred to as the "dividend entitlement") that the corporation may declare or pay on the share is not limited to a maximum amount or fixed at a minimum amount at that time or at any time thereafter by way of a formula or otherwise,

(ii) the amount (in this section referred to as the "liquidation entitlement") that the holder of the share is entitled to receive on the share on the dissolution, liquidation or winding-up of the corporation is not limited to a maximum amount or fixed at a minimum amount by way of a formula or otherwise,

(iii) the share cannot be converted into any other security, other than into another security of the corporation or of another corporation with which it does not deal at arm's length that is, or would be at the date of conversion, a prescribed share,

(iv) the holder of the share does not, at that time or at any time thereafter, have the right or obligation to cause the share to be redeemed, acquired or cancelled by the corporation or any specified person in relation to the corporation, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii),

(v) no person or partnership has, either absolutely or contingently, an obligation to reduce, or to cause the corporation to reduce, at that time or at any time thereafter, the paid-up capital in respect of the share, otherwise than by way of a redemption, acquisition or cancellation of the share that is not prohibited by this section, and

(vi) neither the corporation nor any specified person in relation to the corporation has, either absolutely or contingently, the right or obligation to redeem, acquire or cancel, at that time or at any time thereafter, the share in whole or in part, except where the redemption, acquisition or cancellation is required pursuant to a conversion that is not prohibited by subparagraph (iii); and

(b) it cannot reasonably be expected, having regard to all the circumstances, that any of the terms or conditions of the share or any existing agreement in respect of the share or its issue will be modified or amended, or that any new agreement in respect of the share or its issue will be entered into, in such a manner that the share would not be a prescribed share if it had been issued at the time of such modification or amendment or at the time the new agreement is entered into.

(2) For the purposes of this section,

(a) the dividend entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all the dividend entitlement is determinable by reference to the dividend entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(i);

(b) the liquidation entitlement of a share of the capital stock of a corporation shall be deemed not to be limited to a maximum amount or fixed at a minimum amount where it may reasonably be considered that all or substantially all of the liquidation entitlement is determinable by reference to the liquidation entitlement of another share of the capital stock of the corporation that meets the requirements of subparagraph (1)(a)(ii);

(c) where at any particular time after June 3, 1987, the terms or conditions of a share are changed or any existing agreement in respect of the share is changed or a new agreement in respect of the share is entered into, the share shall, for the purpose of determining whether it is a prescribed share, be deemed to have been issued at that particular time;

(d) the determination of whether a share of the capital stock of a corporation owned by an employee of the corporation or another corporation with which it does not deal at arms' length is a prescribed share shall be made without reference to a right or obligation with respect to an acquisition of the share, the consideration for which is described in subparagraph 183.1(4)(c)(i) or (ii) of the Act (as those subparagraphs read in their application to transactions entered into before September 13, 1988) where no portion of the amount payable on the acquisition of the share is directly determinable by reference to the profits of the corporation or the other corporation for all or any part of the period during which the employee owned the share or had a right to acquire the share, unless the reference to the profits of the corporation or the other corporation is only for the purpose of determining the fair market value of the share pursuant to a formula set out in the employee share purchase agreement under which the employee acquired the share; and

(e) a reference in subparagraphs (1)(a)(iv) and (vi) to a right or obligation of the corporation or a person or partnership does not include a right or obligation pro-

vided in a written agreement among shareholders of a private corporation owning more than 50% of its issued and outstanding share capital having full voting rights under all circumstances to which the corporation, person or partnership is a party unless it may reasonably be considered, having regard to all the circumstances including the terms of the agreement and the number and relationship of the shareholders, that one of the main reasons for the existence of the agreement is to avoid or limit the application of subsection 183.1(1) of the Act.

(3) For the purposes of subsection (1), "specified person" in relation to a corporation means any person or partnership with whom the corporation does not deal at arm's length or any partnership or trust of which the corporation (or a person or partnership with whom the corporation does not deal at arm's length) is a member or beneficiary, respectively.

History: That portion of s. 6207 preceding para. (a) amended by P.C. 1992-2335, Sch. II, s. 14, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable after November 27, 1986.

S. 6207 added by P.C. 1990-1838, s. 2, August 28, 1990, *Canada Gazette*, Part II, September 12, 1990, applicable after November 27, 1986, except that it does not apply with respect to transactions entered into on or after September 13, 1988, other than transactions that are part of a series of transactions, determined without reference to subsection 248(10) of the *Income Tax Act*, commencing before September 13, 1988 and completed before 1989.

Definitions [Reg. 6207]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "employee" — ITA 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed" — ITA 248(1); "private corporation" — ITA 89(1), 248(1); "share", "shareholder" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "written" — *Interpretation Act* 35(1)"writing".

6208. (1) For the purposes of clause 212(1)(b)(vii)(E) of the Act, a prescribed security with respect to an obligation of a corporation is

(a) a share of the capital stock of the corporation unless

(i) under the terms and conditions of the share, any agreement relating to the share or any modification of such terms, conditions or agreement, the corporation or a specified person in relation to the corporation is or may, at any time within 5 years after the date of the issue of the obligation, be required to redeem, acquire or cancel, in whole or in part, the share (unless the share is or may be required to be redeemed, acquired or cancelled by reason only of a right to convert the share into, or exchange the share for, another share of the corporation that, if issued, would be a prescribed security) or to reduce its paid-up capital,

(ii) as a result of the modification or establishment of the terms or conditions of the share or the changing or entering into of any agreement in respect of the share, the corporation or a specified person in relation to the corporation may, within 5 years after the date of the issue of the obligation, reasonably be expected to redeem, acquire or cancel, in whole or in part, the share (unless the share is or may be required to be redeemed, acquired or cancelled by reason only of a right to convert the share into, or exchange the share for, another share of the corporation that, if issued, would be a prescribed security) or to reduce its paid-up capital, or

(iii) as a result of the terms or conditions of the share or any agreement entered into by the corporation or a specified person in relation to the corporation or any modification of such terms, conditions or agreement, any person is required, either absolutely or contingently, within 5 years after the date of the issue of the obligation, to effect any undertaking, including any guarantee, covenant or agreement to purchase or repurchase the share, and including a loan of funds to or the placing of amounts on deposit with, or on behalf of, the shareholder or a specified person in relation to the shareholder given

(A) to ensure that any loss that the shareholder or a specified person in relation to the shareholder may sustain, by reason of the ownership, holding or disposition of the share or any other property, is limited in any respect, and

(B) as part of a transaction or event or series of transactions or events that included the issuance or acquisition of the obligation,

and for the purposes of this subparagraph, where such an undertaking in respect of a share is given at any particular time after the date of the issue of the obligation, the obligation shall be deemed to have been issued at the particular time and the undertaking shall be deemed to have been given as part of a series of transactions that included the issuance or acquisition of the obligation, and

(b) a right or warrant to acquire a share of the capital stock of the corporation that would, if issued, be a prescribed security with respect to the obligation,

where all the consideration receivable upon a conversion or exchange of the obligation or the prescribed security, as the case may be, is a share of the capital stock of the corporation described in paragraph (a) or a right or warrant described in paragraph (b), or both, as the case may be.

Interpretation Bulletins: IT-361R3: Exemption from Part XIII tax on interest payments to non-residents.

(2) For the purposes of this section, where a taxpayer may become entitled upon the conversion or exchange of an obligation or a prescribed security to receive consideration in lieu of a fraction of a share, that consideration shall be deemed not to be consideration unless it may reasonably be considered to be receivable as part of a series of transactions or events one of the main purposes of which is to avoid or limit the application of Part XIII of the Act.

(3) In this section, "specified person", in relation to a corporation or a shareholder, means any person with whom the corporation or the shareholder, as the case may be, does not deal at arm's length or any partnership or trust of which the corporation or the shareholder, as the case may be, or the person is a member or beneficiary, respectively.

History: S. 6208 added by P.C. 1990-854, s. 1, May 10, 1990, *Canada Gazette*, Part II, May 23, 1990, applicable after December 19, 1986.

Definitions [Reg. 6208]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "disposition" — ITA 248(1); "paid-up capital" — ITA 89(1), 248(1); "person", "prescribed", "property" — ITA 248(1); "share", "shareholder", "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

6209. For the purposes of the definition "lending asset" in subsection 248(1) of the Act,

(a) a share owned by a bank is a prescribed share for a taxation year where it is a preferred share of the capital stock of a corporation that is dealing at arm's

length with the bank that may reasonably be considered to be, and is reported as, a substitute or alternative for a loan to the corporation, or another corporation with whom the corporation does not deal at arm's length, in the bank's annual report for the year to the relevant authority or, where the bank was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report for the year with the relevant authority, in its financial statements for the year; and

(b) a property is a prescribed property for a taxation year where

(i) in the case of a security held by a bank, the security is reported as part of the bank's trading account in its annual report for the year to the relevant authority or, where the bank was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report for the year with the relevant authority, in its financial statements for the year,

(ii) in the case of a security held by a taxpayer other than a bank, the security is at any time in the year a property described in an inventory of the taxpayer, or

Proposed Amendment — Reg. 6209(b)(i), (ii)

(i) the security is a mark-to-market property (as defined in subsection 142.2(1) of the Act) for the year of a financial institution (as defined in that subsection), or

(ii) the security is at any time in the year a property described in an inventory of a taxpayer.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 7, will amend subparas. 6209(b)(i) and (ii) to read as above, applicable to taxation years that end after February 22, 1994.

Technical Notes: Section 6209 prescribes certain shares and other securities for the purpose of the definition of "lending asset" in subsection 248(1) of the Act. Securities prescribed by paragraph 6209(b) are excluded from being lending assets. Paragraph 6209(b) prescribes a security if it is included in the trading account of a bank or in the inventory of a taxpayer other than a bank.

Paragraph 6209(b) is amended to provide that a security is prescribed if it is a mark-to-market property or is included in a taxpayer's inventory. "Mark-to-market property", which is defined in new subsection 142.2(1) of the Act, includes most shares and some debt obligations.

As a consequence of this amendment, a specified debt obligation (as defined in subsection 142.2(1) of the Act) held by a bank in its trading account will be treated as a lending asset if it is not a mark-to-market property. This observation applies, in particular, to the debt obligations of a country that has been designated by the Office of the Superintendent of Financial Institutions and to the United Mexican States Collateralized Par or Discount Bonds Due 2019.

(iii) the property is a direct financing lease, or is any other financing arrangement, of a taxpayer that is reported as a loan in the taxpayer's financial statement for the year prepared in accordance with generally accepted accounting principles and an amount is deductible under paragraph 20(1)(a) of the Act in respect of the property that is the subject of the lease or arrangement in computing the taxpayer's income for the year.

History: The opening words of para. 6209(b) amended and subpara. (iii) added by P.C. 1999-195, s. 1, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, apply to the year and files the election with the Minister of National Revenue before October 1998.

S. 6209 added by P.C. 1990-2779, s. 3, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [Reg. 6209]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bank" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "inventory", "preferred share", "prescribed", "property" — ITA 248(1); "share" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART LXIII — CHILD TAX BENEFITS

History: Part LXIII (ss. 6300–6302) enacted by P.C. 1992-2714, December 29, 1992, *Canada Gazette*, Part II, January 13, 1993, applicable after 1992.

6300. Interpretation — In this Part, "qualified dependant" has the meaning assigned by section 122.6 of the Act.

6301. Non-application of presumption — **(1)** For the purposes of paragraph (g) of the definition "eligible individual" in section 122.6 of the Act, the presumption referred to in paragraph (f) of that definition does not apply in the circumstances where

(a) the female parent of the qualified dependant declares in writing to the Minister that the male parent, with whom she resides, is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of each of the qualified dependants who reside with both parents;

(b) the female parent is a qualified dependant of an eligible individual and each of them files a notice with the Minister under subsection 122.62 (1) of the Act in respect of the same qualified dependant;

(c) there is more than one female parent of the qualified dependant who resides with the qualified dependant and each female parent files a notice with the Minister under subsection 122.62 (1) of the Act in respect of the qualified dependant; or

(d) more than one notice is filed with the Minister under subsection 122.62 (1) of the Act in respect of the same qualified dependant who resides with each of the persons filing the notices if such persons live at different locations.

History: Paras. 6301(1)(a) to (d) amended by 1998-2270, subsec. 9(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after August 27, 1995.

Subsec. 6301(1) amended by 1996, c. 11, s. 96, to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

(2) For greater certainty, a person who files a notice referred to in paragraph (1)(b), (c) or (d) includes a person who is not required under subsection 122.62(3) of the Act to file such a notice.

History: Subsec. 6301(2) amended by 1998-2270, subsec. 9(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after August 27, 1995.

Subsec. 6301(2) amended by 1996, c. 11, s. 96, to substitute "Minister of Human Resources Development" for "Minister of National Health and Welfare", in force July 12, 1996.

Definitions [Reg. 6301]: "individual", "Minister" — ITA 248(1); "parent" — ITA 252(2); "person" — ITA 248(1); "qualified dependant" — Reg. 6300; "writing" — *Interpretation Act* 35(1).

6302. Factors — For the purposes of paragraph (h) of the definition "eligible individual" in section 122.6 of the Act, the following factors are to be considered in determining what constitutes care and upbringing of a qualified dependant:

(a) the supervision of the daily activities and needs of the qualified dependant;

(b) the maintenance of a secure environment in which the qualified dependant resides;

(c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;

(d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;

(e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;

(f) the attendance to the hygienic needs of the qualified dependant on a regular basis;

(g) the provision, generally, of guidance and companionship to the qualified dependant; and

(h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.

Definitions [Reg. 6302]: "person" — ITA 248(1); "qualified dependant" — Reg. 6300.

PART LXIV — PRESCRIBED DATES

History: Part LXIV (s. 6400) added by P.C. 1979-484, February 20, 1979, *Canada Gazette*, Part II, March 14, 1979.

6400. (1) Child tax credits — For the purposes of subsection 122.2(1) of the Act, the prescribed date for each of the 1978 and subsequent taxation years is December 31 of that year.

History: S. 6400 substituted by P.C. 1981-911, April 2, 1981, *Canada Gazette*, Part II, April 22, 1981.

S. 6400 substituted, heading added by P.C. 1980-3278, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980.

S. 6400 substituted by P.C. 1980-501, February 8, 1980, *Canada Gazette*, Part II, February 27, 1980.

Definitions [Reg. 6400]: "prescribed" — ITA 248(1); "taxation year" — ITA 249.

6401. Quebec tax abatement — For the purposes of subsection 120(2) of the Act, the prescribed date for each of the 1980 and subsequent taxation years is December 31 of that year.

History: S. 6401 added by P.C. 1981-911, April 2, 1981, *Canada Gazette*, Part II, April 22, 1981.

Definitions [Reg. 6401]: "prescribed" — ITA 248(1); "taxation year" — ITA 249.

PART LXV — PRESCRIBED LAWS

History: The heading to Part LXV amended by P.C. 1994-738, s. 1, May 5, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to 1990 *et seq.*

Part LXV (s. 6500) added by P.C. 1980-876, April 3, 1980, *Canada Gazette*, Part II, April 23, 1980, effective commencing, as to subsec. 6500(1), March 31, 1978, and as to subsec. 6500(2) as follows:

(a) January 1, 1979, in respect of para. 6500(2)(a);

(b) March 31, 1979, in respect of para. 6500(2)(b);

(c) October 15, 1978, in respect of para. 6500(2)(c);

(d) March 31, 1978, in respect of para. 6500(2)(d); and

(e) December 31, 1978, in respect of para. 6500(2)(e).

6500. (1) For the purposes of paragraph 73(1)(d) and subparagraph 148(8)(a)(iii) of the Act,

"prescribed class of persons" means persons referred to in subparagraph 14(b)(i) of *The Family Law Reform Act, 1978*, S.O. 1978, c. 2, of the Province of Ontario; and

"prescribed provisions of the law of a province" means paragraph 19(1)(c) and section 52 of *The Family Law Reform Act, 1978*, S.O. 1978, c. 2, of the Province of Ontario.

(2) For the purposes of subsection 73(1.1) of the Act, "prescribed provisions of the law of a province" means

(a) sections 7 and 9 of *The Matrimonial Property Act*, S.A. 1978, c. 22, of the Province of Alberta;

(b) sections 43, 51 and 52 of the *Family Relations Act*, R.S.B.C. 1979, c. 121, of the Province of British Columbia;

(c) sections 13, 16 and 17 of *The Marital Property Act*, S.M. 1978, C. 24-Cap. M45 of the Province of Manitoba;

(d) sections 4, 6, 7 and 8 and paragraph 19(1)(c) of *The Family Law Reform Act, 1978*, S.O. 1978, c. 2, of the Province of Ontario;

(e) sections 5, 7, 8 and 9 of the *Family Law Reform Act*, S.P.E.I. 1978, c. 6, of the Province of Prince Edward Island; and

(f) sections 5, 8, 21 and 22, subsection 23(4) and sections 26 and 42 of *The Matrimonial Property Act*, S.S. 1979, c. M-6.1, of the Province of Saskatchewan.

History: That portion of subsec. 6500(1) preceding "prescribed class of persons" substituted by P.C. 1986-1048, s. 8, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to taxation years commencing after 1982.

Para. 6500(2)(f) added by P.C. 1982-339, February 4, 1982, *Canada Gazette*, Part II, February 24, 1982, effective in respect of 1980 *et seq.*

Para. 6500(2)(b) substituted by P.C. 1981-277, s. 1, February 5, 1981, *Canada Gazette*, Part II, February 25, 1981, effective March 31, 1979.

Definitions [Reg. 6500]: "person" — ITA 248(1).

Interpretation Bulletins: IT-325R2: Property transfers after separation, divorce and annulment.

6501. For the purposes of paragraph 81(1)(q) of the Act, "prescribed provision of the law of a province" means

(a) in respect of the Province of Alberta

(i) subsections 7(1) and 14(1) of *The Criminal Injuries Compensation Act*, R.S.A. 1970, c. 75, and

(ii) subsections 8(3), 10(2) and 13(8) of *The Motor Vehicle Accident Claims Act*, R.S.A. 1970, c. 243;

(b) in respect of the Province of British Columbia

(i) paragraphs 3(1)(a) and (b) and section 9 of the *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83, and

(ii) subsection 106(1) of the *Motor-vehicle Act*, R.S.B.C. 1960, c. 253, as amended by S.B.C. 1965, c. 27;

(c) in respect of the Province of Manitoba

(i) subsection 6(1) of *The Criminal Injuries Compensation Act*, S.M. 1970, c. 56, and

(ii) subsections 7(9) and 12(11) of *The Unsatisfied Judgement Fund Act*, R.S.M. 1970, c. U70;

(d) in respect of the Province of New Brunswick

(i) subsections 3(1) and (2) of the *Compensation for Victims of Crime Act*, R.S.N.B. 1973, c. C-14, and

(ii) subsections 319(3), (10) and 321(1) of the *Motor Vehicle Act*, R.S.N.B. 1973, c. M-17;

(e) in respect of the Province of Newfoundland

(i) subsection 27(1) of the *Criminal Injuries Compensation Act*, R.S.N. 1970, c. 68, and

(ii) subsection 106(2) of *The Highway Traffic Act*, R.S.N. 1970, c. 152;

(f) in respect of the Northwest Territories, subsections 3(1) and 5(2) and section 13 of the *Criminal Injuries Compensation Ordinance*, R.O.N.W.T. 1974, c. C-23;

(g) in respect of the Province of Nova Scotia, subsections 190(5) and 191(2) of the *Motor Vehicle Act*, R.S.N.S. 1967, c. 191;

(h) in respect of the Province of Ontario

(i) section 5, subsection 7(2) and section 14 of *The Compensation for Victims of Crime Act, 1971*, S.O. 1971, c. 51, and

(ii) subsections 5(3) and 6(1) and section 18 of *The Motor Vehicle Accident Claims Act*, R.S.O. 1970, c. 281;

(i) in respect of the Province of Prince Edward Island, subsection 351(3) of the *Highway Traffic Act*, R.S.P.E.I. 1974, c. H-6;

(j) in respect of the Province of Quebec

(i) sections 5, 5b and 14 of the *Crime Victims Compensation Act*, S.Q. 1971, c. 18, and

(ii) sections 13 and 26, subsection 37(1) and sections 44 and 54 of the *Automobile Insurance Act*, S.Q. 1977, c. 68;

(k) in respect of the Province of Saskatchewan

(i) subsection 10(1) of *The Criminal Injuries Compensation Act*, R.S.S. 1978, c. C-47, and

(ii) subsections 23(1) to (4) and (7), 24(2) to (7) and (9), 25(1), 26(1), 27(1) and (2), 27(5), 51(8) and (9), 54(3) and 55(1) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35; and

(l) in respect of the Yukon Territory, subsection 3(1) of the *Compensation for the Victims of Crime Ordinance*, O.Y.T. 1975 (1st), c. 2 as amended by O.Y.T. 1976 (1st), c. 5.

History: S. 6501 added by P.C. 1981-277, s. 2, February 5, 1981, *Canada Gazette*, Part II, February 25, 1981, effective January 1, 1978.

6502. For the purposes of paragraph 56(1)(c.1), section 56.1, paragraph 60(c.1) and section 60.1 of the Act, the class of individuals

(a) who were parties, whether in a personal capacity or by representation, to proceedings giving rise to an order made in accordance with the laws of the Province of Ontario, and

(b) who, at the time the application for the order was made, were persons described in subclause 14(b)(i) of the *Family Law Reform Act*, Revised Statutes of Ontario 1980, c. 152,

is prescribed as a class of persons described in the laws of a province.

History: S. 6502 added by P.C. 1985-177, January 24, 1985, *Canada Gazette*, Part II, February 6, 1985, effective commencing December 12, 1979.

Definitions [Reg. 6502]: "individual", "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

6503. For the purposes of paragraphs 60(j.02) to (j.04) of the Act, subsections 39(7) and 42(8) of the *Public Service Superannuation Act* and subsection 24(6) of the *Royal Canadian Mounted Police Superannuation Act* are prescribed.

History: S. 6503 added by P.C. 1994-738, s. 2, May 5, 1994, *Canada Gazette*, Part II, May 18, 1994, applicable to 1990 *et seq.*, except that, for the 1990 taxation year, the reference to "paragraphs 60(j.02) to (j.04)" shall be read as "paragraphs 60(j.02) and (j.04)".

Definitions [Reg. 6503]: "prescribed" — ITA 248(1).

PART LXVI — PRESCRIBED ORDER

History: Part LXVI (s. 6600) added by P.C. 1981-910, April 2, 1981, *Canada Gazette*, Part II, April 22, 1981, effective for 1980 *et seq.*

6600. For the purposes of the definition "overseas Canadian Forces school staff" in subsection 248(1) of the Act, the prescribed order is the "Canadian Forces Overseas Schools Order" made by Order in Council P.C. 1975-3/1054 of 6 May, 1975.

History: S. 6600 substituted by P.C. 1981-2410, September 3, 1981, *Canada Gazette*, Part II, September 23, 1981, effective in respect of 1980 *et seq.*

Definitions [Reg. 6600]: "prescribed" — ITA 248(1).

PART LXVII — PRESCRIBED VENTURE CAPITAL CORPORATIONS, LABOUR-SPONSORED VENTURE CAPITAL CORPORATIONS, INVESTMENT CONTRACT CORPORATIONS, QUALIFYING CORPORATIONS AND PRESCRIBED STOCK SAVINGS PLAN

History: The heading to Part LXVII substituted by P.C. 1989-2306, s. 1, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to 1986 *et seq.*

The heading to Part LXVII substituted by P.C. 1986-2770, s. 9, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986.

The heading to Part LXVII substituted by P.C. 1984-3789, subsec. 17(1), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Part LXVII (ss. 6700, 6701) added by P.C. 1981-1788, July 2, 1981, *Canada Gazette*, Part II, July 22, 1981, applicable to 1977 *et seq.*

Interpretation Bulletins [Part LXVII]: IT-73R5: The small business deduction; IT-269R3: Part IV tax on taxable dividends received by a private corporation or a subject corporation.

6700. For the purposes of paragraph 40(2)(i), clause 53(2)(k)(i)(C), paragraph 89(1)(f) [89(1)"private corporation"], subsection 125(6.2), paragraph 125(7)(b) [125(7)"Canadian-controlled private corporation"], section 186.2 and subsection 191(1) of the Act, and in this Part, "prescribed venture capital corporation" means at any particular time

(a) a corporation that is at that time registered under the provisions of

(i) *An Act Respecting Corporations for the Development of Quebec Business Firms*, Statutes of Quebec 1976, c. 33,

(ii) the *Small Business Development Corporations Act, 1979*, Statutes of Ontario 1979, c. 22,

(iii) *Manitoba Regulation 194/84*, being a regulation made under *The Loans Act, 1983(2)*, Statutes of Manitoba 1982-83-84, c. 36,

(iv) *The Venture Capital Tax Credit Act*, Statutes of Saskatchewan 1983-84, c. V-4.1,

(v) the *Small Business Equity Corporations Act*, Statutes of Alberta 1984, c. S-13.5,

(vi) the *Small Business Venture Capital Act*, Statutes of British Columbia 1985, c. 56,

(vii) *An Act respecting Quebec business investment companies*, Statutes of Quebec 1985, c. 9,

(viii) *The Venture Capital Act*, Statutes of Newfoundland 1988, c. 15,

(ix) *The Labour-sponsored Venture Capital Corporations Act*, Statutes of Saskatchewan 1986, c. L-0.2,

(x) Part 2 of the *Employee Investment Act*, Chapter 24 of the Statutes of British Columbia, 1989,

(xi) Part III of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992,

(xii) *The Labour-Sponsored Venture Capital Corporations Act*, Continuing Consolidation of the Statutes of Manitoba c. L12; or

(xiii) Part II of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998;

(b) the corporation established by *An Act to Establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)*, Revised Statutes of Quebec, F-3.2.1;

(c) a corporation that is at that time registered with the Department of Economic Development and Tourism of the Government of the Northwest Territories pursuant to the Venture Capital Policy and Directive issued by the Government of the Northwest Territories on June 27, 1985;

(d) a corporation that is at that time a registered labour-sponsored venture capital corporation;

(e) the corporation established by *The Manitoba Employee Ownership Fund Corporation Act*, Continuing Consolidation of the Statutes of Manitoba, c. E95;

(f) the corporation established by *An Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi*, Statutes of Québec 1995, c. 48; or

(g) a corporation that is at that time registered under Part II of the *Equity Tax Credit Act*, Statutes of Nova Scotia 1993, c. 3.

History: Subpara. 6700(a)(xi) amended by P.C. 1999-249, subsec. 3(1), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to the "*Labour Sponsored Venture Capital Corporations Act, 1992*".

Subpara. 6700(a)(xiii) added by P.C. 1999-249, subsec. 3(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1998 *et seq.*

Para. 6700(d) amended by P.C. 1998-782, s. 2, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable after 1995.

Subpara. 6700(a)(xii) added by P.C. 1997-1943, s. 1, December 17, 1997, *Canada Gazette*, Part II, January 7, 1998, applicable to 1997 *et seq.*

Para. 6700(g) added by P.C. 1997-1669, s. 1, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to 1997 *et seq.*

Para. 6700(f) added by P.C. 1996-436, s. 1, March 26, 1996, *Canada Gazette*, Part II, April 17, 1996, applicable to 1995 *et seq.*

Subpara. 6700(a)(xi) added applicable to 1991 *et seq.*, para. (b) amended effective June 20, 1986, and para. (e) added applicable to 1992 *et seq.*, by P.C. 1993-1549, subsecs. 1(2) to (4), July 21, 1993, *Canada Gazette*, Part II, August 11, 1993.

That portion of s. 6700 preceding para. (a) amended applicable to taxation years ending after July 13, 1990, and para. (d) added applicable after 1988, by P.C. 1992-1307, subsecs. 1(1), (2), June 18, 1992, *Canada Gazette*, Part II, July 1, 1992.

Subpara. (a)(x) added by P.C. 1992-1306, s. 1, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of taxation years ending after September 26, 1989.

That portion of s. 6700 preceding para. (a) substituted by P.C. 1989-2306, subsec. 2(1), November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to taxation years ending after February 18, 1987.

That portion of s. 6700 preceding para. (a) substituted by P.C. 1986-1048, s. 9, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable to 1985 *et seq.*

Subpara. 6700(a)(vi) added by P.C. 1986-739, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, applicable to 1985 *et seq.*

S. 6700 substituted by P.C. 1985-71, January 17, 1985, *Canada Gazette*, Part II, February 6, 1985, applicable to 1983 *et seq.*

S. 6700 substituted by P.C. 1984-3789, subsec. 17(1), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Definitions [Reg. 6700]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — ITA 248(1).

Interpretation Bulletins: IT-458R2: Canadian-controlled private corporation.

6700.1 For the purposes of paragraph 40(2)(i) and clause 53(2)(k)(i)(C) of the Act, a "prescribed venture capital corporation" at any time includes a corporation that at that time has an employee share ownership plan registered under the provisions of Part 1 of the *Employee Investment Act*, chapter 24 of the Statutes of British Columbia, 1989.

History: S. 6700.1 added by P.C. 1992-1306, s. 2, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of taxation years ending after September 26, 1989.

Definitions [Reg. 6700.1]: "corporation" — ITA 248(1), *Interpretation Act* 35(1).

6700.2 For the purposes of paragraph 40(2)(i) and clause 53(2)(k)(i)(C) of the Act, "prescribed venture capital corporation" at any time includes a corporation that at that time is a corporation registered under the provisions of Part II of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992, or of Part II of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998.

History: S. 6700.2 amended by P.C. 1999-249, s. 4, February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that

(a) before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to the "*Labour Sponsored Venture Capital Corporations Act, 1992*",

(b) for the 1997 taxation year, the section shall be read without reference to the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998.

S. 6700.2 added by P.C. 1993-1549, s. 2, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, applicable to 1991 *et seq.*

Definitions [Reg. 6700.2]: "corporation" — ITA 248(1), *Interpretation Act* 35(1).

6701. For the purposes of paragraph 40(2)(i), clause 53(2)(k)(i)(C), the definition "approved share" in subsec-

tion 127.4(1), subsections 131(8) and (11), section 186.1 and subsection 191(1) of the Act, and in this Part, "prescribed labour-sponsored venture capital corporation" means at any particular time

Proposed Amendment — Reg. 6701 opening words

6701. For the purposes of paragraph 40(2)(i), clause 53(2)(k)(i)(C), the definition "approved share" in subsection 127.4(1), subsections 131(8) and (11), section 186.1 and subsection 191(1) of the Act, this Part and subsection 1106(2), "prescribed labour-sponsored venture capital corporation" means at any particular time

Application: The December 12, 1995 draft regulations (Canadian film tax credit), s. 4, will amend the opening words of s. 6701 to read as above, applicable to 1995 *et seq.*

Proposed Amendment — Reg. 6701 opening words — Application to ITA 125(7)"specified investment business"

Technical Notes to draft legislation, June 20, 1996: Section 6701 of the *Income Tax Regulations*, which provides the meaning of "prescribed labour-sponsored venture capital corporation" for a number of provisions of the Act, will be amended to apply for the purpose of the definition "specified investment business" in subsection 125(7).

Proposed Amendment — Reg. 6701 opening words — Application to ITA 89(1)"public corporation" and 204.8"eligible investment"(f)(i)

Department of Finance Technical Notes to ITA 89(1)"public corporation", July 31, 1997: The definition is amended to provide that a prescribed labour-sponsored venture capital corporation is not a public corporation for the purposes of the Act unless a class of its shares becomes listed on a prescribed stock exchange in Canada. For this purpose, it is intended that section 6701 of the Regulations will be amended to add a cross reference to this definition.

Department of Finance Technical Notes to ITA 204.8"eligible investment"(f)(i), July 31, 1997: The definition is also amended so that a prescribed LSVCC that is related to the eligible entity is ignored for the purpose of the second condition. It is intended that section 6701 of the Regulations will be amended to add a cross reference to the definition.

(a) the corporation established by the *Act to establish the Fonds de solidarité des travailleurs du Québec 1983*, c. 58,

(b) a corporation that is registered under the provisions of *The Labour-sponsored Venture Capital Corporations Act*, Statutes of Saskatchewan 1986, c. L-0.2,

(c) a corporation that is registered under Part 2 of the *Employee Investment Act*, chapter 24 of the Statutes of British Columbia, 1989,

(d) a registered labour-sponsored venture capital corporation,

(e) a corporation that is registered under Part III of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992;

(f) the corporation established by *The Manitoba Employee Ownership Fund Corporation Act*, Continuing Consolidation of the Statutes of Manitoba, c. E95,

(f.1) a corporation that is registered under *The Labour-Sponsored Venture Capital Corporations Act*, Continuing Consolidation of the Statutes of Manitoba c. L12, or

(g) the corporation established by *An Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi*, Statutes of Québec 1995, c. 48,

(h) a corporation that is registered under Part II of the *Equity Tax Credit Act*, Statutes of Nova Scotia 1993, c. 3, or

(i) a corporation that is registered under Part II of the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of Northwest Territories, 1998.

History: Para. 6701(i) added by P.C. 1999-249, subsec. 5(2), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1998 *et seq.*

Para. 6701(e) amended by P.C. 1999-249, subsec. 5(1), February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.* except that before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to "*Labour Sponsored Venture Capital Corporations Act, 1992*".

Para. 6701(d) amended by P.C. 1998-782, s. 3, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable after 1995.

Para. 6701(f.1) added by P.C. 1997-1943, s. 2, December 17, 1997, *Canada Gazette*, Part II, January 7, 1998, applicable to 1997 *et seq.*

Para. 6701(h) added by P.C. 1997-1669, s. 2, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to 1997 *et seq.*

Para. 6701(g) added by P.C. 1996-436, s. 2, March 26, 1996, *Canada Gazette*, Part II, April 17, 1996, applicable to 1995 *et seq.*

Para. 6701(e) added applicable to 1991 *et seq.*, and para. (f) added applicable to 1992 *et seq.*, by P.C. 1993-1549, s. 3, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993.

Definitions [Reg. 6701]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "registered labour-sponsored venture capital corporation" — ITA 248(1).

6702. For the purposes of subparagraph 40(2)(i)(ii) and clause 53(2)(k)(i)(C) of the Act, "prescribed assistance" means

(a) the amount of any assistance received from a province that has been provided in respect of, or for the acquisition of, a share of the capital stock of a prescribed venture capital corporation;

(a.1) the amount of any assistance provided under the *Employee Investment Act*, chapter 24 of the Statutes of British Columbia, 1989, in respect of, or for the acquisition of, a share of the capital stock of a corporation described in section 6700.1;

(a.2) the amount of any assistance provided under the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992, or the *Risk Capital Investment Tax Credits Act*, chapter 22 of the Statutes of the Northwest Territories, 1998, in respect of, or for the acquisition of, a share of the capital stock of a corporation described in section 6700.2;

(b) the amount of any tax credit provided in respect of, or for the acquisition of, a share of a prescribed labour-sponsored venture capital corporation; and

(c) the amount of any tax credit provided by a province in respect of, or for the acquisition of, a share of the capital stock of a taxable Canadian corporation (other than a share of the capital stock of a corporation in respect of which an amount has been renounced by the corporation under subsection 66(12.6), (12.601), (12.62) or (12.64) of the Act) that is held in a prescribed stock savings plan.

Related Provisions: Reg. 7300(b) — Prescribed assistance under Reg. 6702 is a prescribed amount for ITA 12(1)(x).

History: Para. 6702(a.2) amended by P.C. 1999-249, s. 6, February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to 1997 *et seq.*

except that before May 8, 1997, the reference to the "*Community Small Business Investment Funds Act*" shall be read as a reference to the "*Labour Sponsored Venture Capital Corporations Act, 1992*". P.C. 1999-249 does not specifically indicate it, but presumably for the 1997 taxation year, it should also be read without reference to the *Risk Capital Investment Tax Credits Act*.

Para. 6702(c) amended by P.C. 1996-494, s. 4, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable after December 2, 1992.

Para. 6702(a.2) added by P.C. 1993-1549, s. 4, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993, applicable to 1991 *et seq.*

Definitions [Reg. 6702]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed labour-sponsored venture capital corporation" — Reg. 6701; "prescribed stock savings plan" — Reg. 6705; "prescribed venture capital corporation" — Reg. 6700; "province" — *Interpretation Act* 35(1); "share" — ITA 248(1); "taxable Canadian corporation" — ITA 89(1), 248(1).

6703. For the purposes of section 186.1 of the Act, a "prescribed investment contract corporation" means a corporation described in clause 146(1)(j)(ii)(B) [146(1)"retirement savings plan"(b)(ii)] of the Act.

History: That portion of s. 6701 preceding para. (a) was amended applicable to 1990 *et seq.* and para. (d) was added applicable after 1988, by P.C. 1992-1307, subsecs. 2(1), (2), June 18, 1992, *Canada Gazette*, Part II, July 1, 1992.

Paras. 6701(c), 6702(a.1) added by P.C. 1992-1306, ss. 3, 4, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of taxation years ending after September 26, 1989.

S. 6701 substituted, and paras. 6702(a) to (c) substituted for (a) and (b) by P.C. 1989-2306, ss. 3 and 4, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to 1986 *et seq.*

S. 6701 substituted, new s. 6702 added and former s. 6702 renumbered as s. 6703 by P.C. 1986-2770, ss. 10, 11, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective from May 23, 1985.

S. 6702 added by P.C. 1984-3789, subsec. 17(2), November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable to taxation years commencing after November 12, 1981.

Definitions [Reg. 6703]: "corporation" — ITA 248(1), *Interpretation Act* 35(1).

6704. For the purposes of section 186.2 of the Act, a corporation is a prescribed qualifying corporation in respect of dividends received by a shareholder on shares of its capital stock if, when the shares were acquired by the shareholder, they constituted

(a) an investment described in sections 33 and 34 of the Act referred to in subparagraph 6700(a)(i);

(b) an eligible investment under the provisions of an Act referred to in subparagraph 6700(a)(ii), (iv), (v), (vi) or (viii) or the regulation referred to in subparagraph 6700(a)(iii);

(c) a qualified investment under the provisions of the Act referred to in subparagraph 6700(a)(vii); or

(d) an investment in an eligible business under the Venture Capital Policy and Directive referred to in paragraph 6700(c).

History: Para. 6704(b) amended applicable to dividends received after February 18, 1987, and para. (d) substituted for paras. (d) and (e) applicable to dividends received after September 26, 1989, by P.C. 1993-1549, s. 5, July 21, 1993, *Canada Gazette*, Part II, August 11, 1993.

Para. 6704(d) added and former para. (d) redesignated as (e) by P.C. 1992-1306, s. 5, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of dividends received after September 26, 1989.

S. 6704 added by P.C. 1989-2306, s. 5, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable in respect of dividends received after February 18, 1987.

Definitions [Reg. 6704]: "business" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "dividend", "prescribed", "share", "shareholder" — ITA 248(1).

6705. For the purposes of paragraph 40(2)(i) and clause 53(2)(k)(i)(C) of the Act, and in this Part, "prescribed stock savings plan" means a stock savings plan as defined in

(a) the *Alberta Stock Savings Plan Act*, Statutes of Alberta 1986, c. A-37.7;

(b) *The Stock Savings Tax Credit Act*, Statutes of Saskatchewan 1986, c. S-59.1;

(c) the *Nova Scotia Stock Savings Plan Act*, Statutes of Nova Scotia 1987, c. 6; and

(d) *The Stock Savings Tax Credit Act*, Statutes of Newfoundland 1988, c. 14.

History: S. 6705 added by P.C. 1989-2306, s. 5, November 23, 1989, *Canada Gazette*, Part II, December 6, 1989, applicable to 1986 *et seq.*

6706. For the purpose of clause 204.81(1)(c)(v)(F) of the Act, a prescribed condition is that, in respect of a redemption of a Class A share of a corporation's capital stock, the shareholder requires the corporation to withhold an amount in respect of the redemption in accordance with Part XII.5 of the Act.

Related Provisions: ITA 204.81 — Conditions for registration; ITA 211.7 — Recovery of credit from provincial LSVCCs; ITA 211.8(1) — Disposition of approved share.

History: S. 6706 amended by P.C. 1998-782, s. 4, May 7, 1998, *Canada Gazette*, Part II, May 27, 1998, applicable to redemptions that occur after 1997.

The definition "qualifying Class A share" in subsec. 6706(1) and the opening words of subsec. 6706(3) amended, para. 6706(2)(c) added, by P.C. 1996-437, s. 1, March 26, 1996, *Canada Gazette*, Part II, April 17, 1996, applicable after December 2, 1992.

S. 6706 added by P.C. 1992-1307, s. 3, June 18, 1992, *Canada Gazette*, Part II, July 1, 1992, applicable in respect of shares redeemed after 1991.

Definitions [Reg. 6706]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed", "share", "shareholder" — ITA 248(1).

Forms: T1149: Remittance form for labour-sponsored funds tax credits withheld on redeemed shares; T2152: Part X.3 tax return for a labour-sponsored venture capital corporation; T5006 Summ: Return of Class A shares; T5006 Supp: Statement of registered labour-sponsored venture capital corporation Class A shares.

6707. For the purpose of subsection 204.82(5) of the Act, a "prescribed provision of a law of a province" means section 25.1 of the *Community Small Business Investment Funds Act*, chapter 18 of the Statutes of Ontario, 1992.

History: S. 6707 added by P.C. 1999-249, s. 7, February 18, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable after May 7, 1997.

PART LXVIII — PRESCRIBED PLANS, ARRANGEMENTS AND CONTRIBUTIONS

History: The heading to Part LXVIII amended by P.C. 1996-911, s. 1, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after October 8, 1986. The heading formerly read: *Prescribed Funds or Plans*.

Part LXVIII (s. 6800) added by P.C. 1981-1789, July 2, 1981, *Canada Gazette*, Part II, July 22, 1981, effective from January 1, 1980.

6800. For the purpose of paragraph (e) of the definition "employee benefit plan" in subsection 248(1) of the Act, each of the following is a prescribed arrangement:

(a) the Major League Baseball Players Benefit Plan;

(b) an arrangement under which all contributions are made pursuant to a law of Canada or a province, where one of the main purposes of the law is to en-

force minimum standards with respect to wages, vacation entitlement or severance pay; and

(c) an arrangement under which all contributions are made in connection with a dispute regarding the entitlement of one or more persons to benefits to be received or enjoyed by the person or persons.

History: S. 6800 amended by P.C. 1996-911, s. 2, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1979.

Definitions [Reg. 6800]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

6801. For the purposes of paragraph (l) of the definition "salary deferral arrangement" in subsection 248(1) of the Act, a prescribed plan or arrangement is an arrangement in writing

(a) between an employer and an employee that is established on or after July 28, 1986 where

(i) it is reasonable to conclude, having regard to all the circumstances, including the terms and conditions of the arrangement and any agreement relating thereto, that the arrangement is not established to provide benefits to the employee on or after retirement but is established for the main purpose of permitting the employee to fund, through salary or wage deferrals, a leave of absence from the employee's employment of not less than

(A) where the leave of absence is to be taken by the employee for the purpose of permitting the full-time attendance of the employee at a designated educational institution (within the meaning assigned by subsection 118.6(1) of the Act, three consecutive months, or

(B) in any other case, six consecutive months

that is to commence immediately after a period (in this section referred to as the "deferral period") not exceeding six years after the date on which the deferrals for the leave of absence commence,

(ii) the amount of salary or wages deferred by the employee under all such arrangements for the services rendered by the employee to the employer in a taxation year does not exceed 33⅓ per cent of the amount of the salary or wages that the employee would, but for the arrangements, reasonably be expected to have received in the year in respect of the services,

(iii) the arrangement provides that throughout the period of the leave of absence the employee does not receive any salary or wages from the employer, or from any other person or partnership with whom the employer does not deal at arm's length, other than

(A) the amount by which the employee's salary or wages under the arrangement was deferred or is to be reduced or, amounts that are based on a percentage of the salary or wage scale of employees of the employer, which percentage is fixed in respect of the employee for the deferral period and the leave of absence, and

(B) the reasonable fringe benefits that the employer usually pays to or on behalf of employees,

(iv) the arrangement provides that the amounts deferred in respect of the employee under the arrangement

(A) are held by or for the account of a trust governed by a plan or arrangement that is an employee benefit plan within the meaning of the definition thereof in subsection 248(1) of the Act, and provides that the amount that may reasonably be considered to be the income of the trust for a taxation year that has been earned by it for the benefit of the employee shall be paid in the year to the employee, or

(B) are held by or for the account of any person other than a trust referred to in clause (A), and provides that the amount in respect of interest or other additional amounts that may reasonably be considered to have accrued to or for the benefit of the employee to the end of a taxation year shall be paid in the year to the employee,

(v) the arrangement provides that the employee is to return to his regular employment with the employer or an employer that participates in the same or a similar arrangement after the leave of absence for a period that is not less than the period of the leave of absence, and

(vi) subject to subparagraph (iv), the arrangement provides that all amounts held for the employee's benefit under the arrangement shall be paid to the employee out of or under the arrangement no later than the end of the first taxation year that commences after the end of the deferral period;

(b) between an employer and an employee that is established before July 28, 1986 where it is reasonable to conclude, having regard to all the circumstances, including the terms and conditions of the arrangement and any agreement relating thereto, that the arrangement is not established to provide benefits on or after retirement but is established for the main purpose of permitting the employee to fund, through salary or wage deferrals, a leave of absence from the employment and under which the deferrals in respect of the leave of absence commenced before 1987;

(c) that is established for the purpose of deferring the salary or wages of a professional on-ice official for his services as such with the National Hockey League if, in the case of an official resident in Canada, the trust or other person who has custody and control of any funds, investments or other property under the arrangement is resident in Canada; or

(d) between a corporation and an employee of the corporation or a corporation related thereto under which the employee (or, after the employee's death, a dependant or relation of the employee or the legal representative of the employee) may or shall receive an amount that may reasonably be attributable to duties of an office or employment performed by the employee on behalf of the corporation or a corporation related thereto where

(i) all amounts that may be received under the arrangement shall be received after the time of the employee's death or retirement from, or loss of, the office or employment and no later than the end of the first calendar year commencing thereafter, and

(ii) the aggregate of all amounts each of which may be received under the arrangement depends on the fair market value of shares of the capital stock of

the corporation or a corporation related thereto at a time within the period that commences one year before the time of the employee's death or retirement from, or loss of, the office or employment and ends at the time the amount is received,

unless, by reason of the arrangement or a series of transactions that includes the arrangement, the employee or a person with whom the employee does not deal at arm's length is entitled, either immediately or in the future, either absolutely or contingently, to receive or obtain any amount or benefit granted or to be granted for the purpose of reducing the impact, in whole or in part, of any reduction in the fair market value of the shares of the corporation or a corporation related thereto.

Related Provisions: Reg. 8508 — Effect of salary deferral leave plan on registered pension plan.

History: Subpara. 6801(a)(i) substituted applicable to 1989 *et seq.*, and para. (d) added applicable to 1986 *et seq.*, by P.C. 1990-301, subsecs. 1(1), (4), February 21, 1991, *Canada Gazette*, Part II, March 13, 1991.

S. 6801 added by P.C. 1988-191, February 4, 1988, *Canada Gazette*, Part II, February 17, 1988, applicable to 1986 *et seq.*

Definitions [Reg. 6801]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferral period" — Reg. 6801(a)(i); "employee", "employee benefit plan", "employer", "employment", "legal representative" — ITA 248(1); "month" — *Interpretation Act* 35(1); "office" — ITA 248(1); "person", "prescribed", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "resident in Canada" — ITA 250; "salary or wages", "share" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

I.T. Technical News: No. 11 (reporting of amounts paid out of an employee benefit plan.

Advance Tax Rulings: ATR-39: Self-funded leave of absence.

6802. For the purposes of paragraph (n) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, a prescribed plan or arrangement is

(a) the plan instituted by the *Canada Pension Plan*;

(b) a provincial pension plan as defined in section 3 of the *Canada Pension Plan*;

(c) a plan instituted by the *Unemployment Insurance Act*;

(d) a plan pursuant to an agreement in writing that is established for the purpose of deferring the salary or wages of a professional on-ice official for the official's services as such with the National Hockey League if, in the case of an official resident in Canada, the trust or other person who has custody and control of any funds, investments or other property under the plan is resident in Canada;

(e) an arrangement under which all contributions are made pursuant to a law of Canada or a province, where one of the main purposes of the law is to enforce minimum standards with respect to wages, vacation entitlement or severance pay;

(f) an arrangement under which all contributions are made in connection with a dispute regarding the entitlement of one or more persons to benefits to be received or enjoyed by the person or persons; or

(g) a plan or arrangement instituted by the social security legislation of a country other than Canada or of a state, province or other political subdivision of such a country.

Related Provisions: ITA 207.6(6) — Rules applicable to a prescribed plan or arrangement.

History: Para. 6802(e) amended, paras. (f) and (g) added, by P.C. 1996-911, s. 3, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after October 8, 1986.

S. 6802 added by P.C. 1991-2540, s. 6, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after October 8, 1986, except that before December 12, 1988, para. 6802(c) shall be read as follows: "(c) a plan instituted by the *Unemployment Insurance Act, 1971*;".

Definitions [Reg. 6802]: "Canada" — ITA 255, *Interpretation Act* 35(1); "person", "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — ITA 250; "salary or wages" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3); "writing" — *Interpretation Act* 35(1).

6802.1 (1) For the purpose of paragraph 8(1)(m.2) of the Act, each of the following is a prescribed plan:

(a) the pension plan established as a consequence of the establishment, by section 27 of the *Members of Parliament Retiring Allowances Act*, of the Members of Parliament Retirement Compensation Arrangements Account; and

(b) the pension plan established by the *Retirement Compensation Arrangements Regulations, No. 1*.

(2) For the purpose of subsection 207.6(6) of the Act, each of the following is a prescribed plan or arrangement:

(a) the pension plan established as a consequence of the establishment, by section 27 of the *Members of Parliament Retiring Allowances Act*, of the Members of Parliament Retirement Compensation Arrangements Account;

(b) the pension plan established by the *Retirement Compensation Arrangements Regulations, No. 1*; and

(c) the pension plan established by the *Retirement Compensation Arrangements Regulations, No. 2*.

History: S. 6802.1 added by P.C. 1999-2211, s. 2, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, applicable after 1991 except that

(a) in their application before December 15, 1994, each of subsecs. 6802.1(1) and (2) shall be read without reference to paras. 6802.1(1)(b) and (2)(b); and

(b) in its application before April 1995, subsec. 6802.1(2) shall be read without reference to para. 6802.1(2)(c).

Definitions [Reg. 6802.1]: "Parliament" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

6803. For the purposes of the definition "foreign retirement arrangement" in subsection 248(1) of the Act, a prescribed plan or arrangement is a plan or arrangement to which subsection 408(a), (b) or (h) of the United States *Internal Revenue Code of 1986*, as amended from time to time, applies.

History: S. 6803 added by P.C. 1992-2416, November 26, 1992, *Canada Gazette*, Part II, December 16, 1992, applicable to 1990 *et seq.*

Definitions [Reg. 6803]: "prescribed" — ITA 248(1); "United States" — *Interpretation Act* 35(1).

6804. Contributions to foreign plans — (1) Definitions — The definitions in this subsection apply in this section.

"foreign non-profit organization" means,

(a) at any time before 1995, an organization

(i) that at that time meets the conditions in subparagraphs (b)(i) to (iii), or

(ii) that at that time is not operated for the purpose of profit, and whose assets are situated primarily outside Canada throughout the calendar year that includes that time, and

(b) at any time after 1994, an organization that at that time

(i) is not operated for the purpose of profit,

(ii) has its main place of management outside Canada, and

(iii) carries on its activities primarily outside Canada.

"foreign plan" means a plan or arrangement (determined without regard to subsection 207.6(5) of the Act) that would, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, be a retirement compensation arrangement.

"qualifying entity" means a non-resident entity that holds all or part of the assets of a foreign plan where the following conditions are satisfied:

(a) the entity is resident in a country under the laws of which an income tax is imposed, and

(b) where those laws provide an exemption from tax, a reduced rate of tax or other favourable tax treatment for entities that hold assets of pension or other retirement plans, the entity qualifies for the favourable treatment.

(2) Electing employer — For the purposes of this section, an employer is an electing employer for a calendar year with respect to a foreign plan where

(a) the employer has sent or delivered to the Minister a letter stating that the employer elects to have this section apply with respect to contributions to the foreign plan, and

(b) the letter was sent or delivered on or before

(i) the last day of February in the year following the first calendar year after 1991 in which a contribution that is or would be if subsection 207.6(5.1) of the Act were read without reference to paragraph (a) of that subsection, a resident's contribution (as defined in that subsection) was made under the foreign plan in respect of services rendered by an individual to the employer, or

(ii) any later date that is acceptable to the Minister,

except that an employer is not an electing employer for a year with respect to a foreign plan if the Minister has granted written permission for the employer to revoke, for the year or a preceding calendar year, the election made under paragraph (a) in respect of the foreign plan.

(3) Election by union — Except as otherwise permitted in writing by the Minister, an election made by a trade union for the purpose of subsection (2) is valid only if it is made by the highest-level structural unit of the union.

(4) Contributions made before 1992 — For the purpose of paragraph 207.6(5.1)(a) of the Act, a contribution made under a foreign plan by a person or body of persons in a calendar year before 1992 is a prescribed contribution where

(a) the contribution is paid to a qualifying entity;

(b) each employer (in this subsection referred to as a "contributor") that makes a contribution under the foreign plan in the year is

(i) a non-resident corporation throughout the year,

(ii) a partnership that makes contributions under the foreign plan primarily in respect of services rendered outside Canada to the partnership by non-resident employees, or

(iii) a foreign non-profit organization throughout the year;

(c) if a corporation or partnership (other than a corporation or partnership that is a foreign non-profit organization throughout the year) is a contributor, no individual who is entitled (either absolutely or contingently) to benefits under the foreign plan is a member of a registered pension plan, or a beneficiary under a deferred profit sharing plan, to which a contributor, or a person or body of persons not dealing at arm's length with a contributor, makes, or is required to make, contributions in relation to the year;

(d) contributions made in the year under the foreign plan for the benefit of individuals resident in Canada are reasonable in relation to contributions made under the plan for the benefit of non-resident individuals; and

(e) the foreign plan is not a pension plan the registration of which under the Act has been revoked.

(5) Contributions made in 1992, 1993 or 1994 — For the purpose of paragraph 207.6(5.1)(a) of the Act, a contribution made under a foreign plan by a person or body of persons at any time in 1992, 1993 or 1994 in respect of services rendered by an individual to an employer is a prescribed contribution where

(a) the contribution is paid to a qualifying entity;

(b) the employer is an electing employer for the year with respect to the foreign plan;

(c) if the employer is not at that time a foreign non-profit organization, the individual is not a member of a registered pension plan (other than a specified multi-employer plan, as defined in subsection 147.1(1) of the Act), or a deferred profit sharing plan, in which the employer, or a person or body of persons that does not deal at arm's length with the employer, participates; and

(d) either

(i) the employer is

(A) a corporation that is not resident in Canada at that time,

(B) a partnership that makes contributions under the foreign plan primarily in respect of services rendered outside Canada to the partnership by non-resident employees, or

(C) a foreign non-profit organization at that time, or

(ii) the individual was non-resident at any time before the contribution is made and became a member of the foreign plan before the end of the month after the month in which the individual became resident in Canada.

(6) Contributions made after 1994 — For the purposes of paragraph 207.6(5.1)(a) of the Act, a contribution made under a foreign plan by a person or body of persons at any time in a calendar year after 1994 in respect of services rendered by an individual to an employer is a prescribed contribution where

(a) the contribution is paid to a qualifying entity;

(b) the employer is an electing employer for the year with respect to the foreign plan;

(c) if the employer is at that time a foreign non-profit organization,

(i) the amount that, if subsection 8301(1) were read without reference to paragraph (b) of that subsection, would be the individual's pension adjustment for the year in respect of the employer is nil, or

(ii) the amount that would be the individual's pension adjustment for the year in respect of the employer if

(A) all contributions made under the foreign plan in the year in respect of the individual were prescribed by this subsection,

(B) where the year is 1996, section 8308.1 were read without reference to subsection (4.1), and

(C) where the year is 1997, subparagraph 8308.1(2)(b)(v) were read as:

"(v) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds $1,000, and"

does not exceed the lesser of

(D) the money purchase limit for the year, and

(E) 18% of the individual's compensation (as defined in subsection 147.1(1) of the Act) for the year from the employer;

(d) if

(i) the employer is at that time a foreign non-profit organization, and

(ii) a period in the year throughout which the individual rendered services to the employer would be, under paragraph 8507(3)(a), a qualifying period of the individual with respect to another employer if that paragraph were read without reference to subparagraph (iv) of that paragraph,

subsection 8308(7) applies with respect to the determination of the individual's pension adjustment for the year with respect to each employer; and

(e) if the employer is not at that time a foreign non-profit organization,

(i) the individual was non-resident at any time before the contribution is made,

(ii) the individual became a member of the foreign plan before the end of the month after the month in which the individual became resident in Canada, and

(iii) the individual is not a member of a registered pension plan, or a deferred profit sharing plan, in which the employer, or a person or body of persons that does not deal at arm's length with the employer, participates.

(7) Replacement plan — For the purposes of subparagraphs (5)(d)(ii) and (6)(e)(ii), where benefits provided to an individual under a particular plan or arrangement are replaced by benefits under another plan or arrangement, the other plan or arrangement is deemed, in respect of the individual, to be the same plan or arrangement as the particular plan or arrangement.

History: Subpara. 6804(6)(c)(ii) amended by P.C. 1998-2256, s. 2, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

S. 6804 added by P.C. 1996-911, s. 4, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after October 8, 1986.

Definitions [Reg. 6804]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "contributor" — Reg. 6804(4); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "electing employer" — Reg. 6804(2); "employee", "employer" — ITA 248(1); "foreign non-profit organization", "foreign plan" — Reg. 6804(1); "individual", "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "month" — *Interpretation Act* 35(1); "non-resident" — ITA 248(1); "pension adjustment", "person", "prescribed" — ITA 248(1); "qualifying entity" — Reg. 6804(1); "registered pension plan" — ITA 248(1); "resident", "resident in Canada" — ITA 250; "retirement compensation arrangement" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "written" — *Interpretation Act* 35(1)"writing".

PART LXIX — PRESCRIBED OFFSHORE INVESTMENT FUND PROPERTIES

History: Part LXIX (s. 6900) added by P.C. 1986-1048, s. 10, May 1, 1986, *Canada Gazette*, Part II, May 14, 1986, applicable after 1984.

History [former Part LXIX]: Former Part LXIX, "Aviation Turbine Fuel", revoked by P.C. 1985-2277, s. 18, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable with respect to purchases and dispositions of aviation turbine fuel occurring after April 30, 1983.

Former Part LXIX added by P.C. 1983-1531, May 26, 1983, *Canada Gazette*, Part II, June 8, 1983, applicable with respect to dispositions occurring and purchases made, with respect to aviation turbine fuel, after January 31, 1982.

6900. For the purpose of paragraph 94.1(2)(a) [94.1(2)"designated cost"] of the Act, an offshore investment fund property (within the meaning assigned by subsection 94.1(1) of the Act) of a taxpayer that

(a) was acquired by him by way of bequest or inheritance from a deceased person who, throughout the five years immediately preceding his death, was not resident in Canada,

(b) had not been acquired by the deceased from a person resident in Canada, and

(c) is not property substituted for property acquired by the deceased from a person resident in Canada

is a prescribed offshore investment fund property of the taxpayer.

Definitions [Reg. 6900]: "person", "prescribed", "property" — ITA 248(1); "resident", "resident in Canada" — ITA 250; "substituted" — ITA 248(5); "taxpayer" — ITA 248(1).

PART LXX — ACCRUED INTEREST ON DEBT OBLIGATIONS

History: Part LXX (s. 7000) added by P.C. 1983-3529, November 17, 1983, *Canada Gazette*, Part II, November 24, 1983, effective for taxation years commencing after 1981.

7000. (1) Prescribed debt obligations — For the purpose of subsection 12(9) of the Act, each of the following debt obligations (other than a debt obligation that is an indexed debt obligation) in respect of which a taxpayer has at any time acquired an interest is a prescribed debt obligation:

(a) a particular debt obligation in respect of which no interest is stipulated to be payable in respect of its principal amount;

(b) a particular debt obligation in respect of which the proportion of the payments of principal to which the taxpayer is entitled is not equal to the proportion of the payments of interest to which he is entitled;

(c) a particular debt obligation, other than one described in paragraph (a) or (b), in respect of which it can be determined, at the time the taxpayer acquired the interest therein, that the maximum amount of interest payable thereon in a year ending after that time is less than the maximum amount of interest payable thereon in a subsequent year; and

(d) a particular debt obligation, other than one described in paragraph (a), (b) or (c), in respect of which the amount of interest to be paid in respect of any taxation year is, under the terms and conditions of the obligation, dependent on a contingency existing after the year,

and, for the purposes of this subsection, a debt obligation includes, for greater certainty, all of the issuer's obligations to pay principal and interest under that obligation.

Related Provisions: ITA 18.1(14) — Right to receive production deemed to be debt obligation.

History: The opening words of subsec. 7000(1) amended by P.C. 1996-1419, subsec. 3(1), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Advance Tax Rulings: ATR-61: Interest accrual rules.

(2) For the purposes of subsection 12(9) of the Act, the amount determined in prescribed manner that is deemed to accrue to a taxpayer as interest on a prescribed debt obligation in each taxation year during which he holds an interest in the obligation is,

(a) in the case of a prescribed debt obligation described in paragraph (1)(a), the amount of interest that would be determined in respect thereof if interest thereon for that year were computed on a compound interest basis using the maximum of all rates each of which is a rate computed

(i) in respect of each possible circumstance under which an interest of the taxpayer in the obligation could mature or be surrendered or retracted, and

(ii) using assumptions concerning the interest rate and compounding period that will result in a present value, at the date of purchase of the interest, of all the maximum payments thereunder, equal to the cost thereof to the taxpayer;

(b) in the case of a prescribed debt obligation described in paragraph (1)(b), the aggregate of all amounts each of which is the amount of interest that would be determined in respect of his interest in a payment under the obligation if interest thereon for that year were computed on a compound interest basis using the specified cost of his interest therein and the specified interest rate in respect of his total interest in the obligation, and for the purposes of this paragraph,

(i) the "specified cost" of his interest in a payment under the obligation is its present value at the date of purchase computed using the specified interest rate, and

(ii) the "specified interest rate" is the maximum of all rates each of which is a rate computed

(A) in respect of each possible circumstance under which an interest of the taxpayer in the obligation could mature or be surrendered or retracted, and

(B) using assumptions concerning the interest rate and compounding period that will result in a present value, at the date of purchase of the interest, of all the maximum payments to the taxpayer in respect of his total interest in the obligation, equal to the cost of that interest to the taxpayer;

(c) in the case of a prescribed debt obligation described in paragraph (1)(c), other than an obligation in respect of which paragraph (c.1) applies, the greater of

(i) the maximum amount of interest thereon in respect of the year, and

(ii) the maximum amount of interest that would be determined in respect thereof if interest thereon for that year were computed on a compound interest basis using the maximum of all rates each of which is a rate computed

(A) in respect of each possible circumstance under which an interest of the taxpayer in the obligation could mature or be surrendered or retracted, and

(B) using assumptions concerning the interest rate and compounding period that will result in a present value, at the date of issue of the obligation, of all the maximum payments thereunder, equal to its principal amount;

(c.1) in the case of a prescribed debt obligation described in paragraph (1)(c) for which

(i) the rate of interest stipulated to be payable in respect of each period throughout which the obligation is outstanding is fixed at the date of issue of the obligation, and

(ii) the stipulated rate of interest applicable at each time is not less than each stipulated rate of interest applicable before that time,

the amount of interest that would be determined in respect of the year if interest on the obligation for that year were computed on a compound interest basis using the maximum of all rates each of which is the compound interest rate that, for a particular assumption with respect to when the taxpayer's interest in the obligation will mature or be surrendered or retracted, results in a present value (at the date the taxpayer acquires the interest in the obligation) of all payments under the obligation after the acquisition by the taxpayer of the taxpayer's interest in the obligation equal to the principal amount of the obligation at the date of acquisition; and

(d) in the case of a prescribed debt obligation described in paragraph (1)(d), the maximum amount of interest thereon that could be payable thereunder in respect of that year.

Related Provisions: ITA 18.1(14) — Right to receive production deemed to be debt obligation.

History: Para. 7000(2)(c) amended, para. (c.1) added, by P.C. 1996-570, subsecs. 1(1), (2), April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1993 *et seq.*

Advance Tax Rulings: ATR-61: Interest accrual rules.

(3) For the purpose of this section, any bonus or premium payable under a debt obligation is considered to be an amount of interest payable under the obligation.

History: Subsec. 7000(3) amended by P.C. 1996-1419, subsec. 3(2), September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Advance Tax Rulings: ATR-61: Interest accrual rules.

(4) For the purposes of this section, where

(a) a taxpayer has an interest in a debt obligation (in this subsection referred to as the "first interest") under

which there is a conversion privilege or an option to extend its term upon maturity, and

(b) at the time the obligation was issued (or, if later, at the time the conversion privilege or option was added or modified), circumstances could reasonably be foreseen under which the holder of the obligation would, by exercising the conversion privilege or option, acquire an interest in a debt obligation with a principal amount less than its fair market value at the time of acquisition,

the subsequent interest in any debt obligation acquired by the taxpayer by exercising the conversion privilege or option shall be considered to be a continuation of the first interest.

History: Subsec. 7000(4) amended by P.C. 1996-570, subsec. 1(3), April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable with respect to debt obligations acquired by reason of the exercise after August 11, 1993 of a conversion privilege or an option to extend the term of another debt obligation.

(5) For the purposes of making the computations referred to in paragraphs (2)(a), (b), (c) and (c.1), the compounding period shall not exceed one year and any interest rate used shall be constant from the date of acquisition or issue, as the case may be, until the time of maturity, surrender or retraction.

History: Subsec. 7000(5) amended by P.C. 1996-570, subsec. 1(4), April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1993 *et seq.*

(6) For the purpose of the definition "investment contract" in subsection 12(11) of the Act, a registered retirement savings plan or a registered retirement income fund, other than a plan or fund to which a trust is a party, is a prescribed contract throughout a calendar year where an annuitant (as defined in subsection 146(1) or 146.3(1) of the Act, as the case may be) under the plan or fund is alive at any time in the year or was alive at any time in the preceding calendar year.

Related Provisions: ITA 142.3(1)(c) — No income accrual from specified debt obligation.

History: Subsec. 7000(6) amended by P.C. 1996-568, s. 1, April 23, 1996, *Canada Gazette*, Part II, May 1, 1996, applicable to 1993 *et seq.*

Subsec. 7000(6) added by P.C. 1985-2277, s. 19, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985, applicable to taxation years commencing after 1981.

Definitions [Reg. 7000]: "amount" — ITA 248(1); "debt obligation" — Reg. 7000(1); "first interest" — Reg. 7000(4)(a); "indexed debt obligation", "prescribed", "principal amount" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified cost" — Reg. 7000(2)(b)(i); "specified interest rate" — Reg. 7000(2)(b)(ii); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

7001. Indexed debt obligations — (1) For the purpose of subparagraph 16(6)(a)(i) of the Act, where at any time in a taxation year a taxpayer holds an interest in an indexed debt obligation, there is prescribed as interest receivable and received by the taxpayer in the year in respect of the obligation the total of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the amount by which the amount payable in respect of the taxpayer's interest in an indexed payment under the obligation (other than a payment that is an excluded payment with respect to the taxpayer for the year) has, because of a change in the purchasing power of money, increased over an inflation adjustment period of the obligation that ends in the year

exceeds the total of

(ii) that portion of the total, if any, determined under subparagraph (i) that is required, otherwise than by subsection 16(6) of the Act, to be included in computing the taxpayer's income for the year or a preceding taxation year, and

(iii) the total of all amounts each of which is the amount by which the amount payable in respect of the taxpayer's interest in an indexed payment under the obligation (other than a payment that is an excluded payment with respect to the taxpayer for the year) has, by reason of a change in the purchasing power of money, decreased over an inflation adjustment period of the obligation that ends in the year, and

(b) where the non-indexed debt obligation associated with the indexed debt obligation is an obligation that is described in any of paragraphs 7000(1)(a) to (d), the amount of interest that would be determined under subsection 7000(2) to accrue to the taxpayer in respect of the non-indexed debt obligation in the particular period that

(i) begins at the beginning of the first inflation adjustment period of the indexed debt obligation in respect of the taxpayer that ends in the year, and

(ii) ends at the end of the last inflation adjustment period of the indexed debt obligation in respect of the taxpayer that ends in the year

if the particular period were a taxation year of the taxpayer and the taxpayer's interest in the indexed debt obligation were an interest in the non-indexed debt obligation.

(2) For the purposes of subparagraph 16(6)(a)(ii) of the Act, where at any time in a taxation year a taxpayer holds an interest in an indexed debt obligation, there is prescribed as interest payable and paid by the taxpayer in the year in respect of the obligation the amount, if any, by which

(a) the total of the amounts, if any, determined under subparagraphs (1)(a)(ii) and (iii) for the year in respect of the taxpayer's interest in the obligation

exceeds

(b) the amount, if any, determined under subparagraph (1)(a)(i) for the year in respect of the taxpayer's interest in the obligation.

(3) For the purposes of subparagraph 16(6)(b)(i) of the Act, where at any time in a taxation year an indexed debt obligation is an obligation of a taxpayer, there is prescribed as interest payable in respect of the year by the taxpayer in respect of the obligation the amount, if any, that would be determined under paragraph (1)(a) in respect of the taxpayer for the year if, at each time at which the obligation is an obligation of the taxpayer, the taxpayer were the holder of the obligation and not the debtor under the obligation.

(4) For the purposes of subparagraph 16(6)(b)(ii) of the Act, where at any time in a taxation year an indexed debt obligation is an obligation of a taxpayer, there is prescribed as interest receivable and received by the taxpayer in the year in respect of the obligation the amount, if any, that would be determined under subsection (2) in respect of the taxpayer for the year if, at each time at which the obligation is an obligation of the taxpayer, the taxpayer

were the holder of the obligation and not the debtor under the obligation.

(5) For the purpose of determining the amount by which an indexed payment under an indexed debt obligation has increased or decreased over a period because of a change in the purchasing power of money, the amount of the indexed payment at any time shall be determined using the method for computing the amount of the payment at the time it is to be made, adjusted in a reasonable manner to take into account the earlier date of computation.

(6) For the purposes of this section, the non-indexed debt obligation associated with an indexed debt obligation is the debt obligation that would result if the indexed debt obligation were amended to eliminate all adjustments determined by reference to changes in the purchasing power of money.

(7) In this section,

"excluded payment" with respect to a taxpayer for a taxation year means an indexed payment under an indexed debt obligation where

(a) the non-indexed debt obligation associated with the indexed debt obligation provides for the payment, at least annually, of interest at a single fixed rate, and

(b) the indexed payment corresponds to one of the interest payments referred to in paragraph (a),

but does not include payments under an indexed debt obligation where, at any time in the year, the taxpayer's proportionate interest in a payment to be made under the obligation after that time differs from the taxpayer's proportionate interest in any other payment to be made under the obligation after that time;

"indexed payment" means, in relation to an indexed debt obligation, an amount payable under the obligation that is determined by reference to the purchasing power of money;

"inflation adjustment period" of an indexed debt obligation means, in relation to a taxpayer,

(a) where the taxpayer acquires and disposes of the taxpayer's interest in the obligation in the same regular adjustment period of the obligation, the period that begins when the taxpayer acquires the interest in the obligation and ends when the taxpayer disposes of the interest, and

(b) in any other case, each of the following consecutive periods:

(i) the period that begins when the taxpayer acquires the taxpayer's interest in the obligation and ends at the end of the regular adjustment period of the obligation in which the taxpayer acquires the interest in the obligation,

(ii) each succeeding regular adjustment period of the obligation throughout which the taxpayer holds the interest in the obligation, and

(iii) where the taxpayer does not dispose of the interest in the obligation at the end of a regular adjustment period of the obligation, the period that begins immediately after the last period referred to in subparagraphs (i) and (ii) and that ends when the taxpayer disposes of the interest in the obligation;

"regular adjustment period" of an indexed debt obligation means

(a) where the terms or conditions of the obligation provide that, while the obligation is outstanding, indexed payments are to be made at regular intervals not exceeding 12 months in length, each of the following periods:

(i) the period that begins when the obligation is issued and ends when the first indexed payment is required to be made, and

(ii) each succeeding period beginning when an indexed payment is required to be made and ending when the next indexed payment is required to be made,

(b) where paragraph (a) does not apply and the obligation is outstanding for less than 12 months, the period that begins when the obligation is issued and ends when the obligation ceases to be outstanding, and

(c) in any other case, each of the following periods:

(i) the 12-month period that begins when the obligation is issued,

(ii) each succeeding 12-month period throughout which the obligation is outstanding, and

(iii) where the obligation ceases to be outstanding at a time other than the end of a 12-month period referred to in subparagraph (i) or (ii), the period that commences immediately after the last period referred to in those subparagraphs and that ends when the obligation ceases to be outstanding.

History: S. 7001 added by P.C. 1996-1419, s. 4, September 11, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to debt obligations issued after October 16, 1991.

Definitions [Reg. 7001]: "amount" — ITA 248(1); "associated" — ITA 256; "debt obligation" — Reg. 7001(6); "disposes" — ITA 248(1)"disposition"; "excluded payment" — Reg. 7001(7); "indexed debt obligation" — ITA 248(1); "indexed payment", "inflation adjustment period" — Reg. 7001(7); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "regular adjustment period" — Reg. 7001(7); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART LXXI — PRESCRIBED FEDERAL CROWN CORPORATIONS

History: Part LXXI (s. 7100) added by P.C. 1984-3095, August 31, 1984, *Canada Gazette*, Part II, September 19, 1984, effective September 1, 1984.

7100. For the purposes of section 27 and subsection 124(3) of the Act, the following are hereby prescribed to be federal Crown corporations:

Canada Deposit Insurance Corporation
Canada Development Investment Corporation
Canada Lands Company Limited
Canada Mortgage and Housing Corporation
Canada Post Corporation
Canadian Broadcasting Corporation
Cape Breton Development Corporation
Farm Credit Corporation
Freshwater Fish Marketing Corporation
Petro-Canada
Royal Canadian Mint
Teleglobe Canada
The St. Lawrence Seaway Authority
VIA Rail Canada Inc.

History: S. 7100 amended by P.C. 1996-1927, s. 1, December 19, 1996, *Canada Gazette*, Part II, January 8, 1997; the deletion of "Air Canada" and the addition of "Canada Lands Company Limited" applicable Novem-

ber 1, 1995; the deletion of the reference to National Railways applicable January 1, 1996.

S. 7100 amended by P.C. 1994-930, June 2, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable after March 26, 1994.

S. 7100 amended by P.C. 1991-2029, October 24, 1991, *Canada Gazette*, Part II, November 6, 1991, effective commencing July 3, 1991.

S. 7100 amended by P.C. 1991-1822, September 26, 1991, *Canada Gazette*, Part II, October 9, 1991, applicable commencing January 1, 1991.

S. 7100 amended by P.C. 1991-350, February 28, 1991, *Canada Gazette*, Part II, March 13, 1991, applicable after January 1991.

S. 7100 amended by P.C. 1986-2590, s. 18, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, effective July 15, 1985.

S. 7100 amended by P.C. 1985-466, February 14, 1985, *Canada Gazette*, Part II, March 6, 1985, effective commencing September 1, 1984.

Definitions [Reg. 7100]: "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-347R2: Crown corporations.

PART LXXII — CUMULATIVE DEDUCTION ACCOUNT

History: Part LXXII (s. 7200) added by P.C. 1984-3789, s. 18, November 29, 1984, *Canada Gazette*, Part II, December 12, 1984, applicable in respect of the first taxation year of a corporation ending after 1982.

7200. Prescribed addition and reduction — **(1)** For the purposes of subparagraph 125(6)(b)(iii.1) of the Act, "prescribed addition" in respect of a corporation means

(a) where, during the period of time commencing on October 24, 1979 and ending at the time of the commencement of the corporation's first taxation year ending after 1982, the number of specified reductions deducted in computing the cumulative deduction account of the corporation exceeds the number of specified additions added in computing the cumulative deduction account of the corporation, the amount, if any, by which

(i) the amount of the last specified reduction deducted in computing the corporation's cumulative deduction account

exceeds 1/8 of the amount, if any, by which

(ii) the aggregate of all amounts deducted by virtue of subparagraph 125(6)(b)(iv) of the Act in computing the corporation's cumulative deduction account during the period of time commencing on the first day of the taxation year of the corporation in which the last specified reduction was made and ending at the time of the commencement of the corporation's first taxation year ending after 1982

exceeds

(iii) the aggregate of all amounts added by virtue of subparagraphs 125(6)(b)(ii) and (iii) of the Act in computing the corporation's cumulative deduction account during the period of time referred to in subparagraph (ii); and

(b) where, during the period of time commencing on October 24, 1979 and ending at the time of the commencement of the corporation's first taxation year ending after 1982

(i) the number of specified reductions deducted in computing the cumulative deduction account of the corporation equals the number of specified additions added in computing the cumulative deduction account of the corporation,

(ii) the later of the last specified reduction and the last specified addition was a specified reduction, and

(iii) the amount of the last specified reduction exceeds the amount of the last specified addition,

the amount, if any, by which

(iv) the amount by which the amount of the last specified reduction exceeds the amount of the last specified addition

exceeds 1/8 of the amount, if any, by which

(v) the aggregate of all amounts deducted by virtue of subparagraph 125(6)(b)(iv) of the Act in computing the corporation's cumulative deduction account during the period of time commencing on the first day of the taxation year of the corporation in which the last specified reduction was made and ending at the time of the commencement of the corporation's first taxation year ending after 1982

exceeds

(vi) the aggregate of all amounts added by virtue of subparagraphs 125(6)(b)(ii) and (iii) of the Act in computing the corporation's cumulative deduction account during the period of time referred to in subparagraph (v).

(2) For the purposes of subparagraph 125(6)(b)(iv.1) of the Act, "prescribed reduction" in respect of a corporation means the amount equal to the amount that would be determined under subsection (1) if the references therein to

(a) "specified additions added" were read as "specified reductions deducted";

(b) "specified reduction deducted" were read as "specified addition added";

(c) "specified reductions deducted" were read as "specified additions added";

(d) "last specified addition" were read as "last specified reduction";

(e) "last specified reduction" were read as "last specified addition"; and

(f) "1/8" were read as "1/9".

(3) In this section,

(a) "cumulative deduction account" has the meaning assigned by paragraph 125(6)(b) of the Act;

(b) "specified addition" has the meaning assigned to the expression "specified addition to the cumulative deduction account" by paragraph 125(12)(a) of the Act as it applied for taxation years ending before 1983; and

(c) "specified reduction" has the meaning assigned to the expression "specified reduction in the cumulative deduction account" by paragraph 125(12)(b) of the Act as it applied for taxation years ending before 1983.

Definitions [Reg. 7200]: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "taxation year" — ITA 249.

PART LXXIII — PRESCRIBED AMOUNTS AND AREAS

History: Heading to Part LXXIII substituted by P.C. 1988-1105, s. 2, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

Part LXXIII (s. 7300) added by P.C. 1986-2770, s. 12, December 11, 1986, *Canada Gazette*, Part II, December 24, 1986, effective commencing May 23, 1985.

7300. [Prescribed amounts] — For the purposes of paragraph 12(1)(x) of the Act, "prescribed amount" means

(a) any amount paid to a corporation by the Native Economic Development Board created under Order in Council P.C. 1983-3394 of October 31, 1983 pursuant to the Native Economic Development Program or paid to a corporation under the Aboriginal Capital Corporation Program of the Canadian Aboriginal Economic Development Strategy, where all of the shares of the capital stock of the corporation are

(i) owned by aboriginal individuals,

(ii) held in trust for the exclusive benefit of aboriginal individuals,

(iii) owned by a corporation, all the shares of which are owned by aboriginal individuals, or

(iv) owned or held in a combination of ownership structures described in subparagraph (i), (ii) or (iii)

and the purpose of the corporation is to provide loans, loan guarantees, bridge financing, venture capital, lease financing, surety bonding or other similar financing services to aboriginal enterprises; or

(b) prescribed assistance within the meaning assigned by section 6702.

Related Provisions: ITA 80(1)"excluded obligation"(a)(i) — Debt forgiveness rules do not apply to prescribed amount.

History: Para. 7300(a) amended by P.C. 1991-729, April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, to substitute subparas. (i) to (iv) for "owned by aboriginal individuals".

S. 7300 amended by P.C. 1990-213, February 8, 1990, *Canada Gazette*, Part II, February 28, 1990, to add para. (a), applicable to amounts received after May 22, 1985.

Definitions [Reg. 7300]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "individual", "prescribed", "share" — ITA 248(1); "taxation year" — ITA 249; "trust" — ITA 104(1), 248(1), (3).

Forms: T2124: Statement of business activities.

7301. For the purposes of subsection 164.1(1) of the Act, $325 is the prescribed amount for the 1987 taxation year.

History: S. 7301 added by P.C. 1987-2168, October 22, 1987, *Canada Gazette*, Part II, November 11, 1987.

7302, 7303. [Revoked]

History: Ss. 7302, 7303 revoked by P.C. 1993-1688, s. 1, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1993 *et seq.*

Ss. 7302, 7303 added by P.C. 1988-1105, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

7303.1 (1) [Prescribed northern zone] — An area is a prescribed northern zone for a taxation year for the purposes of section 110.7 of the Act where it is

(a) the Yukon Territory or the Northwest Territories;

(b) those parts of British Columbia, Alberta and Saskatchewan that lie north of 57°30'N latitude;

(c) that part of Manitoba that lies

(i) north of 56°20'N latitude, or

(ii) north of 52°30'N latitude and east of 95°25'W longitude;

(d) that part of Ontario that lies

(i) north of 52°30'N latitude, or

(ii) north of 51°05'N latitude and east of 89°10'W longitude;

(e) that part of Quebec that lies

(i) north of 51°05'N latitude, or

(ii) north of the Gulf of St. Lawrence and east of 63°00'W longitude; or

(f) Labrador, including Belle Isle.

(2) [Prescribed intermediate zone] — An area is a prescribed intermediate zone for a taxation year for the purposes of section 110.7 of the Act where it is the Queen Charlotte Islands, Anticosti Island, the Magdalen Islands or Sable Island, or where it is not part of a prescribed northern zone referred to in subsection (1) for the year and is

(a) that part of British Columbia that lies

(i) north of 55°35'N latitude, or

(ii) north of 55°00'N latitude and east of 122°00'W longitude;

(b) that part of Alberta that lies north of 55°00'N latitude;

(c) that part of Saskatchewan that lies

(i) north of 55°00'N latitude,

(ii) north of 54°15'N latitude and east of 107°00'W longitude, or

(iii) north of 53°20'N latitude and east of 103°00'W longitude;

(d) that part of Manitoba that lies

(i) north of 53°20'N latitude,

(ii) north of 52°10'N latitude and east of 97°40'W longitude, or

(iii) north of 51°30'N latitude and east of 96°00'W longitude;

(e) that part of Ontario that lies north of 50°35'N latitude; or

(f) that part of Quebec that lies

(i) north of 50°35'N latitude and west of 79°00'W longitude,

(ii) north of 49°00'N latitude, east of 79°00'W longitude and west of 74°00'W longitude,

(iii) north of 50°00'N latitude, east of 74°00'W longitude and west of 70°00'W longitude,

(iv) north of 50°45'N latitude, east of 70°00'W longitude and west of 65°30'W longitude, or

(v) north of the Gulf of St. Lawrence, east of 65°30'W longitude and west of 63°00'W longitude.

History [Reg. 7303.1]: S. 7303.1 enacted by P.C. 1993-1688, s. 2, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1988 *et seq.*

Definitions [Reg. 7303.1]: "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Remission Orders [Reg. 7303.1]: *Prescribed Areas Forward Averaging Remission Order*, P.C. 1994-109 (remission for certain residents of prescribed areas who filed forward averaging elections for 1987).

Interpretation Bulletins [Reg. 7303.1]: IT-91R4: Employment at special work sites or remote work locations.

7304. (1) In this section,

"member of the taxpayer's household" includes the taxpayer;

"designated city" means St. John's, Halifax, Moncton, Quebec City, Montreal, Ottawa, Toronto, North Bay, Winnipeg, Saskatoon, Calgary, Edmonton and Vancouver.

(2) [Trip cost] — For the purposes of this section, the trip cost to a taxpayer in respect of a trip made by an individual who, at the time the trip was made, was a member of the taxpayer's household is the least of

(a) the aggregate of

(i) the value of travel assistance, if any, provided by the taxpayer's employer in respect of travelling expenses for the trip, and

(ii) the amount, if any, received by the taxpayer from his employer in respect of travelling expenses for the trip,

(b) the aggregate of

(i) the value of travel assistance, if any, provided by the taxpayer's employer in respect of travelling expenses for the trip, and

(ii) travelling expenses incurred by the taxpayer for the trip, and

(c) the lowest return airfare ordinarily available, at the time the trip was made, to the individual for flights between the place in which the individual resided immediately before the trip, or the airport nearest thereto, and the designated city that is nearest to that place.

(3) [Period travel cost] — For the purposes of subsection (4), the "period travel cost" to a taxpayer for a period in a taxation year, in respect of an individual who was a member of the taxpayer's household at any time during the period, is the total of the trip costs to the taxpayer in respect of all trips that were made by the individual at a time when the individual was a member of the taxpayer's household where the trips may reasonably be considered to relate to the period.

(4) For the purposes of clause 110.7(1)(a)(i)(A) of the Act, the prescribed amount in respect of a taxpayer for a period in a taxation year is the lesser of

(a) the total of

(i) the value of travel assistance, if any, provided in the period by the taxpayer's employer in respect of travelling expenses for trips, each of which was made by an individual who, at the time the trip was made, was a member of the taxpayer's household, where the trips may reasonably be considered to relate to the period, and

(ii) the amount, if any, received in the period by the taxpayer from the taxpayer's employer in respect of travelling expenses for trips, each of which was made by an individual who, at the time the trip was made, was a member of the taxpayer's household, where the trips may reasonably be considered to relate to the period; and

(b) the total of all the period travel costs to the taxpayer for the period in respect of all individuals who were members of the taxpayer's household at any time in the period.

History: Para. 7304(2)(c), subsecs. 7304(3), (4) amended by P.C. 1993-1688, s. 3, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1988 *et seq.*

S. 7304 added by P.C. 1988-1105, s. 3, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

Definitions [Reg. 7304]: "amount" — ITA 248(1); "designated city" — Reg. 7304(1); "employer", "individual" — ITA 248(1); "member of the taxpayer's household" — Reg. 7304(1); "period travel cost" — Reg. 7304(3); "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "trip cost" — Reg. 7304(2).

7305. For the purposes of subsection 80.3(4) of the Act, prescribed drought regions in respect of

(a) the 1995 calendar year are

(i) in Manitoba, the Local Government Districts of Alonsa, Fisher, Grahamdale, Grand Rapids and Mountain (South), the areas designated under The Northern Affairs Act (Manitoba) as the communities of Camperville, Crane River, Duck Bay, Homebrook, Mallard, Meadow Portage, Rock Ridge, Spence Lake and Waterhen, the Rural Municipalities of Eriksdale, Lawrence, Mossey River, Ste. Rose and Siglunes, and Skownan,

(ii) in Saskatchewan, the Rural Municipalities of Antelope Park, Battle River, Beaver River, Biggar, Blaine Lake, Britannia, Buffalo, Cut Knife, Douglas, Eagle Creek, Eldon, Eye Hill, Frenchman Butte, Glenside, Grandview, Grass Lake, Great Bend, Heart's Hill, Hillsdale, Kindersley, Loon Lake, Manitou Lake, Mariposa, Mayfield, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milton, Mountain View, North Battleford, Oakdale, Paynton, Parkdale, Perdue, Pleasant Valley, Prairie, Prairiedale, Progress, Redberry, Reford, Round Hill, Round Valley, Rosemont, Senlac, Spiritwood, Tramping Lake, Turtle River, Wilton and Winslow, and

(iii) in Alberta, the Counties of Beaver, Camrose, Flagstaff, Lamont, Minburn, Paintearth, Smoky Lake, St. Paul, Strathcona, Thorhild, Two Hills and Vermilion River, the Municipal Districts of Bonnyville, MacKenzie, Northern Lights, Provost and Wainwright, and Special Areas 2, 3 and 4;

(b) the 1997 calendar year are

(i) in Ontario, the Counties of Hastings and Renfrew,

(ii) Nova Scotia,

(iii) in Manitoba, the Rural Municipalities of Albert, Alonsa, Archie, Arthur, Birtle, Boulton, Brenda, Cameron, Clanwilliam, Dauphin, Edward, Ellice, Glenella, Grahamdale, Harrison, Lakeview, Langford, Lansdowne, Lawrence, McCreary, Miniota, Minto, Morton, Ochre River, Park (South), Pipestone, Rosedale, Rossburn, Russell, Ste. Rose, Shellmouth, Shoal Lake, Sifton, Siglunes, Silver Creek, Strathclair, Turtle Mountain, Wallace, Westbourne, Whitewater and Winchester,

(iv) in Saskatchewan, the Rural Municipalities of Abernethy, Antelope Park, Antler, Argyle, Baildon, Bengough, Benson, Big Stick, Biggar, Bratt's Lake, Brock, Brokenshell, Browning, Buchanan, Calder, Caledonia, Cambria, Cana, Chester, Chesterfield, Churchbridge, Clinworth, Coalfields, Cote, Cymri, Deer Forks, Elcapo, Elmsthorpe, Emerald, Enniskillen, Enterprise, Estevan, Excel, Eye Hill, Fertile Belt, Fillmore, Foam Lake, Francis, Fox Valley, Garry, Glenside, Golden West, Good Lake, Grandview, Grass Lake, Grayson, Griffin, Happyland, Happy Valley, Hart Butte, Hazelwood, Heart's Hill, Indian Head, Insinger, Ituna Bon Accord, Invermay, Kellross, Key West, Keys, Kingsley, Lajord, Lake Alma, Lake Johnston, Lake of The Rivers, Langenburg, Laurier,

Lipton, Livingston, Lomond, Maple Creek, Mariposa, Martin, Maryfield, McLeod, Milton, Montmartre, Moose Creek, Moose Jaw, Moose Mountain, Moosomin, Mountain View, Mount Pleasant, North Qu'Appelle, Norton, Oakdale, Orkney, Old Post, Poplar Valley, Prairie, Prairiedale, Progress, Reciprocity, Redburn, Reford, Rocanville, Rosemount, St. Philips, Saltcoats, Scott, Silverwood, Sliding Hills, Souris Valley, South Qu'Appelle, Spy Kill, Stanley, Stonehenge, Storthoaks, Surprise Valley, Tecumseh, Terrell, The Gap, Tramping Lake, Tullymet, Wallace, Walpole, Waverley, Wawken, Wellington, Weyburn, Willow Bunch, Willowdale, Winslow and Wolseley, and

(v) in Alberta, the County of Forty Mile, the Municipal Districts of Acadia Valley, Cypress, Pincher Creek, Provost and Willow Creek, and Special Areas 2, 3 and 4; and

(c) the 1998 calendar year are

(i) in Ontario, the Counties of Bruce, Grey, Huron and Oxford, and the Districts of Nipissing, Parry Sound, Sudbury and Thunder Bay,

(ii) in Nova Scotia, the Counties of Annapolis, Colchester, Cumberland, Digby, Hants and Kings,

(iii) in Saskatchewan, the Rural Municipalities of Aberdeen, Antelope Park, Arlington, Auvergne, Battle River, Bayne, Beaver River, Biggar, Blaine Lake, Blucher, Bone Creek, Britannia, Buffalo, Canaan, Chaplin, Chesterfield, Clinworth, Corman Park, Coteau, Coulee, Cut Knife, Douglas, Dundurn, Eagle Creek, Eldon, Enfield, Excelsior, Eye Hill, Fertile Valley, Frenchman Butte, Frontier, Glen Bain, Glen McPherson, Glenside, Grandview, Grant, Grass Lake, Grassy Creek, Gravelbourg, Great Bend, Harris, Hart Butte, Heart's Hill, Hillsdale, Kindersley, King George, Lac Pelletier, Lacadena, Laird, Lake of The Rivers, Lawtonia, Lone Tree, Loon Lake, Loreburn, Mankota, Manitou Lake, Maple Bush, Mariposa, Marriott, Mayfield, Meadow Lake, Medstead, Meeting Lake, Meota, Mervin, Milden, Milton, Miry Creek, Monet, Montrose, Morse, Mountain View, Newcombe, North Battleford, Oakdale, Old Post, Parkdale, Paynton, Perdue, Pinto Creek, Pleasant Valley, Poplar Valley, Prairie, Prairiedale, Progress, Redberry, Reford, Reno, Riverside, Rosedale, Rosemount, Round Hill, Round Valley, Rosthern, Rudy, St. Andrews, Saskatchewan Landing, Senlac, Shamrock, Snipe Lake, Stonehenge, Swift Current, Tramping Lake, Turtle River, Val Marie, Vanscoy, Victory, Waverly, Webb, Whiska Creek, White Valley, Willow Bunch, Wilton, Winslow, Wise Creek, and Wood River, and

(iv) in Alberta, the Counties of Beaver, Camrose, Flagstaff, Grande Prairie, Lamont, Minburn, Paintearth, St. Paul, Smoky Lake, Stettler, Two Hills and Vermilion River, the Municipal Districts of Acadia, Big Lakes, Birch Hills, Bonnyville, Clear Hills, East Peace, Fairview, Greenview, Northern Lights, Peace, Provost, Saddle Hills, Smoky River, Spirit River, Starland, Wainwright and Yellowhead, and Special Areas 2, 3 and 4.

(d), (e) [Repealed]

Proposed Amendment — Prescribed drought regions in western Canada for 1999

Agriculture and Agri-Food Canada news release, November 16, 1999: TAX DEFERRAL OF 1999 INCOME FROM DROUGHT-INDUCED SALES

Owners of breeding livestock within designated areas of Saskatchewan, Alberta and British Columbia who were forced to sell all or part of their herd this year due to drought conditions will be eligible for a one-year tax deferral of 1999 income from these sales.

On the advice of Minister of Agriculture and Agri-Food Lyle Vanclief, Minister of Finance Paul Martin has designated eligible areas for tax deferral. Initial designations were made after reviewing soil moisture, precipitation levels and forage yield estimates during the 1999 growing season. The review showed drought impact on forage yields in areas of Saskatchewan, Alberta, and British Columbia (see following list).

A final assessment of eligible areas across Canada will be made in late 1999 or early 2000 when complete forage yield information is available. Areas that meet the eligibility criteria may then be added to the list of eligible areas.

The deferral provides a management option to owners of breeding livestock forced to sell all or part of their herd due to drought conditions. It allows producers within designated areas to defer income tax on the sale of breeding livestock for one year to replenish breeding stock in the following year. In the case of consecutive years of drought designation, producers may defer sales income to the first year in which the area is no longer designated.

Breeding livestock producers within designated areas will be able to request this deferral when filing their 1999 income tax returns. Producers are asked to contact their local Revenue Canada Tax Services Office for details on the income tax provisions.

1999 INITIAL DESIGNATIONS: Prairie Region

BRITISH COLUMBIA

Peace River Region

ALBERTA

Birch Hills County
County of Athabasca No. 12
County of Barrhead No. 11
County of Grande Prairie No. 1
County of St. Paul No. 19
County of Thorhild No. 7
Lac Ste. Anne County
Lakeland County
M.D. of Big Lakes
M.D. of Bonnyville No. 87
M.D. of Clear Hills No. 21
M.D. of Fairview No. 136
M.D. of Greenview No. 16
M.D. of Lesser Slave Lake No. 124
M.D. of Northern Lights No. 22
M.D. of Peace No. 135
M.D. of Smoky River No. 130
M.D. of Spirit River No. 133
Saddle Hills County
Smoky Lake County
Westlock County
Woodlands County

SASKATCHEWAN

RM 561 Loon Lake
RM 622 Beaver River

For further information: Vern Greenshields, Minister Vanclief's office, Ottawa, (613) 759-1020; Jill Vaisey, Agriculture and Agri-Food Canada, Prairie Farm Rehabilitation Administration (PFRA), Regina, (306) 780-5716.

Proposed Amendment — Prescribed drought regions in Nova Scotia for 1999

Agriculture and Agri-Food Canada news release, November 16, 1999: TAX DEFERRAL OF 1999 INCOME FROM DROUGHT-INDUCED SALES

Owners of breeding livestock within six Nova Scotia Counties who were forced to sell all or part of their herd this year due to drought conditions will be eligible for a one-year tax deferral of 1999 income from these sales.

On the advice of Minister of Agriculture and Agri-Food Lyle Vanclief, Minister of Finance Paul Martin has designated eligible areas for tax deferral. Initial designations were made after reviewing soil moisture, precipitation levels and forage yield estimates during the 1999 growing season. The review showed drought impact on forage yields in the Nova Scotia Counties of Annapolis, Cumberland, Digby, Hants, Kings, and Yarmouth.

A final assessment of eligible areas across the country will be made in late 1999 or early 2000 when complete forage yield information is available. Areas that meet the eligibility criteria may then be added to the list of eligible areas.

The deferral provides a management option to owners of breeding livestock forced to sell all or part of their herd due to drought conditions. It allows producers within designated areas to defer income tax on the sale of breeding livestock for one year to replenish breeding stock in the following year. In the case of consecutive years of drought designation, producers may defer sales income to the first year in which the area is no longer designated.

Breeding livestock producers within designated areas will be able to request this deferral when filing their 1999 income tax returns. Producers are asked to contact their local Revenue Canada Tax Services Office for details on the income tax provisions.

For further information: Vern Greenshields, Minister Vanclief's office, Ottawa, (613) 759-1020; Peter Fehr, Agriculture and Agri-Food Canada, Ottawa, (613) 759-7226.

History: Paras. 7305(a) to (c) substituted for paras. (a) to (e), by P.C. 1999-1057, June 10, 1999 *Canada Gazette*, Part II, June 23, 1999, applicable after 1994.

Para. 7305(e) added by P.C. 1993-1210, June 8, 1993, *Canada Gazette*, Part II, June 30, 1993, applicable after 1991.

Para. 7305(d) added by P.C. 1992-2542, December 10, 1992, *Canada Gazette*, Part II, December 30, 1992, applicable after 1990.

S. 7305 added by P.C. 1991-464, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable after 1987.

Definitions [Reg. 7305]: "prescribed" — ITA 248(1).

7305.1 [Prescribed amount] — For the purpose of subparagraph (v) of the description of A in paragraph 6(1)(k) of the Act, the amount prescribed for a taxation year is

(a) if a taxpayer is employed in a taxation year by a particular person principally in selling or leasing automobiles and an automobile is made available in the year to the taxpayer or a person related to the taxpayer by the particular person or a person related to the particular person, 11 cents; and

(b) in any other case, 14 cents.

Proposed Amendment — Reg. 7305.1(a), (b)

Application: The May 15, 2000 draft regulations (automobile deduction limits and benefit rates) (pre-published in the *Canada Gazette*, Part I, May 27, 2000), s. 1, will amend para. 7305.1(a) to replace "11 cents" with "12 cents", and para. 7305.1(b) to replace "14 cents" with "15 cents", applicable to taxation years ending after 1999.

Regulatory Impact Analysis Statement: Section 7305.1 of the Regulations applies for the purpose of subparagraph (v) of the description of A in paragraph 6(1)(k) of the *Income Tax Act* (the Act). These provisions determine the per kilometre value of the personal benefit that an employee must recognize in computing income if the employee's automobile operating expenses are paid for by the employer. For taxation years ending after 1999, the prescribed rate for employees other than automobile sales and leasing employees is changed from 14 to 15 cents per kilometre. For taxpayers employed principally in selling or leasing automobiles, the prescribed rate is changed from 11 cents to 12 cents per kilometre for taxation years ending after 1999.

History: S. 7305.1 amended by P.C. 1999-1056, s. 1, June 10, 1999 *Canada Gazette*, Part II, June 23, 1999, applicable to taxation years that end after 1996. For taxation years that end after 1995 and before 1997, paras. (a) and (b) read as follows:

(a) if a taxpayer is employed in a taxation year by a particular person principally in selling or leasing automobiles and an automobile is made available in the year to the taxpayer or a person related to the taxpayer by the particular person or a person related to the particular person, 10 cents; and

(b) in any other case, 13 cents.

S. 7305.1 added by P.C. 1995-775, s. 6, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995; subsec. (1) applicable to 1993 *et seq.*, subsec. (2) applicable to 1994 *et seq.*

Definitions [Reg. 7305.1]: "amount", "automobile", "employed", "person", "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

7306. For the purposes of paragraph 18(1)(r) of the Act, the amount in respect of the use of one or more automobiles in a taxation year by an individual for kilometres driven in the year for the purpose of earning income of the individual is the total of

(a) the product of 29 cents multiplied by the number of those kilometres;

Proposed Amendment — Reg. 7306(a)

Application: The May 15, 2000 draft regulations (automobile deduction limits and benefit rates) (pre-published in the *Canada Gazette*, Part I, May 27, 2000), s. 2, will amend para. 7306(a) to replace "29 cents" with "31 cents", applicable to kilometres driven after 1999.

Regulatory Impact Analysis Statement: Section 7306 of the Regulations applies for the purposes of paragraph 18(1)(r) of the Act to determine the maximum amount deductible by an employer in respect of non-taxable automobile allowances paid by the employer to an employee. The maximum amount is determined by reference to the number of kilometres driven in the year for the purpose of earning income. This amendment to section 7306 increases the per-kilometre limit for kilometres driven after 1999 by 2 cents. For kilometres driven after 1999, the new limits are 37 cents per kilometre for the first 5 000 kilometres and 31 cents for each additional kilometre. An additional 4 cents continues to be allowed for each kilometre driven in the Yukon Territory, the Northwest Territories or Nunavut.

(b) the product of 6 cents multiplied by the lesser of 5,000 and the number of those kilometres; and

(c) the product of 4 cents multiplied by the number of those kilometres driven in the Yukon Territory, the Northwest Territories or Nunavut.

History: S. 7306 amended by P.C. 1999-1056, s. 2, June 10, 1999 *Canada Gazette*, Part II, June 23, 1999, applicable to kilometres driven after 1996, except that before March 1999, para. (c) shall be read without reference to "Nunavut". For kilometres driven after 1994 and before 1996, para. (a) shall be read as follows:

(a) the product of 25 cents multiplied by the number of those kilometres;

For kilometres driven after 1995 and before 1997, para. (a) shall be read as follows:

(a) the product of 27 cents multiplied by the number of those kilometres;

S. 7306 added by P.C. 1991-2272, s. 4, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable re allowances paid for use after 1987 of automobiles.

Definitions [Reg. 7306]: "amount", "automobile", "individual" — ITA 248(1); "taxation year" — ITA 249.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

7307. (1) For the purposes of subsection 13(2), paragraph 13(7)(g), subparagraph 13(7)(h)(iii), subsections 20(4) and (16.1), the description of B in paragraph 67.3(d) and subparagraph 85(1)(e.4)(i) of the Act, the amount prescribed is

(a) with respect to an automobile acquired, or leased under a lease entered into, after August 1989 and before 1991, $24,000; and

(b) with respect to an automobile acquired, or leased under a lease entered into, after 1990, the amount determined by the formula

A + B

where

A is, with respect to an automobile acquired, or leased under a lease entered into,

(i) before 1997, $24,000,

(ii) in 1997, $25,000, or

(iii) after 1997, $26,000, and

Proposed Amendment — Reg. 7307(1)(b)A(iii), (iv)

(iii) in 1998 or 1999, $26,000, or

(iv) after 1999, $27,000, and

Application: The May 15, 2000 draft regulations (automobile deduction limits and benefit rates) (pre-published in the *Canada Gazette*, Part I, May 27, 2000), subsec. 3(1), will amend subpara. (iii) of the description of A in para. 7307(1)(b) to read as above, and add subpara. (iv), applicable after 1999.

Regulatory Impact Analysis Statement: Subsection 7307(1) of the Regulations establishes the capital cost ceiling of passenger vehicles. These amendments increase this maximum amount by $1,000, to $27,000, plus federal and provincial sales taxes, for vehicles acquired after 1999.

B is the sum that would have been payable in respect of federal and provincial sales taxes on the acquisition of the automobile if it had been acquired, at a cost equal to A before the application of the federal and provincial sales taxes, if the automobile

(i) was acquired, at the time of the acquisition, or

(ii) was leased, at the time the lease was entered into.

Related Provisions: Reg. 1100(2.5) — 50% CCA in year of disposition; Reg. Sch. II:Cl. 10.1.

Interpretation Bulletins: IT-478R2: CCA — recapture and terminal loss; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

(2) [Repealed]

Proposed Amendment — Reg. 7307(2)

Department of Finance news release, December 13, 1999: *Interest Expense Limit*

This limit restricts the deductibility of interest expenses on funds borrowed to finance the purchase of a vehicle. It reflects the reasonable cost of financing a vehicle that is generally acceptable for business purposes. For 2000, this limit will remain at $250 per month.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

(3) For the purpose of the description of A in paragraph 67.3(c) of the Act, the amount prescribed in respect of a taxation year of a lessee is, with respect to an automobile leased under a lease entered into

(a) after August 1989 and before 1991, $650; and

(b) after 1990, the amount determined by the formula

A + B

where

A is

(i) for such leases, other than leases entered into in 1997, $650, and

(ii) for such leases entered into in 1997, $550.

Proposed Amendment — Reg. 7307(3)(b)A(i)–(iv)

(i) for leases entered into after 1990 but before 1997, $650,

(ii) for leases entered into in 1997, $550,

(iii) for leases entered into in 1998 or 1999, $650, and

(iv) for leases entered into after 1999, $700, and

Application: The May 15, 2000 draft regulations (automobile deduction limits and benefit rates) (pre-published in the *Canada Gazette*, Part I, May 27, 2000), subsec. 3(2), will amend subparas. (i) and (ii) of the description of A in para. 7307(3)(b) to read as above, and add subparas. (iii) and (iv), applicable after 1999.

Regulatory Impact Analysis Statement: Subsection 7307(3) of the Regulations provides a limit on deductible monthly leasing costs. This amount is increased for leases entered into after 1999 from $650 per month to $700 per month plus the amount of federal and provincial sales tax payable on lease payments of $700 per month.

B is the sum of the federal and provincial sales taxes that would have been payable on a monthly payment under the lease in the taxation year of the lessee if, before those taxes, the lease had required monthly payments equal to A.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles); No. 12 (1998 deduction limits and benefit rates for automobiles).

(4) For the purpose of the description of C in paragraph 67.3(d) of the Act, the amount prescribed in respect of an automobile leased under a lease entered into after August 1989 is the amount equal to 100/85 of the amount determined in accordance with subsection (1) in respect of the automobile.

History: Paras. 7307(1)(b) and (3)(b) amended and subsec. (2) repealed by P.C. 1999-1056, s. 3, June 10, 1999 *Canada Gazette*, Part II, June 23, 1999, paras. (1)(b) and (3)(b) applicable after 1996 and the repeal of subsec. (2) applicable in respect of automobiles acquired after 1996.

Subsec. 7307(1) amended by P.C. 1995-775, s. 7, May 16, 1995, *Canada Gazette*, Part II, May 31, 1995, applicable with respect to automobiles acquired, or leased under leases entered into, after August 31, 1989.

Subsec. 7307(1) amended by P.C. 1994-103, s. 2, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to automobiles acquired or leased under leases entered into after August 31, 1989.

S. 7307 added by P.C. 1991-2272, s. 4, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991.

Definitions [Reg. 7307]: "amount", "automobile", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals.

7308. (1) In this section, "carrier" has the meaning assigned by subsection 146.3(1) of the Act.

(2) For the purposes of this section, a retirement income fund is a qualifying retirement income fund at a particular time if

(a) the fund was entered into before 1993 and the carrier has not accepted any property as consideration under the fund after 1992 and at or before the particular time, or

(b) the carrier has not accepted any property as consideration under the fund after 1992 and at or before the particular time, other than property transferred from a retirement income fund that, immediately before the time of the transfer, was a qualifying retirement income fund.

(3) For the purposes of the definition "minimum amount" in subsection 146.3(1) of the Act, the prescribed factor in respect of an individual for a year in connection with a retirement income fund that was a qualifying retirement income fund at the beginning of the year is the factor, determined pursuant to the following table, that corresponds to the age in whole years (in the table referred to as "X") attained by the individual at the beginning of that year or that would have been so attained by the individual if the individual had been alive at the beginning of that year.

X	Factor
under 79	1/(90 - X)
79	.0853
80	.0875
81	.0899
82	.0927
83	.0958
84	.0993
85	.1033
86	.1079
87	.1133
88	.1196
89	.1271
90	.1362
91	.1473
92	.1612
93	.1792
94 or older	.2000

(4) For the purposes of the definition "minimum amount" in subsection 146.3(1) of the Act, the prescribed factor in respect of an individual for a year in connection with a retirement income fund other than a fund that was a qualifying retirement income fund at the beginning of the year is the factor, determined pursuant to the following table, that corresponds to the age in whole years (in the table referred to as "Y") attained by the individual at the beginning of that year or that would have been so attained by the individual if the individual had been alive at the beginning of that year.

Y	Factor
under 71	1/(90 - Y)
71	.0738
72	.0748
73	.0759
74	.0771
75	.0785
76	.0799
77	.0815
78	.0833
79	.0853
80	.0875
81	.0899
82	.0927
83	.0958
84	.0993
85	.1033
86	.1079
87	.1133
88	.1196
89	.1271
90	.1362
91	.1473
92	.1612
93	.1792
94 or older	.2000

History: The portion of subsecs. 7308(3) and (4) before the table amended to substitute "the prescribed factor" for "the prescribed amount", by P.C. 2000-184, s. 2, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1998 *et seq.*

S. 7308 enacted by P.C. 1994-102, January 20, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1992 *et seq.*

Definitions [Reg. 7308]: "amount" — ITA 248(1); "carrier" — Reg. ITA 146.3(1), Reg. 7308(1); "individual", "prescribed", "property" — ITA 248(1); "qualifying retirement income fund" — Reg. 7308(2); "retirement income fund" — ITA 146.3(1), 248(1).

PART LXXIV — PRESCRIBED TAX TREATY PROVISIONS AND ELECTION

History: Part LXXIV (s. 7400) added by P.C. 1988-1473, s. 5, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable to taxation years commencing after 1984.

7400. (1) For the purposes of section 115.1 of the Act, the following tax treaty provisions are hereby prescribed:

(a) paragraph 8 of Article XIII of the Convention as defined in section 2 of the *Canada–United States Tax Convention Act, 1984*; and

(b) paragraph 6 of Article 13 of the Convention as defined in section 2 of the *Canada–Netherlands Income Tax Convention Act, 1986*.

(2) The election described in paragraph 115.1(b) of the Act in respect of a disposition of property may be made

(a) at any time, if the vendor and the purchaser of the property have filed with the Minister a waiver in respect of the disposition in the form prescribed for the purposes of subparagraph 152(4)(a)(ii) of the Act within three years after the day that the Minister, by virtue of subsection 152(2) or (4) of the Act, mails to the vendor a notice of an original assessment or a notification that no tax is payable for the taxation year of the vendor in which the vendor disposed of the property; and

(b) within three years after the day referred to in paragraph (a), in any other case.

Definitions [Reg. 7400]: "assessment" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "Minister", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-420R3: Non-residents — income earned in Canada.

Part LXXV — Prescribed Film Productions and Revenue Guarantees

History: Part LXXV (s. 7500) added by P.C. 1988-1474, July 21, 1988, *Canada Gazette*, Part II, August 3, 1988, applicable after February 25, 1986.

7500. For the purposes of subparagraph 96(2.2)(d)(ii) of the Act and this Part,

"prescribed film production" means a certified production defined in subsection 1104(2);

"prescribed revenue guarantee" means a revenue guarantee in respect of a prescribed film production, which guarantee is certified by the Minister of Communications to be a guarantee under which the person who agrees to provide the revenue is a licensed broadcaster or *bona fide* film or tape distributor.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. Other references — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Definitions [Reg. 7500]: "Minister", "person" — ITA 248(1); "prescribed film production" — Reg. 7500.

Part LXXVI — Carved-Out Property Exclusion

History: Part LXXVI (s. 7600) added by P.C. 1989-1793, s. 2, September 21, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to property acquired after July 19, 1985.

7600. For the purposes of paragraph (g) of the definition "carved-out property" in subsection 209(1) of the Act, a prescribed property at any time is

(a) any right, licence or privilege to prospect, explore, drill or mine for minerals in a mineral resource (other than a bituminous sands deposit, oil sands deposit or oil shale deposit) in Canada;

(b) any rental or royalty computed by reference to the amount or value of production of minerals from a mineral resource (other than a bituminous sands deposit, oil sands deposit or oil shale deposit) in Canada;

(c) any real property in Canada the principal value of which depends on its mineral resource content (other than a bituminous sands deposit, oil sands deposit or oil shale deposit);

(d) any right to or interest in any property described in any of paragraphs (a) to (c); or

(e) a property acquired before that time by a taxpayer in the circumstances described in paragraph (c) of the definition "carved-out property" in subsection 209(1) of the Act, except where it is reasonable to consider that one of the main reasons for the acquisition of the property, or any series of transactions or events in which the property was acquired, by the taxpayer was to reduce or postpone tax that would, but for this paragraph, be payable by another taxpayer under Part XII.1 of the Act.

Definitions [Reg. 7600]: "amount", "bituminous sands" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "mineral", "mineral resource", "prescribed", "property", "taxpayer" — ITA 248(1).

Part LXXVII — Prescribed Prizes

History: Part LXXVII (s. 7700) added by P.C. 1989-1923, s. 2, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable in respect of 1983 *et seq.*

7700. For the purposes of subparagraph 56(1)(n)(i) of the Act, a prescribed prize is any prize that is recognized by the general public and that is awarded for meritorious achievement in the arts, the sciences or service to the public but does not include any amount that can reasonably be regarded as having been received as compensation for services rendered or to be rendered.

Definitions [Reg. 7700]: "amount", "prescribed" — ITA 248(1).

Interpretation Bulletins: IT-75R3: Scholarships, fellowships, bursaries, prizes, and research grants; IT-257R: Canada Council grants.

Part LXXVIII — Prescribed Provincial Pension Plans

History: Part LXXVIII (s. 7800) added by P.C. 1989-1924, September 28, 1989, *Canada Gazette*, Part II, October 11, 1989, applicable to 1987 *et seq.* except that, for the 1987 taxation year, the reference to "paragraph 118(8)(e)" in subsection 7800(1) shall be read as a reference to "paragraph 110.2(4)(h)".

7800. (1) For the purposes of clause 56(1)(a)(i)(C), subsections 56(2) and (4), paragraph 60(v), subsection 74.1(1) and paragraph 118(8)(e) of the Act, the Saskatchewan Pension Plan is a prescribed provincial pension plan.

(2) For the purpose of subparagraph 60(v)(ii) of the Act, the prescribed amount for a taxation year in respect of the Saskatchewan Pension Plan is, for the 1987 taxation year, $1,200, and for the 1988 and subsequent taxation years, $600.

Definitions [Reg. 7800]: "amount", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-499R: Superannuation or pension benefits; IT-517R: Pension tax credit.

Part LXXIX — Prescribed Financial Institutions

History: Part LXXIX (s. 7900) added by P.C. 1990-854, s. 2, May 10, 1990, *Canada Gazette*, Part II, May 23, 1990, applicable after December 19, 1986.

7900. For the purposes of section 33.1, paragraph 95(2)(a.3), clause 212(1)(b)(iii)(D) and subparagraph 212(1)(b)(xi) of the Act, "prescribed financial institution" means

(a) a corporation that is a member of the Canadian Payments Association; or

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Association Act*.

History: The opening words of s. 7900 amended by P.C. 1997-1670, s. 10, November 20, 1997, *Canada Gazette*, Part II, December 10, 1997, applicable to taxation years of a foreign affiliate of a taxpayer that begin after 1994, except that

(a) the sec. applies to taxation years of a foreign affiliate of a taxpayer that end after 1994 where there has been a change in the taxation year of the foreign affiliate in 1994 and after February 22, 1994, unless

(i) the foreign affiliate had requested that change in the taxation year in writing before February 22, 1994 from the income taxation authority of the country in which it was resident and subject to income taxation, or

(ii) the first taxation year of the foreign affiliate that began after 1994 began at a time in 1995 that is earlier than the time when that taxation year would have begun if there had not been that change in the taxation year of the foreign affiliate.

Definitions [Reg. 7900]: "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union", "shareholder" — ITA 248(1).

PART LXXX — PRESCRIBED RESERVE AMOUNT AND RECOVERY RATE

History: Part LXXX (ss. 8000–8005) added by P.C. 1990-2779, s. 4, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

8000. [Prescribed reserve amount] — For the purpose of clause 20(1)(l)(ii)(C) of the Act, the prescribed reserve amount for a taxation year means the aggregate of

(a) where the taxpayer is a bank, an amount equal to the lesser of

(i) the amount of the reserve reported in its annual report for the year that is filed with and accepted by the relevant authority or, where the taxpayer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report for the year with the relevant authority, in its financial statements for the year, as general provisions or as specific provisions, in respect of exposures to designated countries in respect of loans or lending assets of the taxpayer made or acquired by it in the ordinary course of its business, and

(ii) an amount in respect of the loans or lending assets of the taxpayer at the end of the year that were made or acquired by the taxpayer in the ordinary course of its business and reported for the year by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as part of the taxpayer's total exposure to designated countries for the purpose of determining the taxpayer's general provisions or specific provisions referred to in subparagraph (i) or that were acquired by the taxpayer after August 16, 1990 and reported for the year by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as an exposure to a designated country (in this subparagraph referred to as the "loans") equal to the positive or negative amount, as the case may be, determined by the formula

$$45\% (A + B) - (B + C)$$

where

A is the aggregate of all amounts each of which is the amount that would be the amortized cost of a loan to the taxpayer at the end of the year if the definition "amortized cost" in section 248 of the Act were read without reference to paragraphs (e) and (i) thereof,

B is the aggregate of all amounts each of which is the amount, if any, by which the principal amount of a loan outstanding at the time it was acquired by the taxpayer exceeds the amortized cost of the loan to the taxpayer immediately after the time it was acquired by the taxpayer, and

C is the aggregate of all amounts each of which is

(A) an amount deducted in respect of a loan under clause 20(1)(l)(ii)(B) of the Act in computing the taxpayer's income for the year, or

(B) an amount in respect of a loan determined as the amount, if any, by which

(I) the aggregate of all amounts in respect of the loan deducted under paragraph 20(1)(p) of the Act in computing the taxpayer's income for the year or a preceding taxation year

exceeds

(II) the aggregate of all amounts in respect of the loan included under paragraph 12(1)(i) of the Act in computing the taxpayer's income for the year or a preceding taxation year, and

(a.1) where the taxpayer is a bank, the positive or negative amount that would be determined under the formula in subparagraph (a)(ii) in respect of the specified loans owned by the taxpayer at the end of the year if that subparagraph applied to those loans.

(b) [Repealed]

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of s. 8000 amended and para. (b) repealed by P.C. 1999-195, subsecs. 2(1) and (3), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, apply to the year and files the election with the Minister of National Revenue before October 1998.

Para. 8000(a.1) added by P.C. 1999-195, subsec. 2(2), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to 1997 *et seq.*; and

(b) to taxation years that end after 1991 and before 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

Definitions [Reg. 8000]: "amortized cost", "amount" — ITA 248(1); "bank" — *Interpretation Act* 35(1); "business" — ITA 248(1); "designated country", "exposure to a designated country", "general provisions" — Reg. 8006; "lending asset" — ITA 248(1); "loans" — Reg. 8000(a)(ii); "loans or lending assets" — Reg. 8003; "prescribed", "principal amount" — ITA 248(1); "principal amount outstanding" — Reg. 8002(a); "relevant authority", "specific provisions", "specified loan" — Reg. 8006; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8001. [Repealed]

History: S. 8001 repealed by P.C. 1999-195, s. 3, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act,

as amended, to apply to the year and files the election with the Minister of National Revenue before October 1998.

8002. [Principal amount, amortized cost] — For the purposes of paragraph 8000(a),

(a) the principal amount outstanding at any time of a lending asset of a taxpayer that is a share of the capital stock of a corporation is the part of the consideration received by the corporation for the issue of the share that is outstanding at that time;

(b) where

(i) a taxpayer realizes a loss from the disposition of a loan or lending asset described in subparagraph 8000(a)(ii) or a specified loan described in paragraph 8000(a.1) (in this paragraph referred to as the "former loan") for consideration that included another loan or lending asset that was a loan or lending asset described in subparagraph 8000(a)(ii) or paragraph 8000(a.1) (in this paragraph referred to as the "new loan"), and

(ii) in the case of a former loan that is not a specified loan, the loss is included in computing the taxpayer's provisionable assets as reported for the year to the relevant authority, in accordance with the guidelines established by the relevant authority, for the purpose of determining the taxpayer's general provisions or specific provisions in respect of exposures to designated countries,

the principal amount of the new loan outstanding at the time it was acquired by the taxpayer is deemed to be equal to the principal amount of the former loan outstanding immediately before that time; and

(c) where at the end of a particular taxation year a taxpayer owns a specified loan that, at the end of the preceding taxation year, was described in an inventory of the taxpayer, the amortized cost of the specified loan to the taxpayer at the end of the particular year is its value determined under section 10 of the Act at the end of the preceding year for the purpose of computing the taxpayer's income for the preceding year.

History: Para. 8002(b) amended and para. (c) added by P.C. 1999-195, s. 4, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to 1997 *et seq.*; and

(b) to taxation years that end after 1991 and before 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

Definitions [Reg. 8002]: "amortized cost" — Reg. 8002(c), ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "designated country" — Reg. 8006; "disposition" — ITA 248(1); "exposure to a designated country" — Reg. 8006; "former loan" — Reg. 8002(b)(i); "general provisions" — Reg. 8006; "inventory", "lending asset" — ITA 248(1); "new loan" — Reg. 8002(b)(i); "principal amount" — Reg. 8002, ITA 248(1); "provisionable assets", "relevant authority" — Reg. 8006; "share" — ITA 248(1); "specific provisions", "specified loan" — Reg. 8006; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8003. [Election] — Where a taxpayer elects to have this section apply by notifying the Minister in writing within 90 days after the day on which this section is published in the *Canada Gazette*, the loans or lending assets of the taxpayer that are described in subparagraph 8000(a)(ii) shall not include any loan or lending asset acquired by the taxpayer before November 1988 from a person with whom the taxpayer was dealing at arm's length.

Definitions [Reg. 8003]: "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "lending asset", "Minister", "person", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

8004. [Repealed]

History: S. 8004 repealed by P.C. 1999-195, s. 5, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, to apply to the year and files the election with the Minister of National Revenue before October 1998.

8005. [Rules — loans and lending assets] — For the purposes of subparagraph 8000(a)(ii), where a loan or lending asset of a person (in this section referred to as the "holder") related to a taxpayer

(a) was reported for the year by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as an exposure to a designated country,

(b) was acquired by the holder or another person related to the taxpayer after August 16, 1990 as part of a series of transactions or events in which the taxpayer or a person related to the taxpayer disposed of a loan or lending asset that

(i) for the taxation year immediately preceding the particular year in which it was disposed of, was a loan or lending asset that was reported by the taxpayer to the relevant authority, in accordance with the guidelines established by the relevant authority, as an exposure to a designated country, and

(ii) was a loan or lending asset a loss arising on the disposition of which would be a loss in respect of which a deduction is permitted under Part I of the Act to the taxpayer or a person related to the taxpayer, and

(c) had an amortized cost to the holder, immediately after the time it was acquired by the holder, that was less than 55 per cent of its principal amount,

the following rules apply:

(d) the loan or lending asset shall be deemed

(i) to be a loan or lending asset of the taxpayer at the end of the year,

(ii) to be a loan or lending asset of the taxpayer that was acquired by the taxpayer at the time it was acquired by the holder, and

(iii) to have an amortized cost to the taxpayer, at any time, that is equal to its amortized cost to the holder at that time, and

(e) any amount in respect of the loan or lending asset deducted under paragraph 20(1)(p) of the Act or included under paragraph 12(1)(i) of the Act in computing the holder's income for a particular year shall be deemed to have been so deducted or included, as the case may be, in computing the income of the taxpayer for the year in which the particular year ends.

Definitions [Reg. 8005]: "amortized cost", "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "exposure to a designated country" — Reg. 8006; "holder" — Reg. 8005; "lending asset", "person", "principal amount" — ITA 248(1); "related" — ITA 251(2)–(6); "relevant authority" — Reg. 8006; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8006. For the purposes of this Part,

"designated country" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992,

and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"exposure to a designated country" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"general provisions" has the same meaning as the expression "general country risk provisions" in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"provisionable assets" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time;

"relevant authority" means the Superintendent of Financial Institutions;

"specific provisions" has the same meaning as in the Guidelines for banks established pursuant to section 175 of the *Bank Act*, as that section read on May 31, 1992, and issued by the Office of the Superintendent of Financial Institutions, as amended from time to time.

"specified loan" means

(a) a United Mexican States Collateralized Par Bond due in 2019, or

(b) a United Mexican States Collateralized Discount Bond due in 2019;

History: The definition "specified loan" added to s. 8006 by P.C. 1999-195, s. 6, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to 1997 *et seq.*; and

(b) to taxation years that end after 1991 and before 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

S. 8006 added by P.C. 1992-2335, Sch. II, s. 16, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to taxation years and fiscal periods beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 8006]: "bank" — *Interpretation Act* 35(1).

8007. [Repealed]

History: S. 8007 repealed by P.C. 1999-195, subsec. 7(2), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years ending after September 1997. It formerly read:

8007. Paragraph 8000(b) does not apply in respect of a specified loan of a bank.

S. 8007 added by P.C. 1999-195, subsec. 7(1), February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable to taxation years that end after 1991 and before October 1997 where the taxpayer elects in writing to have para. 8000(a.1) apply to those years and files the election with the Minister of National Revenue before July 1999.

Definitions [Reg. 8007]: "bank" — *Interpretation Act* 35(1); "specified loan" — Reg. 8006.

PART LXXXI — TRANSITION FOR FINANCIAL INSTITUTIONS

History: Part LXXXI (ss. 8100–8105) added by P.C. 1990-2779, s. 4, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

8100. Transition deduction in respect of unpaid claims reserve — For the purpose of subsection 20(26) of the Act, an insurer's unpaid claims reserve adjustment for its taxation year that includes February 23, 1994 is the amount, if any, by which

(a) the total of all amounts each of which is the maximum amount that, because of paragraph 1400(e), was deductible under paragraph 20(7)(c) of the Act in respect of an insurance policy in computing the insurer's income for its last taxation year that ended before February 23, 1994

exceeds

(b) where the insurer elects, by notifying the Minister in writing, to have this paragraph apply, the total of all amounts each of which is the maximum amount that would, because of paragraph 1400(e), have been deductible under paragraph 20(7)(c) of the Act in respect of an insurance policy in computing the insurer's income for its last taxation year that ended before February 23, 1994 if the amount "1/3" in the formula in subparagraph 1400(e)(ii), as it read for that year, were replaced by the amount "1", and

(c) in any other case, the total of all amounts each of which is the maximum amount that would, because of paragraph 1400(e) or (e.1), have been deductible under paragraph 20(7)(c) of the Act in respect of an insurance policy in computing the insurer's income for its last taxation year that ended before February 23, 1994 if paragraph 1400(e.1) had applied to that year and paragraphs 1400(e) and (e.1) were read in their application to that year as they read in their application to the insurer's taxation year that includes February 23, 1994.

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 8100]: "amount", "insurance policy", "insurer", "Minister" — ITA 248(1); "taxation year" — ITA 249; "writing" — *Interpretation Act* 35(1).

8101. Inclusion of transition amount in respect of unpaid claims reserve — **(1)** In this section, "transition deduction" of an insurer means the amount deducted under subsection 20(26) of the Act in computing the insurer's income for its taxation year that includes February 23, 1994.

(2) Subject to subsection (3), there is prescribed for the purpose of section 12.3 of the Act in respect of an insurer for a taxation year that ends after February 22, 1994 the amount determined by the formula

$$\left(\frac{(0.05A + 0.10B + 0.15C)}{365}\right) \times D$$

where

A is the total of

(a) the number of days in the taxation year that are in 1994 or 1995, and

(b) where the taxation year includes February 23, 1994, the number of days in 1994 that are before the first day of the taxation year,

B is the number of days in the taxation year (other than February 29) that are in any of 1996 to 2001,

C is the number of days in the taxation year that are in 2002 or 2003, and

D is the insurer's transition deduction minus the amount, if any, required by subsection (4) or paragraph (5)(b) to be subtracted.

(3) Where subsection 88(1) of the Act has applied to the winding-up of an insurer (in this subsection referred to as the "subsidiary"),

(a) the values of A, B, and C in subsection (2) shall be determined in respect of the subsidiary without including any days that are after the day on which the subsidiary's assets were distributed to its parent on the winding-up; and

(b) there is prescribed for the purpose of section 12.3 of the Act in respect of the parent for its taxation year that includes the day referred to in paragraph (a) the total of

(i) the amount that would be determined under subsection (2) in respect of the parent for the year if the parent's transition deduction did not include the subsidiary's transition deduction, and

(ii) the amount that would be determined under subsection (2) in respect of the parent for the year if

(A) the values of A, B, and C in that subsection were determined without including the day referred to in paragraph (a) and any days before that day, and

(B) the value of D in that subsection were equal to the subsidiary's transition deduction.

(4) Where subsection 138(11.5) or (11.94) of the Act has applied to the transfer of an insurance business by an insurer, there shall be subtracted, in determining the value of D in subsection (2) in respect of the insurer for a taxation year ending after the insurer ceased to carry on all or substantially all of the business, the part of the insurer's transition deduction that can reasonably be attributed to the business.

(5) Where an insurer ceases to carry on all or substantially all of an insurance business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 138(11.5) or (11.94) of the Act applies,

(a) there is prescribed for the purpose of section 12.3 of the Act in respect of the insurer for its taxation year in which the cessation of business occurs, in addition to the amount prescribed by subsection (2), the amount, if any, by which

(i) the part of the insurer's transition deduction that can reasonably be attributed to the business

exceeds

(ii) that part of the total of the amounts included under section 12.3 of the Act in computing the income of the insurer for preceding taxation years that can reasonably be considered to be in respect of the amount determined under subparagraph (i); and

(b) there shall be subtracted, in determining the value of D in subsection (2) in respect of the insurer for the year or a subsequent taxation year, the amount determined under subparagraph (a)(i).

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 8101]: "amount", "business", "insurer", "prescribed" — ITA 248(1); "subsidiary" — Reg. 8101(3); "taxation year" — ITA 249; "transition deduction" — Reg. 8101(1).

8102. [Repealed]

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

S. 8102 amended by P.C. 1992-2335, Sched. II, s. 17, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to taxation years and fiscal periods beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 8102]: "amount", "business" — ITA 248(1); "capital property" — ITA 54, 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "excluded property" — Reg. 8102(1); "mark-to-market property" — ITA 142.2(1), Reg. 8102(1); "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8103. [Repealed]

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Subparas. 8103(a)(i), (ii) amended by P.C. 1992-2335, Sched. II, s. 18, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, applicable to taxation years and fiscal periods beginning after June 17, 1987 and ending after 1987.

Definitions [Reg. 8103]: "amount", "business", "insurer" — ITA 248(1); "person", "prescribed", "property" — ITA 248(1); "subsidiary" — Reg. 8103(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "transition deduction" — Reg. 8103(1).

8104. [Repealed]

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 8104]: "allowable capital loss" — ITA 38(b), 248(1); "amount" — ITA 248(1); "capital property" — ITA 54, 248(1); "disposition" — ITA 248(1); "excluded property" — Reg. 8104(1); "mark-to-market property" — ITA 142.2(1), Reg. 8104(1); "non-resident", "prescribed", "property", "taxable Canadian property" — ITA 248(1); "taxable capital gain" — ITA 38(a), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

8105. [Repealed]

History: Ss. 8100 and 8101 substituted for ss. 8100 to 8105 by P.C. 1996-1452, s. 3, September 17, 1996, *Canada Gazette*, Part II, October 2, 1996, applicable to taxation years that end after February 22, 1994.

Definitions [Reg. 8105]: "allowable capital loss" — ITA 38(b), 248(1); "amount", "prescribed" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "transition loss" — Reg. 8105(1).

Proposed Addition — Reg. 8102–8105

Technical Notes: Part LXXXI contains transition rules for the 1987 tax reform changes to the reserves available to financial institutions. On December 8, 1994, draft amendments were announced that would repeal these rules and introduce (in sections 8100 and 8101) new transition rules relating to unpaid claims reserves for non-life insurance policies.

New transition rules are added in sections 8102 to 8105 in connection with the introduction of the mark-to-market requirement for shares and certain debt obligations held by financial institutions. These new rules apply to taxation years ending after October 30, 1994.

Section 8102 prescribes the maximum transition deduction that may be claimed under subsection 142.5(4) of the Act in respect of non-capital properties.

8102. Mark-to-market — transition deduction — (1) In this section,

"excluded property" of a taxpayer means a mark-to-market property used in a business of the taxpayer in its

taxation year that includes October 31, 1994 where it is reasonable to expect that the property would have been valued at its fair market value for the purpose of computing the taxpayer's income from the business for the year if

(a) the Act were read without reference to subsection 142.5(2), and

(b) the property were held at the end of the year;

Technical Notes: "Excluded property" of a taxpayer is property that it is reasonable to consider would have been marked to market for tax purposes in the taxpayer's taxation year that includes October 31, 1994, even if a requirement to do so had not been introduced. The determination of whether property that has been sold during the year is excluded property is to be made assuming that the taxpayer continued to hold the property throughout the year.

"mark-to-market property" has the meaning assigned by subsection 142.2(1) of the Act.

Technical Notes: "Mark-to-market property" of a taxpayer has the meaning given by subsection 142.2(1) of the Act. In general terms, it comprises most shares held by the taxpayer and debt obligations that are marked to market for financial statement purposes.

(2) For the purpose of subsection 142.5(4) of the Act, the prescribed amount for a taxpayer's taxation year that includes October 31, 1994 is the amount, if any, by which

(a) the total of all amounts each of which is the taxpayer's profit from the disposition in the year, because of subsection 142.5(2) of the Act, of a property other than a capital property or an excluded property

exceeds the total of

(b) the total of all amounts each of which is the taxpayer's loss from the disposition in the year, because of subsection 142.5(2) of the Act, of a property other than a capital property or an excluded property, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's loss from the disposition in the year of a mark-to-market property (other than a capital property, an excluded property or a property disposed of because of subsection 142.5(2) of the Act)

exceeds

(ii) the total of all amounts each of which is the taxpayer's profit from the disposition in the year of a mark-to-market property (other than a capital property, an excluded property or a property disposed of because of subsection 142.5(2) of the Act).

Technical Notes: Subsection 142.5(4) of the Act contains a transition deduction in respect of the introduction of the requirement that certain property be marked to market for tax purposes. It permits a taxpayer to deduct an amount not exceeding a prescribed amount in its taxation year that includes October 31, 1994. Subsection 8102(2) prescribes the following maximum amount for this purpose:

- the taxpayer's total profits from the disposition of non-capital mark-to-market properties (other than excluded properties, as defined in subsection 8102(1)) that the mark-to-market rules deem the taxpayer to have disposed of in the year

minus

- the taxpayer's total losses from the disposition of non-capital mark-to-market properties (other than excluded properties) that the mark-to-market rules deem the taxpayer to have disposed of in the year, and
- the taxpayer's net losses (i.e., losses minus profits) from actual dispositions in the year of non-capital mark-to-market properties (other than excluded properties) and from deemed dispositions of such properties otherwise than because of the mark-to-market rules.

8103. Mark-to-market — transition inclusion — (1) In this section, "transition deduction" of a taxpayer means the amount deducted under subsection 142.5(4) of the Act in computing the taxpayer's income for its taxation year that includes October 31, 1994.

Technical Notes: Section 8103 applies where a taxpayer has claimed a deduction under subsection 142.5(4) of the Act in respect of the introduction of the mark-to-market requirement. It prescribes the amount to be included in income each year under subsection 142.5(5) of the Act in respect of the deducted amount. Generally, the deducted amount is required to be included in income over a 5-year period. Section 8103 also contains rules for the income inclusion after certain corporate reorganizations have occurred or where a taxpayer ceases to carry on a business or to be a financial institution.

Subsection 8103(1) defines the "transition deduction" of a taxpayer to be the amount deducted under subsection 142.5(4) of the Act in computing the taxpayer's income for its taxation year that includes October 31, 1994.

Where a taxpayer has been formed by amalgamation, the continuity rule in paragraph 87(2)(g.2) of the Act ensures that any amount deducted by a predecessor corporation under subsection 142.5(4) of the Act is considered to have been deducted by the taxpayer. Therefore, the taxpayer's transition deduction is the sum of the transition deductions of its predecessors.

Similarly, the transition deduction of a taxpayer to which a business has been transferred in a transaction to which subsection 88(1) (winding-up), 138(11.5) (transfer of insurance business by a non-resident insurer) or 138(11.94) (transfer of insurance business by a resident insurer) of the Act applies will include the amount deducted by the transferor under subsection 142.5(4) in respect of the business. The relevant continuity rules are in paragraph 87(2)(g.2) (which applies to a winding-up by reason of paragraph 88(1)(e.2)) and paragraph 138(11.5)(k).

(2) Subject to subsections (3), (5) and (7), there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of a taxpayer for a taxation year that ends after October 30, 1994 the amount determined by the formula

$$\frac{A}{1825} \times B$$

where

A is the number of days (other than February 29) in the year that are before the day that is 5 years after the first day of the taxation year of the taxpayer that includes October 31, 1994, and

B is the taxpayer's transition deduction minus the amount, if any, required by subsection (4) or paragraph (6)(b) to be subtracted.

Technical Notes: Subsection 8103(2) prescribes the amount to be included in income each year under subsection 142.5(5) of the Act by a taxpayer that has claimed a transition deduction under subsection 142.5(4). The first taxation year for which an amount is prescribed is the taxation year that includes October 31, 1994. The prescribed amount for a taxation year is given by the formula:

$$\frac{A}{1825} \times B$$

where

A = the number of days in the year that are not more than 5 years after the start of the taxpayer's taxation year that includes October 31, 1994 — February 29th is disregarded for this purpose, and

B = the taxpayer's transition deduction minus the amounts specified by subsection 8103(4) and paragraph 8103(6)(b).

Subsections 8103(3), (5) and (7) contain rules that override the determination of the prescribed amount under subsection 8103(2) when a taxpayer undergoes a reorganization, ceases to be a financial institution or ceases to carry on a business.

(3) Where subsection 88(1) of the Act has applied to the winding-up of a taxpayer (in this subsection referred to as the "subsidiary"),

(a) the value of A in subsection (2) shall be determined in respect of the subsidiary without including any days that are after the day on which the subsidiary's assets were distributed to its parent on the winding-up; and

(b) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the parent for its taxation year that includes the day referred to in paragraph (a) the total of

(i) the amount that would be determined under subsection (2) in respect of the parent for the year if the parent's transition deduction did not include the subsidiary's transition deduction, and

(ii) the amount that would be determined under subsection (2) in respect of the parent for the year if

(A) the value of A in that subsection were determined without including the day referred to in paragraph (a) and any days before that day, and

(B) the value of B in that subsection were equal to the subsidiary's transition deduction.

Technical Notes: As noted in the commentary on subsection 8103(1), where a subsidiary is wound up into its parent corporation and subsection 88(1) of the Act applies to the winding-up, the parent will be considered to have deducted the amount deducted by the subsidiary under subsection 142.5(4) of the Act. Thus, this amount will be taken into account in determining the amounts prescribed by subsection 8103(2) in respect of the parent.

Subsection 8103(3) contains additional rules relating to the winding-up of a subsidiary. These rules ensure that no part of the subsidiary's transition deduction is required to be included in both the parent's and the subsidiary's income.

Paragraph 8103(3)(a) provides that the amounts prescribed by subsection 8103(1) for the subsidiary are to be determined ignoring any days after the day on which the subsidiary's assets are distributed to its parent. This rule is relevant only if the subsidiary has a taxation year that ends after the day on which the distribution occurs.

Paragraph 8103(3)(b) prescribes the amount to be included in the parent's income under subsection 142.5(5) of the Act for the taxation year in which it receives the subsidiary's assets. The prescribed amount is equal to the sum of

- the amount that would otherwise be prescribed by subsection 8103(2) if the parent's transition deduction did not include any amount in respect of the subsidiary's transition deduction, and
- the part of the subsidiary's transition deduction that must be recognized in respect of the days in the taxation year after the parent receives the subsidiary's assets.

(4) Where subsection 138(11.5) or (11.94) of the Act has applied to the transfer of an insurance business by an insurer, there shall be subtracted, in determining the value of B in subsection (2) in respect of the insurer for a taxation year that ends after the insurer ceased to carry on all or substantially all of the business, the part of the insurer's transition deduction that is included, because of paragraph 138(11.5)(k) of the Act, in the transition deduction of the person to whom the business was transferred.

Technical Notes: Subsection 8103(4) applies where an insurer has transferred an insurance business to another corporation on a rollover basis pursuant to subsection 138(11.5) or (11.94) of the Act. It provides that after the transfer of the business, the portion of the transferor's transition deduction that is considered a transition deduction of the transferee because of paragraph 138(11.5)(k) of the Act is to be disregarded in determining the amount prescribed by subsection 8103(2) in respect of the transferor. Paragraph 138(11.5)(k) contains a continuity rule for the portion of the transition amount that is reasonably attributable to the transferred business. Since paragraph 138(11.5)(h) of the Act deems the transferor and transferee to have taxation year ends immediately before the business is transferred, special rules are not required for the taxation year of transfer.

(5) Where subsection 98(6) of the Act deems a partnership (in this subsection referred to as the "new partnership") to be a continuation of another partnership (in this subsection referred to as the "predecessor partnership"),

(a) the value of A in subsection (2) shall be determined in respect of the predecessor partnership without including any days that are after the day on which the predecessor partnership's property was transferred to the new partnership; and

(b) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the new partnership for its taxation year that includes the day referred to in paragraph (a) the total of

(i) the amount that would be determined under subsection (2) in respect of the new partnership for the year if its transition deduction did not include the predecessor partnership's transition deduction, and

(ii) the amount that would be determined under subsection (2) in respect of the new partnership for the year if

(A) the value of A in that subsection were determined without including the day referred to in paragraph (a) and any days before that day, and

(B) the value of B in that subsection were equal to the predecessor partnership's transition deduction.

Technical Notes: Subsection 8103(5) contains rules that apply where a partnership ceases to exist and another partnership replaces it, in circumstances such that the continuity rule in subsection 98(6) of the Act applies. The rules are similar to those in subsection 8103(3) for the winding-up of a taxpayer into its parent corporation.

(6) Where a taxpayer ceases to carry on all or substantially all of a business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a

winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 98(6) or 138(11.5) or (11.94) of the Act applies,

(a) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the taxpayer for its taxation year in which the cessation of business occurs, in addition to the amount prescribed by subsection (2), the amount, if any, by which

(i) the part of the taxpayer's transition deduction that can reasonably be attributed to the business

exceeds

(ii) that part of the total of the amounts included under subsection 142.5(5) of the Act in computing the income of the taxpayer for preceding taxation years that can reasonably be considered to be in respect of the amount determined under subparagraph (i); and

(b) there shall be subtracted, in determining the value of B in subsection (2) in respect of the taxpayer for the year or a subsequent taxation year, the amount determined under subparagraph (a)(i).

Technical Notes: Subsection 8103(6) applies where a taxpayer ceases to carry on all or substantially all of a business otherwise than because of a merger, winding-up or transfer of the business to which the rollover rules in subsection 87(2), 88(1), 98(6) or 138(11.5) or (11.94) of the Act apply. In general terms, it accelerates the inclusion in income of the portion of the taxpayer's transition deduction that relates to the business.

Subsection 8103(6) prescribes an amount for inclusion, under subsection 142.5(5) of the Act, in the taxpayer's income for its taxation year in which it ceases to carry on the business. The prescribed amount, which is in addition to the amount prescribed for the year by subsection 8103(2), is equal to the portion of the taxpayer's transition deduction that is attributable to the business minus the amount of that portion that has already been included in the taxpayer's income. Subsection 8103(6) also provides that the portion of the taxpayer's transition deduction that is attributable to the business is to be disregarded in determining the amount prescribed by subsection 8103(2) in respect of the taxpayer for the taxation year in which it ceases to carry on the business and for subsequent taxation years.

(7) Where a taxpayer ceases at any time to be a financial institution otherwise than because it ceases to carry on a business,

(a) there is prescribed for the purpose of subsection 142.5(5) of the Act in respect of the taxpayer for its taxation year that ended immediately before that time, the amount, if any, by which

(i) the taxpayer's transition deduction

exceeds

(ii) the total of the amounts included under subsection 142.5(5) of the Act in computing the taxpayer's income for preceding taxation years; and

(b) the amount prescribed for the purpose of subsection 142.5(5) of the Act in respect of the taxpayer for taxation years after the taxation year referred to in paragraph (a) is nil.

Technical Notes: Subsection 8103(7) applies where a taxpayer ceases to be a financial institution (as defined in subsection 142.2(1) of the Act) otherwise than because it has ceased to carry on a business. This subsection would apply, for example, where a taxpayer ceases to be a financial institution because of a change in control. Subsection 8103(7) requires the taxpayer to include the remaining amount of its transition deduction in income in the taxation year that ends immediately before it ceases to be a financial institution. (There will always be such a taxation year because of paragraph 142.6(1)(a) of the Act.)

8104. Mark-to-market — transition capital loss — (1) In this section,

"excluded property" of a taxpayer means a mark-to-market property of the taxpayer for its taxation year that includes October 31, 1994 where

(a) the taxpayer had a taxable capital gain or an allowable capital loss for the year from the disposition of the property to which section 142 of the Act applied, or

(b) in the case of a taxpayer that was non-resident in the year, the property was a capital property other than a taxable Canadian property;

Technical Notes: Section 8104 prescribes the maximum amount that a taxpayer may claim under subsection 142.5(6) of the Act as an allowable capital loss in respect of the introduction of the mark-to-market requirement.

"Excluded property" of a taxpayer is certain mark-to-market property held by the taxpayer in its taxation year that includes October 31, 1994. This definition is relevant for a taxpayer that is a resident multinational life insurer or a non-resident insurer. In the case of a resident multinational life insurer, excluded property is capital property disposed of by the insurer in the year that was used by the insurer in a foreign insurance business. Excluded property of a non-resident insurer is capital property that is not taxable Canadian property (as defined in subsection 115(1) of the Act). Taxable capital gains and allowable capital losses from excluded property are disregarded in determining the insurer's income.

"mark-to-market property" has the meaning assigned by subsection 142.2(1) of the Act.

Technical Notes: "Mark-to-market property" of a taxpayer has the meaning given by subsection 142.2(1) of the Act. In general terms, it comprises most shares held by the taxpayer and debt obligations that are marked to market for financial statement purposes.

(2) For the purpose of subsection 142.5(6) of the Act, the prescribed amount for a taxpayer's taxation year that includes October 31, 1994 is the amount, if any, by which

(a) the total of all amounts each of which is the taxable capital gain of the taxpayer for the year from the disposition, because of subsection 142.5(2) of the Act, of a property other than an excluded property

exceeds the total of

(b) the total of all amounts each of which is the allowable capital loss of the taxpayer for the year from the disposition, because of subsection 142.5(2) of the Act, of a property other than an excluded property, and

(c) the amount, if any, by which

(i) the total of all amounts each of which is the allowable capital loss of the taxpayer for the year from the disposition of a mark-to-market property (other than an excluded property or a property disposed of because of subsection 142.5(2) of the Act)

exceeds

(ii) the total of all amounts each of which is the taxable capital gain of the taxpayer for the year from the disposition of a mark-to-market property (other than an excluded property or a property

disposed of because of subsection 142.5(2) of the Act).

Technical Notes: Subsection 142.5(6) of the Act contains a transition rule in respect of the introduction of the requirement that certain property be marked to market for tax purposes. It permits a taxpayer to claim, for its taxation year that includes October 31, 1994, an allowable capital loss not exceeding a prescribed amount. Subsection 8104(2) prescribes the following maximum amount for this purpose:

- the taxpayer's total taxable capital gains from the disposition of mark-to-market properties (other than excluded properties, as defined in subsection 8101(1)) that the mark-to-market rules deem the taxpayer to have disposed of in the year

minus

- the taxpayer's total allowable capital losses from the disposition of mark-to-market properties (other than excluded properties) that the mark-to-market rules deem the taxpayer to have disposed of in the year, and
- the taxpayer's net allowable capital losses (i.e., allowable capital losses minus taxable capital gains) from actual dispositions in the year of mark-to-market properties (other than excluded properties) and from deemed dispositions of such properties otherwise than because of the mark-to-market rules.

8105. Mark-to-market — transition capital gains — **(1)** In this section, "transition loss" of a taxpayer means the amount elected by the taxpayer under subsection 142.5(6) of the Act to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994.

Technical Notes: Section 8105 applies where a taxpayer has elected to claim an allowable capital loss under subsection 142.5(6) of the Act in respect of the introduction of the mark-to-market requirement. It prescribes the amount that is deemed by subsection 142.5(7) of the Act to be a taxable capital gain for each year. Generally, the prescribed amount for a year is a proportionate amount of the allowable capital loss that was claimed, based on a 5-year transition period.

Subsection 8105(1) defines the "transition loss" of a taxpayer to be the amount claimed by the taxpayer under subsection 142.5(6) of the Act as an allowable capital loss for the taxation year that includes October 31, 1994. The commentary on subsection 8103(1) regarding the effect of various restructurings on the "transition deduction" also applies to the transition loss.

(2) There is prescribed for the purpose of subsection 142.5(7) of the Act in respect of a taxpayer for a taxation year that ends after October 30, 1994 the amounts that would be prescribed in respect of the taxpayer for the year by section 8103 if the references in subsections 8103(2) to (7) to

(a) "subsection 142.5(5)" were read as "subsection 142.5(7)", and

(b) "transition deduction" were read as "transition loss (as defined in subsection 8105(1))".

Technical Notes: Subsection 8105(2) provides that prescribed amounts are determined using the rules in section 8103. For this purpose, the references in that section to "transition deduction" are replaced by "transition loss" and to "142.5(5)" are replaced by "142.5(7)". For information on section 8103, see the commentary on that provision.

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 8, will add ss. 8102 to 8105, applicable to taxation years that end after October 30, 1994.

PART LXXXII — PRESCRIBED PROPERTIES AND PERMANENT ESTABLISHMENTS

History: The heading of Part LXXXII amended by P.C. 1994-139, s. 14, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 10:00 p.m. EDST, April 26, 1989.

8200. Prescribed properties — For the purposes of subsection 16.1(1) of the Act, "prescribed property" means

(a) exempt property, within the meaning assigned by paragraph 1100(1.13)(a), other than property leased on or before February 2, 1990 that is

(i) a truck or tractor that is designed for use on highways and has a "gross vehicle weight rating" (within the meaning assigned that expression by the *Motor Vehicle Safety Regulations*) of 11,778 kilograms or more,

(ii) a trailer that is designed for use on highways and is of a type designed to be hauled under normal operating conditions by a truck or tractor described in subparagraph (i), or

(iii) a railway car,

(b) property that is the subject of a lease where the tangible property, other than exempt property (within the meaning assigned by paragraph 1100(1.13)(a)), that was the subject of the lease had, at the time the lease was entered into, an aggregate fair market value not in excess of $25,000, and

(c) intangible property.

History: S. 8200 added by P.C. 1991-465, s. 5, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991, applicable in respect of leases entered into after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989, other than leases entered into pursuant to an agreement in writing entered into before that time under which the lessee thereunder has the right to require the lease of the property (and for these purposes a lease in respect of which a material change has been agreed to by the parties thereto effective at any particular time that is after 10:00 p.m. Eastern Daylight Saving Time, April 26, 1989 shall be deemed to have been entered into at that particular time).

Definitions [Reg. 8200]: "property" — ITA 248(1).

8200.1 [Prescribed energy conservation property] — For the purposes of subsection 13(18.1) and subparagraph 241(4)(d)(vi.1) of the Act, prescribed energy conservation property means property described in Class 43.1 in Schedule II.

Related Provisions: ITA 13(18.1) — Dept. of Natural Resources "Technical Guide to Class 43.1" to be determinative.

History: S. 8200.1 added by P.C. 1997-1033, s. 5, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

Definitions [Reg. 8200.1]: "prescribed", "property" — ITA 248(1).

8201. Permanent establishments — For the purposes of subsection 16.1(1), the definition "outstanding debts to specified non residents" in subsection 18(5), subsections 34.2(6), 112(2), 125.4(1) and 125.5(1), the definition "taxable supplier" in subsection 127(9), subsection 206(1.3) and paragraph 260(5)(a) of the Act, a "permanent establishment" of a person or partnership (referred to in this section as the "person") means a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse and, where the person does not have any fixed place of business, the principal place at which the person's business is conducted, and

Proposed Amendment — Application to ITA 128.1(4)(b)(ii)

Technical Notes to ITA 128.1(4), December 17, 1999 [migration]: Second, the *Income Tax Regulations* will be amended after these amendments receive Royal Assent, so that the definition "permanent establishment" in Regulation 8201 will apply for the purpose of subparagraph 128.1(4)(b)(ii).

(a) where the person carries on business through an employee or agent, established in a particular place, who has general authority to contract for the person or who has a stock of merchandise owned by the person from which the employee or agent regularly fills orders, the person shall be deemed to have a permanent establishment at that place,

(b) where the person is an insurance corporation, the person is deemed to have a permanent establishment in each country in which the person is registered or licensed to do business,

(c) where the person uses substantial machinery or equipment at a particular place at any time in a taxation year, the person shall be deemed to have a permanent establishment at that place,

(d) the fact that the person has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to mean that the person has a permanent establishment, and

(e) where the person is a corporation, the fact that the person has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place shall not of itself be held to mean that the person is operating a permanent establishment at that place,

except that, where the person is resident in a country with which the Government of Canada has concluded an agreement or convention for the avoidance of double taxation that has the force of law in Canada and in which the expression "permanent establishment" is given a particular meaning, that meaning shall apply.

History: The opening words of s. 8201 amended by P.C. 2000-183, s. 4, February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1995 *et seq.*, except that in applying the amended s. 8201

(a) to the 1995 and 1996 taxation years, it shall be read without the reference to the phrase "the definition "outstanding debts to specified non residents" in subsection 18(5),";

(b) to the portion of the 1995 taxation year that was in 1994, it shall be read without reference to subsec. 34.2(6) of the Act;

(c) to taxation years that ended before November 1997, it shall be read without the reference to subsec 125.5(1) of the Act; and

(d) to taxation years that began before 1996, it shall be read without the reference to phrase "the definition "taxable supplier" in subsection 127(9),".

S. 8201 added by P.C. 1994-139, s. 15, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after 10:00 p.m. EDST, April 26, 1989.

Definitions [Reg. 8201]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "insurance corporation", "office" — ITA 248(1); "person" — ITA 248(1); "resident" — ITA 250; "subsidiary controlled corporation" — ITA 248(1); "taxation year" — ITA 249.

8201.1 [Repealed]

History: S. 8201.1 repealed by P.C. 2000-183, subsec. 5(2), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable to 1995 *et seq.* For the period from December 5, 1985 through the 1994 taxation year, read:

8201.1 For the purpose of subsection 206(1.3) of the Act, "permanent establishment" of a corporation means a fixed place of business of the corporation, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse and, where the corporation does not have any fixed place of business, the principal place at which the corporation's business is conducted, and

(a) where the corporation carries on business through an employee or agent, established in a particular place, who has general authority to contract for the corporation or who has a stock of merchandise owned by the corporation from which the employee or agent regularly fills orders, the corporation shall be deemed to have a permanent establishment at that place,

(b) where the corporation is an insurance corporation, the corporation is deemed to have a permanent establishment in each country in which the corporation is registered or licensed to do business,

(c) where the corporation uses substantial machinery or equipment at a particular place at any time in a taxation year, the corporation shall be deemed to have a permanent establishment at that place,

(d) the fact that the corporation has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to mean that the corporation has a permanent establishment, and

(e) the fact that the corporation has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place shall not of itself be held to mean that the corporation is operating a permanent establishment at that place,

except that, where the corporation is resident in a country with which the Government of Canada has concluded an agreement or convention for the avoidance of double taxation that has the force of law in Canada and in which the expression "permanent establishment" is given a particular meaning, that meaning shall apply.

S. 8201.1 added by P.C. 2000-183, subsec. 5(1), February 17, 2000, *Canada Gazette*, Part II, March 1, 2000, applicable after December 4, 1985.

Definitions: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "insurance corporation", "office" — ITA 248(1); "resident" — ITA 250; "subsidiary controlled corporation" — ITA 248(1); "taxation year" — ITA 249.

PART LXXXIII — PENSION ADJUSTMENTS, PAST SERVICE PENSION ADJUSTMENTS, PENSION ADJUSTMENT REVERSALS AND PRESCRIBED AMOUNTS

History: The heading to Part LXXXIII amended by P.C. 1998-2256, s. 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996.

The heading to Part LXXXIII amended by P.C. 1996-911, s. 5, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991. The heading formerly read: *Pension Adjustments and Past Service Pension Adjustments*.

Part LXXXIII (ss. 8300–8311) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that

(a) in its application in respect of amounts paid to pension plans before 1991, the definition "excluded contribution" in subsec. 8300(1) shall be read as follows:

"excluded contribution" to a registered pension plan means an amount paid to the plan that is

(a) transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) to (7) of the Act, or

(b) deductible, as a consequence of the payment, under paragraph 60(j) or (j.1) of the Act in computing the income of a taxpayer for a taxation year;

(b) before 1991, subsecs. 8301(2) and (3) shall be read without reference to the expression "and subsection 147(5.1) of the Act";

(c) subsec. 8307(6) is applicable after 1990; and

(d) subsec. 8307(7) is applicable to 1991 *et seq.*

8300. Interpretation — (1) In this Part,

"certifiable past service event", with respect to an individual means a past service event that is required, by reason of subsection 147.1(10) of the Act, to be disregarded, in whole or in part, in determining the benefits to be paid under a registered pension plan with respect to the individual until a certification of the Minister in respect of the event has been obtained;

"complete period of reduced services" of an individual means a period of reduced services of the individual that is not part of a longer period of reduced services of the individual;

"excluded contribution" to a registered pension plan means an amount that is transferred to the plan in accordance with any of subsections 146(16), 147(19), 147.3(1) to (4) and 147.3(5) to (7) of the Act;

History: "Excluded contribution" amended by P.C. 1995-17, subsec. 1(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to transfers occurring after 1990.

Definition "excluded contribution" added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that in its application in respect of amounts paid to pension plans before 1991, the definition shall be read as follows:

> "excluded contribution" to a registered pension plan means an amount paid to the plan that is
>
> (a) transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) to (7) of the Act, or
>
> (b) deductible, as a consequence of the payment, under paragraph 60(j) or (j.1) of the Act in computing the income of a taxpayer for a taxation year;

"flat benefit provision" of a pension plan means a defined benefit provision of the plan under which the amount of lifetime retirement benefits provided to each member is based on the aggregate of all amounts each of which is the product of a fixed rate and either the duration of service of the member or the number of units of output of the member, and, for the purposes of this definition, where

(a) the amount of lifetime retirement benefits provided under a defined benefit provision to each member is subject to a limit based on the remuneration received by the member, and

(b) the limit may reasonably be considered to be included to ensure that the amount of lifetime retirement benefits provided to each member does not exceed the maximum amount of such benefits that may be provided by a registered pension plan,

the limit shall be disregarded for the purpose of determining whether the provision is a flat benefit provision;

"member", in relation to a deferred profit sharing plan or a benefit provision of a registered pension plan, means an individual who has a right (either immediate or in the future and either absolute or contingent) to receive benefits under the plan or the provision, as the case may be, other than an individual who has such a right only because of the participation of another individual in the plan or under the provision, as the case may be;

History: The definition "member" added to subsec. 8300(1) by P.C.1998-2256, subsec. 4(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

"PA offset" for a calendar year means

(a) for years before 1997, $1,000, and

(b) for years after 1996, $600;

History: The definition "PA offset" added to subsec. 8300(1) by P.C.1998-2256, subsec. 4(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

"past service event" means any transaction, event or circumstance that occurs after 1989 and as a consequence of which

(a) retirement benefits become provided to an individual under a defined benefit provision of a pension plan in respect of a period before the time that the transaction, event or circumstance occurs,

(b) there is a change to the way in which retirement benefits provided to an individual under a defined benefit provision of a pension plan in respect of a period before the time that the transaction, event or circumstance occurs are determined, including a change that is applicable only in specified circumstances, or

(c) there is a change in the value of an indexing or other automatic adjustment that enters into the determination of the amount of an individual's retirement benefits under a defined benefit provision of a pension plan in respect of a period before the time that the value of the adjustment changes;

Related Provisions: Reg. 8300(2) — Definition applies to ITA 147.1(1).

"period of reduced services" of an individual means, in connection with a defined benefit or money purchase provision of a registered pension plan, a period that consists of one or more periods each of which is

(a) an eligible period of reduced pay or temporary absence of the individual with respect to an employer who participates under the provision, or

(b) a period of disability of the individual;

"refund benefit" means

(a) with respect to an individual and a money purchase or defined benefit provision of a pension plan, a return of contributions made by the individual under the provision, and

(b) with respect to an individual and a deferred profit sharing plan, a return of contributions made by the individual to the plan,

and includes any interest (computed at a rate not exceeding a reasonable rate) payable in respect of those contributions;

"resident compensation" of an individual from an employer for a calendar year means the amount that would be the individual's compensation from the employer for the year if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to paragraphs (b) and (c) of that definition.

History: The definition "resident compensation" added to subsec. 8300(1) by P.C.1998-2256, subsec. 4(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(2) The definition "past service event" in subsection (1) is applicable for the purposes of subsection 147.1(1) of the Act.

(3) All words and expressions used in this Part that are defined in sections 147 or 147.1 of the Act or in Part LXXXV have the meanings assigned in those provisions unless a definition in this Part is applicable.

(4) For the purposes of this Part, an officer who receives remuneration for holding an office shall, for any period that the officer holds the office, be deemed to render services to, and to be in the service of, the person from whom the officer receives the remuneration.

(5) For the purposes of this Part (other than the definition "member" in subsection (1)), where an individual has received an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision of a pension plan, any rights of the individual under the contract are deemed to be rights under the defined benefit provision.

History: Subsec. 8300(5) amended by P.C.1998-2256, subsec. 4(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(6) For the purposes of this Part and subsection 147.1(10) of the Act, and subject to subsection 8308(1), the following rules apply in respect of the determination of the benefits that are provided to an individual under a defined benefit provision of a pension plan at a particular time:

(a) where a term of the defined benefit provision, or an amendment to a term of the provision, is not applicable with respect to the individual before a specified date, the term shall be considered to have been added to the provision, or the amendment shall be considered to have been made to the term, on the specified date;

(b) where an alteration to the benefits provided to the individual is conditional on the requirements of subsection 147.1(10) of the Act being met, those requirements shall be assumed to have been met;

(c) benefits that will be reinstated if the individual returns to employment with an employer who participates in the plan shall be considered not to be provided until the individual returns to employment; and

(d) where benefits under the provision depend on the individual's job category or other circumstances, the only benefits provided to the individual are the benefits that are relevant to the individual's circumstances at the particular time.

(7) For the purposes of subsections 8301(3) and (8), paragraph 8302(3)(c), subsections 8302(5) and 8304(5) and (5.1), paragraphs 8304.1(10)(c) and (11)(c), subparagraph 8306(4)(a)(ii) and subsection 8308(3), the benefits to which an individual is entitled at any time under a deferred profit sharing plan or pension plan include benefits to which the individual has only a contingent right because a condition for the vesting of the benefits has not been satisfied.

History: Subsec. 8300(7) amended by P.C.1998-2256, subsec. 4(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Selected Cases [subsec. 8300(7)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit).

(8) For the purposes of this Part, such portion of an amount allocated to an individual at any time under a money purchase provision of a registered pension plan as

(a) is attributable to

(i) forfeited amounts under the provision or earnings of the plan that are reasonably attributable to those amounts,

(ii) a surplus under the provision, or

(iii) property transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan, and

Proposed Addition — Reg. 8300(8)(a)(iv)

(iv) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan, and

Application: The November 30, 1999 draft regulations (RPPs), s. 1, will add subpara. 8300(8)(a)(iv), applicable to allocations that occur after 1998.

Technical Notes: Subsection 8300(8) deems certain amounts allocated to an individual under a money purchase provision of a registered pension plan (RPP) to be employer contributions for the purpose of Part LXXXIII of the Regulations. The subsection applies where

- the allocation is attributable to forfeitures or surplus under the money purchase provision, or to surplus transferred from a defined benefit provision, and
- the allocation is in lieu of an employer contribution.

Subsection 8300(8) will generally not affect the calculation of pension credits. However, it is relevant for the application of subsections 8308(5) and (6) (retroactive contributions in respect of a period of reduced services) and subsection 8308(7) (loaned employee rules).

Subsection 8300(8) is amended so that it also applies with respect to allocations that are attributable to money purchase surplus transferred from another money purchase provision. This amendment is consequential on the introduction of new subsection 147.3(7.1) of the Act, which permits the transfer of surplus from one money purchase plan to another. It should be noted that this amendment is relevant only where money purchase surplus is allocated to an individual at the time of the transfer. Existing subparagraph 8300(8)(a)(ii) would apply with respect to allocations that occur after the time of the transfer.

(b) can reasonably be considered to be allocated in lieu of a contribution that would otherwise have been made under the provision by an employer in respect of the individual

shall be deemed to be a contribution made under the provision by the employer with respect to the individual at that time and not to be an amount attributable to anything referred to in paragraph (a).

History: Subsec. 8300(8) added by P.C. 1995-17, subsec. 1(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to amounts allocated after April 5, 1994.

(9) For the purposes of this Part and Part LXXXV, where property held in connection with a particular benefit provision of a pension plan is made available at any time to pay benefits under another benefit provision of the plan, the property is deemed to be transferred at that time from the particular benefit provision to the other benefit provision.

History: Subsec. 8300(9) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(10) For the purposes of this Part and Parts LXXXIV and LXXXV, and subject to subsection (11), an individual is considered to have terminated from a deferred profit sharing plan or a benefit provision of a registered pension plan when the individual has ceased to be a member in relation to the plan or the provision, as the case may be.

History: Subsec. 8300(10) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(11) Where the benefits provided with respect to an individual under a particular defined benefit provision of a registered pension plan depend on benefits provided with respect to the individual under one or more other defined benefit provisions of registered pension plans (each of the particular provision and the other provisions being referred to in this subsection as a "related provision"), for the purposes of this Part and Parts LXXXIV and LXXXV,

(a) if the individual ceases, at any particular time after 1996, to be a member in relation to a specific related provision and is, at the particular time, a member in relation to another related provision, the individual is deemed

(i) not to terminate from the specific provision at the particular time, and

(ii) to terminate from the specific provision at the earliest subsequent time when the individual is no longer a member in relation to any of the related provisions;

(b) if the conditions in subsection 8304.1(14) (read without reference to the words "after 1996 and") are not satisfied with respect to the individual's termination from a related provision, the conditions in that subsection are deemed not to be satisfied with respect to the individual's termination from each of the other related provisions; and

(c) a specified distribution (as defined in subsection 8304.1(8)) made at any particular time in respect of the individual and a related provision is deemed, for the purpose of subsection 8304.1(5), also to be a specified distribution made at the particular time in respect of the individual and each of the other related provisions, except to the extent that the Minister has waived the application of this paragraph with respect to the distribution.

History: Subsec. 8300(11) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(12) For the purposes of this Part, where

(a) all or any part of the amounts payable to an individual under a deferred profit sharing plan are paid by a trustee under the plan to a licensed annuities provider to purchase for the individual an annuity described in subparagraph 147(2)(k)(vi) of the Act, or

(b) an individual has acquired, in full or partial satisfaction of the individual's entitlement to benefits under a benefit provision of a registered pension plan (other than benefits to which the individual was entitled only because of the participation of another individual under the provision), an interest in an annuity contract (other than as a consequence of a transfer of property from the provision to a registered retirement savings plan or a registered retirement income fund under which the individual is the annuitant),

the individual is deemed to continue, from the time of the payment or acquisition, as the case may be, until the individual's death, to be a member in relation to the plan or provision, as the case may be.

History: Subsec. 8300(12) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(13) For the purposes of this Part and Part LXXXV, where a benefit is to be provided, or may be provided, to an individual under a defined benefit provision of a registered pension plan as a consequence of an allocation that is to be made, or may be made, to the individual of all or part of an actuarial surplus under the provision, the individual is considered not to have any right to receive the benefit under the provision until the time at which the benefit becomes provided under the provision.

History [Reg. 8300(13)]: Subsec. 8300(13) added by P.C.1998-2256, subsec. 4(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Definitions [Reg. 8300]: "amount", "annuity" — ITA 248(1); "contribution" — Reg. 8300(8), 8302(11), (12); "deferred profit sharing plan" — ITA 147(1), 248(1); "employer", "employment" — ITA 248(1); "flat benefit provision" — Reg. 8300(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister", "office", "officer" — ITA 248(1); "offset provision" — Reg. 8300(11)(b); "past service event" — Reg. 8300(1), (2); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "period of reduced services" — Reg. 8300(1); "person", "property", "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6); "related provision" — Reg. 8300(12); "render services" — Reg. 8300(4).

8301. Pension adjustment — (1) Pension adjustment with respect to employer — For the purpose of subsection 248(1) of the Act, "pension adjustment" of an individual for a calendar year with respect to an employer means, subject to paragraphs 8308(4)(d) and (5)(c), the total of all amounts each of which is

(a) the individual's pension credit for the year with respect to the employer under a deferred profit sharing plan or under a benefit provision of a registered pension plan;

(b) the individual's pension credit for the year with respect to the employer under a foreign plan, determined under section 8308.1; or

(c) the individual's pension credit for the year with respect to the employer under a specified retirement arrangement, determined under section 8308.3.

Related Provisions: Reg. 8301(2) — Pension credit — deferred profit sharing plan; Reg. 8301(3) — Non-vested termination from DPSP; Reg. 8301(4) — Pension credit — money purchase provision; Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

History: Subsec. 8301(1) amended by P.C. 1996-911, s. 6, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable with respect to the determination of pension adjustments for 1992 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-307R3: Spousal registered retirement savings plans; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

Forms: T4084: Pension adjustment guide.

(2) Pension credit — deferred profit sharing plan — For the purposes of subsection (1) and Part LXXXV and subsection 147(5.1) of the Act, and subject to subsections (3) and 8304(2), an individual's pension credit for a calendar year with respect to an employer under a deferred profit sharing plan is the aggregate of all amounts each of which is

(a) a contribution made to the plan in the year by the employer with respect to the individual, or

(b) such portion of an amount allocated in the year to the individual as is attributable to forfeited amounts under the plan and earnings of the plan in respect thereof, except to the extent that such portion is

(i) included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan,

(ii) paid to the individual in the year, or

(iii) where the year is 1990, attributable to amounts forfeited before 1990 or earnings of the plan in respect thereof,

except that, where the year is before 1990, the individual's pension credit is nil.

Related Provisions: Reg. 8301(15) — Transferred amounts deemed not paid.

History: Subsec. 8301(2) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that before 1991, the subsec. shall be read without reference to the expression "and subsection 147(5.1) of the Act".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

(3) Non-vested termination from DPSP — For the purposes of subsection (1) and Part LXXXV and subsection 147(5.1) of the Act, where

(a) an individual ceased in a calendar year after 1989 and before 1997 to be employed by an employer who participated in a deferred profit sharing plan for the benefit of the individual,

(b) as a consequence of the termination of employment, the individual ceased in the year to have any rights to benefits (other than a right to a refund benefit) under the plan,

(c) the individual was not entitled to benefits under the plan at the end of the year, or was entitled only to a refund benefit, and

(d) no benefit has been paid under the plan with respect to the individual, other than a refund benefit,

the individual's pension credit under the plan for the year with respect to the employer is nil.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

History: Para. 8301(3)(a) amended by P.C. 1998-2256, subsec. 5(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Subsec. 8301(3) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1989, except that before 1991, the subsec. shall be read without reference to the expression "and subsection 147(5.1) of the Act".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(4) Pension credit — money purchase provision — For the purposes of subsection (1) and Part LXXXV and subsection 147.1(9) of the Act, and subject to subsections (4.1) and (8) and 8304(2), an individual's pension credit for a calendar year with respect to an employer under a money purchase provision of a registered pension plan is the total of all amounts each of which is

(a) a contribution (other than an additional voluntary contribution made by the individual in 1990, an excluded contribution or a contribution described in paragraph 8308(6)(e) or (g)) made under the provision in the year by

(i) the individual, except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan, or

(ii) the employer with respect to the individual, or

(b) such portion of an amount allocated in the year to the individual as is attributable to

(i) forfeited amounts under the provision or earnings of the plan in respect thereof,

(ii) a surplus under the provision, or

(ii.1) property transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan,

Proposed Addition — Reg. 8301(4)(b)(ii.2)

(ii.2) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan,

Application: The November 30, 1999 draft regulations (RPPs), s. 2, will add subpara. 8301(4)(b)(ii.2), applicable to the determination of pension credits for 1999 *et seq.*

Technical Notes: In general terms, subsection 8301(4) of the Regulations defines the pension credit of an individual for a year in respect of an employer under a money purchase provision of a pension plan to be the total of

- contributions made in the year by the individual or by the employer with respect to the individual, and
- amounts allocated to the individual in the year that are attributable to forfeited amounts, to surplus under the provision or to surplus transferred from a defined benefit provision.

Paragraph 8301(4)(b) is amended to include in an individual's pension credit any amount allocated to the individual that is attributable to surplus transferred to the provision from another money purchase provision. This amendment is consequential to the introduction of subsection 147.3(7.1) of the Act, which permits the transfer of surplus from one money purchase plan to another. It should be noted that this amendment is relevant only where the money purchase surplus is allocated to an individual immediately upon being transferred. Where the allocation is made after the time of the transfer, existing subparagraph 8301(4)(b)(ii) would apply to include the allocated amount in the individual's pension credit.

It should also be noted that, where such an allocation is in lieu of an employer contribution, amended subsection 8300(8) deems the allocated amount to be an employer contribution rather than an amount attributable to surplus. Thus, the amount is included in the individual's pension credit as an employer contribution, and not as an allocation of surplus.

except to the extent that that portion is

(iii) included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan,

(iv) paid to the individual in the year, or

(v) where the year is 1990, attributable to amounts forfeited before 1990 or earnings of the plan in respect thereof,

except that the individual's pension credit is nil where the year is before 1990, and, for the purposes of this subsection, the plan administrator shall determine the portion of a contribution made by an individual or an amount allocated to the individual that is to be included in determining the individual's pension credit with respect to each employer.

Related Provisions: Reg. 8301(15) — Transferred amounts deemed not paid.

History: That portion of subsec. 8301(4) before subpara. (a)(i) amended and subpara. (b)(ii.1) added by P.C. 1995-17, subsecs. 2(1) and (2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. That portion of subsec. 8301(4) before subpara. (a)(i) is applicable with respect to the de-

termination of pension credits for 1990 *et seq.*, except that for years before 1993, it shall be read without reference to subsection 8301(4.1). Subpara. 8301(4)(b)(ii.1) is applicable with respect to the determination of pension credits for 1991 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(4.1) Money purchase pension credits based on amounts allocated — Where,

(a) under the terms of a money purchase provision of a pension plan, the method for allocating contributions is such that contributions made by an employer with respect to a particular individual may be allocated to another individual, and

(b) the Minister has, on the written application of the administrator of the plan, approved in writing a method for determining pension credits under the provision that, for each individual, takes into account amounts allocated to the individual,

each pension credit under the provision is the amount determined in accordance with the method approved by the Minister.

History: Subsec. 8301(4.1) added by P.C. 1995-17, subsec. 2(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to the determination of pension credits for 1993 *et seq.*

(5) Pension credit — defined benefit provision of a specified multi-employer plan — For the purposes of this Part and Part LXXXV and subsection 147.1(9) of the Act, an individual's pension credit for a calendar year with respect to an employer under a defined benefit provision of a registered pension plan that is, in the year, a specified multi-employer plan is the aggregate of

(a) the aggregate of all amounts each of which is a contribution (other than an excluded contribution) made under the provision by the individual

(i) in the year, in respect of

(A) the year, or

(B) a plan year ending in the year (other than in respect of such portion of a plan year as is before 1990), or

(ii) in January of the year (other than in January 1990) in respect of the immediately preceding calendar year,

except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan,

(b) the aggregate of all amounts each of which is a contribution made in the year by the employer in respect of the provision, to the extent that the contribution may reasonably be considered to be determined by reference to the number of hours worked by the individual or some other measure that is specific to the individual, and

(c) the amount determined by the formula

$$\frac{A}{B} \times (C - B)$$

where

A is the amount determined under paragraph (b) for the purpose of computing the individual's pension credit,

B is the aggregate of all amounts each of which is the amount determined under paragraph (b) for the purpose of computing the pension credit of an individual for the year with respect to the employer under the provision, and

C is the aggregate of all amounts each of which is a contribution made in the year by the employer in respect of the provision,

except that, where the year is before 1990, the individual's pension credit is nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) Pension credit — defined benefit provision — Subject to subsections (7), (8) and (10) and sections 8304 and 8308, for the purposes of this Part and Part LXXXV and subsection 147.1(9) of the Act, an individual's pension credit for a calendar year with respect to an employer under a defined benefit provision of a particular registered pension plan (other than a plan that is, in the year, a specified multi-employer plan) is

(a) if the year is after 1989, the amount determined by the formula

$$A - B$$

where

A is 9 times the individual's benefit entitlement under the provision with respect to the employer and the year, and

B is the amount, if any, by which the PA offset for the year exceeds the total of all amounts each of which is the value of B determined under this paragraph for the purpose of computing the individual's pension credit for the year

(i) with respect to the employer under any other defined benefit provision of a registered pension plan,

(ii) with respect to any other employer who at any time in the year does not deal at arm's length with the employer, under a defined benefit provision of a registered pension plan, or

(iii) with respect to any other employer under a defined benefit provision of the particular plan; and

(b) if the year is before 1990, nil.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8302(1) — Benefit entitlement is portion attributable to employer.

History: Subsec. 8301(6) amended by P.C. 1998-2256, subsec. 5(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(7) Pension credit — defined benefit provision of a multi-employer plan — Where a registered pension plan is a multi-employer plan (other than a specified multi-employer plan) in a calendar year, the following rules apply, except to the extent that the Minister has waived in writing their application in respect of the plan, for the purpose of determining the pension credit of an individual for the year under a defined benefit provision of the plan:

(a) where the individual is employed in the year by more than one participating employer, the pension credit of the individual for the year under the provision with respect to a particular employer shall be de-

termined as if the individual were not employed by any other participating employer;

(b) the description of B in paragraph (6)(a) shall be read as

"B is the amount determined by the formula

$$(C \times D) - E$$

where

C is the PA offset for the year,

D is

(i) where the member rendered services on a full-time basis throughout the year to the employer, one, and

(ii) in any other case, the fraction (not greater than one) that measures the services that, for the purpose of determining the member's lifetime retirement benefits under the provision, the member is treated as having rendered in the year to the employer, expressed as a proportion of the services that would have been rendered by the member in the year to the employer if the member had rendered services to the employer on a full-time basis throughout the year, and

E is the total of all amounts each of which is the value of B determined under this paragraph for the purpose of computing the individual's pension credit for the year with respect to the employer under any other defined benefit provision of the plan; and";

(c) where a period in the year is a period of reduced services of the individual, the pension credit of the individual for the year under the provision with respect to each participating employer shall be determined as the aggregate of

(i) the pension credit that would be determined if no benefits (other than benefits attributable to services rendered by the individual) had accrued to the individual in respect of periods of reduced services, and

(ii) the pension credit that would be determined if the only benefits that had accrued to the individual were benefits in respect of periods of reduced services, other than benefits attributable to services rendered by the individual during such periods; and

(d) subsection (10) shall not apply.

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Para. 8301(7)(b) amended by P.C. 1998-2256, subsec. 5(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(8) Non-vested termination from RPP — For the purposes of this Part and Part LXXXV and subsection 147.1(9) of the Act, and subject to subsection (9), where

(a) an individual ceased in a calendar year after 1989 and before 1997 to be employed by an employer who participated in a registered pension plan for the benefit of the individual,

(b) as a consequence of the termination of employment, the individual ceased in the year to have any rights to benefits (other than a right to a refund benefit) under a money purchase or defined benefit provision of the plan,

(c) the individual was not entitled to benefits under the provision at the end of the year, or was entitled only to a refund benefit, and

(d) no benefit has been paid under the provision with respect to the individual, other than a refund benefit,

the individual's pension credit under the provision for the year with respect to the employer is

(e) where the provision is a money purchase provision, the total of all amounts each of which is a contribution (other than an additional voluntary contribution made by the individual in 1990, an excluded contribution or a contribution described in paragraph 8308(6)(e)) made under the provision in the year by the individual, except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan, and

(f) where the provision is a defined benefit provision, the lesser of

(i) the pension credit that would be determined if this subsection were not applicable, and

(ii) the aggregate of all amounts each of which is a contribution (other than an excluded contribution) made under the provision by the individual in, and in respect of, the year, except to the extent that the contribution was not made in connection with the individual's employment with the employer and is included in determining the individual's pension credit for the year with respect to any other employer who participates in the plan.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

History: Para. 8301(8)(a) amended by P.C. 1998-2256, subsec. 5(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Para. 8301(8)(e) amended by P.C. 1995-17, subsec. 2(4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to the determination of pension credits for 1990 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(9) Multi-employer plans — Subsection (8) is not applicable in respect of a registered pension plan that is a multi-employer plan in a calendar year except, where

(a) the plan is not a specified multi-employer plan in the year;

(b) if the plan contains a defined benefit provision, the Minister has waived in writing the application of paragraph (7)(b) in respect of the plan for the year; and

(c) the Minister has approved in writing the application of subsection (8) in respect of the plan for the year.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(10) Transition rule — money purchase offsets — Where,

(a) throughout the period beginning on January 1, 1981 and ending on December 31 of a particular calendar year after 1989 and before 2000, there has been subtracted, in determining the amount of lifetime retirement benefits under a defined benefit provision of a registered pension plan (other than a specified multi-employer plan), the amount of lifetime retirement benefits under a money purchase provision of the plan or of another registered pension plan,

(b) lifetime retirement benefits under the defined benefit provision are determined, at the end of the particular year, in substantially the same manner as they were determined at the end of 1989, and

(c) for each individual and each calendar year before 1990, the amount of employer contributions made under the money purchase provision for the year with respect to the individual did not exceed $3,500,

the pension credit of an individual for the particular year with respect to an employer under the defined benefit provision is equal to the amount, if any, by which

(d) the amount that would, but for this subsection, be the individual's pension credit

exceeds

(e) the lesser of

(i) $2,500, and

(ii) the amount determined by the formula

$$\frac{1}{10} \times [A - (B \times C)]$$

where

A is the balance in the individual's account under the money purchase provision at the end of 1989,

B is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period ending before 1990 that is pensionable service of the individual under the defined benefit provision and that is not part of a longer period ending before 1990 that is pensionable service of the individual under the provision, and

C is the amount that would be the individual's pension credit for 1989 with respect to the employer under the defined benefit provision if subsection (6) were read without reference to the words "if the year is after 1989" in paragraph (6)(a) and without reference to paragraph (6)(b).

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8301(7)(d) — Provisions inapplicable in determining pension credit in multi-employer plan.

History: The description of C in subpara. 8301(10)(e)(ii) amended by P.C. 1998-2256, subsec. 5(5), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

(11) Timing of contributions — Subject to paragraph (12)(b), for the purposes of this Part, a contribution made by an employer in the first two months of a calendar year to a deferred profit sharing plan, in respect of a money purchase provision of a registered pension plan, or in respect of a defined benefit provision of a registered pension plan that was, in the immediately preceding calendar year, a specified multi-employer plan, shall be deemed to have been made by the employer at the end of the immediately preceding calendar year and not to have been made in the year, to the extent that the contribution can reasonably be considered to relate to a preceding calendar year.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 25.

(12) Indirect contributions — For the purposes of this Part and Part LXXXIV, where a trade union or association of employers (in this subsection and subsections (13) and (14) referred to as the "contributing entity") makes contributions to a registered pension plan,

(a) such portion of a payment made to the contributing entity by an employer or an individual as may reasonably be considered to relate to the plan (determined in accordance with subsection (13), where that subsection is applicable) shall be deemed to be a contribution made to the plan by the employer or individual, as the case may be, at the time the payment was made to the contributing entity; and

(b) subsection (11) shall not apply in respect of a contribution deemed by paragraph (a) to have been made to the plan.

(13) Apportionment of payments — For the purposes of subsection (12), where employers or individuals make payments in a calendar year to a contributing entity to enable the contributing entity to make contributions to a registered pension plan and the payments are not made solely for the purpose of being contributed to the plan, the contributing entity shall

(a) determine, in a manner that is reasonable in the circumstances, the portion of each payment that relates to the plan;

(b) make the determination in such a manner that all contributions made by the contributing entity to the plan, other than contributions made by the contributing entity as an employer or former employer of members of the plan, are considered to be funded by payments made to the contributing entity by employers or individuals;

(c) in the case of payments remitted to the contributing entity by an employer, notify the employer in writing, by January 31 of the immediately following calendar year, of the portion, or of the method for determining the portion, of each such payment that relates to the plan; and

(d) in the case of payments remitted to the contributing entity by an individual, notify the administrator of the plan in writing, by January 31 of the immediately following calendar year, of the total amount of payments made in the year by the individual that relate to the plan.

(14) Non-compliance by contributing entity — Where a contributing entity does not comply with the requirements of subsection (13) as they apply in respect of payments made to the contributing entity in a calendar year to enable the contributing entity to make contributions to a registered pension plan,

(a) the plan becomes, on February 1 of the immediately following calendar year, a revocable plan; and

(b) the Minister may make any determinations referred to in subsection (13) that the contributing entity failed to make, or failed to make in accordance with that subsection.

Related Provisions: Reg. 8301(12) — Meaning of contributing entity.

(15) Transferred amounts — For the purposes of subparagraphs (2)(b)(ii) and (4)(b)(iv), an amount transferred for the benefit of an individual from a registered pension plan or a deferred profit sharing plan directly to a registered pension plan, a registered retirement savings plan, a registered retirement income fund or a deferred profit sharing plan shall be deemed to be an amount that was not paid to the individual.

History: Subsec. 8301(15) amended by P.C. 1995-17, subsec. 2(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to transfers occurring after August 29, 1990.

(16) Subsequent events — Except as otherwise expressly provided in this Part, each pension credit of an individual for a calendar year shall be determined without regard to transactions, events and circumstances that occur subsequent to the year.

Definitions [Reg. 8301]: "additional voluntary contribution", "amount" — ITA 248(1); "arm's length" — ITA 251(1); "benefits" — Reg. 8300(7); "contributing entity" — Reg. 8301(12); "contribution" — Reg. 8300(8), 8302(11), (12); "deferred profit sharing plan" — ITA 147(1), 248(1); "employed", "employer", "employment" — ITA 248(1); "excluded contribution" — Reg. 8300(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "PA offset" — Reg. 8300(1); "pension credit" — Reg. 8301(2)–(4), (5), (6), (8); "period of reduced services" — Reg. 8300(1); "property" — ITA 248(1); "refund benefit" — Reg. 8300(1); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "written" — *Interpretation Act* 35(1)"writing".

8302. Benefit entitlement — **(1)** For the purposes of subsection 8301(6), the benefit entitlement of an individual under a defined benefit provision of a registered pension plan in respect of a calendar year and an employer is the portion of the individual's benefit accrual under the provision in respect of the year that can reasonably be considered to be attributable to the individual's employment with the employer.

Related Provisions: Reg. 8302(2) — Meaning of benefit accrual.

(2) Benefit accrual for year — For the purposes of subsection (1), and subject to subsections (6), (8) and (9), the benefit accrual of an individual under a defined benefit provision of a registered pension plan in respect of a calendar year is the amount computed in accordance with the following rules:

(a) determine the portion of the individual's normalized pension under the provision at the end of the year that can reasonably be considered to have accrued in respect of the year;

(b) where the year is after 1989 and before 1995, determine the lesser of the amount determined under paragraph (a) and

(i) for 1990, $1,277.78,

(ii) for 1991 and 1992, $1,388.89,

(iii) for 1993, $1,500.00, and

(iv) for 1994, $1,611.11; and

(c) where, in determining the amount of lifetime retirement benefits payable to the individual under the provision, there is deducted from the amount of those benefits that would otherwise be payable the amount of lifetime retirement benefits payable to the individual under a money purchase provision of a registered pension plan or the amount of a lifetime annuity payable to the individual under a deferred profit sharing plan, reduce the amount that would otherwise be determined under this subsection by 1/9 of the total of all amounts each of which is the pension credit of the individual for the year under such a money purchase provision or deferred profit sharing plan.

Related Provisions: Reg. 8302(3) — Meaning of normalized pension.

History: Paras. 8302(2)(b) and (c) amended by P.C. 1995-17, subsec. 3(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1991.

(3) Normalized pensions — For the purposes of paragraph (2)(a), and subject to subsection (11), the normalized pension of an individual under a defined benefit provision of a registered pension plan at the end of a particular calendar year is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable under the provision to the individual immediately after the end of the particular year if

(a) where lifetime retirement benefits have not commenced to be paid under the provision to the individual before the end of the particular year, they commenced to be paid immediately after the end of the year;

(b) where the individual had not attained 65 years of age before the time at which lifetime retirement benefits commenced to be paid (or are assumed by reason of paragraph (a) to have commenced to be paid) to the individual, the individual attained that age at that time;

(c) all benefits to which the individual is entitled under the provision were fully vested;

Selected Cases [para. 8302(3)(c)]: *Osborn v. Canada*, [1995] 2 C.T.C. 2215 (TCC) (Non-vested pension amounts treated as if vested for purposes of RRSP contribution limit).

(d) where the amount of the individual's lifetime retirement benefits would otherwise be determined with a reduction computed by reference to the individual's age, duration of service or both, or with any other similar reduction, no such reduction were applied;

Proposed Addition — Reg. 8302(3)(d.1), (d.2)

(d.1) no reduction in the amount of the individual's lifetime retirement benefits were applied in respect of benefits described in any of clauses 8503(2)(a)(vi)(A) to (C);

(d.2) no adjustment, in a manner that is permissible under subparagraph 8503(2)(a)(ix), were made to the amount of the individual's lifetime retirement benefits;

Application: The April 18, 2000 draft regulations (RPPs), s. 1, will add paras. 8302(3)(d.1) and (d.2), applicable to the determination of pension credits for 1990 *et seq.*

Technical Notes: Subsection 8302(3) of the *Income Tax Regulations* sets out rules for determining the normalized pension of an individual under a defined benefit provision of a pension plan. The normalized pension is used in determining the individual's pension credit under the provision. In general terms, an individual's normalized pension at the end of a year is the total lifetime retirement benefits accrued to the individual to the end of the year, determined on the basis of a number of assumptions.

Subsection 8302(3) is amended to add two new assumptions for the purposes of calculating the normalized pension of an individual. These new assumptions are consequential to certain amendments to paragraph 8503(2)(a), which provide additional exceptions to the requirement that lifetime retirement benefits be payable on an equal periodic basis.

New paragraph 8302(3)(d.1) provides that any reduction to lifetime retirement benefits that applies because a plan member is receiving benefits described in new subparagraph 8503(2)(a)(vi) be disregarded in computing normalized pensions. The types of benefits described in subparagraph 8503(2)(a)(vi) include public disability benefits, workers' compensation and accident, sickness or disability insurance benefits. Since most of these types of benefits cease by age 65, the assumption in paragraph 8302(3)(b) that the individual has attained age 65 means that new paragraph 8302(3)(d.1) will generally not have any effect.

New paragraph 8302(3)(d.2) requires that the normalized pension be determined without regard to any adjustment to lifetime

retirement benefits that is permissible under new subparagraph 8503(2)(a)(ix). Subparagraph 8503(2)(a)(ix) allows the amount of lifetime retirement benefits payable to a member while the member is receiving remuneration from a participating employer to be less than the amount that would otherwise be payable if the member were not receiving the remuneration. The assumption in paragraph 8302(3)(d.2) ensures that an individual's normalized pension is determinable in such circumstances.

These amendments apply to the determination of pension credits for 1990 and subsequent years.

(e) where the amount of the individual's lifetime retirement benefits depends on the remuneration received by the individual in a calendar year (in this paragraph referred to as the "other year") other than the particular year, the remuneration received by the individual in the other year were determined in accordance with the following rules:

(i) where the individual was remunerated for both the particular year and the other year as a person who rendered services on a full-time basis throughout each of the years, the remuneration received by the individual in the other year is identical to the remuneration received by the individual in the particular year,

(ii) where subparagraph (i) is not applicable and the individual rendered services in the particular year, the remuneration received by the individual in the other year is the remuneration that the individual would have received in the other year (or a reasonable estimate thereof determined by a method acceptable to the Minister) had the individual's rate of remuneration in the other year been the same as the individual's rate of remuneration in the particular year, and

(iii) where subparagraph (i) is not applicable and the individual did not render services in the particular year, the remuneration received by the individual in the other year is the remuneration that the individual would have received in the other year (or a reasonable estimate thereof determined by a method acceptable to the Minister) had the individual's rate of remuneration in the other year been the amount that it is reasonable to consider would have been the individual's rate of remuneration in the particular year had the individual rendered services in the particular year;

(f) where the amount of the individual's lifetime retirement benefits depends on the individual's remuneration and all or a portion of the remuneration received by the individual in the particular year is treated under the provision as if it were remuneration received in a calendar year preceding the particular year for services rendered in that preceding year, that remuneration were remuneration for services rendered in the particular year;

(g) where the amount of the individual's lifetime retirement benefits depends on the individual's remuneration and the particular year is after 1989 and before 1995, benefits, to the extent that they can reasonably be considered to be in respect of the following range of annual remuneration, were excluded:

(i) where the particular year is 1990, the range from $63,889 to $86,111,

(ii) where the particular year is 1991 or 1992, the range from $69,444 to $86,111,

(iii) where the particular year is 1993, the range from $75,000 to $86,111, and

(iv) where the particular year is 1994, the range from $80,556 to $86,111;

(h) where

(i) the amount of the individual's lifetime retirement benefits depends on the individual's remuneration,

(ii) the formula for determining the amount of the individual's lifetime retirement benefits includes an adjustment to the individual's remuneration for one or more calendar years,

(iii) the adjustment to the individual's remuneration for a year (in this paragraph referred to as the "specified year") consists of multiplying the individual's remuneration for the specified year by a factor that does not exceed the ratio of the average wage for the year in which the amount of the individual's lifetime retirement benefits is required to be determined to the average wage for the specified year (or a substantially similar measure of the change in the wage measure), and

(iv) the adjustment may reasonably be considered to be made to increase the individual's remuneration for the specified year to reflect, in whole or in part, increases in average wages and salaries from that year to the year in which the amount of the individual's lifetime retirement benefits is required to be determined,

the formula did not include the adjustment to the individual's remuneration for the specified year;

(i) where the amount of the individual's lifetime retirement benefits depends on the Year's Maximum Pensionable Earnings for calendar years other than the particular year, the Year's Maximum Pensionable Earnings for each such year were equal to the Year's Maximum Pensionable Earnings for the particular year;

(j) where the amount of the individual's lifetime retirement benefits depends on the actual amount of pension (in this paragraph referred to as the "statutory pension") payable to the individual under the *Canada Pension Plan* or a provincial plan (as defined in section 3 of that Act), the amount of statutory pension (expressed on an annualized basis) were equal to

(i) 25 per cent of the lesser of the Year's Maximum Pensionable Earnings for the particular year and,

(A) in the case of an individual who renders services throughout the particular year on a full-time basis to employers who participate in the plan, the aggregate of all amounts each of which is the individual's remuneration for the particular year from such an employer, and

(B) in any other case, the amount that it is reasonable to consider would be determined under clause (A) if the individual had rendered services throughout the particular year on a full-time basis to employers who participate in the plan, or

(ii) at the option of the plan administrator, any other amount determined in accordance with a method for estimating the statutory pension that can be expected to result in amounts substantially similar to amounts determined under subparagraph (i);

(k) where the amount of the individual's lifetime retirement benefits depends on a pension (in this paragraph referred to as the "statutory pension") payable to the individual under Part I of the *Old Age Security Act*, the amount of statutory pension payable for each calendar year were equal to the aggregate of all amounts each of which is the the full monthly pension payable under Part I of the *Old Age Security Act* for a month in the particular year;

(l) except as otherwise expressly permitted in writing by the Minister, where the amount of the individual's lifetime retirement benefits depends on the amount of benefits (other than public pension benefits or similar benefits of a country other than Canada) payable under another benefit provision of a pension plan or under a deferred profit sharing plan, the amounts of the other benefits were such as to maximize the amount of the individual's lifetime retirement benefits;

(m) where the individual's lifetime retirement benefits would otherwise include benefits that the plan is required to provide by reason of a designated provision of the law of Canada or a province (within the meaning assigned by section 8513), or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, such benefits were not included;

(n) where

(i) the individual attained 65 years of age before lifetime retirement benefits commenced to be paid (or are to be assumed by reason of paragraph (a) to have commenced to be paid) to the individual, and

(ii) an adjustment is made in determining the amount of those benefits for the purpose of offsetting, in whole or in part, the decrease in the value of lifetime retirement benefits that would otherwise result by reason of the deferral of those benefits after the individual attained 65 years of age,

that adjustment were not made, except to the extent that the adjustment exceeds the adjustment that would be made on an actuarially equivalent basis;

(o) except as otherwise provided by subsection (4), where the amount of the individual's lifetime retirement benefits depends on

(i) the form of benefits provided with respect to the individual under the provision (whether or not at the option of the individual), including

(A) the benefits to be provided after the death of the individual,

(B) the amount of retirement benefits, other than lifetime retirement benefits, provided to the individual, or

(C) the extent to which the lifetime retirement benefits will be adjusted to reflect changes in the cost of living, or

(ii) circumstances that are relevant in determining the form of benefits,

the form of benefits and the circumstances were such as to maximize the amount of the individual's lifetime retirement benefits on commencement of payment;

(p) where the amount of the individual's lifetime retirement benefits depends on whether the individual is totally and permanently disabled at the time at which retirement benefits commence to be paid to the individual, the individual were not so disabled at that time; and

(q) where lifetime retirement benefits have commenced to be paid under the provision to the individual before the end of the particular year, benefits payable as a consequence of cost-of-living adjustments described in paragraph 8303(5)(k) were disregarded.

Related Provisions: Reg. 8300(4) — Officer deemed to render services to employer; Reg. 8300(7) — Benefits include contingent benefits; Reg. 8302(5) — Benefit entitlement terminated — normalized pension calculations; Reg. 8503(2) — Permissible benefits; Reg. 8513 — Designate provision of the law of Canada or a province.

History: Para. 8302(3)(g) amended by P.C. 1995-17, subsec. 3(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1991.

(4) Optional forms — Where the terms of a defined benefit provision of a registered pension plan permit a member to elect to receive additional lifetime retirement benefits in lieu of benefits that would, in the absence of the election, be payable after the death of the member if the member dies after retirement benefits under the provision commence to be paid to the member, paragraph (3)(o) applies as if the following elections were not available to the member:

(a) an election to receive additional lifetime retirement benefits, not exceeding additional benefits determined on an actuarially equivalent basis, in lieu of all or any portion of a guarantee that retirement benefits will be paid for a minimum period of 10 years or less, and

(b) an election to receive additional lifetime retirement benefits in lieu of retirement benefits that would otherwise be payable to a spouse or former spouse (in this paragraph referred to as the "spouse") of the member for a period commencing after the death of the member and ending with the death of the spouse, where

(i) the election may be made only if the life expectancy of the spouse is significantly shorter than normal and has been so certified in writing by a medical doctor licensed to practise under the laws of a province of Canada or of the place where the spouse resides, and

(ii) the additional benefits do not exceed additional benefits determined on an actuarially equivalent basis and on the assumption that the spouse has a normal life expectancy.

(5) Termination of entitlement to benefits — For the purposes of subsection (3), where an individual ceased in a calendar year to be entitled to all or part of the lifetime retirement benefits provided to the individual under a defined benefit provision of a registered pension plan, the normalized pension of the individual under the provision at the end of the year shall be determined on the assumption that the individual continued to be entitled to those benefits immediately after the end of the year.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

(6) Defined benefit offset — Where the amount of lifetime retirement benefits provided under a particular defined benefit provision of a registered pension plan to a member of the plan depends on the amount of lifetime retirement benefits provided to the member under one or more other defined benefit provisions of registered pension plans, the benefit accrual of the member under the

particular provision in respect of a calendar year is the amount, if any, by which

(a) the amount that would, but for this subsection, be the benefit accrual of the member under the particular provision in respect of the year if the benefits provided under the other provisions were provided under the particular provision

exceeds

(b) the amount that would be the benefit accrual of the member under the other provisions in respect of the year if the other provisions were a single provision.

(7) Offset of specified multi-employer plan benefits — Where the amount of an individual's lifetime retirement benefits under a defined benefit provision (in this subsection referred to as the "supplemental provision") of a registered pension plan depends on the amount of benefits payable under a defined benefit provision of a specified multi-employer plan, the defined benefit provision of the specified multi-employer plan shall be deemed to be a money purchase provision for the purpose of determining the benefit accruals of the individual under the supplemental provision.

(8) Transition rule — career average benefits — Where

(a) on March 27, 1988 lifetime retirement benefits under a defined benefit provision of a pension plan were determined as the greater of benefits computed on a career average basis and benefits computed on a final or best average earnings basis,

(b) the method for determining lifetime retirement benefits under the provision has not been amended after March 27, 1988 and before the end of a particular calendar year, and

(c) it was reasonable to expect, on January 1, 1990, that the lifetime retirement benefits to be paid under the provision to at least 75 per cent of the members of the plan on that date (other than members to whom benefits do not accrue under the provision after that date) will be determined on a final or best average earnings basis,

at the option of the plan administrator, benefit accruals under the provision in respect of the particular year may, where the particular year is before 1992, be determined without regard to the career average formula.

(9) Transition rule — benefit rate greater than 2 per cent — Subject to subsection (6), where

(a) the amount of lifetime retirement benefits provided under a defined benefit provision of a registered pension plan to a member of the plan is determined, in part, by multiplying the member's remuneration (or a function of the member's remuneration) by one or more benefit accrual rates, and

(b) the largest benefit accrual rate that may be applicable is greater than 2 per cent,

the member's benefit accrual under the provision in respect of 1990 or 1991 is the lesser of

(c) the member's benefit accrual otherwise determined, and

(d) 2 per cent of the aggregate of all amounts each of which is the amount that would, if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to subparagraphs (a)(iii) and (iv) and paragraphs (b) and (c) thereof, be the member's compensation for the year from an employer who participated in the plan in the year for the benefit of the member.

Related Provisions: Reg. 8302(10) — Period of reduced remuneration.

(10) Period of reduced remuneration — For the purposes of paragraph (9)(d), where a member of a registered pension plan is provided with benefits under a defined benefit provision of the plan in respect of a period in 1990 or 1991

(a) throughout which, by reason of disability, leave of absence, lay-off or other circumstance, the member rendered no services, or rendered a reduced level of services, to employers who participate in the plan, and

(b) throughout which the member received no remuneration, or a reduced rate of remuneration,

the member's compensation shall be determined on the assumption that the member received remuneration for the period equal to the amount of remuneration that it is reasonable to consider the member would have received if the member had rendered services throughout the period on a regular basis (having regard to the services rendered by the member before the period) and the member's rate of remuneration had been commensurate with the member's rate of remuneration when the member did render services on a regular basis.

(11) Anti-avoidance — Where the terms of a defined benefit provision of a registered pension plan can reasonably be considered to have been established or modified so that a pension credit of an individual for a calendar year under the provision would, but for this subsection, be reduced as a consequence of the application of paragraph (3)(g), that paragraph shall not apply in determining the individual's normalized pension under the provision in respect of the year.

Definitions [Reg. 8302]: "amount", "annuity" — ITA 248(1); "benefit accrual" — Reg. 8302(2); "benefit entitlement" — Reg. 8302(1); "benefits" — Reg. 8300(7); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "contributing entity" — Reg. 8302(12); "deferred profit sharing plan" — ITA 147(1), 248(1); "designated provision of the law of Canada or a province" — Reg. 8513; "employer", "employment", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "member's compensation" — Reg. 8302(10); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "normalized pension" — Reg. 8302(3), (5); "other year" — Reg. 8302(3)(e); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "render services" — Reg. 8300(4); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "specified year" — Reg. 8302(3)(h)(3); "spouse" — Reg. 8302(4)(b); "statutory pension" — Reg. 8302(3)(j), (k); "supplemental provision" — Reg. 8302(7); "writing" — *Interpretation Act* 35(1).

8303. Past service pension adjustment — (1) PSPA with respect to employer — For the purpose of subsection 248(1) of the Act, "past service pension adjustment" of an individual for a calendar year in respect of an employer means the total of

(a) the accumulated past service pension adjustment (in this Part referred to as "accumulated PSPA") of the individual for the year with respect to the employer, determined as of the end of the year,

(b) the total of all amounts each of which is the foreign plan PSPA (determined under subsection 8308.1(5) or (6)) of the individual with respect to the employer associated with a modification of benefits in the year under a foreign plan (as defined in subsection 8308.1(1)), and

(c) the total of all amounts each of which is the specified retirement arrangement PSPA (determined under subsection 8308.3(4) or (5)) of the individual with respect to the employer associated with a modification of benefits in the year under a specified retirement arrangement (as defined in subsection 8308.3(1)).

History: Subsec. 8303(1) amended by P.C. 1996-911, s. 7, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable with respect to the determination of past service pension adjustments for 1993 *et seq.*

Forms: T4104: Past service pension adjustment guide.

(2) Accumulated PSPA for year — For the purposes of this Part, the accumulated PSPA of an individual for a calendar year with respect to an employer, determined as of any time, is the total of all amounts each of which is the individual's provisional past service pension adjustment (in this Part referred to as "provisional PSPA") with respect to the employer that is associated with

(a) a past service event (other than a certifiable past service event with respect to the individual) that occurred in the year and before that time; or

Proposed Amendment — Reg. 8303(2)(a)

(a) a past service event (other than a certifiable past service event with respect to the individual) that occurred in the preceding year; or

Application: The April 18, 2000 draft regulations (RPPs), subsec. 2(1), will amend para. 8303(2)(a) to read as above, applicable to past service events that occur after 2000.

Technical Notes: Section 8303 of the Regulations provides rules for determining the past service pension adjustment (PSPA) of an individual for a year. The most common situation in which a PSPA arises is where benefits are provided to an individual under a defined benefit provision of a registered pension plan (RPP) on a past service basis. The PSPA associated with those past service benefits reduces the individual's RRSP deduction room. The year in which a PSPA applies to reduce RRSP room depends on whether the PSPA is required to be certified by the Canada Customs and Revenue Agency (CCRA). PSPAs that are exempt from certification reduce RRSP room immediately, whereas certifiable PSPAs do not reduce RRSP room until such time as CCRA issues the certification (which could be later than the year of the past service event). Section 8306 provides that a PSPA is exempt from having to be certified if the past service benefit improvement applies to all or most members of the plan and certain other conditions are met.

The PSPA rules are modified so that exempt PSPAs do not reduce RRSP deduction room until the year following the year of the past service event. This change is being implemented by amending subsection 8303(2) so that exempt provisional PSPAs are not included in accumulated PSPA until the year following the year of the past service event. This amendment is intended, in particular, to ensure that an exempt PSPA does not affect the deductibility of RRSP contributions that were made before the occurrence of a past service event on the expectation that the contributions would be deductible.

This amendment applies to past service events that occur after 2000.

(b) a certifiable past service event with respect to the individual where the Minister has, in the year and before that time, issued a certification for the purposes of subsection 147.1(10) of the Act in respect of the event and the individual.

Related Provisions: Reg. 8303(2.1) — 1991 past service events and certifications.

History: The opening words of subsec. 8303(2) amended by P.C. 1998-2256, subsec. 6(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

(2.1) 1991 past service events and certifications — For the purposes of subsection (2),

(a) a past service event that occurred in 1991 (including, for greater certainty, a past service event that is deemed by paragraph 8304(3)(b) to have occurred immediately after the end of 1990) shall be deemed to have occurred on January 1, 1992 and not to have occurred in 1991; and

(b) a certification issued by the Minister in 1991 shall be deemed to have been issued on January 1, 1992 and not to have been issued in 1991.

History: Subsec. 8303(2.1) added by P.C. 1995-17, s. 4, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1990.

(3) Provisional PSPA — Subject to subsections (8) and (10) and sections 8304 and 8308, for the purposes of this Part, the provisional PSPA of an individual with respect to an employer that is associated with a past service event that occurs at a particular time in a particular calendar year is the amount determined by the formula

$$A - B - C + D$$

where

A is the aggregate of all amounts each of which is, in respect of a calendar year after 1989 and before the particular year, the amount that would have been the individual's pension credit for the year with respect to the employer under a defined benefit provision of a registered pension plan (other than a plan that is, at the particular time, a specified multi-employer plan) had the individual's benefit entitlement under the provision in respect of the year and the employer been equal to the individual's redetermined benefit entitlement (determined as of the particular time) under the provision in respect of the year and the employer,

B is the aggregate that would be determined for A if the reference in the description of A to "determined as of the particular time" were read as a reference to "determined as of the time immediately before the particular time",

C is such portion of the amount of the individual's qualifying transfers made in connection with the past service event as is not deducted in computing the provisional PSPA of the individual with respect to any other employer, and

D is the total of all amounts each of which is an excess money purchase transfer in relation to the individual and the past service event that is not included in determining any other provisional PSPA of the individual that is associated with the past service event.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8303(4) — Meaning of redetermined benefit entitlement; Reg. 8303(6) — Meaning of qualifying transfers; Reg. 8303(7.1) — Excess money purchase transfer amount; Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

History: The formula in subsec. 8303(3) amended, and the description of D added, by P.C. 1998-2256, subsecs. 6(2) and (3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable with respect to past service events that occur after 1997.

Forms: T1004: Application for certification of a provisional past service pension adjustment.

(4) Redetermined benefit entitlement — For the purposes of the description of A in subsection (3), an individual's redetermined benefit entitlement under a defined benefit provision of a registered pension plan in respect of a calendar year and an employer, determined as of a particular time, is the amount that would be deter-

mined under section 8302 to be the individual's benefit entitlement under the provision in respect of the year and the employer if, for the purpose of computing the benefit accrual of the individual in respect of the year under the provision and, where subsection 8302(6) is applicable, under any other defined benefit provision, the amount determined under paragraph 8302(2)(a) in respect of a specific provision were equal to such portion of the individual's normalized pension (computed in accordance with subsection (5)) under the specific provision at the particular time, determined with reference to the year, as may reasonably be considered to have accrued in respect of the year.

(5) Normalized pension — For the purposes of subsection (4), the normalized pension of an individual under a defined benefit provision of a registered pension plan at a particular time, determined with reference to a calendar year (in this subsection referred to as the "pension credit year"), is the amount (expressed on an annualized basis) of lifetime retirement benefits, other than excluded benefits, that would be payable to the individual under the provision immediately after the particular time if

(a) where lifetime retirement benefits have not commenced to be paid under the provision to the individual before the particular time, they commenced to be paid immediately after the particular time,

(b) where the individual had not attained 65 years of age before the time at which lifetime retirement benefits commenced to be paid (or are assumed by reason of paragraph (a) to have commenced to be paid) to the individual, the individual attained that age at that time,

(c) the amount of the individual's lifetime retirement benefits were determined with regard to all past service events occurring at or before the particular time and without regard to past service events occurring after the particular time,

(d) paragraphs 8302(3)(c) to (p) (other than paragraph 8302(3)(g), where subsection 8302(11) was applicable in respect of the pension credit year and the provision or would have been applicable had all benefits provided as a consequence of past service events become provided in the pension credit year) were applied for the purpose of determining the amount of the individual's lifetime retirement benefits and, for the purpose of those paragraphs, the pension credit year were the particular year referred to in those paragraphs, and

(e) where

(i) the amount of the individual's lifetime retirement benefits under the provision depends on the individual's remuneration, and

(ii) all or any part of the individual's lifetime retirement benefits in respect of the pension credit year became provided as a consequence of a past service event, pursuant to terms of the provision that enable benefits to be provided to members of the plan in respect of periods of employment with employers who have not participated under the provision,

the remuneration received by the individual from each such employer in respect of a period of employment in respect of which the individual is provided with benefits under the provision were remuneration received from an employer who has participated under the provision for the benefit of the individual,

and, for the purposes of this subsection, the following benefits are excluded benefits:

(f) where the formula for determining the amount of lifetime retirement benefits payable under the provision to the individual requires the calculation of an amount that is the product of a fixed rate and the duration of all or part of the individual's pensionable service, benefits payable as a direct consequence of an increase in the value of the fixed rate at any time (in this paragraph referred to as the "time of increase") after the pension credit year, other than benefits

(i) provided as a consequence of a second or subsequent increase in the value of the fixed rate after the time that retirement benefits under the provision commenced to be paid to the individual, or

(ii) that would not have become provided had the value of the fixed rate been increased to the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the value of the fixed rate immediately before the time of the increase,

B is the average wage for the calendar year that includes the time of the increase, and

C is

(A) if the value of the fixed rate has previously been increased in the calendar year that includes the time of increase, the average wage for that year, or

(B) otherwise, the average wage for the year immediately preceding the calendar year that includes the time of increase,

(g) where

(i) the provision is a flat benefit provision,

(ii) at the particular time, the amount (expressed on an annual basis) of lifetime retirement benefits provided under the provision to each member in respect of pensionable service in each calendar year does not exceed 40 per cent of the defined benefit limit for the year that includes the particular time,

(iii) the conditions in subsection 8306(2) are satisfied in respect of the provision and the past service event in connection with which the normalized pension is being calculated, and

(iv) only one fixed rate is applicable in determining the amount of the individual's lifetime retirement benefits,

benefits provided as a direct consequence of an increase in the value of the fixed rate at any time (in this paragraph referred to as the "time of increase") after the pension credit year, other than benefits

(v) provided as a consequence of a second or subsequent increase in the value of the fixed rate after the time that retirement benefits under the provision commenced to be paid to the individual, or

(vi) that would not have become provided had the value of the fixed rate been increased to the greater of

(A) the greatest of all amounts each of which is an amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is a value of the fixed rate in the period beginning on January 1, 1984 and ending immediately before the time of increase,

B is the average wage for the calendar year that includes the time of increase, and

C is the average wage for the later of 1984 and the calendar year in which the value of the fixed rate used for A was first effective, and

(B) the amount determined by the formula

$$D + (E \times F)$$

where

D is the value of the fixed rate immediately before the time of increase,

E is the amount by which the value of the fixed rate used for D would have to be increased to provide an increase in the individual's annual lifetime retirement benefits equal to $18 for each year of pensionable service, and

F is the duration (measured in years, including any fraction of a year) of the period beginning on the later of January 1, 1984 and the day on which the value of the fixed rate used for D was first effective and ending on the day that includes the time of increase;

(h) where the provision is a flat benefit provision, benefits provided as a direct consequence of an increase at any time (in this paragraph referred to as the "time of increase") after the pension credit year in the value of a fixed rate under the provision where

(i) the value of the fixed rate was increased pursuant to an agreement made before 1992, and

(ii) at the time the agreement was made, it was reasonable to expect that the percentage increase in the value of the fixed rate would approximate or be less than the percentage increase in the average wage from the calendar year in which the value of the fixed rate was last increased before the time of increase (or, if the increase is the first increase, the calendar year in which the initial value of the fixed rate was first applicable) to the calendar year that includes the time of increase,

(i) where the provision is a flat benefit provision under which the amount of each member's retirement benefits depends on the member's job category or rate of pay in such a manner that the ratio of the amount of lifetime retirement benefits to remuneration does not significantly increase as remuneration increases, benefits provided as a direct consequence of a change, after the pension credit year, in the individual's job category or rate of pay,

(j) where

(i) the individual's pensionable service under the provision ends before the particular time,

(ii) the individual's lifetime retirement benefits under the provision have been adjusted by a cost-of-living or similar adjustment in respect of the period (in this paragraph referred to as the "deferral period") beginning at the latest of

(A) the time at which the individual's pensionable service under the provision ends,

(B) if the amount of the individual's lifetime retirement benefits depends on the individual's remuneration, the end of the most recent period for which the individual received remuneration that is taken into account in determining the individual's lifetime retirement benefits,

(C) if the amount of the individual's lifetime retirement benefits depends on the individual's remuneration and the remuneration is adjusted as described in paragraph 8302(3)(h), the end of the period in respect of which the adjustment is made, and

(D) if the formula for determining the amount of the individual's lifetime retirement benefits requires the calculation of an amount that is the product of a fixed rate and the duration of all or part of the individual's pensionable service (or other measure of services rendered by the individual), the time as of which the value of the fixed rate applicable with respect to the individual was established,

and ending at the earlier of the particular time and the time, if any, at which lifetime retirement benefits commenced to be paid under the provision to the individual, and

(iii) the adjustment is warranted, having regard to all prior such adjustments, by the increase in the Consumer Price Index or in the wage measure from the commencement of the deferral period to the time the adjustment was made,

benefits payable as a consequence of the adjustment,

(k) benefits payable as a consequence of a cost-of-living adjustment made after the time lifetime retirement benefits commenced to be paid under the provision to the individual, where the adjustment

(i) is warranted, having regard to all prior such adjustments, by the increase in the Consumer Price Index from that time to the time at which the adjustment was made, or

(ii) is a periodic adjustment described in subparagraph 8503(2)(a)(ii), and

(l) such portion of the individual's lifetime retirement benefits as

(i) would not otherwise be excluded in determining the individual's normalized pension,

(ii) may reasonably be considered to be attributable to cost-of-living adjustments or to adjustments made by reason of increases in a general measure of salaries and wages (other than increases in such a measure after the time at which lifetime retirement benefits commenced to be paid under the provision to the individual), and

(iii) is acceptable to the Minister.

(6) Qualifying transfers — For the purposes of subsections (3) and 8304(5) and (7), and subject to subsection (6.1), the amount of an individual's qualifying transfers made in connection with a past service event is the total of all amounts each of which is

Proposed Amendment — Reg. 8303(6) opening words

(6) Qualifying transfers — For the purposes of subsections (3) and 8304(5) and (7), and subject to subsections (6.1) and 8304(2), the amount of an individual's qualifying transfers made in connection with a past service event is the total of all amounts each of which is

Application: The April 18, 2000 draft regulations (RPPs), subsec. 2(2), will amend the opening words of para. 8303(6) to read as above, applicable to the determination of an individual's qualifying transfers that occur after April 18, 2000.

Technical Notes: Subsection 8303(6) of the Regulations defines, for the purposes of calculating provisional PSPAs under subsections 8303(3) and 8304(5), the amount of an individual's qualifying transfers made in connection with a past service event. It is defined to be the total of the amounts transferred to fund the past service benefits, where the amounts are

- transferred in accordance with subsections 146(16) (transfers from RRSPs), 147(19) (transfers from DPSPs), 147.3(2) (transfers from money purchase provisions of other RPPs), 147.3(3) (in the case of transfers from a specified multi-employer plan) and 147.3(5) and (7) (transfers from other registered plans on marriage breakdown or death) of the Act, or
- transferred from another benefit provision of the same plan, where the transfer would be in accordance with any of subsections 147.3(2), (5) and (7) of the Act if the two provisions were in separate RPPs.

The amount of the individual's qualifying transfers is applied to offset the provisional PSPA associated with the crediting of the past service benefits.

Subsection 8303(6) is amended so that it is subject to amended subsection 8304(2), which restricts the amount that may be counted as a qualifying transfer when money purchase benefits are replaced by defined benefits. For further details, refer to the commentary on subsection 8304(2).

This amendment applies to the determination of an individual's qualifying transfers that occur after [April 18, 2000].

(a) the portion of an amount transferred to a registered pension plan

(i) in accordance with any of subsections 146(16), 147(19) and 147.3(2), (5) and (7) of the Act, or

(ii) from a specified multi-employer plan in accordance with subsection 147.3(3) of the Act

that is transferred to fund benefits provided to the individual as a consequence of the past service event; or

(b) the amount of any property held in connection with a benefit provision of a registered pension plan that is made available to fund benefits provided to the individual under another benefit provision of the plan as a consequence of the past service event, where the transaction by which the property is made so available is such that, if the benefit provisions were in separate registered pension plans, the transaction would constitute a transfer of property from one plan to the other in accordance with any of subsections 147.3(2), (5) and (7) of the Act.

History: Subsec. 8303(6) amended by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable

(a) to the determination of an individual's qualifying transfers that occur after June 25, 1998, and

(b) where approved by the Minister of National Revenue, to the determination of an individual's qualifying transfers that occurred before June 26, 1998.

(6.1) Exclusion for pre-1990 benefits — The amount of an individual's qualifying transfers made in connection with a past service event shall be determined under subsection (6) without regard to the portion, if any, of amounts transferred or property made available, as the case may be, that can reasonably be considered to have been transferred or made available to fund benefits provided in respect of periods before 1990.

History: Subsec. 8303(6.1) added by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of an individual's qualifying transfers that occur after June 25, 1998.

(7) Deemed payment — Where

(a) an individual has given an irrevocable direction that

(i) an amount be paid to a registered pension plan, or

(ii) property held in connection with a benefit provision of a registered pension plan be made available to fund benefits provided to the individual under another benefit provision of the plan

in the event that the Minister issues a certification for the purposes of subsection 147.1(10) of the Act with respect to the individual and to benefits provided under a defined benefit provision of the plan as a consequence of a past service event, and

(b) the amount is to be paid or the property is to be made available, as the case may be,

(i) where subparagraph (ii) does not apply, on or before the day that is 90 days after the day on which the certification is received by the administrator of the plan, and

(ii) where the plan was deemed by paragraph 147.1(3)(a) of the Act to be a registered pension plan at the time the direction was given, on or before the day that is 90 days after the later of

(A) the day on which the certification is received by the administrator of the plan, and

(B) the day on which the administrator of the plan receives written notice from the Minister of the registration of the plan for the purposes of the Act,

the amount or property, as the case may be, is deemed, for the purpose of subsection (6), to have been paid or made available, as the case may be, at the time the direction was given.

History: Subsec. 8303(7) amended by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable

(a) to the determination of an individual's qualifying transfers that occur after June 25, 1998, and

(b) where approved by the Minister of National Revenue, to the determination of an individual's qualifying transfers that occurred before June 26, 1998.

(7.1) Excess money purchase transfer — Where lifetime retirement benefits have, as a consequence of a past service event, become provided to an individual under a defined benefit provision of a registered pension plan (other than a specified multi-employer plan) in respect of a period (in this subsection referred to as the "past service period") that

(a) was previously pensionable service of the individual under a particular defined benefit provision of a registered pension plan (other than a specified multi-employer plan),

(b) ceased to be pensionable service of the individual under the particular provision as a result of the payment of a single amount, all or part of which was

transferred on behalf of the individual from the particular provision to a registered retirement savings plan, a registered retirement income fund, a money purchase provision of a registered pension plan or a defined benefit provision of a registered pension plan that was, at the time of the transfer, a specified multi-employer plan,

(c) has not, at any time after the payment of the single amount and before the past service event, been pensionable service of the individual under any defined benefit provision of a registered pension plan (other than a specified multi-employer plan), and

(d) is not, for the purpose of subsection 8304(5), a qualifying past service period in relation to the individual and the past service event,

the amount determined by the formula

A – B

is, for the purpose of the description of D in subsection (3), an excess money purchase transfer in relation to the individual and the past service event, where

A is the portion of the amount transferred, as described in paragraph (b), that can reasonably be considered to be attributable to benefits in respect of the portion of the past service period that is after 1989, and

B is the total of all amounts each of which is the portion of a pension credit, or the grossed-up amount of a provisional PSPA, of the individual that can reasonably be considered to be attributable to benefits previously provided under the particular provision in respect of the past service period.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8304.1(7) — Meaning of grossed-up amount of provisional PSPA.

History: Subsec. 8303(7.1) added by P.C. 1998-2256, subsec. 6(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable with respect to past service events that occur after 1997.

(8) Specified multi-employer plan — Where, in a calendar year, an individual makes a contribution (other than an excluded contribution) in respect of a defined benefit provision of a registered pension plan that is, in the year, a specified multi-employer plan, and the contribution

(a) is made in respect of a period after 1989 and before the year, and

(b) is not included in determining the individual's pension credit for the year with respect to any employer under the provision,

the individual's provisional PSPA with respect to an employer who participates in the plan, associated with the payment of the contribution, is the portion of the contribution that is not included in the individual's provisional PSPA with respect to any other employer who participates in the plan, and, for the purpose of this subsection, the plan administrator shall determine the portion of the contribution to be included in the provisional PSPA of the individual with respect to each employer.

Related Provisions: Reg. 8303(9) — Contributions include conditional contributions.

(9) Conditional contributions — For the purpose of subsection (8), a contribution includes an amount paid to a registered pension plan where the right of any person to retain the amount on behalf of the plan is conditional on the Minister issuing a certification for the purposes of subsection 147.1(10) of the Act as it applies with respect to the individual and to benefits provided as a consequence of the payment.

(10) Benefits in respect of foreign service — Where as a consequence of a past service event, benefits become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period throughout which the individual was employed outside Canada, and the Minister has consented in writing to the application of this subsection, each provisional PSPA of the individual associated with the past service event shall be determined on the assumption that no benefits were provided in respect of the period.

Related Provisions: Reg. 8503(3)(a)(vii) — Eligible service outside Canada.

Registered Plan Division Newsletters: 93-2 (Foreign Service Newsletter); 2000-1 (Foreign Service Newsletter Update).

Definitions [Reg. 8303]: "accumulated PSPA" — Reg. 8303(1)(a), 8303(2); "amount" — ITA 248(1); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "certifiable past service event" — Reg. 8300(1); "certification" — Reg. 8303(2.1)(b); "commencement" — *Interpretation Act* 35(1); "contribution" — Reg. 8303(9); "deferral period" — Reg. 8303(5)(j)(ii); "employed", "employer", "employment" — ITA 248(1); "excluded contribution", "flat benefit provision" — Reg. 8300(1); "grossed-up amount" — Reg. 8304(7); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "normalized pension" — Reg. 8303(5); "past service event" — Reg. 8300(1), 8303(2.1)(a); "past service pension adjustment" — ITA 248(1), Reg. 8303(1); "past service period" — Reg. 8303(7.1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "pension credit year" — Reg. 8303(5); "person", "property" — ITA 248(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "qualifying transfers" — Reg. 8303(6); "redetermined benefit entitlement" — Reg. 8303(4); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "time of increase" — Reg. 8303(5)(g), (h); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins [Reg. 8303]: IT-124R6: Contributions to registered retirement savings plans.

8304. Past service benefits — Additional rules

(1) Replacement of defined benefits — Where

(a) an individual ceased, at any time in a calendar year, to have any rights to benefits under a defined benefit provision of a registered pension plan (in this subsection referred to as the "former provision"),

(b) benefits became provided at that time to the individual under another defined benefit provision of a registered pension plan (in this subsection referred to as the "current provision") in lieu of the benefits under the former provision,

(c) the benefits that became provided at that time to the individual under the current provision in respect of the period in the year before that time are attributable to employment with the same employers as were the individual's benefits in respect of that period under the former provision,

(d) no amount was transferred in the year on behalf of the individual from the former provision to a registered retirement savings plan, a registered retirement income fund or a money purchase provision of a registered pension plan, and

(e) no benefits became provided under the former provision to the individual in the year and after that time,

each pension credit of the individual under the former provision for the year is nil.

History: Para. 8304(1)(d) amended by P.C. 1995-17, subsec. 5(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to the determination of pension credits for 1990 *et seq.*

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

Forms: T4104: Past service pension adjustment guide.

(2) Replacement of money purchase benefits — Where

(a) an individual ceased, at any time in a calendar year, to have any rights to benefits under a money purchase provision of a registered pension plan or under a deferred profit sharing plan (in this subsection referred to as the "former provision"),

(b) benefits became provided at that time to the individual under a defined benefit provision of a registered pension plan (in this subsection referred to as the "current provision") in lieu of benefits under the former provision,

(c) the benefits that became provided at that time to the individual under the current provision in respect of the period in the year before that time are attributable to employment with the same employers who made contributions under the former provision in respect of that period on behalf of the individual,

(d) no amount was transferred in the year on behalf of the individual from the former provision to a registered retirement savings plan, a registered retirement income fund, a money purchase provision of a registered pension plan or a deferred profit sharing plan, and

(e) no contributions were made under the former provision by or on behalf of the individual, and no other amounts were allocated under the former provision to the individual, in the year and after that time,

each pension credit of the individual under the former provision for the year is nil.

Proposed Addition — Reg. 8304(2)(f)–(h)

(f) it is reasonable to consider that no excess would, if this subsection did not apply and if the year ended at that time, be determined under any of paragraphs 147(5.1)(a) to (c), 147.1(8)(a) and (b) and (9)(a) and (b) of the Act with respect to the individual for the year,

the following rules apply:

(g) each pension credit of the individual under the former provision for the year is nil, and

(h) the amount, if any, of the individual's qualifying transfers made in connection with the replacement of the individual's benefits shall be determined under subsection 8303(6) without regard to the portion, if any, of amounts transferred from the former provision to the current provision that can reasonably be considered to relate to an amount that, but for paragraph (g), would have been included in determining the individual's pension credit under the former provision for the year.

Application: The April 18, 2000 draft regulations (RPPs), s. 3, will substitute paras. (f) to (h) for the closing words of subsec. 8304, applicable to the determination of pension credits for 2000 *et seq.* and to the determination of an individual's qualifying transfers that occur after April 18, 2000.

Technical Notes: Subsection 8304(2) of the Regulations contains a special rule that applies when an individual's benefits under a money purchase provision of an RPP or under a DPSP (the "former provision") are replaced with benefits under a defined benefit provision of an RPP maintained by the same employer. The subsection provides that, if certain conditions are met, the individual's pension credit under the former provision for the year of replacement is nil.

Subsection 8304(2) is amended in two ways. First, it is amended to provide an anti-avoidance rule intended to ensure that the subsection does not apply to deem an individual's pension credit to be nil if the contributions (and other similar allocations) that would otherwise be included in the individual's pension credit under the former provision in the year of replacement are excessive. For this purpose, contributions made in the year of replacement will be considered excessive if it is reasonable to consider that they would have otherwise resulted in the DPSP contribution limits in subsection 147(5.1) or the pension adjustment limits in subsection 147.1(8) or (9) being violated. This amendment applies to the determination of pension credits for 2000 and subsequent years.

Second, subsection 8304(2) is amended to exclude from an individual's qualifying transfers (determined under subsection 8303(6)) any amounts transferred from the former provision to the current provision that can reasonably be considered to relate to contributions made by or on behalf of the individual (or other similar allocations) under the former provision in the year of replacement. Since these amounts are not included in determining a pension credit for the individual because of subsection 8304(2), it is not appropriate to allow them to offset the provisional PSPA associated with the replacement benefits. This amendment applies to the determination of an individual's qualifying transfers that occur after [April 18, 2000].

History: Paras. 8304(2)(d) and (e) amended by P.C. 1995-17, subsec. 5(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. Para. 8304(2)(d) is applicable with respect to the determination of pension credits for 1990 *et seq.* Para. 8304(2)(e) is applicable with respect to the determination of pension credits for 1993 *et seq.*, except that amended para. (e) does not apply with respect to the determination of an individual's pension credits for 1993 under a money purchase provision of a registered pension plan, or under a deferred profit sharing plan, where the individual ceased, on or before April 5, 1994, to have any rights to benefits under the provision or the plan, as the case may be, and no amounts were allocated to the individual under the provision or the plan, as the case may be, after April 5, 1994.

(3) Past service benefits in year of past service event — Subject to subsection (4), where, as a consequence of a past service event that occurs at a particular time in a calendar year, benefits (in this subsection and subsection (4) referred to as "past service benefits") become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period in the year and before the particular time that, immediately before the past service event, was not pensionable service of the individual under the provision, the following rules apply, except to the extent that the Minister has waived in writing their application in respect of the plan:

(a) each pension credit of the individual under the provision for the year shall be determined as if the past service benefits had not become provided to the individual;

(b) where the year is 1990, the past service event shall be deemed, for the purposes of this Part, to have occurred immediately after the end of the year;

(c) where the year is after 1990, each provisional PSPA of the individual associated with the past service event as a consequence of which the past service benefits became provided shall be determined as if the past service event had occurred immediately after the end of the year;

(d) where information that is required for the computation of a provisional PSPA referred to in paragraph (c) is not determinable until after the time at which the provisional PSPA is computed, reasonable assumptions shall be made in respect of such information; and

(e) subsection 147.1(10) of the Act shall apply in respect of the past service benefits to the extent that that subsection would apply if the past service event had occurred immediately after the end of the year.

(4) Exceptions — Subsection (3) does not apply where

(a) the past service benefits become provided in circumstances where subsection (1) or (2) is applicable; or

(b) the period in respect of which the past service benefits are provided was not, at any time before the past service event,

(i) pensionable service of the individual under a defined benefit provision of a registered pension plan, or

(ii) a period in respect of which a contribution was made on behalf of, or an amount (other than an amount in respect of earnings of a plan) was allocated to, the individual under a money purchase provision of a registered pension plan or under a deferred profit sharing plan.

(c) [Repealed]

History: Para. 8304(4)(c) repealed, and para. 8304(4)(b) amended by striking out the reference to "(in this subsection referred to as the "past service period")", by P.C. 1998-2256, subsec. 7(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable with respect to past service events that occur after 1996.

Subpara. 8304(4)(b)(ii) and para. 8304(4)(c) amended by P.C. 1995-17, subsecs. 5(3) and (4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. Subpara. 8304(4)(b)(ii) is applicable with respect to past service benefits that become provided after April 5, 1994 and para. 8304(4)(c) is applicable with respect to past service benefits that become provided after August 29, 1990.

(5) Modified PSPA calculation — Where

(a) lifetime retirement benefits have, as a consequence of a past service event, become provided to an individual under a defined benefit provision of a registered pension plan in respect of one or more qualifying past service periods in relation to the individual and the past service event, and

(b) the benefits are considered to be attributable to employment of the individual with a single employer,

the provisional PSPA of the individual with respect to the employer that is associated with the past service event is the amount determined by the formula

$$A + B + C - D$$

where

A is the provisional PSPA that would be determined if

(a) this subsection did not apply,

(b) all former benefits in relation to the individual and the past service event had ceased to be provided at the time the past service event occurred,

(c) all former benefits in relation to the individual and the past service event were considered to be attributable to employment of the individual with the employer, and

(d) the value of C in subsection 8303(3) were nil;

B is the total of all amounts each of which is a non-vested PA amount in respect of the individual and the past service event;

C is the total of all amounts each of which is a money purchase transfer in relation to the individual and the past service event; and

D is the amount of the individual's qualifying transfers made in connection with the past service event.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8300(7) — Benefits include contingent benefits; Reg. 8303(6) — Meaning of qualifying transfers.

History: Subsec. 8304(5) amended by P.C. 1998-2256, subsec. 7(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

The description of C in subsec. 8304(5) is amended by P.C. 1995-17, subsec. 5(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to past service events occurring after August 29, 1990.

(5.1) Definitions for subsection (5) — For the purpose of subsection (5), where

(a) lifetime retirement benefits (in this subsection referred to as "past service benefits") have, as a consequence of a past service event occurring at a particular time, become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period that

(i) immediately before the particular time, was not pensionable service of the individual under the provision, and

(ii) is, or was, pensionable service of the individual under another defined benefit provision (in this subsection referred to as the "former provision") of a registered pension plan,

(b) either

(i) the individual has not, at any time after 1996 and before the particular time, been a member in relation to the former provision,

(ii) the individual ceased, at the particular time, to be a member in relation to the former provision, or

(iii) the past service event is a certifiable past service event and the individual is to cease being a member in relation to the former provision no later than 90 days after the day on which a certification of the Minister is issued for the purposes of subsection 147.1(10) of the Act in respect of the past service benefits, and

(c) lifetime retirement benefits to which the individual is or was entitled under the former provision in respect of the period have not been taken into account under subsection (5) as former benefits in determining a provisional PSPA of the individual that is associated with any other past service event,

the following rules apply:

(d) the period is a qualifying past service period in relation to the individual and the past service event,

(e) lifetime retirement benefits to which the individual is or was entitled under the former provision in respect of the period are former benefits in relation to the individual and the past service event,

(f) where subsection 8301(8) has applied in respect of the determination of a pension credit of the individual under the former provision with respect to an employer for a year that includes any part of the period, the amount determined by the formula

$$A - B$$

is a non-vested PA amount in respect of the individual and the past service event, where

A is the amount that would have been the individual's pension credit under the former provision for the

year with respect to the employer if subsection 8301(8) had not applied, and

B is the individual's pension credit under the former provision for the year with respect to the employer, and

(g) the amount determined by the formula

A – B

is a money purchase transfer in relation to the individual and the past service event, where

A is the total of all amounts each of which is

(i) an amount that was transferred, at or before the particular time, on behalf of the individual from the former provision to a registered retirement savings plan, a registered retirement income fund, a money purchase provision of a registered pension plan or a defined benefit provision of a registered pension plan that was, at the time of the transfer, a specified multi-employer plan, or

(ii) an amount that is to be paid or otherwise made available under the former provision with respect to the individual after the particular time, other than an amount that is to be transferred to fund the past service benefits or paid directly to the individual,

to the extent that the amount can reasonably be considered to be attributable to benefits in respect of the portion of the period that is after 1989, and

B is the total of all amounts each of which is, in respect of an employer with respect to which a provisional PSPA of the individual that is associated with the past service event is determined under subsection (5), the amount, if any, by which

(i) the portion of the value determined for B in subsection 8303(3), for the purpose of determining the individual's provisional PSPA with respect to the employer, that can reasonably be considered to be attributable to benefits provided in respect of the period

exceeds

(ii) the portion of the value determined for A in subsection 8303(3), for the purpose of determining the individual's provisional PSPA with respect to the employer, that can reasonably be considered to be attributable to benefits provided in respect of the period.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8300(7) — Benefits include contingent benefits.

History: Subsec. 8304(5.1) added by P.C. 1998-2256, subsec. 7(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(6) Reinstatement of pre-1997 benefits — Where lifetime retirement benefits have, as a consequence of a past service event, become provided to an individual under a defined benefit provision of a registered pension plan in respect of a period that

(a) was previously pensionable service of the individual under the provision,

(b) ceased to be pensionable service of the individual under the provision as a consequence of the individual ceasing before 1997 to be a member in relation to the provision, and

(c) has not, at any time after 1996 and before the past service event, been pensionable service of the individual under a defined benefit provision of a registered pension plan,

each provisional PSPA of the individual that is associated with the past service event shall be determined as if all benefits provided to the individual under the provision before 1997 in respect of the period had been provided to the individual under another defined benefit provision of a registered pension plan in relation to which the individual has not, at any time after 1996, been a member.

History: Subsec. 8304(6) amended by P.C. 1998-2256, subsec. 7(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(7) Two or more employers — Where

(a) lifetime retirement benefits (in this subsection referred to as "past service benefits") provided to an individual under a defined benefit provision of a registered pension plan as a consequence of a past service event are attributable to employment of the individual with two or more employers (each of which is, in this subsection, referred to as a "current employer"), and

(b) subsection (5) would, but for paragraph (5)(b), apply in respect of the determination of each provisional PSPA of the individual that is associated with the past service event,

each such provisional PSPA shall be determined in accordance with the formula set out in subsection (5), except that

(c) in determining the amount A,

(i) the former benefits of the individual shall be considered to be attributable to employment of the individual with the individual's current employers, and

(ii) the portion of the former benefits attributable to employment with each current employer shall be determined by the administrator of the pension plan under which the past service benefits are provided in a manner that is consistent with the association of the past service benefits with each current employer,

(d) the amounts B and C shall be included in computing only one provisional PSPA of the individual, as determined by the administrator of the pension plan under which the past service benefits are provided, and

(e) the amount D that is deducted in computing the individual's provisional PSPA with respect to a particular employer shall equal such portion of the individual's qualifying transfers made in connection with the past service event as is not deducted in computing the provisional PSPA of the individual with respect to any other employer.

Related Provisions: Reg. 8303(6) — Meaning of qualifying transfers.

History: Para. 8304(7)(b) amended by P.C. 1998-2256, subsec. 7(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(8) [Repealed]

History: Subsec. 8304(8) repealed by P.C. 1998-2256, subsec. 7(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the determination of provisional PSPAs that are associated with past service events that occur after 1997.

(9) Specified multi-employer plans — Except in subparagraph (4)(b)(i), a reference in this section to a defined benefit provision of a registered pension plan at any time does not, unless expressly provided, include a defined benefit provision of a plan that is, at that time, a specified multi-employer plan.

Definitions [Reg. 8304]: "amount" — ITA 248(1); "associated" — ITA 256; "benefits" — Reg. 8300(7); "certifiable past service event" — Reg. 8300(1); "contribution" — Reg. 8300(8), 8302(11), (12); "current employer" — Reg. 8304(5)(c), (7)(a); "current provision" — Reg. 8304(1)(b), (2)(b), (5)(a); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — Reg. 8304(9); "employer", "employment" — ITA 248(1); "former benefits" — Reg. 8304(5)(d), (5.1)(e); "former provision" — Reg. 8304(1)(a), (2)(a), (5)(a)(ii), (5.1)(a)(ii); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c), (5.1)(a); "Minister" — ITA 248(1); "past service benefits" — Reg. 8304(3), (5.1)(a), (7)(a); "past service event" — Reg. 8300(1); "pension credit" — Reg. 8301, 8308.1(2)-(4), 8308.3(2), (3); "provision" — Reg. 8300(12)(c); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "qualifying transfers" — Reg. 8303(6); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins [Reg. 8304]: IT-124R6: Contributions to registered retirement savings plans.

8304.1 Pension adjustment reversal — (1) Total pension adjustment reversal — For the purpose of subsection 248(1) of the Act, an individual's "total pension adjustment reversal" for a calendar year means the total of all amounts each of which is the pension adjustment reversal (in this Part and Part LXXXIV referred to as "PAR") determined in connection with the individual's termination in the year from a deferred profit sharing plan or from a benefit provision of a registered pension plan.

Related Provisions: Reg. 8304.1(2) — Termination during 1997 deemed to be in 1998.

Forms: RC4137: Pension adjustment reversal guide; T4104: Past service pension adjustment guide.

(2) Termination in 1997 — For the purpose of subsection (1) and the description of R in paragraph 8307(2)(b), where an individual terminates in 1997 from a deferred profit sharing plan or from a benefit provision of a registered pension plan, the termination is deemed to have occurred in 1998.

(3) PAR — deferred profit sharing plan — For the purposes of this Part and Part LXXXIV and subject to subsection (12), an individual's PAR determined in connection with the individual's termination from a deferred profit sharing plan is

(a) where the conditions in subsection (13) are satisfied with respect to the termination, the total of all amounts each of which is an amount

(i) included in determining a pension credit of the individual under the plan, and

(ii) to which the individual has ceased, at or before the time of the termination, to have any rights,

but does not include any amount to which a spouse or former spouse of the individual has acquired rights as a consequence of a breakdown of their marriage; and

(b) in any other case, nil.

(4) PAR — money purchase provision — For the purposes of this Part and Part LXXXIV and subject to subsection (12), an individual's PAR determined in connection with the individual's termination from a money purchase provision of a registered pension plan is

(a) where the conditions in subsection (14) are satisfied with respect to the termination, the total of all amounts each of which is an amount

(i) included in determining a pension credit of the individual under the provision, and

(ii) to which the individual has ceased, at or before the time of the termination, to have any rights,

but does not include any amount to which a spouse or former spouse of the individual has acquired rights as a consequence of a breakdown of their marriage; and

(b) in any other case, nil.

Related Provisions: Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

(5) PAR — defined benefit provision — For the purposes of this Part and Part LXXXIV and subject to subsections (6) and (12), an individual's PAR determined in connection with the individual's termination from a defined benefit provision of a registered pension plan is

(a) where the conditions in subsection (14) are satisfied with respect to the termination, the amount determined by the formula

$$A + B - C - D$$

where

A is the total of all amounts each of which is, in respect of a particular year that is the year in which the termination occurs or that is a preceding year, the lesser of

(i) the total of all amounts each of which is the pension credit of the individual under the provision for the particular year with respect to an employer, and

(ii) the RRSP dollar limit for the year following the particular year,

B is the total of all amounts each of which is the portion of the grossed-up amount of a provisional PSPA (other than a provisional PSPA determined in accordance with subsection 8303(8)) of the individual that is associated with a past service event occurring before the time of the termination that can reasonably be considered to be attributable to benefits provided under the provision,

C is the total of all amounts each of which is a specified distribution made in respect of the individual and the provision at or before the time of the termination, and

D is the total of all amounts each of which is a PA transfer amount in relation to the individual's termination from the provision; and

(b) in any other case, nil.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8300(11)(c) — Deemed specified distribution; Reg. 8304.1(6) — Defined benefit pension credits; Reg. 8304.1(7) — Meaning of grossed-up amount of provisional PSPA; Reg. 8304.1(8) — Meaning of specified distribution; Reg. 8304.1(10) — PA transfer amount; Reg. 8304.1(11) — Special 1997 PA transfer amount; Reg. 8304.1(14) — Terminations conditions; Reg. 8500(8)(c) — Non-member benefits ignored in determining pension adjustment.

(6) Defined benefit pension credits — For the purpose of subparagraph (i) of the description of A in paragraph (5)(a), in determining an individual's PAR in con-

nection with the individual's termination from a defined benefit provision of a registered pension plan,

(a) the individual's pension credits under the provision for the year in which the termination occurs shall be determined without regard to benefits provided after the time of the termination; and

(b) the individual's pension credits under the provision for each year in which the plan was a specified multi-employer plan are deemed to be nil.

(7) Grossed-up PSPA amount — For the purposes of the descriptions of B in subsection 8303(7.1) and paragraph (5)(a), the grossed-up amount of an individual's provisional PSPA with respect to an employer that is associated with a past service event is the amount that would be the provisional PSPA if

(a) the values of C and D in subsections 8303(3) and 8304(5) were nil; and

(b) the words "at the time the past service event occurred" in paragraph (b) of the description of A in subsection 8304(5) were read as "immediately before the time the past service event occurred".

(8) Specified distribution — For the purpose of the description of C in paragraph (5)(a), an amount paid under a defined benefit provision of a registered pension plan with respect to an individual is a specified distribution made in respect of the individual and the provision at the time it is paid, except to the extent that

(a) it can reasonably be considered to be a payment of benefits in respect of any period before 1990;

(b) it is transferred to another registered pension plan (other than a plan that is, at the time of the transfer, a specified multi-employer plan) in accordance with subsection 147.3(3) of the Act;

(c) it is transferred to another defined benefit provision of the plan where the transfer would, if the provision and the other provision were in separate registered pension plans, constitute a transfer in accordance with subsection 147.3(3) of the Act;

(d) it is a payment in respect of an actuarial surplus;

(e) it is

(i) a return of contributions made by the individual under the provision, where the contributions are returned pursuant to an amendment to the plan that also reduces the future contributions that would otherwise be required to be made under the provision by members of the plan and that does not reduce benefits provided under the provision, or

(ii) a payment of interest in respect of contributions that are returned as described in subparagraph (i);

(f) it can reasonably be considered to be a payment of benefits provided in respect of a period throughout which the plan was a specified multi-employer plan; or

(g) it can reasonably be considered to be a payment of benefits provided in respect of a period throughout which the individual was employed outside Canada, where the benefits became provided as a consequence of a past service event in respect of which the Minister had consented to the application of subsection 8303(10) for the purpose of determining the individual's provisional PSPAs.

Related Provisions: Reg. 8304.1(9) — Property made available deemed to be paid; Reg. 8304.1(15) — Marriage breakdown — benefits acquired by spouse.

(9) Property made available — Where property held in connection with a particular defined benefit provision of a pension plan is made available at any time to provide benefits with respect to an individual under another benefit provision of a pension plan, subsection (8) applies as if the amount of the property had been paid under the particular provision at that time with respect to the individual.

(10) PA transfer amount — Where

(a) an individual has terminated, at a particular time after 1996, from a defined benefit provision (in this subsection referred to as the "former provision") of a registered pension plan,

(b) lifetime retirement benefits (in this subsection referred to as the "past service benefits") have, as a consequence of a past service event occurring at or before the particular time, become provided to the individual under another defined benefit provision of a registered pension plan in respect of a period that is or was pensionable service of the individual under the former provision, and

(c) lifetime retirement benefits to which the individual is or was entitled under the former provision in respect of the period have, under subsection 8304(5), been taken into account as former benefits in determining a provisional PSPA of the individual that is associated with the past service event,

for the purposes of subsection 8406(5) and the description of D in paragraph (5)(a), the lesser of

(d) the portion of the value determined for A in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the past service benefits, and

(e) the portion of the value determined for B in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the former benefits

is a PA transfer amount in relation to the individual's termination from the former provision.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits; Reg. 8304.1(11) — Special 1997 PA transfer amount.

(11) Special 1997 PA transfer amount — Where

(a) an individual has terminated, at a particular time in 1997, from a particular defined benefit provision of a registered pension plan,

(b) lifetime retirement benefits (in this subsection referred to as the "past service benefits") have, as a consequence of a past service event that occurred after the particular time and before 1998, become provided to the individual under the particular provision, or under another defined benefit provision of a registered pension plan, in respect of a period that was previously pensionable service of the individual under the particular provision, and

(c) lifetime retirement benefits to which the individual was previously entitled under the particular provision in respect of the period have, under subsection 8304(5), been taken into account as former benefits in determining a provisional PSPA of the individual that is associated with the past service event,

for the purposes of subsection 8406(5) and the description of D in paragraph (5)(a), the lesser of

(d) the portion of the value determined for A in subsection 8303(3), for the purpose of determining the

provisional PSPA, that can reasonably be considered to be attributable to the past service benefits, and

(e) the portion of the value determined for B in subsection 8303(3), for the purpose of determining the provisional PSPA, that can reasonably be considered to be attributable to the former benefits

is a PA transfer amount in relation to the individual's termination from the particular provision at the particular time.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

(12) Subsequent membership — Where an individual has ceased at a particular time to be a member in relation to a deferred profit sharing plan or a benefit provision of a registered pension plan and subsequently becomes a member in relation to the plan or the provision, as the case may be, the following rules apply in determining the individual's PAR in connection with any subsequent termination from the plan or the provision, as the case may be:

(a) in the case of a deferred profit sharing plan or money purchase provision, any amounts included in a pension credit of the individual under the plan or provision because of an allocation to the individual before the particular time shall be disregarded; and

(b) in the case of a defined benefit provision,

(i) the value of A in paragraph (5)(a) shall be determined without regard to any pension credit, or portion of a pension credit, that is attributable to benefits provided under the provision before the particular time,

(ii) the value of B in paragraph (5)(a) shall be determined without regard to any provisional PSPA that is associated with a past service event that occurred before the particular time, and

(iii) the value of C in paragraph (5)(a) shall be determined without regard to any specified distribution (as defined in subsection (8)) made at or before the particular time.

(13) Termination conditions — deferred profit sharing plan — For the purpose of paragraph (3)(a), the conditions with respect to an individual's termination from a deferred profit sharing plan are the following

(a) the termination occurs after 1996 and otherwise than because of death; and

(b) no payments described in subparagraph 147(2)(k)(v) of the Act have been made out of or under the plan with respect to the individual.

(14) Termination conditions — registered pension plan — For the purposes of paragraphs (4)(a) and (5)(a), the conditions with respect to an individual's termination from a benefit provision of a registered pension plan are the following:

(a) the termination occurs after 1996 and otherwise than because of death; and

(b) no retirement benefits have been paid under the provision with respect to the individual (other than retirement benefits paid with respect to the individual's spouse or former spouse as a consequence of a breakdown of their marriage).

Related Provisions: Reg. 8300(11)(b) — Termination conditions deemed not satisfied.

(15) Marriage breakdown — Where

(a) before a member terminates from a defined benefit provision of a registered pension plan, there has been a breakdown of the member's marriage, and

(b) as a consequence of the breakdown,

(i) the member has ceased to have rights to all or a portion of the benefits provided under the provision with respect to the member, and

(ii) the member's spouse or former spouse (in this subsection referred to as the "spouse") has acquired rights under the provision in respect of those benefits,

for the purpose of subsection (8),

(c) any amount paid under the provision with respect to the rights acquired by the spouse (other than a single amount paid under the provision at or before the time of the member's termination in full satisfaction of the rights acquired by the spouse) is deemed not to have been paid with respect to the member, and

(d) unless a single amount has been paid under the provision at or before the time of the member's termination in full satisfaction of the rights acquired by the spouse, a single amount equal to the present value (at the time the member terminates from the provision) of the benefits to which the member has ceased to have rights as a consequence of the breakdown is deemed to have been paid to the member at that time under the provision in full satisfaction of those benefits.

History: S. 8304.1 added by P.C. 1998-2256, s. 8, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996.

Definitions [Reg. 8304.1]: "amount" — Reg. 8304(16)(c), (d); "annuity" — ITA 248(1); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "contribution" — Reg. 8300(8), 8302(11), (12); "deferred profit sharing plan" — ITA 147(1), 248(1); "employed", "employer" — ITA 248(1); "excess money purchase offset" — Reg. 8304.1(12); "former provision" — Reg. 8304.1(10)(a); "grossed-up amount" — Reg. 8304.1(7); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "offset provision" — Reg. 8304.1(12)(b); "PA transfer amount" — Reg. 8304.1(10), (11); "PAR" — Reg. 8304.1(1), (3)–(6); "past service benefits" — Reg. 8304.1(10)(b), (11)(b); "past service event" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "property" — ITA 248(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan", "RRSP dollar limit" — ITA 146(1), 248(1); "specified distribution" — Reg. 8304.1(8); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "spouse" — Reg. 8304.1(16)(b)(ii); "termination" — Reg. 8304.1(2), (15).

Forms [Reg. 8304.1]: RC4137: Pension adjustment reversal guide.

8305. Association of benefits with employers — **(1)** Where, for the purposes of this Part, it is necessary to determine the portion of an amount of benefits provided with respect to a member of a registered pension plan under a defined benefit provision of the plan that is attributable to the member's employment with a particular employer, the following rules apply, subject to subsection 8308(7):

(a) the determination shall be made by the plan administrator;

(b) benefits provided as a consequence of services rendered by the member to an employer who participates in the plan shall be regarded as attributable to employment with that employer, whether the benefits become provided at the time the services are rendered or at a subsequent time; and

(c) the determination shall be made in a manner that

(i) is reasonable in the circumstances,

(ii) is not inconsistent with such determinations made previously, and

(iii) results in the full amount of benefits being attributed to employment with one or more employers who participate in the plan.

(2) Where the administrator of a registered pension plan does not comply with the requirements of subsection (1) in connection with the determination of an amount under this Part at any time,

(a) the plan becomes, at that time, a revocable plan; and

(b) the Minister shall make any determinations referred to in subsection (1) that the administrator fails to make, or fails to make in accordance with that subsection.

Definitions [Reg. 8305]: "amount", "employer", "employment", "Minister", "registered pension plan" — ITA 248(1).

8306. Exemption from certification — (1) For the purposes of subsection 147.1(10) of the Act as it applies in respect of a past service event and the benefits provided under a defined benefit provision of a registered pension plan with respect to a particular member of the plan, a certification of the Minister is not required where

(a) each provisional PSPA of the member that is associated with the past service event is nil;

(b) the conditions in subsection (2) or (3) are satisfied;

(c) the conditions in subsection (2) or (3) are substantially satisfied and the Minister waives in writing the requirement for certification; or

(d) the past service event is deemed by paragraph 8304(3)(b) to have occurred immediately after the end of 1990.

(2) The following are conditions for the purposes of paragraphs (1)(b) and (c) and 8303(5)(g):

(a) there are more than 9 active members under the provision,

(b) no more than 25 per cent of the active members under the provision are specified active members under the provision;

(c) for all or substantially all of the active members under the provision, the amount of lifetime retirement benefits accrued under the provision has increased as a consequence of the past service event;

(d) where there is a specified active member under the provision;

(i) the amounts C and D in subparagraph (ii) are greater than nil, and

(ii) the amount determined by the formula A/C does not exceed the amount determined by the formula B/D

where

A is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately after the past service event, to a specified active member under the provision,

B is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately after the past service event, to an active member (other than a specified active member) under the provision,

C is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately before the past service event, to a specified active member under the provision, and

D is the aggregate of all amounts each of which is the amount of lifetime retirement benefits accrued under the provision, immediately before the past service event, to an active member (other than a specified active member) under the provision; and

(e) the benefits provided under the provision as a consequence of the past service event to members of the plan who are not active members under the provision are not more advantageous than such benefits provided to active members under the provision.

Related Provisions: Reg. 8306(4) — Meaning of active member and specified active member.

(3) The following are conditions for the purposes of paragraphs (1)(b) and (c):

(a) the past service event consists of the establishment of the provision;

(b) there are more than 9 active members under the provision;

(c) no more than 25 per cent of the active members under the provision are specified active members under the provision;

(d) the member is not a specified active member under the provision;

(e) if the member is not an active member under the provision, for each of the 5 years immediately preceding the calendar year in which the past service event occurs,

(i) the member was not connected at any time in the year with an employer who participates in the plan, and

(ii) the aggregate of all amounts each of which is the remuneration of the member for the year from an employer who participates in the plan did not exceed 2½ times the Year's Maximum Pensionable Earnings for the year; and

(f) the aggregate of all amounts each of which is a provisional PSPA of the member associated with the past service event does not exceed ½ of the money purchase limit for the year in which the past service event occurs.

Related Provisions: Reg. 8306(4) — Meaning of active member and specified active member.

(4) For the purposes of this section as it applies in respect of a past service event,

(a) a member of a pension plan is an active member under a defined benefit provision of the plan if

(i) lifetime retirement benefits accrue under the provision to the member in respect of a period that immediately follows the time the past service event occurs, or

(ii) the member is entitled, immediately after the time the past service event occurs, to lifetime retirement benefits under the provision in respect of a

period before that time and it is reasonable to expect, at that time, that lifetime retirement benefits will accrue under the provision to the member in respect of a period after that time; and

(b) an active member under a defined benefit provision of a pension plan is a specified active member under the provision if

(i) the member is connected, at the time of the past service event, with an employer who participates in the plan, or

(ii) it is reasonable to expect, at the time of the past service event, that the aggregate of all amounts each of which is the remuneration of the member for the calendar year in which the past service event occurs from an employer who participates in the plan will exceed 2½ times the Year's Maximum Pensionable Earnings for the year.

Related Provisions: Reg. 8300(7) — Benefits include contingent benefits.

Definitions [Reg. 8306]: "active member" — Reg. 8306(4)(a); "amount" — ITA 248(1); "associated" — ITA 256; "benefits" — Reg. 8300(7); "employer" — ITA 248(1); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "past service event" — Reg. 8300(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "registered pension plan" — ITA 248(1); "specified active member" — Reg. 8306(4)(b); "writing" — *Interpretation Act* 35(1).

Forms: T215 Segment; T215 Summ: Summary of past service pension adjustments exempt from certification; T215 Supp: Past service pension adjustment exempt from certification.

8307. Certification in respect of past service events — (1) Application for certification — Application for a certification of the Minister for the purposes of subsection 147.1(10) of the Act shall be made in prescribed form by the administrator of the registered pension plan to which the certification relates.

Forms: T1004: Application for certification of a provisional past service pension adjustment.

(2) Prescribed condition — For the purposes of subsection 147.1(10) of the Act in respect of a past service event and benefits with respect to a particular member of a registered pension plan, the prescribed condition is that, at the particular time the Minister issues the certification,

(a) the aggregate of all amounts each of which is the member's provisional PSPA with respect to an employer associated with the past service event

does not exceed

(b) the amount determined by the formula

$$\$8{,}000 + A + B + C - D + R$$

where

A is the member's unused RRSP deduction room at the end of the year immediately preceding the calendar year (in this paragraph referred to as the "particular year") that includes the particular time,

B is the amount of the member's qualifying withdrawals made for the purposes of the certification, determined as of the particular time,

C is the amount of the member's PSPA withdrawals for the particular year, determined as of the particular time, and

D is the aggregate of all amounts each of which is the accumulated PSPA of the member for the particular year with respect to an employer, determined as of the particular time.

R is the total of all amounts each of which is a PAR determined in connection with the individual's termination in the particular year from a deferred profit sharing plan, or from a benefit provision of a registered pension plan, and in respect of which an information return has been filed under section 8402.01 with the Minister before the particular time.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8304.1(2) — Termination during 1997 deemed to be in 1998; Reg. 8307(3) — Meaning of qualifying withdrawals; Reg. 8307(5) — PSPA withdrawals.

History: The formula amended, and the description of R added, in para. 8307(2)(b) by P.C. 1998-2256, subsecs. 9(1), (2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the 1998 and subsequent calendar years.

(3) Qualifying withdrawals — For the purposes of paragraph (5)(a) and the description of B in paragraph (2)(b), the amount of an individual's qualifying withdrawals made for the purposes of a certification in respect of a past service event, determined as of a particular time, is the lesser of

(a) the aggregate of all amounts each of which is such portion of an amount withdrawn by the individual from a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by subsection 146(1) of the Act) at the time of the withdrawal as

(i) is eligible, pursuant to subsection (4), to be designated for the purposes of the certification, and

(ii) is designated by the individual for the purposes of the certification by filing a prescribed form containing prescribed information with the Minister before the particular time, and

(b) the amount, if any, by which

(i) the aggregate of all amounts each of which is the provisional PSPA of the individual with respect to an employer associated with the past service event

exceeds

(ii) the amount, positive or negative, determined by the formula

$$A + C - D + R$$

where A, C, D and R have the same values as they have at the particular time for the purposes of the formula in paragraph (2)(b).

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subpara. 8307(3)(b)(ii) amended to add formula element R by P.C. 1998-2256, subsec. 9(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to the 1998 and subsequent calendar years.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Forms: T1006: Designating an RRSP withdrawal as a qualifying withdrawal.

(4) Eligibility of withdrawn amount for designation — An amount withdrawn by an individual from a registered retirement savings plan is eligible to be designated for the purposes of a certification, except to the extent that the following rules provide otherwise:

(a) the amount is not eligible to be designated if the amount was

(i) withdrawn from a registered retirement savings plan in a calendar year other than the year in which the designation would be filed with the Minister or

either of the 2 immediately preceding calendar years, or

(ii) withdrawn in circumstances that entitle the individual to a deduction under paragraph 60(l) of the Act; and

(b) the amount is not eligible to be designated to the extent that the amount was

(i) designated by the individual for the purposes of any other certification, or

(ii) deducted under section 60.2 or subsection 146(8.2) of the Act in computing the individual's income for any taxation year.

Proposed Amendment — Reg. 8307(4)(b)(ii)

(ii) deducted under section 60.2 or subsection 146(8.2) or 147.3(13.1) of the Act in computing the individual's income for any taxation year.

Application: The April 18, 2000 draft regulations (RPPs), subsec. 4(1), will amend subpara. 8307(4)(b)(ii) to read as above applicable to 1992 *et seq.*

Technical Notes: Section 8307 of the Regulations contains several rules that apply for the purposes of a certification of a provisional PSPA. In some cases, it may be necessary for an individual to withdraw RRSP funds in order for the CCRA to issue a certification of a provisional PSPA. Subsection 8307(4) contains rules limiting the extent to which an RRSP withdrawal may be designated for the purposes of a certification. These rules provide, in part, that a withdrawal is not eligible to be designated to the extent that the individual has claimed a deduction in respect of the withdrawal under certain provisions of the Act.

Paragraph 8307(4)(b) is amended to add a reference to subsection 147.3(13.1) of the Act. Subsection 147.3(13.1) enables an individual on whose behalf an excess transfer has been made to an RRSP or RRIF, and who withdraws the excess or another amount from an RRSP or RRIF, to deduct the withdrawn amount in order to offset the income inclusion resulting from the withdrawal. The amendment to paragraph 8307(4)(b) ensures that an RRSP withdrawal is not eligible to be designated for the purposes of a PSPA certification if the individual has claimed a deduction under subsection 147.3(13.1) in respect of the withdrawal.

This amendment, which applies to 1992 and subsequent years, is consequential to the introduction of subsection 147.3(13.1).

(5) PSPA withdrawals — For the purposes of the description of C in paragraph (2)(b) and the description of G in the definition "net past service pension adjustment" in subsection 146(1) of the Act, the amount of an individual's PSPA withdrawals for a calendar year, determined as of a particular time, is

(a) if the Minister has issued, in the year and before the particular time, a certification for the purposes of subsection 147.1(10) of the Act with respect to the individual, the aggregate of all amounts each of which is the amount of the individual's qualifying withdrawals made for the purposes of a certification that the Minister has issued in the year and before the particular time; and

(b) in any other case, nil.

Related Provisions: Reg. 8307(3) — Meaning of qualifying withdrawals.

History: The opening words of subsec. 8307(5) amended by P.C. 1998-2256, subsec. 9(4), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(6) Prescribed withdrawal — For the purposes of subsection (7) and subsection 146(8.2) of the Act, a prescribed withdrawal is such portion of an amount withdrawn by an individual from a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1) of the Act) as is designated in accordance with subparagraph (3)(a)(iii)[1] for the purposes of a certification in respect of the individual.

Proposed Amendment — Reg. 8307(6)

(6) Prescribed withdrawal — For the purposes of subsection (7) and subsections 146(8.2) and 147.3(13.1) of the Act, a prescribed withdrawal is the portion of an amount withdrawn by an individual from a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1) of the Act) that is designated in accordance with subparagraph (3)(a)(ii) for the purposes of a certification in respect of the individual.

Application: The April 18, 2000 draft regulations (RPPs), subsec. 4(2), will amend subsec. 8307(6) to read as above, applicable to 1992 *et seq.*

Technical Notes: Subsections 146(8.2) and 147.3(13.1) of the Act provide deductions in certain circumstances where an overcontribution to an RRSP, or an excess transfer to an RRSP or RRIF, is subsequently withdrawn. The subsections are intended to provide relief from double taxation. As an exception, the deduction is not available in the case of prescribed withdrawals. Subsection 8307(6) of the Regulations defines a prescribed withdrawal as an amount withdrawn by a taxpayer from an RRSP and designated for the purposes of a PSPA certification.

As subsection 8307(6) currently applies only for the purpose of subsection 146(8.2), it is amended so that it also applies for the purpose of subsection 147.3(13.1). The combined result of subsections 8307(4) and (6) of the Regulations and subsections 146(8.2) and 147.3(13.1) of the Act is that an RRSP withdrawal may be either deducted in computing income (where subsection 146(8.2) or 147.3(13.1) applies) or designated for the purposes of a PSPA certification, but not both.

This amendment, which applies to 1992 and subsequent years, is consequential to the introduction of subsection 147.3(13.1).

History: Subsec. 8307(6) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1990.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans; IT-528: Transfers of funds between registered plans.

(7) Prescribed premium — For the purpose of subsection 146(6.1) of the Act, a premium paid by a taxpayer under a registered retirement savings plan under which the taxpayer is the annuitant (within the meaning assigned by subsection 146(1) of the Act) at the time the premium is paid is a prescribed premium for a particular taxation year of the taxpayer where the following conditions are satisfied:

(a) the taxpayer withdrew an amount (in this subsection referred to as the "withdrawn amount") in the particular year from a registered retirement savings plan for the purposes of a certification in respect of a past service event;

(b) all or part of the withdrawn amount is a prescribed withdrawal pursuant to subsection (6);

[1] *Sic*. Should read (3)(a)(ii) — ed.

(c) it is subsequently determined that

(i) as a consequence of reasonable error, the taxpayer withdrew a greater amount than necessary for the purposes of the certification, or

(ii) as a consequence of the application of paragraph 147.1(3)(b) of the Act, it was not necessary for the taxpayer to withdraw any amount;

(d) the premium is paid by the taxpayer in the 12-month period immediately following the time at which the determination referred to in paragraph (c) is made;

(e) the amount of the premium does not exceed such portion of the withdrawn amount as is a prescribed withdrawal pursuant to subsection (6) and is determined to have been an unnecessary withdrawal;

(f) the taxpayer files with the Minister, on or before the day on or before which the taxpayer is required (or would be required if tax under Part I of the Act were payable by the taxpayer for the taxation year in which the taxpayer pays the premium) by section 150 of the Act to file a return of income for the taxation year in which the taxpayer pays the premium, a written notice in which the taxpayer designates the premium as a recontribution of all or any portion of the withdrawn amount; and

(g) the taxpayer has not designated, pursuant to paragraph (f), any other premium as a recontribution of all or any portion of the withdrawn amount.

History: Subsec. 8307(7) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable to 1991 *et seq.*

Definitions [Reg. 8307]: "accumulated PSPA" — Reg. 8303(1)(a), 8303(2); "amount" — ITA 248(1); "associated" — ITA 256; "employer", "individual", "Minister" — ITA 248(1); "particular year" — Reg. 8307(2)(b)(A); "past service event" — Reg. 8300(1); "prescribed" — ITA 248(1); "prescribed withdrawal" — Reg. 8307(6), "PSPA withdrawal" — Reg. 8307(5); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "qualifying withdrawal" — Reg. 8307(3); "registered pension plan" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "unused RRSP deduction room" — ITA 146(1), 248(1); "withdrawn amount" — Reg. 8307(7)(a); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

8308. Special rules — (1) Benefits provided before registration — For the purposes of this Part and subsection 147.1(10) of the Act, benefits that became provided under a defined benefit provision of a pension plan before the day as of which the plan becomes a registered pension plan shall be deemed to have become provided as a consequence of an event occurring on that day and not to have been provided before that day.

(2) Prescribed amount for connected persons — Where

(a) at any particular time in a calendar year after 1990,

(i) an individual becomes a member of a registered pension plan, or

(ii) lifetime retirement benefits commence to accrue to the individual under a defined benefit provision of a registered pension plan following a period in which lifetime retirement benefits did not accrue to the individual,

(b) the individual is connected at the particular time, or was connected at any time after 1989, with an employer who participates in the plan for the benefit of the individual,

(c) the individual did not have a pension adjustment for 1990 that was greater than nil, and

(d) this subsection did not apply before the particular time to prescribe an amount with respect to the individual,

an amount equal to the lesser of $11,500 and 18 per cent of the individual's earned income (within the meaning assigned by paragraph 146(1)(c) [146(1)"earned income"] of the Act) for 1990 is prescribed with respect to the individual for the year for the purpose of the descriptions of B in paragraphs 146(1)(g.1) and (l) [146(1)"RRSP deduction limit" and "unused RRSP deduction room"] and section 204.2(1.1) of the Act.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

(3) Remuneration for prior years — Where an individual who is entitled to benefits under a defined benefit provision of a registered pension plan receives remuneration at a particular time in a particular calendar year no part of which is pensionable service of the individual under the provision and the remuneration is treated for the purpose of determining benefits under the provision as if it were remuneration received in one or more calendar years preceding the particular calendar year for services rendered in those preceding years, the following rules apply:

(a) such portion of the remuneration as is treated under the provision as if it were remuneration received in a preceding calendar year for services rendered in that preceding year shall be deemed, for the purpose of determining, as of the particular time and any subsequent time, a redetermined benefit entitlement of the individual under the provision, to have been received in that preceding year for services rendered in that preceding year; and

(b) the pension credit of the individual for the particular year under the provision with respect to an employer is the aggregate of

(i) the amount that would otherwise be the individual's pension credit for the particular year, and

(ii) the amount that would, if the payment of the remuneration were a past service event, be the provisional PSPA (or a reasonable estimate thereof determined in a manner acceptable to the Minister) of the individual with respect to the employer that is associated with the payment of the remuneration.

Related Provisions: Reg. 8300(7)) — Benefits include contingent benefits.

(4) Period of reduced services — retroactive benefits — Where,

(a) as a consequence of a past service event, retirement benefits (in this subsection referred to as "retroactive benefits") become provided under a defined benefit provision of a registered pension plan (other than a plan that is a specified multi-employer plan) to an individual in respect of a period of reduced services of the individual,

(b) the period of reduced services was not, before the past service event, pensionable service of the individual under the provision, and

(c) the past service event occurs on or before April 30 of the year immediately following the calendar year in which ends the complete period of reduced services of the individual that includes the period of reduced services,

the following rules apply:

(d) each pension adjustment of the individual with respect to an employer for a year before the calendar year in which the past service event occurs shall be deemed to be, and to always have been, the aggregate of

(i) the amount that would otherwise be the individual's pension adjustment with respect to the employer for the year, and

(ii) such portion of the provisional PSPA of the individual with respect to the employer that is associated with the past service event as may reasonably be considered to be attributable to the provision of retroactive benefits in respect of the year, and

(e) each provisional PSPA of the individual with respect to an employer that is associated with the past service event shall be deemed (except for the purposes of this subsection) to be such portion of the amount that would otherwise be the individual's provisional PSPA as may reasonably be considered not to be attributable to the provision of retroactive benefits.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 23–25.

(5) Period of reduced services — retroactive contributions — Where

(a) a contribution (in this subsection referred to as a "retroactive contribution") is made by an individual, or by an employer with respect to the individual, under a money purchase provision of a registered pension plan in respect of a period in a particular calendar year that is a period of reduced services of the individual, and

(b) the retroactive contribution is made after the particular year and on or before April 30 of the year immediately following the calendar year in which ends the complete period of reduced services of the individual that includes the period of reduced services,

the following rules apply:

(c) each pension adjustment of the individual for the particular year with respect to an employer shall be deemed to be, and to always have been, the amount that it would have been had the retroactive contribution been made at the end of the particular year, and

(d) the retroactive contribution shall be deemed, for the purpose of determining pension adjustments of the individual for any year after the particular year, to have been made at the end of the particular year and not to have been made at any subsequent time.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 23–25.

(6) Commitment to make retroactive contributions — Where

(a) an individual enters into a written commitment to make a contribution under a money purchase provision of a registered pension plan,

(b) the commitment is made to the administrator of the plan or to an employer who participates in the plan, and

(c) the rules in subsection (5) would apply in respect of the contribution if the contribution were made at the time at which the individual enters into the commitment,

the following rules apply for the purposes of this Part:

(d) the individual shall be deemed to have made the contribution to the plan at the time at which the individual enters into the commitment,

(e) if the individual subsequently pays all or a part of the contribution to the plan pursuant to the commitment, the amount paid to the plan is, for the purposes of paragraphs 8301(4)(a) and (8)(e), a contribution described in this paragraph,

(f) any contribution that an employer is required to make under the money purchase provision conditional on the individual making the contribution that the individual has committed to pay and in respect of which subsection (5) would apply if the contribution were made by the employer at the time the individual enters into the commitment shall be deemed to have been made by the employer at that time, and

(g) if an employer subsequently pays to the plan all or a part of a contribution in respect of which paragraph (f) applies, the amount paid to the plan is, for the purposes of paragraph 8301(4)(a), a contribution described in this paragraph.

History: Paras. 8308(6)(e) and (g) amended by P.C. 1995-17, s. 6, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to amounts paid to registered pension plans after 1989.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 23–25.

(7) Loaned employees — Where, pursuant to an arrangement between an employer (in this subsection referred to as the "lending employer") who is a participating employer in relation to a pension plan and an employer (in this subsection referred to as the "borrowing employer") who, but for this subsection, would not be a participating employer in relation to the plan,

(a) an employee of the lending employer renders services to the borrowing employer for which the employee receives remuneration from the borrowing employer, and

(b) while the employee renders services to the borrowing employer, benefits continue to accrue under a defined benefit provision of the plan to the employee, or the lending employer continues to make contributions under a money purchase provision of the plan with respect to the employee,

the following rules apply:

(c) for the purpose of the definition "participating employer" in subsection 147.1(1) of the Act as it applies in respect of the plan, the borrowing employer is a prescribed employer,

(d) the determination, for the purposes of this Part, of the portion of the employee's benefit accrual under a defined benefit provision of the plan in respect of a year that can reasonably be considered to be attributable to the employee's employment with each of the lending and borrowing employers shall be made with regard to the remuneration received by the employee for the year from each employer, and

(e) such portion of the contributions made under a money purchase provision of the plan by the lending employer as may reasonably be considered to be in respect of the employee's remuneration from the bor-

rowing employer shall be deemed, for the purposes of this Part, to be contributions made by the borrowing employer.

Related Provisions: Reg. 8507(5)E(a) — Additional compensation fraction.

(8) Successor plans — Notwithstanding any other provisions of this Part, other than section 8310, where

(a) all benefits with respect to an individual under a defined benefit provision (in this subsection referred to as the "former provision") of a registered pension plan are replaced in a calendar year by identical benefits under a defined benefit provision of another registered pension plan,

(b) the replacement of benefits is consequent on a transfer of the individual's employment from one employer (in this subsection referred to as the "former employer") to another employer (in this subsection referred to as the "successor employer"), and

(c) the Minister consents in writing to the application of this subsection in respect of that replacement of benefits,

the individual's pension adjustments for the year with respect to the former employer and the successor employer shall be the amounts that they would be if all benefits with respect to the individual under the former provision had been attributable to employment with the successor employer and not to employment with the former employer.

(9) Special downsizing benefits — Where

(a) lifetime retirement benefits that do not comply with the condition in paragraph 8503(3)(a) are provided to an individual under a defined benefit provision of a registered pension plan, and

(b) the benefits are permissible only by reason of subsection 8505(3),

each pension credit of the individual under the provision and each provisional PSPA of the individual shall be determined without regard to the lifetime retirement benefits.

Definitions [Reg. 8308]: "amount" — ITA 248(1); "associated" — ITA 256; "benefits" — Reg. 8300(7); "borrowing employer" — Reg. 8308(7); "complete period of reduced services" — Reg. 8300(1); "contribution" — Reg. 8300(8), 8302(11), (12); "employee", "employer", "employment" — ITA 248(1); "former employer" — Reg. 8308(8)(b); "former provision" — Reg. 8308(8)(a); "individual" — ITA 248(1); "lending employer" — Reg. 8308(7); "lifetime retirement benefits" — Reg. 8304(5)(c); "Minister" — ITA 248(1); "past service event" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "period of reduced services" — Reg. 8300(1); "prescribed" — ITA 248(1); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e); "registered pension plan" — ITA 248(1); "retroactive benefits" — Reg. 8308(4)(a); "retroactive contribution" — Reg. 8308(5)(a); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "successor employer" — Reg. 8308(8)(b); "written" — *Interpretation Act* 35(1)"writing".

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

8308.1 Foreign plans — (1) Definitions — In this section, "foreign plan" means a plan or arrangement (determined without regard to subsection 207.6(5) of the Act) that would, but for paragraph (l) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act, be a retirement compensation arrangement.

(2) Pension credit — Subject to subsections (3) to (4.1), the pension credit of an individual for a calendar year with respect to an employer under a foreign plan is

(a) where paragraph (b) does not apply, nil; and

(b) where

(i) the year is 1992 or a subsequent year,

(ii) the individual became entitled in the year, either absolutely or contingently, to benefits under the foreign plan in respect of services rendered to the employer in a period throughout which the individual was resident in Canada and rendered services to the employer that were primarily services rendered in Canada or services rendered in connection with a business carried on by the employer in Canada, or a combination of those services,

(iii) the individual continued to be entitled at the end of the year, either absolutely or contingently, to all or part of the benefits, and

(iv) either

(A) no contribution was made under the foreign plan in the year in respect of the individual, except where

(I) no contribution was made because the foreign plan had an actuarial surplus, and

(II) had a contribution been made in respect of the benefits referred to in subparagraph (ii), it would have been a resident's contribution (as defined in subsection 207.6(5.1) of the Act), or

(B) a contribution that is not a resident's contribution was made under the foreign plan in the year in respect of the individual,

the lesser of

(v) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds the PA offset for the year, and

(vi) the amount by which the money purchase limit for the year exceeds the PA offset for the year.

History: The opening words of subsec. 8308.1(2) and the portion of para. 8308.1(2)(b) after subpara. (iv) amended by P.C. 1998-2256, subsecs. 10(1), (2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable applicable after 1991.

(3) Pension credit — alternative determination — Subject to subsection (4), where the Minister has, on the written application of an employer, approved in writing a method for determining pension credits for a year with respect to the employer under a foreign plan, the pension credits shall be determined in accordance with that method.

(4) Pension credits for 1992, 1993 and 1994 — The pension credit of an individual for 1992, 1993 or 1994 with respect to an employer under a foreign plan is the lesser of

(a) the amount that would, but for this subsection, be determined as the pension credit for the year, and

(b) the amount, if any, by which the lesser of

(i) 18% of the amount that would be the individual's compensation from the employer for the year if the definition "compensation" in subsection 147.1(1) of the Act were read without reference to paragraphs (b) and (c) of that definition, and

(ii) the money purchase limit for the year

exceeds the total of

(iii) $1,000, and

(iv) the amount that would be the pension adjustment of the individual for the year with respect to the employer if subsection 8301(1) were read without reference to paragraph (b) of that subsection.

(4.1) Pension credits — 1996 to 2003 — For the purpose of determining the pension credit of an individual for a calendar year after 1995 and before 2004 with respect to an employer under a foreign plan, subparagraph (2)(b)(vi) shall be read as

"(vi) the money purchase limit for the year.".

History: Subsec. 8308.1(4.1) added by P.C. 1998-2256, subsec. 10(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

(5) Foreign plan PSPA — Subject to subsection (6), where the benefits to which an individual is entitled, either absolutely or contingently, under a foreign plan are modified, the foreign plan PSPA of the individual with respect to an employer associated with the modification of benefits is the amount, if any, by which

(a) the total of all amounts each of which is the amount that, if this section were read without reference to subsection (3), would be the pension credit of the individual with respect to the employer under the foreign plan for a calendar year before the year in which the individual's benefits are modified

exceeds the total of all amounts each of which is

(b) the pension credit of the individual with respect to the employer under the foreign plan for a calendar year before the year in which the individual's benefits are modified, or

(c) the foreign plan PSPA of the individual with respect to the employer associated with a previous modification of the individual's benefits under the foreign plan.

(6) Foreign plan PSPA — alternative determination — Where the Minister has, on the written application of an employer, approved in writing a method for determining the foreign plan PSPA of an individual with respect to the employer associated with a modification of the individual's benefits under a foreign plan, the individual's foreign plan PSPA shall be determined in accordance with that method.

History: S. 8308.1 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991.

Definitions [Reg. 8308.1]: "amount" — ITA 248(1); "associated" — ITA 256; "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "contribution" — Reg. 8300(8), 8302(11), (12); "employer" — ITA 248(1); "foreign plan" — Reg. 8308.1(1); "individual", "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8308.1(2); "resident" — ITA 250; "resident compensation" — Reg. 8300(1); "resident in Canada" — ITA 250; "retirement compensation arrangement" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

8308.2 Prescribed amount for member of foreign plan — (1) Prescribed amount — Where

(a) throughout a period in a particular calendar year after 1992 an individual resident in Canada rendered services to an employer, other than services that were primarily services rendered in Canada or services rendered in connection with a business carried on by the employer in Canada, or a combination of those services,

(b) the individual became entitled in the particular year, either absolutely or contingently, to benefits under a pension plan that is a foreign plan (as defined in subsection 8308.1(1)) in respect of the services, and

(c) the individual continued to be entitled at the end of the particular year, either absolutely or contingently, to all or part of the benefits,

subject to subsection (2), there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act, the lesser of

(d) the amount by which the money purchase limit for the particular year exceeds the PA offset for the particular year, and

(e) 10% of the portion of the individual's resident compensation from the employer for the particular year that is attributable to services rendered by the individual to the employer in periods throughout which the individual rendered services described in paragraph (a).

(2) Prescribed amounts — 1997 to 2004 — For the purpose of determining the amount prescribed under subsection (1) in respect of an individual for a calendar year after 1996 and before 2005, paragraph (d) of that subsection shall be read as:

"(d) the money purchase limit for the particular year, and".

History [Reg. 8308.2]: S. 8308.2 amended and renumbered as subsec. (1), and subsec. (2) added, by P.C. 1998-2256, s. 11, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

S. 8308.2 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991.

Definitions [Reg. 8308.2]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "employer", "individual" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "prescribed" — ITA 248(1); "resident compensation" — Reg. 8300(1); "resident in Canada" — ITA 250.

8308.3 Specified retirement arrangements — (1) Definition — In this section, "specified retirement arrangement" means, in respect of an individual and an employer, a plan or arrangement under which payments that are attributable to the individual's employment with the employer are to be, or may be, made to or for the benefit of the individual after the termination of the individual's employment with the employer, but does not include

(a) a plan or arrangement referred to in any of paragraphs (a) to (k), (m) and (n) of the definition "retirement compensation arrangement" in subsection 248(1) of the Act;

(b) [Repealed]

(c) a plan or arrangement that does not provide in any circumstances for payments to be made to or for the benefit of the individual after the later of the last day of the calendar year in which the individual attains 69 years of age and the day that is 5 years after the day of termination of the individual's employment with the employer;

(d) a plan or arrangement (in this paragraph referred to as the "arrangement") that is, or would be, but for paragraph (l) of the definition "retirement compensation

arrangement" in subsection 248(1) of the Act, a retirement compensation arrangement where

(i) the funding of the arrangement is subject to the *Pension Benefits Standards Act, 1985* or a similar law of a province, or

(ii) the arrangement is funded substantially in accordance with the funding requirements that would apply if the arrangement were subject to the *Pension Benefits Standards Act, 1985*;

(e) a plan or arrangement that is deemed by subsection 207.6(6) of the Act to be a retirement compensation arrangement; or

(f) an arrangement established by the *Judges Act* or the *Lieutenant Governors Superannuation Act*.

History: Paras. 8308.3(1)(a) and (c) amended, para. 8308.3(1)(b) repealed, by P.C. 1998-2256, subsecs. 12(1)–(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, para. (a) and the repeal applicable after 1991; para. (c) applicable after 1997, except that the amendment does not apply in respect of an individual who attained 69 years of age before 1998.

(2) Pension credit — Subject to subsections (3) and (3.1), the pension credit of an individual for a calendar year with respect to an employer under a specified retirement arrangement is

(a) where paragraph (b) does not apply, nil; and

(b) where

(i) the year is 1993 or a subsequent year,

(ii) the employer is, at any time in the year,

(A) a person who is exempt, because of section 149 of the Act, from tax under Part I of the Act on all or part of the person's taxable income, or

(B) the Government of Canada or the government of a province,

(iii) the individual became entitled in the year, either absolutely or contingently, to benefits under the arrangement in respect of employment with the employer,

(iv) at the end of the year, the individual is entitled, either absolutely or contingently, to benefits under the arrangement, and

(v) the amount determined by the formula

$$0.85A - B$$

is greater than nil where

A is the lesser of

(A) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds the PA offset for the year, and

(B) the amount by which the money purchase limit for the year exceeds the PA offset for the year, and

B is the amount that would be the pension adjustment of the individual for the year with respect to the employer if subsection 8301(1) were read without reference to paragraph (c) of that subsection,

the amount that would be determined by the formula in subparagraph (v) if the reference to "0.85" in the formula were replaced by a reference to "1".

Related Provisions: ITA 257 — Negative amounts in formulas.

History: The opening words of subsec. 8308.3(2) and the portion of subpara. 8308.3(2)(b)(v) before the description of B amended by P.C. 1998-2256, subsecs. 12(4), (5), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

(3) Pension credit — alternative determination — Where the Minister has, on the written application of an employer, approved in writing a method for determining pension credits for a year with respect to the employer under a specified retirement arrangement, the pension credits shall be determined in accordance with that method.

(3.1) Pension credits — 1996 to 2003 — For the purpose of determining the pension credit of an individual for a calendar year after 1995 and before 2004 with respect to an employer under a specified retirement arrangement, the portion of paragraph (2)(b) after subparagraph (iv) shall be read as

"(v) the amount determined by the formula

$$0.85A - B$$

is greater than nil where

A is the lesser of

(A) the amount, if any, by which 18% of the individual's resident compensation from the employer for the year exceeds the PA offset for the year, and

(B) the amount by which $15,500 exceeds the PA offset for the year, and

B is the amount that would be the pension adjustment of the individual for the year with respect to the employer if subsection 8301(1) were read without reference to paragraph (c),

the amount that would be determined by the formula in subparagraph (v) if

(vi) the reference to "0.85A" in that formula were read as a reference to "A", and

(vii) clause (B) of the description of A in that subparagraph were read as

"(B) the money purchase limit for the year, and".".

Related Provisions: ITA 257 — Negative amounts in formulas.

History: Subsec. 8308.3(3.1) added by P.C. 1998-2256, subsec. 12(6), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1991.

(4) Specified retirement arrangement PSPA — Subject to subsection (5), where the benefits to which an individual is entitled, either absolutely or contingently, under a specified retirement arrangement are modified, the specified retirement arrangement PSPA of the individual with respect to an employer associated with the modification of benefits is the amount, if any, by which

(a) the total of all amounts each of which is the amount that, if this section were read without reference to subsection (3), would be the pension credit of the individual with respect to the employer under the arrangement for a calendar year before the year in which the individual's benefits are modified

exceeds the total of all amounts each of which is

(b) the pension credit of the individual with respect to the employer under the arrangement for a calendar year before the year in which the individual's benefits are modified, or

(c) the specified retirement arrangement PSPA of the individual with respect to the employer associated

with a previous modification of the individual's benefits under the arrangement.

(5) Specified retirement arrangement PSPA — alternative determination — Where the Minister has, on the written application of an employer, approved in writing a method for determining the specified retirement arrangement PSPA of an individual with respect to the employer associated with a modification of the individual's benefits under a specified retirement arrangement, the individual's specified retirement arrangement PSPA shall be determined in accordance with that method.

History: S. 8308.3 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991, except that, for the purpose of applying, before 1996, the definition "specified retirement arrangement" in subsec. (1), the definition shall be read with the following para. added after para. (a):

> (a.1) an unfunded plan or arrangement that is maintained primarily for the benefit of non-residents in respect of services rendered outside Canada,

Definitions [Reg. 8308.3]: "amount" — ITA 248(1); "arrangement" — Reg. 8308.3(1)(d); "associated" — ITA 256; "Canada" — ITA 255, *Interpretation Act* 35(1); "employer", "employment" — ITA 248(1); "Governor" — *Interpretation Act* 35(1); "individual", "Minister" — ITA 248(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "pension adjustment" — Reg. 8308(5)(c), 8308(8); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident compensation" — Reg. 8300(1); "retirement compensation arrangement", "taxable income" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

8308.4 Government-sponsored retirement arrangements — (1) Definitions — The definitions in this subsection apply in this section.

"administrator" means, in respect of a government-sponsored retirement arrangement, the government or other entity that has ultimate responsibility for the administration of the arrangement.

"government-sponsored retirement arrangement" means a plan or arrangement established to provide pensions directly or indirectly from the public money of Canada or a province to one or more individuals each of whom renders services in respect of which amounts that are included in computing the income from a business of any person or partnership are paid directly or indirectly from the public money of Canada or a province.

(2) Prescribed amount — Where

> (a) in a particular calendar year after 1992 an individual renders services in respect of which an amount that is included in computing the income from a business of any person was payable directly or indirectly by the Government of Canada or of a province, and
>
> (b) at the end of the particular year, the individual is entitled, either absolutely or contingently, to benefits under a government-sponsored retirement arrangement that provides benefits in connection with such services,

there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act,

> (c) where the particular year is before 1996, the amount by which the RRSP dollar limit for that following year exceeds $1,000, and
>
> (d) in any other case, the RRSP dollar limit for that following year.

History: Subsec. 8308.4(2) amended by P.C. 1998-2256, s. 13, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1992.

S. 8308.4 added by P.C. 1996-911, s. 8, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

Definitions [Reg. 8308.4]: "administrator" — Reg. 8308.4(1); "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "government-sponsored retirement arrangement" — Reg. 8308.4(1); "individual" — ITA 248(1); "person", "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "RRSP dollar limit" — ITA 146(1), 248(1).

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

8309. Prescribed amount for lieutenant governors and judges — (1) Subject to subsection (3), where an individual is, at any time in a particular calendar year after 1989, a lieutenant governor of a province (other than a lieutenant governor who is not a contributor as defined in section 2 of the *Lieutenant Governors Superannuation Act*), there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act, the lesser of

> (a) the amount, if any, by which 18% of the salary received by the individual for the particular year as a lieutenant governor exceeds the PA offset for the particular year, and
>
> (b) the amount by which the money purchase limit for the particular year exceeds the PA offset for the particular year.

(2) Subject to subsection (3), where an individual is, at any time in a particular calendar year after 1990, a judge in receipt of a salary under the *Judges Act*, there is prescribed in respect of the individual for the year following the particular year, for the purposes of the descriptions of B in the definitions "RRSP deduction limit" and "unused RRSP deduction room" in subsection 146(1) of the Act and the description of B in paragraph 204.2(1.1)(b) of the Act, the lesser of

> (a) the amount, if any, by which 18% of the salary (other than salary that was not received under the *Judges Act*) received by the individual for the particular year as a judge exceeds the PA offset for the particular year, and
>
> (b) the amount by which the money purchase limit for the particular year exceeds the PA offset for the particular year.

(3) For the purpose of determining the amount prescribed under subsection (1) or (2) in respect of an individual for a calendar year after 1996 and before 2005, paragraphs (1)(b) and (2)(b) shall be read as:

> "(b) the money purchase limit for the particular year.".

History: S. 8309 amended by P.C. 1998-2256, s. 14, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1989.

Definitions [Reg. 8309]: "amount" — ITA 248(1); "Governor" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "lieutenant governor" — *Interpretation Act* 35(1); "money purchase limit" — ITA 147.1(1), 248(1); "PA offset" — Reg. 8300(1); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1).

8310. Minister's powers — (1) Where more than one method for determining an amount under this Part com-

plies with the rules in this Part, only such of those methods as are acceptable to the Minister shall be used.

(2) Where, in a particular case, the rules in this Part require the determination of an amount in a manner that is not appropriate having regard to the provisions of this Part read as a whole and the purposes for which the amount is determined, the Minister may permit or require the amount to be determined in a manner that, in the Minister's opinion, is appropriate.

(3) Where, pursuant to subsection (2), the Minister gives permission or imposes a requirement, the permission or requirement is not effective unless it is given or imposed in writing.

Definitions [Reg. 8310]: "amount", "Minister" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

8311. Rounding of amounts — Where a pension credit, provisional PSPA or PAR of an individual is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, if it is equidistant from 2 such consecutive multiples, to the higher of the two multiples.

History: S. 8311 amended by P.C. 1998-2256, s. 15, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996.

Definitions [Reg. 8311]: "individual" — ITA 248(1); "PAR" — Reg. 8304.1(1), (3)–(5); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "provisional PSPA" — Reg. 8303(2), (3), 8308(4)(e).

PART LXXXIV — RETIREMENT AND PROFIT SHARING PLANS — REPORTING AND PROVISION OF INFORMATION

History: The heading to Part LXXXIV amended by P.C. 1996-911, s. 9, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992. The heading formerly read: *Registered Plans — Reporting and Provision of Information.*

Part LXXXIV (ss. 8400–8410) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, ss. 8400 to 8405, 8409 and 8410 applicable after 1989 except that

(a) any return otherwise required to be filed under s. 8402 or 8403 or subsec. 8409(1) before the particular day that is 60 days after January 15, 1992 shall be deemed to have been filed as required if it is filed on or before the particular day;

(b) any copy of a return or form otherwise required under subsec. 8404(2) or (3) to be forwarded to an individual before the particular day that is 60 days after January 15, 1992 shall be deemed to have been forwarded as required if it is forwarded on or before the particular day;

(c) any return otherwise required by reason of s. 8405 to be filed before February 28, 1991 shall be deemed to have been filed as required if it is filed on or before February 28, 1991; and

(d) subsec. 8409(3) is applicable in respect of final distributions of property held in connection with registered pension plans where the distribution is made after 1989 and any return otherwise required to be filed under subsec. 8409(3) before the particular day that is 60 days after January 15, 1992 shall be deemed to have been filed as required if it is filed on or before the particular day.

8400. Definitions — **(1)** All words and expressions used in this Part that are defined in subsection 8300(1), 8308.4(1) or 8500(1) or in subsection 147.1(1) of the Act have the meanings assigned in those provisions.

History: Subsec. 8400(1) amended by P.C. 1996-911, s. 10, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

(2) A reference in this Part to a pension credit of an individual means a pension credit of the individual as determined under Part LXXXIII.

(3) For the purposes of this Part, where the administrator of a pension plan is not otherwise a person, the administrator shall be deemed to be a person.

Definitions [Reg. 8400]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "individual" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3), Reg. 8400(2); "person" — ITA 248(1), Reg. 8400(3).

8401. Pension adjustment — **(1)** Where the pension adjustment of an individual for a calendar year with respect to an employer is greater than nil, the employer shall, on or before the last day of February in the immediately following calendar year, file with the Minister an information return in prescribed form reporting the pension adjustment, other than the portion, if any, required by subsection (2) or (3) to be reported by the administrator of a registered pension plan.

(2) Where an individual makes a contribution in a particular calendar year to a registered pension plan that is a specified multi-employer plan in the year and the contribution is not remitted to the plan by any participating employer on behalf of the individual, the plan administrator shall, on or before the last day of February in the immediately following calendar year, file with the Minister an information return in prescribed form reporting the aggregate of all amounts each of which is the portion, if any, of the individual's pension adjustment for the particular year with respect to an employer that may reasonably be considered to result from the contribution.

(3) Where the portion of a pension credit of an individual for a calendar year that, pursuant to subsection (4), is reportable by the administrator of a registered pension plan is greater than nil, the administrator shall, on or before the last day of February in the immediately following calendar year, file with the Minister an information return in prescribed form reporting that portion of the pension credit.

(4) For the purpose of subsection (3), where, on application by the administrator of a registered pension plan that is, in a calendar year, a multi-employer plan (other than a specified multi-employer plan), the Minister consents in writing to the application of this subsection with respect to the plan in the year, such portion of each pension credit for the year under a defined benefit provision of the plan as may reasonably be considered to be attributable to benefits provided in respect of a period of reduced services or disability of an individual is, to the extent permitted by the Minister, reportable by the administrator.

(5) Subsections (1) to (3) do not apply to require the reporting of amounts with respect to an individual for the calendar year in which the individual dies.

(6) Where the pension adjustment of an individual for a calendar year with respect to an employer is altered by reason of the application of paragraph 8308(4)(d) or (5)(c) and the amount (in this subsection referred to as the "redetermined amount") that a person would have been required to report based on the pension adjustment as altered exceeds

(a) if the person has not previously reported an amount in respect of the individual's pension adjustment, nil, and

(b) otherwise, the amount reported by the person in respect of the individual's pension adjustment,

the person shall, within 60 days after the day on which paragraph 8308(3)(c) or (5)(c), as the case may be, ap-

plies to alter the pension adjustment, file with the Minister an information return in prescribed form reporting the redetermined amount.

Definitions [Reg. 8401]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount" — ITA 248(1); "contribution" — Reg. 8302(12); "defined benefit provision" — ITA 147.1(1); "employer", "individual", "Minister" — ITA 248(1); "multi-employer plan", "participating employer" — ITA 147.1(1); "pension adjustment" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3), Reg. 8400(2); "person" — ITA 248(1), Reg. 8400(3); "prescribed" — ITA 248(1); "redetermined amount" — Reg. 8401(6); "registered pension plan" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "writing" — *Interpretation Act* 35(1).

8402. Past service pension adjustment — **(1)** Where a provisional PSPA (computed under section 8303, 8304 or 8308) of an individual with respect to an employer that is associated with a past service event (other than a certifiable past service event) is greater than nil, the administrator of each registered pension plan to which the past service event relates shall, within 60 days after the day on which the past service event occurs, file with the Minister an information return in prescribed form reporting such portion of the aggregate of all amounts each of which is the individual's PSPA with respect to an employer that is associated with the past service event as may reasonably be considered to be attributable to benefits provided under the plan, except that a return is not required to be filed by an administrator if the amount that would otherwise be reported by the administrator is nil.

(2) Where a foreign plan PSPA (computed under subsection 8308.1(5) or (6)) of an individual with respect to an employer associated with a modification of benefits under a foreign plan (as defined by subsection 8308.1(1)) is greater than nil, the employer shall, on or before the last day of February in the year following the calendar year in which the individual's benefits were modified, file with the Minister an information return in prescribed form reporting the foreign plan PSPA.

(3) Where a specified retirement arrangement PSPA (computed under subsection 8308.3(4) or (5)) of an individual with respect to an employer associated with a modification of benefits under a specified retirement arrangement (as defined by subsection 8308.3(1)) is greater than nil, the employer shall, on or before the last day of February in the calendar year following the calendar year in which the individual's benefits were modified, file with the Minister an information return in prescribed form reporting the specified retirement arrangement PSPA.

History: S. 8402 renumbered as subsec. 8402(1) and subsecs. (2) and (3) added, by P.C. 1996-911, s. 11, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1991.

Definitions [Reg. 8402]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount" — ITA 248(1); "associated" — ITA 256; "certifiable past service event" — Reg. 8300(1); "employer", "individual", "Minister" — ITA 248(1); "past service event" — ITA 147.1(1), Reg. 8300(1); "prescribed", "registered pension plan" — ITA 248(1).

8402.01 Pension adjustment reversal — **(1) Deferred profit sharing plan** — Where the PAR determined in connection with an individual's termination from a deferred profit sharing plan is greater than nil, each trustee under the plan shall file with the Minister an information return in prescribed form reporting the PAR

(a) where the termination occurs in the first, second or third quarter of a calendar year, on or before the day that is 60 days after the last day of the quarter in which the termination occurs, and

(b) where the termination occurs in the fourth quarter of a calendar year, before February of the following calendar year,

and, for this purpose, an information return filed by a trustee under a deferred profit sharing plan is deemed to have been filed by each trustee under the plan.

Related Provisions: Reg. 8404(2) — Copy of return must be provided to taxpayer.

Forms: T10: Pension adjustment reversal; T10 Segment; T10 Summ: Summary of PARs.

(2) Deferred profit sharing plan — employer reporting — Where an amount included in an individual's pension credit in respect of an employer under a deferred profit sharing plan is included in determining a PAR in connection with the individual's termination from the plan, the employer is deemed to be a trustee under the plan for the purpose of reporting the PAR.

Related Provisions: Reg. 8404(2) — Copy of return must be provided to taxpayer.

(3) Benefit provision of a registered pension plan — Subject to subsection (4), where the PAR determined in connection with an individual's termination from a benefit provision of a registered pension plan is greater than nil, the administrator of the plan shall file with the Minister an information return in prescribed form reporting the PAR

(a) where the termination occurs in the first, second or third quarter of a calendar year, on or before the day that is 60 days after the last day of the quarter in which the termination occurs; and

(b) where the termination occurs in the fourth quarter of a calendar year, before February of the following calendar year.

Related Provisions: Reg. 8404(2) — Copy of return must be provided to taxpayer.

(4) Extended deadline — PA transfer amount — Where, in determining an individual's PAR in connection with the individual's termination from a defined benefit provision of a registered pension plan, it is reasonable for the administrator of the plan to conclude, on the basis of information provided to the administrator by the administrator of another pension plan or by the individual, that the value of D in paragraph 8304.1(5)(a) in respect of the termination may be greater than nil, the administrator shall file with the Minister an information return in prescribed form reporting the PAR, if it is greater than nil, on or before the later of

(a) the day on or before which it would otherwise be required to be filed; and

(b) the day that is 60 days after the earliest day on which the administrator has all the information required to determine that value.

(5) Calendar year quarter — For the purposes of this section,

(a) the first quarter of a calendar year is the period beginning on January 1 and ending on March 31 of the calendar year;

(b) the second quarter of a calendar year is the period beginning on April 1 and ending on June 30 of the calendar year;

(c) the third quarter of a calendar year is the period beginning on July 1 and ending on September 30 of the calendar year; and

(d) the fourth quarter of a calendar year is the period beginning on October 1 and ending on December 31 of the calendar year.

History [Reg. 8402.01]: S. 8402.01 added by P.C. 1998-2256, s. 16, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that any return otherwise required by s. 8402.01 to be filed before the particular day that is

(a) March 31, 1999, if the return is in connection with a termination in 1997 or 1998, or

(b) September 30, 1999, if the return is in connection with a termination in 1999,

is required to be filed on or before the particular day.

Definitions [Reg. 8402.01]: "administrator" — ITA 147.1(1); Reg. 8308.4(1); "benefit provision" — ITA 147.1(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — ITA 147.1(1); "individual", "Minister" — ITA 248(1); "PAR" — Reg. 8304.1(1), (3)–(5); "prescribed" — ITA 248(1); "quarter" — Reg. 4300; "registered pension plan" — ITA 248(1).

8402.1 Where an amount is prescribed by subsection 8308.4(2) in respect of an individual for a calendar year because of the individual's entitlement (either absolute or contingent) to benefits under a government-sponsored retirement arrangement (as defined in subsection 8308.4(1)), the administrator of the arrangement shall, on or before the last day of February in the year, file with the Minister an information return in prescribed form reporting the prescribed amount.

History: S. 8402.1 added by P.C. 1996-911, s. 12, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

Definitions [Reg. 8402.1]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount", "individual", "Minister", "prescribed" — ITA 248(1).

8403. Connected persons — Where, at any particular time after 1990,

(a) an individual becomes a member of a registered pension plan, or

(b) lifetime retirement benefits commence to accrue to the individual under a defined benefit provision of a registered pension plan following a period in which lifetime retirement benefits did not accrue to the individual,

each employer who participates in the plan for the benefit of the individual and with whom the individual is connected (within the meaning assigned by subsection 8500(3)) at the particular time, or was connected at any time after 1989, shall, within 60 days after the particular time, file with the Minister an information return in prescribed form containing prescribed information with respect to the individual unless the employer has previously filed an information return under this section with respect to the individual.

Definitions [Reg. 8403]: "defined benefit provision" — ITA 147.1(1); "employer", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "Minister", "prescribed", "registered pension plan" — ITA 248(1).

Registered Plans Division Newsletters: 98-1 (Simplified pension plans).

Forms: T1007: Connected person information return.

8404. Reporting to individuals — **(1)** Every person who is required by section 8401 or 8402.1 to file an information return with the Minister shall, on or before the day on or before which the return is required to be filed with the Minister, send to each individual to whom the return relates, two copies of the portion of the return that relates to the individual.

(2) Every person who is required by section 8402, 8402.01 or 8403 to file an information return with the Minister shall, on or before the day on or before which the return is required to be filed with the Minister, send to each individual to whom the return relates, one copy of the portion of the return that relates to the individual.

(3) Every person who obtains a certification from the Minister for the purposes of subsection 147.1(10) of the Act in respect of a past service event and an individual shall, within 60 days after receiving from the Minister the form submitted to the Minister pursuant to subsection 8307(1) in respect of the past service event and the individual, forward to the individual one copy of the form as returned by the Minister.

(4) Every person required by subsection (1), (2) or (3) to forward a copy of an information return or a form to an individual shall send the copy to the individual at the individual's last known address or shall deliver the copy to the individual in person.

History [Reg. 8404]: Subsecs. 8404(1) and (2) amended by P.C. 1998-2256, s. 17, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, subsec. 8404(1) applicable after 1992, and subsec. 8404(2) applicable after 1996.

Subsecs. 8404(1) and (2) amended by P.C. 1996-911, s. 13, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1992.

Definitions [Reg. 8404]: "individual", "Minister" — ITA 248(1); "past service event" — ITA 147.1(1), Reg. 8300(1); "person" — ITA 248(1), Reg. 8400(3).

8405. Discontinuance of business — Subsection 205(2) and section 206 are applicable, with such modifications as the circumstances require, in respect of returns required to be filed under this Part.

8406. Provision of information — **(1)** Where a person who is required to file an information return under section 8401 requires information from another person in order to determine an amount that is to be reported or to otherwise complete the return and makes a written request to the other person for the information, the other person shall provide the person with the information that is available to that other person,

(a) where the information return is required to be filed in the calendar year in which the request is received, within 30 days after receipt of the request; or

(b) in any other case, by January 31 of the year immediately following the calendar year in which the request is received.

(2) Where the administrator of a registered pension plan requires information from a person in order to determine a provisional PSPA of an individual under section 8303, 8304 or 8308 and makes a written request to the person for the information, the person shall, within 30 days after receipt of the request, provide the administrator with the information that is available to the person.

(3) Where the administrator of a registered pension plan requires information from a person in order to complete an information return required to be filed under section 8409 and makes a written request to the person for the information, the person shall, within 30 days after receipt of the request, provide the administrator with the information that is available to that person.

(4) Where a person requires information from another person in order to determine a PAR under section 8304.1 in connection with an individual's termination in a calen-

dar year from a deferred profit sharing plan or from a benefit provision of a registered pension plan (other than information that the other person is required to provide to the person under subsection (5)) and makes a written request to the other person for the information, the other person shall provide the person with the information that is available to the other person on or before

(a) if the request is received before December 17 of the year, the day that is 30 days after the day on which the request is received; and

(b) in any other case, the later of the day that is 15 days after the day on which the request is received and January 15 of the year following the year.

History: Reg. 8406(4) added by P.C. 1998-2256, s. 18, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that any information otherwise required by subsec. 8406(4) to be provided before March 7, 1999 is required to be provided on or before that day.

(5) Where benefits provided to an individual under a registered pension plan (in this subsection referred to as the "importing plan") as a consequence of a past service event result in a PA transfer amount in relation to the individual's termination from a defined benefit provision of another registered pension plan (in this subsection referred to as the "exporting plan"),

(a) the administrator of the importing plan shall, in writing on or before the day that is 30 days after the day on which the past service event occurred, notify the administrator of the exporting plan of the occurrence of the past service event and of its relevance in determining the individual's PAR in connection with the individual's termination from the defined benefit provision; and

(b) the administrator of the importing plan shall notify the administrator of the exporting plan of the PA transfer amount in writing on or before the day that is 60 days after

(i) in the case of a certifiable past service event, the day on which the Minister issues a certification for the purposes of subsection 147.1(10) of the Act in respect of the past service event and the individual, and

(ii) in any other case, the day on which the past service event occurred.

Related Provisions: Reg. 8304.1(10) — PA transfer amount; Reg. 8304.1(11) — Special 1997 PA transfer amount.

History: Reg. 8406(5) added by P.C. 1998-2256, s. 18, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that

(a) any notification otherwise required by para. 8406(5)(a) to be provided before September 30, 1998 is required to be provided on or before that date; and

(b) any notification otherwise required by para. 8406(5)(b) to be provided is required to be provided on or before March 7, 1999 (60 days after publication in the *Canada Gazette*).

Definitions [Reg. 8406]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "amount" — ITA 248(1); "certifiable past service event" — Reg. 8300(1); "defined benefit provision" — ITA 147.1(1); "exporting plan", "importing plan" — Reg. 8406(4); "individual", "Minister" — ITA 248(1); "PA transfer amount" — Reg. 8304.1(10), (11); "PAR" — Reg. 8304.1(1), (3)–(5); "past service event" — ITA 147.1(1), Reg. 8300(1); "person" — ITA 248(1), Reg. 8400(3); "registered pension plan" — ITA 248(1); "written" — *Interpretation Act* 35(1)"writing".

8407. Qualifying withdrawals — Where

(a) an individual who has withdrawn an amount from a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by paragraph 146(1)(a) [146(1)"annuitant"] of the Act) at the time of the withdrawal provides the issuer (within the meaning assigned by paragraph 146(1)(c.1) [146(1)"issuer"] of the Act) of the plan, in the calendar year in which the amount was withdrawn or in either of the 2 immediately following calendar years, with the prescribed form referred to in subparagraph 8307(3)(a)(ii) accompanied by a request that the issuer complete the form in respect of the withdrawal, and

(b) the issuer has not, at the time of receipt of the request, forwarded to the individual 2 copies of the information return required by subsection 214(1) to be made by the issuer in respect of the withdrawal, and does not, within 30 days after receipt of the request, forward to the individual 2 copies of that return,

the issuer shall, within 30 days after receipt of the request, complete those portions of the form that the form indicates are required to be completed by the issuer in respect of the withdrawal and return the form to the individual.

Definitions [Reg. 8407]: "amount", "individual", "prescribed" — ITA 248(1); "registered retirement savings plan" — ITA 146(1), 248(1).

Forms: T1006: Designating an RRSP withdrawal as a qualifying withdrawal.

8408. Requirement to provide Minister with information — (1)

The Minister may, by notice served personally or by registered or certified mail, require that a person provide the Minister, within such reasonable time as is stipulated in the notice, with

(a) information relating to the determination of amounts under Part LXXXIII;

(b) where the person claims that paragraph 147.1(10)(a) of the Act is not applicable with respect to an individual and a past service event by reason of an exemption provided by regulation, information relevant to the claim; or

(c) information for the purpose of determining whether the registration of a pension plan may be revoked.

(2) Where a person fails to provide the Minister with information pursuant to a requirement under subsection (1), each registered pension plan and deferred profit sharing plan to which the information relates becomes a revocable plan as of the day on or before which the information was required to be provided.

Definitions [Reg. 8408]: "amount" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "individual", "Minister" — ITA 248(1); "past service event" — ITA 147.1(1), Reg. 8300(1); "person" — ITA 248(1), Reg. 8400(3); "registered pension plan" — ITA 248(1).

8409. Annual information returns — (1)

The administrator of a registered pension plan that is administered under the supervision of a government regulator shall file an information return for a fiscal period of the plan in prescribed form and containing prescribed information

(a) where an agreement concerning annual information returns has been entered into by the Minister and the regulator, as identified in subsection (2),

(i) in the case of the agreement with the Pension Commission of Ontario, with the Taxation Data Centre of the Ministry of Finance of Ontario, and

(ii) in any other case, with that regulator,

on or before the day that an information return required by that regulator is to be filed for the fiscal period; and

(b) in any other case, with the Minister on or before the day that is 180 days after the end of the fiscal period.

History: Subsec. 8409(1) amended by P.C. 1996-213, s. 1, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, applicable to fiscal periods that end after December 30, 1994. Former s. 8409 does not apply for the 1994 calendar year to a registered pension plan with a fiscal period ending in 1994 before December 31, 1994.

Subsec. 8409(1) amended by P.C. 1995-17, s. 7, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1989.

Forms: T244: Registered pension plan annual information return.

(2) For the purposes of paragraph (1)(a), the following government regulators have entered into an agreement concerning annual information returns with the Minister:

(a) the Pension Commission of Ontario, Province of Ontario;

(b) the Superintendent of Pensions, Province of Nova Scotia;

(c) the Superintendent of Pensions, Province of New Brunswick;

(d) the Superintendent of Pensions, Province of Manitoba; and

(e) the Superintendent of Pensions, Province of British Columbia.

History: Subsec. 8409(2) amended by P.C. 1996-213, s. 1, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, applicable to fiscal periods that end after December 30, 1994. Former s. 8409 does not apply for the 1994 calendar year to a registered pension plan with a fiscal period ending in 1994 before December 31, 1994.

(3) The administrator of a registered pension plan shall, within 60 days after the final distribution of property held in connection with the plan, notify the Minister in writing of the date of the distribution and the method of settlement.

History: Subsec. 8409(3) amended by P.C. 1996-213, s. 1, February 20, 1996, *Canada Gazette*, Part II, March 6, 1996, applicable to fiscal periods that end after December 30, 1994. Former s. 8409 does not apply for the 1994 calendar year to a registered pension plan with a fiscal period ending in 1994 before December 31, 1994.

Definitions [Reg. 8409]: "administrator" — ITA 147.1(1), Reg. 8308.4(1); "fiscal period" — ITA 249.1; "Minister", "prescribed", "property", "registered pension plan" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Registered Plans Division Newsletters: 95-4 (New filing requirements for the registered pension plan annual information return); 95-7 (Quebec simplified pension plans); 96-2 (Waiving the requirement to file a registered pension plan annual information return for an inactive plan).

8410. Actuarial reports — The administrator of a registered pension plan that contains a defined benefit provision shall, on demand from the Minister served personally or by registered or certified mail and within such reasonable time as is stipulated in the demand, file with the Minister a report prepared by an actuary on the basis of reasonable assumptions and in accordance with generally accepted actuarial principles and containing such information as is required by the Minister in respect of the defined benefit provisions of the plan.

Definitions [Reg. 8410]: "actuary" — ITA 147.1(1); "administrator" — ITA 147.1(1), Reg. 8308.4(1); "defined benefit provision" — ITA 147.1(1); "Minister", "registered pension plan" — ITA 248(1).

Registered Plans Division Newsletters: 95-3 (Actuarial report content); 95-5 (Conversion of a defined benefit provision to a money purchase provision).

PART LXXXV — REGISTERED PENSION PLANS

History: Part LXXXV (ss. 8500–8520) added by P.C. 1991-2540, s. 7, December 16, 1991, *Canada Gazette*, Part II, January 15, 1992, applicable after 1988 except that:

(a) subsec. 8512(1) is applicable as of January 15, 1992;

(b) any form or document otherwise required by subsec. 8512(2) to be forwarded to the Deputy Minister of National Revenue for Taxation before the particular day that is 60 days after January 15, 1992 shall be deemed to have been forwarded as required if it is forwarded on or before the particular day; and

(c) subsec. 8515(5) is applicable

(i) in respect of contributions made after 1991 to a pension plan that was registered by the Minister on or before July 31, 1991 for the purposes of the *Income Tax Act*, and

(ii) in respect of contributions made after 1990 to a pension plan that is registered by the Minister after July 31, 1991 for the purposes of that Act.

8500. Interpretation — (1) In this Part,

"active member" of a pension plan in a calendar year means a member of the plan to whom benefits accrue under a defined benefit provision of the plan in respect of all or any portion of the year or who makes contributions, or on whose behalf contributions are made, in relation to the year under a money purchase provision of the plan;

Related Provisions: Reg. 8500(7) — Amount allocated under money purchase provision deemed to be contribution.

"average Consumer Price Index" for a calendar year means the amount that is obtained by dividing by 12 the aggregate of all amounts each of which is the Consumer Price Index for a month in the 12-month period ending on September 30 of the immediately preceding calendar year;

"beneficiary" of an individual means a person who has a right, by virtue of the participation of the individual in a pension plan, to receive benefits under the plan after the death of the individual;

"benefit provision" of a pension plan means a money purchase or defined benefit provision of the plan;

"bridging benefits" provided to a member under a benefit provision of a pension plan means retirement benefits payable to the member under the provision for a period ending no later than a date determinable at the time the benefits commence to be paid;

"Consumer Price Index" for a month means the Consumer Price Index for the month as published by Statistics Canada under the authority of the *Statistics Act*;

"defined benefit limit" for a calendar year means the greater of

(a) $1,722.22, and

(b) 1/9 of the money purchase limit for the year;

Related Provisions: Reg. 8509(13), 8516(9) — Grandfathering provisions.

History: "Defined benefit limit" in subsec. 8500(1) amended by P.C. 1998-2256, s. 19, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995, except that paragraph (b) of the definition applies

(a) before March 6, 1996 as though the money purchase limit for each year after 1995 were the amount that it would be if the definition "money purchase limit" in subsec. 147.1(1) of the Act applied as it read on December 31, 1995; and

(b) after March 5, 1996 and before 1997 as though the money purchase limit for each year after 1995 were the amount that it would

be if the definition "money purchase limit" in subsec. 147.1(1) of the Act applied as it read on January 1, 1997.

"Defined benefit limit" in subsec. 8500(1) amended by P.C. 1995-17, subsec. 8(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1991.

"dependant" of an individual at the time of the individual's death means a parent, grandparent, brother, sister, child or grandchild of the individual who, at that time, is both dependent on the individual for support and

(a) under 19 years of age and will not attain 19 years of age in the calendar year that includes that time,

(b) in full-time attendance at an educational institution, or

(c) dependent on the individual by reason of mental or physical infirmity;

"disabled" means, in relation to an individual, suffering from a physical or mental impairment that prevents the individual from performing the duties of the employment in which the individual was engaged before the commencement of the impairment;

"eligible period of reduced pay" of an employee with respect to an employer means a period (other than a period in which the employee is, at any time after 1990, connected with the employer or a period any part of which is a period of disability of the employee)

(a) that begins after the employee has been employed by the employer or predecessor employers to the employer for not less than 36 months,

(b) throughout which the employee renders services to the employer, and

(c) throughout which the remuneration received by the employee from the employer is less than the remuneration that it is reasonable to expect the employee would have received from the employer had the employee rendered services throughout the period on a regular basis (having regard to the services rendered by the employee to the employer before the period) and had the employee's rate of remuneration been commensurate with the employee's rate of remuneration before the period;

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 10.

"eligible period of temporary absence" of an individual with respect to an employer means a period throughout which the individual does not render services to the employer by reason of leave of absence, layoff, strike, lockout or any other circumstance acceptable to the Minister, other than a period

(a) a part of which is a period of disability of the individual, or

(b) in which the individual is, at any time after 1990, connected with the employer;

"eligible survivor benefit period" in relation to a person who is a dependant of an individual at the time of the individual's death, means the period beginning on the day of death of the individual and ending on the latest of

(a) where the dependant is under 19 years of age throughout the calendar year that includes the day of death of the individual, the earlier of

(i) December 31 of the calendar year in which the dependant attains 18 years of age, and

(ii) the day of death of the dependant,

(b) where the dependant is in full-time attendance at an educational institution on the later of the day of death of the individual and December 31 of the calendar year in which the dependant attains 18 years of age, the day on which the dependant ceases to be in full-time attendance at an educational institution, and

(c) where the dependant is dependent on the individual at the time of the individual's death by reason of mental or physical infirmity, the day on which the dependant ceases to be infirm or, if there is no such day, the day of death of the dependant;

"existing plan" means a pension plan that was a registered pension plan on March 27, 1988 or in respect of which an application for registration was made to the Minister before March 28, 1988, and includes a pension plan that was established before March 28, 1988 pursuant to an Act of Parliament that deems member contributions to be contributions to a registered pension plan;

"forfeited amount" under a money purchase provision of a pension plan means an amount to which a member of the plan has ceased to have any rights, other than the portion thereof, if any, that is payable

(a) to a beneficiary of the member as a consequence of the member's death, or

(b) to a spouse or former spouse of the member as a consequence of the breakdown of their marriage or other conjugal relationship;

"grandfathered plan" means

(a) an existing plan that, on March 27, 1988, contained a defined benefit provision, or

(b) a pension plan that was established to provide benefits under a defined benefit provision to one or more individuals in lieu of benefits to which the individuals were entitled under a defined benefit provision of another pension plan that is a grandfathered plan, whether or not benefits are also provided to other individuals;

Related Provisions: Reg. 8509(13) — Grandfathering where plan complied before March 1996 budget date.

"lifetime retirement benefits" provided to a member under a benefit provision of a pension plan means retirement benefits provided to the member under the provision that, after they commence to be paid, are payable to the member until the member's death, unless the benefits are commuted or payment of the benefits is suspended;

"multi-employer plan" in a calendar year means

(a) a pension plan in respect of which it is reasonable to expect, at the beginning of the year (or at the time in the year when the plan is established, if later), that at no time in the year will more than 95 per cent of the active members of the plan be employed by a single participating employer or by a related group of participating employers, other than a plan where it is reasonable to consider that one of the main reasons there is more than one employer participating in the plan is to obtain the benefit of any of the provisions of the Act or these Regulations that are applicable only with respect to multi-employer plans, or

(b) a pension plan that is, in the year, a specified multi-employer plan,

and, for the purposes of this definition, 2 corporations that are related to each other solely by reason that they are

both controlled by Her Majesty in right of Canada or a province shall be deemed not to be related persons;

Related Provisions: ITA 252.1 — Trade union locals and branches deemed to be a single employer; ITA 256(6), (6.1) — Meaning of "controlled".

Regulations: 8510(2), (3) (meaning of "specified multi-employer plan").

"pensionable service" of a member of a pension plan under a defined benefit provision of the plan means the periods in respect of which lifetime retirement benefits are provided to the member under the provision;

"period of disability" of an individual means a period throughout which the individual is disabled;

"predecessor employer" means, in relation to a particular employer, an employer (in this definition referred to as the "vendor") who has sold, assigned or otherwise disposed of all or part of the vendor's business or undertaking or all or part of the assets of the vendor's business or undertaking to the particular employer or to another employer who, at any time after the sale, assignment or other disposition, becomes a predecessor employer in relation to the particular employer, where one or more employees of the vendor have, in conjunction with the sale, assignment or disposition, become employees of the employer acquiring the business, undertaking or assets;

"public pension benefits" means amounts payable on a periodic basis under the *Canada Pension Plan*, a provincial pension plan as defined in section 3 of the *Canada Pension Plan*, or Part I of the *Old Age Security Act*, but does not include disability, death or survivor benefits provided under those Acts;

"public safety occupation" means the occupation of

(a) firefighter,

(b) police officer,

(c) corrections officer,

(d) air traffic controller, or

(e) commercial airline pilot;

"retirement benefits" provided to an individual under a benefit provision of a pension plan means benefits provided to the individual under the provision that are payable on a periodic basis;

"surplus" under a money purchase provision of a pension plan at any time means such portion, if any, of the amount held at that time in respect of the provision as has not been allocated to members and is not reasonably attributable to

(a) forfeited amounts under the provision or earnings of the plan that are reasonably attributable to those amounts,

(b) contributions made under the provision by an employer that will be allocated to members as part of the regular allocation of such contributions, or

(c) earnings of the plan (other than earnings that are reasonably attributable to the surplus under the provision before that time) that will be allocated to members as part of the regular allocation of such earnings;

Related Provisions: Reg. 8500(1.1) — Definition applies to ITA 147.3(7.1).

History: Paras. (a) and (b) of the definition of "surplus" in subsec. 8500(1) amended by P.C. 1995-17, subsec. 8(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

"totally and permanently disabled" means, in relation to an individual, suffering from a physical or mental impairment that prevents the individual from engaging in any employment for which the individual is reasonably suited by virtue of the individual's education, training or experience and that can reasonably be expected to last for the remainder of the individual's lifetime;

"Year's Maximum Pensionable Earnings" for a calendar year has the meaning assigned by section 18 of the *Canada Pension Plan*.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions); 96-1 (Changes to retirement savings limits).

Proposed Addition — Reg. 8500(1.1)

(1.1) The definition "surplus" in subsection (1) applies for the purpose of subsection 147.3(7.1) of the Act.

Application: The November 30, 1999 draft regulations (RPPs), subsec. 3(1), will add subsec. 8500(1.1), applicable after 1998.

Technical Notes: New subsection 147.3(7.1) of the Act permits, in certain circumstances, surplus under a money purchase provision of an RPP to be transferred to a money purchase provision of another RPP. Subsection 147.3(7.1) provides that the term "surplus" has the meaning assigned by the Regulations. New subsection 8500(1.1) of the Regulations provides that the definition of "surplus" in subsection 8500(1) of the Regulations applies for this purpose.

(2) All words and expressions used in this Part that are defined in subsection 147.1(1) of the Act have the meanings assigned in that subsection.

(3) For the purposes of this Part, a person is connected with an employer at any time where, at that time, the person

(a) owns, directly or indirectly, not less than 10 per cent of the issued shares of any class of the capital stock of the employer or of any other corporation that is related to the employer,

(b) does not deal at arm's length with the employer, or

(c) is a specified shareholder of the employer by reason of paragraph (d) of the definition "specified shareholder" in subsection 248(1) of the Act,

and, for the purposes of this subsection,

(d) a person shall be deemed to own, at any time, each share of the capital stock of a corporation owned, at that time, by a person with whom the person does not deal at arm's length,

(e) where shares of the capital stock of a corporation are owned at any time by a trust,

(i) if the share of any beneficiary in the income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, each beneficiary of the trust shall be deemed to own, at that time, all the shares owned by the trust, and

(ii) in any other case, each beneficiary of a trust shall be deemed to own, at that time, that proportion of the shares owned by the trust that the fair market value at that time of the beneficiary's beneficial interest in the trust is of the fair market value at that time of all beneficial interests in the trust,

(f) each member of a partnership shall be deemed to own, at any time, that proportion of all shares of the capital stock of a corporation that are property of the partnership at that time that the fair market value at

that time of the member's interest in the partnership is of the fair market value at that time of the interests of all members in the partnership, and

(g) a person who, at any time, has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation shall be deemed to own, at that time, those shares if one of the main reasons for the existence of the right may reasonably be considered to be that the person not be connected with an employer.

Interpretation Bulletins: IT-124R6: Contributions to registered retirement savings plans.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(4) For the purposes of this Part, an officer who receives remuneration for holding an office shall, for any period that the officer holds the office, be deemed to render services to, and to be in the service of, the person from whom the officer receives the remuneration.

Interpretation Bulletins: IT-167R6: Registered pension plans — employee's contributions.

(5) For the purposes of this Part, any provision that applies with respect to a spouse of a taxpayer also applies in the same manner with respect to a party to a void or voidable marriage to a taxpayer.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(6) Where this Part provides that an amount is to be determined by aggregating the durations of periods that satisfy specified conditions, a period shall be included in determining the aggregate only if it is not part of a longer period that satisfies the conditions.

(7) For the purposes of the definition "active member" in subsection (1), subparagraph 8503(3)(a)(v) and paragraphs 8504(7)(d) and 8507(3)(a), such portion of an amount allocated to an individual at any time under a money purchase provision of a registered pension plan as is attributable to

(a) forfeited amounts under the provision or earnings of the plan that are reasonably attributable to those amounts,

(b) a surplus under the provision, or

(c) property transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan

Proposed Addition — Reg. 8500(7)(d)

(d) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan

Application: The November 30, 1999 draft regulations (RPPs), subsec. 3(2), will add para. 8500(7)(d), applicable to allocations that occur after 1998.

Technical Notes: Subsection 8500(7) of the Regulations deems certain amounts allocated to an individual under a money purchase provision of an RPP to be contributions made on behalf of the individual for the purposes of a number of provisions in Part LXXXV that depend on whether money purchase contributions are made on behalf of an individual. Subsection 8500(7) applies with respect to allocated amounts that are attributable to forfeited amounts, to surplus under the provision or to surplus transferred from a defined benefit provision.

Subsection 8500(7) is amended so that it also applies with respect to allocations that are attributable to money purchase surplus transferred from another money purchase provision. This amendment is consequential on the introduction of new subsection 147.3(7.1) of the Act, which permits the transfer of surplus from one money purchase plan to another. It should be noted that this amendment is relevant only where money purchase surplus is allocated to an individual at the time of the transfer. Existing paragraph 8500(7)(b) would apply with respect to allocations that occur after the time of the transfer.

shall be deemed to be a contribution made under the provision on behalf of the individual at that time.

History: Subsec. 8500(7) added by P.C. 1995-17, subsec. 8(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988, except that with respect to amounts allocated on or before April 5, 1994, subsec. (7) shall be read without reference to the expression "[of] the definition 'active member' in subsection (1)", and for the purposes of subparagraph 8507(3)(a)(vi), without reference to paragraph (c) thereof.

Proposed Addition — Reg. 8500(8)

(8) [Member and non-member benefits] — Where an individual who is entitled to receive benefits (in this subsection referred to as "member benefits") under a pension plan because of the individual's membership in the plan is also entitled to receive other benefits (in this subsection referred to as "non-member benefits") under the plan or under any other pension plan solely because of the participation of another individual in the plan or in the other plan, the following rules apply:

(a) for the purpose of determining whether the member benefits are permissible under this Part, the non-member benefits shall be disregarded;

(b) for the purpose of determining whether the non-member benefits are permissible under this Part, the member benefits shall be disregarded; and

(c) for the purpose of determining a pension adjustment, pension adjustment reversal or provisional past service pension adjustment of the individual under Part LXXXIII, the non-member benefits shall be disregarded.

Application: The April 18, 2000 draft regulations (RRPs), s. 5, will add subsec. 8500(8), applicable after 1988, except that before 1997, the subsec. shall be read without reference to the words "pension adjustment reversal".

Technical Notes: New subsection 8500(8) of the Regulations sets out several rules of interpretation that apply when an individual who is a member of a pension plan is also entitled to receive other benefits (referred to as "non-member benefits") under the plan or under another pension plan because of the participation of another individual in the plan or other plan. Non-member benefits could include, for example, benefits to which the member is entitled because of marriage breakdown or the death of the member's spouse. Subsection 8500(8) provides that the non-member benefits are to be disregarded in determining whether the benefits provided to the individual as a plan member are permissible and in determining a PA, PSPA or PAR of the individual. It also provides that the benefits provided to the individual as a plan member are to be disregarded in determining whether the non-member benefits are permissible.

These rules are relevant, in particular, for large defined benefit RPPs where it is relatively common for two spouses to participate in the same pension plan. The following example will help illustrate these rules. Consider an individual who is a member of a defined benefit RPP and who is receiving post-retirement survivor benefits under the plan because the individual's spouse had also participated in the plan. Subsection 8500(8) ensures that the survivor benefits are disregarded in determining whether benefits can continue to accrue to the individual as a plan member (paragraph 8503(3)(b)), in determining whether

benefits payable to the individual as a plan member comply with the maximum pension limit (section 8504) and in determining a PAR for the individual (subsections 8304.1(8) and (14)). It also ensures that the benefits provided to the individual as a plan member are disregarded in determining whether the survivor benefits are permissible (paragraph 8503(2)(d)).

Subsection 8500(8) applies after 1988.

Definitions [Reg. 8500]: "active member" — Reg. 8500(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "beneficiary", "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "child" — ITA 252(1); "commencement" — *Interpretation Act* 35(1); "connected" — Reg. 8500(3); "consequence of the member's death" — 248(8); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8500(7), 8501(6); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "defined benefit provision" — ITA 147.1(1); "dependant", "disabled" — Reg. 8500(1); "disposed" — ITA 248(1)"disposition"; "employed", "employee", "employer", "employment" — ITA 248(1); "existing plan", "forfeited amount", "grandfathered plan" — Reg. 8500(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase limit", "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "office" — ITA 248(1); "officer" — Reg. 8500(4); "own" — Reg. 8500(3)(d)–(g); "Parliament" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "past service pension adjustment" — ITA 248(1), Reg. 8303(1); "pension adjustment" — ITA 248(1); "period of disability" — Reg. 8500(1); "person" — ITA 248(1); "predecessor employer" — Reg. 8500(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "provisional past service pension adjustment" — Reg. 8303(2); "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6), Reg. 8500(1)"multi-employer plan"; "retirement benefits" — Reg. 8500(1); "share" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "specified shareholder" — ITA 248(1); "spouse" — ITA 147.1(1); "surplus" — Reg. 8500(1); "taxpayer" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

Forms [Reg. 8500]: T920: Application for acceptance of an amendment to an RPP.

8501. Prescribed conditions for registration and other conditions applicable to registered pension plans — (1) Conditions for registration — For the purposes of section 147.1 of the Act, and subject to sections 8509 and 8510, the prescribed conditions for the registration of a pension plan are

(a) the conditions in paragraphs 8502(a), (c), (e), (f) and (l),

(b) if the plan contains a defined benefit provision, the conditions in paragraphs 8503(4)(a) and (c), and

(c) if the plan contains a money purchase provision, the conditions in paragraphs 8506(2)(a) and (d),

and the following conditions:

(d) there is no reason to expect, on the basis of the documents that constitute the plan and establish the funding arrangements, that

(i) the plan may become a revocable plan pursuant to subsection (2), or

(ii) the conditions in subsection 147.1(10) of the Act may not be complied with, and

(e) there is no reason to expect that the plan may become a revocable plan pursuant to subsection 147.1(8) or (9) of the Act or subsection 8503(15).

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(6) and (8) and 8505(3) and (4); Reg. 8501(6) — Rule where contributions made through employer association or trade union from employer or individual.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 19, 30.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(2) Conditions applicable to registered pension plans — For the purposes of paragraph 147.1(11)(c) of the Act, and subject to sections 8509 and 8510, a registered pension plan becomes a revocable plan at any time that it fails to comply with

(a) a condition set out in any of paragraphs 8502(b), (d), (g) to (k) and (m);

(b) where the plan contains a defined benefit provision, a condition set out in paragraph 8503(3)(a), (b), (d), (j), (k) or (l) or (4)(b), (d), (e) or (f); or

(c) where the plan contains a money purchase provision, a condition set out in any of paragraphs 8506(2)(b) to (c) and (e) to (h).

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(6) and (8) and 8505(3) and (4); Reg. 8501(6) — Rule where contributions made through employer association or trade union from employer or individual.

History: Para. 8501(2)(a) amended by P.C. 1996-911, s. 14, June 20, 1996, *Canada Gazette*, Part II, July 10, 1996, applicable after 1993.

Para. 8501(2)(c) amended by P.C. 1995-17, subsec. 9(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(3) Permissive rules — The conditions in this Part do not apply in respect of a pension plan to the extent that they are inconsistent with the provisions of subsections 8503(6) and (8) and 8505(3) and (4).

History: Subsec. 8501(3) amended by P.C. 1995-17, subsec. 9(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(4) Supplemental plans — Where

(a) the benefits provided under a pension plan (in this subsection referred to as the "supplemental plan") that contains one defined benefit provision and no money purchase provisions may reasonably be considered to be supplemental to the benefits provided under a defined benefit provision (in this subsection referred to as the "base provision") of another pension plan,

(b) the supplemental plan does not otherwise comply with the condition set out in paragraph 8502(a) or the condition in paragraph 8502(c), and

(c) the Minister has approved the application of this subsection, which approval has not been withdrawn,

for the purpose of determining whether the supplemental plan complies with the conditions in paragraphs 8502(a) and (c), the benefits provided under the base provision shall be considered to be provided under the supplemental plan.

(5) Benefits payable to spouse after marriage breakdown — Where

(a) a spouse or former spouse of a member of a registered pension plan is entitled to receive all or a portion of the benefits that would otherwise be payable under the plan to the member, and

(b) the entitlement was created

(i) by assignment of benefits by the member, on or after the breakdown of their marriage or other conjugal relationship, in settlement of rights arising out of their marriage or other conjugal relationship, or

(ii) by a provision of the law of Canada or a province applicable in respect of the division of property between the member and the member's spouse

or former spouse, on or after the breakdown of their marriage or other conjugal relationship, in settlement of rights arising out of their marriage or other conjugal relationship,

the following rules apply:

(c) except where paragraph (d) is applicable, the benefits to which the spouse or former spouse is entitled shall, for the purposes of this Part, be deemed to be benefits provided and payable to the member, and

(d) where

(i) the entitlement of the spouse or former spouse was created by a provision of the law of Canada or a province described in subparagraph (b)(ii), and

(ii) that provision

(A) requires that benefits commence to be paid to the spouse or former spouse at a time that may be different from the time benefits commence to be paid to the member, or

(B) gives the spouse or former spouse any rights in respect of the benefits to which the spouse or former spouse is entitled in addition to the rights that the spouse or former spouse would have as a consequence of an assignment by the member, in whole or in part, of the member's right to benefits under the plan,

the benefits to which the spouse or former spouse is entitled shall, for the purposes of this Part, be deemed to be benefits provided and payable to the spouse or former spouse and not provided or payable to the member.

(6) Indirect contributions — Where an employer or an individual makes payments to a trade union or an association of employers (in this subsection referred to as the "contributing entity") to enable the contributing entity to make contributions to a pension plan, such portion of a contribution made by the contributing entity to the plan as is reasonably attributable to a payment made to the contributing entity by an employer or individual shall, for the purposes of the conditions in this Part, be considered to be a contribution made by the employer or individual, as the case may be, and not by the contributing entity.

Proposed Addition — Reg. 8501(6.1), (6.2)

(6.1) Member contributions for unfunded liability — For the purposes of the conditions in this Part, a contribution made by a member of a pension plan in respect of a defined benefit provision of the plan is deemed to be a current service contribution made by the member in respect of the member's benefits under the provision if

(a) the contribution cannot, but for this subsection, reasonably be considered to be made in respect of the member's benefits under the provision;

(b) the contribution is determined by reference to the actuarial liabilities under the provision in respect of periods before the time of the contribution; and

(c) the contribution is made pursuant to an arrangement

(i) under which all, or a significant number, of the active members of the plan are required to make similar contributions,

(ii) the main purpose of which is to ensure that the plan has sufficient assets to pay benefits under the provision, and

(iii) that is approved by the Minister.

Technical Notes: New subsection 8501(6.1) applies where member contributions under a defined benefit provision of a pension plan are made in respect of an unfunded liability, rather than in respect of the member's benefits. The purpose of this subsection is to accommodate arrangements under defined benefit pension plans that require participating employers and plan members to share in the funding of an unfunded liability.

Under some shared-funding arrangements, member contributions that are dedicated towards the plan's unfunded liability are not considered to be made in respect of the member's benefits. Subsection 8501(6.1) provides that, for the purposes of the conditions in Part LXXXV, such contributions are considered to be current service contributions made in respect of the member's benefits under the provision. This ensures that the contributions are not prohibited by the permissible contribution rule in paragraph 8502(b). It also requires that the contributions be taken into account for the purpose of satisfying the current service contribution limit in paragraph 8503(4)(a). It should be noted that subsection 8503(5) may be relevant where the member contribution rate under a shared funding arrangement is set a level that results in the condition in paragraph 8503(4)(a) not being met. Subsection 8503(5) allows the Minister to waive the condition on maximum member contributions where it is reasonable to expect, on a long-term basis, that the regular current service contributions made by members will fund no more than one-half of the related benefits.

New subsection 8501(6.1) applies where:

- member contributions under a defined benefit provision of a pension plan are determined by reference to the actuarial liabilities under the provision;
- the contributions cannot reasonably be considered to be in respect of the member's benefits;
- the contributions are made pursuant to an arrangement approved by the Minister that requires all or a significant number of the active members of the plan to make similar contributions; and
- the main purpose of the arrangement is to ensure that the plan is adequately funded.

(6.2) Prescribed eligible contributions — For the purpose of paragraph 147.2(4)(a) of the Act, a contribution described in subsection (6.1) is a prescribed eligible contribution.

Technical Notes: New subsection 8501(6.1) applies where member contributions under a defined benefit provision of a pension plan are made in respect of an unfunded liability, rather than in respect of the member's benefits. The purpose of this subsection is to accommodate arrangements under defined benefit pension plans that require participating employers and plan members to share in the funding of an unfunded liability.

Under some shared-funding arrangements, member contributions that are dedicated towards the plan's unfunded liability are not considered to be made in respect of the member's benefits. Subsection 8501(6.1) provides that, for the purposes of the conditions in Part LXXXV, such contributions are considered to be current service contributions made in respect of the member's benefits under the provision. This ensures that the contributions are not prohibited by the permissible contribution rule in paragraph 8502(b). It also requires that the contributions be taken into account for the purpose of satisfying the current service contribution limit in paragraph 8503(4)(a). It should be noted that subsection 8503(5) may be relevant where the member contribution rate under a shared funding arrangement is set a level that results in the condition in paragraph 8503(4)(a) not being met. Subsection 8503(5) allows the Minister to waive the condition on maximum member contributions where it is reasonable to expect, on a long-term basis, that the regular current service contributions made by members will fund no more than one-half of the related benefits.

New subsection 8501(6.1) applies where:

- member contributions under a defined benefit provision of a pension plan are determined by reference to the actuarial liabilities under the provision;
- the contributions cannot reasonably be considered to be in respect of the member's benefits;
- the contributions are made pursuant to an arrangement approved by the Minister that requires all or a significant number of the active members of the plan to make similar contributions; and
- the main purpose of the arrangement is to ensure that the plan is adequately funded.

New subsection 8501(6.2) of the Regulations provides that contributions described in subsection 8501(6.1) are prescribed eligible contributions for the purpose of the deductibility rules in amended paragraph 147.2(4)(a) of the Act. This ensures that member contributions made pursuant to a shared-funding arrangement are deductible even though they are not considered to relate to a particular year.

Application: The November 30, 1999 draft regulations (RPPs), s. 4, will add subsecs. 8501(6.1) and (6.2), applicable to contributions made after 1990.

(7) Benefits provided with surplus on plan wind-up — Where

(a) a single amount is paid in full or partial satisfaction of an individual's entitlement to retirement benefits (in this subsection referred to as the "commuted benefits") under a defined benefit provision of a registered pension plan,

(b) other benefits are subsequently provided to the individual under the provision as a consequence of an allocation, on full or partial wind-up of the plan, of an actuarial surplus under the provision,

(c) the other benefits include benefits (in this subsection referred to as "ancillary benefits") that, but for this subsection, would not be permissible under this Part,

(d) if the individual had previously terminated from the provision and the conditions in subsection 8304.1(14) were satisfied with respect to the termination, it is reasonable to consider that all of the ancillary benefits are in respect of periods before 1990, and

(e) the Minister has approved the application of this subsection in respect of the ancillary benefits,

for the purpose of determining whether the ancillary benefits are permissible under this Part, the individual is considered to have an entitlement under the provision to the commuted benefits.

History: Subsec. 8501(7) added by P.C. 1998-2256, s. 20, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to benefits provided after 1996.

Definitions [Reg. 8501]: "active member" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "Canada" — ITA 255, *Interpretation Act* 35(1); "contributing entity" — Reg. 8501(6); "contribution" — Reg. 8501(6), (7); "defined benefit provision" — ITA 147.1(1); "employer", "individual" — ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "prescribed", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "single amount", "spouse" — ITA 147.1(1); "supplemental plan" — Reg. 8501(4)(a); "surplus" — Reg. 8500(1).

8502. Conditions applicable to all plans — For the purposes of section 8501, the following conditions are applicable in respect of a pension plan:

(a) **primary purpose** — the primary purpose of the plan is to provide periodic payments to individuals after retirement and until death in respect of their service as employees;

(b) **permissible contributions** — each contribution made to the plan after 1990 is an amount that

(i) is paid by a member of the plan in accordance with the plan as registered, where the amount is credited to the member's account under a money purchase provision of the plan, or is paid in respect of the member's benefits under a defined benefit provision of the plan,

(ii) is paid in accordance with a money purchase provision of the plan as registered, by an employer with respect to the employer's employees or former employees,

(iii) is an eligible contribution that is paid in respect of a defined benefit provision of the plan by an employer with respect to the employer's employees or former employees,

(iv) is transferred to the plan in accordance with any of subsections 146(16), 147(19) and 147.3(1) to (8) of the Act, or

(v) is acceptable to the Minister and that is transferred to the plan from a pension plan that is maintained primarily for the benefit of non-residents in respect of services rendered outside Canada,

and, for the purposes of this paragraph,

(vi) an eligible contribution is a contribution that is paid by an employer in respect of a defined benefit provision of a pension plan is where it is an eligible contribution under subsection 147.2(2) of the Act or, in the case of a plan in which Her Majesty in right of Canada or a province is a participating employer, would be an eligible contribution under subsection 147.2(2) of the Act if all amounts held to the credit of the plan in the accounts of Canada or the province were excluded from the assets of the plan, and

(vii) such portion of the contributions that are made by Her Majesty in right of Canada or a province in respect of a defined benefit provision of the plan as can reasonably be considered to be made with respect to the employees or former employees of another person shall be deemed to be contributions that are made by that other person;

Related Provisions: Reg. 8510(6) — Special rules — specified multi-employer plan.

(c) **permissible benefits** — the plan does not provide for, and its terms are such that it will not under any circumstances provide for, any benefits other than benefits

(i) that are provided under one or more defined benefit provisions and are in accordance with subsection 8503(2), paragraphs 8503(3)(c) and (e) to (i) and section 8504,

(ii) that are provided under one or more money purchase provisions and are in accordance with subsection 8506(1),

(iii) that the plan is required to provide by reason of a designated provision of the law of Canada or a province, or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, and

(iv) that the plan is required to provide to a spouse or former spouse of a member of the plan by rea-

son of a provision of the law of Canada or a province applicable in respect of the division of property between the member and the spouse or former spouse, on or after the breakdown of their marriage or other conjugal relationship, in settlement of rights arising out of their marriage or other conjugal relationship;

Related Provisions: Reg. 8503(9)(f) — Re-employed member; Reg. 8509(2) — Conditions applicable after 1991 to benefits under grandfathered plan; Reg. 8509(4) — Grandfathered plan — Minister may exempt certain benefits; Reg. 8510(6) — Special rules — specified multi-employer plan; Reg. 8513 — Designated provision of the law of Canada or a province.

(d) **permissible distributions** — each distribution that is made from the plan is

(i) a payment of benefits in accordance with the plan as registered,

(ii) a transfer of property held in connection with a defined benefit provision of the plan to another pension plan to be held in connection with a benefit provision of that other plan, where the transfer is in accordance with subsection 147.3(3), (4.1) or (8) of the Act,

Proposed Amendment — Reg. 8502(d)(ii)

(ii) a transfer of property held in connection with the plan where the transfer is made in accordance with subsection 147.3(3), (4.1), (7.1) or (8) of the Act,

Application: The November 30, 1999 draft regulations (RPPs), subsec. 5(1), will amend subpara. 8502(d)(ii) to read as above, applicable to transactions that occur after 1998.

Technical Notes: Paragraph 8502(d) restricts the distributions that may be made out of an RPP.

Paragraph 8502(d) is amended to add to the list of permissible distributions a transfer of property made in accordance with new subsection 147.3(7.1) of the Act. Subsection 147.3(7.1) permits the transfer of surplus from one money purchase plan to another, where the second plan replaces all or part of the first plan.

This amendment, which is consequential to the introduction of subsection 147.3(7.1), applies to transactions that occur after 1998.

(iii) a return of all or a portion of the contributions made by a member of the plan or an employer who participates in the plan, where the payment is made to avoid the revocation of the registration of the plan,

(iv) a return of all or a portion of the contributions made by a member of the plan under a defined benefit provision of the plan, where the return of contributions is pursuant to an amendment to the plan that also reduces the future contributions that would otherwise be required to be made under the provision by members,

(v) a payment of interest (computed at a rate not exceeding a reasonable rate) in respect of contributions that are returned as described in subparagraph (iv),

(vi) a payment in full or partial satisfaction of the interests of a person in an actuarial surplus that relates to a defined benefit provision of the plan,

(vii) a payment to an employer of property held in connection with a money purchase provision of the plan, or

(viii) where the Minister has, under subsection 8506(2.1), waived the application of the condition in paragraph 8506(2)(b.1) in respect of a money purchase provision of the plan, a payment under the provision of an amount acceptable to the Minister;

History: Subpara. 8502(d)(ii) amended and subpara. 8502(d)(viii) added by P.C. 1995-17, subsecs. 10(1) and (2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. Subpara. 8502(d)(ii) is applicable with respect to distributions made from a pension plan after 1990 and subpara. 8502(d)(viii) is applicable after April 5, 1994.

(e) **payment of pension** — the plan

(i) requires that the retirement benefits of a member under each benefit provision of the plan commence to be paid not later than

(A) the end of the calendar year in which the member attains 69 years of age, or

(B) in the case of benefits provided under a defined benefit provision, such later time as is acceptable to the Minister, but only if the amount of benefits (expressed on an annualized basis) payable does not exceed the amount of benefits that would be payable if payment of the benefits commenced at the time referred to in clause (A), and

(ii) provides that retirement benefits under each benefit provision are payable not less frequently than annually;

History: Cl. 8502(e)(i)(A) amended by P.C. 1998-2256, s. 21, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that

(a) subject to paragraph (b), cl. 8502(e)(i)(A), as amended, applies in respect of benefits provided to an individual who attained 70 years of age before 1997 or 69 years of age in 1996 as though the reference in that clause to "69 years of age" were a reference to "71 years of age" and "70 years of age" respectively; and

(b) where retirement benefits under a pension plan are provided to an individual by means of an annuity contract issued before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, where the individual had not attained that age before 1997, or

(B) 70 years of age, where the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined,

cl. 8502(e)(i)(A), as amended, applies in respect of the benefits as though the reference in that clause to "69 years of age" were a reference to "71 years of age".

(f) **assignment of rights** — the plan includes a stipulation that no right of a person under the plan is capable of being assigned, charged, anticipated, given as security or surrendered, and, for the purposes of this condition,

(i) assignment does not include

(A) assignment pursuant to a decree, order or judgment of a competent tribunal or a written agreement in settlement of rights arising out of a marriage or other conjugal relationship between an individual and the individual's spouse or former spouse, on or after the breakdown of their marriage or other conjugal relationship, or

(B) assignment by the legal representative of a deceased individual on the distribution of the individual's estate, and

(ii) surrender does not include a reduction in benefits to avoid the revocation of the registration of the plan;

(g) **funding media** — the arrangement under which property is held in connection with the plan is acceptable to the Minister;

(h) **investments** — the property that is held in connection with the plan does not include

(i) a prohibited investment under subsection 8514(1),

(ii) at any time that the plan is subject to the *Pension Benefits Standards Act, 1985* or a similar law of a province, an investment that is not permitted at that time under such laws as apply to the plan, or

(iii) at any time other than a time referred to in subparagraph (ii), an investment that would not be permitted were the plan subject to the *Pension Benefits Standards Act, 1985*;

(i) **borrowing** — a trustee or other person who holds property in connection with the plan does not borrow money for the purposes of the plan, except where

(i) the borrowing is for a term not exceeding 90 days,

(ii) the borrowing is not part of a series of loans or other transactions and repayments, and

(iii) none of the property that is held in connection with the plan is used as security for the borrowed money (except where the borrowing is necessary to provide funds for the current payment of benefits or the purchase of annuities under the plan without resort to a distressed sale of the property that is held in connection with the plan),

or where

(iv) the money is borrowed for the purpose of acquiring real property that may reasonably be considered to be acquired for the purpose of producing income from property,

(v) the aggregate of all amounts borrowed for the purpose of acquiring the property and any indebtedness incurred as a consequence of the acquisition of the property does not exceed the cost to the person of the property, and

(vi) none of the property that is held in connection with the plan, other than the real property, is used as security for the borrowed money;

(j) **determination of amounts** — except as otherwise provided in this Part, each amount that is determined in connection with the plan is determined, where the amount is based on assumptions, using such reasonable assumptions as are acceptable to the Minister, and, where actuarial principles are applicable to the determination, in accordance with generally accepted actuarial principles;

(k) **transfer of property between provisions** — property that is held in connection with a benefit provision of the plan is not made available to pay benefits under another benefit provision of the plan (including another benefit provision that replaces the first benefit provision), except where the transaction by which the property is made so available is such that if the benefit provisions were in separate registered pension plans, the transaction would constitute a transfer of property from one plan to the other in accordance with any of subsections 147.3(1) to (4.1), (6) and (8) of the Act;

Proposed Amendment — Reg. 8502(k)

(k) **transfer of property between provisions** — property that is held in connection with a benefit provision of the plan is not made available to pay benefits under another benefit provision of the plan (including another benefit provision that replaces the first benefit provision), except where the transaction by which the property is made so available is such that if the benefit provisions were in separate registered pension plans, the transaction would constitute a transfer of property from one plan to the other in accordance with any of subsections 147.3(1) to (4.1), (6), (7.1) and (8) of the Act;

Application: The November 30, 1999 draft regulations (RPPs), subsec. 5(2), will amend para. 8502(k) to read as above, applicable to transactions that occur after 1998.

Technical Notes: Paragraph 8502(k) of the Regulations requires that property held in connection with one benefit provision of an RPP not be made available to pay benefits under another benefit provision of the same plan. The paragraph exempts from this restriction a transfer of property from one provision of a plan to another where the transfer would be in accordance with any of subsections 147.3(1) to (4.1), (6) and (8) of the Act if the two provisions were in separate RPPs.

Paragraph 8502(k) is amended to add to the list of exempted transfers an intra-plan transfer that would be in accordance with new subsection 147.3(7.1) of the Act. That subsection permits the transfer of surplus from one money purchase plan to another, where the second plan replaces all or part of the first plan.

This amendment, which is consequential to the introduction of subsection 147.3(7.1) of the Act, applies to transactions that occur after 1998.

History: Para. 8502(k) amended by P.C. 1995-17, subsec. 10(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to transactions occurring after 1990.

(l) **appropriate pension adjustments** — the plan terms are not such that an amount that is determined under Part LXXXIII in respect of the plan would be inappropriate having regard to the provisions of that Part read as a whole and the purposes for which the amount is determined; and

(m) **participants in GSRAs** — no individual who, at any time after 1993, is entitled, either absolutely or contingently, to benefits under the plan by reason of employment with an employer with whom the individual is connected is entitled at that time, either absolutely or contingently, to benefits under a government-sponsored retirement arrangement (as defined in subsection 8308.4(1)).

History: Para. 8502(m) added by P.C. 1996-911, s. 15, June 20, 1996 *Canada Gazette*, Part II, July 10, 1996, applicable after 1993.

Registered Plans Division Newsletters [Reg. 8502]: 91-4R (Registration rules for money purchase provisions); 95-5 (Conversion of a defined benefit provision to a money purchase provision); 96-3 (Flexible pension plans); 98-2 (Treating excess member contributions under a registered pension plan).

Definitions [Reg. 8502]: "amount", "annuity" — ITA 248(1); "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "borrowed money" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "connected" — Reg. 8500(3); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "designated provision of the law of Canada or a province" — Reg. 8513; "eligible contribution" — Reg. 8502(b)(vi), 8510(6)(a); "employee", "employer", "employment" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "individual" — ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "non-resident" — ITA 248(1); "par-

ticipating employer" — ITA 147.1(1); "person" — ITA 248(1); "prohibited investment" — Reg. 8514(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "security" — *Interpretation Act* 35(1); "spouse" — ITA 147.1(1); "surplus" — Reg. 8500(1); "written" — *Interpretation Act* 35(1)"writing".

8503. Defined benefit provisions — (1) Net contribution accounts — In this section and subsection 8517(2), the net contribution account of a member of a pension plan in relation to a defined benefit provision of the plan is an account that is

(a) credited with

(i) the amount of each contribution that is made by the member to the plan in respect of the provision,

(ii) each amount that is transferred on behalf of the member to the plan in respect of the provision in accordance with any of subsections 146(16), 147(19) and 147.3(2) and (5) to (7) of the Act,

(iii) such portion of each amount that is transferred to the plan in respect of the provision in accordance with subsection 147.3(3) of the Act as may reasonably be considered to derive from contributions that are made by the member to a registered pension plan or interest (computed at a reasonable rate) in respect of such contributions,

(iv) the amount of any property that was held in connection with another benefit provision of the plan and that has been made available to provide benefits under the provision, to the extent that if the provisions were in separate registered pension plans, the amount would be included in the member's net contribution account by reason of subparagraph (ii) or (iii), and

(v) interest (computed at a reasonable rate determined by the plan administrator) in respect of each period throughout which the account has a positive balance; and

(b) charged with

(i) each amount that is paid under the provision with respect to the member, otherwise than in respect of an actuarial surplus under the provision,

(ii) the amount of any property that is held in connection with the provision (other than property that is in respect of an actuarial surplus under the provision) and that is made available to provide benefits with respect to the member under another benefit provision of the plan, and

(iii) interest (computed at a reasonable rate determined by the plan administrator) in respect of each period throughout which the account has a negative balance.

History: Subparas. 8503(1)(b)(i) and (ii) amended by P.C. 1995-17, subsec. 11(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(2) Permissible benefits — For the purposes of paragraph 8502(c), the following benefits may, subject to the conditions set out in respect of each benefit, be provided under a defined benefit provision of a pension plan:

(a) **lifetime retirement benefits** — lifetime retirement benefits provided to a member where the benefits are payable in equal periodic amounts, or are not so payable only by reason that

(i) the benefits payable to a member after the death of the member's spouse are less than the benefits that would be payable to the member were the member's spouse alive,

(ii) the plan provides for periodic cost-of-living adjustments to be made to the benefits, where the adjustments

(A) are determined in such a manner that they do not exceed cost-of-living adjustments warranted by increases in the Consumer Price Index after the benefits commence to be paid,

(B) consist of periodic increases at a rate not exceeding 4 per cent per annum after the time the benefits commence to be paid,

(C) are based on the rates of return on a specified pool of assets after the benefits commence to be paid, or

(D) consist of any combination of adjustments described in clauses (A) to (C),

and, in the case of adjustments described in clauses (C) and (D), the present value (at the time the member's benefits commence to be paid) of additional benefits that can reasonably be expected to be paid as a consequence of the adjustments does not exceed the greater of

(E) the present value (at the time the member's benefits commence to be paid) of additional benefits that could reasonably be expected to be paid as a consequence of adjustments warranted by increases in the Consumer Price Index after the member's benefits commence to be paid, and

(F) the present value (at the time the member's benefits commence to be paid) of additional benefits that would be paid as a consequence of adjustments at a fixed rate of 4 per cent per annum after the time the member's benefits commence to be paid, or

(iii) where the plan does not provide for periodic cost-of-living adjustments to be made to the benefits, or provides only for such adjustments as are described in clause (ii)(A) or (B), the plan provides for cost-of-living adjustments to be made to the benefits from time to time at the discretion of any person, where the adjustments, together with periodic cost-of-living adjustments, if any, are warranted by increases in the Consumer Price Index after the benefits commence to be paid;

Proposed Addition — Reg. 8503(2)(a)(iv)–(x)

(iv) the amount of the benefits is increased as a consequence of additional lifetime retirement benefits becoming provided under the provision to the member,

(v) the amount of the benefits is determined with a reduction computed by reference to the member's age, duration of service, or both (or with any other similar reduction), and the amount is subsequently adjusted to reduce or eliminate the portion, if any, of the reduction that is not required for the benefits to comply with the conditions in paragraph (3)(c),

(vi) the amount of the benefits is determined with a reduction computed by reference to

(A) disability benefits to which the member is entitled under the *Canada Pension Plan* or a

provincial pension plan as defined in section 3 of that Act,

(B) benefits to which the member is entitled under an employees' or workers' compensation law of Canada or a province in respect of an injury or disability, or

(C) benefits to which the member is entitled pursuant to a sickness or accident insurance plan or a disability insurance plan,

and the amount is subsequently adjusted to reduce or eliminate the reduction,

(vii) the amount of the benefits is determined with a reduction computed by reference to other benefits that are provided under the provision in respect of the member and permissible under paragraph (c), (d), (k) or (n), and the amount is subsequently adjusted to reduce or eliminate the reduction,

(viii) the amount of the benefits is reduced as a consequence of benefits that are permissible under paragraph (c), (d), (k) or (n) becoming provided under the provision in respect of the member,

(ix) the amount of the benefits payable to the member while the member is in receipt of remuneration from a participating employer is less than the amount of the benefits that would otherwise be payable to the member if the member were not in receipt of the remuneration, or

(x) the amount of the benefits is adjusted in accordance with plan terms that were submitted to the Minister on or before [April 18, 2000], where the benefits have begun to be paid before 2003 and the adjustment is approved by the Minister;

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(1), will add subparas. 8503(2)(a)(iv) to (x), applicable after 1988.

Technical Notes: Section 8503 of the Regulations describes the benefits that may be provided under a defined benefit provision of an RPP and contains conditions that apply to such benefits.

Paragraph 8503(2)(a) of the Regulations permits an RPP to provide lifetime retirement benefits (as defined in subsection 8500(1)) under a defined benefit provision to a plan member, but requires the benefits to be payable in equal periodic amounts. Paragraph 8503(2)(a) currently provides two exceptions to the equal periodic requirement, namely to allow for a reduction after the death of the member's spouse and to allow the member's benefits to be adjusted for inflation.

Paragraph 8503(2)(a) is amended to expand the list of permitted exceptions to the equal periodic requirement. These amendments are intended to provide greater flexibility to plan sponsors in designing benefit options to suit the needs of their plan members. The amendments are also intended to accommodate existing defined benefit plans that provide certain adjustments that are not offensive from a tax policy perspective, but do not technically comply with the current requirements of paragraph 8503(2)(a).

The amendments accommodate the following adjustments to a member's lifetime retirement benefits:

- an increase that takes effect at a future specified date;
- a reduction or elimination of an early retirement reduction to the extent that the early retirement reduction was not required under paragraph 8503(3)(c);
- a reduction or elimination of an offset for disability benefits provided to the member under the Canada or Quebec Pension Plans, workers' compensation or private insurance plans;
- a reduction or elimination of a joint and survivor reduction;
- a reduction to finance the cost of providing a survivor pension after pension commencement; and
- a partial payment of lifetime retirement benefits to reflect remuneration received during a period of re-employment or postponed retirement.

The following is a more detailed description of the amendments.

New subparagraph 8503(2)(a)(iv) allows the terms of a pension plan to set out future increases that will be made to the lifetime retirement benefits payable to retired members, regardless of whether the increases are warranted by cost-of-living increases. For example, a specified multi-employer plan (SMEP) is amended effective January 1, 2000, as a consequence of a collective agreement negotiation, to upgrade the benefit rate for all members (both active and retired) in each of the next three years. In 2000, the amount of lifetime retirement benefits payable is $300 per year of service, in 2001, the amount is $350 per year of service and in 2002 and future years, the amount is $400 per year of service. Subparagraph 8503(2)(a)(iv) ensures that the CCRA can accept the amendment without knowing if the benefit increases will be supported by future increases in the Consumer Price Index. Since the plan is a SMEP, the benefit increases will not give rise to PSPAs.

New subparagraph 8503(2)(a)(v) allows a plan to provide for an adjustment to lifetime retirement benefits where the adjustment reduces or eliminates the portion of an early retirement reduction that was not required to be applied in order to comply with the early retirement rules in paragraph 8503(3)(c).

Example

Under Pension Plan A, members with less than 10 years service are allowed to retire with an unreduced pension at age 65. They can also retire as early as age 60 with a pension that is reduced by 0.5% for each month prior to age 65. At age 65, the pension is increased to 100% of what would have been payable had the member retired at age 65. The pension is not indexed. Since paragraph 8503(3)(c) would have permitted the pension to be paid without reduction at age 60, the adjustment to eliminate the 0.5% per month early retirement reduction is permissible under subparagraph 8503(2)(a)(v)

The plan allows members who have completed at least 10 years of service to retire with an unreduced pension at age 62. Such a member is also allowed to retire as early as age 55 with a pension that is reduced by 0.5% for each month prior to age 62. At age 62, the pension is increased to eliminate the portion of the early retirement reduction that was not required in order to comply with the income tax rules. After 11 years of service, Richard retires at age 58 with an accrued pension of $10,000 per year starting at age 62. His immediate pension payable from the plan is $7,600 per year ($10,000 × (1- (0.5% × 48 months))). The maximum annual pension that could have been paid under paragraph 8503(3)(c) from age 58 is $9,400 ($10,000 × (1- (0.25% × 24 months))). At age 62, Richard's pension is increased to that amount.

A number of defined benefit pension plans provide that a member's pension is to be reduced to reflect disability benefits provided to the member under the Canada or Quebec Pension Plans, workers' compensation or private insurance plans. Normally, the offset to the RPP pension is eliminated when the other benefits cease to be paid. New subparagraph 8503(2)(a)(vi) ensures that an adjustment to lifetime retirement benefits to reduce or eliminate such an offset is permissible. New paragraph 8303(2)(d.1) provides that such an offset is to be disregarded in computing normalized pensions.

Pension benefits legislation generally requires that a joint and survivor pension be provided if a plan member has a spouse at termination or retirement. Often, the cost of the survivor pension is financed by way of a reduction to the member's initial pension. Some pension plans provide an optional form which allows for an adjustment to the member's pension to eliminate

a joint and survivor reduction if it is determined that the survivor pension will not be paid. A member might elect such an option, for example, if there is a concern that the spouse might predecease the member, but the couple still wants the financial security of a joint and survivor pension. Subparagraph 8503(2)(a)(vii) is added to ensure that an adjustment that reduces or eliminates a joint and survivor reduction (or other death benefit reduction) is permissible.

New subparagraph 8503(2)(a)(viii) allows a plan to provide an adjustment to lifetime retirement benefits where, after pension commencement, the member foregoes a portion of his or her lifetime retirement benefits to obtain survivor benefits. For example, a member of a pension plan retires and begins receiving a single life pension. Three years later, the member marries and elects to obtain a survivor pension in place of a proportion of the initial pension. Subparagraph 8503(2)(a)(viii) ensures that the reduction to the member's initial pension is permissible.

New subparagraph 8503(2)(a)(ix) allows the amount of lifetime retirement benefits payable to a member while the member is receiving remuneration from a participating employer to be less than the amount that would otherwise be payable if the member were not receiving the remuneration. This exception is intended to accommodate pension plans that require the pension of a member who becomes re-employed after pension commencement to be reduced to reflect the remuneration received during the period of re-employment. Subparagraph 8503(2)(a)(ix) also resolves a conflict with the *Supplemental Pension Plans Act* (Quebec). Section 77 of that Act allows a member of a pension plan who remains employed with a participating employer after normal retirement age to begin receiving a partial pension to reflect any reduction in remuneration during the postponement period. The member is entitled to a full pension when he or she eventually retires. Subparagraph 8503(2)(a)(ix) permits the use of any method of adjustment while a member is receiving remuneration from a participating employer that results in a lesser amount of lifetime retirement benefits being payable to the member during the period of employment. New paragraph 8303(2)(d.2) provides that this type of adjustment is to be disregarded in computing normalized pensions.

New subparagraph 8503(2)(a)(x) contains a grandfathering rule for lifetime retirement benefits that begin to be paid before 2003 and that are adjusted in a manner that would not otherwise comply with paragraph 8503(2)(a). This subparagraph allows the CCRA to approve such an adjustment provided the adjustment is made in accordance with plan terms submitted to the CCRA on or before [April 18, 2000].

These amendments apply after 1988, which is when paragraph 8503(2)(a) first came into force.

(b) **bridging benefits** — bridging benefits provided to a member where

(i) the bridging benefits are payable for a period beginning no earlier than the time lifetime retirement benefits commence to be paid under the provision to the member and ending no later than the end of the month immediately following the month in which the member attains 65 years of age, and

(ii) the amount of the bridging benefits payable for a particular month does not exceed the amount that is determined for that month by the formula

$$A \times (1 - .0025 \times B) \times C \times \frac{D}{10}$$

where

A is the amount (or a reasonable estimate thereof) of public pension benefits that would be payable to the member for the month in which the bridging benefits commence to be paid to the member if

(A) the member were 65 years of age throughout that month,

(B) that month were the first month for which public pension benefits were payable to the member,

(C) the member were entitled to the maximum amount of benefits payable under the *Old Age Security Act*, and

(D) the member were entitled to that proportion, not exceeding 1, of the maximum benefits payable under the *Canada Pension Plan* (or a provincial plan as defined in section 3 of the *Canada Pension Plan*) that the total of the member's remuneration for the 3 calendar years in which the remuneration is the highest is of the total of the Year's Maximum Pensionable Earnings for those 3 years (or such other proportion of remuneration to Year's Maximum Pensionable Earnings as is acceptable to the Minister),

B is

(A) except where clause (B) is applicable, the number of months, if any, from the date on which the bridging benefits commence to be paid to the member to the date on which the member attains 60 years of age, and

(B) where the member is totally and permanently disabled at the time the bridging benefits commence to be paid to the member and the member was not, at any time after 1990, connected with an employer who has participated in the plan, nil,

C is the greatest of all amounts each of which is the ratio of the Consumer Price Index for a month not before the month in which the bridging benefits commence to be paid to the member and not after the particular month, to the Consumer Price Index for the month in which the bridging benefits commence to be paid to the member, and

D is

(A) except where clause (B) is applicable, the lesser of 10 and

(I) where the member was not, at any time after 1990, connected with an employer who has participated in the plan, the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision, and

(II) in any other case, the aggregate that would be determined under subclause (I) if the duration of each period were multiplied by a fraction (not greater than 1) that measures the services rendered by the member throughout the period to employers who participate in the plan as a proportion of the services that would have been rendered by the member throughout the period to such employers

had the member rendered services on a full-time basis, and

(B) where the member is totally and permanently disabled at the time at which the bridging benefits commence to be paid to the member and the member was not, at any time after 1990, connected with an employer who has participated in the plan, 10;

(c) **guarantee period** — retirement benefits (in this paragraph referred to as "continued retirement benefits") provided to one or more beneficiaries of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) the continued retirement benefits are payable for a period beginning after the death of the member and ending

(A) if retirement benefits permissible under paragraph (d) are provided under the provision to a spouse or former spouse of the member, no later than 5 years, and

(B) in any other case, no later than 15 years

after the day on which retirement benefits commence to be paid under the provision to the member, and

(ii) the aggregate amount of continued retirement benefits payable under the provision for each month does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(d) **post-retirement survivor benefits** — retirement benefits (in this paragraph referred to as "survivor retirement benefits") provided to one or more beneficiaries of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) each beneficiary is a spouse, former spouse or dependant of the member at the time of the member's death,

(ii) the survivor retirement benefits provided to a spouse or former spouse are payable for a period beginning after the death of the member and ending with the death of the spouse or former spouse,

(iii) the survivor retirement benefits provided to a dependant are payable for a period beginning after the death of the member and ending no later than at the end of the dependant's eligible survivor benefit period,

(iv) the amount of survivor retirement benefits payable for each month to a beneficiary does not exceed 66⅔ per cent of the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive, and

(v) the aggregate amount of survivor retirement benefits and other retirement benefits payable under the provision for each month to beneficiaries of the member does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(e) **pre-retirement survivor benefits** — retirement benefits (in this paragraph referred to as "survivor retirement benefits") provided to one or more beneficiaries of a member who dies before retirement benefits under the provision commence to be paid to the member where

(i) no other benefits (other than benefits permissible under paragraphs (g), (j) and (n)) are payable as a consequence of the member's death,

Proposed Amendment — Reg. 8503(2)(e)(i)

(i) no other benefits (other than benefits permissible under paragraphs (g), (j), (l.1) or (n)) are payable as a consequence of the member's death,

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(2), will amend subpara. 8503(2)(e)(i) to read as above, applicable after June 4, 1997.

Technical Notes: See under 8503(2)(f)(i).

(ii) each beneficiary is a spouse, former spouse or dependant of the member at the time of the member's death,

(iii) the survivor retirement benefits provided to a spouse or former spouse are payable for a period beginning after the death of the member and ending with the death of the spouse or former spouse,

(iv) the survivor retirement benefits provided to a dependant are payable for a period beginning after the death of the member and ending no later than at the end of the dependant's eligible survivor benefit period,

(v) the amount of survivor retirement benefits payable for a month to a beneficiary does not exceed 66⅔ per cent of the amount that is determined in respect of the month by the formula set out in subparagraph (vi), and

(vi) the aggregate amount of survivor retirement benefits payable under the provision for a particular month to beneficiaries of the member does not exceed the amount that is determined for the particular month by the formula

$$\frac{(A + B)}{12} \times C$$

where

A is the amount (expressed on an annualized basis) of lifetime retirement benefits that accrued under the provision to the member as of the member's day of death, determined without any reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction,

B is, in the case of a member who attains 65 years of age before the member's death or who was, at any time after 1990, connected with an employer who has participated in the plan, nil, and, otherwise, the amount, if any, by which the lesser of

(A) the amount (expressed on an annualized basis) of lifetime retirement benefits that could reasonably be expected to have accrued to the member to the day on which the member would have attained 65 years of age if the member had survived to that day and continued in employment and if the member's rate of remuneration had not increased after the member's day of death, and

(B) the amount, if any, by which 3/2 of the Year's Maximum Pensionable Earnings for the calendar year in which the member dies exceeds such amount as is required by the Minister to be determined in respect of benefits provided, as a consequence of the death of the member, under other benefit provisions of the plan and under benefit provisions of other registered pension plans

exceeds the amount determined for A, and

C is the greatest of all amounts each of which is the ratio of the Consumer Price Index for a month not before the month in which the member dies and not after the particular month, to the Consumer Price Index for the month in which the member dies;

(f) **pre-retirement survivor benefits — alternative rule** — retirement benefits (in this paragraph referred to as "surviving spouse benefits") provided to a beneficiary of a member who dies before retirement benefits under the defined benefit provision commence to be paid to the member where

(i) no other benefits (other than benefits that are permissible under paragraphs (g), (j) and (n)) are payable as a consequence of the member's death,

Proposed Amendment — Reg. 8503(2)(f)(i)

(i) no other benefits (other than benefits permissible under paragraphs (g), (j), (l.1) or (n)) are payable as a consequence of the member's death,

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(3), will amend subpara. 8503(2)(f)(i) to read as above, applicable after June 4, 1997.

Technical Notes: Paragraphs 8503(2)(e) and (f) of the Regulations permit an RPP to provide for the payment of certain survivor benefits under a defined benefit provision where a member dies before beginning to receive retirement benefits. Each paragraph sets out a number of conditions that must be met in order for the plan to provide the survivor benefits. One of the conditions, set out in subparagraphs (e)(i) and (f)(i), is that no other retirement benefits (other than benefits permissible under paragraphs 8503(2)(g), (j) or (n)) can be payable as a consequence of the member's death.

Subparagraphs 8503(2)(e)(i) and (f)(i) are amended to add a reference to new paragraph 8503(2)(l.1), which allows a spouse of a deceased member to elect to receive a bridging benefit in place of all or a proportion of his or her survivor benefits.

These amendments apply after June 4, 1997, which is when paragraph 8503(2)(l.1) comes into force.

(ii) the beneficiary is a spouse or former spouse of the member,

(iii) the surviving spouse benefits are payable for a period beginning not later than the later of

(A) the day that is one year after the day of death of the member, and

(B) the end of the calendar year in which the beneficiary attains 69 years of age,

and ending with the death of the beneficiary,

(iv) the surviving spouse benefits would be in accordance with paragraph (a) if the surviving spouse were a member of the plan, and

(v) the present value (at the time of the member's death) of all benefits provided as a consequence of the member's death does not exceed the present value (immediately before the member's death) of all benefits that have accrued under the provision with respect to the member to the day of the member's death;

(g) **pre-retirement survivor benefits — guarantee period** — retirement benefits provided to one or more individuals as a consequence of the death of a person who

(i) is a beneficiary of a member who died before retirement benefits under the provision commenced to be paid to the member,

(ii) was, at the time of the member's death, a spouse or former spouse of the member, and

(iii) dies after the member's death,

where the benefits would be in accordance with paragraph (c) if the person were a member of the plan;

(h) **lump-sum payments on termination** — the payment, with respect to a member in connection with the member's termination from the plan (otherwise than by reason of death), of one or more single amounts where

(i) the payments are the last payments to be made under the provision with respect to the member,

(ii) if subparagraph (iii) is not applicable, each single amount does not exceed the balance in the member's net contribution account immediately before the time of payment of the single amount, and

(iii) if

(A) the Minister has, pursuant to subsection (5), waived the application of the conditions in paragraph (4)(a) in respect of the provision, or

(B) the member's contributions under the provision for each calendar year after 1990 would have been in accordance with paragraph (4)(a) if the reference in clause (i)(B) thereof to "70 per cent" were read as a reference to "50 per cent",

each single amount does not exceed the amount that would be the balance in the member's net contribution account immediately before the time of payment of the single amount if, for each current service contribution made by the member under the provision, the account were credited with an additional amount equal to the amount of the contribution (other than the portion thereof, if any, paid in respect of one or more periods that were not periods of regular employment and that would not have been required to be paid by the member if the periods were periods of regular employment);

Proposed Amendment — Reg. 8503(2)(h)(iii) closing words

each single amount does not exceed the amount that would be the balance in the member's net contribution account immediately before the time of the payment of the single amount if, for each current service contribution made by the member under the provision, the account were credited at the time of the contribution with an additional amount equal to the amount of the contribution (other than the portion of the contribution, if any, paid in respect of one or more periods that were not periods of regular employment and that would not have been required to be paid by the

member if the periods were periods of regular employment);

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(4), will amend the closing words of subpara. 8503(2)(h)(iii) to read as above, applicable after 1988.

Technical Notes: Paragraph 8503(2)(h) of the Regulations permits a lump sum to be paid under a defined benefit provision of an RPP to a member on termination of plan membership (otherwise than by reason of death) equal to the balance in the member's net contribution account (as defined in subsection 8503(1)). In general terms, that balance is equal to the member's contributions under the provision plus interest, less any payments made in respect of the member. In certain cases, a larger payment may be made equal to the amount that would be the balance in the member's net contribution account if that account were credited with twice the current service contributions made by the member. Normally, the amount that may be paid will equal two times employee contributions plus interest.

Paragraph 8503(2)(h) is amended to clarify that the additional crediting to the net contribution account is to occur at the time that each current service contribution is made, rather than at the time that the lump sum payment is made. This ensures that the notional balance in the net contribution account reflects two times the accrued interest on the current service contributions.

This amendment applies after 1988, which is when paragraph 8503(2)(h) first came into force.

(i) **payment of commuted value of benefits on death before retirement** — the payment of one or more single amounts to one or more beneficiaries of a member who dies before retirement benefits under the provision commence to be paid to the member where

(i) no retirement benefits are payable as a consequence of the member's death, and

(ii) the aggregate of all amounts, each of which is such a single amount (other than the portion thereof, if any, that can reasonably be considered to be interest, computed at a rate not exceeding a reasonable rate, in respect of the period from the day of death of the member to the day the single amount is paid), does not exceed the present value, immediately before the death of the member, of all benefits that have accrued under the provision with respect to the member to the day of the member's death;

(j) **lump sum payments on death** — the payment of one or more single amounts after the death of a member where

(i) the payments are the last payments to be made under the provision with respect to the member,

(ii) if the member dies before retirement benefits under the provision commence to be paid to the member and no retirement benefits are payable as a consequence of the member's death, the aggregate amount to be paid at any time complies with whichever of the conditions in subparagraphs (h)(ii) and (iii) would be applicable if the single amounts were paid in connection with the member's termination from the plan otherwise than by reason of death, and

(iii) if subparagraph (ii) is not applicable, the aggregate amount to be paid at any time does not exceed the balance, immediately before that time, in the member's net contribution account in relation to the provision;

(k) **additional post-retirement death benefits** — retirement benefits (in this paragraph referred to as "additional death benefits") payable after the death of a member who dies after retirement benefits under the provision commence to be paid to the member where the additional death benefits are

(i) retirement benefits provided to a spouse or former spouse of the member that are in excess of the benefits that are permissible under paragraph (d), but that would be permissible under that paragraph if the reference in subparagraph (iv) thereof to "66⅔ per cent" were read as a reference to "100 per cent",

(ii) retirement benefits provided to one or more beneficiaries of the member that are in excess of the benefits that are permissible under paragraph (c), but that would be permissible under that paragraph if it were read without reference to clause (i)(A) thereof, or

(iii) a combination of retirement benefits described in subparagraphs (i) and (ii),

and where

(iv) the additional death benefits are provided in lieu of a proportion of the lifetime retirement benefits that would otherwise be payable under the provision to the member, and

(v) the present value (at the time retirement benefits under the provision commence to be paid to the member) of all benefits provided under the provision with respect to the member does not exceed the present value (at that time) of the benefits that would be so provided if

(A) the amount of the member's lifetime retirement benefits were determined without any reduction dependent on the benefits payable after the death of the member or on circumstances that are relevant in determining such death benefits, and

(B) the maximum amount of retirement benefits that are permissible under paragraph (d) were payable to the member's spouse or former spouse after the death of the member;

Proposed Amendment — Reg. 8503(2)(k)(v)

(v) the present value of all benefits provided under the provision with respect to the member does not exceed the present value of the benefits that would be provided if

(A) the amount of the member's lifetime retirement benefits were determined without any reduction dependent on the benefits payable after the death of the member or on circumstances that are relevant in determining such death benefits,

(B) the maximum amount of retirement benefits that are permissible under paragraph (d) were payable to the member's spouse or former spouse after the death of the member, and

(C) those present values were determined as of

(I) except where subclause (II) applies, the particular time at which retirement benefits under the provision begin to be paid to the member, and

(II) where the additional death benefits become provided after the particular time, the time at which the additional death benefits become provided;

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(5), will amend subpara. 8503(2)(k)(v) to read as above, applicable after 1988.

Technical Notes: Paragraph 8503(2)(k) of the Regulations allows survivor benefits in excess of the benefits permissible under paragraphs 8503(2)(c) and (d) where the survivor benefits are payable to a spouse of a member who dies after beginning to receive retirement benefits. Specifically, paragraph 8503(2)(k) permits a defined benefit RPP to provide up to a 100% joint and survivor pension and up to a 15-year guarantee. To obtain the additional survivor benefits, a member must forgo a portion of his or her lifetime retirement benefits so that the present value of benefits provided in respect of the member does not exceed the present value of the benefits that would be provided if:

- no reduction were applied to the member's lifetime retirement benefits on account of benefits payable after the death of the member; and
- a 66 2/3% survivor benefit were payable to the spouse after the death of the member.

The present values must be determined as of the time retirement benefits begin to be paid to the member.

Subparagraph 8503(2)(k)(iv) is amended so that the present values are determined as of the time the additional death benefits become provided if that time is later than the time retirement benefits begin to be paid to the member. This amendment is consequential to the introduction of new subparagraph 8503(2)(a)(viii), which allows a member to forego a portion of his or her pension after it has begun to be paid in order to obtain survivor benefits.

This amendment applies after 1988, which is when paragraph 8503(2)(k) first came into force.

(l) **additional bridging benefits** — bridging benefits in excess of bridging benefits that are permissible under paragraph (b) (referred to in this paragraph as "additional bridging benefits") provided to a member where

(i) the additional bridging benefits would be permissible under paragraph (b) if the formula set out in subparagraph (ii) thereof were replaced by the formula "A × C",

(ii) the additional bridging benefits are provided in lieu of a proportion of the lifetime retirement benefits that would otherwise be payable under the provision to the member and any benefits related thereto payable after the death of the member, and

Proposed Amendment — Reg. 8503(2)(l)(i), (ii)

(i) the additional bridging benefits would be permissible under paragraph (b) if

(A) the formula in subparagraph (b)(ii) were replaced by the formula "A/12 × C", and

(B) the description of A in subparagraph (b)(ii) were read as:

"A is 40% of the Year's Maximum Pensionable Earnings for the year in which the bridging benefits begin to be paid to the member,"

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(6), will amend subparas. 8503(2)(l)(i) and (ii) to read as above, applicable after June 4, 1997.

Technical Notes: Paragraph 8503(2)(l) of the Regulations permits additional bridging benefits in excess of the bridging benefits permitted by paragraph 8503(2)(b). In general terms, paragraph 8503(2)(b) permits a defined benefit RPP to provide bridging benefits to a member equal to the total public pension benefits (Old Age Security (OAS) and Canada and Quebec Pension Plans (C/QPP)), for the month in which the bridging benefits begin, that the member would receive if he or she were age 65. In subsequent months, the bridging benefits may be adjusted for inflation. The bridging benefits may be paid for a period beginning at the time lifetime retirement benefits begin and ending when the member attains age 65. The bridging benefits are required to be reduced if the member has less than ten years of pensionable service or retires before age 60.

The additional bridging benefits permissible under paragraph 8503(2)(l) can increase a member's total bridging benefits to the amount that would be allowable under paragraph 8503(2)(b) if no reductions on account of short service or age were required. The additional bridging benefits must be provided in place of a proportion of the member's lifetime retirement benefits (with associated survivor benefits), and on a basis that is no more favourable than an actuarial equivalent basis.

Paragraph 8503(2)(l) is amended in two ways. First, it is amended to accommodate the bridging benefits provided for in section 91.1 of Quebec's *Supplemental Pension Plans Act* (QSPPA). To accommodate these benefits, the limit on the amount of bridging benefits that can be provided under paragraph 8503(2)(l) is being increased to allow bridging benefits equal to 40% of the Year's Maximum Pensionable Earnings (YMPE), for the year in which the bridging benefits begin to be paid. YMPE is defined in subsection 8500(1) by way of reference to section 18 of the *Canada Pension Plan*. The new limit is slightly higher than the existing limit, which is based on combined OAS and C/QPP benefits.

Other amendments relating to the bridging benefit provisions of the QSPPA include new paragraph 8503(2)(l.1) (which accommodates spousal bridging benefits) and new subsection 8503(7.1) (which allows a member to forego all lifetime retirement benefits in order to obtain bridging benefits and permits bridging benefit elections to be disregarded in applying the limits on post-retirement survivor benefits). For further details, refer to the commentary on those provisions.

The second amendment to paragraph 8503(2)(l) relates to the condition that the cost of the additional bridging benefits be financed by way of a reduction in the member's lifetime retirement benefits and associated survivor benefits. This condition is amended to allow a member to forego any combination of lifetime retirement benefits and survivor benefits in order to obtain bridging benefits. This will allow, for example, a member to elect to convert lifetime retirement benefits into bridging benefits without adversely affecting the level of survivor benefits payable to the member's spouse.

These amendments apply after June 4, 1997, which is when the bridging benefit provisions of the QSPPA came into force.

(iii) the present value (at the time retirement benefits under the provision commence to be paid to the member) of all benefits provided under the provision with respect to the member does not exceed the present value (at that time) of the benefits that would be so provided if the additional bridging benefits were not provided;

Proposed Addition — Reg. 8503(2)(l.1)

(l.1) **spousal bridging benefits** — retirement benefits (in this paragraph referred to as "spousal bridging benefits") provided to a beneficiary of a member after the death of the member where

(i) the beneficiary is a spouse or former spouse of the member,

(ii) the spousal bridging benefits are payable at the election of the beneficiary, and

(iii) the spousal bridging benefits would be in accordance with paragraph (l) if the beneficiary were a member of the plan;

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(7), will add para. 8503(2)(l.1), applicable after June 4, 1997.

Technical Notes: New paragraph 8503(2)(l.1) of the Regulations permits a spouse or former spouse of a deceased member to elect to receive bridging benefits in place of all or a proportion of his or her survivor benefits. The spousal bridging benefits that are permissible under this paragraph are identical to the bridging benefits that paragraph 8503(2)(l) permits to be provided to a plan member. Paragraph 8503(2)(l.1) is introduced to accommodate the spousal bridging benefits provided for in section 91.1 of the *Supplemental Pension Plans Act* (Quebec).

This amendment applies after June 4, 1997, which is when the spousal bridging benefit provisions of Quebec's legislation came into force.

(m) **commutation of benefits** — the payment with respect to a member of a single amount in full or partial satisfaction of the member's entitlement to other benefits under the provision, where the single amount does not exceed the present value (at the time the single amount is paid) of

(i) the other benefits that, as a consequence of the payment, cease to be provided, and

(ii) benefits, other than benefits referred to in subparagraph (i), that it is reasonable to consider would cease to be provided as a consequence of the payment if

(A) where retirement benefits have not commenced to be paid under the provision to the member at the time the single amount is paid, the plan provided for the retirement benefits that accrued to the member under the provision to be adjusted to reflect the increase in a general measure of wages and salaries from that time to the day on which the benefits commence to be paid, and

(B) the plan provided for periodic cost-of-living adjustments to be made to the retirement benefits payable under the provision to the member to reflect increases in the Consumer Price Index after the retirement benefits commence to be paid (other than increases before the time the single amount is paid); and

Proposed Amendment — Reg. 8503(2)(m)

(m) **commutation of benefits** — the payment with respect to a member of a single amount in full or partial satisfaction of the member's entitlement to other benefits under the provision, where the single amount does not exceed the total of

(i) the present value (at the particular time determined in accordance with subsection (2.1)) of

(A) the other benefits that, as a consequence of the payment, cease to be provided, and

(B) benefits, other than benefits referred to in clause (A), that it is reasonable to consider would cease to be provided as a consequence of the payment if

(I) where retirement benefits have not begun to be paid under the provision to the member at the particular time, the plan provided for the retirement benefits that accrued to the member under the provision to be adjusted to reflect the increase in a general measure of wages and salaries from the particular time to the day on which the benefits begin to be paid, and

(II) the plan provided for periodic cost-of-living adjustments to be made to the retirement benefits payable under the provision to the member to reflect increases in the Consumer Price Index after the retirement benefits begin to be paid (other than increases before the particular time), and

(ii) interest (computed at a reasonable rate) from the particular time to the time the single amount is paid; and

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(8), will amend para. 8503(2)(m), applicable after 1988.

Technical Notes: Paragraph 8503(2)(m) of the Regulations enables an RPP to provide for the commutation of benefits to which a member is entitled under a defined benefit provision of the plan. The lump sum payment cannot exceed the present value (at the time of payment) of the member's foregone benefits. Where the foregone benefits are not indexed, or are only partially indexed, paragraph 8503(2)(m) permits the present value to be determined as if the benefits were fully indexed. The assumed indexing prior to the date of pension commencement can be based on increases in a general measure of wages and salaries, while the assumed indexing thereafter can be based on increases in the Consumer Price Index.

Pension benefits legislation generally requires the commuted value of a member's benefits to be calculated as of the date of termination of plan membership and adjusted for interest between the calculation date and the payment date. However, the present value limit in paragraph 8503(2)(m) is determined as of the payment date and there is no explicit provision for the interest adjustment. This difference in methods can, in some situations, result in the maximum lump sum payment permissible under paragraph 8503(2)(m) being less than the lump sum payment required by the governing pension benefits legislation.

To resolve this conflict and to bring the income tax rules into closer conformity with accepted actuarial practice, paragraph 8503(2)(m) is amended to allow the present value limit to be calculated as of a date prior to the payment date (according to rules set out in new subsection 8503(2.1)) and adjusted for interest between the calculation date and the payment date. Subsection 8503(2.1) permits any calculation date up to two years before the payment date as long as the use of the earlier date is either mandated by pension benefits legislation or is reasonable having regard to accepted actuarial practice and the circumstances in which the member acquires the right to the commutation benefit.

If the calculation date is more than two years before the payment date, the CCRA must approve the use of the calculation date. It is expected that the CCRA would give its approval only where the payment of the lump sum was delayed for valid reasons, for example, if a plan administrator was required to obtain regulatory approval of a wind-up report before making the payment. It is also expected that situations in which the CCRA's approval is requested will be relatively uncommon as pension benefits legislation and accepted actuarial practice generally permit the commuted value to be recalculated on the basis of a new calculation date if there is a lengthy delay between the initial calculation date and the payment date.

This amendment applies after 1988, which is when paragraph 8503(2)(m) first came into force.

(n) **[commutation of benefits]** — the payment, with respect to an individual after the death of a member, of a single amount in full or partial satisfaction of the individual's entitlement to other benefits under the provision, where

(i) the individual is a beneficiary of the member,

(ii) the single amount does not exceed the present value (at the time the single amount is paid) of the other benefits that, as a consequence of the payment, cease to be provided, and

Proposed Amendment — Reg. 8503(2)(n)(ii)

(ii) the single amount does not exceed the total of

(A) the present value (at the particular time determined in accordance with subsection (2.1)) of the other benefits that, as a consequence of the payment, cease to be provided, and,

(B) interest (computed at a reasonable rate) from the particular time to the time the single amount is paid, and

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(9), will amend subpara. 8503(2)(n)(ii) to read as above, applicable after 1988.

Technical Notes: Paragraph 8503(2)(n) of the Regulations enables an RPP to provide for the commutation of benefits to which a beneficiary of a member is entitled under a defined benefit provision of the plan. The lump-sum payment cannot exceed the present value (determined at the time of payment) of the beneficiary's foregone benefits.

Paragraph 8503(2)(n) is amended, effective after 1988, in the same manner as paragraph 8503(2)(m). For details, refer to the commentary on paragraph 8503(2)(m).

(iii) if the other benefits in respect of which the single amount is paid include benefits described in paragraph (e) and the beneficiary was a spouse or former spouse of the member at the time of the member's death, the single amount is not transferred from the plan directly to another registered pension plan, a registered retirement savings plan or a registered retirement income fund except with the approval of the Minister.

Related Provisions: Reg. 8302(3) — Normalized pensions; Reg. 8503(7.1) — Bridging benefits election.

History: Cl. 8503(2)(f)(iii)(B) amended by P.C. 1998-2256, s. 22, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1996, except that

(a) subject to paragraph (b), cl. 8503(2)(f)(iii)(B), as amended, applies in respect of benefits provided to an individual who attained 70 years of age before 1997 or 69 years of age in 1996 as though the reference in that clause to "69 years of age" were a reference to "71 years of age" and "70 years of age" respectively; and

(b) where retirement benefits under a pension plan are provided to an individual by means of an annuity contract issued before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, where the individual had not attained that age before 1997, or

(B) 70 years of age, where the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined,

cl. 8503(2)(f)(iii)(B), as amended, applies in respect of the benefits as though the reference in that clause to "69 years of age" were a reference to "71 years of age".

Subpara. 8503(2)(n)(iii) amended by P.C. 1995-17, subsec. 11(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to payments made after April 5, 1994.

Registered Plans Division Newsletters: 96-3 (Flexible pension plans); 98-2 (Treating excess member contributions under a registered pension plan).

Proposed Addition — Reg. 8503(2.1)

(2.1) Rule for commutation of benefits — For the purpose of determining the limit on a single amount that can be paid with respect to an individual under paragraph (2)(m) or (n), the particular time referred to in those paragraphs is

(a) except where paragraph (b) applies, the time the single amount is paid; and

(b) a specific time that is earlier than the time the single amount is paid, where

(i) the amount of the payment is based on a determination of the actuarial value (at the specific time) of the individual's benefits,

(ii) the use of the specific time in determining the actuarial value

(A) is required by the *Pension Benefits Standards Act, 1985* or a similar law of a province, or

(B) is reasonable having regard to accepted actuarial practice and the circumstances in which the individual acquires the right to the payment, and

(iii) if the specific time is more than two years before the time the single amount is paid, the Minister has approved the use of the specific time for this purpose.

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(10), will add subsec. 8503(2.1), applicable after 1988.

Technical Notes: New subsection 8503(2.1) of the Regulations contains a special rule that applies for the purposes of paragraphs 8503(2)(m) and (n) in determining the present value limit in connection with a commutation of benefits under a defined benefit provision of an RPP. For further details, refer to the commentary on paragraph 8503(2)(m).

Subsection 8503(2.1) applies after 1988, which is when paragraphs 8503(2)(m) and (n) first came into force.

(3) Conditions applicable to benefits — For the purposes of subsection 8501(2) and subparagraph 8502(c)(i), the following conditions are applicable with respect to the benefits provided under each defined benefit provision of a pension plan:

(a) **eligible service** — the only lifetime retirement benefits provided under the provision to a member (other than additional lifetime retirement benefits provided to a member because the member is totally and permanently disabled at the time the member's retirement benefits commence to be paid) are lifetime retirement benefits provided in respect of one or more of the following periods, namely,

(i) a period throughout which the member is employed in Canada by, and receives remuneration from, an employer who participates in the plan,

(ii) a period throughout which the member was employed in Canada by, and received remuneration from, a predecessor employer to an employer who participates in the plan,

(iii) an eligible period of temporary absence of the member with respect to an employer who participates in the plan or a predecessor employer to such an employer,

(iv) a period of disability of the member subsequent to a period described in subparagraph (i) where, throughout such part of the period of disability as is after 1990, the member is not connected with an employer who participates in the plan,

(v) a period in respect of which

(A) benefits that are attributable to employment of the member with a former employer accrued to the member under a defined benefit provision of another registered pension plan, or

(B) contributions were made by or on behalf of the member under a money purchase provision of another registered pension plan,

where the member has ceased to be a member of that other plan,

(vi) a period throughout which the member was employed in Canada by a former employer where the period was an eligibility period for the participation of the member in another registered pension plan, and

(vii) a period acceptable to the Minister throughout which the member is employed outside Canada;

(b) **benefit accruals after pension commencement** — benefits are not provided under the provision (in this paragraph referred to as the "particular provision") to a member in respect of a period that is after the day on which retirement benefits commence to be paid to the member under a defined benefit provision of

(i) the plan, or

(ii) any other registered pension plan if

(A) an employer who participated under the particular provision for the benefit of the member, or

(B) an employer who does not deal at arm's length with an employer referred to in clause (A)

has participated under the defined benefit provision of the other plan for the benefit of the member;

(c) **early retirement** — where lifetime retirement benefits commence to be paid under the provision to a member at any time before

(i) in the case of a member whose benefits are provided in respect of employment in a public safety occupation, the earliest of

(A) the day on which the member attains 55 years of age,

(B) the day on which the member has 25 years of early retirement eligibility service in relation to the provision,

(C) the day on which the aggregate of the member's age (measured in years, including any fraction of a year) and years of early retirement eligibility service in relation to the provision is equal to 75, and

(D) if the member was not, at any time after 1990, connected with any employer who has participated in the plan, the day on which the member becomes totally and permanently disabled, and

(ii) in any other case, the earliest of

(A) the day on which the member attains 60 years of age,

(B) the day on which the member has 30 years of early retirement eligibility service in relation to the provision,

(C) the day on which the aggregate of the member's age (measured in years, including any fraction of a year) and years of early retirement eligibility service in relation to the provision is equal to 80, and

(D) if the member was not, at any time after 1990, connected with any employer who has participated in the plan, the day on which the member becomes totally and permanently disabled,

the amount (expressed on an annualized basis) of lifetime retirement benefits payable to the member for each calendar year does not exceed the amount determined for the year by the formula

$$X \times (1 - .0025 \times Y)$$

where

X is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable to the member for the year if the benefits were determined without a reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction, and

Y is the number of months in the period from the day on which lifetime retirement benefits commence to be paid to the member to the earliest of the days that would be determined under clauses (i)(A) to (C) or (ii)(A) to (C), as the case may be, if the member continued in employment with an employer who participates in the plan,

and, for the purposes of this paragraph,

(iii) "early retirement eligibility service" of a member in relation to a defined benefit provision of a pension plan means one or more periods each of which is

(A) a period that is pensionable service of the member under the provision, or

(B) a period throughout which the member was employed by an employer who has participated in the plan or by a predecessor employer to such an employer, and

(iv) "years of early retirement eligibility service" of a member in relation to a defined benefit provision of a pension plan means the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is early retirement eligibility service of the member in relation to the provision;

(d) **increased benefits for disabled member** — where the amount of lifetime retirement benefits provided under the provision to a member depends on whether the member is physically or mentally impaired at the time (in this paragraph referred to as the "time of commencement") at which retirement benefits under the provision commence to be paid to the member,

(i) the amount of lifetime retirement benefits payable if the member

(A) is not totally and permanently disabled at the time of commencement, or

(B) is totally and permanently disabled at the time of commencement and was, at any time after 1990, connected with an employer who has participated in the plan

satisfies the limit that would be determined by the formula set out in paragraph (c) if the member were not impaired at the time of commencement, and

(ii) the amount of lifetime retirement benefits payable for a particular month to the member if subparagraph (i) is not applicable does not exceed the amount that is determined for the particular month by the formula

$$\frac{(A + B)}{12} \times C$$

where

A is the amount (expressed on an annualized basis) of lifetime retirement benefits that have accrued under the provision to the member to the time of commencement, determined as if the member were not impaired at the time of commencement and without any reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction,

B is, in the case of a member who attains 65 years of age before the time of commencement, nil, and, otherwise, the amount, if any, by which the lesser of

(A) the amount (expressed on an annualized basis) of lifetime retirement benefits that could reasonably be expected to have accrued to the member to the day on which the member would have attained 65 years of age if the member had survived to that day and continued in employment and if the member's rate of remuneration had not increased after the time of commencement, and

(B) the amount, if any, by which the Year's Maximum Pensionable Earnings for the calendar year that includes the time of commencement exceeds such amount as is required by the Minister to be determined in respect of benefits provided to the member under other benefit provisions of the plan and under benefit provisions of other registered pension plans

exceeds the amount determined for A, and

C is the greatest of all amounts each of which is the ratio of the Consumer Price Index for a month not before the month that includes the time of commencement and not after the particular month, to the Consumer Price Index for the month that includes the time of commencement;

(e) **pre-1991 benefits** — all benefits provided under the provision in respect of periods before 1991 are acceptable to the Minister and, for the purposes of this condition, any benefits in respect of periods before 1991 that become provided after 1988 with respect to a member who is connected with an employer who participates in the plan or was so connected at any time before the benefits become provided shall, unless the Minister is notified in writing that the benefits are provided with respect to the member, be deemed to be unacceptable to the Minister;

(f) **determination of retirement benefits** — the amount of retirement benefits provided under the provision to a member is determined in such a manner that the member's pension credit (as determined under Part LXXXIII) under the provision for a calendar year with respect to an employer is determinable at the end of the year;

(g) **benefit accrual rate** — where the amount of lifetime retirement benefits provided under the provision to a member is determined, in part, by multiplying the member's remuneration (or a function of the member's remuneration) by an annual benefit accrual rate, or in a manner that is equivalent to such a multiplication, the benefit accrual rate or the equivalent benefit accrual rate, as the case may be, does not exceed 2 per cent;

(h) **increase in accrued benefits** — where the amount of lifetime retirement benefits provided to a member in respect of a calendar year depends on

(i) the member's remuneration in subsequent years, or

(ii) the average wage (or other general measure of wages and salaries) for subsequent years,

and this condition has not been waived by the Minister, the formula for determining the amount of lifetime retirement benefits is such that

(iii) the percentage increase from year to year in the amount of lifetime retirement benefits that accrued to the member in respect of the year can reasonably be expected to approximate or be less than the percentage increase from year to year in the member's remuneration or in the average wage (or other general measure of wages and salaries), as the case may be, or

(iv) the condition in subparagraph (iii) is not satisfied only by reason that the formula can reasonably be considered to have been designed taking into account the public pension benefits payable to members,

and, for the purposes of this condition, where in determining the amount of lifetime retirement benefits provided under the provision to a member there is deducted an amount described in subparagraph (j)(i), it shall be assumed that the amount so deducted is nil;

(i) where the amount of lifetime retirement benefits provided to a member in respect of a calendar year depends on the member's remuneration in other years, the formula for determining the amount of the lifetime retirement benefits is such that any increase in the amount of lifetime retirement benefits that accrued to the member in respect of the year that is attributable to increased remuneration is primarily attributable to an increase in the rate of the member's remuneration;

(j) **offset benefits** — where

(i) in determining the amount of lifetime retirement benefits provided under the provision to a member there is deducted

(A) the amount of lifetime retirement benefits provided to the member under a benefit provision of a registered pension plan, or

(B) the amount of a lifetime annuity that is provided to the member under a deferred profit sharing plan, and

(ii) a single amount is paid in full or partial satisfaction of the member's entitlement to benefits under the benefit provision referred to in clause (i)(A) or the deferred profit sharing plan referred to in clause (i)(B),

the amount that is so deducted in determining the amount of the member's lifetime retirement benefits under the defined benefit provision includes the amount of lifetime retirement benefits or lifetime annuity that may reasonably be considered to have been forgone as a consequence of the payment of the single amount;

(k) **bridging benefits — cross-plan restriction** — bridging benefits are not paid under the provision to a member who receives bridging benefits under another defined benefit provision of the plan (in this paragraph referred to as the "particular plan") or under a defined benefit provision of another registered pension plan, except that this condition is not applicable where it is waived by the Minister or where

(i) bridging benefits are paid to the member under only one defined benefit provision of the particular plan,

(ii) the decision to provide bridging benefits under the particular plan to the member was not made by the member, by persons with whom the member does not deal at arm's length or by the member and such persons, and

(iii) each employer who has participated in any registered pension plan (other than the particular plan) under a defined benefit provision of which the member receives bridging benefits

(A) has not participated in the particular plan, and

(B) has always dealt at arm's length with each employer who has participated in the particular plan,

and, for the purposes of this paragraph, bridging benefits do not include benefits that are provided on a basis no more favourable than an actuarially equivalent basis in lieu of lifetime retirement benefits and related death benefits; and

Proposed Amendment — Reg. 8503(3)(k) closing words

and, for the purposes of this paragraph, bridging benefits provided under a defined benefit provision of a registered pension plan to the member do not include benefits that are provided on a basis no more favourable than an actuarially equivalent basis in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member; and

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(11), will amend the closing words of para. 8503(3)(k) to read as above, applicable after June 4, 1997.

Technical Notes: Paragraph 8503(3)(k) of the Regulations prohibits the payment of bridging benefits under a defined benefit provision of an RPP to a member to whom bridging benefits are paid under another defined benefit provision of the RPP or under a defined benefit provision of another RPP. This rule is intended to prevent the payment of an inappropriately large amount of bridging benefits. The rule does not apply in respect of bridging benefits that are paid in lieu of lifetime retirement benefits and associated survivor benefits, as long as the benefits are converted on a basis no more favourable than an actuarial equivalent basis.

Paragraph 8503(3)(k) is amended so that the rule does not apply in respect of actuarially determined bridging benefits that are provided in place of any benefits otherwise payable with respect to the member. This amendment is consequential to an amendment to paragraph 8503(2)(l), which allows a member to convert any combination of lifetime retirement benefits and survivor benefits into bridging benefits.

This amendment applies after June 4, 1997, which is when the amendment to paragraph 8503(2)(l) comes into force.

(l) **division of benefits on marriage breakdown** — where, by reason of a provision of a law described in subparagraph 8501(5)(b)(ii), a spouse or former spouse of a member becomes entitled to receive all or a portion of the benefits that would otherwise be payable under the defined benefit provision to the member, and paragraph 8501(5)(d) is applicable with respect to the benefits,

(i) the present value of benefits provided under the provision with respect to the member (including, for greater certainty, benefits provided with respect to the spouse or former spouse) is not increased as a consequence of the spouse or former spouse becoming so entitled to benefits, and

(ii) the benefits provided under the provision to the member are not, at any time, adjusted to replace, in whole or in part, the portion of the member's benefits to which the spouse or former spouse has become entitled.

Related Provisions: Reg. 8500(7) — Amounts allocated under money purchase provision deemed to be contribution; Reg. 8503(13) — Statutory pension plans — special rules; Reg. 8510(5) — Special rules — multi-employer plan; Reg. 8510(6) — Special rules — specified multi-employer plan; Reg. 8510(8) — Purchase of additional benefits — specified multi-employer plan.

Information Circulars: 98-2: Prescribed compensation for RPPs, paras. 8, 32.

Registered Plan Division Newsletters: 93-2 (Foreign Service Newsletter); 2000-1 (Foreign Service Newsletter Update).

(4) Additional conditions — For the purposes of section 8501, the following conditions are applicable in respect of each defined benefit provision of a pension plan:

(a) **member contributions** — where members are required or permitted to make contributions under the provision,

(i) the aggregate amount of current service contributions to be made by a member in respect of a calendar year after 1990, no part of which is a period of disability or an eligible period of reduced pay or temporary absence of the member, does not exceed the lesser of

(A) 9 per cent of the aggregate of all amounts each of which is the member's compensation for the year from an employer who participates in the plan in the year for the benefit of the member, and

(B) the aggregate of $1,000 and 70 per cent of the aggregate of all amounts each of which is the amount that would be the member's pension credit (as determined under Part LXXXIII) for the year under the provision with respect to an employer if section 8302 were read without reference to paragraphs (2)(b) and (3)(g) thereof,

(ii) the method for determining current service contributions to be made by a member in respect of a calendar year that includes a period of disability or an eligible period of reduced pay or temporary absence of the member (referred to in this subparagraph as a "period of reduced services") is consistent with that used for determining contributions in respect of years described in subparagraph (i), except that the member may be permitted or required

to make, in respect of a period of reduced services, current service contributions not exceeding the amount reasonably necessary to fund the member's benefits in respect of the period of reduced services, and

(iii) the aggregate amount of contributions to be made by a member in connection with benefits that, as a consequence of a transaction, event or circumstance occurring at a particular time, become provided under the provision in respect of periods before that time does not exceed the amount reasonably necessary to fund such benefits;

(b) **pre-payment of member contributions** — the contributions that are made under the provision by a member in respect of a calendar year are not paid before the year;

(c) **reduction in benefits and return of contributions** — where the plan is not established by an enactment of Canada or a province, it includes a stipulation that permits, for the purpose of avoiding revocation of the registration of the plan,

(i) the plan to be amended at any time to reduce the benefits provided under the provision with respect to a member, and

(ii) a contribution that is made under the provision by a member or an employer to be returned to the person who made the contribution

which stipulation may provide that an amendment to the plan, or a return of contributions, is subject to the approval of the authority administering the *Pension Benefits Standards Act, 1985* or a similar law of a province;

(d) **undue deferral of payment** — each single amount that is payable after the death of a member is paid as soon as is practicable after the member's death (or, in the case of a single amount permitted by reason of paragraph (2)(j), after all other benefits have been paid);

(e) **evidence of disability** — where additional lifetime retirement benefits are provided under the provision to a member because the member is totally and permanently disabled, the additional benefits are not paid before the plan administrator has received from a medical doctor who is licensed to practise under the laws of a province or of the place where the member resides a written report providing the information on the medical condition of the member taken into account by the administrator in determining that the member is totally and permanently disabled; and

(f) where lifetime retirement benefits are provided under the provision to a member in respect of a period of disability of the member, the benefits, to the extent that they would not be in accordance with paragraph (3)(a) if that paragraph were read without reference to subparagraph (iv) thereof, are not paid before the plan administrator has received from a medical doctor who is licensed to practise under the laws of a province or of the place where the member resides a written report providing the information on the medical condition of the member taken into account by the administrator in determining that the period is a period of disability.

Related Provisions: Reg. 8503(5) — Minister may waive member contribution conditions; Reg. 8509(10.1) — Conditions inapplicable for pre-1992 plans; Reg. 8510(6) — Special rules — specified multi-employer plan.

History: Para. 8503(4)(c) amended by P.C. 1995-17, subsec. 11(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Paras. 8503(4)(e) and (f) repealed and substituted by P.C. 1995-17, subsecs. 11(4) and (5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995. The repeal of former paras. (e) and (f) is applicable after 1988 and new paras. (e) and (f) are applicable with respect to benefits that commence to be paid after April 5, 1994.

Registered Plans Division Newsletters: 96-3 (Flexible pension plans).

(5) Waiver of member contribution conditions — The Minister may waive the conditions in paragraph (4)(a) where member contributions under a defined benefit provision of a pension plan are determined in a manner acceptable to the Minister and it is reasonable to expect that, on a long-term basis, the aggregate of the regular current service contributions made under the provision by all members will not exceed ½ of the amount that is required to fund the aggregate benefits in respect of which those contributions are made.

(6) Pre-retirement death benefits — A pension plan may provide, in the case of a member who dies before retirement benefits under a defined benefit provision of the plan commence to be paid to the member but after becoming eligible to have retirement benefits commence to be paid, benefits under the provision to the beneficiaries of the member where the benefits would be in accordance with subsection (2) if retirement benefits under the provision had commenced to be paid to the member immediately before the member's death.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(6).

(7) Commutation of lifetime retirement benefits — Where a pension plan permits a member to receive a single amount in full or partial satisfaction of the member's entitlement to lifetime retirement benefits under a defined benefit provision of the plan, the following rules apply:

(a) the condition in subparagraph (2)(b)(i) that the payment of bridging benefits under the provision not commence before lifetime retirement benefits commence to be paid under the provision to the member is not applicable where, before the member's lifetime retirement benefits commence to be paid, a single amount is paid in full satisfaction of the member's entitlement to the lifetime retirement benefits; and

(b) such part of the member's lifetime retirement benefits as remains payable after a single amount is paid in full satisfaction of the member's entitlement to lifetime retirement benefits that would otherwise be payable after the member attains a particular age shall be deemed, for the purposes of the conditions in this section, to be lifetime retirement benefits and not to be bridging benefits.

Proposed Addition — Reg. 8503(7.1)

(7.1) Bridging benefits election — Where a pension plan permits a member, or a spouse or former spouse of the member, to elect to receive benefits described in any of paragraphs (2)(b), (l) or (l.1) under a defined benefit provision of the plan on a basis no more favourable than an actuarially equivalent basis in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member, the following rules apply:

(a) the condition in subparagraph (2)(b)(i) that the payment of bridging benefits under the provision not

begin before lifetime retirement benefits begin to be paid under the provision to the member does not apply if, as a consequence of the election, no lifetime retirement benefits remain payable under the provision to the member; and

(b) for the purpose of determining whether retirement benefits provided under the provision to beneficiaries of the member are in accordance with paragraphs (2)(c), (d) and (k), the election may be disregarded.

Application: The April 18, 2000 draft regulations (RRPs), subsec. 6(12), will add subsec. 8503(7.1), applicable after June 4, 1997.

Technical Notes: New subsection 8503(7.1) of the Regulations contains two special rules that apply where an RPP allows a member, or a spouse of a deceased member, to elect to receive bridging benefits in lieu of benefits that would otherwise be payable with respect to the member (including spousal survivor benefits) under a defined benefit provision of the plan. The rules only apply where the conversion is determined on a basis no more favourable than an actuarial equivalent basis. These new rules are intended to accommodate the bridging benefits provided for in section 91.1 of the *Supplemental Pension Plans Act* (Quebec).

The first rule, which is contained in paragraph 8503(7.1)(a), applies where a member fully converts lifetime retirement benefits into bridging benefits. By virtue of the condition in subparagraph 8503(2)(b)(i), bridging benefits must not begin to be paid unless lifetime retirement benefits have begun to be paid. Paragraph 8503(7.1)(a) provides that this condition does not apply where no lifetime retirement benefits remain payable to the member under the provision as a consequence of the member making the bridging benefit election. Therefore, paragraph 8503(7.1)(a) enables a member to fully convert lifetime retirement benefits into bridging benefits, subject to the limit in paragraph 8503(2)(l). Paragraph 8503(7.1)(a) applies in the same manner to enable a surviving spouse to fully convert his or her spousal survivor benefits into bridging benefits in accordance with paragraph 8503(2)(l.1).

Paragraph 8503(7.1)(b) sets out the second rule. This rule applies for the purpose of determining whether post-retirement survivor benefits provided under the provision to beneficiaries of a member are permissible under paragraphs 8503(2)(c), (d) and (k). Paragraph 8503(2)(c) permits a member's retirement benefits to be guaranteed for up to 5 years if a spousal survivor pension is also payable on the death of a member, and otherwise for up to 15 years. For each month of the guarantee, the total retirement benefits payable to beneficiaries must not exceed the retirement benefits (bridging benefits as well as lifetime retirement benefits) that would have been payable to the member if the member were alive. Paragraph 8503(2)(d) permits an RPP to provide post-retirement survivor benefits to a spouse or dependant of a member, provided the survivor benefits satisfy two limits. First, the survivor benefits payable to any one beneficiary must not exceed 66 2/3% of the retirement benefits that would have been payable to the member if the member were alive. Second, the total survivor benefits payable to all beneficiaries, together with any other retirement benefits (such as a guarantee) payable to beneficiaries, must not exceed 100% of the retirement benefits that would have been payable to the member if the member were alive. Paragraph 8503(2)(k) permits a member to forego a portion of his or her lifetime retirement benefits to obtain spousal survivor benefits in excess of the benefits permissible under paragraphs 8503(2)(c) and (d). The additional survivor benefits must not exceed 100% of the retirement benefits that would have been payable to the member if the member were alive, and are subject to a present value test.

Paragraph 8503(7.1)(b) allows a member's bridging benefit election to be disregarded in determining whether the post-retirement survivor benefits provided under a defined benefit provision are permissible. In particular, this rule allows the survivor benefit limits to be based on the amount of retirement benefits that would have been payable to the member if the member were alive and if the member had not converted lifetime retirement benefits into bridging benefits. This enables a member to elect to convert his or her lifetime retirement benefits into bridging benefits, without adversely affecting the level of survivor benefits.

Paragraph 8503(7.1)(b) also allows a spouse's bridging benefit election to be disregarded in determining whether the post-retirement survivor benefits are permissible. This rule is relevant, in particular, for the purpose of applying the second survivor benefit limit in paragraph 8503(2)(d). Paragraph 8503(7.1)(b) ensures that a conversion of spousal survivor benefits into spousal bridging benefits will not jeopardize the status of survivor benefits provided to other beneficiaries of the member (for example, survivor benefits provided to a dependant child of the member).

Subsection 8503(7.1) applies after June 4, 1997, which is when the bridging benefit provisions of Quebec's legislation came into force.

(8) Suspension or cessation of pension — A pension plan may provide for

(a) the suspension of payment of a member's retirement benefits under a defined benefit provision of the plan where

(i) the retirement benefits payable to the member after the suspension are not altered by reason of the suspension, or

(ii) subsection (9) is applicable in respect of the member's retirement benefits; and

(b) the cessation of payment of any additional benefits that are payable to a member under a defined benefit provision of the plan because of a physical or mental impairment of the member or the termination of the member's employment under a downsizing program (within the meaning assigned by subsection 8505(1)).

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8503(8).

History: Para. 8503(8)(b) amended by P.C. 1995-17, subsec. 11(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(9) Re-employed member — Subject to subsection (10), where a pension plan provides, in the case of a member who becomes an employee of a participating employer after the member's retirement benefits under a defined benefit provision of the plan have commenced to be paid, that

(a) payment of the member's retirement benefits under the provision is suspended while the member is employed by a participating employer, and

(b) the amount of retirement benefits payable to the member after the suspension is redetermined

(i) to include benefits in respect of all or any part of the period throughout which payment of the member's benefits was suspended,

(i.1) where the retirement benefits payable under the provision to the member after the suspension are not adjusted by any cost-of-living or similar adjustments in respect of the period throughout which payment of the member's benefits was suspended, to take into account the member's remuneration from the employer for the period throughout which payment of the benefits was suspended,

(ii) where the member was totally and permanently disabled at the time the member's retirement benefits commenced to be paid, to include benefits in

respect of all or a part of the period of disability of the member,

(iii) where the amount of the member's retirement benefits was previously determined with a reduction computed by reference to the member's age, duration of service, or both, or with any other similar reduction, by redetermining the amount of the reduction, or

(iv) where payment of the member's retirement benefits resumes after the member attains 65 years of age, by applying an adjustment for the purpose of compensating, in whole or in part, for the payments forgone by the member after attaining 65 years of age,

the following rules apply:

(c) the condition in paragraph (3)(b) is not applicable in respect of benefits provided under the provision to the member in respect of a period throughout which payment of the member's benefits is suspended,

(d) where the member was totally and permanently disabled at the time the member's retirement benefits commenced to be paid, the condition in paragraph (3)(b) is not applicable in respect of benefits provided under the provision to the member in respect of a period of disability of the member,

(e) the conditions in paragraphs (2)(b) and (3)(c) and (d) and section 8504 are applicable in respect of benefits payable under the provision to the member after a suspension of the member's retirement benefits as if the member's retirement benefits had not previously commenced to be paid, and

(f) for the purpose of paragraph 8502(c) as it applies in respect of benefits provided under the provision on the death of the member during or after a period throughout which payment of the member's benefits is suspended, subsections (2) and (6) are applicable as if the member's retirement benefits had not commenced to be paid before the period.

History: Subpara. 8503(9)(b)(i.1) added by P.C. 1995-17, subsec. 11(7), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(10) Re-employed member — special rules not applicable — Subsection (9) does not apply in respect of benefits provided under a defined benefit provision of a pension plan to a member unless the terms of the plan that provide for the redetermination of the amount of the member's retirement benefits do not apply where retirement benefits have, at any time, been paid under the provision to the member while the member was an employee of a participating employer.

(11) Re-employed member — anti-avoidance — Where a member of a registered pension plan has become an employee of a participating employer after the member's retirement benefits under a defined benefit provision of the plan have commenced to be paid and it is reasonable to consider that one of the main reasons for the employment of the member is to enable the member to benefit from terms of the plan that provide for a redetermination of the amount of the member's retirement benefits provided in respect of a period before the benefits commenced to be paid, the plan becomes a revocable plan at the time the payment of the member's benefits resumes.

(12) Limits dependent on Consumer Price Index — Benefits provided under a defined benefit provision of a pension plan that are benefits to which a condition in any of subparagraphs (2)(b)(ii) and (e)(v) and (vi) and (3)(d)(ii) is applicable shall be deemed to comply with the condition where they would so comply if the Consumer Price Index ratio computed as part of the formula that applies for the purpose of the condition were replaced by a substantially similar measure of the change in the Consumer Price Index.

(13) Statutory plans — special rules — Notwithstanding subsection (3),

(a) for the purposes of the condition in paragraph (3)(b) as it applies in respect of benefits provided under the pension plan established by the *Public Service Superannuation Act*, the reference to "any other registered pension plan" in subparagraph (3)(b)(ii) does not include the pension plans established by the *Canadian Forces Superannuation Act* and the *Royal Canadian Mounted Police Superannuation Act*; and

(b) the condition in paragraph (3)(c) does not apply in respect of benefits provided under the pension plan established by the *Canadian Forces Superannuation Act*.

(14) Artificially reduced pension adjustment — Where

(a) the amount of lifetime retirement benefits provided under a defined benefit provision of a registered pension plan to a member depends on the member's remuneration,

(b) remuneration (in this subsection referred to as "excluded remuneration") of certain types is disregarded for the purpose of determining the amount of the member's lifetime retirement benefits, and

(c) it can reasonably be considered that one of the main reasons that remuneration in the form of excluded remuneration was paid to the member by an employer at any time was to artificially reduce a pension credit of the member under the provision with respect to the employer,

the following rules apply for the purposes of the conditions in subsection 8504(1):

(d) the member shall be deemed to have been connected with the employer while the member was employed by the employer, and

(e) the member shall be deemed not to have received such remuneration as is excluded remuneration.

(15) Past service employer contributions — Where

(a) a contribution that is made by an employer to a registered pension plan is made, in whole or in part, in respect of benefits (in this subsection referred to as "past service benefits") provided under the plan to a member in respect of a period before 1990 and before the calendar year in which the contribution is made,

(b) the contribution is made

(i) after December 10, 1989, or

(ii) before December 10, 1989 where the contribution has not, before that date, been approved by the Minister under paragraph 20(1)(s) of the Act, and

(c) it is reasonable to consider that all or substantially all of such portion of the contribution as is in respect of past service benefits was paid by the employer, with the consent of the member, in lieu of a payment or other benefit to which the member would otherwise be entitled,

the plan becomes, for the purposes of paragraph 147.1(11)(c) of the Act, a revocable plan on the later of December 11, 1989 and the day immediately before the day on which the contribution is made.

Related Provisions: Reg. 8505(8) — Exemption from past service contribution rule.

Definitions [Reg. 8503]: "additional bridging benefits" — Reg. 8503(2)(l); "additional death benefits" — Reg. 8503(2)(k); "administrator" — ITA 147.1(1); "aggregate" — Reg. 8509(2)(c)(i); "amount" — Reg. 8509(2)(c)(ii); "annuity" — ITA 248(1); "any other registered pension plan" — Reg. 8503(13)(a); "arm's length" — ITA 251(1); "average wage" — ITA 147.1(1); "beneficiary", "benefit provision" — Reg. 8500(1); "benefit year" — Reg. 8504(6); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1), 8503(7)(b); "bridging period" — Reg. 8504(5); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "compensation" — ITA 147.1(1); "compensation year" — Reg. 8504(2)(b)J; "connected" — Reg. 8500(3); "consequence of the death", "consequence of the member's death" — ITA 248(8); "Consumer Price Index" — Reg. 8500(1); "continued retirement benefits" — Reg. 8503(2)(c); "contribution" — Reg. 8501(6), (7); "death benefit" — ITA 248(1); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — ITA 147.1(1), Reg 8504(9); "dependant" — Reg. 8500(1); "early retirement eligibility service" — Reg. 8503(3)(c)(iii); "eligible period of reduced pay", "eligible period of temporary absence", "eligible survivor benefit period" — Reg. 8500(1); "employed", "employee", "employer", "employment" — ITA 248(1); "excluded remuneration" — Reg. 8503(14)(b); "highest average compensation" — Reg. 8504(2); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1), 8503(7)(b), 8504(6); "member" — ITA 147.1(1); "member's total indexed compensation" — Reg. 8504(2); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "net contribution account" — Reg. 8503(1); "participating employer" — ITA 147.1(1); "particular plan" — Reg. 8503(3)(k); "particular provision" — Reg. 8503(3)(b); "past service benefits" — Reg. 8503(15)(a); "payment year" — Reg. 8504(6)(a); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "pensionable service", "period of disability" — Reg. 8500(1); "period of reduced services" — Reg. 8503(4)(a)(ii); "person" — ITA 248(1); "predecessor employer" — Reg. 8500(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "public pension benefits", "public safety occupation" — Reg. 8500(1); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "related" — ITA 251(2)–(6); "retirement benefits" — Reg. 8500(1); "single amount" — ITA 147.1(1); "specified year" — Reg. 8504(1)(a)(i); "spouse" — ITA 147.1(1); "surplus" — Reg. 8500(1); "surviving spouse benefits" — Reg. 8503(2)(f); "survivor retirement benefits" — Reg. 8503(2)(d), (e); "time of commencement" — Reg. 8503(3)(d); "totally and permanently disabled" — Reg. 8500(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing"; "year of commencement" — Reg. 8504(1)(a), 8504(2); "Year's Maximum Pensionable Earnings" — Reg. 8500(1); "years of early retirement eligibility service" — Reg. 8503(3)(c)(iv).

8504. Maximum benefits — (1) Lifetime retirement benefits — For the purposes of subparagraph 8502(c)(i), the following conditions are applicable in respect of the lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan:

(a) the amount (expressed on an annualized basis) of lifetime retirement benefits payable to the member for the calendar year (in this paragraph referred to as the "year of commencement") in which the lifetime retirement benefits commence to be paid does not exceed the aggregate of

(i) the aggregate of all amounts each of which is, in respect of a calendar year after 1990 (in this paragraph referred to as a "specified year") in which the member was, at any time, connected with an employer who participated in the plan in the year for the benefit of the member, the lesser of

(A) the amount determined by the formula

$$.02 \times A \times \frac{B}{C}$$

where

A is the aggregate of all amounts each of which is the member's compensation for the specified year from an employer who participated under the provision in the year for the benefit of the member,

B is the greatest of all amounts each of which is the average wage for a calendar year not before the specified year and not after the year of commencement, and

C is the average wage for the specified year, and

(B) the amount determined by the formula

$$D \times E$$

where

D is the defined benefit limit for the year of commencement, and

E is the fraction of the specified year that is pensionable service of the member under the provision, and

(ii) the amount determined by the formula

$$F \times G$$

where

F is the lesser of

(A) 2 per cent of the member's highest average compensation (computed under subsection (2)) for the purpose of the provision, indexed to the year of commencement, and

(B) the defined benefit limit for the year of commencement, and;

G is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision and no part of which is in a specified year; and

(b) the amount of lifetime retirement benefits payable to the member for a particular calendar year after the year in which the lifetime retirement benefits commence to be paid does not exceed the product of

(i) the aggregate of the amounts determined under subparagraphs (a)(i) and (ii), and

(ii) the greatest of all amounts each of which is the ratio of

(A) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the lifetime retirement benefits commence to be paid and not later than the particular year

to

(B) the average Consumer Price Index for the calendar year in which the lifetime retirement benefits commence to be paid.

Related Provisions: Reg. 8503(14) — Rules applicable where pension credit artificially reduced; Reg. 8504(2) — Meaning of highest average compensation; Reg. 8504(3) — Alternative compensation rules; Reg. 8504(4) — Part-time employees; Reg. 8504(10) — Excluded benefits; Reg. 8504(13) — Alternative CPI indexing; Reg. 8505(7) — Exclusion from maximum pension rules; Reg. 8510(5) — Special rules — multi-employer plan.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(2) Highest average compensation — For the purposes of subsection (1) and paragraph 8505(3)(d), the highest average compensation of a member of a pension plan for the purpose of a defined benefit provision of the plan, indexed to the calendar year (in this subsection referred to as the "year of commencement") in which the member's retirement benefits under the provision commence to be paid, is,

(a) in the case of a member who has been employed for 3 non-overlapping periods of 12 consecutive months each by employers who participated under the provision for the benefit of the member, ⅓ of the greatest of all amounts each of which is the aggregate of the member's total indexed compensation for the purpose of the provision for each of the 36 months in 3 such periods throughout which the member was so employed, and

(b) in any other case, the amount determined by the formula

$$12 \times \frac{H}{I}$$

where

H is the aggregate of all amounts each of which is the member's total indexed compensation for the purpose of the provision for a month throughout which the member was employed by an employer who participated under the provision for the benefit of the member, and

I is the number of months for which total indexed compensation is included in the amount determined for H,

and, for the purposes of this subsection, the member's total indexed compensation for a month for the purpose of the provision is the amount determined by the formula

$$J \times \frac{K}{L}$$

where

J is the aggregate of all amounts each of which is such portion of the member's compensation for the calendar year (in this subsection referred to as the "compensation year") that includes the month from an employer who participated under the provision for the benefit of the member as may reasonably be considered to have been received in the month or to otherwise relate to the month,

K is the greatest of all amounts each of which is the average wage for a calendar year not before the later of the compensation year and 1986 and not after the year of commencement, and

L is the average wage for the later of the compensation year and 1986.

Related Provisions: Reg. 8504(3) — Alternative compensation rules; Reg. 8504(4) — Part-time employees.

(3) Alternative compensation rules — Lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the conditions in subsection (1) where they would so comply if either or both of the following rules were applicable:

(a) determine, for the purpose of subsection (2), the member's compensation from an employer for a calendar year by adding to the compensation otherwise determined such portion of the amount of each bonus and retroactive increase in remuneration paid by the employer to the member after the year as may reasonably be considered to be in respect of the year and by deducting therefrom such portion of the amount of each bonus and retroactive increase in remuneration paid by the employer to the member in the year as may reasonably be considered to be in respect of a preceding year; and

(b) determine, for the purpose of computing the amount J in subsection (2), the portion of the member's compensation from an employer for a calendar year that may reasonably be considered to relate to a month in the year by apportioning the compensation uniformly over the period in the year in respect of which it was paid.

(4) Part-time employees — Where the pensionable service of a member under a defined benefit provision of a pension plan includes a period throughout which the member rendered services on a part-time basis to an employer who participates in the plan, the lifetime retirement benefits provided under the provision to the member shall be deemed to comply with the conditions in subsection (1) where they would so comply or be deemed by subsection (3) to so comply if

(a) for the purpose of determining the amount J in subsection (2), the member's compensation from an employer for a calendar year in which the member rendered services on a part-time basis to the employer were the amount that it is reasonable to expect would have been the member's compensation for the year from the employer if the member had rendered services to the employer on a full-time basis throughout the period or periods in the year throughout which the member rendered services to the employer, and

(b) in determining the amount G in subparagraph (1)(a)(ii), the duration of each period were multiplied by a fraction (not greater than 1) that measures the services rendered by the member throughout the period to employers who participate in the plan as a proportion of the services that would have been rendered by the member throughout the period to such employers had the member rendered services on a full-time basis,

and, for the purposes of this subsection,

(c) where a member of a pension plan has rendered services throughout a period to 2 or more employers who participate in the plan, the employers shall be deemed to be, throughout the period, the same employer, and

(d) where a period is

(i) an eligible period of reduced pay or temporary absence of a member of a pension plan with respect to an employer, or

(ii) a period of disability of the member,

the member shall be deemed to have

(iii) rendered services throughout the period on a regular basis (having regard to the services rendered by the employee before the period) to the employer or employers by whom the member was employed before the period, and

(iv) received remuneration throughout the period at a rate commensurate with the member's rate of remuneration before the period.

(5) Retirement benefits before age 65 — For the purposes of subparagraph 8502(c)(i), the following condi-

tions are applicable in respect of retirement benefits payable under a defined benefit provision of a pension plan to a member of the plan for the period (in this subsection referred to as the "bridging period") from the time the benefits commence to be paid to the time the member attains 65 years of age:

(a) the amount (expressed on an annualized basis) of retirement benefits payable to the member for that part of the bridging period that is in the calendar year in which the benefits commence to be paid does not exceed the amount determined by the formula

$$(A \times B) + \left(0.25 \times C \times \frac{D}{35}\right)$$

where

A is the defined benefit limit for the calendar year in which the benefits commence to be paid,

B is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision,

C is the average of the Year's Maximum Pensionable Earnings for the year in which the benefits commence to be paid and for each of the 2 immediately preceding years, and

D is the lesser of 35 and the amount determined for B; and

(b) the amount of retirement benefits (expressed on an annualized basis) payable to the member for that part of the bridging period that is in a particular calendar year after the year in which the retirement benefits commence to be paid does not exceed the product of

(i) the amount determined by the formula set out in paragraph (a), and

(ii) the greatest of all amounts each of which is the ratio of

(A) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the retirement benefits commence to be paid and not later than the particular year

to

(B) the average Consumer Price Index for the calendar year in which the retirement benefits commence to be paid.

Related Provisions: Reg. 8504(8) — Rule where benefits provided under multiple plans; Reg. 8504(11) — Excluded benefits; Reg. 8504(14) — Alternative CPI indexing; Reg. 8505(7) — Exclusion from maximum pension rules.

(6) Pre-1990 benefits — For the purposes of subparagraph 8502(c)(i), and subject to subsection (7), the lifetime retirement benefits provided under a defined benefit provision of a pension plan to a member of the plan in respect of pensionable service in a particular calendar year before 1990 (in this subsection referred to as the "benefit year") are subject to the condition that

(a) the amount (expressed on an annualized basis) of such lifetime retirement benefits payable to the member for a particular calendar year (in this subsection referred to as the "payment year")

does not exceed

(b) the amount determined by the formula

$$\frac{2}{3} \times A \times B \times C$$

where

A is the greater of $1,725 and the defined benefit limit for the year in which the benefits commence to be paid,

B is the aggregate of all amounts each of which is the duration (measured as a fraction of a year) of a period in the benefit year that is pensionable service of the member under the provision, and

C is the greatest of all amounts each of which is the ratio of

(i) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the lifetime retirement benefits commence to be paid and not later than the payment year

to

(ii) the average Consumer Price Index for the calendar year in which the lifetime retirement benefits commence to be paid.

Related Provisions: Reg. 8504(8) — Rule where benefits provided under multiple plans; Reg. 8504(12) — Excluded benefits; Reg. 8504(15) — Alternative CPI indexing.

Registered Plans Division Newsletters: 95-3 (Actuarial report content).

(7) Limit not applicable — The condition in subsection (6) is not applicable with respect to lifetime retirement benefits provided to an individual in respect of periods of pensionable service in a particular calendar year if

(a) at any time before June 8, 1990, a period in the particular year was pensionable service of the individual under a defined benefit provision of a registered pension plan;

(b) on June 7, 1990, the individual was entitled, pursuant to an arrangement in writing, to be provided with lifetime retirement benefits under a defined benefit provision of a registered pension plan in respect of a period in the particular year, whether or not the individual's entitlement was conditional upon the individual making contributions under the provision;

(c) at the commencement of the particular year, a period in a preceding year was pensionable service of the individual under a defined benefit provision of a registered pension plan, and the individual did not, by reason of disability or leave of absence, render services in the particular year to an employer who participated in the plan with respect to the individual;

(d) contributions were made before June 8, 1990 by or on behalf of the individual under a money purchase provision of a registered pension plan in respect of the year; or

(e) contributions were made in the year by or on behalf of the individual to a deferred profit sharing plan.

Related Provisions: Reg. 8500(7) — Amounts allocated under money purchase provision deemed to be contribution.

(8) Cross-plan restrictions — Where an individual is provided with benefits under more than one defined benefit provision, the determination of whether the benefits provided to the individual under a particular defined benefit provision comply with the conditions in subsections (5) and (6) shall be made on the assumption that benefits provided to the individual under each other defined benefit provision (other than a provision that is not included in a registered pension plan) associated with the particular provision were provided under the particular provision.

Related Provisions: Reg. 8504(9) — Associated defined benefit provisions; Reg. 8510(5) — Special rules — multi-employer plan.

(9) Associated defined benefit provisions — For the purposes of subsection (8), a defined benefit provision is associated with a particular defined benefit provision if

(a) the provisions are in the same pension plan, or

(b) the provisions are in separate pension plans and

(i) there is an employer who participates in both plans,

(ii) an employer who participates in one of the plans does not deal at arm's length with an employer who participates in the other plan, or

(iii) there is an individual who is provided with benefits under both provisions and the individual, or a person with whom the individual does not deal at arm's length, has the power to determine the benefits that are provided under the particular provision,

unless it is unreasonable to expect the benefits under the particular provision to be coordinated with the benefits under the other provision and the Minister has agreed not to treat the other provision as being associated with the particular provision.

(10) Excluded benefits — For the purpose of determining whether lifetime retirement benefits provided under a defined benefit provision of a pension plan comply with the conditions in subsection (1), the following benefits shall be disregarded:

(a) additional lifetime retirement benefits payable to a member because the member is totally and permanently disabled at the time the member's retirement benefits commence to be paid; and

(b) additional lifetime retirement benefits payable to a member whose retirement benefits commence to be paid after the member attains 65 years of age, where the additional benefits result from an adjustment that is made to offset, in whole or in part, the decrease in the value of lifetime retirement benefits that would otherwise result by reason of the deferral of such benefits after the member attains 65 years of age and the adjustment is not more favourable than such an adjustment made on an actuarially equivalent basis.

(11) [Excluded benefits] — For the purpose of determining whether retirement benefits provided under a defined benefit provision of a pension plan comply with the conditions in subsection (5), the following benefits shall be disregarded:

(a) additional lifetime retirement benefits described in paragraph (10)(a); and

(b) bridging benefits payable at the election of a member, where the benefits are provided on a basis that is not more favourable than an actuarially equivalent basis in lieu of a proportion of the lifetime retirement benefits that would otherwise be payable under the provision to the member and any benefits related thereto payable after the death of the member.

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(b) bridging benefits payable at the election of a member, where the benefits are provided on a basis that is not more favourable than an actuarially equivalent basis in lieu of all or a proportion of the benefits that would otherwise be payable under the provision with respect to the member.

Application: The April 18, 2000 draft regulations (RPPs), s. 7, will amend para. 8504(11)(b) to read as above, applicable after June 4, 1997.

Technical Notes: Subsection 8504(5) of the Regulations restricts the amount of retirement benefits (lifetime retirement benefits plus bridging benefits) that can be paid under a defined benefit provision of an RPP before a member attains age 65. Paragraph 8504(11)(b) exempts from this limit bridging benefits that are paid in lieu of lifetime retirement benefits and associated survivor benefits, as long as the conversion is determined on a basis no more favourable than an actuarial equivalent basis.

Paragraph 8504(11)(b) is amended so that the exemption applies in respect of actuarially determined bridging benefits that are provided in place of any benefits otherwise payable with respect to the member. This amendment is consequential to an amendment to paragraph 8503(2)(l), which allows a member to convert any combination of lifetime retirement benefits and survivor benefits into bridging benefits.

This amendment applies after June 4, 1997, which is when the amendment to paragraph 8503(2)(l) comes into force.

(12) [Excluded benefits] — For the purpose of determining whether lifetime retirement benefits provided under a defined benefit provision of a pension plan comply with the condition in subsection (6), additional lifetime retirement benefits that are described in paragraph (10)(b) shall be disregarded.

(13) Alternative CPI indexing — The lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in paragraph (1)(b) where they would so comply, or would be deemed by subsection (3) or (4) to so comply, if the ratio that is determined under subparagraph (1)(b)(ii) were replaced by a substantially similar measure of the change in the Consumer Price Index.

(14) [Idem] — The retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in paragraph (5)(b) where they would so comply if the ratio that is determined under subparagraph (5)(b)(ii) were replaced by a substantially similar measure of the change in the Consumer Price Index.

(15) [Idem] — The lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in subsection (6) where they would so comply if the amount C in the formula set out in paragraph (6)(b) were replaced by a substantially similar measure of the change in the Consumer Price Index.

Definitions [Reg. 8504]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "associated" — Reg. 8504(9); "average Consumer Price Index" — Reg. 8500(1); "average wage" — ITA 147.1(1); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1); "commencement" — *Interpretation Act* 35(1); "compensation" — ITA 147.1(1); "connected" — Reg. 8500(3); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8501(6), (7); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "eligible period of reduced pay" — Reg. 8500(1); "employed", "employee" — ITA 248(1); "employer" — ITA 248(1), Reg. 8504(4)(c); "highest average compensation" — Reg. 8504(2); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "pensionable service", "period of disability" — Reg. 8500(1); "person", "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6); "retirement benefits", "totally and permanently disabled" — Reg. 8500(1); "writing" — *Interpretation Act* 35(1); "Year's Maximum Pensionable Earnings" — Reg. 8500(1).

Registered Plans Division Newsletters: 96-1 (Changes to retirement savings limits).

8505. Additional benefits on downsizing — (1) Downsizing program — For the purposes of this section, "downsizing program" means the actions that are taken by an employer to bring about a reduction in the employer's workforce, including

(a) the termination of the employment of employees; and

(b) the payment of amounts and the provision of special benefits to employees who elect to or are required to terminate their employment.

(2) Applicability of downsizing rules — For the purposes of this section,

(a) a downsizing program is an approved downsizing program if the Minister has approved in writing the application of this section in respect of the program;

(b) subject to subsection (2.1), an individual is a qualifying individual in relation to an approved downsizing program if

(i) the employment of the individual is terminated while the downsizing program is in effect,

(ii) the individual was not, at any time before the termination of employment, connected with the employer from whom the individual terminated employment, and

(iii) the Minister has approved in writing the application of this section to the individual; and

(c) the specified day is, in respect of an approved downsizing program,

(i) the day that is designated by the Minister in writing for the purpose of subparagraph (3)(c)(ii), and

(ii) if no such day has been designated, the day that is 2 years after the day on which the Minister approves the application of this section in respect of the downsizing program.

History: The portion of para. 8505(2)(b) before subpara. (i) amended by P.C. 1995-17, subsec. 12(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to an individual whose employment is terminated after February 14, 1992, other than an individual who, on or before that date,

(a) was notified that the individual's employment would be terminated after that date; or

(b) elected to terminate employment after that date.

(2.1) Qualifying individual — exclusion — An individual whose employment is terminated under an approved downsizing program is not a qualifying individual in relation to the program if, at the time the individual's employment is terminated, it is reasonable to expect that

(a) the individual will become employed by, or provide services to,

(i) a person or body of persons from whom the individual terminated employment under the downsizing program, or

(ii) a person or body of persons that does not deal at arm's length with a person or body of persons referred to in subparagraph (i), or

(b) a corporation with which the individual is connected will provide services to a person or body of persons referred to in paragraph (a) and the individual will be directly involved in the provision of the services,

except that this subsection does not apply with respect to an individual where

(c) it is reasonable to expect that

(i) the individual will not be employed or provide services, or

(ii) if paragraph (b) is applicable, the corporation will not provide services,

for a period exceeding 12 months, and

(d) the Minister has waived the application of this subsection with respect to the individual.

History: Subsec. 8505(2.1) added by P.C. 1995-17, subsec. 12(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to an individual whose employment is terminated after February 14, 1992, other than an individual who, on or before that date,

(a) was notified that the individual's employment would be terminated after that date; or

(b) elected to terminate employment after that date.

(3) Additional lifetime retirement benefits — Lifetime retirement benefits (in this section referred to as "special retirement benefits") that do not comply with the condition in paragraph 8503(3)(a) may be provided under a defined benefit provision of a pension plan to a member of the plan who terminates employment after attaining 55 years of age where the following conditions are satisfied:

(a) the special retirement benefits are provided pursuant to an approved downsizing program;

(b) the member is a qualifying individual in relation to the downsizing program;

(c) under the terms of the provision,

(i) retirement benefits will not commence to be paid to the member until the member ceases to be employed by all employers who participate in the plan, and

(ii) retirement benefits will commence to be paid to the member no later than on the specified day;

(d) the amount (expressed on an annualized basis) of special retirement benefits payable to the member for a particular calendar year does not exceed the amount that is determined by the formula

$$A \times B \times C$$

where

A is the lesser of

(i) 2 per cent of the member's highest average compensation (computed under subsection 8504(2)) for the purpose of the provision, indexed to the calendar year (in this paragraph referred to as the "year of commencement") in which retirement benefits commence to be paid under the provision to the member, and

(ii) the defined benefit limit for the year of commencement,

B is the lesser of 7 and the amount, if any, by which 65 exceeds the member's age (expressed in years, including any fraction of a year) at termination of employment, and

C is the greatest of all amounts each of which is the ratio of

(i) the average Consumer Price Index for a calendar year not earlier than the year of commencement and not later than the particular year

to

(ii) the average Consumer Price Index for the year of commencement;

(e) [Repealed]

(f) the plan

(i) does not permit the commutation of retirement benefits payable to the member, or

(ii) permits the commutation of retirement benefits payable to the member only if the life expectancy of the member is significantly shorter than normal; and

(g) lifetime retirement benefits that are permissible only by reason of this subsection are not provided to the member under any other defined benefit provision, unless this condition has been waived by the Minister.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8505(3); Reg. 8505(6) — Alternative CPI indexing.

History: Para. 8505(3)(e) repealed by P.C. 1995-17, subsec. 12(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 29.

(3.1) Re-employed members — Where

(a) a member of a pension plan becomes an employee of a participating employer after lifetime retirement benefits that are permissible only by reason of subsection (3) have commenced to be paid under a defined benefit provision of the plan to the member, and

(b) payment of the member's retirement benefits under the provision is suspended while the member is so employed,

the condition in paragraph (3)(d) is applicable in respect of benefits payable under the provision to the member after the suspension as if

(c) the member had not become so employed, and

(d) payment of the member's retirement benefits had not been suspended.

History: Subsec. 8505(3.1) added by P.C. 1995-17, subsec. 12(4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(4) Early retirement reduction — Where a member of a pension plan is a qualifying individual in relation to an approved downsizing program, the terms of a defined benefit provision of the plan that determine the amount by which the member's lifetime retirement benefits under the provision are reduced because of the early commencement of the benefits may, under the downsizing program, be modified in such a way that the benefits do not comply with the condition in paragraph 8503(3)(c) but would so comply if the member's benefits were provided in respect of employment in a public safety occupation.

Related Provisions: Reg. 8501(3) — Conditions inapplicable where inconsistent with 8505(4); Reg. 8505(5) — Exception for future benefits.

History: Subsec. 8505(4) amended by P.C. 1995-17, subsec. 12(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(5) Exception for future benefits — Subsection (4) does not apply with respect to benefits that are provided to an individual in respect of a period that is after the day on which the individual's employment was terminated under an approved downsizing program.

History: Subsec. 8505(5) amended by P.C. 1995-17, subsec. 12(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(6) Alternative CPI indexing — Special retirement benefits provided to a member under a defined benefit provision of a pension plan shall be deemed to comply with the condition in paragraph (3)(d) where they would so comply if the amount C in that paragraph were replaced by a substantially similar measure of the change in the Consumer Price Index.

(7) Exclusion from maximum pension rules — For the purpose of determining whether retirement benefits provided under a defined benefit provision of a pension plan comply with the conditions in subsections 8504(1) and (5), lifetime retirement benefits that are permissible only by reason of subsection (3) shall be disregarded.

(8) Exemption from past service contribution rule — Subsection 8503(15) does not apply in respect of a contribution that is made in respect of benefits provided to a qualifying individual pursuant to an approved downsizing program.

Definitions [Reg. 8505]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "average Consumer Price Index" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "commencement" — *Interpretation Act* 35(1); "compensation" — ITA 147.1(1); "connected" — Reg. 8500(3); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8501(6); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "downsizing program" — Reg. 8505(1), (2)(a); "employed", "employee", "employer", "employment" — ITA 248(1); "highest average compensation" — Reg. 8504(2); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "person" — ITA 248(1); "public safety occupation" — Reg. 8500(1); "qualifying individual" — Reg. 8505(2)(b); "retirement benefits" — Reg. 8500(1); "special retirement benefits" — Reg. 8505(3); "specified day" — Reg. 8505(2)(c); "writing" — *Interpretation Act* 35(1); "year of commencement" — Reg. 8505(3)(d)(i).

8506. Money purchase provisions — (1) Permissible benefits — For the purposes of paragraph 8502(c), the following benefits may, subject to the conditions specified in respect of each benefit, be provided under a money purchase provision of a pension plan:

(a) **lifetime retirement benefits** — lifetime retirement benefits provided to a member where the benefits are payable in equal periodic amounts or are not so payable only by reason that

(i) the benefits payable to a member after the death of the member's spouse are less than the benefits that would be payable to the member were the member's spouse alive, or

(ii) the benefits are adjusted, after they commence to be paid, where

(A) in the case of retirement benefits provided in accordance with subparagraph (2)(g)(i), the adjustments would be in accordance with any of subparagraphs 146(3)(b)(iii) to (v) of the Act if the annuity by means of which the lifetime retirement benefits are provided were an annuity under a retirement savings plan, and

(B) in any other case, the adjustments are acceptable to the Minister and are similar in nature to the adjustments permissible under clause (A);

(b) **bridging benefits** — bridging benefits provided to a member where the bridging benefits are payable for a period ending no later than the end of the month following the month in which the member attains 65 years of age;

(c) **guarantee period** — retirement benefits (in this paragraph referred to as "continued retirement benefits") provided to one or more beneficiaries of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) the continued retirement benefits are payable for a period beginning after the death of the member and ending no later than 15 years after the day on which retirement benefits commence to be paid under the provision to the member, and

(ii) the aggregate amount of continued retirement benefits payable under the provision for each month does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(d) **post-retirement surviving spouse benefits** — retirement benefits (in this paragraph referred to as "survivor retirement benefits") provided to a beneficiary of a member who dies after retirement benefits under the provision commence to be paid to the member where

(i) the beneficiary is a spouse or former spouse of the member at the time the member's retirement benefits commence to be paid,

(ii) the survivor retirement benefits are payable for a period beginning after the death of the member and ending with the death of the beneficiary, and

(iii) the aggregate amount of survivor retirement benefits and other retirement benefits payable under the provision for each month to beneficiaries of the member does not exceed the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(e) **pre-retirement surviving spouse benefits** — retirement benefits provided to a beneficiary of a member who dies before retirement benefits under the provision commence to be paid to the member, and benefits provided to other individuals after the death of the beneficiary, where

(i) the beneficiary is a spouse or former spouse of the member at the time of the member's death,

(ii) the benefits would be permissible under paragraphs (a) to (c) if the beneficiary were a member of the plan, and

(iii) the retirement benefits are payable to the beneficiary beginning no later than on the later of one year after the day of death of the member and the end of the calendar year in which the beneficiary attains 69 years of age;

(f) **payment from account** — the payment with respect to a member of a single amount from the member's account under the provision;

(g) **lump-sum payments on death before retirement** — the payment of one or more single amounts to one or more beneficiaries of a member who dies before retirement benefits under the provision commence to be paid to the member;

(h) **commutation of benefits** — the payment with respect to a member of a single amount in full or partial satisfaction of the member's entitlement to other benefits under the provision, where the single amount does not exceed the present value (at the time the single amount is paid) of the other benefits that, as a consequence of the payment, cease to be provided; and

(i) the payment, with respect to an individual after the death of a member, of a single amount in full or partial satisfaction of the individual's entitlement to other benefits under the provision, where the individual is a beneficiary of the member and the single amount does not exceed the present value (at the time the single amount is paid) of the other benefits that, as a consequence of the payment, cease to be provided.

History: Subpara. 8506(1)(e)(iii) amended by P.C. 1998-2256, s. 23, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable on the same basis as the amendment to Reg. 8502(e)(i)(A).

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(2) Additional conditions — For the purposes of section 8501, the following conditions are applicable with respect to each money purchase provision of a pension plan:

(a) **employer contributions acceptable to minister** — the amount of contributions that are to be made under the provision by each employer who participates in the plan is determined in a manner acceptable to the Minister;

(b) **employer contributions with respect to particular members** — each contribution that is made under the provision by an employer consists only of amounts each of which is an amount that is paid by the employer with respect to a particular member;

(b.1) **allocation of employer contributions** — each contribution that is made under the provision by an employer is allocated to the member with respect to whom it is made;

(c) **employer contributions not permitted** — contributions are not made under the provision by an employer, and property is not transferred to the provision in respect of the actuarial surplus under a defined benefit provision of the plan or another registered pension plan,

(i) at a time when there is a surplus under the provision, or

(ii) at a time after 1991 when an amount that became a forfeited amount under the provision before 1990, or any earnings of the plan that are reasonably attributable to that amount, is being held in respect of the provision and has not been reallocated to members of the plan;

(d) **return of contributions** — where the plan is not established by an enactment of Canada or a province, it includes a stipulation that permits, for the purpose of avoiding revocation of the registration of the plan, a contribution made under the provision by a member or by an employer to be returned to the person who made the contribution, which stipulation may provide that a return of contributions is subject to the approval of the authority administering the *Pension Benefits Standards Act, 1985* or a similar law of a province;

(e) **allocation of earnings** — the earnings of the plan, to the extent that they relate to the provision and are not reasonably attributable to forfeited amounts or a surplus under the provision, are allocated to plan members on a reasonable basis and no less frequently than annually;

(f) **payment or reallocation of forfeited amounts** — each forfeited amount under the provision (other than an amount forfeited before 1990) and all earnings of the plan that are reasonably attributable to the forfeited amount are

(i) paid to participating employers,

(ii) reallocated to members of the plan, or

(iii) paid as or on account of administrative, investment or similar expenses incurred in connection with the plan

on or before December 31 of the year immediately following the calendar year in which the amount is forfeited, or such later time as is permitted by the Minister under subsection (3);

(g) **retirement benefits** — retirement benefits under the provision are provided

(i) by means of annuities that are purchased from a person who is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, or

(ii) under an arrangement acceptable to the Minister; and

(h) **undue deferral of payment** — each single amount that is payable after the death of a member is paid as soon as is practicable after the member's death.

Related Provisions: Reg. 8509(10.1) — Conditions inapplicable to pre-1992 plans.

History: Para. 8506(2)(b.1) added by P.C. 1995-17, subsec. 13(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to contributions made under a money purchase provision of a pension plan after April 5, 1994.

Para. 8506(2)(c) amended by P.C. 1995-17, subsec. 13(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988, except that para. (c) does not apply with respect to property transferred on or before April 5, 1994 to a money purchase provision of a pension plan in respect of an actuarial surplus under a defined benefit provision of a registered pension plan.

Para. 8506(2)(d) amended by P.C. 1995-17, subsec. 13(3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Para. 8506(2)(f) amended by P.C. 1995-17, subsec. 13(4), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994 with respect to

(a) forfeited amounts under a money purchase provision of a pension plan that arise after April 5, 1994;

(b) earnings of a pension plan after April 5, 1994; and

(c) forfeited amounts under a money purchase provision of a pension plan that arose on or before April 5, 1994, to the extent that, on April 5, 1994, those amounts were being held in respect of the provision and have not been reallocated to members of the plan.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(2.1) Alternative method for allocating employer contributions — The Minister may, on the written application of the administrator of a pension plan, waive the application of the condition in paragraph (2)(b.1) in respect of a money purchase provision of the plan where contributions made under the provision by an employer are allocated to members of the plan in a manner acceptable to the Minister.

History: Subsec. 8506(2.1) added by P.C. 1995-17, subsec. 13(5), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994.

(3) Reallocation of forfeitures — The Minister may, on the written application of the administrator of a registered pension plan, extend the time for satisfying the requirements of paragraph (2)(f) where

(a) the aggregate of the forfeited amounts that arise in a calendar year is greater than normal because of unusual circumstances; and

(b) the forfeited amounts are to be reallocated on a reasonable basis to a majority of plan members or paid as or on account of administrative, investment or similar expenses incurred in connection with the plan.

History: Para. 8506(3)(b) amended by P.C. 1995-17, subsec. 13(6), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after April 5, 1994 with respect to

(a) forfeited amounts under a money purchase provision of a pension plan that arise after April 5, 1994;

(b) earnings of a pension plan after April 5, 1994; and

(c) forfeited amounts under a money purchase provision of a pension plan that arose on or before April 5, 1994, to the extent that, on April 5, 1994, those amounts were being held in respect of the provision and have not been reallocated to members of the plan.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

Definitions [Reg. 8506]: "administrator" — ITA 147.1(1); "amount", "annuity" — ITA 248(1); "beneficiary" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "continued retirement benefits" — Reg. 8506(1)(c); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "employer" — ITA 248(1); "forfeited amount" — Reg. 8500(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "retirement savings plan" — ITA 146(1), 248(1); "single amount", "spouse" — ITA 147.1(1); "surplus" — Reg. 8500(1); "survivor retirement benefits" — Reg. 8506(1)(d); "written" — *Interpretation Act* 35(1)"writing".

8507. Periods of reduced pay — (1) Prescribed compensation — For the purposes of paragraph (b) of the definition "compensation" in subsection 147.1(1) of the Act, there is prescribed for inclusion in the compensation of an individual from an employer for a calendar year after 1990

(a) where the individual has a qualifying period in the year with respect to the employer, the amount that is determined under subsection (2) in respect of the period; and

(b) where the individual has a period of disability in the year, the amount that would be determined under paragraph (2)(a) in respect of the period if the period were a qualifying period of the individual with respect to the employer.

Related Provisions: Reg. 8508 — Salary deferral leave plan.

Interpretation Bulletins: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(2) Additional compensation in respect of qualifying period — For the purposes of paragraph (1)(a) and subsection (5), the amount that is determined in respect of a period in a calendar year that is a qualifying period of an individual with respect to an employer is the lesser of

(a) the amount, if any, by which

(i) the amount that it is reasonable to consider would have been the remuneration of the individual for the period from the employer if the individ-

ual had rendered services to the employer throughout the period on a regular basis (having regard to the services rendered by the individual to the employer before the complete period of reduced pay of which the period is a part) and the individual's rate of remuneration had been commensurate with the individual's rate of remuneration before the beginning of the complete period of reduced pay

exceeds

(ii) the remuneration of the individual for the period from the employer, and

(b) the amount determined by the formula

$$(5 + A + B - C) \times D$$

where

A is the lesser of 3 and the amount that would be the cumulative additional compensation fraction of the individual with respect to the employer, determined to the time that is immediately before the end of the period, if the individual's only qualifying periods had been periods that are also periods of parenting,

B is

(i) if no part of the period is a period of parenting, nil, and

(ii) otherwise, the lesser of

(A) the amount, if any, by which 3 exceeds the amount determined for A, and

(B) the ratio of

(I) the amount that would be determined under paragraph (a) if the remuneration referred to in subparagraphs (a)(i) and (ii) were the remuneration for such part of the period as is a period of parenting

to

(II) the amount determined for D,

C is the cumulative additional compensation fraction of the individual with respect to the employer, determined to the time that is immediately before the end of the period, and

D is the amount that it is reasonable to consider would have been the individual's remuneration for the year from the employer if the individual had rendered services to the employer on a full-time basis throughout the year and the individual's rate of remuneration had been commensurate with the individual's rate of remuneration before the beginning of the complete period of reduced pay of which the period is a part.

Related Provisions: ITA 257 — Negative amounts in formulas; Reg. 8507(7) — Complete period of reduced pay.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(3) Qualifying periods and periods of parenting — For the purposes of this section,

(a) a period in a calendar year is a qualifying period of an individual in the year with respect to an employer if

(i) the period is an eligible period of reduced pay or temporary absence of the individual in the year with respect to the employer,

(ii) either

(A) lifetime retirement benefits are provided to the individual under a defined benefit provision of a registered pension plan (other than a plan that is, in the year, a specified multi-employer plan) in respect of the period, or

(B) contributions are made by or on behalf of the individual under a money purchase provision of a registered pension plan (other than a plan that is, in the year, a specified multi-employer plan) in respect of the period,

pursuant to terms of the plan that apply in respect of periods that are not regular periods of employment,

(iii) the lifetime retirement benefits or the contributions, as the case may be, exceed the benefits that would otherwise be provided or the contributions that would otherwise be made if the benefits or contributions were based on the services actually rendered by the individual and the remuneration actually received by the individual,

(iv) the individual's pension adjustment for the year with respect to the employer includes an amount in respect of the lifetime retirement benefits or the contributions, as the case may be,

(v) no benefits are provided in respect of the period to the individual under a defined benefit provision of any registered pension plan in which the employer does not participate, and

(vi) no contributions are made by or on behalf of the individual in respect of the period under a money purchase provision of a registered pension plan or a deferred profit sharing plan in which the employer does not participate; and

(b) a period of parenting of an individual is all or a part of a period that begins

(i) at the time of the birth of a child of whom the individual is a natural parent, or

(ii) at the time the individual adopts a child,

and ends 12 months after that time.

Related Provisions: Reg. 8500(7) — Amounts allocated under money purchase provision deemed to be contribution.

History: The portion of para. 8507(3)(a) after subpara. (vi) repealed by P.C. 1995-17, s. 14, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Information Circulars: 98-2: Prescribed compensation for RPPs.

(4) Cumulative additional compensation fraction — For the purposes of this section, the cumulative additional compensation fraction of an individual with respect to an employer, determined to any time, is the aggregate of all amounts each of which is the additional compensation fraction that is associated with a period that ends at or before that time and that is a qualifying period of the individual in a calendar year after 1990 with respect to

(a) the employer;

(b) any other employer who does not deal at arm's length with the employer; or

(c) any other employer who participates in a registered pension plan in which the employer participates for the benefit of the individual.

Related Provisions: Reg. 8507(5) — Additional compensation fraction.

(5) Additional compensation fraction — For the purposes of subsection (4), the additional compensation fraction associated with a qualifying period of an individual in a calendar year with respect to a particular employer is the amount determined by the formula

$$\frac{E}{D}$$

where

D is the amount determined for D under paragraph (2)(b) in respect of the qualifying period, and

E is

(a) if

(i) all or a part of the qualifying period is a period throughout which the individual renders services to another employer pursuant to an arrangement in respect of which subsection 8308(7) is applicable,

(ii) the particular employer is a lending employer for the purposes of subsection 8308(7) as it applies in respect of the arrangement, and

(iii) the particular employer and the other employer deal with each other at arm's length,

the amount that would be determined under subsection (2) in respect of the qualifying period if, in the determination of the amount under paragraph (2)(a), no remuneration were included in respect of the portion of the qualifying period referred to in subparagraph (a)(i), and

(b) otherwise, the amount that is determined under subsection (2) in respect of the qualifying period.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 21.

(6) Exclusion of subperiods — A reference in this section to a qualifying period of an individual in a calendar year with respect to an employer or to a period of disability of an individual in a calendar year does not include a period that is part of a longer such period.

(7) Complete period of reduced pay — In subsection (2), "complete period of reduced pay" of an individual with respect to an employer means a period that consists of one or more periods each of which is

(a) a period of disability of the individual, or

(b) an eligible period of reduced pay or temporary absence of the individual with respect to the employer,

and that is not part of a longer such period.

Definitions [Reg. 8507]: "additional compensation fraction" — Reg. 8507(5); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "associated" — ITA 256; "benefits" — Reg. 8501(5)(c); "child" — ITA 252(1); "compensation" — ITA 147.1(1); "complete period of reduced pay" — Reg. 8507(7); "contribution" — Reg. 8501(6), (7); "cumulative additional compensation fraction" — Reg. 8507(4); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit provision" — ITA 147.1(1); "eligible period of reduced pay" — Reg. 8500(1); "employer", "employment", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "pension adjustment" — ITA 248(1); "period of disability" — Reg. 8500(1); "prescribed" — ITA 248(1); "qualifying period" — Reg. 8507(3)(a), 8507(6); "registered pension plan" — ITA 248(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3).

Interpretation Bulletins [Reg. 8507]: IT-363R2: Deferred profit sharing plans — deductibility of employer contributions and taxation of amounts received by a beneficiary.

Registered Plans Division Newsletters [Reg. 8507]: 91-4R (Registration rules for money purchase provisions).

8508. Salary deferral leave plan — Where an employee and an employer enter into an arrangement in writing described in paragraph 6801(a) or (b),

(a) the period throughout which the employee defers salary or wages pursuant to the arrangement shall be deemed to be an eligible period of reduced pay of the employee with respect to the employer; and

(b) for the purposes of section 8507, the amount that it is reasonable to consider would have been the remuneration of the employee for any period from the employer shall be determined on the basis that the employee's rate of remuneration was the amount that it is reasonable to consider would, but for the arrangement, have been the employee's rate of remuneration.

Definitions [Reg. 8508]: "amount" — ITA 248(1); "eligible period of reduced pay" — Reg. 8500(1); "employee", "employer", "salary or wages" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 22.

8509. Transition rules — (1) Prescribed conditions applicable before 1992 to grandfathered plan — The prescribed conditions for the registration of a grandfathered plan are, before 1992,

(a) the condition set out in paragraph 8502(a),

(b) the condition set out in paragraph 8502(c), but only in respect of benefits provided under a money purchase provision of the plan, and

(c) if the plan contains a money purchase provision, the condition set out in paragraph 8506(2)(a),

and the following conditions:

(d) the benefits provided under each defined benefit provision of the plan are acceptable to the Minister and, for the purposes of this condition, any benefits in respect of periods before 1991 that become provided after 1988 with respect to a member who is connected with an employer who participates in the plan, or was so connected at any time before the benefits become provided, shall, unless the Minister is notified in writing that the benefits are provided with respect to the member, be deemed to be unacceptable to the Minister, and

(e) the plan contains such terms as may be required by the Minister.

(2) Conditions applicable after 1991 to benefits under grandfathered plan — For the purpose of the condition in paragraph 8502(c) as it applies after 1991 in respect of a grandfathered plan,

(a) the condition in subparagraph 8503(2)(b)(ii) is replaced by the condition that the amount of bridging benefits payable to a member for a particular month does not exceed the amount that is determined in respect of the month by the formula

$$\left(A \times C \times \frac{E}{F}\right) + \left[G \times \left(1 - \frac{E}{F}\right)\right]$$

where

A is the amount determined for A under subparagraph 8503(2)(b)(ii) with respect to the member for the month,

C is the amount determined for C under subparagraph 8503(2)(b)(ii) with respect to the member for the month,

E is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period ending before 1992 that is pensionable service of the member under the provision,

F is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision, and

G is the amount determined with respect to the member for the month by the formula in subparagraph 8503(2)(b)(ii);

(b) the conditions in paragraphs 8503(3)(c), (h) and (i) and 8504(1)(a) and (b) apply only in respect of lifetime retirement benefits provided in respect of periods after 1991; and

(c) for the purposes of the conditions in paragraphs 8504(1)(a) and (b),

(i) the aggregate that is determined under subparagraph 8504(1)(a)(i) does not include an amount in respect of 1991, and

(ii) the amount that is determined for G under subparagraph 8504(1)(a)(ii) is based only on periods of pensionable service after 1991.

(3) Additional prescribed condition for grandfathered plan after 1991 — The prescribed conditions for the registration of a grandfathered plan include, after 1991, the condition that all benefits provided under each defined benefit provision of the plan in respect of periods before 1992 are acceptable to the Minister.

(4) Defined benefits under grandfathered plan exempt from conditions — The Minister may, after 1991, exempt from the condition in paragraph 8502(c) the following benefits provided under a defined benefit provision of a grandfathered plan:

(a) benefits that are payable after the death of a member, to the extent that the benefits can reasonably be considered to relate to lifetime retirement benefits provided to the member in respect of periods before 1992; and

(b) bridging benefits in excess of bridging benefits that are permissible under paragraph 8503(2)(b), to the extent that the excess bridging benefits are vested in a member on December 31, 1991.

(4.1) Benefits under grandfathered plan — pre-1992 disability — Where benefits are provided under a defined benefit provision of a grandfathered plan to a member of the plan as a consequence of the member having become, before 1992, physically or mentally impaired, the following rules apply:

(a) the conditions in this Part (other than the condition in paragraph (b)) do not apply in respect of the benefits;

(b) the prescribed conditions for the registration of the plan include the condition that the benefits are acceptable to the Minister; and

(c) subsections 147.1(8) and (9) of the Act do not apply to render the plan a revocable plan where those subsections would not so apply if the member's pension credits under the provision were determined without regard to the benefits.

History: Subsec. 8509(4.1) added by P.C. 1995-17, subsec. 15(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(5) Conditions not applicable to grandfathered plan — Where a pension plan is a grandfathered plan,

(a) the conditions referred to in paragraph 8501(2)(b) do not apply before 1992 in respect of the plan;

(b) the condition in paragraph 8502(d) does not apply in respect of distributions that are made before 1992 under a defined benefit provision of the plan; and

(c) the conditions in paragraphs 8503(3)(a) and (b) do not apply in respect of benefits provided under a defined benefit provision of the plan in respect of periods before 1992.

(6) PA limits for grandfathered plan for 1991 — Subsections 147.1(8) and (9) of the Act do not apply in respect of a grandfathered plan for a calendar year before 1992 if

(a) the plan does not contain a money purchase provision in that year; or

(b) no contributions are made in respect of that year under the money purchase provisions of the plan.

(7) Limit on pre-age 65 benefits — Where a pension plan is a grandfathered plan or would be a grandfathered plan if the references to "March 27, 1988" in the definitions "existing plan" and "grandfathered plan" in subsection 8500(1) were read as references to "June 7, 1990" and the references to "March 28, 1988" in the definition "existing plan" in that subsection were read as references to "June 8, 1990",

(a) the conditions in paragraphs 8504(5)(a) and (b) apply only in respect of retirement benefits provided in respect of periods after 1991; and

(b) the amounts that are determined for B and D under paragraph 8504(5)(a) are based only on periods of pensionable service after 1991.

(8) Benefit accrual rate greater than 2 per cent — Where a pension plan is a grandfathered plan or would be a grandfathered plan if the references to "March 27, 1988" in the definitions "existing plan" and "grandfathered plan" in subsection 8500(1) were read as references to "July 31, 1991" and the references to "March 28, 1988" in the definition "existing plan" in that subsection were read as references to "August 1, 1991",

(a) the condition in paragraph 8503(3)(g) applies only in respect of lifetime retirement benefits provided under a defined benefit provision of the plan in respect of periods after 1994; and

(b) subparagraph 8503(3)(h)(iv) is not applicable in respect of lifetime retirement benefits provided under a defined benefit provision of the plan to a member unless the formula for determining the amount of the member's lifetime retirement benefits complies with the condition in paragraph 8503(3)(g) as that condition would, but for this subsection, apply.

(9) Benefits under plan other than grandfathered plan — The following rules apply in respect of the benefits provided under a defined benefit provision of a pension plan that is not a grandfathered plan:

(a) the condition in paragraph 8502(c) does not apply in respect of benefits provided with respect to an individual

(i) to whom retirement benefits have commenced to be paid under the provision before 1992, or

(ii) who has died before 1992; and

(b) the prescribed conditions for the registration of the plan include the condition that all benefits referred to in paragraph (a) are acceptable to the Minister.

(10) Money purchase benefits exempt from conditions — The Minister may exempt from the condition in paragraph 8502(c) all or a portion of the benefits provided under a money purchase provision of a pension plan with respect to a member that may reasonably be considered to derive from contributions made before 1992 under a money purchase provision of a registered pension plan.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(10.1) Stipulation not required for pre-1992 plans — The conditions in paragraphs 8503(4)(c) and 8506(2)(d) do not apply in respect of a pension plan

(a) that was a registered pension plan on December 31, 1991,

(b) in respect of which an application for registration was made to the Minister before 1992, or

(c) that was established to provide benefits to one or more individuals in lieu of benefits to which the individuals were entitled under another pension plan that is a plan described in paragraph (a) or (b) or this paragraph, whether or not benefits are also provided to other individuals.

History: Subsec. 8509(10.1) added by P.C. 1995-17, subsec. 15(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(11) Benefits acceptable to Minister — For greater certainty, where benefits under a defined benefit provision of a pension plan are, by reason of paragraph 8503(3)(e) or subsection (3), subject to the condition that they be acceptable to the Minister, the provisions of this section shall not be considered to limit in any way the requirements that may be imposed by the Minister in respect of the benefits.

(12) PA limits — 1996 to 2003 — Neither subsection 147.1(8) nor (9) of the Act applies to render a registered pension plan a revocable plan at the end of any calendar year after 1995 and before 2004 solely because a pension adjustment, a total of pension adjustments or a total of pension credits of an individual for the year (each of which is, in this subsection, referred to as a "test amount") is excessive where the subsection would not apply to render the plan a revocable plan at the end of the year if each test amount were decreased by the lesser of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is

(A) a pension credit under a defined benefit provision of a registered pension plan that is included in determining the test amount, or

(B) a pension credit under a money purchase provision of a registered pension plan or under a deferred profit sharing plan that is included in determining the test amount and that is taken into account, under paragraph 8302(2)(c), in determining a pension credit referred to in clause (A), and

(ii) $15,500

exceeds the money purchase limit for the year, and

(b) the total of all amounts each of which is a pension credit referred to in clause (a)(i)(A).

History: Subsec. 8509(12) added by P.C. 1998-2256, subsec. 24(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Registered Plans Division Newsletters: 96-1 (Changes to retirement savings limits).

(13) Maximum benefits indexed before 2005 — Where

(a) a pension plan is a grandfathered plan or would be a grandfathered plan if the references to "March 27, 1988" in the definitions "existing plan" and "grandfathered plan" in subsection 8500(1) were read as references to "March 5, 1996" and the references to "March 28, 1988" in the definition "existing plan" in that subsection were read as references to "March 6, 1996",

(b) under the terms of the plan as they read immediately before March 6, 1996, the plan provided for benefits that are benefits to which a condition in any of subsections 8504(1), (5) and (6) and paragraph 8505(3)(d) applies and, at that time, the benefits complied with the condition, and

(c) as a consequence of the change in the defined benefit limit effective March 6, 1996, the benefits would, if this Part were read without reference to this subsection, cease to comply with the condition,

the following rules apply:

(d) for the purpose of determining at any time after March 5, 1996 and before 1998 whether the benefits comply with the condition, the defined benefit limit for each year after 1995 is deemed to be the amount that it would be if the definition "money purchase limit" in subsection 147.1(1) of the Act were applied as it read on December 31, 1995, and

(e) for the purpose of determining at any time after 1997 whether the benefits comply with the condition, the defined benefit limit for 1996 and 1997 is deemed to be the amount that it would be if it were determined in accordance with paragraph (d).

History: Subsec. 8509(13) added by P.C. 1998-2256, subsec. 24(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after March 5, 1996, except that where

(a) the retirement benefits provided to an individual under a pension plan are provided by means of an annuity contract issued before March 6, 1996, and

(b) under the terms and conditions of the contract as they read immediately before March 6, 1996,

(i) the day on which annuity payments are to begin under the contract is fixed and determined and is after 1997, and

(ii) the amount and timing of each annuity payment are fixed and determined,

subsec. 8509(13) shall, in its application to those benefits, be read without reference to the words "and before 1998" in para. (d) and without reference to para. (e).

Definitions [Reg. 8509]: "amount" — ITA 248(1); "benefits" — Reg. 8501(5)(c); "bridging benefits" — Reg. 8500(1); "connected" — Reg. 8500(3); "contribution" — Reg. 8501(6); "deferred profit sharing plan" — ITA 147(1), 248(1); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "employer" — ITA 248(1); "grandfathered plan" — Reg. 8500(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase limit", "money purchase provision" — ITA 147.1(1); "month" — *Interpretation Act* 35(1); "pension adjustment" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "pensionable service" — Reg. 8500(1); "prescribed", "registered pension plan" — ITA 248(1); "retirement benefits" — Reg. 8500(1); "test amount" — Reg. 8509(12); "writing" — *Interpretation Act* 35(1).

8510. Multi-employer plans and specified multi-employer plans — (1) Definition of "multi-employer plan" — The definition "multi-employer plan" in subsection 8500(1) is applicable for the purposes of subsection 147.1(1) of the Act.

(2) Definition of "specified multi-employer plan" — For the purposes of this Part and subsection 147.1(1) of the Act, "specified multi-employer plan" in a calendar year means a pension plan

(a) in respect of which the conditions in subsection (3) are satisfied at the beginning of the year (or at the time in the year when the plan is established, if later),

(b) that has, on application by the plan administrator, been designated in writing by the Minister to be a specified multi-employer plan in the year, or

(c) that was, by reason of paragraph (a), a specified multi-employer plan in the immediately preceding calendar year (where that year is after 1989),

but does not include a pension plan where the Minister has, before the beginning of the year, given notice by registered mail to the plan administrator that the plan is not a specified multi-employer plan.

Related Provisions: Reg. 8510(4) — Minister's notice concerning specified multi-employer plans.

(3) Qualification as a specified multi-employer plan — The conditions referred to in paragraph (2)(a) are the following:

(a) it is reasonable to expect that at no time in the year will more than 95 per cent of the active members of the plan be employed by a single participating employer or by a related group of participating employers;

(b) where the year is 1991 or a subsequent year, it is reasonable to expect that

(i) at least 15 employers will contribute to the plan in respect of the year, or

(ii) at least 10 per cent of the active members of the plan will be employed in the year by more than one participating employer,

and, for the purposes of this condition, all employers who are related to each other shall be deemed to be a single employer;

(c) employers participate in the plan pursuant to a collective bargaining agreement;

(d) all or substantially all of the employers who participate in the plan are persons who are not exempt from tax under Part I of the Act;

(e) contributions are made by employers in accordance with a negotiated contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the plan;

(f) the contributions that are to be made by each employer in the year are determined, in whole or in part, by reference to the number of hours worked by individual employees of the employer or some other measure that is specific to each employee with respect to whom contributions are made to the plan;

(g) the administrator is a board of trustees or similar body that is not controlled by representatives of employers; and

(h) the administrator has the power to determine the benefits to be provided under the plan, whether or not that power is subject to the terms of a collective bargaining agreement.

(4) Minister's notice — For the purpose of subsection (2), the Minister may give notice that a plan is not a specified multi-employer plan only if the Minister is satisfied that participating employers will be able to comply with all reporting obligations imposed by Part LXXXIV in respect of the plan if it is not a specified multi-employer plan, and

(a) the notice is given at or after a time when the conditions in subsection (3) are not satisfied in respect of the plan; or

(b) the plan administrator has applied to the Minister for the notice.

(5) Special rules — multi-employer plan — Where a pension plan is a multi-employer plan in a calendar year,

(a) each member of the plan who is connected at any time in the year with an employer who participates in the plan shall be deemed, for the purposes of applying the conditions in sections 8503 and 8504 in respect of the plan in the year and in each subsequent year, not to be so connected in the year;

(b) paragraph 8503(3)(b) shall, in its application in respect of benefits provided under a defined benefit provision of the plan in respect of a period in the year, be read without reference to subparagraph (ii) thereof; and

(c) the condition in paragraph 8503(3)(k) and the rule in subsection 8504(8) shall apply in the year in respect of the plan without regard to benefits provided under any other pension plan.

(6) Special rules — specified multi-employer plan — Where a pension plan is a specified multi-employer plan in a calendar year,

(a) a contribution that is made in the year in respect of a defined benefit provision of the plan by an employer with respect to the employer's employees or former employees in accordance with the plan as registered shall be deemed, for the purpose of paragraph 8502(b), to be an eligible contribution;

(b) subparagraph 8502(c)(i) shall, in its application in the year in respect of the plan, be read as follows:

"(i) benefits that are in accordance with subsection 8503(2), paragraphs 8503(3)(c), (e) and (g) and subsections 8504(5) and (6)"; and

(c) the conditions in paragraphs 8503(3)(j) and (4)(a) do not apply in the year in respect of the plan.

Proposed Addition — Reg. 8510(6)(d)

(d) a payment made in the year under a defined benefit provision of the plan with respect to a member is deemed to comply with the conditions in paragraph 8503(2)(h) (in the case of a payment made in connection with the member's termination from the plan otherwise than by reason of death) or (j) (in the case of a payment made after the death of the member) where it would comply if paragraph 8503(2)(h) were read as:

"(h) the payment, with respect to a member in connection with the member's termination from

the plan (otherwise than by reason of death), of one or more single amounts where

(i) the payments are the last payments to be made under the provision with respect to the member, and

(ii) each single amount does not exceed the amount that would be the balance in the member's net contribution account immediately before the time of payment of the single amount if, for each contribution that is a specified contribution, the account were credited at the time of the specified contribution with an additional amount equal to the amount of the specified contribution and, for this purpose, a specified contribution is

(A) a contribution included in determining a pension credit of the member under the provision because of paragraph 8301(5)(b), or

(B) a contribution made before 1990 in respect of the provision by a participating employer, to the extent that the contribution can reasonably be considered to have been determined by reference to the number of hours worked by the member or some other measure specific to the member;".

Application: The April 18, 2000 draft regulations (RPPs), s. 8, will add para. 8510(6)(d), applicable after 1988.

Technical Notes: Subsection 8510(6) of the Regulations modifies certain registration rules in sections 8502 and 8503 as they apply to a pension plan that is a specified multi-employer plan (SMEP). In general terms, a SMEP is a defined benefit pension plan in which several non-related employers participate pursuant to a collective bargaining agreement. Employer contribution rates are negotiated and based on hours worked by employees or some other employee-specific measure. Typically, SMEPs are established for employees in an industry or trade where there is frequent movement of employees among employers. SMEP is defined in subsection 8510(2).

New paragraph 8510(6)(d) allows a SMEP to provide lump sum payments on termination or death that are based on employee and employer contributions. Specifically, a SMEP may provide a termination benefit to a member or a death benefit to a beneficiary of a member equal to the amount that would be in the member's net contribution account (as defined in subsection 8503(1)) if that account were also credited with each employer contribution made in respect of the member. Normally, the amount that can be paid will equal the total of the member contributions (if any) and employer contributions plus interest, less any payments previously made with respect to the member. This change is implemented by modifying the conditions in paragraphs 8503(2)(h) and (j) as they apply to SMEPs.

New paragraph 8510(6)(d) applies after 1988, which is when subsection 8510(6) first came into force.

(7) Additional prescribed conditions — Where a pension plan is a specified multi-employer plan in a calendar year, the prescribed conditions for the registration of the plan include, in that year, the following conditions:

(a) when employer and member contribution rates under the plan were last established, it was reasonable to expect that, for each calendar year beginning with the year in which the contribution rates were last established,

(i) the aggregate of all amounts each of which is the pension credit of an individual for the year with respect to an employer under a benefit provision of the plan

would not exceed

(ii) 18 per cent of the aggregate of all amounts each of which is, for an individual and an employer where the pension credit of the individual for the year with respect to the employer under a benefit provision of the plan is greater than nil, the compensation of the individual from the employer for the year,

except that this condition does not apply for years before 1992 in the case of a pension plan that is a grandfathered plan; and

(b) where the plan contains a money purchase provision,

(i) the plan terms are such that, if subsection 147.1(9) of the Act were applicable in respect of the plan, the plan would not under any circumstances become a revocable plan at the end of the year pursuant to that subsection, or

(ii) if the plan terms do not comply with the condition in subparagraph (i), the only circumstances that would result in the plan becoming a revocable plan at the end of the year pursuant to subsection 147.1(9) of the Act, if that subsection were applicable in respect of the plan, are circumstances acceptable to the Minister.

Information Circulars: 98-2: Prescribed compensation for RPPs, para. 6.

(8) Purchase of additional benefits — Where, in the case of a pension plan that is a specified multi-employer plan in a calendar year,

(a) the amount of lifetime retirement benefits provided under a defined benefit provision of the plan to each member is determined by reference to the hours of employment of the member with participating employers,

(b) the plan permits a member whose actual hours of employment in a period are fewer than a specified number of hours for the period to make contributions to the plan in order to increase, to an amount not exceeding the specified number of hours for the period, the number of hours that are treated under the provision as hours of employment of the member in the period, and

(c) the specified number of hours for a period does not exceed a reasonable measure of the actual hours of employment of members who render services throughout the period on a full-time basis,

the condition in paragraph 8503(3)(a) does not apply in respect of such portion of the lifetime retirement benefits provided under the provision to a member as is determined by reference to hours acquired by the member as a consequence of contributions made to the plan in the year by the member, as described in paragraph (b).

Definitions [Reg. 8510]: "active member" — Reg. 8500(1); "administrator" — ITA 147.1(1); "amount" — ITA 248(1); "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "compensation" — ITA 147.1(1); "connected" — Reg. 8500(3); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "employed", "employee", "employer", "employment" — ITA 248(1); "grandfathered plan" — Reg. 8500(1); "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "multi-employer plan" — ITA 147.1(1), Reg. 8500(1); "participating employer" — ITA 147.1(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person",

"prescribed" — ITA 248(1); "related" — ITA 251(2)-(6); "single amount" — ITA 147.1(1); "specified multi-employer plan" — ITA 147.1(1), Reg. 8510(2), (3); "writing" — *Interpretation Act* 35(1).

8511. Conditions applicable to amendments — **(1)** For the purposes of paragraph 147.1(4)(c) of the Act, the following conditions are prescribed in respect of an amendment to a registered pension plan:

(a) where the amendment increases the accrued lifetime retirement benefits provided to a member under a defined benefit provision of the plan, the increase is not, in the opinion of the Minister, inconsistent with the conditions in paragraphs 8503(3)(h) and (i); and

(b) where the plan is a grandfathered plan and the amendment increases the bridging benefits provided to a member under a defined benefit provision of the plan, the member's bridging benefits, as amended, comply with the condition in subparagraph 8503(2)(b)(ii) that would apply if the plan were not a grandfathered plan.

(2) Where an amendment to a registered pension plan provides for the return to a member of all or a part of the contributions made by the member under a defined benefit provision of the plan, the plan becomes a revocable plan at any time that an amount (other than an amount that may be transferred from the plan in accordance with subsection 147.3(6) of the Act) that is payable to the member as a consequence of the amendment is not paid to the member as soon after the amendment as is practicable.

History: Subsec. 8511(2) amended by P.C. 1995-17, s. 16, January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

Definitions [Reg. 8511]: "amount" — ITA 248(1); "bridging benefits" — Reg. 8500(1); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "grandfathered plan", "lifetime retirement benefits" — Reg. 8500(1); "member" — ITA 147.1(1); "Minister", "prescribed", "registered pension plan" — ITA 248(1).

8512. Registration and amendment — **(1)** For the purposes of subsection 147.1(2) of the Act, an application for registration of a pension plan shall be made by forwarding by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa the following documents:

(a) an application in prescribed form containing prescribed information;

(b) certified copies of the plan text and any other documents that contain terms of the plan;

(c) certified copies of all trust deeds, insurance contracts and other documents that relate to the funding of benefits under the plan;

(d) certified copies of all agreements that relate to the plan; and

(e) certified copies of all resolutions and by-laws that relate to the documents referred to in paragraphs (b) to (d).

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

(2) Where, after 1988, an amendment is made to a registered pension plan, to the arrangement for funding benefits under the plan or to a document that has been filed with the Minister in respect of the plan, the plan administrator shall, within 60 days after the day on which the amendment is made, forward to the Deputy Minister of National Revenue for Taxation at Ottawa

(a) a prescribed form containing prescribed information; and

(b) certified copies of all documents that relate to the amendment.

Registered Plans Division Newsletters: 96-1 (Changes to retirement savings limits).

Forms: T920: Application for acceptance of an amendment to a registered pension plan.

(3) For the purposes of subsection 147.1(4) of the Act, an application for the acceptance of an amendment to a registered pension plan is made in prescribed manner where the documents that are required by subsection (2) are forwarded by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa.

Definitions [Reg. 8512]: "administrator" — ITA 147.1(1); "benefits" — Reg. 8501(5)(c); "Minister", "prescribed", "registered pension plan" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

8513. Designated laws — For the purposes of paragraph 8302(3)(m), subparagraph 8502(c)(iii) and paragraph 8517(5)(f), "designated provision of the law of Canada or a province" means subsection 21(2) of the *Pension Benefits Standards Act, 1985* and any provision of a law of a province that is similar to that subsection.

Definitions [Reg. 8513]: "province" — *Interpretation Act* 35(1).

Registered Plans Division Newsletters: 91-4R (Registration rules for money purchase provisions).

8514. Prohibited investments — **(1)** For the purposes of subparagraph 8502(h)(i), and subject to subsections (2) and (3), a prohibited investment in respect of a registered pension plan is a share of the capital stock of, an interest in, or a debt of

Proposed Amendment — Reg. 8514(1) opening words

(1) Prohibited investments — For the purposes of subparagraph 8502(h)(i) and subject to subsections (2), (2.1) and (3), a prohibited investment in respect of a registered pension plan is a share of the capital stock of, an interest in, or a debt of

Application: The April 18, 2000 draft regulations (RPPs), subsec. 9(1), will amend the opening words of subsec. 8514(1) to read as above, applicable to property acquired after September 1999.

Technical Notes: Paragraph 8502(h) requires that an RPP avoid holding investments prohibited by subsection 8514(1). In general terms, subsection 8514(1) provides that an investment is a prohibited investment for an RPP if it is a share of the capital stock or a debt obligation of:

- a plan member;
- an employer who participates in the plan;
- a person connected with a participating employer (as defined in subsection 8500(3));
- a person or partnership that controls a participating employer or that controls a person connected with a participating employer; or
- a person or partnership that does not deal at arm's length with any of the above.

Subsection 8514(1) is subject to subsection 8514(2), which provides exceptions for government debt, shares and debt of publicly-traded companies, and insured mortgages.

Subsection 8514(1) is amended so that it is also subject to new subsection 8514(2.1), which accommodates certain incidental investment transactions undertaken by large defined benefit multi-employer plans. For more details, see the commentary to subsection 8514(2.1).

This amendment applies to property acquired after September 1999.

(a) an employer who participates in the plan,

(b) a person who is connected with an employer who participates in the plan,

(c) a member of the plan,

(d) a person or partnership that controls, directly or indirectly, in any manner whatever, a person or partnership referred to in paragraph (a) or (b), or

(e) a person or partnership that does not deal at arm's length with a person or partnership referred to in paragraph (a), (b), (c) or (d),

or an interest in, or a right to acquire, such a share, interest or debt.

(2) A prohibited investment does not include

(a) a bond, debenture, note, mortgage or similar obligation described in clause 212(1)(b)(ii)(C) of the Act;

(b) a share listed on a stock exchange referred to in section 3200 or 3201;

(c) a bond, debenture, note or similar obligation of a corporation any shares of which are listed on a stock exchange referred to in section 3200 or 3201;

(d) an interest in, or a right to acquire, property referred to in paragraph (b) or (c); or

(e) a mortgage in respect of real property situated in Canada that

(i) where this condition has not been waived by the Minister and the amount paid for the mortgage, together with the amount of any indebtedness outstanding at the time the mortgage was acquired under any mortgage or hypothec that ranks equally with or superior to the mortgage, exceeds 75 per cent of the fair market value, at that time, of the real property that is subject to the mortgage, is insured under the *National Housing Act* or by a corporation that offers its services to the public in Canada as an insurer of mortgages,

(ii) where the registered pension plan in connection with which the mortgage is held would be a designated plan for the purposes of subsection 8515(5) if subsection 8515(4) were read without reference to paragraph (b) thereof, is administered by an approved lender under the *National Housing Act*, and

(iii) bears a rate of interest that would be reasonable in the circumstances if the mortgagor dealt with the mortgagee at arm's length.

Proposed Addition — Reg. 8514(2.1), (2.2)

(2.1) Where a share of the capital stock of, an interest in or a debt of, a person who is connected with a particular employer who participates in a registered pension plan that is a multi-employer plan would, but for this subsection, be a prohibited investment in respect of the plan, the property is not a prohibited investment in respect of the plan if

(a) the plan does not contain a money purchase provision;

(b) at the time the property is acquired by the plan, there are at least 15 employers who participate in the plan, and, for this purpose,

(i) all employers who are related to each other are deemed to be a single employer, and

(ii) all the structural units of a trade union, including each local, branch, national and international unit, are deemed to be a single employer;

(c) at the time the property is acquired by the plan, no more than 10% of the active members of the plan are employed by the particular employer or by any person related to the particular employer;

(d) the property would not be a prohibited investment in respect of the plan if this subsection did not apply and subsection (1) were read without reference to paragraph (1)(b); and

(e) immediately after the time the property is acquired by the plan, the total of all amounts each of which is the cost amount to a person of a property held in connection with the plan that would, but for this subsection, be a prohibited investment in respect of the plan does not exceed 10% of the total of all amounts each of which is the cost amount to a person of a property held in connection with the plan.

(2.2) For the purposes of the conditions in paragraphs (2.1)(b) and (c), two corporations that are related to each other solely because they are both controlled by Her Majesty in right of Canada or a province are deemed not to be related to each other.

Application: The April 18, 2000 draft regulations (RPPs), subsec. 9(2), will add subsecs. 8514(2.1) and (2.2), applicable to property acquired after September 1999.

Technical Notes: New subsection 8514(2.1) of the Regulations provides a limited exclusion for multi-employer plans (as defined in subsection 8500(1)) from the prohibition on lending or investing with related or other closely held parties. Specifically, subsection 8514(2.1) excludes from the list of otherwise prohibited investments for a pension plan that is a multi-employer plan shares and debt of a person who is connected with an employer who participates in the plan. The exclusion applies only if the following conditions are met:

(a) the plan does not contain a money purchase provision;

(b) at the time the property is acquired by the plan, at least 15 non-related employers participate in the plan;

(c) at the time the property is acquired by the plan, no more than 10% of the active members of the plan are employed by the participating employer or by any person related to the participating employer;

(d) the property would not otherwise be a prohibited investment for the plan if subsection 8514(1) were read without reference to paragraph 8514(1)(b) (in other words, the investment does not involve a person who controls a participating employer or who does not deal at arm's length with a participating employer); and

(e) immediately after acquisition of the property, the total cost amount of all such properties held in connection with the plan does not exceed 10% of the total cost amount of all properties held in connection with the plan.

In determining whether employers are related for the purposes of conditions (b) and (c), reference should be made to section 251 of the Act, which defines "related persons" and other similar expressions. New subsection 8514(2.2) contains a special rule that also applies for the purposes of conditions (b) and (c). It provides that two corporations that are otherwise related to each other solely because they are both controlled by the government of Canada or a province are considered not to be related. This rule is analogous to the rule contained in the definition "multi-employer plan" in subsection 8500(1).

For the purpose of condition (b), a union and its locals and branches are considered to be a single employer. This rule is analogous to the rule in section 252.1 of the Act.

This amendment applies to property acquired after September 1999.

(3) A prohibited investment in respect of a registered pension plan does not include an investment that was acquired by the plan before March 28, 1988.

Related Provisions: Reg. 8514(4) — When debt obligation deemed to be issued.

(4) For the purposes of subsection (3), where at any time after March 27, 1988, the principal amount of a bond, debenture, note, mortgage or similar obligation increases as a consequence of the advancement or lending of additional amounts, or the maturity date of such an obligation is extended, the obligation shall, after that time, be deemed to have been issued at that time.

History: Para. 8514(2)(a) and subsec. 8514(4) amended by P.C. 1994-1817, paras. 62(j) and (k), November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. 8514]: "active member" — Reg. 8500(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "connected" — Reg. 8500(3); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "cost amount", "employed", "employer" — ITA 248(1); "Her Majesty" — *Interpretation Act* 35(1); "insurer" — ITA 248(1); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "multi-employer plan" — ITA 147.1(1), Reg. 8500(1); "person", "principal amount", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "related" — ITA 251(2)–(6), Reg. 8514(2.2); "share" — ITA 248(1).

8515. Special rules for designated plans — (1) Designated plans — For the purposes of subsections (5) and (9), and subject to subsection (3), a registered pension plan that contains a defined benefit provision is a designated plan throughout a calendar year if the plan is not maintained pursuant to a collective bargaining agreement and

(a) the aggregate of all amounts each of which is a pension credit (as determined under Part LXXXIII) for the year of a specified individual under a defined benefit provision of the plan

exceeds

(b) 50 per cent of the aggregate of all amounts each of which is a pension credit (as determined under Part LXXXIII) for the year of an individual under a defined benefit provision of the plan.

Related Provisions: Reg. 8515(4) — Specified individual.

(2) Designated plan in previous year — For the purposes of subsections (5) and (9), a registered pension plan is a designated plan throughout a particular calendar year after 1990 if the plan was a designated plan at any time in the immediately preceding year, except where the Minister has waived in writing the application of this subsection in respect of the plan.

(3) Exceptions — A registered pension plan is not a designated plan in a calendar year pursuant to subsection (1) if

(a) the plan would not be a designated plan in the year pursuant to that subsection if the reference in paragraph (1)(b) to "50 per cent" were read as a reference to "60 per cent",

(b) the plan was established before the year, and

(c) the amount determined under paragraph (1)(a) in respect of the plan for the immediately preceding year did not exceed the amount determined under paragraph (1)(b),

or if

(d) there are more than 9 active members of the plan in the year, and

(e) the Minister has given written notice to the administrator of the plan that the plan is not a designated plan in the year.

(4) Specified individuals — An individual is a specified individual for the purposes of paragraph (1)(a) in respect of a pension plan and a particular calendar year if

(a) the individual was connected at any time in the year with an employer who participates in the plan; or

(b) the aggregate of all amounts each of which is the remuneration of the individual for the year from an employer who participates in the plan, or from an employer who does not deal at arm's length with a participating employer, exceeds 2½ times the Year's Maximum Pensionable Earnings for the year.

(5) Eligible contributions — For the purpose of determining whether a contribution made by an employer to a registered pension plan at a time when the plan is a designated plan is an eligible contribution under subsection 147.2(2) of the Act, a prescribed condition is that

(a) the contribution satisfies the condition in subsection (6), or

(b) the contribution would satisfy the condition in subsection (6) if

(i) paragraph (6)(b) and subparagraph (7)(e)(i) were applicable only in respect of retirement benefits that became provided under the plan after 1990,

(ii) paragraph (6)(c) were applicable only in respect of those benefits payable after the death of a member that relate to retirement benefits that became provided under the plan to the member after 1990, and

(iii) the assumption as to the time retirement benefits (other than retirement benefits that became provided after 1990) will commence to be paid is the same for the purposes of the maximum funding valuation as for the purposes of the actuarial valuation that forms the basis for the recommendation referred to in subsection 147.2(2) of the Act pursuant to which the contribution is made.

Related Provisions: Reg. 8515(1)–(3) — Designated plans.

(6) Funding restriction — The condition referred to in subsection (5) is that the contribution would be required to be made for the plan to have sufficient assets to pay benefits under the defined benefit provisions of the plan, as registered, with respect to the employees and former employees of the employer if

(a) required contributions were determined on the basis of a maximum funding valuation prepared as of the same effective date as the actuarial valuation that forms the basis for the recommendation referred to in subsection 147.2(2) of the Act pursuant to which the contribution is made;

(a.1) each defined benefit provision of the plan provided that, with respect to restricted-funding members, retirement benefits are payable monthly in advance;

(b) each defined benefit provision of the plan provided that, after retirement benefits commence to be paid with respect to a restricted-funding member, the benefits are adjusted annually by a percentage increase for each year that is 1 percentage point less than the percentage increase in the Consumer Price Index for the year, in lieu of any cost-of-living adjustments actually provided;

(c) each defined benefit provision of the plan provided the following benefits after the death of a restricted-funding member who dies after retirement benefits under the provision have commenced to be paid to the member, in lieu of the benefits actually provided:

(i) where the member dies within 5 years after retirement benefits commence to be paid under the provision, the continuation of the retirement benefits for the remainder of the 5 years as if the member were alive, and

(ii) where an individual who is a spouse of the member when retirement benefits commence to be paid under the provision to the member is alive on the later of the day of death of the member and the day that is 5 years after the day on which the member's retirement benefits commence to be paid, retirement benefits payable to the individual for the duration of the individual's life, with the amount of the benefits payable for each month equal to 66⅔ per cent of the amount of retirement benefits that would have been payable under the provision for the month to the member if the member were alive;

(d) where more than one employer participates in the plan, assets and actuarial liabilities were apportioned in a reasonable manner among participating employers with respect to their employees and former employees; and

(e) the rule in paragraph 147.2(2)(d) of the Act that provides for the disregard of a portion of the assets of the plan apportioned to the employer with respect to the employer's employees and former employees were applicable for the purpose of determining required contributions pursuant to this subsection.

Related Provisions: Reg. 8515(7) — Maximum funding valuation; Reg. 8515(8) — Restricted-funding member.

History: Para. 8515(6)(a.1) added by P.C. 1995-17, subsec. 17(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable with respect to a contribution made after June 4, 1994, except where the contribution is made pursuant to a valuation report filed with the Minister in accordance with subsec. 147.2(3) of the *Income Tax Act* on or before June 4, 1994.

(7) Maximum funding valuation — For the purposes of subsection (6), a maximum funding valuation is a valuation prepared by an actuary in accordance with the following rules:

(a) the projected accrued benefit method is used for the purpose of determining actuarial liabilities and current service costs;

(b) the valuation rate of interest is 7.5 per cent per annum;

(c) it is assumed that

(i) the rate of increase in general wages and salaries and in each member's rate of remuneration will be 5.5 per cent per annum, and

(ii) the rate of increase in the Consumer Price Index will be 4 per cent per annum;

(d) each assumption made in respect of economic factors other than those referred to in paragraph (c) is consistent with the assumptions in that paragraph;

(e) in the case of a restricted-funding member, it is assumed that

(i) retirement benefits will commence to be paid to the member no earlier than the day on which the member attains 65 years of age,

(ii) the member will survive to the time the member's retirement benefits commence to be paid,

(iii) where the member is employed by a participating employer as of the effective date of the valuation, the member will continue in employment until the time when the member's retirement benefits commence to be paid, and

(iv) when the member's retirement benefits commence to be paid, the member will be married to a person who is the same age as the member;

(f) the rate of mortality at each age is equal to

(i) in the case of a restricted-funding member, 80 per cent of the average of the rates at that age for males and females in the *1983 Group Annuity Mortality Table*, as published in Volume XXXV of the *Transactions of the Society of Actuaries*, and

(ii) in the case of any other member, 80 per cent of the rate at that age in the mortality table referred to in subparagraph (i) for individuals of the same sex as the member;

(g) it is assumed that where a member has a choice between receiving retirement benefits or a lump sum payment, retirement benefits will be paid to the member; and

(h) the plan's assets are valued at an amount equal to their fair market value as of the effective date of the valuation.

Related Provisions: Reg. 8515(8) — Restricted-funding member.

History: Subpara. 8515(7)(e)(i) and para. 8515(7)(f) amended by P.C. 1995-17, subsecs. 17(2) and (3), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988, except that with respect to a contribution that is made

(i) on or before June 4, 1994, or

(ii) pursuant to a valuation report filed with the Minister in accordance with subsec. 147.2(3) of the *Income Tax Act* on or before June 4, 1994,

subpara. 8515(7)(f)(i) shall be read as follows:

(i) in the case of a restricted-funding member, or a male member who is not a restricted-funding member, 80 per cent of the average of the rates at that age for males and females in the *1983 Group Annuity Mortality Table*, as published in Volume XXXV of the *Transactions of the Society of Actuaries*, and

(8) Restricted-funding members — For the purposes of subsections (6) and (7) as they apply in respect of a contribution made to a registered pension plan, a member of the plan is a restricted-funding member if, at the time the maximum funding valuation is prepared,

(a) the member has a right, whether absolute or contingent, to receive retirement benefits under a defined benefit provision of the plan and the benefits have not commenced to be paid; or

(b) the payment of retirement benefits under a defined benefit provision of the plan to the member has been suspended.

(9) Member contributions — Where

(a) a member of a registered pension plan makes a contribution to the plan to fund benefits that have become provided at a particular time under a defined benefit provision of the plan in respect of periods before that time,

(b) the contribution is made at a time when the plan is a designated plan, and

(c) the contribution would not be an eligible contribution under subsection 147.2(2) of the Act if it were

made by an employer who participates in the plan on behalf of the member,

the plan becomes, for the purposes of paragraph 147.1(11)(c) of the Act, a revocable plan immediately before the time the contribution is made.

Related Provisions: Reg. 8515(1)–(3) — Designated plans.

Definitions [Reg. 8515]: "active member" — Reg. 8500(1); "actuary", "administrator" — ITA 147.1(1); "amount" — ITA 248(1); "arm's length" — ITA 251(1); "benefits" — Reg. 8501(5)(c); "connected" — Reg. 8500(3); "Consumer Price Index" — Reg. 8500(1); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "designated plan" — Reg. 8515(1)–(3); "employed", "employee", "employer", "employment", "individual" — ITA 248(1); "maximum funding valuation" — Reg. 8515(7); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "participating employer" — ITA 147.1(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3); "person", "prescribed" — ITA 248(1); "registered pension plan" — Reg. 8515(1), (2); "restricted-funding member" — Reg. 8515(8); "retirement benefits" — Reg. 8500(1); "specified individual" — Reg. 8515(4); "spouse" — ITA 147.1(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing"; "Year's Maximum Pensionable Earnings" — Reg. 8500(1).

8516. Eligible contributions — (1) Prescribed contribution — For the purposes of subsection 147.2(2) of the Act, a contribution described in any of subsections (2) to (9) that is made by an employer to a registered pension plan in respect of the defined benefit provisions of the plan is a prescribed contribution.

History: Subsec. 8516(1) amended by P.C. 1998-2256, subsec. 25(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Subsec. 8516(1) amended by P.C. 1995-17, subsec. 18(1), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(2) Amortization of excess actuarial surplus — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) it is made to the plan before 1995;

(b) the recommendation pursuant to which the contribution is made is such that the contributions that are required to be made by the employer in respect of the defined benefit provisions of the plan do not exceed the contributions that would be required if

(i) except as provided in subparagraph (ii), the contributions to be made by the employer were determined without regard to the actuarial surplus under the provisions, and

(ii) the contributions to be made by the employer after 1990 were determined on the basis that the excess actuarial surplus under the provisions with respect to the employer becomes available uniformly throughout the period beginning on the later of January 1, 1991 and the effective date of the actuarial valuation prepared in connection with the recommendation and ending December 31, 1994 to fund benefits under the provisions, in lieu of contributions that would otherwise be required to be made by the employer,

and, for the purposes of this paragraph, the amount of the excess actuarial surplus under the defined benefit provisions of a pension plan with respect to an employer is, in relation to a recommendation pursuant to which contributions are made by the employer, the amount, if any, by which the amount of the actuarial surplus under the provisions with respect to the employer exceeds the aggregate of

(iii) the lesser of the amounts determined under subparagraphs 147.2(2)(d)(ii) and (iii) of the Act in relation to the employer and the recommendation, and

(iv) where the effective date of the actuarial valuation prepared in connection with the recommendation is before 1991, the amount, if any, by which

(A) the aggregate amount of current service contributions that would, but for the actuarial surplus, have been required to be made in respect of the provisions by the employer and the employer's employees for the period from the effective date of the actuarial valuation to December 31, 1990

exceeds

(B) the aggregate amount of current service contributions for that period made in the period by the employer and the employer's employees; and

(c) the contribution would be an eligible contribution under subsection 147.2(2) of the Act if no contributions were prescribed for the purposes of that subsection and if that subsection were read without reference to subparagraphs (d)(ii) and (iii) thereof.

(3) Approval under paragraph 20(1)(s) of the Act — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) the Minister has approved the contribution under paragraph 20(1)(s) of the Act; and

(b) the contribution would have been deductible under paragraph 20(1)(s) of the Act had that paragraph been applicable to the taxation year of the employer in which the contribution was made.

(4) Contributions pursuant to collective bargaining agreement — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) it is made to the plan before 1994; and

(b) it is made pursuant to a collective bargaining agreement that was entered into before 1990.

(5) Contributions pursuant to statute or by-law — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) it is made to the plan in 1991;

(b) it is made pursuant to a formula in a statute or by-law that was in existence on March 27, 1988; and

(c) the formula was not amended after March 27, 1988 and before the time the contribution is made.

(6) Employer not entitled to reduce contributions — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) it is made to the plan before 1994;

(b) either

(i) the terms of the plan require that contributions made by the employer in respect of the defined benefit provisions of the plan be determined without regard to any actuarial surplus under the provisions, or

(ii) there is a dispute as to whether the terms of the plan have the effect described in subparagraph (i) and steps are being taken to resolve the dispute;

(c) the contribution would be an eligible contribution under subsection 147.2(2) of the Act if no contribu-

tions were prescribed for the purposes of that subsection and if that subsection were read without reference to subparagraphs (d)(ii) and (iii) thereof; and

(d) the contribution is acceptable to the Minister.

(7) Funding on termination basis — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) the contribution is made pursuant to a recommendation by an actuary in whose opinion the contribution is required to be made so that, if the plan is terminated immediately after the contribution is made, it will have sufficient assets to pay benefits accrued under the defined benefit provisions of the plan, as registered, to the time the contribution is made;

(b) the recommendation is based on an actuarial valuation that complies with the following conditions:

(i) the effective date of the valuation is not more than 4 years before the day on which the contribution is made,

(ii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made,

(iii) the valuation is prepared in accordance with generally accepted actuarial principles applicable with respect to a valuation prepared on the basis that a plan will be terminated, and

(iv) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers;

(c) the recommendation is approved by the Minister on the advice of the Superintendent of Financial Institutions; and

(d) at the time the contribution is made, the plan is not a designated plan under section 8515.

History: Subsec. 8516(7) added by P.C. 1995-17, subsec. 18(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(8) Contributions required by pension benefits legislation — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) the contribution

(i) is required to be made to comply with the *Pension Benefits Standards Act, 1985* or a similar law of a province,

(ii) is made in respect of benefits under the defined benefit provisions of the plan as registered, and

(iii) is made pursuant to a recommendation by an actuary;

(b) the recommendation is based on an actuarial valuation that complies with the following conditions:

(i) the effective date of the valuation is not more than 4 years before the day on which the contribution is made,

(ii) all assumptions made for the purposes of the valuation are reasonable at the time the valuation is prepared and at the time the contribution is made, and

(iii) where more than one employer participates in the plan, assets and actuarial liabilities are apportioned in a reasonable manner among participating employers;

(c) the recommendation is approved by the Minister on the advice of the Superintendent of Financial Institutions; and

(d) at the time the contribution is made, the plan is not a designated plan under section 8515.

History: Subsec. 8516(8) added by P.C. 1995-17, subsec. 18(2), January 11, 1995, *Canada Gazette*, Part II, January 25, 1995, applicable after 1988.

(9) Actuarial reports signed before March 6, 1996 — A contribution that is made by an employer to a registered pension plan is described in this subsection if

(a) the actuarial report containing the recommendation pursuant to which the contribution is made was signed before March 6, 1996;

(b) the contribution is made after March 5, 1996;

(c) the contribution would be an eligible contribution under subsection 147.2(2) of the Act if

(i) no contributions were prescribed for the purposes of that subsection, and

(ii) for the purpose of determining whether the actuarial valuation on which the recommendation is based complies with the condition in subparagraph 147.2(2)(a)(iii) of the Act, the defined benefit limit for each year after 1995 were equal to the amount that it would be if the definition "money purchase limit" in subsection 147.1(1) of the Act applied as it read on December 31, 1995; and

(d) where the contribution is made after 1996, the plan is not a designated plan under section 8515 at the time it is made.

History [Reg. 8516(9)]: Subsec. 8516(9) added by P.C. 1998-2256, subsec. 25(2), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable after 1995.

Definitions [Reg. 8516]: "actuary" — ITA 147.1(1); "amount" — ITA 248(1); "benefits" — Reg. 8501(5)(c); "contribution" — Reg. 8501(6); "defined benefit limit" — Reg. 8500(1); "defined benefit provision" — ITA 147.1(1); "employee", "employer", "Minister" — ITA 248(1); "participating employer" — ITA 147.1(1); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "surplus" — Reg. 8500(1); "taxation year" — ITA 249.

8517. Transfer — defined benefit to money purchase — (1) Prescribed amount — Subject to subsections (2) to (3.1), for the purpose of applying paragraph 147.3(4)(c) of the Act to the transfer of an amount on behalf of an individual in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision of a registered pension plan, the prescribed amount is the amount that is determined by the formula

$$A \times B$$

where

A is the amount of the individual's lifetime retirement benefits under the provision commuted in connection with the transfer, as determined under subsection (4), and

B is

(a) the present value factor that corresponds to the age attained by the individual at the time of the transfer, determined pursuant to the table to this subsection, or

(b) where the present value factor referred to in paragraph (a) is less than the present value factor that corresponds to the next higher age, the present value factor determined by interpolation between

those two factors on the basis of the age (expressed in years, including any fraction of a year) of the individual.

Attained Age	Present Value Factor	Attained Age	Present Value Factor
Under 50	9.0	73	9.8
50	9.4	74	9.4
51	9.6	75	9.1
52	9.8	76	8.7
53	10.0	77	8.4
54	10.2	78	8.0
55	10.4	79	7.7
56	10.6	80	7.3
57	10.8	81	7.0
58	11.0	82	6.7
59	11.3	83	6.4
60	11.5	84	6.1
61	11.7	85	5.8
62	12.0	86	5.5
63	12.2	87	5.2
64	12.4	88	4.9
65	12.4	89	4.7
66	12.0	90	4.4
67	11.7	91	4.2
68	11.3	92	3.9
69	11.0	93	3.7
70	10.6	94	3.5
71	10.3	95	3.2
72	10.1	96 or over	3.0

History: The portion of subsec. 8517(1) before the formula amended by P.C. 1998-2256, subsec. 26(1), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts transferred in respect of benefits provided after 1996.

The table in subsec. 8517(1) amended by the said P.C. 1998-2256, subsec. 26(2), applicable to transfers that occur after 1995.

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Forms: T2151: Record of direct transfer of a "single amount".

(2) Minimum prescribed amount — Where an amount is transferred in full satisfaction of an individual's entitlement to benefits under a defined benefit provision of a registered pension plan, the prescribed amount for the purposes of paragraph 147.3(4)(c) of the Act in respect of the transfer is the greater of the amount that would, but for this subsection, be the prescribed amount, and the balance, at the time of the transfer, in the individual's net contribution account (within the meaning assigned by subsection 8503(1)) in relation to the provision.

(3) Plan wind-up or replacement — Where an amount is transferred before January 1, 1993, or such later date as is acceptable to the Minister, on behalf of an individual as a consequence of the winding-up of a registered pension plan or as a consequence of the replacement of a defined benefit provision of a registered pension plan by a money purchase provision of another registered pension plan and either

(a) the winding-up of the plan or the replacement of the provision commenced at a time (in this subsection referred to as the "time of termination") before 1989,

(b) at the time of termination, the plan had at least 50 members, and

(c) the plan was established at least 5 years before the time of termination,

or the condition in paragraph (a) is satisfied and the Minister waives the conditions in paragraphs (b) and (c), the prescribed amount for the purposes of paragraph 147.3(4)(c) of the Act in respect of the transfer is the amount so transferred.

(3.1) Benefits provided with surplus on plan wind-up — Where an amount is transferred in full or partial satisfaction of an individual's entitlement to benefits under a defined benefit provision of a registered pension plan and the benefits include benefits (in this subsection referred to as "ancillary benefits") that are permissible solely because of subsection 8501(7), the prescribed amount for the purpose of paragraph 147.3(4)(c) of the Act in respect of the transfer is the total of

(a) the amount that would, but for this subsection, be the prescribed amount, and

(b) an amount approved by the Minister not exceeding the lesser of

(i) the present value (at the time of the transfer) of the ancillary benefits that, as a consequence of the transfer, cease to be provided, and

(ii) the total of all amounts each of which is, in respect of a previous transfer from the provision to a money purchase provision of a registered pension plan, a registered retirement savings plan or a registered retirement income fund in full or partial satisfaction of the individual's entitlement to other benefits under the defined benefit provision, the amount, if any, by which

(A) the prescribed amount for the purpose of paragraph 147.3(4)(c) of the Act in respect of the previous transfer

exceeds

(B) the amount of the previous transfer.

History: Subsec. 8517(3.1) added by P.C. 1998-2256, subsec. 26(3), December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, applicable to amounts transferred in respect of benefits provided after 1996.

(4) Amount of lifetime retirement benefits commuted — For the purposes of subsection (1), and subject to subsection (7), the amount of an individual's lifetime retirement benefits under a defined benefit provision of a registered pension plan commuted in connection with the transfer of an amount on behalf of the individual in full or partial satisfaction of the individual's entitlement to benefits under the provision is the aggregate of

(a) where retirement benefits have commenced to be paid under the provision to the individual, the amount (expressed on an annualized basis) by which the individual's lifetime retirement benefits under the provision are reduced as a result of the transfer,

(b) where retirement benefits have not commenced to be paid under the provision to the individual, the amount (expressed on an annualized basis) by which the individual's normalized pension (computed in accordance with subsection (5)) under the provision at the time of the transfer is reduced as a result of the transfer, and

(c) where, in conjunction with the transfer, any other payment (other than an amount that is transferred in accordance with subsection 147.3(5) of the Act or that is transferred after 1991 in accordance with subsection 147.3(3) of the Act) is made from the plan in partial

satisfaction of the individual's entitlement to benefits under the provision, the amount (expressed on an annualized basis) by which

(i) if paragraph (a) is applicable, the individual's lifetime retirement benefits under the provision are reduced, and

(ii) if paragraph (b) is applicable, the individual's normalized pension (computed in accordance with subsection (5)) under the provision at the time of the payment is reduced,

as a result of the payment, except to the extent that such reduction is included in determining, for the purposes of subsection (1), the amount of the individual's lifetime retirement benefits under the provision commuted in connection with the transfer of another amount on behalf of the individual.

(5) Normalized pensions — For the purposes of subsection (4), the normalized pension of an individual under a defined benefit provision of a registered pension plan at a particular time is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable under the provision at the particular time if

(a) lifetime retirement benefits commenced to be paid to the individual at the particular time;

(b) where the individual has not attained 65 years of age before the particular time, the individual attained that age at the particular time;

(c) all benefits to which the individual is entitled under the provision were fully vested;

(d) where the amount of the individual's lifetime retirement benefits would otherwise be determined with a reduction computed by reference to the individual's age, duration of service, or both, or with any other similar reduction, no such reduction were applied;

(e) where the amount of the individual's lifetime retirement benefits depends on the amount of benefits provided under another benefit provision of the plan or under another plan or arrangement, a reasonable estimate were made of those other benefits;

(f) where the individual's lifetime retirement benefits would otherwise include benefits that the plan is required to provide by reason of a designated provision of the law of Canada or a province, or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, such benefits were not included; and

(g) except as otherwise provided by subsection (6), where the amount of the individual's lifetime retirement benefits depends on

(i) the form of benefits provided with respect to the individual under the provision (whether or not at the option of the individual), including

(A) the benefits to be provided after the death of the individual,

(B) the amount of retirement benefits, other than lifetime retirement benefits, provided to the individual, or

(C) the extent to which the lifetime retirement benefits will be adjusted to reflect changes in the cost of living, or

(ii) circumstances that are relevant in determining the form of benefits,

the form of benefits and the circumstances were such as to maximize the amount of the individual's lifetime retirement benefits on commencement of payment.

Related Provisions: Reg. 8513 — Designated provision of the law of Canada or a province.

Registered Plans Division Newsletters: 98-2 (Treating excess member contributions under a registered pension plan).

(6) Optional forms — Where

(a) the terms of a defined benefit provision of a registered pension plan permit an individual to elect to receive additional lifetime retirement benefits in lieu of benefits that would, in the absence of the election, be payable after the death of the individual if the individual dies after retirement benefits under the provision commence to be paid to the individual, and

(b) the elections available to the individual include an election

(i) to receive additional lifetime retirement benefits, not exceeding additional benefits determined on an actuarially equivalent basis, in lieu of all or a portion of a guarantee that retirement benefits will be paid for a minimum period of 10 years or less, or

(ii) to receive additional lifetime retirement benefits in lieu of retirement benefits that would otherwise be payable to a spouse or former spouse (in this subparagraph referred to as the "spouse") of the individual for a period commencing after the death of the individual and ending with the death of the spouse, where

(A) the election may be made only if the life expectancy of the spouse is significantly shorter than normal and has been so certified in writing by a medical doctor licensed to practise under the laws of a province or of the place where the spouse resides, and

(B) the additional benefits do not exceed additional benefits determined on an actuarially equivalent basis and on the assumption that the spouse has a normal life expectancy,

paragraph (5)(g) applies as if

(c) the election described in subparagraph (b)(i) were not available to the individual, and

(d) where the particular time the normalized pension of the individual is determined under subsection (5) is after 1991, the election described in subparagraph (b)(ii) were not available to the individual.

(7) Replacement benefits — Where

(a) an amount is transferred on behalf of an individual in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision (in this subsection referred to as the "particular provision") of a registered pension plan,

(b) in conjunction with the transfer, benefits become provided to the individual under another defined benefit provision of the plan or under a defined benefit provision of another registered pension plan, and

(c) an employer who participated under the particular provision for the benefit of the individual also participates under the other provision for the individual's benefit,

the amount of the individual's lifetime retirement benefits under the particular provision commuted in connection with the transfer is the amount that would be determined

under subsection (4) if the benefits provided under the other provision were provided under the particular provision.

Definitions [Reg. 8517]: "amount" — ITA 248(1); "ancillary benefits" — Reg. 8517(3.1); "benefit provision" — Reg. 8500(1); "benefits" — Reg. 8501(5)(c); "Canada" — ITA 255, *Interpretation Act* 35(1); "commencement" — *Interpretation Act* 35(1); "contribution" — Reg. 8501(6); "defined benefit provision" — ITA 147.1(1); "designated provision of the law of Canada or a province" — Reg. 8513; "employer", "individual" — ITA 248(1); "lifetime retirement benefits" — Reg. 8500(1), 8517(4); "member" — ITA 147.1(1); "Minister" — ITA 248(1); "money purchase provision" — ITA 147.1(1); "net contribution account" — Reg. 8503(1); "normalized pension" — Reg. 8517(5); "particular provision" — Reg. 8517(7)(a); "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered pension plan" — ITA 248(1); "registered retirement income fund" — ITA 146.3(1), 248(1); "registered retirement savings plan" — ITA 146(1), 248(1); "retirement benefits" — Reg. 8500(1); "spouse" — ITA 147.1(1); "time of termination" — Reg. 8517(3)(a); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-528: Transfers of funds between registered plans.

Registered Plans Division Newsletters: 95-5 (Conversion of a defined benefit provision to a money purchase provision).

8518. Pension adjustment limits — (1) Subsection 147.1(8) of the Act does not apply to render a registered pension plan a revocable plan at the end of a calendar year by reason that a pension adjustment, or an aggregate of pension adjustments, of an individual for the year is excessive where the subsection would not so apply if the individual's pension adjustments for the year were determined without the inclusion of those pension credits, if any, of the individual for the year under deferred profit sharing plans that are described in subsection (2).

(2) For the purposes of subsection (1), a pension credit (as determined under Part LXXXIII) of an individual for a year under a deferred profit sharing plan is described in this subsection if

(a) it is a pension credit with respect to an employer by whom the individual ceased to be employed in the year; and

(b) it includes the amount of a contribution made to the plan in the year by the employer with respect to the individual that was based, in whole or in part, on the individual's remuneration for the preceding year.

Definitions [Reg. 8518]: "amount" — ITA 248(1); "contribution" — Reg. 8501(6); "deferred profit sharing plan" — ITA 147(1), 248(1); "employed", "employer", "individual", "pension adjustment" — ITA 248(1); "pension credit" — Reg. 8301, 8308.1(2)–(4), 8308.3(2), (3), 8518(2); "registered pension plan" — ITA 248(1).

8519. Association of benefits with time periods — Where, for the purposes of Part LXXXIII or this Part or subsection 147.1(10) of the Act, it is necessary to associate benefits provided under a defined benefit provision of a pension plan with periods of time, the association shall be made in a manner acceptable to the Minister.

Definitions [Reg. 8519]: "benefits" — Reg. 8501(5)(c); "defined benefit provision" — ITA 147.1(1); "Minister" — ITA 248(1).

8520. Minister's actions — For the purposes of this Part, a waiver, extension of time or other modification of the requirements of this Part granted by the Minister or an approval by the Minister in respect of any matter is not effective unless it is in writing and expressly refers to the requirement that is modified or the matter in respect of which the approval is given.

Definitions [Reg. 8520]: "Minister" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

PART LXXXVI — TAXABLE CAPITAL EMPLOYED IN CANADA

History: Part LXXXVI (ss. 8600–8604) enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994. See sections for application.

8600. [Definitions] — For the purposes of this Part and Part I.3 of the Act,

"attributed surplus" for a taxation year, in respect of an insurance corporation that was throughout the year not resident in Canada, means the amount determined under subsection 2405(3) to be the corporation's attributed surplus for the year;

Proposed Amendment — Reg. 8600"attributed surplus"

"attributed surplus" of a non-resident insurer for a taxation year has the meaning assigned by subsection 2400(1);

Application: The September 19, 1997 draft regulations (insurance companies), s. 9, will amend the definition "attributed surplus" in s. 8600 to read as above, applicable to 1997 *et seq.*

Technical Notes: Section 8600 contains several definitions which apply for the purposes of determining a corporation's taxable capital employed in Canada.

The definitions of "attributed surplus" and "Canadian reserve liabilities" are amended by changing the cross-reference from subsection 2405(3) to amended subsection 2400(1). These amendments are strictly consequential on the re-location of those definitions within Part XXIV of the Regulations.

These amendments apply to the 1997 and subsequent taxation years.

"Canadian assets" of a corporation that is a financial institution (as defined in subsection 181(1) of the Act) at any time in a taxation year means, in respect of the year, the amount, if any, by which

(a) the total of all amounts each of which is the amount at which an asset of the corporation (which asset is required, or, if the corporation were a bank to which the *Bank Act* applied, would be required, to be reflected in a return under subsection 223(1) of the *Bank Act*, as that Act read on May 31, 1992, if that return were prepared on a non-consolidated basis) would be shown on the corporation's balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis

exceeds the total of

(b) the investment allowance of the corporation for the year determined under subsection 181.3(4) of the Act, and

(c) the total of all amounts each of which is the amount outstanding at the end of the year on account of a deposit made by the corporation that is described in paragraph (c) of the definition "eligible loan" in subsection 33.1(1) of the Act;

"Canadian premiums" for a taxation year, in respect of an insurance corporation that was resident in Canada at any time in the year and throughout the year did not carry on a life insurance business, means the total of the insurance corporation's net premiums for the year

(a) in respect of insurance on property situated in Canada, and

(b) in respect of insurance, other than on property, from contracts with persons resident in Canada,

and, for the purposes of this definition, "net premiums" has the same meaning as in subsection 403(2), and subsection 403(3) applies as if the references therein to "province" were read as references to "country";

"Canadian reserve liabilities" as at the end of a taxation year, in respect of an insurance corporation that was resident in Canada at any time during the year and carried on a life insurance business at any time in the year, has the same meaning as in subsection 2405(3);

Proposed Amendment — Reg. 8600"Canadian reserve liabilities"

"Canadian reserve liabilities" of an insurer as at the end of a taxation year has the meaning assigned by subsection 2400(1);

Application: The September 19, 1997 draft regulations (insurance companies), s. 9, will amend the definition "Canadian reserve liabilities" in s. 8600 to read as above, applicable to 1997 *et seq.*

Technical Notes: See under 8600"attributed surplus".

"permanent establishment" has the same meaning as in subsection 400(2);

"total assets" of a corporation that is a financial institution (as defined in subsection 181(1) of the Act) at any time in a taxation year means, in respect of that year, the amount, if any, by which

(a) the total of all amounts each of which is the amount at which an asset of the corporation would be shown on the corporation's balance sheet at the end of the year if its balance sheet were prepared on a non-consolidated basis

exceeds

(b) the investment allowance of the corporation for the year determined under subsection 181.3(4) of the Act;

"total premiums" for a taxation year, in respect of an insurance corporation that was resident in Canada at any time in the year and throughout the year did not carry on a life insurance business, means the total of the corporation's net premiums for the year (as defined in subsection 403(2)) that are included in computing its income under Part I of the Act;

"total reserve liabilities" as at the end of a taxation year, in respect of an insurance corporation that was resident in Canada at any time during the year and carried on a life insurance business at any time in the year, has the same meaning as in subsection 2405(3).

Proposed Amendment — Reg. 8600"total reserve liabilities"

"total reserve liabilities" of an insurer as at the end of a taxation year means the total amount as at the end of the year of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of all its insurance policies, as determined for the purposes of the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or in any other case, the Superintendent of Insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated.

Application: The September 19, 1997 draft regulations (insurance companies), s. 9, will amend the definition "total reserve liabilities" in s. 8600 to read as above, applicable to 1997 *et seq.*

Technical Notes: The existing term "total reserve liabilities", which is relevant in determining the taxable capital employed in Canada of insurance corporations that carry on a life insurance business, has the meaning assigned by existing subsection 2405(3). Because that definition has been repealed in subsection 2405(3), the full definition of "total reserve liabilities" is being moved to section 8600. The definition is also amended to replace the reference to "relevant authority" with references to the Superintendent of Financial Institutions, superintendent of insurance of a province or other similar officer of a province.

Related Provisions: ITA 248(1) — "Insurance policy" includes "life insurance policy".

History: S. 8600 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable with respect to taxation years ending after June 30, 1989.

Definitions [Reg. 8600]: "amount" — ITA 248(1); "attributed surplus" — Reg. 2400(1), 8600; "bank" — *Interpretation Act* 35(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "insurance corporation", "insurance policy", "insurer", "life insurance business" — ITA 248(1); "net premiums" — Reg. 403(2), (3), Reg. 8600"Canadian premiums"; "non-resident", "officer", "person", "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249.

8601. [Prescribed proportion of taxable capital] — For the purpose of determining the taxable capital employed in Canada of a corporation for a taxation year under subsection 181.2(1) of the Act, the prescribed proportion of the corporation's taxable capital (as determined under Part I.3 of the Act) for the year is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the taxable capital (as determined under Part I.3 of the Act) of the corporation for the year,

B is the total of all amounts each of which is the amount, determined in accordance with Part IV (or, in the case of an airline corporation, that would be so determined if the corporation had a permanent establishment in every province and if paragraphs 407(1)(a) and (b) were read without reference to the words "in Canada"), of the corporation's taxable income earned in the year in a particular province or the amount of its taxable income that would, pursuant to that Part, be earned in the year in a province if all permanent establishments of the corporation in Canada were in a province, and

C is the corporation's taxable income for the year,

except that, where the corporation's taxable income for the year is nil, the corporation shall, for the purposes of this section, be deemed to have a taxable income for the year of $1,000.

History: S. 8601 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable with respect to taxation years ending after June 30, 1989.

Definitions [Reg. 8601]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed" — ITA 248(1); "permanent establishment" — Reg. 400(2), 8600; "prescribed" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxable income" — ITA 248(1); "taxation year" — ITA 249.

8602. [Prescribed proportion of amount under s. 123.2] — For the purposes of paragraph (b) of the definition "Canadian surtax payable" in subsection 125.3(4) of the Act, the prescribed proportion of the amount determined under section 123.2 of the Act in respect of a corporation for a taxation year is the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount determined under section 123.2 of the Act in respect of the corporation for the year;

B is

(a) where the corporation carried on a life insurance business at any time in the year, the corporation's taxable capital (as determined under Part I.3 of the Act) for the year, and

(b) in any other case, the corporation's taxable capital employed in Canada (as would be determined under Part I.3 of the Act if that Part were read without reference to paragraphs 181.3(1)(a) and (b) thereof) for the year; and

C is the corporation's taxable capital (as determined under Part I.3 of the Act) for the year.

History: S. 8602 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable with respect to taxation years ending after June 30, 1989.

Definitions [Reg. 8602]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employed", "life insurance business", "prescribed" — ITA 248(1); "taxation year" — ITA 249.

8603. [Definitions] — For the purposes of Part VI of the Act,

(a) "Canadian assets" of a corporation that is a financial institution (as defined in subsection 190(1) of the Act) at any time in a taxation year means, in respect of that year, the amount that would be determined under the definition "Canadian assets" in section 8600 in respect of the corporation for the year if the reference in that definition to "subsection 181(1)" were read as a reference to "subsection 190(1)" and paragraph (b) of that definition were read as follows:

"(b) the total determined under section 190.14 of the Act in respect of the corporation's investments for the year in financial institutions related to it, and";

(b) "total assets" of a corporation that is a financial institution (as defined in subsection 190(1) of the Act) at any time in a taxation year means, in respect of that year, the amount that would be determined under the definition "total assets" in section 8600 in respect of the corporation for the year if the reference in that definition to "subsection 181(1)" were read as a reference to "subsection 190(1)" and paragraph (b) of that definition were read as follows:

"(b) the total determined under section 190.14 of the Act in respect of the corporation's investments for the year in financial institutions related to it;"; and

(c) "attributed surplus", "Canadian reserve liabilities" and "total reserve liabilities" have the same respective meanings as in section 8600.

History: S. 8603 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable to 1990 *et seq.*

Definitions [Reg. 8603]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "related" — ITA 251(2)–(6); "taxation year" — ITA 249.

8604. [Prescribed corporations] — For the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the Act, each of the following corporations is a prescribed corporation:

(a) a corporation of which all or substantially all of the assets are shares or indebtedness of financial institutions (as defined in that subsection) to which the corporation is related;

(b) AVCO Financial Services Canada Limited;

(c) AVCO Financial Services Realty Limited;

(d) AVCO Financial Services Quebec Limited;

(e) General Motors Acceptance Corporation of Canada, Limited;

(f) Household Financial Corporation Limited;

(g) Household Finance Corporation of Canada;

(h) Household Realty Corporation Limited;

(i) Merchant Retail Services Limited;

(j) Superior Acceptance Corporation Limited;

(k) Superior Credit Corporation Limited;

(l) Crédit Industriel Desjardins;

(m) Beneficial Canada Inc.;

(n) Beneficial Realty Ltd.;

(o) RT Mortgage-Backed Securities Limited;

(p) RT Mortgage-Backed Securities II Limited;

(q) T. Eaton Acceptance Co. Limited;

(r) National Retail Credit Services Limited;

(s) Ford Credit Canada Limited;

(t) Principal Fund Incorporated;

(u) Farm Credit Corporation;

(v) Canadian Cooperative Agricultural Financial Services;

(w) CU Credit Inc.;

(x) Household Commercial Canada Inc.;

(y) Canadian Home Income Plan Corporation;

(z) Hudson's Bay Company Acceptance Limited;

(z.1) Bombardier Capital Ltd.;

(z.2) Trans Canada Credit Corporation;

(z.3) Norwest Financial Canada, Inc.;

(z.4) Norwest Financial Capital Canada, Inc.;

(z.5) GE Capital Canada Limited; and

(z.6) GE Capital Canada Retailer Financial Services Company.

History: Paras. (w)–(z.6) added to s. 8604 by P.C. 1998-2046, s. 1, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, applicable as follows:

- para. 8604(w) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if CU Credit Inc. so elects by notifying the Minister of National Revenue in writing before 1999, to 1995 *et seq.* of CU Credit Inc. and of all corporations related to CU Credit Inc.;

- para. 8604(x) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Household Commercial Canada Inc. so elects by notifying the Minister of National Revenue in writing before 1999, to 1994 *et seq.* of Household Commercial Canada Inc. and of all corporations related to Household Commercial Canada Inc.;

- para. 8604(y) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Canadian Home Income Plan Corporation so elects by notifying the Minister of National Revenue in writing before 1999, to 1996 *et seq.* of Canadian Home Income Plan Corporation and of

all corporations related to Canadian Home Income Plan Corporation;

- para. 8604(z) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Hudson's Bay Company Acceptance Limited so elects by notifying the Minister of National Revenue in writing before 1999, to taxation years beginning after 1994 of Hudson's Bay Company Acceptance Limited and of all corporations related to Hudson's Bay Company Acceptance Limited;

- para. 8604(z.1) applicable

  (a) to taxation years beginning after May 1998; and

  (b) if Bombardier Capital Ltd. so elects by notifying the Minister of National Revenue in writing before 1999, to 1997 *et seq.* of Bombardier Capital Ltd. and of all corporations related to Bombardier Capital Ltd.;

- paras. 8604(z.2), (z.3) and (z.4) applicable

  (a) to taxation years beginning after May 1998; and

  (b) to 1997 *et seq.* of the particular corporation referred to in para. 8604(z.2), (z.3) or (z.4), and of all corporations related to the particular corporation;

- paras. 8604(z.5) and (z.6) applicable to taxation years ending after September 1998.

S. 8604 enacted by P.C. 1994-556, s. 2, April 14, 1994, *Canada Gazette*, Part II, May 4, 1994, applicable as follows: that portion of s. 8604 preceding para. (b) applicable to 1989 *et seq.*; paras. 8604(b)–(k) applicable to 1991 *et seq.*, and, where a particular corporation prescribed therein so elects by notifying the Minister of National Revenue in writing before 1995, to taxation years ending after June 30, 1989 and before 1991 of the particular corporation and all corporations related to the particular corporation; paras. 8604(l)–(n) applicable (as amended by P.C. 1998-2046, s. 4, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, deemed to have come into force on April 14, 1994)

(a) to taxation years ending after April 1994; and

(b) to the 1994 and subsequent taxation years of the particular corporation referred to in any of those paragraphs and of all corporations related to the particular corporation, and if the particular corporation has so elected by notifying the Minister of National Revenue in writing before 1995, to the taxation years ending after June 1989 of the particular corporation and of all corporations related to the particular corporation;

paras. 8604(o) and (p) applicable to 1992 *et seq.*; paras. (q) to (u) applicable (as amended by P.C. 1998-2046, s. 4, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, deemed to have come into force on April 14, 1994)

(a) to taxation years ending after April 1994;

(b) to the 1994 and subsequent taxation years of the particular corporation referred to in any of paragraphs 8604(q), (r), (t) or (u), and of all corporations related to the particular corporation, and if the particular corporation has so elected by notifying the Minister of National Revenue in writing before 1995, to the 1993 taxation year of the particular corporation and of all corporations related to the particular corporation; and

(c) if the particular corporation referred to in paragraph 8604(s) so elects by notifying the Minister of National Revenue in writing before 1999, to taxation years ending after 1989 of the particular corporation and of all corporations related to the particular corporation;

and para. 8604(v) applicable to taxation years commencing after 1993.

Definitions [Reg. 8604]: "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "related" — ITA 251(2)–(6); "share" — ITA 248(1).

8605. (1) For the purposes of subclause 181.3(1)(c)(ii)(A)(II) and clause 190.11(b)(i)(B) of the Act, the amount prescribed in respect of a particular corporation for a taxation year ending at a particular time is the total of all amounts each of which is the amount determined in respect of a corporation that is, at the particular time, a foreign insurance subsidiary of the particular corporation, equal to the amount, if any, by which

(a) the amount by which the total, at the end of the subsidiary's last taxation year ending at or before the particular time, of

(i) the amount of the subsidiary's long-term debt, and

(ii) the amount of the subsidiary's capital stock (or, in the case of an insurance corporation incorporated without share capital, the amount of its member's contributions), retained earnings, contributed surplus and any other surpluses

exceeds the total of

(iii) the amount of the subsidiary's deferred tax debit balance at the end of the year, and

(iv) the amount of any deficit deducted in computing the subsidiary's shareholders' equity at the end of the year

exceeds the total of all amounts each of which is

(b) the carrying value to its owner at the particular time for the taxation year that includes the particular time of a share of the subsidiary's capital stock or its long term debt that is owned at the particular time by

(i) the particular corporation,

(ii) a subsidiary of the particular corporation,

(iii) a corporation

(A) that is resident in Canada,

(B) that carried on a life insurance business in Canada at any time in its taxation year ending at or before the particular time, and

(C) that is

(I) a corporation of which the particular corporation is a subsidiary, or

(II) a subsidiary of a corporation described in subclause (I), or

(iv) a subsidiary of a corporation described in subparagraph (iii), or

(c) an amount included under paragraph (a) in respect of any surplus of the subsidiary contributed by a corporation described in any of subparagraphs (b)(i) to (iv), other than an amount included under paragraph (b).

(d) [Repealed]

(2) For the purposes of subclause 181.3(1)(c)(ii)(A)(III) and clause 190.11(b)(i)(C) of the Act, the amount prescribed in respect of a particular corporation for a taxation year ending at a particular time is the total of all amounts each of which is the amount determined in respect of a corporation that is, at the particular time, a foreign insurance subsidiary of the particular corporation, equal to the amount, if any, by which

(a) the total of the amounts determined under paragraphs (1)(b) and (c) in respect of the subsidiary for the year

exceeds

(b) the amount determined under paragraph (1)(a) in respect of the subsidiary for the year.

(3) For the purposes of subclause 181.3(1)(c)(ii)(A)(V) and clause 190.11(b)(i)(E) of the Act, the amount prescribed in respect of a particular corporation for a taxation year ending at a particular time means the total of all

amounts each of which would be the total reserve liabilities (as defined in subsection 2405(3)) of a foreign insurance subsidiary of the particular corporation as at the end of the subsidiary's last taxation year ending at or before the particular time if the subsidiary were required by law to report to the Superintendent of Financial Institutions for that year.

Proposed Amendment — Reg. 8605(3)

(3) For the purposes of subclause 181.3(1)(c)(ii)(A)(V) and clause 190.11(b)(i)(E) of the Act, the amount prescribed in respect of a particular corporation for a taxation year ending at a particular time means the total of all amounts each of which would be the total reserve liabilities of a foreign insurance subsidiary of the particular corporation as at the end of the subsidiary's last taxation year ending at or before the particular time if the subsidiary were required by law to report to the Superintendent of Financial Institutions for that year.

Application: The September 19, 1997 draft regulations (insurance companies), s. 10, will amend subsec. 8605(3) to read as above, applicable to 1997 *et seq.*1997 *et seq.*

Technical Notes: Subsection 8605(3) of the Regulations sets out the amount in respect of foreign insurance subsidiaries under subclause 181.3(1)(c)(ii)(A)(V) and clause 190.11(b)(i)(E) of the Act. Subsection 8605(3) is amended strictly as a consequence of the addition of the definition "total reserve liabilities" to subsection 8600.

(4) The definitions in this subsection apply in this section.

"foreign insurance subsidiary" of a particular corporation at any time means a non-resident corporation that

(a) carried on a life insurance business throughout its last taxation year ending at or before that time,

(b) did not carry on a life insurance business in Canada at any time in its last taxation year ending at or before that time, and

(c) is at that time

(i) a subsidiary of the particular corporation, and

(ii) not a subsidiary of any corporation that

(A) is resident in Canada,

(B) carried on a life insurance business in Canada at any time in its last taxation year ending at or before that time, and

(C) is a subsidiary of the particular corporation.

"subsidiary" of a corporation (in this definition referred to as the "parent corporation") means a corporation controlled by the parent corporation where shares of each class of the capital stock of the corporation having a fair market value of not less than 75% of the fair market value of all of the issued and outstanding shares of that class belong to

(a) the parent corporation,

(b) a corporation that is a subsidiary of the parent corporation, or

(c) any combination of corporations each of which is a corporation referred to in paragraph (a) or described in paragraph (b).

Related Provisions: Reg. 8500(1.1) — Definition applies to ITA 147.3(7.1).

History: Para. 8605(1)(c) renumbered (from para. (d)) and amended and former (c) repealed by P.C. 1998-2046, s. 2, November 19, 1998, *Canada Gazette*, Part II, December 9, 1998, applicable to 1991 *et seq.*

S. 8605 added by P.C. 1996-1597, s. 1, October 24, 1996, *Canada Gazette*, Part II, November 13, 1996, applicable to 1991 *et seq.*

Definitions [Reg. 8605]: "amount" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "controlled" — ITA 256(6), (6.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "foreign insurance subsidiary" — Reg. 8605(4); "insurance corporation", "life insurance business", "non-resident" — ITA 248(1); "parent corporation" — Reg. 8605(4)"subsidiary"; "prescribed" — ITA 248(1); "resident in Canada" — ITA 250; "share" — ITA 248(1); "subsidiary" — Reg. 8605(4); "taxation year" — ITA 249; "total reserve liabilities" — Reg. 8600.

PART LXXXVII — NATIONAL ARTS SERVICE ORGANIZATIONS

History: Part LXXXVII (s. 8700) added by P.C. 1994-139, s. 16, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable after July 13, 1990.

8700. For the purposes of paragraph 149.1(6.4)(d) of the Act, the following conditions are prescribed for a national arts service organization:

(a) the organization is an organization

(i) that is, because of paragraph 149(1)(l) of the Act, exempt from tax under Part I of the Act,

(ii) that represents, in an official language of Canada, the community of artists from one or more of the following sectors of activity in the arts community, that is, theatre, opera, music, dance, painting, sculpture, drawing, crafts, design, photography, the literary arts, film, sound recording and other audio-visual arts, and such other sectors of artistic activity related to the creation or performance of works of art as the Minister of Communications may recognize,

(iii) no part of the income of which may be payable to, or otherwise available for the personal benefit of, any proprietor, member, shareholder, trustee, or settlor of the organization, except where the payment is for services rendered or is an amount to which paragraph 56(1)(n) of the Act applies in respect of the recipient,

(iv) all of the resources of which are devoted to the activities and objects described in its application for its last designation by the Minister of Communications pursuant to paragraph 1491.1(6.4)(a) of the Act,

(v) more than 50 per cent of the directors, trustees, officers or other officials of which deal with each other at arm's length, and

(vi) no more than 50 per cent of the property of which at any time has been contributed or otherwise paid into the organization by one person or by members of a group of persons who do not deal with each other at arm's length and, for the purposes of this subparagraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, or a registered charity (other than a club, society or association described in paragraph 149(1)(l) of the Act or a private foundation as that term is defined in paragraph 149.1(1)(f) [149.1(1)"private foundation"] of the Act); and

(b) the activities of the organization are confined to one or more of

(i) promoting one or more art forms,

(ii) conducting research into one or more art forms,

(iii) sponsoring arts exhibitions or performances,

(iv) representing interests of the arts community or a sector thereof (but not of individuals) before governmental, judicial, quasi-judicial or other public bodies,

(v) conducting workshops, seminars, training programs and similar development programs relating to the arts for members of the organization, in respect of which the value of benefits received or enjoyed by members of the organization is required by paragraph 56(1)(aa) of the Act to be included in computing the incomes of those members,

(vi) educating the public about the arts community or the sector represented by the organization,

(vii) organizing and sponsoring conventions, conferences, competitions and special events relating to the arts community or the sector represented by the organization,

(viii) conducting arts studies and surveys of interest to members of the organization relating to the arts community or the sector represented by the organization,

(ix) acting as an information centre by maintaining resource libraries and data bases relating to the arts community or the sector represented by the organization,

(x) disseminating information relating to the arts community or the sector represented by the organization, and

(xi) paying amounts to which paragraph 56(1)(n) of the Act applies in respect of the recipient and which relate to the arts community or the sector represented by the organization.

Minister of Communications: S. 46 of 1995, c. 11, in force July 12, 1996, provides as follows:

> 46. **Other references** — Every reference made to the Minister of Communications, the Minister of Multiculturalism and Citizenship and the Secretary of State of Canada in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue of this Act, in any other Act of Parliament or in any order, regulation or other instrument made under any Act of Parliament shall, unless the context otherwise requires, be read as a reference to the Minister of Canadian Heritage.

Definitions [Reg. 8700]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Her Majesty" — *Interpretation Act* 35(1); "individual", "Minister", "officer", "person", "prescribed" — ITA 248(1); "private foundation" — ITA 149.1(1), 248(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "registered charity" — ITA 248(1); "related" — ITA 251(2)–(6); "shareholder" — ITA 248(1).

PART LXXXVIII — DISABILITY-RELATED MODIFICATIONS AND APPARATUS

History: Part LXXXVIII (s. 8800) added by P.C. 1993-2026, December 9, 1993, *Canada Gazette*, Part II, December 29, 1993, applicable with respect to renovations and alterations made after 1990.

8800. The renovations and alterations that are prescribed for the purposes of paragraph 20(1)(qq) of the Act are

(a) the installation of

(i) an interior or exterior ramp; or

(ii) a hand-activated electric door opener; and

(b) a modification to a bathroom, elevator or doorway to accommodate its use by a person in a wheelchair.

Definitions [Reg. 8800]: "person", "prescribed" — ITA 248(1).

8801. The devices and equipment that are prescribed for the purposes of paragraph 20(1)(rr) of the Act are

(a) an elevator car position indicator, such as a braille panel or an audio signal, for individuals having a sight impairment;

(b) a visual fire alarm indicator, a listening device for group meetings or a telephone device, for individuals having a hearing impairment; and

(c) a disability-specific computer software or hardware attachment.

History: Para. 8801(c) added by P.C. 1995-579, April 4, 1995, *Canada Gazette*, Part II, April 19, 1995, applicable to computer attachments for which amounts are paid by the taxpayer after February 25, 1992.

S. 8801 added by P.C. 1993-2026, December 9, 1993, *Canada Gazette*, Part II, December 29, 1993, applicable with respect to devices or equipment for which amounts are paid by the taxpayer after February 25, 1992.

Definitions [Reg. 8801]: "individual", "prescribed" — ITA 248(1).

PART LXXXIX — PRESCRIBED ORGANIZATIONS

8900. For the purposes of paragraph 110(1)(f) of the Act,

(a) the United Nations, and any specialized agency that is brought into relationship with the United Nations in accordance with Article 63 of the Charter of the United Nations, are prescribed international organizations; and

(b) the International Air Transport Association and the International Society of Aeronautical Telecommunications are prescribed international non-governmental organizations.

History: S. 8900 added by P.C. 1995-663, s. 1, April 26, 1995, *Canada Gazette*, Part II, May 17, 1995, applicable to 1991 *et seq.*, except that para. 8900(b) applies only to 1993 *et seq.*

Definitions [Reg. 8900]: "prescribed" — ITA 248(1).

PART XC — FINANCIAL INSTITUTIONS — PRESCRIBED ENTITIES

Proposed Addition — (Reg. 9000–9003)

Technical Notes: New Parts XC to XCII contain provisions relating to the tax treatment of securities held by financial institutions. The purpose of each Part is as follows:

- Part XC prescribes various entities and properties for the purposes of the definitions in subsection 142.2(1) of the Act. It also prescribes properties for certain other rules.
- Part XCI contains the rules for determining income from specified debt obligations.
- Part XCII sets out rules relating to the disposition of specified debt obligations. These include rules for amortizing gains and losses from the disposition of such obligations.

These new Parts apply to taxation years that end after February 22, 1994.

9000. For the purpose of paragraph (e) of the definition "financial institution" in subsection 142.2(1) of the Act, a trust that is deemed to exist by paragraph 138.1(1)(a) of the Act is prescribed at a particular time where

(a) the trust was created not more than two years before that time; and

(b) the cost at that time of the trustee's interest in the trust does not exceed $5,000,000.

Technical Notes: The definition of "financial institution" in subsection 142.2(1) of the Act excludes a prescribed person or partnership. Section 9000 prescribes for this purpose certain segregated funds maintained by life insurers. A segregated fund is prescribed at a particular time if it was created not more than two years before that time and the insurer's interest in the fund does not exceed $5 million. This exclusion enables an insurer to hold more than 50% of a segregated fund during its start-up phase without having the rules for securities held by financial institutions apply to the fund.

Definitions [Reg. 9000]: "prescribed" — ITA 248(1); "trust" — ITA 104(1), 248(1), (3).

9001. (1) In this section, "qualified small business corporation", at any time, means a corporation that, at that time, is

(a) a Canadian-controlled private corporation, and

(b) an eligible corporation (as defined in subsection 5100(1)) or a corporation that would be an eligible corporation if the definition "eligible corporation" in subsection 5100(1) were read without reference to paragraph (e),

where, at that time,

(c) the carrying value of the total assets of the corporation and all corporations related to it (determined in accordance with generally accepted accounting principles on a consolidated or combined basis, where applicable) does not exceed $50,000,000, and

(d) the number of employees of the corporation and all corporations related to it does not exceed 500.

Technical Notes: The definition of "mark-to-market property" in subsection 142.2(1) of the Act excludes a prescribed property. Section 9001 prescribes certain shares of qualified small business corporations for this purpose.

Subsection 9001(1) provides that a corporation is a "qualified small business corporation" at any time at which:

- the corporation is a Canadian-controlled private corporation;
- the corporation is an eligible corporation (as defined in subsection 5100(1) for the purposes of the deferred income plan rules) or would be an eligible corporation if the exclusion for certain venture capital corporations were disregarded;
- the carrying value of the total assets of the corporation and all related corporations does not exceed $50 million; and
- the corporation and all related corporations have no more than 500 employees.

(2) For the purpose of paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a share of the capital stock of a corporation is a prescribed property in respect of a taxpayer where

(a) immediately after the time at which the taxpayer acquired the share, the corporation was a qualified small business corporation, and

(i) the corporation continued to be a qualified small business corporation for one year after that time, or

(ii) the taxpayer could not reasonably expect at that time that the corporation would cease to be a qualified small business corporation within one year after that time; or

(b) the share was issued to the taxpayer in exchange for one or more shares of the capital stock of the corporation that were prescribed by this subsection in respect of the taxpayer.

Technical Notes: Subsection 9001(2) prescribes a share of a corporation where, immediately after the taxpayer acquired the share, the corporation was a qualified small business corporation. However, a share is not prescribed if the corporation ceases to be a qualified small business corporation within a year, unless the change of status was not reasonably foreseeable.

Subsection 9001(2) also prescribes a share if it was issued to a taxpayer in exchange for one or more shares that were prescribed in respect of the taxpayer. Since the definition of "share" in subsection 248(1) of the Act includes a fraction of a share, subsection 9001(2) applies even if a taxpayer receives less than one share for each share exchanged.

Definitions [Reg. 9001]: "business" — ITA 248(1); "Canadian-controlled private corporation" — ITA 125(7), 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "employee", "prescribed", "property" — ITA 248(1); "qualified small business corporation" — Reg. 9001(1); "related" — ITA 251(2)–(6); "share", "small business corporation", "taxpayer" — ITA 248(1).

9002. (1) For the purposes of

(a) paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, and

(b) subparagraph 142.6(4)(a)(ii) of the Act,

a debt obligation held by a bank is a prescribed property of the bank where the obligation is

(c) an exposure to a designated country (as defined in section 8006), or

(d) a United Mexican States Collateralized Par or Discount Bond Due 2019.

Technical Notes: Section 9002 prescribes various properties for exclusion from the definition of "mark-to-market property" in subsection 142.2(1) of the Act.

Subsection 9002(1) prescribes as property excluded from the definition of "mark-to-market property" in subsection 142.2(1) of the Act certain debt obligations held by a bank. A debt obligation is prescribed if it is an exposure to a country that has been designated by the Office of the Superintendent of Financial Institutions or is a United Mexican States Collateralized Par or Discount Bond Due 2019 (a "Brady bond").

Subsection 9002(1) also prescribes such debt obligations for the purpose of subparagraph 142.6(4)(a)(ii) of the Act. This provision contains a rule relating to prescribed debt obligations held by a bank on February 23, 1994 that were inventory of the bank in its last taxation year ending before February 23, 1994. For further information, see the commentary on subsection 142.6(4) of the Act.

(2) For the purpose of paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a share is a prescribed property of a taxpayer for a taxation year where

(a) the share is a lending asset of the taxpayer in the year; or

(b) immediately after its issuance, the share was a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) of the Act and, at any time in the year, the share would be a term preferred share if

(i) that definition were read without reference to the portion following paragraph (b), and

(ii) where the share was issued or acquired on or before June 28, 1982, it were issued or acquired after that day.

Technical Notes: Subsection 9002(2) prescribes certain preferred shares for exclusion from the definition of "mark-to-market property" in subsection 142.2(1) of the Act.

Paragraph 9002(2)(a) provides for a share to be prescribed if it is a lending asset. By virtue of the definition of a lending asset in subsection 248(1) of the Act and paragraph 6209(a) of the Regulations, a share is a lending asset if it is a preferred share held by a bank that is reported as a loan substitute.

Paragraph 9002(2)(b) provides for a share to be prescribed if it meets two tests. The first is that, immediately after it was issued, it was a share described in paragraph (e) of the definition of "term preferred share" in subsection 248(1) of the Act, i.e., a financial difficulty share. In this regard, it should be noted that the 5- or 10-year period referred to in paragraph (e) is not part of the description of the share. The second test is that the share would be a term preferred share if the portion of the definition of "term preferred share" following paragraph (b) were disregarded and, where the share was issued or acquired on or before June 28, 1982, it had been issued or acquired after that date.

(3) For the purpose of paragraph (e) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a share of the capital stock of a corporation held by a credit union is a prescribed property of the credit union for a taxation year where, throughout the year,

(a) the corporation is a credit union; or

(b) credit unions hold

(i) shares of the corporation that give the credit unions more than 50% of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and

(ii) shares of the corporation having a fair market value of more than 50% of the fair market value of all the issued shares of the corporation.

Technical Notes: Subsection 9002(3) prescribes certain shares held by credit unions for exclusion from the definition of "mark-to-market property" in subsection 142.2(1) of the Act. A share is prescribed if it is

- a share of a credit union, or
- a share of a corporation in which credit unions hold shares carrying more than 50% of the votes and shares representing more than 50% of the fair market value of all issued shares.

Definitions [Reg. 9002]: "bank" — *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "credit union", "lending asset", "prescribed", "property", "share", "shareholder" — ITA 248(1); "taxation year" — ITA 249; "taxpayer", "term preferred share" — ITA 248(1).

9003. For the purpose of paragraph 142.2(3)(c) of the Act, a share described in paragraph 9002(2)(b) is prescribed in respect of all taxpayers.

Technical Notes: Paragraph 142.2(3)(c) of the Act provides that shares that are prescribed are to be ignored in determining whether a taxpayer has a significant interest in a corporation pursuant to subsection 142.2(2). Section 9003 prescribes for this purpose shares that are described in paragraph 9002(2)(b). These are certain preferred shares issued by a corporation in financial difficulty. More specifically, a share is prescribed if it is a share described in paragraph (e) of the definition of "term preferred share" in subsection 248(1) of the Act and it would be a term preferred share if the portion of the definition following paragraph (b) were disregarded (and, in the case of a share that was issued or acquired on or before June 28, 1982, it had been issued or acquired after that date).

Definitions [Reg. 9003]: "prescribed", "share", "taxpayer" — ITA 248(1).

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add Part XC (ss. 9000 to 9003), applicable to taxation years that end after February 22, 1994.

9004. For the purpose of the definition "specified debt obligation" in subsection 142.2(1) of the Act, a property is a prescribed property throughout a taxation year if the property is a direct financing lease, or any other financing arrangement, of a taxpayer that is reported as a loan in the taxpayer's financial statement for the year prepared in accordance with generally accepted accounting principles and an amount is deductible under paragraph 20(1)(a) of the Act in respect of the property that is the subject of the lease or arrangement in computing the taxpayer's income for the year.

History: S. 9004 added by P.C. 1999-195, s. 8, February 11, 1999, *Canada Gazette*, Part II, March 3, 1999, applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects in writing to have para. 20(1)(l) of the Act, as amended, to apply to the year and files the election with the Minister of National Revenue before October 1998.

Definitions [Reg. 9004]: "amount", "prescribed", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

PART XCI — FINANCIAL INSTITUTIONS — INCOME FROM SPECIFIED DEBT OBLIGATIONS [PROPOSED]

Proposed Addition — Part XCI (Reg. 9100–9104)

Technical Notes: Part XCI contains rules for determining the amounts that a financial institution is required to include and deduct each year in respect of a specified debt obligation in computing its income. These rules apply for the purpose of subsection 142.3(1) of the Act.

9100. Interpretation — In this Part,

"fixed payment obligation" of a taxpayer means a specified debt obligation under which

(a) the amount and timing of each payment (other than a fee or similar payment or an amount payable because of a default by the debtor) to be made by the debtor were fixed when the taxpayer acquired the obligation and have not been changed, and

(b) all payments are to be made in the same currency;

Technical Notes: A "fixed payment obligation" of a taxpayer is a specified debt obligation held by the taxpayer under which the payments to be made by the debtor are all fixed in timing and amount, and are all denominated in the same currency. Fees and similar payments are to be disregarded for the purpose of this definition, as are any additional payments that the debtor will be required to make if the debtor fails to make a payment as required under the obligation.

"primary currency" of a specified debt obligation means

(a) the currency with which the obligation is primarily connected, and

(b) where there is no such currency, Canadian currency;

Technical Notes: The "primary currency" of a specified debt obligation is the currency with which the obligation is primarily connected. Where there is no such currency, the primary currency is the Canadian dollar.

"specified debt obligation" of a taxpayer has the meaning assigned by subsection 142.2(1) of the Act;

Technical Notes: "Specified debt obligation" has the meaning given to that term by subsection 142.2(1) of the Act. It should be noted that this term is defined from the perspective of the holder. For example, where a taxpayer holds a coupon that has been stripped from a debt obligation and holds no other interest in the obligation, the specified debt obligation of the taxpayer is just the coupon. It should also be noted that, if a taxpayer disposes of part of a specified debt obligation, subsection 142.4(9) of the Act applies to deem the part disposed of and the retained part to be separate specified debt obligations.

"tax basis" of a specified debt obligation at any time to a taxpayer has the meaning assigned by subsection 142.4(1) of the Act;

Technical Notes: The "tax basis" of a specified debt obligation to a taxpayer is the amount defined by subsection 142.4(1) of the Act. The tax basis is analogous to the adjusted cost base of capital property.

"total return" of a taxpayer from a fixed payment obligation means the amount (measured in the primary currency of the obligation) by which

(a) the total of all amounts each of which is the amount of a payment (other than a fee or similar payment) required to be made by the debtor under the obligation after its acquisition by the taxpayer

exceeds

(b) the cost to the taxpayer of the obligation.

Technical Notes: A taxpayer's "total return" from a fixed payment obligation is equal to (i) the total amount of payments required to be made under the obligation by the debtor after the acquisition of the obligation by the taxpayer minus (ii) the cost of the obligation to the taxpayer. Fees and similar payments (such as insurance premiums) are excluded in determining the total return. The total return is to be measured in the primary currency of the obligation. Where the taxpayer's cost was determined in another currency, it should be translated to the primary currency using the spot rate of exchange at the time of acquisition.

Definitions [Reg. 9100]: "amount" — ITA 248(1); "fixed payment obligation", "primary currency" — Reg. 9100; "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxpayer" — ITA 248(1).

9101. Prescribed inclusions and deductions — **(1)** For the purpose of paragraph 142.3(1)(a) of the Act, where a taxpayer holds a specified debt obligation at any time in a taxation year, the amount prescribed in respect of the obligation for the year is the total of

(a) the taxpayer's accrued return from the obligation for the year;

(b) where the taxpayer's accrual adjustment determined under section 9102 in respect of the obligation for the year is greater than nil, the amount of the adjustment; and

(c) where a foreign exchange adjustment is determined under section 9104 in respect of the obligation for the year and is greater than nil, the amount of the adjustment.

Technical Notes: Paragraph 142.3(1)(a) of the Act requires a financial institution that holds a specified debt obligation in a taxation year to include a prescribed amount in income in respect of the obligation. Subsection 9101(1) prescribes an amount for this purpose equal to the sum of:

- the accrued return from the obligation for the year;
- the accrual adjustment in respect of the obligation for the year (if this amount is positive); and
- in the case of a foreign-currency obligation, the foreign exchange adjustment in respect of the obligation for the year (if this amount is positive).

(2) For the purpose of paragraph 142.3(1)(b) of the Act, where a taxpayer holds a specified debt obligation at any time in a taxation year, the amount prescribed in respect of the obligation is the total of

(a) where the taxpayer's accrual adjustment determined under section 9102 in respect of the obligation for the year is less than nil, the absolute value of the amount of the adjustment; and

(b) where a foreign exchange adjustment is determined under section 9104 in respect of the obligation for the year and is less than nil, the absolute value of the amount of the adjustment.

Technical Notes: Paragraph 142.3(1)(b) of the Act provides that a financial institution that holds a specified debt obligation in a taxation year must deduct a prescribed amount in respect of the obligation. Subsection 9101(2) prescribes an amount for this purpose equal to the absolute value of the sum of:

- the accrual adjustment in respect of the obligation for the year (if this amount is negative); and
- in the case of a foreign-currency obligation, the foreign exchange adjustment in respect of the obligation for the year (if this amount is negative).

In general terms, the accrued return for a year is the total expected economic return to the taxpayer (assuming the taxayer holds the obligation to maturity) that is allocated to the year under accrual principles of income recognition. Sections 9102 and 9103 contain rules relating to the determination of accrued returns.

The accrual adjustment is the amount by which prior years' accrued returns have to be adjusted to reflect subsequent events. For example, the accrued return for a year may have been based on an estimate of the amount of a future payment under the obligation. When the actual amount becomes known, or the estimate needs to be revised, an adjustment would be determined. Subsections 9102(4) and (5) contain rules relating to the determination of accrual adjustments.

The foreign exchange adjustment in respect of a foreign-currency obligation is the amount determined under section 9104. In general terms, this is the amount by which the tax value of the obligation has changed because of a change in the value of the foreign currency relative to the Canadian dollar.

Definitions [Reg. 9101]: "accrual adjustment" — Reg. 9102(4), (5); "accrued return" — Reg. 9102(3); "amount" — ITA 248(1); "foreign exchange adjustment" — Reg. 9104(1); "prescribed" — ITA 248(1); "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

9102. General accrual rules — (1) Fixed payment obligations not in default — For the purpose of paragraph 9101(1)(a), a taxpayer's accrued return for a taxation year from a fixed payment obligation, under which each payment required to be made before the end of the year was made by the debtor when it was required to be made, shall be determined in accordance with the following rules:

(a) determine, in the primary currency of the obligation, the portion of the taxpayer's total return from the obligation that is allocated to each day in the year using

(i) the level-yield method described in subsection (2), or

(ii) any other reasonable method that is substantially similar to the level-yield method;

(b) where the primary currency of the obligation is not Canadian currency, translate to Canadian currency the amount allocated to each day in the year, using a reasonable method of translation; and

(c) determine the total of all amounts each of which is the Canadian currency amount allocated to a day, in the year, at the beginning of which the taxpayer holds the obligation.

Technical Notes: Section 9102 contains the general rules for determining a financial institution's accrued returns and accrual adjustments in respect of a specified debt obligation. These amounts are included in the amounts prescribed by section 9101. Transition rules and rules for special situations are contained in section 9103. Examples are provided at the end of the commentary on this section.

Section 9102 is organized as follows:

- Subsection 9102(1) provides for the determination of accrued returns from specified debt obligations under which all payments are fixed in timing and amount. Subsection 9102(2) describes the level-yield method that is referred to in subsection 9102(1).
- Subsection 9102(3) provides for the determination of accrued returns from obligations other than those to which subsection 9102(1) applies.
- Subsections 9102(4) and (5) provide for the determination of accrual adjustments.
- Subsection 9102(6) provides that the rules in section 9102 are subject to the rules in section 9103.

Subsection 9102(1) sets out, for the purpose of paragraph 9101(1)(a), the method for determining a taxpayer's accrued return for each taxation year from a specified debt obligation that is a fixed payment obligation under which the debtor has made all required payments. A "fixed payment obligation" is defined in section 9100 as a specified debt obligation under which the payments to be made by the debtor are all fixed in timing and amount, and are all denominated in the same currency.

(2) Level-yield method — For the purpose of subsection (1), the level-yield method for allocating a taxpayer's total return from a fixed payment obligation is the method that allocates, to each particular day in the period that begins on the day following the day on which the taxpayer acquired the obligation and that ends on the day on which the obligation matures, the amount determined by the formula

$$(A + B - C) \times D$$

where

A is the cost of the obligation to the taxpayer (measured in the primary currency of the obligation),

B is the total of all amounts each of which is the portion of the taxpayer's total return from the obligation that is allocated to a day before the particular day,

C is the total of all payments required to be made under the obligation after it was acquired by the taxpayer and before the particular day, and

D is the rate of interest per day that, if used in computing the present value (as of the end of the day on which the taxpayer acquired the obligation and based on daily compounding) of all payments to be made under the obligation after it was acquired by the taxpayer, produces a present value equal to the cost to the taxpayer of the obligation (measured in the primary currency of the obligation).

Technical Notes: In the case of a Canadian-dollar obligation that a taxpayer holds throughout a taxation year, the accrued return for the year is the total of the amounts allocated to each day in the year in respect of the taxpayer's total return from the obligation. Where the taxpayer does not hold the obligation throughout the year, the accrued return is the total of the amounts allocated to the days in the year at the beginning of which the taxpayer holds the obligation. The amount allocated to each day is to be determined using the level-yield method described in subsection 9102(2), or any other reasonable method that is substantially similar. Generally, a method would be considered reasonable only if it is in accordance with generally accepted accounting practice.

Under the level-yield method described in subsection 9102(2), the internal rate of return of an obligation is used to determine the amount of the taxpayer's total return from the obligation that is allocated to each day. The internal rate of return is the interest rate that produces a present value of payments under the obligation equal to the cost of the obligation to the taxpayer. For this purpose, compounding is on a daily basis. The amount of the total return allocated to a particular day is determined by the formula:

$$(A + B - C) \times D$$

where

A = the cost of the obligation to the taxpayer;

B = the portion of the total return allocated to preceding days;

C = the total payments required to be made under the obligation to the taxpayer before the particular day; and

D = the internal rate of return of the obligation, expressed as a daily rate of interest.

It is recognized that few, if any, taxpayers use precisely this method for financial statement purposes. As noted above, subsection 9102(1) allows the use of any other reasonable method that is substantially similar. For example, a taxpayer could use a method based on semi-annual compounding, in which case a suitable approach to proration between compounding dates would be necessary (where the taxation year end falls between compounding dates).

It is intended that straight-line proration be an acceptable method where it can be used for financial statement purposes and the obligation provides for a level rate of interest. Under this method, any premium or discount on the acquisition of an obligation is recognized on a uniform basis from the acquisition date to the maturity date of the obligation. Similarly, each interest payment is spread over the period to which it relates. An amount paid in respect of accrued interest on the acquisition of the obligation would normally be taken into account by offsetting it against the interest, and then spreading the remainder of the interest over the period from acquisition to the interest payment date.

In the case of a foreign-currency obligation, the first step is to determine, in the currency of the obligation, the total return and the amount of that return allocated to each day. For this purpose, the level-yield method (or any similar method that is permissible) is applied using the foreign currency as the currency in which all computations are done. Next, the amounts allocated to each day in a taxation year are translated to Canadian dollars using a reasonable method of translation. Finally, the Canadian dollar amounts for the days at the beginning of which the taxpayer holds the obligation are totalled. One translation method that would generally be acceptable is to use the average exchange rate for the year. Where this approach is used, it will make no difference whether the amount allocated to each day is totalled before or after being translated to Canadian dollars. Thus, the accrued return for the year could be determined in the foreign currency, and then translated to Canadian dollars.

Subsection 9102(1) is restricted to specified debt obligations under which the debtor has made all required payments. If a debtor is in default, subsection 9102(3) will apply. In general, under subsection 9102(3) the accrued return for a taxation year will equal the amount that would be determined under subsection 9102(1) plus any additional interest that accrues in the year because of the default.

Related Provisions: ITA 257 — Negative amounts in formulas.

(3) Other obligations — For the purpose of paragraph 9101(1)(a), a taxpayer's accrued return for a taxation year from a specified debt obligation, other than an

obligation to which subsection (1) applies, shall be determined

(a) using a reasonable method that,

(i) taking into account the extent to which the obligation differs from fixed payment obligations, is consistent with the principles implicit in the methods that can be used under subsection (1) for fixed payment obligations, and

(ii) is in accordance with generally accepted accounting practice for the measurement of profit from debt obligations; and

(b) on the basis of reasonable assumptions with respect to the timing and amount of any payments to be made by the debtor under the obligation that are not fixed in their timing or amount (measured in the primary currency of the obligation).

Technical Notes: Subsection 9102(3) contains rules regarding the determination of accrued returns from specified debt obligations for the purpose of paragraph 9101(1)(a). It applies to obligations other than those to which subsection 9102(1) applies. Generally, subsection 9102(3) should allow a taxpayer to recognize income from an obligation using the same method for tax purposes as it uses for financial statement purposes.

Subsection 9102(3) requires that a taxpayer's accrued return from an obligation for each taxation year be determined using a reasonable method that is consistent with the principles implicit in the methods that subsection 9102(1) allows to be used for fixed payment obligations. The degree of consistency that is required depends on the extent to which the obligation is similar to fixed payment obligations. Subsection 9102(3) also requires that the method for determining the accrued return be in accordance with generally accepted accounting practice. Finally, it provides that reasonable assumptions are to be made with respect to the amount and timing of payments that are not fixed. Each of these requirements is discussed below.

Consistency with methods for fixed payment obligations

The following paragaphs describe the main consequences of the requirement that an accrual method used for a particular specified debt obligation be consistent with the principles that are implicit in the methods that can be used for fixed payment obligations.

The first consequence is that the accrued return for each year must be based on the total return that the taxpayer would realize if the obligation were held to maturity. Whether or not particular payments under the obligation are characterized as interest is irrelevant in determining the total return, and thus the amount to be accrued each year. Also, each year's return must include an amount in respect of any discount on the acquisition of the obligation. Conversely, an acquisition premium is to be applied to reduce the amount that would otherwise accrue each year.

Second, to the extent that the total return derives from fixed payments, it must generally accrue at a uniform (or approximately uniform) rate. For example, if the rate of interest for each period is the sum of a fixed rate and a variable rate, and the fixed rate is not the same for all periods, there would have to be a "levelling" of the fixed rates. This requirement to "level the interest rate" is not new. A similar requirement is contained in the accrual rules under subsection 7000(2).

It is not intended that interest be levelled where this would be inappropriate, such as where additional interest is payable because of the default of the debtor. For example, assume that a debt obligation that was acquired at its face amount provides for interest at the rate of 8%, and also provides that where the debtor fails to make a payment as required, interest on the overdue payment accrues at the rate of 11%. In this case, the accrued return for a year would equal the sum of the regular interest that accrues at the rate of 8% and any interest that accrues at 11% on overdue payments.

As indicated above, the consistency requirement is to be applied taking into account the extent to which an obligation differs from fixed payment obligations. This is relevant, in particular, for the levelling principle. For many variable rate debt obligations, it is appropriate to accrue the variable rate interest on the basis of the actual rates for each year. This would apply for example, if a debt obligation provides for interest that is set annually at a rate equal to the 1-year London Interbank Offered Rate (LIBOR) plus ½%. Another example is a debt obligation that provides for interest at a bank's prime rate plus 1%. Of course, any acquisition premium or discount would have to be taken into account in determining the accrued return for each year.

The third consequence of the consistency requirement is that payments of interest in a year are not directly included in the accrued return for the year. In other words, the accrued return is determined on the basis of accrual principles only. (In some circumstances, interest payments may be included in accrual adjustments determined under subsection 9102(5).) However, interest payments, like other payments, would be subtracted from the base on which the return is considered to accrue. Thus, if a debtor prepays interest, the payment has the same tax consequences as a payment of principal (assuming the payment of principal does not constitute a partial disposition of the obligation). In particular, accrued returns continue to be determined throughout the period for which the interest was prepaid.

Fourth, interest that has accrued before a taxpayer acquires an obligation is included in determining the taxpayer's accrued returns only to the extent that the accrued interest exceeds the portion of the cost of the obligation to the taxpayer that is attributable to the interest. This follows from the fact that the amount included in respect of the interest in the taxpayer's total projected return from the obligation is equal to the difference between the amount of the interest and the amount the taxpayer has paid for it.

Finally, in the case of a foreign-currency obligation, the amount that accrues each day is to be determined in the primary currency of the obligation and then translated to Canadian dollars. However, where amounts are translated using the average exchange rate for each year, the same result is obtained by totalling the daily accruals to give the accrued return for the year (measured in the primary currency) before translating to Canadian dollars.

Generally accepted accounting practice

One of the requirements imposed by subsection 9102(3) is that a method for determining accrued returns be in accordance with generally accepted accounting practice. The term "practice" is used rather than "principles" to indicate that the Handbook of The Canadian Institute of Chartered Accountants would not be the only source of information for determining what is acceptable.

Assumptions

The requirement that assumptions be made with respect to the timing and amount of payments that are not fixed is intended to ensure that a taxpayer reports reasonable accrued returns from an obligation that provides for contingent payments. For example, assume that a taxpayer holds an obligation that provides for interest payments at the rate of 3% per year, and an amount payable at maturity equal to $1,000 adjusted by the change in a stock index from the date of issue to the maturity date. In determining its accrued returns, the taxpayer would have to make a reasonable assumption about the amount that will be paid at maturity. This assumption may change from year to year, depending on the performance of the stock index. (The performance of the stock index may also give rise to accrual adjustments under subsection 9102(5).)

Whether it is actually necessary to make assumptions with respect to contingent payments depends on the method used to determine accrued returns. For example, assume that a 5-year obligation provides for interest that, at issue date and at each anniversary of that date, is set equal to the 1-year LIBOR rate plus 1%. A taxpayer that acquires the obligation at a discount

may choose to accrue the discount on a straight-line basis over a reasonable period, and in addition to recognize the actual amount of interest that accrues each year. In this case, there would be no need to make any assumptions about future interest payments.

(4) Accrual adjustment — For the purposes of paragraphs 9101(1)(b) and (2)(a), where a taxation year of a taxpayer is the first taxation year for which subsection 142.3(1) of the Act applies to the taxpayer in respect of a specified debt obligation, the taxpayer's accrual adjustment in respect of the obligation for the year is nil.

Technical Notes: Subsections 9102(4) and (5) provide for the determination of accrual adjustments in respect of specified debt obligations. Where an accrual adjustment for a taxation year is positive, it is included in the amount prescribed by subsection 9101(1) in respect of the obligation for the year. A negative accrual adjustment is included in determining the amount prescribed by subsection 9101(2).

In general terms, an accrual adjustment in respect of an obligation for a taxation year is the amount by which prior years' accrued returns have to be adjusted to recognize payments under the obligation in the year that differ from those assumed for the purpose of determining the accrued returns. The adjustment also takes into account changes in assumptions regarding anticipated future payments under the obligation, to the extent that the changed assumptions will not be fully reflected in the determination of accrued returns for the current and future taxation years.

Subsection 9102(4) provides that a taxpayer's accrual adjustment in respect of a specified debt obligation is nil where the adjustment is being determined for the first taxation year for which subsection 142.3(1) of the Act applies with respect to the obligation. In this case, there are no accrued returns to be adjusted.

(5) For the purposes of paragraphs 9101(1)(b) and (2)(a), where subsection (4) does not apply to determine a taxpayer's accrual adjustment in respect of a specified debt obligation for a particular taxation year, the taxpayer's accrual adjustment is the positive or negative amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the amount that would be the taxpayer's accrued return from the obligation for a taxation year, before the particular year, for which subsection 142.3(1) of the Act applied to the taxpayer in respect of the obligation if the accrued return were redetermined on the basis of

(a) the information available at the end of the particular year, and

(b) the assumptions, if any, with respect to the timing and amount of payments to be made under the obligation after the particular year that were used for the purpose of determining the taxpayer's accrued return from the obligation for the particular year; and

B is the total of

(a) the amount included under paragraph 9101(1)(a) as the taxpayer's accrued return from the obligation for the taxation year immediately preceding the particular year, and

(b) where the taxpayer's accrual adjustment in respect of the obligation for that immediately preceding taxation year was determined under this subsection, the value of A for the purpose of determining that accrual adjustment.

Technical Notes: Subsection 9102(5), which applies where subsection 9102(4) is not applicable, provides that a taxpayer's accrual adjustment in respect of a specified debt obligation for a particular taxation year is equal to

- the total of the taxpayer's accrued returns from the obligation for previous taxation years, redetermined to take into account all information available at the end of the particular year and to use the same assumptions regarding the timing and amount of payments as are used for the purpose of determining the accrued return for the particular year

minus

- the taxpayer's accrued return for the taxation year preceding the particular year, and
- if subsection 9102(5) applied to that preceding year, the redetermined amounts of the accrued returns that were used in determining the accrual adjustment for that year.

Related Provisions: ITA 257 — Negative amounts in formulas.

(6) Special cases and transition — The rules in this section for determining accrued returns and accrual adjustments are subject to section 9103.

Technical Notes: Subsection 9102(6) provides that the rules in section 9102 for determining accrued returns and accrual adjustments are subject to section 9103. Section 9103 contains rules for convertible obligations, impaired obligations and amended obligations, and also transition rules.

The following examples illustrate acceptable methods for determining accrued returns under subsection 9102(3), and show the calculation of accrual adjustments under subsection 9102(5). It should be noted that other methods may also be acceptable. It has been assumed that all methods are in accordance with generally acceptable accounting practice.

Example 1

A debt obligation is issued on January 1, 1996 and matures on January 1, 2001. The obligation has a face amount of $1,000 and provides for an interest payment each January 1st based on the value of 1-year LIBOR on the preceding January 1st minus 2%. The taxpayer acquires the obligation when it is issued, at a cost of $877. The taxpayer's taxation year is the calendar year.

The value of 1-year LIBOR on January 1, 1996 is 6% and on January 1, 1997 is 8%.

The taxpayer has chosen to recognize the discount using a level-yield approach.

Accrued returns and accrual adjustments:

1. Using the value of 1-year LIBOR on January 1, 1996 to project the future values produces interest payments of $40 each January 1st. On this basis, the internal rate of return for the obligation is 7%.

2. The taxpayer's accrued return for 1996 is equal to $61.39 (= $877 × .07).

3. The taxpayer's accrued return for 1997 consists of two components. The first is the amount that would be the accrued return if the value of 1-year LIBOR had remained at 6%. This amount is equal to $62.89 (= ($877 + $61.39 - $40) × .07). The second component is equal to the additional interest because of the difference between the assumed and the actual value of LIBOR. This additional interest is $20. Thus, the accrued return for 1997 is $82.89.

4. Accrued returns for 1998 to 2000 would be determined in a similar manner.

5. There are no accrual adjustments.

Example 2

The facts are the same as in example 1, except that the taxpayer has chosen to accrue the discount using a straight-line approach.

Accrued returns and accrual adjustments:

1. The amount of the discount to be accrued each year is $24.60 (= ($1,000 - $877) / 5).

2. The taxpayer's accrued return for 1996 is equal to $64.60 (= $40 + $24.60).

3. The taxpayer's accrued return for 1997 is equal to $84.60 (= $60 + $24.60).

4. Accrued returns for 1998 to 2000 would be determined in a similar manner.

5. There are no accrual adjustments.

Example 3

A debt obligation is issued on January 1, 1996 and matures on January 1, 1999. The obligation has a face amount of $1,000 and provides for quarterly interest payments. The interest payment for a quarter is based on a 90-day commercial paper rate at the beginning of the quarter, increased or decreased by a specified amount. For the first 4 interest payments, an amount of 1% is subtracted from the commercial paper rate (expressed on an annualized basis). For the next 4 payments, there is an increase of 1%. For the last 4 payments, the commercial paper rate is increased by 3%. The taxpayer acquires the obligation when it is issued, at a cost of $1,000. The taxpayer's taxation year is the calendar year.

The rates for 90-day commercial paper (on an annualized basis) are 6% throughout 1996, 5% throughout 1997 and 7% throughout 1998.

Accrued returns and accrual adjustments:

1. The adjustments to the commercial paper rate must be levelled. The average adjustment is an increase of 1% per year (= (-1% + 1% + 3%) / 3).

2. The accrued return for 1996 is $70 (= $1,000 × (.06 + .01)). The accrued returns for 1997 and 1998 are $60 and $80 respectively.

3. There are no accrual adjustments.

Example 4

A debt obligation is issued on January 1, 1996 and matures on January 1, 2001. The obligation has a face amount of $1,000 and provides for annual interest payments equal to 5% of the face amount. In addition, a bonus is payable on maturity, based on the debtor's cumulative profits over the 5 years. The taxpayer acquires the obligation when it is issued, at a cost of $1,000. The taxpayer's taxation year is the calendar year.

If the debtor had issued a fixed interest rate obligation for the same price, the interest rate would have been 9%.

The amount of the bonus payment is $151.32, and this amount is known before the end of 2000.

Accrued returns and accrual adjustments:

1. The taxpayer's accrued return for 1996 is equal to $90 (= $1,000 × .09).

2. For 1997, the amount to which the 9% rate of return is applied is equal to the face amount plus the difference between the accrued return for 1996 and the amount of interest that was paid, i.e. compounding applies to the unpaid portion of the accrued return. Thus, the taxpayer's accrued return for 1997 is equal to $93.60 (= ($1,000 + $90 - $50) × .09).

3. The taxpayer's accrued returns for 1998 and 1999 are $97.52 and $101.80 respectively.

4. Based on the actual bonus payment, the internal rate of return of the obligation to the taxpayer is 7.6%. Computing the taxpayer's accrued return for 2000 on the basis that all accrued returns were determined using this rate gives an accrued return for 2000 equal to $84.85.

5. Redetermining the taxpayer's accrued returns for 1996 to 1999 on the basis of the rate of return of 7.6% gives total accrued returns for those years equal to $316.47. Since the accrued returns that were reported by the taxpayer totalled $382.92, the taxpayer has an accrual adjustment for 2000 equal to -$66.45. Thus, in computing its income for the year 2000, the taxpayer can claim a deduction of $66.45 under paragraph 142.3(1)(b) of the Act.

6. The net amount included in the taxpayer's income for the year 2000 in respect of the obligation is $18.40 (= $84.85 - $66.45). This is equal to the total return of $401.32 minus $382.92 which was included in computing income for previous years.

Example 5

A debt obligation is issued on January 1, 1996 and matures on January 1, 2001. The amount payable at maturity is equal to $1,000 multiplied by the ratio of the value of a stock index on December 31, 2000 to the value of the index on December 31, 1995. In addition, the obligation provides for interest payments each January 1st equal to $30 multiplied by the ratio of the value of the stock index on the preceding December 31st to the value of the index on December 31, 1995. The taxpayer acquires the obligation when it is issued, at a cost of $1,050. The taxpayer's taxation year is the calendar year.

Accrued returns and accrual adjustments:

1. The taxpayer's accrued return from the obligation for each year is equal to

- the increase, if any, in the adjusted face amount from the end of the preceding year to the end of the current year — the adjusted face amount at any time is equal to $1,000 multiplied by the ratio of the value of the stock index at that time to the value of the stock index on December 31, 1995

plus

- the actual interest for the year

minus

- $10 in respect of the $50 premium over the initial face amount.

2. There would be an accrual adjustment for any year in which the stock index declines. The adjustment would be a negative amount equal to the decrease in the adjusted face amount of the obligation.

Definitions [Reg. 9102]: "amount" — ITA 248(1); "fixed payment obligation" — Reg. 9100; "level-yield method" — Reg. 9102(2); "primary currency" — Reg. 9100; "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "total return" — Reg. 9100.

9103. Accrual rules — special cases and transition — (1) Convertible obligation — For the purposes of section 9102, where the terms of a specified debt obligation of a taxpayer give the taxpayer the right to exchange the obligation for shares of the debtor or of a corporation related to the debtor,

(a) subject to paragraph (b), the right shall be disregarded (whether or not it has been exercised); and

(b) unless less than 5% of the cost of the obligation to the taxpayer is attributable to the right, the cost shall be deemed to equal the amount by which the cost exceeds the portion of the cost attributable to the right.

Technical Notes: Section 9103 contains rules that apply with respect to the determination of accrued returns and accrual adjustments under section 9102. There are rules for convertible obligations, impaired obligations and amended obligations, and also transition rules.

Subsection 9103(1) contains two rules that apply with respect to a specified debt obligation that is convertible into shares of the debtor or of a corporation related to the debtor. Paragraph 9103(1)(a) provides that the conversion right is to be disregarded in determining accrued returns and accrual adjustments. Thus, the possibility that the obligation will be settled by way of shares does not enter into the determination of these amounts. In addition, the actual exercise of the conversion right is ignored for the purpose of determining the accrued return and accrual adjustment for the year of exercise. However, any

gain from converting to shares is recognized under the rules in section 142.4 of the Act for the disposition of obligations.

Paragraph 9103(1)(b) provides that if 5% or more of the cost of a convertible obligation is attributable to the conversion right, the taxpayer's cost is to be considered to be the actual cost minus the amount that is attributable to the conversion right. This rule has the effect of preventing a taxpayer from deducting the cost of a conversion right, where this cost is a significant amount. The cost attributable to a conversion right can be determined as the difference between the actual cost of the obligation and the estimated fair market value of the obligation without the conversion right.

It should be noted that subsection 9103(1) does not apply where a debt obligation is convertible into shares of a corporation not related to the debtor. In this case, the possibility of conversion must be taken into account in determining accrued returns. Where the value of the conversion right is material, a method for determining accrued returns will generally not be considered reasonable unless it is based on an assumption that the right will be exercised and a reasonable value is assumed for the shares.

(2) Default by debtor [temporary — see below] — For the purposes of section 9102, in determining amounts in respect of a specified debt obligation, no reduction shall be made on account of the possible or actual failure of the debtor to make any payments under the obligation.

Technical Notes: Subsection 9103(2) provides that accrued returns and accrual adjustments are to be determined in respect of a specified debt obligation without any reduction for the possible or actual failure of the debtor to make any payments under the obligation. Deductions in respect of impaired debts can be claimed under paragraphs 20(1)(l) (doubtful debt reserve) and 20(1)(p) (bad debt deduction) of the Act.

(3) Amendment of obligation — For the purposes of determining accrued returns and accrual adjustments under section 9102, where the terms of a specified debt obligation of a taxpayer have been amended to change the timing or amount of any payment to be made under the obligation, the amendment shall be taken into account as if the obligation had been acquired at the time the amendment was made.

Technical Notes: Subsection 9103(3) applies where a specified debt obligation has been amended to change the timing or amount of a payment to be made under the obligation. It provides that the amendment is to be taken into account as if the obligation had been acquired when the amendment was made. This means that the amendment affects future accrued returns only. For example, if accrued returns are being determined for a debt obligation using the level-yield method, the rate of return would be redetermined for the period after the amendment, and there would be no accrual adjustment in respect of the amendment.

It should be noted that subsection 9103(3) applies with respect to payments that are not required to be made until after the amendment. If overdue payments are forgiven, a bad debt deduction would generally be available under paragraph 20(1)(p) of the Act.

(4) Obligations acquired before financial institution rules apply — Where a taxpayer held a specified debt obligation at the beginning of the taxpayer's first taxation year (in this subsection referred to as the "initial year") for which subsection 142.3(1) of the Act applied to the taxpayer in respect of the obligation, the following rules apply:

(a) the taxpayer's accrued return from the obligation for the initial year or a subsequent taxation year shall not include an amount to the extent that the amount was included in computing the taxpayer's income for a taxation year preceding the initial year; and

(b) where

(i) interest on the obligation in respect of a period before the initial year becomes receivable or is received by the taxpayer in a particular taxation year that is the initial year or a subsequent taxation year, and

(ii) all or part of the interest would not, but for this paragraph, be included in computing the taxpayer's income for any taxation year,

there shall be included in determining the taxpayer's accrued return from the obligation for the particular year the amount, if any, by which

(iii) the portion of the interest that would not otherwise be included in computing the taxpayer's income for any taxation year

exceeds

(iv) the portion of the cost of the obligation to the taxpayer that is reasonably attributable to that portion of the interest.

Technical Notes: Subsection 9103(4) applies with respect to a specified debt obligation held by a taxpayer at the beginning of its first taxation year to which subsection 142.3(1) of the Act applies. Subsection 9103(4) ensures a proper transition from subsection 12(3) of the Act to subsection 142.3(1). It is expected that there will be few obligations for which subsection 9103(4) is relevant.

Paragraph 9103(4)(a) provides that a taxpayer's accrued return for a taxation year does not include an amount to the extent that the amount was included in computing the taxpayer's income for a taxation year before subsection 142.3(1) commenced to apply. This rule would apply, for example, where prepaid interest has been included in income under subsection 12(3). A reasonable adjustment would be made to the accrued returns that are otherwise determined to allow for the return that has already been recognized. Paragraph 9103(4)(a) would also apply where subsection 16(3) of the Act has required a discount on the issue of a debt obligation to be included in the taxpayer's income.

Paragraph 9103(4)(b) applies with respect to interest that is received or becomes receivable in a taxation year in which subsection 142.3(1) of the Act is applicable, where the interest is in respect of a period before that subsection applied. Paragraph 9103(4)(b) provides that the taxpayer's accrued return for the year from the obligation includes the amount by which (i) the portion of the interest that would not otherwise be taken into account in computing the taxpayer's income for any taxation year exceeds (ii) the portion of the taxpayer's cost of the obligation that is reasonably attributable to that portion of the interest. This paragraph might apply, for example, where a taxpayer receives a contingent interest payment in the first year in which subsection 142.3(1) applies, and part or all of the payment is in respect of a previous taxation year. If the portion of the interest payment that is in respect of the previous year has not been included in computing the taxpayer's income for that year, and would not otherwise be included in the taxpayer's accrued return for the current year, paragraph 9103(4)(b) will include it in the accrued return.

(5) Prepaid interest — transition rule — Where, before November 1994 and in a taxation year that ended after February 22, 1994, a taxpayer received an amount under a specified debt obligation in satisfaction, in whole or in part, of the debtor's obligation to pay interest in respect of a period after the year,

(a) the amount may, at the election of the taxpayer, be included in determining the taxpayer's accrued return for the year from the obligation; and

(b) where the amount is so included, the taxpayer's accrued returns for subsequent taxation years from the obligation shall not include any amount in respect of interest that, because of the payment of the amount, the debtor is no longer required to pay.

Technical Notes: Subsection 9103(5) applies where a taxpayer received a prepayment of interest on a debt obligation before November 1994 and in a taxation year that ended after February 22, 1994. Subsection 9103(5) allows the taxpayer to include the full amount of the prepaid interest in its accrued return for the year in which it received the prepayment, in which case the taxpayer's accrued returns for subsequent years are to be determined without including any amount in respect of the prepaid interest.

Definitions [Reg. 9103]: "amount" — ITA 248(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "initial year" — Reg. 9103(4); "related" — ITA 251(2)–(6); "share" — ITA 248(1); "specified debt obligation" — ITA 142.2(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

9104. Foreign exchange adjustment — (1) For the purposes of paragraphs 9101(1)(c) and (2)(b), where, at the end of a taxation year, a taxpayer holds a specified debt obligation the primary currency of which is not Canadian currency, the taxpayer's foreign exchange adjustment in respect of the obligation for the year is the positive or negative amount determined by the formula

$$(A \times B) - C$$

where

A is the amount that would be the tax basis of the obligation to the taxpayer at the end of the year if

(a) the tax basis were determined using the primary currency of the obligation as the currency in which all amounts are expressed,

(b) the definition "tax basis" in subsection 142.4(1) of the Act were read without reference to paragraphs (f), (h), (o) and (q), and

(c) the taxpayer's foreign exchange adjustment in respect of the obligation for each year were nil,

B is the rate of exchange at the end of the year of the primary currency of the obligation into Canadian currency, and

C is the amount that would be the tax basis of the obligation to the taxpayer at the end of the year if

(a) the definition "tax basis" were read without reference to paragraphs (h) and (q), and

(b) the taxpayer's foreign exchange adjustment in respect of the obligation for the year were nil.

Technical Notes: Section 9104 provides for the determination of foreign exchange adjustments in respect of specified debt obligations. Foreign exchange adjustments are determined if the primary currency of an obligation is not the Canadian dollar. As defined in section 9100, the primary currency of an obligation is the currency with which the obligation is primarily connected. Where a foreign exchange adjustment for a taxation year is positive, it is included in the amount prescribed by subsection 9101(1) in respect of the obligation for the year. A negative adjustment is included in determining the amount prescribed by subsection 9101(2).

Subsection 9104(1) applies where a taxpayer holds a foreign currency obligation at the end of a taxation year. It provides that the foreign exchange adjustment in respect of the obligation for the year is to be computed as follows:

1. Determine the tax basis of the obligation to the taxpayer at the end of the year, using the primary currency of the obligation as the currency in which all amounts are expressed. For this purpose, the definition of "tax basis" in subsection 142.4(1) of the Act is modified so that it does not include (i) any amounts in respect of the change in value of a foreign currency relative to the Canadian dollar, and (ii) the amounts referred to in paragraphs (f) and (q) of the definition (adjustments in determining the adjusted cost base on February 22, 1994 of an obligation that was a capital property).
2. Translate the tax basis to Canadian dollars using the spot rate of exchange at the end of the year.
3. Subtract the Canadian dollar tax basis at the end of the year, determined on the assumption that the foreign exchange adjustment in respect of the obligation for the year is nil, and without taking into account the amounts referred to in paragraphs (f) and (q) of the definition of "tax basis".

The following example illustrates the operation of subsection 9104(1):

Example

A U.S. dollar debt obligation is issued on December 31, 1995 and matures on December 31, 2000. The obligation has a face amount of US$1,000 and provides for interest at the rate of 6%, payable annually. The taxpayer acquires the obligation when it is issued, at a cost of US$900. The taxpayer's taxation year is the calendar year.

The exchange rates (C$/US$) to the end of 1998 are:

	Year-end	Average
1995	$1.36	—
1996	1.30	$1.34
1997	1.35	1.32
1998	1.32	1.34

Results for first 3 years:

	1996	1997	1998
US Dollar Tax Basis	**(US$)**	**(US$)**	**(US$)**
Tax basis (beginning of year)	900.00	916.86	935.17
Add: accrued return	76.86	78.30	79.87
Deduct: interest received	60.00	60.00	60.00
Tax basis (end of year)	916.86	935.17	955.03
Foreign Exchange Adjustment	**(C$)**	**(C$)**	**(C$)**
Tax basis (beginning of year)	1224.00	1191.92	1262.48
Add: accrued return[1]	103.00	103.36	107.02
Deduct: interest received	78.00	81.00	79.20
Tax basis (before current year foreign exchange adjustment)	1249.00	1214.28	1290.30
US$ tax basis - translated	1191.92	1262.48	1260.65
Foreign exchange adjustment	(57.07)	48.19	(29.65)

Notes:

1. Translated using the average exchange rate for the year.

Related Provisions: ITA 257 — Negative amounts in formulas.

I.T. Technical News: No. 15 (tax consequences of the adoption of the "euro" currency).

(2) Where a taxpayer disposes of a specified debt obligation the primary currency of which is not Canadian currency, the taxpayer's foreign exchange adjustment in respect of the obligation for the taxation year in which the disposition occurs is the amount that would be the foreign exchange adjustment if the year had ended immediately before the disposition.

Technical Notes: Subsection 9104(2) provides for the determination of a foreign exchange adjustment for the taxation year in which a taxpayer disposes of a foreign currency debt obligation. The foreign exchange adjustment is the amount that

would be determined under subsection 9104(1) if the taxation year had ended immediately before the disposition.

(3) At the election of a taxpayer, subsection (2) does not apply to specified debt obligations disposed of by the taxpayer before 1996.

Technical Notes: Subsection 9104(3) provides that, at the election of a taxpayer, subsection 9104(2) does not apply to dispositions of debt obligations before 1996. Where a taxpayer makes this election, any foreign-exchange-related change in value of an obligation that arises in the year of disposition will be an element in the determination of the total gain or loss from the disposition of the obligation.

Definitions [Reg. 9104]: "amount" — ITA 248(1); "disposed", "disposes" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "primary currency" — Reg. 9100; "specified debt obligation" — ITA 142.2(1), Reg. 9100; "tax basis" — ITA 142.4(1), Reg. 9100; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add Part XCI (ss. 9100 to 9104), applicable to taxation years that end after February 22, 1994.

Proposed Repeal — Reg. 9103(2)

Application: The November 14, 1997 draft regulations (impaired loans), s. 9, will repeal subsec. 9103(2), applicable

(a) to taxation years that end after September 1997; and

(b) to taxation years that end after 1995 and before October 1997 where the taxpayer elects under subparagraph 3(5)(b) of the attached draft amendments to the *Income Tax Act*.

Technical Notes: Part XCI contains rules for determining the amounts that a financial institution is required to include or deduct each year in respect of a specified debt obligation in computing its income.

Subsection 9103(2) provides that accrued returns and accrual adjustments are to be determined in respect of a specified debt obligation without any reduction for the possible or actual failure of the debtor to make any payments under the obligation. Subsection 9103(2) is repealed as a consequence of the introduction of new subsection 142.3(4) of the *Income Tax Act*. The repeal of subsection 9103(2) applies to taxation years that end after September 1997, and also to taxation years that end after 1995 and before October 1997 where the taxpayer elects to have the reserve provisions in new paragraph 20(1)(l) of the Act apply to those years.

PART XCII — FINANCIAL INSTITUTIONS — DISPOSITION OF SPECIFIED DEBT OBLIGATIONS [PROPOSED]

Proposed Addition — Part XCII (Reg. 9200–9204)

Technical Notes: Part XCII contains provisions relating to the disposition of specified debt obligations by financial institutions. These include:

- a definition of "transition amount";
- provisions that prescribe certain specified debt obligations for exclusion from the amortization requirement; and
- rules for amortizing gains and losses from the disposition of specified debt obligations.

9200. Interpretation — (1) Definitions — In this Part,

"financial institution" has the meaning assigned by subsection 142.2(1) of the Act;

Technical Notes: "Financial institution" has the meaning given to that term by subsection 142.2(1) of the Act.

"gain" of a taxpayer from the disposition of a specified debt obligation means the gain from the disposition determined under paragraph 142.4(6)(a) of the Act;

Technical Notes: A taxpayer's "gain" from the disposition of a specified debt obligation is the gain determined under paragraph 142.4(6)(a) of the Act.

"loss" of a taxpayer from the disposition of a specified debt obligation means the loss from the disposition determined under paragraph 142.4(6)(b) of the Act;

Technical Notes: A taxpayer's "loss" from the disposition of a specified debt obligation is the loss determined under paragraph 142.4(6)(b) of the Act.

"residual portion" of a taxpayer's gain or loss from the disposition of a specified debt obligation means the amount determined under subsection 142.4(8) of the Act in respect of the disposition;

Technical Notes: The "residual portion" of a taxpayer's gain or loss from the disposition of a specified debt obligation is the amount determined under subsection 142.4(8) of the Act in respect of the disposition. The residual portion is the amount of the gain or loss that is required to be amortized (if the amortization requirement applies to the obligation).

"specified debt obligation" of a taxpayer has the meaning assigned by subsection 142.2(1) of the Act;

Technical Notes: "Specified debt obligation" has the meaning given to that term by subsection 142.2(1) of the Act. It should be noted that this term is defined from the perspective of the holder. For example, where a taxpayer holds a coupon that has been stripped from a debt obligation and holds no other interest in the obligation, the specified debt obligation of the taxpayer is just the coupon. It should also be noted that, if a taxpayer disposes of part of a specified debt obligation, subsection 142.4(9) applies to deem the part disposed of and the retained part to be separate specified debt obligations.

"tax basis" of a specified debt obligation to a taxpayer has the meaning assigned by subsection 142.4(1) of the Act.

Technical Notes: The "tax basis" of a specified debt obligation to a taxpayer is the amount defined by subsection 142.4(1) of the Act. The tax basis is analogous to the adjusted cost base of capital property.

(2) Amortization date — For the purposes of this Part, the amortization date for a specified debt obligation disposed of by a taxpayer is the day determined as follows:

(a) subject to paragraphs (b) to (d), the amortization date is the later of the day of disposition and the day on which the debtor is required to make the final payment under the obligation, determined without regard to any option respecting the timing of payments under the obligation (other than an option that was exercised before the disposition);

(b) subject to paragraphs (c) and (d), where the day on which the debtor is required to make the final payment under the obligation is not determinable for the purpose of paragraph (a), the amortization date is the day of disposition;

(c) subject to paragraph (d), where

(i) the obligation provides for stipulated interest payments,

(ii) the rate of interest for one or more periods after the issuance of the obligation was not fixed on the day of issue, and

(iii) when the obligation was issued, it was reasonable to expect that the interest rate for each

period would equal or approximate a reasonable market rate of interest for that period,

the amortization date is the first day, if any, after the disposition on which the interest rate could change; and

(d) where, for purposes of its financial statements, the taxpayer had a gain or loss from the disposition that is being amortized to profit, the amortization date is the last day of the amortization period.

Technical Notes: Subsection 9200(2) contains rules for determining the amortization date for a specified debt obligation disposed of by a taxpayer. This date is used in subsections 9203(2) and (4) to determine the end of the amortization period for an obligation or group of obligations. It is also used in subsection 9202(2) for determining whether an obligation is excluded from the amortization requirement.

Paragraph 9200(2)(a) provides that the amortization date is the day on which the debtor is required to make the final payment under the specified debt obligation or, if later, the day of disposition. The day of disposition would be later where, for example, the debtor has failed to repay borrowed money on the maturity date of the obligation. In determining when the final payment is required to be made, an option to redeem or retract an obligation, or to extend its maturity date, is to be disregarded unless it has been exercised. Paragraph 9200(2)(a) applies only if none of paragraphs 9200(2)(b) to (d) applies.

It should be noted that a specified debt obligation is a taxpayer's interest in a debt obligation issued by the debtor. The amortization date is determined with respect to the taxpayer's interest. Where, for example, the taxpayer holds a coupon stripped from a debt obligation, the amortization date is the payment date for the coupon.

Paragraph 9200(2)(b) applies where the date for the last payment is not determinable, and so paragraph 9200(2)(a) cannot be applied. This would be the case, for example, where the maturity date is based on a contingency. Paragraph 9200(2)(b) provides that, subject to paragraphs 9200(2)(c) and (d), the amortization date is the day of disposition.

Paragraph 9200(2)(c) applies if the obligation is a variable interest rate debt obligation and, at the time the obligation was issued, the interest rate for each period was expected to equal or approximate a reasonable market rate. In this case, the amortization date is the day before the next interest reset date. Paragraph 9200(2)(c) does not apply if there are no interest reset dates after the disposition, or if paragraph 9200(2)(d) is applicable. An example of a debt obligation to which paragraph 9200(2)(c) would apply is an obligation with a 10-year term that provides for the interest rate to be reset every two years to LIBOR plus 1%.

Paragraph 9200(2)(d) applies where, for the purposes of its financial statements, the taxpayer has a gain or loss from the disposition that is being amortized. In this case, the amortization date is the last day of the financial statement amortization period.

Definitions [Reg. 9200]: "amortization date" — Reg. 9200(2); "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "gain", "loss" — Reg. 9200(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxpayer" — ITA 248(1).

9201. Transition amount — For the purpose of subsection 142.4(1) of the Act, "transition amount" of a taxpayer in respect of the disposition of a specified debt obligation means,

(a) where neither paragraph (b) nor (c) applies, nil;

(b) where

(i) the taxpayer acquired the obligation before its taxation year that includes February 23, 1994,

(ii) neither paragraph 7000(2)(a) nor (b) has applied to the obligation, and

(iii) the principal amount of the obligation exceeds the cost of the obligation to the taxpayer (which excess is referred to in this paragraph as the "discount"),

the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the amount included in respect of the discount in computing the taxpayer's profit for a taxation year that ended before February 23, 1994, and

B is the total of all amounts each of which is the amount included in respect of the discount in computing the taxpayer's income for a taxation year that ended before February 23, 1994; and

(c) where

(i) the conditions in subparagraphs (b)(i) and (ii) are satisfied, and

(ii) the cost of the obligation to the taxpayer exceeds the principal amount of the obligation (which excess is referred to in this paragraph as the "premium"),

the negative of the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the amount deducted in respect of the premium in computing the taxpayer's profit for a taxation year that ended before February 23, 1994, and

B is the total of all amounts each of which is the amount deducted in respect of the premium in computing the taxpayer's income for a taxation year that ended before February 23, 1994.

Technical Notes: Subsection 142.4(1) of the Act provides that the transition amount of a taxpayer in respect of the disposition of a specified debt obligation is the amount defined by regulation. This amount is relevant if subsection 142.4(4) of the Act applies in respect of the disposition. The transition amount is required to be recognized in the year of disposition.

Section 9201 defines "transition amount" for the purpose of subsection 142.4(1). In general terms, the transition amount is the amount of any premium or discount that has been recognized for financial statement purposes, but not for tax purposes, to the beginning of the taxation year that includes February 23, 1994.

Paragraphs 9201(b) and (c) provide for the determination of the transition amount in respect of the disposition of a specified debt obligation by a taxpayer where the following conditions are satisfied:

- the taxpayer acquired the obligation before its taxation year that includes February 23, 1994,
- the accrual rules in paragraphs 7000(2)(a) and (b) have not applied to the obligation, and
- the principal amount of the obligation differs from its cost to the taxpayer, i.e. the obligation was purchased at a discount or premium.

Paragraph 9201(b), which applies in the case of a discount, provides that the transition amount is equal to the amount of the discount that has been included in determining the taxpayer's financial statement profit for taxation years ending before February 23, 1994 minus the amount of the discount in-

cluded in determining its income for those years for tax purposes. Thus, the transition amount will be nil if, for tax purposes, the taxpayer has been following its financial statement reporting.

Paragraph 9201(c) contains a similar rule for premiums, except that the transition amount will be negative if it is not nil.

Paragraph 9201(a) provides that if neither of paragraphs 9201(b) and (c) applies, the transition amount is nil.

Related Provisions: ITA 257 — Negative amounts in formulas.

Definitions [Reg. 9201]: "amount" — ITA 248(1); "discount" — Reg. 9201(b)(iii); "disposition" — ITA 248(1); "premium" — Reg. 9201(c)(ii); "principal amount" — ITA 248(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

9202. Prescribed debt obligations — (1) The following rules apply with respect to an election made under subsection (3) or (4) by a taxpayer:

(a) the election applies only if

(i) it is in writing,

(ii) it specifies the first taxation year (in this subsection referred to as the "initial year") of the taxpayer to which it is to apply, and

(iii) either it is received by the Minister within 6 months after the end of the initial year, or the Minister has expressly accepted the later filing of the election;

(b) subject to paragraph (c), the election applies to dispositions of specified debt obligations in the initial year and subsequent taxation years; and

(c) where the Minister has approved, on written application by the taxpayer, the revocation of the election, the election does not apply to dispositions of specified debt obligations in the taxation year specified in the application and in subsequent taxation years.

Technical Notes: Subsection 142.4(5) of the Act provides that the full gain or loss from the disposition of certain specified debt obligations is required to be taken into account in the taxation year of disposition. In other words, the amortization rules do not apply to these gains and losses. Obligations to which this subsection applies include obligations prescribed under subparagraph 142.4(5)(a)(ii). Section 9202 prescribes certain debt obligations for this purpose.

Subsections 9202(3) and (4) provide for elections to be made by a taxpayer. An election is made under subsection 9202(3) if a taxpayer does not want subsection 9202(2) to apply. An election is made under subsection 9202(4) if a taxpayer wants that subsection to apply. Subsection 9202(1) sets out the rules that apply with respect to these elections.

An election must (i) be in writing, (ii) specify the first taxation year to which it applies, and (iii) be received by the Minister of National Revenue within 6 months after the end of that first year (unless the Minister accepts a later filing). An election continues to apply until the taxpayer revokes it. A revocation requires the Minister's approval, and written application must be made for that approval.

(2) Subject to subsection (3), for the purpose of subparagraph 142.4(5)(a)(ii) of the Act, a specified debt obligation disposed of by a taxpayer in a taxation year is prescribed in respect of the taxpayer where the amortization date for the obligation is not more than two years after the end of the year.

Technical Notes: Subsection 9202(2) prescribes certain specified debt obligations for the purpose of subparagraph 142.4(5)(a)(ii) of the Act. Prescribed obligations are excluded from the amortization rules for gains and losses. An obligation is prescribed by subsection 9202(2) if its amortization date (as determined under subsection 9200(2)) is within two years of the end of the taxation year in which the taxpayer disposed of the obligation. However, subsection 9202(2) does not apply to a taxpayer if the conditions in subsection 9202(3) are satisfied.

(3) Subsection (2) does not apply in respect of a taxpayer for a taxation year where

(a) generally accepted accounting principles require that the taxpayer's gains and losses arising on the disposition of a class of debt obligations be amortized to profit for the purpose of the taxpayer's financial statements;

(b) the taxpayer has elected not to have subsection (2) apply; and

(c) the election applies to dispositions in the year.

Technical Notes: Subsection 9202(3) provides that subsection 9202(2) does not apply to a taxpayer if (i) the taxpayer is required by generally accepted accounting principles (GAAP) to amortize gains and losses from a class of debt obligations, and (ii) the taxpayer has elected not to have subsection 9202(2) apply. This exclusion enables a taxpayer that is required to amortize some or all of its gains and losses for financial statement purposes to choose to also amortize them for tax purposes even if the amortization period is short. It should be noted that the exclusion applies to all obligations, not just those for which GAAP requires amortization. See subsection 9202(1) for rules regarding elections under subsection 9202(3).

(4) For the purpose of subparagraph 142.4(5)(a)(ii) of the Act, a specified debt obligation disposed of by a taxpayer in a taxation year is prescribed in respect of the taxpayer where

(a) the taxpayer has elected to have this subsection apply;

(b) the election applies to dispositions in the year; and

(c) the absolute value of the positive or negative amount determined by the formula

$$A - B$$

does not exceed the lesser of $5,000 and the amount, if any, specified in the election, where

A is the total of all amounts each of which is the residual portion of the taxpayer's gain from the disposition of the obligation or any other specified debt obligation disposed of in the same transaction, and

B is the total of all amounts each of which is the residual portion of the taxpayer's loss from the disposition of the obligation or any other specified debt obligation disposed of in the same transaction.

Technical Notes: Subsection 9202(4) prescribes certain specified debt obligations for the purpose of subparagraph 142.4(5)(a)(ii) of the Act. Prescribed obligations are excluded from the amortization rules that apply to gains and losses. Subsection 9202(4) is an elective provision — see subsection 9202(1) for rules relating to elections.

Where subsection 9202(4) applies, a specified debt obligation is prescribed if the taxpayer's net gain or loss from the disposition of the obligation and from other obligations disposed of in the same transaction does not exceed $5,000. A taxpayer may elect to have a lower threshhold for this purpose. Such an election might be made where, for example, the taxpayer is required to amortize gains and losses for financial statement purposes, but does not amortize if the gain or loss is less than $1,000.

Related Provisions: ITA 257 — Negative amounts in formulas.

(5) For the purpose of subparagraph 142.4(5)(a)(ii) of the Act, a specified debt obligation disposed of by a taxpayer in a taxation year is prescribed in respect of the taxpayer where

(a) the disposition resulted in an extinguishment of the obligation, other than an extinguishment that occurred because of a purchase of the obligation by the debtor in the open market;

(b) the taxpayer had the right to require the obligation to be settled at any time; or

(c) the debtor had the right to settle the obligation at any time.

Technical Notes: Subsection 9202(5) prescribes certain specified debt obligations for the purpose of subparagraph 142.4(5)(a)(ii) of the Act. Prescribed obligations are excluded from the amortization rules for gains and losses. A specified debt obligation is prescribed by subsection 9202(5) if the disposition of the obligation results in its extinguishment. An obligation would be prescribed, for example, where the disposition occurs because the debtor settles it, whether at the scheduled maturity date or as a result of the exercise of an option to redeem or retract before that date. As another example, a specified debt obligation would be prescribed where the holder exercises an option to convert it into shares. As an exception, an obligation is not prescribed where the extinguishment occurs because of an open market purchase of the obligation by the debtor.

Subsection 9202(5) also prescribes a specified debt obligation if the obligation is an obligation that was payable on demand or that could be redeemed at any time by the debtor.

Definitions [Reg. 9202]: "amortization date" — Reg. 9200(2); "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "election" — Reg. 9202(1); "gain" — Reg. 9200(1); "initial year" — Reg. 9202(1)(a)(ii); "loss" — Reg. 9200(1); "Minister" — ITA 248(1); "month" — *Interpretation Act* 35(1); "prescribed" — ITA 248(1); "residual portion" — Reg. 9200(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1); "written" — *Interpretation Act* 35(1)"writing".

9203. Residual portion of gain or loss — (1) Allocation of residual portion — Subject to section 9204, where subsection 142.4(4) of the Act applies to the disposition of a specified debt obligation by a taxpayer, the amount allocated to each taxation year in respect of the residual portion of the gain or loss from the disposition shall be determined, for the purpose of that subsection,

(a) by a method that complies with, or is substantially similar to a method that complies with, subsection (2); or

(b) where gains and losses from the disposition of debt obligations are amortized to profit for the purpose of the taxpayer's financial statements, by the method used for the purpose of the taxpayer's financial statements.

Technical Notes: Section 9203 contains rules for determining the amount of the residual portion of a gain or loss from the disposition of a specified debt obligation that must be recognized each year under subparagraph 142.4(4)(c)(ii) or (d)(ii) of the Act. These rules are subject to section 9204, which applies after certain reorganizations and other events.

Subsection 9203(1) specifies the methods that are permitted for amortizing the residual portion of a gain or loss from the disposition of a specified debt obligation. Any method may be used if it complies with subsection 9203(2), or is substantially similar to a method that so complies. Subsection 9203(2) provides for the amount allocated to each year to be determined on a straight-line proration basis. It is intended that the reference to substantially similar methods generally include the method that provides for the amount allocated to each year to equal to the difference between (i) the amount that would have accrued in the year in respect of the obligation if the taxpayer had retained it, and (ii) the amount that would have accrued in the year in respect of the obligation if the taxpayer had reacquired the obligation immediately after disposing of it.

Where a taxpayer amortizes gains and losses for the purpose of its financial statements, the taxpayer is permitted to use the same method of amortization for tax purposes. This rule allows the financial statement method to be used for all obligations, including obligations that are not subject to amortization for financial statement purposes.

(2) Proration method — For the purpose of subsection (1), a method for allocating to taxation years the residual portion of a taxpayer's gain or loss from the disposition of a specified debt obligation complies with this subsection where the amount allocated to each taxation year is determined by the formula

$$A \times \frac{B}{C}$$

where

A is the residual portion of the taxpayer's gain or loss;

B is the number of days in the year that are in the period referred to in the description of C; and

C is the number of days in the period that,

(a) where subsection (3) applies in respect of the obligation, is determined under that subsection, and

(b) in any other case,

(i) begins on the day on which the taxpayer disposed of the obligation, and

(ii) ends on the earlier of

(A) the amortization date for the obligation, and

(B) the day that is 20 years after the day on which the taxpayer disposed of the obligation.

Technical Notes: Subsection 9203(2) sets out, for the purpose of subsection 9203(1), a method for amortizing the residual portion of the gain or loss from the disposition of a specified debt obligation. The method involves prorating the residual portion on a straight-line basis over the amortization period. More specifically, the amount allocated to a particular taxation year is equal to the residual portion of the gain or loss times the proportion of days in the amortization period that are in the year. Generally, the amortization period for an obligation is the period that begins on the day of disposition of the obligation and ends on the earlier of the amortization date determined under subsection 9200(2) and the day that is 20 years after the day of disposition. However, where subsection 9203(3) applies, the amortization period is determined pursuant to that subsection and subsection 9203(4).

(3) Single proration period — Where

(a) a taxpayer has elected in its return of income for a taxation year to have this subsection apply in respect of the specified debt obligations disposed of in a transaction in the year,

(b) all the obligations were disposed of at the same time, and

(c) the number of the obligations to which subsection 142.4(4) of the Act applies is at least 50,

the period determined under this subsection in respect of the obligations is the period that begins on the day of

disposition of the obligations and ends on the weighted average amortization date for those obligations to which subsection 142.4(4) applies.

Technical Notes: Under the amortization method set out in subsection 9203(2), the residual portion of the gain or loss from the disposition of a specified debt obligation is spread on a straight-line basis over the amortization period for the obligation. Subsection 9203(3) allows a taxpayer to use the same amortization period for a group of specified debt obligations that were disposed of at the same time in the same transaction, if there are at least 50 obligations to which subsection 142.4(4) of the Act applies. This enables the net residual gain or loss to be spread as if it were from the disposition of a single obligation.

Where subsection 9203(3) applies, the amortization period starts on the day of disposition of the obligations, and ends on the weighted average amortization date determined under subsection 9203(4) for those obligations to which subsection 142.4(4) applies. In this regard, obligations that are prescribed by section 9202 (obligations excluded from amortization requirement) are not taken into account in determining the weighted average amortization date. In particular, obligations that are prescribed because their amortization dates are not more than two years after the end of the year of disposition are disregarded.

Subsection 9203(3) applies on an elective basis. An election must be made in the tax return for the year in which the obligations were disposed of. No special form is required for the election — it could be made, for example, by including a page with the return that identifies the transaction to which the election applies.

(4) Weighted average amortization date — For the purpose of subsection (3), the weighted average amortization date for a group of specified debt obligations disposed of on the same day by a taxpayer is,

(a) where paragraph (b) does not apply, the day that is the number of days after the day of disposition equal to the total of the number of days determined in respect of each obligation by the formula

$$A \times \frac{B}{C}$$

where

A is the number of days from the day of disposition to the amortization date for the obligation,

B is the residual portion of the gain or loss from the disposition of the obligation, and

C is the total of all amounts each of which is the residual portion of the gain or loss from the disposition of an obligation in the group; and

(b) the day that the taxpayer determines using a reasonable method for estimating the day determined under paragraph (a).

Technical Notes: Subsection 9203(3) allows a taxpayer to use a single amortization period for a group of specified debt obligations. The period ends on the weighted average amortization date for the obligations. Subsection 9203(4) specifies how the weighted average amortization date is to be determined for this purpose. A taxpayer is given a choice between using a precisely determined date and a reasonable estimate of that date.

Under paragraph 9203(4)(a), the weighted average amortization date for a group of obligations disposed of on the same day is obtained as follows:

1. For each obligation, determine the number of days from the day of disposition to the amortization date for the obligation — the amortization date is determined under subsection 9200(2).
2. Multiply the number of days by the ratio of the residual portion of the gain or loss from the disposition of the obligation to the total of the residual portions for all the obligations.
3. Compute the total of the amounts determined under step 2 for all the obligations.
4. Determine the day that follows the day of disposition by that total amount.

Paragraph 9203(4)(b) allows a taxpayer to determine the weighted average amortization date for a group of obligations using a reasonable method for estimating the exact date determined under paragraph 9203(4)(a). An example of an approach that would generally be reasonable is to select a random sample of the debt obligations and determine the exact date for that sample.

Definitions [Reg. 9203]: "amortization date" — Reg. 9200(2); "amount" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "gain", "loss" — Reg. 9200(1); "residual portion" — Reg. 9200(1), 9203(2); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "weighted average amortization date" — Reg. 9203(4).

9204. Special rules for residual portion of gain or loss — (1) Application of section — This section applies for the purposes of subparagraphs 142.4(4)(c)(ii) and (d)(ii) of the Act.

Technical Notes: Section 9204 contains rules relating to the amortization of the residual portion of the gain or loss from the disposition of a specified debt obligation. These rules, which modify the normal rules in section 9203, apply where

- a subsidiary corporation has been wound up into its parent corporation on a rollover basis pursuant to subsection 88(1) of the Act;
- an insurer has transferred an insurance business on a rollover basis pursuant to subsection 138(11.5) or (11.94) of the Act;
- a new partnership is a continuation of another partnership pursuant to subsection 98(6) of the Act;
- a taxpayer ceases to carry on a business; or
- a taxpayer ceases to be a financial institution.

Subsection 9204(1) provides that section 9204 applies for the purpose of subparagraphs 142.4(4)(c)(ii) and (d)(ii) of the Act. Subparagraph 142.4(4)(c)(ii) requires the residual portion of the gain from the disposition of a specified debt obligation to be amortized in accordance with prescribed rules. Subparagraph 142.4(4)(d)(ii) contains a similar requirement with respect to the residual portion of a loss.

(2) Winding-up — Where subsection 88(1) of the Act has applied to the winding-up of a taxpayer (in this subsection referred to as the "subsidiary"), the following rules apply in respect of the residual portion of a gain or loss of the subsidiary from the disposition of a specified debt obligation to which subsection 142.4(4) of the Act applies:

(a) the amount of that residual portion allocated to the taxation year of the subsidiary in which its assets were distributed to its parent on the winding-up shall be determined on the assumption that the taxation year ended when the assets were distributed to its parent;

(b) no amount shall be allocated in respect of that residual portion to any taxation year of the subsidiary after its taxation year in which its assets were distributed to its parent; and

(c) the amount of that residual portion allocated to the taxation year of the parent in which the subsidiary's assets were distributed to it shall be determined

on the assumption that the taxation year began when the assets were distributed to it.

Technical Notes: Where a subsidiary is wound up into its parent corporation and subsection 88(1) of the Act applies to the winding-up, the parent is considered to be a continuation of the subsidiary for the purpose of paragraphs 142.4(4)(c) and (d) of the Act. The relevant continuity provision is paragraph 87(2)(g.2) of the Act, which applies to a winding-up by reason of paragraph 88(1)(e.2). Consequently, amounts may be allocated to the parent in respect of the residual portion of the subsidiary's gains and losses from the disposition of specified debt obligations.

Subsection 9204(2) contains the following rules that ensure that no part of the residual portion of a gain or loss is taken into account in determining the income of both a parent and a subsidiary:

- The amount of the residual portion of a gain or loss allocated to the taxation year of the subsidiary in which its assets were distributed to its parent is to be determined on the assumption that the taxation year ended when the assets were distributed.
- No amount is to be allocated to any subsequent taxation year of the subsidiary.
- The amount of the residual portion of a gain or loss allocated to the taxation year of the parent in which it received the subsidiary's assets is to be determined on the assumption that the taxation year began when the assets were received.

(3) Transfer of insurance business — Where

(a) subsection 138(11.5) or (11.94) of the Act has applied to the transfer of an insurance business by an insurer, and

(b) the person to whom the business was transferred is considered, because of paragraph 138(11.5)(k) of the Act, to be the same person as the insurer in respect of the residual portion of a gain or loss of the insurer from the disposition of a specified debt obligation to which subsection 142.4(4) of the Act applies,

no amount in respect of that residual portion shall be allocated to any taxation year of the insurer that ends after the insurer ceased to carry on all or substantially all of the business.

Technical Notes: Where an insurer has transferred an insurance business to another corporation on a rollover basis pursuant to subsection 138(11.5) or (11.94) of the Act, paragraph 138(11.5)(k) provides that, for the purpose of paragraphs 142.4(4)(c) and (d) of the Act, the transferee is considered to be a continuation of the transferor in respect of the transferred business. Consequently, amounts may be allocated to the transferee in respect of the residual portion of the transferor's gains and losses from the disposition of specified debt obligations in the course of the business. Subsection 9204(3) provides that, after the transfer of the business, amounts that are allocated to the transferee are not also to be allocated to the transferor. Since paragraph 138(11.5)(h) of the Act deems the transferor and transferee to have taxation year ends immediately before the business is transferred, special rules are not required for the taxation year of transfer.

(4) Transfer to new partnership — Where subsection 98(6) of the Act deems a partnership (in this subsection referred to as the "new partnership") to be a continuation of another partnership (in this subsection referred to as the "predecessor partnership"), the following rules apply in respect of the residual portion of a gain or loss of the predecessor partnership from the disposition of a specified debt obligation to which subsection 142.4(4) of the Act applies:

(a) the amount of that residual portion allocated to the taxation year of the predecessor partnership in which its property was transferred to the new partnership shall be determined on the assumption that the taxation year ended when the property was transferred;

(b) no amount shall be allocated in respect of that residual portion to any taxation year of the predecessor partnership after its taxation year in which its property was transferred to the new partnership; and

(c) the amount of that residual portion allocated to the taxation year of the new partnership in which the predecessor partnership's property was transferred to it shall be determined on the assumption that the taxation year began when the property was transferred to it.

Technical Notes: Subsection 9204(4) contains rules that apply where a partnership has ceased to exist and another partnership has replaced it, in circumstances such that the continuity rule in subsection 98(6) of the Act applies. The rules are similar to those in subsection 9204(2) for the winding-up of a taxpayer into its parent corporation.

(5) Ceasing to carry on business — Where

(a) at any time a taxpayer ceases to carry on all or substantially all of a business, otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a transfer of the business to which subsection 98(6) or 138(11.5) or (11.94) of the Act applies,

(b) before that time, the taxpayer disposed of a specified debt obligation that was property used in the business, and

(c) subsection 142.4(4) of the Act applies to the disposition of the obligation,

there shall be allocated to the taxpayer's taxation year that includes that time the part, if any, of the residual portion of the taxpayer's gain or loss from the disposition that was not allocated to a preceding taxation year.

Technical Notes: Subsection 9204(5) applies where a taxpayer ceases to carry on all or substantially all of a business otherwise than because of a merger, winding-up or transfer of the business to which the rollover rules in subsection 87(2), 88(1), 98(6) or 138(11.5) or (11.94) of the Act apply. It requires the residual portion of the gain or loss from each specified debt obligation disposed of in the course of the business to be recognized in the taxation year in which the cessation occurs, except to the extent that the residual portion has been recognized in a previous year.

(6) Ceasing to be a financial institution — Where

(a) at any time a taxpayer ceases to be a financial institution otherwise than because it has ceased to carry on a business,

(b) before that time, the taxpayer disposed of a specified debt obligation, and

(c) subsection 142.4(4) of the Act applies to the disposition of the obligation,

there shall be allocated to the taxpayer's taxation year that ends immediately before that time the part, if any, of the residual portion of the taxpayer's gain or loss from the disposition that was not allocated to a preceding taxation year.

Technical Notes: Subsection 9204(6) applies where a taxpayer ceases to be a financial institution, as defined in subsection 142.2(1) of the Act, otherwise than because it has ceased to carry on a business. This subsection would apply, for example, where a taxpayer ceases to be a financial institution because of a change in control. Subsection 9204(6) requires the residual portion of the gain or loss from each specified debt obligation that the taxpayer disposed of before it ceased to be a financial institution to be recognized in the taxation year ending immediately before it ceased to be a financial institution, except to the extent that the residual portion has been recognized in a previous year.

Definitions [Reg. 9204]: "amount", "business" — ITA 248(1); "disposed" — ITA 248(1)"disposition"; "disposition" — ITA 248(1); "financial institution" — ITA 142.2(1), Reg. 9200(1); "gain" — Reg. 9200(1); "insurer" — ITA 248(1); "loss" — Reg. 9200(1); "new partnership" — Reg. 9204(4); "person" — ITA 248(1); "predecessor partnership" — Reg. 9204(4); "property" — ITA 248(1); "residual portion" — Reg. 9200(1); "specified debt obligation" — ITA 142.2(1), Reg. 9200(1); "subsidiary" — Reg. 9204(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Application: The June 1, 1995 draft regulations (securities held by financial institutions), s. 9, will add Part XCII (ss. 9200 to 9204), applicable to taxation years that end after February 22, 1994.

PART XCIII — FILM OR VIDEO PRODUCTION SERVICES TAX CREDIT [PROPOSED]

Proposed Addition — Reg. 9300

9300. Accredited production — For the purpose section 125.5 of the Act, accredited production means

(a) a film or video production in respect of which the aggregate expenditures, included in the cost of the production, in the period that ends 24 months after the time that the principal filming or taping of the production began, exceeds $1,000,000, and

(b) a film or video production that is part of a series of television productions that has two or more episodes, or is a pilot program for such a series of episodes, in respect of which the aggregate expenditures included in the cost of each episode in the period that ends 24 months after the time that the principal filming or taping of the production began exceeds

(i) in the case of an episode the running time of which is less than 30 minutes, $100,000, and

(ii) in any other case, $200,000,

but does not include a production that is

(c) news, current events or public affairs programming, or a programme that includes weather or market reports,

(d) a talk show,

(e) a production in respect of a game, questionnaire or contest,

(f) a sports event or activity,

(g) a gala presentation or awards show,

(h) a production that solicits funds,

(i) reality television,

(j) pornography,

(k) advertising, or

(l) a production produced primarily for industrial, corporate or institutional purposes.

Application: The October 29, 1997 draft regulations (film/video production services tax credit), s. 1, will add s. 9300, applicable on Royal Assent.

Technical Notes: See under ITA 125.5.

Forms [Reg. 9300]: T1177: Claiming a film or video production service tax credit.

Definitions [Reg. 9300]: "month" — *Interpretation Act* 35(1).

SCHEDULE I — (SECS. 100, 102 AND 106) RANGES OF REMUNERATION AND OF TOTAL REMUNERATION

1. For the purposes of paragraph 102(1)(c), the ranges of remuneration for each pay period in a taxation year shall be determined as follows:

(a) in respect of a daily pay period, the ranges of remuneration shall commence at $31 and increase in increments of $1 for each range up to and including $84.99;

(b) in respect of a weekly pay period, the ranges of remuneration shall commence at $143 and increase in increments of

(i) $2 for each range up to and including $250.99,

(ii) $4 for each range from $251 to $470.99,

(iii) $8 for each range from $471 to $910.99,

(iv) $12 for each range from $911 to $1,570.99,

(v) $16 for each range from $1,571 to $2,450.99, and

(vi) $20 for each range from $2,451 to $3,550.99;

(c) in respect of a bi-weekly pay period, the ranges of remuneration shall commence at $286 and increase in increments of

(i) $4 for each range up to and including $501.99,

(ii) $8 for each range from $502 to $941.99,

(iii) $16 for each range from $942 to $1,821.99,

(iv) $24 for each range from $1,822 to $3,141.99,

(v) $32 for each range from $3,142 to $4,901.99, and

(vi) $40 for each range from $4,902 to $7,101.99;

(d) in respect of a semi-monthly pay period, the ranges of remuneration shall commence at $310 and increase in increments of

(i) $4 for each range up to and including $525.99,

(ii) $8 for each range from $526 to $965.99,

(iii) $18 for each range from $966 to $1,955.99,

(iv) $26 for each range from $1,956 to $3,385.99,

(v) $34 for each range from $3,386 to $5,255.99, and

(vi) $44 for each range from $5,256 to $7,675.99;

(e) in respect of 12 monthly pay periods, the ranges of remuneration shall commence at $620 and increase in increments of

(i) $8 for each range up to and including $1,051.99,

(ii) $18 for each range from $1,052 to $2,041.99,

(iii) $34 for each range from $2,042 to $3,911.99,

(iv) $52 for each range from $3,912 to $6,771.99,

(v) $70 for each range from $6,772 to $10,621.99, and

(vi) $86 for each range from $10,622 to $15,351.99;

(f) in respect of 10 monthly pay periods, the ranges of remuneration shall commence at $743 and increase in increments of

(i) $10 for each range up to and including $1,282.99,

(ii) $20 for each range from $1,283 to $2,382.99,

(iii) $42 for each range from $2,383 to $4,692.99,

(iv) $62 for each range from $4,693 to $8,102.99,

(v) $84 for each range from $8,103 to $12,722.99, and

(vi) $104 for each range from $12,723 to $18,442.99;

(g) in respect of four-week pay periods, the ranges of remuneration shall commence at $572 and increase in increments of

(i) $8 for each range up to and including $1,003.99,

(ii) $16 for each range from $1,004 to $1,883.99,

(iii) $32 for each range from $1,884 to $3,643.99,

(iv) $48 for each range from $3,644 to $6,283.99,

(v) $64 for each range from $6,284 to $9,803.99, and

(vi) $80 for each range from $9,804 to $14,203.99; and

(h) in respect of 22 pay periods per annum, the ranges of remuneration shall commence at $338 and increase in increments of

(i) $5 for each range up to and including $607.99,

(ii) $10 for each range from $608 to $1,157.99,

(iii) $18 for each range from $1,158 to $2,147.99,

(iv) $28 for each range from $2,148 to $3,687.99,

(v) $38 for each range from $3,688 to $5,777.99, and

(vi) $48 for each range from $5,778 to $8,417.99.

Definitions: "pay period", "remuneration" — Reg. 100(1); "taxation year" — ITA 249.

2. For the purposes of paragraph 102(2)(e), the ranges of remuneration for a taxation year shall commence at $9,000 and increase in increments of

(a) $1,000 for each range up to and including $17,999.99;

(b) $2,000 for each range from $18,000 to $57,999.99;

(c) $3,000 for each range from $58,000 to $72,999.99;

(d) $4,000 for each range from $73,000 to $92,999.99;

(e) $5,000 for each range from $93,000 to $117,999.99;

(f) $6,000 for each range from $118,000 to $147,999.99;

(g) $7,000 for each range from $148,000 to $182,999.99;

(h) $8,000 for each range from $183,000 to $222,999.99;

(i) $9,000 for each range from $223,000 to $267,999.99;

(j) $10,000 for each range from $268,000 to $317,999.99;

(k) $20,000 for each range from $318,000 to $417,999.99; and

(l) $30,000 for each range from $418,000 to $567,999.99.

Definitions: "remuneration" — Reg. 100(1); "taxation year" — ITA 249.

3. For the purposes of paragraph 102(2)(e), the ranges of personal credits and expenses for a taxation year shall commence at $1,500 and increase in increments of

(a) $1,000 for each range up to and including $4,499.99;

(b) $2,000 for each range from $4,500 to $8,499.99;

(c) $2,500 for each range from $8,500 to $13,499.99;

(d) $3,000 for each range from $13,500 to $19,499.99;

(e) $3,500 for each range from $19,500 to $26,499.99;

(f) $4,000 for each range from $26,500 to $34,499.99;

(g) $4,500 for each range from $34,500 to $43,499.99;

(h) $5,000 for each range from $43,500 to $53,499.99; and

(i) $5,500 for each range from $53,500 to $58,999.99.

Definitions [Reg. Sch. I:3]: "personal credits" — Reg. 100(1); "taxation year" — ITA 249.

History: Paras. 1(a) to (h) and s. 2 of Sch. I amended by P.C. 1999-2205, ss. 2, 3, December 16, 1999, *Canada Gazette*, Part II, January 5, 2000, effective July 1, 1999.

Paras. 1(a) to (h) and s. 2 of Sch. I amended by P.C. 1998-2271, ss. 2, 3, December 16, 1998, *Canada Gazette*, Part II, January 6, 1999, effective July 1, 1998.

Para. 1(d) of Sch. I amended by P.C. 1996-501, s. 1, April 16, 1996, *Canada Gazette*, Part II, May 1, 1996, effective from January 1, 1996.

Para. 1(d) of Sch. I amended by P.C. 1994-1370, s. 3, August 16, 1994, *Canada Gazette*, Part II, September 7, 1994, effective from January 1, 1994.

Ss. 1, 2 amended, 3 added, by P.C. 1992-2347, ss. 4, 5, November 19, 1992, *Canada Gazette*, Part II, December 2, 1992, effective January 1, 1992.

Para. 1(b) to (h) of Sch. I amended by P.C. 1992-291, s. 3, February 20, 1992, *Canada Gazette*, Part II, March 11, 1992, effective July 1, 1991.

Paras. 1(b) to (h) of Sch. I amended by P.C. 1991-1643, s. 4, September 5, 1991, *Canada Gazette*, Part II, September 25, 1991, effective January 1, 1991.

Paras. 1(a) to (h) of Schedule I amended by P.C. 1991-732, ss. 3, 4, April 18, 1991, *Canada Gazette*, Part II, May 8, 1991, effective January 1, 1990.

Paras. 1(e) to (g) substituted by P.C. 1990-432, s. 3, March 8, 1990, *Canada Gazette*, Part II, March 28, 1990, effective January 1, 1989.

Schedule I substituted by P.C. 1989-2105, s. 7, October 19, 1989, *Canada Gazette*, Part II, November 8, 1989, effective July 1, 1988.

S. 1 substituted by P.C. 1988-1041, s. 3, June 2, 1988, *Canada Gazette*, Part II, June 22, 1988, effective January 1, 1988.

S. 1 substituted by P.C. 1987-1478, s. 4, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective January 1, 1987.

Schedule I substituted by P.C. 1986-1345, s. 4, June 5, 1986, *Canada Gazette*, Part II, June 25, 1986, effective January 1, 1986. (This effective date was confirmed by P.C. 1986-2070, September 11, 1986, *Canada Gazette*, Part II, October 1, 1986.)

Schedule I substituted by P.C. 1985-1645, s. 4, May 16, 1985, *Canada Gazette*, Part II, May 29, 1985, effective January 1, 1985.

Paras. 1(a) to (h) substituted by P.C. 1984-3918, December 6, 1984, *Canada Gazette*, Part II, December 26, 1984, effective July 1, 1984.

Ss. 1 and 2 substituted by P.C. 1984-3684, November 15, 1984, *Canada Gazette*, Part II, November 28, 1984, effective January 1, 1984.

Paras. 1(a) to (h) substituted by P.C. 1984-775, s. 2, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984, effective July 1, 1983.

Schedule I substituted by P.C. 1983-2717, s. 8, September 1, 1983, *Canada Gazette*, Part II, September 14, 1983, effective January 1, 1983.

All that portion of subparas. 1(a)(i), (iii), 1(b)(i), (iii), 1(c)(i), (iii), 1(d)(i), (iii), 1(e)(i), (iii), 1(f)(i), (iii), 1(g)(i), (iii), 1(h)(i), (iii) preceding clause (A) substituted by P.C. 1983-1195, subsecs. 2(1) to 2(16), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

All that portion of paras. 2(a) and 2(b) preceding subpara. (i) substituted by P.C. 1983-1195, subsecs. 2(17) and 2(18), April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective July 1, 1982.

Schedule I substituted by P.C. 1983-1137, s. 5, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, effective January 1, 1982.

Paras. 2(b), (c) substituted by P.C. 1981-1968, July 16, 1981, *Canada Gazette*, Part II, August 12, 1981, effective July 1, 1981.

SCHEDULE II — CAPITAL COST ALLOWANCES

History: Schedule B was consolidated and retitled Schedule II, as of December 31, 1977, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Class 1 — (4 per cent)

[Reg. 1100(1)(a)(i), 1100(1)(za.1), (zc)(i)(A), (B)]

Property not included in any other class that is

(a) a bridge;

(b) a canal;

(c) a culvert;

(d) a dam;

(e) a jetty acquired before May 26, 1976;

(f) a mole acquired before May 26, 1976;

(g) a road, sidewalk, airplane runway, parking area, storage area or similar surface construction, acquired before May 26, 1976;

(h) railway track and grading, including components such as rails, ballast, ties and other track material,

(i) that is not part of a railway system, or

(ii) that was acquired after May 25, 1976;

(i) railway traffic control or signalling equipment, acquired after May 25, 1976, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, but not including property that is principally electronic equipment or systems software therefor;

(j) a subway or tunnel, acquired after May 25, 1976.

(k) electrical generating equipment (except as specified elsewhere in this Schedule);

(l) a pipeline, other than gas or oil well equipment, unless, in the case of a pipeline for oil or natural gas, the Minister, in consultation with the Minister of Energy, Mines and Resources, is or has been satisfied that the main source of supply for the pipeline is or was likely to be exhausted within 15 years after the date on which operation of the pipeline commenced;

(m) the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy;

(n) manufacturing and distributing equipment and plant (including structures) acquired primarily for the production or distribution of gas, except

(i) a property acquired for the purpose of producing or distributing gas that is normally distributed in portable containers,

(ii) a property acquired for the purpose of processing natural gas, before the delivery of such gas to a distribution system, or

(iii) a property acquired for the purpose of producing oxygen or nitrogen;

(o) the distributing equipment and plant (including structures) of a distributor of water;

(p) the production and distributing equipment and plant (including structures) of a distributor of heat; or

(q) a building or other structure, or part thereof, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators.

Proposed Amendment — Electrical generating equipment and heat or water production and distribution equipment

Federal budget, supplementary information, February 28, 2000: *Electrical Generating Equipment, and Heat or Water Production and Distribution Equipment*

Currently, the electrical generating equipment of a producer of electrical energy is generally eligible for a 4-per-cent CCA rate under Class 1 of Schedule II to the *Income Tax Regulations*. The production and distribution equipment of a distributor of heat or water are also generally eligible for this rate under Class 1.

Current CCA Treatment

Class 1 of Schedule II to the *Income Tax Regulations* includes:

- electrical generating equipment described in paragraph (k), or described in paragraph (m) as "generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy"; and
- production and distribution equipment described in paragraphs (o) as "distributing equipment and plant (including structures) of a distributor of water" or (p) as "production and distributing equipment and plant (including structures) of a distributor of heat."

Industry consultations have established that this rate no longer reflects the estimated useful life of such equipment. The budget proposes that the CCA rate be increased from 4 per cent to 8 per cent for the following equipment currently included in Class 1:

- electrical generating equipment (other than buildings and other structures),
- production and distribution equipment (other than buildings and other structures) of a producer or distributor of heat, and
- distribution equipment (other than buildings and other structures) for a distributor of water (other than for consumption, disposal or treatment).

The 8-per-cent rate will apply to equipment acquired after February 27, 2000, that has not been used or acquired for use prior to that date.

It is further proposed that combustion turbines that generate electricity (and any associated burners and compressors) be eligible for a separate class election. The general rule which would otherwise require the property to be transferred into the general UCC pool after five years will not apply.

The separate class election will only apply to equipment acquired after February 27, 2000, that has not been used or acquired for use prior to that date. The proposed election must be filed with the income tax return for the taxation year in which the property is acquired.

Related Provisions: Reg. 1101(5e), (5e.1) — Separate classes; 4600(1)(a), 4600(2)(a) — Qualified property; 4601(a)(i), (ii) — Qualified transportation equipment; 4604(1)(a), 4604(2)(a) — Approved project property.

History: Para. (k) amended by P.C. 1997-1033, s. 6, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after 1987.

Paras. (k) to (q) added by P.C. 1989-2464, s. 10, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 1]: "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "gas or oil well equipment" — Reg. 1104(2); "Minister", "property" — ITA 248(1); "railway system" — Reg. 1104(2); "structure" — Reg 1102(5), (5.1); "systems software" — Reg. 1104(2).

Interpretation Bulletins: IT-79R3: CCA — Buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-304R2: Condominiums; IT-367R3: CCA — multiple-unit residential buildings; IT-482: Pipelines.

Class 2 — (6 per cent)

[Reg. 1100(1)(a)(ii)]

Property that is

(a) electrical generating equipment (except as specified elsewhere in this Schedule);

(b) a pipeline, other than gas or oil well equipment, unless, in the case of a pipeline for oil or natural gas, the Minister in consultation with the Minister of Energy, Mines and Resources, is or has been satisfied that the main source of supply for the pipeline is or was likely to be exhausted within 15 years from the date on which operation of the pipeline commenced;

(c) the generating or distributing equipment and plant (including structures) of a producer or distributor of electrical energy, except a property included in Class 10, 13, 14, 26 or 28;

(d) manufacturing and distributing equipment and plant (including structures) acquired primarily for the production or distribution of gas, except

(i) a property included in Class 10, 13 or 14

(ii) a property acquired for the purpose of producing or distributing gas that is normally distributed in portable containers,

(iii) a property acquired for the purpose of processing natural gas, before delivery of such gas to a distribution system, or

(iv) a property acquired for the purpose of producing oxygen or nitrogen;

(e) the distributing equipment and plant (including structures) of a distributor of water, except a property included in Class 10, 13 or 14; or

(f) the production and distributing equipment and plant (including structures) of a distributor of heat, except a property included in Class 10, 13 or 14

acquired by the taxpayer

(g) before 1988, or

(h) before 1990

(i) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(ii) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(iii) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987.

Related Provisions: Reg. 1101(5i) — Separate class for certain pipelines; Reg. 1103(2); 4600(2)(a) — Qualified property; 4604(2)(a) — Approved project property.

History: All that portion following para. (f) added by P.C. 1989-2464, s. 11, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subpara. (d)(iii) substituted and (d)(iv) added by P.C. 1986-2590, s. 20, November 20, 1986, *Canada Gazette*, Part II, December 10, 1986, applicable to property acquired after April 3, 1985.

Subpara. (d)(iii) substituted by P.C. 1985-890, s. 1, March 21, 1985, *Canada Gazette*, Part II, April 3, 1985, applicable to property acquired after April 3, 1985.

Para. (c) substituted by P.C. 1979-1488, s. 2, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Definitions [Reg. Sch. II:Cl. 2]: "building" — Reg 1102(5), (5.1); "gas or oil well equipment" — Reg. 1104(2); "Minister", "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-482: Pipelines.

Class 3 — (5 per cent)

[Reg. 1100(1)(a)(iii), 1100(1)(sb), (za.2), (zc)(i)(C)]

Property not included in any other class that is

(a) a building or other structure, or part thereof, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is a component part of a building that was under construction by or on behalf of the taxpayer on June 18, 1987;

(b) a breakwater;

(c) a dock;

(d) a trestle;

(e) a windmill;

(f) a wharf;

(g) an addition or alteration, made during the period that is after March 31, 1967 and before 1988, to a building that would have been included in this class during that period but for the fact that it was included in Class 20;

(h) a jetty acquired after May 25, 1976;

(i) a mole acquired after May 25, 1976;

(j) telephone, telegraph or data communication equipment, acquired after May 25, 1976, that is a wire or cable;

(k) an addition or alteration, other than an addition or alteration described in paragraph (k) of Class 6, made after 1987, to a building included, in whole or in part,

(i) in this class,

(ii) in Class 6 by virtue of subparagraph (a)(viii) thereof, or

(iii) in Class 20,

to the extent that the aggregate cost of all such additions or alterations to the building does not exceed the lesser of

(iv) $500,000, and

(v) 25 per cent of the aggregate of the amounts that would, but for this paragraph, be the capital cost of the building and any additions or alterations thereto included in this class or Class 6 or 20; or

(l) ancillary to a wire or cable referred to in paragraph (j) or Class 42 and that is supporting equipment such as a pole, mast, tower, conduit, brace, crossarm, guy or insulator.

Related Provisions: Reg. 1101(5e.2), (5f) — Railway trestles — separate classes; 1102(15)(a), 1103(2f); 4600(1)(a) — Qualified property; 4601(a)(iii) — Qualified transportation equipment; 4604(1)(a) — Approved project property.

History: Para. (j) substituted, (l) added, by P.C. 1994-139, s. 17, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired by a taxpayer after December 23, 1991, other than property acquired pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, except that

(a) where the taxpayer so elects in a letter that is filed with the Minister of National Revenue on or before August 8, 1994 or in a letter that is attached to the taxpayer's return of income filed in accordance with s. 150 of the *Income Tax Act* for the taxpayer's first taxation year ending after December 23, 1991, those provisions apply to property acquired by the taxpayer after the beginning of that year;

(b) with respect to property acquired before December 24, 1991 in respect of which an election referred to in para. (a) applies, para. (l) shall be read without reference to the words "or Class 42" and Schedule II shall be read without reference to Class 42; and

(c) with respect to property acquired after December 23, 1991 and before February 9, 1994, para. (l) shall be read without reference to the words "or Class 42".

Para. (a) substituted, (k) added, by P.C. 1989-2464, subsecs. 12(1), (3), December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Para. (g) substituted by subsec. 12(2) of the said P.C. 1989-2464, applicable in respect of property acquired after 1978.

Para. (g) substituted by P.C. 1978-3768, s. 2, December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Definitions [Reg. Sch. II:Cl. 3]: "amount" — ITA 248(1); "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-79R3: CCA — buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings.

Class 4 — (6 per cent)

[Reg. 1100(1)(a)(iv)]

Property that would otherwise be included in another class in this Schedule that is

(a) a railway system or a part thereof, except automotive equipment not designed to run on rails or tracks, that was acquired after the end of the taxpayer's 1958 taxation year and before May 26, 1976; or

(b) a tramway or trolley bus system or a part thereof, except property included in class 10, 13 or 14.

Related Provisions: Reg. 1102(10)(a), 1103(2), 1104(2)"tramway or trolley bus system".

Definitions [Reg. Sch. II:Cl. 4]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "railway system" — Reg. 1104(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "tramway or trolley bus system" — Reg. 1104(2).

Class 5 — (10 per cent)

[Reg. 1100(1)(a)(v)]

Property that is

(a) a chemical pulp mill or ground wood pulp mill including buildings, machinery and equipment, but not including hydro-electric power plants and their equipment, or

(b) an integrated mill producing chemical pulp or ground wood pulp and manufacturing therefrom paper, paper board or pulp board, including buildings, machinery and equipment, but not including hydro-electric power plants and their equipment,

but not including any property that was acquired after the end of the taxpayer's 1962 taxation year.

Definitions [Reg. Sch. II:Cl. 5]: "building" — Reg 1102(5), (5.1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Class 6 — (10 per cent)

[Reg. 1100(1)(a)(vi), 1100(1)(sb), (zc)(i)(D)]

Property not included in any other class that is

(a) a building of

(i) frame,

(ii) log,

(iii) stucco on frame,

(iv) galvanized iron, or

(v) corrugated metal,

construction, including component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators, if the building

(vi) is used by the taxpayer for the purpose of gaining or producing income from farming or fishing,

(vii) has no footings or any other base support below ground level,

(viii) was acquired by the taxpayer before 1979 and is not a building described in subparagraph (vi) or (vii),

(ix) was acquired by the taxpayer after 1978 under circumstances such that

(A) he was obligated to acquire the building under the terms of an agreement in writing entered into before 1979, and

(B) the installation of footings or any other base support of the building was commenced before 1979, or

(x) was acquired by the taxpayer after 1978 under circumstances such that

(A) he commenced construction of the building before 1979, or

(B) the construction of the building was commenced under the terms of an agreement in writing entered into by him before 1979, and

the installation of footings or any other base support of the building was commenced before 1979;

(b) a wooden breakwater;

(c) a fence;

(d) a greenhouse;

(e) an oil or water storage tank;

(f) a railway tank car acquired before May 26, 1976;

(g) a wooden wharf;

(h) an aeroplane hangar acquired after the end of the taxpayer's 1958 taxation year;

(i) an addition or alteration, made

(A) during the period that is after March 31, 1967 and before 1979, or

(B) after 1978 if the taxpayer was obligated to have it made under the terms of an agreement in writing entered into before 1979,

to a building that would have been included in this class during that period but for the fact that it was included in Class 20;

(j) a railway locomotive acquired after May 25, 1976, but not including an automotive railway car; or

Proposed Amendment — Railway locomotives

Federal budget, supplementary information, February 28, 2000: [See under Class 35 — ed.]

(k) an addition or alteration, made after 1978 to a building included in this class by virtue of subparagraph (a)(viii), to the extent that the aggregate cost of all such additions and alterations to the building does not exceed $100,000.

Related Provisions: Reg. 1102(15)(a), 1103(2f); 4600(1)(a) — Qualified property; 4601(b)(i) — Qualified transportation equipment; 4604(1)(a) — Approved project property.

History: Subpara. (a)(v) substituted by P.C. 1994-139, s. 18, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1989 *et seq.* with respect to property acquired after 1987.

All that portion of para. (a) following subpara. (v) substituted by P.C. 1978-3768, subsec. 3(1), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Para. (i) substituted by P.C. 1978-3768, subsec. 3(2), December 14, 1978, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Para. (k) added by P.C. 1978-3768, subsec. 3(3), December 14, 1978, *Canada Gazette*, Part II, December 14, 1978, effective January 1, 1979.

Definitions [Reg. Sch. II:Cl. 6]: "building" — Reg 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "farming", "fishing", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-79R3: CCA — buildings or other structures; IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings.

Class 7 — (15 per cent)

[Reg. 1100(1)(a)(vii)]

Property that is

(a) a canoe or rowboat;

(b) a scow;

(c) a vessel, but not including a vessel

(i) of a separate class prescribed by subsection 1101(2a), or

(ii) included in Class 41;

(d) furniture, fittings and equipment attached to a property included in this class, but not including radiocommunication equipment;

(e) a spare engine for a property included in this class;

(f) a marine railway; or

(g) a vessel under construction, other than a vessel included in Class 41.

Related Provisions: Reg. 1101(2), (2b) — Separate class for certain property in Class 7; Reg. 4601(e)(i), (ii) — Qualified transportation equipment.

History: Paras. (c), (g) substituted by P.C. 1989-2464, s. 13, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 7]: "class" — Reg. 1102(1)–(3), (14), (14.1); "prescribed", "property" — ITA 248(1).

Interpretation Bulletins: IT-267R2: CCA — vessels; IT-317R: Radio and television equipment.

Class 8 — (20 per cent)

[Reg. 1100(1)(a)(viii), 1100(1)(sb), (zc)(i)(E), (F)]

Property not included in Class 1, 2, 7, 9, 11 or 30 that is

(a) a structure that is manufacturing or processing machinery or equipment;

(b) tangible property attached to a building and acquired solely for the purpose of

(i) servicing, supporting, or providing access to or egress from, machinery or equipment,

(ii) manufacturing or processing, or

(iii) any combination of the functions described in subparagraphs (i) and (ii);

(c) a building that is a kiln, tank or vat, acquired for the purpose of manufacturing or processing;

(d) a building or other structure, acquired after February 19, 1973, that is designed for the purpose of preserving ensilage on a farm;

(e) a building or other structure, acquired after February 19, 1973, that is

(i) designed to store fresh fruits or fresh vegetables at a controlled level of temperature and humidity, and

(ii) to be used principally for the purpose of storing fresh fruits or fresh vegetables by or for the person or persons by whom they were grown;

(f) electrical generating equipment acquired after May 25, 1976, if

(i) the taxpayer is not a person whose business is the production for the use of or distribution to others of electrical energy,

(ii) the equipment is auxiliary to the taxpayer's main power supply, and

(iii) the equipment is not used regularly as a source of supply;

(g) electrical generating equipment, acquired after May 25, 1976, that has a maximum load capacity of not more than 15 kilowatts;

(h) portable electrical generating equipment acquired after May 25, 1976;

(i) a tangible capital property that is not included in another class in this Schedule except

(i) land or any part thereof or any interest therein,

(ii) an animal,

(iii) a tree, shrub, herb or similar growing thing,

(iv) an oil or gas well,

(v) a mine,

(vi) a specified temporary access road of the taxpayer,

(vii) radium,

(viii) a right of way,

(ix) a timber limit,

(x) a tramway track, or

(xi) property of a separate class prescribed by subsection 1101(2a);

(j) property not included in any other class that is radiocommunication equipment acquired after May 25, 1976;

(k) a rapid transit car that is used for the purpose of public transportation within a metropolitan area and is not part of a railway system;

(l) an outdoor advertising poster panel or bulletin board; or

(m) a greenhouse constructed of a rigid frame and a replaceable, flexible plastic cover.

Related Provisions: Reg. 1101(5l), (5p), 1103(2g) — Separate class for certain equipment; Reg. 1102(15)(b), 1103(2a) — Election to include property in Class 8; 1104(2) — Definition of "specified temporary access road"; 4600(2)(c) — Qualified property; 4601(a)(iv), 4601(b)(ii), 4601(c)(ii), 4601(e)(ii), 4601(g) — Qualified transportation equipment; 4604(1)(a), 4604(2)(c) — Approved project property; *Interpretation Act* 35(1) — Definition of "radiocommunication".

History: Subparas. (i)(iv) and (i)(vi) of Class 8 amended by P.C. 1999-629, s. 12, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to property acquired after March 6, 1996.

The portion before para. (a) amended by P.C. 1997-1033, s. 7, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after 1987.

Para. (m) added by P.C. 1994-139, s. 19, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1989 *et seq.* with respect to property acquired after 1987.

That portion preceding para. (a) substituted, para. (l) added, by P.C. 1989-2464, s. 14, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Para. (k) added by P.C. 1985-2673, s. 1, August 28, 1985, *Canada Gazette*, Part II, September 18, 1985.

Subpara. (i)(iv) substituted by P.C. 1980-3120, s. 1, November 13, 1980, *Canada Gazette*, Part II, November 26, 1980.

Definitions [Reg. Sch. II:Cl. 8]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "capital property" — ITA 54, 248(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "oil or gas well", "person", "prescribed", "property" — ITA 248(1); "railway system" — Reg. 1104(2); "specified temporary access road" — Reg. 1104(2); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-79R3: CCA — buildings and other structures; IT-317R: Radio and television equipment; IT-472: Class 8 property; IT-482: Pipelines.

Class 9 — (25 per cent)

[Reg. 1100(1)(a)(ix)]

Property acquired before May 26, 1976, other than property included in Class 30, that is

(a) electrical generating equipment, if

(i) the taxpayer is not a person whose business is the production for the use of or distribution to others of electrical energy,

(ii) the equipment is auxiliary to the taxpayer's main power supply, and

(iii) the equipment is not used regularly as a source of supply,

(b) radar equipment,

(c) radio transmission equipment,

(d) radio receiving equipment,

(e) electrical generating equipment that has a maximum load capacity of not more than 15 kilowatts, or

(f) portable electrical generating equipment,

and property acquired after May 25, 1976 that is

(g) an aircraft;

(h) furniture, fittings or equipment attached to an aircraft; or

(i) a spare part for an aircraft, or for furniture, fittings or equipment attached to an aircraft.

Related Provisions: Reg. 4600(2)(i) — Qualified property; 4601(f) — Qualified transportation equipment; 4604(2)(h) — Approved project; *Interpretation Act* 35(1) — Definition of "radio".

Definitions [Reg. Sch. II:Cl. 9]: "business", "person", "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-317R: Radio and television equipment.

Class 10 — (30 per cent)

[Reg. 1100(1)(a)(x), 1100(1)(zc)(i)(G)]

Property not included in any other class that is

(a) automotive equipment, including a trolley bus, but not including

(i) an automotive railway car acquired after May 25, 1976,

(ii) a railway locomotive, or

(iii) a tramcar,

(b) a portable tool acquired after May 25, 1976, for the purpose of earning rental income for short terms, such as hourly, daily, weekly or monthly, except a property described in Class 12,

(c) harness or stable equipment,

(d) a sleigh or wagon,

(e) a trailer, including a trailer designed to be hauled on both highways and railway tracks,

(f) general-purpose electronic data processing equipment and systems software therefor, including ancillary data processing equipment, acquired after May 25, 1976, but not including property that is principally or is used principally as

(i) electronic process control or monitor equipment,

(ii) electronic communications control equipment,

(iii) systems software for a property referred to in subparagraph (i) or (ii), or

(iv) data handling equipment unless it is ancillary to general-purpose electronic data processing equipment,

(f.1) a designated underground storage cost, or

(f.2) an unmanned telecommunication spacecraft designed to orbit above the earth,

and property (other than property included in Class 41 or property included in Class 43 that is described in paragraph (b) of that Class) that would otherwise be included in another Class in this Schedule, that is

(g) a building or other structure (other than property described in paragraph (l) or (m)) that would otherwise be included in Class 1, 3 or 6 and that was acquired for the purpose of gaining or producing income from a mine, except

(i) a property included in Class 28,

(ii) a property acquired principally for the purpose of gaining or producing income from the processing of ore from a mineral resource that is not owned by the taxpayer,

(iii) an office building not situated on the mine property, or

(iv) a refinery that was acquired by the taxpayer

(A) before November 8, 1969, or

(B) after November 7, 1969 and that had been used before November 8, 1969 by any person with whom the taxpayer was not dealing at arm's length;

(h) contractor's movable equipment, including portable camp buildings, acquired for use in a construction business or for lease to another taxpayer for use in that other taxpayer's construction business, except a property included in

(i) this Class by virtue of paragraph (t),

(ii) a separate class prescribed by subsection 1101(2b), or

(iii) Class 22 or 38;

(i) a floor of a roller skating rink;

(j) gas or oil well equipment;

(k) property (other than a property included in Class 28 or property described in paragraph (l) or (m)) that was acquired for the purpose of gaining or producing income from a mine and that is

(i) a structure that would otherwise be included in Class 8, or

(ii) machinery or equipment,

except a property acquired before May 9, 1972 for the purpose of gaining or producing income from the processing of ore after extraction from a mineral resource that is not owned by the taxpayer;

(l) property acquired after the 1971 taxation year for the purpose of gaining or producing income from a mine and providing services to the mine or to a community where a substantial proportion of the persons who ordinarily work at the mine reside, if such property is

(i) an airport, dam, dock, fire hall, hospital, house, natural gas pipeline, power line, recreational facility, school, sewage disposal plant, sewer, street lighting system, town hall, water pipeline, water pumping station, water system, wharf or similar property,

(ii) a road, sidewalk, aeroplane runway, parking area, storage area or similar surface construction, or

(iii) machinery or equipment ancillary to any of the property described in subparagraph (i) or (ii),

but is not

(iv) a property included in Class 28, or

(v) a railway not situated on the mine property;

(m) property acquired after March 31, 1977, principally for the purpose of gaining or producing income from a mine, if such property is

(i) railway track and grading including components such as rails, ballast, ties and other track material,

(ii) property ancillary to the track referred to in subparagraph (i) that is

(A) railway traffic control or signalling equipment, including switching, block signalling, interlocking, crossing protection, detection, speed control or retarding equipment, or

(B) a bridge, culvert, subway, trestle or tunnel,

(iii) machinery or equipment ancillary to any of the property referred to in subparagraph (i) or (ii), or

(iv) conveying, loading, unloading or storing machinery or equipment, including a structure, acquired for the purpose of shipping output from the mine by means of the track referred to in subparagraph (i),

but is not

(v) property included in Class 28, or

(vi) for greater certainty, rolling stock;

(n) property that was acquired for the purpose of cutting and removing merchantable timber from a timber limit and that will be of no further use to the taxpayer after all merchantable timber that the taxpayer is entitled to cut and remove from the limit has been cut and removed, unless the taxpayer has elected to include another property of this kind in another class in this Schedule;

(o) mechanical equipment acquired for logging operations, except a property included in Class 7;

(p) an access road or trail for the protection of standing timber against fire, insects or disease;

(q) property acquired for a motion picture drive-in theatre;

(r) property included in this class by virtue of subsection 1102(8) or (9), except a property included in Class 28;

(s) a motion picture film or video tape acquired after May 25, 1976, except a property included in paragraph (w) or in Class 12;

Proposed Amendment — Class 10(s)

(s) a motion picture film or video-tape acquired after May 25, 1976, except a property included in paragraph (w) or (x) or in Class 12,

Application: The December 12, 1995 draft regulations (Canadian film tax credit), subsec. 5(1), will amend para. (s) of Class 10 to read as above, applicable to 1995 *et seq.*

(t) a property acquired after May 22, 1979 that is designed principally for the purpose of

(i) determining the existence, location, extent or quality of accumulations of petroleum or natural gas,

(ii) drilling oil or gas wells, or

(iii) determining the existence, location, extent or quality of mineral resources,

except a property included in a separate class prescribed by subsection 1101(2b);

(u) property acquired after 1980 to be used primarily in the processing in Canada of heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent that is

(i) property that would otherwise be included in Class 8 except railway rolling stock or a property described in paragraph (j) of Class 8,

(ii) an oil or water storage tank,

(iii) a powered industrial lift truck that would otherwise be included in paragraph (a), or

(iv) property that would otherwise be included in paragraph (f);

(v) property acquired after August 31, 1984 that is equipment used for the purpose of effecting an interface between a cable distribution system and electronic products used by consumers of that system and that is designed primarily

(i) to augment the channel capacity of a television receiver or radio,

(ii) to decode pay television or other signals provided on a discretionary basis, or

(iii) to achieve any combination of functions described in subparagraphs (i) and (ii); or

(w) a certified production acquired after 1987.

Proposed Amendment — Class 10(w), (x)

(w) a certified production acquired after 1987 and before March 1996, or

(x) a Canadian film or video production.

Application: The December 12, 1995 draft regulations (Canadian film tax credit), subsec. 5(2), will amend para. (w) and add para. (x) to Class 10, applicable to 1995 *et seq.*

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; Reg. 1100(1)(m) — Additional allowance — Canadian film or video production; Reg. 1100(1)(zg) — accelerated CCA for year 2000 compliant hardware; Reg. 1100(2)(a)(iii) — Half-year rule inapplicable to property in para. 10(w); Reg. 1100(21), (21.1) — Certified films and video tapes; Reg. 1101(5a) — Separate class for spacecraft under Class 10(f.2); Reg. 1101(5k) — Separate class for property under Class 10(w); Reg. 1101(5k.1) — Separate class for certain property under Class 10(x); Reg. 1101(5p), 1103(2g) — Separate class for certain equipment under Class 10(f); Reg. 1102(8)(c), 1102(9)(c) — Generating equipment; Reg. 1102(18) — Townsite costs; Reg. 1102(18), 1103(2e); Reg. 1104(2) — Definitions; Reg. 1104(5), (6), (6.1) — Income from a mine; Reg. 1106 — Certificate for Class 10(x); Reg. 1205(1)(a)(vi)(D), 1205(1)(b) — Earned depletion base; Reg. 1206(1)"enhanced recovery equipment"(a), 1206(1)"processing property", 1206(1)"tertiary recovery equipment"; Reg. 4600(1)(b), 4600(2)(e), (g), (h) — Qualified property; Reg. 4601(a)(v), 4601(c)(i), (ii), 4601(d) — Qualified transportation equipment; Reg. 4604(1)(b), 4604(2)(d), (f), (g) — Approved project property; Reg. Sch. II Cl. 16(g) — Large trucks and tractors; Reg. Sch. II Cl. 41.

History: That portion of Class 10 following para. (f.2) and preceding para. (g) substituted by P.C. 1994-230, s. 9, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable with respect to property acquired after February 25, 1992.

Para. (e) substituted by P.C. 1994-139, subsec. 20(1), January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable with respect to property acquired after December 23, 1991.

That portion of para. (h) preceding subpara. (i) substituted by the said P.C. 1994-139, subsec. 20(2), applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991; or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Para. (n) substituted by the said P.C. 1994-139, subsec. 20(3), applicable to 1986 *et seq.*

That portion between para. (f.1) and subpara. (g)(i) substituted (para. (f.2) being added), and subpara. (h)(iii) substituted, by P.C. 1989-2464, s. 15, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Para. (s) substituted and para. (w) added, by P.C. 1988-2795, subsecs. 4(1) and (2), December 22, 1988, *Canada Gazette*, Part II, January 18, 1989. Para. (s) is applicable in respect of property acquired after 1987 and para. (w), in respect of property acquired after 1987 other than property

(a) acquired after 1987 pursuant to an agreement in writing entered into by the taxpayer before June 18, 1987 or pursuant to a prospectus, preliminary prospectus, registration statement or offering memorandum filed before June 18, 1987 with a public authority in Canada where the document was required to be filed before any trade in securities may commence; or

(b) that is a film or tape acquired in 1988 that is part of a series of films or tapes where the series includes films or tapes that are included in Class 12 in Schedule II otherwise than by reason of this paragraph and the film or tape is produced at a fixed price or by reference to a formula under a production option agreement entered into by a licensed broadcaster or *bona fide* film or tape distributor before 1988.

Para. (v) added by P.C. 1986-2770, s. 13, December 11, 1986, *Canada Gazette*, Part II, effective commencing May 23, 1985.

Para. (u) added by P.C. 1981-3329, s. 14, November 26, 1981, *Canada Gazette*, Part II, December 9, 1981, effective January 1, 1981.

Para. (f.1) added by P.C. 1980-3279, s. 4, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980, effective December 12, 1979.

Subpara. (g)(v) revoked, all that portion of para. (k) following subpara. (ii) substituted by P.C. 1980-288, January 25, 1980, *Canada Gazette*, Part II, February 13, 1980.

Paras. (h) substituted, (t) added by P.C. 1979-1487, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

All that portion of para. (g) preceding subpara. (i) and all that portion of para. (k) preceding subpara. (i) substituted, para. (m) added by P.C. 1978-344, subsecs. 6(1)–(3), February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Selected Cases [Class 10]: *Cargill Ltd. v. Canada*, [1996] 3 C.T.C. 2023 (TCC) (Other uses of equipment did not derogate from hauling or transporting function).

Definitions [Reg. Sch. II:Cl. 10]: "arm's length" — ITA 251(1); "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian film or video production" — Reg. 1106(3); "certified production" — Reg. 1104(2); "class" — Reg. 1102 (1)–(3), (14), (14.1); "designated underground storage cost", "gas or oil well equipment", "general-purpose electronic data processing equipment" — Reg. 1104(2); "income from a mine" — Reg. 1104(5), (6), (6.1)(a), (b); "mine" — Reg. 1104(6)(b); "mineral resource", "office", "oil or gas well", "person", "prescribed", "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "structure" — Reg 1102(5), (5.1); "systems software" — Reg. 1104(2); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-306R2: Contractor's movable equipment; IT-476: Gas and oil exploration and production equipment; IT-482: Pipelines; IT-501: Logging assets.

I.T. Technical News: No. 14 (millennium bug expenditures).

Class 10.1 — (30 per cent)

[Reg. 1100(1)(a)(x.1)]

Property that would otherwise be included in Class 10 that is a passenger vehicle, the cost of which to the taxpayer exceeds $20,000 or such other amount as may be prescribed for the purposes of subsection 13(2) of the Act.

Related Provisions: Reg. 1101(1af) — Separate class; Reg. 1100(2.5) — 50% CCA in year of disposition; Reg. 7307 (prescribed amount).

History: Class 10.1 added by P.C. 1991-2272, s. 5, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Definitions [Reg. Sch. II:Cl. 10.1]: "amount", "passenger vehicle", "prescribed", "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-521R: Motor vehicle expenses claimed by self-employed individuals; IT-522R: Vehicle, travel and sales expenses of employees.

I.T. Technical News: No. 10 (1997 deduction limits and benefit rates for automobiles).

Class 11 — (35 per cent)

[Reg. 1100(1)(a)(xi)]

Property not included in any other class that is used to earn rental income and that is

(a) an electrical advertising sign owned by the manufacturer thereof, acquired before May 26, 1976; or

(b) an outdoor advertising poster panel or bulletin board acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987.

History: Para. (b) substituted by P.C. 1989-2464, s. 16, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 11]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 12 — (100 per cent)

[Reg. 1100(1)(a)(xii), 1100(1)(l)]

Property not included in any other class that is

(a) a book that is part of a lending library;

(b) chinaware, cutlery or other tableware;

(c) a kitchen utensil costing less than

(i) $100, if acquired before May 26, 1976, or

(ii) $200, if acquired after May 25, 1976;

(d) a die, jig, pattern, mould or last;

(e) a medical or dental instrument costing less than

(i) $100, if acquired before May 26, 1976, or

(ii) $200, if acquired after May 25, 1976;

(f) a mine shaft, main haulage way or similar underground work designed for continuing use, or any extension thereof, sunk or constructed after the mine came into production, to the extent that the property was acquired before 1988;

(g) linen;

(h) a tool costing less than

(i) $100, if acquired before May 26, 1976, or

(ii) $200, if acquired after May 25, 1976;

(i) a uniform;

(j) the cutting or shaping part in a machine;

(k) apparel or costume, including accessories used therewith, used for the purpose of earning rental income;

(l) a video tape acquired before May 26, 1976;

(m) a motion picture film or video tape that is a television commercial message;

(n) a certified feature film or certified production;

(o) computer software acquired after May 25, 1976, but not including systems software or property acquired after August 8, 1989 and before 1993 that is described in paragraph (s);

(p) a metric scale or a scale designed for ready conversion to metric weighing, acquired after March 31, 1977 and before 1984 for use in a retail business and having a maximum weighing capacity of 100 kilograms;

(q) a designated overburden removal cost; or

(r) a videotape cassette acquired after February 15, 1984 for the purpose of renting and that is not expected to be rented to any one person for more than 7 days in any 30 day period;

Proposed Amendment — Class 12(r)

(r) a video-cassette acquired after February 15, 1984, or a video-laser disk acquired after December 12, 1995, for the purpose of renting and that is not expected to be rented to any one person for more than 7 days in any 30-day period;

Application: The December 12, 1995 draft regulations (Canadian film tax credit), s. 6, will amend para. (r) of Class 12 to read as above, applicable to property acquired after December 12, 1995.

and property that would otherwise be included in another class in this Schedule that is

(s) acquired by the taxpayer after August 8, 1989 and before 1993, for use in a business of selling goods or providing services to consumers that is carried on in Canada, or for lease to another taxpayer for use by that other taxpayer in such a business, and that is

(i) electronic bar code scanning equipment designed to read bar codes applied to goods held for sale in the ordinary course of the business,

(ii) a cash register or similar sales recording device designed with the capability of calculating and recording sales tax imposed by more than one jurisdiction in respect of the same sale,

(iii) equipment or computer software that is designed to convert a cash register or similar sales recording device to one having the capability of calculating and recording sales tax imposed by more than one jurisdiction in respect of the same sale, or

(iv) electronic equipment or computer software that is ancillary to property described in subparagraph (i), (ii) or (iii) and all or substantially all the use of which is in conjunction with that property.

Related Provisions: ITA 127.52(1)(c) — Add-back of CCA on film properties for minimum tax purposes; ITA 237.1 — Tax shelters; Reg. 1100(1)(zg), (zh) — accelerated CCA for year 2000 compliant software; Reg. 1100(2)(a)(iii) — Half-year rule applies to some Class 12 property; Reg. 1100(20.1) — Limitation on CCA claim for computer software tax shelter property; Reg. 1100(21), (21.1) — Certified films and video tapes; Reg. 1101(5r) — Separate class for all computer software tax shelter property; Reg. 1104(2), (7) — Definitions.

History: Para. (f) substituted by P.C. 1990-2780, s. 14, December 20, 1990, *Canada Gazette*, Part II, January 16, 1991, applicable to 1988 *et seq.*

Para. (o) amended, and all that portion of Cl. 12 following para. (r) added, by P.C. 1990-2067, s. 2, September 27, 1990, *Canada Gazette*, Part II, October 10, 1990.

Para. (n) substituted by P.C. 1986-477, s. 3, February 27, 1986, *Canada Gazette*, Part II, March 19, 1986, applicable in respect of a motion picture film or video tape, the principal photography or taping of which commenced after 1985.

Para. (r) added by P.C. 1985-2277, s. 20, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

Para. (p) substituted by P.C. 1981-733, s. 2, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981.

Para. (q) added by P.C. 1979-1487, s. 5, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective for the period commencing November 17, 1978.

Para. (p) added by P.C. 1978-344, s. 7, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Definitions [Reg. Sch. II:Cl. 12]: "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "certified feature film", "certified production" — Reg. 1104(2); "class" — Reg. 1102 (1)–(3), (14), (14.1); "computer software", "designated overburden removal cost" — Reg. 1104(2); "mine" — Reg. 1104(7)(a); "person", "property" — ITA 248(1); "systems software" — Reg. 1104(2); "taxpayer" — ITA 248(1); "television commercial message" — Reg. 1104(2).

Interpretation Bulletins: IT-422: Definition of tools; IT-441: Certified feature productions.

I.T. Technical News: No. 12 (millennium bug expenditures); No. 14 (millennium bug expenditures).

Class 13

[Reg. 1100(1)(b), Schedule III]

Property that is a leasehold interest and property acquired by a taxpayer that would, if that property had been acquired by a person with whom the taxpayer was not dealing at arm's length at the time the property was acquired by the taxpayer, be a leasehold interest of that person, except

(a) an interest in minerals, petroleum, natural gas, other related hydrocarbons or timber and property relating thereto or in respect of a right to explore for,

drill for, take or remove minerals, petroleum, natural gas, other related hydrocarbons or timber;

(b) that part of the leasehold interest that is included in another class in this Schedule by reason of subsection 1102(5) or (5.1); or

(c) a property that is included in Class 23.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 13 property; Reg. 1700(4) — CCA — Farming/fishing property owned since before 1972: leasehold interests.

History: That portion of Class 13 preceding para. (a), and para. (b), substituted by P.C. 1994-139, s. 21, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Definitions [Reg. Sch. II:Cl. 13]: "arm's length" — ITA 251(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "mineral" — Reg. 1104(3); "person", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-324: Emphyteutic lease.

Class 14

[Reg. 1100(1)(c) — apportioned over the life of the property (see also Class 44)]

Property that is a patent, franchise, concession or licence for a limited period in respect of property, except

(a) a franchise, concession or licence in respect of minerals, petroleum, natural gas, other related hydrocarbons or timber and property relating thereto (except a franchise for distributing gas to consumers or a licence to export gas from Canada or from a province) or in respect of a right to explore for, drill for, take or remove minerals, petroleum, natural gas, other related hydrocarbons or timber;

(b) a leasehold interest;

(c) a property that is included in Class 23;

(d) a licence to use computer software; or

(e) a property that is included in Class 44.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 14 property; Reg. 1103(2h) — Election for patent to be in Class 14 instead of Class 44; Reg. Sch. II:Cl. 44 — Patent or right to use patented information.

History: Para. (e) added by P.C. 1994-231, s. 4, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Para. (d) added by P.C. 1983-3411, s. 2, November 3, 1983, *Canada Gazette*, Part II, November 23, 1983, applicable in respect of property acquired after May 25, 1976.

Definitions [Reg. Sch. II:Cl. 14]: "Canada" — ITA 255, *Interpretation Act* 35(1); "computer software" — Reg. 1104(2); "mineral" — Reg. 1104(3); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "related" — ITA 251(2)–(6).

Interpretation Bulletins: IT-143R2: Meaning of "eligible capital expenditure"; IT-477: Patents, franchises, concessions and licences.

Class 15

[Reg. 1100(1)(f)]

Property that would otherwise be included in another class in this Schedule and that

(a) was acquired for the purpose of cutting and removing merchantable timber from a timber limit, and

(b) will be of no further use to the taxpayer after all merchantable timber that the taxpayer is entitled to cut and remove from the limit has been cut and removed,

except

(c) property that the taxpayer has, in the taxation year or a preceding taxation year, elected not to include in this class, or

(d) a timber resource property.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 15 property; Reg. 4604(2)(g) — Approved project property.

History: Class 15 substituted by P.C. 1994-139, s. 22, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions [Reg. Sch. II:Cl. 15]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "timber resource property" — ITA 13(21), 248(1).

Interpretation Bulletins: IT-501: Logging assets.

Class 16 — (40 per cent)

[Reg. 1100(1)(a)(xiii)]

Property acquired before May 26, 1976 that is

(a) an aircraft,

(b) furniture, fittings or equipment attached to an aircraft, or

(c) a spare part for a property included in this class,

property acquired after May 25, 1976 that is

(d) a taxicab,

property acquired after November 12, 1981 that is

(e) a motor vehicle that

(i) would be an automobile as that term is defined in subsection 248(1) of the Act, if that definition were read without reference to paragraph (d) thereof,

(ii) was acquired for the purpose of renting or leasing, and

(iii) is not expected to be rented or leased to any person for more than 30 days in any 12 month period,

property acquired after February 15, 1984 that is

(f) a coin-operated video game or pinball machine,

and property acquired after December 6, 1991 that is

(g) a truck or tractor designed for hauling freight, and that is primarily so used by the taxpayer or a person with whom the taxpayer does not deal at arm's length in a business that includes hauling freight, and that has a "gross vehicle weight rating" (as that term is defined in subsection 2(1) of the *Motor Vehicle Safety Regulations*) in excess of 11,788 kg.

Related Provisions: Reg. 4601(c)(i)(A) — Qualified transportation equipment.

History: All that portion of Class 16 following para. (d) substituted, para. (g) added, by P.C. 1994-139, s. 23, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after December 31, 1987, except that all that portion following para. (e), in its application before December 7, 1991, shall be read as follows:

and property acquired after February 15, 1984 that is

(f) a coin-operated video game or pinball machine.

Para. (e) substituted by P.C. 1991-2272, s. 6, November 21, 1991, *Canada Gazette*, Part II, December 4, 1991, applicable to taxation years and fiscal periods commencing after June 7, 1987 that end after 1987.

All that portion following para. (d) substituted by P.C. 1985-2277, s. 21, July 24, 1985, *Canada Gazette*, Part II, August 7, 1985.

All that portion of Class 16 of Schedule II following para. (c) substituted by P.C. 1983-1083, s. 4, April 14, 1983, *Canada Gazette*, Part II, April 27, 1983, applicable in respect of property (other than property described in Class 31 of Schedule II or paragraph (n) of Class 12 of that schedule) acquired or disposed of after November 12, 1981, property described in the said Class 31 acquired or disposed of after 1981 and property described in paragraph (n) of the said Class 12 acquired or disposed of after 1982.

Definitions [Reg. Sch. II:Cl. 16]: "arm's length" — ITA 251(1); "automobile", "business" — ITA 248(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "month" — *Interpretation Act* 35(1); "motor vehicle", "person", "property", "taxpayer" — ITA 248(1).

Interpretation Bulletins: IT-317R: Radio and television equipment.

Class 17 — (8 per cent)
[Reg. 1100(1)(a)(xiv)]

Property that would otherwise be included in another class in this Schedule that is

(a) a telephone system, telegraph system, or a part thereof, acquired before May 26, 1976, except

(i) radiocommunication equipment, or

(ii) a property included in Class 10, 13, 14 or 28,

and property not included in any other class, acquired after May 25, 1976, that is

(b) telephone, telegraph or data communication switching equipment, except

(i) equipment installed on customers' premises, or

(ii) property that is principally electronic equipment or systems software therefor; or

(c) a road (other than a specified temporary access road of the taxpayer), sidewalk, airplane runway, parking area, storage area or similar surface construction.

Related Provisions: Reg. 1103(2), 1104(2)"specified temporary access road", "telegraph system", "telephone system"; Sch. II:Cl. 29.

History: Para. (c) of Class 17 amended by P.C. 1999-629, s. 13, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to property acquired after March 6, 1996.

Definitions [Reg. Sch. II:Cl. 17]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "specified temporary access road" — Reg. 1104(2); "systems software" — Reg. 1104(2); "taxpayer" — ITA 248(1); "telegraph system", "telephone system" — Reg. 1104(2).

Class 18 — (60 per cent)
[Reg. 1100(1)(a)(xv)]

Property that is a motion picture film acquired before May 26, 1976, except

(a) a television commercial message; or

(b) a certified feature film.

Definitions [Reg. Sch. II:Cl. 18]: "certified feature film" — Reg. 1104(2); "property" — ITA 248(1); "television commercial message" — Reg. 1104(2).

Class 19 — (50 per cent or 20 per cent)
[Reg. 1100(1)(n), (o)]

Property acquired by the taxpayer after June 13, 1963 and before January 1, 1967 that would otherwise be included in Class 8 if,

(a) in the taxation year in which the property was acquired,

(i) the taxpayer was an individual who was resident in Canada for not less than 183 days, or

(ii) the taxpayer was a corporation that had a degree of Canadian ownership;

(b) the property was acquired for use in Canada in a business carried on by the taxpayer that,

(i) for the fiscal period in which the property was acquired, or

(ii) for the fiscal period in which the business first commenced selling goods in reasonable commercial quantities,

whichever was later, was a business in which the aggregate of

(iii) its net sales, as they would be determined under paragraphs 71A(2)(d) and (f) of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*), from the sale of goods processed or manufactured in Canada by the business,

(iv) an amount equal to that part of its gross revenue that is rent from goods processed or manufactured in Canada in the course of the business, and

(v) its gross revenue from advertisements in a newspaper or magazine produced by the business,

was not less than 2/3 of the amount by which the gross revenue from the business for the period exceeded the aggregate of each amount paid or credited in the period to a customer of the business as a bonus, rebate or discount or for returned or damaged goods, and was not a business that was principally

(vi) operating a gas or oil well,

(vii) logging,

(viii) mining,

(ix) construction, or

(x) a combination of two or more of the activities referred to in subparagraphs (vi) to (ix); and

(c) the property had not been used for any purpose whatever before it was acquired by the taxpayer.

Related Provisions: Reg. 1103(2a) — Election to include property in Class 8.

History: Class 19 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. Sch. II:Cl. 19]: "amount", "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "fiscal period" — ITA 249.1; "gross revenue", "individual" — ITA 248(1); "mining" — Reg. 1104(3); "property" — ITA 248(1); "resident in Canada" — ITA 250; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

Class 20 — (20 per cent)
[Reg. 1100(1)(p)]

Property that would otherwise be included in Class 3 or 6

(a) that was acquired after December 5, 1963 and before April 1, 1967 that is

(i) a building,

(ii) an extension to a building, outside the previously existing walls or roof of the building, if the aggregate cost of the extensions added in the aforementioned period exceeded the lesser of

(A) $100,000, and

(B) 25 per cent of the capital cost to the taxpayer of the building on December 5, 1963, or

(iii) an addition or alteration to a property described in subparagraph (i) or (ii),

and that has been certified by the Minister of Industry, upon application by the taxpayer in such form as may be prescribed by the Minister of Industry,

(iv) to be situated in an area that was a designated area, as determined for the purposes of section 71A of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*),

(A) at the time the property was acquired,

(B) in a case where the property was built by the taxpayer, at the time construction was commenced, or

(C) in a case where the property was built for the taxpayer pursuant to a contract entered into by the taxpayer, at the time the contract was entered into, and

(v) to have not been used for any purpose whatever before it was acquired by the taxpayer; or

(b) the capital cost of which was included in the approved capital costs as defined in the *Area Development Incentives Act* upon which approved capital cost the Minister of Industry has based the amount of a development grant authorized under that Act.

Related Provisions: Reg. 1103(2f); 1704(d) — CCA — Farming and fishing: leasehold interests; 4600(1)(a) — Qualified property.

History: Class 20 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. Sch. II:Cl. 20]: "amount" — ITA 248(1); "building" — Reg 1102(5), (5.1); "Minister", "prescribed", "property", "taxpayer" — ITA 248(1).

Class 21 — (50 per cent)

[Reg. 1100(1)(q)]

Property that would otherwise be included in Class 8 or 19

(a) that was acquired after December 5, 1963 and before April 1, 1967 and that

(i) was acquired for use in a business carried on by the taxpayer that has been certified by the Minister of Industry, for the purposes of section 71A of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*), to be a new manufacturing or processing business in a designated area for the fiscal period in which the property was acquired or for a subsequent fiscal period, and

(ii) had not been used for any purpose whatever before it was acquired by the taxpayer; or

(b) the capital cost of which was included in the approved capital costs as defined in the *Area Development Incentives Act* upon which approved capital cost the Minister of Industry has based the amount of a development grant authorized under that Act.

Related Provisions: Reg. 1103(2a) — Election to include property in Class 8; Reg. 4600(2)(k) — Qualified property; 4604(2)(j) — Approved project property.

History: Class 21 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Definitions [Reg. Sch. II:Cl. 21]: "amount", "business" — ITA 248(1); "fiscal period" — ITA 249,1; "Minister", "property", "taxpayer" — ITA 248(1).

Class 22

[Reg. 1100(1)(a)(xvi)]

Property acquired by the taxpayer after March 16, 1964 and

(a) before 1988, or

(b) before 1990

(i) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(ii) that was under construction by or on behalf of the taxpayer on June 18, 1987

that is power-operated movable equipment designed for the purpose of excavating, moving, placing or compacting earth, rock, concrete or asphalt, except a property included in Class 7.

Related Provisions: Reg. 4600(2)(e) — Qualified property; 4603(a) — Qualified construction equipment; 4604(2)(d) — Approved project property; Reg. Sch. II:Cl. 38 — Earth-moving equipment acquired after 1987.

History: Class 22 substituted by P.C. 1989-2464, s. 17, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Class 22 substituted by P.C. 1979-1487, s. 6, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Definitions [Reg. Sch. II:Cl. 22]: "property", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-411R: Meaning of "construction"; IT-469R: CCA — earth-moving equipment.

Class 23 — (100 per cent)

[Reg. 1100(1)(a)(xvii)]

Property that is

(a) a leasehold interest or a concession in respect of land granted under or pursuant to an agreement in writing with the Canadian Corporation for the 1967 World Exhibition where such leasehold interest or concession is to expire not later than June 15, 1968;

(b) a building or other structure, including component parts, erected on land that is the subject matter of a leasehold interest or concession described in paragraph (a) where such building or other structure, including component parts, is of a temporary nature and is required by the agreement to be removed not later than June 15, 1968;

(c) a leasehold interest or licence in respect of land granted under or pursuant to an agreement in writing with the Expo 86 Corporation where such leasehold interest or licence is to expire not later than January 31, 1987; or

(d) a building or other structure, including component parts, erected on land that is the subject matter of a leasehold interest or licence described in paragraph (c) where such building or other structure, including component parts, is of a temporary nature and is required by the agreement to be removed not later than January 31, 1987.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 23 property.

History: Paras. (c) and (d) added by P.C. 1984-3995, s. 2, December 13, 1984, *Canada Gazette*, Part II, January 9, 1985, applicable in respect of property acquired after 1983.

Definitions [Reg. Sch. II:Cl. 23]: "building" — Reg 1102(5), (5.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "writing" — *Interpretation Act* 35(1).

Class 24 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property acquired after April 26, 1965 and before 1971

(a) that would otherwise be included in Class 2, 3, 6 or 8 and that

(i) was acquired primarily for the purpose of preventing, reducing or eliminating pollution of

(A) any of the inland, coastal or boundary waters of Canada, or

(B) any lake, river, stream, watercourse, pond, swamp or well in Canada,

by industrial waste, refuse or sewage created by operations in the course of carrying on a business by the taxpayer or that would be created by such operations if the property had not been acquired and used, and

(ii) had not been used for any purpose whatever before it was acquired by the taxpayer,

but not including property acquired for use in the production of by-products or the recovery of materials unless the by-products are produced from, or the materials are recovered from, materials that after April 26, 1965,

(iii) were being discarded as waste by the taxpayer, or

(iv) were commonly being discarded as waste by other taxpayers who carried on operations of a type similar to the operations carried on by the taxpayer,

and property acquired before 1999

(b) that would otherwise be included in another class in this Schedule

(i) that has not been included by the taxpayer in any other class,

(ii) that had not been used for any purpose whatever before it was acquired by the taxpayer,

(iii) that was acquired by the taxpayer after 1970 primarily for the purpose of preventing, reducing or eliminating pollution of

(A) any of the inland, coastal or boundary waters of Canada, or

(B) any lake, river, stream, watercourse, pond, swamp or well in Canada,

that is caused, or that, if the property had not been acquired and used, would be caused by

(C) operations carried on by the taxpayer at a site in Canada at which operations have been carried on by him from a time that is before 1974,

(D) the operation in Canada of a building or plant by the taxpayer, the construction of which was either commenced before 1974 or commenced under an agreement in writing entered into by him before 1974, or

(E) the operation of transportation or other movable equipment that has been operated by the taxpayer in Canada (including any of the inland, coastal or boundary waters of Canada) from a time that is before 1974,

or that was acquired by him after May 8, 1972, that would otherwise have been property referred to in this subparagraph except that

(F) it was acquired

(I) for the purpose of gaining or producing income from a business by a taxpayer whose business includes the preventing, reducing or eliminating of pollution of a kind referred to in this subparagraph that is caused or that otherwise would be caused primarily by operations referred to in clause (C), (D) or (E) carried on by other taxpayers (not including persons referred to in section 149 of the Act), and

(II) to be used in a business referred to in subclause (I) in the preventing, reducing or eliminating of pollution of a kind referred to in this subparagraph, or

(G) it was acquired

(I) for the purpose of gaining or producing income from a property by a corporation whose principal business is the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, the lending of money, or the leasing of property, or any combination thereof, and

(II) to be leased to a taxpayer (other than a person referred to in section 149 of the Act) to be used by him, in an operation referred to in clause (C), (D), (E) or (F), in the preventing, reducing or eliminating of pollution of a kind referred to in this subparagraph, and

(iv) that has, upon application by the taxpayer to the Minister of the Environment, been accepted by that Minister as property the primary use of which is to be the preventing, reducing or eliminating of pollution of a kind referred to in subparagraph (iii),

and for the purposes of paragraphs (a) and (b)

(c) where a corporation (in this paragraph referred to as the "predecessor corporation") has, as a result of an amalgamation within the meaning assigned by subsection 87(1) of the Act, merged at any time after 1973 with one or more other corporations to form one corporate entity (in this paragraph referred to as the "new corporation"), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

(d) where a corporation (in this paragraph referred to as the "subsidiary") has been wound up at any time after 1973 in circumstances to which subsection 88(1) of the Act applies, the parent (within the meaning assigned by that subsection) shall be deemed to be the same corporation as, and a continuation of, the subsidiary; and

(e) this class shall be read without reference to subparagraph (b)(i) where paragraph (c) or (d) applies to the taxpayer and the property was acquired before 1992.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 24 property; Reg. 4600(1)(a), 4600(2)(k) — Qualified property; 4604(1)(a), 4604(2)(j) — Approved project property.

History: The portion of Class 24 between paras. (a) and (b) amended by P.C. 1997-1033, s. 8, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

All that portion of Class 24 following subpara. (b)(iv) added by P.C. 1994-139, s. 24, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1974 *et seq.*

Those portions of Class 24 preceding subpara. (a)(i) and following subpara. (a)(iii) and preceding subpara. (b)(i) substituted by P.C. 1979-1487, s. 7, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

All that portion of para. (b) preceding subpara. (i) and subpara. (b)(iv) substituted by P.C. 1978-345, s. 1, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective on and after January 1, 1978.

Definitions [Reg. Sch. II:Cl. 24]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "new corporation" — Reg. Sch. II Cl. 24(c); "person" — ITA 248(1); "predecessor corporation" — Reg. Sch. II Cl. 24(c); "property" — ITA 248(1); "subsidiary" — Reg. Sch. II Cl. 24(d); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-336R: Pollution control property.

Class 25 — (100 per cent)

[Reg. 1100(1)(a)(xviii)]

Property that would otherwise be included in another class in this Schedule that is property acquired by the taxpayer

(a) before October 23, 1968, or

(b) after October 22, 1968 and before 1974, where the acquisition of the property may reasonably be regarded as having been in fulfilment of an obligation undertaken in an agreement made in writing before October 23, 1968 and ratified, confirmed or adopted by the legislature of a province by a statute that came into force before that date,

if the taxpayer was, on October 22, 1968, a corporation, commission or association to which, on the assumption that October 22, 1968 was in its 1969 taxation year, paragraph 62(1)(c) of the former Act (within the meaning assigned by paragraph 8(b) of the *Income Tax Application Rules*),

(c) would not apply; and

(d) would have applied but for subparagraph (i) or (ii) of that paragraph.

Definitions [Reg. Sch. II:Cl. 25]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "property" — ITA 248(1); "province" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 26 — (5 per cent)

[Reg. 1100(1)(a)(xix)]

Property that is

(a) a catalyst; or

(b) deuterium enriched water (commonly known as "heavy water") acquired after May 22, 1979.

History: Class 26 amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

Class 26 and rate substituted by P.C. 1979-1488, s. 3, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

Definitions [Reg. Sch. II:Cl. 26]: "property" — ITA 248(1).

Class 27 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property acquired before 1999 that would otherwise be included in another Class in this Schedule

(a) that has not been included by the taxpayer in any other class;

(b) that had not been used for any purpose whatever before it was acquired by the taxpayer;

(c) that was acquired by the taxpayer after March 12, 1970 primarily for the purpose of preventing, reducing or eliminating air pollution by

(i) removing particulate, toxic or injurious materials from smoke or gas, or

(ii) preventing the discharge of part or all of the smoke, gas or other air pollutant,

that is discharged or that, if the property had not been acquired and used, would be discharged into the atmosphere as a result of

(iii) operations carried on by the taxpayer at a site in Canada at which operations have been carried on by him from a time that is before 1974,

(iv) the operation in Canada of a building or plant by the taxpayer, the construction of which was either commenced before 1974 or commenced under an agreement in writing entered into by him before 1974, or

(v) the operation of transportation or other movable equipment that has been operated by the taxpayer in Canada (including any of the inland, coastal or boundary waters of Canada) from a time that is before 1974,

or that was acquired by him after May 8, 1972, that would otherwise have been property referred to in this paragraph except that

(vi) it was acquired

(A) for the purpose of gaining or producing income from a business by a taxpayer whose business includes the preventing, reducing or eliminating of air pollution that is caused or that otherwise would be caused primarily by operations referred to in subparagraphs (iii), (iv) or (v) carried on by other taxpayers (not including persons referred to in section 149 of the Act), and

(B) to be used in a business referred to in clause (A) in the preventing, reducing or eliminating of air pollution in a manner referred to in this paragraph, or

(vii) it was acquired

(A) for the purpose of gaining or producing income from a property by a corporation whose principal business is the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, the lending of money, or the leasing of property, or any combination thereof, and

(B) to be leased to a taxpayer (other than a person referred to in section 149 of the Act) to be used by him, in an operation referred to in subparagraph (iii), (iv), (v) or (vi), in the preventing, reducing or eliminating of air pollution in a manner referred to in this paragraph; and

(d) that has, upon application by the taxpayer to the Minister of the Environment, been accepted by that Minister as property the primary use of which is to be the preventing, reducing or eliminating of air pollution in a manner referred to in paragraph (c);

and for the purposes of paragraphs (a) to (d),

(e) where a corporation (in this paragraph referred to as the "predecessor corporation") has, as a result of an

amalgamation within the meaning assigned by subsection 87(1) of the Act, merged at any time after 1973 with one or more other corporations to form one corporate entity (in this paragraph referred to as the "new corporation"), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

(f) where a corporation (in this paragraph referred to as the "subsidiary") has been wound up at any time after 1973 in circumstances to which subsection 88(1) of the Act applies, the parent (within the meaning assigned by that subsection) shall be deemed to be the same corporation as, and a continuation of, the subsidiary; and

(g) this class shall be read without reference to paragraph (a) where paragraph (e) or (f) applies to the taxpayer and the property was acquired before 1992.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 27 property; Reg. 4600(1)(a), 4600(2)(k) — Qualified property; 4604(1)(a), 4604(2)(j) — Approved project property.

History: The opening words of Class 27 amended by P.C. 1997-1033, s. 9, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

That portion of Class 27 following para. (d) added by P.C. 1994-139, s. 25, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1974 *et seq.*

That portion of Class 27 preceding para. (a) substituted by P.C. 1979-1487, s. 8, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979.

All that portion of Class 27 preceding para. (a) and para (d) substituted by P.C. 1978-345, s. 2, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective on and after January 1, 1978.

Definitions [Reg. Sch. II:Cl. 27]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "Minister" — ITA 248(1); "new corporation" — Reg. Sch. II Cl. 27(e); "person" — ITA 248(1); "predecessor corporation" — Reg. Sch. II Cl. 27(e); "property" — ITA 248(1); "subsidiary" — Reg. Sch. II Cl. 27(f); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-336R: Pollution control property.

Class 28

[Reg. 1100(1)(a)(xx), 1100(1)(w), (zc)(i)(H)]

Property situated in Canada that would otherwise be included in another class in this Schedule that

(a) was acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987,

and that

(b) was acquired by the taxpayer principally for the purpose of gaining or producing income from one or more mines operated by the taxpayer and situated in Canada and each of which

(i) came into production in reasonable commercial quantities after November 7, 1969, or

(ii) was the subject of a major expansion after November 7, 1969

(A) whereby the greatest designed capacity, measured in tons of input of ore, of the mill that processed the ore from the mine was not less than 25 per cent greater in the year following the expansion than it was in the year preceding the expansion, or

(B) where, in the one-year period preceding the expansion,

(I) no mill processed the ore from the mine at any time, or

(II) the mill that processed the ore from the mine processed other ore,

and the Minister, in consultation with the Minister of Energy, Mines and Resources, was satisfied that the greatest designed capacity of the mine, measured in tons of output of ore, immediately after the expansion was not less than 25 per cent greater than the greatest designed capacity of the mine immediately before the expansion,

(c) was acquired by the taxpayer

(i) after November 7, 1969,

(ii) before the coming into production of the mine or the completion of the expansion of the mine referred to in subparagraph (b)(i) or (ii), as the case may be, and

(iii) in the case of a mine that was the subject of a major expansion described in subparagraph (b)(ii), in the course of and principally for the purposes of the expansion,

(d) had not, before it was acquired by the taxpayer, been used for any purpose whatever by any person with whom the taxpayer was not dealing at arm's length, and

(e) is any of the following, namely,

(i) property that was acquired before the mine came into production and that would, but for this class, be included in Class 10 by virtue of paragraph (g), (k), (l) or (r) of that class or would have been so included in that class if it had been acquired after the 1971 taxation year,

(ii) property that was acquired before the mine came into production and that would, but for this class, be included in Class 10 by virtue of paragraph (m) of that class, or

(iii) property that was acquired after the mine came into production and that would, but for this class, be included in Class 10 by virtue of paragraph (g), (k), (l) or (r) of that class,

or that would be described in paragraphs (b) to (e) if in those paragraphs each reference to a "mine" were read as a reference to a "mine that is a location in a bituminous sands deposit, oil sands deposit or oil shale deposit from which material is extracted", and each reference to "after November 7, 1969" were read as "before November 8, 1969".

Related Provisions: Reg. 1101(4a), (4b) — Separate class for certain property under Class 20; Reg. 1104(5), (6.1) — Income from a mine; 1104(7) — Extended meaning of "mine"; 1205(1)(c) — Earned depletion base — 1206(1)"bituminous sands equipment"; 4600(1)(b), 4600(2)(j) — Qualified property; 4601(a)(vi) — Qualified transportation equipment; 4604(2)(i) — Approved project property.

History: Subpara. (b)(ii) substituted by P.C. 1994-139, s. 26, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to expansions of mines commencing after June 18, 1987.

Class 28 substituted by P.C. 1989-2464, s. 18, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subpara. (d)(iii) substituted by P.C. 1980-3279, s. 5, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980, effective in respect of property acquired after December 11, 1979.

Subparas. (d)(ii), (iii) substituted for subpara. (ii) by P.C. 1978-344, s. 8, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective after March 31, 1977.

Definitions [Reg. Sch. II:Cl. 28]: "arm's length" — ITA 251(1); "bituminous sands" — ITA 248(1); "building" — Reg 1102(5), (5.1); "Canada" — ITA 255, *Interpretation Act* 35(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "income from a mine" — Reg. 1104(5), (6.1)(a); "mine" — Reg. 1104(7)(a); "Minister", "person", "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 29 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property not included in Class 41 because of paragraph (c) or (d) of that Class that would otherwise be included in another class in this Schedule

(a) that is property manufactured by the taxpayer, the manufacture of which was completed by him after May 8, 1972, or other property acquired by the taxpayer after May 8, 1972,

(i) to be used directly or indirectly by him in Canada primarily in the manufacturing or processing of goods for sale or lease, or

(ii) to be leased, in the ordinary course of carrying on a business in Canada of the taxpayer, to a lessee who can reasonably be expected to use, directly or indirectly, the property in Canada primarily in Canadian field processing carried on by the lessee or in the manufacturing or processing by the lessee of goods for sale or lease, if the taxpayer is a corporation whose principal business is

(A) leasing property,

(B) manufacturing property that it sells or leases,

(C) the lending of money,

(D) the purchasing of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or

(E) selling or servicing a type of property that it also leases,

or any combination thereof, unless use of the property by the lessee commenced before May 9, 1972;

(b) that is

(i) property that, but for this class, would be included in Class 8, except railway rolling stock or a property described in paragraph (j) of Class 8,

(ii) an oil or water storage tank,

(iii) a powered industrial lift truck,

(iv) electrical generating equipment described in Class 9, or

(v) property described in paragraph (b) or (f) of Class 10; and

(c) that is property acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(C) that is machinery or equipment that is a fixed and integral part of a building, structure, plant facility or other property that was under construction by or on behalf of the taxpayer on June 18, 1987.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 29 property; Reg. 1104(9), 4600(2)(k) — Definition of manufacturing or processing; 4604(2)(j) — Approved project property; Reg. Sch. II Cl. 39.

History: The opening words of Class 29 of Schedule II, and the portion of subpara. (a)(ii) before cl. (A), amended by P.C. 1999-629, s. 14, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

Para. (c) added by P.C. 1989-2464, s. 19, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Selected Cases [Class 29]: *Donohue Normick Inc. v. Canada*, [1995] E.T.C. 2158; 96 DTC 6061 (FCA) (Classification depends on expectation of use of item).

Definitions [Reg. Sch. II:Cl. 29]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "Canadian field processing" — ITA 248(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "corporation" — ITA 248(1), *Interpretation Act* 35(1); "manufacturing or processing" — Reg. 1104(9); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-411R: Meaning of "construction".

Class 30

[Reg. 1100(1)(a)(xxi)]

Property that is an unmanned telecommunication spacecraft designed to orbit above the earth and acquired by the taxpayer

(a) before 1988, or

(b) before 1990

(i) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(ii) that was under construction by or on behalf of the taxpayer before June 18, 1987.

Related Provisions: Reg. 1101(5a) — Separate class.

History: Class 30 substituted by P.C. 1989-2464, s. 20, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 30]: "property", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 31 — (5 per cent)

[Reg. 1100(1)(a)(xxii)]

Property that is a multiple-unit residential building in Canada that would otherwise be included in Class 3 or Class 6 and in respect of which

(a) a certificate has been issued by Canada Mortgage and Housing Corporation certifying

(i) in respect of a building that would otherwise be included in Class 3, that the installation of footings or any other base support of the building was commenced

(A) after November 18, 1974 and before 1980, or

(B) after October 28, 1980 and before 1982,

as the case may be, and

(ii) in respect of a building that would otherwise be included in Class 6, that the installation of footings or any other base support of the building was commenced after December 31, 1977 and before 1979,

and that, according to plans and specifications for the building, not less than 80 per cent of the floor space will be used in providing self-contained domestic establishments and related parking, recreation, service and storage areas;

(b) not more than 20 per cent of the floor space is used for any purpose other than the purposes referred to in paragraph (a);

(c) the certificate referred to in paragraph (a) was issued on or before the later of

(i) December 31, 1981, and

(ii) the day that is 18 months after the day on which the installation of footings or other base support of the building was commenced; and

(d) the construction of the building proceeds, after 1982, without undue delay, taking into consideration acts of God, labour disputes, fire, accidents or unusual delay by common carriers or suppliers of materials or equipment;

and that was acquired by the taxpayer

(e) before June 18, 1987, or

(f) after June 17, 1987 pursuant to

(i) an obligation in writing entered into by the taxpayer before June 18, 1987, or

(ii) the terms of a prospectus, preliminary prospectus, registration statement, offering memorandum or notice required to be filed with a public authority in Canada and filed before June 18, 1987 with that public authority.

Related Provisions: Reg. 1101(5b) — Separate class where property cost $50,000 or more.

History: All that portion of Class 31 following para. (d) added by P.C. 1989-2464, s. 21, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after June 18, 1987.

Para. (d) substituted by P.C. 1982-3667, December 2, 1982, *Canada Gazette*, Part II, December 22, 1982.

All that portion of para. (a) preceding subpara. (ii) substituted, paras. (c), (d) added by P.C. 1981-733, s. 3, March 19, 1981, *Canada Gazette*, Part II, April 8, 1981, effective commencing October 29, 1980.

Subpara. (a)(i) substituted by P.C. 1979-1487, s. 9, May 17, 1979, *Canada Gazette*, Part II, June 13, 1979, effective January 1, 1979.

Class 31 substituted by P.C. 1978-345, s. 3, February 9, 1978, *Canada Gazette*, Part II, February 22, 1978, effective on and after January 1, 1978.

Selected Cases [Class 31]: *Blouin v. Canada*, [1995] 2 C.T.C. 412 (FCTD) (Even certificate obtained by fraud is binding upon Minister).

Definitions [Reg. Sch. II:Cl. 31]: "building" — Reg 1102(5), (5.1); "Canada" — ITA 255, *Interpretation Act* 35(1); "month" — *Interpretation Act* 35(1); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "self-contained domestic establishment", "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings.

Forms: TX87: Application for a copy of a MURB certificate.

Class 32 — (10 per cent)

[Reg. 1100(1)(a)(xxiii)]

Property that is a multiple-unit residential building in Canada that would otherwise be included in Class 6 if the reference to "1979" in subparagraph (a)(viii) of that Class were read as a reference to "1980", and in respect of which

(a) a certificate has been issued by Canada Mortgage and Housing Corporation certifying

(i) that the installation of footings or any other base support of the building was commenced after November 18, 1974 and before 1978, and

(ii) that, according to plans and specifications for the building, not less than 80% of the floor space will be used in providing self-contained domestic establishments and related parking, recreation, service and storage areas; and

(b) not more than 20 per cent of the floor space is used for any purpose other than the purposes referred to in subparagraph (a)(ii).

History: All that portion of Class 32 preceding para. (a) substituted by P.C. 1978-3768, s. 4, December 14, *Canada Gazette*, Part II, December 27, 1978, effective January 1, 1979.

Definitions [Reg. Sch. II:Cl. 32]: "building" — Reg 1102(5), (5.1); "Canada" — ITA 255, *Interpretation Act* 35(1); "property" — ITA 248(1); "related" — ITA 251(2)–(6); "self-contained domestic establishment" — ITA 248(1).

Interpretation Bulletins: IT-195R4: Rental property — CCA restrictions; IT-367R3: CCA — multiple-unit residential buildings; .

Forms: TX87: Application for a copy of a MURB certificate.

Class 33 — (15 per cent)

[Reg. 1100(1)(a)(xxiv)]

Property that is a timber resource property.

Definitions [Reg. Sch. II:Cl. 33]: "property" — ITA 248(1); "timber resource property" — ITA 13(21), 248(1).

Interpretation Bulletins: IT-481: Timber resource property and timber limits.

Class 34 — (50 per cent)

[Reg. 1100(1)(t), (ta)]

Property that would otherwise be included in Class 1, 2 or 8

(a) that is

(i) electrical generating equipment,

(ii) production equipment and pipelines of a distributor of heat,

(iii) steam generating equipment that was acquired by the taxpayer primarily for the purpose of producing steam to operate property described in subparagraph (i), or

(iv) an addition to a property described in subparagraph (i), (ii) or (iii),

but not including buildings or other structures,

(b) that was acquired by the taxpayer after May 25, 1976,

(c) that

(i) was acquired by the taxpayer for use by him in a business carried on in Canada, or

(ii) is to be leased by the taxpayer to a lessee for use by the lessee in Canada, and

(d) that is property in respect of which a certificate has been issued

(i) before December 11, 1979 by the Minister of Industry, Trade and Commerce certifying that the property is part of a plan designed to

(A) produce heat derived primarily from the consumption of wood wastes or municipal wastes,

(B) produce electrical energy by the utilization of fuel that is petroleum, natural gas or related hydrocarbons, coal, coal gas, coke, lignite or peat (in this clause referred to as "fossil fuel"), wood wastes or municipal wastes, or any combination thereof, if the consumption of fossil fuel (expressed as the high heat value of the fossil fuel), if any, chargeable to electrical energy on an annual basis in respect of the property is no greater than 7,000 British Thermal Units per kilowatt-hour of electrical energy produced, or

(C) recover heat that is a by-product of an industrial process, or

(ii) after December 10, 1979 by the Minister of Energy, Mines and Resources certifying that the property is part of a plan designed to

(A) produce heat derived primarily from the consumption of natural gas, coal, coal gas, lignite, peat, wood wastes or municipal wastes, or any combination thereof,

(B) produce electrical energy by the utilization of fuel that is petroleum, natural gas or related hydrocarbons, coal, coal gas, coke, lignite or peat (in this clause referred to as "fossil fuel"), wood wastes or municipal wastes, or any combination thereof, if the consumption of fossil fuel (expressed as the high heat value of the fossil fuel), if any, chargeable to electrical energy on an annual basis in respect of the property is no greater than 7,000 British Thermal Units per kilowatt-hour of electrical energy produced, or

(C) recover heat that is a by-product of an industrial process,

and property that was acquired by the taxpayer after December 10, 1979 (other than property described in paragraph (a)) and would otherwise be included in another Class in this Schedule

(e) that is

(i) active solar heating equipment including solar collectors, solar energy conversion equipment, storage equipment, control equipment, equipment designed to interface solar heating equipment with other heating equipment, and solar water heaters, used to

(A) heat a liquid or air to be used directly in the course of manufacturing or processing,

(B) provide space heating when installed in a new building or other new structure at the time of its original construction where that construction commenced after December 10, 1979, or

(C) heat water for a use other than a use described in clause (A) or (B),

(ii) a hydro electric installation of a producer of hydro electric energy with a planned maximum generating capacity not exceeding 15 megawatts upon completion of site development that is the generating equipment and plant (including structures) of that producer including a canal, a dam, a dyke, an overflow spillway, a penstock, a powerhouse complete with generating equipment and other equipment ancillary thereto, control equipment, fishways or fish bypasses and transmission equipment, except distribution equipment and a property included in Class 10 or 17,

(iii) heat recovery equipment that is designed to conserve energy or reduce the requirement to acquire energy by extracting and reusing heat from thermal waste including condensers, heat exchange equipment, steam compressors used to upgrade low pressure steam, waste heat boilers and ancillary equipment such as control panels, fans, instruments or pumps,

(iv) an addition or alteration to a hydro electric installation described in subparagraph (ii) that results in a change in generating capacity if the new maximum generating capacity at the hydro electric installation does not exceed 15 megawatts, or

(v) a fixed location device acquired after February 25, 1986, that is a wind energy conversion system designed to produce electrical energy, consisting of a wind-driven turbine, generating equipment and related equipment, including control and conditioning equipment, support structures, a powerhouse complete with equipment ancillary thereto, and transmission equipment, but not including distribution equipment, equipment designed to store electrical energy or property included in Class 10 or 17,

(f) that

(i) was acquired by the taxpayer for use by him for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(ii) is to be leased by the taxpayer to a lessee for use by the lessee in Canada, and

(g) that is property in respect of which a certificate has been issued by the Minister of Energy, Mines and Resources,

but not including

(h) property in respect of which a certificate issued under paragraph (d), (g) has been revoked pursuant to subsection 1104(11),

(i) property that had been used before it was acquired by the taxpayer unless the property had previously been included in Class 34 for the purpose of computing the income of the person from whom it was acquired,

(j) property acquired by the taxpayer after February 21, 1994 other than

(i) property acquired by the taxpayer

(A) pursuant to an agreement of purchase and sale in writing entered into by the taxpayer before February 22, 1994,

(B) in order to satisfy a legally binding obligation entered into by the taxpayer in writing before February 22, 1994 to sell electricity to a public power utility in Canada,

(C) that was under construction by or on behalf of the taxpayer on February 22, 1994, or

(D) that is machinery or equipment that is a fixed and integral part of a building, structure or other property that was under construction by or on behalf of the taxpayer on February 22, 1994, and

(ii) property acquired by the taxpayer before 1996

(A) pursuant to an agreement of purchase and sale in writing entered into before 1995 to acquire the property from a person or partnership in circumstances where

(I) the property was part of a project that was under construction by the person or partnership on February 22, 1994, and

(II) it is reasonable to conclude, having regard to all of the circumstances, that the person or partnership constructed the project with the intention of transferring all or part of the project to another taxpayer after completion, or

(B) pursuant to an agreement in writing entered into before 1995 by the taxpayer with a person or partnership where the taxpayer agrees to assume a legally binding obligation entered into by the person or partnership before February 22, 1994 to sell electricity to a public power utility in Canada, or

(k) property in respect of which a certificate has not been issued under paragraph (d) or (g) before the time that is the later of

(i) the end of 1995, and

(ii) 2 years after the property is acquired by the taxpayer or, where the property is property acquired in circumstances to which paragraph (j) applies, 2 years after substantial completion of the property.

Related Provisions: Reg. 1100(2)(a)(iv) — Half-year rule inapplicable to Class 34 property; Reg. 1100(24), (25) — Limitation on deduction for specified energy property; Reg. 1104(11) — Revocation of certificate; Reg. 4600(2)(k) — Qualified property; Reg. 4604(2)(j) — Approved project property.

History: Paras. (j) and (k) added to Class 34 by P.C. 1997-1033, s. 10, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable after February 21, 1994.

That portion of Class 34 preceding para. (a) substituted by P.C. 1989-2464, s. 22, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Subpara. (e)(v) added by P.C. 1987-2354, November 26, 1987, *Canada Gazette*, Part II, December 9, 1987.

Para. (b), subparas. (c)(ii), (f)(ii), cl. (e)(i)(B), and that portion following para. (d) and preceding para. (e) substituted by P.C. 1985-2673, s. 2, August 28, 1985, *Canada Gazette*, Part II, September 18, 1985.

Cls. (d)(i)(C), (ii)(C) substituted by P.C. 1984-2044, subsecs. 3(2), (4), June 14, 1984, *Canada Gazette*, Part II, June 27, 1984.

Subpara. (a)(iv) added, paras. (b)–(f) substituted, paras. (g)–(i) added by P.C. 1980-3323, s. 2, December 4, 1980, *Canada Gazette*, Part II, December 24, 1980; paras. (b)–(i) effective December 11, 1979.

Para. (b) and subpara. (c)(ii) substituted by P.C. 1980-327, February 1, 1980, *Canada Gazette*, Part II, February 13, 1980, effective January 1, 1980.

Definitions [Reg. Sch. II:Cl. 34]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "fossil fuel" — Reg. Sch. II Cl. 34(d)(i)(B), (ii)(B); "Minister" — ITA 248(1); "person", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Class 35 — (7 per cent)

[Reg. 1100(1)(a)(xxv), 1100(1)(z.1b), 1100(1)(zc)(i)(I)]

Property not included in any other class that is

(a) a railway car acquired after May 25, 1976; or

(b) a rail suspension device designed to carry trailers that are designed to be hauled on both highways and railway tracks.

Proposed Amendment — Railway assets

Federal budget, supplementary information, February 28, 2000: *Rail Assets*

Most rail assets owned by common carriers, including railway cars and locomotives, are currently eligible for a 10-per-cent CCA rate.

Current CCA Treatment

Class 6 and Class 35 of Schedule II to the Income Tax Regulations include:

- locomotives described in paragraph (j) of Class 6 as "a railway locomotive acquired after May 25, 1976, but not including an automotive railway car";
- railway cars described in paragraph (a) of Class 35 as "a railway car acquired after May 25, 1976"; and
- rail suspension devices described in paragraph (b) of Class 35 as "a rail suspension device designed to carry trailers that are designed to be hauled on both highways and railway tracks."

The budget proposes that the CCA rates for such locomotives, railway cars and rail suspension devices acquired after February 27, 2000, be increased to 15 per cent. This rate will better reflect the estimated useful life of these assets.

In certain instances, Class 35 railway assets that are the subject of a lease are already eligible for a 13-per-cent CCA rate. The proposed 15-per-cent CCA rate will apply to these assets only if the lessor elects to have the "specified leasing property" rules apply to the asset.

Related Provisions: Reg. 1100(1.13)(a)(viii) — exclusion from specified leasing property rules; Reg. 1101(5d), (5d.1) — Separate classes.

History: Class 35 substituted by P.C. 1994-139, s. 27, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into before December 24, 1991; or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Definitions [Reg. Sch. II:Cl. 35]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1).

Class 36

Property acquired after December 11, 1979 that is deemed to be depreciable property by virtue of paragraph 13(5.2)(c) of the Act.

Related Provisions: Reg. 1101(5g) — Separate class.

History: Class 36 added by P.C. 1982-599, subsec. 6(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982, applicable in respect of property acquired after December 11, 1979.

Definitions [Reg. Sch. II:Cl. 36]: "depreciable property" — ITA 13(21), 248(1); "property" — ITA 248(1).

Class 37 — (15 per cent)

[Reg. 1100(1)(a)(xxvi)]

Property that would otherwise be included in another class in this Schedule that is property used in connection with an amusement park, including

(a) land improvements (other than landscaping) for or in support of park activities, including

(i) roads, sidewalks, parking areas, storage areas, or similar surface constructions, and

(ii) canals,

(b) buildings (other than warehouses, administration buildings, hotels or motels), structures and equipment (other than automotive equipment), including

(i) rides, attractions and appurtenances associated with a ride or attraction, ticket booths and facades,

(ii) equipment, furniture and fixtures, in or attached to a building included in this class,

(iii) bridges, and

(iv) fences or similar perimeter structures, and

(c) automotive equipment (other than automotive equipment designed for use on highways or streets),

and property not included in another class in this Schedule that is a waterway or a land improvement (other than landscaping, clearing or levelling land) used in connection with an amusement park.

Related Provisions: Reg. 1103(2b) — Election to include earlier property in Class 37; Reg. 1104(12) — Meaning of "amusement park"; Reg. 1104(12); 4604(1)(a), 4604(2)(k) — Approved project property.

History: Class 37 added by P.C. 1982-599, subsec. 6(2), February 25, 1982, *Canada Gazette*, Part II, March 10, 1982.

Definitions [Reg. Sch. II:Cl. 37]: "amusement park" — Reg. 1104(12); "associated" — ITA 256; "building" — Reg. 1102(5), (5.1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1); "structure" — Reg 1102(5), (5.1).

Class 38

[Reg. 1100(1)(zd)]

Property not included in Class 22 but that would otherwise be included in that class if that class were read without reference to paragraphs (a) and (b) thereof.

Related Provisions: Reg. 1101(5l) — Election for separate class; Reg. 4600(2)(e) — Qualified property; 4603(a) — Qualified construction equipment; 4604(2)(d) — Approved project property.

History: Class 38 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 38]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1).

Interpretation Bulletins: IT-411R: Meaning of "contruction"; IT-469R: CCA — Earth-moving equipment.

Class 39

[Reg. 1100(1)(ze)]

Property acquired after 1987 and before February 26, 1992 that is not included in Class 29, but that would otherwise be included in that Class if that Class were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) thereof.

Related Provisions: Reg. 1104(9); 4600(2)(k) — Qualified property; 4604(2)(j) — Approved project property; Sch. II:Cl. 43.

History: Class 39 substituted by P.C. 1994-230, s. 10, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Class 39 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Selected Cases [Class 39]: *Will-Kare Paving & Contracting Ltd. v. Canada*, [1996] 2 C.T.C. 2426 (TCC) (25% of sales insufficient to meet test for Class 39).

Definitions [Reg. Sch. II:Cl. 39]: "property" — ITA 248(1).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment; IT-411R: Meaning of "construction".

Class 40

[Reg. 1100(1)(zf)]

Property acquired after 1987 and before 1990 that is a powered industrial lift truck or property described in paragraph (b) or (f) of Class 10 and that is property not included in Class 29 but that would otherwise be included in that class if that class were read without reference to paragraph (c) thereof.

Related Provisions: Reg. 1103(2e) — Transfer from Class 40 to Class 10; 4600(2)(k) — Qualified property; 4604(2)(j) — Approved project property.

History: Class 40 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 40]: "class" — Reg. 1102 (1)–(3), (14), (14.1); "property" — ITA 248(1).

Interpretation Bulletins: IT-147R3: CCA — Accelerated write-off of manufacturing and processing machinery and equipment.

Class 41 — (25 per cent)

[Reg. 1100(1)(a)(xxvii), 1100(1)(y)]

Property

(a) not included in Class 28 that would otherwise be included in that class if that Class were read without reference to paragraph (a) of that Class, and if subparagraphs (e)(i) to (iii) of that Class were read as follows:

"(i) property that was acquired before the mine came into production and that would, but for this Class, be included in Class 10 because of paragraph (g), (k), (l) or (r) of that class or would have been so included in that class if it had been acquired after the 1971 taxation year, and property that would, but for this class, be included in Class 41 because of subsection 1102(8) or (9),

(ii) property that was acquired before the mine came into production and that would, but for this Class, be

included in Class 10 because of paragraph (m) of that Class, or

(iii) property that was acquired after the mine came into production and that would, but for this Class, be included in Class 10 because of paragraph (g), (k), (l) or (r) of that Class, and property that would, but for this Class, be included in Class 41 because of subsection 1102(8) or (9);"

(a.1) that is the portion, expressed as a percentage determined by reference to capital cost, of property that

(i) would, but for this Class, be included in Class 10 because of paragraph (g), (k), or (l) of that Class, or that is included in this Class because of subsection 1102(8) or (9),

(ii) is not described in paragraph (a) or (a.2),

(iii) was acquired by the taxpayer principally for the purpose of gaining or producing income from one or more mines that are operated by the taxpayer and situated in Canada, and that became

available for use for the purpose of subsection 13(26) of the Act in a taxation year, and

(iv) had not, before it was acquired by the taxpayer, been used for any purpose by any person or partnership with whom the taxpayer was not dealing at arm's length,

where that percentage is determined by the formula

$$100 \times \frac{[A - (B \times 365/C)]}{A}$$

where

A is the total of all amounts each of which is the capital cost of a property of the taxpayer that became available for use for the purpose of subsection 13(26) of the Act in the year and that is described in subparagraphs (i) to (iv) in respect of the mine or mines, as the case may be,

B is 5% of the taxpayer's gross revenue from the mine or mines, as the case may be, for the year, and

C is the number of days in the year;

(a.2) that

(i) is property that would, but for this Class, be included in Class 10 because of paragraph (g), (k), or (l) of that Class or that is included in this Class because of subsection 1102(8) or (9),

(ii) was acquired by the taxpayer in a taxation year principally for the purpose of gaining or producing income from one or more mines each of which

(A) is one or more wells operated by the taxpayer for the extraction of material from a deposit of bituminous sands or oil shales, operated by the taxpayer and situated in Canada,

(B) was the subject of a major expansion after March 6, 1996, and

(C) is a mine in respect of which the Minister, in consultation with the Minister of Natural Resources, is satisfied that the greatest designed capacity of the mine, measured in barrels of oil that is not beyond the crude oil stage or its equivalent, immediately after the expansion was not less than 25 % greater than the greatest designed capacity of the mine immediately before the expansion,

(iii) was acquired by the taxpayer

(A) after March 6, 1996,

(B) before the completion of the expansion, and

(C) in the course of and principally for the purposes of the expansion, and

(iv) had not, before it was acquired by the taxpayer, been used for any purpose by any person or partnership with whom the taxpayer was not dealing at arm's length;

(a.3) that is property included in this Class because of subsection 1102(8) or (9), other than property described in paragraph (a) or (a.2) or the portion of property described in paragraph (a.1);

(b) that is property

(i) described in paragraph (f.1), (g), (j), (k), (l), (m), (r), (t) or (u) of Class 10 that would be included in that Class if this Schedule were read without reference to this paragraph; or

(ii) that is a vessel, including the furniture, fittings, radio communication equipment and other equipment attached thereto, that is designed principally for the purpose of

(A) determining the existence, location, extent or quality of accumulations of petroleum, natural gas or mineral resources, or

(B) drilling oil or gas wells,

and that was acquired by the taxpayer after 1987 other than property that was acquired before 1990

(iii) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987,

(iv) that was under construction by or on behalf of the taxpayer on June 18, 1987, or

(v) that is machinery and equipment that is a fixed and integral part of property that was under construction by or on behalf of the taxpayer on June 18, 1987;

(c) acquired by the taxpayer after May 8, 1972, to be used directly or indirectly by the taxpayer in Canada primarily in Canadian field processing, where the property would be included in Class 29 if

(i) Class 29 were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) of that Class,

(ii) subsection 1104(9) were read without reference to paragraph (k) of that subsection, and

(iii) this Schedule were read without reference to this Class, Class 39 and Class 43; or

(d) acquired by the taxpayer after December 5, 1996 (otherwise than pursuant to an agreement in writing made before December 6, 1996) to be leased, in the ordinary course of carrying on a business in Canada of the taxpayer, to a lessee who can reasonably be expected to use, directly or indirectly, the property in Canada primarily in Canadian field processing carried on by the lessee, where the property would be included in Class 29 if

(i) Class 29 were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) of that Class, and

(ii) this Schedule were read without reference to this Class, Class 39 and Class 43.

Related Provisions: ITA 13(5) — Reclassification of property as a result of change in regulations; ITA 257 — Negative amounts in formulas; Reg. 1101(4c), (4d) — Separate class for certain property under Class 41(a), (a.1) and (a.2); Reg. 1102(8)(d), 1102(9)(d) — Generating equipment; Reg. 1102(18) — Townsite costs; Reg. 1104(5) — Income from a mine; Reg. 1104(5.1), (5.2) — Gross revenue from a mine; Reg. 1104(7) — Meaning of "mine"; Reg. 1104(5), (6), (7), 1205(1)(a)(vi)(D), 1205(1)(c) — Earned depletion base; 1206(1)"bituminous sands equipment", "tertiary recovery equipment"; 4600(1)(b), 4600(2)(g), (j) — Qualified property; 4601(a)(vi) — Qualified transportation equipment; 4604(2)(i) — Approved project property; Reg. Sch. II Cl. 43.

History: Paras. (c) and (d) added to Class 41 of Schedule II by P.C. 1999-629, s. 15, April 15, 1999, *Canada Gazette*, Part II, April 28, 1999, applicable to taxation years that begin after 1996.

The portion of Class 41 before para. (b) amended by P.C. 1998-49, s. 5, January 26, 1998, *Canada Gazette*, Part II, February 4, 1998, applicable in respect of property acquired after March 6, 1996, except that paras. (a) and (a.3) apply in respect of property acquired after 1987.

Subpara. (b)(i) amended by P.C. 1997-1033, s. 11, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 25, 1992.

Subpara. (b)(i) substituted by P.C. 1994-230, s. 11, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992.

Class 41 added by P.C. 1989-2464, s. 23, December 14, 1989, *Canada Gazette*, Part II, January 3, 1990, applicable in respect of property acquired after 1987.

Definitions [Reg. Sch. II:Cl. 41]: "amount" — ITA 248(1); "arm's length" — ITA 251(1); "bituminous sands", "business" — ITA 248(1); "Canada" — ITA 255; *Interpretation Act* 35(1); "Canadian field processing" — ITA 248(1); "class" — Reg. 1102 (1)–(3), (14), (14.1); "gross revenue" — ITA 248(1); "gross revenue from a mine" — Reg. 1104(5.1); "income from one or more mines" — Reg. 1104(5), (6.1)(a); "mine" — Reg. 1104(7)(a); "mineral resource", "Minister", "oil or gas well" — ITA 248(1); "person", "property" — ITA 248(1); "radio" — *Interpretation Act* 35(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "writing" — *Interpretation Act* 35(1).

Interpretation Bulletins: IT-267R2: CCA — vessels.

Class 42 — (12 per cent)

[Reg. 1100(1)(a)(xxviii)]

Property that is fibre optic cable.

Related Provisions: Reg. Sch. II Cl. 3(l)–Supporting equipment.

History: Class 42 added by P.C. 1994-139, s. 28, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired by a taxpayer after December 23, 1991, other than property acquired pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, except that

(a) where the taxpayer so elects in a letter that is filed with the Minister before August 9, 1994, or in a letter attached to the taxpayer's return filed with the Minister in accordance with s. 150 of the *Income Tax Act* for the taxpayer's first taxation year ending after December 23, 1991, those provisions apply with respect to property acquired by the taxpayer after the beginning of that year.

(b) with respect to property acquired before December 24, 1991 in respect of which an election referred to in para. (a) applies, Schedule II shall be read without reference to Class 42.

Definitions [Reg. Sch. II:Cl. 42]: "property" — ITA 248(1).

Class 43 — (30 per cent)

[Reg. 1100(1)(a)(xxix)]

Property acquired after February 25, 1992 that

(a) is not included in Class 29, but that would otherwise be included in that Class if that Class were read without reference to subparagraphs (b)(iii) and (v) and paragraph (c) thereof; or

(b) is property

(i) that is described in paragraph (k) of Class 10 and that would be included in that Class if this Schedule were read without reference to this paragraph and paragraph (b) of Class 41, and

(ii) that, at the time of its acquisition, can reasonably be expected to be used entirely in Canada and primarily for the purpose of processing ore extracted from a mineral resource located in a country other than Canada.

Proposed Amendment — Separate class for manufacturing and processing equipment

Federal budget, supplementary information, February 28, 2000: [See under Reg. 1101(5p) — ed.]

Related Provisions: Reg. 4600(2)(k), 4604(2)(j) — Investment tax credit.

History: Para. (b) amended by P.C. 1997-1033, s. 12, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired after February 25, 1992.

Class 43 added by P.C. 1994-230, s. 12, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after February 25, 1992, except that an election referred to therein shall be deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before August 23, 1994.

Definitions [Reg. Sch. II:Cl. 43]: "Canada" — ITA 255, *Interpretation Act* 35(1); "mineral resource", "property" — ITA 248(1).

Interpretation Bulletins: IT-411R: Meaning of "construction".

Class 43.1

Property, other than reconditioned or remanufactured equipment, that would otherwise be included in Class 1, 2 or 8

(a) that is

(i) electrical generating equipment, including any heat generating equipment used primarily for the purpose of producing heat energy to operate the electrical generating equipment,

(ii) equipment that generates both electrical and heat energy,

(iii) heat recovery equipment used primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by

(A) extracting thermal waste that is generated by equipment referred to in subparagraph (i) or (ii), and

(B) reusing the thermal waste to generate electrical energy from equipment referred to in subparagraph (i) or (ii),

(iv) control, feedwater and condensate systems and other equipment, where that property is ancillary to equipment described in subparagraph (i), (ii) or (iii), or

(v) an addition to a property described in any of subparagraphs (i) to (iv),

other than buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), transmission equipment, distribution equipment, fuel storage facilities and fuel handling equipment,

(b) that has not been used for any purpose whatever before it is acquired by the taxpayer and that is

(i) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(ii) leased by the taxpayer to a lessee for use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, and

Proposed Amendment — Class 43.1(b)

(b) that

(i) is situated in Canada,

(ii) is

(A) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(B) leased by the taxpayer to a lessee for the use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, and

(iii) has not been used for any purpose before it was acquired by the taxpayer unless

(A) the property was depreciable property described in Class 34 or 43.1 of the person from whom it was acquired, and

(B) the property was acquired by the taxpayer not more than five years after it became available for use for the purpose of subsection 13(26) of the Act by the person from whom it was acquired and remains at the same site in Canada as that at which that person used the property, and

Application: The September 16, 1997 draft regulations, subsec. 6(1), will amend para. (b) of Class 43.1 to read as above, applicable to property acquired after June 26, 1996 except that, where a taxpayer acquired the property before 1998 pursuant to an agreement in writing made by the taxpayer before June 27, 1996, para. (b) of Class 43.1 shall be read as follows:

(b) that is

(i) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(ii) leased by the taxpayer to a lessee for the use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, and

Federal budget, Supplementary Information, February 18, 1997: *Eligible energy conservation equipment*

This budget proposes changes to expand eligibility for Class 43.1 capital cost allowance treatment to certain acquisitions of used equipment. A reduced qualification threshold for photovoltaic systems is also proposed.

Eligibility for class 43.1 CCA treatment

Eligibility for Class 43.1 is described in draft regulations to the Income Tax Act. Detailed information on both Class 43.1 and CRCE eligibility criteria will be available in a revised "Technical Guide" to be released shortly by Natural Resources Canada (NRCan). Class 43.1 was introduced following the termination of Class 34. In general, the following types of equipment may qualify for inclusion in Class 43.1:

- cogeneration and specified waste-fuelled electrical generation systems (1);
- active solar systems (1);
- small-scale hydroelectric installations;
- heat recovery systems (1);
- wind energy conversion systems;
- photovoltaic electrical generation systems;
- geothermal electrical generation systems; and
- specified waste-fuelled heat production equipment (1).

(1) Active solar heating, heat recovery and heat production systems must be used directly in connection with an industrial process to qualify as Class 43.1 equipment.

Used equipment

The news release entitled "New Tax Measures for Renewables and Energy Conservation" dated June 27, 1996 proposed that only new equipment would be eligible for Class 43.1. This change was proposed to ensure that the incentive provided by the tax system is targeted towards current energy efficient technology. The budget proposes to relax these restrictions to accommodate certain used equipment to the extent that the equipment was included in Class 34 or 43.1 of the vendor, remains at the same site in Canada and is not more than five years old (from the time it was originally placed in service). The cost which can be included under Class 43.1 by the purchaser of any used Class 34 or 43.1 equipment cannot exceed the original capital cost of the equipment when first placed in service.

This change is relieving in nature and will be effective for equipment acquired after June 26, 1996.

Photovoltaic peak capacity requirement

The budget proposes to lower the minimum peak capacity requirement for photovoltaic systems from the current level of 10 to 3 kilowatts. This will permit smaller applications of solar power to qualify.

This change is also relieving in nature and will be effective for all equipment acquired after February 18, 1997.

Energy efficiency investments

The 1996 budget noted the importance of energy efficiency investments in achieving the government's environmental and economic objectives. To this end, it was subsequently announced that the Departments of Finance and Natural Resources would consult on the treatment of energy efficiency investments and investments providing heating and cooling from renewable energy sources to identify impediments. The 1996 budget also noted the importance of the development of recognized standards for energy-using equipment and structures.

Numerous submissions were received and a draft report on the consultations has been circulated to interested parties. The government found these consultations to be helpful and a broad range of ideas was presented.

One of the impediments identified was a lack of information and awareness about the benefits of technologies and practices to improve energy efficiency. Since the 1996 budget, there has been considerable progress in the development of recognized standards for buildings and houses and in the promotion of energy efficiency improvements to existing houses. The Minister of Natural Resources announced additional measures in December 1996 to address this and other impediments.

New national standards for buildings and houses

The National Research Council, under an NRCan Program cofunded by provincial energy ministries, is about to publish the National Energy Code for Buildings (NECB). The National Energy Code for Houses (NECH) is scheduled to be released soon.

National Energy Code for Buildings (NECB) and Houses (NECH)

The NECB and NECH are Canada's first comprehensive energy efficiency codes. These codes have been developed over a six-year period through a consultative process involving Natural Resources Canada, the National Research Council, provincial and territorial government energy ministries and electric utilities. Compliance with code requirements can be demonstrated by either a prescriptive or performance approach. Using the prescriptive approach, the specific thermal requirements contained in the code for each building component must be met. Using the performance approach, deviation from the prescribed value is permitted as long as the overall building energy use is equal to or less than if all components were built to the prescribed values. The codes accommodate regional variations through the use of cost and climate factors for 34 administrative regions. The NECB and NECH are primarily targeted to new construction, including buildings and additions.

The NECB has recently passed through the consensus process of the Canadian Commission on Building and Fire Codes. This code specifies minimum levels of thermal performance for commercial buildings through the establishment of minimum standards of construction for building components and features that affect a building's energy efficiency. Various authorities having jurisdiction for buildings are actively considering the NECB for adoption. Some provincial governments, and the federal government, are considering using the codes as internal guidelines for their own construction.

The NECH is due to be published soon. The code sets minimum energy efficiency standards for new houses, based on regional differences such as climate and energy costs; it is very similar to the NECB in overall structure and general level of requirements.

Home energy rating systems

There are over seven million single- and multi-family houses in Canada today. Residential energy use accounts for over 20% of secondary energy use in Canada today. There is significant potential for improving energy efficiency in this sector. In particular, it is recognized that energy performance can often be improved when renovations, such as replacing windows, finishing basements and attics or replacing furnaces, are planned.

Since 1993, Natural Resources Canada has been developing the Home Energy Retrofit Initiative in response to a desire to promote energy efficient renovations. One of the elements of this program is the Canadian Home Energy Efficiency Rating System (CHEERS) which is due to be released later this year and tested through pilot projects.

Canadian Home Energy Efficiency Rating System (CHEERS)

The Canadian Home Energy Efficiency Rating System will soon be released. CHEERS will offer builders, renovators, home buyers and vendors a reliable tool to assess the energy performance of a house. The system will support a computerized analysis of a house and produce a comparative rating based on the purchased energy needed to operate the house. For existing homes, the system will also recommend specific energy efficiency improvements. NRCan is also developing audit software that will help homeowners identify cost-effective opportunities for energy efficiency retrofits.

Energy efficiency regulations

Under the authority of the *Energy Efficiency Act*, the Government of Canada has regulated minimum energy performance standards for some 20 household products, lamps and motors that are imported into Canada or traded interprovincially. The regulations are designed to phase out less efficient equipment from the Canadian market; they complement energy efficiency regulations which are currently in effect in a number of provinces.

The range of products regulated under these regulations will soon be expanded to include an additional 13 energy-using products. Performance levels will be established for such products as compact clothes dryers, dehumidifiers, gas- and oil-fired boilers and oil-fired furnaces. In addition, the existing standard for split-system central heat pumps will be strengthened. Following these initiatives, regulations will apply to energy-using products that account for more than 75% of residential energy demand.

Energy efficiency and renewable energy in commercial buildings

During the consultations on energy efficiency and heating and cooling from renewable sources, a number of proposals suggested that the tax system be used to provide an incentive for energy efficient buildings. Proposals were varied in nature with some focusing on new commercial buildings (e.g., office buildings, shopping centres, hotels, motels and large apartment complexes) meeting very high energy efficiency standards. Other submissions concentrated on the need to encourage energy efficient retrofits of the existing building stock because of the large potential gains. Still other suggestions were received to promote the use of renewable energy to meet the energy needs of buildings.

Some participants in the consultations suggested introducing new income tax incentives tied to either the C-2000 criteria or the new National Energy Code for Buildings. There was a recognition that new commercial buildings would need to exceed the NECB by a certain amount in order to demonstrate a high level of energy efficiency. In general, the higher the threshold of energy efficiency in excess of the code proposed, the more generous was the tax treatment advocated.

There was also considerable interest in encouraging greater use of renewable energy for the heating and cooling of commercial buildings. This is in recognition of the benefits that renewable energy can have in reducing emissions of certain greenhouse gases. The government acknowledges that the increased use of renewable energy for heating and cooling of commercial buildings should be encouraged.

The government is prepared to examine the appropriateness of using some tax or other mechanism to promote renewable energy, and energy efficiency investments in commercial buildings linked to the National Energy Code for Buildings. While the precise nature of the new incentive mechanism has not yet been determined, possibilities under review include, inter alia, an additional CCA allowance, an investment tax credit (possibly refundable) or a direct program spending initiative administered by NRCan. The government will be examining these and other alternative mechanisms. Funding totalling $60 million to support this new initiative has been set aside, i.e. $20 million per year for three years beginning in 1998. The new initiatives will complement other activities already underway at NRCan and be an important element in promoting investments in energy efficiency and renewable energy for new and existing commercial buildings.

Further details on this proposed new incentive mechanism will be developed in consultation with stakeholders and the final design will be announced by the Minister of Natural Resources later this year.

Proposed Amendment — Class 43.1(b)(iii)(A)

Letter from Department of Finance, April 28, 1999:

Dear [xxx]

Thank you for your letter dated April 14, 1999 regarding draft amendments to Class 43.1 of Schedule II to the Income Tax Regulations.

In your letter, you point out that the amendments allowing used equipment to qualify for Class 43.1 restrict the eligibility for such treatment to equipment that was included in Class 43.1 by the vendor.

You also point out that Regulation 1102(9) allows a taxpayer to make an election, in respect of properties that are described in both Class 41 and Class 43.1, to include the properties in Class 43.1. In default of such an election, Regulation 1102(9) provides that such assets are included in Class 41. This regulation applies to the mining and oil sands industries, which use equipment which may be described in both classes.

Accordingly, the requirement that used equipment [has] been included in Class 43.1 by the vendor of the equipment has the effect of precluding purchasers of used equipment from including their purchased assets in Class 43.1 if they were purchased from a taxpayer who is subject to Regulation 1102(9) and who did not elect to include the equipment in Class 43.1.

We agree that this result was unintended and that there is no policy rationale for denying Class 43.1 treatment to a purchaser of equipment solely because of the classification of the asset in Class 41 by the vendor where the property otherwise qualified for inclusion in Class 43.1 by the vendor.

We are therefore prepared to recommend amendments to the draft regulations to revise draft clause (b)(iii)(A) of Class 43.1 to read

> (A) the property was depreciable property described in Class 34 or or 43.1 of the person from whom it was acquired (*or would have been so described had the person made a valid election to include the property in Class 43.1 pursuant to paragraph 1102(9)(d)*), and

Thank you for bringing this matter to our attention.

Yours sincerely,

Len Farber
Director General
Tax legislation Division
Tax Policy Branch

(c) that is

(i) part of a system (other than an enhanced combined cycle system) that

(A) is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy, or both electrical and heat energy, using only fuel that is fossil fuel, wood waste, municipal waste, landfill gas or digester gas, or any combination of those fuels, and

(B) has a heat rate attributable to fossil fuel not exceeding 6,000 BTU per kilowatt-hour of electrical energy generated by the system, which heat rate is calculated as the fossil fuel (ex-

pressed as the high heat value of the fossil fuel) used by the system that is chargeable to gross electrical energy output on an annual basis, or

(ii) part of an enhanced combined cycle system that

(A) is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy using only a combination of natural gas and waste heat from one or more natural gas compressor systems located on a natural gas pipeline,

(B) has an incremental heat rate not exceeding 6,700 BTU per kilowatt-hour of electricity generated by the system, which heat rate is calculated as the natural gas (expressed as its high heat value) used by the system that is chargeable to gross electrical energy output on an annual basis, and

(C) does not have economically viable access to a steam host,

and property (other than property described in paragraph (a)) that would otherwise be included in another Class in this Schedule

(d) that is

(i) active solar heating equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of heating a liquid or gas used directly in an industrial process, including such equipment that consists of solar collectors, solar energy conversion equipment, solar water heaters, energy storage equipment, control equipment and equipment designed to interface solar heating equipment with other heating equipment, but not including buildings,

(ii) a hydro-electric installation of a producer of hydro-electric energy, where that installation

(A) has an annual average generating capacity not exceeding 15 megawatts upon completion of site development, and

(B) is the electrical generating equipment and plant (including structures) of that producer including a canal, a dam, a dyke, an overflow spillway, a penstock, a powerhouse (complete with electrical generating equipment and other ancillary equipment), control equipment, fishways or fish bypasses, and transmission equipment,

other than distribution equipment and property otherwise included in Class 10 or 17,

(iii) an addition or alteration to a hydro-electric installation described in subparagraph (ii) that results in an increase in generating capacity, if the resulting annual average generating capacity of the hydro-electric installation does not exceed 15 megawatts,

(iv) heat recovery equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by

(A) extracting thermal waste that is generated directly in an industrial process (other than in an industrial process that generates or processes electrical energy), and

(B) reusing the thermal waste directly in an industrial process (other than in an industrial process that generates or processes electrical energy),

including such equipment that consists of heat exchange equipment, compressors used to upgrade low pressure steam, vapour or gas, waste heat boilers and other ancillary equipment such as control panels, fans, instruments or pumps, but not including buildings,

(v) a fixed location device that is a wind energy conversion system that

(A) is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy, and

(B) consists of a wind-driven turbine, electrical generating equipment and related equipment, including

(I) control, conditioning and battery storage equipment,

(II) support structures,

(III) a powerhouse complete with other ancillary equipment, and

(IV) transmission equipment,

other than distribution equipment, auxiliary electrical generating equipment or property otherwise included in Class 10 or 17,

(vi) fixed location photovoltaic equipment that

(A) is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy from solar energy,

(B) has a peak capacity of not less than 10 kilowatts of electrical output, and

Proposed Amendment — Class 43.1(d)(vi)(B)

(B) has a peak capacity of not less than 3 kilowatts of electrical output,

Application: The September 16, 1997 draft regulations, subsec. 6(2), will amend cl. (d)(vi)(B) of Class 43.1 to read as above, applicable to property acquired after February 18, 1997.

Federal budget, Supplementary Information, February 18, 1997: *Photovoltaic peak capacity requirement*

The budget proposes to lower the minimum peak capacity requirement for photovoltaic systems from the current level of 10 to 3 kilowatts. This will permit smaller applications of solar power to qualify.

This change is also relieving in nature and will be effective for all equipment acquired after February 18, 1997.

(C) consists of solar cells or modules and related equipment including

(I) control, conditioning and battery storage equipment,

(II) support structures, and

(III) transmission equipment,

other than buildings, distribution equipment, auxiliary electrical generating equipment and property otherwise included in Class 10 or 17,

(vii) above-ground equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy solely from geothermal energy, including such equipment that consists of pumps, heat exchangers, steam separators, electrical generating equipment and ancillary equipment used to collect the geothermal

heat, but not including buildings, transmission equipment, distribution equipment, equipment designed to store electrical energy and property otherwise included in Class 10 or 17,

(viii) above-ground equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of collecting landfill gas or digester gas, including such equipment that consists of fans, compressors, storage tanks, heat exchangers and other ancillary equipment used to collect the gas, to remove non-combustibles and contaminants from the gas or to store the gas, but not including buildings or property otherwise included in Class 10 or 17,

(ix) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating heat energy from the consumption of wood waste, municipal waste, landfill gas or digester gas, if the heat energy is used directly in an industrial process carried on by the taxpayer or lessee, including such equipment that consists of fuel handling equipment used to upgrade the combustible portion of the fuel and control, feedwater and condensate systems, and other ancillary equipment, but not including buildings or other structures, property otherwise included in Class 10 or 17, heat rejection equipment (such as condensers and cooling water systems), fuel storage facilities, fuel handling equipment and electrical generating equipment, or

(x) an expansion engine with one or more turbines, or cylinders, that convert the compression energy in pressurized natural gas into shaft power that generates electricity, including the related electrical generating equipment and ancillary controls, where the expansion engine

(A) is part of a system that is installed

(I) on a distribution line of a distributor of natural gas, or

(II) on a branch distribution line of a taxpayer primarily engaged in the manufacturing or processing of goods for sale or lease if the branch line is used to deliver natural gas directly to the taxpayer's manufacturing or processing facility, and

(B) is used instead of a pressure reducing valve, and

(e) that has not been used for any purpose whatever before it was acquired by the taxpayer and that is

(i) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(ii) leased by the taxpayer to a lessee for use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada.

Proposed Amendment — Class 43.1(e)

(e) that

(iii) [should be (i)] is situated in Canada,

(iv) [should be (ii)] is

(A) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(B) leased by the taxpayer to a lessee for the use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, and

(iii) has not been used for any purpose before it was acquired by the taxpayer unless

(A) the property was depreciable property described in Class 34 or 43.1 of the person from whom it was acquired, and

(B) the property was acquired by the taxpayer not more than five years after it became available for use for the purpose of subsection 13(26) of the Act by the person from whom it was acquired and remains at the same site in Canada as that at which that person used the property.

Application: The September 16, 1997 draft regulations, subsec. 6(3), will amend para. (e) of Class 43.1 to read as above, applicable to property acquired after June 26, 1996 except that, where a taxpayer acquired the property before 1998 pursuant to an agreement in writing made by the taxpayer before June 27, 1996, para. (e) of Class 43.1 shall be read as follows:

(e) that is

(i) acquired by the taxpayer for use by the taxpayer for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada, or

(ii) leased by the taxpayer to a lessee for the use by the lessee for the purpose of gaining or producing income from a business carried on in Canada or from property situated in Canada.

Federal budget, Supplementary Information, February 18, 1997: See under Cl. 43.1(b).

Proposed Amendment — Generating Equipment Using Flare Gas

Federal budget, supplementary information, February 16, 1999: *Capital cost allowance (CCA) for the productive use of flare gas*

The government is continually reviewing CCA rates to ensure that these rates reflect the economic life of assets. A number of proposals have been made to further encourage investments in energy efficiency and renewable energy projects by, for example, providing accelerated CCA to such assets. These proposals will be reviewed as the national climate change strategy to reduce Canada's greenhouse gas emissions is developed.

This budget proposes to allow electrical generating equipment using solution gas that would otherwise be flared during the production of crude oil to be eligible for CCA Class 43.1. The economic life of this electricity generation equipment is expected to be more consistent with the 30 per cent CCA rate, calculated on a declining balance basis, applicable to that class. The measure will be implemented by:

- including such solution gas in the list of eligible waste fuels that may be consumed in an electrical generating system eligible for CCA Class 43.1; and
- excluding this solution gas from the definition of fossil fuel for the purposes of the heat rate calculation for such electrical generation systems. (Qualifying systems must have a heat rate attributable to fossil fuels of less than 6000 BTU per kilowatt-hour of electrical energy generated by the system.)

A reduction in the flaring of solution gas offers a means of improving local air quality and reducing greenhouse gas emissions.

The CCA change for electrical generating equipment using solution gas that would otherwise be flared will apply to property acquired after February 16, 1999.

Related Provisions: ITA 13(18.1) — Energy, Mines and Resources "Technical Guide to Class 43.1" to be determinative; ITA 66(15)"principal-business corporation"(h), (i) — Corporation whose business uses

property in Class 43.1; Reg. 1100(24), (25) — Limitation on deduction for specified energy property; Reg. 1102(8)(d), 1102(9)(d) — Generating equipment — election for Class 43.1; Reg. 1102(21) — Limitation where Cl. 43.1(b)(iii)(A) or (B) or 43.1(e)(iii)(A) or (B) applies; Reg. 1104(13) — Definitions; Reg. 1104(14) — Where Cl. 43.1(c) not operating due to deficiency, failing or shutdown; Reg. 1219 — Canadian renewable and conservation expense; Reg. 8200.1 — Cl. 43.1 property is prescribed energy conservation property.

History: Class 43.1 added by P.C. 1997-1033, s. 13, July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, applicable to property acquired by a taxpayer after February 21, 1994 except that

(a) in respect of property

(i) acquired by the taxpayer pursuant to an agreement of purchase and sale in writing made before September 27, 1994, or

(ii) under construction by or on behalf of the taxpayer before September 27, 1994,

cl. (c)(ii)(B) shall be read as follows:

(B) has a an incremental heat rate not exceeding 7,000 BTU per kilowatt-hour of electricity generated by the system, which heat rate is calculated as the natural gas (expressed as its high heat value) used by the system that is chargeable to the gross electrical energy output on an annual basis, and

and

(b) in respect of property acquired by a taxpayer before June 27, 1996, or acquired before 1998 pursuant to an agreement in writing made by a taxpayer before June 27, 1996,

(i) the opening words of Class 43.1 shall be read without reference to ", other than reconditioned or remanufactured equipment,",

(ii) the opening words of para. (b) shall be read as follows:

(b) that is

and

(iii) the opening words of para. (e) shall be read as follows:

(e) that is

Definitions [Reg. Sch. II:Cl. 43.1]: "building" — Reg 1102(5), (5.1); "business" — ITA 248(1); "Canada" — ITA 255, *Interpretation Act* 35(1); "depreciable property" — ITA 13(21), 248(1); "digester gas", "distribution equipment", "enhanced combined cycle system", "fossil fuel", "landfill gas", "municipal waste" — Reg. 1104(13); "person", "property" — ITA 248(1); "related" — ITA 251(2)–(6); "structure" — Reg 1102(5), (5.1); "taxpayer" — ITA 248(1); "thermal waste", "transmission equipment", "wood waste" — Reg. 1104(13).

Class 44 — (25 per cent)

[Reg. 1100(1)(a)(xxx), 1100(9.1), 1103(2h)]

Property that is a patent, or a right to use patented information for a limited or unlimited period.

Related Provisions: Reg. 1103(2h) — Election not to include property in Class 44; Reg. Sch. II:Cl. 14 — Patent for a limited period.

History: Class 44 added by P.C. 1994-231, s. 5, February 10, 1994, *Canada Gazette*, Part II, February 23, 1994, applicable to property acquired after April 26, 1993.

Definitions [Reg. Sch. II:Cl. 44]: "property" — ITA 248(1).

SCHEDULE III — CAPITAL COST ALLOWANCES, CLASS 13

History: Schedule H was consolidated and retitled Schedule III, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(b), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of the capital cost to him of a property of Class 13 in Schedule II is the lesser of

(a) the aggregate of each amount determined in accordance with section 2 of this Schedule that is a prorated portion of the part of the capital cost to him, incurred in a particular taxation year, of a particular leasehold interest; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100) of property of the class.

Definitions: "amount" — ITA 248(1); "capital cost" — Reg. 1100(1)(b); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

2. Subject to section 3 of this Schedule, the prorated portion for the year of the part of the capital cost, incurred in a particular taxation year, of a particular leasehold interest is the lesser of

(a) 1/5 of that part of the capital cost; and

(b) the amount determined by dividing that part of the capital cost by the number of 12-month periods (not exceeding 40 such periods) falling within the period commencing with the beginning of the particular taxation year in which the capital cost was incurred and ending with the day the lease is to terminate.

Definitions: "amount" — ITA 248(1); "capital cost" — Reg. 1100(1)(b); "taxation year" — ITA 249.

3. For the purpose of determining, under section 2 of this Schedule, the prorated portion for the year of the part of the capital cost, incurred in a particular taxation year, of a particular leasehold interest, the following rules apply:

(a) where an item of the capital cost of a leasehold interest was incurred before the taxation year in which the interest was acquired, it shall be deemed to have been incurred in the taxation year in which the interest was acquired;

(b) where, under a lease, a tenant has a right to renew the lease for an additional term, or for more than one additional term, after the term that includes the end of the particular taxation year in which the capital cost was incurred, the lease shall be deemed to terminate on the day on which the term next succeeding the term in which the capital cost was incurred is to terminate;

(c) the prorated portion for the year of the part of the capital cost, incurred in a particular taxation year, of a particular leasehold interest shall not exceed the amount, if any, remaining after deducting from that part of the capital cost the aggregate of the amounts claimed and deductible in previous years in respect thereof;

(d) where, at the end of a taxation year, the aggregate of

(i) the amounts claimed and deductible in previous taxation years in respect of a particular leasehold interest, and

(ii) the proceeds of disposition, if any, of part or all of that interest

equals or exceeds the capital cost as of that time of the interest, the prorated portion of any part of that capital cost shall, for all subsequent years, be deemed to be nil; and

(e) where, at the end of a taxation year, the undepreciated capital cost to the taxpayer of property of Class 13 in Schedule II is nil, the prorated portion of any part of the capital cost as of that time shall, for all subsequent years, be deemed to be nil.

Definitions: "amount" — ITA 248(1); "capital cost" — Reg. 1100(1)(b); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

Interpretation Bulletins: IT-324: CCA — Emphyteutic lease; IT-464R: CCA — Leasehold interests.

4. Where a taxpayer has acquired a property that would, if the property had been acquired by a person with whom the taxpayer was not dealing at arm's length at the time the property was acquired, be a leasehold interest of that person, a reference in this Schedule to a leasehold interest shall, in respect of the taxpayer, include a reference to that property, and the terms and conditions of the leasehold interest of that property in respect of the taxpayer shall be deemed to be the same as those that would have applied in respect of that person had that person acquired the property.

History: S. 4 added by P.C. 1994-139, s. 29, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to property acquired after December 23, 1991, other than property acquired by a taxpayer before 1993

(a) pursuant to an agreement in writing entered into by the taxpayer before December 24, 1991, or

(b) that was under construction by or on behalf of the taxpayer on December 23, 1991.

Definitions: "arm's length" — ITA 251(1); "person", "property", "taxpayer" — ITA 248(1).

SCHEDULE IV — CAPITAL COST ALLOWANCES, CLASS 15

History: Schedule D was consolidated and retitled Schedule IV, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(f), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of property described in Class 15 in Schedule II is the lesser of

(a) an amount computed on the basis of a rate per cord, board foot or cubic metre cut in the taxation year; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100 for the taxation year) of property of that class.

History: Para. 1(a) amended by P.C. 1994-139, s. 30, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount", "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

2. Where all the property of the class is used in connection with one timber limit or section thereof, the rate per cord, board foot or cubic metre is the amount determined by dividing

(a) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100 for the taxation year) of the property

by

(b) the number of cords, board feet or cubic metres of timber in the limit or section thereof as of the commencement of the taxation year, obtained by deducting the quantity cut up to that time from the amount shown by the latest cruise.

History: S. 2 substituted by P.C. 1994-139, s. 31, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

3. Where a part of the property of the class is used in connection with one timber limit or a section thereof and a part is used in connection with another limit or section thereof, a separate rate shall be computed for each part of the property, in the manner provided in section 2 of this Schedule, as though each part of the property were the taxpayer's only property of that class.

Definitions: "property", "taxpayer" — ITA 248(1).

SCHEDULE V — CAPITAL COST ALLOWANCES, INDUSTRIAL MINERAL MINES

History: Schedule E was consolidated and retitled Schedule V, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(g), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of a property described in that paragraph that is an industrial mineral mine or a right to remove industrial minerals from an industrial mineral mine is the lesser of

(a) an amount computed on the basis of a rate (computed under section 2 or 3 of this Schedule, as the case may be) per unit of mineral mined in the taxation year; and

(b) the undepreciated capital cost to the taxpayer as of the end of the taxation year (before making any deduction under section 1100) of the mine or right.

Definitions: "amount" — ITA 248(1); "industrial mineral mine", "mineral" — Reg. 1104(3); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

2. Where the taxpayer has not been granted an allowance in respect of the mine or right for a previous taxation year, the rate for a taxation year is an amount determined by dividing the capital cost of the mine or right to the taxpayer minus the residual value, if any, by

(a) in any case where the taxpayer has acquired a right to remove only a specified number of units, the specified number of units of material that he acquired a right to remove; and

(b) in any other case, the number of units of commercially mineable material estimated as being in the mine when the mine or right was acquired.

Definitions: "amount" — ITA 248(1); "residual value" — Reg. Sch. V s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

3. Where the taxpayer has been granted an allowance in respect of the mine or right in a previous taxation year, the rate for the taxation year is

(a) where paragraph (b) does not apply, the rate employed to determine the allowance for the most recent year for which an allowance was granted; and

(b) where it has been established that the number of units of material remaining to be mined in the previous taxation year was in fact different from the quantity that was employed in determining the rate for the previous year referred to in paragraph (a), or where it has been established that the capital cost of the mine or right is substantially different from the amount that

was employed in determining the rate for that previous year, a rate determined by dividing the undepreciated capital cost to the taxpayer of the mine or right as of the commencement of the year minus the residual value, if any, by

(i) in any case where the taxpayer has acquired a right to remove only a specified number of units, the number of units of commercially mineable material that, at the commencement of the year, he had a right to remove, and

(ii) in any other case, the number of units of commercially mineable material estimated as remaining in the mine at the commencement of the year.

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "employed" — ITA 248(1); "residual value" — Reg. Sch. V s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

4. In lieu of the aggregate of deductions otherwise allowable under this Schedule, a taxpayer may elect that the deduction for the taxation year be the lesser of

(a) $100; and

(b) the amount received by him in the taxation year from the sale of mineral.

Definitions: "amount" — ITA 248(1); "mineral" — Reg. 1104(3); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5. In this Schedule, "residual value" means the estimated value of the property if all commercially mineable material were removed.

Definitions: "property" — ITA 248(1).

Interpretation Bulletins [Schedule V]: IT-423: Sale of sand, gravel or topsoil; IT-492: Industrial mineral mines.

SCHEDULE VI — CAPITAL COST ALLOWANCES, TIMBER LIMITS AND CUTTING RIGHTS

History: Schedule C was consolidated and retitled Schedule VI, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

1. For the purposes of paragraph 1100(1)(e), the amount that may be deducted in computing the income of a taxpayer for a taxation year in respect of the capital cost to him of a property, other than a timber resource property, that is a timber limit or a right to cut timber from a limit is the lesser of

(a) the aggregate of

(i) an amount computed on the basis of a rate (determined under section 2 or 3 of this Schedule) per cord, board foot or cubic metre cut in the year, and

(ii) the lesser of

(A) 1/10 of the amount expended by the taxpayer after the commencement of his 1949 taxation year that is included in the capital cost to him of the timber limit or right, for surveys, cruises or preparation of prints, maps or plans for the purpose of obtaining a licence or right to cut timber, and

(B) the amount expended as described in clause (A) minus the aggregate of amounts deducted under this subparagraph in computing the income of the taxpayer in previous years; and

(b) the undepreciated capital cost to the taxpayer as of the end of the year (before making any deduction under section 1100 for the year) of the timber limit or right.

History: Subpara. 1(a)(i) substituted by P.C. 1994-139, s. 32, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "property" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "timber resource property", "undepreciated capital cost" — ITA 13(21), 248(1).

2. If the taxpayer has not been granted an allowance in respect of the limit or right for a previous taxation year, the rate for a taxation year is an amount determined by dividing

(a) the capital cost of the limit or right to the taxpayer, minus the aggregate of the residual value of the timber limit and any amount expended by the taxpayer after the commencement of his 1949 taxation year that is included in the capital cost to him of the timber limit or right, for surveys, cruises or preparation of prints, maps or plans for the purpose of obtaining a licence or right to cut timber,

by

(b) the quantity of timber in the limit or the quantity of timber the taxpayer has obtained a right to cut, as the case may be, (expressed in cords, board feet or cubic metres) as shown by a cruise.

History: Para. 2(b) substituted by P.C. 1994-139, s. 33, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "residual value" — Reg. Sch. VI s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

3. If the taxpayer has been granted an allowance in respect of the limit or right in a previous taxation year, the rate for a taxation year is

(a) where paragraph (b) does not apply, the rate employed to determine the allowance for the most recent year for which an allowance was granted; and

(b) where it has been established that the quantity of timber that was in the limit or that the taxpayer had a right to cut was in fact substantially different from the quantity that was employed in determining the rate for the previous year referred to in paragraph (a), or where it has been established that the capital cost of the limit or right is substantially different from the amount that was employed in determining the rate for that previous year, a rate determined by dividing

(i) the undepreciated capital cost to the taxpayer of the limit or right as of the commencement of the year, minus the residual value,

by

(ii) the estimated remaining quantity of timber that is in the limit or that the taxpayer has a right to cut, as the case may be, (expressed in cords, board feet or cubic metres) at the commencement of the year.

History: Subpara. 3(b)(ii) substituted by P.C. 1994-139, s. 34, January 27, 1994, *Canada Gazette*, Part II, February 9, 1994, applicable to 1986 *et seq.*

Definitions: "amount" — ITA 248(1); "commencement" — *Interpretation Act* 35(1); "employed" — ITA 248(1); "residual value" — Reg. Sch. VI s. 5; "taxation year" — ITA 249; "taxpayer" — ITA 248(1); "undepreciated capital cost" — ITA 13(21), 248(1).

4. In lieu of the deduction otherwise determined under this Schedule, a taxpayer may elect that the deduction for a taxation year to be the lesser of

(a) $100; and

(b) the amount received by him in the taxation year from the sale of timber.

Definitions: "amount" — ITA 248(1); "taxation year" — ITA 249; "taxpayer" — ITA 248(1).

5. In this Schedule, "residual value" means the estimated value of the property if the merchantable timber were removed.

Definitions: "property" — ITA 248(1).

Interpretation Bulletins: IT-481: Timber limits and cutting rights.

SCHEDULE VII — PUBLICLY-TRADED SHARES OR SECURITIES

[Reg. 4400]

History: Schedule F was consolidated and retitled Schedule VII, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Schedule F substituted by P.C. 1980-2081, July 31, 1980, *Canada Gazette*, Part II, August 13, 1980.

Schedule F substituted by P.C. 1980-3472, December 18, 1980, *Canada Gazette*, Part II, January 14, 1981.

Legend re Codes Used:

(1) Close price from the exchange with the largest volume — For this day (December 22, 1971) this item.

(2) Last close price available in the past 4 weeks.

(3) Mid-point between last bid and ask price in the past 4 weeks.

(4) No price available under (1), (2), (3).

All prices are in Canadian funds.

For abbreviations used, see Part XLIV.

A-1 Steel & Iron Foundry (Vancouver) Ltd. (Cl. A.) . . . 6.75(3)
A-1 Steel & Iron Foundry (Vancouver) Ltd. (Cl. B.) . . . 6.50(1)
Aabro Mining & Oils Ltd. . . . (4)
Abbey Life Insurance Company of Canada . . . (4)
L'Abbaye Compagnie d'Assurance Vie du Canada . . . (4)
Abcourt Metals Inc. . . . .28(2)
Aberdeen Minerals Ltd. . . . (4)
Abeta Mining Corp. Ltd. . . . .05(3)
Abex Mines Ltd. . . . .01(3)
Abino Gold Mines Ltd. . . . .03(3)
Abitibi Asbestos Mining Co. Ltd. . . . 1.75(1)
Abitibi Copper Mines Ltd. . . . .13(1)
Abitibi Paper Co. Ltd. . . . 7.25(1)
Compagnie de Papier Abitibi Ltée . . . 7.25(1)
Abitibi Paper Co. Ltd. (7½% Cu. A. Pr.) . . . 49.50(1)
Compagnie de Papier Abitibi Ltée (7½% Cu. A. Priv.) . . . 49.50(1)
Abstainers Insurance Co. . . . 11.00(3)
Acadia Uranium Mines Ltd. . . . .06(2)
Accra Explorations Limited . . . .07(2)
Accurate Calculation Ltd. . . . 1.13(1)
Acheron Mines Ltd. . . . .16(1)
Acklands Limited . . . 7.50(1)
Acklands Limited (6% Cu. Pr.) . . . 15.75(2)
Acklands Limited (6% Cu. Cv. 2nd Pr.) . . . 11.25(1)
Acme Gas & Oil Co. Ltd. . . . .22(1)
Aconic . . . .02(3)
Acres Limited . . . 11.63(1)
Acres Limited (7.20% A. Pr.) . . . 40.00(1)
Acres Limited (Wt.) . . . 2.40(1)
Acroll Oil & Gas Ltd. . . . .63(1)
Adanac Mining & Exploration Ltd. . . . .46(2)
Adera Mining Limited . . . .33(1)
Admiral Corporation . . . 18.50(3)
Admiral Mines Ltd. . . . .15(2)
Advance Red Lake Gold Mines Ltd. . . . .04(3)
Advocate Mines Ltd. . . . 1.80(2)
Aetna Investment Ltd. . . . .85(2)
Corporation de Placement Aetna . . . .85(2)
Afton Mines Limited . . . 1.21(1)
A.G.F. Management Ltd. (Cl. B. Pr.) . . . 5.75(1)
La Societe de Gestion A.G.F. Ltée (Cat. B. Priv.) . . . 5.75(1)
AGF Special Fund Ltd. . . . 3.00(1)
Aggressive Mining Limited . . . .11(3)
Agnico Mines Ltd. . . . 1.98(1)
Agra Industries Ltd. . . . 9.63(1)
AGT Data Systems Ltd. . . . 1.00(1)
A.G.T. Informatique Ltée . . . 1.00(1)
AHED Music Corp. Ltd. . . . 4.70(1)
Aiken-Russet Red Lake Mines Ltd. . . . .07(3)
Aimco Industries Ltd. . . . 16.00(2)
A.I.S. Resources Ltd. . . . 5.90(1)
Ajax Mercury Mines Ltd. . . . .11(1)
Ajax Minerals Limited . . . .23(1)
Akaitcho Yellowknife Gold Mines Ltd. . . . .45(2)
Alakon Metals Limited . . . .06(2)
Albany Oil & Gas Ltd. . . . .45(1)
Albarmont Mines Corporation . . . .27(2)
Albatros Gold Mines Ltd. . . . (4)
Mines d'Or Albatros Ltée . . . (4)
Alberta Copper Resources Ltd. . . . .40(1)
Alberta Eastern Gas Ltd. . . . 5.45(1)
Alberta Gas Trunk Line Co. Ltd. . . . 49.75(1)
Alberta Gas Trunk Line Co. Ltd. (4¼% Cu. C. Pr.) . . . 76.00(2)
Alberta Gas Trunk Line Co. Ltd. (5⅜% Cu. Cv. D. Pr.) . . . 138.00(1)
Alberta Gypsum Ltd. . . . .15(2)
Alberta Natural Gas Co. Ltd. . . . 20.00(1)
Alcan Aluminium Ltd. . . . 18.88(1)
Alcan Aluminium Ltee . . . 18.88(1)
Alcan Aluminium Ltd. (4¼% Cu. Cv. Pr.) . . . 26.75(1)
Alcan Aluminium Ltee (4¼% Cum. Conv. Priv.) . . . 26.75(1)
Alchib Development Ltd. . . . .45(2)
Alcor Minerals Limited . . . .12(2)
Alexander Red Lake Mines Ltd. . . . .03(1)
Algoma Central Railway Co. . . . 8.25(1)
Algoma Steel Corp. Ltd., The . . . 13.38(1)
Algonquin Building Credits Ltd. . . . 4.05(2)
Algonquin Building Credits Ltd. (6% Cu. Pr.) . . . 4.00(2)
Alice Arm Mining Ltd. . . . .11(3)
Alice Lake Mines Limited . . . .23(2)
Alina Mines & Oil Ltd. . . . .80(3)
Aljo Mines Ltd. . . . (4)
Allarco Developments Inc. . . . 4.80(1)
All Canadian-American Investments Limited . . . .55(3)
All-Can Holdings Ltd. (Cl. A.) . . . (4)
All-Can Holdings Ltd. (Cl. B.) . . . (4)
Allcop Mines Ltd. . . . .02(3)
Alliance Building Corp. Ltd. (7% Cu. Cv. A. Prc.) . . . 7.00(2)
Alliance Building Corp. Ltd. . . . 3.20(1)
Allied Mining Corp. . . . 3.25(1)
Allied Roxana Minerals Limited . . . .65(1)
Allied Telemedia Ltd. . . . .03(3)
Alminex Ltd. . . . 5.35(1)
Alscope Consolidated Ltd. . . . 1.25(1)
Altair Mining Corp. Limited . . . .10(2)
Aluminum Co. of Canada Ltd. (4% Cu. 1st Pr.) . . . 18.00(2)
Aluminium du Canada Limitée (4% Cum. 1ière Priv.) . . . 18.00(2)
Aluminum Co. of Canada Ltd. (4-1/2% Cu. 2nd Pr.) . . . 36.13(1)
Aluminium du Canada Limitée (4-1/2% Cum. 2ième Priv.) . . . 36.13(1)
Alvija Mines Ltd. . . . .07(2)
Alwin Mining Co. Ltd. . . . .64(1)
Amalgamated Beau Belle Mines Ltd. . . . .04(2)

Amalgamated Kirkland Mines Ltd. . . . . (4)
Amalgamated Larder Mines Ltd. . . . . .49(1)
Amalgamated Properties Ltd. . . . . .70(1)
Amalgamated Rare Earth Mines Ltd. . . . . .07(2)
Amalgamated Resources Ltd. . . . . .03(2)
Amalta Oils & Minerals Ltd. . . . . .13(1)
Ambassador Development Corp. of Canada Ltd. . . . . .70(1)
Ambassador Mines Ltd. . . . . .09(2)
Amber Resources Ltd. . . . . .30(2)
Ameranium Mines Ltd. . . . . .06(2)
Americ Mines Ltd. . . . . .17(1)
American Chibougamau Mines Ltd. . . . . (4)
American Copper & Smelting Ltd. . . . . (4)
American Eagle Petroleums Ltd. . . . . .75(1)
American Leduc Petroleums Ltd. . . . . .09(2)
American Metropolitan Enterprises Ltd. . . . . 1.15(2)
American Quasar Petroleum Co. . . . . 4.80(2)
American Uranium Limited . . . . . (4)
Amigo Mines Ltd. . . . . .06(1)
Anaconda Petroleum Limited . . . . . (4)
Anchor Mines Limited . . . . . .23(1)
Anchor Petroleums Ltd. . . . . .04(3)
Andacollo Mining Co. Ltd. . . . . (4)
Andex Mines Ltd. . . . . .30(2)
Angelus Petroleums (1965) Ltd. . . . . .23(1)
Anglo American Nickel Mining Corp. Ltd. . . . . (4)
Anglo-Bomarc Mines Limited . . . . . .60(2)
Anglo-Canadian Pulp & Paper Mills Ltd. . . . . 4.70(1)
Anglo-Canadian Pulp & Paper Mills Ltd. (4-1/2% Cu. Cv. Pr.) . . . . . 14.00(1)
Anglo-Canadian Telephone Co. ($2.65 Cu. Pr.) . . . . . 34.00(2)
Anglo-Canadian Telephone Co. ($2.90 Cu. Pr.) . . . . . 38.00(1)
Anglo-Canadian Telephone Co. ($3.15 Cu. Pr.) . . . . . 42.63(2)
Anglo-Canadian Telephone Co. (4-1/2% Cu. Pr.) . . . . . 30.75(1)
Anglo-Permanent Corporate Holdings Limited . . . . . 13.50(2)
Anglo-Rouyn Mines Ltd. . . . . .32(1)
Anglo United Development Corp. Ltd. . . . . .71(1)
Anglo Western Minerals Ltd. . . . . .17(1)
Angot Group Limited, The . . . . . 1.00(3)
Annmar Mining Limited . . . . . .05(1)
Ansil Mines Ltd. . . . . .01(2)
Anthes Imperial Limited (5-1/2% Cu. A. 1st Pr.) . . . . . (4)
Anthes Imperial Limited (5-1/2% Cu. B. 1st Pr.) . . . . . 80.00(2)
Anthes Imperial Limited (5-1/4% Cu. C. 1st Pr.) . . . . . 80.00(2)
Anthonian Mining Corp. Ltd. . . . . .03(2)
Anthony Gas & Oil Explorations Ltd. . . . . 1.43(1)
Antoine Silver Mines Ltd. . . . . .04(3)
Anuk River Mines Ltd. . . . . .25(1)
Anuwon Uranium Mines Ltd. . . . . .02(3)
Aquablast Incorporated . . . . . 3.65(1)
Aquacare International Ltd. . . . . (4)
Aquitaine Co. of Canada Ltd. . . . . 24.50(1)
Société Aquitaine du Canada Ltée . . . . . 24.50(1)
Arcadia Explorations Ltd. . . . . .11(2)
Arctic Yellowknife Mines Ltd. . . . . .03(3)
Ardel Explorations Limited . . . . . .08(3)
Ardo Mines Ltd. . . . . .16(1)
Ardo Mines Ltd. (B. Wt.) . . . . . (4)
Argosy Mining Corp. Ltd. . . . . .45(2)
Argus Corporation Limited . . . . . 13.00(1)
Argus Corporation Limited ($2.50 Cu. A. Pr.) . . . . . 32.00(1)
Argus Corporation Limited ($2.60 Cu. A. Pr.) . . . . . 34.13(2)
Argus Corporation Limited ($2.70 Cu. B. Pr.) . . . . . 35.75(1)
Argus Corporation Limited (C. Pr.) . . . . . 9.75(1)
Arjon Gold Mines Ltd. . . . . .01(3)
Arlington Silver Mines Ltd. . . . . .17(2)
Armore Mines Ltd. . . . . .14(1)
Arno Mines Ltd. . . . . .04(1)
Arrowhead Gold Mines Ltd. . . . . .01(3)
Arctic Gold & Silver Mines Ltd. . . . . .09(1)
Asamera Oil Corporation Ltd. . . . . 18.50(1)
Asbestos Corporation Ltd. . . . . 25.50(1)
Ascopex Explorations Ltd. . . . . (4)
Ascopex Explorations Ltée . . . . . (4)
Aselo Industries Ltd. . . . . .13(2)
Ashland Oil Canada Ltd. . . . . 11.88(1)
Ashland Oil Canada Ltd. (6% Cu. Cv. Pr.) . . . . . 29.50(2)
Ashland Oil Inc. . . . . 20.38(2)
Aspen Grove Mines Ltd. . . . . .10(3)
Associated Porcupine Mines Ltd. . . . . .32(2)
Astonish Lake Uranium Mining Corp. Ltd. . . . . (4)
Astrabrun Mines Ltd. . . . . .03(3)
Astral Communications Ltd. . . . . 1.97(2)
Atco Industries Ltd. . . . . 8.13(1)
Athabasca Columbia Resources Ltd. . . . . 1.65(2)
Athena Mines Limited . . . . . .08(2)
Atlanta Mines Ltd. . . . . (4)
Atlantic Coast Copper Corp. Ltd. . . . . .46(2)
Atlantic Nickel Mines Ltd. . . . . .22(1)
Atlantic Richfield Co. . . . . 64.13(2)
Atlantic Sugar Refineries Co. Limited . . . . . 6.38(1)
Atlantic Sugar Refineries Co. Limited (A. Cu. Pr.) . . . . . 15.00(1)
Atlantic Sugar Refineries Co. Limited (5% Cu. Pr.) . . . . . 62.38(1)
Atlantic Sugar Refineries Co. Limited (Wt.) . . . . . 1.40(1)
Atlantic Trust Co. . . . . (4)
Atlantic Tungsten Corp. Ltd. . . . . .17(1)
Atlas Explorations Limited . . . . . .32(1)
Atlas Yellowknife Mines Ltd. . . . . .05(2)
Attila Resources Ltd. . . . . 1.13(1)
Augdome Corp. Ltd. . . . . .19(3)
Augmitto Explorations Ltd. . . . . (4)
August Porcupine Gold Mines Ltd. . . . . .02(3)
Aunor Gold Mines Ltd. . . . . 2.30(1)
Auscan Mining and Oil Corporation Limited . . . . . .90(1)
Austin Investment Corp. Ltd. . . . . .41(3)
Auto Electric Services Co. Ltd. . . . . 6.00(1)
Auto Marine Electric Ltd. . . . . (4)
Auto Marine Electric Ltd. (Pr.) . . . . . .40(2)
Automotive Hardware Limited . . . . . 7.25(1)
Autoletic Industries Ltd. . . . . .65(2)
Ava Gold Mining Co. Ltd. . . . . (4)
Avco Corporation . . . . . (4)
Avilla International Explorations Ltd. . . . . .28(1)
Avino Mines & Resources Limited . . . . . .33(2)
Avoca Mines Canada Ltd. . . . . .65(2)
Babine International Resources Ltd. . . . . .14(2)
Bahamas-Caribbean Development Corporation Limited . . . . . .16(1)
Baker Talc Ltd. . . . . .42(1)
Balco Forest Products Ltd. . . . . 8.25(1)
Bald Mountain Oil Co. . . . . .03(2)
Baldwin Consolidated Mines Ltd. . . . . .01(3)
Ballinderry Explorations Limited . . . . . .90(1)
Bamboo Creek Gold Mines Ltd. . . . . .80(1)
Banco Finance Limited (Cl. B.) . . . . . (4)
Bancroft Uranium Mines Ltd. . . . . (4)
Band-Ore Gold Mines Ltd. . . . . .05(2)
Bankeno Mines Ltd. . . . . 6.40(1)
Bankfield Consolidated Mines Ltd. . . . . .02(2)
Bank of British Columbia . . . . . 22.25(2)
Bank of Montreal . . . . . 18.50(1)
Bank of Nova Scotia . . . . . 31.13(1)
Banner Porcupine Mines Ltd. . . . . (4)
Banque Canadienne Nationale . . . . . 14.00(1)
Bantam Mining Ltd. . . . . .40(1)
Mines Bantam Ltée . . . . . .40(1)
Barber-Ellis of Canada Ltd. . . . . 13.50(2)
Barber Oil Corporation . . . . . 48.50(3)
Barbi Lake Copper Mines Ltd. . . . . .15(2)
Barcelona Traction Light & Power Co. . . . . .20(2)
Barclay Resources Ltd. . . . . (4)
Barex-Trust, The . . . . . .20(2)
Barima Minerals Ltd. . . . . .01(3)

Barons Oil Limited .05(1)
Barrington Explorations Corp. Ltd. .07(3)
Bartaco Industries Limited 4.50(1)
Barvallee Mines Ltd. (4)
Barymin Explorations Ltd. 1.20(1)
Base Metals Mining Corp. Ltd. .01(3)
Bashaw Leduc Oil & Gas Limited .05(1)
Basic Resources International Limited 3.30(1)
Baslen Petroleums Ltd. .07(3)
Bateman Bay Mining Co. .06(1)
Bathurst Norsemines Ltd. .85(1)
Bathurst Norsemines Ltd. (A. Wt.) (4)
Bathurst Paper Ltd. (5-1/4% Cu. 1963 Pr.) 6.75(2)
Les Papeteries Bathurst Ltée (5-1/4% Cum Priv.) 6.75(2)
Baton Broadcasting Inc. 14.88(1)
Bay Mills Ltd. 1.34(3)
Bay Mills Ltd. (6% Cu. A. 1st Pr.) 3.05(2)
B.C. Turf Limited 4.00(1)
Beacon Mining Co. Ltd. .05(3)
Bear International Industries Ltd. .19(1)
Beattie-Duquesne Mines Ltd. .04(2)
Beauce Placer Mining Co. Ltd. .01(2)
Beaumont Resources Limited .09(1)
Beauport Holdings Ltd. .36(1)
Beaver Engineering Ltd. 6.50(1)
Beaver Lumber Co. Ltd. 19.50(1)
Beaver Lumber Co. Ltd. (Cl. A.) 19.38(1)
Beaver Lumber Co. Ltd. ($1.40 Cu. Pr.) 21.00(2)
Becker Milk Co. Ltd. (Cl. B. Pr.) 10.00(2)
Bel-Air Mining Ltd. .92(1)
Belcarra Explorations Ltd. (4)
Belding-Corticelli Limited 10.25(1)
Belding-Corticelli Limited (7% Cu. Pr.) 10.34(3)
Belding-Corticelli Limited (Wt.) 2.80(1)
Belgium Standard Ltd. 15.50(1)
Belgium Standard Ltd. (5% Cu. Pr.) (4)
Bell Canada 46.88(1)
La Compagnie de Téléphone Bell du Canada 46.88(1)
Bell Canada ($3.20 Cu. Cv. Pr.) 52.38(1)
La Compagnie de Téléphone Bell du Canada ($3.20 Cum. Conv. Priv.) 52.38(1)
Bell Canada ($3.34 Cu. Cv. Cl. B. Pr.) 53.88(1)
La Compagnie de Téléphone Bell du Canada ($3.34 Cum. Conv. Cat. B. Priv.) 53.88(1)
Bellechase Mining Corp. Ltd. .04(2)
Belleterre Quebec Mines Ltd. .15(2)
Bellex Mines Ltd. .02(2)
Bell Knit Industries Ltd. .88(3)
Bell Molybdenum Mines Ltd. .14(1)
Belore Mines Ltd. .16(1)
Belra Explorations Ltd. (4)
Benson Mines Limited .14(1)
Berkley Hotel 1.75(1)
Berncam International Industries Ltd. 6.13(1)
Bethlehem Copper Corporation Ltd. 18.00(1)
Betrust Investment Corporation Ltd. 16.50(2)
Betrust Investment Corporation Ltd. (5-3/4% Cu. A. Pr.) (4)
Big I Mines Ltd., The (4)
Big Jackpot Mines Ltd. .01(3)
Big Long Lac Gold Mining Co. Ltd. .01(3)
Big Nama Creek Mines Ltd. .09(2)
Big Town Copper Mines Ltd. (4)
Bilmac Gold Mines Ltd. (4)
Biltmore Hats Limited 13.00(2)
Biltmore Hats Limited (Cl. A. Cu. Pr.) 10.50(2)
Bio-Millet Laboratories (4)
Laboratoire Bio-Millet (4)
Bird Construction Co. Ltd. 57.50(2)
Bird River Mines Co. Ltd. .65(1)
Biroco Kirkland Mines Ltd. .01(3)
Biron Bay Gold Mines Ltd. .23(1)
Bison Petroleum & Minerals Ltd. 9.10(1)
Black Bay Uranium Ltd. (4)
Black Cricket Mines Ltd. .60(2)
Black Giant Mines Ltd. .30(2)
Black Hawk Mining Ltd. .50(1)
Black Photo Corporation Ltd. 4.85(1)
Blackwater Mines Ltd. .30(1)
Block Bros. Industries Ltd. 3.00(1)
Block Bros. Industries Ltd. (A. Wt.) 5.00(2)
Block Bros. Industries Ltd. (B. Wt.) (4)
Blue Bonnets Raceway Inc. 2.05(1)
Blue Grass Uranium Mines Ltd. .01(3)
Blue Gulch Explorations Limited .48(1)
Blue Star Mines Limited .06(1)
Bluewater Oil & Gas Ltd. .90(1)
Bochawna Copper Mines Ltd. (4)
Bock & Frère Ltée (6-3/4% Cum. Priv.) (4)
Boise Yellowknife Mines Ltd. (4)
Bombardier Limited (Cl. A.) 9.50(1)
Bombardier Limitée (Cat. A.) 9.50(1)
Bonanza Explorations Ltd. (4)
Bonnet Plume River Mines Ltd. .15(3)
Bon-Val Mines Ltd. .44(1)
Boraway Mines Ltd. .11(1)
Border Chemical Company Limited 10.38(1)
Bordun Mining (Quebec) Limited .30(1)
Les Mines Bordun (Québec) Limitée .30(1)
Borealis Exploration Ltd. .30(2)
Borealis Exploration Ltd. (Wt.) (4)
Boswell River Mines Ltd. .22(2)
Boundary Exploration Ltd. .14(1)
Bounty Exploration Ltd. .13(2)
Bourbeau Lake Mines Ltd. .02(3)
Bourlamaque Central Mines 1945 Ltd. .02(3)
Bovis Corporation Ltd. 1.90(1)
Bowater Paper Corporation Ltd. 4.65(2)
Bowaters Mersey Paper Company Ltd. (5-1/2% Cu. Pr.) 32.00(2)
Bowes Co. Ltd. 12.50(2)
Bow Valley Industries Ltd. 28.38(1)
Bow Valley Industries Ltd. (5-1/2% Cu. A. Pr.) 14.25(2)
BP Canada Ltd. (5% Pr.) 75.00(2)
BP Oil & Gas Limited 6.20(1)
Bracemac Mines Ltd. .03(1)
Bralorne Can-Fer Resources Ltd. 1.75(1)
Bralorne Oil & Gas Ltd. 2.25(1)
Bralsaman Petroleums Ltd. 3.25(2)
Bramalea Consolidated Development Ltd. 3.45(1)
Bramalea Consolidated Development Ltd. (Wt.) 2.10(1)
Brameda Resources Limited .92(1)
Braminco Mines Ltd. .03(3)
Brandy Brook Mines Ltd. .10(3)
Brascan Limited 18.50(1)
Brenda Mines Limited 4.55(1)
Brenmac Mines Limited .38(1)
Brettland Mining Ltd. (4)
Brett Oils Limited .23(2)
Brewster Lake Mines Limited .60(1)
Briarcourt Mines Ltd. .11(3)
Bridge & Tank Co. of Canada Ltd. 4.50(2)
Bridge & Tank Co. of Canada Ltd. ($2.90 Cu. Pr.) 32.25(2)
Bridge Hill Mines Limited .38(3)
Bright & Co. Ltd., T.G. 16.00(1)
Bright Red Lake Mines Ltd. .01(3)
Bright Star Trio Mining Ltd. 1.10(1)
Brilund Mines Ltd. 8.00(3)
Brinco Ltd. 5.63(1)
British American Bank Note Co. Ltd. 13.00(1)
British Columbia Forest Products Ltd. 19.75(1)
British Columbia Forest Products Ltd. (6% Cu. Pr.) 41.50(2)
British Columbia Oil Lands Limited 7.50(3)
British Columbia Packers Ltd. (Cl. A.) 20.00(2)
British Columbia Packers Ltd. (Cl. B.) 19.50(3)
British Columbia Sugar Refinery Ltd. 19.38(1)
British Columbia Sugar Refinery Ltd. (5% Cu. Pr.) 17.00(2)
British Columbia Telephone Co. 63.75(1)
British Columbia Telephone Co. (4-3/8% Cu. Pr.) 63.00(2)

British Columbia Telephone Co. (4-1/2% Cu. Pr.) . . . . . 63.00(2)
British Columbia Telephone Co. (4-3/4% Cu. Pr.) . . . . . 66.50(1)
British Columbia Telephone Co. (4-3/4% 1956 Cu. D. Pr.) . . . . . 66.00(2)
British Columbia Telephone Co. (4.84% Cu. Pr.) . . . . . 17.50(2)
British Columbia Telephone Co. (5.15% Cu. Pr.) . . . . . 71.50(2)
British Columbia Telephone Co. (5-3/4% Cu. Pr.) . . . . . 80.50(1)
British Columbia Telephone Co. (6% Cu. Pr.) . . . . . 84.50(3)
British Columbia Telephone Co. (6% Cu. 2nd Pr.) . . . . . 82.00(2)
British Columbia Telephone Co. (6.80% Cu. Pr.) . . . . . 26.50(2)
British Controlled Oilfields Ltd. . . . . .20(2)
British International Finance Canada Ltd. (Cl. A.) . . . . . (4)
British Matachewan Gold Mines Ltd. . . . . (4)
Broken Hill Explorations Ltd. . . . . .08(3)
Brooke Bond Foods Ltd. (4.16% Cu. Pr.) . . . . . 19.50(3)
Brosnan Canadian Mines Ltd. . . . . (4)
Broulan Reef Mines Ltd. . . . . .23(2)
Brown-McDade Mines Ltd. . . . . .10(3)
Bruck Mills Ltd. (Cl. A.) . . . . . 15.00(1)
Bruck Mills Ltd. (Cl. B.) . . . . . 8.00(2)
Bruneau Mining Corporation 1970 . . . . . .11(2)
Brunswick Mining & Smelting Corp. Ltd. . . . . 3.05(1)
Brycon Industries Ltd. . . . . .18(1)
Buchanan Mines Limited . . . . . .15(1)
Buckeye Explorations Ltd. . . . . .35(1)
Budd Automotive Co. of Canada Ltd. . . . . 6.63(1)
Budd Automotive Co. of Canada Ltd. (Wt.) . . . . . 2.40(1)
Buffalo Gas & Oil Corporation Limited . . . . . 1.05(2)
Buffalo Lake Mines Ltd. . . . . (4)
Bullion Mountain Mining Ltd. . . . . .65(1)
Bullion Mountain Mining Ltd. (A. Wt.) . . . . . (4)
Bunker Hill Extension Mines Ltd. . . . . .05(1)
Burlington Mines & Enterprises Ltd. . . . . (4)
Burns Foods Limited . . . . . 12.75(1)
Burnt Hill Tungsten & Metallurgical Ltd. . . . . .18(2)
Burrard Dry Dock Co. Ltd. . . . . 7.00(1)
Burrard Mortgage Investments Ltd. . . . . 1.90(3)
Burrex Mines Limited . . . . . .04(3)
Bushnell Communications Limited . . . . . 6.00(1)
Buval Executive Mining Industries Ltd. . . . . .40(1)
C & C Yachts Ltd. . . . . 2.50(2)
Cable Copper Mines Limited . . . . . (4)
Cabot Corporation . . . . . (4)
Cadillac Development Corp. Ltd. . . . . 8.38(1)
Cadillac Development Corp. Ltd. (6-1/2% Cu. B. Pr.) . . . . . 20.25(1)
Cadillac Explorations Ltd. . . . . 1.30(1)
CAE Industries Ltd. . . . . 4.65(1)
Calcorp Resources Ltd. . . . . .14(2)
Caledon Mountain Estates Ltd. . . . . 4.50(1)
Calgary Power Ltd. . . . . 27.25(1)
Calgary Power Ltd. (4% Cu. Pr.) . . . . . (4)
Calgary Power Ltd. ($5.00 Cu. Pr.) . . . . . 69.00(2)
Calgary Power Ltd. ($5.40 Cu. Cv. Pr.) . . . . . 91.00(2)
Calico Silver Mines Ltd. . . . . .18(2)
Caliper Developments Limited . . . . . .75(2)
Calix Mines Ltd. . . . . .05(1)
Calmark Industries Ltd. . . . . (4)
Calmor Iron Bay Mines Ltd. . . . . .50(2)
Calta Mines Limited . . . . . 1.02(1)
Calvert-Dale Estates Ltd. . . . . .82(2)
Calvert Gas & Oils Ltd. . . . . .14(2)
Cam Mines Ltd. . . . . .30(1)
Cambridge Leaseholds Limited . . . . . 11.50(1)
Cambridge Mines Limited . . . . . .38(1)
Cambridge Mining Corp. Ltd. . . . . .02(3)
Camdeck Mines Ltd. . . . . .15(3)
Camflo Mines Limited . . . . . 2.51(1)
Camindex Mines Ltd. . . . . .13(1)
Camlaren Mines Ltd. . . . . .08(3)
Campbell Chibougamau Mines Ltd. . . . . 4.70(1)
Campbell Red Lake Mines Ltd. . . . . 21.50(2)
Campeau Corporation Ltd. . . . . 3.50(1)
C-A Petroleums Ltd. . . . . (4)
Canada & Dominion Sugar Co. Ltd. . . . . 32.50(1)
Canada Cement LaFarge Ltd. . . . . 46.63(1)
Ciments Canada LaFarge Ltée . . . . . 46.63(1)
Canada Cement LaFarge Ltd. (6-1/2% Cu. Pr.) . . . . . 19.75(1)
Ciments Canada LaFarge Ltée (6-1/2% Cum. Priv.) . . . . . 19.75(1)
Canada Forgings Ltd. . . . . 4.50(2)
Canada Geothermal Oil Ltd. . . . . .68(1)
Canada Machinery Corporation Ltd. . . . . 19.00(1)
Canada Malting Co. Limited . . . . . 26.00(2)
Canada Malting Co. Limited (B. Pr.) . . . . . .89(2)
Canada Northwest Land Limited . . . . . 1.50(2)
Canada Packers Ltd. . . . . 18.50(1)
Canada Permanent Mortgage Corporation . . . . . 18.00(1)
Canada Safeway Limited ($4.40 Cu. Pr.) . . . . . 82.50(2)
Canada Southern Petroleum Ltd. . . . . 6.20(1)
Canada Southern Petroleum Ltd. (Wt.) . . . . . 3.10(1)
Canada Steamship Lines Ltd. . . . . 40.00(2)
Canada Steamship Lines Ltd. (5% Cu. Pr.) . . . . . 5.13(1)
Canada Tungsten Mining Corp. Ltd. . . . . 1.55(1)
Canada Western Cordage Company Ltd. (Cl. A.) . . . . . (4)
Canada Western Cordage Company Ltd. (Cl. B.) . . . . . (4)
Canadex Mining Corp. Ltd. . . . . .13(1)
Canadian Allied Property Investments Limited . . . . . 7.00(3)
Canadian All-Metal Explorations Ltd. . . . . (4)
Canadian Arena Co. . . . . 15.00(1)
Canadian Arrow Mines Limited . . . . . .14(1)
Canadian Barranca Corp. Ltd. . . . . .22(2)
Canadian Bonanza Petroleums Ltd. . . . . 1.30(1)
Canadian Breweries Limited . . . . . 7.50(1)
Les Brasseries Canadiennes Limitée . . . . . 7.50(1)
Canadian Breweries Limited ($2.20 Cu. A. Pr.) . . . . . 32.00(1)
Les Brasseries Canadiennes Limitée ($2.20 Cum. A. Priv.) . . . . . 32.00(1)
Canadian Breweries Limited ($2.65 Cu. B. Pr.) . . . . . 36.50(1)
Les Brasseries Canadiennes Limitee ($2.65 Cum. B. Priv.) . . . . . 36.50(1)
Canadian Cablesystems Ltd. . . . . 14.13(1)
Canadian Cablesystems Ltd. (Wt.) . . . . . 2.25(1)
Canadian Canners Ltd. (Cl. A.) . . . . . 6.50(1)
Canadian Converters Co. Ltd. (Cl. A.) . . . . . 2.00(3)
Canadian Converters Co. Ltd. (B.) . . . . . (4)
Canadian Corporate Management Company Limited . . . . . 16.00(2)
Canadian Corporate Management Company Limited (Cl. B.) . . . . . (4)
Canadian Curtiss-Wright Ltd. . . . . .70(1)
Canadian Delhi Oil Limited . . . . . 5.00(1)
Canadian Equity & Development Company Limited . . . . . 12.00(1)
Canadian Export Gas & Oil Ltd. . . . . 3.60(1)
Canadian Food Products Ltd. . . . . 5.20(2)
Canadian Food Products Ltd. (6% Cu. 1st Pr.) . . . . . 32.50(2)
Canadian Food Products Ltd. (6% Cv. 2nd Pr.) . . . . . 32.00(2)
Canadian & Foreign Securities Co. Ltd. . . . . (4)
Canadian Fortune Oil Limited . . . . . (4)
Canadian Foundation Co. Ltd. . . . . 6.00(1)
Canadian Foundation Co. Ltd. (6% Cu. A. Pr.) . . . . . 7.75(2)
Canadian Gas & Energy Fund Ltd. (B. Wt.) . . . . . 7.25(1)
Canadian General Electric Company Ltd. . . . . 22.50(3)
Compagnie Générale Electrique du Canada Ltée . . . . . 22.50(3)
Canadian General Electric Company Ltd. (Cu. Cv. Pr.) . . . . . 26.00(2)

Compagnie Générale Electrique du Canada Ltée (Cum. Conv. Priv.) 26.00(2)
Canadian General Investments Ltd. 66.00(1)
Canadian General Securities Limited (Cl. A.) 12.75(2)
Canadian General Securities Limited (Cl. B.) 30.00(2)
Canadian Goldale Corp. Ltd. 3.50(1)
Canadian Hidrogas Resources Ltd. .72(1)
Canadian Homestead Oils Limited 8.60(1)
Canadian Homestead Oils Limited (6% Cu. Cv. Pr.) 17.00(1)
Canadian Hydrocarbons Ltd. 13.88(1)
Canadian Hydrocarbons Ltd. (5-1/2% Cu. A. Pr.) 14.00(2)
Canadian Imperial Bank of Commerce 25.75(1)
Canadian Industrial Gas & Oil Ltd. 9.13(1)
Canadian Industrial Gas & Oil Ltd. (5-1/2% Cu. Cv. Pr.) 21.50(1)
Canadian Industries Ltd. 13.88(1)
Canadian Industries Ltd. (7-1/2% Cu. Pr.) 52.50(3)
Canadian International Power Company Ltd. 22.50(1)
Canadian International Power Company Ltd. (5.20% 1965 Cu. Pr.) 13.50(2)
Canadian International Investment Trust Ltd. 32.00(2)
Canadian International Investment Trust Ltd. (5% Cu. Pr.) (4)
Canadian Interurban Properties Limited 2.00(2)
Canadian Interurban Properties Limited (7% Cu. Cv. A. Pr.) 7.75(1)
Canadian Jamieson Mines Ltd. 1.25(1)
Canadian Javelin Limited 9.60(2)
Canadian Keeley Mines Ltd. .05(1)
Canadian Lencourt Mines Ltd. .07(2)
Canadian Leisure Industries Ltd. .06(3)
Canadian Long Island Petroleums Ltd. .65(1)
Canadian Magnesite Mines Ltd. .31(2)
Canadian Malartic Gold Mines Ltd. .27(1)
Canadian Manoir Industries Limited 3.35(1)
Canadian Manoir Industries Limited (6% Cu. Pr.) (4)
Canadian Marconi Company 3.05(1)
Canadian Merrill Ltd. 4.75(1)
Canadian Nistro Mines Ltd. .09(1)
Canadian Occidental Petroleum Ltd. 9.13(1)
Canadian Pacific Limited 13.88(1)
Canadien Pacifique Limitée 13.88(1)
Canadian Pacific Limited (7-1/4 A. Pr.) 10.75(1)
Canadien Pacifique Limitée (7-1/4 A. Priv.) 10.75(1)
Canadian Pacific Limited (4% Pr. Canadian Unit) 9.63(2)
Canadien Pacifique Limitée (4% Priv. Unitée Canadienne) 9.63(2)
Canadian Pacific Limited (4% Pr. United Kingdom Unit) 7.75(2)
Canadien Pacifique Limitée (4% Priv. Unitée Royaume Unis) 7.75(2)
Canadian Pacific Investments Limited 12.00(1)
Canadian Pacific Investments Limited (4-3/4% Cv. A. Pr.) 24.50(1)
Canadian Pacific Investments Limited (Wt.) 3.05(1)
Canadian Provident, The (4)
Les Prévoyants du Canada (4)
Canadian Refractories Ltd. (4)
Canadian Reserve Oil & Gas Ltd. 5.60(1)
Canadian Reynolds Metals Co. Limited (Pr.) (4)
Société Canadienne de Métaux Reynolds Limitée (Priv.) (4)
Canadian Salt Co. Ltd. 15.00(1)
Canadian Scenic Oils Ltd. .80(3)
Canadian Security Management Ltd. (Cl. A.) 1.25(1)
Canadian Southern Cross Mines (No Liability) (4)
Canadian Superior Oil Ltd. 43.25(1)
Canadian Tire Corp. Ltd. 40.25(1)
Canadian Tire Corp. Ltd. (Cl. A.) 35.38(1)
Canadian Tricentrol Oils Ltd. 14.63(2)
Canadian Union Insurance Company (4)
Union (L) Canadienne Cie d'Assurances (4)
Canadian Utilities Limited 37.25(1)
Canadian Utilities Limited (4-1/4% Cu. Pr.) 57.25(3)
Canadian Utilities Limited (5% Cu. Pr.) 66.50(2)
Canadian Utilities Limited (6% Cu. Pr.) 78.75(2)
Canadian Utilities Limited (Wt.) 8.50(1)
Canadian Vickers Ltd. 9.25(2)
Canadian Wallpaper Manufacturers Ltd. 85.50(3)
Canadian Western Natural Gas Company Limited 21.00(1)
Canadian Western Natural Gas Company Limited (5-1/2% Cu. Pr.) 15.00(2)
Canadian Western Natural Gas Company Limited (4% Cu. Pr.) 11.50(2)
Canadore Mining & Development Corp. .10(2)
Can-American Natural Resources Ltd. (4)
Can-American Petroleums Ltd. (4)
Canarctic Resources Ltd. .27(1)
Can-Base Industries Ltd. .18(1)
Canbridge Oil Explorations Ltd. 1.50(2)
Can-Con Enterprises & Explorations Ltd. .10(3)
Candida Holdings Naamloze Vennootschap 16.75(1)
Candore Explorations Ltd. .04(1)
Candy Mines & Investments Ltd. .12(1)
Caneonti Mines Ltd. .01(3)
Cannon Mines Limited .07(2)
Canol Metal Mines Ltd. .02(3)
Canol Mines Limited .25(1)
Canron Ltd. 19.38(1)
Canron Ltée 19.38(1)
Canron Ltd. (4-1/4% Cu. Cv. Pr.) 70.00(2)
Canron Ltée (4-1/4% Cum. Conv. Priv.) 70.00(2)
Canterra Development Corp. Ltd. 1.00(1)
Cantrend Industries Ltd. (Cl. A.) (4)
Les Industries Cantrend Ltée (Cat. A.) (4)
Cantrend Industries Ltd. (Cl. B.) (4)
Les Industries Cantrend Ltée (Cat. B.) (4)
Cantol Ltd. 3.40(2)
Canuc Mines Limited .30(2)
Canyon City Explorations Ltd. .05(3)
Capital Diversified Industries Ltd. .59(1)
Capital Diversified Industries Ltd. (A. Wt.) .15(3)
Capital Dynamics Ltd. 1.80(2)
Capital Dynamisme Ltée 1.80(2)
Capital Dynamics Ltd. (Wt.) .03(2)
Capital Dynamisme Ltée (Wt.) .03(2)
Capital Estates Inc. (4)
Capri Mining Corporation Ltd. .14(2)
Caprive Industries & Resources Limited .09(2)
Captain International Industries Limited 6.00(1)
Captain Mines Limited .11(1)
Cara Operations Ltd. 4.60(1)
Caravelle Mines Ltd. .11(3)
Card Lake Copper Mines Ltd. .10(2)
Cardwell Resources Limited .15(2)
Cariboo-Bell Copper Mines Limited .25(2)
Cariboo Gold Quartz Mining Co. Ltd. .95(1)
Carling Copper Mines Ltd. .20(2)
Carlson Mines Ltd. (4)
Carlton Cleaning Carousels Ltd. .25(2)
Carnegie New Mining Corp. Ltd. (4)
Carndesson Mines Ltd. (4)
Carolin Mines Limited .20(2)
Carrier Shoe Co. Ltd. J.D. 6.63(1)
Carrier Shoe Co. Ltd. J.D. (Wt.) 3.25(2)
Carroll & Reed Ltd. (4)
Carter J.B. (Cl. A.) 10.12(2)
Carter J.B. (Cl. B.) 60.00(2)
Cartier Quebec Explorations Ltd. .10(2)
Casavant Brothers Limited (Cl. A.) 1.00(2)
Casavant Frères Limitée (Cat. A.) 1.00(2)

Cascade Molybdenum Mines Ltd. . . . . .23(1)
Casino Silver Mines Ltd. . . . . .55(1)
Cassiar Asbestos Corporation Limited . . . . . 18.63(1)
Cassiar Consolidated Mines Ltd. . . . . .10(2)
Cassidy's Ltd. . . . . 4.35(1)
Cassidy Ltée . . . . . 4.35(1)
Cassidy's Ltd. (6-1/4% Cu. Cv. A. 1st Pr.) . . . . . 8.75(1)
Cassidy Ltée (6-1/4% Cum. Conv. A. 1ière Priv.) . . . . . 8.75(1)
Castlebar Silver & Cobalt Mines Ltd. . . . . .06(3)
Castle Oil And Gas Limited . . . . . 1.40(2)
CDP Computer Data Processors Ltd. . . . . 1.30(2)
CDRH Limited . . . . . 5.88(1)
Cedar Vale Mines Ltd. . . . . .35(1)
Celtic Minerals Ltd. . . . . .79(1)
Centex Mines Ltd. . . . . .12(1)
Central Dynamics Limited . . . . . .90(2)
Central Fund of Canada Ltd. (Cl. A.) . . . . . 6.25(2)
Central Ontario Savings & Loan Corp. . . . . 8.00(2)
Central Patricia Gold Mines Ltd. . . . . 1.70(1)
Central Trust Company of Canada, The . . . . . 13.75(3)
Centura Mining Ltd. . . . . .36(3)
Cessland Corp. Ltd. . . . . .28(3)
CFTO-TV Limited . . . . . (4)
CGC Mines Ltd. . . . . (4)
Chance Mining & Exploration Co. Ltd. . . . . (4)
Chapparal Mines Limited . . . . . .16(2)
Charter Industries Ltd. . . . . 1.30(2)
Charter Oil Company Ltd. . . . . 6.00(1)
Chataway Exploration Co. Ltd. . . . . .17(2)
Château-Gai Wines Ltd. . . . . 16.88(1)
Chemalloy Mineral Ltd. . . . . 2.06(1)
Chemcell Ltd. . . . . 4.35(1)
Chemcell Ltée . . . . . 4.35(1)
Chemcell Ltd. ($1.00 Cu. Pr.) . . . . . 12.50(2)
Chemcell Ltée ($1.00 Cum. Priv.) . . . . . 12.50(2)
Chemcell Limited ($1.75 Cu. Pt. Pr.) . . . . . 19.75(1)
Chemcell Ltée ($1.75 Cum. Pt. Pr.) . . . . . 19.75(1)
Chesbar Iron Powder Limited . . . . . 2.00(2)
Chesbar Iron Powder Limited (Wt.) . . . . . .40(2)
Chesterville Mines Limited . . . . . .10(1)
Chibex Mining Corp. . . . . .38(1)
Chib-Kayrand Copper Mines Ltd. . . . . .05(1)
Chibougamau Mining & Smelting Co. Inc. . . . . .29(2)
Chiboug Copper Corp. Ltd. . . . . .18(2)
Chieftain Development Company Ltd. . . . . 8.10(1)
Chimo Gold Mines Ltd. . . . . 1.20(1)
Chinook Shopping Centre Limited . . . . . 3.00(3)
Chipman Mining & Energy Corp. Ltd. . . . . .40(2)
Choiceland Iron Mines Ltd. . . . . .25(3)
Chromex Nickel Mines Ltd. . . . . .18(2)
Chromium Mining & Smelting Corporation Limited . . . . . 1.75(2)
Chrysler Corporation . . . . . 29.75(1)
Chukuni Gold Mines Ltd. . . . . .04(3)
CHUM Limited . . . . . 5.50(1)
CHUM Limited (Cl. B.) . . . . . 8.50(1)
Churchill Copper Corporation Ltd. . . . . .75(1)
Cicada Mines Ltd. . . . . .03(3)
Cimco Limited (Cl. A.) . . . . . 12.06(3)
Cincinnati-Porcupine Mines Ltd. . . . . .02(3)
Cinola Mines Ltd. . . . . .08(2)
Citadel Mines Ltd. . . . . .04(3)
Citex Mines Ltd. . . . . .05(1)
Cities Services Company . . . . . (4)
City Associated Enterprises Ltd. (Cl. B.) . . . . . .70(2)
Clairtone Sound Corporation Limited . . . . . (4)
Clarepine Development Ltd. . . . . .20(3)
Clark Canadian Exploration Co. . . . . 3.75(1)
Clavos Porcupine Mines Ltd. . . . . .02(3)
Claw Lake Molybdenum Mines Ltd. . . . . .03(3)
Clearwater Mines Ltd. . . . . .15(1)
Clero Mines Ltd. . . . . .06(2)
Cleveland Mining & Smelting Co. . . . . .05(2)
Clicker Red Lake Mines Ltd. . . . . (4)
Clinger Gold Mines Ltd. . . . . .02(3)
Coast Copper Company Limited . . . . . 3.00(2)
Coast Interior Ventures . . . . . .75(1)
Coast Silver Mines Ltd. . . . . .14(1)
Cochenour Willans Gold Mines Ltd. . . . . .21(1)
Cochrane-Dunlop Hardware Ltd. . . . . 35.00(3)
Cochrane-Dunlop Hardware Ltd. (Cl. A.) . . . . . 30.50(3)
Cockfield Brown & Company Limited . . . . . 6.00(1)
Cockfield Brown & Compagnie Limitée . . . . . 6.00(1)
Codville Distributors Ltd. (Cl. A.) . . . . . 3.75(1)
Coin Canyon Mines Ltd. . . . . (4)
Coin Canyon Mines Ltd. (A. Wt.) . . . . . (4)
Coin Lake Gold Mines Ltd. . . . . .09(2)
Coleman Collieries Ltd. (Cl. A.) . . . . . 7.00(2)
Coleman Collieries Ltd. (Cl. B.) . . . . . 6.95(1)
Coleman Collieries Ltd. (6% 1st. Cv. Pr.) . . . . . .73(2)
Coleman Collieries Ltd. (B. Wt.) . . . . . 2.51(2)
Colleen Copper Mines Ltd. . . . . .12(1)
College Plumbing Supplies Ltd. . . . . 4.00(2)
Collingwood Terminals Ltd. . . . . (4)
Collingwood Terminals Ltd. (Pr.) . . . . . (4)
Colonial Oil and Gas Ltd. . . . . .65(2)
Columbia Cellulose Company Limited . . . . . 2.90(1)
Columbia Cellulose Company Limited ($1.20 Cu. Cv. Pr.) . . . . . 8.63(1)
Columbia Gas System Inc. . . . . (4)
Columbia Metals Corporation Ltd. . . . . .36(1)
Columbia Placers Ltd. . . . . .08(3)
Columbia River Mines Limited . . . . . .28(1)
Columbiere Mines Ltd. . . . . (4)
Comaplex Resources International Ltd. . . . . 1.80(1)
Comaplex Resources International Ltd. (A. Wt.) . . . . . .64(1)
Combined Engineered Products Limited . . . . . 2.60(2)
Combined Engineered Products Limited ($1.10 Cu. Cv. Pr.) . . . . . 11.88(1)
Combined Insurance Co. of America . . . . . 40.00(3)
Combined Larder Mines Ltd. . . . . .01(3)
Combined Metal Mines Ltd. . . . . .12(1)
Comet Industries Ltd. . . . . .70(3)
Les Industries Comète Ltée . . . . . .70(3)
Cominco Ltd. . . . . 22.88(1)
Cominco Ltée . . . . . 22.88(1)
Cominga Compagnie Minière de l'Ungava . . . . . .03(2)
Commerce Nickel Mines Ltd. . . . . .08(3)
Commercial Finance Corporation Limited . . . . . (4)
Commercial Holdings & Metals Corp. . . . . 2.00(1)
Commercial Life Assurance Co. of Canada . . . . . (4)
Commercial Oil & Gas Limited . . . . . .09(2)
Commodore Business Machines (Canada) Limited . . . . . 8.13(1)
Commodore Business Machines (Canada) Limited (A. Wt.) . . . . . 4.25(3)
Commonwealth Holiday Inns of Canada Ltd. . . . . 12.25(1)
Compton Exploration Ltd. . . . . (4)
Computel Systems Ltd. . . . . 3.00(1)
Computrex Centres Ltd. . . . . .38(1)
Comstock Keno Mines Ltd. . . . . .07(3)
Comtech Group International Limited . . . . . 1.90(2)
Comtech Group International Limited (5% Cu. Pr.) . . . . . (4)
Concorde Explorations Ltd. . . . . (4)
Concourse Building Ltd. . . . . (4)
Condor Mines Limited . . . . . .11(1)
Conduits National Co. Ltd. . . . . 3.00(3)
Congress Mining Corporation Limited . . . . . .48(3)
Coniagas Mines Ltd. . . . . .28(2)
Conigo Mines Ltd. . . . . .13(3)
Conoco Silver Mines Ltd. . . . . .25(2)
Con Quest Exploration Ltd. . . . . .40(2)
Consolidated Ad Astra Minerals Ltd. . . . . .11(2)
Consolidated Bathurst Limited . . . . . 7.88(1)
Consolidated Bathurst Limitée . . . . . 7.88(1)
Consolidated Bathurst Limited (6% Cu. Pr.) . . . . . 11.75(1)
Consolidated Bathurst Limitée (6% Cum. Priv.) . . . . . 11.75(1)
Consolidated Bathurst Limited (Wt.) . . . . . .55(2)
Consolidated Bathurst Limitée (Wt.) . . . . . .55(2)

Consolidated Bathurst Ltd. (1968 Wt.) . . . 3.00(1)
Consolidated Bathurst Limitée (1968 Wt.) . . . 3.00(1)
Consolidated Bellekemo Mines Ltd. . . . .01(2)
Consolidated Brewis Minerals Ltd. . . . .08(3)
Consolidated Buffalo Red Lake Mines Ltd. . . . .07(2)
Consolidated Building Corp. Ltd. . . . 1.50(1)
Consolidated Building Corp. Ltd. (6% Cu. A. Pr.) . . . (4)
Consolidated Callinan Flin-Flon Mines Limited . . . .07(1)
Consolidated Canadian Faraday Ltd. . . . .80(2)
Consolidated Canorama Exploration Ltd. . . . .15(2)
Consolidated Daering Mining Inc. . . . .09(1)
Consolidated Developments Ltd. . . . .70(1)
Consolidated Diversified Standard Securities Ltd. (Cl. A.) . . . 2.50(2)
Consolidated Diversified Standard Securities Ltd. ($2.50 1st Pr.) . . . 25.00(3)
Consolidated Dolsam Mines Ltd. . . . .12(2)
Consolidated Durham Mines & Resources Ltd. . . . .73(1)
Consolidated East Crest Oil Company Limited . . . 1.52(2)
Consolidated Fenimore Iron Mines Ltd. . . . .02(3)
Consolidated Gem Exploration Ltd. . . . .05(2)
Consolidated Harpers Malartic Gold Mines Ltd. . . . .05(3)
Consolidated Imperial Minerals Ltd. . . . .07(2)
Consolidated Manitoba Mines Ltd. . . . (4)
Consolidated Marbenor Mines Ltd. . . . 1.55(1)
Consolidated Marcus Gold Mines Ltd. . . . .05(3)
Consolidated Mogador Mines Ltd. . . . .03(2)
Consolidated Monpas Mines Ltd. . . . (4)
Consolidated Montclerg Mines Ltd. . . . .03(2)
Consolidated Morrison Explorations Ltd. . . . 1.58(1)
Consolidated Negus Mines Ltd. . . . .07(1)
Consolidated Nicholson Mines Ltd. . . . .05(1)
Consolidated Northern Exploration Ltd. . . . .29(2)
Consolidated Novell Mines Ltd. . . . .02(3)
Consolidated Oil & Gas Inc. . . . (4)
Consolidated Panther Mines Ltd. . . . .30(3)
Consolidated Pershcourt Mining Ltd. . . . (4)
Consolidated Professor Mines Ltd. . . . (4)
Consolidated Proprietary Mines Holdings Ltd. . . . .06(1)
Consolidated Prudential Mines Ltd. . . . .10(3)
Consolidated Rambler Mines Ltd. . . . 1.55(1)
Consolidated Rexspar Minerals & Chemicals Ltd. . . . .16(1)
Consolidated Ribago Mines Ltd. . . . .02(3)
Consolidated Shunsby Mines Ltd. . . . .10(1)
Consolidated Standard Mines Ltd. . . . .05(2)
Consolidated Textile Mills Ltd. . . . 4.75(1)
Consolidated Theatres Ltd. (Cl. A.) . . . (4)
Consolidated Vigor Mines Ltd. . . . .03(3)
Consolidated Virginia Mining Corp. . . . (4)
Consolidated West Petroleum Limited . . . 1.28(3)
Consumers Distributing Company Limited . . . 23.88(1)
Consumers Gas Company . . . 19.50(1)
Consumers Gas Company (5-1/2% Cu. A. Pr.) . . . 83.25(2)
Consumers Gas Company (5-1/2% Cu. B. Pr.) . . . 84.00(1)
Consumers Glass Co. Ltd. . . . 10.50(2)
Contact Ventures Ltd. . . . .55(1)
Continental Can Company Inc. . . . 32.00(3)
Continental Cinch Mines Ltd. . . . .09(2)
Continental Copper Mines Ltd. . . . .08(3)
Continental McKinney Mines Ltd. . . . .08(1)
Continental Potash Corporation Ltd. . . . .04(1)
Continental Research & Development Ltd. . . . 7.00(1)
Controlled Foods International Ltd. . . . 1.90(2)
Conuco Limited . . . .35(2)
Conwest Exploration Co. Ltd. . . . 7.75(1)
Cooper of Canada Ltd. . . . 14.50(1)
Copconda Mines Ltd. . . . (4)
Copeland Process Ltd. . . . 4.00(1)
Cop-Mac Mines Ltd. . . . .23(1)
Copp-Clark Publishing Co. Ltd. (Pr.) . . . (4)
Copper Corp. of America . . . .08(3)
Coppercorp Limited . . . .15(2)
Copperfields Mining Corp. Ltd. . . . 1.25(1)
Copper Giant Mining Corporation Ltd. . . . .10(1)
Copper Horn Mining Ltd. . . . .04(3)
Copper Lake Explorations Ltd. . . . .31(1)
Copperline Mines Limited . . . .19(1)
Copper-Lode Mines Ltd. . . . .09(1)
Copper-Man Mines Ltd. . . . .04(1)
Copper Pass Mines Ltd. . . . (4)
Copper Queen Explorations Limited . . . .09(2)
Copper Ridge Mines Ltd. . . . .22(1)
Copperstream-Frontenac Mines Ltd. . . . (4)
Copperville Mining Corp. Ltd. . . . .09(2)
Corby Distilleries Limited (Cl. A.) . . . 23.00(1)
Les Distilleries Corby Limitée (Cat. A.) . . . 23.00(1)
Corby Distilleries Limited (Cl. B.) . . . 23.50(2)
Les Distilleries Corby Limitée (Cat. B.) . . . 23.50(2)
Corgemines Limited . . . .20(2)
Corgemines Limitée . . . .20(2)
Cornat Industries Limited . . . 1.65(1)
Coronation Allied Industries Ltd. . . . .57(1)
Coronation Credit Corp. Ltd. . . . 120(1)
Coronation Credit Corp. Ltd. (6% Cu. Cv. A. Pr.) . . . 1.75(1)
Coronation Credit Corp. Ltd. (2 Wt.) . . . (4)
Coronet Mines Limited . . . .25(2)
Corporate Foods Ltd. . . . 8.00(2)
Corporate Foods Ltd. ($2.75 A. Cu. Pr.) . . . 28.00(2)
Corporate Properties Ltd. . . . 3.31(1)
Corporation d'Expansion Financière . . . 1.25(2)
Coseka Resources Limited . . . 1.01(1)
Cosmic Nickel Mines Limited . . . .09(2)
Cosmos Imperial Mills Limited . . . .85(1)
Costain Richard Canada Ltd. . . . 7.50(1)
Coulee Lead & Zinc Mines Ltd. . . . .13(1)
Courier Explorations Ltd. . . . .28(2)
Courvan Mining Co. Ltd. . . . .07(2)
Cover Uranium Mines Ltd. . . . (4)
Cowl Limited . . . 3.50(1)
Crackingstone Mines Ltd. . . . .04(3)
Craibbe Fletcher Gold Mines Ltd. . . . .01(2)
Craig Bit Co. Ltd., The . . . 4.75(2)
Craigmont Mines Ltd. . . . 7.00(1)
Crain Limited, R.L. . . . 11.13(1)
Crawford Allied Industries Ltd. . . . 1.85(1)
Cream Silver Mines Limited . . . .24(2)
Creative Patents & Products Limited . . . 2.25(1)
Credit Foncier Franco-Canadien . . . 57.00(2)
Credo Mining Limited . . . .05(2)
Cree Lake Mining . . . .40(2)
Crest Ventures Ltd. . . . .18(3)
Crestbrook Forest Industries Ltd. . . . 3.90(1)
Crestland Mines Ltd. . . . .07(2)
Crestwood Kitchens Ltd. . . . 1.75(2)
Cresus Mining Limited . . . .07(2)
Les Mines Cresus Limitée . . . .07(2)
Creswell Mines Ltd. . . . (4)
Cross Co. Ltd., W.B. . . . 3.00(2)
Crowbank Mines Ltd. . . . .12(2)
Crown Cork & Seal Co. Ltd. . . . 150.00(2)
Crown Life Insurance Company . . . 30.25(1)
Crown Trust Company . . . 15.50(1)
Crownbridge Copper Mines Ltd. . . . .03(2)
Crown Zellerbach Canada Ltd. (Cl. A.) . . . 16.63(1)
Crows Nest Industries Ltd. . . . 26.00(1)
Croydon Mines Ltd. . . . 7.14(1)
Croydon Rouyn Mines Ltd. . . . .03(3)
Crusade Petroleum Corp. Ltd. . . . .65(1)
Crush International Ltd. . . . 19.00(1)
Cultus Exploration Ltd. . . . .20(1)
Cumex Mines Ltd. . . . .45(1)
Cummings Properties Limited . . . (4)
Les Immeubles Cummings Limitée . . . (4)
Cumont Mines Ltd. . . . .32(2)
Cunningham Drug Stores Limited . . . (4)
Cuvier Mines Ltd. . . . .10(1)
Cygnus Corporation Ltd. (Cl. A.) . . . 5.75(1)

Cygnus Corporation Ltd. (Cl. B.) .625(1)
Dairy Barn Stores of Canada Limited 2.07(1)
Dairy Barn Stores of Canada Limited (Wt.) .38(1)
Dale-Ross Holdings Ltd. 7.50(2)
Dale-Ross Holdings Ltd. (6% Cu. A. Pr.) 7.50(2)
Dalex Co. Limited (7% Cu. Pr.) 80.00(2)
Dalex Mines Limited .06(3)
Dalfen's, Ltd. 12.50(3)
Dalhousie Oil Co. Ltd. .18(3)
Daniel Diversified Ltd. .30(2)
Dankoe Mines .60(2)
D'Aragon Mines Ltd. .17(2)
Darkhawk Mines Ltd. .40(2)
Darsi Mines Limited .09(1)
Dasson Copper Corp. Ltd. .19(1)
Dataline System Ltd. 1.83(1)
Datateck 1.00(1)
Datapro Ltd. 2.25(1)
Dauphin Iron Mines Ltd. .07(1)
David Minerals Ltd. .27(1)
Davis Distributing & Vending Ltd. 1.30(2)
Davis-Keays Mining Co. Ltd. .70(1)
Dawson Developments Ltd. 6.00(1)
Debenture & Securities Corp. of Canada (5 Cu. Pr.) (4)
Debhold (Canada) Limited (6-1/4% Cu. B. Pr.) 78.00(2)
Decca Resources Limited 2.20(1)
Deerhorn Mines Ltd. .03(1)
Dejour Mines Ltd. .17(1)
Delahey Consolidated Nickel Mines Limited .05(3)
D'Eldona Gold Mines Ltd. .45(1)
Delhi Pacific Mines Ltd. .07(2)
Delkirk Mining Ltd. .07(2)
Delmico Mines Ltd. .03(3)
Delta-Benco 1.65(2)
Delta Hotels Ltd. 2.30(2)
Delta Hotels Ltd. (6% Cl. A. Pr.) 1.35(2)
Delta Hotels Ltd. (Rt.) (4)
Delta Minerals Corp. (4)
Delta Petroleum Corporation Ltd. .73(1)
Deltan Corp. Ltd. 6.38(1)
Deltec Panamerica (Sociedad Anonima) 1.00(2)
Demsey Mines Ltd. .17(2)
Denison Mines Ltd. 24.50(1)
Derby Mines Ltd. (4)
Derlak Red Lake Gold Mines Ltd. .01(3)
Deseret Peak Mines Ltd. .18(3)
Desjardins Mines Ltd. .55(3)
Despina Gold Mines Ltd. (4)
Destorbelle Mines Ltd. .01(3)
Devil's Elbow Mines Ltd. .06(2)
Dickenson Mines Ltd. .85(1)
Dictator Mines Ltd. .33(1)
Discovery Mines Ltd. .75(2)
Dison International Ltd. 1.34(1)
Distillers Corporation-Seagrams Ltd. 31.25(1)
District Trust Co. 15.00(3)
Diversified Credit Corp. Ltd. (4)
Dixie-Carolina Mining Corp. Ltd. (4)
D.L.P. Diversified Ltd. (4)
Dog 'n Suds Food Services Ltd. .25(1)
Dolly Varden Mines Ltd. .35(2)
Doman Industries Ltd. 9.75(1)
Doman Industries Ltd. (6-1/2% Cu. Cv. A. Pr.) 39.00(1)
Doman Industries Ltd. (Wt.) 22.00(2)
Domco Industries Ltd. 5.00(2)
Les Industries Domco Limitée 5.00(2)
Dome Mines Ltd. 54.50(1)
Dome Petroleum Ltd. 34.00(1)
Dominion & Anglo Investment Corporation Ltd. (4)
Dominion & Anglo Investment Corporation Ltd. (5% Cu. Pr.) 74.25(3)
Dominion Bridge Co. Ltd. 23.75(1)
Dominion Citrus & Drugs Ltd. 8.50(2)
Dominion Coal Co. Ltd. (Pr.) 23.38(2)
Dominion Corset Co. Ltd. 6.00(2)
Dominion Dairies Ltd. 34.00(2)
Dominion Dairies Ltd. (5% Pr.) 25.00(3)
Dominion Explorers Ltd. 1.40(1)
Dominion Fabrics Limited (4)
Dominion Fabrics Limited (Cl. A. Cu. Pt. Pr.) 4.38(3)
Dominion Foundries & Steel Ltd. 25.00(1)
Dominion Foundries & Steel Ltd. (4-3/4% Cu. A. Pr.) 74.00(1)
Dominion Glass Company Limited 10.25(1)
Dominion Glass Company Limited (7% Cu. Cv. Pr.) 12.75(2)
Dominion Jubilee Corp. Ltd. .70(1)
Dominion Leaseholds Ltd. .06(1)
Dominion Life Assurance Co. 95.00(3)
Compagnie d'Assurance sur la Vie Dite Dominion 95.00(3)
Dominion Lime Limited 7.88(1)
Dominion Lime Limited (Wt.) .50(1)
Dominion Magnesium Ltd. 6.00(2)
Dominion of Canada General Insurance Co. (4)
Dominion-Scottish Investments Ltd. 15.68(3)
Dominion-Scottish Investments Ltd. (5% Cu. Pr.) 30.75(2)
Dominion Stores Ltd. 15.00(1)
Dominion Textile Limited 21.00(1)
Dominion Textile Limitée 21.00(1)
Dominion Textile Limited (7% Cu. Pr.) 101.00(2)
Dominion Textile Limitée (7% Cum. Priv.) 101.00(2)
Domtar Limited 12.25(1)
Domtar Limitée 12.25(1)
Domtar Limited ($1.00 Cu. Pr.) 13.38(2)
Domtar Limitée ($1.00 Cum. Priv.) 13.38(2)
Donalda Mines Ltd. .08(1)
Donlee Manufacturing Industries Limited 4.50(2)
Donna Mines Limited .07(2)
Donohue Company Limited 4.00(1)
La Compagnie Donahue Limitée 4.00(1)
Donohue Company Limited (6-1/4% Cu. Pr.) 15.75(1)
La Compagnie Donahue Limitée (6-1/4% Cum. Priv.) 15.75(1)
Donrand Mines Ltd. (4)
Don-X Mines Ltd. (4)
Doral Mining Exploration Ltd. (4)
Dorion Red Lake Mines Ltd. .01(3)
Dorita Silver Mines Ltd. .11(2)
Douglas Leaseholds Limited 2.25(1)
Dove Lake Mines Inc. .40(3)
Dover Industries Ltd. 15.00(1)
Dover Industries Ltd. (6% Cu. Pr.) 8.00(1)
DRG Limited 14.00(1)
Drummond Die & Stamping Co. Ltd. .16(1)
Drummond Welding & Steel Works Ltd. (Cl. A.) 3.00(2)
Dubuisson Goldfields Ltd. .03(3)
Ducros Mines Ltd. .16(2)
Duke Mining Company Limited .20(2)
Dumagami Mines Limited .19(2)
Les Mines Dumagami Limitée .19(2)
Dumont Nickel Corporation .29(1)
Duncan Range Iron Mines Ltd. .10(3)
Dundee Mines Ltd. .18(1)
Dunraine Mines Ltd. .14(2)
Dunterra Mines Ltd. (4)
Dunvegan Mines Ltd. (4)
Dupont of Canada Ltd. 20.25(1)
Dupont of Canada Ltd. (7-1/2% Cu. Pr.) 52.00(2)
Duport Mining Co. Ltd. (4)
Dupuis Frères Limited (Cl. A. Cu. Pr.) 6.00(2)
Dupuis Frères Limitée (Cat. A. Cum. Priv.) 6.00(2)
Dustbane Enterprises Ltd. 6.50(1)
Dusty Mac Mines Limited .10(2)

Duvan Copper Co. Ltd. .03(2)
Duvex Oils & Mines Ltd. .02(2)
Dylex Diversified Limited 8.75(1)
Dylex Diversified Limited (Cl. A. Pt. Pr.) 8.63(1)
Dynacore Enterprises Ltd. (4)
Dynaco Resources Ltd. .25(2)
Dynalta Oil & Gas Co. Ltd. 1.25(2)
Dynamic Mining Exploration Ltd. .16(2)
Exploration Minière Dynamique Ltée .16(2)
Dynamic Petroleum Products Ltd. 1.02(1)
Dynamo Mines Limited .17(2)
Dynasty Exploration Ltd. 5.90(1)
Eagle Gold Mines Ltd. 3.00(1)
Eagle Industries Limited 5.63(2)
Eagle River Mines Limited .38(2)
Earlcrest Resources Ltd. .11(2)
Early Bird Mines Ltd. .13(1)
East Amphi Gold Mines Ltd. .01(3)
East Bay Gold Ltd. .04(3)
Eastern Bakeries Ltd. 4.00(2)
Eastern Bakeries Ltd. (4% Cu. Pr.) (4)
Eastern Canada Savings & Loan Company 12.50(1)
Eastern Utilities Limited (5-1/2% Cu. Pr.) (4)
Eastgate .73(1)
East Lun Gold Mines Ltd. .01(3)
East Malartic Mines Ltd. .95(2)
Eastmont Larder Lake Gold Mines Ltd. (4)
Eastmont Silver Mines Ltd. (4)
Eastrock Explorations Ltd. .40(3)
East Sullivan Mines Ltd. 2.70(1)
East Ventures Ltd. .04(2)
Eastview Mines Ltd. (4)
Eaton Corporation 42.00(2)
Echo Bay Mining Ltd. .15(2)
Economic Investment Trust Ltd. 13.75(2)
Economic Investment Trust Ltd. (5% Cu. A. Pr.) 32.50(1)
Eddy Match Co. Ltd. 10.25(1)
Edmonton Concrete Block Co. Ltd. (4)
Edmonton International Speedway Ltd. .65(1)
EDP Industries Limited .30(2)
EDP Industries Limited (5% Cu. Cv. A. Pr.) (4)
EDP Industries Limited (Wt.) (4)
Ego Mines Ltd. .09(1)
El Bonanzo Mining Corp. Ltd. .12(3)
El Coco Explorations Ltd. .07(2)
Electrohome Limited 41.00(1)
Electrohome Limited (5-3/4% Cu. A. Pr.) 77.75(3)
Electro-Knit Fabrics (Canada) Ltd. 5.38(1)
Electronic Associates of Canada Limited 2.25(1)
E-L Financial Corporation Limited 6.88(1)
E-L Financial Corporation Limited (A. Cv. Pr.) 9.75(3)
E-L Financial Corporation Limited (Wt.) 2.45(2)
Elk Creek Waterworks Co. Ltd. (4)
Elmac Malartic Mines Ltd. .03(3)
El Paso Natural Gas Company (4)
Embassy Petroleums Ltd. .43(1)
Embassy Petroleums Ltd. (A. Wt.) .20(2)
Emco Limited 6.25(1)
Emperor Mines Ltd. .10(1)
Empire Life Insurance Co., The 8.00(2)
L'Empire Compagnie d'Assurance-Vie 8.00(2)
Empire Metals Corporation Ltd. .10(1)
Empire Minerals Inc. .05(1)
Enamel & Heating Products Limited (Cl. A.) 2.25(2)
Enamel & Heating Products Limited (Cl. B.) 1.25(2)
Enex Mines Ltd. .21(2)
Entarea Management Ltd. 5.00(3)
Equatorial Resources Limited .19(1)
Ericksen-Ashby Mines Ltd. (4)
ERI Explorations Inc. .77(2)
Erie Diversified Industries Ltd. 8.00(2)
Erie Diversified Industries Ltd. (Cl. A.) 8.00(2)
Eskimo Copper Mines Ltd. .12(2)
Essex Packers Limited (4)
Essex Packers Limited (5% Cu. 1st. Pr.) (4)
Ethel Copper Mines Ltd. (4)
Evangeline Savings & Loan Co. (4)
Evenlode Mines Ltd. .01(3)
Excellence Life Insurance Co. (The) (4)
Excellence Compagnie d'Assurance-Vie (4)
Excelsior Life Insurance Co. (4)
L'Excelsior Compagnie d'Assurance-Vie (4)
Exeter Mines Ltd. .40(1)
Expo Iron Limited .45(2)
Expo Ungava Mines Limited .20(2)
Exquisite Form Brassiere (Canada) Limited 4.10(1)
Exquisite Form Brassiere (Canada) Limited (6% Cu. Cv. Pr.) 6.75(2)
Extendicare Canada Ltd. 8.50(3)
Extendicare Canada Ltd. (Wt.) 3.50(3)
Fab Metal Mines Ltd. .04(2)
Fairborn Mines Ltd. .12(1)
Fairway Explorations Ltd. (4)
Falaise Lake Mines Ltd. .16(1)
Falconbridge Nickel Mines Ltd. 81.00(1)
Falcon Explorations Ltd. .55(1)
Fallinger Mining Corporation 1.32(1)
Family Life Assurance Co. (50% Paid) (4)
La Familiale Compagnie d'Assurance-Vie (50% payé) (4)
Fannex Resources Ltd. .37(2)
Far East Minerals Ltd. (4)
Farmers & Merchants Trust Co. Ltd. 2.50(2)
Farwest Mining Ltd. .06(2)
Fathom Oceanology Ltd. .73(1)
Fawn Bay Development Ltd. .05(1)
Federal Diversiplex Ltd. 1.20(2)
Federal Grain Limited 8.00(1)
Federated Mining Corp. Ltd. .45(1)
Federated Mining Corp. Ltd. (Rt.) (4)
Fidelity Mining Investments Ltd. .06(2)
Fidelity Mortgage & Savings Corporation (4)
Compagnie d'Hypothèque et d'Epargne Fidelité (Wt.) (4)
Fidelity Trust Co., The 1.55(2)
Fidelity Trust Co., The (Wt.) .65(2)
Fields Stores Limited 13.50(1)
Financial Collection Agencies Ltd. 16.00(1)
Agences de Collection Financières Ltée 16.00(1)
Financial Life Assurance Co. (4)
Finlayson Ent. (A.) 14.00(2)
Finlayson Ent. (B.) (4)
Finning Tractor & Equipment Company Limited 12.50(1)
First City Financial Corp. Ltd. 7.75(1)
First Maritime Mining Corp. Ltd. .60(1)
First National City Corp. (4)
First National Uranium Mines Limited .15(2)
First Orenda Mines Ltd. .08(1)
Fiscal Investments Ltd. 9.00(2)
Fiscal Investments Ltd. (Pr.) .20(2)
Fittings Ltd. 15.00(2)
Five Star Petroleum and Mines Ltd. .16(2)
Flagstone Mines Limited .17(1)
Fleet Manufacturing Ltd. .86(2)
Fleetwood Corporation 8.00(2)
Flemdon Ltd. 1.40(1)
Fleming Mines Ltd. .01(3)
Flin Flon Mines Ltd. .27(2)
Flint Rock Mines Ltd. 1.95(1)
Foley Silver Mines Ltd. .04(3)
Fontana Mines (1945) Ltd. .03(2)
Ford Motor Company 70.00(1)
Ford Motor Co. of Canada Ltd. 82.75(1)
Forest Kerr Mines Ltd. .04(3)
Fort Norman Explorations Inc. .53(1)
Société d'Exploration Fort Norman Inc. .53(1)

Fort Reliance Minerals Ltd. . . . . .32(1)
Fort St. John Petroleums Ltd. . . . . .67(2)
Fortune Channel Mines Ltd. . . . . .14(1)
Fortune Channel Mines Ltd. (A. Wt.) . . . . . (4)
Fosco Mining Ltd. . . . . 1.18(3)
Founders Group . . . . . .45(2)
Fourbar Mines Limited . . . . . .10(1)
4-F Foods Limited . . . . . .19(2)
Four Seasons Hotels Ltd. . . . . 14.25(1)
Four Seasons Hotels Ltd. (Wt.) . . . . . 6.50(1)
Four Seasons Mining & Resources Ltd. . . . . (4)
Fox Lake Mines Ltd. . . . . .03(2)
FPE Pioneer Electric Ltd. (Cl. A.) . . . . . 17.50(2)
FPE Pioneer Electric Ltd. (5-1/2% Cu. Cv. A. Pr.) . . . . . 69.00(2)
Francana Oil & Gas Ltd. . . . . 4.55(1)
Fraser Companies Limited . . . . . 12.13(1)
Frebert Mines Ltd. . . . . .01(2)
Freehold Gas & Oil Limited . . . . . 1.76(1)
Freehold Gas & Oil Limited (A. Wt.) . . . . . (4)
Freehold Gas & Oil Limited (B. Wt.) . . . . . (4)
Freiman Ltd., A.J. . . . . 5.88(2)
Frobex Limited . . . . . .34(1)
Frontier Explorations Limited . . . . . .16(1)
Fruehauf Trailer Company of Canada Limited . . . . . 16.50(2)
Fulcrum Investments Co. Ltd. . . . . 3.65(1)
Fulcrum Investments Co. Ltd. (6% Cu. Pr.) . . . . . 7.50(2)
Fundy Chemical Corporation Ltd. . . . . 8.75(1)
Fundy Exploration Ltd. . . . . .02(3)
Futurity Oils Limited . . . . . .27(1)
Galex Mines Limited . . . . . .45(1)
Galt Malleable Iron Limited . . . . . 7.50(1)
Galt Malleable Iron Limited (6% Cu. 1st Pr.) . . . . . (4)
Gan Copper Mines Ltd. . . . . .02(3)
Ganda Silver Mines Ltd. . . . . (4)
G & B Automated Equipment Limited . . . . . 1.75(3)
Garrison Creek Consolidated Mines Ltd. . . . . .06(3)
Gary Mines Ltd. . . . . .10(2)
Gaspé Copper Mines Ltd. . . . . 49.00(3)
Gaspé Park Mines Ltd. . . . . (4)
Gaspé Quebec Mines Ltd. . . . . .64(1)
Gaspex Mines Ltd. . . . . (4)
Les Mines Gaspex Ltée . . . . . (4)
Gaspésie Mining Co. Limited . . . . . (4)
Compagnie Minière Gaspésie Limitée . . . . . (4)
Gateford Mines Ltd. . . . . .02(3)
Gateway Uranium Mines Ltd. . . . . .02(3)
Gaz Métropolitain Inc. . . . . 5.50(1)
Gaz Métropolitain Inc. (5.40% Cu. Pr.) . . . . . 66.00(2)
Gaz Métropolitain Inc. (5-1/2% Cu. Pr.) . . . . . 66.00(2)
Gaz Métropolitain Inc. (1963 Wt.) . . . . . 1.45(1)
Gaz Métropolitain Inc. (1966 Wt.) . . . . . 2.20(1)
General Bakeries Ltd. . . . . 3.35(2)
General Development Corporation . . . . . 25.50(3)
General Distributors of Canada Ltd. . . . . 15.88(1)
General Dynamics Corporation . . . . . (4)
General Investment Corporation of Quebec . . . . . 3.00(1)
Société Générale de Financement du Québec . . . . . 3.00(1)
General Motors Corporation . . . . . 80.50(1)
General Products Mfg. Corporation Limited (Cl. A.) . . . . . 82.00(1)
General Products Mfg. Corporation Limited (Cl. B.) . . . . . 81.00(1)
General Resources Ltd. . . . . .08(2)
General Trust of Canada . . . . . 23.75(1)
Genesco Inc. . . . . (4)
Genstar Limited . . . . . 13.13(1)
Genstar Limitée . . . . . 13.13(1)
Genstar Limited (Wt.) . . . . . 4.50(1)
Genstar Limitée (Wt.) . . . . . 4.50(1)
Geoquest Resources Ltd. . . . . 1.95(1)
Georgia Lake Mines Ltd. . . . . (4)
Gesco Distributing Limited . . . . . 3.50(1)
Getty Oil Company . . . . . 80.00(2)
Giant Explorations Ltd. . . . . .40(1)
Giant Mascot Mines Ltd. . . . . 5.00(1)
Giant Metallics Mines Ltd. . . . . .11(2)
Giant Reef Petroleums Limited . . . . . .21(2)
Giant Yellowknife Mines Ltd. . . . . 7.05(2)
Gibbex Mines Ltd. . . . . .35(2)
Gibraltar Mines Ltd. . . . . 4.70(1)
Gibson Mines Ltd. . . . . (4)
Glenburk Mines Ltd. . . . . .03(3)
Glen Copper Mines Ltd. . . . . .16(1)
Glendale Mobile Homes Ltd. . . . . 5.25(1)
Glengair Group Limited . . . . . 1.90(1)
Glengair Group Limited (6% Cv. B. Pr.) . . . . . 3.10(1)
Glengair Group Limited (Units) . . . . . 6.25(1)
Glengair Group Limited (Cl. A. Wt.) . . . . . .85(1)
Glengair Group Limited (Cl. B. Wt.) . . . . . .90(2)
Glenlyon Mines Limited . . . . . .12(1)
Goderich Elevator & Transit Co. Ltd. . . . . (4)
Gogama Minerals Ltd. . . . . .23(1)
Golconda Mining Exploration . . . . . 5.50(3)
Goldcrest Products Ltd. . . . . 3.50(1)
Golden Age Mines Ltd. . . . . .40(1)
Golden Gate Explorations Ltd. . . . . .25(1)
Golden Harker Explorations Ltd. . . . . .07(3)
Golden Shaft Mines Ltd. . . . . (4)
Golden Spike Western Petroleums Limited . . . . . .06(3)
Golden West Resources Limited . . . . . .11(2)
Gold Hawk Exploration Ltd. . . . . (4)
Gold Hawk Mines Ltd. . . . . .11(2)
Goldex Mines Ltd. . . . . 1.20(1)
Goldray Mines Ltd. . . . . .67(1)
Goldrim Mining Company Ltd. . . . . .10(2)
Gold River Mines Ltd. . . . . .15(2)
Goldstar Explorations & Investments Limited . . . . . (4)
Golsil Mines Ltd. . . . . .46(3)
Goodyear Tire & Rubber Co. of Canada Ltd. . . . . 153.00(2)
Goodyear Tire & Rubber Co. of Canada Ltd. (4% Cu. Pr.) . . . . . 34.50(2)
Gordon-LeBel Mines Ltd. . . . . .01(3)
Gordon Mackay & Stores Ltd. (Cl. A.) . . . . . 6.00(2)
Gordon Mackay & Stores Ltd. (Cl. B.) . . . . . 21.75(1)
Governor Gold Mines Ltd. . . . . (4)
Gowganda Silver Mines . . . . . .23(1)
Gradore Mines Ltd. . . . . (4)
Grafton Fraser Limited (6% Cu. Pr.) . . . . . 17.25(1)
Grafton Group Ltd. . . . . 20.75(1)
Gramara Mercantile Corp. Ltd. . . . . .18(3)
Grand Bahama Development Co. Ltd. . . . . (4)
Grandex Exploration and Investment Co. Ltd. . . . . (4)
Grandroy Mines Ltd. . . . . .09(2)
Granduc Mines Ltd. . . . . 4.50(1)
Grandview Mines Ltd. . . . . .12(2)
Granisle Copper Limited . . . . . 7.95(1)
Granite Club Ltd. . . . . 14.75(1)
Granite Mountain Mines Ltd. . . . . .17(1)
Grasset Lake Mines Ltd. . . . . .20(2)
Gray Industries Inc. . . . . .40(1)
Great Bear Silver Mines Ltd. . . . . (4)
Great Britain & Canada Investments Ltd. . . . . 18.75(1)
Great Britain & Canada Investments Ltd. (5-1/4% Cu. Pr.) . . . . . 30.00(2)
Great Canadian Oil Sands Limited . . . . . 5.40(1)
Great Eagle Explorations & Holdings Ltd. . . . . (4)
Great Eastern Resources Canada Ltd. . . . . .39(1)
Great Lakes Nickel Ltd. . . . . 1.37(1)
Great Lakes Paper Company Limited . . . . . 17.75(1)
Great Lakes Paper Company Limited (Wt.) . . . . . 2.30(2)
Great Lakes Power Corporation Ltd. . . . . 19.38(1)
Great Lake Silver Mines Ltd. . . . . .11(3)
Great National Land & Investment Corp. Ltd. . . . . 1.05(1)
Great Northern Capital Corp. Ltd. . . . . 8.75(1)
Great Northern Gas Utilities Ltd. (6% Cu. A. Pr.) . . . . . 19.00(2)
Great Northern Petroleums & Mines Ltd. . . . . .69(1)

Great Northern Petroleums & Mines Ltd. (A. Wt.) . . . . . (4)
Great Pacific Industries Ltd. . . . . 1.30(2)
Great Plains Development Co. of Canada Ltd. . . . . 29.75(2)
Great Slave Mines Ltd. . . . . .05(2)
Great West International Equities Ltd. . . . . (4)
Great West Life Assurance Co. . . . . 43.00(1)
La Great-West Compagnie d'Assurance-Vie . . . . . 43.00(1)
Great West Mining & Smelting Corp. Ltd. . . . . .16(2)
Great West Steel Industries Ltd. . . . . 5.13(1)
Greb Industries Limited . . . . . 4.90(1)
Green Coast Resources Limited . . . . . 4.90(1)
Green Eagle Mines Ltd. . . . . .42(1)
Greenfields Development Corporation Ltd. . . . . (4)
Green Point Mines Ltd. . . . . .18(1)
Grenache Inc. (Cl. A.) . . . . . 3.37(1)
Greyhound Computer of Canada Ltd. . . . . 1.65(1)
Greyhound Lines of Canada Ltd. . . . . 15.75(1)
Grissol Foods Ltd. . . . . 8.25(1)
Grouse Mountain Resorts Ltd. . . . . 2.40(1)
Grouse Mountain Resorts Ltd. (6% Cv. Pr.) . . . . . 1.70(2)
Growers Wine Co. Ltd. (Cl. A.) . . . . . 3.90(2)
Growers Wine Co. Ltd. (Cl. B.) . . . . . 3.75(2)
GSW Limited (Cl. A.) . . . . . 9.13(1)
GSW Limitée (Cat. A.) . . . . . 9.13(1)
GSW Limited (Cl. B.) . . . . . 9.00(2)
GSW Limitée (Cat. B.) . . . . . 9.00(2)
GSW Limited (5% Cu. Pr.) . . . . . 71.63(2)
GSW Limitée (5% Cum. Priv.) . . . . . 71.63(2)
Guarantee Co. of North America, The . . . . . (4)
La Garantie Compagnie d'Assurance de l'Amérique du Nord . . . . . (4)
Guaranty Trust Company of Canada . . . . . 14.88(1)
Guaranty Trust Company of Canada (Rt.) . . . . . .53(2)
Guardian Growth Fund Ltd. (Pr.) . . . . . 8.84(1)
Guardian Management Corporation Ltd. . . . . 7.00(2)
Gubby Mines Ltd. . . . . (4)
Gui Por Uranium Mines & Metals Ltd. . . . . .15(2)
Guichon Mines Ltd. . . . . .03(3)
Gulch Mines Ltd. . . . . .06(1)
Gulf Lead Mines Ltd. . . . . (4)
Gulf Oil Canada Limited . . . . . 25.63(1)
Gulf Oil Canada Limitée . . . . . 25.63(1)
Gulf Oil Corporation . . . . . 25.50(3)
Gulf Titanium Ltd. . . . . .25(2)
Gunn Mines Ltd. . . . . .24(2)
Hahn Brass Limited (5% 1st Pr.) . . . . . (4)
Halifax Developments Limited . . . . . 1.85(1)
Hallnor Mines Ltd. . . . . .80(2)
Halren Mines Ltd. . . . . .10(3)
Hambro Corp. of Canada Ltd. . . . . 13.00(2)
Hambro Corp. of Canada Ltd. (5-1/2% Cu. A. Pr.) . . . . . (4)
Hamilton Group Limited, The . . . . . 21.38(1)
Hamilton Group Limited, The (5% Cu. A. Pr.) . . . . . 85.00(3)
Hamilton Harvey Ltd. . . . . 8.00(1)
Hamilton Trust & Savings Corp. . . . . 10.25(1)
Hamilton Trust & Savings Corp. (Voting) . . . . . 10.50(2)
Hamilton Trust & Savings Corp. (7% Cu. A. Pr.) . . . . . 18.88(1)
Hammond Investment Corporation . . . . . 1.00(2)
Hand Chemical Industries Limited . . . . . 5.00(2)
Les Industries Chimiques Hand Limitée . . . . . 5.00(2)
Hand Chemical Industries Limited (Pt. Pr.) . . . . . 5.00(1)
Les Industries Chimiques Hand Limitée (Pt. Priv.) . . . . . 5.00(1)
Handy Andy Company . . . . . 3.63(3)
Hanna Gold Mines Ltd. . . . . .19(1)
Hansa Explorations Ltd. . . . . (4)
Hanson Mines Ltd. . . . . .14(2)
Hardee Farms International Ltd. . . . . 1.10(2)
Hardee Farms International Ltd. (6-1/2% A. Pr.) . . . . . 80.00(2)
Harding Carpets Ltd. . . . . 14.88(1)
Harding Carpets Ltd. (Cl. A.) . . . . . 14.50(1)
Hardwicke Investment Corporation Ltd. . . . . 50.00(2)
Harlequin Enterprises Ltd. . . . . 3.80(1)
Harris & Sons Ltd., J. . . . . 3.00(1)
Hart River Mines Ltd. . . . . .16(1)
Harvest Petroleums Ltd. . . . . .04(3)
Harvey's Foods Ltd. . . . . .82(1)
Harvey Woods Ltd. (Cl. A.) . . . . . 1.65(2)
Harvey Woods Ltd. (Cl. B.) . . . . . .50(2)
Hawker Industries Ltd. . . . . (4)
Hawker Siddeley Canada Ltd. . . . . 2.40(1)
Hawker Siddeley Canada Ltd. (5-3/4% Cu. Cv. Pr.) . . . . . 58.50(2)
Hayes-Dana Limited . . . . . 12.00(1)
Headvue Mines Ltd. . . . . (4)
Headway Corporation Limited . . . . . 3.45(1)
Headway Red Lake Gold Mines Ltd. . . . . .07(2)
Hearne Coppermine Explorations Ltd. . . . . .15(1)
Heath Gold Mines Ltd. . . . . .01(2)
Hedman Mines Ltd. . . . . .50(3)
Hertz Industries Ltd. . . . . .12(1)
Hewbet Mines Ltd. . . . . (4)
Hibernia Mining Co. Ltd. . . . . .11(1)
Highland-Bell Limited . . . . . (4)
Highland Chief Mines Ltd. . . . . .12(1)
Highland Lodge Mines Ltd. . . . . .08(1)
Highland Mercury Mines Ltd. . . . . .15(3)
Highland Queen Mines Ltd. . . . . .23(3)
Highland Queen Sportswear Ltd. . . . . 1.63(3)
Highland Valley Mines Limited . . . . . .09(2)
Highmont Mining Corporation Ltd. . . . . 2.10(1)
Highpoint Mines Limited . . . . . .05(2)
Hi-Lite Uranium Explorations Ltd. . . . . (4)
Hinde & Dauch Ltd. . . . . 125.00(2)
H & M Tax Savers Ltd. . . . . (4)
Hobrough Ltd. . . . . 3.00(2)
Hobrough Ltd. (6% Cu. Pr.) . . . . . 1.70(2)
Hogan Mines Ltd. . . . . .12(1)
Holberg Mines Limited . . . . . (4)
Hollinger Mines Ltd. . . . . 36.50(1)
Hollingsworth Mines Ltd. . . . . (4)
Home Oil Co. Ltd. (Cl. A.) . . . . . 33.38(1)
Home Oil Co. Ltd. (Cl. B.) . . . . . 33.00(1)
Home Smith International Ltd. . . . . .75(2)
Home Supermarket Ltd. . . . . .30(3)
Honda Mining Co. Ltd. . . . . .29(2)
Horne Fault Mines Ltd. . . . . .07(3)
Horne & Pitfield Foods Ltd. . . . . 2.50(1)
Hotstone Minerals Ltd. . . . . .01(3)
House of Braemore Furniture Ltd. . . . . 3.50(2)
Houston Oils Limited . . . . . 1.94(1)
Houston Oils Limited (Wt.) . . . . . .65(1)
Howard Smith Paper Mills Ltd. ($2.00 Cu. Pr.) . . . . . 25.38(1)
Howden & Company Limited, D. H. . . . . 3.10(2)
Hubbard Dyers Limited . . . . . 45.00(2)
Hubbard Dyers Limited (Pr.) . . . . . (4)
Hubert Lake Ungava Nickel Mines Ltd. . . . . .01(3)
Hub Mining Exploration Ltd. . . . . .16(2)
Hucamp Mines Ltd. . . . . .27(3)
Huclif Porcupine Mines Ltd. . . . . (4)
Hudson Bay Mines Ltd. . . . . .16(3)
Hudson Bay Mining & Smelting Co. Ltd. . . . . 21.00(1)
Hudson Bay Mountain Silver Mines Ltd. . . . . .08(2)
Hudson's Bay Company . . . . . 18.88(1)
Hudson's Bay Oil & Gas Co. Ltd. . . . . 46.00(1)
Hudson's Bay Oil & Gas Co. Ltd. (5% Cu. Cv. A. Pr.) . . . . . 55.50(1)
Hughes-Owens Co. Ltd. (Cl. B.) . . . . . 9.00(2)
Hughes-Owens Co. Ltd. (6.40% Cu. Pr.) . . . . . 21.13(3)
Hugh-Pam Porcupine Mines Ltd. . . . . .16(2)
Humlin Red Lake Mines Ltd. . . . . .01(3)
Hummingbird Mines Ltd . . . . . .85(2)
Hunch Mines Ltd. . . . . .03(3)
Hunter Basin Mines Ltd. . . . . .07(3)
Hunter Douglas Limited . . . . . (4)
Hunter Douglas Limitée . . . . . (4)
Huron Bruce Mines Limited . . . . . (4)

Huron & Erie Mortgage Corporation, The . . . 25.00(1)
Husky Oil Ltd. . . . 16.38(1)
Husky Oil Ltd. (6% Cu. A. Pr.) . . . 43.00(1)
Husky Oil Ltd. (6% Cu. B. Pr.) . . . 44.25(2)
Husky Oil Ltd. (D. Wt.) . . . 6.90(2)
Husky Oil Ltd. (E. Wt.) . . . 5.60(1)
Hydra Explorations Ltd. . . . .17(1)
Hy's of Canada Limited . . . 3.00(1)
Hytec Electronics Ltd. . . . (4)
I.A.C. Limited . . . 19.75(1)
I.A.C. Limitée . . . 19.75(1)
I.A.C. Limited (4-1/2% Cu. Pr.) . . . 69.00(2)
I.A.C. Limitée (4-1/2% Cum. Priv.) . . . 69.00(2)
I.A.C. Limited (5-3/4% Cu. Pr.) . . . 23.00(1)
I.A.C. Limitée (5-3/4% Cum. Priv.) . . . 23.00(1)
I.A.C. Limited (Wt.) . . . 8.00(1)
I.A.C. Limitée (Wt.) . . . 8.00(1)
Ibes International Ltd. . . . .25(2)
Ibsen Cobalt Silver Mines Ltd. . . . (4)
Ice Station Resources Ltd. . . . .21(1)
Ideal Bay Explorations Ltd. . . . .11(3)
Imasco Limited . . . 20.00(1)
Imasco Limitée . . . 20.00(1)
Imasco Limited (6% Cu. Pr.) . . . 4.60(2)
Imasco Limitée (6% Cum. Priv.) . . . 4.60(2)
Imperial General Properties Limited . . . 4.50(1)
Imperial General Properties Limited (Wt.) . . . 1.00(2)
Imperial Life Assurance Co. of Canada . . . 137.00(2)
Compagnie Canadienne d'Assurance sur la Vie-l'Impériale . . . 137.00(2)
Imperial Marine Industries Ltd. . . . 1.05(1)
Imperial Marine Industries Ltd. (A. Wt.) . . . .16(1)
Imperial Metals and Power Ltd. . . . .23(1)
Imperial Metals and Power Ltd. (Wt.) . . . (4)
Imperial Oil Limited . . . 31.50(1)
Income Disability & Reinsurance Co. of Canada . . . 6.00(2)
Income du Canada Cie d'Invalidité et de Réassurance . . . 6.00(2)
Income Disability & Reinsurance Co. of Canada (Wt.) . . . .58(2)
Income du Canada Cie d'Invalidité et de Réassurance (Wt.) . . . .58(2)
Indal Canada Limited . . . 8.38(2)
Independent Mining Corp. Ltd. . . . .01(3)
Index Mines Limited . . . 1.40(2)
Indian Mountain Metal Mines Ltd. . . . .49(2)
Indusmin Limited . . . 9.75(1)
Indusmin Limitée . . . 9.75(1)
Industrial Adhesives Limited . . . 13.38(1)
Industrial Growth Management Limited . . . 3.75(1)
Industrial Life Insurance Company, The . . . (4)
L'Industrielle Compagnie d'Assurance sur la Vie . . . (4)
Ingersoll Machine & Tool Company Limited (4% Cu. Pr.) . . . (4)
Inglis Co. Ltd., John . . . 9.50(1)
Initiative New Exploration Ltd. . . . 2.25(1)
Inland Chemicals Canada Ltd. . . . 3.05(2)
Inland Copper Ltd. . . . .23(1)
Inland Natural Gas Co. Ltd. . . . 13.00(1)
Inland Natural Gas Co. Ltd. (5% Cu. Pr.) . . . 14.50(1)
In-Place Electronics Limited . . . .35(1)
In-Place Electronics Limited (7% Cv. Pr.) . . . (4)
Inqua Resources Ltd. . . . .50(1)
Integrated Wood Products Ltd. . . . 3.50(2)
Inter-City Gas Limited . . . 6.75(1)
Inter-City Gas Limited (6-1/2% Cu. A. 2nd Pr.) . . . 16.50(1)
Inter-City Gas Limited (B. 2nd Pr.) . . . 19.50(2)
Inter-City Gas Limited (Wt.) . . . 2.90(1)
Inter-City Gas Limited (1971 Wt.) . . . 3.05(1)
Inter-City Manufacturing Ltd. (Cl. A.) . . . (4)
Interior Breweries Limited . . . 3.35(2)
Intermetco Ltd. . . . 2.30(1)
International Atlas Development & Exploration Ltd. . . . .19(2)
International Bibis Tin Mines Ltd. . . . .08(1)
International Bond and Equity Corporation Ltd. . . . 1.40(2)
International Bond and Equity Corporation Ltd. (Cl. A.) . . . 1.22(2)
International Bond and Equity Corporation Ltd. (Wt.) . . . .16(3)
International Bornite Mines Ltd. . . . .19(2)
International Business Machines Corp. . . . 339.00(1)
International Copper Corp. Ltd. . . . .16(3)
International Halliwell Mines Ltd. . . . .21(1)
International Hydrodynamics Company Ltd. . . . 1.20(1)
International Hydrodynamics Company Ltd. (B. Wt.) . . . (4)
International Hydrodynamics Company Ltd. (Rt.) . . . (4)
International Kenville Gold Mines Ltd. . . . .10(2)
International Land Corporation Ltd. . . . 5.75(1)
International Mariner Resources Ltd. . . . .66(1)
International Mariner Resources Ltd. (C. Wt.) . . . .19(1)
International Minerals & Chemical Corp. (Canada) Ltd. . . . 16.88(2)
International Mogul Mines Ltd. . . . 7.40(1)
International Nickel Co. of Canada Ltd. . . . 32.63(1)
International Norvalie Mines Ltd. . . . .06(2)
International Obaska Mines Ltd. . . . .28(2)
International Paper Co. . . . (4)
International Space Modules Ltd. (Cl. B.) . . . .90(1)
International Systcoms Ltd. . . . .57(1)
International Utilities Corporation . . . 42.75(1)
International Utilities Corporation (Cl. A. Cv.) . . . 49.75(2)
International Utilities Corporation ($1.32 Cu. Cv. Pr.) . . . (4)
International Visual Systems Ltd. . . . 1.25(1)
International Visual Systems Ltd. (Wt.) . . . .40(2)
Interplex S.P.A. Industries Ltd. . . . .60(1)
Interpool International Ltd. . . . 20.00(1)
Interprovincial All. . . . 1.35(1)
Inter-Provincial Diversified Holdings Limited . . . 3.25(1)
Interprovincial Pipe Line Co. . . . 30.63(1)
Interprovincial Pipe Line Co. (Wt.) . . . 14.50(1)
Interprovincial Steel & Pipe Corp. Ltd. . . . 7.63(1)
Interprovincial Steel & Pipe Corp. Ltd. ($1.20 Cu. Cv. Pr.) . . . 23.75(2)
Inter-Rock Oil Co. of Canada Limited . . . .15(2)
Inter-Tech Development & Resources Ltd. . . . .80(2)
Investment Foundation Ltd. . . . 41.50(3)
Investors Group, The . . . 7.75(1)
Investors Group, The (Cl. A.) . . . 7.75(1)
Investors Group, The (5% Cu. Cv. Pr.) . . . 21.00(1)
Invicta Explorations Ltd. . . . .08(3)
Ionarc Smelters Limited . . . 1.40(1)
I.O.S. Limited . . . (4)
Irish Copper Mines Ltd. . . . .07(2)
Iron Bay Trust . . . 3.10(1)
Iron City Mines Ltd. . . . .15(3)
Iron Cliff Mines Ltd. . . . .17(3)
Ironco Mining & Smelting Ltd. . . . (4)
Iroquois Petroleum Co. Ltd. . . . (4)
La Compagnie de Pétrole Iroquois Ltée . . . (4)
Irwin Toy Ltd. . . . 17.00(2)
ISEC Canada Ltd. . . . .10(1)
Iskut Silver Mines Ltd. . . . .16(2)
Island Telephone Co. Ltd. . . . 10.25(1)
Iso Mines Ltd. . . . 1.35(1)
Israel Continental Oil Co. Ltd. . . . .21(1)
I.T.L. Industries Limited . . . 4.25(1)
I.T.L. Industries Limited (6-1/2% Cu. Cv. Pr.) . . . 10.50(2)
Ivaco Industries Limited . . . 14.25(1)
Les Industries Ivaco Limitée . . . 14.25(1)
IWC Industries Limited . . . 1.90(1)
Jackpot Copper Mines Limited . . . .07(2)

Jack Waite Mining Co. .03(3)
Jacobus Mining Corp. Ltd. .03(2)
Jacola Mines Ltd. .04(3)
Jagor Resources Limited .20(1)
Jahalla Lake Mines Ltd. .04(3)
Jamaica Public Service Co. Ltd. .23(2)
Jamaican Mining Ltd. (4)
Jameland Mines Ltd. .05(2)
James Bay Mining Corp. .22(1)
Jamex Explorations Limited .32(1)
Jamex Explorations Limitée .32(1)
Janus Explorations Ltd. .06(3)
Jason Explorers Ltd. .13(1)
Jason Explorers Ltd. (A. Wt.) (4)
Jaye Explorations Ltd. .06(2)
J. B. Automatik Ltd. (4)
Jean Lake Lithium Mines Ltd. .02(3)
Jelex Mines Ltd. .10(2)
Jenkins Bros. Ltd. (4)
Jericho Mines Ltd. .10(1)
Jersey Consolidated Mines Ltd. .11(2)
Jespersen-Kay Systems Ltd. 3.00(1)
Joburke Gold Mines Ltd. .02(3)
Jockey Club Ltd., The 5.25(1)
Jockey Club Ltd., The (6% Cu. A. 1st Pr.) 10.38(2)
Jockey Club Ltd., The (5-1/2% Cu. B. Pr.) 10.38(2)
Jockey Club Ltd., The (5.60% Cu. 2nd Pr.) 10.38(2)
Johnson & Johnson 97.75(2)
Joliet-Quebec Mines Ltd. .19(1)
Jolly Jumper Products of America Ltd. 1.30(1)
Jolly Jumper Products of America Ltd. (Wt.) (4)
Jonsmith Mines Ltd. .07(2)
Jorex Limited 1.36(1)
Joutel Copper Mines Ltd. .52(1)
Jowsey Denton Gold Mines Ltd. (4)
Joy Mining Ltd. .95(1)
Joy Mining Ltd. (A. Wt.) .05(2)
Juma Mining & Exploration Ltd. .02(3)
Juniper Mines Ltd. .16(2)
Kaiser Resources Ltd. 3.95(1)
Kal Resources Ltd. .64(1)
Kalco Valley Mines Ltd. .15(2)
Kallio Iron Mines Ltd. 5.00(1)
Kamad Silver Company Ltd. .35(1)
Kamco Developments Ltd. (4)
Kam-Kotia Mines Ltd. .45(1)
Kamloops Copper Consolidated Ltd. .07(1)
Kappa Explorations Ltd. .36(2)
Kaps Transport Limited 8.13(1)
Kardar Canadian Oils Ltd. 1.88(2)
KB Mining Co. Ltd. .11(3)
Keeprite Products Ltd. (Cl. A.) 11.75(1)
Kelglen Mines Ltd. .05(2)
Kellcam Explorations Ltd. (4)
Kelly-Desmond Mining Corp. Ltd. .01(1)
Kelly-DeYong Sound Corporation Ltd. .85(1)
Kelly Douglas & Co. Ltd. (Cl. A. Cu. Pr.) 5.50(2)
Kelsey-Hayes-Canada Ltd. 7.00(2)
Keltic Mining Corp. Ltd. (4)
Kelver Mines Limited .18(1)
Kelvinator of Canada Limited 5.00(2)
Kendon Copper Mines Ltd. (4)
Kenogamisis Gold Mines Ltd. .09(3)
Kenting Limited 10.25(1)
Kenwest Mines Ltd. .02(3)
Kerr Addison Mines Ltd. 7.40(1)
Kewegama Gold Mines (Que.) Ltd. .05(3)
Key-Anacon Mines Ltd. .25(2)
Key Industries Limited .22(2)
Keystone Business Forms Limited 3.00(2)
Key-Way Mining Co. Ltd. .07(2)
Kidd Copper Mines Ltd. (4)
Kiena Gold Mines Ltd. .75(1)
Kilarney Gas & Oil Development Co. Ltd. (4)
Kilembe Copper Cobalt Ltd. 2.25(1)
Kimberlite Mining Corp. Ltd. (4)
King Island Mines Ltd. .03(3)
King Kirkland Gold Mines Ltd. (4)
Kingswood Explorations Ltd. .14(1)
Kingswood Explorations Ltd. (Wt.) (4)
Kirkland Gateway Gold Mines Ltd. (4)
Kirkland Minerals Corp. Ltd. .07(2)
Kismet Mining Corporations Ltd. .37(1)
Knobby Lake Mines Limited .20(2)
Knogo Corp. Ltd. .75(3)
Koffler Stores Ltd. 15.38(1)
Koffler Stores Ltd. (7% A. 1st Pr.) 8.88(1)
Koffler Stores Ltd. (Wt.) 6.85(2)
Komo Explorations Ltd. .07(2)
Kontiki Lead & Zinc Mines Ltd. .03(2)
Kopan Developments Ltd. .06(2)
KSF Chemical Processes Ltd. 1.80(1)
KSF Chemical Processes Ltd. (1968 Wt.) .50(2)
K. T. Mining Ltd. .11(1)
Kukatush Mining Corp. (1960) Ltd. 1.75(1)
Kupfer Mines Ltd. .42(1)
La Banque Provinciale du Canada 13.75(1)
Labatt Limited, John 22.00(1)
Labatt Limitée, John 22.00(1)
Labatt Limited, John (Cv. A. Pr.) 23.88(1)
Labatt Limitée, John (Conv. A. Priv.) 23.88(1)
Labrador Mining & Exploration Co. Ltd. 35.25(1)
Lacanex Mining Company Limited .90(2)
Lacanex Mining Company Limited (Wt.) .45(2)
Laddie Gold Mines Ltd. .04(3)
Laduboro Oil Ltd. .90(2)
Laidlaw Motorways Ltd. 14.88(1)
Laidlaw Motorways Ltd. (7% Cu. Cv. A. Pr.) 15.38(1)
Laidlaw Motorways Ltd. (Wt.) 10.62(1)
Laiteries Leclerc Inc., Les (Cat. A.) 10.75(1)
Lake Beaverhouse Mines Limited .12(2)
Lake Dufault Mines Ltd. 12.13(1)
Lake Erie Gas Ltd. (4)
Lake Expanse Gold Mines Ltd. .09(3)
Lakehead Mines Ltd. .09(2)
Lake Kozak Mines Ltd. .04(3)
Lakeland Natural Gas Ltd. (Wt.) (4)
Lakelyn Mines Ltd. .10(3)
Lake Ontario Cement Ltd. 2.70(1)
Lake-Osu Mines Ltd. .09(2)
Lake Shore Mines Ltd. 2.30(1)
Lakeside Oil & Gas Ltd. (4)
La Luz Mines Ltd. 1.55(1)
Lambert Inc., Alfred (Cl. A.) 15.25(2)
Lambton Loan & Investment Co. (4)
Lancer of Canada Limited 1.85(2)
Langis Silver & Cobalt Mining Co. Ltd. .06(2)
Larandona Mines Ltd. (4)
Larchmont Mines Ltd. .08(3)
Largo Mines Ltd. .22(3)
Laroma Midlothian Mines Ltd. .04(3)
Laronge Mining Ltd. .81(1)
Larum Mines Ltd. .02(3)
Lassie Red Lake Gold Mines Ltd. .07(2)
Lassiter Petroleums Ltd. (4)
Laura Mines Limited .20(2)
Laura Secord Candy Shops Ltd. 8.88(1)
Laurentide Financial Corp. Ltd. 10.38(1)
Laurentide Financial Corp. Ltd. ($1.25 Cu. Pr.) 17.50(1)
Laurentide Financial Corp. Ltd. ($1.40 Cu. Pr.) 19.00(1)
Laurentide Financial Corp. Ltd. (6-1/4% Cu. Pr.) 17.00(2)
Laurentide Financial Corp. Ltd. ($2.00 Cu. Cv. 2nd Pr.) 25.88(2)
La Vérendrye Management Corp. 8.00(2)
Corporation de Gestion La Vérendrye 8.00(2)
Lawson & Jones Ltd. (Cl. A.) 18.00(2)
Lawson & Jones Ltd. (Cl. B.) 92.50(3)
Leamoor Minerals Ltd. 1.10(2)

Lederic Mines Ltd. . . . . .18(1)
Leeds Metals Co. Ltd. . . . . .04(3)
LeeMac Mines Ltd. . . . . .21(1)
Leigh Instruments Limited . . . . . 4.45(1)
Leigh Instruments Limited
($2.60 Cu. Cv.A. Pr.) . . . . . 25.00(2)
Leisure World Nursing Homes Ltd. . . . . 1.00(3)
Leitch Mines Ltd. . . . . (4)
Lemtex Developments Limited . . . . . .55(2)
Lennie Red Lake Gold Mines Ltd. . . . . .03(3)
Leon's Furniture Ltd. . . . . 6.13(2)
Lequer Mines & Investments Ltd. . . . . (4)
Les Mines Belair Inc. . . . . .92(1)
Levack Mines Ltd. . . . . (4)
Levy Industries Ltd. . . . . 13.50(2)
Levy Industries Ltd. (6% Cu. A. Pr.) . . . . . 6.50(1)
Lewes River Mines Ltd. . . . . .11(2)
Lewis Red Lakes Mines Ltd. . . . . .22(2)
Lexington Mines Limited . . . . . .25(1)
Liberian Iron Ore Limited . . . . . 10.13(1)
Life Investors Ltd. . . . . 7.50(2)
Life Investors Ltd. (Wt.) . . . . . 1.25(1)
Lincoln Trust & Saving Company . . . . . 12.13(1)
Lingside Copper Mining Co. Limited . . . . . .03(2)
Linland Equipment Sales Ltd. . . . . 1.25(3)
Lion Mines Ltd. . . . . (4)
Lion Nickel Mines of Canada . . . . . .25(3)
Lithium Corporation of Canada Ltd. . . . . .05(3)
Little Hatchet Minerals Ltd. . . . . .30(3)
Little Long Lac Mines Limited . . . . . 1.80(1)
Livingston Industries Ltd. . . . . 9.00(1)
Livingston Industries Ltd.
(6% Cu. A. 1st Pr.) . . . . . 39.25(2)
Livingston Industries Ltd. (Wt.) . . . . . 5.00(1)
Lobell Mines Ltd. . . . . (4)
Loblaw Companies Limited (Cl. A.) . . . . . 5.75(1)
Loblaw Companies Limited (Cl. B.) . . . . . 5.75(1)
Loblaw Companies Limited
($2.40 Cu. Pr.) . . . . . 30.00(1)
Loblaw Groceterias Co. Limited . . . . . 99.50(2)
Loblaw Groceterias Co. Limited
($1.50 Cu. A. Pr.) . . . . . 18.50(1)
Loblaw Groceterias Co. Limited
($1.60 Cu. B. Pr.) . . . . . 19.88(1)
Loblaw Groceterias Co. Limited
($6.00 2nd Pt. Pr.) . . . . . 60.00(2)
Loblaw Inc. . . . . 7.00(2)
Locana Corporation Ltd. . . . . (4)
Lochaber Oil Corp. Ltd. . . . . (4)
Lochiel Explorations Ltd. . . . . 1.54(1)
Lodestar Mines Ltd. . . . . .05(3)
Loeb Ltd., M. . . . . 3.55(1)
Logistec Corp. . . . . 8.25(1)
Loisan Red Lake Gold Mines Ltd. . . . . .04(3)
London Life Insurance Co. . . . . 68.50(2)
London Life Compagnie d'Assurance-Vie . . . . . 68.50(2)
London Pride Silver Mines Ltd. . . . . .09(1)
Lone Creek Mines Ltd. . . . . .50(2)
Lord Simcoe Hotel Ltd. (Cl. A.) . . . . . (4)
Lori Explorations Ltd. . . . . .21(2)
Lornex Mining Corporation Ltd. . . . . 6.80(1)
Lost River Mining Corp. Ltd. . . . . 3.85(1)
Louanna Gold Mines Ltd. . . . . .05(2)
Louisbourg Mines Ltd. . . . . (4)
Louisiana Land & Exploration Co. . . . . (4)
Louvicourt Goldfield Corp. . . . . .11(2)
Lower Valley Mines Ltd. . . . . .12(2)
Lucky Strike Mines Limited . . . . . .13(2)
Lundor Mines Ltd. . . . . .55(1)
Luxor Red Lake Mines Ltd. . . . . (4)
Lynbar Mining Corp. Ltd. . . . . .10(3)
Lyndhurst Mining Co. Ltd. . . . . .02(3)
Lynx-Canada Explorations Limited . . . . . 1.35(2)
Lynx Yellowknife Gold Mines Ltd. . . . . .04(1)
Lytton Mineral Limited . . . . . 1.30(1)
MacAndrews Red Lake Gold Mines Ltd. . . . . (4)
MacDonald Mines Ltd. . . . . .08(1)
MacLan Exploration Limited . . . . . .63(1)
MacLaren Power & Paper Co. (Cl. A.) . . . . . 15.00(2)
MacLaren Power & Paper Co. (Cl. B.) . . . . . 16.00(2)
MacLaren Power & Paper Co. (1% Pr.) . . . . . .50(2)
Maclean-Hunter Limited . . . . . 8.75(1)
Maclean-Hunter Limitée . . . . . 8.75(1)
Maclean-Hunter Limited (B.) . . . . . 9.50(2)
Maclean-Hunter Limitée (B.) . . . . . 9.50(2)
Maclean-Hunter Cable TV Limited . . . . . 8.00(1)
Maclean-Hunter Cable TV Limited
(7% Cu. A. Pr.) . . . . . 18.62(1)
Macmillan Bloedel Limited . . . . . 25.50(1)
Macmillan Bloedel Limited (3% Pr.) . . . . . .47(3)
Madeleine Mines Ltd. . . . . 2.54(1)
Les Mines Madeleine Ltée . . . . . 2.54(1)
Madill Ltd., S. . . . . 6.50(2)
Madison Oils Ltd. . . . . .12(2)
Madsen Red Lake Gold Mines Ltd. . . . . .60(1)
Magadyne Industries Limited . . . . . 1.25(2)
Magna Electronics Corp. Ltd. . . . . 4.05(1)
Magna Electronics Corp. Ltd.
(6-1/2% Cu. Pr.) . . . . . (4)
Magnasonic Canada Ltd. . . . . 8.00(1)
Magnetics International Ltd. . . . . .80(1)
Magnum Fund Ltd. . . . . 23.38(3)
Magoma Mines Ltd. . . . . .04(1)
Maher Shoes Limited . . . . . 20.25(2)
Maher Shoes Limited (Pr.) . . . . . 8.00(1)
Main Oka Mining Corp. . . . . (4)
Majestic Explorations Ltd. . . . . (4)
Major Holdings & Development Ltd. . . . . 1.60(1)
Malartic Goldfields (Quebec) Ltd. . . . . .55(2)
Malartic Hygrade Gold Mines Ltd. . . . . 2.25(1)
Mandarin Mines Ltd. . . . . .16(2)
M. & M. Porcupine Gold Mines Ltd. . . . . .08(3)
Maneast Uranium Corp. Ltd. . . . . .01(3)
Manhattan Continental Development
Corporation . . . . . .31(2)
Manitou-Barvue Mines Ltd. . . . . .33(2)
Manix Mining Co. Ltd. . . . . .20(1)
Manoka Mining & Smelting Co. Ltd. . . . . (4)
Manor Mines Ltd. . . . . (4)
Manterre Gold Mines Ltd. . . . . .01(3)
Maple Leaf Gardens Ltd. . . . . 30.50(1)
Maple Leaf Mills Limited . . . . . 15.50(1)
Les Moulins Maple Leaf Limitée . . . . . 15.50(1)
Maple Leaf Mills Limited (5-1/2% B. Pr.) . . . . . 70.00(1)
Les Moulins Maple Leaf Limitée
(5-1/2% Cat. B. Priv.) . . . . . 70.00(1)
Maple Leaf Mines Ltd. . . . . .13(2)
Maracambeau Mines Ltd. . . . . .07(1)
Mara Lake Mines Ltd. . . . . .09(3)
Marchant Mining Co. Ltd. . . . . .60(1)
Marché Union Inc. . . . . 3.60(2)
Mareast Explorations Ltd. . . . . (4)
Margaret Red Lake Mines (1940) Ltd. . . . . (4)
Maria Mining Corp. Ltd. . . . . (4)
Marigot Investments Ltd. . . . . .25(2)
Mariner Mines Limited (B. Wt.) . . . . . (4)
Maritime Electric Co. Ltd. . . . . 27.00(1)
Maritime Telegraph & Telephone Co. Ltd. . . . . 22.13(1)
Maritime Telegraph & Telephone Co. Ltd.
(7% Cu. Pr.) . . . . . (4)
Markborough Properties Ltd. . . . . 5.38(1)
Markborough Properties Ltd. (Wt.) . . . . . .70(1)
Marlex Enviro-Systems & Resources Ltd. . . . . .24(2)
Marshall Boston Iron Mines Ltd. . . . . .26(1)
Marshall Creek Copper Co. Ltd. . . . . .07(1)
Martin-Bird Gold Mines Ltd. . . . . .01(3)
Martin-McNeely Mines Ltd. . . . . .07(1)
Marval Mines Ltd. . . . . .35(1)
Mines Marval Ltée . . . . . .35(1)
Marvens Ltd. (Cl. A.) . . . . . (4)
Massey-Ferguson Limited . . . . . 11.63(1)
Massval Mines Limited . . . . . .07(3)
Master Metal Corp. Mining Ltd. . . . . .55(2)
Mastermet Cobalt Mines Ltd. 15
Matachewan Consolidated Mines Ltd. . . . . .07(2)
Mate Yellowknife Gold Mines Limited . . . . . .05(3)
Matrix Exploration Limited . . . . . .23(3)
Mattagami Lake Mines Ltd. . . . . 27.88(1)

Matt Berry Mines Ltd. . . . . .09(3)
Maverick Mines & Oils Limited . . . . . .12(2)
Maverick Mountain Resources Ltd. . . . . .20(2)
Maybrun Mines Ltd. . . . . .10(2)
Maycor Mines Ltd. . . . . .05(3)
Mayfair Molly Mines Ltd. . . . . .06(3)
Mayfield Explorations Ltd. . . . . .14(1)
Maylac Gold Mines Ltd. . . . . (4)
McAdam Mining Corp. Ltd. . . . . .41(1)
McCarthy Milling Co. Ltd. (Cl. A.) . . . . . (4)
McCarthy Milling Co. Ltd. (Cl. B.) . . . . . (4)
McCoy Lake Mines Limited . . . . . (4)
Les Mines du Lac McCoy Limitée . . . . . (4)
McCuaig Red Lake Gold Mines Ltd. . . . . .02(3)
McFinley Red Lake Gold Mines Ltd. . . . . .05(3)
McIntyre-Porcupine Mines Ltd. . . . . 74.75(1)
McLaughlin Associates Ltd., S. B. . . . . 13.00(1)
McLaughlin Associates Ltd., S. B. (Wt.) . . . . . 5.30(1)
McManus Red Lake Gold Mines Ltd. . . . . .01(3)
McMarmac Red Lake Gold Mines Ltd. . . . . .01(3)
McVittie Graham Mining Co. Ltd. . . . . 1.55(2)
Medipack Corp. Ltd. . . . . 1.45(1)
Melchers Distilleries Limited . . . . . 11.00(2)
Les Distilleries Melchers Ltée . . . . . 11.00(2)
Melton Real Estate Ltd. . . . . 1.60(1)
Melton Real Estate Ltd. (A. Wt.) . . . . . .48(2)
Menorah Mines Ltd. . . . . .11(1)
Mentor Exploration & Development Co. Ltd. . . . . .60(2)
MEPC Canadian Properties Ltd. . . . . 7.38(1)
MEPC Canadian Properties Ltd. (6% Cu. A Pr.) . . . . . 18.88(1)
MEPC Canadian Properties Ltd. (Wt.) . . . . . 2.40(1)
MEPC Canadian Properties Ltd. (Rt.) . . . . . (4)
Mercuria Industries Limited . . . . . .80(1)
Mercury Explorations Limited . . . . . .10(2)
Merged Mining Enterprises Ltd. . . . . .15(3)
Meridian Mining & Exploration Co. Ltd. . . . . .58(3)
Merland Explorations Limited . . . . . .75(1)
Meta Uranium Mines Ltd. . . . . .11(1)
Meteor Mining Company Limited . . . . . .04(1)
Metropolitan Stores of Canada Ltd. . . . . 15.38(1)
Metropolitan Stores of Canada Ltd. ($1.30 Cu. 1967 Pr.) . . . . . 19.50(2)
Metropolitan Stores of Canada Ltd. (6-1/2% Cu. 1961 Pr.) . . . . . 18.50(2)
Metropolitan Trust Company, The . . . . . 18.75(2)
Metropolitan Trust Company, The (Rt.) . . . . . .90(2)
Mexican Light & Power Co. Limited . . . . . 6.82(3)
Mexican Light & Power Co. Limited ($1.00 Cu. Pr.) . . . . . 11.38(2)
Mextor Minerals Ltd. . . . . .30(3)
MGF Management Ltd. (Cl. A.) . . . . . 1.95(1)
Mica Company of Canada Ltd. . . . . (4)
Microsystems International Ltd. . . . . 5.38(1)
Microsystems International Ltd. (Wt.) . . . . . 1.70(1)
Cie Internationale des Microsystèmes Ltée (Wt.) . . . . . 1.70(1)
Midcon Oil & Gas Limited . . . . . .51(1)
Middle Bay Mines Ltd. . . . . .01(3)
Midepsa Industries Ltd. . . . . .16(1)
Mid Industries & Explorations Ltd. . . . . .40(2)
Midland Nickel Corp. Ltd. . . . . .18(2)
Midland Petroleums Limited . . . . . .06(1)
Mid Patepedia Mines Ltd. . . . . .14(2)
Midrim Mining Co. Ltd. . . . . .12(1)
Mid-West Mines Ltd. . . . . .05(2)
Mija Mines Limited . . . . . .12(2)
Miles Red Lake Mines Ltd. . . . . .02(3)
Milestone Exploration Ltd. . . . . .08(3)
Mill City Petroleums Ltd. . . . . 2.06(1)
Millerfields Silver Corp. Ltd. . . . . (4)
Milton Brick Company Ltd. . . . . 3.85(1)
Mindustrial Corporation Ltd. . . . . 7.25(1)
Minedel Mines Ltd. . . . . .04(3)
Mineral Exploration Corp. Ltd. . . . . .12(3)
Mineral Mountain Mining Co. Ltd. . . . . .18(1)
Mineral Resources International Ltd. . . . . .35(2)
Mines Iberville Ltée . . . . . (4)
Minex Development Ltd. . . . . .10(2)
Min-Ore Mines Ltd. . . . . .03(2)
Mirado Nickel Mines Ltd. . . . . .02(3)
Miro Mines Ltd. . . . . .05(2)
Miron Company Ltd. (Cl. A.) . . . . . 4.10(1)
Compagnie Miron Ltée (Cat. A.) . . . . . 4.10(1)
Mistango River Mines Ltd. . . . . .12(2)
Mistassini Uranium Mines Ltd. . . . . .10(2)
Mitchell Co. Ltd., Robert (Cl. A.) . . . . . 11.50(1)
Mitchell Co. Ltd., Robert (Cl. B.) . . . . . (4)
MLW Worthington Limited . . . . . 12.75(2)
MLW Worthington Limitée . . . . . 12.75(2)
Mobilex Development Corporation Limited . . . . . .85(2)
Mobil Oil Corporation . . . . . 51.25(2)
Mogar Mines Ltd. . . . . (4)
Mohawk Industries Ltd. . . . . .90(2)
Mohawk Industries Ltd. (6% Cu. Cv. Pr.) . . . . . 1.95(2)
Mohawk Mines Ltd. . . . . .02(3)
Mollie Mac Mines Ltd. . . . . .09(2)
Molson Industries Ltd. (Cl. A.) . . . . . 19.75(1)
Les Industries Molson Ltée (Cat. A.) . . . . . 19.75(1)
Molson Industries Ltd. (Cl. B.) . . . . . 19.75(1)
Les Industries Molson Ltée (Cat. B.) . . . . . 19.75(1)
Molson Industries Ltd. (Cl. C) . . . . . (4)
Les Industries Molson Ltée (Cat.C.) . . . . . (4)
Molybdenite Corp. of Canada Limited . . . . . (4)
Molymine Exploration Ltd. . . . . .10(1)
Moly-Ore Mines Ltd. . . . . .32(2)
Monarch Gold Mines Ltd. . . . . .02(3)
Monarch Investments Ltd. . . . . 23.38(3)
Monarch Life Assurance . . . . . 28.00(2)
La Compagnie d'Assurance-Vie Monarch . . . . . 28.00(2)
Monarch Metal Mines Ltd. . . . . .07(2)
Monenco Ltd. . . . . 6.00(1)
Moneta Porcupine Mines Ltd. . . . . .60(2)
Monpre Iron Mines Ltd. . . . . (4)
Monteagle Minerals Ltd. . . . . .35(1)
Monterey Petroleum Corporation . . . . . .21(1)
Mont Laurier Uranium Mines Ltd. . . . . .86(1)
Montreal City & District Savings Bank . . . . . 14.88(1)
Banque d'Epargne de la Cité du District de Montréal . . . . . 14.88(1)
Montreal Refrigerating & Storage Ltd. . . . . (4)
Montreal Trust Co. . . . . 18.13(1)
Moore Corp. Ltd. . . . . 38.00(1)
Mooshia Gold Mines Co. Ltd. . . . . .01(3)
More Mines Limited . . . . . .17(2)
Moresby Mines Ltd. . . . . .15(2)
Morocco Mines Ltd. . . . . .08(1)
Morono Copper Mines Ltd. . . . . .21(2)
Morse Corporation Ltd., Robt. (Cl. A.) . . . . . 14.00(1)
Morse Corporation Ltd., Robt. (Cl. B.) . . . . . 30.00(1)
Morse Corporation Ltd., Robt. (5-1/2% Cu. Cv. A. Pr.) . . . . . 33.00(2)
Morse Corporation Ltd., Robt. (5-1/2% Cu. Cv. B. Pr.) . . . . . 31.50(2)
Motorcade Stores Limited . . . . . .25(2)
Mount Jamie Mines (Quebec) Limited . . . . . .15(1)
Les Mines du Mont Jamie (Québec) Limitée . . . . . .15(1)
Mount Keno Mines Ltd. . . . . .01(3)
Mount Pleasant Mines Ltd. . . . . .25(2)
Mount Royal Rice Mills Ltd. . . . . 7.50(2)
Mount Royal Rice Mills Ltd. (5.80% Cu. Pr.) . . . . . 20.00(2)
Mount Washington Copper Co. Ltd. . . . . .07(2)
Mount Wright Iron Mines Ltd. . . . . .20(1)
MPG Investment Corporation Limited . . . . . 4.20(2)
MPG Investment Corporation Limited ($1.30 Cu. Pr.) . . . . . 15.00(1)
MSN Industries Ltd. . . . . 6.13(2)
Mt. Hyland Mines Ltd. . . . . .17(3)
MTS International Services Inc. . . . . 3.00(1)
Multi-Minerals Ltd. . . . . .27(1)
Multiple Access General Computer Corporation Limited . . . . . 1.25(1)
Murgor Explorations Ltd. . . . . .09(2)
Murky Fault Metal Mines Ltd. . . . . .50(2)

Murmac Lake Athabasca Mines Ltd. . . . . .02(3)
Murphy Oil Co. Ltd. . . . . 12.00(1)
Murphy Oil Co. Ltd.
(5-3/4% Cu. Cv. A. Pr.) . . . . . 31.00(1)
Murrit Photofax Ltd. . . . . 3.30(2)
Murrit Photofax Ltd. (Wt.) . . . . . .40(2)
Muscocho Exploration Ltd. . . . . .18(1)
Mustanf Mines Ltd. . . . . .29(2)
Mymar Mininf & Reduction Ltd. . . . . .26(2)
My-Ritt Red Lake Fold Mines Ltd. . . . . (4)
Myteque Mines Limited . . . . . (4)
Mytolon Chemical Inc. . . . . 2.75(1)
Mytolon Chemical Inc. (Wt.) . . . . . 1.00(3)
Nabors Drilling Limited . . . . . 10.00(2)
Na-Churs International Limited . . . . . 6.00(1)
Nadina Explorations Ltd. . . . . .91(1)
Naganta Mining & Development Co. Ltd. . . . . .21(1)
Nahanni Mines Ltd. . . . . .20(1)
Nasco Cobalt Silver Mines Ltd. . . . . .01(3)
National Drug & Chemical Co.
of Canada Ltd. . . . . 6.00(1)
National Drug & Chemical Co.
of Canada Ltd. (Cu. Cv. Pr.) . . . . . 8.50(2)
National Grocers Company Limited
($1.50 Cu. Pr.) . . . . . 24.44(3)
National Hees Enterprises Ltd. . . . . 2.75(1)
National Hees Industries Ltd. . . . . 2.70(2)
National Hees Industries Ltd.
(6% Cv. 1st Pr.) . . . . . (4)
National Nickel Limited . . . . . .17(1)
National Nursing Homes Ltd. . . . . 1.75(1)
National Nursing Homes Ltd. (Wt.) . . . . . .35(2)
National Petroleum Corporation . . . . . 2.35(1)
National Sea Products Ltd. . . . . 9.50(1)
National Sea Products Ltd.
(5-1/2% Cu. Pr.) . . . . . 3.25(2)
National Trust Co. Ltd. . . . . 32.50(1)
Nation Lake Mines Ltd. . . . . (4)
Native Minerals Ltd. . . . . .03(1)
Native Mines Ltd. . . . . .05(2)
Navco Food Services Limited . . . . . (4)
Negor Mines Ltd. . . . . (4)
Nello Mining Ltd. . . . . (4)
Nelson's Laundries Co. Ltd.
(6% Cu. Pr.) . . . . . 7.25(3)
Nemrod Mining Co. Ltd. . . . . .18(2)
Neonex International Limited . . . . . 3.70(1)
Nesbitt Mining & Exploration Ltd. . . . . .25(3)
New Arntfield Mines Ltd. . . . . (4)
New Associated Developments Ltd. . . . . (4)
New Athona Mines Ltd. . . . . .10(2)
Newbaska Gold & Copper Mines Ltd. . . . . (4)
New Bedford Explorations Ltd. . . . . .09(2)
New Bidlamaque Gold Mines Ltd. . . . . (4)
New Brunswick Telephone Co. Ltd. . . . . 14.63(1)
New Brunswick Uranium Metals
& Mining Ltd. . . . . 2.90(1)
New Calumet Mines Ltd. . . . . .20(1)
New Campbell Island Mines Ltd. . . . . (4)
New Cinch Uranium Ltd. . . . . .19(2)
Newconex Holdings Ltd. . . . . 4.70(2)
New Continental Oil Company
of Canada Limited . . . . . .69(1)
New Cronin Babine Mines Ltd. . . . . .06(1)
New Davies Petroleums Ltd. . . . . .06(1)
New Digby Dome Mines Ltd. . . . . .04(3)
New Dimension Resources Ltd. . . . . .58(2)
New Dominion Nickel Mines Ltd. . . . . .02(3)
New Far North Exploration Ltd. . . . . .04(3)
New Formaque Mines Ltd. . . . . .04(2)
Newfoundland Light & Power Co. Ltd. . . . . 12.25(1)
Newfoundland Light & Power Co. Ltd.
(5-1/2% Cu. A. Pr.) . . . . . (4)
New Forty Four Mines Ltd. . . . . (4)
New Gateway Oils & Minerals Ltd. . . . . .11(2)
New Glacier Explorers Ltd. . . . . .05(1)
New Gold Star Mines Ltd. . . . . (4)
New Goldvue Mines Ltd. . . . . .06(1)
New Harricana Mines Ltd. . . . . (4)
New Hope Porcupine Gold Mines Ltd. . . . . (4)
New Hosco Mines Ltd. . . . . .62(1)
New Indian Mines Ltd. . . . . .06(2)
New Insco Mines Ltd. . . . . .40(1)
New Jason Mines Ltd. . . . . .03(3)
New Kelore Mines Ltd. . . . . .05(2)
New Lorie Mines Ltd. . . . . .04(2)
Newlund Mines Ltd. . . . . .13(2)
New Mallen Red Lake Mines Ltd. . . . . .01(3)
New Marvel Oils Ltd. 15
New Metalore Mining Co. Ltd. . . . . .45(2)
New Miller Pipe Lines & Mining
Exploration Ltd. . . . . .07(2)
New Mount Costigan Mines Ltd. . . . . .16(1)
Newnorth Gold Mines Ltd. . . . . .05(2)
New Pascalis Mines Ltd. . . . . .20(3)
New Picton Uranium Mines Ltd. . . . . (4)
New Potterdoal Mines Ltd. . . . . .04(3)
New Privateer Mines Limited . . . . . .19(2)
New Providence Development Co. . . . . .36(1)
New Quebec Raglan Mines Limited . . . . . 6.90(1)
New Redwood Gold Mines Ltd. . . . . (4)
Newrich Explorations Ltd. . . . . .06(2)
New Senator Rouyn Ltd. . . . . .08(2)
New Taku Mines Ltd. . . . . .26(1)
New Territorial Uranium Mines Ltd. . . . . .11(1)
New Unisphere Resources Limited . . . . . .42(2)
Newvan Resources Ltd. . . . . .28(2)
New Walcord Mines Ltd. . . . . .02(3)
New Wellington Mines Ltd. . . . . .21(3)
New York Oils Limited . . . . . .65(2)
Niagara Structural Steel Co. Ltd. . . . . (4)
Niagara Structural Steel Co. Ltd.
(6-1/2% Cu. Cv. A. Pr.) . . . . . 18.00(2)
Niagara Wire Weaving Company Limited,
The . . . . . 11.00(2)
Niagara Wire Weaving Company Limited,
The (Cl. B.) . . . . . 10.00(2)
Nickel Hill Mines Limited . . . . . .14(2)
Nickel Lake Mines Ltd. . . . . .02(3)
Nickel Offsets Ltd. . . . . .14(3)
Nickel Rim Mines Limited . . . . . .10(1)
Nicoba Mines Ltd. . . . . .02(3)
Nicohal Mines Ltd. . . . . (4)
Nisson Mining & Development Limited . . . . . 1.80(1)
Nith River Petroleums Ltd. . . . . .31(2)
Nitracell Canada Ltd. . . . . .30(1)
Noble Mines & Oils Ltd. . . . . 1.15(1)
Nocana Mines Ltd. . . . . .03(2)
Noctin Investment Corporation Ltd. . . . . (4)
Noland Mines Ltd. . . . . (4)
Nor-Acme Gold Mines Ltd. . . . . .18(1)
Noradco Mines Ltd. . . . . (4)
Noranda Mines Ltd. . . . . 32.75(1)
Norbaska Mines Ltd. . . . . .19(2)
Norcan Mines Limited . . . . . .10(1)
Norco Oil Corp. . . . . 1.19(1)
Nordev Mines Ltd. . . . . .10(3)
Nordex Explosives Ltd. . . . . .50(1)
Nordic Industries Ltd. . . . . .18(2)
Norex Resources Limited . . . . . .20(2)
Norgold Mines Limited . . . . . .03(2)
Norlex Mines Ltd. . . . . .26(1)
Normont Copper Ltd. . . . . (4)
Norque Copper Mines Ltd. . . . . (4)
Norseman Mines Limited . . . . . .80(1)
Northair Mines Ltd. . . . . .15(1)
North American Asbestos Co. Ltd. . . . . .04(2)
North American Land & Leisure Ltd. . . . . (4)
North American Rare Metals Ltd. . . . . .18(1)
North American Rockwell Corp. . . . . 29.00(3)
Northcal Mines Ltd. . . . . .41(1)
North Canadian Oils Ltd. . . . . 5.50(1)
North Canadian Oils Ltd.
(5-1/2% Cu. Pr.) . . . . . 38.00(2)
North Coldstream Mines Ltd. . . . . .48(1)
North Continental Oil & Gas
Corporation Ltd. . . . . .02(1)
North D'Arcy Explorations Ltd. . . . . .20(2)

Northern Canada Mines Ltd. .49(1)
Northern & Central Gas Corporation Ltd. 14.00(1)
Northern & Central Gas Corporation Ltd. ($1.06 Cu. Cv. Pr.) 22.00(2)
Northern & Central Gas Corporation Ltd. ($1.50 Cu. Cv. Pr.) 28.75(1)
Northern & Central Gas Corporation Ltd. ($2.60 Cu. 1st Pr.) 37.25(2)
Northern & Central Gas Corporation Ltd. ($2.70 Cu. Pr.) 37.00(2)
Northern & Central Gas Corporation Ltd. (Wt.) 5.50(1)
Northern Coal Mines Ltd. .12(3)
Northern Gem Mining Corp. Ltd. .02(3)
Northern Homestakes Mines Ltd. .24(1)
Northern Homestakes Mines Ltd. (Rt.) .01(1)
Northern Metals Limited (4)
Northern Nuclear Mines Ltd. (4)
Northern Quebec Explorers Ltd. .12(2)
Northern Tar, Chemical & Wood Ltd. 3.25(1)
Northern Tar, Chemical & Wood Ltd. (Cu. A. Pr.) 17.00(2)
Northern Telephone Ltd. (5-1/2% Cu. A. 1st Pr.) (4)
Northern Telephone Ltd. (5-1/2% Cu. B. 1st Pr.) (4)
Northern Telephone Ltd. (5-1/2% Cu. C. 1st Pr.) 14.50(3)
North Expo Mines Ltd. (4)
Northgate Exploration Ltd. 4.70(1)
North Island Mines Limited .12(2)
Northland Oils Ltd. .82(1)
Northland Trust Co. (4)
Northlode Explorations Ltd. .16(1)
North Pacific Mines Ltd. .37(1)
North Rock Explorations Ltd. 2.25(1)
Northville Explorations Ltd. .06(3)
Northwest Canalask Nickel Mines Ltd. .06(1)
North Western Utilities Ltd. (4% Cu. Pr.) 54.00(2)
Northwest Sports Enterprises Ltd. 6.00(1)
Northwest Trust Co. (4)
Northwest Trust Co. (Pr.) (4)
Northwest Ventures Limited .52(1)
North Whitney Mines Ltd. (4)
Nor-West Kim Resources Ltd. .18(2)
Nor-West Kim Resources Ltd. (B. Wt.) (4)
Nouvelle Mining Exploration Ltd. .10(2)
Nova Beaucage Mines Ltd. .26(2)
Nova Scotia Light & Power Co. Ltd. 13.13(1)
Nova Scotia Light & Power Co. Ltd. (4% Cu. Pr.) (4)
Nova Scotia Light & Power Co. Ltd. (4-1/2% Cu. Pr.) (4)
Nova Scotia Light & Power Co. Ltd. (5% Cu. Pr.) (4)
Nova Scotia Savings and Loan Co. 15.50(2)
NQN Mines Ltd. .17(1)
Les Mines N.Q.N. Limitée .17(1)
NSI Marketing Ltd. 3.65(1)
Nudulama Mines Ltd. (4)
Numac Oil & Gas Ltd. 12.75(1)
Nu-West Development Corp. Ltd. 8.25(1)
N.W. Canalask (4)
NWL Financial Corporation Ltd. 2.10(1)
N.W.P. Developments Ltd. (4)
N.W.T. Copper Mines Ltd. .15(3)
Oakville Wood Specialties Limited (6% Cu. Pr.) (4)
Oakwood Petroleums Limited 1.00(1)
O'Brien Gold Mines Limited .14(2)
Occidental Petroleum Corporation 12.25(1)
Ocean Cement & Supplies Ltd. 29.50(1)
Oceanic Iron Ore of Canada Ltd. .15(3)
Ogilvie Flour Mills Co. Ltd. (7% Cu. Pr.) 25.25(2)
Oil Patch Equipment Sales & Rentals Ltd. 1.90(1)
Okanagan Helicopters Ltd. 6.25(1)
Okanagan Helicopters Ltd. (6% Cu. A. Pr.) (4)
Okanagan Helicopters Ltd. (6% Cv. 2nd Pr.) 11.50(3)
Okanagan Helicopters Ltd. (Wt.) 3.00(1)
Okanagan Holdings Ltd. 5.13(2)
Okanagan Telephone Company ($.40 Cu. Pr.) 5.25(3)
Old Canada Investment Corporation Ltd. .70(2)
Old Canada Investment Corporation Ltd. (6% A. 1st Pr.) 1.45(2)
Old Canada Investment Corporation Ltd. (Wt.) .50(2)
Olivet Gold Mines Ltd. (4)
Omega Hydrocarbons Ltd. .07(2)
Omega Mines Ltd. .14(2)
Onaco Petroleums Ltd. .08(3)
Onaping Mines Ltd. .08(3)
Ontex Mining Ltd. .38(1)
Opemiska Copper Mines (Quebec) Ltd. 8.10(1)
Open End Mines Limited .31(2)
Orangeroof Canada Ltd. 5.25(1)
Orchan Mines Ltd. 3.55(1)
Ordala Mines Ltd. (4)
Orlando Realty Corporation Ltd. 4.95(2)
Orofino Mines Ltd. .13(3)
Oro Mines Ltd. .20(1)
Ortega Minerals Ltd. .05(2)
Orvalley Gold Mines Ltd. (4)
OSF Industries Limited 4.75(1)
Oshawa Group Ltd. (Cl. A.) 11.38(1)
Oshawa Group Ltd. (Wt.) 1.50(1)
Osisko Lake Mines Ltd. .27(2)
Ourgold Mining Co. Ltd. (4)
Overland Express Ltd., The 10.50(1)
Overland Express Ltd., The ($.60 Cu. Cv. Pr.) 22.00(2)
Overland Express Ltd., The (2nd Pt. Pr.) 4.45(2)
Pace Industries Ltd. .85(1)
Pace Industries Ltd. (Wt.) (4)
Pacific Asbestos Ltd. 1.32(1)
Pacific Atlantic Canadian Investment Co. Ltd. 4.05(2)
Pacific Atlantic Canadian Investment Co. Ltd. (5% Cu. A. Pr.) (4)
Pacific Copper Mines Ltd. 1.85(1)
Pacific Enterprises Ltd. 1.65(2)
Pacific Gas Transmission Co. (4)
Pacific Nickel Mines Ltd. .31(1)
Pacific Northern Gas Ltd. (Cl. A.) 3.50(2)
Pacific Northern Gas Ltd. (6-3/4% Cu. Pr.) 22.50(2)
Pacific Northern Oils Ltd. .07(2)
Pacific Petroleums Limited 31.63(1)
Pacific Silver Mines & Oils Ltd. .06(2)
Pacific Sulphur Ltd. (4)
Pacific Western Airlines Ltd. 12.63(1)
Pacific Western Airlines Ltd. (6% Cu. Pr.) 30.88(1)
Packard Pershing Mines Ltd. (4)
Paco Corporation of Canada Ltd. 1.85(3)
Page Petroleum Ltd. 1.50(1)
Palco Explorations Ltd. .15(3)
Palliser Petroleums Ltd. (4)
Palmer McLellan (United) Ltd. (4)
Palomino Explorations Ltd. .10(3)
Pamike Mines Ltd. .20(1)
Pamour Porcupine Mines Ltd. 1.75(1)
Panacan Resources Ltd. .38(1)
Panacea Mining & Exploration Ltd. (4)
Pan American Mines Ltd. (4)
Pan Canadian Petroleums Limited 15.25(1)
Pancana Industries Ltd. 2.35(1)
Pan Eastern Corporation Ltd. .29(1)
Pango Gold Mines Ltd. (4)
Pan Ocean Oil Corporation 11.38(1)
Panther Mines Ltd. .20(1)
Paragon Properties Limited 3.10(2)
Paramaque Mines Ltd. .03(2)
Paramount Mining Ltd. .20(1)
Parkland Beef Industries Ltd. .30(1)

Park Lawn Cemetery Company . . . . . (4)
Parr Mines Ltd. . . . . .14(1)
Partridge River Mines Ltd. . . . . (4)
Pathfinder Resources Ltd. . . . . .92(1)
Pathfinder Resources Ltd. (B. Wt.) . . . . . .16(2)
Patino N.V. . . . . 13.75(1)
Pato Consolidated Gold Dredging Ltd. . . . . 6.50(2)
Patricia Silver Mines Ltd. . . . . .06(2)
Paulpic Gold Mines Ltd. . . . . .13(3)
Pax International Mines Ltd. . . . . .01(3)
Payco Mines Ltd. . . . . .05(1)
Payette River Mines Limited . . . . . .06(2)
Payfair Industries Ltd. . . . . (4)
PCE Explorations Limited . . . . . .52(1)
Peace River Mining & Smelting Ltd. . . . . (4)
Peace River Petroleums Ltd. . . . . .17(1)
Peel-Elder Limited . . . . . 14.13(1)
Peel Resources Ltd. . . . . .14(1)
Pelangio Larder Mines Ltd. . . . . .02(3)
Pembina Pipe Line Ltd. (Cl. A.) . . . . . 7.13(1)
Pembina Pipe Line Ltd. (Cl. B.) . . . . . 7.00(1)
Pembina Pipe Line Ltd.
(5% Cu. 1st Pr.) . . . . . 48.00(2)
Pembina Pipe Line Ltd.
(6% Cu. A. 2nd Pr.) . . . . . 25.50(2)
Pembroke Electric Light Co. Ltd. . . . . 27.50(2)
Pend Oreille Mines & Metals Co. . . . . .75(3)
Pennbec Mining Corp. . . . . (4)
Pennington's Stores Limited . . . . . 11.88(1)
People's Credit Jewellers Ltd. . . . . 9.38(1)
People's Credit Jewellers Ltd. (Cl. A.) . . . . . 9.00(1)
People's Credit Jewellers Ltd.
(6% Cu. Pr.) . . . . . 94.75(3)
People's Department Stores Limited . . . . . 11.75(1)
PEP Professional & Engineered Patents
Ltd. . . . . .35(3)
Père Marquette Petroleums Ltd. . . . . .03(2)
Permo Gas & Oil Limited . . . . . .38(1)
Pershing Manitou Gold Mines Ltd. . . . . (4)
Pershon Gold Mines Ltd. . . . . .01(3)
Peruvian Oils & Minerals Ltd. . . . . .29(1)
Peso Silver Mines Ltd. . . . . .14(1)
Peterson Red Lake Mines Ltd. . . . . (4)
Petrofina Canada Ltd. . . . . 21.50(1)
Petrofina Canada Ltée . . . . . 21.50(1)
Petrol Oil & Gas Company Ltd., The . . . . . 1.32(1)
Petromines Ltd. . . . . .26(1)
Petroquest Ltd. . . . . (4)
Peyto Oils Limited . . . . . 1.87(1)
Pharaoh Mines Ltd. . . . . (4)
Phillips Cables Limited . . . . . 9.75(1)
Phillips Petroleum Co. . . . . (4)
Phoenix Canada Oil Company Ltd. . . . . 7.45(1)
Photo Engravers & Electrotypers Ltd. . . . . 19.00(2)
Pickel Crow Explorations Limited . . . . . .23(2)
Pickering Metal Mines Ltd. . . . . .01(3)
Pick Mines Ltd. . . . . (4)
Picton Mines . . . . . (4)
Pine Bell Mines Ltd. . . . . .13(2)
Pine Lake Mining Co. Ltd. . . . . .13(2)
Pine Pacific Mines Ltd. . . . . .18(3)
Pine Point Mines Ltd. . . . . 24.00(1)
Pine Ridge Exploration Co. Ltd. . . . . .13(2)
Pine Tree Explorations Ltd. . . . . .15(1)
Pinex Mines Ltd. . . . . .69(1)
Pinnacle Mines Ltd. . . . . .12(2)
Pinnacle Petroleums Ltd. . . . . .44(2)
Pitchvein Mines Ltd. . . . . .01(3)
Pitt Gold Mining Co. Ltd. . . . . .04(2)
Pitts Engineering Construction Limited,
C.A. . . . . 14.13(1)
Pizza Pan International Corp. . . . . (4)
Place Gas & Oil Company Limited . . . . . 1.00(1)
Placer Development Ltd. . . . . 25.50(2)
Plains Petroleum Ltd. . . . . .27(1)
Plateau Metals Ltd. . . . . .33(1)
Pleno Mines Ltd. . . . . (4)
Polaris Mines Ltd. . . . . .05(2)
Polcon Corp. . . . . 3.00(2)
Polypump Ltd. . . . . 2.53(1)
Ponderay Exploration Co. Ltd. . . . . 1.15(1)
Ponder Oils Ltd. . . . . .68(2)
Popular Industries Ltd. . . . . 1.50(1)
Port Arthur Iron Ore Corp. . . . . (4)
Portcomm Communications Corp. Ltd. . . . . .75(1)
Portcomm Communications Corp. Ltd.
(A. Wt.) . . . . . (4)
Port Dover Gas & Oil Ltd. . . . . (4)
Portfield Petroleums Limited . . . . . .10(2)
Portland Yellowknife Gold Mines Limited . . . . . (4)
Potter Distilleries Ltd. . . . . 3.50(1)
Power Corp. of Canada Ltd. . . . . 5.50(1)
Power Corp. of Canada Ltd.
(4-3/4% 1st Pr.) . . . . . 28.38(1)
Power Corp. of Canada Ltd.
(5% Cv. A. 2nd Pr.) . . . . . 8.88(1)
Power Corp. of Canada Ltd.
(6% 2nd Pr.) . . . . . (4)
Prado Exploration Ltd. . . . . 1.12(1)
Prairie Oil Royalties Company Ltd. . . . . 11.75(2)
Prairie Royalty . . . . . (4)
Prefac Concrete Co. Ltd. . . . . 1.45(2)
La Cie de Béton Préfac Ltée . . . . . 1.45(2)
Premier Cablevision Limited . . . . . 10.60(1)
Premier Trust Co., The (Fully Paid) . . . . . 340.00(2)
Premium Iron Ores Limited . . . . . 1.75(2)
Preston Mines Limited . . . . . 6.70(1)
Price Company Limited, The . . . . . 7.25(1)
La Compagnie Price Limitée . . . . . 7.25(1)
Price Company Limited, The
(4% Cu. Pr.) . . . . . 50.00(2)
La Compagnie Price Limitée
(4% Cum. Priv.) . . . . . 50.00(2)
Prime Potash Corporation of Canada Ltd. . . . . .03(2)
Primer Group Minerals Ltd. . . . . .09(2)
Probe Mines Limited . . . . . .20(1)
Proflex Limited . . . . . 2.20(1)
Pronghorn Petroleum Corp. Ltd. . . . . (4)
Proto Explorations Ltd. . . . . .15(2)
Provident Assurance Company, The . . . . . (4)
La Prévoyance Compagnie d'Assurance . . . . . (4)
Provigo Inc. . . . . 6.75(3)
Provinces & Explorations Ltd. . . . . .22(2)
Puma Petroleums Ltd. . . . . .84(1)
Puma Petroleums Ltd. (A. Wt.) . . . . . .48(2)
Purdex Minerals Ltd. . . . . .01(3)
Pure Silver Mines Ltd. . . . . 2.30(1)
Pyramid Mining Co. Ltd. . . . . .31(1)
Q Broadcasting Ltd. (Cl. A.) . . . . . 5.00(1)
Quadrate Explorations Ltd. . . . . .02(3)
Quatsino Copper-Gold Mines Ltd. . . . . .11(1)
Quebec Antimony Mines Ltd. . . . . .24(1)
Les Mines d'Antimoine du Québec Ltée . . . . . .24(1)
Quebec Cobalt & Exploration Ltd. . . . . .55(2)
Quebec Explorers Corp. Ltd. . . . . .15(1)
Quebec Gold Belt Mines Ltd. . . . . .08(3)
Quebec Industrial Minerals Corp. . . . . (4)
Compagnie de Minéraux Industriels
du Québec . . . . . (4)
Quebec Manitou Mines Ltd. . . . . .12(2)
Quebec Mattagami Minerals Ltd. . . . . .25(2)
Quebec Sturgeon River Mines Ltd. . . . . .10(2)
Quebec Telephone . . . . . 13.75(2)
La Corporation de Téléphone de Québec . . . . . 13.75(2)
Quebec Telephone
(6-1/5% Cu. Cv. A. Pr.) . . . . . 14.00(2)
La Corporation de Téléphone de Québec
(6-1/5% Cum. Conv. A. Priv.) . . . . . 14.00(2)
Quebec Telephone (5% Cu. Pr.
1951 Series) . . . . . 5.50(2)
La Corporation de Téléphone de Québec
(5% Cum. Priv. 1951) . . . . . 5.50(2)
Quebec Telephone (5% Cu. Pr.
1955 Series) . . . . . 13.25(2)
La Corporation de Téléphone de Québec
(5% Cum. Priv. 1955) . . . . . 13.25(2)
Quebec Telephone (5% Cu. Pr.
1956 Series) . . . . . (4)

La Corporation de Téléphone de Québec (5% Cum. Priv. 1956) . . . . (4)
Quebec Telephone (4-3/4% Cl. Pr. 1965 Series) . . . . 12.50(2)
La Corporation de Téléphone de Québec (4-3/4% Cum. Priv. 1965) . . . . 12.50(2)
Quebec Uranium Mining Corp. . . . .18(2)
Queenston Gold Mines Ltd. . . . .20(2)
Quejo Mines Ltd. . . . .04(3)
Quest Yellowknife Mines Limited . . . . .01(3)
Quilchena Mining & Development Co. Ltd. . . . (4)
Quinte-Canlin Limited . . . . 1.95(2)
Quinte-Canlin Limited (Cl. A.) . . . . 2.00(2)
Q.S.P. Ltd. . . . 11.25(1)
Q.S.P. Ltée . . . . 11.25(1)
Rackla River Mines Ltd. . . . .06(2)
Rackla River Mines Ltd. (Rt.) . . . . (4)
Radex Minerals Ltd. . . . .08(2)
Radex Minerals Ltd. (Wt.) . . . . (4)
Radiation Development Co. Ltd. . . . 3.50(1)
Radio Hill Mines Co. Ltd. . . . (4)
Radiore Uranium Mines Ltd. . . . .25(1)
Ragged Chute Silver Mines Ltd. . . . (4)
Ramada Resources Ltd. . . . (4)
Rambler Exploration Co. Ltd. . . . (4)
Ramid International Ltd. . . . .24(2)
Ram Petroleums Ltd. . . . .64(1)
Rancheria Mining Co. Ltd. . . . .08(2)
Ranchmens Resources Ltd. . . . .60(2)
Rand Malartic Mines Ltd. . . . .02(3)
Rand Resources Limited . . . . .53(1)
Ranger Oil (Canada) Limited . . . . 13.75(1)
Rank Organization Ltd. . . . 22.13(1)
Ranney Gold Mines Ltd. . . . (4)
Rapid Data Systems & Equipment Ltd. . . . 4.50(1)
Rapid Data Systems & Equipment Ltd. (6% Cu. Cv. Pr.) . . . . 5.25(1)
Rapid Grip & Batten Limited . . . . 5.00(2)
Rapid Grip & Batten Limited (Cl. A.) . . . . 7.00(2)
Rapid River Resources Ltd. . . . .06(2)
Rawhide U. Mines Ltd. . . . .10(2)
Rayfield Mining Co. . . . (4)
Raylloyd Mines & Explorations Ltd. . . . .20(2)
Raymond Tiblemont Gold Mines Ltd. . . . .02(3)
Rayore Mines Ltd. . . . .40(2)
Rayrock Mines Limited . . . . 1.15(1)
Reactor Uranium Mines Ltd. . . . .15(2)
Reader's Digest Association (Canada) Ltd. . . . 7.88(2)
Sélection du Reader's Digest (Canada) Ltée . . . . 7.88(2)
Readyfoods Ltd. . . . 1.88(1)
Realm Mining Corporation Limited . . . . (4)
Realty Capital Corporation Ltd. (Cl. A.) . . . . 3.40(1)
Realty Capital Corporation Ltd. (Wt.) . . . . .85(2)
Reco Silver Mines Ltd. . . . .10(2)
Redaurum Red Lake Gold Mines Ltd. . . . (4)
Redcoat Mines Ltd. . . . (4)
Redcon Gold Mines Ltd. . . . .03(3)
Redhill Investment Corp. Ltd. . . . 4.75(2)
Red Metal Mines Ltd. . . . .06(2)
Redruth Gold Mines Ltd. . . . .02(3)
Redstone Mines Ltd. . . . .32(3)
Reed Shaw Osler Limited . . . . 8.75(1)
Reeves MacDonald Mines Ltd. . . . 1.00(1)
Regentbranch Holdings Limited . . . . 2.25(3)
Reichhold Chemicals (Canada) Ltd. . . . 9.00(2)
Reichhold Chemicals (Canada) Ltd. (Wt.) . . . . 2.75(2)
Reid Lithographing Co. Ltd. . . . 10.13(2)
Reid Lithographing Co. Ltd. (6-1/4% Cu. A. Pr.) . . . . 41.13(3)
Reitman's (Canada) Ltd. . . . 19.13(1)
Reitman's (Canada) Ltd. (Cl. A.) . . . . 19.25(1)
Renold Chains Canada Ltd. (Cl. A. Cu. Pr.) . . . . (4)
Renzy Mines Ltd. . . . .43(2)
Reprox Corp. Ltd. . . . 1.70(1)
Republic Resources Ltd. . . . .17(2)
Revelstoke Building Materials . . . . 14.75(1)
Revelstoke Building Materials Ltd. (6% Cu. Pr.) . . . . 15.00(1)
Revenue Properties Co. Ltd. . . . .71(1)
Rexdale Mines Ltd. . . . (4)
Reynolds Aluminum Co. of Canada Ltd. (4-3/4% Cu. 1st Pr.) . . . . 64.75(2)
Société d'Aluminium Reynolds (Canada) Ltée (4-3/4% Cum. Priv.) . . . . 64.75(2)
R.H.P. Canada Ltd. (Cu. Pt. Cl. A.) . . . . (4)
Rhyolite-Rouyn Mines Ltd. . . . (4)
Richan Explorations Limited . . . . .80(2)
Richelieu Vaudreuil Farms Ltd. . . . (4)
Richfault Explorations Ltd. . . . (4)
Rich Group Yellowknife Mines Ltd. . . . .21(3)
Richore Gold Mines Ltd. . . . (4)
Richwood Silver Mines Ltd. . . . 2.10(2)
Ridgefield Explorations Ltd. . . . (4)
Riley's Datashare International Ltd. . . . 1.95(1)
Rimrock Mining Corporation Ltd. . . . .50(1)
Rio-Algom Mines Ltd. . . . 15.25(1)
Rio-Algom Mines Ltd. ($5.80 Cu. A. 1st Pr.) . . . . 75.50(2)
Rio Plata Silver Mines Ltd. . . . .07(3)
Rio Rupununi Mines Ltd. . . . .01(3)
Ripley International Ltd. . . . 3.80(2)
Riverside Yarns Ltd. . . . 2.25(1)
Riverside Yarns Ltd. (Cl. A. Cu. Cv. Pr.) . . . . 2.75(3)
Riviera Industries & Resources Ltd. . . . .22(1)
Robb Montbray Mines Ltd. . . . .01(3)
Robert Mines Ltd. . . . .50(2)
Robin Red Lake Mines Ltd. . . . .50(1)
Robinson, Little & Co. Ltd. . . . 37.25(1)
Robinson, Little & Co. Ltd. (Cl. A.) . . . . 36.75(2)
Rocket Mines Limited . . . . .18(1)
Rockland Mining Ltd. . . . .23(2)
Rodstrom Yellowknife Mines Ltd. . . . .07(1)
Rokon Mines Ltd. . . . .29(1)
Rolland Paper Co. Limited (Cl. A.) . . . . 3.10(1)
Compagnie de Papier Rolland Limitée (Cat. A.) . . . . 3.10(1)
Rolland Paper Co. Limited (Cl. B.) . . . . 2.75(2)
Compagnie de Papier Rolland Limitée (Cat. B.) . . . . 2.75(2)
Rolland Paper Co. Limited (4-1/4% Cu. Pr.) . . . . (4)
Compagnie de Papier Rolland Limitée (4-1/4% Cum. Priv.) . . . . (4)
Rolling Hills Copper Mines Ltd. . . . .34(1)
Roman Corporation Ltd. . . . 6.10(1)
Romfield Building Corp. Ltd. . . . (4)
Ronalds-Federated Ltd. . . . 13.50(2)
Ronnoco Gold Mines Ltd. . . . (4)
Ron Roy Uranium Mines Limited . . . . .12(2)
Rose Gold Mining Co. Ltd. . . . .11(3)
Rose Pass Mines Ltd. . . . .25(1)
Rothmans of Pall Mall Canada Ltd. . . . 16.63(1)
La Cie Rothmans de Pall Mall Canada Ltée . . . . 16.63(1)
Rothmans of Pall Mall Canada Ltd. (6.85% Cu. 1st Pr.) . . . . 82.50(1)
La Cie Rothmans de Pall Mall Canada Ltée (6.85% Cum. Priv.) . . . . 82.50(1)
Rothmans of Pall Mall Canada Ltd. (6-5/8% Cv. 2nd Pr.) . . . . 19.88(1)
La Cie Rothmans de Pall Mall Canada Ltée (6-5/8% Conv. Priv.) . . . . 19.88(1)
Rothmans of Pall Mall Canada Ltd. (Wt.) . . . . 3.50(1)
La Cie Rothmans de Pall Mall Canada Ltée (Wt.) . . . . 3.50(1)
Rouyn Exploration Ltd. . . . .07(1)
Rowan Consolidated Mines Ltd. . . . .02(3)
Roxmark Mines Ltd. . . . .04(3)
Royal Agassiz Mines Ltd. . . . .28(1)
Royal Bank of Canada, The . . . . 29.50(1)
Royal Canadian Ventures Ltd. . . . 1.02(1)
Royal Oak Dairy Ltd. (Cl. A.) . . . . 12.75(3)

Royal Oak Dairy Ltd. (Cl. B.) . . . . . (4)
Royal Trust Company, The . . . . . 37.50(1)
Compagnie Trust Royal . . . . . 37.50(1)
Royal Trust Co. Mortgage Corp., The (5% Cu. A. Pr.) . . . . . 14.25(1)
R.R.D. Limited . . . . . 5.00(1)
R.R.D. Limited (Wt.) . . . . . .50(1)
R.S.L. Limited . . . . . 3.10(1)
Rugged Red Lake Mines Ltd. . . . . .01(3)
Russel Holdings Ltd. . . . . 1.08(1)
Russell Foods . . . . . (4)
Russel Ltd., Hugh (Cl. A.) . . . . . 9.00(1)
Russel Ltd., Hugh (6-1/2% Cv. A. 1st Pr.) . . . . . 20.13(2)
Ruttan Lake Explorations Ltd. . . . . .37(1)
Ryanor Mining Co. Ltd. . . . . .14(1)
Sabina Industries Ltd. . . . . 2.35(1)
Safari Explorations Limited . . . . . .23(2)
Saint Fabien Copper Mines Ltd. . . . . .07(2)
Saint Lawrence Cement Co. Ltd. (Cl. A.) . . . . . 36.50(1)
Saint Lawrence Columbium & Metals Corp. . . . . 1.00(1)
Saint Lawrence Corp. Ltd. . . . . 21.00(1)
Saint Lawrence Corp. Ltd (5% Cu. A. Pr.) . . . . . 63.00(2)
Saint Lawrence Diversified Co. . . . . .65(2)
La Compagnie Diversifiée St-Laurent . . . . . .65(2)
Saint Luci Exploration Co. Ltd. . . . . .16(2)
Saint Maurice Capital Corp. Ltd. . . . . .70(1)
Samson Mines Ltd. . . . . .02(2)
Sandwell & Company Limited . . . . . 5.75(1)
Sanelli Pools Limited (Units) . . . . . .45(3)
Sangamo Co. Ltd. . . . . 14.38(3)
San Jacinto Explorations Ltd. . . . . .09(1)
San Judas Molybdenum Corp. Ltd. . . . . .40(1)
Santack Mines Ltd. . . . . (4)
Santa Helena Mining Ltd. . . . . .20(1)
Santa Maria Mines Ltd. . . . . .31(1)
Santa's Village Ltd. . . . . 10.00(2)
Santiago Mining & Exploration Ltd. . . . . (4)
Sapawe Gold Mines Ltd. . . . . .03(2)
Saratoga Processing Co. Ltd. . . . . 4.40(2)
Sarimco Mines Ltd. . . . . .02(3)
Sarnoil Ltd. . . . . (4)
Saskatchewan Trust & Loan Co. . . . . (4)
Saskoba Mines Inc. . . . . .34(3)
Sastex Petro-Minerals Ltd. . . . . .07(2)
Satellite Metal Mines Ltd. . . . . .06(1)
Savanna Creek Gas & Oil Ltd. . . . . (4)
Sayvette Limited . . . . . 4.70(1)
Scandia Mining & Exploration Ltd. . . . . .11(2)
Schneider Limited, J. M. . . . . 11.00(2)
Schneider Limited, J. M. (B. Cu. Cv. Pr.) . . . . . 8.25(1)
Schneider Limited, J. M. (C. Cu. Cv. Pr.) . . . . . (4)
Schott Industries Inc. . . . . 5.50(2)
Scinimex Limited . . . . . .53(2)
Scintrex Limited . . . . . 2.90(1)
Scope Resources Ltd. . . . . .13(3)
Scott Chibougamau Mines Ltd. . . . . .01(3)
Scottish & York Holdings Ltd. . . . . 9.50(1)
Scott-LaSalle Limited . . . . . 9.13(2)
Scott Misener Steamships Ltd. . . . . 2.50(3)
Scott Misener Steamships Ltd. (5-1/2% Cu. Redeemable Pr.) . . . . . 7.50(2)
Scott Paper Limited . . . . . 18.50(2)
Scott's Restaurant Ltd. . . . . 15.13(1)
SCU Industries Ltd. . . . . 1.75(2)
Scurry-Rainbow Oil Limited . . . . . 16.25(1)
Scythes and Company Limited . . . . . 16.00(1)
Seaboard Life Insurance Co. . . . . 2.00(3)
Seaway Copper Mines Ltd. . . . . .83(1)
Seaway Multi-Corp. Ltd. . . . . 8.00(2)
Seaway Multi-Corp. Ltd. (Cu. Cv. A. Pr.) . . . . . 5.88(2)
Seaway Multi-Corp. Ltd. (Wt.) . . . . . .94(2)
Seco-Cemp (7-1/4%) . . . . . 10.31(1)
Secondo Mining Ltd. . . . . .10(3)
Security Capital Corp. Ltd. (Cl. B.) . . . . . 3.90(1)
Seemar Mines Ltd. . . . . .25(3)
Seldore Mining Company Limited . . . . . .40(3)
Select Properties Ltd. . . . . 2.45(2)
Selkirk Holdings Ltd. (Cl. A.) . . . . . 17.00(1)
Senior Gas & Oil Ltd. . . . . (4)
September Mt. Copper Mines Ltd. . . . . .10(2)
Seton Lake Mines Ltd. . . . . (4)
Share Mines & Oils Ltd. . . . . .12(1)
Shasta Mines & Oils Ltd. . . . . .50(2)
Shaw Limited, L.E. . . . . 5.88(2)
Shawmin Explorations Ltd. . . . . (4)
Shawnee Petroleums Ltd. . . . . .09(3)
Shawnex Mines Limited . . . . . .15(3)
Shaw Pipe Industries Ltd. . . . . 8.00(1)
Sheba Copper Mines Ltd. . . . . .22(1)
Sheba Mines Ltd. . . . . .04(2)
Sheldon-Larder Mines Ltd. . . . . .07(3)
Shell Canada Limited (Cl. A.) . . . . . 37.25(1)
Shell Investments Ltd. (5-1/2% Cu. Cv. Pr.) . . . . . 37.25(1)
Shell Investments Ltd. (Wt.) . . . . . 17.00(1)
Shell Oil Company . . . . . (4)
Shelter Bay Mining Corp. . . . . .21(1)
Shepherd Casters Canada Ltd. . . . . 4.00(1)
Sheritt-Lee Mines Ltd. . . . . .28(1)
Sheritt Gordon Mines Ltd. . . . . 15.13(1)
Sherwin-Williams Co. of Canada Ltd. . . . . 13.50(2)
Sherwin-Williams Co. of Canada Ltd. (7% Cu. Pr.) . . . . . 89.00(2)
Shewan Copper Mining Corp. Ltd. . . . . (4)
Shield Development Co. Ltd., The . . . . . .80(2)
Shore-to-Shore Corporation Limited . . . . . 3.50(2)
Shully's Industries Limited . . . . . 4.75(1)
Siebens Oil & Gas Ltd. . . . . 9.00(1)
Sierra Empire Mines Ltd. . . . . 1.50(2)
Sifton Properties Ltd. . . . . 3.60(2)
Sigma Mines (Quebec) Ltd. . . . . 3.75(2)
Silbak Premier Mines Ltd. . . . . .09(1)
Sileurian Chieftain Mining Co. Ltd. . . . . .09(1)
Silknit Limited . . . . . 22.00(2)
Silknit Limited (5% Pr.) . . . . . 37.00(2)
Silmonac Mines Ltd. . . . . .27(1)
Silver Butte Mines Ltd. . . . . .07(2)
Silver Chief Minerals Ltd. . . . . .27(1)
Silver Christal Natural Gas & Minerals Ltd. . . . . .45(2)
Silver City Mines Ltd. . . . . .12(1)
Silver-Cup Mines Ltd. . . . . .20(2)
Silver Eureka Corp. . . . . .38(1)
Silver Key Mines Ltd. . . . . .05(3)
Silverknife Mines Ltd. . . . . .05(3)
Silver Lake Mines Ltd. . . . . (4)
Silvermaque Mining Ltd. . . . . .18(2)
Silver-Men Mines Ltd. . . . . .03(3)
Silver-Miller Mines Ltd. . . . . .05(1)
Silver Monarch Mines Ltd. . . . . (4)
Silver Pack Mines Ltd. . . . . (4)
Silverquick Development Co. (B.C.) Ltd. . . . . .12(1)
Silver Ridge Mining Co. Ltd. . . . . .05(2)
Silver Shield Mines Inc. . . . . 3.10(2)
Silver Shield Mines Inc. (A. Wt.) . . . . . 2.19(2)
Silver Shield Mines Inc. (B. Wt.) . . . . . 2.02(2)
Silversides Mines Ltd. . . . . .07(2)
Silver Spring Mines Ltd. . . . . .58(2)
Silverstack Mines Ltd. . . . . .26(1)
Mine Silverstack Ltée . . . . . .26(1)
Silver Standard Mines Ltd. . . . . 1.10(1)
Silver Star Mines Ltd. . . . . .10(2)
Silver Summit Mines Ltd. . . . . .02(2)
Silverwood Industries Ltd. (Cl. A.) . . . . . 15.63(1)
Silverwood Industries Ltd. (Cl. B.) . . . . . 14.75(2)
Simpsons Limited . . . . . 22.00(1)
Simpsons-Sears Limited . . . . . 28.63(1)
Sintra Limited . . . . . 5.50(2)
Sintra Ltée . . . . . 5.50(2)
Sirmac Mines Ltd. . . . . (4)
Skelly Oil Company . . . . . 45.25(3)
Sklar Manufacturing Ltd. . . . . 2.35(1)
Sklar Manufacturing Ltd. (Wt.) . . . . . .75(2)
Skyline Hotels Limited . . . . . 9.25(1)
Sladen (Quebec) Ltd. . . . . (4)

Slate Bay Gold Mines Ltd. .02(3)
Slater Steel Industries Limited 10.00(1)
Slater Steel Industries Limited (5-1/2% Cu. 1st Pr.) 13.88(2)
Slater Steel Industries Limited (5-1/2% 2nd Pr.) 13.75(2)
Slater Steel Industries Limited ($1.20 Cu. Pr.) 15.00(1)
Slater Walker of Canada Ltd. 13.25(2)
Slater Walker of Canada Ltd. (Rt.) (4)
Slater Walker Securities Ltd. 8.00(1)
Slave Point Mines Ltd. .04(3)
S.L. Diversified Corp. Ltd. 9.38(1)
Slocan Ottawa Mines Ltd. .69(1)
S.M.A. Inc. .50(2)
S-M Industries Ltd. (4)
Snowdrift Base Metal Mines Ltd. .13(3)
Sobeys Stores Limited 6.75(2)
Soca Ltée .50(2)
Société Générale de Financement du Québec (4)
Sogena Inc. 14.50(1)
Sogepet Ltd. 1.22(1)
Solar Explorations Ltd. (4)
Solidarité Compagnie d'Assurance sur la Vie (4)
Solomon Development Ltd. .38(1)
Solomons Pillars Mines Ltd. (4)
Somerville Industries Ltd. ($2.80 Cu. Pr.) 40.00(2)
Somex Ltée .83(1)
Southam Press Limited 73.13(1)
South Dufault Mines Ltd. .05(2)
Southern Pacific Petroleum Ltd. .08(1)
Southern Union Oils Ltd. (4)
South Pacific Mines Ltd. (4)
South Seas Mining Ltd. .22(1)
South Winnipeg Limited (4)
Spacemaster Minerals Ltd. .03(2)
Spa Mines Ltd. .05(3)
Spanish River Mines Ltd. (4)
Spar Aerospace Products Ltd. 1.65(1)
Sparling Ltd., George 2.40(2)
Spartan Air Services Ltd. .50(1)
Spartan Explorations Ltd. .13(1)
Spartex Oil & Gas Ltd. .08(3)
Spectroair Explorations Ltd. .13(2)
Speculators Fund Ltd. .42(2)
Spenho Mines Ltd. .06(2)
Spina Porcupine Mines Ltd. (4)
Spirit Lake Mines Ltd. (4)
Spooner Mines & Oils Limited 1.10(1)
Stability Life Insurance Co. (4)
La Stabilité Compagnie d'Assurance-Vie (4)
Stafford Foods Ltd. 2.60(2)
Stairs Exploration & Mining Co. Ltd. .02(2)
Stall Lake Mines Ltd. .89(1)
Stampede International Resources Ltd. .68(1)
Standard Broadcasting Corp. Ltd. 13.00(1)
Standard Fuel Co. Ltd. (4-1/2% Cu. Pr.) (4)
Standard Gold Mines Ltd. .07(2)
Standard Nickel Mines Limited .22(1)
Standard Paving & Materials Ltd. 11.50(1)
Stanfields Ltd. (Cl. A.) (4)
Stanfields Ltd. (Cl. B.) (4)
Stanford Mines Ltd. .60(1)
Stannex Minerals Ltd. .14(2)
Stanrock Uranium Mines Ltd. .60(1)
St. Anthony Mines Ltd. (4)
Star Lake Gold Mines Ltd. .05(2)
Steel Co. of Canada Ltd., The 26.75(1)
Steeltree Group Inc. .95(3)
Steeltree Group Inc. (6% Cu. Pr.) 3.55(3)
Steep Rock Iron Mines Ltd. 2.23(1)
Steetley Industries Ltd. 7.00(1)
Steinberg's Limited (Cl. A.) 22.88(1)
Steinberg Limitée (Cat. A.) 22.88(1)
Steinberg's Limited (5-1/4% Cu. A. Pr.) 77.00(2)
Steinberg Limitée (5-1/4% Cum. A. Priv.) 77.00(2)
Steintron International Electronics Ltd. 3.35(2)
Stellako Mining Company Ltd. .11(1)
Sterisystems Ltd. 15.25(2)
Sterisystems Ltd. (Cl. A.) 15.50(2)
Sterling Trust Corporation 8.25(1)
Stewart Lake Iron Mines of Ontario Ltd. .15(3)
St. James Resources Ltd. 1.70(2)
St. Mary's Explorations Ltd. .04(3)
Stormy Mines Ltd. .28(3)
Stuart House International Ltd. 3.55(1)
Stuart House International Ltd. (6% Cu. Cv. A. Pr.) 6.75(2)
Stuart Oil Company Ltd., D.A. 7.75(2)
Studer Mines Limited .10(2)
Stump Mines Ltd. .08(2)
Sturdy Mines Ltd. .14(2)
Sturgeon Petroleums Ltd. (4)
Sturgex Mines Ltd. .21(2)
Subeo Limited .10(1)
Sudbury Contact Mines Ltd. .25(1)
Sullivan Mining Group Ltd. 2.70(1)
Groupe Minier Sullivan Ltée 2.70(1)
Summit Explorations & Holdings Ltd. .73(1)
Sun Bear Mines Ltd. .01(3)
Sunburst Explorations Ltd. .11(1)
Sunburst Explorations Ltd. (Rt.) .01(1)
Sunlite Oil Company Ltd. 5.00(2)
Sunningdale Oils Ltd. 2.65(1)
Sun Publishing Co. Limited (Cl. A.) 34.75(2)
Sun Publishing Co. Limited (Cl. B.) 33.00(2)
Sunrise Silver Mines Ltd. .10(1)
Sunset Yellowknife Mines Ltd. (4)
Superior Acid & Iron Ltd. .12(1)
Superior Electronics Industries Ltd. 2.05(1)
Supermarché à Domicile Ltée .30(3)
Superpack Corporation Ltd. 4.00(2)
Supersol Ltd. (4)
Supertest Petroleum Corporation Limited 16.25(1)
Supertest Petroleum Corporation Limited (Ordinary) 68.00(1)
Surluga Gold Mines Ltd. .07(2)
Surpass Chemicals Limited 1.60(1)
Swim Lake Mines Ltd. .15(2)
Swiss Oils of Canada (1959) Ltd. .18(3)
Systems Air Corp. Ltd. .15(3)
Systems Dimensions Ltd. 6.88(1)
Tache Lake Mines Ltd. .03(2)
Tagami Mines Limited .12(2)
Takla Silver Mines Ltd. .09(3)
Talisman Mines Limited .15(2)
Taman Uranium Mines Ltd. .07(3)
Tamblyn Limited, G. 18.50(2)
Tamblyn Limited, G. (4% Cu. Pr.) 25.00(2)
Tancord Industries Limited (A. Pr.) 2.50(1)
Taneloy Mines Ltd. .08(2)
Tanzilla Explorations Ltd. .11(1)
Tara Exploration & Development Company Limited 12.75(1)
Target Mines Ltd. .08(3)
Tartan Explorations Ltd. .19(1)
Taseko Mines Ltd. .22(1)
Tashota-Nipigon Mines Ltd. .22(3)
Tasmaque Gold Mines Ltd. (4)
Taylor Windfall Gold Mining Co. Ltd. .02(3)
Tay River Mines Ltd. .15(2)
Teck Corporation Ltd. (Cl. A.) 4.75(1)
Teck Corporation Ltd. (Cl. B.) 4.15(1)
Teckora Mines Limited .51(2)
Teknol Mining Co. Ltd. .34(1)
Teledyne Canada Ltd. 4.65(2)
Tenneco Inc. (4)
Terra Developers Ltd. (4)
Terra Mining & Exploration Ltd. 2.40(1)
Terrasol 2.88(1)
Terrex Mining Co. Ltd. .15(1)
Texacal Resources Ltd. .24(1)
Texaco Canada Limited 34.50(1)
Texaco Canada Limited (4% Cu. Pr.) 60.00(2)

Texal Development Ltd. . . . . .30(1)
Texas East Transmission . . . . . (4)
Texas Gulf Sulphur Co. Inc. . . . . 14.38(1)
Texmont Mines Ltd. . . . . .39(1)
Texore Mines Ltd. . . . . .10(2)
Tex-Sol Explorations Ltd. . . . . .57(1)
Thermatron Corporation Ltd. . . . . (4)
Thermatron Corporation Ltd. (Wt.) . . . . . (4)
Third Canadian General Investment Trust Ltd. . . . . 11.75(2)
Third Canadian General Investment Trust Ltd. (Pr.) . . . . . 32.00(2)
Thomas Nationwide Transport Limited . . . . . 1.95(1)
Thompson Lundmark Gold Mines Ltd. . . . . .20(2)
Thompson Paper Box Co. Limited . . . . . 4.75(2)
Thompson Paper Box Co. Limited (6% Cu. Pr.) . . . . . (4)
Thomson Drilling Company Ltd. . . . . 1.50(2)
Thomson Newspapers Limited . . . . . 29.13(1)
Thomson Newspapers Limited (6-3/4% Cu. Pr.) . . . . . 51.13(1)
Thor Explorations Ltd. . . . . .68(3)
Thorncrest Explorations Ltd. . . . . (4)
Timken Roller Bearing Co. . . . . 43.00(3)
Timrod Mining Co. Ltd. . . . . .21(2)
Tinex Development Exploration Ltd. . . . . (4)
Tobe Mines Ltd. . . . . .12(3)
Tokar Limited . . . . . 1.40(1)
Tombill Mines Ltd. . . . . .55(1)
Tomrose Mines Ltd. . . . . (4)
Tonecraft Limited . . . . . 12.50(1)
Tontine Mining Limited . . . . . .60(1)
Tooke Bros. Ltd. . . . . .75(3)
Tooke Bros. Ltd. (A. Pr.) . . . . . (4)
Topley Criss Mines Limited . . . . . .09(3)
Torcan Explorations Ltd. . . . . .12(2)
Tormex Mining Developers Ltd. . . . . 1.68(1)
Toromont Industrial Holdings Ltd. . . . . 1.30(1)
Toromont Industrial Holdings Ltd. (6-1/2% Cu. Cv. A. Pr.) . . . . . (4)
Toronado Mines Ltd. . . . . .17(2)
Toronto-Dominion Bank . . . . . 30.00(1)
Toronto & London Investment Co. Ltd. . . . . 3.90(2)
Toronto Iron Works Ltd., The . . . . . 8.75(2)
Toronto Star Limited (Cl. B.) . . . . . 38.00(1)
Toronto Star Limited (Cl. C.) . . . . . 38.50(2)
Torwest Resources (1962) Ltd. . . . . .23(2)
Total Petroleum (North America) Ltd. . . . . 6.20(1)
Total Petroleum (North America) Ltd. (3-1/2% Cv. A. Pr.) . . . . . 14.25(1)
Tower Resources Ltd. . . . . .24(2)
Towmart Holdings Limited . . . . . .45(2)
Traders Bldg. . . . . (4)
Traders Group Limited (Cl. A.) . . . . . 15.75(1)
Le Groupe Traders Limitée (Cat. A.) . . . . . 15.75(1)
Traders Group Limited (Cl. B.) . . . . . 15.00(2)
Le Groupe Traders Limitée (Cat.B.) . . . . . 15.00(2)
Traders Group Limited (5% Cu. Pr.) . . . . . 25.00(2)
Le Groupe Traders Limitée (5% Cum. Priv.) . . . . . 25.00(2)
Traders Group Limited (5% Cu. Cv. A. Pr.) . . . . . 20.50(2)
Le Groupe Traders Limitée (5% Cum. Conv. A. Priv.) . . . . . 20.50(2)
Traders Group Limited (4-1/2% Cu. Pr.) . . . . . 56.25(1)
Le Groupe Traders Limitée (4-1/2% Cum. Priv.) . . . . . 56.25(1)
Traders Group Limited ($2.16 Cu. Pr.) . . . . . 26.00(1)
Le Groupe Traders Limitée ($2.16 Cum. Priv.) . . . . . 26.00(1)
Traders Group Limited (1965 Wt.) . . . . . 2.05(1)
Le Groupe Traders Limitée (1965 Wt.) . . . . . 2.05(1)
Traders Group Limited (1966 Wt.) . . . . . 4.70(1)
Le Groupe Traders Limitée (1966 Wt.) . . . . . 4.70(1)
Traders Group Limited (1969 Wt.) . . . . . 5.00(1)
Le Groupe Traders Limitée (1969 Wt.) . . . . . 5.00(1)
Transair Limited . . . . . 3.15(1)
Transair Limited (Wt.) . . . . . .89(1)
Transair Limited (Rt.) . . . . . (4)
Transair Limited (Pr.) . . . . . (4)
Trans-American Mining Corp. Ltd. . . . . (4)
Trans Canada Glass Ltd. . . . . 5.13(1)
Trans-Canada Pipe Lines Limited . . . . . 36.25(1)
Trans-Canada Pipe Lines Limited ($2.75 Cu. Cv. Pr.) . . . . . 66.75(1)
Trans-Canada Pipe Lines Limited ($2.80 Cu. Pr.) . . . . . 42.25(1)
Trans-Canada Pipe Lines Limited (Wt.) . . . . . 10.75(1)
Trans-Canada Resources Ltd. . . . . .82(1)
Trans Columbia Exploration Ltd. . . . . .11(2)
Transcontinental Resources Ltd. . . . . .27(2)
Trans Eastern Oil & Gas Ltd. . . . . (4)
Trans Global Financial Services Ltd. . . . . 1.80(1)
Trans-Mountain Oil Pipeline Company . . . . . 20.38(1)
Transocean Oil Incorporated . . . . . (4)
Trans-Prairie Pipelines Ltd. . . . . 12.75(2)
Transterre Exploration Ltd. . . . . .20(1)
Trans Yukon Exploration Ltd. . . . . .06(1)
Tresdor Larder Mines Ltd. . . . . (4)
Tribag Mining Co. Ltd. . . . . .60(1)
Tri-Bridge Mines Limited . . . . . .35(1)
Trimac Ltd. . . . . 6.50(1)
Trinity Chibougamau Mines Ltd. . . . . .10(1)
Triphope Resources Ltd. . . . . (4)
Triton Explorations Limited . . . . . .70(1)
Trizec Corporation Limited . . . . . 17.00(1)
Trizec Corporation Limited (Wt.) . . . . . .50(1)
Troilus Mines Ltd. . . . . .15(2)
Trojan Consolidated Mines Ltd. . . . . .25(1)
Tromac Mines Ltd. . . . . .03(3)
Troy Silver Mines Ltd. . . . . .08(2)
Trust Général du Canada . . . . . 23.75(1)
Tru-Wall Concrete Forming Ltd. . . . . 2.90(1)
Tundra Gold Mines Ltd. . . . . .18(2)
Turbo Resources Limited . . . . . .93(2)
Turismo Industries Ltd. . . . . .37(1)
Turner Valley Oil Company Limited . . . . . .18(3)
Twentieth Century Explorations Limited . . . . . .75(2)
Twin Peak Mines Ltd. . . . . .28(3)
Twin Richfield Oils Ltd. . . . . .21(3)
Tyee Lake Resources Limited . . . . . .14(2)
U.A.P. Inc. (Cl. A.) . . . . . 16.25(2)
Ulster Petroleums Ltd. . . . . 1.46(1)
Ultramar Company Limited . . . . . 6.13(1)
Unas Investments Ltd. . . . . 16.63(2)
Ungava Copper Corp. Ltd. . . . . .04(2)
Unican Security Systems Ltd. . . . . 4.05(1)
Unigesco Inc. . . . . (4)
Unigesco Inc. (Cl. A.) . . . . . 2.85(1)
Unigesco Inc. (Cl. B.) . . . . . 2.72(1)
Union Acceptance Corporation Ltd. (6% Cu. C. 1st Pr.) . . . . . 40.44(3)
Union d'Acceptance Limitée (6% Cum. C. 1ère Priv.) . . . . . 40.44(3)
Union Acceptance Corporation Ltd. (6-1/4% Cu. A. 1st Pr.) . . . . . 40.00(2)
Union d'Acceptance Limitée (6-1/4% Cum. A. 1ère Priv.) . . . . . 40.00(2)
Union Acceptance Corporation Ltd. (6-1/4% Cu. B. 1st Pr.) . . . . . 42.50(2)
Union d'Acceptance Limitée (6-1/4% Cum. B. 1ière Priv.) . . . . . 42.50(2)
Union Carbide Canada Limited . . . . . 13.50(1)
Union Carbide du Canada Limitée . . . . . 13.50(1)
Union Gas Company of Canada Limited . . . . . 14.75(1)
Union Gas Company of Canada Limited (5-1/2% Cu. A. Pr.) . . . . . 43.00(1)
Union Gas Company of Canada Limited (6% Cu. B. Pr.) . . . . . 44.13(1)
Union Mining Corporation . . . . . .21(2)
Union Oil Company of Canada Ltd. . . . . 44.00(2)
United Asbestos Corp. Ltd. . . . . 4.05(1)
United Canadian Shares Ltd. . . . . (4)
United Canso Oil & Gas Ltd. . . . . 4.25(1)
United Canso Oil & Gas Ltd. (Wt.) . . . . . .64(1)
United Cobalt Mines Ltd. . . . . .02(3)
United Comstock Lode Mines Ltd. . . . . (4)
United Copper Corporation Ltd. . . . . .10(1)

United Corporations Ltd. (Cl. A.) . . . . . 19.50(2)
United Corporations Ltd. (Cl. B.) . . . . . 15.00(1)
United Corporations Ltd. ($1.50 Cu. A. Pr.) . . . . . 20.00(2)
United Corporations Ltd. (5% Cu. 63 Pr.) . . . . . 19.00(2)
United Equities Limited . . . . . 2.00(1)
United Funds Management Ltd. . . . . 8.38(1)
United Grain Growers Limited (5% Pr.) . . . . . 14.00(2)
United Investment Life Assurance Co. . . . . 5.69(2)
La Compagnie d'Assurance-Vie United Investment . . . . . 5.69(2)
United Keno Hill Mines Ltd. . . . . 3.85(1)
United MacFie Mines Ltd. . . . . .04(3)
United Mindamar Metals Ltd. . . . . .16(2)
United New Fortune Mines Ltd. . . . . (4)
United Provincial Investment Ltd. . . . . 1.30(2)
United Reef Petroleums Ltd. . . . . .18(2)
United Siscoe Mines Ltd. . . . . 2.10(1)
United Westburne Industries Ltd. . . . . 4.00(1)
United Westburne Industries Ltd. (6-1/4% Cu. A. 1st Pr.) . . . . . 39.00(2)
United Westburne Industries Ltd. (Wt.) . . . . . 1.00(2)
Universal Factors Corp. . . . . (4)
Universal Gas Co. Ltd. . . . . (4)
Universal Minerals Corporation . . . . . .24(2)
Universal Patent & Development Ltd. . . . . .12(2)
Universal Sections Ltd. . . . . 6.50(1)
Univex Mining Corporation Ltd. . . . . .41(2)
Upper Canada Mines Ltd. . . . . 1.66(1)
Uranium Ridge Mines Ltd. . . . . .03(3)
Uranium Valley Mines Ltd. . . . . .20(3)
Urban Quebec Mines Ltd. . . . . .04(2)
US-CA-MEX Explorations Ltd. . . . . .20(1)
Utilities & Funding Corp. Ltd. . . . . 1.60(1)
Utilities & Funding Corp. Ltd. (Cl. A.) . . . . . 1.60(2)
Valdex Mines Inc. . . . . .13(2)
Valley Copper Mines Ltd. . . . . 7.70(1)
Val Mar Swimming Pools Ltd. (Cl. A.) . . . . . 1.60(1)
Piscines Val Mar Ltée (Cat. A.) . . . . . 1.60(1)
Val Nor Exploration Ltd. . . . . (4)
Vananda Exploration Ltd. . . . . .06(1)
Van der Holt Associates Limited . . . . . 7.25(1)
Vandoo Consolidated Explorations Ltd. . . . . .04(2)
Van Ness Industries Ltd. . . . . .83(2)
Vargas Mines Limited . . . . . .53(1)
Vastlode Mining Company Ltd. . . . . .05(1)
Velcro Industries Limited . . . . . 17.63(1)
Vencap Investments Ltd. . . . . 1.80(1)
Venpower Limited . . . . . 1.30(1)
Ventures Mining Limited . . . . . .07(2)
Vermont Mines Ltd. . . . . (4)
Versafood Services Ltd. . . . . 7.50(1)
Versatile Manufacturing Ltd. . . . . 3.50(1)
Versatile Manufacturing Ltd. (Cl. A.) . . . . . 2.75(1)
Vespar Mines Ltd. . . . . .14(1)
Vestor Explorations Ltd. . . . . .33(2)
Viau Limited . . . . . (4)
Viau Limitée . . . . . (4)
Victoria Algoma Mineral Co. Ltd. . . . . .11(1)
Victoria & Grey Trust Co. . . . . 35.50(1)
Victoria & Grey Trust Co. (5.35% Cu. A. Pr.) . . . . . 40.63(1)
Victoria Wood Development Corp. Ltd. . . . . (4)
Victoria Wood Development Corp. Ltd. (7-1/2% Cu. A. Pr.) . . . . . 8.13(3)
Victor Mining Corp. Ltd. . . . . .08(2)
Viking Mines Ltd. . . . . .08(3)
Villacentres Ltd. . . . . 9.88(1)
Vimy Explorations Ltd. . . . . .02(3)
Visa Bella Inc. . . . . (4)
Volcanic Mines Ltd. . . . . .10(3)
Voyager Explorations Ltd. . . . . (4)
Voyager Petroleums Ltd. . . . . 4.90(1)
Vulcan Industrial Packaging Limited . . . . . 9.00(1)
Wabasso Limited . . . . . 18.50(2)
Wabasso Limitée . . . . . 18.50(2)
Waco Petroleums Ltd. . . . . .02(3)
Wadge Mines Ltd. . . . . .01(3)
Waferboard Corp. Ltd. . . . . 1.50(1)
Wainoco Oil & Chemicals Ltd. . . . . 5.63(2)
Waite Dufault Mines Ltd. . . . . .09(2)
Wajax Limited . . . . . 13.63(1)
Wajax Limitée . . . . . 13.63(1)
Walker-Gooderham & Worts Limited, Hiram . . . . . 42.38(1)
Wall & Redekop Corporation Ltd. . . . . 2.75(1)
Wardair Canada Ltd. . . . . 1.45(1)
Warner Investments Ltd., E.C. (Cl. A.) . . . . . (4)
Warner Investments Ltd., E.C. (Cl. B.) . . . . . (4)
Warner West . . . . . .43(3)
Warnock Hersey International Limited . . . . . 3.65(2)
Warnock Hersey International Limited ($1.50 Cu. A. Pr.) . . . . . 10.00(2)
Warrington Products Ltd. (Pr.) . . . . . 3.50(3)
Watson Lake Mines Ltd. . . . . .04(3)
Wavecom Development Ltd. . . . . .75(1)
W.C.P. Explorations Ltd. . . . . 10.13(1)
W.C.P. Explorations Ltd. (5% Cu. Cv. A. Pr.) . . . . . 30.00(1)
Webb & Knapp (Canada) Limited . . . . . .40(2)
Webb & Knapp (Canada) Limitée . . . . . .40(2)
Webbwood Exploration Co. Ltd. . . . . 1.25(3)
Webbwood Mobile Home Estates Ltd. . . . . 1.00(2)
Wee-Gee Uranium Mines Ltd. . . . . (4)
Weldwood of Canada Limited . . . . . 13.50(1)
Weldwood of Canada Limited (Rt.) . . . . . (4)
Welland Consolidated Mining Ltd. . . . . (4)
Wellington Bank (Cl. A.) . . . . . .38(3)
Wentworth Investment Corporation Ltd. . . . . 10.00(2)
Werner Lake Nickel Mines Ltd. . . . . .01(3)
Wescorp Industries Ltd. . . . . 5.40(3)
Wesley Mines Ltd. . . . . (4)
Westairs Mines Ltd. . . . . (4)
Westates Petroleum Company . . . . . 5.05(3)
Westburne International Industries Ltd. . . . . 10.75(1)
Westburne International Industries Ltd. (8% Cu. Cv. Pr.) . . . . . 36.00(1)
Westburne International Industries Ltd. (Wt.) . . . . . 6.70(2)
West Canadian Mineral Holdings Ltd. . . . . 1.10(1)
Westcoast Petroleum Ltd. . . . . 10.13(0)
Westcoast Petroleum Ltd. (6% Cu. Pr.) . . . . . 30.00(2)
West Coast Resources Ltd. . . . . .06(1)
Westcoast Transmission Co. Ltd. . . . . 25.88(1)
Westcoast Transmission Co. Ltd. (Wt.) . . . . . 6.69(1)
Westcoast Transmission Co. Ltd. (Rts.) . . . . . .16(1)
Westeel-Rosco Limited . . . . . 13.88(1)
Westeel-Rosco Limitée . . . . . 13.88(1)
Western Allenbee Oil & Gas Company Ltd. . . . . .23(3)
Western & Texas Oil Co. Ltd. . . . . (4)
Western Broadcasting Co. Ltd. . . . . 12.13(1)
Western Broadcasting Co. Ltd. (5-3/4% Cu. Cv. Pr.) . . . . . 36.00(1)
Western-Buff Mines & Oils Ltd. . . . . .07(1)
Western Canadian Seed Processors Ltd. . . . . 4.50(1)
Western Decalta Petroleum Ltd. . . . . 6.55(1)
Western Exploration Company Ltd. . . . . .12(2)
Western Mines Ltd. . . . . 2.55(1)
Western Quebec Mines Co. Ltd. . . . . .10(1)
Western Realty Projects Limited . . . . . 7.13(1)
Western Standard Silver Mines Ltd. . . . . .10(1)
Western Supplies Ltd. (Cl. A. Cu. Cv.) . . . . . 9.00(1)
Western Tin Mines Ltd. . . . . .02(2)
Western Warner Oils Limited . . . . . .47(1)
Westfair Foods Ltd. (Cl. A.) . . . . . 26.50(2)
Westfair Foods Ltd. (7% Cu. Pr.) . . . . . 19.00(3)
Westfield Minerals Ltd. . . . . .96(1)
Westfield Minerals Ltd. (Wt.) . . . . . .48(2)
West Hill Enterprises & Mining Ltd. . . . . .10(2)
West Indies Plantation Ltd. . . . . 1.75(2)
West Indies Plantation Ltd. (Cl. A.) . . . . . 3.25(2)
Westinghouse Canada Limited . . . . . 14.50(1)
Westinghouse Canada Limitée . . . . . 14.50(1)
Westland Mines Ltd. . . . . .08(2)
Weston Limited, George . . . . . 18.00(1)
Weston Limited, George (4-1/2% Cu. Pr.) . . . . . 66.50(1)

Weston Limited, George (6% Cu. Pr.) . . . . . 82.00(1)
West Red Lake Gold Mines Ltd. . . . . (4)
Westview Investment Corporation Ltd. . . . . 2.08(3)
Westville Mines Ltd. . . . . (4)
West Wasa Mines Ltd. . . . . .08(3)
Whim Creek Consolidated (No Liability) . . . . . (4)
Whipsaw Mines Limited . . . . . .10(2)
Whistler Petroleums Ltd. . . . . .32(1)
White Pass & Yukon Corp. Ltd. . . . . 10.00(1)
White Pass & Yukon Corp. Ltd. (6-3/4% Cu. A. Pr.) . . . . . 22.00(2)
White Pass & Yukon Corp. Ltd. (Wt.) . . . . . .76(2)
White River Mines Ltd. . . . . .28(1)
White Star Copper Mines Ltd. . . . . .14(2)
Whitehorse Copper Mines Ltd. . . . . 1.75(1)
Whiterock Estates Development Corporation Limited . . . . . 14.38(1)
Whitesail Mines Ltd. . . . . (4)
Whitey Wilson Oil & Gas Ltd. . . . . .31(3)
Whonnock Industries Limited (Cl. A.) . . . . . 13.50(1)
Whonnock Industries Limited (Cl. B.) . . . . . 14.00(1)
Wilco Mining Co. Ltd. . . . . .15(1)
Wildor Mines . . . . . .01(3)
Wiley Oilfield Hauling Ltd. . . . . 7.00(1)
Williams Creek Gold Quartz Mining Co. Ltd. . . . . .46(1)
Willow Lake Mines Ltd. . . . . (4)
Willroy Mines Ltd. . . . . .70(1)
Wilshire Oil Company of Texas . . . . . (4)
Wilson Red Lake Gold Mines Ltd. . . . . (4)
Winco Steak & Burger Restaurants Limited . . . . . 4.60(1)
Windermere Exploration Limited . . . . . .20(1)
Windfall Oils & Mines Ltd. . . . . .09(2)
Win-Eldrich Mines Ltd. . . . . .09(1)
Winnipeg Supply & Fuel Co. Ltd. . . . . 8.50(3)
Win West Oil & Mining Ltd. . . . . .25(2)
Wisconsin Mining Company Ltd. . . . . .10(1)
Wolf Creek Mines Ltd. . . . . (4)
Wood, Alexander Ltd. . . . . 2.53(3)
Wood-Croesus Gold Mines Ltd. . . . . .02(3)
Woodford Investment Ltd. (Cl. A.) . . . . . (4)
Woodford Investment Ltd. (Cl. B.) . . . . . 2.00(1)
Woodward Stores Limited . . . . . 25.00(1)
Worldwide Energy Company Ltd. . . . . 2.16(2)
Wosk's Ltd. . . . . 7.75(2)
Wrightbar Mines Limited . . . . . .30(2)
Wright-Hargreaves Mines Ltd. . . . . 1.15(1)
Xoma Ltd. . . . . 4.05(1)
Xoma Ltée . . . . . 4.05(1)
Y. & R. Properties Ltd. . . . . 6.75(1)
Yankee Canuck Oil and Mining Corp. Ltd. . . . . .04(3)
Yarandry Silver Mines Ltd. . . . . 50.(3)
Yellorex Mines Ltd. . . . . .13(3)
Yellowknife Base Metals Ltd. . . . . (4)
Yellowknife Bear Mines Ltd. . . . . 4.40(1)
Yorbeau Mines Inc. . . . . .05(3)
York Lambton Corporation Limited (Cl. A.) . . . . . .80(2)
York Lambton Corporation Limited (Cl. B.). . . . . (4)
Young-Davidson Mines Ltd. . . . . .16(3)
Young Mines Ltd., H. G. . . . . .06(2)
Young-Shannon Gold Mines Ltd. . . . . .01(3)
Yreka Mines Ltd. . . . . .17(2)
Yukon Consolidated Gold Corp. Ltd. . . . . 1.10(2)
Yukon Properties Limited . . . . . (4)
Yukon Revenue Mines Limited . . . . . .12(2)
Zahamy Mines Ltd. . . . . 2.38(2)
Zeller's Ltd. . . . . 17.00(1)
Zeller's Ltd. (4-1/2% Cu. Pr.) . . . . . 34.00(1)
Zenith Electric Supply Ltd. . . . . 2.35(1)
Zenith Mining Corporation Ltd. . . . . .27(1)
Zenmac Metal Mines Limited . . . . . .06(2)
Zinat Mines Limited . . . . . .15(2)
Zodiac Ltd. (Cl. A.) . . . . . 1.90(1)
Zodiac Ltée (Cat. A.) . . . . . 1.90(1)
Zodiac Mines Ltd. . . . . (4)
Zulapa Mining Corporation Ltd. . . . . .12(1)

PROCLAMATION FIXING VALUATION DAYS

Know You that We, by and with the advice of Our Privy Council for Canada, do by this Our Proclamation

(a) fix December 22, 1971 as the day in relation to any property referred to in paragraph 24(a) of the *Income Tax Application Rules* for the purposes of subdivision c of Division B of Part I of the *Income Tax Act*; and

(b) fix December 31, 1971 as the day in relation to any property referred to in paragraph 24(b) of those Rules for the purposes of that subdivision.

History: Proclamation amended by P.C. 1994-1817, s. 48, November 1, 1994, *Canada Gazette*, Part II, November 30, 1994.

This proclamation was first issued in the *Canada Gazette*, Part I, April 29, 1972, and on consolidation was included as chapter 946 of the Consolidated Regulations of Canada, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

SCHEDULE VIII — UNIVERSITIES OUTSIDE CANADA

History: Schedule I was consolidated and retitled Schedule VIII, by the Consolidated Regulations of Canada, chapter 945, proclaimed in force August 15, 1979, by P.C. 1979-1934, July 19, 1979, *Canada Gazette*, Part II, August 8, 1979.

Interpretation Bulletins: IT-516R2: Tuition tax credit.

1. The universities situated in the United States of America that are prescribed by section 3503 are the following:

Abilene Christian University, Abilene, Texas
Adams State College, Alamosa, Colorado
Alfred University, Alfred, New York
American Film Institute Center for Advanced Film and Television Studies, Los Angeles, California
American Graduate School of International Management, Glendale, Arizona
American International College, Springfield, Massachusetts
American University, The, Washington, District of Columbia
American University in Cairo, The, New York, New York
Amherst College, Amherst, Massachusetts
Anderson College, Anderson, South Carolina
Andover Newton Theological School, Newton Centre, Massachusetts
Andrews University, Berrien Springs, Michigan
Antioch College, Yellow Springs, Ohio
Arizona State University, Tempe, Arizona
Asbury Theological Seminary, Wilmore, Kentucky
Associated Mennonite Biblical Seminary, Elkhart, Indiana
Atlantic Union College, South Lancaster, Massachusetts
Augsburg College, Minneapolis, Minnesota
Azusa Pacific College, Azusa, California
Babson College, Babson Park, Massachusetts
Bard College, Annandale-on-Hudson, New York
Barnard College, New York, New York
Bates College, Lewiston, Maine
Bastyr University, Seattle, Washington
Beloit College, Beloit, Wisconsin
Bennington College, Bennington, Vermont
Bentley College, Waltham, Massachusetts
Beth Medrash, Govoha, Lakewood, New Jersey

Bethel College, Mishawaka, Indiana
Bethel College and Seminary, St. Paul, Minnesota
Bethel College, North Newton, Kansas
Biola University, LaMirada, California
Bob Jones University, Greenville, South Carolina
Boston College, Chestnut Hill, Massachusetts
Boston University, Boston, Massachusetts
Bowdoin College, Brunswick, Maine
Bowling Green State University, Bowling Green, Ohio
Brandeis University, Waltham, Massachusetts
Brigham Young University — Hawaii Campus, Laie, Hawaii
Brigham Young University, Provo, Utah
Brown University, Providence, Rhode Island
Bryn Mawr College, Bryn Mawr, Pennsylvania
Bucknell University, Lewisburg, Pennsylvania
California Institute of Technology, Pasadena, California
California Lutheran University, Thousand Oaks, California
Calvin College, Grand Rapids, Michigan
Calvin Theological Seminary, Grand Rapids, Michigan
Canisius College, Buffalo, New York
Carleton College, Northfield, Minnesota
Carnegie-Mellon University, Pittsburgh, Pennsylvania
Carroll College, Helena, Montana
Case Western Reserve University, Cleveland, Ohio
Catholic University of America, The, Washington, District of Columbia
Cedarville College, Cedarville, Ohio
Central Michigan University, Mount Pleasant, Michigan
Central Yeshiva Tomchei Tmimim-Lubavitch, Brooklyn, New York
City University, Bellevue, Washington
Claremont McKenna College, Claremont, California
Clark University, Worcester, Massachusetts
Clarkson University, Potsdam, New York
Colby College, Waterville, Maine
Colby-Sawyer College, New London, New Hampshire
Colgate University, Hamilton, New York
Colgate-Rochester Divinity School, The, Rochester, New York
College of William and Mary, Williamsburg, Virginia
Colorado College, The, Colorado Springs, Colorado
Colorado School of Mines, Golden, Colorado
Colorado State University, Fort Collins, Colorado
Columbia International University, Columbia, South Carolina
Columbia Pacific University, San Rafael, California
Columbia Union College, Takoma Park, Maryland
Columbia University in the City of New York, New York, New York
Concordia College, Moorhead, Minnesota
Connecticut College, New London, Connecticut
Cornell University, Ithaca, New York
Cornerstone College and Grand Rapids Baptist Seminary, Grand Rapids, Michigan
Covenant College, Lookout Mountain, Tennessee
Creighton University, Omaha, Nebraska
Curtis Institute of Music, The, Philadelphia, Pennsylvania
Dallas Theological Seminary, Dallas, Texas
Dartmouth College, Hanover, New Hampshire
Denison University, Granville, Ohio
De Paul University, Chicago, Illinois
Dordt College, Sioux Center, Iowa
Drake University, Des Moines, Iowa
Drew University, Madison, New Jersey
Drury College, Springfield, Missouri
Duke University, Durham, North Carolina
Duquesne University, Pittsburgh, Pennsylvania
Eastern College, St. Davids, Pennsylvania
Eastern Mennonite University, Harrisonburg, Virginia
Eastern Washington University, Cheney, Washington
Eckerd College, St. Petersburg, Florida
Ecumenical Theological Center, Detroit, Michigan
Elmira College, Elmira, New York
Emerson College, Boston, Massachusetts
Emmanuel School of Religion, Johnson City, Tennessee
Emmaus Bible College, Dubuque, Iowa
Emory University, Atlanta, Georgia
Emporia State University, Emporia, Kansas
Ferris State University, Big Rapids, Michigan
Florida Atlantic University, Boca Raton, Florida
Florida State University, Tallahassee, Florida
Fordham University, New York, New York
Franciscan University of Steubenville, Steubenville, Ohio
Fresno Pacific College, Fresno, California
Fuller Theological Seminary, Pasadena, California
Gallaudet College, Washington, District of Columbia
Geneva College, Beaver Falls, Pennsylvania
George Washington University, The, Washington, District of Columbia
Georgia Institute of Technology, Atlanta, Georgia
Goddard College, Plainfield, Vermont
God's Bible School and College, Cincinnati, Ohio
Gonzaga University, Spokane, Washington
Gordon College, Wenham, Massachusetts
Gordon-Conwell Theological Seminary, South Hamilton, Massachusetts
Goshen College, Goshen, Indiana
Grace University, Omaha, Nebraska
Graceland College, Lamoni, Iowa
Greenville College, Greenville, Illinois
Grinnell College, Grinnell, Iowa
Hamilton College, Clinton, New York
Hampshire College, Amherst, Massachusetts
Harvard University, Cambridge, Massachusetts
Hebrew Union College — Jewish Institute of Religion, Cincinnati, Ohio
Herman M. Finch University of Health Sciences, The/The Chicago Medical School, North Chicago, Illinois
Hillsdale College, Hillsdale, Michigan
Holy Trinity Orthodox Seminary, The, Jordanville, New York
Hope College, Holland, Michigan
Houghton College, Houghton, New York
Huntington College, Huntington, Indiana
Illinois Institute of Technology, Chicago, Illinois
Indiana University, Bloomington, Indiana
Iowa State University of Science and Technology, Ames, Iowa
Ithaca College, Ithaca, New York
Jamestown College, Jamestown, North Dakota
Jewish Theological Seminary of America, The, New York, New York
Johns Hopkins University, The, Baltimore, Maryland
Juilliard School, The, New York, New York
Kansas State University, Manhattan, Kansas
Kettering University, Flint, Michigan
Lafayette College, Easton, Pennsylvania

Lake Superior State University, Sault Ste. Marie, Michigan
Lawrence Technological University, Southfield, Michigan
Lehigh University, Bethlehem, Pennsylvania
Leland Stanford Junior University (Stanford University), Stanford, California
Le Moyne College, Syracuse, New York
Le Tourneau College, Longview, Texas
Liberty University, Lynchburg, Virginia
Life University, Marietta, Georgia
Logan College of Chiropractic, St. Louis, Missouri
Loma Linda University, Loma Linda, California
Louisiana State University and Agricultural and Mechanical College, Baton Rouge, Louisana
Loyola University, Chicago, Illinois
Lutheran Bible Institute of Seattle, Issaquah, Washington
Macalester College, St. Paul, Minnesota
Maharishi University of Management, Fairfield, Iowa
Manhattanville College, Purchase, New York
Mankato State University, Mankato, Minnesota
Marantha Baptist Bible College, Watertown, Wisconsin
Marquette University, Milwaukee, Wisconsin
Massachusetts Institute of Technology, Cambridge, Massachusetts
Mayo Foundation, Rochester, Minnesota
Mayo Graduate School of Medicine, Rochester, Minnesota
Meadville-Lombard Theological School, Chicago, Illinois
Medical College of Pennsylvania and Hahnemann University, The, Philadelphia, Pennsylvania
Mercyhurst College, Erie, Pennsylvania
Mesivta Yeshiva Rabbi Chaim Berlin, Brooklyn, New York
Messiah College, Grantham, Pennsylvania
Miami University, Oxford, Ohio
Michigan State University, Detroit College of Law, East Lansing, Michigan
Michigan State University, East Lansing, Michigan
Michigan Technological University, Houghton, Michigan
Middlebury College, Middlebury, Vermont
Minot State University, Minot, North Dakota
Mirrer Yeshiva Central Institute, Brooklyn, New York
Montana State University, Bozeman, Montana
Montana Tech of the University of Montana, Butte, Montana
Moody Bible Institute, Chicago, Illinois
Moravian College, Bethlehem, Pennsylvania
Mount Holyoke College, South Hadley, Massachusetts
Mount Ida College, Newton Centre, Massachusetts
Multnomah Bible College, Portland, Oregon
Naropa Institute, The, Boulder, Colorado
National College of Chiropractic, The, Lombard, Illinois
Nazarene Theological Seminary, Kansas City, Missouri
Ner Israel Rabbinical College, Baltimore, Maryland
New England College, Henniker, New Hampshire
New York University, New York, New York
Niagara University, Niagara, New York
North American Baptist Seminary, Sioux Falls, South Dakota
North Carolina State University at Raleigh, Raleigh, North Carolina
North Central College, Naperville, Illinois
North Dakota State University of Agriculture and Applied Science, Fargo, North Dakota
Northeastern University, Boston, Massachusetts
Northwest College of the Assemblies of God, Kirkland, Washington
Northwestern College, Orange City, Iowa
Northwestern College, St. Paul, Minnesota
Northwestern University, Evanston, Illinois
Northwood University, Midland, Michigan
Nyack Missionary College, Nyack, New York
Oakland University, Rochester, Michigan
Oakwood College, Huntsville, Alabama
Oberlin College, Oberlin, Ohio
Ohio College of Podiatric Medicine, Cleveland, Ohio
Ohio State University, The, Columbus, Ohio
Ohio University, Athens, Ohio
Old Dominion University, Norfolk, Virginia
Oral Roberts University, Tulsa, Oklahoma
Oregon State University, Corvallis, Oregon
Ottawa University, Ottawa, Kansas
Pace University, New York, New York
Pacific Graduate School of Psychology, Menlo Park, California
Pacific Lutheran University, Tacoma, Washington
Pacific Union College, Angwin, California
Pacific University, Forest Grove, Oregon
Palm Beach Atlantic College, West Palm Beach, Florida
Palmer College of Chiropractic, Davenport, Iowa
Palmer College of Chiropractic-West, Sunnyvale, California
Park College, Kansas City, Missouri
Parsons School of Design, New York, New York
Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania
Pennsylvania State University, The, University Park, Pennsylvania
Philadelphia College of Bible, Langhorne, Pennsylvania
Philadelphia College of Textiles and Science, Philadelphia, Pennsylvania
Pine Manor College, Chestnut Hill, Massachusetts
Pomona College, Claremont, California
Princeton Theological Seminary, Princeton, New Jersey
Princeton University, Princeton, New Jersey
Principia College, The, Elsah, Illinois
Providence College, Providence, Rhode Island
Purdue University, Lafayette, Indiana
Rabbinical College of America, Morristown, New Jersey
Rabbinical College of Long Island, Long Beach, New York
Rabbinical Seminary of America, Forest Hills, New York
Radcliffe College, Cambridge, Massachusetts
Reed College, Portland, Oregon
Reconstructionist Rabbinical College, Wyncote, Pennsylvania
Reformed Bible College, Grand Rapids, Michigan
Rensselaer Polytechnic Institute, Troy, New York
Rice University, Houston, Texas
Roberts Wesleyan College, North Chili, New York
Rochester Institute of Technology, Rochester, New York
Rockefeller University, New York, New York
Rush University, Chicago, Illinois

Rutgers — The State University, New Brunswick, New Jersey
St. John's College, Annapolis, Maryland
St. John's College, Santa Fe, New Mexico
St. John's University, Jamaica, New York
St. Lawrence University, Canton, New York
Saint Louis University, St. Louis, Missouri
St. Mary's University of San Antonio, San Antonio, Texas
Saint Olaf College, Northfield, Minnesota
St. Vladimir's Orthodox Theological Seminary, Crestwood, New York
San Francisco State College, San Francisco, California
San Jose State College, San Jose, California
Santa Clara University, Santa Clara, California
Sarah Lawrence College, Bronxville, New York
Scripps College, Claremont, California
Scripps Research Institute, The, La Jolla, California
Seattle Pacific University, Seattle, Washington
Seattle University, Seattle, Washington
Sherman College of Straight Chiropractic, Spartanburg, South Carolina
Simmons College, Boston, Massachusetts
Simpson College, Indianola, Iowa
Simpson College, Redding, California
Skidmore College, Saratoga Springs, New York
Smith College, The, Northampton, Massachusetts
South Dakota School of Mines and Technology, Rapid City, South Dakota
Southern Adventist University, Collegedale, Tennessee
Southern Illinois University of Carbondale, Carbondale, Illinois
Southern Methodist University, Dallas, Texas
Southwestern Adventist College, Keene, Texas
Spring Arbor College, Spring Arbor, Michigan
Springfield College, Springfield, Massachusetts
State University College at Oswego, Oswego, New York
State University College at Potsdam, Potsdam, New York
State University of New York at Binghamton, Binghamton, New York
State University of New York at Buffalo, Buffalo, New York
State University of New York at Stony Brook, Stony Brook, New York
State University of New York College of Arts and Science at Plattsburgh, Plattsburgh, New York
Stephens College, Columbia, Missouri
Stevens Institute of Technology, Hoboken, New Jersey
Sunbridge College, Chestnut Ridge, New York
Swarthmore College, Swarthmore, Pennsylvania
Syracuse University, Syracuse, New York
Tabor College, Hillsboro, Kansas
Talmudical Yeshiva of Philadelphia, Philadelphia, Pennsylvania
Taylor University, Upland, Indiana
Teachers College, Columbia University, New York, New York
Telshe Yeshiva Rabbinical College of Telshe, Inc., Wickliffe, Ohio
Telshe Yeshiva-Chicago, Rabbinical College of Telshe-Chicago, Inc., Chicago, Illinois
Temple University, Philadelphia, Pennsylvania
Texas Chiropractic College, Pasadena, Texas
Texas Woman's University, Denton, Texas
Thomas Aquinas College, Santa Paula, California
Touro College, New York, New York
Trinity Bible College, Ellendale, North Dakota
Trinity Christian College, Palos Heights, Illinois
Trinity College, Hartford, Connecticut
Trinity Episcopal School for Ministry, Ambridge, Pennsylvania
Trinity Evangelical Divinity School, Deerfield, Illinois
Trinity University, San Antonio, Texas
Tufts University, Medford, Massachusetts
Tulane University, New Orleans, Louisiana
Union College, Lincoln, Nebraska
Union College, Schenectady, New York
Union Institute, The, Cincinnati, Ohio
Union Theological Seminary, New York, New York
University of Alabama at Birmingham, The, Birmingham, Alabama
University of Arizona, The, Tucson, Arizona
University of Arkansas at Little Rock, Little Rock, Arkansas
University of California, Berkeley, California
University of California, Davis, California
University of California, Irvine, California
University of California, Los Angeles, California
University of California, Riverside, California
University of California, San Diego, California
University of California, San Francisco, California
University of California, Santa Barbara, California
University of California, Santa Cruz, California
University of Central Florida, Orlando, Florida
University of Chicago The, Chicago, Illinois
University of Cincinnati, Cincinnati, Ohio
University of Colorado, Boulder, Colorado
University of Delaware, Newark, Delaware
University of Denver, Denver, Colorado
University of Detroit, Detroit, Michigan
University of Florida, Gainesville, Florida
University of Georgia, The, Athens, Georgia
University of Hawaii, Honolulu, Hawaii
University of Houston, Houston, Texas
University of Idaho, Moscow, Idaho
University of Illinois, Urbana, Illinois
University of Iowa, Iowa City, Iowa
University of Judaism, Los Angeles, California
University of Kansas, Lawrence, Kansas
University of Kentucky, Lexington, Kentucky
University of Maine, Orono, Maine
University of Maryland, College Park, Maryland
University of Massachusetts at Amherst, Amherst, Massachusetts
University of Miami, Coral Gables, Florida
University of Michigan, The, Ann Arbor, Michigan
University of Minnesota, Minneapolis, Minnesota
University of Missouri, Columbia, Missouri
University of Missouri, St. Louis, Missouri
University of Montana-Missoula, The, Missoula, Montana
University of Nebraska, The, Lincoln, Nebraska
University of Nevada-Reno, Reno, Nevada
University of North Carolina at Chapel Hill, Chapel Hill, North Carolina
University of North Dakota, Grand Forks, North Dakota
University of North Texas, Denton, Texas
University of Notre Dame du Lac, Notre Dame, Indiana
University of Oklahoma, Norman, Oklahoma
University of Oregon, Eugene, Oregon

University of Pennsylvania, Philadelphia, Pennsylvania
University of Pittsburgh, Pittsburgh, Pennsylvania
University of Portland, Portland, Oregon
University of Rhode Island, Kingston, Rhode Island
University of Rochester, Rochester, New York
University of San Diego, San Diego, California
University of Southern California, Los Angeles, California
University of Texas, Austin, Texas
University of Texas Southwestern Medical Center at Dallas, The, Dallas, Texas
University of the Pacific, Stockton, California
University of Tulsa, Tulsa, Oklahoma
University of Utah, Salt Lake City, Utah
University of Vermont, Burlington, Vermont
University of Virginia, Charlottesville, Virginia
University of Washington, Seattle, Washington
University of Wisconsin, Madison, Wisconsin
University of Wyoming, The, Laramie, Wyoming
Utah State University of Agriculture and Applied Science, Logan, Utah
Valparaiso University, Valparaiso, Indiana
Vanderbilt University, Nashville, Tennessee
Vassar College, Poughkeepsie, New York
Villanova University, Villanova, Pennsylvania
Wake Forest University, Winston-Salem, North Carolina
Walla Walla College, College Place, Washington
Washington and Lee University, Lexington, Virginia
Washington Bible College, Lanham, Maryland
Washington State University, Pullman, Washington
Washington University, St. Louis, Missouri
Wayne State University, Detroit, Michigan
Wellesley College, Wellesley, Massachusetts
Wesleyan University, Middleton, Connecticut
West Virginia University, Morgantown, West Virginia
Western Baptist College, Salem, Oregon
Western Conservative Baptist Seminary, Portland, Oregon
Western Michigan University, Kalamazoo, Michigan
Western States Chiropractic College, Portland, Oregon
Western Washington University, Bellingham, Washington
Westminster Theological Seminary, Philadelphia, Pennsylvania
Westminster Theological Seminary in California, Escondido, California
Wheaton College, Norton, Massachusetts
Wheaton College, Wheaton, Illinois
Wheelock College, Boston, Massachusetts
Whitman College, Walla Walla, Washington
Whittier College, Whittier, California
Whitworth College, Spokane, Washington
William Tyndale College, Farmington Hills, Michigan
Williams College, Williamstown, Massachusetts
Wittenberg University, Springfield, Ohio
Wright State University, Dayton, Ohio
Yale University, New Haven, Connecticut
Yeshiva Ohr Elchonon Chabad/West Coast Talmudic Seminary, Los Angeles, California
Yeshiva University, New York, New York

History: Carroll College, Duquesne University, University of Texas Southwestern Medical Center at Dallas, The, University of Wyoming, The and Wright State University added by P.C. 2000-726, subsec. 1(2), May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable as of January 1, 1997.

Antioch College, California Lutheran University, Cornerstone College and Grand Rapids Baptist Seminary, Eastern College, Emporia State University, Juilliard School, The, Marantha Baptist Bible College, Naropa Institute, State University of New York at Stony Brook and West Virginia University added by the said P.C. 2000-726, subsec. 1(3), applicable as of January 1, 1998.

Texas Woman's University, University of Missouri and Wheelock College added by the said P.C. 2000-726, subsec. 1(4), applicable as of January 1, 1999.

Colgate-Rochester Divinity School, The, Eastern Mennonite University, Kettering University, Liberty University, Life University, Louisiana State University and Agricultural and Mechanical College, Michigan State University, Northwest College of the Assemblies of God, Northwood University, Santa Clara University, Southern Adventist University and University of Vermont added by the said P.C. 2000-726, subsec. 1(5), effective June 7, 2000.

Ambassador University (Big Sandy TX), American College, The (Bryn Mawr PA), Anna Maria College (formerly Anna Maria College for Women) (Paxton MA), Baldwin-Wallace College (Berea OH), Bluffton College (Bluffton OH), Carroll College (Waukesha WI), College of New Rochelle (NY), College of Wooster, The (OH), Dana College (Blair NB), De Pauw University (Greencastle IN), Detroit College of Law (MI), Divinity School, The (Rochester NY), Earlham College (Richmond IN), Eastern-Baptist Theological Seminary, The (Philadelphia), Eastern Mennonite College (Harrisonburg VA), Georgetown University (Washington DC), GMI Engineering & Management Institute (Flint MI), Gustavus Adolphus College (St. Peter MN), Hebrew Union College — Jewish Institute of Religion (Los Angeles), Hebrew Union College — Jewish Institute of Religion (New York), Hobe Sound Bible College (Hobe Sound FL), Hollins College (VA), Hood College (Frederick MD), Liberty Baptist College (Lynchburg VA), Life Chiropractic College (Marietta GA), Louisiana State University (Baton Rouge), Marymont College (Tarrytown NY), Mills College (Oakland CA), Mount Vernon College (Washington DC), Nasson College (Springvale ME), Nazarene Bible College (Colorado Springs), Nebraska Wesleyan University (Lincoln), Northrop Institute of Technology (Inglewood CA), Northwest College (Kirkland WA), Northwood Institute (Midland MI), Puget Sound Christian College ... A college of the Bible (Edmonds WA), Reformed Theological Seminary (Jackson MS), Ripon College (Ripon WI), Saint Mary-of-the-Woods College (IN), Saint Mary's College (Notre Dame IN), Southern College of Seventh-Day Adventists (Collegedale TN), Temple Buell College (Denver), Trinity College (Dunedin FL), University of Dubuque (IA), University of Santa Clara (CA), University of the Ozarks (Clarksville, AK), University of the South, The (Sewanee TN), University of Vermont and State Agricultural College (Burlington), Wagner College (Staten Island NY) and Yeshiva University of Los Angeles deleted by the said P.C. 2000-726, subsec. 1(1), effective June 7, 2000.

S. 1 amended by P.C. 1997-1041, subsecs. 1(1), (2), July 25, 1997, *Canada Gazette*, Part II, August 20, 1997, to add the following (applicable to 1996 *et seq.*):

Bastyr University, Seattle, Washington
City University, Bellevue, Washington
Columbia International University, Columbia, South Carolina
Eckerd College, St. Petersburg, Florida
Grace University, Omaha, Nebraska
Herman M. Finch University of Health Sciences, The/The Chicago Medical School, North Chicago, Illinois
Montana Tech of the University of Montana, Butte, Montana
Multnomah Bible College, Portland, Oregon
Parsons School of Design, New York, New York
Union College, Lincoln, Nebraska
University of California, Davis, California
University of California, Irvine, California
University of California, Los Angeles, California
University of California, Riverside, California
University of California, San Diego, California
University of California, Santa Barbara, California
University of California, Santa Cruz, California
University of Montana-Missoula, The, Missoula, Montana
University of North Texas, Denton, Texas

and delete the following (applicable to 1996 *et seq.*):

Antioch University, New York, New York
Bastyr College, Seattle, Washington
Briarcliff College, Briarcliffe Manor, New York
Columbia Bible College & Seminary, Columbia, South Carolina
Dropsie University, The, Philadelphia, Pennsylvania
George Williams College, Downers Grove, Illinois
Grace College of the Bible, Omaha, Nebraska
Montana College of Mineral Science and Technology, Butte, Montana

Multnomah School of the Bible, Portland, Oregon
Ricker College, Houlton, Maine
Rosemead Graduate School of Psychology, Rosemead, California
University of Health Sciences/The Chicago Medical School, Chicago, Illinois
University of Montana, Missoula, Montana
Western Evangelical Seminary, Portland, Oregon
Westminster Choir College, Princeton, New Jersey

S. 1 amended by P.C. 1996-632, subsecs. 1(1), (2), April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add the following (applicable after 1994):

Alfred University, Alfred, New York
Colby-Sawyer College, New London, New Hampshire
College of New Rochelle, New Rochelle, New York
Florida State University, Tallahassee, Florida
Holy Trinity Orthodox Seminary, The, Jordanville, New York
Lawrence Technological University, Southfield, Michigan
Maharishi University of Management, Fairfield, Iowa
Medical College of Pennsylvania and Hehnemann University, The Philadelphia, Pennsylvania
Mercyhurst College, Erie, Pennsylvania
Rush University, Chicago, Illinois
Simpson College, Redding, California
Southern College of Seventh-Day Adventists, Collegedale, Tennessee
Westminster Theological Seminary in California, Escondido, California

and delete the following (applicable after 1994):

Maharishi International University, Fairfield, Iowa
Medical College of Pennsylvania, Philadelphia, Pennsylvania

S. 1 amended by P.C. 1995-581, s. 1, April 4, 1995, *Canada Gazette*, Part II, April 19, 1995, to add the following (applicable after 1993):

Ambassador University, Big Sandy, Texas
Columbia Union College, Takoma Park, Maryland
Detroit College of Law, Detroit, Michigan
Divinity School, The, Rochester, New York
Emmanuel School of Religion, Johnson City, Tennessee
Meadville-Lombard Theological School, Chicago, Illinois
Oakwood College, Huntsville, Alabama
Scripps Research Institute, The, La Jolla, California
University of the South, The, Sewanee, Tennessee

S. 1 amended by P.C. 1994-866, subsec. 1(1), May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add the following (applicable after 1992):

Associated Mennonite Biblical Seminary, Elkhart, Indiana
Bluffton College, Bluffton, Ohio
Clark University, Worcester, Massachusetts
Ecumenical Theological Center, Detroit, Michigan
Nebraska Wesleyan University, Lincoln, Nebraska
Northwestern College, Orange City, Iowa
Sunbridge College, Chestnut Ridge, New York
Union Institute, The, Cincinnati, Ohio
University of Georgia, The, Athens, Georgia
University of Judaism, Los Angeles, California
Wake Forest University, Winston-Salem, North Carolina
Wheaton College, Norton, Massachusetts

S. 1 amended by the said P.C. 1994-866, subsec. 1(2), by repealing the following (applicable after 1992):

Goshen Biblical Seminary, Elkhart, Indiana
Mennonite Biblical Seminary, Elkhart, Indiana
Union for Experimenting Colleges and Universities, The, Cincinnati, Ohio

S. 1 amended by P.C. 1993-901, May 4, 1993, *Canada Gazette*, Part II, May 19, 1993, to add the following (applicable after 1991):

American Film Institute Center for Advanced Film and Television Studies, Los Angeles, California
Calvin Theological Seminary, Grand Rapids, Michigan
St. John's University, Jamaica, New York
Saint Olaf College, Northfield, Minnesota

S. 1 amended by P.C. 1992-1108, s. 1, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992 to add the following (applicable after 1990):

Baldwin-Wallace College, Berea, Ohio
Bastyr College, Seattle, Washington
Earlham College, Richmond, Indiana
Lutheran Bible Institute of Seattle, Issaquah, Washington
North Central College, Naperville, Illinois
Rabbinical College of Long Island, Long Beach, New York
Scripps College, Claremont, California
Trinity Bible College, Ellendale, North Dakota
University of California, San Francisco, California

S. 1 amended by P.C. 1991-467, s. 1, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991 (applicable after 1989) to add the following:

Anderson College, Anderson, South Carolina
De Pauw University, Greencastle, Indiana
Ferris State University, Big Rapids, Michigan
Hampshire College, Amherst, Massachusetts
Mayo Foundation, Rochester, Minnesota
Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania
Reconstructionist Rabbinical College, Wyncote, Pennsylvania
Skidmore College, Saratoga Springs, New York
Talmudical Yeshiva of Philadelphia, Philadelphia, Pennsylvania
Villanova University, Villanova, Pennsylvania
Yeshiva Ohr Elchonon Chabad/West Coast Talmudic Seminary, Los Angeles, California

S. 1 amended by P.C. 1990-1332, s. 2, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990 (applicable after 1988), to substitute "Franciscan University of Steubenville" for "University of Steubenville" and "Lake Superior State University" for "Lake Superior State College" and to add the following:

Claremont McKenna College, Claremont, California
Columbia Bible College & Seminary, Columbia, South Carolina
Curtis Institute of Music, The, Philadelphia, Pennsylvania
Emory University, Atlanta, Georgia
Franciscan University of Steubenville, Steubenville, Ohio
Mankato State University, Mankato, Minnesota
Minot State University, Minot, North Dakota
New England College, Henniker, New Hampshire
Northwestern College, St. Paul, Minnesota
Palmer College of Chiropractic-West, Sunnyvale, California
Rice University, Houston, Texas
Southwestern Adventist College, Keene, Texas
University of Alabama at Birmingham, The, Birmingham, Alabama
University of Montana, Missoula, Montana
University of San Diego, San Diego, California
University of the Ozarks, Clarksville, Arkansas

S. 1 amended by P.C. 1989-723, s. 1, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, to add the following applicable after 1987:

Augsburg College, Minneapolis, Minnesota
Elmira College, Elmira, New York
God's Bible School and College, Cincinnati, Ohio
Life Chiropractic College, Marietta, Georgia
Life Chiropractic College–West, San Lorenzo, California
Montana College of Mineral Science and Technology, Butte, Montana
Nazarene Bible College, Colorado Springs, Colorado
Providence College, Providence, Rhode Island
Thomas Aquinas College, Santa Paula, California
University of Arkansas at Little Rock, Little Rock, Arkansas
University of Nevada–Reno, Reno, Nevada
Western Baptist College, Salem, Oregon

S. 1 amended by P.C. 1988-561, s. 1, March 24, 1988, *Canada Gazette*, Part II, April 13, 1988, to add the following, applicable after 1986:

Carroll College, Waukesha, Wisconsin
Dana College, Blair, Nebraska
Emerson College, Boston, Massachusetts
Hood College, Frederick, Maryland
Nazarene Theological Seminary, Kansas City, Missouri
Pacific Union College, Angwin, California [already listed]
Princeton Theological Seminary, Princeton, New Jersey
Reformed Theological Seminary, Jackson, Mississippi
State University College at Potsdam, Potsdam, New York
Taylor University, Upland, Indiana [already listed]
University of Massachusetts at Amherst, Amherst Massachusetts

S. 1 amended by P.C. 1987-1479, s. 1, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective after 1985, to delete "Detroit Bible College, Farmington Hills, Michigan", to substitute "Biola University" for "Biola College", "San Rafael" for "Petaluma" in "Columbia Pacific University" [which had not previously been listed], to add "(Stanford University)" to "Leland Stanford Junior University", and to add the following:

American International College, Springfield, Massachusetts
Atlantic Union College, South Lancaster, Massachusetts
Canisius College, Buffalo, New York
Central Yeshiva Tomchei Tmimim-Lubavitch, Brooklyn, New York

Concordia College, Moorhead, Minnesota
Emmaus Bible College, Dubuque, Iowa
Hobe Sound Bible College, Hobe Sound, Florida
Moravian College, Bethlehem, Pennsylvania
Pacific Graduate School of Psychology, Menlo Park, California
Philadelphia College of Bible, Langhorne, Pennsylvania
Rabbinical College of America, Morristown, New Jersey
Saint Mary-of-the-Woods College, Saint Mary-of-the-Woods, Indiana
Trinity Episcopal School for Ministry, Ambridge, Pennsylvania
University of Rhode Island, Kingston,Rhode Island
Western States Chiropractic College, Portland, Oregon
Whittier College, Whittier, California
William Tyndale College, Farmington Hills, Michigan

S. 1 amended by P.C. 1986-746, s. 1, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective January 1, 1985, to substitute "Seattle Pacific University, Seattle, Washington" for "Seattle Pacific College, Seattle, Washington", and to add the following:

De Paul University, Chicago, Illinois
GMI Engineering & Management Institute, Flint, Michigan
Grace College of the Bible, Omaha, Nebraska
Hollins College, Hollins College, Virginia
Mount Ida College, Newton Centre, Massachusetts
Sherman College of Straight Chiropractic, Spartanburg, South Carolina
Union for Experimenting Colleges and Universities, The, Cincinnati, Ohio
Washington and Lee University, Lexington, Virginia

S. 1 amended by P.C. 1985-1150, s. 1, April 4, 1985, *Canada Gazette*, Part II, April 17, 1985 to add "American Graduate School of International Management, Glendale, Arizona", effective commencing January 1, 1983; to substitute "Clarkson University" for Clarkson College of Technology, and "Puget Sound Christian College ... A college of the Bible" for "Puget Sound College of the Bible", effective January 1, 1984; and to add the following effective January 1, 1984:

American University in Cairo, The, New York, New York
Barnard College, New York, New York
Lafayette College, Easton, Pennsylvania
State University of New York at Binghamton, Binghamton, New York
University of Health Sciences/The Chicago Medical School, Chicago, Illinois
University of Missouri, Columbia, Missouri

S. 1 amended by P.C. 1984-774, s. 1, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984 to add the following effective commencing January 1, 1983:

American College, The, Bryn Mawr, Pennsylvania
Antioch University, New York, New York
Case Western Reserve University, Cleveland, Ohio
Central Michigan University, Mount Pleasant, Michigan
College of Wooster, The, Wooster, Ohio
Hebrew Union College — Jewish Institute of Religion, Los Angeles, California
Kansas State University, Manhattan, Kansas
Maharishi International University, Fairfield, Iowa
Mirrer Yeshiva Central Institute, Brooklyn, New York
Mount Vernon College, Washington, District of Columbia
Ohio College of Podiatric Medicine, Cleveland, Ohio
Pacific University, Forest Grove, Oregon
Palm Beach Atlantic College, West Palm Beach, Florida
Puget Sound College of the Bible, Edmonds, Washington
Radcliffe College, Cambridge, Massachusetts
Ripon College, Ripon, Wisconsin
St. Vladimir's Orthodox Theological Seminary, Crestwood, New York
Southern Illinois University of Carbondale, Carbondale, Illinois
Trinity University, San Antonio, Texas
University of Central Florida, Orlando, Florida
University of Steubenville, Steubenville, Ohio
Westminster Choir College, Princeton, New Jersey

S. 1 amended by P.C. 1983-1194, s. 1, April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, to add the following effective from January 1, 1982:

Adams State College, Alamosa, Colorado
Beloit College, Beloit, Wisconsin
Bowling Green State University, Bowling Green, Ohio
College of William and Mary, Williamsburg, Virginia
Fresno Pacific College, Fresno, California
Medical College of Pennsylvania, Philadelphia, Pennsylvania
Pine Manor College, Chestnut Hill, Massachusetts
Rockefeller University, New York, New York
Trinity Evangelical Divinity School, Deerfield, Illinois
Walla Walla College, College Place, Washington
Western Conservative Baptist Seminary, Portland, Oregon

S. 1 amended by P.C. 1982-1094, April 8, 1982, *Canada Gazette*, Part II, April 28, 1982, to add to the following, effective January 1, 1981:

Abilene Christian University, Abilene, Texas
Andover Newton Theological School, Newton Centre, Massachusetts
Asbury Theological Seminary, Wilmore, Kentucky
Bates College, Lewiston, Maine
Bethel College, North Newton, Kansas
Illinois Institute of Technology, Chicago, Illinois
LeTourneau College, Longview, Texas
Liberty Baptist College, Lynchburg, Virginia
Messiah College, Grantham, Pennsylvania
Oberlin College, Oberlin, Ohio
Pomona College, Claremont, California
Reformed Bible College, Grand Rapids, Michigan
St. Mary's University of San Antonio, San Antonio, Texas
Texas Chiropractic College, Pasadena, Texas

S. 1 amended by P.C. 1981-673, March 12, 1981, *Canada Gazette*, Part II, March 25, 1981, to add the following, effective January 1, 1980:

Azusa Pacific College, Azusa, California
Boston College, Chestnut Hill, Massachusetts
Le Moyne College, Syracuse, New York
Northwest College, Kirkland, Washington
Northwood Institute, Midland, Michigan
Rabbinical Seminary of America, Forest Hills, New York
South Dakota School of Mines and Technology, Rapid City, South Dakota
Whitman College, Walla Walla, Washington
Yeshiva University of Los Angeles, Los Angeles, California

S. 1 amended by P.C. 1980-1138, s. 1, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, to add the following, effective on and after January 1, 1979:

Cedarville College, Cedarville, Ohio
Detroit Bible College, Farmington Hills, Michigan
Goddard College, Plainfield, Vermont
Louisiana State University, Baton Rouge, Louisiana
Multnomah School of the Bible, Portland, Oregon
North American Baptist Seminary, Sioux Falls, South Dakota
Ottawa University, Ottawa, Kansas
Pace University, New York, New York
Park College, Kansas City, Missouri
St. John's College, Annapolis, Maryland
St. John's College, Santa Fe, New Mexico
Stephens College, Columbia, Missouri
Taylor University, Upland, Indiana
Touro College, New York, New York
Trinity College, Dunedin, Florida
Washington Bible College, Lanham, Maryland
Western Evangelical Seminary, Portland, Oregon

S. 1 amended by P.C. 1979-1181, April 4, 1979, *Canada Gazette*, Part II, April 25, 1979, to add the following, effective on and after January 1, 1978:

Brigham Young University — Hawaii Campus, Laie, Hawaii
Eastern Washington University, Cheney, Washington
Fuller Theological Seminary, Pasadena, California
Grinnell College, Grinnell, Iowa
Macalester College, St. Paul, Minnesota
National College of Chiropractic, The, Lombard, Illinois
Old Dominion University, Norfolk, Virginia
Saint Mary's College, Notre Dame, Indiana
Sarah Lawrence College, Bronxville, New York
Union College, Schenectady, New York
University of Santa Clara, Santa Clara, California

S. 1 amended by P.C. 1978-781, March 16, 1978, *Canada Gazette*, Part II, April 12, 1968, to add the following, effective on and after January 1, 1977:

Bennington College, Bennington, Vermont
Creighton University, Omaha, Nebraska
Florida Atlantic University, Boca Raton, Florida
Mesivta Yeshiva Rabbi Chaim Berlin, Brooklyn, New York
Ohio University, Athens, Ohio

Swarthmore College, Swarthmore, Pennsylvania
University of Houston, Houston, Texas
Valparaiso University, Valparaiso, Indiana
Western Washington University, Bellingham, Washington

2. The universities situated in the United Kingdom of Great Britain and Northern Ireland that are prescribed by section 3503 are the following:

Aston University, Birmingham, England
Cranfield University, Bedfordshire, England
Gateshead Talmudical College, Gateshead, England
Imperial College of Science, Technology and Medicine, London, England
Queen's University of Belfast, The, Belfast, Northern Ireland
University of Aberdeen, Aberdeen, Scotland
University of Bath, The, Bath, England
University of Birmingham, Birmingham, England
University of Bradford, Bradford, England
University of Bristol, Bristol, England
University of Cambridge, Cambridge, England
University of Dundee, The, Dundee, Scotland
University of Durham, Durham, England
University of Edinburgh, Edinburgh, Scotland
University of Exeter, Exeter, England
University of Glasgow, Glasgow, Scotland
University of Hull, The, Hull, England
University of Lancaster, Lancaster, England
University of Leeds, Leeds, England
University of Liverpool, Liverpool, England
University of London, London, England
University of Manchester, The, Manchester, England
University of Newcastle, The, Newcastle upon Tyne, England
University of Nottingham, The, Nottingham, England
University of Oxford, Oxford, England
University of Reading, Reading, England
University of St. Andrews, St. Andrews, Scotland
University of Sheffield, Sheffield, England
University of Southampton, Southampton, England
University of Strathclyde, Glasgow, Scotland
University of Surrey, Guildford, Surrey, England
University of Sussex, Brighton, England
University of Wales, Cardiff, Wales

History: S. 2 amended by P.C. 2000-276, s. 2, May 18, 2000, *Canada Gazette*, Part II, June 7, 2000, to change Cranfield Institute of Technology to Cranfield University, and Victoria University of Manchester to University of Manchester, The, effective June 7, 2000; to add University of Newcastle, The, Newcastle upon Tyne, England and University of Surrey, Guildford, Surrey, England, applicable as of January 1, 1997; and to add Imperial College of Science, Technology and Medicine, London, England, applicable as of January 1, 1998.

S. 2 amended by P.C. 1996-632, s. 2, April 30, 1996, *Canada Gazette*, Part II, June 15, 1994, to add "Aston University, Birmingham, England" and "University of Sussex, Brighton, England", applicable after 1994.

S. 2 amended by P.C. 1994-866, s. 2, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add "University of Hull, The, Hull, England", applicable after 1992.

S. 2 amended by P.C. 1992-1108, s. 2, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992, to add "Gateshead Talmudical College, Gateshead, England", applicable after 1990.

S. 2 amended by P.C. 1991-467, s. 2, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991 (applicable after 1989) to add the following:

University of Bath, The, Bath, England

University of Dundee, The, Dundee, Scotland

University of Nottingham, The, Nottingham, England

S. 2 amended by P.C. 1990-1332, s. 3, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990, to add "University of Exeter, Exeter, England" and "University of Lancaster, Lancaster, England", applicable after 1988.

S. 2 amended by P.C. 1989-723, s. 2, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, to add "University of Southampton, Southampton, England", applicable after 1987.

S. 2 amended by P.C. 1984-774, s. 2, March 8, 1984, *Canada Gazette*, Part II, March 21, 1984 to add "University of Durham, Durham, England", applicable after 1982.

3. The universities situated in France that are prescribed by section 3503 are the following:

American University in Paris, Paris
Catholic Faculties of Lyon, Lyon
Catholic Institute of Paris, Paris
Catholic University of Lille, The, Lille
École Nationale des Ponts et Chaussées, Paris
European Institute of Business Administration (INSEAD), Fontainebleau
Hautes Études Commerciales, Paris
Paris Graduate School of Management, Paris
University of Aix-Marseilles, Aix-en-Provence
University of Paris, Paris

History: S. 3 amended by P.C. 2000-726, s. 3, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to change Catholic Faculties of Lille to Catholic University of Lille, The, effective June 7, 2000.

S. 3 amended by P.C. 1994-866, s. 3, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add the following (applicable after 1992):

Hautes Études Commerciales, Paris
Paris Graduate School of Management, Paris

S. 3 amended by P.C. 1991-467, s. 3, March 14, 1991, *Canada Gazette*, Part II, March 27, 1991 (applicable after 1989) to add the following:

École Nationale des Ponts et Chaussées, Paris
European Institute of Business Administration (INSEAD), Fontainebleau

S. 3 amended by P.C. 1990-1332, s. 4, June 28, 1990, *Canada Gazette*, Part II, July 18, 1990, to substitute "American University" for "American College", applicable after 1988.

S. 3 amended by P.C. 1988-561, s. 2, March 24, 1988, *Canada Gazette*, Part II, April 13, 1988, to add "American College in Paris, Paris", applicable after 1986.

4. The universities situated in Austria that are prescribed by section 3503 are the following:

University of Vienna, Vienna

5. The universities situated in Belgium that are prescribed by section 3503 are the following:

Catholic University of Louvain, Louvain

History: S. 5 amended by P.C. 2000-726, s. 4, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to delete Free University of Brussels, Brussels, effective June 7, 2000.

6. The universities situated in Switzerland that are prescribed by section 3503 are the following:

Franklin College of Switzerland, Sorengo (Lugano)
University of Fribourg, Fribourg
University of Geneva, Geneva
University of Lausanne, Lausanne

History: S. 6 amended by P.C. 1992-1108, s. 3, May 21, 1992, *Canadd Gazette*, Part II, June 3, 1992, to add "Franklin College of Switzerland, Sorengo (Lugano)", applicable after 1990.

7. The universities situated in Vatican City that are prescribed by section 3503 are the following:

Pontifical Gregorian University

8. The universities situated in Israel that are prescribed by section 3503 are the following:

Bar-Ilan University, Ramat-Gan

Ben Gurion University of the Negev, Beersheba
Bezalel-Academy of Arts and Design, Jerusalem
École biblique et archéologique française, Jerusalem
Hebrew University of Jerusalem, The, Jerusalem
Jerusalem College for Women, Bayit-Vegan, Jerusalem
Jerusalem College of Technology, Jerusalem
Technion-Israel Institute of Technology, Haifa
Tel-Aviv University, Tel-Aviv
University of Haifa, Haifa
Weizmann Institute of Science, Rehovot
Yeshivat Aish Hatorah, Jerusalem

History: S. 8 amended by P.C. 1996-632, s. 3, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add "École biblique et archéologique française, Jerusalem", applicable after 1994.

S. 8 amended by P.C. 1994-866, s. 4, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add "Yeshivat Aish Hatorah, Jerusalem", applicable after 1992.

S. 8 amended by P.C. 1988-561, s. 3, March 24, 1988, *Canada Gazette*, Part II, April 13, 1988, to add "Bezalel-Academy of Arts and Design, Jerusalem", applicable after 1986.

S. 8 amended by P.C. 1986-746, s. 2, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, effective January 1, 1985, to add "Jerusalem College of Technology, Jerusalem".

S. 8 amended by P.C. 1983-1194, s. 2, April 21, 1983, *Canada Gazette*, Part II, May 11, 1983 to add the following effective from January 1, 1982:

University of Haifa, Haifa
Weizmann Institute of Science, Rehovot

S. 8 amended by P.C. 1980-1138, s. 2, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, as corrected by *Canada Gazette*, Part II, June 11, 1980, errata, to add the following, effective on and after January 1, 1979:

Ben Gurion University of the Negev, Beersheba
Jerusalem College for Women, Bayit-Vegan, Jerusalem

9. The universities situated in Lebanon that are prescribed by section 3503 are the following:

St. Joseph University, Beirut

History: S. 9 amended by P.C. 2000-726, s. 5, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to delete American University of Beirut, The, Beirut, effective June 7, 2000.

S. 9 amended by P.C. 1980-1138, s. 3, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, effective on and after January 1, 1979, to add: St. Joseph University, Beirut.

10. The universities situated in Ireland that are prescribed by section 3503 are the following:

National University of Ireland, Dublin
Royal College of Surgeons in Ireland, Dublin
University of Dublin, Dublin

History: S. 10 amended by P.C. 1985-1150, s. 2, April 4, 1985, *Canada Gazette*, Part II, April 17, 1985, applicable commencing January 1, 1984, to add: National University of Ireland, Dublin.

S. 10 amended by P.C. 1980-1138, s. 4, May 1, 1980, *Canada Gazette*, Part II, May 14, 1980, effective on and after January 1, 1979, to add: University of Dublin, Dublin.

11. The universities situated in the Federal Republic of Germany that are prescribed by section 3503 are the following:

Ruprecht-Karls-Universität Heidenberg, Heidenberg
Ukrainian Free University, Munich

History: S. 11 amended by P.C. 1996-632, s. 4, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add "Ruprecht-Karls-Universität Heidenberg, Heidenberg", effective after 1994.

12. The universities situated in Poland that are prescribed by section 3503 are the following:

Catholic University of Lublin, Lublin
Jagiellonian University, Krakow

History: S. 12 amended by P.C. 2000-726, s. 6, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to add Jagiellonian University, Krakow, applicable as of January 1, 1998.

S. 12 amended by P.C. 1986-746, s. 3, March 26, 1986, *Canada Gazette*, Part II, April 16, 1986, to substitute "Catholic University of Lublin, Lublin" for "Catholic University of Lubin, Lubin", effective January 1, 1982.

S. 12 added by P.C. 1983-1194, s. 3, April 21, 1983, *Canada Gazette*, Part II, May 11, 1983, effective from January 1, 1982.

13. The universities situated in Spain that are prescribed by section 3503 are the following:

University of Navarra, Pamplona

History: S. 13 added by P.C. 1987-1479, s. 2, July 30, 1987, *Canada Gazette*, Part II, August 19, 1987, effective after 1985.

14. The universities situated in the People's Republic of China that are prescribed by section 3503 are the following:

Nanjing Institute of Technology, Nanjing

History: S. 14 added by P.C. 1989-723, s. 3, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, applicable after 1987.

15. The universities situated in Jamaica that are prescribed for the purposes of section 3503 are the following:

University of the West Indies, Mona Campus, Kingston

History: S. 15 added by P.C. 1989-723, s. 3, April 28, 1989, *Canada Gazette*, Part II, May 10, 1989, applicable after 1987.

16. The university situated in the Czech and Slovak Federal Republic that is prescribed by section 3503 is the following:

Universita Karlova, Prague

History: S. 16 added by P.C. 1992-1108, s. 4, May 21, 1992, *Canada Gazette*, Part II, June 3, 1992, applicable after 1990.

17. The universities situated in Australia that are prescribed by section 3503 are the following:

University of Melbourne, The, Parkville
University of Queensland, The, Brisbane
University of Sydney, The, Sydney
University of Tasmania, Hobart

History: S. 17 amended by P.C. 2000-726, s. 7, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to delete Flinders University of South Australia, The, Adelaide and University of New South Wales, The, Sydney, effective June 7, 2000; and to add University of Melbourne, The, Parkville and University of Queensland, The, Brisbane, applicable as of January 1, 1997.

S. 17 amended by P.C. 1996-632, s. 5, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, to add "Flinders University of South Australia, The, Adelaide" and "University of New South Wales, The, Sydney" applicable after 1994.

S. 17 amended by P.C. 1994-866, s. 5, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, to add "University of Tasmania, Hobart", applicable after 1992.

S. 17 added by P.C. 1993-901, May 4, 1993, *Canada Gazette*, Part II, May 19, 1993, applicable after 1991.

18. The university situated in the Republic of Croatia that is prescribed by section 3503 is the following:

University of Zagreb, Zagreb

History: S. 18 added by P.C. 1994-866, May 26, 1994, *Canada Gazette*, Part II, June 15, 1994, applicable after 1992.

19. The university situated in South Africa that is prescribed by section 3503 is the following:

University of the Witwatersrand, The, Johannesburg

History: S. 19 added by P.C. 1995-581, April 4, 1995, *Canada Gazette*, Part II, April 19, 1995, applicable after 1993.

Interpretation Bulletins: See at beginning of Schedule.

20. The university situated in the Netherlands that is prescribed by section 3503 is the following:

Leiden University, Leiden
Nijenrode University, Breukelon

History: S. 20 amended by P.C. 2000-726, s. 8, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, to add Leiden University, applicable as of January 1, 1998.

S. 20 added by P.C. 1996-632, s. 6, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, applicable after 1994.

21. The university situated in Hong Kong that is prescribed by section 3503 is the following:

Hong Kong University of Science and Technology, The, Kowloon

History: S. 21 added by P.C. 1996-632, s. 6, April 30, 1996, *Canada Gazette*, Part II, May 15, 1996, applicable after 1994.

22. The university situated in New Zealand that is prescribed by section 3503 is the following:

Victoria University of Wellington, Wellington

History: S. 22 added by P.C. 2000-726, s. 9, May 28, 2000, *Canada Gazette*, Part II, June 7, 2000, applicable as of January 1, 1999.

SCHEDULES IX, X

[Revoked]

History: Schedules IX, X revoked by P.C. 1993-1688, s. 4, August 26, 1993, *Canada Gazette*, Part II, September 8, 1993, applicable to 1993 *et seq.*

Schedules IX, X added by P.C. 1988-1105, s. 4, June 6, 1988, *Canada Gazette*, Part II, June 22, 1988, applicable to 1987 *et seq.*

INCOME TAX CONVENTIONS INTERPRETATION ACT

An Act respecting the interpretation of Canada's international conventions relating to income tax and the Acts implementing such conventions.

R.S.C. 1985, c. I-4, AS AMENDED

Short Title

1. Short title — This Act may be cited as the *Income Tax Conventions Interpretation Act*.

Definition

2. Definition of "convention" — In this Act, "convention" means any convention or agreement between Canada and another state relating to tax on income, and includes any protocol or supplementary convention or agreement relating thereto.

Interpretation

3. Meaning of undefined terms — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the law of Canada is that, to the extent that a term in the convention is

(a) not defined in the convention,

(b) not fully defined in the convention, or

(c) to be defined by reference to the laws of Canada,

that term has, except to the extent that the context otherwise requires, the meaning it has for the purposes of the *Income Tax Act*, as amended from time to time, and not the meaning it had for the purposes of the *Income Tax Act* on the date the convention was entered into or given the force of law in Canada if, after that date, its meaning for the purposes of the *Income Tax Act* has changed.

I.T. Technical News: No. 18 (*Cudd Pressure* case).

4. Permanent establishments in Canada — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the law of Canada is that where, for the purposes of the application of the convention, the profits from a business activity, including an industrial or commercial activity, attributable or allocable to a permanent establishment in Canada are to be determined for any period,

(a) there shall, except where the convention expressly otherwise provides, be included in the determination of those profits all amounts with respect to that activity that are attributable or allocable to the permanent establishment and that would be required to be included under the *Income Tax Act*, as amended from time to time, by a person resident in Canada carrying on the activity in Canada in the computation of his income from a business for that period; and

(b) there shall, except to the extent that an agreement between the competent authorities of the parties to the convention expressly otherwise provides, not be deducted in the determination of those profits any amount with respect to that activity that is attributable or allocable to the permanent establishment and that would not be deductible under the *Income Tax Act*, as amended from time to time, by a person resident in Canada carrying on the activity in Canada in the computation of his income from a business for that period.

5. Definitions — Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, in this section and in the convention,

"annuity" does not include any pension payment or any payment under a plan, arrangement or contract described in subparagraphs (a)(i) to (ix) of the definition "pension";

History: The definition "annuity" amended by 1999, c. 22, subsec. 84(1), applicable with respect to amounts paid after 1996. It formerly read:

> "annuity" does not include a pension payment (other than a periodic pension payment) arising in Canada;

"Annuity" added by 1993, c. 24, s. 147, applicable with respect to amounts paid after 1991.

"Canada" means the territory of Canada, and includes

(a) every area beyond the territorial seas of Canada that, in accordance with international law and the laws of Canada, is an area in respect of which Canada may exercise rights with respect to the seabed and subsoil and their natural resources, and

(b) the seas and airspace above every area described in paragraph (a);

"immovable property" and **"real property"**, with respect to such property in Canada, are hereby declared to include

(a) any right to explore for or exploit mineral deposits and sources in Canada and other natural resources in Canada, and

(b) any right to an amount computed by reference to the production, including profit, from, or to the value of production from, mineral deposits and sources in Canada and other natural resources in Canada;

"pension" means, in respect of payments that arise in Canada,

(a) if the convention does not include a definition "pension", a payment under any plan, arrangement or contract that is

(i) a registered pension plan,

(ii) a registered retirement savings plan,

(iii) a registered retirement income fund,

(iv) a retirement compensation arrangement,

(v) a deferred profit sharing plan,

(vi) a plan that is deemed by subsection 147(15) of the *Income Tax Act* not to be a deferred profit sharing plan,

(vii) an annuity contract purchased under a plan referred to in subparagraph (v) or (vi),

(viii) an annuity contract where the amount paid by or on behalf of an individual to acquire the contract was deductible under paragraph 60(l) of the *Income Tax Act* in computing the individual's income for any taxation year (or would have been so deductible if the individual had been resident in Canada), or

(ix) a superannuation, pension or retirement plan not otherwise referred to in this paragraph, and

(b) if the convention includes a definition "pension", a payment that is a pension for the purposes of the convention or a payment (other than a payment of social security benefits) that would be a periodic pension payment if the convention did not include a definition "pension";

Related Provisions: 5"annuity" — Annuity excludes pension payments and certain other payments.

History: The definition "pension" added by 1999, c. 22, subsec. 84(3), applicable with respect to amounts paid after 1996.

"periodic pension payment" means, in respect of payments that arise in Canada, a pension payment other than

(a) a lump sum payment, or a payment that can reasonably be considered to be an instalment of a lump sum amount, under a registered pension plan,

(b) a payment before maturity, or a payment in full or partial commutation of the retirement income, under a registered retirement savings plan,

(c) a payment at any time in a calendar year under a registered retirement income fund, where the total of all payments (other than the specified portion of each such payment) made under the fund at or before that time and in the year exceeds the total of

(i) the amount that would be the greater of

(A) twice the amount that, if the value of C in the definition "minimum amount" in subsection 146.3(1) of the *Income Tax Act* were nil, would be the minimum amount under the fund for the year, and

(B) 10% of the fair market value of the property (other than annuity contracts that, at the beginning of the year, are not described in paragraph (b.1) of the definition "qualified investment" in subsection 146.3(1) of the *Income Tax Act*) held in connection with the fund at the beginning of the year

if all property transferred in the year and before that time to the carrier of the fund as consideration for the carrier's undertaking to make payments under the fund had been so transferred immediately before the beginning of the year and if the definition "minimum amount" in subsection 146.3(1) of the *Income Tax Act* applied with respect to all registered retirement income funds, and

(ii) the total of all amounts each of which is an annual or more frequent periodic payment under an annuity contract that is a qualified investment, as defined in subsection 146.3(1) of the *Income Tax Act*, (other than an annuity contract the fair market value of which is taken into account under clause (i)(B)) held by a trust governed by the fund that was paid into the trust in the year and before that time, or

(d) a payment to a recipient at any time in a calendar year under an arrangement, other than a plan or fund referred to in paragraphs (a) to (c), where

(i) the payment is not

(A) one of a series of annual or more frequent payments to be made over the lifetime of the recipient or over a period of at least 10 years,

(B) one of a series of annual or more frequent payments each of which is contingent on the recipient continuing to suffer from a physical or mental impairment, or

(C) a payment to which the recipient is entitled as a consequence of the death of an individual who was in receipt of periodic pension payments under the arrangement, and that is made under a guarantee that a minimum number of payments will be made in respect of the individual, or

(ii) at the time the payment is made, it may reasonably be concluded that

(A) the total amount of payments (other than excluded payments) under the arrangement to the recipient in the year will exceed twice the total amount of payments (other than excluded payments) made under the arrangement to the recipient in the immediately preceding year, otherwise than because of the fact that payments commenced to be made to the recipient in the preceding year and were made for a period of less than twelve months in that year, or

(B) the total amount of payments (other than excluded payments) under the arrangement to the recipient in the year will exceed twice the total amount of payments (other than excluded payments) to be made under the arrangement to the recipient in any subsequent year, otherwise than because of the termination of the series of payments or the reduction in the amount of payments to be made after the death of any individual,

and, for the purposes of this subparagraph, "excluded payment" means a payment that is neither a periodic payment nor a payment described in any of clauses (i)(A) to (C).

History: The portion of the definition "periodic pension payment" before para. (a) amended by 1999, c. 22, subsec. 84(2), applicable with respect to amounts paid after 1996. The portion formerly read:

"periodic pension payment" does not include a pension payment arising in Canada that is

Para. (c) of "periodic pension payment"amended by 1998, c. 19, s. 286, applicable to amounts paid after 1997. Para. (c) formerly read:

(c) a payment at any time in a calendar year under a registered retirement income fund where the total of all payments made under the fund at or before that time and in the year, other than

(i) a payment or portion thereof that is not required by section 146.3 of the *Income Tax Act* to be included in computing the income of any person and that is not included under paragraph 212(1)(q) of that Act in respect of any person, and

(ii) a payment in respect of which a deduction is available under paragraph 60(l) of the *Income Tax Act* in computing the income of any person,

exceeds the greater of

(iii) twice the amount that would be the minimum amount under the fund for the year, and

(iv) ten per cent of the amount that would be the fair market value of the property held in connection with the fund at the beginning of the year,

if all property transferred in the year and before that time to the carrier of the fund as consideration under the fund had been transferred immediately before the beginning of the year and if the definition "minimum amount" in paragraph 146.3(1)(b.1) of the *Income Tax Act* were applicable with respect to all registered retirement income funds, or

"Periodic pension payment" added by 1993, c. 24, s. 147, applicable with respect to amounts paid after 1991.

"real property" — [see under "immovable" above — ed.]

Special note re s. 5: 1993, c. 24, subsec. 84(10) (re-enacted as 1994, c. 7, Sched. VIII, subsec. 84(10)), provides as follows:

(10) Notwithstanding subsection (9), [amended ITA 146.3(1)"minimum amount"] does not apply for the purposes of section 5 of the *Income Tax Conventions Interpretation Act*, with respect to payments made before 1993.

5.1 (1) [Repealed]

History: S. 5.1 repealed by 1999, c. 22, s. 85, applicable with respect to amounts paid after 1996. It formerly read:

(1) **Definition of "pension"** — For the purposes of the definitions "annuity" and "periodic pension payment" in section 5, "pension" includes payments arising in Canada under

(a) a registered pension plan;

(b) a registered retirement savings plan;

(c) a registered retirement income fund;

(d) a retirement compensation arrangement;

(e) a deferred profit sharing plan;

(f) a plan that is deemed by subsection 147(15) of the *Income Tax Act* not to be a deferred profit sharing plan;

(g) an annuity contract purchased under a plan referred to in paragraph (e) or (f);

(h) an annuity contract where the amount paid by or on behalf of an individual to acquire the contract was deductible under paragraph 60(l) of the *Income Tax Act* in computing the individual's income for any taxation year (or would have been so deductible if the individual had been resident in Canada); and

(i) a superannuation, pension or retirement plan not otherwise referred to in this section.

S. 5.1 renumbered as subsec. 5.1(1) by 1998, c. 19, s. 287, applicable to amounts paid after 1997.

S. 5.1 added by 1993, c. 24, s. 148, applicable with respect to amounts paid after 1991.

(2) Definition of "specified portion" — For the purpose of the definition "periodic pension payment" in section 5, the "specified portion" of a payment means the total of

(a) the portion of the payment that is not required by section 146.3 of the *Income Tax Act* to be included in computing the income of any person and that is not included under paragraph 212(1)(q) of that Act in respect of any person; and

(b) the portion of the payment in respect of which a deduction is available under paragraph 60(l) of the *Income Tax Act* in computing the income of any person.

History: Subsec. 5.1(2) added by 1998, c. 19, s. 287, applicable to amounts paid after 1997.

6. Meaning of "interest" — Notwithstanding section 3, the meaning of the term "interest" in any convention given the force of law in Canada before November 19, 1974 does not include any amount paid or credited, pursuant to an agreement in writing entered into before June 23, 1983, as consideration for a guarantee referred to in paragraph 214(15)(a) of the *Income Tax Act*.

6.1 Transitional — Where a taxation year of a taxpayer includes June 23, 1983, the additional tax payable under the *Income Tax Act* (except Part XIII thereof) by the taxpayer for the taxation year by virtue of this Act shall be calculated in accordance with the following formula

$$A = T \times \frac{B}{C}$$

where

A is the amount of additional taxes payable under the *Income Tax Act* (except Part XIII thereof) by the taxpayer for the taxation year by virtue of this Act,

T is the amount of additional taxes payable under the *Income Tax Act* (except Part XIII thereof) by the taxpayer for the taxation year by virtue of this Act (except this section),

B is the number of days in the taxation year after June 23, 1983, and

C is the number of days in the taxation year.

History: S. 6.1 added by 1985, c. 48 (1st Supp.), s. 2, applicable to taxation years ending after June 23, 1983.

6.2 Partnerships — Notwithstanding the provisions of a convention between Canada and another state or the Act giving it the force of law in Canada, it is hereby declared that the law of Canada is that, for the purposes of the application of the convention and the *Income Tax Act* to a person who is a resident of Canada, a partnership of which that person is a member is neither a resident nor an enterprise of that other state.

History: S. 6.2 added by 1991, c. 49, s. 220, applicable to taxation years ending after June 23, 1983.

6.3. Gains arising in Canada — Except where a convention expressly otherwise provides, any amount of income, gain or loss in respect of the disposition of a property that is taxable Canadian property within the meaning assigned by the *Income Tax Act* is deemed to arise in Canada.

History: S. 6.3 added by 1999, c. 22, s. 86, applicable to dispositions that occur after February 23, 1998.

Application

7. Application — This Act applies

(a) in the case of tax under Part XIII of the *Income Tax Act*, to amounts paid or credited after June 23, 1983; and

(b) in all other cases, to taxation years ending after June 23, 1983.

CANADA–UNITED STATES INCOME TAX CONVENTION, 1980

Convention Between Canada and The United States of America With Respect to Taxes on Income and on Capital Signed on September 26, 1980, as Amended by the Protocols Signed on June 14, 1983, March 28, 1984, March 17, 1995 and July 29, 1997

(Enacted in Canada by S.C. 1984, c. 20; 1995 Protocol enacted in Canada by S.C. 1995, c. 34, Royal Assent November 8, 1995; 1997 Protocol enacted in Canada by S.C. 1997, c. 38, Royal Assent December 10, 1997.)

Notes:

The Income Tax Convention (treaty) between Canada and the United States was signed on September 26, 1980, and amended before ratification by Protocols signed on June 14, 1983 and March 28, 1984. Instruments of ratification were exchanged on August 16, 1984. This Convention supersedes the former Canada-U.S. Convention, signed in 1942. A third Protocol, signed on March 17, 1995 (replacing one earlier signed on August 31, 1994), came into force with instruments of ratification exchanged on November 9, 1995. A fourth Protocol, signed on July 29, 1997, came into force with instruments of ratification exchanged on December 16, 1997.

On April 26, 1984, the United States Treasury Department released a technical explanation of the Convention. A news release issued by the Canadian Department of Finance on August 16, 1984 states that the technical explanation "accurately reflects understandings reached in the course of negotiations with respect to the interpretation and application of the various provisions in the 1980 Tax Convention as amended".

The Technical Explanation is accepted as valid guidance by the Courts; see, e.g., *Coblentz*, [1996] 3 C.T.C. 295 (FCA). The relevant portion of the technical explanation is reproduced below after each paragraph of the relevant Article. Note, however, that the Federal Court of Appeal stated in *Kubicek Estate*, [1997] 3 C.T.C. 435: "The Technical Explanation is a domestic American document. True, it is stated to have the endorsation of the Canadian Minister of Finance, but in order to bind Canada it would have to amount to another convention, which it does not. From the Canadian viewpoint, it has about the same status as a Revenue Canada interpretation bulletin, of interest to a Court but not necessarily decisive of an issue".

On June 13, 1995, the U.S. Treasury Department released a technical explanation of the March 17, 1995 Protocol. The Canadian Minister of Finance again stated that "Canada agrees that the technical explanation accurately reflects understandings reached in the course of negotiations with respect to the interpretation and application of the various provisions in the Protocol": Department of Finance news release 95-048, June 13, 1995. Similarly, a technical explanation for the Protocol signed on July 29, 1997 was released by the U.S. Treasury Department in December, 1997. The relevant portions of these technical explanations are reproduced below with the text.

Negotiations for a further Protocol to amend the treaty are underway; see Proposed Amendment box below.

[For reference to the Canada-United States Social Security Agreement, see Revenue Canada Information Circular 84-6.]

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Canada and the United States of America, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

Proposed Amendment — New Negotiations

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

Beginning on October 20, 1998, Canada and the United States will consult in Washington regarding modifications to the current Canada-U.S. Income Tax Convention. These consultations are contemplated by Article 20 of the Protocol to the Convention that was signed on March 17, 1995 and entered into force on November 9, 1995. As stipulated in that Protocol, discussions are to include consideration of reductions in the withholding tax rates provided in the Convention and the need for any modifications to the rules in Article XXIX A of the Treaty regarding Limitation on Benefits. It is possible that other issues will also be discussed.

The Department of Finance invites comments from the public regarding the upcoming negotiations. Persons are invited to send their written comments to the Department to the attention of Brian Ernewein, Director, Tax Legislation Division, 17th Floor, East Tower, 140 O'Connor Street, Ottawa, Ontario K1A 0G5.

For further information: Brian Ernewein, Tax Policy Branch, 992-3045.

Application of the 1995 Protocol: Future consultations, and the coming into force of the Protocol, are covered in Articles 20 and 21.

Article 20 provides that the appropriate authorities of each country will consult within a three year period with a view to determining whether further reductions in the withholding rates should be introduced and whether amendments to the new limitation of benefits provisions would be appropriate. The authorities will also consult after a three year period to consider giving effect to the new arbitration procedure provided for under Article XXVI (Mutual Agreement Procedure).

Article 20 reads:

> 1. The appropriate authorities of the Contracting States shall consult within a three-year period from the date on which this Protocol enters into force with respect to further reductions in withholding taxes provided in the Convention, and with respect to the rules in Article XXIX A (Limitation on Benefits) of the Convention.
>
> 2. The appropriate authorities of the Contracting States shall consult after a three-year period from the date on which the Protocol enters into force in order to determine whether it is appropriate to make the exchange of notes referred to in Article XXVI (Mutual Agreement Procedure) of the Convention.

Article 21 sets out the mechanism for the entry into force of the Protocol and the application of its provisions. In general, the provisions of the Protocol will be effective for the withholding tax as of the first day of the second month following the entry into force of the Protocol and, for other taxes, for taxable periods beginning on and after the first day of January following the entry into force of the Protocol. However, special rules are provided for a phased reduction of the withholding tax on direct dividends and the branch profits tax and for the provisions of Article XXVI A (Assistance in Collection). The provisions relating to the US estate tax in Article XXIX B (Taxes Imposed by Reason of Death) are effective retroactively for deaths occurring after November 10, 1988.

Article 21 reads:

> 1. This Protocol shall be subject to ratification in accordance with the applicable procedures in Canada and the United States and instruments of ratification shall be exchanged as soon as possible.
>
> 2. The Protocol shall enter into force upon the exchange of instruments of ratification, and shall have effect:
>
> (a) For tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties) and XVIII (Pensions and Annuities) of the Convention, except on income referred to in paragraph 5 of Article XVIII of the Convention (as it read before the entry into force of this Protocol), with respect to amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force, except that the reference in paragraph 2(a) of Article X (Dividends) of the Convention, as amended by the Protocol, to "5 per cent" shall be read, in its application to amounts paid or credited on or after that first day:
>
> (i) Before 1996, as "7 per cent"; and
>
> (ii) After 1995 and before 1997, as "6 per cent"; and
>
> (b) For other taxes, with respect to taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force, except that the reference in paragraph 6 of Article X (Dividends) of the Convention, as amended by the Protocol, to "5 per cent" shall be read, in its application to taxable years beginning on or after that first day and ending before 1997, as "6 per cent".
>
> 3. Notwithstanding the provisions of paragraph 2, Article XXVI A (Assistance in Collection) of the Convention shall have effect for revenue claims finally determined by a requesting State after the date that is 10 years before the date on which the Protocol enters into force.
>
> 4. Notwithstanding the provisions of paragraph 2, paragraphs 2 through 8 of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention (and paragraph 2 of Article II (Taxes Covered) and paragraph 3(a) of Article XXIX (Miscellaneous Rules) of the Convention, as amended by the Protocol, to the extent necessary to implement paragraphs 2 through 8 of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention) shall, notwithstanding any limitation imposed under the law of a Contracting State on the assessment, reassessment or refund with respect to a person's return, have effect with respect to deaths occurring after the date on which the Protocol enters into force and, provided that any claim for refund by reason of this sentence is filed within one year of the date on which the Protocol enters into force or within the otherwise applicable period for filing such claims under domestic law, with respect to benefits provided under any of those paragraphs with respect to deaths occurring after November 10, 1988.
>
> 5. Notwithstanding the provisions of paragraph 2, paragraph 2 of Article 3 of the Protocol shall have effect with respect to taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force.

Technical Explanation [1995 Protocol]:

Article 20

Article 20 of the Protocol does not amend the text of the Convention. It states two understandings between the Contracting States regarding future action relating to matters dealt with in the Protocol. Paragraph 1 requires the appropriate authorities of the Contracting States to consult on two matters within three years from the date on which the Protocol enters into force. First, they will consult with a view to agreeing to further reductions in withholding rates on dividends, interest and royalties under Articles X, XI, and XII, respectively. This provision reflects the fact that, although the Protocol does significantly reduce withholding rates, the United States remains interested in even greater reductions, to further open the capital

markets and fulfill the objectives of the North American Free Trade Agreement. Second, the appropriate authorities of the Contracting States will consult about the rules in Article XXIX A (Limitation on Benefits). By that time, both Contracting States will have had an opportunity to observe the operation of the Article, and the United States will have had greater experience with the corresponding provisions in other recent U.S. tax conventions.

Paragraph 2 of Article 20 also requires consultations between the appropriate authorities, after the three-year period from the date on which the Protocol enters into force, to determine whether to implement the arbitration procedure provided for in paragraph 6 of Article XXVI (Mutual Agreement Procedure), added by Article 14 of the Protocol. The three-year period is intended to give the authorities an opportunity to consider how arbitration has functioned in other tax conventions, such as the U.S.-Germany Convention, before implementing it under this Convention.

Article 21

Article 21 of the Protocol provides the rules for the entry into force of the Protocol provisions. The Protocol will be subject to ratification according to the normal procedures in both Contracting States and instruments of ratification will be exchanged as soon as possible. Upon the exchange of instruments, the Protocol will enter into force.

Paragraph 2(a) of Article 21 generally governs the entry into force of the provisions of the Protocol for taxes withheld at source, while paragraph 2(b) generally governs for other taxes. Paragraphs 3, 4, and 5 provide special rules for certain provisions.

Paragraph 2(a) provides that the Protocol generally will have effect for taxes withheld at source on dividends, interest, royalties, and pensions and annuities (other than social security benefits), under Articles X, XI, XII, and XVIII, respectively, with respect to amounts paid or credited on or after the first day of the second month following the date on which the Protocol enters into force (i.e., the date on which instruments of ratification are exchanged). However, with respect to direct investment dividends, the 5 percent rate specified in paragraph 2(a) of Article X will be phased in as follows: (1) for dividends paid or credited after the first day of the second month referred to above, and during 1995, the rate of withholding will be 7 percent; (2) for dividends paid or credited after the first day of the second month, and during 1996, the rate will be 6 percent; and (3) for dividends paid or credited after the first day of the second month and after 1996, the rate will be 5 percent.

For taxes other than those withheld at source and for the provisions of the Protocol relating to taxes withheld on social security benefits, the Protocol will have effect with respect to taxable years beginning on or after the first day of January following the date on which the Protocol enters into force. However, the rate of tax applicable to the branch tax under paragraph 6 of Article X (Dividends) will be phased in in a manner similar to the direct investment dividend withholding tax rate; that is, a rate of 6 percent will apply for taxable years beginning in 1996 and a rate of 5 percent will apply for taxable years beginning in 1997 and subsequent years.

Paragraph 3 of Article 21 provides a special effective date for the provisions of the new Article XXVI A (Assistance in Collection) of the Convention, introduced by Article 15 of the Protocol. Collection assistance may be granted by a Contracting State with respect to a request by the other Contracting State for a claim finally determined by the requesting State after the date that is ten years before the date of the entry into force of the Protocol. Thus, for example, if instruments of ratification are exchanged on July 1, 1995, assistance may be given by Canada under Article XXVI A for a claim that was finally determined in the United States at any time after July 1, 1985.

Paragraph 4 of Article 21 provides special effective date provisions for paragraphs 2 through 7 of the new Article XXIX B (Taxes Imposed by Reason of Death) of the Convention, introduced by Article 18 of the Protocol, and certain related provisions elsewhere in the Convention. These special effective date provisions are discussed above in connection with Article 18.

Finally, paragraph 5 of Article 21 provides a special effective date for paragraph 2 of Article 3 of the Protocol, which provides a new residence rule for certain "continued" corporations. Under paragraph 5, the new residence rule for such corporations will have effect for taxable years beginning on or after the first day of January following the date on which the Protocol enters into force.

Article I — Personal Scope

This Convention is generally applicable to persons who are residents of one or both of the Contracting States.

Technical Explanation [1984]:

Article I provides that the Convention is generally applicable to persons who are residents of either Canada or the United States or both Canada and the United States. The word "generally" is used because certain provisions of the Convention apply to persons who are residents of neither Canada nor the United States.

Article II — Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

Technical Explanation [1984]:

Paragraph 1 states that the Convention applies to taxes "on income and on capital" imposed on behalf of Canada and the United States, irrespective of the manner in which such taxes are levied. Neither Canada nor the United States presently impose taxes on capital. Paragraph 1 is not intended either to broaden or to limit paragraph 2, which provides that the Convention shall apply, in the case of Canada, to the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the *Income Tax Act* and, in the case of the United States, to the Federal income taxes imposed by the *Internal Revenue Code* ("the Code").

National taxes not generally covered by the Convention include, in the case of the United States, the estate, gift, and generation-skipping transfer taxes, the Windfall Profits Tax, Federal unemployment taxes, social security taxes imposed under sections 1401, 3101, and 3111 of the Code, and the excise tax on insurance premiums imposed under Code section 4371. The Convention also does not generally cover the Canadian excise tax on net insurance premiums paid by residents of Canada for coverage of a risk situated in Canada, the Petroleum and Gas Revenue Tax (PGRT) and the Incremental Oil Revenue Tax (IORT). However, the Convention has the effect of covering the Canadian social security tax in certain respects because under Canadian domestic tax law no such tax is due if there is no income subject to tax under the *Income Tax Act* of Canada. Taxes imposed by the states of the United States, and by the provinces of Canada, are not generally covered by the Convention. However, if such taxes are imposed in accordance with the provisions of the Convention, a foreign tax credit is ensured by paragraph 7 of Article XXIV (Elimination of Double Taxation).

2. Notwithstanding paragraph 1, the taxes existing on March 17, 1995 to which the Convention shall apply are:

(a) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act*; and

(b) in the case of the United States, the Federal income taxes imposed by the *Internal Revenue Code* of 1986. However, the Convention shall apply to:

(i) the United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);

(ii) the United States excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations);

(iii) the United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 2 of Article XXIV (Elimination of Double Taxation) and paragraph 4 of Article XXIX (Miscellaneous Rules); and

(iv) the United States estate taxes imposed by the *Internal Revenue Code* of 1986, to the extent, and only to the extent, necessary to implement the provisions of paragraph 3(g) of Article XXVI (Mutual Agreement Procedure) and Article XXIX B (Taxes Imposed by Reason of Death).

Technical Explanation [1995 Protocol]:

Article 1 of the Protocol amends Article II (Taxes Covered) of the Convention. Article II identifies the taxes to which the Convention applies. Paragraph 1 of Article 1 replaces paragraphs 2 through 4 of Article II of the Convention with new paragraphs 2 and 3. For each Contracting State, new paragraph 2 of Article II specifies the taxes existing on the date of signature of the Protocol to which the Convention applies. New paragraph 3 provides that the Convention will also apply to taxes identical or substantially similar to those specified in paragraph 2, and to any new capital taxes, that are imposed after the date of signature of the Protocol.

New paragraph 2(a) of Article II describes the Canadian taxes covered by the Convention. As amended by the Protocol, the Convention will apply to all taxes imposed by the Government of Canada under the *Income Tax Act*.

New paragraph 2(b) of Article II amends the provisions identifying the U.S. taxes covered by the Convention in several respects. The Protocol incorporates into paragraph 2(b) the special rules found in paragraph 4 of Article II of the present Convention. New paragraph 2(b)(iii) conforms the rule previously found in paragraph 4(c) of Article II to the amended provisions of Article XXIV (Elimination of Double Taxation), under which Canada has agreed to grant a foreign tax credit for U.S. social security taxes. In addition, the Protocol adds a fourth special rule to reflect the addition to the Convention of new Article XXIX B (Taxes Imposed by Reason of Death) and related provisions in new paragraph 3(g) of Article XXVI (Mutual Agreement Procedure).

Article 1 of the Protocol also makes minor clarifying, non-substantive amendments to paragraphs 2 and 3 of the Article.

Technical Explanation [1984]:

Paragraph 2 contrasts with paragraph 1 of the Protocol to the 1942 Convention, which refers to "Dominion income taxes." In addition, unlike the 1942 Convention, the Convention does not contain a reference to "surtaxes and excess-profits taxes."

Related Provisions: Art. XXVI A:9 — Cross-border collection assistance applies to other taxes as well.

History: Para. 2 amended by 1995 Protocol, article 1, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) and (4) under "Application of the 1995 Protocol" above). Para. 2 formerly read:

> 2. The existing taxes to which the Convention shall apply are:
>
> (a) in the case of Canada, the taxes imposed by the Government of Canada under Parts I, XIII and XIV of the *Income Tax Act*; and
>
> (b) in the case of the United States, the Federal income taxes imposed by the *Internal Revenue Code*.

3. The Convention shall apply also to:

(a) any taxes identical or substantially similar to those taxes to which the Convention applies under paragraph 2; and

(b) taxes on capital;

which are imposed after March 17, 1995 in addition to, or in place of, the taxes to which the Convention applies under paragraph 2.

Technical Explanation [1995 Protocol]:

See under para. 2.

Technical Explanation [1984]:

Paragraph 3 provides that the Convention also applies to any taxes identical or substantially similar to the taxes on income in existence on September 26, 1980 which are imposed in addition to or in place of the taxes existing on that date. Similarly, taxes on capital imposed after that date are to be covered.

It was agreed that Part I of the *Income Tax Act* of Canada is a covered tax even though Canada has made certain modifications in the *Income Tax Act* after the signature of the Convention and before the signature of the 1983 Protocol. In particular, Canada has enacted a low flat rate tax on petroleum production (the PGRT) which, at the time of the signature of the 1983 Protocol, is imposed generally at a statutory rate of 14.67 percent for the period June 1, 1982 to May 31, 1983, and at 16 percent thereafter, generally reduced to an effective rate of 11 percent or 12 percent after deducting a 25 percent resource allowance. The PGRT is not deductible in computing income for Canadian income tax purposes. This agreement is not intended to have implications for any other convention or for the interpretation of Code sections 901 and 903. Further, the PGRT and IORT are not taxes described in paragraphs 2 or 3.

History: Para. 3 amended by 1995 Protocol, article 1, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. The Convention shall apply also to:
>
> (a) any identical or substantially similar taxes on income; and
>
> (b) taxes on capital
>
> which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.

4. [Repealed]

Technical Explanation [1984]:

Paragraph 4 provides that, notwithstanding paragraphs 2 and 3, the Convention applies to certain United States taxes for certain specified purposes: the accumulated earnings tax and personal holding company tax are covered only to the extent necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends); the excise taxes imposed with respect to private foundations are covered only to the extent necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations); and the social security taxes imposed under sections 1401, 3101, and 3111 of the Code are covered only to the extent necessary to implement the provisions of paragraph 4 of Article XXIX (Miscellaneous Rules). The pertinent provisions of Articles X, XXI, and XXIX are described below. Canada has no national taxes similar to the United States accumulated earnings tax, personal holding company tax, or excise taxes imposed with respect to private foundations.

Article II does not specifically refer to interest, fines and penalties. Thus, each Contracting State may, in general, impose interest, fines, and penalties or pay interest pursuant to its domestic laws. Any question whether such items are being imposed or paid in connection with covered taxes in a manner consistent with provisions of the Convention, such as Article XXV (Non-Discrimination), may, however, be resolved by the competent authorities pursuant to Article XXVI (Mutual Agreement Procedure). See, however, the discussion below of the treatment of certain interest under Articles XXIX (Miscellaneous Rules) and XXX (Entry Into Force).

History: Para. 4 repealed by 1995 Protocol, article 1, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 4 formerly read:

> 4. Notwithstanding the provisions of paragraphs 2(b) and 3, the Convention shall apply to:
>
> (a) the United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);
>
> (b) the United States excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations); and
>
> (c) the United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXIX (Miscellaneous Rules).

Article III — General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) when used in a geographical sense, the term "Canada" means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(b) the term "United States" means:

(i) the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory; and

(ii) when used in a geographical sense, such term also includes any area beyond the territorial seas of the United States which, in accordance with international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(c) the term "Canadian tax" means the taxes referred to in Article II (Taxes Covered) that are imposed on income by Canada;

(d) the term "United States tax" means the taxes referred to in Article II (Taxes Covered), other than in subparagraph (b)(i) to (iv) of paragraph 2 thereof, that are imposed on income by the United States;

(e) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his authorized representative; and

(ii) in the case of the United States, the Secretary of the Treasury or his delegate;

(h) the term "international traffic" with reference to a resident of a Contracting State means any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident) except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State;

(i) the term "State" means any national State, whether or not a Contracting State; and

(j) the term "the 1942 Convention" means the Convention and Protocol between Canada and the United States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in the case of Income Taxes signed at Washington on March 4, 1942, as amended by the Convention signed at Ottawa on June 12, 1950, by the Convention signed at Ottawa on August 8, 1956 and by the Supplementary Convention signed at Washington on October 25, 1966.

Technical Explanation [1995 Protocol]:

This Article of the Protocol amends paragraphs 1(c) and 1(d) of Article III (General Definitions) of the Convention. These paragraphs define the terms "Canadian tax" and "United States tax," respectively. The present Convention defines "Canadian tax" to mean the Canadian taxes specified in paragraph 2(a) or 3(a) of Article II (Taxes Covered), i.e., Canadian income taxes. It similarly defines the term "United States tax" to mean the U.S. taxes specified in paragraph 2(b) or 3(a) of Article II, i.e., U.S. income taxes.

As amended by the Protocol, paragraph 2(a) of Article II of the Convention covers all taxes imposed by Canada under its *Income Tax Act*, including certain taxes that are not income taxes. As explained below, paragraph 2(b) is similarly amended by the Protocol to include certain U.S. taxes that are not income taxes. It was, therefore, necessary to amend the terms "Canadian tax" and "United States tax" so that they would continue to refer exclusively to the income taxes imposed by each Contracting State. The amendment to the definition of the term "Canadian tax" ensures, for example, that the Protocol will not obligate the United States to give a foreign tax credit under Article XXIV (Elimination of Double Taxation) for covered taxes other than income taxes.

The definition of "United States tax," as amended, excludes certain United States taxes that are covered in Article II only for certain limited purposes under the Convention. These include the accumulated earnings tax, the personal holding company tax, foundation excise taxes, social security taxes, and estate taxes. To the extent that these are to be creditable taxes in Canada, that fact is specified elsewhere in the Convention. A Canadian income tax credit for U.S. social security taxes is provided in new paragraph 2(a)(ii) of Article XXIV (Elimination of Double Taxation). A Canadian income tax credit for the U.S. estate taxes is provided in paragraph 6 of new Article XXIX B (Taxes Imposed by Reason of Death).

Technical Explanation [1984]:

Article III provides definitions and general rules of interpretation for the Convention. Paragraph 1(a) states that the term "Canada," when used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, under international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources. This definition differs only in form from the definition of Canada in the 1942 Convention; paragraph 1(a) omits the reference in the 1942 Convention to "the Provinces, the Territories and Sable Island" as unnecessary.

Paragraph 1(b)(i) defines the term "United States" to mean the United States of America. The term does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory.

Paragraph 1(b)(ii) states that when the term "United States" is used in a geographical sense the term also includes any area beyond the territorial seas of the United States which, under international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Paragraph 1(c) defines the term "Canadian tax" to mean the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the *Income Tax Act* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the Government of Canada after that date and which are in addition to or in place of the then existing taxes. The term does not extend to capital taxes, if and when such taxes are ever imposed by Canada.

Paragraph 1(d) defines the term "United States tax" to mean the Federal income taxes imposed by the *Internal Revenue Code* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the United States after that date in addition to or in place of the then existing taxes. The term does not extend to capital taxes, nor to the United States taxes identified in paragraph 4 of Article II (Taxes Covered).

Paragraph 1(e) provides that the term "person" includes an individual, an estate, a trust, a company, and any other body of persons. Although both the United States and Canada do not regard partnerships as taxable entities, the definition in the paragraph is broad enough to include partnerships where necessary.

Paragraph 1(f) defines the term "company" to mean any body corporate or any entity which is treated as a body corporate for tax purposes.

The term "competent authority" is defined in paragraph 1(g) to mean, in the case of Canada, the Minister of National Revenue or his authorized representative and, in the case of the United States, the Secretary of the Treasury or his delegate. The Secretary of the Treasury has delegated the general authority to act as competent authority to the Commissioner of the Internal Revenue Service, who has redelegated such authority to the Associate Commissioner (Operations). The Assistant Commissioner (Examination) has been delegated the authority to administer programs for simultaneous, spontaneous and industrywide exchanges of information. The Director, Foreign Operations District, has been delegated the authority to administer programs for routine and specific exchanges of information and mutual assistance in collection. The Assistant Commissioner (Criminal Investigations) has been delegated the authority to administer the simultaneous criminal investigation program with Canada.

Paragraph 1(h) defines the term "international traffic" to mean, with reference to a resident of a Contracting State, any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident), except where the principal purpose of the voyage is transport between points within the other Contracting State. For example, in determining for Canadian tax purposes whether a United States resident has derived profits from the operation of ships or aircraft in international traffic, a voyage of a ship or aircraft (whether or not operated or used by that resident) that includes stops in both Contracting States will not be international traffic if the principal purpose of the voyage is to transport passengers or property from one point in Canada to another point in Canada.

Paragraph 1(i) defines the term "State" to mean any national State, whether or not a Contracting State.

Paragraph 1(j) establishes "the 1942 Convention" as the term to be used throughout the Convention for referring to the pre-existing income tax treaty relationship between the United States and Canada.

Related Provisions: *Income Tax Conventions Interpretation Act* 3 — Meanings of undefined terms; 5 — Definitions of "annuity", "Canada", "immovable property", "real property", "periodic pension payment"; 6 — Definition of "interest".

History: Subparas. 1(c) and (d) amended by 1995 Protocol, article 2, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Subparas. (c) and (d) formerly read:

> (c) the term "Canadian tax" means the Canadian taxes referred to in paragraphs 2(a) and 3(a) of Article II (Taxes Covered);
>
> (d) the term "United States tax" means the United States taxes referred to in paragraphs 2(b) and 3(a) of Article II (Taxes Covered);

Subpara. 1(h) amended by 1983 Protocol, article I.

Selected Cases [Art. III(1)]: *Cudd Pressure Control Inc. v. R.*, [1999] 1 C.T.C. 1 (FCA); leave to appeal to SCC refused (1999), 242 N.R. 400 (note) (Notional rent not deductible).

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article XXVI (Mutual Agreement Procedure), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Technical Explanation [1984]:

Article III provides definitions and general rules of interpretation for the Convention. Paragraph 1(a) states that the term "Canada," when used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, under international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources. This definition differs only in form from the definition of Canada in the 1942 Convention; paragraph 1(a) omits the reference in the 1942 Convention to "the Provinces, the Territories and Sable Island" as unnecessary.

Paragraph 1(b)(i) defines the term "United States" to mean the United States of America. The term does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory.

Paragraph 1(b)(ii) states that when the term "United States" is used in a geographical sense the term also includes any area beyond the territorial seas of the United States which, under international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Paragraph 1(c) defines the term "Canadian tax" to mean the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the *Income Tax Act* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the Government of Canada after that date and which are in addition to or in place of the then existing taxes. The term does not extend to capital taxes, if and when such taxes are ever imposed by Canada.

Paragraph 1(d) defines the term "United States tax" to mean the Federal income taxes imposed by the *Internal Revenue Code* as in existence on September 26, 1980 and any identical or substantially similar taxes on income imposed by the United States after that date in addition to or in place of the then existing taxes. The term does not extend to capital taxes, nor to the United States taxes identified in paragraph 4 of Article II (Taxes Covered).

Paragraph 1(e) provides that the term "person" includes an individual, an estate, a trust, a company, and any other body of persons. Although both the United States and Canada do not regard partnerships as taxable entities, the definition in the paragraph is broad enough to include partnerships where necessary.

Paragraph 1(f) defines the term "company" to mean any body corporate or any entity which is treated as a body corporate for tax purposes.

The term "competent authority" is defined in paragraph 1(g) to mean, in the case of Canada, the Minister of National Revenue or his authorized representative and, in the case of the United States, the Secretary of the Treasury or his delegate. The Secretary of the Treasury has delegated the general authority to act as competent authority to the Commissioner of the Internal Revenue Service, who has redelegated such authority to the Associate Commissioner (Operations). The Assistant Commissioner (Examination) has been delegated the authority to administer programs for simultaneous, spontaneous and industrywide exchanges of information. The Director, Foreign Operations District, has been delegated the authority to administer programs for routine and specific exchanges of information and mutual assistance in collection. The Assistant Commissioner (Criminal Investigations) has been delegated the authority to administer the simultaneous criminal investigation program with Canada.

Paragraph 1(h) defines the term "international traffic" to mean, with reference to a resident of a Contracting State, any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident), except where the principal purpose of the voyage is transport between points within the other Contracting State. For example, in determining for Canadian tax purposes whether a United States resident has derived profits from the operation of ships or aircraft in international traffic, a voyage of a ship or aircraft (whether or not operated or used by that resident) that includes stops in both Contracting States will not be international traffic if the principal purpose of the voyage is to transport passengers or property from one point in Canada to another point in Canada.

Paragraph 1(i) defines the term "State" to mean any national State, whether or not a Contracting State.

Paragraph 1(j) establishes "the 1942 Convention" as the term to be used throughout the Convention for referring to the pre-existing income tax treaty relationship between the United States and Canada.

Paragraph 2 provides that, in the case of a term not defined in the Convention, the domestic tax law of the Contracting State applying to the Convention shall control, unless the context in which the term is used requires a definition independent of domestic tax law or the competent authorities reach agreement on a meaning pursuant to Article XXVI (Mutual Agreement Procedure). The term "context" refers to the purpose and background of the provision in which the term appears.

Pursuant to the provisions of Article XXVI, the competent authorities of the Contracting States may resolve any difficulties or doubts as to the interpretation or application of the Convention. An agreement by the competent authorities with respect to the meaning of a term used in the Convention would supersede conflicting meanings in the domestic laws of the Contracting States.

Article IV — Residence

1. For the purposes of this Convention, the term "resident" of a Contracting State means any person that, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, citizenship, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by the estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries. For the purposes of this paragraph, an individual who is not a resident of Canada under this paragraph and who is a United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) is a resident of the United States only if the individual has a substantial presence, permanent home or habitual abode in the United States, and that individual's personal and economic relations are closer to the United States than to any third State. The term "resident" of a Contracting State is understood to include:

> (a) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority, and
>
> (b)
>
> > (i) a trust, organization or other arrangement that is operated exclusively to administer or provide pension, retirement or employee benefits; and
> >
> > (ii) a not-for-profit organization
>
> that was constituted in that State and that is, by reason of its nature as such, generally exempt from income taxation in that State.

Technical Explanation [1995 Protocol]:

Article 3 of the Protocol amends Article IV (Residence) of the Convention. It clarifies the meaning of the term "resident" in certain cases and adds a special rule, found in a number of recent U.S. treaties, for determining the residence of U.S. citizens and "green-card" holders.

The first sentence of paragraph 1 of Article IV sets forth the general criteria for determining residence under the Convention. It is amended by the Protocol to state explicitly that a person will be considered a resident of a Contracting State for purposes of the Convention if he is liable to tax in that Contracting State by reason of citizenship. Although the sentence applies to both Contracting States, only the United States taxes its non-resident citizens in the same manner as its residents. Aliens admitted to the United States for permanent residence ("green card" holders) continue to qualify as U.S. residents under the first sentence of paragraph 1, because they are taxed by the United States as residents, regardless of where they physically reside.

U.S. citizens and green card holders who reside outside the United States, however, may have relatively little personal or economic nexus with the United States. The Protocol adds a second sentence to paragraph 1 that acknowledges this fact by limiting the circumstances under which such persons are to be treated, for purposes of the Convention, as U.S. residents. Under that sentence, a U.S. citizen or green card holder will be treated as a resident of the United States for purposes of the Convention, and, thereby, be entitled to treaty benefits, only if (1) the individual has a substantial presence, permanent home, or habitual abode in the United States, and (2) the individual's personal and economic relations with the United States are closer than those with any third country. If, however, such an individual is a resident of both the United States and Canada under the first sentence of the paragraph, his residence for purposes of the Convention is determined instead under the "tie-breaker" rules of paragraph 2 of the Article.

The fact that a U.S. citizen who does not have close ties to the United States may not be treated as a U.S. resident under Article IV of the Convention does not alter the application of the saving clause of paragraph 2 of Article XXIX (Miscellaneous Rules) to that citizen. However, like any other individual that is a resident alien under U.S. law, a green card holder is treated as a resident of the United States for purposes of the saving clause only if he qualifies as such under Article IV.

New paragraph 1(a) confirms that the term "resident" of a Contracting State includes the Government of that State or a political subdivision or local authority of that State, as well as any agency or instrumentality of one of these governmental entities. This is implicit in the current Convention and in other U.S. and Canadian treaties, even where not specified.

New paragraph 1 also clarifies, in subparagraph (b), that trusts, organizations, or other arrangements operated exclusively to provide retirement or employee benefits, and other not-for-profit organizations, such as organizations described in section 501(c) of the *Internal Revenue Code*, are residents of a Contracting State if they are constituted in that State and are generally exempt from income taxation in that State by reason of their nature as described above. This change clarifies that the specified entities are to be treated as residents of one of the Contracting States. This corresponds to the interpretation that had previously been adopted by the Contracting States. Such entities, therefore, will be entitled to the benefits of the Convention with respect to the other Contracting State, provided that they satisfy the requirements of new Article XXIX A (Limitation on Benefits) (discussed below).

Technical Explanation [1984]:

Article IV provides a detailed definition of the term "resident of a Contracting State." The definition begins with a person's liability to tax as a resident under the respective taxation laws of the Contracting States. A person who, under those laws, is a resident of one Contracting State and not the other need look no further. However, the Convention definition is also designed to assign residence to one State or the other for purposes of the Convention in circumstances where each of the Contracting States believes a person to be its resident. The Convention definition is, of course, exclusively for purposes of the Convention.

Paragraph 1 provides that the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. The phrase "any other criterion of a similar nature" includes, for U.S. purposes, an election under the Code to be treated as a U.S. resident. An estate or trust is, however, considered to be a resident of a Contracting State only to the extent that income derived by such estate or trust is liable to tax in that State either in its hands or in the hands of its beneficiaries. To the extent that an estate or trust is considered a resident of a Contracting State under this provision, it can be a "beneficial owner" of items of income specified in other articles of the Convention — e.g. paragraph 2 of Article X (Dividends).

Related Provisions: *Income Tax Conventions Interpretation Act* 6.2 — Residence of partnership.

History: Para. 1 amended by 1995 Protocol, article 3(1), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 1 formerly read:

> 1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by such estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries.

I.T. Technical News: No. 16 (*Crown Forest Industries* case; U.S. S-Corps and LLCs).

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States or in neither State, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither State, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) if he is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Technical Explanation [1984]:

Paragraphs 2, 3, and 4 provide rules to determine a single residence for purposes of the Convention for persons resident in both Contracting States under the rules set forth in paragraph 1. Paragraph 2 deals with individuals. A "dual resident" individual is initially deemed to be a resident of the Contracting State in which he has a permanent home available to him. If the individual has a permanent home available to him in both States or in neither, he is deemed to be a resident of the Contracting State with which his personal and economic relations are closer. If the personal and economic relations of an individual are not closer to one Contracting State than to the other, the individual is deemed to be a resident of the Contracting State in which he has a habitual abode. If he has such an abode in both States or in neither State, he is deemed to be a resident of the Contracting State of which he is a citizen. If the individual is a citizen of both States or of neither, the competent authorities are to settle the status of the individual by mutual agreement.

Related Provisions: ITA 250(5) — Corporation not resident in Canada under treaty is deemed not resident under ITA.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it was created under the laws in force in a Contracting State, it shall be deemed to be a resident of that State. Notwithstanding the preceding sentence, a company that was created in a Contracting State, that is a resident of both Contracting States and that is continued at any time in the other Contracting State in accordance with the corporate law in that other State shall be deemed while it is so continued to be a resident of that other State.

Technical Explanation [1995 Protocol]:

Article 3 of the Protocol adds a sentence to paragraph 3 of Article IV of the current Convention to address the residence of certain dual resident corporations. Certain jurisdictions allow local incorporation of an entity that is already organized and incorporated under the laws of another country. Under Canadian law, such an entity is referred to as having been "continued" into the other country. Although the Protocol uses the Canadian term, the provision operates reciprocally. The new sentence states that such a corporation will be considered a resident of the State into which it is continued. Paragraph 5 of Article 21 of the Protocol governs the effective date of this provision.

Technical Explanation [1984]:

Paragraph 3 provides that if, under the provisions of paragraph 1, a company is a resident of both Canada and the United States, then it shall be deemed to be a resident of the State under whose laws (including laws of political subdivisions) it was created. Paragraph 3 does not refer to the State in which a company is organized, thus making clear that the tie-breaker rule for a company is controlled by the State of the company's original creation. Various jurisdictions may allow local incorporation of an entity that is already organized and incorporated under the laws of another country. Paragraph 3 provides certainty in both the United States and Canada with respect to the treatment of such an entity for purposes of the Convention.

Related Provisions: ITA 250(5.1) — Continuation in other jurisdiction.

History: The last sentence of para. 3 added by 1995 Protocol, article 3(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(5) under "Application of the 1995 Protocol" above).

4. Where by reason of the provisions of paragraph 1 an estate, trust or other person (other than an individual or a company) is a resident of both Contracting States, the competent authorities of the States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

Technical Explanation [1984]:

Paragraph 4 provides that where, by reason of the provisions of paragraph 1, an estate, trust, or other person, other than an individual or a company, is a resident of both Contracting States, the competent authorities of the States shall by mutual agreement endeavor to settle the question and determine the mode of application of the Convention to such person. This delegation of authority to the competent authorities complements the provisions of Article XXVI (Mutual Agreement Procedure), which implicitly grant such authority.

5. Notwithstanding the provisions of the preceding paragraphs, an individual shall be deemed to be a resident of a Contracting State if:

(a) the individual is an employee of that State or of a political subdivision, local authority or instrumentality thereof rendering services in the discharge of functions or a governmental nature in the other Contracting State or in a third State; and

(b) the individual is subjected in the first-mentioned State to similar obligations in respect of taxes on income as are residents of the first-mentioned State.

The spouse and dependent children residing with such an individual and meeting the requirements of subparagraph (b) above shall also be deemed to be residents of the first-mentioned State.

Technical Explanation [1984]:

Paragraph 5 provides a special rule for certain government employees, their spouses, and dependent children. An individual is deemed to be a resident of a Contracting State if he is an employee of that State or of a political subdivision, local authority, or instrumentality of that State, is rendering services in the discharge of functions of a governmental nature in any State, and is subjected in the first-mentioned State to "similar obligations" in respect of taxes on income as are residents of the first-mentioned State. Paragraph 5 provides further that a spouse and dependent children residing with a government employee and also subject to "similar obligations" in respect of income taxes as residents of the first-mentioned State are also deemed to be residents of that State. Paragraph 5 overrides the normal tie-breaker rule of paragraph 2. A U.S. citizen or resident who is an employee of the U.S. government in a foreign country or who is a spouse or dependent of such employee is considered to be subject in the United States to "similar obligations" in respect of taxes on income as those imposed on residents of the United States, notwithstanding that such person may be entitled to the benefits allowed by sections 911 or 912 of the Code.

Related Provisions: ITA 250(1)(c) — Residence of Canadian ambassador, etc., working outside Canada.

Selected Cases [Art. IV]: *Crown Forest Industries Ltd. v. Canada*, [1995] 2 C.T.C. 64 (SCC) (Residence implies taxability on world wide income).

Article V — Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.

Technical Explanation [1984]:

Paragraph 1 provides that for the purposes of the Convention the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on. Article V does not use the term "enterprise of a Contracting State," which appears in the 1942 Convention. Thus, paragraph 1 avoids introducing an additional term into the Convention. The omission of the term is not intended to have any implications for the interpretation of the 1942 Convention.

I.T. Technical News: No. 18 (*Dudney* case).

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Technical Explanation [1984]:

Paragraph 2 provides that the term "permanent establishment" includes especially a place of management, a branch, an office, a factory, a workshop, and a mine, oil or gas well, quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment if, but only if, it lasts more than 12 months.

Technical Explanation [1984]:

Paragraph 3 adds that a building site or construction or installation project constitutes a permanent establishment if and only if it lasts for more than 12 months.

4. The use of an installation or drilling rig or ship in a Contracting State to explore for or exploit natural resources constitutes a permanent establishment if, but only if, such use is for more than three months in any twelve-month period.

Technical Explanation [1984]:

Paragraph 4 provides that a permanent establishment exists in a Contracting State if the use of an installation or drilling rig or drilling ship in that State to explore for or exploit natural resources lasts for more than 3 months in any 12 month period, but not if such activity exists for a lesser period of time. The competent authorities have entered into an agreement under the 1942 Convention setting forth guidelines as to certain aspects of Canadian taxation of drilling rigs owned by U.S. persons that constitute Canadian permanent establishments. The agreement will be renewed when this Convention enters into force.

History: Para. 4 amended by 1983 Protocol, article II.

5. A person acting in a Contracting State on behalf of a resident of the other Contracting State — other than an agent of an independent status to whom paragraph 7 applies — shall be deemed to be a permanent establishment in the first-mentioned State if such person has, and habitually exercises in that State, an authority to conclude contracts in the name of the resident.

Technical Explanation [1984]:

Paragraph 5 provides that a person acting in a Contracting State on behalf of a resident of the other Contracting State is deemed to be a permanent establishment of the resident if such person has and habitually exercises in the first-mentioned State the authority to conclude contracts in the name of the resident. This rule does not apply to an agent of independent status, covered by paragraph 7. Under the provisions of paragraph 5, a permanent establishment may exist even in the absence of a fixed place of business. If, however, the activities of a person described in paragraph 5 are limited to the ancillary activities described in paragraph 6, then a permanent establishment does not exist solely on account of the person's activities.

There are a number of minor differences between the provisions of paragraphs 1 through 5 and the analogous provisions of the 1942 Convention. One important deviation is elimination of the rule of the 1942 Convention which deems a permanent establishment to exist in any circumstance where a resident of one State uses substantial equipment in the other State for any period of time. The Convention thus generally raises the threshold for source basis taxation of activities that involve substantial equipment (and that do not otherwise constitute a permanent establishment). Another deviation of some significance is elimination of the rule of the 1942 Convention that considers a permanent establishment to exist where a resident of one State carries on business in the other State through an agent or employee who has a stock of merchandise from which he regularly fills orders that he receives. The Convention provides that a person other than an agent of independent status who is engaged solely in the maintenance of a stock of goods or merchandise belonging to a resident of the other State for the purpose of storage, display or delivery does not constitute a permanent establishment.

6. Notwithstanding the provisions of paragraphs 1, 2 and 5, the term "permanent establishment" shall be deemed not to include a fixed place of business used solely for, or a person referred to in paragraph 5 engaged solely in, one or more of the following activities:

(a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;

(b) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) the purchase of goods or merchandise, or the collection of information, for the resident; and

(e) advertising, the supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the resident.

Technical Explanation [1984]:

Paragraph 6 provides that a fixed place of business used solely for, or an employee described in paragraph 5 engaged solely in, certain specified activities is not a permanent establishment, notwithstanding the provisions of paragraphs 1, 2, and 5. The specified activities are: a) the use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident whose business is being carried on; b) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery; c) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person; d) the purchase of goods or merchandise, or the collection of information, for the resident; and e) advertising, the supply of information, scientific research, or similar activities which have a preparatory or auxiliary character, for the resident. Combinations of the specified activities have the same status as any one of the activities. Thus, unlike the OECD Model Convention, a combination of the activities described in subparagraphs 6(a) through 6(e) need not be of a preparatory or auxiliary character (except as required by subparagraph 6(e)) in order to avoid the creation of a permanent establishment. The reference in paragraph 6(e) to specific activities does not imply that any other particular activities — for example, the servicing of a patent or a know-how contract or the inspection of the implementation of engineering plans — do not fall within the scope of paragraph 6(e) provided that, based on the facts and circumstances, such activities have a preparatory or auxiliary character.

7. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

Technical Explanation [1984]:

Paragraph 7 provides that a resident of a Contracting State is not deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in the other State through a broker, general commission agent, or any other agent of independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not constitute either company a permanent establishment of the other.

Technical Explanation [1984]:

Paragraph 8 states that the fact that a company which is a resident of one Contracting State controls or is controlled by a company which is either a resident of the other Contracting State or which is carrying on a business in the other State, whether through a permanent establishment or otherwise, does not automatically render either company a permanent establishment of the other.

9. For the purposes of the Convention, the provisions of this Article shall be applied in determining whether any person has a permanent establishment in any State.

Technical Explanation [1984]:

Paragraph 9 provides that, for purposes of the Convention, the provisions of Article V apply in determining whether any person has a permanent establishment in any State. Thus, these provisions would determine whether a person other than a resident of Canada or the United States has a permanent establishment in Canada or the United States, and whether a person resident in Canada or the United States has a permanent establishment in a third State.

Related Provisions: *Income Tax Conventions Interpretation Act* 4 — Permanent establishment in Canada.

Selected Cases [Art. V]: *Dudney v. R.*, [2000] 2 C.T.C. 56 (FCA); aff'g [1999] 1 C.T.C. 2267 (TCC) (Taxpayer had no "fixed base").

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

Article VI — Income from Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture, forestry or other natural resources) situated in the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that income derived by a resident of a Contracting State from real property situated in the other Contracting State may be taxed by that other State. Income from real property includes, for purposes of Article VI, income from agriculture, forestry or other natural resources. Also, while "income derived ... from real property" includes income from

rights such as an overriding royalty or a net profits interest in a natural resource, it does not include income in the form of rights to explore for or exploit natural resources which a party receives as compensation for services (e.g., exploration services); the latter income is subject to the provisions of Article VII (Business Profits), XIV (Independent Personal Services), or XV (Dependent Personal Services), as the case may be. As provided by paragraph 3, paragraph 1 applies to income derived from the direct use, letting or use in any other form of real property and to income from the alienation of such property.

2. For the purposes of this Convention, the term "real property" shall have the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated and shall include any option or similar right in respect thereof. The term shall in any case include usufruct of real property, rights to explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources; ships and aircraft shall not be regarded as real property.

Technical Explanation [1984]:

Generally speaking, the term "real property" has the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated, in accordance with paragraph 2. In any case, the term includes any option or similar right in respect of real property, the usufruct of real property, and rights to explore for or to exploit mineral deposits, sources, and other natural resources. The reference to "rights to explore for or to exploit mineral deposits, sources and other natural resources" includes rights generating either variable (e.g., computed by reference to the amount of value or production) or fixed payments. The term "real property" does not include ships and aircraft.

Related Provisions: *Income Tax Conventions Interpretation Act* 5 — Definition of "immovable property" and "real property".

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property and to income from the alienation of such property.

Technical Explanation [1984]:

Unlike Article XIII A of the 1942 Convention, Article VI does not contain an election to allow a resident of a Contracting State to compute tax on income from real property situated in the other State on a net basis. Both the *Internal Revenue Code* and the *Income Tax Act* of Canada generally allow for net basis taxation with respect to real estate rental income, although Canada does not permit such an election for natural resource royalties. Also, unlike the 1942 Convention which in Article XI imposes a 15 percent limitation on the source basis taxation of rental or royalty income from real property, Article VI of the Convention allows a Contracting State to impose tax on such income under its internal law. In Canada the rate of tax on resource royalties is 25 percent of the gross amount of the royalty, if the income is not attributable to a business carried on in Canada. In an exchange of notes to the Protocol, the United States and Canada agreed to resume negotiations, upon request by either country, to provide an appropriate limit on taxation in the State of source if either country subsequently increases its statutory tax rate now applicable to such royalties (25 percent in the case of Canada and 30 percent in the case of the United States).

History: Article VI amended by 1983 Protocol, article III.

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

Article VII — Business Profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on, or has carried on, business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

Technical Explanation [1984]:

Paragraph 1 provides that business profits of a resident of a Contracting State are taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated in that other State. If the resident carries on, or has carried on, business through such a permanent establishment, the other State may tax such business profits but only so much of them as are attributable to the permanent establishment. The reference to a prior permanent establishment ("or has carried on") makes clear that a Contracting State in which a permanent establishment existed has the right to tax the business profits attributable to that permanent establishment, even if there is a delay in the receipt or accrual of such profits until after the permanent establishment has been terminated.

Any business profits received or accrued in taxable years in which the Convention has effect, in accordance with Article XXX (Entry Into Force), which are attributable to a permanent establishment that was previously terminated are subject to tax in the Contracting State in which such permanent establishment existed under the provisions of Article VII.

Related Provisions: Art. V — Permanent establishment.

I.T. Technical News: No. 18 (*Dudney* case).

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with any other person related to the resident (within the meaning of paragraph 2 of Article IX (Related Persons)).

Technical Explanation [1984]:

Paragraph 2 provides that where a resident of either Canada or the United States carries on business in the other Contracting State through a permanent establishment in that other State, both Canada and the United States shall attribute to that permanent establishment business profits which the permanent establishment might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with any other person related to the resident. The term "related to the resident" is to be interpreted in accordance with paragraph 2 of Article IX (Related Persons). The reference to other related persons is intended to make clear that the test of paragraph 2 is not restricted to independence between a permanent establishment and a home office.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.

Technical Explanation [1984]:

Paragraph 3 provides that, in determining business profits of a permanent establishment, there are to be allowed as deductions those expenses which are incurred for the purposes of the permanent establishment, including executive and administrative expenses, whether incurred in the State in which the permanent establishment is situated or in any other State. However, nothing in the paragraph requires Canada or the United States to allow a deduction for any expenditure which would not generally be allowed as a deduction under its taxation laws. The language of this provision differs from that of paragraph 1 of Article III of the 1942 Convention, which states that in the determination of net industrial and commercial profits of a permanent establishment there shall be allowed as deductions "all expenses, wherever incurred" as long as such expenses are reasonably allocable to the permanent establishment. Paragraph 3 of Article VII of the Convention is not intended to have any implications for interpretation of the 1942 Convention, but is intended to assure that under

the Convention deductions are allowed by a Contracting State which are generally allowable by that State.

I.T. Technical News: No. 18 (*Cudd Pressure* case).

4. No business profits shall be attributed to a permanent establishment of a resident of a Contracting State by reason of the use thereof for either the mere purchase of goods or merchandise or the mere provision of executive, managerial or administrative facilities or services for such resident.

Technical Explanation [1984]:

Paragraph 4 provides that no business profits are to be attributed to a permanent establishment of a resident of a Contracting State by reason of the use of the permanent establishment for merely purchasing goods or merchandise or merely providing executive, managerial, or administrative facilities or services for the resident. Thus, if a company resident in a Contracting State has a permanent establishment in the other State, and uses the permanent establishment for the mere performance of stewardship or other managerial services carried on for the benefit of the resident, this activity will not result in profits being attributed to the permanent establishment.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

Technical Explanation [1984]:

Paragraph 5 provides that business profits are to be attributed to a permanent establishment by the same method in every taxable period unless there is good and sufficient reason to change such method. In the United States, such a change may be a change in accounting method requiring the approval of the Internal Revenue Service.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Technical Explanation [1984]:

Paragraph 6 explains the relationship between the provisions of Article VII and other provisions of the Convention. Where business profits include items of income which are dealt with separately in other Articles of the Convention, those other Articles are controlling.

7. For the purposes of the Convention, the business profits attributable to a permanent establishment shall include only those profits derived from the assets or activities of the permanent establishment.

Technical Explanation [1984]:

Paragraph 7 provides a definition for the term "attributable to." Profits "attributable to" a permanent establishment are those derived from the assets or activities of the permanent establishment. Paragraph 7 does not preclude Canada or the United States from using appropriate domestic tax law rules of attribution. The "attributable to" definition does not, for example, preclude a taxpayer from using the rules of section 1.864-4(c)(5) of the Treasury Regulations to assure for U.S. tax purposes that interest arising in the United States is attributable to a permanent establishment in the United States. (Interest arising outside the United States is attributable to a permanent establishment in the United States based on the principles of Regulations sections 1.864-5 and 1.864-6 and Revenue Ruling 75-253, 1975-2 C.B. 203.) Income that would be taxable under the Code and that is "attributable to" a permanent establishment under paragraph 7 is taxable pursuant to Article VII, however, even if such income might under the Code be treated as fixed or determinable annual or periodical gains or income not effectively connected with the conduct of a trade or business within the United States. The "attributable to" definition means that the limited "force-of-attraction" rule of Code section 864(c)(3) does not apply for U.S. tax purposes under the Convention.

Selected Cases [Art. VII]: *Sumner v. R.*, [2000] 2 C.T.C. 2359 (TCC) (Performer's "loan-out" company subject to Canadian tax).

Article VIII — Transportation

1. Notwithstanding the provisions of Articles VII (Business Profits), XII (Royalties) and XIII (Gains), profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic, and gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers (including trailers and related equipment for the transport of containers) used principally in international traffic, shall be exempt from tax in the other Contracting State.

Technical Explanation [1984]:

Paragraph 1 provides that profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic are exempt from tax in the other Contracting State, even if, under Article VII (Business Profits), such profits are attributable to a permanent establishment. Paragraph 1 also provides that gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers (including trailers and related equipment for the transport of containers) used principally in international traffic are exempt from tax in the other Contracting State even if, under Article XIII (Gains), those gains would be taxable in that other State. These rules differ from Article V of the 1942 Convention, which conditions the exemption in the State of source on registration of the ship or aircraft in the other State. Paragraph 1 also applies notwithstanding the provisions of Article XII (Royalties). Thus, to the extent that profits described in paragraph 2 would also fall within Article XII (Royalties) (e.g., rent from the lease of a container), the provisions of Article VIII are controlling.

Related Provisions: Art. III:1(h) — Meaning of "international traffic"; ITA 81(1)(c) — Exemption for income from ship or aircraft in international traffic.

History: Para. 1 amended by 1983 Protocol, article IV.

2. For the purposes of this Convention, profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic include profits from:

(a) the rental of ships or aircraft operated in international traffic;

(b) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in international traffic; and

(c) the rental of ships, aircraft or containers (including trailers and related equipment for the transport of containers) provided that such profits are incidental to profits referred to in paragraph 1, 2(a) or 2(b).

Technical Explanation [1984]:

Paragraph 2(a) provides that profits covered by paragraph 1 include profits from the rental of ships or aircraft operated in international traffic. Such rental profits are included whether the rental is on a time, voyage, or bareboat basis, and irrespective of the State of residence of the operator.

Paragraph 2(b) provides that profits covered by paragraph 1 include profits derived from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, if such containers are used in international traffic.

Paragraph 2(c) provides that profits covered by paragraph 1 include profits derived by a resident of a Contracting State from the rental of ships, aircraft, or containers (including trailers and related equipment for the transport of containers), even if not operated in international traffic, as long as such profits are incidental to profits of such person referred to in paragraphs 1, 2(a), or 2(b).

Related Provisions: Art. III:1(h) — Meaning of "international traffic".

3. Notwithstanding the provisions of Article VII (Business Profits), profits derived by a resident of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 3 states that profits derived by a resident of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between points in the other Contracting State is taxable in that other State, whether or not the resident maintains a permanent establishment there. Paragraph 3 overrides the provisions of Article VII. Profits from such a voyage do not qualify for exemption under Article VIII by virtue of the definition of "international traffic" in paragraph 1(h) of Article III (General Definitions). However, profits from a similar voyage by aircraft are taxable in the Contracting State of source only if the profits are attributable to a permanent establishment maintained in that State.

Related Provisions: Art. XV:3 — Exemption for employees' income.

4. Notwithstanding the provisions of Articles VII (Business Profits) and XII (Royalties), profits of a resident of a Contracting State engaged in the operation of motor vehicles or a railway as a common carrier or a contract carrier derived from:

(a) the transportation of passengers or property between a point outside the other Contracting State and any other point; or

(b) the rental of motor vehicles (including trailers) or railway rolling stock, or the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used to transport passengers or property between a point outside the other Contracting State and any other point

shall be exempt from tax in that other Contracting State.

Technical Explanation [1984]:

Paragraph 4 provides that profits derived by a resident of a Contracting State engaged in the operation of motor vehicles or a railway as a common carrier or contract carrier, and attributable to the transportation of passengers or property between a point outside the other Contracting State and any other point are exempt from tax in that other State. In addition, profits of such a person from the rental of motor vehicles (including trailers) or railway rolling stock, or from the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used to transport passengers or property between a point outside the other Contracting State and any other point are exempt from tax in that other State.

Related Provisions: Art. XV:3 — Exemption for employees' income.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to profits or gains referred to in those paragraphs derived by a resident of a Contracting State from the participation in a pool, a joint business or an international operating agency.

Technical Explanation [1984]:

Paragraph 5 provides that a resident of a Contracting State that participates in a pool, a joint business, or an international operating agency is subject to the provisions of paragraphs 1, 3, and 4 with respect to the profits or gains referred to in paragraphs 1, 3, and 4.

6. Notwithstanding the provisions of Article XII (Royalties), profits derived by a resident of a Contracting State from the use, maintenance or rental of railway rolling stock, motor vehicles, trailers or containers (including trailers and related equipment for the transport of containers) used in the other Contracting State for a period or periods not expected to exceed in the aggregate 183 days in any twelve-month period shall be exempt from tax in the other Contracting State except to the extent that such profits are attributable to a permanent establishment in the other State and liable to tax in the other State by reason of Article VII (Business Profits).

Technical Explanation [1984]:

Paragraph 6 states that profits derived by a resident of a Contracting State from the use, maintenance, or rental of railway rolling stock, motor vehicles, trailers, or containers (including trailers and related equipment for the transport of containers) used in the other Contracting State for a period not expected to exceed 183 days in the aggregate in any 12-month period are exempt from tax in that other State except to the extent that the profits are attributable to a permanent establishment, in which case the State of source has the right to tax under Article VII. The provisions of paragraph 6, unlike the provisions of paragraph 4, apply whether or not the resident is engaged in the operation of motor vehicles or a railway as a common carrier or contract carrier. Paragraph 6 overrides the provisions of Article XII (Royalties), which would otherwise permit taxation in the State of source in the circumstances described.

Gains from the alienation of motor vehicles and railway rolling stock derived by a resident of a Contracting State are not affected by paragraph 4 or 6. Such gains would be taxable in the other Contracting State, however, only if the motor vehicles or rolling stock formed part of a permanent establishment maintained there. See paragraphs 2 and 4 of Article XIII.

Article IX — Related Persons

1. Where a person in a Contracting State and a person in the other Contracting State are related and where the arrangements between them differ from those which would be made between unrelated persons, each State may adjust the amount of the income, loss or tax payable to reflect the income, deductions, credits or allowances which would, but for those arrangements, have been taken into account in computing such income, loss or tax.

Technical Explanation [1984]:

Paragraph 1 authorizes Canada and the United States, as the case may be, to adjust the amount of income, loss, or tax payable by a person with respect to arrangements between that person and a related person in the other Contracting State. Such adjustment may be made when arrangements between related persons differ from those that would obtain between unrelated persons. The term "person" encompasses a company resident in a third State with, for example, a permanent establishment in a Contracting State.

Related Provisions: ITA 247 — Transfer pricing adjustments.

2. For the purposes of this Article, a person shall be deemed to be related to another person if either person participates directly or indirectly in the management or control of the other, or if any third person or persons participate directly or indirectly in the management or control of both.

Technical Explanation [1984]:

Paragraph 2 provides that, for the purposes of Article IX, a person is deemed to be related to another person if either participates directly or indirectly in the management or control of the other or if any third person or persons participate directly or indirectly in the management or control of both. Thus, if a resident of any State controls directly or indirectly a company resident in Canada and a company resident in the United States, such companies are considered to be related persons for purposes of Article IX. Article IX and the definition of "related person" in paragraph 2 may encompass situations that would not be covered by provisions in the domestic laws of the Contracting States. Nor is the paragraph 2 definition controlling for the definition of "related person" or similar terms appearing in other Articles of the Convention. Those terms are defined as provided in paragraph 2 of Article III (General Definitions).

3. Where an adjustment is made or to be made by a Contracting State in accordance with paragraph 1, the other Contracting State shall (notwithstanding any time or procedural limitations in the domestic law of that other State) make a corresponding adjustment to the income, loss or tax of the related person in that other State if:

(a) it agrees with the first-mentioned adjustment; and

(b) within six years from the end of the taxable year to which the first-mentioned adjustment relates, the competent authority of the other State has been notified of the first-mentioned adjustment. The competent authorities, however, may agree to consider cases where the

corresponding adjustment would not otherwise be barred by any time or procedural limitations in the other State, even if the notification is not made within the six-year period.

Technical Explanation [1995 Protocol]:

Article 4 of the Protocol amends paragraphs 3 and 4 of Article IX (Related Persons) of the Convention. Paragraph 1 of Article IX authorizes a Contracting State to adjust the amount of income, loss, or tax payable by a person with respect to arrangements between that person and a related person in the other Contracting State, when such arrangements differ from those that would obtain between unrelated persons. Under the present Convention, if an adjustment is made or to be made by a Contracting State under paragraph 1, paragraph 3 obligates the other Contracting State to make a corresponding adjustment if two conditions are satisfied: (1) the other Contracting State agrees with the adjustment made or to be made by the first Contracting State, and (2) the competent authority of the other Contracting State has received notice of the first adjustment within six years of the end of the taxable year to which that adjustment relates. If notice is not given within the six-year period, and if the person to whom the first adjustment relates is not notified of the adjustment at least six months prior to the end of the six-year period, paragraph 4 of Article IX of the present Convention requires that the first Contracting State withdraw its adjustment, to the extent necessary to avoid double taxation.

Article 4 of the Protocol amends paragraphs 3 and 4 of Article IX to prevent taxpayers from using the notification requirements of the present Convention to avoid adjustments. Paragraph 4, as amended, eliminates the requirement that a Contracting State withdraw an adjustment if the notification requirement of paragraph 3 has not been met. Paragraph 4 is also amended to delete the requirement that the taxpayer be notified at least six months before expiration of the six-year period specified in paragraph 3.

As amended by the Protocol, Article IX also explicitly authorizes the competent authorities to relieve double taxation in appropriate cases, even if the notification requirement is not satisfied. Paragraph 3 confirms that the competent authorities may agree to a corresponding adjustment if such an adjustment is not otherwise barred by time or procedural limitations such as the statute of limitations. Paragraph 4 provides that the competent authority of the State making the initial adjustment may grant unilateral relief from double taxation in other cases, although such relief is not obligatory.

Technical Explanation [1984]:

Paragraph 3 provides that where, pursuant to paragraph 1, an adjustment is made or to be made by a Contracting State, the other Contracting State shall make a corresponding adjustment to the income, loss, or tax of the related person in that other State, provided that the other State agrees with the adjustment and, within six years from the end of the taxable year of the person in the first State to which the adjustment relates, the competent authority of the other State has been notified in writing of the adjustment. The reference to an adjustment which "is made or to be made" does not require a Contracting State to formally propose an adjustment before paragraph 3 becomes pertinent. The notification required by paragraph 3 may be made by any of the related persons involved or by the competent authority of the State which makes or is to make the initial adjustment. The notification must give details regarding the adjustment sufficient to apprise the competent authority receiving the notification of the nature of the adjustment. If the requirements of paragraph 3 are complied with, the corresponding adjustment will be made by the other Contracting State notwithstanding any time or procedural limitations in the domestic law of that State.

History: Para. 3 amended by 1995 Protocol, article 4, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. Where an adjustment is made or to be made by a Contracting State in accordance with paragraph 1, the other Contracting State shall (notwithstanding any time or procedural limitations in the domestic law of that other State) make a corresponding adjustment to the income, loss or tax of the related person in that other State if:
>
> (a) it agrees with the first-mentioned adjustment; and
>
> (b) within six years from the end of the taxable year to which the first-mentioned adjustment relates, the competent authority of the other State has been notified of the first-mentioned adjustment.

4. In the event that the notification referred to in paragraph 3 is not given within the time period referred to therein, and the competent authorities have not agreed to otherwise consider the case in accordance with paragraph 3(b), the competent authority of the Contracting State which has made or is to make the first-mentioned adjustment may provide relief from double taxation where appropriate.

Technical Explanation [1995 Protocol]:

See under para. 3.

Technical Explanation [1984]:

Paragraph 4 provides that in a case where the other Contracting State has not been notified as provided in paragraph 3 and if the person whose income, loss, or tax is being adjusted has not received notification of the adjustment within five and one-half years from the end of its taxable year to which the adjustment relates, such adjustment shall not be made to the extent that the adjustment would give rise to double taxation between the United States and Canada. Again, the notification referred to in this paragraph need not be a formal adjustment, but it must be in writing and must contain sufficient details to permit the taxpayer to give the notification referred to in paragraph 3.

If, for example, the Internal Revenue Service proposes to make an adjustment to the income of a U.S. company pursuant to Code section 482, and the adjustment involves an allocation of income from a related Canadian company, the competent authority of Canada must receive written notification of the proposed IRS adjustment within six years from the end of the taxable year of the U.S. company to which the adjustment relates. If such notification is not received in a timely fashion and if the U.S. company does not receive written notification of the adjustment from the IRS within 5½ years from the end of its relevant taxable year, the IRS will unilaterally recede on the proposed section 482 adjustment to the extent that this adjustment would otherwise give rise to double taxation between the United States and Canada. The Internal Revenue Service will determine whether and to what extent the adjustment would give rise to double taxation with respect to income arising in Canada by examining the relevant facts and circumstances such as the amount of foreign tax credits attributable to Canadian taxes paid by the U.S. company, including any carryovers and credits for deemed paid taxes.

History: Para. 4 amended by 1995 Protocol, article 4, generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 4 formerly read:

> 4. In the event that the notification referred to in paragraph 3 is not given within the time period referred to therein, and if the person to whom the first-mentioned adjustment relates has not received, at least six months prior to the expiration of such time period, notification of such adjustment from the Contracting State which has made or is to make such adjustment that State shall, notwithstanding the provisions of paragraph 1, not make the first-mentioned adjustment to the extent that such adjustment would give rise to double taxation.

5. The provisions of paragraphs 3 and 4 shall not apply in the case of fraud, willful default or neglect or gross negligence.

Technical Explanation [1984]:

Paragraph 5 provides that neither a corresponding adjustment described in paragraph 3 nor the cancelling of an adjustment described in paragraph 4 will be made in any case of fraud, willful default, neglect, or gross negligence on the part of the taxpayer or any related person.

Paragraphs 3 and 4 of Article IX are exceptions to the "saving clause" contained in paragraph 2 of Article XXIX (Miscellaneous Rules), as provided in paragraph 3(a) of Article XXIX. Paragraphs 3 and 4 of Article IX apply to adjustments made or to be made with respect to taxable years for which the Convention has effect as provided in paragraphs 2 and 5 of Article XXX (Entry Into Force).

Article X — Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 allows a Contracting State to impose tax on its residents with respect to dividends paid by a company which is a resident of the other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such dividends, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

Proposed Amendment — Withholding Tax Rates

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1995 Protocol]:

See under para. 7.

Technical Explanation [1984]:

Paragraph 2 limits the amount of tax that may be imposed on such dividends by the Contracting State in which the company paying the dividends is resident if the beneficial owner of the dividends is a resident of the other Contracting State. The limitation is 10 percent of the gross amount of the dividends if the beneficial owner is a company that owns 10 percent or more of the voting stock of the company paying the dividends; and 15 percent of the gross amount of the dividends in all other cases. Paragraph 2 does not impose any restrictions with respect to taxation of the profits out of which the dividends are paid.

History: Subpara. 2(a) amended by 1995 Protocol, article 5(1), effective for amounts paid or credited on or after January 1, 1997. For 1996 the rate is 6 per cent and before 1996 the rate was 10% (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Subpara. 2(a) formerly read:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident.

Technical Explanation [1984]:

Paragraph 3 defines the term "dividends," as the term is used in this Article. Each Contracting State is permitted to apply its domestic law rules for differentiating dividends from interest and other disbursements.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

Technical Explanation [1984]:

Paragraph 4 provides that the limitations of paragraph 2 do not apply if the beneficial owner of the dividends carries on business in the State in which the company paying the dividends is a resident through a permanent establishment or fixed base situated there, and the stockholding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the dividends are taxable pursuant to the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be. Thus, dividends paid in respect of holdings forming part of the assets of a permanent establishment or fixed base or which are otherwise effectively connected with such permanent establishment or fixed base (i.e., dividends attributable to the permanent establishment or fixed base) will be taxed on a net basis using the rates and rules of taxation generally applicable to residents of the State in which the permanent establishment or fixed base is situated.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Technical Explanation [1984]:

Paragraph 5 imposes limitations on the right of Canada or the United States, as the case may be, to impose tax on dividends paid by a company which is a resident of the other Contracting State. The State in which the company is not resident may not tax such dividends except insofar as they are paid to a resident of that State or the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base in that State. In the case of the United States, such dividends may also be taxed in the hands of a U.S. citizen and certain former citizens, pursuant to the "saving clause" of paragraph 2 of Article XXIX (Miscellaneous Rules). In addition, the Contracting State in which the company is not resident may not subject such company's undistributed profits to any tax. See, however, paragraphs 6, 7, and 8 which, in certain circumstances, qualify the rules of paragraph 5. Neither paragraph 5 nor any other provision of the Convention restricts the ability of the United States to apply the provisions of the Code concerning foreign personal holding companies and controlled foreign corporations.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing a tax on the earnings of a company attributable to permanent establishments in that State, in addition to the tax which would be chargeable on the earnings of a company which is a resident of that State, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purposes of this paragraph, the term "earnings" means the amount by which the business profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years exceeds the sum of:

(a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years;

(b) all taxes, other than the additional tax referred to in this paragraph, imposed on such profits in that State;

(c) the profits reinvested in that State, provided that where that State is Canada, such amount shall be de-

termined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof; and

(d) five hundred thousand Canadian dollars ($500,000) or its equivalent in United States currency, less any amounts deducted by the company, or by an associated company with respect to the same or a similar business, under this subparagraph (d); for the purposes of this subparagraph (d) a company is associated with another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons, or if the two companies deal with each other not at arm's length.

Technical Explanation [1995 Protocol]:

See under para. 7.

Technical Explanation [1984]:

Paragraph 6 provides that, notwithstanding paragraph 5, a Contracting State in which is maintained a permanent establishment or permanent establishments of a company resident in the other Contracting State may impose tax on such company's earnings, in addition to the tax that would be charged on the earnings of a company resident in that State. The additional tax may not, however, exceed 10 percent of the amount of the earnings which have not been subjected to such additional tax in previous taxation years. Thus, Canada, which has a branch profits tax in force, may impose that tax up to the 10 percent limitation in the case of a United States company with one or more permanent establishments in Canada. This branch profits tax may be imposed notwithstanding other rules of the Convention, including paragraph 6 of Article XXV (Non-Discrimination).

For purposes of paragraph 6, the term "earnings" means the excess of business profits attributable to all permanent establishments for a year and previous years over the sum of: a) business losses attributable to such permanent establishments for such years; b) all taxes on profits, whether or not covered by the Convention (e.g., provincial taxes on profits and provincial resource royalties (which Canada considers "taxes") in excess of the mineral resource allowance provided for under the law of Canada), other than the additional tax referred to in paragraph 6; c) profits reinvested in such State; and d) $500,000 (Canadian, or its equivalent in U.S. dollars) less any amounts deducted under paragraph 6(d) with respect to the same or a similar business by the company or an associated company. The deduction under paragraph 6(d) is available as of the first year for which the Convention has effect, regardless of the prior earnings and tax expenses, if any, of the permanent establishment. The $500,000 deduction is taken into account after other deductions, and is permanent. For the purpose of paragraph 6, references to business profits and business losses include gains and losses from the alienation of property forming part of the business property of a permanent establishment. The term "associated company" includes a company which directly or indirectly controls another company or two companies directly or indirectly controlled by the same person or persons, as well as any two companies that deal with each other not at arm's length. This definition differs from the definition of "related persons" in paragraph 2 of Article IX (Related Persons).

History: Para. 6 amended by 1995 Protocol, article 5(1), to substitute "5 per cent" for "10 per cent", effective January 1, 1997. For 1996, the rate is 6 per cent and for 1985–1995, the rate was 10 per cent (see Art. 21(2)(b) reproduced under "Application of the Provisions of the Protocol" above).

7. Notwithstanding the provisions of paragraph 2,

(a) dividends paid by a company that is a resident of Canada and a non-resident-owned investment corporation to a company that is a resident of the United States, that owns at least 10 per cent of the voting stock of the company paying the dividends and that is the beneficial owner of such dividends, may be taxed in Canada at a rate not exceeding 10 per cent of the gross amount of the dividends;

(b) paragraph 2(b) and not paragraph 2(a) shall apply in the case of dividends paid by a resident of the United States that is a Regulated Investment Company; and

(c) Paragraph 2(a) shall not apply to dividends paid by a resident of the United States that is a Real Estate Investment Trust, and paragraph 2(b) shall apply only where such dividends are beneficially owned by an individual holding an interest of less than 10 per cent in the trust; otherwise the rate of tax applicable under the domestic law of the United States shall apply. Where an estate or a testamentary trust acquired its interest in a Real Estate Investment Trust as a consequence of an individual's death, for the purposes of the preceding sentence the estate or trust shall for the five-year period following the death be deemed with respect to that interest to be an individual.

Technical Explanation [1995 Protocol]:

Article 5 of the Protocol amends Article X (Dividends) of the Convention. Paragraph 1 of Article 5 amends paragraph 2(a) of Article X to reduce from 10 percent to 5 percent the maximum rate of tax that may be imposed by a Contracting State on the gross amount of dividends beneficially owned by a company resident in the other Contracting State that owns at least 10 percent of the voting stock of the company paying the dividends. The rate at which the branch profits tax may be imposed under paragraph 6 is also reduced by paragraph 1 of Article 5 from 10 percent to 5 percent. Under the entry-into-force provisions of Article 21 of the Protocol, these reductions will be phased in over a three-year period.

Paragraph 2 of Article 5 of the Protocol replaces paragraph 7 of Article X of the Convention with a new paragraph 7. Paragraph 7 of the existing Convention is no longer relevant because it applies only in the case where a Contracting State does not impose a branch profits tax. Both Contracting States now do impose such a tax.

New paragraph 7 makes the 5 percent withholding rate of new paragraph 2(a) inapplicable in certain situations. Under new paragraph 7(b), dividends paid by U.S. regulated investment companies (RICs) are denied the 5 percent withholding rate even if the Canadian shareholder is a corporation that would otherwise qualify as a direct investor by satisfying the 10-percent ownership requirement. Consequently, all RIC dividends to Canadian beneficial owners are subjected to the 15 percent rate that applies to dividends paid to portfolio investors.

Dividends paid by U.S. real estate investment trusts (REITs) to Canadian beneficial owners are also denied the 5 percent rate under the rules of paragraph 7(c). REIT dividends paid to individuals who own less than a 10 percent interest in the REIT are subject to withholding at a maximum rate of 15 percent. Paragraph 7(c) also provides that dividend distributions by a REIT to an estate or a testamentary trust acquiring the interest in the REIT as a consequence of the death of an individual will be treated as distributions to an individual, for the five-year period following the death. Thus, dividends paid to an estate or testamentary trust in respect of a holding of less than a 10 percent interest in the REIT also will be entitled to the 15 percent rate of withholding, but only for up to five years after the death. REIT dividends paid to other Canadian beneficial owners are subject to the rate of withholding tax that applies under the domestic law of the United States (i.e., 30 percent).

The denial of the 5 percent withholding rate at source to all RIC and REIT shareholders, and the denial of the 15 percent rate to most shareholders of REITs, is intended to prevent the use of these non-taxable conduit entities to gain unjustifiable benefits for certain shareholders. For example, a Canadian corporation that wishes to hold a portfolio of U.S. corporate shares may hold the portfolio directly and pay a U.S. withholding tax of 15 percent on all of the dividends that it receives. Alternatively, it may place the portfolio of U.S. stocks in a RIC, in which the Canadian corporation owns more than 10 percent of the shares, but in which there are enough small shareholders to satisfy the RIC diversified ownership requirements. Since the RIC is a pure conduit, there are no U.S. tax costs to the Canadian corporation of interposing the RIC as an intermediary in the chain of ownership. It is unlikely that a 10 percent shareholding in a RIC will constitute a 10 percent shareholding in any company from which the dividends originate. In the absence of the special rules in paragraph 7(b), however, interposition of a RIC would transform what should be portfolio dividends into direct investment dividends taxable at source by the United States only at 5 percent. The special rules of paragraph 7 prevent this.

Similarly, a resident of Canada may hold U.S. real property directly and pay U.S. tax either at a 30 percent rate on the gross income or at the income tax rates specified in the *Internal Revenue Code* on the net income.

By placing the real estate holding in a REIT, the Canadian investor could transform real estate income into dividend income and thus transform high-taxed income into much lower-taxed income. In the absence of the special rule, if the REIT shareholder were a Canadian corporation that owned at least a 10 percent interest in the REIT, the withholding rate would be 5 percent; in all other cases, it would be 15 percent. In either event, with one exception, a tax rate of 30 percent or more would be significantly reduced. The exception is the relatively small individual Canadian investor who might be subject to U.S. tax at a rate of only 15 percent on the net income even if he earned the real estate income directly. Under the rule in paragraph 7(c), such individuals, defined as those holding less than a 10 percent interest in the REIT, remain taxable at source at a 15 percent rate.

Subparagraph (a) of paragraph 7 provides a special rule for certain dividends paid by Canadian non-resident-owned investment corporations ("NROs"). The subparagraph provides for a maximum rate of 10 percent (instead of the standard rate of 5 percent) for dividends paid by NROs that are Canadian residents to a U.S. company that owns 10 percent or more of the voting stock of the NRO and that is the beneficial owner of the dividend. This rule maintains the rate available under the current Convention for dividends from NROs. Canada wanted the withholding rate for direct investment NRO dividends to be no lower than the maximum withholding rates under the Convention on interest and royalties, to make sure that a foreign investor cannot transform interest or royalty income subject to a 10 percent withholding tax into direct dividends qualifying for a 5 percent withholding tax by passing it through to an NRO.

Technical Explanation [1984]:

Paragraph 7 provides that, notwithstanding paragraph 5, a Contracting State that does not impose a branch profits tax as described in paragraph 6 (i.e., under current law, the United States) may tax a dividend paid by a company which is a resident of the other Contracting State if at least 50 percent of the company's gross income from all sources was included in the computation of business profits attributable to one or more permanent establishments which such company had in the first-mentioned State. The dividend subject to such a tax must, however, be attributable to profits earned by the company in taxable years beginning after September 26, 1980 and the 50 percent test must be met for the three-year period preceding the taxable year of the company in which the dividend is declared (including years ending on or before September 26, 1980) or such shorter period as the company had been in existence prior to that taxable year. Dividends will be deemed to be distributed, for purposes of paragraph 7, first out of profits of the taxation year of the company in which the distribution is made and then out of the profits of the preceding year or years of the company. Paragraph 7 provides further that if a resident of the other Contracting State is the beneficial owner of such dividends, any tax imposed under paragraph 7 is subject to the 10 or 15 percent limitation of paragraph 2 or the rules of paragraph 4 (providing for dividends to be taxed as business profits or income from independent personal services), as the case may be.

History: Para. 7 amended by 1995 Protocol, article 5(2), effective with respect to amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 7 formerly read:

> 7. Notwithstanding the provisions of paragraph 5, a Contracting State, other than a Contracting State that imposes the additional tax on earnings referred to in paragraph 6, may tax a dividend paid by a company to the extent that the dividend is attributable to profits earned in taxable years beginning after the date of signature of the Convention if, for the three-year period ending with the close of the company's taxable period preceding the declaration of the dividend (or for such part of that three-year period as the company has been in existence, or for the first taxable year if the dividend was declared in that taxable year), at least 50 per cent of such company's gross income from all sources was included in the computation of the business profits attributable to a permanent establishment which such company had in that State; provided that where a resident of the other Contracting State is the beneficial owner of such dividend any tax so imposed on the dividend shall be subject to the limitations of paragraph 2 or the rules of paragraph 4, as the case may be.

8. Notwithstanding the provisions of paragraph 5, a company which is a resident of Canada and which has income subject to tax in the United States (without regard to the provisions of the Convention) may be liable to the United States accumulated earnings tax and personal holding company tax but only if 50 per cent or more in value of the outstanding voting shares of the company is owned, directly or indirectly, throughout the last half of its taxable year by citizens or residents of the United States (other than citizens of Canada who do not have immigrant status in the United States or who have not been residents in the United States for more than three taxable years) or by residents of a third state.

Technical Explanation [1984]:

Paragraph 8 provides that, notwithstanding paragraph 5, a company which is a resident of Canada and which, absent the provisions of the Convention, has income subject to tax by the United States may be liable for the United States accumulated earnings tax and personal holding company tax. These taxes can be applied, however, only if 50 percent or more in value of the outstanding voting shares of the company is owned, directly or indirectly, throughout the last half of its taxable year by residents of a third State or by citizens or residents of the United States, other than citizens of Canada who are resident in the United States but who either do not have immigrant status in the United States or who have not been resident in the United States for more than three taxable years. The accumulated earnings tax is applied to accumulated taxable income calculated without the benefits of the Convention. Similarly, the personal holding company tax is applied to undistributed personal holding company income computed as if the Convention had not come into force.

Article X does not apply to dividends paid by a company which is not a resident of either Contracting State. Such dividends, if they are income of a resident of one of the Contracting States, are subject to tax as provided in Article XXII (Other Income).

Information Circulars: 76-12R4: Applicable rate of part XIII tax on amounts paid or credited to persons in treaty countries.

Article XI — Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 allows interest arising in Canada or the United States and paid to a resident of the other State to be taxed in the latter State. Paragraph 2 provides that such interest may also be taxed in the Contracting State where it arises, but if a resident of the other Contracting State is the beneficial owner, the tax imposed by the State of source is limited to 15 percent of the gross amount of the interest.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

Proposed Amendment — Withholding Tax Rates

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1995 Protocol]:

Article 6 of the Protocol amends Article XI (Interest) of the Convention. Paragraph 1 of the Article reduces the general maximum withholding rate on interest under paragraph 2 of Article XI from 15 percent to 10 percent.

Technical Explanation [1984]:

See Article XI, para. 1.

History: Para. 2 amended by 1995 Protocol, article 6(1), to substitute "10 per cent" for "15 per cent", effective with respect to amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above).

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) the interest is beneficially owned by the other Contracting State, a political subdivision or local authority thereof or an instrumentality of such other State, subdivision or authority, and is not subject to tax by that other State;

(b) the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to debt obligations issued at arm's length and guaranteed or insured by that other State or a political subdivision thereof or an instrumentality of such other State or subdivision which is not subject to tax by that other State;

(c) the interest is beneficially owned by a resident of the other Contracting State and is paid by the first-mentioned State, a political subdivision or local authority thereof or an instrumentality of such first-mentioned State, subdivision or authority which is not subject to tax by that first-mentioned State;

(d) the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to indebtedness arising as a consequence of the sale on credit by a resident of that other State of any equipment, merchandise or services except where the sale or indebtedness was between related persons; or

(e) the interest is paid by a company created under the laws in force in the other Contracting State with respect to an obligation entered into before the date of signature of this Convention, provided that such interest would have been exempt from tax in the first-mentioned State under Article XII of the 1942 Convention.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article XI of the Convention provides that, notwithstanding the general withholding rate applicable to interest payments under paragraph 2, certain specified categories of interest are exempt from withholding at source. Paragraph 2 of Article 6 of the Protocol amends paragraph 3(d) of the Convention, which deals with interest paid on indebtedness arising in connection with a sale on credit of equipment, merchandise, or services. The exemption provided by that paragraph in the Convention is broadened under the Protocol to apply to interest that is beneficially owned either by the seller in the underlying transaction, as under the present Convention, or by any beneficial owner of interest paid with respect to an indebtedness arising as a result of the sale on credit of equipment, merchandise, or services. This exemption, however, does not apply in cases where the purchaser is related to the seller or the debtor is related to the beneficial owner of the interest. The negotiators agreed that this exemption is subject, as are the other provisions of the Convention, to any anti-avoidance rules applicable under the respective domestic law of the Contracting States.

The reference to "related persons" in paragraph 3(d) of Article XI of the Convention, as amended, is a change from the present Convention, which refers to "persons dealing at arm's length." The term "related person" as used in this Article is not defined for purposes of the Convention. Accordingly, the meaning of the term, and, therefore, the application of this Article, will be governed by the domestic law of each Contracting State (as is true with the use of the term "arm's-length" under the current Convention) under the interpretative rule of paragraph 2 of Article III (General Definitions). The United States will define the term "related person" as under section 482 of the *Internal Revenue Code*, to include organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests. The Canadian definition of "related persons" is found in section 251 of the *Income Tax Act*.

Technical Explanation [1984]:

Paragraph 3 provides a number of exceptions to the right of the source State to impose a 15 percent tax under paragraph 2. The following types of interest beneficially owned by a resident of a Contracting State are exempt from tax in the State of source: a) interest beneficially owned by a Contracting State, a political subdivision, or a local authority thereof, or an instrumentality of such State, subdivision, or authority, which interest is not subject to tax by such State; b) interest beneficially owned by a resident of a Contracting State and paid with respect to debt obligations issued at arm's length which are guaranteed or insured by such State or a political subdivision thereof, or by an instrumentality of such State or subdivision (not by a local authority or an instrumentality thereof), but only if the guarantor or insurer is not subject to tax by that State; c) interest paid by a Contracting State, a political subdivision, or a local authority thereof, or by an instrumentality of such State, subdivision, or authority, but only if the payer is not subject to tax by such State; and d) interest beneficially owned by a seller of equipment, merchandise, or services, but only if the interest is paid in connection with a sale on credit of equipment, merchandise, or services and the sale was made at arm's length. Whether such a transaction is made at arm's length will be determined in the United States under the facts and circumstances. The relationship between the parties is a factor, but not the only factor, taken into account in making this determination. Furthermore, interest paid by a company resident in the other Contracting State with respect to an obligation entered into before September 26, 1980 is exempt from tax in the State of source (irrespective of the State of residence of the beneficial owner), provided that such interest would have been exempt from tax in the Contracting State of source under Article XII of the 1942 Convention. Thus, interest paid by a United States corporation whose business is not managed and controlled in Canada to a recipient not resident in Canada or to a corporation not managed and controlled in Canada would be exempt from Canadian tax as long as the debt obligation was entered into before September 26, 1980. The phrase "not subject to tax by that ... State" in paragraph 3(a), (b), and (c) refers to taxation at the Federal levels of Canada and the United States.

The phrase "obligation entered into before the date of signature of this Convention" means: (1) any obligation under which funds were dispersed prior to September 26, 1980; (2) any obligation under which funds are dispersed on or after September 26, 1980, pursuant to a written contract binding prior to and on such date, and at all times thereafter until the obligation is satisfied; or (3) any obligation with respect to which, prior to September 26, 1980, a lender had taken every action to signify approval under procedures ordinarily employed by such lender in similar transactions and had sent or deposited for delivery to the person to whom the loan is to be made written evidence of such approval in the form of a document setting forth, or referring to a document sent by the person to whom the loan is to be made that sets forth, the principal terms of such loan.

History: Subpara. 3(d) amended by 1995 Protocol, article 6(2), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Subpara. 3(d) formerly read:

> (d) the interest is beneficially owned by a seller who is a resident of the other Contracting State and is paid by a purchaser in connection with the sale on credit of any equipment, merchandise or services, except where the sale is made between persons dealing with each other not at arm's length; or

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. However, the term "interest" does not include income dealt with in Article X (Dividends).

Technical Explanation [1984]:

Paragraph 4 defines the term "interest," as used in Article XI, to include, among other things, debt claims of every kind as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. In no event, however, is income dealt with in Article X (Dividends) to be considered interest.

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed

base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

Technical Explanation [1984]:

Paragraph 5 provides that neither the 15 percent limitation on tax in the Contracting State of source provided in paragraph 2 nor the various exemptions from tax in such State provided in paragraph 3 apply if the beneficial owner of the interest is a resident of the other Contracting State carrying on business in the State of source through a permanent establishment or fixed base, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base (i.e., the interest is attributable to the permanent establishment or fixed base). In this case, interest income is to be taxed in the Contracting State of source as business profits — that is, on a net basis.

6. For the purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident.

Technical Explanation [1984]:

Paragraph 6 establishes the source of interest for purposes of Article XI. Interest is considered to arise in a Contracting State if the payer is that State, or a political subdivision, local authority, or resident of that State. However, in cases where the person paying the interest, whether a resident of a Contracting State or of a third State, has in a State other than that of which he is a resident a permanent establishment or fixed base in connection with which the indebtedness on which the interest was paid was incurred, and such interest is borne by the permanent establishment or fixed base, then such interest is deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of the payer's residence. Thus, pursuant to paragraphs 6 and 2, and Article XXII (Other Income), Canadian tax will not be imposed on interest paid to a U.S. resident by a company resident in Canada if the indebtedness is incurred in connection with, and the interest is borne by, a permanent establishment of the company situated in a third State. "Borne by" means allowable as a deduction in computing taxable income.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

Technical Explanation [1984]:

Paragraph 7 provides that in cases involving special relationships between persons Article XI does not apply to amounts in excess of the amount which would have been agreed upon between persons having no special relationship; any such excess amount remains taxable according to the laws of Canada and the United States, consistent with any relevant provisions of the Convention.

8. Where a resident of a Contracting State pays interest to a person other than a resident of the other Contracting State, that other State may not impose any tax on such interest except insofar as it arises in that other State or insofar as the debt-claim in respect of which the interest is paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

Technical Explanation [1984]:

Paragraph 8 restricts the right of a Contracting State to impose tax on interest paid by a resident of the other Contracting State. The first State may not impose any tax on such interest except insofar as the interest is paid to a resident of that State or arises in that State or the debt claim in respect of which the interest is paid is effectively connected with a permanent establishment or fixed base situated in that State. Thus, pursuant to paragraph 8 the United States has agreed not to impose tax on certain interest paid by Canadian companies to persons not resident in the United States, to the extent that such companies would pay U.S.-source interest under Code section 861(a)(1)(C) but not under the source rule of paragraph 6. It is to be noted that paragraph 8 is subject to the "saving clause" of paragraph 2 of Article XXIX (Miscellaneous Rules), so the United States may in all events impose its tax on interest received by U.S. citizens.

9. The provisions of paragraphs 2 and 3 shall not apply to an excess inclusion with respect to a residual interest in a Real Estate Mortgage Investment Conduit to which Section 860G of the United States *Internal Revenue Code*, as it may be amended from time to time without changing the general principle thereof, applies.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article 6 of the Protocol adds a new paragraph 9 to Article XI of the Convention. Although the definition of "interest" in paragraph 4 includes an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit (REMIC) described in section 860G of the *Internal Revenue Code*, new paragraph 9 provides that the reduced rates of tax at source for interest provided for in paragraphs 2 and 3 do not apply to such income. This class of interest, therefore, remains subject to the statutory 30 percent U.S. rate of tax at source. The legislation that created REMICs in 1986 provided that such excess inclusions were to be taxed at the full 30 percent statutory rate, regardless of any then-existing treaty provisions to the contrary. The 30 percent rate of tax on excess inclusions received by residents of Canada is consistent with this expression of Congressional intent.

History: Para. 9 added by 1995 Protocol, article 6(3), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the Provisions of the Protocol" above).

Information Circulars [Article XI]: 76-12R4: Applicable rate of part XIII tax on amounts paid or credited to persons in treaty countries.

Article XII — Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Generally speaking, under the 1942 Convention royalties, including royalties with respect to motion picture films, which are derived by a resident of one Contracting State from sources within the other Contracting State are taxed at a maximum rate of 15 percent in the latter State; copyright royalties are exempt from tax in the State of source, if the resident does not have a permanent establishment in that State. See Articles II, III, XIII C, and paragraph 1 of Article XI of the 1942 Convention, and paragraph 6(a) of the Protocol to the 1942 Convention.

Paragraph 1 of Article XII of the Convention provides that a Contracting State may tax its residents with respect to royalties arising in the other Contracting State. Paragraph 2 provides that such royalties may also be taxed in the Contracting State in which they arise, but that if a resident of the other Contracting State is the beneficial owner of the royalties the tax in the Contracting State of source is limited to 10 percent of the gross amount of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such royalties, the

tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

Proposed Amendment — Withholding Tax Rates

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1984]:

See Article XII, para. 1.

3. Notwithstanding the provisions of paragraph 2,

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (other than payments in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television);

(b) payments for the use of, or the right to use, computer software;

(c) payments for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement); and

(d) payments with respect to broadcasting as may be agreed for the purposes of this paragraph in an exchange of notes between the Contracting States;

arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

Technical Explanation [1995 Protocol]:

Article 7 of the Protocol modifies Article XII (Royalties) of the Convention by expanding the classes of royalties exempt from withholding of tax at source. Paragraph 3, as amended by the Protocol, identifies four classes of royalty payments arising in one Contracting State and beneficially owned by a resident of the other that are exempt at source: (1) subparagraph (a) preserves the exemption in paragraph 3 of the present Convention for copyright royalties in respect of literary and other works, other than certain such payments in respect of motion pictures, videotapes, and similar payments; (2) subparagraph (b) specifies that computer software royalties are also exempt; (3) subparagraph (c) adds royalties paid for the use of, or the right to use, patents and information concerning industrial, commercial, and scientific experience, other than payments in connection with rental or franchise agreements; and (4) subparagraph (d) allows the Contracting States to reach an agreement, through an exchange of diplomatic notes, with respect to the application of paragraph 3 of Article XII to payments in respect of certain live broadcasting transmissions.

The specific reference to software in subparagraph (b) is not intended to suggest that the United States views the term "copyright" as excluding software in other U.S. treaties (including the current treaty with Canada).

The negotiators agreed that royalties paid for the use of, or the right to use, designs or models, plans, secret formulas, or processes are included under subparagraph 3(c) to the extent that they represent payments for the use of, or the right to use, information concerning industrial, commercial, or scientific experience. In addition, they agreed that royalties paid for the use of, or the right to use, "know-how," as defined in paragraph 11 of the Commentary on Article 12 of the OECD Model Income Tax Treaty, constitute payments for the use of, or the right to use, information concerning industrial, commercial, or scientific experience. The negotiators further agreed that a royalty paid under a "mixed contract," "package fee," or similar arrangement will be treated as exempt at source by virtue of paragraph 3 to the extent of any portion that is paid for the use of, or the right to use, property or information with respect to which paragraph 3 grants an exemption.

The exemption granted under subparagraph 3(c) does not, however, extend to payments made for information concerning industrial, commercial, or scientific experience that is provided in connection with a rental or franchise agreement. For this purpose, the negotiators agreed that a franchise is to be distinguished from other arrangements resulting in the transfer of intangible property. They agreed that a license to use intangibles (whether or not including a trademark) in a territory, in and of itself, would not constitute a franchise agreement for purposes of subparagraph 3(c) in the absence of other rights and obligations in the license agreement or in any other agreement that would indicate that the arrangement in its totality constituted a franchise agreement. For example, a resident of one Contracting State may acquire a right to use a secret formula to manufacture a particular product (e.g., a perfume), together with the right to use a trademark for that product and to market it at a non-retail level, in the other Contracting State. Such an arrangement would not constitute a franchise in the absence of any other rights or obligations under that arrangement or any other agreement that would indicate that the arrangement in its totality constituted a franchise agreement. Therefore, the royalty payment under that arrangement would be exempt from withholding tax in the other Contracting State to the extent made for the use of, or the right to use, the secret formula or other information concerning industrial, commercial, or scientific experience; however, it would be subject to withholding tax at a rate of 10 percent, to the extent made for the use of, or the right to use, the trademark.

The provisions of paragraph 3 do not fully reflect the U.S. treaty policy of exempting all types of royalty payments from taxation at source, but Canada was not prepared to grant a complete exemption for all types of royalties in the Protocol. Although the Protocol makes several important changes to the royalty provisions of the present Convention in the direction of bringing Article XII into conformity with U.S. policy, the United States remains concerned about the imposition of withholding tax on some classes of royalties and about the associated administrative burdens. In this connection, the Contracting States have affirmed their intention to collaborate to resolve in good faith any administrative issues that may arise in applying the provisions of subparagraph 3(c). The United States intends to continue to pursue a zero rate of withholding for all royalties in future negotiations with Canada, including discussions under Article 20 of the Protocol, as well as in negotiations with other countries.

As noted above, new subparagraph 3(d) enables the Contracting States to provide an exemption for royalties paid with respect to broadcasting through an exchange of notes. This provision was included because Canada was not prepared at the time of the negotiations to commit to an exemption for broadcasting royalties. Subparagraph 3(d) was included to enable the Senate to give its advice and consent in advance to such an exemption, in the hope that such an exemption could be obtained without awaiting the negotiation of another full protocol. Any agreement reached under the exchange of notes authorized by subparagraph 3(d) would lower the withholding rate from 10 percent to zero and, thus, bring the Convention into greater conformity with established U.S. treaty policy.

Technical Explanation [1984]:

Paragraph 3 provides that, notwithstanding paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work, including royalties from such works on videotape or other means of reproduction for private (home) use, if beneficially owned by a resident of the other Contracting State, may not be taxed by the Contracting State of source. This exemption at source does not apply to royalties in respect of motion pictures, and of works on film, videotape or other means of reproduction for use in connection with television broadcasting. Such royalties are subject to tax at a maximum rate of 10 percent in the Contracting State in which they arise, as provided in paragraph 2 (unless the provisions of paragraph 5, described below, apply).

History: Para. 3 amended by 1995 Protocol, article 7(1), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

Para. 3 amended by 1983 Protocol, article V, para. 1.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including motion pictures and works on film, videotape or other means of reproduction for use in

connection with television), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, tangible personal property or for information concerning industrial, commercial or scientific experience, and, notwithstanding the provisions of Article XIII (Gains), includes gains from the alienation of any intangible property or rights described in this paragraph to the extent that such gains are contingent on the productivity, use or subsequent disposition of such property or rights.

Technical Explanation [1984]:

Paragraph 4 defines the term "royalties" for purposes of Article XII. "Royalties" means payments of any kind received as consideration for the use of or the right to use any copyright of literary, artistic, or scientific work, including motion pictures, and works on film, videotape or other means of reproduction for use in connection with television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or any payment for the use of or the right to use tangible personal property or for information concerning industrial, commercial, or scientific experience. The term "royalties" also includes gains from the alienation of any intangible property or rights described in paragraph 4 to the extent that such gains are contingent on the productivity, use, or subsequent disposition of such intangible property or rights. Thus, a guaranteed minimum payment derived from the alienation of (but not the use of) any right or property described in paragraph 4 is not a "royalty." Any amounts deemed contingent on use by reason of Code section 871(e) are, however, royalties under paragraph 2 of Article III (General Definitions), subject to Article XXVI (Mutual Agreement Procedure). The term "royalties" does not encompass management fees, which are covered by the provisions of Article VII (Business Profits) or XIV (Independent Personal Services), or payments under a bona fide cost-sharing arrangement. Technical service fees may be royalties in cases where the fees are periodic and dependent upon productivity or a similar measure.

History: Para. 4 amended by 1983 Protocol, article V, para. 2.

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

Technical Explanation [1984]:

Paragraph 5 provides that the 10 percent limitation on tax in the Contracting State of source provided by paragraph 2, and the exemption in the Contracting State of source for certain copyright royalties provided by paragraph 3, do not apply if the beneficial owner of the royalties carries on business in the State of source through a permanent establishment or fixed base and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base (i.e., the royalties are attributable to the permanent establishment or fixed base). In that event, the royalty income would be taxable under the provisions of Article VII (Business Profits) or XIV (Independent Personal Services), as the case may be.

6. For the purposes of this Article,

(a) royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in any other State of which the payer is a resident; and

(b) where subparagraph (a) does not operate to treat royalties as arising in either Contracting State and the royalties are for the use of, or the right to use, intangible property or tangible personal property in a Contracting State, then such royalties shall be deemed to arise in that State.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 7 of the Protocol amends the rules in paragraph 6 of Article XII of the Convention for determining the source of royalty payments. Under the present Convention, royalties generally are deemed to arise in a Contracting State if paid by a resident of that State. However, if the obligation to pay the royalties was incurred in connection with a permanent establishment or a fixed base in one of the Contracting States that bears the expense, the royalties are deemed to arise in that State.

The Protocol continues to apply these basic rules but changes the scope of an exception provided under the present Convention. Under the present Convention, a royalty paid for the use of, or the right to use, property in a Contracting State is deemed to arise in that State. Under the Protocol, this "place of use" exception applies only if the Convention does not otherwise deem the royalties to arise in one of the Contracting States. Thus, the "place of use" exception will apply only if royalties are neither paid by a resident of one of the Contracting States nor borne by a permanent establishment or fixed base in either State. For example, if a Canadian resident were to grant franchise rights to a resident of Chile for use in the United States, the royalty paid by the Chilean resident to the Canadian resident for those rights would be U.S. source income under this Article, subject to U.S. withholding at the 10 percent rate provided in paragraph 2.

The rules of this Article differ from those provided under U.S. domestic law. Under U.S. domestic law, a royalty is considered to be from U.S. sources if it is paid for the use of, or the privilege of using, an intangible within the United States; the residence of the payor is irrelevant. If paid to a nonresident alien individual or other foreign person, a U.S. source royalty is generally subject to withholding tax at a rate of 30 percent under U.S. domestic law. By reason of paragraph 1 of Article XXIX (Miscellaneous Rules), a Canadian resident would be permitted to apply the rules of U.S. domestic law to its royalty income if those rules produced a more favorable result in its case than those of this Article. However, under a basic principle of tax treaty interpretation recognized by both Contracting States, the prohibition against so-called "cherry-picking," the Canadian resident would be precluded from claiming selected benefits under the Convention (e.g., the tax rates only) and other benefits under U.S. domestic law (e.g., the source rules only) with respect to its royalties. See, e.g., Rev. Rul. 84-17, 1984-1 C.B. 308. For example, if a Canadian company granted franchise rights to a resident of the United States for use 50 percent in the United States and 50 percent in Chile, the Convention would permit the Canadian company to treat all of its royalty income from that single transaction as U.S. source income entitled to the withholding tax reduction under paragraph 2. U.S. domestic law would permit the Canadian company to treat 50 percent of its royalty income as U.S. source income subject to a 30 percent withholding tax and the other 50 percent as foreign source income exempt from U.S. tax. The Canadian company could choose to apply either the provisions of U.S. domestic law or the provisions of the Convention to the transaction, but would not be permitted to claim both the U.S. domestic law exemption for 50 percent of the income and the Convention's reduced withholding rate for the remainder of the income.

Royalties generally are considered borne by a permanent establishment or fixed base if they are deductible in computing the taxable income of that permanent establishment or fixed base.

Since the definition of "resident" of a Contracting State in Article IV (Residence), as amended by Article 3 of the Protocol, specifies that this term includes the Contracting States and their political subdivisions and local authorities, the source rule does not include a specific reference to these governmental entities.

Technical Explanation [1984]:

Paragraph 6 establishes rules to determine the source of royalties for purposes of Article XII. The first rule is that royalties arise in a Contracting State when the payer is that State, or a political subdivision, local authority, or resident of that State. Notwithstanding that rule, royalties arise not in the State of the payer's residence but in any State, whether or not a Contracting State, in which is situated a permanent establishment or fixed base in connection with which the obligation to pay royalties was incurred, if such royalties are borne by such permanent establishment or fixed base.

Thus, royalties paid to a resident of the United States by a company resident in Canada for the use of property in a third State will not be subject to tax in Canada if the obligation to pay the royalties is incurred in connection with, and the royalties are borne by, a permanent establishment of the company in a third State. "Borne by" means allowable as a deduction in computing taxable income.

A third rule, which overrides both the residence rule and the permanent establishment rule just described, provides that royalties for the use of, or the right to use, intangible property or tangible personal property in a Contracting State arise in that State. Thus, consistent with the provisions of Code section 861(a)(4), if a resident of a third State pays royalties to a resident of Canada for the use of or the right to use intangible property or tangible personal property in the United States, such royalties are considered to arise in the United States and are subject to taxation by the United States consistent with the Convention. Similarly, if a resident of Canada pays royalties to a resident of a third State, such royalties are considered to arise in the United States and are subject to U.S. taxation if they are for the use of or the right to use intangible property or tangible personal property in the United States. The term "intangible property" encompasses all the items described in paragraph 4, other than tangible personal property.

History: Para. 6 amended by 1995 Protocol, article 7(2), effective for amounts paid or credited on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 6 formerly read:

> 6. For the purposes of this Article, royalties shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. However:
>
> (a) except as provided in subparagraph (b), where the person paying the royalties, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident; and
>
> (b) where the royalties are for the use of, or the right to use, intangible property or tangible personal property in a Contracting State, then such royalties shall be deemed to arise in that State and not in the State of which the payer is a resident.

Subpara. 6(b) amended by 1983 Protocol, article V, para. 3.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Technical Explanation [1984]:

Paragraph 7 provides that in cases involving special relationships between persons the benefits of Article XII do not apply to amounts in excess of the amount which would have been agreed upon between persons with no special relationship; any such excess amount remains taxable according to the laws of Canada and the United States, consistent with any relevant provisions of the Convention.

8. Where a resident of a Contracting State pays royalties to a person other than a resident of the other Contracting State, that other State may not impose any tax on such royalties except insofar as they arise in that other State or insofar as the right or property in respect of which the royalties are paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

Technical Explanation [1984]:

Paragraph 8 restricts the right of a Contracting State to impose tax on royalties paid by a resident of the other Contracting State. The first State may not impose any tax on such royalties except insofar as they arise in that State or they are paid to a resident of that State or the right or property in respect of which the royalties are paid is effectively connected with a permanent establishment or fixed base situated in that State. This rule parallels the rule in paragraph 8 of Article XI (Interest) and paragraph 5 of Article X (Dividends). Again, U.S. citizens remain subject to U.S. taxation on royalties received despite this rule, by virtue of paragraph 2 of Article XXIX (Miscellaneous Rules).

Selected Cases [Art. XII]: *Angoss International Ltd. v. R.*, [1999] 2 C.T.C. 2259 (TCC) (Copyright payments for computer software exempt from withholding tax).

Information Circulars: 77-16R4: Non-resident income tax.

Article XIII — Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that Canada and the United States may each tax gains from the alienation of real property situated within that State which are derived by a resident of the other Contracting State. The term "real property situated in the other Contracting State" is defined for this purpose in paragraph 3 of this article. The term "alienation" used in paragraph 1 and other paragraphs of Article XIII means sales, exchanges and other dispositions or deemed dispositions (e.g., change of use, gifts, distributions, death) that are taxable events under the taxation laws of the Contracting State applying the provisions of the Article.

Related Provisions: ITA 115(1)(b) — Taxable Canadian property; ITA 126(2.21), (2.22) — Foreign tax credit to emigrant for tax payable on gain accrued while resident in Canada; ITA 128.1(4)(b)(i) — Real property in Canada excluded from deemed disposition on emigration.

2. Gains from the alienation of personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has or had (within the twelve-month period preceding the date of alienation) in the other Contracting State or of personal property pertaining to a fixed base which is or was available (within the twelve-month period preceding the date of alienation) to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment or of such a fixed base, may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 2 of Article XIII provides that the Contracting State in which a resident of the other Contracting State "has or had" a permanent establishment or fixed base may tax gains from the alienation of personal property constituting business property if such gains are attributable to such permanent establishment or fixed base. Unlike paragraph 1 of Article VII (Business Profits), paragraph 2 limits the right of the source State to tax such gains to a twelve-month period following the termination of the permanent establishment or fixed base.

3. For the purposes of this Article the term "real property situated in the other Contracting State"

(a) In the case of real property situated in the United States, means a United States real property interest and real property referred to in Article VI (Income from Real Property) situated in the United States, but does not include a share of the capital stock of a company that is not a resident of the United States; and

(b) in the case of real property situated in Canada means:

(i) real property referred to in Article VI (Income from Real Property) situated in Canada;

(ii) a share of the capital stock of a company that is a resident of Canada, the value of whose shares is

derived principally from real property situated in Canada; and

(iii) an interest in a partnership, trust or estate, the value of which is derived principally from real property situated in Canada.

Technical Explanation [1997]:

Article 1 of the Protocol amends paragraph 3 of Article XIII (Gains) of the Convention. Paragraph 1 of Article XIII of the Convention provides that gains derived by a resident of a Contracting State from the alienation of real property situated within the other Contracting State may be taxed in that other State. The term "real property situated in the other Contracting State" is defined for this purpose in paragraph 3 of Article XIII of the Convention.

Under paragraph 3(a) of Article XIII of the Convention, real property situated in the United States includes real property (as defined in Article VI (Income from Real Property) of the Convention) situated in the United States and a United States real property interest. Under section 897(c) of the *Internal Revenue Code* (the "Code") the term "United States real property interest" includes shares in a U.S. corporation that owns sufficient U.S. real property interests to satisfy an asset-ratio test on certain testing dates.

Under Paragraph 3(b) of Article XIII of the Convention, real property situated in Canada means real property (as defined in Article VI of the Convention) situated in Canada; shares of stock of a company, the value of whose shares consists principally of Canadian real property; and an interest in a partnership, trust or estate, the value of which consists principally of Canadian real property. The term "principally" means more than 50 percent.

Under the Code, stock of a foreign corporation is not considered a "United States real property interest." Therefore, the United States does not tax a resident of Canada on the sale of stock of a foreign corporation, regardless of the composition of the corporation's assets. Although the Convention permits Canada to tax a U.S. resident on the sale of stock of a company that is not a resident of Canada if the value of the company's shares consists principally of Canadian real property, Canada does not currently impose such a tax. However, on April 26, 1995, amendments were proposed to the Canadian Income Tax Act that would impose Canadian income tax on gains realized on stock of certain companies that are not residents of Canada if (i) more than 50 percent of the fair market value of all of the company's properties consists of any combination of taxable Canadian property, Canadian resource property, timber resource property in Canada and income interests in Canadian trusts, and (ii) more than 50 percent of the fair market value of the shares in question is derived directly or indirectly from any combination of real property located in Canada, Canadian resource property, and timber resource property in Canada. [See ITA 115(1)(b) — ed.] This amendment is proposed to be effective as of April 26, 1995 with proration for gains that accrued before that date. Although the Canadian Parliament was dissolved before these amendments were passed, they are expected to be re-introduced in the current session with the same effective date.

The Protocol amends paragraphs 3(a) and 3(b)(ii) of Article XIII of the Convention to limit each State's right to tax the gains of a resident of the other State from the sale of stock of a real property holding company to cases where the company is resident in that State. Although the United States does not impose and is not currently considering imposing a tax under the Code on gains from the sale of stock of non-resident real property holding companies, the Protocol nevertheless amends the Convention to prohibit the imposition of such a tax on Canadian residents. Although Canada is considering imposing such a tax on gains from the sale of shares of companies that are not residents of Canada, this Protocol provision will cause the proposed amendments to the Canadian *Income Tax Act* to be inapplicable to U.S. residents who derive gains from the sale of stock of real property holding companies that are not residents of Canada. This provision will be retroactively effective to April 26, 1995, the date the previous Canadian legislation was proposed to be effective.

Technical Explanation [1984]:

Paragraph 3 provides a definition of the term "real property situated in the other Contracting State." Where the United States is the other Contracting State, the term includes real property (as defined in Article VI (Income from Real Property)) situated in the United States and a United States real property interest. Thus, the United States retains the ability to exercise its full taxing right under the *Foreign Investment in Real Property Tax Act* (Code section 897). (For a transition rule from the 1942 Convention, see paragraph 9 of this Article).

Where Canada is the other Contracting State, the term means real property (as defined in Article VI) situated in Canada; shares of stock of a company, the value of whose shares consists principally of Canadian real property; and an interest in a partnership, trust or estate, the value of which consists principally of Canadian real property. The term "principally" means more than 50 percent. Taxation in Canada is preserved through several tiers of entities if the value of the company's shares or the partnership, trust or estate is ultimately dependent principally upon real property situated in Canada.

Related Provisions: *Income Tax Conventions Interpretation Act* 5 — Definition of "real property".

History: Para. 3(a) and subpara. 3(b)(ii) amended by 1997 Protocol, article 1, effective April 26, 1995 and in force December 16, 1997 (the day instruments of ratification were exchanged). The para. and subpara. formerly read:

(a) in the case of real property situated in the United States, means a United States real property interest and real property referred to in Article VI (Income from Real Property) situated in the United States; and

. . . . .

(ii) a share of the capital stock of a company, the value of whose shares is derived principally from real property situated in Canada; and

Para. 3 amended by 1983 Protocol, article VI, para. 1.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Technical Explanation [1984]:

Paragraph 4 reserves to the Contracting State of residence the sole right to tax gains from the alienation of any property other than property referred to in paragraphs 1, 2, and 3.

Advance Tax Rulings: ATR-43: Utilization of a non-resident-owned investment corporation as a holding corporation. However, see para. 5 below.

5. The provisions of paragraph 4 shall not affect the right of a Contracting State to levy tax on gains from the alienation of property derived by an individual who is a resident of the other Contracting State if such individual:

(a) was a resident of the first-mentioned State for 120 months during any period of 20 consecutive years preceding the alienation of the property; and

(b) was a resident of the first-mentioned State at any time during the ten years immediately preceding the alienation of the property;

and if such property (or property for which such property was substituted in an alienation the gain on which was not recognized for the purposes of taxation in the first-mentioned State) was owned by the individual at the time he ceased to be a resident of the first-mentioned State.

Technical Explanation [1984]:

Paragraph 5 states that, despite paragraph 4, a Contracting State may impose tax on gains derived by an individual who is a resident of the other Contracting State if such individual was a resident of the first-mentioned State for 120 months (whether or not consecutive) during any period of 20 consecutive years preceding the alienation of the property, and was a resident of that State at any time during the 10-year period immediately preceding the alienation of the property. The property (or property received in substitution in a tax-free transaction in the first-mentioned State) must have been owned by the individual at the time he ceased to be a resident of the first-mentioned State.

History: Para. 5 amended by 1983 Protocol, article VI, para. 2.

6. Where an individual (other than a citizen of the United States) who was a resident of Canada became a resident of the United States, in determining his liability to United States taxation in respect of any gain from the alienation of a principal residence in Canada owned by him at the

time he ceased to be a resident of Canada, the adjusted basis of such property shall be no less than its fair market value at that time.

Technical Explanation [1984]:

Paragraph 6 provides a rule to coordinate Canadian and United States taxation of gains from the alienation of a principal residence situated in Canada. An individual (not a citizen of the United States) who was a resident of Canada and becomes a resident of the United States may determine his liability for U.S. income tax purposes in respect of gain from the alienation of a principal residence in Canada owned by him at the time he ceased to be a resident of Canada by claiming an adjusted basis for such residence in an amount no less than the fair market value of the residence at that time. Under paragraph 2(b) of Article XXX, the rule of paragraph 6 applies to gains realized for U.S. income tax purposes in taxable years beginning on or after the first day of January next following the date when instruments of ratification are exchanged, even if a particular individual described in paragraph 6 ceased to be a resident of Canada prior to such date. Paragraph 6 supplements any benefits available to a taxpayer pursuant to the provisions of the Code, e.g., section 1034.

7. Where at any time an individual is treated for the purposes of taxation by a Contracting State as having alienated a property and is taxed in that State by reason thereof and the domestic law of the other Contracting State at such time defers (but does not forgive) taxation, that individual may elect in his annual return of income for the year of such alienation to be liable to tax in the other Contracting State in that year as if he had, immediately before that time, sold and repurchased such property for an amount equal to its fair market value at that time.

Technical Explanation [1984]:

Paragraph 7 provides a rule to coordinate U.S. and Canadian taxation of gains in circumstances where an individual is subject to tax in both Contracting States and one Contracting State deems a taxable alienation of property by such person to have occurred, while the other Contracting State at that time does not find a realization or recognition of income and thus defers, but does not forgive, taxation. In such a case the individual may elect in his annual return of income for the year of such alienation to be liable to tax in the latter Contracting State as if he had sold and repurchased the property for an amount equal to its fair market value at a time immediately prior to the deemed alienation. The provision would, for example, apply in the case of a gift by a U.S. citizen or a U.S. resident individual which Canada deems to be an income producing event for its tax purposes but with respect to which the United States defers taxation while assigning the donor's basis to the donee. The provision would also apply in the case of a U.S. citizen who, for Canadian tax purposes, is deemed to recognize income upon his departure from Canada, but not to a Canadian resident (not a U.S. citizen) who is deemed to recognize such income. The rule does not apply in the case of death, although Canada also deems that to be a taxable event, because the United States in effect forgives income taxation of economic gains at death. If in one Contracting State there are losses and gains from deemed alienations of different properties, then paragraph 7 must be applied consistently in the other Contracting State within the taxable period with respect to all such properties. Paragraph 7 only applies, however, if the deemed alienations of the properties result in a net gain.

8. Where a resident of a Contracting State alienates property in the course of a corporate or other organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

Technical Explanation [1995 Protocol]:

Article 8 of the Protocol broadens the scope of paragraph 8 of Article XIII (Gains) of the Convention to cover organizations, reorganizations, amalgamations, and similar transactions involving either corporations or other entities. The present Convention covers only transactions involving corporations. The amendment is intended to make the paragraph applicable to transactions involving other types of entities, such as trusts and partnerships.

As in the case of transactions covered by the present Convention, the deferral allowed under this provision shall be for such time and under such other conditions as are stipulated between the person acquiring the property and the competent authority. The agreement of the competent authority of the State of source is entirely discretionary and, when granted, will be granted only to the extent necessary to avoid double taxation.

Technical Explanation [1984]:

Paragraph 8 concerns the coordination of Canadian and U.S. rules with respect to the recognition of gain on corporate organizations, reorganizations, amalgamations, divisions, and similar transactions. Where a resident of a Contracting State alienates property in such a transaction, and profit, gain, or income with respect to such alienation is not recognized for income tax purposes in the Contracting State of residence, the competent authority of the other Contracting State may agree, pursuant to paragraph 8, if requested by the person who acquires the property, to defer recognition of the profit, gain, or income with respect to such property for income tax purposes. This deferral shall be for such time and under such other conditions as are stipulated between the person who acquires the property and the competent authority. The agreement of the competent authority of the State of source is entirely discretionary and will be granted only to the extent necessary to avoid double taxation of income. This provision means, for example, that the United States competent authority may agree to defer recognition of gain with respect to a transaction if the alienator would otherwise recognize gain for U.S. tax purposes and would not recognize gain under Canada's law. The provision only applies, however, if alienations described in paragraph 8 result in a net gain. In the absence of extraordinary circumstances the provisions of the paragraph must be applied consistently within a taxable period with respect to alienations described in the paragraph that take place within that period.

History: Para. 8 amended by 1995 Protocol, article 8, generally effective with respect to taxation years beginning on or after January 1, 1996 (see Art. 21 under "Application of the 1995 Protocol" above). Para. 8 formerly read:

> 8. Where a resident of a Contracting State alienates property in the course of a corporate organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

9. Where a person who is a resident of a Contracting State alienates a capital asset which may in accordance with this Article be taxed in the other Contracting State and

(a) that person owned the asset on September 26, 1980 and was resident in the first-mentioned State on that date; or

(b) the asset was acquired by that person in an alienation of property which qualified as a non-recognition transaction for the purposes of taxation in that other State;

the amount of the gain which is liable to tax in that other State in accordance with this Article shall be reduced by the proportion of the gain attributable on a monthly basis to the period ending on December 31 of the year in which the Convention enters into force, or such greater portion of the gain as is shown to the satisfaction of the competent authority of the other State to be reasonably attributable to that period. For the purposes of this paragraph the term "non-recognition transaction" includes a transaction to which paragraph 8 applies and, in the case of taxation

in the United States, a transaction that would have been a non-recognition transaction but for Sections 897(d) and 897(e) of the *Internal Revenue Code*. The provisions of this paragraph shall not apply to

(c) an asset that on September 26, 1980 formed part of the business property of a permanent establishment or pertained to a fixed base of a resident of a Contracting State situated in the other Contracting State;

(d) an alienation by a resident of a Contracting State of an asset that was owned at any time after September 26, 1980 and before such alienation by a person who was not at all times after that date while the asset was owned by such person a resident of that State; or

(e) an alienation of an asset that was acquired by a person at any time after September 26, 1980 and before such alienation in a transaction other than a non-recognition transaction.

Technical Explanation [1984]:

Paragraph 9 provides a transitional rule reflecting the fact that under Article VIII of the 1942 Convention gains from the sale or exchange of capital assets are exempt from taxation in the State of source provided the taxpayer had no permanent establishment in that State. Paragraph 9 applies to deemed, as well as actual, alienations or dispositions. In addition, paragraph 9 applies to a gain described in paragraph 1, even though such gain is also income within the meaning of paragraph 3 of Article VI. Paragraph 9 will apply to transactions notwithstanding section 1125(c) of the *Foreign Investment in Real Property Tax Act*, Public Law 96-499 ("FIRPTA").

Paragraph 9 applies to capital assets alienated by a resident of a Contracting State if (a) that person owned the asset on September 26, 1980 and was a resident of that Contracting State on September 26, 1980 (and at all times after that date until the alienation), or (b) the asset was acquired by that person in an alienation of property which qualified as a non-recognition transaction for tax purposes in the other Contracting State. For purposes of subparagraph 9(b), a non-recognition transaction is a transaction in which gain resulting therefrom is, in effect, deferred for tax purposes, but is not permanently forgiven. Thus, in the United States, certain tax-free organizations, reorganizations, liquidations and like-kind exchanges will qualify as non-recognition transactions. However, a transfer of property at death will not constitute a non-recognition transaction, since any gain due to appreciation in the property is permanently forgiven in the United States due to the fair market value basis taken by the recipient of the property. If a transaction is a non-recognition transaction for tax purposes, the transfer of non-qualified property, or "boot," which may cause some portion of the gain on the transaction to be recognized, will not cause the transaction to lose its character as a non-recognition transaction for purposes of subparagraph 9(b). In addition, a transaction that would have been a non-recognition transaction in the United States but for the application of sections 897(d) and 897(e) of the Code will also constitute a non-recognition transaction for purposes of subparagraph 9(b). Further, a transaction which is not a non-recognition transaction under U.S. law, but to which non-recognition treatment is granted pursuant to the agreement of the competent authority under paragraph 8 of this Article, is a non-recognition transaction for purposes of subparagraph 9(b). However, a transaction which is not a non-recognition transaction under U.S. law does not become a non-recognition transaction for purposes of subparagraph 9(b) merely because the basis of the property in the hands of the transferee is reduced under section 1125(d) of FIRPTA.

The benefits of paragraph 9 are not available to the alienation or disposition by a resident of a Contracting State of an asset that (a) on September 26, 1980 formed part of the business property of a permanent establishment or pertained to a fixed base which a resident of that Contracting State had in the other Contracting State, (b) was alienated after September 26, 1980 and before the alienation in question in any transaction that was not a non-recognition transaction, as described above, or (c) was owned at any time prior to the alienation in question and after September 26, 1980 by a person who was not a resident of that same Contracting State after September 26, 1980 while such person held the asset. Thus, for example, in order for paragraph 9 to be availed of by a Canadian resident who did not own the alienated asset on September 26, 1980, the asset must have been owned by other Canadian residents continuously after September 26, 1980 and must have been transferred only in transactions which were non-recognition transactions for U.S. tax purposes.

The availability of the benefits of paragraph 9 is illustrated by the following examples. It should be noted that the examples do not purport to fully describe the U.S. and Canadian tax consequences resulting from the transactions described therein. Any condition for the application of paragraph 9 which is not discussed in an example should be assumed to be satisfied.

Example 1.

A, an individual resident of Canada, owned an appreciated U.S. real property interest on September 26, 1980. On January 1, 1982, A transferred the U.S. real property interest to X, a Canadian corporation, in exchange for 100 percent of X's voting stock. A's gain on the transfer to X is exempt from U.S. tax under Article VIII of the 1942 Convention. Since the transaction qualifies as a non-recognition transaction for U.S. tax purposes, as described above, X is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the U.S. real property interest occurring after the entry into force of this Convention. If A's transfer to X had instead occurred after the entry into force of this Convention, A would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to U.S. taxation of that portion of the gain resulting from the transfer to X that is attributable on a monthly basis to the period ending on December 31 of the year in which the Convention enters into force (or a greater portion of the gain as is shown to the satisfaction of the U.S. competent authority). X would be entitled to the benefits of paragraph 9 pursuant to subparagraph 9(b), upon a subsequent disposition of the U.S. real property interest.

Example 2.

The facts are the same as in Example 1, except that A is a corporation which is resident in Canada. Assuming that the transfer of the U.S. real property interest to X is a section 351 transaction or a tax-free reorganization for U.S. tax purposes, the results are the same as in Example 1.

Example 3.

The facts are the same as in Example 1, except that X is a U.S. corporation. If the transfer to X by A took place on January 1, 1982, A's gain on the transfer to X would be exempt from tax under Article VIII of the 1942 Convention and A would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the stock of X occurring after the entry into force of this Convention. If the transfer to X by A took place after the entry into force of this Convention, A would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to U.S. taxation (if any) of the gain resulting from the transfer to X, and would also be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the stock of X. For several reasons, including the fact that X is a U.S. corporation, paragraph 9 has no impact on the U.S. tax consequences of a subsequent disposition by X of the U.S. real property interest in either case.

Example 4.

B, a corporation resident in Canada, owns all of the stock of C, which is also a corporation resident in Canada. C owns a U.S. real property interest. After the Convention enters into force, B liquidates C in a section 332 liquidation. The transaction is treated as a non-recognition transaction for U.S. tax purposes under the definition of a non-recognition transaction described above. C is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to gain taxed (if any) under section 897(d), and B is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the U.S. real property interest. Generally, the United States would not subject B to tax upon the liquidation of C.

Example 5.

The facts are the same as in Example 4, except that C is a U.S. corporation. B is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to U.S. taxation (if any) of the gain resulting from the liquidation of C. B is not entitled to the benefits of paragraph 9 upon a subsequent disposition of the U.S. real property interest since that asset was held after September 26, 1980 by a person who was not a resident of Canada. The U.S. tax consequences to C are governed by the internal law of the United States.

Example 6.

D, an individual resident of the United States, owns Canadian real estate. On January 1, 1982, D transfers the Canadian real estate to E, a corporation resident in Canada, in exchange for all of E's stock. This transfer is treated as a taxable transaction under the *Income Tax Act* of Canada. However, D's gain on the transfer is exempt from Canadian tax under Article VIII of the 1942 Convention. D is not entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the stock of E since the stock was not transferred in a transaction which was a non-recognition transaction for Canadian tax purposes. E is not entitled to Canadian benefits under this paragraph since, *inter alia*, it is a Canadian resident. (However, under Canadian law, both D and E would have a basis for tax purposes equal to the fair market value of the property at the time of D's transfer). If

the transfer to E had taken place after entry into force of this Convention, D would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to Canadian tax resulting from the transfer to E, but would not be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the E stock. (Note that E could seek to have the transaction treated as a non-recognition transaction under paragraph 8 of this Article, with the result that, if the competent authority agrees, D will take a carryover basis in the stock of E and be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition thereof).

Example 7.

The facts are the same as in Example 6, except that E is a U.S. corporation. This transaction is also a recognition event under Canadian law at the shareholder level. The results are generally the same as in Example 6. However, if the transfer to E had been granted non-recognition treatment in Canada pursuant to paragraph 8, both D and E would be entitled to the benefits of paragraph 9 for Canadian tax purposes, pursuant to subparagraph 9(b), upon subsequent dispositions of the stock of E or the Canadian real estate, respectively.

Example 8.

F, an individual resident of the United States, owns all of the stock of G, a Canadian corporation, which in turn owns Canadian real estate. F causes G to be amalgamated in a merger with another Canadian corporation. This is a non-recognition transaction under Canadian law and F is entitled for Canadian tax purposes, to the benefits of paragraph 9, pursuant to subparagraph 9(b), upon a subsequent disposition of the stock of the other Canadian corporation.

Example 9.

H, a U.S. corporation, owns all of the stock of J, another U.S. corporation. J owns Canadian real estate. H liquidates J. For Canadian tax purposes, no tax is imposed on H as a result of the liquidation and H receives a fair market value basis in the Canadian real estate. Accordingly, since gain has been forgiven due to the fair market value basis (rather than postponed in a non-recognition transaction), H would not be entitled to the benefits of subparagraph 9(b) upon the subsequent disposition of the Canadian real estate. Canada would impose a tax on J, but J would be entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to Canadian tax imposed on the liquidation.

Example 10.

The facts are the same as in Example 9, except that J is a Canadian corporation. Paragraph 9 does not affect the Canadian taxation of J. While H is subject to Canadian tax on the liquidation of J, H is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to such Canadian taxation. H will take a fair market value basis (rather than have gain postponed in a non-recognition transaction) in the Canadian real estate for Canadian tax purposes and is thus not entitled to the benefits of paragraph 9 upon a subsequent disposition of the Canadian real estate (since, *inter alia*, the gain has been forgiven due to the fair market value basis).

Example 11.

K, a U.S. corporation, owns the stock of L, another U.S. corporation, which in turn owns Canadian real estate. K causes L to be merged into another U.S. corporation. For Canadian tax purposes, such a transaction is treated as a recognition event, but Canada will not impose a tax on K under its internal law. Canada would impose tax on L, but L is entitled to the benefits of paragraph 9, pursuant to subparagraph 9(a), with respect to Canadian taxation of gain resulting from the merger. The acquiring U.S. corporation would take a fair market value basis in the Canadian real estate, and would thus not be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the real estate. (Note that the acquiring U.S. corporation could seek to obtain non-recognition treatment under paragraph 8 of this Article, with the result that, if approved by the competent authority, it would obtain a carryover basis in the property and be entitled to the benefits of subparagraph 9(b) upon a subsequent disposition of the Canadian real estate).

Paragraph 9 provides that where a resident of Canada or the United States is subject to tax pursuant to Article XIII in the other Contracting State on gains from the alienation of a capital asset, and if the other conditions of paragraph 9 are satisfied, the amount of the gain shall be reduced for tax purposes in that other State by the amount of the gain attributable to the period during which the property was held up to and including December 31 of the year in which the documents of ratification are exchanged. The gain attributable to such person[1] is normally determined by dividing the total gain by the number of full calendar months the property was held by such person, including, in the case of an alienation described in paragraph 9(b), the number of months in which a predecessor in interest held the property, and multiplying such monthly amount by the number of full calendar months ending on or before December 31 of the year in which the instruments of ratification are exchanged.

Upon a clear showing, however, a taxpayer may prove that a greater portion of the gain was attributable to the specified period. Thus, in the United States the fair market value of the alienated property at the treaty valuation date may be established under paragraph 9 in the manner and with the evidence that is generally required by U.S. Federal income, estate, and gift tax regulations. For this purpose a taxpayer may use valid appraisal techniques for valuing real estate such as the comparable sales approach (see Rev. Proc. 79-24, 1979-1 C.B. 565) and the reproduction cost approach. If more than one property is alienated in a single transaction each property will be considered individually.

A taxpayer who desires to make this alternate showing for U.S. tax purposes must so indicate on his U.S. income tax return for the year of the sale or exchange and must attach to the return a statement describing the relevant evidence. The U.S. competent authority or his authorized delegate will determine whether the taxpayer has satisfied the requirements of paragraph 9.

The amount of gain which is reduced by reason of the application of paragraph 9 is not to be treated for U.S. tax purposes as an amount of "nontaxed gain" under section 1125(d)(2)(B) of FIRPTA, where that section would otherwise apply. (Note that gain not taxed by virtue of the 1942 Convention is "nontaxed gain").

U.S. residents, citizens and former citizens remain subject to U.S. taxation on gains as provided by the Code notwithstanding the provisions of Article XIII, other than paragraphs 6 and 7. See paragraphs 2 and 3(a) of Article XXIX (Miscellaneous Rules).

History: Para. 9 amended by 1983 Protocol, article VI, para. 3.

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

I.T. Technical News: No. 4 (article XIII:9 of the Canada–U.S. tax convention (1980).

Selected Cases [Art. XIII]: *Angoss International Ltd. v. R.*, [1999] 2 C.T.C. 2259 (TCC) (Copyright payments for computer software exempt from withholding tax).

Article XIV — Independent Personal Services

Income derived by an individual who is a resident of a Contracting State in respect of independent personal services may be taxed in that State. Such income may also be taxed in the other Contracting State if the individual has or had a fixed base regularly available to him in that other State but only to the extent that the income is attributable to the fixed base.

Technical Explanation [1984]:

Article XIV concerns the taxation of income derived by an individual in respect of the performance of independent personal services. Such income may be taxed in the Contracting State of which such individual is a resident. It may also be taxed in the other Contracting State if the individual has or had a fixed base regularly available to him in the other State for the purpose of performing his activities, but only to the extent that the income is attributable to that fixed base. The use of the term "has or had" ensures that a Contracting State in which a fixed base existed has the right to tax income attributable to that fixed base even if there is a delay between the termination of the fixed base and the receipt or accrual of such income.

Unlike Article VII of the 1942 Convention, which provides a limited exemption from tax at source on income from independent personal services, Article XIV does not restrict the exemption to persons present in the State of source for fewer than 184 days. Furthermore, Article XIV does not allow the $5,000 exemption at source of the 1942 Convention, which was available even if services were performed through a fixed base. However, Article XIV provides complete exemption at source if a fixed base does not exist.

Related Provisions: ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

[1] *Sic*. Should read "period" — ed.

Selected Cases [Art. XIV]: *Dudney v. R.*, [2000] 2 C.T.C. 56 (FCA); aff'g [1999] 1 C.T.C. 2267 (TCC) (Taxpayer had no "fixed base").

I.T. Technical News: No. 18 (*Dudney* case).

Article XV — Dependent Personal Services

1. Subject to the provisions of Articles XVIII (Pensions and Annuities) and XIX (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that, in general, salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment are taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised in the other Contracting State, the entire remuneration derived therefrom may be taxed in that other State but only if, as provided by paragraph 2, the recipient is present in the other State for a period or periods exceeding 183 days in the calendar year, or the remuneration is borne by an employer who is a resident of that other State or by a permanent establishment or fixed base which the employer has in that other State. However, in all cases where the employee earns $10,000 or less in the currency of the State of source, such earnings are exempt from tax in that State. "Borne by" means allowable as a deduction in computing taxable income. Thus, if a Canadian resident individual employed at the Canadian permanent establishment of a U.S. company performs services in the United States, the income earned by the employee from such services is not exempt from U.S. tax under paragraph 1 if such income exceeds $10,000 (U.S.) because the U.S. company is entitled to a deduction for such wages in computing its taxable income.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in a calendar year in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) such remuneration does not exceed ten thousand dollars ($10,000) in the currency of that other State; or

(b) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in that year and the remuneration is not borne by an employer who is a resident of that other State or by a permanent establishment or a fixed base which the employer has in that other State.

Technical Explanation [1984]:

See Article XV, para. 1.

Related Provisions: ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a Contracting State in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle or train operated by a resident of that Contracting State shall be taxable only in that State.

Technical Explanation [1984]:

Paragraph 3 provides that a resident of a Contracting State is exempt from tax in the other Contracting State with respect to remuneration derived in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle, or train operated by a resident of the taxpayer's State of residence. The word "regularly" is intended to distinguish crew members from persons occasionally employed on a ship, aircraft, motor vehicle, or train. Only the Contracting State of which the employee and operator are resident has the right to tax such remuneration. However, this provision is subject to the "saving clause" of paragraph 2 of Article XXIX (Miscellaneous Rules), which permits the United States to tax its citizens despite paragraph 3.

Article XV states that its provisions are overridden by the more specific rules of Article XVIII (Pensions and Annuities) and Article XIX (Government Services).

Related Provisions: Art. III:1(h) — Meaning of "international traffic"; ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

Article XVI — Artistes and Athletes

1. Notwithstanding the provisions of Articles XIV (Independent Personal Services) and XV (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities do not exceed fifteen thousand dollars ($15,000) in the currency of that other State for the calendar year concerned.

Technical Explanation [1984]:

Article XVI concerns income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State. Article XVI overrides Articles XIV (Independent Personal Services) and XV (Dependent Personal Services) to allow source basis taxation of an entertainer or athlete in cases where the latter Articles would not permit such taxation. Thus, paragraph 1 provides that certain income of an entertainer or athlete may be taxed in the State of source in all cases where the amount of gross receipts derived by the entertainer or athlete, including expenses reimbursed to him or borne on his behalf, exceeds $15,000 in the currency of that other State for the calendar year concerned. For example, where a resident of Canada who is an entertainer derives income from his personal activities as an entertainer in the United States, he is taxable in the United States on all such income in any case where his gross receipts are greater than $15,000 for the calendar year. Article XVI does not restrict the right of the State of source to apply the provisions of Articles XIV and XV. Thus, an entertainer or athlete resident in a Contracting State and earning $14,000 in wages borne by a permanent establishment in the other State may be taxed in the other State as provided in Article XV.

Related Provisions: ITA 146(1)"earned income"(c) — Income exempted by tax treaty is not earned income of a non-resident for RRSP purposes.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles VII (Business Profits), XIV (Independent Personal Services) and XV (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Technical Explanation [1984]:

Paragraph 2 provides that where income in respect of personal activities exercised by an entertainer or an athlete accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Article VII (Business Profits), Article XIV, and Article XV, be taxed in the Contracting State in which the activities are exercised.

The anti-avoidance rule of paragraph 2 does not apply if it is established by the entertainer or athlete that neither he nor persons related to him participate directly or indirectly in the profits of the other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

Thus, if an entertainer who is a resident of Canada is under contract with a company and the arrangement between the entertainer and the company provides for payments to the entertainer based on the profits of the company, all of the income of the company attributable to the performer's U.S. activities may be taxed in the United States irrespective of whether the company maintains a permanent establishment in the United States. Paragraph 2 does not affect the rule of paragraph 1 that applies to the entertainer or athlete himself.

3. The provisions of paragraphs 1 and 2 shall not apply to the income of:

(a) an athlete in respect of his activities as an employee of a team which participates in a league with regularly scheduled games in both Contracting States; or

(b) a team described in subparagraph (a).

Technical Explanation [1984]:

Paragraph 3 provides that paragraphs 1 and 2 of Article XVI do not apply to the income of an athlete in respect of an employment with a team which participates in a league with regularly scheduled games in both Canada and the United States, nor do those paragraphs apply to the income of such a team. Such an athlete is subject to the rules of Article XV. Thus, the athlete's remuneration would be exempt from tax in the Contracting State of source if he is a resident of the other Contracting State and earns $10,000 or less in the currency of the State of source, or if he is present in that State for a period or periods not exceeding in the aggregate 183 days in the calendar year, and his remuneration is not borne by a resident of that State or a permanent establishment or fixed base in that State. In addition, a team described in paragraph 3 may not be taxed in a Contracting State under paragraph 2 of this Article solely by reason of the fact that a member of the team may participate in the profits of the team through the receipt of a bonus based, for example, on ticket sales. The employer may be taxable pursuant to other articles of the Convention, such as Article VII.

History: Para. 3 amended by 1983 Protocol, article VII, para. 1.

4. Notwithstanding the provisions of Articles XIV (Independent Personal Services) and XV (Dependent Personal Services) an amount paid by a resident of a Contracting State to a resident of the other Contracting State as an inducement to sign an agreement relating to the performance of the services of an athlete (other than an amount referred to in paragraph 1 of Article XV (Dependent Personal Services) may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of such payment.

Technical Explanation [1984]:

Paragraph 4 provides that, notwithstanding Articles XIV and XV, an amount paid by a resident of a Contracting State to a resident of the other State as an inducement to sign an agreement relating to the performance of the services of an athlete may be taxed in the first-mentioned State. However, the tax imposed may not exceed 15 percent of the gross amount of the payment. The provision clarifies the taxation of signing bonuses in a manner consistent with their treatment under U.S. interpretations of the 1942 Convention. Amounts paid as salary or other remuneration for the performance of the athletic services themselves are not taxable under this provision, but are subject to the provisions of paragraphs 1 and 3 of this Article, or Articles XIV or XV, as the case may be. The paragraph covers all amounts paid (to the athlete or another person) as an inducement to sign an agreement for the services of an athlete, such as a bonus to sign a contract not to perform for other teams. An amount described in this paragraph is not to be included in determining the amount of gross receipts derived by an athlete in a calendar year for purposes of paragraph 1. Thus, if an athlete receives a $50,000 signing bonus and a $12,000 salary for a taxable year, the State of source would not be entitled to tax the salary portion of the receipt of the athlete for that year under paragraph 1 of this Article.

History: Para. 4 added by 1983 Protocol, article VII, para. 2.

Selected Cases [Art. XVI]: *Sumner v. R.*, [2000] 2 C.T.C. 2359 (TCC) (Performer's "loan-out" company subject to Canadian tax).

Article XVII — Withholding of Taxes in Respect of Personal Services

1. Deduction and withholding of tax on account of the tax liability for a taxable year on remuneration paid to an individual who is a resident of a Contracting State (including an entertainer or athlete) in respect of the performance of independent personal services in the other Contracting State may be required by that other State, but with respect to the first five thousand dollars ($5,000) in the currency of that other State, paid as remuneration in that taxable year by each payer, such deduction and withholding shall not exceed 10 per cent of the payment.

Technical Explanation [1984]:

Article XVII confirms that a Contracting State may require withholding of tax on account of tax liability with respect to remuneration paid to an individual who is a resident of the other Contracting State, including an entertainer or athlete, in respect of the performance of independent personal services in the first-mentioned State. However, withholding with respect to the first $5,000 (in the currency of the State of source) of such remuneration paid in that taxable year by each payor shall not exceed 10 percent of such payment. In the United States, the withholding described in paragraph 1 relates to withholding with respect to income tax liability and does not relate to withholding with respect to other taxes, such as social security taxes. Nor is the paragraph intended to suggest that withholding in circumstances not specifically mentioned, such as withholding with respect to dependent personal services, is precluded by the Convention.

2. Where the competent authority of a Contracting State considers that an amount that would otherwise be deducted or withheld from any amount paid or credited to an individual who is a resident of the other Contracting State in respect of the performance of personal services in the first-mentioned State is excessive in relation to the estimated tax liability for the taxable year of that individual in the first-mentioned State, it may determine that a lesser amount will be deducted or withheld.

Technical Explanation [1984]:

Paragraph 2 provides that in any case where the competent authority of Canada or the United States believes that withholding with respect to remuneration for the performance of personal services is excessive in relation to the estimated tax liability of an individual to that State for a taxable year, it may determine that a lesser amount will be deducted or withheld. In the case of independent personal services, paragraph 2 may thus result in a lesser withholding than the maximum authorized by paragraph 1.

3. The provisions of this Article shall not affect the liability of a resident of a Contracting State referred to in paragraph 1 or 2 for tax imposed by the other Contracting State.

Technical Explanation [1984]:

Paragraph 3 states that the provisions of Article XVII do not affect the liability of a resident of a Contracting State for taxes imposed by the other Contracting State. The Article deals only with the method of collecting taxes and not with substantive tax liability.

Article XVIIIA of the 1942 Convention authorizes the issuance of regulations to specify circumstances under which residents of the United States temporarily performing personal services in Canada may be exempted from deduction and withholding of United States tax. This provision is omitted from the Convention as unnecessary. The Code and regulations provide sufficient authority to avoid excessive withholding of U.S. income tax. Further, paragraph 2 provides for adjustments in the amount of withholding where appropriate.

History: The title of Article XVII and para. 2 amended by 1983 Protocol, article VIII.

Article XVIII — Pensions and Annuities

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, but the amount of any such pension that would be excluded from taxable income in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that a resident of a Contracting State is taxable in that State with respect to pensions and annuities arising in the other Contracting State. However, the State of residence shall exempt from taxation the amount of any such pension that would be excluded from taxable income in the State of source if the recipient were a resident thereof. Thus, if a $10,000 pension payment arising in a Contracting State is paid to a resident of the other Contracting State and $5,000 of such payment would be excluded from taxable income as a return of capital in the first-mentioned State if the recipient were a resident of the first-mentioned State, the State of residence shall exempt from tax $5,000 of the payment. Only $5,000 would be so exempt even if the first-mentioned State would also grant a personal allowance as a deduction from gross income if the recipient were a resident thereof. Paragraph 1 imposes no such restriction with respect to the amount that may be taxed in the State of residence in the case of annuities.

History: Para. 1 amended by 1983 Protocol, article IX, para. 1.

Selected Cases [Art. XVIII:1]: *Coblentz v. Canada*, [1996] 3 C.T.C. 295 (FCA) (No double taxation involved in taxation of lump-sum payment of pension).

2. However:

(a) pensions may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of a periodic pension payment, the tax so charged shall not exceed 15 per cent of the gross amount of such payment; and

(b) annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of an annuity payment, the tax so charged shall not exceed 15 per cent of the portion of such payment that would not be excluded from taxable income in the first-mentioned State if the beneficial owner were a resident thereof.

Technical Explanation [1984]:

Paragraph 2 provides rules with respect to the taxation of pensions and annuities in the Contracting State in which they arise. If the beneficial owner of a periodic pension payment is a resident of the other Contracting State, the tax imposed in the State of source is limited to 15 percent of the gross amount of such payment. Thus, the State of source is not required to allow a deduction or exclusion for a return of capital to the pensioner, but its tax is limited in amount in the case of a periodic payment. Other pension payments may be taxed in the State of source without limit.

In the case of annuities beneficially owned by a resident of a Contracting State, the Contracting State of source is limited to a 15 percent tax on the portion of the payment that would not be excluded from taxable income (i.e., as a return of capital) in that State if the beneficial owner were a resident thereof.

History: Subpara. 2(b) amended by 1983 Protocol, article IX, para. 2.

Information Circulars: 75-6R: Required withholding from amounts paid to non-resident persons performing services in Canada.

3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or, except for the purposes of Article XIX (Government Service), any benefit referred to in paragraph 5.

Technical Explanation [1997 Protocol]:

Paragraph 1 of Article 2 of the Protocol amends paragraph 3 of Article XVIII (Pensions and Annuities) of the Convention to clarify that social security benefits paid by one Contracting State in respect of services rendered to that State or a subdivision or authority of that State are subject to the rules set forth in paragraph 5 of Article XVIII, and are not subject to Article XIX (Government Service). Thus, all social security benefits paid by a Contracting State will be subject to the same rules, regardless of whether the services were rendered to a private sector employer, the government, or both.

Technical Explanation [1995 Protocol]:

Article 9 of the Protocol amends Article XVIII (Pensions and Annuities) of the Convention. Paragraph 3 of Article XVIII defines the term "pensions" for purposes of the Convention, including the rules for the taxation of cross-border pensions in paragraphs 1 and 2 of the Article, the rules in paragraphs 2 and 3 of Article XXI (Exempt Organizations) for certain income derived by pension funds, and the rules in paragraph 1(b)(i) of Article IV (Residence) regarding the residence of pension funds and certain other entities. The Protocol amends the present definition by substituting the phrase "other retirement arrangement" for the phrase "retirement plan." The purpose of this change is to clarify that the definition of "pensions" includes, for example, payments from Individual Retirement Accounts (IRAs) in the United States and to provide that "pensions" includes, for example, Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs) in Canada. The term "pensions" also would include amounts paid by other retirement plans or arrangements, whether or not they are qualified plans under U.S. domestic law; this would include, for example, plans and arrangements described in section 457 or 414(d) of the *Internal Revenue Code*.

Technical Explanation [1984]:

Paragraph 3 defines the term "pensions" for purposes of the Convention to include any payment under a superannuation, pension, or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances, and amounts paid under a sickness, accident, or disability plan. Thus, the term "pension" includes pensions paid by private employers as well as any pension paid by a Contracting State in respect of services rendered to that State. A pension for government service is covered. The term "pensions" does not include payments under an income averaging annuity contract or benefits paid under social security legislation. The latter benefits are taxed, pursuant to paragraph 5, only in the Contracting State paying the benefit. Income derived from an income averaging annuity contract is taxable pursuant to the provisions of Article XXII (Other Income).

Related Provisions: *Income Tax Conventions Interpretation Act* 5.1 — Definition of "pension".

History: Para. 3 amended by 1997 Protocol, article 2(1), in force December 16, 1997 (the day instruments of ratification were exchanged). See Article 3 of the Protocol reproduced under Art. XVIII(5) for further information on the application of the amendment. The para. formerly read:

> 3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or any benefit referred to in paragraph 5.

Para. 3 amended by 1995 Protocol, article 9(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or any benefit referred to in paragraph 5.

4. For the purposes of the Convention, the term "annuities" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible for the

purposes of taxation in the Contracting State in which it was acquired.

Technical Explanation [1984]:

Paragraph 4 provides that, for purposes of the Convention, the term "annuities" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make payments in return for adequate and full consideration other than services rendered. The term does not include a payment that is not periodic or any annuity the cost of which was deductible for tax purposes in the Contracting State where the annuity was acquired. Items excluded from the definition of "annuities" are subject to the rules of Article XXII.

Related Provisions: *Income Tax Conventions Interpretation Act* 5 — Definition of "annuity".

5. Benefits under the social security legislation in a Contracting State (including tier 1 railroad retirement benefits but not including unemployment benefits) paid to a resident of the other Contracting State shall be taxable only in that other State, subject to the following conditions:

(a) a benefit under the social security legislation in the United States paid to a resident of Canada shall be taxable in Canada as though it were a benefit under the *Canada Pension Plan*, except that 15 per cent of the amount of the benefit shall be exempt from Canadian tax; and

(b) a benefit under the social security legislation in Canada paid to a resident of the United States shall be taxable in the United States as though it were a benefit under the Social Security Act, except that a type of benefit that is not subject to Canadian tax when paid to residents of Canada shall be exempt from United States tax.

Application of 1997 Protocol: S.C. 1999, c. 22, s. 83, applicable to the 1996 and 1997 taxation years, provides special rules for the application of the 1997 Protocol to the Canada-U.S. Income Tax Convention. It reads as follows:

83. (1) **Definitions** — The definitions in this subsection apply in this Part.

"Convention" has the meaning assigned by section 2 of the *Canada-United States Tax Convention Act, 1984*.

"creditable United States tax" of an individual for a taxation year means an amount

(a) that was paid to the government of the United States by or on behalf of the individual, at a time when the individual was resident in Canada, on account of United States tax on the individual's United States social security benefits for the year;

(b) that would have been so payable to that government if the Convention had not been amended by the Protocol signed at Ottawa on July 29, 1997; and

(c) that is refundable by that government under the terms of the Convention.

"United States social security benefits" of an individual for a particular taxation year includes

(a) benefits of the United States Social Security Administration, and

(a) (b) tier 1 railroad benefits of the United States Railroad Retirement Board

paid to or for the benefit of the individual in the particular year (but does not include unemployment benefits) and, for the purpose of this definition, a benefit paid in a taxation year for the following taxation year is deemed to have been paid in that following year.

(2) **Additional Amount** — Each individual who has paid creditable United States tax for a taxation year is deemed to have paid the amount of $50, on the individual's balance-due day for the year, on account of the individual's tax payable under Part I of the *Income Tax Act* for the year.

(3) **Interest** — For the purpose of determining interest payable under the *Income Tax Act* by or to an individual, the individual's creditable United States tax for a taxation year is deemed

(a) to have been paid, on the individual's balance-due day for the year, on account of the individual's tax payable under Part I of the Act for the year; and

(b) to have been refunded to the individual on the first day on which the Minister of National Revenue, in respect of the individual's creditable United States tax,

(i) pays an amount to or for the benefit of the individual, or

(ii) applies an amount to a liability of the individual.

Technical Explanation [1997 Protocol]:

Paragraph 2 of Article 2 of the Protocol amends paragraph 5 of Article XVIII of the Convention, which provides rules for the taxation of social security benefits (including tier 1 railroad retirement benefits but not including unemployment benefits), and reverses changes made by the third protocol to the Convention, which was signed on March 17, 1995 and generally took effect as of January 1, 1996 (the "1995 Protocol"). Under the Convention prior to amendment by the 1995 Protocol, the State of residence of the recipient of social security benefits had the exclusive right to tax social security benefits paid by the other State on a net basis but exempted 50 percent of the benefit. This was changed by the 1995 Protocol. Under the 1995 Protocol, effective January 1, 1996 benefits paid under the U.S. or Canadian social security legislation to a resident of the other Contracting State (or, in the case of Canadian benefits, paid to a U.S. citizen) are taxable exclusively in the paying State.

Canada and the United States impose different source-basis taxing regimes on social security benefits. Under Code section 871(a)(3), 85 percent of social security benefits paid to a nonresident alien are includible in gross income. The taxable portion of social security benefits is subject to the regular 30 percent withholding tax, with the result that the gross social security benefit is subject to an effective tax rate of 25.5 percent. This is a final payment of tax and Canadian recipients of U.S. social security benefits, regardless of their level of income, may not elect to be taxed in the United States on a net basis at graduated rates.

In Canada, social security benefits paid to nonresidents are subject to a general withholding tax of 25 percent. However, Canada permits U.S. recipients of Canadian benefits to file a Canadian tax return and pay tax at regular graduated rates on their net income. As a result, low-income U.S. recipients of Canadian social security typically pay little or no tax on their benefits.

The Protocol returns to a system of residence-based taxation in which social security benefits are exclusively taxable in the State where the recipient lives. Social security benefits will generally be taxed as if they were benefits paid under the social security legislation in the residence State. Therefore, social security benefits will be taxed on a net basis at graduated rates and low-income recipients will not pay any tax on these benefits. However, the Protocol modifies the residence State's taxation of cross-border benefits in order to take into account how the benefits would have been taxed in the source State if paid to a resident of that State.

In the case of Canadian recipients of U.S. social security benefits, the Protocol provides that only 85 percent of these benefits will be subject to tax in Canada. This reflects the fact that, although in Canada social security benefits are fully includible, a maximum of 85 percent of United States social security benefits are includible in income for U.S. tax purposes. See Code section 86. This is also consistent with the taxation of social security benefits under the Convention prior to the effective date of the 1995 Protocol, since at the time the pre-1996 rule was adopted the United States included a maximum of 50 percent of the social security benefits in income.

In the case of U.S. recipients of Canadian social security benefits, the Protocol provides that the benefits will be taxed as if they were payments under the *Social Security Act*. Therefore, a maximum of 85 percent of the Canadian benefits will be included in the gross income of a U.S. recipient, even though the entire benefit would have been taxed by Canada if received by a Canadian resident. However, if the Canadian benefit is of a type that is not subject to Canadian tax when paid to a resident of Canada, it will not be subject to U.S. tax when received by a resident of the United States. This provision is necessary to take into account certain proposed changes to Canada's Old Age Security benefits. At present, Old Age Security benefits paid to U.S. residents are subject to both ordinary Canadian income tax and an additional "recovery tax" that has the effect of means-testing the benefit. Canada has proposed to change the Old Age Security benefit system so that the benefit would be means-tested at source and not subject to the recovery tax. Because the amount of such future benefits will have already been reduced to take into account the recipient's income, it would not be appropriate to subject such benefits to additional U.S. tax.

[Application of the Protocol]

Article 3 of the Protocol contains the rules for bringing the Protocol into force and giving effect to its provisions.

Paragraph 1

Paragraph 1 provides for the ratification of the Protocol by both Contracting States according to their constitutional and statutory requirements and instruments of ratification will be exchanged as soon as possible.

In the United States, the process leading to ratification and entry into force is as follows: Once a protocol has been signed by authorized representatives of the two Contracting States, the Department of State sends the protocol to the President who formally transmits it to the Senate for its advice and consent to ratification, which requires approval by two-thirds of the Senators present and voting. Prior to this vote, however, it generally has been the practice for the Senate Committee on Foreign Relations to hold hearings on the protocol and make a recommendation regarding its approval to the full Senate. Both Government and private sector witnesses may testify at these hearings. After receiving the advice and consent of the Senate to ratification, the protocol is returned to the President for his signature on the ratification document. The President's signature on the document completes the process in the United States.

Paragraph 2

Paragraph 2 of Article 3 provides that the Protocol will enter into force on the date on which the instruments of ratification are exchanged. However, the date on which the Protocol enters into force will not be the date on which its provisions will take effect. Paragraph 2, therefore, also contains rules that determine when the provisions of the Protocol will have effect.

Under paragraph 2(a), Article 1 of the Protocol will have effect as of April 26, 1995. As discussed above, this is the date on which certain proposed amendments to Canadian law would be effective.

Under paragraph 2(b), Article 2 of the Protocol will have effect as of January 1, 1996, which is the date as of which the changes to the taxation of social security benefits that were implemented by the 1995 Protocol became effective. Consequently, the source-basis taxation of social security benefits that was implemented by the 1995 Protocol will be retroactively eliminated and recipients of cross-border social security benefits will be entitled to a refund of any source-State tax withheld on their benefits for 1996 and later years. This return to residence-basis taxation of social security benefits means that some high-income recipients of cross-border benefits may be required to pay additional taxes to their State of residence if their average tax rate on these benefits in their State of residence is higher than the current rate of source-State withholding tax. It is only for future years, however, that such high-income recipients of benefits will be subject to a higher rate of tax. No one will be subject to a higher rate of tax for the retroactive period. If, as a result of the change, the residence-State tax would exceed the amount of the refund otherwise due, there will be neither a refund of source-State tax nor the imposition of additional residence-State tax.

Subparagraphs (b)(i) and (ii) provide rules that determine how the retroactive effect of the Protocol will generally be implemented for the year in which the Protocol enters into effect. As discussed below, these rules are required as a result of administrative limitations on the ability of the relevant Government organizations to effect the payment of refunds. Withholding taxes imposed by the United States on cross-border social security benefits are collected and administered by the Social Security Administration (SSA), not the Internal Revenue Service (IRS). However, any refunds of withholding tax improperly collected on social security benefits are ordinarily paid by the IRS. If the Protocol enters into force prior to September 1 of a calendar year, it is possible for the SSA to pay refunds of the tax withheld for the entire year directly to the individual Canadian recipient. If the Protocol enters into force after August 31 of a calendar year, it will not be possible for SSA to pay refunds of tax withheld for that year and refunds must be paid through the IRS.

Paragraphs 3, 4 and 5 of Article 3 establish administrative procedures to govern the payment of refunds through the IRS, including rules to ensure that benefits will not be subject to a higher rate of tax in the residence State for the retroactive period. The taxes withheld on social security benefits paid for years after 1995 and prior to the calendar year in which the Protocol enters into force (referred to in the Protocol as "source-taxed benefits") will be subject to the refund procedures set forth in paragraphs 3, 4, and 5, regardless of when the Protocol enters into force. Social security benefits paid for calendar years beginning after the Protocol enters into force will not be subject to the refund procedures set forth in paragraphs 3, 4, and 5 because source State tax will not be withheld.

If the Protocol enters into force after August 31 of a calendar year, subparagraph (b)(i) provides that social security benefits paid during such calendar year will be treated as benefits paid for calendar years ending before the year in which the Protocol enters into force (and thus will be treated as "source-taxed benefits"). In this case, the taxes withheld on these benefits will be subject to the refund procedures set forth in paragraphs 3, 4, and 5 of Article 3 and these benefits will not be subject to a higher rate of residence-State tax. If the Protocol enters into force before September 1 of a calendar year, subparagraph (b)(ii) provides that social security benefits paid during such calendar year will be treated as benefits paid for calendar years beginning after the year in which the Protocol enters into force. In this case, the taxes withheld on these benefits will be directly and automatically refunded by the source State and the potentially higher rate of residence-State tax will apply.

Paragraph 3

Paragraph 3 of Article 3 of the Protocol provides rules governing the payment of refunds of source-State tax with respect to "source-taxed benefits." In general, all applications for refund must be made to the competent authority of the source State within three years of entry into force of the Protocol.

Except as set forth in subparagraph (b) of paragraph 2, the retroactive effect of the Protocol is elective and applies only if a recipient of benefits applies for a refund of the tax paid or withheld. Consequently, if a recipient of benefits does not apply for a refund of the tax paid or withheld, the Protocol will not be given retroactive effect, except as set forth in subparagraph (b) of paragraph 2. If the residence-State tax that would be imposed on such source-taxed benefits is greater than the source-State tax imposed on such benefits, it is assumed that the recipient will not apply for a refund of the source-State tax and such benefits will not be subject to the retroactive effect of the Protocol. Because the application for refund may be made on a year-by-year basis, the recipient may elect the most beneficial treatment for each year. Therefore, social security benefits will not be subject to a higher rate of tax for the retroactive period, except as set forth in subparagraph (b) of paragraph 2.

The refund procedure depends on the recipient's State of residence. In the case of U.S. residents who received Canadian social security benefits that were subject to Canadian tax, a U.S. resident who elects to have the Protocol apply retroactively will apply directly to the Canadian competent authority for the refund of any Canadian tax not previously refunded. On the receipt of such refund, the Canadian social security benefits will be includible in the U.S. resident's gross income for the years with respect to which the refund was paid. Consequently, the U.S. recipient may be required to file an amended U.S. income tax return for such years and pay U.S. tax on such benefits. Pursuant to Article XXVII (Exchange of Information) of the Convention, the Canadian competent authority will provide the U.S. competent authority with information regarding the payment of refunds.

In the case of Canadian residents who received U.S. social security benefits, the Canadian competent authority shall be the only person entitled to apply for a refund of the U.S. taxes withheld on such benefits. Individual residents of Canada will not apply directly to the IRS for refunds. However, the Canadian competent authority may base its applications on information received from individual Canadians, as well as on information to be provided by the United State competent authority. The Protocol provides that the Canadian competent authority shall apply for and receive all such refunds on behalf of individual residents of Canada and shall remit such refunds to individual residents of Canada after deducting any additional Canadian tax that may imposed as a result of such social security benefits being subject to tax in Canada. The Canadian competent authority shall make such application for refund on behalf of an individual resident of Canada only if the additional Canadian tax that would be imposed is less than the amount of the U.S. tax to be refunded. If, with respect to an individual resident of Canada, the additional Canadian tax that would be imposed on the individual's social security benefits is equal to or greater than the U.S. tax withheld, the Canadian competent authority shall not apply for a refund of the U.S. tax withheld on the individual's benefits. This provision ensures that refunds of U.S. tax will be paid only when the refund will benefit an individual resident of Canada. A refund of U.S. tax will not be paid if it would simply result in a payment from the U.S. Treasury to the Government of Canada without any portion of the refund being paid to an individual resident of Canada.

Paragraph 4

Paragraph 4 provides that all taxes refunded as a result of the Protocol will be refunded without interest. Correspondingly, any additional taxes assessed as a result of the Protocol will be assessed without interest provided that the additional taxes are paid in a timely manner. However, interest and penalties on underpayments may be assessed for periods beginning after December 31 of the year following the year in which the Protocol enters into force.

Paragraph 5

Paragraph 5 provides that the competent authorities shall establish procedures for making or revoking the application for refund provided for in paragraph 3 and such other procedures as are necessary to ensure the appropriate implementation of the Protocol. It will be necessary to establish procedures for a taxpayer to revoke his application for refund because a taxpayer may apply for a refund and then determine that the residence-State tax imposed on his social security benefits pursuant to Article 2 of the Protocol exceeds the amount of source-State tax refunded. Such a taxpayer (or, in the case of a Canadian resident, the Canadian competent authority acting on behalf of such taxpayer) will be permitted to revoke his application for refund provided that the taxpayer returns the source-State refund and the three-year period established in paragraph 3 has not expired as of the date on which the revocation is filed. The competent authorities will also establish procedures to ensure that duplicate refunds are not paid.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 9 of the Protocol amends paragraph 5 of Article XVIII to modify the treatment of social security benefits under the Convention. Under the amended paragraph, benefits paid under the U.S. or Canadian social security legislation to a resident of the other Contracting State, or, in the case of Canadian benefits, to a U.S. citizen, are taxable exclusively in the paying State. This amendment brings the Convention into line with current U.S. treaty policy. Social security benefits are defined, for this purpose, to include tier 1 railroad retirement benefits but not unemployment benefits (which therefore fall under Article XXII (Other Income) of the Convention). Pensions in respect of government service are covered not by this rule but by the rules of paragraphs 1 and 2 of Article XVIII.

The special rule regarding U.S. citizens is intended to clarify that only Canada, and not the United States, may tax a social security payment by Canada to a U.S. citizen not resident in the United States. This is consistent with the intention of the general rule, which is to give each Contracting State exclusive taxing jurisdiction over its social security payments. Since paragraph 5 is an exception to the saving clause, Canada will retain exclusive taxing jurisdiction over Canadian social security benefits paid to U.S. residents and citizens, and vice versa. It was not necessary to provide a special rule to clarify the taxation of U.S. social security payments to Canadian citizens, because Canada does not tax on the basis of citizenship and, therefore, does not include citizens within the scope of its saving clause.

Technical Explanation [1984]:

Paragraph 5, as amended by the 1984 Protocol, provides that benefits under social security legislation in Canada or the United States paid to a resident of the other Contracting State are taxable only in the State in which the recipient is resident. However, the State of residence must exempt from taxation one-half of the total amount of such benefits paid in a taxable year. Thus, if U.S. social security benefits are paid to a resident of Canada, the United States will exempt such benefits from tax and Canada will exempt one-half of the benefits from taxation. The exemption of one-half of the benefits in the State of residence is an exception to the saving clause under subparagraph 3(a) of Article XXIX (Miscellaneous Rules). The United States will not exempt U.S. social security benefits from tax if the Canadian resident receiving such benefits is a U.S. citizen. If a U.S. citizen and resident receives Canadian social security benefits, Canada will not tax such benefits and the United States will exempt from tax one-half of the total amount of such benefits. The United States will also exempt one-half of Canadian social security benefits from tax if the recipient is a U.S. citizen who is a resident of Canada, under paragraph 7 of Article XXIX. Paragraph 5 encompasses benefits paid under social security legislation of a political subdivision, such as a province of Canada.

History: Para. 5 amended by 1997 Protocol, article 2(2), in force December 16, 1997 (the day instruments of ratification were exchanged). Article 3 of the Protocol provides the following:

> 1. This Protocol shall be subject to ratification in accordance with the applicable procedures in Canada and the United States and instruments of ratification shall be exchanged as soon as possible.
>
> 2. This Protocol shall enter into force upon the exchange of instruments of ratification, and shall have effect as follows:
>
> (a) Article 1 [amendments to Article XIII (Gains)] of this Protocol shall have effect as of April 26, 1995; and
>
> (b) Article 2 [amendments to Article XVIII (Pension and Annuities)] of this Protocol shall have effect with respect to amounts paid or credited to a resident of the other Contracting State after 1995, except that where a Contracting State has, in accordance with the Convention read without reference to this Protocol, imposed a tax on benefits paid or credited under the social security legislation in that State, and those benefits are paid or credited after 1995 and
>
> (i) before the calendar year in which this Protocol enters into force, if this Protocol enters into force before September 1 of that year, or
>
> (ii) before the end of the calendar year in which this Protocol enters into force, if this Protocol enters into force after August 31 of that year,
>
> Article 2 [amendments to Article XVIII (Pension and Annuities)] shall only have effect with respect to such benefits (referred to in this Article as "source-taxed benefits") as described in paragraphs 3, 4 and 5.
>
> 3. With respect to source-taxed benefits paid by a Contracting State to a resident of the other Contracting State, Article 2 applies only if the resident has, within three years after the date on which this Protocol enters into force, applied to the competent authority of the first-mentioned Contracting State for a refund of the tax imposed on the benefits. However, with respect to source-taxed benefits paid by the United States to a resident of Canada, the competent authority of Canada shall:
>
> (a) apply for and receive such refund on behalf of the resident;
>
> (b) remit to the resident, in accordance with the law of Canada governing refunds of income tax overpayments, such refund less any tax imposed in Canada on the benefits in accordance with Article 2 of this Protocol; and
>
> (c) make the application referred to in subparagraph (*a*) only if the additional tax that would be imposed in Canada on the benefits, on the assumption that Article 2 of this Protocol applied, would be less than the tax imposed in the United States on the benefits as a result of paragraph 5 of Article XVIII (Pensions and Annuities) of the Convention read without reference to this Protocol.
>
> 4. All taxes refunded as a result of this Protocol shall be refunded without interest and interest on any taxes of a resident of a Contracting State assessed as a result of this Protocol shall be computed as though those taxes became payable no earlier than December 31 of the year following the year in which this Protocol enters into force.
>
> 5. The competent authorities of the Contracting States shall establish procedures for making or revoking the application referred to in paragraph 3 and shall agree on such additional procedures as are necessary to ensure the appropriate implementation of this Protocol.

The para. formerly read:

> 5. Benefits under the social security legislation in a Contracting State (including tier 1 railroad benefits but not including unemployment benefits) paid to a resident of the other Contracting State (and in the case of Canadian benefits, to a citizen of the United States) shall be taxable only in the first-mentioned State.

Para. 5 amended by 1995 Protocol, article 9(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 5 formerly read:

> 5. Benefits under the social security legislation in a Contracting State paid to a resident of the other Contracting State shall be taxable as follows:
>
> (a) such benefits shall be taxable only in that other State;
>
> (b) notwithstanding the provisions of subparagraph (a), one-half of the total amount of any such benefit paid in a taxable year shall be exempt from taxation in that other State.

Para. 5 amended by 1984 Protocol, article I.

6. Alimony and other similar amounts (including child support payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable as follows:

(a) such amounts shall be taxable only in that other State;

(b) notwithstanding the provisions of subparagraph (a), the amount that would be excluded from taxable income in the first-mentioned State if the recipient

were a resident thereof shall be exempt from taxation in that other State.

Technical Explanation [1984]:

Paragraph 6(a) provides that only the State of which a person is resident has the right to tax alimony and other similar amounts (including child support payments) arising in the other Contracting State and paid to such person. However, under paragraph 6(b), the state of residence shall exempt from taxation the amount that would be excluded from taxable income in the State of source if the recipient were a resident thereof. Thus, if child support payments are made by a U.S. resident to a resident of Canada, Canada shall exempt from tax the amount of such payments which would be excluded from taxable income under section 71(b) of the *Internal Revenue Code*. Paragraph 6 does not define the term "alimony"; the term is defined pursuant to the provisions of paragraph 2 of Article III (General Definitions).

Article XVIII does not provide rules to determine the State in which pensions, annuities, alimony, and other similar amounts arise. The provisions of paragraph 2 of Article III are used to determine where such amounts arise for purposes of determining whether a Contracting State has the right to tax such amounts.

Paragraphs 1, 3, 4, 5(b) and 6(b) of Article XVIII are, by reason of paragraph 3(a) of Article XXIX (Miscellaneous Rules), exceptions to the "saving clause." Thus, the rules in those paragraphs change U.S. taxation of U.S. citizens and residents.

History: Para. 6 amended by 1983 Protocol, article IX, para. 3.

7. A natural person who is a citizen or resident of a Contracting State and a beneficiary of a trust, company, organization or other arrangement that is a resident of the other Contracting State, generally exempt from income taxation in that other State and operated exclusively to provide pension, retirement or employee benefits may elect to defer taxation in the first-mentioned State, under rules established by the competent authority of that State, with respect to any income accrued in the plan but not distributed by the plan, until such time as and to the extent that a distribution is made from the plan or any plan substituted therefor.

Technical Explanation [1995 Protocol]:

A new paragraph 7 is added to Article XVIII by Article 9 of the Protocol. This paragraph replaces paragraph 5 of Article XXIX (Miscellaneous Rules) of the present Convention. The new paragraph makes reciprocal the rule that it replaced and expands its scope, so that it no longer applies only to residents and citizens of the United States who are beneficiaries of Canadian RRSPs. As amended, paragraph 7 applies to an individual who is a citizen or resident of a Contracting State and a beneficiary of a trust, company, organization, or other arrangement that is a resident of the other Contracting State and that is both generally exempt from income taxation in its State of residence and operated exclusively to provide pension, retirement, or employee benefits. Under this rule, the beneficiary may elect to defer taxation in his State of residence on income accrued in the plan until it is distributed or rolled over into another plan. The new rule also broadens the types of arrangements covered by this paragraph in a manner consistent with other pension-related provisions of the Protocol.

History: Para. 7 added by 1995 Protocol, article 9(3), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2)(a) under "Application of the 1995 Protocol" above).

Interpretation Bulletins: IT-122R2: United States social security taxes and benefits.

Article XIX — Government Service

Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, the provisions of Article XIV (Independent Personal Services), XV (Dependent Personal Services) or XVI (Artistes and Athletes), as the case may be, shall apply, and the preceding sentence shall not apply, to remuneration paid in respect of services rendered in connection with a trade or business carried on by a Contracting State or a political subdivision or local authority thereof.

Technical Explanation [1984]:

Article XIX provides that remuneration, other than a pension, paid by a Contracting State or political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. (Pursuant to paragraph 5 of Article IV (Residence), other income of such a citizen may also be exempt from tax, or subject to reduced rates of tax, in the State in which he is performing services, in accordance with other provisions of the Convention.) However, if the services are rendered in connection with a trade or business, then the provisions of Article XIV (Independent Personal Services), Article XV (Dependent Personal Services), or Article XVI (Artistes and Athletes), as the case may be, are controlling. Whether functions are of a governmental nature may be determined by a comparison with the concept of a governmental function in the State in which the income arises.

Pursuant to paragraph 3(a) of Article XXIX (Miscellaneous Rules), Article XIX is an exception to the "saving clause." As a result, a U.S. citizen resident in Canada and performing services in Canada in the discharge of functions of a governmental nature for the United States is taxable only in the United States on remuneration for such services.

This provision differs from the rules of Article VI of the 1942 Convention. For example, Article XIX allows the United States to impose tax on a person other than a citizen of Canada who earns remuneration paid by Canada in respect of services rendered in the discharge of governmental functions in the United States. (Such a person may, however, be entitled to an exemption from U.S. tax as provided in Code section 893.) Also, under the provisions of Article XIX Canada will not impose tax on amounts paid by the United States in respect of services rendered in the discharge of governmental functions to a U.S. citizen who is ordinarily resident in Canada for purposes other than rendering governmental services. Under paragraph 1 of Article VI of the 1942 Convention, such amounts would be taxable by Canada.

Related Provisions: Art. XXVIII — Diplomatic agents and consular officials.

Article XX — Students

Payments which a student, apprentice or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments are made to him from outside that State.

Technical Explanation [1984]: Article XX provides that a student, apprentice, or business trainee temporarily present in a Contracting State for the purpose of his full-time education or training is exempt from tax in that State with respect to amounts received from outside that State for the purpose of his maintenance, education, or training, if the individual is or was a resident of the other Contracting State immediately before visiting the first-mentioned State. There is no limitation on the number of years or the amount of income to which the exemption applies.

The Convention does not contain provisions relating specifically to professors and teachers. Teachers are treated under the Convention pursuant to the rules established in Articles XIV (Independent Personal Services) and XV (Dependent Personal Services), in the same manner as other persons performing services. In Article VIII A of the 1942 Convention there is a 2-year exemption in the Contracting State of source in the case of a professor or teacher who is a resident of the other Contracting State.

Article XXI — Exempt Organizations

1. Subject to the provisions of paragraph 3, income derived by a religious, scientific, literary, educational or charitable organization shall be exempt from tax in a Contracting State if it is resident in the other Contracting State but only to the extent that such income is exempt from tax in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that a religious, scientific, literary, educational, or charitable organization resident in a Contracting State shall be exempt from tax on income arising in the other Contracting State but only to the extent that such income is exempt from taxation in the Contracting State in which the organization is resident. Since this paragraph, and the remainder of Article XXI, deal with entities that are not normally taxable, the test of "resident in" is intended to be similar — but cannot be identical — to the one outlined in paragraph 1 of Article IV (Residence). Paragraph 3 provides that paragraph 1 does not exempt from tax income of a trust, company, or other organization from carrying on a trade or business, or income from a "related person" other than a person referred to in paragraph 1 or 2.

2. Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by:

(a) a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to administer or provide pension, retirement or employee benefits; or

(b) a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a);

shall be exempt from income taxation in that taxable year in the other Contracting State.

Technical Explanation [1995 Protocol]:

Article 10 of the Protocol amends Article XXI (Exempt Organizations) of the Convention. Paragraph 1 of Article 10 amends paragraphs 2 and 3 of Article XXI. The most significant changes are those that conform the language of the two paragraphs to the revised definition of the term "pension" in paragraph 3 of Article XVIII (Pensions and Annuities). The revision adds the term "arrangement" to "trust, company or organization" in describing the residents of a Contracting State that may receive dividend and interest income exempt from current income taxation by the other Contracting State. This clarifies that IRAs, for example, are eligible for the benefits of paragraph 2, subject to the exception in paragraph 3, and makes Canadian RRSPs and RRIFs, for example, similarly eligible (provided that they are operated exclusively to administer or provide pension, retirement, or employee benefits).

The other changes, all in paragraph 2, are intended to improve and clarify the language. For example, the reference to "tax" in the present Convention is changed to a reference to "income taxation." This is intended to clarify that if an otherwise exempt organization is subject to an excise tax, for example, it will not lose the benefits of this paragraph. In subparagraph 2(b), the phrase "not taxed in a taxable year" was changed to "generally exempt from income taxation in a taxable year" to ensure uniformity throughout the Convention; this change was not intended to disqualify a trust or other arrangement that qualifies for the exemption under the wording of the present Convention.

Technical Explanation [1984]:

Paragraph 2 provides that a trust, company, or other organization that is resident in a Contracting State and constituted and operated exclusively to administer or provide employee benefits or benefits for the self-employed under one or more funds or plans established to provide pension or retirement benefits or other employee benefits is exempt from taxation on dividend and interest income arising in the other Contracting State, in a taxable year, if the income of such organization is generally exempt from taxation for that year in the Contracting State in which it is resident. In addition, a trust, company, or other organization resident in a Contracting State and not taxed in a taxable year in that State shall be exempt from taxation in the other State in that year on dividend and interest income arising in that other State if it is constituted and operated exclusively to earn income for the benefit of an organization described in the preceding sentence. Pursuant to paragraph 3 the exemption at source provided by paragraph 2 does not apply to dividends or interest from carrying on a trade or business or from a "related person," other than a person referred to in paragraph 1 or 2. The term "related person" is not necessarily defined by paragraph 2 of Article IX (Related Persons).

Related Provisions: ITA 212(14)(c) — Certificate of exemption from non-resident withholding tax.

History: Para. 2 amended by 1995 Protocol, article 10(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 2 formerly read:

> 2. Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by:
>
> (a) a trust, company or other organization which is resident in a Contracting State, generally exempt from tax in a taxable year in that State and constituted and operated exclusively to administer or provide benefits under one or more funds or plans established to provide pension, retirement or other employee benefits; or
>
> (b) a trust, company or other organization which is resident in a Contracting State, not taxed in a taxable year in that State and constituted and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a);
>
> shall be exempt from tax in that taxable year in the other Contracting State.

Para. 2 amended by 1983 Protocol, article X.

3. The provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company, organization or other arrangement from carrying on a trade or business or from a related person other than a person referred to in paragraph 1 or 2.

Technical Explanation [1995 Protocol]:

See under para. 2.

Technical Explanation [1984]:

See under para. 1.

History: Para. 3 amended by 1995 Protocol, article 10(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. The provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company or other organization from carrying on a trade or business or from a related person other than a person referred to in paragraph 1 or 2.

4. A religious, scientific, literary, educational or charitable organization which is resident in Canada and which has received substantially all of its support from persons other than citizens or residents of the United States shall be exempt in the United States from the United States excise taxes imposed with respect to private foundations.

Technical Explanation [1984]:

Paragraph 4 provides an exemption from U.S. excise taxes on private foundations in the case of a religious, scientific, literary, educational, or charitable organization which is resident in Canada but only if such organization has received substantially all of its support from persons other than citizens or residents of the United States.

5. For the purposes of United States taxation, contributions by a citizen or resident of the United States to an organization which is resident in Canada, which is generally exempt from Canadian tax and which could qualify in the United States to receive deductible contributions if it were resident in the United States shall be treated as charitable contributions; however, such contributions (other than such contributions to a college or university at which the citizen or resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions to the income of such citizen or resident arising in Canada. The preceding sentence shall not be interpreted to allow in any taxable year deductions for char-

itable contributions in excess of the amount allowed under the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions. For the purposes of this paragraph, a company that is a resident of Canada and that is taxable in the United States as if it were a resident of the United States shall be deemed to be a resident of the United States.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 10 adds a sentence to paragraph 5 of Article XXI of the Convention. The paragraph in the present Convention provides that a U.S. citizen or resident may deduct, for U.S. income tax purposes, contributions made to Canadian charities under certain circumstances. The added sentence makes clear that the benefits of the paragraph are available to a company that is a resident of Canada but is treated by the United States as a domestic corporation under the consolidated return rules of section 1504(d) of the *Internal Revenue Code*. Thus, such a company will be able to deduct, for U.S. income tax purposes, contributions to Canadian charities that are deductible to a U.S. resident under the provisions of the paragraph.

Technical Explanation [1984]:

Paragraph 5 provides that contributions by a citizen or resident of the United States to an organization which is resident in Canada and is generally exempt from Canadian tax are treated as charitable contributions, but only if the organization could qualify in the United States to receive deductible contributions if it were resident in (i.e., organized in) the United States. Paragraph 5 generally limits the amount of contributions made deductible by the Convention to the income of the U.S. citizen or resident arising in Canada, as determined under the Convention. In the case of contributions to a college or university at which the U.S. citizen or resident or a member of his family is or was enrolled, the special limitation to income arising in Canada is not required. The percentage limitations of Code section 170 in respect of the deductibility of charitable contributions apply after the limitations established by the Convention. Any amounts treated as charitable contributions by paragraph 5 which are in excess of amounts deductible in a taxable year pursuant to paragraph 5 may be carried over and deducted in subsequent taxable years, subject to the limitations of paragraph 5.

History: The last sentence of para. 5 added by 1995 Protocol, article 10(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above).

6. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the *Income Tax Act* if the only income of the resident for that year were the resident's income arising in the United States. The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article 10 amends paragraph 6 of Article XXI of the Convention to replace references to "deductions" for Canadian tax purposes with references to "relief" from tax. These changes clarify that the provisions of paragraph 6 apply to the credit for charitable contributions allowed under current Canadian law. The Protocol also makes other non-substantive drafting changes to paragraph 6.

Technical Explanation [1984]:

Paragraph 6 provides rules for purposes of Canadian taxation with respect to the deductibility of gifts to a U.S. resident organization by a resident of Canada. The rules of paragraph 6 parallel the rules of paragraph 5. The current limitations in Canadian law provide that deductions for gifts to charitable organizations may not exceed 20 percent of income. Excess deductions may be carried forward for one year.

The term "family" used in paragraphs 5 and 6 is defined in paragraph 2 of the Exchange of Notes accompanying the Convention to mean an individual's brothers and sisters (whether by whole or half-blood, or by adoption), spouse, ancestors, lineal descendants, and adopted descendants. Paragraph 2 of the Exchange of Notes also provides that the competent authorities of Canada and the United States will review procedures and requirements for organizations to establish their exempt status under paragraph 1 of Article XXI or as an eligible recipient of charitable contributions or gifts under paragraphs 5 and 6 of Article XXI. It is contemplated that such review will lead to the avoidance of duplicative administrative efforts in determining such status and eligibility.

The provisions of paragraph 5 and 6 generally parallel the rules of Article XIII D of the 1942 Convention. However, paragraphs 5 and 6 permit greater deductions for certain contributions to colleges and universities than do the provisions of the 1942 Convention.

Related Provisions: ITA 118.1(9) — Commuter's charitable donations.

History: Para. 6 amended by 1995 Protocol, article 10(3), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 6 formerly read:

> 6. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization which is resident in the United States, which is generally exempt from United States tax and which could qualify in Canada to receive deductible gifts if it were created or established and resident in Canada shall be treated as gifts to a registered charity; however, such gifts (other than such gifts to a college or university at which the resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of Canada in respect of the deductibility of gifts to registered charities to the income of such resident arising in the United States. The preceding sentence shall not be interpreted to allow in any taxable year deductions for gifts to registered charities in excess of the amount allowed under the percentage limitations of the laws of Canada in respect of the deductibility of gifts to registered charities.

Information Circulars [Art. XXI]: 77-16R4: Non-resident income tax.

Forms [Art. XXI]: NR602: Non-resident ownership certificate — no withholding tax.

Article XXII — Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State, except that if such income arises in the other Contracting State it may also be taxed in that other State.

Technical Explanation [1984]:

Paragraph 1 provides that a Contracting State of which a person is a resident has the sole right to tax items of income, wherever arising, if such income is not dealt with in the prior Articles of the Convention. If such income arises in the other Contracting State, however, it may also be taxed in that State. The determination of where income arises for this purpose is made under the domestic laws of the respective Contracting States unless the Convention specifies where the income arises (e.g., paragraph 6 of Article XI (Interest)) for purposes of determining the right to tax, in which case the provisions of the Convention control.

2. To the extent that income distributed by an estate or trust is subject to the provisions of paragraph 1, then, notwithstanding such provisions, income distributed by an estate or trust which is a resident of a Contracting State to a resident of the other Contracting State who is a beneficiary of the estate or trust may be taxed in the first-mentioned State and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the income; provided, however, that such income shall be exempt from tax in the first-mentioned State to the extent of any amount distributed out of income arising outside that State.

Technical Explanation [1984]:

Paragraph 2 provides that to the extent that income distributed by an estate or trust resident in one Contracting State is deemed under the domestic law of that State to be a separate type of income "arising" within that State, such income distributed to a beneficiary resident in the other Contracting State may be taxed in the State of source at a maximum rate of 15 percent of the gross amount of such distribution. Such a distribution will, however, be exempt from tax in the State of source to the extent that the income distributed by the estate or trust was derived by the estate or trust from sources outside that State. Thus, in a case where the law of Canada treats a distribution made by a trust resident in Canada as a separate type of income arising in Canada, Canadian tax is limited by paragraph 2 to 15 percent of the gross amount distributed to a U.S. resident beneficiary. Although the Code imposes a tax on certain domestic trusts (e.g., accumulation trusts) and such trusts are residents of the United States for purposes of Article IV (Residence) and paragraph 2 of Article XXII, paragraph 2 does not apply to distributions by such trusts because, pursuant to Code sections 667(e) and 662(b), these distributions have the same character in the hands of a non-resident beneficiary as they do in the hands of the trust. Thus, a distribution by a domestic accumulation trust is not a separate type of income for U.S. purposes. The taxation of such a distribution in the United States is governed by the distribution's character, the provisions of the Code and the provisions of the Convention other than the provision in paragraph 2 limiting the tax at source to 15 percent.

Interpretation Bulletins: IT-465R: Non-resident beneficiaries of trusts.

3. Losses incurred by a resident of a Contracting State with respect to wagering transactions the gains on which may be taxed in the other Contracting State shall, for the purpose of taxation in that other State, be deductible to the same extent that such losses would be deductible if they were incurred by a resident of that other State.

Technical Explanation [1995 Protocol]:

Article 11 of the Protocol adds a new paragraph 3 to Article XXII (Other Income) of the Convention. This Article entitles residents of one Contracting State who are taxable by the other State on gains from wagering transactions to deduct losses from wagering transactions for the purposes of taxation in that other State. However, losses are to be deductible only to the extent that they are incurred with respect to wagering transactions, the gains on which could be taxable in the other State, and only to the extent that such losses would be deductible if incurred by a resident of that other State.

This Article does not affect the collection of tax by a Contracting State. Thus, in the case of a resident of Canada, this Article does not affect, for example, the imposition of U.S. withholding taxes under section 1441 or section 1442 of the *Internal Revenue Code* on the gross amount of gains from wagering transactions. However, in computing its U.S. income tax liability on net income for the taxable year concerned, the Canadian resident may reduce its gains from wagering transactions subject to taxation in the United States by any wagering losses incurred on such transactions, to the extent that those losses are deductible under the provisions of new paragraph 3. Under U.S. domestic law, the deduction of wagering losses is governed by section 165 of the *Internal Revenue Code*. It is intended that the resident of Canada file a nonresident income tax return in order to substantiate the deduction for losses and to claim a refund of any overpayment of U.S. taxes collected by withholding.

History: Para. 3 added by 1995 Protocol, article 11, generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above).

Article XXIII — Capital

1. Capital represented by real property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

Technical Explanation [1984]:

Although neither Canada nor the United States currently has national taxes on capital, Article XXIII provides rules for the eventuality that such taxes might be enacted in the future. Paragraph 1 provides that capital represented by real property (as defined in paragraph 2 of Article VI (Income From Real Property)) owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

Related Provisions: *Income Tax Conventions Interpretation Act* 5 — Definition of "immovable property" and "real property".

2. Capital represented by personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, or by personal property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

Technical Explanation [1984]:

Paragraph 2 provides that capital represented by either personal property forming part of the business property of a permanent establishment or personal property pertaining to a fixed base in a Contracting State may be taxed in that State.

3. Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic, and by personal property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

Technical Explanation [1984]:

Paragraph 3 provides that capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic and by personal property pertaining to the operation of such ships and aircraft are taxable only in the Contracting State of residence.

Related Provisions: Art. III:1(h) — Meaning of "international traffic".

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Technical Explanation [1984]:

Paragraph 4 provides that all elements of capital other than those covered by paragraphs 1, 2, and 3 are taxable only in the Contracting State of residence. Thus, capital represented by motor vehicles or railway cars, not pertaining to a permanent establishment or fixed base in a Contracting State, would be taxable only in the Contracting State of which the taxpayer is a resident.

Article XXIV — Elimination of Double Taxation

1. In the case of the United States, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States, or to a company electing to be treated as a domestic corporation, as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada; and, in the case of a company which is a resident of the United States owning at least 10 per cent of the voting stock of a company which is a resident of Canada from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada by that company with respect to the profits out of which such dividends are paid.

Technical Explanation [1984]:

Paragraph 1 provides the general rules that will apply under the Convention with respect to foreign tax credits for Canadian taxes paid or accrued. The United States undertakes to allow to a citizen or resident of the United States, or to a company electing under Code section 1504(d) to be treated as a domestic corporation, a credit against the Federal income taxes imposed by the Code for the appropriate amount of income tax paid or accrued to Canada. In the case of a company which is a resident of the United States owning 10 percent or more of the voting stock of a company which is a resident of Canada (which for this purpose does not include a company electing under Code section 1504(d) to be treated as a domestic corporation), and from which it receives dividends in a taxable year, the United States shall allow as a credit against income taxes imposed by the Code the appropriate amount of income tax paid or accrued to Canada by

the Canadian company with respect to the profits out of which such company paid the dividends.

The direct and deemed-paid credits allowed by paragraph 1 are subject to the limitations of the Code as they may be amended from time to time without changing the general principle of paragraph 1. Thus, as is generally the case under U.S. income tax conventions, provisions such as Code sections 901(c), 904, 905, 907, 908, and 911 apply for purposes of computing the allowable credit under paragraph 1. In addition, the United States is not required to maintain the overall limitation currently provided by U.S. law.

The term "income tax paid or accrued" is defined in paragraph 7 of Article XXIV to include certain specified taxes which are paid or accrued. The Convention only provides a credit for amounts paid or accrued. The determination of whether an amount is paid or accrued is made under the Code. Paragraph 1 provides a credit for these specified taxes whether or not they qualify as creditable under Code section 901 or 903. A taxpayer who claims credit under the Convention for Canadian taxes made creditable solely by paragraph 1 is not, as a result of the Protocol, subject to a per-country limitation with respect to Canadian taxes. Thus, credit for such Canadian taxes would be computed under the overall limitation currently provided by U.S. law. (However, see the discussion below of the source rules of paragraphs 3 and 9 for a restriction on the use of third country taxes to offset the U.S. tax imposed on resourced income).

A taxpayer claiming credits for Canadian taxes under the Convention must apply the source rules of the Convention, and must apply those source rules in their entirety. Similarly, a taxpayer claiming credit for Canadian taxes which are creditable under the Code and who wishes to use the source rules of the Convention in computing that credit must apply the source rules of the Convention in their entirety.

History: Para. 1 amended by 1983 Protocol, article XI, para. 1.

2. In the case of Canada, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows:

(a) subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof)

(i) income tax paid or accrued to the United States on profits, income or gains arising in the United States, and

(ii) in the case of an individual, any social security taxes paid to the United States (other than taxes relating to unemployment insurance benefits) by the individual on such profits, income or gains

shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) subject to the existing provisions of the law of Canada regarding the taxation of income from a foreign affiliate and to any subsequent modification of those provisions — which shall not affect the general principle hereof — for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of the United States; and

(c) notwithstanding the provisions of subparagraph (a), where Canada imposes a tax on gains from the alienation of property that, but for the provisions of paragraph 5 of Article XIII (Gains), would not be taxable in Canada, income tax paid or accrued to the United States on such gains shall be deducted from any Canadian tax payable in respect of such gains.

Technical Explanation [1995 Protocol]:

Article 12 of the Protocol amends Article XXIV (Elimination of Double Taxation) of the Convention. Paragraph 1 of Article 12 amends the rules for Canadian double taxation relief in subparagraphs (a) and (b) of paragraph 2 of Article XXIV. The amendment to subparagraph (a) obligates Canada to give a foreign tax credit for U.S. social security taxes paid by individuals. The amendment to subparagraph (b) of paragraph 2 does not alter the substantive effect of the rule, but conforms the language to current Canadian law. Under the provision as amended, Canada generally continues to allow an exemption to a Canadian corporation for direct dividends paid from the exempt surplus of a U.S. affiliate.

History: Subparas. 2(a) and (b) amended by 1995 Protocol, article 12(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Subparas. (a) and (b) formerly read:

(a) subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof), and unless a greater deduction or relief is provided under the law of Canada, income tax paid or accrued to the United States on profits, income or gains arising in the United States shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) subject to the provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the general principle hereof), for the purposes of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of the United States; and

Para. 2 amended by 1983 Protocol, article XI, para. 2.

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

3. For the purposes of this Article:

(a) profits, income or gains (other than gains to which paragraph 5 of Article XIII (Gains) applies) of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) shall be deemed to arise in that other State; and

(b) profits, income or gains of a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) or to which paragraph 5 of Article XIII (Gains) applies shall be deemed to arise in the first-mentioned State.

Technical Explanation [1984]:

Paragraph 3 provides source rules for purposes of applying Article XXIV. Profits, income or gains of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention, for reasons other than the saving clause of paragraph 2 of Article XXIX (Miscellaneous Rules) (e.g., pensions and annuities taxable where arising pursuant to Article XVIII (Pensions and Annuities)), are deemed to arise in the latter State. This rule does not, however, apply to gains taxable under paragraph 5 of Article XIII (Gains) (i.e., gains taxed by a Contracting State derived from the alienation of property by a former resident of that State). Gains from such an alienation arise, pursuant to paragraph 3(b), in the State of which the alienator is a resident. Thus, if in accordance with paragraph 5 of Article XIII, Canada imposes tax on certain gains of a U.S. resident such gains are deemed, pursuant to paragraphs 2 and 3(b) of Article XXIV, to arise in the United States for purposes of computing the deduction against Canadian tax for the U.S. tax on such gain. Under the Convention such gains arise in the United States for purposes of the United States foreign tax credit. Paragraph 3(b) also provides that profits, income, or gains arise in the Contracting State of which a person is a resident if they may not be taxed in the other Contracting State under the provisions of the Convention (e.g., alimony), other than the "saving clause" of paragraph 2 of Article XXIX.

4. Where a United States citizen is a resident of Canada, the following rules shall apply:

(a) Canada shall allow a deduction from the Canadian tax in respect of income tax paid or accrued to the

United States in respect of profits, income or gains which arise (within the meaning of paragraph 3) in the United States, except that such deduction need not exceed the amount of the tax that would be paid to the United States if the resident were not a United States citizen; and

(b) for the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (a). The credit so allowed shall not reduce that portion of the United States tax that is deductible from Canadian tax in accordance with subparagraph (a).

5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income referred to in Article X (Dividends), XI (Interest) or XII (Royalties) that arise (within the meaning of paragraph 3) in the United States and that would be subject to United States tax if the resident of Canada were not a citizen of the United States, as long as the law in force in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of such items which exceeds 15 per cent of the amount thereof:

(a) the deduction so allowed in Canada shall not be reduced by any credit or deduction for income tax paid or accrued to Canada allowed in computing the United States tax on such items;

(b) Canada shall allow a deduction from Canadian tax on such items in respect of income tax paid or accrued to the United States on such items, except that such deduction need not exceed the amount of the tax that would be paid on such items to the United States if the resident of Canada were not a United States citizen; and

(c) for the purposes of computing the United States tax on such items, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b). The credit so allowed shall reduce only that portion of the United States tax on such items which exceeds the amount of tax that would be paid to the United States on such items if the resident of Canada were not a United States citizen.

Technical Explanation [1995 Protocol]:

Paragraphs 4 and 5 of Article XXIV of the Convention provide double taxation relief rules, for both the United States and Canada, with respect to U.S. source income derived by a U.S. citizen who is resident in Canada. These rules address the fact that a U.S. citizen resident in Canada remains subject to U.S. tax on his worldwide income at ordinary progressive rates, and may, therefore, be subject to U.S. tax at a higher rate than a resident of Canada who is not a U.S. citizen. In essence, these paragraphs limit the foreign tax credit that Canada is obliged to allow such a U.S. citizen to the amount of tax on his U.S. source income that the United States would be allowed to collect from a Canadian resident who is not a U.S. citizen. They also oblige the United States to allow the U.S. citizen a credit for any income tax paid to Canada on the remainder of his income. Paragraph 4 deals with items of income other than dividends, interest, and royalties and is not changed by the Protocol. Paragraph 5, which deals with dividends, interest, and royalties, is amended by paragraph 2 of Article 12 of the Protocol.

The amendments to paragraph 5 of the Article make that paragraph applicable only to dividend, interest, and royalty income that would be subject to a positive rate of U.S. tax if paid to a Canadian resident who is not a U.S. citizen. This means that the rules of paragraph 4, not paragraph 5, will apply to items of interest and royalties, such as portfolio interest, that would be exempt from U.S. tax if paid to a non-U.S. citizen resident in Canada. Under paragraph 4, Canada will not allow a credit for the U.S. tax on such income, and the United States will credit the Canadian tax to the extent necessary to avoid double taxation.

Paragraph 2 of Article 12 of the Protocol makes further technical amendments to paragraph 5 of Article XXIV of the Convention. The existing Technical Explanation of paragraphs 5 and 6 of Article XXIV of the Convention should be read as follows to reflect the amendments made by the Protocol:

Paragraph 5 provides special rules for the elimination of double taxation in the case of dividends, interest, and royalties earned by a U.S. citizen resident in Canada. These rules apply notwithstanding the provisions of paragraph 4, but only as long as the law in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of dividends, interest, or royalties which exceeds 15 percent of the amount of such items of income, and only with respect to those items of income. The rules of paragraph 4 apply with respect to other items of income; moreover, if the law in force in Canada regarding the deduction for foreign taxes is changed so as to no longer allow such a deduction, the provisions of paragraph 5 shall not apply and the U.S. foreign tax credit for Canadian taxes and the Canadian credit for U.S. taxes will be determined solely pursuant to the provisions of paragraph 4.

The calculations under paragraph 5 are as follows. First, the deduction allowed in Canada in computing income shall be made with respect to U.S. tax on the dividends, interest, and royalties before any foreign tax credit by the United States with respect to income tax paid or accrued to Canada. Second, Canada shall allow a deduction from (credit against) Canadian tax for U.S. tax paid or accrued with respect to the dividends, interest, and royalties, but such credit need not exceed the amount of income tax that would be paid or accrued to the United States on such items of income if the individual were not a U.S. citizen after taking into account any relief available under the Convention. Third, for purposes of computing the U.S. tax on such dividends, interest, and royalties, the United States shall allow as a credit against the U.S. tax the income tax paid or accrued to Canada after the credit against Canadian tax for income tax paid or accrued to the United States. The United States is in no event obliged to give a credit for Canadian income tax which will reduce the U.S. tax below the amount of income tax that would be paid or accrued to the United States on the amount of the dividends, interest, and royalties if the individual were not a U.S. citizen after taking into account any relief available under the Convention.

The rules of paragraph 5 are illustrated by the following examples.

Example B

A U.S. citizen who is a resident of Canada has $100 of dividend income arising in the United States. The tentative U.S. tax before foreign tax credit is $40.

Canada, under its law, allows a deduction for the U.S. tax in excess of 15 percent or, in this case, a deduction of $25 ($40 - $15). The Canadian taxable income is $75 and the Canadian tax on that amount is $35.

Canada gives a credit of $15 (the maximum credit allowed is 15 percent of the gross dividend taken into Canadian income) and collects a net tax of $20.

The United States allows a credit for the net Canadian tax against its tax in excess of 15 percent. Thus, the maximum credit is $25 ($40 - $15). But since the net Canadian tax paid was $20, the usable credit is $20.

To be able to use a credit of $20 requires Canadian source taxable income of $50 (50% of the U.S. tentative tax of $40). Under paragraph 6, $50 of the U.S. dividend is resourced to be of Canadian source. The credit of $20 may then be offset against the U.S. tax of $40, leaving a net U.S. tax of $20.

The combined tax paid to both countries is $40, $20 to Canada and $20 to the United States.

Example C

A U.S. citizen who is a resident of Canada receives $200 of income with respect to personal services performed within Canada and $100 of dividend income arising within the United States. Taxable income for U.S. purposes, taking into account the rules of Code section 911, is $220. U.S. tax (before foreign tax credits) is $92. The $100 of dividend income is deemed to bear U.S. tax (before foreign tax credits) of $41.82 ($100/$200 x $92). Under Canadian law, a deduction of $26.82 (the excess of $41.82 over 15 percent of the $100 dividend income) is allowed in computing income. The Canadian tax on $273.18 of income ($300 less the $26.82 deduction) is $130. Canada

then gives a credit against the $130 for $15 (the U.S. tax paid or accrued with respect to the dividend, $41.82 but limited to 15 percent of the gross amount of such income, or $15), leaving a final Canadian tax of $115. Of the $115, $30.80 is attributable to the dividend:

$$\frac{\$73.18\ (\$100\ \text{dividend less}\ \$26.82\ \text{deduction})}{\$273.18\ (\$300\ \text{income less}\ \$26.82\ \text{deduction})} \times \$115$$

Of this amount, $26.82 is creditable against U.S. tax pursuant to paragraph 5. (Although the U.S. allows a credit for the Canadian tax imposed on the dividend, $30.80, the credit may not reduce the U.S. tax below 15 percent of the amount of the dividend. Thus, the maximum allowable credit is the excess of $41.82, the U.S. tax imposed on the dividend income, over $15, which is 15 percent of the $100 dividend). The remaining $3.98 (the Canadian tax of $30.80 less the credit allowed of $26.82) is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5. (An additional $50.18 of Canadian tax with respect to Canadian source services income is creditable against U.S. tax pursuant to paragraphs 3 and 4(b). The $50.18 is computed as follows: tentative U.S. tax (before foreign tax credits) is $92; the U.S. tax on Canadian source services income is $50.18 ($92 less the U.S. tax on the dividend income of $41.82); the limitation on the services income is:

$$\frac{\$120\ (\text{taxable income from services})}{\$220\ (\text{total taxable income})} \times \$92$$

or $50.18. The credit for Canadian tax paid on the services income is therefore $50.18; the remainder of the Canadian tax on the services income, or $34.02, is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5.)

Paragraph 6 is necessary to implement the objectives of paragraphs 4(b) and 5(c). Paragraph 6 provides that where a U.S. citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 are deemed for the purposes of Article XXIV to arise in Canada to the extent necessary to avoid double taxation of income by Canada and the United States consistent with the objectives of paragraphs 4(b) and 5(c). Paragraph 6 can override the source rules of paragraph 3 to permit a limited resourcing of income. The principles of paragraph 3 have effect, pursuant to paragraph 3(b) of Article XXX (Entry Into Force) of the Convention, for taxable years beginning on or after January 1, 1976. See the discussion of Article XXX below.

The application of paragraph 6 is illustrated by the following example.

Example D

The facts are the same as in Example C. The United States has undertaken, pursuant to paragraph 5(c) and paragraph 6, to credit $26.82 of Canadian taxes on dividend income that has a U.S. source under both paragraph 3 and the *Internal Revenue Code*. (As illustrated in Example C, the credit, however, only reduces the U.S. tax on the dividend income which exceeds the amount of income tax that would be paid or accrued to the United States on such income if the individual were not a U.S. citizen after taking into account any relief available under the Convention. Pursuant to paragraph 6, for purposes of determining the U.S. foreign tax credit limitation under the Convention with respect to Canadian taxes,

$$\$64.13\ \left(\frac{A}{\$220} \times \$92 = \$26.82;\ A = \$64.13\right)$$

of taxable income with respect to the dividends is deemed to arise in Canada.

History: Para. 5 amended by 1995 Protocol, article 12(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 5 formerly read:

> 5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income referred to in Article X (Dividends), XI (Interest) or XII (Royalties) which arise (within the meaning of paragraph 3) in the United States, as long as the law in force in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of such items which exceeds 15 per cent of the amount thereof:
>
> (a) the deduction so allowed in Canada shall not be reduced by any credit or deduction for income tax paid or accrued to Canada allowed in computing the United States tax on such items;
>
> (b) Canada shall allow a deduction from the Canadian tax in respect of the income tax paid or accrued to the United States on such items, except that such deduction need not exceed 15 per cent of the gross amount of such items that has been included in computing the income of the citizen for Canadian tax purposes; and
>
> (c) for the purposes of computing the United States tax on such items, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b). The credit so allowed shall reduce only that portion of the United States tax on such items which exceeds 15 per cent of the amount thereof included in computing United States taxable income.

6. Where a United States citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 shall, notwithstanding the provisions of paragraph 3, be deemed to arise in Canada to the extent necessary to avoid the double taxation of such income under paragraph 4(b) or paragraph 5(c).

7. For the purposes of this Article, any reference to "income tax paid or accrued" to a Contracting State shall include Canadian tax and United States tax, as the case may be, and taxes of general application which are paid or accrued to a political subdivision or local authority of that State, which are not imposed by that political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to the Canadian tax or United States tax, as the case may be.

Technical Explanation [1995 Protocol]:

Paragraph 3 of Article 12 of the Protocol makes a technical amendment to paragraph 7 of Article XXIV. It conforms the reference to U.S. and Canadian taxes to the amended definitions of "United States tax" and "Canadian tax" in subparagraphs (c) and (d) of paragraph 1 of Article III (General Definitions). No substantive change in the effect of the paragraph is intended.

History: Para. 7 amended by 1995 Protocol, article 12(3), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 7 formerly read:

> 7. For the purposes of this Article, any reference to "income tax paid or accrued" to a Contracting State shall include Canadian tax and United States tax, as the case may be, and taxes of general application which are paid or accrued to a political subdivision or local authority of that State, which are not imposed by that political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to the taxes of that State referred to in paragraphs 2 and 3(a) of Article II (Taxes Covered).

8. Where a resident of a Contracting State owns capital which, in accordance with the provisions of the Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in that other State. The deduction shall not, however, exceed that part of the capital tax, as computed before the deduction is given, which is attributable to the capital which may be taxed in that other State.

9. The provisions of this Article relating to the source of profits, income or gains shall not apply for the purpose of determining a credit against United States tax for any foreign taxes other than income taxes paid or accrued to Canada.

History: Para. 9 added by 1983 Protocol, article XI, para. 3.

10. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such

State may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

Technical Explanation [1995 Protocol]:

Paragraph 4 of Article 12 of the Protocol adds a new paragraph 10 to Article XXIV of the Convention. This paragraph provides for the application of the rule of "exemption with progression" by a Contracting State in cases where an item of income of a resident of that State is exempt from tax in that State by virtue of a provision of the Convention. For example, where under Canadian law a tax benefit, such as the goods and services tax credit, to a Canadian resident individual is reduced as the income of that individual, or the individual's spouse or other dependent, increases, and any of these persons receives U.S. social security benefits that are exempt from tax in Canada under the Convention, Canada may, nevertheless, take the U.S. social security benefits into account in determining whether, and to what extent, the benefit should be reduced.

New Article XXIX B (Taxes Imposed by Reason of Death), added by Article 19 of the Protocol, also provides relief from double taxation in certain circumstances in connection with Canadian income tax imposed by reason of death and U.S. estate taxes. However, subparagraph 7(c) of Article XXIX B generally denies relief from U.S. estate tax under that Article to the extent that a credit or deduction has been claimed for the same amount in determining any other tax imposed by the United States. This restriction would operate to deny relief, for example, to the extent that relief from U.S. income tax is claimed under Article XXIV in respect of the same amount of Canadian tax. There is, however, no requirement that relief from U.S. tax be claimed first (or exclusively) under Article XXIV. Paragraph 6 of Article XXIX B also prevents the claiming of double relief from Canadian income taxation under both that Article and Article XXIV, by providing that the credit provided by Article XXIX B applies only after the application of the credit provided by Article XXIV.

Technical Explanation [1984]:

Paragraph 9 provides clarification that the source rules of this Article shall not be used to determine the credit available against U.S. tax for foreign taxes other than income taxes paid or accrued to Canada (i.e., taxes of third countries). Thus, creditable third country taxes may not offset the U.S. tax on income treated as arising in Canada under the source rules of the Convention. A person claiming credit for income taxes of a third country may not rely upon the rules of paragraphs 3 and 6 for purposes of treating income that would otherwise have a U.S. source as having a foreign source. Thus, if the taxpayer elects to compute the foreign tax credit for any year using the special source rules set forth in paragraphs 3 and 6, paragraph 9 requires that a separate limitation be computed for taxes not covered by paragraph 1 without regard to the source rules of paragraphs 3 and 6, and the credit for such taxes may not exceed such limitation. The credit allowed under this separate limitation may not exceed the proportion of the Federal income taxes imposed by the Code that the taxpayer's taxable income from foreign sources (under the Code) not included in taxable income arising in Canada (and not in excess of total foreign source taxable income under the Code) bears to the taxpayer's worldwide taxable income. In any case the credit for taxes covered by paragraph 1 and the credit for other foreign taxes is limited to the amount allowed under an overall limitation computed by aggregating taxable income arising in Canada and other foreign source taxable income.

If creditable Canadian taxes exceed the proportion of U.S. tax that taxable income arising in Canada bears to the entire taxable income, such taxes may qualify to be absorbed by any excess in the separate limitation computed with respect to other taxes.

In a case where a taxpayer has different types of income subject to separate limitations under the Code (e.g., section 904(d)(1)(B) DISC dividends) the Convention rules just described apply in the context of each of the separate Code limitations.

A taxpayer may, for any year, claim a credit pursuant to the rules of the Code. In such case, the taxpayer would be subject to the limitations established in the Code, and would forego the rules of the Convention that determine where taxable income arises. In addition, any Canadian taxes covered by paragraph 1 which are not creditable under the Code would not be credited.

Thus, where a taxpayer elects to use the special source rules of this Article to compute the foreign tax credit for any year, the following computations must be made:

Step 1(a): Compute a hypothetical foreign tax credit limitation for Canadian income and taxes using the source rules of the Convention.

Step 1(b): Compute a hypothetical foreign tax credit limitation for third country income and taxes using the source rules of the Code.

Step 1(c): Compute an overall foreign tax credit limitation using the source rules of the Convention to the extent they resource Canadian source income as U.S. source income or U.S. source income as Canadian source income, and using the source rules of the Code with respect to any other income.

Step 2: Allocate the amount of creditable Canadian taxes to the amount of the limitation computed under step 1(a), and allocate the amount of creditable third country taxes to the amount of the limitation computed under step 1(b). The amount of credit to be so allocated may not exceed the amount of the respective limitation.

Step 3: (1) If the total credits allocated under step 2 exceed the amount of the limitation computed under step 1(c), the amount of allowable credits must be reduced to that limitation (see Rev. Rul. 82-215, 1982-2 Cum. Bull. 153 for the method of such reduction).

(2) If the total credits allocated under step 2 are less than the amount of the limitation computed under step 1(c), then (a) any amount of creditable Canadian taxes in excess of the amount of the step 1(a) limitation may be credited to the extent of the excess of the step 1(c) limitation over the total step 2 allocation, and (b) any amount of third country taxes in excess of the amount of the step 1(b) limitation may not be credited.

The following examples (in which the taxpayer's U.S. tax rate is presumed to be 46%) illustrate the application of the source rules of Article XXIV:

Example 1.

(a) A U.S. corporate taxpayer has for the taxable year $100 of taxable income having a U.S. source under both the Convention and the Code; $100 of taxable income having a Canadian source under both the Convention and the Code; $50 of taxable income having a Canadian source under the Convention but a U.S. source under the Code (see, for example, paragraph 1 of Article VII (Business Profits) and paragraph 3(a) of Article XXIV); and $80 of taxable income having a foreign (non-Canadian) source under the Code. The taxpayer pays $75 of Canadian income taxes and $45 of third country income taxes. All the foreign source income of the taxpayer constitutes "other" income described in Code section 904(d)(1)(C).

The source rules of the Convention are applied as follows to compute the taxpayer's foreign tax credit:

Step 1(a):

$$\frac{\$150 \text{ (Canadian source taxable income under Convention)}}{\$330 \text{ (total taxable income)}} \times \$151.80$$

= $69 limit for Canadian taxes.

Step 1(b):

$$\frac{\$80 \text{ (third country source taxable income under Code)}}{\$330 \text{ (total taxable income)}} \times \$151.80$$

= $36.80 limit for third country taxes.

Step 1(c):

$$\frac{\$230 \text{ (overall foreign taxable income under source rules described above)}}{\$330 \text{ (total taxable income)}} \times \$151.80$$

= $105.80 total limit.

Step 2: The taxpayer may tentatively credit $69 of the $75 Canadian income taxes under the step 1(a) limitation, and $36.80 of the third country income taxes under the step 1(b) limitation.

Step 3: Since the total amount of taxes credited under step 2 equals the taxpayer's total limitation of $105.80 under step 1(c), no additional taxes may be credited. The taxpayer has a $6 Canadian income tax carryover and an $8.20 third country income tax carryover for U.S. foreign tax credit purposes.

(b) If the taxpayer had paid only $30 of third country taxes, he would credit that $30 in step 2. Since the total amount of credits allowed under step 2 ($99) is less than the taxpayer's total limit of $105.80, and since the taxpayer has $6 of excess Canadian taxes not credited under step 2, he may also claim a credit for that $6 of Canadian income taxes, for a total credit of $105.

(c) If the taxpayer had paid $45 of third country income taxes and $65 of Canadian income taxes, the computation would be as follows:

Step 2: The taxpayer would credit the $65 of Canadian income taxes, and would also credit $36.80 of the $45 of third country income taxes.

Step 3: Although the total amount of credits computed under step 2 ($101.80) is less than the taxpayer's total limitation of $105.80, no addi-

tional credits can be claimed since the taxpayer has only excess third country income taxes. The excess third country income taxes are thus not permitted to offset U.S. tax on income that is Canadian source income under the Convention. The taxpayer would have $8.20 of third country income taxes as a carryover for U.S. foreign tax credit purposes.

Example 2.

A United States corporate taxpayer has for the taxable year $100 of taxable income having a Canadian source under the Convention but a U.S. source under the Code; $100 of taxable income having a U.S. source under both the Convention and the Code; $80 of taxable income having a foreign (non-Canadian) source under the Code; and $50 of loss allocated or apportioned to Canadian source income. The taxpayer pays $50 of foreign (non-Canadian) income taxes, and $20 of Canadian income taxes.

The source rules of the Convention are applied as follows to compute the taxpayer's foreign tax credit:

Step 1(a):

$$\frac{\$50 \text{ (Canadian source taxable income under Convention)}}{\$230 \text{ (total taxable income)}} \times \$105.80$$

= $23 limit for Canadian taxes.

Step 1(b):

$$\frac{\$80 \text{ (third country source taxable income under Code)}}{\$230 \text{ (total taxable income)}} \times \$105.80$$

= $36.80 limit for third country taxes.

Step 1(c):

$$\frac{\$130 \text{ (overall foreign taxable income under source rules described above)}}{\$230 \text{ (total taxable income)}} \times \$105.80$$

= $59.80 limit for Canadian taxes.

Step 2: Since the taxpayer paid $20 of Canadian income taxes, he may credit that amount in full since the step 1(a) limit is $23. Since the step 1(b) limit is $36.80, the taxpayer may credit $36.80 of the $50 foreign income taxes paid.

Step 3: Although the total taxes credited under step 2 ($56.80) is less than the taxpayer's total limit of $59.80, no additional credits may be claimed since the only excess taxes are third country income taxes, and those may not be used to offset any excess limitation in step 3. The $13.20 of foreign taxes not allowed as a credit is available as a foreign tax credit carryover.

Example 3.

The facts are the same as in Example 2, except that foreign (non-Canadian) operations result in a loss of $30 rather than taxable income of $80, and no foreign (non-Canadian) income taxes are paid. The taxpayer's credit is computed as follows:

Step 1(a):

$$\frac{\$50}{\$120} \times \$55.20 = \text{limit for Canadian taxes.}$$

Step 1(b): Since there is no third country source taxable income under the Code, the limit for third country income taxes is zero.

Step 1(c):

$$\frac{\$20}{\$120} \times \$55.20 = \$9.20 \text{ total limit.}$$

Step 2: Since the taxpayer paid $20 of Canadian income tax, he may tentatively credit that amount in full since the step 1(a) limit is $23.

Step 3: Since the total taxes credited under step 2 ($20) exceeds the taxpayer's total limit of $9.20, the taxpayer must reduce the total amount claimed as a credit to $9.20. The remaining $10.80 of Canadian income taxes are available as a foreign tax credit carryover.

Example 4.

The facts are the same as in Example 2, except that the first $100 of taxable income mentioned in Example 2 has a Canadian source under both the Convention and the Code.

Step 1(a):

$$\frac{\$50}{\$230} \times \$105.80 = \$23 \text{ limit for Canadian taxes.}$$

Step 1(b):

$$\frac{\$80}{\$230} \times \$105.80 = \$36.80 \text{ limit for third country income taxes.}$$

Step 1(c):

$$\frac{\$130}{\$230} \times \$105.80 = \$59.80 \text{ total limit.}$$

Step 2: The taxpayer credits the $20 of Canadian income tax and $36.80 of third country income tax.

Step 3: As explained in Example 2, the taxpayer's total credit is limited to $56.80. In this case, however, if the Canadian taxes covered by the Convention are creditable under the Code, the taxpayer could elect the Code limitation of $59.80 ($130/$230 × $105.80), which is more advantageous than the Convention limitation because that limitation does not permit third country income taxes to be credited against the U.S. tax on income arising in Canada under the Convention.

Example 5.

The facts are the same as in Example 2, except that the corporation pays $25 of Canadian income taxes and $12 of foreign (non-Canadian) income taxes. Under step 2, the taxpayer would credit $23 of the $25 of Canadian income taxes and the full $12 of third country income taxes. Since the total amount of income taxes credited under step 2 is $35, which is less than the taxpayer's total limit of $59.80, the taxpayer may credit an amount of Canadian income taxes up to the $24.80 excess. Here, the taxpayer may claim a credit for the additional $2 of Canadian income taxes not credited under step 2, and has a total credit of $37.

Example 6.

(a) A U.S. corporate taxpayer has for the taxable year $100 of taxable income having a Canadian source under the Convention and the Code; $50 of taxable income having a Canadian source under the Convention but a U.S. source under the Code; $80 of taxable income having a foreign (non-Canadian) source under the Code; and $50 of loss allocated or apportioned to U.S. source income. The taxpayer pays $65 of Canadian income taxes, and $45 of third country income taxes.

Step 1(a):

$$\frac{\$150}{\$230} \times \$82.80 = \$69 \text{ limit for Canadian income taxes.}$$

Step 1(b):

$$\frac{\$80}{\$180} \times \$82.80 = \$36.80 \text{ limit for third country income taxes.}$$

Step 1(c):

$$\frac{\$180}{\$180} \times \$82.80 = \$82.80 \text{ total limit.}$$

Step 2: The taxpayer tentatively credits the $65 of Canadian income taxes against the $69 limit of step 1(a), and $36.80 of the $45 of third country income taxes against the $36.80 limit of step 1(b).

Step 3: Since the total amount of credits tentatively allowed under step 2 ($101.80) exceeds the taxpayer's total limit of $82.80 under step 1(c), the taxpayer's allowable credit is reduced to $82.80 under the method provided by Rev. Rul. 82-215.

(b) If the taxpayer had paid only $40 of Canadian income taxes, the total credits tentatively allowed under step 2 is $76.80. Although that amount is less than the $82.80 total limit under step 1(c), no additional taxes may be credited since the taxpayer only has excess third country income taxes. The $8.20 of excess third country income taxes would be allowed as a foreign tax credit carryover.

The general rule for avoiding double taxation in Canada is provided in paragraph 2. Pursuant to paragraph 2(a) Canada undertakes to allow to a resident of Canada a credit against income taxes imposed under the *Income Tax Act* for the appropriate amount of income taxes paid or accrued to the United States. Paragraph 2(b) provides for the deduction by a Canadian company, in computing taxable income, of any dividend received out of the exempt surplus of a U.S. company which is an affiliate. The provisions of paragraphs 2(a) and (b) are subject to the provisions of the *Income Tax Act* as they may be amended from time to time without changing the general principle of paragraph 2. Paragraph 2(c) provides that where Canada imposes a tax on the alienation of property pursuant to the provisions

of paragraph 5 of Article XIII (Gains), Canada will allow a credit for the income tax paid or accrued to the United States on such gain.

The rules of paragraph 1 are modified in certain respects by rules in paragraphs 4 and 5 for income derived by United States citizens who are residents of Canada. Paragraph 4 provides two steps for the elimination of double taxation in such a case. First, paragraph 4(a) provides that Canada shall allow a deduction from (credit against) Canadian tax in respect of income tax paid or accrued to the United States in respect of profits, income, or gains which arise in the United States (within the meaning of paragraph 3(a)); the deduction against Canadian tax need not, however, exceed the amount of income tax that would be paid or accrued to the United States if the individual were not a U.S. citizen, after taking into account any relief available under the Convention.

The second step, as provided in paragraph 4(b), is that the United States allows as a credit against United States tax, subject to the rules of paragraph 1, the income tax paid or accrued to Canada after the Canadian credit for U.S. tax provided by paragraph 4(a). The credit so allowed by the United States is not to reduce the portion of the United States tax that is creditable against Canadian tax in accordance with paragraph 4(a).

The following example illustrates the application of paragraph 4.

Example A

- A U.S. citizen who is a resident of Canada earns $175 of income from the performance of independent personal services, of which $100 is derived from services performed in Canada and $75 from services performed in the United States. That is his total world-wide income.
- If he were not a U.S. citizen, the United States could tax $75 of that amount under Article XIV (Independent Personal Services). By reason of paragraph 3(a), the $75 that may be taxed by the United States under Article XIV is deemed to arise in the United States. Assume that the U.S. tax on the $75 would be $25 if the taxpayer were not a U.S. citizen.
- However, since the individual is a U.S. citizen, he is subject to U.S. tax on his worldwide income of $175. After excluding $75 under section 911, his taxable income is $100 and his U.S. tax is $40.
- Because he is a resident of Canada, he is also subject to Canadian tax on his worldwide income. Assume that Canada taxes the $175 at $75.
- Canada will credit against its tax of $75 the U.S. tax at source of $25, leaving a net Canadian tax of $50.
- The United States will credit against its tax of $40 the Canadian tax net of credit, but without reducing its source basis tax of $25; thus, the allowable credit is $40 - $25 = $15.
- To use a credit of $15 requires Canadian source taxable income of $37.50 ($37.50/$100 - $40 = 15). Without any special treaty rule, Canadian source taxable income would be only $25 ($100 less the section 911 exclusion of $75). Paragraph 6 provides for resourcing an additional $12.50 of income to Canada, so that the credit of $15 can be fully used.

Paragraph 5 provides special rules for the elimination of double taxation in the case of dividends, interest, and royalties earned by a U.S. citizen resident in Canada. These rules apply notwithstanding the provisions of paragraph 4, but only as long as the law in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of dividends, interest, or royalties which exceeds 15 percent of the amount of such items of income, and only with respect to those items of income. The rules of paragraph 4 apply with respect to other items of income; moreover, if the law in force in Canada regarding the deduction for foreign taxes changes, the provisions of paragraph 5 shall not apply and the U.S. foreign tax credit for Canadian taxes and the Canadian credit for U.S. taxes will be determined solely pursuant to the provisions of paragraph 4.

The calculations under paragraph 5 are as follows. First, the deduction allowed in Canada in computing income shall be made with respect to U.S. tax on the dividends, interest, and royalties before any foreign tax credit by the United States with respect to income tax paid or accrued to Canada. Second, Canada shall allow a deduction from (credit against) Canadian tax for U.S. tax paid or accrued with respect to the dividends, interest, and royalties, but such credit need not exceed 15 percent of the gross amount of such items of income that have been included in computing income for Canadian tax purposes. (The credit may, however, exceed the amount of tax that the United States would be entitled to levy under the Convention upon a Canadian resident who is not a U.S. citizen.) Third, for purposes of computing the U.S. tax on such dividends, interest, and royalties, the United States shall allow as a credit against the U.S. tax the income tax paid or accrued to Canada after the 15 percent credit against Canadian tax for income tax paid or accrued to the United States. The United States is in no event obliged to give a credit for Canadian income tax which will reduce the U.S. tax below 15 percent of the amount of the dividends, interest, and royalties.

The rules of paragraph 5 are illustrated by the following examples.

Example B

- A U.S. citizen who is a resident of Canada has $100 of royalty income arising in the United States. The tentative U.S. tax before foreign tax credit is $40.
- Canada, under its law, allows a deduction for the U.S. tax in excess of 15 percent or, in this case, a deduction of $25 ($40 - $15). The Canadian taxable income is $75 and the Canadian tax on that amount is $35.
- Canada gives a credit of $15 (the maximum credit allowed is 15 percent of the gross royalty taken into Canadian income) and collects a net tax of $20.
- The United States allows a credit for the net Canadian tax against its tax in excess of 15 percent. Thus, the maximum credit is $25 ($40 - $15). But since the net Canadian tax paid was $20, the usable credit is $20.
- To be able to use a credit of $20 requires Canadian source taxable income of $50 (50% of the U.S. tentative tax of $40). Under paragraph 6, $50 of the U.S. royalty is resourced to be of Canadian source. The credit of $20 may then be offset against the U.S. tax of $40, leaving a net U.S. tax of $20.
- The combined tax paid to both countries is $40, $20 to Canada and $20 to the United States.

Example C

A U.S. citizen who is a resident of Canada receives $200 of income with respect to personal services performed within Canada and $100 of royalty income arising within the United States. Taxable income for U.S. purposes, taking into account the rules of Code section 911, is $220. U.S. tax (before foreign tax credits) is $92. The $100 of royalty income is deemed to bear U.S. tax (before foreign tax credits) of $41.82 ($100/$220 × $92). Under Canadian law, a deduction of $26.82 (the excess of $41.82 over 15 percent of the $100 royalty income) is allowed in computing income. The Canadian tax on $273.18 of income ($300 less the $26.82 deduction) is $130. Canada then gives a credit against the $130 for $15 (the U.S. tax paid or accrued with respect to the royalty, $41.82, but limited to 15 percent of the gross amount of such income, or $15), leaving a final Canadian tax of $115. Of the $115, $30.80 is attributable to the royalty

$$\frac{\$73.18\ (\$100\ \text{royalty less}\ \$26.82\ \text{deduction})}{\$273.18\ (\$300\ \text{income less}\ \$26.82\ \text{deduction})} \times \$115.$$

Of this amount, $26.82 is creditable against U.S. tax pursuant to paragraph 5. (Although the U.S. allows a credit for the Canadian tax imposed on the royalty, $30.80, the credit may not reduce the U.S. tax below 15 percent of the amount of the royalty. Thus, the maximum allowable credit is the excess of $41.82, the U.S. tax imposed on the royalty income, over $15, which is 15 percent of the $100 royalty). The remaining $3.98 (the Canadian tax of $30.80 less the credit allowed of $26.82) is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5. (An additional $50.18 of Canadian tax with respect to Canadian source services income is creditable against U.S. tax pursuant to paragraphs 3 and 4(b). The $50.18 is computed as follows: tentative U.S. tax (before foreign tax credits) is $92; the U.S. tax on Canadian source services income is $50.18 ($92 less the U.S. tax on the royalty income of $41.82); the limitation on the services income is:

$$\frac{\$120\ (\text{taxable income from services})}{\$220\ (\text{total taxable income})} \times \$92,$$

or $50.18. The credit for Canadian tax paid on the services income is therefore $50.18; the remainder of the Canadian tax on the services income, or $34.02, is a foreign tax credit carryover for U.S. purposes, subject to the limitations of paragraph 5).

Paragraph 6 is necessary to implement the objectives of paragraphs 4(b) and 5(c). Paragraph 6 provides that where a U.S. citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 are deemed for the purposes of Article XXIV to arise in Canada to the extent necessary to avoid double taxation of income by Canada and the United States consistent with the objectives of paragraphs 4(b) and 5(c). Paragraph 6 can override the source rules of paragraph 3 to permit a limited resourcing of income. The principles of paragraph 6 have effect, pursuant to paragraph 3(b) of Article XXX (Entry Into Force), for taxable years beginning on or after January 1, 1976. See the discussion of Article XXX below.

The application of paragraph 6 is illustrated by the following example.

Example D

The facts are the same as in Example C. The United States has undertaken, pursuant to paragraph 5(c) and paragraph 6, to credit $26.82 of Canadian taxes on royalty income that has a U.S. source under both paragraph 3 and the *Internal Revenue Code*. (As illustrated in Example C, the credit, however, only reduces the U.S. tax on the royalty income which exceeds 15 percent of the amount of such income included in computing U.S. taxable income.) Pursuant to paragraph 6, for purposes of determining the U.S. foreign tax credit limitation under the Convention with respect to Canadian taxes, $64.13 (A/$220 × $92 = $26.82; A = $64.13) of taxable income with respect to the royalties is deemed to arise in Canada.

Paragraph 7 provides that any reference to "income tax paid or accrued" to Canada or the United States includes Canadian tax or United States tax, as the case may be. The terms "Canadian tax" and "United States tax" are defined in paragraphs 1(c) and 1(d) of Article III (General Definitions). References to income taxes paid or accrued also include taxes of general application paid or accrued to a political subdivision or local authority of Canada or the United States which are not imposed by such political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to taxes of Canada or the United States referred to in paragraphs 2 and 3(a) of Article II (Taxes Covered).

In order for a tax imposed by a political subdivision or local authority to fall within the scope of paragraph 7, such tax must apply to individuals, companies, or other persons generally, and not only to a particular class of individuals or companies or a particular type of business. The tax must also be substantially similar to the national taxes referred to in paragraphs 2 and 3(a) of Article II. Finally, the political subdivision or local authority must apply its tax in a manner not inconsistent with the provisions of the Convention. For example, the political subdivision or local authority must not impose its tax on a resident of the other Contracting State earning business profits within the political subdivision or local authority but not having a permanent establishment there. It is understood that a Canadian provincial income tax that satisfied the conditions of paragraph 7 on September 26, 1980 also satisfied the conditions of that paragraph on June 14, 1983 — i.e., no significant changes have occurred in the taxes imposed by Canadian provinces.

Paragraph 8 relates to the provisions of Article XXIII (Capital). It provides that where a resident of a Contracting State owns capital which, in accordance with the provisions of Article XXIII, may be taxed in the other Contracting State, the State of residence shall allow as a deduction from (credit against) its tax on capital an amount equal to the capital tax paid in the other Contracting State. The deduction is not, however, to exceed that part of the capital tax, computed before the deduction, which is attributable to capital which may be taxed in the other State.

History: Para. 10 added by 1995 Protocol, article 12(4), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above).

Article XXV — Non-Discrimination

1. Citizens of a Contracting State, who are residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected.

Technical Explanation [1984]:

Paragraphs 1 and 2 of Article XXV protect individual citizens of a Contracting State from discrimination by the other Contracting State in taxation matters. Paragraph 1 provides that a citizen of a Contracting State who is a resident of the other Contracting State may not be subjected in that other State to any taxation or requirement connected with taxation which is other or more burdensome than the taxation and connected requirements imposed on similarly situated citizens of the other State.

2. Citizens of a Contracting State, who are not residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of any third State in the same circumstances (including State of residence) are or may be subjected.

Technical Explanation [1984]:

Paragraph 2 assures protection in a case where a citizen of a Contracting State is not a resident of the other Contracting State. Such a citizen may not be subjected in the other State to any taxation or requirement connected to taxation which is other or more burdensome than the taxation and connected requirements to which similarly situated citizens of any third State are subjected. The reference to citizens of a third State "in the same circumstances" includes consideration of the State of residence. Thus, pursuant to paragraph 2, the Canadian taxation with respect to a citizen of the United States resident in, for example, the United Kingdom may not be more burdensome than the taxation of a U.K. citizen resident in the United Kingdom. Any benefits available to the U.K. citizen by virtue of an income tax convention between the United Kingdom and Canada would be available to the U.S. citizen resident in the United Kingdom if he is otherwise in the same circumstances as the U.K. citizen.

3. In determining the taxable income or tax payable of an individual who is a resident of a Contracting State, there shall be allowed as a deduction in respect of any other person who is a resident of the other Contracting State and who is dependent on the individual for support the amount that would be so allowed if that other person were a resident of the first-mentioned State.

Technical Explanation [1995 Protocol]:

Article 13 of the Protocol amends Article XXV (Non-Discrimination) of the Convention. Paragraph 1 of Article 13 amends paragraph 3 of Article XXV to conform the treaty language to a change in Canadian law. The paragraph is intended to allow the treatment of dependents under the income tax law of a Contracting State to apply with respect to dependents who are residents of the other Contracting State. As drafted in the present Convention, the rule deals specifically only with deductions; the amendments made by the Protocol clarify that it also applies to the credits now provided by Canadian law.

Technical Explanation [1984]:

Paragraph 3 assures that, in computing taxable income, an individual resident of a Contracting State will be entitled to the same deduction for dependents resident in the other Contracting State that would be allowed if the dependents were residents of the individual's State of residence. The term "dependent" is defined in accordance with the rules set forth in paragraph 2 of Article III (General Definitions). For U.S. tax purposes, paragraph 3 does not expand the benefits currently available to a resident of the United States with a dependent resident in Canada. See Code section 152(b)(3).

History: Para. 3 amended by 1995 Protocol, article 13(1), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 3 formerly read:

> 3. In determining the taxable income of an individual who is a resident of a Contracting State there shall be allowed as a deduction in respect of any other person who is a resident of the other Contracting State and who is dependent on the individual for support the amount that would be so allowed if that other person were a resident of the first-mentioned State.

4. Where a married individual who is a resident of Canada and not a citizen of the United States has income that is taxable in the United States pursuant to Article XV (Dependent Personal Services), the United States tax with respect to such income shall not exceed such proportion of the total United States tax that would be payable for the taxable year if both the individual and his spouse were United States citizens as the individual's taxable income determined without regard to this paragraph bears to the amount that would be the total taxable income of the individual and his spouse. For the purposes of this paragraph,

(a) the "total United States tax" shall be determined as if all the income of the individual and his spouse arose in the United States; and

(b) a deficit of the spouse shall not be taken into account in determining taxable income.

Technical Explanation [1984]:

Paragraph 4 allows a resident of Canada (not a citizen of the United States) to file a joint return in cases where such person earns salary, wages, or other similar remuneration as an employee and such income is taxable in the United States under the Convention. Paragraph 4 does not apply where the resident of Canada earns wages which are exempt in the United States under Article XV (Dependent Personal Services) or earns only income taxable by the United States under provisions of the Convention other than Article XV.

The benefit provided by paragraph 4 is available regardless of the residence of the taxpayer's spouse. It is limited, however, by a formula designed to ensure that the benefit is available solely with respect to persons whose U.S. source income is entirely, or almost entirely, wage income. The formula limits the United States tax with respect to wage income to that portion of the total U.S. tax that would be payable for the taxable year if both the individual and his spouse were United States citizens as the individual's taxable income (determined without any of the benefits made available by paragraph 4, such as the standard deduction) bears to the total taxable income of the individual and his spouse. The term "total United States tax" used in the formula is total United States tax without regard to any foreign tax credits, as provided in subparagraph 4(a). (Foreign income taxes may, however, be claimed as deductions in computing taxable income, to the extent allowed by the Code.) In determining total taxable income of the individual and his spouse, the benefits made available by paragraph 4 are taken into account, but a deficit of the spouse is not.

The following example illustrates the application of paragraph 4.

> A, a Canadian citizen and resident, is married to B who is also a Canadian citizen and resident. A earns $12,000 of wages taxable in the U.S. under Article XV (Dependent Personal Services) and $2,000 of wages taxable only in Canada. B earns $1,000 of U.S. source dividend income, taxed by the United States at 15 percent pursuant to Article X (Dividends). B also earns $2,000 of wages taxable only in Canada. A's taxable income for U.S. purposes, determined without regard to paragraph 4, is $11,700 ($12,000 - $2,000 (Code sections 151(b) and 873(b)(3)) + $1,700 (Code section 63)). The U.S. tax (Code section 1(d)) with respect to such income is $2,084.50. The total U.S. tax payable by A and B if both were U.S. citizens and all their income arose in the United States would be $2,013 under Code section 1(a) on taxable income of $14,800 ($17,000 - $200 (Code section 116) - $2,000 (Code section 151)). Pursuant to paragraph 4, the U.S. tax imposed on A's wages from U.S. sources is limited to $1,591.36 ($11,700/$14,800 × $2,013). B's U.S. tax liability with respect to the U.S. source dividends remains $150.

The provisions of paragraph 4 may be elected on a year-by-year basis. They are purely computational and do not make either or both spouses residents of the United States for the purpose of other U.S. income tax conventions. The rules relating to the election provided by U.S. law under Code section 6013(g) (see section 1.6013–6 of the Treasury Regulations) do not apply to the election described in this paragraph.

5. Any company which is a resident of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

Technical Explanation [1984]:

Paragraph 5 protects against discrimination in a case where the capital of a company which is a resident of one Contracting State is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State. Such a company shall not be subjected in the State of which it is a resident to any taxation or requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which are subjected other similar companies which are residents of that State but whose capital is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State.

6. Notwithstanding the provisions of Article XXIV (Elimination of Double Taxation), the taxation on a permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be less favourably levied in the other State than the taxation levied on residents of the other State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State:

> (a) to grant to a resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents; or
>
> (b) to grant to a company which is a resident of the other Contracting State the same tax relief that it provides to a company which is a resident of the first-mentioned State with respect to dividends received by it from a company.

Technical Explanation [1984]:

Paragraph 6 protects against discrimination in the case of a permanent establishment which a resident of one Contracting State has in the other Contracting State. The taxation of such a permanent establishment by the other Contracting State shall not be less favorable than the taxation of residents of that other State carrying on the same activities. The paragraph specifically overrides the provisions of Article XXIV (Elimination of Double Taxation), thus ensuring that permanent establishments will be entitled to relief from double taxation on a basis comparable to the relief afforded to similarly situated residents. Paragraph 6 does not oblige a Contracting State to grant to a resident of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. In addition, paragraph 6 does not require a Contracting State to grant to a company which is a resident of the other Contracting State the same tax relief that it grants to companies which are resident in the first-mentioned State with respect to intercorporate dividends. This provision is merely clarifying in nature, since neither the United States nor Canada would interpret paragraph 6 to provide for granting the same relief in the absence of a specific denial thereof. The principles of paragraph 6 would apply with respect to a fixed base as well as a permanent establishment. Paragraph 6 does not, however, override the provisions of Code section 906.

History: Para. 6 amended by 1983 Protocol, article XII.

7. Except where the provisions of paragraph 1 of Article IX (Related Persons), paragraph 7 of Article XI (Interest) or paragraph 7 of Article XII (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

Technical Explanation [1984]:

Paragraph 7 concerns the right of a resident of a Contracting State to claim deductions for purposes of computing taxable profits in the case of disbursements made to a resident of the other Contracting State. Such disbursements shall be deductible under the same conditions as if they had been made to a resident of the first-mentioned State. Thus, this paragraph does not require Canada to permit a deduction to a Canadian trust for disbursements made to a non-resident beneficiary out of income derived from a business in Canada or Canadian real property; granting such a deduction would result in complete exemption by Canada of such income and would put Canadian trusts with non-resident beneficiaries in a better position than if they had resident beneficiaries. These provisions do not apply to amounts to which paragraph 1 of Article IX (Related Persons), paragraph 7 of Article XI (Interest), or paragraph 7 of Article XII (Royalties) apply. Paragraph 7 of Article XXV also provides that, for purposes of determining the taxable capital of a resident of a Contracting State, any debts of such person to a resident of the other Contracting State shall be deductible under the same conditions as if they had been contracted to a resident of

the first-mentioned State. This portion of paragraph 7 relates to Article XXIII (Capital).

8. The provisions of paragraph 7 shall not affect the operation of any provision of the taxation laws of a Contracting State:

(a) relating to the deductibility of interest and which is in force on the date of signature of this Convention (including any subsequent modification of such provisions that does not change the general nature thereof); or

(b) adopted after such date by a Contracting State and which is designed to ensure that a person who is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favorable than that enjoyed by residents of that State.

Technical Explanation [1984]:

Paragraph 8 provides that, notwithstanding the provisions of paragraph 7, a Contracting State may enforce the provisions of its taxation laws relating to the deductibility of interest, in force on September 26, 1980, or as modified subsequent to that date in a manner that does not change the general nature of the provisions in force on September 26, 1980; or which are adopted after September 26, 1980, and are designed to ensure that non-residents do not enjoy a more favorable tax treatment under the taxation laws of that State than that enjoyed by residents. Thus Canada may continue to limit the deductions for interest paid to certain non-residents as provided in section 18(4) of Part I of the *Income Tax Act*.

Related Provisions: ITA 18(4) — Thin capitalization rule.

9. Expenses incurred by a citizen or resident of a Contracting State with respect to any convention (including any seminar, meeting, congress or other function of a similar nature) held in the other Contracting State shall, for the purposes of taxation in the first-mentioned State, be deductible to the same extent that such expenses would be deductible if the convention were held in the first-mentioned State.

Technical Explanation [1984]:

Paragraph 9 provides that expenses incurred by citizens or residents of a Contracting State with respect to any convention, including any seminar, meeting, congress, or other function of similar nature, held in the other Contracting State, are deductible for purposes of taxation in the first-mentioned State to the same extent that such expenses would be deductible if the convention were held in that first-mentioned State. Thus, for U.S. income tax purposes an individual who is a citizen or resident of the United States and who attends a convention held in Canada may claim deductions for expenses incurred in connection with such convention without regard to the provisions of Code section 274(h). Section 274(h) imposes special restrictions on the deductibility of expenses incurred in connection with foreign conventions. A claim for a deduction for such an expense remains subject, in all events, to the provisions of U.S. law with respect to the deductibility of convention expenses generally (e.g., Code sections 162 and 212). Similarly, in the case of a citizen or resident of Canada attending a convention in the United States, paragraph 9 requires Canada to allow a deduction for expenses relating to such convention as if the convention had taken place in Canada.

Interpretation Bulletins: IT-131R2: Convention expenses.

10. Notwithstanding the provisions of Article II (Taxes Covered), this Article shall apply to all taxes imposed by a Contracting State.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 13 of the Protocol amends paragraph 10 of Article XXV of the Convention to broaden the scope of the non-discrimination protection provided by the Convention. As amended, Article XXV will apply to all taxes imposed by a Contracting State. Under the present Convention, non-discrimination protection is limited in the case of Canadian taxes to taxes imposed under the *Income Tax Act*. As amended by the Protocol, non-discrimination protection will extend, for example, to the Canadian goods and services tax and other Canadian excise taxes.

Technical Explanation [1984]:

Paragraph 10 provides that, notwithstanding the provisions of Article II (Taxes Covered), the provisions of Article XXV apply in the case of Canada to all taxes imposed under the *Income Tax Act*; and, in the case of the United States, to all taxes imposed under the Code. Article XXV does not apply to taxes imposed by political subdivisions or local authorities of Canada or the United States.

Article XXV substantially broadens the protection against discrimination provided by the 1942 Convention, which contains only one provision dealing specifically with this subject. That provision, paragraph 11 of the Protocol to the 1942 Convention, states that citizens of one of the Contracting States residing within the other Contracting State are not to be subjected to the payment of more burdensome taxes than the citizens of the other State.

The benefits of Article XXV may affect the tax liability of a U.S. citizen or resident with respect to the United States. See paragraphs 2 and 3 of Article XXIX (Miscellaneous Rules).

History: Para. 10 amended by 1995 Protocol, article 13(2), generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 10 formerly read:

10. Notwithstanding the provisions of Article II (Taxes Covered), this Article shall apply:

(a) in the case of Canada, to all taxes imposed under the *Income Tax Act*; and

(b) in the case of the United States, to all taxes imposed under the *Internal Revenue Code*.

Article XXVI — Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if he is a resident of neither Contracting State, of which he is a national.

Technical Explanation [1984]:

Paragraph 1 provides that where a person considers that the actions of one or both of the Contracting States will result in taxation not in accordance with the Convention, he may present his case in writing to the competent authority of the Contracting State of which he is a resident or, if he is a resident of neither Contracting State, of which he is a national. Thus, a resident of Canada must present to the Minister of National Revenue (or his authorized representative) any claim that such resident is being subjected to taxation contrary to the Convention. A person who requests assistance from the competent authority may also avail himself of any remedies available under domestic laws.

2. The competent authority of the Contracting State to which the case has been presented shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Except where the provisions of Article IX (Related Persons) apply, any agreement reached shall be implemented notwithstanding any time or other procedural limitations in the domestic law of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within six years from the end of the taxable year to which the case relates.

Technical Explanation [1984]:

Paragraph 2 provides that the competent authority of the Contracting State to which the case is presented shall endeavor to resolve the case by mutual agreement with the competent authority of the other Contracting State, un-

less he believes that the objection is not justified or he is able to arrive at a satisfactory unilateral solution. Any agreement reached between the competent authorities of Canada and the United States shall be implemented notwithstanding any time or other procedural limitations in the domestic laws of the Contracting States, except where the special mutual agreement provisions of Article IX (Related Persons) apply, provided that the competent authority of the Contracting State asked to waive its domestic time or procedural limitations has received written notification that such a case exists within six years from the end of the taxable year in the first-mentioned State to which the case relates. The notification may be given by the competent authority of the first-mentioned State, the taxpayer who has requested the competent authority to take action, or a person related to the taxpayer. Unlike Article IX, Article XXVI does not require the competent authority of a Contracting State to grant unilateral relief to avoid double taxation in a case where timely notification is not given to the competent authority of the other Contracting State. Such unilateral relief may, however, be granted by the competent authority in its discretion pursuant to the provisions of Article XXVI and in order to achieve the purposes of the Convention. In a case where the provisions of Article IX apply, the provisions of paragraphs 3, 4, and 5 of that Article are controlling with respect to adjustments and corresponding adjustments of income, loss, or tax and the effect of the Convention upon time or procedural limitations of domestic law. Thus, if relief is not available under Article IX because of fraud, the provisions of paragraph 2 or Article XXVI do not independently authorize such relief.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may agree:

(a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits or allowances between persons;

(c) to the same determination of the source, and the same characterization, of particular items of income;

(d) to a common meaning of any term used in the Convention;

(e) to the elimination of double taxation with respect to income distributed by an estate or trust;

(f) to the elimination of double taxation with respect to a partnership;

(g) to provide relief from double taxation resulting from the application of the estate tax imposed by the United States or the Canadian tax as a result of a distribution or disposition of property by a trust that is a qualified domestic trust within the meaning of section 2056A of the *Internal Revenue Code*, or is described in subsection 70(6) of the *Income Tax Act* or is treated as such under paragraph 5 of Article XXIX B (Taxes Imposed by Reason of Death), in cases where no relief is otherwise available; or

(h) to increases in any dollar amounts referred to in the Convention to reflect monetary or economic developments.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

Technical Explanation [1995 Protocol]:

Article 14 of the Protocol makes two changes to Article XXVI (Mutual Agreement Procedure) of the Convention. First, it adds a new subparagraph 3(g) specifically authorizing the competent authorities to provide relief from double taxation in certain cases involving the distribution or disposition of property by a U.S. qualified domestic trust or a Canadian spousal trust, where relief is not otherwise available.

Technical Explanation [1984]:

Paragraph 3 provides that the competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities may agree to the same attribution of profits to a resident of a Contracting State and its permanent establishment in the other Contracting State; the same allocation of income, deductions, credits, or allowances between persons; the same determination of the source of income; the same characterization of particular items of income; a common meaning of any term used in the Convention; rules, guidelines, or procedures for the elimination of double taxation with respect to income distributed by an estate or trust, or with respect to a partnership; or to increase any dollar amounts referred to in the Convention to reflect monetary or economic developments. The competent authorities may also consult and reach agreements on rules, guidelines, or procedures for the elimination of double taxation in cases not provided for in the Convention.

The list of subjects of potential mutual agreement in paragraph 3 is not exhaustive; it merely illustrates the principles set forth in the paragraph. As in the case of other U.S. tax conventions, agreement can be arrived at in the context of determining the tax liability of a specific person or in establishing rules, guidelines, and procedures that will apply generally under the Convention to resolve issues for classes of taxpayers. It is contemplated that paragraph 3 could be utilized by the competent authorities, for example, to resolve conflicts between the domestic laws of Canada and the United States with respect to the allocation and apportionment of deductions.

Related Provisions: Art. II:2(b)(iv) — Application to U.S. estate taxes.

History: Subpara. 3(g) renumbered as 3(h) and subpara. (g) added by 1995 Protocol, article 14(1), generally effective for taxation years beginning on or after January 1, 1997 (see Art. 21(2) under "Application of the 1995 Protocol" above).

4. Each of the Contracting States will endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy (ordre public).

Technical Explanation [1984]:

Paragraph 4 provides that each Contracting State will endeavor to collect on behalf of the other State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by the other State does not enure to the benefit of persons not entitled to such relief. Paragraph 4 does not oblige either Contracting State to carry out administrative measures of a different nature from those that would be used by Canada or the United States in the collection of its own tax or which would be contrary to its public policy.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Technical Explanation [1984]:

Paragraph 5 confirms that the competent authorities of Canada and the United States may communicate with each other directly for the purpose of reaching agreement in the sense of paragraphs 1 through 4.

6. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities pursuant to the preceding paragraphs of this Article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedures shall be established in an exchange of notes be-

tween the Contracting States. The provisions of this paragraph shall have effect after the Contracting States have so agreed through the exchange of notes.

Technical Explanation [1995 Protocol]:

Article 14 also adds a new paragraph 6 to Article XXVI (Mutual Agreement Procedure). Paragraph 6 provides for a voluntary arbitration procedure, to be implemented only upon the exchange of diplomatic notes between the United States and Canada. Similar provisions are found in the recent U.S. treaties with the Federal Republic of Germany, the Netherlands, and Mexico. Paragraph 6 provides that where the competent authorities have been unable, pursuant to the other provisions of Article XXVI, to resolve a disagreement regarding the interpretation or application of the Convention, the disagreement may, with the consent of the taxpayer and both competent authorities, be submitted for arbitration, provided the taxpayer agrees in writing to be bound by the decision of the arbitration board. Nothing in the provision requires that any case be submitted for arbitration. However, if a case is submitted to an arbitration board, the board's decision in that case will be binding on both Contracting States and on the taxpayer with respect to that case.

The United States was reluctant to implement an arbitration procedure until there has been an opportunity to evaluate the process in practice under other agreements that allow for arbitration, particularly the U.S.-Germany Convention. It was agreed, therefore, as specified in paragraph 6, that the provisions of the Convention calling for an arbitration procedure will not take effect until the two Contracting States have agreed through an exchange of diplomatic notes to do so. This is similar to the approach taken with the Netherlands and Mexico. Paragraph 6 also provides that the procedures to be followed in applying arbitration will be agreed through an exchange of notes by the Contracting States. It is expected that such procedures will ensure that arbitration will not generally be available where matters of either State's tax policy or domestic law are involved.

Paragraph 2 of Article 20 of the Protocol provides that the appropriate authorities of the Contracting State will consult after three years following entry into force of the Protocol to determine whether the diplomatic notes implementing the arbitration procedure should be exchanged.

Related Provisions: ITA 115.1 — Competent authority agreements.

History: Para. 6 added by 1995 Protocol, article 14(2), generally effective for taxation years beginning on or after January 1, 1996 (see article 21(2) reproduced under "Application of the Provisions of the Protocol" above).

Information Circulars: 71-17R4: Requests for competent authority consideration under mutual agreement procedures in income tax conventions.

Article XXVI A — Assistance in Collection

1. The Contracting States undertake to lend assistance to each other in the collection of taxes referred to in paragraph 9, together with interest, costs, additions to such taxes and civil penalties, referred to in this Article as a "revenue claim".

Technical Explanation [1995 Protocol]:

Article 15 of the Protocol adds to the Convention a new Article XXVI A (Assistance in Collection). Collection assistance provisions are included in several other U.S. income tax treaties, including the recent treaty with the Netherlands, and in many U.S. estate tax treaties. U.S. negotiators initially raised with Canada the possibility of including collection assistance provisions in the Protocol, because the Internal Revenue Service has claims pending against persons in Canada that would be subject to collection under these provisions. However, the ultimate decision of the U.S. and Canadian negotiators to add the collection assistance article was attributable to the confluence of several unusual factors.

Of critical importance was the similarity between the laws of the United States and Canada. The Internal Revenue Service, the Justice Department, and other U.S. negotiators were reassured by the close similarity of the legal and procedural protections afforded by the Contracting States to their citizens and residents and by the fact that these protections apply to the tax collection procedures used by each State. In addition, the U.S. negotiators were confident, given their extensive experience in working with their Canadian counterparts, that the agreed procedures could be administered appropriately, effectively, and efficiently. Finally, given the close cooperation already developed between the United States and Canada in the exchange of tax information, the U.S. and Canadian negotiators concluded that the potential benefits to both countries of obtaining such assistance would be immediate and substantial and would far outweigh any cost involved.

Under paragraph 1 of Article XXVI A, each Contracting State agrees, subject to the exercise of its discretion and to the conditions explicitly provided later in the Article, to lend assistance and support to the other in the collection of revenue claims. The term "revenue claim" is defined in paragraph 1 to include all taxes referred to in paragraph 9 of the Article, as well as interest, costs, additions to such taxes, and civil penalties. Paragraph 9 provides that, notwithstanding the provisions of Article II (Taxes Covered) of the Convention, Article XXVI A shall apply to all categories of taxes collected by or on behalf of the Government of a Contracting State.

2. An application for assistance in the collection of a revenue claim shall include a certification by the competent authority of the applicant State that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

Technical Explanation [1995 Protocol]:

Paragraph 2 of the Article requires the Contracting State applying for collection assistance (the "applicant State") to certify that the revenue claim for which collection assistance is sought has been "finally determined." A revenue claim has been finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

3. A revenue claim of the applicant State that has been finally determined may be accepted for collection by the competent authority of the requested State and, subject to the provisions of paragraph 7, if accepted shall be collected by the requested State as though such revenue claim were the requested State's own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State's own taxes.

Technical Explanation [1995 Protocol]:

Paragraph 3 of the Article clarifies that the Contracting State from which assistance was requested (the "requested State") has discretion as to whether to accept a particular application for collection assistance. However, if the application for assistance is accepted, paragraph 3 requires that the requested State grant assistance under its existing procedures as though the claim were the requested State's own revenue claim finally determined under the laws of that State. This obligation under paragraph 3 is limited by paragraph 7 of the Article, which provides that, although generally treated as a revenue claim of the requested State, a claim for which collection assistance is granted shall not have any priority accorded to the revenue claims of the requested State.

4. Where an application for collection of a revenue claim in respect of a taxpayer is accepted

(a) by the United States, the revenue claim shall be treated by the United States as an assessment under United States laws against the taxpayer as of the time the application is received; and

(b) by Canada, the revenue claim shall be treated by Canada as an amount payable under the *Income Tax Act*, the collection of which is not subject to any restriction.

Technical Explanation [1995 Protocol]:

Paragraph 4 of Article XXVI A provides that, when the United States accepts a request for assistance in collection, the claim will be treated by the United States as an assessment as of the time the application was received. Similarly, when Canada accepts a request, a revenue claim shall be treated as an amount payable under the *Income Tax Act*, the collection of which is not subject to any restriction.

5. Nothing in this Article shall be construed as creating or providing any rights of administrative or judicial review of the applicant State's finally determined revenue claim by the requested State, based on any such rights that may be available under the laws of either Contracting State. If, at any time pending execution of a request for assistance under this Article, the applicant State loses the right under its internal law to collect the revenue claim, the competent authority of the applicant State shall promptly withdraw the request for assistance in collection.

Technical Explanation [1995 Protocol]:

Paragraph 5 of the Article provides that nothing in Article XXVI A shall be construed as creating in the requested State any rights of administrative or judicial review of the applicant State's finally determined revenue claim. Thus, when an application for collection assistance has been accepted, the substantive validity of the applicant State's revenue claim cannot be challenged in an action in the requested State. Paragraph 5 furthers provides, however, that if the applicant State's revenue claim ceases to be finally determined, the applicant State is obligated to withdraw promptly any request that had been based on that claim.

6. Subject to this paragraph, amounts collected by the requested State pursuant to this Article shall be forwarded to the competent authority of the applicant State. Unless the competent authorities of the Contracting States otherwise agree, the ordinary costs incurred in providing collection assistance shall be borne by the requested State and any extraordinary costs so incurred shall be borne by the applicant State.

Technical Explanation [1995 Protocol]:

Paragraph 6 provides that, as a general rule, the requested State is to forward the entire amount collected to the competent authority of the applicant State. The ordinary costs incurred in providing collection assistance will normally be borne by the requested State and only extraordinary costs will be borne by the applicant State. The application of this paragraph, including rules specifying which collection costs are to be borne by each State and the time and manner of payment of the amounts collected, will be agreed upon by the competent authorities, as provided for in paragraph 11.

7. A revenue claim of an applicant State accepted for collection shall not have in the requested State any priority accorded to the revenue claims of the requested State.

8. No assistance shall be provided under this Article for a revenue claim in respect of a taxpayer to the extent that the taxpayer can demonstrate that

(a) where the taxpayer is an individual, the revenue claim relates to a taxable period in which the taxpayer was a citizen of the requested State, and

(b) where the taxpayer is an entity that is a company, estate or trust, the revenue claim relates to a taxable period in which the taxpayer derived its status as such an entity from the laws in force in the requested State.

Technical Explanation [1995 Protocol]:

Paragraph 8 provides that no assistance is to be given under this Article for a claim in respect of an individual taxpayer, to the extent that the taxpayer can demonstrate that he was a citizen of the requested State during the taxable period to which the revenue claim relates. Similarly, in the case of a company, estate, or trust, no assistance is to be given to the extent that the entity can demonstrate that it derived its status as such under the laws in force in the requested State during the taxable period to which the claim relates.

9. Notwithstanding the provisions of Article II (Taxes Covered), the provisions of this Article shall apply to all categories of taxes collected by or on behalf of the Government of a Contracting State.

10. Nothing in this Article shall be construed as:

(a) limiting the assistance provided for in paragraph 4 of Article XXVI (Mutual Agreement Procedure); or

(b) imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).

Technical Explanation [1995 Protocol]:

Subparagraph (a) of paragraph 10 clarifies that Article XXVI A supplements the provisions of paragraph 4 of Article XXVI (Mutual Agreement Procedure). The Mutual Agreement Procedure paragraph, which is more common in U.S. tax treaties, provides for collection assistance in cases in which a Contracting State seeks assistance in reclaiming treaty benefits that have been granted to a person that is not entitled to those benefits. Subparagraph (b) of paragraph 10 makes clear that nothing in Article XXVI A can require a Contracting State to carry out administrative measures of a different nature from those used in the collection of its own taxes, or that would be contrary to its public policy (ordre public).

11. The competent authorities of the Contracting States shall agree upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States.

Technical Explanation [1995 Protocol]:

Paragraph 11 requires the competent authorities to agree upon the mode of application of Article XXVI A, including agreement to ensure comparable levels of assistance to each of the Contracting States.

Paragraph 3 of Article 21 of the Protocol allows collection assistance under Article XXVI A to be sought for revenue claims that have been finally determined at any time within the 10 years preceding the date on which the Protocol enters into force.

History [Art. XXVI A]: Art. XXVI A added by 1995 Protocol, article 15, effective for revenue claims finally determined after November 9, 1985 (see Art. 21(3) under "Application of the 1995 Protocol" above).

Article XXVII — Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which the Convention applies insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article I (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to the taxes to which the Convention applies or, notwithstanding paragraph 4, in relation to taxes imposed by a political subdivision or local authority of a Contracting State that are substantially similar to the taxes covered by the Convention under Article II (Taxes Covered). Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities may release to an arbitration board established pursuant to paragraph 6 of Article XXVI (Mutual Agreement Procedure) such information as is necessary for carrying out the arbitration procedure; the members of the arbitration board shall be subject to the limitations on disclosure described in this Article.

Technical Explanation [1995 Protocol]:

Article 16 of the Protocol amends Article XXVII (Exchange of Information) of the Convention. Paragraph 1 of Article 16 amends paragraph 1 of Article XXVII. The first change is a wording change to make it clear that information must be exchanged if it is "relevant" for carrying out the provisions of the Convention or of the domestic laws of the Contracting States, even if it is not "necessary." Neither the United States nor Canada views this as a substantive change. The second amendment merely conforms the language of the paragraph to the language of Article II (Taxes Covered), as amended, by referring to the taxes "to which the Convention applies" rather than to the taxes "covered by the Convention."

The Protocol further amends paragraph 1 to allow a Contracting State to provide information received from the other Contracting State to its states, provinces, or local authorities, if it relates to a tax imposed by that state, province, or local authority that is substantially similar to a national-level tax covered under Article II (Taxes Covered). However, this provision does not authorize a Contracting State to request information on behalf of a state, province, or local authority. The Protocol also amends paragraph 1 to authorize the competent authorities to release information to any arbitration panel that may be established under the provisions of new paragraph 6 of Article XXVI (Mutual Agreement Procedure). Any information provided to a state, province, or local authority or to an arbitration panel is subject to the same use and disclosure provisions as is information received by the national Governments and used for their purposes.

Technical Explanation [1984]:

Paragraph 1 authorizes the competent authorities to exchange the information necessary for carrying out the provisions of the Convention or the domestic laws of Canada and the United States concerning taxes covered by the Convention, insofar as the taxation under those domestic laws is not contrary to the Convention. The authority to exchange information granted by paragraph 1 is not restricted by Article I (Personal Scope), and thus need not relate solely to persons otherwise covered by the Convention. It is contemplated that Article XXVII will be utilized by the competent authorities to exchange information upon request, routinely, and spontaneously.

Any information received by a Contracting State pursuant to the Convention is to be treated as secret in the same manner as information obtained under the taxation laws of that State. Such information shall be disclosed only to persons or authorities, including courts and administrative bodies, involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention and the information may be used by such persons only for such purposes. (In accordance with paragraph 4, for the purposes of this Article the Convention applies to a broader range of taxes than those covered specifically by Article II (Taxes Covered).)

In specific cases a competent authority providing information may, pursuant to paragraph 3, impose such other conditions on the use of information as are necessary. Although the information received by persons described in paragraph 1 is to be treated as secret, it may be disclosed by such persons in public court proceedings or in judicial decisions.

The provisions of paragraph 1 authorize the U.S. competent authority to continue to allow the General Accounting Office to examine tax return information received from Canada when GAO is engaged in a study of the administration of U.S. tax laws pursuant to a directive of Congress. However, the secrecy requirements of paragraph 1 must be met.

Related Provisions: Reg. 203 — Information return where person in Canada receives income from source in the U.S. on behalf of a person outside Canada.

History: Para. 1 amended by 1995 Protocol, article 16(1), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 1 formerly read:

> 1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavor to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavor to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

Technical Explanation [1984]:

If a Contracting State requests information in accordance with Article XXVII, the other Contracting State shall endeavor, pursuant to paragraph 2, to obtain the information to which the request relates in the same manner as if its own taxation were involved, notwithstanding the fact that such State does not need the information. In addition, the competent authority requested to obtain information shall endeavor to provide the information in the particular form requested, such as depositions of witnesses and copies of unedited original documents, to the same extent such depositions and documents can be obtained under the laws or administrative practices of that State with respect to its own taxes.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

Technical Explanation [1984]:

Paragraph 3 provides that the provisions of paragraphs 1 and 2 do not impose on Canada or the United States the obligation to carry out administrative measures at variance with the laws and administrative practice of either State; to supply information which is not obtainable under the laws or in the normal course of the administration of either State; or to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy. Thus, Article XXVII allows, but does not obligate, the United States and Canada to obtain and provide information that would not be available to the requesting State under its laws or administrative practice or that in different circumstances would not be available to the State requested to provide the information. Further, Article XXVII allows a Contracting State to obtain information for the other Contracting State even if there is no tax liability in the State requested to obtain the information. Thus, the United States will continue to be able to give Canada tax information even if there is no U.S. tax liability at issue.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article II (Taxes Covered):

(a) to all taxes imposed by a Contracting State; and

(b) to other taxes to which any other provision of the Convention applies, but only to the extent that the in-

formation is relevant for the purposes of the application of that provision.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 16 amends paragraph 4 of Article XXVII, which describes the applicable taxes for the purposes of this Article. Under the present Convention, the Article applies in Canada to taxes imposed by the Government of Canada under the *Income Tax Act* and on estates and gifts and in the United States to all taxes imposed under the *Internal Revenue Code*. The Protocol broadens the scope of the Article to apply to "all taxes imposed by a Contracting State". This change allows information to be exchanged, for example, with respect to Canadian excise taxes, as is the case with respect to U.S. excise taxes under the present Convention. Paragraph 4 is also amended to authorize the exchange of information with respect to other taxes, to the extent relevant to any other provision of the Convention.

Technical Explanation [1984]:

Paragraph 4 provides that, for the purposes of Article XXVII, the Convention applies, in the case of Canada, to all taxes imposed by the Government of Canada on estates and gifts and under the *Income Tax Act* and, in the case of the United States, to all taxes imposed under the *Internal Revenue Code*. Article XXVII does not apply to taxes imposed by political subdivisions or local authorities of the Contracting States. Paragraph 4 is designed to ensure that information exchange will extend to most national level taxes on both sides, and specifically to information gathered for purposes of Canada's taxes on estates and gifts (not effective for deaths or gifts after 1971). This provision is intended to mesh with paragraph 8 of Article XXX (Entry Into Force), which terminates the existing estate tax convention between the United States and Canada.

History: Para. 4 amended by 1995 Protocol, article 16(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 4 formerly read:

> 4. Notwithstanding the provisions of Article II (Taxes Covered), for the purposes of this Article the Convention shall apply:
>
> (a) in the case of Canada, to all taxes imposed by the Government of Canada on estates and gifts and under the *Income Tax Act*; and
>
> (b) in the case of the United States, to all taxes imposed under the *Internal Revenue Code*.

Article XXVIII — Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Technical Explanation [1984]:

Article XXVIII states that nothing in the Convention affects the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements. However, various provisions of the Convention could apply to such persons, such as those concerning exchange of information, mutual agreement, and non-discrimination.

Related Provisions: Art. XIX — Government service.

Article XXIX — Miscellaneous Rules

1. The provisions of this Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

Technical Explanation [1984]:

Paragraph 1 states that the provisions of the Convention do not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance accorded by the laws of a Contracting State in the determination of the tax imposed by that State. Thus, if a deduction would be allowed for an item in computing the taxable income of a Canadian resident under the Code, such deduction is available to such person in computing taxable income under the Convention. Paragraph 1 does not, however, authorize a taxpayer to make inconsistent choices between rules of the Code and rules of the Convention. For example, if a resident of Canada desires to claim the benefits of the "attributable to" rule of paragraphs 1 and 7 of Article VII (Business Profits) with respect to the taxation of business profits of a permanent establishment, such person must use the "attributable to" concept consistently for all items of income and deductions and may not rely upon the "effectively connected" rules of the Code to avoid U.S. tax on other items of attributable income. In no event are the rules of the Convention to increase overall U.S. tax liability from what liability would be if there were no convention.

2. Except as provided in paragraph 3, nothing in the Convention shall be construed as preventing a Contracting State from taxing its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens (including a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of ten years following such loss) and companies electing to be treated as domestic corporations, as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

Technical Explanation [1984]:

Paragraph 2 provides a "saving clause" pursuant to which Canada and the United States may each tax its residents, as determined under Article IV (Residence), and the United States may tax its citizens (including any former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss) and companies electing under Code section 1504(d) to be treated as domestic corporations, as if there were no convention between the United States and Canada with respect to taxes on income and capital.

History: Para. 2 amended by 1983 Protocol, article XIII, para. 1.

3. The provisions of paragraph 2 shall not affect the obligations undertaken by a Contracting State:

(a) under paragraphs 3 and 4 of Article IX (Related Persons), paragraphs 6 and 7 of Article XIII (Gains), paragraphs 1, 3, 4, 5, 6(b) and 7 of Article XVIII (Pensions and Annuities), paragraph 5 of Article XXIX (Miscellaneous Rules), paragraphs 1, 5 and 6 of Article XXIX B (Taxes Imposed by Reason of Death), paragraphs 2, 3, 4 and 7 of Article XXIX B (Taxes Imposed by Reason of Death) as applied to the estates of persons other than former citizens referred to in paragraph 2 of this Article, paragraphs 3 and 5 of Article XXX (Entry into Force), and Articles XIX (Government Service), XXI (Exempt Organizations), XXIV (Elimination of Double Taxation), XXV (Non-Discrimination) and XXVI (Mutual Agreement Procedure);

(b) under Article XX (Students), toward individuals who are neither citizens of, nor have immigrant status in, that State.

Technical Explanation [1995 Protocol]:

Article 17 of the Protocol amends Article XXIX (Miscellaneous Rules) of the Convention. Paragraph 1 of Article 17 modifies paragraph 3(a), the exceptions to the saving clause, to conform the cross-references in the paragraph to changes in other parts of the Convention. The paragraph also adds to the exceptions to the saving clause certain provisions of Article XXIX B (Taxes Imposed by Reason of Death). Thus, certain benefits under that Article will be granted by a Contracting State to its residents and, in the case of the United States, to its citizens, notwithstanding the saving clause of paragraph 2 of Article XXIX.

Technical Explanation [1984]:

Paragraph 3 provides that, notwithstanding paragraph 2, the United States and Canada must respect certain specified provisions of the Convention in regard to residents, citizens, and section 1504(d) companies. Paragraph 3(a) lists certain paragraphs and Articles of the Convention that represent exceptions to the "saving clause" in all situations; paragraph 3(b) provides a limited further exception for students who have not acquired immigrant status in the State where they are temporarily present.

History: Subpara. 3(a) amended by 1995 Protocol, article 17(1), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) and (4) under "Application of the 1995 Protocol" above). Subpara. 3(a) formerly read:

> (a) under paragraphs 3 and 4 of Article IX (Related Persons), paragraphs 6 and 7 of Article XIII (Gains), paragraphs 1, 3, 4, 5(b) and 6(b) of Article XVIII (Pensions and Annuities), paragraphs 5 and 7 of Article XXIX (Miscellaneous Rules), paragraphs 3 and 5 of Article XXX (Entry into Force), and Articles XIX (Government Service), XXI (Exempt Organizations), XXIV (Elimination of Double Taxation), XXV (Non-Discrimination) and XXVI (Mutual Agreement Procedure); and

Subpara. 3(a), as amended by 1983 Protocol, article XIII, para. 2, was replaced by 1984 Protocol, article II, para. 1.

4. With respect to taxable years not barred by the statute of limitations ending on or before December 31 of the year before the year in which the Social Security Agreement between Canada and the United States (signed in Ottawa on March 11, 1981) enters into force, income from personal services not subject to tax by the United States under this Convention or the 1942 Convention shall not be considered wages or net earnings from self-employment for purposes of social security taxes imposed under the *Internal Revenue Code*.

Technical Explanation [1984]:

Paragraph 4 provides relief with respect to social security taxes imposed on employers, employees, and self-employed persons under Code sections 1401, 3101, and 3111. Income from personal services not subject to tax by the United States under the provisions of this Convention or the 1942 Convention is not to be considered wages or net earnings from self-employment for purposes of the U.S. social security taxes with respect to taxable years of the taxpayer not barred by the statute of limitations relating to refunds (under the Code) ending on or before December 31 of the year before the year in which the Social Security Agreement between Canada and the United States (signed in Ottawa on March 11, 1981) enters into force. Thus, if that agreement enters into force in 1986, a resident of Canada earning income from personal services and such person's employer may apply for refunds of the employee's and employer's shares of U.S. social security tax paid attributable to the employee's income from personal services that is exempt from U.S. tax by virtue of this Convention or the 1942 Convention. In this example, the refunds would be available for social security taxes paid with respect to taxable years not barred by the statute of limitations of the Code ending on or before December 31, 1985. For purposes of Code section 6611, the date of overpayment with respect to refunds of U.S. tax pursuant to paragraph 4 is the later of the date on which the Social Security Agreement between Canada and the United States enters into force and the date on which instruments of ratification of the Convention are exchanged.

Under certain limited circumstances, an employee may, pursuant to paragraph 5 of Article XXX (Entry Into Force), claim an exemption from U.S. tax on wages under the 1942 Convention for one year after the Convention comes into force. The provisions of paragraph 4 would not, however, provide an exemption from U.S. social security taxes for such year.

Paragraph 4 does not modify existing U.S. statutes concerning social security benefits or funding. The *Social Security Act* requires the general funds of the Treasury to reimburse the social security trust funds on the basis of the records of wages and self-employment income maintained by the Social Security Administration. The Convention does not alter those records. Thus, any refunds of tax made pursuant to paragraph 4 would not affect claims for U.S. quarters of coverage with respect to social security benefits. And such refunds would be charged to general revenue funds, not social security trust funds.

History: Para. 4 amended by 1983 Protocol, article XIII, para. 3.

5. Where a person who is a resident of Canada and a shareholder of a United States S corporation requests the competent authority of Canada to do so, the competent authority may agree, subject to terms and conditions satisfactory to such competent authority, to apply the following rules for the purposes of taxation in Canada with respect to the period during which the agreement is effective:

> (a) the corporation shall be deemed to be a controlled foreign affiliate of the person;
>
> (b) all the income of the corporation shall be deemed to be foreign accrual property income;
>
> (c) for the purposes of subsection 20(11) of the *Income Tax Act*, the amount of the corporation's income that is included in the person's income shall be deemed not to be income from a property; and
>
> (d) each dividend paid to the person on a share of the capital stock of the corporation shall be excluded from the person's income and shall be deducted in computing the adjusted cost base to the person of the share.

Technical Explanation [1995 Protocol]:

Paragraph 2 of Article 17 replaces paragraphs 5 through 7 of Article XXIX of the present Convention with three new paragraphs. (Paragraph 5 in the present Convention was moved to paragraph 7 of Article XVIII (Pensions and Annuities), and paragraphs 6 and 7 were deleted as unnecessary.) New paragraph 5 provides a rule for the taxation by Canada of a Canadian resident that is a shareholder in a U.S. S corporation. The application of this rule is relatively limited, because U.S. domestic law requires that S corporation shareholders be either U.S. citizens or U.S. residents. Therefore, the rule provided by paragraph 5 would apply only to an S corporation shareholder who is a resident of both the United States and Canada (i.e., a "dual resident" who meets certain requirements), determined before application of the "tie-breaker" rules of Article IV (Residence), or a U.S. citizen resident in Canada. Since the shareholder would be subject to U.S. tax on its share of the income of the S corporation as it is earned by the S corporation and, under Canadian statutory law, would be subject to tax only when the income is distributed, there could be a timing mismatch resulting in unrelieved double taxation. Under paragraph 5, the shareholder can make a request to the Canadian competent authority for relief under the special rules of the paragraph. Under these rules, the Canadian shareholder will be subject to Canadian tax on essentially the same basis as he is subject to U.S. tax, thus eliminating the timing mismatch.

Technical Explanation [1984]:

Paragraph 5 provides a method to resolve conflicts between the Canadian and U.S. treatment of individual retirement accounts. Certain Canadian retirement plans which are qualified plans for Canadian tax purposes do not meet Code requirements for qualification. As a result, the earnings of such a plan are currently included in income, for U.S. tax purposes, rather than being deferred until actual distributions are made by the plan. Canada defers current taxes on the earnings of such a plan but imposes tax on actual distributions from the plan. Paragraph 5 is designed to avoid a mismatch of U.S. taxable income and foreign tax credits attributable to the Canadian tax on such distributions. Under the paragraph a beneficiary of a Canadian registered retirement savings plan may elect to defer U.S. taxation with respect to any income accrued in the plan but not distributed by the plan, until such time as a distribution is made from the plan or any substitute plan. The election is to be made under rules established by the competent authority of the United States. The election is not available with respect to income accrued in the plan which is reasonably attributable to contributions made to the plan by the beneficiary while he was not a Canadian resident.

History: Para. 5 amended by 1995 Protocol, article 17(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 5 formerly read:

> 5. A beneficiary of a Canadian registered retirement savings plan may elect, under rules established by the competent authority of the United States, to defer United States taxation with respect to any income accrued in the plan but not distributed by the plan, until such time as a distribution is made from such plan, or any plan substituted therefor. The provisions of the preceding sentence shall not apply to income which is reasonably attributable to contributions made to the plan by the beneficiary while he was not a resident of Canada.

Para. 5 amended by 1983 Protocol, article XIII, para. 4.

6. For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that:

(a) a measure falls within the scope of the Convention only if:

(i) the measure relates to a tax to which Article XXV (Non-Discrimination) of the Convention applies; or

(ii) the measure relates to a tax to which Article XXV (Non-Discrimination) of the Convention does not apply and to which any other provision of the Convention applies, but only to the extent that the measure relates to a matter dealt with in that other provision of the Convention; and

(b) notwithstanding paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, any doubt as to the interpretation of subparagraph (a) will be resolved under paragraph 3 of Article XXVI (Mutual Agreement Procedure) of the Convention or any other procedure agreed to by both Contracting States.

Technical Explanation [1995 Protocol]:

The Protocol adds to Article XXIX a new paragraph 6, which provides a coordination rule for the Convention and the General Agreement on Trade in Services ("GATS"). Paragraph 6(a) provides that, for purposes of paragraph 3 of Article XXII (Consultation) of the GATS, a measure falls within the scope of the Convention only if the measure relates to a tax (1) to which Article XXV (Non-Discrimination) of the Convention applies, or (2) to which Article XXV does not apply and to which any other provision of the Convention applies, but only to the extent that the measure relates to a matter dealt with in that other provision. Under paragraph 6(b), notwithstanding paragraph 3 of Article XXII of the GATS, any doubt as to the interpretation of subparagraph (a) will be resolved under paragraph 3 of Article XXVI (Mutual Agreement Procedure) of the Convention or any other procedure agreed to by both Contracting States.

GATS generally obliges its Members to provide national treatment and most-favored-nation treatment to services and service suppliers of other Members. A very broad exception from the national treatment obligation applies to direct taxes. An exception from the most-favored-nation obligation applies to a difference in treatment resulting from an international agreement on the avoidance of double taxation (a "tax agreement") or from provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

Article XXII(3) of GATS specifically provides that there will be no access to GATS procedures to settle a national treatment dispute concerning a measure that falls within the scope of a tax agreement. This provision preserves the exclusive application of nondiscrimination obligations in the tax agreement and clarifies that the competent authority mechanism provided by the tax agreement will apply, instead of GATS procedures, to resolve nondiscrimination disputes involving the taxation of services and service suppliers.

In the event of a disagreement between Members as to whether a measure falls within the scope of a tax agreement that existed at the time of the entry into force of the Agreement establishing the World Trade Organization, Article XXII(2), footnote 11, of GATS reserves the resolution of the dispute to the Contracting States under the tax agreement. In such a case, the issue of the scope of a tax agreement may be resolved under GATS procedures (rather than tax treaty procedures) only if both parties to the existing tax agreement consent. With respect to subsequent tax agreements, GATS provides that either Member may bring the jurisdictional matter before the Council for Trade In Services, which will refer the matter to arbitration for a decision that will be final and binding on the Members.

Both Canada and the United States agree that a protocol to a convention that is grandfathered under Article XXII(2), footnote 11, of GATS is also grandfathered. Nevertheless, since the Protocol extends the application of the Convention, and particularly the nondiscrimination article, to additional taxes (e.g., some non-income taxes imposed by Canada), the negotiators sought to remove any ambiguity and agreed to a provision that clarified the scope of the Convention and the relationship between the Convention and GATS.

The purpose of new paragraph 6(a) of the Convention is to provide the agreement of the Contracting States as to the measures considered to fall within the scope of the Convention in applying Article XXII(3) of GATS between the Contracting States. The purpose of new paragraph 6(b) is to reserve the resolution of the issue of the scope of the Convention for purposes of Article XXII(3) of GATS to the competent authorities under the Convention rather than to settlement under GATS procedures.

Technical Explanation [1984]:

Paragraph 6 provides rules denying the benefits of the Convention in certain situations where both countries believed that granting benefits would be inappropriate. Paragraph 6(a) provides that Articles VI (Income from Real Property) through XXIV (Elimination of Double Taxation) shall not apply to profits, income or gains derived by a trust which is treated as the income of a resident of a Contracting State (see paragraph 1 of Article IV (Residence)), if a principal purpose of the establishment, acquisition or maintenance of the trust was to obtain a benefit under the Convention or the 1942 Convention for persons who are not residents of that State. For example, the provision could be applied to a case where a non-resident of the United States created a United States trust to derive dividend income from Canada and a principal purpose of the establishment or maintenance of the trust was to obtain the reduced rate of Canadian tax under Article X (Dividends) for the non-resident. Paragraph 6(b) provides that Articles VI through XXIV shall not apply to Canadian non-resident owned investment companies, as defined in section 133 of the *Income Tax Act*, or under a similar provision that is subsequently enacted. This provision operates to deny the benefits of the Convention to a Canadian non-resident owned investment company, and does not affect the grant of benefits to other persons. Thus, for example, a dividend paid by such a company to a shareholder who is a U.S. resident is subject to the reduced rates of tax provided by Article X. The denial of the benefits of Articles VI through XXIV in such cases applies notwithstanding any other provision of the Convention. A Canadian non-resident owned investment company may, however, be entitled to claim the benefits of the 1942 Convention for an additional one-year period, pursuant to paragraph 5 of Article XXX (Entry into Force). Where the provisions of this paragraph apply, the Contracting State in which the income arises may tax such income under its domestic law.

History: Para. 6 amended by 1995 Protocol, article 17(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 6 formerly read:

6. Notwithstanding any other provision of the Convention,

(a) where profits, income or gains derived by a trust is to be treated for the purposes of the Convention as income of a resident of a Contracting State, and a principal purpose for the establishment, acquisition or maintenance of the trust was to obtain a benefit under the Convention or the 1942 Convention for persons who are not residents of that State, Articles VI (Income from Real Property) through XXIV (Elimination of Double Taxation) shall not apply in relation to the profits, income or gains of the trust; and

(b) Articles VI (Income from Real Property) through XXIV (Elimination of Double Taxation) shall not apply to non-resident-owned investment corporations as defined under section 133 of the *Income Tax Act* of Canada, or under any similar provision enacted by Canada after the date of signature of the Protocol.

Para. 6 amended by 1983 Protocol, article XIII, para. 5.

7. The appropriate authority of a Contracting State may request consultations with the appropriate authority of the other Contracting State to determine whether change to the Convention is appropriate to respond to changes in the law or policy of that other State. Where domestic legislation enacted by a Contracting State unilaterally removes or significantly limits any material benefit otherwise provided by the Convention, the appropriate authorities shall promptly consult for the purpose of considering an appropriate change to the Convention.

Technical Explanation [1995 Protocol]:

The Protocol also adds to Article XXIX a new paragraph 7, relating to certain changes in the law or treaty policy of either of the Contracting States. Paragraph 7 provides, first, that in response to a change in the law or policy of either State, the appropriate authority of either State may request consultations with its counterpart in the other State to determine

whether a change in the Convention is appropriate. If a change in domestic legislation has unilaterally removed or significantly limited a material benefit provided by the Convention, the appropriate authorities are instructed by the paragraph to consult promptly to consider an appropriate amendment to the Convention. The "appropriate authorities" may be the Contracting States themselves or the competent authorities under the Convention. The consultations may be initiated by the authority of the Contracting State making the change in law or policy or by the authority of the other State. Any change in the Convention recommended as a result of this process can be implemented only through the negotiation, signature, ratification, and entry into force of a new protocol to the Convention.

Technical Explanation [1984]:

Paragraph 7 provides rules for the U.S. taxation of Canadian social security benefits paid to a resident of Canada who is a U.S. citizen. These rules are described in the discussion of paragraph 5 of Article XVIII (Pensions and Annuities).

History: Para. 7 amended by 1995 Protocol, article 17(2), generally effective with respect to taxable years begining on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above). Para. 7 formerly read:

> 7. One-half of the total amount of benefits under the social security legislation in Canada paid in a taxable year to a resident of Canada who is a citizen of the United States shall be exempt from taxation in the United States.

Para. 7 added by 1984 Protocol, article II, para. 2.

Article XXIX A — Limitation on Benefits

1. For the purposes of the application of this Convention by the United States,

(a) a qualifying person shall be entitled to all of the benefits of this Convention, and

(b) except as provided in paragraphs 3, 4 and 6, a person that is not a qualifying person shall not be entitled to any benefits of the Convention.

Proposed Amendment — Limitation on Benefits

Department of Finance news release, October 2, 1998: *Canada and United States to Consult regarding Modifications to Income Tax Treaty*

[Reproduced before Article I — ed.]

Technical Explanation [1995 Protocol]:

In general

Article 18 of the Protocol adds a new Article XXIX A (Limitation on Benefits) to the Convention. Article XXIX A addresses the problem of "treaty shopping" by requiring, in most cases, that the person seeking U.S. treaty benefits not only be a Canadian resident but also satisfy other tests. In a typical case of treaty shopping, a resident of a third State might establish an entity resident in Canada for the purpose of deriving income from the United States and claiming U.S. treaty benefits with respect to that income. Article XXIX A limits the benefits granted by the United States under the Convention to those persons whose residence in Canada is not considered to have been motivated by the existence of the Convention. Absent Article XXIX A, the entity would be entitled to U.S. benefits under the Convention as a resident of Canada, unless it were denied benefits as a result of limitations (e.g., business purpose, substance-over-form, step transaction, or conduit principles or other anti-avoidance rules) applicable to a particular transaction or arrangement. General anti-abuse provisions of this sort apply in conjunction with the Convention in both the United States and Canada. In the case of the United States, such anti-abuse provisions complement the explicit anti-treaty-shopping rules of Article XXIX A. While the anti-treaty-shopping rules determine whether a person has a sufficient nexus to Canada to be entitled to treaty benefits, general anti-abuse provisions determine whether a particular transaction should be recast in accordance with the substance of the transaction.

The present Convention deals with treaty-shopping in a very limited manner, in paragraph 6 of Article XXIX, by denying benefits to Canadian residents that benefit from specified provisions of Canadian law. The Protocol removes that paragraph 6 from Article XXIX, because it is superseded by the more general provisions of Article XXIX A.

The Article is not reciprocal, except for paragraph 7. Canada prefers to rely on general anti-avoidance rules to counter arrangements involving treaty-shopping through the United States.

The structure of the Article is as follows: Paragraph 1 states that, in determining whether a resident of Canada is entitled to U.S. benefits under the Convention, a "qualifying person" is entitled to all of the benefits of the Convention, and other persons are not entitled to benefits, except where paragraphs 3, 4, or 6 provide otherwise. Paragraph 2 lists a number of characteristics, any one of which will make a Canadian resident a qualifying person. These are essentially mechanical tests. Paragraph 3 provides an alternative rule, under which a Canadian resident that is not a qualifying person under paragraph 2 may claim U.S. benefits with respect to those items of U.S. source income that are connected with the active conduct of a trade or business in Canada. Paragraph 4 provides a limited "derivative benefits" test for entitlement to benefits with respect to U.S. source dividends, interest, and royalties beneficially owned by a resident of Canada that is not a qualifying person. Paragraph 5 defines certain terms used in the Article. Paragraph 6 requires the U.S. competent authority to grant benefits to a resident of Canada that does not qualify for benefits under any other provision of the Article, where the competent authority determines, on the basis of all factors, that benefits should be granted. Paragraph 7 clarifies the application of general anti-abuse provisions.

2. For the purposes of this Article, a qualifying person is a resident of Canada that is:

(a) a natural person;

(b) the Government of Canada or a political subdivision or local authority thereof, or any agency or instrumentality of any such government, subdivision or authority;

(c) a company or trust in whose principal class of shares or units there is substantial and regular trading on a recognized stock exchange;

(d) a company more than 50 per cent of the vote and value of the shares (other than debt substitute shares) of which is owned, directly or indirectly, by five or fewer persons each of which is a company or trust referred to in subparagraph (c), provided that each company or trust in the chain of ownership is a qualifying person or a resident or citizen of the United States;

(e)

(i) a company 50 per cent or more of the vote and value of the shares (other than debt substitute shares) of which is not owned, directly or indirectly, by persons other than qualifying persons or residents or citizens of the United States, or

(ii) a trust 50 per cent or more of the beneficial interest in which is not owned, directly or indirectly, by persons other than qualifying persons or residents or citizens of the United States,

where the amount of the expenses deductible from gross income that are paid or payable by the company or trust, as the case may be, for its preceding fiscal period (or, in the case of its first fiscal period, that period) to persons that are not qualifying persons or residents or citizens of the United States is less than 50 per cent of its gross income for that period;

(f) an estate;

(g) a not-for-profit organization, provided that more than half of the beneficiaries, members or participants of the organization are qualifying persons or residents or citizens of the United States; or

(h) an organization described in paragraph 2 of Article XXI (Exempt Organizations) and established for the purpose of providing benefits primarily to individuals who are qualifying persons, persons who were qualifying persons within the five preceding years, or residents or citizens of the United States.

Technical Explanation [1995 Protocol]:

Individuals and governmental entities

Under paragraph 2, the first two categories of qualifying persons are (1) individual residents of Canada, and (2) the Government of Canada, a political subdivision or local authority thereof, or an agency or instrumentality of that Government, political subdivision, or local authority. It is considered unlikely that persons falling into these two categories can be used, as the beneficial owner of income, to derive treaty benefits on behalf of a third-country person. If a person is receiving income as a nominee on behalf of a third-country resident, benefits will be denied with respect to those items of income under the articles of the Convention that grant the benefit, because of the requirements in those articles that the beneficial owner of the income be a resident of a Contracting State.

Publicly traded entities

Under subparagraph (c) of paragraph 2, a Canadian resident company or trust is a qualifying person if there is substantial and regular trading in the company's principal class of shares, or in the trust's units, on a recognized stock exchange. The term "recognized stock exchange" is defined in paragraph 5(a) of the Article to mean, in the United States, the NASDAQ System and any stock exchange registered as a national securities exchange with the Securities and Exchange Commission, and, in Canada, any Canadian stock exchanges that are "prescribed stock exchanges" under the *Income Tax Act*. These are, at the time of signature of the Protocol, the Alberta, Montreal, Toronto, Vancouver, and Winnipeg Stock Exchanges. Additional exchanges may be added to the list of recognized exchanges by exchange of notes between the Contracting States or by agreement between the competent authorities.

Certain companies owned by publicly traded corporations also may be qualifying persons. Under subparagraph (d) of paragraph 2, a Canadian resident company will be a qualifying person, even if not publicly traded, if more than 50 percent of the vote and value of its shares is owned (directly or indirectly) by five or fewer persons that would be qualifying persons under subparagraph (c). In addition, each company in the chain of ownership must be a qualifying person or a U.S. citizen or resident. Thus, for example, a Canadian company that is not publicly traded but that is owned, one-third each, by three companies, two of which are Canadian resident corporations whose principal classes of shares are substantially and regularly traded on a recognized stock exchange, will qualify under subparagraph (d).

The 50-percent test under subparagraph (d) applies only to shares other than "debt substitute shares." The term "debt substitute shares" is defined in paragraph 5 to mean shares defined in paragraph (e) of the definition in the Canadian *Income Tax Act* of "term preferred shares" (see section 248(1) of the *Income Tax Act*), which relates to certain shares received in debt-restructuring arrangements undertaken by reason of financial difficulty or insolvency. Paragraph 5 also provides that the competent authorities may agree to treat other types of shares as debt substitute shares.

Ownership/base erosion test

Subparagraph (e) of paragraph 2 provides a two-part test under which certain other entities may be qualifying persons, based on ownership and "base erosion." Under the first of these tests, benefits will be granted to a Canadian resident company if 50 percent or more of the vote and value of its shares (other than debt substitute shares), or to a Canadian resident trust if 50 percent or more of its beneficial interest, is not owned, directly or indirectly, by persons other than qualifying persons or U.S. residents or citizens. The wording of these tests is intended to make clear that, for example, if a Canadian company is more than 50 percent owned by a U.S. resident corporation that is, itself, wholly owned by a third-country resident other than a U.S. citizen, the Canadian company would not pass the ownership test. This is because more than 50 percent of its shares is owned indirectly by a person (the third-country resident) that is not a qualifying person or a citizen or resident of the United States.

For purposes of this subparagraph (e) and other provisions of this Article, the term "shares" includes, in the case of a mutual insurance company, any certificate or contract entitling the holder to voting power in the corporation. This is consistent with the interpretation of similar limitation on benefits provisions in other U.S. treaties.

The second test of subparagraph (e) is the so-called "base erosion" test. A Canadian company or trust that passes the ownership test must also pass this test to be a qualifying person. This test requires that the amount of expenses that are paid or payable by the Canadian entity in question to persons that are not qualifying persons or U.S. citizens or residents, and that are deductible from gross income, be less than 50 percent of the gross income of the company or trust. This test is applied for the fiscal period immediately preceding the period for which the qualifying person test is being applied. If it is the first fiscal period of the person, the test is applied for the current period.

The ownership/base erosion test recognizes that the benefits of the Convention can be enjoyed indirectly not only by equity holders of an entity, but also by that entity's obligees, such as lenders, licensors, service providers, insurers and reinsurers, and others. For example, a third-country resident could license technology to a Canadian-owned Canadian corporation to be sub-licensed to a U.S. resident. The U.S. source royalty income of the Canadian corporation would be exempt from U.S. withholding tax under Article XII (Royalties) of the Convention (as amended by the Protocol). While the Canadian corporation would be subject to Canadian corporation income tax, its taxable income could be reduced to near zero as a result of the deductible royalties paid to the third-country resident. If, under a Convention between Canada and the third country, those royalties were either exempt from Canadian tax or subject to tax at a low rate, the U.S. treaty benefit with respect to the U.S. source royalty income would have flowed to the third-country resident at little or no tax cost, with no reciprocal benefit to the United States from the third country. The ownership/base erosion test therefore requires both that qualifying persons or U.S. residents or citizens substantially own the entity and that the entity's deductible payments be made in substantial part to such persons.

Other qualifying persons

Under subparagraph (f) of paragraph 2, a Canadian resident estate is a qualifying person, entitled to the benefits of the Convention with respect to its U.S. source income.

Subparagraphs (g) and (h) specify the circumstances under which certain types of not-for-profit organizations will be qualifying persons. Subparagraph (g) of paragraph 2 provides that a not-for-profit organization that is a resident of Canada is a qualifying person, and thus entitled to U.S. benefits, if more than half of the beneficiaries, members, or participants in the organization are qualifying persons or citizens or residents of the United States. The term "not-for-profit organization" of a Contracting State is defined in subparagraph (b) of paragraph 5 of the Article to mean an entity created or established in that State that is generally exempt from income taxation in that State by reason of its not-for-profit status. The term includes charities, private foundations, trade unions, trade associations, and similar organizations.

Subparagraph (h) of paragraph 2 specifies that certain organizations described in paragraph 2 of Article XXI (Exempt Organizations), as amended by Article 10 of the Protocol, are qualifying persons. To be a qualifying person, such an organization must be established primarily for the purpose of providing pension, retirement, or employee benefits to individual residents of Canada who are (or were, within any of the five preceding years) qualifying persons, or to citizens or residents of the United States. An organization will be considered to be established "primarily" for this purpose if more than 50 percent of its beneficiaries, members, or participants are such persons. Thus, for example, a Canadian Registered Retirement Savings Plan ("RRSP") of a former resident of Canada who is working temporarily outside of Canada would continue to be a qualifying person during the period of the individual's absence from Canada or for five years, whichever is shorter. A Canadian pension fund established to provide benefits to persons employed by a company would be a qualifying person only if most of the beneficiaries of the fund are (or were within the five preceding years) individual residents of Canada or residents or citizens of the United States.

The provisions of paragraph 2 are self-executing, unlike the provisions of paragraph 6, discussed below. The tax authorities may, of course, on review, determine that the taxpayer has improperly interpreted the paragraph and is not entitled to the benefits claimed.

3. Where a person that is a resident of Canada and is not a qualifying person of Canada, or a person related thereto, is engaged in the active conduct of a trade or business in Canada (other than the business of making or managing investments, unless those activities are carried on with customers in the ordinary course of business by a bank, an insurance company, a registered securities dealer or a deposit-taking financial institution), the benefits of the Convention shall apply to that resident person with respect to income derived from the United States in connection with or incidental to that trade or business, including any such income derived directly or indirectly by that resident person through one or more other persons that are residents of the United States. Income shall be deemed to be derived from the United States in connection with the

active conduct of a trade or business in Canada only if that trade or business is substantial in relation to the activity carried on in the United States giving rise to the income in respect of which benefits provided under the Convention by the United States are claimed.

Technical Explanation [1995 Protocol]:

Active trade or business test

Paragraph 3 provides an eligibility test for benefits for residents of Canada that are not qualifying persons under paragraph 2. This is the so-called "active trade or business" test. Unlike the tests of paragraph 2, the active trade or business test looks not solely at the characteristics of the person deriving the income, but also at the nature of the activity engaged in by that person and the connection between the income and that activity. Under the active trade or business test, a resident of Canada deriving an item of income from the United States is entitled to benefits with respect to that income if that person (or a person related to that person under the principles of *Internal Revenue Code* section 482) is engaged in an active trade or business in Canada and the income in question is derived in connection with, or is incidental to, that trade or business.

Income that is derived in connection with, or is incidental to, the business of making or managing investments will not qualify for benefits under this provision, unless those investment activities are carried on with customers in the ordinary course of the business of a bank, insurance company, registered securities dealer, or deposit-taking financial institution.

Income is considered derived "in connection" with an active trade or business in the United States if, for example, the income-generating activity in the United States is "upstream," "downstream," or parallel to that conducted in Canada. Thus, if the U.S. activity consisted of selling the output of a Canadian manufacturer or providing inputs to the manufacturing process, or of manufacturing or selling in the United States the same sorts of products that were being sold by the Canadian trade or business in Canada, the income generated by that activity would be treated as earned in connection with the Canadian trade or business. Income is considered "incidental" to the Canadian trade or business if, for example, it arises from the short-term investment of working capital of the Canadian resident in U.S. securities.

An item of income will be considered to be earned in connection with or to be incidental to an active trade or business in Canada if the income is derived by the resident of Canada claiming the benefits directly or indirectly through one or more other persons that are residents of the United States. Thus, for example, a Canadian resident could claim benefits with respect to an item of income earned by a U.S. operating subsidiary but derived by the Canadian resident indirectly through a wholly-owned U.S. holding company interposed between it and the operating subsidiary. This language would also permit a Canadian resident to derive income from the United States through one or more U.S. residents that it does not wholly own. For example, a Canadian partnership in which three unrelated Canadian companies each hold a one-third interest could form a wholly-owned U.S. holding company with a U.S. operating subsidiary. The "directly or indirectly" language would allow otherwise available treaty benefits to be claimed with respect to income derived by the three Canadian partners through the U.S. holding company, even if the partners were not considered to be related to the U.S. holding company under the principles of *Internal Revenue Code* section 482.

Income that is derived in connection with, or is incidental to, an active trade or business in Canada, must pass an additional test to qualify for U.S. treaty benefits. The trade or business in Canada must be substantial in relation to the activity in the United States that gave rise to the income in respect of which treaty benefits are being claimed. To be considered substantial, it is not necessary that the Canadian trade or business be as large as the U.S. income-generating activity. The Canadian trade or business cannot, however, in terms of income, assets, or other similar measures, represent only a very small percentage of the size of the U.S. activity.

The substantiality requirement is intended to prevent treaty-shopping. For example, a third-country resident may want to acquire a U.S. company that manufactures television sets for worldwide markets; however, since its country of residence has no tax treaty with the United States, any dividends generated by the investment would be subject to a U.S. withholding tax of 30 percent. Absent a substantiality test, the investor could establish a Canadian corporation that would operate a small outlet in Canada to sell a few of the television sets manufactured by the U.S. company and earn a very small amount of income. That Canadian corporation could then acquire the U.S. manufacturer with capital provided by the third-country resident and produce a very large number of sets for sale in several countries, generating a much larger amount of income. It might attempt to argue that the U.S. source income is generated from business activities in the United States related to the television sales activity of the Canadian parent and that the dividend income should be subject to U.S. tax at the 5 percent rate provided by Article X of the Convention, as amended by the Protocol. However, the substantiality test would not be met in this example, so the dividends would remain subject to withholding in the United States at a rate of 30 percent.

In general, it is expected that if a person qualifies for benefits under one of the tests of paragraph 2, no inquiry will be made into qualification for benefits under paragraph 3. Upon satisfaction of any of the tests of paragraph 2, any income derived by the beneficial owner from the other Contracting State is entitled to treaty benefits. Under paragraph 3, however, the test is applied separately to each item of income.

4. A company that is a resident of Canada shall also be entitled to the benefits of Articles X (Dividends), XI (Interest) and XII (Royalties) if

(a) its shares that represent more than 90 per cent of the aggregate vote and value represented by all of its shares (other than debt substitute shares) are owned, directly or indirectly, by persons each of whom is a qualifying person, a resident or citizen of the United States or a person who

(i) is a resident of a country with which the United States has a comprehensive income tax convention and is entitled to all of the benefits provided by the United States under that convention;

(ii) would qualify for benefits under paragraphs 2 or 3 if that person were a resident of Canada (and, for the purposes of paragraph 3, if the business it carried on in the country of which it is a resident were carried on by it in Canada); and

(iii) would be entitled to a rate of United States tax under the convention between that person's country of residence and the United States, in respect of the particular class of income for which benefits are being claimed under this Convention, that is at least as low as the rate applicable under this Convention; and

(b) the amount of the expenses deductible from gross income that are paid or payable by the company for its preceding fiscal period (or, in the case of its first fiscal period, that period) to persons that are not qualifying persons or residents or citizens of the United States is less than 50 per cent of the gross income of the company for that period.

Technical Explanation [1995 Protocol]:

Derivative benefits test

Paragraph 4 of Article XXIX A contains a so-called "derivative benefits" rule not generally found in U.S. treaties. This rule was included in the Protocol because of the special economic relationship between the United States and Canada and the close coordination between the tax administrations of the two countries.

Under the derivative benefits rule, a Canadian resident company may receive the benefits of Articles X (Dividends), XI (Interest), and XII (Royalties), even if the company is not a qualifying person and does not satisfy the active trade or business test of paragraph 3. To qualify under this paragraph, the Canadian company must satisfy both (i) the base erosion test under subparagraph (e) of paragraph 2, and (ii) an ownership test.

The derivative benefits ownership test requires that shares (other than debt substitute shares) representing more than 90 percent of the vote and value of the Canadian company be owned directly or indirectly by either (i) qualifying persons or U.S. citizens or residents, or (ii) other persons that satisfy each of three tests. The three tests that must be satisfied by these other persons are as follows:

First, the person must be a resident of a third State with which the United States has a comprehensive income tax convention and be entitled to all of the benefits under that convention. Thus, if the person fails to satisfy the limitation on benefits tests, if any, of that convention, no benefits would be granted under this paragraph. Qualification for benefits under an active trade or business test does not suffice for these purposes, because that test

grants benefits only for certain items of income, not for all purposes of the convention.

Second, the person must be a person that would qualify for benefits with respect to the item of income for which benefits are sought under one or more of the tests of paragraph 2 or 3 of this Convention, if the person were a resident of Canada and, for purposes of paragraph 3, the business were carried on in Canada. For example, a person resident in a third country would be deemed to be a person that would qualify under the publicly-traded test of paragraph 2 of this Convention if the principal class of its shares were substantially and regularly traded on a stock exchange recognized either under the treaty between the United States and Canada or under the treaty between the United States and the third country. Similarly, a company resident in a third country would be deemed to satisfy the ownership/base erosion test of paragraph 2 under this hypothetical analysis if, for example, it were wholly owned by an individual resident in that third country and most of its deductible payments were made to individual residents of that country (i.e., it satisfied base erosion).

The third requirement is that the rate of U.S. withholding tax on the item of income in respect of which benefits are sought must be at least as low under the convention between the person's country of residence and the United States as under this Convention.

5. For the purposes of this Article,

(a) the term "recognized stock exchange" means:

(i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the *Securities Exchange Act of 1934*;

(ii) Canadian stock exchanges that are "prescribed stock exchanges" under the *Income Tax Act*; and

(iii) any other stock exchange agreed upon by the Contracting States in an exchange of notes or by the competent authorities of the Contracting States;

(b) the term "not-for-profit organization" of a Contracting State means an entity created or established in that State and that is, by reason of its not-for-profit status, generally exempt from income taxation in that State, and includes a private foundation, charity, trade union, trade association or similar organization; and

(c) the term "debt substitute share" means:

(i) a share described in paragraph (e) of the definition "term preferred share" in the *Income Tax Act*, as it may be amended from time to time without changing the general principle thereof; and

(ii) such other type of share as may be agreed upon by the competent authorities of the Contracting States.

6. Where a person that is a resident of Canada is not entitled under the preceding provisions of this Article to the benefits provided under the Convention by the United States, the competent authority of the United States shall, upon that person's request, determine on the basis of all factors including the history, structure, ownership and operations of that person whether

(a) its creation and existence did not have as a principal purpose the obtaining of benefits under the Convention that would not otherwise be available; or

(b) it would not be appropriate, having regard to the purpose of this Article, to deny the benefits of the Convention to that person.

The person shall be granted the benefits of the Convention by the United States where the competent authority determines that subparagraph (a) or (b) applies.

Technical Explanation [1995 Protocol]:

Competent authority discretion

Paragraph 6 provides that when a resident of Canada derives income from the United States and is not entitled to the benefits of the Convention under other provisions of the Article, benefits may, nevertheless be granted at the discretion of the U.S. competent authority. In making a determination under this paragraph, the competent authority will take into account all relevant facts and circumstances relating to the person requesting the benefits. In particular, the competent authority will consider the history, structure, ownership (including ultimate beneficial ownership), and operations of the person. In addition, the competent authority is to consider (1) whether the creation and existence of the person did not have as a principal purpose obtaining treaty benefits that would not otherwise be available to the person, and (2) whether it would not be appropriate, in view of the purpose of the Article, to deny benefits. The paragraph specifies that if the U.S. competent authority determines that either of these two standards is satisfied, benefits shall be granted.

For purposes of implementing paragraph 6, a taxpayer will be expected to present his case to the competent authority for an advance determination based on the facts. The taxpayer will not be required to wait until it has been determined that benefits are denied under one of the other provisions of the Article. It also is expected that, if and when the competent authority determines that benefits are to be allowed, they will be allowed retroactively to the time of entry into force of the relevant treaty provision or the establishment of the structure in question, whichever is later (assuming that the taxpayer also qualifies under the relevant facts for the earlier period).

7. It is understood that the fact that the preceding provisions of this Article apply only for the purposes of the application of the Convention by the United States shall not be construed as restricting in any manner the right of a Contracting State to deny benefits under the Convention where it can reasonably be concluded that to do otherwise would result in an abuse of the provisions of the Convention.

Technical Explanation [1995 Protocol]:

General anti-abuse provisions

Paragraph 7 was added at Canada's request to confirm that the specific provisions of Article XXIX A and the fact that these provisions apply only for the purposes of the application of the Convention by the United States should not be construed so as to limit the right of each Contracting State to invoke applicable anti-abuse rules. Thus, for example, Canada remains free to apply such rules to counter abusive arrangements involving "treaty-shopping" through the United States, and the United States remains free to apply its substance-over-form and anti-conduit rules, for example, in relation to Canadian residents. This principle is recognized by the Organization for Economic Cooperation and Development in the Commentaries to its Model Tax Convention on Income and on Capital, and the United States and Canada agree that it is inherent in the Convention. The agreement to state this principle explicitly in the Protocol is not intended to suggest that the principle is not also inherent in other tax conventions, including the current Convention with Canada.

History [Art. XXIX A]: Art. XXIX A added by 1995 Protocol, article 18, generally effective for taxation years beginning on or after January 1, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above.)

Article XXIX B — Taxes Imposed by Reason of Death

1. Where the property of an individual who is a resident of a Contracting State passes by reason of the individual's death to an organization referred to in paragraph 1 of Article XXI (Exempt Organizations), the tax consequences in a Contracting State arising out of the passing of the property shall apply as if the organization were a resident of that State.

Technical Explanation [1995 Protocol]:

In general

Article 19 of the Protocol adds to the Convention a new Article XXIX B (Taxes Imposed by Reason of Death). The purpose of Article XXIX B is to better coordinate the operation of the death tax regimes of the two Con-

tracting States. Such coordination is necessary because the United States imposes an estate tax, while Canada now applies an income tax on gains deemed realized at death rather than an estate tax. Article XXIX B also contains other provisions designed to alleviate death taxes in certain situations.

For purposes of new Article XXIX B, the term "resident" has the meaning provided by Article IV (Residence) of the Convention, as amended by Article 3 of the Protocol. The meaning of the term "resident" for purposes of Article XXIX B, therefore, differs in some respects from its meaning under the estate, gift, and generation-skipping transfer tax provisions of the *Internal Revenue Code*.

Charitable bequests

Paragraph 1 of new Article XXIX B facilitates certain charitable bequests. It provides that a Contracting State shall accord the same death tax treatment to a bequest by an individual resident in one of the Contracting States to a qualifying exempt organization resident in the other Contracting State as it would have accorded if the organization had been a resident of the first Contracting State. The organizations covered by this provision are those referred to in paragraph 1 of Article XXI (Exempt Organizations) of the Convention. A bequest by a U.S. citizen or U.S. resident (as defined for estate tax purposes under the *Internal Revenue Code*) to such an exempt organization generally is deductible for U.S. estate tax purposes under section 2055 of the *Internal Revenue Code*, without regard to whether the organization is a U.S. corporation. However, if the decedent is not a U.S. citizen or U.S. resident (as defined for estate tax purposes under the *Internal Revenue Code*), such a bequest is deductible for U.S. estate tax purposes, under section 2106(a)(2) of the *Internal Revenue Code*, only if the recipient organization is a U.S. corporation. Under paragraph 1 of Article XXIX B, a U.S. estate tax deduction also will be allowed for a bequest by a Canadian resident (as defined under Article IV (Residence)) to a qualifying exempt organization that is a Canadian corporation. However, paragraph 1 does not allow a deduction for U.S. estate tax purposes with respect to any transfer of property that is not subject to U.S. estate tax.

2. In determining the estate tax imposed by the United States, the estate of an individual (other than a citizen of the United States) who was a resident of Canada at the time of the individual's death shall be allowed a unified credit equal to the greater of

(a) the amount that bears the same ratio to the credit allowed under the law of the United States to the estate of a citizen of the United States as the value of the part of the individual's gross estate that at the time of the individual's death is situated in the United States bears to the value of the individual's entire gross estate wherever situated; and

(b) the unified credit allowed to the estate of a nonresident not a citizen of the United States under the law of the United States.

The amount of any unified credit otherwise allowable under this paragraph shall be reduced by the amount of any credit previously allowed with respect to any gift made by the individual. The credit otherwise allowable under subparagraph (a) shall be allowed only if all information necessary for the verification and computation of the credit is provided.

Technical Explanation [1995 Protocol]:

Unified credit

Paragraph 2 of Article XXIX B grants a "pro rata" unified credit to the estate of a Canadian resident decedent, for purposes of computing U.S. estate tax. Although the Congress anticipated the negotiation of such pro rata unified credits in *Internal Revenue Code* section 2102(c)(3)(A), this is the first convention in which the United States has agreed to give such a credit. However, certain exemption provisions of existing estate and gift tax conventions have been interpreted as providing a pro rata unified credit.

Under the *Internal Revenue Code*, the estate of a nonresident not a citizen of the United States is subject to U.S. estate tax only on its U.S. situs assets and is entitled to a unified credit of $13,000, while the estate of a U.S. citizen or U.S. resident is subject to U.S. estate tax on its entire worldwide assets and is entitled to a unified credit of $192,800. (For purposes of these *Internal Revenue Code* provisions, the term "resident" has the meaning provided for estate tax purposes under the *Internal Revenue Code*.) A lower unified credit is provided for the former category of estates because it is assumed that the estate of a nonresident not a citizen generally will hold fewer U.S. situs assets, as a percentage of the estate's total assets, and thus will have a lower U.S. estate tax liability. The pro rata unified credit provisions of paragraph 2 increase the credit allowed to the estate of a Canadian resident decedent to an amount between $13,000 and $192,800 in appropriate cases, to take into account the extent to which the assets of the estate are situated in the United States. Paragraph 2 provides that the amount of the unified credit allowed to the estate of a Canadian resident decedent will in no event be less than the $13,000 allowed under the *Internal Revenue Code* to the estate of a nonresident not a citizen of the United States (subject to the adjustment for prior gift tax unified credits, discussed below). Paragraph 2 does not apply to the estates of U.S. citizen decedents, whether resident in Canada or elsewhere, because such estates receive a unified credit of $192,800 under the *Internal Revenue Code*.

Subject to the adjustment for gift tax unified credits, the pro rata credit allowed under paragraph 2 is determined by multiplying $192,800 by a fraction, the numerator of which is the value of the part of the gross estate situated in the United States and the denominator of which is the value of the entire gross estate wherever situated. Thus, if half of the entire gross estate (by value) of a decedent who was a resident and citizen of Canada were situated in the United States, the estate would be entitled to a pro rata unified credit of $96,400 (provided that the U.S. estate tax due is not less than that amount). For purposes of the denominator, the entire gross estate wherever situated (i.e., the worldwide estate, determined under U.S. domestic law) is to be taken into account for purposes of the computation. For purposes of the numerator, an estate's assets will be treated as situated in the United States if they are so treated under U.S. domestic law. However, if enacted, a technical correction now pending before the Congress will amend U.S. domestic law to clarify that assets will not be treated as U.S. situs assets for purposes of the pro rata unified credit computation if the United States is precluded from taxing them by reason of a treaty obligation. This technical correction will affect the interpretation of both this paragraph 2 and the analogous provisions in existing conventions. As currently proposed, it will take effect on the date of enactment.

Paragraph 2 restricts the availability of the pro rata unified credit in two respects. First, the amount of the unified credit otherwise allowable under paragraph 2 is reduced by the amount of any unified credit previously allowed against U.S. gift tax imposed on any gift by the decedent. This rule reflects the fact that, under U.S. domestic law, a U.S. citizen or U.S. resident individual is allowed a unified credit against the U.S. gift tax on lifetime transfers. However, as a result of the estate tax computation, the individual is entitled only to a total unified credit of $192,800, and the amount of the unified credit available for use against U.S. estate tax on the individual's estate is effectively reduced by the amount of any unified credit that has been allowed in respect of gifts by the individual. This rule is reflected by reducing the amount of the pro rata unified credit otherwise allowed to the estate of a decedent individual under paragraph 2 by the amount of any unified credit previously allowed with respect to lifetime gifts by that individual. This reduction will be relevant only in rare cases, where the decedent made gifts subject to the U.S. gift tax while a U.S. citizen or U.S. resident (as defined under the *Internal Revenue Code* for U.S. gift tax purposes).

Paragraph 2 also conditions allowance of the pro rata unified credit upon the provision of all information necessary to verify and compute the credit. Thus, for example, the estate's representatives will be required to demonstrate satisfactorily both the value of the worldwide estate and the value of the U.S. portion of the estate. Substantiation requirements also apply, of course, with respect to other provisions of the Protocol and the Convention. However, the negotiators believed it advisable to emphasize the substantiation requirements in connection with this provision, because the computation of the pro rata unified credit involves certain information not otherwise relevant for U.S. estate tax purposes.

In addition, the amount of the pro rata unified credit is limited to the amount of U.S. estate tax imposed on the estate. See section 2102(c)(4) of the *Internal Revenue Code*.

History [Art. XXIX B]: Art. XXIX B added by 1995 Protocol, article 19, generally effective for deaths after November 10, 1988, provided refund claims that would otherwise be too late are filed by November 9, 1996 (see Art. 21(2) under "Application of the 1995 Protocol" above.)

3. In determining the estate tax imposed by the United States on an individual's estate with respect to property

that passes to the surviving spouse of the individual (within the meaning of the law of the United States) and that would qualify for the estate tax marital deduction under the law of the United States if the surviving spouse were a citizen of the United States and all applicable elections were properly made (in this paragraph and in paragraph 4 referred to as "qualifying property"), a non-refundable credit computed in accordance with the provisions of paragraph 4 shall be allowed in addition to the unified credit allowed to the estate under paragraph 2 or under the law of the United States, provided that

(a) the individual was at the time of death a citizen of the United States or a resident of either Contracting State;

(b) the surviving spouse was at the time of the individual's death a resident of either Contracting State;

(c) if both the individual and the surviving spouse were residents of the United States at the time of the individual's death, one or both was a citizen of Canada; and

(d) the executor of the decedent's estate elects the benefits of this paragraph and waives irrevocably the benefits of any estate tax marital deduction that would be allowed under the law of the United States on a United States Federal estate tax return filed for the individual's estate by the date on which a qualified domestic trust election could be made under the law of the United States.

Technical Explanation [1995 Protocol]:

Marital credit

Paragraph 3 of Article XXIX B allows a special "marital credit" against U.S. estate tax in respect of certain transfers to a surviving spouse. The purpose of this marital credit is to alleviate, in appropriate cases, the impact of the estate tax marital deduction restrictions enacted by the Congress in the *Technical and Miscellaneous Revenue Act* of 1988 ("TAMRA"). It is the firm position of the U.S. Treasury Department that the TAMRA provisions do not violate the non-discrimination provisions of this Convention or any other convention to which the United States is a party. This is because the estate — not the surviving spouse — is the taxpayer, and the TAMRA provisions treat the estates of nonresidents not citizens of the United States in the same manner as the estates of U.S. citizen and U.S. resident decedents. However, the U.S. negotiators believed that it was not inappropriate, in the context of the Protocol, to ease the impact of those TAMRA provisions upon certain estates of limited value.

Paragraph 3 allows a non-refundable marital credit in addition to the pro rata unified credit allowed under paragraph 2 (or, in the case of a U.S. citizen or U.S. resident decedent, the unified credit allowed under U.S. domestic law). However, the marital credit is allowed only in connection with transfers satisfying each of the five conditions set forth in paragraph 3. First, the property must be "qualifying property," i.e., it must pass to the surviving spouse (within the meaning of U.S. domestic law) and be property that would have qualified for the estate tax marital deduction under U.S. domestic law if the surviving spouse had been a U.S. citizen and all applicable elections specified by U.S. domestic law had been properly made. Second, the decedent must have been, at the time of death, either a resident of Canada or the United States or a citizen of the United States. Third, the surviving spouse must have been, at the time of the decedent's death, a resident of either Canada or the United States. Fourth, if both the decedent and the surviving spouse were residents of the United States at the time of the decedent's death, at least one of them must have been a citizen of Canada. Finally, to limit the benefits of paragraph 3 to relatively small estates, the executor of the decedent's estate is required to elect the benefits of paragraph 3, and to waive irrevocably the benefits of any estate tax marital deduction that would be allowed under U.S. domestic law, on a U.S. Federal estate tax return filed by the deadline for making a qualified domestic trust election under *Internal Revenue Code* section 2056A(d). In the case of the estate of a decedent for which the U.S. Federal estate tax return is filed on or before the date on which this Protocol enters into force, this election and waiver must be made on any return filed to claim a refund pursuant to the special effective date applicable to such estates (discussed below).

4. The amount of the credit allowed under paragraph 3 shall equal the lesser of

(a) the unified credit allowed under paragraph 2 or under the law of the United States (determined without regard to any credit allowed previously with respect to any gift made by the individual), and

(b) the amount of estate tax that would otherwise be imposed by the United States on the transfer of qualifying property.

The amount of estate tax that would otherwise be imposed by the United States on the transfer of qualifying property shall equal the amount by which the estate tax (before allowable credits) that would be imposed by the United States if the qualifying property were included in computing the taxable estate exceeds the estate tax (before allowable credits) that would be so imposed if the qualifying property were not so included. Solely for purposes of determining other credits allowed under the law of the United States, the credit provided under paragraph 3 shall be allowed after such other credits.

Technical Explanation [1995 Protocol]:

Paragraph 4 governs the computation of the marital credit allowed under paragraph 3. It provides that the amount of the marital credit shall equal the lesser of (i) the amount of the unified credit allowed to the estate under paragraph 2 or, where applicable, under U.S. domestic law (before reduction for any gift tax unified credit), or (ii) the amount of U.S. estate tax that would otherwise be imposed on the transfer of qualifying property to the surviving spouse. For this purpose, the amount of U.S. estate tax that would otherwise be imposed on the transfer of qualifying property equals the amount by which (i) the estate tax (before allowable credits) that would be imposed if that property were included in computing the taxable estate exceeds (ii) the estate tax (before allowable credits) that would be imposed if the property were not so included. Property that, by reason of the provisions of paragraph 8 of this Article, is not subject to U.S. estate tax is not taken into account for purposes of this hypothetical computation.

Finally, paragraph 4 provides taxpayers with an ordering rule. The rule states that, solely for purposes of determining any other credits (e.g., the credits for foreign and state death taxes) that may be allowed under U.S. domestic law to the estate, the marital credit shall be allowed after such other credits.

In certain cases, the provisions of paragraphs 3 and 4 may affect the U.S. estate taxation of a trust that would meet the requirements for a qualified terminable interest property ("QTIP") election, for example, a trust with a life income interest for the surviving spouse and a remainder interest for other family members. If, in lieu of making the QTIP election and the qualified domestic trust election, the decedent's executor makes the election described in paragraph 3(d) of this Article, the provisions of *Internal Revenue Code* sections 2044 (regarding inclusion in the estate of the second spouse of certain property for which the marital deduction was previously allowed), 2056A (regarding qualified domestic trusts), and 2519 (regarding dispositions of certain life estates) will not apply. To obtain this treatment, however, the executor is required, under paragraph 3, to irrevocably waive the benefit of any marital deduction allowable under the *Internal Revenue Code* with respect to the trust.

The following examples illustrate the operation of the marital credit and its interaction with other credits. Unless otherwise stated, assume for purposes of illustration that H, the decedent, and W, his surviving spouse, are Canadian citizens resident in Canada at the time of the decedent's death. Assume further that all conditions set forth in paragraphs 2 and 3 of this Article XXIX B are satisfied (including the condition that the executor waive the estate tax marital deduction), that no deductions are available under the *Internal Revenue Code* in computing the U.S. estate tax liability, and that there are no adjusted taxable gifts within the meaning of *Internal Revenue Code* section 2001(b) or 2101(c). Also assume that the applicable U.S. domestic estate and gift tax laws are those that were in effect on the date the Protocol was signed.

Example 1. H has a worldwide gross estate of $1,200,000. He bequeaths U.S. real property worth $600,000 to W. The remainder of H's estate consists of Canadian situs property. H's estate would be entitled to a pro rata unified credit of $96,400 (= $192,800 x (600,000/1,200,000)) and to a marital credit in the same amount (the lesser of the unified credit allowed ($96,400) and the U.S. estate tax that would otherwise be imposed on the property transferred to W

($192,800 [tax on U.S. taxable estate of $600,000]). The pro rata unified credit and the marital credit combined would eliminate all U.S. estate tax with respect to the property transferred to W.

Example 2. H has a worldwide gross estate of $1,200,000, all of which is situated in the United States. He bequeaths U.S. real property worth $600,000 to W and U.S. real property worth $600,000 to a child, C. H's estate would be entitled to a pro rata unified credit of $192,800 (= $192,800 x 1,200,000/1,200,000) and to a marital credit of $192,800 (the lesser of the unified credit ($192,800) and the U.S. estate tax that would otherwise be imposed on the property transferred to W ($235,000, i.e., $427,800 [tax on U.S. taxable estate of $1,200,000] less $192,800 [tax on U.S. taxable estate of $600,000]). This would reduce the estate's total U.S. estate tax liability of $427,800 by $385,600.

Example 3. H has a worldwide gross estate of $700,000, of which $500,000 is real property situated in the United States. H bequeaths U.S. real property valued at $100,000 to W. The remainder of H's gross estate, consisting of U.S. and Canadian situs real property, is bequeathed to H's child, C. H's estate would be entitled to a pro rata unified credit of $137,714 ($192,800 x $500,000/$700,000). In addition, H's estate would be entitled to a marital credit of $34,000, which equals the lesser of the unified credit ($137,714) and $34,000 (the U.S. estate tax that would otherwise be imposed on the property transferred to W before allowance of any credits, i.e., $155,800 [tax on U.S. taxable estate of $500,000] less $121,800 [tax on U.S. taxable estate of $400,000]).

Example 4. H has a worldwide gross estate of $5,000,000, $2,000,000 of which consists of U.S. real property situated in State X. State X imposes a state death tax equal to the federal credit allowed under *Internal Revenue Code* section 2011. H bequeaths U.S. situs real property worth $1,000,000 to W and U.S. situs real property worth $1,000,000 to his child, C. The remainder of H's estate ($3,000,000) consists of Canadian situs property passing to C. H's estate would be entitled to a pro rata unified credit of $77,120 ($192,800 x $2,000,000/$5,000,000). H's estate would be entitled to a state death tax credit under *Internal Revenue Code* section 2102 of $99,600 (determined under *Internal Revenue Code* section 2011(b) with respect to an adjusted taxable estate of $1,940,000). H's estate also would be entitled to a marital credit of $77,120, which equals the lesser of the unified credit ($77,120) and $435,000 (the U.S. estate tax that would otherwise be imposed on the property transferred to W before allowance of any credits, i.e., $780,000 [tax on U.S. taxable estate of $2,000,000] less $345,800 [tax on U.S. taxable estate of $1,000,000]).

Example 5. The facts are the same as in Example 4, except that H and W are Canadian citizens who are resident in the United States at the time of H's death. Canadian Federal and provincial income taxes totalling $500,000 are imposed by reason of H's death. H's estate would be entitled to a unified credit of $192,800 and to a state death tax credit of $300,880 under *Internal Revenue Code* sections 2010 and 2011(b), respectively. Under paragraph 6 of Article XXIX B, H's estate would be entitled to a credit for the Canadian income tax imposed by reason of death, equal to the lesser of $500,000 (the Canadian taxes paid) or $1,138,272 ($2,390,800 (tax on $5,000,000 taxable estate) less total of unified and state death tax credits ($493,680) x $3,000,000/$5,000,000). H's estate also would be entitled to a marital credit of $192,800, which equals the lesser of the unified credit ($192,800) and $550,000 (the U.S. estate tax that would otherwise be imposed on the property transferred to W before allowance of any credits, i.e., $2,390,800 [tax on U.S. taxable estate of $5,000,000] less $1,840,800 [tax on U.S. taxable estate of $4,000,000]).

5. Where an individual was a resident of the United States immediately before the individual's death, for the purposes of subsection 70(6) of the *Income Tax Act*, both the individual and the individual's spouse shall be deemed to have been resident in Canada immediately before the individual's death. Where a trust that would be a trust described in subsection 70(6) of that Act, if its trustees that were residents or citizens of the United States or domestic corporations under the law of the United States were residents of Canada, requests the competent authority of Canada to do so, the competent authority may agree, subject to terms and conditions satisfactory to such competent authority, to treat the trust for the purposes of that Act as being resident in Canada for such time as may be stipulated in the agreement.

Technical Explanation [1995 Protocol]:

Canadian treatment of certain transfers

The provisions of paragraph 5 relate to the operation of Canadian law. They are intended to provide deferral ("rollover") of the Canadian tax at death for certain transfers to a surviving spouse and to permit the Canadian competent authority to allow such deferral for certain transfers to a trust. For example, they would enable the competent authority to treat a trust that is a qualified domestic trust for U.S. estate tax purposes as a Canadian spousal trust as well for purposes of certain provisions of Canadian tax law and of the Convention. These provisions do not affect U.S. domestic law regarding qualified domestic trusts. Nor do they affect the status of U.S. resident individuals for any other purpose.

Interpretation Bulletins: IT-305R4: Testamentary spouse trusts.

6. In determining the amount of Canadian tax payable by an individual who immediately before death was a resident of Canada, or by a trust described in subsection 70(6) of the *Income Tax Act* (or a trust which is treated as being resident in Canada under the provisions of paragraph 5), the amount of any Federal or state estate or inheritance taxes payable in the United States (not exceeding, where the individual was a citizen of the United States or a former citizen referred to in paragraph 2 of Article XXIX (Miscellaneous Rules), the amount of estate and inheritance taxes that would have been payable if the individual were not a citizen or former citizen of the United States) in respect of property situated within the United States shall,

(a) to the extent that such estate or inheritance taxes are imposed upon the individual's death, be allowed as a deduction from the amount of any Canadian tax otherwise payable by the individual for the taxation year in which the individual died on the total of

(i) any income, profits or gains of the individual arising (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)) in the United States in that year, and

(ii) where the value at the time of the individual's death of the individual's entire gross estate wherever situated (determined under the law of the United States) exceeded 1.2 million U.S. dollars or its equivalent in Canadian dollars, any income, profits or gains of the individual for that year from property situated in the United States at that time, and

(b) to the extent that such estate or inheritance taxes are imposed upon the death of the individual's surviving spouse, be allowed as a deduction from the amount of any Canadian tax otherwise payable by the trust for its taxation year in which that spouse dies on any income, profits or gains of the trust for that year arising (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)) in the United States or from property situated in the United States at the time of death of the spouse.

For purposes of this paragraph, property shall be treated as situated within the United States if it is so treated for estate tax purposes under the law of the United States as in effect on March 17, 1995, subject to any subsequent changes thereof that the competent authorities of the Contracting States have agreed to apply for the purposes of this paragraph. The deduction allowed under this paragraph shall take into account the deduction for any income tax paid or accrued to the United States that is pro-

vided under paragraph 2(a), 4(a) or 5(b) of Article XXIV (Elimination of Double Taxation).

Technical Explanation [1995 Protocol]:

Credit for U.S. taxes

Under paragraph 6, Canada agrees to give Canadian residents and Canadian resident spousal trusts (or trusts treated as such by virtue of paragraph 5) a deduction from tax (i.e., a credit) for U.S. Federal or state estate or inheritance taxes imposed on U.S. situs property of the decedent or the trust. This credit is allowed against the income tax imposed by Canada, in an amount computed in accordance with subparagraph 6(a) or 6(b).

Subparagraph 6(a) covers the first set of cases — where the U.S. tax is imposed upon a decedent's death. Subparagraph 6(a)(i) allows a credit for U.S. tax against the total amount of Canadian income tax payable by the decedent in the taxable year of death on any income, profits, or gains arising in the United States (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)). For purposes of subparagraph 6(a)(i), income, profits, or gains arising in the United States within the meaning of paragraph 3 of Article XXIV include gains deemed realized at death on U.S. situs real property and on personal property forming part of the business property of a U.S. permanent establishment or fixed base. (As explained below, these are the only types of property on which the United States may impose its estate tax if the estate is worth $1.2 million or less.) Income, profits, or gains arising in the United States also include income and profits earned by the decedent during the taxable year of death, to the extent that the United States may tax such amounts under the Convention (e.g., dividends received from a U.S. corporation and wages from the performance of personal services in the United States).

Where the value of the decedent's entire gross estate exceeds $1.2 million, subparagraph 6(a)(ii) allows a credit against the Canadian income tax on any income, profits, or gains from any U.S. situs property, in addition to any credit allowed by subparagraph 6(a)(i). This provision is broader in scope than is the general rule under subparagraph 6(a)(i), because the United States has retained the right to impose its estate tax on all types of property in the case of larger estates.

Subparagraph 6(b) provides rules for a second category of cases — where the U.S. tax is imposed upon the death of the surviving spouse. In these cases, Canada agrees to allow a credit against the Canadian tax payable by a trust for its taxable year during which the surviving spouse dies on any income, profits, or gains (i) arising in the United States on U.S. situs real property or business property, or (ii) from property situated in the United States. These rules are intended to provide a credit for taxes imposed as a result of the death of the surviving spouse in situations involving trusts. To the extent that taxes are imposed on the estate of the surviving spouse, subparagraph 6(a) would apply as well. In addition, the competent authorities are authorized to provide relief from double taxation in certain additional circumstances involving trusts, as described above in connection with Article 14 of the Protocol.

The credit allowed under paragraph 6 is subject to certain conditions. First, where the decedent was a U.S. citizen or former citizen (described in paragraph 2 of Article XXIX (Miscellaneous Rules)), paragraph 6 does not obligate Canada to provide a credit for U.S. taxes in excess of the amount of U.S. taxes that would have been payable if the decedent had not been a U.S. citizen or former citizen. Second, the credit allowed under paragraph 6 will be computed after taking into account any deduction for U.S. income tax provided under paragraph 2(a), 4(a), or 5(b) of Article XXIV (Elimination of Double Taxation). This clarifies that no double credit will be allowed for any amount and provides an ordering rule. Finally, because Canadian domestic law does not contain a definition of U.S. situs property for death tax purposes, such a definition is provided for purposes of paragraph 6. To maximize coordination of the credit provisions, the Contracting States agreed to follow the U.S. estate tax law definition as in effect on the date of signature of the Protocol and, subject to competent authority agreement, as it may be amended in the future.

7. In determining the amount of estate tax imposed by the United States on the estate of an individual who was a resident or citizen of the United States at the time of death, or upon the death of a surviving spouse with respect to a qualifed domestic trust created by such an individual or the individual's executor or surviving spouse, a credit shall be allowed against such tax imposed in respect of property situated outside the United States, for the federal and provincial income taxes payable in Canada in respect of such property by reason of the death of the individual or, in the case of a qualified domestic trust, the individual's surviving spouse. Such credit shall be computed in accordance with the following rules:

(a) a credit otherwise allowable under this paragraph shall be allowed regardless of whether the identity of the taxpayer under the law of Canada corresponds to that under the law of the United States;

(b) the amount of a credit allowed under this paragraph shall be computed in accordance with the provisions and subject to the limitations of the law of the United States regarding credit for foreign death taxes (as it may be amended from time to time without changing the general principle hereof), as though the income tax imposed by Canada were a creditable tax under that law;

(c) a credit may be claimed under this paragraph for an amount of federal or provincial income tax payable in Canada only to the extent that no credit or deduction is claimed for such amount in determining any other tax imposed by the United States, other than the estate tax imposed on property in a qualified domestic trust upon the death of the surviving spouse.

Technical Explanation [1995 Protocol]:

Credit for Canadian taxes

Under paragraph 7, the United States agrees to allow a credit against U.S. Federal estate tax imposed on the estate of a U.S. resident or U.S. citizen decedent, or upon the death of a surviving spouse with respect to a qualified domestic trust created by such a decedent (or the decedent's executor or surviving spouse). The credit is allowed for Canadian Federal and provincial income taxes imposed at death with respect to property of the estate or trust that is situated outside of the United States. As in the case under paragraph 6, the competent authorities also are authorized to provide relief from double taxation in certain cases involving trusts (see discussion of Article 14, above).

The amount of the credit generally will be determined as though the income tax imposed by Canada were a creditable tax under the U.S. estate tax provisions regarding credit for foreign death taxes, in accordance with the provisions and subject to the limitations of *Internal Revenue Code* section 2014. However, subparagraph 7(a) clarifies that a credit otherwise allowable under paragraph 7 will not be denied merely because of inconsistencies between U.S. and Canadian law regarding the identity of the taxpayer in the case of a particular taxable event. For example, the fact that the taxpayer is the decedent's estate for purposes of U.S. estate taxation and the decedent for purposes of Canadian income taxation will not prevent the allowance of a credit under paragraph 7 for Canadian income taxes imposed by reason of the death of the decedent.

In addition, subparagraph 7(c) clarifies that the credit against the U.S. estate tax generally may be claimed only to the extent that no credit or deduction is claimed for the same amount of Canadian tax in determining any other U.S. tax. This makes clear, for example, that a credit may not be claimed for the same amount under both this provision and Article XXIV (Elimination of Double Taxation). To prevent double taxation, an exception to this restriction is provided for certain taxes imposed with respect to qualified domestic trusts. Subject to the limitations of subparagraph 7(c), the taxpayer may choose between relief under Article XXIV, relief under this paragraph 7, or some combination of the two.

8. Provided that the value, at the time of death, of the entire gross estate wherever situated of an individual who was a resident of Canada (other than a citizen of the United States) at the time of death does not exceed 1.2 million U.S dollars or its equivalent in Canadian dollars, the United States may impose its estate tax upon property forming part of the estate of the individual only if any gain derived by the individual from the alienation of such property would have been subject to income taxation by the United States in accordance with Article XIII (Gains).

Technical Explanation [1995 Protocol]:

Relief for small estates

Under paragraph 8, the United States agrees to limit the application of its estate tax in the case of certain small estates of Canadian resident decedents. This provision is intended to eliminate the "trap for the unwary"

that exists for such decedents, in the absence of an estate tax convention between the United States and Canada. In the absence of sophisticated estate tax planning, such decedents may inadvertently subject their estates to U.S. estate tax liability by holding shares of U.S. corporate stock or other U.S. situs property. U.S. resident decedents are already protected in this regard by the provisions of Article XIII (Gains) of the present Convention, which prohibit Canada from imposing its income tax on gains deemed realized at death by U.S. residents on such property.

Paragraph 8 provides relief only in the case of Canadian resident decedents whose entire gross estates wherever situated (i.e., worldwide gross estates determined under U.S. law) have a value, at the time of death, not exceeding $1.2 million. Paragraph 8 provides that the United States may impose its estate tax upon property forming part of such estates only if any gain on alienation of the property would have been subject to U.S. income taxation under Article XIII (Gains). For estates with a total value not exceeding $1.2 million, this provision has the effect of permitting the United States to impose its estate tax only on real property situated in the United States, within the meaning of Article XIII, and personal property forming part of the business property of a U.S. permanent establishment or fixed base.

Saving clause exceptions

Certain provisions of Article XXIX B are included in the list of exceptions to the general "saving clause" of Article XXIX (Miscellaneous Rules), as amended by Article 17 of the Protocol. To the extent that an exception from the saving clause is provided for a provision, each Contracting State is required to allow the benefits of that provision to its residents (and, in the case of the United States, its citizens), notwithstanding the saving clause. General saving clause exceptions are provided for paragraphs 1, 5, and 6 of Article XXIX B. Saving clause exceptions are provided for paragraphs 2, 3, 4, and 7, except for the estates of former U.S. citizens referred to in paragraph 2 of Article XXIX.

Effective dates

Article 21 of the Protocol contains special retrospective effective date provisions for paragraphs 2 through 8 of Article XXIX B and certain related provisions of the Protocol. Paragraphs 2 through 8 of Article XXIX B and the specified related provisions generally will take effect with respect to deaths occurring after the date on which the Protocol enters into force (i.e., the date on which the instruments of ratification are exchanged). However, the benefits of those provisions will also be available with respect to deaths occurring after November 10, 1988, provided that a claim for refund due as a result of these provisions is filed by the later of one year from the date on which the Protocol enters into force or the date on which the applicable period for filing such a claim expires under the domestic law of the Contracting State concerned. The general effective dates set forth in Article 21 of the Protocol otherwise apply.

It is unusual for the United States to agree to retrospective effective dates. In this case, however, the negotiators believed that retrospective application was not inappropriate, given the fact that the TAMRA provisions were the impetus for negotiation of the Protocol and that the negotiations commenced soon after the enactment of TAMRA. The United States has agreed to retrospective effective dates in certain other instances (e.g., in the case of the U.S.-Germany estate tax treaty). The retrospective effective dates apply reciprocally, so that they will benefit the estates of U.S. decedents as well as Canadian decedents.

Related Provisions [Art. XXIX B]: ITA 60(d) — Deduction for interest accruing on estate taxes; Art. II:2(b)(iv) — Application to U.S. estate taxes; Art. XXVI:3(g) — Competent authority agreement to eliminate double taxation.

Article XXX — Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Ottawa as soon as possible.

Technical Explanation [1984]:

Paragraph 1 provides that the Convention is subject to ratification in accordance with the procedures of Canada and the United States. The exchange of instruments of ratification is to take place at Ottawa as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and, subject to the provisions of paragraph 3, its provisions shall have effect:

(a) for tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties) and XVIII (Pensions and Annuities), with respect to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) for other taxes, with respect to taxable years beginning on or after the first day of January next following the date on which the Convention enters into force; and

(c) notwithstanding the provisions of subparagraph (b), for the taxes covered by paragraph 4 of Article XXIX (Miscellaneous Rules) with respect to all taxable years referred to in that paragraph.

Technical Explanation [1984]:

Paragraph 2 provides, subject to paragraph 3, that the Convention shall enter into force upon the exchange of instruments of ratification. It has effect, with respect to source State taxation of dividends, interest, royalties, pensions, annuities, alimony, and child support, for amounts paid or credited on or after the first day of the second calendar month after the date on which the instruments of ratification are exchanged. For other taxes, the Convention takes effect for taxable years beginning on or after January 1 next following the date when instruments of ratification are exchanged. In the case of relief from United States social security taxes provided by paragraph 4 of Article XXIX (Miscellaneous Rules), the Convention also has effect for taxable years before the date on which instruments of ratification are exchanged.

3. For the purposes of applying the United States foreign tax credit in relation to taxes paid or accrued to Canada:

(a) notwithstanding the provisions of paragraph 2(a) of Article II (Taxes Covered), the tax on 1971 undistributed income on hand imposed by Part IX of the *Income Tax Act* of Canada shall be considered to be an income tax for distributions made on or after the first day of January 1972 and before the first day of January 1979 and shall be considered to be imposed upon the recipient of a distribution, in the proportion that the distribution out of undistributed income with respect to which the tax has been paid bears to 85 per cent of such undistributed income;

(b) the principles of paragraph 6 of Article XXIV (Elimination of Double Taxation) shall have effect for taxable years beginning on or after the first day of January 1976; and

(c) the provisions of paragraph 1 of Article XXIV shall have effect for taxable years beginning on or after the first day of January 1981.

Any claim for refund based on the provisions of this paragraph may be filed on or before June 30 of the calendar year following that in which the Convention enters into force, notwithstanding any rule of domestic law to the contrary.

Technical Explanation [1984]:

Paragraph 3 provides special effective date rules for foreign tax credit computations with respect to taxes paid or accrued to Canada. Paragraph 3(a) provides that the tax on 1971 undistributed income on hand imposed by Part IX of the *Income Tax Act* of Canada is considered to be an "income tax" for distributions made on or after January 1, 1972 and before January 1, 1979. Any such tax which is paid or accrued under U.S. standards is considered to be imposed at the time of distribution and on the recipient of the distribution, in the proportion that the distribution out of undistributed income with respect to which the tax has been paid bears to 85 percent of such undistributed income. A person claiming a credit for tax pursuant to paragraph 3(a) is obligated to compute the amount of the credit in accordance with that paragraph.

Paragraph 3(b) provides that the principles of paragraph 6 of Article XXIV (Elimination of Double Taxation), which provides for resourcing of certain dividend, interest, and royalty income to eliminate double taxation of U.S. citizens residing in Canada, have effect for taxable years beginning on or after January 1, 1976. The paragraph is intended to grant the competent authorities sufficient flexibility to address certain practical problems that have arisen under the 1942 Convention. It is anticipated that the competent authorities will be guided by paragraphs 4 and 5 of Article XXIV in applying paragraph 3(b) of Article XXX. Paragraph 3(c) provides that the provisions of paragraph 1 of Article XXIV (and the source rules of that Article) shall have effect for taxable years beginning on or after January 1, 1981.

Any claim for refund based on the provisions of paragraph 3 may be filed on or before June 30 of the calendar year following the year in which instruments of ratification are exchanged, notwithstanding statutes of limitations or other rules of domestic law to the contrary. For purposes of Code section 6611, the date of overpayment is the date on which instruments of ratification are exchanged, with respect to any refunds of U.S. tax pursuant to paragraph 3.

History: Para. 3 amended by 1983 Protocol, article XIV.

4. Subject to the provisions of paragraph 5, the 1942 Convention shall cease to have effect for taxes for which this Convention has effect in accordance with the provisions of paragraph 2.

Technical Explanation [1984]:

Paragraph 4 provides that, subject to paragraph 5, the 1942 Convention ceases to have effect for taxes for which the Convention has effect under the provisions of paragraph 2. For example, if under paragraph 2 the Convention were to have effect with respect to taxes withheld at source on dividends paid as of October 1, 1984, the 1942 Convention will not have effect with respect to such taxes.

5. Where any greater relief from tax would have been afforded by any provision of the 1942 Convention than under this Convention, any such provision shall continue to have effect for the first taxable year with respect to which the provisions of this Convention have effect under paragraph 2(b).

Technical Explanation [1984]:

Paragraph 5 modifies the rule of paragraph 4 to allow all of the provisions of the 1942 Convention to continue to have effect for the period through the first taxable year with respect to which the provisions of the Convention would otherwise have effect under paragraph 2(b), if greater relief from tax is available under the 1942 Convention than under the Convention. Paragraph 5 applies to all provisions of the 1942 Convention, not just those provisions of the Convention for which the Convention takes effect under paragraph 2(b) of this Article. Thus, for example, assume that the Convention has effect, pursuant to paragraph 2(b), for taxable years of a taxpayer beginning on or after January 1, 1985. Further assume that a U.S. resident with a taxable year beginning on April 1 and ending on March 31 receives natural resource royalties from Canada which are subject to a 25% tax under Article VI (Income from Real Property) of the Convention, as amended by the Protocol, and Canada's internal law, but which would be subject to a 15% tax under Article XI of the 1942 Convention. Pursuant to paragraph 5, the greater benefits of the 1942 Convention would continue to apply to royalties paid or credited to the U.S. resident through March 31, 1986.

6. The 1942 Convention shall terminate on the last date on which it has effect in accordance with the preceding provisions of this Article.

Technical Explanation [1984]:

Paragraph 6 provides that the 1942 Convention terminates on the last of the dates on which it has effect in accordance with the provisions of paragraphs 4 and 5.

7. The Exchange of Notes between the United States and Canada dated August 2 and September 17, 1928, providing for relief from double income taxation on shipping profits, is terminated. Its provisions shall cease to have effect with respect to taxable years beginning on or after the first day of January next following the date on which this Convention enters into force.

Technical Explanation [1984]:

Paragraph 7 terminates the Exchange of Notes between the United States and Canada of August 2 and September 17, 1928 providing for relief from double taxation of shipping profits. The provisions of the Exchange of Notes no longer have effect for taxable years beginning on or after January 1 following the exchange of instruments of ratification of the Convention. The 1942 Convention, in Article V, had suspended the effectiveness of the Exchange of Notes.

8. The provisions of the Convention between the Government of Canada and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on the Estates of Deceased Persons signed at Washington on February 17, 1961 shall continue to have effect with respect to estates of persons deceased prior to the first day of January next following the date on which this Convention enters into force but shall cease to have effect with respect to estates of persons deceased on or after that date. Such Convention shall terminate on the last date on which it has effect in accordance with the preceding sentence.

Technical Explanation [1984]:

Paragraph 8 terminates the Convention between Canada and the United States for the Avoidance of Double Taxation with Respect to Taxes on the Estates of Deceased Persons signed on February 17, 1961. The provisions of that Convention cease to have effect with respect to estates of persons deceased on or after January 1 of the year following the exchange of instruments of ratification of the Convention.

Interpretation Bulletins: IT-173R2: Capital gains derived in Canada by residents of the United States.

Article XXXI — Termination

1. This Convention shall remain in force until terminated by a Contracting State.

Technical Explanation [1984]:

Paragraph 1 provides that the Convention shall remain in force until terminated by Canada or the United States.

2. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.

Technical Explanation [1984]:

Paragraph 2 provides that either Canada or the United States may terminate the Convention at any time after 5 years from the date on which instruments of ratification are exchanged, provided that notice of termination is given through diplomatic channels at least 6 months prior to the date on which the Convention is to terminate.

3. Where a Contracting State considers that a significant change introduced in the taxation laws of the other Contracting State should be accommodated by a modification of the Convention, the Contracting States shall consult together with a view to resolving the matter; if the matter cannot be satisfactorily resolved, the first-mentioned State may terminate the Convention in accordance with the procedures set forth in paragraph 2, but without regard to the 5 year limitation provided therein.

Technical Explanation [1984]:

Paragraph 3 provides a special termination rule in situations where Canada or the United States changes its taxation laws and the other Contracting State believes that such change is significant enough to warrant modification of the Convention. In such a circumstance, the Canadian Ministry of Finance and the United States Department of the Treasury would consult

with a view to resolving the matter. If the matter cannot be satisfactorily resolved, the Contracting State requesting an accommodation because of the change in the other Contracting State's taxation laws may terminate the Convention by giving the 6 months' prior notice required by paragraph 2, without regard to whether the Convention has been in force for 5 years.

4. In the event the Convention is terminated, the Convention shall cease to have effect:

(a) for tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties), XVIII (Pensions and Annuities) and paragraph 2 of Article XXII (Other Income), with respect to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2; and

(b) for other taxes, with respect to taxable years beginning on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2.

Technical Explanation [1984]:

Paragraph 4 provides that, in the event of termination, the Convention ceases to have effect for tax withheld at source under Articles X (Dividends), XI (Interest), XII (Royalties), and XVIII (Pensions and Annuities), and under paragraph 2 of Article XXII (Other Income), with respect to amounts paid or credited on or after the first day of January following the expiration of the 6 month period referred to in paragraph 2. In the case of other taxes, the Convention shall cease to have effect in the event of termination with respect to taxable years beginning on or after January 1 following the expiration of the 6 month period referred to in paragraph 2.

APPENDIX — EXECUTION AND COMPETENT AUTHORITIES LETTER

September 26, 1980

Excellency: I have the honor to refer to the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital, signed today, and to confirm certain understandings reached between the two Governments with respect to the Convention.

1. In French, the term "société" also means a "corporation" within the meaning of Canadian law.

2. The competent authorities of each of the Contracting States shall review the procedures and requirements for an organization of the other Contracting State to establish its status as a religious, scientific, literary, educational or charitable organization entitled to exemption under paragraph 1 of Article XXI (Exempt Organizations), or as an eligible recipient of the charitable contributions or gifts referred to in paragraphs 5 and 6 of Article XXI, with a view to avoiding duplicate application by such organizations to the administering agencies of both Contracting States. If a Contracting State determines that the other Contracting State maintains procedures to determine such status and rules for qualification that are compatible with such procedures and rules of the first-mentioned Contracting State, it is contemplated that such first-mentioned Contracting State shall accept the certification of the administering agency of the other Contracting State as to such status for the purpose of making the necessary determinations under paragraphs 1, 5 and 6 of Article XXI.

It is further agreed that the term "family", as used in paragraphs 5 and 6 of Article XXI, means an individual's brothers and sisters (whether by whole or half-blood, or by adoption), spouse, ancestors, lineal descendants and adopted descendants.

3. It is the position of Canada that the so-called "unitary apportionment" method used by certain states of the United States to allocate income to United States offices or subsidiaries of Canadian companies results in inequitable taxation and imposes excessive administrative burdens on Canadian companies doing business in those states. Under that method the profit of a Canadian company on its United States business is not determined on the basis of arm's-length relations but is derived from a formula taking account of the income of the Canadian company and its worldwide subsidiaries as well as the assets, payroll and sales of all such companies. For a Canadian multinational company with many subsidiaries in different countries to have to submit its books and records for all of these companies to a state of the United States imposes a costly burden. It is understood that the Senate of the United States has not consented to any limitation on the taxing jurisdiction of the states by a treaty and that a provision which would have restricted the use of unitary apportionment in the case of United Kingdom corporations was recently rejected by the Senate. Canada continues to be concerned about this issue as it affects Canadian multinationals. If an acceptable provision on this subject can be devised, the United States agrees to reopen discussions with Canada on this subject.

CANADA–UNITED KINGDOM INCOME TAX CONVENTION

Convention Between The Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains as Amended

(Enacted in Canada by S.C. 1980-81-82-83, c. 44, Part X.)

Background

The Canada-United Kingdom Income Tax Convention, as signed on September 8, 1978 and amended by a Protocol signed on April 15, 1980 and a second Protocol signed on October 16, 1985, is reproduced below. The Convention was brought into force on December 17, 1980, the 1980 Protocol entered into force on December 18, 1980, and the 1985 Protocol entered into force on December 23, 1985. In accordance with Article 28 of the Convention and Article VI of the 1980 Protocol, the provisions thereof have effect in Canada as follows:

(a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after January 1, 1976;

(b) in respect of other Canadian taxes, for the 1976 taxation year and subsequent years;

(c) the provisions of Article 27A of the Convention, as added by Article IV of the Protocol, will have effect in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after January 1, 1981;

(ii) in respect of other Canadian taxes for any taxation year beginning on or after January 1, 1981.

The provisions of the 1985 Protocol have effect in Canada as follows:

(a) for tax withheld at the source on income referred to in Articles 10, 11 and 12 of the Convention, as amended by the 1985 Protocol, with respect to amounts paid or credited on or after February 1, 1986;

(b) in relation to payments referred to in Article 17 of the Convention, as amended by the 1985 Protocol, with respect to amounts paid on or after April 6, 1986;

(c) in relation to all other provisions of the 1985 Protocol, for taxation years beginning on or after January 1, 1986.

The 1985 Protocol shall cease to be effective at such time as the Convention ceases to be effective in accordance with Article 29 of the Convention.

The Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

Article 1 — Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2 — Taxes Covered

1. The taxes which are the subject of this Convention are:

(a) in Canada:

the income taxes which are imposed by the Government of Canada, (hereinafter referred to as "Canadian tax");

(b) in the United Kingdom of Great Britain and Northern Ireland:

the income tax, the corporation tax, the capital gains tax, the petroleum revenue tax and the development land tax (hereinafter referred to as "United Kingdom tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes by either Contracting State or by the Government of any territory to which the present Convention is extended under Article 26. The Contracting States shall notify each other of changes which have been made in their respective taxation laws.

Article 3 — General Definitions

1. In this Convention, unless the context otherwise requires:

(a)

(i) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which is an area where Canada may, in accordance with its national legislation and international law, exercise sovereign rights with respect to the sea-bed and sub-soil and their natural resources;

(ii) the term "United Kingdom" means Great Britain and Northern Ireland, including an area outside the territorial sea of the United Kingdom which in accordance with international law has been or may be hereafter designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(b) the terms "a Contracting State" and "the other Contracting State" means, as the context requires, Canada or the United Kingdom;

(c) the term "person comprises an individual, a company, any entity treated as a unit for tax purposes or any other body of persons;

(d) the term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes; in French, the term "société" also means a "corporation" within the meaning of Canadian law;

(e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(f) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his authorised representative;

(ii) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

(g) the term "tax" means Canadian tax or United Kingdom tax, as the context requires;

(h) the term "national" means:

(i) in relation to the United Kingdom all citizens of the United Kingdom and Colonies, British Subjects under Sections 2, 13(1) or 16 of the *British Nationality Act 1948*, and British Subjects by virtue of Section 1 of the *British Nationality Act 1965*, provided they are patrial within the meaning of the *Immigration Act 1971*, so far as these provisions are in force on the date of entry into force of this Convention or have been modified only in minor respects, so as not to affect their general character; and all legal persons, partnerships, and associations deriving their status as such from the law in force in the United Kingdom;

(ii) in relation to Canada, all citizens of Canada and all legal persons, partnerships and associations deriving their status as such from the law in force in Canada.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article 4 — Fiscal Domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

Article 5 — Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) a building site or construction or assembly project which exists for more than 12 months.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities

which have a preparatory or auxiliary character, for the enterprise.

4. A person — other than an agent of independent status to whom paragraph 5 applies — acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 — Income from Immovable Property

1. Income from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Convention, the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

4. The provisions of paragraphs 1 and 3 shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7 — Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment situated in a Contracting State, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible under the law of that State if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, the provisions of this Article shall not prevent the application of the provisions of those other articles with respect to the taxation of such items of income.

Article 8 — Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and Article 7, profits derived from the operation of ships used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. Notwithstanding the provisions of Article 7, profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that State.

4. The provisions of this Article shall also apply to profits derived by an enterprise of a Contracting State from its participation in a pool, a joint business or an international operating agency.

History: Article 8 amended by 1985 Protocol to renumber former para. 3 as para. 4 and to add new para. 3. Former para. 3 read as follows:

> 3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by an enterprise of a Contracting State from its participation in a pool, a joint business or in an international operating agency.

Article 9 — Associated Enterprises

Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income, deductions, receipts or outgoings, which would, but for those conditions, have been attributed to one of the enterprises, but, by reason of those conditions, have not been so attributed may be taken into account in computing the profits or losses of that enterprise and taxed accordingly.

Article 10 — Dividends

1. Dividends paid by a company which is a resident of Canada to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Canada, and according to the laws of Canada, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the recipient is a company which controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;

Proposed Amendment — Withholding rate on direct dividends

February 1992 budget: [The federal government is prepared, in its tax treaty negotiations, to reduce the withholding tax rate on "direct" dividends from 10% to 5% over a five-year period beginning in 1993.]

(b) 15 per cent of the gross amount of the dividends in all other cases.

2. Dividends paid by a company which is a resident of the United Kingdom to a resident of Canada may be taxed in Canada. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but provided that the beneficial owner of the dividends is a resident of Canada the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph 2 of this Article:

(a)

(i) Dividends paid by a company which is a resident of the United Kingdom to a resident of Canada may be taxed in Canada.

(ii) Where a resident of Canada is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph, tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(iii) Where a resident of Canada is entitled to a tax credit in respect of such a dividend under sub-paragraph (c) of this paragraph, tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 10 per cent.

(iv) Except as provided in sub-paragraphs (a)(ii) and (a)(iii) of this paragraph, dividends paid by a company which is a resident of the United Kingdom to a resident of Canada who is the beneficial owner of those dividends shall be exempt from any tax which is chargeable in the United Kingdom on dividends.

(b) A resident of Canada who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividend, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of such credit over his liability to United Kingdom tax.

(c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner of the dividend is, or is associated with, a company which, either alone or together with one or more associated companies, controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividend. In these circumstances a company which is a resident of Canada and receives a dividend from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividend, be entitled to a tax credit equal to one-half of the tax credit to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of such credit over its liability to United Kingdom tax. For the purpose of this sub-paragraph, two companies shall be deemed to be associated if one controls, directly or indirectly, more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to or treated in the same way as income

from shares by the taxation law of the State of which the company making the payment is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company is a resident of only one Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. If a resident of Canada does not bear Canadian tax on dividends derived from a company which is a resident of the United Kingdom and owns 10 per cent or more of the class of shares in respect of which the dividends are paid, then neither paragraph 2 nor 3 shall apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares referred to above.

Provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

History: Article 10 amended by 1985 Protocol to substitute para. 1 and subpara. 3(c), to add new subpara. 3(a)(iii) and to renumber former subpara. 3(a)(iii) as 3(a)(iv), adding reference in (iv) to new subpara. (a)(iii). Para. 1 and subpara. 3(c) formerly read:

> 1. Dividends paid by a company which is a resident of Canada to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Canada, and according to the laws of Canada, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
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> (c) The provisions of subparagraph (b) of this paragraph shall not apply where the beneficial owner of the dividend is a company which, either alone or together with one or more associated companies, controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purposes of this subparagraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other or both are controlled directly or indirectly by a third company.

Information Circulars: 76-12R4: Applicable rate of part XIII tax on amounts paid or credited to persons in treaty countries.

Article 11 — Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article,

(a) Interest arising in the United Kingdom and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation; and

(b) Interest arising in Canada and paid to a resident of the United Kingdom shall be taxable only in the United Kingdom if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the United Kingdom Export Credits Guarantee Department.

4. (a) Notwithstanding the provisions of paragraph 2 of this Article, interest arising in Canada and paid in respect of a bond, debenture or other similar obligation of the Government of Canada or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the United Kingdom, be taxable only in the United Kingdom;

(b) Notwithstanding the provisions of Article 29 Canada may, on or before the thirtieth day of June in any calendar year give to the United Kingdom notice of termination of this paragraph and in such event this paragraph shall cease to have effect in respect of interest paid on obligations issued after 31 December of the calendar year in which the notice is given.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

6. The provisions of paragraphs 1, 2 and 4 of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base, situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision,

a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the person deriving the interest or between both of them and some other person, the amount of the interest paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

9. Any provision in the law of a Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution of the company paying such interest. The preceding sentence shall not apply to interest paid to a company which is a resident of a Contracting State in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

10. The provisions of paragraph 2 of this Article shall not apply to interest where the beneficial owner of the interest

(a) does not bear tax in respect thereof in Canada; and

(b) sells (or makes a contract to sell) the holding from which the interest is derived within three months of the date on which such beneficial owner acquired that holding.

History: Article 11 amended by 1985 Protocol to substitute "10 per cent" for "15 per cent" in para. 2

Information Circulars: 76-12R4: Applicable rate of part XIII tax on amounts paid or credited to persons in treaty countries.

Article 12 — Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne as such by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the person deriving the royalties or between both of them and some other person, the amount of the royalties paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

History: Article 12 amended by 1985 Protocol to substitute in para. 3 "Notwithstanding the provisions of paragraph 2 of this Article" for "Notwithstanding the provisions of paragraph 2" and to substitute, in paras. 3 and 4, "motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting" for "motion picture films and works on film or videotape for use in connection with television".

Article 13 — Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

Related Provisions: ITA 126(2.21), (2.22) — Foreign tax credit to emigrant for tax payable on gain accrued while resident in Canada; ITA 128.1(4)(b)(i) — Real property in Canada excluded from deemed disposition on emigration.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting

State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains from the alienation of:

(a) any right, licence or privilege to explore for, drill for, or take petroleum, natural gas or other related hydrocarbons situated in a Contracting State, or

(b) any right to assets to be produced in a Contracting State by the activities referred to in sub-paragraph (a) above or to interests in or to the benefit of such assets situated in a Contracting State,

may be taxed in that State.

5. Gains from the alienation of:

(a) shares, other than shares quoted on an approved stock exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in a Contracting State or from any right referred to in paragraph 4 of this Article, or

(b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in a Contracting State, of rights referred to in paragraph 4 of this Article, or of shares referred to in sub-paragraph (a) above,

may be taxed in that State.

6. The provisions of paragraph 5 of this Article shall not apply:

(a) in the case of shares, where immediately before the alienation of the shares, the alienator owned, or the alienator and any persons related to or connected with him owned, less than 10 per cent of each class of the share capital of the company; or

(b) in the case of an interest in a partnership or trust, where immediately before the alienation of the interest, the alienator was entitled to, or the alienator and any persons related to or connected with him were entitled to, an interest of less than 10 per cent of the income and capital of the partnership or trust.

7. For the purposes of paragraph 5 of this Article:

(a) the term "an approved stock exchange" means a stock exchange prescribed for the purposes of the Canadian *Income Tax Act* or a recognised stock exchange within the meaning of the United Kingdom Corporation Tax Acts; and

(b) the term "immovable property" does not include any property (other than rental property) in which the business of the company, partnership or trust was carried on.

8. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

9. The provisions of paragraph 8 of this Article shall not affect the right of a Contracting State to tax, according to its domestic law, gains derived by an individual who is a resident of the other Contracting State from the alienation of any property, if the alienator:

(a) is a national of the first-mentioned Contracting State or was a resident of that State for 15 years or more prior to the alienation of the property, and

(b) was a resident of the first-mentioned Contracting State at any time during the five years immediately preceding such alienation.

History: Article 13 amended by 1985 Protocol to substitute paras. 1 and 2, to add new paras. 3 and 6, to renumber former para. 3 as para. 4 and former para. 4 as para. 5, substituting "paragraph 4" for both references to "paragraph 3" in former para. 4, and to substitute paras. 7 to 9 for former paras. 5 to 7. Former paras, 1, 2, 5, 6, and 7 read as follows:

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Contracting State.

. . . . .

5. For the purposes of paragraph 4 of this Article "an approved stock exchange" means a stock exchange prescribed for the purposes of the Canadian Income Tax Act or a recognized stock exchange within the meaning of the United Kingdom Corporation Tax Acts.

6. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

7. The provisions of paragraph 6 of this Article shall not affect the right of a Contracting State to tax, according to its domestic law, gains derived by an individual resident in the other Contracting State from the alienation of any property, if the alienator:

(a) is a national of the first-mentioned Contracting State or was a resident of that State for 15 years or more prior to the alienation of the property and

(b) was a resident of the first-mentioned Contracting State at any time during the five years immediately preceding such alienation.

Article 14 — Professional Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 — Dependent Personal Services

1. Subject to the provisions of Articles 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of employment, and as if reference to employer were references to the company.

5. Where under the law of a Contracting State tax is required to be deducted and is so deducted from salaries, wages and other similar remuneration derived in respect of an employment exercised in that Contracting State, tax shall not be deducted therefrom on behalf of the other Contracting State.

History: Para. 5 added by 1980 Protocol.

Article 16 — Artistes and Athletes

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply:

(a) to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds;

(b) to a non-profit making organization no part of the income of which is payable, or is otherwise available for the personal benefit of, any proprietor, member or shareholder thereof; or

(c) to an entertainer or athlete in respect of services provided to an organization referred to in sub-paragraph (b).

Article 17 — Pensions and Annuities

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

2. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the annuities the tax so charged shall not exceed 10 per cent of the portion thereof that is subject to tax in that State.

3. For the purposes of this Convention, the term "pension" includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances, and any payment under a sickness, accident or disability plan, as well as any payment made under the social security legislation in a Contracting State, but does not include any payment under a superannuation, pension or retirement plan in settlement of all future entitlements under such a plan or any payment under an income-averaging annuity contract.

4. For the purposes of this Convention, the term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth, but does not include a pension or any payment under a superannuation, pension or retirement plan in settlement of all future entitlements under such a plan or any payment under an income-averaging annuity contract.

5. Notwithstanding any other provision of this Convention, alimony and similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

History: Article 17 substituted by 1985 Protocol. Article 17 formerly read:

> 1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such pensions and annuities may also be taxed in the first-mentioned Contracting State, but of the total amount thereof paid in any year of assessment or taxation year to a resident of the other Contracting State that first-mentioned Contracting State shall exempt from tax ten thousand Canadian dollars ($10,000) or five thousand pounds sterling (£5,000), whichever is the greater. For the purposes of this paragraph the term "pensions" does not include lump sum payments out of a pension plan.
>
> 2. Notwithstanding the provisions of paragraph 1 of this Article, pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature may be taxed in the United Kingdom.
>
> 3. The term " annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period

of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth, but does not include payments of any kind under an income-averaging annuity contract.

4. Notwithstanding any other provision of this Convention, alimony and similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

Para. 1 substituted by 1980 Protocol.

Article 18 — Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of performing the services.

2. This Article shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

3. In this Article, the term "political subdivision" shall, in relation to the United Kingdom, include Northern Ireland.

Article 19 — Students

Payments which a student, apprentice or business trainee who is or was immediately before visiting one of the Contracting States a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 20 — Estates and Trusts

1. Income received from an estate or trust resident in Canada by a resident of the United Kingdom who is the beneficial owner thereof may be taxed in Canada according to its law, but the tax so charged shall not exceed 15 per cent of the gross amount of the income.

2. The provisions of paragraph 1 of this Article shall not apply if the recipient of the income, being a resident of the United Kingdom, carries on business in Canada through a permanent establishment situated therein, or performs in Canada professional services from a fixed base situated therein, and the right or interest in the estate or trust in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. For the purposes of this Article, a trust does not include an arrangement whereby the contributions made to the trust are deductible for the purposes of taxation in Canada.

History: Para. 3 added by 1985 Protocol.

Article 21 — Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:

(a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions — which shall not affect the general principle hereof — and unless a greater deduction or relief is provided under the laws of Canada, tax payable in the United Kingdom on profits, income or gains arising in the United Kingdom shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions — which shall not affect the general principle hereof — for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in the United Kingdom.

The terms "foreign affiliate" and "exempt surplus" shall have the meaning which they have under the *Income Tax Act* of Canada.

2. In the case of the United Kingdom, double taxation shall be avoided as follows: subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) tax payable under the laws of Canada and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Canada (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Canadian tax is computed; and

(b) in the case of a dividend paid by a company which is a resident of Canada to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the Canadian company, the credit shall take into account (in addition to any tax creditable under (a)) tax payable under the laws of Canada by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of paragraphs 1 and 2 of this Article, income, profits and capital gains owned by a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

4. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and

the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph 1 or paragraph 2 of this Article.

History: Para. 4 added by 1985 Protocol.

Article 22 — Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging either Contracting State to grant to individuals not resident in its territory those personal allowances and reliefs for tax purposes which are by law available only to individuals who are so resident.

3. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings attributable to permanent establishments in that State of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on the earnings of a company which is a resident of the first-mentioned State, provided that the rate of any additional tax so imposed shall not exceed 10 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years.

4. For the purpose of paragraph 3 of this Article, the term "earnings" means the profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years after deducting therefrom:

(a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years; and

(b) all taxes, other than the additional tax referred to in paragraph 3 of this Article, imposed on such profits in that State; and

(c) the profits reinvested in that State, provided that where that State is Canada, the amount of such deduction shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle thereof; and

(d) five hundred thousand Canadian dollars ($500,000) or two hundred and fifty thousand pounds sterling (£250,000), whichever is the greater, less any amount deducted in that State under this subparagraph (d) by the company or a company associated therewith; for the purposes of this subparagraph (d) a company is associated with another company if one of them directly or indirectly has control of the other or both are directly or indirectly under the control of the same person, or if the two companies deal with each other not at arm's length.

5. In this Article, the term "taxation" means taxes which are the subject of this Convention.

History: Para. 3 amended by 1985 Protocol to substitute "10 per cent" for "15 per cent".

Paras. 3, 4 substituted by 1980 Protocol.

Article 23 — Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting State shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may reach agreement on:

(a) the same allocation of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

Related Provisions: ITA 115.1 — Competent authority agreements.

Information Circulars: 71-17R4: Requests for competent authority consideration under mutual agreement procedures in income tax conventions.

Article 24 — Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for the carrying out of the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to persons other than per-

sons (including a court or administrative tribunal) concerned with the assessment, collection or enforcement in respect of the taxes which are the subject of this Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

Article 25 — Diplomatic and Consular Officials

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic or permanent mission or consular post of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or capital gains.

Article 26 — Extension

1. This Convention may be extended, either in its entirety or with modifications to any territory for whose international relations either of the Contracting States is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Convention and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in notes to be exchanged for this purpose.

2. The termination of this Convention under Article 29 shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Convention to any territory to which it has been extended under this Article.

Article 27 — Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the law of a Contracting State in the determination of the tax imposed by that Contracting State.

2. Where under any provision of this Convention any person is relieved from tax in a Contracting State on certain income and, under the law in force in the other Contracting State, that person is subject to tax in that other State in respect of that income by reference to the amount thereof which is remitted to or received in that other State, the relief from tax to be allowed under this Convention in the first-mentioned State shall apply only to the amounts so remitted or received.

3. Nothing in this Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada by virtue of the provisions of section 91 of the Canadian *Income Tax Act*, so far as they are in force on the date of entry into force of this Convention, or have been modified only in minor respects, so as not to affect their general character.

4. The aggregate of the amount or value of the dividend and the amount of the tax credit referred to in paragraph 3(b) or 3(c) of Article 10 of this Convention shall be treated as a dividend for Canadian income tax purposes.

5. Each of the Contracting States will endeavour to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by this Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy.

6. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Convention.

History: Article 27 amended by 1985 Protocol to add reference, in para. 4, to para. 3(c) of Article 10.

Article 27A — Miscellaneous Rules Applicable to Certain Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2. A person who is a resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other Contracting State shall, subject to paragraph 3 of this Article, be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.

3. The provisions of paragraph 2 of this Article shall not apply where the activities referred to therein are carried on for a period or periods not exceeding in the aggregate 30 days in any 12 month period. For the purposes of this paragraph:

(a) where a person carrying on activities referred to in paragraph 2 of this Article is associated with an enterprise carrying on substantially similar activities, that person shall be deemed to be carrying on those substantially similar activities of the enterprise with which he is associated, in addition to his own activities;

(b) two enterprises shall be deemed to be associated if one enterprise participates directly or indirectly in the management or control of the other enterprise or if the same persons participate directly or indirectly in the management or control of both enterprises.

4. Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other Contracting State may, to the extent that the duties are performed offshore in that other Contracting State, be taxed in that other Contracting State.

History: Article 27A substituted by 1985 Protocol. Article 27A formerly read:

Article 27A — Miscellaneous Rules Applicable to Certain Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2. Any person who is resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other Contracting State shall, subject to paragraphs 3 and 4 of this Article, be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.

3. The provisions of paragraph 2 of this Article shall not apply where the activities referred to therein are carried on for a period or periods not exceeding in the aggregate 30 days in any 12 month period. For the purposes of this paragraph:

(a) where a person carrying on activities referred to in paragraph 2 of this Article is associated with an enterprise carrying on substantially similar activities, that person shall be deemed to be carrying on those substantially similar activities of the enterprise with which he is associated, in addition to his own activities;

(b) two enterprises shall be deemed to be associated if one enterprise participates directly or indirectly in the management or control of the other enterprise or if the same persons participate directly or indirectly in the management or control of both enterprises.

4. Profits derived by a resident of a Contracting State from the transportation of passengers or goods to a location where activities in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in a Contracting State, or from the operation of tugboats and similar vessels in connection with such activities, shall be taxable only in the Contracting State of which he is a resident.

5. (a) Subject to subparagraph (b) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other Contracting State may, to the extent that the duties are performed offshore in that other Contracting State, be taxed in that other Contracting State.

(b) Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of passengers or goods to a location where activities connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in the other Contracting State, or in respect of an employment exercised aboard a tugboat or similar vessel in connection with such activities, may be taxed in that other Contracting State unless the person deriving the profits from the operation of the ship or aircraft is a resident of the first-mentioned Contracting State.

Article 27A added by 1980 Protocol.

Article 28 — Entry into Force

1. The Convention shall come into force on the date when the last of all such things shall have been done in Canada and the United Kingdom as are necessary to give the Convention the force of law in Canada and the United Kingdom respectively and shall thereupon have effect:

(a) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January 1976;

(ii) in respect of other Canadian taxes, for the 1976 taxation year and subsequent years;

(b) in the United Kingdom:

(i) in relation to any dividend to which paragraph 3 of Article 10 applied in respect of income tax and payment of tax credit, for any year of assessment beginning on or after 6 April 1973. A dividend paid on or after 1 April 1973 but before 6 April 1973 shall be treated for tax credit purposes as paid on 6 April 1973;

(ii) in relation to any other provision of this Convention, in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1976;

(iii) in respect of corporation tax, for any financial year beginning on or after 1 April 1976;

(iv) in respect of petroleum revenue tax for any chargeable period beginning on or after 1 January 1976;

(v) in respect of development land tax, for any realised development value accruing on or after 1 August 1976.

2. The Governments of the Contracting States shall, as soon as possible, inform one another in writing of the date when the last of all such things have been done as are necessary to give the Convention the force of law in Canada and the United Kingdom respectively. The date specified by the last Government to fulfil this requirement, being the date on which the Convention shall come into force in accordance with paragraph 1, shall be confirmed in writing by the Government so notified.

3. Subject to the provisions of paragraph 4 of this Article the existing Agreement shall cease to have effect as respects taxes to which this Convention applies in accordance with the provisions of paragraph 1 of this Article.

4. Where, however, any greater relief from tax would have been afforded by any provision of the existing Agreement than is due under this Convention, any such provision as aforesaid shall continue to have effect

(a) in the United Kingdom for any year of assessment, chargeable period or financial year;

(b) in Canada for any taxation year;

beginning before the entry into force of this Convention.

5. The existing Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

6. The termination of the existing Agreement as provided in paragraph 5 of this Article shall not revive the Agreement between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with respect to certain classes of Income signed at Ottawa on 6 December 1965. Upon the entry into force of this Convention that Agreement shall terminate.

7. In this Article the term "the existing Agreement" means the Agreement between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital Gains signed at Ottawa on 12 December 1966.

8. Notwithstanding any provisions of the respective domestic laws of the Contracting States imposing time limits for applications for relief from tax, an application for

relief under the provisions of this Convention shall have effect, and any consequential refunds of tax made, if the application is made to the competent authority concerned within one year of the end of the calendar year in which this Convention enters into force.

History: Para. 8 added by 1980 Protocol.

Article 29 — Termination

This Convention shall continue in effect indefinitely but the Government of either Contracting State may, on or before 30 June in any calendar year after the year 1980 give notice of termination to the Government of the other Contracting State and, in such event, this Convention shall cease to be effective:

(a) in Canada

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January in the calendar year next following that in which the notice is given; and

(ii) in respect of other Canadian taxes for any taxation year ending in or after the calendar year next following that in which the notice is given;

(b) in the United Kingdom

(i) in respect of income tax and capital gains tax for any year of assessment beginning on or after 6 April in the calendar year next following that in which such notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which such notice is given;

(iii) in respect of petroleum revenue tax for any chargeable period beginning on or after 1 January in the calendar year next following that in which such notice is given;

(iv) in respect of development land tax, for any realised development value accruing on or after 1 April in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE in duplicate at London, this 8th day of September 1978, in the English and French languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF CANADA:

Paul Martin

FOR THE GOVERNMENT OF GREAT BRITAIN AND NORTHERN IRELAND:

Frank Judd

CURRENT STATUS OF TAX TREATIES

Reciprocal income tax treaties are currently in force between Canada and the following countries. (In some cases the treaty currently in force, signed on the date noted, replaced another treaty that had been in force from an earlier time.)

Tax treaties in force

Argentina (April 29, 1993)
Australia (May 21, 1980)
Austria (December 9, 1976)
Bangladesh (February 15, 1982)
Barbados (January 22, 1980)
Belgium (May 29, 1975)
Brazil (June 4, 1984)
Cameroon (May 26, 1982)
Chile (January 21, 1998)
China (People's Republic of) (May 12, 1986)[2]
Croatia (December 9, 1997)
Cyprus (May 2, 1984)
Czech Republic[3]
Czechoslovakia[3] (August 30, 1990)
Denmark (September 17, 1997)
Dominican Republic (August 6, 1976)
Egypt (May 30, 1983)
Estonia (June 2, 1995)
Finland (May 28, 1990)
France (May 2, 1975 and Protocols of January 16, 1987 and November 30, 1995)
Germany (July 17, 1981 treaty with West Germany, now considered in force for the unified Germany)
Guyana (October 15, 1985)
Hungary (April 15, 1992 and Protocol of May 3, 1994)
Iceland (June 19, 1997)
India (January 11, 1996)
Indonesia (April 1, 1998)
Ireland (November 23, 1966)
Israel (July 21, 1975)
Italy (November 17, 1977 and Protocol of March 20, 1989)
Ivory Coast (June 16, 1983)
Jamaica (March 30, 1978)
Japan (May 7, 1986)
Kazakhstan (September 25, 1996)
Kenya (April 27, 1983)
Korea (February 10, 1978)
Latvia (Republic of) (April 26, 1995)
Lithuania (Republic of) (August 29, 1996)
Luxembourg (July 8, 1991)
Malaysia (October 15, 1976)
Malta (July 25, 1986)
Mexico (March 16, 1990 and April 8, 1991)
Morocco (December 22, 1975)
Netherlands (May 27, 1986, and Protocols of same date, March 4, 1993, and August 25, 1997)
New Zealand (May 13, 1980)
Nigeria (August 4, 1992)
Norway (November 23, 1966)
Pakistan (February 24, 1976)
Papua New Guinea (October 16, 1987)
Philippines (March 11, 1976)
Poland (May 4, 1987)
Romania (November 20, 1978)
Russia (October 5, 1995)
Singapore (March 6, 1976 and Protocol of same date)
Slovakia[3]
South Africa (Republic of) (November 27, 1995)
Spain (November 23, 1976)
Sri Lanka (June 23, 1982)
Sweden (August 27, 1996)
Switzerland (May 5, 1997)
Tanzania (United Republic of) (December 15, 1995)
Thailand (April 11, 1984)
Trinidad and Tobago (Republic of) (September 11, 1995)
Tunisia (February 10, 1982)
Ukraine (March 4, 1996)
United Kingdom of Great Britain and Northern Ireland (September 8, 1978)
United States of America (September 26, 1980 and Protocols of March 17, 1995 and July 29, 1997)
Vietnam (November 14, 1997)
Zambia (Republic of) (February 16, 1984)
Zimbabwe (April 16, 1992)

Tax treaties or protocols signed but not yet in force

Algeria (February 28, 1999)
Austria (Protocol, June 15, 1999)
Bulgaria (March 3, 1999)
Japan (Protocol, February 19, 1999)
Jordan (September 6, 1999)
Kyrgyz Republic (Kyrgyzstan) (June 4, 1998)
Lebanon (December 29, 1998)
Luxembourg (September 10, 1999)
Portugal (June 14, 1999)
Uzbekistan (Republic of) (June 17, 1999)

Tax treaties or protocols under negotiation (re-negotiation)

Armenia
Australia[4]
Barbados
Belgium[4]
Colombia
Czech Republic
Ecuador
Egypt
Gabon
Germany[4]
Greece
Ireland[4]

[2]Note that the treaty with China does *not* apply to Hong Kong, notwithstanding the return of the territory to China in July 1997.

[3]The treaty with the former Czechoslovakia is considered to be in force, effective January 1, 1993, with both the Czech Republic and Slovakia.

[4]Will eventually replace the existing treaty.

Italy (Republic of)[4]
Kuwait
Mauritius (Republic of)
Mexico (United States of)[4]
Moldova
Mongolia
Norway[4]
Romania[4]
Saint Lucia
Senegal
Singapore[5]
Slovak Republic
Slovenia (Republic of)
Turkey
United Arab Emirates
United Kingdom[5]
United States[5]
Venezuela

For current information regarding the status of treaty negotiations with any country, contact David Senécal at the Department of Finance, (613) 947-9860. For current information regarding Revenue Canada administrative policy with respect to which treaties are in force, contact the International Taxation Office (613) 952-3741 or 1-800-267-5177.

[4]Will eventually replace the existing treaty.

[5]Protocol.

INTERPRETATION ACT

An Act respecting the Interpretation of Statutes and Regulations

REVISED STATUTES OF CANADA 1985, CHAPTER I-21, AS AMENDED.

Short Title

1. Short title — This Act may be cited as the *Interpretation Act*.

Interpretation

2. (1) Definitions — In this Act,

"Act" means an Act of Parliament;

"enact" includes to issue, make or establish;

"enactment" means an Act or regulation or any portion of an Act or regulation;

"public officer" includes any person in the public service of Canada who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or on whom a duty is imposed by or under an enactment;

"regulation" includes an order, regulation, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established

(a) in the execution of a power conferred by or under the authority of an Act, or

(b) by or under the authority of the Governor in Council;

"repeal" includes revoke or cancel.

(2) Expired and replaced enactments — For the purposes of this Act, an enactment that has been replaced is repealed and an enactment that has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed.

History: Subsec. 2(2) amended by 1999, c. 31, s. 146, in force June 17, 1999 (the date of Royal Assent). It formerly read:

> (2) For the purposes of this Act, an enactment that has been replaced, has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed.

Application

3. (1) Application — Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

(2) Application to this Act — The provisions of this Act apply to the interpretation of this Act.

(3) Rules of construction not excluded — Nothing in this Act excludes the application to an enactment of a rule of construction applicable to that enactment and not inconsistent with this Act.

Enacting Clause of Acts

4. (1) Enacting clause — The enacting clause of an Act may be in the following form:

> "Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:".

(2) Order of clauses — The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form.

Operation

Royal Assent

5. (1) Royal Assent — The Clerk of the Parliaments shall endorse on every Act, immediately after its title, the day, month and year when the Act was assented to in Her Majesty's name and the endorsement shall be a part of the Act.

(2) Date of commencement — If no date of commencement is provided for in an Act, the date of commencement of that Act is the date of assent to the Act.

(3) Commencement provision — Where an Act contains a provision that the Act or any portion thereof is to come into force on a day later than the date of assent to the Act, that provision is deemed to have come into force on the date of assent to the Act.

(4) Commencement when no date fixed — Where an Act provides that certain provisions thereof are to come or are deemed to have come into force on a day other than the date of assent to the Act, the remaining provisions of the Act are deemed to have come into force on the date of assent to the Act.

Day Fixed for Commencement or Repeal

6. (1) Operation when date fixed for commencement or repeal — Where an enactment is expressed to come into force on a particular day, it shall be construed as coming into force on the expiration of the previous day; and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect upon the commencement of the following day.

(2) When no date fixed — Every enactment that is not expressed to come into force on a particular day shall be construed as coming into force

(a) in the case of an Act, on the expiration of the day immediately before the day the Act was assented to in Her Majesty's name;

(b) in the case of a regulation, on the expiration of the day immediately before the day the regulation was

registered pursuant to section 6 of the *Statutory Instruments Act* or, if the regulation is of a class that is exempted from the application of subsection 5(1) of that Act, on the expiration of the day immediately before the day the regulation was made.

(3) **Judicial notice** — Judicial notice shall be taken of a day for the coming into force of an enactment that is fixed by a regulation that has been published in the *Canada Gazette*.

Regulation Prior to Commencement

7. **Preliminary proceedings** — Where an enactment is not in force and it contains provisions conferring power to make regulations or do any other thing, that power may, for the purpose of making the enactment effective on its commencement, be exercised at any time before its commencement, but a regulation so made or a thing so done has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective on its commencement.

Territorial Operation

8. (1) **Territorial operation** — Every enactment applies to the whole of Canada, unless a contrary intention is expressed in the enactment.

(2) **Amending enactment** — Where an enactment that does not apply to the whole of Canada is amended, no provision in the amending enactment applies to any part of Canada to which the amended enactment does not apply, unless it is provided in the amending enactment that it applies to that part of Canada or to the whole of Canada.

(2.1) **Exclusive economic zone of Canada** — Every enactment that applies in respect of exploring or exploiting, conserving or managing natural resources, whether living or non-living, applies, in addition to its application to Canada, to the exclusive economic zone of Canada, unless a contrary intention is expressed in the enactment.

(2.2) **Continental shelf of Canada** — Every enactment that applies in respect of exploring or exploiting natural resources that are

(a) mineral or other non-living resources of the seabed or subsoil, or

(b) living organisms belonging to sedentary species, that is to say, organisms that, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil

applies, in addition to its application to Canada, to the continental shelf of Canada, unless a contrary intention is expressed in the enactment.

(3) **Extra-territorial operation** — Every Act now in force enacted prior to December 11, 1931 that expressly or by necessary or reasonable implication was intended, as to the whole or any part thereof, to have extra-territorial operation shall be construed as if, at the date of its enactment, the Parliament of Canada had full power to make laws having extra-territorial operation as provided by the *Statute of Westminster, 1931*.

History: Subsecs. 8(2.1) and (2.2) added by 1996, c. 31, s. 87, proclaimed in force January 31, 1997 (SI/97-21).

Rules of Construction

Private Acts

9. **Provisions in Private Acts** — No provision in a private Act affects the rights of any person, except as therein mentioned or referred to.

Law Always Speaking

10. **Law always speaking** — The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.

Imperative and Permissive Construction

11. **"Shall" and "may"** — The expression "shall" is to be construed as imperative and the expression "may" as permissive.

Enactments Remedial

12. **Enactments deemed remedial** — Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Preambles and Marginal Notes

13. **Preamble** — The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

14. **Marginal Notes and historical references** — Marginal notes and references to former enactments that appear after the end of a section or other division in an enactment form no part of the enactment, but are inserted for convenience of reference only.

Application of Interpretation Provisions

15. (1) **Application of definitions and Interpretation Provisions** — Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.

(2) **Interpretation sections subject to exceptions** — Where an enactment contains an interpretation section or provision, it shall be read and construed

(a) as being applicable only if a contrary intention does not appear, and

(b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.

16. **Words in regulations** — Where an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power.

Her Majesty

17. Her Majesty not bound or affected unless stated — No enactment is binding on Her Majesty or affects Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.

Related Provisions: ITA 27 — Application of ITA to Crown corporations.

Proclamations

18. (1) Proclamation — Where an enactment authorizes the issue of a proclamation, the proclamation shall be understood to be a proclamation of the Governor in Council.

(2) Proclamation to be issued on advice — Where the Governor General is authorized to issue a proclamation, the proclamation shall be understood to be a proclamation issued under an order of the Governor in Council, but it is not necessary to mention in the proclamation that it is issued under such an order.

(3) Effective day of Proclamations — A proclamation that is issued under an order of the Governor in Council may purport to have been issued on the day of the order or on any subsequent day and, if so, takes effect on that day.

Oaths

19. (1) Administration of oaths — Where, by an enactment or by a rule of the Senate or House of Commons, evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken or administered, the oath may be administered, and a certificate of its having been made, taken or administered may be given by

(a) any person authorized by the enactment or rule to take the evidence; or

(b) a judge of any court, a notary public, a justice of the peace or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered.

(2) Where justice of peace empowered — Where power is conferred on a justice of the peace to administer an oath or solemn affirmation or to take an affidavit or declaration, the power may be exercised by a notary public or a commissioner for taking oaths.

Related Provisions: ITA 220(5) — Administration of oaths.

Reports to Parliament

20. Reports to Parliament — Where an Act requires a report or other document to be laid before Parliament and, in compliance with the Act, a particular report or document has been laid before Parliament at a session thereof, nothing in the Act shall be construed as requiring the same report or document to be laid before Parliament at any subsequent session.

Corporations

21. (1) Powers vested in Corporations — Words establishing a corporation shall be construed

(a) as vesting in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property for the purposes for which the corporation is established and to alienate that property at pleasure;

(b) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, as vesting in the corporation power to use either the English or the French form of its name or both forms and to show on its seal both the English and French forms of its name or have two seals, one showing the English and the other showing the French form of its name;

(c) as vesting in a majority of the members of the corporation the power to bind the others by their acts; and

(d) as exempting from personal liability for its debts, obligations or acts individual members of the corporation who do not contravene the provisions of the enactment establishing the corporation.

(2) Corporate name — Where an enactment establishes a corporation and in each of the English and French versions of the enactment the name of the corporation is in the form only of the language of that version, the name of the corporation shall consist of the form of its name in each of the versions of the enactment.

(3) Banking business — No corporation is deemed to be authorized to carry on the business of banking unless that power is expressly conferred on it by the enactment establishing the corporation.

Majority and Quorum

22. (1) Majorities — Where an enactment requires or authorizes more than two persons to do an act or thing, a majority of them may do it.

(2) Quorum of board, court, commission, etc. — Where an enactment establishes a board, court, commission or other body consisting of three or more members, in this section called an "association",

(a) at a meeting of the association, a number of members of the association equal to,

(i) if the number of members provided for by the enactment is a fixed number, at least one-half of the number of members, and

(ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range,

constitutes a quorum;

(b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association; and

(c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

Appointment, Retirement and Powers of Officers

23. (1) Public officers hold office during pleasure — Every public officer appointed by or under the authority of an enactment or otherwise is deemed to have been appointed to hold office during pleasure only, unless it is otherwise expressed in the enactment, commission or instrument of appointment.

(2) Effective day of appointments — Where an appointment is made by instrument under the Great Seal, the instrument may purport to have been issued on or after the day its issue was authorized, and the day on which it so purports to have been issued is deemed to be the day on which the appointment takes effect.

(3) Appointment or engagement otherwise than under great seal — Where there is authority in an enactment to appoint a person to a position or to engage the services of a person, otherwise than by instrument under the Great Seal, the instrument of appointment or engagement may be expressed to be effective on or after the day on which that person commenced the performance of the duties of the position or commenced the performance of the services, and the day on which it is so expressed to be effective, unless that day is more than sixty days before the day on which the instrument is issued, is deemed to be the day on which the appointment or engagement takes effect.

(4) Remuneration — Where a person is appointed to an office, the appointing authority may fix, vary or terminate that person's remuneration.

(5) Commencement of appointments or retirements — Where a person is appointed to an office effective on a specified day, or where the appointment of a person is terminated effective on a specified day, the appointment or termination is deemed to have been effected immediately on the expiration of the previous day.

24. (1) Implied powers respecting public officers — Words authorizing the appointment of a public officer to hold office during pleasure include, in the discretion of the authority in whom the power of appointment is vested, the power to

(a) terminate the appointment or remove or suspend the public officer;

(b) re-appoint or reinstate the public officer; and

(c) appoint another person in the stead of, or to act in the stead of, the public officer.

(2) Power to act for ministers — Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the act or thing is administrative, legislative or judicial, or otherwise applying to that minister as the holder of the office, include

(a) a minister acting for that minister or, if the office is vacant, a minister designated to act in the office by or under the authority of an order in council;

(b) the successors of that minister in the office;

(c) his or their deputy; and

(d) notwithstanding paragraph (c), a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing, or to the words so applying.

(3) Restriction as to public servants — Nothing in paragraph (2)(c) or (d) shall be construed as authorizing the exercise of any authority conferred on a minister to make a regulation as defined in the *Statutory Instruments Act*.

(4) Successors to and deputy of public officer — Words directing or empowering any public officer, other than a minister of the Crown, to do any act or thing, or otherwise applying to the public officer by his name of office, include his successors in the office and his or their deputy.

(5) Powers of holder of public office — Where a power is conferred or a duty imposed on the holder of an office, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office.

Evidence

25. (1) Documentary evidence — Where an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in any judicial proceedings, the document is admissible in evidence and the fact is deemed to be established in the absence of any evidence to the contrary.

(2) Queen's printer — Every copy of an enactment having printed thereon what purports to be the name or title of the Queen's Printer and Controller of Stationery or the Queen's Printer is deemed to be a copy purporting to be printed by the Queen's Printer for Canada.

Computation of Time

26. Time limits and holidays — Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

27. (1) Clear days — Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

(2) Not clear days — Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

(3) Beginning and ending of prescribed periods — Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

(4) After specified day — Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

(5) Within a time — Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

28. Calculation of a period of months after or before a specified day — Where there is a reference

to a period of time consisting of a number of months after or before a specified day, the period is calculated by

(a) counting forward or backward from the specified day the number of months, without including the month in which that day falls;

(b) excluding the specified day; and

(c) including in the last month counted under paragraph (a) the day that has the same calendar number as the specified day or, if that month has no day with that number, the last day of that month.

29. Time of the day — Where there is a reference to time expressed as a specified time of the day, the time is taken to mean standard time.

30. Time when specified age attained — A person is deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of that person's birth.

Miscellaneous Rules

31. (1) Reference to magistrate, etc. — Where anything is required or authorized to be done by or before a judge, magistrate, justice of the peace, or any functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where the thing is to be done.

(2) Ancillary powers — Where power is given to a person, officer or functionary, to do or enforce the doing of any act or thing, all such powers as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing are deemed to be also given.

(3) Powers to be exercised as required — Where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(4) Power to repeal — Where a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the same manner and subject to the same consent and conditions, if any, to repeal, amend or vary the regulations and make others.

32. Forms — Where a form is prescribed, deviations from that form, not affecting the substance or calculated to mislead, do not invalidate the form used.

33. (1) Gender — Words importing female persons include male persons and corporations and words importing male persons include female persons and corporations.

(2) Number — Words in the singular include the plural, and words in the plural include the singular.

(3) Parts of speech and grammatical forms — Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.

Offences

34. (1) Indictable and summary conviction offences — Where an enactment creates an offence,

(a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;

(b) the offence is deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offence is an indictable offence; and

(c) if the offence is one for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, no person shall be considered to have been convicted of an indictable offence by reason only of having been convicted of the offence on summary conviction.

(2) *Criminal Code* to apply — All the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that Code relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.

(3) Documents similarly construed — In a commission, proclamation, warrant or other document relating to criminal law or procedure in criminal matters

(a) a reference to an offence for which the offender may be prosecuted by indictment shall be construed as a reference to an indictable offence; and

(b) a reference to any other offence shall be construed as a reference to an offence for which the offender is punishable on summary conviction.

Powers to Enter Dwelling-houses to Carry out Arrests

34.1 Authorization to enter dwelling house — Any person who may issue a warrant to arrest or apprehend a person under any Act of Parliament, other than the *Criminal Code*, has the same powers, subject to the same terms and conditions, as a judge or justice has under the *Criminal Code*

(a) to authorize the entry into a dwelling-house described in the warrant for the purpose of arresting or apprehending the person, if the person issuing the warrant is satisfied by information on oath that there are reasonable grounds to believe that the person is or will be present in the dwelling-house; and

(b) to authorize the entry into the dwelling-house without prior announcement if the requirement of subsection 529.4(1) is met.

Definitions

35. (1) General definitions — In every enactment,

"Act", as meaning an Act of a legislature, includes an ordinance of the Yukon Territory or of the Northwest Territories and a law made by the Legislature for Nunavut or continued by section 29 of the *Nunavut Act*;

"bank" means a bank listed in Schedule I or II to the *Bank Act*;

History: The definition "bank" amended by 1999, c. 28, s. 168, in force June 28, 1999. The definition formerly read:

"bank" means a bank to which the *Bank Act* applies;

"British Commonwealth" or **"British Commonwealth of Nations"** has the same meaning as "Commonwealth";

"broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;

"Canada", for greater certainty, includes the internal waters of Canada and the territorial sea of Canada;

History: "Canada" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"Canadian waters" includes the territorial sea of Canada and the internal waters of Canada;

History: "Canadian waters" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"Clerk of the Privy Council" or **"Clerk of the Queen's Privy Council"** means the Clerk of the Privy Council and Secretary to the Cabinet;

"commencement", when used with reference to an enactment, means the time at which the enactment comes into force;

"Commonwealth" or **"Commonwealth of Nations"** means the association of countries named in the schedule;

"Commonwealth and Dependent Territories" means the several Commonwealth countries and their colonies, possessions, dependencies, protectorates, protected states, condominiums and trust territories;

"contiguous zone",

(a) in relation to Canada, means the contiguous zone of Canada as determined under the *Oceans Act*,

(b) in relation to any other state, means the contiguous zone of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Contiguous zone" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"continental shelf",

(a) in relation to Canada, means the continental shelf of Canada as determined under the *Oceans Act*, and

(b) in relation to any other state, means the continental shelf of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Continental shelf" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"contravene" includes fail to comply with;

"corporation" does not include a partnership that is considered to be a separate legal entity under provincial law;

"county" includes two or more counties united for purposes to which the enactment relates;

"diplomatic or consular officer" includes an ambassador, envoy, minister, chargé d'affaires, counsellor, secretary, attaché, consul-general, consul, vice-consul, proconsul, consular agent, acting consul-general, acting consul, acting vice-consul, acting consular agent, high commissioner, permanent delegate, adviser, acting high commissioner, and acting permanent delegate;

"exclusive economic zone",

(a) in relation to Canada, means the exclusive economic zone of Canada as determined under the *Oceans Act* and includes the seabed and subsoil below that zone, and

(b) in relation to any other state, means the exclusive economic zone of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Exclusive economic zone" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"Federal Court" means the Federal Court of Canada;

Proposed Repeal — 35(1)"Federal Court"

Application: Bill C-40 (First Reading June 15, 2000), subsec. 147(1), will repeal the definition "Federal Court" in subsec. 35(1), in force on a day to be fixed by order of the Governor in Council.

"Federal Court–Appeal Division" or **"Federal Court of Appeal"** means that division of the Federal Court of Canada called the Federal Court–Appeal Division or referred to as the Federal Court of Appeal by the *Federal Court Act*;

Proposed Repeal — 35(1)"Federal Court–Appeal Division" or "Federal Court of Appeal"

Application: Bill C-40 (First Reading June 15, 2000), subsec. 147(1), will repeal the definition "Federal Court–Appeal Division" or "Federal Court of Appeal" in subsec. 35(1), in force on a day to be fixed by order of the Governor in Council.

"Federal Court–Trial Division" means that division of the Federal Court of Canada so named by the *Federal Court Act*;

Proposed Repeal — 35(1)"Federal Court–Trial Division"

Application: Bill C-40 (First Reading June 15, 2000), subsec. 147(1), will repeal the definition "Federal Court–Trial Division" in subsec. 35(1), in force on a day to be fixed by order of the Governor in Council.

"Governor", **"Governor General"**, or **"Governor of Canada"** means the Governor General of Canada or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title that officer is designated;

"Governor General in Council" or **"Governor in Council"** means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada;

"Great Seal" means the Great Seal of Canada;

"Her Majesty", **"His Majesty"**, **"the Queen"**, **"the King"** or **"the Crown"** means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;

"Her Majesty's Realms and Territories" means all realms and territories under the sovereignty of Her Majesty;

"herein" used in any section shall be understood to relate to the whole enactment, and not to that section only;

"holiday" means any of the following days, namely, Sunday; New Year's Day; Good Friday; Easter Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning

Sovereign[1]; Victoria Day; Canada Day; the first Monday in September, designated Labour Day; Remembrance Day; any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving[2]; and any of the following additional days, namely:

(a) in any province, any day appointed by proclamation of the lieutenant governor of the province to be observed as a public holiday or as a day of general prayer or mourning or day of public rejoicing or thanksgiving within the province, and any day that is a non-juridical day by virtue of an Act of the legislature of the province, and

(b) in any city, town, municipality or other organized district, any day appointed to be observed as a civic holiday by resolution of the council or other authority charged with the administration of the civic or municipal affairs of the city, town, municipality or district;

"internal waters",

(a) in relation to Canada, means the internal waters of Canada as determined under the *Oceans Act* and includes the airspace above and the bed and subsoil below those waters, and

(b) in relation to any other state, means the waters on the landward side of the baselines of the territorial sea of the other state;

History: "Internal waters" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"legislative assembly", **"legislative council"** or **"legislature"** includes the Lieutenant Governor in Council and the Legislative Assembly of the Northwest Territories, as constituted before September 1, 1905, the Commissioner in Council of the Yukon Territory, the Commissioner in Council of the Northwest Territories, and the Legislature for Nunavut;

"lieutenant governor" means the lieutenant governor or other chief executive officer or administrator carrying on the government of the province indicated by the enactment, by whatever title that officer is designated, and, in relation to the Yukon Territory, the Northwest Territories or Nunavut, means the Commissioner thereof;

"lieutenant governor in council" means the lieutenant governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the executive council of the province indicated by the enactment and, in relation to the Yukon Territory, the Northwest Territories or Nunavut, means the Commissioner thereof;

"local time", in relation to any place, means the time observed in that place for the regulation of business hours;

"military" shall be construed as relating to all or any part of the Canadian Forces;

"month" means a calendar month;

"oath" includes a solemn affirmation or declaration when the context applies to any person by whom and to any case in which a solemn affirmation or declaration may be made instead of an oath, and in the same cases the expression "sworn" includes the expression "affirmed" or "declared";

"Parliament" means the Parliament of Canada;

"person" or any word or expression descriptive of a person, includes a corporation;

"proclamation" means a proclamation under the Great Seal;

"province" means a province of Canada, and includes the Yukon Territory, the Northwest Territories and Nunavut;

"radio" or **"radiocommunication"** means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3000 GHz propagated in space without artificial guide;

"regular force" means the component of the Canadian Forces that is referred to in the *National Defence Act* as the regular force;

"reserve force" means the component of the Canadian Forces that is referred to in the *National Defence Act* as the reserve force;

"security" means sufficient security, and "sureties" means sufficient sureties, and when those words are used one person is sufficient therefor, unless otherwise expressly required;

"standard time", except as otherwise provided by any proclamation of the Governor in Council that may be issued for the purposes of this definition in relation to any province or territory or any part thereof, means

(a) in relation to the Province of Newfoundland, Newfoundland standard time, being three hours and thirty minutes behind Greenwich time,

(b) in relation to the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, that part of the Province of Quebec lying east of the sixty-third meridian of west longitude, and that part of Nunavut lying east of the sixty-eighth meridian of west longitude, Atlantic standard time, being four hours behind Greenwich time,

(c) in relation to that part of the Province of Quebec lying west of the sixty-third meridian of west longitude, that part of the Province of Ontario lying between the sixty-eighth and the ninetieth meridians of west longitude, Southampton Island and the islands adjacent to Southampton Island, and that part of Nunavut lying between the sixty-eighth and the eighty-fifth meridians of west longitude, eastern standard time, being five hours behind Greenwich time,

(d) in relation to that part of the Province of Ontario lying west of the ninetieth meridian of west longitude, the Province of Manitoba, and that part of Nunavut, except Southampton Island and the islands adjacent to Southampton Island, lying between the eighty-fifth and the one hundred and second meridians of west longitude, central standard time, being six hours behind Greenwich time,

(e) in relation to the Provinces of Saskatchewan and Alberta, the Northwest Territories and that part of Nunavut lying west of the one hundred and second meridian of west longitude, mountain standard time, being seven hours behind Greenwich time,

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[1]The Monday immediately preceding May 25 (SOR/57-55, *Canada Gazette*, Part II, February 27, 1957).

[2]The second Monday in October (SOR/57-56, *Canada Gazette*, Part II, February 27, 1957).

(f) in relation to the Province of British Columbia, Pacific standard time, being eight hours behind Greenwich time, and

(g) in relation to the Yukon Territory, Yukon standard time, being nine hours behind Greenwich time;

"statutory declaration" means a solemn declaration made pursuant to section 41 of the *Canada Evidence Act*;

"superior court" means

(a) in the Province of Prince Edward Island or Newfoundland, the Supreme Court,

(a.1) in the Province of Ontario, the Court of Appeal for Ontario and the Superior Court of Justice,

(b) in the Province of Quebec, the Court of Appeal and the Superior Court in and for the Province,

(c) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Appeal for the Province and the Court of Queen's Bench for the Province,

(d) in the Provinces of Nova Scotia and British Columbia, the Court of Appeal and the Supreme Court of the Province, and

(e) in the Yukon Territory or the Northwest Territories, the Supreme Court of the territory, and in Nunavut, the Nunavut Court of Justice,

and includes the Supreme Court of Canada and the Federal Court of Canada;

Proposed Amendment — 35(1)"superior court" closing words

and includes the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada;

Application: Bill C-40 (First Reading June 15, 2000), subsec. 147(2), will amend the closing words of the definition "superior court" in subsec. 35(1) to read as above, in force on a day to be fixed by order of the Governor in Council.

"telecommunications" means the emission, transmission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

"territorial sea",

(a) in relation to Canada, means the territorial sea of Canada as determined under the *Oceans Act* and includes the airspace above and the seabed and subsoil below that sea, and

(b) in relation to any other state, means the territorial sea of the other state as determined in accordance with international law and the domestic laws of that other state;

History: "Territorial sea" added to subsec. 35(1) by 1996, c. 31, s. 88, proclaimed in force January 31, 1997 (SI/97-21).

"territory" means the Yukon Territory, the Northwest Territories and, after section 3 of the *Nunavut Act* comes into force, Nunavut;

"two justices" means two or more justices of the peace, assembled or acting together;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;

"United States" means the United States of America;

"writing", or any term of like import, includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form.

(2) Governor in Council may amend schedule — The Governor in Council may, by order, amend the schedule by adding thereto the name of any country recognized by the order to be a member of the Commonwealth or deleting therefrom the name of any country recognized by the order to be no longer a member of the Commonwealth.

36. Construction of "telegraph" — The expression "telegraph" and its derivatives, in an enactment or in an Act of the legislature of any province enacted before that province became part of Canada on any subject that is within the legislative powers of Parliament, are deemed not to include the word "telephone" or its derivatives.

37. (1) Construction of "year" — The expression "year" means any period of twelve consecutive months, except that a reference

(a) to a "calendar year" means a period of twelve consecutive months commencing on January 1;

(b) to a "financial year" or "fiscal year" means, in relation to money provided by Parliament, or the Consolidated Revenue Fund, or the accounts, taxes or finances of Canada, the period beginning on April 1 in one calendar year and ending on March 31 in the next calendar year; and

(c) by number to a Dominical year means the period of twelve consecutive months commencing on January 1 of that Dominical year.

(2) Governor in Council may define year — Where in an enactment relating to the affairs of Parliament or the Government of Canada there is a reference to a period of a year without anything in the context to indicate beyond doubt whether a financial or fiscal year, any period of twelve consecutive months or a period of twelve consecutive months commencing on January 1 is intended, the Governor in Council may prescribe which of those periods of twelve consecutive months shall constitute a year for the purposes of the enactment.

38. Common names — The name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation thereof.

39. (1) Affirmative and negative resolutions — In every Act

(a) the expression "subject to affirmative resolution of Parliament", when used in relation to any regulation, means that the regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and shall not come into force unless and until it is affirmed by a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses;

(b) the expression "subject to affirmative resolution of the House of Commons", when used in relation to any

regulation," means that the regulation shall be laid before the House of Commons within fifteen days after it is made or, if the House is not then sitting, on any of the first fifteen days next thereafter that the House is sitting and shall not come into force unless and until it is affirmed by a resolution of the House of Commons introduced and passed in accordance with the rules of that House;

(c) the expression "subject to negative resolution of Parliament", when used in relation to any regulation, means that the regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and may be annulled by a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses; and

(d) the expression "subject to negative resolution of the House of Commons", when used in relation to any regulation, means that the regulation shall be laid before the House of Commons within fifteen days after it is made or, if the House is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and may be annulled by a resolution of the House of Commons introduced and passed in accordance with the rules of that House.

(2) Effect of negative resolution — Where a regulation is annulled by a resolution of Parliament or of the House of Commons, it is deemed to have been revoked on the day the resolution is passed and any law that was revoked or amended by the making of that regulation is deemed to be revived on the day the resolution is passed, but the validity of any action taken or not taken in compliance with a regulation so deemed to have been revoked shall not be affected by the resolution.

References and Citations

40. (1) Citation of enactment — In an enactment or document

(a) an Act may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number in the volume of Acts for the year or regnal year in which it was enacted or by reference to its long title or short title, with or without reference to its chapter number; and

(b) a regulation may be cited by reference to its long title or short title, by reference to the Act under which it was made or by reference to the number or designation under which it was registered by the Clerk of the Privy Council.

(2) Citation includes amendment — A citation of or reference to an enactment is deemed to be a citation of or reference to the enactment as amended.

41. (1) Reference to two or more parts, etc. — A reference in an enactment by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules, appendices or forms shall be read as including the number or letter first mentioned and the number or letter last mentioned.

(2) Reference in enactments to parts, etc. — A reference in an enactment to a part, division, section, schedule, appendix or form shall be read as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

(3) Reference in enactment to subsections, etc. — A reference in an enactment to a subsection, paragraph, subparagraph, clause or subclause shall be read as a reference to a subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

(4) Reference to regulations — A reference in an enactment to regulations shall be read as a reference to regulations made under the enactment in which the reference occurs.

(5) Reference to another enactment — A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment shall be read as a reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law.

Repeal and Amendment

42. (1) Power of repeal or amendment reserved — Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

(2) Amendment or repeal at same session — An Act may be amended or repealed by an Act passed in the same session of Parliament.

(3) Amendment part of enactment — An amending enactment, as far as consistent with the tenor thereof, shall be construed as part of the enactment that it amends.

43. Effect of repeal — Where an enactment is repealed in whole or in part, the repeal does not

(a) revive any enactment or anything not in force or existing at the time when the repeal takes effect,

(b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder,

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed,

(d) affect any offence committed against or contravention of the provisions of the enactment so repealed, or any punishment, penalty or forfeiture incurred under the enactment so repealed, or

(e) affect any investigation, legal proceeding or remedy in respect of any right, privilege, obligation or liability referred to in paragraph (c) or in respect of any punishment, penalty or forfeiture referred to in paragraph (d),

and an investigation, legal proceeding or remedy as described in paragraph (e) may be instituted, continued or enforced, and the punishment, penalty or forfeiture may be imposed as if the enactment had not been so repealed.

44. Repeal and substitution — Where an enactment, in this section called the "former enactment", is repealed

and another enactment, in this section called the "new enactment", is substituted therefor,

(a) every person acting under the former enactment shall continue to act, as if appointed under the new enactment, until another is appointed in the stead of that person;

(b) every bond and security given by a person appointed under the former enactment remains in force, and all books, papers, forms and things made or used under the former enactment shall continue to be used as before the repeal in so far as they are consistent with the new enactment;

(c) every proceeding taken under the former enactment shall be taken up and continued under and in conformity with the new enactment in so far as it may be done consistently with the new enactment;

(d) the procedure established by the new enactment shall be followed as far as it can be adapted thereto

(i) in the recovery or enforcement of fines, penalties and forfeitures imposed under the former enactment,

(ii) in the enforcement of rights, existing or accruing under the former enactment, and

(iii) in a proceeding in relation to matters that have happened before the repeal;

(e) when any punishment, penalty or forfeiture is reduced or mitigated by the new enactment, the punishment, penalty or forfeiture if imposed or adjudged after the repeal shall be reduced or mitigated accordingly;

(f) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment;

(g) all regulations made under the repealed enactment remain in force and are deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their stead; and

(h) any reference in an unrepealed enactment to the former enactment shall, with respect to a subsequent transaction, matter or thing, be read and construed as a reference to the provisions of the new enactment relating to the same subject-matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.

45. (1) Repeal does not imply enactment was in force — The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that the enactment was previously in force or was considered by Parliament or other body or person by whom the enactment was enacted to have been previously in force.

(2) Amendment does not imply change in law — The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

(3) Repeal does not declare previous law — The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

(4) Judicial construction not adopted — A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

Demise of Crown

46. (1) Effect of demise — Where there is a demise of the Crown,

(a) the demise does not affect the holding of any office under the Crown in right of Canada; and

(b) it is not necessary by reason of such demise that the holder of any such office again be appointed thereto or, having taken an oath of office or allegiance before the demise, again take that oath.

(2) Continuation of proceedings — No writ, action or other process or proceeding, civil or criminal, in or issuing out of any court established by an Act is, by reason of a demise of the Crown, determined, abated, discontinued or affected, but every such writ, action, process or proceeding remains in full force and may be enforced, carried on or otherwise proceeded with or completed as though there had been no such demise.

SCHEDULE

(*section 35 "Commonwealth"*)

Antigua and Barbuda
Australia
The Bahamas
Bangladesh
Barbados
Belize
Botswana
Brunei Darussalam
Canada
Cyprus
Dominica
Fiji
Gambia
Ghana
Grenada
Guyana
India
Jamaica
Kenya
Kiribati
Lesotho
Malawi
Malaysia
Maldives
Malta
Mauritius
Nauru
New Zealand
Nigeria
Pakistan
Papua New Guinea
St. Christopher and Nevis

Schedule

St. Lucia
St. Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Solomon Islands
South Africa
Sri Lanka
Swaziland
Tanzania
Tonga
Trinidad and Tobago
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Zambia
Zimbabwe

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- $0.12/km car salesperson operating expenses benefit effective 2000, Reg. 7305.1(1)(a)
- $0.14/km car operating expenses benefit for 1997-99, Reg. 7305.1(1)(b)
- $0.15/km car operating expenses benefit effective 2000, Reg. 7305.1(1)(b)
- $0.35 and $0.29 per km car allowances for 1997-99, Reg. 7306
- $0.37 and $0.31 per km car allowances effective 2000, Reg. 7306
- $0.39 and $0.33 per km car allowances in territories for 1997-99, Reg. 7306
- $0.41 and $0.35 per km car allowances in territories effective 2000, Reg. 7306
- $1 below which refund interest not payable, 164(3), (3.2)
- $1 per acre maximum deduction for payments on exploration and drilling rights acquired before April 11/62, ITAR 29(13)
- $2.50 per hectare of certain resource royalties not taxable, is deductible, Reg. 1211(d)(ii)
- $3.75 per day residing in prescribed intermediate zone, deduction, 110.7(1)(b)(ii)(A), 110.7(2)
- $7.50 per day maintaining household in prescribed intermediate zone, deduction, 110.7(1)(b)(ii), 110.7(2)
- $7.50 per day residing in prescribed northern zone, deduction, 110.7(1)(b)(ii)(A)
- $10 below which child tax benefit payment postponed to later month, 122.61(2)
- $10 per day penalty for trustee/receiver failing to file return, 162(3)
- $13.60 per month (federal) education credit before 1996, 118.6(2)
- $15 per day maintaining household in prescribed northern zone, deduction, 110.7(1)(b)(ii)
- $17 per month (federal) education credit for 1996, 118.6(2)
- $25 below which no instalment interest payable, 161(2.1)
- $25 per day penalty for failing to comply with obligation, 162(7), (7.1)
- $25.50 per month (federal) education credit for 1997, 118.6(2)
- $34 per month (federal) education credit after 1997, 118.6(2)
- $50 credit for U.S. social security tax changes under treaty, Canada–U.S. Tax Convention Art. XVIII:5
- $50 maximum penalty for trustee/receiver failing to file return, 162(3)
- $50 minimum interest to be reported by financial institution, Reg. 201(1) (Notes)
- $50 penalty for actions re ownership certificate, 162(4)
- $50 per day of conference expenses deemed paid for meals/entertainment, 67.1(3)
- $60 per month amount part-time education credit after 1997, 118.6(2)B(a)
- $60 per week, certain child care expenses per child over 7 (pre-1992), 63(2)(b)(ii)
- $80 per month amount for education credit before 1996, 118.6(2)
- $90 per week, certain child care expenses for child over 7 (pre-1998), 63(2)(b)(ii), 63(2.3)(c)B, 63(3)"child care expense"(c)(ii)
- $100 minimum fees for tuition credit, 118.5(1)(a), (c)
- $100 minimum penalty for failing to comply with obligation, 162(7), (7.1)
- $100 minimum penalty for false statement or omission, 163(2)
- $100 minimum penalty for issuer extending RRSP advantage, 146(13.1)(b)
- $100 minimum penalty for late renunciation, 66(12.75)
- $100 minimum penalty for non-resident corporation failing to file return, 162(2.1)(b)(i)
- $100 optional CCA deduction for timber limit or right to cut timber, Reg. Sch. VI:4
- $100 penalty for failing to provide SIN or information on a form, 162(5), (6)
- $100 per month amount for education credit for 1996, 118.6(2)
- $100 per month penalty for late designation, 66(14.5)
- $100 per month penalty for late-filed elections, 85(8), 93(6), 96(6), 220(3.5)
- $100 per partner per month penalty for failing to file partnership information return, 162(8)
- $100 per week, certain child care expenses for child over 7 (after 1997), 63(2)(b)(ii), 63(2.3)(c)B, 63(3)"child care expense"(c)(ii)
- $100 political contribution for 75% credit before 2000, 127(3)(a)
- $100 threshold for withholding on patronage dividends, 135(3)
- $100 under which GST credit paid in one lump sum, 122.5(5)(b)
- $105 annual GST credit, 122.5(3)(d), (e)
- $120 per week, certain child care expenses per child under 7 or disabled (pre-1992), 63(2)(b)(i)
- $150 per month amount for education credit for 1997, 118.6(2)
- $150 per week, certain child care expenses per child under 7 or disabled (pre-1998), 63(2)(b)(i), 63(2.3)(c)A, 63(3)"child care expense"(c)(i)
- $170 credit to offset pension income, 118(3)
- $175 per week, certain child care expenses per child under 7 or disabled (after 1997), 63(2)(b)(i), 63(2.3)(c)A, 63(3)"child care expense"(c)(i)
- $190 (indexed after 1990) GST credit, 122.5(3)
- $200 below which tool, utensil or medical/dental instrument fully deductible, Reg. Sch. II:Cl. 12(c), Sch. II:Cl. 12(e), Sch. II:Cl. 12(i)
- $200 foreign currency gain or loss ignored for individual, 39(2)
- $200 maximum charitable donations for low-rate credit, 118.1(3)
- $200 per month amount for full-time education credit after 1997, 118.6(2)B(a)
- $200 political contribution for 75% credit after 1999, 127(3)(a)
- $200 work of art deemed not depreciable property, Reg. 1102(1)(e)(i)
- $215 per square metre hand-woven carpet deemed not depreciable property, Reg. 1102(1)(e)(ii)
- $250 individual surtax reduction, 180.1(1)(a)(ii)(A)
- $250 maximum charitable donations for low-rate credit [pre-1994], 118.1(3)
- $250 per month interest deductibility limit for automobile (purchased June 8/87–Aug/89), 67.2
- $250 per month interest deduction limit for automobile effective 1997, 67.2, Reg. 7307(2)
- $250 teachers' exchange fund contribution deductible, 8(1)(d)
- $300 contribution to RPP in 1944–45, income from RPP reduced, 57(4)
- $300 minimum CPP/QPP benefits, allocated to prior year, 56(8)
- $300 per month interest deduction limit for automobile before 1997, 67.2, Reg. 7307(2)
- $500 exemption for scholarship, bursary or prize income, 56(1)(n)
- $500 maximum fine for issuing debt with interest coupons lacking "AX" or "F" marking, 240
- $500 maximum political contribution credit, 127(3)(c)
- $500 maximum refundable medical expense credit, 122.51(2)A(a)

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- $500 minimum holding (each) of shares by non-insiders for corporation to be designated public or trust to be mutual fund trust, Reg. 4800(1)(b)(iv), 4800(2)(b)(iv), 4801, 4803(3), (4)
- $500 minimum penalty re tax shelter identification number, 237.1(7.4)
- $500 per month minimum penalty for late-filed R&D non-profit corporation return, 149(7.1)A(a)
- $500 per month penalty for failure to provide foreign-based information, 162(10)
- $500 per month penalty for late-filed elections, 83(4), 131(1.3), 184(5)
- $500 threshold below which no penalty for failure to remit withholdings, 227(9.1)
- $525 maximum labour-sponsored funds tax credit before 1998, 127.4(5)(a)
- $550 per month leasing cost limit for automobile effective 1997, 67.3, Reg. 7307(3)
- $550 political contribution cutoff for 50% credit on excess over $200, 127(3)(b)
- $600 maximum contribution to Saskatchewan Pension Plan, Reg. 7800(2)
- $600 maximum transfer of unused tuition/education credits, 118.8, 118.9(1)
- $600 minimum RRSP contribution (pension credit offset) effective 1997, Reg. 8301(6), 8309, 8503(4)(a)(i)(B)
- $600 pension adjustment offset after 1996, Reg. 8300(1)"PA offset"(b)
- $600 per month leasing cost limit for automobile (lease entered into June 18/87–Aug. 31/89), 67.3
- $625 monthly threshold for OAS benefits withholding, 180.2(4)(a)(ii) [to be repealed]
- $650 maximum moving expenses, non-taxable reimbursement to employee, *see* Notes to 6(1)(b)
- $650 per month leasing cost limit for automobile before 1997 and for 1997-99, 67.3, Reg. 7307(3)(b)(i), (iii)
- $665 monthly threshold for OAS benefits withholding, 180.2(4)(a)(ii)
- $700 maximum labour-sponsored funds tax credit (pre-1992), 127.4(2)
- $700 per month leasing cost limit for automobile effective 2000, 67.3, Reg. 7307(3)(b)(iv)
- $750 maximum deductible health plan premium per child, 20.01(2)(c)(i)C
- $750 maximum labour-sponsored funds tax credit after 1997, 127.4(5)(a), Reg. 100(5)(a)
- $850 maximum tuition and education credits transferred to spouse, 118.81(c)
- $1,000 antique furniture or object deemed not depreciable property, Reg. 1102(1)(e)(iv)
- $1,000 artists' employment expenses deductible, 8(1)(q)
- $1,000 instalment interest threshold below which no penalty applies, 163.1(b)
- $1,000 maximum allowable for medical expense credit air conditioner for chronic ailment, Reg. 5700(c.3)
- $1,000 maximum deduction from income of volunteer emergency worker, 8(1)(a) [to be repealed]
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- $1,000 maximum labour-sponsored funds tax credit 1993–1995, 127.4(2)
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- $1,000 minimum fine for offence, 238(1)(a)
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- $1,000 minimum RRSP contribution (pension credit offset), Reg. 8301(6), 8309, 8503(4)(a)(i)(B)
- $1,000 pension adjustment offset before 1997, Reg. 8300(1)"PA offset"(a)
- $1,000 pension income, credit to offset, 118(3)
- $1,000 per month penalty for failing to provide foreign-based information, 162(10)
- $1,000 per year gain on farm that is principal residence, election to exempt, 40(2)(c)(ii)
- $1,000 threshold below which no instalments required, 156.1(1), 157(2.1)
- $1,075 maximum political contribution for credit after 1999, 127(3)(c)
- $1,150 maximum political contribution for credit before 2000, 127(3)(c)
- $1,200 deduction for income from pre-1940 annuities, 58(2), (3)
- $1,200 tax gap above which instalments due by Quebec residents, 156.1(1)
- $1,500 (indexed after 1988) threshold for medical expense credits for high-income taxpayers, 118.2(1)C
- $1,500 maximum annual RESP contributions before 1996, 146.1(1)"RESP annual limit"(a), 146.1(2)(k), 204.9(1)"excess amount"(a)
- $1,500 maximum deductible health plan premium per person, 20.01(2)(c)(i)B
- $1,500 per year of employment before 1989, additional retiring allowance transferred to RRSP, 60(j.1)(ii)(B)
- $1,722.22 defined benefit limit before 1999, Reg. 8500(1)"defined benefit limit"(a)
- $2,000 child care expenses per child over 7 (pre-1992), 63(1)(e)(ii)(B)
- $2,000 deduction from income of dining or recreational club, 149(5)(f)(i)
- $2,000 maximum annual RESP contributions effective 1996, 146.1(1)"RESP annual limit"(b), 146.1(2)(k), 204.9(1)"excess amount"(a)
- $2,000 moving expenses for person with mobility impairment, medical expense credit, 118.2(2)(l.5)
- $2,000 per year of employment before 1996, retiring allowance transferred to RRSP, 60(j.1)(ii)(A)
- $2,000 pre-1986 capital loss balance deductible against any income, 111(1.1)(b)(i)
- $2,000 RRSP overcontribution room, 204.2(1.1)(b)C
- $2,000 tax gap above which instalments due, 155(1), 156.1(1)
- $2,500 inventory adjustment for farmers in loss years (1994–95), 28(1)(c)
- $2,500 maximum penalty for failing to comply with obligation, 162(7), (7.1)
- $2,500 maximum penalty for non-resident corporation failing to file return, 162(2.1)(b)(ii)
- $2,500 minimum employment/business income for refundable medical expense credit, 122.51(1)"eligible individual"(c)
- $2,500 minimum penalty for false statement in return re distribution from foreign trust, 163(2.4)(e)(i)
- $2,500 restricted farm loss fully deductible, 31(1)
- $3,000 child care expenses per child over 7 (pre–1998), 63(1)(e)(ii)(B)
- $3,000 minimum lump-sum payment for retroactive spreading over prior years, 110.2(2)
- $3,500 deduction for refunds of past service AVCs, 60.2(1)(b)
- $3,500 maximum employee's RPP contribution (pre-1991), 8(1)(m), (m.1), 8(6), Reg. 8301(10)
- $3,500 maximum employee's RPP contribution for pre-1990 service, 147.2(4)(b), (c)
- $3,500 maximum employer RPP contribution (pre-1991), 20(1)(q), 20(22), 147(8)
- $3,500 maximum purchase for labour-sponsored funds tax credit (1996-97), 127.4(5)(a), 127.4(6)(a)
- $3,500 per year of employment, retiring allowance transferred to RRSP, 60(j.1)(ii)
- $4,000 child care expenses per child over 7 (after 1997), 63(1)(e)(ii)(B)
- $4,000 child care expenses per child under 7 or disabled (pre-1992), 63(1)(e)(ii)(A)
- $4,000 maximum annual RESP contributions effective 1997, 146.1(1)"RESP annual limit"(c), 204.9(1)"excess amount"(a)
- $5,000 and under non-periodic payment, withholding requirement, Reg. 103(1), (4)(a)

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- $5,000 child care expenses per child under 7 or disabled (pre–1998), 63(1)(e)(ii)(A)
- $5,000 deduction for income from pre-1932 annuities, 58(1)
- $5,000 income threshold to be deemed not financially dependent on annuitant, 146(1)"refund of premiums"
- $5,000 independent personal services income across U.S. border, maximum 10% withholding, Canada–U.S. Tax Convention Art. XVII.1
- $5,000 inventory adjustment for farmers in loss years (1993–94), 28(1)(c)
- $5,000 limit before 1997 to attendant care deduction or credit for disabled person, 64(c), 118.2(2)(b.1)
- $5,000 limit of cost of wheelchair-access van for medical expense credit, 118.2(2)(l.7)
- $5,000 maximum deductible cost of maintaining old residence after moving, 62(3)(g)
- $5,000 maximum education and tuition amounts transferred to spouse, parent or grandparent, 118.81(a)A(ii)
- $5,000 maximum fine for communicating confidential information or SIN, 239(2.2), (2.21), (2.3)
- $5,000 maximum gain or loss from obligation, not to be specified debt obligation, Reg. 9202(4)(c)
- $5,000 maximum purchase for labour-sponsored funds tax credit 1993–1995, 127.4(2), Reg. 6706
- $5,000 maximum purchase for labour-sponsored funds tax credit before March 6/96, 127.4(2), Reg. 6706(4)
- $5,000 maximum purchase for labour-sponsored funds tax credit effective 1998, 127.4(5)(a), 127.4(6)(a)
- $5,000 maximum RESP payments until student enrolled for 13 weeks, 146.1(2)(g.1)(ii)(B)
- $5,000 minimum FAPI for participating percentage calculation, 95(1)"participating percentage"
- $5,000 per month base for tax on excess foreign property holdings, 206(2.01)
- $5,500 threshold for penalty tax on overcontributions to RRSP/DPSP (pre-1991), 204.2(1)(b)(iv), 204.2(4)(a)(iii)
- $6,000 (indexed after 1988) notch provision for dependant's medical expenses, 117(7), 117.1(1)(b)
- $6,000 transfer of pension/DPSP payments to spouse's RRSP (until 1994), 60(j.2)(ii)(A)
- $6,000 transitional extra RRSP overcontribution room, 204.2(1.5)(a)
- $7,000 child care expenses per child under 7 or disabled (after 1997), 63(1)(e)(ii)(A)
- $7,000 maximum federal tax at issue for Tax Court of Canada informal procedure before September 1993, *Tax Court of Canada Act* s. 18
- $7,500 inventory adjustment for farmers in loss years (1992–93), 28(1)(c)
- $8,000 limitation on RPP past service benefits, Reg. 8307(2)(b)
- $8,000 maximum penalty for late designation, 66(14.5)
- $8,000 maximum penalty for late-filed elections, 85(8), 93(6), 96(6), 220(3.5)
- $8,000 RRSP overcontribution room, 204.2(1.1)(b)M
- $8,333 basic federal tax threshold for phasing in surtax, 180.1(1)(a)(ii)(B)(II)
- $8,750 maximum restricted farm loss deduction, 31(1)
- $10,000 attendant care deduction before 1997 for disabled person in year of death, 118.2(2)(b.1)
- $10,000 denominator for reduced small business deduction for large corporations, 125(5.1)
- $10,000 employment income of Canadian resident from U.S. or U.S. resident from Canada not taxable, Canada–U.S. Tax Convention Art. XV:2(a)
- $10,000 external income threshold for deduction of private health plan premiums, 20.01(1)(a)(ii)
- $10,000 income below which no instalments required for co-op or credit union, 157(2)(c)
- $10,000 inventory adjustment for farmers in loss years (1991–92), 28(1)(c)
- $10,000 limit for attendant care credit for disabled person, 118.2(2)(b.1)
- $10,000 limit of lump-sum payable by employer to RRSP without source withholding, Reg. 103(3.2)
- $10,000 maximum RRSP withdrawal per year for Lifelong Learning Plan, 146.02(1)"eligible amount"(c), Reg. 104.1(1)(c)
- $10,000 minimum small business bond, 15.2(3)"qualifying debt obligation"(a)
- $10,000 minimum small business development bond, 15.1(3)"qualifying debt obligation"(a)
- $10,000 over which capital addition to building owned since 1971 by credit union deemed separate building, ITAR 58(1)(c)(i)
- $10,000 revenue over which non-profit organization must file information return, 149(12)
- $10,000 tax-free payment by employer to spouse on death, 248(1)"death benefit"
- $10,000 threshold for recoverable contribution to non-resident trust, 94(7) [proposed]
- $10,000 value of individual asset required to be reported on emigration, 128.1(10)"reportable property"(d)
- $11,500 denominator for reduced small business deduction for large corporations, 125(5.1)
- $11,500 RRSP contribution limit for 1991, 146(1)"RRSP deduction limit" 147.1(1)"money purchase limit"
- $12,000 maximum federal tax at issue for Tax Court of Canada informal procedure after August 1993, *Tax Court of Canada Act* s. 18
- $12,000 maximum penalty for failure to provide foreign-based information, 162(10)
- $12,500 basic federal tax threshold for high-income surtax, 180.1(1)
- $12,500 inventory adjustment for farmers in loss years (1990–91), 28(1)(c)
- $12,500 RRSP contribution limit for 1992–93, 146(1)"RRSP deduction limit" 147.1(1)"money purchase limit"
- $13,500 RRSP contribution limit for 1994 and 1996–2003, 146(1)"RRSP dollar limit", 147.1(1)"money purchase limit"
- $14,500 RRSP contribution limit for 1995, 146(1)"RRSP deduction limit" 147.1(1)"money purchase limit"
- $15,000 athlete/entertainer income of Canadian resident from U.S. or U.S. resident from Canada not taxable, Canada–U.S. Tax Convention Art. XVI:1
- $15,000 basis for additional CCA for grain-drying machinery, Reg. 1100(1)(sb)(iv)(B)
- $15,000 cutoff for lump sum payment, withholding requirements, Reg. 103(4)(b), (c)
- $15,000 exempt reimbursement for housing loss on relocation, 6(20)(a)
- $15,000 maximum contributions to eligible funeral arrangement for funeral services, 148.1(1)"eligible funeral arrangement"(b)(i)
- $15,000 maximum late filing penalty, 66(12.75)
- $15,000 monthly employer withholdings, remittance dates, Reg. 108(1.1)(a)
- $15,500 pension adjustment limitation, Reg. 8509(12)(a)(ii)
- $15,500 RRSP contribution limit for 2004, 146(1)"RRSP deduction limit" 147.1(1)"money purchase limit"
- $16,069 threshold for reducing refundable medical expense credit before 1999, 122.51(2)B(b)
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